

STATE OF SOUTH CAROLINA

In The Court of Appeals

 ORIGINAL

APPEAL FROM GREENVILLE COUNTY

Steven H. John, Circuit Court Judge

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SC Court of Appeals
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THE STATE,

V.

JAMES EDDIE BAILEY,

APPELLANT

APPELLATE CASE NO. 2014-002447

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 JAMES EDDIE BAILEY,)
)
 DEFENDANT.)
 _____)

2013-GS-23-09292

TRANSCRIPT OF RECORD

OCTOBER 8, 2014
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE STEVEN H. JOHN

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

ALLEN FRETWELL, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

SYMME CULBERTSON, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	Knife -----	7	X
S-2	U.S. Currency -----	7	X
S-3	911 Recording -----	7	X
S-4	Surveillance video ----- (Segments one, two and nine)	7	71
S-5	Baseball Hat -----	7	X
S-6	Gloves -----	7	X
S-7	Tan Boots -----	7	X
S-8	Photo -----	7	75
S-9	Photo -----	7	75
S-10	Photo -----	7	75
S-11	Photo -----	7	75
S-12	Photo -----	7	75
S-13	Photo -----	7	75
S-14	Photo -----	7	X
S-15	Photo -----	7	X
S-16	Photo -----	7	X
S-17	Photo -----	7	X
S-18	Photo -----	7	X
S-19	Photo -----	7	X
S-20	Photo -----	7	X
S-21	Map -----	7	X
S-22	Camouflage Pants -----	7	X
S-23	In-car video -----	7	X

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-24	Photo -----	7	X
S-25	Photo -----	7	X
S-26	Photo -----	7	X
S-27	Photo -----	7	X
S-28	Photo -----	7	X
S-29	Photo -----	7	X
S-30	Photo -----	7	X
S-31	Black Cloth -----	7	X
S-32	U.S. Currency -----	7	X
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OPENING STATEMENTS - MR. FRETWELL

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1 you're automatically judging in your own mind whether or not
2 you believe them. And how do you do that? You use your
3 good common sense. You use your good judgment.

4 That's what we're going to be asking you to do here
5 today. Use your good common sense, apply it to the facts
6 and evidence in this case, find that evidence which
7 convinces you it's true, apply the law that I give to you,
8 and then decide whether or not the State has proven the
9 Defendant guilty of the crime or crimes charged beyond a
10 reasonable doubt.

11 With that, I'm going to turn it over to the lawyers for
12 their opening statements. Solicitor.

13 **MR. FRETWELL:** May it please the Court, Your Honor.

14 **THE COURT:** Yes, sir.

15 **MR. FRETWELL:** Mr. Culbertson.

16 **MR. CULBERTSON:** Yes, sir.

17 **MR. FRETWELL:** Madame Forelady, ladies and gentlemen of
18 the jury, good afternoon. On April 14th, 2013 Sharon Taylor
19 was managing the Dollar General on Poinsett Highway near
20 Rutherford Road. Shortly before close a man walked in,
21 indicated he just needed to get some pet supplies or pet
22 food and then went on about to walk into the store.

23 A short time later Sharon noticed the man walking along
24 the back aisle of the store and asked if she could help him
25 find the pet food. His response, I've got everything. So

OPENING STATEMENTS - MR. FRETWELL

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1 Sharon went back to her closing duties.

2 Sharon's boyfriend, Tom Nash, who also happened to be
3 Sharon's ride home that evening, was assisting a female
4 customer to her car with some bags. As Tom stepped out of
5 the store, the man inside the store asked the cashier where
6 the other lady was.

7 When Sharon emerged from her office, the man asked her
8 for some help finding some snacks and motioned for her to
9 walk and follow him to the back of the store. Feeling
10 uneasy, since the snacks were clearly visible in front of
11 them, Sharon began to slow down as the man began to slow
12 down.

13 That man, ladies and gentlemen, later identified as the
14 Defendant, James Bailey, suddenly grabs Sharon by the hair,
15 bent her over, started dragging her down the aisle and then
16 he threw her down on the ground, laid on top of her and
17 placed a large knife to her neck. The Defendant told
18 Sharon, you need to understand, this is a robbery, and I
19 will kill you.

20 He then moved the knife to her stomach, on the side of
21 her stomach, and repeated his threat to kill her. The
22 cashier, who had walked over to look down the aisle, saw her
23 manager in trouble and ran to get Tom and to call 911. Tom
24 ran to the back of the store and found Sharon on the ground
25 with the Defendant lying on top of her.

OPENING STATEMENTS - MR. FRETWELL

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1 When Tom attempted to intervene, the Defendant moved
2 the knife back to Sharon's throat and applied enough
3 pressure that a trickle of blood began to run down her neck.
4 The Defendant told Tom, go get money or she's dead.
5 Realizing the gravity of the situation and the importance of
6 not antagonizing the Defendant, Tom returned to the front of
7 the store to find some money that he could exchange for
8 Sharon's life.

9 The cashier was able to open the cash drawer. And Tom
10 grabbed twenty-two dollars out of the drawer and headed to
11 the back of the store. The Defendant took the money and
12 began to complain that it was not enough. He wanted the
13 money from the safe.

14 Tom made up a story that the safe was locked or empty
15 and told the Defendant that he needed to leave since the
16 police were on their way. The Defendant eventually got up
17 off the floor, off of Sharon and started walking back to the
18 front of the store with Tom close behind.

19 Now, meanwhile, in response to the cashier's call to
20 911, Master Deputy Bruce Emily from the Greenville County
21 Sheriff's Office had pulled up outside. And as he
22 approached the front door the front door swung open and out
23 stepped the Defendant matching the robbery suspect
24 description, money in one hand and knife in the other.

25 Deputy Emily told the Defendant to stop, at which point

OPENING STATEMENTS - MR. FRETWELL

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1 he turned and began to run.. Deputy Emily ran after the
2 Defendant and called in his clothing description to dispatch
3 along with their direction of travel.

4 Other deputies quickly arrived and caught sight of the
5 Defendant as he was going around the corner of a church on
6 Poinsett Highway. Deputies May and Giovanni jumped out of
7 their vehicles in pursuit of the Defendant.

8 After identifying himself and instructing the Defendant
9 to stop, Deputy Giovanni deployed his taser, bringing the
10 Defendant to the ground. With Deputy May on one side and
11 Deputy Giovanni on the other, the Defendant continued to
12 struggle and resist their efforts to bring his arms behind
13 his back so that he could be handcuffed.

14 When Deputy May was eventually able to drag one of the
15 Defendant's arms out from underneath him, he noticed that
16 still clutched in his hand was a knife with an open blade.
17 Deputy May began striking the Defendant in order to get him
18 to release his grip on the knife.

19 When Deputy May was able to get the knife out of his
20 hand and throw it clear, Deputy Giovanni began wrestling
21 with the Defendant's other arm. Eventually they got his
22 hands behind his back and he was taken into custody.

23 The deputies did notice that he was still wearing the
24 gloves he had put on inside the floor -- inside the store.
25 They also, in one of his pockets, found the twenty-two

OPENING STATEMENTS - MR. FRETWELL

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1 dollars in cash that he had robbed from the store.

2 This Defendant, as the Judge has told you, is charged
3 with armed robbery, kidnapping, possessing a weapon during
4 the commission of a violent crime and resisting arrest.

5 Ladies and gentlemen, in order to establish the Defendant's
6 guilt for the charge of armed robbery, let me just make sure
7 everybody can see this, we must establish that the Defendant
8 took something of value from the person or presence of
9 another with the intent permanently to deprive that
10 individual of the property using violence or by causing fear
11 and while armed with a deadly weapon.

12 For the charge of kidnapping the State must prove that
13 the Defendant knowingly and unlawfully seized, confined,
14 inveigled, decoyed, kidnapped, abducted or carried away any
15 other person by any means whatsoever without the authority
16 of law. Basically any restriction on another's freedom or
17 liberty or freedom of movement if performed without the
18 authority of law constitutes the crime of kidnapping in
19 South Carolina.

20 Now, to establish the Defendant's guilt for possessing
21 a weapon during the commission of a violent crime the State
22 must prove that the Defendant was in possession of a knife,
23 which the Court will instruct you under South Carolina law
24 is a weapon, in fact, a deadly weapon, and that the
25 Defendant possessed that weapon while committing an armed

OPENING STATEMENTS - MR. FRETWELL

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1 robbery, or a kidnapping or both. As the Court will
2 instruct you that both armed robbery and kidnapping have
3 been classified as violent crimes under South Carolina law.

4 Finally, in order to establish the Defendant's guilt
5 for resisting arrest the State must prove that the Defendant
6 beyond a reasonable doubt that the Defendant knowingly and
7 wilfully resisted in any manner a lawful arrest by clearly
8 identifiable law enforcement officers.

9 Please listen carefully as the witnesses inside the
10 Dollar General on April 14th, 2013 testify, including Sharon
11 Taylor, and tell you how the Defendant robbed the store by
12 holding Sharon on the ground at knife-point. Listen to Tom
13 Nash as he describes his helplessness as the woman he loves
14 was held captive by a man who repeatedly threatened to kill
15 her and who had the means and ability to do so.

16 Also, please listen to Deputy Emily as he describes his
17 encounter with the Defendant at the front door of the store
18 and the subsequent pursuit that ended in the Defendant's
19 capture. Finally, listen to Deputies May and Giovanni as
20 they testify to the struggle that they had with the
21 Defendant as they attempted first to disarm him and then to
22 take him into custody.

23 At the conclusion of the evidence, ladies and
24 gentlemen, I will ask you to find the Defendant, James
25 Bailey, guilty of armed robbery, guilty of kidnapping,

OPENING STATEMENTS - MR. CULBERTSON

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1 guilty of possessing a weapon during the commission of a
2 violent crime and guilty of resisting arrest. Thank you.

3 **THE COURT:** All right. Mr. Culbertson.

4 **MR. CULBERTSON:** Thank you, Your Honor. May it please
5 the Court.

6 **THE COURT:** Yes, sir.

7 **MR. CULBERTSON:** Mr. Fretwell.

8 **MR. FRETWELL:** Yes, sir.

9 **MR. CULBERTSON:** Ladies and gentlemen, my name is
10 Symmes Culbertson. I'm an attorney here in Greenville. And
11 I represent Mr. Bailey sitting over there, James Bailey.

12 I was sitting there listening to the solicitor's
13 presentation, his opening statement to you. Hopefully I
14 won't go quite as long. I might. Don't hold it against me.

15 But as I was listening to it I was reminded of the
16 words of Sam Ervin, who used to be Speaker of the House, the
17 United States House up in congress, Washington, especially
18 during the Watergate trials, which he preceded over. He
19 used to refer to himself as this old country boy or this
20 little backwoods country boy from North Carolina.

21 And at times I feel kind of that same way, especially
22 when I sit here with all the stuff that the State has to
23 show, and all the video stuff they have to show, and all
24 this production of technology that they're going to use to
25 present their case to you. I'm just some poor little

OPENING STATEMENTS - MR. CULBERTSON

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1 country lawyer trying to represent my client.

2 In that regard I will tell you that I've always been
3 from Greenville. Grew up here, was born here. Plan to
4 always live here. My client, Mr. Bailey, is from
5 Greenville. Well, not really from Greenville. Originally
6 from the Spartanburg area, but he and his family, his
7 brother sitting back there, his mother would be here, but
8 she's sick, they're all from Greenville now. They all live
9 around here. Have their entire life. I just wanted you
10 guys to know that. Poor, simple, country folks from
11 Greenville, South Carolina, we don't have all this
12 technology.

13 Mr. Bailey has been accused of a crime. And the
14 State's going to put on this show about how they're going to
15 prove their crime -- that he committed this crime. And I
16 urge you to listen to all the folks who get up here and
17 raise their hand and testify to you about what they saw,
18 what happened, what they experienced, what they know.
19 Listen to that. That's very important.

20 But as you listen to that, like the Judge said, weigh
21 their credibility. Weigh the viewpoint in which they might
22 be telling you that. Or weigh why they might be telling it
23 to you in that manner that they're telling it to you. All
24 that's important for you guys when you go back there to
25 start trying to make a decision.

OPENING STATEMENTS - MR. CULBERTSON

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1 To the extent you do that, I also am going to urge you
2 to look at all this technology that the State's going to put
3 up. Look at the videotape that they're going to play for
4 you and ask those same questions to the issues that pop up
5 in the videotape. Why did that happen? Why did he do that?
6 Why did she say -- ask all those questions because that's
7 all important as to the credibility and believability of
8 what the people tell you from the witness stand that took
9 place. Merge them all together. Make your own decision
10 based on what you see, what you experience and what you
11 believe the truth to be.

12 Your Honor told you a little bit about it's the State's
13 burden to prove all this. With all their technology and all
14 their showoffs, it's their burden to prove that. Mr. Bailey
15 is an innocent man. He sits over there right now and will
16 throughout this trial being an innocent man. Only until you
17 folks decide otherwise, he'll continue being that, an
18 innocent man.

19 Remember that when you go back, listening to the
20 evidence and start deliberating amongst yourself. And
21 remember also, the State, as the Judge told you, has the
22 burden of proving otherwise, that they have the burden of
23 showing to you or proving to you that he's no longer an
24 innocent man, that he did these things that they say he did.
25 That's a heavy burden to lift.

OPENING STATEMENTS - MR. CULBERTSON

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1 It sounds simple, sounds easy. It's not. Realize that
2 they have the task to do, they have a burden to overcome. I
3 urge you to make them overcome that burden.

4 I've already mentioned to you a little bit about
5 credibility, believability of the witnesses that might
6 testify. And I've already mentioned to you that in addition
7 to what you hear, who you hear saying it, what you see as
8 they tell you, to also look at the videotape and apply that
9 same criticism, that same thought process in your head about
10 what are they really showing, why are you showing me this,
11 what is actually there? Apply that to all the video you may
12 see in this case and compare it to what you'll actually
13 hear. I dare say there might be some discrepancy there.

14 And this conversation the solicitor was talking to you
15 earlier about, fear, intrepidation, and running around and
16 everybody nervous and scared, look at the video. Tell me
17 where that's exhibited on the video. Tell me about this
18 knife wielding, cash flashing gentleman who's in the store.
19 Where's that on the video? Where's that on the video?

20 One last thing and then I'm going to sit down. His
21 Honor and oftentimes folks start talking, witnesses start
22 talking, police officers are talking, lawyers start talking,
23 anybody starts talking, my children start talking, they may
24 say something not really what they meant to say. Christmas
25 is tomorrow. Christmas is not until December.

OPENING STATEMENTS - MR. CULBERTSON

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1 It may feel sitting up here sometimes that Christmas
2 will never get here. I know on the elevator I joke all the
3 time that they're slow as Christmas and everybody knows what
4 I'm talking about. Sometimes the judicial process takes a
5 little bit of time. And I apologize for that.

6 It's not my intention to make anybody miss Christmas or
7 miss anything for that -- miss dinner tonight. It just
8 takes a while. And I appreciate y'all being here, sharing
9 your time with us. And we could not do this without y'all.
10 So thank you.

11 But what I really wanted to point out was His Honor a
12 few minutes ago, he probably doesn't even remember having
13 said it this way, he's made the comment that there's really
14 four cases in one. And that comment made me a little
15 nervous.

16 And it made me nervous for this reason. And I think he
17 may clean it up, if not today, sometime during the course of
18 this case. That he did not mean to imply simply because you
19 reach a certain decision on a verdict in one case that you
20 have to reach that same verdict, that same decision in any
21 other cases or any other charges you'll hear today.

22 There are four separate charges. All four of them can
23 have two potential verdicts. Not one verdict fits all.
24 Four cases, two verdicts, possibly a total of eight
25 different verdicts are possible in this case. It's not four

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

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1 cases in one. It's four cases.

2 And you as the jury is charged with the responsibility
3 of making an independent decision in all four of those
4 cases. I just want you to keep that thought in mind. That,
5 having been said, I'll shut up. I'll sit down. Thank
6 y'all.

7 **THE COURT:** All right. Solicitor, your first witness,
8 please, sir.

9 **MR. FRETWELL:** Your Honor, the State would call Tom
10 Nash.

11 **THE COURT:** All right, sir. Please come around to be
12 sworn, sir.

13 **Tom Nash,** being duly
14 sworn testified as follows;

15 **MADAME CLERK:** Thank you. Please be seated. Would you
16 please state your name for the record.

17 **MR. NASH:** Tom Nash.

18 **MADAME CLERK:** Thank you.

19 **THE COURT:** Go ahead, solicitor.

20 **MR. FRETWELL:** May it please the Court, Your Honor.

21 **THE COURT:** Yes, sir.

22 **Direct Examination by Mr. Fretwell:**

23 Q. Mr. Nash, where do you live?

24 A. In Travelers Rest, South Carolina.

25 Q. And that's in Greenville County?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

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1 coming in and out.

2 And there was a lady there that had several bags.

3 Which I knew it was very dark, very dangerous area. And I
4 took her with her bags out the door, knowing it was at that
5 approach time of 9:00. They could lock the doors, I would
6 be out while they progressed to close down the store.

7 Q. All right. And did you return to the front of the
8 store after you helped this lady?

9 A. I did. I returned there to the front at which time the
10 saleslady in there opened the door immediately and made a
11 statement to me that Ms. Sharon Taylor was -- said, she,
12 Sharon is in a disagreement back there or a fight, rather,
13 with a customer. And I said, where? And I left from there
14 and went to the site of what was going on.

15 Q. Okay. And just to be clear, is that Ms. Karen
16 Nartowicz that's sitting right ---

17 A. That is.

18 Q. Okay. So she came out and talked to you. What did you
19 do at that point?

20 A. I came through the door immediately and proceeded to
21 come down the aisle-way to the back area where I observed
22 Ms. Sharon Taylor on the floor being huddled up by the
23 Defendant over here. My first response, I thought he was
24 trying to rape her. She -- he had her in a fetal position
25 with her hair pulled back with her neck exposed.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

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1 He had his arm wrapped around her belly at which point
2 I didn't know until I got exactly within just a couple of
3 feet. And my motions were to do something then.

4 And he came up ---

5 Q. They're actually lying on the floor?

6 A. Yes, sir. He is -- he is all into the side of her in a
7 fetal position accompanying her with his arm, his right arm
8 around at her belly level, her lower belly -- of her
9 abdomen. He had his left hand back in behind here, which he
10 was pulling her head backwards. And at that time when he
11 saw me closing in and I made some choice statements to him,
12 then he came up with a knife to her throat.

13 Q. What was Sharon's condition at that point?

14 A. She was extremely distraught. Extremely. Which, you
15 know, put even more of a task in front of me. And she was
16 -- this was not a human being, this was somebody I love.
17 And I had to try to make a decision as best I could.

18 She had tried to grab a can goods ---

19 **MR. CULBERTSON:** I object, Your Honor.

20 **THE COURT:** On what grounds?

21 **MR. CULBERTSON:** Well, to start with hearsay. He's
22 about to tell me what somebody ---

23 **THE COURT:** Well, I don't believe it to be hearsay
24 unless -- why don't you rephrase your question, but I
25 thought he was going to describe something he was seeing in

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

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1 his presence. But why don't you ---

2 A. I observed ---

3 **THE COURT:** Sir.

4 A. I observed.

5 **THE COURT:** Sir.

6 **MR. FRETWELL:** Just a second, Mr. Nash. I'd be happy
7 to, Your Honor.

8 **THE COURT:** Solicitor, you rephrase your question.

9 Your objection is overruled. Thank you.

10 **MR. CULBERTSON:** Yes, sir. Thank you, sir.

11 Q. What, if anything, did you see Sharon do at that point?

12 A. I observed her grab a large can of ravioli off from the
13 bottom of the shelf. She then attempted to try to hit him
14 and strike him upside the head, which I could tell was as
15 much aggravation as possible to him. And I cautioned her to
16 not -- to stop, you know, to just cease and desist right
17 then, and which she did.

18 And he kept relenting the whole time that he was going
19 to kill her. There was nothing else that I could see in his
20 eyes, his face, his actions or anything else that delineated
21 in any sort of way from the fact that he was meaning what he
22 said he was going to do.

23 Q. Was there anything that you told police or told me that
24 the Defendant did with the knife that gave you some extra
25 concern about Sharon's safety?

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

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1 A. When I saw the blood that came from her neck area and
2 the pressure that was being pushed in on her neck, I knew --
3 I knew this man and the increase in times he kept telling me
4 and trying to get what he wanted out of him. All he kept
5 saying was he had nothing to lose, he was going to kill her.

6 Q. What did you do at that point?

7 A. After seeing that that situation was one to where I
8 couldn't do anything physically, and I was going to have to
9 try to do this thing more mentally than all, then I kept
10 trying to get to him to find out what he really wanted.

11 Q. Right. And did you find out what he wanted?

12 A. He wanted some money.

13 Q. Okay.

14 A. He wanted every bit of the money. And I told him, I
15 said, okay. And he asked her for money. She was in no
16 position. She didn't have anything with her. And asked me
17 for money, which, unfortunately, I didn't have. And then I
18 told him that I'm sorry, you know, I just don't have any.

19 I tried to get him to come up from the floor from her
20 by telling him the police were on their way. And anyway, he
21 wasn't budging. He did offer an exchangement between me
22 being on the floor and her rising, but I felt like I had
23 more control over the situation myself at that time and that
24 if it was a promise of something coming to him that maybe I
25 could extend her life.

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

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1 Q. What did you do about finding some money?

2 A. I went to the cashier.

3 Q. All right. And what -- and were you able to get any
4 money?

5 A. Yes, I was. Karen got the cash register open. I
6 reached in there and purposefully grabbed twenty-two dollars
7 because I wanted something that would kind of rile him
8 quickly and be low in value to take back to try to get some
9 kind of satisfaction.

10 She then handed a phone to me, which was the 911
11 operator. I made it imperative to her that this was a
12 really bad situation and that, you know, this man had a
13 knife and he was going to kill her, needed some help. And
14 she assured me that help was on the way.

15 Gave the phone back to the cashier. I got the twenty-
16 two dollars, left, went back down, rolled it up, handed it
17 out with my left hand in hopes that he would, perhaps, try
18 to take the knife up to grab it, but he'd obviously knew not
19 to do that.

20 And he got the money away from me, counted it, said
21 it's not but twenty-two dollars here. And I told him, I
22 said, man, this is right at closing. They've already
23 deposited their money. I said, you need to get yourself out
24 of here. I said, the cops are right on their way.

25 So he told her to be still, not to get up. Told me to

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

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1 back up. And he got up. He came straight up the aisle that
2 he was coming from. I went around the other aisle to kind
3 of make a path in case -- 'cause I did not know where Karen
4 was at at the time, and met at the headway area at the front
5 of the store.

6 He saw Karen back over toward the clothing area. And
7 there he made the statements, I see you on the phone over
8 there. And he made like a gesture to go toward that way.
9 And I said, nah, don't need to do this, you need to get on
10 out of the store, man.

11 Stepped out the door. I held it open for him. He kept
12 the knife tucked down toward his belly area the whole time.
13 And when he got outside the door, I looked and I said, it's
14 Peter, isn't it? And he said, what? And he turned around
15 and what it was was I had seen the police car in the
16 reflection of the bank building across the street. And I
17 was trying to get him turned toward the cops. And he saw
18 them at that time when he did turn and he took off. And I
19 went back inside and secured the door and went back to
20 Sharon.

21 Q. Was there any particular reason you called him that
22 name or used that name?

23 A. Well, he had a black hat with a P on it. And I was
24 trying to think of something to get him to turn toward the
25 police. I thought maybe something may happen to make things

TOM NASH - DIRECT EXAMINATION BY MR. FRETWELL

67

1 stop right then. A lot of things go through your mind. And
2 that's the reason why.

3 Q. All right. I'm going to show you what has been marked
4 State's exhibit 1 and exhibit 2. And I'd like you to look
5 at the box, State's exhibit 1, and tell me, first of all, if
6 it's in a sealed condition. Take a minute to check it.

7 A. Yes, sir.

8 Q. Okay. If we can get some scissors, I'm going to ask
9 you to cut open one of the sides of the box, and outside the
10 presence of the jury, in your lap, take a look at what's
11 located in that box and tell me if you recognize it.

12 A. Somebody wraps good Christmas presents.

13 Q. I'll just remind you to do that in your lap. In your
14 lap, sir, looking at it.

15 A. Yes, sir.

16 Q. You recognize the item?

17 A. Yes, sir, I do.

18 Q. What is it?

19 A. It's a Kershaw drop point knife, single blade, lock
20 opening.

21 Q. Okay. Keeping it in your lap, this is not in evidence
22 at this point, is there -- what about the knife makes you
23 recognize it?

24 A. One is the drop point knife from here, the locking
25 section that's up above here on the black tier and the

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF GREENVILLE) IN THE COURT OF GENRAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 James Eddie Bailey,) 2013-GS-23-9292
7 Defendant.)
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B E F O R E:

HONORABLE STEVEN H. JOHN, JUDGE; and a jury

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

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Attorney for the State

SYMMES WATKINS CULBERTSON, SR., ESQUIRE
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Linda D. Moffitt
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Silver knife		135
S-2	U.S. currency		118
S-3	9-1-1 recording		20
S-4	Surveillance video		24
S-5	Baseball hat		95
S-6	Gloves		95
S-7	Tan boots		68
S-8	Photograph		
S-9	Photograph		
S-10	Photograph		
S-11	Photograph		
S-12	Photograph		
S-13	Photograph		
S-14	Photograph		27
S-15	Photograph		27
S-16	Photograph		27
S-17	Photograph		27
S-18	Photograph		27
S-19	Photograph		27
S-20	Photograph		27
S-21	Map		62
S-22	Pants		68
S-23	Video		67

1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	S-24	Photograph		70
4	S-25	Photograph		70
5	S-26	Photograph		70
6	S-27	Photograph		70
7	S-28	Photograph		70
8	S-29	Photograph		71
9	S-30	Photograph		71
10	S-31	Piece of black cloth		99
11	S-32	U.S. currency		118
12	S-33	South Carolina identification card		119

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	Competency to stand trial evaluation		
C-2	Question from the jury		193
C-3	Question from the jury		193
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C-5	Question from the jury		201
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Karen Nartowicz
Direct examination by Mr. Fretwell

1 going to do that since we've already commenced the trial.

2 Also, this is not an exceptionally long trial. I
3 don't know that it would apply to y'all, but sometimes we
4 find jurors when they are taking notes, they concentrate on
5 what they're writing down and they just tune out the next
6 questions and answers that are given by the witness.

7 So, we normally don't allow the taking of notes unless
8 it's going to be an exceptionally long trial, which this
9 one is not going to be.

10 All right. Thank y'all very much.

11 THE FOREPERSON: Thank you, Judge.

12 THE COURT: All right. Go ahead, solicitor.

13 MR. FRETWELL: May it please the Court, Your Honor.

14 DIRECT EXAMINATION BY MR. FRETWELL

15 Q Ms. Nartowicz, you live in Greenville now?

16 A Yes.

17 Q How long have you lived in Greenville?

18 A Since January of 2013.

19 Q Okay. And are you currently employed?

20 A No.

21 Q Okay. Were you employed in April of 2013 at the
22 Dollar General on Poinsett Highway?

23 A Yes.

24 Q And you were working there as a cashier?

25 A Yes.

Sharon Taylor
Direct examination by Mr. Fretwell

- 1 Q Okay. And let me take you back to April 14th of 2013.
2 Okay. At that time were you employed as a manager by
3 Dollar General?
4 A Yes.
5 Q And what was your store location that particular
6 evening?
7 A 114 Poinsett Highway.
8 Q Okay. And can you tell me that evening what caused
9 you to be -- were you scheduled to work that day?
10 A No, sir.
11 Q Or do you recall why you were working that evening?
12 A I was supposed to be on a 3-day vacation. I got a
13 call from my boss who said that a manager that was supposed
14 to be on duty that night at my store was flipping out and
15 saying that she had to quit, she couldn't wait, she had to
16 go right then.
17 That was like maybe 6:30 or something till 7:00. And
18 he asked me could I come off my vacation and go to my
19 store. And I told him yes.
20 Q Okay. And have you watched any of the -- the video in
21 this case from -- from the surveillance video?
22 A Yes.
23 Q How you're addressed, is that normally how you would
24 be addressed if you were managing the store?
25 A No, sir. Usually I would be addressed in all black.

Sharon Taylor
Direct examination by Mr. Fretwell

1 A Yes.

2 Q Okay. Before you saw him in the store that evening
3 did you know Mr. Bailey?

4 A No.

5 Q Okay. Had you seen him before?

6 A Not that I recollect, no.

7 Q Okay. All right. So did you have any encounter with
8 Mr. Bailey in the store referencing what you were just
9 talking about?

10 A The only -- that I had with him prior to was he had
11 told Karen when he came in that he was looking for dog
12 food.

13 Tom and I had walked toward that area. He actually
14 was holding a bag of dog food or cat food. I'm not sure
15 which.

16 I went back to the front, and as I went back to the
17 front I walked across toward my office and I noticed
18 Mr. Bailey in the back corner. And I thought that it was
19 kind of odd since she said he told her he was just getting
20 dog food that he was over in the corner.

21 And I hollered back and asked him can I help you find
22 anything else, and he said, no, I've got everything. And
23 at that point I just turned around and went back. I went
24 into the office for a few moments and came back out.

25 Q At the point where you saw him on the back aisle of

Sharon Taylor
Direct examination by Mr. Fretwell

1 the store, did he have any dog food in his hands at that
2 time?

3 A No.

4 Q Okay. All right. So you said you went back to the
5 office. At that point what were -- what happened?

6 A At that point I came back out of the office and walked
7 to the front register. And as I walked there he was
8 walking up to the register setting the dog food on the
9 counter.

10 So I realized that my handheld was still laying
11 between the registers. So I picked it up, and I took it
12 into the office and put it on the cradle.

13 As I was making exit out of the office I heard
14 Mr. Bailey asking Karen where the other lady was. She told
15 him I was busy, could she help him. And he said no, I need
16 the other lady.

17 At that time I was already out of the office, and I
18 said I'm right here, what can I do for you.

19 Mr. Bailey at that time said he needed some chips and
20 snacks. And I said, sir, they're right there. He said
21 show me. I started to feel very uncomfortable about this
22 situation because they were right there, where as close as
23 that table.

24 At that point he took a step forward, and he said, "I
25 said show me." So not wanting to be in front of him, I

Sharon Taylor
Direct examination by Mr. Fretwell

1 hung behind him, at which point he grabbed me by the back
2 of the hair and stuck a knife in my side, drug me to the
3 back hall, threw me on the floor and told me you need to
4 understand this is a robbery and I'll kill you. He said I
5 don't care if I die but I am going to kill you. And he
6 just kept repeating over and over that he would kill me.

7 At some point it seemed like it was forever. I heard
8 Tom's voice tell him in some choice words to get up off of
9 me, at which point he took the knife from my side and put
10 it up to my throat, and he pushed in on my throat. So I
11 still have damage on my throat.

12 And he just kept saying he was going to kill me. And
13 he told Tom he wanted some money. And Tom said I don't
14 have any money, and he told me you give me some money. And
15 I said I don't have any money back here.

16 He asked where the safe was. Tom told him, man,
17 there's no money in the safe at night, they don't keep
18 money here, it's all gone, the only money is in the
19 register.

20 And at that point he told Tom to go to the register
21 and get him some money. And he said you better come back.
22 And he took the knife, and he started to cut me across the
23 throat. And he said if you don't come back in just a few
24 minutes I will kill her.

25 So Tom went to the front to get the money. And the

Sharon Taylor
Direct examination by Mr. Fretwell

1 whole time he was up there getting money Mr. Bailey was
2 repeatedly telling me that he was going to kill me. He
3 said don't think I won't, I won't think twice about killing
4 you, I will kill you.

5 So then Tom came back with the money and told him,
6 man, you don't want it to go down like this, you need to
7 leave, the police are coming.

8 Mr. Bailey finally got up and went toward the front.
9 And he told me to stay there, so I stayed for a few
10 minutes. And then I got up and made my way to the front.

11 As I went to the front Karen handed me the phone.
12 Dispatch was on the phone and asked me was I okay, and I
13 told them, no, I was not okay.

14 And then Tom had come in and was holding me. And we
15 went to the door to make sure that he was out of sight, and
16 I couldn't see him any more.

17 A few minutes later an ambulance came and put me in
18 the ambulance to check me out. They were going to take me
19 to the hospital, but I had learned that Bailey was on his
20 way, and I wouldn't go until the next day because I was so
21 afraid that when I got to the hospital I'd see him, and I
22 didn't want to see him any more.

23 Q Ms. Taylor, would you like a break for just a minute?

24 A Please.

25 MR. FRETWELL: Your Honor, may we request a brief

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 received that call and turned around?

2 A Maybe 2 miles at the most.

3 Q All right. And when you turned around, how did you
4 proceed to the Dollar General?

5 A Like I said, I was at the intersection of Cedar Lane
6 and West Blue Ridge. So I turned around and activated my
7 lights.

8 The -- that would be Cedar Lane, 183, coming into the
9 city over the Pete Hollis Bridge, left on Shaw street
10 through one intersection to the top of the hill, which
11 would be Rutherford Street, I believe, where Rutherford
12 Road crosses and Poinsett is. It's -- and then that is on
13 the intersection, is on the corner.

14 Q And you said that you activated your emergency
15 equipment, is that correct?

16 A That is.

17 Q Okay. And what do you consider your emergency
18 equipment?

19 A All -- all blue lights and sirens.

20 Q Okay. And when you do that does anything happen
21 automatically when you do that?

22 A Yes, sir. When I -- when you hit the primary blue
23 lights the -- it activates the in-car camera.

24 Q Okay. And your car was equipped with an in-car
25 camera?

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A Yes, sir, it was.

2 Q All right. Do you remember or recall how long it took
3 you to get to the Dollar General from the time you received
4 the call?

5 A It was quick. I -- maybe 30 or 45 seconds, or maybe a
6 minute. It wasn't -- it wasn't long. I was going pretty
7 fast.

8 Q All right. Tell the -- tell the jury what happened
9 when you pulled up into the area of the Dollar General and
10 what information you had.

11 A Like I said, when -- when I approached the -- coming
12 up Shaw Street towards the main intersection of Poinsett.
13 Once you're in the intersection you would have to turn
14 left. It's the first business on the corner.

15 So about half way up Shaw Street I turned my siren off
16 and left my blue lights running to clear the last
17 intersection. Once I cleared the last intersection I
18 turned my blue lights off and pulled my car where the front
19 of my car would be facing the front of the store, advised
20 dispatch on the radio that I was on the scene and
21 started --

22 Q Just a second.

23 A Okay. I'm sorry.

24 Q What information did you possess at the time that you
25 arrived with respect to what was going on with the store

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 and any kind of suspect information?

2 A If I remember correctly, like I said, the dispatch was
3 that there was an armed robbery in progress, a black male
4 was in the store armed and had -- was wearing a white
5 t-shirt and dark pants, is the way it was dispatched.
6 That's the information I had.

7 There was other employees in the store, but I don't
8 recall if that was dispatched as to how many people were
9 actually in the store other than the suspect.

10 Q Do you know whether or not you had any information on
11 what kind of weapon was being used?

12 A A knife, sir.

13 Q Okay. All right. So upon arrival you said -- you've
14 indicated you turned your -- your lights off.

15 A Yes, sir.

16 Q Your siren and your lights or just your --

17 A The siren was deactivated, like I said, about half way
18 up Shaw Street. And then the lights, after I cleared the
19 last intersection I turned them off.

20 Q Okay. And you said you got out of the vehicle and you
21 were talking to dispatch. How did you approach the Dollar
22 General?

23 A I just -- I advised dispatch. As I turned the corner
24 it looked dark. I remember asking to confirm, because it
25 looked like the stores were closed there. It was dark on

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 the corner.

2 And as I parked and got out of my vehicle, as soon as
3 I closed my -- my door I picked up the front door of the
4 business, and I saw Mr. Nash and Mr. Bailey standing at the
5 front door of the business.

6 I drew my side arm and yelled for -- I -- just put
7 your hands up, put your hands up. Mr. Bailey looked once
8 at me, made a right and started to run towards the corner
9 of the building.

10 Q What, if anything, did you notice about the way in
11 which this individual was dressed?

12 A The first thing I noticed it was -- the match on the
13 description, it was white t-shirt and dark pants.

14 There's a -- a light just above the outside of the
15 front door of the store, and it's like it was in a
16 spotlight. Where I was still -- my car was parked and
17 where I was approaching from was dark, but there was a
18 spotlight on above the door of the business that
19 illuminated it real bright.

20 Q I'm going to show you what's been entered into
21 evidence as State's Exhibit 13. Can you find that
22 spotlight on there?

23 A Yes, sir. It's right here.

24 Q Would you step down and show the members of the jury
25 where on that picture that was lighting, what you're

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 referring to?

2 (Whereupon, the witness left the stand.)

3 A There's a floodlight --

4 THE COURT: You have to stay outside that.

5 A I realized I crossed the threshold there. There's a
6 spotlight right there above the door.

7 Q And if you just come down here and show the -- this
8 part of the jury.

9 (Whereupon, the witness complied.)

10 Q You can take your seat, sir.

11 (Whereupon, the witness returned to the stand.)

12 THE COURT: Just put it right there on the table.

13 Thank you, sir.

14 Q In addition to the clothing description that you've
15 given us, what, if anything, did you notice about the
16 individual when he came out?

17 A The first thing I noticed is that it appeared he had a
18 knife in his left hand. I saw a shiny object, pointed
19 object, from his left hand.

20 In my experience and training the greatest threat from
21 an unknown situation is the hands. We're trained, and we
22 train our new officers always look at the hands first.
23 That's why you'll hear over and over. Any time you hear
24 anything with law enforcement it's show me your hands, let
25 me see your hands and put your hands up. That's where the

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 threat to our well being comes from. So I immediately look
2 to the hands.

3 Like I said when I -- when I'm looking I was
4 approximately 20 feet away, maybe 20 or 25 feet away, from
5 this individual.

6 The door opens, and he's standing in the doorway. One
7 hand is down here where I see a sharp -- like I said, a
8 sharp silver object in his hand. And the right hand is
9 clinched up pushing the door open with -- with the arm.

10 Q What, if anything, do you see in that hand?

11 A It was wadded up and looked like it might -- might
12 have had paper or possibly money curled up in it. Both
13 hands were gloved.

14 Q And you've testified that you told the individual put
15 his hands up --

16 A I did.

17 Q -- or stop or something like that, and he took off.

18 A I said twice to -- for him to put his hands up, put
19 your hands up. As he started running I yelled stop and
20 continued to yell stopped as I was transmitting that I was
21 in foot pursuit of that subject.

22 Q And that particular business, the Dollar General
23 there, when you pulled your patrol car in, is there any
24 business between your patrol car and the Dollar General?

25 A It's a -- it's a bar on the corner.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 Q Okay. So there's actually two businesses there, and
2 the Dollar General was the one further away from --

3 A Right.

4 Q Okay.

5 A I just pulled up on the sidewalk.

6 Q What happened after you turned the corner of the
7 business in pursuit?

8 A Like I said, once I challenged the suspect I started
9 calling on the radio giving them a description that I was
10 in foot pursuit of a black male wearing camo pants.

11 I was moving around the corner of the building towards
12 Rutherford Road through the parking lot.

13 I think the next thing I would have said was that
14 we're turning left on Rutherford, because we went through
15 the parking lot. I'm approximately 30 to 40 feet behind
16 him not gaining any ground, but I really wasn't losing any
17 either. I was keeping pace with him.

18 We got to the -- the end of the parking lot where
19 Rutherford Road is, and we turned up Rutherford Road. We
20 turned left down Second Street heading back towards
21 Poinsett, and I let the units responding know that we were
22 headed back towards Poinsett.

23 As we came down Second Street there's a fence that
24 runs all the way down the right side of Second Street,
25 because there's a Poinsett Tire, is there. And there's a

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 fence all the way down.

2 So when we got to the end of that fence Mr. Bailey
3 took a right around the fence and started diagonally across
4 Poinsett Tire. And I was still chasing him then.

5 About midway through the parking lot I observed two
6 patrol cars that were responding coming down Poinsett,
7 which would have been to my left. I remember all I could
8 say was I need help back here, because I saw my -- my, you
9 know, my responding unit was going by me.

10 We continued to run across the parking lot, and I was
11 starting to lose a little ground, but I still was probably
12 60 to 50 feet behind him.

13 I saw the two cars coming back into my field of vision
14 and turn on Mahon Street.

15 At that time I brought my flashlight up and
16 illuminated Mr. Bailey who was still right in front of me.
17 I believe Mr. Giovanni, Deputy Giovanni, was first coming
18 around and pulled into the parking lot. And I heard him
19 yell at Bailey. And May came in the parking lot and yelled
20 at him. And I quit running at that time. I continued to
21 proceed, but that was a pretty good stretch for me to run.

22 Q Just out of curiosity, how old are you, sir?

23 A I'm 50 years old, sir.

24 Q Let me show you what's been marked as State's
25 Exhibit 21.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A None.

2 Q Is there any doubt in your mind that that is the
3 individual who was taken into custody by Master Deputy May
4 and Master Deputy Giovanni behind the church?

5 A No doubt at all.

6 Q All right. I want to show you now what's been marked
7 as State's Exhibit 23. I'm going to show you what's been
8 marked as State's Exhibit 23, and I'll ask what is this
9 disc and do you recognize it now.

10 A It's the in-car -- it's a copy, a D.V.D. copy, of the
11 in-car video from my unit that I was operating that day.

12 Q Okay. And have you viewed this copy of your in-car
13 video?

14 A I have, sir.

15 Q Does it accurately reflect the -- what was shown out
16 the front of your windshield from the time you activated
17 your emergency equipment until the time that you pulled up
18 outside the Dollar General and the bar there on the
19 Poinsett Highway?

20 A Yes, sir.

21 Q All right. Is a microphone also activated at the time
22 that the -- the camera is activated?

23 A Yes, sir. It's a body mic that is worn on my belt
24 right beside my spare-taser cartridge.

25 Q Okay. Does that body mic -- does it have a range or

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 is it --

2 A At best maybe a hundred yards. It goes out pretty
3 quick.

4 There's a -- there's a base for the mic that sets. I
5 have mine mounted on the dashboard of the like in-car radio
6 stereo, AM/FM, would be, which gives it a little bit more
7 range. The antenna sticks up just about that much above
8 the dash. But once you get, like I said, 75 or 100 yards
9 away from the car it's gone. It can't pick it up. It's a
10 very small device.

11 Q And in your viewing of this copy of your video, does
12 the car move at all after you pull it up and park it?

13 A No, sir.

14 Q And you said very -- very soon afterwards you lose the
15 microphone, is that correct?

16 A Correct, sir.

17 Q Okay. And I think you said you recognized the item
18 but you didn't say how. Would you say that you -- how you
19 recognized?

20 A It has my initials on it as being the one that I
21 viewed.

22 Q All right.

23 MR. FRETWELL: Your Honor, at this time the state
24 would move State's Exhibit 23 into evidence.

25 MR. CULBERTSON: No objection.

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 THE COURT: It's in evidence without objection.

2 (Video marked State's Exhibit No. 23.)

3 Q All right. I also want to show you what's been marked
4 as State's Exhibits 7 and 22. And I'll ask if you
5 recognize those items.

6 A I do, sir.

7 Q And what is -- let's start with State's Exhibit 7.
8 What is State's Exhibit 7?

9 A Just a second. I'm sorry. State's Exhibit 7 is a --

10 Q Just a second.

11 A I'm sorry.

12 Q They're not in evidence, so.

13 A A tan pair of boots.

14 Q Okay. Do you recognize those boots?

15 A I do.

16 Q All right. And where do you recognize those boots
17 from?

18 A As the ones that Mr. Bailey was wearing the night he
19 was arrested and the same ones I had took out of his
20 property from the jail.

21 Q Okay. And what do you see in State's Exhibit 22?

22 A Camo pair of pants.

23 Q Do you recognize those pants?

24 A Yes, I do.

25 Q And where do you recognize those pants?

Nathaniel Bruce Emily
Direct examination by Mr. Fretwell

1 A Those were the pants that Mr. Bailey was wearing the
2 night that I arrested him and also the same ones that were
3 taken out of his property, removed by me from his property,
4 at the jail.

5 Q And you brought them here to court.

6 A I did.

7 MR. FRETWELL: Your Honor, at this time the state
8 would move State's 7 and 22 into evidence.

9 THE COURT: Any objection?

10 MR. CULBERTSON: No, sir. No objection.

11 THE COURT: Very good. It's in evidence without
12 objection.

13 (Tan boots marked State's Exhibit No. 7; pants marked
14 State's Exhibit No. 22.)

15 MR. FRETWELL: Your Honor, at this time the state
16 would request permission to publish State's Exhibit 23, the
17 video.

18 THE COURT: You may do so.

19 (Whereupon, the video was played for the jury.)

20 Q Now that there's no sound, does the sound come back on
21 before you --

22 (Whereupon, the video was played for the jury.)

23 Q Okay. Now, do you recall whether there is additional
24 audio on this tape until such time as you walk all the way
25 back to your car and get in your car after the arrest and

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 have.

2 THE COURT: Cross-examination.

3 MR. CULBERTSON: Thank you, sir.

4 CROSS-EXAMINATION

5 BY MR. CULBERTSON

6 Q Glad you don't have to do all of that running any
7 more.

8 Detective Emily, a couple of things I want to go over
9 from your testimony today and what's in some of your
10 reports.

11 As I understand it you were -- you were effectively the
12 first officer at the scene.

13 A I was.

14 Q And we heard you coming up Cedar Lane Road off
15 Whitehorse doing that whole thing. Took you a little bit
16 of time to get there, just a short period of time given the
17 distance you were away.

18 And in that period of time, what started you on that
19 journey to the Dollar General store was a report that you
20 received over dispatch telling you that there was a robbery
21 in progress at that Dollar General store, is that correct?

22 A Correct.

23 Q And you get there, pull up in front of the Dollar
24 General store. That's on that video. And as you pull up
25 you see Mr. Nash and Mr. Bailey on the inside of the store,

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

- 1 is that correct?
- 2 A The door was open.
- 3 Q The door was open.
- 4 A They were in the doorway, sir.
- 5 Q So they were -- they were coming out the door as you
- 6 pulled up.
- 7 A Yes.
- 8 Q I'm just trying to get --
- 9 A Yes.
- 10 Q As you pull up are your blue lights flashing?
- 11 A No.
- 12 Q You've turned the blue lights off.
- 13 A After I came through the intersection.
- 14 Q And I understand that. My -- I'm going to get to the
- 15 rest of it in just a second, but right now my question is
- 16 earlier I thought you said that the car automatically would
- 17 turn the blue lights on, in-car camera comes on, is that
- 18 correct?
- 19 A Yes.
- 20 Q You turn the blue lights off, why's the camera still
- 21 rolling?
- 22 A It stays on until the deputy turns it off inside.
- 23 Q Okay. So it's not just a matter of turning the blue
- 24 lights off, you shut it off.
- 25 A No, sir.

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 Q Once on, it stays on.

2 A Auto on and manual off.

3 Q Okay. So the blue lights are off, the camera's
4 rolling. You pull up in front of the store, see two
5 gentlemen walking out the door and you hop out of your car.

6 A Yes.

7 Q Okay. As you hop out of your car you pull out your
8 service revolver.

9 A Correct.

10 Q Is that what you did?

11 A Yes.

12 Q Okay. And you pointed it at the two men coming out
13 the door and said put your hands up.

14 A Correct.

15 Q Why?

16 A It's an armed robbery in progress.

17 Q How did you know it was them?

18 A At that moment, technically, he was matching the
19 description.

20 Q You didn't. You didn't know.

21 MR. FRETWELL: Is that a question?

22 MR. CULBERTSON: That was a question.

23 A I knew that I was encountering a person matching the
24 description that was given to me by dispatch.

25 Q Okay. One of the gentlemen as you hop out of the car

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 and point a gun at him, say put your hands up not knowing
2 who they are, knowing anything really about it other than
3 what you have heard, he runs around the corner of the
4 building.

5 MR. FRETWELL: Objection, Your Honor, to the compound
6 nature of the question. If he has a question --

7 THE COURT: I appreciate it. He can -- if he can
8 answer the question, he can answer it. If he can't, he can
9 say he doesn't understand it or can't answer it.

10 Keep going.

11 Q He runs around the corner of the building.

12 A Yes.

13 Q One of the gentlemen coming out of the store, as point
14 you point at him, he runs around the corner of the
15 building.

16 A Correct.

17 Q And you take off after him.

18 A Correct.

19 Q And I apologize for doing this, but y'all run a pretty
20 good marathon all over that area of town.

21 A A pretty good stretch.

22 Q A pretty good stretch. One of the guys is wearing
23 these boots that belong to Mr. Bailey. He's wearing these
24 boots.

25 A Yes.

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

1 Q You have your gun out running after him, or have you
2 holstered your gun?

3 A I holstered when I started running.

4 Q Okay. At any point in time did you pull out your
5 taser?

6 A No.

7 Q You never had anything to do with tasing Mr. Bailey.

8 A No.

9 Q Detective Emily, I'm curious about this. Your
10 testimony earlier said that when you pulled up in front of
11 the store with the lights and camera -- lights off with the
12 camera running -- that you saw a gentleman coming out with
13 a knife in his left hand and a wad of what ultimately
14 decided was cash in his right hand.

15 A Correct.

16 Q All right. Are you aware that previously in one of
17 your reports you had indicated just the opposite?

18 A Yes, sir, I am.

19 Q Okay. In that report that you wrote the night of the
20 event you said the suspect had the knife in his right hand
21 and a wad of cash in his left hand.

22 A I can explain that.

23 Q I'm going to let you do that in just a second.

24 A Okay.

25 Q This case -- this chase begins.

Nathaniel Bruce Emily
Cross-examination by Mr. Culbertson

- 1 A Yes.
- 2 Q And when you ultimately -- Mr. Bailey's ultimately
3 placed under arrest.
- 4 A Yes.
- 5 Q Where is the cash located?
- 6 A I don't know.
- 7 Q Where is the knife located?
- 8 A As I said before, sir, I don't know. I wasn't --
- 9 Q You weren't the person there.
- 10 A I wasn't the person that actually arrested him, sir.
- 11 Q All right. You wanted to explain something a second
12 ago. I'm sorry.
- 13 A Yes. I can.
- 14 Q Please.
- 15 A I know this about myself, and I had to explain it
16 before. It's a threat assessment. When I'm looking at you
17 and I do a threat assessment, do I have a threat on my
18 right or on my left.
- 19 When I look at somebody the threat if it's in your
20 left hand, it's going to be my right. I know this about
21 myself. I try to keep from doing it, but because I've done
22 it so long it's where does that threat come from, and right
23 or left. So it was on my right. The knife, my threat, was
24 on my right, which would have been his left hand.
- 25 Q Okay.

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 dispatch had come back over that a black male was inside
2 the store. And then there was another radio transmission
3 that said that the defendant had or the suspect had a knife
4 to the manager's throat.

5 Q And anything else about what -- why he was doing that,
6 why there was --

7 A Demand. He was demanding money.

8 Q Demanding money. All right. Who was the first to
9 arrive on the scene?

10 A Master Deputy Emily was the first.

11 Q All right. Did you learn any information from him
12 before you arrived on the scene?

13 A He said that he was on scene, and there was a few
14 moments of radio silence, and then he came back over and
15 announced that he was chasing the subject on foot.

16 He did call out that it was a black male, white --
17 white shirt, dark pants, and he was running in the
18 direction of Rutherford Road.

19 Q Is that the area in which you proceeded?

20 A It is.

21 Q Okay. And then did you deviate from that path?

22 A Well, actually I responded in essentially the same
23 approach as Master Deputy Emily did. I came down Poin --
24 Cedar Lane Road and made a left onto Shaw Street. I
25 crossed over Poinsett Highway when he said that he was

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 going to -- you know, running in the direction of
2 Rutherford.

3 By the time that radio communication come out I was
4 already half way up Shaw Street, and so I crossed over
5 Poinsett Highway. And when he said he was running back in
6 the direction of Poinsett, I turned left on the first road
7 that was -- it's right behind the Dollar General store --
8 and came back out on Poinsett Highway.

9 When I came back out on Poinsett, that's when I saw
10 Master Deputy Emily in the parking lot of the tire shop,
11 and he was pointing and flashing his flashlight in the
12 direction of the church.

13 Q Let me stop you just a second and back up.

14 Master Deputy Emily testified that he has a camera in
15 his car that turns on when he turns on his blue lights.

16 A Yes.

17 Q Do you have that kind of camera, or actually did you
18 at the time?

19 A I did.

20 Q You did?

21 A Yes.

22 Q Was it functioning at the time?

23 A It was.

24 Q Did you have any kind of recording of this particular
25 incident?

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 A Just -- just my driving to the scene.

2 Q Okay. And where is that?

3 A Typically, in a situation like that where the video
4 shows nothing beyond us driving to the scene, we don't save
5 those videos unless there's some evidentiary value to it.

6 Q Did you review that video?

7 A We did.

8 Q Did you see anything of evidentiary value on that
9 video?

10 A Nothing other than my driving to the scene, no.

11 Q So you did not preserve that video and turn it into P
12 and E.

13 A No.

14 Q Do you recall if the defendant, the man you arrested,
15 was on that video at any time?

16 A He was not.

17 Q Let me now direct you to State's Exhibit 14. If you
18 can, just step down for just a second.

19 A Okay.

20 (Whereupon, the witness left the stand.)

21 Q And show the members of the jury how you entered and
22 where you came into contact with the individual that Master
23 Deputy Emily was --

24 A I approached the scene in the same manner that Master
25 Deputy Emily testified to. I came down Shaw Street here,

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 crossed over Poinsett Highway when he announced by radio
2 that was he chasing the subject in that direction of
3 Rutherford Road.

4 I came up Rutherford Road and was probably right in
5 this area when Master Deputy Emily announced by radio that
6 he was chasing him back in the direction of Poinsett.

7 I made a turn, a left turn, here onto this street and
8 approached this corner. And when I made the right turn
9 back on Poinsett I could see Master Deputy Emily about
10 midway through this parking lot, and I did see the suspect
11 about right here at the corner of this church.

12 Q And you -- and he is straight in front of you, or is
13 he off to the right?

14 A He was off to the right.

15 Q Okay. And your car at that point was driving down
16 Poinsett?

17 A My car at that point was driving -- you see where
18 these vehicles are on this map. I was driving that
19 direction straight ahead.

20 Q Okay. What happened when you -- did you pull onto
21 Mahon Street?

22 A I did. I made a right turn here onto Mahon. And at
23 this point the suspect had already gotten behind the church
24 and was out of my view for just a few seconds.

25 I turned into the back of the parking lot here, and I

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 parked. I stopped at an angle this way and jumped out of
2 my vehicle. My car was parked in such a way that the
3 windshield was towards this corner of the parking lot here
4 in the back. And I exited my patrol car and ran after the
5 suspect at that point.

6 Q And you said that you lost track of him for a few
7 seconds. Did you get a good look at the clothing
8 description before you lost track of him?

9 A When I -- when I saw him going around the back side of
10 the church here he'd already crossed the road. I could
11 tell that he had a white shirt on and that he was a black
12 male and he was wearing dark pants, but I couldn't tell
13 anything else about him at that point.

14 Q Okay. And did you encounter him again behind the
15 church?

16 A Yes. When I actually exited my patrol vehicle I could
17 see him walking essentially in this direction. It was a
18 fast walk, but he wasn't running at that point any more.

19 Q Okay. And what happened at that point?

20 A As I got out of my car and approached him, I yelled at
21 him, sheriff's office, stop. He continued to walk away.
22 He did turn and look at me briefly and continued to walk.
23 And I was not aware of the fact that -- you know, whether
24 or not he was still armed, had no idea what he had on him.

25 Q Could you see his hands at that point?

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 A I could not. They were in front of him and he was
2 walking away from me.

3 Q And so what did you do at that point?

4 A I announced. I told him to stop again, and he
5 continued to walk away from me. And at that point I
6 deployed my department-issued taser. And I did tase the
7 defendant, and he fell to the ground.

8 Q At the time at which you told him to stop were you
9 dressed much like you're dressed today?

10 A Yes.

11 Q Minus the top.

12 A Yes.

13 Q Okay. And your patrol vehicle that you pulled in
14 there, is that a marked patrol vehicle?

15 A It is.

16 Q And it had blue lights?

17 A It did.

18 Q And those blue lights were activated.

19 A Yes.

20 Q Did you have -- do you remember if you had your siren
21 on?

22 A I had my siren on as I approached, but once I got into
23 the area I turned it off. It's pretty hard to hear the
24 radio when the sirens are on.

25 Q All right. So you indicated that you deployed your

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 taser. what happened then?

2 A The defendant fell to the ground. I moved in closer
3 to him, and I placed my taser on the back of his leg pretty
4 low, close town to his leg, to his foot.

5 And Master Deputy May was running behind me. He ran
6 up as well. And once the taser cycle stopped, which is a
7 5-second cycle, we made an attempt to take custody of him.

8 Q Now, why did you apply the taser to his leg?

9 A Because he was still trying to move.

10 Q Could you see his hands at that point?

11 A No. He had them underneath him.

12 Q Okay. All right. Now, the individual that you saw
13 there that you attempted to take into custody, is he in the
14 courtroom?

15 A He is.

16 Q Could you please identify him?

17 A Yes. The defendant sitting here in the blue shirt.

18 Q All right. At that point you said Deputy May arrived.
19 Was he dressed similarly to you?

20 A Yes.

21 Q All right. And tell the jury how you were able to
22 process -- you went to try to take the defendant into
23 custody.

24 A Well, I was on the defendant's right side. I lowered
25 down, and I had my knees across his buttocks and his leg,

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 the upper part of his thigh, on the right side. I took my
2 taser and placed it in my left hand and tried to pull his
3 arm out from underneath him with my right hand.

4 Q Wait a minute. Why were you trying to pull his arm
5 out?

6 A Trying to secure him, trying to get handcuffs on him.

7 Q All right.

8 THE COURT: Solicitor, is there any reason for the
9 deputy to --

10 MR. FRETWELL: No, sir. I apologize.

11 THE COURT: That's right. Just resume the witness
12 stand. Thank you.

13 (Whereupon, the witness returned to the stand.)

14 MR. FRETWELL: Tunnel vision, Your Honor.

15 THE COURT: That's all right.

16 Q You said you were trying to pull his hand out to
17 secure in the handcuffs. Was that something that he was
18 allowing you to do, or not?

19 A No. He was actively resisting.

20 Q And, Deputy Giovanni, could you either move a little
21 bit closer to the microphone or speak up just a little bit?

22 A Uh-huh.

23 Q All right. So at that point you're working on his
24 right hand. What is Deputy May doing?

25 A Deputy May was trying to get his other hand out from

Michael Joseph Giovanni
Direct examination by Mr. Fretwell

1 under him, his left hand.

2 Q Okay. And what happened after that?

3 A We continued to struggle with him for a few moments.
4 Again, I was -- I was holding my taser in my left hand, so
5 I only had the use of one side. The taser probes were
6 still attached to the defendant. And I was getting ready
7 to tase him again because he was not complying with our
8 commands to put his hands behind his back.

9 Q Well, speaking of that, just a second, what kind of
10 commands were you giving the defendant? What were you
11 telling him?

12 A We were just yelling, yelling at him, to put his hands
13 behind his back and stop resisting. And he -- he would not
14 allow his hands to be pulled out from under him.

15 Q Okay. And at some point did you become aware of a
16 weapon?

17 A Yes.

18 Q Okay. Tell us about that.

19 A Deputy May continued to struggle with his left side.
20 Eventually, he was able to get his hand out from underneath
21 him. And when he pulled his hand out from underneath him
22 the defendant was still holding the knife, and Deputy May
23 was able to get that knife away from him, and he threw it
24 out about 10 feet away from where we were at.

25 Q Let me. Did you get a chance to look at the knife as

Matthew Tyler May
Direct examination by Mr. Fretwell

1 was fighting the guy. So at this time I really didn't want
2 to get separated from Master Deputy Giovanni.

3 Q Okay. And when was the first time that you noticed
4 somebody that you identified as a suspect in this case?

5 A When we turned off of Mahon back onto Poinsett Highway
6 I did see Master Deputy Emily running through the parking
7 lot of Poinsett Tire. And then obviously he started
8 flashing his flashlight like he indicated. And we could
9 see the guy running toward the church parking lot.

10 When Master Deputy Giovanni pulled in behind the
11 church he kind of pulled off to the right, and I pulled in
12 pretty much parallel with him. And then I witnessed him
13 get out of the car and make verbal contact with the
14 suspect.

15 Q So you actually turned onto Mahon where the church is?

16 A Yes, yeah.

17 Q All right. Tell the jury what happened once you
18 stopped the car. You saw -- you saw the individual. And
19 what did you do at that point when you saw him, and what
20 was he doing?

21 A When I saw the suspect he was still -- before we
22 really got out of the cars he was still kind of jogging
23 through the parking lot.

24 Master Deputy Giovanni got there before I did. So I
25 was several steps behind him, and he's yelling at him to

Matthew Tyler May
Direct examination by Mr. Fretwell

- 1 A Yes, sir.
- 2 Q And is that something that you typically do?
- 3 A Yes, sir.
- 4 Q Okay. And why do you do that?
- 5 A You're either looking for more weapons -- and at this
- 6 point, you know, we felt confident that probable cause
- 7 existed for the arrest. So it's a search incident to the
- 8 arrest. And you're looking for fruits of the crime, means
- 9 of escape or other weapons.
- 10 Q Well, let me ask you specifically about fruits of the
- 11 crime. Were you -- were you aware of how much, if any,
- 12 money was taken from the Dollar General?
- 13 A At that time, no.
- 14 Q Okay. Did you locate an amount of money in --
- 15 A Yes, sir.
- 16 Q Okay. Where did you locate it?
- 17 A Right front pocket.
- 18 Q Okay. Was the money in something or was it just by
- 19 itself?
- 20 A Some of the money was by itself, and then he had some
- 21 in his wallet.
- 22 Q Okay. And did you mark those separately?
- 23 A Yes, sir.
- 24 Q Okay. Let me -- let me point you to what has been
- 25 marked as State's Exhibit 2 and State's Exhibit 32. Can

Matthew Tyler May
Direct examination by Mr. Fretwell

- 1 you tell which ones of -- which of those exhibits were --
2 was the money that you found by itself and which money was
3 found in his wallet?
4 A State's Exhibit 32 was in his wallet.
5 Q Was in his wallet?
6 A Yes.
7 Q Do you know how much is in there?
8 A Looks like a dollar.
9 Q Okay. Did you put that in property and evidence after
10 the fact?
11 A Yes, sir.
12 Q All right. And what about the other exhibit?
13 A This would be the -- State's Exhibit 2 would be what
14 was in his right front pocket.
15 Q And how much money was that?
16 A Looks like \$22.
17 Q Okay. And that was by itself, not in anything, is
18 that correct?
19 A Correct.
20 Q And you put that into property and evidence as well?
21 A Yes, sir.
22 MR. FRETWELL: Your Honor, at this time the state
23 would move both of those exhibits into evidence.
24 THE COURT: Any objection?
25 MR. CULBERTSON: Just unclear. It's 32. And what was

1 and circumstantial evidence. So that's what I was talking
2 about.

3 MR. CULBERTSON: Yes, sir. And I appreciate that. I
4 understand that. I just recently found out about this
5 State vs. Grippon case. I think I got it last night.

6 THE COURT: Okay.

7 MR. CULBERTSON: And I didn't note that.

8 THE COURT: Well, what is it that you -- what is it
9 that you wanted me to do?

10 MR. CULBERTSON: Your Honor, to be honest with the
11 Court, I personally have not had a chance to fully look at
12 the case yet. I just know it deals with some
13 circumstantial-evidence language.

14 THE COURT: Yes, sir.

15 MR. CULBERTSON: I've not had a chance, again, to
16 fully look at it.

17 THE COURT: All right.

18 MR. CULBERTSON: And I'm just alerting the Court
19 and/or your clerk to maybe take a look at it and see --

20 THE COURT: Well, I appreciate that, but, you know,
21 until our Supreme Court tells us to -- if they do -- change
22 again, then I'm going to stick with the last decision they
23 made.

24 MR. CULBERTSON: Yes, sir. I understand.

25 THE COURT: All right, sir.

1 MR. CULBERTSON: Also, Your Honor, one last thing I
2 wanted to bring up, and I made reference to this in my
3 opening.

4 At some point during your initial conversation with
5 the jury you indicated it was really four trials in one.

6 THE COURT: Right. And I told them at the -- in the
7 opening that -- that they were going to make four separate
8 decisions and one decision did not have to govern the
9 other.

10 They have to make a -- four separate decisions because
11 the elements are different, and I just told them they
12 needed to listen to the facts and evidence and then listen
13 to the Court's charge on the law and make a decision on
14 each one of them.

15 And I'll tell them that again when we get to the point
16 of the verdict form. And I did not talk about the verdict
17 form but it's -- the way I've got it here, they're very
18 straightforward. They've got the caption of the case.

19 There's a separate verdict form for each charge.
20 There's one for armed robbery; there's one for kidnapping;
21 there's one for possession of a weapon during the
22 commission of a violent crime; and one for resisting
23 arrest.

24 And I will tell you that in between the four verdict
25 forms I do have a short page in here, and it'll just

1 All right. Ladies and gentlemen, we have concluded
2 the evidentiary portion of this trial. There will be no
3 more evidence that is received in this case. That does not
4 end the proceedings.

5 where we are now is we will have the closing arguments
6 of the attorneys. I told you at the very beginning the
7 opening statements and closing arguments, they are not
8 evidence. You have now received all of the evidence in
9 this case.

10 The closing arguments are important. They're each
11 side's summation to you of what they believe that the
12 evidence has shown to you during the course of the trial,
13 remembering of course that you are the judges of the facts
14 in this particular case.

15 when we get done with the closing arguments I will
16 give you the law that you will apply to the facts and
17 evidence you find to be true in this case. And then I'll
18 submit the case to you for your deliberations and your
19 unanimous decision in this particular matter.

20 So with that, solicitor.

21 MR. FRETWELL: May it please the Court, Your Honor.

22 THE COURT: Yes, sir.

23 MR. FRETWELL: Mr. Culbertson.

24 MR. CULBERTSON: Yes, sir.

25 MR. FRETWELL: Good afternoon, ladies and gentlemen.

Closing arguments

1 As the judge has told you, this is the conclusion of
2 the evidence in this case, and I'm going to try to be
3 brief, but I have to tell you this is my last opportunity
4 to speak to you. There've been a lot of exhibits in this
5 case. I'm going to try to be as brief as I can.

6 There are generally two types of crimes in a criminal
7 practice. The first, which is probably the most common, is
8 a case where there's a clear crime that's committed but we
9 don't know who did it. And those kinds of cases are
10 generally referred to by law enforcement officers as
11 who-done-its. That's probably the most common.

12 The second class is a situation where we know who the
13 parties are that are involved. It might be two individuals
14 that got into a fight. One's dead. Why did that person
15 die? Was it self-defense? Is there a justification for
16 it?

17 Those kinds of cases are not as common as the
18 who-done-its, the burglaries where there's a broken window,
19 there's items stolen but we don't know who did it. So
20 forensics come in. They dust for prints. They canvass the
21 neighborhood. They talk to neighbors, who saw what, trying
22 to make an identification of who committed the crime.

23 There's also a third category, and this third category
24 is actually very rare. And the third category is where
25 there's a clear crime and there's an individual there and

Closing arguments

1 we know who that person is because they're caught
2 redhanded.

3 Ladies and gentlemen, that is the kind of case that
4 you have before you today, a situation in which there's a
5 clear crime, a clear set of crimes, and an identifiable
6 individual who perpetrated those crimes.

7 You heard testimony starting yesterday from Tom Nash.
8 Tom Nash told you -- and Sharon Taylor told you as well --
9 that they were at the Dollar General on April 14th of 2013
10 closing the store, that at some point several people had
11 come in the store. Most of those people had gotten their
12 merchandise and were heading out of the store. And there
13 were one, two people left in the store.

14 Mr. Nash stepped out to help somebody to her car with
15 some bags, and at that point according to Ms. Taylor the
16 defendant she identified asked or motioned for her to come
17 to the back of the store, wanted her -- him -- she -- he
18 wanted her to show him where the snacks were.

19 You remember the testimony of Sharon Taylor that she
20 said she became uneasy at some point because the snacks
21 were clearly visible in front of her, and yet there was
22 still this pulling to the back of the store.

23 Now, Mr. Nash testified that when he came back in the
24 store alerted by Karen Nartowicz that there was something
25 going on in the store, he went back and he found his

Closing arguments

1 girlfriend on the ground with the defendant lying on top of
2 her. But at that point he became very concerned.

3 And, ladies and gentlemen, at the conclusion of what
4 happened there when he went and got that money, brought it
5 back and then followed that individual out of the store, if
6 it had not been for a couple of things that individual
7 would have left the store and this case would move back
8 into that first category, who-done-it.

9 Ms. Taylor and Mr. Nash both testified that the
10 individual wasn't known to them. They didn't know that
11 person, hadn't been in the store before that they -- that
12 they recalled.

13 But it was for a couple of things that this case takes
14 a different trek. It was Karen Nartowicz immediately
15 going, taking her cell phone and calling 9-1-1.

16 Now, Karen didn't testify much, didn't have a lot of
17 recollection of that night. But I submit to you all that
18 Karen Nartowicz is a hero because she contacted the police.

19 And Bruce Emily -- and you saw that video, how fast he
20 was moving. And I know we all sit there when we're driving
21 down and see a patrol car whiz by and think who does that
22 person think he is, they're not chasing anybody. well,
23 ladies and gentlemen, that is an instance where Deputy
24 Emily is also a hero.

25 And Tom Nash is a hero to Sharon Taylor. And I'm

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1 sorry he got caught on the other side of that door, but you
2 all had a chance to listen to Tom Nash testify. And you
3 talk about somebody that's just a country boy, that's Tom
4 Nash.

5 I don't know how somebody can be married to somebody
6 for 30 years, quit your job, stay home, take care of that
7 lady while she died, get through that, have somebody else
8 come into your life and experience the kind of incident
9 that occurred on April 14th of 2013 and remain as
10 collective and as composed and thinking the way that Tom
11 Nash did. But you heard it from him on the stand and you
12 heard it from him on that 9-1-1 call.

13 And, ladies and gentlemen, when the state -- when the
14 judge tells you the state has the burden of proof -- and we
15 certainly have the burden of proof -- there's also a lot
16 that the prosecutor takes on.

17 And when a witness is kind of a little bit snappy to
18 defense counsel, makes you cringe a little bit. But you
19 have to think about this.

20 Tom Nash sees in front of him the individual who
21 almost took his girlfriend's life. And there's a man there
22 doing his job in representing him, and he's going to maybe
23 be a little bit terse. But that's Tom Nash. You saw him;
24 you heard him; you heard him testify. And you weigh his
25 credibility as to whether he saw his girlfriend Sharon

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1 Taylor on the ground unable to move.

2 Now, I also want you to think about this: You heard
3 Tom Nash testify, and Sharon Taylor, both, testify about a
4 can of Ravioli, that Sharon reached over and grabbed and
5 thought maybe if I just -- maybe I can get out of this.

6 And who knows what? Nobody knows what they would do
7 in that situation once they're in it. But Tom Nash was
8 there.

9 And here's the other hero in this case. Tom Nash
10 said, no, Sharon, don't do that, let's not antagonize him,
11 let me go while he's holding you hostage and procure \$22 --
12 \$22, ladies and gentlemen, that I submit was a ransom for
13 Sharon's life. And it worked. Whether it was the fact
14 that the defendant was able to get the money that he asked
15 for, whether it was the fact that Tom Nash told him you
16 better get out of here because the police are on their way.
17 Regardless, he got up, and he started walking out of that
18 door.

19 And, again, I want you to think about this. What
20 would have happened if Bruce Emily had been just a few
21 minutes late? What if Karen Nartowicz had decided, look,
22 I'm outta here, there's something going on, I'm just going
23 to run out the door, I'm going to go in another part of the
24 store, but I'm not going to call 9-1-1. She's a hero,
25 ladies and gentlemen. That's what she is.

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1 You heard testimony from Deputy Emily, and you not
2 only heard the testimony. You saw on the surveillance
3 video where the individual -- the defendant walks out of
4 the store and starts to go to the right.

5 And this is a difficult medium to see anything to be
6 honest with you. Getting these bulbs right. And talk
7 about a show, this isn't a show. This is just, you know,
8 boards with paper on them and a lamp that sometimes doesn't
9 work. Sometimes it does.

10 But you'll have an opportunity in the jury room to
11 have that surveillance video with you and have a computer.
12 You can look at that surveillance video to see all of --
13 see all of the angles of it.

14 And I encourage you to look at the top of that -- of
15 that frame when the defendant's walking out the door to see
16 that Bruce Emily is right there. You see his feet.
17 basically run right by as soon as -- as soon as the
18 defendant leaves the store.

19 And you also see that on Deputy Emily's in-car video.
20 You can see the individual turn and run. And you see Bruce
21 right after him. And you can tell he's moving because he's
22 calling into dispatch.

23 Sounds pretty -- pretty good for somebody that's --
24 that's running like that and somebody who's attained the
25 age that Bruce has to be able to run and keep up.

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1 And we saw the distance. You know, nobody would want
2 to do it, but we're talking about running around the
3 corner, as he pointed out, up Rutherford Road, down here
4 and around here. That's no short distance. But it is also
5 not miles.

6 And I've -- you know, full well Deputy Emily said
7 once -- once those other two officers were there I stopped
8 and I started walking. But he was there and he was able to
9 confirm in his testimony that the individual that was taken
10 into custody was the same individual that he had chased
11 from the front of that store and that he hadn't lost sight
12 until his brothers in blue were there able to get out and
13 affect the arrest.

14 Almost every witness who testified identified the
15 defendant, identified him as the individual who'd gone into
16 that store.

17 And, again, back at the surveillance video, you can
18 look on that surveillance video. And if you have a mind to
19 see it, track 8, minute 2.26. You can see gloves in his
20 hand, him putting the right glove on. .3 minutes and 18
21 seconds, you can see him putting the left one on. On track
22 6 you can see at minute 4.16, you can see as he walks
23 around the corner about to go up and -- and ask to see the
24 manager. Just for a second you can kind of see something
25 kinda out of blunt out of his pocket, and that's that

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1 knife, and he's putting it where he needs to use it. He's
2 wearing the gloves at that point.

3 Ladies and gentlemen, this wasn't a crime, a knee-jerk
4 crime. This crime was one where he brought the knife. He
5 had it with him. He brought the gloves. He was wearing or
6 he had those gloves and put them on in the store. And then
7 there's this, which was found on his person.

8 You're the finders of fact. You can make some headway
9 of what this is. You can also look in the video
10 surveillance from the Dollar General and see that Dollar
11 General sells trash bags that are just this color. And it
12 looks like somebody tried to fasten something, a piece of
13 cloth, onto a bag, and it also looks like it's torn. I
14 don't know if this is some kind of a face covering that was
15 torn. That's for you to decide.

16 But, ladies and gentlemen, this clearly doesn't work.
17 So, as I told you, I don't have an opportunity to get back
18 up and tell you something. It's not because I won't have a
19 response to what Mr. Culbertson tells you, but this is
20 maybe something that Mr. Culbertson might tell you. He
21 might say to you, well, if he had a mask, why wouldn't he
22 wear it? If he had a face covering, why wouldn't he wear
23 it?

24 Well, I'll give you two reasons. No. 1, it doesn't
25 work, and, No. 2, a mask is what you take with a gun, not a

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1 knife. A knife is something that you've got to be able to
2 lull somebody into a sense of security so that you can grab
3 them and overpower them. Gun. You can walk in with a mask
4 and point it at somebody and they're going to stop wherever
5 they are. But not with a knife. And that was the decision
6 that was made.

7 You heard from the -- the testimony from Deputy
8 Giovanni and Deputy May how they got out, got out with the
9 defendant, that he continued to struggle.

10 And this may be another thing that Mr. Culbertson
11 might address with respect to the resisting arrest, because
12 he couldn't help it. He was being tased. There was no way
13 for him to give up his arms so that he could be handcuffed.

14 And you heard the testimony from the deputies that
15 that tasing is for a period of time, and then it stops.
16 And at that point they -- you can move your arms. You
17 certainly can't move your arms while that shock is going.
18 But after that point is the point at which the defendant
19 continued to struggle with the officers, continued to
20 resist that lawful arrest.

21 A couple of other things that I want to point out to
22 you. Mr. Culbertson talked about some other people in the
23 store and whether or not all of those people had left the
24 store.

25 You can look at that on the surveillance video. You

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1 can count them coming in, coming out. You can also look at
2 the other angles, the camera angles that are on there, and
3 you can determine whether they have any evidentiary value
4 to you or not and they factor into your decision process.
5 They're all there, and it's in evidence for you to see.

6 But I want to talk specifically just briefly about
7 some reference that Mr. Culbertson made a couple of times
8 with respect to locking that door. You heard testimony
9 that at 9:00 o'clock they're supposed to lock that door.

10 And I have an idea. With respect to the kidnapping
11 charge, there might be an argument that those individuals
12 that were in the store, well, if you take the state's
13 position, then Mr. Nash who was locking that door and
14 Ms. Taylor who was locking that door, they were kidnapping
15 everybody inside because surely they were seizing,
16 confining, inveigling, decoy, kidnap, abduct. Surely they
17 were confining them in that store.

18 That's just not the case, because you heard that every
19 private property has the authority of law to exclude
20 people, and the operative concept here is not keeping
21 people out. It's keeping people in.

22 And you heard the testimony of Sharon Taylor that
23 there's a little knob there that anybody could go up to.
24 Now, they didn't. You know, you go to the store when
25 it's -- when it's closed, and you wait for the person there

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1 to let you out. And they lock it back out after you not to
2 keep the rest of the people that are in there in there but
3 to keep anybody else from coming in.

4 The judge is going to give you definitions for each of
5 these words. Don't know if anybody ever heard of the word
6 inveigle. He's basically going to tell you that means to
7 lure, to entice.

8 And I would submit to you even though the state only
9 has to prove one of these for purposes of the kidnapping
10 statute that, in fact, the defendant and the proof that has
11 been given to you proves as you listen to the definition
12 all of these with the exception of a decoy; that there was
13 no decoy or object used to entice Ms. Taylor to come back
14 there. But she was seized. She was seized by her hair.
15 She was confined. She was unable to get up. She couldn't
16 move and she was not free to leave.

17 In fact, I think the way that she described it is that
18 while that knife was to her neck he had his hand on her
19 hair keeping her from moving at all and lying on top of
20 her.

21 And as you listen to the rest of the definitions that
22 the judge gives you for those words, again, I submit,
23 didn't decoy, but all of the rest without any authority of
24 law and certainly knowingly and unlawfully.

25 The armed robbery, the \$22, what I characterized for

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1 you as really what was the ransom that was paid for
2 Sharon's life. From the person or another person -- just
3 like if somebody went into a bank and robbed the bank,
4 they're actually taking the bank's money. The Dollar
5 General's money. This is Dollar General's money. But it
6 was taken from the person or the presence physically of Tom
7 Nash who handed it to him in the presence of the two
8 employees that were there, one that was on the floor being
9 held captive and the other, the cashier, who was able to
10 open the draw, specifically because they needed to get
11 money out to try to see if they could appease the
12 defendant's demands.

13 when he went out, took off running, definite
14 indication of an intent to permanently deprive the
15 individuals inside that store of that money and that
16 property using violence or by causing fear while armed with
17 a deadly weapon.

18 As I told you in the opening, the state -- the judge
19 will charge you that a knife is considered a weapon, in
20 fact, a deadly weapon under South Carolina law.

21 That when you are working through your verdict forms
22 that you have back there you'll have a separate verdict
23 form for each -- for each offense. And the Court's going
24 to instruct you that you must decide on the kidnapping and
25 the armed robbery before you move to that third charge,

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1 which is the possessing of a weapon during the commission
2 of a violent crime.

3 But if you find the defendant guilty of either or
4 both, and those -- those crimes being considered violent
5 crimes in South Carolina, then you can consider whether or
6 not he was in possession of a knife, that weapon, during
7 the commission of those -- of those -- those crimes.

8 And, finally, the resisting arrest. As the indictment
9 reads, basically, resisting the arrest of Deputy Giovanni
10 and/or Deputy May that you heard from who were clearly
11 identifiable law enforcement officers with their blue
12 lights on in marked patrol cars telling the defendant to
13 stop and taking him into custody on information that was
14 more than substantial for probable cause to make an arrest.

15 I'm -- perhaps Mr. Culbertson might touch on the
16 in-car videos, and I just encourage you to listen to the
17 testimony. Certainly, you can have it replayed if you need
18 to to hear from Deputy Giovanni where his car was facing
19 and whether or not he reviewed his tape, there was any
20 mention or -- or any visualization of the defendant on
21 there.

22 Finally, and I am going to end, I mentioned Deputy
23 Emily in particular, and these other deputies, because on
24 the night of August 14th of 2013 Greenville County
25 Sheriff's Office did their job. They did it, and they did

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1 it exceptionally well.

2 They got there quick. They confronted the defendant
3 as he was coming out of the store, and they quickly got him
4 under control. I'm sure they would always like for that
5 result to obtain.

6 And, ladies and gentlemen, the individuals, the
7 manager, Sharon Taylor, her boyfriend, Karen Nartowicz, all
8 did their job.

9 Karen you might argue did a pretty significant job on
10 the night in question, along with Tom. But they did their
11 job. And think for a moment how difficult it had to be for
12 Sharon to come in here, to take this stand and tell a group
13 of strangers what happened to her not 30 feet from the
14 person she identified as doing it to her. Sharon Taylor
15 did her job.

16 Now, ladies and gentlemen, I'm asking you to do your
17 job, to deliberate and, as the judge instructs you, to come
18 to a unanimous verdict that speaks the truth. Thank you
19 for your time.

20 THE COURT: Mr. Culbertson.

21 MR. CULBERTSON: Thank you, sir. May it please the
22 Court.

23 THE COURT: Yes, sir.

24 MR. CULBERTSON: I'm not sure where to begin, and part
25 of the reason I'm not sure where to begin is because the

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1 solicitor from what I heard spent most of the time worried
2 about what it is I'm about to tell you.

3 What I'm about to tell you is my client is still an
4 innocent man, and it is their burden, their duty, their
5 obligation under the law to meet the burden of proof, meet
6 a burden to remove that cloak of innocence from my client.
7 And they stood up here and they put on this show for the
8 last day and a half and talked to you a little bit, and
9 they tried to convince you that because he didn't do this,
10 because he did that, because they have done in the past
11 he's guilty. He's not.

12 They have a burden of proving to you that my client
13 walked into this store, tried to rob the store, tried to
14 pull a knife on her, tried to do all of these things that
15 they say they think he did. They haven't proven any of
16 that to you. They haven't proven any of that to you.

17 I start off saying I'm just a poor old country lawyer
18 from Greenville, South Carolina. I don't have all of this
19 technology and I don't have all of this flashing lights and
20 all of this other stuff to show you.

21 They did, and they tried to show it to you. They did
22 show it to you. They showed you -- and I hate to do
23 this -- go over it piece by piece. They showed you this
24 video, a couple of videos.

25 But on one of those videos is photographs inside the

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1 store. And all the videos that you saw from inside the
2 store, tell me one -- tell me one picture where you see my
3 client doing anything wrong, doing anything at all.

4 You see him along with some other folks walking up and
5 down the aisles like people want to do in the store.

6 That's what they're here for. People walk up and down
7 shopping. He's doing it, and a lot of other folks are
8 doing it.

9 They want you to believe that -- and it's in the
10 corner over here that you can't see in the video. He
11 pulled her over there and did this, that and the other.
12 They've got videos all over the place.

13 You see on those videos people walking up and down all
14 of those aisles constantly. You see my client walking up
15 and down the aisles. You see Mr. Nash walk up and down the
16 aisles. You see the other employees and the other patrons
17 walking up and down the aisle.

18 At no point in time do you see my client doing
19 anything wrong. At no point in time do you see any of
20 those other people come up and going there's someone over
21 there, hey. You don't ever see that.

22 In all of the video they showed you -- and you watched
23 a lot of it -- there's none of that. You see some people
24 walking down the aisle, to the top of the aisle, to the
25 front of the aisle or whatever part of the aisle, doing

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1 some shopping. At the same time my client supposedly has
2 dragged some woman down by the hair holding onto her to at
3 the other end of that aisle.

4 Remember what they told you. That was the aisle that
5 I was attacked on. She pointed that out while another
6 person was standing in front of that aisle shopping for
7 something. Nobody jumped up and down, nobody run, nobody
8 screamed, nobody said go help her.

9 They have not -- they, the state, have not given you
10 anything to look at that shows my client doing anything
11 illegal at all. Nothing. None of those videos show
12 anything wrong.

13 None of those videos show anything about my client
14 except him walking up and down the aisle shopping except
15 for one in which you see him walk up to the cash register
16 counter, put items on the table to cash out and then goes
17 back to get something else and comes back shortly after
18 that. That's all you see -- that's all you see.

19 Then they want you to believe that these gloves are
20 somehow evidence of something. They want you to believe
21 that they're evidence of my client's willingness and
22 preparedness to go into this store and rob it and not leave
23 any fingerprints. That's what they want you to believe.

24 Their video doesn't show that. Their video never
25 shows these gloves in my client's hand. He's walking

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1 around with these gloves clinched in his hand. He might
2 actually be switching them. He never had these things on.
3 He's just walking around with these gloves. They're his
4 gloves. I don't know what it showed. It sure doesn't show
5 he did anything wrong.

6 Then they want you to believe other stuff they haven't
7 shown to you. They want you to believe that this means
8 something, that this was in my client's pocket so it must
9 mean something.

10 I don't know that it was in my client's pocket. It
11 was found on the ground next to where they tased him and
12 put him down. I don't know what it is -- I don't know what
13 it is.

14 They want you to believe it was a mask that somebody
15 would rob -- wear to go in and rob a store. Look at the
16 videos. Look at the photographs. Look at everything.
17 This is nowhere near my client, nowhere. Never wearing it.
18 It's not on him. He's not wearing it. He's not trying to
19 hide it. He's not trying to disguise anything.

20 I don't know what that's for. I don't know what it
21 proves. It proves absolutely nothing like a lot of this
22 other stuff right here. It's great to thrash around and
23 talk about. It doesn't prove a thing, not a thing.

24 Then the worst part. Then they want you to believe
25 that you see not only my client in this video, but look at

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1 the video, never, but then they want you to believe you see
2 him pulling this out and waving this knife around. I don't
3 know. You'll have to look at the tape again.

4 Let me know if you ever see my client doing anything
5 wrong, illegal, out of the ordinary on those videos. Let
6 me know on any of those videos if you ever see this knife
7 in his right hand, in his left hand, behind his ear, on his
8 belt, anywhere on their videos. Let me know when you see
9 my client with this knife.

10 I want to talk about this knife a little bit more
11 before I move on because part of what they want you to
12 believe -- and it's true. Part of what they did is all of
13 these officers showed and took all of these photographs and
14 collected all of this evidence. And the forensic detective
15 came in and talked about the fact that she collected all of
16 this stuff at the directions of the other officer, that
17 sometimes she'll do testing on this and do fingerprints and
18 do this and that and the other.

19 Think about it. They knew. They had been told that
20 this knife had been held to the throat of a lady in the
21 store so much so that it cut her and had blood coming out.

22 Don't you think it would be a simple matter to say
23 this was my client's knife, we will test the knife and see
24 if her blood is anywhere on this knife?

25 Don't let them fool you with false promises. We

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1 promise we're going to show you, we're going to be able to
2 do this. They haven't done that yet. If they want to
3 convict somebody, do it right. Do your job. Show me the
4 connection between this knife, the young lady whose
5 knife -- whose throat got bloody a little bit and how it's
6 on this knife that that's my client's knife. They haven't
7 done that.

8 Likewise, in all of this technology and all of this
9 stuff they have, they haven't shown you anything.
10 Remember, there was supposed to be two more videos, two
11 more videos from inside the patrol car.

12 One of them, officer came up here and said, yeah, my
13 equipment is the same as everybody else's. You turn on
14 blue lights, it's supposed to start activating, it's
15 supposed to start recording, but mine wasn't working. For
16 whatever reason it was broken. Listen, that I understand.
17 Stuff breaks down.

18 The other officer gets up here and tells you that his
19 car is parked back here wherever this is, back here behind
20 where they stopped my client, tase him, throw him on the
21 ground, hit him a couple of times, that his car is parked
22 back there.

23 That's the blue light flashing in that one photograph.
24 That was his car. Remember, we talked about that's your
25 patrol car, was that on top of the patrol car. That sounds

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1 to me like "My Cousin Vinny". I don't know if any of y'all
2 have seen that movie where he parades in or whatever,
3 question somebody about what's behind the screen, what's
4 behind the bugs on the screen, what's behind the dirt on
5 the bugs behind the screen, how can you really see it.

6 He said that's my car with the blue lights on top. We
7 know that the blue lights are on the top as we reported.
8 They've all said that. We all know that.

9 There should be video of my client being stopped,
10 being tased, being hit by the police. Of all of this stuff
11 they've collected, it doesn't exist. It doesn't exist
12 because a couple of officers decided it's just not
13 important, there's just no need for us to bring it to the
14 jury to show it to them. Why? Why did they decide to just
15 throw that away? It may be the same reason they decided
16 not to test the knife.

17 They want you to believe that gloves, that some
18 plastic masking thing, and the fact that my client walks
19 out of the store with another gentleman who'd been in the
20 store, locks the door, and as he's standing in the doorway
21 being let out of the store he had been in for a while, a
22 bunch of police cars pull up and blue lights flashing and
23 an officer hops out pointing a gun at him.

24 Now, this speaks to some people more than others, and
25 I understand that and I appreciate that. But here is a

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1 gentleman, my client. Police pull up, point the gun
2 at him. He hadn't done anything. They don't tell him what
3 they want. They're just pointing a gun.

4 I submit it may not be that unusual for some people in
5 that situation to say I'm out of here. And he runs around
6 the corner of the building.

7 Is that evidence of a crime? No. He runs around, and
8 the chase ensued. Not just that guy, but a bunch of other
9 police cars show up. And he still keeps running because he
10 doesn't know what they want. Nobody said he'd done
11 anything wrong. They tase him. They throw him on the
12 ground. They hit him a couple of times. And then they
13 collect a lot of this stuff from him.

14 Wait a minute. His driver's license is in his wallet.
15 His money is in his pants pocket. His money is in his
16 wallet. His, his, his. It's all his. There's nothing
17 wrong with that.

18 No blood on the knife tested. No. Anything on the
19 video that shows my client doing anything other than what I
20 submit is a reasonable thing for a man in his situation
21 with a bunch of people pointing guns at him.

22 They haven't met their burden. They have a burden to
23 prove that my client did something illegal. They have a
24 burden to prove that my client is no longer innocent.
25 They, they, they. They have this burden. For some reason

Jury charge

1 they want you to think I have to explain why he did this or
2 I have to explain why he ran or I -- no. It's their
3 burden.

4 The judge will tell you it's their burden. There's
5 nothing anywhere here that shows you my client. My client
6 sits there today and I hope and dare say will continue to
7 be there an innocent man. Thank you.

8 THE COURT: All right. Ladies and gentlemen, it's now
9 my duty and responsibility to give you the law that you
10 will apply to the facts and evidence you find to be true in
11 this case.

12 I told you at the very beginning I would not indicate
13 to you at any point in time what I think the facts of this
14 case are, because it's not my job. It's your job. It's
15 your responsibility to have examined all of the facts and
16 the evidence in this case and find that evidence which
17 convinces you it's true.

18 I told you that you would have to judge the
19 credibility and the believability of the witnesses that
20 have come before you and testified in this case.

21 In doing so you can believe one witness against
22 several, or several against one. You can believe a portion
23 of what a witness says and disregard the remaining portion
24 of it.

25 If you've got a good sound reason for doing so you can

Jury charge

1 disregard in its entirety the testimony of a particular
2 witness. You look at whether the witness has exhibited to
3 you any kind of interest, motive, bias, prejudice they
4 might have in giving you the testimony. You examine the
5 opportunity for knowledge, how did they come about that
6 information they gave you from the witnesses witness stand.

7 You do not have any friends to reward; you do not have
8 any enemies to punish. Your verdict cannot be the result
9 of any kind of passion, prejudice or sympathy. It has to
10 be an examination of the facts and the evidence in this
11 case, and find that evidence which convinces you its true.
12 And then you're going to weigh that evidence against the
13 state's burden to prove the defendant guilty beyond a
14 reasonable doubt.

15 In this case, as with virtually every single case
16 that's tried, there are two kinds of evidence, direct and
17 circumstantial evidence.

18 Direct evidence. The kind of evidence that is
19 produced from a witness that testifies as to the existence
20 of a fact, what they saw, what they heard, what took place
21 in their presence.

22 Circumstantial evidence. Chain of facts indicating
23 the existence of a fact. The law doesn't make a
24 distinction between the two. A greater degree of certainty
25 is not required of one over the other, but to the extent

Jury charge

1 that the state relies on any circumstantial evidence all of
2 the circumstances have to be consistent with each other and
3 when taken together point conclusively to the guilt of the
4 defendant beyond a reasonable doubt.

5 In this case the defendant did not testify. That is
6 not a fact for you to consider. You may not talk about it
7 in the jury room; you may not use it in your deliberations;
8 you may not use it mentally to make your decision in this
9 particular case. It's not a part of this case.

10 The defendant is presumed innocent. The state must
11 prove the defendant guilty beyond a reasonable doubt. The
12 defendant having no burden, there is nothing incumbent upon
13 the defendant to present any evidence or testify in the
14 matter. And the burden of proof remains always on the
15 state of South Carolina to prove the defendant guilty
16 beyond a reasonable doubt.

17 And it ties into that presumption of innocence that I
18 told you at the very beginning. The defendant is presumed
19 innocent when charges are brought against them; they're
20 presumed innocent when the trial starts; they are presumed
21 innocent now. They remain presumed innocent unless, until
22 you believe the state has proven to you the guilt of the
23 defendant beyond a reasonable doubt based upon the evidence
24 presented.

25 Now, in this presumption of innocence it's not just

Jury charge

1 some legal right or some legal phrase. It's a substantial
2 right to which every American is entitled, that they're
3 presumed innocent unless the jury is satisfied from the
4 evidence that the defendant is guilty of the crime or
5 crimes charged beyond a reasonable doubt.

6 So what's reasonable doubt? The kind of doubt that
7 would cause an ordinary reasonable person to hesitate to
8 act. Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced the defendant is guilty.

10 Now, there are very few things we can know with
11 absolute certainty, and the law does not require the state
12 of South Carolina to give you that kind of proof.

13 What is required is if based upon your view of the
14 evidence, the evidence you find to be true, you are firmly
15 convinced the defendant is guilty of the crime or crimes
16 charged, you must find the defendant guilty.

17 On the other hand, based upon your view of the
18 evidence, the evidence you find to be true, you are not
19 firmly convinced the defendant is guilty of the crime or
20 crimes charged, you must give the defendant the benefit of
21 the doubt and find him not guilty.

22 I told you at the very beginning the defendant is
23 charged with four crimes. So you're going to have four
24 decisions to make here. And I told you your decision on
25 one does not govern your decision on the next one, because

Jury charge

1 each crime has different elements, different things the
2 state has to prove to you beyond a reasonable doubt.

3 And I'm going to go over each one of those four crimes
4 with you, so you need to listen to what the state has to
5 prove to you and then go back to the evidence and say did
6 the state prove this to us beyond a reasonable doubt or
7 not.

8 Armed robbery. The state must first prove beyond a
9 reasonable doubt that the defendant took personal property
10 from the person or presence of another person. Property is
11 in the presence of a person if it is within their reach,
12 inspection, observation or control so that the person could
13 if not overcome with violence or prevented by fear from
14 keeping possession of the property.

15 The state also has to prove beyond a reasonable doubt
16 that the defendant carried the property away intending to
17 permanently deprive the owner of that property and to keep
18 the property for their own use.

19 The slightest removal, the possession of it, even for
20 an instant, is sufficient to show a taking and carrying
21 away. Taking and carrying away of the property must have
22 been done with violence or putting the owner of the
23 property in fear of violence.

24 And, finally, the state has to prove to you beyond a
25 reasonable doubt that the defendant was armed with a deadly

Jury charge

1 weapon during the robbery.

2 What's a deadly weapon? A deadly weapon is any kind
3 of article or instrument or a substance which is likely to
4 or could cause death or great bodily harm. Whether an
5 object or an instrument or some kind of substance has been
6 used as a deadly weapon depends on the facts and
7 circumstances of each case.

8 The next crime, kidnapping. The defendant is charged
9 with that crime, and the state has to prove to you beyond a
10 reasonable doubt that the defendant knowingly and
11 unlawfully seized or confined or kidnapped or abducted or
12 carried away another person without authority of law.

13 That means to do it wilfully against the law. It
14 means to do it with knowledge, not accidentally. Seize
15 means to take hold of suddenly or forcibly. Confine means
16 to limit or to restrict or to enclose within a certain area
17 or keep in.

18 Kidnap would mean to remove a person against their
19 will by unlawful force or fraud. And abduct means to carry
20 them off....

21 The state doesn't have to prove to you that the
22 defendant did all of them. The state has to prove to you
23 beyond a reasonable doubt that the defendant did one of
24 them.

25 Something done without the authority of law is

Jury charge

1 something which the law does not sanction, permit or allow.
2 And kidnapping does not have to be done for any particular
3 personal or monetary gain. It can be done for any reason
4 whatsoever.

5 If you find the defendant guilty of the crime of armed
6 robbery or kidnapping or both, but at least one of them,
7 then you may consider and would consider whether the
8 defendant is guilty of the crime of possession of a weapon
9 during the commission of a violent crime.

10 So the violent crimes here are armed robbery and
11 kidnapping. If you find him guilty of one of those, then
12 you consider did the defendant commit the crime of
13 possession of a weapon during the commission of a violent
14 crime.

15 The state has to prove to you beyond a reasonable
16 doubt that the defendant visibly displayed some type of
17 deadly weapon during the commission of a violent crime.
18 It's alleged here it's a knife. And that would be any kind
19 of instrument or tool with a sharp cutting blade, whether
20 or not fastened to a handle, which could be used to
21 inflict, cut or slash or wound.

22 In order to find the defendant guilty of the
23 possession of a weapon during the commission of a violent
24 crime you obviously have to have first found the defendant
25 guilty of committing the violent crime. And, again, armed

Jury charge

1 robbery and kidnapping are considered by the state of South
2 Carolina as violent crimes. And then the state has to
3 prove to you beyond a reasonable doubt that that weapon,
4 that deadly weapon, further advanced or helped in the
5 commission of that crime, the armed robbery or the
6 kidnapping.

7 And the last charge is resisting arrest. The
8 defendant is charged with resisting arrest. The state must
9 prove beyond a reasonable doubt that the defendant resisted
10 a lawful arrest being made by a person the defendant knew
11 or reasonably should have known was a law enforcement
12 officer.

13 Wilfully means intentionally, not accidentally.
14 Resist means to oppose, strive against. Obstruct means to
15 impede or hinder, interfere with.

16 That ladies and gentlemen, is the law that you're
17 going to apply to the facts and evidence you find to be
18 true.

19 Now, regarding this the Court has prepared for you
20 four verdict forms. Very straightforward. I have the
21 caption of the case.

22 Armed robbery. Under the charge of armed robbery, we,
23 the jury, by unanimous consent find the defendant. There's
24 two choices. Check one or the other. I put one before the
25 other. Don't assign anything to that. I've got to put one

Jury charge

1 before the other. Not guilty or guilty.

2 Once the jury has decided that case proceed on to the
3 next one.

4 Kidnapping. Under the charge of kidnapping of Sharon
5 Taylor, we, the jury, by unanimous consent find the
6 defendant. Again, two choices. Not guilty or guilty,
7 remembering again if you find him guilty of one or both,
8 then you can consider the third charge, possession of a
9 weapon during the commission of a violent crime. The jury
10 has found the defendant not guilty of both armed robbery
11 and kidnapping, then obviously you would have to find the
12 defendant not guilty of possession of a weapon during the
13 commission of a violent crime because you found him not
14 guilty of the violent crimes.

15 The fourth charge, resisting arrest. On the charge of
16 resisting arrest, we, the jury, by unanimous consent find
17 the defendant. Again, two choices, not guilty or guilty.

18 Again, four charges. Your decision on one doesn't
19 mean you've got to find the same thing on the next one.
20 Each one's different. Each one has a little bit different
21 elements that the state has to prove to you beyond a
22 reasonable doubt.

23 Now, the decision on each one of them must be
24 unanimous, and that means exactly what you think it means.
25 It means 12-0. It does not mean 11-1, 10-2, any

Jury charge

1 combination thereof.

2 Whatever the verdict is, it is the verdict of each and
3 every member of the jury.

4 So, Madam Forelady, you understand that you check the
5 appropriate block on the verdict form and sign your name.
6 You are indicating that this indeed is the verdict of each
7 and every member of the jury in this matter.

8 THE FOREPERSON: Yes, sir.

9 THE COURT: Now, thank you very much.

10 All right. What I'm going to ask that you do, Madam
11 Forelady, is take the 12 members -- yourself included -- to
12 the jury room.

13 The two alternates, ladies, if you'll stay with us.
14 Take the other members of the jury to the jury room.

15 Madam Forelady, do not begin your deliberations until
16 the bailiff hands to you the verdict form and all of the
17 exhibits. When all of that comes into the jury room, then
18 your jury may begin its deliberations. Thank you very
19 much.

20 (Whereupon, the jury retired to deliberate at
21 4:00 p.m.)

22 THE COURT: As to the alternates in this matter, is
23 there any reason that the Court should not excuse the two
24 alternates at this time from the state?

25 MR. FRETWELL: I know of no reason, Your Honor.

1 THE COURT: From the defense?

2 MR. CULBERTSON: Not unless they want to stay.

3 THE COURT: well, I appreciate that.

4 Obviously, if the Court excuses you y'all, you're free
5 to do whatever it is that you wish to do.

6 Ladies, you are -- did exactly what the Court asked
7 you to be the alternates in this case. You don't obviously
8 know how many times we have to substitute an alternate in
9 for a regular member of the jury. Somebody gets sick or
10 something, and it happens more than you would think it
11 would. It just didn't happen in this particular case. I'm
12 able to excuse you. You can go back about your regular
13 duties. The jury service this week is over with.

14 So if you needed some kind of statement for work, you
15 just go to the clerk's office downstairs and they'll get
16 that to you. But with that, you are excused.

17 Remember you earn an exemption for three years coming
18 back to circuit court jury duty. So if the fine clerk of
19 court sends you a notice, you can tell them you served.
20 Now, your local city judge or magistrate or federal judge
21 tells you to go see them for jury duty, I'm sorry. You've
22 got to go see them.

23 All right. Thank you very much.

24 (Whereupon, alternate jurors were excused.)

25 THE COURT: All right. Solicitor, exceptions,

1 deletions, additions to the charge from the state?

2 MR. FRETWELL: None, Your Honor.

3 THE COURT: From the defense, Mr. Culbertson?

4 MR. CULBERTSON: Your Honor, quite honestly, it's one
5 of the better charges I've heard in a long time. Again, I
6 object --

7 THE COURT: Well, I appreciate you saying that. I
8 just want to know if you have any objections or not.

9 MR. CULBERTSON: No objections, Your Honor.

10 THE COURT: Thank you very much.

11 All right. Gentlemen, I want to appreciate the way
12 that both of you tried this case and presented it to the
13 jury. You know, the Court found to be in a very
14 straightforward manner, and I appreciate you doing that.

15 Each of you represented the interest of your
16 respective side or client in this matter, and I appreciate
17 the job that both of y'all did. Thank you very much.

18 Will you check with the court reporter and make sure
19 we've got all of the right exhibits that go into the jury
20 room, please. Thank you very much. We'll be at ease until
21 the jury -- thank you.

22 (Whereupon, a recess was taken.)

23 THE COURT: All right. Solicitor and Mr. Culbertson.
24 I'm going to send the jury home for the evening, and we'll
25 resume tomorrow morning at 9:30. I'm going to call the

1 jury in.

2 Ask the jury to come in, please.

3 (Whereupon, the jury returned to the courtroom at
4 5:38 p.m.)

5 THE COURT: All right. Madam forelady and ladies and
6 gentlemen of the jury, I'm going to send you home for the
7 evening and I'll have you come back and resume your
8 deliberations tomorrow morning at 9:30.

9 The bailiff will inform you what time y'all need to
10 assemble so you can be in the jury room by 9:30 in the
11 morning.

12 With that, please remember what I told you before.
13 Don't talk about the case outside of your jury room. Don't
14 allow anybody to talk to you about it. You cannot discuss
15 it with anyone. You can't do any research. You can't look
16 up anything. I'll see you back tomorrow morning at 9:30.
17 And resume your deliberations at that time. Thank you very
18 much.

19 (Whereupon, the trial jury was excused.)

20 THE COURT: All right. Solicitor, anything from the
21 state at this point in time?

22 MR. FRETWELL: No, Your Honor.

23 THE COURT: Anything from the defense?

24 MR. CULBERTSON: No, sir.

25 THE COURT: All right. Gentlemen, I'll see you back

1 tomorrow morning at 9:30. And we will be at ease then
2 until the jury needs us. All right. Thank y'all very
3 much.

4 MR. FRETWELL: Yes, sir.

5 MR. CULBERTSON: Your Honor, can I just -- just kind
6 of a housekeeping matter. Is it your intention to have the
7 jury at 9:30 tomorrow come back into the courtroom or --

8 THE COURT: No, sir. I'm just going to have them go
9 directly into the jury room and have the clerk take the
10 exhibits back into the jury room at 9:30 and have them
11 resume their deliberations.

12 MR. CULBERTSON: And you're going to do that when all
13 of them show up.

14 THE COURT: Right, oh, absolutely. The clerk will not
15 take the exhibits back into the jury room until all of them
16 show up. Absolutely. They all have to be here.

17 MR. CULBERTSON: Yes, sir.

18 THE COURT: Thank you all.

19 (Question from the jury marked Court's Exhibit No. 2;
20 question from the jury marked Court's Exhibit No. 3.)

21 END OF PROCEEDINGS OCTOBER 9, 2014
22
23
24
25

1 (Proceedings October 10, 2014)

2 (Whereupon, all jurors were present and the exhibits
3 were submitted to the jury at 9:23 a.m.)

4 (The following takes place outside the presence of the
5 jury at 10:04 a.m.)

6 THE COURT: All right. Counsel, I understand that you
7 have a matter for the Court.

8 MR. CULBERTSON: Your Honor, as is often the case,
9 unfortunately, during the course of a trial things may find
10 their way past my thought process. Specifically, in this
11 case there was testimony regarding an additional in-car
12 video that was not presented in evidence.

13 The issue of -- and I'll mispronounce this I'm sure --
14 but I call it spoliation came up. I did not raise that at
15 the time of your requested jury charges. Maybe I should
16 have. But, quite honestly, I did not have that thought in
17 my head at that time.

18 On reflection I now believe that that is an issue that
19 should have been raised. And although I did not request it
20 at the time you asked for jury charges, I'm requesting it
21 now.

22 Actually, what I'm doing now is my understanding of
23 the cases I've read on that issue, I would make the motion
24 for dismissal of the charges against my client. In the
25 alternative I'd ask for a charge on spoliation be given to

1 the jury.

2 THE COURT: All right, sir. Do you want to respond to
3 that, solicitor?

4 MR. FRETWELL: Your Honor, first of all, the response
5 that I would have to Mr. Culbertson's motion to dismiss is
6 to say that I believe that that is not a proper motion,
7 that if the defense would like a spoliation-of-evidence
8 charge, that is a charge that they should request during
9 the charging conference which Your Honor held.

10 The fact that it was not requested may or may not be
11 an error on defense counsel's part, but I do not believe
12 the appropriate remedy is a motion to dismiss or the
13 entertaining of a motion to dismiss.

14 Do you want to hear the state's position on whether a
15 charge should be given at this point?

16 THE COURT: I suppose, yes. I would think you could
17 state that very quickly.

18 MR. FRETWELL: Yes, sir. My concern is having a
19 charge in isolation at this point, if the Court feels it's
20 appropriate to add a charge to what the Court has already
21 charged or already has been agreed to by both sides, would
22 highlight the issue improperly, that if the Court is
23 inclined to give such a charge that it should be in the
24 context of a recharge on all of the law in this case.

25 THE COURT: All right, sir. Thank you.

1 Yes, sir, Mr. Culbertson.

2 MR. CULBERTSON: If I could reply very briefly, Your
3 Honor.

4 While I understand and appreciate the solicitor's
5 position on that matter in terms of timing of my request, I
6 do not believe that there is any limitation on any due
7 process or protection issues that are raised. I believe
8 that this is actually a due process issue, and I think it
9 is appropriate for me raise that at any time.

10 THE COURT: All right. Very good.

11 All right. General rule of the law pursuant to the
12 due process law, 14th Amendment to the Constitutional of
13 the United States of America, criminal prosecutions must
14 comport to the prevailing notions of fundamental fairness,
15 and in that it is a standard that criminal defendants be
16 afforded a meaningful opportunity to present a complete
17 defense. The state does not however have an obligation to
18 have and preserve an absolute duty to preserve all
19 evidence.

20 Now, in this case particular matter to establish a due
21 process violation where the state has failed to preserve
22 some matter that potentially may have some evidentiary
23 value the defendant has to demonstrate to the Court that
24 the state destroyed the evidence in bad faith or that the
25 evidence possessed an exculpatory value apparent on the

1 face of the evidence before it was destroyed and the
2 defendant cannot obtain other evidence of comparable value
3 by other means.

4 Now, in this particular case, clearly, there's no
5 evidence in this case, certainly none produced by the
6 defendant and none that's been set forth in this trial,
7 that the state destroyed evidence in bad faith. There's
8 just no evidence, zero evidence, of that in this case.

9 The only testimony is that there was an in-car video
10 of one of the patrol cars, not the one that went to the
11 Family Dollar and saw the defendant exiting the -- or
12 some -- Dollar General -- I'm sorry -- the store but the
13 video of another responding officer.

14 Now, the officer said he viewed it with another duly
15 appointed law enforcement officer and all it showed was him
16 driving to the scene. That clearly doesn't have any kind
17 of evidentiary value. It just shows the car going to the
18 scene.

19 The officer testified how his car was parked. It was
20 not parked such that the defendant would have been in view
21 of the camera. There's no evidentiary value there.

22 Now, would the best, absolute, hundred percent best,
23 course of business have been to have made a copy of that
24 and turned it over to the state, yes. No question about
25 that. But there's no bad faith. There's zero evidence of

1 it.

2 So you look at the other part of it that the evidence
3 possessed some kind of exculpatory value apparent on its
4 face before the evidence was destroyed. And there is zero
5 evidence of that.

6 The only evidence is -- is that the video shows the
7 patrol car going to the scene. There's just zero, just no,
8 argument to be made that that has any kind of evidentiary
9 value in this case.

10 There's no evidence that the defendant was visible in
11 any of the video. There's no testimony of that. There's
12 nothing that shows it has any kind of exculpatory value or
13 any kind of evidentiary value of any type in this case.
14 Therefore, the motion to dismiss the charges is denied.

15 First, I don't think that's a proper motion regarding
16 the particular matter, but, be that as it may, the motion
17 to dismiss is denied.

18 And the Court refuses to give a spoliation-of-evidence
19 charge to the jury because there is no evidence in the
20 record that would support that charge on the law to the
21 jury. That request is denied. Thank you very much.

22 MR. CULBERTSON: Thank you, Your Honor.

23 MR. FRETWELL: Thank you, Your Honor.

24 THE COURT: Anything further from the state at this
25 point in time?

1 MR. FRETWELL: No, Your Honor.

2 THE COURT: Anything further from the defendant?

3 MR. CULBERTSON: No, sir.

4 THE COURT: All right. Then we'll just be at ease
5 until the jury needs us. Thank y'all very much.

6 MR. CULBERTSON: Your Honor --

7 THE COURT: Yes, sir.

8 MR. CULBERTSON: -- I'm sorry. You don't need this.
9 I just -- I know that everything has already been sent back
10 to the jury and they supposedly don't want stuff --

11 THE COURT: Yes, sir.

12 MR. CULBERTSON: -- and I was just on an early Friday
13 morning just trying to schedule everything else I need to
14 do today. I didn't know if you intended to bring them. If
15 there was some period of time I could go make some phone
16 calls and check.

17 THE COURT: Well, how far away will you be?

18 MR. CULBERTSON: Oh, not far at all. I will be if not
19 in this building, it's certainly within short --

20 THE COURT: Okay. Just make sure the clerk has your
21 cell number --

22 MR. CULBERTSON: She does.

23 THE COURT: -- and that you keep it on so that when
24 she calls you, you can just come right back. I don't have
25 a problem with that.

1 MR. CULBERTSON: Yes, sir. As soon as I get -- as
2 soon as I get notice, I'll be back in less than ten
3 minutes, five minutes.

4 THE COURT: Yes, sir. Great. Not a problem.
5 (Whereupon, a recess was taken.)

6 THE COURT: All right. Solicitor, Mr. Culbertson, I
7 understand that the jury wants us to recharge them the
8 definition of resisting arrest.

9 Is the state ready to receive the jury?

10 MR. FRETWELL: Yes, sir.

11 THE COURT: And the defense?

12 MR. CULBERTSON: Yes, sir.

13 THE COURT: Ask the jury to come in, ma'am.

14 (Whereupon, the jury returned to the courtroom at
15 10:40 a.m.)

16 THE COURT: All right. Ladies and gentlemen, you have
17 requested the Court to recharge resisting arrest, and I'm
18 happy to do so.

19 The state has to prove beyond a reasonable doubt that
20 the defendant resisted a lawful arrest being made by a
21 person the defendant knew or reasonably should have known
22 was a law enforcement officer.

23 Knowingly. That means consciously done that.
24 Wilfully means you've intentionally done it. You haven't
25 done it by accident. Resist. That means to oppose or

Jury charge

1 strive against or obstruct in any manner. Obstruct means
2 to impede or to hinder or interfere with. Even a peaceful
3 nonviolent or indirect obstruction regarding an arrest can
4 be classified as resisting arrest if the means used are
5 sufficient to prevent that officer from making an arrest.
6 That is the definition of resisting arrest.

7 So with that, Madam Forelady, I hope that answers your
8 question. Return your jury to the jury room and continue
9 deliberations. Thank you very much.

10 THE FOREPERSON: Thank you, Your Honor.

11 (Whereupon, the jury retired to deliberate at
12 10:44 a.m.)

13 THE COURT: All right. Gentlemen, we will be at ease
14 until the jury needs us. Thank you very much.

15 MR. CULBERTSON: Thank you, Your Honor.

16 (Question from the jury marked Court's Exhibit No. 4;
17 question from the jury marked Court's Exhibit No. 5.)

18 (Whereupon, a recess was taken.)

19 THE COURT: All right. Solicitor and Mr. Culbertson,
20 I understand that the jury has reached a verdict in this
21 matter. Is that correct? Is that your understanding also?

22 MR. CULBERTSON: That's what we have been told, yes,
23 sir.

24 THE COURT: All right. Very good. Are you ready to
25 receive it, Solicitor?

Verdict

1 MR. FRETWELL: Yes, Your Honor.

2 THE COURT: Mr. Culbertson.

3 MR. CULBERTSON: Yes, sir.

4 THE COURT: All right. I want to talk to everyone in
5 the courtroom.

6 I'm sorry. Could y'all move that out of the way so
7 when the jury comes in I see them, please?

8 (Pause.)

9 THE COURT: Thank you. I appreciate it.

10 We're about to receive the jury's verdict in this
11 matter. I do not know nor does anyone in this courtroom
12 know what that verdict is going to be.

13 We've asked this jury to do a very difficult thing,
14 that is for 12 people to agree on a resolution of the
15 matter.

16 This jury's verdict will be received with respect and
17 it will be received with silence. The Court will not
18 tolerate any kind of showing of emotion regarding the
19 jury's verdict.

20 If you cannot follow these instructions I'm asking you
21 to leave the courtroom, because if you fail to follow those
22 instructions you will then be detained by an officer of the
23 Georgetown County Sheriff's Office, and I will hold a
24 contempt of court hearing thereafter. Thank you very much.

25 If anyone would like to leave the courtroom, please do

Verdict

1 so now. Ask the jury to come in.

2 MR. CULBERTSON: Greenville.

3 THE COURT: Yes, sir, Mr. Culbertson.

4 MR. CULBERTSON: You're obviously anxious to get home
5 since you said Georgetown County Sheriff's Deputy instead
6 of --

7 THE COURT: It's Greenville County. Well, I
8 appreciate it, Mr. Culbertson. I'm sorry I said Georgetown
9 and not Greenville, which is appropriate, but obviously I
10 assume everybody understands. We'll -- thank you.
11 Appreciate it. Thank you..

12 (Whereupon, the jury returned to the courtroom at
13 11:00 a.m. to report its verdict.)

14 THE COURT: Madam Forelady, has your jury reached a
15 verdict in this matter?

16 THE FOREPERSON: Yes, sir, we have.

17 THE COURT: Could you hand the bailiff forms to the
18 bailiff? I mean the verdict forms to the bailiff, please.
19 Thank you, ma'am. I appreciate it.

20 All right. Madam clerk, you may publish the verdicts.

21 THE CLERK: Your Honor, in the case of
22 2013-GS-23-9292, the state of South Carolina vs. James
23 Eddie Bailey, No. 1, armed robbery. On the charge of armed
24 robbery, we, the jury, by unanimous consent find the
25 defendant guilty.

Verdict

1 No. 2, kidnapping. On the charge of kidnapping of
2 Sharon Taylor, we, the jury, by unanimous consent find the
3 defendant guilty.

4 No. 3, possession of a weapon during the commission of
5 a violent crime. On the charge of possession of a weapon
6 during the commission of a violent crime, we, the jury, by
7 unanimous consent find the defendant guilty.

8 No. 4, resisting arrest. On the charge of resisting
9 arrest, we, the jury, by unanimous consent find the
10 defendant guilty.

11 These are all signed by Kimberly Dunham, our
12 foreperson.

13 Ladies and gentlemen, if you agree these are the
14 verdicts you reached in your deliberation room would you
15 please raise your right hand?

16 (Whereupon, all jurors responded affirmatively.)

17 THE CLERK: Thank you.

18 THE COURT: Does the state wish the jury polled in
19 this matter?

20 MR. FRETWELL: No, Your Honor.

21 THE COURT: Does the defendant wish the jury polled in
22 this matter?

23 MR. CULBERTSON: No, sir.

24 THE COURT: Thank you very much.

25 Madam Forelady and ladies and gentlemen of the jury,

Verdict

1 you did exactly what the Court asked you to do, that is to
2 well and truly deliberate in this case and reached a true
3 and just unanimous verdict in this matter.

4 I understand, the parties understand, everyone
5 understands we asked you to do a difficult thing. It is
6 not often easy to get two people to agree on something,
7 much less 12 people. So we understand that and we
8 appreciate that. And I appreciate as your presiding judge
9 the jobs you did in this particular case.

10 You've earned an exemption from coming back to circuit
11 court jury duty within three years. So if your fine clerk
12 of court here sends you a notice about your duty in the
13 next three years, you can tell the clerk that you have
14 served.

15 Now, if you happen to live in the city, certainly if
16 the county magistrate sends you a summons or a federal
17 judge sends you a summons, you do have to go see them. But
18 you just don't have to come and see us in the next three
19 years.

20 All right. Thank you very much. With that, you are
21 excused from your jury service for this week. Appreciate
22 it very much. Thank you.

23 (Whereupon, the trial jury was excused.)

24 THE COURT: Motions by the defense?

25 MR. CULBERTSON: Your Honor, obviously, I'd move at

1 this time for a directed verdict.

2 THE COURT: All right, sir. Regarding the defendant's
3 motion in this matter to, in effect, renew the motion for a
4 directed verdict by a motion for a new trial the Court --
5 in that standard I have to look at whether or not there's
6 any kind of competent evidence that would sustain the
7 jury's verdict.

8 Even if the Court disagreed with the verdict, which in
9 this case I do not, and I believe that it's a proper
10 verdict in this matter -- but if the Court -- even if I did
11 disagree with the verdict, the trial judge may not
12 substitute his judgment for that of the jury when there is
13 competent evidence to sustain the jury's verdict.

14 I find there has been more than sufficient evidence,
15 proper evidence, that has been introduced in this matter
16 that would prove and has shown the defendant guilty beyond
17 a reasonable doubt of all four charges.

18 I respectfully decline to grant your motion for a new
19 trial.

20 MR. CULBERTSON: Thank you, sir.

21 THE COURT: Any other matters?

22 MR. CULBERTSON: Yes, sir. I would obviously at this
23 time like to for the record renew all of my previous
24 motions including the additional request that I had made to
25 the Court to charge the jury in spoliation.

Sentence

1 THE COURT: All right, sir. All of those matters are
2 for the record. The Court's ruling is on the record on all
3 of those matters. They were respectfully declined at that
4 point in time, and the Court renews all of those prior
5 findings at this time. Thank you very much.

6 MR. CULBERTSON: Thank you, sir.

7 THE COURT: All right. Is the state ready to proceed
8 to sentencing in this matter?

9 MR. FRETWELL: We are, Your Honor. I would just if it
10 pleases the Court, I'd like to put the on the record. I
11 think we discussed this in chambers at the beginning of the
12 trial, but put on the record that the state has served
13 notice of intent, life without --

14 THE COURT: Do you have -- is that in the clerk of
15 court's file, or do you have a copy of that?

16 MR. FRETWELL: I have a copy of it, and it's also in
17 the clerk of court's file.

18 THE COURT: I tell you what. Why don't we just to be
19 safe, you make that a court's exhibit in this matter?

20 MR. FRETWELL: And, Your Honor, what I'll be asking
21 the Court to mark is as Court's Exhibit 2 the notice of
22 intent to seek a sentence of imprisonment for life without
23 the possibility of parole, as Court's Exhibit 3 the
24 affidavit of service on defense counsel, and as Court's
25 Exhibit 4 the affidavit of service on the defendant at the

Sentence

1 detention center.

2 THE COURT: All right. Actually I think those might
3 be different numbers, but they will be marked as court's
4 exhibits. The court reporter will take care of marking
5 those as exhibits.

6 Go ahead and do that now, please.

7 MR. FRETWELL: Your Honor, in addition --

8 THE COURT: I'm sorry. The court reporter has got
9 to --

10 MR. FRETWELL: I'm sorry.

11 (Notice of intent marked Court's Exhibit No. 6;
12 affidavit marked Court's Exhibit No. 7; affidavit marked
13 Court's Exhibit No. 8.)

14 THE COURT: Solicitor, you may proceed.

15 MR. FRETWELL: Your Honor, in addition to those items
16 that I've asked and the Court has agreed to have marked as
17 court's exhibits, I have the 11 prior certified copies of
18 convictions for the convictions that are referenced on the
19 state's notice of intent to seek life without parole that I
20 would also like to enter as court's exhibits and into the
21 record at this time.

22 THE COURT: All right. Those would be Court's
23 Exhibit -- next. I believe that to be Court's Exhibit 9 in
24 this matter. Do you want them all marked as one? Do you
25 want them all marked as one, sir?

Sentence

1 MR. FRETWELL: However the Court feels is appropriate.

2 THE COURT: One is fine.

3 (Copies of indictments and sentences marked Court's
4 Exhibit No. 9.)

5 THE COURT: Now, as I understand it, what now has been
6 marked as Court's Exhibit No. 9 are these prior convictions
7 of the defendant that were classified as most serious by
8 the State of South Carolina, that being one count of armed
9 robbery and ten counts -- I'm sorry -- one count of armed
10 robbery. And that was from 1982. And then ten counts of
11 armed robbery that followed in 1996. Is that correct?

12 MR. FRETWELL: That's correct, Your Honor.

13 THE COURT: Very good. Be glad to hear the state's
14 arguments.

15 MR. FRETWELL: Your Honor, the only thing in addition
16 to what the Court already knows about the facts of this
17 case is I would like to bring to the Court's attention that
18 the defendant has been incarcerated since the date of --
19 since the night of the arrest on April 14th of 2013.

20 In addition to the convictions that the state has
21 handed up, the defendant has convictions in 1982 for grand
22 larceny, for assault and battery of a high and aggravated
23 nature.

24 The charges that the prior convictions, other prior
25 convictions, the defendant received that were not -- that

Sentence

1 did not qualify for the life-without-parole calculation
2 were a strong arm robbery, two counts of purse snatching in
3 1996. And that is the totality of the defendant's record,
4 Your Honor.

5 If it pleases the Court and at the appropriate time I
6 believe the victim would like to address the Court on the
7 issue of sentencing.

8 THE COURT: All right. I'll be glad to hear from you,
9 ma'am, if you want to stand up. And, again, you'll need to
10 state your name for the record. But I'll be glad to hear.
11 If you want to -- stay right there is fine.

12 THE VICTIM: Your Honor, my name is Sharon Taylor.

13 THE COURT: Yes, ma'am. Go ahead.

14 THE VICTIM: And I beg of you today to please put this
15 man away so that he can never do to anybody else what he's
16 done to me.

17 It's been a year and six months, and I have not slept
18 one night. So I'm begging Your Honor to please see that he
19 goes away and can't do this again.

20 And to him I would like to say --

21 THE COURT: Ma'am, I'm sorry. You cannot address the
22 defendant. It's not proper. If you have comments, I'll be
23 glad to receive them. You may not address the defendant.

24 THE VICTIM: I just want to say his brother has told
25 me he's sorry. It is not his brother's place to apologize

Sentence

1 for what he's done for me, but I do appreciate it.

2 THE COURT: Thank you, ma'am. I appreciate that very
3 much.

4 Anything further, Solicitor?

5 MR. FRETWELL: No, Your Honor.

6 THE COURT: All right. Thank you.

7 All right. Mr. Culbertson, I'll be glad to hear from
8 you, sir.

9 MR. CULBERTSON: Thank you, Your Honor.

10 Mr. Bailey is 52 years of age and just celebrated a
11 birthday -- he'll be 51 the 25th of this month, I believe.

12 He originally is from Spartanburg County. His mother
13 who is in poor health is not able to be with him today or
14 any time during this trial. His brother I think -- one or
15 two other family members -- periodically have been here.
16 His brother, I think, the entire time.

17 He's got a family that supports him to the extent that
18 they can. And what I mean by that is obviously Mr. Bailey
19 has spent a great deal of his life in the custody of the
20 Department of Corrections in South Carolina.

21 He has indicated to me that he is sorry for what
22 happened. It was a situation in which he had recently been
23 released from prison.

24 On that particular day he found himself taking some
25 prescription medication, and in addition to prescription

Sentence

1 medication he was taking took some illicit substances also.
2 Not using that as an excuse. He doesn't want to use that
3 as an excuse. I just bring that to the Court's attention
4 to say that he had obviously ingested some material. It
5 probably did not happen in the best state of mind.

6 He knows what he did was wrong. He knows he's going
7 to have to suffer and pay a penalty for that. And he and I
8 talked about the fact that given his prior record, given
9 this event, Your Honor has very little, if any, discretions
10 with what sentence you have to impose.

11 He knows it's going to be a life-without-parole
12 sentence, and I can speak to that a little bit more in just
13 a moment. But knowing that you have very little
14 discretion, I don't really have any -- much more to say in
15 regards to Mr. Bailey's status at this time.

16 He has expressed to me that he would like to
17 communicate his sympathy and sorry to the defendant [sic]
18 and for everybody he put through that night; everything he
19 put them through that night.

20 Had he been in any better state of mind he believes --
21 and I do too -- that it's unlikely that would have
22 transpired. But he knows what he did was wrong. He knows
23 he subjected them to a great deal of pain and mental
24 heartache, and for that he truly is sorry.

25 And so his brother. I think his brother has actually

Sentence

1 had some communications with one of the victims in this
2 case already. She indicated. They apparently have known
3 each other for a number of years. In fact, I think there's
4 some degree of relationship between these two families in
5 such that they look after one another's children from time
6 to time. It's just a bad situation. I know Your Honor is
7 kinda hamstrung on what sentence you have to impose today.

8 I just want to tell you a little bit before that
9 happens about Mr. Bailey.

10 He informed me that he does not wish to add anything
11 to that and does not wish to address Your Honor or anybody
12 else at this time, and he's also told me that he intends to
13 immediately file an appeal in this matter. And I'm telling
14 him today since he has told me that that's outside of my --
15 as his attorney right here, that's outside of my authority
16 and my control, that he needs to get in contact with the
17 office of appellate defense in terms of being able to file
18 that appeal.

19 THE COURT: All right, sir. He has to do that within
20 ten days of today.

21 MR. CULBERTSON: Yes, sir, Thank you, sir.

22 THE COURT: Very good.

23 Mr. Bailey, could you stand up, please?

24 Regarding 2013-GS-23-292, regarding the indictment for
25 four counts, that being armed robbery, kidnapping,

Sentence

1 possession of a weapon during the commission of a violent
2 crime and resisting arrest -- regarding the resisting
3 arrest, the Court sentence in this matter is for one year.
4 You're given a time-served sentence for that.

5 Regarding the possession of a weapon during the
6 commission of a violent crime, the defendant is committed
7 to the state department of corrections for a term of five
8 years concurrent with counts one and two.

9 Regarding armed robbery and kidnapping, both of those
10 matters pursuant to Section 17-25-45, Mr. Bailey, as your
11 attorney has explained to you, your prior record includes
12 obviously many more than the two most serious offenses that
13 put you in this capacity.

14 Do you understand the state of South Carolina has a
15 3-strike law for serious crimes and two strikes for most
16 serious? And your past 11 convictions for armed robbery
17 puts you in the position where the statute is mandatory
18 regarding Section 17-25-45.

19 Therefore the sentence the Court imposes upon you is
20 life imprisonment without the possibility of parole. Thank
21 you, sir.

22 END OF REQUESTED TRANSCRIPT OF RECORD
23
24
25

WITNESSES

N Emily

Greenville County Sheriffs Office

4/15/2013

ARREST WARRANT NUMBER

2013A2330203010, 2013A2330203012,
2013A2330203015 and 2013A2330203016

Count I, II, III, IV

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2013-GS-23-

AOF

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

TERM 2013

THE STATE

vs.

JAMES EDDIE BAILEY

Indictment for

0139/0095/0549/0326

**ARMED ROBBERY, KIDNAPPING, POSSESSION
OF A WEAPON DURING THE COMMISSION OF
A VIOLENT CRIME AND RESISTING ARREST**

**VIOLATION § 16-11-0330, § 16-03-0910,
§ 16-23-0490 and § 16-9-0320 (A)**

**ENTERED
ACCT.**

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
**ARMED ROBBERY, KIDNAPPING, POSSESSION OF A
WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
AND RESISTING ARREST**

At a Court of General Sessions, convened on **OCT 22 2013** the Grand Jurors of Greenville

County present upon their oath:

COUNT I - ARMED ROBBERY

That JAMES EDDIE BAILEY did in Greenville County, on or about the 14th day of April, 2013, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: funds belonging to DOLLAR GENERAL taken from the person or presence of Sharon Taylor and/or Tom Nash and/or Karen Nartowicz This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II - KIDNAPPING

That JAMES EDDIE BAILEY did in Greenville County, on or about the 14th day of April, 2013, unlawfully seize, abduct, confine, inveigle, decoy or carry away Sharon Taylor an employee of DOLLAR GENERAL, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

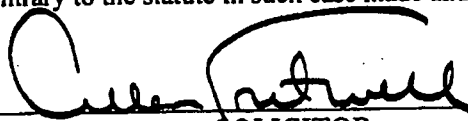
COUNT III - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That JAMES EDDIE BAILEY did in Greenville County on or about the 14th day of April, 2013, possess or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Armed Robbery and/or Kidnapping. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

COUNT IV - RESISTING ARREST

That JAMES EDDIE BAILEY did in Greenville County, on or about the 14th day of April, 2013, knowingly, willfully and unlawfully oppose or resist an arrest being made by Mike Giovanni and/or Matt May with the Greenville County Sheriff's Office whom he knew or reasonably should have known were law enforcement officers. This is in violation of §16-9-320(A) of the South Carolina Code of Laws (1976) as amended.

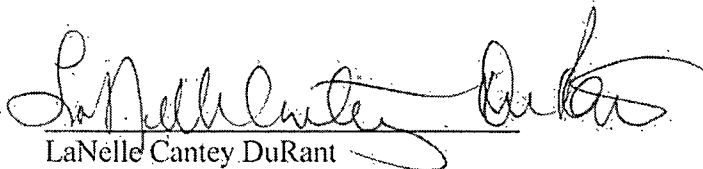
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

August 31st, 2015



LaNelle Cantey DuRant
Appellate Defender

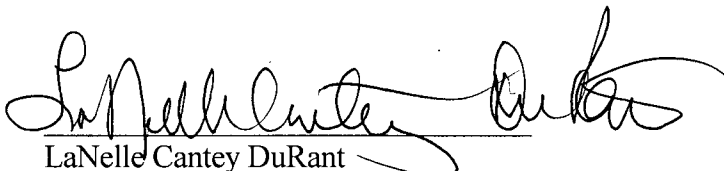
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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August 31st, 2015


LaNelle Cantey DuRant
Appellate Defender

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Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

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ATTORNEY FOR APPELLANT

AUG 31 2015

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Greenville County

Steven H. John, Circuit Court Judge

RECEIVED

AUG 31 2015

RESPONDENT

SC Court of Appeals

THE STATE,

V.

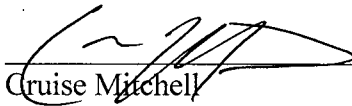
JAMES EDDIE BAILEY,

APPELLANT

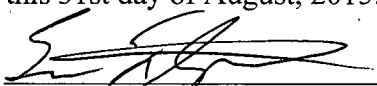
APPELLATE CASE NO. 2014-002447

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and James E. Bailey #114196, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 31st day of August, 2015.


Cruise Mitchell
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 31st day of August, 2015.


_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.