

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Donald B. Hocker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN UPSON,

APPELLANT

APPELLATE CASE NO. 2014-000852

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT #1 - #14 (PHOTOS)

1 attentive to what goes on.

2 At this time I'm going to ask: Is there any
3 exceptions or objections to the preliminary charge from
4 the Court, from the State?

5 MR. SLOCUM: None from the State, Your Honor.

6 THE COURT: From the defense?

7 MR. SMITH: Nothing, Your Honor.

8 THE COURT: Okay. Thank you very much.

9 Now the lawyers will make their opening arguments
10 to you. And they're not evidence in the case. It's just
11 their statement of what they believe their respective
12 positions to be, and what they believe the evidence shall
13 be during the course of this trial.

14 But it is not evidence. It's just an opening
15 statement as it is called. So we'll hear from the State
16 first. Solicitor?

17 MR. SLOCUM: Thank you, Your Honor. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. SLOCUM: Mr. Smith, Mr. Gibbons, ladies and
21 gentlemen.

22 November 27th, 2013. Last November. The day
23 before Thanksgiving, it was a Wednesday, around 10
24 o'clock, two men arm robbed the Captain D's here on
25 Whiskey Road, a couple miles down the road.

1 The State's about to show you evidence that one of
2 those individuals was John Upson. This is John Upson's
3 day in court. And I don't want you to lose sight of that
4 throughout the case. We're here for John Upson and John
5 Upson alone.

6 You're going to hear evidence that's going to show
7 that these two men armed with a handgun, used that handgun
8 to force the employees inside Captain D's to give them
9 money. You're going to hear how that handgun was used,
10 how it was put to the back of one of those individual's
11 head.

12 You're going to hear, evidence is going to show
13 you, of how law enforcement came to understand, to know it
14 was John Upson that did this.

15 Mr. Upson is represented by Mr. Andy Smith. And he
16 is a fine defense attorney. And it's his job to advocate
17 for his client, just as it is my job to advocate for the
18 State.

19 I ask you to stay focused on John Upson in this
20 case. As I just said earlier, this is John Upson's day in
21 court. These witnesses that I just discussed, that I
22 just brought up, are going to tell you their story of what
23 happened that night a little after 10 o'clock on the 27th
24 of November. They're going to sit right up there and tell
25 you what all happened. I want you to listen to their

1 testimony. Pay attention. I ask you as jurors to pay
2 attention.

3 And your job is to judge the facts in this case.
4 My job is to put up the evidence. It's your job to be the
5 judge of the facts. It's the Judge's job to give you the
6 law.

7 Now in being the judges of the facts, I ask you to
8 use your common sense. You do it everyday, at the store,
9 at work, at home, using your common sense to judge the
10 credibility and the believability of what you hear and
11 what you see.

12 An example of that would be one of your young'uns
13 at home coming up with chocolate on their hands, on their
14 face. And, did you get in the cookie jar? Did you get in
15 the chocolate? No. Well, right then you can judge that
16 young'un right in front of you. And although you didn't
17 see them eating chocolate, you can surmise that they got
18 into the chocolate.

19 And we call that circumstantial evidence. It's
20 one type of evidence. Circumstantial and direct. Direct
21 evidence is something you see, touch. You feel it, you
22 hear it.

23 Circumstantial is something that based on what you
24 know you can piece together to get you to a certain
25 ending. We're in a room right now. No windows. Can't

1 see outside. We don't know what's going on outside.
2 Three people walk in that back door. The first two are
3 holding wet umbrellas. The third one is soaking wet.
4 Now, we don't know what's happening outside. We don't see
5 that it's raining outside, but based on those two wet
6 umbrellas and the third person being soaking wet, you can
7 piece it all together to know that it's raining outside
8 even though you don't see it direct, touch it, smell it,
9 hear it, feel it. You can use your common sense and your
10 ability to judge the credibility and the believability of
11 a witness to put those pieces together.

12 The State's going to show you how all these pieces
13 fit together, how John Upson along with another
14 individual -- now that other individual, it's not his day
15 in court today. This is John Upson's day. But on
16 November 27, 2013, John Upson along with another
17 individual by use of force and intimidation took personal
18 property away from Captain D's, that being money, while
19 being armed with a deadly weapon, with a gun.

20 That's armed robbery. It's simple. It's robbing
21 someone while being armed with a deadly weapon.

22 We're also going to show you how John Upson along
23 with another individual -- again, I ask you not to lose
24 sight of John Upson. This is his day in court. How John
25 Upson seized or confined Jameshia Alston and Scott Hall

1 without legal authority to do so. Kidnapping. That's
2 what kidnapping is.

3 Now the Judge just told you, he's the one that
4 gives you the law. And what I just told you, if the
5 Judge's law differs in any way, shape or form, I ask you
6 to go with what he tells you to do.

7 Now the first sentence of those charges are "John
8 Upson along with another." Another portion of our law in
9 South Carolina we have the hand of one is the hand of all.
10 That means that if one person does something, the second
11 person is just as guilty as the other person. They both
12 acted together. They both did it together. Just
13 because one person, say, had the gun, the other person did
14 not doesn't mean they're not both guilty of armed
15 robbery.

16 You're going to hear testimony John Upson didn't
17 have a gun. It doesn't mean he's not guilty of armed
18 robbery because of our law, the hand of one is the hand of
19 all. If one person does something the other person's just
20 as guilty.

21 Thank you all for being here, for your time. I
22 ask you to pay attention. I ask you to, at the end of
23 the day once you see all this evidence, once you hear all
24 of the testimony, that you will be firmly convinced in the
25 Defendant's guilt.

1 And the State has the burden of proving that. We
2 have the burden to present you evidence to prove to you
3 beyond a reasonable doubt the Defendant's guilt. Not all
4 doubt, but what's reasonable, what makes sense. Using
5 your common sense, what is reasonable. And all that is is
6 being firmly convinced in the Defendant's guilt.

7 Thank you. And I ask at the end of this trial you
8 return a verdict of guilty.

9 THE COURT: Thank you, Solicitor. Mr. Smith?

10 MR. SMITH: Thank you, Your Honor. May it please
11 the Court.

12 Mr. Solicitor, Mr. Molony.

13 Good afternoon. You're here today as a jury for
14 12, 14 individuals here, and you're in a tough situation.
15 I don't envy your spot. You're where the rubber meets the
16 road in our republic. Okay.

17 This is where it happens. This is where, as the
18 Judge explained, you have the power to prevent
19 governmental overreach, government abuses. And on the
20 other end of that spectrum you have the power to prevent
21 mistakes that come from miscommunications,
22 misunderstandings, mistakes. In this room a mistake means
23 a man goes to prison. A mistake is a big deal in this
24 room. You have the power as a jury to prevent that
25 mistake.

1 In this case the State just spent a few minutes
2 talking about how there are going to be holes in their
3 case and how you're going to have to try to fill in the
4 holes of the case for the State. Okay.

5 What I want you to worry about is what you think
6 about the evidence you're going to hear. You're going to
7 hear a lot of evidence. Some of it may sound complex.
8 Some of it's going to be real simple. This isn't a really
9 difficult case. Some of it's going to be very simple.
10 There's a little bit of nuances to it.

11 We've had our heads dug real deep into it for a
12 while. We're going to try to help make sure that you
13 understand everything clearly. Okay?

14 The State is going to try to show, like they just
15 said, that John Upson, the man sitting right there, the
16 man that is presumed innocent in your eyes and the eyes of
17 the Court, in the eyes of the State, that man is presumed
18 innocent. They're going to try to prove that he was
19 involved with an armed robbery and a kidnapping.

20 Now that's a difficult burden for them to carry.
21 They have to convince you beyond a reasonable doubt.
22 Right now if you're looking at the scales of justice, this
23 is John Upson, in favor of John Upson. It would tip like
24 this. It would tip really heavy because he's got this
25 heavy presumption of innocence. Okay?

1 For this -- for you to return a verdict of guilty,
2 the State has to convince you beyond a reasonable doubt to
3 bring up the scales, not to be even, but to outweigh,
4 it's not to be -- you have to be convinced beyond a
5 reasonable doubt. Each of you.

6 We always talk about a verdict being, the meaning
7 of the word being "to speak the truth." Okay? And for a
8 true verdict to come out of this jury, it has to be the
9 truth of what you believe individually.

10 It has to be the truth of what you believe. What
11 you believe. What you believe. It has to be the truth of
12 what you believe individually for it to be a true verdict
13 of the jury.

14 You're also going to hear some other things that
15 we're going to talk about, that John Upson wasn't there,
16 that he was elsewhere and among others. You'll get to
17 hear about that. We just want you to be considerate of
18 the people you're going to listen to, pay attention.
19 You're going to hear things that are going to stick out to
20 you.

21 What I want you to do is, those things are for
22 particular a reason. They may mean something to you but
23 not mean something to somebody else. You're going to hear
24 these things. And when you hear them, just take them and
25 set them aside. Put them in a little bag that you can

1 take with you back into the jury room. You're going to
2 hear things that are beneficial to John Upson. You take
3 those and put them in a bag. You may hear things that are
4 beneficial to the State. You take those and put them in a
5 bag. Some things are going to be good for the State, some
6 things may be beneficial for John Upson. You're going to
7 take that back with you and you're all going to compare.

8 Okay.

9 But you need to take note of those things so when
10 you go back into that jury room that you've done, you've
11 honored your oath, that you've honored the system, that
12 you've honored what we're here to do, and that you have
13 something to talk about, that you paid attention, that you
14 held onto these things and considered them.

15 When it all comes down to the end, I'm going to ask
16 you to just come back in with a true verdict, a verdict
17 that represents what each of you individuals believe, what
18 each of you individually is convinced of or not convinced
19 of.

20 And I hope that that verdict will be a verdict of
21 not guilty.

22 Thank you.

23 THE COURT: Thank you, Mr. Smith. The State ready
24 to proceed?

25 MR. SLOCUM: We are, Your Honor.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 THE COURT: Call your first witness, please.

2 MR. SLOCUM: The State calls Jameshia Alston.

3 JAMESHIA ALSTON, having been duly sworn, was
4 examined and testified as follows:

5 THE CLERK: Have a seat in the witness box. State
6 your full name for the Court and spell your last, please.

7 THE WITNESS: Jameshia Brenae Alston, A-L-S-T-O-N.

8 DIRECT EXAMINATION

9 BY MR. SLOCUM:

10 Q. Ms. Alston, good afternoon.

11 A. Good afternoon.

12 Q. Please tell the jury where you are from.

13 A. Aiken, South Carolina.

14 Q. And how long have you lived in Aiken?

15 A. All my life, basically.

16 Q. Are you in school?

17 A. Yes, sir.

18 Q. Where are you in school?

19 A. Twelfth grade at South Aiken High School.

20 Q. And will you graduate in May?

21 A. Yes, sir.

22 Q. What are your plans after school?

23 A. To join the Army.

24 Q. When are you going to do that?

25 A. July 15th.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. And any secondary school after that?

2 A. I want to go to Lander University to take up
3 nursing, night classes.

4 Q. Where do you work?

5 A. Captain D's.

6 Q. And where is Captain D's located?

7 A. In Aiken, South Carolina, on Whiskey Road.

8 Q. Is that Aiken County?

9 A. Yes, sir.

10 Q. And did you work at Captain D's on November 27,
11 2013?

12 A. Yes, sir.

13 Q. Let's go back to that day, if you would. Where
14 were you on November 27th, 2013, around ten o'clock?

15 A. I was counting my money at the back of the store at
16 a desk. At first I didn't really pay it attention that
17 someone was coming into the store with an armed robbery,
18 like, whatever. And I stood up and my reaction was, "Oh
19 my God, I'm going to die."

20 Q. Now you said you were counting your money. What
21 does that mean?

22 A. I was counting my drawer down to 150. I do this
23 every night after I close or after my shift was over. I
24 count my drawer down to 150 and I set my drawer to the
25 printer and I count my deposit out.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. When you say "your drawer," is that a cashier
2 drawer?

3 A. Yes, sir.

4 Q. You're a cashier up front?

5 A. Yes, sir.

6 Q. Had you all closed for the day?

7 A. Yes, sir.

8 Q. I'm sorry. I didn't mean to cut you off. What
9 happened next?

10 A. Okay. After that I was counting my money whenever
11 they came and I said, "Oh my God, I'm going to --

12 THE COURT: You need to speak up, ma'am, a little
13 louder, please.

14 THE WITNESS: The first boy asked Scott to walk him
15 to the safe. And the other boy, he told me to stay in the
16 back, and he told me not to go anywhere. And I was just,
17 like, "I want to go home." And he was, like, "No, stay
18 right there."

19 So I stayed there, whatever. And I didn't hear
20 what else was going on in the front.

21 So he walked me over to the, by the cooler and I
22 stood there for a minute. And then he said, "Get inside
23 the cooler." So I got inside the cooler. And then they
24 brought the other two boys back, but before that they
25 searched our pockets and stuff for cell phones and

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 anything else that we had.

2 Q. Okay. Back you up just a little bit. Right when

3 they first came in the door --

4 A. Yes, sir.

5 Q. -- did one of them have a gun?

6 A. Yes, sir.

7 Q. What did that -- what was that individual doing

8 with the gun?

9 A. He had it to the back of Scott's head.

10 Q. Who was Scott?

11 A. My fellow employee.

12 Q. He was working with you that night?

13 A. Yes, sir.

14 Q. Okay. And the individual who had the gun to the

15 back of Scott's head, where did they go?

16 A. To the front of Captain D's.

17 Q. Where were you?

18 A. I was -- stayed in the back by the file cabinet at

19 the time.

20 Q. Were you alone?

21 A. Yes, sir. With John Upson.

22 Q. With who?

23 A. John Upson.

24 Q. Could you please point him out?

25 A. Right here. The blue shirt with the red tie.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 MR. SLOCUM: Your Honor, please let the record
2 reflect that she pointed to the Defendant.

3 THE COURT: Okay. So noted for the record.

4 BY MR. SLOCUM:

5 Q. Now you said you were in the back with John Upson.
6 Did you know it was John Upson at this time?

7 A. No, sir. I didn't.

8 Q. Okay. When did you come to learn it was John
9 Upson?

10 A. I went home that night after the robbery and I was
11 just, like, on the Internet doing some research. And one
12 of my co-workers that worked with me is friends with him
13 because I had saw him two days before the robbery, he came
14 inside of Captain D's.

15 Q. The Defendant. You had seen the Defendant two days
16 before the robbery?

17 A. Yes, sir.

18 Q. Okay.

19 A. So, and it's my job to remember my customers if I
20 take their order to remember their faces. And so I
21 remembered his face, but I didn't know his name at the
22 time.

23 Q. Did he order anything that night?

24 A. He ordered a Sprite, a large Sprite to drink, the
25 two days before the robbery.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. And you were the cashier?

2 A. Yes, sir. And I looked and I saw his face and I
3 looked at him and, like I said, it's my job to remember my
4 customers. So that's what I did. And I remembered the
5 face.

6 So I got home and I was looking on the Internet and
7 I saw pictures of him on one of my co-worker's page and I
8 jumped up from the computer because I knew I had saw this
9 person and I knew that's who it was with me in the back
10 when the robbery happened.

11 Q. Okay. When they first came in, the two
12 individuals that were doing the robbery, what were they
13 wearing?

14 A. All black. Like, they had on black hoodies, black
15 pants. They had, like, surgical gloves on, and bandanas.

16 Q. Bandanas where?

17 A. Right here (indicating), below their nose down.

18 Q. Was there a portion of their face exposed?

19 A. Only their eyes. Well, I only saw the second
20 boy's. Only his eyes and his nose were showing.

21 Q. When you saw the second boy, who are you referring
22 to?

23 A. John Upson.

24 Q. How did you know it was John Upson?

25 A. Because, like I say, it's my, you know, job to

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 remember my customers. So, and I remember his eye. Like,
2 that's the thing that caught me, his eye and his bald
3 head. And I was, like, I know this person, but I don't
4 know his name.

5 Q. So you weren't aware of his name at the time of the
6 incident?

7 A. No, sir.

8 Q. You did discover it later, though; right?

9 A. Yes, sir. I went home and I looked it up.

10 Q. About what time did this all happen?

11 A. At 10:15.

12 Q. Well, why do you say 10:15?

13 A. Because I was counting my money right after we
14 close, and then it felt like about 10:15. That's how
15 long.

16 Q. Do you close at 10?

17 A. Yes, sir.

18 Q. And do you always count your money after you close?

19 A. Yes, sir.

20 Q. And what do you do with that money?

21 A. I put it in the safe in the front, but I didn't get
22 a chance to get it to the safe fast enough.

23 Q. Do you count your money each night?

24 A. Yes, sir. Every night that I work I count my
25 register down to 150.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. And when you mean -- "count it down to 150," what
2 does that mean?

3 A. I take my change and I count. Like, I add it all
4 up and I stop at 150. Then I take the rest of the money
5 out and I make out my deposit.

6 Q. Okay.

7 A. And I count that money and put it in the drop box.
8 But, like I said, I didn't get that far that night.

9 Q. Okay. Now, you put the deposit -- you said you
10 have a deposit and a cash drawer. Where does each money
11 go?

12 A. In the safe.

13 Q. They both go in the safe?

14 A. Yes, sir.

15 Q. Did the man who was in back with you say anything
16 to you?

17 A. He was -- I was, like, "Can I go home?" And he
18 was, like, "No. Stand right here. Don't move." And I
19 was just, I was scared for my life.

20 Q. Did you feel like you could leave at any time?

21 A. No, sir.

22 Q. Let's go back to the gun. Did you see what color
23 the gun was?

24 A. It was black.

25 Q. Did it appear to be a real gun to you?

JAMESHIA ALSTON - DIRECT BY SLOCUM

- 1 A. Yes, sir.
- 2 Q. Why do you say that?
- 3 A. Because the first boy -- it was heavy to hold up.
- 4 Like, you could tell there was weight to the gun.
- 5 Q. The individuals, what, if anything, did you notice
- 6 about their demeanor when they walked in?
- 7 A. They were forceful.
- 8 Q. Were they yelling?
- 9 A. Not yelling, but their voice was more demanding
- 10 than calm.
- 11 Q. Were you afraid?
- 12 A. Yes, sir.
- 13 Q. Who put you in the freezer, stand-up refrigerator?
- 14 A. John Upson.
- 15 Q. About how long were you in the refrigerator?
- 16 A. It felt like 30 minutes to me.
- 17 Q. Were you upset at this time?
- 18 A. Yes, sir.
- 19 Q. Did you ever get out of the refrigerator?
- 20 A. No, sir. I came by after the robbery was over.
- 21 Q. Not during the robbery?
- 22 A. No, sir.
- 23 Q. About how long after that you said?
- 24 A. Thirty minutes.
- 25 Q. Did you speak to law enforcement when they showed

JAMESHIA ALSTON - DIRECT BY SLOCUM

- 1 up that night?
- 2 A. Yes, sir.
- 3 Q. What did you tell them?
- 4 A. I told them everything that happened at the store.
- 5 And they asked me to give my statement, and I wrote it
- 6 down for them or whatever. And I told them that I had
- 7 recognized one of the guy's faces but I didn't know his
- 8 name at the time.
- 9 Q. You're referring to the Defendant?
- 10 A. Yes, sir.
- 11 Q. About how long after the robbery did you discover
- 12 -- did you see that picture and discover it was John
- 13 Upson?
- 14 A. About an hour after I was at home. And I was
- 15 looking on the Internet and then I jumped up because I saw
- 16 his face and I knew that was him, like.
- 17 Q. Is there any doubt in your mind who it was?
- 18 A. It was him.
- 19 Q. Who did you send -- or, what did you do with those
- 20 pictures?
- 21 A. I e-mailed them to Detective Royster.
- 22 Q. The police officer?
- 23 A. A detective. Yes, sir.
- 24 Q. How long have you been at Captain D's working?
- 25 A. For two years.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. Do you know the phone number at Captain D's?

2 A. [REDACTED].

3 MR. SLOCUM: Permission to approach, Your Honor?

4 THE COURT: Certainly.

5 BY MR. SLOCUM:

6 Q. Ms. Alston, I'm handing you what's been previously
7 marked as State's Exhibits Six, Seven, Eight, Nine, 13,
8 and 14. Would you please take a look at these?

9 A. Yes, sir.

10 Q. Do you recognize those pictures?

11 A. Yes, sir.

12 Q. How do you recognize them?

13 A. That's where I work. That's my job.

14 Q. And have these pictures -- what about 13 and 14,
15 how do you recognize those?

16 A. That's the guy that I saw in the back of the store
17 with me that day we got robbed.

18 Q. Do these pictures accurately depict and reflect the
19 store you work at in the two pictures you sent law
20 enforcement on November 27th, 2013?

21 A. It is.

22 Q. Have they been changed or altered in any way,
23 shape, or form?

24 A. No, sir.

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

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 moves to admit Exhibit Six, Seven, Eight, Nine, 13 and 14
2 into evidence.

3 THE COURT: What says the defense?

4 MR. SMITH: Without objection, Your Honor.

5 MR. SLOCUM: Your Honor, at this time may the
6 witness step down so that we may publish these to the
7 jury?

8 THE COURT: Sure.

9 (State's Exhibit Nos. 6, 7, 8, 9, 13 and 14,
10 photographs, received into evidence.)

11 THE COURT: Madam Witness, I'm going to ask you to
12 speak up very loud. You're going to be facing away from
13 the court reporter, and she'll need to take down
14 everything you say.

15 THE WITNESS: Yes, sir.

16 THE COURT: Thank you.

17 THE WITNESS: You're welcome.

18 BY MR. SLOCUM:

19 Q. This is State's Exhibit Six. 'Can you please tell
20 the jury what this is we're looking at?

21 A. This is my work station where I count my money down
22 every night.

23 Q. Is this where you were when the robbery occurred?

24 A. Yes, sir.

25 Q. State's Exhibit Seven, what are we looking at here?

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 A. This is the cooler in the back of Captain D's.
2 Q. Is this where you were --
3 A. That's where I --
4 Q. -- forced to go into?
5 A. Yes, sir.
6 Q. State's Exhibit Eight, what are we looking at
7 here?
8 A. That's the inside of the cooler in the back of
9 Captain D's.
10 Q. State's Exhibit Nine?
11 A. And that's how it was when they closed the door.
12 Q. The same cooler?
13 A. Yes, sir.
14 Q. With the door closed?
15 A. Yes, sir.
16 Q. State's Exhibit, next, 11 -- 13. State's Exhibit
17 13, Jameshia, what is that?
18 A. The guy that was in the back with me the day of the
19 robbery.
20 Q. The man that told you you couldn't leave?
21 A. Yes, sir.
22 Q. The man that put you in the cooler?
23 A. Yes, sir.
24 Q. Fourteen?
25 A. This is the same guy.

JAMESHIA ALSTON - DIRECT BY SLOCUM

1 Q. Are those two pictures, 13 and 14, the ones you
2 sent to law enforcement?

3 A. Yes, sir.

4 Q. That's all. You can have a seat back up there.

5 A. (Returns to witness stand.)

6 Q. Jameshia, a few more questions. What time did the
7 store close?

8 A. At 10 o'clock.

9 Q. You testified earlier that you were in the back
10 with a boy. When you say "boy", do you mean a man or a
11 child?

12 A. A man.

13 Q. The Monday before when the Defendant was in
14 there --

15 A. Yes, sir.

16 Q. -- did he do anything unusual while he was there?
17 Did you notice anything?

18 A. He took a picture of one of my co-workers, and I
19 thought that was real weird.

20 Q. And who was that co-worker?

21 A. William Keels.

22 Q. Whose Facebook page did you see the Defendant on?

23 A. William Keels'.

24 Q. Did you recognize the man that had the gun?

25 A. No, sir.

JAMESHIA ALSTON - CROSS BY SMITH

1 Q. Only the man who was in the back with you?

2 A. Yes, sir.

3 Q. Only the Defendant?

4 A. Yes, sir.

5 MR. SLOCUM: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. SLOCUM: Jameshia, thank you. Please answer
10 any questions Mr. Smith has for you.

11 THE WITNESS: You're welcome. Yes, sir.

12 THE COURT: Mr. Smith, cross-examination?

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Good afternoon, Jameshia.

16 A. Hello.

17 Q. Thanks for coming today.

18 A. You're welcome.

19 Q. Jameshia, I understand that night you were pretty
20 shook up, weren't you?

21 A. Yes, sir.

22 Q. And you were scared?

23 A. Yes, sir.

24 Q. You really wanted to catch -- you wanted to help
25 the police who had come in and robbed the place?

JAMESHIA ALSTON - CROSS BY SMITH

- 1 A. Yes, sir.
- 2 Q. You really wanted to help them out?
- 3 A. Yes, sir.
- 4 Q. So you told them everything you knew about who came
5 in that night?
- 6 A. Yes, sir.
- 7 Q. You told them what color hair they had?
- 8 A. I didn't say what color hair they had.
- 9 Q. No, you didn't. Did you talk about any facial
10 hair?
- 11 A. No, sir.
- 12 Q. Eyes?
- 13 A. Yes, sir.
- 14 Q. Height?
- 15 A. No, sir.
- 16 Q. Weight?
- 17 A. Yes, sir.
- 18 Q. Clothing?
- 19 A. Yes, sir.
- 20 Q. And did you tell them that this person had been in
21 Captain D's before?
- 22 A. Yes, sir.
- 23 Q. And you put all that stuff in your statement;
24 right?
- 25 A. Yes, sir.

JAMESHIA ALSTON - CROSS BY SMITH

1 Q. Let me show you something.

2 (Defendant's Exhibit No. 1, statement of 11-27-13,
3 marked for identification.)

4 BY MR. SMITH:

5 Q. Jameshia, I'm going to show you what's been marked
6 Defendant's Exhibit One.

7 A. Okay.

8 Q. I want you to take a look at that. Do you know
9 what that is?

10 A. A statement.

11 Q. A statement?

12 A. Yes, sir.

13 Q. Is that the statement you gave police that night?

14 A. Yes, sir.

15 Q. Okay. Does it say anything about that -- in that
16 statement about what the suspects were wearing?

17 A. No, sir. It just states his weight, their weight.

18 Q. What did it say about their weight?

19 A. The heavyset boy stayed in the back with me and the
20 skinny boy walked Devin and Scott to the front after
21 retrieving their --

22 Q. Okay. What does it say about what clothes they
23 were wearing?

24 A. It doesn't say that, but I told that to the cops.

25 Q. And I'm just asking about your statement.

JAMESHIA ALSTON - CROSS BY SMITH

- 1 A. Yes, sir.
- 2 Q. Does it say anything in your statement about seeing
3 them in the store before?
- 4 A. No, sir.
- 5 Q. But you just told me that all of that stuff was in
6 your statement; didn't you?
- 7 A. I told that to the police, sir.
- 8 Q. But just a second ago you told me all that stuff I
9 was asking you about, you put in your statement to the
10 police?
- 11 A. Can you rephrase that?
- 12 Q. Just a second ago I asked you a series of
13 questions. Did you tell the police about height, weight,
14 hair color, clothing, if the man had been in the store
15 before. And you answered the questions. And I asked you
16 if you had put that in your statement to the police and
17 you told me yes.
- 18 A. I put the height and the size in there.
- 19 Q. You put the height?
- 20 A. The size and the weights.
- 21 Q. Skinny and?
- 22 A. Skinny and heavy.
- 23 Q. Skinny and heavy. That's height and weight.
- 24 Your Honor, I'd move to introduce into evidence
25 Defendant's Exhibit One as witness Jameshia Alston's

JAMESHIA ALSTON - CROSS BY SMITH

1 statement to the police that night.

2 THE COURT: What says the State?

3 MR. SLOCUM: Without objection.

4 THE COURT: All right. Without objection, will be
5 Defense Exhibit Number One.

6 (Defendant's Exhibit No. 1, Alston statement of
7 11-27-13, received into evidence.)

8 BY MR. SMITH:

9 Q. Now, Jameshia, the night that -- the night that you
10 say that John Upson was in the store --

11 A. Yes, sir.

12 Q. -- on a Monday?

13 A. Yes, sir.

14 Q. Was it a Monday?

15 A. Yes, sir.

16 Q. Was he with anybody else?

17 A. He was.

18 Q. Okay. Who was he with?

19 A. I can't identify the other person.

20 Q. You don't know his name?

21 A. No, sir.

22 Q. Okay. But you'd recognize him if you saw him?

23 A. Sir?

24 Q. You'd recognize him if you saw him?

25 A. I just know the Defendant. That's all I

JAMESHIA ALSTON - CROSS BY SMITH

1 recognized. I didn't know the other person at all.

2 Q. Didn't you just say your job is to remember your
3 customers?

4 A. But he wasn't one of my customers. He didn't come
5 talk to me personally at my register, so.

6 Q. Do you remember me?

7 A. No, sir. You're not one of my customers.

8 Q. Okay. Now when the people came in the back door
9 and when you were in the back of the store, the subject
10 that was back there with you, was he standing behind you?

11 A. No, sir.

12 Q. Did he have his hood on?

13 A. He did have his hood on.

14 Q. He had a hood on, and he had a bandana?

15 A. Yes, sir. Over his nose.

16 Q. Covering his mouth?

17 A. Yes, sir.

18 Q. Okay. Did you describe the other person?

19 A. No, sir. Not at all.

20 Q. Did you remember what the other, the appearance of
21 the other person?

22 A. I just know they both had on black, and they had
23 on, like, surgical gloves.

24 Q. Do you remember any distinguishing characteristics
25 of that person?

JAMESHIA ALSTON - CROSS BY SMITH

- 1 A. No, sir.
- 2 Q. Okay. Did they act -- when they came in, did they
3 act like they knew where they were going?
- 4 A. The first boy he was, like, "Take me to the safe in
5 the front." That's what he said.
- 6 Q. Okay. Now when you left there that night, when
7 you went home, did Detective Royster tell you to go home
8 and go look on Facebook?
- 9 A. No, sir. I just decided to take it to my own and
10 do it myself.
- 11 Q. Did you call him and tell him what you had found?
- 12 A. Yes, sir. I did.
- 13 Q. And he asked you to send him the photos?
- 14 A. Yes, sir.
- 15 Q. Do you remember what time it was that you called
16 him?
- 17 A. I know I got home and I did that about an hour
18 after everything had happened at Captain D's. So I don't
19 know exact timing.
- 20 Q. Okay. Do you know what time you got home?
- 21 A. Not exactly. Like, an hour later and some minutes,
22 but not exact time.
- 23 Q. Okay. Now when you went and looked on Facebook --
24 that's where you looked; right?
- 25 A. Yes, sir.

JAMESHIA ALSTON - CROSS BY SMITH

1 Q. You scrolled down through the pictures?

2 A. Yes, sir. I did.

3 Q. Or, did you type in John Upson's name?

4 A. No, I went on William Keels' page and I found his
5 name. And when I saw his picture I jumped up because I
6 knew that was him. And then I, like, clicked on his name
7 and I was scrolling through his pictures. As I was
8 looking I jumped up again. I told my mom that was him.

9 Q. How many pictures do you think you looked at before
10 you found his?

11 A. Two pictures.

12 Q. Two?

13 A. Yes, sir. I found those two.

14 Q. How many pictures on William Keels' Facebook did
15 you look through --

16 A. Oh, I just saw one picture. It's, like, when you
17 look on somebody else page, it's only one profile picture.

18 Q. Does he have a lot of pictures of other people on
19 his --

20 A. I didn't look at that.

21 Q. You didn't look at anybody else's picture?

22 A. No, sir. I just looked at his name, who I was
23 looking for.

24 Q. You were just looking for John Upson?

25 A. Yes, sir.

JAMESHIA ALSTON - CROSS BY SMITH

1 Q. And you looked for his name?

2 A. No. I was looking at pictures while I was
3 scrolling -- I was on William Keels' page.

4 Q. Yes.

5 A. And you can scroll through a friend list. And I
6 saw his picture and I clicked on his name. I didn't know
7 his name at the time but I clicked on it because I knew
8 his face. I saw the picture and I jumped up. I told my
9 mom that's him.

10 Q. I guess my question wasn't clear. When you were
11 looking through William Keels' pictures --

12 A. I didn't go through his pictures. I was just
13 looking at his friends' list.

14 Q. That's what I'm saying. You were looking through
15 his friends' list and looking at pictures on the friends'
16 list; right?

17 A. Yes, sir.

18 Q. That's how you found this picture --

19 A. Yes, sir.

20 Q. -- that you used to identify John Upson?

21 A. Yes, sir.

22 Q. About how many of those pictures had you gone
23 through before you found John Upson?

24 A. I don't know exactly.

25 Q. And you didn't look any more before -- after you

JAMESHIA ALSTON - CROSS BY SMITH

1 found that picture?

2 A. No, sir.

3 Q. So you don't know if there's anybody else on that

4 Facebook page --

5 A. No, sir.

6 Q. -- that would resemble the person that was in the

7 store with you?

8 A. No, sir.

9 Q. You don't know?

10 A. No, sir.

11 Q. And William Keels has a lot of friends; doesn't he?

12 A. Yes, sir.

13 MR. SMITH: Beg the Court's indulgence.

14 THE COURT: Sure.

15 (Pause.)

16 BY MR. SMITH:

17 Q. Jameshia, do you know a guy named Ishmael Norid-

18 Deen?

19 A. No, sir.

20 Q. Were you ever shown a police lineup? Were you

21 shown a lineup of six people?

22 A. A list of names.

23 Q. You were shown names?

24 A. Yes, sir.

25 Q. The police never showed you a lineup of anybody?

JAMESHIA ALSTON - REDIRECT BY SLOCUM

1 A. Not people, like, pictures; no, sir.

2 Q. Okay.

3 MR. SMITH: No further, Your Honor.

4 THE COURT: Anything on redirect?

5 MR. SLOCUM: Briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. SLOCUM:

8 Q. Jameshia, Mr. Smith just showed you your written
9 statement --

10 A. Yes, sir.

11 Q. -- to the police that night?

12 A. Yes, sir.

13 Q. Did you also give a verbal statement to the police
14 that night?

15 A. Yes, sir; I did.

16 Q. Is everything in your written statement the same in
17 verbal and vice versa or do they, are they different?

18 A. In the statement it just states the weight and what
19 they were -- like, it just states the weight of the skinny
20 boy and heavysset boy. But I told the police verbally what
21 they wore and stuff like that.

22 Q. Told them everything you told us today?

23 A. Yes, sir.

24 Q. In regards to these Facebook pictures --

25 A. Yes, sir.

1 Q. -- why did you stop looking after you found John
2 Upson?

3 A. Because I knew this was the person that was in the
4 back with me on the day of the robbery.

5 Q. The same person that forced you into the --

6 A. Cooler.

7 Q. -- refrigerator?

8 A. Yes, sir.

9 Q. The same person that wouldn't let you leave?

10 A. Yes, sir.

11 Q. The same person that came in with another
12 individual who had a handgun?

13 A. Yes, sir.

14 Q. Real quick. You mentioned telling law
15 enforcement -- Mr. Smith asked you about the eyes. What
16 was it about Mr. Upson's eyes that you remember?

17 A. He has a lazy eye. It's kind of droopy, like that.

18 MR. SLOCUM: Beg the Court's indulgence?

19 THE COURT: Sure.

20 (Pause.)

21 MR. SLOCUM: Nothing further, Your Honor.

22 THE COURT: Okay. Anything on recross?

23 MR. SMITH: No, Your Honor.

24 THE COURT: Okay. Thank you for your testimony,
25 ma'am. You can step down.

SCOTT AARON HALL - DIRECT BY SLOCUM

1 THE WITNESS: You're welcome.

2 MR. SLOCUM: Your Honor, the State calls Scott
3 Hall.

4 SCOTT AARON HALL, having been duly sworn, was
5 examined and testified as follows:

6 THE CLERK: Have a seat in the witness box. State
7 your full name for the Court.

8 THE WITNESS: Scott Aaron Hall, H-A-L-L.

9 DIRECT EXAMINATION

10 BY MR. SLOCUM:

11 Q. Mr. Hall, good afternoon.

12 A. Good afternoon.

13 Q. Mr. Hall, how old are you?

14 A. I'm 21.

15 Q. And where are you from?

16 A. Ridge Spring, South Carolina.

17 Q. And where do you live now?

18 A. In Aiken, South Carolina.

19 Q. How long have you been in Aiken?

20 A. Just about 10 years now.

21 Q. Are you married?

22 A. No, sir.

23 Q. Have any kids?

24 A. Yes, sir.

25 Q. How old are your kids?

SCOTT AARON HALL - DIRECT BY SLOCUM

- 1 A. Nine months.
- 2 Q. Do you provide for this child?
- 3 A. Yes, sir.
- 4 Q. Where were you on November 27, 2013?
- 5 A. Out back, taking the trash out at Captain D's where
- 6 I work.
- 7 Q. You were working at Captain D's?
- 8 A. Yes, sir.
- 9 Q. And what did you do for Captain D's that November
- 10 of last year?
- 11 A. I was a cook.
- 12 Q. And how long had you been working as a cook up
- 13 until November 27th?
- 14 A. Just about 11 months.
- 15 Q. What were you doing around 10 o'clock?
- 16 A. Finishing up, closing up, taking the trash out to
- 17 the trash cans and bringing them back inside.
- 18 Q. Had business closed down for the day?
- 19 A. Yes, sir.
- 20 Q. What happened to you that night while you were
- 21 taking the trash it?
- 22 A. I was approached by two black males who, the first
- 23 one he placed a gun to the back of my head before I could
- 24 get the trash cans into the store.
- 25 Q. Please show us where.

SCOTT AARON HALL - DIRECT BY SLOCUM

- 1 A. Oh. Right below my right ear. Right there. He
2 placed the gun right there. And he ordered me to take him
3 up front to where the safe was.
- 4 Q. Did you happen to see a gun?
- 5 A. Yes, sir.
- 6 Q. Did you see what color it was?
- 7 A. Yes, sir. Black.
- 8 Q. Did it appear to be a real gun to you?
- 9 A. Yes, sir. I could feel the heaviness and the
10 coldness on my ear as he was holding it there. I could
11 feel the coldness to it.
- 12 Q. Did you see what these individuals were wearing?
- 13 A. Yes, sir. Black sweat pants and black hoodies with
14 black hoods over them and had bandanas as well.
- 15 Q. About how far from the back door were you when
16 approached by the two men?
- 17 A. I'd say two or three feet from the back door.
- 18 Q. Was the door open or closed?
- 19 A. Yes, sir. It was open. It was propped with a
20 stick because if it closes it locks on its own. So we
21 wouldn't have had a way back inside. So I had it propped
22 open with a stick.
- 23 Q. Is that what you normally do when you take the
24 trash out?
- 25 A. Yes, sir. Yes, sir.

1 Q. At this time that, did you recognize any of the
2 men?

3 A. No, sir.

4 Q. When you were forced up front, please tell us what
5 happened next.

6 A. When -- after I was forced up front he still had
7 the gun to the back of my head. He told me to get on all
8 fours and keep my head down between my legs so I wouldn't
9 look up and see anything.

10 Q. Were you afraid?

11 A. Yes, sir. Very.

12 Q. What happened next?

13 A. I could hear him demanding Devin, which is our
14 other employee, to give him money and to keep the change
15 because he didn't, he wasn't fooling with the change.

16 MR. SMITH: Objection, Your Honor. It's hearsay.

17 MR. SLOCUM: Your Honor, it's a statement by a
18 co-conspirator in furtherance of a conspiracy. It's
19 allowed.

20 THE COURT: Okay. Let, let's do this, Madam
21 Forelady and ladies and gentlemen of the jury. It's one
22 of these times that a matter of law needs to be addressed
23 with the attorneys so, and it's probably, maybe a good
24 time to take a little short break.

25 So if you'll retire to your jury room. I caution

1 you and remind you not to discuss anything about this case
2 among yourselves.

3 Get you back out shortly.

4 (Jury exits courtroom at 3:39 P.M.)

5 THE COURT: Mr. Smith, the basis for your
6 objection, is that it is hearsay?

7 MR. SMITH: Yes, sir.

8 THE COURT: Now, I'm looking at Rule 801(d)(2).
9 Statements which are not hearsay and Subsection E, a
10 statement by a co-conspirator of a party during the course
11 and furtherance of the conspiracy.

12 Now, I realize that one of the charges -- he's not
13 charged with conspiracy, but would not that be a
14 conspiracy or alleged conspiracy by virtue of what is
15 being claimed that the Defendant and the other person
16 did?

17 Be glad to hear from you on this point.

18 MR. SMITH: Your Honor, at this point there's been
19 no evidence presented that there is a conspiracy. Up
20 until a conspiracy has been established, there's --
21 letting in evidence that would be -- a statement of a
22 co-conspirator would be in the hopes that in the future
23 conspiracy is shown. At this point there haven't even
24 been allegations that there's a co-conspirator.

25 THE COURT: Okay.

1 MR. SMITH: There haven't been allegations that one
2 of the employees is a co-conspirator.

3 THE COURT: Now, this statement that this witness
4 gave, he's repeating what person number one said, correct,
5 not an employee? My understanding -- is that correct,
6 Solicitor? Or, correct me if I'm wrong.

7 MR. SLOCUM: Your Honor, the statement that he's
8 being addressed -- that Mr. Hall is testifying to is a
9 statement made by the gunman, the second individual.
10 There's no tie to anyone at this point. It's just being a
11 second individual with Mr. Upson who entered the Captain
12 D's.

13 THE COURT: Well, just by virtue of the testimony
14 thus far, allegedly that, that the gunman and Mr., and the
15 Defendant came in and did what has been testified that
16 they did, would that not in and of itself make it a
17 conspiracy?

18 MR. SMITH: Your Honor, I'm objecting to any
19 statement from a co-worker --

20 THE COURT: Okay.

21 MR. SMITH: -- in this case. I think they were
22 getting ready to ask him about a statement from a
23 co-worker. I believe they were getting ready to ask that
24 question.

25 THE COURT: Well, so far, this last statement that

1 was objected to, it's my understanding and I think agreed
2 to by the Solicitor that it was a statement of person
3 number one or the gunman. I think this witness over here
4 called it boy number one and boy number two.

5 MR. SLOCUM: That's correct.

6 THE COURT: The gunman.

7 MR. SLOCUM: That's correct.

8 THE COURT: Right. Okay. And I don't think,
9 Solicitor, you were planning to get into any statements by
10 any employees; correct?

11 MR. SLOCUM: That is correct, Your Honor.

12 THE COURT: Okay. All right. So I think -- I
13 think your concern is resolved.

14 MR. SMITH: Yes, sir.

15 THE COURT: Okay. So that objection would be
16 withdrawn?

17 MR. SMITH: Yes, sir.

18 THE COURT: Okay. Thank you very much, Mr. Smith.
19 Let's take a five-minute break before we start
20 back.

21 MR. SLOCUM: Yes, sir.

22 (Break taken at 3:49 P.M., until 3:53 P.M., and the
23 trial resumed:)

24 THE COURT: Bring the jury out, please, sir

25 (Jury enters courtroom at 3:53 P.M.)

SCOTT AARON HALL - DIRECT BY SLOCUM

1 THE COURT: Let the record reflect that the jury is
2 back in.

3 I will just remind and caution the jury that it's
4 very important that all of you be very attentive and be
5 very alert because otherwise then you're not going to be
6 able to properly make a determination in this case. So I
7 just remind everybody, all 14 of you, to be very alert, be
8 very attentive during the course of this trial.

9 Thank you.

10 BY MR. SLOCUM:

11 Q. Mr. Hall, what happened after you were forced up
12 front with a gun to your head?

13 A. He -- after he had gotten the money and everything,
14 he had issued us -- he had issued me to get up off the
15 ground, still with my hands raised.

16 Q. He is who?

17 A. The gunman.

18 Q. What did he do in terms of getting money?

19 A. I -- he received it from Devin, after Devin fumbled
20 with it a couple times to get the safe open.

21 Q. Did he -- how did he ask to take the money?

22 A. He said, "Give me the money, I don't want the damn
23 coins," -- "the damn change" is his exact words.

24 Q. Did he put it in a bag?

25 A. Yes, sir. He snatched a takeout bag from one of

SCOTT AARON HALL - DIRECT BY SLOCUM

1 our takeout bags from the front counter.

2 Q. After he received the money, what happened?

3 A. He issued me to get up off the ground, still to
4 keep my hands above my head. And this whole time he still
5 had the gun to the back of my head. He issued us to walk
6 into the cooler.

7 Q. Did you at any time feel free to leave?

8 A. No, sir.

9 Q. Were you afraid?

10 A. Yes, sir.

11 Q. You said earlier it was a black gun?

12 A. Yes, sir.

13 Q. Handgun?

14 A. Yes, sir.

15 Q. Do you know what type of handgun?

16 A. It looked similar to a nine millimeter, but I'm not
17 sure if that was what it was.

18 Q. Was it semiautomatic?

19 A. Yes, sir.

20 Q. It was?

21 A. Yes, sir.

22 Q. Okay. Did you speak to law enforcement that night?

23 A. Yes, sir.

24 Q. And were you able to give them any descriptions of
25 the suspects?

SCOTT AARON HALL - DIRECT BY SLOCUM

1 A. Just the facial features.

2 Q. Any of their clothing? Outer wear?

3 A. Yes, sir. Their weight and their height as well.

4 Q. What did you tell them?

5 A. That they were about six foot, and the gunman was a

6 little but shorter. He was a little bit taller than me,

7 probably about five-eleven. They were both black males.

8 And the gunman had a, somewhat of a teardrop tattoo or a

9 birthmark under his left eye. And that's all I could see

10 from his nose down.

11 Q. About how quick was the time frame did you have to

12 get a look at these folks?

13 A. Just a few seconds.

14 Q. It happened pretty fast?

15 A. Yes, sir.

16 Q. Did you ever turn around to look at the gunman?

17 A. No, sir. He just approached me. Whenever he was

18 running up, that's the only time I seen his face.

19 Q. Did you ever give law enforcement a name of who it

20 was?

21 A. No, sir.

22 MR. SLOCUM: Permission to approach, Your Honor?

23 THE COURT: Certainly.

24 BY MR. SLOCUM:

25 Q. Mr. Hall, I'm handing you what's previously --

SCOTT AARON HALL - DIRECT BY SLOCUM

1 excuse me, Your Honor.

2 Mr. Hall, I'm handing you what's previously marked
3 for identification purposes as State's Exhibit One through
4 Five, and State's Exhibit 10, 11 and 12.

5 Would you please take a look at these, please, sir?

6 A. Yes, sir.

7 Q. And I ask you: Do you recognize those photos?

8 A. Yes, sir. This is Captain D's where I work.

9 Q. And that goes for all the photos I just handed you?

10 A. Yes, sir.

11 Q. Do those photos fairly and accurately depict
12 Captain D's as it was on November 27th of 2013?

13 A. Yes, sir.

14 Q. Have they been changed, altered or deleted in any
15 form or fashion?

16 A. No, sir.

17 MR. SLOCUM: Your Honor, at this time the State
18 moves to enter Exhibits One through Five, 10, 11 and 12
19 into evidence.

20 THE COURT: Okay. What says the defense?

21 MR. SMITH: Without objection, Your Honor.

22 THE COURT: Without objection, State's Exhibits One
23 through Five, 10 through 12 into evidence.

24 (State's Exhibit Nos. 1, 2, 3, 4, 5, 10, 11, 12,
25 photographs, received into evidence.)

SCOTT AARON HALL - DIRECT BY SLOCUM

1 MR. SLOCUM: Your Honor, at this time may the
2 witness step down so we can publish to the jury?

3 THE COURT: Sure. I would ask the witness to speak
4 up loud since you're facing away from the court reporter.

5 BY MR. SLOCUM:

6 Q. Mr. Hall, this is State's Exhibit One. Can you
7 please tell the jury what that is?

8 A. That's a picture of the front of Captain D's
9 Restaurant.

10 Q. The Captain D's where you work?

11 A. Yes, sir.

12 Q. Where is that Captain D's located?

13 A. Whiskey Road.

14 Q. In the City limits of Aiken?

15 A. Yes, sir.

16 Q. Aiken County?

17 A. Yes, sir.

18 Q. State's Exhibit Two, what is that?

19 A. Those are the trash -- those are the trash, where
20 we have to take the trash cans back there. That is the
21 back of, I believe, Dunkin' Donuts and Five Guys which is
22 directly right beside our restaurant.

23 Q. Do you use those trash cans?

24 A. Yes, sir.

25 Q. Can you please point out Captain D's?

SCOTT AARON HALL - DIRECT BY SLOCUM

1 A. That's ours right there, those cans.

2 Q. And State's Exhibit Three, what is this we're
3 looking at?

4 A. That's a little bit past the trash cans, just a
5 little bit in front of it. And that's the back door in
6 which we come. This is the direction we come to take the
7 trash back there.

8 Q. State's Exhibit Four, what are we looking at here?

9 A. That's the direction in which I was approached by
10 the two black males. They ran up over our sidewalk, right
11 here, and then they came up, right there, exactly where
12 that trash can is.

13 Q. That's where you were?

14 A. Yes, sir.

15 Q. State's Exhibit Five?

16 A. That's, once again, the trash can. That exact
17 general area, right where I was located. I was right
18 there at the door.

19 Q. Where did they put the gun to your head?

20 A. Just about right, like, right there. It was a
21 camera, like, literally focused right down there so about
22 right there. It was right -- as soon as I turned around
23 to grab the trash can, they already had it to my head.

24 Q. And State's Exhibit 10, what are we looking at
25 here?

SCOTT AARON HALL - DIRECT BY SLOCUM

- 1 A. That's the front of the Captain D's Restaurant.
2 That's the registers. And right in here, right down
3 here -- which you might not be able to see this -- this is
4 where they asked me to place my head down and get down on
5 all fours.
- 6 Q. Was this the location where the money was taken?
- 7 A. Yes, sir. That's the safe as well. Yes, sir.
- 8 Q. State's Exhibit 11?
- 9 A. This is the -- that's the exact spot to where I was
10 forced to lay down. And that's where Devin was and the
11 gunman was right here demanding money out of the safe.
12 Right there.
- 13 Q. Okay. And 12?
- 14 A. And that's the same thing. That's where he
15 actually got the bag from to get the money from, little
16 plastic bag right there.
- 17 Q. Okay. You can have a seat.
- 18 A. (Complying.)
- 19 Q. About how long did this robbery take? How long did
20 it occur?
- 21 A. Two to three minutes.
- 22 Q. And how long were you in the freezer?
- 23 A. For about five minutes.
- 24 Q. What did you do after you got out of the freezer?
- 25 A. We eased our way out of the cooler, well, the

SCOTT AARON HALL - CROSS BY SMITH

1 freezer. And we just made our way to the front of the
2 store because that's where the phone was and everything.
3 And then Devin called 9-1-1. I just followed behind him.

4 Q. Did you talk to law enforcement when they showed
5 up?

6 A. Yes, sir.

7 Q. Did you tell them what you told us here today?

8 A. Yes, sir.

9 Q. Did you give a written and a verbal statement?

10 A. Yes, sir.

11 MR. SLOCUM: Beg the Court's indulgence, Your
12 Honor.

13 THE COURT: Sure.

14 (Pause.)

15 BY MR. SLOCUM:

16 Q. Did you feel free to leave at any time?

17 A. No, sir.

18 MR. SLOCUM: Please answer any questions Mr. Smith
19 has for you. Thank you.

20 THE WITNESS: Yes, sir.

21 THE COURT: Cross-examination?

22 MR. SMITH: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. SMITH:

25 Q. Mr. Hall, thanks for coming today.

SCOTT AARON HALL - CROSS BY SMITH

- 1 A. You're welcome.
- 2 Q. Do you know John Upson?
- 3 A. No, sir.
- 4 Q. Did you ever identify John Upson?
- 5 A. No, sir.
- 6 Q. Were you ever shown a photo lineup?
- 7 A. No, sir.
- 8 Q. Did you ever see anybody like that in the store
- 9 before?
- 10 A. No, sir.
- 11 Q. Now, when you went -- when you were brought to the
- 12 front of the store --
- 13 A. Uh-huh.
- 14 Q. -- who was at the front of the store?
- 15 A. Devin.
- 16 Q. Devin?
- 17 A. Yes, sir.
- 18 Q. And who's he?
- 19 A. He was one our employees as well.
- 20 Q. Was he the manager that night?
- 21 A. Yes, sir.
- 22 Q. Okay. Is he the only one that had access to the
- 23 safe?
- 24 A. Yes, sir.
- 25 Q. Okay. Did you ever see the face of the guy who

SCOTT AARON HALL - CROSS BY SMITH

1 stayed in the back of the store?

2 A. No, sir.

3 Q. Okay. But the guy that escorted you to the front
4 of the store, you had a first split-second or a few
5 seconds or whatever, you could tell that he had a mark on
6 his eye?

7 A. Yes, sir.

8 Q. Either a teardrop tattoo or a birthmark or
9 something?

10 A. Yes, sir.

11 Q. Anything else that you saw about him?

12 A. No, sir. Just that he had dreads as well.

13 Q. Okay. Now, when you were face down on the ground,
14 were you laying on the ground?

15 A. Yes, sir. My knees were on the ground, and my
16 hands. He told me to get on all fours.

17 Q. Was your belly on the ground?

18 A. No, sir. Kind of like on all fours. Like, a
19 crawling position as well with my head, like, down.

20 Q. Your head was tucked down?

21 A. Yes, sir.

22 Q. Okay. The way your head was, you couldn't see the
23 safe --

24 A. No, sir.

25 Q. -- right? Okay. And you couldn't see the cash

SCOTT AARON HALL - CROSS BY SMITH

- 1 register?
- 2 A. No, sir.
- 3 Q. And you didn't see any of the money?
- 4 A. Huh-uh.
- 5 Q. Okay. When you were taken -- after you stood up
- 6 and went to the back -- when you went to the back, was the
- 7 freezer open or closed?
- 8 A. It was open. I was waiting, really, for them to
- 9 put us in there. Jameshia was already in there as well.
- 10 Q. Could you tell if it had been closed and they
- 11 opened it when you came back, or was it just open?
- 12 A. It was just open.
- 13 Q. It was just open. You said that they had, that
- 14 both of them had bandanas on their faces?
- 15 A. Yes, sir.
- 16 Q. When was the first time that you told somebody
- 17 that?
- 18 A. It should've been the night that we got robbed.
- 19 That night I told officers that.
- 20 Q. Okay. Do you remember the heights? How tall they
- 21 were?
- 22 A. The man with the dreads, the gunman, he was a
- 23 little bit shorter than John.
- 24 Q. You say John, but you don't know who --
- 25 A. No.

SCOTT AARON HALL - CROSS BY SMITH

1 Q. -- the other guy was?

2 A. No, sir.

3 Q. So the gunman was shorter than the guy that was
4 standing in the back?

5 A. Yes, sir.

6 Q. Now -- beg the Court's indulgence.

7 THE COURT: Sure. (Pause.)

8 BY MR. SMITH:

9 Q. Scott, could you tell us -- could you tell us
10 exactly what each of them had on? Start with the guy with
11 the gun.

12 A. The gunman had on a hooded sweatshirt and black, it
13 was black sleeves and surgical gloves, and black
14 sweat pants, and black shoes as well.

15 Q. Okay. Did he have a bandana on?

16 A. Yes, sir. Black bandana.

17 Q. And he had a hood over his head?

18 A. Yes, sir.

19 Q. How much of his face could you see?

20 A. Just about that much (indicating). Just from,
21 like, the bottom of his nose to about his forehead and his
22 hair. His dreads were already out. I saw those as well.

23 Q. Was the bandana covering his mouth or was --

24 A. Yes, sir. It was teetering, covering half his nose
25 and covering the remainder of his mouth as well.

SCOTT AARON HALL - REDIRECT BY SLOCUM

- 1 Q. So it was perched on there?
- 2 A. Yes, sir.
- 3 Q. The other guy, the guy that was in the back --
- 4 A. Uh-huh.
- 5 Q. -- what was he wearing?
- 6 A. A black hoody, black hooded-sweatshirt, black
- 7 pants, and a big, like, bulky black sweatshirt as well.
- 8 He had -- a lot bigger than the gunman.
- 9 Q. Okay. Did he have his hood up?
- 10 A. Yes, sir.
- 11 Q. And he had a bandana on?
- 12 A. Yes, sir.
- 13 Q. And how much of his face could you see?
- 14 A. Not really any at all.
- 15 MR. SMITH: Nothing further, Your Honor.
- 16 THE COURT: Okay. Any redirect?
- 17 MR. SLOCUM: Briefly, Your Honor.
- 18 REDIRECT EXAMINATION
- 19 BY MR. SLOCUM:
- 20 Q. Scott, do you ever work up front?
- 21 A. No, sir.
- 22 Q. Where do you work at Captain D's?
- 23 A. I work in the back, in the cooking.
- 24 Q. Were you working two days prior to the --
- 25 A. No, sir. I don't believe so.

SCOTT AARON HALL - RECROSS BY SMITH

1 Q. -- robbery? Was there money missing from the safe?
2 A. Yes, sir. That night.
3 Q. Were you paying more attention to the gunman or the
4 guy behind the gunman?
5 A. The gunman.
6 Q. And about how long did it, did it take when they
7 approached you, took you back inside?
8 A. Two, three minutes.
9 Q. The whole thing?
10 A. Yes, sir.
11 Q. I believe you testified earlier it was a matter of
12 seconds before the gun was --
13 A. Yes, sir.
14 Q. -- to your head? About how much time did you have
15 to look at both suspects?
16 A. Just a few seconds.
17 Q. It happened pretty quick?
18 A. Yes, sir.
19 MR. SLOCUM: That's all the questions I have, Your
20 Honor.
21 THE COURT: Recross?
22 MR. SMITH: Briefly, Your Honor.
23 RECROSS-EXAMINATION
24 BY MR. SMITH:
25 Q. When you were up front and you were face down, you

SCOTT AARON HALL - RECROSS BY SMITH

1 couldn't see the safe?

2 A. No, sir.

3 Q. You couldn't see the registers?

4 A. No, sir.

5 Q. You don't handle the registers, do you?

6 A. No, sir.

7 Q. So you don't know for sure if money was taken?

8 A. No, sir. I had to count the money, whatever was
9 left over that we had in the store after the money was
10 taken.

11 Q. But you don't know if money was taken?

12 A. No, sir. I just had to count the money that was
13 left in the drawers. Yes, sir.

14 MR. SLOCUM: Thank you.

15 THE COURT: Thank you for your testimony, sir. You
16 can step down.

17 THE WITNESS: Yes, sir.

18 THE COURT: Solicitor?

19 MR. MOLONY: Thank you, Your Honor. The State
20 calls Detective Billy Royster.

21 WILLIAM ROYSTER, having been duly sworn, was
22 examined and testified as follows:

23 THE CLERK: Have a seat in the witness box.

24 State your full name for the Court and spell your
25 last, please.

WILLIAM ROYSTER - DIRECT BY MOLONY

1 THE WITNESS: William Royster, R-O-Y-S-T-E-R.

2 DIRECT EXAMINATION

3 BY MR. MOLONY:

4 Q. Detective Royster, where are you employed at?

5 A. Aiken Department of Public Safety.

6 Q. And what are your duties there now?

7 A. I'm a criminal investigator.

8 Q. Prior to becoming an investigator there, what if
9 anything did you do?

10 A. I've been working there for 22 years. I've spent
11 time in patrol, worked my way up to a sergeant in the
12 patrol division until I was promoted into the criminal
13 investigative division eight years ago.

14 Q. Were you working as a criminal investigator on the
15 night of November 27th, 2013?

16 A. Yes, sir. I was the on-call detective for that
17 night.

18 Q. And explain to the jury how you became involved
19 initially in this case.

20 A. Since we don't -- detectives don't work 24 hours a
21 day. We have somebody on call. That was my week to be on
22 call for any major crime that the patrol division would
23 need help investigating.

24 So shortly after the crime was reported, they
25 called me and I responded.

WILLIAM ROYSTER - DIRECT BY MOLONY

1 Q. Describe what the scene looked like when you
2 arrived at Captain D's that night.

3 A. There was several officers there. The employees
4 were there. They were writing statements and we were
5 trying to determine what happened. I looked around to see
6 what was in the restaurant at that time, took some
7 photographs of the safe, where it was, and the condition
8 it was in at the time.

9 Q. You said "employees." Throughout your
10 investigation, were you able to determine how many actual
11 employees were working at the time of this armed robbery?

12 A. There was three at the establishment when it was
13 robbed.

14 Q. All right. Other than the two we've heard from
15 today, who was the third employee that was working that
16 night?

17 A. Devin Johnson.

18 Q. Devin Johnson?

19 A. Yes.

20 Q. He was the one the defense referred to earlier as
21 the manager?

22 A. Yes. He was the person in charge that night.

23 Q. That night. Okay. Now, throughout your
24 investigation, were you able to determine if any video
25 surveillance images were able to be taken from the Captain

WILLIAM ROYSTER - DIRECT BY MOLONY

1 D's that night?

2 A. They had one but the recording device was broken
3 and did not work.

4 Q. Did you try to get it?

5 A. They tried to get it, yes. It would -- there was
6 nothing there.

7 Q. What about any of the surrounding businesses?

8 A. The camera angles that they showed did not show us
9 anything.

10 Q. What about fingerprints? Did you -- were
11 fingerprints lifted from the scene?

12 A. No. They were talking about how the, both subjects
13 that came in were wearing gloves.

14 Q. Now, did you receive an e-mail from one of the
15 employees in this case that night?

16 A. Yes, I did.

17 Q. And who did you receive an e-mail from?

18 A. From Ms. Alston.

19 Q. At what point in your investigation did the
20 Defendant become a suspect in this case?

21 A. When I received the e-mail about 11:30, 12 o'clock
22 that night.

23 Q. When were the arrest warrants acquired for the
24 Defendant?

25 A. That Thursday morning.

WILLIAM ROYSTER - DIRECT BY MOLONY

- 1 Q. Thursday, the next morning?
- 2 A. Yes.
- 3 Q. Now after these arrest warrants were acquired, did
- 4 you have the opportunity to speak with the Defendant?
- 5 A. Yes, I did. By phone.
- 6 Q. And when was that?
- 7 A. Thanksgiving afternoon about five o'clock. He
- 8 called my cell phone.
- 9 Q. Okay. And what's your cell phone number?
- 10 A. [REDACTED].
- 11 Q. And were you able to look at your cell phone when
- 12 he called to see what number he was calling from?
- 13 A. Yes.
- 14 Q. And what number was that?
- 15 A. [REDACTED].
- 16 Q. Did you have a conversation with the Defendant at
- 17 that time?
- 18 A. Yes, we did.
- 19 Q. Did you inform the Defendant that he was wanted --
- 20 A. Yes, I did.
- 21 Q. -- for this crime at that time?
- 22 A. I told him I had a warrant for his arrest.
- 23 Q. What did the Defendant -- what, if anything, did he
- 24 tell you on the phone at that time?
- 25 MR. SMITH: Objection, Your Honor.

WILLIAM ROYSTER - DIRECT BY MOLONY

1 THE COURT: Okay.

2 MR. SMITH: Statement of hearsay.

3 THE COURT: Okay. Let -- have the lawyers
4 approach for just a second.

5 (Off-the-record discussion.)

6 THE COURT: Mr. Smith, concerning that objection?

7 MR. SMITH: Your Honor, I withdraw my objection.

8 THE COURT: Withdraw it at this time. Thank you
9 very much.

10 All right. Will you repeat your question,
11 Solicitor, so we can kind of, you know, see where we are?

12 MR. MOLONY: I'll do it, Your Honor.

13 Q. Detective Royster, after you were able to determine
14 that there was a cell phone call coming in on your phone,
15 did you answer the phone at that time?

16 A. Yes, I did.

17 Q. And who was on the other end of the phone?

18 A. John Upson.

19 Q. What did the Defendant tell you at that time?

20 A. Told me that he was downtown that evening at a
21 comedy show.

22 Q. Did he tell you -- what, if anything, did he say he
23 did after the comedy show?

24 A. That it was -- he was at a bar afterwards.

25 Q. Did he mention anything in regards to his phone

WILLIAM ROYSTER - DIRECT BY MOLONY

1 records?

2 A. He told me to get his cell phone records to find
3 out where he was.

4 Q. Okay. Again, what time about, roughly, was this
5 conversation?

6 A. Five o'clock Thanksgiving Day.

7 Q. When was the Defendant ultimately arrested?

8 A. The next Monday, the 2nd of December.

9 Q. And what, if anything, did you do in regards to the
10 Defendant's cell phone records on that same day?

11 A. I obtained a search warrant for Verizon to obtain
12 his phone records for the time period around the robbery.

13 Q. Now, were these records from the same number you
14 had just spoken with him?

15 A. Yes, they were.

16 Q. Did you actually receive these records from
17 Verizon?

18 A. Yes, I did.

19 Q. Throughout your investigation, were you able to
20 determine whether or not there was actually a comedy show
21 in Aiken that night?

22 A. Yes, there was.

23 Q. And where was this comedy show located?

24 A. Aiken Center of the Arts.

25 Q. Were you able to determine approximately what time

WILLIAM ROYSTER - DIRECT BY MOLONY

1 that show was supposed to start?

2 A. It was scheduled to start at eight P.M. that night.

3 Q. And what time, roughly, was it supposed to end?

4 A. It was supposedly an after-party at a bar near
5 there starting around 11.

6 Q. And where was this bar?

7 A. Hotel Aiken.

8 Q. Is that also downtown?

9 A. Yes it.

10 Q. Where was this comedy show actually held?

11 A. Aiken Center of the Arts is located at 112 Laurens
12 Street South.

13 Q. Were you able to determine the phone number for
14 Aiken Center of the Arts?

15 A. Yes, sir. It's [REDACTED].

16 Q. What about the phone number for Captain D's, the
17 one on Whiskey Road here in Aiken?

18 A. Yeah, it's [REDACTED].

19 Q. Now in regards to this gunman, what, if any,
20 suspects do you have at this time as to who the gunman
21 was?

22 A. I don't have a suspect as to who the gunman was.

23 Q. You don't know who he was at this time?

24 A. No, I do not. It's still an ongoing investigation.

25 Q. What about in regards to any other individuals, not

WILLIAM ROYSTER - DIRECT BY MOLONY

1 the gunman, but that may have been involved in this crime
2 that night?

3 A. Yes, sir. Other suspects have been developed.

4 Q. At this time in regards to that night, have any
5 other arrests been made?

6 A. One other arrest was made, a person named Cassandra
7 Ellis on a charge of misprision of a felony.

8 Q. But in regards to the actual planning and the
9 robbery actually being carried out, have any other charges
10 actually been brought at this time?

11 A. No, nobody, no, sir.

12 Q. And what's the status of the investigation today?

13 A. It's ongoing.

14 Q. Now Cassandra Ellis, who is she?

15 A. She is an employee there and a friend of John
16 Upson's.

17 Q. Okay. And who is Cassandra Ellis's son?

18 A. William Keels.

19 Q. Devin Johnson, the third suspect -- I mean, the
20 third witness that was actually an employee and in the
21 store at the time of the armed robbery, has he been
22 charged with anything?

23 A. No, no.

24 Q. At this time, is he a suspect?

25 A. No, not at all.

WILLIAM ROYSTER - CROSS BY SMITH

1 Q. Now the defense brought up a name "Norid-Deen."

2 Does that name ring a bell?

3 A. Yes, it does. Ishmael Norid-Deen.

4 Q. Why does his name ring a bell in this case?

5 A. Through the course of the investigation he's known
6 to John Upson. And through Mr. Norid-Deen's cell phone
7 records I was able to make a connection between the two,
8 particularly on the night in question.

9 Q. At this time again, no charges have been brought --

10 A. Oh, no.

11 Q. -- against Norid-Deen?

12 A. No.

13 MR. MOLONY: Beg the Court's indulgence, Your
14 Honor.

15 (Pause.)

16 MR. MOLONY: Thank you. Please answer any
17 questions the defense has, Detective.

18 THE COURT: Cross-examination?

19 MR. SMITH: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. SMITH:

22 Q. Good afternoon, Detective Royster.

23 You said you had checked for video surveillance at
24 Captain D's?

25 A. Yes.

WILLIAM ROYSTER - CROSS BY SMITH

1 Q. They've got video cameras?

2 A. They got cameras but their hard drive is broken.
3 They didn't know how long it had been down.

4 Q. Okay. How did you determine that the hard drive
5 was broken?

6 A. They had it examined and they told me that they
7 sent it off to get it, see what could be found on it. And
8 they said there was nothing that they could retrieve from
9 it.

10 Q. Did you ever examine it?

11 A. No.

12 Q. Did you ever refer to -- send it to anybody that --

13 A. No.

14 Q. -- the information, taking it to people to check it
15 out?

16 A. No, sir.

17 Q. Okay. Now, this case is a, basically an eyewitness
18 identification case; isn't it?

19 A. Yes.

20 Q. And in an identification case, eyewitness
21 identification case it's very important to get
22 descriptions of the suspects?

23 A. Yes.

24 Q. And so that night when you got descriptions from
25 the employees that were there, you encouraged them to be

WILLIAM ROYSTER - CROSS BY SMITH

1 detailed?

2 A. It's hard to get details from somebody who's that
3 scared.

4 Q. Yes, sir.

5 A. They were quite upset. Mr. Hall was still
6 shaking. He was visibly shaking.

7 Q. You made suggestions to them of maybe writing about
8 what they were wearing or maybe --

9 A. I asked them questions. Ms. Alston kept telling me
10 that she had seen -- he had been in the store, that he had
11 talked to another employee just a couple days before.

12 Q. But none of that's reflected in any of their
13 statements, is it?

14 A. It was not in their written statement, no.

15 Q. In verbal statements?

16 A. Yes.

17 Q. Did you record any of those statements?

18 A. No, I did not.

19 Q. Okay. So in your report I imagine you wrote down
20 what they told you?

21 A. I wrote a lot of it down. Yes, sir.

22 Q. Okay. Can you show me in your report -- do you
23 have your report with you?

24 A. No, sir. I don't.

25 Q. Would you like to see a copy?

WILLIAM ROYSTER - CROSS BY SMITH

1 A. Yeah.

2 MR. SMITH: What I'm about to show Detective
3 Royster is a case notes and summary. I'd like if I could
4 have this marked as Defendant's Exhibit Two.

5 (Defendant's Exhibit No. 2, case notes and summary,
6 marked for identification.)

7 BY MR. SMITH:

8 Q. If you'd take a look at that. Tell me if that's a
9 copy of your case notes summary.

10 A. Just, this is the case notes. This part is the
11 affidavit to the warrant.

12 Q. Okay. In your case notes that you have there, can
13 you point out where you wrote down where they told you
14 about the bandana?

15 A. I didn't. I wrote down that I went and talked to
16 Mr. Keels.

17 Q. Okay. Can you tell me in your case notes, show me
18 in your case notes where you wrote down anything about
19 surgical gloves?

20 A. No, I didn't.

21 Q. You didn't write that down?

22 A. No.

23 Q. Wouldn't that be important to put in a report?

24 A. It's -- somebody wearing gloves committing a crime
25 is kind of standard nowadays.

WILLIAM ROYSTER - CROSS BY SMITH

1 Q. So it wouldn't be important to write down?

2 A. It's not critical, no.

3 Q. That they were wearing bandanas?

4 A. Not really. I mean, I go by what -- what I need to
5 make my case. What I had was Ms. Alston telling me that
6 she had seen him. He was in the store two days prior. I
7 talked to a fellow employee named Williams Keels. I left
8 the restaurant and went to Mr. Keels' house to talk with
9 him to see who was in there talking with him that two days
10 before.

11 Q. You talked about videotapes at surrounding
12 businesses and didn't you check with any surrounding
13 businesses to see if --

14 A. I went in to Baskin Robbins. I asked them. They
15 didn't have anything. And Five Guys, which is part of the
16 same building as the Baskin Robbins, didn't have anything.

17 Q. And on the other side there's a Pizza Hut.

18 A. The other side is a Pizza Hut but from what I was
19 being told, they had probably come -- from what Mr. Hall
20 was saying, he thought they came from behind the Staples
21 store. But being dark at night, nothing shows.

22 Q. Did you get a description of a vehicle from
23 Mr. Hall?

24 A. No.

25 Q. Okay.

WILLIAM ROYSTER - CROSS BY SMITH

1 A. No vehicle was seen.

2 Q. Okay.

3 (Defendant's Exhibit No. 3, 4, and 5, photographs,
4 marked for identification.)

5 BY MR. SMITH:

6 Q. I'm going to hand you what's been marked as
7 Defendant's Exhibit Number Three. Can you tell the jury
8 what that picture shows?

9 A. It's the front part of Captain D's on Whiskey Road.

10 Q. Okay. And I'm going to show you Number Four,
11 Defendant's Exhibit Four. What does that show?

12 A. It looks like the -- looking towards the rear of, I
13 assume it's Staples because it has Staples on the door
14 there.

15 Q. Yes, sir. Let me show you Defendant's Exhibit
16 Number Five. Can you tell me what that shows?

17 A. Same as the second picture, just closer.

18 Q. It's the back corner of Staples?

19 A. Yes.

20 Q. This is Staples. You said Scott Hall told you they
21 probably came from back behind Staples?

22 A. He said he thought they did.

23 Q. Okay. Do these pictures fairly and accurately
24 represent Captain D's?

25 A. Yes, sir.

WILLIAM ROYSTER - CROSS BY SMITH

1 Q. And the back side of Staples?

2 A. Yes, sir.

3 MR. SMITH: Your Honor, at this time I move to admit
4 into evidence Defendant's Exhibits Three, Four and Five.

5 THE COURT: What says the State?

6 MR. MOLONY: No objection, Your Honor.

7 THE COURT: Without objection Three, Four and Five
8 on behalf of the State (verbatim).

9 Mr. Smith, what are your intentions concerning
10 Two? Is that just for identification only?

11 MR. SMITH: Yes, sir.

12 THE COURT: Case notes. I want to make sure.

13 Thank you.

14 (Defendant's Exhibit Nos. 3, 4, and 5, photographs,
15 received into evidence.)

16 BY MR. SMITH:

17 Q. In State's (verbatim) Five, can you tell me what
18 that looks like on the top back corner of the building of
19 Staples?

20 A. It could be a camera.

21 Q. Looks like a video camera?

22 A. Could be.

23 Q. Surveillance camera. Did you talk to Staples about
24 that camera?

25 A. No, sir. I did not.

WILLIAM ROYSTER - CROSS BY SMITH

- 1 Q. It's possible that if there's a camera shining
2 there that it would have seen the entry of these two
3 fellows?
- 4 A. From that distance at night in that dark --
- 5 Q. You're not sure?
- 6 A. -- I would be very doubtful of it.
- 7 Q. But it's possible?
- 8 A. Oh, it's possible.
- 9 Q. But you didn't check?
- 10 A. No.
- 11 Q. Are there any, any other source of video cameras in
12 the area? Traffic cameras?
- 13 A. They don't record.
- 14 Q. The traffic cameras --
- 15 A. No, sir.
- 16 Q. -- in Aiken don't record?
- 17 A. No, sir. Those do not record.
- 18 Q. Okay. Now you had a report of the guy with the gun
19 had a teardrop tattoo and dreads?
- 20 A. Yes. That's the way they described him.
- 21 Q. Did you check to see if anybody had been booked at
22 the Aiken County Detention Center --
- 23 A. Yes, I did.
- 24 Q. -- to see if anybody had a teardrop tattoo?
- 25 A. I went through the whole jail system online with

WILLIAM ROYSTER - CROSS BY SMITH

1 the general description that they gave. I found one
2 person who matched that description, and when I checked on
3 their name I found out they were incarcerated in the
4 Department of Corrections at the time of the robbery.

5 Q. How many people came up in your search of people
6 with teardrop tattoos?

7 A. One.

8 Q. One with a teardrop tattoo?

9 A. Oh, the tattoo? There was probably several with a
10 tattoo, but only one with long dreads.

11 Q. Long dreads and a tattoo?

12 A. Yeah.

13 Q. Now, you didn't check for any fingerprints; right?

14 A. That's correct.

15 Q. Because they were wearing gloves?

16 A. Yes.

17 Q. You didn't check for any DNA?

18 A. No, sir.

19 Q. You didn't get any description of a vehicle?

20 A. No vehicle was seen.

21 Q. And the description that you had of the suspects
22 that night when you left Captain D's was a very -- it
23 wasn't a very full description, was it?

24 A. Oh, no, no.

25 Q. Did you send Jameshia Alston home to look on

WILLIAM ROYSTER - CROSS BY SMITH

1 Facebook?

2 A. No, I didn't. I wouldn't want her to do that,
3 really. I'd much rather develop a suspect and show a
4 lineup.

5 Q. Now you talked about phone numbers for -- that
6 you've found that were connected with John Upson. You
7 said Ishmael Norid-Deen was a phone number that had been
8 in contact with John Upson?

9 A. Yes.

10 Q. Okay. Did you ever run a photo lineup of John
11 Upson or -- excuse me. Oh, answer that.

12 A. No, I did not.

13 Q. Did you ever run one of Ishmael Norid-Deen?

14 A. I did. It was a long shot because he really didn't
15 meet the physical description, but just to make sure I
16 did. And I showed it to Devin Johnson.

17 Q. You didn't show it to anybody else, did you?

18 A. No, I didn't. Devin was the one that told me he
19 would know that person if he saw him again. He said, "I
20 got a good look at his eyes. I would know that person if
21 I saw him again."

22 Q. Now, Ishmael Norid-Deen used to work at Captain
23 D's, didn't he?

24 A. I recently learned that, yes.

25 Q. Okay. And did you ever find the phone number for

WILLIAM ROYSTER - CROSS BY SMITH

1 Devin Johnson?

2 A. No, I did not. His phone was stolen that night.

3 And I have -- when I needed to talk to him, I just went by
4 the restaurant to talk with him.

5 Q. You never learned what his phone number was?

6 A. He did give me the number of the phone that was
7 stolen.

8 Q. Okay. Didn't you pull the phone records for that
9 phone number?

10 A. Yeah, I did. It was mixed up in my notes with
11 everything else I had. And in checking on them, trying to
12 find out which carrier it was, yeah, I did include that
13 number to a warrant for AT&T for another phone number.

14 Q. Okay. Did you notice any connection of phone calls
15 with Ishmael Norid-Deen?

16 A. Yes, I did.

17 Q. That night?

18 A. Yes, sir. I did.

19 Q. The night of the robbery?

20 A. Yes, sir. There was, I believe, four attempts but
21 it appeared that no connection was made.

22 Q. Okay. And in your opinion Devin Johnson had
23 something to do with this robbery, didn't he?

24 A. No, not at all. It wouldn't make sense.

25 Q. Didn't you tell Devin Johnson that you know he was

WILLIAM ROYSTER - CROSS BY SMITH

1 involved with this?

2 A. No, I did not.

3 Q. You didn't interview Devin Johnson yesterday
4 morning?

5 A. Yes, we did. Myself and Steve Miano.

6 Q. And in that interview didn't you tell Devin Johnson
7 that you know he had something to do with this?

8 A. No, I did not.

9 Q. Okay.

10 A. I never really -- it didn't make sense for Devin to
11 be involved. He left a lot of money in the safe. If he
12 was involved, why wouldn't he give them all the money?

13 Q. Do you have any other warrants pending in this
14 case?

15 A. No, I do not.

16 Q. You don't have anybody else out there?

17 A. No.

18 Q. But you have other suspects; right?

19 A. Oh, yes.

20 Q. Ishmael Norid-Deen's one of them?

21 A. As a person who could be involved, yes.

22 Q. Did you run anybody else's phone records that
23 night?

24 A. Anybody else's?

25 Q. Yeah. Did you run --

WILLIAM ROYSTER - CROSS BY SMITH

1 A. William Keels'.

2 Q. You did William Keels'. Did you do Jameshia
3 Alston's.

4 A. Whose?

5 Q. Jameshia Alston's?

6 A. No.

7 Q. Did you run Scott Hall's phone records?

8 A. No.

9 Q. Do you admit or deny telling Devin Johnson that you
10 were going to help him remember what we need to know?

11 A. I don't recall ever saying that to Devin Johnson.

12 Q. You don't remember or you deny saying that?

13 A. No, I did not say that, no.

14 Q. You're going to help him?

15 A. No.

16 Q. Who gave you the description -- since it's not in
17 your report, do you remember who gave you the description
18 of the teardrop tattoo and dreads?

19 A. That was Devin.

20 Q. Devin told you that?

21 A. Yeah.

22 MR. SMITH: Beg the Court's indulgence.

23 (Pause.)

24 BY MR. SMITH:

25 Q. Now there was -- we're here today for, for charges

WILLIAM ROYSTER - CROSS BY SMITH

1 against John Upson for armed robbery and two counts of
2 kidnapping; right?

3 A. Yes.

4 Q. But there were three people inside of the store?

5 A. That's correct.

6 Q. And wasn't there another indictment for kidnapping?

7 A. As far as I know there was.

8 Q. And it's not part of this case?

9 A. Apparently not, no.

10 Q. Do you know why that indictment was pulled?

11 A. No, I don't.

12 Q. Okay. Judge, can I request a sidebar?

13 THE COURT: Sure.

14 (Off-the-record discussion.)

15 BY MR. SMITH:

16 Q. Detective Royster, isn't it true that there is a
17 video of your interview with Devin Johnson from yesterday?

18 A. Yes.

19 Q. Okay. And isn't it true that on that video you
20 have accused him of playing a part in this?

21 A. Steve Miano and I kept talking with him about it.
22 I didn't accuse him. It was Steve Miano that kept
23 badgering, good cop-bad cop, and talking with him just to
24 make sure.

25 I don't remember ever saying that to him during

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 that interview.

2 Q. You deny saying that?

3 A. Yeah. I don't -- I don't recall saying that.

4 Q. Do you think that Devin was truthful or do you
5 think he's part of this case?

6 A. I think he was being truthful. There was a good
7 bit of money left behind and his cell phone got stolen. I
8 mean, it wouldn't make sense for him to be a part of it.

9 Q. Okay.

10 THE COURT: All right. We'll put on the record
11 what we discussed sidebar in just a little bit.

12 MR. SMITH: Okay.

13 THE COURT: So you're good.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: Redirect?

16 MR. MOLONY: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MOLONY:

19 Q. Detective Royster, why was Devin Johnson being
20 interviewed yesterday?

21 A. When we got to looking at phone records we saw that
22 he called Mr. Norid-Deen that evening several times from
23 his cell phone. And we learned that Mr. Norid-Deen
24 received a phone call from Captain D's that night also.
25 All those calls taking place at about the same time,

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 roughly 10 P.M.

2 We got him in to talk to him about that. He was
3 telling us, and he stuck with his story, that he knows
4 Mr. Norid-Deen and he does not have a car. He lives in
5 New Ellenton, and he was trying to get a ride home after
6 work.

7 MR. SMITH: Objection, Your Honor. Hearsay.

8 THE COURT: I believe it would be hearsay. And
9 I'll sustain the objection and strike it from the record.
10 And caution or instruct the jury, rather, to disregard
11 that last bit of testimony concerning what Devin Johnson
12 allegedly told this officer.

13 You may proceed.

14 BY MR. MOLONY:

15 Q. Don't tell me what anybody said. But subsequent to
16 the interview with Devin Johnson, was he arrested for
17 anything involved in this case?

18 A. Not at all, no.

19 Q. Now, had you known or after that interview had you
20 thought that he was involved, would you have brought
21 charges against him?

22 A. Yes, I would have, if I could prove it. But, no,
23 he is not a suspect. He has not been a suspect.

24 Q. Was he under subpoena to be here today?

25 A. As far as I know, he was.

1 Q. Again, who did you say that he was calling?

2 A. Norid-Deen.

3 Q. And what makes Norid-Deen, what raised the red flag
4 as to Norid-Deen?

5 A. Phone records and his connection to John Upson.

6 Q. So since the day of the armed robbery, November
7 27th, that night, later that night when you actually
8 received the e-mail and able to get a name from Jameshia
9 and everything else, since that day and John Upson became
10 a suspect and arrest warrants were drawn, has anything
11 changed as to John Upson's involvement in this case?

12 A. Absolutely none.

13 MR. MOLONY: No further questions, Your Honor.

14 THE COURT: Okay. Thank you for your testimony,
15 Officer. You can step down.

16 Madam Forelady, and ladies and gentlemen of the
17 jury, we're going to go ahead and recess now for the
18 evening.

19 I understand that there will be potentially a
20 couple more witnesses for the State and if they are called
21 we'll do those in the morning.

22 We're going to start back at nine o'clock in the
23 morning, a little bit earlier than we normally do but I
24 want to start back at nine. So please be prompt in
25 getting to your jury room by nine o'clock. If you're not

1 prompt, then we can't start any business.

2 So please allow yourself plenty of time, make sure
3 everything is taken care of and in order with your
4 personal affairs before you come.

5 I remind you, there may be some curiosity as far as
6 what you've been doing today with friends and family
7 members. And, I mean, there's nothing wrong in saying
8 that you're on a trial jury but leave it at that. Don't
9 discuss with anybody you come into contact with anything
10 about this case and certainly not, no discussion among
11 yourselves.

12 And we'll see you back promptly at nine o'clock in
13 the morning. Hope you have a great evening.

14 (Jury exits courtroom at 4:52 P.M.)

15 THE COURT: Okay. Gentlemen, we discussed at a
16 sidebar conference, first, the defense wants to play while
17 the officer's on the stand -- I understand, and you
18 correct me, Mr. Smith, if I'm misstating anything.

19 MR. SMITH: Yes, sir.

20 THE COURT: You wanted to play a redacted version
21 of this video that was testified to. And that's going to
22 be done in the morning. Give you a chance to do your
23 redaction specifically related to the issue of what may or
24 may not have been said by the officer to Devin Johnson;
25 correct?

1 MR. SMITH: Yes, sir.

2 THE COURT: Okay. So, the officer will be subject
3 to being recalled to the stand.

4 Officer, since we're still in the middle of your
5 testimony you can't -- even though you are the lead
6 investigator in this case, you really are now kind of
7 prevented from discussing your testimony with the
8 solicitors because we are in the middle of your testimony.

9 Now with that said, then, the -- Solicitor, you
10 indicated that you want the right to recall the officer as
11 it relates to cell phone records. You have someone from
12 Verizon coming in the morning to testify and you may find
13 a need to recall the officer concerning cell phone
14 records; correct?

15 MR. MOLONY: That's correct, Your Honor.

16 THE COURT: Okay. And you'll have the right to do
17 that if that's a decision that you make in the morning.

18 MR. MOLONY: Yes, sir.

19 THE COURT: So as I understand you got two more
20 witnesses from the State. And then of course certainly
21 the defense will inform us what they plan to do as far as
22 a case or not and any testimony related to that.

23 Anything further we need to put on the record
24 before we adjourn for this afternoon?

25 MR. SLOCUM: Your Honor, the State would request

1 since we've started the trial that the Defendant be taken
2 into custody until the end of the trial.

3 THE COURT: Okay. And what says the defense?

4 MR. SMITH: Your Honor, the Defendant is out on,
5 he's on home arrest. He's got an ankle monitor on. I
6 don't think there's any danger that he flees. His
7 whereabouts is monitored --

8 THE COURT: Okay.

9 MR. SMITH: -- by the detention center.

10 THE COURT: Okay. Mr. Upson, I'm going to allow --
11 I'm not going to revoke your bond.

12 THE DEFENDANT: Thank you, Your Honor.

13 THE COURT: I'm going to allow you to remain out,
14 not to suggest that I'm thinking you're not going to show
15 up tomorrow and whatever other days we have of your
16 trial. But understand that if you fail to appear then
17 that will be, constitute a revocation of your bond and a
18 bench warrant will be issued for your arrest.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Whatever your lawyers say for you to be
21 back in the courthouse, you be back in the courthouse.
22 Okay?

23 THE DEFENDANT: Yes, sir, Your Honor. Thank you
24 very much.

25 THE COURT: Anything else from the State?

1 MR. SLOCUM: Nothing from the State, Judge.

2 THE COURT: Defense?

3 MR. SMITH: Nothing from the defense, Your Honor.

4 THE COURT: We'll be in recess until nine o'clock
5 tomorrow morning. Everybody have a great evening. We're
6 going to try to do a few pleas before we finish up for
7 today.

8 END OF DAY'S PROCEEDINGS: 4:56 P.M.

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WILLIAM ROYSTER - RECROSS BY SMITH

1 ON WEDNESDAY, APRIL 16, 2014 AT 9:20 A.M.:

2 THE COURT: Thank you very much. Have a seat.

3 Gentlemen, are we ready for the jury?

4 MR. SLOCUM: We are, Your Honor.

5 MR. SMITH: Yes, sir.

6 THE COURT: Very good. Bring the jury out, please.

7 THE BAILIFF: Okay.

8 (Jury enters courtroom at 9:20 A.M.)

9 THE COURT: Let the record reflect the jury's all
10 in. Good morning.

11 THE JURY (COLLECTIVELY): Good morning.

12 THE COURT: Hope everyone's doing well, you had a
13 good, restful evening and you're ready to start back to
14 work this morning.

15 Solicitor?

16 MR. MOLONY: Detective Billy Royster, Your Honor,
17 back on the stand.

18 THE COURT: All right. I just remind you that
19 you're still under oath from yesterday, sir.

20 THE WITNESS: Yes, sir.

21 RECROSS-EXAMINATION

22 BY MR. SMITH:

23 Q. Good morning, Detective Royster.

24 Just, I got a quick question before we get into
25 what we were into yesterday. How tall is John Upson?

WILLIAM ROYSTER - RECROSS BY SMITH

1 A. I'd say around five-seven, five-eight.

2 Q. Would it help you to look at your incident report
3 to remind you?

4 A. It's not my incident -- I didn't write that report.

5 Q. Is that your name at the bottom of that report?

6 A. That's me as part of it. Chad Cathcart wrote that
7 report.

8 Q. And does it have John Upson's name and biographical
9 information on that report?

10 A. Yes, it does.

11 Q. How tall does it say he is?

12 A. Five-seven.

13 Q. Thank you.

14 Detective Royster, yesterday we talked about a
15 video interview that you did with Devin Johnson on Monday
16 of this week.

17 A. Yes, sir.

18 Q. I'm going to ask you a few questions about that
19 video, about statements that you made on the video.

20 A. Okay.

21 Q. Do you admit that during that video, during that
22 interview you told Devin Johnson that someone that you
23 thought was involved or something that led you to believe
24 that he was involved, that he was having a lot of contact
25 with Devin Johnson (verbatim) and you asked him what was

WILLIAM ROYSTER - RECROSS BY SMITH

1 running through your mind?

2 A. I made mention to him about the contact that we
3 found between him and Norid-Deen that night on his cell
4 phone, and on the phone for the restaurant itself. I did
5 question him about that.

6 Q. Okay. And you think, you think that Ishmael
7 Norid-Deen was involved with this robbery?

8 A. I would consider him a person of interest, yes.

9 Q. Not a prime suspect?

10 A. He does not match the description of the second
11 person who went in. I think he's involved, but I do not
12 think he went in.

13 Q. That's -- well, the question I'm asking you is: Do
14 you think he's a prime suspect of somebody who's
15 involved? I'm not saying who went in.

16 A. Yeah. I think he's a person of interest of someone
17 involved in this robbery.

18 Q. Okay. But you wouldn't go so far as to say he was
19 a suspect?

20 A. I'm getting close to that point.

21 Q. Okay. Do you admit saying the words to Devin
22 Johnson during that interview, "I'm hoping that what we
23 talk about will help you remember what we need to know"?

24 A. I don't recall those exact words, but if I said
25 something to him in that nature, it would be our

WILLIAM ROYSTER - RECROSS BY SMITH

1 conversation with him about what happened that night would
2 help him remember things that happened that night, that
3 may help us.

4 Q. Okay. So you don't admit it but you --

5 A. I may have said it. That was an hour-and-a-half
6 long interview.

7 Q. Okay. Do you admit telling Devin Johnson that
8 when he made the phone calls to Ishmael Norid-Deen that
9 Ishmael Norid-Deen was a stone's throw from Captain D's?

10 A. Yeah, I told him that.

11 Q. That he was probably looking at it?

12 A. Yes, sir.

13 Q. Do you admit that towards the end of the interview
14 you tell him, you're talking to him about how you think it
15 might be an inside job. You tell him, "You can understand
16 how we're thinking that somebody has to let them know when
17 it's time to come in"?

18 A. Yeah. It's logical the way the establishment is
19 set up and built.

20 MR. SMITH: Thank you. Beg the Court's
21 indulgence.

22 THE COURT: Sure.

23 BY MR. SMITH:

24 Q. And when you were talking with him about an inside
25 job and that somebody had to let him in, do you think it

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 was Devin Johnson that was the one who was the inside guy?

2 A. We were thinking that since we had the phone calls
3 from his cell phone to Norid-Deen's cell phone, and then
4 there was a phone call from the restaurant itself to
5 Norid-Deen's phone, the idea did cross my mind that he's
6 the one telling them it's time to come in; yes.

7 Q. Okay. Thank you.

8 THE COURT: Anything on redirect, Solicitor?

9 MR. MOLONY: Briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. MOLONY:

12 Q. Detective Royster, this interview with Devin
13 Johnson you said it was an hour and a half long?

14 A. Yes.

15 Q. And what was the purpose of the interview at this
16 time?

17 A. With those phone records, seeing that the calls
18 made from his cell phone to Norid-Deen's cell phone, and
19 then right after those calls were made, a call was made
20 from the restaurant to Norid-Deen's phone. He never made
21 connection to Norid-Deen's cell phone because he ran out
22 of minutes. He told us he was asking for a ride home. He
23 lives in New Ellenton. He did not have a car. He said,
24 "Sometimes I walk home after work."

25 MR. SMITH: Objection, Your Honor. This is hearsay.

WILLIAM ROYSTER - REDIRECT BY MOLONY

1 THE COURT: Okay. Sustained.

2 BY MR. MOLONY:

3 Q. After the interview with Devin Johnson, did -- at
4 that time was he still a suspect in this case?

5 A. No. After that interview, at the end of that
6 interview I told him, "I always thought you were straight
7 with us."

8 Q. Up until you became aware of these phone calls from
9 Devin Johnson to Norid-Deen, was he a suspect in this
10 case?

11 A. No, he was not.

12 Q. So when you found out you brought him in to talk to
13 him about it?

14 A. That's correct.

15 Q. Now, these calls to Norid-Deen, did -- was a search
16 warrant done for Norid-Deen's cell phone records?

17 A. Yes, it was.

18 Q. Do you remember Norid-Deen's cell phone number?

19 A. His cell phone number is [REDACTED]. He has
20 since changed his number. That's the number he had at
21 that time.

22 Q. The 508 number, that's the number that Devin
23 Johnson attempted to call?

24 A. That's correct.

25 Q. That's the number that the Defendant was in

WILLIAM ROYSTER - RECROSS BY SMITH

1 constant contact with?

2 A. That's correct.

3 Q. And Norid-Deen is a suspect in this case?

4 A. That's correct.

5 MR. MOLONY: No further questions, Your Honor.

6 THE COURT: Recross?

7 RECROSS-EXAMINATION

8 BY MR. SMITH:

9 Q. Did you make a photo lineup of Ishmael Norid-Deen?

10 A. Yes, I did.

11 Q. Did you show that to anybody other than Devin
12 Johnson?

13 A. No, I did not.

14 Q. Okay. Were there any phone calls between Devin
15 Johnson and John Upson that night?

16 A. No, there was not.

17 MR. SMITH: Okay. Nothing further, Your Honor.

18 THE COURT: Thank you, sir, for your testimony.

19 You can step down.

20 THE WITNESS: Thank you, sir.

21 THE COURT: Call your next witness, Solicitor.

22 MR. SLOCUM: Your Honor, the State calls Ms. Karen
23 Milbrodt.

24 KAREN MILBRODT, having been duly sworn, was
25 examined and testified as follows:

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 examined and testified as follows:

2 THE CLERK: Having a seat in the witness box.
3 State your full name and spell your last for the Court,
4 please.

5 THE WITNESS: My full name is Desra Sheryl Fraser.
6 Fraser is F-R-A-Z-E-R.

7 DIRECT EXAMINATION

8 BY MR. SLOCUM:

9 Q. Ms. Frazer, who do you work for?

10 A. The Bureau of Alcohol, Tobacco, Firearms and
11 Explosives.

12 Q. And how long have you been there?

13 A. Seven years.

14 Q. What do you do for ATF?

15 A. I'm an intelligence research specialist. So I work
16 along with the criminal -- with the special agents and
17 basically provide intel for their cases.

18 Q. And what all does that encompass?

19 A. Depending on the case, it can be call detail
20 records, tracking of phone, bank records, international
21 travel, identifying people, photographs, criminal
22 histories, looking into business records.

23 Q. Were you asked to help on this case?

24 A. Yes, sir.

25 Q. And how did you become involved?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. I currently work with the ATF Task Force located
2 here in Aiken. And since I have worked on other cases
3 with them, they know that I have the ability to use
4 Pen-Link on call-detail records and I was brought in.

5 Q. What is Pen-Link?

6 A. Pen-Link is a database that takes the raw data
7 provided from the phone companies, we upload it and it
8 allows you to do -- you can extract data from those
9 records however you need them.

10 Q. Were you provided records from the phone companies
11 in this case?

12 A. Yes, sir.

13 Q. Who gave those to you?

14 A. Aiken Department of Public Safety e-mailed me the
15 raw data from Verizon Wireless.

16 MR. SLOCUM: Permission to approach, Judge?

17 THE COURT: Sure.

18 BY MR. SLOCUM:

19 Q. Ms. Fraser, I'm asking you to look at State's
20 Exhibit 16 that's been admitted into evidence. Do you
21 recognize those?

22 A. Yes, I do.

23 Q. What are these?

24 A. These are the call detail records in the original
25 format that we received from Verizon Wireless.

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 Q. From Detective Royster in this case?

2 A. Yes. Yes, sir, from his search warrant.

3 Q. Okay. And as a result of receiving those records,
4 what did you do?

5 A. This information was uploaded into Pen-Link so that
6 I can map the phone calls, and the location of where he
7 was when he made the phone calls.

8 Q. And based on your involvement and your work in this
9 case, what, if anything, did you make for the detective?

10 A. I was asked specifically to do a specific time
11 frame. And in that time frame I was able to locate where
12 the phone was, but I was also able to show that the call
13 was blocked when he called Captain D's, when the phone
14 called Captain D's.

15 Q. Okay. We'll get to that in just a minute.

16 A. Okay.

17 Q. I'm showing you what's been previously marked for
18 identification as State's Exhibit 15.

19 A. Yes.

20 Q. Do you recognize that, Ms. Fraser?

21 A. Yes, I do.

22 Q. What is that?

23 A. This is a report that is generated from the
24 Pen-Link system.

25 Q. That's your report --

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. Yes, sir.

2 Q. -- that you made as a result of receiving those
3 records?

4 A. Yes, sir.

5 Q. Has that report been altered, changed, deleted in
6 any way, shape or form?

7 A. No, sir.

8 Q. Does it fairly and accurately depict your report
9 that you derived from those records?

10 A. Yes, sir.

11 MR. SLOCUM: Your Honor, at this time the State
12 wishes to move State's Exhibit 15 into evidence.

13 THE COURT: And what says the defense?

14 MR. SMITH: Your Honor, I'd like to see it.

15 THE COURT: Sure.

16 MR. SLOCUM: My apologies.

17 (Document handed to defense counsel.)

18 MR. SMITH: No objection, Your Honor.

19 THE COURT: Without objection, it will be State's
20 Exhibit 15 into evidence.

21 (State's Exhibit No. 15, Pen-Link report, received
22 into evidence.)

23 BY MR. SLOCUM:

24 Q. Ms. Fraser, can you please look at those records
25 and specifically the time frame starting at nine o'clock?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. Yes, sir.

2 Q. And what do those records indicate that you made?
3 Please tell the jury what you discovered.

4 A. The time frame that I was asked to focus on started
5 at 2137. And at that time I see an incoming phone call
6 from this telephone to Captain D's.

7 Q. What else does -- is in that time frame?

8 A. Then after that phone call, there was a phone call
9 that was blocked back to Captain D's. And then at 2147, a
10 gentleman by the name --

11 THE COURT: Madam Witness, it would be helpful for
12 the jury if you'd convert to military time from regular
13 time.

14 THE WITNESS: Okay.

15 THE COURT: It may be helpful to them. You can't
16 do that?

17 THE WITNESS: I have to subtract. So 9:47. I'm
18 sorry.

19 BY MR. SLOCUM:

20 Q. Okay.

21 A. 9:47. I'll redo them again. I'm sorry.

22 At 9:37 there's an outgoing phone call from this
23 cell phone to Captain D's.

24 Q. Did that phone make any calls prior to that 9:47
25 and 9:37 you just testified to?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. Yes, sir.

2 Q. From nine o'clock forward, tell us if it made any
3 other calls --

4 A. Yes, sir.

5 Q. -- in that nine o'clock time frame? I'm sorry.

6 A. In the entire hour or just before that time?

7 Q. Just that hour.

8 A. Okay. Ten.

9 Q. And were you asked to make any maps of those phone
10 calls?

11 A. Yes, sir. I was.

12 Q. And did you make maps?

13 A. Yes, sir.

14 MR. SLOCUM: Permission to approach, Your Honor?

15 THE COURT: Certainly.

16 BY MR. SLOCUM:

17 Q. Ms. Fraser, I'm handing you State's Exhibit for
18 identification only 17, 18, 19, 20, 21, 22, 23, 24, 25,
19 and 26. Could you, please take a look at these?

20 A. Yes, sir.

21 Q. And what are they?

22 A. This is -- each map represents a phone call that
23 was made on this phone and which cell towers it hit off
24 of.

25 Q. Now were those maps derived from your work in this

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 case?

2 A. Yes, sir.

3 Q. Derived from cell phones records that you were
4 sent?

5 A. Yes, sir.

6 Q. Have those maps been changed, altered, or deleted
7 in any way, shape or form from when you made them?

8 A. No.

9 Q. Do they fairly and accurately depict the map you
10 made in reference to this case?

11 A. Yes, sir.

12 MR. SLOCUM: Your Honor, at this time the State
13 moves to enter into evidence State's Exhibit 17 through
14 26.

15 THE COURT: All right. Sixteen is already into
16 evidence. On the other exhibits, any objection to it?

17 MR. SMITH: Without objection, Your Honor.

18 THE COURT: Okay. Without objection 17 through 26
19 with the exception of 16 which is already in evidence will
20 be into evidence on behalf the State.

21 MR. SLOCUM: Thank you, Your Honor.

22 (Thereupon, State's Exhibit Nos. 17, 18, 19, 20,
23 21, 22, 23, 24, 25 and 26, maps, were received into
24 evidence.)

25 BY MR. SLOCUM:

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 Q. Ms. Fraser, what phone numbers are related -- what
2 number is related to that map?

3 A. This map is phone calls. [REDACTED]

4 Q. And were you given any information at all as to who
5 owned that number, who belonged to that number?

6 A. No, sir.

7 Q. If you take a look at State's 17, what does this
8 map depict?

9 A. This map is actually depicting two different, three
10 different phone calls. And it shows the cell towers that
11 they hit off of.

12 Q. Okay. And what are the numbers associated with
13 that cell tower?

14 A. The tower numbers?

15 Q. That's correct?

16 A. 1600, 877, and 920.

17 Q. And what do these arcs depict?

18 A. Cell towers have three different sides and what
19 these are --

20 MR. SLOCUM: Your Honor, may the juror (verbatim)
21 step down and show the jury what she's testifying to?

22 THE COURT: Sure.

23 BY MR. SLOCUM:

24 Q. Could you please tell the jury what you're
25 testifying to?

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 A. Yes. The towers are three sided so what this is
2 showing you is the side of the tower and location of where
3 the cell phone was. So basically the call was made within
4 the colored pie shape, or in -- it depends on what the
5 function is, but that's what this is indicating.

6 Q. This map shows where a call either began or ended?

7 A. Or if he was stationary, or both. It could be in
8 the same tower.

9 Q. Do you know how far apart those towers are?

10 A. Yes, sir. They're 14.7 miles.

11 Q. And where did you get that information?

12 A. Google Earth.

13 Q. I want to show you State's Exhibits 18 through 26
14 that are already in evidence. And what do these maps
15 depict?

16 A. They all depict phone calls but some actually
17 depict that there was possible movement when a cell phone
18 was made, when the call was made.

19 Q. How are you able to tell that?

20 A. The green indicates the cell tower the call began
21 off of, and the red indicates the cell that was used when
22 the phone call ended.

23 Q. Can you show the jury that on the remainder of the
24 exhibits?

25 A. This cell phone basically was stationary so there's

DESRA SHERYL FRASER - DIRECT BY SLOCUM

1 only one pie shape. Once again, the green was at the
2 beginning of the cell phone call, the red is at the end.

3 This cell phone was stationary.

4 And another stationary phone call.

5 Once again, a stationary phone call.

6 Another one.

7 Another one.

8 And, once again, a moving. Green showing the
9 beginning, red showing the end.

10 Q. What time was that call made?

11 A. This call was at 9:48.

12 Q. Ms. Fraser, is it possible to start a phone call in
13 one area -- show the jury these two that overlap -- in
14 that overlapped area, for it to jump towers; can that
15 happen?

16 A. It's possible but in my experience this shows the
17 movement of a cell phone call.

18 Q. And you testified earlier that the triangulation or
19 triangle --

20 A. Yes.

21 Q. -- is that, again, arcs that are shown?

22 A. Yes. Basically the phone call, he was in this
23 location when the phone call was made, and he ended in
24 this location. So it's within the pies.

25 Q. And again, if you know, how would it jump from one

DESRA SHERYL FRASER - CROSS BY SMITH

1 tower to another if you were stationary in that
2 overlapping?

3 A. The only time I have seen that is when it would
4 jump to another phone carrier's tower.

5 Q. Okay.

6 A. But on Verizon, that doesn't usually happen.

7 Q. Verizon tower?

8 A. Yes, sir.

9 Q. Ms. Fraser, thank you. That's all the questions I
10 have. Please answer any Mr. Smith has for you.

11 THE COURT: Cross-examination, Mr. Smith?

12 MR. SMITH: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. SMITH:

15 Q. Good morning, Ms. Fraser.

16 A. Good morning.

17 Q. Again, there's no way to say who was holding the
18 telephone --

19 A. No, sir.

20 Q. -- when it made the phone call? You keep saying
21 "he" but you don't know who was on the phone?

22 A. No, sir; I do not.

23 Q. When you say "he" you mean the phone?

24 A. Yes.

25 Q. Okay. Again, there's no way to know what the

DESRA SHERYL FRASER - CROSS BY SMITH

1 content of the phone conversation is?
2 A. No, sir.
3 Q. Okay. Now these maps that you're showing, they
4 cover a broad area --
5 A. Yes.
6 Q. -- don't they?
7 A. Yes, they do.
8 Q. And they overlap. What would happen if, say, I
9 start on this tower --
10 A. Uh-huh.
11 Q. -- and I move and go to this tower, and before the
12 call is over I'm back into this area? Does it show
13 beginning and ending call here?
14 A. Since it's one call, all it will show is the
15 beginning cell tower and the ending cell tower.
16 Q. So you don't know if movement occurred?
17 A. No.
18 Q. So these where you say it's stationary --
19 A. Correct.
20 Q. -- the phone could be moving anywhere within that
21 cell tower area?
22 A. Yes, yes.
23 Q. And the phone could leave this area, go into a
24 different area and come back and it would still show just
25 that pie chart?

DESRA SHERYL FRASER - CROSS BY SMITH

1 A. No, sir. If it leaves outside that pie, it will
2 show a different pie even if it's on the same cell tower.
3 Each pie represents one side of it. So it would show a
4 different, either cell tower or a different side of that
5 one tower.

6 Q. If the call started in this tower and in this --

7 A. And moved.

8 Q. -- and moved --

9 A. Yeah.

10 Q. -- and came back and ended in that?

11 A. No, sir.

12 Q. So, it's possible for me to start a phone call in
13 this segment --

14 A. Uh-huh.

15 Q. -- leave to a different segment, come back to this
16 segment, and it would look like it was stationary?

17 A. Possible. Yes, sir.

18 Q. Okay. Now you provided various maps. Have you
19 provided any other maps? You provided other maps to the
20 solicitor's office, didn't you, other than these?

21 A. In this case?

22 Q. Yes.

23 A. I had one with all the calls.

24 (Defendant's No. 7, ATF map, marked for
25 identification.)

DESRA SHERYL FRASER - CROSS BY SMITH

1 BY MR. SMITH:

2 Q. I'm going to show you what's been marked as
3 Defendant's Exhibit Seven. Can you tell me what that is?

4 A. Yes, sir. It is a phone call showing the beginning
5 location of the cell tower was 1600 and the ending cell
6 tower was 877.

7 Q. Okay. Is that the same towers that are shown on
8 State's Exhibit 20?

9 A. Yes, sir. It looks to be the same.

10 Q. Okay. Did you prepare Defendant's Exhibit Seven?

11 A. Yes, I did.

12 Q. Okay. So these are, these are the same thing.
13 They're just, one's in color and one's black and white?

14 A. Yes, sir.

15 Q. They represent the same towers?

16 A. And information that -- the cell tower's specific
17 information was removed so it was a clear map.

18 Q. Okay. Could you explain to us why the coverage
19 area of the pie sections are different from one map to the
20 other?

21 A. Without me having the map -- I mean, the cell tower
22 location actually on this map, it would be hard. I can't
23 specifically say that it's the same tower. So, I wouldn't
24 feel comfortable. It looks to be the same but without
25 that information, I don't know. And I would really --

DESRA SHERYL FRASER - CROSS BY SMITH

1 Q. Well, you've got the information right here, don't
2 you?

3 A. Well, you're saying that they're different. So
4 without having these cell towers actually listed on there.

5 Q. This is State's Exhibit 20.

6 A. Yes.

7 Q. And it's the call from 907; correct?

8 A. Yes, it is.

9 Q. It's from phone number that ends in [REDACTED]?

10 A. Yes, sir. But this one, I do not know what time
11 the phone call ended. That was a working copy.

12 Q. But you can tell which tower it was made from;
13 right?

14 A. The difference in the mapping would have to be a
15 Verizon. I can't answer that question.

16 Q. You don't know the answer to that question?

17 A. No, that's more of a technical question.

18 Q. Okay. But you prepared both of these?

19 A. Yes, sir, I did.

20 MR. SMITH: Beg the Court's indulgence. (Pause.)

21 Your Honor, at this time I'd move the Court to
22 admit into evidence Defendant's Exhibit Seven.

23 MR. SLOCUM: May I see it?

24 (Shown to State's Attorney.)

25 MR. SLOCUM: Yeah. Without objection.

1 THE COURT: All right. Without objection it will
2 be Defendant's Exhibit Number Seven into evidence.

3 (Defendant's Exhibit No. 7, ATF map, received into
4 evidence.)

5 MR. SMITH: Thank you. No further questions.

6 THE COURT: Anything on redirect, solicitor?

7 MR. SLOCUM: Yes. Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. SLOCUM:

10 Q. You testified earlier about star 67?

11 A. Yes, sir.

12 Q. What did you mean by that?

13 A. Coming from Verizon Wireless they send us --

14 MR. SMITH: Objection, Your Honor. I didn't ask
15 anything on cross-examination about star 67.

16 THE COURT: Solicitor?

17 MR. SLOCUM: I withdraw the question.

18 THE COURT: Okay. Thank you for your testimony,
19 ma'am. You can step down.

20 Any objection to this witness being excused?

21 MR. SLOCUM: No sir.

22 MR. SMITH: No, Your Honor.

23 THE COURT: You're welcome to stay with us or
24 you're free to leave.

25 Anything further from the State?

1 MR. SLOCUM: The State rests at this time, Judge.

2 THE COURT: All right.

3 Madam Forelady and ladies and gentlemen of the
4 jury, we're going to take a break. And I'm going to ask
5 that you retire to your jury room.

6 And, again, as I've stated previously, don't talk
7 about this case among yourselves. Certainly don't start
8 your deliberations yet. We'll get you back out here
9 shortly. Thank you.

10 (Jury exits courtroom at 10:10 A.M.)

11 THE COURT: Okay. Mr. Smith, anything from you,
12 sir?

13 MR. SMITH: Yes, Your Honor.

14 Your Honor, at this time the defense would move for
15 a directed verdict with regards to the kidnapping charges,
16 both kidnapping charges, as well as the armed robbery
17 charge but specifically towards the armed robbery charge.

18 The State has presented no credible evidence upon
19 which a jury would be able to base a decision of guilt. I
20 say that for all of them, but specifically, Your Honor,
21 with regard to the armed robbery. There's been no
22 testimony of money that was taken, and no testimony of any
23 property that was taken that wasn't stricken from the
24 record as hearsay.

25 Your Honor, they had a witness that they could have

1 called, Devin Johnson. He was on subpoena to be here.
2 They moved forward without him. On the indictment that
3 was presented on the armed robbery it lists him as the
4 person from whom goods or money were taken.

5 THE COURT: Okay. Solicitor, let me hear from you
6 on this.

7 MR. SLOCUM: Your Honor, I'm not exactly sure what
8 Mr. Smith is referring to. I believe at sidebar we
9 discussed the statement made by co-conspirator in
10 furtherance of a conspiracy which was ultimately allowed
11 in. That testimony came through Scott Hall, the
12 individual who had the gun to the back of his head. That
13 statement was, "Put the money in the bag, I don't care
14 about the change."

15 It was further testimony that there was money kept
16 in the safe each night by Jameshia Alston, the cash
17 drawers. There's testimony that Scott Hall again about,
18 "Put the money in the bag, I don't want change."

19 There's evidence of -- pictures of empty cash
20 drawers and change lying on the ground which would
21 circumstantially and directly show that money was taken
22 out of the safe, all derived from testimony on behalf of
23 the State.

24 THE COURT: The testimony, if I remember correctly,
25 that necessitated a sidebar conference, I think,

1 Mr. Smith, you initially thought that Devin Johnson was
2 being quoted by the witness.

3 And then after we talked at sidebar, I think then
4 it was realized that they were quoting the, the other guy
5 with the gun. And I think as a result of that then you
6 withdrew your objection.

7 MR. SMITH: I withdrew my --

8 THE COURT: Just -- I just want to make sure we
9 clear that up. All right.

10 I have had some concern with the issue of the
11 money. Now according to my notes, and that's not
12 necessarily to suggest that I'm going to agree with the
13 defense, but we need to really air this out completely
14 because I've had some concern with the evidence related to
15 the issue of money. Okay?

16 Now Jameshia Alston's testimony was that she was in
17 the process, and I'm paraphrasing now. I'm not
18 necessarily directly quoting verbatim these witnesses.
19 She was in the process of counting her money when the two
20 fellows came in, and she did not get as far as she
21 normally does by putting the money into the, on deposit
22 into the lock box or wherever the money goes. Okay.

23 But she did not necessarily say what happened to
24 the money. She just did not get through the whole
25 process of counting money.

1 And that was, that was all that I remember her
2 stating concerning anything about money.

3 Now, first I'm going to say: Do you agree or
4 disagree with the Court's memory on her testimony?

5 MR. SLOCUM: Yes, Your Honor.

6 However, there's more that I would request that we
7 discuss in reference to her testimony.

8 THE COURT: Okay. That's what I want to do. I
9 want to go through each witness.

10 MR. SLOCUM: That particular night, that is
11 correct, she was in the process of counting her money.
12 However, I asked her if -- she had been working at Captain
13 D's for two years and her normal practice each night, once
14 she finishes counting down that money is to put that money
15 in a change drawer and put it into the safe for the next
16 day. That's been her practice for two years. She did it
17 every night.

18 Circumstantially money in the cash drawer goes into
19 the safe. Now in reference to her testimony and money,
20 that's where we would take the position for her.

21 And, further, it's corroborated by Scott Hall's
22 testimony which we --

23 THE COURT: We'll get to Scott in a minute.

24 MR. SLOCUM: Yes, sir.

25 THE COURT: All right. Mr. Smith, related to

1 Ms. Alston's testimony, what is your recollection?

2 MR. SMITH: Your Honor, I recall that she was asked
3 what she was doing. She said that she was counting her
4 drawer down to 150 and that she usually takes it from
5 there to the safe. But she never made it that far.

6 I don't recall her saying anything about any money
7 being taken from her or any money missing from her drawer.

8 THE COURT: All right. Okay.

9 Then we move over to Scott Hall. And in direct
10 examination he said the gunman got the money from the safe
11 and put it in a bag that they used for carry-out orders.
12 He says that on direct.

13 But then he comes around on recross and stated he
14 did not know if the money had been taken because he was on
15 all fours not looking in the direction of the safe or the
16 cash registers.

17 Solicitor, what do you remember concerning Scott
18 Hall?

19 MR. SLOCUM: Your Honor, that he did testify and
20 even showed the jury on a picture the bag that the gunman
21 grabbed. The statement he said, "Put the money in the
22 bag, I don't want the change" which was further
23 corroborated by the empty cash drawers and the change on
24 the ground.

25 The other issue in terms of what he said on cross

1 is an issue for the jury to determine via credibility,
2 believability of the witness. We feel it survives a
3 directed verdict motion.

4 THE COURT: Mr. Smith, concerning Scott Hall?

5 MR. SMITH: Your Honor, I did ask him directly if
6 he saw them take any money from the safe or the cash
7 registers. And he said, no, he did not see them. He says
8 he heard a demand for money, but a demand for money is not
9 taking the money.

10 There was testimony that there was money still left
11 in the safe.

12 Your Honor, he told us specifically that he could
13 not have seen it from the way that he was looking.

14 THE COURT: Right. Well, as you fellows know, in
15 determining or making a ruling on a motion for directed
16 verdict of course the Court looks at any direct evidence
17 and any substantial circumstantial evidence is the
18 standard, which you guys know.

19 So what I've got to make a determination is this
20 circumstantial evidence. I guess the gunman's statement,
21 "Put the money in the bag," and that was done according to
22 Scott Hall, that probably would be direct evidence.

23 But the empty cash drawers, change on the floor,
24 Ms. Alston's testimony that she was prevented from
25 finishing the counting of the money, is that enough

1 circumstantial evidence to survive a motion for directed
2 verdict? Again, I'm not concerned with the weight. All
3 I'm concerned with is the existence of any direct
4 substantial circumstantial evidence.

5 And the fact that Scott Hall may have contradicted
6 himself, I don't know if that -- that would probably go to
7 the weight, which I'm not concerned with, and not
8 necessarily to the existence.

9 It's a close case. And, like I said, I've had
10 concerns. I mentioned this to Lyon early on. I had
11 concerns with the State's presentation of the issue of the
12 money in the armed robbery.

13 Viewing that, viewing the evidence in the light
14 most favorable to the State, I'm going to deny. And,
15 again, I recognize it's a close call, Mr. Smith, but I'm
16 going to deny your motion for a directed verdict. I think
17 there's enough there to send it to the jury.

18 Now anything specifically as it relates to the
19 kidnapping charge? I know you've made a motion for
20 directed verdict. And certainly you're protected on the
21 record on that. Is there anything else specifically on
22 that?

23 MR. SMITH: Your Honor, just one thing further just
24 to protect the record --

25 THE COURT: Sure.

1 MR. SMITH: -- on the armed robbery. They could
2 have called Devin Johnson. He could have provided an
3 accounting. He was under subpoena. They chose to go
4 forward without him. That would just be another ground
5 for the armed robbery.

6 THE COURT: Right.

7 MR. SMITH: With regard to the kidnapping, no
8 additional grounds.

9 THE COURT: Okay. You know, of course, you want
10 to renew this motion at the conclusion of the case, I may
11 have some epiphany and something may just go off in my
12 head and I may change positions. But right now I'm
13 denying the motion, but you're protected on the record.

14 MR. SMITH: Thank you.

15 THE COURT: Okay. You had indicated in chambers,
16 Mr. Smith, that it was your plan at least this morning,
17 earlier this morning, that you were going to call some
18 witnesses in your case?

19 MR. SMITH: Yes, sir.

20 THE COURT: All right. Let me go ahead and give
21 the standard instruction to your client. You may want to
22 explain to him what I'm going to do because it will take
23 me just a minute to pull up my script.

24 MR. SMITH: Yes, sir. Could we have a minute?

25 THE COURT: Yes, sir. Do y'all want to take about

1 a five-minute break?

2 MR. SLOCUM: Can we approach, Judge?

3 THE COURT: Yeah.

4 (Off-the-record discussion.)

5 (A recess was taken from 10:27 A.M., until 10:49
6 A.M., and the trial resumed:)

7 THE COURT: Thank you very much. Have a seat.
8 We're back on the record.

9 And since the State has rested, I need to -- before
10 I examine the Defendant, you wanted to put some additional
11 matters on the record, Solicitor, as it relates to the
12 defense motion for directed verdict?

13 MR. SLOCUM: Yes, sir. Just on the existence of
14 circumstantial evidence.

15 THE COURT: Right.

16 MR. SLOCUM: Detective Royster in his testimony
17 discussed his knowledge of some of the money taken. And
18 again, I'm paraphrasing, that they didn't even take all of
19 the money in the safe, was --

20 THE COURT: Right.

21 MR. SLOCUM: -- came out in his testimony. That
22 along with testimony of Scott and Jameshia corroborated by
23 the pictures, we feel adds to the existence of
24 circumstantial evidence. And we just wanted to put that
25 on the record.

1 THE COURT: Thank you very much.

2 Okay. Mr. Upson, would you please stand? And
3 Madam Clerk, would you swear this Defendant in, please?

4 (Defendant placed under oath.)

5 THE COURT: Mr. Upson, at this time I'm going to
6 explain to you certain of your rights. If you do not
7 understand anything I say, please let me know. If you
8 want me to explain anything in more detail, please let me
9 know that as well.

10 Do you understand so far?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: We've now reached the stage of the
13 trial where you may present your defense. You have the
14 right to claim the protections given to you by the Fifth
15 Amendment to the Constitution of the United States. This
16 amendment states in part: No person shall be compelled in
17 any criminal case to be a witness against himself.

18 This means that you cannot be required to testify
19 in this case. You have the right to testify on your own
20 behalf, however no one can make you testify. This is a
21 personal right and no one can waive this right except
22 you. If you decide to testify you will be subject to the
23 same rules that govern other witnesses and you may be
24 examined and cross-examined on any relevant issue in this
25 case.

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 does find that Mr. Upson has made the decision not to
2 testify in this case. He has done so freely, voluntarily,
3 and intelligently, having received competent counsel and
4 advice from his attorneys in this matter.

5 Anything else before we bring the jury out?

6 MR. SLOCUM: Not from the State.

7 MR. SMITH: Nothing from the defense.

8 THE COURT: Thank you very much. Bring the jury
9 out, please, sir.

10 (Jury enters courtroom at 10:55 A.M.)

11 THE COURT: Let the record reflect the jury's back
12 in. Mr. Smith?

13 MR. SMITH: Thank you, Your Honor. The defense
14 calls Investigator Steve Miano.

15 PHILLIP STEPHEN MIANO, III, having been duly sworn,
16 was examined and testified as follows:

17 THE CLERK: Have a seat in the witness box. State
18 your full name for the Court and spell your last, please.

19 THE WITNESS: My name is Phillip Stephen Miano the
20 Third, M-I-A-N-O.

21 DIRECT EXAMINATION

22 BY MR. SMITH:

23 Q. Investigator Miano, is it okay if I call you Steve?

24 A. That's perfectly fine.

25 Q. Is that what you go by?

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 A. Yes, sir.

2 Q. Okay. Can you tell the jury where you work?

3 A. I'm currently employed by the Second Judicial
4 Circuit Solicitor's Office in the capacity of chief
5 investigator.

6 Q. Okay. How long have you worked there?

7 A. I've worked in the solicitor's office since the end
8 of October, I couldn't give you a direct date, 2013.

9 Q. Last year?

10 A. Yes, sir.

11 Q. Okay. And where did you work before that?

12 A. Prior to that I was employed at Aiken Public
13 Safety.

14 Q. Okay. What are the roles -- what is your role as
15 an investigator at the solicitor's office?

16 A. My role as an investigator at the solicitor's
17 office is, once a case is made by a jurisdiction within
18 the Second Judicial Circuit that case is then forwarded to
19 the solicitor's office for prosecution.

20 During that time period before it goes to trial or
21 a resolution is made, myself and other investigators will
22 take those cases and kind of find things inside those
23 cases that we might need further information on, such as
24 if a video wasn't turned over.

25 And we also provide subpoenas to witnesses and

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 other folks.

2 Q. Basically you prepare a case for trial?

3 A. Yes, sir.

4 Q. Okay. How is what you do at the solicitor's
5 office different than, like, the police department role?

6 A. I think it probably would be hard to kind of put a
7 specific, I guess, attachment on the difference. I mean,
8 we're all investigators. The only difference is that
9 we're not the charging agency.

10 Q. Okay. Now, you have an opinion about robberies
11 that occur at restaurants?

12 A. Do I have an opinion?

13 Q. Yeah. What -- can you answer that? Have you
14 formed an opinion about how robberies that occur at
15 restaurants come about?

16 A. As a whole, no, sir, I haven't.

17 Q. Do you believe that restaurant robberies are
18 primarily inside jobs?

19 A. I would say there's a percentage of them that are.
20 And I would -- I wouldn't be able to put a percentage on
21 those. I mean, it's like the majority of crimes.
22 Oftentimes there are people on the inside that do assist
23 with them.

24 Q. Okay. Do you recall an interview that you had
25 with Devin Johnson on Monday this week?

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 A. Yes, sir. I do.

2 Q. And do you recall in that interview that you told
3 him that on restaurant robberies there's usually an inside
4 element?

5 A. I don't remember specifically.

6 Q. Do you recall a statement to Devin Johnson where
7 you told him that Ishmael Norid-Deen is a prime suspect?

8 A. I don't know if I used the word "prime". I did say
9 that he was a suspect.

10 Q. Okay. Do you remember the statement you made to
11 Devin Johnson that Ishmael Norid-Deen is wanted for
12 robbery?

13 A. I did allude that he was wanted. I don't know if
14 I said armed robbery, robbery. I don't know the specific
15 charge I said, but I did allude that he was wanted.

16 Q. Okay. Now do you think -- do you remember your
17 statement to Devin Johnson during that interview that you
18 thought that he had something to do with this armed
19 robbery at Captain D's?

20 A. Yes, sir.

21 Q. Do you remember telling him that the hammer's going
22 to fall hard?

23 A. I believe I did use that language.

24 Q. Do you remember the statement you made to him, you
25 said, "I don't think you'd pass a polygraph," with regard

PHILLIP STEPHEN MIANO III - DIRECT BY SMITH

1 to his phone conversations to Ishmael Norid-Deen?

2 A. I don't know. I know that I did have mention of a
3 polygraph while we were doing the interview, but I don't
4 know the specific verbiage that I used with him.

5 Q. Okay. Do you recall a statement that you made to
6 Devin Johnson during that interview where you talked to
7 him about calling somebody five times before the robbery,
8 and how he had access to the safe, and that it looks like
9 it's an inside job?

10 A. I don't know the specific number of phone calls but
11 we did, during the course of that interview, present some
12 of those facts to him.

13 MR. SMITH: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. SMITH:

16 Q. Do you think that Devin Johnson is involved with
17 this case?

18 A. After my interview that I sat in with Detective
19 Royster, I do not believe that Devin Johnson is involved
20 in this case.

21 Q. Do you believe that Ishmael Norid-Deen is involved
22 in this case?

23 A. I do not know enough of the specifics of the case
24 to determine one way or the other about his involvement
25 within the case.

PHILLIP STEPHEN MIANO III - CROSS BY MOLONY

1 Q. You helped investigate this case, didn't you, or
2 helped prepare it for court?

3 A. No, sir. Actually not completely. I did not.
4 There's another investigator that helped prepare the case
5 for Court. That investigator was out of town on Monday,
6 and I assisted with the interview.

7 Q. So Monday is when you got involved?

8 A. Yes, sir.

9 Q. Okay. But from your impression on Monday, the
10 interview on Monday, do you believe that Ishmael Norid-
11 Deen may have a role in this robbery?

12 A. From -- I can't make a statement one way or the
13 other whether he does or doesn't.

14 MR. SMITH: Okay. Thank you.

15 THE COURT? Cross-examination?

16 MR. MOLONY: Thank you, Judge.

17 CROSS-EXAMINATION

18 BY MR. MOLONY:

19 Q. Investigator Miano, you were present at this
20 interview on Monday; right?

21 A. Yes, sir.

22 Q. And this is the one that the defense has spoken in
23 great detail to Detective Royster about in this case.
24 What -- explain to the jury briefly what the purpose of
25 that interview was.

PHILLIP STEPHEN MIANO III - CROSS BY MOLONY

1 A. The purpose of that interview is really to not
2 leave any stone unturned. Oftentimes -- and, like I
3 said, I can't really put a percentage mark on it, whether
4 it's a robbery or other violent crimes. You want to make
5 sure that there's -- that you've examined all leads. And
6 that's pretty much what we were doing on Monday was trying
7 to really eliminate, if not confirm, that Mr. Johnson was
8 involved or was not involved in the robbery.

9 Q. You would agree with me that at the time of the
10 interview we had just, as the State, had just basically
11 learned some evidence that he had been in contact with
12 Norid-Deen moments before the armed robbery; is that
13 right?

14 A. Yes, sir.

15 Q. Okay. And we knew that Norid-Deen's cell phone
16 number -- you at that time knew that his cell phone number
17 had been on the Defendant's records a whole bunch that
18 night; isn't that right?

19 A. Yes -- well, yes, sir.

20 Q. Norid-Deen's cell phone number. Norid-Deen, the
21 name that he's bringing up that you stated is, I guess you
22 really didn't have enough information to make a judgment
23 one way or the other, but ultimately were you doing your
24 job to try to further investigate this case?

25 A. Absolutely.

PHILLIP STEPHEN MIANO III - REDIRECT BY SMITH

1 Q. And if something would have come up at that time
2 that would have given you or any other investigator enough
3 to arrest Devin Johnson, would you have done that at that
4 time?

5 A. Yes, sir.

6 Q. That was the purpose of the interview, wasn't it?

7 A. Yes, sir.

8 Q. To see if he was actually involved; is that right?

9 A. Right. Yeah.

10 Q. That's your job as an investigator; isn't it?

11 A. Correct.

12 MR. MOLONY: No further questions, Your Honor.

13 THE COURT: Redirect?

14 MR. SMITH: Briefly.

15 REDIRECT EXAMINATION

16 BY MR. SMITH:

17 Q. Devin Johnson is a victim in this case; right? He
18 was an important witness. Do you know why your office
19 didn't call him as a witness?

20 A. Do I know why we didn't call him as a witness?

21 THE COURT: Speak up, sir.

22 THE WITNESS: Okay. I'm sorry.

23 THE COURT: That's all right.

24 BY MR. SMITH:

25 Q. Yes, sir. His name is listed on the indictment.

SERENA GREEN WALKER - DIRECT BY SMITH

1 He wasn't called as a witness. Do you know why?

2 A. I don't know why. I haven't -- I've had limited
3 interaction with the case. From my understanding I think
4 he was subpoenaed for the trial.

5 Q. Okay.

6 MR. SMITH: Thank you, Your Honor.

7 THE COURT: Thank you for your testimony,
8 Investigator. You can step down.

9 MR. SMITH: Defense calls Serena Walker.

10 THE COURT: Okay.

11 SERENA GREEN WALKER, having been duly sworn, was
12 examined and testified as follows:

13 THE CLERK: Have a seat in the witness box. State
14 your full name for the Court and spell your last.

15 THE WITNESS: My name is Serena Green Walker,
16 W-A-L-K-E-R.

17 DIRECT EXAMINATION

18 BY MR. SMITH:

19 Q. Good morning, Ms. Walker.

20 A. Good morning.

21 Q. Thanks for coming today. Ms. Walker, can you tell
22 the jury where you're from and what you do for a living?

23 A. I'm from Aiken, South Carolina. And I work at
24 Sprint Gas Station.

25 Q. Okay. Now, do you remember the night of November

SERENA GREEN WALKER - DIRECT BY SMITH

1 27th?

2 A. Yes, I do.

3 Q. Okay. Why do you remember that night?

4 A. Because my brother put on a comedy show downtown.

5 Q. Who is your brother?

6 A. Ivory Corley.

7 Q. Were you involved with setting up that show?

8 A. Yes, I was.

9 Q. Okay. Who else was involved with that show?

10 A. As far as setting up?

11 Q. Yes, ma'am.

12 A. My son and a couple other people that were already

13 there.

14 Q. Okay. Do you know John Upson?

15 A. Yes, I do.

16 Q. Was John Upson involved with setting up that show?

17 A. Yes, he was. He helped my son bring my food

18 upstairs.

19 Q. Okay. Do you know when that show was supposed to

20 start?

21 A. It was supposed to start at nine.

22 Q. Okay. And when did it start?

23 A. It started after nine. I'm not sure exactly how

24 late, but it was after nine.

25 Q. When did you get to this benefit?

SERENA GREEN WALKER - DIRECT BY SMITH

1 A. About eight o'clock.

2 Q. Okay. And what did you do when you got there?

3 A. I sat and waited for my son to come upstairs, and
4 when he came upstairs it was him and John together. And
5 they were bringing my food. And John had set my food in
6 the wrong spot and I made him move it.

7 Q. Okay. That's John Upson?

8 A. John Upson, yes.

9 Q. Okay. And that was around eight o'clock?

10 A. Uh-huh. Yes, it was.

11 Q. Was that the first time that you saw John at the
12 benefit?

13 A. That night?

14 Q. Yes.

15 A. Yes.

16 Q. Okay. And what was your role at this benefit?

17 A. Just attending. Because my brother put on this
18 show, we were able to have our own table in VIP.

19 Q. Okay. Did you help set up for the show?

20 A. I set up my table, yes.

21 Q. Did you -- and were you there for the duration of
22 the show?

23 A. Yes, I was.

24 Q. What did you do after the show?

25 A. We all walked down towards the club, and I went

SERENA GREEN WALKER - DIRECT BY SMITH

1 home because I had to go to work the next morning.
2 Q. When you say "the club", where are you talking
3 about?
4 A. On the corner of Laurens Street, the hotel.
5 Q. Hotel Aiken?
6 A. Uh-huh, yes.
7 Q. Do you know about what time the show ended?
8 A. No, I don't.
9 Q. When you left this benefit, who was with you?
10 A. My sister, a couple other women, my son, John
11 Upson; it was just a whole group of us walking and playing
12 and cutting up together.
13 Q. Okay. How was John acting that night?
14 A. Like he always act; funny, you know, telling jokes,
15 playing around. He was acting no different than any
16 other time I see him.
17 Q. Okay.
18 MR. SMITH: I beg the Court's indulgence. (Pause.)
19 Q. Could you estimate about what time the show ended
20 and y'all walked over to the Hotel Aiken?
21 A. Not really because I really wasn't paying attention
22 to the time.
23 Q. You said the show started late?
24 A. Yes.
25 Q. Do you remember about what time it ended up

SERENA GREEN WALKER - CROSS BY MOLONY

1 starting?

2 A. No, I don't.

3 Q. Okay. You said it was supposed to start at nine?

4 A. Yes.

5 Q. Okay. What was this benefit for?

6 A. What was the benefit for?

7 Q. Yes, ma'am.

8 A. He usually put on a comedy show every year, but
9 this year they were also raising money for some kids for
10 Christmas.

11 Q. Okay. And do you know about how many people were
12 there?

13 A. The room was full. So, whatever the capacity of
14 the room was, I'm sure it was at capacity. But I really
15 don't know what the capacity was.

16 Q. Okay. Where was this benefit held?

17 A. At the Arts Center downtown on Laurens Street.

18 MR. SMITH: Okay. Thank you very much.

19 THE WITNESS: You're welcome.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MR. MOLONY:

23 Q. Hey, Ms. Walker, how are you doing?

24 A. I'm okay.

25 Q. You stated that your brother is Ivory Corley?

SERENA GREEN WALKER - CROSS BY MOLONY

1 A. Yes.

2 Q. And he's a comedian, isn't he?

3 A. Yes.

4 Q. And he put on the show that night?

5 A. Yes.

6 Q. Now you testified that the show was supposed to
7 start at eight o'clock; is that right?

8 A. No. Nine o'clock.

9 Q. At nine o'clock?

10 A. I got there at eight o'clock.

11 Q. Okay. This show -- I'm going to show you -- can I
12 mark this?

13 (State's Exhibit Number 27, ACR poster, marked for
14 identification.)

15 MR. MOLONY: May I approach, Your Honor?

16 THE COURT: Sure.

17 BY MR. MOLONY:

18 Q. All right. Ms. Walker, I'm going to show you
19 what's been marked for identification as State's Exhibit
20 27, and ask you if you recognize this.

21 A. Yes.

22 Q. Who is this first picture of, right here?

23 A. My brother, Ivory.

24 Q. Okay. And is this the show you're referring to at
25 the Aiken Center of the Arts?

SERENA GREEN WALKER - CROSS BY MOLONY

1 A. Yes.

2 Q. Was this a flyer for it?

3 A. Yes.

4 MR. MOLONY: Your Honor, at this time the State
5 would move to introduce state's Exhibit 27.

6 THE COURT: What says the defense?

7 MR. SMITH: Without objection.

8 THE COURT: Okay. Without objection, Number 27 for
9 the State into evidence.

10 MR. MOLONY: Thank you.

11 (State's Exhibit No. 27, ACR poster, received into
12 evidence.)

13 BY MR. MOLONY:

14 Q. Now, Ms. Walker, you would agree that this flyer
15 for the show with your brother on it states that it was
16 supposed to start at eight o'clock; isn't that right?

17 A. Yes.

18 Q. So you're just confused about it actually suppose
19 to start at nine?

20 A. I guess. You know, like I said, I thought it
21 started at nine o'clock instead of eight.

22 Q. Yes, ma'am. And this after-party, you're not sure
23 exactly what time it was going to be starting; right?

24 A. No.

25 Q. So, if the show started at eight, and it was -- say

SERENA GREEN WALKER - REDIRECT BY SMITH

1 it was late starting, you said?

2 A. Yes, it was.

3 Q. Okay. You saw him before the show, and then you
4 saw him after the show; is that right?

5 A. Correct.

6 Q. You didn't see him during the show, did you?

7 A. No. I don't remember seeing him during the show.

8 Q. So you're not sure where he was during the hour
9 before you -- or from the first time you saw him until the
10 last time you saw him?

11 A. Correct.

12 MR. MOLONY: Thank you, Ms. Walker.

13 THE WITNESS: You're welcome.

14 THE COURT: Anything on redirect?

15 REDIRECT EXAMINATION

16 BY MR. SMITH:

17 Q. Ms. Walker, you were a little confused about the
18 time this show started. Are you confused about seeing
19 John Upson there that night?

20 A. No. I may have the times confused, but I'm not
21 confused about seeing him that night.

22 Q. Okay. And you saw him -- when exactly did you see
23 him again?

24 A. An hour before the show started because I got there
25 an hour before to set up my food on my table.

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 Q. And then?

2 A. I saw him after the show.

3 MR. SMITH: Okay. Thank you.

4 THE WITNESS: Uh-huh.

5 THE COURT: Thank you for your testimony, ma'am.

6 You can step down.

7 With no objection, you are excused or you're
8 certainly welcome to remain with us.

9 THE WITNESS: All right. Thank you.

10 MR. SMITH: No objection, Your Honor.

11 MR. MOLONY: No, objection.

12 MR. SMITH: The defense calls Janet Williams.

13 JANET LAVERNE WILLIAMS, having been duly sworn, was
14 examined and testified as follows:

15 THE CLERK: Have a seat in the witness box. State
16 your full name for the Court and spell your last, please.

17 THE WITNESS: My name is Janet Laverne Williams.

18 W-I-L-L-I-A-M-S.

19 DIRECT EXAMINATION

20 BY MR. SMITH:

21 Q. Good morning, Ms. Williams.

22 A. Good morning.

23 Q. Thanks for coming. Can you tell the jury where
24 you're from and what you do for a living?

25 A. I'm from Aiken, South Carolina. And I'm employed

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 by Aiken County Department of Social Services. I'm an
2 eligibility worker.

3 Q. Okay. Now do you remember the night of November
4 27th?

5 A. I do.

6 Q. Okay. Why would you remember that night?

7 A. Because I don't normally go out. And I was invited
8 to go to this comedy show. And the comedy show was on
9 Laurens Street at the Art Center which I didn't even know
10 they had little rooms to, I guess, to rent out for
11 events.

12 So, got dressed and met my cousin up there and we
13 went to this comedy show.

14 Q. Who's your cousin?

15 A. Her name's Marty Williams.

16 Q. Okay. Do you know John Upson?

17 A. I do, yes.

18 Q. How do you know him?

19 A. We were actually raised in the same neighborhood.
20 He's older than me but, you know, me being the little
21 young, aggravating child, I would see him from time to
22 time.

23 Q. Okay. Now did you see John Upson that night?

24 A. I did. Yes, sir.

25 Q. Okay. Where were you seated?

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 A. Right directly in front of the stage. I was in,
2 they had a VIP section. And when I say "directly in front
3 of the stage," I was, like, looking up like this
4 (indicating). So, you know.

5 Q. Okay. Do you remember seeing John Upson that
6 night?

7 A. I do. Uh-huh.

8 Q. Okay. When did you see him?

9 A. Well, actually I saw him when, I guess my nerves
10 calmed down and the show was pretty much over because I
11 wouldn't look back. It was so many people. It was very
12 crowded in there.

13 When I was getting ready to leave out, I pretty
14 much ran into everybody I knew. I was a little emotional
15 because during the show they brought up two family members
16 that I had lost, like, a month apart.

17 So, you know, he was trying to console me and, you
18 know, things of that nature. We talked about it because
19 of course he knew my cousins. So we, we talked and
20 walked and, you know.

21 Q. Did you go to the after-party?

22 A. I did. I didn't know that was a part of the VIP
23 section so they kind of forced me into [REDACTED] Laurens which
24 is where it's located.

25 Q. Did you see John Upson there?

JANET LAVERNE WILLIAMS - DIRECT BY SMITH

1 A. I did. He actually walked me down there. We were
2 all walking down. I had on my cousin's shoes and I came
3 out of there, I was kind of walking without my shoes on.
4 It was -- kind of calmed me down because I was a little
5 emotional, like I stated. You know, I was very teary-eyed
6 because I hadn't dealt with the deaths of my family
7 members.

8 Q. How was John acting that night when you saw him?

9 A. Like she stated, like John. I mean, like I said, I
10 was emotional. And, you know, I mean, he can be a bit of
11 a jokester but at the time that's what's needed, you know,
12 because I was supposed to have been out enjoying myself.
13 So, he was just being John.

14 Q. Do you remember at the show about how many people
15 were there?

16 A. When I was young they used to say "filled to the
17 rim with brim". I mean, it was packed. It was a lot of
18 people. The few times that I attempted to look back, you
19 know, it was so many people. So I realized all I needed
20 to do was to look up, so --

21 Q. Okay.

22 A. -- it was a lot of people.

23 MR. SMITH: Thank you. Beg the Court's indulgence.

24 (Pause. Conferring with Defendant.)

25 BY MR. SMITH:

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 Q. Do you remember about what time the show ended?

2 A. It was probably around -- because it started late,
3 I want to say, like, it wasn't 11. I'm just guessing
4 maybe, like, 10:30, quarter to 11.

5 Because I know by the time I made it down to the
6 club it was, it was, like, almost 11 o'clock. And we
7 were in the club and, like I stated, I was just in an
8 emotional, you know, state. And I was standing in the
9 corner trying to, you know, just uplift my spirits. And
10 actually John saw that I was so emotional. He actually
11 pulled me outside and that's when I broke down, so.

12 Q. Okay. Thank you. Nothing further.

13 THE WITNESS: Uh-huh.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY MR. MOLONY:

17 Q. Hey, Ms. Williams. How are you?

18 A. Hello. How are you?

19 Q. Doing well. So you just testified that the
20 Defendant, you saw him at the very end of the show?

21 A. Yes, uh-huh.

22 Q. Okay. And you were sitting right up front?

23 A. Yeah. I was right, right there by the stairs and
24 right there on the stage almost but not, you know,
25 standing on the stage. I was -- my table was right there.

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 Q. Okay. Where, where did you see him? Where was
2 he?

3 A. When I was getting ready to leave, you know, like,
4 I sat there for a while after everybody was trying to
5 leave. I don't like crowds, so I was waiting for the room
6 to kind of get a little thin. When I was walking out I
7 had to go to the restroom, so my cousin showed me where
8 the restroom was and I was coming back out looking for
9 her.

10 So before I got to the elevators -- I had never
11 been in this building before. I guess once you come out
12 of the room, this is where they had the table where you
13 showed your, your tickets or whatever. And I want to say
14 I was about to get on the elevator and when I looked over
15 he was walking towards me. He was asking me, was I okay.
16 I said, you know, "I'm all right."

17 Q. Yes, ma'am.

18 A. Right there by the elevator when I was getting
19 ready to leave out.

20 Q. Yes, ma'am. So, this was -- the show was done,
21 lights were on?

22 A. Oh, yeah. Uh-huh. They were actually getting rid
23 of tables and everything because when I stated I was
24 waiting for the room to kind of thin out, I was waiting.

25 Q. Yes, ma'am. And so when you actually saw him it

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 wasn't actually in the room where the comedy show was
2 being held, it was basically towards where the elevator
3 was?
4 A. Yes, uh-huh.
5 Q. The elevator wasn't in the room where the comedy
6 show was being held, was it?
7 A. No, sir.
8 Q. Okay. How long have you known the Defendant?
9 A. I've known him, I would say, all of my life of
10 remembering, I guess. Childhood friends, I guess.
11 Q. Yes, ma'am. Now, this after-party at Hunter and
12 Laurens?
13 A. Uh-huh.
14 Q. You testified, you were kind of guessing time?
15 A. Yes.
16 Q. Did you ever look at your watch when you got to
17 Hunter and Laurens?
18 A. Watches don't work on me.
19 Q. So you're not exactly sure of the time?
20 A. I'm not. No, sir. Huh-uh.
21 Q. As to --
22 A. But I know it wasn't 11 o'clock.
23 Q. Okay.
24 A. I do know because once I got into the club and got
25 very emotional, I actually text somebody to come get me

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 because I was just too emotional to drive. And that's
2 when he saw me getting upset. Everybody was kind of
3 consoling me. They're not used to seeing me out in clubs,
4 so. And I actually had a couple people come over. John
5 was one of them, "Janet, let's walk outside and get some
6 air." You know, "Thank you," and I walked outside.

7 Q. How do you know it wasn't 11 o'clock?

8 A. Because when I started texting --

9 Q. Yes, ma'am.

10 A. -- the person I started texting him, probably it
11 was a little bit after 11. I had been in the club for a
12 little while.

13 Q. When you say a "little while", couple minutes? Ten
14 minutes?

15 A. Maybe 10, 15 minutes. Uh-huh. Yes.

16 Q. Okay. You've known the Defendant your whole life.
17 You're aware of his cell phone number?

18 A. No.

19 Q. [REDACTED]?

20 A. I moved away. I lived in Charlotte for 15 years
21 and I've only been back for five years to take care of my
22 grandmother, so.

23 Q. Okay. You've known him for a long time --

24 A. I've known him -- exactly.

25 Q. -- but you're not real close with him?

JANET LAVERNE WILLIAMS - CROSS BY MOLONY

1 A. No, sir.

2 Q. And you weren't with him that --

3 A. No.

4 Q. -- night because you didn't see him until after?

5 A. No, sir.

6 MR. MOLONY: Thank you, Your Honor.

7 THE COURT: Redirect?

8 MR. SMITH: Nothing further.

9 THE COURT: Thank you for your testimony, ma'am.

10 You may step down. Any objection to this witness being
11 excused?

12 MR. MOLONY: No, sir, Judge.

13 THE COURT: You're free to leave or you're welcome
14 to stay with us.

15 MR. SMITH: Your Honor, the defense calls Vernon
16 Wright.

17 THE COURT: Okay.

18 VERNON LEE WRIGHT, having been duly sworn, was
19 examined and testified as follows:

20 THE CLERK: Have a seat in the witness box.

21 State your full name for the Court and spell your
22 last.

23 THE WITNESS: Vernon Lee Wright, W-R-I-G-H-T.
24
25

VERNON LEE WRIGHT - DIRECT BY SMITH

DIRECT EXAMINATION

BY MR. SMITH:

Q. Good morning, Vernon.

A. Good morning.

Q. Thanks for coming this morning.

Could you tell the jury just a little bit about yourself, where you grew up and what you do for a living?

A. Yes, sir. I'm from here. I'm originally from here in Aiken, South Carolina. I served Aiken County Sheriff's Office under the Detention Division for 11 years. And I currently work for Augusta Technical College as a college professor.

Q. Thank you. Do you remember the night of November 27th?

A. Yes, sir.

Q. Okay. Why do you remember that day?

A. Because there was a special event and I had reserved a table for my business.

Q. Okay. What business is that?

A. I own a barber shop here in town.

Q. Okay. Do you know John Upson?

A. Yes, sir. I do.

Q. How do you know John?

A. I know John Upson from school.

Q. Okay. Did you see John Upson the night of this

VERNON LEE WRIGHT - DIRECT BY SMITH

1 benefit?

2 A. Yes, sir.

3 Q. When did you see him?

4 A. I can't exactly tell you the time. I do know that
5 the show was supposed to start at eight and it was
6 extremely late. I've seen Mr. Upson when I was on my way
7 to the restroom, and we actually spoke to one another.

8 Q. Okay.

9 A. And when I went back into the room, he was still
10 pretty much standing in the same spot.

11 Q. Now when you had a chance to speak with him, had
12 the show already started?

13 A. No, sir. Ivory had been on the stage, but the
14 actual show aspect of it hadn't started yet.

15 Q. So it was just getting to the point of starting?

16 A. Right. At least we were under the impression that
17 it was about to start but then there was a pause there, I
18 don't know, for maybe 10, 15 minutes before the acts
19 actually got on the stage.

20 Q. Did you go to that after-party?

21 A. Yes, I did.

22 Q. Okay. Did you see John Upson there?

23 A. I don't recall seeing John at the after-party.

24 Q. Okay. Do you remember when you spoke with John
25 that time, that evening, do you remember how he was

VERNON LEE WRIGHT - CROSS BY SLOCUM

1 acting?

2 A. He was -- actually we were surprised to see one
3 another. I hadn't seen him in several years.

4 Q. Okay. Was he acting normal?

5 A. Yes.

6 Q. Okay. Not nervous or upset or anything?

7 A. No, sir.

8 Q. Okay.

9 MR. SMITH: Beg the Court's indulgence. (Pause.)
10 Nothing further, Your Honor.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. SLOCUM:

14 Q. Mr. Wright --

15 A. Yes, sir.

16 Q. -- you know Mr. Upson from school; is that correct?

17 A. Yes, sir.

18 Q. What school?

19 A. I know John from when I was in middle school at
20 Kennedy B. (verbatim) Middle School, here in Aiken.

21 Q. So he was a buddy of yours?

22 A. No, we're not buddies but we know each other.

23 Q. And you said you couldn't tell exactly when the
24 show started. It was extremely late. Is that your
25 testimony?

1 A. Yes, sir.

2 Q. How long did the show last?

3 A. I do know that the show was supposed to end --
4 well, we were supposed to be out of the building by
5 midnight and if I'm not mistaken the show actually ended
6 before midnight.

7 Q. Okay. And then it ended just before midnight, then
8 you went to the bar, right, the after-party?

9 A. Yes, sir.

10 Q. Where was the after-party?

11 A. It was [REDACTED] Laurens Street.

12 Q. And you didn't see Mr. Upson at that?

13 A. There were several people there, sir, I -- you
14 know; I can't recall.

15 Q. Do you know Ishmael Norid-Deen?

16 A. No, I don't.

17 Q. You don't?

18 MR SLOCUM: Beg the Court's indulgence. (Pause.)

19 Nothing further, Judge.

20 THE COURT: Redirect?

21 MR. SMITH: Nothing.

22 THE COURT: Thank you for your testimony, sir. You
23 can step down. If there's no objection to being excused,
24 you are free to leave or you're welcome to remain with us.

25 MR. SMITH: Judge, can we approach?

1 Okay? Again, I remind you, don't discuss this case
2 amongst yourselves or anybody you come in contact with
3 over lunch break. Don't discuss anything about this case.
4 We'll see you back at 1:30. Have a good lunch.

5 (Jury exits courtroom at 11:34 A.M.)

6 THE COURT: Okay. Anything for the record before
7 we take our lunch break, from the State?

8 MR. SLOCUM: Nothing from the State.

9 THE COURT: From the defense?

10 MR. SMITH: Your Honor, I'd just like to renew my
11 motion for directed verdict on the armed robbery as well
12 as for the kidnapping.

13 THE COURT: Okay.

14 MR. SMITH: For the same reasons stated previously
15 for the armed robbery.

16 THE COURT: Okay. Thank you very much. The motion
17 is denied.

18 All right. We'll be in recess until 1:30. As I
19 indicated to you at our sidebar we had a moment ago, we'll
20 provide you with a draft of the final charge for you to
21 look at. We'll probably -- and the verdict form too.

22 If y'all want to hang around for just a little bit
23 before you take off for lunch, we can probably get you a
24 copy before you break for lunch. So if you'd just hang
25 around for a little bit, please.

1 MR. SLOCUM: Yes, sir.

2 MR. MOLONY: Yes, sir.

3 (Lunch break taken at 11:36 A.M. At 1:44 P.M., the
4 trial resumed:)

5 THE COURT: All right. Let's go back on the
6 record -- oh, we're missing --

7 MR. GRIMES: We can do the preliminary stuff, Your
8 Honor. He's on the way in, but we can start.

9 THE COURT: Well, I don't mind waiting.

10 MR. GRIMES: That's all right. We talked about
11 stuff.

12 THE COURT: All right. The proposed charge, does
13 the State have any objections, changes, amendments?

14 MR. SLOCUM: Yes, sir, Your Honor. Just to the --
15 amendment to the charge of armed robbery. We actually
16 dealt with this here recently in this circuit about the
17 armed robbery. During the commission of attempted
18 robbery, one reasonably believes the item used to be a
19 deadly weapon, those words "reasonably believed" are not
20 in the charges that we reviewed earlier.

21 And we would just ask that that be amended to
22 include the new language.

23 THE COURT: Okay. Let me look here.

24 Solicitor, help me out a little bit more. What
25 specifically -- which page are we referring to?

1 Madam Forelady and ladies and gentlemen of the
2 jury, we are now at the stage, as I had mentioned to you
3 before we broke for lunch, that the lawyers will give
4 their closing arguments to you. And I will then, after
5 that is done, I will give you the charge on the law and
6 your final instructions.

7 So if you will pay very close attention. Give your
8 undivided attention to the lawyers as they present their
9 closing arguments. Okay?

10 Mr. Smith?

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

13 THE COURT: Yes, sir.

14 MR. SMITH: Mr. Slocum, Mr. Molony.

15 Good afternoon, ladies and gentlemen of the jury.
16 Thank you for your service.

17 We know that this is an imposition on your time and
18 your lives and we truly value your service. It's
19 something to remember for the rest of your lives.

20 We talked about -- before this all got started, we
21 kind of gave you an idea what was going to happen. We
22 told you you were going to hear all this evidence and now
23 you've heard it. I talked about you having two different
24 bags, a bag of good stuff, a bag of bad stuff, stuff that
25 you didn't want to hear. The stuff that you don't

1 consider important, you just throw it away.

2 Now you all paid good attention the whole time.
3 You've all remembered things you've heard. Some things
4 mean a lot to you. Some things don't.

5 What we're going to do now is go through some
6 things you heard. We're going to review it.

7 The night this happened, John Upson was involved
8 with a benefit, a comedy show that was a benefit. He was
9 there ahead of time. He was helping set up. He was
10 involved with the setup of the show. He was seen at the
11 show, you heard, right up until the point of the start.
12 Okay.

13 You also heard testimony that he was seen right
14 there when it ended. A lady who was sitting right up
15 front, she was sitting right up front, and she was
16 watching the show. She wasn't paying attention to what's
17 going on behind her, beside her.

18 She was watching the show. She didn't see John
19 Upson during the show but when it was over, she got up and
20 she walked back and as she went back she saw John Upson.
21 What time was that? She says about 10:30, 10:45.

22 What time did this robbery occur? Did you hear
23 that? Do you remember that?

24 He would have had to jumped into his car, sped back
25 downtown, parked, jumped out, ran upstairs, see his good

1 friend and say, Oh, how are you doing? Are you okay? I
2 notice you've been crying. I'm going to comfort you.

3 Are those the actions of a man who just arm robbed
4 a Captain D's? A man who the State is trying to say goes
5 in with a bandana over his mouth, a hoody on, gloves on,
6 rushes in there, rushes out, and then he's cool as a
7 cucumber? That doesn't make sense. That doesn't make
8 sense.

9 Why does this man leave the show if he's so
10 invested in it? He's there before, he's there after.
11 He's there at the after-show, the show where his childhood
12 friends are attending, his childhood friends are putting
13 on. The State's asking you to believe that he's going to
14 leave there.

15 I got an idea. Why don't we go and rob the Captain
16 D's? That's cool. I'd much rather do that than watch
17 this show. It doesn't make any sense.

18 You heard good evidence. You heard good testimony
19 from witnesses putting him there. Okay. That's
20 important for you to consider.

21 What else did you hear about? Well, you heard
22 about phone records.

23 And all of this stuff has been admitted. You're
24 going to get to take this all back with you into the jury
25 room. And you can flip through anything that you want.

1 There's a lot here. There are pages and pages of small
2 typed phone records, cell tower records, maps, all this
3 stuff that's been printed out for you, all this stuff.

4 What does it show? What is the State hoping to
5 show from this? I know what it doesn't show. It doesn't
6 show that John Upson was at Captain D's robbing the place.
7 It doesn't show that. It can't show through any of this
8 phone stuff that John Upson was at Captain D's.

9 This doesn't help you one bit in making your
10 decision. It's for you to consider. You can spend your
11 time. I encourage you, if you want to look into it, look
12 into it. There's good information in there.

13 But ultimately what you're not going to find in
14 there, you're not going to find anything that tells you
15 that John Upson was at Captain D's at the time of the
16 robbery. It's not there. Okay.

17 We're going to play a little game. Okay? You're
18 going to like this. What I'm showing you is a picture of
19 a bunch of people's noses and eyes. Okay. These are
20 people that you all have seen. These are people that you
21 would know and recognize them. These are pictures that
22 show maybe about what was shown to Jameshia when she got
23 put in the freezer by the guy with the mask, with a
24 bandana over his face and hoody on.

25 I'm going to ask you guys who some of these people

1 are because you know who they are. You've seen them. You
2 didn't see them for just a split second a few days ago.
3 You didn't see them for a few minutes a few days ago.
4 These are people you've seen repetitively for a long time,
5 for years. Let me see if you know these people. Don't
6 answer me out loud. Okay. I want you to look at them. I
7 want you to think. Let's start with this one. Let's
8 start with this one.

9 I want y'all to look at it. Get a good look.
10 Think in your mind who you might think that is. If you
11 need any more time to look at it, let me know. I'll give
12 you more time.

13 This one right here. Okay. Are you guys ready
14 for the great reveal? See how many of you got this right.
15 Brad Pitt. You guys have seen him before; right? It's
16 just an exercise to get you guys to know what she saw.
17 What are we expecting her to do? The State is trying to
18 -- they're resting their entire case on this. Okay.
19 They're resting their whole case on that (indicating).

20 You heard from the investigators. You heard
21 Investigator Royster tell you that there are no other
22 suspects in this case. And you heard Investigator Miano
23 talk about how he thinks that the guy named Ishmael Norid-
24 Deen was a suspect in this case.

25 You heard about photo lineups. But did you hear

1 about a photo lineup of John Upson? No, you didn't. You
2 didn't hear about a photo lineup of John Upson because
3 none was ever done. None was ever done. They didn't show
4 his picture to anybody. They took what Jameshia Alston
5 found on Facebook, said, all right, we got our guy.

6 That's good enough for us. Let's go to court with it.

7 They didn't investigate. I mean, they -- they had
8 an opportunity to look for video footage. They checked at
9 Captain D's. Their system was out. Isn't it convenient
10 that the guy that they were interrogating at the last
11 minute on Monday morning is a manager at Captain D's who
12 they thought might be involved with this? Isn't it
13 convenient that there's no video footage? That the hard
14 drive wasn't functioning properly? It just seems a little
15 convenient.

16 What about the camera at Staples? You heard from
17 Scott that he thought they had come up from behind
18 Staples. Well, there, sitting perched like an eagle on
19 the back corner of Staples, right up to -- right up to the
20 back corner of Captain D's we see this. Do you see
21 that? A big old thing sticking right up there in the back
22 corner looking right at the back door of Captain D's. Did
23 anybody even ask about that? They didn't even go talk to
24 Staples about that.

25 Round two. Round two.

1 Let's do another one. Let's try the big one.
2 Okay. It may be a little more difficult. Take a good
3 look. Enough time? Who do you think that is? It's
4 Jay-Z. Got Jay-Z on there. Okay.

5 Let's talk about what Scott Hall said. Scott Hall
6 was there. He was in a bad position. He had a gun put
7 to the back of his head. He sees these guys. Right? He
8 sees them wearing their bandanas over their faces, hoodies
9 over their heads. They order him to the front. They put
10 him down, a gun to his head. What does he say about
11 those guys? He doesn't get a real good look. He can't
12 identify them. But what can he tell you? He can tell you
13 how tall they were. That was about the best description
14 we got of anybody was out of Scott Hall. Black male, two
15 black males, one about five-eleven, one taller than that.

16 Do you remember how tall Scott Hall was? He wasn't
17 that tall. He's not five-eleven. Five-eleven. Taller
18 than that.

19 Now, do you remember, I asked Detective Royster:
20 How tall is John Upson? John Upson's not very tall. He's
21 five-seven. And we're talking about the difference
22 between me and Michael Jordan. If Michael Jordan's in
23 here, you're going to be able to say, that's Michael
24 Jordan. That's Andy Smith. That's a big difference
25 there. It's a big difference. And what's more than the

1 four or five inches. What's more than that.

2 When people who are a certain height -- how do you
3 judge people's heights? You look at somebody and say he's
4 six-two, she's five-three. They don't do that. A lot of
5 times what they do is they say, hey, the guy's taller than
6 me. That guy's shorter than me. Scott Hall, John Upson,
7 about the same height.

8 Why would he say that? Why would he say that this
9 guy's five-eleven and the other guys over five-eleven, six
10 foot or more if it's John Upson? Well, the answer to that
11 is because it wasn't John Upson. He wasn't there. He's
12 downtown at the benefit, spending the evening with his
13 friends and his family.

14 We'll go to round three with the pictures. Who
15 should we do? How about we do this one. This big one
16 right here.

17 All right. Do you have in your mind who you think
18 it is? Let me show you. Michael Jordan. It's hard to
19 tell from those little, that little view of him; isn't
20 it?

21 Now, we've got Jameshia Alston. She's scared. I
22 feel bad for Jameshia Alston. She's counting down her
23 money, just like she does every night. It's every other
24 night for her. She's counting down her till, closing up,
25 getting ready to go home, enjoy Thanksgiving break and

1 somebody rushes in the door with a gun.

2 And she sees the gun and she is freaked out. She
3 told you that she was afraid that she was going to die.
4 When someone's afraid that they're going to die and they
5 see somebody running around the store, are they gazing
6 into somebody's eyes? Are they staring at their face?
7 Guess what? The guy who's she's saying is John Upson
8 isn't the guy with the gun.

9 Two guys coming in and one's got a gun, who are you
10 watching? The guy with the gun. You don't care so much
11 about the other guy. You're concerned about the guy with
12 the gun. The other guy's got a mask over his face and a
13 hoody on, marches you to a freezer, puts you in the
14 freezer, closes the door. And this freezer doesn't have a
15 window on it. She's in a windowless freezer, telling you
16 what a man who has his face covered and hoody on, telling
17 you who that is.

18 Now she doesn't know John Upson. She wasn't
19 raised with John Upson. She's never spent a day with
20 John Upson's family. She doesn't know him.

21 She knows him as a customer from two days prior.
22 She doesn't know me as a customer. She knows John Upson
23 from two days prior as a customer.

24 The people who are up here in this stand -- Janet
25 Williams, Vernon Wright, Serena Walker -- they know John

1 Upson. And guess what? When they're with John Upson, he
2 didn't have his face covered. He didn't have a hoody on.
3 That's easy for them to say, yeah, I'm with John Upson, a
4 guy I know, a guy who's not trying to hide himself.

5 And what did they tell you about John? Did they
6 tell you that he was acting nervous? That he was
7 fidgety? Did they tell you that he was sweaty, acting
8 weird? No. Remember? They all said he was being John
9 Upson. He was being gregarious. He was trying to comfort
10 me. He was making me laugh. He was walking with me
11 across the street. We were going to go spend some time at
12 the after-party together. That's the John Upson they
13 saw. They didn't see a guy who had just robbed Captain
14 D's. Okay.

15 I don't know that we're going to do all of these.
16 I know you want to. Let's do this one. This bottom big
17 one here. Take a good look. Think in your mind who it
18 might be. Ready? Here goes.

19 Barry White. Barry White. If I was given a
20 description of a guy who robbed me that night and that guy
21 happened to be John Upson, that's an easy thing to say. I
22 want you to remember. You listened to all of this stuff.

23 The State brought this case against John Upson.
24 They decided when was enough investigation. Did they
25 investigate this enough? We're ready to come to court.

1 We're ready to present it to the jury.

2 But there's some stuff that's missing, isn't
3 there? Okay. You got stuff that's missing. What
4 happened to Devin Johnson? You heard this guy's name a
5 lot during the trial.

6 Devin Johnson never sat up there. Why didn't he
7 sit up here? Devin Johnson's name is on one of the
8 indictments. He's a victim. He's a victim. He's an
9 important witness. The State didn't get him up here.
10 They chose to go forward with this case. They chose what
11 evidence to present.

12 And remember who's burden this is. Who has the
13 burden here? Remember the scales at the beginning? We
14 talked about the scales. John Upson, it's all in his
15 favor when we start. The State is the one who has to tip
16 the scales. Not just so they're even. They got to tip
17 them all in the other direction.

18 You have to be convinced beyond a reasonable
19 doubt. The State decides, hey, what evidence can we
20 present to the jury to convince them beyond a reasonable
21 doubt? Do we need to gather more evidence? Do we have
22 enough? They decided they had enough, and they didn't
23 need to investigate this any more.

24 They didn't need to call all these witnesses.
25 They didn't call Devin Johnson. They didn't call William

1 Keels. They didn't call Cassandra Ellis. They didn't
2 call these people, these people who were mentioned in the
3 story. You don't know anything about these people. And
4 the reason you don't know anything about them is because
5 the State didn't present that evidence to you.

6 But you deserve to hear all of the evidence. Is
7 it too much to ask a panel of 12 people to make a decision
8 on somebody's life to decide whether to take away
9 somebody's liberty with just some of the information?
10 Just a little bit? You deserve it all. Okay. You
11 deserve it all.

12 And, remember, it's not John Upson's job to defend
13 himself. It's the government's job to prove to you
14 beyond a reasonable doubt that he's guilty. And they
15 decide how they're going to do it.

16 Remember what they didn't give you. We don't have
17 any videos. You don't have any photo lineups. We're
18 missing witnesses.

19 Now, remember, when you go back into this room
20 you're going to be asked to discuss the case. You're
21 going to be asked to render a verdict. And I'll tell you
22 what a verdict means. A verdict means to speak the truth.
23 Remember, we talked about this at the beginning; speak the
24 truth.

25 The truth of the verdict, a jury's verdict has to

1 be your truth. It has to be your truth. And your
2 truth. And your truth. It has to be every individual's
3 truth. We don't have a decision from a jury until we
4 have a unanimous decision from all 12 members of the
5 jury. All 12 of you have to agree.

6 And guess what? There may be differences of
7 opinion. You may -- some may be stronger in favor of
8 guilty. Some may be firmly convinced the State didn't
9 prove guilt. Because, remember, we don't have to prove
10 him innocent. You just have to be convinced beyond a
11 reasonable doubt by the State that he's guilty. The
12 other side is, they -- did they meet that burden. Not
13 that he's innocent, because they didn't meet that burden.
14 Some of you guys are going to be convinced of that.

15 It's not your job to bully each other. It's not
16 your job to strong arm each other, to beat each other to
17 fall into line. We got to get back out there and get a
18 verdict. You don't have to do that. It's okay for
19 people to have different opinions. If you all have the
20 same opinion, you got a verdict. Okay. If you don't all
21 have the same opinion, you don't have a verdict. Keep
22 that in mind. It's got to be your decision.

23 Now when you go back there and vote, I want you to
24 pay attention to how you do it. You're going to discuss
25 things. And you're going to be asked to vote and when it

1 comes time to vote you're going to have to commit to
2 something, one way or another. Commitment's a big thing.
3 You got to ask yourself you how do you feel. What does my
4 body do when it's time to step across the line for guilty
5 or step across the line for not guilty?

6 When you're asked if you are firmly convinced
7 beyond a reasonable doubt that the State has proven him
8 guilty, if you find yourself leaning back in your chair,
9 folding your arms, taking a deep breath before you cast
10 your vote, guess what that is? That's reasonable doubt.

11 That hesitation that you have to act, that shows
12 something. That shows you that you're not firmly
13 convinced. Some people have -- respond different ways.
14 I raise my eyebrows. I do it all the time. All in
15 favor of guilty, raise eyebrows, lean back, take a deep
16 breath. That's reasonable doubt right there. Pay
17 attention to those feelings. Okay. They inform you what
18 you really believe.

19 We really do appreciate your time. A lot of
20 people get up here and they ask you, they ask you to come
21 back with something. They ask you to find somebody
22 guilty. They ask you to find somebody not guilty.

23 I think it's disingenuous. I'm going to ask you to
24 vote what you're firmly convinced of. I'm going to ask
25 you -- or not convinced of, as it may be. If you're not

1 convinced, if you're not convinced that the State has
2 proved him guilty beyond a reasonable doubt, that's easy;
3 that's not guilty.

4 If you're not convinced, if you have questions, if
5 you have doubts; that's easy.

6 I'm going to ask you to vote your truth. To
7 return a true verdict, not a bullied verdict, not a
8 strong-arm verdict; your truth. So that when you come
9 back out here and you tell the Court either, "Sorry, we
10 can't come up with a verdict," or "This is our verdict,"
11 that whatever you say reflects what you truly believe. I
12 know you will.

13 I appreciate your time. Thank you.

14 THE COURT: Thank you, Mr. Smith. Solicitor?

15 MR. SLOCUM: Thank you, Your Honor. May it please
16 the Court.

17 THE COURT: Certainly.

18 MR. SLOCUM: Mr. Gibbons. Mr. Smith.

19 Ladies and gentlemen, good afternoon.

20 I want to address a few things that Mr. Smith just
21 told you. I told you in my opening that he's a fine
22 attorney and it's his job to advocate for Mr. Upson. He's
23 done a great job of doing that.

24 But what he's done is ask you to look over here;
25 look at what's going on down here; check out this camera;

1 or what about this fellow; what about what's going on over
2 here. He doesn't want you to look at what has actually
3 been shown to you and what actually happened that night.
4 He doesn't want you to look at the truth from that night.

5 He said to you about your job. It's not your job
6 to punish someone. It's not your job to punish someone,
7 to take away their liberty. It's not your job to reward
8 someone either. You took an oath and that's why we chose
9 you; to be fair and impartial and to be the finders of the
10 fact. That is it. That is all we want you to do today.

11 Mr. Smith wants you to think there's no way John
12 Upson could have been involved because he was downtown the
13 entire time at this comedy show. But all three people
14 that got up there that testified for the Defendant gave
15 you times of 10:45, 11 o'clock, just before midnight. One
16 didn't even know the time, didn't know when the show
17 started or when the show ended. No one could give you a
18 concrete time.

19 But cell phone records do. And I ask you to look
20 at those. Mr. Smith said if you want to look at them,
21 please look at them. They're in evidence. Check them
22 out. See for yourself.

23 Mr. Smith wants you to think there's some
24 conspiracy, some reason they didn't check the camera. He
25 said that law enforcement didn't check the camera. The

1 reason we interviewed this person, the reason law
2 enforcement did this has nothing to do with John Upson.
3 Nothing to do with John Upson and what happened on
4 November 27th, 2013. Nothing at all.

5 The date this all happened, November 27th, 2013,
6 was when two people went into that Captain D's and robbed,
7 with a gun, Captain D's. Forced Jameshia Alston and Scott
8 Hall into a cooler and left. One of those persons was
9 Mr. Upson, the Defendant in this case.

10 However, this whole story really starts on November
11 25th, 2013, two days before that. Ms. Alston was
12 working. She said that the Defendant came in that night,
13 on the 25th, ordered a large Sprite and took a picture of
14 William Keels who was a co-worker with her that night on
15 the 25th.

16 The details, ladies and gentlemen. She remembers
17 the details. If you're going to make up something, make
18 up a whopper of a story. But she doesn't. She tells you
19 exactly what happened because that's what happened. She's
20 not making it up. A large Sprite and took a picture of
21 William Keels. And we'll get to William Keels a little
22 more in a minute.

23 But on November 27th, those two people come in the
24 back door in all black with a hood on and bandanas up here
25 (indicating). She makes eye contact with that person in

1 the back with her. She sees the gun. The gun -- the
2 gunman goes up to the front, puts it to the back of Scott
3 Hall's head. She doesn't see that. She's in the back
4 with John Upson by herself. And she sees those eyes.

5 The same eyes that she saw the two nights before that
6 ordering a Sprite, took a picture of William Keels. She
7 says she remembered it because of his lazy eye. She
8 didn't make that up. She told you that because that's
9 what happened.

10 This area we were just talking about in the back
11 with Jameshia. She was there. Right here. She said she
12 was at this desk when it happened. They'd come in that
13 back door. She is with Upson by herself, no one else.

14 She's not -- the gun's gone. She's not
15 concentrating on the gun. She said when she saw his eyes
16 she knew him, but she didn't know a name. So she didn't
17 tell law enforcement a name. If you're going to make it
18 up, let's give him a name and go with it that night. She
19 didn't because she wasn't sure. She just knew that she
20 knew him.

21 And so what's she do? She thinks back, all right,
22 two days earlier William Keels, the picture. So she goes
23 to William Keels' Facebook page. She didn't know the
24 guy. She just remembered him two days before. And what
25 does she see? John Upson. And she stops. She stops

1 looking because -- what'd she say -- "I almost jumped out
2 of my chair."

3 She knew. She sat up there and told you. She
4 knew. No doubt in her mind that's who it was. She had
5 the time back then. She's not making this up.

6 Mr. Hall, Scott Hall, who was working with
7 Ms. Alston that night; has a gun, a black gun, pistol --
8 she told you it was black, Ms. Alston told you it was
9 black -- put to the back of his head and he could tell it
10 was real by how cold it was. He's forced up front.
11 Forced on his hands and knees with the gun still to the
12 back of his head. Says, "The gunman grabbed the bag."
13 Showed you the bag he grabbed off of this little rack they
14 got there where they give the food. Grabbed a bag, said,
15 "Put the money in the bag, I don't want the change."

16 Ladies and gentlemen, we have empty cash registers
17 and change. This corroborates his story. He's not
18 making it up. He couldn't give you a great description.
19 He had a few seconds. He told you that, "I had a few
20 seconds, that's all I could see."

21 I imagine with a gun to your head and a few
22 seconds, I'm surprised anything at all was remembered. I
23 submit to you that what he's telling you happened
24 happened. He's not making it up. If he were going to
25 make it up, let's get a name. Let's go looking for

1 everybody. As a matter of fact who will make it up, let's
2 get a second name. Let's make it up for a second name, a
3 second suspect, the gunman. Law enforcement didn't, she
4 didn't, Scott didn't, because they didn't know.

5 But Jameshia knew. She knew.

6 And when she saw him, when she saw this portion of
7 his eyes she knew (snaps fingers). Now she told you that
8 when this all happened she was afraid. She felt like she
9 was going to die. She was back there held against her
10 will. She told you she did not feel free to leave.
11 Scott told you he did not feel free to leave. He had a
12 gun to his head. She's scared to death. Upson takes her
13 and puts her in the freezer.

14 And then when the gunman comes back with Scott and
15 the other fellow, Mr. Johnson who we'll talk about just a
16 little bit more, puts them all in the freezer. Upson
17 helps with that. They had just taken the money out of the
18 safe, out of the registers, those drawers.

19 You heard Jameshia talk about it. She counts it
20 down every night she works and puts the money in the
21 safe. We got an empty safe. We've got money gone. We've
22 got, "Give me the money, don't give me the change."

23 Well, the change is still there. We don't know how
24 much money because they don't know. Law enforcement
25 didn't know. They didn't make up a number, some arbitrary

1 number. Money was taken.

2 "Give me the money, I don't want the change," and
3 then they throw them in the freezer.

4 After all of that happens, Jameshia tells you she
5 talks to law enforcement. Scott talks to law enforcement.
6 Jameshia says she knows the guy, "Saw him in here two days
7 earlier but I don't know his name." She didn't give law
8 enforcement his name because she didn't know.

9 But when she got home, she's going through
10 Facebook, pictures of William Keels, the same guy that she
11 saw John Upson take a picture of two days before. She
12 sees this picture and about jumped out of her chair.

13 So what's she do? She got those two pictures, sent
14 them to Detective Royster. There's John Upson. That's
15 the Defendant. She didn't make up a name. It wasn't
16 until after she saw his picture, "This is him." She sat
17 up there on the stand, "This is him." No doubt. She
18 knew.

19 That's all you need. That's all the law requires
20 for a verdict of guilty.

21 That is direct evidence. That's what she saw.
22 It's what she felt.

23 Circumstantial evidence with Scott. Snatching the
24 bag, "Give me the money. Leave the change." Well, empty
25 cash register and change. You put it together. It's just

1 what I asked you to do in opening. Please use your common
2 sense. You can put things together. The law makes no
3 distinction between direct evidence and circumstantial
4 evidence. You only need one. You only need direct -- you
5 only need what Jameshia told us during this trial. That's
6 all you need.

7 But look at everything. Look at all of it.

8 The next day, the 28th, after Detective Royster
9 told you he went to John Upson's house looking for him, he
10 wasn't there. The Defendant calls him on the phone.
11 Calls him from [REDACTED]. You'll see it here in just a
12 minute. Talks to Detective Royster, tells him he's got a
13 warrant for him. John Upson said, "I was downtown at the
14 comedy show, check my phone. I was down there the whole
15 time. Check my phone."

16 Well, Detective Royster did just that. Here's the
17 phone call I was telling you about. Detective Royster
18 told you his number was [REDACTED]. You can check all
19 of this on your own in the cell records. I urge you to
20 please look at these.

21 Calls him on the 28th, 5:02. Detective Royster
22 calls him right back at this [REDACTED]. Calls from the
23 same phone, the exact same number. We'll get into the
24 Defendant's cell phone records now.

25 And I'm going to show you what happened here. I

1 want you to look when you go back there as well. You can
2 see on the 27th, 2013, these are phone calls that the
3 Defendant makes to this Ishmael Norid-Deen, the fellow
4 that you've heard his name. The funny thing about it
5 here, the name Ishmael Norid-Deen, Williams Keels and
6 Devin Johnson that Detective Royster told you about, and
7 Devin Johnson was one of the fellows on the inside of the
8 store, the one that was there with Scott Hall in the
9 front, Scott Hall said took the money, is they're all tied
10 into John Upson. That's the common denominator in all of
11 this.

12 But you look here, 8:12, Ishmael Norid-Deen calls
13 John Upson. 8:17, John Upson makes a phone call. Someone
14 calls up. Defendant called. Defendant called. Norid-
15 Deen. Norid-Deen. 8:12, 8:17, 8:18, 9:02, 9:05, 9:07,
16 9:27. All while he's at the show, watching the show
17 supposedly. He ain't watching the show. He's on his
18 phone. We're not saying he's not downtown because the map
19 will show you, he's downtown at this time. His phone is
20 pinging off towers that are downtown. We're not arguing
21 that. The State is not arguing that.

22 But you look here. At 9:37, a phone call was made
23 to Captain D's from the Defendant's cell phone. Two
24 minutes later, oops, let's star 67 before we call Captain
25 D's.

1 Desra Fraser, she didn't get into it much but she
2 said, brought it up about the Defendant dialing star 67 to
3 block his call right before he called Captain D's. We all
4 know what star 67 is. What do we have here at 9:47? A
5 call to William Keels. He's back in the picture. John
6 Upson went up there to see him on Monday, took a picture
7 of him. That's how Jameshia knew him, through William
8 Keels. He calls William Keels right before the armed
9 robbery happens, but at 9:48 he makes one last call to
10 Captain D's through star 67 and then silence. Not a
11 peep.

12 The armed robbery happened, Jameshia told you,
13 about 10:15 she said. At 11:01, the police check the
14 records, this 864 number, calls the Defendant's cell phone
15 at 11:01. Pinging off tower 920. Right down here.
16 There's downtown. Here's tower 920. At 11:01. Please
17 look at this. Please look at those records.

18 He wasn't downtown. The cell phone's pinging
19 downtown all before that. We're not denying that. 11:01,
20 he wasn't downtown. Let's take a look at what's in
21 between downtown and where this phone pings. Captain
22 D's.

23 Now Mr. Upson got to be the most unlucky man in the
24 planet to just have called Captain D's three times before
25 it's robbed and the person he was seeing two days before,

1 before it's robbed. It's got be the worst luck ever.

2 Ladies and gentlemen, Mr. Upson went in that night
3 with another fellow. We don't know. We didn't make it
4 up. She didn't make it up. That was Jameshia against her
5 will. Put her in the freezer. Was there when the other
6 gunman had a gun to the back of Scott Hall's head, took
7 money out of that safe and they left.

8 Now you'll see phone calls that are made after the
9 armed robbery. These are two days later. Please look at
10 them: You heard Detective Royster testify about the
11 numbers to Aiken Center of the Arts. And you can see it
12 in there. It's in the records.

13 He calls Captain D's again at 11:29, two days after
14 at 9:30 A.M. However he leaves a number out. You can see
15 that on the records, a number is missing. Then he gets it
16 right, he calls Captain D's without star 67. And then
17 calls the Aiken Center of the Arts, star 67, the same
18 place where the comedy show was, the same exact place.

19 Now, what are the odds of all of that? This has
20 just got to be bad luck; right? The worst day ever. The
21 worst day ever.

22 Ladies and gentlemen, circumstantially this all
23 adds up. Common sense will tell you. Jameshia told you
24 direct. Her story has not changed since day one. She has
25 not wavered one iota from the start of all of this.

1 Please look at these. Look at what we've showed
2 you, what the State has presented to you.

3 Now, the State is alleging that John Upson along
4 with another committed armed robbery and two counts of
5 kidnapping.

6 And I want to address something really quick about
7 Devin Johnson. He was a third individual there that
8 night. He was the one that was also put in the freezer.
9 However you heard Detective Royster talk about how they
10 wanted to uncover every stone. Detective Miano uncovered
11 every stone, and they did their due diligence. They
12 thought he might be involved in connection to Norid-Deen.
13 So they went and checked on him. They did their job,
14 exactly what they wanted to do.

15 I submit that if they hadn't done it it would be
16 brought up as well but it doesn't matter because it's all
17 smoke and mirrors. It has nothing to do with John Upson
18 and what he did that night.

19 The armed robbery was the Defendant, John Upson,
20 along with the another. We don't know the other, but we
21 know that he used a gun and that they took personal
22 property of another person, another individual at Captain
23 D's. That money did not belong to them when they went in
24 there. They took it by force or intimidation. By force
25 with a gun to the back of Scott Hall's head. And that

1 they used a deadly weapon, a pistol or what appeared to be
2 a deadly weapon. Scott told you he felt the coldness of
3 the steel. He knew it was real. Jameshia saw him holding
4 it up against the back of his head. She thought it was
5 real.

6 That's all armed robbery is. Like I told you in
7 opening. Robbing somebody with a gun. Kidnapping,
8 knowingly, unlawfully seizing or confining only for a
9 moment another person without authority of law.

10 Kidnapping can happen (snaps fingers) like that.

11 "Can I leave? No, stay right here." She was
12 afraid for her life. She was put in the freezer. She
13 told you that. Scott told you that. They did not feel
14 free to leave. Kidnapping. That's all it takes (snaps
15 fingers) just that.

16 Now here in South Carolina and on these two things,
17 armed robbery and kidnapping, the Judge is going to direct
18 you on the law. As I told you in opening, whatever he
19 says, please go with it.

20 The hand of one, hand of all means that two people
21 acting together for the common plan or intent. Here we
22 have John Upson and an unknown individual entered the
23 Captain D's with a gun with the intent of robbing it.

24 Now, during this crime he helped. He held
25 Jameshia in the back. He helped put them in the freezer.

1 He assisted. He aided. He abetted in the crime. So he
2 is just as guilty as the person with the gun. It doesn't
3 matter who actually had the gun, all are guilty. The hand
4 of one is the hand of all.

5 Ladies and gentlemen, I told you in opening that I
6 want you to use your common sense to weigh the
7 believability and credibility of the witnesses. I ask
8 you that when you go back there to do just that.

9 Jameshia, 18 years old, about to graduate high
10 school. What reason does she have to lie, to making this
11 up? If she was going to lie, let's blow it up. Let's
12 blow it out of the water. Let's pick the other guy and go
13 after him, but she didn't. She told law enforcement that
14 night she didn't know who it was but she had seen him
15 before two days earlier. She recognized his lazy eye she
16 saw that picture and (snaps fingers) about jumped out of
17 her chair. The story hasn't changed since November 27th,
18 2013.

19 Please look at the phone records. Look at the
20 maps. You can put it all together. Please use your
21 common sense.

22 I thank you for your time and your service. And I
23 think that once you get back there, see all of this, the
24 only verdict reasonable, and the only verdict which you
25 will be firmly convinced for armed robbery and two counts

1 of kidnapping is that Mr. John Upson is guilty.

2 Thank you.

3 THE COURT: Thank you, Solicitor.

4 Madam Forelady, ladies and gentlemen of the jury,
5 I'm going to take about a five-minute break before we
6 start the final charge on the law by the Court, give
7 everybody a chance to kind of catch their breath. So just
8 retire back to your jury room and we'll bring you out
9 shortly.

10 Again, don't start your deliberations. Don't
11 discuss this case among yourselves.

12 (Jury exits courtroom at 2:39 P.M.)

13 THE COURT: One matter on the record. Jameshia's
14 last name is not spelled correctly on the indictment.
15 Would you -- it's missing the S on Alston.

16 MR. SLOCUM: Does it have an S or it doesn't have
17 an S?

18 THE COURT: It does not have an S.

19 MR. SLOCUM: We would move to amend it, Judge.

20 THE COURT: If you have any objections to letting
21 the solicitor just pen through it and leaving it in?

22 MR. SMITH: None, Your Honor.

23 THE COURT: We'll take about a five-minute break.

24 MR. SLOCUM: Thank you, Your Honor.

25 (Break taken at 2:39 P.M. At 2:52 P.M., the trial

1 The indictments in this case allege several
2 different offenses against the Defendant. The charges
3 are: In Indictment 2014-GS-02-74, armed robbery;
4 Indictment 2014-GS-02-79, kidnapping of Jameshia Alston;
5 and Indictment 2014-GS-02-80, kidnapping of Scott Hall.

6 Each indictment charges a separate and distinct
7 offense. You must decide each indictment separately on
8 the evidence and the law applicable to it, uninfluenced by
9 your decision as to any other indictment.

10 The Defendant may be convicted or acquitted on any
11 or all of the offenses charged. You'll be asked to write
12 a separate verdict of guilty or not guilty for each
13 indictment.

14 Now, Madam Forelady and ladies and gentlemen of the
15 jury, I remind you that during this trial you and I have
16 had certain duties to perform. As the Trial Judge, it
17 has been my responsibility to preside over the trial of
18 this case and I also have the duty to rule or have had the
19 duty to rule on the admissibility of the evidence offered
20 during this trial.

21 You are to consider only the competent evidence
22 before you. If there was any testimony ordered stricken
23 from the record in this case during this trial, then you
24 must disregard that testimony. You are to consider only
25 the testimony which has been presented from the witness

1 Let the record reflect that the jury's in.

2 Madam Forelady, I have been informed that you have
3 reached a verdict in this case.

4 FOREPERSON of the JURY: Yes, sir.

5 THE COURT: And was the verdict reached
6 unanimously?

7 FOREPERSON OF THE JURY: Yes, sir.

8 THE COURT: As to each indictment?

9 FOREPERSON OF THE JURY: Yes, sir.

10 THE COURT: The verdict form, would you hand that
11 to the bailiff please, sir -- please, ma'am. Sorry.

12 FOREPERSON OF THE JURY: (Complying.)

13 THE COURT: Madam Clerk, if you will publish the
14 verdict, please?

15 And if the Defendant would please stand.

16 THE CLERK: Your Honor, we have the State of South
17 Carolina versus John Lyndon Upson. As to Indictment
18 2014-GS-02-00074, the charge of armed robbery, we, the
19 jury, find the Defendant guilty.

20 As to Indictment 2014-GS-02-00079, the charge of
21 kidnapping of Jameshia Alston, we, the jury, find the
22 Defendant guilty.

23 As to Indictment 2014-GS-02-00080, the charge of
24 kidnapping of Scott Hall, we, the jury, find the Defendant
25 guilty.

1 Signed April 16th, 2014, by Forelady Suzanne Dyke.

2 Ladies and gentlemen of the petit jury, is this
3 your verdict and do you still agree?

4 THE JURY (COLLECTIVELY): Yes.

5 THE COURT: Okay. Does the defense want
6 individual polling of the members of the trial jury?

7 MR. SMITH: No, Your Honor.

8 THE COURT: Okay. You can have a seat. Thank
9 you.

10 Madam Forelady and ladies and gentlemen of the
11 jury, let me thank you for your jury service. As I
12 discussed with you on Monday it's -- serving on a jury is
13 a very high, very important civic responsibility that we
14 all have.

15 And our system of justice that we have in this
16 state and in this country certainly could not operate in
17 any way without a jury such as yourselves and we
18 appreciate your jury service very much.

19 Now, so I don't forget, Madam Forelady, you'll need
20 to sign the indictments. And just when I release you,
21 you'll just need to get with the clerk to sign that
22 paperwork.

23 You are free, if you so choose, to discuss this
24 matter with anyone that you would like to talk with.
25 Sometimes the lawyers like to contact a person on a jury

1 Mr. Smith, be glad to hear from you, be glad to
2 hear from the Defendant, and be glad to hear from anybody
3 that wants to speak on his behalf. It's up to you.

4 MR. SMITH: Yes, sir. Thank you. May it please
5 the Court.

6 Judge, Mr. Upson is 42 years old. He grew up here
7 in Aiken. He graduated from South Aiken High School
8 here. He's been a barber, Your Honor. He attended
9 Southern Barber College as well as Aiken Tech. And that's
10 primarily the work that he's done. Your Honor, he's
11 single. He doesn't have any kids, but he's got his family
12 here with him.

13 Your Honor, John Upson maintains his innocence. He
14 understands that he's been found guilty by a jury but he
15 maintains that he was not involved with this incident.

16 His brother, Charlie, would like to address the
17 Court at this time.

18 THE COURT: Okay. You'll need to be sworn and then
19 I'll be glad to hear from you.

20 (Oath administered.)

21 THE COURT: Would you please state your name for
22 the record?

23 MR. CHARLIE UPSON: Okay. My name is Charlie
24 Upson.

25 THE COURT: Okay. Be glad to hear from you,

1 Mr. Upson.

2 MR. CHARLIE UPSON: Thank you, Judge. Just a
3 moment.

4 THE COURT: Take your time, sir.

5 MR. CHARLIE UPSON: This is a bit overwhelming for
6 my family and me, given the gravity of the situation.

7 We can only ask and implore the Court for mercy.
8 My brother is 42 years old. I am five years his senior.
9 I ask for mercy not primarily for him but for my parents
10 who are elderly and, as you've heard, have endured the
11 lifelong situation such as this, not as serious but,
12 still.

13 Again, given the gravity of the situation and what
14 he's faced with, and the age of my parents, my father who
15 will be 84 this year, Your Honor, and, and I would hate
16 for him to pass while my brother's incarcerated.

17 So, again, I just implore the Court to keep that in
18 mind. And I realize that you have to take everything into
19 account. You have to take into account the nature of the
20 crime, and the victims. I'm not unaware of that. I'm
21 not insensitive to that, but just would ask that you take
22 that into account, please.

23 THE COURT: Thank you very much, Mr. Upson.

24 MR. CHARLIE UPSON: Thank you.

25 THE COURT: Okay. Mr. Smith, was there another

1 gentleman that wanted to speak?

2 MR. SMITH: It appears that his father would like
3 to speak also.

4 THE DEFENDANT: No, I'd like to say something, Your
5 Honor.

6 THE COURT: Just consult with your attorney.

7 MR. SMITH: Yes, sir. It's --

8 THE COURT: I'll be glad to hear from you. Okay?
9 Yes, sir.

10 THE DEFENDANT: Your Honor, I said I didn't do
11 this. Any time they came to me with a plea for a lesser
12 sentence, I turned it down.

13 My father's 84 years old. My mother's 73.

14 Prior to me coming back home I was working in North
15 Dakota in the oil fields. I came back because of my
16 father's age to help him with his property and my mother.

17 To the victims of the crime, I'm sorry that it
18 happened to them but I had no part in this.

19 Again, the State came to me just now again asking
20 if there was anything that I could do to lessen my
21 sentence to give information I would have, but I didn't
22 because I know no information about this robbery. I did
23 not participate in this robbery.

24 To my daddy, my brother, friends. To my father,
25 don't never think anything negative. Best childhood I

1 ever had. Unfortunately what most know, most black kids
2 never get. I had done some things more or less paper
3 hanging and I was wrong for that.

4 As far as the strong-arm robbery going to the cash
5 register and dealing with the counterfeit money, but I
6 ain't never robbed nobody. I never put a gun on nobody.
7 I'm not a violent individual.

8 And, again, I apologize to the victims for what
9 they went through but to my father and my family, I ask
10 they forgive for whatever's going on now with this here
11 because they don't -- my father provided the best for me.
12 He provided the best for me. I didn't want for nothing.

13 Robbing somebody is something that I did not do.
14 Saying I'm a six feet tall individual. I ain't six feet.

15 What is done is done. The evidence and then of
16 course the jury's made their decision, Your Honor.

17 I'm just asking that you have mercy on me. I may
18 never get to see my family. I may not be able to see ever
19 my father on the other side of the gate again, attend his
20 funeral or my mother's, for that matter. God forbid that
21 it comes to it. I would rather see my demise before
22 theirs.

23 But, again, I throw myself at the mercy of the
24 Court and thank you for listening to me, Your Honor.

25 THE COURT: Thank you, sir.

1 Mr. Smith, anything further from you?

2 MR. SMITH: Nothing, Your Honor.

3 THE COURT: Anything further from the State?

4 MR. SLOCUM: Not from the State, Judge.

5 THE COURT: Give me just a few moments. You can
6 stand down. Be with you shortly.

7 (Pause from 5:18 P.M., until 5:22 P.M.:)

8 THE COURT: All right. We're back on the record in
9 the sentencing phase of the State versus John Lyndon
10 Upson.

11 And, Mr. Upson, you know, regardless of however I
12 view the case from the factual standpoint or from a guilt
13 or sentence standpoint, I must and do accept the verdict
14 of the jury. And they considered the evidence and made a
15 determination that you were guilty of all three.

16 And it certainly goes without saying that these are
17 serious charges, extremely serious charges. They carry a
18 maximum sentence of 30 years in prison. Armed robbery
19 carries a mandatory minimum of 10 years. Not a whole lot
20 of offenses that carry that mandatory minimum. So they
21 are very serious.

22 And I've considered everything. I considered
23 everything that was said. I would commend all four
24 attorneys for an excellent presentation of their
25 respective cases.

1 And THESE SENTENCE WILL RUN CONCURRENT. THE
2 SENTENCE OF THE COURT IS YOU BE COMMITTED TO THE STATE
3 DEPARTMENT OF CORRECTIONS FOR A PERIOD OF 20 YEARS.
4 THAT'S ON EACH INDICTMENT. NO SEXUAL OFFENDER REGISTRY ON
5 THE TWO KIDNAPPING INDICTMENTS.

6 And good luck to you, sir.

7 THE DEFENDANT: Thank you, Your Honor.

8 BOTTOM LEFT: Thank you, Your Honor.

9 MR. SLOCUM: Thank you, Your Honor.

10 END OF CASE: 5:20 P.M.

11 ** **

12 CERTIFICATE OF REPORTER

13
14 STATE OF SOUTH CAROLINA)

15
16 COUNTY OF AIKEN)

17
18 I, Cheri L. Young, Registered Professional Reporter
19 and Official Court Reporter for the State of South
20 Carolina, Second Circuit-At Large, do hereby certify that
21 the foregoing proceedings were written stenographically by
22 me using computer-aided translation; further, that the
23 foregoing is a true, accurate and complete record, to the
24 best of my skill and ability, of all the proceedings had
25 and evidence introduced in the hearing of the captioned

WITNESSES

Aiken Department Of Public Safety

William R Royster

Law Enforcement Case #: 14-14864

JAS

ARREST WARRANT NUMBER

FILED January 9 2014
2013A0220101013

Liz Godard
C.C.P. & G.S.
Shannon D. Rosenblantz
Deputy Clerk

ACTION OF GRAND JURY

True Bill

Robert Wade

Foreperson of Grand Jury
Date: January 9, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0200074

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JANUARY TERM 2014

THE STATE

vs.

JOHN LYNDON UPSON

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing constitutes a true and correct copy of the
original documents which have been filed in my office this

APR 11, 2014

Liz Godard
C.C.P. & G.S. Aiken County, S.C.
Anna Godard
Deputy Clerk

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on January 13, 2014, the Grand Jurors of Aiken County present upon their oath:

That JOHN LYNDON UPSON along with another, did in Aiken County on or about November 27, 2013, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: a handgun, feloniously take from the person or presence of Devin Johnson by means of force or intimidation goods or monies of Captian D's, such goods or monies being described as follows: U.S. currency, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

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



J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

William R Royster

Law Enforcement Case #: 14-14864

JAS

ARREST WARRANT NUMBER

13-DI02-0105

FILED January 9, 2014

Liz Godard
C.C.P. & G.A.

Shannon D. Rosen
Deputy Clerk

ACTION OF GRAND JURY

True Bill

Robert Wade
Foreperson of Grand Jury

Date: January 9, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0200079

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JANUARY TERM 2014

**THE STATE
vs.**

JOHN LYNDON UPSON

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General
Sessions for Aiken County, South Carolina do hereby certify
that the foregoing contains a true and correct copy of the
original documents which have been filed in this case.

APR 11, 2014

C.C.P. & G.A. Aiken County

Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

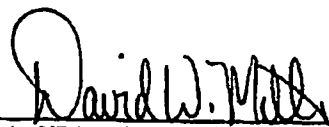
INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on January 13, 2014, the Grand Jurors of Aiken County present upon their oath:

That JOHN LYNDON UPSON did in Aiken County on or about November 27, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Jameshia Alton without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

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



J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken Department Of Public Safety

William R Royster

Law Enforcement Case #: 14-14864

JAS

ARREST WARRANT NUMBER

13-DI02-0106

FILED January 9 2014

Liz Godard, Jr.
C.C.P. & G.S.
Shannon D. Rosen
Deputy Clerk

ACTION OF GRAND JURY

True B:11

Robert Wade
Foreperson of Grand Jury
Date: January 9, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0200080

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

JANUARY TERM 2014

THE STATE
vs.

JOHN LYNDON UPSON

CDR #: 0095

Indictment for

KIDNAPPING

§ 16-03-0910

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby verify that the foregoing constitutes a true and correct copy of the original document which has been filed in my office this

APR 11, 2014

Liz Godard, Jr.
C.C.P. & G.S., Aiken County, S.C.

Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

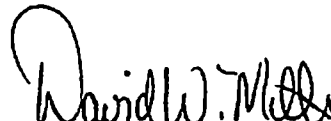
INDICTMENT FOR
KIDNAPPING

§ 16-03-0910

At a Court of General Sessions, convened on January 13, 2014, the Grand Jurors of Aiken County present upon their oath:

That JOHN LYNDON UPSON did in Aiken County on or about November 27, 2013, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Scott Hall without authority of law, all in violation of §16-3-910 of the Code of Laws of South Carolina (1976), as amended.

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



J. STROM THURMOND, SOLICITOR

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."

August 6th, 2015



John H. Strom
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

AUG 06 2015

SC Court of Appeals