

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM BERKELEY COUNTY

Roger M. Young, Circuit Court Judge

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THE STATE,

RESPONDENT
SC Court of Appeals

V.

DONTE SAMAR BROWN,

APPELLANT

APPELLATE CASE NO. 2014-001082

RECORD ON APPEAL

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NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 THE COURT: Sure. Five minutes.

2 (Recess taken.)

3 THE COURT: Are you ready then?

4 MS. TAYLOR: State's ready, Your Honor.

5 MS. LITTLEJOHN: Yes, Your Honor.

6 THE COURT: Bring the jury in.

7 (In open court, jury present.)

8 THE COURT: You may resume.

9 BY MS. TAYLOR:

10 Q. Investigator Powell, I think we were at [REDACTED]
11 [REDACTED] and you had just told us about the gun that was
12 recovered.

13 A. Yes.

14 Q. Do you know if that gun was sent for any kind of
15 testing?

16 A. Yes.

17 Q. And can you tell the jury what kind of testing it
18 was without telling us the results?

19 A. There was DNA done on the gun as well as
20 ballistics.

21 Q. And the DNA testing was done by whom?

22 A. That was sent to IntelliGENETICS and the ballistic
23 was sent to SLED.

24 Q. Did you receive results back from those tests?

25 A. Yes.

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 Q. Also as part of your investigation, did you learn
2 that Christopher Wilson was fitted with a GPS monitor?

3 A. Yes.

4 Q. And did you have an opportunity to review the
5 records from that GPS monitor?

6 A. I did.

7 Q. You were in the courtroom earlier when Agent
8 Powell from probation testified about this, correct?

9 A. That is correct.

10 Q. And you reviewed records you testified were
11 authentic?

12 A. I have.

13 Q. When you went to probation -- and I understand it
14 wasn't Agent Powell that you spoke with, but when you
15 went to probation to ask them to pull those records,
16 whose records did you ask them to pull?

17 A. The codefendant in this case, Christopher Wilson.

18 Q. Did you provide them with identifying information?

19 A. I did.

20 Q. And the agent pulled records for that person to
21 your knowledge?

22 A. He did.

23 Q. Okay. I also want to talk to you, Agent Powell.
24 As part of your investigation, did you or investigators
25 working with you get cell phone records?

1 A. They did.

2 Q. And can you tell the jury, just kind of list off
3 what cell phone records you collected.

4 A. We collected cell phone records from both
5 codefendants in this case, Christopher Wilson and Donte
6 Brown. We also collected those of Marteeke Hamilton,
7 Cynthia Garrett. I believe there were some other records
8 we collected as well.

9 Q. Were some of those people from people that worked
10 at the Zaxby's?

11 A. Yes.

12 Q. You heard testimony earlier in the week about
13 Jeffrey Taylor using someone else's cell phone.

14 A. Yes.

15 Q. Were you able to corroborate his story about why
16 he used that phone and who he called?

17 A. Yes, we were.

18 Q. Did it turn out he was, in fact, calling another
19 woman?

20 A. Yes.

21 Q. Did you also get phone records for someone named
22 Slaughter?

23 A. We did.

24 Q. Did you attempt, after speaking with Cynthia
25 Garrett, did you attempt to speak or find the person

1 named Slaughter?

2 A. We did.

3 Q. Were you successful in that?

4 A. We were not.

5 Q. She had given you some identifying information,
6 but you weren't able to track him down?

7 A. That's correct.

8 Q. All right. As part of those cell phone records,
9 did you get -- did you attempt to get records from
10 Mr. Brown?

11 A. We did.

12 Q. Did those records reflect the time period of the
13 robbery?

14 A. They did not.

15 Q. Were you able to get records for the codefendant,
16 Christopher Wilson?

17 A. Yes.

18 Q. And did those records reflect the time of the
19 robbery?

20 A. They did.

21 Q. I'm showing defense what's been marked as State's
22 35. I believe it's already been entered, but can you
23 look at these records, Investigator Powell, and tell me
24 if you recognize this.

25 A. I do.

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 Q. And can you tell the jury what these are, please.

2 A. These are the phone records belonging to
3 Christopher Wilson.

4 Q. And are those the complete records or just
5 relevant portions?

6 A. These are relevant portions around the time of the
7 robbery.

8 Q. And where did you get those phone records from?

9 A. We sent these off, and we obtained these from
10 Sprint.

11 Q. Is that an accurate representation of those
12 portions of the records that they sent you?

13 A. Yes.

14 MS. TAYLOR: Your Honor, if it's not, we ask
15 that State's 35 be admitted.

16 MS. LITTLEJOHN: That's -- we've agreed to
17 these Bates stamps Your Honor, subject to the search
18 warrant issue.

19 MS. TAYLOR: Your Honor. May we approach?

20 THE COURT: All right.

21 (Discussion held at sidebar.)

22 (State's Exhibit No. 35 was marked for
23 identification and admitted into evidence.)

24 MS. LITTLEJOHN: No objection, Your Honor.

25 THE COURT: All right.

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 BY MS. TAYLOR:

2 Q. Investigate Powell, I'm also going to show you
3 what's been previously entered as State's 32 and ask if
4 you recognize those.

5 A. I do.

6 Q. And what are those?

7 A. These are the GPS records that I obtained from
8 probation, pardon, and parole.

9 Q. This is going to be a little tedious, so I
10 apologize in advance, but what I would like to do, with
11 your cooperation, is to compare the telephone records
12 about the phone calls we've talked about today, with
13 Cynthia Garrett and Marteeke Hamilton to the GPS records
14 that we have that cover the same time zone.

15 Are you comfortable with that?

16 A. Yes.

17 MS. LITTLEJOHN: For the record, I would
18 object for the reasons stated in previous motions.

19 THE COURT: Overruled.

20 BY MS. TAYLOR:

21 Q. If you'll look for me on Christopher Wilson's cell
22 phone records, I believe the first page is number 8 of
23 25.

24 A. That's correct.

25 Q. And can you tell the jury what number or what time

1 and date that page starts with?

2 A. This starts with 12/23/11, starts at 1954 hours.

3 Q. And were you able to determine if that is correct
4 eastern standard time?

5 A. Yes. According to Sprint, it is.

6 Q. Okay. So that would be 7:54?

7 A. Yes.

8 Q. Not great with military time, but I'm trying.

9 A. Understood.

10 Q. On this page, can you check your records
11 reflecting the numbers that Cynthia Garrett and Marteeke
12 Hamilton gave you and see whether phone calls either to
13 or from those individuals are reflected on this page.

14 A. Yes. There are phone calls to both of those
15 numbers present on this page.

16 Q. And the first one we'll talk about will be Cynthia
17 Garrett, and she testified earlier that her telephone
18 number is 425-4083; is that correct?

19 A. That's correct.

20 Q. Could you tell the jury when the first call to her
21 or from her is reflected on the phone records.

22 A. According to this, it's showing outbound call to
23 that number on the date of December 23rd, which would be
24 8:44 p.m.

25 Q. Okay. Is there then another call out to her that

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 evening?

2 A. Yes. There is another one right after that
3 showing at 8:45.

4 Q. Okay.

5 A. And then further down the list I see another one
6 at 9:06.

7 Q. Okay. That should be all in the first page, is
8 that --

9 A. That would be correct for that number, yes.

10 Q. And then let's switch, still on that first page,
11 to Marteeeka Hamilton's number. She testified earlier her
12 number is 471-5757?

13 A. That's correct.

14 Q. Do you see that number reflected on this first
15 page?

16 A. I do.

17 Q. And can you tell the jury when those phone calls
18 were and whether they were incoming or outgoing.

19 A. Those phone calls start at -- it would be 8:47
20 p.m., and it's showing three outgoing calls to that
21 number, one at 8:47, one at 8:48, another one at 8:57.

22 Q. Are there any other numbers that evening?

23 A. Yes. On that same telephone number showing
24 outbound call at 9:05, and then another outbound call
25 showing at 10:54.

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 Q. Let's talk about that 10:54 call, if you don't
2 mind. Looking at the GPS records, can you tell us when
3 those records begin?

4 A. According to the sheet I have, they begin on
5 12/23/2011 at 10:29 p.m.

6 Q. So those records start at 10:29 and this phone
7 call shows at 10:54?

8 A. Yes.

9 Q. Based on those GPS records, could you tell where
10 Christopher Wilson was at 10:54 p.m.?

11 A. Yes, just give me a moment.

12 Q. Sure.

13 MS. LITTLEJOHN: Your Honor, I'll just renew
14 my objection with regard to Christopher Wilson, for the
15 record.

16 THE COURT: As to Christopher Wilson's
17 GPS records?

18 MS. LITTLEJOHN: Yes.

19 THE COURT: You have a continuing objection.
20 It is admitted, over your objection.

21 THE WITNESS: According to the records on
22 here, on 12/23/2011 at 10:54, he's indicating he is at
23 431B St. James Avenue, Goose Creek.

24 BY MS. TAYLOR:

25 Q. Do you know, on the map that is up to your right,

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 State's 39, do you know where 431B St. James Avenue is
2 located?

3 A. Yes. That would be just prior to the Zaxby's.
4 Zaxby's address is 433 St. James Avenue.

5 Q. So would it be the wooded area next to the
6 Zaxby's?

7 A. Yes.

8 Q. So based on those GPS records at the time that
9 that call was placed to Marteeke Hamilton at 10:54,
10 Christopher Wilson is in the woods outside of Zaxby's?

11 A. That's correct.

12 Q. Let's go next to the next page, page 9 of 25, if
13 you don't mind. And, again, I would just like to go over
14 Ms. Hamilton's records, her phone number being 471-5757.
15 Do you see the first time that that number is reflected
16 on page 9 of 25?

17 A. Yes.

18 Q. And when would that be?

19 A. Showing outbound call, which would be on 12/4/11
20 at 16 minutes after midnight.

21 Q. So this is going into the next morning?

22 A. Yes.

23 Q. What time was the Zaxby's robbed?

24 A. Let me look at the initial incident and get the
25 exact time.

1 Q. Thank you.

2 A. According to the initial report taken, Zaxby's was
3 robbed at four minutes after midnight.

4 Q. Looking at these phone records, were there any
5 phone calls placed at four minutes after midnight?

6 A. The first call I see -- there is one one minute
7 after midnight and the next one is at eight minutes after
8 midnight, so there are no phone calls at four minutes
9 after midnight.

10 Q. So there is a seven minute gap?

11 A. Yes.

12 Q. Based on your investigation into this incident,
13 how long was the Zaxby's actually being robbed?

14 A. Approximately two-and-a-half, three minutes.

15 Q. Okay. And that would coordinate with what time
16 there is no phone calls listed?

17 A. Yes.

18 Q. Okay. So the call to Ms. Hamilton, outbound call,
19 I believe you said, was at 16 after midnight, 12:16?

20 A. That's correct.

21 Q. Looking at Christopher's GPS records, could you
22 tell us where he was located at 12:16 a.m.?

23 A. According to this, on 12/4/2011 at 12:07 a.m., it
24 was 433 St. James Avenue.

25 Q. And what is that address?

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 A. That is the Zaxby's.

2 Q. And you said it was at 12 what?

3 A. According to the exact time on here, it's 12:07:53
4 a.m.

5 Q. What is the name time it shows after 12:07?

6 A. It's showing 12:53, according to the printout I'm
7 looking here.

8 Q. So there is a pretty significant gap in the
9 GPS records?

10 A. Yes, the records I'm looking at.

11 Q. Okay. Let's go back to -- you said the Zaxby's
12 was robbed. I think the 911 call came in at 12:04.
13 According to the initial incident report, where is
14 Christopher Wilson located at 12:04?

15 A. 431B St. James Avenue.

16 Q. And where is that?

17 A. That is the Dumpster directly behind the Zaxby's.

18 Q. Thank you. I'm going to continue going down the
19 phone records and try to match them up with the GPS.

20 A. Yes.

21 Q. On page 9 of 25, there was a call outbound, you
22 said, to Marteeke Hamilton at 12:16. Do you see any
23 other calls to Ms. Hamilton on that page?

24 A. At 12:22 a.m. I'm showing a routed call to
25 Marteeke Hamilton.

1 Q. Is that the 471-5757 number?

2 A. Yes.

3 Q. And then going down further, do you see any calls
4 around 12:28?

5 A. I do. I show an outbound call to that same
6 telephone number.

7 Q. And flipping to the next page, are there more
8 calls to Ms. Hamilton on this page?

9 A. Yes.

10 Q. And without going through every single one of
11 them, Investigator, what is the last call that you see to
12 Ms. Hamilton reflected in Christopher Wilson's cell phone
13 records that evening?

14 A. Last one I see showing an outbound call is timed
15 at 12:50 a.m.

16 Q. Were you able to review the GPS recording
17 regarding this time frame?

18 A. Yes did.

19 Q. Do those record reflect at some point Mr. Wilson
20 left the area?

21 A. Yes.

22 Q. And can you tell the jury how you can tell that,
23 first off.

24 A. What I'm looking at the GPS records themselves,
25 again, there is date and time stamps on here and directly

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 next to that is the location where the monitor would have
2 been at the time. Looking at those records, starting at
3 12:53 a.m., we start going from 310 Swamp Fox Lane, 12:57
4 a.m. is [REDACTED] and then it starts
5 progressing actually down St. James Avenue from 312, 219,
6 149, and 111.

7 Q. So does that correspond with both the cell phone
8 records and Ms. Hamilton's earlier testimony that she
9 picked them up sometime around 1 a.m.?

10 A. It would.

11 Q. I want to go back to page 9 of 25, if you don't
12 mind, very quickly, and talk about any calls that went
13 out to Ms. Garrett during that time frame, and I can just
14 point you, if it's okay with everyone, starting at about
15 12:20 a.m.?

16 A. Okay.

17 Q. Do you see any calls to Ms. Garrett around that
18 time?

19 A. I do. I show one, two, three outbound calls to
20 that number, starting at 12:20 a.m., 12:21 a.m., and
21 12:22 a.m.

22 Q. And these calls were being placed less than 15
23 minutes after the Zaxby's had been robbed?

24 A. That would be correct.

25 Q. During the course of your investigation,

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 Investigator Powell, did you have an opportunity to get
2 information regarding defendant's DNA?

3 A. Yes.

4 Q. Was that sent for any comparison testing?

5 A. Yes.

6 Q. And what did you request it be compared to?

7 A. I requested it be --

8 MS. LITTLEJOHN: Your Honor --

9 THE COURT: Yes.

10 MS. LITTLEJOHN: Subject to the prior
11 objection of the search warrant.

12 THE COURT: Noted. Overruled.

13 THE WITNESS: That DNA was submitted off with
14 the swabs that were obtained from the handgun.

15 BY MS. TAYLOR:

16 Q. Do you have the swabs you actually took from the
17 defendant?

18 A. I do.

19 Q. And could you pull those out for us.

20 A. Yes.

21 Q. Can you tell the jury how went about collecting
22 swabs?

23 A. Then we collect DNA swabs. We utilize cotton
24 swabs that's pre-packaged for our use. We collect oral
25 swabs from the inner cheek area. We collect two of

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 those, and then we place them into vented boxes, which
2 are then submitted to our evidence room.

3 Q. And after you collect them, are they opened?

4 A. No.

5 Q. Are they sealed in some way?

6 A. They're maintained. Once the boxes are placed
7 back there, they're placed into evidence envelopes, such
8 as these, which would then be sealed, and then we would
9 submit those along with anything for comparison to
10 IntelliGENETICS, in this case.

11 Q. And who is in charge of the evidence room?

12 A. CSI Myers.

13 Q. So she would have been the one to actually submit
14 to IntelliGENETICS?

15 A. I could collect the item also.

16 Q. Other than the people you just listed, does
17 anybody else have access to the evidence room?

18 A. At that time, no.

19 Q. Okay.

20 MS. TAYLOR: If we could mark these as
21 State's 36. We would ask that State's 36 be admitted.

22 THE COURT: Do you have any objection to 36?

23 MS. LITTLEJOHN: We do, Your Honor.

24 THE COURT: What is it?

25 MS. LITTLEJOHN: Complete chain.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 THE COURT: These are boxes of what?

2 MS. TAYLOR: They're the DNA swabs taken from
3 the defendant, Your Honor.

4 BY MS. TAYLOR:

5 Q. Based on your investigation, Investigator Powell,
6 did you obtain arrest warrants in this case?

7 A. I did.

8 Q. And who did you obtain the arrest warrants for?

9 A. I obtained arrest warrants for Donte Brown and
10 Christopher Wilson.

11 MS. TAYLOR: Thank you. No further
12 questions.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MS.. LITTLEJOHN:

16 Q. Officer Powell, prior to entering the detective's
17 office, what division were you in?

18 A. I would have been in the patrol division.

19 Q. How long have you been in the parole division?

20 A. I began my employment with Goose Creek in January
21 of 2007 and entered into the investigations division in
22 March of 2010.

23 Q. You were here when Detective Mason testified
24 earlier?

25 A. I was.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 Q. And you know him?

2 A. Yes.

3 Q. Had he been a detective for quite some time?

4 A. He had been.

5 Q. Pretty respected detective in your division?

6 A. Yes.

7 Q. You said the way you got this case was he was on
8 annual leave.

9 A. That's what I was advised.

10 Q. So you looked over the report. That's the first
11 thing you did, right?

12 A. Yes.

13 Q. As an officer, you're taught, and as human beings
14 we know, people get sick, things come up, vacation,
15 somebody may be unavailable for whatever reason, right?

16 A. That's correct.

17 Q. As an officer, you know it's important to have
18 detailed notes?

19 A. Yes.

20 Q. Y'all go to the criminal justice academy.

21 A. They do.

22 Q. They teach you how to testify in court?

23 A. Yeah.

24 Q. But they also teach you to take good, detailed
25 notes.

1 A. Yes, ma'am.

2 Q. That is actually stressed, how critical detailed
3 good notes are?

4 A. Documentation, yes.

5 Q. Documentation. There's a saying, not documented,
6 didn't happen.

7 A. Fair enough.

8 Q. You are taught to leave no stone unturned, right?

9 A. We investigate our cases, yes.

10 Q. And you heard Officer Mason, who you just said you
11 had a lot of respect for, as I think most of us, he keeps
12 on going at it, leaving no stone unturned?

13 A. That's what he testified to.

14 Q. Do you agree it's best to leave no stone unturned
15 on a investigation?

16 A. I would agree.

17 Q. That would make it a good investigation, to have
18 good documentation and no stone unturned, correct?

19 A. Yes.

20 Q. Follow all possible leads, correct?

21 A. Yes.

22 Q. And document them?

23 A. Yes.

24 Q. One of the things y'all learned in the academy is
25 all about honesty, integrity, being forthright, right?

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 A. Yes.

2 Q. And you'd agree, though, that there are times that
3 people aren't always forthright with officers. Let me
4 take you back to your days on patrol.

5 A. Okay.

6 Q. You probably stopped some people for speeding.

7 A. Okay.

8 Q. And probably heard a lot of different reasons?

9 A. Sure.

10 Q. In other words, people aren't always forthright
11 with officers?

12 A. Correct.

13 Q. For whatever the reason?

14 A. Yes.

15 Q. Whether it's in your capacity of looking in your
16 rear-view mirror, they got a ticket. They see the blue
17 light, or coming to talk to you as a detective?

18 A. Yes.

19 Q. So you're told to follow up every lead and
20 everything you're told and document for a good case,
21 correct?

22 A. Yes.

23 Q. Somebody might -- various reasons people could
24 come in, various reasons they could say things. Maybe
25 they don't want the insurance raised; maybe they want to

1 set someone up. You don't know, do you? That's why you
2 check it out.

3 A. That's correct.

4 Q. Part of the investigation, you said you listened
5 to the 911 call?

6 A. Yes.

7 Q. And you talked about all the possible witnesses?

8 A. Yes.

9 Q. You followed all leads?

10 A. Yes.

11 Q. And documented it as such?

12 A. Yeah.

13 Q. Let me -- you said the GPS records are totally
14 accurate?

15 A. Based on the records that I was provided.

16 Q. And the phone records would be totally accurate,
17 and you would say those are based on the records you were
18 provided, correct?

19 A. From the spreads.

20 Q. Right. So one of them is right down the hall, the
21 GPS. Let's just look at this. At 12:53 a.m., Mr. Wilson
22 was at 32 Swamp Fox Lane per the GPS records?

23 A. Yes.

24 Q. At 12:53. Prior to that, at 1:07, he was at
25 Zaxby's?

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 A. Yes.

2 Q. Isn't there actually -- 431B St. James Avenue is a
3 location and not the woods, isn't it?

4 A. I would have to look at that. According to the
5 records we got, it was in the woods.

6 Q. Do you believe it might be in that Big Lots
7 shopping center right next to it, small businesses?

8 A. It could be.

9 Q. Are you familiar that there is an address called
10 431B St. James Avenue, or is your testimony as an officer
11 who knows Goose Creek well that 431B St. James is the
12 woods?

13 A. There is an address for 431B St. James Avenue then
14 I would consent to that.

15 Q. Okay. So 12:05 431B St. James Avenue at 12:05.

16 A. Yes.

17 Q. 12:04 is 431B St. James Avenue?

18 A. Yes.

19 Q. Basically, 11:59 is 431B St. James Avenue?

20 A. Yes.

21 Q. That 911 call, we heard it yesterday. When that
22 came in from Jeffrey Taylor, saying it was being robbed,
23 they're heading in, you heard the tape. I'm sure you
24 listened to it a lot.

25 A. Yes.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 Q. And it picks up, and it says Goose Creek police,
2 but it gives you automatic times on there. Did you hear
3 that?

4 A. Yes.

5 Q. Uh-huh. Something like 003 and some seconds?

6 A. Yes.

7 Q. Right in there.

8 A. Yeah.

9 Q. And the robbery took about a minute, minute and a
10 half, two minutes max?

11 A. Approximately.

12 Q. It wasn't long?

13 A. Right.

14 Q. And it was over and done with by 12:07?

15 A. I would agree with that.

16 Q. And you probably know who the first officer was
17 that responded? And I'm sure we'll hear testimony from
18 it, but the first officer was on the scene pretty much
19 like that, wasn't he?

20 A. He was there pretty quick.

21 Q. Let's talk about that first officer who arrives on
22 the scene. The first officer who arrives on the scene
23 gets the first view. They're going to know what's going
24 on first, right?

25 A. Typically.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 Q. In pretty much any kind of case, not talking about
2 this kind of case. I'm talking about any kind of case,
3 right?

4 A. Sure.

5 Q. So what they see and observe and pass on, that's
6 pretty important?

7 A. Yeah.

8 Q. Who was the officer -- based on the CAB report --
9 and the CAB report is your police report, the Goose Creek
10 agency report, who's the first officer, or do you know?

11 A. I believe it was Officer Convery.

12 Q. And I believe, according to the CAB report, the
13 police were there about six minutes after midnight,
14 right?

15 A. That's what it shows.

16 Q. And the CAB report is a Goose Creek police report?

17 A. It's documentation through our dispatch center
18 with the calls, yes.

19 Q. So is it part of case file, really?

20 A. Yes.

21 Q. It's pretty important, those times on this?

22 A. Yes.

23 Q. So at six minutes after midnight, the first very
24 important officer is on duty. He's there?

25 A. He's on the scene.

1 Q. He's on the scene. At 12:53, Chris Wilson is at
2 350 Swamp Fox. At 12:07, he's at Zaxby's. Now, do you
3 recall any money being picked up as a lead officer?

4 A. Yes.

5 Q. Was \$600 found?

6 A. Not to my knowledge.

7 Q. So if somebody told you \$600 was dropped, I know
8 that, and you're the lead officer --

9 A. Yes.

10 Q. -- so everybody coordinates with you, and you have
11 the best document, there is no evidence of \$600 being
12 dropped, is there?

13 A. Nothing was collected to that amount.

14 Q. How much was collected total, less than \$50?

15 A. Yeah. It was definitely less than \$50.

16 Q. I think it was like 25, 15, something like that,
17 wasn't it?

18 A. Yeah.

19 Q. Pretty nominal?

20 A. It was under 50, yes, yes.

21 Q. Let's go through the investigation. You heard
22 Jeffrey Taylor talk about -- he gives us the
23 blow-by-blow, if you will. He tells how the robbers ran
24 out.

25 A. Yes.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 Q. You were in the courtroom and heard them to be in
2 the area behind Zaxby's?

3 A. That's what he stated.

4 Q. Correct?

5 A. Correct. He did state that.

6 Q. And you said he was out there making a telephone
7 call?

8 A. Yes.

9 Q. And we've heard it, borrowed somebody's phone to
10 call one girl, said his girlfriend didn't get upset.

11 A. Yeah.

12 Q. And you talked to this girl -- you talked to the
13 girl he was talking to?

14 A. Yeah. We made contact with her.

15 Q. And you have that documented in your police
16 report?

17 A. I would have to refer to it.

18 Q. If you don't find.

19 A. Sure.

20 Q. If you can give us a date and time, I don't recall
21 receiving that with her name on it.

22 A. No, I do not see that on the report.

23 Q. You don't have it, you said?

24 A. No, I do not.

25 Q. So you didn't confirm that?

1 A. It's not documented.

2 Q. No documentation. Okay.

3 A. Yes.

4 Q. You also received a call that there was subjects
5 running towards Big Lots, didn't you? I believe that's
6 in the CAB report.

7 A. I believe so, yes.

8 Q. You have written statements about that?

9 A. With regards to the subs running towards big lots?

10 Q. That there were two subjects dressed in black
11 running towards Big Lots. Isn't that in your CAB report?

12 A. I believe it's in the CAB report. I would have to
13 look at that. If it's in there, I'll consent to that.

14 Q. And you have a report, written report, where you
15 talked to those folks?

16 A. I do not.

17 Q. But you have the entire case file with you, do you
18 not?

19 A. Yes.

20 Q. So we don't have a written report on that. We
21 don't have a written report on Jeffrey Taylor's -- the
22 girlfriend that we didn't want -- the girlfriend he's
23 jealous of?

24 A. Correct.

25 Q. Do you have a written report from the regular

1 girlfriend?

2 A. We spoke to -- if I can look at the report here,
3 it was Lindy that he was contacting.

4 Q. You don't have a person's last name, et cetera?

5 A. No.

6 Q. And the 911 report comes, and the CAB report says
7 that at 4:34 out of the building, do you agree with that?

8 A. Yes.

9 Q. There was a case in the woods, did you see that?

10 A. I do.

11 Q. And that's what time, 5:05?

12 A. I would agree with that.

13 Q. And at 11:09 on your CAB report, the witness
14 states Foxburg and Huntsman, right?

15 A. In reference to the subjects running across the
16 roadway.

17 Q. 12:30, K-9 is on the scene. Would you agree with
18 that?

19 A. Yes.

20 Q. And the K-9 was tracking right afterward.
21 Wouldn't you agree?

22 A. Yes.

23 Q. So we had the police report that was the CAB
24 report.

25 A. Correct.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 Q. Now, let's look at that GPS record again. The 911
2 call, where was Christopher Wilson when the initial
3 police officer arrived on scene?

4 A. According to the time stamp, which was on the
5 police reports, 431B St. James Avenue.

6 Q. One minute after the robbery, according to the
7 GPS, Christopher Wilson -- Christopher Wilson was at
8 Zaxby's?

9 A. Showing at 12:07 in the a.m., showing on the
10 police report.

11 Q. And we agreed the time is about 12, six minutes
12 after? Well, after the robbery, within a couple of
13 minutes of the robbery, he was at Zaxby's, according to
14 the GPS record.

15 A. According to that, yes.

16 Q. If we're to accept this as accurate.

17 A. Correct.

18 Q. And at 12:53, he's at 310 Swamp Fox, which is the
19 first house where the money was, was found, in the
20 driveway?

21 A. Yes, according to the GPS report.

22 Q. He was at his house, [REDACTED] at 12:57?

23 A. Yes.

24 Q. He's at his house, and the dog had tracked, right?

25 A. There was a dog that tracked.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 Q. Dog didn't go into -- he's at his house. Did the
2 dog track and say that this officer who was testifying
3 with regard to these he -- did the dog come back and
4 track him at 12:53, at 310 Swamp Fox, which is one of the
5 places that's labeled there on the map?

6 A. Not to my recollection.

7 Q. Did the dog come back and follow him and get him
8 at his house at 12:57?

9 A. He did not.

10 Q. At 0020, money was found at 310 Swamp Fox, right?

11 A. Yes.

12 Q. By then, that place was flooded with police
13 officers, wasn't it?

14 A. I would imagine so.

15 Q. As a lead officer, you see how many people were
16 there?

17 A. Yes. There's quite a few people.

18 Q. And Officer Cook, they're all just at Zaxby's or
19 officers are back in the back of Swamp Fox, outside of
20 Swamp Fox?

21 A. Yes.

22 Q. Somebody actually came and protected the money
23 that was in the driveway until CSI Myers could come get
24 it, I think, or one of the evidence folks could come get
25 it.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 A. Yes. It was collected, yes.

2 Q. So they were standing there. The officers were
3 standing there with it.

4 A. Yeah.

5 Q. Okay. And these GPS we've been talking about with
6 Christopher Wilson, it doesn't tell you where Donte Brown
7 was, does it?

8 A. That monitor was attached to Christopher Wilson.

9 Q. And you've heard the testimony here today that
10 other people have let people use their telephone. The
11 first person who did it was the guy who called in?

12 A. Yeah.

13 Q. Did y'all go -- did you go to Lowe's in
14 Summerville to check out that Cynthia Garrett had gone in
15 there and called the police?

16 A. I did not.

17 Q. Did you check out that the light bill that she
18 told you about was in her name?

19 A. We did not.

20 Q. This trip to Wal-Mart was taken -- you would agree
21 with me Wal-Mart has a lot of surveillance cameras
22 everywhere?

23 A. Most of them do.

24 Q. Did you go to Wal-Mart?

25 A. Did not.

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 Q. You were told where Slaughter lived, told what
2 Slaughter drove. You made her a confidential informant.
3 She was willing to do pretty much calling and everything.
4 Did you ask her, Hey, if we can't get Slaughter, will you
5 take us to him?

6 Did you ask her that?

7 A. I don't recall.

8 Q. How many trips and days did y'all go out to find
9 Slaughter and how long did you stay out there?

10 A. I couldn't provide that information.

11 Q. Would you say more than 20?

12 A. Twenty or -- what time frame?

13 Q. Times that you're out there to find this fellow
14 that Ms. Garrett is getting her information from?

15 A. There were quite a few. I can't recall a number.

16 Q. Do you have it in your documentation?

17 A. I do not have any documentation how many times we
18 went to look for him.

19 Q. So no documentation with regard to looking for
20 Slaughter, correct?

21 A. Correct.

22 Q. Not written.

23 A. Nothing documented, no.

24 Q. So we don't know that one. She talked to you
25 about all the issues, the pregnancy and not liking this

1 woman and that woman because he had been with her and
2 her, and she got into all of that with you, didn't she?

3 A. She advised there were issues.

4 Q. Issues?

5 A. The things that you're describing. That is
6 issues. Most people would call that issues. I would
7 agree with you.

8 Q. So what you're saying is you're in charge of this
9 based on some of this stuff, and they can't report where
10 he was, that makes sense, but the GPS isn't even Donte
11 Brown. Your key person that started you on the road for
12 Donte Brown was Cynthia Garrett, wasn't it?

13 A. Yes.

14 Q. Cynthia Garrett who talked to you about Lowe's,
15 and we didn't go there; here's who I got my information
16 from, didn't check that out; no camping outside of that
17 person's door. Didn't go check out the Wal-Mart videos.
18 You knew she wasn't telling you the truth when she told
19 you she had heard there was \$600 found. You know, as the
20 lead investigator, there was no \$600 found anywhere, was
21 there?

22 A. There was not.

23 Q. Did you go talk to any of these people that may be
24 a little -- let's be honest, these women who might be a
25 little upset because you've got two women who are

1 supposedly having his child, according to Ms. Garrett,
2 right?

3 A. Which one are you referring to?

4 Q. Marteeka and Cynthia Garrett.

5 A. I did speak to both of them.

6 Q. And Cynthia Garrett actually told you all about
7 how she was bugging him to get her a pregnancy test,
8 right?

9 A. If that's what it indicated in the interview, then
10 yes.

11 Q. But you knew that was a sore spot, didn't you?

12 A. I don't know.

13 Q. So you don't think Ms. Garrett was upset about
14 that?

15 A. I couldn't describe that. You would have to ask
16 her that.

17 Q. We did. We heard her talk, and as the officer in
18 charge of this case, you keep basic data on people, don't
19 you?

20 A. Yes.

21 Q. And based on the basic data that you keep, Donte
22 Brown reflects being five-ten, correct?

23 A. I think according to that information, yes.

24 Q. Cynthia Garrett also told you in your interview it
25 was a 45, do you remember that, and it was a short gun,

NICHOLAS POWELL - CROSS BY MS. LITTLEJOHN

1 do you remember that?

2 A. I believe so.

3 Q. That was a gun that she saw. We found out today
4 that she really didn't see that. Her daughter saw that,
5 but what was recovered was a longer gun and a 22, right?

6 A. It was a 22 caliber handgun.

7 Q. And we've seen it. It's a longer handgun, not a
8 short pistol?

9 A. Correct.

10 Q. And on her interview, she actually shows you by
11 hand this is a short thing, doesn't she?

12 A. I believe so, yes.

13 Q. All right. With regard to my client, Donte Brown,
14 we've been hearing a lot about Christopher Wilson. You
15 would agree with me that they are -- we're talking about
16 two different people, aren't we?

17 A. There are two individuals, yes.

18 Q. Right. And this whole GPS --

19 A. That has to do with Christopher Wilson, right.
20 It's on his person, yes.

21 Q. And we heard all about these calls, who called who
22 when and a lot of people called looking for Donte or
23 Donte was looking for -- or Chris would call them looking
24 for Donte, right?

25 A. Based on past testimony, yes.

NICHOLAS POWELL - REDIRECT BY MS. TAYLOR

1 MS. LITTLEJOHN: I don't have any further
2 questions.

3 THE COURT: Any redirect?

4 REDIRECT EXAMINATION

5 BY MS. TAYLOR:

6 Q. The information you received from people you
7 interviewed back in 2011, early part of 2012 --

8 A. Yes.

9 Q. What information did you receive about who was
10 using Christopher Wilson's phone the night of the
11 robbery?

12 A. Donte Brown was using that phone.

13 Q. Who did you receive that information from?

14 A. Marteeke Hamilton was one of the individuals along
15 with Cynthia Garrett.

16 Q. They give you that information back in 2011-2012?

17 A. Yes.

18 Q. There has been a lot of conversation, and we went
19 through the records and compared the GPS and the cell
20 phone records and Ms. Littlejohn went through and
21 compared the CAB report?

22 A. Yes.

23 Q. Do you have any way of knowing if the Goose Creek
24 police department clock is the same as the Sprint clock
25 and is the same as the GPS clock?

1 A. I do not.

2 Q. Is it possible that those times are off by
3 seconds, or even a few minutes?

4 A. Absolutely.

5 Q. Talking about the GPS records, and there was some
6 discussion about 431B St. James Avenue?

7 A. Yes.

8 Q. When you pulled records, would you have been able
9 to see through probation -- and maybe this would have
10 been an easier way to do it, but were you able to see
11 actual dots on a map?

12 A. I was.

13 Q. And what did those dots show you as to where 431B
14 was located?

15 A. It was showing the Dumpster area behind Zaxby's.

16 Q. So the wooded Dumpster area that's off of the left
17 of the map?

18 A. Yes.

19 Q. Okay. You also talked about the first officer
20 that was on scene that got there. Obviously the CAD
21 report indicates 2:06?

22 A. Yes.

23 Q. And what is that officer's name?

24 A. Convery.

25 Q. Where is he located now?

NICHOLAS POWELL - REDIRECT BY MS. TAYLOR

1 A. Right now I think he's up in Camden.

2 Q. And that's in what state?

3 A. That's in New Jersey.

4 Q. Were there other officers, including Officer
5 Schrader, who arrived immediately after Officer Convery?

6 A. Yes. Officer Schrader and Officer Norton were
7 riding together that night. They arrived right after he
8 did.

9 Q. And to your knowledge, Officer Convery, did he go
10 into the Zaxby's?

11 MS. LITTLEJOHN: Objection. Your Honor, I
12 don't think he can testify about what Officer Convery did
13 if he wasn't out there and didn't hear it on record.
14 Officer Convery can testify.

15 THE COURT: He didn't observe it. He can't
16 testify about it.

17 MS. TAYLOR: She went into thousands of
18 questions of him as a case officer and what he read.

19 THE COURT: Might have, but she didn't ask
20 him to make hearsay -- or something that was outside of
21 what he viewed. If he didn't view it, he can't testify
22 about it.

23 MS. TAYLOR: Yes, Your Honor.

24 BY MS. TAYLOR:

25 Q. Based on the police reports that you viewed, who

NICHOLAS POWELL - REDIRECT BY MS. TAYLOR

1 went into the Zaxby's?

2 A. Officer Schrader.

3 Q. The money you talked about being collected at 310
4 Swamp Fox Lane, was that, as well as the money collected
5 in the woods outside Zaxby's, sent for testing?

6 A. If you'll provide me a moment I can tell you.

7 Q. Sure.

8 A. According to this, it does appear it was sent off
9 for testing.

10 Q. Just touching briefly on the GPS records, Ms.
11 Littlejohn went into detail about where it shows
12 Mr. Wilson was, the address it shows Mr. Wilson was after
13 the Zaxby's was robbed. Do you remember that?

14 A. Yes.

15 Q. And he mentioned 310 Swamp Fox Lane and [REDACTED]

16 [REDACTED]

17 A. She did.

18 Q. Are those addresses indicated on that map to your
19 right?

20 A. They are.

21 Q. And was any evidence found, anything that was
22 collected, found at 310 Swamp Fox Lane?

23 A. Yes.

24 Q. And what was that?

25 A. That was money.

NICHOLAS POWELL - REDIRECT BY MS. TAYLOR

1 Q. And that was found where, on the driveway?

2 A. Yes.

3 Q. [REDACTED] is also indicated; is that
4 correct?

5 A. It is.

6 Q. And that's the address of Mr. Wilson?

7 A. It is.

8 Q. Were you present for Sergeant Cook's testimony
9 regarding the K-9 track?

10 A. Yes.

11 Q. And were you present -- did you review his report
12 as part of being the case agent?

13 A. Yes.

14 Q. Where does his report indicate that his K-9 lost
15 the scent?

16 A. It indicated at [REDACTED]

17 Q. The address of Christopher Wilson?

18 A. Yes.

19 Q. Is that the same address that Mr. Brown was
20 located at when you served the search warrant?

21 A. It was.

22 MS. TAYLOR: Thank you. No further
23 questions.

24 THE COURT: Recross?

25 RECROSS-EXAMINATION

1 BY MS. LITTLEJOHN:

2 Q. You agree GPS has nothing to do with Donte Brown,
3 it's not on him, but wouldn't you also agree that a cell
4 phone -- I could have your cell phone, you could have my
5 cell phone. We don't know that answer, do we?

6 A. We don't know who was using it other than the
7 testimony that was provided.

8 Q. And you don't know where it was either?

9 A. I couldn't tell you where it was at the time of
10 the calls.

11 Q. It's three hours before Cynthia Garrett talked to
12 him last time until after the robbery, right?

13 A. If that's what the phone records reflect.

14 Q. And the money that was found, Donte Brown, he
15 found some money, not the \$600 that Cynthia Garrett is
16 okay with, out of 25 total, 25, and on none of those did
17 your test results come back to Donte Brown, did they?

18 A. I didn't see anything with those results on it.

19 Q. If I can provide you with the IntelligenETICS,
20 just for you to reflect on it.

21 A. Absolutely.

22 Q. And nowhere in DNA results for money that was
23 taken from Zaxby's did Donte Brown put over there -- no
24 DNA, nothing scientific done, only Ms. Garrett?

25 A. Yeah. There is no DNA on the money that was

1 recovered.

2 Q. Don't know where the phones are, no DNA. You told
3 us. Okay. Appreciate it. Thank you.

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

5 All right, folks. This is where we'll break
6 for today. Again, I'll leave you for the evening with
7 the same instructions not to discuss the case with anyone,
8 including other members of the jury, family members,
9 neighbors, anyone.

10 Please don't try to find anything out about
11 the case on the Internet. Please don't post anything on
12 social media. Please don't visit the crime scene, just
13 go home and enjoy your evening. If you happen to see
14 something in the newspaper about the case tomorrow,
15 please just avoid it, and we will see you back at 9:30
16 tomorrow morning. All right? Thank you for your
17 patience today.

18 (Jury dismissed.)

19 THE COURT: All right.

20 Mr. Brown, we talked yesterday about putting
21 up a defense, whether or not you want to testify. It
22 does sound like we will be finished with the State's
23 portion of the case tomorrow. You will need to make a
24 decision tomorrow as to whether or not you want to put up
25 a defense and whether or not you want to testify. You

1 don't have to tell me today whether you want to testify,
2 but at some point after the State rests, you will need to
3 make a final decision.

4 Understand? All right.

5 MS. TAYLOR: Your Honor, for that purpose,
6 there are some convictions the State would tend to
7 introduce as impeachment. I don't know if you want to go
8 into those now.

9 THE COURT: What are they?

10 MS. TAYLOR: He has from 2006, Your Honor, a
11 conviction for strong-arm robbery, a conviction for
12 assault and battery of a high and aggravated nature, and
13 a conviction of burglary second violent. We have
14 provided defense with certified copies.

15 THE COURT: All right. I haven't made a
16 decision yet about these, but what she is telling me is
17 that you have some prior felony convictions that are less
18 than ten years old. It's possible that those would be
19 allowed to be brought to the jury's attention if you
20 testify, and if they are allowed, it will only be for the
21 purpose of impeachment and it would only be with the
22 purpose of trying to convince the jury that you are less
23 likely to tell the truth because you have been convicted
24 of prior felonies before.

25 I haven't made a decision as to whether or

1 not I would allow these in, but those are something that
2 you are on notice of. You can talk with your lawyers,
3 and if you decide you want to testify, then I'll make a
4 final decision as to whether or not I will allow those to
5 be used for impeachment purposes only.

6 Is there anything else?

7 MS. TAYLOR: Nothing from the State, Your
8 Honor.

9 THE COURT: Okay. Well, let's try to pick up
10 the pace a little bit tomorrow, if at all possible. Oh,
11 I have some jury charges that we've done, if you have
12 anything you want to add to those.

13 (Recess taken.)

14 (May 8, 2014.)

15 THE COURT: Anything we need to take up
16 before we bring the jury in?

17 MS. LITTLEJOHN: Your Honor, do you want to
18 hear my motion with regard to the DNA right before we get
19 to him?

20 THE COURT: Do you want to renew the same
21 objection?

22 MS. LITTLEJOHN: That objection on the DNA is
23 not about the search warrant getting to the DNA.

24 THE COURT: What is your objection to the DNA
25 now? We have a chain of custody lady. Presumably she's

1 first?

2 MS. TAYLOR: She is, and then our DNA expert
3 is supposed to be here at 10:00.

4 MS. LITTLEJOHN: It's the Bostick case, Your
5 Honor. I will give you a copy of that. It was the 98
6 percent case.

7 THE COURT: Can you give me the cite to the
8 case?

9 MS. LITTLEJOHN: I have it here. Bostick,
10 I'm sorry, Bostick. It's -- okay.

11 THE COURT: Give me the cite.

12 MS. LITTLEJOHN: 392 South Carolina --

13 THE COURT: What do you want to say about
14 this case?

15 MS. LITTLEJOHN: Your Honor, I'm looking at
16 the last page where I'm supposed --

17 THE COURT: I'm looking at it electronically,
18 so we don't do pages, so just give me a --

19 MS. LITTLEJOHN: I'm sorry.

20 THE COURT: What paragraph?

21 MS. LITTLEJOHN: It's right near the end.
22 They talk about what had been presented, and number four,
23 it says, While the DNA from the blood found on Bostick's
24 jeans excluded about 99 percent of the population, the
25 blood could not be matched to Polite's DNA.

1 In addition, the weapon used to beat Polite
2 in the head was never introduced into evidence. Finally,
3 no evidence was introduced concerning Bostick's knowledge
4 that Polite may have had money in the briefcase or if
5 indeed any money was in the briefcase on that particular
6 Sunday. The evidence presented by the State raised, at
7 most, a mere suspicion that Bostick committed this crime.

8 Your Honor, I know this is talking about a
9 directed verdict based on that with a 99 percent. What I
10 would ask the Court to do is take the testimony of him
11 based on a 403 analysis. If 99 percent just raises a
12 mere suspicion, I would submit that what, in this case,
13 is 98. -- is less than 99, 98.7 something, and to put in
14 something that is a mere suspicion under an expert where
15 they're going to be hearing from that expert, I think
16 could be very prejudicial, and I just didn't know if you
17 would like to take any testimony in limine prior to the
18 testimony.

19 THE COURT: Why don't you tell me, what is
20 this expert going to testify to?

21 MS. TAYLOR: Your Honor, his conclusions are
22 that 97.8 percent of the African American population are
23 able to be excluded from the DNA found on the gun and
24 that Mr. Brown is not able to be excluded so he falls in
25 that 2.2 percent of the population that cannot be

1 excluded. We certainly aren't going to ask him to say
2 that it is his DNA.

3 THE COURT: He's not going to be able to say
4 that it is, but he's just in the group that can't be
5 excluded.

6 MS. TAYLOR: Correct.

7 THE COURT: All right. Well, if that were
8 the only piece of evidence though the State had, I would
9 say probably you have at least a very good chance of
10 getting a directed verdict, if that was the only bit of
11 evidence, especially that being circumstantial evidence,
12 but there is substantial circumstantial evidence that he
13 was involved with this, and this is just a piece of
14 circumstantial evidence.

15 You certainly can bring out in
16 cross-examination that it does not definitely identify
17 him as the sole purposes who it could be, but he is in a
18 very small subset of people that it could be.

19 MS. LITTLEJOHN: And, Your Honor, the other
20 thing is, with regard to the qualifications, we have the
21 CV, and I see -- you probably don't have -- it's a
22 Medical College of Virginia Department of Pathology
23 Molecular Pathology, Genetics Pathology, Biochemistry,
24 Molecular Genetics, Statistics, Blood Banking -- I'm
25 assuming these are some of the classes he took under

1 pathology.

2 I would just ask that we look at his
3 qualifications outside the scope of the jury because I
4 think it's important to determine if we're actually going
5 to qualify him.

6 THE COURT: We can do that. He's not here
7 yet?

8 MS. TAYLOR: He's not here yet.

9 THE COURT: When he comes in, if you would
10 like to have that hearing, we'll break.

11 MS. LITTLEJOHN: We're looking at the jury
12 things you gave us, Your Honor, jury charges.

13 THE COURT: Yeah, we made some changes, on
14 basically -- State wanted hand of one, hand of all, ad I
15 made some corrections and deletions on burglary second,
16 but if you have something that you want to hand up and
17 give it to me now --

18 MS. LITTLEJOHN: We're hoping to get one --
19 we need to see what the rest of the testimony is,
20 obviously. I'm hoping I can get one coming over --

21 THE COURT: It's fine. Whatever you want to
22 submit, just submit it to me now so we can be looking at
23 it, thinking about it, and, most importantly, typing it
24 up so if we do put it in, we can just have it ready. It
25 may be that I don't allow it, but if I do, it's going to

WENDY MYERS - DIRECT BY MS. TAYLOR

1 be a part of it, and it just physically takes the time to
2 type it up, so just give me what you want, potentially.

3 MS. LITTLEJOHN: And, Your Honor, I would
4 make a request for a correction.

5 THE COURT: We'll get to that. All right?
6 We're not doing a charge conference right now. I'm
7 trying to get the trial to the point where we can have a
8 charge conference, hopefully today.

9 (In open court, jury present.)

10 THE COURT: All right. Folks, welcome back.
11 We're going to resume now with the State recalling a
12 prior witness.

13 MS. TAYLOR: Yes, Your Honor. The State
14 calls Wendy Myers.

15 WENDY MYERS,
16 having been previously duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 THE COURT: Ma'am, I will remind you, you're
20 still under oath, all right?

21 THE WITNESS: Yes, sir.

22 BY MS. TAYLOR:

23 Q. Ms. Myers, we talked the other day about you being
24 a crime scene investigator. Do you have other duties at
25 Goose Creek?

WENDY MYERS - DIRECT BY MS. TAYLOR

1 A. I'm also the evidence technician.

2 Q. Could you tell the jury what that means.

3 A. Any of the evidence or property that comes into
4 the police department I secure in the evidence room and
5 keep up with it, dispose of it when it's necessary to
6 return to victims and things like that.

7 Q. Are you also responsible for sending it places to
8 be analyzed?

9 A. Yes.

10 Q. And in this case, did you have an opportunity to
11 have evidence turned into the evidence room?

12 A. I did.

13 Q. The evidence room at Goose Creek, is that secured?

14 A. Yes, it is.

15 Q. Who has access to that room?

16 A.. Myself and the division commander, Captain
17 Soderberg.

18 Q. How do you keep track of who touches what
19 evidence?

20 A. It has to be signed out if it goes to anyone
21 besides me and Officer Soderberg.

22 Q. I'm going to ask you what has been marked as
23 State's 36 and ask you if you can identify that, please.

24 A. Yes. These are the oral swabs from Donte Brown.

25 Q. And do you know who turned those swabs in to the

1 evidence room?

2 A. Investigator Powell.

3 Q. Once those swabs were turned into the evidence
4 room, were they tampered with or altered in any way?

5 A. They were not.

6 Q. Do you know what happened to those swabs?

7 A. They were taken to the IntelliGENETICS laboratory
8 for analysis.

9 Q. Who took them?

10 A. I did.

11 Q. Did anybody else have custody or control of them?

12 A. They did not.

13 MS. TAYLOR: No further questions, Your
14 Honor.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MS. LITTLEJOHN:

18 Q. Just briefly.

19 Agent Myers, you've been doing this a long time
20 before you've sent stuff to SLED in the past, right?

21 A. That's correct.

22 Q. And just for clarification, that's South Carolina
23 Law Enforcement Division?

24 A. Yes, that's correct.

25 Q. And that's the big lab for the State of South

MELINDA KNOWLAND - DIRECT BY MR. WEST

1 Carolina, right?

2 A. Correct.

3 Q. Why is it that Goose Creek chooses to use
4 IntelliGENETICS?

5 A. Expediency, getting results quicker.

6 Q. And that's a private lab, right?

7 A. It's a private lab, that's correct.

8 Q. And is that like extra pay? Do y'all pay for
9 that?

10 A. Yes, we do.

11 Q. Do you know how much you pay?

12 A. I have no idea.

13 Q. You don't?

14 MS. LITTLEJOHN: No further questions.

15 MS. TAYLOR: Nothing from the State, Your
16 Honor.

17 THE COURT: You may step down.

18 MR. WEST: State calls Melinda Knowland.

19 MELINDA KNOWLAND,

20 having been first duly sworn,

21 was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. WEST:

24 Q. Good morning, Ms. Knowland. How are you?

25 A. Great. How are you?

1 Q. I'm doing all right. Where do you work?

2 A. Motel Six.

3 Q. What is your job title?

4 A. Assistant manager.

5 Q. And what do those job titles entail, your job
6 duties?

7 A. Actually, a little bit of everything. I help
8 oversee the entire operation of the property, handle
9 check-ins, check-outs, housekeeping department, banks,
10 filing, payroll.

11 Q. Does Motel Six keep records of when people check
12 in?

13 A. Yes, we do.

14 Q. And how are those records stored?

15 A. We have paper records going back seven years in
16 our paper room.

17 Q. I'm going to show you what's going to be marked as
18 State's No. 37. Do you recognize this document?

19 A. Yes, I do.

20 Q. And what is that?

21 A. It is a copy of a bill from our location, back in
22 2011.

23 Q. And is there a date on that?

24 A. Original check-in date of December the 24th, 2011.

25 Q. Is there any way to alter these records, change

MELINDA KNOWLAND - DIRECT BY MR. WEST

1 them in any way?

2 A. No, sir.

3 Q. Are they a true and accurate representation of the
4 records that you would keep at Motel Six?

5 A. Yes, sir.

6 MR. WEST: State would move State's No. 37
7 into evidence.

8 MS. LITTLEJOHN: Without objection, Your
9 Honor.

10 THE COURT: Admitted.

11 (State's Exhibit No. 37 was marked for
12 identification and admitted into evidence.)

13 BY MR. WEST:

14 Q. You already said this was dated December 24, 2011.

15 A. Uh-huh.

16 Q. Is there a name of who would have checked in at
17 the Motel Six?

18 A. The clerk is S.S.

19 Q. Who was the person that would have rented the
20 hotel room?

21 A. The desk clerk on duty at the time.

22 Q. Who would have been the person that would have
23 been renting the hotel room that night, according to
24 those records?

25 A. Oh, the guest, you mean?

1 Q. Yes, guest.

2 A. I'm sorry. I misunderstood, Donte Brown.

3 Q. Okay.

4 MR. WEST: Thank you. No further questions
5 at this time.

6 THE COURT: Cross?

7 CROSS-EXAMINATION

8 BY MS. LITTLEJOHN:

9 Q. Briefly. Ms. Knowland?

10 A. Yes, ma'am.

11 Q. Y'all have people put down how many people were
12 there staying in the room?

13 A. We ask how many adults are staying in the room,
14 and we go by whatever they tell us.

15 Q. Okay. Do you remember when the police officers
16 came and got the material for this from you?

17 A. I don't remember exactly.

18 Q. Did you have a chance to look at the material
19 surrounding this?

20 A. I looked at that.

21 Q. And did you look at the receipt?

22 A. That is the receipt.

23 Q. The printed receipt, I mean, the handwritten
24 receipt.

25 A. The check-in card?

MELINDA KNOWLAND - REDIRECT BY MR. WEST

1 Q. I guess that's what it's called.

2 A. Yes.

3 Q. Where people put how many adults and tag number
4 and all that?

5 A. Yes, ma'am.

6 Q. And how many people checked in, how many adults?
7 Oh, it's on here? I'm not sure how to read that.

8 A. One adult.

9 Q. And you weren't on duty, were you?

10 A. I don't believe I was on duty at the time. I was
11 not the person who checked them in. I may have been
12 there, you know, in the office or something, but I was
13 not the person who checked them in.

14 Q. Do you recall who came and went back in December
15 of 2012, who may have come and gone or visitors during
16 that time frame?

17 A. We don't keep track of visitors. I know that
18 Mr. Brown would have had to show his ID to check in and
19 get the room.

20 MS. LITTLEJOHN: Okay. Thank you.

21 REDIRECT EXAMINATION

22 BY MR. WEST:

23 Q. Which Motel Six is that a receipt from?

24 A. The location on Ashley Phosphate Road in North
25 Charleston.

SONIA WILSON - DIRECT BY MS. TAYLOR

1 MR. WEST: Thank you.

2 THE COURT: Recross, Ms. Littlejohn?

3 MS. LITTLEJOHN: None, Your Honor.

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

5 Thank you.

6 MS. TAYLOR: State calls Sonia Wilson.

7 SONIA WILSON,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. TAYLOR:

12 Q. Good morning, Ms. Wilson. Thank you for being
13 here. Ms. Wilson, where do you live?

14 A. [REDACTED] Goose Creek.

15 Q. How long have you lived there?

16 A. Almost 29 years.

17 Q. Who lives there with you now?

18 A. My husband and I.

19 Q. Back in December of 2011, was there anyone else
20 living at your address?

21 A. Yes, my son.

22 Q. And what's your son's name?

23 A. Christopher Wilson.

24 Q. Have you had an opportunity to meet the defendant,
25 Donte Brown?

SONIA WILSON - CROSS BY MS. LITTLEJOHN

1 A. Yes.

2 Q. At some point in January, specifically January the
3 5th of 2012, did you receive information that a search
4 warrant had been served at your home?

5 A. Upon my arrival at home, yes.

6 Q. And after the police officers left, once that
7 search warrant had been served, did you find anything
8 unusual in your kitchen that day?

9 A. Yes, there were -- in my oven, there were -- there
10 was a bowl of ramen noodles sitting in my oven.

11 Q. To your knowledge was your son Christopher home
12 that day?

13 A. He was not.

14 Q. Do you eat ramen noodles?

15 A. No, I don't.

16 Q. Does your husband eat ramen noodles?

17 A. No, he does not.

18 MS. TAYLOR: Thank you. No further
19 questions.

20 CROSS-EXAMINATION

21 BY MS. LITTLEJOHN:

22 Q. Ms. Wilson, you know who -- you know who Donte
23 Brown is, right?

24 A. Yes.

25 Q. And you met him on quite a few occasions?

1 A. Yes.

2 Q. As a matter of fact, first time you met him, you
3 went outside and he was there?

4 A. Correct.

5 Q. And then you -- he would hang around some with
6 your son. You didn't like that, right?

7 A. Correct.

8 Q. And you found him once, I think, he was inside
9 your house, and Christopher wasn't even there, right?

10 A. True.

11 Q. Your son -- you haven't been in here, you don't
12 know. The jurors heard a lot about Chris, right? His
13 name keeps coming up. Christopher, in 2011, at the time
14 of this, was about, what, how old, 20 --

15 A. He'll be 28 in September, so --

16 Q. About 25, something like that?

17 A. Uh-huh.

18 Q. He's about five-six, right?

19 A. I'm not sure. Probably.

20 Q. Sound about right?

21 A. Yeah.

22 Q. You know without saying, you know he is, don't
23 you?

24 A. Oh, sure I do.

25 Q. And the State knows where he is.

LANIER DANIELS - DIRECT BY MS. TAYLOR

1 A. Sure.

2 MS. LITTLEJOHN: I don't have any other
3 questions.

4 MS. TAYLOR: Nothing from the State, Your
5 Honor.

6 THE COURT: You may be excused. Thank you.

7 MS. TAYLOR: May Ms. Wilson be excused?

8 THE COURT: You may. You're free to go.

9 MS. TAYLOR: State calls Lanier Daniels.

10 LANIER DANIELS,

11 having been first duly sworn,

12 was examined and testified as follows:

13 DIRECT EXAMINATION

14 BY MS. TAYLOR:

15 Q. Good morning, Mr. Daniels. You don't want to be
16 here, do you?

17 A. No, ma'am.

18 Q. You were subpoenaed to be here?

19 A. Yes.

20 Q. Back in January of 2012, were you incarcerated in
21 the Hill Finklea Detention Center?

22 A. Yes.

23 Q. What was that for?

24 A. DUS, driving under suspension.

25 Q. Just to get this out there, you've had some

LANIER DANIELS - DIRECT BY MS. TAYLOR

1 trouble with the law before; is that correct?

2 A. Correct.

3 Q. While you were in the Hill Finklea Detention
4 Center, did you have the opportunity to encounter Donte
5 Brown?

6 A. Yes.

7 Q. Where was that?

8 A. In the jail cell.

9 Q. Did you have an opportunity to have a conversation
10 with Mr. Brown?

11 A. Yes.

12 Q. And can you tell the jury what you remember about
13 that conversation.

14 A. I just remember him telling me what was going on
15 at the -- what had happened at Zaxby's that night, how
16 they were in the back and they were just -- he was upset
17 that the guy shot the other guy, or whoever got shot, and
18 they were upset about that and just talking about what
19 had happened and how they got away.

20 Q. Specifically, do you remember him saying who shot
21 the person at the Zaxby's?

22 A. I just know he said the other person shot him. I
23 don't know who the other person was.

24 Q. Did Mr. Brown indicate whether was there when the
25 other person got shot?

LANIER DANIELS - DIRECT BY MS. TAYLOR

1 A. Yes.

2 Q. What did he say about that?

3 A. That he was upset with the dude because he shot
4 the person he wasn't supposed to shoot.

5 Q. Did Mr. Brown indicate if he knew the person that
6 got shot, or knew of her?

7 A. I believe he said it was a relative or someone,
8 relative to another family member, aunt, boyfriend's
9 uncle's girlfriend, something like that.

10 Q. Do you remember giving a statement to law
11 enforcement regarding this case?

12 A. Yes.

13 Q. Would it help to refresh your recollection if I
14 showed you that statement?

15 A. Please.

16 MS. TAYLOR: Your Honor, may I approach?

17 THE COURT: You may.

18 THE WITNESS: Yes, uncle's girlfriend,
19 correct.

20 BY MS. TAYLOR:

21 Q. What, if anything else, did Mr. Brown tell you
22 about who planned the robbery?

23 A. That, I don't -- I don't remember him saying
24 anything about robberies being planned. I couldn't say
25 that. I don't remember that.

1 Q. And your statement says he said that he's the one
2 who set up the whole thing. You don't deny that he said
3 that?

4 A. Yes.

5 Q. And, obviously, your memory probably was better
6 back then than it is now?

7 A. That was two years ago.

8 Q. I understand. Did Mr. Brown tell you anything
9 else about the circumstances of how he came to be
10 arrested in this case?

11 A. He said he was at a friend's house, and he was in
12 somebody's house and he said he was making ramen noodles
13 or something like that, to that effect, and he said he
14 seen a police officer walk by the window or something and
15 next thing he knew he was knocking on the door and he got
16 arrested.

17 Q. Did he say anything about why he was at that house
18 or where he was going before he made those ramen noodles?

19 A. It was something about getting rid of the gun or
20 something to that effect.

21 Q. Okay. Mr. Daniels, why did you not want to come
22 testify today?

23 A. Because, I mean, I just ain't want to be here.
24 This had nothing to do with me, really.

25 Q. But you gave a statement to law enforcement?

LANIER DANIELS - CROSS BY MS. LITTLEJOHN

1 A. I mean, that's what they want.

2 Q. Were you hoping to get something out of giving
3 that statement?

4 A. Possibly, but I didn't. I did everything I had to
5 do and got out.

6 Q. You didn't get a benefit or your driving license?

7 A. I didn't get nothing.

8 MS. TAYLOR: No further questions, Your
9 Honor.

10 THE COURT: Cross?

11 CROSS-EXAMINATION

12 BY MS. LITTLEJOHN:

13 Q. And, Mr. Daniels, Ms. Taylor brought out that
14 you've been in trouble with the law before. You met
15 Donte at the Berkeley County Detention Center, right?

16 A. Correct.

17 Q. And you said y'all were in the same cell, right?

18 A. Yes.

19 Q. And people at the jail would be able to confirm
20 that, right?

21 A. Yes.

22 Q. You were actually -- let's talk about -- you said
23 that you were in there for driving under suspension.

24 A. Yes.

25 Q. Weren't you also in there for another charge?

LANIER DANIELS - CROSS BY MS. LITTLEJOHN

1 A. False information?

2 Q. False information, giving false information to a
3 police officer?

4 A. Yeah. I told them my name was somebody else's
5 name.

6 Q. But you lied to the police, right?

7 A. Correct.

8 Q. Okay. As a matter of fact, the agency that you
9 gave this information to that had you under -- that
10 arrested you just so happened to be Goose Creek, wasn't
11 it?

12 A. They arrested me.

13 Q. Huh?

14 A. Yes.

15 Q. Tell me -- I've been handed a pretty big report
16 from the solicitor's office. Can you tell us she's
17 making something with regard to -- and you mentioned
18 something that you had been in trouble with the law. You
19 want to tell us about that?

20 A. Something about me being in trouble with the law?

21 Q. Right.

22 A. What do you mean?

23 Q. Said you've been in trouble with the law on
24 several occasions.

25 A. For driving under suspension.

LANIER DANIELS - REDIRECT BY MS. TAYLOR

1 Q. Anything else?

2 A. False arrests, gun charges when I was younger.
3 Selling marijuana when I was younger. I'm 41 now. I
4 haven't done anything in over 20 years except for these
5 DUS's.

6 Q. DUS's. And how did you get up here today?

7 A. Somebody drove me.

8 Q. Somebody drove you?

9 A. Yes, ma'am.

10 Q. Was it a friend of yours or --

11 A. Yes.

12 Q. Were you here yesterday?

13 A. No.

14 Q. So you got a ride this morning?

15 A. Yes, ma'am.

16 Q. Okay. So, basically, the biggest thing you've
17 been in trouble with lately has been the driving under
18 suspension, and what you were there for then, the filing
19 false police report, something -- basically not being
20 truthful with the police?

21 A. That's two years ago.

22 Q. All right. All right. I appreciate it. Thanks.

23 REDIRECT EXAMINATION

24 BY MS. TAYLOR:

25 Q. I'm sorry. One more question, Mr. Daniels.

KENNETH WHITLER - DIRECT BY MR. WEST

1 Did Mr. Brown indicate who picked himself and his
2 accomplice up the night of the robbery?

3 A. He said his baby mother.

4 MS. TAYLOR: Okay. No further questions.

5 THE COURT: Recross?

6 MS. LITTLEJOHN: No, Your Honor.

7 THE COURT: You can step down. Next witness.

8 MR. WEST: State calls Kenneth Whitler.

9 KENNETH WHITLER,

10 having been first duly sworn,
11 was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. WEST:

14 Q. Mr. Whitler, how are you this morning?

15 A. Well, a little bit of sinus problem, but --

16 Q. Are you working right now?

17 A. Pardon?

18 Q. Are you working right now?

19 A. No, I've retired.

20 Q. Where did you retire from?

21 A. The State Law Enforcement Division.

22 Q. Is that otherwise known as SLED?

23 A. SLED, yes, sir.

24 Q. What did you do when you worked for SLED?

25 A. I was a firearms tool mark examiner in the

KENNETH WHITLER - DIRECT BY MR. WEST

1 firearms department.

2 Q. Okay. Can you describe for the jury your
3 background and education and training in that field.

4 A. My education is I have graduate and undergraduate
5 degrees from the University of South Carolina. There is
6 no university that you can go to to get a degree in
7 firearms identification, which is what I do, or did.

8 You have to learn it from other qualified
9 examiners. When I was with the FBI laboratory, I
10 underwent their training program. It's approximately a
11 two-year training program where you shoot, literally,
12 thousands of bullets and cartridge cases, compare guns to
13 those bullets. You work on real cases plus test cases.

14 MS. LITTLEJOHN: Accept him as an expert.

15 THE COURT: In what field are you offering
16 him as an expert?

17 MR. WEST: Firearms identification.

18 MS. LITTLEJOHN: We're willing to stipulate
19 to that.

20 THE COURT: All right. Folks, remember
21 Monday, I guess it was, maybe Tuesday morning, I told you
22 about we normally have people come in and they testify.
23 They're allowed to tell you what they heard, they saw,
24 they touched, they felt, they smelt. We don't normally
25 let people come in and testify about their opinions about

KENNETH WHITLER - DIRECT BY MR. WEST

1 evidence. That's not their purpose in telling you what
2 they saw.

3 The law, though, says that when somebody,
4 because of experience or education or specialized
5 training in some field, rises to the level of expertise
6 in that field, then they are allowed to come in and
7 testify to you as an expert in that field, and to not
8 only tell you about their observations, but they're
9 allowed to give you their opinion about their
10 observations or the evidence that's in question.

11 This witness has now been qualified as an
12 expert in firearms identification so will be allowed to
13 tell you what his opinion is about the evidence.

14 Now, just because somebody has been qualified
15 as an expert in a field doesn't mean that you are
16 required to absolutely accept everything that he says.
17 You can decide how much weight to give his testimony,
18 based on all of the evidence that you've heard throughout
19 the testimony and as you will hear throughout the
20 testimony and decide how much weight that his testimony
21 deserves.

22 All right? You may continue.

23 BY MR. WEST:

24 Q. Thank you, Your Honor.

25 Mr. Whitler, you've been qualified as an expert,

—KENNETH WHITLER - DIRECT BY MR. WEST—

1 but I still want to go over a few things. You've had
2 multiple years in training in identifying firearms; is
3 that correct?

4 A. Yes, sir.

5 Q. How many times would you say you've testified in
6 court?

7 A. I've testified approximately 275 times in various
8 state, federal, and territorial courts.

9 Q. Could you please describe for the jury your role
10 in the identification of firearms in this case.

11 A. The pistol and a fired cartridge case were
12 submitted to the laboratory. I test fired the pistol to
13 obtain a known cartridge case so I knew where it came
14 from because I actually fired the gun and collected the
15 cartridge case. I had taken that test fired cartridge
16 case, I compared it to the submitted questioned cartridge
17 case on a comparison microscope, and that's a device that
18 lets you look at two objects side by side microscopically
19 so you can compare any marks on one item to the marks on
20 the another cartridge case.

21 That's what I did in this case, and from comparing
22 the test fired cartridge case with submitted cartridge
23 case, I concluded that the cartridge case that was
24 submitted was fired by the pistol that was submitted.

25 Q. I'm going to back up a little bit. Who submitted

1 the firearm and the shell casing to you?

2 A. I'm assuming the Goose Creek police department.

3 Q. Goose Creek? And could you describe the chain of
4 custody through SLED of how you received these items?

5 A. SLED has an evidence room. We call it the log-in
6 department. If you are, in this case, the Goose Creek
7 police department, you will go to SLED, go to the log-in
8 department. You will tell them what all you have, what
9 exams you want, and they will accept your evidence. When
10 they -- at that time, when they accept it, they make sure
11 that all the evidence is in a sealed condition.

12 Once they take it in their custody, it goes into
13 their evidence storage, and they input all the
14 information regarding that request into the computer
15 system, and then the various people in the different
16 departments look at the computer system and determine if
17 you have any evidence that you need to examine in a
18 particular case, and then you can also tell where the
19 evidence is. In most cases, it's still downstairs in log
20 in.

21 In my case, the person that assigns our cases
22 looked at it and assigned me the case, and then I went
23 downstairs, obtained the evidence from the log-in
24 department, took it back upstairs, worked it, and then
25 returned the evidence back to the log-in department when

—KENNETH WHITLER - DIRECT BY MR. WEST—

1 I was finished with it, and then at that point, once I
2 send my report out, the Goose Creek police department can
3 come back up to SLED, go to the log-in department, and
4 retrieve their evidence.

5 Q. And you received evidence in this case?

6 A. Yes.

7 Q. And could you tell whether that evidence had been
8 tampered with or altered in any way?

9 A. No.

10 Q. I'm going to go back to your general
11 qualification. Could you describe for the jury what
12 exactly you were testing in terms of what a projectile is
13 and how a bullet is fired.

14 A. Well, there was no bullet submitted in this case.
15 It is was just a cartridge case.

16 Q. What is the difference between a bullet and a
17 cartridge case?

18 A. A cartridge case holds the bullet. What most
19 people will tell you or think is a bullet is actually
20 what is known as a cartridge. It's got a cartridge case
21 which contains gunpowder. It also has the bullet stuff
22 in the front of the cartridge case. The cartridge is put
23 in the firearm. When the firearm is fired, the cartridge
24 case -- the gunpowder in the cartridge case is ignited.
25 The bullet goes down the barrel, and the cartridge case,

KENNETH WHITLER - DIRECT BY MR. WEST

1 if it's a pistol, as it was in this case, is ejected from
2 the gun.

3 That's basically the difference --

4 Q. Okay.

5 A. -- of what happens.

6 Q. Did you receive a bullet in this case?

7 A. No, I didn't.

8 Q. Now, once a bullet is fired, is there anything
9 that could have altered the bullet so that you would not
10 be able to test it?

11 A. Well, the bullet could be damaged, but that
12 doesn't mean we couldn't -- I've gotten many an
13 identification off a damaged bullet.

14 Q. Is it possible that you couldn't identify a
15 specific bullet if it was damaged to a certain extent?

16 A. If there's no marks on it, no insufficient marks,
17 I wouldn't be able to, but that's something that you
18 would have to look at it first.

19 Q. All right. And you said you did receive a shell
20 casing in this case?

21 A. That's correct.

22 Q. I'm going to show you what's been marked as --

23 MR. WEST: Beg your indulgence, Your Honor.
24 Looking for the number on this one.

25 BY MR. WEST:

KENNETH WHITLER - DIRECT BY MR. WEST

1 Q. State's No. 26, can you identify that for the
2 jury.

3 A. Yes, I can. It's a fired cartridge case.

4 Q. Okay. And could you tell the caliber or any
5 details about that?

6 A. It's a 22 long rifle cartridge case.

7 Q. And how were you able to identify that?

8 A. I identified it -- you mean to the gun?

9 Q. In that particular shell casing.

10 A. Well, it's in a package that is heat sealed, and I
11 put my initials and the date on it, and I also have my
12 marks and initials on the cartridge case.

13 Q. Okay. So that is the shell casing that you
14 specifically tested in this case?

15 A. Yes, sir.

16 Q. Okay. I'm going to show you what's been marked as
17 State's No. 31. Do you recognize this?

18 A. I recognize the outside of it.

19 Q. And how do you recognize that?

20 A. It's got my initials and the case and lab number
21 and the item number on it.

22 Q. Okay. Is that, in fact, the gun you tested in
23 this case?

24 A. Yes, it is.

25 Q. In reference to both the cartridge casing and the

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 gun, did you make any conclusions as to those items?

2 A. Yes. As I stated previously, I compared to test
3 fire the cartridge case from the pistol to the submitted
4 cartridge case and determined that this cartridge case
5 was fired by the item 31 pistol.

6 Q. And that is your professional opinion that is the
7 gun that fired that shell casing?

8 A. That's correct.

9 MR. WEST: Thank you. No further questions
10 at this time.

11 MS. LITTLEJOHN: I have no questions, Your
12 Honor.

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

14 Folks, we just need to take up a matter of
15 law. Don't begin deliberations or discussions, and we'll
16 have you back in a few minutes.

17 (In open court, jury not present.)

18 DANIEL DEMERS,

19 having been first duly sworn,

20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 BY MS. TAYLOR:

23 Q. Good morning, Dr. Demers. How are you?

24 A. I'm fine. How are you?

25 Q. Fine, thank you. What we're going to do here is

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 just go over qualification briefly, if you don't mind.
2 Could you tell the Court about your educational
3 background, first off.

4 A. Sure. I have a bachelor's degree in cell biology
5 from Eastern Connecticut State University, and I have a
6 PhD in molecular pathology from the Medical College of
7 Virginia.

8 Q. Are you certified in any areas?

9 A. Well, there really aren't certifications in
10 forensics, exactly. I've been working in forensics for
11 nearly 30 years so I published some of the first papers
12 published in the U.S. on DNA testing for identity
13 purposes, so I've been in from kind of the very
14 beginning. I've done work for CODIS and under contract
15 with the National Institute of Justice and many state
16 police agencies, and I've been doing this a long time.

17 Q. What is that contract with the national institute
18 entail?

19 A. I don't know if they're still doing it, but back
20 in the late '90s and early 2000s, when CODIS was just
21 getting a national database system, CODIS was just
22 getting ramped up, and a lot of the testing went through
23 NIJ approved laboratories, and the lab that I ran at that
24 time was an approved NIJ laboratory, and so under grant
25 from NIJ, we did testing for various state agencies, for

1 CODIS.

2 Q. Do you work in a lab now?

3 A. Yes.. I'm director of IntelliGENETICS.

4 Q. And is that lab certified in any way?

5 A. IntelliGENETICS is accredited by ASCLD/LAB, which
6 is the same accrediting agency that accredits SLED and
7 most state labs as well as the FBI.

8 Q. In order to be accredited, are there certain
9 requirements you have to meet, your lab has to meet?

10 A. Oh, certainly. Not only the lab, but the
11 personnel as well, so they come in and they do a
12 multi-day inspection, and we have to be compliant with
13 the standards of ASCLD/LAB, and we have to be compliant
14 with the FBI standards for testing laboratory.
15 Personnel, testing personnel, have certain qualifications
16 that they have to meet, education, even down to certain
17 courses that they have to take and experience.

18 Technical leaders have a higher level of
19 qualifications. I'm the director. I'm also considered
20 the technical leader of the forensic unit, so the
21 technical leaders -- it's basically like the lab
22 director, but in forensics, they refer to them as a
23 technical leader.

24 Q. And as the technical leader, there are additional
25 requirements for you?

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 A. The minimum requirements for a technical leader
2 are that they have a minimum of a master's degree and at
3 least three years of documented experience as a qualified
4 forensic analyst, and to be a qualified forensic analyst,
5 you have to meet those standards, so it requires, you
6 know, somebody that's in a management position overseeing
7 the operations of the forensic laboratory.

8 It requires that they have minimum educational
9 background as well as experience. Given I have a PhD and
10 I have 30 years of experience, I haven't had problems
11 meeting that standard.

12 Q. Have you ever testified in court anywhere in the
13 country?

14 A. Oh, yes. You know, I haven't kept a record in the
15 early days because back in the early 90's when DNA was
16 just rolling out, we were in court practically every
17 week. As things became more accepted, towards the end of
18 the '90s, then that -- the amount of testimony declined
19 quite a bit, but I've testified in probably 12 or 13
20 different states, including South Carolina. In fact,
21 this courtroom within the past year, I think.

22 Q. And have you been qualified as an expert when you
23 testified?

24 A. Yes.

25 Q. And in what field were you qualified?

DANIEL DEMERS - CROSS BY MR. SCHWACKE

1 A. DNA testing, forensic DNA testing, as well as
2 parentage testing as well. That's another field.

3 Q. Do you testify in family court as well?

4 A. I have.

5 Q. You said specifically that you had testified
6 before in this courtroom, and were you qualified as an
7 expert when you did that?

8 A. Yes.

9 Q. And that was in forensic testing?

10 A. Yes. Actually, that was associated with this
11 case.

12 Q. It was for Goose Creek?

13 A. Yes.

14 MS. TAYLOR: Your Honor, I think that's all I
15 have at this point.

16 CROSS-EXAMINATION

17 BY MR. SCHWACKE:

18 Q. Do you pronounce it Demers?

19 A. Demers.

20 Q. You are affiliated with IntelliGENETICS, LLC?

21 A. That's correct.

22 Q. And what state is it incorporated in?

23 A. South Carolina.

24 Q. Are there other branches of IntelliGENETICS in
25 South Carolina?

DANIEL DEMERS - CROSS BY MR. SCHWACKE

1 A. No.

2 Q. Just Myrtle Beach?

3 A. Actually, it's located in Hilton Head.

4 Q. I'm sorry, Hilton Head. And how many employees do
5 you have for IntelliGENETICS?

6 A. Officially now we have four employees.

7 Q. And do they have designated duties within your
8 company?

9 A. Yes, they do.

10 Q. So one would be you?

11 A. Correct.

12 Q. And you would be someone that would be certified
13 and authorized to do the actual genetic testing?

14 A. There's actually two of us that are qualified to
15 do the testing, sign out reports, and testify.

16 Q. So who would be the other person?

17 A. It's a young lady that works for us. Her name is
18 Katie Thurmond. She was not involved in this particular
19 case, but she's what you call a qualified forensic
20 analyst, and I'm the technical leader for the forensic
21 lab, so I'm basically in charge of the forensic unit, and
22 then I'm also director for the whole facility.

23 Q. Who would be another employee?

24 A. Edith Mandujano-Demers.

25 Q. I would imagine that would be your wife.

1 A. Yes.

2 Q. What are her responsibilities?

3 A. She runs the customer relations part of it.

4 Q. So she does the billing and bill collecting?

5 A. Well, no. We do parentage testing for homeland
6 security for immigration-related matters, and she
7 coordinates all of that testing with the U.S. embassies
8 abroad, as well as the INS offices here in the U.S.

9 Q. And then the other -- the fourth person?

10 A. Her name is Ruth Taylor, and she's the director of
11 the customer service department.

12 Q. So you mentioned homeland security, and we know
13 that you're here on behalf of the Goose Creek police
14 department case. How many different law enforcement
15 agencies do you do DNA examinations for?

16 A. We've been doing work for Goose Creek for the
17 longest, about four or five years now. North Charleston
18 PD, U.S. Marshall Service from Charleston County. We've
19 done work for Lexington County sheriff's office as well
20 as Hardeeville PD.

21 We do some work for sheriff's offices in Georgia,
22 and then the other side of it is we do quite a bit of
23 work for public defender's offices. So we, you know, do
24 case review and sometimes additional testing for South
25 Carolina, North Carolina, Georgia public defenders, the

DANIEL DEMERS - CROSS BY MR. SCHWACKE

1 Innocence Project out of North Carolina.

2 Q. So if I have an item that I want to be examined,
3 how do you get it to you?

4 A. Well, if you're a police department, you can
5 deliver it, which is the most common way, or it can be
6 shipped in.

7 Q. And do you have requirements for items that are
8 shipped in?

9 A. We have requirements for both, and both ways are
10 perfectly acceptable and have been used throughout the
11 U.S. for as long as I've been involved in DNA testing.
12 And they're basically laid out by ASCLD/LAB, the
13 accrediting agency, as well as the FBI standards that we
14 have to adhere to.

15 Q. So from a law enforcement agency, I want you to do
16 an examination, I'm assuming I have contacted you
17 previously, entered into a contractual relationship with
18 you, and there is sort of guidelines and policies that
19 you want the law enforcement to do with any samples they
20 send you?

21 A. We do not work under any contractual obligations.
22 People are free to bring work in or not bring work in.
23 They're not bound by contract, and we're not bound by
24 contract. I do half expect that the submitting agencies
25 maintain a chain of custody so that we can be compliant.

DANIEL DEMERS - CROSS BY MR. SCHWACKE

1 with our accrediting agency, so I need to have things
2 that are brought to me in the proper form so that I can
3 meet my standards so when we get inspected and they go
4 through my case files, they will see that we're following
5 the standard.

6 Q. So when we went through the four people employed,
7 is one person acting as the one receiving these items or
8 is it possible for any of the four of you to do that from
9 a law enforcement agency?

10 A. From only Katie or myself.

11 Q. And Katie is --

12 A. Thurmond.

13 Q. That is Katie?

14 A. Yes, she's a qualified forensic chemist.

15 Q. I imagine as part of the accreditation process you
16 have to be compliant with policies dealing with storage,
17 sterility. Those items are part of what the
18 accreditation process would be?

19 A. Yes. We have to follow the exact same guidelines
20 any accredited lab, like SLED does or the FBI lab. We
21 all follow the same standards, and we're inspected by the
22 same accrediting agencies, so we're all bound by the same
23 rules, basically.

24 Q. And you said that's ASCLD?

25 A. I'm sorry. They call it ASCLD/LAB, it's the

DANIEL DEMERS - CROSS BY MR. SCHWACKE

1 American Society of Crime Laboratory Directors/Laboratory
2 Accreditation Board, hence we call it ASCLD.

3 Q. The FBI defers to ASCLD, or that is a separate
4 process, and you have another agency that comes in and
5 reviews your procedures?

6 A. It's kind of a joint mission when we're inspected,
7 someone from ASCLD/LAB comes in representing ASCLD/LAB
8 and their standards. Somebody from FBI comes in and
9 inspects using the FBI inspection documents, so there's
10 two inspection documents, and there's one person from
11 each agency to handle their own inspection document, so
12 it's kind of two inspections going on at the same time.

13 So ASCLD/LAB are kind of general guidelines that
14 would apply to all forensic laboratories, whether we're
15 doing documents, fingerprints, ballistics, in this case,
16 DNA.

17 The FBI is coming in specifically to zero in on
18 the FBI quality standards, which are more specific, while
19 ASCLD/LAB has some standards regarding things like sample
20 receipt and handling and things like that. The FBI lab,
21 because it's specific to DNA, has more stringent
22 standards that go beyond what ASCLD/LAB requires, so it's
23 kind of a joint effort in getting that done.

24 Q. But your certificate that you showed us is from
25 ASCLD?

1 A. Yes, because they actually are the accrediting
2 agency.

3 Q. You don't get anything from -- earlier you said
4 NIJ, you were NIJ approved lab at one point, but that's
5 not the case anymore, but they don't do accreditation
6 or --

7 A. They don't do accreditation. What I said earlier
8 is we were approved by NIJ for doing work under their
9 jurisdiction using their funds so get work into the CODIS
10 database, so that was -- in that case, they reviewed
11 laboratories, qualifications, and made their decisions
12 based on the laboratory's qualifications, so we were one
13 of five laboratories at that time approved to do work for
14 NIJ.

15 Q. What accessibility do you have to the CODIS
16 database?

17 A. None.

18 Q. And why is that?

19 A. Because we're a private laboratory. To have
20 direct access to CODIS, you have to be a police
21 laboratory.

22 Q. So SLED would be the only one that would have
23 access to that?

24 A. In the State of South Carolina, you also have --
25 the Richland County sheriff's office has a DNA lab, so

DANIEL DEMERS - CROSS BY MR. SCHWACKE

1 they have a CODIS terminal, and Beaufort County sheriff's
2 office has a DNA lab so they have a CODIS terminal, and I
3 think there is actually a new lab, possibly, I think
4 in -- Greenville sheriff's office now most recently set
5 up a DNA laboratory.

6 Q. And your and your labs were certified when?

7 A. We're inspected every other year by FBI. We're
8 inspected every five years by ASCLD/LAB, and then we're
9 inspected every other year by the AABB, which is -- the
10 AABB is the American Association of Blood Banks, and all
11 of our homeland security work is under that
12 accreditation.

13 Q. But when was the last time you were accredited by
14 any one of those agencies? How long has it been?

15 A. We're still accredited. What do you mean by
16 accredited?

17 Q. When is the last time they came and gave you a
18 certificate of satisfaction, whatever it is they give you
19 to show, hey, we came in here, we did this testing you're
20 good to go?

21 A. Somebody was in November of -- December of 2013, a
22 representative for FBI did an FBI quality audit of our
23 facility as required every other year, so that was done
24 December of 2013.

25 Q. You said ASCLD is every five years?

DANIEL DEMERS - CROSS BY MR. SCHWACKE

1 A. That's correct.

2 Q. So how long has that been?

3 A. It will be five years come this October.

4 Q. And you've testified how many times?

5 A. Fifty times.

6 MR. SCHWACKE: One moment, Your Honor.

7 That's all I have.

8 THE COURT: Do you have any more?

9 MS. TAYLOR: No, Your Honor.

10 THE COURT: So you obviously are moving to
11 have him qualified as an expert in the field of --

12 MS. LITTLEJOHN: Forensic testing.

13 THE COURT: Of DNA?

14 MS. TAYLOR: Yes, Your Honor.

15 THE COURT: All right. What the defendant's
16 position on that?

17 MR. SCHWACKE: Based on his testimony, no
18 further objection. We would let him be qualified.

19 THE COURT: You have no objections and he can
20 be qualified?

21 MR. SCHWACKE: Right.

22 THE COURT: Before we bring the jury in,
23 we'll take a rest room break.

24 (Recess taken.)

25 (In open court, jury present.)

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 THE COURT: All right. State, call your next
2 witness.

3 MS. TAYLOR: Dr. Daniel Demers.

4 DANIEL DEMERS,
5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MS. TAYLOR:

9 Q. Good morning, Dr. Demers.

10 THE COURT: Before you do that, let me just
11 go ahead and tell them -- this witness has been qualified
12 as an expert in the field of forensic testing and DNA.
13 That's what we were having a hearing on before so we can
14 just smooth into the questions without interruption, but
15 he has been qualified, or is qualified, as an expert in
16 the field of DNA testing.

17 Like I told you with the previous instruction
18 on expert witness testimony, you decide how much
19 testimony -- or how much weight to give his testimony,
20 based on all of the evidence that you hear throughout the
21 trial. You're not required to blindly accept an expert's
22 testimony simply because they're an expert. You decide
23 alone, based on all the evidence you heard and will hear,
24 how much weight his testimony deserves.

25 I'm simply telling you this now because

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 everyone has agreed he's an expert in this field, so
2 she'll be able to tell you some -- ask him foundation
3 expert qualification basis questions, and we won't need
4 to stop and go through that.

5 All right?

6 MS. TAYLOR: Thank you, Your Honor.

7 BY MS. TAYLOR:

8 Q. Dr. Demers, could you tell the jury a little bit
9 about your educational and professional background.

10 A. Certainly. I have a bachelor degree in cell
11 biology from Connecticut State University, and I have a
12 PhD in Molecular Pathology from the Medical College of
13 Virginia.

14 Q. And your professional background?

15 A. Professionally, I've worked in DNA identity
16 forensic laboratories from 1990 -- well, mid '80s to
17 1990, I worked in the paternity and forensic laboratory
18 at the Medical College of Virginia. From 1990 until
19 2003, I was director of Fairfax Identity Laboratories in
20 Fairfax, Virginia, and since 2003 I've been director of
21 IntelliGENETICS, which is here in South Carolina.

22 Q. Could you tell the jury what IntelliGENETICS is.

23 A. IntelliGENETICS is a -- kind of your typical DNA
24 identity testing laboratory. We're accredited to do
25 parentage testing, which we mostly do for immigration.

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1 purposes, and we are accredited by ASCLD/LAB. That's the
2 same accrediting agency that accredits the State lab,
3 SLED, as well as most other state laboratories and the
4 FBI lab, and we're accredited by ASCLD/LAB to do forensic
5 testing for criminal cases such as this.

6 Q. So you talked about different types of testing
7 that you do. I think you mentioned parentage testing and
8 forensic testing; is that correct?

9 A. That's correct.

10 Q. And have you had experience in both of those
11 fields?

12 A. Yes. I've been working in both of those fields
13 since 1985.

14 Q. Have you ever testified in court before?

15 A. Yes. I've testified in, more or less, a dozen or
16 so states, totally about maybe perhaps 50 times,
17 including this very courtroom last year.

18 Q. The work that you do, is it -- do you work for --
19 I'm sorry. Do you work for government entities, private
20 entities? Tell me your clientele at IntelliGENETICS.

21 A. Our clientele is basically anyone that needs the
22 service, so on the parentage side, we concentrate more on
23 identity testing that's done for Homeland Security
24 purposes, and it comes via U.S. embassies, people that
25 are applying for a visa in a U.S. embassy in a foreign

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 country, so mostly comes through U.S. embassies.

2 On the forensic side, it's really quite variable.
3 Work comes from police departments and sheriff's offices,
4 private investigators, public defenders and defense
5 attorneys. We've even done work for the Innocence
6 Project in North Carolina, so it comes -- being private,
7 we may find ourselves on either side. We could be on the
8 prosecution side or we could be on the defense side.

9 Q. In this particular case, were you asked by Goose
10 Creek police department to do some testing?

11 A. Yes, we were.

12 Q. And, obviously, as a private lab, you're paid for
13 that testing?

14 A. Yes.

15 Q. Do you remember, Doctor, the evidence that they
16 sent you to be tested in this case?

17 A. Well, I reviewed the case file this week, so I do
18 recall the case.

19 Q. Do you remember being sent specifically some DNA
20 swabs that were taken from the defendant, Mr. Brown?

21 A. I'm sorry. I didn't hear that.

22 Q. Some DNA swabs that were taken from the defendant,
23 Donte Brown?

24 MR. SCHWACKE: Your Honor, just for the
25 record, we would object.

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 THE COURT: I'm sorry?

2 MR. SCHWACKE: Just for the record, we would
3 renew our previous objection.

4 THE COURT: All right. Denied.

5 THE WITNESS: Did the you want the date we
6 received it?

7 BY MS. TAYLOR:

8 Q. Did you receive a DNA swab?

9 A. Yes. We received a swab, oral swab.

10 Q. And when you received that swab, would it have
11 been sealed?

12 A. Yes.

13 Q. I'm going to show you what's been previously
14 marked as State's No. 36, and I don't know from looking
15 at that package if you can identify if those are the
16 swabs you received for testing in that case?

17 A. Yes. It's a typical submission from Goose Creek,
18 has their case number and their item number on it, and
19 that becomes part of my record. And then I can see my
20 own handwriting on here, because once I receive a sample,
21 I put our number and specific sample number on it, and
22 they're usually submitted in little boxes, so within here
23 are little boxes, and that's my seal on the back. When I
24 return it, I put my own seal, and it still has my
25 initials and date on there.

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 Q. Do you have any records indicating who you
2 received that package from?

3 A. Yes, I do.

4 Q. And could you tell us who that was.

5 A. That was investigator Wendy Myers from Goose Creek
6 police department.

7 MS. TAYLOR: At this time we would ask
8 State's 36 to be entered into evidence, if I could just
9 have the package. Thank you.

10 MR. SCHWACKE: Again, subject to our
11 previous --

12 THE COURT: It's admitted.

13 MS. TAYLOR: Thank you, Your Honor.

14 (State's Exhibit No. 36 was marked for
15 identification and admitted into evidence.)

16 BY MS. TAYLOR:

17 Q. Thank you, Your Honor. Did you receive other
18 evidence for testing in this case?

19 A. Yes.

20 Q. As part of that evidence, were you presented with
21 a firearm?

22 A. Yes. On that same day, a Ruger handgun was
23 brought in, but we did not take custody of it, so it was
24 brought in by investigator Myers, and she was there while
25 I collected the DNA from it. And then she took -- she

DANIEL DEMERS - DIRECT BY MS. TAYLOR

1 always had possession of it, basically, so I didn't keep
2 that item.

3 Normally, we get items in, they get secured in our
4 vault, and then we do our work and we return it, but in
5 this particular case, she brought in the item. We did
6 our DNA collection of the item, and then it was given
7 right back to her.

8 Q. And when you did that collection, can you just
9 explain to the jury how that process works.

10 A. Yes. It's not quite as sophisticated as you might
11 think. As it turns out, the best way of collecting DNA
12 evidence from an item, whether it be a handgun, a knife,
13 or even an article of clothing, is to use a cotton tipped
14 swab, not really so different than a Q-tip that you would
15 get from a pharmacy, except these are sterile swabs, and
16 we use a liquid, just to moisten the swab, and we go over
17 the items.

18 So in a case of a handgun, we're -- largely, we're
19 going over the handle of the handgun, so we're rubbing
20 the swab, and in a case like this, we would use multiple
21 swabs so that we're really thorough in going over and
22 collecting as much of the DNA as we can.

23 Q. So you -- you had the DNA swabs from the
24 defendant; you also collected swabs from a handgun. Were
25 you also presented with a ski mask and some money in this

1 case?

2 A. It was a \$5 bill, a \$20 bill, ski mask was brought
3 in earlier. There was also a butcher knife.

4 Q. And you had DNA samples from other people to be
5 tested; is that correct?

6 A. When the ski mask was brought in on December 30th
7 of 2011, a reference sample from two individuals were
8 also brought in.

9 Q. Okay. Now that we know what you had to test,
10 let's turn a little bit toward DNA in general and how you
11 test it. And I know we all watch CSI, I'm sure, and
12 think we know what DNA is, but I'd like to heard it from
13 the expert, if you don't mind, if you could just explain
14 to the jury, briefly, what DNA is.

15 A. Certainly. Just to summarize, in kind of a
16 general way, you see it on TV. It may have been talked
17 about in this courtroom earlier; I don't know. You're
18 certainly going to get your dose of it now.

19 Anyway, a DNA sample, as you've all heard, is the
20 genetic material that we all inherit from our parents and
21 it's what makes us unique, and when we do a DNA test,
22 whether it be a handgun or an article of clothing or
23 anything else, we collect DNA from the individual and we
24 process that DNA to generate a DNA profile. So what,
25 really, is a DNA profile?

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1 A DNA profile, you can think of it as kind of a
2 collection of peaks, data peaks, so I think most people
3 are familiar with polygraph test, a lie detector test.
4 If they have haven't had one, they've at least seen it on
5 TV, and so you'll see the polygraph. It's kind of moving
6 along in a flat line, and then when the person tells a
7 lie, you get this spike up, or a peak, and the data, as
8 we collect it, looks like that. It's a peak. It's a
9 spike up.

10 The difference is that on a polygraph it's in
11 black and white, and in DNA, it's a collection of colored
12 peaks. So when you are thinking about a DNA profile, you
13 can kind of think about a set of peaks that are appearing
14 on a graph, and those peaks get reduced to a number.
15 Obviously, we need to report this. We have to put it
16 into a document, a report that is easy to interpret and
17 understand, and so we can't put a bunch of peaks into a
18 report, so it's standard in the industry now to convert
19 those peaks into a number.

20 So if they have spoken about the DNA results, or
21 if they haven't yet, they will be, the DNA results you
22 may have seen yourself will be on a series of numbers,
23 and if you can just remember one thing, each one of these
24 numbers in the report corresponds to a unique peak on the
25 graph, and you may have even heard a scientific term

1 called allele.

2 I don't know if that's been bandied about during
3 the past few days or if it will be today, but you don't
4 need to get hung up on that scientific term. If you hear
5 allele, just think peak, and each number on the report
6 corresponds to a peak in the graph and that corresponds
7 to an allele.

8 So the thing about DNA testing today is it's
9 developed to the point where when we develop a DNA
10 profile, those series of peaks. We're actually
11 collecting data from 16 different regions of the
12 individual's DNA, 16 different areas or regions within
13 the person's DNA we're collecting data from, and each one
14 of those regions, there will be one or two peaks
15 associated with that region.

16 So in total, if you do the math real quick, 16
17 different regions times one or two peaks, you wind up
18 with 28 to 32 peaks in total, giving you a full DNA
19 profile.

20 So if we have an item, whatever, in this case we
21 have this -- it's okay to refer to these previous items?

22 Q. Certainly.

23 A. In this case, there was a ski mask that was
24 submitted as an example, and when we collected the DNA
25 from that ski mask, we got somewhere around 28 to 32

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1 peaks, and so that told us that there was only DNA from
2 one person on that ski mask. And if you bring in a
3 suspect, DNA from a suspect, and we generate the DNA
4 profile from that suspect, if that series of peaks from
5 the suspect matches up perfectly with the series of peaks
6 on the mask, then you know that the DNA on the mask came
7 from this suspect.

8 If it's a perfect match, that is called identity,
9 and we know now from many, many years of research
10 conducted all over the world that a DNA profile of this
11 magnitude is specific to an individual. It's so specific
12 that if you were to go out and test every other person in
13 the world -- the world has something like seven billion
14 people now. If you were to go out and test every person
15 in the world, you most likely would not come across one
16 single person that would match up exactly this DNA
17 profile. That's how specific it is.

18 So when we have a single unique -- and we call
19 that single contributor DNA profile, then we know that's
20 a perfect match, and we know that person handled the
21 item, whatever it is.

22 I'm not saying anything about guilt or innocence,
23 because that's not my job. As a DNA person, what I do is
24 I receive evidence. I process it, regardless of whether
25 it's a defense case or a prosecution case, process it, we

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1 report it out, and it's up to you people here, of course,
2 to make the final determination of guilt and innocence.

3 Q. Let me stop you right there, Doctor, if you don't
4 mind. You talked about a full profile. Is it also
5 possible for you to get partial profiles or mixed
6 profiles?

7 A. Yes. That's a good question, because,
8 unfortunately, forensic evidence is not always as
9 clean-cut and as perfect as we would like. So partials
10 profiles happen when the DNA has been compromised in some
11 way. So, unfortunately, forensic scenes can be almost
12 anything, and the sun, humidity, the weather, time
13 itself -- there are many things that cause DNA to
14 deteriorate over time, and what that causes is for the
15 laboratory to not get all the collection of peaks that we
16 would normally expect to get.

17 Remember, I said we would normally get 28 to 30
18 peaks collectively from 16 different regions, so the
19 regions that come out later on the graph actually
20 correspond to bigger pieces of DNA, so as the DNA
21 degrades, there is a tendency to those to degrade down
22 and we don't see them, so a partial profile would just
23 simply be instead of 16 regions of data, we get, perhaps,
24 10 or 12 regions of data. Anything less than the full 16
25 would be considered a partial profile.

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1 Q. When you have a partial profile, it's not possible
2 to get a total match; is that correct?

3 A. You can, in fact, and it can be actually quite
4 compelling. Partial profile from a single contributor,
5 if it matches the suspect, you will still get a number
6 that is, you know, one in many hundreds of billions or
7 even a trillion; in other words, it's identity. It's the
8 person.

9 Where it gets more complicated is when you have a
10 mixture of DNA. The mixture is just what it sounds like.
11 A mixture is DNA from more than one person, and this is
12 very common in forensic cases, particularly in weapons.
13 For some reason, guns and knives have usually more than
14 one person's DNA on it, I don't know why, but they seem
15 to get passed around, so it's not uncommon to have two,
16 three, four, or even more DNA samples from three, four,
17 five different people on a weapon.

18 So if we just -- by kind of giving of give you the
19 basis of what a single contributor profile is and what it
20 looks like, so if we can just take this one step further
21 and increase the level of complexity, let's just say the
22 ski mask -- we were talking about the ski mask. We'll
23 just stay with the ski mask.

24 In this case a ski mask had DNA from only one
25 person, at least that's all we could detect. Let's say

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1 that the ski mask had DNA from two people. So instead of
2 the normal 28 to 32 sets of peaks, we would get about
3 twice as many peaks, but in practice, we don't get twice
4 as many peaks.

5 Twice as many peaks would put us at around 60 data
6 peaks. Altogether, we don't get twice as many, simply
7 because any two individuals, even if they're unrelated,
8 they will have some of their data peaks in common, so
9 there's 28 to 32 per person, so instead of getting double
10 that, 55 to 60, perhaps, when I have a mixture of two
11 people, when they share some things, we'll get perhaps 45
12 to 50 data peaks.

13 So when we see something like that with 45 to 50
14 data peaks -- and there's other criteria, but we can
15 narrow it down to determine the minimum number of -- we
16 call them contributors, donors, the minimum number of
17 people that handle that item, whether it be a gun or a
18 ski mask.

19 So a DNA mixture with two individuals on it would
20 give us the opportunity to exclude a suspect, and the way
21 we would exclude a suspect, if you remember when we're
22 talking about just one person's DNA on a ski mask and a
23 suspect, you've got a perfect mask, okay, no problem.

24 Now, if you have a mixture of two people, it gets
25 a little more complicated, because we don't know which

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1 set of peaks goes with this person and which set of peaks
2 goes with this person. We have no way to divide them out
3 and figure out which goes to which, so the way this is
4 handled in the scientific community is to -- with that
5 suspect, quite simply, if all the peaks that the suspect
6 has in his or her DNA profile is not in the mixture, then
7 he's excluded, he or she is excluded. They cannot be a
8 contributor.

9 So if you have a mixture, whether it's on a
10 gun or a ski mask and you have all these data peaks, the
11 suspect's peaks have to all be represented in this
12 mixture, and if they're not, then that person cannot be a
13 contributor of the DNA on that item.

14 But what if they are all represented in the
15 mixture? What is the meaning of that? If we have a
16 mixture with 45, 50 data peaks. We've concluded it's
17 come from two people. We have a suspect, and all of his
18 data peaks are represented here in this mixture. What is
19 the meaning of that?

20 To give you some idea of the meaning of that,
21 we calculate what's called the probability of exclusion,
22 and probability of exclusion is not as complicated as it
23 sounds. When you think of probability of exclusion, you
24 can think of it's the probability that a falsely accused
25 person, or somebody just selected at random, would be

1 excluded from the evidence.

2 So, in other words, another way of saying it,
3 it's the probability that the evidence item does not have
4 all of the peaks that the suspect has. So it's not
5 uncommon in mixtures like that to get a probability of
6 exclusion of 99.99 percent. We get mixtures, some where
7 the probability exclusion is 99.99 percent.

8 What does that mean? I'll just back up.
9 Probability of exclusion of 99.99 percent means that
10 99.99 percent of falsely accused people would be excluded
11 from this mixture; in other words, 99.99 percent of
12 falsely accused people, if we looked at their profile, we
13 would not find all their data peaks on the evidence. So
14 that's a very compelling number when you know that if
15 they just go out and randomly pick something or pick the
16 wrong person.

17 That person, with 99.99 percent certainty, is
18 going to be excluded just simply because not all of his
19 peaks are in the item. So mixtures like that are still
20 quite compelling.

21 Q. Let me ask you, Dr. Demers: When you have a
22 mixture of more than one person, it's possible to exclude
23 people but not possible for the identity determination
24 that you talked about single contributor; is that
25 correct?

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1 A. We cannot say -- no, that is correct. We cannot
2 say he matches this item. We can look at it and we can
3 see that all of his data peaks are in the mixture sample,
4 then we know that he is a possible contributor. We're
5 not saying he is, so what we can do is give you an idea,
6 is this guy just unlucky? Did this guy really handle the
7 item, or is he just unlucky? So if the probability of
8 exclusion is 99.99 percent, then he'd have to be really
9 unlucky to, number one, have come to the attention of the
10 police as a suspect, and on top of that, he's so unlucky
11 that he match -- all of his components are present in the
12 mixture sample.

13 So that is really a compelling situation. It gets
14 more complicated as you factor in more contributors, so
15 let's say you have an item with three contributors or
16 four contributors or even more. As you can imagine, the
17 complexity of the DNA profile increases, so when we had
18 one DNA profile, we were talking about 28 to 32 peaks,
19 and we said we'll get a mixture of two people, now we're
20 talking about 45 to 50 peaks.

21 As you keep adding in people, the number of peaks
22 go up. You have quite a few data peaks in there, so as
23 the number of data peaks goes up, the number of possible
24 contributors goes up, and the probability of exclusion
25 goes down. So the more contributors, the less compelling

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1 the number will be. The less compelling the evidence
2 will be. The greater chance there is that somebody is
3 just falsely accused, if that makes sense.

4 Q. Yes, sir. Let's talk now about specifically the
5 items that you tested in relation to this case.

6 There were some items that you tested that you did
7 not receive results from; is that correct, results
8 relating to anyone in this case? Let's talk specifically
9 about the \$20 bill and the \$5 bill.

10 A. Money is obviously something that has been handled
11 by a lot of people and depends on how long they have it
12 handled. You know, sometimes they will roll it up in
13 their fist, and that generally will transfer a lot of
14 their DNA. So it's not surprising.

15 We obtained a mixture on the \$5. We obtained a
16 mixture profile, and everybody we tested was excluded
17 from that, and on the \$20 bill we obtain a mixture from
18 at least four contributors, so at least there were enough
19 peaks there that we knew there were at least four people
20 that handled it, and, again in that case, everybody that
21 we tested was excluded.

22 Q. Let's talk next about the ski mask you excluded
23 already. Were you able to get a match to the DNA pulled
24 off the black ski mask?

25 A. The mask had DNA from only one person, so single

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1 contributor, and that matched to a suspect.

2 Q. And who was that suspect?

3 A. That was Christopher Wilson.

4 Q. Thank you. I'd like to talk next about the barrel
5 of the gun and the butt of the gun, if you don't mind.

6 Were you able to get any DNA off of those two
7 areas of the gun that matched anyone in this case?

8 A. Sometimes police will have us -- depending on the
9 circumstances of the case, sometimes will have us analyze
10 the -- if it has a magazine that they slide up or there's
11 bullets in the chamber, they'll have us analyze that
12 separately, especially in cases, perhaps such as suicide
13 because a person that loaded the gun is not necessarily
14 the person that fired the gun, and then sometimes they
15 will have us analyze the barrel of the gun, because
16 sometimes if it's close range, you can actually get some
17 blow back of the victim's DNA on the barrel, and then
18 if -- on the butt of the gun, sometimes people will use
19 the butt of a gun as a weapon to knock somebody over, and
20 so in that situation they'll ask us to analyze just the
21 butt separately.

22 And then, of course, the grip of the gun and the
23 trigger area, that's going to be the area of the greatest
24 interest because that's going to be the area that the
25 person that fired the gun is most likely going to be

1 found on.

2 Q. Okay. So did you test the barrel and the butt of
3 the Ruger gun you were presented with?

4 A. Yes. We tested the barrel and the butt of the
5 gun, and we got a mixture profile that had at least three
6 people on it. So we had an update of peaks that we knew
7 there were at least three people that came in contact
8 with the butt of the gun and the barrel.

9 In that case, every one that we tested, including
10 Christopher Wilson and Donte Brown, were excluded.

11 Q. Okay. Did you test the handle of the Ruger gun?

12 A. The handle was tested separately, and in that
13 case, the handle of the gun -- actually, I could tell you
14 the exact number -- gave us enough data peaks that I
15 concluded there were at least five people that had come
16 in contact with the handle of the gun, and there were
17 exactly 84 peaks in this mixture profile in the handle of
18 the gun.

19 Q. So that means multiple people have DNA on the
20 handle?

21 A. Based on our analysis, we reported at least five.
22 Technically, it could be four, for some complex genetic
23 reasons. It could be five; it could be six. It actually
24 doesn't really matter the number of contributors. What
25 matters is the number of data peaks that we have, because

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1 that's what we're going to base our analysis on.

2 Q. So is this one of those instances that you
3 testified about earlier where it makes it more difficult
4 to exclude people, because you have multiple databases?

5 A. It does, so when we calculate it, you can see that
6 in the probability of exclusion when we calculated that
7 for various racial groups because it's different for
8 blacks, whites, Hispanics, Asians, and it's not a lot
9 different. You know, it's not going to be 99.99 in one
10 racial group and 95 in another racial group.

11 As an example, the exclusion probability for a
12 Caucasians was 98.9 percent, 99 percent. Among
13 Hispanics, it was 98.2. It was little lower. Among
14 Asians, it was 98.3, so about the same, about 98 percent,
15 and among U.S. blacks, it was about 97.8.

16 Q. You talked about the exclusionary probability in
17 this case. Were you able to determine whether or not
18 Donte Brown could be excluded as a contributor to the DNA
19 on the gun?

20 A. We can conclude that all of the peaks in his DNA
21 profile could be found in the mixture profile from the
22 handle of the gun, so we have to report that he is a
23 possible contributor. We're not saying he is the
24 contributor, but we have to say he is not excluded
25 because he's not excluded. If all of his data peaks are

1 there, he is one of those people -- he's either one of
2 those unlucky people that, you know, came to the
3 attention of the police and just by coincidence all of
4 his data peaks are there, or he handled the gun. Those
5 are the two possibilities.

6 Q. And just so I can make sure I understand, 97.8
7 percent of the African American population in the United
8 States would have been excluded as a contributor to this
9 DNA?

10 A. Correct.

11 Q. So --

12 A. Quite honestly, I think you kind of have to --
13 that's just a statistical number, and, you know,
14 statistics can mean a lot of things, so you kind of have
15 to put a little bit of a explanation with it because what
16 a lot of people say is if you took 100 U.S. blacks and
17 you profiled them all and compared them to this mixture
18 profile, two of them on average that statistically we
19 would expect to not be excluded from the handgun.

20 That, at its most basic level, is a true
21 statement, but what that doesn't take into consideration
22 is the other evidence that may be associated with the
23 case; the fact that the person came to the attention of
24 the police as a suspect; the fact that maybe he or she
25 did not have an alibi for that time, and then on top of

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1 that, you have this potentially coincidental match.

2 So if we were to -- you know, you might have 100
3 people in this courtroom. Let's say, just for the sake
4 of argument, we had 100 blacks here in this U.S.
5 courtroom and we were to test all of them, and let's say
6 two of them matched. Let's say one matched, not matched,
7 but could not be excluded. Let's say three did. It's
8 unimportant.

9 Most likely, those people had nothing to do with
10 the case. Most likely, they had an alibi as to their
11 location at that critical time of the crime, so you have
12 to kind of put it in perspective with these other
13 elements. It is, on its most basic level, a measure of
14 how unlucky the person is that their data peaks are part
15 of this mixture profile. Are they just unlucky? They
16 could be. Are they so unlucky that they're a suspect in
17 the case, they have no alibi, and they cannot be
18 excluded? I don't know. That's for you all to decide.

19 Q. Thank you, Doctor.

20 A. I think there's actually -- if I may, there's just
21 another kind of component to this mixture analysis that I
22 think is worth noting.

23 Q. Sure.

24 A. Two things: The most likely explanation for this
25 mixture profile is that Christopher Wilson and Donte

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1 Brown -- this is a possible explanation -- Christopher
2 Wilson and Donte Brown both handled the gun. We could
3 not exclude Christopher Wilson or Donte Brown, and that
4 three other female individuals also handled the gun. So
5 I can't say that with certainty that the other three
6 people were female, but I have a good indication that
7 they were, and the reason is because when we do these
8 tests, one of the 16 regions that we collect DNA from,
9 that we collect data from, is sex, or gender, of the
10 person.

11 So females are -- you may or may not remember
12 this, but females are genetically XX. They get one X
13 from their mom and one X from their dad, and males are
14 XY, so when a family has four girls and no boys, it's the
15 man's fault because all of his sperm have been carrying
16 Xs.

17 So if he produces a -- fertilized the egg with a
18 Y chromosome, then the child will be male. So we get an
19 X peak and we get a Y peak, and we get an indication of
20 the different genders based on the relative heights of
21 these peaks, so if you look at the mixture profile from
22 the handgun, the Y was really, really low, and the X was
23 really, really high. So either one of these -- one of
24 the males that handled the gun has a really, really rare
25 genetic anomaly, which is highly unlikely, or several of

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1 the handlers of the gun were women.

2 And one explanation is Christopher and Donte
3 collectively make up 53 percent -- 45 out of the 84 peaks
4 can be attributed to Christopher or Donte. That's 53
5 percent of the peaks on the handgun. So that could just
6 be coincidence or, again, bad luck.

7 MS. TAYLOR: Thank you, sir.

8 CROSS-EXAMINATION

9 BY MR. SCHWACKE:

10 Q. You are the head of the IntelliGENETICS lab that
11 did the testing in this case?

12 A. Yes.

13 Q. And how long have you been involved with that
14 company?

15 A. Ten years.

16 Q. And it's an accredited lab?

17 A. Yes.

18 Q. And it's accredited by whom?

19 A. By the American Association of Blood Banks, the
20 AABB, for parentage testing, and that's for homeland
21 security matters, and then we're accredited by the A
22 American Society of Crime Laboratory Directors/Laboratory
23 Accreditation Board. It's referred to as ASCLD/LAB, and
24 that is the accrediting agency that accredits the South
25 Carolina state labs and as well as SLED as well as other

1 state crime labs and the FBI labs, so it's kind of the
2 primary accrediting body for forensic FBI testing
3 laboratories.

4 Q. They actually come into your facility, do visual
5 inspections, I guess do -- is there a proficiency testing
6 that is done?

7 A. Yes. That is part of it. Accredited labs have to
8 participate, but all the technical people in the lab have
9 to participate in proficiency. We have to do that for
10 AABB as well, and as part of it, as you mentioned, they
11 come in, and even in a small lab like ours, you get two
12 people there for two-and-a-half days. So they do a lot
13 of poking around and they go through case files and make
14 sure that we're doing things according to the
15 FBI standard as well as the ASCLD/LAB standards.

16 Q. And you've been in restaurants before and see the
17 rating that's on there. Is there anything that's like
18 that with your type of accreditation?

19 A. Well, there kind of is. They have standards that
20 are absolutely required and you -- if you miss one of
21 those, you cannot be accredited, so you have to correct
22 that problem. They have some other standards that are
23 considered important, but not required, and you have to
24 obtain a certain percentage of those.

25 I forget the exact percentage of what is

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1 considered important. Sometimes an important thing
2 doesn't really apply to the lab that you have. For
3 instance, our lab being a small private lab operates a
4 lot differently than a large government lab like SLED.

5 And then they have some other standards that are
6 labelled as desirable, and those are things that you can
7 have but you don't have to have.

8 Q. And I would imagine one of the things that they
9 want you to have and what you would want to have as a
10 company that does this type of work are standards related
11 to the upkeep and sanitariness -- or the sanitary nature
12 of your business --

13 A. Sure.

14 Q. -- because of the dangers of such things as
15 contamination of sampling?

16 A. Sure.

17 Q. That's correct?

18 A. Oh, yes, yes. You're absolutely right.

19 Q. What steps do y'all take to avoid any type of
20 cross contamination or contamination of something you're
21 testing?

22 A. We do a lot of things, most of which are practiced
23 by everybody. You know, we all kind of do everything
24 pretty much the same these days.

25 In fact, 20 years ago, that wasn't necessarily

1 true, but then 20 years ago we didn't even have
2 accreditation. Today things have become very, very
3 standardized, and as far as cleanliness, they go through
4 and they look at the lab. They look at the condition of
5 the facility, the floors, the countertops. They look at
6 the equipment.. They want to see that it's clean and
7 maintained.

8 We have to maintain documents, records, on
9 everything that we do in the laboratory. At the time a
10 piece of equipment comes in, we have to calibrate it. We
11 have to document if it's calibrated, how we calibrate it,
12 the results of the calibration. If there is any kind of
13 maintenance that has to be done, we have to document
14 that, and it's extremely detailed, so this is true for
15 all the equipment, all of the agents, all of the staff.
16 We have to document the education of the staff, their
17 continuing education, their proficiency test results,
18 their training, the -- you asked specifically about
19 things that are done to prevent contamination.

20 One of the things that is done is samples of
21 evidence must be processed at a different time and/or
22 location than samples that are considered references, you
23 know, known standards from suspects and victims.

24 So that's one thing that is a requirement that
25 everybody must do. Another requirement is that when we

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1 extract DNA -- the technology is -- and I think you've
2 hit on kind of an important point. The technology is so
3 sensitive today, it's able to detect such minute amounts
4 of DNA, that's a good thing because we can process
5 evidence that 15 years ago we could not process just
6 because there was not enough DNA there.

7 Today we can, but that is also -- the other side
8 of that is you get down to such a good sensitivity level
9 that you can have issues of contamination, and that's why
10 it's addressed in the standards. So to prevent any
11 possible contamination -- because we have ways to pick it
12 up. If something is contaminated, we have ways to pick
13 that up, but once it's happened, it's happened, and you
14 can't back it up. So one is to process evidence and
15 reference samples at different time or different
16 location.

17 The other is to process what they call a blank,
18 along with the sample, so the blank, which is extracted
19 in every step of the way, the evidence, it goes with the
20 evidence, but there's nothing put into the blank. It is
21 called the blank because it is blank and it should be
22 blank when you're done, and if it's not blank when you're
23 done, then you know you may have obtained some
24 contamination.

25 So that's something else that's done, negative and

1 positive controls are done. We use special equipment in
2 the laboratory that also prevents equipment from being
3 contaminated. Just bleach is a very good thing for
4 maintaining -- bleach is a great way to destroy DNA, so
5 wiping things down with bleach is another way to just
6 keep everything clean, and it's a constant effort to
7 always wipe things down and keep the work space clean.

8 Q. And so you indicated that when the weapon was
9 brought to you -- because you did the lifting, so to
10 speak --

11 A. Yes.

12 Q. -- of the material, genetic material of whatever
13 source from the gun for your examination?

14 A. Correct.

15 Q. And I would guess since -- based on what you've
16 discussed so far that this wasn't an examination of the
17 material lifted from -- and let's talk about the handle
18 of the gun.

19 A. Okay.

20 Q. It was not a hair that you got the genetic
21 markings from?

22 A. No. It was, you know, from the handle, you know,
23 which it's typically a textured surface, so the DNA of
24 people.

25 Q. So it could have been a skin cell, exfoliated --

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1 A. Correct.

2 Q. Because that's one way genetic material --

3 A. Correct, perspiration.

4 Q. Sweat, oils?

5 A. That's correct.

6 Q. So you didn't know what it was in this case that
7 you're getting the genetic markings from off the handle?

8 A. Right. We just got the DNA from the person that
9 handled it.

10 Q. And I guess it's important for y'all to make sure
11 that the contamination doesn't occur is because you can't
12 guarantee, except on your own end, that that's not going
13 to happen, the contamination is not going to happen to a
14 piece of evidence?

15 A. No. We can't guarantee it.

16 Q. Because --

17 A. We can only protect against it and monitor for it,
18 and so if the monitoring tools are clean then and we have
19 no evidence of contamination, then we are confident in
20 the final result.

21 Q. So your ability to control cross contamination is
22 only as good as the police making sure they do something
23 appropriately in terms of not having items come into
24 contact with each other?

25 A. Correct. Collection is a very important part of

1 process. If it's not collected and packaged and
2 maintained correctly, then there is a famous case where
3 they said garbage in, garbage out. That was the O.J.
4 Simpson case, besides the glove thing.

5 Q. All right. So --

6 A. Yes. To answer your question, collection is
7 important.

8 Q. So we're now going to pretend I don't have this
9 one on, just trying to speed this up, so if I come over
10 here and come into contact with this box, there is the
11 possibility now that I've left my genetic signature on
12 that box.

13 A. If you handled it without a glove, you probably
14 did. Now, leaving it there and having us be able to
15 detect it are two different things, so you certainly left
16 some DNA there.

17 Q. Correct.

18 A. That brief moment -- unless your hands were really
19 sweaty, that brief moment you probably didn't leave
20 enough DNA that I could pick it up. Just because the
21 sensitivity of test is not enough that we pick up that
22 minute amount of DNA, but it would take a little bit
23 more.

24 Q. Some amount of duration, if I'm talking about
25 something and handle it and --

1 A. Uh-huh.

2 Q. And I want to look at this side and turn it that
3 way.

4 A. Right.

5 Q. There's a possibility I've left something there.
6 And right now, because I'm ungloved, I've also left the
7 possibility that whatever else somebody else may have
8 left, I've now picked up their DNA as well.

9 A. So you're saying that if there was DNA there and
10 then you touched it, maybe some of that came with you?

11 Q. Two days ago Joe Blow came in here and was dealing
12 with this box. Just as you indicated, it was possible
13 that I've left DNA on that box, Joe Blow has left
14 potential for DNA.

15 A. Potential, yes.

16 Q. And I've come into contact now with the box.

17 A. Right.

18 Q. I could have left my genetic markers, and I could
19 have also now have some of Joe Blow's --

20 A. That's correct. That can happen.

21 Q. And one of the things about the DNA is you had
22 talked about it being able to degrade, sun, heat, Clorox,
23 all those kinds of things.

24 A. Right.

25 Q. But bottom line of it is, you don't really know

1 when that genetic material was left if nothing -- I mean,
2 if there's a period of time that elapses.

3 A. You're correct. We collect DNA; we analyze it.
4 We say, This is the result. We're not making any
5 statement about when it was left, although you can make
6 some general comments about it.

7 You know, for example, an item that was touched a
8 year ago and has now been handled by people subsequently,
9 that person's DNA from a year ago is probably no longer
10 there or present at such a low level that you don't pick
11 it up, and there is a tendency to pick up more DNA from
12 the last person that handled it. There are exceptions.
13 It's not 100 percent. These are just general guidelines.
14 You tend to pick up the DNA from the person that most
15 recently handled the item, whatever it may be.

16 Q. Now, eight days is a considerably shorter period
17 of time than a year. You would agree?

18 A. Yes.

19 Q. All right. Now, we're going to pretend I have
20 just put these gloves on for the first time.

21 A. Okay.

22 Q. So the same thing is going to go. I'm going to
23 come and I'm going to have a barrier between my leaving
24 my DNA on this box because I put on the gloves. So when
25 I get to the point to examine what was in the box, and

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1 then I go to handle the gun, I still have the barrier
2 between me and the gun?

3 A. Uh-huh.

4 Q. But there's still the possibility, because the box
5 has been handled on the outside, this glove has now
6 become contaminated and this gun has too?

7 A. Potentially you are correct. It's a very good
8 observation. You're correct. It's -- that's why,
9 personally -- I -- when somebody comes in like this, I
10 don't have any knowledge about who's handled it, and so I
11 handle -- I approach it as though someone has handled it,
12 as you've just described. So myself, I don't want to
13 contribute that, so I wear gloves to open the item, and I
14 change those gloves before I handle the item. So that's
15 one of the things for -- it's not a regulation that I
16 have to frequently change my gloves, but it's an easy
17 thing to do. Frequent changing of gloves prevents me
18 from moving DNA around.

19 Q. And they're not expensive?

20 A. That's right, yes, sir.

21 Q. So you haven't been told anything by law
22 enforcement as to the location of the weapon, where it
23 was found, the circumstances, any of that information?

24 A. I don't have anything in my record. If they
25 mentioned it, I haven't recorded it, and this is a 2011

1 case, so I have no recollection of where it was found. I
2 know it was shortly after the crime occurred, but I don't
3 know the amount of time.

4 Q. And if I said it was eight days, you wouldn't know
5 if that's right or not?

6 A. No, I don't.

7 Q. All right. So if this box has got the gun in it
8 and this box is a suitcase, then, again, the possibility
9 exists that information, genetic information, that was on
10 the suitcase could have been transferred to the gun,
11 which was contained in that bag?

12 A. Uh-huh. If you're talking in terms rhetorical --
13 rhetorically, it could happen. Practically speaking, in
14 my experience and in the literature, transfers are more
15 likely to happen person to object, and there are some
16 circumstances where it can transfer from object to
17 object.

18 As an example, let's say blood has black
19 splattered on to this surface, and now I rub my glasses
20 across here and I -- now the blood has transferred to my
21 glasses. So that is one way for DNA to be transferred
22 from object to object. If somebody were perspiring and
23 they perspired on to something and while it was still wet
24 then that came in contact, that would be a reasonable
25 way -- they call that secondary transfer to occur.

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1 But it's unlikely that a hard surface, like a
2 handgun, that is in contact with another surface is going
3 to pick up enough DNA -- if it picks up any, it could
4 have -- I can't say if it was the inside -- did you say
5 it was inside the suitcase, or you don't know?

6 Q. I can show you what's been marked and introduced
7 as State's Exhibit Nos. 27 and 29. These have been
8 introduced.

9 A. This looks like one of those suitcases that you
10 carry on.

11 Q. It looks like my mother's old luggage, but --

12 A. I see where it's at. If that's where it's
13 recovered, and this is the way mine is, it looks like one
14 of those suitcases that open up and you can hang your
15 suit in there or your dress or whatever and then it folds
16 in half. The inside is vinyl. It's a good one. It's
17 leather. If it's a cheap one, it's vinyl, like mine.

18 Q. And you see the glove is in contact with the bag?

19 A. Yes. So they're using good technique here to
20 examine. So in this situation, I would say the risk of
21 secondary transfer is really quite low.

22 Q. But you can't exclude it?

23 A. No, I can't exclude it 100 percent, but I can tell
24 you in my experience it's very unlikely that enough
25 secondary transfer would occur that I could pick it up

1 and test.

2 Q. But you can't say that's what is going to happen
3 in any given case.

4 A. No. Well, I equate theoreticals like this to the
5 sun, or our sun coming up in the morning. Every morning,
6 for millions of years be the sun has risen. Now, is it
7 theoretically possible that the sun won't rise tomorrow?
8 Yes. Our sun could explode, and we go into a deep freeze
9 and so it wouldn't rise tomorrow, but for millions of
10 years, it has risen, so I'll bet my money that it will
11 rise tomorrow.

12 But if somebody says in theory, could the sun not
13 rise tomorrow? I would have to say yes, from a
14 scientific perspective. It could happen, so the thing
15 about theoreticals is that you kind of have to put them
16 in perspective, and although yes, there's that really
17 slight chance, it's highly unlikely enough secondary
18 transfer is going to pick up under these circumstances
19 that I'll pick it up.

20 Q. We had talked earlier about -- actually, when were
21 you testifying on your direct examination, you had
22 mentioned that there were a number of items that had been
23 tested, so I just want to go through those with you again
24 real quick.

25 A. Okay.

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1 Q. We had the \$5 bill.

2 A. Uh-huh.

3 Q. And in that instance, Mr. Donte Brown's excluded.

4 A. Correct.

5 Q. There was the \$20, and Mr. Donte Brown is
6 excluded.

7 A. Correct.

8 Q. Then you have a butcher knife, which I don't
9 recall there being testimony on, a butcher knife -- you
10 were also asked to test this; is that correct?

11 A. Yes. I did test the butcher knife.

12 Q. And that matches to Christopher Wilson?

13 A. Yes. Primarily, the butcher knife had female DNA
14 on it, and there was a minor male contribution, so it was
15 probably two people, some female and then Christopher
16 Wilson.

17 Q. Then you were asked to test the gun, and that was
18 broken down, and I guess you made the decision, since you
19 were the one that actually did it?

20 A. No. Actually, I don't generally make those
21 decisions because it's based on the circumstances of the
22 crime, and I generally don't have that information. It
23 usually comes from the agency.

24 Q. So the gun is broken down into three areas for
25 purposes of your examination, the butt, the barrel, and

1 the handle.

2 A. Correct.

3 Q. And on the butt and the barrel, the DNA sequencing
4 from those two items, the butt and the barrel of the gun,
5 Mr. Brown is excluded.

6 A. Correct.

7 Q. So what that then leaves us with is the handle.

8 A. Yes, sir.

9 Q. And in the handle, you were talking about the
10 peaks that is -- those indicated that possible
11 contribution in a mix sample of up to five people.

12 A. Correct.

13 Q. And you said consisting of at least five. Two
14 people were excluded as being contributors to that
15 mixture profile?

16 A. Correct.

17 Q. That included two of the employees of the
18 restaurant, Vincent Riley and Jeffrey Taylor, right?

19 A. That is correct.

20 Q. So I guess my question is, in a way that works,
21 since there are at least five contributors, does the
22 elimination of Vincent Riley and Jeffrey Taylor take that
23 down to three possible contributors or are there still
24 five contributors because they can be excluded?

25 A. There will always be five contributors. It's just

1 a matter of trying to identify or associate who they are.
2 The fact that Vincent Riley and Jeffrey Taylor were
3 excluded shows you how the process works, that a
4 person -- since they work at the restaurant, you said,
5 it's understandable that they would be excluded and they
6 were, in fact, excluded from this complex mixture, so
7 even though there is a lot of data peaks --

8 Q. You're doing this again, I'm --

9 A. I'm sorry --

10 Q. I'm trying to understand why where they were is a
11 reason they can be statistically excluded.

12 A. The reason -- they're not statistically excluded.
13 They're simply excluded because all of their data peaks
14 are not in the collection of data peaks that we got from
15 the gun. It's that simple. It's just a direct
16 observation. If everything that --

17 Q. Well, you had mentioned whether somebody had an
18 alibi in your direct examination as a way to factor in a
19 statistical probability?

20 A. No. I'm sorry. I didn't mean to suggest that.

21 Q. You said 2.2 people, based upon the black
22 population of the United States, still fit into the box,
23 correct?

24 A. Correct.

25 Q. Of a suspect.

1 A. Correct.

2 Q. But yet you wanted to point out whether they had
3 an alibi as a way to reduce that number?

4 A. No. I was certainly trying to put the meaning of
5 the mixture into perspective, because I don't know what
6 the other evidence is. I don't even know if there is
7 other evidence. I'm just saying, as an example, if
8 somebody has an ironclad alibi, regardless of the fact
9 that they are included as a possible contributor, if they
10 have an ironclad alibi, then you have to reasonably say,
11 regardless of the DNA result, they are not likely to be a
12 contributor. That's all I'm saying.

13 So, you know, I'm trying to give -- because
14 probability of exclusion is a complicated thing, and you
15 yourself have kind of misunderstand my wording, and I'm
16 sorry if I didn't explain it well enough, because that's
17 why I tried to use an alternative term, which is instead
18 of probability of exclusion, you cannot look at it as the
19 probability of being unlucky, because what you're saying
20 is somebody may not be excluded because of coincidence,
21 and I'm just trying to put that in perspective to say
22 that is possible, but that's where other evidence comes
23 into play.

24 If we tested everybody here, you could
25 coincidentally not be excluded. His Honor could

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1 coincidentally not be excluded, but I don't think anyone
2 is considering you as a serious suspect in the case, so
3 other evidence comes into play as you weigh the evidence
4 in total. That is all, but it doesn't change the
5 statistics of the evidence.

6 Q. And the mixture profile attributed for Mr. Donte
7 Brown on the handle of the Ruger gun, that was based on
8 the U.S. black population.

9 A. Yes.

10 Q. Regardless of sex?

11 A. Regardless of gender because there is no point of
12 correlation between gender and the other data peaks that
13 we find in a --

14 Q. So if the total black population under the last
15 census for Berkeley County was 44,800, then based on that
16 statistic in Berkeley County there are about 980 people
17 right there now that also can't be excluded.

18 A. Statistically that's possible.

19 Q. And the mixture that was found on the handle of
20 the gun, consisting of five contributors still, leaves up
21 in the air the possibility of someone else whose sample
22 you have not received as being a person who did this.

23 A. That's why I pointed out that you have to put the
24 statistic in perspective, because it's common for defense
25 attorneys to say that exact statement that, well,

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1 statistically there is 900 and some odd people that could
2 not be excluded from this profile, and that statistically
3 those 900 and some odd people are not suspects in the
4 case.

5 They have not come to the attention of the police.
6 Whatever evidence there is, I have no idea, but there is
7 no other evidence that associates the defendant with the
8 item. So it's not quite an apples to apples comparison
9 that you're trying to do.

10 Q. So have you no way of knowing what law enforcement
11 did prior to you receiving this evidence whether or not
12 there's been some transfer of DNA, occurring before you
13 saw the gun, to that weapon?

14 A. Are you referring to some unintentional something
15 that happened before they got there or after they got
16 there?

17 Q. You can only verify what you did at your lab.

18 A. That's correct.

19 Q. You can't say whatsoever whether the police
20 screwed that sample up?

21 A. I make no representation about the police. You
22 have to talk to them for that, but I will -- I have said
23 to you, and I will reiterate, in my opinion, in my
24 experience, secondary transfer from the suitcase to the
25 handgun is an unlikely explanation for how his DNA got

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1 there.

2 Q. But you can't exclude it?

3 A. No. It's like the sun coming up tomorrow kind of
4 thing.

5 Q. And you said that, and you're paid to be here to
6 say that?

7 A. Well, sir, please. I'm not paid to say anything
8 except what I find.

9 Q. And what you found --

10 A. And whether I work for the defense or I work for
11 the prosecution, I do a test. I report my findings.
12 They are what they are. I don't make any assertions of
13 guilt or innocence. That's your job.

14 Q. And, again --

15 A. But I'm not paid to say anything. Nobody pays me
16 to say anything.

17 Q. All you know is from the point you receive it, and
18 you don't know what happened before?

19 A. Correct.

20 Q. Thank you.

21 A. You're absolutely right. I make no assertion
22 about what the police -- how they collected it or handled
23 it. You have to get that to the police.

24 THE COURT: Redirect?

25 MS. TAYLOR: No, Your Honor.

1 THE COURT: All right. You may step down.
2 Does the State have further witnesses?

3 MS. TAYLOR: Your Honor, at this point the
4 State rests.

5 THE COURT: All right. Is their lunch here
6 yet? All right.

7 Folks, what we're going to do is you've heard
8 the State's evidence now. I've had the bailiffs order
9 you lunch. I think it's pizza, and we're going to
10 continue to work to get ready for the next phase of the
11 trial, and then while we are working, y'all will have
12 lunch, then we'll take a short break for lunch, and what
13 I anticipate right now -- it's not here yet? It should
14 be getting here soon.

15 So let's right now plan to meet back at 1:15,
16 and that should give you time to eat, stretch your legs;
17 if you want to, go outside and smoke and get some fresh
18 air. You're not required to eat lunch here, but we got
19 it for you. If you want to go off to lunch, you can, if
20 you want to. If you go off, please come back by 1:15,
21 but what we have for you, or should have for you, will be
22 here very shortly.

23 Please don't begin deliberations or
24 discussions about the case or comment on witness
25 demeanor, social media. Avoid that sort of thing, and,

1 again, please don't go to the crime scene or anything
2 like that, and then we will resume at 1:15 the next phase
3 of the trial. All right? Thank you.

4 Go with them right now and, again, if you
5 want to go downstairs and stretch your legs and get some
6 fresh air and then come back up when the pizza is here,
7 you can do that.

8 THE WITNESS: Your Honor, am I released?

9 THE COURT: Yes.

10 (In open court, jury not present.)

11 THE COURT: All right. Let's do this: Now,
12 has the defense decided whether or not they're going to
13 call any witnesses?

14 MS. LITTLEJOHN: We are not, Your Honor.

15 THE COURT: Mr. Brown, will you stand up.

16 All right. Yesterday and the day before we
17 talked about your right to present a defense, and
18 specifically whether or not you wanted to testify. I
19 told you then, and I'll reiterate, you're not required to
20 put up a defense. You're not required to prove your
21 innocence. The State must prove your guilt.

22 At this point, your lawyers have indicated to
23 me that you do not want to call any witnesses and that
24 you do not want to testify. As I told you, if you want
25 to testify, tell your side of the story or call any

1 witnesses, you can do that. If you wanted to testify,
2 you would have to answer truthfully under oath, and the
3 questions that your lawyers ask you would be subject to
4 cross-examination by the defense.

5 Your lawyer has indicated to me that you have
6 decided you do not want to call any witnesses and you do
7 not want to testify. It is your decision and your
8 decision alone as to whether or not you want to put up a
9 defense and whether or not you want to testify. She has
10 indicated you do not want to call witnesses and you do
11 not want to testify.

12 Is that, in fact, your decision?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Well, then we will
15 have some motions here in just a second, and then we will
16 begin our jury charge conference process and then we'll
17 have closing arguments and submit it to the jury after
18 lunch. You may be seated.

19 All right. Does the defense want to make any
20 motions at this point?

21 MS. LITTLEJOHN: Yes, Your Honor. We would
22 make a motion with regard to a directed verdict.

23 THE COURT: All right.

24 MS. LITTLEJOHN: First of all, we have -- I
25 would submit that there has been mere speculation

1 evidence that has been presented. I mean, first, we'll
2 start -- we're starting backwards, we're starting with
3 the DNA fellow.

4 His Honor said earlier in the week when we
5 were talking about the motion of suppressing DNA, and it
6 was would have, could have, and you talked about going to
7 SLED, and you said it would be 100 percent match, and I
8 would -- 100 percent, and we don't even have that. So
9 talking mere speculation -- just putting an example
10 there, Your Honor.

11 We have -- mere speculation as to the GPS,
12 there's -- that is very, very circumstantial at best,
13 Your Honor. Also, with regard -- we would also make our
14 motions with regard to the search warrants. Again, based
15 on statute, there is one page that's missing --

16 THE COURT: We're not going to review the
17 rulings on the motion. Based on the evidence that got in
18 only --

19 MS. LITTLEJOHN: Your Honor, I don't believe
20 they have proven that Donte Brown -- I don't think there
21 is any evidence that the jury can say Donte Brown was at
22 Zaxby's and Donte Brown did the armed robbery. If you
23 don't get the armed robbery, you don't get the
24 kidnapping.

25 There's also a conspiracy charge. I don't

1 believe there is any evidence of a conspiracy. If you
2 don't get the armed robbery by saying that Donte was
3 there, then you don't get the attempted murder either. I
4 don't believe that they have been successful in the
5 attempted murder because I believe that the victim
6 herself's testimony was to the effect of it didn't mean
7 to go off or an accidental kind of thing versus the
8 intent. I have not seen the intent that's required for
9 attempted murder on that.

10 And, of course, if you don't get the armed
11 robbery and the kidnapping and the attempted murder, you
12 have to get in the building somehow, I don't believe
13 they've presented any evidence that Donte Brown went into
14 the building, and that gets into burglary.

15 Your Honor, he has not been pointed out, if
16 you will, established, as the one who committed the
17 robbery at Zaxby's.

18 THE COURT: Okay. State want to respond?

19 MS. TAYLOR: Thank you, Your Honor.

20 Looking at the evidence in the light most
21 favorable to the State, we believe there is substantial
22 circumstantial evidence. We also had two witnesses who
23 testified that Mr. Brown himself stated he was part of
24 the robbery and committed the armed robbery at Zaxby's.
25 Obviously, Your Honor, the State is going to proceed or

1 asking to proceed under a hand of one theory because both
2 of the men were masked, and we can't say which one was
3 the holder of the gun and which one was the holder of the
4 knife, but under the hand of one theory, both would be
5 responsible for the shooting of Ms. Williams.

6 I think her testimony, if I'm not mistaken,
7 was that the shooters said, I don't want to hurt you,
8 before she was shot. Certainly whether or not that was a
9 true statement is up to the jury. We are asking for the
10 assault and battery charge as a lesser included, but that
11 goes to the attempted murder. Obviously, two people --

12 THE COURT: You're asking for assault and
13 battery of a high and aggravated nature?

14 MS. TAYLOR: Yes, I'm sorry. Obviously, I
15 think Ms. Littlejohn is right. All the charges are tied
16 together, but taking the evidence in the light most
17 favorable to the State, we believe there is evidence such
18 that we can survive a directed verdict motion to present
19 this case to the jury.

20 THE COURT: All right. Well, there is
21 substantial circumstantial evidence to support each of
22 the indicted offenses, so the motions are denied.

23 Now, I'm going to have y'all -- we've got to
24 get some corrections made. State is asking for a charge
25 of assault and battery of a high and aggravated nature.

1 Are you in agreement with that?

2 MS. LITTLEJOHN: I'm in agreement with it,
3 Your Honor.

4 THE COURT: Okay. I think you -- well, I
5 haven't gotten anything that you've asked for yet. We'll
6 hand out what you asked for. There was a correction
7 made -- correction reads a lot better on -- hand that to
8 them -- burglary second.

9 Burglary second, as I understand it, if it's
10 a dwelling, you don't have to prove an aggravating
11 circumstance. If it is a building, then you have to
12 prove one of the four aggravating circumstances of
13 burglary first and so I think that charge should reflect
14 now that it was a building and they must have also proved
15 one of the four aggravating circumstances.

16 So that, hopefully, is a little bit clearer.
17 Hopefully it's a lot clearer than it was in the ones that
18 I gave you at the end of the day yesterday. In addition,
19 there is a -- let's see. Defendant not testifying
20 charge, there's a hand of one hand of all.

21 Attempted murder also has a lesser included
22 of assault and battery of a high and aggravated nature.
23 Kidnapping should stay the same; armed robbery should
24 stay the same. Again, second degree burglary should be
25 clearer, possession of a weapon during a violent crime is

1 the same, conspiracy is the same.

2 What do you have that you would like,
3 Ms. Littlejohn, that we didn't already cover?

4 MS. LITTLEJOHN: Your Honor, what I would
5 like is on the presumption of innocence -- and I'll just
6 hand this up. I've gone over, I think, mostly all this
7 with Ms. Dixon, the credibility of witness. Here's one,
8 Your Honor, on credibility of witnesses.

9 THE COURT: This looks like my charge already
10 on presumption.

11 MS. LITTLEJOHN: Your Honor, what I did on
12 that, the presumption of innocence there is that it says,
13 But accompanies the defendant throughout the trial until
14 you reach a verdict of guilt.

15 THE COURT: Mine, though, if you read it,
16 says unless and until.

17 MS. LITTLEJOHN: Maybe I missed --

18 THE COURT: Like on page three of what we
19 just handed you, very top.

20 MS. LITTLEJOHN: I like that, unless and
21 until. Well, that just cut down -- on that same sentence
22 you have there, this presumption of innocence accompanies
23 the defendant from the time he was charged throughout the
24 trial --

25 THE COURT: I'll add unless and until on

1 that. Okay?

2 MS. LITTLEJOHN: Okay. And that was one of
3 them, and then over on the page where you talk about
4 punishment --

5 THE COURT: We don't have credibility of
6 witnesses there? You wanted this credibility. I
7 normally have it in there.

8 MS. LITTLEJOHN: I was just thinking it's
9 been overlooked. It's been a long week for all of us.

10 THE COURT: It looks like the one we use.
11 We'll add it on. All right.

12 MS. LITTLEJOHN: And then under the
13 punishment, Your Honor, first of all, I would somewhat
14 object to having a punishment one in there because I
15 believe that it almost in a way presumes that -- you're
16 saying, hey, I'll punish -- and they've been told their
17 role, Judge, the facts, not the law, and we don't know if
18 there's going to be punishment. So I would first,
19 actually, just to get to even say anything about
20 punishment -- because that's not their job.

21 THE COURT: Well, I think that's what that
22 charge says. We just put it in there to say we'll just
23 make sure you're not back there talking about punishment.

24 MS. LITTLEJOHN: And I guess what I'm looking
25 at, it says in determining the guilt, it says, or

1 innocence --

2 THE COURT: Uh-huh.

3 MS. LITTLEJOHN: -- and my -- what I -- if
4 we're going to stick with the punishment, I would say in
5 determining whether to render a verdict of guilty or not
6 guilty, not innocent. So in -- it's primarily that word
7 innocence coming in there, to determine the guilt or
8 innocence, because they don't determine innocence.

9 So I was going to say in determining whether
10 to read your verdict of guilty or not guilty regarding
11 this defendant, you cannot consider any possible penalty.

12 THE COURT: Okay. I'll change it to in
13 determining your verdict of guilty or not guilty, you
14 cannot consider any possible penalty.

15 Does that work for you?

16 MS. LITTLEJOHN: Yes. Prior knowledge, Your
17 Honor, and mere presence --

18 MS. TAYLOR: Your Honor, I think the prior
19 knowledge is in the hand of one charge you've included
20 already.

21 MS. LITTLEJOHN: And I've explained to her --
22 I haven't actually gotten there with it. As a matter of
23 fact, though, in the mere presence that I handed up to
24 you, I would delete the last sentence of what I handed up
25 to you on your mere presence.

1 THE COURT: The law is that proof of -- at
2 the scene of a crime is not sufficient -- it also says
3 aider and abettor. Prior knowledge is in there.

4 MS. TAYLOR: I think actually in the hand of
5 one charge, Your Honor, on page five, the first dotted
6 paragraph, there is a mere presence charge.

7 THE COURT: Yeah, there is a mere presence
8 charge in there. I thought I had seen it. Okay. There
9 is a mere presence charge in there. Look at the last
10 bulleted point before the attempted murder.

11 MS. LITTLEJOHN: Okay. Where in there?
12 Okay.

13 THE COURT: Prior knowledge is the paragraph
14 before that that begins on page four. Okay.

15 MS. LITTLEJOHN: Okay. And that also gives
16 the mere knowledge on it. Let's see. Credibility of
17 witnesses -- Your Honor, I would also -- I just want to
18 confirm, because I have not yet, that new --

19 THE COURT: Circumstantial evidence?

20 MS. LITTLEJOHN: New circumstantial evidence
21 one.

22 THE COURT: It is the new charge.

23 MS. LITTLEJOHN: It is the new one? Okay. I
24 wanted to check that out. Your Honor, I would ask for an
25 accessory after the fact.

1 THE COURT: He's not charged with being an
2 accessory after the fact.

3 MS. LITTLEJOHN: Your Honor, my argument on
4 that would be that it would be a lesser included of
5 conspiracy.

6 THE COURT: You got any authority on that?

7 MS. LITTLEJOHN: I don't have any authority
8 on that.

9 THE COURT: Well, I don't believe it is.

10 MS. TAYLOR: Your Honor, the State would
11 object to that, relying on State vs. Good, which is 315
12 SC 135.

13 THE COURT: What is that cite?

14 MS. TAYLOR: The defendant is --

15 THE COURT: No, give me cite.

16 MS. TAYLOR: 315 SC for 135.

17 THE COURT: What does that say?

18 MS. TAYLOR: Unless the evidence points to an
19 exclusionary situation in limiting him as a principal,
20 he's not entitled to a charge as accessory after the
21 fact.

22 THE COURT: All right.

23 MS. LITTLEJOHN: State vs. Fuller 346 SC
24 477 -- maybe we can talk a look at this over the lunch
25 break, accessory after the fact, if I can look at it over

1 lunch to see if I can distinguish anything.

2 MR. SCHWACKE: If you allow a little argument
3 on something --

4 THE COURT: All right. Is there anything
5 else you wanted?

6 MR. SCHWACKE: Your Honor, if you would allow
7 a second attorney on the same case to argue.

8 THE COURT: Yeah.

9 MR. SCHWACKE: In what you've presented to
10 us, I don't see the language that was in your opening
11 comments to the jury.

12 THE COURT: About what?

13 MR. SCHWACKE: And we didn't object to it at
14 the time, but your comments were to the effect that the
15 jury's responsibility is to seek the truth, and just
16 based upon the State vs. Daniels -- I only have the
17 appellate case number because I'm getting it from off
18 line, from October of 2012, they kind of caution the
19 bench from using terms in that way --

20 THE COURT: Which case?

21 MR. SCHWACKE: The State vs. Gregory Daniels.

22 THE COURT: What's the cite?

23 MR. SCHWACKE: I have appellate case number
24 2010-159728.

25 THE COURT: Say that again?

1 MR. SCHWACKE: 2010-159728. I didn't know if
2 you were going to revisit that at all, but I know you
3 have a little catch-all.

4 THE COURT: What is it you want me to do or
5 not do? I'm not clear.

6 MR. SCHWACKE: What it says is that terms
7 that the jury's job is to seek the truth are improper
8 burden shifting to the defense because the State doesn't
9 have to prove its innocence or prove the truth -- I mean,
10 the State has to prove guilt beyond a reasonable doubt,
11 but the defense doesn't have to -- the truth doesn't
12 necessary -- isn't what necessarily wins out from a jury
13 standpoint, so it ends up improperly shifting the burden,
14 and that --

15 THE COURT: I'll review it and see what it is
16 that you're trying to say. I'm not exactly clear, but --

17 MS. TAYLOR: Your Honor, starting on page six
18 and seven on the charge of assault and battery high and
19 aggravated nature, I think this is actually under the old
20 law the ABHAN charge. It says that it includes all the
21 elements --

22 THE COURT: The charge is or the case is?

23 MS. TAYLOR: The charge is, that it includes
24 all the elements except malice aforethought, and I think
25 actually it's different because of the intent to kill.

1 The second bulleted paragraph we would agree
2 with, and the third paragraph where the circumstances of
3 aggravation is not -- that's under the old ABHAN, not the
4 new one. I had the same problem trying to look it up.

5 THE COURT: Where are you at on the charges?

6 MS. TAYLOR: Page six, Your Honor.

7 THE COURT: All right.

8 MS. TAYLOR: The first paragraph where it
9 says that it includes all the elements of attempted
10 murder except malice aforethought. Actually, also
11 doesn't include intent to kill under assault and battery
12 high and aggravated nature. And then flipping to the
13 second page, page seven --

14 THE COURT: Be specific. You want me to
15 delete something or add something? I'm not clear.

16 MS. TAYLOR: I think that line is not a
17 correct statement of the law, so if we could, just take
18 out the last two lines of that first bulleted paragraph.

19 THE COURT: Beginning with assault and
20 battery of a high and aggravated nature?

21 MS. TAYLOR: Yes, Your Honor.

22 THE COURT: And take out stated another way?

23 MS. TAYLOR: No. Stated another way is
24 appropriate, I think, and then flipping to page seven --

25 THE COURT: Take out circumstances of

1 aggravation?

2 MS. TAYLOR: Yes, Your Honor, and I think in
3 what I sent you, we had included a definition of great
4 bodily injury. I think that's also appropriate for an
5 addition, because they have to find great bodily injury.
6 I think I e-mailed it too. I could certainly give it
7 again.

8 THE COURT: All right. Do you have any
9 objection to that?

10 MS. LITTLEJOHN: I don't, Your Honor. I
11 looked at what Ms. Taylor had sent, and I think that's --
12 great bodily injury, I just finished a case on that. I
13 totally agree with that.

14 After reviewing this case, I don't believe
15 accessory after the fact is appropriate.

16 THE COURT: Well, going back to
17 Mr. Schwacke's issue of State vs. Daniel, it says that
18 issue isn't preserved because nobody objected to the
19 language that we used there, which is not the same
20 language that I used, but they said we instruct the trial
21 judge to remove any suggestion from his General Sessions
22 charge that a criminal jury's duty is to return a verdict
23 that is just or fair to all parties.

24 I didn't say that. I don't recall using
25 those words, and I don't have that in my charge that I

1 have submitted, so I don't intend to charge that. I
2 might say something about your job is to find the truth,
3 which is different from being fair and just, but in any
4 event, I don't have it in my charge, but I'll certainly
5 try to unthink it and not let it pop in there.

6 MR. SCHWACKE: Justice Toal's opinion kind of
7 goes into other things, but, obviously, that's not the
8 law of the case, but she is pointing out a search for the
9 truth issue about a trial. Her concurrence kind of
10 covers those.

11 MS. LITTLEJOHN: Judge, just for
12 clarification purposes, the punishment on number 11,
13 where it says guilt or innocence, we're going to cover
14 that and change that on the second bulleted one to -- I
15 notice it said guilt or innocence.

16 THE COURT: I'm sorry. What is it you're
17 asking?

18 MS. LITTLEJOHN: On the second bulleted --

19 THE COURT: On page 11?

20 MS. LITTLEJOHN: Right.

21 THE COURT: Second bulleted point beginning
22 with punishment for the crime is a matter for me to
23 determine?

24 MS. LITTLEJOHN: And should never be
25 considered by you in any way, impartial verdict as to the

1 guilt or innocence --

2 THE COURT: What do you want me to do?

3 MS. LITTLEJOHN: On bullet number one, in
4 determining -- I thought we had agreed to change that to
5 guilty or not guilty, and --

6 THE COURT: Arriving at a -- just so that we
7 take out any Schwacke's objections, why don't we take out
8 fair and impartial verdict as well and arrive at a
9 verdict of guilty or not guilty.

10 MS. LITTLEJOHN: Just take out bullet number
11 two?

12 THE COURT: What?

13 MS. LITTLEJOHN: Bullet point number two?

14 THE COURT: What are you looking at? I'm
15 looking at --

16 MS. LITTLEJOHN: Under punishment.

17 THE COURT: I'm saying -- here is what it
18 will read: The punishment for the crime is a matter for
19 me to determine and should never be considered by you in
20 any way whatsoever in arriving at a verdict of guilty or
21 not guilty.

22 That's how it will read. That not only puts
23 in the language you want, it talks out any possible fair
24 justice truth arguments that might offend Mr. Schwacke.
25 I'm just thinking ahead. Although that language has been

1 in every jury charge I've done for the last 11 years, I
2 guess, so nobody had given a thought to circumstantial
3 evidence, and I was the trial judge on circumstantial
4 evidence.

5 Anything else?

6 MS. TAYLOR: Nothing from the State, Your
7 Honor.

8 MS. LITTLEJOHN: Do we need both bulleted
9 points in that?

10 THE COURT: I'm just leaving it. It just
11 makes it easier.

12 Now, you didn't put any up any evidence. You
13 want them to present in full?

14 MS. LITTLEJOHN: Absolutely, Your Honor.

15 THE COURT: How long do you think you'll
16 need?

17 MS. TAYLOR: Maybe 30 minutes.

18 MS. LITTLEJOHN: I intend to say the same
19 amount of time.

20 MS. TAYLOR: Probably not that long.

21 THE COURT: I'll give you up to 30 minutes.
22 If you sort of look like you're not beginning to wind up,
23 I'll start going, okay, it's time to wind up after
24 somewhere between 30 and 45 minutes.

25 We don't we all meet back at 1:15.

1 (Recess taken.)

2 A F T E R N O O N S E S S I O N

3 THE COURT: Is there anything further to the
4 jury charges from the State?

5 MS. TAYLOR: No, Your Honor.

6 THE COURT: From the defense?

7 MS. LITTLEJOHN: No, Your Honor.

8 THE COURT: Okay. Would you prefer to have
9 me ask you if you plan to call any witnesses?

10 MS. LITTLEJOHN: I'd like to rest in front of
11 the jury, Your Honor.

12 THE COURT: Okay. Y'all ready?

13 MS. TAYLOR: Ready, Your Honor.

14 THE COURT: You ready, Ms. Littlejohn?

15 (In open court, jury present.)

16 THE COURT: All right, folks. We are now
17 going to resume with the defense calling their first
18 witness.

19 Do you have any witnesses you want to call?

20 MS. LITTLEJOHN: We would rest. We have no
21 one we need to call.

22 THE COURT: You have heard all the testimony
23 you're going to hear in this trial, and we will move then
24 to the next phase of the trial, which is the closing
25 arguments.

1 Closing arguments are the lawyers are going
2 to get up and review the evidence they have heard with
3 you and attempt to persuade you by way of argument to
4 render a verdict on their client's behalf. I would
5 remind you that what the lawyers say is not to be
6 considered by you as evidence. It is argument.
7 Evidence, again, is testimony of people getting up and
8 telling you what they heard, touch, felt, smelt, that
9 sort of thing, documents, photographs, anything else
10 physical that we allowed into evidence. Those things are
11 evidence.

12 They're simply going to talk about that
13 evidence now, give you a preview of the law that I'll be
14 charging you on, and, again, attempting to persuade you
15 to render a verdict on their behalf. Now, after they
16 finish with the closing arguments, I will then charge you
17 on the law, go over the verdict forms with you, and then
18 you will retire and consider what your verdict would be.

19 The rules of our procedure state that when
20 the defense does not call any witnesses, the State goes
21 first and then the defense will have the right to close.
22 So you'll hear the State's final closing arguments first
23 and then the defense's final closing arguments.

24 So, Madame Solicitor, if you're ready, you
25 may begin.

1 MS. TAYLOR: Thank you, Your Honor. May it
2 please the Court: Ladies and gentlemen, first I have to
3 apologize for sneezing and coughing my way through this
4 trial. I promise to stay very far back so I won't
5 breathe on anybody, and I apologize for that and thank
6 you for paying attention through the week. I know it's
7 been a long week.

8 The first thing I'm going to talk to you
9 about today is the law, and the judge is going to charge
10 you on the law, so I'm not going to take too much of your
11 time, but there are some things I want to key in on.
12 First is what Mr. West spoke to you in his opening
13 statement about the hand of one is the hand of all. It's
14 a legal theory we have here in SC, and what it means is
15 when two people or more than two people act together in
16 committing a crime, the actions of one are the actions of
17 all.

18 So, in this case, as Mr. West told you, we
19 only have one person holding a gun, only one person shot,
20 Ms. Williams, but if you find that two people, Mr. Brown
21 and someone else, acted together when those crimes were
22 being committed, then they're both responsible for that
23 gunshot.

24 Mr. Brown is charged with armed robbery.
25 That is the taking of personal property from the person

1 or presence of another and carrying it away, to do that
2 with the intent to deprive that owner of that property
3 and keep it for his own use, and the armed part basically
4 means that he did it while armed with a deadly weapon.
5 Please remember the slightest removal of the property,
6 even if it's just for an instant, is enough for armed
7 robbery.

8 Kidnapping: Knowingly and unlawfully seized,
9 confined -- there's 20 different words they use for this.
10 I've pulled out the two that we think are applicable. To
11 seize someone is to take hold of suddenly or forcibly; to
12 confine them is to limit, restrict, or enclose them
13 within bounds limiting someone's movement against their
14 will, forcing them to the ground. Don't get up. That's
15 kidnapping.

16 Mr. Brown is also charged with attempted
17 murder. That means that he, or someone working in
18 concert with him, with the intent to kill, attempted to
19 kill another person with malice aforethought, either
20 express or implied. Malice basically means hatred, ill
21 will, hostility. They did it with an evil heart.
22 Attempted murder requires specific intent. The
23 defendant, or person acting in concert with him, must
24 have intended to commit the act.

25 Now, if you find that the person who shot

1 Ms. Williams didn't intend to shoot her, there is another
2 charge that you can consider, and that is called assault
3 and battery of a high and aggravated nature. What that
4 means is she was unlawfully injured and great bodily
5 injury resulted or could have resulted from what was done
6 to her, and great bodily injury basically means an injury
7 which creates a substantial risk of death or which causes
8 serious permanent disfigurement or loss of a bodily
9 member or organ. Being shot, obviously the State would
10 argue, is an act that could produce great bodily injury,
11 even if Ms. Williams was lucky enough that it didn't.

12 Defendant is also charged with possession of
13 a weapon during the commission of a violent crime. This
14 requires that we prove that he was in possession of a
15 firearm or a knife or displayed what the victims believed
16 to be a firearm or a knife, during the commission of a
17 violent crime, and the judge will tell you that attempted
18 murder, kidnapping, armed robbery, burglary second, all
19 these charges are legally considered violent crimes.

20 Criminal conspiracy: More than one person
21 combined together for the purpose of committing an
22 unlawful act. There has to be an agreement, an
23 understanding. It could be implied. They don't have to
24 write it down, sign a contract, but if two people say,
25 We're going to commit this act together, that's

1 conspiracy.

2 He's also charged with burglary in the second
3 degree, and what we have to prove for that is that he
4 entered the Zaxby's with the intent to commit a crime
5 therein, what are the aggravating circumstances? That
6 someone was hurt, that they used a weapon. The judge can
7 tell you the law about that, but basically the Zaxby's
8 was robbed, the people were armed. It's a building.
9 He's going to define that for you.

10 One of the most important things that the
11 judge is going to tell you, and what I want to take a
12 minute to talk about, is the State's burden of proof. We
13 are required to prove to you beyond a reasonable doubt
14 that Donte Brown committed the robbery at Zaxby's and
15 during the commission of that robbery committed the
16 burglary and criminal conspiracy.

17 What is reasonable doubt? Legal definition
18 sometimes is said that it's proof that would cause a
19 reasonable person to hesitate to act. What does that
20 mean? Is firmly convinced. You have to be firmly
21 convinced that he is guilty. It doesn't require all
22 doubt, because unless you're there, you can't have proof
23 beyond all doubt. That's an impossible burden, and
24 that's not what we have. It's beyond a reasonable doubt,
25 and I would submit to you, ladies and gentlemen, that we

1 have proven that case.

2 I'm going to go over the testimony with you.
3 It's been a very long week. I'm just going to hit some
4 highlights, if you'll bear with me for a minute.

5 We started out with Mr. Taylor who works at
6 the Zaxby's, and he told you he was outside, that he saw
7 the two men going in, all dressed in black. They had
8 Mr. Kemp with them. He called 911. We entered that
9 tape. You can listen to it again if you like. He's
10 scared on that tape. You can tell, and he says, They're
11 coming out. They're running in the woods right now.

12 And he told you, when the first officer
13 arrived, he pointed in the direction. They went that
14 way. That officer went chasing through the woods. You
15 also heard from Riley Kemp. He told you how he was
16 grabbed, forced into the Dumpster area. You saw the
17 picture of his pocket and his pants that had been cut
18 open and his wallet was taken.

19 Mr. Riley rode up on his bike, just coming to
20 get a ride. He was grabbed, taken to the Dumpster area.
21 His phone was taken. He's the one that identified the
22 picture of the gun that we entered in later, the gun that
23 was found at the house that we had the search warrant on.
24 And although on the stand he says six-one, when you look
25 back at his statement he said one was about five seven,

1 one was about five-ten.

2 Mr. Lane, the one who opened the door to the
3 Zaxby's, told you how he was forced to the ground.
4 Daniel Auman told you he was forced to the ground. He
5 was even struck in the head, he thinks by the gun, and
6 then there was Ms. Williams, who was forced to the ground
7 money taken out of her pocket, and then she was shot.

8 Then we brought Melvin Powell, who -- if they
9 had been going a little bit faster, might have hit them.
10 He said there were two men all dressed in black, about
11 five-ten, and showed you on this map, that I'm sure you
12 guys are sick of seeing, how they ran from the woods
13 outside the Zaxby's over to Foxborough, showed you where
14 they ran.

15 Officer Schrader came and testified about
16 arriving on the scene. He told you Officer Convery was
17 in the woods. I'm sure Ms. Littlejohn will say why
18 didn't we bring Mr. Convery? You heard the other
19 officers on the scene told you what happened and, he
20 secured the scene. And then we have the K-9 officer, and
21 he came in and said we got there pretty quick. They told
22 us where to go. Melvin Powell had pointed the officers
23 in the direction: This is where we saw the men run.

24 So he starts his dog, and it's a hot track.
25 That's what he said, fresh scent. That dog is pulling

1 him so hard he can barely hold him, nose down, tail down.
2 This dog knows where these people went, and this dog goes
3 from where the Powells have pointed out the people ran to
4 the Foxborough area, all the way down this street, ends
5 up in front of Christopher Wilson's house, is where he
6 loses the scent. Ends up right in front of the house.

7 The officer told you that's where the ski
8 mask was found, same ski mask they sent out to be tested
9 later. You heard Investigator Mason talk about finding
10 that ski mask and money. Then you heard from
11 Investigator Myers, who is a crime scene investigator,
12 talk about wearing gloves. They didn't get fingerprints.
13 She got the surveillance video. We also heard that, and
14 she collected that shell casing.

15 And then you hard from Marteeeka Hamilton.
16 I'm sure the defense is going to try to paint her as a
17 bitter ex-girlfriend. She didn't seem to care if he had
18 dated other people, but that's for y'all to decide. She
19 didn't want to be here. She told you we subpoenaed her
20 to be here. She was in a long-term relationship with the
21 defendant. Obviously, they had feelings for each other
22 at some point or another, but she told you that he was
23 using Christopher Wilson's cell phone after the robbery.
24 Come pick us up. Where from? Foxborough. Come get us.

25 So she picked them sometime between midnight,

1 is when the robbery occurred, and around 1 a.m., and that
2 they're in the car talking about the robbery.
3 Christopher Wilson says, I didn't mean to shoot that
4 lady, and Donte Brown calls him stupid. They're talking
5 about the robbery because the two of them had just
6 committed it.

7 What else does she tell you? She went to
8 that Motel Six that everybody talked about, him being
9 there a couple days. She saw shopping bags. He's got a
10 new phone. Now, on the stand, she said he had a job, but
11 when I showed her her statement, she said, well, maybe I
12 said back then that he didn't have a job.

13 I would submit to you, ladies and gentlemen,
14 she doesn't want to be here. She doesn't want to testify
15 against him, but what she said back then is probably
16 fresher in her recollection as to what the facts were
17 back then than what she wants to say today. She also
18 told investigators back then, and she admitted this on
19 the stand, that Donte Brown was using Christopher
20 Wilson's phone before and after the robbery. Here she
21 said only said after, but back then, she said before.

22 Cynthia Garrett, again, defense wants to make
23 her to be a bitter ex-girlfriend, and she probably was.
24 Sounds like she was, but does that mean she was lying?
25 What does she get by lying? She tells you this about

1 Donte Brown before the robbery happened: He did not have
2 a job. She wanted him to get a job. They were living
3 together. Help me pay the bills, but he told her, I
4 would rather rob than work. I would rather rob than
5 work. Let's me borrow your car. Chris Wilson and I are
6 going to go do a lick. That's a robbery, and she saw him
7 with a gun.

8 Little confusion as to whether it was the
9 same gun. She saw him with a gun. After the robbery,
10 she finds out what happens. She goes to the police
11 because she doesn't want to be involved. I got kids. I
12 don't need to be in the middle of this.

13 She says yes, he called me that night from
14 Chris Wilson's phone, called me earlier in the night.
15 They were together. Called me after the robbery. They
16 were together. You can look at the cell phone records.
17 We're going to enter them into evidence.

18 After the robbery, Mr. Brown calls her on
19 Chris Wilson's phone, about 12:20, 15 minutes after the
20 robbery of the Zaxby's. Come pick us up.

21 Where?

22 Foxborough, this neighborhood, right across
23 the street from Zaxby's. I'll give you a couple hundred,
24 pay your light bill. She wanted to do the right thing.
25 Was she worried about her getting her name out? She told

1 you she was. And why? I know his temper. She didn't
2 want to be involved.

3 She tells you that later she goes to the
4 Wal-Mart with Mr. Brown. And what does he tell her why
5 they're in the Wal-Mart? Yeah, Chris Wilson and I robbed
6 the Zaxby's. We dropped money. He says \$600. We know
7 some money is dropped. The victims told that you, and
8 they find money along the track. We couldn't go back
9 because the police were chasing us. The police, being
10 Officer Convery, who is chasing them through the woods as
11 they run.

12 We spent the money on clothes, shoes, hotel
13 rooms. She told you she saw him with new clothes, new
14 shoes. She knows he was in the hotel room. Doesn't have
15 a job. Where is the money coming from? He says Chris
16 Wilson shot somebody. Same thing they said in the car to
17 Marteeke Hamilton, exact same thing, and she also tells
18 her they scoped out the scene beforehand.

19 So the testimony about the GPS records and
20 the cell phone records is a little convoluted, and I
21 apologize for that, but if you look at the GPS records,
22 what they show is Christopher Wilson and whoever is with
23 him are inside the woods outside of Zaxby's for hours
24 before they robbed the place. They're scoping it out.
25 And who's using Chris Wilson's cell phone during those

1 hours? Donte Brown is because they're together, in the
2 woods, scoping out Zaxby's before they robbed it.

3 We got those records in through Agent Powell
4 with probation. You heard about the gun that was located
5 during the search warrant, and, yes, you've heard a lot
6 about Christopher Wilson. I don't deny that. When two
7 people commit a crime together, we're going to talk about
8 them. That's the way the evidence goes, but you also
9 hear when they went to execute that search warrant at
10 that house in Foxborough where the dog tracked to, who
11 was there? Donte Brown. They found the gun. It was the
12 same gun that was identified by one of the victims.

13 You heard from the lead investigator. He
14 talked to you about the interviews that he did, talked
15 about the leads that they followed, how they got Chris
16 Wilson and Donte Brown's name, what they didn't follow up
17 with.

18 Now, I'm assuming Ms. Littlejohn is going to
19 get up here and talk about all the things the
20 investigator didn't do. Sure, there are things he didn't
21 do. He didn't track down whether or not Cynthia Garrett
22 jumped out at the car at the Lowe's and actually called
23 police. Why? It doesn't have anything to do with this
24 case, nothing. Whose light bill the name was? Doesn't
25 have anything to do with this case.

1 He tracked down the leads that were important
2 to this case. That's what he did, the phone records that
3 matter to this case. Not whether or not Cynthia Garrett
4 ever told a lie in her entire life.

5 She also talked to him about not documenting
6 all the times he went to look for Slaughter. I don't
7 know how a police officer is supposed document how often
8 he looked for somebody and doesn't find them, but that's
9 what she asked.

10 He told you about the search warrant that
11 they found, that social security card of Mr. Kemp's in
12 the house. He also explained to you the phone records
13 and the GPS records.

14 Then you heard from Ms. Wilson, Christopher
15 Wilson's mother, and it may seem strange that we called
16 her. It was really just about the ramen noodles, not
17 something important, but it becomes important because we
18 know Donte Brown is at the house the day the search
19 warrant is served, and he's the only one that could have
20 been making the ramen noodles because she wasn't home and
21 her husband wasn't home and her son wasn't home, but he's
22 there.

23 Then we call Lanier Daniels. He tells you
24 he's next door in the detention center wit the defendant
25 after he's been arrested. He's got no dog in this fight.

1 He didn't want to be here, didn't want to come testify.
2 Had to subpoena him, and what did he tell you? They're
3 sitting in the holding cell, and Donte Brown is telling
4 him, Yeah, we robbed the Zaxby's. That's why I'm here.

5 And what else does he tell him? My uncle's
6 girlfriend got shot.

7 Well, Ms. Williams told you she dated Donte
8 Brown's uncle. How would Lanier Daniels know that if
9 Donte Brown hadn't told him? How would Lanier Daniels
10 know that Donte Brown's baby's mom, Marteeeka Hamilton,
11 picked them up from the scene if Donte Brown hadn't told
12 him? How would Lanier Daniels know that Donte Brown got
13 arrested while making ramen noodles if Donte Brown hadn't
14 told him? There is no reason for him to make that stuff
15 up.

16 The only way he would have known is it came
17 from the defendant's mouth itself. The Motel Six
18 receipt, corroboration. Then you heard from Mr. Whitler
19 from SLED. Firearms and tool marks. The shell casing we
20 got from Goose Creek Ms. Myers told you they collected
21 Zaxby's match the gun that they collected from [REDACTED]
22 [REDACTED]

23 And then Dr. Demers, he talked to you about
24 DNA Chris Wilson definitely had on the ski mask. That's
25 absolute. Talked about the gun. There were five

1 contributors. A lot of that went over my head, but he
2 said it's harder when you have more people. You can't
3 match 100 percent. You can exclude, but you can't match,
4 and what he said was almost 98 percent of the African
5 American population in the United States is excluded from
6 being on this gun. Not Donte Brown. Can't exclude him.

7 They talk a lot about transfer, and I think
8 Dr. Demers did a pretty good job of saying why he didn't
9 think it happened, but it's an interesting argument that
10 the only place it transferred to is the handle of that
11 gun, not the barrel, not the butt, just the handle where
12 somebody would hold it. That's the only place he can't
13 be excluded from, and he told you, probably better than I
14 could ever explain, you have to take those results into
15 consideration along with all the other evidence.

16 Like I said, we're talking about Chris Wilson
17 a lot. That's because that's who he's with. That's the
18 other guy who robbed the Zaxby's. We have to talk about
19 him, and did Chris Wilson leave more evidence behind than
20 Donte Brown? Sure, he did, but Donte Brown left evidence
21 behind because he's with Chris Wilson, so the evidence
22 that points to Wilson also points to Brown.

23 We've got the phone calls, using his phone;
24 we've got the car ride; we've got the conversation
25 before, We're going to go do a lick.

1 The defense wants you to focus on what we
2 don't have. Officer Powell, you didn't document when you
3 couldn't find people. Because they don't want you to
4 look at what we do have. Look over here at what they're
5 missing, not over here at what they've got.

6 What we do have, we have phone calls, GPS
7 records, phone calls that put Donte Brown with
8 Christopher Wilson, and the GPS records of Christopher
9 Wilson that shows you where he's at two hours before the
10 robbery. He's hanging out in the woods. During the
11 robbery, he's at Zaxby's; afterwards, he's run into his
12 house. We've got them being picked up within an hour of
13 the robbery, talking about the robbery. We've got
14 Mr. Brown spending money in the days after the robbery,
15 hotel rooms, shoes, clothes, new phone. Doesn't have a
16 job.

17 We've got his own words, what he says to
18 Cynthia Garrett before and after the robbery: I'm going
19 to do a lick. I'm going to use your car. I'd rather rob
20 than work, and what he says to her afterwards, yeah, we
21 did it. And Lanier Daniels, again, why would he lie?
22 How is he going to make up ramen noodles. Of all the
23 things to pick, you're going to lie about that?

24 Ladies and gentlemen: Mr. West told you that
25 the devil is in the details, and the defense is going to

1 talk about circumstantial evidence, I'm sure, and I just
2 want to try to explain it to you the best I can.

3 This is one fact: Donte Wilson gets picked
4 up -- Donte Brown gets picked up with Christopher Wilson
5 after the robbery. If that's all we had, that's nothing.
6 That's nothing. We wouldn't be here if that's all we
7 have. We have him getting picked up after the robbery.
8 We have the phone calls before the robbery. We have not
9 being excluded on the DNA on the gun. We have what he
10 says to Cynthia Garrett before the robbery, what he says
11 to Cynthia Garrett after robbery, what he says to Lanier
12 Daniels; I'd rather rob than work; GPS records; cell
13 phone records -- I can keep going.

14 This is what we have. You can't break that.
15 One fact, one circumstance is easily refutable, but when
16 you have multiple facts, multiple circumstances, you
17 can't break it. It's not bad luck. It's not bad luck
18 because Donte Brown robbed the Zaxby's with Christopher
19 Wilson. This is beyond a reasonable doubt. We would ask
20 you to find him guilty as charged.

21 Thank you.

22 THE COURT: All right. Ms. Littlejohn?

23 MS. LITTLEJOHN: After I finish up, the judge
24 is requesting to let y'all go back into the room you've
25 been coming in and out of, and I don't know how you do

1 it. Everybody ips up their own little pieces of paper
2 and does their silent vote. You're supposed to have
3 respect for the vote, and you're going to make a
4 decision. That's it. You're the judges of the facts.
5 So being the judges of facts, there is one thing I want
6 to tell you: If I say anything in this closing that you
7 remember another way, take it the way you remember it,
8 okay? Because you're the judge of the facts. I'm not.

9 It's not intentional. We all perceive things
10 differently at times, and I think the judge will probably
11 instruct you on that. It's how you remember, okay?

12 Let's talk about happened here. This is a
13 quick robbery. The robbery is quicker than selecting the
14 jury. It's quicker than selecting two or three of y'all.
15 It's the quickest robbery I've ever seen. I haven't seen
16 a lot of robberies, but even on TV, that is quick, and
17 when you go back there and hear that 911 tape, look up
18 there at that clock, blow-by-blow, just like in sports.
19 Call it again, call it again, and going out. And you
20 heard -- and look at that. It's a little over a minute.

21 You will see it it's less than two minutes on
22 that 911 tape. You saw the video, and I think I asked
23 Officer Myers how long that whole video took. About two
24 minutes, somewhere around there. Somebody knew exactly
25 where they were going, I would submit to you, knew

1 exactly where to go in there.

2 What did Ms. Williams tell you? She had been
3 there eight years, eight years as a manager. I'm going
4 to submit to you, she's going to know if somebody has
5 worked there or hadn't worked there, and I asked her, did
6 Donte ever work there? No.

7 Everybody is making a big deal. There seemed
8 to be a big deal over after the fact she found out
9 that -- and, frankly, I got confused as to the
10 relationship, her ex-husband or ex-boyfriend's sister --
11 I mean, it was one of those where there is a long -- you
12 know, you had to sort of dig to see if you knew somebody,
13 if they were related, and many of y'all who are from
14 small towns, maybe you know. Small towns, you figure out
15 how you might be related to somebody. It might be way on
16 down, but that's kind of how it sounded, plus boyfriend,
17 so I don't know.

18 So Jeffrey Taylor, he calls it. In, Judge is
19 going to talk to you about credibility. He didn't have
20 much to say other than, I was the one that called in, and
21 I didn't see anything until it became time to call it in.

22 And I asked him about his record. He told
23 us: Robbery, robbery, robbery. That's what he said.
24 And when I asked him which way they went, and he said
25 back, sort of like you would be angled going back towards

1 the Dumpster area.

2 The State wants to talk about Christopher
3 Wilson's cell phone. Gosh, I didn't hear any single
4 person the State put up say they spoke with Christopher
5 Wilson on Christopher Wilson's cell phone. No, no, no.
6 What I'm hearing is they spoke with Donte Brown on
7 Christopher Williams cell phone. You've heard him. I
8 think y'all -- I asked Officer Powell or somebody else
9 mentioned Chris Wilson. I think it's his mother when I
10 asked her how old he was. I mean, early 20's.

11 Now, I'm going to submit to you -- perfect
12 example. Jeffrey Taylor used Kevin lane's cell phone,
13 remember that, to call the other woman, and yet he even
14 had a cell phone. So people letting people use and hold
15 their cell phones, particularly younger people, I'm going
16 to submit to you is not unheard of, not nowadays.

17 The State wants to show you that -- wants you
18 to believe that that was him. You didn't hear,
19 Christopher, I spoke with Christopher. I spoke with
20 Donte on Christopher's phone.

21 So the possession of the cell phone doesn't
22 have anything to do with the GPS, and then you compare
23 that to the time in the 911 thing that testified, put
24 people up here, telling you how true everything is, and
25 when I asked Officer Powell about it, you look at that

1 compared to the Goose Creek, his own agency on the report
2 that actually put Christopher Wilson at the Zaxby's that
3 had been robbed -- remember? You'll have that back
4 there. Just look at that. I thought when I was asking
5 questions about that, it's interesting, so I don't know,
6 but I'm just going to tell you, my belief -- well, excuse
7 me.

8 I'm going to submit to you that GPS was on
9 Christopher Wilson. They told you it was on Christopher
10 Wilson. We're not doubting that it was on Christopher
11 Wilson. Yes, the phone belonged to Christopher Wilson.
12 I haven't heard one single person say, I thought that
13 Christopher Wilson -- Christopher Wilson's fault. Think
14 about that. Possession of a cell phone doesn't
15 necessarily tie into a GPS.

16 I don't know if y'all caught it, but when
17 there were people on the stand, I was asking how tall
18 these folks were. People are going to be off on their
19 perception. But what does Riley Kemp say? Riley Kemp is
20 standing closest to the tallest one, and that's why I
21 kept calling it the tallest person, and so I asked Riley,
22 I say, How tall are you?

23 And he said five-ten, and the person who was
24 holding him was several inches taller, so the person
25 holding him was, like, six feet something. Melvin

1 Powell, remember how he got up there and he said
2 five-ten, somewhere around there, and I said, But then
3 the statement says in a crunched running position? What
4 would he be if they were standing up?

5 Now, do you think that whoever was holding
6 poor Riley was crunched down? I'm going to submit to you
7 now, right there with him, if you will. Kevin Lane, ask
8 Kevin. He said six, six-one. When I asked Officer
9 Powell how tall Donte was, five-ten. That's their own
10 witness that said that.

11 Whoever robbed that place had their mask on,
12 everything. Didn't want to be seen, so what does that
13 leave us with? Height. Height would be a main factor,
14 height.

15 I want you to listen to the 911 call when you
16 get back there, and remember what the picture of Riley
17 Kemp, the gunman who was held in the back, what he was
18 wearing. He wasn't wearing a white sweatshirt. I asked
19 him about that. You're going to hear that call back
20 there. Just think about it.

21 Now, let's talk a minute about Ms. Wilson,
22 Chris Wilson's mother. I think she actually is upset.
23 She doesn't like Donte. It is pretty clear. She does
24 not like Donte. She told us how tall her son was. She
25 also, when I asked her, I said, well, has Chris -- has

1 Donte ever been at your house without Chris? Because
2 he's been in your back yard without him, been in your
3 house without him, and the answer was yes. This is his
4 own mother. Remember, she does not like -- she flat out
5 told you, she doesn't like him. About five-six, been in
6 there alone without him. She doesn't like him at all.

7 She also told you that -- you heard all this
8 testimony about Chris Wilson. I didn't see Chris Wilson,
9 right here from this witness stand, tell us anything.
10 What did she tell us? State knew where he was. I must
11 have been sleeping or something. I didn't see him. I
12 don't think he was here. He wasn't here, but everybody
13 else was here. We don't want to be here if you don't
14 want to be subpoenaed. Who wants to be subpoenaed? I
15 submit to you, nobody does.

16 I don't think anybody called up Mary Brown
17 and said, Pick me, pick me. Lanier Daniels -- you know,
18 I asked Lanier Daniels, I said, he admitted he had a
19 pretty thick record, and I asked him, I said, What were
20 you in there for that day?

21 He just said, or the State did, a DUS.
22 That's driving under suspension, and I had to ask him.
23 It wasn't just driving under suspension, was it? It was
24 filing a false police report. But that's kind of like
25 lying, filing false police report. False is to not tell

1 the truth. And who did he say the agency was in Goose
2 Creek? Who's the agency on this in Goose Creek. Notice
3 I put two and two together there. That's up to you to
4 do, tear that piece of paper up.

5 I asked him, I said, So somebody from the
6 jail, come tell us. Record. Somebody come tell us if
7 y'all were really in a cell together. I didn't see
8 anybody come in and tell us that. How would they know
9 this? How would they know that?

10 You heard testimony they arrested Christopher
11 Wilson. What could Christopher Wilson be saying about
12 him? I don't know, but are there other ways that someone
13 could have learned it? I submit to you sure would be.

14 The DNA, what do we know? We know that we're
15 talking about the DNA on the gun, briefly. There are at
16 least at five possible contributors, at least, he said.
17 The entire population of just Berkeley County only is,
18 around by my calculations and all -- Berkeley County's
19 population of African American, based on the last census,
20 is somewhere around 45,000. Population of Berkeley
21 County, based on the last census was around 170
22 something. So if 2.2 percent of all persons in the black
23 population cannot be excluded, that means about 986, 986
24 people just in Berkeley County alone, can't be excluded,
25 and that's what he said, and that's going to be at

1 least -- because, remember, what do we know? We know
2 that no one knows about these at least three other
3 contributors. Why? Because Goose Creek sent it to a
4 paid lad instead of SLED.

5 Would it have made a difference? I don't
6 know, but was it done? No. Could it have made a
7 difference? Yes. But one of the things they did tell us
8 was they can't tell how it got on there, and they don't
9 know when it got on there. And y'all remember watching
10 these officers up here when they were handling the
11 evidence, they put on the gloves and all? I would too,
12 but according to the doctor, what we're supposed to do
13 when we're handling evidence for DNA, we're supposed to
14 change those gloves a lot. So they take the gun, they
15 put it -- open the box with it, there is one piece of
16 DNA, because somebody else would have touched the outside
17 of this box, so you open it.

18 Then cross containment. They close it, pick
19 up that gun. A lot of possibilities. Think about that,
20 the suitcase. Suitcase wasn't found inside. It was not
21 found inside, outside.

22 Motel Six. They tell you he was at Motel
23 Six. Okay. I think one of the women said he had, like,
24 two bags or something, and I asked if he remembered if
25 they were Christmas presents. Maybe it was giving or

1 receiving. It was Christmas time. Part of what you're
2 supposed to do is use common sense because we know one
3 thing: He couldn't take other women to Christopher's
4 house because Christopher mom didn't want him there
5 anyway. She didn't like him. He couldn't take other
6 women to the very place where he's living, paying the
7 light bill: Cynthia Garrett's house. I don't think she
8 would put up with that, but you have to decide if she
9 would:

10 They made a big deal about his cell phone.
11 There's some really expensive cell phones out there, some
12 really expensive nonexpensive cell phones. Now, they
13 talk about this track. Come around here, tracked this
14 way, not the way Jeffrey Taylor told you, come down
15 through here. You know what you didn't see? None of us
16 heard any testimony about that \$600 that was dropped.
17 Ms. Williams didn't even say the store lost 600 and
18 hadn't even found it.

19 It's a \$5 bill in one place over here in the
20 woods and 310 Swamp Fox and another \$20 bill. Quick. As
21 you heard the DNA expert, did not have Donte's Brown's
22 DNA on it. Now, if you believe Cynthia Garrett, if Donte
23 lost \$600 running down the road, you're going to find --
24 we talked about sale transfers, you're going to find some
25 sale transfers.

1 You put both of those women up here, Marteeka
2 Hamilton and Cynthia Garrett. Marteeka is going to tell
3 you she didn't know the Goose Creek area, so she went to
4 what I'll call the main road, the St. James Avenue in
5 here, picked them up around here. What do we know?

6 We know that she picks them up, right around
7 in there, but she doesn't say, Oh, yes, they were in a
8 panic, blah, blah, blah. She says Christopher Wilson
9 said this, and Donte called him, stupid, blah blah.
10 Well, if somebody were to tell you that, you're going to
11 say something like, Get away, you're stupid, things like
12 that. You're not going to say, Way to go.

13 I mean, if you were involved, I submit what
14 you would say. If you're involved, they have this great
15 big conversation about where are you going to spend all
16 this \$3,000, \$4,000 that they took, right there in the
17 car with Marteeka? You didn't hear it. You didn't even
18 hear that kind of tale told after you heard me asking
19 her, pulling it out of her, pretty much. Well, weren't
20 you accused -- if you didn't pretty much work with him,
21 you could be deemed an accessory, and you have a child on
22 the way. And then, of course, found out she had pending
23 charges right here in this courtroom.

24 Now, how did all of this start? Cynthia --
25 excuse me, Cynthia Garrett calls the police station in

1 Goose Creek, walks in, and right off the rip, she tells
2 them. They say, Hello, Mrs. Jones. First thing we get.
3 Do you want to help? Why not? Then -- she tells him,
4 and I was wanting to know about what they followed up on.
5 Why? I wanted to know because she made a big deal in her
6 interview because you heard me ask her about the light
7 bill and that she was having trouble paying it, blah,
8 blah, and she said he claimed he would pay her light
9 bill.

10 Yeah. If that part of the interview is a big
11 chunk of it, well, I would check and see if that's going
12 to be in his name, or her name, like she wants to claim.
13 If it's your light bill, it's going to be your name. It
14 wasn't in her name. I asked her. So they didn't check
15 that. And then she said, I'm scared of him. I didn't
16 want my identity known. I'm scared of him.

17 Here is how afraid she is: She's so afraid
18 she said she jumped out and ran to Lowe's. I would want
19 to know if this woman was afraid, so I checked that out.
20 Other people may check it out, who knows. But then she
21 has him and Dolla, a/k/a Chris Wilson, come to the house
22 on January 1st, was my recollection, and cut hair for her
23 children, cut hair for her children. That doesn't sound
24 scared to me. It doesn't sound like a scared woman. It
25 sounds like a woman of opportunity, opportunity to get a

1 haircut for free. This woman, who saw an opportunity to
2 cause problems and get even with Donte Brown. She said
3 she was okay with the fact that she may be pregnant and
4 he would have another woman pregnant.

5 Officer Powell says, That might be a little
6 bit of a problem. I'm going to ask you to use your
7 common sense on it, and think about her demeanor on that
8 stand since she was so okay with this. I submit to you
9 not many women would be. Not the nicest thing to do
10 either, I would say that, but not many women are going to
11 be like that.

12 If Donte Brown is at Christopher Wilson's
13 house, and Christopher Wilson was involved, which would
14 indicate to me Donte may help him leave, may help him get
15 a ride, he may tell Donte, Get me out of here and not
16 tell me why. He may say call Marteeeka -- what was it,
17 Marteeeka, whoever, whatever girl it was, but that doesn't
18 say a thing about where Donte was because all we know is
19 Donte would get to Wilson's house without him. We know
20 Donte would use his phone. We know Donte is not six
21 feet. That's from the officer's own testimony.

22 We know Cynthia Garrett and Marteeeka did not
23 want to be here, but they didn't necessarily, I will
24 submit to you, tell the truth to the officers at the jump
25 street. That's his word we're going to take. Somebody

1 won't tell the truth, right there, you jump street
2 Mrs. Jones.

3 The State, I submit to you, made a good case
4 against Christopher Wilson, against Christopher Wilson,
5 against Christopher Wilson, not Donte, and yes, I will
6 ask you to think about what was not done.

7 I asked about the confession in Wal-Mart.
8 That's why I asked about those cameras and videos in
9 Wal-Mart. They have them. But who might have motive,
10 who might have motive? Maybe some women scorned. I'll
11 tell you who doesn't have motive, I don't believe, these
12 folks right here who are the victims. They don't have a
13 motive, no. But they're the ones who give us the one
14 thing we know: Height. They tell us the height.

15 Thank you.

16 THE COURT: All right. Folks, you've heard
17 now all of the arguments. I will now charge you on the
18 law that applies to the facts of this case.

19 I told you at the beginning of the trial, and
20 I'll remind you now, that you and I have different roles.
21 We're both judges. I'm the trial judge; you're the
22 judges of the facts. My job is to preside over the
23 trial, make sure both side get a fair trial, rule on
24 things like procedure and admissibility of evidence. You
25 are only to consider the evidence you have heard in this

1 courtroom that was admitted into evidence.

2 You consider as evidence testimony that
3 you've heard from the witness stand. You can also
4 consider as evidence any exhibits that were made a part
5 of the record in this case, as well as any stipulations
6 that got made. I also have now the additional duty of
7 charging you on the law that applies in this case, and it
8 is your duty as jurors to accept and apply the law as I
9 now state it to you. If you think you have any idea of
10 what the law is or what the law ought to be and it does
11 not agree with what I now instruct you that the law is,
12 you must forget that idea because you are sworn to uphold
13 the law or accept the law and apply the law exactly as I
14 state it to you.

15 You are the sole judges of the facts. You
16 determine how much weight to give the witnesses. You
17 determine or judge the credibility of witnesses that were
18 called at trial. As judges of the facts, you judge
19 whether or not a witness has a bias, a prejudice, or an
20 interest in the outcome of the lawsuit. You can judge
21 such things as appearance and demeanor on the witness
22 stand and reasonableness of a witness's statement. You
23 are not bound to decide this case based on the number of
24 witnesses that a side produces.

25 You can believe one witness over many or many

1 against one. You can accept all of a witness's statement
2 or you can reject it entirely. You can accept part of a
3 witness's statement or you can reject part of it. If you
4 reject part of it, you may still accept the remainder of
5 a witness's testimony.

6 Now, I told you that during the trial, we
7 ordinarily do not allow people to testify about their
8 opinion about evidence, but we do make an exception for
9 expert witnesses, and, as I told you, these are people
10 for whom we make an exception because of experience or
11 specialized training in an area. They can give their
12 opinion and state their reasons for their opinion. You
13 give an expert's testimony as much or as little weight as
14 you think it deserves, and if you don't think it's based
15 upon sufficient education or experience, or you conclude
16 that the expert's opinions are not sound or outweighed by
17 other evidence, you may disregard the opinion entirely.

18 You are not compelled to blindly accept an
19 expert's opinion. You have the right to consider
20 testimony in light of all of the circumstances and give
21 it such weight, if any, you think it is entitled to. I
22 remind you the fact that the defendant was arrested,
23 charged, and indicted in this case is not evidence in
24 this case and cannot be considered by you as evidence of
25 guilt in this state, nor does it create any presumption

1 or inference of guilt.

2 An indictment is simply a document that is a
3 formal written notice. It contains the charges that are
4 against the defendant and that he stands trial for. It
5 is the formal document by which this case is brought into
6 this court; in other words, how we have jurisdiction to
7 hear the case.

8 Now, to these indictments the defendant pled
9 not guilty, and that plea, therefore, casts a burden upon
10 the State to prove the defendant is guilty beyond a
11 reasonable doubt. A person, when charged with committing
12 a criminal offense in SC, is never required to prove
13 himself innocent. This is an important rule of law in
14 our country that a defendant in a criminal trial will
15 always be presumed to be innocent of the crime for which
16 he is indicted unless and until his guilt has been proven
17 by evidence satisfying you of that guilt beyond a
18 reasonable doubt.

19 The presumption of innocence is not a mere
20 legal theory. This isn't just a legal phrase. This is a
21 substantial constitutional right to which every defendant
22 is entitled. This presumption of innocence accompanies
23 the defendant from the time he is charged throughout the
24 trial unless and until you reach a verdict of guilt based
25 on evidence -- based upon evidence satisfying you of that

1 guilt beyond a reasonable doubt. Now, I instruct and I
2 emphasize that the fact the defendant did not testify is
3 not a factor to be considered by you in any way in your
4 deliberation and in your consideration on the question of
5 guilt or innocence of the defendant. This is not to be
6 considered by you in any manner whatsoever.

7 A defendant has a constitutional right to
8 remain silent and the assertion of this right must not be
9 considered by you during your deliberations. I repeat,
10 under your oath, you are to draw no conclusion whatsoever
11 from the fact that the defendant in this case did not
12 testify. The fact that the defendant did not testify
13 should not even be discussed in the jury room. The
14 burden of proof, as I've stated before, is on the State.
15 The defendant is not required to prove his innocence.
16 The burden of proof remains on the State to prove guilt
17 beyond a reasonable doubt.

18 Now, what is reasonable doubt? Some of you
19 may have heard or served as jurors in a civil case where
20 you were told that it was only necessary to prove that a
21 fact is more likely true than not true. This is also
22 called greater weight or preponderance of the evidence.
23 In criminal cases, the State's proof must be more
24 powerful than that. It must be beyond a reasonable
25 doubt.

1 Proof beyond a reasonable doubt is proof that
2 leaves you firmly convinced of the defendant's guilt.
3 There are very few things in this world we know with
4 absolute certainty, and in criminal cases, the law does
5 not require proof that overcomes every possible doubt.
6 If, based on your consideration of the evidence, you are
7 firmly convinced that the defendant is guilty of the
8 crime charged, then you must find the defendant guilty.

9 If, on the other hand, you think there is a
10 real possibility that the defendant is not guilty, then
11 you must give the defendant the benefit of the doubt and
12 find him not guilty.

13 Now, there are two types of evidence that is
14 generally present in a trial: There is direct evidence
15 and there is circumstantial evidence. Direct evidence
16 strictly proves the existence of a fact. That does not
17 require deduction. Circumstantial evidence is proof of a
18 chain of facts which indicate the existence of a fact.
19 Crimes may be proven by circumstantial evidence, and the
20 law makes no distinction between the weight or value
21 between either direct or circumstantial evidence.

22 However, to the extent that the State relies
23 on circumstantial evidence, all of the circumstances must
24 be consistent with each other and, when taken together,
25 point conclusively to the guilt of the accused beyond a

1 reasonable doubt. If these circumstances merely portray
2 the defendant's behavior as suspicious, then the proof
3 has failed. The State has the burden of proving the
4 defendant guilty beyond a reasonable doubt. This burden
5 rests with the State, regardless of whether the State
6 relies on direct evidence, circumstantial evidence, or
7 some combination of the two.

8 Now, as I told you, you, as jurors, determine
9 the credibility of witnesses who testified in this case,
10 and credibility simply means believability. It's your
11 duty as jurors to analyze and evaluate evidence and
12 determine which evidence convinces you of its truth. In
13 determining the believability of witnesses who testified
14 in this case, again, you may believe one witness over
15 several witnesses or several witnesses over one witness.

16 You may believe part of the testimony of a
17 witness and the remaining part of the testimony of that
18 same witness. You may believe the testimony of a witness
19 in its entirety or you can reject the testimony of a
20 witness in its entirety. You may consider whether a
21 witness has exhibited to you any interest, bias,
22 prejudice, or other motive in this case, and you may also
23 consider the appearance and manner of a witness while on
24 the witness stand.

25 Now, I charge you that it is the law in SC

1 that if a crime is committed in SC by two or more people
2 who are acting together in committing a crime, then the
3 act of one is the act of all. A person who joins with
4 another to commit an unlawful act is criminally
5 responsible for everything done by the other person,
6 which happens as a probable and natural consequence of
7 the act done in carrying out the common plan and purpose.

8 For example, two people can be guilty of
9 killing another person when only one of the two had a
10 gun, there was only one bullet, and only one of the two
11 fired a shot that caused the death. If two or more
12 people are acting -- if two or more people are together,
13 acting together, assisting each other in committing the
14 offense, the act of one is the act of all; as is
15 sometimes said, the hand of one is the hand of all.

16 Prior knowledge that a crime is going to be
17 committed without more is not sufficient to make a person
18 guilty of that crime. Mere knowledge that another person
19 is going to commit a crime, even if the defendant is
20 present when the crime is committed, is not sufficient to
21 convict the defendant as a principle. Guilt as a
22 principle is shown by actual or constructive presence at
23 the scene as a result of prior arrangement.

24 Therefore, a finding of a prior arranged plan
25 or common scheme is necessary for a finding of guilt as a

1 principle. The State must prove beyond a reasonable
2 doubt by competent evidence that the theory of the hand
3 of one is the hand of all. A principal in a crime is one
4 who either actually commits the crime or who is present,
5 aiding, abetting, or assisting in committing the crime.
6 When a person does an act in the presence of and with the
7 assistance of another, the act is done by both.

8 For two or more, acting with a common plan or
9 intent are present in the commission of a crime, it does
10 not matter who actually commits the crime. All are
11 guilty. The hand of one is the hand of all. Present at
12 the commission of the crime means to be sufficiently near
13 to aid and abet and assist in the commission of a crime;
14 however, mere presence at the scene of a crime is not
15 sufficient to convict one as a principal of aiding and
16 abetting.

17 Intent is also a necessary element, for there
18 must have been a common design or intent to commit the
19 crime, and the crime must have been committed pursuant
20 thereto with the person aiding and abetting by some overt
21 act. Intent means intending the result which actually
22 occurs, not accidentally or involuntarily. Intent may be
23 shown by acts and conduct of the defendant and other
24 circumstances for which you may naturally and reasonably
25 infer intent. The State must prove these elements beyond

1 a reasonable doubt.

2 Now, the first charge that I want to go over
3 with you, the elements of the crime that the State has to
4 prove, is for the indicted charge of attempted murder.

5 In order to prove this crime, the State must prove that
6 the defendant, with the intent to kill, attempted to kill
7 another person with malice aforethought, either express
8 or implied. Malice is hatred, ill will, or hostility
9 towards another. It is the intentional doing of a
10 wrongful act without just cause or excuse and with an
11 intent to inflict an injury or under circumstances that
12 the law will infer an evil attempt.

13 Malice aforethought does not require malice
14 to exist for any particular time before the act is
15 committed. The malice must exist in the mind of the
16 defendant just before and at the time the act is
17 committed; therefore, there must be a combination of
18 previous evil intent and an act. Malice aforethought may
19 be expressed or inferred. These terms, expressed or
20 inferred, do not mean different kinds of malice, but
21 merely the manner in which malice may be shown to exist.
22 That is either by direct evidence or by inference from
23 the facts and circumstances which are proved.

24 Express malice is shown when a person speaks
25 words which express hatred or ill will toward another or

1 when the person prepared beforehand to do the act which
2 was later accomplished; for example, lying in wait for
3 a person or any other acts of preparation going to show
4 that the deed was within the defendant's mind would be
5 express malice. If the facts are proved beyond a
6 reasonable doubt sufficient to raise an inference of
7 malice to your satisfaction, this inference would simply
8 be an evidentiary fact to be considered by you, the jury,
9 along with any other evidence in the case, and you may
10 give it the weight you decide it should receive.

11 An intent to kill is an element of attempted
12 murder. In the context of an attempt crime, specific
13 intent means the defendant intended to complete the acts
14 comprising the underlying offense. Intent means not
15 accidentally or involuntarily. Intent may be shown by
16 acts and conduct of the defendant and other circumstances
17 from which you may naturally and reasonably infer intent.
18 Evidence of the character of the act, the character of
19 the instrument used, the manner in which it was used, the
20 purpose to be accomplished, and the resulting wounds or
21 injuries may be considered in determining the intent with
22 which the act was committed. Intent may also be inferred
23 when it is demonstrated that the defendant voluntarily
24 and willfully commits an act, the natural tendency of
25 which is to destroy another's life.

1 Now, if you find that the State has not
2 proven the defendant is guilty of attempted murder, you
3 must then determine whether the State has proven the
4 defendant is guilty of a lesser included charge of
5 assault and battery of a high and aggravated nature.
6 Assault and battery of a high and aggravated nature is
7 committed by a person if the person unlawfully injures
8 another person or great bodily injury to another results
9 or the act is accomplished by means likely to produce
10 death or great bodily injury. Grade bodily injury is
11 defined as bodily injury which causes a substantial risk
12 of death or which causes serious permanent disfigurement
13 or protracted loss or impairment of function of a bodily
14 member or organ.

15 Now, the next indictment is for kidnapping.
16 There were five indictments for kidnapping. To prove
17 kidnapping, the State must prove beyond a reasonable
18 doubt that the defendant knowingly and unlawfully seized,
19 confined, inveigled, deceived, decoyed, kidnapped,
20 abducted, or carried away another person without
21 authority of law. To do a thing unlawfully is to do it
22 willfully against the law. Knowingly means with
23 knowledge, consciously, not accidentally. Seize means to
24 take hold of suddenly or forcibly; confine means to
25 limit, restrict, or enclose within bounds, imprison or

1 shut or keep in. Inveigle means to lure, entice, or lead
2 astray by false representations, promises, or other
3 deceitful means.

4 Decoy means to lure by as if by decoy. A
5 decoy is something to entice a person into a trap.
6 Kidnap is to remove a person against his will by unlawful
7 force or by fraud. Abduct means to carry off secretly or
8 by force or illegal purpose. Carry away means to remove.

9 The State does not have to prove the
10 defendant did all of these things. Instead, if you find
11 beyond a reasonable doubt that the defendant did any of
12 these things, you may find the defendant guilty of
13 kidnapping.

14 Something that is done without authority of
15 law is something which the law does not sanction, permit,
16 allow, condone, or provide justification for, so
17 kidnapping does not have to be for any personal or
18 monetary gain, for any -- or -- let me start again.

19 The kidnapping does not have to be for any
20 personal or monetary gain for any illegal purpose but may
21 be for any reason whatsoever.

22 The next crime that I want to go over with
23 you is for the indictments for armed robbery. In order
24 to prove this offense, the State must first prove beyond
25 a reasonable doubt that the defendant took personal

1 property from the person or presence of another person.
2 Property is in the presence of a person if it is within
3 the person's reach inspection, observation, or control so
4 that the person could, if not overcome with violence or
5 prevented by fear, keep possession of the property.

6 The State must also prove beyond a reasonable
7 doubt that the defendant carried away intending -- or
8 carried the property away intending to permanently
9 deprive the owner of the property and to keep the
10 property for the defendant's own use. The slightest
11 removal of the property or the complete possession of the
12 property, even if for an instant by the defendant, is
13 sufficient to show a taking and carrying away of the
14 property.

15 The taking and carrying away of the property
16 must have been done with violence or by putting the owner
17 of the property in fear in violence. Finally, the State
18 must prove beyond a reasonable doubt that the
19 defendant -- the defendant was armed with a deadly weapon
20 during the robbery.

21 A deadly weapon is any article, instrument,
22 or substance which is likely the cause of death or great
23 bodily harm. Whether an instrument has been used as a
24 deadly weapon depends on the facts and circumstances of
25 each case. The following examples -- the following are

1 examples of instruments which may be deadly weapons: A
2 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
3 slingshot, metal knuckles, a razor, gasoline, a firebomb,
4 or Molotov cocktail, lighter fluid. A gun may be a
5 deadly weapon even if it is not operating.

6 Next there is an indictment for second degree
7 burglary. In order to prove second degree burglary, the
8 State must prove beyond a reasonable doubt that the
9 defendant entered a building without consent with the
10 intent to commit a crime in the building and there is at
11 least one of the following four factors in aggravation:
12 One, when entering, while in the building or while
13 fleeing, the defendant or an accomplice was armed with a
14 deadly weapon or explosive; two, when entering while in
15 the building or when fleeing the defendant or an
16 accomplice caused physical injury to anyone not
17 participating in the crime; three, when entering while in
18 the building or when fleeing the defendant or an
19 accomplice used or threatened to use a dangerous weapon;
20 four, when entering, while in the building or when
21 fleeing, the defendant or an accomplice displayed what
22 was or appeared to be a knife, pistol, revolver, rifle,
23 shotgun, machine gun, or other firearm.

24 A building is any structure, vehicle,
25 watercraft or aircraft where any person lodges or lives

1 or where people assemble for the purpose of business,
2 government, education, religion, entertainment, public
3 transportation, or public use or where goods are stored.

4 A deadly weapon is any article, instrument,
5 or substance which is likely to cause death or great
6 bodily harm. Whether an instrument has been used as a
7 deadly weapon depends on the facts and circumstances of
8 each case. The following are examples of instruments
9 which may be deadly weapons, a pistol, a shotgun, a
10 rifle, a dirk, a dagger, a knife, a slingshot, metal
11 knuckles, a razor, gasoline, a firearm or Molotov
12 cocktail, and lighter fluid, and a gun may be a deadly
13 weapon even if it's not operating.

14 Next there is an indictment for possession of
15 a weapon during a violent crime, or during the commission
16 of a violent crime. The State must prove beyond a
17 reasonable doubt that the defendant was in possession of
18 a firearm or visibly displayed what appeared to be a
19 firearm or displayed a knife during the commission of a
20 violent crime. Firearm means any machine gun, automatic
21 rifle, revolver, pistol, or any weapon which is designed
22 to or could be readily converted to dispel a projectile.
23 A knife means an instrument or tool with a sharp cutting
24 blade, whether or not fastened to a handle, which can be
25 used to inflict a cut, slash, or wound.

1 In order to find the defendant guilty of
2 possession of a weapon during the commission of a violent
3 crime, you must first find the defendant guilty of
4 committing a violent crime or attempting to commit a
5 violent crime. I charge you that attempted murder, armed
6 robbery, burglary in the second degree, and kidnapping
7 are all violent crimes. The State must prove beyond a
8 reasonable doubt that the weapon further advanced or
9 helped in the commission of the crime.

10 And then the final indictment is for the
11 charge of conspiracy. In order to prove conspiracy, the
12 State must prove beyond a reasonable doubt that the
13 defendant combined with one or more persons for the
14 purpose of committing an unlawful act or committing an
15 unlawful act by unlawful means. There must be a mutual
16 understanding, agreement, or common intention and plan.
17 Mere passive knowledge of or consent to the criminal
18 conduct of another of is not enough to make a person a
19 criminal conspirator. It must be guilty knowledge and
20 participate.

21 Similarly, the mere fact that the defendant
22 may have associated with another person or met with
23 another person and discussed common aims and interest
24 does not necessarily establish proof of the existence of
25 a conspiracy or that the defendant was involved in

1 conspiracy. On the other hand, it is not necessary that
2 the agreement be a formal one, that it be in writing,
3 that the persons hold a meeting and expressly state the
4 terms of the common plan or that the agreement be stated
5 in words between them.

6 The agreement of a criminal conspiracy may
7 come through or may come into being through an implied
8 mutual understanding. The willful, intentional, and
9 knowing adoption by two or more persons of a common plan
10 is sufficient. No overt acts need to be shown to
11 establish a conspiracy. A conspiracy may be shown by
12 circumstantial evidence and the conduct of the parties.

13 In order to convict the defendant of
14 conspiracy, the State must prove beyond a reasonable
15 doubt not only that the defendant knew of the unlawful
16 conduct, but that the defendant agreed to combine with
17 the other person for the purpose of accomplishing the
18 unlawful conduct.

19 Now, in determining your verdict of guilty or
20 not guilty, you cannot consider any possible penalty for
21 any particular crime. The punishment for the crime is a
22 matter for me to determine and should never be considered
23 by you in any way whatsoever in arriving at a verdict of
24 guilty or not guilty.

25 Finally, your verdict must be unanimous. In

1 other words, all 12 jurors must agree as to the verdict.
2 Now, Madame Foreman, this is where you actually have a
3 little bit of something to do back there. You'll conduct
4 the deliberations and go over the indictments to write
5 the verdict on here.

6 You'll see there's an indictment for
7 attempted murder. There is one -- five indictments for
8 kidnapping, three indictments for armed robbery, one for
9 burglary second degree, one for criminal conspiracy, and
10 one for possession of a weapon during the commission of a
11 violent crime. Each of these indictments is to be
12 considered on its own.

13 The State must convince 12 of you beyond a
14 reasonable doubt that the defendant is guilty of each
15 indictment separately. All right? Just because he's
16 been convicted of one or found not guilty of one doesn't
17 mean you have to come up with the same verdict on each of
18 them. Each of these stand alone.

19 Now, on all of them, except the attempted
20 murder indictment, whenever the jury has reached a
21 verdict, I want you, Madame Foreman, to simply write on
22 the back of it where it says verdict, you write what the
23 verdict is, which should be either guilty or not guilty.
24 Just sign it and date it. All right? That's as to each
25 of the indictments except attempted murder.

1 As to the attempted murder verdict, I've
2 attached a separate form because this one has a lesser
3 included charge, so write the verdict on the form that I
4 have stapled to the attempted murder indictment, and
5 you'll see that form says first, as to the charge of
6 attempted murder, we, the jury, unanimously find the
7 defendant, Donte Samar Brown -- there two choices, either
8 guilty or not guilty. All right? If you write guilty,
9 then you can just sign it, date it, stop deliberations on
10 that one.

11 On the other hand, if you find he's not
12 guilty of attempted murder, you mark the block where it
13 says not guilty, but you'll then go to part two which
14 says if you, the jury, find the defendant, Donte Samar
15 Brown, is not guilty of attempted murder, then you must
16 decide whether the defendant, Donte Samar Brown, is
17 guilty or not guilty of assault and battery of a high and
18 aggravated nature. Then you'll see below that are two
19 choices, guilty or not guilty. Whichever of the two the
20 jury unanimously decide, you write it, date it, and let
21 the bailiffs know you've reached a verdict when you have
22 completed all of them.

23 Again, as to this one, first consider
24 attempted murder. If it's not guilty, only then do you
25 consider the lesser included of assault and battery of a

1 high and aggravated nature. If you find him guilty of
2 attempted murder, you simply mark that one and end your
3 deliberation as to that indictment.

4 Now, I'm going to send you back with the
5 bailiff to the jury room. I need to give the attorneys
6 an opportunity to give me the opportunity if I misspoke
7 something. That's a formality we go through to say,
8 Judge, you misspoke. Then we'll get the evidence
9 together, send it back with the bailiff along with the
10 indictments. Then and only then do you begin your
11 deliberations, so just bear with us for a few minutes.
12 This doesn't take that long, but don't begin your
13 deliberations until I send the verdict back, along with
14 the evidence, and the bailiff tells you I've said it's
15 okay to begin your deliberations.

16 Okay? So go back with the bailiff, please.
17 (In open court, jury not present.)

18 THE COURT: All right. There anything from
19 the State?

20 MS. TAYLOR: No, Your Honor.

21 THE COURT: Anything from the defendant?

22 MS. LITTLEJOHN: No, Your Honor.

23 MR. SCHWACKE: One matter: We moved directly
24 into closing arguments after we rested, so just for the
25 record, I would like to place a renewal of all motions

1 that were made.

2 THE COURT: And they are all denied again for
3 the same reason. Let's get the evidence together.

4 Is there any objection to me sending the jury
5 charges back?

6 MS. TAYLOR: None from the State, Your Honor.

7 THE COURT: Any from the defense?

8 MS. LITTLEJOHN: Can we think about it a
9 little bit, not send it right now, see if they ask for it
10 and may revisit?

11 THE COURT: I'll go along with that. All
12 right.

13 Other than that, why don't you get together
14 with her down here and make sure we got the evidence in.
15 Alternates have been discharged.

16 (At 3:00 p.m., jury retires to deliberate.)

17 (3:44 p.m., in open court, jury present.)

18 THE COURT: Okay, folks. You indicate the
19 you want to see State's Exhibit 25 again, so we brought
20 you back in, and they've got to cue it up. If you got a
21 point you want to stop, how about you raise your hand and
22 we'll try to stop at that point and we'll go forward.
23 Okay? So when you're ready.

24 Don't discuss anything while you're here in
25 our presence. If you want to discuss it, go back to the

1 jury room. We'll bring you back as many times as you
2 want. Okay? Go back and let us know if you need to see
3 any more or anything else.

4 (5:30 p.m., in open court, jury not present.)

5 THE COURT: Got everybody in here? All
6 right. They've sent a question back: What do we do if
7 we cannot come to a conclusion on the indictments? Is
8 there a time limit? What is our next course of action.

9 So I will give them an Allen charge and kind
10 of explain to them what happens, and they can deliberate
11 as long as they want to tonight, come back tomorrow,
12 totally up to them. Bring them on in.

13 (In open court, jury present.)

14 All right. Welcome back, folks. You sent in
15 a question that says what do we do if we cannot come to a
16 conclusion on the indictments? Is there a time limit?
17 What is our next course of action?

18 So let me kind of explain to you what happens
19 and what my response is, what I usually tell the jury.
20 First of all, I don't want to know what you're leaning
21 towards as far as a conviction or acquittal or what any
22 vote numbers are at any point. Don't ever tell me that,
23 all right? That's not what I'm seeking.

24 Here is what I will say: All right. When a
25 jury like you sometimes expresses difficulty in coming to

1 a verdict, I usually bring them in and say, look, this is
2 what happens if you can't come to a verdict. What
3 happens is that I either have to declare a mistrial, and
4 then we will come back another day with another jury, and
5 they will hear essentially the same testimony that you've
6 heard and we'll retry the case.. There is no reason for
7 us to expect that we're going to get any better jury than
8 we've got this week, and we go through this exact same
9 process that we went through on Monday: We qualify a
10 jury, we go through the questioning about trying to
11 evaluate whether or not people have conflicts with
12 hearing this case, and then we go through the selection
13 process, and we end up with a jury panel much like
14 yourself.

15 Whether or not the exact composition of, you
16 know, age, race, sex comes out, I don't know. Those
17 numbers aren't really that relevant, but what is relevant
18 is we have a jury panel that's representative of the
19 community, and I don't have any reason to believe that
20 there are any 12 better or smarter people that's going to
21 hear the case if we have to do it over again than you 12.

22 It gets difficult to be a juror. You hear a
23 lot of facts. You hear contested testimony. I
24 understand it's a difficult job, and obviously y'all have
25 been at it now for a couple of hours and you're

1 struggling with it. I understand that. I don't want to
2 know what your breakdown is. Is may be 50/50, but
3 usually there's a majority and there's a minority. It
4 might be that it's 50/50, but what I usually ask jurors
5 to do is go back and listen to what the other people have
6 to say. If you're in a group that is in the majority,
7 listen to what the minority has to say. If you're in the
8 group that's in the minority, listen to what the group in
9 the majority has to say, and think about what your
10 position is.

11 Don't bend your decision to the majority or
12 yield to a minority just because you want to get out.
13 Listen to what they have to say, and if y'all can in good
14 conscience come to a unanimous decision, that's all we
15 could ever ask you to do. That's all we'll ever ask any
16 jury to do. We won't force you to stay any longer than
17 you want to. What I do ask is that you go back and, in
18 light of what I've told you, see if you can't come to a
19 verdict, whatever your verdict is.

20 We will stay as long as you want to tonight.
21 If you decide at some point you think you can't reach a
22 verdict, well, then you let me know. If you get to a
23 point where you go, well, you know what? We'd like to
24 just break for the evening and come back tomorrow and
25 finish and talk about it some more, that will be fine

1 too. We'll leave it to you as to how long you want to
2 deliberate before we make any decisions as to whether or
3 not you want to come back or you have reached an impasse
4 and you can't come up with any verdicts at all. That is
5 totally up to you. I just ask that you go back, try to
6 give it another effort, based on what I've said.

7 Listen to what everybody else has to say if
8 it differs from what you have to say. If you're
9 convinced you're correct, stick to your guns. If you
10 think the other side might have some merits, mull it over
11 and see how it feels and see if that doesn't change your
12 mind, but all we can ask 12 people to do is what you have
13 been doing, and that is, you listened to the testimony,
14 you listened to what I've told you the law is, and then
15 you see if you can come to a unanimous verdict.

16 So to answer your question, that's
17 essentially it. All right? So go on back there and work
18 on it a little bit more, and then let us know what your
19 decision is.

20 (Jury retires to resume deliberations 5:46
21 p.m.)

22 THE COURT: Jury requested by note to see the
23 sheet that had the definition of assault and battery of a
24 high and aggravated nature. Both sides have consented to
25 send the entire jury charge, written jury charges, back

1 to the jury.

2 (7:34 p.m., in open court, jury not present.)

3 THE COURT: They have a question about is a
4 firearm considered a knife? The title of the charge says
5 weapon. Within the charge states specifically firearm.

6 MS. TAYLOR: They might not have gone to the
7 next page. I'm a little confused. I assume they're
8 talking about the charge of possession of a weapon during
9 a violent crime.

10 THE COURT: Have them bring their copy of the
11 jury charges with them.

12 (In open court, jury present.)

13 THE COURT: Madame Foreman, you said is a
14 firearm considered a knife? The title of the charge says
15 weapon. Within the charge says specifically firearm.
16 Are you referring to the possession of weapon during a
17 violent crime charge starting on page nine, or what are
18 you referring to with this question?

19 THE FOREPERSON: Yes, Your Honor.

20 THE COURT: All right. Go to page nine. You
21 got that one? You don't have the jury charge with you?

22 THE FOREPERSON: Well, we have the --

23 THE COURT: The jury charge. You have that?
24 I told have you them bring the jury charge back in with
25 them.

1 Okay. On the charge jury, you'll see -- is
2 your confusion with what's in the jury charge or what's
3 on the indictment?

4 THE FOREPERSON: What's on the indictment.

5 THE COURT: Can you hand the bailiff the
6 indictment?

7 All right. The indictment reads in the title
8 the charge is possession of a weapon during the
9 commission of a violent crime, and it reads, or alleges,
10 that Donte Samar Brown did in Berkeley County, SC on or
11 about December 24th, 2011 possess a firearm or visibly
12 display what appeared to be a firearm during the
13 commission or attempted commission of a violent crime, to
14 wit burglary and/or armed robbery and/or burglary second
15 degree in violation of 16-23-490 of the SC code of laws.

16 Now, the title of the -- on the indictment,
17 and the title in any statute book, is not considered part
18 of the body of the crime. All right? So what I want you
19 to -- I think the answer to your question lies within the
20 jury charge, and you asked what is a firearm, and I
21 charged you on page ten, starting at the top, first line,
22 a firearm means any machine gun, automatic rifle,
23 revolver, pistol, or any weapon which is designed or may
24 be readily converted to expel a projectile. Okay? So
25 that defines what a weapon is. Okay?

1 It then defines what a knife is. This
2 indictment does not allege possession of a knife as being
3 what the basis of that indictment is. It's a firearm.
4 So the charge should give you the definition of what
5 you're looking for, all right? Don't worry about the
6 title of the charge or the title on the indictment. That
7 is simply describing what the particular crime is. It
8 gives us something to refer to it as. All right?

9 The indictment -- I'm sorry if I misread. It
10 says Donte Samar Brown did in Berkeley County SC on or
11 about December 24th, 2011 possess a firearm or visibly
12 display what appeared to be a firearm during the
13 commission or attempted commission of a violent crime, to
14 wit, kidnapping and/or armed robbery and/or burglary
15 second degree, violent, in violation of 16-23-40. Okay?
16 Does that answer your question for you? Okay?

17 When you sent this back in, or when you sent
18 this back, I looked at the jury charge again. If you'll
19 look at page nine, I think a word got put in there twice,
20 at the very last -- right under where it says possession
21 of a weapon during a violent crime, the first sentence
22 reads defendant is charged with possession of a weapon
23 during the commission of or attempt to commit a violent
24 crime.

25 The State must prove beyond a reasonable

1 doubt that the defendant was in possession of a firearm,
2 and it has the word arm there again. That clearly is
3 just a typo. So strike that through, so it should read,
4 defendant was in the possession of a firearm or visibly
5 displayed what appeared to be a firearm or visibly
6 displayed a knife during the commission of a crime.

7 Okay? Does that answer your question for
8 you?

9 THE FOREPERSON: Yes.

10 THE COURT: All right. We'll send you back.
11 I'll give you the indictments.

12 (7:43, jury resumes deliberations.)

13 THE COURT: Anything from the State?

14 MS. TAYLOR: No, Your Honor.

15 THE COURT: From the defense?

16 MS. LITTLEJOHN: Your Honor, just because the
17 jury came out with that, what we would like to do for the
18 error, what we would ask the Court to do, it talked all
19 about the burden of proof and not the presumption of
20 innocence, and what they were asking for, although they
21 were given it as a package there, a whole package of
22 charges, I would just ask if we could -- I want to place
23 on the record that we -- we think that adding that in
24 addition to those charge -- and I don't put my charge up,
25 the burden of proof, reasonable doubt, in that portion of

1 it, it didn't remind them of the presumption of
2 innocence.

3 THE COURT: Well, they have the entire jury
4 charge, which has the presumption of innocence at the
5 beginning of it. The entire charge has it, and they have
6 the entire set of jury charges back there now, so it's in
7 there.

8 Anything else?

9 MS. LITTLEJOHN: Nothing, Your Honor.

10 THE COURT: Okay.

11 (Jury notes marked for identification as
12 Court's Exhibit Nos. 10 through 17.)

13 (7:56 p.m., in open court jury not present.)

14 THE COURT: All right. I'm told we have a
15 verdict. Record reflect defendant is in the courtroom.
16 Bring the jury in.

17 (In open court, jury present.)

18 THE COURT: All right. Madame Foreman: I
19 understand the jury has reached a verdict; is that
20 correct?

21 THE FOREPERSON: Yes.

22 THE COURT: Is it unanimous?

23 THE FOREPERSON: Yes.

24 THE COURT: Would you hand it to the bailiff,
25 please. All right. The defendant will rise. All right.

1 As to indictment 2012-GS-08-1187, armed
2 robbery, the verdict is guilty. On indictment
3 2012-GS-08-1189, armed robbery, the verdict is guilty.
4 As to indictment 2012-GS-08-1188, armed robbery, the
5 verdict is guilty.

6 As to indictment 2012-GS-08-1192, kidnapping,
7 verdict is guilty. Indictment 2012-GS-08-1190,
8 kidnapping, verdict is guilty. Indictment
9 2012-GS-08-1191, kidnapping, verdict is guilty.
10 Indictment 2012-GS-08-1193, indictment for kidnapping,
11 verdict is guilty. Indictment 2012-GS-08-1194,
12 indictment for kidnapping, verdict is guilty.

13 On indictment 2012-GS-08-1198, indictment for
14 attempted murder, the verdict is not guilty. On the
15 lesser charged charge of assault and battery of a high
16 and aggravated nature, verdict is not guilty. On
17 indictment 2012-GS-08-1195, for burglary second degree,
18 verdict is guilty. On indictment 2012-GS-08-1196,
19 indictment for criminal conspiracy, the verdict is
20 guilty. On 2012-GS-08-1197, possession of a weapon
21 during the commission of a violent crime, the verdict is
22 not guilty.

23 If, in fact, this is your verdict would you
24 please indicate that by raising your right hand?

25 THE COURT: Let the record reflect all the

1 jurors have raised their right hand. Do you wish to have
2 the jury polled?

3 MS. LITTLEJOHN: I do, Your Honor.

4 THE COURT: All right. The clerk will poll
5 the jury.

6 (Whereupon, all the jurors were polled and
7 indicated their agreement with the verdict.)

8 THE COURT: All right. Well, ladies and
9 gentlemen: Thank you for your service. It's been a long
10 week. It's been a long day, but, clearly, you have done
11 exactly what anybody could hope, and that is you were
12 conscientious jurors. Your job wasn't to come in and
13 necessarily just rubber stamp whatever anybody puts in
14 front of you. Your job is to set and listen carefully to
15 the evidence, listen to what the law is, and go back and
16 deliberate.

17 These were very serious charges, and it is
18 clear that you took your job very seriously. You
19 deliberated for a number of hours today. We cannot ask
20 for more than that. Whatever your verdict is, we could
21 not ask for more than what you have done this week, and
22 it shows that you take your job very, very seriously, and
23 as, I told you at the first of the week, people come in.
24 It's not necessarily how they want to spend their week,
25 but once they get there, they really do take it

1 seriously, and I hope that you learned something this
2 week about our process, the way it works. We have a
3 method to our madness.

4 There is a methodology to it that if it
5 didn't all make sense, maybe on reflection it will make
6 sense, but, you know, we've been coming up with these
7 rules now for -- a lot of them are several hundred years
8 old, the ways that we do things and the method that we do
9 them.

10 But they're time tested, and we have an
11 adversarial process where we put it out on the table.
12 Both sides get to cross-examine for basically as long as
13 they want to, ask questions for as long as they want to,
14 and then let you 12 people come in and decide what the
15 truth is, and your verdict come -- the word verdict comes
16 from the Latin word, which means to speak the truth, and
17 so you have done all that we could ask you to, and that
18 is deliver us a verdict and we'll now live with that, and
19 we'll appreciate your hard work this week.

20 It has been a long week. It's been a long
21 day. You're finished for the week. You don't have to
22 come back anymore. You don't have to call after 6:00.
23 If you will remember, at the first of the week when I was
24 qualifying you on Monday, I told you that one -- you are
25 now basically disqualified from jury service for the rest

1 of the year and you have a exemption for the next three
2 years, and I have some people that come back. Even
3 though they have an exemption, they want to serve again.
4 Other people say once every three years is fine for me,
5 but I sincerely hope you enjoyed the process. You found
6 it was worth your time to come in here and participate.

7 Again, these are very serious charges. Some
8 cases are more serious than others, but obviously this is
9 a very serious case, and you took your job seriously. We
10 can't ask for more than that. We don't ask you to come
11 back with a particular verdict. We just ask you to do
12 your best, and, clearly, you folks did all that anybody
13 could ever ask a jury to do.

14 So you are now free to go. They can give you
15 some notices for your work if you need that, and I thank
16 you again for your service on behalf of the citizens of
17 the State of South Carolina. All right? You're free to
18 go.

19 (Jury dismissed.)

20 THE COURT: All right. Do you have some
21 sentencing sheets?

22 MS. TAYLOR: Mr. Alfaro has gone to get them.

23 MS. LITTLEJOHN: Is it time for me to renew
24 my motion?

25 THE COURT: Okay. What you got?

1 MS. LITTLEJOHN: First of all, with my motion
2 for directed verdict, the basis of which, when you look
3 at the verdict here, possession of a weapon, et cetera --
4 obviously, inconsistent verdicts are allowed, but I think
5 the circumstantial evidence of this is way toward that.

6 Furthermore, I make a motion to renew all the
7 motions, including those with the search warrants and all
8 those we have documented throughout this, plenty of them,
9 and a motion for a new trial, Your Honor.

10 THE COURT: Well, your motions are all
11 denied. I think there is sufficient evidence to support
12 the verdicts that were in. I find it's very interesting
13 that on the ones they found not guilty on and the weapons
14 charge they clearly found that while there was a
15 kidnapping and armed robbery, that I gather the verdict
16 was that the poor lady who got shot wasn't shot
17 intentionally, so the verdict of not guilty on attempted
18 murder and ABHAN are consistent with that, and he did
19 not -- I gather they found that he didn't possess a
20 firearm, which is how they came up with that verdict, but
21 those verdicts are not inconsistent at all with the
22 things that they did find him guilty on, especially under
23 a theory of hand of one, hand of all, so your motions are
24 denied.

25 All right. Let's go to sentencing. What

1 would the State like to tell me?

2 MR. TAYLOR: Your Honor, the victims,
3 unfortunately, had to leave. Ms. Williams was here
4 earlier. She did leave a letter for us that I think
5 someone has got in a file somewhere, but I can tell you
6 from this incident we did have a codefendant, Mr. Wilson.

7 Her statement at that time was basically that
8 this was an event that affected all of their lives. She
9 spoke on behalf of the younger victims, the males that
10 were there, and told the Court basically then that she
11 felt very much like a mother figure, that she had spoken
12 with the victims, and I had a chance to speak with the
13 victims while we were preparing for trial, Your Honor,
14 and I can tell you that all of the young men were
15 definitely affected. Riley Kemp, specifically, who was
16 the one that was taken outside in the Dumpster has been
17 traumatized by this incident. Ms. Williams would ask for
18 the maximum sentence allowed.

19 I think we've already given the Court his
20 prior record, but that included the 2006 strong-arm
21 robbery, burg second degree, violent, and assault and
22 battery, high and aggravated nature.

23 THE COURT: All right. Ms. Littlejohn, is
24 there anything you would like to say or your client would
25 like to say?

1 MS. LITTLEJOHN: Yes, Your Honor. As you
2 know, Mr. Wilson was sentenced to -- I want to say 60
3 years. We came to trial. I think you've seen the
4 evidence. I think it's good faith evidence. There was a
5 lot of circumstantial evidence, nevertheless a verdict.
6 I think when you look at the culpability in this, when
7 you balance all of that, Your Honor, he exercised his
8 rights.

9 I think the length of time the jury was out
10 shows that this was -- this is sometimes referred to as a
11 slam dunk case. It wasn't. It was in the -- in the
12 length of time the trial took, it was a lengthy, well
13 thought out process. Your Honor, based on that -- and I
14 respect the jury's verdict, and I understand where the
15 victim is coming from and I've spoken to them as well. I
16 would ask the Court for something in the neighborhood of
17 about 20, 25 years.

18 THE COURT: All right. Mr. Brown, would you
19 like to say anything?

20 THE DEFENDANT: No, sir.

21 MS. LITTLEJOHN: I think his mother would
22 like to speak.

23 THE COURT: Bring her up.

24 THE WITNESS: Hi, my name is Brenda Brown,
25 and I'm 47 years old, and Donte Samar Brown is my baby

1 boy.

2 THE COURT: Yes, ma'am.

3 THE WITNESS: And I just ask that you would
4 have mercy on him and give him a chance, because we're
5 not reunited with each other, and I would like to get
6 that chance to give him what he's supposed to have, the
7 right training. I would just like him to have the right.

8 Oh, yeah, because his father kept him from me
9 for a couple of years, and I only got in touch with him
10 when I saw him on the news when that happened, and I
11 visited a few times and I missed a couple of years being
12 with him, and I would just like to have a couple more
13 times to be with him.

14 THE COURT: All right. Well, they have
15 visiting times at the Department of Corrections.

16 Now, did you want to say something,
17 Mr. Brown?

18 THE DEFENDANT: No, sir.

19 THE COURT: Pardon?

20 THE DEFENDANT: No, sir.

21 THE COURT: All right. Mr. Schwacke, did you
22 want to say anything?

23 MR. SCHWACKE: No, Your Honor.

24 THE COURT: Well, you're 26 years old.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: How far did you get in school?

2 THE DEFENDANT: Ninth, ninth grade.

3 THE COURT: Did you work before you got
4 arrested?

5 THE DEFENDANT: No, sir.

6 THE COURT: Didn't sound like it. I'm
7 just -- you know, a little bit always sad when I have to
8 put a young person in prison. It doesn't sound like you
9 were doing much with your life before, and the crime that
10 I heard this week, the premeditation that was involved,
11 the preying on these young, innocent people -- clearly,
12 the three young men were traumatized. That lady,
13 Ms. Linda, that is a remarkable woman. I can't imagine
14 the scenario in which she got shot and her only concern
15 was how it was affecting the young people that worked
16 with her. That was her first concern, and she is one of
17 the most remarkable victims I've ever heard on a witness
18 stand. I would want that lady in a foxhole with me if it
19 ever came to that.

20 Clearly, the young men, especially the one
21 young man, are and remain traumatized by that, that
22 incident. It is sad for you, but you have forfeited your
23 right to be out on our streets for a very long time. I'm
24 going to give you 30 years on the armed robbery charges.
25 I'm going to give you 30 years on each of the kidnapping

1 charges. The kidnapping charges will run consecutive to
2 the armed robbery charges. They'll run concurrent with
3 each other, but consecutive to the armed robbery, and
4 then the burglary second degree, I will sentence you to
5 15 years on that. Criminal conspiracy is five years.
6 Those will run concurrent with all of the others, so you
7 basically got 60 years, like your codefendant did.

8 MR. SCHWACKE: And, Your Honor, just for the
9 record, on the kidnappings, to make sure there is a
10 notation that does not trigger the sexual offender
11 registry.

12 THE COURT: Yeah, it does not.

13 MS. LITTLEJOHN: Your Honor, he has been
14 incarcerated since January 5th, 2012.

15 THE COURT: Okay.

16 MS. LITTLEJOHN: Will you make a notation for
17 the time served on that?

18 THE COURT: All right.

19 MS. LITTLEJOHN: And, briefly, just for the
20 conspiracy and the burglary second, run concurrent with
21 the other, is that concurrent with the armed robberies
22 which was the first of them?

23 THE COURT: Is what?

24 MS. LITTLEJOHN: You say it's to run
25 concurrent with the others, so -- okay.

1 THE COURT: Anything else?

2 MS. TAYLOR: Nothing from the State, Your
3 Honor.

4 THE COURT: Okay. Good luck.

5 MS. LITTLEJOHN: Thank you, Your Honor.

6 - - -

7 (Whereupon, the proceedings were concluded.)

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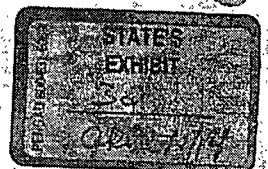
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12/23/2011 10:22:20 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:22:56 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:23:31 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:24:07 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:24:43 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:25:19 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:25:55 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:26:31 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:27:06 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:27:42 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:28:18 PM	431B St James Ave	Goose Creek SC 29445
12/23/2011 10:28:54 PM	431B St James Ave	Goose Creek SC 29445

[illegible]

12/23/2011 11:59:29 PM		St James Ave	Goose Creek SC 29445
12/24/2011 12:00:05 AM		St James Ave	Goose Creek SC 29445
12/24/2011 12:00:41 AM	431B	St James Ave	Goose Creek SC 29445
12/24/2011 12:01:16 AM		St James Ave	Goose Creek SC 29445
12/24/2011 12:01:52 AM		St James Ave	Goose Creek SC 29445
12/24/2011 12:02:28 AM	431B	St James Ave	Goose Creek SC 29445
12/24/2011 12:03:04 AM		St James Ave	Goose Creek SC 29445
12/24/2011 12:03:40 AM		St James Ave	Goose Creek SC 29445
12/24/2011 12:04:16 AM		St James Ave	Goose Creek SC 29445

Max Time	Street	City, State, Zip
12/24/2011 12:06:06 AM	433 St James Ave	Goose Creek SC 29445
12/24/2011 12:06:42 AM	433 St James Ave	Goose Creek SC 29445
12/24/2011 12:07:17 AM	433 St James Ave	Goose Creek SC 29445
12/24/2011 12:07:53 AM	433 St James Ave	Goose Creek SC 29445

✓

##	Wilson, Christopher	Offender	12/28/2011 02:32:19 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:32:55 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:33:31 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:34:06 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:34:42 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:35:19 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:35:56 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:36:33 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:37:07 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 02:47:17 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 03:31:29 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 05:33:54 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 06:41:24 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:20:34 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:21:46 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:22:22 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:22:57 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:37:58 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:38:37 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:39:10 PM	913957642
##	Wilson, Christopher	Offender	12/28/2011 07:50:21 PM	913957642

12/24/2011 01:00:42 PM	9627 Highway 78
12/24/2011 01:01:18 PM	9474 Highway 78
12/24/2011 01:01:55 PM	9347 Highway 78
12/24/2011 01:02:30 PM	ramp
12/24/2011 01:03:05 PM	I-26
12/24/2011 01:03:47 PM	8692 Bentwood Dr
12/24/2011 01:04:25 PM	I-26
12/24/2011 01:04:58 PM	I-26
12/24/2011 01:05:34 PM	209A
12/24/2011 01:08:33 PM	ramp
12/24/2011 01:34:55 PM	2213 Ashley Phosphate Rd
12/24/2011 01:37:19 PM	ramp
12/24/2011 01:40:54 PM	ramp
12/24/2011 01:46:16 PM	Mazyck Rd
12/24/2011 02:18:52 PM	7380 Mazyck Rd
12/24/2011 04:49:01 PM	2551 Ashley Phosphate Rd
12/24/2011 04:49:37 PM	ramp
12/24/2011 04:51:37 PM	ramp
12/24/2011 04:55:48 PM	2147 Ashley Phosphate Rd
12/24/2011 04:58:11 PM	Ashley Phosphate Rd
12/24/2011 05:05:49 PM	Ashley Phosphate Rd
12/24/2011 05:46:37 PM	Ashley Phosphate Rd
12/24/2011 05:49:36 PM	2015 Ashley Phosphate Rd
12/24/2011 05:50:12 PM	2418 Ashley Phosphate Rd
12/24/2011 05:50:48 PM	2503 Ashley Phosphate Rd
12/24/2011 06:15:23 PM	2551 Ashley Phosphate Rd
12/24/2011 06:27:55 PM	2504 Ashley Phosphate Rd
12/24/2011 08:04:51 PM	7394 Mazyck Rd
12/24/2011 08:11:26 PM	ramp
12/24/2011 08:12:02 PM	2103 Northwood Blvd
12/24/2011 08:13:59 PM	2252 Northwood Blvd
12/24/2011 08:14:35 PM	7804 Rivers Ave
12/24/2011 08:15:11 PM	8150 Rivers Ave
12/24/2011 08:15:47 PM	8550 Rivers Ave
12/24/2011 08:16:22 PM	2197 Otranto Blvd
12/24/2011 08:16:58 PM	Rivers Ave
12/24/2011 08:17:35 PM	US-52
12/24/2011 08:18:10 PM	US-52
12/24/2011 08:18:46 PM	203 S Goose Creek Blvd
12/24/2011 08:19:22 PM	107 S Goose Creek Blvd
12/24/2011 08:19:58 PM	St James Ave
12/24/2011 08:20:33 PM	141 St James Ave
12/24/2011 08:21:19 PM	208 St James Ave
12/24/2011 08:21:55 PM	218 St James Ave
12/24/2011 08:22:31 PM	227 St James Ave
12/24/2011 08:23:07 PM	325 St James Ave
12/24/2011 08:23:43 PM	402 St James Ave
12/24/2011 09:04:53 PM	306 Vixen Blvd

Sprint Subscriber Information
Sprint Case #: 2012-001437
Reference Case #: NONE PROVIDED

Request Type: CDR
Date Range: 12/23/2011 to 12/25/2011
Subject Number: 8433249264
Account Number:
Subscriber Name:
Address:

SSN Target:
Comments:

Please note records were researched for the complete date range listed above. The attached call detail records are provided in what we call a "CDMA Call Detail Report," which includes all billable and completed incoming, outgoing and routed calls except those made or received while roaming. A guide to reading CDMA Reports is Included for your convenience.

Request Type: Subscription Info (Basic)
Date Range: 12/23/2011 to 12/25/2011
Subject Number: 8433249264
Account Number:
Subscriber Name:
Address:

SSN Target:
Comments:

***** ACCOUNT DETAILS *****

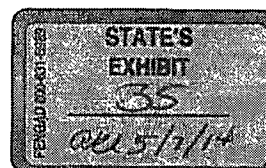
SUBSCRIBER IS IN A SPLIT BILL RELATIONSHIP

Billing Account Number (BAN): 675471473
 Account Establish Date: 11/1/2011
 Account Expiration (Cancel) Date: Active through Date Searched

Account Billing Address(es):
 Effective: 11/1/2011
 CHRIS WILSON
 PO BOX 54988
 IRVINE, CA 92619

Account Contact Numbers:
 Phone: 0000000000 Active Date: 1/2/2012

2



2011-4050
 AMW0260

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Call Records for PTN 8433249264

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CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	REPOLL_#
(843) 714-0174	(843) 324-9264		Inbound	12/23/11 19:54:33	12/23/11 19:54:33	0	524
(843) 324-9264	(843) 714-0174		Outbound	12/23/11 19:55:01	12/23/11 19:55:01	0	295
(843) 323-2799	(843) 324-9264		Inbound	12/23/11 20:10:12	12/23/11 20:10:12	0	524
(843) 324-9264	(843) 323-2799		Outbound	12/23/11 20:11:43	12/23/11 20:11:43	0	526
(843) 324-9264	(843) 323-2799		Outbound	12/23/11 20:22:49	12/23/11 20:22:49	0	298
(843) 324-9264		(843) 323-2799	Outbound	12/23/11 20:27:52	12/23/11 20:28:26	34	690
(843) 324-9264		(843) 323-2799	Outbound	12/23/11 20:30:39	12/23/11 20:31:34	55	690
(843) 323-2799	(843) 324-9264		Inbound	12/23/11 20:42:09	12/23/11 20:42:09	0	528
(843) 324-9264		425-4083	Outbound	12/23/11 20:44:56	12/23/11 20:45:19	23	690
(843) 324-9264		425-4083	Outbound	12/23/11 20:45:30	12/23/11 20:46:02	32	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/23/11 20:47:37	12/23/11 20:48:18	41	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/23/11 20:48:54	12/23/11 20:49:44	50	690
(843) 324-9264		(843) 471-5757	Outbound	12/23/11 20:57:49	12/23/11 20:58:23	34	690
(843) 323-2799	(11843) 324-9264	(843) 324-9264	Routed_Call	12/23/11 21:04:39	12/23/11 21:05:02	23	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/23/11 21:05:54	12/23/11 21:06:32	38	690
(843) 324-9264	(843) 425-4083	425-4083	Outbound	12/23/11 21:06:41	12/23/11 21:07:19	38	690
(843) 324-9264	(843) 323-2799		Outbound	12/23/11 21:07:06	12/23/11 21:07:06	0	525
(843) 324-9264	(843) 324-9264	(843) 324-9264	Outbound	12/23/11 21:11:50	12/23/11 21:12:40	50	690
(843) 324-9264	(11843) 324-9264	(843) 324-9264	Routed_Call	12/23/11 21:11:51	12/23/11 21:12:40	49	690
(843) 323-2799	(843) 324-9264		Inbound	12/23/11 21:14:10	12/23/11 21:14:10	0	526
(843) 324-9264	(843) 323-2799		Outbound	12/23/11 21:15:18	12/23/11 21:15:18	0	524
(843) 323-2799	(843) 324-9264		Inbound	12/23/11 21:33:56	12/23/11 21:33:56	0	519
(708) 271-2637	(843) 324-9264		Inbound	12/23/11 21:54:05	12/23/11 21:54:05	0	521
(843) 735-3988	(11843) 324-9264	(843) 324-9264	Routed_Call	12/23/11 22:46:17	12/23/11 22:46:19	2	690
(843) 324-9264	(843) 735-3988	(843) 735-3988	Outbound	12/23/11 22:48:17	12/23/11 22:48:31	14	690
(843) 324-9264	(843) 735-3988	(843) 735-3988	Outbound	12/23/11 22:48:55	12/23/11 22:49:19	24	690
(843) 324-9264	(843) 735-3988	(843) 735-3988	Outbound	12/23/11 22:49:25	12/23/11 22:50:07	42	690
(843) 324-9264		(843) 735-3988	Outbound	12/23/11 22:54:08	12/23/11 22:54:10	2	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/23/11 22:54:23	12/23/11 22:58:44	261	690
(843) 453-6075	(11843) 324-9264	(843) 324-9264	Routed_Call	12/23/11 22:56:13	12/23/11 22:56:21	8	690
(708) 271-2637	(843) 324-9264		Inbound	12/23/11 23:03:21	12/23/11 23:03:21	0	531

SPRINT NEXTEL CORPORATION
CDMA Network

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Call Records for PTN 8433249264

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CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	REPOLL_#
(708) 271-2637	(11843) 324-9264	(843) 324-9264	Routed_Call	12/23/11 23:04:23	12/23/11 23:04:37	14	690
(708) 271-2637	(11843) 324-9264	(843) 324-9264	Routed_Call	12/23/11 23:05:20	12/23/11 23:05:25	5	690
(646) 477-0292	(843) 324-9264		Inbound	12/23/11 23:17:55	12/23/11 23:17:55	0	529
(843) 425-4083	(843) 324-9264		Inbound	12/23/11 23:24:34	12/23/11 23:24:34	0	519
(708) 271-2637	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:01:50	12/24/11 0:01:54	4	690
(843) 324-9264	(646) 477-0292		Outbound	12/24/11 0:08:12	12/24/11 0:08:12	0	529
(646) 477-0292	(843) 324-9264		Inbound	12/24/11 0:08:41	12/24/11 0:08:41	0	533
(843) 324-9264	(708) 271-2637		Outbound	12/24/11 0:09:36	12/24/11 0:09:36	0	297
(646) 477-0292	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:13:33	12/24/11 0:13:56	23	690
(708) 271-2637	(843) 324-9264		Inbound	12/24/11 0:14:59	12/24/11 0:14:59	0	532
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/24/11 0:16:07	12/24/11 0:18:50	163	690
(843) 324-9264	(708) 271-2637		Outbound	12/24/11 0:16:34	12/24/11 0:16:34	0	532
(708) 271-2637	(843) 324-9264		Inbound	12/24/11 0:17:51	12/24/11 0:17:51	0	531
(843) 324-9264		(843) 934-1204	Outbound	12/24/11 0:19:25	12/24/11 0:19:55	30	690
(843) 324-9264	(843) 425-4083	425-4083	Outbound	12/24/11 0:20:10	12/24/11 0:21:00	50	690
(843) 324-9264	(843) 425-4083	425-4083	Outbound	12/24/11 0:21:05	12/24/11 0:21:49	44	690
(843) 324-9264		425-4083	Outbound	12/24/11 0:22:01	12/24/11 0:22:03	2	690
(843) 324-9264	(843) 636-2811	(843) 636-2811	Outbound	12/24/11 0:22:20	12/24/11 0:22:58	38	690
(843) 471-5757	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:22:37	12/24/11 0:22:55	18	690
(843) 324-9264		(843) 636-2811	Outbound	12/24/11 0:23:04	12/24/11 0:23:14	10	690
(843) 324-9264	(843) 425-7309	(843) 425-7309	Outbound	12/24/11 0:23:20	12/24/11 0:24:48	88	690
(843) 636-2811	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:23:51	12/24/11 0:27:20	209	690
(843) 471-5757	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:24:36	12/24/11 0:24:44	8	690
(843) 425-7309	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:26:16	12/24/11 0:26:23	7	690
(843) 471-5757	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:27:02	12/24/11 0:27:07	5	690
(843) 324-9264	(843) 901-2559	(843) 901-2559	Outbound	12/24/11 0:27:30	12/24/11 0:28:09	39	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/24/11 0:28:13	12/24/11 0:29:31	78	690
(843) 901-2559	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:29:26	12/24/11 0:29:44	18	690
(843) 324-9264	(843) 636-2811	(843) 636-2811	Outbound	12/24/11 0:29:49	12/24/11 0:31:45	116	690
(843) 425-7309	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:30:40	12/24/11 0:30:46	6	690
(843) 324-9264	(708) 271-2637		Outbound	12/24/11 0:34:18	12/24/11 0:34:18	0	519

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CDMA Network

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Call Records for PTN 8433249264

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CALLING_NBR	CALLED_NBR	DIALED_DIGITS	M_R_#	START_DATE	END_DATE	DURATION (SEC)	REPOLL_#
(843) 471-5757	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:37:48	12/24/11 0:38:05	17	690
(708) 271-2637	(843) 324-9264		Inbound	12/24/11 0:38:08	12/24/11 0:38:08	0	297
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/24/11 0:38:10	12/24/11 0:40:34	144	690
(843) 324-9264	(708) 271-2637		Outbound	12/24/11 0:39:04	12/24/11 0:39:04	0	528
(708) 271-2637	(843) 324-9264		Inbound	12/24/11 0:39:56	12/24/11 0:39:56	0	298
(843) 324-9264	(843) 636-2811	(843) 636-2811	Outbound	12/24/11 0:41:47	12/24/11 0:42:33	46	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/24/11 0:42:42	12/24/11 0:43:42	60	690
(843) 636-2811	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:43:11	12/24/11 0:43:43	32	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/24/11 0:43:47	12/24/11 0:48:22	275	690
(843) 636-2811	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:45:40	12/24/11 0:46:02	22	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:48:18	12/24/11 0:48:28	10	690
(843) 324-9264		(843) 636-2811	Outbound	12/24/11 0:48:25	12/24/11 0:48:33	8	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:48:34	12/24/11 0:48:40	6	690
(843) 636-2811	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:48:49	12/24/11 0:49:57	68	690
(843) 324-9264	(843) 471-5757	(843) 471-5757	Outbound	12/24/11 0:50:00	12/24/11 0:54:13	253	690
(646) 477-0292	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:50:35	12/24/11 0:50:40	5	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:50:58	12/24/11 0:51:04	6	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:51:36	12/24/11 0:51:42	6	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:52:14	12/24/11 0:52:21	7	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:52:28	12/24/11 0:52:34	6	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:52:45	12/24/11 0:52:51	6	690
(646) 477-0292	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:52:46	12/24/11 0:52:51	5	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:53:21	12/24/11 0:53:27	6	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:54:00	12/24/11 0:54:06	6	690
(843) 636-2811	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 0:54:13	12/24/11 0:54:15	2	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:54:48	12/24/11 0:54:55	7	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:55:39	12/24/11 0:55:46	7	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:56:25	12/24/11 0:56:32	7	690
(843) 636-2811	(11843) 324-9264	(843) 324-9264	Routed_Call	12/24/11 0:57:12	12/24/11 0:57:20	8	690
(843) 324-9264	(843) 636-2811	(843) 636-2811	Outbound	12/24/11 0:58:58	12/24/11 1:01:01	123	690
(843) 636-2811	(843) 324-9264	(843) 324-9264	Inbound	12/24/11 1:02:43	12/24/11 1:06:04	201	690

SPRINT NEXTEL CORPORATION
CDMA Network

Key to Understanding CDMA Call Detail Reports

- Calling number:** This column reflects the number placing the call (the individual who initiated the call). If the call is an outgoing call, this will be the Sprint PCS target number.
- Called number:** This column reflects the number actually called. In most cases this number will be the same as the number in the "Dialed Digits" column. If the number has been forwarded, or if there is a routing number, then this will be reflected. If the number has a 11 in front of the area code, that means the call rolled to voicemail and was NOT answered by the customer.
- Dialed digits:** This column reflects the digits that the caller enters into the keypad of the phone. If the call is an incoming call, this will be the Sprint PCS target number.
- M_R #:** Mobile Role (Type of Call). Listed as outgoing, incoming, routed call or undetermined.
- Start Date:** Date and time the call was initiated.
- End Date:** Date and time the call was ended.
- Duration:** Duration of call, in seconds.
- Repoll number:** This reflects which phone switch handled the call.
- First Cell:** Specific cell site in which the call was initiated. The **first digit** reflects the sector. The **last 3-4 digits** represent the site number. (See attached "Three Sector Layout" page for sector orientation.) For example, if the number in the column reads 2083, the cell site is 083 and the sector is 2.
- Last Cell:** Specific cell site in which the call was ended. The **first digit** reflects the sector. The **last 3-4 digits** represent the site number.. (See attached "Three Sector Layout" page for sector orientation.) For example, if the number in the column reads 2083, the cell site is 083 and the sector is 2.

Key to Understanding CDMA Call Detail Reports, cont.

*Routed calls come in two main varieties. The first, also known as Temporary Local Directory Number (TLDN). They may be considered to be bridge/router numbers to complete a call. The second is when a call is not answered, but is routed to voicemail. Calls routed straight to voicemail will also have an "11" before the number indicated in the "Called_Nbr" column. For handsets using visual voicemail, these numbers may replace the "11" in the called number column: (800) 877-2400, (866) 677-8204, (866) 222-2604, and (877) 836-4746.

*The CDMA call detail report may indicate the sending and receipt of text messages and e-mail. While not flagged as text messages, the line will indicate no duration, the dialed digits column will either be blank or will show an e-mail address, and the repoll column may contain one of the following numbers: 13; 291-298; 347; 506-533; 681-684; 686-688.

* On the CDMA network, Sprint maintains Gateway and SWAT (Soft Wireless Access Tandem) networks in areas where there are large Sprint customer populations. These provide the required extra space that helps Sprint maintain all of the calls. When a call moves through a gateway or SWAT cell-site information is not retained and is not recoverable.

*Please be advised that as of October 12, 2010, all CDMA CDR (Call Detail Record) text message time stamps are kept in Central time zone. Records prior to October 12, 2010 are either in Central or Eastern time zone. Sprint is unable to determine which time zone is reflected in records older than October 12, 2010.

739 739

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

In M. B. B. B.

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002499

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801187

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: *[Redacted]*

B/M

Indictment for

Armed Robbery

§16-11-0330(A)

CDR: 0139

12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

[Handwritten initials]

[Handwritten initials]

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

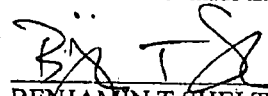
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, while armed with a deadly weapon; to wit: a pistol, take and carry away personal property of Riley Kemp from or in the immediate presence of Riley Kemp, described as follows: a wallet, with intent to deprive Riley Kemp of possession by use of force, threats or intimidation, in violation of §16-11-0330(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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

741
741

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

J. M. Foye

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002500

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

R. D. Foye
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

Ann
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801188

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Armed Robbery

§16-11-0330(A)

CDR: 0139

12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

[Signature]

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

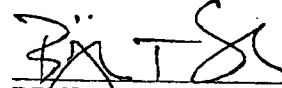
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Vincent Riley from or in the immediate presence of Vincent Riley, described as follows: a cell phone battery, with intent to deprive Vincent Riley of possession by use of force, threats or intimidation, in violation of §16-11-0330(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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

743 743

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Wm. Fogle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002501

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

W.D. Peterson
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

J. Davis
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801189

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]
B/M

Indictment for

Armed Robbery

§16-11-0330(A)
CDR: 0139

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

12 JUL 18 PM 12:12

FILED

HF

201

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

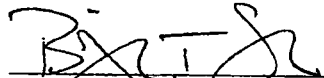
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Armed Robbery

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, while armed with a deadly weapon, to wit: a pistol, take and carry away personal property of Gerlinda Williams from or in the immediate presence of Gerlinda Williams, described as follows: United States Currency, with intent to deprive Gerlinda Williams of possession by use of force, threats or intimidation, in violation of §16-11-0330(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.


BENJAMIN T. SHELTON
ASSISTANT SOLICITOR

745 745

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

In a file

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002494

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

DD Peters
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

Amey
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801190

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

12 JUL 18 PM 12:12

FILED

JPH

JPH

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Gerlinda Williams, without authority of law, in violation of §16-03-0910 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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

747
747

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

In M. Foy

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002495

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

DD Peters
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801191

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Kidnapping

§16-03-0910

CDR: 0095

12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED *[Signature]*

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

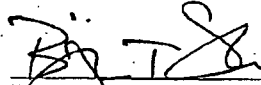
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Riley Kemp, without authority of law, in violation of §16-03-0910 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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

749 749

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

David N. Fogle

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002496

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

DD Peters
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

Am
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801192

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

8/2/12

✓ 8/2/12

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

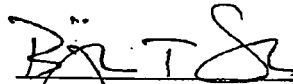
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Vincent Riley, without authority of law, in violation of §16-03-0910 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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

751
751

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

David M. Foye

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002497

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

Truep 1211

DD Peters
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

David M. Foye
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801193

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]
B/M

Indictment for

Kidnapping

§16-03-0910
CDR: 0095

12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JP

JP

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

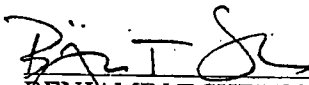
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Kevin Lane, without authority of law, in violation of §16-03-0910 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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

753
753

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Inv. A. Frye

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002498

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

DD Peters
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

Arms
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801194

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Kidnapping

§16-03-0910

CDR: 0095

12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

FILED

JGH

11/17

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

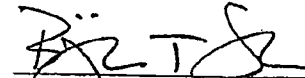
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Kidnapping

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one, Daniel Aumen, without authority of law, in violation of §16-03-0910 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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Tim A. Fogel

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002505

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

*True Bill**R. D. Peters*
Foreperson of Grand JuryDate: *7/18/12*

VERDICT

*Guilty**Smay*
Foreperson of Petit Jury*8 May 14*
Date:

INDICT

DOCKET NO. 2012GS0801195

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

VS.

DONTÉ SAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Burglary 2nd Degree

§16-11-0312(B)

CDR: 0086

12 JUL 18 PM 12:12
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.FILED *JH**8/17*

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

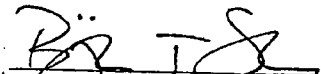
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Burglary 2nd Degree

That DONTE SAMAR BROWN did in Berkeley County, on or about December 24, 2011, enter without consent and with the intent to commit a crime therein, the Zaxby's building located at 433 St. James Avenue, Goose Creek, South Carolina, and the defendant did enter the building in the nighttime while armed with a deadly weapon, in violation of §16-11-0312(B) 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.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

757 757

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

John M. Foy

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002508

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

W.D. Peters
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Guilty

Amos
Foreperson of Petit Jury

8 May 14
Date:

INDICT

DOCKET NO. 2012GS0801196

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Criminal Conspiracy

§16-17-410

CDR: 0049

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

12 JUL 18 PM 12:12

FILED

JH

JH

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

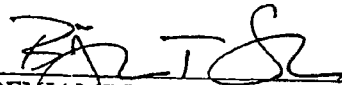
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Criminal Conspiracy

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, combine with another, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: to commit Armed Robbery, in violation of §16-17-410, Code of Laws of South Carolina, (1976, as amended).

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


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Tom M. Fogel

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002507

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

*True Bill**AK Peters*
Foreperson of Grand JuryDate: *7/18/12*

VERDICT

*Not Guilty**AMP*
Foreperson of Petit Jury*8 May 14*
Date:

INDICT

DOCKET NO. 2012GS0801197

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTÉ SAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Possession of a Weapon During The
Commission of a Violent Crime

§16-23-0490

CDR: 0549

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

12 JUL 18 PM 12:12

FILED *JH**AMP*

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

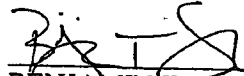
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Possession of a Weapon During The Commission of a Violent Crime

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, possess a firearm, or visibly display what appeared to be a firearm, during the commission, or attempted commission of a violent crime, to wit: Kidnapping, and/or Armed Robbery, and or Burglary 2nd Degree-Violent, in violation of §16-23-0490 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.


BENJAMIN T. SHELTON
ASSISTANT SOLICITOR

761
761

BTS2012-01-00047

WITNESSES

Goose Creek Police Department

Lawrence Foyler

AGENCY CASE NUMBER

20114950

ARREST WARRANT NUMBER

K002479

DATE OF ARREST

January 6, 2012

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date: *7/18/12*

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS0801198

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term

THE STATE

vs.

DONTE SAMAR BROWN

DOB: [REDACTED]

B/M

Indictment for

Attempted Murder

§16-03-0029

CDR: 3410

MARY F. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

12 JUL 18 PM 12:12

FILED

[Signature]

[Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

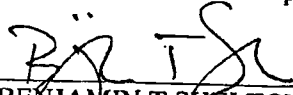
INDICTMENT

At a Court of General Sessions, convened on July 18, 2012 the Grand Jurors of Berkeley County present upon their oath:

Attempted Murder

That DONTE SAMAR BROWN did in Berkeley County, South Carolina, on or about December 24, 2011, with malice aforethought, either express or implied, attempt to kill the victim, Gerlinda Williams, to wit: the defendant did shoot the victim with a handgun during the commission of a robbery, in violation of §16-03-0029 of the South Carolina Code of Laws (1976) as amended.

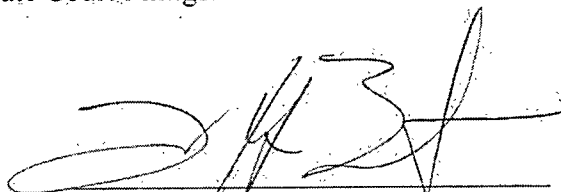
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BENJAMIN T SHELTON
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 21st, 2015



Tiffany L. Butler
Appellate Defender

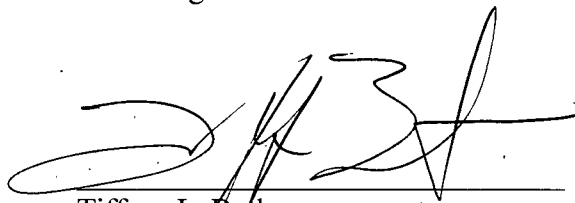
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

July 21st, 2015



Tiffany L. Butler
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED
JUL 21 2015
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Roger M. Young, Circuit Court Judge

 ORIGINAL

THE STATE,

RESPONDENT, **RECEIVED**

JUL 21 2015

V.

DONTE SAMAR BROWN,

SC Court of Appeals

APPELLANT

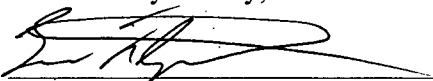
APPELLATE CASE NO. 2014-001082

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Donte Samar Brown #314818, at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472 on this 21st day of July, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of July, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.