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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2013-002665
Criminal Case No. 2011-GS-10-2074

State of South Carolina.....Respondent,

vs.

Jarret Graddick..... .....Appellant.

RECORD ON APPEAL

Steven Edward Buckingham
S.C. Bar No. 75089
PERKINS LAW FIRM
200 North Main Street / Suite 301
Greenville, South Carolina 29601
864.908.3900
SBuckingham@JohnPerkinsLaw.com

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
803.734.1343
RDudek@sccid.sc.gov

Attorneys for Appellant Jarret Graddick

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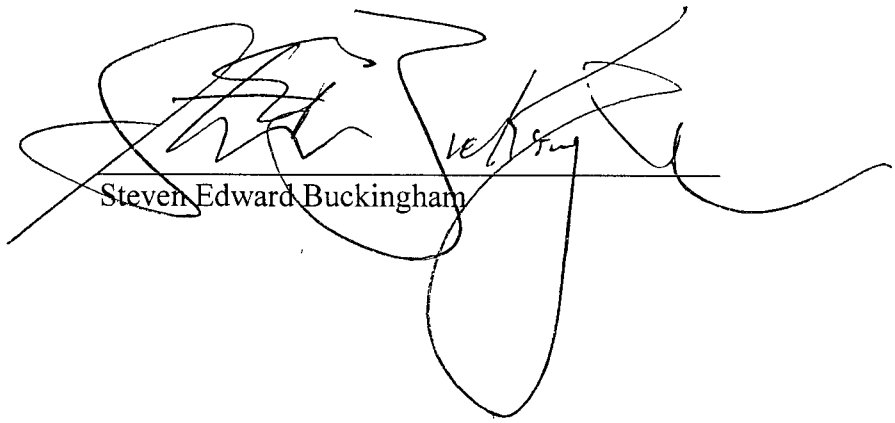
CERTIFICATION OF COUNSEL

The undersigned counsel for Appellant hereby certifies that this Record on Appeal contains all material proposed to be included by the parties and not any other material.

I SO CERTIFY.



Steven Edward Buckingham

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS)
Jarret Graddick)
AKA)
Race: BLACK Sex: M Age: 26)
DOB: SS#:)
Address:)
City,State,Zip MT PLEASANT, SC 294640000)
DL# 100118684 SID#: SC01561690)
*CDL Yes☐, No☐ CMV Yes☐, No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 2011GS1002074
A/W# K674463
Date of Offense: 9/15/2010
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☒ PLEADS TO: ARMED ROBBERY

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is ☒ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury _____ (defendant's initials)
The plea is ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Kneece Shealy, Jennifer | 7919 | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 20 ~~days/months~~/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment of $ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on. _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections 891 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee. _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund
Other: _____

*Fine		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.40
TOTAL		$ 133.40

☐ Appointed PD or appointed other counsel; §47.12 requires $500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Laurel Cooper
Court Reporter: Deborah Gaerdes
Presiding Judge R. Markley Dennis
Judge Code: 20
Sentence Date: 12/8/13

SCCA/217 (03/2011)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	IN THE COURT OF GENERAL SESSIONS CASE NUMBER: 2011-GS-10-02074
STATE OF SOUTH CAROLINA vs. JARRET GRADDICK **Defendant.**	VERDICT FORM

We, the Jury, by unanimous consent, find the Defendant, **JARRET GRADDICK**, on the charge of **ARMED ROBBERY**:

✓ GUILTY

____ NOT GUILTY

PRESIDING JUROR

December 6, 2013

JKS20100904944

WITNESSES,
TYRONE SIMMONS
Mt. Pleasant Police Department

AGENCY CASE NUMBER
2010P12283

ARREST WARRANT NUMBER
K674463

DATE OF ARREST
September 15, 2010

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury
Date: AUG 25 2011

VERDICT
Guilty
12-5-13
Foreperson of Petit Jury Date.

INDICT

DOCKET NO. 2011GS1002074

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

JARRET GRADDICK
DOB:
B/M

Indictment for
Armed Robbery

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 4, 2011 the Grand Jurors of Charleston County present upon their oath,

Armed Robbery

That on or about September 15, 2010, in Charleston County, South Carolina, the Defendant, JARRET GRADDICK, while at 3014 South Morgans Point Road, Mt. Pleasant, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Phone Smart employees with the intent to permanently deprive the victims of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

ARREST WARRANT

K-674463

STATE OF SOUTH CAROLINA

X County/ ☐ Municipality of

CHARLESTON

THE STATE

against

JARRET GRADDICK

Addr

MT PLEASANT, SC 29466

Phone SSN

Sex M Race B Height 600 Weight 150

DL State SC DL # 100118684

DOB Agency ORI #

Prosecuting Agency MPPD

Prosecuting Officer

Offense ARMED ROBBERY

Offense Code

Code/Ordinance Sec. 16-11-330

This Warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☐ Municipality of _____. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date.

RETURN

A copy of this arrest warrant was delivered to defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

STATE OF SOUTH CAROLINA)
X County/ ☐ Municipality of)
CHARLESTON)

AFFIDAVIT

Form Approved by S.C. Attorney General, April 21, 2000 SCCA 819

Personally appeared before me the affiant WILLIS who being duly sworn deposes and says that defendant JARRET GRADDICK did within this county and state on 9-15-10 violate the criminal laws of the State of South Carolina (or ordinance of X County/ ☐ Municipality CHARLESTON) in the following particulars:

DESCRIPTION OF OFFENSE ARMED ROBBERY
16-11-330

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA)
X County/ ☐ Municipality of)
CHARLESTON)

Affiant's Address MT. PLEASANT SC 29464

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that on 9-15-10 defendant JARRET GRADDICK did violate the criminal laws of the State of South Carolina (or ordinance of X County/ ☐ Municipality of CHARLESTON) as set forth below.

DESCRIPTION OF OFFENSE:

ARMED ROBBERY
16-11-330

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me)
on September 16, 2010)
) Judge's Address
(L.S.) N. CHARLESTON, SC 29405
Signature of Issuing Judge) Judge's Telephone
Judge Code 376 (DNK)

Issuing Court X ☐ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

BAIL set by

Judge Bligen

on 9-16-10

Type and Amount $250.00

Name of Surety

PRELIMINARY HEARING held by

Judge

on

Defense Attorney

Decision

FILED
2010 SEP 21 AM 8:45
J. ARMSTRONG
CLERK OF COURT

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol pros., etc.)

Disposition

Sentence

JURORS

WITNESSES

Name

Address

Telephone

Name

Address

Telephone

Name

Address

Telephone

Name

Address

Telephone

Name

Address

Telephone

Name

Address

Telephone

Name

Address

Telephone

Graddick-ROA_0006

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

OCA# 2010-P-12283
AFFIDAVIT

Personally appeared before me, a Magistrate of this County, one DET. Adam Willis (affiant) who, first being duly sworn, deposes and says that, JARRET GRADDICK (defendant) did within the Town of Mount Pleasant, County of Charleston, State of South Carolina, on SEPTEMBER 15th, 2010 violate the criminal laws of the State of South Carolina, namely, ARMED ROBBERY at 3014 SOUTH MORGANS POINT ROAD, MT. PLEASANT, SC in Violation of Section, 16-11-330 of the South Carolina Code of Laws of 1976, as amended.

The Affiant states that there is probable cause to believe that the Defendant named above did commit the crime(s) set forth and that such probable cause is based on the following facts:

That on September 15th, 2010, Phone Smart employees James Blain and Harlee Lynn, reported to the Mount Pleasant Police Department that the Phone Smart Cellular store had been robbed by two black males with masks and guns. The suspects left the scene by running through a field nearby. A witness observed a red and black Chevrolet Impala leaving the scene at a high rate of speed after the robbery and provided a description of the vehicle and license plate number to the Mount Pleasant Police department. The vehicle along with Defendant, Jarrett Eric Graddick, along with co-defendants, Keenan Coakley, Kevin Smalls, and Brian Mazyck were all taken into custody.

Moreover, that the stolen money from the business along with a Glock .45 handgun and clothing matching the suspects were recovered from the vehicle.

Additionally that Co-Defendant Kevin Smalls admitted to taking the Defendant Jarret Graddick to the area where the robbery occurred and picking him up after the robbery.

That the defendant acted in concert with the co-defendants to feloniously and unlawfully rob the Phone Smart where two of the subjects, armed with deadly weapon(s), entered the business and deprived the business of money.

All of the above is believed to be true based on witness statements, co-defendant Kevin Smalls' statement and the investigation of Detective T.F. Simmons. All of the above is against the law, peace, and dignity of the State of South Carolina.

AFFIANT

Sworn to and Subscribed before me
This 16 day of Sept 2010

Signature of Judge

100 Ann Edwards Lane
Mt. Pleasant, SC 29464
(843)884-4176

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
	)	
v	)	Case No. 11-GS-10-2074
	)	
Jarret Eric Graddick,	)	
	)	
Defendant	)	

TRANSCRIPT OF JURY TRIAL

The within jury trial in the above-captioned matter was held December 2 through December 6, 2013, before The Honorable R. Markley Dennis, Jr. in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Jennifer Shealy, Assistant Solicitor
Emmanuel Ferguson, Assistant Solicitor
9TH CIRCUIT SOLICITOR'S OFFICE
101 Meeting Street, 4th Floor
Charleston, South Carolina 29401
Appearing for State of South Carolina

William L. Runyon, Jr.
3 Gamecock Avenue, Suite 303
Charleston, South Carolina 29407
Appearing for Defendant Coakley

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
P O Box 901
Johns Island, South Carolina, 29457
dgarrison@sccourts.org

DECEMBER 2, 2013 9:00 A.M.

(STATUTORY JURY QUALIFICATION)

(PANEL EXCUSED FOR BALANCE OF DAY)

DECEMBER 3, 2013 1:00 P.M.

(IN CHAMBERS STATUS CONFERENCE)

(DEFENDANT COAKLEY PRESENT - COURTROOM 4C)

THE COURT: Let the record reflect that Mr. Coakley is present. Uh, -- thank you very much.

Prior to your arriving, we had a status conference and talked about certain things, one of which was the closing argument of Mr. Smiley. I assume you've received this. Ms. Shealy, have you received this?

SOLICITOR SHEALY: I have not.

THE COURT: I'm sorry. Well, there are two decisions on point. I find it interesting and I'm going to apply the law as it has been established. You can raise the objection.

It was addressed by the Court very summarily, I think, in 2010, the *State v. Smith*, which is 387 South Carolina 619. It's

an interesting Opinion. They're relying on the case of the *State v Huckie* at 22 South Carolina 295. It's an 1885 case, I think. A very old case, but it applies. It clearly states that even when there are conflicting sides in a codefendant's case, that if any defendant offers evidence then the defendants lose the right to close and that the State has the right to close.

I personally don't agree with that, but that's the law. I am going to apply it. I think that it needs to be revisited. They talk about it very quickly, in about two sentences, I think, about whether or not that's the right -- whether or not you would lose the right to close.

Of course that Motion is not before me, but if it was I'd have to rule; because it says 'no', that it is not, that it doesn't create a right ---

JIM SMILEY: If I remember right, Smith was the Fifth Circuit, the severance ---

THE COURT: It dealt with severance but they also stated, because they raised the issue that you'd lose the right to close if

forced to go to trial. That's correct. That was Judge Jeffcson's case.

JIM SMILEY: Right. But it did create a subsequent right to settle.

THE COURT: It did not.

JIM SMILEY: Okay.

THE COURT: And they reaffirmed basically by mention that they are relying on the principles stated in *State v. Crowe*.

JIM SMILEY: All right, I ---

THE COURT: And *State v. Crowe* is the case that discusses it. That's a Supreme Court decision.

JIM SMILEY: Yes, sir.

THE COURT: So I will follow those decisions and -- the Court may choose to deal with it otherwise, should that become necessary.

JIM SMILEY: Where do you -- when is the appropriate time to make ---

THE COURT: I would think that you would make it at the close of case, that you would move to have a right to close. Because I don't know at this stage -- as I am going to tell the jury, don't look to the

defendants to offer any evidence because they don't have to offer any evidence. That's not what the law says.

If that be the case, then we will address it at that time. I just wanted to give you, preliminarily, -- you asked what would be my position: My position would be to follow the principles that are set forth in *State v. Crowe* and *State v. Smith*.

With respect to -- kick this one around. With alternates, whether it doubles or not. The logic would say that if it doubles for preemptory challenges that it doubles for alternates. But in reading it, it doubles with preemptory challenges because the legislature chose to provide for that. They did not provide for that in the alternates statute. And the statue, I would note, follows the preemptory challenge. So if the State wanted to create that right among defendants for alternate selection, they could have. They chose not to do it. So strikes are one and two. Divide them up however y'all want. Per alternate.

JIM SMILEY: Yes, sir. I would object

to ---

THE COURT: Well, you can offer it now, but based on what? Just on general principle, because it was doubled on preemptory challenges?

JIM SMILEY: I would ---

THE COURT: Because there is no statutory provision that I saw and no case law decided; I don't believe, I couldn't find it.

JIM SMILEY: I will just be quiet.

THE COURT: No, no, you can challenge it. I don't have any problem with an objection but it has to have a foundation, based on something.

JIM SMILEY: Well, if I could, Your Honor, it appears to me that the defendants don't get to pick whether they're tried together or not. The State tries that, makes that determination.

THE COURT: Well, yes and no. It makes that -- as I said; I haven't had a Motion. There is no Motion to sever this case.

JIM SMILEY: No, sir.

THE COURT: Not when these men were

before me. I don't know if there was ever one made.

JIM SMILEY: No, sir, there hasn't been one that's been made. I guess that I would have to make a Motion to sever to make the other Motions, because I believe that if he was tried alone that he would be given two preemptory strikes for alternates, whereas just one ---

THE COURT: And we would only get ten as to the jury. Y'all talked about it, as I understand, peremptorily. I understand that you all have talked about it and you agreed seven, seven and six?

JIM SMILEY: Yes, sir, and I agreed that I would take one less. And the reason we can't combine it is because we have -- we have conflicting defenses. We can't appear to be ---

THE COURT: I understand that you have. That's why you have three lawyers.

JIM SMILEY: Yes, sir.

THE COURT: There's no question that there are competing interests here. I understand that. But when you read these

cases, the Court for whatever reason seems to say, 'Okay. So what? We're not going to recognize that as something that entitles you to a severance."

JIM SMILEY: Yes, sir.

THE COURT: And that's your only reason for it, that you're losing the right to have preemptory challenges, number one; and, number two, the right to close.

JIM SMILEY: Absolutely. And at this point that would be the basis.

THE COURT: And you have a preemptory challenge. The question is whether or not you get to have double. I find that has to be statutory provision, otherwise you comply with what the law says.

JIM SMILEY: Yes, sir. If you would, just note my objection.

THE COURT: Okay. Thank you.

JIM SMILEY: And I guess that I need to do this with the case. On behalf of Kevin Smalls, I make that objection.

THE COURT: I understand.

JIM SMILEY: Would it be easier for the Court if -- that unless otherwise stated that

I will be joining in -- I am just trying to make it so that we all don't have to jump up.

THE COURT: If we have a Motion that is made that everybody wants to be a part of, they need to so state, ---

JIM SMILEY: Very good.

THE COURT: --- so that the record is clear.

JIM SMILEY: The reason that I made that objection, Your Honor, is because I believe that it violates my client's right to fair and impartial trial based on the sixth amendment of the United States Constitution and the South Carolina Constitution, as provided. I understand your position and I appreciate it, Your Honor.

THE COURT: Thank you, sir.

JIM SMILEY: Thank you.

THE COURT: Anything else that we need to deal with before we bring the panel up, once we get them.

SOLICITOR SHEALY: None from the State.

THE COURT: Anything from any of the defendants at this point?

ANDREW GRIMES: Just quickly, Your

Honor, before Mr. Craddick comes in, we did ask that he be allowed to stay out on bond.

(DEFENDANT GRADDICK PRESENT)

THE COURT: Mr. Graddick, I understand that but given the nature of this, given multiple defendants, -- and it's something that I am sure your lawyer has explained. It's pretty customary, what I'm about to say. If it were a separate trial, but it is not, then I may be more inclined to allow you to remain on bond since the bondsman is in agreement. But out of an abundance of caution, I am going to have to revoke the bond, sir. I hope -- you've have an opportunity to discuss with your lawyer about that?

JARRET GRADDICK: Yes, sir.

THE COURT: He's talked with me about that this morning. I understand your position but out of an abundance of caution I'm going to choose to follow the standard operating procedure. Okay?

JARRET GRADDICK: Yes, sir.

THE COURT: Thank you, Mr. Grimes. Anything else from Mr. Graddick?

ANDREW GRIMES: No, sir.

THE COURT: Anything, Mr. Runyon?

WILLIAM RUNYON: Nothing from Defendant Coakley at this time.

THE COURT: Thank you so much. Okay. Anything else, Mr. Smiley?

JIM SMILEY: Your Honor, just that I've explained to my client that he will also be taken into custody.

THE COURT: Do you understand that, sir?

KEVIN SMALLS: Yes, sir.

THE COURT: Thank you so much.

JIM SMILEY: Thank you.

THE COURT: You bet. You will be given, for your edification, and I know each of us do different things, uh, -- my position is that I can't think of a more serious case than I try. Although certainly these are all serious cases and I understand that. A capital murder case is probably, by nature, one of the most serious cases that we try in this General Sessions courtroom. I, for the life of me, in almost every single one that I've tried, though not that many, I've tried

seven, the attorneys have the strike sheet before we strike. Now that we do that, I don't understand why other people don't give them the strike sheets. I do So you will get the strike sheet so that you can plan your strikes accordingly. It makes no sense for us to do that in a capital case but none other. So, that's my rationale for doing that. They can correct me up the road.

I see that it is referred to as a Cricket Cellular Store and Oakland Market. Are those two different properties?

JIM SMILEY: The Oakland Market is the whole complex.

THE COURT: All right. Well, why don't I just refer to it as the Oakland Market then?

JIM SMILEY: Yes, sir.

THE COURT: All right.

JIM SMILEY: It's that whole big ——

THE COURT: I understand.

JIM SMILEY: Yes, sir.

THE COURT: Since I can't pronounce "cellular".

JIM SMILEY: The Cricket Store has two

names, too. It's called the Cricket Store but it is also called the SmartPhone outlet. It's the same thing.

THE COURT: But it's in the Oakland Market?

JIM SMILEY: Yes, sir at the Super Walmart.

THE COURT: And the Oakland Market is a pretty well-known name for that area?

JIM SMILEY: Yes, sir. I believe that everybody knows that. It's the Super Walmart shopping center.

SOLICITOR SHEALY: I was just going to say that it's the new Walmart area. Everyone is familiar with that.

JIM SMILEY: It's called the Oakland Market but ---

SOLICITOR SHEALY: --- the "new Walmart" is definitely ---

JIM SMILEY: (Affirmative nod), the new Walmart. There is an old one, too, but it is the new Walmart, in that shopping center.

THE COURT: Thank you. What is the significance of the Six Mile, Five Mile and Ten Mile area of Mount Pleasant, Ms. Shealy?

SOLICITOR SHEALY: Judge, it's one of those questions that if you're from there, you'll know it. There are areas designated by how far they were from the other bridge. The Ten Mile area and the Six Mile ---

THE COURT: I understand that, but why is it necessary that I ---

SOLICITOR SHEALY: Because these gentlemen all live in that area. That is a very close-knit area of Mount Pleasant.

THE COURT: All right. Thank you.

SOLICITOR SHEALY: Which milestones did I put, Judge?

THE COURT: You put Five Mile, Six Mile and Ten Mile.

SOLICITOR SHEALY: Thank you, Five Mile.

THE COURT: Pardon me?

SOLICITOR SHEALY: I was just reviewing my notes.

THE COURT: Just to remind you -- and really this is directed more at Ms. Sheely. We are at borderline numbers to get the number. I tell solicitors that you have the ultimate control of whether the case goes forward or not.

SOLICITOR SHEALY: I understand.

THE COURT: You have the trump card in your hand.

SOLICITOR SHEALY: Okay.

THE COURT: We have fifty-seven at the moment. That only leaves fifty (sic) to get the two alternates. Of course, we don't know how many are going to be excused. Okay. Are you (Mr. Grimes) going to be first on cross?

ANDREW GRIMES: Yes, sir.

THE COURT: So the order is Mr. Grimes, Mr. Runyon second, and Mr. Smiley third?

WILLIAM RUNYON: That's the way that I understand it, Judge.

ANDREW GRIMES: Yes, sir.

JIM SMILEY: Yes, sir.

THE COURT: Thank you. Bring the jury up. Which ones are we going to trial on? All of these?

SOLICITOR SHEALY: I am not sure which ones that you have.

THE COURT: I have one that show kidnaping.

SOLICITOR SHEALY: No, no, no.

THE COURT: Which ones? I've got ---

SOLICITOR SHEALY: (Review of documents at bench), can I pull these apart, Judge?

THE COURT: Please, if you will and just give me the ones that we need.

SOLICITOR SHEALY: (Upon review of documents with Clerk Dom Michel, tenders copies to Judge Dennis.)

THE COURT: Thank you. Appreciate that. That makes it easy. I don't require y'all to rise when the jury comes in. I don't require that you rise when I come in either, because we're working. Thank you.

(JURY PANEL IN @ 1:54 P.M.)

THE COURT: We have forty-nine?

CLERK: Fifty, (sidebar with Judge).

THE COURT: That's fine. Just for your edification, when going through the list the jurors that we have also include some jurors that are involved in the summary judgment trial today. So if one of those persons happens to be by that number, we will go to the next number in calling out and identifying strikes. Any objection from the State?

SOLICITOR SHEALY: No, Your Honor.

THE COURT: In other words, there may be persons who may appear here who aren't physically present in the courtroom. Any objection?

ANDREW GRIMES: No, Your Honor.

WILLIAM RUNYON: None from Defendant Coakley, Your Honor.

JIM SMILEY: None from Defendant Smalls, Your Honor.

THE COURT: I hope you all have had a good day thus far. Thank you for your patience. As I mentioned to you yesterday when we did the statutory qualification, I promise you that you won't be here as long as your were yesterday. It may take us a little bit longer just because of the sheer number, but it shouldn't take us too long. Do we still have a potential one for tomorrow?

CLERK: Yes, sir. The case that Judge Jefferson started on Monday, that's starting tomorrow morning. We've gone through the remaining three cases, so we're down to nonjury.

THE COURT: So Judge Young will not be

picking one?

CLERK: No, sir, not for the criminal cases.

THE COURT: At this point, this case, we anticipate will probably run and take us into at least Thursday, possibly Friday. So this might be the last time that you have to come. I know that upsets everybody, but I'll give you the advance notice so that you can deal with the frustration.

For those of you who will be selected, we will be finished this week. I promise you that. Are we still waiting on two?

CLERK: (Sidebar with Judge Dennis).

THE COURT: I think we still have one more juror to come in. Do we have them all?

BAILIFF: Yes, sir.

THE COURT: Thank you, ladies and gentlemen. I appreciate your patience.

The case that we have in which I need your assistance is case captioned -- and the caption, the first party will be the State of South Carolina. Generally that's the party who is making the claim. In this case the State of South Carolina is making the claim

against three individuals: Jarret Graddick, Keenan Coakley and Kevin Lamar Smalls, accusing them -- the claim is that they are being accused of committing the offense of armed robbery.

I'll share what the allegations are in just a few moments, but first I'd like to introduce you to the persons and entities involved.

First, I'd like to -- Mr. Graddick, good afternoon. If you would, please stand and face the jury panel.

JARRET GRADDICK: (Complies).

THE COURT: Standing in the middle is Jarret Graddick. Are there any members of the jury panel related by blood or marriage, have any business dealings with, socially or casually acquainted with, have any connection with Mr. Graddick? If so, please stand. (No response). Thank you. There are none. Mr. Graddick, you may be seated.

Mr. Graddick is represented Mr. Grimes. If you would, identify yourself and anyone that will be assisting you.

ANDREW GRIMES: Good afternoon. I am

Andrew Grimes. I with the Public Defenders Office, an assistant public defender. Assisting me is John Kowelski, also with the Public Defenders Office.

THE COURT: Thank you.

ANDREW GRIMES: Thank you.

THE COURT: Are there any members of the jury panel related by blood or marriage, have any business dealings with, socially or casually acquainted with, ever been represented by Mr. Grimes or Mr. Kowelski? If so, please stand. Yes, ma'am?

JUROR NUMBER 4: Juror Number 4, Constance Anastopolon. Mr. Kowelski was my student, Your Honor. I believe that I taught him Torts and, I believe, Evidence.

THE COURT: Would that influence you in this trial?

JUROR NUMBER 4: It would make it difficult, Your Honor.

THE COURT: Very well. I will excuse -- and your juror number, again?

JUROR NUMBER 4: Number 4.

THE COURT: Juror Number 4 will be excused from participation in this dispute.

I assume that obviously if we have to excuse one, we're good, but if we have to excuse two that we're in trouble.

If we have to excuse one, we've got a possible issue. I don't know what the significance of it is. You weigh that. But I'll give you a few minutes, since you said that you wanted to make a call.

SOLICITOR SHEALY: Thank you, Your Honor.

THE COURT: We will be at-ease.

WILLIAM RUNYON: Do we have enough time to --

THE COURT: Absolutely.

(BRIEF RECESS)

(DEFENDANT GRADDICK PRESENT)

(DEFENDANT COAKLEY PRESENT)

(DEFENDANT SMALLS PRESENT)

THE COURT: Let the record reflect that all defendants are present. Let's -- rather than having everybody -- unless I hear otherwise, I will assume everyone is in agreement -- if you have an objection that is yours, make it. Otherwise, it'll be agreed -- unless I hear otherwise, I'll assume everybody is in agreement -- so when I ask if

there are any additional questions that are needed, it will not be necessary for you to respond individually, unless you respond that you have no objection.

JIM SMILEY: I understand.

THE COURT: Okay. Because everybody -- is everybody okay with that for record purposes?

ANDREW GRIMES: Yes, sir.

WILLIAM RUNYON: For Defendant Coakley.

THE COURT: Thank you. Okay. There was a Motion for sequestration of witnesses. So all witnesses will be sequestered.

Who is the person that you identified as your ---

SOLICITOR SHEALY: Tyrone Simmons. Sergeant Tyrone Simmons.

THE COURT: Mr. Simmons will be your chief witness and may remain with you in the courtroom.

SOLICITOR SHEALY: Thank you.

THE COURT: All right. Are we ready for the jury? Defendants ready?

SOLICITOR SHEALY: I've lost my co-counsel: He'll be right back.

rather than you will take the law as I give it to you and apply it fairly and impartially to the facts that you will ultimately determine.

I thank you very much for your attention to my remarks. I ask you to give that same attention now to the attorneys as they give their opening statements on behalf of their clients.

Solicitor?

SOLICITOR SHEALY: May it please the Court?

THE COURT: Yes, ma'am.

SOLICITOR SHEALY: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, ma'am.

SOLICITOR SHEALY: Good afternoon. On September 15th, 2010, at Oakland Plantation -- and let me tell you, because if you're not from Mount Pleasant, you might not travel out that way. It's going towards Awendaw. But for those that are from Mount Pleasant, you know that there is the old Walmart and the new Walmart. Oakland Plantation has a large, big new Walmart. If you stand facing that

Walmart, there's a row of businesses over on the side. Interestingly, a lot of those businesses open from both sides, the side closest to the Walmart parking lot and from the other side; so there are two entrances.

Jim Blain and Harlee Lynn were employees at the phone store. Most people call it the Cricket Store, because there's a big sign that says CRICKET above and on the window. They were working there. Around 6:30 customers had stopped coming in. They were chatting inside the business, where you go to buy cell phones, etc. Things were quieting down.

What happened previously was that Kevin Smalls, in a red and black Impala, drove down a dead-end street named Sam Edwards Road. You will see a diagram that will make more sense. But if this is Sam Edwards Road, that dead ends, there is a road called Porchers Bluff that run parallel to it. That is along the back of Walmart. If you were go down Porchers Bluff a little bit, it would be the back side of these businesses that I was telling you about.

When Me, Kevin Smalls, drove that red-and-black Impala down Sam Edwards Road, he let two guys out at the dead-end. One was Jarret Graddick and one was Keenan Coakley. They had with them at least one gun, gloves, and shirts knotted to cover the bottom of their faces.

About thirty minutes -- I am not sure exactly how long but it was about thirty minutes, some times passes. The store quieted. Harlee Lynn looked out the back door. At that time, on the other side of the road was an area that was kind of grown up. Since then it's been mowed down some. She sees Mr. Graddick and Mr. Coakley -- she doesn't know who they are, but she sees two guys with their faces covered barreling towards their store entrance. Jim Blain, her co-employee and manager of the store, sees them coming. They panic. Jim Blain sees the gun.

They go out the front door into the parking lot of the Walmart. When they go out there, as you can imagine, they were very upset. They were screaming, "Call 911!

We've been robbed."

They then try to seek shelter in one of the other businesses right in that area. One business was already closed. They ultimately go to Jersey Mike's.

Harlee Lynn calls 911.

Jim Blain takes a minute, goes back and looks in the window to see if the guys are still there. They are at the cash register where the money is. One of them waves a gun at him. He retreats back to the Jersey Mike's.

When they realize that they had gone back in the direction that they came, Jim Blain gets in his vehicle to try to see if he can find them down Porchers Bluff. He cannot.

When they call running out of that store saying "Call 911! We've been robbed!" there was a woman who had just bought her groceries at Walmart. She was in the parking lot. Her car was close to the area where the store was. She said, "Are y'all okay?" Then she calls 911. As she does so, she sees a red-and-black Impala parked just a few cars down from her. Kevin Smalls was standing on the

outside of the car. She will tell you how he appeared, looking back and forth, from the Cricket phone store back and forth. He looked very nervous. While she is on 911, she goes 'there are some guys acting very suspicious in the parking lot.'

They had started to tear out of there. You can go right down in front of the Walmart and then around the garden center, out back towards Porchers Bluff. That's what they did. They got out of there.

Then they approached the stop light to 17. Now, even if y'all aren't familiar with the area at all, it's a little confusing now in 2013 as to the roads compared to 2010 because there has been so much work done on the roads in Mount Pleasant.

But Kevin Smalls turned left, going back towards Mount Pleasant, right back down Sam Edwards Road. He picked up Mr. Graddick. He picked up Mr. Coakley. And he had a front passenger, Brian Mazyck, who was charged in this case as well.

When they got back in the car, they were excited. 'We got money!'

They then go straight back down Sam Edwards Road at a high rate of speed and have to go back up and make a u-turn to come back towards Mount Pleasant.

They don't get far. Because when Jessica Lyons, the woman who was putting groceries in her car, called in the red-and-black Impala, she called in the tag number as well. If you do live in Mount Pleasant, you know that they are everywhere, the Mount Pleasant Police. They were there that day.

Officer Zeitner pulls rights in behind the red-and-black Impala, having heard it on dispatch, and stops the car. You will have the benefit of seeing that in-car video that shows the traffic stop.

I will tell you two people who weren't being very still: Jarret Graddick and Keenan Coakley. You will see their behavior in the back seat. You will see one trying to get into the front seat after Mr. Smalls was asked to get out of the car.

But, more importantly, is what was in that car: two shirts that had been tied to hide faces, gloves, a gun, a loaded gun, and

currency -- money on the back seat.

Interestingly, Mr. Blain, the manager at the Cricket phone store, he told the police, 'You know what? I've got a weird bill in my till from the cash register. I tried to put in through the ATM' the night before and he told them that it wouldn't take it. He told them that it had these unusual stamps on it. Guess what was in the back seat of that car? That bill with those stamps.

Now, Judge Dennis has told you how you will hear at the end of the all the evidence being put in, after all the closing arguments are made, what the law is.

I want to introduce you to a law in South Carolina that is a law in many states, which is that "the hand of one is the hand of all." We've got three guys here: two that go in, one that drops them off, one that is the stakeout and the one that goes and picks them back up. We've got three guys involved in this armed robbery. The hand of one is the hand of all.

What the hand of one is the hand of all stands for is that if a crime is committed by

two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a natural consequence of the acts done in carrying out the common plan and purpose.

When you plan to go into a business where people are working, to shield your face, to carry a deadly weapon, to steal, whether you are the two that go in or the one that is waiting outside, you are all guilty of armed robbery.

You will hear from Brian Mazyck in this case. He was also charged that night. He was the front passenger. Please start from the very beginning in looking at his conduct, starting with the in-car video. That night, he told the police 'I didn't have anything to do with this.' That night he gave the police a statement of what all he had seen. That night he went back out to Sam Edwards Road to try to help them find stuff. You will have the benefit of hearing from Brian Mazyck.

After the conclusion of all the evidence and when Judge Dennis has explained to you the law in the case, we will ask that you return guilty verdicts: one against Jarret Graddick; one against Keenan Coakley; and one against Kevin Smalls. Thank you very much, ladies and gentlemen.

THE COURT: Mr. Grimes.

ANDREW GRIMES: Thank you, Your Honor.

THE COURT: Yes, sir.

ANDREW GRIMES: Good afternoon. On behalf of Jarret Graddick, his mother, his family, his girlfriend, I would like to thank you for coming to court today, though it might not be your first choice to be here. Again, I would like to thank you for keeping an open eye and for listening carefully to all the evidence in this case, because it is important that you keep an open mind.

This case is essentially about where was Jarret at 6:30 on September 15th, 2010, over three years ago. We will present evidence that Jarret was at his grandmother's house. He was there at 6:30. He was helping her out.

You will hear about what he did that day, about how he was home all day, they were sort of watching TV, the various soap operas in the afternoon. About 5:00 o'clock, when Ms. Graddick's favorite show comes on, she always watches Dr. Oz. They watched that show for a while and while they were watching that show, Melvin White comes over to the home, a long-time family friend of the Graddicks.

Right before Dr. Oz was over or right after it was over, they go outside and Jarret is helping his grandmother in the garden. That's one thing that he really liked to do for her. He did the mulching, pulled some of the weeds. That's why she likes for him to be in her house.

While he's out there in the garden, you will hear evidence that a car pulls up and that two boys, or the guys in the car, say 'Come on, Jarret, let's go.' His grandmother says, 'Don't get in that car, don't go with them.' But Jarret, being young and wanting to be with his friends, decides to go. That's probably about 6:30 or 6:35.

Then as Ms. Shealy pointed out, about

6:40, Office Zeitner is making the car stop. Jarret was in the car. All of the evidence that Ms. Shealy talked about was in the car, too. When you hear it, at first it sounds like the State has a rather strong case. Jarret is in the car, the money is in the car, there was a gun in the car, it was close to the scene and it was within a short time..

But not everything is what it first appears to be. That's why you have to keep an open mind in such cases.

We don't dispute a lot of what she's said. There is no dispute that there was an armed robbery. It's not a case of what happened. It's a case of who did this. Did Jarret do it or was he at home with his grandmother?

You'll hear evidence about why he was in Mr. Smalls' car. Was he just hanging out there with Mr. Smalls, getting ready to go downtown that night with Mr. Smalls? Or was he part this masked mindless armed robbery?

You may hear evidence that his DNA was found on the gun. We are not going to dispute that. But just because your DNA is

somewhere, you can't tell when it was put there, how long it had been there. There's no telling how long ago it had happened, when the gun had been touched or how the gun got to Brian Mazyck, under his passenger seat of the car or what Brian Mazyck was doing that day.

Speaking of Brian Mazyck, you heard a lot about three people but, as Ms. Shealy told you, one of their key witnesses describes seeing people get out of the car, putting gloves on, wearing masks, talks about four people being in the car. There were four persons, including Brian Mazyck. The gun was found near his passenger seat. Now he's up here -- he's none of us. He's made a deal with the State to get out of going to prison. He knows that he is guilty.

The same witness who saw Mr. Mazyck in the car, who saw four people, he never saw those two people who robbed the store get back in that car. You'll hear a lot about fields and paths. There is no telling what other people were out there. They could have run into someone's house, ran to a house;

All we know is that there was the car.

For whatever reason that Kevin Smalls goes to Jarret's house and picks him up, maybe they are going out because they got some money, going to a party. 'Come with us.' Jarret is like, 'alright', not knowing anything at all about what's gone on. His grandmother will be able to tell you about that.

That's why we are asking you to keep an open mind in this case. Listen to all the evidence. Look at all the witnesses' biases, issues of their credibility, why they would say one thing versus something else. Look at the physical evidence. When you consider all that evidence, Ms. Graddick's testimony, Mr. White's testimony, we are confident that you will find that Jarret was at home with his grandmother on September 15th, 2010. You will find that he is innocent of these charges. Thank you.

THE COURT: Mr. Runyon.

WILLIAM RUNYON: Everything is so clear, everything is so simple, like the State has told you, it just sort of slid

right on up in there. Two people robbed the phone store. Two people got into a car. But there were four people in the car when they stopped the car, the Mount Pleasant Police Department.

The State has decided that only three of those people had anything to do with it. The other one was as pure as the wind-driven snow from the top of a roof.

That's why I think what we are going to have to do here is, like Mr. -- like my colleague said, we're going to have to keep an open mind, we have to listen to what actually went on.

There were four people in this car. You will find that Mr. Coakley was riding in the car with three other people. That's what they are going to be able to prove to you, that he was in the car.

Now, beyond that it's going to be up to you to decide who were the two people that went into the phone store, and were they the same people that were in the car that was stopped by the Mount Pleasant Police Department. It's that simple and that

uncomplicated. That simple, and just that complicated.

I thank you for your attention. My client is in court today, just like the other gentlemen are. He has his family here, just like the other gentlemen have their families here. We are hoping to get this resolved at some point in time after the State has presented its evidence.

Who were the two people that went in the store? Were either of those two people who went in the store either of the people -- any of the four who were in the car? That's the question.

Thank you very much.

THE COURT: Thank you, Mr. Runyon. Mr. Smiley?

JIM SMILEY: May it please the Court?

THE COURT: Yes, sir.

JIM SMILEY: You met Kevin. He stood up for jury qualification. I have the honor of representing Kevin Smalls.

There's a concept here that each of the jurors, that I want you to start out with. While there are three individuals over there

and we are trying three individuals. They are each getting separate trials -- at the same time. That is real important.

Kevin Smalls has a red-and-black Impala. Kevin Smalls dropped off Keenan Coakley and Jarret Graddick.

Mr. Smalls went to the Walmart.

Mr. Smalls picked up Mr. Coakley and Mr. Graddick back on Sam Edwards Road, which is a pretty good distance.

I want you to listen for evidence that he knew what those two fellows were going to be up to -- if that was the same two fellows.

See, that's what is really hard. I'm here to make sure that Kevin Smalls gets a fair trial; that you weigh that evidence against Kevin and not just take it as a whole. What do you see?

I don't know the story of the other defendants, because I'm only concerned with one, Kevin Smalls. Kevin Smalls dropped them off, picked them up. That doesn't mean that he knew what was going on.

All I ask for, and the Judge has brought it up several times, is that you use your

common sense, to listen to the facts that the State lays out -- and by the end, you're going to think -- I don't know if you're old enough, but when I was growing it was the Apple Dumpling Gang -- that it was the Apple Dumpling Gang or the Three Stooges, Four Stooges. It just makes no sense. It doesn't make any sense whatsoever.

Kevin had a car. He gave people rides. Kevin, at some point, realized that there was something really wrong when those fellows got back in that car and as he pulled back out on 17. When the police put on a light, he stopped -- right then.

After the fact, it is not hand of one is the hand of all. The Judge will tell you the law. I am not going to support that I understand it all, but what he says is the law. I just want to make sure that you understand that: My understanding of the law is that they're have to show that there was a common purpose and plan. So I want you to listen to what you hear about a common purpose and plan.

Also, I want you to think about Brian

Mazyck, as he testifies, sitting next to Kevin in the front seat of that car.

I think that there were a couple of different things going on there. As the picture develops, I think that you will be able to separate it.

In this trial, Kevin Smalls wasn't a part of any armed robbery, he was not part of any plan. It doesn't make sense. You'll see why, as the evidence plays out.

We all have different jobs. You job is to be the finders of the facts. When you decide the facts, that is what the facts are.

Ms. Shealy, she is the prosecutor. Her job is to do justice, what she believes is justice. I'm sure she will do her job well. Her job is not just to try to convict people. Her job is to try to do the right thing for each person and for society as a whole.

Detective Simmons, he's a policeman. His job is to arrest people. That's what he does. Not to convict people, but to arrest people that he believes the evidence shows committed crimes. That's what he did in this case. That doesn't make it the ultimate, or

we wouldn't need a jury, would we? If he decided, that would be it, (negative gesture).

Now, the Judge -- besides keeping us in line, -- he's the keeper of the of the law. What he says the law is, that's the law. Even if I want to argue with it, I think that I might know it, what he says goes. That's real important.

He also is what I called the gatekeeper. During this trial, Ms. Shealy may do something that I think is not within the Rules -- not that she'd do it on purpose, and I want to make sure that you understand that because a lot of times we do things that we all see different ways. So from time to time, Mr. Grimes, Ms. Runyon, Ms. Shealy or myself may stand up and say we object. Then it goes to Judge Dennis as the gatekeeper of the Rules to say, "yeah, that gets to come in' or 'no; that's outside the Rules." The Rules of evidence support the truth, because it gets you competent information to make your decision as finders of the fact.

We can all guess and speculate, but y'all

can't. There is no guessing, speculating or filling in the blanks. Your job is not to do his job, your job is not to do her job, your job is not to do my job. Your job is to sift through the facts, as you're allowed to, and to come with an unanimous decision as to each individual, not as a whole.

My job -- I haven't told you what my job is, though it seems a little obvious. It's a little different than Ms. Shealy's. We're both attorneys. But a prosecutor seeks to do justice. As a defense attorney, my job is to zealously represent the interest of my client within the rules that are presented in the case. I will do that.

One last concept and I will sit down. I always talk too much. I will try to make it short and sweet.

There is a presumption of innocence that Judge Dennis told you. Kevin Smalls doesn't have to prove anything, not a thing. He is presumed innocent. You can't say somewhere along the way, 'Well, I guess there might be this or that.' He's innocent. He didn't do anything wrong. We know with certainty that

he didn't go into that store. He wasn't the robber. Your job for him is to determine whether there was a preplan that he was part of, whether he was acting in concert with the robbers. The answer to that, after the evidence comes back will show that he was not. He was not. He is not guilty. Thank you.

THE COURT: Call your first witness.

SOLICITOR SHEALY: The State calls Jim Blain.

(WITNESS TAKES STAND)

JAMES BLAIN, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Mr. Blain, if you would, please, tell the jury where you currently work?

A. I work at a store that I own and operate. It's called TS Wireless. It is the Oakland Plantation Shopping Center. People know it as the Super Walmart Plaza.

Q. Do people call your store by something other than its official name?

A. Well, we sell cellular phones and services. The biggest signage over the door is "CRICKET", so people call it the Cricket Store, but we sell other stuff besides that.

Q. Okay. Were you the owner of that store back in September of 2010?

A. Yes, ma'am.

Q. If you would, can you describe your store for us? How many doors do customers have the ability to walk in?

A. Well, it's a classic modern strip mall store with the exception that it was built with glass on either end. So it's an eleven hundred square feet, very small retail store. People can enter from the Walmart parking lot and they also can pull up on South Morgans Point Road, which is the road behind the store and enter through there. There is parking in both front and back of the store that people use.

Q. Okay. I am going to show you a number of photographs and ask you, first, if you can identify those?

A. Well, the first one ---

Q. If you will, just look at them and

see if they -- if you recognize what is depicted in those photographs.

A. (Upon review), yes. I certainly recognize what's in the photographs.

Q. Okay. Are those accurate depictions of a certain location on September 15th, 2010?

A. Yes.

Q. What place was that?

A. This would be the -- they are photos of the interior of my store and also a shot of the exterior.

SOLICITOR SHEALY: Your Honor, at this time -- and I will show these to defense counsel -- we would move to introduce State's Exhibits previously marked two (2) through ten (10).

THE COURT: Any objection?

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: No objection from Defendant Coakley.

JIM SMILEY: No objection, Your Honor.

THE COURT: Without objection, State's Exhibits 2 through 10 are admitted, each being a photograph.

(SO ENTERED AS STATE'S EXHIBITS 1 - 10)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. I want you to kind of orient the jury. If you look at that, what has been marked as State's Exhibit 2, what does that picture show?

A. This is what I would call our back door. It is actually, technically, according to the Town of Mount Pleasant, the front door but -- there's a street address of 3014 South Morgans Point Road. About a third of our customers come in through this door.

You can see by the signage the various products that we have: Cricket, low left; Boost Mobile, T-Mobile, the spokes model there.

Q. Okay. And you said that while the Town of Mount Pleasant called it your front door that you call it your back door?

A. Yes.

Q. Why is that? Do you get more traffic from the other door?

A. We get more traffic from the front door, (affirmative nod). About two-thirds of our people come in from the Walmart Plaza,

the larger parking area in the front of the store.

Q. And the other door deposits into the Walmart parking lot area, is that right?

A. Yes, it does, ma'am.

Q. Showing you State's Exhibit 3, could you describe to the jury what this shows?

A. This is just inside the same door. First on the left are -- the first door on the left is a bathroom.

There's a little TV on the wall where people have to wait, a courtesy TV.

A storage closet (indicating).

Then you're into the main sales area of the store.

Q. Okay. State's Exhibit 4?

a. Now you're standing in the main sales area.

To the left, off screen, you can see a bit of the counter in the low left. That is the cashier selling station. That is where I spend most of my time.

Q. Let me show you what has been marked as State's Exhibit 5. That shows just kind of a larger picture of that area?

A. Yes, this is a good perspective. You're seeing almost ninety percent of the store. The only thing behind you is the door coming in.

I typically stood around the corner to the left. That's one sales/cashier area.

Q. Let me show you a photo that highlights that area. Showing you State's Exhibit 6 and State's Exhibit 7, is this the area where you're indicating that you spend most of your time?

A. That's where I typically spend my day, yes.

Q. Now, where do you keep money that you collect during the day?

A. You can see in this photo, just beneath the computer monitor a white drawer, just ——

Q. Showing you State's Exhibit 8, does that reflect the white drawer?

A. Please repeat the question?

Q. State's Exhibit 8, does that show the white drawer?

A. That's the drawer in close up.

Q. Is there something missing in this

photograph?

A. My cash box where I'd put the bills and -- I think that the change drawer might be visible, the little black thing.

Q. On the bottom shelf?

A. No, that's a credit card machine on the bottom shelf.

Q. Okay. That evening, did something unusual happen?

A. Most unusual.

Q. Could you tell your first who else was inside the store with you?

A. At approximately 6:15 in the evening, -- we're open until 7:00 -- it had gotten dark by that point, dusky kind of evening. And I was there with one other employee in the store with me, a young lady by the name of Harlee Lynn. She and I were -- it was slow, there was nobody else was in the store.

So I had moved forward to her cashier/ sales station, in the front of the store near Walmart, --

Q. Showing you State's Exhibit 4, does this you her area?

A. Yes. I was seated in the chair -- there is a chair on the side near the wall -- not that chair. I was seated in the chair up close to the desk. Miss Lynn was seated in the farthest chair. She was actually seated facing in the direction of the camera.

She said, 'Jmmmmmm!' in a rather oddball way. I turned and saw two men coming into the store who had hats on and masks, who were waving a gun. I said to Harlee, 'Let's get out of here.'

Not a word was spoken between the robbers and us. We could see clear trouble coming and we were out the front door in -- I don't know. Ten seconds, flat. If I could get some sense of the adrenalin pumping that evening, it was -- it was shocking. I've been in the cell phone business for twenty-three years, in the retail end in various locations in the area for seven years -- at that point, now ten years. We saw trouble and we vacated the door as fast as possible.

Q. And does that photograph reflect the door that you exited out of?

A. Yes, ma'am.

SOLICITOR SHEALY: I beg the Court's indulgence just a moment.

THE COURT: All right.

SOLICITOR SHEALY: With the Court's permission, may I just hand him a pointer so that in the future you can show the jury where we are talking about — (tenders pointer to witness).

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. So did the two guys come into the store prior to y'all leaving the store? Had they made their way in?

A. Yes, they were entering as we were exiting.

Q. When you and Miss Lynn got out of the store, what did y'all do?

A. I thought that I would be a hero, I thought that I would be tricky. All of the stores are through-and-throughs, front door and back door. There was a Sprint cellular store two doors down. I thought that I'd run down there, run through the Sprint store and watch them leave, maybe see how they were getting away.

Sprint closes at 6:00. I ran slap into a closed door at the Sprint store.

I was trying to -- you would think dialing 911 on a cell phone would be easy, but I -- I tried three times and I couldn't manage 911.

I cut through the store which was next to us, called Jersey Mike's submarine sandwich store, and I ran -- I ran yelling through there, "Armed robbery! Everybody stay inside!" Exited out the back of the Jersey Mike's store in time to see two people running through the field across the street. Across South Morgans Point Road from us is a wide-open field, an undeveloped field. It was covered with underbrush at the time. It was covered with waist-high brush. I could see people running through the field, two guys.

Again, I thought "hey, this is the time to think and act." I jumped into my little car, which was parked out back, and thought that I would cut them off. I drove a block and by this time I'd managed to call 911 and reported the robbery. I drove down five

hundred yards on Porchers Bluff and cut left to where I thought that they might pop out of the woods, pop out of the field. I didn't see any activity that I thought was suspicious.

I also thought, 'what am I going to do if I do see them?' The operator for 911 was saying this was a bad idea, "We don't advise you to pursue. If they are armed, don't pursue.' So I hit a driveway, turned around and came back to the store. The total elapsed time was three or five minutes. It's hard to really tell exactly.

By that time, I was totally impressed. A Mount Pleasant policeman was already at my store. He was talking with my sales assistant, Miss Lynn.

Q. Let me see if I can just recap. So when you went looking for them, you saw no sign of them?

A. I saw them running through the field and that's when I jumped in the car. That's the last that I saw of them.

Q. And you told us that that field kind of had brush. Does it still have that amount

of brush?

A. No. I think that the developer has cut it clear because of that particular incident -- or maybe he wants to develop the land, I don't know. But it is clear-cut now.

Q. Let me show you what has been previously marked as State's Exhibit 12 and just ask you if you are -- if that is a familiar area for you?

A. (Upon review), yes.

Q. What does that depict?

A. You can see in this aerial photograph the roof of the big Walmart. That oriented me. The streets are labeled Porchers Bluff and South Morgans Point Road. The parking lot, (indicating). I can actually see the building where my store is and the field across the street.

SOLICITOR SHEALY: Your Honor, I have shown this to defense counsel. I think without objection, I move to admit State's Exhibit 12.

THE COURT: Without objection, it is admitted.

(SO ENTERED AS STATE'S EXHIBIT 12)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Taking a look at that, can you orient the jury?

A. Here's ---

SOLICITOR SHEALY: Your Honor, -- just a second. Would the Court allow him to approach ---

WITNESS: Or if I could simply stand.

IT CLERK: I have a rule if that will help, just hold it off (screen).

WITNESS: Good enough. I will try to speak up.

SOLICITOR SHEALY: Try not to turn your back to the court reporter, and just make sure that you are speaking loud enough for the jury.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. What is State's Exhibit 12?

A. Up there is Highway 17.

This is obviously the big Walmart roof.

This is South Morgans Point Road where my store is, and this is the building

with my store. I am probably around mid-way in the building.

The robbers entered through this back door and exited out into this field. I was hoping to --

I'm sorry to draw on the screen.

I was hoping to cut them off coming out of there and drove all the way down to here before returning back to the store.

Q. And the road that you are showing they cut across to, what is the name of that road?

A. This is South Morgans Point Road.

This is Porchers Bluff.

The big parking lot, that's the front of the store.

Q. Now, prior to your seeing them when you ran through Jersey Mike's and saw them exiting, did you ever go back to look and see what was going on in the store?

A. Yes. I said earlier that I ran into the closed door at the Sprint and then cut through Jersey Mike's. But as I was coming back from trying to cut through Sprint, I came to the front of my store and looked

around me -- through the front window; the Walmart parking lot side window into the store to see if they were still in there.

They were at that cash station where I told you that I stood and worked. One of the guys still saw me and raised his gun. I thought, 'uhhhh' and I ducked away from the window out of what might have been a line of fire. That's when I cut through the Jersey Mike's.

I think that I also bumped into Miss Lynn outside where she was in the front on the phone, and I then cut through Jersey Mike's.

Q. Showing you State's Exhibit 7, is this the work station that -- sorry.

A. No (sic).

Q. That's the work station where you saw the two individuals?

A. Yeah, they were behind the counter. At least one of them was behind the counter where the cash box was.

Q. With the Court's permission, could you stand and show us what the person who had the gun did towards you?

A. The person who had the gun was in

this area and was generally aiming in the direct that I was looking into the store from.

Q. Okay, you can take your seat again.

A. (Complies).

Q. Would you describe for us, please, what you can about how they appeared? Height? Size?

A. My -- my sighting of the robbers was very brief. They were -- they seemed to be young, athletic men, tall and thin. They had masks on their face, ball caps on. I wouldn't be able to recognize them at all, really..

Q. Okay. Now, regarding the 911 calls, you started making your 911 call at what point?

A. I tried to dial as I ran towards Sprint.. At some point -- I can only recollect that I was talking to 911 as I was driving, trying to head them off running through the field.

Q. And you indicated that Miss Lynn was already on the phone before you went to look for the gentlemen?

A. As I -- as we fled the store, I shouted to Harlee "call 911" and then did my crazy run-around.

Q. And you told us -- what time did your store close?

A. Seven o'clock.

Q. Did you give a statement to the police that evening?

A. Yes, I did.

Q. Do you recall what time that you told them that this event occurred?

A. I recollect that it was 6:15'ish but I don't have an exact recollection ---

Q. Would it assist you to look at your statement?

A. It would.

SOLICITOR SHEALY: With the Court's permission, ---

THE COURT: Yes. Mark it for identification, please.

COURT REPORTER: State's Exhibit 116 for identification.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Mr. Blain, if you would, take a look

at what has been marked as State's Exhibit 11A for identification purposes and tell us whether or not you recognize that document?

A. I recognize it. It's my statement that I gave to the police shortly after the incident.

Q. If you would take a moment to look at it, please do so, but tell us what time you told the police that evening that this happened?

A. I said approximately 6:30.

Q. Now, did you have the occasion to go back into the store that evening to see what, if anything, had been taken?

A. Yes. When I returned after my drive down the road and back, there was a policeman already here. I moved to go into the store and they said, 'don't go in, it's a crime scene, let us do out thing.' They were there, it seemed, like an hour or more taking fingerprints and such. Then we went into the store after that.

Q. What did you find was missing from the store?

A. I found that the cashbox was miss-

ing, with the day's proceeds, approximately a thousand dollars.

Q. When you say "cashbox", could you describe for us what you mean by that term?

A. Yes. The -- we don't really use a formal cash register. There is a drawer to organize money, dollar bills and change. I typically go to Office Depot and Staples and get a metal cashbox, but they are too tall for the drawer. So I take the cashbox and bust the hinge on it, throw away the lid and use the portion that holds dollar bills. They have the spring clips and you put ones, fives, tens, twenties. Then I take out the plastic change tray and use a little plastic change tray and a metal dollar bill tray. It fits nicely into the desk drawer arrangement that came with the work station.

Q. Showing you what has been previously marked as State's Exhibit 71, I ask you whether or not you can recognize the item -- that item?

A. Yes, I certainly recognize it. This is the missing cash drawer.

SOLICITOR SHEALY: Your Honor, at this

time we would move to introduce this as State's Exhibit 71. As I understand, it's without objection.

THE COURT: Without objection, State's Exhibit 71 is admitted.

(SO ENTERED AS STATE'S EXHIBIT 71)

DIRECT EXAMTNATION CONTINUED

BY SOLICITOR SHEALY:

Q. Now, you were telling us that when you buy it that you change it what fashion?

A. I pull the hinge ---

Q. The pin?

A. No, no. There's a peg that goes through. It's the drawer/door hinge pin. The -- there is a wire that secures the lid to that. On that model it was easy to pull out, separate, and just use the cash drawer. There was also a Scotch-taped or a piece of cardboard on the bottom of that, uh, -- if you hold it up by the handle -- if you set that flat, that thing will spin. So I cut some cardboard out and now it sits flat.

Q. In addition to telling the police that this was missing and the money was there anything unique about the money that

was taken?

A. Yes. Yes, ma'am. The -- this was three years ago, understand. The typical routine at that time was for me to take the daily proceeds and do a -- prior to -- about that time I would do a night deposit drop at the Bank of America at the corner of the Isle of Palms connector and 17.

But the ATM's were changed at the Bank of America so that they -- you have to put cash in, as well as take cash out; a very innovative kind of novelty. Rather than bag up the cash at the end of the evening, I would ten to count it and stack it and go to the ATM and put the money in. I thought it was kind of cool. The machine would go "bbbrruppp" and it would count the dollars accurately and give me a receipt. Very new.

The night before the robbery, when I put the money in, it -- if the money is marked, defaced or anything, it gets rejected by the ATM machine. A hundred dollar bill came back out. I smoothed it out and put it back it. I held it up the light, it looked good. I put it back in three times. I held it up and

looked at it, 'why isn't this going in?' It looked like a real bill to me, didn't look counterfeit in any way. I flipped it over and on the back were two round marks as if somebody had taken a rubber stamp -- or the end of a pencil maybe, even, that size -- and made marks on the back of the bill.

Q. Let me interrupt you for a second. Showing you what has been previously marked as State's Exhibit 56, I ask you whether you can identify the items identified in that photograph?

A. I can.

SOLICITOR SHEALY: Your Honor, I ---

WITNESS: It's, uh, ---

SOLICITOR SHEALY: --- would ---

WITNESS: --- the back side of the dollar -- of the hundred dollar bill that I tried to put into the machine the day before.

SOLICITOR SHEALY: Your Honor, as I understand it, without objection, I would move State's Exhibit 56 into evidence.

THE COURT: State's Exhibit 56 into evidence, being a photograph, without objection.

(SO ENTERED AS STATE'S EXHIBIT 56)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Showing you State's Exhibit 56, can you stand up and point to the area that you were talking about?

A. Evidentially these marks on the bill prevented it from being accepted the previous evening by the ATM machine.

Q. You may take your seat again.

A. (Complies).

SOLICITOR SHEALY: I beg the Court's indulgence just a moment.

THE COURT: Yes, ma'am.

SOLICITOR SHEALY: Thank you, Mr. Blain. I have no further questions for you. Please answer any that the defense attorneys may have.

WITNESS: Okay.

THE COURT: Cross-examine, Mr. Grimes?

ANDREW GRIMES: Yes, sir. Thank you, Your Honor.

THE COURT: Yes, sir.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. Good afternoon, Mr. Blain.

A. Good afternoon.

Q. I want to ask you a few questions about the timing in this case.

A. Sir?

Q. I said that I want to ask you a few questions about some of the timing in this case.

A. Okay.

Q. I believe that you said that the robbery was at approximately 6:30 p.m.?

A. Yes, sir.

Q. It was a little confused after that. You said that you were sort of trying to play hero, that you were trying to be tricky, trying to cut them off on Porchers Bluff Road.

A. (Affirmative nod).

Q. You said that the total of that took three to five minutes? Or what was the time frame on that?

A. Three to five minutes.

Q. From the time that you saw people coming in until the time you got back to the store and the Mount Pleasant officer was

there, that was three to five minutes?

A. First I exited the store.

I tried to go through Sprint.

Met Miss Lynn outside the store, tried to look back in.

Cut through Jersey Mike's.

It was probably three to five minutes there, although my heart was racing and I don't know on that time.

Having seen the people run through the field, I jumped in my car. Again, another three to five minutes. It was a very short distance, no more than -- I probably didn't drive more than a half mile and then returned the same route.

Q. Would it be fair to say that it ranged from a minimum of six minutes up to ten minutes?

A. That seems about right.

Q. Now, I want to ask you a few questions about the red-and-black Impala. Did you ever see a red-and-black Impala that day?

A. I did not.

Q. You never saw the robbers get into one?

A. No.

Q. Now, if I -- I think that you were shown Exhibit 12.

ANDREW GRIMES: Show Exhibit 12.

SOLICITOR SHEALY: You want us to pull it up (on TV screen).

ANDREW GRIMES: If you don't mind.

SOLICITOR SHEALY: (Displaying State's Exhibit 12).

ANDREW GRIMES: Thank you.

CROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. I believe that you said that your store is like this first little white building near the Walmart?

A. Yep.

Q. And there's a field that you say at the time the grass was sort of grown up and now it is sort of clear-cut?

A. Yes, sir.

Q. You saw the two robbers running through that field?

A. Yes.

Q. Porchers Bluff Road is right there?

A. This is Porchers Bluff.

Q. There is something here, I don't know if that's called a power center or a utility outlet? Some utility complex there?

A. There may be something on this side of this street.

Q. Right there?

A. (Affirmative nod).

Q. And there are sort of a couple of paths through there where you -- where people could cross Porchers Bluff Road going towards Sam Edwards Road; right?

A. The question is?

Q. Do you know if there is any sort of path that people could run through?

A. I don't know. It's a field to me.

Q. Okay. But when you came out, you didn't see where those two robbers had run?

A. I saw runners going through this field and ---

Q. Okay.

A. --- that's the last that I saw of them.

Q. So you don't know if they kept going down on this side of Porchers Bluff Road or if they crossed the road?

A. No, I don't

Q. Thank you. Now, a few questions about the statement that you gave Detective Simmons.

A. Okay.

Q. You were there -- you went back there to try to track them down a couple of times, it seems like.

A. (No verbal response).

Q. Looks like you were able to give Detective Simmons a fairly decent description of what you saw. Is that correct?

A. Yes, sir.

Q. You said that you saw the persons had -- you said that they masks on?

A. Yes, sir.

Q. I believe caps?

A. Yes.

Q. Sort of tall and thin?

A. Yes.

Q. You said that you saw a gun?

A. Yes.

Q. You never saw if any of them were wearing gloves, did you?

A. I didn't notice gloves.

ANDREW GRIMES. May I have one moment, Your Honor?

THE COURT: Sure.

ANDREW GRIMES: (Sidebar with Mr. Kowelski and Defendant Graddick). Thank you, Mr. Blain, I have no further questions.

THE COURT: Mr. Runyon?

WILLIAM RUNYON: Yes, sir. May it please the Court,

CROSS EXAMINATION

BY WILLIAM RUNYON:

Q. You say tall and thin, are you talking about tall and thin like my friend, Mr. Grimes?

A. If your friend Mr. Grimes could stand up?

Q. The gentleman that was just talking to you?

A. Oh -- I'd say not that tall.

Q. Over six feet?

A. I'd say not over six feet.

Q. Not over six feet?

A. I'd say maybe six feet.

Q. Shorter than my friend?

A. Is -- I guess so, if Mr. Grimes is

over six feet.

Q. And that would be for both of these people? Roughly?

A. They seemed to be thin, tall young men.

Q. All right. And they ran through this field that had all these briars in it, what-have-you. You ran around, trying to cut them off but you didn't cut them off?

A. Correct.

Q. And you're familiar with that field. You saw it every day at that time, didn't you?

A. I would drive by it every day to work.

Q. What kind of briars or bushes did it have in it? Do you know?

A. They would be bona fide South Carolina field stubble briars, bushes.

Q. And you ran through it you'd have to wear up your clothes, what-have-you?

A. I have no idea.

Q. Now, ---

A. They didn't -- was it thorny? I don't have any idea.

Q. People live on Porchors Bluff Road, what-have-you, around that area?

A. There are a few houses, yes.

Q. As a practical matter, you did your best to go around and cut them off, but by the time that you got around there you didn't see anybody?

A. Correct.

Q. Okay. And as a practical matter, you saw two people in your store; one at what you term the cash drawer?

A. (Affirmative nod).

Q. Correct?

A. Yes.

Q. I was asking you "correct," because this nice lady (court reporter) has to take a verbal answer down.

A. She couldn't hear my head shake, no, sir.

Q. She couldn't hear your head shake. And as a practical matter, these two people came into your store, y'all ran out and they went right to work? Went right to where the cash register was, apparently. Right?

A. Yes, sir.

Q. Now, it was no big secret where your cash drawer is, is it?

A. No.

Q. But certainly it's not labeled "Cash Drawer" or cash register or anything like that?

A. No.

Q. So as a practical matter, the only people who really know your system are the people working in your store?

A. No. Our customers see us make change every day.

Q. So your customers see you make change every day?

A. Yes.

Q. All right. Is Keenan Coakley a customer of yours?

A. I don't know.

WILLIAM RUNYON: No further questions, Your Honor.

THE COURT: Cross examine?

JIM SMITHEY: Thank you, Your Honor, may it please the court.

THE COURT: Yes, sir.

JIM SMILEY: Can we put Exhibit 12 back

on the screen?

SOLICITOR SHEALY: (Displaying State's Exhibit 12).

CROSS EXAMINATION

BY JIM SMILEY:

Q. Mr. Blain, I am Jim Smiley. I represent Mr. Smalls. Just a couple of questions. All right?

A. All right.

Q. Again, I am going to be talking about that field a little bit. The gentlemen -- or whatever you want to call them - the two robbers. When they came out of that field, you saw them as they were coming of the field or not until they got to your back door, in the beginning?

A. (No verbal response).

Q. Do you understand my question?

A. Yes. The -- my sales associate saw them break cover. There is also a heavy, dense wooded spot. She saw them break cover and run across the street. That's when she said, "Jiiimmm", which drew my attention.

Q. I gotcha.

A. So I didn't see them run from the

field.

Q. She must have, though?

A. She must have, (affirmative nod). I saw them as soon as they entered the store.

Q. As soon as that, you saw what was going on -- 'Let's get out!' Smart thing.

A. Yes, sir.

Q. When you came out into Walmart side of what -- what I would call your front door, too. I understand Mount Pleasant but -- that's your front side?

A. The Walmart side, yes.

Q. When you came out onto the Walmart side, you were vocal -- correct? "Call 911!"

A. Yes.

Q. You certainly didn't quietly move to the next door, it was "Call 911! Call 911!"

A. Yes, I was -- I guess that I would have been saying it out loud.

Q. I gotcha. You've got your store, looking at the Walmart side, your front door and then to the left is the Sprint store?

A. No, may I -- (negative gesture), the other way around.

Q. It's the other way around?

A. (Affirmative nod), it's the other way around.

Q. The Sprint store is to your right?

A. (Affirmative nod).

Q. Then Jersey Mike's is to your left. They sandwich your store?

A. No.

Q. Okay, tell me about it then.

A. Well, welcome to our plaza.

Q. Yes, sir.

A. The stores are cut into slithers of these buildings.

Q. Okay.

A. It would have been Sprint on the end, a vacancy, Jersey Mike's and then me.

Q. Okay.

A. So I went out, over, back, through.

Q. So to make sure -- I've got you. I just want to make sure that I can communicate this.

Looking at your store ——

THE COURT: From which direction?

JIM SMILEY: That's what I've got to ask him.

CROSS EXAMINATION CONTINUED

BY JIM SMILEY.

Q. Looking at your store from the Walmart parking lot, looking at your front door, Jersey Mike's is to the right?

A. Correct.

Q. And Sprint is farther to the right?

A. Right.

Q. And there is a vacancy between Jersey Mike's and the Sprint store?

A. Correct.

Q. I got it.

A. At that time there was.

Q. And that's what is important today.

A. Okay.

Q. When you came out, you went all the way to the end, to the Sprint store and they were closed.

A. Right.

Q. Then you went back to your store and looked in?

A. (Affirmative nod).

Q. Saw a guy generally waving a gun?

A. (Affirmative nod).

Q. Then you went back to Jersey Mike's and went inside?

A. (Affirmative nod).

Q. So there was a lot of commotion going on. Correct?

A. In my mind, yes.

Q. It's a terrible thing to be armed robbed. I would be quite -- I can understand it. My point being that it was an excited, chaotic time right then?

A. Yes.

Q. From Jersey Mike's, you were able to see the robbers exit the back of your store, the side with the field on it?

A. Yes. I didn't actually see them exit the store but I did see them run through the field.

Q. That's what I am getting to. When they hit that field, they were running towards the back of it?

A. (No verbal response).

Q. Across it?

A. May I?

Q. Yes, please.

A. They were running -- what gave me the idea of outflanking them is that they were running like this -- (indicating).

Q. So they were running kind of catty-cornered across it, towards Porchers Bluff Road?

A. Yes, sir.

Q. Towards the far corner of it?

A. Yes, sir.

Q. Okay. So you jumped in your car to come out that Mr. South Morgans Point Road where it intersects with Porchers Bluff, ---

A. Yes.

Q. -- and you took a left?

A. Yes.

Q. And down that road it runs into the circle that becomes Rifle Range. Correct?

A. Correct.

Q. Also down that road is a road to the left -- and I can't pronounce it. Forgive me. I think that it is called Yough Hall Road: Y-o-u-g-h? I am just asking for the record.

A. I am not aware of Yough Road.

Q. Okay. I guess what I am asking is how far you went down.

A. I did not go as far as the circle.

Q. So you went down, thought holy

smokes, what am I doing?' The 911 lady --

A. I am not seeing anybody. They could be hiding in the woods. It could take all night. 'Where am I going?'

Q. And it was pretty much dusk or getting close to it?

A. Yes.

Q. So 'hummm, I'll take your advice and go back to my store.'

A. Right.

Q. You actually didn't call 911 until you -- or didn't get through to 911 until you were in your car?

A. Or getting in -- I remember talking to 911 when I was in my car.

Q. All right. And you said that you saw one of the robbers waving a gun?

A. Yes.

Q. If he had had white gloves on, would you have recognized it?

A. (No verbal response).

Q. A white hand on the gun?

A. It's hard to speculate.

Q. I understand.

JIM SMILEY: That's all that I've got.

THE COURT. Redirect?

SOLICITOR SHEALY: Just very briefly, Your Honor. Thank you.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. First of all, you've shown us where your store is. It looks like there is a break and then another building similarly located?

A. Yes. Yes, ma'am.

Q. Could you stand up for us and -- is that in fact the break between those two buildings?

A. No.

Q. What is it?

A. It's a dumpster area, a trash area. There is at least an eight-foot brick wall here and swing gates on the Walmart side. So if you were going to bring trash out, you'd enter through this side. It's not a through and through.

Q. In that other building, the building that continues, what type of stores were there at the time? Do you recall?

A. In this building there wasn't much. There was a mailing shop called Going Postal, a liquor store, there might have been a Match Muscle, where you buy vitamins to lift weights with.

Q. Okay. You saw the guys going across the field.

A. (Affirmative nod).

Q. Can you point to where you last saw them in general? Did you lose sight of them when they were in the field or later?

A. I saw them in this area, headed this way when I went to get my car and then I lost sight of them.

Q. So where is the last place that you saw them?

A. The last place that I saw them was they were running through this field.

Q. Okay. And as you've indicated that when you went down Porchers Bluff, that you did not go as far down at the traffic circle?

A. Correct.

Q. Now, when you got back, were the police already at your store?

A. Yes.

Q. And you've been asked about the description that you gave - you may have a seat.

A. (Complies).

Q. --- that evening to the people that came in. Do you need to take another look at your statement?

A. That would be helpful.

Q. Okay. I show you what has been marked just as ID, State's Exhibit 116. Would you describe for the jury what you told the police about how they looked that night?

A. I said that they were both tall and thin, not chunky, not overweight, that they had athletic builds. I said all had masks covering the lower part of their faces, the area around their eyes was not covered.

Q. The area around the eyes was not covered?

A. (No verbal response).

Q. Is that what you said?

A. Yes.

SOLICITOR SHEALY: I have no further questions.

THE COURT: Recross?

ANDREW GRIMES: No, sir.

THE COURT: Recross, Mr. Runyon?

WILLIAM RUNYON: No, sir.

THE COURT: Recross, Mr. Smiley?

JIM SMILEY: Nothing further, Your Honor.

THE COURT: Thank you, sir. You may step down.

(WITNESS STEPS DOWN)

THE COURT: All right, ladies and gentlemen. At this point we will take our recess for the evening.

Please remember that you are not at liberty to discuss this case among yourselves or with anyone. That includes anyone at home tonight or anyone outside this courtroom.

Nor are you to allow anyone to talk with you about this case. So when you go home tonight, if someone is there, I am sure the first question is going to be what this case is about. Tell them that you can talk to them but it will have to be when you conclude the case.

If you discuss it, you would have commenced your deliberation at that time and

Yes, please feel free to take the notes that you wish.

(PENS/NOTEPADS DISTRIBUTED)

THE COURT: I appreciate your being punctual morning and I apologize for the delay. Sometimes those things just occur. So, thank you.

We will now procedure. Solicitor, call your next witness.

SOLICITOR SHEALY: We call Lynn Harlee (sic).

(WITNESS TAKES STAND)

HARLEE LYNN, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Ms. Lynn, if you would please, tell the jury where you are currently employed.

A. Cricket Wireless in Mount Pleasant.

Q. Is that located in Oakland Plantation?

A. Yes.

Q. How long have you worked there?

A. Four years.

Q. And what do you do for that company?

A. I am a sales associate.

Q. If you would, focus your attention back to Sept 15th, 2010. Could you tell the jury what happened late afternoon, early evening?

A. My boss and I were sitting at the front desk, just waiting for the day to end. I looked up and saw two people running towards the back door, clothed -- full speed. I screamed at my boss, said "Jim!" We both looked up and then ran out the front door.

Q. Let me slow you down just a little bit. You're saying that was the back door.

A. (Affirmative nod).

Q. Is that the door that is on -- what is the name of that back road?

A. South Morgans Point Road.

Q. South Morgans Point Road?

A. (Affirmative nod).

Q. They were coming from what direction?

A. The woods.

Q. Has that area changed since then?

A. Just -- not really.

Q. Is it as fully grown up as it was?

A. No.

Q. And when you saw these two people, can you tell the jury how they appeared?

A. Uh, -- (pause).

Q. You indicated that they were running fast.

A. (Affirmative nod).

Q. Clothing-wise, height-wise, etc.?

A. I don't really know about the height but I know, uh, -- one was in blue hoodie and another one, I think, was in black. I really don't recall.

Q. Were you able to see their faces?

A. No.

Q. What was obscuring their face?

A. I think that they had like ski masks on their face, something to cover up so that you can't see anything.

Q. Do you remember giving a statement back when this happened?

A. Yes.

Q. To the police officers?

A. Yes.

Q. Did you in fact give one that

evening?

A. (No verbal response).

Q. The evening of the incident?

A. Yes.

Q. Would it help you to have a copy of that to look at, to refresh your memory?

A. Yes.

SOLICITOR SHEALY: Your Honor, if I could have this marked for ID purposes.

THE COURT: All right.

COURT REPORTER: State's Exhibit 115 for identification.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. If you want to take a moment and look at that.

A. (Upon review), okay.

Q. Have you had a chance to look at it?

A. Yeah.

Q. If you would, describe to the jury what part of their face was visible to you, if any?

A. Uh, --

JIM SMILEY: Your Honor, I object that she -- I understand that she has refreshed

her memory but ---

THE COURT: You can't read from the statement. Just answer the question. If you need to review the statement again, you may review it but you can't read from it.

WITNESS: Okay. I don't really -- I mean, nothing was really visible because they have something to cover their eyes, some sunglasses or -- then they had something on their face, so I didn't really see anything.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. And as you see them approach the store, what do you and Jim do?

A. We run out the front door, which is the door opening to the Walmart.

Q. And what did y'all do from that point?

A. We ran down to the Sprint store but unfortunately they were already closed. So we tried another door, and that door was closed as well because it wasn't developed into a store yet. So we ran through Jersey Mike's. As I was running in Jersey Mike's, my boss jumped in his car and started chasing

the boys that ran back across the field towards Rifle Range.

Q. And when you say Rifle Range, are you talking about Rifle Range that runs parallel to 17?

A. Yes.

Q. There is a street that runs behind Walmart named Porchers Bluff, is that right?

A. (No verbal response).

Q. Or do you know the name of the street right behind Walmart?

A. I don't know the name of the street.

Q. As Jim was leaving to follow them, did you in fact talk to 911? Call 911?

A. I didn't call 911. Actually a lady that was either in Jersey Mike's or entering Jersey Mike's heard us yell, "Call 911!" She was the one who actually called them.

And when I got -- she eventually gave me the phone and I got on the phone with 911 and explained the situation.

Q. And when you were on the phone with 911, could you tell the jury whether or not anybody from the Mount Pleasant Police Department came to where you were?

A. The operator on the line wanted me to stay on the phone until a police officer got there. Shortly after talking to her, a police officer showed up and I was able to talk to him and showed him the situation.

SOLICITOR SHEALY: Beg the Court's indulgence just a moment.

THE COURT: All right.

SOLICITOR SHEALY: (Sidebar with Mr. Ferguson), I have no further questions. Please answer any questions that the defense may have.

THE COURT: Mr. Grimes?

ANDREW GRIMES: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir. You may proceed with your examination.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. Good morning, Miss Lynn.

A. Good morning.

Q. I just have a few questions to ask you about this incident. Okay?

A. Okay.

Q. I know that it happened a little

over three years ago. Right?

A. Yes.

Q. And it happened really fast? I guess we could call it a split second that you all were in the Cricket store together?

A. Yes.

Q. Giving someone is coming in, robbing you, you probably were not paying too much attention to what they were wearing or were trying to get details, were you?

A. Well, the only reason that I saw what they were wearing is because I saw them coming through the back.

Q. Okay.

A. So that's how I was able to -- (pause).

Q. And you said that you saw that they were wearing masks?

A. Well, yes, something was covering their face, which I was assuming was a mask.

Q. It could have been a mask, a shirt or something else?

A. Yes.

Q. And I think that you said that they were wearing hoodie sweatshirts?

A. Yes.

Q. Are you sure about that?

A. Yes.

Q. I just wanted to make sure. And you said about sunglasses. Are you sure that they were wearing sunglasses or might they have been wearing glasses?

A. I -- (pause).

Q. If you need to refresh your memory by looking at your statement, feel free.

A. Well, in my statement I put -- I put that I think they were wearing glasses but that I wasn't a hundred percent. But that's what I -- (affirmative nod).

Q. All right. Now I just want to ask you a few questions about what happened after you guys got into Jersey Mike's, when you saw them run back through the field?

A. Yes.

Q. And you didn't -- you saw your boss try to chase them or to go after them?

A. Yes.

Q. You didn't see where they went after that, did you?

A. I did not. Neither did my boss.

Q. Let me ask you a few more questions about this. You didn't put in your description anything -- you didn't say anything about their height, did you?

A. I did not.

Q. Or their weight?

A. No.

Q. Or about the type of build that they had?

A. Type of what?

Q. Build?

A. No.

ANDREW GRIMES: Thank you.

THE COURT: Cross examine, Mr. Runyon?

WILLIAM RUNYON: Yes, sir.

CROSS EXAMINATION

BY WILLIAM RUNYON:

Q. Good morning, ma'am.

A. Good morning.

Q. How you doing?

A. I'm good. How are you?

Q. I could be better, I could be worse. You've worked there for four years?

A. Yes, sir.

Q. And at that point in time you'd

worked there, what? About a year?

A. Yes.

Q. You're a sales associate?

A. Yes.

Q. And y'all did not have cash register?

A. Not -- I mean, it's like in a drawer, like in a desk drawer.

Q. Well, let me ask you this. At the end of the day -- have you ever opened the store in the morning during the course of your employment?

A. Yes.

Q. And usually how much change do you have in the drawer in the morning when you open? Is there a set amount?

A. Are you referring to like regular -- like bills or how much in the drawer total?

Q. Do you have a policy like having a hundred dollars worth of change, or fifty dollars, or no change?

A. We use -- it changed. It used to be a hundred and then we changed it to three because the store got busier. So every morning we start the drawer with three

hundred.

Q Was that the policy on the day of the robbery?

A. Yes But it wasn't three hundred, it was -- I don't know. A hundred fifty?

Q. There was about a hundred and fifty dollars worth of change that day?

A. Right.

Q. And the way that I understand -- and you're going to have to help me with this because I don't even know how to go get my voicemail off my cell phone. So you've got to help me with it. But the way that I understand that it works, you have sales contracts, sales receipts and what-have-you that you do when you service customers?

A. Yes.

Q. So at the end of the day you kinda of add those things up and -- you kind of figure out how much money that you made that day, to go to the bank?

A. Yes.

Q. You do take checks?

A. No.

Q. You don't take checks?

A. No.

Q. Do you take credit cards?

A. Yes.

Q. You take credit cards and cash?

A. Yes.

Q. Now, on the day in question, were there any credit card receipt/slips taken, do you know?

A. Are you asking if we ran credit cards that day?

Q. I'm sorry. Let me just put it directly. When these two people came in and they stole something, did they steal credit card slips or just the money?

A. Just the money.

Q. Were you in charge of determining how much money was taken, after this, for the police? Or did your boss do that?

A. My boss did it.

Q. But there was a way to figure out exactly how much cash was in the drawer at the time?

A. Right.

Q. Other than testify to what you saw, you had no involvement in determining how

much money was missing or anything like that?

A. No.

WILLIAM RUNYON: Thank you.

THE COURT: Cross examine, Mr. Smiley.

JIM SMILEY: Just a few questions, Your Honor.

CROSS EXAMINATION

BY JIM SMILEY:

Q. Miss Lynn, you saw them come running across the field; right?

A. Yes.

Q. Break from the woods?

A. Yes.

Q. Y'all ran out on the Walmart side, right?

A. Yes.

Q. You got on the phone with 911 about the time that you got to the Jersey Mike's? The woman handed you the phone?

A. Uh, -- (pause) -- yes. I mean, we already -- we were kind of running between stores. I'd already went to Jersey Mike's and then when I went back is when the lady was on the phone and she handed me the phone.

Q. Okay. From the time that you left

the store at the time that you got on the phone, twenty seconds? A minute? About how long do you think that it was before you were talking to 911? I know it's hard to say, but just the best that you can.

A. A minute or two. I mean, it was really -- we were running and then the next thing I know, we were on the phone.

Q. Okay. And you were on the phone -- were you inside Jersey Mike's or outside Jersey Mike's?

A. I don't know.

Q. Your concern was about what was going on inside your store and on the South Morgans Point Road side, the back of the store; right?

A. Right.

Q. You weren't concerned about where you were?

A. No.

Q. You felt safe being at Jersey Mike's.

A. Yes.

Q. While you were in that -- talking on the phone there at Jersey Mike's, did any

cars go peeling off, or anything like that that made you worry?

A. No.

JIM SMILLY: Nothing further.

THE COURT: Redirect?

SOLICITOR SHEALY: Just a few. Thank you, Your Honor.

REDIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. When you and Mr. Blain left the Cricket store and were running, were either of y'all yelling out anything as you ran, that you remember?

A. I really don't know if I was, but I know that he was. He was yelling, "Call 911!"

Q. And that is as y'all are approaching, first, the Sprint store?

A. Yes.

Q. And what time was it that this occurred, when you first see the guys coming towards your store?

A. It was close to closing, so about 6:30'ish.

Q. Okay. When you got into Jersey

Mike's, someone else inside had already called 911, is that correct?

A. I don't remember if she was inside or if she was entering Jersey Mike's. That, I don't remember.

Q. Tell the jury, when all of that was happening that evening, were you -- what was your state of mind?

A. I was just really scared. I didn't know what to do. I'd never been in a situation like that. I was fresh out of high school, so it was kinda like -- (pause) -- I was just scared.

SOLICITOR SHEARY: I have no further questions. Thank you.

THE COURT: Recross, Mr. Grimes?

ANDREW GRIMES: No, sir.

THE COURT: Recross, Mr. Runyon?

WILLIAM RUNYON: No, sir.

THE COURT: Mr. Smiley?

JIM SMILEY: No, sir.

THE COURT: Thank you. You may come down.

(WITNESS STEPS DOWN)

THE COURT: Call your next witness.

SOLICITOR SHEALY: Jessica Lyons.

(WITNESS TAKES STAND)

JESSICA LYONS, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Ms. Lyons, if you would, I would like for you to focus your attention back to September 15th, 2010. Could you tell the jury where you were that evening?

A. I was at Walmart.

Q. Do you recall where you had parked your vehicle, approximately?

A. Yeah. I was at the front of the store. My car was facing the group of stores adjacent to Walmart.

Q. And within that group of stores was there the Cricket store?

A. Yes.

Q. Tell us if anything struck your attention when you were exiting the store and going to your car.

A. I was putting the groceries in my car and I heard a man yelling for help, so I

looked up.

Q. What did you do?

A. I asked him if he was okay. She said, "No, I'm being robbed. Call 911!"

Q. What did you do as a result of that?

A. I called 911.

Q. Did you see where the gentleman went?

A. When I looked up, he was near the stores and he ran into the Jersey Mike's.

Q. When you were calling 911, at some point did any car strike your attention?

A. What -- yeah. Well, what struck my attention is that there was a gentleman standing by a car. He was looking very nervous.

Q. In what way was he looking nervous?

A. He had his hand on the car, he was looking around the parking lot, just looking very nervous, seemed really anxious.

Q. Based on your observations, what did that vehicle do? What did you do as a result?

A. Well, I looked over at the gentleman and we caught eyes, and I decided that I

wanted to get into my car. I turned around and got into my car and that's when I dialed 911.

Q. Okay. Did the red-and-black Impala stay parked or did it leave?

WILLIAM RUNYON: I don't believe that the witness established the color of the vehicle.

JIM SMILEY: I ---

SOLICITOR SHEALY: I'm sorry.

WILLIAM RUNYON: Objection to the color of the vehicle.

THE COURT: I sustain the objection.

SOLICITOR SHEALY: I apologize.

THE COURT: Rephrase your question.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. The car that you're indicating where the man was acting nervous, what color was that car?

A. It was red and black.

Q. And did that car stay parked or did it in fact leave?

A. No, after a short period of time, he got into the car and left.

Q. Could you tell whether or not there was a passenger in that car?

A. Yeah, there was one other gentleman in the car.

Q. Based on your observations, did you do anything when that car left?

A. Yeah. From where I was sitting in my car, as the car backed up out of the space, I could see the license plate number, so I jotted down the license plate number.

Q. And did you in fact -- have you had the opportunity to listen to your 911 tape?

A. Yes, I did.

Q. Did you rely the information to the 911 dispatcher as to what the tag number was?

A. Yes, I did.

Q. Do you know what that tag number was?

A. It was FPV 808.

Q. And you finished your phone conversation with 911?

A. Um-numm.

Q. And did you stick around --

THE COURT: Was that a "yes"?

WITNESS: Yes. I'm sorry.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Did you stick around after that, or did you leave?

A. No, the operator told me that I could leave.

Q. Okay. And did you in fact at some other date give a statement to the police about what you saw?

A. Yes. The next morning, I went to the police station and gave a written statement.

Q. So that would have been on September 16th?

A. Correct.

Q. Did anything draw your attention once the red and black vehicle was leaving?

A. (No verbal response).

Q. As it was driving off?

A. Well, the vehicle drove around the side of the store, the right side of the group of stores, and then a couple of seconds later I heard tires screeching and the vehicle drove away.

SOLICITOR SHEALY: Beg the Court's

indulgence just a moment, (sidebar with Mr Ferguson). I have no further questions. Please answer any questions that the defense attorneys may have. Thank you.

THE COURT: Cross examine, Mr. Grimes?

ANDREW GRIMES: Yes, Your Honor.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. Good morning, Ms. Lyons.

A. Hello.

Q. How are you doing today?

A. Good, thank you.

Q. As I understand, back on September 15th, 2010, you were coming out of Walmart?

A. Yes.

Q. You were putting your groceries into the car?

A. Yes.

Q. And you heard somebody yelling that he was being cobbed, asking for help?

A. Right.

Q. And you called 911?

A. Yes.

Q. At that point, I guess that you said hat you saw a gentleman — was he kinda

standing like this or ---

A. He had his arm on the car and he was looking around.

Q. So someone is out running around, calling for help and he was looking around?

A. He was more kind of fidgety and like checking/scanning the parking lot, look back and forth at the store.

Q. And Walmart was a pretty busy place?

A. Yeah, it was very busy.

Q. And then you said, I think, that you locked eyes with him?

A. At one point, (affirmative nod).

Q. I guess that it was when you locked eyes that he drove away?

A. No. When he was standing there.

Q. Okay. So you locked eyes, he was standing here. He got in the car and drove away after that?

A. It was a period later. We locked eyes, then I -- I remember thinking that 'this is really suspicious' and I didn't want to be standing outside my car, so I got into my car. He sometime got in the car and that's when they left.

Q. So it was a young black male standing outside, with his arm on the window, looking around Walmart while someone was running around yelling, he locks eyes with you, ---

A. Um-humm..

Q. --- and that set off alarm bells?

A. No, it was already set off, just looking at his behavior. But I didn't want him looking at me.

ANDREW GRIMES: May I have a moment, Your Honor?

THE COURT: Yes, you may.

ANDREW GRIMES: Thank you. I have no further questions.

THE COURT: Cross examine, Mr. ---

WILLIAM RUNYON: No questions, Your Honor.

THE COURT: Cross examine, Mr. Smiley?

JIM SMILEY: Yes, sir, may it please the Court?

CROSS EXAMINATION

BY MR. SMILEY

Q. Ms. Lyons, there was an armed robbery going on, right?

A. Yeah.

Q. I believe that the gentleman was yelling, "Call 911, I'm being robbed."

A. Yeah, he didn't say it was armed but he said he was robbed.

Q. I gotcha. You're right. Exactly.

A. (Affirmative nod).

Q. So, "Call 911! I'm being robbed!"

A. Right.

Q. At that point in time, you didn't know where the robbers were; did you?

A. No.

Q. You didn't know if they were in the parking lot, you didn't know if they were in the store or if they had run away already?

A. Initially, no.

Q. As you said, this parking lot was full of people.

A. Right.

Q. And you were at your -- what kind of car did you have?

A. I had a Prius.

Q. A Prius?

A. (Affirmative nod).

Q. And you were putting your groceries

in the back?

A. Yeah, initially I was putting them in the hatchback.

Q. So the hatchback was up?

A. Um-hmm.

Q. You had just come from the Walmart food section, which is closest to that side of the parking lot.

A. Right.

Q. You had just walked up and you were putting your groceries in your car when this happened?

A. Yeah.

Q. And it was before the person started yelling, "I am being robbed" that you noticed this suspicious black man?

A. No.

Q. It was after he yelled, "I am being robbed", that you looked around and saw a black man nearby?

A. Yeah, he said he was -- he was screaming for help. I walked around to the front of my car and asked him if he was okay. That's when he said that he was being robbed. I was calling 911 I'm standing there, just

kind of standing there and that's when I noticed the gentleman.

Q. So as you were looking around, you were standing in the parking lot?

A. Um-hmm.

THE COURT: Is that a yes?

WITNESS: "Yes."

THE COURT: And the reason I say that is because this lady (court reporter) is taking it down and we need words.

WITNESS: Okay. Sorry.

CROSS EXAMINATION

BY JIM SMILEY:

Q. So you were looking at the area where the robbery took place?

A. Um-hmm, (affirmative nod).

Q. And you were looking in the parking lot?

A. Yeah.

Q. You were nervous, right?

A. (No verbal response).

Q. You were anxious, weren't you?

A. (No verbal response).

Q. There was a robbery going on?

A. No, I don't know if I was anxious.

I was making a phone call.

Q. You were anxious enough that you got back on your car; right?

A. After I saw the gentleman, (affirmative nod). That made me nervous.

Q. Because a black male was standing close to you?

A. No. Because of the way the man was acting.

Q. What was he doing with his arms? He was just standing there, right?

A. He had one hand on the car ---

Q. Yeah.

A. --- and one hand by his side.

Q. What was he wearing?

A. I don't recall. I think that he was wearing a dark shirt.

Q. Excuse me?

A. I think that he was wearing a dark shirt, but I don't recall.

Q. A dark shirt?

A. I think.

Q. So his clothing didn't grab your notice?

A. No.

Q. Did he have a hat on?

A. No, not ---

Q. Glasses on?

A. --- that I recall.

Q. There was nothing out of the ordinary besides that he was standing in close proximity to you and looking nervous?

A. And he was not -- he was not just scanning the parking lot. He was fidgety, he was looking around, he was going back and forth the store, and ---

Q. Let me stop you there. When you say that he was going back and forth ---

A. He was looking back and forth to the store.

Q. Okay. He wasn't moving ---

A. No.

Q. Just like you, you were standing there ---

A. --- on the phone, yeah.

Q. You were looking around and as you looked around, you locked eyes? Right?

A. Right.

Q. Then you went, 'Oooh, I'm getting in my car."

A. Yeah, because I was obviously on the phone with 911 reporting a robbery.

Q. Okay. This car, how far away was it?

A. He was only a few cars away from me, on the other side of ---

Q. Right. Your car was facing the Cricket phone store?

A. Yes.

Q. The car that you saw this gentleman by was facing the other direction, correct?

A. Uh, it was facing -- I don't remember which direction that it was facing.

Q. All right. Was he on the driver's side of the car?

A. It was -- I believe that it was facing the other direction.

Q. Away from the store, pulled into a parking spot?

A. Yeah.

Q. He was standing on the driver's side?

A. He was standing on the, uh, he was on the right side of the car.

Q. So he was ---

A. He was on the opposite side of the car from me.

Q. Okay. Did you see him walk up or anything?

A. No.

Q. Or just that when you were looking around, you saw him?

A. Yeah.

Q. Did you speak to him?

A. No.

Q. At this point in time, you had no clue where the robbers were, did you?

A. No.

Q. You thought that maybe these two -- that this black male at that point in time could have been the robber. Right?

A. Well, I didn't see anybody exit the store. So -- I was assuming that the robbers were in the store.

Q. You didn't think that he was a robber?

A. My initial -- the thing that popped into my head first was that he was driving the get-away car.

Q. Okay. All right. So from just

standing there, on the opposite side of the car from the driver's side, outside, looking around, you deduced that was the get-away driver?

A. I said that I thought that it could be.

Q Well, that was ---

A. Yeah, ---

Q. --- in your mind?

A. Right.

THE COURT: Allow Mr. Smiley to finish answering the question. When you're both talking, it's a difficult situation for the court reporter.

WITNESS: I apologize.

JIM SMILEY: I do that, too. I just did it. I'm bad about that, too. It's hard, because we're trying to talk it out and sometimes it -- I'm the worse, so I will try to be better.

CROSS EXAMINATION

BY JIM SMILEY:

Q So that's where your mindset was?

A. Correct.

Q. Okay. At some point did you get out

of your car?

A. You mean after everything?

THE COURT: Jim, ---

JIM SMILEY: Yes, sir, I will back up and ask it in real simple, short questions.

CROSS EXAMINATION CONTINUED

BY JIM SMILEY:

Q. You got in your car?

A. Yes, sir.

Q. That's where you dialed 911?

A. I began dialing 911 before I got into my car.

Q. And that would have been when you were standing at the front of your car?

A. Yes.

Q. You were on the phone with 911, you look around and see this black gentleman, look eyes and 'I'm getting in my car.'

A. Right.

Q. You are now in your car. You got out of your car and went into the Jersey Mike's, correct?

A. I never went into Jersey Mike's.

Q. Okay. At some point in time did you hand your phone to anybody to talk to 911?

A. No.

Q. So you did your talking while you were in the car?

A. Yes

Q. All right. Now I've got to back up just a little bit. You were -- it's hard to do witnout a map. You were in a row of parking places that are part of the Walmart parking lot but are parallel to the Cricket store and Jersey Mike's.

A. Correct.

Q. It was that last row that has parking places on both sides, correct?

A. Right.

Q. There are also parking places over by Jersey Mike's?

A. Yes.

Q. In that row -- there's a row that you come out of the -- and I call it the Walmart parking lot just because it's divided.

A. Okay.

Q. There's an exit right there that goes parallel to the store; correct, to get out of the parking lot that you were in?

A. Right.

Q. You're familiar with that parking lot?

A. Yes.

Q. There's another way out of that parking lot, correct?

A. Yes.

Q. You can back out and stay within the Walmart parking lot to the other side, where there is the main drag in front of the store; correct?

A. Yes.

Q. When you were in your car, after a period of time -- well, let me ask you this: When you were in your car, were you still watching the black man?

A. Until he got into his car and left, (affirmative nod).

Q. About the time that you got in your car, he got in his car?

A. No. I was already in my car before he left.

Q. Bad question. You are in your car. Correct?

A. Yes.

Q. The gentleman that you thought might be the get-away driver was no longer leaning up against the passenger side of his car; correct?

A. I don't understand the question. At some point he got in his car and left.

Q. I apologize. What I am asking is, did you see him get into the car?

A. I don't recall.

Q. Okay. While you are still in your car, ---

A. Yes.

Q. --- talking to 911, ---

A. Yes.

Q. --- this car backs out, ---

A. Um-humm.

Q. --- and pulls in front of you?

A. It wasn't directly in front of me but it was close; yeah.

Q. It was going to the exit that would be in front of the Cricket store?

A. Right.

Q. And that's when you noticed that there were two black men, right?

A. No, I noticed that there was another

man in the car when I noticed the gentleman standing there, because I looked at the car.

Q. Describe what the other gentleman was doing?

A. I couldn't see what he was doing. I could just see that there was somebody in the car.

Q. Was the fellow standing out of the car talking to him?

A. I couldn't tell if he was talking to him.

Q. You just noticed that he was nervous, looking around?

A. Right.

Q. Okay. And the car, as it pulls pass you it was, like, 'There goes the get-away car, I want to get the license plate.' That was your thought process, right?

A. I thought that it wouldn't hurt to have the license plate.

Q. Certainly not. So you wrote down that license plate, right?

A. Correct.

Q. And the car pulls out onto the road that runs in front of the Cricket store?

A. Right. It went around to the right side of the stores, then I couldn't see it any further.

Q. Again, I'm calling it the Walmart parking lot there.

A. Right.

Q. It exits onto the road that runs parallel to the front of the store that had been robbed. Correct?

A. Correct. Between the store and Walmart, right.

JIM SMILEY: Could you pull up State's Exhibit 12, the map? If you don't mind.

SOLICITOR SHEALY: (Displaying State's Exhibit 12).

CROSS EXAMINATION CONTINUED

BY JIM SMILEY:

Q. I am going to pull up a map and maybe I can do it better this way.

A. Okay.

Q. I am going to walk over there so that I don't get on top of you. Okay?

A. Okay.

Q. This is the -- this is the Walmart store, agreed?

A. Yes.

Q. And these are the strip of stores with the Cricket store, correct?

A. Yes.

Q. All right. This is the -- what I've been calling the Walmart parking lot. Correct?

A. Yes.

Q. And you were parked about right here?

A. Yes.

Q. So your car was pretty much directly in front of the Cricket store?

A. Yes.

Q. The fellow that you were worried about was parked a little further ---

A. A little closer to Walmart.

Q. A little closer to Walmart?

A. (Affirmative nod).

Q. So he would have been right in this area?

A. Right.

Q. Okay. Very good. And you saw him back up, right?

A. Right.

Q. Then come to that exit, correct?
A. Yes.
Q. And that is to the street that runs in front of the store?
A. Correct.
Q. Then he took a right?
A. He was out of my view.
Q. Right here he wasn't when he was exiting the parking lot, was he?
A. No, I could see that.
Q. Okay. And he took a right towards the Walmart?
A. Correct.
Q. So at that point you lost sight of him?
A. Right.
Q. You're inside your car?
A. Yes.
Q. You lose sight of that car leaving?
A. Yes.
Q. Then you heard some squealing?
A. Yes, like a couple of seconds later I heard tires squealing.
Q. You assumed that it was coming from that car? Correct?

A. Yes.

Q. You couldn't swear to it because you didn't see it. Correct?

A. I didn't see it.

Q. Okay. It was like a squeal, like "errrkk".

A. Like somebody pulling away real quick.

Q. Getting out of there as fast as they possibly could?

A. Yes.

Q. Okay. I just want to make sure, the gentleman that was standing outside of the car, he made no gestures towards you.

A. No.

Q. He didn't really move, did he?

A. (Negative gesture).

Q. Just stood in one place?

A. Yes.

Q. Sort of like you, right?

A. Yes.

Q. And it was your intuition more than anything else that said 'that guy could be the get away driver.'

A. Yes.

JIM SMILEY: That's all that I have.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Ms. Lyons, Mr. Smiley asked you several times, the black man, the black man. Was there anything about him being black that caught your attention?

A. No. There were a lot of black people in the parking lot.

Q. Okay. Again, he asked you whether it was your intuition. Could you show the jury again what the guy standing outside the red-and-black car was behaving in the parking lot?

A. He was very fidgety. He was looking around like (illustrating), and he was looking back and forth to the store, just very nervous acting.

Q. Okay. Let me ask you this, you had heard the people running towards Jersey Mike's, yelling?

A. Yes.

Q. Tell this jury whether the guy standing by the red-and-black Impala was

using his cell phone to call 911?

A. He was not.

SOLICITOR SHEALY: Thank you. Nothing further. Your Honor, we'd ask that she be excused.

THE COURT: One second. Thank you. Recross?

ANDREW GRIMES: Thank you, Your Honor.

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY ANDREW GRIMES:

Q. I would like to ask you a few questions. Do you remember how many other cars were leaving that Walmart area during this timeframe?

A. I have no idea. It was a busy evening at Walmart, so I assume that it was a couple at least.

Q. At least two or ---

THE COURT: She can't answer the question, Mr. Grimes. She said that she doesn't know. As you said, she doesn't know

RECROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. Now, you testified several times

that the reason the person caught your eye was because he was acting fidgety, nervous, was moving around?

A. Yes.

Q. And you gave a statement to the police, to Detective Simmons the next day, right? About 9:00 o'clock in the morning?

A. Yes.

Q. And do you have a copy of your statement up there?

A. I don't have a copy with me but I have a copy at home.

Q. Did you review it before you came to court?

A. Yes.

Q. And in your statement you don't say anything about him being very fidgety, did you?

A. I don't remember what I said in my statement. I know that I said in my statement that the gentleman caught my eye.

ANDREW GRIMES: Can I mark this as Defendant's Exhibit 1, Your Honor.

THE COURT: Okay.

COURT REPORTER: Graddick Exhibit 1.

THE COURT: Graddick 1 for ID.

CROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. I will show you what has been marked as Defendant Graddick's Exhibit 1 for identification.

A. Okay.

Q. In there, you don't say any about the neck going around, looking all around; do you?

A. No, at the time I didn't know that it was going to be so important.

Q. And at the bottom of that statement it talks about that you're giving a complete and truthful statement, giving all the facts to the police?

A. Yeah.

Q. And if you thought that it was very important and that's why it stood out -- it's fair to say that it is important, isn't it?

A. At the time it didn't seem important to me. What was important was that the gentleman caught my attention. Why he caught my attention, I didn't volunteer. I didn't think that was important.

Q. But three and a half years later, it's very important.

A. Now that you're asking me why he caught my attention, I'm explaining why.

Q. I believe that your statement doesn't say anything about him locking eyes with you, does it.

A. It says that he looked at me at one point and that I got in my car.

Q. And it doesn't say anything about him pulling off real quick, the part about tied squealing?

A. No. It says that he backed up and drove to the other side of the store and five or six seconds later I heard tires squealing.

Q. And as you told Mr. Smiley, you don't know whose tires those were?

A. No, I couldn't see the car at all.

ANDREW GRIMES: Thank you. I have no further questions.

THE COURT: Recross?

WILLIAM RUNYON: No questions on behalf of Defendant Coakley, Your Honor.

THE COURT: Mr. Smiley?

RECROSS EXAMINATION

BY JIM SMILEY:

Q. You said that you didn't see my client, Mr. Smalls, using his cell phone?

A. I don't recall him using a cell phone.

Q. Okay. Do you know if he had a cell phone?

A. I have no idea if he had a cell phone.

Q. Were other people not using cell phones?

A. There were several people in the parking lot call 911, I could say.

Q. And there were people that didn't have phones, right?

A. I don't know who had a phone and who didn't.

Q. Like the gentleman ---

A. I'm assuming everybody has a phone nowadays.

THE COURT: She can't -- I am not going to allow her to answer that question. Rephrase your question. That calls for speculation.

JIM SMILEY: Yes, sir.

RECROSS EXAMINATION CONTINUED

BY JIM SMILEY:

Q. So you were -- the gentleman that came out of the phone store, that was yelling "Call 911!"

A. Right.

Q. "We've been robbed!" He wasn't using his phone, was he?

A. He was running. I'm assuming that's why he went into Jersey Mike's, was to call 911.

Q. Okay.

JIM SMILEY: That's all that I've got. Thank you.

THE COURT: Do you wish the witness to be excused?

SOLICITOR SHEALY: May I follow up with one question.

THE COURT: No, ma'am, you may not. Thank you very much.

SOLICITOR SHEALY: Yes, please -- we would ask that she be excused.

THE COURT: Any objection from anyone else?

MR. GRIMES: No, sir.

WILLIAM BUNDON: None from Defendant Coakley.

JIM SMILEY: No, Your Honor.

THE COURT: You may come down and you may leave.

(WITNESS STEPS DOWN)

THE COURT: Call your next witness, please.

SOLICITOR FERGUSON: The State calls Edward Stunkard.

(WITNESS TAKES STAND)

EDWARD STUNKARD, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY MR. FERGUSON:

Q. Good morning, Mr. Stunkard.

A. Good morning.

Q. Tell the jury where you work?

A. I work at Walmart.

Q. What is your title as a Walmart employee?

A. Asset Protection Manager.

Q. You said Asset Protection Manager?

A. Yes, sir.

THE COURT: Thank you, ladies and gentlemen. Mr. Ferguson, you may continue with your examination.

SOLICITOR FERGUSON: Thank you, Your Honor.

THE COURT: All right.

DIRECT EXAMINATION RESUMED

BY SOLICITOR FERGUSON:

Q. Mr. Stunkard, I am showing you State's Exhibit 102 which is a video of Rooftop 3 at Walmart.

A. Yeah.

Q. As I play the video, if you could just identify the red and black car that you were approached to see if it was captured on that Walmart video.

A. Yes, sir.

Q. (Video playing) --

A. There.

Q. Pause, please.

SOLICITOR FERGUSON: Your Honor, we would ask that the record reflect that the witness identified a vehicle at 6:35:30.

THE COURT: The record speaks for itself, Solicitor. The video, the jury has

seen it.

SOLICITOR FERGUSON: Yes, sir, I ---

THE COURT: The record is there. It's a part of the record. Thank you, sir. That's redundant. Thank you.

SOLICITOR FERGUSON: Thank you.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR FERGUSON:

Q. I want to show you another video, Mr. Stunkard. (Video playing), ---

THE COURT: Are all of these on State's Exhibit 102?

SOLICITOR FERGUSON: Yes, Your Honor. Yes, State's Exhibit 102 is three video clips.

THE COURT: That's fine.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR FERGUSON:

Q. Please do the same, Mr. Stunkard. Please have them stop the video when the same car is seen.

A. Right there.

Q. And what time is it on the video?

A. It is 6:35:50.

Q. I want to show you one more video,

(Video playing). What are we looking at here?

A. This is the back of the store. This is, most of the time, where the delivery trucks come in, this driveway right here. That is the loading docks, unloading docks.

SOLICITOR FERGUSON: If I may approach, Your Honor.

THE COURT: Sure.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR FERGUSON:

Q. I am going to hand you this pointer. Can you identify any road that we see there?

A. This is Porchers Bluff Road.

Q. That is Porchers Bluff Road?

A. Yes, sir.

Q. And one more time, if you could identify the vehicle as it takes place.

A. Okay.

Q. (Video playing), ---

A. Right there.

Q. What time does the tape show?

A. 6:36:39.

Q. What road is that car approaching?

A. Porchers Bluff.

Q. And it is making a right onto Porchers Bluff Road?

A. Yes, sir.

SOLICITOR FERGUSON: I beg the Court's indulgence. Technology not only gives you convenience but also teaches us patience.

THE COURT: Increases blood pressure.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR FERGUSON:

Q. I am showing you what has been marked as State's Exhibit 12. Are you familiar with that map?

A. Yes, sir, I am.

Q. Can you identify the Walmart where you work?

A. This is the Walmart right here.

Q. In that previous camera shot, can you point to where it was showing?

A. Right here. It shows this specific area right here, coming out to the road.

Q. And that road, what is that road that you are talking about?

A. Porchers Bluff Road.

Q. Now, in the video that you saw that red car, which direction did that car turn?

A. It turned in that direction, towards 17.

Q. Towards Highway 17?

A. Yes, sir.

SOLICITOR FERGUSON: Thank you. Please answer any questions that the defense may have.

THE COURT: Cross examine?

MR. KOWELSKI: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CROSS EXAMINATION

BY MR KOWELSKI:

Q. Good morning, Mr. Stunkard. I want to just talk to you a little bit about you just testified to on direct with Mr. Ferguson. You said that it was your job to make sure that the two hundred cameras that you have in Walmart are accurate and function?

A. Correct.

Q. And part of that accuracy is making sure that the time stamp is on there and that the time stamps are correct?

A. Correct.

your next witness.

SOLICITOR SHEALY: The State would call Joseph Davis.

(WITNESS TAKES STAND)

JOSEPH DAVIS, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. If you would, please tell the jury where you live.

A. I live at 41 Sam Edwards Road, Mount Pleasant, South Carolina.

Q. And, if you would, tell the jury how long you have lived there?

A. I'm forty-three now. I'd say I've lived there about -- I'd say about forty years.

Q. Forty years?

A. About.

Q. Are you working right now?

A. No, ma'am.

Q. What work did you previously do?

A. Everything from -- Firecracker, Bo's Shem Creek Bar & Grill, Sullivan's Island,

about everything, anything.

Q. Okay. Let me ask you about some trouble that you got into in the past.

A. Okay.

Q. Did you have some forgeries that you were convicted of?

A. Yes, ma'am.

Q. And those were back in the '90s?

A. Yes, ma'am.

Q. And those were back in the '90s?

A. Yes, ma'am.

Q. Now I'm going to show you what has been previously marked as State's Exhibits 14 -- 13, 14 and 17, and ask if you recognize the areas depicted.

A. This is down my street.

This is the beginning ---

COURT REPORTER: Exhibit number?

SOLICITOR SHEALY: I'm sorry.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. State's Exhibit -- as to State's Exhibit 13, that's -- you indicated that's what?

A. This is Sam Edwards Road. This is

going back to the back gate

Q. Okay.

A. This is going back to the back gate, the dead end.

Q. Okay, we will go over that a little bit more fully in just a minute.

State's Exhibit 17?

A. That is my house.

Q. And State's Exhibit 14?

A. That's the same road, Sam Edwards Road.

SOLICITOR SHEALY: Your Honor, I believe without objection that I would at this time move State's Exhibits 13, 14 and 17 into evidence.

THE COURT: Exhibits 13, 14 and 17 are admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 13)

(SO ENTERED AS STATE'S EXHIBIT 14)

(SO ENTERED AS STATE'S EXHIBIT 17)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. In just a second, Mr. Davis, you'll be able to look at these pictures on that screen right there.

A. Okay. That's my road.

Q. Now, let me ask you something about the road. If you're staring looking at that photograph, are you looking at the end of the road?

A. I'm looking at the dead end.

Q. Showing you State's Exhibit 14, which way are you looking here?

A. You are looking towards the highway.

Q. Towards 17?

A. Yes, ma'am.

Q. And State's Exhibit 17, what is that?

A. You're looking at my house, the front.

Q. So let's go back to the one with the dead-end. State's Exhibit 13. Do you see an antenna-looking thing up there with you?

A. (Negative gesture).

Q. (Tenders pointer to witness). If you could stand up, Mr. Davis, using this pointer -- you're almost tall enough, but using this pointer show the jury on that photo where your house is.

A. My house is right here at the

mailbox.

Q. Okay.

A. That black mailbox right there.

This is another house.

There is a house right there.

This is a dead-end.

This is a private property that has no way out except one way that's coming down this road, Sam Edwards Road.

Q. Okay. Now, you've told you that you have lived over there for forty-one years?

A. Yes, ma'am.

Q. Can you show us whether there are some cut-throughs over to Porchers Bluff?

A. You've got to come back. You've got to turn back around.

Q. In my photo?

A. Yes, ma'am. This right here is a dead end. You can't get no way through there.

Q. So going back to State's Exhibit 14, where ---

A. This is my house.

This is my next-door neighbor's house.

This is my yard.

There is a telephone pole in the area right here and you can see a little path -- if you look at the road, you can see that there is a little path where you can get in there.

Q. Showing you State's Exhibit 12 -- pull that up. Can you show us on here -- can you find your road and the Walmart?

A. Yeah. If you put it up on the screen, I can show you.

Q. Okay. Showing you State's Exhibit 12, ---

A. This is Sam Edwards Road right here. This is the dead end.

Excuse me, I'm kinda blind so it will take a minute.

Porchers Bluff is right here.

Walmart is right here.

This is an electricity fence.

There is a shortcut to Sam Edwards Road, there's a shortcut right here.

You can go around here and move all the way through to Porchers Bluff.

You cross over and you can get to Walmart.

Q. You can be seated now.

A. (Complies).

Q. I would like for you to focus your attention back to September 15th, 2010. Would you tell the jury whether or not something drew your attention that evening?

A. Yeah, a red and black car. My little son was sitting in the front car, playing in the dirt.

Q. What about the red-and-black struck your attention?

A. It's a dead-end. Why you coming down that road if you know that it's a dead-end. And the sign that was there before that sign was there, the sign was at the head of the road.

Q. Telling you that it was a dead end?

A. Yes.

Q. Well, let's talk about the head of the road just a second. Is it different now than it was in 2010?

A. No, it's still the same.

Q. Up on 17?

A. Except that they got sidewalks and trees, that's it.

Q. What about the entrance to Sam Edwards Road?

A. It's still about the same.

Q. So what did you see the red and black car do?

A. Go to the back area and into the fence.

Q. When you say the fence, can you point to us where the fence is?

A. Okay. You can see that this is a brick here and a brick here, and there's a fence. This was supposed to be closed off. You can't see it, but on the brick wall it says "Private Property, Do Not Enter."

Q. Okay.

A. And they had it closed off.

Q. Who lives in that residence at the end of that street?

A. The Coakleys, Jamie Coakley.

Q. The Coakleys?

A. (Affirmative nod).

Q. At that fence, what did the car go?

A. The car went in, went halfway in, disappeared, then it turned around and came back down that road.

Q. Can you tell the jury how many people were in that car when it came down that road?

A. At first there was four of them. Then when they turned around and came back out, there was two and two of them was then on foot.

Q. The two that were on foot, can you describe to us what they did?

A. They were walking. They went through the path like they was going to the store.

Q. What do you remember about their appearance?

A. They had on jeans, a hoodie cap -- both of them had on hoodies, and white gloves.

Q. They had on gloves?

A. Yes.

Q. What did the red-and-black car do after those two got out?

A. It left right off.

Q. Did you have the occasion later that evening to see that vehicle?

A. It came back down, I'd say about

twenty to thirty-five minutes later, speeding.

Q. You know what? Could you put your hands down from your mouth, just so that everybody can hear you?

A. Oh, sorry, (complies).

Q. When they went -- when they came in first -- they came in slow at first.

Then they went back out like how you drive normally to leave out.

But I'd say about twenty-five to thirty-five minutes later that the car back flying through.

Q. Where were you when it came back flying through?

A. I been in the front yard with my son.

Q. What did you see happen at that point?

A. I saw the two fellas coming running out of the woods. The same spot that they went in through, they came back out the same area.

Q. Can you show us on this picture -- can you see it on this picture, or do you

have to have the other picture?

A. No, you gotta go on back.

Q. Gotta go back?

A. Yeah, you gotta go back to where you show all the Walmart and everything. Back to Number 12.

Q. Okay, State's Exhibit 12.

A. Okay, this area right here (indicating). The same spot that they went into, this area right here, they came back flying -- they came back through the same area, went right back down the road to the fence that is cut off, which you can't get through.

Q. The one that you showed us earlier at the dead-end?

A. Uh-huh, (affirmative nod).

Q. At any point is there any connection between those two guys and the red-and-black car again?

A. No.

Q. So when they're coming back through the shortcut, what happened to the car with the two guys?

A. They went inside the fence. The two

fellows immediately followed after them, and then the car came back flying.

Q When they came back of the woods, can you tell the jury how they appeared?

A. Okay, they was like -- they was in a hurry. It looked like one of them was tucking something like a football.

Q. Can you show us what you mean?

A. Like they was tucking something under their coat and they was running very quickly.

Q. Did you see anything be thrown at any point?

A. Yes. It was -- they right here, there's a ditch right there and they threw something in the ditch.

Q. Going back to State's Exhibit 13.

A. The ditch is right here by the fence. You can't tell where that's at right now because it's grew up so much.

Q. Okay. But you saw what? What exactly happened there?

A. I saw somebody toss something. I don't know what it was, it was something shiny like. But after the policeman came

upon the road, they showed me what it was.

Q. The police did?

A. Yes.

Q. So did you have the occasion to talk to the police that night?

A. Yes, I did.

Q. Did you call them or were you out there when they ---

A. I was out there when they came down the road.

Q. Did you in fact give a statement to the police that evening?

A. Yes, I talked to them.

Q. So that would have been on September 15th?

A. Yes.

Q. And it was a written statement?

A. Yes.

SOLICITOR SHEALY: Beg the court's indulgence, just a moment.

THE COURT: Okay.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. The two guys that you saw come out of the woods, did you see where they went in

connection with the car?

A. They went to the back area, right where the car had went to but I didn't see anybody after they tossed the thing.

Q. That was the last thing -- the last part that you saw of them?

A. Yes, ma'am.

SOLICITOR SHEALY: Beg the court's indulgence just a moment, (sidebar with Mr. Ferguson).

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. You told us, Mr. Davis, now the car comes down Sam Edwards Road the second time?

A. The first time it went in, turned and came back out.

The second time they came back speeding.

Q. Speeding?

A. Yes.

Q. Then did the car stay at the end of Sam Edwards Road or did it go back towards 17?

A. It went back towards 17. It didn't stay back there. It just went in real fast

and went right back out, as quick as it went in it went out.

Q. Thank you very much. Answer any questions that the defense might have.

SOLICITOR SHEALY: Thank you.

THE COURT: Cross examine?

ANDREW GRIMES: Thank you, Your Honor.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. Good afternoon, Mr. Davis.

A. How you doing?

Q. Doing pretty good. How you doing today?

A. Alright.

Q. You said that what caught your attention back on September 15th of 2010 was that the red car came down ---

A. It was a red-and-black car. It was black ---

Q. Thank you.

A. --- at the bottom and red on the top.

Q. So this red-and-black car came down a one-way street.

A. Uh-huh.

BY ANDREW GRIMES:

Q. So the last couple of questions that I want to ask you, just to clarify.

A. Okay.

Q. After the car was leaving, I guess the fourth time, did you see where those other two guys went?

A. No, it disappeared.

Q. They ran through the woods?

A. No, they disappeared. Like they was nowhere in sight. But the car left, so they have to be in the backseat or something because the windows were up.

Q. Okay. You didn't actually see them get in the car?

A. No, I didn't.

Q. They disappeared kind of like ghosts?

A. You could say that; yes, sir.

ANDREW GRIMES: May I have a moment, Your Honor?

THE COURT: Yes, sir.

ANDREW GRIMES: (Sidebar with Mr. Kowelski and Defendant Graddick). Thank you, Your Honor, I have no further questions.

towards ---

A. Yes.

Q. --- Jamie Oakley's?

A. Yes.

Q. All right. I think that you testified that you didn't actually see them get in the car?

A. (Negative gesture), no.

Q. Okay. But that's when you saw the shiny thing?

A. I saw when they -- when they threw something in the ditch?

Q. Yeah. Here's my question, that was -- but the first question is, that was the time when you saw them toss something?

A. Yeah. Right.

Q. When you saw them toss that shiny thing, was it down at the end of the road or at the cut across from you?

A. No, it was down at the end of the road in the ditch.

Q. I am just trying to make sure that we are clear.

A. Right.

Q. And at that point, you said that you

didn't see them get in the car but ---

A. No.

Q. --- that the car turned around and left quickly?

A. Yeah.

Q. Left quickly?

A. Yes.

Q. And that unless they were ghosts, that you assume that they got in the car?

A. Yes.

Q. And that was thirty minutes after the first time you'd seen the car that day?

A. Yes, sir.

Q. So by about noon or so, they were gone?

A. You could say that. They were down the road by noon. They were out of my sights.

Q. Right; out of your sight?

A. Yes.

Q. You saw them go up to 17?

A. Yes.

Q. And you didn't pay no mind until the police came shortly thereafter?

A. Yes, sir.

Q. Okay, a couple of more questions about 17.

A. Okay.

Q. Going back to when this allegedly happened in 2010, because they've did that big construction project out there on 17 since then. Right?

A. Yes, sir.

Q. If you were coming down 17 to go to Sam Edwards Road, coming down going towards the bride, you can't turn directly onto Sam Edwards Road. You have to go past it and do a U-turn; right?

A. Now you've got to but before then there was a cut -- there was like a little divider before they closed it off.

Q. Back then you could make a U-turn closer to Sam Edwards Road. Now, you've got to go down to almost Dingle Road to turn around.

A. Yes, sir.

Q. Then coming out of Sam Edwards Road, back then if you wanted to go to the bridge, south on 17, you had to go to the right when you first came out?

A. You could have gone to the right or you could have gone straight out and taken Porchers Bluff Road.

Q. Right. But my point is that you coulon't go straight across to 17 South.

A. No.

Q. You had to go to the right and then make ---

A. Yes.

Q. --- a U-turn?

A. Yes, at the light.

Q. Okay. Mr. Davis, I appreciate it. That's all that I have got for you.

THE COURT: Redirect?

SOLICITOR SHEALY: Yes, sir.

REDIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Mr. Davis, just to make sure that we're straight, when we're talking about one, two, three, four times, you're talking about: one time down the street?

A. Yes.

Q. The second time was out the street?

A. Yes.

Q. Third time down the street?

A. Yes.

Q. Fourth time out the street?

A. Yes.

Q. So the vehicle came down Sam Edwards Road twice?

A. Twice. The first one they came in slowly, came back out slowly -- and was the second time.

The third time, they come speeding down the road. The fourth time, they were speeding out the road.

Q. Okay. And I think that you have indicated to the defense attorneys that you think that it was in the early part of the day because it was hot and you were playing outside with your child?

A. Yes, ma'am.

Q. You also mentioned hearing a siren?

A. Yes, ma'am.

Q. All right. When did you hear the siren in connection with the red-and-black car being on Sam Edwards Road?

A. After it had disappeared -- come back out Sam Edwards Road.

Q. That's when you heard the siren?

A. Yes, Ma'am

Q. And you indicated that it was approximately thirty to thirty-five after the car had left the first time that the car came back?

A. Yes, ma'am.

Q. Do you remember talking to Detective DeCamp that night?

A. (Negative gesture)

Q. Do you remember the officer who took your statement?

A. There was a bunch of them. Sorry.

Q. How many officers do you remember seeing on Sam Edwards Road?

A. I'd say at least about ten of them, because they -- the whole road was blocked off out there with deputy sheriffs and by the boys in blue.

Q. Okay. Did you approach the police about what you know, or did they approach you?

A. I saw them down the road and asked them what was going on. They told me that there was a robbery and asked had I seen a red-and-black car? I told them that I saw

somebody, some follows and saw somebody throw something in the bush.

Q. All right.

A. They asked me where and I told them down at the dead end. They took me down to the dead end and I said, 'somewhere over there.' So they shined a light and they saw something in the bush.

Q. So you are the one that led them down the street?

A. Yes.

Q. And you told us that Jamie Coakley lives at the end of Sam Edwards Road?

A. Yes, ma'am.

Q. Would you tell the jury wnether there are a lot of Coakleys in Mount Pleasant?

A. To tell you the truth, I just really know Jamie and Josh Coakley and their mama and them.

Q. You just know Jamie, Josh and their mom?

A. Yes.

Q. Is that who lives at the end of the street?

SOLICITOR SHEALY: Yes, sir, Your Honor.

THE COURT: Anything from the defendants before we bring in the jury? Mr. Grimes?

ANDREW GRIMES: No, Your Honor.

THE COURT: Mr. Runyon?

WILLIAM RUNYON: Nothing for Defendant Coakley, Your Honor.

THE COURT: Mr. Smiley?

JIM SMILEY: No, sir, Your Honor.

THE COURT: Invite the jury to return.

(JURY IN @ 2:10 P.M.)

THE COURT: Thank you, ladies and gentlemen. I trust that you had a good lunch. We are now ready to resume the trial. Solicitor, call your next witness.

SOLICITOR SHEALY: Yes, sir, Your Honor. Andy DeCamp.

(WITNESS TAKES STAND)

ANDREW DECAMP, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Detective Decamp, if you would, please tell the jury where you are currently employed.

A. Yes, ma'am. I am currently a detective with the Mount Pleasant Police Department.

Q. How long have you been with Mount Pleasant?

A. Since March of 2009.

Q. Okay. Focusing your attention back to September of 2010, can you tell the jury in what capacity that you worked there then?

A. During that time I was held the rank of Patrolman First Class. I was on Patrol

Q. What does it mean to be on patrol?

A. You're answering calls for service in an assigned district and then also outside that district but inside the jurisdiction of Mount Pleasant.

Q. Can you tell the jury if you recall on September 14th if you were called out to 3014 South Morgans Point Road?

A. I was called there. That's the Cricket Cellular Store, in reference to an armed robbery.

Q What county is that located in?

A. That's in Charleston County.

Q. When you say that you were called out there, do you mean that you were dispatched out there?

A. Yes, ma'am. There was a call for service in reference to dispatch advising on the primary channel that an armed robbery had just occurred, that was being reported at that location.

Q. When somebody is dispatched, does it go out to all officers?

A. It does. These calls are dispatched out on a primary patrol channel for our police department, so all patrol officers would hear that or would have that information available.

Q. Could you tell the jury what time that dispatch came in?

A. That call was dispatched at 6:35 that day.

Q. Where were you when the call came out?

A. At the time the call was dispatched to the officers, I was driving on 17 --

Highway 17 northbound. I was approaching the intersection of Highway 41.

Q. So northbound, you were going towards Awendaw?

A. Yes, ma'am, that's correct.

Q. Let me show you what has been marked as State's Exhibit 104 and ask if you're familiar with this area?

A. I am familiar with this.

Q. What does that depict?

A. In the center of the photograph is the intersection of Highway 17 and Highway 41.

SOLICITOR SHEALY: Your Honor, at this time I would offer State's Exhibit 104 into evidence. I understand that it is without objection.

THE COURT: Without objection, State's Exhibit 104 is admitted.

(SO ENTERED AS STATE'S EXHIBIT 104)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Can you see it up here? It's also behind you.

A. Yes, ma'am.

Q. Do you have a pointer up there?

A. I don't ---

Q. Let he hand you -- (tendering) first, orient us as to where 17 is in that diagram.

A. Highway 17 is the road right here, running the length of the diagram.

Q. If you would, speak up just a little bit for us since you have your back turned towards the jury.

A. Sorry.

Q. So which way were you headed on Highway 17?

A. I was headed northbound on Highway 17, which would be in this direction right here (indicating), approaching the intersection of Highway 41, this intersection right here.

Q. Using that diagram, would you show us where you traveled to answer the call.

A. After being dispatched to the call, I responded northbound on 17, past the intersection of 41.

I came to the intersection of Porchers Bluff, which is this road running along here

and made a right turn on Porchers Bluff Road. Then I made a left turn onto South Morgans Point Road, right here.

The business that I responded to was located in this shopping center, in this building right here. I parked my patrol vehicle at the corner of the building.

Q. You can take your seat.

A. (Complies).

Q. Would you tell the jury what time your arrival time there was?

A. I arrived at the business at approximately 6:37 p.m.

Q. Okay. When you got the business, who did you speak with?

A. Upon arrival, I exited my vehicle and was at the corner of the — of that building that was closest to Walmart.

At that time, I identified James Blain and Harlee Lynn, who was the manager and employee of the business. They were actually at the rear door to the business, the door leading to South Morgans Point Road. I called them over to my location. Miss Lynn at that point was on the telephone. I called

there over, at which point I started talking with them and identified them as employees of the business. And then got a suspect description from them.

Q. Did it come out over dispatch whether or not a certain type of vehicle was being looked for?

A. While I was speaking with Mr. Blain and Ms. Lynn, uh, dispatch advised that someone by the name of Jessica Lyons had actually called in a vehicle fleeing the scene at a high rate of speed, and it was described as black-and-red Impala, Chevy Impala. There was also a tag number, which was FVP 808.

Q. Okay. Now, I'm going to ask you a couple more questions with that diagram. Sorry, I'm struggling with my glasses.

Would you take a look at that and show us where Hamlin Road is.

A. Hamlin Road runs right here and intersects Highway 17 right there.

Q. And are you familiar were Linnen Lane is?

A. Uh, -- (looking at photograph).

Q. Off of Hamlin Road?

A. I am not sure if it is on this photograph but Linnen Lane is a road that runs or intersects -- that runs -- or intersects Hamlin Road between Rifle Range and Highway 17.

Q. Can you see the markings now?

A. There we go, (affirmative nod).

Q. So that's Linnen Lane?

A. It is.

Q. And show Hamlin Lane again.

A. Hamlin Road, (indicating).

Q. Okay.

A. And Linnen Lane (indicating).

Q And you've indicated that you were traveling north on 17?

A. I was.

Q. You've noted the intersection of 17 and 41.

A. (Affirmative nod).

Q. Would you tell the jury whether or not that's considered a high traffic area?

A. The intersection of Highway 17 and 41 is subject to a lot of congestion and heavy traffic at different times during the

day.

Q. Are there some subdivisions off of 41?

A. On 41 there are some major subdivisions, to include Dunes West, Rivertowne, and a lot of housing areas back there. So we do find that there is a lot of traffic buildup in this intersection, especially coming northbound on 17, turning onto 41.

Q. Okay. Thank you. Now, when you were first dealing with -- you can have a seat.

A. (Complies).

Q. Thank you. When you were first dealing with Mr. Blain and Miss Lynn, could you describe their demeanor to the jury?

A. Their demeanor was frantic. You know, something that we expect and see from people that have been through a traumatic event.

They were able to give me, you know, a brief description of what took place and a suspect description, and also a direction of flight; all while, you know, being frantic and needing to be calmed down.

Q. When you were talking with them, did you enter the Cricket store or did you enter the Cricket store with with them after y'all talked??

A. We didn't enter Cricket with them. However, once Corporal Mauldin arrived on scene, we then entered the business to do a security sweep, to confirm that the business was vacate. Then we secured the business.

Q. While in there, did you learn what was missing from the business?

A. We did, as well as talking with Mr. Blain. It appeared that the till or the cash register from the business was missing, along with an undisclosed amount of cash.

Q. Did you hear anything distinguishable about pieces of cash that were gone?

A. We did. Mr. Blain actually described to us that on a one hundred dollar bill, that there was some sort of marking that wasn't part of the original bill, but rather looked like a pen design, or something like that, that was on one of the bills; which I believe was later corroborated with the cash that was recovered..

Q. When you received that information as being one of the first responders, do you communicate that back over the radio?

A. Most of the time we would try to keep in touch, (affirmative nod). You know, a lot of was going on at once. There was a traffic stop taking place.

Q. How did you learn of that?

A. I actually heard about it on the radio, over the primary channel. I heard Officer Zeitner's transmission in reference to performing a traffic stop on that suspect vehicle that I mentioned earlier.

Q. After you went in the store, finished talking with Miss Lynn and Mr. Blain, what was the next thing that you did? And did you do it with any other officers?

A. Well, once Corporal Mauldin and I cleared the business and secured it, at that point Detective Simmons was notified to come to the scene.

Also Ray Haupt with crime scene was also dispatched to process the business.

Also while this was taking place, Lieutenant Alfaro responded to the area,

along with Officer Dunbar.

Also Corporal Mauldin.

We all began to canvas the area for suspects or any evidence of the crime.

Q. When you say canvas the area, what area were y'all looking at?

A. There is a field that -- there is a field area, which also corresponded with the suspected direction of flight, which is this area right here right next to the business.

This is the Cricket cellular store.

This is an open field area.

So this area, long with Porchers Bluff Road and South Morgans Point Road, then also the wooded areas here, to included Sam Edwards Road and Steve Gilliard Road.

Q. What was your role? What areas did you actually canvas?

A. At one point or another, I was in all of those areas.

Q. Were the canines deployed?

A. The Charleston County Sheriff's Office assisted us with that. They deployed their canine units. We were looking for, at that point, you know, any evidence of the

crime. We were trying to retrace the direction of flight of the suspects.

Also, based on the initial accounts that we received about the incident, there was the possibility of a firearm being discarded in the area.

Q. Okay. Was a firearm in fact located anywhere on the property?

A. It was not..

Q. When you went to Sam Edwards Road, were there other officers also on that road with you?

A. There were. There were County deputies but also Lieutenant Alfaro, Corporal Mauldin, Officer Dunbar and CSI Haupt came out at this point.

Q. And you've indicated to us that you heard over the radio about a traffic stop?

A. (Affirmative nod).

Q. Were y'all on Sam Edwards Road after the traffic stop?

A. We were, (affirmative nod). This was after the traffic stop..

Q. Do you recall a resident on that road being outside while y'all were looking

for stuff?

A. I do. There was actually a network of trails that run through the wooded area on this side of Porchers Bluff Road. There are dirt trails, walking trails. While we were canvasing this area, we came up to the area of Sam Edwards Road where other units were looking as well, which is where I came into contact with Mr. Joseph Davis, who is actually a local resident of the area. He had pertinent information with reference to his observations of possible suspects, staging the robbery and then also fleeing the scene.

Q. Okay. And did you in fact speak with Mr. Davis?

A. I did. I spoke to him. After we talked about -- after he reported to me the information that he had, I actually recorded a written statement from Mr. Davis.

Q. Did he point out any areas to y'all while he was out there with you?

A. He did. He showed us the general area on Sam Edwards Road, or to the side of Sam Edwards Road, where he thought an object

was discarded. That is also, later once we searched that area, where we found the missing cash tray from the register.

Q. During the time that y'all were taking a statement from him, were y'all outside of your vehicle or inside of your vehicle?

A. We were inside my vehicle.

Q. And you've explained that there were also a number of other officers out on Sam Edwards Road?

A. There were. At that point, in the aftermath of the event and the aftermath of the traffic stop, during the area canvas there was both Charleston County units as well as Mount Pleasant units out on that road.

SOLICITOR SHEALY: I beg the court's indulgence, (sidebar with Mr. Ferguson).

THE COURT: Certainly.

SOLICITOR SHEALY: I have no further questions right now. Answer any that the defense may have. Thank you.

THE COURT: Mr. Grimes?

ANDREW GRIMES: Thank you, Your Honor.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. Good afternoon, Detective DeCamp.

A. Good afternoon. How you doing, sir?

Q. I'm pretty good. How are you doing today?

A. Good.

Q. I just want to ask you a few questions about reports. Okay?

A. Okay.

Q. When you do reports, it is important to be accurate in doing those?

A. Yes, sir.

Q. And it is important for you to be fair in writing your reports?

A. Absolutely.

Q. And for the reports to be complete?

A. Yes, that's important.

Q. Because sometimes it may take over three years for a case to get from incident to trial; correct?

A. (Affirmative nod), as we are seeing right now.

Q. Yes, sir. And you handle a lot of cases during that three years, don't you?

A. Well, at that point, yeah. Every day you take different reports.

Q. Such as a patrol officer?

A. Right.

Q. Now I want to ask you a few questions about the report that you wrote in this case. I think that you have the incident date and time at September 15th, 2010 at 6:25 p.m.

A. I believe that's correct.

Q. And then you received a dispatch ten minutes later, at 6:35?

A. That's correct.

Q. And according to your report, you and Corporal Mauldin arrived at the scene about 6:37?

A. I was the first one to arrive at that approximate time. Corporal Mauldin was a little further after that.

Q. Okay. Now I want to ask you a few questions about Highway 17. Where were you when you first received or heard about armed robbery over dispatch?

A. At the time that that call was dispatched, I was traveling on Highway 17

towards the intersection of Highway 41. So in between the intersection of Hamlin and Highway 17 and 41 and 17.

Q. So -- it's my understanding that the Brickyard subdivision is kind of across the street from Hamlin?

A. That's correct.

Q. So you were a little bit past Brickyard but not quite to Highway 41?

A. Correct. I was actually in this section right here (indicating on map).

Q. Ms. Shealy asked you a lot of questions about whether the traffic is heavy. You said that it could be at times.

A. Right.

Q. It took you about two minutes to respond, is that correct?

A. Correct.

Q. Did you go flashing blue lights or did you go your normal speed?

A. At that point I didn't activate my lights or siren due to the close proximity. That's a typical practice of the police department to not use a siren when you're in such close proximity to a call that is a

crime of this nature.

Q. You don't want to give yourself away?

A. Sure.

Q. So it took you about two minutes to make that trip. Correct?

A. Correct.

ANDREW GRIMES: Thank you, Your Honor. I have no further questions.

THE COURT: Mr. Runyon.

CROSS EXAMINATION

BY WILLIAM RUNYON:

Q. Good afternoon, Detective DeCamp.

A. Good afternoon, sir.

Q. Just briefly, if you'll harken back to that evening, it was still light at that time, was it not?

A. Yes, sir, it was.

Q. And it still warm at that time, was it not?

A. I don't particularly remember. I don't believe that it was cold at that point.

Q. All right. You were wearing a standard-issue Mount Pleasant uniform?

A. I was.

Q. Was it the short-sleeve or long-sleeve version? Do you remember?

A. I'm sorry, I don't remember. I believe that it was short sleeve at that point.

Q. Well, for this time of year, short sleeve is probably what it was?

A. Correct.

Q. Because it was still kind of warm in September of that year?

A. (No verbal response).

Q. Did you actually go through the field and the trails into the woods?

A. I did, sir.

Q. Was it easy walking or was it -- did you have briars, snags or whatever?

A. In the field area that I was pointing out earlier, across from the store, it was -- it's fairly open except for in some areas there were some bushes and tall weeds. Overall that's a fairly open field, so that was fairly easy going.

Then behind in the wooded area across the street, on the other side of Porchers Bluff Road, to the south of Porchers Bluff, in that

wooded area there is a network of trails. Actually if you go through those trails, you can -- at that time you could travel pretty uninhibited.

Q. So it didn't mess up your uniform too bad?

A. Not too bad.

Q. But it did mess it up a little bit?

A. I don't remember that other than some dirt on the shoes.

Q. Dirt on the shoes?

A. (Affirmative nod).

Q. And then of course they brought in a canine unit to follow up and assist in both the field and the woods?

A. That's correct.

WILLIAM RUNYON: No further questions, Your Honor.

THE COURT: Mr. Smiley?

CROSS EXAMINATION

BY MR. SMILEY:

Q. You were the first one there, of the first responders?

A. Yes, I was.

Q. Oh, by the way, I'm Jim Smiley. I

represent Kevin Eadlis.

While you were there, you spoke to the owner of the business and an employee, is that correct

A. That's correct.

Q. Was there anybody else there at that time that you were trying to get information from?

A. At that point, I think that the only other action that I was taking is that there was a business that was open next door to the Cricket store. At that point it was our main concern that all the people that worked there and everybody was all okay. Once that happened, other than just controlling their movement going to the next door store, other than that it was mainly those two people that I was speaking with.

Q. Did you ever have contact with a Ms. Jessica Lyons?

A. No, I didn't.

Q. And you heard over dispatch, you were advised that a car had left the Walmart at a high rate of speed?

A. I wasn't -- I don't remember the

location from where it was leaving from what was dispatched, from the information that was dispatched it was reported that a vehicle was leaving at a high rate of speed form the general area.

Q. Now, when you met with Mr. Davis over on Sam Edwards Road -- by the way, Sam Edward Road, while it is one road over, it's a decent hike from there to the Walmart, right?

A. I'm sorry?

Q. Bad question. Let me try again. From Mr. Davis' house on Sam Edwards Road, through those trails over to the Walmart, it is a pretty decent hike; isn't it? It is at least, what? I won't try to put distances in your mouth. How far do you believe that distance to be?

A. I guess everything is relative. I don't believe that it is really that far, simply because -- because with what used to be the Guy C. Lee area developed within that wooded region, you actually follow that fenced area around and then through on that trail and it's not that far of a distance.

Q. Then we've got that field that is behind -- excuse me -- I drew a blank. That field off of South Morgans Point Road, across from the Cricket store, that they saw the gentlemen/fellows coming out of?

A. Correct.

Q. That is a pretty big field, right?

A. It's fairly large.

Q. And if you were following those trails, you would have to actually -- those trails don't come out in that field, do they?

A. No, those trails are only applicable for the other side of Porchers Bluff Road.

Q. Right. And they come out close to the entrances/exit of Walmart, right?

A. (No verbal response).

Q. Onto Porchers Bluff?

A. They -- yes, those trails run pretty much behind Guy C. Dee, that developed area, and then pretty much exit out near the intersection of South Morgans Point Road and Porchers Bluff Road.

Q. The field is further down, is what my point is, towards Rifle Range?

A. Well, it extends probably further

than that. However, the field -- the field area that I am talking about is right here.

Q. Right.

A. It extends maybe a little bit further over. However, the developed area that I am talking about is right here. The trails, the network of trails that I am talking about is leading to -- (indicating), is right here.

Q. I gotcha.

A. So the fielded area would be right here and the network of trails that I am speaking about it right here.

Q. Then they cross through that over to Sam Edwards Road?

A. That's correct.

Q. When you were talking to Mr. Davis, he was in his yard?

A. I was actually speaking to him on the street. I don't think that we were at his residence.

Q. Okay. Did he show you where he was located when he said that he saw these things?

A. I believe that he did and I -- but I

don't quite remember. I believe that he told where he was on Sam Edwards Road when he observed this

Q. All right. But you don't remember?

A. I don't.

Q. Okay.

JIM SMILEY: Nothing further.

THE COURT: Redirect?

SOLICITOR SHEALY: No, Your Honor.

THE COURT: Do you wish the witness to be excused.

(WITNESS STEPS DOWN)

SOLICITOR SHEALY: Joseph Zeltner.

THE COURT: Do you wish for the witness to be excused?

SOLICITOR SHEALY: I'm sorry. Yes, Your Honor.

THE COURT: Any objections?

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: No objection.

JIM SMILEY: No objection.

THE COURT: Thank you. You are also free to leave. Solicitor, call your next witness.

SOLICITOR SHEALY: Thank you, Your

Honor. The State calls Joseph Zeitner.

(WITNESS TAKES STAND)

JOSEPH ZEITNER, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Officer Zeitner, if you would, please tell the jury where you are currently employed.

A. I am currently employed with the Town of Mount Pleasant.

Q. In what capacity are you employed in there?

A. I am a traffic officer. I work in the traffic bureau. I respond to collisions. I work primarily the night shift, so I do a lot of the law enforcement too.

Q. Okay. Back in September, specifically September 15th, 2010, were you working for Mount Pleasant?

A: Yes, ma'am.

Q: And you've worked there how long?

A. I have been there for almost eight years now.

Q. In what capacity were you working on that occasion?

A. On that occasion I was actually under a grant position, the Highway Enforcement of Aggressive Traffic, which is a driving-while-impaired position.

Q. Okay. Would you tell the jury whether or not you heard a dispatch and where you were when you heard it, regarding something that occurred at South Morgans Point Road.

A. Yes. We heard a dispatch come out that there was an armed robbery at the Cricket store at the Oakland Market. Myself and Lieutenant Kaufman were actually on a traffic stop towards -- past Wando High School, as you go down 17 towards Myrtle Beach. You past Wando High School and you're going toward Awendaw, McClellanville. There's Wando Farms, Bulls Bay, and there's like a bulls head on the side of the road. We were in that area.

Q. Okay. Showing you what has been marked as State's Exhibit 104. Can you see it on the screen that's behind you?

A. Yes, ma'am.

Q. Can you point out to the jury what -- did you start traveling after you heard that dispatch?

A. Yes. When I heard the dispatch come out, I started traveling down 17 into the area.

Q. You can stand up.

A. I started traveling down 17 towards Porchers Bluff Road. As I got down here, I got into the left turn lane.

Q. Okay. Did anything draw your attention as you were getting into the left turn lane?

A. As I was getting down in that area, over the radio they dispatched the description of a red car with black on it.

As I was sitting here, a Charleston County cruiser came off of Porchers Bluff Road and turned southbound onto 17. At that time, they gave a plate number of FVP 808 for that vehicle.

As I was writing that down, I saw a car come across the intersection that was a red Impala with a black stripe. As it went

past, I could see that it matched the description. I caught up with the car and it had the same tag on it that was dispatched out.

Q. You can have a seat.

A. Thank you, (complies).

Q. At that intersection is there a business?

A. Yes, there's a business on one side. It's Guy C. Lee, it's like a lumber place.

Q. Now, tell us a little bit about your car. Does it have the capacity to video record what is being depicted from your -- from within your car?

A. Yes. Being in Traffic, what we have is -- we have to videotape all of our stops and everything. So I have a digital camera system that's installed in the car. When I activate my blue lights, it actually records thirty seconds in the past and then the audio turns on from when I turn on the blue lights, from that point on.

Q. Okay. When you take your car back to the police station, do they download the videotape?

A. Yes. When we take our car back to the police station, if you park in between -- there are two antennas on the back of the station. As soon as you park, that video starts downloading. So you can't do anything with it. It downloads to a server at that point.

Q. If you would, please describe for the jury what occurred once you put your lights on.

A. Once I put my lights on, -- I knew that other officers were coming because it was a suspect stop, a high risk stop because it was a suspect vehicle from an armed robbery.

I got out of my car and gave the driver verbal -- I gave everybody in the car verbal commands to put their hands up.

I gave the driver verbal commands to put his hands up.

I waited for another unit to get behind me. At that time, we had the driver turn off the car. We started having people exit the car. We had the driver come out first.

In the car -- as I was looking at the

car, at moments you could see the car shake and the two occupants of the vehicle in the back of the car -- the one on the left, on the driver's side, actually disappeared out of my sight three times in the entire time that we were calling the driver out of the car.

And the second passenger, you could see the passenger on the right jumping around the car. At one point it looked like he was between the seats and almost to the front of the car.

So we called out the back seat passengers, left and right, and then we called out the front seat passenger after that..

Q. Why did you make the decision to take them out one at a time and in what order? Why was that decided?

A. Because it was a high risk stop that came out with the possibility of weapons, guns and such, you take one person out at a time so that you can see your threats. It's an officer safety thing. It was also an issue because it was in the afternoon on a

busy roadway.

So we took the driver out first. Basically you take the driver out first and that way the person that is in control of the car is out of the car, so that you can ensure that that car is not going to go anywhere else.

Usually you like to only have one door open on the car, so that everybody exits the same way. So if anything is going to happen, if you have a precursor to an event, to where if somebody is going to try to attack or anything, another door would come open.

But because of all the movement in the car, we actually had the back seat passenger behind the driver open the door and we had those back seat passengers exist before we had the occupant in the front passenger seat exit.

Q. Okay. Do you remember now the order in which the individuals -- did y'all identify the individuals after you got them out of the car?

A. Yes. After we got the out of the car and got them back to the station, we were

able to identify all of the individuals.

Q. Can you testify from memory as to who got out first, second, third and fourth?

A. Yes.

Q. Who got out on the driver's side?

A. The driver of the car, Kevin Smalls, got out first.

Q. Then who was the next person that got out?

A. That would have been Jarret Graddick, who was behind the driver, in the backseat of the car.

Q. And then who was the third person that got out of the vehicle?

A. It would have been Keenan Coakley, who was the other side of the right seat -- on the right of the back seat.

Q. And the fourth person who got out?

A. It would be Brian Mazyck.

Q. Okay. And you had indicated that after you had stopped the vehicle is when those movements that you were talking about were going on?

A. Yes, ma'am.

Q. I'm going to show you what has been

previously marked as State's Exhibit 103 and ask if you can identify that?

A. Yes, this is the CD from the in-car video of my vehicle.

Q. Are your initials reflected on the front of it?

A. Yes. I reviewed it this morning before I came in to ensure that it's ---

Q. I'm sorry. I think that I interpreted you when you were going to say what it is labeled.

A. It is labeled "Kevin Smalls." The way that we label it, it only gives you a certain amount, so it was labeled as the first person that I took out of the car.

Then the case number for us, which would be 2010-T-12283, Armed Robbery. Then JA are my first two initials, because it didn't label it all the way through my last name because of the title, the lack of room. Then the date that it was record, September 15th, 2010 and on here it says 9/15/2010.

Q. You indicated that you had looked at this today?

A. Yes, ma'am.

Q. Had you also looked at it previously?

A. Yes, ma'am.

Q. Could you tell the court, please, whether or not this is an accurate depiction of the traffic stop that day?

A. Yes, that's an accurate depiction of the traffic stop that day.

SOLICITOR SHEALY: Your Honor, it is my understanding that without objection I can now move this into evidence.

THE COURT: State's Exhibit 103 is admitted without objection, being a CD.

(SO ENTERED AS STATE'S EXHIBIT 103)

SOLICITOR SHEALY: Permission to publish it?

THE COURT: You may publish it.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Officer Zeitner, as it is beginning to play, tell the jury what -- (video playing) -- the start time for it was.

A. The start time for it is September 15th, 2010 at 1841, which would be 6:41 p.m.

Q. (Video playing) -- is that the

vehicle in front of you?

A. Yes, that's the vehicle in front. It was the red Impala with a black stripe, and you can see the tag is the same tag that dispatch gave out -- EVP 808.

Q. (Video playing) -- Officer Zeitner, one of the things that you described earlier was someone looking as if they were trying to get into the front seat, was that just depicted on the tape?

A. Yes, ma'am, you can see that the right back seat passenger was actually trying to go through the middle of the two front seats, to get to the front of the car at that time. That's why we directly yelled commands at him.

Q. (Video playing) -- when you began yelling more loudly there, what was your concern?

A. My concern is that because it was an armed robbery -- when you have people that go out of sight, you don't know what is going to happen when they come back up. So as the left read seat passenger was ducking, I specifically told him to put his hands on the

roof because I wanted to be able to have sight of his hands and the top of his body.

Q. And who, again, was the left rear seat passenger?

A. I believe that would have been Jarret Graddick.

Q. (Video playing) -- the female officer that you're getting directions from, who was that?

A. That was Lieutenant Debbie Alfaro.

Q. (Video playing) -- was she in a supervisory capacity that day?

A. Yes.

Q. (Video playing) -- okay. Is that the last involvement with the defendants on your camera?

A. Yes, that's the last involvement on my camera.

Q. Officer Zeitner, I am not sure if the jury heard you because the recording kept going -- who was the female officer at the scene?

A. Lieutenant Debbie Alfaro.

Q. And she was there in a supervisory capacity?

A. Yes, she was.

Q. And she was the one giving you direction as to which order to do it?

A. Yes.

Q. At one time you said, "Do you have me covered."

A. Yes.

Q. What did you mean by that?

A. At one time she asked me if I had a PA in my car instead of screaming, because as you scream you get hoarse because your throat gets dry and everything. It's easier for them to hear us on a PA and everything. The way that the PA is set up in my car, I actually have to turn a button to turn it on, turn off the siren to be able to turn on the PA. Then you have to pull the PA off the front of the dash. So I would have actually have had to lean into my car, drop my head below the dashboard to do all of that. I asked her is she had me covered with the car so that I could do that, engage the PA.

Q. Meaning to keep you out of harm's way?

A. Yes.

Q. And the two individuals in the back seat that got out in undershirts, that was which to people again?

A. Jarret Graddick and Keenan Coakley.

Q. Having just looked at the video tape, because the lights are a little funny in here, would you describe to the jury what behavior on the part of the back seat occupants was of concern to you?

A. The behavior of the back seat occupants was them -- the left back seat passenger actually dropped out of sight. I believe that it was three times to where I couldn't see him at all.

The right back seat passenger kept making movement to the point where it actually shook the car, where he was trying -- it appeared that he was trying to get through the two front seats to get to the front of the car.

Q. After all four individuals were taken out of the vehicle, were they ultimately arrested?

A. Yes.

Q. And where were they taken from the scene?

A. I believe that they were taken to the police station.

Q. Did you stay at the scene after they had left the scene?

A. A little bit just to pass on information to the lieutenants and then I went back to the station to type my supplemental report.

Q. Were you present when an officer moved the vehicle from that location into the parking lot at ---

A. Yes, I was.

Q. You were?

A. Yes.

Q. That was which officer?

A. That would be Officer Kaufman.

Q. After that occurred, what -- who were you waiting for to arrive at the scene regarding the car itself?

A. I believe that we were waiting on the tow truck and crime scene.

Q. And when you say "crime scene", what would be the value of crime scene coming out?

A. There would be a detective coming to collect the evidence from the scene, a crime

scene technician that would collect evidence from that car that could be related to the crime.

Q. Do you recall whether or not when crime scene arrived?

A. I believe that I was there when crime scene technician Ray Hauph showed up. I believe that I was still on the scene.

Q.D o you remember whether any of the windows were rolled down in the vehicle?

A. I believe -- as you can see on the video, I believe that the back left passenger was down. Because when he sticks his hands up, the one hand actually comes out of the window at one point.

SOLICITOR SHEALY: Beg the court's indulgence just one moment.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. What efforts were made to make sure that the car was secured while you were waiting for the crime scene technician to arrive?

A. It was parked in the parking lot. I believe that after Officer Kaufman got in it,

that he got out and we waited on crime scene.

Q. About how many officers were there?

A. There was more than five. It would have almost been a whole shift, so it probably would have been upwards of eight to ten at that time.

Q. Did you look in the vehicle at all?

A. I looked briefly when I cleared it to make sure that there was nobody else in it. If you watch the end of that, what we do -- because I'd never approached the vehicle, we have to look in all the windows just to make sure that there is nobody hiding in the floorboards or anything. We also go so far as to look in the trunk just to make sure that nobody is hiding in the trunk. So that there is no threat to anybody from there.

Q. All right. Did you see any items in the vehicle that appeared to be of evidentiary value?

A. I don't recall if I saw anything.

Q. And that's because that at the time that you looked, you were looking for what?

A. People.

SOLICITOR SHEALY: Answer any questions

that defense counsel may have.

THE COURT: Mr. Grimes?

ANDREW GRIMES: Thank you, Your Honor.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. Good afternoon, Officer Zeitner.

A Afternoon.

Q. How you doing today?

A. Good. How about you?

Q. Not too bad. I want to ask you just a couple of questions about being a police officer. Some of them may seem to be common sense.

A. Okay.

Q. Being a police officer can be pretty dangerous, can't it?

A. Yes, it can.

Q. Especially traffic stops?

A. Yes.

Q. You don't know who you're stopping.

A. Correct.

Q. And you don't know what they might have in the car?

A. Correct.

Q. Or what kind of state of mind that

They are

A. Correct.

Q. If they are under the influence of alcohol or drugs.

A Correct.

Q. If they're fugitives or something like that.

A. That's correct.

Q. And when you -- in this case you were making a felony traffic stop.

A. It used to be called a felony car stop. Now it's called a high risk car stop. So if I use that verbiage interchangeable, that's the way that the trend has gone.

Q. All right. And you had reports of a weapon being involved?

A. Yes, sir.

Q. That's one thing that would make it high risk?

A. Correct.

Q. Multiple people in a car make it high risk?

A. That would be correct.

Q. And the general safety of other people out there -- there are a lot of cars

-- makes it high risk. It's a high traffic area. Correct?

A. That would be correct.

Q. You want to protect the citizens from anyone getting a chance to jump in on them?

A. That would be correct.

Q. So when you come out of there, you come out of there weapons pulled; right?

A. Yes.

Q. You don't want to give anyone a chance to get the jump on you?

A. Correct.

Q. And for someone in that car, that might be scary to them?

A. It could be.

Q. Might make them nervous?

A. Yes.

Q. Make them move around a lot?

A. It could.

ANDREW GRIMES: One moment, please, Your Honor?

THE COURT: Sure.

ANDREW GRIMES: (Sidebar with Mr. Kowelski), nothing further.

WILLIAM RUNYON: No questions, Judge.

THE COURT: Mr. Smiley?

CROSS EXAMINATION

BY JIM SMILEY:

Q. I'm Jim Smiley. I think that we've met before?

A. Yes. How you doing, Mr. Smiley?

Q. I represent Kevin Smalls.

A. Okay.

Q. He was the driver, right?

A. Yes, sir.

Q. And he followed commands?

A. Yes, he did.

Q. You were yelling at them -- watching the video, it was a little chaotic, there was a lot of stuff going on there. But there is no doubt that when you were yelling out commands, that the people in the car knew what was going on?

A. Yes. You could see that when I yelled "put your hands up" that people in the car were putting their hands up, the driver and the front seat passenger immediately did that.

Q. Yeah. It was the two fellows in the

front that put their hands up, didn't move. Then when -- you asked them a couple of times to cut off the car. You actually see him putting the car in park, because the reverse lights came on.

A. Yes, sir.

Q. He put it in park and then cut it off.

A. Yes, sir.

Q. Correct?

A. Correct.

Q. And he walked back the way that he was supposed to do, to you?

A. (No verbal response).

Q. Did he hand you the keys? I noticed that you had them. When did you get the keys?

A. Usually when you do a high risk car stop, what you will do is have the driver take the keys out with him and put them on the roof. You don't want them throwing their keys, because you don't want to lose the keys in the roadway or anything if anything was to happen.

But because of the movement in the back

of the car at that time, we just had them get out and left the keys in the ignition.

Q. So when he's backing up to you, he doesn't have the keys? They were still in the car?

A. Yeah. I believe that Lieutenant Alfaro got those before we opened the trunk.

Q. Okay. You all of a sudden had the keys and I was just trying to figure out where they came from. All right.

A. Yes, sir.

Q. So your sum total involvement in this case was the actual stop, right?

A. Yes, sir.

Q. When you first saw the red-and-black car, I think in your report that you said that it was turning from Porchers Bluff Road onto Highway 17. Did you actually see it on Porchers Bluff or ---

A. I saw it come across the intersection. I couldn't say how long it was on Porchers Bluff.

Q. Could it -- I guess my question is, could it have been doing a U-turn from 17, going ---

A. It could have been -- I saw a deputy's car go by -- even in the eyes of a police officer, when I see a police car go by I kind of look at it for an extra second, too. So -- (pause).

Q. Before you turned your lights on and turned onto 17, it -- it wasn't a speed thing?

A. It wasn't speeding, no.

Q. And when you pulled behind it and turned your lights on, it stopped?

A. (Affirmative nod).

Q. It didn't go another inch.

A. Right. The car in front of it was waiting on the red light. When I turned on the blue lights, the light changed and the other car went, it stayed there.

JIM SMILEY: That's all that I've got. Thanks.

THE COURT: Redirect?

SOLICITOR SHEALY: No, Your Honor.

THE COURT: You may step down.

(WITNESS STEPS DOWN)

THE COURT: Do you wish for him to be excused?

SOLICITOR SHEALY: Please

THE COURT: Any objection?

WILLIAM RUNYON: No objection from Defendant Coakley.

ANDREW GRIMES: No, sir

JIM SMILEY: None, Your Honor.

THE COURT: Thank you. You are free to leave. Solicitor, call your next witness.

SOLICITOR SHEALY: The State calls Debbie Alfaro.

(WITNESS TAKES STAND)

DEBRA ALFARO, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Ms. Alfaro, if you would, please, tell the jury whether you were previously employed with the Mount Pleasant Police Department?

A. I was. Twenty-two years with Mount Pleasant Police and six years with Charleston County.

Q. Tell the jury what you are doing now?

A. I retired and I have a business over on -- in Mount Pleasant.

Q. In 2010 -- September 15th, 2010, you were employed with Mount Pleasant?

A. Yes, ma'am.

Q. In what capacity?

A. I was the lieutenant in charge of the road and also the SWAT commander.

Q. Could you tell the jury whether you remember getting a dispatch regarding an armed robbery that took place at the Cricket store in Oakland Plantation?

A. Yes, ma'am. They put it out on the radio. I was the supervisor that responded to that location.

Q. Okay. So, if you would, describe -- when something comes out like that over dispatch, as a supervisor what is your role? What do you do?

A. My role is that when a call goes out, I basically start delegating officers where they need to be. We want to cover the exits out of Mount Pleasant as well as sending a unit to the incident location. We go ahead and start getting information as

quickly as we can.

Q. Do you recall where you were when it came out?

A. Yes, ma'am. I was on Highway 17 North, just passing the Towne Center.

Q. Just passing Towne Center?

A. Yes, headed towards 17 North.

Q. And what do you do after you send out your commands, after the dispatched. What is the next thing that you do regarding this incident?

A. Actually we are listening to information as we get it across tele-communications as well as from the officers responding on scene.

As they are getting information, I am filtering it and deciding on where to send people or on what needs to be done next.

Q. If you would, do you at some point stop somewhere?

A. No. No, our priority is to get on scene and to, again, send officers to other locations, to make sure that victims are safe, trying to get information.

Q. Meaning that you're doing this as

you're driving?

A. Yes, ma'am. Multitasking.

Q. What I mean is that at some point you arrive on scene and stop?

A. Yes, ma'am.

Q. Tell the jury about that.

A. Once we get on scene, obviously — are you wanting me to talk about what I did or just in general what we do?

Q. What you did in this case.

A. Okay. On this particular incident, we had officers responding to the location.

We received information of a tag and vehicle description. Shortly after that, one of my officers, Officer Zeitner, located the vehicle and he was behind it. He asked did I want him to go ahead and initiate the traffic stop. He'd confirmed the tag and everything. His location was 17 and 41.

I did not want them to turn onto 41 so that we would get into a pursuit. I was so close, I told him to go ahead and initiate it and I would be responding there as his backup for the felony car stop.

Q. When you arrived, how did you

approach the vehicle?

A. When we arrive on a scene, uh, basically there are two cars positioned for a felony car stop, for officer safety. One officer is going to be calling out the commands for the vehicle and for all the people in the vehicle to respond. The other person basically is cover and to protect the officer calling it out.

For a felony car stop, we will bring each suspect back, one at a time, so that we can search them and pass them on to another officer so that they search them and secure them until we finish with the crime scene.

Q. Okay. The female -- have you had a chance to listen to and see ---

A. Yes, I have.

Q. --- the in-car video?

A. Yes, I have.

Q. The female voice that we hear ---

A. That would be me.

Q. --- is ---

A. A little high-pitched but that's me.

Q. Was there anything about the behavior within the car that caused you

concern?

A. Yes, ma'am. The two gentlemen that were in the back seat kept moving around, they kept ducking down, they were moving around the car -- it was like nonstop movement. I was concerned over officer safety, with the weapon in the car. We didn't know what they were going to do at that point, so it was a high risk, felony car stop.

Q. How long did you stay at that scene before leaving?

A. My role at that scene was Zeitner's backup, making sure that we got all four of the suspects secured in that location.

I also had to make sure that we had no crossfire at that intersection. There were several citizens out there.

Once we were able to secure the four suspects, we pulled the car out of the roadway. We had to search it prior to towing it.

From that location, I was back and forth in communication with Detective Tyrone Simmons over there. We discussed what needed

to be done at that sc.

From there, I went to a dirt road, Sam Edwards Road, where we'd heard information that there might be a gun or something left from the scene.

Q. Okay.

A. So that's where I headed.

Q. Now, regarding the vehicle that was -- that had been moved into the parking lot.

A. Yes, ma'am.

Q. Were you there when Ray Haupt arrived there to search the vehicle?

A. Yes, ma'am.

Q. Had you had the opportunity to look into the vehicle?

A. Yes, ma'am

Q. Were there anything -- was there anything readily apparent to you when you looked in it?

A. When we were -- when we looked in the vehicle, there was a Glock on the passenger side. It was not quite underneath it. And then the back seat where the arm rest went, the money was in there.

Q. You could just see that by just

looking in the vehicle?

A. Yes, ma'am.

Q. From the outside of the vehicle?

A. Yes.

Q. And then you left there and went to Sam Edwards Road?

A. Yes, ma'am.

Q. What -- how did you know to go to Sam Edwards Road? How did you learn about it?

A. Investigations had been speaking with -- they had obtained information. They said that if we went down those paths over night after where the location was, that we might find a gun or we were looking for a cash till.

Q. Okay. Do you recall who else went on that road?

A. Corporal Mauldin, Dunbar, DeBroi (phonetic), and -- I'm not sure if -- we were standing by, waiting on Charleston County to bring their dogs also.

Q. Okay. The dogs were coming to see if they --

A. To see if they could locate a weapon

for us. Right.

Q. Do you recall whether or not there was a resident on the street that was out there when y'all were out there?

A. Yes, ma'am. There was a gentleman on the street and he said, 'I saw two guys running through the area and they threw something towards the ditch area.' There was a fenced area and all. So that's where we went. He was just a citizen on the road. I don't recall his name right now, but -- he just pointed to the ditch area, there were a lot of ditches back there and that's where we found the till.

Q. Okay. Showing you what has been previously marked as State's Exhibit 13. It will come up on the television and behind you.

A. Okay.

Q. Do you recognize that road?

A. Yes, ma'am.

Q. Using the pointer -- is there one up there?

A. Yes.

Q. Can you show us the general area

where you found the trail?

A. It was at the dead-end road. There's a fence back there, and I don't know if you can see the fence in the picture. It was on the right-hand side in a ditch down in that area, right past this house. We went into the wooded area, checked all the area. It was right in here (indicating) to the right side.

Q. You can take your seat.

A. (Complies).

Q. Showing you what has been previously marked as State's Exhibit 16, State's Exhibit 15, and State's Exhibit 11. Do you recognize those depictions?

A. Yes, ma'am.

Q. Could you tell us what those are?

A. This is -- it's the ditch area near the trail that comes right out of the location where the -- the shopping center where the store is located that was robbed.

SOLICITOR SHEALY: Your Honor, my understanding is that without objection we would move to introduce State's Exhibits 15, 16 and 11.

THE COURT: State's Exhibits 11, 15 and 16 are admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 11)

(SO ENTERED AS STATE'S EXHIBIT 15)

(SO ENTERED AS STATE'S EXHIBIT 16)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Showing you first State's Exhibit 16, can you tell us what that picture depicts?

A. Yes, ma'am. It is the ditch area that leads past where the trial that comes out of the field across from the location in the shopping center that was robbed, the Cricket store.

Q. Okay. All right. Then showing you State's Exhibit 15, what does that depict?

A. That is the till prior to us putting it in evidence.

Q. Okay. Then State's Exhibit 11?

A. Same thing.

Q. Just a closer view?

A. Yes.

Q. Showing you what has been previously marked as State's Exhibit 71, this is the

till that was out there?

A. Yes, ma'am.

Q. When you saw the till, did you move it or change its location?

A. No, ma'am. We waited for the evidence tech to get there and take photographs of it. Plus, with the dogs en route, we were hoping that they could pick up a scent and help them a little better in finding the gun for us.

Q. Okay. While you were out there that evening, did any of the defendants come to Sam Edwards Road?

A. Yes, ma'am. One of the investigators brought one out there and they were going back through the trails that we'd previously walked through looking for evidence.

SOLICITOR SHEALY: Beg the court's indulgence just a moment.

THE COURT: All right.

SOLICITOR SHEALY: I have no further questions. Please answer any that the defense may have.

THE COURT: Cross examine? Any

questions?

ANDREW GRIMES: No, sir.

THE COURT: Mr. Runyon?

WILLIAM RUNYON: Thank you.

CROSS EXAMINATION

BY WILLIAM RUNYON:

Q. Lieutenant Alfaro, good afternoon.

A. How you doing, Mr. Runyon?

Q. Just a few questions.

A. All right.

Q. You saw a Glock, a weapon?

A. There was a weapon in the vehicle, yes, sir.

Q. In the right front passenger seat, if I recall your testimony.

A. Yes, sir.

Q. And I know that you will correct me if I am wrong.

A. I will.

Q. Okay. You said that you saw some money in the car. Where was that money?

A. There was an armrest in the back seat and it was piled in there.

Q. So the money wasn't fully visible?

A. Partially, but we would have done an

inventory on the vehicle prior to towing it.

Q. So it was in the armrest in the back?

A. Yes, sir.

Q. The gun was in the front seat.

A. (No verbal response).

Q. And you left the till on the ground for evidentiary purposes?

A. Correct.

Q. To take pictures like we just saw?

A. (Affirmative nod).

Q. Then the County brought their trusty canine unit?

A. Yes, sir.

Q. And, uh, the canine unit might have been able to pick up a scent, because at that time you weren't sure where everything was? It was still fluid?

A. Yes, sir.

Q. And the canine unit might be able to pick up the scent of whoever handled that?

A. We will looking for -- if there were any additional items out there in the woods, correct.

Q. Any additional items that the canine

until might be able to find?

A. Correct.

Q. Basically other than straining your vocal cords at the car stop, that's about your involvement in the whole thing?

A. Just as a supervisor making sure that everybody is doing their job.

Q. I understand.

A. Okay.

Q. Thank you. No further questions.

A. You're welcome.

THE COURT: Cross examine, Mr. Smiley?

JIM SMILEY: Yes, sir.

CROSS EXAMINATION

BY JIM SMILEY:

Q. Hey Debi.

A. Mr. Smiley.

Q. Excuse me, Lieutenant Alfaro. I represent Kevin Smalls.

A. Okay.

Q. You were in charge of that scene at 17 and 41?

A. At 17 and 41, yes.

Q. And the car was pulled into Seel's by Officer Kaufman?

A. Okay.

Q. At that point, did you tell them to conduct an inventory search?

A. Actually at that point we'd already notified the tow company and at that point we needed to do the inventory prior to towing it.

Q. So before crime scene got there, an officer started to go through, documenting the car?

A. Originally we checked to see if there was anybody in the trunk. Then after that, to make sure of the items that were visible to us prior to inventory.

Q. Okay.

A. Right.

Q. So when crime scene got -- took pictures of the car, items had been moved around by one of the officers doing an inventory search?

A. They were located at that point. Then once crime scene got there; they started doing an inventory on everything.

The officer -- most of it was plain view. In fact, everything that I named was plain

view -- clothing that was in the car.

Q. All right.

JIM SMILEY: I think that's all that I've got.

THE COURT: Redirect?

SOLICITOR SHEALY: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Ms. Alfaro, you indicated that you thought that when you had looked in the car that you saw the gun, where?

A. From what I can remember and in reviewing this, it was in the front seat -- underneath -- the passenger side.

Q. Underneath the seat on the front passenger side?

A. Yes, ma'am.

Q. Let me show you -- and if you can't identify these, ---

A. I won't.

Q. --- that's okay. I am showing you what has been previously marked as State's Exhibit 34, 35 and 33. If you can, identify

-- well, let me ask you this. You indicated that crime scene and y'all had looked in the vehicle?

A. Correct.

Q. And you saw money?

A. Money, (affirmative nod).

Q. And you saw clothing?

A. (Affirmative nod).

Q. And those were in the back seat?

A. I can verify that the money was in the back seat, in the arm section.

Another officer located the gun.

Then there was clothing. It was like they were changing clothing in the process of the car stop.

Q. And do you remember which crime scene technician came out to the scene?

A. It should have been Haupt.

Q. Explain the different roles that you had for Officer Haupt ---

A. Correct.

Q. --- because -- would Office Haupt be the one who would log the different items that ---

A. Correct.

Q. --- were found?

A. Correct.

Q. And does the crime scene technician photograph where they find things?

A. That's correct.

Q. So you believe that it was under the front passenger seat?

A. Right. I did not do that part of the car.

Q. Okay.

A. I'm just saying that an officer says, 'We've got a gun.' Gray. Glock.

'We've got money.' I saw the money myself, so I can definitely identify to that. Okay?

Q. And were any items removed from the vehicle or moved from the vehicle before Officer Haupt got there?

A. As far as I know -- my concern at that point, we had a major intersection, we had -- we had to get the vehicle out of the road.

We got the defendants transported to headquarters.

Then at that point we pulled the car over

there to Seel's -- it's a boat place in Mount Pleasant.

Waited for crime scene. Then once crime scene arrived, I headed from there to the next location.

Q. Okay.

A. So as I am getting this information, whether it be in person or on the radio, I'm processing it and delegating.

Q. Okay.

A. Okay.

Q. And you said that you had a major intersection. You're talking about the intersection of 17 and 41?

A. Highway 17 and 41. It was rush hour traffic, so it was busy.

Q. Thank you.

A. Okay.

Q. Please answer any questions that the defense has.

A. Okay.

THE COURT: Recross?

ANDREW GRIMES: Briefly, Your Honor.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. I just want to ask you a few questions.

A. Okay.

Q. I find something -- I might be a little confused.

A. Okay.

Q. I believe that you told Mr. Smiley that everything that you saw -- the gun, the clothes, the money -- was in plain view.

A. The money, plain view.

The clothes, plain view.

The gun, the officer that located the gun said 'the gun is right there.' I think that it was Dunbar.

Q. So you didn't see the gun?

A. No.

Q: That was another officer?

A. It was Dunbar. I can say that for sure. He saw the gun and he said, 'We've got a gun. It's a Glock.'

Q. All right.

A. Okay.

Q. Thank you.

A. You're welcome.

THE COURT: Recross, Mr. Runyon?

WILLIAM RUNYON: No, sir.

JIM SMILEY: No, sir.

THE COURT: Thank you. You may step down.

(WITNESS STEPS DOWN)

THE COURT: Do you wish the witness to be excused?

SOLICITOR SHEALY: I do. Thank you.

THE COURT: Any objection?

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: None.

JIM SMILEY: No, sir.

THE COURT: You are free to leave. Okay, let's take a recess at this point. I will let you go to your jury room. Don't discuss the case. We will be with you in about ten to fifteen minutes. Thank you.

I assume that since you've been sitting in that seat that you've been selected as the presiding juror?

JUROR NUMBER 273: I was the last to show up today. Is there anything that I need to do?

THE COURT: No, you're doing fine. Thank you.

RAY HAUPT, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Mr. Haupt, please tell the jury where you are employed?

A. With the Mount Pleasant police department in Mount Pleasant, South Carolina.

Q. And how long have you been employed there?

A. A little over ten years.

Q. In what capacity are you working there?

A. Crime scene investigator and as a property and evidence room technician.

Q. I'm sorry, what was the last thing?

A. Evidence & Property room technician.

Q. How long have you been doing that type of work for Mount Pleasant?

A. About eight years.

Q. So September 15th, 2010, you were working in that capacity?

A. Yes.

Q. Were you called out to an incident

at South Morgans Point Road at Oakland Plantation?

A. Uh, -- I was later.

Q. Did you go to another location initially?

A. Yes.

Q. You went to Highway 41 and 17?

A. Yes.

Q. Before we get there, could you explain what you do as a technician. What is your role.

A. Crime scene, it's pretty much that I respond to service calls where crime scene is requested. I mainly will photograph, identify items of evidence, collect and preserve them. Take them back to the Mount Pleasant police department and enter them into the evidence room.

Q. And when you take photographs, do you take them initially of where the evidence is actually found?

A. I do photographs all over the scene and then work my way in to items of the evidence.

Q. And the purpose of that is to

memorialize where a piece of evidence is located?

A. Yes.

Q. Now, you -- when you bring it back to the police station, is it part of your role to make sure that that evidence stays secure?

A. Yes.

Q. How do you protect for that when you're actually collecting evidence?

A. (No verbal response).

Q. Do you have evidence in a certain way when you're at a different location?

A. I try to package it in the same bag that I want it to stay in at the evidence room. I have different bags and different boxes that I can use. So, yes.

Q. Now, some items -- could you tell the jury what SLED is?

A. The South Carolina Law Enforcement Division.

Q. Is part of its function to perform analyses on certain types of evidence?

A. Yes, if requested to do so by the agency.

Q. If requested to do so?

A. Yes.

Q. So part of your role, are you also transporting evidence to SLED?

A. I did.

Q. And once evidence has been analyzed, do you receive it back from SLED?

A. Yes.

Q. Do you go there to pick it up?

A. Yes.

Q. Prior to it going and when it gets back, where is it located at the police department?

A. In the evidence room.

Q. What kind of security do you have in the evidence room?

A. Our room is double-locked. We have the lock going into our office and then we have another locked door going into the actual evidence room.

There are only four keys that are available to be used. There are four technicians. We all have our own key assigned out to us.

We also have an alarm code for the

evidence room that every time we turn the alarm On or Off, it is registered.

Q. Do you do any type of initial work on pieces of evidence before they are sent to SLED?

A. Some.

Q. Do you do swabbing?

A. Yes.

Q. Explain to the jury what you mean by swabbing.

A. Swabbing is when we're trying to locate DNA evidence. It can be anything from touch DNA, saliva, blood.

What we first to is open a sterile swab package. It usually contains two cotton-tipped applicators. We moisten that with some distilled water and apply it to the area that we are trying to collect DNA from. We rub it in like a little circular motion in the area that we want it. Then we allow it to air dry, then package it. We use a manila envelope. It's then placed in the evidence room.

Q. When you're taking things out of your agency to SLED, do you memorialize who

you take it to at SLED?

A. (No verbal response).

Q. Do you write down who you've taken it to at SLED?

A. When I drop evidence off?

Q. When you drop it off, (affirmative nod).

A. Yes, they have it on their chain of custody.

Q. And then when you go back to SLED to pick things up, do you know who you received it from?

A. Yes, it's printed on the chain of custody as well.

Q. Okay. That's to show who'all has had any contact with the item of evidence?

A. The chain of custody that I receive when I drop an item off for testing at SLED it's -- it is their evidence in-take person that is on our paperwork.

Then when I pick it up, it's one of the in-take personnel that will give it back to us. So it's not everybody.

Q So focusing your attention on this investigation, ——

A. Yes.

Q. -- tell the jury where the first place that evening was.

A. Okay. 2910 Highway 17 North, Mount Pleasant, South Carolina.

Q. And when you got there, what was your -- what did you do first?

A. I first spoke with Lieutenant Alfaro, who advised me of what they had. Then I photographed the vehicle.

Q. And showing you what's been marked as State's Exhibits 18, 19, 20, 24 and 25, are these photographs that you are familiar with?

A. (Upon review), yes.

Q. Then also photographs, State's Exhibits 33, 34, 35, 31, 30, 29 and 28. Do all of those reflect your photography at Seel's?

A. (Upon review), yes.

Q. And one other, 23.

A. (Upon review), yes.

SOLICITOR SHEALY: Your Honor, at this time I would move to introduce, without objection, State's Exhibits 24, 25, 20, 19,

18, 33, 34, 35, 31, 30, 29 and 28.

THE COURT: Without objection, State's Exhibits 18, 19, 20, 23 (sic), 24, 25, 28, 29, 30, 31, 33, 34 and 35 are admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 18)

(SO ENTERED AS STATE'S EXHIBIT 19)

(SO ENTERED AS STATE'S EXHIBIT 20)

(SO ENTERED AS STATE'S EXHIBIT 24)

(SO ENTERED AS STATE'S EXHIBIT 25)

(SO ENTERED AS STATE'S EXHIBIT 28)

(SO ENTERED AS STATE'S EXHIBIT 29)

(SO ENTERED AS STATE'S EXHIBIT 30)

(SO ENTERED AS STATE'S EXHIBIT 33)

(SO ENTERED AS STATE'S EXHIBIT 34)

(SO ENTERED AS STATE'S EXHIBIT 35)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Mr. Haupt, showing you what has been marked as State's Exhibit 25. It's going to appear on that screen and on this screen.

A. Okay.

Q. Could you tell us what is depicted in that photograph?

A. That's the parking lot of 2019

Highway 17 North and the red-and-black Impala that I was requested to process.

Q. Okay. And State's Exhibit 18 is just from the other angle?

A. Correct.

Q. When you are processing a car, could you describe for the jury what that process involves? Where do you start?

A. Pretty much like a mentioned earlier. I take overall photographs, pictures of the car and then I work my way into the vehicle identifying items of evidence as I go.

Q. Okay. As you are taking those items out, you then put them into the bags that you've told us about?

A. Not all the time. Sometimes they will stay there a little bit as I still try to identify it as evidence.

If it is an item that is being, by necessity, collected at that time, then I will go ahead and collect it, bag it.

Q. Okay. If you could, walk us around this vehicle with the photographs.

Showing you State's Exhibit 19, what is

depicted in that photograph?

A. It's the front driver's seat of the Impala. On the seat are some items of clothing. It's a blue shirt, a black shirt, a pair of pants and a belt.

Q. Okay. Showing you what has been marked as State's Exhibit 57, can you tell the jury whether or not those items are within that bag?

A. As to which item?

Q. If you could look at it and ---

A. I have to open the bag.

Q. You can pull that out.

A. This is still sealed.

Q. I can open that up, I have some scissors.

SOLICITOR SHEALY: Your Honor, this is without objection from the defense. I will move in item 57 (State's Exhibit 57).

THE COURT: Without objection, State's Exhibit 57 is admitted.

(SO ENTERED AS STATE'S EXHIBIT 57)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. The writing that is on this paper,

is that your writing or is that from SLED?

A. That would be from SLED.

Q. (Opening State's Exhibit 57), if you could, pull those items out for us.

A. (Complies), okay.

Q. Could you hold those up for the jury and describe what we have there.

A. That is two shirts, one inside the other. The outside shirt is a black shirt, on the inside is a blue shirt.

Q. Is that the way that those shirts were found the day that you found them?

A. No.

Q. Okay. What has changed in that?

A. They were inside out the day that I found them, as you can see in the picture.

Q. When you say inside out, they were together but ---

A. Yes. They were still together but they were -- the blue shirt was on top and the black was underneath.

SOLICITOR SHEALY: State's Exhibit 59, Your Honor. I understand without objection.

THE COURT: State's Exhibit 59 admitted without objection, items of clothing.

(SO ENTERED AS STATE'S EXHIBIT 59)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. (Opening State's Exhibit 59).

A. You want me to do the same thing?

Q. Yes. Could you stand up and hold those up for the jury?

A. (Displaying), it's a black pair of pants and a belt that were also found on the seat right there. You can see the buckle on that part of the seat.

Q. Okay. Was there any other item found in that particular area?

A. There were the two gloves that were found underneath the seat.

Q. Underneath which seat?

A. That same seat, the front driver's seat.

Q. And did you put those gloves in this package?

A. Yes.

Q. And these items that we have just talked about ----

SOLICITOR SHEALY: And, Judge, this is State's Exhibit 60 that I would like to move

in, without objection.

THE COURT: State's Exhibit 60 is -- is that the bag containing clothing?

SOLICITOR SHEALY: It is, Your Honor.

THE COURT: Admitted without objection, a bag containing clothing.

(SO ENTERED AS STATE'S EXHIBIT 60)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. As it relates to State's Exhibit 57, 59 and then 60, did all of these items go to SLED?

A. I believe so, (reviewing). Yes.

Q. And who did you deliver them to at SLED?

A. It would have been two different people.

Q. Okay. As it relates to the two shirts?

A. The two shirts would have been forensic technician Nikki Hughes.

Q. And the black pants and the belt?

A. The same person.

Q. Nikki Hughes?

A. Forensic technician Nikki Hughes,

yes.

Q. And then the two gloves from underneath the seat?

A. That would have been forensic technician Doris Yarbrough.

Q. The gloves currently are still sealed; is that correct?

A. Yes.

Q. Okay. So I'm going to leave that like that for another witness. But did you receive all of these items back from SLED?

A. Yes.

Q. Who did you receive them back from?

A. One person would have been Amy Stephens at SLED. She is also one of the forensic technicians.

Q. That was as to which item?

A. That is for the two gloves that were found underneath the front passenger seat.

Q. Okay. Was there a pair of shoes found near the front passenger seat?

A. Yes.

Q. Okay. Showing you what has been previously marked as State's Exhibit 62.

SOLICITOR SHEALY: Without objection,

Your Honor.

THE COURT: State's Exhibit 62, admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 62)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Can you identify this?

A. (Upon review), yes.

Q. Could you show this to the jury, please?

A. (Displaying).

Q. And those were found where?

A. The floorboard of the ---

Q. Was it the front passenger seat or the back passenger seat?

A. Front passenger.

Q. Okay. Put those in here.

A. (Complies).

Q. Those did not go to SLED?

A. No, they did not.

Q. Let me clarify something real quick. As to the earlier items that we were talking about, you said that you got them back from SLED from two different people?

A. (Affirmative nod).

Q. You indicated that you got one back from -- whom?

A. Two of the gloves were from forensic technician Amy Stephens.

Q. And the other items?

A. Forensic Technician Doris Yarbrough.

Q. Say that again?

A. Forensic Technician Doris Yarbrough.

Q. Okay. Now showing you -- was there anything else found in the front seat, of value?

A. (No verbal response).

Q. Or have you testified to those?

A. (No verbal response).

Q. The black shirt?

A. (Affirmative nod).

Q. The blue shirt?

A. Right.

Q. The pants with the belt? And the two gloves?

A. Correct.

Q. Now focusing your attention to the rear passenger back seat. Showing you State's Exhibit 24, that might -- you might be able to see it better on that one than on

that one. What does that reflect?

A. That is the back seat of the Impala, the red-and-black Chevy Impala. You can see the cash money on top of the center console for the back seat. Then some clothing items on the floorboard, rear driver's side seat.

Q. Okay. Regarding the rear passenger seat, did you also locate any gloves in that area?

A. Yes, in the back pocket of the -- of the front passenger seat, the pocket of the seat.

SOLICITOR SHEALY: Beg the Court's indulgence for just a moment.

THE COURT: Okay.

SOLICITOR SHEALY: I'm sorry, Judge. I'm missing some photos. I will be just a second.

Judge, I had them on my PowerPoint. I don't know why they aren't in my stack. Just a moment, please.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Which pocket of the back of the seat did you locate the gloves in?

A. May I?

Q. (Tenders photograph).

A. (Indicating).

Q. And did you in fact collect those gloves?

A. I did. I photographed them and collected them.

Q. Showing you State's Exhibit 39, ---

SOLICITOR SHEALY: This is without objection, Your Honor.

THE COURT: State's?

SOLICITOR SHEALY: Exhibit 39.

THE COURT: Into evidence. State's Exhibit 39 is admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 39)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Does that depict where you found the gloves?

A. Yes, it is. That's the inside of the pocket on the front passenger seat..

Q. Showing you State's Exhibit 63, could you tell the jury what is in that bag?

A. It's the four plastic gloves that's shown in the picture behind me.

Q. Were those then sent to SLED?
A. Yes, they were.
Q. Who did you give those to?
THE COURT: Do you want Exhibit 63 admitted?
SOLICITOR SHEALY: Yes, Your Honor.
THE COURT: State's Exhibit 63, a bag containing plastic gloves is admitted without objection.
DIRECT EXAMINATION CONTINUED
BY SOLICITOR SHEALY:
Q. Who did you give those to?
A. Forensic Tech Doris Yarbrough.
Q. And did you receive those items back from SLED?
A. Yes, I did.
Q. Who did you receive them back from?
A. Patricia Crooks.
Q. And the way that the internal part of the bag is, that packaging, that was done by SLED?
A. Correct.
Q. Under the front passenger seat -- now, when you say under the front passenger seat, the back area is the same as under the

front passenger seat?

A. I --

Q. The area where you would put your feet?

A. Correct.

Q. So that's the same location?

A. Correct.

Q. Did you find something under the front passenger seat that was of interest?

A. I did.

Q. What was that?

A. It was a Glock handgun, Model .45 caliber. It also contained a magazine with nine rounds.

Q. When you are at the scene, what do you do when you first see the gun? Do you check to see if there's ammunition?

A. (Affirmative nod), and I photograph it in place, both from where I located it underneath, where I could see it from the back passenger area and then from the front passenger area as well.

Q. Then do you unload it while you were there?

A. Yes, I did. I photographed it first

before unloading it, as it was. Then I ejected the magazine from the handgun, opened the chamber to make sure that it was unloaded.

Q. Showing you what has previously been marked as State's Exhibit 67, I ask you if this is the weapon that you located?

A. (Upon review), yes.

Q. Would you show that to the jury, please.

THE COURT: Do you ---

SOLICITOR SHEALY: It's been secured, Your Honor.

THE COURT: --- want it admitted

SOLICITOR SHEALY: Yes, Your Honor

THE COURT: State's Exhibit 67, a box containing a weapon, is admitted without objection.

(SQ ENTERED AS STATE'S EXHIBIT 67)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Can you identify that?

A. This it the handgun with the magazine that was in it.

Q. Okay. You took the ammunition out?

A. Correct.

Q. Showing you State's Exhibit 70 ---

SOLICITOR SHEALY: Your Honor, I'd like to move this into evidence, without objection.

THE COURT: Exhibit 70, a bag with cartridges.

(SO ENTERED AS STATE'S EXHIBIT 70)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. What does that bag contain?

A. Nine .45 caliber rounds that were found in the magazine of the handgun.

Q. So there were nine rounds in it?

A. Correct.

Q. Showing you what has been previously marked as State's Exhibit 34, 35, and 36.

A. Okay.

Q. First showing you State's Exhibit 38, what does that depict?

A. It's the nine rounds that were in the magazine that was inside the handgun when I located it.

SOLICITOR SHEALY: Your Honor, at this time we would offer State's Exhibit 38 into

evidence, without objection.

THE COURT: State's Exhibit 38, a photograph, is admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 38)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Showing you State's Exhibits 36 and 37, could you indicate to the jury what those two photographs reflect?

A. Number 36 is the handgun after it had been unloaded. It also shows some of the rounds that are actually in the magazine.

Number 37 just shows the rounds themselves in the magazine, how many were in it.

Q. Okay. Showing you State's Exhibits 33, 34 and 35, I would ask if you can identify those.

A. (Upon review), yes, I can.

SOLICITOR SHEALY: Your Honor, at this time we would move into evidence State's Exhibit 36, 37, 33, 34 and 35.

THE COURT: State's Exhibits 33 through 37, without objection.

SOLICITOR SHEALY: I cannot get it in

sequential order.

(SO ENTERED AS STATE'S EXHIBIT 33)

(SO ENTERED AS STATE'S EXHIBIT 34)

(SO ENTERED AS STATE'S EXHIBIT 35)

(SO ENTERED AS STATE'S EXHIBIT 36)

(SO ENTERED AS STATE'S EXHIBIT 37)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. So showing how it first appeared when you located the gun, uh, -- State's Exhibit 33.

A. Okay.

Q. Could you point out in that photograph where the gun is?

A. Yes.

Q. This is the underneath area of the front passenger seat. You can see the sight, the rear sight from the handgun right here. It is that little u-shaped area.

This is the slide for the handgun.

The handle is right here.

Q. And explain to the jury where you are taking that photograph from, where is that camera?

A. It's on the floorboard of the rear

seat.

Q. Of the rear seat?

A. (Affirmative nod), pointing towards the front passenger seat.

Q. And as you pull it out, (State's Exhibit) 35?

A. (Affirmative nod).

Q. It is sort of dark in that photograph but can you see it in there?

A. Yes, ma'am. The whole handgun is right there, after I pulled it out from underneath the seat.

Q. Okay. Now, when you took the gun back to the station, did you do anything with the gun?

A. I did at a later date.

Q. All right. Tell the jury what you did.

A. First I entered it into evidence after I got back to the station.

Q. Is that what you do with all the items that you collect?

A. Correct -- (reviewing).

Q. Are you looking for the date?

A. Yes.

Q. Let me show you what have been previously marked as (State's Exhibit) 68 and see if that helps you.

A. (Upon review), okay. Yes. August 3rd, 2012, around noon, I took the swabbings of the handgun -- I took it from the trigger guard and, un, as well as the handle.

Q. When you saw that you took swabbings, describe that process for us.

A. It is the process that I described earlier where I would take an unused sterile cotton Q-tip. I open the package and moisten it with sterile water. Then I swab the area that I deem to be -- then I let it air-dry and package it in a manila envelope.

Q. Looking at the gun, holding it up, could you show the jury where it was that you swabbed?

A. (Indicating), the trigger right here and then the trigger guard area and then the handled, front and back and the sides.

Q. Okay. So the swabbing that you did of the handle area, did you package it separately?

A. Yes.

SOLICITOR SHEALY: Your Honor, State's Exhibit 61, we'd move into evidence -- without objection.

THE COURT: State's Exhibit 61 is admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 61)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. And that reflects the swabbing of the handle?

A. Correct.

Q. And then State's Exhibit 68, what type of swab is in here?

A. It's from the trigger guard and the trigger.

Q. And both of those items were taken by you where?

A. At the Mount Pleasant Police Department headquarters.

Q. And then, where did you take them to?

A. To SLED.

Q. Who did you give those to at SLED?

A. Forensic Technician Doris Yarbrough.

Q. Did you later receive those back from SLED?

A. I did.

Q. Did you pick them up?

A. I did.

Q. From whom did you pick them up?

A. Patricia Crooks.

Q. Patricia Crooks?

A. Yes.

Q. Okay. Also from the back seat of the vehicle, was there any currency that was taken at that time?

A. Yes.

Q. Showing you State's Exhibit 24, does that reflect where you found the currency?

A. Correct.

Q. And also State's Exhibit 29?

A. Correct.

Q. Can you describe that area? Some of the currency is out of our view. Where all did you collect the currency?

A. The one you can see here and then up here, some of it is was kind of hanging over the side but pretty much in that area.

Q. Did you -- in total, how much currency was in the vehicle?

A. I did. It was a thousand and

ninety-five dollars ($1,095) in U.S. currency.

Q. And State's Exhibit 69 ---

SOLICITOR SHEALY: I am just going to do this part, Judge, as ID, without objection.

THE COURT: Okay.

(SO ENTERED AS EXHIBIT 69 - ID ONLY)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Does this reflect the container with the currency?

A. Yes, it does.

Q. Did you later take photographs of the currency?

A. I did.

Q. And was there one item of currency that was distinguishable?

A. Yes.

Q. Did you take a photograph of that as well?

A. I did.

Q. Showing you what has been marked as State's Exhibit 56, ---

THE COURT: Has that been introduced?

SOLICITOR SHEALY: I think that has

already been introduced, Judge. State's Exhibit 56.

THE COURT: Okay.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Showing you that item, did that item draw your attention?

A. It did.

Q. Okay. That is contained within the packet of currency right here?

A. Correct.

Q. Okay. Now, after the inventory of the vehicle at Seel's, did you actually leave that location at that point and go somewhere else?

A. I did.

Q. Where did you go next?

A. I followed the vehicle as it was being towed to 1333 Sweetgrass Basket Parkway. It's an evidence impound building.

Q. Was that the same evening?

A. Correct.

Q. And did you do further inventory of the truck at that time -- of the vehicle at that time?

A. I did not.

Q. So you followed it there for safety precautions, security precautions?

A. Security precaution of the evidence as well as to open up the building. It is another building that is locked and alarmed and there's only the four evidence technicians with the Mount Pleasant Police Department that have access to it. So in order to get in the building, I can to be there to unlock it and relock it.

Q. Why was it that you decided to take it at that point to somewhere else?

A. I was requested to respond to another scene, related to the same incident.

Q. And when you had it towed to that location, can you later go back and search it?

A. Yes.

Q. In fact, was a search warrant later done in this case to allow you to do so?

A. It was.

Q. Let's stay on September 15th, if we can. Where did you go after you left the impound?

A. I responded to the Cricket store at 3014 South Morgans Point Road in Mount Pleasant, South Carolina.

Q. And what was the purpose of your going there?

A. To photograph and process that scene as well.

Q. When you say "process" the scene, what do you typically look at in a place where a crime has occurred? What are you looking for?

A. In this case, I was photographing the scene to document everything overall and then inside the business, but mainly for fingerprint evidence.

Q. Okay. And can you tell the jury whether it's successful unusually if people wear gloves?

A. Not usually. Q. Okay. Did you in fact locate any fingerprints that have been compared in this case?

A. I did not.

Q. What else did you do other than photograph the area and look for fingerprints there?

A. I just looked for any other evidence that might be in the area. Basically just to document the business.

Q. Did you find anything?

A. I found that one of the tills had been opened, or one of the -- I guess it was the cash register that had been opened and the till was missing.

Q. Okay. Showing you State's Exhibit 8 that's already in evidence, is that the area that you are talking about?

A. It is.

Q. Showing you State's Exhibit 9, was there anything significant about that photograph?

A. Yes, that's one of the work stations, I guess, for the employees of the business. It is not normally open like that, but that's how I found it.

Q. Okay. After finishing at the actual location, where did you then go?

A. I then responded to the area of Sam Edwards Road in Mount Pleasant, South Carolina.

Q. Okay. And when you arrived at Sam

Edwards Road, were there other officers there?

A. There were.

Q. What was your role there that evening?

A. We were looking for any kind of evidence in the area. I was notified by Lieutenant Alfaro that a possible till, register till, had been located. I was there to photograph and collect it.

Q. Did you in fact photograph it?

A. I did.

Q. Okay. Showing you State's Exhibit 15, does that photograph depict the till that you found?

A. It does.

Q. And showing you State's Exhibit 71, is this the till that you found?

A. It is.

Q. After leaving Sam Edwards Road, did you do anything further that evening regarding this case?

A. I responded to the Mount Pleasant Police Department and logged in all the items of evidence that I had collected throughout

my time out.

Q. Now, you told us that you received a search warrant so that you could look further in the car?

A. Correct.

Q. Do you recall what date it was that you gathered other evidence out of the car?

A September 17th, 2010.

Q. Showing you what has been as State's Exhibit 72, does this bag reflect what items that you found or some of the items that you found?

A. Yes.

SOLICITOR SHEALY: Okay. Your Honor, at this time we would move State's Exhibit 72 into evidence.

THE COURT: Any objection?

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: No, Your Honor.

JIM SMILEY: No objection.

THE COURT: Without objection, State's Exhibit 72, a bag containing various items, is admitted.

(SO ENTERED AS STATE'S EXHIBIT 72)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Could you please show the jury what was contained within this?

A. Can I put a pair of gloves on?

Q. Yes. Do you have some?

A. I do. Okay. It's a black in color Family Guy t-shirt.

It's a black in color Polo-style t-shirt.

A pair of jeans and a belt.

Q. And of those items that you have shown us, could you tell us which ones went to SLED?

A. No, ---

Q. Did all of those items go to SLED?

A. --- none of these items went to SLED.

Q. So none of those went to SLED?

A. No.

Q. Showing you what has been previously marked as State's Exhibit 29, ---

A. Can I put them back in the bag?

Q. Yes, please. Can you tell me, is that the area where you found those items?

A. It is.

Q. And that is the Family Guy t-shirt

that you noted?

A. Correct.

Q. The gathering of clothes behind the other seat, the driver's back seat, is that where the jeans came from -- the dark pants?

A. (No verbal response).

Q. Let me show you another picture, State's Exhibit 24, ---

A. Okay. Yes.

Q. Now showing you State's Exhibit -- what number is that?

A. State's Exhibit 58.

Q. Showing you State's Exhibit 58, could you describe for the jury what is found in that bag?

SOLICITOR SHEALY: Your Honor, we would offer State's Exhibit 58, without objection.

THE COURT: State's Exhibit 58, a bag containing various items, is admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 58)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Can you tell the jury what that is?

A. It's a black Basic Editions t-shirt

that has been knotted.

Q Could you pull that out for us?

A. Yes, (complies).

Q. Can you hold it up for us?

A. (Complies).

Q. Are you familiar with that type of knotting of a shirt?

A. Yes.

Q. Okay. Can you show the jury how you've seen that worn?

A. Typically this would be on the front of your face and it would be tied on the back of your head to hold it, like that (demonstrating).

Q. And that item was sent to SLED?

A. Yes, it was.

Q. Who did you turn that item over to at SLED?

A. Forensic Technician Doris Yarbrough.

Q. And who did you receive it back from?

A. Forensic Technician Amy Stephens.

Q. Okay. Showing you State's Exhibit 81 ---

SOLICITOR SHEALY: And, Your Honor,

I would offer this at this time, without objection.

THE COURT: What is the number?

SOLICITOR SHEALY. Eighty-one (81).

THE COURT: State's Exhibit 81, a bag, is admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 81)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Could you describe for the jury what that depicts?

A. A black Talkeetna USA t-shirt, also knotted.

Q. And regarding that item number and the previous item number, 58, the two knotted shirts, where were they found in the car?

A. The back driver's floorboard area.

Q. Just to refresh your memory -- 29, is that 29 that is up there?

A. (No verbal response).

Q. Can you point on that photograph as to where those shirts were found?

A. You can't really see them in this picture but they are underneath this pile of clothing.

Q. If you would, please, bring out State's Exhibit 81.

A. (Complies). Same thing, got a knot in the back. Talha USA on the tag. Same thing, like a mask.

Q. Okay. Then State's Exhibit 75 ---

SOLICITOR SHEALY: Your Honor, we would offer State's Exhibit 75 at this time, without objection.

THE COURT: State's Exhibit 75, a bag containing items, is admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 75)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Had that bag been opened?

A. It has not.

Q. Okay. Open it up.

A. (Complies).

Q. Okay. Show the jury, please, what was found in that bag?

A. It's two shirts together, inside out. It is a tan shirt with a lighter, white-and-tan designed, shirt inside of it.

Q. So the way it is now, is that was

found in the car?

A. Yes.

Q. Okay.

A. Then a black and tan Dickies brand shirt.

Q. Did those items go to SLED?

A. No.

Q. Okay. Now showing you State's Exhibits 73 and 94, could you please open those and show the jury what is in those bags?

THE COURT: State's Exhibit 93 and 94 ---

SOLICITOR SHEALY: Exhibit 73.

THE COURT: State's Exhibit 73 and 94 admitted, without objection.

(SO ENTERED AS STATE'S EXHIBIT 73)

(SO ENTERED AS STATE'S EXHIBIT 94)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Could you open those and show the jury what those are?

A. A pair of sunglasses.

Q. And that is State's Exhibit 73?

A. Yes.

Q. State's Exhibit 94?

A. It's another pair of glasses.

Q. Now, as evidence custodian, do you also receive evidence from other members of the Mount Pleasant Police Department if they have evidentiary items?

A. That's correct.

Q. Could you tell the jury whether or not you received some cell phones from Tyrone Simmons?

A. I didn't.

Q. Did not?

A. I'm sorry. I did not.

Q. You did not received some cell phones from Tyrone?

A. No, that was one of our other technicians.

Q. I'm sorry? Say that again?

A. That was one of our other evidence technicians.

Q. But four were put into evidence?

A. I'm sorry?

Q. Four cell phones were put into evidence?

JIM SMILEY: Objection, Your Honor.

Hearsay.

THE COURT: Rephrase your question.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. As one of the evidence custodians in Mount Pleasant, do you have access to entries made by other evidence custodians for Mount Pleasant, regarding this case?

A. Yes. I have access to every item of evidence in the police department.

Q. And that is something that you do in the ordinary logging-in of evidence?

ANDREW GRIMES: Objection, Your Honor.

THE COURT: What is your objection?

ANDREW GRIMES: The answer calls for hearsay.

THE COURT: Overruled.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Could you tell the jury whether or not an evidence custodian with Mount Pleasant received four cell phones from Tyrone Simmons?

A. On the evidence sheet that I see, I see that they received three.

Q. Three?
A. (Affirmative nod).
Q. Okay. And did you receive some buccal swabs from Tyrone Simmons?
A. Yes, I did.
Q. Showing you what has been previously marked, I believe for ID purposes, could you tell me whether you receive received State's Exhibit 76 for ID?
A. Yes, I did.
Q. Can you tell from that label whose buccal swab that is?
A. Yes.
Q. Whose is that?
A. Kevin Smalls'.
Q. Regarding State's Exhibit 77, previously marked for ID, did you also receive that buccal swab in?
A. Yes.
Q. Can you tell from which defendant that buccal swab came.
A. Yes. It is Keenan Coakley's.
Q. State's Exhibit 78 for ID, did you receive that buccal swab?
A. Yes.

Q. And whose is that?
A. Jarret Graddick's.
Q. And State's Exhibit 79 for ID, did you receive that buccal swab?
A. Yes, I did.
Q. Whose buccal swab is that?
A. Brian Mazyck's.
Q. Would you tell the jury, please, whether those items went to SLED?
A. Yes, they did.
Q. And who were they turned into at SLED?
A. Forensic Technician Doris Yarbrough.
Q. Then did you also pick them back up from SLED?
A. I did.
Q. And from whom did you receive those?
A. Patricia Crooks.
Q. Going back -- I may have failed to ask you, regarding State's Exhibit 81, which was the black t-sheet, the Talkeetna t-shirt. Can you tell us who you took that to at SLED?
A. Forensic Technician Doris Yarbrough.
Q. And from whom did you receive them?
A. Amy Stephens.

Q. Okay. Now, was there an occasion where some other items of evidentiary value was found after the impounding of the car and after the scene that night?

A. Yes.

Q. First, could you describe the circumstances of that event to the jury?

A. On March 28th, 2013, we were conducting a case review and one of the clothing items that I'd collected, the black shirt and the blue shirt that I'd mentioned earlier were inside out, in the vehicle. We went to open the shirts back up, to see how they were worn at the time or would have been worn at the time, and on doing so the sleeves opened up and it revealed some gloves.

Q. And the gloves were located where in the shirt?

A. Knotted up or balled up in one of the sleeves.

Q. Okay. Showing you what has been previously marked as State's Exhibit 80, ---

SOLICITOR SHEALY: Your Honor, we would like to offer this at this time; with no objection, as I understand it.

THE COURT: State's Exhibit 80 is admitted without objection, a ---

SOLICITOR SHEALY: Thank you, Your Honor.

THE COURT: --- bag containing some items.

(SO ENTERED AS STATE'S EXHIBIT 80)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. What is contained within that bag?

A. Two plastic gloves.

Q And did those two plastic gloves go to SLED?

A. They did.

Q. To whom did you give them at SLED?

A. Forensic Technician Nikki Hughes.

Q. And from whom did you receive them back?

A. Doris Yarbrough.

Q. Okay. Now, ---

SOLICITOR SHEALY: Your Honor, at this time I would like to offer State's Exhibits 43 and 44, without objection.

THE COURT: Without objection, State's Exhibits 43 and 44 are admitted.

(SO ENTERED AS STATE'S EXHIBIT 43)

(SO ENTERED AS STATE'S EXHIBIT 44)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. If we could bring those up, State's Exhibit 43 and 44. Could you describe to the jury what that picture reflects?

A. Yes. Can we darken this picture?

Q. We can cut the lights down a little bit.

A. This is the black shirt and the blue shirt. When I turned them back to the way that they would normally be worn, in the sleeves here we can start to see where the gloves were revealed.

Q. Those are the gloves that we were just talking about?

A. Correct.

Q. Prior to that amount of it being revealed, State's Exhibit 52 --

SOLICITOR SHEALY: Judge, we would offer ---

THE COURT: Without objection.

(SO ENTERED AS STATE'S EXHIBIT 52)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Does that picture reflect when the gloves were first noticed?

A. Correct.

Q. Do you recall the date that that occurred?

A. March 28th, 2013.

Q. Okay, winding down. Now, you've indicated that the items that you took to SLED came back to you?

A. Correct.

Q. Would you tell the jury whether or not when you sometimes send items to SLED that they then send you things back that you didn't have before?

A. Yes.

Q. And give the jury an example or some examples of what those type items are.

A. Depending on what analysis requested for what items, -- say that we would like to have DNA collected from an item, they would then collect their DNA almost in the same fashion that I would, either by swabs or trace items. Those would then -- when they're done with them, they would package them up and send them back to us. Then I

would enter it as evidence at the Mount Pleasant Police Department.

Q. Okay.

SOLICITOR SHEALY: Beg the Court's indulgence.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. To make this as painless as possible, I am going to show you ---

SOLICITOR SHEALY: And, Your Honor, I offer at this time, for purposes of ID, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 95 and 96 into evidence as ---

THE COURT: You are just offering it for ID?

SOLICITOR SHEALY: As ID. I'm sorry. Yes, as items received by Investigator Haupt from SLED.

THE COURT: It that a matter -- have you stipulated to that?

SOLICITOR SHEALY: I understand that it is without objection.

THE COURT: Well, it is not being offered. Those are items that he -- he can

say 'I received those items.'

SOLICITOR SHEALY: That's all that I want him to say. There are just so many numbers that I don't want us to lose track, for purposes of the chain.

THE COURT: The chain is not in evidence yet, so that's not a problem.

SOLICITOR SHEALY: Yes.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Did you receive those items back from SLED?

A. Do you have the bag?

Q. Yes, (tendering).

A. (Upon review), yes.

Q. Okay. Then items -- State's Exhibits 97, 98, 99, 100 and 101 for ID purposes. Could you tell the jury whether you received those items back from SLED?

A. Yes.

Q. And do you remember from whom you received them back? And that would also apply to the previous ones.

A. The first set was from Patricia Crooks. The second set that you've handed

up was from Doris Yarbrough.

Q. Okay. And, uh, one final matter. Did you receive some items from Tyrone Simmons that had been taken from Mr. Smalls?

SOLICITOR SHEALY: I beg the Court's indulgence for just a moment. I will withdraw that, Your Honor.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Officer Haupt, do you recall if when you were looking in the car if you found a cell phone that you took into evidence?

A. I did.

Q. So in all there were four cell phones ---

A. Correct.

Q. --- that were located?

A. (Affirmative nod).

SOLICITOR SHEALY: I think that is everything. Let me just speak to my co-counsel for just a second -- (sidebar with Mr. Ferguson).

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. One thing that I need to do and then

I will be finished with you. The buccal swabs ---

SOLICITOR SHEALY: Your Honor, I think that these may still be as ID and I wouldn't move them in at this time: 76, 77, 78 and 79.

THE COURT. That's fine.

JIM SMILEY: They are for ID.

THE COURT: ID.

JIM SMILEY: No objection.

THE COURT: Have you admitted those?

COURT REPORTER: Marked ID Only.

THE COURT: And they are admitted without objection?

JIM SMILEY: (Affirmative nod).

ANDREW GRIMES: Yes, sir.

THE COURT: Very well. State's Exhibits 76, ---

SOLICITOR SHEALY: Thank you, Your Honor. Thank you, Officer Haupt. Please answer any questions that the defense may have.

(SO ENTERED AS STATE'S EXHIBIT 76)

(SO ENTERED AS STATE'S EXHIBIT 77)

(SO ENTERED AS STATE'S EXHIBIT 78)

(SO ENTERED AS STATE'S EXHIBIT 79)

THE COURT: Cross examine?

ANDREW GRIMES: No questions. Thank you.

THE COURT: Mr. Runyon.

WILLIAM RUNYON: Briefly, Your Honor. If you would be so kind as to pull up State's Exhibit 24, ---

SOLICITOR SHEALY: (Displaying).

WILLIAM RUNYON: Thank you.

CROSS EXAMINATION

BY WILLIAM RUNYON:

Q. Officer, good afternoon.

A. Good afternoon.

Q. I call your attention to State's Exhibit 24. You photograph things as you find them, do you not?

A. Well, first, I do overalls and then I start working into the scene.

Q. What I am trying to ask you -- that console there, with the two cup holders, that folds up, doesn't it?

A. It appears that it does. I can't say whether it does or not.

Q. But you folded -- you photographed it in the unfolded position, correct?

A. Correct.

Q. And you don't know how it got in the unfolded position or when it was in the unfolded position?

A. That's correct.

Q. You just took a photograph of that as you found it when you got the scene?

A. Yes.

WILLIAM RUNYON: Thank you. No further questions.

THE COURT: Mr. Smiley?

CROSS EXAMINATION

BY JIM SMILEY:

Q. Boy, C.S.I. is a lot more interesting on the TV. But you're the C.S.I. guy, right?

A. Yes.

Q. Now, when you get to a scene, you'd like for it to be, for lack of a better word, pristine or untouched by anybody, like police officers of whatever. You'd like it to be just as it was. Correct?

A. Correct.

Q. And you're aware that in this case that Officer Kaufman -- if I said his name

correctly -- Kaufman -- had already done an inventory search of the car. Were you aware of that?

A. No, I was not.

Q. So if had moved clothes before you got there, you wouldn't know that?

A. No, I wouldn't.

Q. You photographed what you saw, where they were, when you arrived?

A. Correct.

Q. For instance, the clothes that were in that front seat, -- there were obviously four guys in the car, right?

A. I ---

Q. Excuse me. Well, you've got four suspects and I got it. Back to it, when you took pictures, you -- you got to the scene and took your pictures but if officers had moved items before you got there, you would not know?

A. I wasn't aware of anyone moving items.

JIM SMILEY: Thank you very much.

THE COURT: Redirect?

SOLICITOR SHEALY: Nothing further.

THE COURT: Thank you. You may come down.

(WITNESS STEPS DOWN)

THE COURT: Ladies and gentlemen, at this point we will recess for the evening. Please make sure, Mr. Presiding Juror, if you will collect the notepads and give them to the bailiffs. They will secured them for the evening and they will be returned to you in the morning.

Again, I would remind you that you are not at liberty to talk with anyone about this case or discuss it with anyone outside of the courtroom. Do not allow anyone to talk with you about the case or to talk about it in your presence. That includes anyone that may be at home.

I would ask that you please return you to your jury room by 9:30 in the morning, and we will return you to the courtroom.

Have a good evening.

(JURY OUT @ 5:15 P.M.)

THE COURT: Anything from the State before recessing?

SOLICITOR SHEALY: Did you want you

(WITNESS TAKES STAND)

BRIAN MAZYCK, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Mr. Mazyck, would you please tell the jury how old you are.

A. Twenty-eight (28).

Q. Where did you grow up?

A. Mount Pleasant, Seven Mile.

Q. Seven Mile?

A. Yes, ma'am.

Q. What road does your family live on?

A. Yough Hall.

Q. Where do you live now? That same address?

A. Yes, ma'am.

Q. Who do you live with?

A. My grandmother.

Q. Who raised you?

A. My grandmother.

Q. Was she here yesterday with you?

A. Yes, ma'am.

Q. Is your father here with you today?

A. Yes, ma'am.

Q. And the person sitting next to your father, is that your attorney?

A. Yes, ma'am.

Q. What is her name?

A. Martha Kent Runey.

Q. Martha Kent Runey?

A. Yes, ma'am.

Q. Let's start by talking about your relationship with Mr. Graddick, Mr. Coakley and Mr. Smalls.

A. Yes, ma'am.

Q. Could you tell the jury how you know Keenan Coakley?

A. He's my cousin.

Q. So you have known him all of your life?

A. Basically.

Q. Okay. How does that relationship -- how close is that relationship?

A. His father and my father are first cousins.

Q. Did Mr. Coakley grow up in the same area that you did?

A. Yes, ma'am.

Q. And what road does he live on?

A. Coakley Road.

Q. What about Jarret Graddick? How long have you known him?

A. For a while.

Q. When you say for a while, are you talking about a number of years or a ---

A. Yes, --

Q. --- number of months or ---

A. --- years.

Q. Now would you describe your relationship with Jarret Graddick? Are y'all friends?

A. Yes, ma'am.

Q. What about Kevin Smalls, how are y'all related?

A. We're cousins down the line.

Q. Down the line?

A. Yes, ma'am.

Q. How did you know him? Did he grow up in the same area?

A. School, yeah. Basically the same area.

Q. What schools did you go to in Mount Pleasant?

A. Jenny Moore, I think Lang Middle.
Q. Where did you go to high school?
A. Wando.
Q. Wando?
A. (Affirmative nod).
Q. Now, Mr. Graddick lives where?
A. Hamlin Road and Linnen Lane.
Q. Hamlin Road and Linnen Lane?
A. Yes, ma'am.
Q. Before we got further, would you tell the jury, do you have a record for burglary in the third degree from 2006?
A. Yes, ma'am.
Q. Do you have a record for eight breaking and entering motor vehicles, from 2006?
A. Yes, ma'am.
Q. And do you have a record for malicious injury to personal property from 2008?
A. Yes, ma'am.
Q. Let's focus our attention back to September 15th, 2010. Could you tell the jury what started out that morning happening?
A. I believe that before the four of us

were together, I believe that we went to North Charleston. We went to the Trident campus, just walking around.

Q. Why would y'all do that? What was the interest in the Trident campus?

A. There was no interest. I guess just walking through talking to females.

Q. Okay, that's what I was going to ask you, were y'all looking for girls?

A. Yes, ma'am.

Q. After that, did y'all return to Mount Pleasant?

A. No, ma'am. We went to the C&W, the Chinese restaurant off Rivers.

Q. Did y'all have lunch there?

A. Yes, ma'am.

Q. Then what happened?

A. We met a couple of females in there, talked to them to say 'hey', and that's when we left. After we left there, we went to Mount Pleasant, to Kevin's house.

Q. Okay. What were y'all doing when you went to Kevin's house?

A. They were playing a PlayStation.

Q. Who was playing the PlayStation?

A. Kevin and Keenan.

Q. While you were there, did anything happen to you?

A. Yeah, I started to feel kinda sick 'cause I'm a diabetic and I didn't have my insulin on at the time.

Q. How old were you when you were diagnosed with diabetes?

A. Ten.

Q. Since you were ten years old?

A. Yes, ma'am.

Q. Does that run in your family?

A. Yes, ma'am.

Q. When you started feeling poorly, what happened?

A. I asked Kevin to take me home so that I could take some more insulin.

Q. And did he in fact take you home?

A. Yes, ma'am.

Q. And that would have been to your grandmother's house?

A. Yes, ma'am.

Q. What happened after you went home?

A. After I went home, I took some insulin and sat for like, maybe, ten minutes

and then I went to my brother's house.

Q. How did you get to your brother's house?

A. My cousin Jessica.

Q. Okay. Had she been at your grandmother's?

A. She'd just came over. She'd just stopped through and I asked her to give me a ride to my brother's house.

Q. I'm sorry, I didn't -- you might have to talk up just a little bit for us. Okay?

A. She stopped through and I, uh, --

Q. She did what?

A. She came over and ---

Q. Okay, so she came over?

A. Yes, ma'am. I asked her if she could give me a ride to my brother's house.

Q. Tell the jury, if you would, where your brother's house is.

A. It's Awendaw. I guess it's labeled as Awendaw, Tisha's Road.

Q. If you are going up Highway 17 towards Awendaw, would you have already passed Oakland where the new Walmart is

before you get to your brother's house?

A. Yes, ma'am.

Q. Why did you decide to go over to your brother's house?

A. I usually go over there and hang out with him. And he had a bunch of dogs at that time, so I was going over there to help him clean his yard and feed the dogs.

Q. Did he sell dogs?

A. Yes, ma'am.

Q. While you were at your brother's house, did you hear from any of the defendants?

A. Yes, ma'am.

Q. Tell the jury about that.

A. I can't remember if I had a call fro -- it was either Keenan or Jarret, one of the two, I don't remember. But I remember that I got a text call from Kevin saying that they were going to the mall that day. So while I was at my brother's house -- you know, he was about to go get his wife from work, so sure I'll go. He came over and paid my brother for some dogs, two dogs that he got from my brother. From there, I left with him.

Q. When you left from your brother's house with Smalls, where did y'all go?

A. We went to the Walmart, to the Redbox.

Q. The Redbox, is that one of those movie -- where you check out a movie?

A. Yes, ma'am.

Q. Where was the Redbox located?

A. Inside the Walmart.

Q. Who was driving the vehicle?

A. Kevin.

Q. What color was the vehicle?

A. Red and black.

Q. When you got to Walmart about the Redbox, did you get out of the car?

A. No, ma'am.

Q. Who got out of the car?

A. Kevin.

Q. Do you know how long -- do you know if he went into the Walmart after that or did he go back to the car?

A. He went into the Walmart.

Q. What happened after he went into the Walmart.

A. While he was in the Walmart, I was

sitting the car, just texting random people -- I couldn't tell you who I was texting. Then probably like ten minutes later he came back out.

Q. He came back out?

A. Yes, ma'am.

Q. What did y'all do when he came back?

A. When he came out, we went to the McDonald's.

Q. Okay. Tell us what happened at the McDonald's.

A. We went to McDonald's and --

Q. First of all, let me interrupt you. Tell us where that McDonald's is located.

A. It's on the other side of the Oakland Market, on the side of the Walmart parking lot.

Q. Next to the McDonald's, is there also a Chick-Fil-A?

A. Yes, ma'am, and a bank.

Q. Okay. So you went to McDonald's and then what happened?

A. Well, he didn't want to come in. Because a female that he knew worked there, and I guess that he didn't want to, you know,

fool around with her or see her.

So I went in and I was like, you know, okay, — I didn't have any money. It was like, 'you okay to buy me some food?' It was like, 'okay.' So I went in and I ordered food, then I told him that the girl was not in there. So he came in and sat by the door. He was texting on his phone, I don't know who. So when my food order came up, I went back to him and I was, like, 'you got the money for the food?' He was like, 'I don't have any money.' So when he said that, I was like, 'Oh. Why did you let me order the food?'

So from there we left, we got back in the car. At this time we went back to the Walmart parking lot and we pulled up by a truck. He was texting -- I believe that it was one of the females from earlier that day, from the restaurant, saying 'get some crabs, some alcohol and a movie.'

So after that, we went around to liquor store part of the road, in front of the Cricket. Then ---

Q. Let me interrupt you there just

because that is a little confusing.

A. Yes, ma'am.

Q. When you were by the truck, what area of the parking lot was that?

A. On the Walmart side.

Q. Closer to the Walmart side?

A. Yes.

Q. Then you say that the vehicle was moved, that y'all moved ---

A. We moved.

Q. You moved and parked near what?

A. It was in front -- a little over from the Cricket store, but basically in front of the Cricket store, a couple of rows ahead, maybe a row or two in front of the Cricket store.

Q. And what happened -- you said that he was texting when y'all parked there?

A. Yes, ma'am.

Q. Let me ask you, when you got in his car when he came to pick you up at your brother's house, was there anything unusual about what was in his car?

A. Yes, ma'am. There was clothing that I saw that the other guys had. So while I am

sitting there, I'm looking around -- so I was like, 'where are they?' 'They getting ready. When they finish, they're going to call me.' And I was like, 'How are they going to call you if their cell phones are in the back seat?'

Q. Let me interrupt you for a second and show you what been marked previously as State's Exhibit 29. It's going to come up there and it's going to come up behind you.

A. Okay.

Q. Do you recognize the clothing in that picture?

A. Yes, ma'am.

Q. When you say that it was the other guys, what are you talking about?

A. Graddick and Coakley.

Q. Whose shirt is the one with the cartoon on it?

A. That's Coakley's.

Q. All right Were there other items in the car at that -- this picture was taken later, but were there other items in the car at the time that he picked you up from your brother's that you didn't understand?

A. There was the cell phones, the two cell phones, the shoes and the clothing.

Q. Showing you State's Exhibit 30, are you talking about that pair of shoes?

A. Yes, ma'am.

Q. Did you know who owned that pair of shoes?

A. Yes, ma'am.

Q. Who?

A. Keenan.

Q. Did you ask Brian (sic) about the shoes?

A. No, ma'am.

Q. Did you ask Kevin about the shoes? I'm sorry, you are Brian. Did you ask Kevin about those shoes?

A. No, I just asked where were they when I saw their stuff in the car. It was like 'they're home, gathering up.'

ANDREW GRIMES: Objection, calls for hearsay.

THE COURT: Sustained.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Showing you State's Exhibit 31, that

is just a closer photograph of those shoes?

A. Yes, ma'am.

Q. So y'all parked over and a little down from the Cricket store?

A. Yes, ma'am.

Q. What did Kevin tell you about what y'all were going to be doing at that point?

A. He was still texting. He was waiting on the female to reply back. I believe that it was the female that worked at the Walmart. He was like, uh, he was waiting for the females earlier to reply back so that he could know what type of liquor to go get out of the liquor store.

Q. And would you describe for the jury where the liquor store is compared to where the Cricket store is?

A. The liquor store is like three to four stores from the right where we were parked.

Q. Going down further away from Walmart?

A. Yes, ma'am.

Q. Was there anything about where you parked -- where he parked -- that you were

questioning?

A. Yes, ma'am.

Q. What was that?

A. Well, we parked like maybe a little over from the Cricket store instead of parking in front of the liquor store.

Q. As y'all waited in the vehicle, could you tell us how Kevin was behaving? What did he do?

A. He reclined his seat and adjusted the mirrors. You know, (hand gesture). So while he's adjusting the mirrors, looking in the mirrors, I'm looking back — because I don't know what's going on. I was like, 'okay, why we park here instead of the liquor store.'

Q. When you say he — I'm sorry to interrupt you. When you say that he adjusted the mirror and did the seat back, can you demonstrate that for the jury?

A. Like he adjusted, you know, the side mirror; reclined his seat; was just texting and looking in the mirrors.

Q. And what would have been in the mirror?

A. The Cricket store.

Q. Did something draw your attention from the Cricket store area?

A. No, ma'am.

Q. At some point do you hear anybody screaming?

A. Yes, ma'am.

Q. Tell us about that.

A. Probably like -- I'd say like five minutes after we parked and all of that went down, he adjusted the mirrors and whatnot, I heard a scream -- a guy scream out, "Help, we've been robbed!" So when I looked back, he ran out of his store and I think he ran to the Jersey Mike's next door to his store. He said, 'somebody call the cops.'

So the female on the side of the car, she was like, 'What happened?' He was like, 'We just got robbed! Call the cops.'

So as she said to call the cops, I got my cell phone out and Mr. Small's told me don't get involved.

Q. When you saw the woman run out, did you say that you also saw a man run out of the Cricket store?

A. No, I saw a guy run out.
Q. Did you recognize him?
A. Yes, ma'am.
Q. Where did you recognize him from?
A. From that store.
Q. Had you been in that store previously?
A. Yes, ma'am.
Q. So when you took your cell phone out, what did Kevin Smalls say?
A. He told me, "don't get involved."
Q. What happened next?
A. After that, we backed up and we pulled off.
Q. You pulled off which way?
A. As we backed out, we turned and when we came to the stop sign we made that right and that put us right in front of Walmart. When we're riding through the front side of Walmart and we got to the lawn and garden, that's when we made that left. That's going to bring you out on the tire and lube express side on the back side of Walmart.
Q. Go ahead.
A. From there, that takes you to

Porchers Bluff where we made that right and got on 17.

Well, we made a right and then we made a left onto 17.

Q. When y'all were traveling through the parking lot, could you describe for the jury how quickly or how slowly that y'all were traveling?

A. We were going at a nice pace, a nice little speed.

Q. When you got to the stop light on Porchers Bluff, you said that y'all turned left.

A. Yes.

Q. What happened after you turned left?

A. When we turned left -- it was before they torn Highway 17 up to where it is now. There was a median that you could turn in. So when we got on 17, we dipped through the median and went down Sam Edwards Road.

Q. Let me interrupt you for a second.

A. Okay.

Q. When you got on 17, before you turned on Sam Edwards Road, ---

A. Yes, ma'am.

Q. --- did y'all travel down to Jarret Graddick's house and pick him up?

A. No, ma'am.

Q. So when you turned left onto Sam Edwards Road, tell the jury what happened at that point.

A. As we turned left on Sam Edwards Road, we went to the end of the road and he turned around.

Q. Let me show you what has been marked as State's Exhibit 13. Is that a photograph of Sam Edwards Road?

A. Yes, ma'am.

Q. Are you familiar with that road?

A. Yes, ma'am.

Q. And could you tell the jury whether you have ever used any cut-throughs on that road.

A. Yes, ma'am.

Q. So as y'all were driving down the road, tell the jury again what happened.

A. Okay. To the back side, as you can see, we turned around to the back. As we were approaching coming forward, off the road like up in this area right here ---

Q. Hang tight for just a second. I'm going to get you a pointer -- (tendering). And you can stand up

THE COURT: You need to keep your voice up.

SOLICITOR SHEALY: You're soft-spoken and you're going to have your back turned to them. So speak up. Okay?

WITNESS BRIAN MAZYCK: Okay.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Okay, you may continue.

A. Yes, ma'am. As we approached coming back up this side -- like it's not on this (indicating) but up like closer to the highway part, a little inbetween, that's when he hit the brakes. When he hit the brakes, I saw him look in the mirror -- once he looked in the mirror and backed up, I saw Coakley and Graddick -- there is a path over here, (indicating). You can't see it. But they were coming out waving, so ---

Q. Let me show you another photograph and see if that helps us a little bit. Showing you State's Exhibit 14. That is

turned the other way, going towards 17.

A. Yes, ma'am.

Q. Does that show you the area of the pathway?

A. Still -- it's up in this area right here.

Q. Okay. We will go back to State's Exhibit 13. Y'all had already turned around?

A. Yes, ma'am.

Q. And -- go ahead, continue describing what happened.

A. Like I said, we turned and were going back up. As we were going back up Sam Edwards Road, they came out of the path flagging him down. When he backed up, they got in the car.

After they got in the car, that's when we went back to the head of Sam Edwards Road and made a right.

Q: Go ahead and take your seat again.

A. (Complies).

Q. Let's slow down just a little bit. Could you see from where -- and when you say "they", who are you talking about?

A. Coakley and Graddick.

Q. When you say that they came out, where -- y'all had already turned around and were heading back towards the front?

A. Yes, ma'am.

Q. And then you say that Kevin Smalls did what with his rearview mirror?

A. Oh, he looked in his rearview mirror as he was riding back out of that road. He was looking in the mirror.

Q. And what did he do with his car at that point?

A. He stopped. He stopped and put in reverse, I guess. That's when they came out flagging, so he backed up towards them.

Q. Okay. Did you see them at that point?

A. Yes, ma'am.

Q. Could you tell that it was Graddick and Coakley?

A. Yes, ma'am.

Q. Can you remember how they appeared? What they had on?

A. Not quite but I know that they had gloves and shades on, and I think hats.

Q. Okay. And they then get where --

where did they go once y'all flagged them down and Kevin has backed up?

A. Oh, they got in the car.

Q. Where did they get in the car, who got on what side?

A. Coakley got in behind me and Graddick got in behind Smalls.

Q. Prior to their getting in the car, did you see any type weapon?

A. I saw a black gun.

Q. Okay. Who had the weapon as they were getting in the car?

A. I can't remember.

Q. Was there anything covering their faces when you saw them come out of the path?

A. Yes, ma'am.

Q. What was that?

A. Shades. And I don't know whether it was a shirt pulled up over the faces or a bandanna.

Q. What part of the face whatever it was covering?

A. Oh, it was covering like the nose piece, that piece (indicating).

Q. When they got in the car, can you

tell the jury whether or not anyone said anything?

A. No one said anything right then, at that moment.

Q. What happened then?

A. After that we headed out to Sam Edwards Road and -- we got on 17. Once we got on 17, we went to the far left lane.

Q. Let me interrupt you again. Sorry. But when they got in the back seat, do you know if the windows were up or down?

A. I don't remember.

Q. Did you see anything be thrown anywhere before they got in the car?

A. The cash register.

Q. Where do you think that the cash register was thrown? You can stand up and point it out to us -- or is it not in that photograph?

A. It is not in that photograph but it's like ---

Q. Showing you State's Exhibit 14, ---

A. --- over in that area. There's a gate over there, but you can't see it -- off screen.

Q. So as y'all approached 17 again, was there any discussion in the car about how quickly y'all should go?

A. Yes, ma'am. Well, after we made that turn, the U-turn at the light, coming back up 17, uh, they were like, 'Okay, take Clements Ferry Road...' ---

ANDREW GRIMES: Objection. Hearsay.

WILLIAM RUNYON: Your Honor, may we take up a matter of law at this time?

THE COURT: All right. Ladies and gentlemen, I will let you go to your jury room. There is a matter that I need to discuss out of your presence. Do not begin your deliberations.

(JURY OUT @ 10:03 A.M.)

THE COURT: All right. What is your objection or matter of law?

ANDREW GRIMES: I will let Mr. Runyon got first.

WILLIAM RUNYON: Your Honor, what she's on the threshold of doing is -- I don't mean to object prematurely but it's better prematurely than too late. She's now going to have this witness start testifying about

what people have said.

All three of these people are on trial. There's no way for us to cross examine, necessarily, and we're getting into the area of *Bruton*, Judge.

THE COURT: *Bruton*?

WILLIAM RUNYON: *Bruton* and hearsay.

THE COURT: Well, first of all, it's not *Bruton*, because it's not a statement being offered. I would agree with you that if it was a statement that you couldn't challenge that, but the witness is here.

Tell me why 801(d)(2) doesn't apply.

WILLIAM RUNYON: Well, Your Honor, quite frankly it doesn't apply because we don't — Mr. Coakley doesn't have the ability to cross examine Mr. Graddick or Mr. Smalls.

THE COURT: He does if they take the stand, but he's got the ability to cross examine this witness as to whether those statements are current.

801(d)(2) says that if it is a statement of someone that's adverse to that person, being offered against them, which is it, and that person is a defendant in this case, then

— then why is it not admitted? And the witness is available to testify.

WILLIAM RUNYON: Judge, he is available.

THE COURT: I understand that. He's testifying as to the statement attributed to your — which is classic 801(d)(2) talks about.

WILLIAM RUNYON: Well, Judge, I am not going to argue with the Court.

THE COURT: No, I'm just saying that — 801(d)(2) says that it is not hearsay. That's what it says. So I disagree with your argument that it is hearsay.

WILLIAM RUNYON: We've made the record, Judge. Thank you.

THE COURT: Thank you, sir.

ANDREW GRIMES: Your Honor, if I may put on the record, ---

THE COURT: Sure.

ANDREW GRIMES: It is our position that Mr. Coakley may have been saying 'Go, Go, Go!' but that's a statement that we cannot cross Mr. Coakley on that. We don't believe that he ---

THE COURT: But he is saying that Coakley said that. You can challenge him that Coakley said that. You don't have to cross examine Coakley. And Coakley can testify if he wants to, that's up to him.

I mean, Folks, this is really nothing more than -- there are no statements being offered. But if you can offer the statement of a person -- and we know that we have to go through a *Jackson v. Denno* hearing for that; for obvious reasons, because they have Constitutional rights not to testify.

But this is not an interrogation. This is a conversation with a citizen. This is nothing more than anything that comes into court. The fact that it is a trial for a criminal case doesn't change the evidentiary application.

So I appreciate your position. You can argue that up the road and maybe we will make some new law.

I don't think that 801(d)(2) makes this hearsay and, therefore, none of that applies. The witness who is saying these things is here to be challenged. That is precisely

what (d)(1) talks about. It says that you can offer it if they've been present and have testified. The whole purpose of that is so that you can challenge that testimony itself. That's the challenge. That's the confrontation. You're confronting the witness.

It's not a *Bruton* issue, it has nothing to do with *Bruton*. It's not -- now, I would agree with you that if we're talking about a statement that this person made that is being offered against that person and that -- that has to pass muster concerning the *Jackson v. Denno* hearing and now -- now we've got a different ballgame.

But that's not what this is. This is a witness who was present, who heard the conversation and he's testifying, which is adverse to your party. That's clearly that.

The distinction -- for instance, to give you the distinction, I sustained an objection -- you want to offer a statement which your client made that was beneficial. Clearly it says that it has to be offered again. Years ago when I went to law school, it had to be

an adverse party -- you could throw it in, it didn't matter. A statement against interest by a party or -- you could offer anything that a party said. They changed the Rule and said that it has to be offered against a person. Clearly that's what we do.

So, Solicitor, is there anything else that you'd like to supplement the record as being your basis for ---

SOLICITOR SHEALY: No, Your Honor.

THE COURT: --- being able to ask the question.

SOLICITOR SHEALY: No, Your Honor.

THE COURT: Thank you. The record has been made. Thank you very much. I overrule the objection, but I appreciate ---

ANDREW GRIMES: Thank you, Your Honor.

THE COURT: And, Mr. Runyon, thank you for raising it. You say prematurely, I think that it needed to be raised and arrested. Thank you very much.

All right, let's bring in the jury.

And the objection will continue through out and it is protected for the purposes of review so that we don't have to interrupt.

Each time that a statement is made by a defendant, it is noted that your objection continues for each individual. The State agrees with that approach ---

SOLICITOR SHEALY: Yes, sir.

THE COURT: --- for purposes of review?

SOLICITOR SHEALY: Yes, Your Honor.

THE COURT: And the defendants, each is comfortable with that for protecting the record?

ANDREW GRIMES: Yes, sir.

WILLIAM RUNYON: For Defendant Coakley, that's fine.

THE COURT: Okay.

JIM SMILEY: Yes, sir.

THE COURT: Thank you. Invite the jury to return.

(JURY IN @ 10:10 A.M.)

THE COURT: Thank you, ladies and gentlemen. As you know, as I mentioned to you that our Rules are well-defined, that they don't overlap. You have the responsibility of determining the facts and it is my responsibility to determine the law. Occasionally we don't have to have a matter

-- and you've heard me tell an attorney that 'we will place that on the record at the next recess.' The reason for that is that that is not a matter for your concern.

So in order to facilitate those discussions, sometimes we need to excuse you. Please understand that's the normal process. Also please understand that as officers of the Court that the attorneys are entitled to, and should, raise those matters as they occur. It is very important that they do that during the process. That's very normal and very proper as well. So don't read anything into that either. Thank you.

You may continue, Ms. Shealy.

SOLICITOR SHEALY: Thank you, Your Honor.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Brian, I believe that we were talking about that y'all were heading back down Sam Edwards Road towards 17.

A. Yes, ma'am.

Q. If you would, please tell the jury if anyone was saying anything.

A. When they got in the car, they were like, 'Go, Go, Go!' That's when we went -- we were on 17, now we're U-turning, now we're going up 17, ---

Q. Let me slow you down there just so they will understand what you mean by a U-turn. When y'all got to the end of the street here (indicating Sam Edwards Road), which way did Mr. Smalls turn?

A. He turned right.

Q. When you say that y'all U-turned it, where was that?

A. Actually when you come off this road, there's a light like right there. He went to the far left lane and he U-turned at the light.

Q. So when you U-turned, were you still on Highway 17?

A. Yes, ma'am.

Q. You were heading back towards the bridge?

A. Yes, ma'am.

Q. If you would, describe to the jury, please, what was going on in the backseat as y'all were traveling back down 17 South.

A. As we were traveling back down 17, they were in the back seat trying to take the clothes off that they had on during the robbery and put the clothes that were in the car on.

Q. And when you say that's what they were doing, could you see them doing that?

A. Yes, ma'am.

Q. How were you feeling about that?

A. I was scared and nervous. I wanted to get out of the car.

Q. Okay. Tell the jury -- they were changing clothes?

A. Yes, ma'am.

Q. At any point did you see a weapon?

A. Yes, ma'am. The gun was under the armrest in the back seat.

Q. Tell the jury what other behavior was happening in the back of the car.

A. Nothing at that moment. But when we got pulled over by the heat car, -- Mr. Smalls brought it to the attention of everyone that the heat car was behind us. When he said the heat car was behind us, I looked back in the rearview I saw the heat

car that had came out of nowhere. So we were just sitting at the light now, no one is moving.

He just threw on the lights. Once he threw on the lights, he told us to put our hands up. So now we have our hands up in the car.

You know, as he started telling us to turn the car off, don't move, I think that it was Mr. Coakley said, "Go! I'm not going back to jail. Go!"

When I looked at the passenger side -- any movement to your left side, you can see. So, you know, as I glanced over he had the gun to the back of Mr. Smalls seat.

Q. Who had the gun?

A. Mr. Coakley.

Q. And when you say that he had it to the back of Mr. Smalls' seat, are you talking about the back of Mr. Smalls' seat?

A. Yes, ma'am.

Q. And what was Mr. Coakley saying?

A. He was like, 'Drive! I'm not going back to jail.'

WILLIAM RUNYON: Your Honor, may I ---

THE COURT: What is the objection?

WILLIAM RUNYON: To the statement that he just made that he said was said by Mr. Coakley

THE COURT: All right. Thank you, sir. Your objection is overruled.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Let's go back just a little bit,

A. Yes, ma'am.

Q. -- did anyone in the car indicate where y'all should travel?

A. Yes, ma'am.

Q. Who did that?

A. They both said that we should take Clements Ferry.

Q. And when you say "they both", you mean who?

A. Coakley and Graddick.

Q. And for those on the jury who aren't familiar with Clements Ferry, do you have to go down 41 to get to Clements Ferry?

A. Yes, ma'am.

Q. Are you familiar with whether or not 41 is a two-land road?

A. It's a one.

Q. When you say one, it's one going this way and one going that way?

A. Yeah.

Q. Okay. So describe -- you were telling us that y'all initially put your hands up?

A. Yes, ma'am.

Q. And then Mr. Coakley initially put the gun to the back of Mr. Smalls' seat?

A. Yes, ma'am.

Q. And he said what?

A. He was, like, 'Drive, boy, drive! I'm not going back to jail.'

Q. Then what started happening in the back seat?

A. After that, I really don't know. I had my hands up and I didn't look back. I could feel movement in the back seat.

Q. You could what?

A. I could feel the movement of them in the back seat.

Q. Now, at any time when you were in the vehicle, did you see any money?

A. When I took a glance back, there was

money in the armrest.

Q. Okay. Could you tell what was going on with the money?

A. No, ma'am. They just had it sitting there.

Q. Showing you State's Exhibit 28, can you see -- that is the armrest that you're talking about? In the middle, with the cup holders?

A. Yes, ma'am.

Q. And when you saw the money, where was it when you saw it?

A. It was right here.

Q. Was the seat divider, the armrest, up?

A. No, it was down.

Q. What was going on in that area?

A. They just had the money setting right there and the gun was underneath the arm, the console.

Q. It was underneath at the time that you saw it?

A. Yes, ma'am.

Q. And then you later saw it again with Mr. Coakley?

A. Yes, ma'am.

Q. When you were at the stopping point, could you describe what happened when the police was directing you all to get in and out of -- I mean out of the vehicle?

A. As they told us to get out, I believe that they told Smalls to get out first.

Once Smalls got out, Mr. Coakley was trying to go across the middle of the seat to drive the car off. Mr. Smalls had already turned the car off. Mr. Coakley was coming through the middle of the two front seats. He had his legs coming across. They was like, 'Don't move! Don't move! Keep still.' After that, he stopped.

That's when they took out Mr. Graddick.

Then from Mr. Graddick exiting the vehicle, Mr. Coakley was after him.

I was the last to get out.

Q. When you got out of the vehicle, would you describe to the jury what the police were doing with the four of you?

A. Separating us by putting us in different vehicles.

Q. Putting you all in different police vehicles?

A. Yes, ma'am.

Q. And could you tell the jury what you told the police the first time that you had a chance to tell them anything?

A. Once I got in the police cruiser, I told them what happened; that I didn't know that he was going on. He told me, 'Well, just tell the truth.' So that's what I did.

Q. Were you arrested?

A. Yes, ma'am.

Q. And charged with armed robbery?

A. Yes, ma'am.

Q. Are you still charged with armed roobery?

A. Yes, ma'am.

Q. When you went to the police station, did you give a statement to the police?

A. Yes, ma'am.

Q. Okay. And did you try to give them as many details as you could at that time?

A. Yes, ma'am.

Q. Did you write your statement?

A. No, ma'am.

Q. Who wrote the statement?

A. The detective.

Q. After writing your statement, did the police ask you to do something else?

A. Yes, ma'am.

Q. What did they ask you to do?

A. Well, they took me back to the crime to where they'd threw the register till at and -- they said that there was another gun, which there wasn't. So I walked the fence line with them, searching for another gun -- which we didn't find. But we found the register tossed in the woods.

Q. Okay. Let me ask you something, did you go down -- and you know that you're here to tell the truth.

A. Yes, ma'am.

Q. You've been sworn to tell the truth?

A. Yes, ma'am.

Q. Did you go down Sam Edwards Road to drop off Graddick and Coakley?

A. No, ma'am.

Q. You did not go down there with that intention?

A. No, ma'am.

Q. Have you had an opportunity to review your statement that you gave to the police?

A. Yes, ma'am.

Q. Could you describe to the jury whether it's in the right sequence of events?

A. No, ma'am.

Q. It is not?

A. No, ma'am.

Q. Okay. What are you talking about?

A. The way that it is written it sounds like I was down there more than once. But it wasn't more than once It was the way that the detective interviewed it, he was jumping from place to place. So once he's going to one spot, I'm thinking about the next spot. That's how it got twisted.

Q. Okay. The next day -- were you put in jail that night?

A. Yes, ma'am.

Q. And the next day, did Sergeant Tyrone Simmons come and get you from the jail?

A. Yes, ma'am.

Q. What did -- tell us what you told

Sergeant Simmons that had happened when you all got down to the jail.

A. Oh, when we got to the jail and he came and took me for another interview, I told him what was going on. I told him about the suspects were -- I didn't talk to Smalls since I was there, but I'd talked to Graddick and Coakley when they had us in a place where we could see each other, like at the desk and whatnot.

Q. Let's slow that down, because everyone is not going to be familiar with that. When they took you to the jail, did they put all four of you together in a cell?

A. No, ma'am.

Q. Describe for the jury whether or not they separated you all?

A. Yes, they separated us.

Q. So when would you have had the occasion to speak to Mr. Graddick or to Mr. Coakley?

A. When they -- the cell that I was, the holding cell that I was in, when they went to the desk it was like they was right in front -- right in front of the desk, like

from me to you right there.

Q. Okay. Tell the jury, if you would, what you were told by Mr. Coakley and Mr. Graddick.

A. Mr. Coakley told me to tell them that we picked him up from his cousin Jamie's house, that he was lifting weights.

Q. That he was lifting weights?

A. Yes, ma'am.

Q. And did he say anything about money that was taken?

A. It was like that it was four thousand dollars ($4,000).

Q. That is what Mr. Coakley told you?

A. Yes, ma'am.

Q. What about Mr. Graddick, did he say anything?

A. He said that we picked him up from the park near his house.

Q. He said that that's what happened, or he asked you to say something?

A. He told me to say that we picked him up from the park near his house.

Q. What did you tell Keenan Coakley and Jarret Graddick when they asked you to tell a

lie?

A. That 'I'm not lying, I'm going to tell the truth.'

Q. So we talked about that you were charged that evening?

A. Yes, ma'am.

Q. And you agree that night to cooperate with the police immediately?

A. Yes, ma'am.

Q. Did you give a statement on the 15th, the night of the incident?

A. Yes, ma'am.

Q. On the 16th, you gave a statement?

A. Yes, ma'am.

Q. And can you tell the jury whether you told your lawyer that you also wanted to cooperate with the State?

A. Yes, ma'am.

Q. And, again, -- I will ask you again, Brian, did you go down Coakley (sic) Road before those two guys got dropped off?

A. No, ma'am.

SOLICITOR SHEALY: Beg the court's indulgence just a moment.

THE COURT: All right.

SOLICITOR SHEALY: (Sidebar with Mr. Ferguson).

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Mr. Mazyck, have you been promised anything to come in and testify?

A. No, ma'am.

Q. Has the State in any way indicated to you what might happen with your charges?

A. No, ma'am.

Q. Thank you. Please answer any questions that the defense may have.

THE COURT: Cross examine?

ANDREW GRIMES: Yes, sir. Thank you, Your Honor

THE COURT: Yes, sir.

CROSS EXAMINATION

BY ANDREW GRIMES:

Q. Good morning, Mr. Mazyck.

A. Good morning.

Q. I want to clarify a few things first about your background. If for some reason you don't understand one of my questions or -- sometimes I have a habit of mumbling, just ask me to speak up or to repeat myself.

Okay?

A. Yes, sir.

Q. You were born October 3, 1985?

A. Yes, sir.

Q. And the last four numbers of your Social Security Number are 4569 or ---

SOLICITOR SHEALY: Objection, Your Honor.

THE COURT: What is the purpose of that? Asking his Social Security number? You can show it to him, but there is no need to do that.

ANDREW GRIMES: Thank you, Your Honor. May I approach the witness?

THE COURT: You may. Let the record reflect that you are going to show him his Social Security number?

ANDREW GRIMES: Yes, sir. (Upon review of file), it doesn't seem that I have that part, so I will skip that question.

THE COURT: Very well.

ANDREW GRIMES: Thank you.

CROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. You have a nickname, you go by "Bezel"; right?

A. Yes, sir.

Q. What exactly does Bezel mean?

A. It means nothing.

Q. I want to ask you a little bit about your prior record. Ms. Shealy brought out that you were convicted in 2006 of a burglary in the third degree?

A. Yes, sir

Q. And I think on that same day that you were convicted of, I believe, eight counts of breaking into fuel tanks?

A. Fuel tanks?

Q. Gas tanks.

A. I don't recall that, sir.

Q. But you had eight breaking-and-enterings?

A. Yes, sir

Q. And those carried five years each.

SOLICITOR SHEALY: Objection, Your Honor.

THE COURT: Sustained. Conform your questions pursuant to the Rules. Thank you, sir.

ANDREW GRIMES: Thank you, Your Honor.

CROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. Now I want to ask you about the pending charge here, the armed robbery. That carries a minimum of ten years in prison; correct?

A. Yes, sir.

Q. Up to thirty years?

A. Yes, sir.

Q. If you're convicted of that, you could do anything between that time?

A. Yes, sir.

Q. If you cooperate, you could get less than ten years if convicted of armed robbery; right?

A. Yes, sir.

Q. And armed robbery is what they call a no parole offense?

A. Yes, sir.

Q. Which means that you do eighty-five percent of your time; correct?

A. Yes, sir.

Q. If you did get ten years, you'd do at least eight and a half years?

A. Yes, sir.

Q. You are twenty-eight now?

A. Yes, sir.

Q. So you wouldn't be able to get out until you were thirty-six?

A. Yes, sir.

Q. And it is what they call a strike or a most serious offense; correct?

A. Yes, sir.

Q. If you get two of those, you'd be looking at life without parole?

A. Yes, sir.

Q. Now, at the end, I think Ms. Shealy asked you if anyone had made you any promises or given you any benefits for your testimony here today.

A. Yes, sir.

Q. And has anyone -- when you say -- by "benefits", I mean has anyone dropped any charges for you?

A. No, sir.

Q. Has anyone reduced any charges against you?

A. No, sir.

Q. Give you any special considerations as to bond?

A. No, sir.

Q. Now, you were arrested on September

15th, 2010; correct?

A. Yes, sir.

Q. At that time you gave a statement to Detective Byrd and ---

A. Yes, sir.

Q. --- then the next day to Detective Simmons?

A. Yes, sir.

Q. About two years later, you signed what's called a proffer agreement; correct?

A. Yes, sir.

Q. And during that time, did you receive any promises or benefits from the State?

A. No, sir.

Q. None at all?

A. No, sir.

Q. Are you sure about that?

A. No, I don't really know of ---

Q. What's that?

A. I can't answer that one but none that I know of. Not that I know of.

Q. I'll try to make it simple, okay? Because it's important.

A. Okay.

Q. Between the time that you gave your statement and the time that you signed the proffer agreement, did the State drop any charges for you?

A. Yes. When I went to court, yes, sir.

Q. And what charges did they drop?

SOLICITOR SHEALY: Your Honor, I have an objection and a matter of law.

THE COURT: All right. Ladies and gentlemen, I need for you to go out and go to your jury room. We will be with you as quickly as we can.

(JURY OUT @ 10:26 A.M.)

THE COURT: Before -- Mr. Runyon, you made an objection concerning the statement about the jail. You want to go ahead and supplement your objection?

WILLIAM RUNYON: Your Honor, I would like to supplement that by not only objection, but that in his identification he said Mr. Coakley said "I don't want to go back to jail' or "I'm not going back to jail.' That indicates that there was some prior conviction or some prior offense. That

introduces the defendant's record. And, therefore, not only do I object to that, Judge, but I would append to that objection a Motion for a mistrial as to Mr. Coakley.

THE COURT: What is the State's response?

SOLICITOR SHEALY: Your Honor, I think that statement was so minimal that it probably didn't draw the jury's attention.

THE COURT: Oh, I think that it drew it several times. What is your position concerning the admissibility?

SOLICITOR SHEALY: I think if that's what he said, that's what he said. It doesn't in any way indicate that he's been convicted of a crime. He said 'I don't want to go back to jail.'

THE COURT: Well, it does imply that he was convicted of a crime.

SOLICITOR SHEALY: I don't think that it implies that he was convicted of one, just that he was in jail. He didn't say, 'I don't want to go back to prison.' I think that if you'd like to make a curative instruction of some sort that the State certainly would be

agreeable to that.

THE COURT: How do you cure that?

SOLICITOR SHEALY: If the defense wants to highlight it in a curative instruction, I think you could indicate that ---

THE COURT: Mr. Runyon's defendant wants a mistrial.

SOLICITOR SHEALY: I don't think that a mistrial is in order, Your Honor. I think that it can be cured by saying "Any reference of back to jail should not be entered into your consideration at all. There is no evidence in this record that Mr. Coakley has been to jail."

THE COURT: I understand that. That's why the statement is just -- that's the problem with the statement, is it not?

SOLICITOR SHEALY: I think that it can be cured, Judge.

THE COURT: Again, I don't understand. How do you cure that that is not what he said.

SOLICITOR SHEALY: Well, I think ---

THE COURT: The problem that I have, Solicitor, is that this is -- my thought is

that this is why he was trying to escape, all of these things. That's a rationale basis. But to inject into the framework and then -- the first little mention, I would agree that maybe it was insignificant. But he repeated it several times.

SOLICITOR SHEALY: Judge, I still think though that if you were to instruct the jury that they ---

THE COURT: Well, I appreciate your suggestion that I instruct the jury. That bell has been rung loudly and clearly, so I would -- with all due respect, I don't think that you can undo that. What am I going to tell them? 'You disregard the statement that he was in jail'?

SOLICITOR SHEALY: I. ---

THE COURT: How do you suggest that I cure that? What language would you suggest that could be offered to cure it?

SOLICITOR SHEALY: I think that you can instruct the jury that, 'There was mention by Mr. Mazyck that Mr. Coakley said that he did not want to go back to jail. I instruct you that that should not be

considered by you at all, that it should be struck from the record. In your deliberations, you should not consider that statement at all.'

THE COURT: I see. Forget the bell that was rung, ladies and gentlemen. Forget the bell.

SOLICITOR SHEALY: I mean, I -- we have to ---

THE COURT: Just ignore the bell.

SOLICITOR SHEALY: Well, we often have that when we have curative instructions.

THE COURT: No, we don't. Not something as significant as that. And you obviously think it's significant. You're not arguing that it's proper.

SOLICITOR SHEALY: Well, it ---

THE COURT: I don't understand why you even allowed the witness to even do that.

SOLICITOR SHEALY: I didn't ---

THE COURT: That doesn't make any sense to me.

SOLICITOR SHEALY: Well, I had instructed him previously ---

THE COURT: Ma'am, I appreciate that.

That's all preparation. I understand that you can't control them when they get on the stand. All right.

What's our position -- let me hear that and then we will take a recess. I am going to have to think about this one.

SOLICITOR SHEALY: What is my position as to?

THE COURT: As to the question concerning his benefits.

SOLICITOR SHEALY: I don't know -- I think that Mr. Grimes is getting ready to attempt to introduce through Mr. Mazyck that some charges have been dismissed against him.

THE COURT: Have they?

SOLICITOR SHEALY: I don't know the sequence of that ---

THE COURT: Ma'am, just answer. Have they been dismissed?

SOLICITOR SHEALY: There have been charges that ---

THE COURT: All right. They have been dismissed after his arrest?

SOLICITOR SHEALY: I would have to check that.

THE COURT: Well, you better go check it because -- you're argued that there haven't been, and that's significant, Solicitor. Don't make an objection when you don't even know the basis of your objection.

SOLICITOR SHEALY: No, that's why -- I do know the basis, so that we can find out if ---

SOLICITOR SHEALY: Okay.

ANDREW GRIMES: Your Honor, I have the disposition sheets, if that will help.

THE COURT: Well, you may want to show them to the Solicitor so that she can argue with them, if she wants to.

We'll be at-ease for a few minutes, take a break.

(BRIEF RECESS)

(DEFENDANT GRADDICK PRESENT)

(DEFENDANT COAKLEY PRESENT)

(DEFENDANT SMALLS PRESENT)

THE COURT: Okay, let the record reflect that all the defendants are present. Yes, Ms. Shealy?

SOLICITOR SHEALY: Your Honor, could I ask for a few moments to further research?

I was also looking at the prior charges.

THE COURT: Well, you can -- I'm prepared to rule on the prior charges, if you'll just tell me whether or not it was done after his arrest?

SOLICITOR SHEALY: It was absolutely done after his arrest.

THE COURT: That's fine. I'm prepared to rule on that. That's not the problem. The other one, I'm not going to -- I am going to take that under advisement at this point. You can do further research on that issue.

SOLICITOR SHEALY: Okay.

THE COURT: You want a curative instruction?

WILLIAM RUNYON: I'd have an objection to ---

THE COURT: I know you want a mistrial. I understand that.

WILLIAM RUNYON: I want a mistrial. I do not want -- all a curative instruction would do is call attention to all of that.

THE COURT: So yours is not an either/or. You want a mistrial, no curative instruction?

WILLIAM RUNYON: I am relying on what I learned in handset. Yes, Judge.

THE COURT: That's why I asked you that. There is no question but that that would call attention to it. There's no question that I could say the curative instruction -- and I'm not the least bit concerned that the jury would follow that instruction. But yours is for a mistrial only?

WILLIAM RUNYON: Yes, Your Honor.

THE COURT: And if I decline that, you're willing to -- you'll just let the record speak for itself. You don't want it to be reinforced.

WILLIAM RUNYON: That's correct, Your Honor, and let me state my basis for that.

THE COURT: All right.

WILLIAM RUNYON: Judge, when that was elicited the first time, I entered my objection.

THE COURT: Yes.

WILLIAM RUNYON: Then in spite of my objection, the State proceeded to elicit that response at least two more times, if not

three times.

THE COURT: It was several times.

WILLIAM RUNYON: If you give a curative instruction, that's just going to be piled on and -- that's my basis for not asking for a curative instruction.

THE COURT: There is no question that those are factors that I'm weighing in the moment, the fact that it followed and the fact that the State did not argue that it was proper in the first place.

SOLICITOR SHEALY: Well, Your Honor, I do want to ---

THE COURT: I understand. I'm going to give you a chance to argue that.

SOLICITOR SHEALY: Okay.

THE COURT: Thank you.

SOLICITOR SHEALY: And just so that the record is clear, when he objected to that language, it was not granted.

THE COURT: Ma'am?

SOLICITOR SHEALY: When he objected to that, made his objection, it was not granted.

THE COURT: That's correct. I over-ruled the objection primarily to simply state

that -- the one mention of it is fine, but the reinforcement of it is what bothers me. The one time, sure, that gives an explanation. But to continue it, and you're not arguing that is proper, then I am concerned.

SOLICITOR SHEALY: I do think that it is proper for ---

THE COURT: Well, you didn't argue that, Solicitor.

SOLICITOR SHEALY: But I'm asking --

THE COURT: Ms. Shealy, I'll -- I have not ruled yet. Thank you.

SOLICITOR SHEALY: Yes, sir.

THE COURT: Thank you very much. Let's don't argue about whether you did or didn't.

SOLICITOR SHEALY: Yes, sir. Thank you.

THE COURT: Thank you.

SOLICITOR SHEALY: Okay.

THE COURT: I will allow you to explore any benefit that he has received since his arrest. I think that's legitimate. I think that's perfect as to why he may be motivated,

the extent of it. I think that's something that the jury can hear. But any benefit that he's received, that you can explain it on redirect but that clearly it's a proper examination. Thank you very much.

ANDREW GRIMES: Thank you, Your Honor.

THE COURT: Because it goes to support the way that he is testifying, why he might be testifying for his own benefit. Okay.

SOLICITOR SHEALY: Thank you, Your Honor.

THE COURT: Okay. Let's bring in our jury.

(JURY IN @ 10:54 A.M.)

THE COURT: Thank you, ladies and gentlemen. We appreciate your patience. We are ready to continue. Mr. Grimes, you may resume your examination.

ANDREW GRIMES: Thank you, Your Honor.

CROSS EXAMINATION RESUMED

BY ANDREW GRIMES:

Q. Mr. Mazyck, on September 15th, 2010, you were charged with this armed robbery; correct?

A. Yes, sir.

Q. Now I want to ask you a few

questions about an armed robbery charged that you had in 2009.

A. Yes, sir.

Q. Do you recall being arrested for that in December for an incident that was alleged to have happened at Jack's Cosmic Dogs?

A. Yes, sir.

Q. That charge was pending when you were arrested for this armed robbery, correct?

A. Yes, sir.

Q. And in October of 2011, Ms. Shealy dismissed that 2009 armed robbery charge; correct?

A. Right.

Q. At the time that she dismissed it, you would have been looking at life without parole. Not one strike but two strikes.

A. Yes, sir.

THE COURT: Wait a minute. Rephrase your question because that's not an accurate statement of the law. It's possible -- not that he would have been but that he could have been.

ANDREW GRIMES: I'm sorry

THE COURT: Rephrase the question.

ANDREW GRIMES: Yes, sir.

THE COURT: That would be misleading., Thank you, sir.

CROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. I apologize, Mr. Mazyck. In 2009 when you were arrested on -- or in 2011, when this first armed robbery was dismissed, ---

A. Yes, sir.

Q. --- right before that you -- you were facing two armed robberies; correct?

A. I -- I'm not quite sure. I believe one.

Q. There was one from Jack's Cosmic Dogs and this one?

A. Yes, sir.

Q. And if you had been convicted of both of them, there's the possibility that you could have ended up with life without parole?

A. Correct.

Q. And if that happened, the only time that you'd see your family again would be

visits at the jail -- or prison. Correct?

A. Correct.

Q. And you wanted her to dismiss that first armed robbery charge, correct?

A. Yes, sir.

Q. And you know Ms. Shealy to do you right and dismiss that first armed robbery charge; correct?

A. Repeat that one more time, sir?

Q. You wanted Ms. Shealy to dismiss that first armed robbery charge, the one involved in Jack's Cosmic Dogs; correct?

A. Correct.

Q. And you wanted her to dismiss this one, too; correct?

A. I didn't say that but -- yeah.

Q. Can you speak up a little bit?

A. Correct.

Q. Now, at that time you were also facing another charge, weren't you? A third charge?

A. Uh, -- (pause).

Q. At the time that you got arrested on this, you had a total of three felony charges pending, didn't you?

A. (No verbal response).

Q. Jack's Cosmic Dog robbery, this armed robbery, and a criminal sexual conduct in the third degree?

A. Yes, sir.

Q. And if you were convicted of that, it could require you to go to prison for up to ten years; correct?

A. Yes, sir.

Q. And it could have required that you register as a sex offender, for the rest of your life?

A. Yes, sir.

Q. And you are grateful to her for doing that, aren't you?

A. Yes, sir.

Q. Now, you've talked a lot today about September 15th, 2010. I don't want to go into all the details because I think the jury can compare your testimony with everyone else's. But just to clarify, it is your testimony today under oath that you never went down Sam Edwards Lane and dropped of Jarret and Keenan?

A. Correct.

Q. That the only time that you went down Sam Edwards Lane is ---

A. To pick up.

Q. --- when you said that Kevin drove down there to pick up Jarret and Keenan?

A. Yes, sir.

Q. And that is your testimony today, under oath?

A. Yes, sir.

Q. Again, your testimony under oath today is that while you guys were out that you went to Walmart, you went to McDonalds, then you went back and then parked near the Cricket store and the liquor store. Then Mr. Smalls was sort in the car leaning back a little and looking in his mirror watching towards the Cricket store?

A. Yes, sir.

Q. He was never out of the car?

A. I don't recall him being out of the car.

Q. Standing?

A. (Negative gesture).

Q. Locking eyes with anybody?

A. No, sir.

Q. He never did that?

A. No, sir.

Q. Now, I think that you told Ms. Shealy that when you talked to Detective Byrd, the first detective that you talked to, that you knew that it was important to give him all the details of what y'all did that day.

A. Yes, sir.

Q. Correct?

A. Yes, sir.

Q. But there was mix-up where he misunderstood what you were saying of you misunderstood what he was saying?

A. Yes, sir.

Q. But in your statement you never talk about going to Trident Tech looking for girls, do you?

A. No, sir.

Q. And I think that you said that you went to C&W after Trident Tech?

A. Yes, sir.

Q. That's not in your statement either, is it?

A. No, sir.

Q. Is that the first time that you've told that to anybody?

A. Yes, sir. No. I mean no, sir. When he interviewed me, he -- he said from that point on, in the car. He didn't ask me like about earlier that day. Like way that morning part. He was asking about what happened since he'd picked me up and all.

Q. Okay. But is that the first time that you've told anybody about Trident Tech, is today?

A. (Negative gesture).

Q. Or have you told that to Ms. Sheafy or anyone else?

A. That's not the first time.

Q. When was the first time?

A. I told my attorney and I told Ms.. Sheaily.

Q. When was that?

A. When I first talked to her. I wouldn't remember the date.

Q. That's fair. You don't happen to remember which movie was returned, do you?

A. No, sir.

Q. Now I want to ask you a couple of

questions about what happened at the jail that night. The night that you got arrested.

A. Okay.

Q. I think you told Ms. Shealy that it was -- I won't say a common booking area but you're -- when you're first arrested, your taken to processing; right?

A. Yeah.

Q. Sort of a big area where everyone is kinda put in together, but codefendants are supposed to be separated; correct?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. And you said that you guys were separated to some degree.

A. Yes, sir.

Q. But that your holding cell was right across from the desk where they'd do some paperwork or make phone calls?

A. No, no, we weren't that far in. But we were booked in at that point.

Q. Okay. And the jail obviously has correctional officers there?

A. Yes, sir.

Q. To make sure that there is security.
A. Yes, sir.
Q. There's cameras in the jail, too; right?
A. Yes, sir.
Q. And in your statement you talk about a corrections officer, and he telling Jarret to move away. Correct?
A. Yes, sir.
Q. Do you remember the name of the corrections officer?
A. No, sir.
Q. I think that I may have misspoke but -- I want to ask you a couple more questions about that day. You said that you went to McDonald's?
A. Yes, sir.
Q. What time did you go there?
A. I don't know the time.
Q. You think it was 5:30? 6:00?
THE COURT: He said that he didn't know the time. So he can't answer the question.
ANDREW GRIMES: Yes, sir.
THE COURT: He can't answer the question. He would be speculating. Move on

to something else.

ANDREW GRIMES: Yes, sir.

CROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. Do you recall that there is a camera at the McDonald's?

A. Yes, sir.

Q. And you told the detective about that?

A. Yes, sir.

Q. And you're up here telling the truth, supporting your story?

A. Yes, sir.

Q. And you're not just saying this just to avoid going to prison?

A. No, sir.

Q. If you did something wrong, you would own up and take responsibility?

A. Yes, sir.

Q. Even though you've had a bunch of charges dismissed in the past?

A. Yes, sir.

ANDREW GRIMES: May I have one moment, Your Honor?

THE COURT: Yes, sir.

ANDREW GRIMES: (Sidebar with Mr. Kowelski).

CROSS EXAMINATION CONTINUED

BY ANDREW GRIMES:

Q. Just a couple more questions. The gun that was found in the car was found under your seat. Correct?

A. Correct.

Q. And any deals that you made with Ms. Shealy wouldn't cover a Federal prosecution, would it?

A. No, sir.

Q. And given your prior record, it is illegal for you to have a gun; isn't it?

A. Yes, sir.

ANDREW GRIMES: Thank you.

THE COURT: Cross examine, Mr. Runyon.

CROSS EXAMINATION

BY MR. RUNYON:

Q. Good afternoon, Mr. Mazyck.

A. Good afternoon.

Q. Mr. Mazyck, I need to clarify a few things because I am a little confused. It's easy for me to get confused, so bear with me. Okay?

A. Yes, sir -- sir.

Q. Now, I understand that earlier in the day that you'd had a problem with your insulin?

A. Yes, sir.

Q. Well, actually it was not a problem with your insulin. You felt like your blood sugar was high?

A. Yes, sir.

Q. And so you needed to get some insulin?

A. Yes, sir.

Q. So you had Mr. Smalls take you home?

A. Yes, sir.

Q. All right. Now, do you -- does your insulin -- do you -- does you keep insulin in the refrigerator or do you use the pen?

A. At the time I was using the syringes that had to be refrigerated.

Q. Has to be refrigerated?

A. Yes, sir.

Q. And you ordinarily take your insulin prior to eating?

A. Yes, sir.

Q. So -- and there's a reason for that,

isn't there?

A. Yes, sir.

Q. Because you need to control the sugar in your blood; right?

A. Yes, sir.

Q. So when you went to McDonald's that afternoon, you don't remember what time it was?

A. No, sir.

Q. You would have had Mr. Smalls take you back by the house so that you could have gotten your shot before you ate, wouldn't have you?

A. No, sir. I mean, I had already took my insulin. After he dropped me off, I took my insulin before I went to my brother's house. So we went to McDonald's after I'd already took my insulin. By then, you know, my sugar was already like normal range.

Q. You only need to take one shot a day?

A. No, I take three to four.

Q. You take three or four?

A. (Affirmative nod):

Q. How do you know how to take three or

four?

A. Test my blood sugar and all. It's on a sliding scale. Before meals, I take my dosage. Right after I take my dosage I have to eat. But back then the insulin that I'm on now, I wasn't on.

Q. Okay. So you didn't do any checking of your insulin before you went to McDonald's or anything like that?

A. No, sir.

Q. And you didn't have your insulin before you went to McDonald's?

A. No, sir.

Q. And your blood sugar wasn't giving you any trouble?

A. (No verbal response).

Q. But you had low blood sugar before it happened?

A. Yes, sir.

Q. And real low blood sugar kind of makes you confused; doesn't it?

A. Yes, sir.

Q. And as a matter of fact, if it gets real low you could even pass out; can't you?

A. Yes, sir.

Q. So you have to be real careful about that?

A. Yes, sir.

Q. Because if it gets low, confusion is one thing but passing out is quite another; isn't it?

A. Yes, sir.

Q. Okay. Now, -- but you're absolutely positive that there was no confusion on the afternoon of the 15th?

A. Yes sir.

Q. And there was no confusion to the fact that you didn't go down Sam Edwards Road twice.

A. Yes, sir.

Q. And there is no confusion -- excuse me.

WILLIAM RUNYON: Could you please pull up State's Exhibit 13 -- or the one with the car.

CROSS EXAMINATION CONTINUED

BY WILLIAM RUNYON:

Q. Now, who previously identified this clothes as belonging to, I take it, to Mr. Coakley?

A. Yes, sir.

Q. And they were in the car when you got in the car with Mr. Smalls to go to he shopping center that afternoon?

A. Yes, sir.

Q. And these were the same clothes that he supposedly had over his face when he came out of the woods?

A. Not these clothes, sir.

Q. Not those clothes?

A. (Negative gesture), not those clothes.

Q. What clothes did he have over his face when he got out of the shopping center -- I mean when he came out of the woods?

A. I believe that it was khaki, something khaki.

Q. Something khaki?

A. Yes, sir.

Q. Now, so -- those clothes were in the car, but Mr. Coakley wasn't in the car before you went to Walmart?

A. No, sir.

Q. And you didn't see Mr. Coakley that afternoon until he, quote, came out of the

woods?

A. Yes, sir.

Q. And when he came out of the woods, you knew who it was; didn't you?

A. I mean, not at the moment. When they got in the car and started talking, yes.

Q. Well, when they came out of the woods was they all covered with masks and what-have-you?

A. Yes, sir.

Q. And when did he take off the mask?

A. When they got off Sam Edwards.

Q. He didn't take off his mask until he got in the car?

A. No, sir, because I noticed that there were some people outside.

Q. There were people outside?

A. Yes, sir.

Q. What people were outside?

A. Two guys that live on that road.

Q. A fellow with dreadlocks?

A. Yes, sir.

Q. Mr. Davis?

A. Yes, sir.

Q. He could see everything that was

happening out there, couldn't he?

A. Yes, sir.

Q. Mr. Davis could see you in the car?

A. Yes, sir.

Q. Okay. Now, you knew about the Cricket store, didn't you?

A. No, sir.

Q. You'd never been in the Cricket store before?

A. Oh, yeah, I'd been in it before.

Q. You were a customer of the Cricket store, weren't you?

A. No, I wasn't a customer.

Q. You weren't a customer?

A. No, sir.

Q. What did you go in the Cricket store for?

A. I used to go in there to pay my little brother's phone bill, and my older brother's. They had accounts with Cricket.

Q. So your little brother was a customer of the Cricket store?

A. Yes, sir.

Q. You said that the gun was under the armrest in the back seat?

A. Yes, sir.

Q. Then it somehow got mysteriously under your seat?

A. Yes, sir.

Q. Okay. You didn't put it under there?

A. No, sir.

Q. And the armrest where you see the money, that was up, wasn't it, at the time of the stop?

A. No, sir.

Q. It was just open and the money was just kind of laying there for everybody to see?

A. Yes, sir. They were trying to close it.

Q. They tired to close it?

A. (Affirmative nod).

Q. So we're very sure -- we understand that the armrest was open like it was there, right?

A. Yes, sir.

Q. There is no confusion about that?

A. No, sir.

Q. So at the time that you got out of

the car, you could look in the back seat and see that money in there, couldn't you?

A. No, sir.

Q. You couldn't?

A. (No verbal response).

Q. Why not?

A. I mean, when I got out of the car, I didn't look. But when we got pulled over -- I took a glance back when he said the heat car was behind us, and the armrest was open with the money in it and the gun was underneath.

Q. So how many times had you been in the Cricket store before?

A. I wouldn't remember.

Q. You don't remember?

A. (Negative gesture).

Q. As a practical matter, it's real convenient ---

A. Not that much, sir.

Q. You paid your brother's phone bill, what? At least a half a dozen times?

A. No, sir.

Q. At least one time?

A. Yes, sir.

Q. Did you pay it with a check?

A. No, sir.

Q. Did you pay it with cash?

A. Yes, sir.

Q. You walked in and gave the man cash or the lady cash, ---

A. Yes, sir.

Q. --- they'd give you a receipt and change?

A. Yes, sir

Q. And you'd stand there at the service counter and you'd see how it worked?

A. You could say that. Yes, sir.

Q. I can't say that because I wasn't there. I haven't been to the Cricket store. But you have, haven't you?

A. Yeah. Yes, sir.

Q. Now, let's talk about the jail that evening on the 15th when you were there.

A. Okay.

Q. Try to explain to the jury how these holding cells are laid out.

A. Okay. Like where you are, there's a desk there. Then this side across from the desk, over here, there's holding cells.

That evening when they put me in the holding cell, they had someone on the bench and they had someone on the bench and they had someone in the cell next to me. They opened my cell door when one of the other guys went out, when Coakley and Graddick was up there. So, like I said, when they was at the desk -- the guards weren't really doing their job, they were walking off, so that gave them a chance to talk to me.

Q. The guards weren't paying attention?

A. No, sir.

Q. The man doing the paperwork wasn't paying attention?

A. No, sir.

Q. And y'all just had this big 'ole conversation just right there about how you were going to fool the State?

A. It was no conversation.

Q. No conversation?

A. No, it was like -- you know, he wasn't really saying nothing. It was like I was reading his lips.

Q. All right. So what you're saying then to the jury is that Mr. Coakley never

told you what to say or not to say?

A. Yes, sir.

Q. He just kinda looked at you?

A. No, he told me what to say.

Q. Well, did he tell you what to say or did he just look at you?

A. Let me explain. You know, after we -- you know, after the processing, that's when you get to go use the phones. So when we got to the phone side, I sat by him and he told me -- he was, like, he said, 'yeah, lie and tell them that y'all picked me up from Jamie's house, I was lifting weight.'

That's when I told him, 'I cannot lie for you. If you were lifting weight, how were you in the car? How did you get arrested?

Q. So there was nobody by the phones?

A. No, sir.

Q. They just turned codefendants loose to go over and use the phone?

A. Basically, (affirmative nod).

Q. Basically?

A. (Affirmative nod).

Q. Now, what time of the evening was this? Roughly? If you know.

A. In the jailhouse?
Q. Yeah.
A. It probably was night. Nighttime. I don't recall what time.
Q. You hadn't had your medicine, had you?
A. No, sir.
Q. You weren't confused at that time by your blood sugar going down, were you?
A. No, sir.
Q. Was your blood sugar going down or going up?
A. It hadn't been going anywhere because I -- I mean, I didn't eat. So you don't really do too much movement, you know.
Q. You didn't eat, but you went to McDonald's?
A. I didn't get the McDonald's, sir.
Q. You didn't get the McDonald's?
A. No, sir.
Q. So you had nothing to eat?
A. Nothing to eat.
Q. Nothing to eat from lunchtime?
A. Not from lunchtime, sir.
Q. And you didn't eat anything until

the next morning when you got the sumptuous breakfast that they serve at the jail; right?

A. No. Actually when we got to the jail, they gave us a bag lunch.

Q. When you got to the jail, they gave you a bag lunch?

A. Yes, sir.

Q. Did you get the bag lunch before or after the conversation with Mr. Coakley?

A. That was -- I don't recall. I can't remember.

Q. You're not confused this morning, are you?

A. No, sir.

Q. You've had your insulin today, right?

A. Yes, sir.

Q. Now, you were in the car with Mr. Smalls and you hadn't been in contact with Mr. Coakley since -- when? Since lunchtime?

A. You could say that, yes, sir.

Q. You hadn't seen them?

A. No.

Q. You hadn't spoken to him?

A. No, sir.

Q. No mention of him?

A. No, sir.

Q. And just all of a sudden, mysteriously, you ride with someone down Sam Edwards Road, in front of Mr. Davis', and you pick up Mr. Coakley and Mr. Graddick?

A. Yes, sir. Like I say, when I got in the car, the vehicle, I asked Mr. Smalls where were they. He said that they were home, getting ready because we were going to the mall. That was it.

Q. So actually, as a practical matter, you really shouldn't be charged with armed robbery, should you?

A. No, sir.

Q. Because you didn't know anything about it, did you?

A. No, sir.

Q. No one had discussed it with you, did they?

A. No, sir.

Q. As a matter of fact, when the blue lights came at the stop and the people told you to get out, "I didn't do anything." Right?

A. Yes, sir.

Q. So you really shouldn't be charged at all, should you?

A. No, sir.

Q. And you didn't even have time to call the police after you found out that something had happened, right?

A. Right.

Q. Because it was just a matter of minutes and there was the policeman behind you?

A. Right.

Q. Okay. So in this situation -- in this situation, you were totally innocent?

A. Yes, sir.

Q. And you don't expect that anything is going to be done for you?

A. No, sir.

WILLIAM RUNYON: I have nothing further for the witness at this time.

THE COURT: Very well. Cross examine, Mr. Smiley?

CROSS EXAMINATION

BY JIM SMILEY:

Q. Hey, Brian.

A. Hey.

Q. I'm Jim Smiley and I represent Kevin. You've known Kevin a pretty good while, right?

A. Yes, sir.

Q. Y'all are pretty close friends?

A. Yes, sir.

Q. All right. Kevin, he drove people around a good bit; didn't he?

A. Yes, sir.

Q. Because he had a car?

A. Yes, sir.

Q. He actually had two of them, didn't he?

A. Yes, sir.

Q. Kevin was always working, wasn't he?

A. Yes, sir.

Q. And he was going to school, too, wasn't he?

A. I don't know, sir.

Q. You didn't know that he was going to school as an auto mechanic?

A. No, sir.

Q. You hung out with Kevin a good bit, though?

A. Yes, sir.

Q. Let's be real clear as we get started. Kevin never said anything to you about being involved in an armed robbery, did he?

A. No, sir.

Q. When you were in front of -- when you were in the Walmart parking lot with Kevin and that robbery was going on in the Cricket phone store, you didn't go 'Oh, my gosh, that's got to be Graddick and Coakley'; did you?

A. No, sir.

Q. Did you know Jamie Coakley?

A. Yes, sir.

Q. You knew that he lived down at the end of Sam Edwards Road?

A. Yes, sir.

Q. You'd been there before?

A. I've never been to his house.

Q. Okay. But you knew that he lived down that road?

A. Yes, sir.

Q. That was like a Wednesday, right?

A. The day of the incident?

Q. Yeah.
A. I don't remember what day it was.
Q. But it wasn't a weekend, was it?
A. No, sir.
Q. It was a week day?
A. Yes, sir.
Q. And about -- that morning of the 15th, you were at your grandmama's house, where you lived?
A. Yes, sir.
Q. Let's start with the morning.
A. Yes, sir.
Q. Kevin came and picked you up?
A. Yes, sir.
Q. When he came and picked you up, it was just the two of you starting the day?
A. Yes, sir.
Q. Then later you went and picked up -- picked you up and then he picked up Keenan?
A. Yes, sir.
Q. Then he swung around and picked up Jarret?
A. Yes, sir.
Q. About what time do you think that would have been?

A. I don't really remember. It was years ago. I don't remember all the times.

Q. It was before lunchtime?

A. Yes, sir.

Q. So it was in the morning?

A. Um-humm, (affirmative nod).

Q. And the four of you drove out to Trident Tech, right?

A. Um-humm.

Q. That's where your day began, out that way?

A. Yes, sir.

Q. So the four of you walked around out there, just scoping out women if you could?

A. (Affirmative nod).

Q. Just sort of checking it out, right?

A. Yes, sir.

Q. About how long do you think that you were out there?

A. I would say maybe an hour.

Q. By then it'd gotten close to lunch, right?

A. Yes, sir.

Q. So it is your testimony that the four of you went to the Chinese restaurant?

A. Yes, sir.
Q. And you all four ate?
A. Yes, sir.
Q. You paid for yours?
A. Yes, sir.
Q. Kevin paid for his?
A. Yes, sir.
Q. And then after you made that -- during that time, all four of you are in the car and you didn't hear any discussion about an armed robbery; right?
A. Yes, sir.
Q. When you were driving around, you didn't hear any discussion about an armed robbery, did you?
A. It was a regular day.
Q. On a regular normal day, Kevin would pick y'all up and you would go places when he wasn't working. Right?
A. Yes, sir.
Q. Because y'all hang out together?
A. Yes, sir.
Q. You've known him since, gosh, middle school?
A. (Affirmative nod).

Q. So you all sort of grew up together, as buddies; right?

A. Right.

Q. Right?

A Yes, sir.

Q. When you got to -- after the four of you ate lunch, you went back to Kevin's house?

A. Yes, sir.

Q. Was there anybody else home at Kevin's house?

A. Yes, sir.

Q. So the four of y'all hung out there?

A. Yes, sir.

Q. And that's when you -- you felt like your sugar was getting high?

A. Yes, sir.

Q. How do you feel when your sugar gets high? The same way as when it gets low, or is it different?

A. No, it's different: When my sugar gets high, I can feel like tension, feel stiffness and like I am drying out inside, dehydration.

Q. It doesn't feel good?

A. (Negative gesture).

Q. Sort of like you have a bad headache all over?

A. (Affirmative nod).

Q. I am just trying to get -- I don't have diabetes, but I want to make sure that we understand.

A. Exactly.

Q. You weren't feeling good?

A. No, sir.

Q. All right. As a matter of fact, according to you, Kevin and Keenan were playing the ---

A. --- PlayStation.

Q. PlayStation, (affirmative nod). I was going to say X-Box. But PlayStation.

A. (Affirmative nod).

Q. And you asked Kevin if he would take you home?

A. Yes, sir.

Q. That's sort of what Kevin does, he drives people around a lot; doesn't he?

A. Yes, sir.

Q. So he took you to -- help he pronounce it, the road that you live on. I'm

bad with --

A. Yough Hall.

Q. "Yo"?

A. Yeah.

Q. Yough Hall?

A. (Affirmative nod).

Q. Yough Hall. It looks funny and I can't ever get it right. So he took you to Yough Hall?

A. (Affirmative nod).

Q. To get there, you go up on 17?

A. Yes, sir.

Q. You actually live pretty close to Keenan, don't you?

A. Yes, sir.

Q. And Jarret lives a little further away but you all live within a fairly close proximity to each other; right?

A. Yes, sir.

Q. So you got home midafternoon?

A. Probably.

Q. Because you had gone to lunch, you'd been at Kevin's for a bit and then you get to your house; right?

A. Yes, sir.

Q. So as soon as you got home, you took your insulin; right?

A. Yes, sir.

Q. Does it make you feel better immediately?

A. No, sir.

Q. It takes a little while?

A. Yes, sir.

Q. And after you take your insulin, you usually try to eat right after?

A. No, sir.

Q. No?

A. No, sir.

Q. See, I -- I'm not trying to trick you. I'm just trying to make sure that I understand. So it's not necessary to eat right after?

A. No, sir.

Q. I thought I'd hear testimony that you had to take your insulin right before you ate. I'm sorry.

A. No, sir.

Q. Okay. So you're hanging out at your house. Did Kevin tell you where he was going when he left?

A. Back home.

Q. Back home?

A. (Affirmative nod).

Q. At some point in time after that, you'd gotten home, gotten your insulin, and started feeling better, a little bit, and -- was it your sister that took you out to your brother's house?

A. Cousin.

Q. Your cousin, (affirmative nod). Excuse me. She drove you out to Ten Mile?

A. Right.

Q. Right?

A. Yes, sir.

Q. That's a pretty decent ways past Oakland Shopping Center; right?

A. (No verbal response).

Q. It's not close like the other places were. Right?

A. Right.

Q. And you said that your brother, Quinton, sold dogs?

A. Yes, sir.

Q. And that Kevin had bought a couple of dogs from him -- right?

A. Yes, sir.

Q. And that he owed Quinton. Right?

A. Yes, sir.

Q. So when y'all talked, he was like, 'Yeah, I will come get you because I've got to come out there anyway.' Right?

A. Right. Well, since he was coming over there, he paid my brother. He didn't have to come over there that day, but he -- you know, since 'I'm coming, I will pay him off today.'

Q. I gotcha. Since he was off and he was coming over to get you and he'd pay for the days. Right?

A. Yes, sir.

Q. You weren't working nowhere, were you?

A. (No verbal response).

Q. Were you working then?

A. Yes, sir.

Q. Where?

A. No, sir -- I don't remember. I can't remember.

Q. You don't believe that you were working at a job at that time?

A. I can't remember.

Q. You weren't working that day, for sure?

A. No.

Q. So he came out and paid your brother some money?

A. Yes, sir.

Q. And you got in the car with them?

A. Yes, sir.

Q. And you're thinking that this was about 5:00 o'clock in the afternoon by now?

A. No, sir.

Q. No?

A. It was still early. I'd say maybe around 4:00, maybe around 4:00.

Q. So about 4:00 o'clock, he picked you up?

A. (Affirmative nod).

JIM SMILEY: If I may beg the Court's indulgence.

THE COURT: Yes, sir.

CROSS EXAMINATION CONTINUED

BY JIM SMILEY:

Q. And it is your testimony that from there y'all went straight to the Oakland

Shopping Center

A. Yes, sir.

Q. And when Kevin came into Oakland and parked, he parked on the grocery side of Walmart.

A. Not exactly on the side but in the front -- where the little walkway is?

Q. Yeah.

A. Not in the parking lot.

Q. And he returned a Redbox movie?

A. Yes, sir.

Q. So you're saying that that happened somewhere after 4:00?

A. I can't remember exactly but it was probably somewhere around that time, because my brother's wife gets off at, I think, 4:30 or 5:00 o'clock.

Q. If I told you that the night that you gave the statement to Detective Byrd that you said that it was about 5:00-something when Kevin came to get you, would that be -- you aren't disputing that?

A. (No verbal response).

Q. It was 4:00 or 5:00, something like that?

A. (Affirmative nod), yes.

Q. So you get to the Oakland Shopping Center, he parks, he goes inside and returns a Redbox movie?

A. Yes, sir.

Q. Did he talk to the girl at that time? Do you know?

A. I don't know. I was in (sic) the phone (sic). I mean, I was on -- I was in the car. I was on my phone texting until he came out.

Q. All right. So he went into the Walmart and was in there for a bit?

A. (Affirmative nod).

Q. So he didn't see the girl?

A. (Negative gesture).

COURT REPORTER: Is that a "no"?

THE COURT: Was that a "no"?

WITNESS MYZCK: Oh, no, sir.

JIM SMILEY: We've got to say "yes" or "no" because ---

THE COURT: The court reporter needs to take down what you're saying. So it helps her know to know, when you say "yes" or "no."

WITNESS MAYZCK: Okay. Yes, sir.

THE COURT: Thank you.

CROSS EXAMINATION CONTINUED

BY JIM SMILEY:

Q. I do the same thing. I've got to learn how -- just like I talk on top of you, so we've got to do things slower for Ms. Garrison (court reporter). All right?

A. All right.

Q. So

THE COURT: To do things that makes it easier for her. She can handle the speed, but there's no need to make it difficult.

JIM SMILEY: Absolutely.

CROSS EXAMINATION CONTINUED

BY JIM SMILEY:

Q. You saw, you said, clothes in the back seat when you got picked up at your brother's house?

A. Yes, sir.

Q. You asked Kevin about that?

A. Yes, sir.

Q. It's your testimony that he said the fellows are at the house getting ready?

A. (Affirmative nod), to go to the mall.

Q. Did y'all go out to the mall occasionally?

A. No, sir.

Q. So that would have been unusual?

A. (No verbal response).

Q. That would have been a new thing, for the four of you to go out to the mall?

A. No, we've gone to the mall.

Q. That was a bad question. I'm sorry. The four of you had gone out to the mall before?

A. Yes, sir.

Q. You ride shotgun with Kevin a lot; right?

A. Yes, sir.

Q. Okay. And after you got there -- after he had gone into the Walmart -- first, you said that you wanted something to eat?

A. Yes, sir.

Q. And after he'd gone into the Walmart, you went inside the McDonald's?

A. Right.

Q. Not through the drive-through but inside; right?

A. Yes, sir.

Q. Then you had to come out and tell him that it was okay for him to come in, that the girl that worked there wasn't working then?

A. Yes, sir.

Q. And supposedly he got out and came in with you?

A. Yes, sir.

Q. You didn't have no money?

A. No, sir.

Q. You'd spent it all at lunch?

A. Yes, sir.

Q. Okay. So you ordered food, then was like 'hey, I need some money.' He did not have any money?

A. Yes, sir.

Q. So you sort of got stuck?

A. (Affirmative nod).

Q. That's a little embarrassing, right?

A. Yes, sir.

Q. Then you get back in the car and it's your testimony that y'all didn't leave but went back around to the Walmart parking lot, close to the strip of stores on that side; right?

A. Not right then.

Q. No?

A. Once we left the Walmart, we went to McDonald's, then we went back in the Walmart parking lot and that's when we pulled by the truck and he was texting.

Q. Okay.

A. That's ---

Q. Let me make sure that I understand this, so I am going to slow you down a little bit.

A. Okay.

Q. So you go back into the Walmart parking lot?

A. Yes, sir.

Q. And that's the part of Walmart that is on the grocery side, that you were in then?

A. It was basically around in the same area as when he took the Redbox in.

Q. Okay. And then he got out and went inside there, from there?

A. (No verbal response).

Q. To see the girl?

A. No, sir. He didn't go in and see

the girl at all. He was texting the female -- it was a female that he knew that worked there, and she was on her way to work. I guess he supposedly had gotten some money from her.

Q. Uh-huh.

A. And then he was texting the other girls that we met at C&W's about what type of liquor or get, some crabs and whatnot, ---

Q. Okay.

A. --- a movie.

Q. Okay. So he was going to buy crabs and liquor?

A. Yes, sir.

Q. So you thought that you were going to the liquor store next?

A. Yes, sir.

Q. Okay. So you pull around to that Walmart parking lot, the one that's over near the stores?

A. Um-humm.

Q. The strip of stores?

A. Yes, sir.

Q. And since he'd picked you up and had come back to the Oakland Plantation shopping

center, y'all hadn't left?

A. No, sir.

Q. Okay. And the latest that he would have picked you up was about 5:00'ish; right?

A. Yes, sir.

Q. And from Tasha Road, which is about ten miles over, it was maybe -- ten minutes, maybe?

A. Yes, sir.

Q. So you had been at the shopping center -- you got to the shopping center no later than 5:15, 5:20 or something like that?

A. Yes, sir.

Q. And Kevin didn't leave the shopping center with the red-and-black car, with you in it, until after the robbery?

A. Yes, sir.

Q. Okay. When you looked in the back seat and saw their clothes, you saw their cell phones too?

A. Right.

Q. They didn't have multiple cell phones?

A. (No verbal response).

Q. They each just had a cell phone?

A. That's right.

Q. The entire time that Kevin was with you in the car, he obviously did not talk to Jarret Graddick or Keenan Coakley because their phones were in the car and you were right next to them; right?

A. Correct. They were in the back seat.

Q. The phones were in the back seat?

A. Yes, sir.

Q. Before I forget, let me skip around a bit. I know that I am not going in order, but -- let's go to the jail, all right?

A. Yes, sir.

Q. You said that Keenan told you to lie, right?

A. Yes, sir.

Q. And Keenan also told you that Kevin was already cooperating with the police; right?

A. Yes, sir.

Q. Sort of like you did, right?

A. Yes, sir.

Q. That he was already telling them things?

A. Yes, sir.

Q. Sort of like you did, right?

A. Yes, sir.

Q. And he told you a lie, to tell a lie about ---

A. Yes, sir.

Q. --- that they went to Jamie's to weight lift; right?

A. Yes, sir.

Q. And you knew -- did you know that Keenan and Jarret was friends with Jamie?

A. Yes, sir.

Q. So it wouldn't be unusual for them to go to Jamie's house, would it?

A. No, sir.

Q. And you know them that you ain't lying for anybody. Right?

A. Yes, sir.

Q. Then Jarret got a chance to talk to you, right?

A. Yes, sir.

Q. And he basically said, 'hey, buddy, I need you to help me out here. I need you to lie.'

A. Yes, sir.

Q. You told him the same thing?

A. Yes, sir.

Q. And Kevin was close by to you during those times, too, wasn't he?

A. No, sir.

Q. He never had an opportunity to look at you or talk to you?

A. No, sir.

Q. All right. So he wasn't an opportunity to say, 'hey, I'm telling the truth' or anything like that to you; was he?

A. No, sir.

Q. All right. Get to Sam Edwards Road back then, you had to go a little past it and do a U-turn to go into Sam Edwards Road

A. Yes, sir, then.

Q. And it's changed now?

A. (Affirmative nod).

Q. Okay. And, so Kevin after he left the Walmart pulled in Sam Edwards and drove back towards Jamie's house; right?

A. Yes, sir.

Q. Jamie's is back in the back, isn't it?

A. I don't know where he lives.

Q. All right. Fair enough. Went down, turned around, didn't see anybody, didn't see Keenan or Jarret at that point in time.

A. (No verbal response).

Q. Turned around and came back up the road, right?

A. Yes, sir.

Q. Then he stopped the car because he saw them?

A. Yes, sir.

Q. And you at that point noticed two guys, Jarret and thingamajig -- excuse me, Mr. Coakley -- coming out of the woods?

A. Yes, sir.

Q. Was something on their face, the register till and the whole thing?

A. Yes, sir.

Q. At that time you knew that something was up?

A. Yes, sir.

Q. Right.

A. Yes, sir.

Q. You might have thought about stuff before but that's when you got worried, right?

A. Yes, sir.

Q. They quickly got in the car?

A. Yes, sir, by the time we stopped they'd jumped in the car.

Q. So there wasn't a chance for Kevin -- there wasn't an opportunity to Kevin to say, 'I don't want you in my car'? As soon as that car stopped, they were in the car?

A. Yes, sir.

Q. And then they said, "Go, Go, Go!" right?

A. Yes, sir.

Q. You weren't feeling good about things right then, were you?

A. No, sir.

Q. It was sort of a bad situation once they got in the car but you didn't know what to do; right?

A. Yes, sir.

Q. Did you want to go home?

A. Yes, sir.

Q. So you get up there and he takes a right, does a U-turn at Porchers Bluff, that light there?

A. Yes, sir.

Q. And when he turned around and started going, he was like 'there's a cop behind us.'

A. As we approached the light, as they was saying 'take Clements Ferry', I said, 'Well, y'all can drop me off at the gas station. I'll get out and walk home.'

Q. I gotcha.

A. That's when we got pulled, that when he said that the heat car was behind us.

Q. All right. When the lights come on it was boom, boom, boom, boom, boom.

A. Yes, sir.

Q. Kevin didn't try to drive off anywhere, did he?

A. No, sir.

Q. You're sitting next to him and when that PA system said to put your hands up, you and Kevin both ---

A. Yes, sir.

Q. --- boom (demonstrating hands up); right?

A. Yes, sir.

Q. And that's when you heard the stuff, felt and saw the movement in the back seat?

A. As we were driving, I saw movement in the back.

Q. I gotcha. And so at that point you've got your hands up and Kevin has got his hands up, hasn't he?

A. Yes, sir.

Q. Kevin isn't saying anything, is he?

A. No, sir.

Q. He's sort of like you, like 'what in the world is going on?' Right?

A. (No verbal response).

Q. He sort of had that look on his face?

A. Yes, sir.

Q. He followed what the police said when they said to turn off the car. Right?

A. Yes, sir.

Q. Now, the fellows in the back were going "Go", right?

A. Yes, sir.

Q. As a matter of fact, I think you said -- and I ant to make sure that I am clear on this -- that you saw Keenan pointing a gun at Kevin; right?

A. Yes, sir.

Q. Like, "Go" with a gun in his back?

A. Yes, sir.

Q. He didn't know, though (indicating Defendant Kevin Smalls)?

A. I don't think Kevin did, (negative gesture).

Q. He didn't know that there was a gun at his back?

A. No, sir.

Q. Kevin got out of the car and then you saw the money and all that stuff; right?

A. Yes, sir.

Q. Okay. Now, they took you back out to the scene that night. Right?

A. Correct.

Q. Because you were in custody, it was not you chose to go out there. You didn't get to choose to go out there, because you were in custody; right?

A. Yes, sir.

Q. Now, that tray, the cash tray, it was in a ditch across from Mr. Davis' house, basically, where that cut is?

A. Yes, sir.

Q. It wasn't down at the end of the

road?

A. No, sir.

Q. And the cut that you saw them come out of is right across from Mr. Davis' house?

A. Yes, sir.

Q. And Mr. Davis' house is sort of in the middle of that street?

A. Yes, sir.

Q. It's a pretty decent way down to the end where that fence is, right?

A. No, sir.

Q. About a hundred yards?

A. It's not that far from the beginning of the road, maybe like three houses down.

Q. Okay. Three houses down from where y'all were?

A. Well, from the beginning of the road -- the head of the road.

Q. Okay. Gotcha. It's not unusual for Kevin to drop somebody off and come back and then come back to pick them up, is it?

A. No, sir.

Q. He's done that for you, hasn't he?

A. Yes, sir.

Q. So it is not unusual, is it?

A. No. Not if there is gas money involved.

Q. I know. He'll take you somewhere for gas money, right?

A. Yes, sir.

Q. But my point is, if you say, 'Hey, can you take me to my brother's house and then pick me up in a couple hours?' If he's off that day and you give him some gas money, he'll say 'sure.

A. Yes, sir.

Q. Now, I know that you are charged with armed robbery and I know that you feel like you probably shouldn't be. Right?

A. Yes, sir.

Q. While you haven't been promised anything, you don't expect to go on trial for armed robbery, do you?

A. No, sir.

Q. No, sir. 'Actually you're hoping and you're expecting that you're not going to have to plead guilty to armed robbery?'

A. Yes, sir.

Q. You're expecting that by cooperating, coming in here and testifying,

that when this is all over with that you won't be convicted of armed robbery?

A. No, sir.

Q. That is your expectation, isn't it?

A. No, sir.

Q. Do you expect to appear and get convicted?

A. Oh, no, sir.

Q. Okay. I just wanted to make sure we're -- okay. It was probably a bad question. So you don't expect to get convicted of armed robbery, do you?

A. No, sir.

Q. All right.

JIM SMILEY: I beg the court's indulgence.

THE COURT: Certainly.

JIM SMILEY: No further questions.

THE COURT: Redirect?

SOLICITOR SHEALY: Yes, sir. Thank you, Your Honor.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. SHEALY:

Q. Mr. Mazyck, I just have a few follow

up questions. Pulling up State's Exhibit 28 again, one of the defense attorneys asked you about that shirt in the back seat that has a cartoon.

A. Yes, ma'am.

Q. Could you tell the jury whether or not that was in the car when Brian Mazyck (sic) first picked you up?

A. Uh, --

Q. First picked you up -- sorry, that's not very clear. When he picked you up from your brother's house?

A. Yes, ma'am.

Q. And also one of the gentlemen asked you about the shirts that were over there face. Do you remember what color the shirts were that were over the face of Mr. Graddick and Mr. Coakley?

A. No. I think that one was khaki and one was black. I don't know who had on what.

Q. Who had what?

A. Who had on what.

Q. Okay. But you remember seeing a khaki shirt at some point?

A. Yes, ma'am.

Q. They've asked you a lot about what you expect. When you're testifying, you're hoping that I am going to help you out. Is that right?

A. Yes, ma'am.

Q. Okay. Now, tell the jury, though, whether I have promised you anything at any point?

A. She hasn't.

Q. When you -- when they were asking you about two older charges, one in 2006 and one in 2009 that were dismissed, have you and I ever talked about those two cases?

A. No, ma'am.

Q. Did I ever indicate to you that I would drop these if you helped me in this case?

A. No, ma'am.

Q. In fact, when you came to meet with me the first time, you signed an agreement, did you not?

A. Yes.

SOLICITOR SHEALY: If I could have this marked for ID.

THE COURT: Sure.

COURT REPORTER: It will be State's Exhibit 114 for identification.

THE COURT: ID Only.

(SO MARKED AS STATE'S 114 - ID ONLY)

REDICRECT EXAMINATION CONTINUED

SOLICITOR SHEALY:

Q. I am showing you what has been marked as State's Exhibit 14 (sic) and ask if you can identify that?

A. (Reviewing).

Q. Go ahead and flip through to the back page, as well.

A. (Upon review), yes.

Q. I think you've got one more page.

A. (Upon review), Yes, ma'am.

Q. Okay. Could you tell the jury whether or not that is the document that you signed when you agreed to cooperate with the State?

A: Yes, ma'am.

Q. Is your signature on the back page of that document?

A: Yes, ma'am.

Q. Would you tell the jury, please, the date of that document?

A. It is August 20th, 2012.
Q. 2012?
A. (Affirmative nod).
Q. Mr. Smiley was asking you about what time everything happened.
A. Yes, ma'am.
Q. Do you remember the exact times of everything that happened that day?
A. Not the exact times.
Q. Okay. You remember that it was sometime near the time that your brother's girlfriend or wife would be getting off work?
A. Yes, ma'am.
Q. And she got off work at what time?
A. I believe 5:30.
Q. Okay. Had you seen her get home by the time that Mr. Smalls picked you up?
A. No, ma'am.
Q. So she hadn't made it home from work?
A. No, ma'am.
SOLICITOR SHEALY: I beg the court's indulgence just a moment.
THE COURT: Certainly. Take your time.
SOLICITOR SHEALY: Okay.

REDIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Again regarding the questions that you were asked about what happened between Mr. Graddick, Mr. Coakley and you at the jail, it was on that day -- the next day -- that you told Sergeant Simmons about that, correct?

A. Yes, ma'am.

Q. And that would have been September 16th?

A. Yes, ma'am.

SOLICITOR SHEALY: I have no further questions. Thank you.

THE COURT: Recross?

ANDREW GRIMES: Yes, Your Honor. Just a few questions.

THE COURT: Sure.

RECROSS EXAMINATION

BY ANDREW GRIMES:

Q. Mr. Mazyck, I just want to ask you a few questions about some of the things that these other attorneys may have asked you about. I think you told Mr. Runyon that you were -- that's you've been to that Sprint

(sic) store several times? I believe that it was a Cricket store.

A. A couple.

Q. And you knew the general procedure there of how they took money, where they kept the money?

A. No, sir.

Q. But you went there and you'd paid bills there?

A. Yes, sir.

Q. Do you know Mr. Davis?

A. Yes, sir.

Q. And he knows you?

A. Yes, sir.

Q. And you know the cuts, you've been through those cuts before.

A. Uh, -- a couple of times, yes, sir.

Q. And I believe that you said that you don't recall if you were working at this time?

A. I don't recall.

Q. You couldn't afford to pay for your meal at McDonald's that day, could you?

A. No, sir.

Q. You talked about your brother named

Clinton?

A. Yes, sir.

Q. And you have another brother, Kelvin?

A. Yes, sir.

Q. He is kinda tall?

A. No, sir.

Q. Is he taller or shorter than you?

A. About the same height.

Q. And you haven't said anything about where he was that day, have you?

A. No, sir.

ANDREW GRIMES: May I have one moment, Your Honor?

THE COURT: Yes, sir.

ANDREW GRIMES: (Sidebar with Mr. Kowelski), -- thank you, Judge.

THE COURT: Recross?

WILLIAM RUNYON: Briefly.

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY WILLIAM RUNYON:

Q. You rode with Mr. Smalls quite a bit, didn't you?

A. Yes, sir

Q. Because he gave you rides?

A. (Affirmative nod).

Q. I believe that you testified to that.

A. (Affirmative nod).

Q. And it was not unusual for him to pick up and drop off people, was it?

A. No, sir.

Q. But that afternoon, from the time that you all got back together after you went home, the only two people that you're saying that he picked up were Mr. Coakley and Mr. Graddick?

A. Yes, sir.

Q. He didn't pick up anybody else?

A. No, sir.

Q. No, sir?

A. No, sir.

Q. And on August 20th, 2012, you signed the agreement?

A. Yes, sir

Q. That is when you decided what the truth was going to be in this case?

A. No, sir.

Q. When did you decide what the truth

Was going to be in this case?

A. The day of the arrest.

Q. The day of the arrest?

A. Yes, sir.

Q. And as a practical matter, you have no explanation for how Mr. Smalls communicated with Mr. Graddick or Mr. Coakley that afternoon, would you?

A. No, sir

Q. You have no explanation for why he would have gone down Sam Edwards Road to pick up somebody?

A. No, sir.

Q. Nobody every explained that to you?

A. No, sir

Q. And you don't expect any rewards?

A. No, sir.

Q. Because you're totally innocent?

A. Yes, sir.

WILLIAM RUNYON: No further questions.

THE COURT: Mr. Smiley? Recross?

JIM SMILEY: Thank you, Your Honor.

THE COURT: Yes, sir.

RECROSS EXAMINATION

BY JIM SMILEY:

Q. Now, your statement to the police the next day, you said that Kevin came and got you about 5:00 o'clock; correct?

A. I am not quire sure.

Q. If I showed you your statement, would it refresh your memory?

A. Yes, sir.

Q. Let me get it for you. Okay?

A. Yes, sir.

JIM SMILEY: If I could mark this.

COURT REPORTER: Defendant Small's Exhibit 1 for identification.

JIM SMILEY: For identification only.

(SO ENTERED AS DEFENDANT SMALLS 1)

THE COURT: Defendant Smalls' Exhibit 1 for identification only.

JIM SMILEY: Thank you.

RECROSS EXAMINATION CONTINUED

BY JIM SMILEY:

Q. (Tendering); I am going to show you what has been marked as Defendant Smalls Exhibit 1, for ID purposes only and ask if you recognize that?

A. (No verbal response).

Q. Is that your statement?

A. Yes, sir.

Q. I'll give you a chance to read that first page -- or all of it if you need to, to refresh your memory about what time that you told the police the day of that Kevin came out to pick you up.

A. (Reviewing).

Q. I direct your attention to the first line.

A. I said that it was about 5:00-something that day.

Q. Okay. Does that refresh your memory?

A. Yes, sir.

Q. Okay. And I think that you testified when I was asking you questions that you thought that his wife got off at 4:30. But it could have been maybe 5:30?

A. No, I'd say 4:00-something to 5:30 be home.

Q. So she could have gotten off as early as 4:30 or as late as 5:30?

A. (Affirmative nod).

Q. Okay. When you left --

A. Yes, sir.

Q. -- with Kevin from your brother's house, she wasn't at home yet?

A. No, sir.

JIM SMILEY: That's all that I have.

THE COURT: Thank you, sir. You may step down.

(WITNESS STEPS DOWN)

THE COURT: Any objection to this witness being excused?

SOLICITOR SHEALY: No, sir.

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: No objection from Defendant Coakley.

THE COURT: Mr. Smiley?

JIM SMILEY: No, sir.

THE COURT: You are free to leave.

SOLICITOR SHEALY: Beg the Court's indulgence just one moment.

THE COURT: Oka.

SOLICITOR SHEALY: Your Honor, at this time we would call Sara Lippi.

THE COURT: Okay. How long do you anticipate this testimony to be?

SOLICITOR SHEALY: Like two minutes.

THE COURT: That's fine. Given the

hour, I just wanted to check so we have a timeline for --

SOLICITOR SHEALY: Yes, sir. Very brief.

(WITNESS TAKES STAND)

SOLICITOR SHEALY: (Tenders documents to be marked as exhibits).

COURT REPORTER: These will be marked as State's Exhibits 112 and 113.

SARA LIPPI, having been sworn to tell the truth, and nothing but the truth, testified as follows.

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Ms. Lippi, would you please tell the jury where you are employed?

A. Charleston County Clerk of Court.

Q. And where is your office located?

A. Just downstairs on the first floor.

Q. Okay. Just a few minutes ago, did you get a request from my investigator to pull the status chain forms regarding Brian Mazyck ---

A. I did.

Q. --- signed by Jennifer Shealy?

A. Yes.

Q. In fact, did you provide those to us?

A. Yes.

Q. Showing you what has been marked as State's Exhibits 112 and 113, I ask if that is what you provided me with?

A. (Upon review), yes.

SOLICITOR SHEALY: Your Honor, at this time I would move these into evidence without objection.

THE COURT: State's Exhibit 112 and 113 are admitted, without objection.

(SO ENTERED AS STATE'S EXHIBIT 112)

(SO ENTERED AS STATE'S EXHIBIT 113)

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Ms. Lippi, if you would, regarding State's Exhibit 112, could you tell the jury the Indictment number?

A. It's 2006-GS-10-1169.

Q. What does this form reflect? Does it reflect when the charge was *nol prossed*?

A. It does.

Q. And does that in essence mean dismissed?

A. Not prosecuted, yes.

Q. Tell the jury, please, what the date of that was -- that I signed it?

A. The date it was signed was September 9th, 2011.

Q. Regarding State's Exhibit 113, similarly, would you tell us the Indictment number?

A. Indictment number is 2009-GS-10-04112.

Q. When was that signed by me?

A. This was signed October 13th, 2011.

Q. 2011?

A. (Affirmative nod).

Q. And these pieces of paper reflect that those two charges were dismissed by my office?

A. Yes.

Q. By me individually?

A. Yes.

Q. Okay.

SOLICITOR SHEALY: I have no further questions.

THE COURT: Cross examine? Any questions?

ANDREW GRIMES: I have no questions, Your Honor.

THE COURT: Mr. Runyon?

WILLIAM RUNYON: Thank you.

CROSS EXAMINATION

BY WILLIAM RUNYON:

Q. Ms. Lippi, you really have no idea why you were asked to bring those papers up. Right?

A. No, sir.

WILLIAM RUNYON: No further questions, Judge.

THE COURT: Mr. Smiley?

JIM SMILEY: Nothing, Your Honor.

THE COURT: Thank you. Any redirect?

SOLICITOR SHEALY: No, sir.

THE COURT: Thank you, you may step down.

(WITNESS STEPS DOWN)

THE COURT: At this point we will recess or do you have another witness to call?

SOLICITOR SHEALY: We have a brief chain witness.

THE COURT: That's fine. Proceed.

Ms. Sheely, you indicated that you wanted to make further argument concerning the issue of the Motion by Mr. Runyon for a mistrial.

SOLICITOR SHEALY: Yes, Your Honor. Is there any way that I could have over the lunch hour to look at the case law that we have pulled.

THE COURT: Let me go ahead and rule then. I appreciate it.

I've done some research during the examination as well. There are two cases that I find interesting on the issue, both of which deal with the fact that the error, if it is, is harmless. But I am not even sure that it is error in this case because -- there's nothing in the testimony that suggest any type of conviction, first of all. He could have been in jail for traffic violation(s), Family Court, could have been anything under the sun. We don't know. So it is very, very vague. The Court, in one of the cases, noted vagueness of the testimony.

State v. Thompson at 352 South Carolina 552, the Court of Appeals 2003.

State v. Singleton, 284 South Carolina

398, a 1985 case. That one was Judge Moore's, a death penalty case. The Court found the error to be harmless, considering all the other efforts.

But one of the factors that we have here is that he simply said 'I am not going back.' It was a motivation factor, but he didn't move this car forward.

It also goes, and I have to -- this is something that I was thinking about as I heard more testimony. It has significant probative value as to Mr. Smalls' involvement in this case. That he is saying -- and therefore it lends some credibility to his statement that, 'I want out of here. You need to go, because I've got some involvement though you may not.'

There are all sorts of inferences that can be drawn from the statement.

Furthermore, and this is noted in the Thompson case and in several cases cited in the Thompson case, the State never attempted to prove any other prior bad acts concerning this defendant. The only mention is from this person.

And we go back then to the original objection of hearsay. He's here to be challenged. I understand that you don't challenge him on the statement. I wouldn't either.

The record is protected because, obviously, there's post-conviction relief cases that I've read that failure to raise that issue creates a potential problem. So that's preserved for -- not that you did it for that reason. You did it because, as you said in your Motion, you believe that there is undue prejudice.

I don't think that the prejudice is that significant, if there is prejudice. Certainly it's not -- it doesn't change or in any way, I think, render this an unfair proceeding, overly, from the standpoint of violating Mr. Coakley's situation.

For those reasons, I decline your Motion.

Certainly there is a case -- notwithstanding your request, I could cure it with a curative instruction. But given the fact that it is a matter that you don't want the jury to hear, that you didn't want the jury

to hear in the first place, I believe that a curative instruction would be -- first of all, it would be inconsistent with what I just said. So I will stand by that. It will rise or fall on that basis, unless the State demands a curative instruction.

I will allow you to look at it over lunch, should you consider it to be an error. There are cases where, notwithstanding your strenuous objection to it, went and ahead and granted it -- went ahead and gave a curative instruction. The Court in review said that it corrected the wrong. So -- (pause).

WILLIAM RUNYON: Judge, I am not arguing with that. I'd never argue with the Court.

THE COURT: No, you can certainly -- that's my -- I am now at the point where you can supplement or further argue your position.

WILLIAM RUNYON: As a practical matter -- I haven't read too many hand's decisions but a curative instruction and -- and I would vigorously suggest to the Court that if the State suggests it and the Court considers it,

that it not be done. It merely would reinforce what -- frankly we could, in all candor to the Court, you know, it could get lost in this morass of exhibits, what-have you. But if you're going to give a curative instruction, it'd just reinforce it.

THE COURT: You've stated precisely what has been observed, was observed by Judge Moore and observed by Judge -- in fact, my classmate and colleague -- Tommy Cooper in trying the *Thompson* case. It was just an incidental comment that was -- granted, it was repeated. It was a single mention in that. I mentioned to you that that was my concern.

But, again, it was -- the witness who is not a sophisticated witness is not -- you have law enforcement and -- in I think both cases. I know that there was in the *Thompson* case because there was talk about warrants. That was the suggestion, that he had other warrants, which certainly talks about -- that suggests a crime. We don't even know if this was a crime. It could have been a civil matter. It could have been anything. It

could have been, 'I just don't want to go to jail', period.

The statement itself, I don't believe rises to the level required for a mistrial. So I am denying your Motion on that basis. The rationale for my allowing the testimony, I think that I have fully stated that. Thank you.

SOLICITOR SHEALY: Your Honor, one scheduling matter that I want to see how you want to handle it. When we get back, we will finish up with her (Yarbrough), I can read the two stipulations into the record and then we will need a minute to test up the Skype.

THE COURT: Why don't we do this? Let's -- you can't have the Skype set up and then ready to go?

SOLICITOR SHEALY: I don't know.

THE COURT: Well, let's look at that.

SOLICITOR SHEALY: I think that they were putting it on the podium. I don't know if that makes a big difference but ---

THE COURT: It doesn't bother me that it's on the podium but we -- we'll take a break or whatever we have to do.

the Mount Pleasant Police Department began to inventory the red and black Impala while it was parked in the Seel's parking lot. He began by moving the seat divider in the back seat. He moved it from the Up position to the Down position. When he did so, currency spilled into the seat. He advised his supervisor and he decision was made to wait for crime scene tech Ray Haupt to arrive to inventory the car.

(Reading):

The attorneys for the State and the defendants agree that appropriate measures took place in transporting evidence, and that Exhibits 60, 62, and Item 76 through 101 while at the South Carolina Law Enforcement Division, the exhibits were not tampered with.

THE COURT: Okay.

SOLICITOR SHEALY: We would call Paul Meen.

THE COURT: The Stipulations will be Court's Exhibits 1 and 2?

(SO ENTERED AS COURT'S EXHIBIT 1)

(SO ENTERED AS COURT'S EXHIBIT 2)

THE COURT: You may call your next witness, Solicitor.

SOLICITOR SHEALY: The State calls Paul Meeh.

(WITNESS TAKES STAND)

PAUL MEEH, having been sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. Mr. Meeh, if you would, please tell the jury where you are currently employed?

A. I am currently employed at SLED in Columbia as a forensic scientist in the DNA department.

Q. Tell us about your educational background.

A. I got my bachelors degree in 2001 from the University of South Carolina in Biology. In 2003, I got my masters in molecular biology. I was doing Ph.D. work there for three years, but I was hired away by SLED. I guess that was in 2007.

Then I did a year and a half of training inside of SLED to learn their procedures and

protocols for DNA processing. Since then, I been working with SLED as a DNA analyst on my own as a forensic scientist.

Q. How long have you been working at SLED in that capacity?

A. Six years now, six and a half years.

Q. During that six to six and a half year period, do you continue to get training?

A. I do. Of course, annually we have to keep up on our training. Every year.

Q. Have you ever been asked to testify in court before?

A. I have.

Q. Have you qualified as an expert previously?

A. Yes.

SOLICITOR SHEALY: Your Honor, at this time we would offer Mr. Meeh as an expert in the field of DNA analyst.

THE COURT: Do you care to examine him as to his qualifications?

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: No questions from Defendant Coakley.

JIM SMILEY: No, sir.

THE COURT: Very well, he will be permitted to render opinions in that area.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Mr. Meeh, if we could start by your giving the jury a brief explanation of what DNA is.

A. DNA is how you inherit all of your traits from your parents. You get half from your father and half from your mother. It is in every cell in your body except your red blood cells.

It is unique to you. That's what is important about it for our purposes, is that each person has their own. Except for twins. Those are the only people who share DNA. Theirs would look exactly the same in testing. But our, those who do not have a twin, it would look completely than anyone else.

It allows us to see who has touched things, who has left body fluids, things like that.

Q. My next question was going to be, how do you find DNA from people if it is not

currently on their body?

A. Well, there is ---

Q. There are various ways that people can leave their DNA behind?

A. Sure. So a -- a really common way is body fluids. That is sort of the serology portion of what we do, to identify body fluids: saliva, semen, blood, those things.

In this case I was asked to do touch DNA, which is a little bit different. It is the skin cells off your body that are constantly shedding. The dust in your house is made up mostly of shed skin cells. So, you know, it's pretty common for your shirts or anything that you've touched, leave a pen at the bank or something like that, it's going to have skin cells on it.

Q. When examining for DNA, what is the role of having buccal swabs?

A. Buccal swabs Sam serve as a standard. That's a known standard.

So if we were to generate a DNA profile, say off of this pointer, we could tell who has touched that pointer in the past only by comparing it to known standards from each

person. That's the cheek -- the cheek cells in your mouth are called buccal epithelial cells. You just take a little swab, a sterile cotton swab, and isolate DNA from those. Then we can compare that profile to what we generate from evidence and say 'is it possible that this person, whoever we got the buccal swab from, contribution to this instrument or item?'

Q. Okay. And then you're given swabs to make the comparison with the buccal swabs?

A. Correct.

Q. Okay. In this case, showing you what's been previously marked as State's Exhibits 76, 77, 78 and 79, could you tell the jury whether those are the buccal swabs that you were provided with.

A. Well, you can see -- most importantly -- first, you can see that my initials are on there, so I've worked with these in the past. So, yeah.

It's labeled buccal swab and then it's got someone's name. Each one would have an individual's name that would tell me, you know, who to assign to that standard. It's

also got the numbers on the outside and I have to cross check the names with the number. If we had the wrong standard, obviously that be an incorrect analysis.

Q. Showing you State's Exhibit 61 and 68, could you tell the jury whether or not these were swabs provided to you from evidence?

A. Again, I see my initials on the packaging. So, yes, I would say that I worked with these.

Q. Okay. Then showing ---

A. If I might just double check them.

Q. Sure.

A. (Upon review), yes. I worked with these.

Q. I am going to show you a handful, just to try to make things move smoothly

A. Okay.

Q. Showing you what has been previously marked as State's Exhibits 82 through 96 and 93, and 95 through 101, I ask you whether or not you were provided with these?

A. (Upon review), yes. I would have received these from Betty Butler. I see her

initials on these. She was the evidence processing person that would generate and give me these for comparison.

Q. Now, tell the jury what you do once you have buccal swabs and once you have swabs generated either by law enforcement or by SLED personnel.

A. The first thing that we do is isolate DNA. To give an example, there were some swabs from the trigger of a gun. We take that swab, we put it some specials solutions and get the DNA We quantify and we amplify that so that we can see it on the instrumentation. The only way that we can see it is that we make many copies of it.

Once we see that on the instrumentation, then we have to work with the buccal swabs. It is important to keep those things in two different areas and keep them in sequence. You don't want to work with the buccal swabs, your standards, before you work with evidence because it could contaminate -- make it possible to contaminate. Especially with touch DNA because touch DNA is -- there is not very much of it. Usually we are working

with smaller amounts, so you have to be careful.

The A to B strategy is just to isolate the DNA, amplify it and view it on the instrumentation.

Q. Okay. And regarding the analyses that you did in this case, did you prepare actually two reports?

A. I did. There were some extra samples sent in later on, so I did a supplemental report.

Q. Okay. Focusing your attention on your earlier report, that being January 22nd, 2013, could you explain to the jury your findings by telling us what item that you were looking at, comparing to the buccal swabs?

A. Yes. No problem. There were several items submitted -- many items, actually.

There were some swabs from a trigger, like I mentioned.

There was a swab from the handle of a handgun.

Some swabs from plastic gloves.

Some swabs from t-shirts.

And also some debris from a t-shirt. To there were a number of swabs submitted for comparison with four buccal swabs.

Q. Regarding the debris from the t-shirt, did that have any human DNA?

A. No, it didn't.

Q. Of the items that I have given you, I have not given you the debris.

A. Okay.

Q. So if you could, take those items one by one for us and tell us your conclusions.

A. Item 14.1 would be the first. That is a swab from a t-shirt. The DNA ---

Q. I'm sorry. Item what?

A. Item 14.1 -- would you like for me to go in numerical order or the order that they were reported on the report.

Q. On the report.

A. Okay. So Items 14.1 is the first one and that's a swab from a t-shirt.

Q. Wait, I just need to double check that with you. Which report are you looking at?

A. The January 22nd, 2013.

Q. Okay. If you could just go down your list.

A. Sure. If I could have something to check them off.

Q. You mean a pen?

A. Yes.

Q. Oh, sure, (tenders pen to witness).

A. Beginning with number five. That was the partial DNA profile developed from Item 5 -- see, that's the trouble, because it is an "also matches", we've got a little bit of trouble here.

The first Item 14.1 was a match. In that case, I can give a stat.,

Item 5 is an "also matches", so -- I'll just have to clear that up in a minute.

Q. Okay. Well, handle it however you wish to handle it if you'll just reference the SLED number for me.

A. I just don't want the "also matches" to be confused ---

Q. Okay.

A. The partial DNA profile developed from Item 5 also matches the DNA profile of

Jarret Graddick. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately one in ninety-six thousand (1 in 96,000).

Q. Okay. Could you tell us what that swab is from?

A. That was a swab from the trigger and trigger guard of a Glock handgun.

Q. Okay.

A. Moving on, Item 6 did not contain any DNA. That was a swab from the handle of the Glock handgun.

Item 7.1 is a mixture of at least -- or the DNA profile developed from Item 7.1 is a mixture of at least two individuals. Kevin Smalls, Keenan Coakley, Jarret Graddick and Brian Mazyck are excluded as possible contributors to that mixture.

Q. Okay. Again, that was from what type of evidence?

A. Item 7.1 is a plastic glove.

Q. Okay. If you will, explain what you mean by a mixture of two people but that the other four were excluded.

A. Right. The DNA profile is developed from standards, the buccal swabs from the cheek. There is only one person -- and you only have two alleles at each location; you could only have, because you get one from your mother and one from your father.

We know sometimes that there is a mixture, that multiple people have touched a glove or multiple people touched the steering wheel on a car. You'd get three, or more, alleles at each of those locations. So you know that more than one person has contributed to that.

So whenever you have to go in and -- it changes the way that you calculate the statistics, number one. And you have to compare those buccals to -- the buccal swab controls -- to those mixtures.

That was Item 7.1

Item 7.2, I did not develop a profile form Item 7.2.

Q. What does that mean when you say 'I did not develop a profile'?

A. We may have gotten some DNA but it was just too little to work with or it just

didn't generate enough data for us to compare to the standard -- or to any data at all in that example.

Item 8.1, also a swab from a plastic glove, the DNA profile developed was a mixture of at least two individuals. Keenan Coakley could not be excluded as a possible contributor to the mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in eighty (one in 80).

Q. What does that mean?

A. That's to say -- that is how sure we are that someone could or could not have contributed to this mixture. When we compare the buccal swabs, we have to measure how confident that we are that that person could or could not have contributed.

What a stat of one in eighty means is that you were to go out into the general population, go to the mall or go anywhere in a city, and just recruit people and do this same testing, you would have to test approximately -- you'd hypothesize that you

would have to test eighty people until you found someone who could have contributed to that mixture on Item 8.1 -- so that's -- in our business, that is not a very strong stat. We test so many locations that we get very, very big stats usually. So this one is not that confident. I'll show one later that we super confident of.

Q. Okay. 8.2?

A. Item 8.2, no human DNA was detected on Item 8.2, which was a swab from a plastic glove.

Q. Okay. Then 9.1?

A. Item 9.1, the DNA profile is that it was a mixture of at least three individuals. So this had one more individual.

Jarret Graddick cannot be excluded as a possible contributor to this mixture. The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in six (1 in 6). So that's a low stat. One in six, that would be -- you know, several people in this courtroom probably could have contributed to that one. That

was 9.1?

Q. Yes. And 9.2? Well, regarding 9.1, Mr. Coakley, Mr. Mazyck and Mr. Smalls, were they excluded?

A. They were excluded. Correct.

Q. Okay.

A. Item 9.2 is the mixture of at least two individuals.

Jarret Graddick cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is one in seventy-six thousand (1 in 76,000).

Keenan Coakley, Kevin Smalls and Brian Mazyck are excluded as possible contributors.

That was 9.2, one in seventy-six thousand on that one.

Q. That also was a swab from a plastic glove?

A. Yes.

Q. 10.1?

A. That was also a mixture of at least two individuals.

Keenan Coakley cannot be excluded as a

possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in twenty (1 in 20).

Kevin Smalls, Jarret Graddick and Brian Mazyck are excluded as possible contributors to 10.1 and ---

Q. Okay.

A. Okay.

Q. Then 10.2, that was a swab from what?

A. A plastic glove also.

Q. Would you tell the jury your findings on that one?

A. The DNA profile developed from Item 10.2 matches the DNA profile of Keenan Coakley. The probability of randomly selecting an unrelated individual having a DNA profile matching this item is approximately one in two hundred and forty quadrillion (1 in 240,000,000,000,000). So that's a much better stat. That one you can be very confident in.

Q. Okay. And 11.1?

A. Item 11.1, the partial DNA profile developed from Item 11.1 is insufficient for reliable interpretation.

Q. What does that mean?

A. That means it generated a few alleles, it generated a few spots as far as the data goes but it just -- there wasn't enough that you could be confident in any kind of measurement. You don't want to -- you don't want to try to make measurement on too small a data. It gets messy, it doesn't work well.

Q. Okay, that was 11.1. And 11.2?

A. The DNA profile developed from Item 11.2 is a mixture of at least two individuals.

No conclusive statement an be made as to the inclusion or exclusion of Keenan Coakley as a possible contributor to this item.

Kevin Smalls, Jarret Graddick and Brian Mazyck are excluded as possible contributors.

Q. Explain to the jury, if you would, how three people can be excluded and one person there can be no conclusive results.

A. The way that you are excluded on a

mixture is -- when your alleles specifically don't compare at a location where there is full representation. So if we have a location that has everything that we are looking for as far as this mixture goes, we think we know how people were there, we think we can tell -- that you've got everyone who was going to contribute, at that location. If your alleles aren't present, then you are excluded. Let's say that you have a thirty-one (31) and there is no thirty-one at this location -- it's got twenty-five, twenty-six, twenty-seven, twenty-eight, -- that means that you're excluded. You did not contribute to the mixture.

But "no conclusive statement", which is also in this result, means that at some places you were there, at some places you weren't and we can't put any weight behind it and we can't measure it, so I -- you're unwilling to commit to someone being excluded or not at that point.

Q. Okay. And -- then Item 12.1, being a swab from a plastic glove?

A. Item 12.1 is a mixture of at least

two individuals.

Keenan Coakley cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in two hundred eighty (1 in 280).

No conclusive statement can be made as to the inclusion or exclusion of Jarret Graddick as a possible contributor to this mixture.

Kevin Smalls and Brian Mazyck are excluded as possible contributors.

Q. Item 12.2, being a swab from a plastic glove?

A. Is a mixture of at least three individuals.

Keenan Coakley cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in two (1 in 2).

No conclusive statement can be made as to the inclusion or exclusion of Jarret Graddick

as a possible contributor.

Kevin Smalls and Brian Mazyck are excluded.

SOLICITOR SHEALY: I beg the Court's indulgence just a moment.

THE COURT: Yes, ma'am.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR FERGUSON:

Q. We are now on 13.1 -- tell us first, if you would, where that swab came from.

A. Item 13.1 is a swab from a t-shirt.

Q. What were the results of that.

A. The DNA profile developed from Item 13.1 is a mixture of at least two individuals.

Keenan Coakley cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in ninety (1 in 90).

Kevin Smalls, Jarret Graddick and Brian Mazyck are excluded as possible contributors.

Q. So not Graddick, not Smalls and not Mazyck but Coakley cannot be excluded?

A. Correct.

Q. Okay. Now tell us about Item 14.1, a swab from a t-shirt.

A. The DNA profile developed from Item 14.1 is a mixture of at least two individuals. The DNA profile of the major contributor to this mixtures matches the profile of Jarret Graddick.

The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this item is one in one hundred and ninety quadrillion (1 in 1990,000,0000,000,000,000).

Kevin Smalls, Keenan Coakley and Brian Mazyck are excluded as possible minor contributors to this mixture.

Q. Okay. Then that's the conclusion of the first set of items that you analyzed; is that correct

A. Yeah. Yes.

Q. After analyzing them, do you then memorialize it into a report?

A. (No verbal response).

Q: That we talked about earlier?

A. Yes.

Q. And that has your conclusion and a list of the items that you'd received?

A. Correct.

Q. Could you give us the date of your next analysis?

A. It was May 31st of 2013. That's the report date of the supplemental report.

Q. Okay. If you would, please, go over what your analyses included that day.

A. Five more items were submitted for analysis. They were swabs from a black shirt, a swab from a blue shirt, a swab from black knit pants with a belt -- or pants, no knit. Excuse me. Pants with a belt. Swabs from the plastic gloves from the sleeves of the blue shirt. That's 18.1 and 19.1, same description, both swabs from plastic gloves.

Q. Okay. If you would, go over item by item what your conclusions were that day.

A. Item 15.1 is a swab from a black shirt. The DNA profile developed from Item 15.1 is a mixture of at least two individuals.

The DNA profile of the major contributor to this mixture matches the profile of Jarret.

Graddick.

The probability of randomly selecting an unrelated individual having a DNA profile matching the major contributor to this item is approximately one in four point four quintillion (1 in 4,400,000,000,000,000,000,000).

Brian Mazyck, Keenan Coakley and Kevin Smalls are excluded as possible contributors to this mixture.

Q. Okay.

A. Item ---

Q. The terminology that you used for the shirt is that it was a match as to Graddick? Given that percentage.

A. To the major contributor. Sometimes in a mixture if one person -- if one person contributes much more DNA than another, then -- let's say that someone contributes ten times the amount of DNA of the other, it stands out on our data and you can pick out who that major contributor is.

In this case, Item 15.1 was that way.

Q. Item 16.1?

A. That is a swab from a blue shirt.

The DNA profile developed from Item 16.1 is a mixture of at least three individuals.

Jarret Graddick cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in a hundred and sixty thousand (1 in 160,000).

No conclusive statement can be made as to the inclusion or exclusive of Kevin Smalls as a possible contributor to this mixture.

Keenan Coakley and Brian Mazyck are excluded as possible contributor.

Q. Item 17.1? That is a swab from the black pants with belt.

A. The DNA profile developed from 17.1 is a mixture of at least three individuals.

Jarret Graddick cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is one in twelve (1 in 12).

Kevin Smalls, Keenan Coakley and Brian

Mazyck are excluded as possible contributors.

Q. And 18.1? A swab from the plastic glove found in the left sleeve of a blue shirt and black shirt.

A. The profile developed from Item 18.1 is a mixture of at least two individuals.

Jarret Graddick cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could have contributed to this mixture is approximately one in twelve hundred (1 in 1,200).

Kevin Smalls, Keenan Coakley and Brian Mazyck are excluded.

Q. 19.1?

A. The DNA profile developed from Item 19.1 is a mixture of at least three individuals.

Jarret Graddick cannot be excluded as a possible contributor to this mixture.

The probability of randomly selecting an unrelated individual who could contributed to this mixture is approximately one in two hundred and twenty thousand (1 in 220,000).

Kevin Smalls, Keenan Coakley and Brian

Mazyck are excluded as possible contributors.

Q. And, if you could, again for the jury, define what the term "match" means?

A. A match is when at a certain position your alleles, what you got from your mother and father matches what was on the evidence, vice-versa.

Our reports have just numbers in them. It is just a table of numbers. If your numbers match what is on the evidence, then you were a match. That can be at every position and you'd get a big stat, like that two hundred and sixty quadrillion or whatever stat that I mentioned. If you match at every position you will get a massive stat like that. The less positions you match at, the stat decreases with each position. Each one is an individual test.

So if you match at every position, you get a huge stat. If you don't match at every position you get a small stat or you are excluded.

Q. That table that you were talking about, is that included in your report?

A. It is, on both.

Q. I'm going to ask you regarding your report dated January 22nd, is this an accurate copy of that report?

A. (Upon review), yes, it is.

SOLICITOR SHEALY: Your Honor, I would offer it into evidence at this time.

THE COURT: What is the exhibit number?

SOLICITOR SHEALY: I have not marked this one.

COURT REPORTER: State's Exhibit 111.

SOLICITOR SHEALY: I believe without objection.

ANDREW GRIMES: No objection, Your Honor.

WILLIAM RUNYON: No objection, Your Honor.

JIM SMILEY: No objection.

THE COURT: Without objection, State's Exhibit 111 is admitted.

(SO ENTERED AS STATE'S EXHIBIT 111)

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. Then also I show you this and ask if that is an accurate copy of your report? That was dated, what?

A. May 31st. Yes, it is.

SOLICITOR SHEALY: And, Your Honor, if I could offer this as State's Exhibit 112.

COURT REPORTER: State's Exhibit 110.

SOLICITOR SHEALY: Okay, 110.

COURT REPORTER: We are backing up to use the numbers that were skipping during the premarking of exhibits.

SOLICITOR SHEALY: Right.

THE COURT: State's Exhibit 110 is admitted without objection.

(SO ENTERED AS STATE'S EXHIBIT 110)

SOLICITOR SHEALY: Beg the Court's indulgence just a moment.

THE COURT: All right.

DIRECT EXAMINATION CONTINUED

BY SOLICITOR SHEALY:

Q. And you -- thank you, Mr. Meeh. I have no further questions.

A. You're welcome.

SOLICITOR SHEALY: No further questions. Please answer any questions that the defense counsel has.

THE COURT: You may cross examine, Mr. Grimes?

ANDREW GRIMES: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. GRIMES:

Q. Good afternoon, Mr. Meeh.

A. Good afternoon.

Q. Bear with me a little bit. I am sure that you will correct me if I am wrong on something. Now, I believe that you stated earlier that only identical twins have the same DNA.

A. Correct.

Q. That is true when a hundred percent of the DNA is analyzed. Correct?

I don't believe that be true for twins, no. There are small areas that have single nuclei repeats that would randomly change and I think that there would small differences even in twins. The way that we test, it wouldn't be different.

Q. All right. In a forensics situation that we have here, I think that it is SLED's protocol that they analyze fifteen loci. Is that correct?

A. Correct.

Q. And that fifteen represent less than

one percent of cellular DNA; correct?

A. Much less than one percent. It's tiny, the amount that we test.

Q. And I want to ask you a couple of things about maybe the underlying science or maybe the background for that. There are two subspecialities that are incorporated for forensic analysis for DNA, correct?

A. Correct.

Q. There are molecular genetics and population genetics?

A. Correct.

Q. Molecular genetics incorporates the actual laboratory work leading to the generation of the DNA profile?

A. Correct.

Q. And once there is the so-called match between a suspect's profile and the DNA that is collected, you have to do a statistical analysis as to how many people in the world match that evidentiary material?

A. Correct.

Q. And the need for population genetics analyze a hundred percent of the DNA?

A. (No verbal response).

Q. Because you can never be a hundred percent certain that that a particular individual matches the individual sample.

A. Correct.

Q. And the DNA technology used in this case is called polymer-based chain reaction?

A. Not exactly. Polymerized-based chain reaction is the underlying science behind what we do, but this testing is called STR testing, short tandem repeat testing.

Q. Okay. Help me on that a little bit. Is that kind of where you take copies and keep repeating ---

A. Yes, that's the amplification. What you refer to polymerase chain reactions, that's the amplification. So you can't see, you can't visualize DNA, you can't measure it unless you amplify it.

Q. And that's very sensitive technology that allows DNA testing, just a few cells; isn't it?

A. Correct, it's very sensitive.

Q. And obviously because of the sensitivity, you wear gloves when you're working in the laboratory?

A. Correct.

Q. Because you don't want to leave your DNA on the sample?

A. That's correct.

Q. And you don't want to transfer someone else's samples?

A. Absolutely.

Q. How often do you change gloves while you are working on ---

A. Very frequently. As best we can, we maintain an antiseptic technician. I mean, we try to keep everything clean. I mean, we try to make sure that there is separation between cases, clean in between each case and we have to document that we cleaned in between each case. So very often.

Q. That's because the DNA technology that you use in testing could incorporation any DNA testing that was -- or any DNA that was left over, or was in the area?

A. It could.

Q. I want to ask you about mixed samples. Mixed samples is when you find DNA profiles of more than one person on a

particular sample?

A. Correct.

Q. For example, the pointer that you talked about, you -- if every witness used it, there might be more than one DNA sample on there?

A. Correct.

Q. From that, you couldn't tell who touched it first or who touched it last.

A. No. That's correct.

Q. Or how long they touched it for?

A. Correct.

Q. In this case you found -- there were several DNA samples that had mixed samples; correct?

A. Correct. Yeah, there were many.

Q. And the DNA results in this case do not indicate the order in which DNA was placed on the sample, does it?

A. Correct.

Q. They don't indicate who last wore a shirt, for example?

A. That's correct.

Q. I want to ask you about Item 15.1, the black shirt?

A. A DNA mixture was found on that item, correct?

A. Correct.

Q. And the DNA sample doesn't indicate that Mr. Graddick wore or touched that shirt, does it?

A. (No verbal response).

Q. Excuse me. Does it indicate when Mr. Graddick touched or wore that shirt?

A. Yeah, no. There is no way that it could ever tell me when someone did something. Right.

Q. Same for Item 16.1?

A. Correct. It was a mixture. I also couldn't tell at what time it would have been worn by anyone.

Q. Okay. Now, I want to ask you, in addition to the buccal swabs that you collect, SLED keeps a data base of DNA; doesn't it?

A. Yes.

Q. That's what they call CODIS?

A. Correct.

Q. So it's not unusual if you have a sexual assault case, an unknown suspect, if

you get a DNA sample from the suspect, you can run it through CODIS and find out who the person was, if they are in the system; right?

A. Right.

Q. Do you know if any of the DNA that was run here match anybody? Was it ran through CODIS?

A. No, it wouldn't have been. I would have been the person to put it into CODIS.

Q. Some of these questions -- give me a couple of minutes here, that may save some time.

A. I can extrapolate on my last answer, too, if you don't mind, while you are doing that.

Q. Sir?

A. I can go further on my last answer. I was thinking why nothing was put into CODIS. We have limitations on what we can and can't put in. It has to be directly attributable to the crime. It has to be directly attributable to a suspect. So, say a subject broke into your house and left a t-shirt there and you could definitively say that wasn't your shirt, then -- and law

enforcement gathered it from there, that could go into CODIS. But certain things can't go into there. We have limitation on what we can and can't put it. So that's probably ---

Q. Now, I want to ask you a little bit about population genetics for a minute. You said that it indicated on Item 9.1 --

A. Sir? What was that number, please?

Q. Item 9.1, one in six individuals.

A. Yeah.

Q. That could amount to tens of thousand of people in South Carolina; correct?

A. Yeah. That's not a strong stat at all.

Q. Now, I asked you a little about the gun, the trigger and trigger guard. I think that is Item 5.

A. Yes.

Q. That contained a mixed DNA sample, correct?

A. Item 5?

Q. Yes.

A. (Upon review), it's a partial DNA

profile but not a mixture.

Q. So an example, when you talked about Item 14.1 you used DNA profile of Item 5 -- it was a partial DNA profile. What is the difference between that and ---

A. Between a partial and a mixture?

Q. (Affirmative nod).

A. A partial is when there is just not that much DNA there and you missed some of the spots that you're testing, because some of the spots are larger -- that is one thing that happens. Some of the places that we test are larger than others. So they will be longer. It's more difficult to get them resolved just because they are larger. You know, when the DNA degrades from nature, sun and weather, the bigger ones go first. So a lot of times what we will see is that the smaller ones at the beginning of this positions will test. That's where we get our stat from.

We actually have a new technology now. It's called mini fiber. It's a smaller one. It's a system based on amplification, so we can test things that are degraded. This case

would probably have benefitted from that.

Q. So if something is out in the sun and weather it's possible that it could degrade?

A. That's right.

Q. And if it was found in the car, found by the police right, you wouldn't have had any degradation, probably?

A. Well, yeah, but it depends on how they stored it too. It depends on what the conditions were in the car. Was it summer? How long had it been in the car? All those factors. Humidity. So everything you can imagine degrades DNA. Nothing is really good for it once it is on something.

Q. All right. Not like a park where it may stay out there for billions of years; right?

A. Well, no. You know, that's funny. We just got DNA from a scientific community, got DNA from three hundred thousand year old people.

Q. Okay. So under the right circumstances, DNA could be hundreds of thousands of years old?

A. It can be.

Q. Since DNA on the gun is consistent with Mr. Graddick, it seemed like less than half the loci analyzed in this case. Right?

A. Yean, that's the drop that I was talking about. As you can see in the table, for item five a statistic would have to be generated just for the ones reported there.

Q. That's why it's called a partial profile?

A. Correct. That's also why that number is less. You can see the statistic on that one, for item five, is one in ninety-six thousand (1 in 96,000) as opposed to the one in one hundred ninety quadrillion for the others.

Q. Let me ask you a couple of other questions. Just because you touch something, that doesn't mean that you always leave your DNA on it; correct?

A. Yeah. You don't have to leave DNA.

Q. So in your expert opinion, if someone held the gun to someone and said "Go, Go, Go!", would you expect to find their DNA on the gun?

A. It's possible. You know, it's really hit and miss with touch DNA. What you find is that some people really shed their DNA, they put it onto everything and you can find it very easily. Some people just don't seem to shed at all. You can test their clothing, you can test their steering wheel in their car and it's like they never touched it. It's amazing. Touch DNA is very finicky about these things.

Q. And in your experience, say someone is in a car and they always ride around with someone who gives rides to them, they go and see girls and they leave clothes in there, could it leave touch DNA on their clothes.

A. Yes, certainly.

Q. Just laying there?

A. Yeah.

Q. Even though they never wore the clothes?

A. It's possible. The places that we test, we try to avoid some of that with the scraping of the neck band or the armpits or something that would hopefully rub on the person's skin more of the person who was

wearing it.

But, frankly, almost all clothing that I have ever done is a mixture, at least. I've never done -- even my own clothing when I was doing training. I don't let anyone borrow my clothing but it was a mixture. So -- I don't know. But I'd be the major, usually.

Q. Now, you didn't find any DNA on the Glock handle, did you?

A. That was Item 6?

Q. I believe so.

A. That's correct, I did not.

Q. And if someone -- never mind, I think that you have already answered that question. You don't know if Mr. Graddick used a gun during that robbery or not, do you?

A. No.

Q. There is no way that DNA could tell you that?

A. It could not.

Q. And it can't tell you anything about the circumstances of how his DNA got on the gun, can it?

A. It could not.

ANDREW GRIMES: May I have a moment, Your Honor?

THE COURT: Yes.

ANDREW GRIMES: Thank you, (sidebar with Mr. Kowelski). Thank you, Mr. Meeh.

THE COURT: Cross examine, Mr. Runyon.

CROSS EXAMINATION

BY WILLIAM RUNYON:

Q. Good afternoon, sir.

A. Good afternoon.

Q. I am going to try not to be too redundant of my friend, Mr. Grimes. I hope that my questions are not too simplistic. Fifty-three years ago I spent three torturous semesters to get two credits in -- semester credits for freshman biology.

A. I understand completely.

Q. Okay?

A. Yeah.

Q. Now, as I understand your testimony, you're just testifying there were some items that you tested where Keenan Coakley could not be excluded as having contributed or come into contact with that item?

A. That's a fair assessment. Some he

came into contact with, yes.

Q. I am dumbing it down for me.

A. Okay.

Q. If I make it too dumb, you correct me?

A. Sure.

Q. Now, -- as you told Mr. Grimes, you can't say when someone touched?

A. Correct, I could never say when.

Q. But someone was obviously -- strike that. One of the nightmares for you to test DNA would be if someone -- if someone took a family's dirty clothes hamper and said, 'Test the DNA on these clothes.' You would get all sorts of mixtures, wouldn't you?

A. You would.

Q. Possibly?

A. Yes.

Q. Depending on how they shed? Some members of the family shed, some members of the family don't. Things of that sort.

A. Correct.

Q. And then we can -- when you start comparing it to the buccal swab is when you start trying to get it narrowed down.

A. Correct.

Q. As it relates to those items that you excluded, say Keenan Coakley in this case, that doesn't necessarily mean that he did not come in contact with those items; isn't that correct?

A. It doesn't mean that, no.

Q. It just means that there is no DNA there.

A. It just means of the DNA tested -- it could mean that -- it could mean that there was no DNA there or it could mean that of the DNA that was tested that he didn't submit any of that for that item.

Q. And as it relates to Item -- and you said that you can't tell when it was placed on the, say the shirt or the belt or whatever, ---

A. Correct.

Q. And, so, uh, -- now, I was interested in the fact that some of these items that you tested, some of these samples that you tested, showed multiple contributors. Is that correct, sir?

A. Yes, sir.

Q. Of those multiple contributors, of course if you didn't have a buccal swab, you couldn't identify them.

A. That's right. That's how you identify them is using that standard.

Q. So on the items that had multiple contributors without buccal swabs, is there any way -- strike that. Again, you've got to bear with me.

A. Take your time.

Q. I am not as erudite as my friend, Mr. Grimes. As it relates to multiple contributors, that likewise doesn't mean -- that likewise doesn't indicate when those contributors made that contribution to that item?

A. Right. I could never tell when anyone contributed DNA to an item.

Q. Could you go back and review your report, sir?

A. Which one?

Q. The two reports.

A. Yes, sir?

Q. Tell me how many items there were that had multiple contributors in this case?

A. Oh, gosh. I'm going to go to the table to count them, (reviewing). On the first report, dated January 22nd, that one appears to have ten items of multiple contributors. On the second report, it appears to have five. I would approximate fifteen, total.

Q. So you have fifteen multiple contributors who -- for which we don't know who they are? Or you didn't have a sample, a buccal swab?

A. Correct.

WILLIAM RUNYON: No further questions, Your Honor.

THE COURT: Mr. Smiley?

JIM SMILEY: Very quickly.

CROSS EXAMINATION

BY JIM SMILEY:

Q. You talk about your probabilities, you say that's a good match, then what number does it move to where you think that it is a match?

A. Yeah, you -- that's a good question. You feel more confident the higher it gets, obviously. So you start to feel -- I mean,

one in two, one in six, that is not very good. You can't put a lot of weight on that. Uh, one in twelve, again, it is not that good. But when you get to one in a hundred, if you think about what that means, that eliminates ninety-nine percent of the people. So you start to feel pretty good then.

You get one to one thousand, that eliminates ninety-nine point nine percent and you start to feel really good.

If you have one of those quadrillion, quintillion, you are extremely confident at that point. No worries at all.

Q. But you concede that it is a probability?

A. Correct.

Q. Let's use one in a thousand and you say that there is one in a thousand chances -- I'm sorry, I am Jim Smiley and I represent Kevin Smalls.

A. Good to meet you.

Q. Just want to be sure that you know who I am talking about.

A. Yes, sir.

Q. But when you get one in a thousand,

that doesn't mean that it is that person. Even when you've got a nine hundred and ninety-nine point nine percent chance, it could be somebody ---

A. It never means that it is that person, correct.

Q. You are only looking at fifteen places on the DNA, right?

A. Yeah, and that's not exactly what limits it. What you can't tell is, especially with a partial profile or something, what you're saying in the stat if that if you were to go out in the population and just select random people, it would take you approximately a thousand. What you don't know is if you've got -- you could select them first, you could select them second. It could be at any one of those positions of a thousand. It's just an approximation of how sure you are.

Q. Okay. DNA, by its very nature, is the excluder; right?

A. Right, it's strong in both directions. Yeah.

Q. I guess what I'm saying about that

— you exclude an individual, you've saying that it isn't him, definitely?

A. Yes, it's very strong in that regard. It's very strong in that regard, yes.

Q. Okay. We will leave it at that one. As to Kevin Smalls, only, it comes back and says that he is a possible. I don't know if -- let me correct myself.

In your second report, I believe that it is Item 16.1, ---

A. That was that no conclusive statement would be made as to the inclusion or exclusion. That's even weaker than a weak stat. That's not even a one in two. That means as you go position by position that it is a mixture and that there is nothing there that definitely says 'no, it is not him.' But -- you can't — you couldn't ever make a measurement, so you couldn't put any weight behind that statement, to say that he wouldn't be included.

Q. So at the end of the scale, we've got Excluded.

A. Right.

Q. And I think the biggest number that you got in this one is quintrillion or quintillion or ---

A. Right.

Q. A really big number, that's like the most positive that you can get.

A. Right.

Q. Well, the -- let me choose the right words here. The "not conclusive" is right next to the "excluded".

A. It really is. Right.

Q. And, so, -- all right. By the way, you did a great job. I understood DNA today.

A. Thank you. Excuse my voice. I've been sick.

Q. I've been so lost in DNA before, so I really do appreciate it.

JIM SMILEY: Your Honor, that's all that I have got.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY SOLICITOR SHEALY:

Q. There were questions asked of you, Mr. Meeh, about multiple contributors.

A. (Affirmative nod).

Q. Could you tell the jury whether or not it is unusual to find multiple contributors on items of evidence?

A. It is not at all unusual to find multiple contributors. Items of clothing are almost always multiple contributors. I don't know why.

SOLICITOR SHEALY: Thank you, Your Honor. I have no further questions.

THE COURT: Recross?

ANDREW GRIMES: No questions, Your Honor.

THE COURT: Recross?

WILLIAM RUNYON: No questions.

THE COURT: Recross?

JIM SMILEY: No, sir.

THE COURT: Mr. Meeh, thank you very much. You may step down.

(WITNESS STEPS DOWN)

THE COURT: Is there any objection to this witness being excused?

SOLICITOR SHEALY: No objection.

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: No objection, Your Honor.

JIM SMILEY: No objection.

THE COURT: Hearing none, you are also free to leave, sir.

THE COURT: Any additional witnesses?

SOLICITOR SHEALY: No, sir, Your Honor. At this time the State rests.

THE COURT: Very well. There are matters of law now that I have to take up out of your presence. It's good timing for us to take a break.

I will let you go to your jury room. Please do not begin your deliberations. Do not discuss the case among yourselves. We will be with you as quickly as possible. Thank you.

(JURY OUT @ 3:45 P.M.)

THE COURT: Any Motions from the State at this point?

SOLICITOR SHEALY: No, Your Honor.

THE COURT; Mr. Grimes?

ANDREW GRIMES: Thank you, Your Honor. On behalf of Jarret Graddick we respectfully move for a directed verdict. I believe that the evidence is sufficient to establish that he was involved in the robbery. The State

has a circumstantial case and there is no evidence that there was an actual armed robbery, because Mr. Blain and Ms. Harlee were outside the store at the time and the robbery wasn't necessarily viewed. The property wasn't under immediate control, so therefore it would be more larceny than armed robbery. Thank you, Your Honor.

THE COURT: Considering the evidence in the light most favorable to the State, there is substantial circumstantial evidence to suggest his involvement. The fact that they were not in the store, that they had ran for their safety, which probably makes it more one of the strongest things, that they were in fear. They did a prudent and practical thing, went and called the police. They protected themselves and said, 'take it.' They proceeded to take it. So I disagree with you wholeheartedly that all the evidence does not reflect an armed robbery. But, thank you. Mr. Runyon?

WILLIAM RUNYON: Your Honor, I would move for a directed verdict at this point on behalf of Keenan Coakley. I move for that on

the grounds that at this point in time -- and I realize that there was testimony of Mr. Mazyck that Mr. Coakley came out of the woods, that that is circumstantial. But at this point in time we don't think that the circumstantial evidence rises to the level that requires the court to place the burden on the jury. We'd ask the Court to direct a verdict of not guilty.

Prior to the Court ruling on that, anticipating the Court's ruling, I -- and I don't mean to be pessimistic about that, but at this point in time I'd renew my Motion for a mistrial, Judge, based on the statements previously discussed on the record. I would suggest to the Court that, yes, it could be harmless error with one statement. But the State proceeded to elicit the statement from their witness, on more than one occasion. So therefore, we would respectfully renewed our Motion for mistrial on the grounds previously stated on the record, Judge.

THE COURT: Again, I want -- because you have stated something that we were in agreement on, we disagreed on what I said we

were to do. But we were in agreement that it was so remote that it may be, I think you said, succumbed by all the other evidence -- or something to that effect, that is would be lost in the shuffle, so to speak.

I would be happy to -- I don't believe that it is error, but out of an abundance of caution, if persist in it being in error, I will be delighted to give, over your objection, an instruction that they are to disregard that in its entirety. There's a case that has been cited over and over again and the Court has said that if there is error, the Court by giving that instruction believes the jury will follow that instruction to the T. I will be delighted to do that, if that's what you wish me to do.

WILLIAM RUNYON: Judge, you know I'm not going to ask you to do that.

THE COURT: I understand. Thank you, sir. In fact, I don't think you want me to do that.

WILLIAM RUNYON: You're absolutely right, Judge.

THE COURT: The State's position is

still the same? I don't think it's error, frankly.

SOLICITOR SHEALY: I don't either, Your Honor. We are not asking for a curative.

THE COURT: Thank you very much. I do respectfully deny your Motion. Obviously -- the obvious thing is, of course, the involvement of everybody being present, the stop with all the items being found, all ties in with the timing of everything. It's substantial circumstantial evidence. I respectfully deny your Motion as to those two, because they were the ones in the back seat moving around and doing things -- allegedly.

JIM SMILEY: Your Honor, on behalf of Mr. Smalls, I also would move for a directed verdict, Your Honor.

Looking at the evidence in the light most favorable to the State, they are relying on the hand of one is the hand of all to establish that my client's involvement; which shows that they had to present some evidence of a preplan or that they were acting in concert, Your Honor. I don't believe that

there has been any direct evidence, at all, as to a preplan or acting in concert. We have mere presence, at the most. I think that -- I don't have the case law but I think that it must rise above mere presence to get to the jury.

My client, from the facts presented, may be guilty of another crime but I don't believe that it rises to armed robbery in this case even when looking at it in the light most favorable to the State. Therefore, I would make a Motion for a directed verdict on those basis.

While standing, I will renew the objection that I made -- I am not going to go back into the details ---

THE COURT: About the juror?

JIM SMILEY: Yes, sir. That's all that I have.

THE COURT: And the Court continues -- the alternate, I think is proper under the law as we have it and I am not concerned.

Without the testimony of Mr. Mazyck, we probably have enough. But Mr. Mazyck's testimony is quite interesting, because he

provided additional circumstantial evidence from which the jury could infer.

Let me state that I found it extremely unusual. His presence there was to shop, allegedly. Then he was sitting there and he said that he was scooted down in the seat. I think that this was after the visit to McDonald's. The visit to McDonald's is something that I find extremely interesting. As I recall Mr. Mazyck, the conversation, and you can correct me, but I thought that he attributed it to what was going on -- the texting by Kevin Smalls about what the plans were for the evening. Something about getting some alcohol and that's why they went to the store, to get something for the evening. That's interesting because if you take his testimony, he went and ordered something form McDonald's at the insistence of Mr. Smalls, who was willing to buy him something at McDonald's, yet when he came to ask for the money he said, 'I don't have any money.' Well, how in the world do you plan on buying any alcohol for a party? Without money? So clearly there is an abundance of

evidence that logically connects as being there for something other than what is suggested of just taking somebody for a ride. We really don't know what it is at this stage.

Given that, given the testimony of the witness who called in -- the citizen -- which was amazing, which is a credit to herself and, I think, a statement of society of being observant, of erring on the side of caution, not reaching any conclusions but looking at something and saying, 'this appears be out of the norm, I want to give this information.' Lo and behold, not only was her intuition correct but she was absolutely correct. Because we found, if the jury chooses to so conclude -- we ended up finding the cash box that supposedly came from the store in the location that, surprisingly, was attributed to the location of all four persons in the car. We find the money, which had the unique bill, in the car; which certainly would lead the jury to believe that the four people were there.

Now, I agree that they've got to prove

and I will charge it but from the standpoint of this, the court's perspective, -- I deny the Motion.

JIM SMILEY: Thank you, Your Honor.

THE COURT: Thank you so much. All right. Do you intend to offer witness?

ANDREW GRIMES: Yes, sir.

THE COURT: Are those witnesses present?

ANDREW GRIMES: Yes, sir.

THE COURT: And after that, does -- at this point, you're not held to it, but does Mr. Coakley intend to offer any additional witnesses?

WILLIAM RUNYON: Not at the point.

THE COURT: That's fine. You're not held to that. I understand that. That would be an assessment based on all the testimony and I understand that.

WILLIAM RUNYON: Yes, sir, based on the time, if we were, it wouldn't be before the first thing in the morning.

THE COURT: I don't know. I might want to go late and complete all the evidentiary portion. We'll see.

MR. KOWELSKI: Beg the Court's indulgence, (sidebar with Mr. Grimes). No, no further questions, Your Honor.

THE COURT: Thank you. You may come down, sir.

(WITNESS STEPS DOWN)

THE COURT: Any additional witnesses?

ANDREW GRIMES: No, sir, but we need to take up a matter of law.

THE COURT: All right, ladies and gentlemen. I am going to let you go to your jury room.

Do not begin your deliberations, don't discuss the case. We will be with you very quickly.

(JURY OUT @ 4:25 P.M.)

THE COURT: All right. Have you talked with your clients as to whether they wish to testify or not testify?

ANDREW GRIMES: We would ask for at least five minutes to talk with him, because he ---

THE COURT: Okay. Y'all talk because we're now -- we're playing with the jury's time. Y'all could have made this decision a

long time before today, so y'all talk very quickly.

ANDREW GRIMES: Thank you, your Honor, We will be at-ease for about five minutes. You can talk to him outside, if you want to.

(DEFENDANT COAKLEY PRESENT)

(DEFENDANT SMALLS PRESENT)

THE COURT: Let me go ahead and deal with Mr. Runyon's client then. Have you discussed with your client his right to testify?

WILLIAM RUNYON: Yes, Your Honor, and Mr. Coakley has indicated that he wishes to available himself of his Constitutional right not to testify.

THE COURT: Absolutely. Mr. Coakley, -- and you can stand or remain seated. Your pleasure.

You have had the opportunity to talk to your lawyer about your right to testify or not to testify, sir?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: Okay. And you've had time to reflect on his advice and discussion concerning that issue?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: And you've made a decision for yourself that you want to exercise that right not to testify?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: You've already heard me throughout this trial explain that they are not to look to you to prove or disprove anything. I will further instruct them that they can't even consider that in the jury's deliberations. Do you understand that?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: But it is your right to testify, if you want to. You understand that as well?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: Considering it all, it is your decision to stand by your right and enforce your right not to testify; is that correct, sir?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: Are you under the influence of any alcohol or any type of medication here today, sir?

DEFENDANT COAKLEY: No, sir.

THE COURT: Are you comfortable with your decision?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: Any complaints about the way that your lawyer has advised you concerning this issue?

DEFENDANT COAKLEY: No, sir.

THE COURT: If at any point between now and when I ask Mr. Runyon, as you heard Mr. Grimes, 'does Mr. Coakley wish to present any additional testimony', or any additional witnesses or the jury's consideration, if you should change your mind, let me know and then I will excuse the jury and we would revisit that. If not, I will assume that you stand by your decision. Okay?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: Is that fair, sir?

DEFENDANT COAKLEY: Yes, sir.

THE COURT: Thank you, sir. I find that Mr. Coakley certainly has had the benefit of very competent counsel. He's had an opportunity to talk with him about his right to testify or not to testify. It's very obvious by his responses and his body

language, with emphases on his responses, that he has made a conscious decision for himself not to testify. That is his absolutely right. I find that he makes the decision freely, voluntarily, knowingly and intelligently. Thank you so much.

Mr. Smiley, have you talked with your client?

JIM SMILEY: I have, Your Honor. After discussing it with Mr. Smalls, he has elected not to testify.

THE COURT: Mr. Smalls -- and you can remain seated, sir, if you wish to. You've discussed with your lawyer your right to testify or to not testify, sir?

DEFENDANT SMALLS: Yes, sir.

THE COURT: And you've had time to reflect on his advice and those discussions?

DEFENDANT SMALLS: Yes, sir.

THE COURT: After reflection and upon reflection, it is your decision not to testify, sir?

DEFENDANT SMALLS: Yes, sir.

THE COURT: And as you just heard me explain to Mr. Goakley, you understand that

that is your right and I've reinforced that, I think at least twice already, and will charge the jury that they cannot consider that against you. Do you understand?

DEFENDANT SMALLS: Yes, sir.

THE COURT: But notwithstanding your right to not testify, you have the right to testify or offer testimony if you want to. Do you understand that?

DEFENDANT SMALLS: Yes, sir.

THE COURT: And that's not what you wish to do?

DEFENDANT SMALLS: No, sir.

THE COURT: Are you under the influence of any alcohol or medication here today?

DEFENDANT SMALLS: I am not.

THE COURT: Are you comfortable with your decision not to testify?

DEFENDANT SMALLS: Yes, sir.

THE COURT: Thank you so much, Mr. Smalls. I find that Mr. Smalls has certainly had the benefit of very competent counsel. He's indicated that he has had an opportunity to reflect on his decision and I find by his response that he has made a conscious

decision for himself not to testify, to exercise his Constitution right to not testify. I find that to be a decision that he makes freely, voluntarily, knowingly and intelligently.

Mr. Smalls, just as I indicated to Mr. Coakley, I will do the same thing at the same time, in the same order. If between now and when I ask Mr. Smiley if you wish to present any further witnesses for the jury's consideration, -- until that point, if you should change your mind, let me know. We would excuse the jury and revisit this issue. But if I don't hear from you, I will assume that you stand by your decision. Okay?

DEFENDANT SMALLS: Yes, sir. Okay.

THE COURT: Thank you, sir. Okay.

(MR. GRIMES RETURNS TO JURY ROOM)

ANDREW GRIMES: Thank you, Your Honor.

(DEFENDANT GRADDICK PRESENT)

THE COURT: Very well. Let the record reflect that Mr. Graddick is present. You've had sufficient opportunity to talk with Mr. Graddick about his decision to testify or not to testify?

ANDREW GRIMES: Yes, sir.

THE COURT: Has he made a decision?

ANDREW GRIMES: Yes, sir.

THE COURT: What is that decision?

ANDREW GRIMES: He will exercise his right to remain silent.

THE COURT: All right. Mr. Graddick, good afternoon.

DEFENDANT GRADDICK: Good afternoon.

THE COURT: You've had the opportunity to discuss this matter further with your lawyers, is that correct?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: And they've explained to you your rights, that you have the right to testify or not to testify?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: And you've already heard me explain to the jury, at least twice, that you don't have to prove or disprove anything at all. They can't look to you or expect you to do so. You do understand that it is your right to testify if you want to, do you understand that?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: After considering, after -- and you've had time to reflect and consider what their advice and discussions have been. Is that correct?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: And you have made the decision for yourself not to testify?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: And your lawyers have explained that I will instruct the jury that they cannot use that against it, and that if they do then -- I add that it would violate their oath. Do you understand?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: Are you under the influence of any alcohol or any medication here today, sir?

DEFENDANT GRADDICK: No, sir.

THE COURT: Are you comfortable with your decision?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: I find that Mr. Graddick was had the benefit of competent counsel in this matter and that he has indicated that he is satisfied with the manner in which they

have advised him. I find that he is satisfied -- I find that he has made a conscious decision for himself to exercise his Constitutional rights. I find that his decision is one that he makes freely, voluntarily, knowingly and intelligently.

Again, you are not under the influence of any type medication or drugs?

DEFENDANT GRADDICK: No, sir.

THE COURT: If at any point between now and I bring this jury in and ask your lawyer if there are any further witnesses, and he's going to say 'no, Mr. Graddick rests.' If up that point you should change your mind, let me know. We'll send the jury back out and have additional conversation.

If I don't hear from you, I assume that you will stand by your decision. Okay?

DEFENDANT GRADDICK: Yes sir.

THE COURT: Thank you so much, Mr. Graddick. Let's bring in our jury, please.

(JURY IN @ 4:53 P.M.)

THE COURT: Ladies and gentlemen, thank you very much. We are ready to continue now. Mr. Grimes, does Mr. Graddick wish to present

be able to talk to them, because we will conclude this tomorrow -- most probably.

Have a good evening. I'd ask you to be in your jury room, please, at 9:30. Thank you so much.

(JURY OUT @ 5:02 P.M.)

THE COURT: Any Motions from the State?

SOLICITOR SHEALY: No, sir.

THE COURT: Mr. Grimes?

ANDREW GRIMES: Yes, sir. Thank you, Your Honor, may it please the Court.

THE COURT: Yes, sir.

ANDREW GRIMES: We would renew our Motion on the -- also that the State has not proven that Jarret was one of the robbers. Thank you.

THE COURT: Thank you. Based on my -- I think that my recitation and ruling on it, even considering the additional evidence, there are obviously some inconsistencies that could lead the jury to conclude that the State has not met is burden of proof, notwithstanding his alibi. So clearly, in that situation, I would respectfully your request.

Mr. Runyon?

WILLIAM RUNYON: Your Honor, I would renew the Motions previously made for a directed verdict and I would fervently renew the Motion for a mistrial, as previously made, for the reasons stated previously on the record.

THE COURT: Thank you, sir. I appreciate that and I think that we have certainly articulated our various positions with respect to both sides of that. I deny your Motions. Thank you, sir.

Yes, Mr. Smiley?

JIM SMILEY: Just for the record, Your Honor, I renew my Motions.

THE COURT: I agree that there are some issues that would -- and I will certainly charge the hand of one is the hand of all. Certainly that applies to all the defendants. So the jury will have that instruction. I appreciate that, but I respectfully deny that.

Any other requests to charge?

WILLIAM RUNYON: Your Honor, just since the court -- in directing you comments to Mr. Smiley, will the Court be charging mere

presence?

THE COURT: I will charge mere presence. I think that it is appropriate.

WILLIAM RUNYON: Thank you.

THE COURT: I think that it is incorporated in my hand of one is the hand of all. It says that it has to be more than merely being present at the scene of a crime. So I -- yes. I think that will cover what you would like to have said.

WILLIAM RUNYON: I will take it whatever way that you would like to do it. Thank you.

THE COURT: Yes, sir. Thank you, sir. Any other specific requests to charge?

JIM SMILEY: I don't know what to call the charge, but I ---

THE COURT: Well, if you want to think about it overnight.

JIM SMILEY: I'm going to tell you what I am asking for, though I don't know exactly how to put it. I think that the jury could find that my client was guilty of conduct other than armed robbery because of the events after. I am trying to think of the

right terms ---

THE COURT: You can argue that they could find him guilty of something else. That is not going to be submitted.

JIM SMILEY: I'm just trying to ---

THE COURT: I would love to charge that but we -- I think that we'd have to change the Constitution for me to do that. I'd be charging on the facts, telling them what they should do if they don't find that the State has met its burden of proof.

I will be telling them -- not that they can find him guilty of another. But I will tell them that if the State fails on its burden of proof, they've got to return a verdict of not guilty.

JIM SMILEY: Yes, sir, thank you. If you don't ask, you don't get it.

THE COURT: I understand. If you want to give me a charge that this state has recognized given our -- you know, the Federal judges have a great opportunity to give some, I think, clarity to some of these legal principles, because they can charge on the facts. They can bring it to a case-specific

charge.

Ours is -- I think that we've gone a lot better than we did when I first started practicing, to be candid with you, Maybe I'm being -- not mine, per se, but we still have that Constitutional restrictions about charging on the facts.

JIM SMILEY: I will do some ——

THE COURT: Look at it and see.

JIM SMILEY: Yes, sir. I'd be happy to receive but -- I understand what you're asking for.

JIM SMILEY: Yes, sir.

SOLICITOR SHEALY: Your Honor, could we possibly get a copy of your hand of one is the hand of all charge, because I may want to incorporate some of the language in my closing?

THE COURT: I will send it to you.

SOLICITOR SHEALY: Thank you.

THE COURT: I will send it to everybody. Okay?

SOLICITOR SHEALY: Yes, sir. Thank you.

JIM SMILEY: There is another issue that I think that we could go ahead and deal with

before in the morning, and that is the order of closings.

THE COURT: Well, I'm going to follow the same order. You can make a Motion that you want to be the last speaker.

JIM SMILEY: Yes, sir. Mr. Smalls ---

THE COURT: But ---

JIM SMILEY: --- has not presented any evidence.

THE COURT: No, he hasn't.

JIM SMILEY: Mr. Smalls, if he was being tried alone, would be afforded the last argument in this case. It's because a co-defendant in this case, Mr. Graddick, presented evidence -- now is Mr. Smalls being denied the opportunity for last close.

As I understand the case law, it says that -- paraphrasing -- it is not a substantial right that he is losing. I would argue that it's been a long practice in South Carolina and a very important consideration that every defense lawyer and his defendant may, when they decide to put up evidence or not to put up evidence, can ---

THE COURT: I understand.

JIM SMILEY: --- have the last argument. In this case, because of the multiple defendants and one has presented evidence, that is -- I respectfully understand what the court has decided, but that Mr. Smalls would be denied that right. Therefore, I think that it keeps him from getting a fair and impartial trail as if he were being tried alone.

Therefore, I would make a Motion to be allowed to make the last argument. I understand the current status of the rulings of the Court, but I just would like to make that Motion because I do believe that my client is substantially --- affects my client's Constitutional rights, Your Honor.

THE COURT: I understand.

WILLIAM RUNYON: And, Your Honor, Defendant Coakley would join in that same Motion, Judge, because we're in the same position.

THE COURT: Yeah.

WILLIAM RUNYON: We've presented no evidence. Uh, --- if the Court would rule that we are entitled to the last argument, I

would be more than happy to flip a coin with Mr. Smiley.

THE COURT: I appreciate it. We can deal with that. The problem is that we've got to get around -- I mean you've got to get around. I keep dropping back on the other side of this bench here sometimes.

Notwithstanding -- and I think that I even said it on the record, so they'll review it, they can look at it. I hear you. I understand. But whether I agree with it or not is not important, because as I told that jury on Monday, I took an oath to follow and apply the law. The Court revisited this issues as -- and it may have been even since then, but certainly in the *State v. Smith* case, an authority I previously cited, in 2010. It references *State v. Crowe*, a 1982 case which cites the controlling case of *State v. Huckee*, which is an 1885 or 1887 case, something that has been around. Somebody can say that it needs to be revisited, that it is old/archaic. Or another way of looking at it is that it is tried and true. It's worked in the past, has

passed all the tests of time and therefore it is good law. So I'll let those up the street deal with that -- "up the street" being up I-26, in Columbia.

WILLIAM RUNYON: Judge, can I just vouch for the record -- not arguing with the court's ruling, but I'd like to vouch for the record and point out that if my -- if we are separately indicted in this case and ---

THE COURT: Listen, ---

WILLIAM RUNYON: The only reason I am doing this is for the record, Judge. I think that if the Solicitor can indict co-conspirators in a joint indictment, that we would be -- that that would be applicable. But I think for the record ---

THE COURT: These cases talk about the independent cases, that you have to prove it. But it is still -- it acknowledges that, but says that it doesn't matter. So you can -- you don't have to state it on the record. It's there. There are three separate indictments. I think that I said it, I think that you have a substantial right. I think that it is a strategy. They' recognized that

but the Court has consistently said 'sorry', 'tough', basically 'suck it up', 'go on', 'too bad.

WILLIAM RUNYON: All right. I understand.

THE COURT: You know, to me it is a first cousin to -- I was reading in some of the convictions. The one that has always bothered me and still does, about you can't agree -- that you can't, as you can in a DUI say that we agree we have a prior DUI and you can't put that in evidence. Not so with a burg. If you have a Burg 1st, you have prior burglaries, you don't get to put it in notwithstanding that you'd stipulate to it that it's a Burg 1st. I think that's kind of interesting. But it's tried and true and it's still the law. I imagine that it will still be the law for the next twenty years.

WILLIAM RUNYON: Just putting that on the record, Judge.

THE COURT: Thank you, sir. All right. All right, I will send you that charge tonight at some point so that you all will have it. See you in the morning by

9:15. Anything before we recess?

SOLICITOR SHEALY: No, Your Honor.

ANDREW GRIMES: No, sir.

WILLIAM RUNYON: Thank you, Judge.

JIM SMILEY: Nothing.

THE COURT: We will be in recess until in the morning.

(COURT IN RECESS)

(TRANSCRIPT CONTINUED NEXT PAGE)

DECEMBER 6, 2013 9:30 A.M.

(DEFENDANT GRADDICK PRESENT)

(DEFENDANT COAKLEY PRESENT)

(DEFENDANT SMALLS PRESENT)

(OFF RECORD BENCH CONFERENCE)

THE COURT: Good morning, gentlemen.

Mr. Runyon, you just asked about mere presence. The charge says that mere presence is more than just simply being present when a charge is committed. Do you want more than that?

WILLIAM RUNYON: No, Judge, that was my question.

THE COURT: Any responses that -- there are two. Everybody -- of course, I will charge the alibi charge. I have another paragraph as part of mine, but the paragraph that you requested is also a part of mine.

The first one, I don't have any problem with the logic of that charge and it goes to what I said earlier. It's a Federal charge. The problem that we have is that I think that it is a borderline charge on the facts. I think that it is covered when I tell them that you consider what a person had to gain out of it, in general. I think that you can argue that. I mean, I don't have any

problem with that. But I'm not inclined to charge it.

So, in conclusion, after my charge, if you want that specific charge, just hand it up and I will make it a court's exhibit and the record will be protected.

ANDREW GRIMES: Thank you, Your Honor. For the record -- and every time that I've asked for this charge, I've gotten the same response. But where it has like the charge, it's really Judge McDonald --

THE COURT: Right, but there was a distinction in that case. She said that there was a specific deal that had been struck. To be honest with you, she had concerns about charging it then, too.

ANDREW GRIMES: That's what I understand. It was a sort of unique situation.

JIM SMILEY: It just dawned on me that I haven't asked, but do you have a part of your charge that each defendant is to be considered separately?

THE COURT: Yes, and there are three verdict forms, one for each. That's not a charge but I will -- I think you will argue

and I will certainly explain that they have to analyze the evidence as to each person. Yes.

JIM SMILEY: Thank you.

THE COURT: All right. We have all the jurors. Is the State ready to proceed?

SOLICITOR SHEALY: Yes, Your Honor. Thank you.

THE COURT: Let the record reflect that the defendants are present. Are the defendants ready to proceed?

ANDREW GRIMES: Yes, Your Honor.

WILLIAM RUNYON: Yes, sir.

JIM SMILEY: Yes, sir.

THE COURT: Let's bring in our jury.

(JURY IN @ 9:36 A.M.)

THE COURT: Good morning, ladies and gentlemen. I trust that you had a good evening. We are now ready to continue.

Let me state before we start, as I indicated on Monday, I believe so strongly in this system -- I am not asking for any reward or anything back from this; it's just that you deserve it. You're a classic example of why I believe so strongly in the system.

You're punctual, you've paid close attention throughout the trial. You're exactly what I believe that a jury is all about. I just thank you for that on behalf of the parties and the whole process. It has been a pleasure to serve with each one of you.

You're almost there. It's close. There still remains two very important parts of this process: closing arguments where the attorneys will have their change to speak with you and suggest reasonable inferences that you may draw from the evidence. I am sure that when you begin the process of analyzing the evidence that you will find their remarks extremely beneficial to you

While important, their remarks are not to be considered evidence. The evidence comes from the testimony of the witnesses, as we know.

Following the closing arguments, I will then give you instruction on the law. That's another part that — we put them all together

and we develop, by combination we get a result which is -- which speaks the truth in this controversy.

Please remember that while the law, of course, is important that my remarks likewise should never be considered evidence.

Give your attention now to the attorneys as they give their closing remarks.

Solicitor? Do you want to waive on the opening on ---

SOLICITOR SHEALY: I'll waive.

THE COURT: Okay. Mr. Grimes?

ANDREW GRIMES: Thank you, Your Honor.

THE COURT: Yes, sir.

ANDREW GRIMES: Good morning. Do you remember back on Tuesday afternoon, in my opening statement that I basically said that this case is about, 'where was Jarret about 6:30 on September 15th, 2010?'

The answer to that question is -- listen to his grandmother, Ms. Graddick. As you heard her testify, she saw this car pull up, a red car. She said that it was about 6:34. The boys called to Jarret, Jarret ran over there and got in with his buddies. "Don't get in that car." But Jarret didn't listen to her. If he had, we would know with a hundred percent certainty where he was. But

we know that he was there at her house with her, helping out in the yard, and with Mr. White.

There is no one that anyone will be able to come in here, such as Brian Mazyck, who probably should be at a fourth table, and make up a story about Jarret running through some cuts and all this stuff. Or somebody like Kevin Smalls coming in and saying, 'Yeah, I dropped him off, picked him up.'

We would have known for sure if he had listened to his grandmother. But he was a young man. As young men tend to do, they have other things on their mind. On his mind was girls. You heard a lot of talk about texting girls, going out to Trident, talk about girls getting some crabs, liquor, meeting with girls that night.

Anyone who is a parent knows that kids, young men, teenagers, they are liable to sneak out the windows to go meet girls.

We heard Mr. Smiley, in his opening statement, go through the role of everybody in here, what their jobs are and everything. The job of the police is to investigate the

crime. If they get a report of a crime, they go out and they find a video, talk to witnesses. Listen to what the witnesses said.

Now, Detective Simmons was busy and he can delegate. He can say, 'Sergeant Wills, you go do this.' 'Sergeant Smith, you do this.' 'Officer so-and-so, you do this.'

We heard that Sergeant Wills talked to Jarret after he was arrested. Jarret told him that he wasn't in the car at 6:30, that they picked him up at his home.

Well, how hard is it to drive from the Mount Pleasant police station down 17 to Linnen Avenue, walk into the driveway, 'Hello, Ms. Graddick. Do you have a few minutes of your time? We have a few questions about where Jarret was.' Ten or fifteen minutes.

How hard would it be for him to make a phone call, dial the number, 'Hello, Ms. Graddick' -- ten or fifteen seconds?

And he's too busy to do that himself; how hard is it to send someone else down there?

The reason that I make a big deal about

that is because it is important to have full investigations. You want to be fair, have an accurate and complete investigation. We've all seen stories of people being in prison ten, twenty, thirty years, who have been cleared.

Everything isn't always what it first appears to be. Something may look suspicious and -- no doubt, Jarret looked suspicious. He was sitting in the car shortly after a robbery, there was a gun, money, shirts. If I sued the police for wrongful arrest, I'd probably get sanctioned and disbarred to bring such a silly suit.

But when you try to deprive someone of their liberty on an armed robbery charge, you better do all your work and not make assumptions, just assume that someone is guilty.

The last people who spoke to Ms. Graddick are you. As Judge Dennis noted, you have been on time, we've seen you take notes, you've been listening, watching. These are all things that you will consider when you determine a witness' credibility.

If for some reason, you missed something, Miss Deborah (court reporter) can play it back or answer that question. Sometimes we will get a question about 'can we get a transcript of the testimony', and that's not possible at this point. It takes time to type it and everything but we do have and audiotape where you can listen, we can play it back.

Speaking of credibility, I want to talk a little bit about the witness' credibility. In this case we have a whole stack of evidence over here. You didn't hear much objection about all of this (indicating exhibits). Like I said in my opening, we are not arguing about what happened. We're arguing over who did it.

There's only been three witnesses who have testified to direct knowledge of where Jarret was around 6:30 on September 15th, 2010. One is Brian Mazyck, Ms. Graddick and Mr. White. Compare Ms. Graddick with Brian Mazyck, who is looking at jail time. Ms. Graddick may be concerned about Jarret going to jail. They may have equal concerns there.

Then there may be the argument about who came forward. Brian Mazyck was caught dead-to-rights. His only way out was to make a deal. So obviously you can't totally believe his version.

You heard Judge Dennis at the beginning of the trial say that we don't have to come forward with any evidence. It's the police's job to investigate.

Ms. Graddick was seventy-two at the time, I doubt that she was walking down to the police station but it wouldn't have been that hard for them to have come out and talked to her.

Who was forthright? For example, I asked him what Bezel meant, and he had no idea. I don't know if anyone ever had a nickname that didn't have a story behind, a meaning, something to it. Maybe it meant embezzle, he was embezzling Ms. Shealy, trying to get all these deals -- get the armed robbery dismissed, got a criminal sexual conduct dismissed. He's probably trying to get this one dismissed.

And who was contradicted by other

witnesses. The only witness who contradicts what Ms. Graddick says was Mr. Pants-on-Fire.

There was no reason for Mr. Davis to take sides in this case. He said that there were four people in that car, both times. He got a good view, talked about gloves, masks, shirts. He seemed fine to me.

Then we have Ms. Lyons. She was very specific about what Kevin Smalls was doing. Well, I disagree with some of her -- while I might be judging her myself, relying on a lot of assumptions, she obviously was right. She was so sure that the persons outside, standing by a car, Brian Mazyck, was so sure that he was involved in that.

Then they talk about what testimony was corroborated. Ms. Graddick talks about that Melvin was there. Melvin came in and testified.

Brian Mazyck said that he was at his brother's house, then they went to McDonald's. There was a video there but we never saw that video.

We heard the manager of Walmart testify that there are thirty-six outside cameras

there. We saw three angles. If they have been there from 5:30 to 6:30, they would have shown up more than three times.

And he was a convicted fellow. Mr. Graddick didn't have a record. Obviously his charges are being dismissed. He's looking for a deal.

Now, also talking about credibility, someone will make mistakes. Mr. Davis, I think made a mistake. He said that he saw the car between ten and twelve. If I got up here and argued that the whole case was wrong because he said ten to twelve, that would have been what you call unreasonable doubt and I would be laughed out of the courtroom or the jury room. It was almost three years ago and he thinks that it was between ten and twelve but all the facts that he talked about were consistent with everyone else.

Like Mr. White, when we asked him what day it was, he said that it was September 18th. Obviously it wasn't September 18th. But obviously there wasn't a red-and-black car that picked him up on September 18th either. He described the events, just like Mr. Davis.

If someone makes a big deal out of the fact that he said September 18th, 'well, he must be lying', then why wouldn't that same rationale apply to Mr. Davis?

I also want to talk a little bit about memory. It's out -- how can you be sure that Ms. Graddick and Mr. White are correct about the time? It's been a long time ago. She's older, has some health problems. But sometimes maybe something stands out that you're going to remember. Her grandson gets arrested, how hard is that to remember. Remember, it was only a few hours at that point. For example, 6:34 and he was arrested -- if she got a call by, say, 9:30, that's only three or four hours. That's why I asked a lot of questions about her background, to show that she knows her history and I wanted you to get to know her a little bit more. I know that my grandmother has all her memory, she would recognize me. She talked about her career, her husband, his jobs. She might not know all of Jarret's friends but when you're seventy-two, you're probably not going to hang out around her -- not when you're out

looking for girls. She wouldn't know all of his friends. Again, it's been three or three and a half years and people change. You can see how they were dressed that day. Sometimes you may see people that you know but they are dressed differently and you might not recognize them.

Talking about stuff that remains in your memory, there are events that stand out. Who in here know what we were doing on September 11th, 2010. Who knows what we were doing on September 11th, 2001. Some things you remember.

Now I want to talk a little bit about the DNA and the car stop. You heard that this is a high risk car stop. You heard that the officer decided to bring them out one at a time.

If someone had just gotten in that car and the next thing they knew they were being pulled over, guns are pointed at them, it's easy to say how you should act but it hard to say how you actually would act under the stress of that event. If you look at some of the pictures, I think that there is a speaker

box in the trunk of that car. That speaker box might deflect a bullet and that might be way they got down there. Or maybe it was because you're trying to sit, as you're supposed to.

You heard testimony that he's taking the gun and pointing it at Mr. Smalls, that he tried to jump in that front seat and drive off. But when the police surrounded them and he couldn't do anything, he didn't want to get shot, so he picks the gun up and throws it away. I mean, if the police out there had seen a gun near somebody, who knows what would have happened.

As to the clothes, I think that Mr. Meeh testified that there is no way to tell whose DNA got on there, how it got on there, when it got on there, stuff like that.

Officer Zeitner, he testified that he didn't see anyone trying to change clothes. It was only Ms. Alfaro who testified to that. You can watch the video yourself -- I think at most you see the shoes. You can't really see anybody taking their shirt off. I don't believe the video shows that. Obviously the

clothes that Jarret was wearing when they got out of the car do not match the description of the people who did the robbery. No one from the store -- nobody ever ID's any of these shirts as being the shirts that the robbers wore before.

I want to talk a little bit about circumstantial evidence. The reason that we want to talk about that is because we only had three witnesses who had direct knowledge. I believe Judge Dennis is going to advise you on the law on circumstantial evidence and direct evidence.

Circumstantial evidence is treated as direct evidence but it is a little different. I hate to read but I want to make sure that I get this right, *"To the extent that the State relies on circumstantial evidence, all circumstances must be consistent with each other and when taken together point conclusively to the guilt of the accused beyond a reasonable doubt. If these circumstances merely portray the defendant's behavior as suspicious, the proof has failed."* There is more language there but

that is sort of it in a nutshell.

As I said in the beginning, obviously Jarret's circumstances are suspicious. I would be insulting your intelligence if I said otherwise. But do all of the circumstances taken together point conclusively to his guilt. By "all", that includes Mr. Pants-on-Fire. How do you reconcile his testimony with the other testimony in the case and say that he is not involved? I haven't quite figured that out yet. I'm sure that Ms. Shealy will give you her explanation.

But there might be another explanation that could easily explain what happened here. I ask that you consider that, that you can't rule it out. It could have happened that Mr. Smalls, Brian Mazyck were at the Walmart around 5:30, that Brian Mazyck realizes that he doesn't have any money for girls, crabs, liquor. He knows how the Cricket store works, he's paid bills there before. He knows where they keep the money at. He is the only one among all the ones there that has been identified as a customer of someone

who has been in the store.

He discussed the situation with Kevin. They leave. Meet Keenan. Then they get a fourth person, maybe it's a friend of Keenan, maybe it is Brian Mazyck's brother, a friend of Brian Mazyck. We don't know who it is. Then they go back to Sam Edwards Road, drop off Keenan and this fourth person. They go do the robbery, come back, they pick them up. The fourth person, maybe he gets freaked out because he knows that Mr. Blain was sort of following them. He said, 'I'm going to cut my losses and just run through these woods.' There's a lot of woods out there.

Mr. Davis never saw anyone get in the car but you can assume that they did. Then they go back to their original plan: crabs, girls, liquor. They roll by Jarret's house, pick him up, come back out, head where they are going, they get stopped. Arrested.

Maybe you will say, 'Mr. Grimes, you're just trying to trick us with this fourth person. You're trying to muddy the waters, play games with us.' Well, we know from the DNA reports that there is this unidentified

contributor to the shirts, gloves, and we don't know those people are. Mr. Meeh said, 'Well, I didn't run them through CODIS' thought he didn't say exactly why. Said that it wasn't like a homeowner in a burglary could say 'that shirt yours, not mine.' I am not sure if I understand that difference. We know that the shirt there was involved, it's evidentiary. That's why they were testing it; took the swabs. It can't be that hard to take a swab and run it through CODIS just to check it out. Do a fair, accurate and complete investigation.

I want to thank you for your time, your considerations. We probably won't see each other again. I hope you have a good holiday season, a good Christmas. The last thing that I would ask is that you help Jarret, his mother and his family, to have a safe and wonderful Christmas by giving them one of the best presents that you could, finding him innocent. Thank you.

THE COURT: Mr. Runyon.

WILLIAM RUNYON: Ladies and gentlemen of the jury, in my experience in all these

case, it's the little things that kind of bring everything together. What struck me when I first got in this case, a long time ago, was --- while back in my family we had horses. We had them for twenty-one years and it took me twenty-one years to figure out that something that ate while I slept was not an investment. But the simple fact of the matter is that you, uh, got kind of messy walking around barnyards, horse stalls, have you.

That reminded me of Detective DeCamp. Remember Detective DeCamp? He was the young police officer who arrived on the scene, who was just a few minutes ago. Later on, after securing the scene, what have you, he actually walked through the field, what have you. Remember, I asked him -- I said, 'That messed up your uniform, didn't it?' 'No, it didn't really mess my uniform', he said nothing snagged or anything like that. Said 'but it did mess up my shoes, my shoes got all muddy.'

Brian Mazyck identified State's Exhibit 62 as my client's shoes. They haven't been

in any barnyards and they haven't been in any muddy fields, haven't been in any muddy woods. It's that simple.

It's little details like that that -- the State just throws these things up against the wall, they throw it up against the wall to see what sticks.

They picked up Mr. Graddick later, Keenan was in the car. Keenan Coakley was in that car and there's no question about that. The question is when he got in that car. That's the question. What did the State prove to you, unless they tell you that the State's witness totally is lying, was Mr. Davis -- remember Mr. Davis? He's the -- this guy who worked hard his life, lives there in Mount Pleasant, has got a child. The child was playing out in the yard. It's totally believable. He's out there -- and I believe that he was two or three years old, so he was going to be out there with the child, watching the child because he didn't want the child to be out in the street.

This car comes down the street. Two guys get out, went in the woods. Then the car

leaves. That is his testimony. That is the theory of the State's case, by the way. That is what Ms., Shealy told you that she was going to prove to you, that the car came down the street once and then it came back again later. Then the car comes later and two guys got in the car.

'Q. Mr. Davis, did you see any Coakleys go in the woods that day?

A. No, sir.

Q. Did you see any Coakleys come out of the woods that day?

A. No, sir.'

Well, Mr. Davis was asked by Ms. Shealy,

'Q. There are a lot of Coakleys out in Mount Pleasant, aren't there?

A. Sure are.'

I get up and I say,

'Q. Mr. Davis, do you know Keenan Coakley?

A. Sure do.

Q. Did you see him go in the woods that day?

A. Sure didn't.

Q. Did you see him come out of the

woods that day?

A. No, sir.'

Which means that at some point in time, after that car left Sam Edwards Road, Keenan Coakley got in the car.

And what do we find out about Mr. Smalls? Mr. Smalls is always giving people rides and Mr. Smalls knows Keenan Coakley. And Keenan Coakley -- and all these people know each other. Keenan Coakley was in the car.

By the way, the only person who said that Keenan Coakley grabbed the gun was -- the DNA test guy didn't say it, but we'll talk about touch DNA in just a minute -- was Brian Mazyck.

And Mr. Mazyck is the fellow that I know you want to have your back. I've sure you've reached that conclusion. If you're applying for a loan, you want Mr. Mazyck saying -- you can go the bank and rely on Mr. Mazyck.

Mr. Mazyck said the car only went down the road one time. Okay. Either Brian Mazyck is wrong or Mr. Davis is wrong.

And Brian Mazyck said, *'Oh, yeah, I could see that money in the back.'* Remember that?

And it's the little things, the little things, the little things. *'I can see the money in the back.'*

Well, there is a picture of the money in the back. Remember that? Those pictures? You remember that. The console was open in the back, the money was spilling out. Anybody sitting in the back seat would see it. Wouldn't they? They must have guilty knowledge. Those people sitting in the back seat must know what's going on.

Once again, it's the little things. The little things.

The State and the defense agreed not to call a witness. That agreement was that the officer started the inventory search of the car, that he opens the console of the car and the money spills out. No one sitting in that back seat could have seen the money the way that Brian Mazyck said. It just didn't happen that way. The little things. 'Little things.

I think that there was a song about little things mean a lot. Maybe I am dating myself, but there is a little song about

that.

Now, the fact of the matter is that the Court is going to tell you -- and if I say anything about what the law is and it should be different than what the judge tells you, which would be inadvertent on my part, then take what the judge tells you. I assure that it would be totally inadvertent on my part.

The Court is going to tell you that merely being present at the scene of a car (sic) -- merely being present at the scene of a crime, at that car, doesn't make you guilty of the crime. The circumstances must all come together to say that Keenan Coakley was one of those people that ran up to that store, ran back through the field, ran back through the muddy woods -- with clean shoes (displaying shoes).

I guarantee you that if there was a trace of mud from Keenan Coakley that could be related to those woods, -- you heard the expert from SLED, -- they would have been able to identify it.

The other thing is, and remember this. They took them out of the car with a routine

police procedure. They took them out of the car and put them in a different patrol car and we didn't hear any police officer saying, *'Well, Keenan Coakley was in my car and, boy, there was all a bunch of mud down in the floorboard.'* None of that. Keenan Coakley didn't run through no woods.

Mr. Grimes told you that circumstances have got to come together and point conclusively to the question of guilt.

Now, there's no way that Keenan Coakley can prove that he wasn't in that car that day, because he was. You know, Brian Mazyck told you about Mr. Smalls gives rides to everybody, picks them up, drops them off; that that is the way that he does things.

There is absolutely no evidence that Mr. Coakley was one of that got in that car on Sam Edwards Road. There just isn't. As a matter of fact, there's affirmative evidence, unless they don't want you to believe Mr. Davis, there is no evidence that he got in the car on Sam Edwards Road. If he didn't get in the car on Sam Edwards Road, then he wasn't one of the robbers. It's just that

simple.

Now, there is a hundred and some-odd exhibits in this case, a hundred and some-odd exhibits. Let's boil it down a little bit.

Was Mr. Coakley in the car? Sure.

Remember the discussion about DNA? The gentleman from SLED and the lady who appeared by Skype, they talked about how you've got to be careful when you're doing touch DNA because -- you know, as a practical matter, maybe my DNA is on those shoes right now because I picked them up. I didn't wear them but I picked them up. If they were to swab them now -- because it's real easy to get DNA on things. If you get in the car -- and I still don't understand this whole thing about those clothes that were in the car, but these people were wearing clothes. Mr. Coakley was wearing clothes when they got out of the car and they didn't bring any clothes in here to say "*oh, these pants are muddy*", none of that.

Now, little things.

If Ms. Lyons had been big on the Pig, maybe there wouldn't have been a phone call.

But she went to Walmart for groceries and she made the phone call, which led ultimately to the traffic stop. But at no time -- and by the way, what did Mr. Blain of the phone store tell you? He said, *'You know, it's not a secret how we do the money in our store. Anybody who is a customer of our store knows how the money is done.'*

Q. Was Kennan Coakley one of your customers?

A. No.

Q. Mr. Mazyck, have you ever been in that store?

A. No, I don't think so. Oh, maybe I paid my brother's bill once or twice.'

Brian Mazyck is at the center of this situation and he's got every reason to want you to believe that Mr. Coakley was involved in this versus maybe one of his friends that he talked into it.

Now, Brian Mazyck -- as a matter of fact, Mr. Mazyck tells you that he didn't do anything. He's as pure as the wind-driven snow as it would relate to anything involved in this crime. He didn't go to the liquor

store, he didn't buy crabs, he didn't have any money. I mean, he couldn't even buy something at McDonald's. Mr. Smalls didn't have any money to give him anything either. Maybe he was confused because he's on insulin and he was wacky. As he said, sometime he gets confused when his insulin is low and his sugar is high. But the simple fact of the matter is that it is the little things.

Another little thing -- remember the picture, the list of evidence about cell phones? Brian Mazyck said, *'Oh, Mr. Coakley's cell phone was in the back seat.'* Mr. Mazyck was testing back and forth to somebody. He said that Mr. Smalls was testing back and forth to somebody, some girls. If there was any evidence that Mr. Coakley had been in touch with Mr. Mazyck or Mr. Smalls that afternoon, this fine lady (indicating Solicitor) would have brought in here and put a witness on the stand and said, *'You tell us about those cell phones.'* There are all records. There was no connection.

Now, DNA means that Mr. Coakley was -- to the extent that he was around, some of the

things may have had his DNA on them. Remember, there is what they call touch DNA. That's because we all -- you know, you take a shower in the morning, shave and what have you, you think you're all clean but after we heard the SLED expert it's more that we're all walking around kinda of just shedding this "cloud" of DNA as we walk down the hall. That's what it sounds like. And I guess to a certain extent -- and he said that some people do, some people don't.

But the simple fact is that he was in the car. He's probably been in the car before. He knew Mr. Smalls, ridden with him before.

You can go in and you can say, *'Well, it's Friday. Let's go home. Let's just go ahead and -- here's the indictment on Keenan Coakley, let's go ahead and vote.'*

But the Court is going to tell you what you've got to do. You've got to decide whether the State has proven its case beyond a reasonable doubt. You know, that's the toughest part of this whole thing. That's the toughest part because you want to believe the State's case, you want to believe

everything that the State has said. You want to believe that the State is right, that there are people in here that should be found guilty.

But in order to do that, the little things -- the little things have to all add up. That's what a circumstantial evidence case is all about.

What struck me at the beginning of this case was the mud on the shoes of Officer DeCamp. It just didn't -- it wasn't there, associated with Mr. Coakley. For years I heard, 'take the boots off if you're coming in the house.' Take your boots off, on the farm. I've heard that more times than I can shake a stick at.

Or, 'You've got mud in the back of my car.' But the police didn't have to vacuum out the back of the car that Mr. Coakley rode in. His shoes are right there. Any shoes that he had that day, they would have been able to take them from him and prove that he went through the muddy field. They're not here. Which means that if Mr. Davis says that he didn't get in the car; he didn't go

in the woods, he didn't come out of the woods, that he got in the car later. It was a short period of time, but he got in the car later. That's why I am going to ask you to find Mr. Coakley not guilty. Not because it is some specious thing but because the little things are not there. He didn't have muddy shoes, those shoes aren't muddy. The shoes that he was wearing when the got of the car weren't muddy, because they would have brought them in here, too.

I want to thank you for your attention. It's been a long case and it's been trying on you. If there is anything that I've said or done during the course of this trial, that has offended you or made you mad, by all means I apologize for it. In forty-six years of practicing law, I don't believe that I've had a jury or juror that has held anything against a litigant that I've represented because of something that I've said or done. If I have said or done something that has made you upset or mad during this trial -- well, if I have really made you mad, after this whole thing is over with, regardless of

your decision is, call my office and give me down the road for it. That's what this is all about. They call it practicing law, because we never get it right. That's kind of humorous except doctors practice medicine and -- I told my doctor that and he didn't appreciate that, because he thinks he gets it right all the time. I think he does. But I thank you for the attention that you have given this matter, allowing us this time. I want to thank you on behalf of Mr. Coakley and I ask that you find Mr. Coakley not guilty.

THE COURT: Mr. Smiley?

JIM SMILEY: Good morning. I certainly had a sleepless night last night. I stand in front of you with twenty years of practice, terrified. I've represented Kevin Smalls to the best of my ability but I'm scared that I am not doing a good enough job to portray my client. It's easy to represent a guilty person. It's hard to represent an innocent person.

In this case it's been my pleasure to represent Kevin. What I asked you from the

very start, during my closing, I ask you again before I start my closing. While this case has three codefendants in the room, each defendant is to have a separate trial.

Mr. Graddick, Mr. Coakley, y'all have to make the decision whether they robbed that store.

Mr. Smalls, we know that he did not rob that store but you have to make the decision whether he was part of a preplan, acted in concert with the others. We base that on the evidence that we have.

Y'all have a really tough job. There are certain things that you are sit back there and say, 'We know this. We know this.' This is where the problem comes, they are going to ask you, and they have to, to assume, to guess -- and that, by its very definition, is not beyond a reasonable doubt. When you say, 'you know what, this may be what happened.' That's reasonable doubt right there, when you say "may be." If you sit there and you hesitate about what went on, that's reasonable doubt.

I am going to try to stick to the few

things that we know. We know that two black men with masks came in -- well, we are not sure that we know that they were black men. We heard some testimony about that but -- we know that two men came in. Miss Lynn said that they broke through the field, through those trees -- and you can see those trees. While they say that this field has changed, you can look at the overhead photograph and you've be able to see the wood line, the tree in the field. Two men broke out of the field, towards the door of the phone store.

Miss Lynn and Mr. Blain exit the store, and I would have probably done the same thing, yelling 'robbery, robbery, call 911."

We know from Ms. Lyons and we know from Brian Mazyck that Kevin was there.

Now, we know that.

But I -- and I can't use "but", but -- I don't understand how Kevin was -- was part of this preplan that he was the get-away driver, or the lookout, or both? So I am going to break it down and look at each one.

It doesn't make sense that he was a lookout, if that was his role, because the

cell phones that supposedly belonged to Keenan and Jarret were on the backseat. So if he was the lookout, he had no way to communicate. And if he was supposedly the lookout, would he have been right in front of the store, standing out there?

You'd have to think that he was part of The Apple Dumpling Gang to sit right there. I keep using that. Don Knox and Tim Conway are funny and they were dufusces. But I hope you don't think Kevin is so stupid that he would go where there is thirty-six camera watching him. I mean, every time I pull into a Walmart, I see cameras everywhere. So if you're the, quote, unquote, "lookout", I guess that you're communicating by -- yelling? I don't know. But they weren't communicating by cell phones. We would have heard about that. If they had cell phone records, they would have brought them in here to show you.

So I hope that you will agree that in trying to make their case the hand of one is the hand of all that they certainly haven't proved that Kevin Smalls was a lookout. It

just doesn't make sense.

Now, as the get-away driver? That makes even less sense. Kevin Smalls to act as the get-away driver in this case -- I mean, a get-away driver wouldn't have parked in the Walmart parking lot. A get-away driver would have been parked back on that back road, Sam Edwards Road, or somewhere else so the guys could jump in the car. They weren't going to jump in the car in the Walmart parking lot. It just doesn't make sense.

Or if you were the get-away driver, if they want to tell you that he was going to pick up somebody on Sam Edwards Road, why would he go over and sit in front of the place robbed where he'd be seen by everybody and then drive around to this -- it's not an easy place to get to. As you've already heard, they had to make U-turns and everything else to get there. That just doesn't make sense.

I ask that you use common sense.

Now, Ms. Lyons hunch that that car was involved, that was right. The way that she came to her hunch, I don't agree with. But

she told you what she did, and I appreciate that. She said that Kevin Smalls -- even though she never identified him. Who knows that was even Kevin, but -- she identified a man standing outside the car, leaning on it, in front of that area that is part of Walmart in the general vicinity of the Cricket store, the liquor store.

She said that he was standing there. I tried to pin her down about 'why did you pick this guy?' I'd ask her before about that, about how she was. She said that she was nervous, that she was looking around. I asked her what it was about Kevin that showed that he was nervous and looking around: I don't think that shows -- well, I hope that you don't think that that "evidence" is beyond reasonable doubt, that somehow he was part of the preplan, that he was somehow acting in concert.

And I did ask Brian Mazyck -- and you all are going to have to decide what to do with Brian. But I asked him:

Q. When that robbery was going on, did you think that it was Jarret and Keenan?

A. No.

Q. The two guys that you had been with earlier that day?

A. No.

You decide whether there was a preplan that included Kevin or not in this case.

Now, Mr. Davis. Mr. Davis, he had no dog in this fight. He saw a red car come down the road. That's important, that it went to the end of the road. Jamie Coakley, who Brian says he knew, lived down at that end of the road. It's been established that Jamie knew these fellows, that Kevin went down to that end where his house was and that he dropped two guys off. That would make sense. Then he left.

Now, when I first got this case, in looking at it, Mr. Davis said that he saw white gloves. That worried me a little bit. If my guy dropped two guys off at Jamie's house and they've got white gloves on, something -- it's something that you've got to think about. And I didn't get it until Mr. Davis testified. Those guys got out but they didn't go in the woods back there; they

out and then they walked up the road -- and I tried to help you with the distance there, but -- they walked up three houses, towards Mr. Davis' house, and went into the cut across from his house. That's when he saw the white gloves. I will submit to you that made sense, because when they got out of the car that's when they prepared for the robbery. That's when Mr. Davis saw them.

Now, if I'd been Mr. Davis, I would have been thinking that something was up right then. But -- okay. And I certainly am not casting any aspersions on Mr. Davis, please understand that.

This cut -- it makes it sound like this cut is a paved highway through to the Walmart. It's woods. If you've been in that area, you may be familiar with it. It's a pretty good bit to get through there -- down the road, through the field, into the trees, across the highway and into the phone store. That is a pretty good ways, it's not like it's right next to it. I think that's pretty important in Kevin's mind as this was going on.

Mr. Davis got the time wrong and while that's -- as time goes, memories fade and change. That doesn't mean that anybody is not telling the truth. But as you replay things in your mind, as you're telling it, it grows. I think that's what it shows, that it grows.

Then Mr. Davis said that the red car came down, went to the end of the road, and dropped two people off. Four people in the car when it went down, two in the car when it came back.

Then when it came back down the road, the second time, third time he's seen it as it went in and out, it went to the end of the road, turned around, it came up and it stopped after the fellows walked out of the woods by his house, where that cut was.

What does that show? It shows that Kevin picked up the fellows. That's all that it shows.

Now, I'm trying to stick to the things that we know.

We've got the Walmart video, and we could start with that first video that has the

strip on the side -- starting about 6:28. Thank you. They showed you the car as it was leaving the Walmart area. This is all in evidence, you're going to have it. Starting the video at 6:28, -- if you don't mind. (Video playing), -- that's fine. Thank you.

Now, if you'll watch, in about five seconds -- if I've got my times right -- there it is, 6:28:29, there he is pulling in. Now, I want you to watch the speed because there was a big deal made about how it was flying out, like that was some evidence of guilt.

(Video playing), first of all we see them pulling in. At 6:35:30, just a little before. Then five minutes later, (video playing), you see him coming out. So they were in that area for about five minutes.

Then if you would go to the center camera of the Walmart -- and I do appreciate Ms. Sheely's help. The State doesn't have to assist me in trying to get all that done, but it's very nice that they are cooperative and we appreciate their help. I'm not any good with computers. If I had to do this

technology, we'd be at this all day.

At 6:35 -- if you want to just let it run from there, (video playing), you can see some people moving around. I just want it to run for a minute.

Actually, could you back it up about two more minutes -- (video playing). Right there is good. Thank you. We'll just watch from here, (video playing). See this gentleman (indicating), watch him. He doesn't have anything to do with this case but I just want you to watch for a minute, (video playing). See what time it is. I'm guessing the robbery is going on. What is he doing? He's looking around. He's trying to see what is going on.

See the young lady, she's looking.

Everybody's looking.

Does he look suspicious? He's just standing there, looking around, trying to see what's -- now he's going towards it. All right.

Keep letting it run, please, (video playing).

I asked about the timing of the video,

was it real time. The gentleman told me that it was but I think that you can tell that it is a little choppy. I don't think that we're getting all the frames on this, but y'all can make that decision.

I kept looking for Ms. Lyons to come out of the store, or for Kevin to come out of the store. Unfortunately, while they've got thirty-eight or thirty-six video cameras, we don't have that angle.

(Video playing), there goes his car. You can see the other cars moving around. You, as the judges of the facts, can decide whether it is peeling out, going fast.

I asked her about the screeching tires because, you know, that concerned me too. She never saw it. I will tell you that I've gone over those bricks in front of the Walmart, turned onto those bricks and my tires have screeched before. But I'll let y'all decide on that.

But I think what is important is that back at 6:36, 6:37, (video playing), see that car going out? You can see it's speed. There you can see that car and you see its

speed.

Now, if you're the get-away driver, I asked these questions -- if you're the get-away driver, first of all there are a lot quicker ways to get out of the Walmart parking lot. When you first look at it, you think 'what is he doing.' But the security fellow told you that is a normal way that people go out.

But if you're leaving so fast -- and it took him over a minute and ten seconds to where you see him. That's driving time. You first see him at 6:35:30 and he is pulling out and taking a right at 6:36:40.

Now, let's talk about the police stop.

I'm just trying to tell you what I see and trying to show you the facts that are reasonable doubt. I'm trying to stick to things that we know.

The car stop on Kevin's car. The first thing, he doesn't try to flee. All right. If you're an armed robber, part of an armed robbery, we see it every day that people try to evade the police. He didn't try to do that.

When he was told to put his hands up, you see them go up immediately. Now, armed robbers, they try to get away.

I found that very interesting and I think that it shows you the difference in the defendants. Coakley tries to get over the seat into the driver's seat. The two of them in the back, the car is bouncing, things are moving. Y'all got to see the car and there was stuff everywhere at that point and they yelling, "Go! Go! Go!." Kevin ain't going anywhere. He stops, puts his hands up immediately.

As they're saying "Go, go, go", he doesn't know it but Brian Mazyck see that he has a gun stuck in his back, the back of his seat. He's not part of any plan.

Fortunately, Kevin's kindness of his lack of being assertive, by being the guy who worked hard and had a car, was getting him sucked into an armed robbery.

Kevin Smalls dropped off his "friends" at Jamie Coakley's house, then he ran to Walmart to do some errands; return a movie. He dropped off the movie at the Redbox, got back

in his car.

He saw a robbery, watched it. He got out of there. That woman they were locking eyes with, was giving him the eye, jumping in her car, closing the door, -- I bet that he did get out of there. I probably would have gotten out of there, too, with an armed robbery going on; some woman looking at me, then getting in her car and getting on the phone. 'Let's get out of here.'

Now, I guess that I do have to talk to you about Brian. Brian Mazyck says that they were in that parking lot a minimum, if you take the shortest period of time, forty minutes -- and I'm being generous here, 6:00 o'clock to 6:35. There are thirty-six cameras.

The other thing that makes no sense is this McDonald's thing. First of all, you've got to understand that Kevin has been driving people around. He works for his money. He went and got Brian, paid his brother for dogs. Then Brian goes into McDonald's; orders food and then turns to my guy and says, 'Give me some money.'

Kevin supposedly doesn't have any money, but according to Brian what is going on with him in the parking lot over there is that he was going to buy liquor. With what? According to Brian, he doesn't have any money. It doesn't make sense.

So we really have to drop back to not filling in holes, but we really have to drop back to what y'all know beyond a reasonable doubt. When you sit back there, please, I beg of you, to deal with these individuals separately. They are separately indicted.

Kevin Smalls did not participate in a robbery, he was not of a part knowingly -- he might have been a part of a plan, according to the other two fellows, by being someone who was kind enough to drop people off and pick them up, for gas money or whatever. He is getting pounded for it. He didn't choose to be with these fellows.

Kevin Smalls is innocent. He is not just not guilty, but innocent.

The State must prove that he was a part of a preplan, that he acted in concert. Now, Brian said that when the fellows got out of

the woods and got in the car that he knew that something was up. I'm sure Kevin did, too. But at that point you're stuck. That is not part of a preplan, that's not part of the crime. It might be accessory-after-the-fact but it certainly is not armed robbery, doesn't show that he was part of the plan. They've got to show that he was acting in concert, that he assisted those two gentlemen knowingly in committing an armed robbery. The evidence does not, does not come close.

I'm been doing this for about twenty years, not nearly as long as the esteemed Mr. Runyon. To get up here and to try to convey to you all the things that I want you to know, it's hard. It's really hard for me. Your stomach is in knots because you want truth done in this courtroom.

If you think these guys need to be convicted when you look at the evidence.

But when it comes to Kevin Smalls, he is not guilty. I beg that you give him a fair and open trial, to stick with what you know, not to make assumptions.

Y'all have been a wonderful jury. It's

been a pleasure to present you this case. Please. He's not guilty.

THE COURT: Thank you, Mr. Smiley. Ms. Shealy?

SOLICITOR SHEALY: May it please the Court?

THE COURT: Yes, ma'am.

SOLICITOR SHEALY: Good morning. Let's start with Sam Edwards Road.

Joseph Davis, who has been living over there for forty years, knows his cut-throughs. He saw an unfamiliar car. He saw it go to the end of the road, not to Jamie Coakleys' but to the fence that is tucked away in the back, at the end of that road.

He sees two people get out. They are dressed in dark clothing and white gloves. They aren't going to Jamie Coakley's.

He sees that vehicle leave.

Let's go to the Cricket store. I didn't realize until she testified that she's just come out of high school, working at the phone store with Mr. Blain. She looks out that door and see two guys dressed in dark clothing, with sunglasses on, faces covered,

come barreling into her store. What does she do? She says, "Jim!"

What does Mr. Blain tell you? He tells you that he saw one of them with a gun.

You couldn't see the bottom of their faces. And he tells you something else, they were tall, they weren't chunky they weren't overweight, they had an athletic build.

What did they do? They did the right thing. They got the heck out of there and they start yelling, 'We've been robbed. Call 911.'

They seek shelter. They try the Sprint store, it's closed. They try the next place, it's unoccupied. They retreat into Jersey Mike's.

The moment that Harlee Lynn gets into Jersey Mike's, she gets on that phone that someone else has already begun calling 911 and tells them what she saw.

Now, what does Mr. Blain do? He gets in his vehicle and tries to go follow them.

What had been going on in the parking lot at that time. Well, let's look at what Brian Mazyck tells us. He told you about earlier

when they went to the Walmart. Then they went over to the McDonald's, he orders food and then Mr. Smalls tells him 'I don't have any money.'

Well, what does he tell you about when he gets in that car initially when Kevin Smalls goes to pick him up at his brother's? He tells you that things were weird in there. He saw Keenan Coakley's, Southfork-whatever the emblem is, shirt in the backseat.

Mr. Runyon has missed the point on something. What else did Brian Mazyck tell you? He told you that Keenan Coakley's new shoes were in the car. Where were Keenan Coakley and Jarret Graddick, he asked. What does Kevin Smalls tell him, 'Oh, they're getting ready.'

When you get back into the jury room, look at State's Exhibit 35, a photograph. It's the backseat of the car where the gun was ultimately found, where Keenan Coakley was sitting, there's a pair of shoes. Those are the shoes that he took off after the incident. They're not the shiny new ones that Brian Mazyck told you were in the car.

Mr. Runyon has gotten up here and he has said, 'Oh, Detective DeCamp said that it was muddy, muddy, muddy, muddy.' I believe what Detective DeCamp said was, 'I had some dirt on my shoes.

Those (indicating State's Exhibit 35) are the shoes that were used for the robbery.

Brian Mazyck also thought that it was weird that their cell phones were in the car. After Keenan Coakley does not buy Brian Mazyck the meal that he ordered at the McDonald's, they first go and park by a truck. Remember?

Then they move the car. They move the car not near the liquor store that Kevin Smalls is talking about buying liquor, getting crabs, meeting up with girls, watching movies. Ladies and gentlemen, Brian Mazyck told you that that made him suspicious. 'If you don't have money to buy my lunch at McDonald's, he's thinking, 'well, how are we doing to get crabs? How are we going to get liquor? Why are we going to the mall and how are we going to watch a movie?'

So can't you just picture it? red-and-

black car driving up, positioning itself so that in that rearview mirror that Kevin Smalls can watch what is going down in the Cricket store. He's got the seat back just a little bit so that he can watch what is going on.

And then what does Jessica Lyons tell us? These men -- these gentlemen, the attorneys, are trying to suggest to you that Jessica Lyons was looking at Kevin Smalls because he was black. She told you that was ridiculous. What drew him to her attention was not the color of his skin but was his behavior. He was outside the car at that point. He's looking at the Cricket, he's looking around, he's nervous. He's looking at the Cricket, he's looking around, he's nervous. That's what he did to draw her attention.

And isn't it interesting that she was spot on?

The get-away man? Look at him. She thought enough of his odd behavior that when she calls 911, she tells them. And she takes time out of her day to look at the license tag, to help police. Aren't we glad that she

did?

People were yelling as they were running, 'Call 911!' It's interesting -- just as the Walmart video, -- what is interesting about the path that Kevin Smalls took out of the parking lot is this. When he makes that turn out of the Walmart parking lot, in front of where the stores are, when you get to that intersection before you turn right in front of Walmart, what's to your left? The field. You can see people running.

What does he do? He gets right back on Sam Edwards Road. Why? Why in the world would he go back up to Sam Edwards Road at that time except to pick up his buddies. Jarret Graddick and Keenan Coakley were going to have money for a good night tonight. There was absolutely no other reason for him to go down Sam Edwards Road at that point but to pick up his friends. No other reason.

And Jessica Lyons told you that when she hears that car going out, when she sees the car going out; that she hears spinning tires, tires squealing.

Now, Mr. Davis tells us that while he is

still out on the road, the one that he is familiar with, that this time, unlike the first time, when that red-and-black car turns down Sam Edwards Road that it is not going at a normal pace, that he is going fast. He is looking for them, 'Where is Keenan Coakley, where is Jarret Graddick.' The way that Joseph Davis described it was that he saw them coming out of the woods, and all of a sudden they were gone. They got in the car.

What does Brian Mazyck tell you -- oh, what is most important about what Joseph Davis tells you is that Kevin Smalls, before Joseph Davis sees them coming out of the woods, Kevin Smalls stops right in the area where they would typically come out. Brian Mazyck tells you, no, that he stopped and backed up when they started 'waving us down.'

When that car leaves with the two guys that had just robbed the Cricket store, robbed it at gunpoint, it flies out of there. It makes a U-turn on Porchers Bluff to head back down Highway 17 South.

Now, what does Brian Mazyck tells us happens in the car when they get in there?

One gets in with a gun. He can't tell you which one that it was. He doesn't remember. But one of them gets in with a gun.

They had those masks on their face. Well, let's think about it, get the image, (demonstrating with shirt over lower part of face). The knot goes on the back of the head. This part is covering the nose and the mouth. Picture the image of that.

Sunglasses. Sunglasses found in the car.

They've got their eyes covered, they've got their mouths covered, they've got their noses covered. Joseph Davis can't say that Keenan Coakley went into those woods or that he came out. He couldn't see him. Eyes covered, mouths covered, nose covered.

So Brian Mazyck tells us what is being said in the car. Keenan Coakley, 'Let's go up Clement Ferry Road.' The testimony that you have heard is that if you turn right on 40, it leads out to Clement's Ferry Road. What does it lead away from? It leads away from Highway 17 that all the Mount Pleasant police officers patrol. Keenan Coakley is, like 'Let's get out of here, let's do down

Clement's Ferry Road.' He is ready to flee.

What else does Brian Mazyck tell us? They are changing their clothes. They are taking off their clothes in the backseat.

What else are they doing? They are stuffing their money in the car seat, in the divider, the seat divider. They are stuffing it in there at that point.

What else does he see? He sees a gun. Let's talk about that gun for a second. Ladies and gentlemen, this (displaying gun) isn't a play gun, this isn't a BB gun; this is a Glock. This is the Glock that Jarret Graddick, Keenan Coakley and Kevin Smalls thought would do the job.

And, what else? It wasn't an unloaded Glock. It was loaded. These guys, they weren't playing.

Brian Mazyck sees the gun in the back seat. Now, you will remember when Officer Zeitner that he is getting the information about the robbery and that when he does so he sees the red-and-black car, that he gets the tag information and that he follows immediately behind them.

Let me talk to you a second about Brian Mazyck. They want to make a deal about the fact that he had two charges that have been dismissed previously by me. We got the lady to come upstairs from the Clerk's office to tell you when those items -- when those charges were dismissed. One was dismissed in September of 2011, one was dismissed in October of 2011. And Brian Mazyck told you that the first time that he comes in and signs the agreement was a year later. Just about a year later.

What else did Brian Mazyck tell you? He told you -- he told us, and they didn't have to elicit this from him. 'When I saw that guy running out of the store, I recognized him. He was the guy from the Boost store.' They want you to believe that he went in and robbed it.

What else do we know about Brian Mazyck? That evening after those police officers got them out of the car -- and isn't it interesting that they took them out in order of danger? They took the driver first.

ANDREW GRIMES: Objection.

THE COURT: Sustained.

SOLICITOR SHEALY: They take the driver first.

ANDREW GRIMES: Objection.

THE COURT: Sustained. That's an unreasonable inference.

SOLICITOR SHEALY: They indicated to you that because of what had been going on in the car that they decided to take them out individually.

Who did they take out first? Kevin Smalls, the driver.

Because of the behavior in the back seat, they take the passengers in the back seat out next. Remember, that Jarret Graddick is behind Mr. Smalls and Coakley is behind Mr. Mazyck.

And who comes out last? Who do the police chose to take out last? Brian Mazyck.

And what does he tell the police immediately? 'I had nothing to do with this.' They take him down to the police station to get a statement from him. They believe enough of what he said to take him back down to Sam Edwards Road to help them

look for stuff.

The next day, when Tyrone Simmons goes to pick him up from the jail, he lets them know what Keenan Coakley and Jarret Graddick had asked him to do for them. He asked them to lie, gave him stories to tell. He told them that, 'I am not doing it, I'm not doing it.'

So Jarret Graddick that evening, on September 15th, learned from Brian Mazyck, 'I am not lying for you.' Remember how he wanted him to lie about the park? Remember how Mr. Graddick told you that there was a park right at the corner of Linnen and Hamlin. Brian said, 'I am not lying for you.'

Now, let's talk about the times involved in this case. Well, actually before we do that, let's look at the report. I'm sorry. Let's look at the report -- (pause it for just a second). If we could get the lights dimmed a little bit, I think that we could see it better.

As you're looking at this, remember what Officer Zeitner was telling you, that heads were disappearing in the back, there was a

lot of bending over, hands not in the air when they were asked to put their hands in the air. And remember as you're looking what Brian Mazyck told you. They were changing clothes and that at one point that Coakley tried to get into the front seat and put his foot on the gas pedal, still trying to flee. Still trying to flee. He tried to flee with an officer behind them, tried to flee when all these officers are approaching the scene.

As you also look at the recording, look at the intersection itself. There is testimony about how traffic is. Look as this is happening at all the cars turning onto 40. So you can get an idea of what the traffic was like on Highway 17 at 6:30 on a Wednesday night, — (video playing).

Look at the heads going down, (video playing).

"Do you have any guns?", Zeitner asks, (video playing).

Notice the undershirt, (video playing).

No belt, (video playing).

Ladies and gentlemen, what was signify-cant about the fact that they had undershirts

on is because the overshirts that they had on were found by the police in the car inside-out. They'd just taken off of their heads.

What was tucked in this one was the plastic glove.

That's why they had their undershirts on. They were doing exactly what Brian Mazyck said that they were doing. They were taking off their clothes.

And Mr. Graddick? Jarret Graddick, who couldn't keep his pants up when he was getting out the car. He didn't have on a belt. It was with the shirt that he took off. He didn't have a belt.

Let's look at the times involved. The times are crucial here, (video playing):

6:35, Dispatch called out that we've had an armed robbery at Oakland Plantation, South Morgans Point Road.

6:35:29, we see Smalls on the move.

6:35:59, in front of Walmart.

6:36:40, going around, heading towards Sam Edwards Road

Officer DeCamp got there by 6:37.

Officer Zeitner stopped that vehicle at

6:41.

We're talking about six minutes. Six minutes between the dispatch of the robbery -- and, remember that 911 was called immediately as they got into Jersey Mike's.

At 6:35 the robbery happens and then six minutes later Officer Zeitner stops the car with Kevin Smalls, Jarret Graddick, Keenan Coakley and Brian Mazyck. Stopped.

Let's think about Ms. Graddick's testimony for a minute. What she tells us is that she was certain that Jarret was at her house at 6:34.

At 6:34, Kevin Smalls was over in the parking lot. He could not be both in the Walmart parking lot and down 17, down Hamlin Road, down Linnen Lane. Kevin Smalls can't be two places at one time. Does any of that makes sense?

Does it even make sense that Kevin Smalls had Jarret Graddick and Keenan Coakley in that vehicle? Had that Glock? Had all the money, including the bill that Mr. Blain told the police about? That they had the clothes? The gloves?

That he was traveling down 17 where Brickyard Plantation is and Hamlin Road -- Hamlin Road, be entering a neighborhood and pick up Jarret Graddick? Then travel right back down 17, towards the armed robbery?

Then make a U-turn?

Then go back to 17 and 41?

It didn't happen. It didn't happen.

Six minutes was enough time for Mr. Smalls to get in that vehicle, get the heck out of there, get down Sam Edwards Road, get those guys in his car and then get stopped.

Mr. Grimes was asking, 'Well, why didn't Tyrone Simmons go talk to Ms. Graddick?' Well, if you were Ms. Graddick and you knew that your grandson had been arrested but that you saw him at 6:34, wouldn't you go down there? Wouldn't you get somebody to drive you down there? Wouldn't you be pounding on somebody's desk, 'It couldn't have been my grandson.'

Let's talk about the DNA. And I'll tell you, y'all were patient while I was trying to get that evidence in. That is the worse part for a jury, having to sit through that. But

it is important because we have items of evidence that we needed to have in.

The gun trigger and the guard, Officer Haupt told us how he swabbed it. Whose DNA is on the trigger and the guard? Jarret Graddick's. A match. One in ninety-six thousand (1 in 96,000). Jarret Graddick, trigger, gun.

The plastic glove underneath the driver's seat, Keenan Coakley could not be excluded.

Now, keep in mind as we are going through this that there are no matches for Kevin Smalls and there are no matches to Brian Mazyck.

A plastic glove from the back of the front passenger seat, there's a photograph of it, one of the gloves from there, Graddick cannot be excluded.

Next glove, Graddick cannot be excluded; this time, one in seventy-six thousand (1 in 76,000).

Another glove; Keenan Coakley cannot be excluded.

Jarret Graddick.

Keenan Coakley.

Jarret Graddick.

Another glove in that area, Coakley, a match, one in two hundred and forty quadrillion. Keenan Coakley had that glove.

There's another plastic gloves on which Jarret Graddick cannot be excluded. There is just no exclusive result.

And Coakley, one in two hundred eighty (1 in 280) cannot be excluded.

One of these knotted t-shirts, the makeshift masks, the kind that some kids use when they're playing cops-and-robbers when they are young, one of them Keenan Coakley cannot be excluded.

The other one Jarret Graddick matched, one in one hundred ninety quadrillion. He wore this mask. He shielded himself. He tried to protect his identity when he walked into a place where Mr. Blain and that young girl were working, with a loaded gun.

Black shirt, that was inside out. Inside out. He was hot from adrenalin rush, he was taking his clothes off. Match. One in four point four quintillion.

Blue shirt, which is inside the black

shirt. Cannot be excluded. One in one hundred sixty thousand.

The pants with the belt that at least kept these up -- so that there was no chance of them falling as he was running through that field, one in twelve, Graddick.

The plastic gloves found inside of those shirts, Graddick couldn't be excluded.

And another glove that was found inside the shirt, Graddick couldn't be excluded.

The DNA slams them. It slams all three because it shows you that these two men went into that store and robbed it, wearing gloves to protect themselves from leaving fingerprints, wearing masks to protect their identity, carrying a loaded gun.

Carrying a loaded gun in a store where there is a super Walmart, at 6:30 at night. Can you imagine the patrons there?

They thought of all kinds of ways to protect themselves. A loaded Glock. That wasn't just to protect themselves. That was to make someone give them -- give them the money so that they could have a big night.

Each of my colleagues have thanked you

for your service. I certainly thank you, as well. I know that's been a week that took you away from your families, it took you away from fun, it took you away from work. And I appreciate it, and I thank you.

But there are some other people that I would like to thank, though. I'd like to thank Jim Blain and Harlee Lynn for being as observant as they were when such a traumatic thing happened to them. That young girl, to see them rushing in there. Mr. Blain told you, 'I couldn't even dial 911.' They did a remarkable job in making observations in a very, very panicky situation.

I would also like to especially thank Jessica Lyons because she, her instincts were right. Her instincts were exactly right. And but for her, they may never have been arrested. They may have hit Clement's Ferry Road, had those crabs, wined and dined those girls and left everybody else behind. Left Jim Blain and Harlee Lynn to deal with it.

I am thankful that Walmart had the security cameras that they did, because it shows us the time. It shows us the critical

time that Kevin Smalls left the Walmart parking lot. It shows us his path. It corroborates what Ms. Lyons said, it corroborates what Brian Mazyck said.

One of those attorneys asked why would they be driving around Walmart with all those cameras, why didn't he just wait on Sam Edwards Road. He just wanted to know when to go back and get them. Kevin Smalls knew that he wasn't going to get away with staying parked on Sam Edwards. But if you adjust that seat, you adjust that mirror, you know when the heck to get out of there.

I would like to thank Joseph Davis because he was observant that day as well. He told you both times coming down Sam Edwards Road. He even knew where they had thrown an item and helped Debi Alfaro find it and helped Investigator Haupt retrieve it. But he did.

Now, you're not to worry about punishment. You're here to worry about responsibility. What the judge will instruct you is the law of hand of one is the hand of all.

That's going to be difficult (screen) for y'all to see there. Y'all listen to the judge and he will instruct you. What it essentially means is that even though we don't know which of these two guys had the loaded Glock, and even though Kevin Smalls doesn't go into the store, when you combine it -- when you get three people to commit an armed robbery, one, two, three (indicating defendants) are guilty.

The hand of one is if the crime was committed by two or more people who are acting together to commit a crime. The act of one is the act of all. A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a natural consequence of the act done in carrying out the common plan and purpose. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of hand. Or as it is sometimes said, the hand of one is the hand of all.

A principal in a crime is either one who

actually commits the crime or who is present aiding, abetting or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act of one is the act of the other.

Where two or more are acting with a common plan or intent, are present at the commission of a crime, it doesn't matter who actually commits the crime. This is important. Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime. Kevin Smalls, right outside. Graddick and Coakley, in the Cricket.

Ladies and gentlemen, one of the attorneys used the language "caught dead to right", these guys were caught dead to right.

One of them said, I believe that it was Mr. Grimes, would you give Jarret Graddick and his family a Christmas present by finding him not guilty. That's not your role. It's not your role to give presents. Your job is to decide the issues in this case, the facts in this case and whether we have met our

burden.

Ladies and gentlemen, what the State asks is that you return a verdict of guilty of armed robbery as to Jarret Graddick, Keenan Coakley and Kevin Smalls.

Jim Blain and Harlee Lynn, the didn't deserve what happened. These guys don't deserve to get away with it.

THE COURT: Ladies and gentlemen, at this point I will let you take a break. I'll let you retire to your jury room for about ten minutes.

Do not begin your deliberations, however. It would still be inappropriate to discuss this case among yourselves: Thank you.

(JURY OUT @ 11:35 A.M.)

THE COURT: Anything from the State before recessing?

SOLICITOR SHEALY: No, Your Honor.

THE COURT: Anything from any of the defendants before recessing?

WILLIAM RUNYON: No, Your Honor.

ANDREW GRIMES: No, sir.

JIM SMILEY: (Negative gesture).

THE COURT: Very well. We will be at

ease for about ten minutes.

COURT REPORTER: Counsel, please check your exhibits during this recess.

(COUNSEL APPROVAL OF EXHIBITS)

WILLIAM RUNYON: Your Honor, I noticed when they were packing the evidence on the cart, I noticed that the Clerk, the Honorable Clerk, was providing a box of rubber gloves for the jury to maybe use in handling the -- and I just am not sure that unless they ask for those to handle things with, whether or not those should be provided, since rubber gloves are so prominent in this case. And it's a semi-objection, Judge, and I just don't think unless they ask for them you should just automatically give them to them.

THE COURT: Thank you, sir.

MR. RUNYON: Yes, sir. And that's said for whatever it is worth, Your Honor.

THE COURT: Thank you. Anything else?

MR. RUNYON: No.

THE COURT: Thank you. Then let's bring in our jury.

(JURY IN @ 11:50 A.M.)

THE BAILIFF: All the jurors are

seated, Judge.

THE COURT: Thank you very much, Mr. Pryor (bailiff). And thank you, ladies and gentlemen. We've now reached the final portion and you're almost ready to begin the process of resolving this case. Now it becomes my responsibility to give you the law, as I indicated to you that I would give to, that you, of course, promised to accept and apply fairly and impartially to those facts that you will determine when you are instructed to retire and evaluate the evidence.

And you will evaluate each piece of evidence and decide what you find to be credible and believable. And in so doing, you will determine the truth of the evidence in that both the State, Mr. Graddick, Mr. Coakley and Mr. Smalls, the attorneys expect that you will perform that consistent with your oath and I'm confident that you will.

And once you've done that, the parties to this dispute will have obtained a fair and impartial determination. And that's what everyone expects.

As you have heard me use from time to time the term "defendants", as I've mentioned to you when I basically identified this case, defendants is a term used to designate the party against whom some claim is made. As we have here where the State has claimed that these individuals, each individual, committed the crime of armed robbery. So if you hear the term of defendants, that is another way of referring to them collectively.

But it's important also to realize that there are three separate indictments, three separate defendants and three separate determinations that you will have to make. And each party is entitled to a fair and impartial determination based on your assessment of the evidence.

Each defendant was brought into this Court by virtue of the documents, that I showed you when I started -- they're called indictments. They will not accompany you to the jury room. They're not evidence. They merely contain the accusations against the defendant.

Each defendant has entered a plea of not

guilty to the indictment pertaining to him, which places then upon the State the burden of proving his guilt. Because as I mentioned to you, persons accused of criminal offenses are never required to prove or disprove or explain anything at all. And they certainly are not required to prove their innocence.

In fact, persons in this state and in this country who are accused of committing criminal offenses are presumed to be innocent. And those aren't just words. That's a mental process that each of you has to maintain. Because you see, that presumption of innocence is so strong it's sufficient for a verdict of not guilty unless you, collectively upon your evaluation, have been satisfied beyond a reasonable doubt of each element of the crime alleged against that particular defendant. And only then may you remove that presumption of innocence from your mind. So that's what it is.

And each of you, under your oath, must actively presume that each of these defendants are innocent and can only change that when and if you are persuaded beyond a

reasonable doubt of his guilt.

As I mentioned also to you, persons accused are not required to prove or disprove anything. They don't have to present any testimony. They do not have to testify. That, in fact, if a person accused of an offense does not testify, that can never be considered against that particular person. A defendant has a Constitutional right to remain silent and the assertion of that right cannot and must not be considered against them. Therefore, and in this case and under your oath, you are to reach no inference and to draw no conclusion whatsoever from the fact that each defendant did not testify in this case.

The failure of the defendant to testify should not even be discussed in your jury room. If it is, you will have violated your oath.

No, you will look to the party that has the burden of proof and that's the State. And the State has to prove each defendant's guilt beyond a reasonable doubt. And the failure of the defendant to testify is not a

factor to be considered in that regard.

What is a reasonable doubt? A reasonable doubt is a doubt that would make an honest, sincere, conscientious juror, who's searching for the truth in the case to hesitate to act or to take some action. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of a defendant's guilt.

Now, there are very few things in this world and in this life that we know with absolutely certainty. And in criminal disputes such as this, the law does not require proof that overcomes every possible doubt. If, based upon your consideration of the evidence, you're firmly convinced that that defendant is guilty of the crime charged, then you must return a verdict of guilty.

If, on the other hand, you think there is a real possibility that he's not guilty, then you must give him the benefit of that doubt and return a verdict of not guilty.

A reasonable doubt, ladies and gentlemen, may arise from the evidence which is in the case or from the lack or absence of evidence

in the case. And it's up to you to determine whether or not a reasonable doubt exist as to the guilt of any of these defendants. I charge you that the defendant is entitled to every reasonable doubt arising in the whole case. That means simply this -- if, upon any issue of fact, which would be essential for your returning a verdict of guilty against that defendant, you should have a reasonable doubt as to how that particular issue should be resolved, I would instruct you that it would be your duty to resolve that reasonable doubt in that defendant's favor.

Now, the evidence which you are to consider consists of the testimony of the witnesses and the exhibits that were introduced through their testimony and nothing else.

During the trial you noticed we excused you on several occasions to take up matters of the law. And I mentioned to you at that time, that that was very proper. That's the way that that's handled. I take up matters of law out of your presence, just as you take up matters of facts out of our presence.

That'll be done in your jury room and we will not be party to that and will not here that. Because why? Because you're the sole judge of those facts and it's my responsibility to be the sole judge of the law.

I would also instruct you that the fact that an attorney made an objection, that should never be considered whatsoever in your deliberations. You shouldn't consider that against the attorney. Likewise, my ruling should not be considered. And, in fact, probably -- oddly enough, one of the rulings that can be made really demonstrates probably as clearly as I can state it, how we work together in resolving this dispute. You heard and will recall there were generally two rulings to objections, sustained or overruled. Now, if I overruled it, you heard the answer to the question. And certainly you should consider that and evaluate that.

If I sustained the objection, then you did not hear the answer to the question and you shouldn't consider that whatsoever. Frankly, if I overruled it, it's at that moment, that's exactly how we work together.

I said as a matter of law, typically it's a rule of evidence, that I was going to permit the answer. But then it's given to you. You have to decide whether you believe it or not. And if so, how strongly do you believe it. The fact that I overruled it and allowed it, that shouldn't be considered. If you put any weight on that and therefore say, 'well, therefore, I must believe this', then you've let me invade your providence. That is not the purpose. You decide the truth and you decide how strongly you believe that particular testimony.

Now, during this trial if it appears to you by anything that I've said or done, that I'm indicating or suggesting to you that I'm here to resolve a factual issue, please remember again you're to disregard that in its entirety.

Also, the remarks of the attorneys, as I've told you throughout, that they're very important. They're Officers of this Court and have an extremely important responsibility. They have duties to present the evidence, present arguments that will

assist us. You certainly have given them your attention and I appreciate that. And you certainly are expected to consider their arguments when you begin the process of evaluating this case, but I will remind you that their remarks are not evidence.

If in their discussions they stated what a witnesses said or didn't say, and that differs from your collective recollection, you're instructed to disregard those remarks of the attorneys. Why? Because you're the sole judge of the facts. You decide what a witness said.

And I would remind you, each have been taking notes and I thank you for that, I thank you for your attentiveness. Those are your notes, of course, and if we have a difference that can't be resolved among yourselves, Ms. Garrison (court reporter) can replay any particular testimony that you may need. So just remember that. But your collective determination is what controls in what a witness said or didn't say. Also, if any attorney in their arguments gave you a statement of what the law is and it differs

from what I tell you the law is, you're instructed to disregard that attorney's statement because it's my responsibility. And for the purposes of this proceeding today, I'm the sole judge of the law in this case.

Now, evidence in a case such as this, there are two types of evidence, which you generally consider. Quite frequently, they consist of both types. Sometimes one more than the other, but it really doesn't matter because it's customary to use both types of evidence.

One would be direct evidence. And direct evidence is typically testimony regarding a sensory perception. I saw something, I heard something, I felt something or the like. And if you are firmly convinced as to the truthfulness of that testimony, then it would establish that particular fact and circumstance.

The other would be circumstantial evidence. And that, unlike direct evidence, is when a person testifies of a number of facts. And if you're firmly convinced as to

the reliability and the truthfulness of each of those facts and you link them, then either through deductively, deductive reasoning, you reach another conclusion, you reach another conclusion, that, likewise, if you're firmly convinced of that conclusion, it would establish that particular fact or conclusion.

I will tell you that it is quite common to use both and the law makes absolutely no distinction between the value or the weight to be given either to direct or circumstantial evidence. Nor is there any greater degree of certainty required of circumstantial evidence and direct evidence. Rather, you should weigh all of the evidence and decide what you find to be credible and believable.

I would instruct you in that regard, however, that the mere fact that the circumstances brought out in a case are strongly suspicious of guilt, or that the circumstances are such that a defendant's guilt is probable, that that would not be enough to sustain a conviction. Why? Because the proof offered by the State has to

be more than mere suspicion. It has to be more than somebody being probably guilty. It has to be proof that satisfies you or convinces you beyond a reasonable doubt.

Now, how do you decide credibility and believability of witnesses? As I told you on Monday, you have been doing this all your life and this is not going to be foreign to you when you begin this process. If you hear something or you read something, you decide every day of your life whether you believe it or not and, if so, how strongly.

The tools and the factors that you would have used in your life, I would urge you to use them when you begin this process. I'm going to discuss some of them with you now, but we know that it's a commonsense exercise, simply applying your life's experience, your sense of logic, and then deciding what you believe to be true. Now, some of the factors that you may want to consider would be the demeanor of the witness.

How did they appear to you, straightforward or hesitant in answering the questions?

Was the testimony of a witness consistent or was it inconsistent?

Was it strengthened or weakened by other evidence in the case?

How did the witness come to know the facts he or she testified to, and what was the ability of that witness to know those particular facts or circumstances?

Is there a reason for a witness to give testimony, which may be helpful or beneficial to one or side or detrimental or damaging to one side. In other words, was the witness biased or prejudiced in any fashion?

In determining the credibility and believability of the witnesses, you're given very wide latitude and broad discretion. You have a right to believe many witnesses against one, one witness against many. You have the right to believe all the witnesses' testimony, part of the witnesses' testimony, or none of the witnesses' testimony.

Now, of course you don't make these decisions arbitrarily. You have that right and that prerogative because your objective has been, since you took the oath, to

determine the truth regardless of the source of the evidence.

Now, while you enjoy the very wide latitude and broad discretion when it comes to determining the facts, please remember that you don't enjoy the same with the law. As I stated to you I think when you started, you may hear some principles of law that you believe -- number one, you didn't believe they were that way or that particular manner or, even moreso, that it should be changed. I respect your right to differ with any principle of the law as a duty of this country. But for the purposes of this proceeding today, if you should have any differences or if you believe the law should be different or changed, you must set that aside and take the law and apply the law fairly and impartially.

Again, the fact that I give you an instruction on particular issue of the law should not be considered by you in any way to be a suggestion of how you're to resolve the factual issue.

You also should consider the charge as a

whole and not put any greater inferences or weight on any one aspect of the charge and apply this charge and the law fairly and impartial to the facts as you will determine them.

I read to you when I qualified you, they're accused of committing the offense -- each defendant is accused of committing the offense of armed robbery. Allegedly, it occurred on September the 15th, 2010 at 3014 South Morgan's Point Road in Mount Pleasant.

In order to be entitled to a verdict of guilty as to the defendants, any and all of them, the State must prove beyond a reasonable doubt that that particular defendant took personal property from the person or presence of another.

Property is in the presence of a person if it's within that person's reach, inspection, observation or control, so that the person could, if not overcome with violence or prevented by fear, keep possession of the property.

The State must also prove beyond a reasonable doubt that the defendant carried

the property away intending to permanently deprive the owner of the property and to keep the property for the defendant's own use. The slightest removal of the property or the complete possession of the property, even for an instant by the defendant, is sufficient to show a taking and carrying away of the property. Furthermore, the taking and carrying away of the property must have been done with violence or by putting the owner of the property in fear of violence.

Finally, the State must prove beyond a reasonable doubt that the defendant was armed with a deadly weapon during the robbery. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. I would instruct you in that regard that a pistol may be a deadly weapon. Also, ladies and gentlemen, I would charge you in the principle of law known as the hand of one is the hand of all. If a crime is committed by two or more people who are acting together in

committing a crime, the act of one is the act of all. A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person, which occurred as a natural consequence of the acts done in carrying out their common plan or purpose. If two people are acting together, assisting each other in committing the offense, two or more people, the act of one is the act of all. Or as it's sometimes said, the hand of one is the hand of all.

Prior knowledge that a crime is going to be committed without more would not be sufficient to make a person guilty of the crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal. Nor is mere presence at the scene of a crime or mere association with a person who commits a crime make a defendant an accomplice or an aider or abettor of that person committing the crime.

Guilt, as a principle, is shown by actual

and constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt -- a finding of guilt as a principal. The State must prove beyond a reasonable doubt by competent evidence this theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or who is present, aiding, abetting, or assisting in committing that crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime itself.

Present at the commission of a crime, that term, means to be sufficiently near to aid and abet and assist in the commission of a crime.

The burden of proof to prove every element of the crime charged, if you find after reviewing all the evidence that the

State has proven the defendant was only present at the scene but was not participating, then you must not find that defendant guilty, of course. It has to be involved in some fashion.

Intent is also a necessary element, for there must have been a common design or intent to commit the crime and then the crime must have been committed pursuant thereto. Intent means intending the result which actually occurs, not accidentally or involuntarily. Intent may be shown by the action and conduct of the person and other circumstances from which you may naturally and reasonably infer intent. The State must prove the element of intent beyond a reasonable doubt.

I would also instruct you, ladies and gentlemen, that a defendant, Mr. Graddick, has raised a defense of alibi. In order to establish an alibi, it must be shown that that defendant was at another specified place at the time the crime was committed. And that it was, therefore, impossible for the defendant to have been at the scene of the

crime.

Mere denial of presence at the scene of a crime does not constitute an alibi.

Now, there is no burden on that defendant, Mr. Graddick, to prove an alibi. The burden is on the State to prove beyond a reasonable doubt that Mr. Graddick was actually present at the scene of the crime and actually participated in it, and was not somewhere else. In other words, the State has the burden of disproving the Defendant's alibi defense.

Now, ladies and gentlemen, you took an oath, just -- similar to the oath that I took when we started this process. And basically what you have promised to do is to set aside all human emotion, which is not easy sometimes. Because human emotion has no presence, and really no purpose in performing the act of judging. And that's not always easy for us because we are human. But you have to consciously do that and I'm confident that you will.

And you must remember something, you're not advocates for either side. You have no

friends to reward nor do you have any enemies to punish. You're here to consciously, conscientiously apply your commonsense, your sense of logic to the case. Perform the task that has been assigned to you, and that's analyzing the evidence, and decide what you believe to be the true facts.

Then once you've decided those true facts, you take the law as I gave it to you, apply that fairly and impartially to those facts and report your decision. When you've done that, you will have honored the oath in every respect.

To assist you, Mr. Wachter, in recording the verdict, I've prepared three verdict forms. That is necessary because there are three separate cases, as we have discussed. They are similar -- and I'll just explain one -- but there are two choices that appear. You have two options. The order in which they appear absolutely means nothing at all. I had to put them in some order. This one happens to be Mr. Graddick's. And you will note that each one is captioned -- and the caption is simply to facilitate the file. It

doesn't have any other significance or purpose, other than that. And the body reads the same. The only difference is you have one for Mr. Coakley and one for Mr. Smalls. And this one just happens to be Mr. Graddick's.

It says, (reading): "We, the jury, by unanimous consent.." -- what does that mean? It means all twelve of you have to agree. Eleven to one is not sufficient. It has to be twelve to zero.. --"...find the Defendant, Jarret Graddick, on the charge of armed robbery.." -- the first choice guilty, second choice not guilty.

What will you be saying if guilty is your first choice? You'll be saying that you've analyzed the evidence in this case, applied the law, and you believe the State has met its burden of proof as to each of those elements that we've discussed, beyond a reasonable doubt. And, therefore, consistent with my instruction, you're returning a verdict of guilty.

Not Guilty, you'll be saying that you've analyzed it and you're not convinced beyond a

reasonable doubt of one or more. Because if the State fails on one, then you must return a verdict of not guilty. The State has must prove each element beyond a reasonable doubt.

Whichever your choice, you'll note there's a line that proceeds it, if you'll place a check in that and circle it. Then sig where it says "Presiding Juror," sign it. Once you've done that, you will have completed that particular verdict form, and then you'll go to the next and so on until you've completed three verdict forms.

I know you're anxious to get to the process of doing what you've taken an oath to do. And I've told you, you're almost there. I need to talk with the attorneys now out of your presence and see if there's any additional instruction that I need to give and I'll have to excuse you, of course, to do that.

But if there aren't any additional instructions, then we will deliver the exhibits to you. And when you receive the exhibits, then you may commence your deliberations.

Now, once the deliberations start, the only restriction that I place on deliberations is if any juror has to leave the table for any reason, you must stop deliberating until all twelve of you are together.

Also, we're going to keep here some of the exhibits. You have photographs. If you want to view the firearm and the cartridges, we will bring you back in and make that available to you to inspect, but we're not going to send those back to you. It's not that we don't trust you, it's just no reason to send that back. You have seen it. You have photographs of it but if you do need to view it further, please feel free to send me a note.

Should you want to send me a note, if you'll just write it on one page, we'll make it an exhibit, and we'll respond to that.

Also, obviously, the videos, if you need to watch any of the videos that have been played, we'll have to bring you in in order to accomplish that. So just let me know which or all. If you want to watch them all, that's fine.

The clothing, as you've noticed during the process, most people have placed on gloves. That's not to say there's anything contaminating there, but it's just a safety precaution -- many of us know that. I will send that clothing if you ask for it. But unless you do, we're not going to send back any of the clothing exhibits. You have photographs of some, but if you want to inspect them, please just let me know and we'll be happy to send them back.

Thank you for your attention. I'm going to ask you to retire to your jury room. Do not commence your deliberations until you receive the exhibits. Thank you.

(JURY OUT @ 12:20 P.M.)

THE COURT: Exceptions or additions from the State?

MS. SHEALY: None, Your Honor.

THE COURT: Exceptions or additions from Mr. Graddick?

MR. GRIMES: Just subject to our request number one, on the ---

THE COURT: On the ---

MR. GRIMES: Yes sir.

THE COURT: We'll make that Court's Exhibit Number 3.

(SO ENTERED AS COURT'S EXHIBIT NUMBER 3)

THE COURT: And I declined to charge request number one for reasons stated. I think it's covered by my general charge on if somebody had something to gain from-that or not, which was covered. But you can scrutinize it. The words that I have problems with is the -- when you really look at this more closely with a witness, I think that it is more a factual problem. But it's noted in the record and you're protected for that. Anything else, other than that, Mr. Grimes?

MR. GRIMES: No, sir.

THE COURT: Any objection or exceptions from Defendant Coakley?

MR. RUNYON: No problems with Defendant Coakley. No additions or exceptions. And just for the record, since I put something on the record before, I don't want to leave dangling participles, I think that the circumstances or the conditions that the Court laid out for the jury insofar as

handling the exhibits answers my quasi objection to the rubber gloves.

THE COURT: Okay. And for that, -- okay. I don't have any problem, I just feel like it's better because of all of the potential that's there. To be honest with you, I'd already planned to do that. That's just my custom.

MR. RUNYON: I just wanted to clarify for the Court that I no longer have an objection.

THE COURT: Thank you, sir. Thank you all. Appreciate it. It's always a pleasure to work with you. We will be at-ease until we hear from the jury.

(JURY IN DELIBERATIONS @ 12:25 P.M.)

(NOTIFIED OF JURY QUESTION @ 1:30 P.M.)

THE COURT: Let's get the attorneys in here, and the defendants.

(DEFENDANT GRADDICK PRESENT)

(DEFENDANT COAKLEY PRESENT)

(DEFENDANT SMALLS PRESENT)

THE COURT: We have received a note from the jury, asking -- and this will be Court's Exhibit 4.

(SO ENTERED AS COURT'S EXHIBIT 4)

THE COURT: Court's Exhibit 4 says, basically, "What is the definition of the hand of one, the definition of reasonable doubt, definition of intent."

I've copied the three portions of my charge that deals with those three issues. I'll give a copy to each one of you. I'll attach it to it.

My response is, (reading): "*I've attached portions of my charge which you've requested. If additional portions are needed, please let me know.*" Signed by me. Okay. Y'all can look at it.

ANDREW GRIMES: Thank you, Your Honor

WILLIAM RUNYON: I take it, Judge, that you're saying that they wanted your charges?

THE COURT: That is what they are asking for.

WILLIAM RUNYON: I just wanted to clarify that.

THE COURT: That is what they are asking. That is what the note says, "the hand of one, definition of reasonable doubt, definition of intent." I interpret that as he wants an explanation of that. I can send

back my charge. That's how I explained it to them.

WILLIAM RUNYON: Your Honor, we have no objection if this is what you charged them.

THE COURT: That's correct.

ANDREW GRIMES: On behalf of Defendant Jarret Graddick, we have no objection.

SOLICITOR SHEALY: And we have no objection.

THE COURT: Okay. If they need additional, that's why I asked. I don't want to preclude them if they want additional portions. I think that Judge Newman has started giving his entire charge. I'm close to that but since they haven't really signed off on it, *per se*, I wait for them to ask for something. This is a simple way of dealing with it.

JIM SMILEY: No objection.

THE COURT: Okay, you can take this back to the jury.

(COURT'S EHXIBIT 4 TO JURY @ 1:51 P.M.)

THE COURT: All right, we'll be at-ease until we hear from the jury.

(NOTIFIED OF JURY QUESTION @ 2:08 P.M.)

THE COURT: Thank you. We will be at-ease.

(JURY IN DELIBERATIONS)

(NOTIFIED OF VERDICT @ 3:20)

THE COURT: Let me see the attorneys.

(OFF RECORD BENCH CONFERENCE)

(DEFENDANT GRADDICK PRESENT)

(DEFENDANT COAKLEY PRESENT)

(DEFENDANT SMALLS PRESENT)

THE COURT: This will be ---

COURT REPORTER: Court's Exhibit 6.

(SO ENTERED AS COURT'S EXHIBIT 6)

THE COURT: We just discussed off the record what has been marked as Court's Exhibit 6. The jury has advised that they have reached a verdict on two cases. We discussed whether or not to go ahead and receive the two. They are unanimous decisions.

Mr. Grimes, Mr. Graddick would request that the jury continue to deliberate on the third case before receiving any verdict; is that correct?

ANDREW GRIMES: Yes, sir.

THE COURT: And the basis for that

request is, what?

ANDREW GRIMES: Your Honor, I believe that he is entitled to a full and complete consideration of the facts. Some of my argument involved Mr. Smalls and as they continue to discuss Mr. Smalls, they may reconsider their decision.

THE COURT: What decision? They've already reached a verdict as to Mr. Graddick.

ANDREW GRIMES: They were tried together and the verdicts should be announced together, Your Honor.

THE COURT: Thank you, sir. I don't think that there is any logical reason not to receive the verdicts. At least the Court can't think of any right now.

The jury has decided two cases. I need to find out first of all if it is a decision by the jury. We need, first of all, to have that resolved. Then the Court may tell them to retire and continue their deliberations as to the third defendant or we may just simply -- there doesn't seem any reason, to me, to not go ahead and resolve those.

Of course, I don't know what the verdicts

are. If the verdict is guilty, we can go ahead and take care of that defendant, those defendants. If it is not guilty, then they don't have to sit in this court any longer. If it is a guilty verdict, we can resolve that while they continue to deliberate in the other.

From a judicial standpoint, it seems to be expedient for everybody here. We don't need to sit around and wait when we have a way to resolve it.

As I've stated on numerous occasions, as has Mr. Smiley and each of you, they are three separate cases. So we're not talking about a package deal here. They are individual cases. I've so instructed that there are three armed robbery trials. They've advised that they have resolved two of the three cases.

So noting your objection, the Court is still going to receive the verdict.

ANDREW GRIMES: Thank you.

THE COURT: Bring in the jury panel.

While the jury is coming, let me tell you that I appreciate the courtesies extended by

verdict on two of the cases.

ANDREW GRIMES: Thank you, Your Honor.

THE COURT: Yes, sir. Before I answer that question.

ANDREW GRIMES: Yes, sir.

THE COURT: Let the record reflect that the defendants are present, Mr. Graddick, Mr. Coakley and Mr. Smalls.

COURT REPORTER: Marking that jury note as Court's Exhibit 6.

THE COURT: Yes. Thank you. And they say that they want to see all videos of the Walmart. I am not sure what that is, but I'll ask about that, too. Bring in the jury.

(SO ENTERED AS COURT'S EXHIBIT 6)

COURT REPORTER: And Court's Exhibit Number 7.

(SO ENTERED AS COURT'S EHXIBIT 7)

(JURY IN @ 3:32 P.M.)

THE COURT: Thank you, ladies and gentlemen. I have your notes, which we have marked as Court's Exhibits 6 and 7.

In Court's Exhibit 6, you indicated that you have reached a decision in two of the

three cases. Is that correct, sir?

FOREMAN: That is correct, Your Honor.

THE COURT: All right. Then Exhibit 7, your note, requests the replaying of the testimony of Mr. Davis, Joseph Davis, and all of the videos. Do you want the arrest video and the Walmart videos or ---

FOREMAN: Just the Walmart videos, the one at 6:28 through the last one, which was ---

THE COURT: I think that there were three cameras.

FOREMAN: Four.

THE COURT: Four cameras. Okay. That has nothing to do with your decision? That has to do with you resolving the third case?

FOREMAN: Yes, sir. Both of those.

THE COURT: Do you have the verdict forms that you have decided on.

FOREMAN: Yes, sir.

THE COURT: Very well. If you will pass the verdict forms to Mr. Pryor (bailiff). We will be in the process of

resolving that -- and we'll get the videos cued up for your review.

BAILIFF: (Tenders forms to Judge Dennis).

THE COURT: (Upon review), the verdict forms have been properly completed. If you would, please publish the verdicts.

I would ask the defendants Mr. Coakley and Mr. Graddick to please rise.

DEFENDANT GRADDICK: (Complies)

DEFENDANT COAKLEY: (Complies)

CLERK: Case Number 2011-GS-10-02078, the State of South Carolina versus Keenan Coakley, "We, they jury, by unanimous consent find the Defendant, Keenan Coakley, on the charge of armed robbery, Guilty." Signed by David Watcher, December 6th, 2013.

Case Number 2011-GS-10-02074, State of South Carolina versus Jarret Graddick, "We, the jury, by unanimous consent find the Defendant, Jarret Graddick, on the charge of armed robbery, Guilty." Signed David Watcher, dated December 6th, 2013.

Mr. Foreman, ladies and gentlemen of the jury, if these are your verdicts, please

raise your right hand -- (unanimous response by jurors raising rights hands). Let the record reflect that all jurors have raised their hand.

THE COURT: Thank you very much.

Anything further from the jury on the issues of the verdicts, from the State?

SOLICITOR SHEALY: No, Your Honor.

THE COURT: From the defendants?

ANDREW GRIMES: On behalf of Defendant Graddick, we would request that the jury be polled.

THE COURT: Very well. Ladies and gentlemen, then we will -- go ahead and poll then as to each verdict.

I assume you join in that --

WILLIAM RUNYON: We would make that same request, Your Honor.

THE COURT: Very well. What is going to happen -- is it all right with each of you that we simply lump them into, 'has the court published your verdicts' in the plural rather than do it separately on each case? May we just simply say, 'is this your verdicts' on both?

ANDREW GRIMES: Yes, sir.

WILLIAM RUNYON: I -- yes, Your Honor.

THE COURT: What is going to happen is that polling the jury simply states that -- you have already technically done that by raising your right hand. But there is a process that's been around as long as I have been practicing law, and long before. The Clerk is going to call your name and ask whether that was your verdict. When you respond, please understand that you will be responding in each case. If it is not your verdict in both cases, you can say that it is 'my verdict' in one but not the other. Okay. If it is your verdict, simple say yes.

Then he will ask, 'Is it still your verdict(s)?' Then you'll respond accordingly.

If you would please assist us.

CLERK: Yes, sir. Starting with the foreman, Juror Number 273, David Wachter.

JUROR NUMBER 273: Yes, it is my verdict:

CLERK: Sir, is this your verdict?

Juror number 273: Yes, sir.

CLERK: Sir, are these still your

verdicts.

JUROR NUMBER 273: Yes. Yes, sir.

CLERK: Juror Number 118, are these your verdicts?

JUROR NUMBER 118: Yes.

CLERK: Are they still your verdicts?

JUROR NUMBER 118: Yes.

CLERK: Thank you, ma'am. Juror Number 255, are these your verdicts?

JUROR NUMBER 255: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 255: Yes.

CLERK: Juror Number 176, are these your verdicts?

JUROR NUMBER 176: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 176: Yes.

CLERK: Juror Number 58, are these your verdicts?

JUROR NUMBER 58: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 58: Yes.

CLERK: Juror Number 108, are these your verdicts?

JUROR NUMBER 108: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 108: Yes.

CLERK: Thank you, sir. Juror Number 26, are these your verdicts?

JUROR NUMBER 26: Yes.

THE COURT: Are these still your verdicts?

JUROR NUMBER 26: Yes.

CLERK: Juror Number 148, are these your verdicts?

JUROR NUMBER 148: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 148: Yes.

CLERK: Juror Number 221, are these your verdicts?

JUROR NUMBER 221: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 221: Yes.

CLERK: Juror Number 22, are these your verdicts?

JUROR NUMBER 221: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 222: Yes.

CLERK: Juror Number 98, are these your verdicts?

JUROR NUMBER 98: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 98: Yes.

CLERK: Thank you, ma'am. Juror Number 152, are these your verdicts?

JUROR NUMBER 152: Yes.

CLERK: Are these still your verdicts?

JUROR NUMBER 152: Yes.

CLERK: Your Honor, the jury has been polled and the verdicts stand.

THE COURT: Yes, the jury has been polled and the verdict does stand. Thank you very much. Anything further from the jury before I return them to their jury room to resume their deliberations?

ANDREW GRIMES: Not on behalf of Defendant Graddick.

WILLIAM RUNYON: Not on behalf of Defendant Coakley, Your Honor.

THE COURT: Any other requests, Mr. Smiley, at this point?

JIM SMILEY: No, sir.

THE COURT: Thank you very much, ladies and gentlemen.

COURT REPORTER: Testimony of Joseph

JIM SMILEY: Just ---

RECROSS EXAMINATION

BY MR. SMILEY:

Q. So when the police got there and talked to you, they asked you first did you see a red-and-black car out there?

A. Yes, sir.

THE COURT: We have the videos cued up.

(WALMART VIDEOS REPLAYED BEFORE JURY)

THE COURT: Thank you. If you would return to your jury room and resume your deliberations, we will be in the process of getting those things for you. Thank you very much.

(JURY OUT @ 3:43 P.M.)

THE COURT: With respect to the verdict, anything further from the State? Any Motions?

SOLICITOR SHEALY: No, Your Honor.

THE COURT: Any Motions from Defendant Graddick?

ANDREW GRIMES: We just renew our Motion for a directed verdict.

THE COURT: Very well, I believe that the court has responded to all the issues.

Certainly the evidence supports the verdict and I would deny the Motion.

WILLIAM RUNYON: On behalf of Defendant Coakley, Your Honor, we would renew our Motion for a directed verdict and move for a mistrial -- excuse me, move for a new trial. We also renew our Motions for a mistrial as we previously stated on the record.

THE COURT: Thank you, sir. Those Motions are noted and preserved. The Court again, as to Mr. Coakley, finds the evidence adequate to support the verdict and would respectfully deny your Motions, for a new trial and for a mistrial.

All right. Are we ready for sentencing or do you want to wait? Whatever your pleasure.

SOLICITOR SHEALY: We are ready to go forward with sentencing.

THE COURT: Do you have sentencing sheets?

SOLICITOR SHEALY: I do.

THE COURT: Okay. Anything further from the State?

SOLICITOR SHEALY: Your Honor, regard-

ing Jarret Graddick, he does have a 2006 conviction for criminal conspiracy.

Keenan Coakley does not have an adult record. He does, however, have a juvenile record for simple assault and battery, a drug possession, assault and battery by a student upon a school employee, malicious injury to a treehouse -- "tree, house" -- and a disturbing schools.

THE COURT: All right. Be glad to hear from us -- we will do it in the order that we have been doing it.

ANDREW GRIMES: Thank you, Your Honor. I spoke with Mr. Runyon and that's the first time I've ever seen a judge come down and shake hands with the clients. We appreciate that. It's been a little while since I've tried a case in front of you, so I don't know if that is new or ---

THE COURT: I've been trying to do that my entire career -- at least once I started doing it. I'm sure security doesn't necessarily always like for me to do that. But -- by the same token, I respect that. But it's something that I try to do because I

-- we are all human beings, God created it. I do that out of the same respect that I'd have for anybody else. They're entitled to the same respect as anybody else, as far as I am concerned.

ANDREW GRIMES: And I told Jarret about what Your Honor said, that you would give us a fair trial, that if we do lose, then we would get fair sentence. That's all that we're seeking in this case is a fair sentence.

Jarret now is twenty-six years old. I think that he was close to turning twenty-three at the time of this offense.

He has been in jail eight hundred and ninety-one (891) days.

THE COURT: Okay.

ANDREW GRIMES: He bonded out November 16th, 2013. He was out for the holidays with his family. Quite frankly, there have been no issues. I have a lot of respect for Jarret coming to court, being a man, for showing up, facing the jury and showing the charges. I think that speaks highly of him.

He was born and raised in Mount Pleasant.

He has a daughter that is a year and a half one out in the lobby.

He's worked on and off as an electrician with his father since he's been fifteen.

His mother and father have an autistic child and Jarret helps out with him. They have a close relationship.

Jarret also helps his grandmother. You saw her testify. Obviously the jury did not believe her on her sequence of the times. But there is no doubt that he was, that he visited with her. That was confirmed when we talked with her before trial. We were a little bit concerned about her health. I asked him, 'are you sure that your grandmother can go through this, do you want her to do this.' If she can't go through this, I didn't want to call her. His grandmother was quite adamant, she said 'I'll be there to testify.' I met with her several time. She's always said that right about 6:30 these other kids picked him up.

You know, me and Jarret have kind of an odd relationship. I read the arrest warrants and stuff and said, 'there's not much that I

can do for you here, other than to talk with Ms. Shealy.' You know, I contacted her and -- there wasn't much that we could do.

As we prepared for trial, he seemed to pick up on a lot of the points. We had a lot of jokes. He knew some about my medical issue and he would ask about that. A lot of clients don't' do that. He's a very caring person.

When I talked to him, I think Wednesday night -- or, excuse me, Tuesday night, trying to see what would cause him -- you know, he seems so friendly, outgoing, so smart, to be turning through stores robbing stuff. I just can't picture that. He's young, maybe he was caught up with the wrong influences but everyone was close to the same age. I don't know if it was the adrenalin, the high or something. I am just at a complete loss. It's as if there are two Jarrets.

To me, if he was sentenced to maybe around fifteen years, I'm certain that he'd learn his lesson, would come out as a mature Jarret. More like his father.

His mother, I think quite frankly, may

have let him get away with too much stuff. His father is more of a disciplinarian. When I talked to him briefly, you know, he talked about some stuff. He's kind of at a loss to explain what happened, how this happened.

One of the deputies that has been here, Ms. Pryor, has been very supportive. She's e-mailed me a lot in the case, has called, helped with the three-ways at the jail, to coordinate some stuff. She obviously cares about him.

I think that his mother would like to briefly address the Court.

THE COURT: I'll be happy to hear from her. I just need you to give me your full name for the record.

BRIDGETT GRADDICK: I just -- (emotional).

THE COURT: Ma'am?

BRIDGETT GRADDICK: I -- that's my son. He's always -- he's a kind-like person. He'd do anything in the community and he was in church. All the time, everybody in the community loves Jarret and he takes time to do things -- he takes out the trash, he

cleans the yard, he -- (emotional). I love my son -- (emotional) -- he's my son.

COURT REPORTER: And her name?

ANDREW GRIMES: Bridgett Graddick.

THE COURT: Thank you. I don't believe that Ms. Pryor wishes to address the Court. Thank you.

THE COURT: Thank you, Mr. Grimes. Anything from the State concerning Mr. Graddick?

SOLICITOR SHEALY: Nothing further, Your Honor. Thank you.

THE COURT: Mr. Runyon?

WILLIAM RUNYON: Your Honor, you've heard that the Coakleys ----

THE COURT: I'm sorry. There is one thing that I need to ask about Mr. Graddick. What happened with the criminal conspiracy? Did he get time served? Probation?

ANDREW GRIMES: I believe that it was probation, Your Honor.

THE COURT: How long was he on proba-tion?

DEFENDANT GRADDICK: Two years.

ANDREW GRIMES: Two years.

THE COURT: And he successfully completed that?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: So that would have put it to 2008, when you finished probation?

DEFENDANT GRADDICK: Yes, sir.

THE COURT: Excuse me, Mr. Runyon. I'm sorry.

WILLIAM RUNYON: No problem. Your Honor, has heard even during the jury selection where Mr. Coakley is from. He's from Mount Pleasant. He lives on Coakley Road. The Coakleys are an extensive family in the Mount Pleasant area. He went so school in Mount Pleasant, Judge.

His mother and father are in the courtroom today and his pastor is here with him. Judge, he's got an older brother who has been very attentive to this case. He lives and works out of state.

Mr. Coakley has been in custody since July 5, 2011, Judge. We'd ask the court to take that into consideration.

Of course, Mr. Coakley -- we heard the verdict. I don't argue with jury verdicts,

Judge. I haven't done that since I started practicing and there is no sense to start now. The verdict is the verdict and we have to deal with it.

I think as a practical matter, that we've got a young man -- you heard the juvenile record.

THE COURT: Yes.

WILLIAM RUNYON: And I have to tell you that he did have some problems at school. Most of those items that you heard about were significant but not disturbing situations -- like the treehouse situation, things of that sort. He successfully addressed those issues in the juvenile process.

We are where we are now, Judge. I'd ask the Court to be as lenient as possible considering the circumstance and, as I asked, to take into consideration that he's been in jail since July 5th.

THE COURT: Anything else?

WILLIAM RUNYON: Nothing else at this time, Judge.

THE COURT: I don't understand it either.

WILLIAM RUNYON: Judge, if ---

THE COURT: Good afternoon, sir. If you would, give me full name, please, sir.

JAMES COAKLEY: I'm James Michael Coakley. I am Keenan Coakley's father.

THE COURT: Yes, sir.

JAMES COAKLEY: This is my baby. I love him to death.

THE COURT: I know that you did.

JAMES COAKLEY: And I tried to bring him up the best way that I could. But, you know, kids are going to be kids. He's not a bad person, Your Honor.

Very seldom do you see -- I am a father, I'm up here. It's not always that you have someone to come and stand behind their kids like this, because most families don't have a mother and a father in the home. Our kids had a mother and father in the home.

This is my wife right here.

This is our pastor. We are church-going people.

I don't believe in foolishness and stuff like that, Your Honor. And I teach my kids not to believe in foolishness. But, you

know, things happen and we can't watch our kids twenty-four/seven.

THE COURT: No, sir.

JAMES COAKLEY: I have to work, I've got to feed them. I'm a State employee, a Citadel coach. I work around a whole lot of kids. I speak to them every morning and foolishness and getting in trouble, bad stuff like that. You know, I see a lot of them jail and stuff like that. But me being a truthful man, and I don't try to put myself on a pedestal but I speak to them and I tell them, you know, 'your father and mother didn't send you to school for four years to get in trouble, man,'

It's my heart and my goal to do that at The Citadel. I've been working there, next year will be twenty-eight years. I've seen a lot of things happen around there.

I'm asking you this afternoon, Your Honor, to please show mercy, to lighten his sentence, because he was gone for three years -- he's got a young child and he couldn't even make his birthday last Saturday. He loves him to death. He always asks about his

daddy. As a matter of fact, I take him with me, I always keep him with me. I have him on the riding mower with me, cutting grass. He calls he dad. He calls me daddy because he really didn't get to see his dad when he was a baby when Keenan got locked up.

I'm asking you, to please, lighten the sentence for him so that he can come home and be with us.

His mama, we almost lost her last year. She had toxic shock. I went home to find her in the bathroom unconscious. The only thing that he could do on the phone was to cry for his mama, because he can't be there for his mother.

I am asking you for your mercy today.

THE COURT: Thank you, sir. I don't know what the answer is, Mr. Coakley. Yes, sir? I'm sorry. Give me your name, please.

BURNETT JACQUES: The first name is Burnett, B-u-r-n-e-t-t and the last name is Jacques, J-a-c-q-u-e-s.

I been in youth pastoring for many, many years and I've been in youth counseling for many years. I am from the Island of Haiti,

and I've been here in ministerial school for many years.

I've been dealing personally, one-to-one, with Keenan for quite a while. Especially since he's been in jail, I've been visiting with him and talking to him. I've seen quite a lot of improvement in terms of behavior and commitment.

It's amazing in these days of modern days -- people are recycling papers, recycling leaves. I believe that there should be a way also where we can recycle our wayward people.

It is true that the Bible says that a soul without sin shall truly die. But also I believe in the vow of redemption. Not only should we recycle paper but we should recycle people, redeem them as with this young man. I believe that with proper counseling, proper talk, proper teaching that people -- I've made mistakes myself, but eventually I've been redeemed. So if I have been redeemed and -- and I don't believe that I'm one bit better than those young people, these young men, so I cry for redemption. I believe that -- I don't have any say so in that but I

believe that should try for all out young people.

THE COURT: Unfortunately, sir, I don't have anything to do with that.

BURNETT JACQUES: Yes, sir, but I would say a prayer for your mercy and ask if you can do less, not only towards them where they go away but to try to find a some way that they reduce their sentences and get them back home in the proper environment and teachings and -- so, please, mercy.

THE COURT: This is something that -- we've all talked about some things, and the things that we all know about -- I'm a parent, too. I'm a grandparent. I thank God every day, I don't think my children are immune from doing exactly what is before me today. We as human beings are capable of making mistakes, and a mistake was made here.

There is no question that there are lots of people -- there are people that come in here, and I see a lot of them, that don't even have any family. They've never known their parents. Then I see some that have parents, have a community, have a church

community. The Bible talks about that, too: *To whom much is given, much is expected.*

I think that's a fair request.

It also talks about the consequences of our sins, our actions and that we have to suffer for that.

That's -- redemption, I don't have anything to do with that. There is a judge much greater than me that is going to take care of that one. I don't deal with that.

Mine is to try to do, as best I can, to mete out the punishment that I think is appropriate for the actions that were taken. These were serious, serious actions. How they go from what we saw to carrying, literally a canon -- a .45 -- a gun holding a .45 caliber cartridge. Had that gone off in that store? It's just lucky that we aren't talking about a robbery -- an armed robbery with murder. It would have been horrible.

The troubling thing about an armed robbery, why it is so serious and why the State takes it so seriously is that those folks didn't know what was going to happen to them. They thought that they were dead. I

can't think of any greater nightmare.

I don't know the answer, Reverend. It's a puzzling thing. I ponder it every day that I get up. I open the newspapers, I see another story. On the news this week there was a family, a community where they were going -- talking about going to Columbia to try to change some image, to try to get people to understand that 'we've got to stop doing what's going on.'

I don't know where the answer is, I'll confess that. But I do know this, I excused one person. Do you know what his reason was? 'I live in this community. I'm sorry, but I already have an opinion based on what we see every day about young people.'

That's a sad statement.

Is it fair? No, it is not.

Is it reality? Yes, it is.

Can it be changed? Sure, it can.

But you know where it's got to start? With people your age. It's got to start.

You're right, we can't be with them twenty-four/seven, we can't walk with them every day.

They've got to start making decisions. I've been doing this for twenty years and I have people, all the time, who -- I had a young man, I'll never forget him. He was eighteen years old, he shot a person in the chest with a .40 caliber pistol. I asked him, I said, 'What did you think was going to happen when you pulled that trigger?'

He looked at me like, 'What?'

I said, 'What did you think was going to happen?'

'Well, I didn't think.'

You shoot somebody and you don't even think about what is going to happen? That just doesn't make any sense. We've got to start thinking before.

I don't know what causes people to go from where he went, to do what was done.

The jury has passed on it.

But you will have a chance -- and I'm sure that the victims would love to see you in jail for thirty years. I understand their feelings, I really do. You put them through hell that day.

I'll take into consideration the lack of

record or the type of record that you have.

I will also take into consideration the ages.

I believe Mr. Graddick, that the firearm was tied to you. I understand that you don't have to say -- but that was the evidence in this case.

And you were on probation for two years.

You are the older. I am going to hold you accountable.

The sentence of the Court in Mr. Graddick's case is twenty (20) years, and he is to be given credit for eight hundred and ninety-one (891) days.

The sentence for Mr. Coakley is sixteen (16) years and he is to be given credit for time served since July 5th, 2011.

God bless you, good luck to both of you.

(DEFENDANT GRADDICK IN CUSTODY)

(DEFENDANT COAKLEY IN CUSTODY)

THE COURT: Gentleman, we have another note; I think that this is where this case is going to be resolved -- it's what we talked about. Let me see the attorneys.

(SO ENTERED AS COURT'S EXHIBIT 7)

(OFF RECORD BENCH CONFERENCE)

JIM SMILEY: Can I have a minute to talk with him?

THE COURT: Certainly.

(BRIEF RECESS)

(DEFENDANT SMALLS PRESENT)

JIM SMILEY: Your Honor, may we --

(OFF RECORD BENCH CONFERENCE)

JIM SMILEY: We're almost there, Your Honor.

THE COURT: That's fine.

JIM SMILEY: They are doing the sentencing sheet now.

THE COURT: All right. Okay, why don't we do this? I don't need the sentencing sheet to take his guilty plea.

JIM SMILEY: No, sir, we can sign it afterwards.

SOLICITOR SHEALY: That's fine.

THE COURT: Let's do that and then I can go back and deal with the jury.

JIM SMILEY: That's fine. Kevin, let's move up here. Do you want to talk to me?

THE COURT: Jim, go ahead and talk. There's no rush. I tell you what, why don't

I answer this question and tell them that we are in the process of -- let's bring them in so that they don't think that we have forgotten about them.

JIM SMILEY: Yes, sir.

THE COURT: Bring in the jury.

(JURY IN @ 4:17 P.M.)

THE COURT: Thank you, ladies and gentlemen. I have what has now been marked as Court's Exhibit 8 (sic). It says, "At what time is someone considered as aiding and abetting in a crime?"

There is no specific law that defines that other than what you already have. You have the law that pertains to this case as to what the State has to prove beyond a reasonable doubt to find someone guilty of a crime, being a principle or assisting in that crime. That's a factual determination that is left to the jury. The jury has to make that determination. Of course, that determination has to be made beyond a reasonable doubt, that you conclude that that has been established by the evidence.

I would love to answer it but I am not at

liberty to do so under the restrictions that I have. That would cause me to be commenting on the facts of this particular case. I cannot do so. Thank you, sir.

Please retire and resume your deliberations. Thank you so much.

(JURY OUT @ 4:23 P.M.)

THE COURT: Exceptions or additions from the State?

SOLICITOR SHEALY: No, Your Honor.

THE COURT: Exceptions or additions from Mr. Smalls?

JIM SMILEY: No, Your Honor.

THE COURT: Thank you.

(SIDEBAR DEFENDANT SMALLS AND COUNSEL)

JIM SMILEY: Your Honor, I need a quick break to run to the restroom and then we are ready.

THE COURT: Yes, sir.

(BRIEF RECESS)

(DEFENDANT SMALLS PRESENT)

JIM SMILEY: There's one thing that I

forgot to tell him, (sidebar with Defendant Smalls). I think that he understands his rights, Your Honor.

THE COURT: Mr. Smalls, good afternoon, sir.

DEFENDANT SMALLS: Good afternoon.

THE COURT: I have been handed a sentencing sheet, Mr. Smalls, that bears your signature on Indictment 11-GS-10-2079, which is an indictment charging you with the offense of armed robbery; which we have spent the last four days or so trying. According to this sentencing sheet you're now desirous of pleading guilty to accessory after the fact of a felony A, B,C; is that correct, sir?

JIM SMILEY: (Sidebar with Defendant).

DEFENDANT SMALLS: Yes, sir.

THE COURT: Your lawyer has explained to you the difference between the indicted offense and the offense of accessory after the fact?

DEFENDANT SMALLS: Yes, sir.

THE COURT: What does that carry?

SOLICITOR SHEALY: Zero to fifteen.

THE COURT: Do you understand that, sir?

DEFENDANT SMALLS: Yes, sir.

THE COURT: Do you understand that charge is not a lesser-included offense of armed robbery?

DEFENDANT SMALLS: Yes, sir.

THE COURT: Your lawyer has explained your right to have that charge of accessory after the fact presented to the grand jury before being asked to answer to that charge. Is that true, sir?

DEFENDANT SMALLS: Yes, sir.

THE COURT: You have checked this box and initialed it, indicating your desire to waive presenting it to the grand jury and go forward with this plea today; is that true, sir?

DEFENDANT SMALLS: Yes, sir.

THE COURT: Do you fully understand that right?

DEFENDANT SMALLS: I do.

THE COURT: Understanding, Mr. Smalls, that I could sentence you up to fifteen years in jail, what is your plea? Guilty or not

guilty?

DEFENDANT SMALLS: Guilty.

THE COURT: Are you totally satisfied with the manner in which your attorney has represented you throughout this matter?

DEFENDANT SMALLS: Yes, sir.

THE COURT: Have you had sufficient opportunity to talk with him about the consequences of changing your plea?

DEFENDANT SMALLS: Yes, sir.

THE COURT: And you understand the rights that you're giving up?

DEFENDANT SMALLS: Yes, sir.

THE COURT: Mr. Smiley, you obviously has demonstrated those rights for the last several days, but you've also discussed with him again your right to exercise those same rights at a trial on this charge?

JIM SMILEY: I have, Your Honor.

THE COURT: And he fully understands and appreciates what he is doing?

JIM SMILEY: He does.

THE COURT: Based on your assessment of the evidence, do you concur with his decision to enter a guilty plea?

JIM SMILEY: To accessory after the fact; yes, sir.

THE COURT: I think that we talked about that.

JIM SMILEY: Yes, sir.

THE COURT: And it appears to be more of what the factual situation -- obviously the jury has been deliberating for quite a while, so there certainly is -- not to be critical to the State for indicating it as an armed robbery.

JIM SMILEY: Yes, sir.

THE COURT: Do you understand that, sir?

DEFENDANT SMALLS: I do.

THE COURT: It would be your right to have a jury trial, your right to confront the witnesses against you on this charge. Do you understand that?

DEFENDANT SMALLS: Yes, sir.

THE COURT: That means that the witnesses would come forward and testify to basically the same thing that we did today, the only thing is that you'd be charged with being an accessory; which would probably pick

up from the time that you left and picked them up and -- and you were stopped, because that's where the majority of the evidence was. There is some before that indirectly is there. Cleary there is evidence of that because there was the money and everything else in the car, the money. Do you understand that?

DEFENDANT SMALLS: Yes, sir.

THE COURT: But it would be your right to challenge those witnesses again; do you understand that?

DEFENDANT SMALLS: I understand.

THE COURT: You want to give up those rights?

DEFENDANT SMALLS: Yes, sir.

THE COURT: You understand that you're giving up the right to remain silent by talking with me?

DEFENDANT SMALLS: Yes, sir.

THE COURT: It is your decision to give up that right, as well?

DEFENDANT SMALLS: Yes, sir.

THE COURT: Nobody has threatened you in any way or promised you anything?

DEFENDANT SMALLS: No, sir.

THE COURT: I think that I know the facts. Is there anything else that you want to tell me, Solicitor?

SOLICITOR SHEALY: No, sir, Your Honor. Mr. Smiley and I -- other than this, that when Mr. Smiley and I were talking about the possibility of a plea, he indicated that he would be requesting probation. It's the State's position that due to Mr. Smalls' involvement that probation would not be appropriate to the State.

THE COURT: Thank you very much. Does he have a record of any type?

SOLICITOR SHEALY: He does, Your Honor. He has seven breaking-and-entering motor vehicle convictions back from 2006. Sorry, just a second -- and one drug charge and a 2008 shoplifting.

JIM SMILEY: The drug charge was resolved at the same time as the B&E's.

SOLICITOR SHEALY: That's correct. I think that it was a suspended Y.

JIM SMILEY: Yes. That's correct.

THE COURT: A suspended Y, and he did

HAND OF ONE IS HAND OF ALL

If a crime is committed by two or more people who are acting together in committing a crime, the act of one is the act of all. A person who joins with another to accomplish an illegal purpose is criminally responsible for everything done by the other person which occurs as a natural consequence of the acts done in carrying out the common plan and purpose For example, two people can be guilty of killing another person when only one of the two had a gun, there was only one bullet, and only one of the two fired the shot that caused the death. If two or more people are together, acting together, assisting each other in committing the offense, the act of one is the act of all or, as it is sometimes said, "the hand of one is the hand of all".

Prior knowledge that a crime is going to be committed, without more, is not sufficient to make a person guilty of that crime. Mere knowledge that another person is going to commit a crime, even if the defendant is present when the crime is committed, is not sufficient to convict the defendant as a principal nor does mere presence at the scene of a crime or mere association with a person who commits a crime make a defendant an accomplice or an aider and abettor of the person committing the crime.

Guilt as a principal is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or

common scheme is necessary for a finding of guilt as a principal The state must prove beyond a reasonable doubt by competent evidence the theory of the hand of one is the hand of all.

A principal in a crime is one who either actually commits the crime or who is present aiding, abetting, or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more, acting with a common plan or intent, are present at the commission of a crime, it does not matter who actually commits the crime. Present at the commission of a crime means to be sufficiently near to aid and abet and assist in the commission of the crime.

INTENT

Intent is also a necessary element, for there must have been a common design or intent to commit the crime and the crime must have been committed pursuant thereto with the person aiding and abetting by some overt act. Intent means intending the result which actually occurs, not accidentally or involuntary. Intent may be shown by acts and conduct of the defendant(s) and other circumstances from which you may naturally and reasonably infer intent. The state must prove intent beyond a reasonable doubt.

REASONABLE DOUBT

A reasonable doubt is a doubt which makes an honest, sincere, conscientious juror in search of the truth in the case hesitate. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence you are firmly convinced that the defendant is guilty of the crime charged, you must find him guilty. If on the other hand you think there is a real possibility that he is not guilty, you must give him the benefit of the doubt and find him not guilty. Reasonable doubt may arise from evidence which is in the case or from the lack or absence of evidence in the case. Its up to you, ladies and gentlemen to determine whether or not a reasonable doubt exists as to guilt of this defendant. I charge you that the defendant is entitled to every reasonable doubt arising in the whole case. If upon any issue of fact essential to conviction and a verdict of guilty, you have a reasonable doubt as to how that issue should be resolved, it would be your duty to resolve that reasonable doubt in favor of the defendant.

Map
Traffic
Pioneers Blvd
Sawgrass Expy
Interstate 75
Interstate 95
Interstate 595
Florida Turnpike
Weston Rd
Flamingo Rd
Hollywood Blvd
Sheridan St
Stirling Rd
Griffin Rd
Davie Blvd
Broward Blvd
Sunrise Blvd
Oakland Park Blvd
Commercial Blvd
Atlantic Blvd
Coconut Creek Pkwy
Wiles Rd
Copans Rd
Hillsboro Blvd
Powerline Rd
Dixie Hwy
Federal Hwy
Andrews Ave
Military Trl
Lyons Rd
Nob Hill Rd
University Dr
Pine Island Rd
Sample Rd
Coconut Creek Blvd
Lake Worth Rd
Forest Hill Blvd
Southern Blvd
Okeechobee Blvd
Palm Beach Lakes Blvd
Belvedere Rd
Parker Ave
Australian Ave
Banyan Blvd
Okeechobee Blvd
Palm Beach Lakes Blvd
Belvedere Rd
Parker Ave
Australian Ave
Banyan Blvd

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of General Sessions

R. Markley Dennis, Circuit Court Judge

Appellate Case No. 2013-002665
Criminal Case No. 2011-GS-10-2074

State of South Carolina. . . . . Respondent,

vs.

Jarret Graddick. . . . . Appellant.

APPELLANT'S PROOF OF SERVICE

The undersigned counsel for Appellant hereby certifies that a true copy of the Record on Appeal for the above-referenced case has been served by U.S. Mail upon The Honorable Jenny Abbott Kitchings, at Post Office Box 11629, Columbia, SC 29211, this 22nd day of April, 2015.

[Signature Block Follows]

Steven Edward Buckingham
S.C. Bar No. 75089
PERKINS LAW FIRM
200 North Main Street / Suite 301
Greenville, South Carolina 29601
864.908.3900
SBuckingham@JohnPerkinsLaw.com

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
803.734.1343
RDudek@sccid.sc.gov

Attorneys for Appellant Jarret Graddick

SUBSCRIBED AND SWORN TO before me
this 22nd day of April, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires 6/27/2023

AMY WOOD
My Commission Expires
NOTARY
PUBLIC
06-27-2023
SOUTH CAROLINA

Respectfully submitted,

PERKINS LAW FIRM

Steven Edward Buckingham
S.C. Bar No 75089
PERKINS LAW FIRM
200 North Main Street / Suite 301
Greenville, South Carolina 29601
864.908.3900
SBuckingham@JohnPerkinsLaw.com

Robert M. Dudek
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211-1589
803.734.1343
RDudek@sccid.sc.gov

Attorneys for Appellant Jarret Graddick

Greenville, SC
April 17, 2015