

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BERKELEY COUNTY

Roger M. Young, Circuit Court Judge

ORIGINAL
RECEIVED

JUL 21 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DONTE SAMAR BROWN,

APPELLANT

APPELLATE CASE NO. 2014-001082

RECORD ON APPEAL

TIFFANY L. BUTLER
Appellate Defender

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

Attorney for Appellant

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MAY 5-8, 2014.....	1
COURT'S EXAMINATION OF DEFENDANT REGARDING HIS RIGHT TO A JURY TRIAL AND RIGHT TO PRESENT A DEFENSE.....	6
COURT'S OPENING REMARKS	17
JURY VOIR DIRE	30
JURY SELECTION	70
MOTION TO EXCLUDE REFERENCE TO CHRISTOPHER WILSON'S GPS MONITORING.....	85
RULING BY THE COURT	87
MOTION TO EXCLUDE CHRISTOPHER WILSON'S GPS RECORDS.....	87
MOTION TO EXCLUDE REFERENCE TO THE MOTEL SIX	94
RULING BY THE COURT	96
MOTION TO EXCLUDE CHRISTOPHER WILSON'S CELL PHONE RECORDS (RELEVANCY).....	97
RULING BY THE COURT	97
MOTION TO EXCLUDE CHRISTOPHER WILSON'S DNA FOUND ON SKI MASK	98
RULING BY THE COURT	101
MOTION TO SUPPPRESS EVIDENCE FOUND AT THE MOTEL SIX (SEARCH WARRANT)	101
MOTION TO SUPPRESS EVIDENCE FOUND AT 318 SWAMP FOX LANE (SEARCH WARRANT).....	102

TESTIMONY

NICHOLAS RYAN POWELL (IN CAMERA)	
Direct examination by Ms. Littlejohn.....	103
Cross examination by Ms. Taylor.....	114
LINDA LOMBARD (IN CAMERA)	
Direct examination by Ms. Littlejohn.....	116
MOTION TO SUPPRESS DEFENDANT'S DNA (SEARCH WARRANT).....	117

TESTIMONY

NICHOLAS RYAN POWELL (IN CAMERA)	
Redirect examination by Ms. Taylor	119
Recross examination by Ms. Littlejohn.....	121
RULING BY THE COURT ON MOTION TO SUPPRESS EVIDENCE FOUND AT THE MOTEL SIX	122
DEFENSE ARGUMENT IN SUPPORT OF MOTION TO SUPPRESS DEFENDANT'S DNA	123
STATE'S ARGUMENT	132
STATE'S THIRD-PARTY GUILT MOTION.....	139
RULING BY THE COURT ON STATE'S MOTION	148
RULING BY THE COURT ON MOTION TO SUPPRESS DEFENDANT'S DNA.....	149
MOTION TO EXCLUDE CHRISTOPHER WILSON'S CELL PHONE RECORDS (DEFECTIVE SEARCH WARRANT)	160
RULING BY THE COURT	170

TESTIMONY

SONIA WILSON (IN CAMERA)

Direct examination by Ms. Taylor	171
Cross examination by Ms. Littlejohn	175
Redirect examination by Ms. Taylor	180
Recross examination by Ms. Littlejohn	181

RULING BY THE COURT ON MOTION TO SUPPRESS

EVIDENCE FOUND AT 318 SWAMP FOX LANE	186

OPENING STATEMENT BY MR. WEST	209

OPENING STATEMENT BY MS. LITTLEJOHN	217

TESTIMONY

JEFFREY TAYLOR

Direct examination by Mr. West	221
Cross examination by Ms. Littlejohn	227
Redirect examination by Mr. West	231

RILEY KEMP

Direct examination by Ms. Taylor	231
Cross examination by Ms. Littlejohn	246

VINCENT RILEY

Direct examination by Mr. West	252
Cross examination by Ms. Littlejohn	257
Redirect examination by Mr. West	262

KEVIN LANE

Direct examination by Mr. West	264
Cross examination by Ms. Littlejohn	270
Redirect examination by Mr. West	271
Recross examination by Ms. Littlejohn	272

DANIEL AUMAN

Direct examination by Ms. Taylor	273

GERLINDA WILLIAMS

Direct examination by Mr. West	277
Cross examination by Ms. Littlejohn	287

MELVIN POWELL

Direct examination by Mr. West.....	293
Cross examination by Ms. Littlejohn.....	298

DAVID SCHRADER

Direct examination by Mr. West.....	300
Cross examination by Ms. Littlejohn.....	305

SCOTT COOK

Direct examination by Ms. Taylor	307
Cross examination by Ms. Littlejohn.....	320
Redirect examination by Ms. Taylor	322
Recross examination by Ms. Littlejohn.....	323

TODD MASON

Direct examination by Ms. Taylor	325
Cross examination by Ms. Littlejohn.....	334

WENDY MYERS

Direct examination by Ms. Taylor	335
Cross examination by Ms. Littlejohn.....	349
Redirect examination by Ms. Taylor	351

RULING BY THE COURT ON MOTION TO SUPPRESS
EVIDENCE FOUND AT 318 SWAMP FOX LANE.....

354

RULING BY THE COURT ON MOTION TO EXCLUDE
CHRISTOPHER WILSON'S GPS RECORDS.....

368

TESTIMONY

MARTEEKA HAMILTON

Direct examination by Ms. Taylor	375
Cross examination by Ms. Littlejohn.....	386
Redirect examination by Ms. Taylor	407
Recross examination by Ms. Littlejohn.....	409

CYNTHIA GARRETT

Direct examination by Ms. Taylor	411
Cross examination by Ms. Littlejohn.....	428
Redirect examination by Ms. Taylor	464

STEWARD POWELL

Direct examination by Mr. West.....	467
Cross examination by Ms. Littlejohn.....	471
Redirect examination by Mr. West.....	477
Recross examination by Ms. Littlejohn.....	478

DAVID SODERBERG

Direct examination by Mr. West.....	478

NICHOLAS POWELL

Direct examination by Ms. Taylor.....	484
Cross examination by Ms. Littlejohn.....	517
Redirect examination by Ms. Taylor.....	536
Recross examination by Ms. Littlejohn.....	541

WENDY MYERS

Direct examination by Ms. Taylor.....	549
Cross examination by Ms. Littlejohn.....	551

MELINDA KNOWLAND

Direct examination by Mr. West.....	552
Cross examination by Ms. Littlejohn.....	555
Redirect examination by Mr. West.....	556

SONIA WILSON

Direct examination by Ms. Taylor.....	557
Cross examination by Ms. Littlejohn.....	558

LANIER DANILES

Direct examination by Ms. Taylor.....	560
Cross examination by Ms. Littlejohn.....	564
Redirect examination by Ms. Taylor.....	566

KENNETH WHITLER

Direct examination by Mr. West.....	567

DANIEL DEMERS (IN CAMERA)

Direct examination by Ms. Taylor.....	575
Cross examination by Mr. Schwacke.....	579

DANIEL DEMERS

Direct examination by Ms. Taylor.....	588
Cross examination by Mr. Schwacke.....	612

STATE RESTS.....	633
COLLOQUY REGARDING DEFENDANT'S RIGHT TO TESTIFY	634
MOTION FOR A DIRECTED VERDICT.....	635
RULING BY THE COURT.....	638
JURY CHARGE CONFERENCE.....	638
DEFENSE RESTS	652
CLOSING ARGUMENT BY MS. TAYLOR.....	654
CLOSING ARGUMENT BY MS. LITTLEJOHN	669
JURY CHARGE ON THE LAW	682
RENEWAL OF ALL MOTIONS MADE BY DEFENSE	702
RULING BY THE COURT.....	703
NOTE FROM JURY	704
<u>ALLEN</u> CHARGE.....	704
NOTE FROM JURY	707
QUESTION FROM THE JURY	708
VERDICT	713
RENEWAL OF MOTION FOR A DIRECTED VERDICT	717
RENEWAL OF ALL MOTIONS MADE BY DEFENSE	717
RULING BY THE COURT	717
STATE'S ARGUMENT	718
DEFENSE ARGUMENT	719
SENTENCING	721

STATE’S EXHIBIT #32	724
STATE’S EXHIBIT #35	733
INDICTMENTS	739
CERTIFICATE OF COUNSEL.....	763

I N D E X

1	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
2	Nicholas Powell	103	114	119	121
3		485	517	536	541
4	Linda Lombard	116	--	--	--
5	Sonia Wilson	171	175	180	181
6		557	559	--	--
7	Jeffrey Taylor	221	227	231	--
8	Riley Kemp	231	246	--	--
9	Vincent Riley	252	257	262	--
10	Kevin Lane	264	270	272	272
11	Daniel Auman	273	--	--	--
12	Gerlinda Williams	277	287	--	--
13	Melvin Powell	293	298	--	--
14	David Schrader	301	305	--	--
15	Scott Cook	307	320	322	323
16	Todd Mason	325	334	--	--
17	Wendy Myers	335	349	351	--
18		549	551	--	--
19	Marteeka Hamilton	375	386	407	409
20	Cynthia Garrett	411	428	464	--
21	Steward Powell	467	471	477	478
22	David Soderberg	478	--	--	--
23	Melinda Knowland	553	555	557	--
24	Lanier Daniels	560	564	567	--
25	Kenneth Whittler	567	--	--	--
	Daniel Demers	576	579	--	--
		588	612	--	--

E X H I B I T S

1	NO.	DESCRIPTION	ID.	EV.
2	State's 1	911 Tape	226	226
3	State's 2	Photograph	235	235
4	State's 3	Photograph	235	235
5	State's 4	Photograph	235	235
6	State's 5	Photograph	235	235
7	State's 6	Photograph	235	235
8	State's 7	Photograph	235	235
9	State's 8	Photograph	235	235
10	State's 9	Photograph	246	246
11	State's 10	911 Tape	269	269
12	State's 11	Photograph	331	331
13	State's 12	Photograph	331	331
14	State's 13	Ski Mask	333	333
15	State's 14	Photograph	339	339
16	State's 15	Photograph	339	339
17	State's 16	Photograph	339	339
18	State's 17	Photograph	339	339
19	State's 18	Photograph	339	339
20	State's 19	Photograph	339	339
21	State's 20	Photograph	339	339
22	State's 21	Photograph	339	339
23	State's 22	Photograph	339	339
24	State's 23	Photograph	339	339

E X H I B I T S

1	NO.	DESCRIPTION	ID.	EV.
2	State's 24	Photograph	339	339
3	State's 25	Video Surveillance	346	346
4	State's 26	Shell Casing	482	482
5	State's 27	Photograph	482	482
6	State's 28	Photograph	482	482
7	State's 29	Photograph	482	482
8	State's 30	Photograph	482	482
9	State's 31	Gun	484	484
10	State's 32	Chris Wilson GPS records	470	470
11	State's 33	Photograph	494	494
12	State's 35	Chris Wilson phone records	505	505
13	State's 36	Donte Brown Oral Swabs	593	593
14	State's 37	Motel 6 Receipt	554	554
15	Court's 1	Search Warrant for Motel Six Record	110	--
16	Court's 2		110	--
17	Court's 3		110	--
18	Court's 4	Search Warrant for Donte Brown	110	--
19	Court's 5	Search Warrant for Sprint Phone Records	110	--
20	Court's 6	Waiver of Miranda Rights	110	--
21	E X H I B I T S			

1 THE COURT: Let's get a couple things out of
2 the way before we bring the jury panel up.

3 This is the State vs. Donte Samar Brown. Are
4 you Donte Samar Brown?

5 THE DEFENDANT: Yes.

6 THE COURT: I've got several indictments
7 here. You're charged with attempt murder, one count,
8 zero to 30 years; five counts of kidnapping at zero to 30
9 years; and burg second is zero to 15; criminal
10 conspiracy, zero to five; possession of a weapon during a
11 violent crime, zero to five; and attempted murder is zero
12 to 30.

13 MS. TAYLOR: I'm sorry. You said attempted
14 murder twice. I wanted make sure you had the armed
15 robbery.

16 THE COURT: Armed robbery is 10 to 30, three
17 counts, exposes you to 90 years. Kidnapping, five counts
18 at 30, zero to 30, exposes you to 150 years. Burglary
19 second, one count, zero to 15; criminal conspiracy, one
20 count, zero to five; weapons charge is zero to five,
21 attempted murder is zero to 30.

22 If my math is correct, you could end up with
23 a possible 295 years in prison at the end of the day, or
24 at the end of the trial, if you're convicted on all of
25 them and I ran them consecutively.

1 I don't know anything about this case. I
2 just got the indictments this morning, but that's quite a
3 bit of time. In other words, if you got convicted,
4 there's little chance, I suppose, that you would ever
5 walk out of prison again.

6 That having been said, you've pled not guilty
7 to each of these indictments, and you've asked for a jury
8 trial. We're getting ready to start that process here in
9 a little bit. We'll bring the jury up. I'm going to
10 qualify the jury. We'll ask them some questions about
11 this case specifically, and we'll get 12 names, probably
12 a couple alternates, and probably after lunch start.
13 This trial will approximately take a couple days to try
14 it and come back with a verdict. Whatever it is, we'll
15 deal with sentencing at that time.

16 I don't know whether I will give you 295
17 years. I don't know anything about the case. There are
18 some that are mandatory minimum. Armed robbery is a
19 mandatory minimum of ten years on each of those. All the
20 others, the minimum is zero, but the upside is 30 on each
21 of them.

22 So have there been any plea offers made?

23 MS. TAYLOR: Your Honor, the offer was to run
24 all sentences concurrent but without recommendations from
25 the State.

1 THE COURT: All right. So 30 years is what
2 you were exposed to under their offer. Defense has
3 turned that down; is that correct?

4 MS. LITTLEJOHN: That's correct, Your Honor.
5 I didn't know if you wanted him to answer that on the
6 record.

7 THE COURT: All right. So, Mr. Brown, do you
8 still want a jury trial?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Are you ready to go to
11 trial?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 Now, I want to go over something with you.
15 I'm not going to require that you give me an answer
16 today, but you'll have to before the trial is over.

17 When you asked for a jury trial, you don't
18 have to prove your innocence. The State has to prove
19 that you're guilty. They have to convince 12 jurors
20 beyond a reasonable doubt that you're guilty. You don't
21 have to do anything other than show up. You don't have
22 to call witnesses and you don't have to testify, and I'll
23 tell the jury that. That's a constitutional right that
24 you have. You have it, I have it, every single one of us
25 has it, but it's your right.

1 You can exercise it or you can waive it. You
2 have decided to exercise your right to a jury trial, so
3 we're going to give you a jury trial.

4 At some point during that trial, you will
5 have to decide if you want to present a defense and if
6 you want to testify. You don't have to make this
7 decision until the State puts all of their evidence up.
8 Your side, after the State puts all of their evidence up,
9 the lawyers will make a motion, I'm certain, that says,
10 Judge, even if you believe everything they've said, there
11 is no way the jury could convict you. How that goes, I
12 don't know, because I don't know how the evidence will
13 go, but let's assume that I deny that motion..

14 You then have to decide if you want to put up
15 a defense. Putting up a defense means calling witnesses,
16 maybe showing some photographs, putting documents in. If
17 you call witnesses, the other side gets to cross-examine
18 those witnesses, and one of the most important decisions
19 you have to make is whether or not you want to testify.

20 You have the right to get up on the witness
21 stand and be put under oath, and then you will have to
22 truthfully tell the answers to the questions that your
23 lawyer asks you. If you decide that you want to testify,
24 you will also have to answer any questions that the State
25 wants to ask you. That's called cross-examination.

1 You have the right to testify. Nobody can
2 force you to testify. The State can't call you during
3 their case, but you have the right to do it, if you want
4 to. You also have the right to not testify, and if you
5 don't want to testify, there is nobody on this planet
6 that can make you testify.

7 If you decide you don't want to testify, I
8 will instruct the jury that that is a constitutional
9 right that you have, and they are not to discuss it in
10 any way, shape, or form, nor should they allow it to
11 enter into their deliberations as to whether or not the
12 State has met its burden of proof of convicting you.
13 Therefore, they're not allowed to talk about it during
14 deliberations.

15 They're not even supposed to let it enter
16 their minds, so you don't have to make a final decision.
17 You do need to be thinking about it, and I'm sure you
18 have thought about it and I'm sure you talked about it
19 with your lawyer, but, ultimately, you have to make a
20 decision after the State puts up all their evidence.

21 You don't have to tell me right now if you
22 want to testify. I'm simply going through this with you
23 right now so that you have to be thinking about it over
24 the next day or two. We'll have this conversation again
25 at that point when it becomes necessary for you to decide

1 if you want to testify or not. I strongly encourage you
2 to think about it, talk about it with your lawyers, if
3 you have any friends or family members that you want to
4 discuss that matter with, fine, but it's your right.

5 You're facing 295 years in prison. It's your
6 case. All right? But it will be your decision and your
7 decision alone. Your lawyers can advise you as to
8 whether or not they think it's a good idea, but,
9 ultimately, it's your call if you decide you want to
10 testify or not testify.

11 Do you understand everything I've told you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions that
14 you want to ask me about that?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. You can be seated. All
17 right.

18 How long does the State anticipate the case
19 will take?

20 MS. TAYLOR: Your Honor, I would anticipate
21 us resting -- if we start testimony tomorrow morning, we
22 would rest probably Wednesday morning.

23 THE COURT: Okay.

24 MS. TAYLOR: But probably late Wednesday
25 morning. We may go into the afternoon. We have, I

1 think, 24 witnesses, but some of them are relatively
2 short.

3 THE COURT: All right. Ms. Littlejohn, how
4 about on your side? What is your estimate?

5 MS. LITTLEJOHN: A day.

6 THE COURT: Okay. All right. Well, I'm not
7 going to hold you to it.

8 My law clerk's has handed me a list of
9 motions. I don't see any on here that we sometimes see,
10 like Jackson v. Denno or Neil vs. Biggers. Do you have
11 any of those?

12 MS. LITTLEJOHN: Your Honor, we will be doing
13 a Jackson v. Denno. I don't there was an eyewitness, so
14 nobody can make any sort of identification.

15 THE COURT: Okay.

16 MS. TAYLOR: The State does not intend to
17 introduce that statement. The only use would be for
18 impeachment purposes of the defendant were to testify,
19 but we do not intend to introduce it in our case in
20 chief.

21 THE COURT: I know you don't have these
22 motions written out. It says motion to suppress the
23 Motel Six -- what is that?

24 MS. LITTLEJOHN: Your Honor, after the
25 incident occurred, my client -- that's pretty much the

1 basis of -- who is at the Motel Six? Who's staying
2 there? We're going to be suppressing -- we're asking
3 that be suppressed. It's an after the fact type of
4 situation.

5 THE COURT: That he was at a Motel Six?

6 MS. LITTLEJOHN: Correct. I don't know that
7 we'll get to that, but --

8 THE COURT: We'll deal with that sort of
9 thing after lunch then. I was just curious as to what
10 that meant.

11 Now, you got a motion we discussed briefly at
12 sidebar and you want to put it on the record about
13 conducting a jury voir dire in camera. Explain what you
14 would like me to do.

15 MS. LITTLEJOHN: Yes. I'm going off my rough
16 draft with my voir dire, but I think it's number 27 where
17 it says that the judge will instruct that the defendant
18 does not have to testify. Do any of you feel that the
19 defendant must take the stand and testify?

20 Your Honor, it is that question and their
21 individual feedback where I would like them individually
22 asked up here. They can come give us the answers so as
23 to not taint other members of jury panel; otherwise, I
24 fully anticipate most of them are going to go, No
25 problem, in the generic sense, but that is so critical an

1 issue when we look at -- we know what the rule is.
2 You're not supposed to hold it against them, but I think
3 that we would all probably agree that common sense and
4 just what we see from day-to-day interaction with
5 nonlawyer people, when you hear people say, Well, they
6 didn't have anything to say about what they're accused
7 of, or something to that effect.

8 I think I would like to have their one-on-one
9 response with regard to that particular line of
10 questioning of do they have an opinion, if so, would they
11 testify, or have they ever expressed an opinion if
12 somebody doesn't testify.

13 THE COURT: Well, I don't usually get into
14 that level of detail on a trial, on a voir dire. What
15 I'll do is I usually kind wind things up with this
16 general is there any anybody that has any reason why they
17 don't think they could be fair and impartial to both
18 parties?

19 And I give examples of things like belonging
20 to organizations that think the jury system has gone
21 crazy, or some people quote the Bible and say, I can't
22 set in judgment of people, and I think I also usually
23 give an example of, Well, do you not think you could
24 listen to what the judge instructs you that the law is,
25 and in that, what I might do is just give some examples

1 of things that come up during the course of trial, like,
2 oh, presumptions of innocence and defendant not
3 testifying, that sort of thing. Rather than bring every
4 single individual juror down, I give them the opportunity
5 to say if you think you have any reason why you think you
6 could not be fair and impartial, then come down and let's
7 talk about it. As opposed to bringing every single
8 person down and asking them that question individually, I
9 would be more comfortable with that.

10 MS. LITTLEJOHN: Could we perhaps rephrase it
11 then? Has anyone ever, during a conversation, commented
12 about a defendant not taking the stand in a case? And,
13 if so, what was the nature of the comment?

14 THE COURT: You know, on the rare occasion
15 which I have ever ventured from what I usually do,
16 especially on a non-death penalty case, you can phrase a
17 question like that, and there's almost nobody that will
18 respond that they have given a racist answer, a bigoted
19 answer, an answer in which it makes you look bad if you
20 answer yes.

21 I prefer the open-ended question where you
22 say, well, these are examples of things, and maybe you
23 should think about. If you have a problem with that,
24 then let's talk about it and come forward, because if you
25 ever say has anybody ever made any kind of comments that

1 suggest you're racist, well, it takes a fool to stand up
2 in front of a lot of people and say you know what? As a
3 matter of fact, I have. I think I actually did have
4 somebody do that one time to my shock, but it's the
5 exception rather than the rule.

6 I think I have better success, if we have any
7 success on those type of questions, with giving it as,
8 well, these are examples of things that come up, and
9 people have these rights, and if you have a problem with
10 somebody that exercises those rights, well, come down.
11 And you might get one or two, or, depending on how big
12 the panel is, sometimes more, but I prefer to handle it
13 that way.

14 MS. LITTLEJOHN: What you're just speaking
15 with may not have to be has anyone ever commented on, has
16 anyone ever just been involved in a discussion
17 regarding --

18 THE COURT: Who hasn't ever been involved in
19 a discussion about that kind of rights? I mean,
20 everybody that ever went to high school probably set
21 around in some kind of circumstance and said, you know, I
22 wonder if that is -- just because somebody testifies, do
23 you really believe that? You might have had a
24 conversation 20, 30 years ago.

25 MS. LITTLEJOHN: Or a conversation they can

1 recall.

2 THE COURT: I don't know. I would prefer,
3 and I would do it my way, but I note your request.

4 MS. LITTLEJOHN: Thank you, Your Honor.

5 (Recess taken.)

6 (Jury panel qualified.)

7 THE COURT: You are our jury panel then, so
8 what we'll do now is move into that section that we call
9 voir dire, where we're basically just trying to find out
10 if you have any reason why you couldn't serve on this
11 particular case that I'm about to give you some
12 background on. All right?

13 Now, the way we do this, when a person is
14 charged with a crime at this level of court, the case is
15 brought to court by way of an indictment. Remember when
16 I asked you a few minutes ago has anybody served as a
17 grand juror or served as a juror on the grand jury, a
18 juror on the grand jury before? Grand juries review
19 evidence, and they issue indictments. If you are
20 indicted for a crime, it's similar to what you probably
21 are thinking of as being arrested for a crime.

22 Basically, there is a determination made by
23 some third person, either a magistrate or a grand jury,
24 that a crime has been committed and that there exists
25 enough evidence to charge a particular person with that

1 crime and they therefore have to stand trial.

2 Indictments are, for those of you that are
3 interested in history, have been around now for a little
4 over 1,000 years. Remember the old Magna Carta, where
5 you had the problems with the King of England who would
6 come along and pick people up and just throw them in
7 trial, and if you got on the wrong side of the king, you
8 could get arrested and put on trial and not even know
9 what you were standing trial for until the trial began.

10 Well, that was one of the reasons why they
11 ended up having that great big confrontation with King
12 John at Runnymede, and we had a document that he agreed
13 to sign called the Magna Carta that gave the citizens of
14 England some rights. One of them was the right to stand
15 trial by a jury of peers and to also be put -- to have
16 some kind of notice as to what it was that you were being
17 charged with, so it wasn't just you had to worry about
18 getting on the wrong side of the king, and maybe he got
19 up on the wrong side of the bed one day, and next thing
20 you know, you're on trial, so this is the process.

21 This being a country that devises a lot of
22 their legal system and all that from England, the rights
23 that were granted to English citizens under the Magna
24 Carta, a lot of them was -- everybody said that's a
25 pretty good idea. We're going to keep them when we

1 started the country here after the revolution from
2 England.

3 Basically, what the grand jury does is
4 there's 18 citizens, and they usually hear a little bit
5 of evidence. There's no cross-examination of witnesses
6 or anything like that, and as a practical purpose, grand
7 jury testimony basically consists of, in modern state
8 court, just a police officer reading the report in, and
9 then the grand jury, 12 of them vote to true bill an
10 indictment. Then the person is arrested, and they have
11 to stand trial.

12 So I'm telling you this because sometimes
13 people go, well, if a person has been arrested, well,
14 then, they must be guilty of something. That's is not
15 the law, and if anybody has that as a thought in their
16 head, I'm going to ask you now to disregard that thought,
17 because that is clearly not the law in this country at
18 all.

19 Every person that's charged with a crime is
20 presumed to be innocent of that crime, and they have to
21 stand trial for it, but throughout the trial, they are
22 deemed to be not guilty, and they are not guilty unless
23 and until the State or the government can convince 12 of
24 you that they are guilty of that crime beyond a
25 reasonable doubt.

1 So the fact that somebody has been indicted
2 for a charge or a crime does not raise an inference of
3 guilt. It's not considered as evidence of guilt. The
4 only reason why I'm going over this with you is because
5 these indictments set forth the charges where and when
6 this incident allegedly took place, who allegedly
7 committed those offenses, and it puts that person, the
8 defendant, on notice of what they are charged with so
9 that when they stand trial, it won't come as a complete
10 surprise like it would back in the days before the Magna
11 Carta where you're on trial having to defend yourself
12 over something you didn't even know what it was about.
13 The defendant now knows what he was charged with. It
14 also gives this Court jurisdiction to hear the case, so
15 that's the whole purpose of that.

16 I tell you these, again, because the fact
17 that a person is charged with a crime is not to be
18 considered by you as evidence of guilt of that crime.
19 All right? These indictments will go back to the jury
20 room, not as evidence, but for one purpose: To write the
21 verdict on the back of the indictment, either guilty or
22 not guilty. They're the only things that go back to the
23 jury room during deliberations that aren't evidence.
24 Everything else that goes in the jury room is evidence.
25 Indictments aren't evidence.

1 So that is the background on what these
2 documents are about. I bring them now to you to tell you
3 that this is the case of the State of South Carolina vs.
4 Donte Samar Brown.

5 Mr. Brown was indicted for several different
6 charges. The first thing he was indicted for was for
7 kidnapping, and there are five indictments for
8 kidnapping, indictment 2012-GS-08-1190, 1191, 1192, 1193,
9 and 1194. Those five indictments are for kidnapping, and
10 they allege that on or about December 24th, 2011, Donte
11 Samar Brown did, in Berkeley County, South Carolina,
12 unlawfully seize, confine, inveigle, decoy, kidnap,
13 abduct, or carry away one Daniel Auman without authority
14 of the law in violation of Section 16-3-910 of the South
15 Carolina Code of Laws. That indictment -- that is
16 indictment 2012-GS-08-1194. 1193, same date, same time,
17 same elements, in that case, the victim is Kevin Lane.

18 Indictment 2012-GS-08-1192 is for kidnapping.
19 Again, same date, time, defendant, victim in this
20 indictment is Vincent Riley. Indictment 2012-GS-08-1191,
21 again, same date, time, defendant, with a victim being
22 Riley Kemp, and indictment 2012-GS-08-1190, again, same
23 date, time, county with the victim being Gerlinda
24 Williams.

25 All right? Now, he also was charged with

1 three indictments for armed robbery. Those indictments
2 are 2012-GS-08-1187, 1188, and 1189, and they allege that
3 on or about December 4th, 2011, Donte Samar Brown did in
4 Berkeley County, South Carolina, while armed with a
5 deadly weapon, to wit, a pistol, take or carry away the
6 personal property of Gerlinda Williams from or in the
7 immediate presence of Gerlinda Williams as described as
8 follows: United States currency, with intent to deprive
9 Gerlinda Williams of possession by use of force, threats,
10 or intimidation in violation of Section 16-11-33(a) of
11 the South Carolina Code of Laws. All right?

12 Indictment 2012-GS-08-1188, same date,
13 county, the victim in that armed robbery is Vincent
14 Riley, and the only other difference is that instead of
15 U.S. currency, this indictment alleges the personal
16 property that he took away was a cell phone, battery.
17 All right?

18 Then we have indictment 2012-GS-08-1187, in
19 same date, time, county, the victim in this case is Riley
20 Kemp, and the personal property being taken away in that
21 one is for a wallet.

22 Then we have indictment 2012-GS-08-1196
23 alleges that Donte Samar Brown in Berkeley County, South
24 Carolina, on or about December 24, 2011, did combine with
25 another and/or other persons for the purpose of

1 accomplishing a criminal or lawful object or an object
2 that is neither criminal or unlawful to criminal and
3 unlawful means, to wit, commit an armed robbery in
4 violation of 16-17-410 of the South Carolina Code of
5 Laws.

6 Then we have indictment 2012-GS-08-1198.
7 This is an indictment for armed robbery -- excuse me, for
8 attempted murder. And this indictment says that Donte
9 Samar Brown did, in Berkeley County, South Carolina on or
10 about December 24, 2012 with malice aforethought either
11 expressed or implied attempted to kill the victim
12 Gerlinda Williams, to wit the defendant did shoot the
13 victim with a handgun during the commission of a robbery
14 in violation of 16-3-29 of the South Carolina Code of
15 Laws as appended.

16 Then we have indictment 2012-GS-08-1195.
17 This is for burglary second degree, and this says that
18 Donte Samar Brown did in Berkeley County on or about
19 December 24th, 2011 enter without content and with the
20 intent to commit a crime therein the Zaxby's building
21 located at 433 St. James Avenue, Goose Creek, South
22 Carolina, and the defendant did enter the building in the
23 nighttime while armed with a deadly weapon in violation
24 of second 16-11-312(b) of the South Carolina Code of
25 Laws.

1 And then the final indictment is
2 2012-GS-08-1197, and this is for possession of a weapon
3 during the commission of a violent crime, and it alleges
4 Donte Samar Brown did in Berkeley County, South Carolina,
5 on or about December 4, 2011 posses a firearm or visibly
6 display what appeared to be a firearm during the
7 commission or attempted commission of a violent crime, to
8 wit, kidnapping and/or armed robbery and/or burglary
9 second degree, violent in violation of Section 16-23-490
10 of the South Carolina Code of Laws.

11 Now, to each of these indictments Mr. Brown
12 pled not guilty. As I told you, the fact that he was
13 indicted should not be considered by you in any way as
14 evidence of guilt. The law says he sets at that table
15 considered to be innocent of these charges and remains
16 innocent -- considered innocent of the these charges
17 unless and until the State convinces you of his guilt
18 beyond a reasonable doubt.

19 All right? He doesn't have to prove that he
20 is innocent. The State has to prove that he is guilty.
21 This isn't just some rhetorical right, legal concept,
22 this is a constitutional right that Mr. Brown has, you
23 have, and that I have, every one of us as citizens have.
24 We don't have to prove that we're innocent in this
25 country. The State or the government has to prove that

1 we are guilty.

2 So, I don't want anyone to give the fact that
3 he was arrested or indicted for these charges any
4 presumption of guilt. He is presumed innocent of these
5 charges. Now, he pled not guilty, so we're here to give
6 him a trial. The State will give him a trial on each of
7 these charges. I bring that to your attention because I
8 need to ask now, I read you these indictments what the
9 charges were, and ask, is there any member of the jury
10 panel who knows anything at all about this incident that
11 took place on December 24th, 2011 at a Zaxby's in Goose
12 Creek? Anybody read anything in the newspaper, know
13 anything about it, talked to anybody about it? Does it
14 ring a little bell, oh, yeah, I think I did talk to
15 somebody about that?

16 Yes, sir, your name and number.

17 A PROSPECTIVE JUROR: Juror 105.

18 THE COURT: All right. You want to come
19 forward?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: Yes, sir. Number 105.

22 A PROSPECTIVE JUROR: There was another young
23 man involved with this, Christopher Wilson, and I know
24 him from a child and I know his mother and his father.
25 My kids went to day care with him when he was young, and

1 I used to live right there in Foxboro right where he
2 lived with his parents, so just to let you know, that's
3 what I know about it.

4 THE COURT: So you know him personally, or
5 just his wife --

6 A PROSPECTIVE JUROR: Well, I know his father
7 and mother from when he was in day care with my kids.

8 THE COURT: Okay. You think that would
9 affect your ability to be fair and impartial?

10 A PROSPECTIVE JUROR: I'm just letting you
11 know, so -- we'll see. That's what I know about that
12 case.

13 THE COURT: All right. I'm going to excuse
14 you from service on this case. Okay? Go ahead and have
15 a seat, because I'm not excusing you for the week because
16 on the outside chance we get to another trial, I still
17 want you to call the telephone number after 6:00, but as
18 to the rest of the questions I'm asking, you don't have
19 to stand up for any more, and I'm excusing you from this
20 case. All right?

21 A PROSPECTIVE JUROR: Yes, sir.

22 A PROSPECTIVE JUROR: Juror number 50, Myra
23 Davis. I live right down the street from Zaxby's in
24 Fairfax and I did hear about it. I don't know any facts
25 about it except they broke in and kind of made me nervous

1 about it because I live right down the street.

2 THE COURT: The fact that you live right down
3 the street, you said it makes you nervous, do you think
4 that would affect your ability to be fair and impartial
5 for or against the State or for or against Mr. Brown?

6 A PROSPECTIVE JUROR: Probably not.

7 THE COURT: Do you think you would be okay to
8 be a juror or do you think you might hold it against
9 Mr. Brown?

10 A PROSPECTIVE JUROR: I could be okay with
11 being a juror.

12 THE COURT: Okay. Thank you.

13 Juror number 41, Jason Coates.

14 A PROSPECTIVE JUROR: I actually know him. I
15 went to school with him.

16 THE COURT: You went to school with the
17 defendant, high school?

18 A PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: How long ago was that?

20 A PROSPECTIVE JUROR: I got kicked out when I
21 was 17, so it would be about eight years ago, nine.

22 THE COURT: Do you think that would affect
23 your ability to be fair and impartial in this case,
24 either for or against the State or for or against the
25 defendant?

1 A PROSPECTIVE JUROR: Yeah. I used to party
2 with him all the time. We used to party after school.

3 THE COURT: All right. Well, I'll excuse
4 you. Even though you are excused, we might still have
5 another case this week. I'm going to leave you on the
6 panel, just stay till we're finished and we'll break for
7 tomorrow. You won't have to stand up and answer any more
8 questions though this, morning but just go back and have
9 a seat. You're excused from this trial.

10 All right. Juror number 95, Stuart Hughes.

11 A PROSPECTIVE JUROR: I'm a volunteer
12 fireman, Goose Creek Fire Department, and if I remember
13 right, we got pulled from Goose Creek City.

14 THE COURT: You responded to it?

15 A PROSPECTIVE JUROR: I responded to stand
16 by, and if I remember right, Medic One, who is out of our
17 station, was dispatched to that call.

18 THE COURT: So you talked about it?

19 A PROSPECTIVE JUROR: They came back, told us
20 what happened, what was going on after the incident took
21 place.

22 THE COURT: All right. Well, I'll excuse you
23 then from this trial. We still might try another case,
24 so we'll leave you in the panel, so you don't have to
25 respond to any more of the questions. Any of them you

1 thing you might need to stand up for, you don't have to
2 this morning. Just remain seated and call the telephone
3 number after 6:00. When we break for lunch, you don't
4 have to come back. You don't have to answer any more
5 questions. Okay? Thank you.

6 All right. I'm excusing 105, 41, and 95.

7 All right. Now, I told you Mr. Brown pled
8 not guilty, so the State has to provide him with a trial
9 to prove his guilt. In South Carolina, the prosecuting
10 attorneys are known as solicitors. The state's broken up
11 into 16 judicial circuits. We live in the Ninth Judicial
12 Circuit. The Ninth Circuit is Charleston and Berkeley
13 County. Solicitor for this circuit is Scarlett Wilson,
14 and she has designated two solicitors out of the Berkeley
15 County office to prosecute this case for them, and those
16 folks are Colleen Taylor and Mason West.

17 Would y'all stand and face the jury panel.
18 Is there any member of the jury panel who is related by
19 blood or marriage or acquainted in any way with either
20 Ms. Scarlett Wilson, the solicitor, or the two people
21 from her office who she has designated to prosecute this
22 case, Ms. Colleen Taylor or Mr. Mason West? If so, would
23 you please stand. Okay. I fine none.

24 Now, let me introduce you to Mr. Brown, Donte
25 Samar Brown. Would you stand and face the jury panel.

1 All right. This is Mr. Donte Samar Brown standing in the
2 blue shirt there. Is there any member of the jury panel
3 who is related by blood or marriage or acquainted in any
4 way with Mr. Donte Samar Brown? If so, would you please
5 stand. All right. I find none.

6 He is represented by his two attorneys, Ms.
7 Debbie Littlejohn and Mr. David Schwacke. Is there any
8 member of the jury panel who is related by blood or
9 marriage or acquainted in any way with either
10 Ms. Littlejohn or Mr. Schwacke? If so, would you please
11 stand.

12 Yes. Your name and number?

13 A PROSPECTIVE JUROR: Juror 147, my name is
14 Leslie Roberts. I was familiar with Mr. Schwacke's
15 brother. We went to college together.

16 THE COURT: The fact that you went to college
17 with his brother, would that affect your ability to be
18 fair and impartial in this case, either for or against
19 his client or for or against the State?

20 A PROSPECTIVE JUROR: No, sir.

21 THE COURT: All right. Thank you. You may
22 be seated. Anyone else? All right. You may be seated.

23 Now, is there any member of the jury panel
24 who either now or in the past has ever worked for the
25 Ninth Circuit Solicitor's Office or any solicitor's

1 office in this state? If so, would you please stand.
2 Either you or an immediate family member or maybe a close
3 personal friend? If so, would you please stand. All
4 right. I find none.

5 Is there any member of the jury panel, either
6 you or an immediate family member or a close personal
7 friend, either now or in the past worked for law
8 enforcement? All right. Could be either in this state
9 or out of this state. If that applies to anyone, would
10 you please stand. All right.

11 If you hesitated, just go ahead and stand up
12 and we'll clear it up. Better be safe than sorry. All
13 right? Let's start with you, ma'am, your name and
14 number.

15 A PROSPECTIVE JUROR: Cynthia Wood, number
16 187.

17 THE COURT: Okay.

18 A PROSPECTIVE JUROR: My brother-in-law
19 worked for Hanahan reserve and police officer.

20 THE COURT: And what was the last part?

21 A PROSPECTIVE JUROR: He was a police
22 officer.

23 THE COURT: Would that affect your ability to
24 be fair and impartial in this case, either for or against
25 the State or for or against the defendant?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: All right. What was your number
3 again?

4 A PROSPECTIVE JUROR: 187. I also have a
5 niece who works in the Berkeley County sheriff's
6 department.

7 THE COURT: All right. Would that affect
8 your ability to be fair and impartial in this case?

9 A PROSPECTIVE JUROR: No.

10 THE COURT: All right. Thank you.

11 All right. Yes, ma'am, your name and number?

12 A PROSPECTIVE JUROR: I'm Shannon Whaley,
13 182. My mother-in-law was a probate judge.

14 THE COURT: Would that affect your ability to
15 be fair and impartial in this case, either for or against
16 the State or for or against the defendant?

17 A PROSPECTIVE JUROR: No.

18 THE COURT: All right. Yes, ma'am, in the
19 pink?

20 A PROSPECTIVE JUROR: My husband was in the
21 police department at the weapons station, and he also was
22 a private investigator.

23 THE COURT: All right. What was your name
24 and number again?

25 A PROSPECTIVE JUROR: Myra Davis, 15.

1 THE COURT: Okay. Is he currently or is he
2 retired?

3 A PROSPECTIVE JUROR: He's retired.

4 THE COURT: Would that affect your ability to
5 be fair and impartial in this case, either for or against
6 the State or for or against the defendant?

7 A PROSPECTIVE JUROR: No.

8 THE COURT: All right. Thank you. You can
9 be seated.

10 Yes, sir, your name and number?

11 A PROSPECTIVE JUROR: James Chambers, 38. My
12 father is a retired police officer.

13 THE COURT: Where at?

14 A PROSPECTIVE JUROR: Rennselaer, New York.

15 THE COURT: All right. Would that affect
16 your ability to be fair and impartial in this case,
17 either for or against the State or for or against the
18 defense?

19 A PROSPECTIVE JUROR: No, sir.

20 THE COURT: All right. Thank you. Yes, your
21 name and number?

22 A PROSPECTIVE JUROR: Alicia King, number
23 102. I'm engaged to a state police officer.

24 THE COURT: Highway patrol?

25 A PROSPECTIVE JUROR: No, DNR, Department of

1 Natural Resources.

2 THE COURT: Would that affect your ability to
3 be fair and impartial in this case, either for or against
4 the State or for or against the defense?

5 A PROSPECTIVE JUROR: No, sir.

6 THE COURT: All right. Thank you. Your name
7 and number?

8 A PROSPECTIVE JUROR: My name is Betty Frye.
9 I'm number 69. I've been a chaplain's aid in the
10 Charleston County Detention Center for four years as a
11 minister.

12 THE COURT: What was your number again?

13 A PROSPECTIVE JUROR: 69.

14 THE COURT: Okay. Would that affect your
15 ability to be fair and impartial, either for or against
16 the State or for or against the defendant?

17 A PROSPECTIVE JUROR: No, sir.

18 THE COURT: Yes, sir. Your name and number?

19 A PROSPECTIVE JUROR: 20. I have a cousin
20 that is in the armed forces in South Carolina,
21 supervisor.

22 THE COURT: Where is that at?

23 A PROSPECTIVE JUROR: That's on the other
24 side of Sumter.

25 THE COURT: Okay. What was your number

1 again?

2 A PROSPECTIVE JUROR: 20.

3 THE COURT: Would that affect your ability to
4 be fair and impartial, either for or against the State or
5 for or against the defendant?

6 A PROSPECTIVE JUROR: No, sir.

7 THE COURT: All right. Thank you. Anyone
8 else? All right.

9 Is there any member of the jury panel, either
10 you or an immediate family member, ever been prosecuted
11 by the Ninth Judicial Circuit solicitor's office? If so,
12 would you please stand. All right. I find none.

13 Is there any member of the jury panel, either
14 you or an immediate family member or a close personal
15 friend ever been either a witness to any sort of a crime
16 or a victim of any sort of a crime? If so, would you
17 please stand. All right.

18 Again, I'm going to ask you to give your
19 answer out loud, but if you would prefer to just come
20 down and tell me more privately, feel free to do that.
21 Your name and number?

22 A PROSPECTIVE JUROR: Brenda Ferguson, 66.

23 THE WITNESS:

24 THE COURT: Okay.

25 A PROSPECTIVE JUROR: Domestic abuse.

1 THE COURT: That would be you?

2 A PROSPECTIVE JUROR: Yes.

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

5 A PROSPECTIVE JUROR: No.

6 THE COURT: All right. Thank you. Yes, your
7 name and number?

8 A PROSPECTIVE JUROR: Jason Smith, 161.

9 THE COURT: Okay.

10 A PROSPECTIVE JUROR: Assault and brandishing
11 a weapon.

12 THE COURT: And that would be you as the
13 victim?

14 A PROSPECTIVE JUROR: Yes.

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

17 A PROSPECTIVE JUROR: No.

18 THE COURT: Thank you. Yes, name and number?

19 A PROSPECTIVE JUROR: Cheryl Rash, 143.

20 THE COURT: Okay.

21 A PROSPECTIVE JUROR: I'm not sure if you
22 mean like from my business, we have been many, many times
23 victimized, burglarized through the years, but it will
24 not affect my decisions.

25 THE COURT: Would that affect your ability to

1 be fair and impartial in this case, either for or against
2 the State or for or against the defense?

3 A PROSPECTIVE JUROR: Not at all.

4 THE COURT: Yes, your name and number.

5 A PROSPECTIVE JUROR: Richard Stephens, 164.
6 I would rather come down, Your Honor.

7 THE COURT: Okay. That's fine.

8 A PROSPECTIVE JUROR: 164, Richard Stephens.
9 My stepson has -- he was charged for kidnapping.

10 THE COURT: He was what?

11 A PROSPECTIVE JUROR: Charged with kidnapping
12 one time.

13 THE COURT: He was?

14 A PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: And what was the resolution of
16 the case?

17 A PROSPECTIVE JUROR: He was found not
18 guilty.

19 THE COURT: Do you think that would affect
20 your ability to be fair and impartial in this case,
21 either for or against the State or for or against the
22 defense?

23 A PROSPECTIVE JUROR: No, sir.

24 THE COURT: How long ago was that?

25 A PROSPECTIVE JUROR: Probably three years

1 ago.

2 THE COURT: Where was that at?

3 A PROSPECTIVE JUROR: Charleston County.

4 THE COURT: So he was prosecuted by the
5 solicitor?

6 A PROSPECTIVE JUROR: Yes.

7 THE COURT: Okay. All righty. Thank you.

8 THE BAILIFF: Juror number 98, Carolyn
9 Johnson.

10 A PROSPECTIVE JUROR: My brother was involved
11 in a carjacking, shooting.

12 THE COURT: Okay. And was he convicted of
13 that?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: Was he charged with it?

16 A PROSPECTIVE JUROR: No.

17 THE COURT: How long ago was that?

18 A PROSPECTIVE JUROR: It's probably been
19 about ten years ago.

20 THE COURT: And where was that at?

21 A PROSPECTIVE JUROR: At Goose Creek.

22 THE COURT: He never got charged?

23 A PROSPECTIVE JUROR: Huh-uh.

24 THE COURT: Do you think that would affect
25 your ability to be fair and impartial? Was he a victim

1 or allegedly a participant?

2 A PROSPECTIVE JUROR: He was a victim.

3 THE COURT: All right. Thank you very much.

4 A PROSPECTIVE JUROR: 160, Arthur Smalls, a
5 home burglary.

6 THE COURT: What you would like to tell me?

7 A PROSPECTIVE JUROR: I had a home burglary,
8 but it wouldn't affect my decision.

9 THE COURT: How long ago was that?

10 A PROSPECTIVE JUROR: That was Labor Day last
11 year.

12 THE COURT: All right. And would that affect
13 your ability to be fair and impartial in this case?

14 A PROSPECTIVE JUROR: No.

15 THE COURT: All right. Thank you.

16 Yes, your number, please, name and number?

17 A PROSPECTIVE JUROR: Adam Hodgden, 93.
18 Armed robbery, bank, bank teller.

19 THE COURT: Were you a victim?

20 A PROSPECTIVE JUROR: No, my spouse.

21 THE COURT: Okay. You want to come up a
22 second?

23 All right. I'm a little hard of hearing.
24 Were you charged with it?

25 A PROSPECTIVE JUROR: No. My wife was a bank

1 teller at the time and was held up, for armed robbery.

2 THE COURT: Okay. And how long ago was that?

3 A PROSPECTIVE JUROR: Eight years.

4 THE COURT: Okay. And what was the
5 resolution?

6 A PROSPECTIVE JUROR: He was convicted.

7 THE COURT: Okay. Where was that at?

8 A PROSPECTIVE JUROR: It was in Greenville.

9 THE COURT: Would that affect your ability to
10 be fair and impartial in this case, either for or against
11 the State or for or against the defense?

12 A PROSPECTIVE JUROR: No, Your Honor.

13 THE COURT: Thank you.

14 A PROSPECTIVE JUROR: Number 13, Kimberly
15 Barber.

16 THE COURT: Yes?

17 A PROSPECTIVE JUROR: My brother was involved
18 in a burglary 15 years ago, and he was convicted and sent
19 to prison for it.

20 THE COURT: All right. He was convicted?

21 A PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: Burglary first degree?

23 A PROSPECTIVE JUROR: Uh-huh.

24 THE COURT: All right. And where was that
25 at?

1 A PROSPECTIVE JUROR: West Columbia, South
2 Carolina.

3 THE COURT: Would that affect your ability to
4 be fair and impartial in this case, either for or against
5 the State or for or against the defense?

6 A PROSPECTIVE JUROR: No.

7 THE COURT: Thank you.

8 A PROSPECTIVE JUROR: Juror number 60, Jason
9 Douglas.

10 My wife was actually -- I don't know if it's
11 Circuit Court. She was possessing a controlled
12 substance.

13 THE COURT: She was convicted of that?

14 A PROSPECTIVE JUROR: I don't know. But it
15 was through Scarlett Wilson's office.

16 THE COURT: All right. How long ago?

17 A PROSPECTIVE JUROR: It was --

18 THE COURT: She was recently prosecuted by
19 the solicitor's office?

20 A PROSPECTIVE JUROR: Yes.

21 THE COURT: All right.

22 A PROSPECTIVE JUROR: I just wanted to give
23 full disclosure.

24 THE COURT: Has it been resolved?

25 A PROSPECTIVE JUROR: I think so.

1 THE COURT: Is it in drug court or something?

2 A PROSPECTIVE JUROR: No.

3 THE COURT: But it's over with?

4 A PROSPECTIVE JUROR: As far as I know. It's
5 complicated.

6 THE COURT: Okay.

7 A PROSPECTIVE JUROR: She's not very
8 forthright with me.

9 THE COURT: Since it's kind of unclear, she
10 might be prosecuted by them currently, I'm going to
11 excuse you from service on this trial. Go ahead back
12 there. You don't have to answer any more questions, but
13 remain in the panel for now because we might draw another
14 one, and so you will just call the telephone number after
15 6:00 until it says you don't have to call anymore.

16 A PROSPECTIVE JUROR: Okay.

17 THE COURT: But you don't have to respond to
18 any more questions now.

19 I'm going to excuse him from service. Juror
20 143, can you come back up here a second? You said your
21 business was -- had been burglarized a number of times?

22 A PROSPECTIVE JUROR: Yes.

23 THE COURT: What kind of business is it?

24 A PROSPECTIVE JUROR: Auto salvage.

25 THE COURT: The name of it?

1 A PROSPECTIVE JUROR: Blue and Gold Auto
2 Storage.

3 THE COURT: And you said that wouldn't affect
4 your ability to be fair and impartial?

5 A PROSPECTIVE JUROR: No.

6 THE COURT: All right. Thank you. Anything
7 else before we move on?

8 Any member of the jury panel ever been a
9 member of or contributed to organizations that are
10 raising funds or are organized on behalf of law
11 enforcement, like Mothers Against Drunk Driving, MADD,
12 CAVC, Citizens Against Violent Crime, either now or in
13 the past? And if you've ever given money or been a
14 member of any organization like that, if so, would you
15 please stand.

16 And I ask generally law enforcement, but
17 anybody either now or in the past ever worked for the
18 Berkeley County sheriff's office and you didn't already
19 respond? Okay. Same thing with Goose Creek police
20 department. Either you or a family member ever work for
21 Goose Creek police department? All right.

22 Any member of the jury panel ever studied law
23 or worked in a lawyer's office? If so, would you please
24 stand.

25 Yes, your name and number?

1 A PROSPECTIVE JUROR: Alicia King, 102.

2 THE COURT: And what did do you?

3 A PROSPECTIVE JUROR: I was a paralegal for
4 Mitch Lanier.

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

7 A PROSPECTIVE JUROR: No, sir.

8 THE COURT: Your name and number?

9 A PROSPECTIVE JUROR: Percy Beauford, number
10 15. I worked as a legal assistant.

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

13 A PROSPECTIVE JUROR: No, it would not affect
14 it.

15 THE COURT: All right. Yes?

16 A PROSPECTIVE JUROR: Nicole Joseph, 101.

17 THE COURT: Okay.

18 A PROSPECTIVE JUROR: I was pre-law, so I
19 have an undergrad degree in criminal law and history,
20 basically constitutional law.

21 THE COURT: All right. Would that affect
22 your ability to be fair and impartial in this case,
23 either for or against the State, or for or against the
24 defense?

25 A PROSPECTIVE JUROR: No, sir.

1 THE COURT: Anybody ever studied any, like,
2 physical sciences, you know, biology, physics any of
3 those? I hate to say the hard sciences, but contrast
4 those with the soft signs, the social sciences thing, but
5 any kind of a science degree, study that in college or
6 have an advanced degree in any of the sciences? If so,
7 would you please stand.

8 Yes, your name and number?

9 A PROSPECTIVE JUROR: Ronald Adams, 3. I
10 took physics and some other classes in college.

11 THE COURT: Thank you. Yes, your name and
12 number?

13 A PROSPECTIVE JUROR: Timothy Mescher, 119.
14 You mean currently working on a degree?

15 THE COURT: That would be fine.

16 A PROSPECTIVE JUROR: I'm studying to be a
17 chemical engineer.

18 THE COURT: All right. Thank you. Yes, name
19 and number?

20 A PROSPECTIVE JUROR: 160, Oscar Smalls. I
21 studied computer science, which included hard sciences
22 like botany, things like that.

23 THE COURT: All right. Yes?

24 A PROSPECTIVE JUROR: I'm juror 86.

25 THE COURT: And what are you studying?

1 A PROSPECTIVE JUROR: I'm studying biology.

2 THE COURT: All right. Thank you. Number,
3 please?

4 A PROSPECTIVE JUROR: Number 60. Jason
5 Douglas. I have a degree in biology.

6 THE COURT: Okay. Thank you.

7 A PROSPECTIVE JUROR: I have a nursing
8 degree. I studied biology, microbiology, chemistry.

9 THE COURT: Tell me your number again.

10 A PROSPECTIVE JUROR: 50, Myra Davis.

11 THE COURT: All right. Thank you. Yes?

12 A PROSPECTIVE JUROR: Number 51, James
13 Austin. I have a master in science in mathematics and a
14 minor in business.

15 THE COURT: Thank you. Yes?

16 A PROSPECTIVE JUROR: Juror 66, Brenda
17 Ferguson, sciences for nursing degree.

18 THE COURT: Thank you. Tell me your number
19 again?

20 A PROSPECTIVE JUROR: 66.

21 THE COURT: Okay. Yes?

22 A PROSPECTIVE JUROR: Leverette Pope. Took
23 biology and chemistry in college. Also, I was a state
24 certified EMT.

25 THE COURT: What was your number?

1 A PROSPECTIVE JUROR: 138.

2 THE COURT: Thank you. Anyone else?

3 Any member of the jury panel ever been a
4 witness to a criminal offense, whether it got reported or
5 not, and you didn't already come forward with a previous
6 question and tell me about it in response to anything?

7 All right. Any member of the jury panel ever
8 work for either, like, Zaxby's, McDonald's, any kind of
9 fast food restaurant in the past or currently? If so,
10 would you please stand.

11 All right. Your name and number?

12 A PROSPECTIVE JUROR: Jason Smith, 161.

13 THE COURT: Okay. Where did you work at?

14 A PROSPECTIVE JUROR: I worked at Arby's for
15 years.

16 THE COURT: All right. Yes, name and number?

17 A PROSPECTIVE JUROR: Kim Gootee, 76. I
18 don't have my bifocals on. I was a manager at
19 McDonald's, Taco Bell, Arby's.

20 THE COURT: Okay.

21 A PROSPECTIVE JUROR: 51, James Dawson. I
22 worked at Papa Johns.

23 THE COURT: All right. Thank you. Did I see
24 somebody over here?

25 Any member of the jury panel ever been to the

1 Zaxby's in Goose Creek? If so, would you please stand.

2 Okay. I'm just going to start, and give me
3 your name and number and you sit down.

4 A PROSPECTIVE JUROR: Robert Hefner, 86.

5 A PROSPECTIVE JUROR: Tim Mescher, 119.

6 A PROSPECTIVE JUROR: Steve Bell, 16.

7 A PROSPECTIVE JUROR: Rafael Torres, 173.

8 A PROSPECTIVE JUROR: Oscar Smalls, 160.

9 A PROSPECTIVE JUROR: Percy Beauford, 15.

10 A PROSPECTIVE JUROR: Kenneth Dean, 52.

11 A PROSPECTIVE JUROR: John Washington, 179.

12 A PROSPECTIVE JUROR: Jason Smith, 161.

13 A PROSPECTIVE JUROR: Shannon Whaley, 182.

14 A PROSPECTIVE JUROR: Slobodan Mijic, 122.

15 A PROSPECTIVE JUROR: Rhonda Harrison, 83.

16 A PROSPECTIVE JUROR: Rickey Hill, 90.

17 A PROSPECTIVE JUROR: Nicole Washington, 180.

18 A PROSPECTIVE JUROR: Nicole Joseph, 101.

19 A PROSPECTIVE JUROR: Kimberly Gootee, 76.

20 A PROSPECTIVE JUROR: Richard Stephens, 164.

21 A PROSPECTIVE JUROR: James Chambers, 38.

22 A PROSPECTIVE JUROR: Myra Davis, 50.

23 A PROSPECTIVE JUROR: Carolyn Johnson, 98.

24 A PROSPECTIVE JUROR: Adam Hodgden, 93.

25 A PROSPECTIVE JUROR: Edna Murray, 130.

1 A PROSPECTIVE JUROR: Michele Scantland, 152.

2 A PROSPECTIVE JUROR: Linda Miller, 124.

3 A PROSPECTIVE JUROR: James Dawson, 51.

4 A PROSPECTIVE JUROR: Service what.

5 A PROSPECTIVE JUROR: Jason Coates, 41.

6 A PROSPECTIVE JUROR: Betty Frye, 69.

7 A PROSPECTIVE JUROR: Sandra McDaniel, 116.

8 THE COURT: All right. Zaxby's folks are
9 probably thrilled to hear that. All right.

10 Any member of the jury panel, either now or
11 in the past ever live in Foxborough subdivision?

12 Anybody, either you a you or a close personal
13 friend, ever hunt with dogs? I'm just going to again
14 we'll do -- just give us your name and number out loud so
15 we can pick that up, okay?

16 Start with you.

17 A PROSPECTIVE JUROR: Kenneth Dean, 52. When
18 I was younger my dad used to take me out.

19 THE COURT: Yeah, do tell me if it's your or
20 family member.

21 A PROSPECTIVE JUROR: 73, Ruby Gaskins. My
22 husband.

23 THE COURT: Thank you.

24 A PROSPECTIVE JUROR: Rickey Hill, number 90.
25 I belong to a hunt club, hunting club. We use dogs.

1 A PROSPECTIVE JUROR: Richard Stephens, 164.
2 My nephew does a lot of hunting with dogs.

3 A PROSPECTIVE JUROR: Gootee, 76, my husband.

4 THE COURT: Thank you.

5 A PROSPECTIVE JUROR: Mindy Sager, 150. My
6 son hunts with dogs.

7 A PROSPECTIVE JUROR: Edna Murray, 130. My
8 husband hunts with dogs.

9 A PROSPECTIVE JUROR: Theodore Bishop, 18. I
10 hunt with dogs.

11 A PROSPECTIVE JUROR: James Dawson, number
12 51. I've been hunting with dogs.

13 A PROSPECTIVE JUROR: Jason Coates, 41. Me
14 and my best friend go hunting with dogs all the time.

15 A PROSPECTIVE JUROR: Brenda Ferguson, 66,
16 family and friends.

17 A PROSPECTIVE JUROR: Betty Frye, 69, family
18 and friends hunting.

19 A PROSPECTIVE JUROR: Leverette Pope, raised
20 and hunted with dogs.

21 THE COURT: Thank you.

22 All right. My last question is kind of a
23 catchall, and it's this: I told you, and you probably
24 have figured it out, what we're trying to do is find 12
25 people who don't know anything significant about the case

1 such that it would affect your ability to be fair and
2 impartial.

3 We've got two sides in this case: We've got
4 the State and we got the defendant. Both of these sides
5 are entitled to a fair and impartial jury. That's people
6 who haven't made up their mind about what the outcome
7 ought to be. They don't know any of the parties or
8 witnesses or anything like that.

9 Saying that part right there just reminded me
10 that I for forgot to ask you about witnesses in this
11 case, so before I get to my last kind of catchall
12 question, I got to get my witness list here, and that
13 must be up there.

14 Okay. I'm going to call out the names of
15 some people who may be called as witnesses in this case.
16 Not everybody on this list will be, but a lot of them
17 will be, so we'll put them down out of an abundance of
18 caution. When I call out the name, if there is any
19 member of the jury panel who is related by blood or
20 marriage or acquainted with any of these folks in any
21 way, would you please stand when I call the name out.

22 First, Jeffrey Taylor? I find none. Riley
23 Kemp? I find none. Vincent Riley? I find none. Kevin
24 lane? I find none. Daniel Aumen? I find none.
25 Gerlinda Williams? Monica Dodes? I find none. Melvin

1 Powell? I find none.

2 Officer David Schrader with the Goose Creek
3 police department? Sergeant Scott Cook, Berkeley County
4 sheriff? I find none. Todd Mason? I find none. Wendy
5 Myers, Goose Creek police? Marteeeka Hamilton? I find
6 none. Cynthia Garrett? I find none. Captain Dave
7 Soderberg with the Goose Creek police department? I find
8 none. Detective Nick Powell, Goose Creek police
9 department? Sonia Wilson? I find none. Melinda
10 Knowland? I find none. Doris Yarbrough with SLED, or
11 South Carolina Law Enforcement? I find none.

12 Patricia Crooks with SLED? I find none.
13 Kenneth Whitler with SLED? I find none. Dr. Daniel
14 Demers? I find none. Lanier Daniels? I find none.
15 Steward Powell? I find none. Nathaniel Whack? I find
16 none. Christie White? I find none.

17 Christopher Wilson? I find none. Officer
18 McWethy with Berkeley county shift? I find none. Jay
19 Robinson, Goose Creek police? Sergeant Horner with Goose
20 Creek police? Officer Tisdale with Goose Creek police?
21 Officer Ramirez with Goose Creek police? Anybody that
22 works SCE&G that might be a records custodian? We need
23 to bring somebody in as a records custodian. Todd Mason,
24 Goose Creek police? I think that's all of it. All
25 right.

1 I started to tell you, we're looking for 12
2 people that don't know any of the people, any of the
3 witnesses, any of the lawyers such that it would affect
4 your ability to be fair and impartial. Almost always my
5 follow up, which was even if you might know somebody, we
6 just want to know -- it might be just so slight it
7 wouldn't make any difference, but we appreciate you
8 telling us about that, because that factors into whether
9 or not any of the parties may want to accept you as a
10 juror or strike you as a juror, but they need to have
11 that kind of information.

12 That's why we ask you to disclose it, but we
13 always ask, do you think that would affect your ability
14 to be fair and impartial, because that's what we're
15 looking for, is for 12 people who can provide the State
16 with a fair and impartial trial and the defendant with a
17 fair and impartial trial.

18 Both sides are entitled to that, and that is
19 the whole purpose of the last basically hour of
20 questioning, was to get to that. Part of this is also
21 asking yourself, can you be a fair and impartial juror to
22 these folks? And there's two sides. I've talked to you
23 about some of them.

24 First of all, the defendant was arrested.
25 That doesn't mean he's guilty. It means he's presumed to

1 be innocent. The State has to prove that he's guilty.
2 Ask yourself, can you go along with that? Sometimes you
3 got people that go, Well, you know, I believe law
4 enforcement over anybody else's word.

5 Ask yourself, is that fair? Can you disabuse
6 yourself of that thought, if you have it? Sometimes you
7 got people that say, well, you know, I believe that there
8 are verses this the Bible that say I can't sit in
9 judgment of my fellow man.

10 That's okay. We need to know that. If
11 that's what your belief is and it's a sincerely held
12 belief, then each side needs to know that. Sometimes you
13 have organizations out there that say, You know what?
14 The government has gone to heck in a hand basket, and we
15 need to reform the system, and there are groups out there
16 that in essence say, look, if any of our members ever get
17 on a jury, then there is some expectation as to what the
18 outcome ought to be, either automatically guilty or
19 automatically innocent.

20 On a civil trial, sometimes I would -- you
21 know, there's questions you ask about civil trials. Same
22 thing. They just think, well, you know, verdicts are too
23 outrageous, things like that. There are, as I told you,
24 rights that everybody has that even though we know
25 they're rights, we still might go, you know what? I

1 think if you get up -- or you don't testify at a trial,
2 then that might mean something.

3 I'm here to tell you that is not the law.
4 That is a constitutional right that every single person
5 in this room, including the defendant, has, to not
6 testify if he doesn't want to. In fact, I even had a
7 conversation with him already about it, and explained to
8 him, and I explained to you exact same thing. In this
9 country, you do not have to prove your innocence. The
10 State has to prove you're guilty. The only thing that
11 Mr. Brown has to do is show up for trial, and he's done
12 that.

13 From that point on, he can sit at that table
14 and not utter a word. He doesn't have to call any
15 witnesses if he doesn't want to, and he doesn't have to
16 testify if he doesn't want to. He can if he wants, but
17 he doesn't have to, but if he does not, part of your oath
18 as jurors is to not hold that against him in any way,
19 shape, or form. It shouldn't enter your mind as
20 evidence, and you're not allowed to talk about it in your
21 deliberations. That's the law.

22 That's not something that's for him, it's for
23 all of us, and if you don't think you can live with that
24 as part of your oath as jurors, then you need to let me
25 know so we can talk about it, all right? Because, again,

1 I am going to seek 12 of you. I'm going to put you under
2 oath, and your oath, in essence, says that you promise
3 you will base your decision on you what hear in this
4 courtroom, not what outside influences say or anything
5 like that, but what you hear in this courtroom as
6 evidence on that witness stand and what I tell you the
7 law is, even if it's not what you think the law ought to
8 be or what you wish the law ought to be.

9 Under the oath that you take at the beginning
10 of this trial, that is what you are duty bound after you
11 take that oath to do, is apply that law, and that law is
12 what I just told you. He's not guilty in the eyes of the
13 law. He doesn't have to prove he's guilty. The State
14 has to prove he's guilty, and if you don't think you can
15 live with that, then we need to talk about that.

16 I'm not going to try to convince anybody to
17 change your views. For instance, I told you there are
18 some people that have religious views. It comes up from
19 time to time. People who have religious beliefs,
20 philosophical beliefs. You can believe whatever you want
21 in the this country as far as I'm concerned, as long as
22 you're not advocating to hurt somebody or commit a
23 violent act to try to overthrow the country. You can
24 believe whatever you want. I think that's what makes
25 this country great, but if it affects your ability --

1 your beliefs affect your ability to be fair to the State
2 or to the defendant, then you and I need to have a
3 discussion.

4 I'm not going to try to embarrass you. I'm
5 not going to try to talk you out of it, but just in
6 fairness to both of these sides, you need to disclose it.
7 You can come up and talk to me about it. I'm not going
8 to embarrass you or try to hold it against you or try to
9 talk you out of it, necessarily, but you need to disclose
10 it to me if there is some reason why you don't think you
11 could be fair and impartial. All right? So if that
12 applies to anyone, and you can think of any reason,
13 whether it's one of those reasons I mentioned or some
14 other reason that I haven't possibly thought about, if
15 you have any reason why you don't think you could be fair
16 and impartial to either the State or the defense, would
17 you please stand.

18 All right? Would you like to come up.

19 THE COURT: Yes. Come up.

20 A PROSPECTIVE JUROR: Juror 160, Oscar
21 Smalls.

22 THE COURT: Yes, sir?

23 A PROSPECTIVE JUROR: My issue is that my mom
24 had actually gone to the hospital on that day and I
25 don't -- that is kind of an emotional thing to me. What

1 happened is it was December 23rd or 24th, around 4:00 in
2 the morning. I placed a call to 911 and it took a while
3 for them to get to my mom's house, and actually the
4 police kind of surprised me. I didn't understand this,
5 and my mom eventually did pass away on December 26th,
6 2011.

7 THE COURT: Let me see if I got this correct.
8 Correct me if I'm wrong. Because the EMS was slow
9 getting to your house you might hold that against them?

10 A PROSPECTIVE JUROR: They brought the
11 police, which I didn't quite understand. My mom had some
12 problem breathing issues and --

13 THE COURT: Okay. And you think that would
14 affect your ability to be fair and impartial?

15 A PROSPECTIVE JUROR: Because of the date,
16 yes..

17 THE COURT: All right. Fair enough. I'm
18 going to excuse you from service, since you don't think
19 you could be fair. Don't leave yet. When we leave for
20 the day, when I send everybody to lunch, you can leave,
21 but keep calling that telephone number after 6:00 because
22 we may have another trial this week. Likely we won't,
23 but we may. Okay? Thank you.

24 THE BAILIFF: Juror 144, John Rich.

25 A PROSPECTIVE JUROR: Good morning.

1 THE COURT: What would you like to tell me?

2 A PROSPECTIVE JUROR: I'm not really a
3 religious person, but I have spent the last 59 years of
4 my life not judging people, and I don't believe I should
5 be put in a position where I have to make a judgment on
6 somebody's life or otherwise, their freedom.

7 THE COURT: Okay. Who would be on your jury
8 if you got convicted or got charged with a crime?

9 A PROSPECTIVE JUROR: Whoever the system
10 selects.

11 THE COURT: Okay. But not somebody like you?

12 A PROSPECTIVE JUROR: Not somebody like me.

13 THE COURT: You just don't think you could be
14 fair to these folks?

15 A PROSPECTIVE JUROR: I don't think I would
16 make a decision yay or nay. I would have to say I would
17 abstain.

18 THE COURT: All right. Well, then I'll
19 excuse you from service on this jury. You can go back to
20 your seat. Just wait till we break.

21 Anyone else? All right. Let me make sure I
22 got the same ones, we're all on the same page.

23 (Discussion held at sidebar.)

24 THE COURT: I'm excusing 144, 160, and number
25 60. And earlier I had taken out 104, 41, and 95. Is

1 that all the ones that y'all have that I said?

2 MS. LITTLEJOHN: I don't think we asked the
3 question if anybody may have been represented by us or
4 prosecuted by them, but I would like to address the
5 question does anybody know anyone in my office, we list
6 everybody in their office or been affiliated with them,
7 so they might have sat down but been affiliated with, but
8 that's what I think the issue was, anybody you know been
9 represented or prosecuted --

10 THE COURT: As far as the PD's office goes, I
11 should have brought it up with you. I don't usually say
12 represented by the public defender unless you want me to.

13 MS. LITTLEJOHN: In our office, not give the
14 name of our office, just those who work there, need the
15 names of those.

16 THE COURT: Do you have a name of a person?

17 MS. LITTLEJOHN: Did you want to do that with
18 the solicitor's as well?

19 THE COURT: I'm not going to do that. What
20 are you asking me to say, Debbie?

21 MS. LITTLEJOHN: Does anybody know any
22 persons --

23 THE COURT: Who works in the solicitor's
24 office or public defender's office, or know Mrs. Taylor
25 or Mr. West. And I did the same thing to you and David,

1 but I didn't say public defender's office.

2 MS. LITTLEJOHN: What about number 15, about
3 ever been arrested?

4 THE COURT: Arrested or accused. All right.

5 I know we had a number of people that said
6 that they had been. I thought I asked. Was anybody ever
7 prosecuted, but --

8 MS. TAYLOR: By the Ninth Circuit Solicitor's
9 Office.

10 MS. LITTLEJOHN: Then anybody ever
11 contributed to the campaign of Scarlett Wilson?

12 THE COURT: I deem that of a nature to be a
13 political question, and I don't really ask political
14 questions.

15 So you want arrested or accused by the
16 solicitor's office? Because I believed I asked that.

17 MS. LITTLEJOHN: Just whether anybody has
18 been arrested or accused of a crime, period, not just the
19 Ninth Circuit.

20 THE COURT: All right. Other than the
21 answers that we get out of here, do you have any
22 challenges for cause or anything?

23 MS. LITTLEJOHN: I think we struck them all.

24 THE COURT: Do you have any?

25 MS. TAYLOR: No, Your Honor.

1 THE COURT: All right.

2 (End of sidebar.)

3 Out of an abundance of caution, I asked a
4 question earlier, has anybody ever been prosecuted by the
5 Ninth Circuit Solicitor's Office. I know there were some
6 people that responded about family members that had been
7 accused or arrested outside of the solicitor's office in
8 the Ninth Circuit. Is there any member of the jury panel
9 who -- either you or an immediate family member ever been
10 arrested or accused by any law enforcement agency, even
11 outside of the Ninth Circuit Solicitor's Office? So it
12 could be arrest or prosecution in any jurisdiction and
13 you haven't already stood up and just related that
14 information us to earlier.

15 Okay. Yes, your name and number?

16 A PROSPECTIVE JUROR: 182.

17 THE COURT: All right. And what would your
18 response be, you, family member?

19 A PROSPECTIVE JUROR: Can I come up?

20 THE COURT: Yes. Anybody that wants to can
21 just come up as well.

22 Okay.

23 A PROSPECTIVE JUROR: I was -- I had a
24 shoplifting ten years now.

25 THE COURT: And that was conviction or was

1 dismissed?

2 A PROSPECTIVE JUROR: Just a fine.

3 THE COURT: Just a fine. Okay. And where
4 was that at?

5 A PROSPECTIVE JUROR: Charleston County.

6 THE COURT: Okay. All right. Thank you.

7 Let me ask you this: Would that affect your
8 ability to be fair and impartial in this case, either for
9 or against the State or for or against the defense?

10 A PROSPECTIVE JUROR: No.

11 THE COURT: Okay. Thank you. Next? Number
12 69, Betty Frye.

13 A PROSPECTIVE JUROR: My husband's side of
14 the family had had a brother that's been locked up for
15 burglary.

16 THE COURT: He was convicted of what?

17 A PROSPECTIVE JUROR: Brother-in-law. He was
18 convicted of burglary, stealing, stuff like that.

19 THE COURT: Where was that?

20 A PROSPECTIVE JUROR: Charleston County.

21 THE COURT: Okay. And how long ago?

22 A PROSPECTIVE JUROR: He's in jail now, so,
23 like -- within a year.

24 THE COURT: Okay. So he was just recently
25 convicted or still ongoing?

1 A PROSPECTIVE JUROR: Well, he's in the
2 penitentiary.

3 THE COURT: So he got convicted.

4 A PROSPECTIVE JUROR: Yeah, he got convicted.

5 THE COURT: All right.

6 A PROSPECTIVE JUROR: And a nephew has been
7 convicted of murder.

8 THE COURT: Who was?

9 A PROSPECTIVE JUROR: Their nephew.

10 THE COURT: And where was that?

11 A PROSPECTIVE JUROR: In Charleston County.

12 THE COURT: And when was that?

13 A PROSPECTIVE JUROR: That was eight years
14 ago.

15 THE COURT: Okay. And he's still in prison
16 as well?

17 A PROSPECTIVE JUROR: Uh-huh, yeah.

18 THE COURT: All right. Would that affect
19 your ability to be fair and impartial in this case,
20 either for or against the State or for or against the
21 defense?

22 A PROSPECTIVE JUROR: No.

23 THE COURT: Okay. Thank you.

24 A PROSPECTIVE JUROR: Next. Juror number
25 116, Sandra make Daniel. My stepson, five counts of

1 lynching. He was charged with five counts of lynching.

2 THE COURT: Was he convicted?

3 A PROSPECTIVE JUROR: No, just probation.

4 THE COURT: Well, he did get convicted --

5 A PROSPECTIVE JUROR: And then my nephew.

6 THE COURT: For what?

7 A PROSPECTIVE JUROR: Burglary.

8 THE COURT: And where was your stepson
9 prosecuted?

10 A PROSPECTIVE JUROR: Here.

11 THE COURT: How long ago?

12 A PROSPECTIVE JUROR: It's been six years ago
13 maybe.

14 THE COURT: And how about the nephew?

15 A PROSPECTIVE JUROR: He's been about four
16 years ago.

17 THE COURT: Where was that?

18 A PROSPECTIVE JUROR: You know, I don't know.

19 THE COURT: In South Carolina?

20 A PROSPECTIVE JUROR: Yeah, it's in South
21 Carolina, probably over -- probably here.

22 THE COURT: Okay. Would that affect your
23 ability to be fair and impartial, either for or against
24 the State or for or against the defense?

25 A PROSPECTIVE JUROR: No. They're both bad

1 boys.

2 THE COURT: All right. Next?

3 THE BAILIFF: Juror number 150, Mindy Sager.

4 A PROSPECTIVE JUROR: My brother was
5 convicted of drug possession in Texas.

6 THE COURT: In Texas?

7 A PROSPECTIVE JUROR: Uh-huh.

8 THE COURT: And how long ago was that?

9 A PROSPECTIVE JUROR: Six years ago.

10 THE COURT: Okay. Would that affect your
11 ability to be fair and impartial, either for or against
12 the State or for or against the defense?

13 A PROSPECTIVE JUROR: No, sir.

14 THE COURT: All right. Thank you.

15 A PROSPECTIVE JUROR: Number 76, Kimberly
16 Gootee.

17 THE COURT: Yes, ma'am?

18 A PROSPECTIVE JUROR: My daughter was
19 arrested for drug possession. She is going to a
20 probation officer, and credit card fraud, a little
21 embarrassing.

22 THE COURT: Where was this at?

23 A PROSPECTIVE JUROR: Berkeley County.

24 THE COURT: Okay. And she was convicted, or
25 is she currently being prosecuted?

1 A PROSPECTIVE JUROR: She was convicted and
2 served time over here at the county, got out, you know,
3 good behavior, I don't know, whatever. Lost her driver's
4 license. I don't see her that often, because, you know,
5 with drugs and everything and she stole from me, so I
6 don't --

7 THE COURT: Would it affect your ability to
8 be fair and impartial, either for or against the State or
9 for or against the defense?

10 A PROSPECTIVE JUROR: I don't know, and it's
11 been bothering me. I was also married to a cop about
12 five years ago. I had somebody try to break in on me.
13 I'm not -- and I was raised with guns and everything. I
14 don't know. I'm giving you my honest opinion.

15 THE COURT: All right. Thank you.

16 A PROSPECTIVE JUROR: Juror number 50, Myra
17 Davis. My cousin was arrested for burglary. I don't
18 remember what year.

19 THE COURT: Last five years?

20 A PROSPECTIVE JUROR: No.

21 THE COURT: Ten?

22 A PROSPECTIVE JUROR: Might have been ten.

23 THE COURT: And where was this?

24 A PROSPECTIVE JUROR: In this -- Berkeley
25 County.

1 THE COURT: Was he convicted?

2 A PROSPECTIVE JUROR: Yes.

3 THE COURT: All right. And so he was
4 prosecuted by the solicitor's office?

5 A PROSPECTIVE JUROR: I think so, yeah.

6 THE COURT: All right. Would that affect
7 your ability to be fair and impartial in this case,
8 either for or against the State or for or against the
9 defense?

10 A PROSPECTIVE JUROR: Probably, yes.

11 THE COURT: You would be inclined to hold it
12 against the State?

13 A PROSPECTIVE JUROR: That sounds bad, but --
14 no, huh-uh.

15 THE COURT: Well, why -- you said it would
16 affect you.

17 A PROSPECTIVE JUROR: Well, no, I wouldn't
18 hold it against the State, but it might affect my
19 decision -- I'm sorry.

20 THE COURT: Against the defendant?

21 A PROSPECTIVE JUROR: I'm not supposed to
22 touch you.

23 THE COURT: All right. Thank you. You can
24 be seated.

25 MS. LITTLEJOHN: Is she excused, Your Honor?

1 THE COURT: Yeah, we'll excuse her.

2 A PROSPECTIVE JUROR: Number 101, Nicole
3 Joseph. It was my father and it was DEA drug
4 trafficking, so I was called to ask questions about that.

5 THE COURT: How long ago?

6 A PROSPECTIVE JUROR: This is when I was a
7 kid, so --

8 THE COURT: Would that affect your ability to
9 be fair and impartial for or against the State or for or
10 against the defense?

11 A PROSPECTIVE JUROR: Not at all.

12 THE COURT: Okay. Thank you.

13 A PROSPECTIVE JUROR: 51, James Dawson. My
14 father was convicted of a DUI.

15 THE COURT: DUI?

16 A PROSPECTIVE JUROR: Yes.

17 THE COURT: That was just in magistrate
18 court?

19 A PROSPECTIVE JUROR: It was in the state of
20 Tennessee.

21 THE COURT: Okay. How long ago was that?

22 A PROSPECTIVE JUROR: About two years ago.

23 THE COURT: Would that affect your ability to
24 be fair and impartial in this case for or against the
25 State or for or against the defense?

1 A PROSPECTIVE JUROR: No.

2 THE COURT: All right. Thank you. All
3 right.

4 (The following discussion was held at
5 sidebar.)

6 THE COURT: 76, she couldn't really come out
7 and say whether she was okay, so I'm going to excuse 76
8 as well.

9 MS. TAYLOR: Yes, sir.

10 THE COURT: Anybody else we need to talk
11 about?

12 MS. LITTLEJOHN: Figure out number 102. She
13 worked for Mitch, and she didn't say anything when we
14 asked did anybody know us.

15 THE COURT: Number 102? What about her?

16 MS. LITTLEJOHN: She worked for Mitch.

17 THE COURT: All right. Anything else?

18 All right. We'll draw. You get five and
19 you get ten.

20 (End of sidebar.)

21 THE COURT: All right, folks.

22 The process that we go through in criminal
23 court is just slightly different than the process we go
24 through in civil court. I want you to come up. You'll
25 stand, come to the front of the room here where the table

1 and chairs are, and then turn around and face back
2 towards the back.

3 The State has the opportunity to say present
4 the juror or excuse the juror first. If they say present
5 the juror, then it moves to the defense, and then they
6 say present the jury or excuse the juror. If both sides
7 say present the juror, then you're seated. If either of
8 the two say excuse the juror, then you'll just go back
9 and have a seat.

10 All right?

11 A PROSPECTIVE JUROR: I don't know if I
12 missed my opportunity, but I was trying to get excused
13 because my wife is having surgery Wednesday, so I don't
14 know if I missed the opportunity to --

15 THE COURT: All right. What is your name and
16 number?

17 A PROSPECTIVE JUROR: Steve Bell, number 16.

18 THE COURT: 16? All right. Well, we'll need
19 to excuse you then. All right. You can be seated.
20 Thank you.

21 THE CLERK: Juror 173, Rafael Torres.

22 (The juror, a Hispanic male, approaches.)

23 What say you for the State?

24 MS. TAYLOR: Please present the juror.

25 THE CLERK: What says the defendant?

1 MR. SCHWACKE: Plead seat the juror.

2 THE CLERK: Seat the juror.

3 Juror 116, Sandra McDaniel?

4 (The juror, a white female, approaches.)

5 What says the State?

6 MS. TAYLOR: Please present the juror.

7 THE CLERK: What says the defendant?

8 MR. SCHWACKE: Please excuse this juror.

9 THE CLERK: Excuse the juror.

10 Juror 124, Linda Miller. What says the

11 State?

12 MS. TAYLOR: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. SCHWACKE: Please seat the juror.

15 THE CLERK: Seat the juror.

16 Juror 71, William Gadsden.

17 (The juror, a black male, approaches.)

18 What says the State?

19 MS. TAYLOR: Please excuse the juror.

20 THE CLERK: Excuse the juror.

21 Juror 163, Fetima Snider.

22 (The juror, a black female, approaches.)

23 What says the State?

24 MS. TAYLOR: Please seat the juror.

25 THE CLERK: What says the defendant?

1 MR. SCHWACKE: Seat the juror.
2 THE CLERK: Seat the juror.
3 Number 15, Percy Beauford, Jr.
4 (The juror, a black male, approaches.)
5 What says the State?
6 MS. TAYLOR: Please excuse the juror.
7 THE CLERK: Excuse the juror.
8 Juror 28, Shannon Brown.
9 (The juror, a white female, approaches.)
10 What says the State?
11 MS. TAYLOR: Please present the juror.
12 THE CLERK: What says the defendant?
13 MR. SCHWACKE: Seat the juror.
14 THE CLERK: Seat the juror.
15 Juror 143, Cheryl Rash?
16 (The juror, a white female, approaches.)
17 What says the State?
18 MS. TAYLOR: Please present the juror.
19 THE CLERK: What says the defendant?
20 MR. SCHWACKE: Please excuse this juror.
21 THE CLERK: Excuse the juror.
22 Juror 94, Bryan Hood.
23 (The juror, a white male, approaches.)
24 What says the State?
25 MS. TAYLOR: Please present the juror.

1 THE CLERK: What says the defendant?
2 MR. SCHWACKE: Please seat this juror.
3 THE CLERK: Seat the juror.
4 Juror 161, Jason Smith.
5 (The juror, a white male, approaches.)
6 What says the State?
7 MS. TAYLOR: Please present the juror.
8 THE CLERK: What says the defendant?
9 MR. SCHWACKE: Please excuse this juror.
10 THE CLERK: Excuse the juror.
11 Juror number 6, Charles Ambrose, Jr.?
12 (The juror, a white male, approaches.)
13 What says the State?
14 MS. TAYLOR: Please present the juror.
15 THE CLERK: What says the defendant?
16 MR. SCHWACKE: Please seat this juror.
17 THE CLERK: Seat the juror.
18 Juror 150, Mindy Sager.
19 (The juror, a white female, approaches.)
20 What says the State?
21 MS. TAYLOR: Please present the juror.
22 THE CLERK: What says the defendant?
23 MR. SCHWACKE: Please seat this juror.
24 THE CLERK: Seat the juror.
25 Juror 32, George Butler.

1 (The juror, a white male, approaches.)
2 What says the State?
3 MS. TAYLOR: Please present the juror.
4 THE CLERK: What says the defendant?
5 MR. SCHWACKE: Please excuse the juror.
6 THE CLERK: Excuse the juror.
7 Juror number 11, Bertram Bainter.
8 (The juror, a white male, approaches.)
9 What says the State?
10 MS. TAYLOR: Please present the juror.
11 THE CLERK: What says the defendant?
12 MR. SCHWACKE: Please excuse the juror.
13 THE CLERK: Excuse the juror.
14 Juror 90, Rickey Hill.
15 (The juror, a white male, approaches.)
16 What says the State?
17 MS. TAYLOR: Please present the juror.
18 THE CLERK: What says the defendant?
19 MR. SCHWACKE: Please excuse this juror.
20 THE CLERK: Excuse the juror.
21 Juror 119, Timothy Mescher.
22 (The juror, a white male, approaches.)
23 What says the State?
24 MS. TAYLOR: Please seat the juror.
25 THE CLERK: What says the defendant?

1 MR. SCHWACKE: Seat the juror.

2 THE CLERK: Seat the juror.

3 Juror 21, Lance Bowers.

4 What says the State?

5 MS. TAYLOR: Please present the juror.

6 THE COURT: What says the defendant?

7 MR. SCHWACKE: Please seat this juror.

8 THE CLERK: Seat the juror.

9 Juror 86, Robert Hefner.

10 (The juror, a white male, approaches.)

11 What says the State?

12 MS. TAYLOR: Please present the juror.

13 THE CLERK: What says the defendant?

14 MR. SCHWACKE: Please seat the juror.

15 THE CLERK: Seat the juror.

16 Juror 171, Kayla Thompson.

17 (The juror, a white female, approaches.)

18 What says the State?

19 MS. TAYLOR: Please present the juror.

20 THE CLERK: What says the defendant?

21 MR. SCHWACKE: Please seat the juror.

22 THE CLERK: Seat the juror.

23 Juror one 82, Shannon Whaley?

24 (The juror, a white female, approaches.)

25 What says the State?

1 MS. TAYLOR: Please present the juror.

2 THE CLERK: What says the defendant?

3 MR. SCHWACKE: Please seat the juror.

4 THE CLERK: Seat the juror. Alternates?

5 THE COURT: One strike for the State, two for
6 the defense. Two alternates.

7 THE CLERK: Juror 83, Rhonda Harrison?

8 (The juror, a white female, approaches.)

9 What says the State?

10 MS. TAYLOR: Please present the juror.

11 THE CLERK: What says the defendant?

12 MR. SCHWACKE: Please excuse the juror.

13 THE CLERK: Excuse the juror.

14 Juror 164, Richard Stephens.

15 (The juror, a white male, approaches.)

16 What says the State?

17 MS. TAYLOR: Please excuse the juror.

18 THE CLERK: Excuse the juror.

19 Juror 52, Kenneth Dean.

20 (The juror, a white male, approaches.)

21 Any challenge for cause from the State?

22 MS. TAYLOR: None.

23 THE COURT: What says the defendant?

24 MR. SCHWACKE: Please excuse this juror.

25 THE CLERK: Excuse the juror.

1 Juror number 20, Curtis Boatwright.

2 (The juror, a black male, approaches.)

3 Any challenges for cause from the State?

4 MS. TAYLOR: None.

5 THE CLERK: Any challenges for cause from the
6 defendant?

7 MR. SCHWACKE: None.

8 THE CLERK: Seat the juror.

9 THE COURT: All right. That's the first
10 alternate. Draw a second.

11 THE CLERK: Juror 101, Nicole Joseph.

12 (The juror, a white female, approaches.)

13 What says the State?

14 MS. TAYLOR: Please excuse the juror.

15 THE CLERK: Excuse the juror.

16 Juror 122, Slobodan Mijic.

17 (The juror, a white male, approaches.)

18 Any challenge for cause from the State?

19 MS. TAYLOR: None.

20 THE CLERK: What says the defendant?

21 MR. SCHWACKE: Please seat the juror.

22 THE CLERK: Seat the juror.

23 THE COURT: All right. Anything from the
24 State?

25 MS. TAYLOR: Nothing, Your Honor.

1 THE COURT: From the defense?

2 MR. SCHWACKE: Nothing, Your Honor.

3 THE COURT: Okay. Well, folks, you are our
4 jury now, and what we are going to do is I'm going to
5 send you back with the bailiffs to the jury room, and
6 that's where you will report tomorrow morning 9:30. We
7 will start up then.

8 We will work through some pretrial things
9 that we need to do this afternoon, so we will be ready to
10 start in the morning, so I'll send you home with these
11 instructions: Don't talk to anybody about the case.
12 Obviously, the first thing that is going to happen when
13 you go into the door or you go back to work or whatever
14 it is you do, first thing somebody is going to do is say,
15 Did you get picked on a jury?

16 You can say, Yeah, I did, but I'm not allowed
17 to talk about the case. The judge told me not to talk
18 about the case, and here is the reason why this is
19 important: Remember I told you we're going to put you
20 under oath tomorrow morning, and you're going to make
21 this decision that you make this week, whatever it is,
22 based on what you hear in this courtroom, namely the
23 evidence and then the law. It's not fair to either of
24 these parties to have outside influences affecting what
25 your judgment is. Stop and think about it, you know?

1 These folks, they're not going to know anything at all
2 about the case other than what you could tell them, and
3 you haven't had all of the evidence until the end of the
4 trial.

5 So the best case scenario is they're going to
6 just start mouthing off what their opinions are. None of
7 that is proper to influence your decision one way or the
8 other. They're not going to hear what you're going to
9 hear. They're not going to see what you're going to see,
10 so it's really a matter of fairness, if you stop and
11 think about it. If you were on trial, would you want
12 your husband, wife, neighbor, bartender telling other
13 people what they thought would happen in your case? It's
14 the same thing. Both of these folks do not need to have
15 these other folks telling you what they think about a
16 case they're not jurors on and that they have not heard,
17 all right? So please don't talk to anybody about the
18 case. You'll have plenty of time after the case is over
19 with to talk with them about it.

20 Now, I don't know if there has been a
21 reporter sitting in here today, whether or not there will
22 be any news coverage or not. There is no televisions
23 here today, but sometimes the reporters can hear -- I
24 never know it until the trial is over with, but if
25 somebody writes about the case, that's fine, but, again,

1 that's one of those things where it's somebody else
2 telling what their thoughts are or what their
3 observations are, so that's not an influence that's
4 proper for you during a trial.

5 Again, if somebody writes something about the
6 case, you can read about it all you want after the trial
7 is over with, so if there is any kind of press coverage
8 in the morning, if you get the newspaper and you see
9 something, please don't read it. It might just be best
10 if you don't read the paper at all for the next few days,
11 just out of an abundance of caution. If you're like me
12 and you read the paper first thing and you happen to see
13 something about the case, please just put the paper aside
14 and don't read anymore.

15 Another thing that we have to talk to jurors
16 about now that people are on a jury, they want to get
17 invested in it. They might want to do a little
18 investigation. You might want to ride by. You know it's
19 Zaxby's in Goose Creek. Well, don't go eat there for the
20 next few days. Don't go by there. Don't start riding
21 around the parking lot, imagining things, especially once
22 the trial starts and you start hearing little tidbits.

23 Every single thing that you need to make a
24 judgment in this case we will provide you in this
25 courtroom, and if we don't provide it to you in this

1 courtroom, then it's not a proper thing for you to
2 discover.

3 So don't go out and start doing your own
4 investigation. Don't go on the Internet and try to find
5 out anything about the case. There would be old enough
6 articles, but don't start Googling, don't start looking
7 on Google maps. Don't start tweeting things about it.
8 Don't go on Facebook and talk about your juror experience
9 until after the trial is over, and you can you do
10 whatever you want to do, but during the trial, don't do
11 any kind of social media where you're talking about your
12 experiences and things like that.

13 Again, one of the things that I stress to you
14 during the opening tomorrow is don't begin to make your
15 mind up until you've heard all of the evidence. Well, at
16 this point, you haven't heard anything, but everything
17 that you hear, there is always two sides to everything in
18 a case, just like there is in life, and so the
19 adversarial process, where we have direct and
20 cross-examination and one side puts up stuff, the other
21 side puts up stuff, all of that stuff is not proper for
22 you to begin to make up your mind until you've heard all
23 of it.

24 So don't go out and try to find things out.
25 Don't let outside influences affect your judgment. Don't

1 proactively go out and start doing social media and
2 things like that. All of those things cause us to -- it
3 causes a lot of headaches in a trial, not the least of
4 which is we may have to declare a mistrial and start all
5 over again in front of another jury.

6 I'm just going to send you home today. Don't
7 talk about the case. Just enjoy the rest of the day.
8 Come back tomorrow morning after a good night's sleep.
9 Try to be in the jury room a little bit early, if you
10 can, say like 9:20, 9:15. I always like to have the jury
11 pick their own foreperson if they want to.

12 It's the first decision you make. It's kind
13 of interesting to me to see who gets picked. If you
14 can't come up with somebody, I'll pick someone, but you
15 don't get any extra pay or anything for being a jury
16 foreperson. All you do is really handle the verdict form
17 at the end of the trial and write down a verdict,
18 whatever it is, but sometimes, you know, it's -- like I
19 said, I like to let the jury pick some of that because
20 it's a way to get to know each other as well.

21 You can talk other jury members, but don't
22 talk about the trial. Don't talk about what you've heard
23 at any time during the trial up until the time I send the
24 evidence back with you, after you've heard the entire
25 case, and I say, You can now begin your deliberations.

1 That's the only time it's proper for you to begin your
2 deliberations for talking about the case amongst each
3 other.

4 Just avoid that temptation, all right? Talk
5 about whatever you want, but don't talk about this case.
6 All right? So thank you so much for your patience today.
7 You don't have to come back today. You don't have to
8 call after 6:00, just report about 9:15 in the morning,
9 and hopefully we'll get started right at 9:30. See you
10 in the morning.

11 (Recess taken.)

12 A F T E R N O O N S E S S I O N

13 THE COURT: All right. Ms. Littlejohn, you
14 got a bunch of motions. Which one do you want to pick up
15 first?

16 MS. LITTLEJOHN: Why don't we go with
17 relevancy.

18 THE COURT: Relevancy? That's usually kind
19 of a trial kind of motion.

20 MS. LITTLEJOHN: The ones that I would
21 address relevancy to, Your Honor, is not being relevant
22 to the case of Donte Brown.

23 There are two people who were arrested, Donte
24 Brown and Christopher Wilson. Christopher Wilson pled
25 recently. Well, in early December.

1 THE COURT: What did he get?

2 MS. TAYLOR: He got 60 years, Your Honor.

3 THE COURT: Sixty?

4 MS. TAYLOR: Yes, sir. He pled to all
5 indictments that Mr. Brown is charged with, all of them
6 except for attempted murder were run concurrent, and he
7 received 30 years maximum on the burglary, then the
8 attempted murder was run consecutive to that. He pled
9 the day of trial, Your Honor.

10 MS. LITTLEJOHN: He did. The GPS --

11 THE COURT: And he turned down 30?

12 MS. LITTLEJOHN: Yes, Your Honor.

13 THE COURT: Okay.

14 MS. LITTLEJOHN: The GPS -- and, honestly,
15 the files kind of got commingled as well, so that's why
16 you see us with large notebooks, so to speak.

17 The GPS was one of the ways that they were
18 able to -- or that they said that they were able to track
19 Christopher Wilson, because Christopher Wilson -- I think
20 it was a lifetime monitor; is that correct? Lifetime
21 monitor he had with the GPS through probation and parole.
22 That was Christopher Wilson, not Donte Brown. He didn't
23 have on a monitor.

24 So our first motion would be a motion to
25 suppress any indication of the GPS because the GPS was

1 strictly for -- was strictly on Donte Brown and, Your
2 Honor -- excuse me, Your Honor, on Christopher Wilson,
3 and at the plea -- and Ms. Taylor and I both have a copy
4 of it, and I listened to it. There was no mention by
5 Mr. Wilson that my client, Mr. Brown, did it, was
6 present.

7 But, nevertheless, the GPS was on one of two
8 people arrested, not my client. I think that GPS data as
9 to my -- the codefendant's GPS that's sitting on his leg
10 is irrelevant to my client, clearly more prejudicial.
11 People look at GPS monitors now and just -- they already
12 have that sense of it, if you will.

13 THE COURT: What's the State's theory on GPS?

14 MS. TAYLOR: Yes, Your Honor. We agree with
15 defense counsel that GPS is on the codefendant; however,
16 we anticipate having witnesses that will be testifying
17 that based on phone calls they were getting from this
18 defendant that he placed himself with the codefendant,
19 based on statements he made about who needs a ride and
20 what he was doing.

21 He was also using the codefendant's cell
22 phone to make these phone calls. If that testimony comes
23 in as we anticipate it does, Your Honor, then we think
24 the jury can certainly infer he's with the codefendant
25 and therefore the codefendant's location is relevant.

1 THE COURT: Well, if there is testimony that
2 he can either -- that he can be placed with the
3 defendant -- the codefendant, then you can use that. You
4 can use his words or somebody else's words to connect
5 them together during the time frame that you intend to
6 show the GS. I don't want any reference to the fact that
7 the codefendant was found guilty or pled guilty.

8 MS. TAYLOR: No, Your Honor, and we wouldn't
9 anticipate any mention of this, obviously, unless the
10 codefendant testifies, and solely for impeachment
11 purposes.

12 MS. LITTLEJOHN: Right.

13 THE COURT: All right.

14 MS. LITTLEJOHN: Your Honor, furthermore,
15 with regard to the -- if I just go ahead and keep on the
16 subject of the GPS, Your Honor, I know you've made the
17 ruling so far if there is testimony, but my understanding
18 is that the GPS is run by Omni Link. I think it's out of
19 Atlanta. I'm not really sure where it's out of. At that
20 time, probation, pardon and parole services was utilizing
21 their software, one of their vendors, if you will.

22 It is GPS data. GPS data can be obstructed
23 by various things. Sometimes it included Zaxby's, but
24 other various things, and when it does, it tends to come
25 off -- my understanding, limited because I'm certainly no

1 expert in this -- is then it goes to cell phones and cell
2 phone towers, which then gets you into all opinion and
3 triangulations.

4 THE COURT: But that's not GPS. That's cell
5 phone.

6 MS. LITTLEJOHN: But that's when it loses any
7 GPS, the satellite portion, it goes to cell towers.

8 THE COURT: I don't know that to be a fact.
9 I always thought GPS bounces off of satellites. Cell
10 phones are triangulated off of cell towers.

11 MS. LITTLEJOHN: But there are times when
12 cell phones will get interfered -- I mean, satellites can
13 get interfered with, is my understanding.

14 THE COURT: Well, you could use that on
15 cross-examination, I guess. That's news to me. I'm not
16 saying that it's true or not true, but I suppose if
17 that's true, then bring that out on cross-examination.

18 MS. LITTLEJOHN: And, Your Honor, I would
19 just ask that until we have an expert with GPS testify
20 that we not have -- so that we can determine the accuracy
21 of it, then I would think that would be after an
22 informant would testify that they were together, or the
23 people testified they were together and spoke with them,
24 then the GPS would come in, and prior to the GPS coming
25 in, that we just go ahead and set the foundation for the

1 scientific expertise of the GPS.

2 THE COURT: It's basically a counsel Daubert.
3 We don't need Daubert.

4 MS. LITTLEJOHN: Correct, Your Honor.

5 THE COURT: Okay.

6 MS. TAYLOR: Your Honor, I'm not exactly sure
7 what defense counsel is arguing but I'll try to address
8 it. GPS records are kept by probation, pardon and parole
9 as part of their normal business documents. They are
10 trained in how to look at the GPS records because part of
11 what they do at probation, pardon and parole is keep
12 track of people who are on monitors like the codefendant
13 was. Investigator Powell with Goose Creek went to
14 probation, pardon and parole. They pulled these records,
15 or records they have available, and showed them, Here's,
16 what we've got.

17 Now, defense counsel wants to cross-examine
18 Agent Powell, probation, pardon and parole, Investigator
19 Powell as to the accuracy of GPS, I certainly think she's
20 entitled to do that, but I don't know that we need an
21 expert to come in and testify when the probation agent is
22 trained -- he may not be an expert in GPS, but he's
23 certainly trained in how to use a GPS printout that they
24 use in the normal course of business.

25 Certainly, there is room for interpretation

1 as to the different signals or the accuracy -- I mean, I
2 myself, in speaking with the agent, they can testify
3 about the accuracy of the locations because they use it
4 on a day-to-day basis.

5 THE COURT: Well, it seems to me what you're
6 trying to do is get the GPS coordinates in as sort of
7 business records --

8 MS. TAYLOR: Yes, Your Honor.

9 THE COURT: All right. If you want to
10 challenge the accuracy of a GP -- any particular
11 GPS coordinate or the system itself, I think you would
12 have to probably get somebody in here to do that, because
13 they wouldn't be putting an expert up to testify as to
14 what sort of things interfere with GPS coordinates.

15 They are basically going to be offering a
16 witness who is going to be introducing the evidence
17 through the business records exception, which is not
18 required -- or does not require expert testimony.

19 MS. LITTLEJOHN: Your Honor, in response to
20 that, that would be the 803 -- Court's indulgence, we
21 actually -- we had agreed to sequestration of all the
22 witnesses. I believe that we have -- which one do you
23 want, Fogle or Powell?

24 Under 8036, we would submit that that would
25 be -- the business record exception would not fit here

1 because it would be inadmissible hearsay, that the
2 attempt to introduce the GPS data to show Mr. Wilson was
3 in the area at the time the robbery occurred, and it's
4 being used for the truth of the matter asserted, that
5 Mr. Wilson was there, that Mr. Brown was there, and
6 simply reading a report doesn't qualify someone to
7 testify as to the accuracy of it, which then would be
8 obviously very prejudicial to us, Your Honor.

9 Your Honor, furthermore, the software for
10 this, I believe it belongs to Omni Link, whose business
11 record it is anyway. My understanding is they want to
12 use Agent Steward Powell, saying Agent Steward Powell
13 gave to Officer Nick Powell probation to police officer,
14 but in the report done by the officer, it was that Agent
15 Powell went to Agent Gross who then basically logged on
16 and pulled it up.

17 I think that --

18 THE COURT: Where is this data coming from?

19 MS. LITTLEJOHN: Omni Link.

20 MS. TAYLOR: The GPS is run by Omni Link,
21 Your Honor, but the agents with probation, pardon and
22 parole at the time, because they don't use this company
23 anymore, had access to the Omni Link web site, or server
24 or whatever. I don't know which word is appropriate, and
25 they would regularly go on to this web site, it's my

1 understanding, and pull this data compilation from Omni
2 Link's server for their own records. It's not -- it was
3 data that they had access to, not stored on probation
4 servers, but stored on other servers that they had access
5 to.

6 They had user names and passwords and were
7 able to get this information any time they needed it, and
8 it was stored for their purpose. They were the only ones
9 watching it. Omni Link certainly wasn't the ones that
10 were watching this data.

11 MS. LITTLEJOHN: The business record
12 itself -- Omni Link, it was created by them, stored on
13 their server, produced on their software.

14 MS. TAYLOR: I believe the rule states, Your
15 Honor, and a report of the data compilation made at or
16 near the time or from information transmitted by. This
17 is information transmitted by the GPS to this server that
18 probation, pardon and parole did pull off. It's
19 certainly a data compilation that they have access to,
20 and it's the regular practice of probation to get this
21 data compilation of the GPS.

22 THE COURT: I'll have to think about that
23 overnight. I haven't had that come up I'll have to
24 research it.

25 MS. LITTLEJOHN: I was just going by evidence

1 Rule 901, 70, 8036, and it was Agent Gross to access the
2 data, Your Honor. That was actually in their report.

3 MS. TAYLOR: But certainly any custodian of
4 the records could testify as to their authenticity, Your
5 Honor.

6 THE COURT: All right. Well, I'll take that
7 under advisement. Let y'all know what I decide tomorrow.

8 What else do you have?

9 MS. LITTLEJOHN: Let me just go down,
10 checkmark this.

11 Your Honor, with regard to -- I filed
12 motions -- I don't think the solicitor is objecting to
13 these for Cynthia Garrett and Marteeke Hamilton, their
14 testimony.

15 MS. TAYLOR: After conversation with defense
16 counselor, Your Honor, it's my understanding she's
17 objecting to testimony from third parties, which
18 certainly we'll instruct our witnesses not to mention.
19 There are statements that we intend to elicit from them
20 about statements made by the defendant himself, which
21 certainly I think are admissible as --

22 THE COURT: From these two witnesses?

23 MS. TAYLOR: These two witnesses will
24 testify, Your Honor, not only statements they heard from
25 the defendant himself, but they have information that we

1 don't intend to elicit from third parties, which I think
2 was the basis for her motion, and we certainly don't
3 intend to elicit that information.

4 THE COURT: Correct.

5 MS. LITTLEJOHN: Correct, it was, Your Honor.

6 Your Honor, let me mark that one off. Your
7 Honor, I made a motion to suppress Motel Six, any
8 reference to Motel Six. That would be relevancy, Your
9 Honor.

10 THE COURT: What is the deal on Motel Six?

11 MS. TAYLOR: Your Honor, again, we anticipate
12 testimony being from these same two witnesses that they
13 either saw or were told by the defendant that after the
14 robbery, he and the codefendant checked into the Motel
15 Six, and we have records from the Motel Six showing that
16 they checked into that location.

17 We believe not only is it relevant to support
18 their testimony concerning what he told them about the
19 events of that evening into the morning, but, also, we
20 anticipate one of these witnesses testifying that to her
21 knowledge, at that point, the defendant had no job, and
22 certainly the State believes that testimony we would
23 elicit from her and other witnesses, that immediately
24 after the robbery, he's renting hotel rooms, purchasing
25 new telephones, purchasing new clothing, new shoes, and

1 showing this to other people would be relevant for the
2 jury to infer that that money came from somewhere.

3 But, again, Your Honor, that would be based
4 off of testimony that we would anticipate coming from the
5 witnesses.

6 THE COURT: Well, if it corroborates what he
7 is telling other people, it certainly seems to be
8 relevant. He's telling her this is what he did and where
9 he's at, supported by GPS.

10 MS. LITTLEJOHN: With regard to the
11 codefendant, he was wearing that.

12 THE COURT: Again, he's with somebody and
13 they can corroborate that. I think that's fine. It's
14 just used to suppress and basically corroborate what your
15 records show. For instance, he checked into a Motel Six
16 and he's told other people that he's at a Motel Six, I
17 think that's fine.

18 MS. LITTLEJOHN: But, Your Honor, what we
19 have is a receipt where my client was at Motel Six, not
20 two people, just one person.

21 THE COURT: Okay.

22 MS. LITTLEJOHN: Being at Motel Six.

23 THE COURT: Maybe I misunderstood what you
24 said. You've got somebody saying the defendant told him
25 he was at a Motel Six?

1 MS. LITTLEJOHN: That he went there, Your
2 Honor, and also another witness that actually visited him
3 there at the Motel Six and the codefendant was there. I
4 don't know if it has anything to do with the GPS records.

5 THE COURT: Well, GPS regardless, but if
6 you've got somebody that says that they saw him there and
7 it's backed up by receipts -- I would rather it backed up
8 by receipts GPS or not, it can come in. I'm missing
9 something.

10 MS. LITTLEJOHN: Your Honor, it's receipts
11 that were found there. Actually, there were no receipts
12 found in the Motel Six that I'm aware of, and there is no
13 evidence, that I'm aware of, of anyone knowing he made
14 any purchases.

15 There's a video that at best is blurry -- you
16 can't make it out. I think we pretty much agree to that.

17 THE COURT: Are you putting in evidence of
18 things that he did, correct?

19 MS. TAYLOR: Yes, Your Honor. He's the one
20 that checked into the Motel Six. We have the records
21 showing his sign-in sheet and that he stayed there for
22 three days, and we would anticipate the testimony from
23 the witnesses being that he was at the Motel Six with the
24 codefendant while they were making all these purchases.

25 THE COURT: They're coming in. What else?

1 MS. LITTLEJOHN: Your Honor, the next issue
2 with regard to -- right now we're only -- I'm only
3 addressing these as to the issue of relevancy -- would be
4 Christopher Wilson's cell phone data.

5 MS. TAYLOR: And, Your Honor not to jump the
6 gun, but just as we said before, we anticipate the
7 testimony being that -- witnesses will testify this
8 defendant was calling them from Christopher Wilson's cell
9 phone, which corroborates or supports the State's
10 allegations that they're together at the time, and that's
11 both before and after the robbery, Your Honor.

12 MS. LITTLEJOHN: And for the purpose of this
13 portion of the hearing, we're only doing that with regard
14 to relevancy, Your Honor. We would argue Christopher
15 Wilson, the codefendant's, telephone cannot be placed at
16 a certain spot, if you will. There's no GPS in it or
17 whatever they do with those sort of things to tell us the
18 longitude and latitude, and -- to tell us whose hand it's
19 in.

20 THE COURT: It does seem relevant. So as
21 long as they can properly lay a foundation for the
22 introduction of it, it can come in. Who did you intend
23 to bring in the cell phone data?

24 MS. LITTLEJOHN: We actually had agreed on
25 certain Bates stamped pages, Your Honor.

1 MS. TAYLOR: We had a Sprint representative
2 ready to come in from Kansas, Your Honor, but it's my
3 understanding we have agreed to the chain, that those are
4 the authentic records of the codefendant, and we're
5 planning on having an officer testify they were
6 subpoenaed and received.

7 MS. LITTLEJOHN: For the record, it's Bates
8 stamped 260, 270, 271, 272, 288, and 289.

9 THE COURT: Okay.

10 MS. LITTLEJOHN: Next, with regard strictly
11 only -- and we'll go back to some of these. On the issue
12 of relevancy, DNA was found on a ski mask that matched,
13 or alleged to have matched, Christopher Wilson. That was
14 on Christopher Wilson.

15 During the robbery, people went in had on ski
16 masks.. We're not disputing that, and shortly, near
17 Zaxby's, they found a ski mask, same color and all, and
18 had Christopher Wilson's DNA on it.

19 That, Your Honor, I certainly believe under
20 probative versus prejudicial relevancy issue with regard
21 to Mr. Brown.

22 MS. TAYLOR: Again, Your Honor, the testimony
23 we would anticipate would be that there is certainly
24 enough inference or enough circumstantial evidence for
25 the jury to make the conclusion that this defendant was

1 with Mr. Wilson prior to the burglary.

2 Testimony of the victims are that two people
3 entered the Zaxby's. We had testimony from people who
4 see two people fleeing the scene. We have testimony that
5 puts Mr. Wilson and Mr. Brown together being picked up by
6 a third party within 45 minutes of the robbery in the
7 location where the two people have fled.

8 So although it seems like this evidence is
9 solely against Mr. Wilson, certainly in this case, Your
10 Honor, as a hand of one case, this evidence against one
11 defendant, if we can place this defendant with the
12 codefendant, is certainly relevant to the State's case of
13 proving that they're the two people that robbed the
14 Zaxby's.

15 MS. LITTLEJOHN: Your Honor, in reply to
16 that, basically, this is a bootstrapping situation, to
17 bootstrap -- here is Mr. Wilson, who admitted to being
18 there, actually in his plea never admitted to going in.
19 We both have a copy of that transcript, but be that as it
20 may, he admitted that there, everything leads to
21 Mr. Wilson.

22 The connection to Mr. Brown is, Oh, y'all
23 buds. Y'all hang out together, hip to hip, so you must
24 be the one. You must have been there. If you're there,
25 he's there, and we'll be approaching the -- any issues

1 that particularly one of the witnesses will have with
2 regard to Mr. Brown. They used to be together.

3 MS. TAYLOR: Your Honor, certainly if defense
4 counsel has questions of credibility of a witness, she's
5 able to do that on cross-examination; however, we have
6 two separate witnesses who will testify that prior to the
7 burglary, within an hour or so of the burglary, this
8 defendant is using the codefendant's cell phone that
9 within 30 minutes of the robbery he's using it to say,
10 Come pick us up, talking about him and the codefendant,
11 so he puts himself with the codefendant. And evidence of
12 the codefendant is the one that robbed Zaxby's, when he's
13 putting himself with that person, certainly we think is
14 relevant to proving whether or not he was involved, when
15 we know that there are two people that went into the
16 Zaxby's.

17 THE COURT: Are we at this point discussing
18 the DNA evidence or whether they're with this particular
19 person?

20 MS. TAYLOR: The ski mask, the DNA on the ski
21 mask that's found on the flight path from the Zaxby's is
22 the codefendant's DNA but --

23 THE COURT: Flight path, what do you mean?

24 MS. TAYLOR: There is a dog track that goes
25 from Zaxby's and leads out, and they find the DNA this

1 ski mask on, that also corroborates where the witnesses
2 say they saw these two people leave also corroborates the
3 neighborhood where these defendants are picked up 45
4 minutes later.

5 So, I mean, seems like just one piece, but
6 looking at the totality of the circumstances, if we are
7 able to put them together before the robbery and we're
8 able to put them together based on the defendant's own
9 statements, then whether or not the codefendant had a ski
10 mask on that matches the description of the two people
11 that robbed Zaxby's is relevant to the State's case, to
12 be able to prove that they robbed Zaxby's together.

13 THE COURT: Okay. It can come in. Again,
14 just to be sure there is no mention that Mr. Wilson was
15 convicted, or pled guilty.

16 MS. TAYLOR: No, Your Honor.

17 THE COURT: That comes in. All right?

18 MS. LITTLEJOHN: I think that -- oh, excuse
19 me. Let's just jump over to this, Your Honor. We're
20 going to be making some motions to suppress search
21 warrants.

22 THE COURT: Like what?

23 MS. LITTLEJOHN: Well, if we can call the --
24 we'll start with Motel Six. We believe that if we can
25 just call -- let me see who did that one, that search

1 warrant. We can call Investigator Powell. We'll be
2 making a motion with regard to the search warrant, Your
3 Honor, that is defective and not reliable.

4 Your Honor, most of our -- a significant
5 portion of what we are looking at with regard to the
6 search warrant is based on -- the new case came out April
7 23rd, 2014, State vs. Alex Robinson, with regard to the
8 validity of the warrant.

9 THE COURT: Are you going to call a witness?

10 MS. TAYLOR: Yes, Your Honor.

11 NICHOLAS RYAN POWELL,

12 having been first duly sworn,
13 was examined and testified as follows:

14 MS. TAYLOR: I'm sorry to interrupt. The
15 State has a standing argument in this issue, so I don't
16 know if you want to address this now.

17 THE COURT: You have what?

18 MS. TAYLOR: We don't believe the defendant
19 has standing or a reasonable expectation of privacy to
20 object to this search warrant. It's motel records. I
21 have a case I can hand up. I didn't know --

22 THE COURT: Well, he's on the stand. Let's
23 see what he's got to say.

24 MS. TAYLOR: Yes, Your Honor.

25 DIRECT EXAMINATION

1 BY MS. LITTLEJOHN:

2 Q. Officer Powell, on January 3rd, you went to
3 Charleston County and asked Judge Lombard for a search
4 warrant?

5 A. That's correct.

6 Q. And I assume you have a copy of it, right?

7 A. I do.

8 Q. Do you have the original or do you have a copy?

9 A. I've got a copy in my book here.

10 Q. Okay. And you list out the description of
11 properties.

12 A. Yes.

13 Q. And your reason is you're a certified officer,
14 authorized to make searches and seizures. On December
15 24th, two suspects committed an armed robbery at the
16 Zaxby's in Goose Creek. During this incident, the
17 manager of the business was shot by one of the suspects,
18 that after the robbery an informant came forward and
19 provided information, identified two suspects involved in
20 the incident. Information obtained from the informant
21 was that Donte Brown and Christopher Wilson committed the
22 armed robbery and stayed at the Motel Six following the
23 incident.

24 Preliminary records indicate that Donte Brown
25 checked into Motel Six on December 24, 2011, and the

NICHOLAS POWELL - DIRECT BY MS. LITTLEJOHN

1 affiant believes that the aforementioned report will help
2 to positively identify the suspects involved.

3 That's what you have in your affidavit, correct?

4 A. That's correct.

5 Q. And that was signed by Judge Lombard at 1:42,
6 correct?

7 A. Yes.

8 Q. And the search warrant was executed at about 20
9 minutes later, at 2:05 p.m.?

10 A. That's correct.

11 Q. The informant, that would be Cynthia Garrett,
12 correct?

13 A. That's correct.

14 Q. And you first met her when she appeared there at
15 the Goose Creek police department around December 29th,
16 correct?

17 A. Yes. I originally received information via lead
18 sheet there was a person who had information regarding
19 this incident.

20 Q. Received information what?

21 A. Regarding the armed robbery, that there was an
22 individual that had information about that. I received
23 that on December 29th, 2011, and that's when I contacted
24 Ms. Garrett, and she arrived later that day in the police
25 department to speak with me.

1 Q. Right. And I think it was you and Officer Fogle
2 who sat down and talked with her, right?

3 A. Officer Fogle, yes, that's correct.

4 Q. And a significant portion of what she told you she
5 would say Slaughter told me?

6 A. It was third party information from Slaughter,
7 that's correct.

8 Q. As a matter of fact mast, in listening to the tape
9 again, you made a comment to the effect of, you don't get
10 Slaughter to come in and talk to me, do you?

11 A. I believe if that's what the tape shows, then yes,
12 I'll agree to that.

13 Q. That was -- so that was the first time you had met
14 her, was that day.

15 A. Yes.

16 Q. I think it was later in that afternoon, wasn't it?

17 A. It was that afternoon.

18 Q. And the -- Court's indulgence.

19 Let's just go back to the search warrant. Your
20 next meeting with her was on January 12th, on or around
21 January 12th, wasn't it?

22 A. That sounds about right.

23 Q. It was after you requested the search warrant?

24 A. Yes.

25 Q. And Ms. Garrett, in your conversations with her,

NICHOLAS POWELL - DIRECT BY MS. LITTLEJOHN

1 made various statements which could be confirmed, or not
2 confirmed.

3 A. Correct.

4 Q. Some would be -- a lot would be required to be
5 confirmed through this fellow, Slaughter?

6 A. There was some information from Slaughter, yes.

7 Q. She told you things such as -- she told you about
8 her light bill?

9 A. Yes.

10 Q. And she gave you her address.

11 A. Yes.

12 Q. And you didn't -- that light bill from -- is it
13 SCE&G light bill? And did you check with SCE&G to find
14 out whose name was on the bill at the address that she
15 was giving you?

16 A. I don't believe so.

17 Q. So you took that to be the truth?

18 A. Based on the information that she provided us.

19 THE COURT: Is this on the suppression of
20 Motel Six?

21 MS. LITTLEJOHN: It is, Your Honor.

22 THE COURT: All right. I guess I'm missing
23 something here. Was this found at the hotel? What are
24 we talking about?

25 MS. LITTLEJOHN: We're talking about the

NICHOLAS POWELL - DIRECT BY MS. LITTLEJOHN

1 validity of the search warrant in general.

2 THE COURT: Is there more than one?

3 MS. LITTLEJOHN: There's several search
4 warrants that were executed.

5 BY MS. LITTLEJOHN:

6 Q. She also made a statement to you that she ran into
7 Lowe's and asked them to call the police, correct?

8 A. I believe so. I would have to look back at it.

9 Q. And you didn't confirm that with Lowe's in
10 Summerville either, did you?

11 A. No, we did not.

12 Q. And she actually told you of how she and Mr. Brown
13 were having issues, personal issues, between themselves?

14 A. You could say that.

15 Q. They weren't friends at that time, were they?

16 A. I don't believe so.

17 Q. But they had been very friendly, hadn't they?

18 A. In the past.

19 Q. According to what she said to the point where I
20 believe in your interview there was something about she
21 actually referenced a pregnancy kit at some point in
22 time?

23 A. I believe so.

24 Q. With regard to Mr. Brown?

25 A. Correct.

NICHOLAS POWELL - DIRECT BY MS. LITTLEJOHN

1 MS. LITTLEJOHN: Court's indulgence.

2 What I would like to do here is Officer
3 Powell was involved in several of the search warrants, so
4 while we have him on the stand, I would like to take the
5 Officer Powell search warrants, if the Court is fine with
6 that.

7 THE COURT: All right. Which ones are he
8 involved with, the Motel Six one and what else?

9 MS. LITTLEJOHN: Officer Fogle is involved
10 with the DNA; Officer Powell is involved with regard to
11 the 301 Swamp Fox Lane. We can move to that one, if you
12 like.

13 THE COURT: Okay.

14 BY MS. LITTLEJOHN:

15 Q. You actually asked Judge Johnson -- applied to her
16 for a search warrant on January 5 for a search warrant
17 for [REDACTED] correct?

18 A. Yes.

19 Q. And other than the factual elements which we set
20 out previously, saying, you know, there was a robbery,
21 that a manager was shot, informant came, provided --
22 identified two suspects possibly identified in the
23 incident, information obtained from the informant was
24 that Christopher Wilson was involved in the commission of
25 the armed robbery that occurred.

NICHOLAS POWELL - DIRECT BY MS. LITTLEJOHN

1 You tell how much apparently was taken, that a
2 shell casing was found, a ski mask was recovered during
3 the investigation, and DNA was located on a ski mask.
4 Mr. Wilson's DNA was on file at a databank as a positive
5 match, and that's information you gave Judge Johnson,
6 correct?

7 A. That's correct.

8 Q. But the final confirmation of the DNA was received
9 when?

10 A. After we resubmitted the DNA that we collected
11 from Christopher Darnell Wilson when he was placed under
12 arrest for this, when we executed the search warrant.

13 Q. This was executed on the 5th of January?

14 A. Yes.

15 Q. And we didn't get the final report of Christopher
16 Wilson on the ski mask until after the 5th.

17 A. That would have been a reference to the submission
18 of the new sample we obtained, but we received a hit from
19 that database from Dr. Mears' office.

20 Q. And that would be an e-mail where Dr. Mears said
21 he recommended you collect a new sample for confirmation
22 testing?

23 A. That's correct.

24 Q. So he needed to confirm. Okay. Let's see which
25 ones you were on here.

NICHOLAS POWELL - DIRECT BY MS. LITTLEJOHN

1 MS. LITTLEJOHN: If we can make these search
2 warrants as exhibits, just copies. They're Bates
3 stamped.

4 Your Honor, if I could approach, if I may
5 approach the witness.

6 THE COURT: You may.

7 BY MS. LITTLEJOHN:

8 Q. I'll share these with -- what we have here is a
9 search warrant for the county of Charleston, January 3rd
10 where Judge Lombard -- that's the one we just went over.
11 And you can identify that?

12 A. Yes.

13 Q. And that's the search warrant you applied for?

14 A. Yes.

15 MS. LITTLEJOHN: Your Honor, if I may have
16 this marked.

17 THE COURT: Sure. I'd like to see it after
18 you mark it.

19 (Court's Exhibit Nos. 1 through 9 were marked
20 for identification.)

21 BY MS. LITTLEJOHN:

22 Q. We talked about the search warrant for [REDACTED]
23 [REDACTED] January 5th. What I'm going to show you is two
24 search warrants, both dated the same date, and I'm
25 distinguishing these for the record because in the bottom

1 corner of the first set, it says AMW0202, just a Bates
2 stamp to help us keep it straight.

3 That is where -- that would be the first cover of
4 the -- on 202, that search warrant?

5 A. Uh-huh.

6 Q. This one page is the search warrant, 203, and
7 that's what you applied for? 204, the affidavit for the
8 search warrant, is that your significant?

9 A. That is my signature, yes.

10 Q. On AMW205, on the return, it says it was executed
11 January 5th, AMW205 is 1530, but we don't have a
12 signature on there.

13 A. Okay.

14 Q. Would you agree with that?

15 A. Yeah.

16 Q. Let me show you the second set I have. They're
17 also from [REDACTED] If you'd agree that's the first
18 page of the fuzzy Bates stamped one of your search
19 warrant, the second page duplicate, third one, that's
20 where you identified your signature. That's your the
21 affidavit?

22 A. Yes.

23 Q. And the fourth one, it's a return. Is that your
24 signature on the bottom of this return of the -- second
25 set of [REDACTED] with the fuzzy Bates stamped

NICHOLAS POWELL - DIRECT BY MS. LITTLEJOHN

1 pages?

2 A. It appears so, yes.

3 Q. Would you tell us what's written on -- and that's
4 notarized too, correct?

5 A. These aren't notarized.

6 Q. Down at the bottom?

7 A. It is not. Oh, the signatures?

8 Q. Yes. Can you tell me what time is written on
9 that?

10 A. There is no time written on this one.

11 Q. So on the first set for 3/18 we have a time but no
12 signatures. On the second set, the same place, the same
13 search warrant, we have signatures and no time.

14 A. Correct.

15 MS. LITTLEJOHN: Now, if we can just mark
16 this for distinguishing purposes, it looks like AMW202,
17 and it is four sheets -- it's one exhibit, and then -- I
18 can't make out the BATES pages, but it's four sheets for
19 the identical search warrant of [REDACTED] only
20 it is the omission of our time on the return.

21 THE COURT: Okay.

22 BY MS. LITTLEJOHN:

23 Q. In your conversation with Ms. Garrett where you
24 got your information -- and we established she got it
25 from Slaughter, she also completed a five-page written

1 statement while she was in there; is that correct?

2 A. Yes, she did.

3 Q. And, Your Honor, if I may approach, can you
4 identify that? And you exited the room, she wrote her
5 statement, you came back in, correct?

6 A. Yes.

7 Q. In her statement to you that she relied on or that
8 you relied on, on page three of five, which is Bates page
9 stamped 567 for reference, can you read midway down --
10 for clarity one, two -- the 14th line, the first full
11 sentence that begins on that 14th line, if you can read
12 that sentence.

13 A. Donte and Dolla never told me that they robbed
14 Zaxby's in Goose Creek, but they told Slaughter and I
15 don't know who else. The reason why I'm coming forward
16 with this information --

17 Q. That was -- okay. So she met with you, and then
18 she actually wrote a statement saying that they never
19 told her that?

20 A. They never told her directly at that time.

21 Q. Yes. Your Honor, if I could, and what you put in
22 your affidavit, that is complete, isn't it?

23 A. Which document are you referring to?

24 Q. The search warrant affidavits, the one we went
25 over on Motel Six and [REDACTED]

NICHOLAS POWELL - CROSS BY MS. TAYLOR

1 A. The first information was correct regarding that.

2 Q. And that is your complete affidavit?

3 A. It's the affidavit that was submitted to the judge
4 for signing, yes. That is the complete affidavit.

5 Q. And there was no reason to supplement that,
6 correct?

7 A. There were no supplements to that affidavit.

8 MS. LITTLEJOHN: I have no further questions,
9 Your Honor.

10 THE COURT: Cross?

11 MS. TAYLOR: Yes, Your Honor. Just a few
12 questions.

13 CROSS-EXAMINATION

14 BY MS. TAYLOR:

15 Q. Investigator Powell, the information you received
16 from Ms. Garrett about the Motel Six, were you able to
17 corroborate that before you did the search warrant for
18 those records?

19 A. Yes, we were.

20 Q. And how did you do that?

21 A. We were able to send Investigator Goodyear to
22 Motel Six who spoke with the desk clerk at the time and
23 was able to obtain the information that Donte Brown had
24 checked in there.

25 Q. And is that what that line reads, preliminary

1 records indicate Donte Brown did check in on December
2 24th?

3 A. Yes.

4 Q. And, actually, didn't you receive more than one
5 piece of information from the Motel Six? You received, I
6 think, a printed receipt, a written receipt, and some
7 videos; is that correct?

8 A. Yes.

9 Q. And the printed receipt you actually had before
10 you had the search warrant; isn't that right?

11 A. That's correct.

12 Q. Now, moving onto [REDACTED] prior to the
13 issuance of that search warrant, I believe you said on
14 direct examination, you had already received a DNA kit on
15 the codefendant, Christopher Wilson, correct?

16 A. Yes.

17 Q. And whose address is [REDACTED]

18 A. Christopher Wilson.

19 Q. In fact, is that the defendant's address?

20 A. That is not.

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

23 MS. LITTLEJOHN: No further questions, Your
24 Honor.

25 THE COURT: All right. What is your

LINDA LOMBARD - DIRECT BY MS. LITTLEJOHN

1 argument, or you got another witness?

2 MS. LITTLEJOHN: We do, Your Honor.

3 LINDA LOMBARD,

4 having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LITTLEJOHN:

8 Q. Judge Lombard, I know you are a magistrate down in
9 Charleston. I'm going to show you what is marked as
10 Court's Exhibit 1. It's a four-page search warrant for
11 the Motel Six.

12 A. Yes, ma'am.

13 Q. And you signed --

14 A. Yes, ma'am.

15 Q. -- the search warrant, and we have been in here
16 prior to you being in here and we looked at the
17 affidavit, the search warrant. If you are given
18 additional information for a search warrant or if they
19 supplement it, do you put a notation of some sort?

20 A. That depends. Mostly I do, sometimes I do not.

21 Q. Okay. But your habit is that you do?

22 A. I don't have it -- my recent habit is I could say
23 that. Now, that's two years old. That's two years old.

24 Q. But do you have any indication of this being
25 supplemented with any oral testimony, to your knowledge?

1 A. I have absolutely no memory of that certain
2 warrant at all.

3 Q. Okay.

4 MS. LITTLEJOHN: Thank you. I have no
5 further questions for this witness.

6 MS. TAYLOR: No question from the State, Your
7 Honor.

8 THE WITNESS: May I be released, Judge? I've
9 got to go back to court.

10 THE COURT: Yes.

11 THE WITNESS: Thank you, sir.

12 MS. LITTLEJOHN: At this time, Judge, we
13 would call Judge Shirley Johnson.

14 MS. TAYLOR: If it will speed up the process,
15 the State is willing to concede there was no oral
16 testimony supporting the search warrants.

17 THE COURT: Will that suffice for you?

18 MS. LITTLEJOHN: Well, Your Honor, we have
19 several search warrants going over that. The DNA one --
20 let me get my little checklist here.

21 It would speed it up, actually. The DNA of
22 my client by Officer Fogle, the Motel Six one -- there
23 was not a search warrant done on the GPS; [REDACTED]
24 is Officer Powell; cell phone of Christopher Wilson.

25 MS. TAYLOR: It's my recollection, speaking

1 with the officer, they have no memory of any oral
2 testimony supplementing any search warrants in this case,
3 so if that is sufficient for defense counsel, I think we
4 could let the magistrate go.

5 THE COURT: You're willing to consent there
6 is no oral supplement made to any of the magistrates?

7 MS. TAYLOR: Yes, sir. On any search
8 warrants in this case, the State does not believe there
9 was oral testimony supplementing any of the affidavits.

10 THE COURT: Then she can -- Judge Johnson can
11 be released?

12 MS. LITTLEJOHN: Your Honor, well -- how
13 about this: We'll speed it up even quicker.

14 MS. TAYLOR: Yes, Your Honor, she can be
15 released.

16 MS. LITTLEJOHN: Will the State stipulate to
17 the Officer Fogle January 5th buccal swab of my client?
18 And I'm on 206, 207, 208, and 209, January 5th, and fuzzy
19 Bates stamp page -- I can't read it, but there are two
20 sets of these, Your Honor. The return was done January
21 6th.

22 MS. TAYLOR: There's two separate copies.

23 MS. LITTLEJOHN: We can just mark this for
24 identification.

25 THE COURT: All right.

NICHOLAS POWELL - REDIRECT BY MS. TAYLOR

1 MS. LITTLEJOHN: The State has stipulated
2 that either Officers Fogle or Powell did any
3 supplementary testimony, and, Court's indulgence, I just
4 want to find one for the search warrant just so we can
5 mark it as a record for the cell phone database of
6 Christopher Wilson, not the -- but for the database.

7 I'm showing this to Ms. Taylor. It's Bates
8 stamped 618 dated December 30th by Investigator Fogle,
9 619, with database search for the Sprint account number
10 3249264, which I believe Ms. Taylor would confirm with me
11 that that was what was listed as Christopher Wilson's
12 cell phone number, and, Your Honor, I apologize. I can
13 try to get you a cleaner copy. I just happened to have
14 his name on a sticky that ran through there.

15 Page 620, Bates stamp of the affidavit, and
16 the return, page 621, four pages with the cell phone
17 data, Your Honor, if you could just mark that.

18 REDIRECT EXAMINATION

19 BY MS. TAYLOR:

20 Q. Investigator Powell, just to be clear, there was
21 some confusion. There seem to be multiple copies of
22 search warrants. Can you tell us why some returns would
23 have signatures and some would not?

24 A. Right. When we execute a search warrant in the
25 residence, we complete the return when we're there, but

1 the bottom portion, where the signature for us and the
2 judge goes, we do that in front of the judge when we're
3 signing the return back.

4 Q. And so the copies that you provided to the State,
5 were some unsigned and some signed?

6 A. Yeah.

7 Q. Where are the originals of those held?

8 A. The originals would be with the Courts.

9 Q. And you don't have those with you today?

10 A. We do not.

11 Q. We need them. Can you get them from the
12 magistrate court?

13 A. Yes.

14 Q. Quick question about the DNA investigator. Were
15 you involved in making the decision to get the search
16 warrant for defendant's DNA?

17 A. Yes.

18 Q. Are you the case officer on this case?

19 A. I am.

20 Q. And to your knowledge, was the defendant's DNA
21 already in a database?

22 A. Yes.

23 Q. And what database was that in?

24 A. That's the CODIS database.

25 Q. Do you know why the defendant's DNA was in that

NICHOLAS POWELL - REDIRECT BY MS. TAYLOR

1 database, or when it was entered?

2 A. It was entered in 2006.

3 Q. So prior to this incident?

4 A. Yes.

5 Q. If you had not been able to get defendant's DNA in
6 this case, what would your course of action have been?

7 A. We would have submitted those items to SLED who
8 has access to that database for comparison purposes.

9 Q. If SLED had been able to give you the same results
10 that you got basically here, what would you have done?

11 A. We would have obtained a new sample from the
12 defendant.

13 Q. Is it necessary to obtain a new sample or can the
14 evidence in your case be compared to the database that's
15 already there?

16 A. You can compare it to the database, but any time
17 you do that, we obtain a new sample for comparison, so we
18 know we got it directly from the defendant.

19 Q. Where do you send that?

20 A. We use IntelliGENETICS.

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

23 RECROSS EXAMINATION

24 BY MS. LITTLEJOHN:

25 Q. And you testified that everything was complete,

1 and the State stipulated there was no supplemental
2 testimony on these affidavits, so what was testified to
3 today, none of that was told to the judge in getting
4 these, correct?

5 A. That's correct.

6 MS. LITTLEJOHN: No further questions.

7 THE COURT: All right. What's next?

8 MS. LITTLEJOHN: Your Honor, we would first
9 address the issue of the DNA of my client.

10 THE COURT: Why don't we start with the
11 search warrant of Motel Six first. It seems more
12 straightforward. He didn't search your room, right?

13 MS. LITTLEJOHN: They did not.

14 THE COURT: They searched the --

15 MS. LITTLEJOHN: The records.

16 THE COURT: He didn't have standing, really,
17 to raise that one. I personally think the affidavit was
18 insufficient, but he didn't really have standing to raise
19 that.

20 They went and got records from the hotel that
21 he didn't have any reason -- ability to object to things.
22 It's my understanding the evidence from Motel Six, there
23 is nothing inside of his room; is that correct?

24 MS. TAYLOR: That's correct, Your Honor.

25 THE COURT: So that one is denied because he

1 doesn't have standing, even if it were an insufficient.
2 Okay?

3 Now, you want to go to DNA next?

4 MS. LITTLEJOHN: Yes, Your Honor.

5 THE COURT: All right.

6 MS. LITTLEJOHN: With regard to my client's
7 DNA -- and does the Court have the search warrant for
8 that?

9 THE COURT: I do not. All right. Which ones
10 do I need to look at for this one? I've got 6, 5, 4, 3,
11 2, 1 --

12 MS. LITTLEJOHN: We believe it's 5, Your
13 Honor. We think it might get a little confusing with
14 some of these.

15 THE COURT: This is Sprint, No. 5. 6 is the
16 statement of Cynthia Garrett. 4 is a search warrant to
17 get a DNA sample from Donte Brown.

18 MS. LITTLEJOHN: That would be it, Your
19 Honor.

20 THE COURT: Okay. Tell me what you find is
21 the problem with this.

22 MS. LITTLEJOHN: Yes, Your Honor. You've
23 heard the testimony with regard to the informant who gave
24 the information, Cynthia Garrett. You also heard the
25 testimony from the officers that during the first and

1 only meeting that they had with her she filled out a
2 five-page statement. The officer himself actually said
3 that would be in the CI file, and, for the record,
4 confidential informant file.

5 They had not met with her before that date.
6 So, clearly, they would never have used her for anything.
7 In the search warrant for the DNA -- and I'm looking
8 strictly at the affiant's belief, Your Honor -- it goes
9 through telling about that there was a robbery. Then it
10 says, after the robbery, an informant came forward and
11 provided information identifying two suspects possibly
12 involved in the incident.

13 Information obtained by the informant was
14 that Donte Brown was involved in the commission of the
15 crime. Then it talks about they found the shell casing,
16 et cetera, say a gun and knife were recovered during the
17 investigation.

18 At that point in time there was no results on
19 any gun and knife, and that is part of the [REDACTED] Your
20 Honor. Nevertheless, they have testified that they did
21 not supplement the record with any information with
22 regard to Cynthia Garrett. Their testimony has been, and
23 where we are heading here, Your Honor, is they've talked
24 about a confidential informant.

25 They go to the magistrate, Judge Johnson, ask

1 her to sign this. There's been nothing other than, Here
2 you go. Please put your John Henry on here.

3 The validity of the warrant itself, Your
4 Honor, when you look at this new case that came out on
5 April 23rd, 2014, State vs. Alex Robinson, it says --
6 it's referencing that case. They're addressing two of
7 Robinson's arguments that the trial Court erred in not
8 granting his motions, and he said first he argued
9 Sergeant Donald misled the judge who issued the search
10 warrant by knowingly omitting the facts and circumstances
11 of Oliver's involvement in the drug transactions.

12 Oliver would be the third party, if you will,
13 which would be similar to Slaughter that Cynthia Garrett
14 was referencing, that she got her information from
15 Slaughter.

16 Second, he argues the warrant is invalid
17 because Sergeant Donald did not present the issuing judge
18 with any information regarding the confidential
19 informant's reliability.

20 Your Honor, she came to them. They have the
21 ability to make her a confidential informant. You just
22 can't, all of a sudden, who filed a confidential
23 informant? She had a package. It's referenced in the
24 testimony. If you look at and run, this is in many
25 respects analogous to the Robinson case, only somewhat

1 different in some ways.

2 In the Robinson case, Sergeant Donald knew of
3 the third party, and just to set this up for the record,
4 you had Sergeant Donald dealing with an informant who
5 said, Hey, I can go by drugs. It has to be done through
6 somebody, done through Oliver.

7 So -- but the confidential informant is there
8 with the third party, who's doing this, knows the third
9 party, and there's indication that Sergeant Donald saw,
10 shook hands with, et cetera, Oliver, the third party in
11 this, if you will.

12 Your Honor, probably some of the biggest
13 things that come out of this is it talks about the
14 neutral -- you've heard from one magistrate and two
15 others who were going to get on the stand, and we would
16 submit to you that their testimony is they didn't recall
17 signing any additional information, and the solicitor has
18 consented to this.

19 In the Robinson case, the officer, it says,
20 should have disclosed that the informant purchased
21 cocaine through a purported agent and should have
22 described the circumstances he believed gave rise to the
23 agency. Goose Creek did not disclose that, nor did they
24 tell that it was hearsay.

25 Nowhere in the affidavit, in any of these

1 affidavits, do they say Cynthia Garrett learned this or
2 the confidential informant learned this through a third
3 party whose name she doesn't know; furthermore, we have
4 not been able to confirm who this third party is, nor
5 have we spoken with this third party with regard to this,
6 and we have made her a confidential informant.

7 So they have not even done that, Your Honor.
8 I anticipate the solicitor is going to argue Frank's
9 motion, saying that the Court may not order suppression
10 simply because the officer made a false statement or
11 omitted key facts. You must demonstrate that those false
12 statements or omissions were material.

13 The fact that this is an informant, that's in
14 there. What's not in there is this is the first time
15 this is an informant. She gave us, and I asked her about
16 the light bill and about Lowe's, two things that could
17 have been easily verified, not verified.

18 Nowhere in here does it say she got it from a
19 third party, and certainly nowhere in here does it say in
20 her written statement the informant says he -- they did
21 not tell me. I heard it from so-and-so.

22 When you get to the reliability of the
23 confidential informant, they are to include in the
24 affidavit any evidence of the informant's reliability
25 renders the warrant invalid. There is -- there was no

1 reliability with her. The officer testified that's the
2 first they heard from her, basically rings up the phone,
3 hey, let me come talk to you.

4 I even asked him, hadn't they -- they weren't
5 friends now and they had been friends, and she had asked
6 about a pregnancy test, basically getting to the gist of
7 she wasn't happy with them at the time. Things had gone
8 south.

9 Nothing was checked with regard to that.
10 They had not ever used her. They didn't check with
11 regard to any reliability of her. She's telling them, He
12 offered money to pay the light bill at my place. I asked
13 him if he checked it out and if he would, would he know
14 that that place was under Donte's name. He had not
15 checked it.

16 He didn't check out the Lowe's story. Things
17 that could be checked weren't checked. She gives the
18 name of a person, but it's just a first name or a last
19 name, and does say, this is where they live, but nothing
20 says -- and we took her directions that she gave us and
21 went there and spoke with this person.

22 Your Honor, in citing this, State vs.
23 Harrison, they're making a probable cause determination.
24 The task of the issuing magistrate is simply to make
25 practical confident decision regarding all the

1 circumstances set forth in the affidavit beforehand,
2 including the veracity and basis of knowledge of the
3 person supplying hearsay information. There's a
4 probability that contraband or evidence would be found in
5 a particular case.

6 Granted, it's not about contraband, but there
7 lies the only difference in this State vs. Robinson,
8 other than they didn't even know who the hearsay person
9 was that was giving them this information. The existence
10 of probable cause in the Robinson case depended entirely
11 upon the informant's hearsay statements to the officer.
12 Parallel to this: Probable cause for everything at the
13 beginning was Cynthia Garrett, who Goose Creek police
14 chose to make an informant. They made her the
15 confidential informant. They did the package with her.
16 That was on December 29th.

17 I asked him, when was the next time you
18 talked with her? Wasn't it January 12th, something to
19 that effect? The answer was yes, to establish that it
20 was well after these search warrants had been applied
21 for. All of her information, except for one of those
22 things, could be verified, but the officer testified were
23 not verified, were hearsay and totally based on the
24 information that what the informant had told was the
25 truth.

1 A warrant based solely on information
2 provided by a confidential informant must contain
3 language supporting the credibility of the informant and
4 the basis of his knowledge. Your Honor, in essence, it
5 could be a floodgate. Imagine the floodgate of -- people
6 can be vindictive nowadays. Imagine the floodgate would
7 open up. Vindictive spouses decided to come in and
8 decided to start saying so-and-so told me about this, and
9 that was good enough. Although we never met the person
10 before that date, we are opening a total floodgate with
11 regard to it.

12 Leon would not apply in this case. Your
13 Honor, the good faith exception cannot apply when we are
14 looking at this situation. They even address it right
15 there in the Robinson case. Again, no evidence of
16 reliability of the informant. As a matter of fact, if
17 you look at the omissions that were done, Donte and Dolla
18 did not tell me they did. They told Slaughter, no last
19 name, no first name, no whatever name.

20 The Supreme Court stated without any
21 information concerning the reliability of the informant,
22 the inferences from the facts which lead to the complaint
23 will be drawn, not by neutral and detached magistrate as
24 the constitutions requires, but instead by police officer
25 engaged in the often competitive enterprise of ferreting

1 out crime, or, as in this case, an unidentified
2 informant, and that would be in this case the third party
3 that's listed.

4 The issuing judge was forced to guess whether
5 the event advised actually occurred. As in Robinson, in
6 this case too, you have to imagine the hearsay, double
7 hearsay, if you will, will work. Again, no indication of
8 reliability. The Court says good faith exception is
9 inapplicable in cases where affiant fails to provide the
10 magistrate with a substantial basis for probable cause.

11 This Court, in Robinson, I believe all they
12 could do to try not to have to suppress that search
13 warrant because there was even indication of -- they talk
14 about an agency relationship, this person being an agent
15 of that.

16 Your Honor, we don't even have that here. No
17 indication of ever -- of any reliability of this
18 confidential informant. We have to look at, on the day
19 this was signed, here's what was presented, not what was
20 discovered as a result of, but this is all they were
21 presented with, plenty of omissions they were not
22 presented with, material omissions that they were not
23 presented with -- Your Honor, based on the material
24 omissions that were in here, the hearsay and the
25 affidavit itself, the reliability of the confidential

1 informant, we would request that these search warrants,
2 which we've marked up here, be suppressed on those, bases
3 and we are citing a lot of the Robinson case --

4 THE COURT: When you say these search
5 warrants, are you talking about the DNA one?

6 MS. LITTLEJOHN: DNA.

7 THE COURT: All right.

8 MS. LITTLEJOHN: Primarily focussing on my
9 client's DNA.

10 THE COURT: You mean this instead of these.
11 There is not more than one DNA search warrant, is there?

12 MS. LITTLEJOHN: There is for Christopher
13 Robinson, but we're not dealing with that.

14 THE COURT: Okay. What is the State's
15 position?

16 MS. TAYLOR: We concede the affidavit is
17 insufficient; however, based on Investigator Powell's
18 testimony, we don't believe suppression is appropriate in
19 this case. He testified, Your Honor, that the
20 defendant's DNA was already in the CODIS database, based
21 on a prior arrest, and that were he not able to get a
22 certain warrant based on this affidavit, that what he
23 would have done is asked SLED, based on information he
24 had, to run that DNA in the database against the samples
25 they had, which would have resulted in the same result,

1 and then based on that he would have gotten a search
2 warrant for a new submission.

3 So although the argument by defense counsel
4 is eloquent, the case law, Your Honor, and I can -- I
5 don't have copies of the cases, I apologize, but State
6 vs. McCord which is a Court of Appeals case from 2002,
7 Nix vs. Williams is a Supreme Court case. That cite is
8 467 U.S. 431, and U.S. vs. Red Bird, which is a federal
9 case, Your Honor, all say that if the prosecution can
10 establish that the evidence would have inevitably been
11 discovered, then suppression is not appropriate, and in
12 this case, that's what we have. His DNA was already
13 available. They just got it from a swab as opposed to
14 running it through CODIS.

15 THE COURT: Let me have the cites to those
16 cases again.

17 MS. TAYLOR: State vs. McCord case is 349
18 S.C. 477, and in that case, what basically happened in
19 that case is the DNA had already been taken from a search
20 warrant in another county, and they used that DNA to
21 compare, as opposed to getting another search warrant,
22 and the Court of Appeals said that's fine. DNA collected
23 by law enforcement is available for comparison.

24 In Nix vs. Williams, Your Honor, which is the
25 Supreme Court case, that cite is 467 U.S. 431.

1 Basically, it says if the prosecution can establish by a
2 preponderance of the evidence that the information
3 ultimately or inevitably would have been discovered by
4 lawful means, the information is admissible, despite the
5 fact it was illegally obtained.

6 And U.S. vs. Red Bird, Your Honor, which is
7 146 federal supplement 2d 993, in that case, Your Honor,
8 the Court found that the defendant's statements were
9 illegally obtained and that the buccal swabs were
10 potentially excludable as fruit of the poisonous tree.
11 The doctrine of inevitable discovery provided the gateway
12 for admission of the DNA evidence because the Court was
13 convinced that the government would have obtained a
14 search warrant for the swabs anyway, and that's what
15 Investigator Powell's testimony was.

16 THE COURT: Well, I agree with you on your
17 conceding that the affidavit was insufficient. I believe
18 you're probably right on inevitable discovery, but I want
19 to review those cases tonight before I make a final
20 decision, so I will do that.

21 I've got State vs. McCord, you got Nix vs.
22 Williams, and what was the last name?

23 MS. TAYLOR: U.S. vs. Red Bird. It's 146
24 federal supplement 2d 993.

25 THE COURT: All right. You got another one?

1 Was there another search warrant issue?

2 MS. LITTLEJOHN: Court's indulgence, Your
3 Honor.

4 MS. TAYLOR: Just for the Court's
5 information, on the cell phone records and the search
6 warrant for the [REDACTED] Red Fox, the State is also arguing
7 standing on those two search warrants.

8 THE COURT: It's their position that he,
9 Mr. Brown, doesn't have standing to raise any objection
10 to the admission or to the search warrant on Christopher
11 Wilson's phone records. Do you have any authority on
12 that?

13 MS. LITTLEJOHN: We can just research an
14 issue on that, Your Honor, and what we can do is e-mail.

15 THE COURT: You can e-mail me tonight.

16 MS. LITTLEJOHN: I will copy Ms. Taylor on
17 that.

18 Your Honor I would also, with regard to the
19 good faith exception, Leon, I point out the Johnson case.
20 I don't have a copy of it cited in here. It's 302 SC 243
21 1990.

22 THE COURT: And what are you citing this for?

23 MS. LITTLEJOHN: For the inevitable
24 discovery, good faith exception.

25 Your Honor, also, what I would note is that

1 Officer Powell talked about how they send their stuff to
2 a Hilton Head lab. They send it off to a private lab
3 instead of right here with SLED. The issue is although
4 it may would have been done, it's sort of like asking us
5 to look at -- hindsight is 20/20, so whatever is done
6 would be okay.

7 THE COURT: Well, what she's saying is that
8 our Courts have said if they can say even though they
9 didn't do that, that's what they would have done, then it
10 would have been successful in finding this evidence
11 anyway, then it's okay.

12 They don't have to have done it. They could
13 have done it, and it would have been inevitable if they
14 would have done it. If the Court had not issued a search
15 warrant, then it comes in.

16 MS. LITTLEJOHN: We don't know what they
17 would have done. Nobody knows what they would have done.
18 Will you give us some time to research on that, Your
19 Honor?

20 THE COURT: You have tonight, just like me.
21 Was there any other search warrant issues? You have down
22 here suppress items found at [REDACTED] and it says
23 in parentheses, Chris's house. Would that be Wilson,
24 codefendant?

25 MS. TAYLOR: Yes, Your Honor.

1 THE COURT: Wouldn't that also be a standing
2 issue?

3 MS. LITTLEJOHN: That would be a standing
4 issue we'll get back with you on. I believe they're
5 going to argue standing issue on that, right?

6 MS. TAYLOR: Yes, sir.

7 MS. LITTLEJOHN: We would just argue on that.
8 I believe they're going to introduce items they're going
9 to try to link to my client saying they were in Chris's
10 house.

11 MS. TAYLOR: And, Your Honor, I don't know if
12 we need to call Ms. Wilson, who is Christopher Wilson's
13 mother to testify, or if you can take judicial notice
14 that the defendant is actually charged with burglary for
15 being in that house, although he was there when the
16 officers went to serve the search warrant, which is when
17 the items were recovered, but we can certainly call
18 Ms. Wilson to testify that they didn't have permission to
19 be there. And the standing is an issue for defense, but
20 I think they would concede --

21 THE COURT: That is the basis for the
22 burglary charge that he's facing today?

23 MS. TAYLOR: No, Your Honor. It's a separate
24 burglary. When they went to serve the search warrant on
25 Christopher Wilson's home, they found Donte Brown there,

1 but he did not have permission to be there, and he's been
2 charged -- allegedly, he did not have permission to be
3 there and has been charged with burglary for being in
4 that house, but that was when the items that defense
5 counsel spoke of were recovered, so he was present when
6 the items were recovered, but, according to the owner of
7 the home, was not supposed to be there.

8 THE COURT: You might want to get her in to
9 testify to that.

10 MS. TAYLOR: The State would allege, in that
11 case, the search warrant is sufficient. So I don't know
12 if we want to take that up or --

13 THE COURT: So let's see. You got -- require
14 a foundation be established as to authenticity that Lamar
15 Daniels was in the store with Defendant Brown. Is this
16 going to be a jailhouse snitch testimony?

17 MS. TAYLOR: It's an informant, Your Honor,
18 that was in the detention center.

19 THE COURT: What kind of foundation do you
20 need? Normally, they just come in and say I was in the
21 jail.

22 MS. LITTLEJOHN: I told y'all I was throwing
23 all that stuff to you when I sent it to you at oh dark
24 thirty last night.

25 THE COURT: Is there anything else we need to

1 take up today?

2 MS. TAYLOR: The State had filed a few
3 motions, Your Honor.

4 THE COURT: What is that?

5 MS. LITTLEJOHN: We partly agreed to them.

6 MS. TAYLOR: First off, there were two
7 motions, Your Honor, one regarding the codefendant's
8 statement and one regarding the defendant's statement
9 that I think we have agreed to. Certainly unless the two
10 of them testify, that no one can be asked about
11 statements that they made, including the investigating
12 officer who took the statements. I think defense counsel
13 has conceded that that's correct.

14 THE COURT: Okay.

15 MS. TAYLOR: State also filed third-party
16 guilt motion, Your Honor. Based on some information that
17 I believe defense counsel has or has told me she's trying
18 to get, there are a number of third parties in this case
19 that she has implicated to me were involved in the armed
20 robbery.

21 I don't know what evidence she plans on
22 introducing to that effect or attempting to introduce to
23 that effect, but the motion we filed, Your Honor,
24 basically asks that any evidence that she intends to
25 introduce be proffered so that the Court can make a

1 determination if it meets with the third-party guilt
2 requirements, which would basically be that it's
3 inconsistent with the defendant's own guilt, and that
4 there is a chain of facts and circumstances pointing to
5 that guilt.

6 A lot of it is innuendo. I agree with
7 defense counsel she's able to ask the officers about
8 witnesses they didn't interview, but implications that
9 those people are involved just because they weren't
10 interviewed I think are inappropriate, based on the
11 third-party guilt case law.

12 THE COURT: What do you want to say about
13 that? I only read what I got handed this morning, which
14 is a State's motion in opposition. I couldn't pick out
15 anything in there that was specific enough to point the
16 third-party guilt, other than it just seemed like
17 suspicious behavior. One guy was no longer at the house,
18 at the first house, and the dogs -- the dogs went to 310.
19 People wouldn't open the door, something like that, and
20 the guy that was there wasn't there, took off or
21 something like that.

22 MS. LITTLEJOHN: Right.

23 THE COURT: Suspicious behavior, but nothing
24 that indicated guilt, but those are the only things that
25 I'm aware of. Have you got something more than that?

1 MS. LITTLEJOHN: I think that -- I thought we
2 pretty well had settled up here, that what I'm going to
3 be doing is the officers -- I didn't come up with these
4 names out of the blue. It's in their report, and on
5 certain people they chose to take DNA, including certain
6 victims, certain witnesses, what have you.

7 I don't know what they did about these people
8 when they talked to them, did they check out their
9 credibility, because I think that's important, checking
10 out people's credibility. We think the jury has a right
11 to know about any individual's credibility they spoke
12 with. The 310 Red Fox one -- to my knowledge, they never
13 have spoken with him, ever. Nobody from the State's ever
14 spoken to him, and he apparently -- they went there. He
15 wasn't there. They put his name in, and I think he said
16 one of the officers made some statement about it, but
17 it's just to go to, Here is who was there. Here is who
18 was there earlier. Now they're gone.

19 The other individual, Your Honor, was a
20 fellow who was calling in 911. Jeffrey Taylor is his
21 name. He was parked right next to the Dumpster where a
22 lot of action was going on before the robbers took the
23 fellows -- took the poor little fellow inside to rob the
24 place. There will be testimony -- what we're looking at
25 is the right to present a full defense. That would

1 include where people say who was located, who was spoken
2 with. I think it goes down -- I'm not saying they did
3 it. I'm talking about the job -- what they did and what
4 they didn't do.

5 I didn't get these names, like I said, out of
6 the blue. They're in the officer's report. Even the
7 manager who you've heard reference to in here was shot,
8 in her interview with the officers, she keeps telling him
9 y'all need to check out Jeffrey Taylor, is basically the
10 gist of what she's saying in that, and I think he has --
11 I think he has a prior record, if I'm not mistaken.

12 MS. TAYLOR: And, Your Honor, the State would
13 contend that is exactly what third-party guilt does not
14 allow the defendant to do. There is no evidence that
15 Jeffrey Taylor was involved, other than by supposition by
16 other witnesses that were inside, other than he acted
17 funny that night, so check out this guy, but it's
18 certainly not inconsistent with the defendant's own guilt
19 because I think everyone will concede two people went
20 into the Zaxby's, and Jeffrey Taylor was not one of them
21 because he was on the phone with 911.

22 So even if somehow Mr. Taylor is involved,
23 it's not inconsistent with Mr. Brown being involved, and
24 that's what third-party guilt requires. Not only that,
25 but there is no evidence that he is involved other than

1 these people saying maybe he did it, which is exactly
2 what the case law is supposed to keep out.

3 MS. LITTLEJOHN: We're not saying maybe they
4 did it.

5 THE COURT: What are you saying?

6 MS. LITTLEJOHN: We're saying what did you
7 see? What did you see? Who did you interview? What did
8 you ask them? What did they do? Was there anybody out
9 there to hear you scream? A fellow rides up on a bike.
10 Did anybody hear you scream?

11 THE COURT: Are these rhetorical questions?

12 MS. LITTLEJOHN: Those would be some of the
13 questions, so to speak, I would ask, which doesn't go to
14 third-party guilt.

15 MS. TAYLOR: I'm just basing it off of what
16 defense counsel just said, that people said, Go check out
17 this guy, which is exactly the kind of questioning that
18 the case law does not allow her to ask, and I just want
19 to make sure that's not done in front of the jury in an
20 inappropriate manner.

21 THE COURT: I agree that you're not just --
22 you can ask some question. You can't just throw up smoke
23 screens about well, did you check out all these unrelated
24 things? And I'm not really sure -- based on what you're
25 telling me, it almost sounds like you're asking almost

1 rhetorical questions, but like this other house where the
2 house -- lights got turned off, people wouldn't answer
3 the door, there's just no reason to go there.

4 There's no evidence that those people had
5 anything to do with it, and just to say, oh, that's kind
6 of suspicious behavior, is not enough to get that into
7 evidence.

8 MS. LITTLEJOHN: Your Honor, the dog led to
9 there, that officers spent an hour out there that night.

10 MS. TAYLOR: And found nothing.

11 MS. LITTLEJOHN: In the rule of completeness,
12 this is their report. It's not my report. This is their
13 report that's in.

14 MS. TAYLOR: Officers all the time, Your
15 Honor, have leads that they follow through that don't
16 lead anywhere, and that's exactly what they're not
17 supposed to get into.

18 MS. LITTLEJOHN: I'm getting into what they
19 did, what they didn't do, I mean, because other than
20 that, the last stop would be Christopher Wilson's house,
21 and it wasn't.

22 THE COURT: Well, if you've got the dogs
23 going out there and they went to some other place, I
24 think -- and then they went to the place where you
25 ultimately found other things out, I think it's okay to

1 ask -- you know, they're going to be giving you a time
2 frame. Yeah, we took the dogs out. Where did it lead
3 you? Well, it led us to 310 -- same street?

4 MS. TAYLOR: One is Swamp Fox and one is Red
5 Fox.

6 THE COURT: 310 Red Fox, did you find
7 anything there? No. Okay. Then you go on, where the
8 dogs did take you.

9 MS. LITTLEJOHN: That's right, and that night
10 they didn't find any -- they found money in a driveway at
11 neither 310 Red Fox nor at [REDACTED] that night.

12 MS. TAYLOR: And, certainly, Your Honor, we
13 think it's appropriate for defense counsel to go into the
14 dog track, but spending 45 minutes cross-examining the
15 detectives about the behavior of the people at that house
16 doesn't, to us, seem appropriate because there's nothing
17 connecting them to the robbery.

18 After -- you know, did you find anything
19 there? No. Did you talk to everybody? We talked to
20 everybody that was there. Did you talk to this guy that
21 they say was gone? No, and we don't have a problem with
22 that, but it's the further implication that just because
23 the officers didn't talk to this person, it's not an
24 attack on their investigation at that point. Once you
25 imply that he is involved, that's third-party guilt.

1 THE COURT: Well, I think we're talking about
2 the same thing. I'm questioning how you're going to
3 develop your cross-examination, and I guess the best I
4 can do is say, well, if you get off tangent, then I'll
5 shut down that avenue of questioning.

6 MS. LITTLEJOHN: My argument is the right to
7 present a full defense without saying John Doe did it,
8 not Donte Brown.

9 THE COURT: Well, it's not just that. It's
10 just -- you're not allowed to just throw out -- well,
11 these are all these suspicious circumstances and going
12 around about that. That's not what the law allows you to
13 do. So if you find that there is something that really
14 does look like somebody else did it, that's one thing,
15 but just to go, well, the dogs led us to that house and
16 then we knocked on the door, people didn't answer, you
17 can say that, and then that -- you go on, but the whole
18 point of them trying to say, well, those people could
19 have been the ones that did it is not proper.

20 MS. LITTLEJOHN: I think that -- I would
21 agree with you in saying A, B, and C did it is not
22 proper. I think I have a right to a full defense, which
23 would be their report, their case report.

24 THE COURT: All right. I'll decide, I guess,
25 when you start down your cross-examination path as to

1 what is or isn't allowed.

2 MS. LITTLEJOHN: I think we're both a thin
3 line --

4 MS. TAYLOR: We're just concerned here that
5 it's not a bell that can be unrung in front of the jury,
6 which is why we would request, before she goes down that
7 path, that the testimony be proffered outside the
8 presence of the jury so that the Court can then make a
9 ruling as to whether or not it's allowable. Once she
10 says something in front of the jury about somebody else
11 doing it and the State objects, then that's in the jury's
12 mind forever.

13 MS. LITTLEJOHN: Your Honor, I will be asking
14 that it was police officers who took DNA of Vincent
15 Riley, Jeffrey Taylor, Christopher Wilson, and Donte
16 Brown. They submitted it. They use a private laboratory
17 down there.

18 THE COURT: The labs all came back that it
19 wasn't other people; is that right?

20 MS. TAYLOR: That's correct, Your Honor.

21 THE COURT: So why do you want that in?

22 MS. LITTLEJOHN: I'm looking -- I think I
23 have the right to develop what procedures they use and
24 what procedures they do not use as officers. Where do
25 they pick and choose who you want to grab DNA from? I

1 mean, they did it. It's their action. It's their case.

2 THE COURT: I hear you. You can ask them
3 what they did. At some point, you'll go too far. I'll
4 cut you off. I guess -- I mean, I don't know what else
5 to say.

6 She has a right to pursue what they did, and
7 you're asking me to cut her off on a cross-examination
8 that she hasn't conducted yet, so I've told you the
9 parameters, and we'll just see where it goes.

10 Anything else?

11 All right. Well, I got a motion to
12 reconsider a sentence. It won't take long. It's
13 scheduled for 9:30, so be ready at 9:30, because it won't
14 take long and we'll get started after that.

15 (Recess taken.)

16 (May 6, 2014.)

17 (In open court, jury not present.)

18 THE COURT: All right. Let's go back on the
19 record on Brown, just to clear up a couple things, let
20 you know what I'm deciding on the inevitable discovery
21 thing.

22 We did have a couple of issues where we said,
23 like, the cell phone, the [REDACTED] issue, and the
24 motel and we talked about standing. I think, more
25 correctly, we probably need to refer to those in terms of

1 no expectation of privacy. I think the Courts have
2 gotten away from calling it standing and saying no
3 expectation of privacy, so that's really the basis for
4 those rulings.

5 On the [REDACTED] one, you still wanted to
6 put the mother up to testify? The defendant didn't have
7 permission to be there?

8 MS. TAYLOR: Yes, Your Honor, and she is
9 present and ready to testify.

10 THE COURT: All right. We'll take care of
11 that then shortly.

12 As far as inevitable discovery goes, just
13 reiterate for me the State's position based on what your
14 officer testified to as to how you would have inevitably
15 discovered the evidence anyway.

16 MS. TAYLOR: The defendant's DNA, based on
17 prior conviction, was already in the CODIS database.
18 Investigator Powell testified that because they had his
19 name what they would have done is sent the information to
20 SLED and asked SLED to check it against his DNA.

21 When SLED had come back with the information
22 that it could not be excluded, he would have used that
23 information to get a search warrant for a DNA sample, and
24 we believe that information certainly could have gotten a
25 search warrant for that sample and would have had their

1 own lab because Goose Creek uses their own lab to run it
2 to get the same results they got.

3 THE COURT: All right. Ms. Littlejohn, you
4 want to respond to anything on that?

5 MS. LITTLEJOHN: Yes, Your Honor. I handed
6 up the case of State v. Jenkins, and -- I think I left my
7 highlighted copy at the office, but it states that first
8 the affidavit must set forth facts as to why the
9 police believe -- it's actually, ironically, a DNA case,
10 whose DNA is the person who committed the crime, et
11 cetera.

12 They go on to say in this particular case --
13 the affidavit in this case does not contain any
14 identification as to whether the police had other DNA
15 evidence in which Jenkins' DNA profile could be compared.
16 The State -- Court's indulgence.

17 In Higgins, the State argued the discovery of
18 Jenkins' DNA was inevitable because they could have
19 gotten it from the database, and in Jenkins, he also had
20 a prior record. I think it was for CSC or something to
21 that effect, so it was already in the database there,
22 okay?

23 The Court goes on to state that the purpose
24 of the exclusionary rule is, quote, to deter, to compel
25 respect for the constitutional guarantee is the only

1 effective way by removing incentive to disregard it.

2 Court's indulgence just a sec.

3 In our case, there were at least five
4 different profiles that were found, two of whom they're
5 going to say -- I submit that the State's going to argue
6 that at least two of them matched Donte and the
7 codefendant, leaving an additional three others. So
8 for -- it was only when we did the motion to suppress,
9 only when asked, what else could he have done, he said,
10 he could have sent it up there, but there are three other
11 profiles. That wasn't sent up there.

12 THE COURT: Well, they don't have to be,
13 under the case. Under Jenkins, the way I read it, is the
14 prosecutor can't just get up there and blindly state,
15 Well, this is what they could have done. They have to
16 actually put something on the record where a police
17 officer or some law enforcement officer would stand up
18 and say, This is what I would have done.

19 There has to be some record other than the
20 prosecutor standing up at trial and giving a theoretical
21 or hypothetical scenario. The police officer can get on
22 the stand and give a hypothetical, this is what I would
23 have done, but that is some basis for a factual finding,
24 that it would have been inevitably discovered.

25 MS. LITTLEJOHN: But, Your Honor, in State

1 vs.. Jenkins, they basically say that the State's
2 contention through the officer misses the point of the
3 inevitable discovery doctrine.

4 As stated in Jenkins, the issue is not
5 whether a state agency has the profile in the database,
6 but, rather, the burden is on the State to prove whether
7 the Goose Creek police department would have obtained
8 Donte Brown's genetic profile from the database and that
9 the lawfully obtained profile, that being the one that
10 would be pending at SLED, could be compared to the
11 profile on what they found in this case be the gun.

12 The inevitable discovery doctrine requires
13 the State to establish they inevitably would have
14 obtained it, not could have. There's been no testimony
15 that what they reportedly had at SLED would have worked.

16 THE COURT: If they had, in the SLED
17 database, Mr. Brown's DNA, then they would have found it,
18 not could have, because your DNA doesn't change. It's
19 not like, well, there's a 50/50 chance it would have
20 matched. If his was in it, and they had a sample of his
21 to send to it, it would have matched. DNA either matches
22 100 percent or it doesn't match, but it doesn't
23 theoretically go up to CODIS if it's in there, and not
24 come back with a match. If it's in there and they had
25 his sample to send to match what they had in their

1 database, it would have matched. As I understand DNA, it
2 is inevitable it would have.

3 So they only have to show that the steps they
4 would have taken to get it, had they had a valid search
5 warrant.

6 MS. LITTLEJOHN: If they did, if it's in the
7 DNA database.

8 THE COURT: And it is. He had a prior
9 arrest.

10 MS. LITTLEJOHN: But in the Jenkins case,
11 they reference -- first, they reference inevitable
12 discovery doctrine cannot review evidence obtained via
13 unlawful search because probable cause to obtain a
14 warrant when the government presents no evidence that the
15 police would have obtained a warrant. Furthermore, they
16 are --

17 THE COURT: Let's stop there. The first part
18 I agree with, but they put up evidence yesterday through
19 the police officer in which he stated what he would have
20 done if he hadn't have had this bad search warrant. And
21 that is he would have contacted CODIS and found, in fact,
22 he had been in there, they would have gotten a valid
23 search warrant as a result of that.

24 So they have met their burden of putting a
25 factual basis together, or on the record, to show what

1 they would done. I believe that's what Jenkins stands
2 for, is that you can't just have the prosecutor stand up
3 and say, Oh, Judge, under inevitable discovery, this is
4 another way they would have found it.

5 You actually have to put somebody up on the
6 stand to state that is, in fact, what they would have
7 done.

8 MS. LITTLEJOHN: Your Honor, in looking at
9 footnote seven in there, it talks about how in Jenkins
10 the State presented an uncertified copy of a printout
11 from SLED indicating the State's DNA database contains
12 Jenkins. They talk about how the printout was not --
13 they go on to say that no part of the record contains --
14 there's no indication a DNA expert could actually use the
15 profile.

16 So in Jenkins, they say the State's
17 contention that the printout proves is inevitable
18 discovery claim misses the point of the inevitable
19 discovery doctrine. The issue as to whether inevitable
20 discovery is not whether a state agency, in this case
21 that would be SLED, as in both cases, separate from the
22 prosecutor, has Jenkins' profile in its database, rather
23 the doctrine places on the state the burden of proving
24 that the law enforcement agencies investigate or
25 solicitor's office prosecuting inevitably would have

1 obtained his genetic profile from this database and that
2 the lawfully obtained profile could be compared to the
3 profile developed from the -- and in Jenkins the semen
4 found in the victim, in this case, the DNA found on the
5 gun, and the Jenkins case, it says the printout
6 establishes only that the solicitor's office might have
7 obtained -- might have obtained a profile from the DNA
8 database, but it requires the State to establish
9 inevitably would have obtained it and could have used it.

10 And when you look at the could have used it,
11 you're getting back to where it says contains no
12 indication of DNA expert could actually use the profile.
13 There's been no testimony that it could be used. That's
14 a great unknown.

15 THE COURT: Do you want to respond?

16 MS. TAYLOR: Obviously, our officer testified
17 that he looked up in CODAS the defendant's DNA profile
18 taken from his prior conviction is in CODIS. At this
19 point, Your Honor, if that's what the rule stands for and
20 that we have to have somebody from SLED come testify, I
21 mean, I don't know how to prove it's his DNA other than
22 take his DNA now and have SLED compare it to what's in
23 CODIS now, and I don't think that's what the Court
24 intended.

25 Further, I think that if that were to happen

1 at this point, all we would be able to do would be to
2 continue the case and actually get the DNA again, which
3 certainly we could get at this point, based on the other
4 evidence that's been collected. So I think it's kind of
5 chasing a tail to say it can't be done because the
6 officer testified that's what he would have done, and it
7 certainly could be done now.

8 THE COURT: I believe the State has met its
9 threshold under Jenkins. If the Court of Appeals is
10 saying that in addition to having a police officer come
11 up and state that this is what they would have done in
12 order to submit the DNA to SLED and gotten the results
13 from SLED, that you actually need to come down and have a
14 DNA expert testify that that would have been a match, I
15 don't think that's what it says. If that's what they
16 need, well, I guess they'll state it clearer when they
17 reverse me, but I think that they have met the basis
18 right now for stating that's what they need to do, is --
19 it's more than a prosecutor getting up, stating, This is
20 what they could have done.

21 They put the police officer up. This is him
22 stating what they would have done. It seems to me a
23 fruitless exercise to have to get somebody from SLED to
24 test it and say it would have matched at this point in a
25 hearing.

1 But we move on. Okay? So -- you made your
2 record.

3 MS. LITTLEJOHN: I would just like to clarify
4 for the record what your ruling is on this, is that the
5 search warrant is, in fact, defective and that -- but for
6 the inevitable discovery of his testimony that it could
7 have matched. That's the reason --

8 THE COURT: My reasoning is the search
9 warrant is defective. That normally would have been a
10 basis for suppression; however, inevitable discovery,
11 they can state, well, unless they showed the officer
12 acted in bad faith, which there has been no evidence of,
13 they, in fact, would have discovered it through this
14 other inevitable course of events. And if they would
15 have gone through that, and since his DNA is in the
16 database and DNA does match up, I don't think it's
17 necessary at this point to have the actual analysis done
18 and brought down to make that record. If it does, then
19 I'm wrong and we'll do it again, but at this point I
20 think that the threshold is simply to state that it could
21 have been done and would have been done. In this
22 alternative measure, the end result would have been the
23 same.

24 MS. LITTLEJOHN: And it's the Court's
25 contention that the DNA would match 100 percent?

1 THE COURT: That's the way I understand DNA
2 works. It wouldn't come back you or me or anybody else.
3 If his DNA was in their system, it would have matched.

4 MS. LITTLEJOHN: And it could have been done.

5 THE COURT: Let me ask you this: Did you
6 otherwise have the DNA analyzed?

7 MS. TAYLOR: I'm sorry, Your Honor?

8 THE COURT: There is a point for going into
9 this DNA evidence. You otherwise had this DNA tested?

10 MS. TAYLOR: Yes, Your Honor. He's not a
11 perfect match, but it cannot be excluded. I think it's
12 97.8 percent could have been excluded. That's what our
13 expert would testify to, so it's not 100 percent match,
14 but, obviously, his DNA is 100 percent match for his DNA.

15 THE COURT: And that will come into evidence.

16 MS. TAYLOR: Yes.

17 MS. LITTLEJOHN: When you say that, you're
18 talking about the 98 or the 100 percent?

19 THE COURT: Well, I'm not sure what you're
20 saying now.

21 MS. LITTLEJOHN: Earlier, you said, And that
22 will come into evidence. You talked about his DNA would
23 be 100 percent --

24 THE COURT: Somebody from SLED is going to
25 come down and testify, right?

1 MS. TAYLOR: Someone from IntelliGENETICS,
2 Your Honor.

3 THE COURT: A DNA expert is going to come
4 down and put it into record. The point of the exercise
5 is there is a procedure in place that if they had not had
6 gotten this -- if they had not gone to the magistrate and
7 gotten a defective search warrant, this is how they would
8 have otherwise gotten this evidence, and I think that's
9 all Jenkins says you have to do.

10 The rest of it, about matching and that,
11 well, the evidence shows what it is. It's a very, very,
12 very close to 100 percent chance that it's this guy and
13 nobody else on the planet.

14 MS. LITTLEJOHN: We're, of course, going to
15 be addressing that at the time before it's introduced,
16 would have obtained it and could have been compared based
17 on what he has said.

18 THE COURT: Right.

19 MS. LITTLEJOHN: If we can just note that
20 objection for the record, Your Honor, of the could be
21 compared.

22 THE COURT: It's in the record.

23 All right. Before we get started, I'll get
24 this resentencing done.

25 (Recess taken.)

1 THE COURT: What did you want to put on the
2 record? You asked for a moment. Is there something else
3 that you wanted to say before we brought the jury in?

4 MR. TAYLOR: We have the hearing on the [REDACTED]
5 search warrant, the [REDACTED] that I have the
6 mother of the codefendant on.

7 MS. LITTLEJOHN: We have agreed that if the
8 telephone records of Christopher Wilson are admitted,
9 that certain Bates stamped pages are allowed. We've
10 agreed to that. The State and I did that.

11 What we would argue in the same standing is
12 the whole standing issue of Christopher Wilson's cell
13 phone records.

14 THE COURT: All right. Your client would
15 have no expectation of privacy in somebody else's phone
16 records, would be the basis of my denying the motion.

17 MS. LITTLEJOHN: If we could be heard on --
18 that all comes to the standing issue, I think.

19 THE COURT: Again, I don't think we speak in
20 terms of standing as much as we do expectation of
21 privacy. What is your client's expectation of privacy in
22 a codefendant's cell phone records?

23 MS. LITTLEJOHN: Your Honor, what we're going
24 to argue on that is that pursuant to 17-13-140, the
25 search warrant was defective.

1 THE COURT: You don't have standing to argue
2 a search warrant is defective in somebody else's phone.

3 MS. LITTLEJOHN: Your Honor, on State vs.
4 Freeman, State vs. McKnight, a search warrant is
5 defective for improper execution and return. Each of the
6 defendants, which in this case would preclude Donte
7 Brown, against whom seized evidence is offered has
8 standing to object to the validity of the search.

9 This is a statutory violation as opposed to a
10 constitutional violation pursuant to South Carolina code
11 of laws 17-13-140, which addresses the issue of issuance,
12 execution, and return of search warrant for property
13 connected to the commission of the crime, inventory of
14 property seized.

15 THE COURT: What's the State's response?

16 MS. TAYLOR: Your Honor, there's been no
17 evidence that search warrants are defective. Obviously
18 an affidavit was done, and it was signed by a magistrate.
19 I think there was some question as to whether or not the
20 return was signed, which is why we sent Investigator
21 Powell to get the originals. He's coming back with the
22 originals, and based on the two copies that we got
23 yesterday, the return was signed. The first one that
24 didn't have the signature on it was the officer's own
25 copy that they left at the residence and not the one they

1 got signed by the magistrate, but if that's what Ms.
2 Littlejohn is questioning, then certainly we have those
3 on the way, and it was just a miscommunication, not
4 having the originals from the magistrate's office, but I
5 don't think there has been any evidence that the search
6 warrants were issued in violation of the statute, which
7 is just requiring it signed where an -- that an affidavit
8 was written, which it was in this case.

9 MS. LITTLEJOHN: Your Honor, I thought we
10 had -- I apologize. I thought we had a ruling on that
11 because we looked at the affidavit upon which the search
12 warrant was based, and I thought, I may be mistaken, but
13 I thought the Court -- we all agreed that there was no
14 material that supplemented this, no oral testimony, and
15 there was not sufficient probable cause in that case.

16 MS. TAYLOR: I hate to disagree with Ms.
17 Littlejohn. We do agree that the affidavit was not
18 sufficient, but that's not the requirement. The
19 requirement for statutory purposes is that an affidavit
20 is done. It doesn't mean that any time an affidavit is
21 ruled insufficient it's a violation of a statute.

22 If the affidavit is insufficient, that's a
23 violation of the Fourth Amendment argument, and that's a
24 separate and distinct argument from what she is saying,
25 the standing to challenge the validity of the search

1 warrant under the statute. You can challenge the
2 validity of the search warrant under the statute if it's
3 not issued properly because there is no affidavit done,
4 and I think that's what that case says. In that case,
5 they didn't even do an affidavit, so the Court found
6 there was a violation of the statute because an affidavit
7 is required.

8 Doesn't require that the affidavit is done
9 correctly in the statute, just that one is done;
10 otherwise, we would never have a standing issue -- I'm
11 sorry, Your Honor, an expectation of privacy issue to be
12 ruled on. If it's always -- if the affidavit is
13 insufficient, it violates the statute, you would never
14 even get to -- based on the cases she cited, we would
15 never even get to an expectation of privacy issue.

16 MS. LITTLEJOHN: And, Your Honor, if -- I
17 would just point to Freeman, page seven. I think we
18 handed these up. It says that -- it's citing the holding
19 that when the State is unable to demonstrate a good faith
20 attempt to comply with the statute, authorizing the
21 issuance, execution, and return of search warrants cited
22 in the code, exclusion is the proper remedy. However, it
23 may well be that on the retrial of the case the State
24 will produce the original warrant when a search warrant
25 is defective, and it gives the statute, 17-13-140. Each

1 of the defendants against whom seized evidence is offered
2 has standing to object to the validity of the search.
3 That's referencing McKnight.

4 I think that that goes to the heart of --
5 with a defective search warrant based on total lack of --
6 lack of probable cause because of what was omitted and
7 not -- what was not -- no oral testimony for it, I think
8 that that could arguably be good faith issues with regard
9 to the totality of the search warrant to allow the
10 standing and to say that a defendant has the standing
11 under the statute would be tantamount to allowing -- to
12 an expectation of privacy for each of those defendants
13 under the statute.

14 MS. TAYLOR: Your Honor, I have a copy of the
15 statute here, and I don't have a copy to share with
16 Ms. Littlejohn, but I'm sure the Court can pull it up.

17 What the statute requires are the -- how a
18 search warrant is issued, and it basically requires that
19 a warrant is issued only upon affidavit, and if the
20 magistrate is satisfied that the grounds for the
21 application exist or there's probable cause, then the
22 magistrate shall issue the warrant.

23 Obviously, in this case not -- and I don't --
24 I'm honestly not sure which search warrant we're talking
25 about, because the State has not conceded that the search

1 warrant on [REDACTED] is not adequate, but even if
2 later the magistrate is found to have been incorrect that
3 probable cause existed or that the affidavit was
4 insufficient, the requirements of the statute have still
5 been met in that an affidavit was done. That's what the
6 statute requires.

7 The -- whether or not the affidavit was
8 sufficient to support probable cause is a Fourth
9 Amendment issue, which is separate and distinct from this
10 action, and the cases that she is citing saying that
11 violations of the statute give standing to everyone to
12 challenge it are correct and I agree with her on that,
13 but this is not a violation of the statute.

14 She's argued that the search warrant itself
15 was insufficient, which, if that's true, then that's a
16 violation of the Fourth Amendment right against
17 unreasonable search and seizure, not a violation of the
18 statute on issuance, because the application -- the
19 affidavit was done and the search warrant was issued in
20 the proper form, and that's all that the statute
21 requires.

22 The statute certainly doesn't supercede the
23 Fourth Amendment, and, like I said, Your Honor, if it's
24 the issuance and finding the affidavit insufficient, then
25 there could never be a case where a defendant didn't

1 have -- a Court could rule the defendant didn't have an
2 expectation of privacy and therefore couldn't challenge
3 the search warrant because it would always be that
4 everybody had standing, and that's just not the way it
5 was written.

6 The cases are very clear that it's a
7 violation of the statute, not a violation of the
8 constitution that gives standing, to challenge.

9 MS. LITTLEJOHN: And, Your Honor, the
10 State -- and I think --

11 THE COURT: Stop, stop, stop, stop for a
12 minute. Let me just read for a minute.

13 So is the basis of your motion that they
14 haven't been able to produce the original?

15 MS. LITTLEJOHN: No, Your Honor. Well, yes,
16 that, because we don't have that yet; furthermore, I
17 believe the testimony -- if we look at the affidavit
18 itself, I thought the Court had ruled that the affidavit
19 was defective.

20 THE COURT: Well, let me see which one we're
21 talking about. We talked about three yesterday, at
22 least. Which one? I don't have them. Here they are.
23 Go through them and tell me which one you're complaining
24 about.

25 MS. LITTLEJOHN: It would be number five, the

1 database search, dated December 30th by Investigator
2 Fogle on the database search of the Sprint number, and
3 this is one where neither one of us could find a copy
4 real quick, so it had the writing on it of Chris Wilson.
5 Ms. Taylor and I agreed that was the one we were talking
6 about, the telephone number contained in the search
7 warrant. Bates stamp number is 618, 19, 20, and 21.

8 If you like, we can hold this in abeyance
9 until you hear the other standing issues, if you like.

10 THE COURT: Is the State's position as to
11 what her argument is again that -- tell me if I'm on the
12 right track. Your position, as I understand it, is if it
13 is regular in form, under 17-13-140, that is, it's
14 supported by an affidavit and they can produce it and it
15 has a return, then it has met the conditions of
16 17-13-140.

17 As long as it's in its form proper, you've
18 met what the statute requires, then you get to the issue
19 of whether or not the defendant has an expectation of
20 privacy to challenge this. Is that summarizing your
21 argument correctly?

22 MS. TAYLOR: Yes, Your Honor.

23 THE COURT: So if, for instance, there were
24 no affidavit attached and you couldn't produce an
25 affidavit, you would have a defective search warrant that

1 would not -- you couldn't put the affidavit in,
2 regardless of whether or not the defendant had an
3 expectation of privacy; is that --

4 MS. TAYLOR: I think that's what the case law
5 says, yes, Your Honor.

6 THE COURT: Okay. All right. I agree with
7 that interpretation then. I had to make sure I
8 understood, because I thought we were arguing for a while
9 on one thing, and it turns out you were arguing on
10 another thing.

11 But as to this warrant, and I suspect the
12 same argument is being made as to your other warrants, a
13 violation of 17-13-140 is only as to whether or not the
14 requirements of it be based on an affidavit signed by a
15 judge with a return.

16 If that is met, then you still have to get
17 over the hurdle of whether or not your client has an
18 expectation of privacy. He challenged whether or not it
19 comes in, but as long as the search warrant is correct in
20 its form under 17-13-140, that's the first hurdle the
21 State has to meet. They've met it, as long as they can
22 produce an original. You still then have to get over the
23 expectation of privacy argument.

24 So that while you may be correct in that the
25 Court may rule that the probable cause may have some

1 defects in it, which might cause it to be thrown out, if
2 your client had an expectation of privacy in the thing to
3 be searched or seized, as long as -- you still have to
4 meet that hurdle. You still have to meet the hurdle of
5 showing your client has an expectation of privacy, once
6 the State shows this is in proper form, and right now, it
7 looks to me, if they can produce the original, if you're
8 going to challenge it on that ground, they will have met
9 it, if they can produce it, a search warrant that has a
10 description of the things to be seized, it's signed by a
11 magistrate, it's supported by an affidavit, and it has a
12 return attached. It has therefore met the requirements
13 of 17-13-140. All right?

14 Then we address expectation of privacy, and
15 my ruling would be your client does not have an
16 expectation of privacy in somebody else's phone records.

17 MS. LITTLEJOHN: You're absolutely correct
18 when you say you expect this to come back around with
19 some other search warrants, and I would just ask if the
20 Court would be so kind as to, after we've addressed this
21 issue, the whole standing issue on all the search
22 warrants that it applies to -- does it also apply to the
23 home of Christopher Wilson, his mother and father, if I
24 would then be allowed the opportunity to do an argument
25 that would obviously encompass the phone records as well?

1 THE COURT: I guess, just -- well, you can
2 make a contemporaneous argument. You have to when you
3 get to it.

4 I'm ready to start the trial. We need to
5 move something along, if you can come up with something,
6 but as I understand the argument that you're making, you
7 have a 17-13-140 argument that the warrant is defective
8 in its form. That is -- and if they could not produce a
9 search warrant that was regular in form, you would be
10 able to raise suppression, even if you didn't have an
11 expectation of privacy under the case law, but as long as
12 they can produce a search warrant that meets the
13 requirements of 17-13-140, admissibility, based on
14 defectiveness of the probable cause is something that you
15 have to have an expectation of privacy in order to raise
16 and argue.

17 My preliminary ruling at this point is your
18 client does not have an expectation of privacy in those,
19 so that, first of all, I'm ruling that as long as they
20 can produce the original, they have met the requirements
21 of 17-13-140, so it won't be suppressed on those grounds
22 as long as they can come up with the original.

23 Then, if they can come up with the original,
24 you have the -- the second hurdle is your suppression,
25 Fourth Amendment and you have to get over the expectation

SONIA WILSON - DIRECT BY MS. TAYLOR

1 of privacy hurdle.

2 Are we all on the same page?

3 MS. LITTLEJOHN: We are, and I believe we're
4 going to address the next search warrant that we'll
5 actually have to do with it and have the witness here.

6 THE COURT: Okay. Let's bring her in for
7 that limited purpose.

8 SONIA WILSON,

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

11 DIRECT EXAMINATION

12 BY MS. TAYLOR:

13 Q. Thank you, Ms. Wilson. Thank you for being here.

14 Ms. Wilson, would you tell the Court, where do you
15 live?

16 A. [REDACTED] Goose Creek.

17 Q. How long have you lived there?

18 A. Almost 28 years.

19 Q. Who lives there with you?

20 A. Presently?

21 Q. Yes, ma'am?

22 A. Me and my husband.

23 Q. Back in December of 2011, did anyone else live at
24 that address?

25 A. Yes, my son, Christopher Wilson.

SONIA WILSON - DIRECT BY MS. TAYLOR

1 Q. Do you know the defendant, Donte Brown?

2 A. Yes.

3 Q. You've met him before?

4 A. Yes.

5 Q. Do you know about when it was that you met him?

6 A. Either the latter part of November or the
7 beginning of December.

8 Q. And can you tell the Court about the circumstances
9 of you meeting Mr. Brown.

10 A. This particular night -- and it could have been
11 December, I'm not really sure, I don't remember, but I
12 went outside in my back yard, and there was this person
13 sitting in a chair on the side of the house, and I'm
14 saying, Who are you and what are you doing here?

15 And he said that he had nowhere to go, that he and
16 his father didn't get along. He explained to me that he
17 had family living in Union Heights, and I told him, I
18 said, Well, tonight is going to be a very cold night.
19 You don't need to be here in my yard. I said, Well, come
20 on in.

21 I invited him in, and asked him if he was hungry
22 and he said yes. I fed him. Again, I don't know what
23 night -- what day of the week that was. He spent the
24 next night there, and I told Christopher, I said, Look,
25 he can't stay here. He needs to go wherever his family

1 is.

2 And I don't know if that was two or three days
3 later -- I just can't remember. But when I finally did
4 tell him he had to leave, he said yes, I was leaving.

5 I thought he was gone. I go in my garage where my
6 washer and dryer is to wash my clothes, and there he is
7 standing in the garage.

8 I said, What are you doing here? I told you to
9 leave my house. And I said, If you don't leave, I'm
10 calling the cops.

11 He left. I thought that he was gone. Days went
12 by. I didn't see him. I'm in my guest bedroom, getting
13 ready, pulling some shoes out from underneath the bed,
14 and I saw a shoe, a leg, and there he was underneath this
15 bed with all of these shoes underneath there, and he
16 startled me because I had no idea he was in my house.

17 I mean, I'm getting dressed in this room and I had
18 no idea he was in there. So my husband got up and told
19 him that if he didn't leave right now we were calling the
20 cops for sure. I didn't call the cops in the past
21 because -- I mean, I just didn't.

22 So he left, and I think maybe after he left, it
23 was time for me to go on vacation, and I went to Florida
24 for a week. And that was the last time I saw him.

25 Q. Do you remember when it was -- was it before

SONIA WILSON - DIRECT BY MS. TAYLOR

1 Christmas or after Christmas you went to Florida, if you
2 remember?

3 A. It was before Christmas.

4 Q. So these conversations you had with Mr. Brown
5 about not being allowed in your house was before
6 Christmas?

7 A. Yes, it was.

8 Q. Did there come a time, Ms. Wilson, when you were
9 informed about a search warrant that was served on your
10 residence?

11 A. After I got back from Florida, I was getting off
12 from work, driving down Swamp Fox Lane, the street that I
13 live on, and that -- and I live in the cul-de-sac. That
14 street was engulfed with police officers, and we couldn't
15 even get down the street. It was blocked off.

16 So when they finally did let us in the street, I
17 get out of the car and the policeman approached me, and I
18 saw Donte sitting in the back seat of the squad car.

19 I go in, and that's when they explained to me that
20 they knocked on the door, I guess to serve the warrant,
21 and he lets them in the house, lets the cop in the house.

22 Q. Does the date of January the 5th sound about right
23 for when this occurred?

24 A. I'm going to say yes. I don't remember the date.

25 Q. After Christmas?

SONIA WILSON - DIRECT BY MS. TAYLOR

1 A. Oh, it was after Christmas, right.

2 Q. On the day that you were informed that Mr. Brown
3 had been in your home, do you know where your son was
4 located that day?

5 A. At the time, I did not. But --

6 Q. Do you know now?

7 A. I know now.

8 Q. And where was he?

9 A. He was incarcerated.

10 Q. And when had he been picked up?

11 A. That weekend for shoplifting.

12 Q. Before Mr. Brown was found in your home?

13 A. Yes.

14 Q. At any time prior to -- after you had a discussion
15 with Mr. Brown and your husband had a discussion with him
16 about not being allowed to be in your house, and between
17 the day you found out he was there, did you at any time
18 give him permission to come back?

19 A. I did not.

20 MS. TAYLOR: Thank you, Ms. Wilson. No
21 further questions, Your Honor.

22 THE COURT: Ms. Littlejohn?

23 CROSS-EXAMINATION

24 BY MS. LITTLEJOHN:

25 Q. Ms. Wilson, you can actually only tell us -- you

SONIA WILSON - CROSS BY MS. LITTLEJOHN

1 weren't living there daily, you were at work during the
2 day, right?

3 A. Oh, sure. I was at work during the day.

4 Q. And then were you in Florida?

5 A. For Christmas, yes.

6 Q. And you work, like, five days a week?

7 A. Correct.

8 Q. Pretty standard, 9:00 to 4:00, 8:00?

9 A. 7:30 to 4:30.

10 Q. I knew it was a long day. Your husband is home,
11 correct?

12 A. Not at that time. He also worked.

13 Q. But he would be at home at times when you were not
14 home?

15 A. Exactly.

16 Q. So you don't know what conversations could have
17 happened between your husband and Donte since you weren't
18 present. You didn't witness those, did you?

19 A. No, I didn't witness those, but I know my husband
20 did not want him there.

21 Q. You know that's what your husband told you.

22 A. Yes.

23 Q. Right? But you didn't witness any conversations?

24 A. No.

25 Q. Okay.

1 A. But Donte wasn't there during the daytime when my
2 husband was there, but I don't know. I never witnessed
3 that.

4 Q. So all you can testify to is what you said
5 beforehand, before you went on Christmas break, before
6 you went to Florida?

7 A. Exactly.

8 Q. Okay. Not what may have occurred in --
9 conversations that may have occurred with your husband
10 and Donte?

11 A. That's true.

12 Q. Okay. And Donte knew your son, correct?

13 A. Well, obviously so, yes.

14 Q. And take a wild guess at this, but you said y'all
15 lived about 28 years, something like that?

16 A. Yes.

17 Q. In the 28 years, did Chris ever have friends over?
18 They may have been playing basketball, come over, maybe
19 you would be at work? He could have been 12 years old,
20 playing basketball and his friends come in?

21 A. That could be possible.

22 Q. Or come back from church and his friends come over
23 and maybe y'all would go out to dinner somewhere? In
24 other words, you did not always, in his entire life, say
25 at this moment, This person can come in, this person

SONIA WILSON - CROSS BY MS. LITTLEJOHN

1 cannot come in. Chris would have friends over?

2 A. Well, I'm going to say being a child, I guess that
3 could have happened.

4 Q. I think that's pretty normal.

5 A. Yeah.

6 Q. And most of their friends, his friends, regardless
7 of age, would have assumed that Chris is allowing him in,
8 come on over, or did Chris ever meet friends, like most
9 normal kids do, I'll meet you at my house after school,
10 or meet you at my house after basketball or what have
11 you?

12 A. That could have been possible.

13 Q. And you didn't always say -- you weren't always
14 standing there to say yes or no, were you?

15 A. He's always known that no one is to be in my house
16 when I'm not there.

17 Q. But if you're not there, you don't know, do you?

18 A. That's true.

19 Q. So you don't know who Chris may have said, Hey, go
20 to my house, or, I'll meet you at the house because, like
21 all children, young kids, he would have people over?

22 A. Well, I guess that's possible.

23 Q. And matter of fact, when you pulled up that day,
24 Chris had just been put in jail the day before, correct?

25 A. Some time there. I don't know exactly when he was

1 arrested.

2 Q. I think that was on the 4th. Does that sound
3 about correct?

4 A. Again, I don't know. If that Monday -- it was
5 that weekend that he was arrested. I don't know.

6 Q. Okay. You don't know if Chris had prearranged to
7 say, Hey, meet me at the house or not, do you?

8 A. That may have happened. I mean, that could be
9 possible, but he was aware he was not to be in my house.

10 Q. But that was from a conversation that you had had
11 before you went to Florida?

12 A. True, three times, two times.

13 Q. But there were other people in the house?

14 A. Just my husband.

15 Q. And Chris?

16 A. My husband never would have told him to come to
17 our house.

18 Q. That you know of. But your husband and Chris
19 could also invite somebody in, or have them meet them at
20 the house, without your knowledge?

21 A. Am I to answer that?

22 Q. Correct.

23 A. I guess that's possible, but that house is not
24 Christopher's house. He knew that he was not allowed to
25 invite this person into my house after he knew that I

SONIA WILSON - REDIRECT BY MS. TAYLOR

1 strictly told him that he had to leave or we would call
2 the cops.

3 Q. And, again, that was before, and we don't know
4 what Christopher or your husband may have said about
5 meeting you there afterwards, do you?

6 A. That's true.

7 MS. LITTLEJOHN: Court's indulgence.

8 BY MS. LITTLEJOHN:

9 Q. One final question. The house at [REDACTED] --

10 A. [REDACTED]

11 Q. Your house, that's in both y'all's names?

12 A. Yes, it is.

13 Q. When I say both, I mean your husband --

14 A. Yes.

15 MS. LITTLEJOHN: Okay. No further questions.

16 MS. TAYLOR: Briefly.

17 REDIRECT EXAMINATION

18 BY MS. TAYLOR:

19 Q. When you discovered Mr. Brown had been in your
20 home, what did you do?

21 A. Called the cops.

22 Q. And to your knowledge, were there charges filed
23 against Mr. Brown?

24 A. For -- yes.

25 Q. For being in your home?

SONIA WILSON - RECROSS BY MS. LITTLEJOHN

1 A. Yes.

2 Q. And were those burglary charges?

3 A. Yes, it is.

4 Q. Upon looking at your house that day after you were
5 allowed in, do you have any information about how
6 Mr. Brown would have gotten into your home?

7 A. Through my window in my living room.

8 Q. And to your knowledge, did Mr. Brown have a key?

9 A. No, he does not.

10 Q. Did your son Christopher have a key?

11 A. No, he did not.

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

14 MS. LITTLEJOHN: Just briefly, in following
15 up, Your Honor.

16 RECROSS-EXAMINATION

17 BY MS. LITTLEJOHN:

18 Q. This discovery about Mr. Brown coming in your
19 house, the police had already been there and done the
20 search warrant on the 5th. That's the date of the search
21 warrant?

22 A. Yes.

23 Q. And they had done a great job, and they left and
24 they didn't find any entry point. As a matter of fact,
25 you called them the next day and said, Hey, guys, by the

1 way, you missed something?

2 A. True.

3 Q. And they didn't come back out, did they?

4 A. Someone came out.

5 Q. They didn't take prints to see?

6 A. I think they did.

7 Q. They took prints on that?

8 A. They --

9 Q. But he didn't --

10 A. I think they did take prints, took pictures of the
11 entry, what I assumed was.

12 Q. What you assumed was?

13 A. Right.

14 Q. But they didn't see it on the date of the search
15 warrant.

16 A. I don't think they were searching for the entry
17 point. They were searching for what they searching for.
18 They assumed he was in, I assume, because of me, but he
19 didn't do any searching of any entry point of how he
20 entered that house.

21 Q. They didn't ask you and you didn't tell them?

22 A. No.

23 Q. Your husband didn't tell them?

24 A. No.

25 Q. Okay.

1 A. In fact, they explained us to why they were there,
2 and that search warrant was being served on what they
3 found. That was it.

4 Q. And you didn't say, Hey, he's not allowed to be
5 here and you didn't say it?

6 A. I was upset of the fact that I'm just now finding
7 out that my son has done what he did. I mean, I was
8 distraught about that, and then to come home and found
9 that he was in my house, yeah, I was upset, so that
10 conversation never came up.

11 Q. And there was no documentation of it by the police
12 officers, as far as you know, either --

13 A. Documentation of what?

14 Q. About him being allowed or not allowed on the date
15 of the search warrant.

16 A. What was explained to me after everything,
17 everyone left, two officers set down, and I don't
18 remember their names, in my living room and explained to
19 me what had happened. At that time they informed me that
20 Christopher was in jail for the shoplifting at Wal-Mart.
21 They had a search warrant. They rang the doorbell. I
22 opened my door and let them in.

23 Q. Right.

24 A. And I was upset. I mean, that's all -- and they
25 explained to me what they confiscated out of that room

SONIA WILSON - RECROSS BY MS. LITTLEJOHN

1 that they tore up, looking for stuff, and outside,
2 wherever they found stuff outside. That was the gist of
3 that conversation.

4 Q. That room you're referring to is Chris's room,
5 correct?

6 A. Yes.

7 Q. All right. Do you recall having a telephone
8 conversation with -- you had several conversations with
9 Chris while he was in jail.

10 A. Yes, I did.

11 Q. And we have listened to those.

12 A. Okay.

13 Q. Do you recall him telling you, I gave him a key?

14 A. No, I do not.

15 Q. Do you recall him telling you, I had him come over
16 there?

17 A. We had lots of conversation. That may have -- we
18 may have said that. I don't remember any of the
19 conversations. I didn't remember that, but Christopher
20 did not have a key. There was only two keys. He never
21 had a key to my house.

22 Q. To your house?

23 A. I'm not going to say he didn't take a key from my
24 key chain and make a key. I don't know that to be true.

25 Q. So he could have.

1 A. Well, that's possible. He could have.

2 Q. Okay.

3 MS. LITTLEJOHN: I have no further questions.
4 Court's indulgence, Your Honor.

5 BY MS. LITTLEJOHN:

6 Q. Just one follow-up question. To your knowledge,
7 Christopher didn't have a key, but he was a young man.
8 I'm just going to kind of guess he probably didn't come
9 home at 8:00 every night. How did he get in and out of
10 the house?

11 A. There was lots of times that he never came home at
12 all, so he would either have to knock on the door, or I
13 would leave the sliding door open. He did not have a key
14 to open that front door. Never did he open the front
15 door at my house.

16 Q. To your knowledge?

17 A. I'm telling you, while I was there.

18 Q. Right, while you were there.

19 A. He would come and couldn't get in. He would knock
20 on my window, ring that doorbell, and go to the side of
21 the house, and that's been for the last ten years. He
22 could not, while I was in that house, take a key and open
23 that front door.

24 Q. As you say, you don't know if he ever took the key
25 off your ring, do you?

SONIA WILSON - RECROSS BY MS. LITTLEJOHN

1 A. That's true. I don't know if he did that or not.

2 MS. LITTLEJOHN: I have no further questions,
3 Your Honor.

4 THE COURT: You may step down.

5 MS. TAYLOR: She is under subpoena for later
6 in the week but may she be excused for today?

7 MS. LITTLEJOHN: I have no objection.

8 THE COURT: That would be fine. You may go
9 today, but please don't leave the area so we can have you
10 back when we need you, okay?

11 All right. Is there anything else we need to
12 deal with before we get the jury in?

13 MS. LITTLEJOHN: A ruling on this, Your
14 Honor. I think we're going to be arguing this.

15 MS. TAYLOR: I think the testimony is clear
16 he didn't have permission to be in the home. There has
17 been no evidence other than supposition that somebody
18 else may have give him permission to be in the room. All
19 we have on the record is one of the two homeowners told
20 him when he was in the house on multiple occasions they
21 were going to call the police.

22 THE COURT: Ms. Littlejohn?

23 MS. LITTLEJOHN: Ms. Taylor is right, that
24 Ms. Wilson did just say I didn't give him permission, but
25 she also testified that the home is in their name,

1 husband and wife. She's also testified that she was --
2 you know, she does a standard job. I think she works in
3 North Charleston.

4 THE COURT: Do you have any evidence that
5 anyone else, i.e., her husband or Christopher, gave your
6 client permission to be there?

7 MS. LITTLEJOHN: Your Honor, what I would
8 submit is when I asked her about do you know if
9 Christopher asked him to meet him there, she said no. I
10 asked her, did Christopher ever --

11 THE COURT: But do you have any evidence that
12 Christopher said meet me there, aside from the fact that
13 it does not appear that Christopher had permission to
14 allow anyone else in the house? You asked a question.
15 She said no.

16 Do you have anything to rebut the answer to
17 her question? You're just throwing something up on the
18 side of the wall to see if it sticks at this point, but
19 it's hypothetical that her evidence right now is
20 uncontroverted. He didn't have permission to be in that
21 house. She told him not to be there. She called the
22 cops when she found him there. There's nothing else that
23 she could have done other than pulled a gun on him and
24 escorted him out, as far as I can tell.

25 Every time he was there after a certain

1 point, she allowed him, out of the kindness of her heart,
2 to come in, get out of the cold, have a place to stay,
3 but once she realized she was basically dealing with a
4 homeless person, she wasn't willing to allow him to stay.

5 She said, You have to leave, took a couple
6 nudges, but she finally unequivocally said, You must go
7 and not come back. And when she comes in and finds him
8 under the bed, I don't know what else you do. You have
9 to present something to overcome the uncontroverted
10 evidence that she told him not to be there, and he did
11 not have permission to be there, and you don't have any
12 evidence that anyone else gave him permission to be
13 there.

14 You asking a question that asks about a
15 hypothetical situation is not the basis for it,
16 especially when the answer was in the negative as to
17 whether or not she just happens to know if anybody else
18 gave him permission. That is not -- that's not evidence.

19 MS. LITTLEJOHN: Your Honor, the purpose of
20 this hearing where Ms. Wilson was placed up was the
21 search warrant of [REDACTED]

22 THE COURT: Okay.

23 MS. LITTLEJOHN: So let me go -- and we have
24 that search warrant up there. Officer Powell testified
25 yesterday, I think that his [REDACTED] -- it's marked as

1 Exhibits 2 and 3.

2 THE COURT: What's the point?

3 MS. LITTLEJOHN: First -- this is one of the
4 affidavits in the search warrant that was not
5 supplemented. It was based on information from the
6 informant, and they did find the ski mask, based on their
7 database, but they had testified they were told to
8 rewrite, that Christopher Wilson's address is [REDACTED] that's
9 why they were there.

10 Your Honor, you said I could -- would allow
11 me to go back to and contemporaneously look at the entire
12 search warrant standing, i.e., expectation of privacy,
13 and here is where I'm going to incorporate the cell to
14 [REDACTED] because -- Court's indulgence.

15 Here, Your Honor. 17-13-140, we've been over
16 that. We see what it is, and I understand that you
17 believe that it is strictly the form that is written.

18 THE COURT: Uh-huh.

19 MS. LITTLEJOHN: This isn't a State versus
20 federal protection case. The State may grant more
21 protection to citizens than what the federal government
22 can, and we have actually seen that in some case law.

23 I would submit that South Carolina has done
24 so through 17-13-140: A warrant issued shall be issued
25 only upon affidavits sworn to before magistrates

1 established in the grounds for a warrant.

2 In this case, there's a complete absence of
3 showing of the reliability of the informant. As a matter
4 of fact, it was said that she actually did not tell the
5 truth. There are no grounds for the warrant established.

6 THE COURT: Wait a minute. Who didn't tell
7 the truth --

8 MS. LITTLEJOHN: The reliability of the
9 informant.

10 THE COURT: Look, those all go to the
11 ultimate issue of whether or not there is an expectation
12 of privacy that you can raise as to make those search
13 warrants invalid. The 17-13-140 argument goes to the
14 form of the documents, and assuming again the originals
15 are there and are near what we have, the requirements of
16 17-13-140 have been met.

17 Then you get to the point of, well, we want
18 to allege that what's in there, those affidavits, that
19 what's in the affidavit is insufficient to rise to the
20 level of probable cause, that is not an issue that you
21 raise under 17-13-140, that is an issue that you raise if
22 you have an expectation of privacy in the article to be
23 searched or seized under the Fourth Amendment, but the
24 17-13-140 is just South Carolina's requirement that this
25 is what has to be in a search warrant, okay, in order to

1 be issued.

2 If those things aren't in the search warrant,
3 or accompanying the search warrant, then in order for the
4 State to be able to get that evidence, any evidence, in,
5 they have to show that there was a search that is
6 otherwise not -- in which you do not otherwise need a
7 warrant.

8 I don't think they're making that argument.
9 Nobody is making that argument. I'm just stating that if
10 the State wants to try to get evidence in via a search
11 warrant, or under any search, if the State wants to
12 search or seize stuff, they have to show that there's
13 probable cause, either with or without the need to have a
14 search warrant.

15 You can have searches because of exigent
16 circumstances in which you don't need a search warrant,
17 but if those don't exist and you need a search warrant,
18 South Carolina has said these are the things that we
19 require to be in those pieces of paper that get submitted
20 to a magistrate, whether or not they are defective
21 internally, i.e., there's the -- there are probable cause
22 issues in there. Those are not addressed in a 17-13-140
23 argument.

24 That's the way I read the law, and I think I
25 have made it abundantly clear that you think it's not,

1 but we just -- an hour and a half into this this morning,
2 and we're not making any progress, we're just rereading
3 the same ground.

4 MS. LITTLEJOHN: If I could just connect the
5 two, as I see it, for the record here.

6 THE COURT: All right.

7 MS. LITTLEJOHN: Your Honor, to allow this
8 in, it opens the door under 17-13-140 for a poor and
9 unreliable whatever search warrant being signed, in this
10 case, three different magistrates. Under 17-13-140,
11 saying, okay, we have four pieces of paper and they
12 happen to have A, B, and C on them, it doesn't matter
13 what's in it, and it implies --

14 THE COURT: Well, it does matter what's in
15 it. It has to be one of those things that 17-13-140 says
16 has to be in it. It just can't be the Sunday comics.
17 It's got to be, you know, an affidavit signed by a police
18 officer. The magistrate has to sign it. There's got to
19 be a return, and they have to produce the original.

20 MS. LITTLEJOHN: Right. I understand what
21 you're saying with regard to the form, and what I'm
22 saying is 17-13-140 has nothing to do -- they don't sit
23 there and -- when the legislature drafted this, they
24 don't say, Hey, you know what? We don't care about
25 truthfulness. We don't care about reliability. We just

1 have this form, and if you want to paste the Sunday
2 comics under the affidavit, that's fine too. We don't
3 care.

4 Your Honor, I think that that is how the two
5 connect, because I understand 17-13-140 is the form of
6 it, but I think implied in the form is some sort of -- I
7 think the legislature was expecting some sort of
8 reliability, not putting a Mother's Day card under the
9 affidavit, and if we read it as strictly a form, they
10 could put a Mother's Day card under the affidavit, and it
11 wouldn't matter.

12 That just says, hey, have four pieces of
13 paper that have these headings on it, irrespective of
14 what's on it because it's signed.

15 THE COURT: Presumably a competent magistrate
16 is not going to sign an affidavit, or sign a search
17 warrant, that has a comic strip or a Mother's Day card on
18 it. There has to be some semblance of probable cause,
19 but whether or not it, in fact, rises to the level of
20 probable cause is a matter that is for a different type
21 of argument.

22 The 17-13-140 argument, as I understand it --
23 and I could be wrong, but as I understand it today, it is
24 a matter of form, and the defendant could raise it if
25 those things that are required to be in it are not in it.

1 They could say defective search warrant, and it could
2 challenge the admission of the evidence if there, for
3 instance, was no search warrant or they couldn't produce
4 the original or the affidavit wasn't attached, something
5 along those lines, but as long as they can produce one
6 that is informed that meets the requirements of
7 17-13-140, then it comes in, subject to a later argument
8 by somebody who has an expectation of privacy, who argued
9 that probable cause did not, in fact, exist, and it
10 should be thrown out for that reason.

11 That is my ruling.

12 MS. LITTLEJOHN: Thank you, Your Honor.

13 THE COURT: Okay?

14 MS. TAYLOR: Your Honor, just for the Court's
15 information, we have the originals of the search warrants
16 here, everything except for the return. They're looking
17 for them. They're filed in another place, but the
18 originals, everything except for the return, the original
19 warrant, affidavit, everything we have here if you want
20 to go ahead and mark those.

21 THE COURT: Well, we'll mark them. We'll
22 take a ten-minute break so everybody can use the rest
23 room, and we'll come back and hopefully finally get
24 started. We'll have your opening arguments.

25 (Recess taken.)

1 THE COURT: All right. Is everybody ready?

2 MS. TAYLOR: I think Ms. Littlejohn still has
3 an issue with the GPS.

4 THE COURT: What about GPS?

5 MS. TAYLOR: I don't think we address it in
6 the opening, so if you want -- I think she still had a
7 pending motion about whether or not the GPS records were
8 admissible. We had the custodian for probation, pardon
9 and parole here.

10 THE COURT: Let the record reflect the
11 defendant is in the courtroom. Bring the jury in.

12 (In open court, jury present.)

13 THE COURT: All right. Welcome back, folks.
14 Sorry for the delay. We got a little bit bogged down
15 this morning, but I think we're ready to go now.

16 I understand that Ms. Whaley -- have you been
17 appointed foreman? Shannon Brown. I'm sorry. There are
18 two Shannons on there. I'm looking at the wrong one, so
19 Shannon Brown is the foreperson of the jury. Well,
20 congratulations. As I said yesterday, you don't get any
21 extra pay. You just write the verdict down at the end of
22 the form, and if the crowd gets unruly during the trial
23 in the back, you settle them down.

24 Now, folks, we're going to get started, but
25 before I begin to talk, we need to have the clerk

1 administer your oath to you, so if you would, stand and
2 raise your right hand.

3 (Jury duly sworn.)

4 THE COURT: All right. Well, I need to give
5 you a few remarks over what we'll be doing, how we
6 proceed, what we do during a trial and what everybody's
7 different role is.

8 As I said, this is a criminal trial, and the
9 State of South Carolina brought a number of charges
10 against Mr. Brown. I told you yesterday during the voir
11 dire process I read them out to you. I will just go over
12 briefly with you, again, he is facing charges for
13 attempted murder, possession of a weapon during the
14 commission of a crime, violent crime, criminal
15 conspiracy, burglary second. There are five indictments
16 for kidnapping, and there are three indictments for armed
17 robbery.

18 Mr. Brown pled not guilty to each of these,
19 and so it is now incumbent upon the State to give him a
20 trial in front of a jury and to attempt to persuade you,
21 that jury, that he is guilty of these crimes beyond a
22 reasonable doubt.

23 Again, the fact that he was indicted or
24 arrested for these charges is not evidence of guilt. It
25 doesn't raise any presumptions of guilt, the fact that he

1 was arrested. The law presumes and you shall presume
2 that he is innocent of these charges and remains innocent
3 of these charges throughout the trial unless and until
4 the State proves to you beyond a reasonable doubt that he
5 is guilty of these charges.

6 So in a trial like this, we have this thing
7 we call a burden of proof, and the burden of proof in a
8 criminal trial is the standard we call beyond a
9 reasonable doubt. You probably have heard that phrase
10 before. If you have been a juror before, you might have
11 heard it, but more than likely it was TV or a book or
12 movie or something along those lines.

13 What does beyond a reasonable doubt mean,
14 anyway? It's one of those things that you've heard of a
15 bunch of times, but you just go, well, let's quantify
16 that. What exactly does it mean? Well, it might be
17 helpful to use it by a means of comparison.

18 If you were ever a juror in a civil trial,
19 you heard that the burden of proof in a civil trial is a
20 preponderance of the evidence, or the greater weight of
21 the evidence, it's sometimes called, or if you think of
22 it in terms of probability, you think is something more
23 likely true than not true? And it's helpful for a lot of
24 folks to imagine this set of scales where you have on the
25 one hand the State and on the other hand the defendant.

1 Well, in a civil trial, you have a plaintiff
2 and a defendant, the person that sued and the person that
3 got sued, and those scales are even at the beginning of
4 the trial, and the greater weight of the evidence is
5 simply tilting those scales, even if it's just slightly,
6 in the plaintiff's favor, and, if so, the plaintiff, who
7 has a burden of proving the greater weight of the
8 evidence is entitled to a verdict, if you find those
9 scales tip in the plaintiff's favor, but at the end of
10 the trial, if those scales are even, or maybe you think
11 they would tip in the defendant's favor, the plaintiff
12 hasn't met the burden of proof, and the defense would be
13 entitled to a verdict.

14 Well, in a criminal trial where the State is
15 accusing somebody of committing a crime, the burden is a
16 lot higher than it is in a civil case where it's just
17 somebody suing somebody else. It's just beyond a
18 reasonable doubt. Well, what does that mean? Well, our
19 Courts have defined beyond a reasonable doubt to mean it
20 leaves you firmly convinced of the defendant's guilt.

21 It does not require absolute certainty,
22 because there are very few things in life that anybody
23 can prove with an absolute certainty, but it has to leave
24 you, after you've heard all of the evidence, firmly
25 convinced that the defendant is guilty, and if you're not

1 firmly convinced, then you are required under the oath
2 that you took to find the defendant not guilty. On the
3 other hand, if you are firmly convinced, then you are
4 required to find the defendant guilty.

5 Let's go back to those set of scales, all
6 right? You got the State, who's accused the defendant of
7 committing a crime, and at the beginning of the trial,
8 the scales are even. Remember, in a civil case they just
9 had to tip those scales a little bit. Well, in a
10 criminal case like this, those scales have to tip quite a
11 bit in the State's favor in order to prove beyond a
12 reasonable doubt. So the State has a very high burden of
13 proof in a criminal case, and as I stated at the earlier
14 part of the trial, when we were drawing the jury, the
15 defendant doesn't have to prove he's innocent or not
16 guilty. The State has to prove he's guilty. He doesn't
17 have to do anything, other than show up for trial, and
18 he's done that.

19 So he doesn't have any burden of proof at
20 all. That's because he doesn't have to prove anything.
21 He doesn't have to call witnesses, he doesn't have to
22 testify, and he doesn't even have to tell me at this
23 point if he wants to testify or call any witnesses. He
24 doesn't have to do anything at this point, and so that is
25 something that you need to keep in mind.

1 Now, because the State has the burden of
2 proof, the State gets to put their case up first. They
3 the question to call witnesses first, they get to ask
4 questions first. The defendant will have the
5 opportunity, through his lawyers, to cross-examine
6 witnesses, but the State gets to call witnesses first and
7 when somebody -- when a side calls a witness and it
8 starts asking questions, we call that a direct
9 examination. When the other side then gets up and asks
10 questions, that's called cross-examination. You've
11 probably heard that before.

12 So that's the way we get the truth out, is we
13 let people get up. They tell you what they hear, they
14 saw, they touched, they felt, they smelt, and then the
15 other side gets to ask questions, and that adversarial
16 process is what we're trying to get to the truth, which
17 is what you will find by way of your verdict, and your
18 verdict should speak the truth.

19 But because we're having the State put up
20 their case first, the defendant -- again, if he wants to,
21 can, he doesn't have to. And, again, let me emphasize,
22 if he doesn't put up a defense, he doesn't testify,
23 you're not to hold that against him in any way, shape, or
24 form. It shouldn't enter your mind while you are
25 deliberating, and you are prohibited from discussing that

1 in the jury room if he does not.

2 All right? So the State will go first. My
3 suggestion to you is to use your common sense when you're
4 listening to testimony. Trials are a lot like life.
5 There's usually two sides to every story, and it's not
6 until you've heard both sides that you can begin to make
7 up your mind about something.

8 So you're going to hear the first witness,
9 whoever that might be, and you'll hear the first set of
10 questions, the direct examination, and then you'll hear
11 cross-examination, and I allow one little follow-up
12 round, redirect and then recross, and so you'll probably
13 have a first impression from the first witness, based on
14 the first questions, but you'll see the flow where you're
15 going to hear from different people. You'll probably at
16 some point in the trial change your mind from what you
17 first heard, maybe it will get stronger, maybe it will
18 get weaker, but the important part of this discussion is
19 keep an open mind until you've heard all of the evidence.
20 That's why every time we break for the day or go for a
21 break for lunch or I send you home for the day, I'm
22 always stressing to you, don't begin your deliberations.
23 Don't talk to anybody about the case because until you've
24 heard all of the evidence, it's not proper to begin your
25 deliberations. All right? Because you haven't heard

1 everything, and you don't know what is still out there
2 that you haven't heard.

3 Once you've heard everything and then I tell
4 you the law, then you can begin to deliberate to make up
5 your mind. You do things like judge credibility of
6 witnesses. You can observe their demeanor on the witness
7 stand, things like that. That's part of what a jury
8 does, decide how much credibility or weight to give the
9 testimony of a witness.

10 During this trial, you set as judges of the
11 facts. I'm what we call the judge of the law. Your job
12 is where there is any kind of conflict in the testimony
13 or the evidence, you decide how to resolve it. That's
14 your job. How much weight to give testimony of a
15 witness, that's your job. I have no bearing at all on
16 your decisions as to how much weight to give testimony,
17 whether it be in the form of people speaking to you,
18 photographs, documents, or anything like that. That is
19 solely the jury's province, and whatever you decide, on
20 your verdict, if there is any factual basis whatsoever to
21 support your evidence, if there is an appeal, then it's
22 upheld. All right?

23 But then that gets into my role, and my role
24 is the judge of the law, and that's the two functions
25 that I serve in this trial. My first is to make sure

1 that both sides get a fair trial. All right? The
2 State's entitled to a fair trial. Mr. Brown is entitled
3 to a fair trial, and I don't have an interest in the
4 outcome of this lawsuit any more than you do at this
5 point, because, remember, we were asking all these
6 questions to determine, do you know any of these people?
7 Do you know anything about this case? Have you ever been
8 there? Would that affect your ability to be fair and
9 impartial?

10 Well, the same sort of analysis. It's more
11 or less a self-analysis that the judge has to do, but if
12 I knew any of the facts of this case, knew any of the
13 witnesses, if I saw anything happen, I couldn't be the
14 judge. They would have to get another judge in here, but
15 I'm like you. I don't really know about the case other
16 than what I've heard in the last day, okay? I'm just a
17 few hours ahead of you on hearing anything about this
18 case. All right? So that's my job, is to make sure we
19 have a fair trial.

20 Now, that has two functions in it: One is we
21 have rules of procedure. In other words, like I'm
22 telling you, the one side gets to call witnesses first,
23 that sort of thing. These are all rules of procedure
24 that I have to make sure that we follow. The other is,
25 as I rule on evidence, we have rules of evidence, and I

1 have to make sure what you hear are things that you're
2 supposed to hear. All right? We call that legally
3 competent evidence.

4 As I told you a few minutes ago, if we ever
5 have an appeal from a case, 99.99 percent of the time if
6 there is ever a case that is reversed, it's because of
7 something that the judge did wrong, not that the jury did
8 wrong, but what the judge did wrong. In other words, I
9 didn't allow the proper procedures to take place or we
10 didn't follow the proper procedures or I made an
11 evidentiary ruling that was incorrect; in other words, I
12 let you hear evidence that you weren't supposed to hear
13 or I kept you from hearing evidence that you were
14 supposed to hear.

15 The other thing that I could get reversed on
16 is charging you incorrectly on the law at the end of the
17 trial, because I will tell you what the State has to
18 prove on each of these charges. There's elements to each
19 of these crimes that the State has to prove, and I'll
20 tell you what those are at the end of the trial. It's up
21 to you to decide whether or not they met it, but if I
22 charged you incorrectly on the law on, say, attempted
23 murder or kidnapping, then they go, Well, you know what?
24 The jury couldn't have possibly made the right decision
25 because the judge didn't instruct them properly, or, The

1 judge should have let them hear this, or, The judge
2 shouldn't have let them hear that.

3 So those are mistakes on me. That's why we
4 try to do this correctly. We really only want to do a
5 trial one time. There is nothing worse than having the
6 Court of Appeals or Supreme Court send it back and say,
7 Judge, you made a mistake. You got to do it again.
8 Nobody wants that, so there is a method to our madness,
9 so we have been working on issues this morning,
10 preliminary motions. Hopefully we'll do this one time
11 and do it right.

12 So you've seen movies or television shows
13 where sometimes the lawyers jump up and go, Objection,
14 all right? That's really kind of like a code word for
15 the judge to say, Wait a minute. Judge, you need to make
16 a ruling right now, and it's usually an evidentiary
17 ruling, so I have to make a decision: Is this something
18 that they should hear or they shouldn't hear?

19 Now, sometimes because of having done this
20 for a while and I could figure out where we're at in the
21 context, the lawyer stands up and says objection, I can
22 rule based on just that, sustained or overruled.

23 Sometimes I have to have the lawyers just
24 come out of earshot of you and say, Tell me a little bit
25 more what is the basis of that ruling, or what is your

1 objection? Then I can rule.

2 Sometimes it's a complete surprise to me, and
3 I just really need to know what this person is going to
4 say before you can make a decision as to whether or not
5 it's proper for you to hear it. So it's really not that
6 we're trying to hide anything from you, it's just that
7 we're trying to do it once, because if I let you hear
8 something that you weren't supposed to hear, well, it's
9 kind of hard to unhear things.

10 I can give you instructions at certain times
11 and say disregard that, but, you know, we try to avoid
12 doing that, if at all possible, so it may be that
13 occasionally I have to send you out, hear what the
14 witness has to say, make a ruling, and you come back in
15 and I either hear it or not, so it's just people trying
16 to do their job. Nobody is trying to hide anything from
17 you. So that's our basic following of what we do, why
18 we're doing things in the manner that we do them.

19 Procedure-wise, the trial consists of about
20 three basic different parts. First, we're going to have
21 opening statements, then we're going to have the
22 evidence, and then we'll have closing arguments, and I'll
23 charge you on the law so it breaks down to four parts,
24 five if you count going back and deliberating, but in a
25 moment the lawyers are going to get up and give you a

1 little, like, five, ten-minute opening statement. I call
2 these our Reader's Digest condensed versions of things
3 because, as I told you, you're only going to hear one
4 person at a time, and sometimes it doesn't make sense
5 what you're hearing if you don't have a way of putting it
6 in some context, so this is just giving you some context.

7 In other words, they're going to give you a
8 brief overview of the case from their perspective, tell
9 you what it is that you're likely to hear, and it makes
10 it easier for you to then follow the evidence.

11 What is important to remember about this
12 process where the lawyers are getting up and making
13 statements, they're not witnesses. What the lawyers say
14 is not to be considered by you as evidence of what
15 happened. All right? If they were witnesses, in other
16 words, they were there and saw what happened, they
17 wouldn't be allowed to be the lawyer in this case. They
18 would be called as a witness, and they would get up on
19 the witness stand, be put under oath, and tell you what
20 they saw, they hear, they touched, they felt, they smelt.
21 They're not going to be doing that.

22 They're going to kind of be giving you a
23 preview of the evidence and giving you some context, but
24 remember, they're not witnesses, and what they say isn't
25 to be considered by you as evidence. When we get into

1 the trial, you'll hear the lawyers ask questions of the
2 witnesses, all right? Asking a question is not evidence.
3 The answer to the question is evidence. Okay? So keep
4 that in mind, because, by and large, the lawyers do more
5 talking than anybody throughout the trial. They do more
6 talking than I do, so you're going to hear from them.
7 Remember: They're not witnesses. What they say is not
8 evidence.

9 So we'll have the opening statements, which,
10 again, is just about five to ten minutes, and then we
11 move on. The State will call the first witness. We'll
12 go through the process. They'll call as many witnesses
13 as they want, and once all of the evidence comes in, then
14 we'll come back, they'll make closing arguments in which
15 they then review the evidence that you, in fact, heard,
16 and kind of give you an argument as to why you ought to
17 come back with a verdict on their side's behalf. All
18 right?

19 After that, then, I charge you on what the
20 law is that applies to this kind of case with these kind
21 of charges, and then you retire to consider what your
22 verdict would be.

23 So that's the process of the trial. Again,
24 keep an open mind throughout the trial, wait till you've
25 heard all of the evidence before you begin to make up

1 your mind, and, remember, throughout the trial, don't
2 discuss the case with each other. That's basically
3 premature deliberations. Don't do that, all right?

4 You can think about the case, but don't think
5 about it in terms of, oh, this is how I'm going to vote.
6 I can't keep you from your thoughts, but just remember:
7 You're going to hear more. Otherwise, it would be the
8 end of the trial and we would be nearing the end where
9 you could talk about it with other people. So just keep
10 an open mind, listen to the evidence, decide, weigh
11 credibility of witnesses and things like that, and what
12 I'm going to do now is turn it over to the lawyers so we
13 can actually begin the trial.

14 So, Madame Solicitor, if you're ready, you
15 may begin.

16 MR. WEST: Thank you Your Honor, May it
17 please the Court. December 23rd, 2011, around midnight,
18 Zaxby's in Goose Creek was robbed by two men dressed in
19 all black wearing black ski masks. During the robbery,
20 employees were held at gunpoint and knifepoint, and Ms.
21 Gerlinda Williams, the manager was shot. Those are the
22 basic facts we'll hear during the trial this week, but
23 you'll also hear about the facts that led law enforcement
24 to this man, Donte Brown.

25 You'll hear a lot of testimony during the

1 course of this trial, so I do want to give you a brief
2 overview of the things you can expect to hear during the
3 trial. One of the first things you will learn is two men
4 were involved. One of them was Christopher Wilson. The
5 other is on trial today, and his name is Donte Brown.

6 Now, because the two defendants committed
7 these crimes together, you're going to hear a lot of
8 direct testimony about Christopher Wilson. That makes
9 sense, because this was a joint enterprise. They acted
10 together. They conspired to plan, rob, kidnap and steal
11 from the people at Zaxby's. So the first people you're
12 going to hear from are the employees of Zaxby's.

13 You're going to hear from a man named Riley
14 Kemp. He's going to tell you how he was taking out the
15 trash when two men grabbed him, took him behind the
16 Dumpsters, held him at knife and gunpoint, cut his back
17 pocket, and took his wallet. You're going to hear how
18 Vincent Riley happened to ride up on his bicycle around
19 that same time and grabbed him and took his cell phone.

20 They eventually let him go, but they forced
21 Riley Kemp to let them inside Zaxby's, rushed inside,
22 barged inside, and forced all the employees on the
23 ground, ordering them to stay there. They rushed into
24 the manager's office, stole the drawers of money, rifled
25 through Ms. Gerlinda Williams's, the manager's, pockets,

1 and shot her. They then fled the Zaxby's.

2 You will see the surveillance video of this
3 entire event. Now, obviously, Mr. Brown and Mr. Wilson
4 knew there were security cameras in Zaxby's because they
5 wore ski masks, but what they didn't know was they were
6 being watched by more than just the security cameras.

7 You'll hear from a man named Jeffrey Taylor
8 who was an off-duty employee who happened to be in his
9 car in the parking lot while this was happening. He saw
10 what was happening to Riley Kemp, and he called 911
11 immediately. You will hear the 911 tape.

12 After you hear from Jeffrey Taylor, he'll
13 tell you that it was because of his call that police
14 arrived as fast as they did. You'll hear testimony about
15 the fact that they arrived so fast that they actually
16 chased Wilson and Brown through the woods beside the
17 Zaxby's. Those wood lines are important there, because
18 an important piece of evidence was found in the woods.
19 You'll hear about a ski mask that was found. That ski
20 mask was collected and tested for DNA, and that DNA came
21 back to Christopher Wilson.

22 Now, again, I'll remind you, you will hear a
23 lot about Christopher Wilson, so pay a lot of attention
24 to the testimony because you'll see how the evidence
25 against Christopher Wilson and Donte Brown begins to add

1 up.

2 Let's go back to the wood line. Once they're
3 in the wood line, they visually wanted to cross St. James
4 Avenue to get into the Foxborough subdivision. You'll
5 hear how Monica Dodes and Melvin Powell saw them crossing
6 St. James Avenue, and, in fact, they were there so fast
7 they actually almost hit them as they were crossing St.
8 James. Their testimony is very important because it was
9 they that helped law enforcement start their dog track.

10 Officer Cook with the Berkeley County
11 sheriff's office took his K-9 and started a scent track
12 in the Foxborough subdivision. You need to listen to his
13 testimony, because he's going to tell you how K-9 tracks
14 a scent, what type of scent that he collects, and where
15 that trail led the officers that night.

16 Now, the Foxborough subdivision is important
17 because the Foxborough subdivision is where Christopher
18 Wilson actually lived. His house was physically across
19 the street from the Zaxby's, and that house is important
20 because that is the same house that Donte Brown was
21 staying in. In fact, that's the same house that Donte
22 Brown was actually arrested in. He wasn't arrested the
23 same night of the robbery, but he was arrested during the
24 execution of a search warrant.

25 A search warrant is how law enforcement go

1 about looking for evidence, and that search warrant is
2 important because they found important pieces of evidence
3 in the home of Christopher Wilson.

4 You'll hear how they found property belonging
5 to one of the victims. You'll hear how they found the
6 exact gun that was used during the robbery. You're going
7 to hear from an expert who's going to testify how he
8 matched the gun found at Christopher Wilson's house to
9 the gun that was used during the robbery, but the testing
10 didn't stop there. You're going to hear how the gun was
11 tested for DNA, and you're going to hear how that DNA was
12 tested for that of Donte Brown.

13 Now, there's other witnesses you're going to
14 hear from, and they're not experts, they're not victims,
15 and they're not law enforcement, but they're important
16 because they tell an important story because they tell a
17 story about their interactions in conversations with
18 Donte Brown himself. You'll hear from Marteeke Hamilton,
19 Cynthia Garrett, and Lanier Daniels. Their testimony is
20 very detail oriented, so it's crucial you pay very close
21 attention to what they have to say, how they have to say
22 it, and just apply your common sense to what they're
23 saying.

24 Marteeke Hamilton is going to testify about
25 phone conversations she had with this defendant

1 immediately prior to the robbery, immediately after the
2 robbery, whose phone he was using during those
3 conversations, and, most importantly, that she picked up
4 both Donte Brown and Christopher Wilson immediately after
5 the robbery across the street from Zaxby's, at
6 Christopher Wilson's house.

7 You'll next hear from Cynthia Garrett. She
8 also spoke with this defendant, Donte Brown, and she's
9 going to tell you how Donte Brown admitted to his
10 involvement in the robbery. She's also going to tell you
11 about the gun that we talked about earlier. Next, you'll
12 hear from Lanier Daniel. He's also going to tell you how
13 Donte Brown admitted to his role in the robbery. You're
14 going to hear details from these witnesses that only
15 Donte Brown would have known.

16 The next thing I want to talk about, ladies
17 and gentlemen, is actually the law. There's several
18 charges in this trial, so I want you to be able to
19 understand everything he's charged with. There are
20 several different crimes, and it's important you
21 understand the elements of each and what the State has to
22 prove.

23 First, he's charged with armed robbery.
24 There are three counts of armed robbery because he
25 actually took property from three different people. In

1 order to be convicted of armed robbery, the State must
2 prove that Donte Brown and Christopher Wilson took
3 property belonging to the victims by force while armed
4 with a deadly weapon, so in this case you'll hear about
5 money and cell phones and a gun and a knife.

6 Next, he's charged with kidnapping.
7 Kidnapping is a little different. It's a little more
8 complicated because ordinarily when you think of
9 kidnapping, you think of someone being tied up or thrown
10 in the trunk of a car. That's not what the State has to
11 prove. What the State has to prove is that there was an
12 unlawful confinement, an unlawful seizure, or restriction
13 of the freedom of a person. This can be the doors of
14 Zaxby's being locked, everyone ordered to the ground at
15 gunpoint, and everyone not being able to leave.

16 Next he's charged with burglary in the second
17 degree. Burglary is when a person enters a building
18 without consent of the owner or the manager with the
19 intent to commit a crime therein, so in this instance,
20 going into the Zaxby's is a building, and he committed a
21 crime while he was inside.

22 Attempted murder is the next charge. This
23 charge comes from the injuries to Gerlinda Williams. She
24 was shot. In order to prove attempted murder, the State
25 must first prove she was shot with malice aforethought.

1 The judge is going to instruct you as to what malice
2 means during this trial, and Ms. Taylor will explain it
3 more at the end of the evidence, but what you need to be
4 on the lookout for here is testimony regarding an ill
5 will or an evil heart during the shooting.

6 Next you'll hear about criminal conspiracy.
7 Criminal conspiracy is when two people agree to plan to
8 commit a crime together. It's just a meeting of the
9 minds between the two defendants. Lastly, possession of
10 a weapon during the commission of a violent crime. If
11 you believe a gun or a knife is used during these crimes,
12 then he is also guilty of possession of a weapon during
13 the commission of a violent crime.

14 Lastly, I want to talk about the aspect of a
15 law that's not necessarily a statute he's charged with,
16 but, rather, an act that could go to the guilt or
17 innocence of the defendant, and called hand of one, hand
18 of all. If Donte Brown went with Christopher Wilson to
19 the Zaxby's knowing a crime was going to be committed,
20 whether it be robbery, kidnapping, stealing, any crime
21 whatsoever and he helped in any way, then he is also
22 guilty of each and every crime that was charged.

23 So, in this instance, you have two people
24 going into Zaxby's. One of them has a gun. That gun
25 shoots Gerlinda Williams. Technically, the gun is in the

1 hand of one, but in the eyes of the law, that gun is in
2 the hand of all.

3 Ladies and gentlemen: This is a serious
4 case. People were kidnapped and robbed. Ms. Gerlinda
5 Williams was shot. So please, pay very close attention
6 to the details that each and every one of the witnesses
7 will present. This is going to be a detail-oriented
8 case. Ladies and gentlemen: The devil is in the
9 details, and at the end of the trial, each of these
10 details will be brought together to paint a big picture
11 of the guilt of Donte Brown.

12 It's the State's burden to prove each of
13 these details, and each of these details will come
14 together so that you as a jury can justly do the job that
15 you've been called upon to do. These details will prove
16 justice, and justice will only be found in a guilty
17 verdict against Donte Brown.

18 Thank you.

19 THE COURT: Ms. Littlejohn?

20 MS. LITTLEJOHN: First, I want to thank y'all
21 for coming in here, and being here, because I'm just
22 going to guess nobody picked up a phone and called Mary
23 Brown in the Clerk of Court and said, Can I serve on jury
24 duty, please? I need a week off. So, seriously, y'all
25 don't know how important it is, and the judge is right.

1 He told you, you are the judge of the facts. And in the
2 end, you're going to end up in that jury room, and you're
3 going to be tearing apart individual pieces of paper and
4 writing down your thoughts, individually, that is, your
5 belief, and you come together or you don't in the end.
6 It's that simple.

7 But I really wanted to thank you. And,
8 today, I have the privilege and the pleasure of
9 representing Donte Brown. And there are a lot of things
10 that we do not disagree on. This is what is really good.
11 We don't disagree on a lot of things in this case. We
12 agree that Zaxby's was robbed. We agree there was an
13 armed robbery. Nobody is disputing that. It's not good.

14 Another fact that I think that you've already
15 heard, the judge has told you that the law presumes that
16 Donte is innocent. Well, just why? The law presumes
17 that, but at the end you're going to go back into that
18 jury room, and when you tear up individual pieces of
19 paper, individually, put your own individual conscience,
20 you're going to be asked to vote guilty or not guilty.
21 Notice that word innocent wasn't in there. Big
22 difference there.

23 You never have to look at innocence. You're
24 asked to look at not guilty. The judge talked to you
25 about the burden of proof. It's not guilty. I'm going

1 to give you an example of that.

2 You're home asleep, by yourself, and a couple
3 weeks later, a buddy of yours says, hey, I saw you out,
4 you know, that night at the grocery store, and I called
5 out your name and you didn't respond. Are you mad at me
6 or something?

7 And you're, I wasn't out. The person looked
8 like you, acted like you, dressed like you, what have
9 you, walked like you do, but it wasn't you. How do you
10 prove the negative? You're home asleep, which is why the
11 burden is on the State to prove guilt beyond a reasonable
12 doubt. You can't prove a negative. How do you prove
13 innocence? You don't have anything to do with it.

14 In essence, what we're saying here is I
15 submit to you when it's all said and done, you're not
16 just going to say not guilty, you're going to think to
17 yourself innocent, but you won't have that option. I
18 apologize. You won't have that option to say innocent,
19 but you only have two options there: You have that -- we
20 have the fact Zaxby's was robbed.

21 Third fact: This is something I think you
22 see in everyday life. Some things are not always what
23 they seem. Some things are not always what they seem.
24 How do we know? We have to look at what's said, what's
25 not said; what's done, what's not done. What we see and

1 what we don't see; what we're presented with, and what
2 we're not presented with.

3 I'll give you an example. Have any of you
4 known or seen couples you think are happy? Everybody
5 thinks they are, and then all of a sudden, one day, the
6 announcement comes: These people are getting a divorce,
7 out of the blue. Why? Because we all saw this loving
8 couple. There's a lot we didn't see, a lot not heard, a
9 lot not done. So we're going to be looking at these
10 things, what wasn't done. What wasn't seen. What was
11 said? Why would people say things?

12 Mr. West told you how important a search
13 warrant was. We'll probably look at what's in that. How
14 did they come up with that? So I just want you to keep
15 those in mind. Keep an open mind and remember: If I say
16 look at my hand and I hold this up, not really looking at
17 it, if you think about it. This is the front of my hand.
18 Now we look at the back of my hand, so you have to see
19 both sides of the picture, but we're not disagreeing.
20 There was a robbery. It was bad.

21 Donte Brown did not do it. Thank you.

22 THE COURT: All right. State, call your
23 first witness.

24 MR. WEST: State would call Jeffrey Taylor.

25 JEFFREY TAYLOR,

JEFFREY TAYLOR - DIRECT BY MR. WEST

1 having been first duly sworn,
2 was examined and testified as follows:

3 DIRECT EXAMINATION

4 THE WITNESS: My name is Jeffrey Taylor,
5 T-a-y-l-o-r.

6 BY MR. WEST:

7 Q: Mr. Taylor, how are you this morning?

8 A. I'm all right.

9 Q. Where do you live?

10 A. Cross, South Carolina.

11 Q. Are you working right now?

12 A. Yes.

13 Q. Where are you working?

14 A. Mack Daddy's.

15 Q. Where is that?

16 A. Cross, South Carolina.

17 Q. Were you working in December of 2011?

18 A. Yes.

19 Q. Where were you working?

20 A. Zaxby's.

21 Q. Which Zaxby's?

22 A. Goose Creek.

23 Q. Is that in Berkeley County?

24 A. Yes.

25 Q. How long did you work there?

JEFFREY TAYLOR - DIRECT BY MR. WEST

1 A. About a year.

2 Q. What did you do while you were there?

3 A. Cook.

4 Q. Do you remember the night of December 23rd, 2011,
5 early morning hours of December 24th?

6 A. Yes.

7 Q. Why don't you tell the jury what shift you were
8 working that night.

9 A. Evening shift.

10 Q. What time did you get off?

11 A. Probably right about 11:00.

12 Q. Okay. Can you describe for the jury what happened
13 when you got off.

14 A. We got off, went, got my phone, went to sit in my
15 car, made a couple phone calls, went back in the car, sat
16 in my car, started listening to music. Next thing I
17 knew, I seen a little light flashing, so I started
18 looking at the light, and I stopped and I looked in the
19 back and heard somebody say turn around, so I turned
20 around, and I seen two people -- three people going
21 towards Zaxby's, and --

22 Q. Could you identify those three people?

23 A. No. I never seen their face.

24 Q. Did you know one of them?

25 A. I know one of them, yes.

1 Q. Who was that?

2 A. That was Ronnie.

3 Q. Could you tell what the other two were wearing?

4 A. They had, like, black outfit on.

5 Q. Okay. Was there anything covering their faces?

6 A. I couldn't tell, really. Couldn't see that far.

7 Q. Okay. Could you tell if they were holding

8 anything in their hand?

9 A. One of them had a gun. I remember that much.

10 Q. And what was he doing with the gun?

11 A. He had it poked in the side and he took it back to
12 the restaurant.

13 Q. So he's taking them back to the restaurant?

14 A. Right.

15 Q. Could you describe or describe the locations of
16 two individuals?

17 A. What do you mean, location?

18 Q. How they were in relation to --

19 A. Oh, they was, like, pulling him back towards the
20 restaurant, on the side of the restaurant.

21 Q. Okay. I'm going to show you what's been marked
22 for identification as State's -- we're going to mark this
23 as State's No. 1, please.

24 MR. WEST: I'm going to put it up on the
25 easel to the jury can see it. Can you see that?

JEFFREY TAYLOR - DIRECT BY MR. WEST

1 THE WITNESS: Yes, sir.

2 BY MR. WEST:

3 Q. I'm going to hand you a pointer, kind of describe
4 some things for jury. If you would, press this red
5 button here. You can point. I want you to show this the
6 jury on this map --

7 THE COURT: Why don't you have him identify
8 what it is first and then have it admitted before you
9 publish it.

10 MR. WEST: We're not introducing it as
11 evidence, Your Honor.

12 THE COURT: Well, at least have him identify
13 it.

14 BY MR. WEST:

15 Q. Could you tell the jury where that is.

16 A. That's Zaxby's, that's the parking lot.

17 Q. Is that the Zaxby's where you worked?

18 A. Yes, sir.

19 Q. And is that where you were parked?

20 A. I was parked right about there. There is a
21 parking lot right here, so right about there
22 (indicating).

23 Q. Okay. Now, as you've indicated for the jury, that
24 was where you were parked. What were you parked next to?

25 A. The Dumpster.

1 Q. And where did you see the three individuals coming
2 out ?

3 A. About there when I noticed they was going back to
4 the restaurant.

5 Q. All right. Now, is there a back door to the
6 restaurant?

7 A. Yes.

8 Q. Could you point that out for the jury.

9 A. Back door should be right there (indicating).

10 Q. And that's where you saw them walking towards?

11 A. Yes. They was coming into the restaurant, to the
12 back of the door.

13 Q. When you saw them, what did you do?

14 A. Called 911.

15 Q. Did you call 911 immediately?

16 A. Yes.

17 Q. I'm going to show you what has been premarked as
18 State's No. 1. I apologize, Your Honor. We're going to
19 have that map as State's No. 38. The map is for ID only,
20 and this we are showing, Mr. Taylor, State's No. 1. Do
21 you recognize that?

22 A. Yes, sir.

23 Q. What is that?

24 A. 911 call, tape.

25 Q. And how do you recognize it?

JEFFREY TAYLOR - DIRECT BY MR. WEST

1 A. From listening to it.

2 Q. And did you make any writings on the CD?

3 A. I put my initials there, my name.

4 Q. Have you listened to this in its entirety?

5 A. Yes.

6 Q. Did you make any alterations, deletions,
7 subtractions to it?

8 A. No.

9 MR. WEST: State would ask State's Exhibit
10 No. 1 be admitted into evidence.

11 MS. LITTLEJOHN: Without objection.

12 THE COURT: Admitted.

13 (State's Exhibit No. 1 was marked for
14 identification and admitted into evidence.)

15 MR. WEST: Permission to publish, Your Honor?

16 THE COURT: You may.

17 (911 tape played for the jury.)

18 BY MR. WEST:

19 Q. Why did you call 911 so fast?

20 A. Cause I seen it right there.

21 Q. Were you scared?

22 A. Not really, but yes, in a way, because I didn't
23 know what was going to happen.

24 Q. Have you ever been in any trouble with the law
25 before?

1 A. Yes.

2 Q. Did you know the men who were involved?

3 A. No.

4 Q. Could you see their faces?

5 A. No.

6 Q. Could you ever identify them?

7 A. No.

8 Q. What did you do after you called 911?

9 A. Stayed on the phone until the police got there.

10 Q. And once the police arrived, what did you do?

11 A. I got out, told them which direction they went.

12 Q. Did you help the police in any other way?

13 A. That was it.

14 Q. Did you ever give any statement to police?

15 A. Yeah, they called me, told me I have to go down to
16 the police to make a statement, and that was it.

17 Q. Were you cooperative?

18 A. Yes.

19 MR. WEST: No further questions at this time,
20 Your Honor.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MS. LITTLEJOHN:

24 Q. Mr. Taylor, on that evening, you said you had --
25 you were leading up to this and you said you borrowed a

JEFFREY TAYLOR - CROSS BY MS. LITTLEJOHN

1 telephone from a co-worker. You took it inside and you
2 came out and you were able to call?

3 A. Yes.

4 Q. You had to borrow a phone, even though you had a
5 phone?

6 A. Yes.

7 Q. Can you tell us about that?

8 A. Sure. I borrowed his phone because I didn't want
9 my girlfriend to know I was calling another woman.

10 Q. Oh. Okay. That would make good sense. Okay. So
11 you've listened to the tape. You probably timed it or
12 something, hadn't you?

13 A. No, ma'am.

14 Q. If I told that you it was right at a minute and
15 ten seconds, something like that, would you agree with
16 me?

17 A. I wouldn't know.

18 Q. So you called 911 as it was going on, correct?

19 A. Yes, ma'am.

20 Q. And you were parked right next to it?

21 A. Yes, ma'am.

22 Q. And you gave a statement that night, right?

23 A. Not that night. I think the following day.

24 Q. Excuse me?

25 A. I think it was the following day too, it wasn't

1 that night.

2 Q. Well, correct, because it actually occurred the
3 23rd going into the 24th, so I guess the 24th would be
4 the better way to say it, right?

5 A. Right.

6 Q. And you said you saw three males.

7 A. Right.

8 Q. One was riding a bicycle.

9 A. Right.

10 Q. Three males, one was riding a bicycle, and two
11 others, right, is what you saw?

12 A. Right.

13 Q. Okay. And then, actually, the police brought you
14 back in again, didn't they? Did you get another
15 statement?

16 A. I think so. I'm not -- I wrote one then, I guess
17 I did another one too. I'm not sure. It's been a while.

18 Q. That was on the 29th of December?

19 A. Probably was. I wouldn't know.

20 Q. And they took your DNA, right?

21 A. Yes.

22 Q. They actually ran past you, didn't they?

23 A. One on one side and the other one on the other
24 side of the car.

25 Q. If I may, Your Honor, approach?

JEFFREY TAYLOR - CROSS BY MS. LITTLEJOHN

1 THE COURT: Go ahead.

2 BY MS. LITTLEJOHN:

3 Q. You said your car was parked, and, for the record,
4 I'm pointing to where he said his car was parked,
5 catty-corner to that Dumpster right next to it?

6 A. Right.

7 Q. And so one runs this way -- if this is your car,
8 one on both sides?

9 A. Right, one on one side, one on the other.

10 Q. Taking you back this side?

11 A. Yes.

12 Q. Taking you toward the woods in back of Zaxby's.
13 Okay. And you were seated at the time, correct?

14 A. Yes, ma'am.

15 Q. Now, Mr. West had asked you if you had a prior
16 record.

17 A. Yes, ma'am.

18 Q. Could you tell us what that is.

19 A. Robbery, robbery, and robbery.

20 Q. And in your 911 tape, you said something about a
21 white sweatshirt.

22 A. Probably did. Somebody, they had a white
23 sweatshirt on. I didn't know who it was.

24 Q. And the robbers had on -- they were covered all in
25 black, right?

JEFFREY TAYLOR - REDIRECT BY MR. WEST

1 A. Right.

2 Q. Okay.

3 MS. LITTLEJOHN: No further questions.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. WEST:

8 Q. Mr. Taylor, do you know this defendant?

9 A. No, sir.

10 Q. Were you involved in the robbery in any way?

11 A. No, sir. If I did, I wouldn't have called the
12 police.

13 Q. Thank you. No further questions for you, sir.

14 A. You're welcome.

15 THE COURT: Recross?

16 MS. LITTLEJOHN: No, Your Honor.

17 THE COURT: You may step down.

18 THE WITNESS: Yes, sir.

19 THE COURT: Next witness?

20 MS. TAYLOR: State calls Riley Kemp.

21 RILEY KEMP,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 THE WITNESS: My name is Riley Jacob Kemp,

RILEY KEMP - DIRECT BY MS. TAYLOR

1 K-e-m-p.

2 BY MS. TAYLOR:

3 Q. How are you doing this morning, Riley?

4 A. All right.

5 Q. I'm going to ask you to make sure you speak up so
6 everybody can hear you.

7 A. Yes, ma'am.

8 Q. Riley, are you working right now?

9 A. Yes.

10 Q. And what do you do right now?

11 A. I work for Sun Control. I install security
12 systems.

13 Q. How long have you worked at Sun Control?

14 A. Since December.

15 Q. December of last year?

16 A. Yes, ma'am.

17 Q. Where were you working back in December of 2011?

18 A. Zaxby's.

19 Q. How long you had been working at the Zaxby's?

20 A. I worked there from September to December, so a
21 couple months at the time.

22 Q. Okay. And what did you do at the Zaxby's?

23 A. I was a cook.

24 Q. And I'm assuming that means you just cooked there?

25 A. Yes, ma'am, for the most part, yes.

RILEY KEMP - DIRECT BY MS. TAYLOR

1 Q. Do you remember working on December 23rd of 2012?

2 A. Yes, ma'am.

3 Q. And what was your shift that day?

4 A. I worked at night, it was probably either 5:00 or
5 6:00 to close.

6 Q. And do you remember what time the store closed
7 that day?

8 A. I believe it was a Friday, so we closed at 11:00.

9 Q. Okay. After the store closed at 11:00, what did
10 you guys on the closing shift have to do?

11 A. Well, there's a couple different duties that had
12 to be done. My duty was vats, which is cleaning out the
13 fryers.

14 Q. And when you clean out the fryers, what do you
15 have to do?

16 A. You have to dump the oil, clean out the sides of
17 where -- for the grease, and then you have to fill them
18 back out and then you have take the bottoms of them
19 outside, clean them, and put them back in and also run
20 trash and do the outside and the -- outside area and then
21 the floor on the inside.

22 Q. Sounds pretty gross.

23 A. Yes, ma'am.

24 Q. You said you had to run trash.

25 A. Yes, ma'am.

RILEY KEMP - DIRECT BY MS. TAYLOR

1 Q. What does that mean?

2 A. At the end of the night, you gather up all the
3 trash and make a trip out to the Dumpster and throw
4 everything away.

5 Q. Permission to approach, Your Honor? I'm going to
6 show you what's been marked as State's 2 through 9. I've
7 already shown them to defense, Your Honor. Can you look
8 through those pictures real quick and tell me if you
9 recognize them. Don't tell me what they are, just --

10 A. Yes, ma'am. I recognize them.

11 Q. And the first set of pictures, not the last one,
12 but the first September pictures, 2 through 8, what are
13 those pictures of?

14 A. That's in front of the building.

15 Q. Are these all of the Zaxby's?

16 A. Yes, ma'am.

17 Q. And did these accurately reflect how the Zaxby's
18 looked that evening?

19 A. Yes, ma'am.

20 MS. TAYLOR: Your Honor, at this time we ask
21 State's 2 through 8 to be admitted into evidence.

22 MS. LITTLEJOHN: Without objection.

23 THE COURT: Admitted.

24 MS. TAYLOR: Permitted to publish, Your
25 Honor?

RILEY KEMP - DIRECT BY MS. TAYLOR

1 THE COURT: You may.

2 (State's Exhibits 2 through 8 were marked for
3 identification and admitted into evidence.)

4 BY MS. TAYLOR:

5 Q. I'm going to ask you to turn around and look at
6 these while you testify, if that's all right with you.
7 Just remember when you talk you have to turn back around
8 to the microphone, okay? Looking at this, State's No. 2,
9 can you tell the jury what this is a picture of.

10 A. That's a picture of the front of Zaxby's.

11 Q. And what road is that Zaxby's located on?

12 A. It's off St. James Avenue.

13 Q. Is that the Zaxby's where you were working that
14 night?

15 A. Yes, ma'am.

16 Q. And you say you had to run trash, and that meant
17 you had to take the trash outside?

18 A. Yes, ma'am.

19 Q. Where does the trash go?

20 A. It goes out to the Dumpsters.

21 Q. Could you pull up number three, No. 3, please.
22 And what is a picture of that?

23 A. That is a picture of the Dumpsters.

24 Q. Where in relation to the Zaxby's -- if you're
25 looking at the front of the building, where are the

RILEY KEMP - DIRECT BY MS. TAYLOR

1 Dumpsters located?

2 A. In the back right corner.

3 Q. And is it inside the parking lot?

4 A. Yes, ma'am.

5 Q. What's behind Zaxby's?

6 A. Just woods.

7 Q. Okay. Is this the Dumpster that you took the
8 trash out to that night?

9 A. Yes, ma'am.

10 Q. And tell the jury, if you could, how you go about
11 taking the trash. Do you have a wheelbarrow? Do you
12 carry it by hand? How does that work?

13 A. We have wheelbarrows, there's two of them, and
14 we -- most of the time cardboard goes in one and trash
15 goes in the other, so when you go out there, you dump --
16 it's easier to cycle through.

17 Q. And that night, did you have the two wheelbarrows
18 that you took out?

19 A. I probably had at least one. I don't know how
20 much trash we had that night.

21 Q. Do you remember when you took the trash out of --
22 when you first took the trash out, did anything unusual
23 happen?

24 A. No, ma'am.

25 Q. Did you have to make more than one trip that

1 night?

2 A. Yes, ma'am.

3 Q. And tell me about that.

4 A. Well, I probably ran it out and I came back and
5 then I realized that I left something open. You have to
6 make sure everything is closed back there, so I had to go
7 ahead and do that. That's when everything happened on
8 the second trip.

9 Q. You said you realized you left something open.
10 What do you mean?

11 A. Like either the -- like how that door is open,
12 that or the inside there, I usually make sure everything
13 is closed on the inside. They have -- where the trash
14 goes, there's like a sliding door for the Dumpster
15 itself.

16 Q. So when you go out -- how do you get to the
17 Dumpsters?

18 A. When you go out back, I usually -- it's just like
19 a cut through the parking lot. It's kind of to the right
20 of --

21 Q. Is there a back door to the restaurant?

22 A. Yes, ma'am.

23 Q. And is that how you go out to take the trash?

24 A. Yes, ma'am.

25 Q. Is that door locked, do you know?

RILEY KEMP - DIRECT BY MS. TAYLOR

1 A. Yes, ma'am.

2 Q. How do you get back into the restaurant?

3 A. There's a buzzer.

4 Q. So when you went to take the trash out, did you
5 tell anybody where you were going?

6 A. No, ma'am. I was already outside, so usually if
7 we go outside, we do all the outside stuff at one time,
8 and that includes when you clean them and then when you
9 run trash.

10 Q. Okay. So you said you went back to the Dumpsters
11 to make sure everything was closed?

12 A. Yes, ma'am.

13 Q. And tell the jury what happened when you went back
14 to the Dumpster.

15 A. As I was walking back, I heard -- I hear footsteps
16 behind me, and I turned around there and there was two
17 gentlemen and they took me into the Dumpster. We were
18 back there for a while. They smashed my phone. They --

19 Q. I know this is hard, Riley, so let me kind of walk
20 you through it, if you don't mind.

21 A. That's fine.

22 Q. You heard footsteps behind you.

23 A. Yes, ma'am.

24 Q. And you turned around and saw two people.

25 A. Yes, ma'am.

RILEY KEMP - DIRECT BY MS. TAYLOR

1 Q. Did you recognize the people?

2 A. No, ma'am. They had ski masks on.

3 Q. Tell the jury what you remember them wearing?

4 A. It was just dark clothes. There was nothing
5 outstanding I could tell you.

6 Q. Okay. And you said that they had ski masks on?

7 A. Yes, ma'am.

8 Q. Did the ski masks cover their own face?

9 A. All about their eyes and mouth because I know when
10 they were talking I didn't hear, like, a disturbance in
11 the voice.

12 Q. Okay. Did the men have anything?

13 A. One had a knife and one had a gun.

14 Q. All right. And they approached you at the
15 entrance to the Dumpster?

16 A. A little bit before it.

17 Q. Okay.

18 A. It wasn't quite to the entrance of it.

19 Q. Could you put up No. 3, please. And what is this
20 a picture of it, Riley?

21 A. That's a picture inside o the Dumpster area.

22 Q. Okay. So you were approached by these two men,
23 one with the gun and one with the knife?

24 A. Yes, ma'am.

25 Q. What happened?

RILEY KEMP - DIRECT BY MS. TAYLOR

1 A. They grabbed me and they took me back there and
2 they asked for my phone, so I gave them my phone, and
3 they smashed it, and then they heard a disturbance
4 outside of the Dumpsters, and that's when they brought
5 V.J. back there.

6 Q. Who is V.J.?

7 A. He was a co-worker at the time.

8 Q. And did you see him before you went in the
9 Dumpster area?

10 A. No, ma'am.

11 Q. You said they heard something did you hear V.J.
12 come up?

13 A. There was quite a possibility. I heard something
14 and I didn't think nothing of it until I walked away.

15 Q. Did somebody stay with you in the Dumpster area?

16 A. Yes, ma'am.

17 Q. Was it the one with the knife or the one with the
18 gun?

19 A. The one with the knife.

20 Q. And where were you -- looking at this picture,
21 where were you inside that Dumpster area?

22 A. I was -- I don't know exactly when he walked away.
23 I know he eventually -- I was behind the Dumpster on the
24 left.

25 Q. Did you want to be there?

1 A. No.

2 Q. Did you feel like you were free to leave?

3 A. No.

4 THE COURT: Would you just speak up loud so
5 the court reporter can hear your answer.

6 BY MS. TAYLOR:

7 Q. Maybe lean up closer to that a little bit.

8 A. No. I didn't want to be there, and I didn't feel
9 like I was free to leave.

10 Q. So the man with the knife stayed with you.

11 A. Yes, ma'am.

12 Q. And what did the man with the gun do?

13 A. He walked out and brought V.J. back to the
14 Dumpsters.

15 Q. And once V. J. was back there, what happened?

16 A. The guy with the gun searched him and he asked if
17 he had anything on him and he said no, and he just
18 searched through. He had a small backpack on, and he
19 searched through that.

20 Q. Okay.

21 A. And then after that is when we walked -- we
22 started walking back to the restaurant.

23 Q. And who walked to the restaurant?

24 A. Well, we first got out there, and they let V.J.
25 go, so it was just the three of us.

RILEY KEMP - DIRECT BY MS. TAYLOR

1 Q. Let me back up to when you're still in the
2 Dumpster area. Other than the cell phone, did the men
3 take anything?

4 A. My wallet.

5 Q. And how did that happen?

6 A. He was trying to unbutton my back pocket because I
7 had a button on where I kept my wallet and he could not
8 undo it, so he used the knife and ripped my pants to get
9 it.

10 Q. So the man with the knife is the one that took
11 your wallet?

12 A. Yes, ma'am.

13 Q. Could you put up No. 6 for me, please. What is
14 this a picture of, Riley?

15 A. That was the area I was standing at behind the
16 Dumpster.

17 Q. And do you see what's on the ground there?

18 A. Yes. That was my phone.

19 Q. The phone that the men took from you?

20 A. Yes, ma'am.

21 Q. Okay. What is this a picture of?

22 A. That's a picture of behind Zaxby's.

23 Q. And does it show the back door?

24 A. Yes, ma'am. If you look, you see the gate open.
25 That's the back area where we clean the vats.

RILEY KEMP - DIRECT BY MS. TAYLOR

1 Q. Okay. Is that the area that the men took you to?

2 A. Yes, ma'am. To the Dumpsters, yes.

3 Q. Tell me how you walked up to the back door.

4 A. We just -- one went on one side of me, one was on
5 the other, and we just walked -- you see the little
6 pathway. We just walk up in the pathway.

7 Q. Did they have ahold of you?

8 A. I couldn't remember at the time. They could have.

9 Q. Did they still have the weapons?

10 A. Yes, ma'am.

11 Q. Once you got to the back door, Riley, what
12 happened?

13 A. They said let us in, and I was hesitant about it,
14 and the guy with the gun shook his gun at me and said,
15 Let us in, so then I rang the buzzer.

16 Q. When you ring the buzzer typically at the Zaxby's,
17 what happens?

18 A. Someone lets you in.

19 Q. And did someone let you in that night?

20 A. Yes, ma'am.

21 Q. Once the door was opened, what happened?

22 A. We walked in and one went straight and one went
23 to -- because Kevin opened up the door so Kevin was kind
24 of right there, and then one walked over that way and
25 told him to get on the ground, and once he did that, he

RILEY KEMP - DIRECT BY MS. TAYLOR

1 walked back to me and he told me to get on the ground,
2 and after that, I just couldn't hear everything.

3 Q. Tell us a little bit about the layout of Zaxby's.
4 When you come in the back door, where are you?

5 A. You got the cooler to your left and then you got
6 the rest room to your right. You got a freezer, and then
7 if you look straight, you see the manager's office.

8 Q. Okay. And this is all in the back of the
9 building?

10 A. Yes, ma'am.

11 Q. The public doesn't go back there?

12 A. Ma'am?

13 Q. The public doesn't go back there?

14 A. Normally, no. There's really no one that goes
15 back there.

16 Q. So other than yourself, and I think you mentioned
17 Kevin, who else was still working at the Zaxby's at the
18 time you went in with the two men?

19 A. It was me, Kevin, Daniel, and Ms. Linda.

20 Q. And one of the men ordered you and Kevin to get on
21 the ground?

22 A. And Daniel, yes.

23 Q. Okay. And then did you hear anything else while
24 you were on the ground?

25 A. I heard Ms. Linda saying, Don't hurt us, don't

1 hurt us. You can have the money, and then I heard a
2 gunshot, and then -- then I heard him come to the back of
3 the door, and they heard them drop money and leave.

4 Q. Once the two men had left, what did you do?

5 A. We stayed on the ground for a second. Ms. Linda
6 yelled out, Guys, and that's when we got up and went back
7 to her.

8 Q. Where was Ms. Linda?

9 A. I would assume outside the manager's office. I
10 couldn't tell you, but --

11 Q. When did you see her?

12 A. I saw her in the office, last I saw her, but I got
13 on the ground.

14 Q. And once you guys were in the office, do you remember
15 what happened?

16 A. Ms. Linda was calling one of her relatives. It
17 was, I think, her mom, and then Kevin called the police.

18 Q. And did the police respond?

19 A. Yes, ma'am.

20 Q. Do you remember talking to the police that night?

21 A. After they arrived, yes, ma'am.

22 Q. Okay. And I think I already showed you this. You
23 recognize this picture?

24 A. Yes, ma'am.

25 Q. And is that an accurate representation of what you

RILEY KEMP - DIRECT BY MS. TAYLOR

1 looked like that evening?

2 A. Yes, ma'am.

3 MS. TAYLOR: Your Honor, we would ask for
4 State's No. 9 to be admitted into evidence.

5 MS. LITTLEJOHN: No objection.

6 THE COURT: Admitted.

7 (State's Exhibit No. 9 was marked for
8 identification and admitted into evidence.)

9 BY MS. TAYLOR:

10 Q. Did the police take pictures of you that evening?

11 A. Yes, ma'am.

12 Q. And could you tell the jury what we're looking at
13 here in this picture?

14 A. They just took a picture for evidence of my rear
15 pants.

16 Q. And tell the jury again what happened to those
17 pants.

18 A. They were cut because they could not unbutton my
19 pants pocket to get my wallet.

20 Q. Open case. Answer any question Ms. Littlejohn
21 has, okay?

22 Thank you, Riley.

23 CROSS-EXAMINATION

24 BY MS. LITTLEJOHN:

25 Q. Riley, we talked before. I think you probably

1 talked to everybody involved in this case.

2 A. Yes, ma'am.

3 Q. So I just want to follow up, kind of go over some
4 of the questions with you here.

5 That picture we saw of you, can you put that up,
6 the last one? I think it's State's Exhibit 9, that one
7 right there?

8 A. Yes, ma'am.

9 Q. That's how you were dressed that night?

10 A. Yes, ma'am.

11 Q. You didn't have on a white sweatshirt, that you
12 can recall.

13 A. Not that I can recall.

14 Q. Okay. Fair enough. Okay. And did the police
15 take your pants, that you recall, into evidence?

16 A. No, ma'am.

17 Q. When were you in that Dumpster -- first, let's go
18 back. It took you a while. You're taking the
19 wheelbarrow out there, and the doors to the Dumpster
20 area, before you actually get into them --

21 A. Yes, ma'am.

22 Q. -- those are pretty heavy doors?

23 A. Yes, ma'am.

24 Q. And if you open them, you can hear them?

25 A. Yes, ma'am.

RILEY KEMP - CROSS BY MS. LITTLEJOHN

1 Q. So you're back there with these two other fellows.

2 A. Yes, ma'am.

3 Q. And you told me previously you're about five ten?

4 A. Yes, ma'am.

5 Q. And the guy who's next to you was the one with the
6 knife.

7 A. Yes, ma'am.

8 Q. And you said he was a couple -- you told me
9 earlier he was a couple inches taller than you, right?

10 A. Yes, ma'am.

11 Q. So you're guessing about 6'1" or so?

12 A. Yes, ma'am.

13 Q. And while the other fellow goes out front and
14 deals with V.J. on the bicycle and he comes back in,
15 you're still standing there with that one guy?

16 A. Yes, ma'am.

17 Q. The taller guy? You probably were standing next
18 to him longer than anybody in this whole event, weren't
19 you, because you were in that closed facility with him?

20 A. Yes, ma'am.

21 Q. Okay. And you heard, even in all your fright, you
22 heard V.J. come up, right?

23 A. Yes, ma'am.

24 Q. When you went out there, to take out the trash
25 and -- did you notice anybody else, no cars coming and

1 going or anything?

2 A. No, ma'am.

3 Q. Nobody had any descriptive facial mustache or
4 anything that you could see?

5 A. No, ma'am.

6 Q. But it was open around the eyes area and the mouth
7 area?

8 A. I know in the eyes area, and the mouth area, I
9 would assume so because when I hear their voice, I didn't
10 hear anything blocking it.

11 Q. And you tell me you were out there about five
12 minutes you thought?

13 A. Yes, ma'am.

14 Q. Probably felt like a lot longer, I'm sure, but you
15 gave a statement to the police, and you talked about how
16 V.J. rode up and they let him go?

17 A. Yes, ma'am.

18 Q. One of the things that you said was that when you
19 entered that back door and went up to it, you were
20 hesitant?

21 A. Yes, ma'am.

22 Q. So one of them rang the bell, let's go, run in.
23 You hesitated because you had other people inside, right?

24 A. Yes, ma'am.

25 Q. That makes sense. So then y'all go in, and

RILEY KEMP - CROSS BY MS. LITTLEJOHN

1 somebody went straight back to the Zaxby's -- I mean,
2 straight back to the manager's office?

3 A. Yes, ma'am.

4 Q. Didn't somebody kind of had you get down and then
5 went to the manager's office?

6 A. I would assume so, yes.

7 Q. If I were to just go into any Zaxby's, am I going
8 to see the manager's office?

9 A. From, like, the public entrances?

10 Q. Right. That's not public, is it?

11 A. No.

12 Q. So how often do you recall people who weren't
13 employed there or not bringing in deliveries or
14 affiliated with it or something like that back there to
15 know the layout of it?

16 A. Not too many people.

17 Q. Okay. And because that's where -- and because
18 money is counted back there, everybody is kind of tucked
19 away, so to speak? We don't have the general public
20 seeing it, right?

21 A. Yes, ma'am.

22 Q. And didn't you tell us that your best guesstimate
23 was that you thought the guys were in their mid 20's,
24 early 30's?

25 A. Yes, ma'am.

RILEY KEMP - CROSS BY MS. LITTLEJOHN

1 Q. You're five-ten and the fellow was a couple inches
2 taller than you, mid 20's, early 30's, nothing
3 distinctive, and I think you already told us you wouldn't
4 recognize anybody from that evening, correct? That
5 evening you didn't recognize them?

6 A. Right, no, ma'am, not that evening.

7 MS. LITTLEJOHN: All right. I don't have any
8 further questions, Riley. I appreciate it. Thanks.

9 THE COURT: Redirect?

10 MS. TAYLOR: No, Your Honor.

11 THE COURT: You may step down. All right.
12 This looks like a good place to break for lunch. Let's
13 resume at 2:00.

14 Folks, I'm going to send you out. You can go
15 to lunch with anybody you want to, including other
16 members of the jury panel, but, again, please don't talk
17 to anyone about the case, including other members of the
18 jury panel, and, again, please don't visit any of the
19 places that you've heard about. Please don't put
20 anything on social media or anything like that.

21 If anybody does approach you about the case,
22 please report that as soon as you get back. All right?
23 See you back at 2:00. Thank you.

24 (In open court, jury not present.)

25 Anything before we break?

VINCENT RILEY - DIRECT BY MR. WEST

1 MS. TAYLOR: No, Your Honor.

2 THE COURT: All right. See y'all a little
3 bit before 12:00.

4 (Recess taken.)

5 A F T E R N O O N S E S S I O N

6 THE COURT: All right, folks. Welcome back.
7 We'll resume with the State calling the next witness.

8 MR. WEST: Thank you. State calls Vincent
9 Riley.

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

13 DIRECT EXAMINATION

14 THE WITNESS: My name is Vincent Riley,
15 R-i-l-e-y. I'm a junior.

16 BY MR. WESTON:

17 Q. Good afternoon, Mr. Riley. How are you today?

18 A. I'm all right.

19 Q. Where do you live?

20 A. Goose Creek.

21 Q. Are you working anywhere right now?

22 A. No, sir.

23 Q. Were you working in December 2011?

24 A. Yes, sir.

25 Q. Where were you working?

VINCENT RILEY - DIRECT BY MR. WEST

1 A. Zaxby's.

2 Q. Did you have any family connections at Zaxby's?

3 A. Other than my mama?

4 Q. Who is your mom?

5 A. Linda Williams.

6 Q. Does she work at the Zaxby's as well?

7 A. Yes, sir.

8 Q. What was her job?

9 A. General manager.

10 Q. Okay. Were you working the night of December
11 23rd, early morning hours of December 24th, 2011?

12 A. No, sir.

13 Q. What were you doing that night?

14 A. I was riding my bike, and I was coming to Zaxby's
15 parking lot. I was on my way to my brother's house, but
16 then I saw one of my co-worker's cars out there, so I
17 asked him for a ride, so I had to ride my bike up the
18 street. And when I was on my way going to Zaxby's, I
19 heard voices behind the Dumpster.

20 Q. What happened next?

21 A. I called Jeffrey's name, but some dude came out
22 with a gun, and he grabbed me and he take me behind the
23 Dumpster.

24 Q. Why did you call Jeffrey's name?

25 A. Because I thought he was working because his car

VINCENT RILEY - DIRECT BY MR. WEST

1 was outside.

2 Q. So it was Jeffrey's car that you saw?

3 A. Yes, sir.

4 Q. And you heard two voices, or how many voices did
5 you say you heard?

6 A. Two.

7 Q. So you heard two voices behind the Dumpsters, and
8 you went up to the Dumpsters?

9 A. I was going past the Dumpsters. I was calling his
10 name because I thought he was working that night, but he
11 wasn't.

12 Q. And then what happened?

13 A. Dude came out with a pistol. He grabbed me. He
14 took me behind the Dumpster, and he took my cell phone,
15 but he gave it back to me and told me to take my battery
16 out my cell phone and put the battery back in my pocket.

17 Q. What was he wearing?

18 A. All black.

19 Q. Was he wearing anything over his face?

20 A. Ski mask.

21 Q. Was there somebody else with him?

22 A. Yes, sir.

23 Q. Were you able to identify who that was?

24 A. No, sir, only thing I could identify, he was tall
25 and he had on black too.

VINCENT RILEY - DIRECT BY MR. WEST

- 1 Q. Was something covering his face?
- 2 A. Yes, sir.
- 3 Q. And who was with him behind the Dumpsters?
- 4 A. Riley.
- 5 Q. How do you know Riley?
- 6 A. I work with him. We hang out.
- 7 Q. What were they doing to Riley when you saw them?
- 8 A. He was hold hostage in the corner.
- 9 Q. How was he held hostage?
- 10 A. Like --
- 11 Q. Were they holding something up to him?
- 12 A. I couldn't see. All I saw was, like, his arm,
- 13 and, you know, his arm around his shoulder.
- 14 Q. Okay. Could you tell the jury how the man with
- 15 the gun took you behind the Dumpsters?
- 16 A. Yeah. He grabbed me and just took me behind the
- 17 Dumpster.
- 18 Q. Could you demonstrate for the jury how he held the
- 19 gun to you?
- 20 A. Right here (indicating).
- 21 Q. So he held the gun to your chest?
- 22 A. Yeah.
- 23 Q. Were you able to see that gun pretty close?
- 24 A. Yes.
- 25 Q. I'm going to show you what's been premarked for

VINCENT RILEY - DIRECT BY MR. WEST

1 ID only as State's No. 30. Don't show it to the jury or
2 anything, but can you identify what that is?

3 A. That's the gun.

4 Q. How do you recognize that?

5 A. By the long barrel.

6 Q. Thank you.

7 A. You're welcome.

8 Q. Did you try to call 911?

9 A. No, sir. He said if I called the police, he would
10 shoot me, so --

11 Q. Were you able to tell anything about the man
12 wearing the mask?

13 A. He had a mustache. He was short.

14 Q. Could you describe maybe the height and weight?

15 A. Five seven, probably roughly around 135, 140.

16 Q. Could you tell the skin color or anything?

17 A. He was black. I mean, I couldn't tell if he was
18 light, but he was a black male.

19 Q. How could you tell, was there holes in the mask?

20 A. Yeah, eyes and the mouth.

21 Q. On both the masks that both the men were wearing?

22 A. Only one of them.

23 Q. So you couldn't see the face of the other one?

24 A. Huh-uh.

25 Q. Okay. What did you do after they told you to

1 leave?

2 A. I went home.

3 Q. Okay. Did you ever return to Zaxby's?

4 A. Only time I returned is when I got a phone call
5 saying my mother had been shot.

6 Q. What were you wearing that night, do you remember?

7 A. T-shirt and shorts and I had a book bag.

8 Q. Okay. Do you remember what color?

9 A. I think it was, like, black.

10 MR. WEST: No further questions at this time.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MS. LITTLEJOHN:

14 Q. And you I have never met before, have we?

15 A. No, ma'am.

16 Q. I'm Debbie Littlejohn. I'm going to ask you a
17 couple questions to follow up on here. They call you
18 V.J., right?

19 A. Yes.

20 Q. So we have to make a court record here, so if I
21 were to call you V.J. or other people associated with the
22 case call you V.J., we're referring to Vincent Riley?

23 A. Yes, ma'am.

24 Q. I just want to clarify that because sometimes the
25 jury might hear that and might wonder.

VINCENT RILEY - CROSS BY MS. LITTLEJOHN

1 You were coming up that day, and you said you saw
2 Jeffrey's car outside, right?

3 A. Yes, ma'am.

4 Q. And the driver's side door was open?

5 A. Yes, ma'am.

6 Q. His interior light was on?

7 A. Yes, ma'am.

8 Q. And that's why you called out for him, right?

9 A. Yes, ma'am.

10 Q. He wasn't in the car, that you could tell?

11 A. No, ma'am.

12 Q. And it was probably -- were you calling out about
13 the time you were going past the Dumpster?

14 A. Yes, ma'am.

15 Q. So if there's any testimony that says someone was
16 in the Dumpster and heard you, that would be because you
17 were right in front of the Dumpster?

18 A. Yes, ma'am.

19 Q. And you were riding a bike, and didn't your bike
20 actually kind of -- pretty much smack dab on the outside
21 of the Dumpsters where they had you leave it, right?

22 A. Yes, ma'am.

23 Q. In about the middle of it?

24 A. It was, like, between the doors, in between --
25 right in front of the door.

VINCENT RILEY - CROSS BY MS. LITTLEJOHN

1 Q. Right. Outside?

2 A. Yes, ma'am.

3 Q. Okay. So it was just sitting out there. Someone
4 came from the Dumpster area, and you worked there.
5 You're familiar with the Dumpsters?

6 A. Yes, ma'am.

7 Q. And those are pretty heavy gates. They open to go
8 into the Dumpster area?

9 A. Yes, sort of heavy.

10 Q. They're not aluminum, wouldn't you agree with
11 that?

12 A. Yes, ma'am.

13 Q. They're like steel or something?

14 A. Yes, ma'am.

15 Q. And has a bar down at the bottom that if you don't
16 lift up all the way you're going to hear it dragging?

17 A. Yes, ma'am.

18 Q. And this was about midnight. It's pretty quiet
19 out, wasn't it?

20 A. Yes, ma'am.

21 Q. Now, the person you say who pulled you in, you
22 said he was about five seven, mustache, 135?

23 A. Yes, ma'am.

24 Q. You didn't really get the other fellow. He was
25 over with Riley Kemp?

VINCENT RILEY - CROSS BY MS. LITTLEJOHN

1 A. Yes, ma'am.

2 Q. And when you spoke to my investigator, didn't you
3 tell the investigator that that fellow, you thought, was
4 probably about six-two?

5 A. Yes, ma'am.

6 Q. Shorter guy had the mustache?

7 A. Yes, ma'am.

8 Q. That's the one you were with more of the time,
9 right?

10 A. Yes, ma'am.

11 Q. So about the only thing you could pick out on the
12 one that was over here on the other side with Riley, best
13 you could do is pick out his height?

14 A. Yes, ma'am.

15 Q. They gave you your stuff back and they told you,
16 basically, don't snitch, right?

17 A. Yes, ma'am.

18 Q. When you got on your bicycle and -- I'm just going
19 to kind of demonstrate where Zaxby's is on this big map
20 here. The one that had been marked State's Exhibit 38,
21 just for purposes, you went -- you were exiting the back
22 door of Zaxby's, you went to the left?

23 A. Yes, ma'am.

24 Q. Towards the Big Lots area?

25 A. Yes, ma'am.

VINCENT RILEY - CROSS BY MS. LITTLEJOHN

1 Q. Not to the right, towards the Wal-Mart area?

2 A. No, ma'am.

3 Q. Correct? Okay. They asked you what was in your
4 bag, told you not to snitch, took your battery out, and
5 put your battery back in and gave you your phone, and the
6 whole time Riley is back there with him, right?

7 A. Yes, ma'am.

8 Q. At that time you were living in the Coveney Green
9 area, which is right behind it, same direction you rode
10 the bike?

11 A. Yes, ma'am.

12 Q. Okay. When you were leaving, did you think to
13 call -- instead of going the way you went, Jeffrey is
14 parked right here, just right next to the Dumpster, just
15 run in there and put yourself in the car?

16 A. No, ma'am.

17 Q. Did you see him able to put yourself -- so you
18 could jump in the car with him?

19 A. No, ma'am.

20 Q. And they got a statement from you, I'll say that
21 night, but it was on into the 24th, right?

22 A. Yes, ma'am.

23 Q. Was it the next day? They asked you in your
24 statement, they said, well, basically, what are you doing
25 here?

VINCENT RILEY - REDIRECT BY MR. WEST

1 A. Yes, ma'am. Well, they asked me, did I work
2 there. I told them I didn't work there.

3 Q. So then they asked you, What are you doing here?

4 A. Yes, ma'am.

5 Q. Did you recognize any of the voices?

6 A. No, ma'am.

7 Q. Now, you were wearing shorts that night, right,
8 and a T-shirt?

9 A. Yes, ma'am.

10 MS. LITTLEJOHN: I don't have any questions.

11 REDIRECT EXAMINATION

12 BY MR. WEST:

13 Q. V.J., you also gave a statement dated December
14 29th, 2011 to law enforcement?

15 A. Yes, sir.

16 Q. Do you remember the height and weight descriptions
17 that you gave the law enforcement on that date?

18 A. I don't remember the weight, but I remember the
19 height.

20 Q. Okay. And what were those heights?

21 A. Five-seven and six-two.

22 Q. Would it refresh your memory, since it was closer
23 to the actual time of the incident, to have a look at
24 your statement?

25 A. Yes, sir.

1 Q. Do you remember what you told law enforcement now?

2 A. Yes, sir.

3 Q. And what is that?

4 A. I told one of the dudes was five-ten and another
5 dude was five-seven.

6 Q. And that would have been a time that was fresher
7 in your mind as opposed to two or three years later, like
8 we are now?

9 A. Yes, sir.

10 Q. Now, when one of the masked men held a gun to your
11 chest, did you at any time feel free to leave?

12 A. No, sir.

13 Q. Did you want to give him any of your property?

14 A. No, sir.

15 Q. Did you want to let him search through any of your
16 property?

17 A. No, sir.

18 MR. WEST: Thank you. No further questions.

19 THE COURT: Recross?

20 MS. LITTLEJOHN: No further questions.

21 THE COURT: You may step down.

22 THE WITNESS: Thank you.

23 MR. WEST: State would call Kevin lane.

24 KEVIN LANE,

25 having been first duly sworn,

KEVIN LANE - DIRECT BY MR. WEST

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 THE WITNESS: Hello. My name is Kevin Lane,
4 last name is L-a-n-e.

5 BY MR. WEST:

6 Q. Good afternoon, Mr. Lane. Where do you live now?

7 A. I live in Summerville, South Carolina.

8 Q. Do you have a job?

9 A. Yeah.

10 Q. Where do you work?

11 A. I work at Toyota across from -- Toyota in North
12 Charleston.

13 Q. Did you have a job in December 2011?

14 A. Yes, sir.

15 Q. Where were you working?

16 A. At Zaxby's.

17 Q. What did you do there?

18 A. I was a cook.

19 Q. Do you remember the night of December 23rd, early
20 morning hours of December 24th, 2011?

21 A. Yes, sir.

22 Q. Were you working at Zaxby's that night?

23 A. Yes, sir.

24 Q. Was it Zaxby's in Goose Creek?

25 A. Yes, sir.

1 Q. Can you describe for the jury the events that took
2 place on that night at the Zaxby's?

3 A. Yes, sir. It was, like, a regular night. It was
4 very hectic. It was, like, the day before Christmas Eve.
5 I was a cook, and I had to clean all the dishes and, I
6 mean, take all the dishes back and everything, and then
7 Riley told me I had to go outside and dump the trash, and
8 I said okay, and he left.

9 And I went and I was taking all the dishes back,
10 and I gave it, like, 15, 20 minutes. I heard the buzzer
11 ring, and then I opened the door. I turned around, and
12 that's when I saw two guys approach me, and there was a
13 guy with a gun and he told me to get on the ground. And
14 so I got on the ground, and he told Andrew to get on the
15 ground, so I was sitting there and he asked me for my
16 phone. So I gave him my phone, and then that's when I
17 heard him leave, and I heard a little bit of scuffling,
18 and then I heard them leave.

19 Q. What were they wearing?

20 A. I think black -- I know they were wearing black
21 masks, but I guess it was all black.

22 Q. So the clothing was all black, and they had masks
23 that were black?

24 A. Yes, sir.

25 Q. Both of them were wearing all black clothing?

KEVIN LANE - DIRECT BY MR. WEST

1 A. Yes.

2 Q. Could you tell whether either of them was wearing
3 gloves or anything like that?

4 A. One was wearing white and one was wearing black
5 gloves.

6 Q. So one was wearing white gloves and the other was
7 wearing black gloves?

8 A. Yes, sir.

9 Q. Could you tell whether any of them had any sort of
10 weapons?

11 A. Yes, sir.

12 Q. Could you describe those?

13 A. The one that had the gun, the shorter one came
14 towards me, and the other one had a knife.

15 Q. You said the shorter one. Do you have an
16 approximate height or weight?

17 A. I'm about five-ten, so he was about five-six,
18 five-seven.

19 Q. And that was the man with the gun?

20 A. Yes, sir.

21 Q. What about the other one?

22 A. He was taller than me, about six, six-one.

23 Q. Do you remember what happened after they left when
24 you were still on the ground?

25 A. Yes, sir.

1 Q. Okay. What did they do once they left the back
2 area when you were still on the ground?

3 A. What did I do?

4 Q. What did they do, were you able to tell?

5 A. No, sir.

6 Q. Could you tell where they went into Zaxby's?
7 Could you tell where the masked men went into Zaxby's
8 after they ordered you to the ground?

9 A. No, sir.

10 Q. Okay. Could you tell what they were doing?

11 A. No, sir.

12 Q. Could you hear what they were doing?

13 A. No, sir.

14 Q. Did you hear anything happen after they ordered to
15 you the ground?

16 A. I just heard a loud smacking noise.

17 Q. What was that?

18 A. I guess it was the gun.

19 Q. The gun, smacking something, or a gun going off?

20 A. Gun going off, I'm sorry.

21 Q. And what happened that that?

22 A. I heard scuffling noises, and then I heard them
23 leave.

24 Q. Did you see them leave out the back door?

25 A. No, sir.

—KEVIN LANE - DIRECT BY MR. WEST—

1 Q. Could you tell any aspects of the men behind the
2 masks? Could you tell the skin color or anything like
3 that?

4 A. I just knew they were black. I saw the little
5 holes in their face.

6 Q. What did you do once you heard -- you said it was
7 a loud banging noise.

8 A. Yes, sir.

9 Q. What did you do after that?

10 A. I stood there. I never moved off the ground.

11 Q. Did you ever call 911?

12 A. Not until they left.

13 Q. Okay. So after they left, you did call 911?

14 A. Yes, sir.

15 Q. Okay. I'm going to show the witness what's been
16 premarked as State's Exhibit 10. Do you recognize this?

17 A. Yes, sir.

18 Q. What is that?

19 A. My 911 tape.

20 Q. How do you recognize it?

21 A. My initials are right there.

22 Q. So you signed and dated it?

23 A. Yes, sir.

24 Q. Have you made any alterations, deletions, or
25 subtractions to this tape?

KEVIN LANE - DIRECT BY MR. WEST

1 A. No, sir.

2 MR. WEST: State would move Exhibit 10 into
3 evidence.

4 MS. LITTLEJOHN: Court's indulgence. No
5 objection, Your Honor.

6 THE COURT: Admitted.

7 (State's Exhibit No. 10 was marked for
8 identification and admitted into evidence.)

9 MR. WEST: Permission to publish, Your Honor?

10 THE COURT: You may.

11 (911 tape played for the jury.)

12 BY MR. WEST:

13 Q. So at the end of the 911 recording, it say the
14 officers couldn't get in. Were the doors locked at
15 Zaxby's?

16 A. Yes, sir.

17 Q. Do you remember giving a statement to police after
18 this happened?

19 A. Yes, sir.

20 Q. Do you remember what you told them in that
21 statement, that these men told you to do?

22 A. Yes, sir.

23 Q. What is that?

24 A. I mean, they told me to get on the ground, mostly.

25 Q. Okay. Would it refresh your memory to look at

KEVIN LANE - CROSS BY MS. LITTLEJOHN

1 your statement?

2 A. Yes, sir.

3 Q. Of reviewing your statement, do you remember some
4 of the things the men told you to do?

5 A. Yes, sir.

6 Q. What were they?

7 A. It was don't move -- I mean, don't F'ing move,
8 actually, and then after they left, he was, I told you
9 not to move, B, and that was it.

10 Q. Told you not to move, B?

11 A. Yes.

12 Q. Is that a euphemism for a cuss word there?

13 A. Yes, sir.

14 Q. Okay.

15 MR. WEST: That's all the questions I have at
16 this time.

17 THE COURT: Cross?

18 CROSS-EXAMINATION

19 BY MS. LITTLEJOHN:

20 Q. I'm Debby Littlejohn. I want to go over a few
21 things with you.

22 When you gave your statement on the 4th, you gave
23 that to Officer Powell, right, with Goose Creek?

24 A. That's right.

25 Q. Okay. And you told him that it was the night you

KEVIN LANE - REDIRECT BY MR. WEST

1 had to clean the kitchen, and you said it had been a
2 pretty hectic night like it had before, correct?

3 A. Yes, ma'am.

4 Q. What time did y'all close that night, do you
5 remember?

6 A. Yes, ma'am. We closed at 11:00.

7 Q. Okay. Okay. You said you were closed, and you
8 said in your statement, Jeffrey T. came up to me at, I
9 believe 11:30, and asked me for my phone.

10 Who is Jeffrey T?

11 A. One of the employees.

12 Q. Brings it back ten minutes later, goes back, and
13 you're still inside cleaning, right?

14 A. Yes, ma'am.

15 Q. And Riley has gone outside?

16 A. Yes, ma'am.

17 Q. Do you know the exact time of your telephone call?

18 A. No, ma'am.

19 Q. Okay.

20 MS. LITTLEJOHN: I don't have any further
21 questions.

22 REDIRECT EXAMINATION

23 BY MR. WEST:

24 Q. Mr. Lane, you said that Jeffrey borrowed your
25 phone?

KEVIN LANE - REDIRECT BY MR. WEST

1 A. Yes, sir.

2 Q. Do you know why he borrowed your phone?

3 MS. LITTLEJOHN: Your Honor, I object.

4 THE COURT: On what grounds?

5 MS. LITTLEJOHN: Asking him to testify as to
6 what he believes it was, doesn't know.

7 THE COURT: Did he state why he wanted to
8 borrow your phone?

9 THE WITNESS: I asked him before he asked for
10 it, my phone.

11 THE COURT: Okay. Well, if you asked him why
12 he wanted to, then he'll know. You can answer the
13 question.

14 THE WITNESS: To be honest, he said his old
15 lady would be checking his phone.

16 BY MR. WEST:

17 Q. His girlfriend?

18 A. Yes.

19 MR. WEST: No further questions, Your Honor.

20 RECROSS-EXAMINATION

21 BY MS. LITTLEJOHN:

22 Q. Briefly, in reply to that, that's what you were
23 told was the reason for borrowing it, right?

24 A. Yes, ma'am.

25 Q. You don't know for sure, though?

DANIEL AUMAN - DIRECT BY MS. TAYLOR

1 A. Yes.

2 Q. That's what you were told, is what you know?

3 A. Yes, ma'am.

4 MS. LITTLEJOHN: Okay. Thanks.

5 THE COURT: You can step down.

6 MS. TAYLOR: State calls Daniel Auman.

7 DANIEL AUMAN,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. TAYLOR:

12 Q. I'm just going to ask you remember to talk into
13 microphone so everybody can hear you.

14 A. Yes, ma'am.

15 Q. Where were you working back in December 2011?

16 A. Zaxby's.

17 Q. And how long had you been working there?

18 A. For three-and-a-half years.

19 Q. What did you do at Zaxby's?

20 A. I cook, chicken, fries and cook wings.

21 Q. Were you working on the night of December 23rd,
22 2011?

23 A. Yes, ma'am.

24 Q. What were you doing that night?

25 A. Dishes.

DANIEL AUMAN - DIRECT BY MS. TAYLOR

1 Q. Do you remember what time the Zaxby's closed that
2 night?

3 A. Ten something.

4 Q. Okay. If it was a Friday night, do you know what
5 time y'all would have closed on a Friday?

6 A. 11:00.

7 Q. And were you working close that night?

8 A. Yes, ma'am.

9 Q. Do you remember something happening that night?

10 A. All I remember is two people came in the back
11 door.

12 Q. Okay. And did you recognize those people?

13 A. No, ma'am.

14 Q. Do you remember what they were wearing?

15 A. All black.

16 Q. Did they have anything covering their face?

17 A. Yes.

18 Q. And what was that?

19 A. Ski masks.

20 Q. Okay. Did the people -- did you see if they had
21 anything in their hands?

22 A. Yes.

23 Q. And what was that?

24 A. One had gun.

25 Q. You saw one with a gun.

1 A. Yeah.

2 Q. Did either of the people with the ski masks say
3 anything to you?

4 A. No, ma'am.

5 Q. Did they tell you to do anything?

6 A. They told me to get down on the ground.

7 Q. And where were you when they told you to get down
8 on the ground?

9 A. In the dish room.

10 Q. Did you get down on the ground?

11 A. Yes.

12 Q. And did they say anything else to you?

13 A. They said put my head down on the ground.

14 Q. Did they take anything from you?

15 A. Only my cell phone.

16 Q. Okay. And were you able to get your cell phone
17 back?

18 A. Yes, ma'am.

19 Q. When did you get your cell phone back?

20 A. After they left.

21 Q. Okay. When you were down on the ground, did they
22 say anything else to you?

23 A. Hold my head down.

24 Q. And other than put your head down?

25 A. They just hit me with the gun.

DANIEL AUMAN - DIRECT BY MS. TAYLOR

1 Q. One of them hit you with the gun?

2 A. Yes.

3 Q. And where did he hit you?

4 A. On my head.

5 Q. Do you know why he hit you? You have to answer
6 out loud.

7 A. No, ma'am.

8 Q. Did you see them do anything else while they were
9 in the Zaxby's?

10 A. They took -- no.

11 Q. So they took your cell phone, made you get down on
12 the ground. Did you want to get down on the ground?

13 A. No, ma'am.

14 Q. Did you feel like you could leave while they were
15 there?

16 A. No.

17 Q. And did you have to get medical treatment for your
18 head?

19 A. No, ma'am.

20 Q. Did the EMS check you out that night?

21 A. No.

22 Q. Okay. After -- do you remember when they left?

23 A. No.

24 Q. Did you hear them leave?

25 A. Yes.

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 Q. Did you hear them say anything or do anything as
2 they were leaving?

3 A. They already dropped the cashier thing on the
4 ground.

5 Q. They dropped some of the money on the ground. And
6 after they left, what did you do?

7 A. Then I went into the office.

8 Q. And who else was in the office?

9 A. Ms. Linda, me, and Kevin and Riley.

10 Q. Okay.

11 MS. TAYLOR: That's all I have, Daniel.

12 Thank you.

13 MS. LITTLEJOHN: I don't have any questions,
14 Your Honor.

15 THE COURT: You may step down.

16 MR. WEST: State would call Gerlinda
17 Williams.

18 GERLINDA WILLIAMS,

19 having been first duly sworn,

20 was examined and testified as follows:

21 DIRECT EXAMINATION

22 THE WITNESS: My name is Gerlinda Williams,
23 W-i-l-l-i-a-m-s.

24 BY MR. WEST:

25 Q. Good afternoon, Ms. Williams?

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 A. Good afternoon.

2 Q. Where do you live?

3 A. Moncks Corner.

4 Q. Are you working right now?

5 A. I am not.

6 Q. Why not?

7 A. Well, I had to leave Wal-Mart because I had an
8 absenteeism problem because I was becoming ill, so I went
9 two days over my absenteeism, so they terminated my
10 employment.

11 Q. Do you have a medical condition right now?

12 A. I do, several.

13 Q. Okay. Do you mind telling the jury about any of
14 that?

15 A. I have hypothyroidism. I was just diagnosed with
16 hypertension, high cholesterol, and, well, for those who
17 don't know what thyroidism is, I have thyroid disease. I
18 have a problem with my thyroid which controls a lot in my
19 body, and I have glaucoma and right now having an
20 intestinal infection that they're treating me for.

21 Q. Were you working back in December of 2011?

22 A. I certainly was.

23 Q. Where were you working?

24 A. Zaxby's.

25 Q. Is that -- where was that Zaxby's?

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 A. St. James Avenue, Goose Creek, South Carolina.

2 Q. Is that in Berkeley County?

3 A. I don't know if that's Berkeley County or not. I
4 think it's considered Berkeley.

5 Q. Okay. What was your job title at Zaxby's?

6 A. Assistant manager.

7 Q. And what were some of the things that you did?

8 A. I was responsible for hiring, for firing, for
9 orientation, truck order, managing the crew, handling
10 financial situations, such as openings, setting up for
11 the day, closing, closing out the day, taking deposits to
12 the bank.

13 Q. Would you have been handling any of the money on
14 the night of December 23rd, early morning hours of
15 December 24th, 2011?

16 A. Yes, sir.

17 Q. Were you, in fact, doing that that night?

18 A. Yes, sir.

19 Q. Okay. Why don't you tell the jury a little bit
20 about the events that bring us here today.

21 A. I was robbed and shot. Well, Zaxby's was robbed
22 and shot.

23 Q. Let's break it down a little bit more than that.
24 Do you know how many people came in to Zaxby's?

25 A. I know there was two people.

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 Q. Okay.

2 A. There were two.

3 Q. And what were they wearing?

4 A. All dark clothing, like all black clothing, black
5 hoodie, ski masks.

6 Q. Okay. Was there any holes in the ski masks for
7 eyes or a mouth?

8 A. Eyes, the mouth.

9 Q. Okay. Were they wearing gloves?

10 A. I remember one wearing gloves. I'm not sure
11 about -- I'm not quite sure about the other one.

12 Q. What color were those gloves?

13 A. They were dark, either navy blue or black.

14 Q. Did either of the two men that came into Zaxby's
15 say anything to you?

16 A. The gunman did.

17 Q. Okay. Describe that encounter.

18 A. Well, he came -- well, he -- when he came into the
19 office, he told me to stand up, and then he told me to
20 lay down on the floor outside. And I was laid down on
21 the floor outside, and he was rifling through my pockets,
22 looking for stuff. And he -- I had a box cutter and I
23 had an Army knife. He looked at those and he gave them
24 back to me, and then as he was rifling through my
25 pockets, he shot me.

1 He said, I don't want to hurt you, and I don't
2 want to kill you. That's what he said.

3 Q. Did you remember any of the weapons that the men
4 were carrying?

5 A. Yeah. One was a knife and one was a gun.

6 Q. Could you describe that gun at all?

7 A. The only thing I remember about it, it had a real
8 long nose on it, and it was dark. It was navy blue or it
9 was black, and the knife was like the chef knives that we
10 use at the restaurant, and that handle was dark. I don't
11 know if it was brown or dark, but it was dark, and the
12 reason why I have trouble distinguishing is because of
13 the glaucoma. My vision is dim already, so without
14 lighting, they looked navy blue or black.

15 Q. Did either of them take any property that belonged
16 to either you or the restaurant?

17 A. They did.

18 Q. And what was that?

19 A. He -- I had \$18 in my pocket. He took that out of
20 my pocket, and then from Zaxby's, probably about \$3,800,
21 \$3,600.

22 Q. Did you ever give them permission to take those
23 pieces of property?

24 A. No, sir.

25 Q. Did you want them to take that property?

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 A. No, sir.

2 Q. Were the doors at Zaxby's locked that night?

3 A. They were.

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

5 A. After they came in or before?

6 Q. During the incident.

7 A. Oh, no, huh-uh.

8 Q. And why was that?

9 A. Because they held us there. They told us --

10 Q. Were you scared?

11 A. Yes, uh-huh.

12 Q. Can you describe your injury for the jury.

13 A. I was shot in the top part of my back here, and
14 the bullet exited through the bottom part of my leg,
15 upper part of my leg.

16 Q. Do you still have problems with that injury today?

17 A. I do.

18 Q. Could you describe that for the jury.

19 A. My leg was swell up from time to time. It will
20 ache.

21 Q. Do you have any pain from that injury?

22 A. Every now and then it will throb, and I just take
23 Ibuprofen, or just take anything with the medication I'm
24 already taking.

25 Q. And it still hurts well after two years after this

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 incident?

2 A. Yes, from time to time.

3 Q. You remember the police ever arriving on scene?

4 A. I do remember them arriving. But I, myself, did
5 not talk to them. One of the employees talked to them,
6 because I was busy trying to reach the owners and they
7 said they were outside to let them in, but I wouldn't let
8 the kids out of the office because I had crammed them all
9 in the office. And then the young man that was in the
10 office that called said the police said they're outside,
11 come let them in, so we all left out the office together
12 and went to the door to let them.

13 Q. Who was in the office with you?

14 A. Myself, it was Daniel, Kevin, Riley.

15 Q. Okay. Once you let the police inside, what
16 happened?

17 A. I was kind of worried about the other kids, and I
18 was trying to make sure that they were okay. The EMS
19 came in to attend -- because, you know, I was shot, but I
20 was able to walk because my body went into shock,
21 according to the doctor, but I was concerned about the
22 other children because I wanted to make sure they were
23 okay.

24 And the police and everybody was trying to get me
25 out of there to go on to the hospital because I needed to

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 go to the hospital, but they came around looking. They
2 were looking, you know, walking around the restaurant,
3 and I told them, the restaurant is not -- I can't leave
4 the restaurant. It's not closed, and someone said this
5 is a crime scene investigation. We going to be here a
6 few hours. Don't worry about it. We'll take care of
7 these kids, and I said okay and went on to EMS.

8 Q. So did you leave with EMS?

9 A. I did.

10 Q. Where did you go?

11 A. Trident Hospital.

12 Q. How long were you there?

13 A. Maybe about six hours, five to six hours.

14 Q. Have you seen any doctors since?

15 A. Yes.

16 Q. Is the Zaxby's that you're working in, does it
17 have any sort of surveillance system?

18 A. We have the type of surveillance system that you
19 can look at one screen at a time or you can divide it up
20 into sixteenths or eighths, depending on what section you
21 want to monitor. You can monitor whatever section you
22 need to, but it's motion sensed. Something has to be
23 going on in that area for it to pick up something and
24 record.

25 Q. Do you know how to download a recording from that

1 camera?

2 A. I don't know how to download it. I just know how
3 to pull it up to look at it, you know, if I need to
4 watch, like, the kids playing in the kitchen or
5 something, but --

6 Q. Did you ever try to download anything for the
7 police in this case?

8 A. No.

9 Q. Do you know this defendant?

10 A. No.

11 Q. Did you ever have any sort of family or friends
12 connection --

13 MS. LITTLEJOHN: Objection, Your Honor.
14 Relevancy.

15 THE COURT: Overruled.

16 BY MR. WEST:

17 Q. Did you ever have any family or friend connection
18 with this defendant?

19 A. Well, what I found out afterwards, I was dating
20 his ex uncle by marriage.

21 Q. Let's go back to the actual incident itself. Do
22 you remember which of the men approached you first?

23 A. The one with the knife.

24 Q. Okay. And did you see the one with the gun later?

25 A. He switched places with the knife man, the gunman.

GERLINDA WILLIAMS - DIRECT BY MR. WEST

1 Q. What do you mean by that? Kind of describe that
2 for the jury.

3 A. Well, the buzzer rang, and not thinking nothing of
4 it, they all, whoever, came in, and I heard one of the
5 boys scream, so -- but they are always horse playing when
6 they're closing, so I didn't pay any attention. And I
7 was in the office, sitting down, doing my paperwork and
8 stuff, and I happened to turn around, and a gentleman
9 came at me with a knife like this and came into the
10 office.

11 And then the next thing I knew, the one with the
12 knife, came -- I'm sorry. The one with the gun came in
13 and had him go in the back.

14 Q. Had who go in the back?

15 A. The one with the knife.

16 Q. So the one with the knife left the manager's
17 office?

18 A. Right.

19 Q. And went where?

20 A. I don't know. I guess he went to where everybody
21 else was at, the other kids, because I couldn't tell you
22 where he went to exactly.

23 Q. Now, when the men were leaving, do you remember
24 any conversations that were had?

25 A. Yeah. They were arguing about the bag --

1 Q. What specifically about the bag?

2 A. Like, who has it or where is it or why don't you
3 have it? It was just a bunch of mumbo jumbo confusion
4 because they were dropping the money all as they were
5 running.

6 Q. So as they were leaving in the hallway, they were
7 dropping some money?

8 A. Yes.

9 Q. Okay.

10 MR. WEST: That's all the questions the State
11 has at this time.

12 THE COURT: Cross?

13 CROSS-EXAMINATION

14 BY MS. LITTLEJOHN:

15 Q. Ms. Williams, this robbery occurred at Zaxby's.
16 That's at 433 St. James Avenue, right?

17 A. That's correct.

18 Q. Okay. And what I heard you say so far is that
19 they went through your pockets, they took a box cutter
20 out and Army knife and they put it back in. Did the
21 officers check -- take your pocket -- take your pants to
22 test it for any sort of cells that may be on it or take
23 your box cutter or Army knife for that?

24 A. Not at that time, but they came and take my pants.

25 Q. Did they take the box cutter or the Army knife?

GERLINDA WILLIAMS - CROSS BY MS. LITTLEJOHN

1 A. No.

2 Q. But you told them about it, right?

3 A. I don't remember.

4 Q. You have had an opportunity -- matter of fact,
5 quite a few opportunities to meet with the government,
6 right?

7 A. Meet with who?

8 Q. The government, State side of the government?

9 A. Yes, uh-huh.

10 Q. And to meet with the police officers, right?

11 A. With the investigators?

12 Q. Right.

13 A. Yes.

14 Q. With Goose Creek?

15 A. Uh-huh.

16 Q. And you've given statements to them, video
17 statement, I believe?

18 A. A video? What is a video statement?

19 Q. They were recording everything you were saying
20 when you were in there?

21 A. Oh, I don't -- I don't remember. I don't know,
22 honestly don't know.

23 Q. You met with them on January 5th, does that sound
24 about right, with Officer Powell? If I told you you have
25 a written statement, January 5th, does that sound about

GERLINDA WILLIAMS - CROSS BY MS. LITTLEJOHN

1 right? You went to the police officers and met with
2 them, to Goose Creek?

3 A. Yeah. I met with someone there.

4 Q. Right.

5 A. Yes, I did.

6 Q. He was wearing a ball cap then, I think, or jeans
7 or --

8 A. And he had those things in his ear, earrings in
9 his ear?

10 Q. I don't recall.

11 A. I met with someone there. I can't tell you what
12 his name was.

13 Q. Okay. And have you seen the video recording of
14 that?

15 A. Bits and pieces. I didn't want to look at that.

16 Q. Okay. I didn't know if you had the opportunity to
17 look at it. I wanted to make sure you had. This knife
18 you're describing, you say that's a chef's knife, like
19 people would use in a good part of their kitchen, people
20 who cook a lot of stuff will use?

21 A. Yeah. That's what it looked like.

22 Q. Sort of the ordinary kind of thing? Okay. You
23 said they were dropping money. Was that change they were
24 dropping too?

25 A. Well, change is what I heard.

GERLINDA WILLIAMS - CROSS BY MS. LITTLEJOHN

1 Q. So it's change you heard dropping. Do you know or
2 did they kind of -- getting out of there too quick, to
3 know if some of the money where they dropped the change,
4 if it rolled out and they didn't take it with them?

5 A. No, because I was face -- I was on the floor face
6 down.

7 Q. I don't know if afterwards you saw the money
8 there.

9 A. Oh, I wasn't even looking for money.

10 Q. Oh, okay. Since you were the manager there and
11 you were in charge of the hiring and the firing and
12 everything, sitting right here is Donte Brown. Did you
13 ever hire him? Was he ever an employee of yours?

14 A. No.

15 Q. To your knowledge, has he ever worked at Zaxby's?

16 A. Not at the 443 St. James. I was there for almost
17 eight years, so not in my time.

18 Q. So for eight years. Okay. So you've pretty
19 well-known who worked there, within that eight years?

20 A. Pretty much, yes, ma'am.

21 Q. Would you say that was a really quick robbery?

22 A. Yeah, it was.

23 Q. They went straight to the manager's office, right?

24 A. Yes, sure did.

25 Q. Waste no time finding it?

1 A. No time.

2 Q. Is the general public allowed back there? Like,
3 would I know where the manager's office would be?

4 A. No, I wouldn't think so.

5 Q. Well, I don't, I'm just general public. So it's
6 not a well broadcast thing.

7 A. Right.

8 Q. And is that like what time you would normally
9 count the money, because that was your job on that night?

10 A. That time of night? It would have been because it
11 was a weekend night and we stay open later.

12 Q. On the weekend night would be about the right time
13 for it?

14 A. Yes, ma'am.

15 Q. So if I had -- if I had worked there to be
16 familiar with it, what have you, I would know about what
17 time on a weekend you would be doing it, counting your
18 money?

19 A. Yes.

20 Q. And I would know exactly where to go, waste no
21 time, right?

22 A. If you work there, you go in the back.

23 Q. And I know if I visited a lot or somehow or
24 another had the privilege to be in the back, because
25 that's not open to the general public?

GERLINDA WILLIAMS - CROSS BY MS. LITTLEJOHN

1 A. No.

2 Q. I believe you spoke with an investigator from my
3 office. Didn't you tell her -- she was asking you about
4 the height, and didn't you say he was over five ten, the
5 taller one, to the best of your recollection?

6 A. I don't think I gave her a measurement. What I
7 was told is, he was taller than the guy that shot me.
8 The guy with the knife was the taller one.

9 Q. The guy with the knife was the taller one?

10 A. Yes, uh-huh.

11 Q. Then that security system monitored outside as
12 well, right?

13 A. It does. It's not the whole entire thing, but out
14 back, there's selected cameras put up. It doesn't
15 monitor the whole parking lot.

16 Q. So sporadic?

17 A. Right.

18 Q. But it doesn't move around the parking lot, does
19 it?

20 A. Huh-uh.

21 Q. It just monitors certain areas at all times; is
22 that right?

23 A. Yeah, at all times.

24 Q. Okay.

25 MS. LITTLEJOHN: I don't have any further

MELVIN POWELL - DIRECT BY MR. WEST

1 questions. Thank you.

2 MR. WEST: Nothing on redirect. Your Honor.

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

4 MR. WEST: The State would call Melvin
5 Powell.

6 MELVIN POWELL,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 THE WITNESS: My name is Melvin Powell,
11 P-o-w-e-l-l.

12 BY MR. WEST:

13 Q. Good afternoon, Mr. Powell. Are you working
14 anywhere right now?

15 A. No. I'm currently unemployed.

16 Q. Where do you live?

17 A. 126 Gator Drive, Goose Creek.

18 Q. That's in Goose Creek?

19 A. Yes, sir.

20 Q. Do you remember the night of December 23rd, early
21 morning hours of December 24th, 2011?

22 A. Yes, sir.

23 Q. I want you to describe for the jury what you were
24 doing that night.

25 A. We went out Christmas shopping.

MELVIN POWELL - DIRECT BY MR. WEST

1 Q. Okay. Where did you go?

2 A. We went to Wal-Mart.

3 Q. Where is that Wal-Mart?

4 A. That Wal-Mart is on St. James.

5 Q. Is that near the Zaxby's?

6 A. About a quarter of a mile away from Zaxby's.

7 Q. Do you remember driving down St. James that night?

8 A. Truthfully, I was not driving. I was a passenger.

9 My spouse and I were. We went to Wal-Mart. We were
10 coming back. There was a lot of commotion, police cars
11 and so forth. We noticed that, and when we pulled out of
12 Wal-Mart, headed home, we proceeded down St. James back
13 towards 52. We got in the vicinity of the Catholic
14 church on the left-hand side.

15 Just beyond that we switched lanes because of
16 the police cars swarming around us to allow them to pass
17 by, and in so doing, there was a gap, I guess, a few
18 moments where -- darkness, because blue light all around
19 you all of a sudden, then there was a gap, and about that
20 time she had to slam on the brakes. Two guys came from
21 the wooded area and juttet across the street directly in
22 front of us.

23 Q. Could you tell what those two men were wearing?

24 A. Truthfully, no. Dark clothing, no visual. I
25 can't tell you whether they were black or white.

MELVIN POWELL - DIRECT BY MR. WEST

1 Q. You couldn't see their faces?

2 A. Could not see their faces because of the fact,
3 first of all, slamming on the brakes, okay, because
4 you're going to hit somebody, you know? All right. I
5 did turn back to look to watch them where they went, you
6 know, what's up with these crazy people, you know,
7 running out in front of us like this, kids. And they
8 proceeded across the road, and what struck me as odd is
9 they did not go towards the street but ran along the
10 wooded fenced area, right behind some bushes.

11 Q. Okay. I'm going to show you what's been premarked
12 for identification only as State's No. 39. I'm actually
13 going to set it up on the easel right here so the jury
14 can see it. Can you see that all right?

15 Mr. Powell, I have a pointer right here, if you'll
16 just push this red button on the top. If you could,
17 please, describe for the jury kind of your location
18 amongst these events that you just described.

19 A. This wooded area, this is the road here that I
20 would have predicted they would have ran down; however,
21 there is a wooden fence right here that they ran up
22 beside and they came across right in this area right
23 here.

24 Q. And what direction of travel were you --

25 A. We were coming from this direction.

MELVIN POWELL - DIRECT BY MR. WEST

1 Q. So on this direction on the map, it would look
2 like you were going south?

3 A. Yes. We were actually coming up here. Wal-Mart
4 would be down at this end. We were coming down this
5 highway, down this way.

6 Q. And where did you almost strike the two
7 individuals?

8 A. Right about there.

9 Q. Okay.

10 A. Because what had happened was they came out of the
11 wooded area, and we were in the middle lane there.

12 Q. Okay. Did you stop?

13 A. Yeah.

14 Q. Okay. You stopped to avoid hitting them?

15 A. Well, the front end went down.

16 Q. Did you continue after they crossed?

17 A. Yes.

18 Q. What did you do after that?

19 A. We went down to -- where is the street? I want to
20 say this is the next turn in right here. We pulled in
21 right here, turned right there through this, came back
22 and went up in there and stopped.

23 Q. Why did you particularly go to that Zaxby's?

24 A. Why did we go to Zaxby's?

25 Q. Right.

1 A. Because the police were searching.

2 Q. So there were police at Zaxby's?

3 A. Yes.

4 Q. Did you talk to the police?

5 A. Yes.

6 Q. What did you --

7 MS. LITTLEJOHN: I would ask, instead of
8 asking we, that he limit it to what he did.

9 THE WITNESS: I sat in the vehicle. I didn't
10 drive. I was not driving. I was the passenger.

11 THE COURT: He can state what he observed.

12 BY MR. WEST:

13 Q. Okay. So you talked to the officers?

14 A. Yes, sir.

15 Q. You individually?

16 A. Yes.

17 Q. Did you ever tell officers about your observations
18 that night?

19 A. I did.

20 Q. Okay. Do you remember what you told them?

21 A. I told them that we -- that two individuals had
22 ran across the street in front of us, we almost hit them,
23 that they had gone along the wooded area of the fence and
24 we knew that something was going on. We didn't know
25 what. We had no idea what was transpiring.

MELVIN POWELL - CROSS BY MS. LITTLEJOHN

1 Q. Did you ever give the cops or the officers a
2 description of the individuals?

3 A. Yes, yes, I did.

4 Q. And what did that description consist of?

5 A. I told him it was two males, okay, about
6 five-nine, five-eleven, between 160, 180 pounds.

7 Q. How were you able to give that descriptor?

8 A. Based on my own height and weight. I work quality
9 assurance. I am used to weights and measures.

10 Q. Do you have a similar build as that?

11 A. Yes.

12 Q. Okay.

13 MR. WEST: That's all the questions the State
14 has at this time.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MS. LITTLEJOHN:

18 Q. Mr. Powell, I'm Debbie Littlejohn. I'm going to
19 ask you some questions about what happened that night.

20 You and I have never talked, have we?

21 A. No.

22 Q. And it's good meeting you. You wrote a statement
23 that night, right?

24 A. Yes, I did.

25 MS. LITTLEJOHN: Your Honor, if I may

MELVIN POWELL - CROSS BY MS. LITTLEJOHN

1 approach the witness.

2 THE WITNESS: Go ahead.

3 BY MS. LITTLEJOHN:

4 Q. I'm just going to show you for identification --

5 A. Okay.

6 Q. Have you seen your statement lately?

7 A. Not recently. Within the last week or so, yes.

8 Q. Would it help you just to refresh your memory to
9 look at it?

10 A. Yeah. This is great. That is my handwriting.

11 Q. And you wrote that the night of, right?

12 A. Yes, ma'am.

13 Q. Okay. And on your statement, basically tell us
14 exactly what you said here, that you're leaving Wal-Mart,
15 you left off the Christmas shopping part, don't blame
16 you, and you noticed the police there and y'all go in.

17 You switched to the middle lane like you talked
18 about. You saw two men, approximately five-nine to
19 five-eleven, 160 to 180, crossing the road from the
20 wooded area in front of the Zaxby's, is what you said,
21 and you said then -- you said they were hunched down a
22 bit.

23 A. Well, they were -- and it appeared, as best I can
24 recall, they were looking away from us.

25 Q. They weren't just --

MELVIN POWELL - CROSS BY MS. LITTLEJOHN

1 A. I don't know whether they were carrying something
2 and they were running across the road. I know they
3 were -- they came from a crouched position. I did see
4 them crouch before they crossed the road.

5 Q. So as they're running, they're not standing up
6 straight?

7 A. They're not just walking across the road.

8 Q. Not just meandering?

9 A. Right.

10 Q. So that description of five-nine, five-eleven, is
11 what's reflective of in the crouched position, right?

12 A. Correct.

13 MS. LITTLEJOHN: I have no further questions,
14 Your Honor.

15 THE COURT: Any redirect?

16 MR. WEST: No redirect, Your Honor.

17 THE COURT: You may step down. Thank you.
18 Are you okay with him being free to go?

19 MS. LITTLEJOHN: Yes.

20 THE COURT: You're free to go. Thank you.

21 MR. WEST: The State calls Officer Schrader.

22 DAVID SCHRADER,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

DAVID SCHRADER - DIRECT BY MR. WEST

1 BY MR. WEST:

2 Q. Good morning, Officer. Where do you work?

3 A. I work for the Goose Creek police department.

4 Q. What is your title and rank?

5 A. My rank is patrolman first class. I'm also a
6 field training officer.

7 Q. How long have you worked for the Goose Creek
8 police department?

9 A. I first started working for them in 2005.

10 Q. Could you describe for the jury your educational
11 background and experience.

12 A. I have a high school diploma. I have some
13 college. I did not receive a degree.

14 Q. Do you have any law enforcement training?

15 A. Through the department, yes, sir. I'm certified
16 in speed measuring devices, data master certification and
17 operation, precision rifle, precision marksman, field
18 training officer, and specific skill instructor.

19 Q. Do you remember the night of December 23rd, early
20 morning hours of December 24th, 2011?

21 A. Yes, sir.

22 Q. Can you remember the events that bring us here
23 today?

24 A. Yes, sir. Shortly after midnight, we received a
25 call for an armed robbery in progress at the Zaxby's

DAVID SCHRADER - DIRECT BY MR. WEST

1 located on St. James Boulevard. I was in the area of --
2 on Moncks Corner Road near the police station. My
3 recruit was driving. I had the recruit with me. It was
4 Officer Norton. We responded to the scene. We were not
5 the first ones on the scene, but we did get there in
6 short order.

7 Q. You said you arrived on scene. Who else was on
8 scene when you arrived?

9 A. At a minimum, I know Lieutenant Convery was on the
10 scene, and I believe there were two other cars that were
11 already in the parking lot. I do not recall positively
12 who else was on scene.

13 Q. When you arrived on scene, what was your role in
14 the investigation?

15 A. Initially, we were there to determine for sure
16 what had happened shortly -- almost immediately upon our
17 arrival, we determined there was an armed robbery that
18 occurred and a perimeter was being set up. There was --
19 Lieutenant Convery had already proceeded into the
20 roads --

21 MS. LITTLEJOHN: I believe the officer he's
22 referencing will need to testify what he did. He can
23 only testify if he saw an action, I believe. Even if
24 he's his supervisor, I don't think he can testify to that
25 because he has to see what he saw, is what -- hearsay.

DAVID SCHRADER - DIRECT BY MR. WEST

1 THE COURT: Well, he's not offering anything
2 yet for proving the truth of the matter asserted, he's
3 just saying what they did to set up a scene, set up a
4 perimeter, as I understand.

5 MS. LITTLEJOHN: As long as he personally was
6 involved and did it.

7 THE COURT: He said he was a supervisor, and
8 he can say what he told people to do, what he got done.

9 MR. WEST: Thank you, Your Honor.

10 BY MR. WEST:

11 Q. Officer, continue.

12 A. I did not proceed with Officer Convery into the
13 woods, just because -- the time of night, he already had
14 a head start. I didn't want to confuse things and so
15 forth, so I went back towards Zaxby's at which time
16 Sergeant Horner was on scene. He had us secure the
17 building, go in, make sure -- do security sweep of the
18 building to make sure there were not any bad guys still
19 in the building.

20 Q. So you went into Zaxby's?

21 A. Yes, sir.

22 Q. Did you talk to anybody inside?

23 A. Throughout the course of my time there, I spoke
24 to, I believe, everybody that was inside at the time of
25 the incident.

DAVID SCHRADER - DIRECT BY MR. WEST

1 Q. Did you -- describe what you mean by a secure
2 sweep of the building.

3 A. To make sure they weren't any suspects in there,
4 any hostile people still within the building.

5 Q. During this time, are you looking in particular
6 for any evidence?

7 A. I keep an eye out for evidence, anything that I
8 did not -- I don't want to disturb that could be
9 potentially used as evidence, but my primary concern
10 during that sweep is to make sure there were not any
11 hostiles still in there to ensure the safety of everybody
12 still in the building.

13 Q. Did you find anything of significance while you
14 were inside?

15 A. Yes, sir. As I went through the door from the
16 lobby area into the employee area, I did observe a spent
17 cartridge on the floor right there by the door, which I
18 have quite a lot of experience with weapons, recognized
19 it as a 22 caliber or very, very close to that.

20 Q. Could you describe what you meant by spent
21 cartridge.

22 A. A bullet that had already been shot. It's a brass
23 casing that is left over, minus the projectile powder
24 inside.

25 Q. Did you disturb it in any way?

DAVID SCHRADER - CROSS BY MS. LITTLEJOHN

1 A. Absolutely not. I did my utmost ability to make
2 sure that did not get disturbed at that point because I
3 knew it was going to be evidence.

4 Q. Were you present during any photographing or
5 anything at the scene?

6 A. I was there during the photographing of the
7 general scene. That specific item, I don't recall.

8 Q. Did you ever leave the restaurant to assist in any
9 other investigation?

10 A. I did. I exited the building once or twice,
11 primarily to speak to other people outside, witnesses, as
12 well as my supervisor, Sergeant Horner.

13 Q. Does Officer Convery still work with Goose Creek
14 police department?

15 A. No, sir. He got rehired by Camden police
16 department, up in New Jersey.

17 Q. He has gone back to that agency.

18 MR. WEST: No further questions at this time,
19 Your Honor.

20 THE COURT: Cross?

21 MS. LITTLEJOHN: Yes.

22 CROSS-EXAMINATION

23 BY MS. LITTLEJOHN:

24 Q. Officer Schrader, just briefly, so primarily other
25 folks had gotten there, other police officers had gotten

DAVID SCHRADER - CROSS BY MS. LITTLEJOHN

1 there; is that right?

2 A. Yes, ma'am.

3 Q. And you and your recruit, I think you said Norton?

4 A. Yes, ma'am.

5 Q. Came up and you saw the spent cartridge, secured
6 it until CSI would get there?

7 A. I secured the area so it would not get disturbed.

8 Q. And we don't know if it was kicked around or not
9 beforehand.

10 A. No, ma'am.

11 Q. And we don't know what happened when the first
12 officer arrived because you weren't there, right?

13 A. I know by radio he said he was pursuing somebody
14 into the woods, but I didn't personally observe him going
15 into the wood, no, ma'am.

16 MS. LITTLEJOHN: Okay. I don't have any
17 further questions. Thank you very much.

18 THE COURT: Any redirect?

19 MR. WEST: No redirect, Your Honor. Thank
20 you very much.

21 THE COURT: You can step down.

22 MS. TAYLOR: Can the officer be released from
23 his subpoena?

24 THE COURT: Yes. Any problem with that?

25 MS. LITTLEJOHN: I'm fine with it.

SCOTT COOK - DIRECT BY MS. TAYLOR

1 THE COURT: You're free to go.

2 MS. TAYLOR: State calls Sergeant Scott Cook.

3 SCOTT COOK,

4 having been first duly sworn,

5 was examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. TAYLOR:

8 Q. Where are you employed?

9 A. Berkeley County sheriff's office.

10 Q. How long have you been working?

11 A. Nineteen years.

12 Q. What do you do for Berkeley?

13 A. Currently I'm a sergeant in the K-9 unit.

14 Q. And tell the jury, if you would, a little bit
15 about what that means.

16 A. Basically, I supervise the people under me, but
17 I'm also a patrol unit. I get out, stop cars, back up
18 patrol units on calls where a dog is needed, run tracks,
19 looking for drugs.

20 Q. And how long have you been with the K-9 unit?

21 A. Sixteen years.

22 Q. As part of your duties with the K-9 unit, is there
23 a training involved?

24 A. Lots of training.

25 Q. And tell the jury about that training, please.

SCOTT COOK - DIRECT BY MS. TAYLOR

1 A. Initially when we get these dogs, we get them
2 green, which means they have no training. We get them
3 from overseas from a vendor in Kentucky. We bring them
4 back here. After they're assessed, I bring them back and
5 take six weeks training them to their full capacity. And
6 then once their six weeks is finished, they get
7 nationally certified and their training never stops. We
8 train every Tuesday.

9 Q. And what do the dogs have to do to be certified
10 nationally?

11 A. It's a pass/fail course, but they have to do
12 everything, every discipline they're trained in. They
13 have to pass every discipline set by a minimum standard
14 by the North American Police Dog Association.

15 Q. What are some of those searches?

16 A. Area search, article search, building search,
17 tracking, aggression, obedience, and narcotics.

18 Q. And the dogs that you have Berkeley County, are
19 they tested in all of those areas?

20 A. The dual purpose dogs are, yes.

21 Q. And the dog you have now, was that the same dog
22 you had back in December 2011?

23 A. It is.

24 Q. Could you tell the jury what area your dog is
25 trained in?

1 A. My dog holds what is called a police utility
2 title, which means he's certified in all the disciplines
3 first time around with no failures.

4 Q. What kind of dog do you have?

5 A. I have a Czech Shepherd.

6 Q. And can you tell the jury, is there a difference
7 between the different types of dogs that are used in K-9?

8 A. Everybody has their own favorite. We use Belgian
9 Malinois. We also use what's called a Malinois Herder
10 which is a mix between a German Shepherd and Belgian
11 Malinois, German Shepherds, Bloodhounds; some departments
12 use Labs. We primarily use German Shepherds.

13 Q. Why is that?

14 A. Just because of the reliability of them. Their
15 health. If you get Belgian Malinois, they're usually
16 kind of high-strung, not good for a handler because
17 they're high-strung German Shepherd is more calm.

18 Q. Is there a difference in the type of training or
19 the types of certifications or areas that different
20 breeds of dogs are trained in?

21 A. As far as the dual purpose dogs, no. The Malinois
22 the Shepherds are usually more for aggression control,
23 but they are used as single-purpose dogs, which they only
24 do tracking or just drugs or something like that, and
25 then the Bloodhounds are a single-purpose dogs. Labs are

SCOTT COOK - DIRECT BY MS. TAYLOR

1 generally single purpose.

2 Q. What are the single purpose, Bloodhounds?

3 A. Yes. Single purpose are generally Bloodhounds for
4 just tracking, but they're usually used for older tracks,
5 we use them for lost kids, lost elderly adults, stuff
6 like that.

7 Q. You said a Bloodhound is used in older tracks. Is
8 there a difference in how a dog tracks and older track
9 versus a newer track?

10 A. When a human lays a scent, they cause ground
11 disturbance, which means when you step on grass, it
12 automatically, at the time you step on it, starts to
13 decompose, and it makes a different scent than a fresh
14 blade of grass, as it starts to decompose.

15 The longer it starts to decompose, the scent
16 changes. It spreads out, depends on the temperature or
17 the wind, the humidity, and, also, you got skin graphs
18 that are falling off you, millions at a time, every
19 second, so the dogs are trained to track the fresher
20 scent and the ground disturbance, and when they're
21 tracking a fresher scent, they pull harder. They're
22 generally more in a straight line because what we call a
23 scent tone or a scent pattern is closer together because
24 it's more fresh than a scent pattern that has been
25 setting for, say, an hour or two hours. It spreads out

1 over a bigger region, and the dog will generally cast and
2 not pull as hard.

3 Q. When you say the dog casts, what does that mean?

4 A. When a scent spreads out, we call it a cone.

5 Generally, if my tie here is a source order, drugs is
6 usually a source order, and a track, a scent laid by the
7 person, the longer it sits, it spreads out wider.

8 So the actual dog will actually go to the end of
9 that cone or that scent pattern until it doesn't smell it
10 anymore and then come back to where it does smell it, and
11 we call it casting, and with some dogs, you can actually
12 tell where the smell actually stops and how far it
13 spreads out because the dog will actually stop, lift its
14 head up, and come back and drop his head down.

15 Q. I want to make sure I'm understanding you
16 correctly. On a newer scent, your dog goes more in a
17 straight line?

18 A. That's correct.

19 Q. And on a older scent, it's back and forth?

20 A. He's not pulling as hard because he's starting to
21 work harder to draw that scent into his nose.

22 Q. And as a trainer, is that one of the things you
23 guys are trained to look for?

24 A. Yes. Our job as trainers is to not only train the
25 dog, but we have to train the handler, how to read what

SCOTT COOK - DIRECT BY MS. TAYLOR

1 the dog is trying telling him. As a handler, you're
2 basically reading your dog's body posture and behavioral
3 changes to see what he's trying to tell you, and on an
4 older track, when they're tasking, when we're tracking on
5 a 15-foot tracking lead, on an older track, the dog will
6 actually leave a little bit of loop in the line compared
7 to a fresh track, what we call a hot track, he's pulling
8 extremely hard. His tail is down. His head is down, and
9 he's pretty much dragging you away.

10 Q. And that's something you do in training?

11 A. Yes, it is.

12 Q. Do you work with one dog or do you have more than
13 one dog?

14 A. I have two dogs. I have a Bloodhound and a German
15 Shepherd.

16 Q. Do you use them for different things?

17 A. I do.

18 Q. Could you tell the jury about that.

19 A. The German Shepherd is generally used for hotter
20 tracks, patrol tracks, criminal tracks, compared to the
21 Bloodhound that, like I said, we use basically for kids
22 that go missing, elderly adults, Alzheimer's patients,
23 stuff like that, because they're not an aggressive dog.

24 Q. Is there a difference in using Bloodhound versus a
25 Shepherd, for instance, when you have a known scent

SCOTT COOK - DIRECT BY MS. TAYLOR

1 versus just trying to find the track?

2 A. Yes. The Bloodhounds typically we train to offer
3 a scent article, because when we got missing adults or
4 missing children, we are able to obtain scent articles
5 from bed linens, clothes, that type of thing, and we can
6 send the dog off, and we teach that dog to hunt for that
7 specific scent on a track. Compared to German Shepherds,
8 we train them to track hot tracks, tracks that are
9 generally less than an hour old because it's usually a
10 fresh crime they're going to. It's not something that a
11 parent may realize three hours later that their kid is
12 missing.

13 Q. So when the German Shepherd is tracking, is it
14 tracking one particular scent or just the disturbance in
15 the cells you mentioned earlier?

16 A. Yeah, it's generally tracking just the combination
17 of human odor and fresh ground disturbance.

18 Q. So it's possible for a Shepherd to hit multiple
19 scents in the same area?

20 A. Absolutely.

21 Q. Back in December 2011, you were working a K-9?

22 A. Yes I was.

23 Q. And what dog did you have?

24 A. Gotcha, my German Shepherd.

25 Q. His name is Gotcha?

SCOTT COOK - DIRECT BY MS. TAYLOR

1 A. Yes, ma'am.

2 Q. Did you name him?

3 A. I did.

4 Q. Do you remember being called for a agency assist
5 to Goose Creek on December -- it would have been the very
6 early morning hours, right around midnight, of December
7 24, 2011?

8 A. I do.

9 Q. Could you tell us how that call came in.

10 A. We got a call to assist Goose Creek city with an
11 armed robbery that had happened at the Zaxby's on 176.
12 Once I got on scene, I was told by the officers on the
13 scene that two individuals were seen running across
14 Highway 176 and entering into the Foxborough subdivision.

15 We generally start our tracks from the last known
16 point where the suspects or individuals were seen, just
17 because there was a fresher track to start, so I started
18 my dog at the entrance of Foxborough, casted him, and he
19 immediately went nose to ground, tail down, started
20 dragging me. We angled through the front yard of a house
21 that sat on the corner, ran down the front yard of the
22 house, I believe it was Silver Fox Lane, down the front
23 yards, where we encountered some money on the ground.

24 The dog continued to drag me. We wound up at the
25 end of Swamp Fox Lane, which turns into a cul-de-sac, and

SCOTT COOK - DIRECT BY MS. TAYLOR

1 then a road turns to the left of that. The dog entered
2 the cul-de-sac, went to the back of the cul-de-sac, and
3 lost scent, went head up and started searching around.
4 At that point, not knowing where the suspects went, kind
5 of thought they maybe got into a vehicle at that point,
6 wasn't really sure, so we checked the area, and that's
7 when we went across the street, onto the corner, and the
8 dog picked up a scent.

9 I could tell it wasn't a fresh sent. It was an
10 older track for the purpose of -- the line was not as
11 taut. The dog was casting a lot more, and he wasn't
12 pulling near as hard.

13 Q. And you've been looking over here. We've got it
14 set up for you, but do you recognize what's been
15 previously marked as State's Exhibit No. 39 for
16 identification?

17 A. I do.

18 Q. Could you tell the jury what that is, please.

19 A. That's an aerial photo of the Foxborough
20 subdivision.

21 Q. In front of you is a little pointer. If you hit,
22 I think, the red button, a red light will show up and
23 that might help. So I just want to back up.

24 Can you show the jury on that map where you
25 started the original track.

SCOTT COOK - DIRECT BY MS. TAYLOR

1 A. Yeah. We started right there.

2 Q. And that was based on information you received
3 from other officers?

4 A. Officer, yeah. That was told to him by a witness
5 they were seen crossing.

6 Q. Okay. And from that point, you said that Gotcha
7 immediately picked up a scent?

8 A. Yes.

9 Q. And in your experience, to you that seemed to be a
10 fresh scent?

11 A. Yes, it was.

12 Q. Based on the way Gotcha was reacting?

13 A. He did what we call a head turn, very abrupt head
14 turn. He snapped his head, and immediately nose to
15 ground, tail down, one of the cues we look for when the
16 dog is on a hot fresh scent.

17 Q. He's basically dragging you?

18 A. He's dragging me.

19 Q. If you don't mind, with the pointer, if you could
20 just show the jury where Gotcha pulled you until you
21 found that money you mentioned?

22 A. We started here. We went up the edge of this road
23 and actually cut the corner here on this yard. We went
24 down the edge of this yard, and we counted the money
25 right where -- I don't remember where the address was,

SCOTT COOK - DIRECT BY MS. TAYLOR

1 but right where the yellow box was. It was in the front
2 area.

3 We went past that. I told the officer that was
4 running with me to let his people know that they need to
5 come and secure that as evidence. We continued down the
6 front yards. We went into this cul-de-sac and actually
7 stopped right here.

8 Q. And is that in front of what is marked [REDACTED]
9 [REDACTED]

10 A. It is, and at the time there was actually a car
11 parked in the cul-de-sac.

12 Q. When you got to right in front of [REDACTED]
13 [REDACTED] how did Gotcha react to let you know he lost the
14 scent?

15 A. His head came up, tail came up, started circling,
16 sniffing around the area, trying to reacquire a track.

17 Q. Is that what he's trained to do?

18 A. Yes, it is.

19 Q. When you dog loses the scent, as a handler, what
20 are you trained to do?

21 A. Dogs don't have reasoning skills, so as the
22 handler, we have to take and be the human part of the
23 time and direct our dogs to go search other areas. We do
24 it on tracking. We're trained to do what is called
25 four-cornering or cutting 45s as well. The

1 four-cornering is when you come to a situation like this
2 or a four corner or three corner there, to check all four
3 corners to make sure they didn't cross the street or go
4 in a different direction.

5 Q. And did you do that?

6 A. I did.

7 Q. Show the jury where you went.

8 A. We went across the street here, and that's where
9 he picked up the older scent, and he did track, but as I
10 said, it was much looser. Didn't have the intensity and
11 the pull that it had on this track. We wound up tracking
12 down the edge on this, across the street, down the end of
13 the street to the front door of this residence right
14 here.

15 Q. Is that the residence marked at 310 Red Fox Lane?

16 A. Red Fox, yes, ma'am.

17 Q. And you said you could tell it was an older track?

18 A. Yes, ma'am.

19 Q. Explain to the jury what -- what his difference
20 was between the first portion of the track and the
21 second.

22 A. His body language changed drastically. Like I
23 said, he wasn't pulling as hard. He was casting a lot
24 more. He was actually going from side to side from the
25 edge of the road to -- I think there was a fence there.

SCOTT COOK - DIRECT BY MS. TAYLOR

1 He was casting probably three to four feet on each side,
2 and his pull wasn't as intense. He wasn't dragging me
3 like he was earlier, leaving a loop in the line.

4 Q. And based on your experience, did you feel like
5 those two tracks were related?

6 A. No, I didn't.

7 Q. As a K-9 handler, even when you don't feel, based
8 on human reasoning, that the track is related to what
9 you're looking for, are you still obligated to follow the
10 track?

11 A. Sure. We have to investigate it. The ideal track
12 is somebody at the end of it. In this case, there
13 wasn't. We thought maybe either they -- like I said, had
14 gotten in the car here or probably crossed the road or
15 went in a different direction, but when we crossed the
16 street here and got him on this track, I knew it was a
17 much older track than what he was previously on so it
18 wasn't as fresh and it could have been somebody that
19 walked there.

20 Q. Were you able to find that hot fresh track again?

21 A. No, I was not.

22 Q. So it ended up in the area of [REDACTED]

23 A. It did.

24 Q. He said it took you to the address -- I think it's
25 on Red Fox Lane?

SCOTT COOK - CROSS BY MS. LITTLEJOHN

1 A. Yes, 310 Red Fox.

2 Q. Were you there when officers were able to make
3 contact with the people inside?

4 A. I was.

5 Q. To your knowledge, was anything found in
6 connection with the armed robbery there?

7 A. No, it was not.

8 MS. TAYLOR: Nothing further at this time,
9 Your Honor.

10 THE COURT: Cross?

11 CROSS-EXAMINATION

12 BY MS. LITTLEJOHN:

13 Q. Officer Cook, on that track you're talking about
14 there, can we tell -- you talk about -- the older track
15 and newer track and all of that.

16 A. Yes, ma'am.

17 Q. But we don't know what time frame on those, do we?
18 We can't say?

19 A. No, ma'am.

20 Q. Thirty-two minutes or whatever.

21 A. No.

22 Q. But it's not like a day, is it?

23 A. No, it's not a day. It's usually within -- older
24 tracks that spread out that wide, two, three feet,
25 depending on the ground conditions and the weather --

SCOTT COOK - CROSS BY MS. LITTLEJOHN

1 wetter grounds hold track -- or human scent more tightly,
2 so you're looking probably within an hour or two hours.

3 Q. Okay. So -- okay. I didn't know.

4 A. Yeah.

5 Q. I appreciate it.

6 Now, you got there about -- if the 911 record said
7 you got there -- that you were on the scene about 12
8 minutes after midnight, would you agree that is about
9 right?

10 A. Yeah. That is probably about right.

11 Q. And you were running, I think, with Officer
12 Robinson who was running with you?

13 A. I believe it was Officer Robinson, yes.

14 Q. And you stopped at [REDACTED] -- you first stop at 310,
15 and you get money.

16 A. Well, we didn't stop. We blew over top of the
17 money.

18 Q. Okay. Then you go to [REDACTED] and then you try to
19 redirect and check things out again, and you go over to
20 310 Red Fox?

21 A. Correct.

22 Q. Now, you were at 310 Red Fox for a while, weren't
23 you?

24 A. Yes, ma'am, we were.

25 Q. Trying to get people to come to the door?

SCOTT COOK - REDIRECT BY MS. TAYLOR

1 A. Yes, ma'am.

2 Q. Didn't you go back to your car and get the
3 PA system or something?

4 A. Not my car, no, ma'am. Other officers showed up
5 on the scene, and they were using the loudspeaker to
6 address the people inside.

7 Q. And you eventually found people inside, right?

8 A. Yes, ma'am.

9 Q. And nobody wasn't -- you didn't go to [REDACTED] the
10 bottom, [REDACTED] You stopped right at the road?
11 Officers didn't go inside there?

12 A. Not inside there, no. Not to the residence, no.

13 MS. LITTLEJOHN: Court's indulgence.

14 I don't have any further questions.

15 MS. TAYLOR: Briefly, Your Honor.

16 REDIRECT EXAMINATION

17 BY MS. TAYLOR:

18 Q. I neglected to ask you earlier, did you do any
19 other tracks related to this case?

20 A. Oh, yes, ma'am, I did. I'm sorry, yes.

21 Q. Did you go back to the restaurant?

22 A. Yes, I did.

23 Q. Could you tell the jury what happened there.

24 A. Yes, ma'am. We brought the dog back, just mainly
25 to see where they ran, and if anything else was dropped,

SCOTT COOK - RE CROSS BY MS. LITTLEJOHN

1 like the money was at 310. We brought the money back to
2 where they were last seen running. I believe it's by the
3 Dumpster area. The dog picked up on a track, and we went
4 in and we could see fresh ground disturbance. There was
5 pine straw that was turned up, tree branches broken, all
6 that kind of stuff, and the dog tracked and actually
7 tracked into the wood line and made a loop and came out
8 right in front -- right where they crossed that,
9 actually, and we came to a tree, and the dog actually bit
10 and picked up a black ski mask that was sitting next to a
11 tree, and there was also some money there as well.

12 MS. TAYLOR: All right. Thank you. No
13 further questions.

14 RE CROSS EXAMINATION

15 BY MS. LITTLEJOHN:

16 Q. On that line of questioning, it's sort of a
17 redirect, recross, rather -- and let me flip it over,
18 because here we don't -- can you see this Zaxby's in this
19 picture real well?

20 A. Yes.

21 Q. Okay. Okay. And can you show us -- and I would
22 ask you, actually, instead of with the pointer, because
23 those things, at least I think, they can be jumpy. When
24 you went back to Zaxby's, which way -- where did you
25 start when you went back to Zaxby's?

SCOTT COOK - RECROSS BY MS. LITTLEJOHN

1 A. Right here.

2 Q. At that parking spot?

3 A. By the Dumpsters area here.

4 Q. And then which way did the dog pull you?

5 A: We went in here and circled and came out right
6 here. He made, like, a loop.

7 Q. A loop?

8 A. Yeah, like a half --

9 Q. Running away from the Dumpster towards Foxborough?

10 A. Correct.

11 Q. He did not at all yank you back to the left
12 towards -- I think that's Coveney Green back in there?

13 A. I'm not sure what's behind there, but no.

14 Q. He didn't yank you back up catty-corner, as though
15 you're going behind or anywhere behind the Dumpster,
16 right?

17 A. No. It kind of went right in here. There is
18 almost like a little path looking thing, and then we went
19 off the path and into the woods. Like I said, you could
20 see where there was pine straw busted up and kicked up.

21 Q. Just so we have a record clear, that at the
22 Dumpster the dog took you towards Foxborough, not away
23 from Foxborough?

24 A. That's correct.

25 MS. LITTLEJOHN: Okay. Thank you. I have no

TODD MASON - DIRECT BY MS. TAYLOR

1 further questions.

2 THE COURT: You're free to go. All right.

3 This ought to be a good place to take a rest
4 room make. Let's take about ten, fifteen minutes, and
5 we'll come back. Again, remember, don't begin
6 deliberations or discussions about the case. We'll see
7 you back in about ten, fifteen minutes.

8 (Recess taken.)

9 THE COURT: Let the record reflect the
10 defendant is in the courtroom.

11 (In open court, jury present.)

12 THE COURT: All right. We'll resume with the
13 State calling the next witness.

14 MS. TAYLOR: The State calls Todd Mason.

15 TODD MASON,

16 having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MS. TAYLOR:

20 Q. Mr. Mason, where are you employed?

21 A. Currently with GEICO Insurance.

22 Q. Where were you employed before that?

23 A. City of Goose Creek police department.

24 Q. What did you do for Goose Creek?

25 A. I was a cell investigator.

TODD MASON - DIRECT BY MS. TAYLOR

1 Q. How long did you work there?

2 A. I worked at Goose Creek right at 12 years.

3 Q. And were you employed as such in December 2011?

4 A. Yes, ma'am, I was.

5 Q. As a criminal investigator, can you briefly
6 describe for the jury your job description.

7 A. Sure. I was assigned criminal cases for
8 additional follow-up work. It typically entailed
9 interviewing and helping process crime scenes,
10 interviewing witnesses and making factual supplemental
11 reports to document, you know, my actions throughout a
12 case.

13 Q. As part of being a criminal investigator, were you
14 on call?

15 A. Yes. We were on call in a rotation based
16 schedule. I think at the time it was anywhere from every
17 five to six weeks. I think we're on call for a week at a
18 time.

19 Q. And were you on call the evening of December 23rd
20 into the morning of December 24th, 2011?

21 A. Yes, ma'am, I was.

22 Q. Did you respond to an incident at the Zaxby's in
23 Goose Creek?

24 A. Yes, I did.

25 Q. And this may seem like a silly question, but what

TODD MASON - DIRECT BY MS. TAYLOR

1 county is that located in?

2 A. It's in Berkeley County.

3 Q. Thank you. How did the call came out?

4 A. It came to me through the dispatch center, which
5 is typical. We were notified when we were needed. Came
6 out as Zaxby's was robbed and there was -- an employee
7 had been shot.

8 Q. And did you respond directly to the Zaxby's?

9 A. I had started to go directly to Zaxby's, but
10 another, I guess, crime scene had established and went to
11 kind of just make sure both scenes were kind of secured,
12 do what I needed to do as the investigator.

13 Q. Do you remember where that other scene would have
14 been?

15 A. It was in the Foxborough subdivision. I want to
16 say it was either 310 or 320, Fox Hunt maybe, I believe.

17 Q. If I said 310 Red Fox Lane, would that sound
18 familiar?

19 A. That's correct.

20 Q. And after you responded to that scene, was
21 anything of value located at that scene?

22 A. While I was on scene, no.

23 Q. Okay.

24 A. I was told that some cash, I believe a \$20 bill,
25 was found along a track that was done by Berkeley

TODD MASON - DIRECT BY MS. TAYLOR

1 County's K-9 unit and had led to that residence, the
2 track did, but I believe there was a \$20 bill found along
3 that track.

4 Q. Let me show you this map situated over here to
5 your right. It's been previously marked as State's 39,
6 and I just want to make sure we're all talking about the
7 same then. You'll see on this map, Mr. Mason, that there
8 are actually two addresses, well, three addresses, two of
9 which are marked as Swamp Fox Lane and one of which is
10 marked as Red Fox Lane. Does that look familiar?

11 A. Yes, it does.

12 Q. And the address that you're talking about, where
13 the money was found, is that on Swamp Fox Lane or on Red
14 Fox Lane?

15 A. I believe it was on Swamp Fox, if my memory serves
16 me correct.

17 Q. And you responded, I think you said, to the Red
18 Fox location?

19 A. That is correct.

20 Q. So there's nothing found at the Red Fox Lane
21 location?

22 A. That is correct.

23 Q. Okay. But the money you were told had been found
24 at 310 Swamp Fox?

25 A. Yes, ma'am.

TODD MASON - DIRECT BY MS. TAYLOR

1 Q. And to your knowledge, was that money collected?

2 A. It was.

3 Q. After you responded to the Red Fox Lane location,
4 and found out that nothing was going on there related to
5 your case, did you then go to the Zaxby's?

6 A. I did.

7 Q. And what happened when you got to the Zaxby's?

8 A. It had already been cordoned off, if you will, and
9 folks were kind of securing it at that point. I guess I
10 need to back up a little bit, first of all, just to make
11 a correction.

12 Red Fox Lane, it was being held also because a dog
13 had tracked to that residence, and I was going to draft a
14 search warrant, so I did leave from Red Fox to go to our
15 city police department to start typing the search warrant
16 for that residence because we weren't getting a response
17 at the time and we thought maybe there might be suspects
18 or evidence inside based on the track.

19 So when I was typing that search warrant, I got
20 notification that they got consent to go in and clear the
21 residence and no one fitting the description of a robbery
22 was inside and no evidence to speak of was found, and so
23 after that, then I left the police department because it
24 was no longer needed for me to type that search warrant,
25 then I went to Zaxby's.

TODD MASON - DIRECT BY MS. TAYLOR

1 Q. So for lack of a better word, the scene at Red Fox
2 had been cleared?

3 A. Right.

4 Q. Not related, nobody there?

5 A. Exactly.

6 Q. Then you went to Zaxby's?

7 A. Exactly.

8 Q. Thank you for clearing that up.

9 When you got to the Zaxby's, you said it had been
10 cordoned off and everybody was kind of --

11 A. That's correct, and I believe by this point I had
12 already called for Wendy Myers, our crime scene tech, and
13 I believe she had just arrived prior to me.

14 Q. Okay. Did you get notification of any evidence
15 that was found outside of the Zaxby's?

16 A. At some point, yes, I did.

17 Q. And tell us what that notification was.

18 A. That notification came again from the Berkeley
19 County's K-9 unit. They had found a ski mask, and I
20 believe a \$5 in the woods adjacent to Zaxby's, which
21 would be on the upper side of that -- what's marked
22 Zaxby's in that yellow triangle, it would have been to
23 the upper -- to the right of it, if you're looking at the
24 front of it, but in this description, it's above it to
25 the top, in that wooded area.

TODD MASON - DIRECT BY MS. TAYLOR

1 Q. Mr. Mason, I'm going to show you what's previously
2 been marked for identification as State's 11 and 12 and
3 ask if you can identify those.

4 A. Yes, these are the photographs that I took.

5 Q. Is that an accurate reflection of how it looked
6 that evening?

7 A. Yes, it is.

8 Q. Is that the location where the ski mask and money
9 was found?

10 A. Yes, it is.

11 MS. TAYLOR: At this time we move State's 11
12 and 12 into evidence.

13 MS. LITTLEJOHN: Without objection, Your
14 Honor.

15 THE COURT: Admitted.

16 (State's Exhibit Nos. 11 and 12 were marked
17 for identification and admitted into evidence.)

18 MS. TAYLOR: Permission to publish, Your
19 Honor?

20 THE COURT: You may.

21 BY MS. TAYLOR:

22 Q. This is No. 11. Could you tell the jury what
23 we're looking at in this picture.

24 A. Again, this is that wooded area, the lot next to
25 Zaxby's. Typically, what I do is I take an overall shot

TODD MASON - DIRECT BY MS. TAYLOR

1 of the scene, and then I gradually move in to kind of
2 pinpoint what I'm actually photographing because it's a
3 little bit difficult to see what I am photographing, so
4 to get a general shot of the area, I always start wide
5 and move into the tighter shot for the actual evidence
6 itself.

7 So this would be the wooded area, and what we
8 tried to do is to kind of give you an idea of where the
9 evidence was found. If you'll see kind of in this -- I
10 don't know how to point to it, but there's a flashlight
11 on -- there is a pointer right here? Okay.

12 Right here is an officer's flashlight, and he's
13 pointing down at the ground. That's kind of illuminating
14 that ski mask and that \$5 bill.

15 Q. And when you took this picture, were you standing
16 with the road to your back?

17 A. Yes, I was.

18 Q. Okay. If you could put in No. 12 for me, please,
19 and tell us what we see in this picture.

20 A. That is the ski mask and then the \$5 bill.

21 Q. Is that the officer in the left-hand corner?

22 A. Yes, it is.

23 Q. Okay. Were you able to collect that ski mask that
24 evening, Mr. Mason?

25 A. Yes, ma'am, I was.

TODD MASON - DIRECT BY MS. TAYLOR

1 Q. And I'm going to show you what's been previously
2 marked as State's 13 and hand you some gloves. If you
3 could, open that package for me and see if you can
4 identify that.

5 A. The contents are the ski mask.

6 Q. And is that the same ski mask you collected that
7 evening from outside Zaxby's?

8 A. It appears to be, yes.

9 MS. TAYLOR: At this time we would move
10 State's 13 into evidence.

11 MS. LITTLEJOHN: Without objection, Your
12 Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 13 was marked for
15 identification and admitted into evidence.)

16 BY MS. TAYLOR:

17 Q. Before you put that back in there, could you pull
18 it out for me and hold it up so the jury can see the
19 front of it and where the cut-offs are?

20 A. It's a pretty typical ski mask. It's got the
21 mouth holes and eye holes.

22 Q. All right.

23 MS. TAYLOR: Thank you, Mr. Mason. No
24 further questions.

25 THE WITNESS: Okay.

TODD MASON - CROSS BY MS. LITTLEJOHN

1 THE COURT: Cross?

2 CROSS-EXAMINATION

3 BY MS. LITTLEJOHN:

4 Q. Officer Mason, I know you said you've been at
5 Goose Creek for 12 years?

6 A. I was, yes, ma'am, until recently, until about a
7 year and six months ago.

8 Q. All right. You were a detective there, weren't
9 you?

10 A. Yes, ma'am, for ten years.

11 Q. Pretty good long time. And this case -- when you
12 get assigned a case -- this case was assigned to you,
13 right, was originally yours?

14 A. It was originally mine because I was on call, but
15 it was later reassigned because --

16 Q. You went on vacation?

17 A. Went on vacation, yes, ma'am.

18 Q. Okay. And you worked -- how many crime scenes do
19 you figure you worked?

20 A. I couldn't even begin to guess. Several.

21 Q. A lot of them?

22 A. Yes, ma'am, oh yes.

23 Q. Do a lot of follow-up on them?

24 A. Yes, ma'am.

25 Q. A lot of detailed follow-up?

TODD MASON - CROSS BY MS. LITTLEJOHN

1 A. That's right, yes, ma'am.

2 Q. Okay. Appreciate it. One quick question. You
3 said they were typing up a search warrant. Is that sort
4 of the norm that the officers, detectives, would type up
5 the search warrant and the affidavit and then they
6 present them to the magistrate?

7 A. Yes.

8 Q. So search warrants are typically typed by that
9 particular officer presenting it?

10 A. Yes.

11 Q. That's the norm?

12 A. Yes.

13 MS. LITTLEJOHN: Okay. Thank you.

14 MS. TAYLOR: Nothing further, Your Honor.

15 THE COURT: You can step down. Thank you.

16 MS. TAYLOR: May Mr. Mason be excused?

17 THE COURT: You're free to go.

18 THE WITNESS: Thank you.

19 MS. TAYLOR: State calls Wendy Myers.

20 WENDY MYERS,

21 having been first duly sworn,

22 was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MS. TAYLOR:

25 Q. Where are you employed?

WENDY MYERS - DIRECT BY MS. TAYLOR

1 A. City of Goose Creek police department.

2 Q. What do you do?

3 A. Crime scene investigator and evidence technician.

4 Q. So you're a CSI tech?

5 A. Yes, ma'am.

6 Q. How long have you been working there?

7 A. For almost ten years.

8 Q. Do you have training to do crime scene
9 investigation?

10 A. I do.

11 Q. And can you tell the jury about that training.

12 A. Sure. Crime scene processing workshops, child
13 fatality investigations, blood pattern splatter
14 recognition.

15 Q. So you're taught how to process a crime scene?

16 A. Correct.

17 Q. Were you working in that capacity back in December
18 2011?

19 A. I was.

20 Q. And do you remember getting a call to Zaxby's in
21 Goose Creek? It would have been December 24th, about
22 midnight.

23 A. Yes, I do.

24 Q. Can you tell the jury how that call came to you.

25 A. Sure. Investigator Mason contacted me and let me

WENDY MYERS - DIRECT BY MS. TAYLOR

1 know he needed my assistance at the crime scene,
2 responded out there. I got there a little after
3 midnight, which would have been the 24th, still. They
4 had recovered a mask in the wooded area.

5 Investigator Mason recovered that mask at my
6 request. We took photographs of the exterior of the
7 business and then the interior of the business, spoke
8 with the victims that were inside, got an idea of what
9 had occurred outside of the restaurant and inside the
10 restaurant, and then we viewed the videotape, which
11 showed the subjects wearing gloves, long-sleeved shirts.
12 So there was really not a whole lot of processing to do
13 as far as fingerprints and DNA, that kind of stuff.

14 Q. If the video and the witnesses hadn't told you
15 would about the gloves, would you have done
16 fingerprinting?

17 A. Yes, yes.

18 Q. But in this case --

19 A. Right.

20 Q. If you know there not wearing gloves --

21 A. It's a waste of resources.

22 Q. So if you're not doing fingerprinting, what did
23 you do to process the scene?

24 A. Took the digital photographs. I recorded the
25 video. We needed to remove the hard drive from the unit,

WENDY MYERS - DIRECT BY MS. TAYLOR

1 and concerned that we might lose the video, I videotaped
2 it with my video camera to make sure that it was saved before
3 we removed the hard drive from the system itself,
4 recovered the projectile that was located on the floor,
5 just inside of the entrance door to the kitchen area, and
6 then the shell casing that was probably about ten feet
7 away from the projectile.

8 Q. When you process a scene, do you have -- is it
9 normal to work outside in, or how do you decide which way
10 to go?

11 A. I always go outside in.

12 Q. And then do you process it based off what the
13 witnesses are telling you what happened?

14 A. Right, correct, right.

15 Q. I'm going to show you, Ms. Myers, what previously
16 been marked as State's 14 through 24 for identification,
17 these have been shown to defense counsel, and ask you if
18 you can just generally look through those and see if you
19 recognize them.

20 A. Yes. These are the photographs I took.

21 Q. And are those accurate photographs of how the
22 scene looked that evening?

23 A. They are.

24 Q. Have they been altered in any way?

25 A. No, they have.

WENDY MYERS - DIRECT BY MS. TAYLOR

1 MS. TAYLOR: At this time we ask State's 14
2 through 24 be admitted.

3 MS. LITTLEJOHN: Without objection, Your
4 Honor.

5 THE COURT: Admitted.

6 (State's Exhibit Nos. 14 through 24 were
7 marked for identification and admitted into evidence.)

8 MS. TAYLOR: Permission to publish them?

9 THE COURT: You may.

10 BY MS. TAYLOR:

11 Q. We're going to put these pictures up on the screen
12 behind you and ask if you can explain to the jury what
13 we're looking at. This is State's 14.

14 A. This is the actual entrance into the kitchen area
15 of the Zaxby's. Behind you would be the entrance door,
16 to go a little bit to the right, and this is that doorway
17 right there where employees only. Further down the hall
18 would be the bathrooms, if that gives you an idea. The
19 eating area is in front of us.

20 Q. Is there anything in this picture -- I know it's
21 kind of hard to see. There is actually a pointer in
22 front of you, if you want to grab that. If you push the
23 red button, it should have a little red light. Was there
24 anything of value found in this area?

25 A. Right there is the shell casing that was

WENDY MYERS - DIRECT BY MS. TAYLOR

1 recovered.

2 Q. And you recovered that shell casing?

3 A. I did.

4 Q. If you could put up 15, please. Is that the same
5 shell casing?

6 A. Yes, it is.

7 Q. And then from this door, can you tell us --
8 actually, while I have this picture up, Your Honor --

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

11 BY MS. TAYLOR:

12 Q. We're going to mark this as State's 26, but if you
13 would identify that for me.

14 A. Yes, ma'am. That's the one we recovered.

15 Q. That's the one shown in the picture here?

16 A. Yes.

17 MS. TAYLOR: State's 26, I think without
18 objection.

19 THE COURT: It's admitted.

20 MS. TAYLOR: Thank you, Your Honor.

21 (State's Exhibit No. 26 was marked for
22 identification and admitted into evidence.)

23 BY MS. TAYLOR:

24 Q. Can you tell what caliber that shell casing is?

25 A. It appears to be a 22.

1 Q. And after you recovered that shell casing, where
2 did you go in the restaurant?

3 A. Further down this hallway, beyond that door, into
4 the kitchen area, the office area. Everything is located
5 in the back of the business, toward the back door.

6 Q. If you could put up 15 for me, please. I think
7 you just kind of walked us through it. So I'll ask you
8 to just describe what we're seeing here.

9 A. This is going to be some of food prep area. That
10 is the drive-through window that's up there, the far
11 edge, and that's going to be on the left once you're
12 walking down that hallway.

13 Q. Was there anything of value found in this area?

14 A. No, ma'am.

15 Q. All right. Next please? 17? What are we looking
16 at here?

17 A. This is leading further back. You can see that's
18 the rear door where entry was made into the business.
19 That's just a loaf of bread there, and down here, in this
20 general area, you can't actually see in this picture,
21 that's just a piece of bread. Then in this area is going
22 to be the projectile that was recovered.

23 Q. And that would -- when you say projectile, what
24 does that mean?

25 A. A spent round, what comes out of the casing. Once

WENDY MYERS - DIRECT BY MS. TAYLOR

1 a bullet is fired, it would actually go into a person or
2 a wall or whatever it would strike.

3 Q. So when a gun is fired, the bullet, for lack of a
4 better word, comes out and separates?

5 A. That's correct.

6 Q. So then you have a shell casing and a projectile?

7 A. Right.

8 Q. And you recovered both of those from the scene?

9 A. Right.

10 Q. If you could put the next one up, please, No. 18,
11 what are we looking at here?

12 A. That is just more of the general area showing some
13 of the change that was dropped on the way out. This is
14 all in that same general area toward the exit door at the
15 rear of the business.

16 Q. Where is the exit door in this -- where would it
17 be located? I don't think it's in the picture?

18 A. It should be back here -- see where the mops are?
19 Kind of up in the --

20 Q. Top middle of the picture?

21 A. Right. That should be an exit going back there.

22 Q. Okay. I think we're on 19, and is that a picture
23 of the back door?

24 A. Yes, it is, and there is the bread down there at
25 the bottom.

WENDY MYERS - DIRECT BY MS. TAYLOR

1 Q. And the stuff that's in front of back door there,
2 it was that way when you arrived at the scene?

3 A. Yes, it was.

4 Q. Kind of knocked over and everything?

5 A. Yes.

6 Q. If you could put up 20 for me, please. Is that
7 just a close-up of back door?

8 A. It is, and the -- just the debris that's left in
9 the floor in front of the door.

10 Q. Okay. 21, please. What is this area?

11 A. That is the actual food preparation area, and
12 behind us is the office. I'm standing kind of in the
13 office doorway, shooting out into the food preparation
14 area.

15 Q. So where you're standing, is the exit door to the
16 left or to the right?

17 A. It's going to be to the left.

18 Q. So around that corner?

19 A. Correct.

20 Q. Okay. And 21? 22, I'm sorry. What is this a
21 picture of?

22 A. That's actually inside the office area. There's
23 the video system up there. This is a printer.

24 Q. And is that how the office appeared when you first
25 responded to the scene?

WENDY MYERS - DIRECT BY MS. TAYLOR

1 A. It is.

2 Q. Was there any money still left in the safe? I
3 don't know if you can tell from that picture.

4 A. I can't tell from the picture. I don't recall.

5 Q. Was the safe open that way?

6 A. It was open that way.

7 Q. Okay. Thank you. And 24? 23. Do you know where
8 this picture is located?

9 A. Yeah. That's those bread things again that were
10 on the left earlier. This is going back toward the exit
11 door, and that right there is going to be the recovered
12 projectile.

13 Q. Is this near the manager's office?

14 A. Yes. It's near the manager's office.

15 Q. And the last one, 24, please. What is that?

16 A. That is a picture of the projectile.

17 Q. The same one that we saw in the last picture, just
18 close up?

19 A. Just close up.

20 Q. And was that recovered?

21 A. It was, yes, ma'am.

22 Q. And to your knowledge, the shell casing that you
23 recovered, was that sent for further testing?

24 A. It was. It was sent to SLED.

25 Q. And SLED is --

1 A. The South Carolina Law Enforcement Division. They
2 do all the ballistics testing for us.

3 Q. You also mentioned -- thank you. You mentioned in
4 your earlier testimony that you -- that there was
5 surveillance video at this Zaxby's?

6 A. Correct.

7 Q. And you weren't able to download that, correct?

8 A. That's correct.

9 Q. So how did you make a copy of it?

10 A. I held the camera as steady as I could and just
11 videotaped the video while it played before we removed
12 the hard drive.

13 Q. I'm going to show you what's been marked as
14 State's 25. Do you recognize this?

15 A. Yes, I do.

16 Q. And could you tell the jury what it is.

17 A. That's my video of the video surveillance.

18 Q. How do you know it's on that disk?

19 A. It's got my initials and date.

20 Q. Did you watch that in its entirety?

21 A. I did.

22 Q. Is it an accurate reflection of the surveillance
23 that you saw on their system that night?

24 A. Yes, it is.

25 Q. Was it altered or changed in any way?

WENDY MYERS - DIRECT BY MS. TAYLOR

1 A. No, it's not.

2 MS. TAYLOR: At this time we ask State's 25
3 be admitted.

4 MS. LITTLEJOHN: That's going to be without
5 objection.

6 THE COURT: Admitted.

7 (State's Exhibit No. 25 was marked for
8 identification and admitted into evidence.)

9 MS. TAYLOR: And may we publish it?

10 THE COURT: You may.

11 BY MS. TAYLOR:

12 Q. The surveillance video at Zaxby's, the screen that
13 you saw in one of those pictures, is it divided into
14 different --

15 A. They have split screens so you can see different
16 things going on inside the restaurant at the same time.
17 If I were watching one to see what was going on at the
18 back door, I could also see what was going on at the
19 counter, things like that, so it's a multi-screen
20 display, so what I did when I videoed it, I did an
21 initial overall and then I go individually screen by
22 screen so you can see as it progresses throughout the
23 business.

24 Q. And are you aware -- there's been previous
25 testimony, but are you aware if the surveillance system

1 at Zaxby's is motion activated?

2 A. I don't know.

3 Q. Were you able to get every screen? Did you report
4 every single screen or were there some screens where
5 nothing was shown?

6 A. If there was nothing shown on the screen in the
7 main one, I did not copy that.

8 Q. Okay.

9 A. That's the initial screen that you'll have with
10 all the clips playing at the same time.

11 Q. It's kind of hard to see on this shot, but you did
12 individual shots of everything?

13 A. Yes.

14 Q. And that's coming up after this?

15 A. Yes, ma'am. That's the manager, inside the
16 office, Ms. Williams.

17 Q. That's her wearing the Santa hat?

18 A. That is.

19 Q. And those are the cash drawers? He's going into
20 the safe there?

21 A. He is. That's the safe there. this is outside the
22 office. There is the refrigerator or freezer to the left
23 and the locker on the right.

24 Q. It's hard to see without pausing that video, but
25 were you able to determine the color of the gloves the

WENDY MYERS - DIRECT BY MS. TAYLOR

1 two men were wearing?

2 A. One was wearing white and the other was wearing
3 black.

4 Q. Were you able to tell how those men were armed?

5 A. There was a knife, what appeared to be a large
6 kitchen style knife in one hand, and the other one had
7 the -- a 22 caliber handgun, or what appeared to be a 22
8 caliber handgun.

9 Q. Thank you.

10 A. It's difficult to see, but the Santa Claus hat
11 would be on the bottom right-hand corner.

12 Q. That would be Ms. Williams on the ground?

13 A. Yes, and that's the exit door, the rear exit door
14 as employees are coming in and out, trying to close up
15 the business for the evening. And that's the suspects
16 entering. One stays at the back with the employees,
17 there and the other comes forward to get the manager's
18 area, and that was the employees getting back on the
19 feed.

20 Q. Were those all of the shots that had any relevant
21 video footage?

22 A. Yes, ma'am, they were.

23 Q. Did you review the others to make sure there
24 wasn't anything you were missing?

25 A. I did.

WENDY MYERS - CROSS BY MS. LITTLEJOHN

1 Q. And did you determine the other shots didn't have
2 any footage of the robbery itself?

3 A. I did.

4 MS. TAYLOR: Thank you, Ms. Myers. No
5 further questions.

6 CROSS-EXAMINATION

7 BY MS. LITTLEJOHN:

8 Q. Agent Myers, I'm going to go over a couple quick
9 things with you here.

10 You also -- you recovered a spent shell casing and
11 a fired projectile, right?

12 A. That's correct.

13 Q. And that's where Ms. Taylor was talking about the
14 bullets?

15 A. Correct.

16 Q. And was a fired projectile sent up to SLED?

17 A. I believe it was not, based on the -- let me
18 double-check. I don't believe I submitted that because
19 of the damage it sustained.

20 Q. And can it sustain damage just because of, like,
21 people walking on it, running on it to get to safety?

22 A. It would require something striking it.

23 Q. Like what?

24 A. It could be a person, a bone, a wall, something
25 steel, a vehicle.

WENDY MYERS - CROSS BY MS. LITTLEJOHN

1 Q. And there is also a paper. Did you recover a
2 paper with a partial shoe print?

3 A. There was a receipt --

4 Q. If this will help --

5 MS. LITTLEJOHN: May I approach the witness,
6 Your Honor?

7 THE COURT: Uh-huh.

8 THE WITNESS: That's the back of, like, a
9 receipt book, for deposit type receipts. There was a
10 partial toe print on the back of the receipt on the
11 paper.

12 BY MS. LITTLEJOHN:

13 Q. A toe print?

14 A. Like the toe part of the sole of a shoe.

15 Q. That wasn't sent out for any testing?

16 A. No, it was not.

17 Q. Okay. I've watched that video myself several
18 times, because it takes a while to kind of get it in
19 perspective there, but as I watched that video, you
20 finally figure out which portion you're looking at, their
21 coming and going. It looked to me to be about
22 two-and-a-half minutes max. Would you agree with that?

23 A. Probably about that. It's a short time period.

24 Q. And that would -- but the time frame that that is
25 would be the actual time frame of this robbery?

WENDY MYERS - REDIRECT BY MS. TAYLOR

1 A. No, it's not. There was activity outside the
2 business prior to.

3 Q. I'm talking about when they entered, from the time
4 they entered, where we saw them entering there on the
5 video, they enter and we see them exit.

6 A. That is the time frame of what had occurred inside
7 the business.

8 Q. I'm just talking about the inside part.

9 A. Right. Then that would be correct. Everything
10 you see on the video was what occurred inside.

11 Q. Inside a little less than two-and-a-half minutes?

12 A. I would have to look at the counter, but that
13 sounds about right.

14 Q. Sounds about right? Okay.

15 MS. LITTLEJOHN: Court's indulgence. I have
16 nothing else, Your Honor.

17 MS. TAYLOR: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MS. TAYLOR:

20 Q. Ms. Myers, you talked about the spent round not
21 being sent to SLED. What would be reasoning behind why
22 it wasn't sent?

23 A. If it was damaged beyond what they could examine
24 under the microscope, they're required -- and I'm going
25 to have to speak a little liberally here because I'm not

WENDY MYERS - REDIRECT BY MS. TAYLOR

1 trained in that area, but I know that they look at it
2 under a high-powered microscope, and they compare rifling
3 on the casing, which are the lines that are -- grooves
4 put into the casing by the barrel of the gun itself.
5 That's how they can look at it. They fire one, and they
6 compare it side by side and they say, Okay, yes. This
7 matches the same rifling that was in the gun.

8 If the projectile itself, the part of the bullet
9 that broke apart and struck something, is too damaged,
10 like that one you could see was very flat, it can
11 possibly pick up other rifling marks, striations and
12 things in it, where it makes it impossible to compare, or
13 it's just too flat to look at. There's too much damage
14 to it, so they can't effectively look at it and say
15 fairly that yes, this is from the same gun. It would
16 have to be more intact, in other words, to be able to
17 tell that.

18 Q. So based on your training in crime scene
19 investigation and your experience, you determined that
20 that couldn't be compared by the SLED analysis; is that
21 correct?

22 A. That's correct.

23 Q. And so there is no point in sending it.

24 A. That's correct.

25 MS. TAYLOR: Thank you. No further

1 questions.

2 MS. LITTLEJOHN: No questions, Your Honor.

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

4 All right, folks. This is where we will
5 break for today. I want to send you home with the
6 reminder not to talk about the case with anyone,
7 including other members of the jury panel.

8 Please don't try to find anything on the
9 internet about the case. Please don't visit the crime
10 scene. Don't talk to anybody about the case, and if
11 anybody tries to contact you, please report that back to
12 me tomorrow morning.

13 If there is any kind of news coverage in the
14 paper or otherwise, when you get up in the morning,
15 please don't read it, if you happen to see anything that
16 might indicate that that is -- there is an article about
17 this case. Again, I don't know if there will be or not,
18 but if there is, please just turn away. Don't read it.
19 You'll have all the time in the world to read it when the
20 case is over with.

21 Thank you for your patience today. If you
22 would, be back in the jury room tomorrow by 9:30, and
23 hopefully we'll get started right on time. All right?
24 Thank you. See you in the morning.

25 (Jury recessed.)

1 THE COURT: All right. Let's meet back
2 tomorrow morning about 9:15 so we can discuss any of the
3 things we need to talk about, and we'll make some final
4 decisions about evidentiary matters.

5 All right? See y'all in the morning.

6 (Recess taken.)

7 (May 7, 2014.)

8 THE COURT: All right. We are back on State
9 vs. Brown. Let the record reflect the defendant is in
10 the courtroom.

11 All right. I need to make a final decision
12 on these search warrants. As I understand, we have
13 got -- which search warrants do you need me to rule on?

14 MS. TAYLOR: I think the outstanding ones
15 were for the codefendant's cell phone records and for the
16 house.

17 THE COURT: Let's go by Court exhibit.

18 MS. TAYLOR: I'm sorry, and of course I don't
19 have that list. Do you have that?

20 MS. LITTLEJOHN: I left that with Karen.

21 MR. SCHWACKE: All I know is No. 3 is the
22 Swamp Fox.

23 MS. TAYLOR: No. 3, which is the search
24 warrant for Swamp Fox Lane.

25 THE COURT: No. 3, [REDACTED] is

1 No. 3. All right. What other ones?

2 MS. LITTLEJOHN: There should be two search
3 warrants on that one, Your Honor.

4 THE COURT: Which exhibits?

5 MS. LITTLEJOHN: If you can just look at
6 that. I thought we put in as 2. No. 2, y'all, is Swamp
7 Fox.

8 THE COURT: No. 2 and 3 are Swamp Fox?

9 MS. LITTLEJOHN: Correct. I think it's --

10 MR. SCHWACKE: No. 4 is Donte Brown's person.

11 THE COURT: That's No. 4.

12 MR. SCHWACKE: That's No. 4.

13 MS. LITTLEJOHN: Your Honor -- and I think
14 there may be an error in how this was stapled, because
15 No. 3 is Swamp Fox with the Bates stamp number AMW202
16 through -- it's supposed to be through 205, the clear
17 Bates stamp number.

18 But in our exhibits here, Court exhibit
19 attached to it, it has the last two pages of the Swamp
20 Fox unclear one. I thought I had submitted these as four
21 pages and four pages, not six pages and two pages.

22 THE COURT: Well, I don't know.

23 MS. LITTLEJOHN: If you just give me one
24 second, I think I can make your ruling easier on one
25 thing.

1 Your Honor, what we're going to do is we
2 spoke with the solicitor so we can get it done quicker.

3 THE COURT: I really can't hear you.

4 MS. LITTLEJOHN: We spoke with the solicitor
5 to narrow thing downs quicker. We talked about the
6 search warrant on Christopher Wilson's cell phone. We're
7 going to waive any defect on that.

8 THE COURT: All right. That's No. 5?

9 MS. TAYLOR: That's correct, Your Honor.

10 THE COURT: Okay. Hold on. Let me make a
11 note. No. 5 cell phone.

12 MS. LITTLEJOHN: And we're stipulating, Your
13 Honor, that the following pages will come in on his cell
14 phone records.

15 MS. TAYLOR: Bates stamp pages 260, 270, 271,
16 272, 288, and 289.

17 THE COURT: Okay.

18 MS. TAYLOR: And those will be marked as
19 State's 35.

20 THE COURT: How about State's No. 1, the
21 Motel Six video?

22 MS. TAYLOR: We don't intend to offer the
23 video. The first was the printout that had the
24 defendant's name on it. They actually got that before
25 they ever got the search warrant, so if it's easier for

1 everybody, we'll just use that printout and not the
2 handwritten receipt.

3 THE COURT: State No. 1 is not necessary.
4 All right. No. 2, which is the search on [REDACTED]
5 No. 3 is [REDACTED] --

6 MS. TAYLOR: Your Honor, just for the record,
7 I think the only difference is the Bates stamp numbers,
8 and that the return is different because one has a clear
9 copy of the signature and the other doesn't have a
10 signature on it, but the search warrants themselves,
11 everything except for the return, is the same.

12 MS. LITTLEJOHN: Correct.

13 THE COURT: Okay. So they are, in essence,
14 the same thing. One has the return, which clears up the
15 problem with the other, at least as far as the return
16 goes.

17 MS. TAYLOR: What happened, Your Honor, one
18 of them has a copy of the return that doesn't have a
19 signature on it because it came from the officer's file.
20 There's then a different one that has a copy with the
21 signature on it because it was a carbon copy of a carbon
22 copy, then we have an original which was entered as
23 Exhibit No. 9, which was the original search warrant
24 affidavit that just doesn't have the return, and, for the
25 record, I can tell you as an officer of the Court, Goose

1 Creek magistrate office has looked for returns on all of
2 these, and they are unable to locate them.

3 THE COURT: All right. No. 9 is the original
4 of No. 2 and 3?

5 MS. TAYLOR: Yes, sir, it just does not have
6 a return attached.

7 THE COURT: But is it the return that is on
8 No. 2?

9 MS. TAYLOR: It's the same return, Your
10 Honor. They just can't locate the original.

11 MS. LITTLEJOHN: No. 2 takes away the time on
12 it, and on the return in No. 3, you have the time boldly
13 printed in there and no signature.

14 MS. TAYLOR: What he told me is one is a copy
15 from his file, one is a copy of the return he did turn
16 into magistrate's office. The time is not clear because
17 of the copy.

18 THE COURT: Okay. But as to No. 2, 3, and 9,
19 if you have produced the original, you have produced a
20 copy of the return, but there's still an argument that it
21 is invalid, correct?

22 MS. LITTLEJOHN: Correct, Your Honor,
23 because, obviously, the best evidence rule requires the
24 original.

25 THE COURT: Well, No. 9 is the original, I'm

1 told.

2 MS. LITTLEJOHN: And that's what I'm
3 referring to.

4 THE COURT: But your argument under 17-13-140
5 is it's deficient under State vs. Robinson because there
6 is no -- there's nothing in the affidavit which tells the
7 Court why the informant is reliable. Is that correct?

8 MS. LITTLEJOHN: The two reasons we believe
9 that it's defective are, number, the Robinson liability.

10 THE COURT: Okay.

11 MS. LITTLEJOHN: And, number two, what we
12 have as the original, and the only thing we can rely on
13 the original is -- does not comply statutorily under the
14 interpretation -- albeit I disagree with the
15 interpretation, but albeit with the interpretation is all
16 it requires is the four pages, statutorily.

17 THE COURT: All right. Maybe I'm totally
18 misunderstanding what the purpose is of No. 9. Isn't
19 No. 9 the original?

20 MS. LITTLEJOHN: No. 9 is the original.

21 THE COURT: So there is no question they have
22 complied with producing the original of the search
23 warrant -- it's either a copy of the return or otherwise
24 no return, if a copy of the return does not suffice for
25 an original of the return. Are you in agreement with

1 that?

2 MS. LITTLEJOHN: With allowing the copy?

3 THE COURT: No. Am I correctly stating what
4 the state of affairs are, that No. 9 is the original of
5 No. 2 and 3, except that No. 9 does not have a return
6 attached to it at all; however, No. 3 has a copy of a
7 return attached but not an original. Is that the state
8 of what that particular search warrant is?

9 MS. LITTLEJOHN: Yes, Your Honor, as well as
10 No. 3 has no time written on it.

11 THE COURT: Okay. At all?

12 MS. LITTLEJOHN: Right. It's not there.
13 These were copies we were given by the State.

14 THE COURT: No. 9 has no time written on it.

15 MS. TAYLOR: I think she means No. 3. The
16 return has no time written on it.

17 THE COURT: Nevertheless, assuming for the
18 sake of argument that they have complied with the
19 requirements of producing the original of the search
20 warrant, and if it is sufficient to have a copy of a
21 return as opposed to original of a return or no return at
22 all, if it's defective in only having a copy of the
23 return or there is no return, you still have to show
24 prejudice by having a lack of return, correct? That is
25 the law, correct?

1 MS. LITTLEJOHN: It is, Your Honor.

2 THE COURT: All right. Can you show
3 prejudice by not having the original of the return if the
4 copy is deemed not to be sufficient?

5 MS. LITTLEJOHN: Yes, Your Honor, I think we
6 can because it takes -- first of all, this is the
7 officer's search warrant they typed up. It takes two
8 search warrant copies of returns, No. 2 and 3 that we
9 have, that were given to us through the solicitor,
10 through Goose Creek that have substantially different or
11 omissions of portions.

12 The officer is sitting in here and he can
13 testify to all this stuff and put it up here now, but I
14 believe -- it takes two of ours to make up the alleged
15 original, which should be somewhere with the officer,
16 with the Court, Goose Creek.

17 I believe that on the search warrant of [REDACTED]
18 itself that if all that were in order that because it --
19 although I would argue highly defective on the
20 reliability portion --

21 THE COURT: That is a separate argument. I
22 want to get to the defect of not having an original
23 return being prejudicial to you. We'll get to the defect
24 about reliability in a moment. Set that aside for the
25 sake of argument.

1 Can you show prejudice by not having an
2 original return attached to the search warrant?

3 MS. LITTLEJOHN: Yes, Your Honor, because I
4 think that the defendant is entitled to see the entirety
5 of the search warrant.

6 THE COURT: He may be, but how does it
7 prejudice him in not having it here?

8 MS. LITTLEJOHN: Because we really don't know
9 what's written on that original search warrant.

10 THE COURT: Okay.

11 MS. LITTLEJOHN: Given that No. 2 and 3 are
12 different, and not just by an omission of a signature,
13 because that time on No. 3 is darkened in, like, it looks
14 like it's written hard. We have dealt with omissions as
15 part of the defects of the affidavit.

16 THE COURT: What is the difference between
17 the signed return on No. 2 and the unsigned return on
18 No. 3? You told me there was a difference. What is it?

19 MS. LITTLEJOHN: Your Honor, I think it's
20 No. 2 that doesn't have a signature.

21 THE COURT: Correct.

22 MS. LITTLEJOHN: Okay. No. 2 has no
23 signature --

24 THE COURT: No. 3 has no signature on the
25 return.

1 MS. LITTLEJOHN: No. 3 has no signature, but
2 if you look at the top of it, where it says I received
3 this search warrant January 5th, executed as follows at
4 1530 --

5 THE COURT: Uh-huh.

6 MS. LITTLEJOHN: Your Honor, I'm just going
7 to submit to the Court. The way my copy looks, that's
8 pretty hard writing. I mean, that's clear writing.
9 That's not a matter of it being faint or anything.

10 THE COURT: Well, it was written obviously at
11 a different time, because if it has -- if one has a time
12 written in there and one is blank, the copies were made
13 at a different time. It might have been a second
14 difference; it might have been a day; it might have been
15 a year, I don't know. All that indicates to me is that,
16 well, there is a signature without a time on it.

17 Logically, you would go, I don't know how you
18 would pull that off, actually, to have the time written
19 in later but not have the signature on, and on the one on
20 No. 2, have the signature on there but the time is not in
21 there.

22 It should have had the time on there, but it
23 got placed on later, after -- maybe they made a copy of
24 it later on, wrote in the time and attached it because
25 they had already sent on the one with the signature on

1 it. I don't know the answer to it.

2 MS. TAYLOR: What I'm told, Your Honor, is
3 that there are multiple copies of the return and that
4 they can get separated, so when he wrote the time on it,
5 the one that he turned into the magistrate to be signed
6 may not have had the time on it, but what I would ask the
7 Court to take notice of is that the written out part of
8 what they took is the same on both.

9 THE COURT: Okay. I'll note that. All
10 right. So --

11 MS. LITTLEJOHN: One other issue would be
12 without the original to determine that the original has
13 the signature and that the original return has this
14 signature and the time, in other words, combining numbers
15 2 and 3, without that original, we don't know if it
16 complied with the ten days in.

17 THE COURT: Okay. Let's now move to your
18 argument that it is deficient because of the Robinson
19 case. And your position is that the affidavit is
20 insufficient because there a statement that says,
21 information -- let's see.

22 That affidavit, the robbery, informant came
23 forward and provided information identifying two suspects
24 possibly involving the incident. Information obtained
25 from the informant was that Christopher Darnell Wilson

1 was involved in the commission of the armed robbery that
2 occurred at Zaxby's. There's nothing in there that
3 indicates why the informant was deemed reliable.

4 As I understand it, that is your argument
5 under State v. Robinson, then it is a defective warrant,
6 correct?

7 MS. LITTLEJOHN: Correct, Your Honor, and --
8 that's correct, Your Honor.

9 THE COURT: Okay. And the State's position
10 earlier in the week is you concede that is a defective
11 warrant if we were talking about an expectation of -- or
12 irrespective of the defect because it's not in
13 compliance, or they have no standing, no expectation for
14 privacy. Did you not say early in the week you conceded?

15 MS. TAYLOR: Not on this search warrant, Your
16 Honor. This search warrant is the one that contains
17 additional information.

18 THE COURT: What is that additional
19 information?

20 MR. TAYLOR: If you look towards the bottom,
21 Your Honor, it says a ski mask was recovered during the
22 investigation, and DNA was located in the ski mask.
23 Christopher Darnell Wilson's DNA was on file in the CODIS
24 database and was a positive match to the DNA located in
25 the ski mask. Christopher Darnell Wilson's address of

1 [REDACTED] is in close proximity to the Zaxby's.

2 This warrant contains additional information
3 that the other warrants we conceded were insufficient did
4 not contain.

5 THE COURT: So you concede it may have been
6 defective because of the lack of reliability of the
7 informant but that it contains additional information
8 that if you excised out the information obtained from the
9 informant would otherwise make it still a valid warrant;
10 is that correct?

11 MS. TAYLOR: Correct, Your Honor. And just
12 for record purposes also, Your Honor, I think what the
13 case law says, and I don't have the case law in front of
14 me, is that if the search warrant contains other
15 information corroborating what the confidential informant
16 says, that can be enough to show that the confidential
17 informant was reliable, but I think either way you do it,
18 if you take the informant out completely and just rely on
19 the DNA evidence, I believe this is a sufficient search
20 warrant.

21 MS. LITTLEJOHN: I would agree with regard to
22 the affidavit portion on that, what Ms. Taylor is saying.

23 THE COURT: So then your argument is solely
24 on the defect of 17-13-140(b), defective because of lack
25 of a return; is that correct?

1 MS. LITTLEJOHN: Correct, and the lack of
2 return is, we believe, substantial and prejudicial
3 because it takes two of our copies to make one of what's
4 allegedly the return; number two, it's takes two of our
5 copies to make one of the alleged return. It almost
6 brings me back to the omission. Number three, the
7 ten-day rule. We don't know until we see the entire
8 return.

9 THE COURT: Okay. Well, as to warrants
10 No. 2, 3, and 9, I find that the State has produced the
11 original, which is Exhibit No. 9. There is no return
12 attached to No. 9. There is a copy of a signed return to
13 No. 3 but not to No. 2 -- excuse me.

14 There is a copy signed of a return to
15 No. 2 but not to No. 3. There is no return attached to
16 No. 9, copy or original, however, so even assuming for
17 the sake of argument that a defective return -- or their
18 search warrant is defective under 17-13-140, because not
19 only is the search warrant and affidavit needs to be an
20 original under that statute, but the return must also be
21 an original -- assuming that that is the law and
22 therefore because there is no return either copied,
23 unsigned or signed, or an original, No. 9, I find that
24 you still have to prove a prejudice in not having an
25 original signed return attached to No. 9 and that the

1 reasons you stated do not rise to the level of prejudice.

2 So the State has complied with the technical
3 form requirements of No. 9 search warrant. As to the
4 argument that it is defective, or the affidavit is
5 unreliable, under Robinson, I agree there is no
6 corroboration of the identification of the informant, but
7 there is other statements in the affidavit which would
8 either corroborate the informant's statements or standing
9 alone with the informant's statement excised out would
10 suffice for probable cause to exist in No. 9.

11 So you may use the results of the search
12 warrant for No. 9.

13 MS. TAYLOR: Thank you, Your Honor.

14 THE COURT: Now, what other search warrants
15 do we need to deal with?

16 MS. TAYLOR: I believe that's last of them,
17 Your Honor. We agreed on the cell phone records.

18 MS. LITTLEJOHN: Right.

19 THE COURT: Okay. The GPS --

20 MS. TAYLOR: That wasn't gotten through a
21 search warrant, Your Honor.

22 THE COURT: Okay.

23 MS. TAYLOR: It was gotten through the
24 probation agent without a search warrant.

25 THE COURT: And yesterday I told y'all in

1 camera that I would allow those in. There is two
2 cases -- one out of North Carolina and one out of
3 someplace else, I can't recall off the top of my head,
4 that said that the GPS data pulled off the server is
5 business records exception 8036 and that the person who
6 comes and testifies that they're someone who regularly
7 has access to those records stored on the server can come
8 in and testify as to what those -- what that data was
9 that got pulled off, then they don't really need to be an
10 expert to do that.

11 There's -- that's 701 lay testimony
12 interpreting -- or stating their interpretation or
13 perception of data, and I think that's, under 701,
14 allowed -- I just don't see any difference between that
15 and a police officer who's reading Breathalyzer,
16 Datamaster result. They don't have to be experts to read
17 the data, so that will come in.

18 MS. TAYLOR: Thank you, Your Honor.

19 THE COURT: What else was there now? Was
20 there something about DNA that we still have to --

21 MS. TAYLOR: You ruled on Mr. Brown's DNA
22 under inevitable discovery rule. I believe counsel had
23 an objection or was going to make an objection as to the
24 DNA results from the ski mask that could point to the
25 codefendant or --

1 MS. LITTLEJOHN: We're making the objection
2 as to the conclusion of the DNA with regard to what we've
3 determined on the handle of the gun, which is
4 Mr. Brown's. And --

5 THE COURT: What was that last part?

6 MS. LITTLEJOHN: Your Honor, I think I'm just
7 going to try to cross-examine the witness before we -- I
8 think I'll do it through cross-examination versus motion.

9 THE COURT: Okay. I'm still not sure -- as I
10 understand it, there's, like, the results say -- there is
11 a bunch of DNA on this, maybe four or five people on
12 there from what they can determine.

13 One of those people was the defendant, but it
14 could have been four or five other people. That's the
15 argument that you want to make and get to the point on
16 cross-examination? Is that correct?

17 MS. LITTLEJOHN: Correct, Your Honor, because
18 my understanding is -- my understanding, as far as the
19 DNA under State vs. Jenkins case, your ruling has been on
20 that, that it comes in, was that -- that Mr. Brown's DNA
21 comes in because they would have gotten to it? Or -- was
22 that the ruling?

23 THE COURT: Yes, that they otherwise would
24 have gotten to it.

25 MS. LITTLEJOHN: Right.

1 THE COURT: In other words, if they hadn't
2 gotten a search warrant when they got the information
3 that Mr. Brown was involved, then they would have gone to
4 CODIS, gotten that information off of CODIS, and an
5 examiner would have looked at those.

6 Now, these are my rulings. Of course, as we
7 get to the point, you'll need to resume your objection,
8 and I'll just state they are entered subject to your
9 objection, but just remember you need to renew it when it
10 comes in on No. 9 and on the GPS if you still want to
11 make it and on the DNA. Okay? You still need to make it
12 contemporaneous.

13 MS. LITTLEJOHN: As well as asking them about
14 2 and 3.

15 THE COURT: None of the search warrants
16 themselves are coming in. It's really No. 9 is the
17 search warrant that we're talking about. They produced
18 that original. 2 and 3 are there, simply for Court's
19 exhibits, because there's a difference in these returns,
20 so we'll let them stay in as 2 and 3, Court's exhibits,
21 but you don't put search warrants into evidence. You put
22 the results in of the evidence, and so --

23 MS. LITTLEJOHN: Right.

24 THE COURT: We're really only talking about
25 No. 9 as being the search warrant, so for convenience's

1 stake for everybody, let's not talk about No. 2 and 3
2 anymore. We're just referring on 9 when it comes to
3 talking about the search results of [REDACTED]

4 MS. LITTLEJOHN: So that we don't mess up,
5 for lack of a better word, we'll refer to No. 9 -- it
6 will be without a return? Is that how we want to say it?

7 THE COURT: You don't need to discuss the
8 return in front of the jury. That was a matter of law
9 for me to rule on, but we don't put search warrants into
10 evidence. We don't put the return into evidence. Those
11 are Court's exhibits, and 2 and 3 are Court exhibits.
12 9 is a Court exhibit, but we don't need to talk about 2,
13 3, and 9 anymore, really.

14 MS. LITTLEJOHN: Your Honor, with regard to
15 that -- and, respectfully, there may be some of these
16 items that they found that I may want to address.

17 THE COURT: All right. Well, then if you
18 want to, then refer to the -- if you feel like you need
19 to ask about a return, then you can refer to the Court
20 exhibit, and I guess then it would have to be 2 or 3,
21 depending on which one you want, but they don't come into
22 evidence. You can refer to them on cross-examination.

23 MS. LITTLEJOHN: Exactly, for the purpose of
24 cross-examination.

25 THE COURT: Okay. Fair enough.

1 MS. TAYLOR: I'm just making sure I'm clear.
2 I don't know that referring to pieces of paper and
3 talking about the two differences in the two returns that
4 the jury then doesn't get to then see is appropriate,
5 when -- I mean, the search warrants obviously don't get
6 entered into evidence, and I don't know what -- never
7 mind.

8 MS. LITTLEJOHN: I think I'm certainly
9 entitled to ask him if they lost the original return.

10 THE COURT: You can ask it. Okay? All
11 right.

12 Is there anything else we need to take up
13 before the jury comes in?

14 MS. LITTLEJOHN: Could we take a comfort
15 break?

16 THE COURT: I was going to suggest that.

17 Before we bring the jury in, do you want to
18 put a cite on those out of state cases on GPS and GPS
19 data being business records exceptions?

20 The first one is a Massachusetts case,
21 Commonwealth vs. Thissel. The cite to that is 74 Mass
22 appellate Court 773. That is a 2009 case. It looks like
23 910 N.E. 2d 943, and then a North Carolina -- or Court of
24 Appeals case is North Carolina -- or State vs. Jackson.
25 That is 748 S.E. 2d 50, and that is a 2013 case.

1 All right.

2 MS. LITTLEJOHN: May I, all that ruling, in
3 brief response, note that the way I distinguish those two
4 from this is not -- has to do with their probationary
5 cases, or one of those is a probationary case, which is
6 clearly -- hearsay is admissible, et cetera. It doesn't
7 take nearly as much. We can skip over so much of that,
8 and one's a probation violation matter.

9 THE COURT: Okay. You've made your point.
10 I'm not -- it doesn't change my mind, but you are on the
11 record. Anything else?

12 MS. LITTLEJOHN: Nothing, Your Honor.

13 THE COURT: All right. Let's bring the jury
14 in.

15 (In open court, jury present.)

16 THE COURT: All right. Folks, thank you for
17 your patience this morning. I thank you for showing up
18 on time. We sometimes have to deal with some things
19 that, believe it or not, does streamline things to make
20 it go smoother faster, and the last thing I want to do is
21 waste your time by sitting back there and not being in
22 here, so we will resume now with the State calling their
23 next witness.

24 MS. TAYLOR: Thank you, Your Honor. The
25 State calls Marteeeka Hamilton.

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 MARTEEKA HAMILTON,
2 having been first duly sworn,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 THE WITNESS: My name is Marteeeka Hamilton,
6 last name is spelled H-a-m-i-l-t-o-n.

7 BY MS. TAYLOR:

8 Q. Good morning. How are you this morning?

9 A. I'm fine.

10 Q. I'm going to get this out of the way. Do you want
11 to be here?

12 A. No, ma'am.

13 Q. Were you subpoenaed to be here?

14 A. Yes, ma'am.

15 Q. Do you know defendant Donte Brown?

16 A. Yes, ma'am.

17 Q. How do you know?

18 A. We've been in a relationship.

19 Q. How long have you been in a relationship with
20 Mr. Brown?

21 A. For about six years.

22 Q. You said about six years?

23 A. Yes, ma'am.

24 Q. Has that been on and off?

25 A. Yes, ma'am.

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 Q. Okay. Have you spoken with Mr. Brown recently?

2 A. No, ma'am.

3 Q. Okay. Do you remember speaking to Mr. Brown back
4 in December of 2011?

5 A. Yes, ma'am.

6 Q. And can you tell me, do you remember how you spoke
7 to him? Was it in person or by phone?

8 A. I don't understand the question.

9 Q. Did you see him in person first or did he call you
10 first?

11 A. On -- at what point in time?

12 Q. On December 23rd of 2011.

13 A. I received a phone call.

14 Q. Do you remember what phone he was calling from?

15 A. Dolla's phone.

16 Q. His friend Dolla's phone. Do you remember what
17 your phone number was back then?

18 A. No, ma'am.

19 Q. Okay. Do you remember giving a statement to law
20 enforcement back in 2012?

21 A. Yes, ma'am.

22 Q. I'm going to show you this and ask you to look at
23 the top portion where you filled out your information.
24 Does that look familiar?

25 A. Which one?

1 Q. Is this your handwriting up here?

2 A. Yes, ma'am.

3 Q. And do you see the phone number that you put down?

4 A. Yes, ma'am.

5 Q. And can you tell the jury what that phone number
6 is?

7 A. 843-572-5746.

8 Q. Was that your phone number back then?

9 A. That was the phone numbers at my grandmother's.

10 Q. Did you have a cell phone back then?

11 A. Yes.

12 Q. Do you remember speaking with the officer and
13 giving him your cell phone number?

14 A. Yes.

15 Q. And do you remember -- would it be correct you
16 gave him the number of 471-5157?

17 A. Yes.

18 Q. So that's what your phone number was back in
19 December of 2011?

20 A. That's the number I gave him, yes.

21 Q. Okay. And is that the number that Mr. Brown
22 called you on?

23 A. Yes, ma'am.

24 Q. And he called you from whose phone again? I'm
25 sorry.

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 A. Dolla's.

2 Q. Do you know Dolla's real name?

3 A. No, ma'am.

4 Q. Do you remember about what time that day he called
5 you?

6 A. The first call I got was around 12:00, maybe 1:00,
7 p.m.

8 Q. So nighttime?

9 A. Yes, ma'am.

10 Q. So that would be around midnight or the 23rd going
11 into Christmas Eve, the 24th?

12 A. Yes, ma'am.

13 Q. And what did Mr. Brown tell you, or say to you?

14 A. He asked me what I was doing. I told him I was at
15 the salon, and he told me that he might need to get a
16 ride.

17 Q. Did he say where he needed a ride from?

18 A. At that point in time, no.

19 Q. Okay. Had you talked to him at all earlier in the
20 day?

21 A. No, ma'am.

22 Q. Not that you recall?

23 A. No, ma'am.

24 Q. Okay. When he said he might need a ride, did he
25 say he was with anyone or anyone else needed a ride?

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 A. Him and Dolla.

2 Q. Okay. And how did that conversation end? Were
3 you going to pick them up, or what happened?

4 A. I told him I would call him back after I left the
5 salon.

6 Q. Okay. And did you do that?

7 A. Yes, ma'am.

8 Q. And what happened then? Did you speak to him?

9 A. Yes.

10 Q. Tell me about that.

11 A. Well, after I left the salon, I went to pick up my
12 mother. I called him back to see if he still needed a
13 ride. He told me hold up, someone else probably was
14 coming to get them, but then he said never mind. Come
15 on.

16 Q. Okay. And did you eventually go and pick him and
17 Dolla up?

18 A. Yes, ma'am.

19 Q. Where did you pick them up?

20 A. From the Foxborough subdivision.

21 Q. Okay. I'm going to show you, Ms. Hamilton, what's
22 been marked for identification as State's Exhibit 39.
23 Could we get the easel? Thank you.

24 Just to help orient you, this is the Zaxby's on
25 St. James?

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 A. Yes.

2 Q. Does this look familiar as the area you picked
3 them up that night?

4 A. Hold on. Is that -- I think that's too far up.

5 Q. So it's off this map toward the bottom that you
6 picked them up?

7 A. Is that supposed to be a Big Lots? It was more
8 across the street from the Hess.

9 Q. All right. And do you know where the Hess is in
10 relation to the Zaxby's?

11 A. I think it was coming up. I don't see the Hess on
12 there.

13 Q. If you're heading toward the Zaxby's is, the Hess
14 down toward the bottom of the map?

15 A. Yes.

16 Q. So you were called by Mr. Brown to come pick him
17 and his friend Dolla up that night?

18 A. Uh-huh.

19 Q. What did he tell you about where they were, or
20 where to come pick them up?

21 A. He just told me to turn into the Foxborough
22 entrance across from the Hess.

23 Q. And if you look on the bottom of that map, do you
24 see kind of at the bottom in the middle, is that entrance
25 right into the Foxborough neighborhood?

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 A. Right there?

2 Q. Right down here?

3 A. The entrance from the -- if that's the entrance.
4 across from the Hess, then yes.

5 Q. So when you went to pick Mr. Brown and his friend
6 up, what happened? Did you see them immediately?

7 A. No.

8 Q. Did you continue to make phone calls between
9 yourself and Mr. Brown as to where to pick them up?

10 A. Yes, to see where they were located.

11 Q. Okay. And at some point did you finally get to
12 them?

13 A. Yes. I actually stopped because I was lost, so I
14 just stopped and it came from the side of the car.

15 Q. Okay. And where was that that you stopped?

16 A. Like, in the middle of the entranceway.

17 Q. Did you drive all the way down that road before
18 you turned around?

19 A. Yes, like halfway.

20 Q. While you were in that neighborhood, Ms. Hamilton,
21 did you see any police cars?

22 A. Yes, at someone's house.

23 Q. Did you see any police cars over at the Zaxby's
24 before you turned in?

25 A. No, ma'am, because I turned into the entrance

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 before, like, where the -- I think it was like the corner
2 store. I turned into that entrance.

3 Q. So you pulled up to the entrance that's shown on
4 the bottom of that map, and you said that they came from
5 behind the car?

6 A. Yes.

7 Q. And did they get in the car with you?

8 A. Uh-huh.

9 Q. You have to say yes or no.

10 A. Yes, ma'am.

11 Q. Thank you. Where -- did somebody get in the front
12 or did somebody get in the back?

13 A. Dolla got in the back and Donte got in the front.

14 Q. Did you have any problems with Mr. Brown after you
15 picked them up or before you picked them up about any
16 compensation for picking them up?

17 A. Yes.

18 Q. And what did they tell you?

19 A. Okay.

20 Q. Did he tell you he was going to give you something
21 if you gave him a ride?

22 A. No. I told them if I was picking them up, I would
23 need some gas money because the car was on E.

24 Q. And did he give you gas money?

25 A. Yes, ma'am.

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 Q. How much money did he give you?

2 A. \$40.

3 Q. Okay. Once you picked them up from the Foxborough
4 entrance to the subdivision, where did you go?

5 A. Dropped them off to the mall parking lot.

6 Q. And this was about, you said, 1:00 or 2:00 in the
7 morning?

8 A. Yes.

9 Q. So the mall was closed?

10 A. Yes.

11 Q. Did you have any conversations with Mr. Brown and
12 his friend Dolla while you were in the car?

13 A. I mean, me, no.

14 Q. Were they having any conversation?

15 A. Dolla was already on the phone, speaking to
16 whoever.

17 Q. Okay.

18 A. And I did overheard him say that he didn't mean to
19 shoot someone, and Donte called him a stupid motherfucker
20 but that was about all the conversation there was.

21 Q. When you dropped them off in the mall parking lot,
22 did you see anybody there to pick them up?

23 A. No.

24 Q. So you just left them in the parking lot?

25 A. I just left them.

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 Q. That's where they asked you to.

2 A. Uh-huh.

3 Q. Did you have an opportunity to talk to Mr. Brown
4 in the days after that?

5 A. Yes.

6 Q. Was he still calling you from Dolla's phone or was
7 it a different number?

8 A. I believe it was --

9 MS. LITTLEJOHN: Your Honor, I object to the
10 relevancy of that.

11 THE COURT: What's the relevancy?

12 MS. TAYLOR: Your Honor, may we approach?

13 (Discussion held at sidebar.)

14 BY MS. TAYLOR:

15 Q. When you talked to Mr. Brown in the days after you
16 picked him up that night, was he still calling you from
17 his friend Dolla's phone or did he have his own phone?

18 A. His own phone.

19 Q. Did you have an opportunity to see him in the days
20 after you picked them up that night?

21 A. Yes.

22 Q. And where was that?

23 A. I believe it the Motel Six on Ashley Phosphate.

24 Q. And when you went to the Motel Six in Ashley
25 Phosphate, who was in the room?

MARTEEKA HAMILTON - DIRECT BY MS. TAYLOR

1 A. Donte and Dolla.

2 Q. Just the two of them?

3 A. Uh-huh.

4 Q. Did you see anything else in the room, other than,
5 like, their clothes that they had brought with them, did
6 you notice anything else in the room?

7 A. No, ma'am.

8 Q. Do you remember telling the officer that you saw
9 shopping bags?

10 A. Yes.

11 Q. And how many shopping bags do you remember seeing?

12 A. Like, two or three.

13 Q. Do you know they came from?

14 A. No, ma'am.

15 Q. Okay. Do you remember -- before you dropped them
16 off at the mall, did he say anything about being dropped
17 off somewhere else?

18 A. Not that I can recall.

19 Q. Do you remember telling the officer something
20 about Money Man Pawn in Goose Creek?

21 A. Yes.

22 Q. Tell the jury about that, please.

23 A. I mean, I guess that's where they was originally
24 supposed to go for someone else to pick them up, but I
25 ended up just taking them to the mall.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. Okay.

2 MS. LITTLEJOHN: Court's indulgence, Your
3 Honor.

4 MS. TAYLOR: Court's indulgence, Your Honor.

5 That's all I have for you, Ms. Hamilton.

6 Thank you.

7 CROSS-EXAMINATION

8 BY MS. LITTLEJOHN:

9 Q. It's Ms. Hamilton?

10 A. Yes, ma'am.

11 Q. Marteeeka Hamilton?

12 A. Yes, ma'am.

13 Q. They call you Teeka?

14 A. Yes, ma'am.

15 Q. And you and I have never met before today?

16 A. No, ma'am.

17 Q. I want to go over a couple of things. First,
18 sometimes we have to ask personal questions, okay?

19 A. Yes, ma'am.

20 Q. I don't mean any offense by that. You testified
21 with the solicitor that you and Donte had been involved
22 on and off for six years.

23 A. Yes, ma'am.

24 Q. And isn't it correct y'all had problems before,
25 right?

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 A. Yes, ma'am.

2 Q. And that would be even over other women?

3 A. Yes, ma'am.

4 Q. Can you think of any other women you've had
5 problems with?

6 A. Yes, ma'am.

7 Q. Would one of them be Cynthia Garrett?

8 A. Yes, ma'am.

9 Q. So, basically, my client was kind of seeing y'all
10 both?

11 A. I'm not sure.

12 Q. Somehow or another the time frame -- y'all -- you
13 and Ms. Garrett weren't friends that had to do with
14 Donte, right?

15 A. Yes. I mean, at the time that I guess he was
16 seeing her, we weren't together.

17 Q. And then he came back to you and then goes back to
18 her?

19 A. Yes.

20 Q. All right. So it was on again, off again between
21 that. Okay. I want to talk with you about your
22 statement that you gave to the police officers. You gave
23 the statement to the police officers on January 9th,
24 correct?

25 A. Yes, ma'am.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. And in that statement, and I took the liberty of
2 taking some notes off your statement there, you talked
3 about how you had been at the beauty shop pretty much all
4 day, right?

5 A. Yes, ma'am.

6 Q. And you didn't really know Dolla?

7 A. Yes, ma'am.

8 Q. You knew the name but never really met him?

9 A. Yes, ma'am.

10 Q. When you picked up Donte and Dolla, did you see on
11 the map -- if I may approach?

12 THE COURT: You may.

13 BY MS. LITTLEJOHN:

14 Q. For identification, No. 39, do you see where it
15 says [REDACTED]

16 A. Yes, ma'am.

17 Q. And did you pick them up in front of the house at
18 [REDACTED] where that curve is?

19 A. No, ma'am.

20 Q. Did you pick them up on Swamp Fox?

21 A. No, ma'am.

22 Q. They were heading towards you, toward the main
23 road?

24 A. No, ma'am.

25 Q. You went down the side road, but they were coming

1 up towards the main road?

2 A. Like I say, I pulled -- I came from the first
3 Foxborough entrance by the J.D. corner store, and when I
4 pulled down that road, it led me to the end of -- what's
5 that there --

6 Q. Vinson Boulevard?

7 A. No, right there. Kennington Drive?

8 Q. Kennington Drive?

9 A. Yes. It led me to that corner right there.

10 Q. Okay.

11 A. So when I picked them up, I picked them up on
12 Nixon Boulevard.

13 Q. And which way -- when you picked them up, which
14 way were they walking?

15 A. They were coming up behind the car.

16 Q. If we refer to the main road as St. James Avenue,
17 the bigger road --

18 A. Yes, ma'am.

19 Q. -- because that's what it is, were they walking
20 towards St. James? Were they walking that direction, or
21 were they coming this direction, towards St. James?

22 A. Yes, ma'am, coming towards St. James.

23 Q. So sort of like they were meeting you. Because
24 you don't know that area well, do you?

25 A. No, ma'am.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. And you said they were coming up from behind.
2 Were they, or could you tell when they got in the car if
3 they were running and huffing and puffing?

4 A. No, ma'am. They weren't huffing and puffing.

5 Q. In your interview with Officer Powell, he was
6 using words like they jumped in the car. Do you recall
7 that?

8 A. Yes, ma'am.

9 Q. Can you tell -- did they jump in and hit the
10 floor?

11 A. No, ma'am. They didn't literally ran and jumped
12 in the car. So, I mean, when he said, I didn't really ay
13 any attention to you, he was saying it, but they
14 didn't -- ran and jumped in the car literally.

15 Q. So you're using jumped in as a form of speak?

16 A. Yes. I mean, I guess the way you say it made it
17 seem as if they ran and hopped in the car. That wasn't
18 the case.

19 Q. So if I say jumped in, meaning ran and hopped in,
20 you would -- tell me how they would actual -- how they
21 actually got into the car.

22 A. I mean, like you or me would walk and just get in
23 the car. Not -- I mean, they didn't show any signs of
24 running or being out of breath or anything like that.
25 They just walked and got into the car.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. Did they duck down?

2 A. No, ma'am.

3 Q. They didn't -- did they say anything to you, like
4 go, go, get out of here?

5 A. No, ma'am.

6 Q. You were questioned about -- let me just take you
7 back briefly.

8 When you came to the police station, that was on
9 or about, give or take, 15 days after the robbery at
10 Zaxby's, after you picked them up; is that right?

11 A. Yes, ma'am.

12 Q. And you were asked how were they dressed?

13 A. Yes, ma'am.

14 Q. In your statement from Officer Powell, didn't you
15 say you didn't recall except that Dolla had on -- you
16 were referencing a hat of some sort?

17 A. Yes, ma'am.

18 Q. That comes over your ears?

19 A. Yes, ma'am.

20 Q. Did anybody have on ski masks?

21 A. No, ma'am.

22 Q. Do you know if they had on all black clothing?

23 A. No, ma'am.

24 Q. He asked you, I think, he was trying to hone in on
25 asking you about the type of clothing and on all the

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 occasions he asked you, you didn't know, did you?

2 A. No, ma'am.

3 Q. So if I were to ask you a little over two weeks
4 from now what I was wearing today, do you think you would
5 remember?

6 A. No, ma'am.

7 Q. He also went into asking you about the hotel.

8 A. Yes, ma'am.

9 Q. Because you met him at a hotel later on.

10 A. Yes, ma'am.

11 Q. And I think you said you actually saw two boxes?

12 A. Yes, ma'am.

13 Q. This was right at Christmas?

14 A. Yes, ma'am.

15 Q. I assume you go Christmas shopping?

16 A. Yes, ma'am.

17 Q. You get boxes, things come in boxes?

18 A. Yes, ma'am.

19 Q. You don't know if that was a Christmas present
20 that he received?

21 A. No, ma'am.

22 Q. Christmas present that was going to be given?

23 A. No, ma'am.

24 Q. Do you know what was in the box?

25 A. No, ma'am.

1 Q. I think you told Officer Powell that it was some
2 shoes. Do you recall that?

3 A. I believe so.

4 Q. Do you know they were purchased?

5 A. No, ma'am.

6 Q. You don't know what brand?

7 A. No, ma'am.

8 Q. Wouldn't you agree with me that you can buy real
9 expensive tennis shoes at really expensive stores?

10 A. Yes, ma'am.

11 Q. And you can buy name brand shoes in less expensive
12 stores?

13 A. Yes, ma'am.

14 Q. So you don't know what was in there and how much
15 it cost, do you?

16 A. No, ma'am.

17 Q. Ms. Taylor made a reference to Donte having a
18 telephone.

19 A. Yes, ma'am.

20 Q. Again, it's Christmas time. Do you know if he
21 received a telephone for a gift?

22 A. No, ma'am.

23 Q. So you don't know if he purchased a telephone or
24 someone gave him a telephone?

25 A. I have no idea.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. Officer kept asking you about in your statement
2 about did you see large amounts of cash.

3 A. No, ma'am.

4 Q. In the hotel room?

5 A. No, ma'am.

6 Q. What about guns?

7 A. No, ma'am.

8 Q. Knives?

9 A. Nothing.

10 Q. When you went -- you went to visit there, right?

11 A. Yes, ma'am.

12 Q. And to your knowledge, Dolla was visiting and
13 staying. Do you know whose room that was in for sure?

14 A. No, ma'am.

15 Q. Were you there -- you weren't there with him the
16 entire time to be able to know if Dolla was there the
17 entire time or if he was, like you, came over and spent
18 time, do you?

19 A. Dolla left.

20 Q. Dolla left. Let me go back to the conversation
21 that was heard on the telephone. Are you saying that you
22 heard Dolla, and, for the record, Dolla is known as
23 Christopher Wilson, correct, or do you know?

24 A. I'm not sure.

25 Q. You've been told that, though?

1 A. Yes, ma'am.

2 Q. And you've been told that by, I assume, the police
3 officers?

4 A. Yes, ma'am.

5 Q. The solicitors --

6 A. I believe the first time was Investigator Powell.

7 Q. Okay. So if I were to -- when I'm referring to
8 Dolla or if I refer to Christopher Wilson, you kind of
9 could use those interchangeably based on what Officer
10 Powell told you, that is his nickname or street name,
11 right?

12 A. Yes, ma'am.

13 Q. Would there be times when you would call Dolla's
14 phone looking for Donte?

15 A. Yes, ma'am.

16 Q. Did -- and Donte would call your phone from
17 Christopher Wilson's phone?

18 A. Yes, ma'am.

19 Q. When you got in the car you said Christopher
20 Wilson got in the back?

21 A. Yes, ma'am.

22 Q. Was he sitting in the back passenger?

23 A. Yes, ma'am.

24 Q. So he would be on the catty-corner.

25 A. Yes, ma'am, because my son was right behind me.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. And how old is your son?

2 A. How old was he at the time?

3 Q. Yes, at the time. A little thing?

4 A. Yes, ma'am, he was only a couple months.

5 Q. Oh, really little thing. Okay. When they got in
6 the car was Christopher Wilson on the telephone?

7 A. Yes, ma'am.

8 Q. Do you know who he was talking to?

9 A. No, ma'am.

10 Q. And based on where there was seating in the car,
11 could they -- Donte would be able to hear Christopher
12 Wilson better on the telephone than you, wouldn't he?

13 A. Yes.

14 Q. Because he was right behind him?

15 A. Yes.

16 Q. Early on the conversation, you told Officer Powell
17 who asked you about it, and you told him that Donte
18 seemed calm and collected.

19 A. Yes.

20 Q. Not in a panic, not upset.

21 A. Yes.

22 Q. He asked you that, not just once, did he?

23 A. No.

24 Q. He kept going back to that, didn't he?

25 A. Yes.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. And he kept going back to how did -- they got in a
2 car, jumped in, and the word jumped in was your word, not
3 his, wasn't it?

4 A. No.

5 Q. As a matter of fact -- at the very beginning, at
6 the very, very beginning of your interview with him, he
7 did say -- he appreciated you coming down and you're free
8 to go any time.

9 A. Yes, ma'am.

10 Q. And that door was closed, though, in the room
11 y'all were in, wasn't it?

12 A. Yes, ma'am.

13 Q. And y'all were actually inside, in the interior of
14 the police department, weren't you?

15 A. Yes, ma'am.

16 Q. Again, this is right at a little after two weeks
17 later.

18 A. Yes, ma'am.

19 Q. And you kept saying to him, I'm being honest,
20 didn't you?

21 A. Yes, ma'am.

22 Q. Do you remember him telling you, You're familiar
23 with what's called half truths?

24 A. I don't recall.

25 Q. You don't recall?

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 A. I don't recall him saying that, but I do recall
2 him saying he didn't think I was being completely honest
3 with him.

4 Q. Do you remember him saying you're already involved
5 in all this?

6 A. In so many words.

7 Q. Do you remember him saying at this point you need
8 to reach deep down and think about this, you got other
9 people to think about, and you said you're pregnant right
10 now, right?

11 A. Yes, ma'am.

12 Q. Do you remember that, him telling you that?

13 A. Yes.

14 Q. In that same breath, if you will, knowing that you
15 were pregnant?

16 A. Yes.

17 Q. As a matter of fact, you have been locked up
18 before for shoplifting, right?

19 A. Yes, ma'am.

20 Q. And he knew that?

21 A. Yes, ma'am.

22 Q. Not a secret. Do you remember him telling you, so
23 you got other people to think about, that's right. You
24 said you've already been locked up for being associated
25 with people in reference to that, right? Do you remember

1 him telling you that?

2 A. Yes, ma'am.

3 Q. Do you remember telling him that nothing was said
4 about Zaxby's?

5 A. Yes, ma'am.

6 Q. At the beginning part of the conversation.

7 A. Yes, ma'am.

8 Q. Do you remember saying that from what you recall
9 of what Christopher Wilson was saying, they had gone into
10 somebody's house?

11 A. Yes, ma'am.

12 Q. So two weeks later, when you're thinking back,
13 what your thought was, was that Christopher Wilson had
14 gone into someone's house?

15 A. Yes.

16 Q. And that's when Donte called him stupid, et
17 cetera, et cetera?

18 A. Yes, ma'am. Well, he called him stupid because we
19 overheard him saying that he didn't mean to shoot
20 whoever.

21 Q. And your impression was that was about a house,
22 Christopher Wilson going into a house. Officer asked
23 you -- or I think you actually said that Christopher
24 Wilson threw something out the window, didn't you?

25 A. I don't recall.

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 Q. Do you recall if you told him maybe that
2 something -- where something was thrown out the window by
3 Christopher Wilson?

4 A. I don't recall.

5 Q. Officer kept asking you if you had seen
6 Christopher Wilson who's in the back with a gun.

7 A. Yes, ma'am.

8 Q. It's dark outside, right?

9 A. Yes, ma'am.

10 Q. And you didn't take them very far, did you? I
11 mean, Goose Creek to the mall, right?

12 A. Yes, ma'am.

13 Q. Do you know if at any time over the course of the
14 next couple of days if Donte rented a car and went to
15 North Carolina?

16 A. No, ma'am.

17 Q. When you went in and gave a statement -- let me
18 back up here. How did you get to the police station that
19 day?

20 A. They came and got me from home.

21 Q. Did you have a car?

22 A. No, ma'am.

23 Q. So you didn't have transportation?

24 A. No, ma'am.

25 Q. And were you, in fact, during that time frame

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 living downtown and in Goose Creek due to your job and
2 transportation?

3 A. Yes, ma'am.

4 Q. Do you remember Officer Powell questioning you
5 about were you sure you took them to the mall?

6 A. Yes, ma'am.

7 Q. And if it shows differently, do you remember
8 telling him if it shows differently, you can just cuff
9 me?

10 A. Yes, ma'am.

11 Q. When you dropped him off at the mall, that was
12 near the Books A Million Sears area?

13 A. Yes, ma'am.

14 Q. I think that's what I read in your statement. Did
15 you have an opportunity to observe if the mall had
16 cameras?

17 A. No, ma'am.

18 Q. Are you aware that at this time between when --
19 Zaxby's arrived, and you say Christmas Eve, if you will,
20 because it was the 23rd going into the 24th and that two
21 weeks something or other later you said you would see
22 Donte here and there. You weren't with him consistently,
23 right?

24 A. No, ma'am.

25 Q. Are you aware of him having any conversations with

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 any other women during that time?

2 A. Conversations, what do you mean by conversations?

3 Q. Maybe chatting with him?

4 A. Not that I can recall.

5 Q. Do you remember Officer Powell telling you, We can
6 look at this as the good cooperative witness that's
7 giving me information in reference to two subjects, or we
8 can look at that time as an accomplice, came and picked
9 them up and led them out of Goose Creek.

10 A. In so many words, yes.

11 Q. Formally, I'm sure they want to check things. Did
12 you drive the speed limit or were you hauling it?

13 A. The speed limit.

14 Q. So you weren't just gunning it out of there?

15 A. No, ma'am, because I didn't feel like I had a
16 reason to.

17 Q. Do you take a lot of side roads?

18 A. No, ma'am. I stayed on the main road.

19 Q. He didn't say take this side road, take this road
20 down here so we won't be seen?

21 A. No, ma'am. There was no reason to take side
22 roads, like I said.

23 Q. And you actually were told to write it down, and I
24 think you were told to be completely truthful; otherwise,
25 it's always not such a good thing. Do you remember being

1 told that in your interview?

2 A. I don't recall.

3 Q. You wrote a statement to go along with this?

4 A. Yes, ma'am.

5 Q. You wrote a statement -- were you inquiring if you
6 would have to go to court and -- if you write the
7 statement, I don't have to go to court?

8 A. Yes, ma'am.

9 Q. So you thought it as a one or another thing, write
10 a statement, not go to court? You didn't think you would
11 be called into court?

12 A. No, ma'am.

13 Q. You wrote a statement?

14 A. No, ma'am.

15 Q. And that's because were you led to believe they
16 would write the statement you probably wouldn't have to
17 go to court?

18 A. Not really.

19 Q. But then I think you were told the police officers
20 don't rule the court systems, so --

21 A. Yes.

22 Q. The word accessory was used a couple of times in
23 your interview, wasn't it?

24 A. Yes, ma'am.

25 Q. Did you ever tell Officer Powell some two weeks

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 later that, This is exactly what happened. There was a
2 robbery of Zaxby's and Donte Brown was involved and he
3 did it?

4 A. No, ma'am.

5 Q. I know you said you and Donte were -- do you
6 remember if y'all were or you were not -- y'all were on
7 or off again during that December/January?

8 A. We were not talking at the time. We was talking,
9 but we wasn't going together.

10 Q. So y'all weren't friends, so to say, right, in the
11 more intimate sense?

12 A. Yeah.

13 Q. Y'all were being cordial?

14 A. Yes.

15 Q. Do you know if he was homeless? He wasn't, was
16 he?

17 A. No, ma'am.

18 Q. Do you know if he had a job? He did, didn't he?

19 A. Yes, ma'am.

20 Q. He worked for -- he worked at?

21 A. Detyens Shipyard.

22 Q. Did he also work -- maybe the same places, temp
23 agencies, like Staff Mark?

24 A. Yes.

25 Q. And you know what I meant by Staff Mark. Okay.

1 When you went for the interview, two weeks later,
2 do you remember that was a pretty long interview?

3 A. Yes, ma'am.

4 Q. What would you call long? Was it a couple of
5 hours, would you say, at least?

6 A. Maybe like an hour or so.

7 Q. If I told you that I looked at your interview and
8 I transcribed -- and transcribed a bunch, added to it,
9 did it several times, and the interviews had time stamps
10 on the bottom of them, told you the time of it, those
11 interviews started before 10:47 a.m., didn't it?

12 A. Yes, ma'am, it was pretty early.

13 Q. We were still talking at 1324. That would be
14 1:00, 1:24.

15 A. Yes, ma'am.

16 Q. That's more than an hour, right?

17 A. Yes, ma'am. I don't know the time, but I know it
18 was pretty long.

19 Q. More than an hour. There would be times where
20 Christopher Wilson would call you looking for Donte,
21 right?

22 A. Yes.

23 Q. You have a shoplifting conviction, correct?

24 A. Yes, ma'am.

25 Q. And you have been arrested on charges that are

MARTEEKA HAMILTON - CROSS BY MS. LITTLEJOHN

1 currently pending?

2 A. Yes, ma'am.

3 Q. In Berkeley County?

4 A. Yes, ma'am.

5 Q. Those haven't been resolved, have they?

6 A. No, ma'am.

7 Q. And those charges that are pending against you are
8 being prosecuted by the Ninth Judicial Circuit, this very
9 office here, right?

10 A. Yes, ma'am.

11 Q. You've been in trouble before for shoplifting?

12 A. Yes, ma'am.

13 Q. So you didn't like being in jail there, did you, I
14 don't think?

15 A. No, ma'am.

16 Q. I would assume that because most people don't.
17 Sure would be nice if this Ninth Judicial Circuit case,
18 by this solicitor's office -- you haven't been promised
19 anything, have you?

20 A. No, ma'am.

21 Q. But do you hope in your heart of hearts that maybe
22 it will all work out fine?

23 A. Yes, ma'am.

24 MS. LITTLEJOHN: I have no further questions.

25 THE COURT: Redirect?

1 REDIRECT EXAMINATION

2 BY MS. TAYLOR:

3 Q. Thank you. Ms. Hamilton, just to clear it up, I'm
4 not prosecuting your charges, am I?

5 A. Not that I'm aware of.

6 Q. Have you met your solicitor?

7 A. No, ma'am.

8 Q. Okay. Have we had a conversation about your
9 charges and if they have anything to do with this case?

10 A. No, ma'am.

11 Q. You haven't been promised anything?

12 A. No, ma'am.

13 Q. I just want to clear up a couple of things real
14 quick. You told Ms. Littlejohn on cross-examination that
15 Mr. Brown had a job at the time the Zaxby's was robbed.
16 Do you remember saying that?

17 A. Yes, ma'am.

18 Q. Okay. And you said he worked at the shipyard?

19 A. Yes, ma'am.

20 Q. Do you remember having a conversation with
21 Investigator Powell back in January of 2012 about whether
22 or not Mr. Brown had a job?

23 A. I don't recall.

24 Q. If what you said back to him back then was he did
25 not have a job, you're not denying that?

MARTEEKA HAMILTON - REDIRECT BY MS. TAYLOR

1 A. I don't recall it, but no.

2 Q. You probably remember better back then than you do
3 now?

4 A. Yes..

5 Q. And then I wanted to talk to you about the phone
6 calls you were getting from Mr. Brown, you said, on Mr.
7 Wilson's phone?

8 A. Yes.

9 Q. Do you remember telling Investigator Powell that
10 he had called you -- that Mr. Brown had called you
11 earlier in the day on December 23rd from Mr. Wilson's
12 phone?

13 A. I don't remember.

14 Q. But if that's what you said, you don't deny that?

15 A. No, ma'am.

16 Q. And if that's what the phone records show, you
17 wouldn't deny that?

18 A. I mean, I really can't say, because, like I say,
19 Christopher will call my phone, looking for Donte.

20 Q. Were you with Donte Brown the day of the 23rd or
21 were you getting your hair done?

22 A. No, ma'am. I was in the salon with my aunt and my
23 cousin.

24 Q. So you don't remember Mr. Wilson calling you
25 looking for Mr. Brown?

MARTEEKA HAMILTON - RECROSS BY MS. LITTLEJOHN

1 A. At a point in time I did receive a call from him.

2 Q. From -- who is him?

3 A. Christopher.

4 Q. Okay.

5 A. But my phone wasn't in my possession. My cousin
6 had my phone.

7 Q. Do you remember telling Officer Powell that --

8 MS. LITTLEJOHN: Objection. Leading.

9 BY MS. TAYLOR:

10 Q. Do you remember telling Investigator Powell that
11 the call you received earlier that day was from
12 Mr. Brown?

13 A. No, ma'am.

14 Q. Okay.

15 MS. TAYLOR: Thank you. No further
16 questions.

17 THE COURT: Recross?

18 RECROSS-EXAMINATION

19 BY MS. LITTLEJOHN:

20 Q. Just to follow up on the telephone questions, do
21 you know if Christopher Wilson ever spoke with your
22 cousin on your telephone?

23 A. He had to, because I was told there was a so many
24 minute long conversation that I knew didn't come from me.

25 Q. Because y'all weren't friends then?

MARTEEKA HAMILTON - REGROSS BY MS. LITTLEJOHN

1 A. Who?

2 Q. You and Donte. That's why it didn't come from
3 you.

4 A. I mean, yeah. We were friends, but at the same
5 time, just like I say, I never spoke with Donte earlier
6 that day, so --

7 Q. So Christopher Wilson was seeing your cousin?

8 A. Yes. I mean, they had been conversating {sic}
9 because, like I said, the only time I spoke with Donte
10 was around 12, 1:00 that night, and that's when he called
11 for a ride. Other than that, I didn't speak with Donte
12 that day.

13 Q. And you told Donte what beauty shop you were at
14 and who was doing hair, right?

15 A. I don't recall.

16 Q. If he asked, you would have told him, right?

17 A. Yes.

18 Q. And you were getting your hair done, right?

19 A. Yes.

20 MS. LITTLEJOHN: No further questions.

21 THE COURT: You're free to go.

22 Okay, folks. Let's take a rest room break
23 for about ten, fifteen minutes. Again, please don't
24 discuss the case with each other or talk about witness
25 demeanor or anything like that, and we'll see y'all back

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 in about ten, fifteen minutes.

2 (Recess taken.)

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

4 (In open court, jury present.)

5 THE COURT: Call your next witness.

6 MS. TAYLOR: State calls Cynthia Garrett.

7 CYNTHIA GARRETT,

8 having been first duly sworn,

9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MS. TAYLOR:

12 Q. Were you subpoenaed to be here today?

13 A. Yes.

14 Q. Do you want to be here?

15 A. No.

16 Q. Do you know the defendant, Donte Brown?

17 A. Yes.

18 Q. And how do you know him?

19 A. My ex-boyfriend.

20 Q. Can you tell the jury, when did you date
21 Mr. Brown?

22 A. November 2012.

23 Q. November 2011 maybe?

24 A. '11, I'm sorry.

25 Q. How did you meet Mr. Brown?

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. Facebook.

2 Q. And can you tell the jury the circumstances of how
3 you came to date him.

4 A. He start inboxing me, and then after that --

5 MS. LITTLEJOHN: Your Honor, relevancy.

6 MS. TAYLOR: Just establishing foundation.

7 THE COURT: Go ahead. You can lay a
8 foundation.

9 BY MS. TAYLOR:

10 Q. Tell the jury how you came to date Mr. Brown.

11 A. We started conversating {sic}, and then we
12 exchanged numbers.

13 Q. Did there come a time when he lived with you?

14 A. Yeah.

15 Q. And tell the jury how that happened.

16 A. He asked me to wash his clothes, and at that time
17 his parents must be -- had put him out. I told him yeah,
18 and then when I thought he was going back home and he
19 was, like, we have to talk, he told me the situation, so
20 I was, like, yeah, well, you might as well stay here if
21 we're going to be together, and I let him stay for, like,
22 a month.

23 Q. Where were you living at the time?

24 A. In Lincolnville.

25 Q. Was there anyone else other than you and Mr. Brown

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 living in the house?

2 A. My three kids.

3 Q. How old were your kids?

4 A. The oldest one was 16 at the time, 16, 14, and I
5 think my girl was 12. I know they two-and-a-half years
6 apart.

7 Q. And how long did you say that Mr. Brown lived with
8 you?

9 A. Thirty days.

10 Q. Okay. And did there come a time when he no longer
11 lived there?

12 A. Yes.

13 Q. And can you tell the jury how that happened.

14 A. We had a fight, and I just told him he had to
15 leave.

16 Q. Do you remember what the fight was about?

17 A. It always about -- he said I was being slick with
18 another guy.

19 Q. So he accused you of dating somebody else?

20 A. Just messing with somebody else, yes.

21 Q. Were you, in fact, seeing somebody else?

22 A. No. I mean, I had liked the person, but I wasn't
23 sleeping around, but he thought I was.

24 Q. And so that resulted in a fight?

25 A. Yes.

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 Q. And as a result of that fight, what happened?

2 A. I got tired of it, because I been through it in
3 the past, so I just told him he had to go.

4 Q. And was it your home you were staying in?

5 A. Yes.

6 Q. And did Mr. Brown move out?

7 A. Yeah. After I called the police, yeah.

8 Q. Do you remember about when that was?

9 A. It had to been a week before Christmas.

10 Q. Okay. And that's in 2011?

11 A. Yeah, like on a Tuesday, yeah.

12 Q. Okay. So if Christmas was on the Saturday or
13 Sunday, it would have been the Tuesday before?

14 A. Yeah.

15 Q. Okay. After Mr. Brown moved out of your house,
16 did you stay in contact with him?

17 A. Yeah. He called me off and on, yeah.

18 Q. Do you remember whose phone he was calling you
19 from?

20 A. Dolla.

21 Q. And do you know Dolla -- that's the name you call
22 Christopher Wilson?

23 A. Yeah.

24 Q. Okay. Had you ever met Dolla before?

25 A. Not before -- well, I haven't met Dolla till Donte

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 came in my life, yeah.

2 Q. But you met Mr. Wilson through the defendant?

3 A. Yeah.

4 Q. Okay. Prior to you asking him to leave your
5 house, do you know if Mr. Brown was working?

6 A. He wasn't working, but he had a job offer.

7 Q. And did he take that job offer, to your knowledge?

8 A. At first he did. I took him to the job site,
9 like, once, but after that, he wouldn't go.

10 Q. Did he say anything to you about why he didn't
11 want to work?

12 A. I asked him, I said, Donte, you don't want to take
13 this job offer? I will take you back and forth to work
14 as long as you help me with gas.

15 And he was, like, he would rather rob than work.

16 And then I said, Well, you can't be with me.

17 Q. He would rather rob than work?

18 A. Yeah.

19 Q. Did there come a time when Mr. Brown asked you to
20 use your car?

21 A. Yes.

22 Q. Did he have his own car?

23 A. No.

24 Q. To your knowledge, did Mr. Wilson have his own
25 car?

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. No.

2 Q. Did he tell you what he wanted to use the car for?

3 A. Yes.

4 Q. What was that?

5 A. To do a lick.

6 Q. What does that mean?

7 A. Rob..

8 Q. Did he say anything about who he was going to do
9 this robbery with?

10 A. Dolla.

11 Q. Okay. Did you allow him to use your car?

12 A. No.

13 Q. And was this all before you asked him to leave
14 your house?

15 A. Yes.

16 Q. Okay. Did there come a time, while he was still
17 living with you, where Mr. Brown had in his possession
18 something that troubled you?

19 A. While he was living with me, no.

20 Q. Okay. Did you ever see Mr. Brown with a gun?

21 A. My daughter did.

22 Q. Did you see the gun that he had?

23 A. Yeah.

24 Q. Okay. What was he doing with the gun when you saw
25 him?

1 A. Cleaning it.

2 Q. And where was that?

3 A. It was in my kitchen.

4 Q. Okay. Did you say anything to him about it?

5 A. I told him that he needed to get that out of my
6 house.

7 Q. Okay. If you saw a picture of the gun, do you
8 think you would recognize it?

9 A. Yes.

10 Q. We're going to look for it. It seems to be
11 misplaced, but we'll keep going until we find it, okay?

12 After he moved out of your house, you said you
13 stayed in touch with him; is that right?

14 A. Yeah.

15 Q. So he moved out that Tuesday, and then Christmas
16 was coming up?

17 A. Yeah.

18 Q. Do you remember seeing him during that week after
19 he had moved out?

20 A. No. I pick him up, like, that one time after
21 'cause -- you know, he had a job offer, so I was trying
22 to take him to work.

23 Q. Okay.

24 A. But other than that, no.

25 Q. Do you remember where you picked him up?

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. Like down the street, like Zaxby's and Hess.

2 Q. Between Zaxby's and Hess?

3 A. Yes.

4 Q. I'm going to ask to you look at this map that's
5 behind you marked as State's 39 for identification. Just
6 to orient you, this is what's marked as the Zaxby's here.
7 Did that area look familiar to you?

8 A. Yes.

9 Q. Is that the area that you picked Mr. Brown up?

10 A. Yes.

11 Q. Do you know where he was staying at that time?

12 A. Dolla house.

13 Q. And do you know Dolla's house was?

14 A. I can't remember, but I know, it's, like, across
15 the street in the subdivision by Zaxby's.

16 Q. So it's shown on that map somewhere, you just
17 don't know exactly where?

18 A. Yes..

19 Q. I'm going to show you, Ms. Garrett, what's been
20 previously marked as State's Exhibit 30 for
21 identification and ask you if you recognize that.

22 A. Yes.

23 Q. And how do you recognize this?

24 A. He was cleaning it.

25 Q. Who was cleaning this?

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. Donte.

2 Q. So is this -- this is a picture of a gun?

3 A. Yes.

4 Q. And is this the same gun he was cleaning in your
5 kitchen?

6 A. Yes.

7 Q. Okay. Thank you. So after you picked him up from
8 that Zaxby's, did you see him again?

9 A. No.

10 Q. Okay. Did you ever have an opportunity to talk to
11 him by telephone?

12 A. He would, like, here and there, yeah.

13 Q. And whose phone was he calling from?

14 A. At first it was Dolla until he got his own.

15 Q. Okay. Do you remember what your phone number was
16 back in December of 2011?

17 A. I know it start with a 425.

18 Q. Do you remember giving a statement to officers
19 in -- I'm sorry, at the end of December 2011?

20 A. Yes.

21 Q. I'm going to show you your statement and ask you
22 if you recognize that top part that has your information
23 filled out.

24 A. Yes.

25 Q. Is that your handwriting?

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. Yes.

2 Q. And does it have your phone number on it?

3 A. Yes.

4 Q. Could you read that out for us.

5 A. 425-4083.

6 Q. And that's the phone number you had back then?

7 A. Yes.

8 Q. Is that the phone number Mr. Brown would call
9 using Mr. Wilson's cell phone?

10 A. Yes.

11 Q. Okay. I'm going to go now to specifically the
12 date of December 23rd, 2011. Do you remember that day?

13 A. Yes.

14 Q. And can you tell me if you remember talking to
15 Mr. Brown at some point that day?

16 A. Yes.

17 Q. And tell me how that conversation happened.

18 A. I remember he called me one night, I think it was
19 like midnight, and he asked me to come pick him and Dolla
20 up.

21 Q. Okay.

22 A. And I told him no. He asked where I was at. I'm,
23 like, I'm at the club, and, he's like, Where?

24 And I'm, like, Why?

25 And then he was, like, If you come pick me up, I

1 will pay your light bill and fix your vents, because he
2 had broke my vents in the car.

3 I'm, like, No, and he get mad and hang up.

4 Q. How much was your light bill?

5 A. At that time it was, like, 175.

6 Q. And how much would it have cost to fix your vents?

7 A. I don't know, because he broke it. I wasn't
8 keeping the car anyway.

9 Q. But he offered you a couple hundred to come pick
10 him and Mr. Wilson up?

11 A. Because at that time I was moving, and he knew
12 that. I guess he was, like, trying to help me out, and I
13 was, like, no.

14 Q. Did he say where they needed a ride from?

15 A. They didn't say where from, but he wanted me to
16 pick them up.

17 Q. It was him and Mr. Wilson together?

18 A. Yeah.

19 Q. After you told him no, did you talk to him anymore
20 that night?

21 A. No.

22 Q. Did you ever have a chance to speak with him
23 again?

24 A. Yeah. I remember he called me on my birthday, I
25 think on my birthday or before because he had want to

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 take me out.

2 Q. When is your birthday?

3 A. On the 27th of December.

4 Q. Okay. Did you go out with him?

5 A. No.

6 Q. After that, did you see him?

7 A. I saw him again, like, I remember the first of
8 January.

9 Q. Okay.

10 A. Because I had need to get my boy's hair cut to go
11 back to school after Christmas break.

12 Q. When you say them --

13 A. Well, really Donte, because Dolla cut hair, and I
14 need my boy's hair cut.

15 Q. So you were trying to get in touch with Mr. Wilson
16 to try to get a haircut?

17 A. Actually, I do things for Donte. Like, I just
18 don't go through his friends.

19 Q. And by that point, were you still calling
20 Mr. Wilson's phone to get in touch with him or did
21 Mr. Brown have his on phone number?

22 A. Donte had his own phone by then.

23 Q. After the night that you were at the club and he
24 called you from Mr. Wilson's phone, he started calling
25 you from his own phone?

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. Yeah. Like, around my birthday. I think, like,
2 the day before, either on my birthday -- I can't
3 remember, because he was calling me off his phone because
4 he had wanted to take me out.

5 Q. And you said that you saw Mr. Brown and Mr. Wilson
6 on January 1st.

7 A. Yes.

8 Q. At some point did you have a conversation with
9 Mr. Brown regarding the night that he called you asking
10 for a ride?

11 A. We didn't talk about the ride that night because
12 we had went to Wal-Mart. We was talking about the
13 robbery.

14 Q. Did you talk about other stuff that happened that
15 same day, the robbery?

16 A. Yes.

17 Q. Okay. If you would, please, tell the jury what
18 Mr. Brown told you about the robbery at the Zaxby's.

19 A. He was just, like, they robbed Zaxby's and Dolla
20 shot the person.

21 Q. When you say they, who does that mean?

22 A. Donte and Dolla.

23 Q. That they robbed the Zaxby's together?

24 A. Yes.

25 Q. Did he say anything about how they got in or --

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. No.

2 Q. -- being at the Zaxby's before the robbery?

3 A. They said they was scoping the scene out for a
4 while, but -- well, Donte -- because me and him been to
5 Wal-Mart together, but he didn't say how he got into it
6 and all that other stuff.

7 Q. He said they were scoping the scene out?

8 A. Yeah, for a while.

9 Q. Did he tell you what happened after the robbery?

10 A. They just -- well, Donte just be, like, they got
11 money, and, you know, they went shopping or whatever.

12 Q. Did he tell you what he bought?

13 A. He got clothes, shoes, new phones.

14 Q. When you saw Mr. Brown, did he have new clothes
15 and shoes?

16 A. Yeah.

17 Q. Not clothes that you had seen him with?

18 A. No, no. He been with me, no.

19 Q. Did he say anything to you about what happened as
20 they left from the Zaxby's?

21 A. No. He just said they run, he dropped money, and
22 I asked him why he didn't go back and get it. He was,
23 like, because the police was coming.

24 Q. So as he was leaving, they dropped money, but they
25 couldn't go back because the police were coming?

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 A. Yeah.

2 Q. Okay. And, again, who did he say shot the victim?

3 A. Dolla.

4 Q. Did he tell you who picked them up that night?

5 A. I told him that I -- that -- well, he said
6 Tiffany.

7 Q. Now, do you know the name Marteeke Hamilton?

8 A. Yeah.

9 Q. And how do you know her name?

10 A. He said that's his ex-girlfriend.

11 Q. Did you and Donte have some conflict over Ms.
12 Hamilton?

13 A. Yeah, here and there.

14 Q. And why was that?

15 A. 'Cause I guess he say stuff to try to make me
16 jealous, yeah, but --

17 Q. You didn't like it when he brought up her name?

18 A. Yeah, yeah.

19 Q. Did Mr. Brown tell you anything other than new
20 clothes, new shoes, and a new phone about how he spent
21 the money?

22 A. They rent a car and went out of town.

23 Q. Did he say anything about where he was staying
24 after the robbery?

25 A. He was in a hotel, but I don't know which one.

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 Q. Okay. Ms. Garrett, once you had these
2 conversations with Mr. Brown, what did you do?

3 A. I went to the police.

4 Q. And why did you do that?

5 A. Because once he told me, I feel like I was an
6 accessory.

7 Q. Did you do it because you were mad at him?

8 A. No.

9 Q. Did you hold hard feelings against Mr. Brown?

10 A. No.

11 Q. Did you want him to get in trouble?

12 A. No. I just did it because I feel like it was the
13 right thing to do.

14 MS. TAYLOR: No further questions. Thank
15 you.

16 THE COURT: Okay, folks. We are going -- the
17 cross-examination will probably take a little bit longer
18 than normal -- well, not normal, but it would eat well
19 into where we break for lunch, so we're going to go ahead
20 and break a little bit early for lunch and come back
21 after lunch and begin cross-examination.

22 It's almost 12:00 now, so if you would, be
23 back in the jury room at 1:30 and we will resume at 1:30.
24 Don't talk about the case. Don't discuss it with anyone,
25 including other jurors. Please don't go by the crime

CYNTHIA GARRETT - DIRECT BY MS. TAYLOR

1 scene or anything like that, and please don't use any
2 form of social media. If anybody talks to you about the
3 case, please report that when you come back. All right?
4 See y'all at 1:30.

5 (In open court, jury not present.)

6 Okay. Now, during the lunch break, you can't
7 talk to anybody including, any of the lawyers. If
8 anybody does approach you to talk to you about the case,
9 please report that back. If you go to lunch or something
10 like that and you have a ride, obviously, you can talk to
11 that person, but please don't talk about the case with
12 anyone, and if anybody does try to talk to you about the
13 case, please report that when we come back. Okay?

14 Thank you.

15 A F T E R N O O N S E S S I O N

16 THE COURT: All right. Are you ready to
17 proceed?

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

19 MR. SCHWACKE: We're ready, Your Honor.

20 THE COURT: All right. Where is the witness?

21 MS. TAYLOR: She's sitting outside.

22 THE COURT: Let's bring her back. Okay.
23 Let's bring the jury back.

24 (In open court, jury present.)

25 THE COURT: We are going to resume now with

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 the cross-examination of the witness, and, ma'am, I'll
2 remind you that you're still under oath.

3 Ms. Littlejohn, if you're ready.

4 CROSS-EXAMINATION

5 BY MS. LITTLEJOHN:

6 Q. Ms. Garrett, my name is Debbie Littlejohn. I'm
7 going to ask you a couple questions. I'm sure you've
8 been told how the procedure works, right?

9 A. Yes.

10 Q. And you know that I have the pleasure of
11 representing Donte.

12 A. Yes.

13 Q. And I asked you if you knew how the procedure
14 worked. How many times have you met with the solicitor's
15 office, or a representative from the solicitor's office?

16 A. Twice.

17 Q. Twice? And how many times have you spoken with
18 them?

19 A. Twice.

20 Q. So you never talked to them but twice on the
21 telephone, that's it?

22 A. I meant in person.

23 Q. Twice in person?

24 A. Yes.

25 Q. About how many times do you think on the

1 telephone?

2 A. None. They only called me to schedule an
3 appointment.

4 Q. And you met with the officers, right?

5 A. Yes.

6 Q. Okay. And they told you how this procedure works,
7 right, and how the Court thing works?

8 A. Yes.

9 Q. As a matter of fact, I believe my investigator
10 went out and you refused to speak with her, right?

11 A. No one ever came out.

12 Q. Oh, okay. Let's go over some of the issues that
13 you hit on in your direct examination with the solicitor.

14 When you were preparing for this case, I'm looking
15 at it, did you review your interview?

16 A. I'm sorry. Repeat that?

17 Q. Did you review your interview that you had with
18 the police officer?

19 A. No.

20 Q. So you haven't seen the two CDs?

21 A. The two CDs? What is two CDs?

22 Q. When -- you met with Officer Powell twice, didn't
23 you?

24 A. I met with the solicitor -- yeah, twice, yeah.

25 Q. Right. And both times those were videotaped.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. No. I wasn't videotaped.

2 Q. So if we were to tell you that I watched the
3 conversation that occurred on December 29th, 2011 with
4 you and Officer Powell and, I believe, Officer Fogle was
5 in there, you were at the Goose Creek police department
6 talking with them, you were not aware that was being
7 videotaped?

8 A. No.

9 Q. I have been able to watch that, so let's go over
10 some of this for a moment, okay? You first met with the
11 officers on December 29th, 2011, correct?

12 A. Correct.

13 Q. And you listed your address as [REDACTED] West Carolina
14 Avenue, Lincolnvile, correct?

15 A. Correct.

16 Q. During the conversation you had with the
17 solicitor, as well as the conversation I was able to
18 listen to that was videotaped, didn't you say that Donte
19 offered to pay your light bill?

20 A. Correct.

21 Q. That light bill you're referring to, that was run
22 by SCE&G, right?

23 A. Correct.

24 Q. That light bill was in the name of Donte Brown,
25 wasn't it?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. Correct.

2 Q. So it was his light bill?

3 A. Correct.

4 Q. Okay. And you're aware when you go to get lights
5 on they ask you questions like, is it for business or
6 residential? I'm sure you've had lights turned on,
7 correct?

8 A. Yes.

9 Q. And they asked you whether it's business or
10 residential and you say it's for my house, right?

11 A. Correct.

12 Q. And they want to know how you plan on paying for
13 it, right?

14 A. Correct.

15 Q. And since you have gotten lights on before, you
16 know that one of the things they will ask you is where do
17 you work?

18 A. Correct.

19 Q. Well, where you were living where the lights were
20 in Donte's name, are you aware that the service was
21 established around November 16th, 2011 at that address
22 you're referencing in Lincolnville in his name?

23 A. The lights was in a friend's name at first, and we
24 have agreed to put it in his name until I was able to pay
25 off my bill and put it in my own name. And it's not in

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 his name no more, it's in my name.

2 Q. So it was established in his name, October --
3 around October 2011, mid-October, right?

4 A. Yeah.

5 Q. Mid-November, I'm sorry, mid-November?

6 A. Correct.

7 Q. And you said you filled out the application for
8 the lights?

9 A. I didn't fill it out. Donte did all that.

10 Q. You filled out the applications for lights?

11 A. For lights?

12 Q. Right, when you called to get lights in your name
13 before?

14 A. Yeah, we called over the phone.

15 Q. But they'll ask you questions, like, your date of
16 birth, social security number, where you work; they want
17 to know you're a real person with a real social security
18 number, real date of birth, and how you plan on paying
19 for it, so when you've gotten electric in your name
20 before, you've been asked where you work?

21 A. Correct.

22 Q. On the electric bill, if I were to tell you when
23 it was established in Donte's name, it had him down as
24 employed at High Track Shipyard, are you aware of that?

25 A. Donte was working in the very beginning --

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 Q. Are you aware that he was employed there?

2 A. Yeah.

3 Q. Okay. Thank you. That's all I need to know.

4 So let's talk about your statement on December
5 29th, 2011 that you gave to the Goose Creek police.

6 In your statement -- let's just talk about your
7 written statement first, not your oral statement of your
8 videotape. You actually say to them that you know him
9 cause me and him was not talking and I also say -- you
10 were not talking. You were angry with him when you wrote
11 this statement on December 29th, correct?

12 A. No. I wasn't angry with him when I write those
13 statements.

14 Q. You said he called you when you were at the club.

15 A. Correct, he did call me when I was at the club.

16 Q. You remember making a comment about another
17 female, Marteeke Hamilton --

18 A. Yeah.

19 Q. -- to police officers? And you don't like her, or
20 at that time you didn't like her very much, did you?

21 A. I would never say I don't like her. I just didn't
22 like when he calls, throw her up in my face, because I'm,
23 like, if you're going to throw her up in my face, you go
24 live with her.

25 Q. It made you mad?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. It don't make me mad.

2 Q. It didn't make you mad?

3 A. No. I just don't like when I'm with someone and
4 we're together, you don't throw up the past person
5 because in that case they should be together and you
6 should never been to my house.

7 Q. But y'all living together, if he wants to talk to
8 somebody, I don't want you in my house, even though y'all
9 are together, but it didn't make you mad, correct?

10 A. It don't make me mad. I have no reason to be mad
11 at her.

12 Q. Actually, in your interview with Officer Powell on
13 December 29th, you actually talked about her and said, I
14 said that's -- and I'm going to quote that -- I said,
15 That's a dumb ass girl, knowing she's an accessory?

16 A. I did say she was a dumb ass girl, I mean --

17 Q. Okay.

18 A. That's just common sense, but that don't mean I
19 don't like her. She don't like me. We just mess with
20 the same guy.

21 Q. You remember that same interview, on December
22 29th, you were talking about before all that and what the
23 solicitor mentioned is where you said you saw a gun --
24 well, for instance, you told us your daughter saw it,
25 correct? If that's what you said earlier.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. Correct.

2 Q. Okay. And then you said you saw it?

3 A. Because she told me.

4 Q. So you didn't actually see it. Your daughter saw
5 it and told you about it?

6 A. Yeah, she saw it. She told me about it, yeah. I
7 mean, why would she not tell me?

8 Q. Right. So you never even saw the gun. You know
9 what she told you, right?

10 A. Right.

11 Q. And how old is she, 13, you said?

12 A. My baby is 14 now.

13 Q. I'm sorry. Fourteen. So what you told the
14 officer that day was -- you told us now under oath that
15 you never actually saw it, your daughter did, but didn't
16 you tell the officer it was a little black handgun, not
17 one that was big?

18 A. I don't remember telling the officer it was a
19 little handgun, because I really didn't see the whole
20 entire gun. I know the gun was big.

21 Q. So if I told you that you told the officer, quote,
22 look like a little black handgun, not nothing that was
23 big, just a little, you would deny that those were your
24 words to the officer on December 29th, 2011?

25 A. I can't deny it. It was two years ago. I don't

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 remember. I don't remember everything. You know how
2 long that was. I would have to see my statement.

3 Q. This is part of your interview?

4 A. I'm not denying what I said or write, but it was a
5 long time ago. I don't remember that stuff.

6 Q. Okay. And you told him, I want to say maybe a 45.

7 A. I never say a 45.. I don't even know that about a
8 gun. I didn't know a 25, a 15, a 10. I don't know
9 anything about a gun, so I didn't tell them a number.
10 They probably said a 45, but I don't know nothing about
11 no guns.

12 Q. Because he actually asked you if you knew the
13 difference between a revolver and a pistol?

14 A. And I told him no, I don't know anything about no
15 guns. I don't own guns; I don't hold guns; I don't know
16 about guns.

17 Q. Do you remember telling him it was small?

18 A. Yeah, 'cause, like I said, I didn't see the actual
19 whole gun.

20 Q. You never saw the actual gun?

21 A. Not the whole gun, but I saw --

22 Q. Okay.

23 MS. TAYLOR: Your Honor, I'm sorry. If
24 defense counsel could let the witness finish her answer.

25 THE COURT: Let the witness finish her answer

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 before you ask the next question.

2 BY MS. LITTLEJOHN:

3 Q. So you've told us a few minutes ago you never saw
4 it, but your daughter told you about it.

5 A. My daughter saw the gun. She told me about it.

6 Q. Okay. Do you remember telling my officer, Officer
7 Powell, that you didn't like guns, basically, and I'm not
8 quoting anything here, but basically to the essence of
9 you don't know guns, you don't like guns.

10 A. No, I don't like guns.

11 Q. Right. Don't allow them around?

12 A. No. My kids don't play with guns, no water guns,
13 no nothing.

14 Q. All right. So, basically, it's hands off?

15 A. Hands off. My kids know the deal.

16 Q. They don't touch them, you don't touch them,
17 nobody touches them?

18 A. Not at my house.

19 Q. If I told you I have a photograph that appears to
20 look like you with a gun, what would you say, actually, a
21 pistol?

22 A. Really? I have to see that photograph.

23 MS. LITTLEJOHN: Your Honor, if may approach?

24 THE COURT: Sure.

25 THE WITNESS: That's me.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 BY MS. LITTLEJOHN:

2 Q. Little blurry. And when was that taken?

3 Would you agree that there have been photographs that
4 somebody that looks -- looks like you in a photograph?

5 A. That's not me, 'cause I don't remember taking
6 pictures -- that gun look like it's holding it to her
7 head. I don't put it in my life like that.

8 Q. Do you remember one -- let's go back to that first
9 interview where you were talking to Officer Powell and
10 you actually drove to the interview, or they didn't send
11 a car to get you?

12 A. I drive.

13 Q. Right. You drove to the interview, and you called
14 them, didn't you?

15 A. I sure did.

16 Q. Right. So they interviewed you that day, and you
17 really wanted to give them some information, right?

18 A. Correct.

19 Q. About the Zaxby's robbery?

20 A. Correct.

21 Q. And kept saying to them, Slaughter told me,
22 Slaughter told me.

23 I'm not asking you to repeat what Slaughter told
24 you. You can't do that. That's one of the rules, okay,
25 but didn't you keep saying, Slaughter told me?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. Slaughter told me.

2 Q. Right?

3 A. Uh-huh.

4 Q. We're just not allowed to repeat what Slaughter
5 said.

6 A. Correct.

7 Q. You ended up -- you told the police you didn't
8 know the full name of Slaughter, right?

9 A. Correct.

10 Q. But you also told the police -- at some point,
11 they asked you, did you have -- this guy Slaughter, do
12 you have his telephone number? You said yeah and gave it
13 to them, right?

14 A. Correct.

15 Q. Because that's somebody's number you had. In one
16 of the ways -- they showed you a picture of Donte. Since
17 y'all have been together, you recognized Donte, and you
18 actually kind of -- you said, yeah, that's his big head;
19 basically, that he had a big head?

20 A. I always call him that. He know that.

21 Q. I guess it was a nickname sort of --

22 A. No, we joke around.

23 Q. I'm not saying it's derogatory. I'm just
24 saying -- and in that interview, you actually -- at the
25 beginning, you say Ms. Jones?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. Excuse me?

2 Q. Didn't they call you Ms. Jones?

3 A. No.

4 Q. So they never called you another name on any
5 interview tape or anything other than Cynthia Garrett?

6 A. No.

7 Q. No, they didn't, or no, they didn't?

8 A. No, they didn't.

9 Q. They didn't. So if I told you in listening to the
10 taped interviews on several occasions, first thing the
11 officer did when they walked into the room was, Hi, Ms.
12 Jones. How are you? I've had a long discussion with you
13 in on the phone and a little bit. What we would like to
14 do is come start at the beginning of this.

15 Then that would be totally inaccurate? The
16 officer didn't say that to you?

17 A. No.

18 Q. Do you remember -- you had not met with these
19 particular police officers before this day, had you,
20 before the day you went in there?

21 A. I only met with them the first time I walk in
22 there, and I met with the solicitor's office -- I mean --

23 Q. I'm just talking about this one day, before the
24 day of the 29th of December.

25 A. No.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 Q. You never met them, did you?

2 A. No.

3 Q. Okay. I'm sorry. Misunderstood there. And you
4 were concerned about your name coming out, weren't you?

5 A. Of course.

6 Q. And so they signed you up as a confidential
7 informant, didn't they?

8 A. Yeah, that's what he said.

9 Q. And then the report said CI number, get CI number.
10 CI means confidential informant. That's what they mean,
11 right?

12 A. Uh-huh.

13 Q. And you had to fill out a CI packet, a packet to
14 be a confidential informant, didn't you?

15 A. Correct.

16 Q. And I believe Officer Powell told you it's going
17 to be strictly confidential. There's only so many others
18 that would have access to it, correct?

19 A. Correct.

20 Q. And at the time you believed it, right?

21 A. I did, at the time.

22 Q. And you believed it?

23 A. Of course.

24 Q. The police officer told you something, you're
25 going to believe it?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. I learned now.

2 Q. But it didn't turn out to be true?

3 A. No.

4 Q. You are in here today and there you were?

5 A. Right.

6 Q. Do you remember saying that day in our interview
7 after about -- during the time you were signing it up as
8 a confidential informant, you remember saying I have a
9 question? My name is Cynthia Garrett, but I say Jones
10 because I don't want my name to be, but I put my real
11 name on there, meaning on the statement.

12 A. I believe so.

13 Q. So that may have refreshed your memory that maybe
14 they may have said, Hi, Ms. Jones, when you walked in,
15 that probably be right?

16 A. Probably right. It was two years ago.

17 Q. And they told you that being a confidential
18 informant, they could wire you up and everything, meaning
19 a recorded device, and you said, Huh? And then explained
20 it, like with a recorded device?

21 A. I believe so.

22 Q. You did tell them you had to go to court for a
23 ticket, didn't you?

24 A. I can't remember. I believe so.

25 Q. Okay. If you can't remember, that's fair.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. I can't remember.

2 Q. That's fair. You're right. It was a while ago.
3 And after going through all this confidential informant
4 thing, you were actually told that when you asked if you
5 would be required to testify, you were actually told
6 something to the effect of it would have to go to a
7 higher court judge, usually a circuit court judge or
8 above, for them to reveal that information, for them to
9 actually -- to bring out the contents of the file.

10 Remember being told something to that effect?

11 A. I believe so.

12 Q. They fingerprinted you, right?

13 A. Correct.

14 Q. Do you remember from that same December 29th you
15 told the officers exactly where Slaughter lived?

16 A. Correct.

17 Q. Apartment complex? What is across the street from
18 it, the name of it?

19 A. I didn't know the name of the street.

20 Q. No, across -- what was -- the elementary school
21 that was across the street from and the name of the
22 apartment complex?

23 A. Correct.

24 Q. You told me he was, like, 39 years old, correct?

25 A. Correct.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 Q. Told them what kind of car and all who drove?

2 A. Correct.

3 Q. Give them all sorts of information? Said he was
4 tall, over six feet, gave them his number?

5 A. Correct.

6 Q. The gun that you identified in the picture today,
7 this is the first time you were able to say, oh, yes,
8 that's the gun, was just a couple weeks ago, wasn't it?

9 A. Correct.

10 Q. Donte doesn't have a driver's license, does he, or
11 at that time he didn't, did he?

12 A. No.

13 Q. And if I say Dolla, you realize I'm talking about
14 Christopher Wilson?

15 A. Correct.

16 Q. So if I use those interchangeably, I just want to
17 make sure we're on the same page here. Dolla would call
18 you? I think you actually said blow up your phone and
19 all, want to find Donte and talk to Donte, right?

20 A. Correct.

21 Q. In that same statement, the first statement you
22 made, you actually say Donte and Dolla never told me that
23 they robbed Zaxby's.

24 Do you remember that? Would it help if I showed
25 you that, just to help refresh your memory? I'm just

1 showing this to the witness. Is that your handwriting
2 there?

3 A. Uh-huh.

4 Q. And you remember writing this statement?

5 A. Correct.

6 Q. And you've had a chance to review it, and in your
7 statement then, didn't you say Donte and Dolla never told
8 me they robbed Zaxby's?

9 A. At the beginning Donte denied it.

10 Q. December 29th, that's in your statement, correct?

11 A. Correct.

12 Q. Focus on that interview. Have you had a chance to
13 review your written statement?

14 A. Yes.

15 Q. Do you remember in your written statement you --
16 strike that, Your Honor.

17 Do you remember in your written statement you told
18 the officers that you didn't want Donte at your house,
19 right?

20 A. Correct.

21 Q. And you even said that y'all had argued one day,
22 right around this time of the statement and all, for a
23 couple weeks before that and said you got out, went to
24 Lowe's in Summerville, and told them to call the police,
25 didn't you?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. I jumped out of the car.

2 Q. You jumped out of the car and went to Lowe's in
3 Summerville and told them to call the police?

4 A. Yeah. He was trying to fight me.

5 Q. Yeah, whatever reason. So you told them what
6 Lowe's it was and where it was?

7 A. Yeah, on Main Street.

8 Q. So they could check that out easy?

9 A. They can.

10 Q. Yeah, right, of course, of course they can. Now,
11 let me take you over to the next time you talked with the
12 police. That was January 12th, correct?

13 A. Correct.

14 Q. At around 11:54 a.m.?

15 A. Correct.

16 Q. Again, I listened to the taped interview from
17 January 24th. And took some notes here. I want to go
18 over these with you. This was after Donte was arrested
19 because he was arrested on January the 5th, correct?

20 A. Correct.

21 Q. And after he was arrested, a little bit after
22 that, you went back to the police station, right?

23 A. Correct.

24 Q. And you said you were afraid he might accuse you
25 of talking, right?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. Correct.

2 Q. Isn't that you what told the officers on that
3 interview?

4 A. Correct.

5 Q. I believe you told the solicitor earlier that it
6 was when you and Donte were at Wal-Mart, you said he
7 confessed to you.

8 A. Correct.

9 Q. You actually told that to the officers too, didn't
10 you?

11 A. Correct.

12 Q. And y'all went to Wal-Mart that day because you
13 told the officers you had to return a monitor, didn't
14 you?

15 A. Correct.

16 Q. And you needed to do that so you could get a gift
17 card?

18 A. Correct.

19 Q. So you could get a couple dollars and put it on a
20 telephone bill, right?

21 A. Correct.

22 Q. Although you wrote your statement that day at
23 11:54, your interview -- you had already had a good bit
24 of talking with the interview with the officers before
25 you wrote a statement that day, right? Y'all went into a

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 little room and talked and you wrote this statement in
2 January. Do you remember that?

3 A. Correct.

4 Q. Okay. Do you remember asking -- strike that, Your
5 Honor.

6 Do you remember telling the police
7 officers -- do you remember telling them that you had a
8 conversation with Donte and that in this conversation he
9 supposedly told you that he ran from the scene? Remember
10 that?

11 A. Yes.

12 Q. And dropped \$600?

13 A. Correct.

14 Q. And in this conversation where he supposedly told
15 you that, you told the officers -- they supposedly told
16 you two people were hurt, right?

17 A. Correct.

18 Q. You even said that pictures were taken, right?

19 A. Pictures?

20 Q. I think you said there were pictures taken -- a
21 bunch of money, basically.

22 A. They did.

23 Q. Right. That's what you were trying to tell the
24 officers, right?

25 A. Right.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 Q. You actually even said to the officers on the
2 interview of January 12th that Donte offered to pay, you
3 said, your light bill, right?

4 A. Correct.

5 Q. And we've established that light bill was in his
6 name, right?

7 A. Right.

8 Q. Okay. You told the officers, didn't you, that
9 Donte even told you he had a rental car.

10 A. Correct.

11 Q. Said he had a hotel?

12 A. Correct.

13 Q. You told him he had gotten clothes and shoes?

14 A. Correct.

15 Q. And you said they were actually over at your
16 house, right after January 1, before the children started
17 school that year, so probably about the 2nd, I would
18 guess, didn't know what day of the week that would be,
19 because they start pretty early.

20 A. No, it was January 1st.

21 Q. It was January 1st?

22 A. Yes, because that's when my son get his money, and
23 he needed to get his hair cut, but I didn't have the
24 money. So I know Dolla cuts hair real good, so I told
25 Donte, I think, to come over so Dolla could cut my boy's

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 hair before he went back to school.

2 Q. So you wanted a good haircut?

3 A. Of course.

4 Q. Didn't have the money, told Donte what to do, he
5 brought Dolla over there to cut the hair.

6 A. Right.

7 Q. As a matter of fact, I think you told the officers
8 you didn't have gasoline money, right? At that time you
9 were running low on gasoline money, right?

10 A. Yeah, of course. I wasn't working at the time. I
11 had to pay my bills. So I was low on money. Donte know
12 that, so I needed them that day to cut my boy's hair. Of
13 course I had gas at that time.

14 Q. And didn't you tell the officers that you didn't
15 try to find out what he was in jail for in Berkeley
16 County, called up to the jail and they wouldn't tell you?

17 A. Correct.

18 Q. Officers said, We just want to you to know to be
19 truthful. Here's the public record, right? They told
20 you the public record, right, for -- that's what they
21 said, what the general public would know, right?

22 A. Correct.

23 Q. You wanted to know what he was in jail for, but
24 you're just gone. You made allegations when they signed
25 you up as a confidential informant, and the officers told

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 you it takes a circuit court judge to open that up,
2 and -- but you didn't know why he was in jail?

3 A. I had a feeling.

4 Q. You had a feeling? And Berkeley County, they flat
5 out wouldn't tell you, right?

6 A. Right.

7 Q. They flat out wouldn't tell you why he was in
8 jail?

9 A. That's Berkeley County. Because Charleston County
10 would have told us.

11 Q. Right, but --

12 A. Berkeley County different. Correct.

13 Q. Neither one of them, they won't tell that stuff,
14 will they? They wouldn't tell you, will they?

15 A. No.

16 Q. As a matter of fact, things were pretty tight
17 during that time because cable was cut off because you
18 said you used to watch the news a good bit, right? I
19 think you told him --

20 A. The cable got cut off?

21 Q. The cable.

22 A. I told them the cable got cut off?

23 Q. You used to watch the news, you said.

24 A. I own one of those little boxes if my cable was
25 not on. I'm always watching the news, but I didn't watch

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 it that time when --

2 Q. You said you liked watching the news, right?

3 MS. TAYLOR: Your Honor, if she could let the
4 witness answer.

5 THE WITNESS: When that happened with Donte,
6 I didn't watch the news, but I got a phone call from
7 friends of the family telling me --

8 BY MS. LITTLEJOHN:

9 Q. You can't say what somebody else said.

10 A. Yeah, I watch it all the time.

11 Q. Okay. Do you remember talking to the police
12 officers in the January taped interview and said to them,
13 after Donte was in jail for this, charged of this, but
14 the thing is, just before he got locked up, he was just
15 cussing me.

16 A. Of course.

17 Q. He got a child on the way and the officer said to
18 you, you got a child on the way? And you said yes, he
19 said that, but I think he's lying to make me jealous.

20 A. No, he did say that.

21 Q. And you said that basically they asked you, you
22 don't think it's Teeka's, meaning Marteeke Hamilton,
23 correct?

24 A. Repeat that again?

25 Q. Didn't they ask you -- and the question would have

1 been, you don't think it's Teeka's?

2 A. Well, he said she was pregnant, so I guess she
3 was. I mean, he always speaking on Teeka, which I do
4 know she have another child.

5 Q. And didn't you tell them he claimed she was
6 pregnant and she had an abortion?

7 A. Yeah. That's what he told me.

8 Q. You told the officers basically you need to be
9 calling that girl. You don't need to be calling me.

10 A. Correct.

11 Q. Earlier when the solicitor asked you about that,
12 Donte allegedly said to you would have been taking out
13 this Zaxby's for a while, you told the officers that
14 that's what was said and you didn't tell them whether it
15 was for two weeks, two months, or how long, did you?

16 A. I don't know.

17 Q. That's when you also told him that \$600 was
18 dropped while running, right?

19 A. Correct.

20 Q. Actually claimed that you were the first person
21 that got the call from Donte and Dolla to come pick them
22 up, right?

23 A. So, he called me.

24 Q. But you told the officer, I was the first person
25 they called?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. Correct.

2 Q. You said they went back to the hotel, or Donte
3 did, and then you told the officers, They never tell me
4 they had girls at the hotel, which I ain't stupid?

5 A. Of course I said that.

6 Q. You said they rented a car to go to North
7 Carolina. You told the officers that, correct?

8 A. Correct.

9 Q. Then Donte supposedly told you what you told me
10 also was that the one female, Marteeke, or Teeka, whose
11 baby she was having, or had, what have you, takes him
12 part of the way, and then some other girl named Tiffany
13 comes around, right?

14 A. Repeat that again?

15 Q. Some girl named Tiffany, you mentioned to the
16 police officers -- do you remember that?

17 A. Yes.

18 Q. And you've seen the name Tiffany in Donte's
19 telephone. You told that to the officers, right?

20 A. I don't remember.

21 Q. You remember telling the officers that you told
22 Donte, You can text your girlfriend. I don't care.

23 A. Correct.

24 Q. They got to deal with you, not me.

25 A. Correct.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 Q. So you told the officer the alleged confession you
2 gave not long before this at Wal-Mart, right?

3 A. Correct.

4 Q. Y'all were near -- y'all were near the service
5 desk because you were returning the monitor, or customer
6 service, one of those?

7 A. I don't remember. It was two years ago. We was
8 at the Wal-Mart.

9 Q. So you're inside the Wal-Mart?

10 A. Correct.

11 Q. Do you remember again on that same interview
12 talking to the officers and telling them that Slaughter
13 was wanting to have relation -- intimate relations with
14 you?

15 A. Correct.

16 Q. And I think you even described to the officers at
17 some point in time not only where Slaughter lived but
18 Slaughter's car type, car color, and his girlfriend's
19 car, what all those looked like? I think they said one
20 was big; do you remember that?

21 A. Correct.

22 Q. When you went in there on January 12th, the
23 officers had actually called you that day, right?

24 A. Correct.

25 Q. They called you, asked you to come in, right?

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 A. Correct.

2 Q. And you said something to them about you sure were
3 glad they called you because you had been trying to call
4 them, right?

5 A. I don't remember.

6 Q. You don't remember. Do you remember telling
7 officers on that same conversation that basically you
8 look at the news at 4, 5, 6, 10, and 11, I be on that
9 news now. Do you remember saying that?

10 A. Correct.

11 Q. And they assured you again that everything is
12 confidential, right?

13 A. Correct.

14 Q. You told them -- do you remember telling them you
15 tried 411 to get in touch with the officers?

16 A. I never tell them that.

17 Q. I didn't say 911, I said 411.

18 A. No.

19 Q. Do you remember saying actually, I'm glad y'all
20 called me this morning because I was going to come over
21 here anyway because I got worried.

22 A. No. I don't remember saying that.

23 Q. And you told them about how you had to move, you
24 were going to move, I think, something like that.
25 Something about you didn't like the glass door, but you

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 told them how you were going to be moving, right?

2 A. Right.

3 Q. And this was all confidential. Are you aware of
4 any court proceedings where they had to approach a
5 circuit court judge? And I want to explain the
6 difference between a magistrate judge and a circuit court
7 judge.

8 MS. TAYLOR: Your Honor, relevance, as to the
9 line of questioning.

10 THE COURT: I'm not sure I understand what
11 the line of questioning is about.

12 MS. LITTLEJOHN: I just want -- we can
13 approach.

14 THE COURT: I'll tell you what: This would
15 be a good time to take a rest room break, so why don't we
16 send y'all to the jury room. Please don't begin
17 deliberations or discussions about the case.

18 (In open court, jury not present.)

19 MS. LITTLEJOHN: Let me tell you what I'm
20 getting into right there.

21 THE COURT: Where are you going with this
22 line of questioning? I'm not sure where you're going.

23 MS. LITTLEJOHN: That was just a real simple
24 one, Your Honor.

25 THE COURT: I still don't understand it.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 Explain it to me.

2 MS. LITTLEJOHN: She was -- based on the
3 interview statement, she was signed as a confidential
4 informant, and it says only circuit judge can overturn
5 it. I just wanted her to realize you're talking about
6 somebody way up high, like you, who is not a magistrate.

7 THE COURT: What is the point?

8 MS. LITTLEJOHN: I just wanted her to realize
9 a big formal proceeding in a courtroom. I wanted to see
10 if she understood when they told her you told the circuit
11 court judge do you know what a circuit court judge is,
12 it's a big formal thing. That's all.

13 THE COURT: We need to wind up on this. I'm
14 not sure where we're going with this. It is
15 cross-examination, and your client is facing substantial
16 jail time, and I'll give you a lot of the leeway, but I'm
17 not sure where we're going. If you can, tell me where
18 we're going and how much longer before we get there,
19 because you seem to be going over the statements she gave
20 the officer.

21 MS. LITTLEJOHN: I'm looking at the interview
22 part.

23 THE COURT: I understand the interview.
24 You're going over that seemingly line by line. I'm not
25 really sure how it helps your client, but --

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 MS. LITTLEJOHN: I'm skipping a lot of the
2 lines, believe it or not, because it was pretty long.

3 THE COURT: Okay.

4 MS. LITTLEJOHN: I'm more than halfway done.

5 THE COURT: All right. Well, let's try to
6 move it along a little bit quicker. I think you're
7 starting to maybe lose a few jurors. It has an interest
8 point to hear all the things she said, but I'm not really
9 sure that I understand that it impeaches her as much as
10 you are hoping it does, so I'm not really sure why you're
11 bringing it all out, I guess, is kind of what I'm wanting
12 to plant in your mind. Okay?

13 So let's take ten minutes and let's start
14 back.

15 (Recess taken.)

16 (In open court, jury present.)

17 THE COURT: All right. We will resume now
18 with cross-examination.

19 BY MS. LITTLEJOHN:

20 Q. Ms. Garrett, you've actually written Donte while
21 she's been incarcerated, haven't you?

22 A. I write Donte about one time, like once.

23 MS. LITTLEJOHN: Your Honor, if I may
24 approach the witness.

25 THE COURT: You may.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 BY MS. LITTLEJOHN:

2 Q. Do you recognize that as your handwriting?

3 A. Correct.

4 Q. And that's your handwriting?

5 A. Correct.

6 Q. And that's your handwriting?

7 A. Correct, correct.

8 Q. You've written him more than one time, right?

9 A. I have, but it wasn't on no good notes.

10 Q. You've written him a couple times, haven't you,
11 more than two?

12 A. Yeah.

13 Q. Okay. You have said to him, Your words really
14 tear me down. You hurt me so bad, right?

15 A. Of course.

16 Q. He hurt you?

17 A. Of course.

18 Q. That's what you wrote him on January 12th, wasn't
19 it?

20 A. Right.

21 Q. That same month, January 23rd, you wrote him and
22 you said, you know just as well as I know, my baby's
23 yours, but like you say, it's not.

24 A. Correct.

25 Q. And you tell him then you will not see my baby

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 ever..

2 A. Correct.

3 Q. You even wrote him in April -- I'm sorry, in May
4 2012 and you said, I could care less who rob who because
5 it wasn't me, didn't you?

6 A. Correct.

7 Q. That same letter said you can't hurt me or break
8 my heart as much as you already did to me. I've moved on
9 with someone else, but the sad thing is I can't even love
10 him because of what you have done to my heart, broken it
11 all to pieces.

12 A. Correct.

13 Q. And now you're telling me to keep the baby, and
14 you told him, you're not naming -- I'm not naming your
15 child after you again, didn't you?

16 A. Correct.

17 Q. Do you remember that last interview telling
18 Officer Powell you wanted to get some money on your
19 calling card and you would accept his calls because you
20 wanted to know what happened, right?

21 A. I don't remember.

22 Q. You were going to talk to Donte and let him tell
23 you what happened, right?

24 A. I don't remember.

25 Q. And you talked on direct about how he called you.

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 He called you at about 21 minutes past midnight going
2 from the 23rd into the 24th, correct? Somewhere in
3 there, right?

4 A. Correct.

5 Q. And that's when he said, I'm at Dolla's and come
6 get us, right?

7 A. Correct.

8 Q. And that's what you told officers on January 1st,
9 right?

10 A. Correct.

11 Q. And you already told him what happened, but
12 according to -- you believed that someone shot someone
13 and you had him around your children, right, for the
14 haircut?

15 A. Correct.

16 Q. Ms. Garrett, you testified you were afraid of
17 guns.

18 MS. LITTLEJOHN: Your Honor, if I may
19 approach?

20 THE COURT: You may.

21 MS. TAYLOR: Your Honor, this has been asked
22 and answered.

23 THE WITNESS: That's not my photos, and I
24 told you that earlier.

25 BY MS. LITTLEJOHN:

CYNTHIA GARRETT - CROSS BY MS. LITTLEJOHN

1 Q. So you would say --

2 THE COURT: Regardless of whether or not she
3 said it was her --

4 THE WITNESS: That's not me.

5 THE COURT: You already dealt with it.

6 BY MS. LITTLEJOHN:

7 Q. Not you. And just to wrap up here -- and that,
8 under oath, is not you?

9 A. That's not me.

10 Q. Apparently you believe another woman was pregnant,
11 same as you, but you weren't angry about that, were you,
12 correct? That's what you're telling us.

13 A. Correct.

14 Q. You told them you watched the news all the time.
15 Do you remember on Live Five that you watched it so many
16 times, him saying if you have any information, call the
17 Crime Stoppers?

18 A. I didn't watch that news that day. I wasn't even
19 at home. I told you I got a phone call about him.

20 Q. Do you know you can always turn something into
21 Crime Stoppers, right, receive a reward?

22 A. Correct.

23 Q. I believe that's confidential, so I don't --

24 MS. LITTLEJOHN: I have no further questions.

25 THE COURT: Redirect?

CYNTHIA GARRETT - REDIRECT BY MS. TAYLOR

1 MS. TAYLOR: Thank you, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. TAYLOR:

4 Q. Ms. Garrett, Ms. Littlejohn asked you a lot of
5 questions about confidential informant and giving a
6 different name. Why were you worried about your name
7 getting out in this case?

8 A. Because I know Donte temper.

9 Q. Were you worried he would be mad at you?

10 A. Yeah.

11 Q. And the letters that she showed you, some of those
12 letters that you wrote, were you trying to find out if he
13 knew it was you?

14 A. No, not really, because I already knew he knew
15 because when he Homeboy Jay, I think he text my phone.

16 MS. LITTLEJOHN: I think it's going to be
17 hearsay.

18 MS. TAYLOR: I'm just asking what she heard,
19 not that it's a true statement.

20 THE COURT: She's stating you're offering it
21 for -- to prove --

22 MS. TAYLOR: Her state of mind.

23 THE COURT: Why she was trying to find that
24 out?

25 MS. TAYLOR: Yes, Your Honor.

CYNTHIA GARRETT - REDIRECT BY MS. TAYLOR

1 THE COURT: All right. Go ahead.

2 THE WITNESS: Just nasty words, you're dirty,
3 you turn the boy in, so I already pretty much knew that
4 Donte knew because Jay told me that Donte told him that I
5 write statements on him.

6 BY MS. TAYLOR:

7 Q. Okay.

8 A. So it wasn't a secret no more.

9 Q. Now, there was some discussion earlier about --
10 you gave two statements police officers?

11 A. Correct.

12 Q. The first statement, I think the date was
13 September 29th?

14 A. Correct.

15 Q. And Ms. Littlejohn pointed out that in that
16 statement you wrote that Mr. Brown had never told you
17 that he robbed the Zaxby's?

18 A. In the beginning, when I was trying to pick Donte
19 up, he was, like, no, and then, like I say, I went to
20 Wal-Mart, they confess they did it.

21 Q. And when did you go to Wal-Mart with him?

22 A. We had to go to Wal-Mart because I said, Can you
23 do me a favor? I hadn't paid my phone call, and I had no
24 cash, and he know that I always paid my bills. And he
25 was, like, okay because Wal-Mart give you three chances

CYNTHIA GARRETT - REDIRECT BY MS. TAYLOR

1 to return something and you can't, and Donte agreed, so
2 when we got -- he confessed when we got inside of
3 Wal-Mart, but I can't remember where we was at or any of
4 that other stuff.

5 Q. Was that after you had already given the first
6 statement to the police?

7 A. Yes.

8 Q. Okay. And then in your second statement, is that
9 when you told the police what Mr. Brown had told you?

10 A. Yes.

11 Q. There's also been some discussion about someone
12 named Slaughter?

13 A. Correct.

14 Q. How did you know Slaughter?

15 A. Through Donte.

16 Q. And Ms. Littlejohn also asked you about
17 conversations you had with Investigator Powell and that
18 they needed to talk to Marteeke. Do you remember that?

19 A. I don't think I remember telling them to call her.

20 Q. Or that she was involved?.

21 A. Right.

22 Q. And I know it's been years. We have gone through
23 a lot of details today, and we've been up here a long
24 time, but I just wanted to ask you, Ms. Garrett the
25 information you've given to this jury about what

STEWARD POWELL - DIRECT BY MR. WEST

1 Mr. Brown said about being involved in the robbery at the
2 Zaxby's, was that the truth?

3 A. That is the truth.

4 MS. TAYLOR: Thank you. No further
5 questions.

6 THE COURT: Recross?

7 MS. LITTLEJOHN: Nothing, Your Honor.

8 THE COURT: You may step down.

9 MR. WEST: State calls Steward Powell.

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

13 DIRECT EXAMINATION

14 THE WITNESS: My name is Steward Powell,
15 P-o-w-e-l-l.

16 BY MR. WEST:

17 Q. Where do you work?

18 A. I'm an agent with South Carolina Department of
19 Probation, Pardon and Parole.

20 Q. Describe some of your job duties.

21 A. Partially and mostly what I do is supervise
22 offenders as they're sentenced by Court. I carry out
23 that sentence to the Court and the sentence imposed by
24 the parole board throughout the State of South Carolina,
25 also enforce the laws of the state.

STEWARD POWELL - DIRECT BY MR. WEST

1 Q. Do any of those duties include the use of
2 GPS monitoring systems?

3 A. They do.

4 Q. And what does that entail?

5 A. There is a GPS monitor affixed to the ankle of the
6 offender, and their movements are tracked wherever they
7 go.

8 Q. How do they work?

9 MS. LITTLEJOHN: Your Honor, if I may object,
10 based on our earlier motions, for the record.

11 THE COURT: For the record, your motion is
12 denied for the reasons stated earlier.

13 BY MR. WEST:

14 Q. Continue, Agent Powell.

15 A. The State has a GOC, general operations center, in
16 Columbia. These offenders are tracked, 24 hours a day,
17 seven days a week so they're always monitored. Us field
18 agents -- and what I mean is someone like me at a local
19 office, we can log on to our computers and see in
20 realtime where these offenders are.

21 Q. Is that information recorded?

22 A. It's recorded and it's archived.

23 Q. How is it recorded?

24 A. It's recorded by a third party vendor that
25 supplied the software and the hardware, the actual ankle

STEWARD POWELL - DIRECT BY MR. WEST

1 monitor, for the system.

2 Q. Is that information accurate?

3 A. It is very accurate. We use it in court all the
4 time.

5 Q. Do you have access to this information throughout
6 your duties as a probation officer?

7 A. I do. I can log on to my laptop at any time.

8 Q. Did you ever learn how to read that recorded
9 information?

10 A. The department that worked for sends us to
11 training for such interpretation of GPS equipment.

12 Q. Is that information kept in the regular course of
13 business?

14 A. It is.

15 Q. I'm going to show you what has been marked as
16 State's No. 32. I'm going to ask you if recognize these
17 documents.

18 A. Yes, I do recognize them.

19 Q. And what are they?

20 A. They are the GPS archived data of Christopher
21 Wilson.

22 Q. And how do you recognize them as such?

23 A. They have his name on it.

24 Q. Is there a kit on this?

25 A. There is a date as well as a time stamp.

STEWARD POWELL - DIRECT BY MR. WEST

1 Q. Okay. Have you had an opportunity to review
2 these?

3 A. I have.

4 Q. Has there been any alterations, deletions,
5 subtractions from these records?

6 A. No. They appear to be in order.

7 MR. WEST: We would ask State's No. 32 be
8 entered into evidence.

9 MS. LITTLEJOHN: Your Honor, if I could just
10 see them.

11 No objection.

12 THE COURT: Over their continuing objection,
13 these are admitted.

14 (State's Exhibit No. 32 was marked for
15 identification and admitted into evidence.)

16 BY MR. WEST:

17 Q. So State's No. 32 is admitted and, again, can you
18 clarify who these records are of?

19 A. They are the GPS coordinates of Christopher Wilson
20 providing the time, date of his GPS monitor.

21 Q. Thank you, Mr. Powell.

22 MR. WEST: No further questions for this
23 witness at this time.

24 THE COURT: Any cross?

25 CROSS-EXAMINATION

STEWARD POWELL - CROSS BY MS. LITTLEJOHN

1 BY MS. LITTLEJOHN:

2 Q. Agent Powell, you actually didn't access that data
3 yourself, did you?

4 A. I did not.

5 Q. Agent Gross did it for you?

6 A. Agent Gross, former agent with our agency
7 forwarded that information.

8 Q. Because Agent Gross is the one who primarily
9 worked with that, right?

10 A. That is correct.

11 Q. Where on the GPS we were given did it tell me -- I
12 see a name on here. Okay? Christopher Wilson, but can
13 you show me where -- we've talked -- you haven't been in
14 here because we've sequestered the witnesses, but there's
15 been talk about a fellow named Christopher Wilson, and
16 Christopher is a common first name, Wilson is a pretty
17 common last name. How do we know what in your document
18 tells me Christopher Williams' date of birth and document
19 marked No. 32, State's 32, that -- there is no
20 identifying information here, a name.

21 A. I have other additional information. I'm telling
22 you what we know from the person that we track is
23 Christopher Wilson.

24 Q. But you don't -- there's no identifying
25 information as to who this is or what y'all turned over,

STEWARD POWELL - CROSS BY MS. LITTLEJOHN

1 is there?

2 A. We originally turned over photographs as well as
3 there was a date of birth on there, and if there's not
4 one, we certainly can provide it.

5 Q. Okay. If there is no photograph that's provided,
6 the date of birth, and this is it, how do we know who
7 this fellow is? How do we know from this?

8 A. Ma'am, I don't really know what you're asking me.

9 Q. This is about a guy named Christopher Wilson. Can
10 you tell me from this what his date of birth is?

11 A. From that, I cannot tell you, ma'am.

12 Q. Can you tell me a social security number?

13 A. I do not know his social security number.

14 Q. Can you tell me his race and age from this?

15 A. Not from that, but I do know from looking at him.

16 Q. From this?

17 A. No, ma'am.

18 Q. From the evidence, evidence that was turned in
19 from the police officers, Nick Powell, you turned -- as a
20 matter of fact, Nick Powell, Officer Nick Powell called
21 you, Agent Steward Powell, correct?

22 A. Correct. He contacted our office, ma'am.

23 Q. And if we were provided printouts that just look
24 like this, the printout looking like Exhibit No. 32, it
25 will never tell us a name -- I mean, it will never tell

1 us a date of birth, race, height, anything on it, will
2 it?

3 A. I've answered that, yes, ma'am, you're correct.

4 Q. So for whatever Christopher Wilson this is, we
5 can't identify the person it is based on the printout,
6 you're saying it's accurate, right?

7 A. I'm saying the information that the State and we
8 provided is accurate.

9 Q. Can you explain to us -- and I don't know if
10 you'll need to show us on a map or something -- why the
11 information provided -- this information doesn't have
12 coordinates on it, does it?

13 A. I can look at it and see. The only information I
14 see on here is the actual address.

15 Q. Okay. Tell me, what else is usually contained in
16 the body of one of these and how do you read it.

17 A. It has the offender's name, it has the serial
18 number device placed on them by the agent at the time of
19 the GPS installation. It also has the current location
20 of the offender.

21 Q. But also has a bunch of other numbers out there
22 for these folks on these things, right?

23 A. I'm going by what's on the document, ma'am.

24 Q. Can you tell me what it means when they talk
25 about -- on one of these it says expand. What does that

STEWARD POWELL - CROSS BY MS. LITTLEJOHN

1 mean?

2 A. I did not know what expand means.

3 MS. LITTLEJOHN: Your Honor, may I approach
4 the witness?

5 THE COURT: You may.

6 BY MS. LITTLEJOHN:

7 Q. This is part of the discovery provided to us, the
8 solicitor's office provided to us, through the police
9 officer, Officer Powell. I was going to show you this
10 page here, and you've got four columns and it has a bunch
11 of numbers, 32.99, 88.1 and a 12. You testified you're
12 very familiar with these reports and they're accurate.
13 Can you tell me what that means?

14 A. I testified to the numbers that we submitted.
15 Those numbers, I do not know. I'm a field agent, not a
16 statistician or a person of science.

17 Q. But you pulled these numbers off. You pulled
18 these pages off as part of what you gave me.

19 A. I did not pull those pages off. As I testified
20 earlier, Agent Gross pulled those pages off.

21 Q. But it is accurate, correct?

22 A. We stand by what our department's agents do, that
23 is correct.

24 Q. And you said you had been trained in this,
25 correct?

1 A. That is correct.

2 Q. And in training it -- we're looking at the
3 accuracy, 8, 12, 6 -- what does that mean?

4 A. You know, I don't see a column on there. I don't
5 really know what those numbers mean without a column. It
6 could be anything, and I don't want to speculate without
7 knowing for sure, but there's no columns on that sheet.

8 Q. What does the title, accuracy, mean?

9 A. I do not know. Like I said, I'm only trained to
10 interpret the paperwork I'm sent, the address and the
11 location.

12 THE COURT: He's just here as custodian of
13 getting the records off. He's not here to interpret the
14 data.

15 MS. TAYLOR: Correct, Your Honor.

16 BY MS. LITTLEJOHN:

17 Q. Agent Powell, let me just clarify a couple things.
18 You're here today to testify that one of your agents
19 handed you -- one agent handed you, basically, GPS and
20 you handed it off to Officer Nick Powell.

21 A. No --

22 Q. And what it was, was the paperwork is up there is
23 an accurate reflection of it.

24 A. No, ma'am. I did not get any paperwork from an
25 agent and hand it to Nick Powell. That was not it. She

STEWARD POWELL - CROSS BY MS. LITTLEJOHN

1 handed it to Mr. Powell.

2 Q. She handed it to Mr. Powell?

3 A. That is correct, and that's what I've attested to
4 here today.

5 Q. And all you're saying with regard to accuracy is
6 not that the GPS is accurate, but that the record is an
7 accurate reflection of what was handed by Agent Gross to
8 Officer Powell?

9 A. What I'm telling you is, records that I looked at,
10 and those do belong to us, we use those every day in the
11 course of our daily activities.

12 Q. Are you saying --

13 MS. LITTLEJOHN: Your Honor, may we approach?

14 (Discussion held at sidebar.)

15 BY MS. LITTLEJOHN:

16 Q. Agent Powell, those are the records of probation,
17 and y'all stand by your records, correct?

18 A. We do, ma'am.

19 Q. And based on the records, we don't know what
20 Christopher Wilson it is based on the records received,
21 correct?

22 A. I'm submitting those based upon Christopher
23 Wilson.

24 Q. A Christopher Wilson.

25 MS. LITTLEJOHN: Thank you. No further

1 questions.

2 REDIRECT EXAMINATION

3 BY MR. WEST:

4 Q. Just to clarify, you were Christopher Wilson's
5 probation agent, right?

6 A. That is correct. I supervised him for probably a
7 period of a couple years.

8 Q. So this isn't some random Christopher Wilson?

9 A. No, I mean -- it's Christopher Wilson.

10 Q. Okay. And these are the records of the same
11 Christopher Wilson that you were the probation officer
12 for?

13 A. That is correct. When he was released from
14 prison, he was ordered by the Courts to wear an ankle
15 monitor. He was not released at any time. We picked him
16 up from SCDC. He was brought to our office in the
17 custody of an agent, and the ankle monitor was placed on
18 him, so at no time was he was unsupervised at any point.

19 Q. Okay. And these are the records that accurately
20 reflect the records that are presented for that same
21 Christopher Wilson?

22 A. That is correct.

23 MR. WEST: Thank you.

24 THE COURT: And those records are contained
25 where?

DAVID SODERBERG - DIRECT BY MR. WEST

1 THE WITNESS: They are archived with Omni
2 Link, which is our vendor.

3 THE COURT: Do you have any recross?

4 RECROSS-EXAMINATION

5 BY MS. LITTLEJOHN:

6 Q. Just -- and you're accepting this as being
7 Christopher Wilson is based on what Agent Gross told you
8 those records were because she pulled them?

9 A. She pulled those records, that is correct.

10 Q. And that --

11 MS. LITTLEJOHN: No further questions, Your
12 Honor.

13 THE COURT: You can step down.

14 MR. WEST: State calls captain Dave
15 Soderberg.

16 DAVID SODERBERG,
17 having been first duly sworn,
18 was examined and testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WEST:

21 Q. And your title is captain, correct?

22 A. Yes.

23 Q. Where are you a captain?

24 A. I'm a captain with the city of Goose Creek police
25 department. I run criminal investigations division.

DAVID SÖDERBERG - DIRECT BY MR. WEST

1 Q. How long have you been working for Goose Creek?

2 A. Twenty years.

3 Q. Can you describe your professional background for
4 the jury.

5 A. Yeah, three years United States Army military
6 policeman, and 29 years civilian law enforcement, rose
7 through the ranks of patrolman. I was detective for a
8 while, road sergeant, sergeant detectives, lieutenant
9 detectives, now I'm captain detectives.

10 Q. Were you working in the months of December 2011,
11 January 2012?

12 A. I was.

13 Q. Okay. Did you have a role in the investigation of
14 the case against this defendant?

15 A. I did.

16 Q. Could you describe the role for the jury.

17 A. On the -- are we going with the --

18 Q. What did you do in connection with the
19 investigation into this crime, these crimes?

20 A. Right. And my aspect, on the 5th of January 2012,
21 I participated in a search warrant at the home at 138
22 Swamp Fox Lane in the city of Goose Creek in Foxborough.
23 We were serving a search warrant --

24 MS. LITTLEJOHN: I'm going to object based on
25 the previous objection with regard to the search warrant.

DAVID SODERBERG - DIRECT BY MR. WEST

1 THE COURT: Overruled for the reasons stated
2 earlier.

3 BY MR. WEST:

4 Q. And just to clarify, Captain, was that [REDACTED]

5 A. I'll confirm it. Yes. [REDACTED]

6 Q. Okay. You can continue.

7 A. Responded over in regard to that search warrant,
8 and during that time, a search warrant was executed.
9 Defendant was located inside the house. They came to the
10 front doors. We were executing the search warrant. At
11 that point he was detained.

12 We went through and executed the search warrant.
13 One of my investigators alerted me that he had located
14 the gun on the exterior of the residence in kind of a
15 tan-ish gray-ish suitcase that was outside of the
16 residence near the pedestrian door of the garage on the
17 west side. I went out there. At that time, he had it
18 unzipped but he had not touched the weapon. I had gloves
19 on, Latex gloves. I advised him I would pick up the
20 weapon if he would go ahead and photograph it, which he
21 did as we pulled it out.

22 The weapon was a Ruger Mark II semi-automatic 22
23 caliber long round, blue pistol.

24 Q. I'm showing the witness what's been premarked as
25 State's 27, 28, 29 and 30. Captain, could you take a

DAVID SODERBERG - DIRECT BY MR. WEST

1 look at those and tell me if you recognize those.

2 A. Yes, sir. I do, sir.

3 Q. And what are those?

4 A. This is a photograph of the suitcase the weapon
5 was found in that was on the exterior of the house. Also
6 shows in the zippered pocket on the front flap the
7 firearm that I just advised, Ruger Mark II, that was in
8 there. I know these are it. I know my hand, and this is
9 my hand that's actually holding on to the weapon while it
10 was photographed by Investigator Goodyear.

11 Q. All right. Are these the same photographs taken
12 from the execution of that search warrant?

13 A. Yes, they are.

14 Q. And are they fair and accurate representations of
15 everything that was done, to what you just testified to?

16 A. Yes.

17 MR. WEST: State would ask that State's 27
18 through 30 be admitted into evidence.

19 MS. LITTLEJOHN: Your Honor, that would be
20 subject to our objection.

21 THE COURT: Over your objection, it's
22 admitted.

23 (State's Exhibit Nos. 27 through 30 were
24 marked for identification and admitted into evidence.)

25 MR. WEST: Would you please publish State's

DAVID SODERBERG - DIRECT BY MR. WEST

1 No. 27.

2 BY MR. WEST:

3 Q. And what is that a picture of?

4 A. That's the suitcase that was located on the west
5 side of the residence, on the exterior..

6 Q. And State's No. 29, what is that a photograph of?

7 A. That's the same residence with the Ruger Mark II
8 pistol inside -- the same suitcase at the residence with
9 the Ruger Mark II pistol inside.

10 Q. And State's No. 30.

11 A. That's a picture of the Ruger Mark II pistol that
12 I'm holding that was pulled from that same suitcase with
13 Investigator Goodyear taking a picture.

14 Q. And after you photographed that pistol, what did
15 you do with it?

16 A. I placed it in a brown paper bag, and that item,
17 along with a knife that was secured on the interior of
18 the residence, was then placed inside my vehicle. I
19 drove it to the evidence room in the Goose Creek police
20 department where I put it in, into evidence, so I went
21 directly from that location to our evidence room.

22 Q. I'm showing you what has been marked as State's
23 Exhibit 31. Can you get some gloves for this witness?

24 Do you recognize this?

25 A. Yes, I do.

DAVID SODERBERG - DIRECT BY MR. WEST

1 Q. How do you recognize it?

2 A. In my duties as the captain of the investigation
3 unit, I'm also in charge of the evidence room and that
4 location, so I do period quick, inspections. I'm in
5 there all the time, along with my evidence clerk. That
6 is a box that we would use, but mainly the reason I
7 identified the tags on it is case number, the submitting
8 officer.

9 Q. I'm going to ask you to open the box.

10 A. Yes, sir.

11 Q. Without showing the jury, would you identify what
12 that is?

13 A. Yes, sir.

14 Q. And what is that?

15 A. That is the Ruger Mark II 22 pistol and has the
16 correct serial number, 21544491.

17 Q. Is that the same pistol you recovered during the
18 execution of that search warrant?

19 A. Yes, it is.

20 MR. WEST: State would ask No. 31 be moved
21 into evidence, Your Honor.

22 THE COURT: Over objection, it's admitted.

23 MS. LITTLEJOHN: Correct, Your Honor. If we
24 could just see it now that it's open.

25 THE COURT: Okay. If you want to take a

DAVID SODERBERG - DIRECT BY MR. WEST

1 look, take a look at it.

2 (State's Exhibit No. 31 was marked for
3 identification and admitted into evidence.)

4 BY MR. WEST:

5 Q. Would you go ahead and publish that to the jury.
6 Captain, could you take that out of the box and
7 demonstrate that for the jury.

8 THE COURT: Folks, we put those locks on
9 there so that gives you a comfort zone. People get very
10 nervous around guns, myself included. The gun is
11 inoperable. It does not have any ammunition in it, and
12 it's got a lock going through there so it is not
13 operable. All right?

14 MR. WEST: Thank you, Captain. No further
15 witnesses for this witness at this time.

16 MS. LITTLEJOHN: No questions, subject to
17 foundation from the State.

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

19 THE WITNESS: Thank you, Your Honor.

20 MS. TAYLOR: The State would call Detective
21 Nick Powell.

22 NICHOLAS POWELL,

23 having been first duly sworn,
24 was examined and testified as follows:

25 DIRECT EXAMINATION

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 BY MS. TAYLOR:

2 Q. Investigator Powell, where do you work?

3 A. City of Goose Creek police department.

4 Q. How long have you been there?

5 A. About seven years.

6 Q. What do you do for Goose Creek?

7 A. I'm a criminal investigator in the criminal
8 investigations division.

9 Q. What does that mean?

10 A. I investigate crimes and any follow-up we got
11 forwarded from the patrol division, property crimes,
12 missing persons, narcotic offenses.

13 Q. And is investigator the same as detective?

14 A. Yes.

15 Q. You guys just call it a different thing?

16 A. It's agency.

17 Q. Okay. Were you working in that capacity back in
18 December of 2012?

19 A. I was.

20 Q. And did you get involved in a case regarding the
21 defendant, Donte Brown, and Christopher Wilson?

22 A. I did.

23 Q. How did you come to be involved in that case?

24 A. I was assigned by Lieutenant Ott who was my
25 supervisor at the time of the case, and I was advised to

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 conduct a follow-up investigation.

2 Q. Were you the one that originally responded to the
3 incident?

4 A. I was not.

5 Q. And who was that?

6 A. Investigator Mason.

7 Q. How did you come to be assigned to the case?

8 A. I believe he was on leave that week.

9 Q. So you got the case turned over to you. Do you
10 remember when it was?

11 A. I believe it was around the 27th of December.

12 Q. And the incident date was when?

13 A. The 24th, night of the 23rd.

14 Q. Okay. So a couple days later.

15 A. Yes.

16 Q. When you got assigned the case, what did you do
17 first?

18 A. I obtained an initial copy of the incident report,
19 along with any supplemental reports by the officers, and
20 I conducted follow-up with those to read over it to
21 understand the entirety of the case.

22 Q. Did you know at that point if any physical
23 evidence had been collected?

24 A. I did.

25 Q. And is it your -- part of your job

1 responsibilities to get that evidence tested or did
2 somebody else do that?

3 A. CSI Myers handles those kind of things, but I do
4 coordinate with her.

5 Q. And to your knowledge, had any of that physical
6 evidence been sent for testing?

7 A. No.

8 Q. So you get the case on the 27th, do a review of
9 the file?

10 A. Yes.

11 Q. What did you do next?

12 A. I began conducting interviews of the victims of
13 Zaxby's.

14 Q. Is this the same people who had been interviewed
15 the night of the incident?

16 A. Yes.

17 Q. So you did a second interview?

18 A. Yes.

19 Q. And what next?

20 A. After I conducted an initial follow-up interview
21 with them, I was actually provided information on
22 December 29th via a crime tip that there was an
23 individual who wanted to provide information on this
24 case.

25 Q. And did you follow up on that tip?

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 A. That same day I did.

2 Q. And did you learn who that individual was?

3 A. I did.

4 Q. Who was that?

5 A. Cynthia Garrett.

6 Q. Were you able to have a conversation with
7 Ms. Garrett?

8 A. I did.

9 Q. And when was that?

10 A. That was that afternoon, I believe it was
11 approximately 5 p.m.

12 Q. On the date of December 29th?

13 A. Yes.

14 Q. Based on information that you learned from
15 Ms. Garrett, were you able to identify potential suspects
16 in this case?

17 A. I was.

18 Q. And how did you identify those people?

19 A. One of the individuals, she stated his name was
20 Donte Brown. The other, which was Dolla. We obtained a
21 photograph from South Carolina Department of Motor
22 Vehicles of Donte Brown and showed that to her and she
23 was able to positively identify that subject.

24 Q. And is that the Donte Brown that's in the
25 courtroom today?

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 A. It is.

2 Q. Was she able to identify the individual that she
3 knew as Dolla?

4 A. She was.

5 Q. And who is that individual?

6 A. That's Christopher Wilson.

7 Q. After you got that initial information from
8 Ms. Garrett, what did you do?

9 A. One of the pieces of information that we provided
10 was a reference to a Motel Six. We sent one of our
11 investigators out there to get information together
12 regarding Donte Brown having stayed at that location, and
13 he was able to obtain a printout from there, indicating
14 that he had stayed there.

15 Q. So in doing that, you were just trying to
16 corroborate what Ms. Garrett had told you?

17 A. We were. We were able to do that along with a
18 dollar amount that she provided us in regards to the
19 robbery and that closely matched the one we obtained from
20 Zaxby's.

21 Q. What was that dollar amount Zaxby's gave you?

22 A. Approximately 3,700.

23 Q. You're able to corroborate portions of her story?

24 A. Yes.

25 Q. And then what did you do next?

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 A. Based on that information I spoke with CSI Myers
2 who conducted a search through what we call CODIS
3 database, which is a regional system for DNA, and
4 Christopher Wilson's DNA was in that system. We
5 submitted the ski mask to them for analysis.

6 Q. Do you have a particular DNA lab that Goose Creek
7 uses?

8 A. We do.

9 Q. And can you tell the jury about that piece?

10 A. It's called IntelliGENETICS. It's out of Hilton
11 Head, and it does our analysis of any DNA items that we
12 need.

13 Q. And I think there's been some conversation about
14 the state law enforcement division up in Columbia. Is
15 there a reason Goose Creek uses IntelliGENETICS versus
16 SLED?

17 A. Turnaround time. We get quicker results from
18 them.

19 Q. So you guys pay IntelliGENETICS?

20 A. We do.

21 Q. You found out Mr. Wilson's DNA was in CODIS?

22 A. We did.

23 Q. What did you do?

24 A. That I submitted to IntelliGENETICS.

25 Q. What item would that be?

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 A. The ski mask that was collected by Investigator
2 Mason.

3 Q. You've been in the courtroom this week?

4 A. Yes.

5 Q. Is that the ski mask that's already been entered
6 into evidence?

7 A. It is.

8 Q. You sent that off to IntelliGENETICS?

9 A. Yes.

10 Q. And did you get results back from that?

11 A. We did.

12 Q. And what were those results?

13 A. The results were the DNA that was located on the
14 ski mask matched of that Christopher Wilson.

15 Q. Once you learned that information, what was the
16 next step in your investigation?

17 A. When I received e-mail, which would have been
18 January 5th, 2012, we executed a search warrant on
19 Mr. Wilson's residence, which was [REDACTED]

20 MS. LITTLEJOHN: I would renew my objection
21 to the search warrant of [REDACTED]

22 THE COURT: Overruled.

23 BY MS. TAYLOR:

24 Q. I think, Investigator Powell, I may have missed a
25 couple steps, so I'm going to back up if that's okay with

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 you.

2 A. Absolutely.

3 Q. While you were waiting for that DNA testing to be
4 done, did you speak with anybody else in regards to this
5 case?

6 A. We spoke to multiple individuals, obviously at the
7 restaurant, employees of that location, and we obtained
8 written statements from them and we collected some DNA
9 samples from some of them as well.

10 Q. And why would you collect DNA samples from people
11 at the restaurant?

12 A. We would collect those for comparison purposes
13 against any evidence that might have been collected.
14 Based on the fact that they were employees there, we
15 might use those for exclusionary purposes.

16 Q. So you said on January 5th, I believe, you got the
17 DNA hit back?

18 A. Yes.

19 Q. And you executed a search warrant on Christopher
20 Wilson's home; is that correct?

21 A. That's correct.

22 Q. And the address again?

23 A. [REDACTED] That's in Goose Creek, South
24 Carolina, county of Berkeley.

25 Q. I'm going to show you what's been previously

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 marked as State's Exhibit 39. Do you recognize that map?

2 A. I do.

3 Q. And I know you've seen it before because you've
4 been sitting in here, but Zaxby's is the yellow box in
5 the side. Could you point out for the jury -- I don't
6 know if -- there it is. Could you point out for the jury
7 where Christopher Wilson's address is on this map?

8 A. Right -- that's the location, [REDACTED]

9 Q. Okay. So you executed the search warrant at that
10 address?

11 A. Yes.

12 Q. And was anyone at the address when you got there?

13 A. Yes, they were.

14 Q. Who was that?

15 A. Donte Brown, the defendant, seated here in court.

16 Q. While you were executing that search warrant, did
17 you find anything that you considered to be of
18 evidentiary value?

19 A. I did.

20 Q. And what would that be?

21 A. One of the items we located was the social
22 security card belonging to one of the victims of Zaxby's.

23 Q. And were you able to collect that card?

24 A. Yes, I was.

25 Q. Investigator Powell, I'm going to show you what

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 has been previously marked for identification as State's
2 33 and ask if you recognize that.

3 A. I do.

4 Q. And can you tell the jury what that is a picture
5 of, please.

6 A. This is a photograph of the social security card
7 belonging to Riley Kemp.

8 Q. Where was that card located?

9 A. That was located in a drawer in one of the back
10 right bedrooms.

11 Q. Is that a fair and accurate representation of
12 where it was found while you did that search warrant?

13 A. Yes.

14 MS. TAYLOR: At this time, we would ask for
15 State's 33 to be admitted.

16 MS. LITTLEJOHN: Again, objection.

17 THE COURT: Admitted over objection.

18 (State's Exhibit No. 33 was marked for
19 identification and admitted into evidence.)

20 MS. TAYLOR: Thank you, Your Honor.

21 BY MS. TAYLOR:

22 Q. And instead of putting that up on the big screen,
23 Investigator, if you could just hold that up so the jury
24 can see it. Thank you.

25 Were you present when any other items were found

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 at the house?

2 A. Yes.

3 Q. And what other items?

4 A. There was a Finish Line receipt located in that
5 bedroom as well.

6 Q. Is that in that same bedroom?

7 A. Yes.

8 Q. Okay. What, if anything, seemed important to you
9 about the Finish Line receipt?

10 A. Based on statements that we had obtained regarding
11 shopping that had been done while the defendant was at
12 Motel Six, we felt like that was important to the
13 investigation to corroborate that statement.

14 MS. LITTLEJOHN: Your Honor, could you have
15 him clarify? He said defendant and he's talking about
16 Christopher Wilson, and they're both arrested. Could we
17 refer --

18 THE COURT: Are you making an objection?

19 MS. LITTLEJOHN: I am. I'm asking if the
20 Court can ask him to clarity --

21 THE COURT: Would you repeat your answer.

22 THE WITNESS: The defendant, Donte Brown, who
23 was staying at Motel Six.

24 BY MS. TAYLOR:

25 Q. So just to clarify, you had received information

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 that while Mr. Brown was at the Motel Six, there had been
2 shopping going on.

3 A. Yes.

4 Q. And the Finish Line receipt, you felt,
5 corroborated that information?

6 A. I did.

7 Q. Did you collect that receipt?

8 A. I did.

9 Q. Do you have it with you today?

10 A. I do, it's --

11 Q. It's in the evidence bag?

12 A. Yes, it is.

13 Q. If it's okay with you, Investigator, I'm just
14 going to bring this back bag up.

15 A. Yes, ma'am.

16 MS. LITTLEJOHN: Your Honor, I would object.

17 THE COURT: Well, I don't know what's in that
18 bag, so let me see.

19 Let me send the jury out for just a minute.
20 If you need to use the rest room, we'll have you back.
21 Don't begin deliberations.

22 (In open court, jury not present.)

23 THE COURT: 403 to what?

24 MS. LITTLEJOHN: Your Honor, I believe to
25 enter -- have him enter the Finish Line receipt without

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 saying who told him, I saw Finish Line with a receipt on
2 this day; there is no indication from the witness list or
3 anything that there was going to be any testimony about
4 anybody from Finish Line, and we've already had the
5 hearing with regard to [REDACTED] and at one point in
6 time on that we talked about how I believe Ms. Wilson was
7 on the stand. I can't remember. We established they
8 searched Christopher's bedroom.

9 Your Honor, with regard to that, I would
10 just -- my grounds are that I believe to admit that
11 without any foundation of anyone saying I saw this Finish
12 Line with this date of receipt and we know that didn't
13 have anybody from the store coming in because they're not
14 on the witness list.

15 THE COURT: Well, presumably, there is a date
16 on there, and that date would be subsequent to the date
17 of the robbery.

18 MS. LITTLEJOHN: Correct.

19 THE COURT: All right. So there is evidence
20 that somebody bought something from that store
21 afterwards. It's not a -- it's not a clincher, but it's
22 circumstantial evidence that somebody purchased something
23 from that store after that date, the date of the robbery.

24 So it would have probative value. It would
25 be circumstantial evidence, just a small little piece,

NICHOLAS POWELL, - DIRECT BY MS. TAYLOR

1 but it can come in.

2 MS. LITTLEJOHN: Your Honor, I would also --
3 because my objection to that is the prejudicial value,
4 lack of information authenticating the receipt as well,
5 and it's being offered for the truth of the matter
6 asserted, hearsay.

7 THE COURT: Well, 403 is that the prejudicial
8 value outweighs its probative value, because, of course,
9 it has -- it's prejudicial to your client, or I'm sure
10 they wouldn't be offering it. So it has some -- well,
11 I'll let you argue the motion. You respond.

12 MS. TAYLOR: Yes, Your Honor. The receipt --
13 as the Court stated, the receipt is dated the day after
14 the robbery. We've had prior witnesses who have
15 testified they saw shopping bags in the motel room that
16 Mr. Brown was staying in. Another witness testified that
17 he had new shoes when she saw him after the robbery.

18 It's just one more piece of the evidence that
19 the State believes circumstantially links the defendant
20 to the robbery, and the fact he had money available to
21 him after the robbery that he did not have prior to the
22 robbery.

23 THE COURT: All right. Well, I find that
24 there is -- whatever prejudicial value that it has, it is
25 not outweighed by the probative value.

NICHOLAS POWELL - DIRECT BY MS. TAYLOR

1 MS. LITTLEJOHN: With regard to the hearsay,
2 with it being hearsay, Your Honor, because he's offering
3 it for the truth of the matter asserted.

4 MS. TAYLOR: It's not a statement, Your
5 Honor. It's a document. It doesn't have assertions on
6 it. He's not -- he's certainly not going to testify that
7 Donte Brown is the one that bought the shoes, just that
8 they found it in the home where he was at, and certainly
9 I think that the receipt is self-authenticating in that
10 something was purchased from Finish Line, and I think it
11 even says shoe size nine on the receipt.

12 THE COURT: Well, it is an out of court
13 statement. It is a statement that someone purchased a
14 shoe from that place at that time. Technically, that
15 meets the definition of an out of court statement. The
16 question, is why are you offering it, and so tell me why
17 you're offering it.

18 MS. TAYLOR: We're offering it though that
19 shoes were purchased, that something was purchased --
20 something was purchased from the Finish Line on that date
21 and time. Not that it was that price or that type of
22 shoe necessarily, I'm not sure she would bring in as a
23 declarant because it's printed by the -- there wouldn't
24 be anyone we could bring in to testify that I made this
25 statement because it's printed by machine.

NICHOLAS POWELL - DIRECT BY MS. TAYLOR.

1 THE COURT: Well, that would come in as a
2 business record. Somebody could say yes, it is a
3 receipt. It was printed out at the time somebody
4 purchased this, but you are offering it for the purpose
5 of showing that somebody purchased something from the
6 store during that time frame.

7 So it does meet the definition of hearsay to
8 get it in, and you would need to get somebody in and show
9 it's a business record exception.

10 MR. TAYLOR: Your Honor, if you don't mind,
11 we could certainly move past this, if we could have
12 somebody fine some case law on this.

13 THE COURT: That's fine. It just won't come
14 in right now. It's getting towards the end of day.
15 Maybe you can bring them back in tomorrow. Just my
16 initial thinking out loud is it meets the definition of a
17 written hearsay statement. The way I can think right off
18 is you could get it in is an 803 business record, okay?
19 So just for right now, the stuff from the store doesn't
20 come in.

21 MS. TAYLOR: That's the only thing we had,
22 Your Honor, that receipt.

23 THE COURT: All right. Anything else we need
24 to take up before we bring the jury back in?

25 MS. TAYLOR: Not from the State, Your Honor.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

Roger M. Young, Circuit Court Judge

 ORIGINAL

THE STATE,

RESPONDENT, **RECEIVED**

JUL 21 2015

SC Court of Appeals

V.

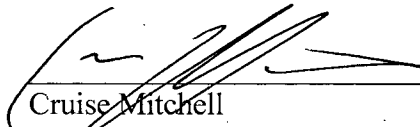
DONTE SAMAR BROWN,

APPELLANT

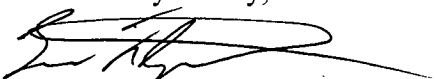
APPELLATE CASE NO. 2014-001082

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Donte Samar Brown #314818, at Lieber Correctional Institution, P.O. Box 205, Ridgeville, SC 29472 on this 21st day of July, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 21st day of July, 2015.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.