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VOLUME I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TERRANCE SEABROOK,

APPELLANT

APPELLATE CASE NO. 2015-001495

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 1 (DVD OF SURVEILLANCE FOOTAGE)
STATE'S EXHIBIT NO. 2 (DVD OF SURVEILLANCE FOOTAGE)
STATE'S EXHIBIT NO. 26 (PHOTOGRAPH)
STATE'S EXHIBIT NO. 28 (CD OF INTERVIEW)
STATE'S EXHIBIT NO. 29 (CD OF INTERVIEW)
STATE'S EXHIBIT NO. 37 (CD OF TELEPHONE CALL)
STATE'S EXHIBIT NO. 38 (CD OF TELEPHONE CALL)

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -vs-)
) February 28, 2012
TERRANCE SEABROOK,)
) Beaufort, South Carolina
 Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 (February 28, 2012.)

2 THE ASSISTANT SOLICITOR: This is Mr. Shatike
3 Shabazz, also known as Walter Jenkins.

4 Your Honor, this is Ms. Campbell's motion to
5 be relieved as his attorney on the record. I provided
6 the Court with a copy of the State's dismissal of
7 Mr. Shabazz's pending charges. That was dismissed today.
8 In talking with Ms. Campbell, I would like it to be clear
9 the State is dismissing that charge with prejudice, as I
10 think that's also clear through the State's attached
11 granting transactional immunity, which has also been
12 provided for the Court.

13 THE COURT: All right. Ms. Campbell?

14 MS. CAMPBELL: May it please the Court, Your
15 Honor: I have been representing -- I was lawfully
16 appointed to represent Mr. Shabazz, and we developed our
17 attorney-client relationship over many months. The
18 solicitor came to me and informed me that it was his
19 intention today to dismiss the armed robbery charge
20 against my client, to file a grant of transactional
21 immunity for Mr. Shabazz, and that the indictment was
22 being dismissed with prejudice, and he placed Mr. Shabazz
23 under subpoena now by the State.

24 I talked with Mr. Shabazz and explained my
25 understanding of the documentation to him, the grant of

1 transactional immunity and what that means, the null
2 prosse form dismissing it with prejudice, and the fact
3 that once the indictment has been dismissed that we no
4 longer have a relationship as attorney-client, in my
5 opinion, since the charges I was representing him on are,
6 essentially, non-existent anymore.

7 Functionally, the State intends, I believe,
8 to call Mr. Shabazz to testify in the case of the State
9 of South Carolina versus Terrance Seabrook, who was his
10 codefendant. And, for the record, and for the purposes
11 of this hearing, I wanted to clarify for Mr. Shabazz that
12 I am no longer in an attorney-client relationship with
13 him and would not be advising him on any matters from now
14 on relating to this case.

15 THE COURT: All right. Well, Mr. Shabazz,
16 you want to stand up a second? Would you prefer Shabazz
17 or Jenkins?

18 THE DEFENDANT: Shabazz.

19 THE COURT: If you would stand a minute, just
20 to make sure that you understand what is going on here,
21 you were originally charged with a crime. The State has
22 given you immunity against prosecution. You will not be
23 prosecuted for that crime. They intend to call you as a
24 witness in a codefendant's trial to testify in that
25 matter.

1 While you cannot be prosecuted for the crime
2 of the armed robbery or any of the events surrounding
3 that, you are under an obligation to tell the truth when
4 you testify.

5 So you can't be prosecuted for the armed
6 robbery. They can call you to testify, and since they
7 have given you immunity from the prosecution of the
8 transaction of the robbery, you do not have the right to
9 not testify by claiming your Fifth Amendment right. They
10 are not available to you, and I gather Ms. Campbell has
11 discussed that matter with you.

12 Normally, if you're facing charges, you would
13 have the right to say, I do not want to testify because I
14 have a Fifth Amendment right not to incriminate myself.
15 Those rights are no longer available to you, because the
16 State cannot prosecute you for the robbery.

17 In other words, if you came in and said, I
18 did it, they can't prosecute you for that. What they can
19 do is call you now to testify. You will be under Court
20 order to testify, and if you tell me you do not want to
21 testify, the Court will hold you in contempt of Court.
22 The only thing that you could be prosecuted for is
23 perjury, so, in other words, you have to come in and tell
24 the truth.

25 Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: So I am going to relieve
3 Ms. Campbell as being your lawyer. She's no longer your
4 lawyer. She no longer will provide you with advice
5 because she's no longer -- you're no longer charged with
6 any crime. I understand both the prosecutor and the
7 defense lawyer, of course, would like to talk with you
8 now to find out exactly what it is you intend to testify
9 about.

10 I encourage you to go talk to them now so
11 that we can make plans for a trial that is to begin
12 tomorrow morning. It might help us resolve that case if
13 they know exactly what it is you're going to testify
14 about.

15 So, again, tell the truth. You're not to
16 make up anything, but you can't be prosecuted for saying
17 anything that incriminates you. Again, if you come into
18 court, though, tomorrow and are put under oath and you
19 testify to something that it turns out later on is not
20 the truth, then you could be prosecuted for perjury, but
21 you could not be prosecuted for the armed robbery.

22 Do you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. Good enough. Thank you.

25 (Recess taken.)

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THE ASSISTANT SOLICITOR: Your Honor, we're back for Mr. Seabrook.

THE COURT: All right.

THE ASSISTANT SOLICITOR: It's my understanding that Mr. Weidner tells me that he has a motion to continue.

THE COURT: He has a motion to continue? Okay.

MR. WEIDNER: Sir, as you know, when we came in today, I had some -- I thought we were prepared to go, but now there has been a grant of immunity, and I've had an opportunity to talk to a person who is going to be a key witness for the government.

Based on my discussions with him, quite frankly, I guess it provides some clarity what's going on, but also the question now, it offers up a theory of the defense that I feel like I've got an obligation to look into, and I'm happy to go with the very next term of court.

I don't think it would take more than tracking down and talking to about three witnesses, but based on my discussion with the witness that I've just been allowed to talk to, I feel compelled to explore that defense, and --

1 THE COURT: Can you enlighten me a little
2 bit? I don't want you to necessarily tip your hand, but
3 help me understand what you need to look into.

4 MR. WEIDNER: I don't know if I can do that
5 without tipping my hand.

6 THE COURT: You say you need to talk to some
7 people as an alibi or is it -- what is it?

8 MR. WEIDNER: Well, there's -- and that's
9 part of my -- well, how do I do this? He knows, meaning
10 the witness, that I've now been able to talk to, knows
11 information about some of the players contained upon a
12 video that the government intends to place into evidence
13 that would, at a minimum, change the nature of the
14 offense for which my client is charged, which I think is
15 significant. The charge is armed robbery, what my client
16 is facing with the two strikes rule, and --

17 THE COURT: Okay.

18 MR. WEIDNER: So I think that's significant.

19 THE COURT: What is the State's position on
20 this? You're ready to go to trial?

21 THE ASSISTANT SOLICITOR: Yes, sir. The
22 State's ready.

23 THE COURT: If it had come up a week or so
24 ago, I would maybe not be quite as understanding, but,
25 you know, since you just did give a grant of immunity

1 today and this has changed the nature of his defense and
2 he's just now had an opportunity to talk to you, it
3 sounds like he has got some things he needs to explore,
4 and since the State is seeking life without parole, in
5 fairness, I think the right thing to do is to grant him a
6 continuance to the next term of court, so I will grant
7 that.

8 THE ASSISTANT SOLICITOR: And so, Your Honor,
9 that being the case, the State would like to put on the
10 record that we will call this case to trial starting
11 March the 19th.

12 THE COURT: Okay. All right.

13 THE ASSISTANT SOLICITOR: Thank you, Your
14 Honor.

15 MR. WEIDNER: Thank you, sir.

16 - - -

17 (Whereupon, the proceedings were concluded.)

18 - - -

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I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Beaufort County, South Carolina, on the 28th of February 2012..

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

June 5, 2014

Amanda K. Haffenden

Circuit Court Reporter

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2010-GS-07-02320 & 2010-GS-07-02321

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

MARCH 19, 2012

PARTIAL TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

TERRANCE L. SEABROOK

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

Wanda H. Rowe, CVR-M
Official Court Reporter

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BEGIN DAY ONE

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EXHIBITS

No exhibits were admitted.

1 DAY ONE, MARCH 19, 2012,

2 BEGINNING 11:21 A.M.

3 VOIR DIRE, BY THE COURT:

4 THE COURT: Thank you all.

5 BAILIFF: One moment, your Honor. I miscounted,
6 evidently.

7 All present, your Honor.

8 THE COURT: Thank you. Good morning. All right.
9 Ladies and gentlemen, if you'd give me your attention at
10 this time. We are about to begin the case entitled The
11 State of South Carolina versus Terrance Seabrook. He
12 was charged by a bill of indictment by the Grand Jury of
13 Beaufort County, with the offenses of armed robbery and
14 kidnaping.

15 Ladies and gentlemen, this case is, again, an
16 alleged armed robbery and kidnaping, where it is alleged
17 that on October 4th of 2010, an armed robbery and
18 kidnaping occurred at the Exxon gas station located at
19 1702 Sea Island Parkway.

20 Ladies and gentlemen, the State in this case is
21 being represented by Mr. Jim Bannon. Mr. Bannon, if you
22 would stand and face the jury panel.

23 Thank you, sir.

24 Ladies and gentlemen, the defendant in this case,
25 Mr. Seabrook, if you would stand and face the panel.

1 Mr. Seabrook is being represented by Mr. Larry
2 Weidner.

3 Thank you, gentlemen.

4 Ladies and gentlemen of the jury panel, my question
5 is, is there any member of the jury panel related by
6 blood or connected by marriage with the defendant in
7 this case, Mr. Terrance Seabrook? If so, please stand.

8 Is there any member of the jury panel who is a
9 close personal friend or share a special relationship
10 with the defendant, in this case, Mr. Terrance Seabrook?
11 If so, please stand.

12 Additionally, ladies and gentlemen, you have been
13 introduced to the attorneys trying this case. My
14 question is, is there any member of the jury panel
15 related by blood or connected by marriage or have a
16 close personal or share a special relationship with
17 either of the attorneys trying this case? If so, please
18 stand.

19 Additionally, ladies and gentlemen, has either
20 member of the jury panel ever been represented by or
21 employed by either of the attorneys representing or
22 participating in the trial of this case. If so, please
23 stand.

24 Yes, sir, if you would please, stand and give me
25 your name and juror number.

1 JUROR NUMBER 231: 231, Jonathan Vuolo.

2 THE COURT: Who?

3 JUROR NUMBER 231: Mr. Weidner.

4 THE COURT: Has he represented you in the past, or
5 is he currently representing you?

6 JUROR NUMBER 231: In the past.

7 THE COURT: In the past, what did he do for you?

8 JUROR NUMBER 231: He was a --

9 THE COURT: Defense? He defended you in something?

10 JUROR NUMBER 231: (Nodded head.)

11 THE COURT: Sir, that does not disqualify you. But
12 I just want to make absolutely sure, sir, that because
13 Mr. Weidner has represented you in the past, would that
14 affect your ability to be fair and impartial in the
15 trial of this case?

16 JUROR NUMBER 231: No, ma'am.

17 THE COURT: Thank you. You may be seated, sir.
18 Anyone else?

19 Ladies and gentlemen, the following is a list of
20 potential witnesses in this case. My question is going
21 to be the same. Is there any member of the jury panel
22 related by blood or connected by marriage, or a close
23 personal friend or share a special relationship with any
24 of these potential witnesses?

25 They are Adam Paul of the Beaufort County Sheriff's

1 Office. Sean Kirkpatrick. Brian Chapman of Beaufort
2 County Sheriff's Office. Mike Pierce. Eric Angstadt
3 and Jeremiah Fraser. Shatike Shabazz, or also known as
4 Walter Jenkins. John Donahue. Sammy Washington. Jeff
5 Vortisch. Eileen Rios. Ramona Kuhn. And Brian Baird.

6 Again, the question is, is there any member of the
7 jury panel related by blood or connected by marriage or
8 a close personal friend or share a relationship with any
9 of these potential witnesses?

10 Sir, your name and juror number?

11 JUROR NUMBER 76: Brian Fackrell, Number 76.

12 THE COURT: Sir, who do you know?

13 JUROR NUMBER 76: Jeremiah Frasier's my friend and
14 Brian Chapman's my neighbor.

15 THE COURT: Okay. Sir, have you spoken with either
16 of these gentlemen about this case? I know you know
17 very little about it.

18 COURT REPORTER: I'm sorry. I didn't hear his
19 answer.

20 THE COURT: I'm sorry. Repeat again.

21 JUROR NUMBER 76: No, I have not.

22 THE COURT: Thank you. All right. Sir, what I
23 need to make sure is whether or not your friendship
24 would affect your ability to be fair and impartial in
25 the trial of this case.

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ORIGINAL

1 JUROR NUMBER 76: No, I don't think so.

2 THE COURT: I need you to be absolutely sure.

3 JUROR NUMBER 76: I'm sure.

4 THE COURT: All right, sir. Thank you. You may be
5 seated. Anyone else?

6 Ladies and gentlemen, I know I've told you very
7 little about this case. It is an alleged armed robbery
8 and kidnaping that occurred back on October 4th, 2010,
9 here in Beaufort County, at 1702 Sea Island Parkway, in
10 Saint Helena, South Carolina, at the Exxon station. I
11 want to make sure that no member of the jury panel has
12 seen, heard, or read anything about this case or has any
13 independent knowledge about this case whatsoever. If
14 you do, please stand.

15 BAILIFF: One standing, your Honor.

16 THE COURT: May I have your name and juror number.

17 JUROR NUMBER 152: Jill McCullough, Number 152.

18 THE COURT: Ms. McCullough, I don't want you to
19 tell me what you heard about it, but I want to know how
20 you heard about it.

21 JUROR NUMBER 152: I heard it in the neighborhood
22 and I have , and neighborhood
23 concerns about that station being repeatedly robbed.
24 It's just neighborhood.

25 THE COURT: Have you heard anything specific about

1 this?

2 JUROR NUMBER 152: Not this specific, no.

3 THE COURT: And you don't have any independent
4 knowledge about this robbery?

5 JUROR NUMBER 152: No.

6 THE COURT: Is that correct?

7 JUROR NUMBER 152: Right.

8 THE COURT: And you live in , I
9 presume. All right, ma'am. please standing one more
10 time.

11 Ma'am, because you live in the neighborhood, I want
12 to make sure you can be fair and impartial to the State
13 and the defendant in this case. Can you?

14 JUROR NUMBER 152: I believe so, yes.

15 THE COURT: All right. And do you have any
16 questions whatsoever?

17 JUROR NUMBER 152: No.

18 THE COURT: All right. You may be seated, ma'am.
19 Thank you.

20 Ladies and gentlemen, is there any member of the
21 jury panel a member of or a financial contributor to any
22 group which has as its primary concern the promotion of
23 law enforcement or victims' rights? This would include
24 organizations such as Citizens Against Violent Crime,
25 also known as CAVE; or Mothers Against Drunk Driving,

1 MADD; or Students Against Drunk Driving? And again, the
2 question is, is there any member of the jury panel who
3 is a member of or contributor to any of these types of
4 organizations? If so, please stand.

5 Ladies and gentlemen, this would also include,
6 let's say, the Troopers Association or the County
7 Sheriff's Association calls you and you donate money.
8 That would include that, as well. Do I have anyone on
9 the panel that needs to respond?

10 JUROR NUMBER 248: My husband does. Sheila Yaw.
11 248 is my number.

12 THE COURT: Ms. Yaw, what organization does your
13 husband donate to?

14 JUROR NUMBER 248: To the Sheriff's Association.

15 THE COURT: Okay. Thank you, ma'am. You may be
16 seated. Anyone else?

17 Ladies and gentlemen, has any member of the jury
18 panel formed or expressed an opinion as to the guilt or
19 innocence of the defendant in this case, Mr. Terrance
20 Seabrook? If so, please stand.

21 Is any member of the jury panel conscious of any
22 interest, bias, any prejudice for or against the
23 defendant in this case? If so, please stand.

24 Ladies and gentlemen, is there any member of the
25 jury panel that knows any reason whatsoever that you

1 cannot give both the State of South Carolina and the
2 defendant in this case, Mr. Seabrook, a fair and
3 impartial trial in the matter of this case?

4 Are there any further questions requested of this
5 panel from the State?

6 MR. BANNON: Not from the State, your Honor.

7 THE COURT: From the defense?

8 MR. WEIDNER: No, thank you.

9 THE COURT: Ladies and gentlemen, what is happening
10 at this point is, those of you that have been qualified
11 as jurors in this case, your names have been placed into
12 the computer. It is going to draft a list for me. What
13 is going to happen is, your name is going to be called.
14 I'm going to ask you to stand in place. You don't have
15 to say or do anything. And each of the attorneys will
16 have an opportunity to say please seat the juror or the
17 juror is excused.

18 Certainly, if you are excused, you'll sit right
19 back down again, because we'll go through the whole
20 thing with the next judge with Judge Kinard. Of course,
21 if you're asked to take a seat, you'll come take a seat
22 up here in the jury box. All right? And again, this
23 takes just a quick moment.

24 Is everyone fine? Very good. All right.

25 Ladies and gentlemen, while Diane is pulling our

1 list, I want to introduce you to my bailiffs in the
2 courtroom. I hope they've introduced you to everyone
3 else prior to that. I've got Al, who's my head bailiff.
4 I've got Bob sitting down over there. I've got Jody
5 down here. I'm guessing that Norman and Debbie are
6 probably in the other courtroom.

7 BAILIFF: Norman is. Debbie's off today.

8 THE COURT: Debbie's off today. Ladies and
9 gentlemen, the bailiffs' entire job, I should say, is to
10 serve you; to take care of you while you are here. And
11 I can tell you that, as a circuit court judge, they can
12 send me anywhere. I am not just holding court in these
13 five counties. I will go everywhere, and half the time
14 I do travel. And I will tell you that every courthouse
15 has bailiffs, but let me tell you that no courthouse has
16 bailiffs like my bailiffs. They are absolutely amazing.
17 If you need anything while you are here performing jury
18 duty, just ask one of them. They are not only
19 wonderful, but they are probably the most funny and
20 interesting group of men and one women. And really, I
21 do enjoy. It's probably one of the best parts about the
22 job. They're absolutely fabulous. If you need
23 anything, if you need any assistance whatsoever, please
24 ask them. Don't hesitate.

25 Ready to go?

1 MADAM CLERK: Yeah, we're ready.

2 THE COURT: Ladies and gentlemen, when you hear
3 your name called, again, would you please stand in
4 place, and we'll go ahead and either ask you to take a
5 seat or have you sit back down in your spot.

6 All right, Diane.

7 JUROR SELECTION:

8 MADAM CLERK: Yes, Judge. Juror Number 103, Kelly
9 Hallock. What says the State?

10 MR. BANNON: It was 103 and it was Hallock?

11 MADAM CLERK: 103.

12 THE COURT: Hallock with an H.

13 MR. BANNON: Please present this juror.

14 MADAM CLERK: What says the Defense?

15 MR. WEIDNER: Please excuse this juror.

16 THE COURT: You may be excused, Ms. Hallock,
17 wherever you are. Thank you.

18 MADAM CLERK: Juror Number 207, Leon Smalls. What
19 says the State?

20 MR. BANNON: Please excuse Mr. Smalls.

21 THE COURT: You may be excused, Mr. Smalls.

22 MADAM CLERK: Juror Number 123, Anna Josey. What
23 says the State?

24 MR. BANNON: Please present this juror.

25 MADAM CLERK: What says the Defense?

1 MR. WEIDNER: Please swear the witness.

2 THE COURT: Come on around, Ms. Josey. Bring all
3 your belongings.

4 MADAM CLERK: Juror Number 174, James Phillips.
5 What says the State?

6 MR. BANNON: Please excuse Mr. Phillips.

7 MADAM CLERK: Juror Number 124, Christine Joyner.
8 What says the State?

9 MR. BANNON: Please present this juror.

10 MADAM CLERK: What says the Defense?

11 MR. WEIDNER: Please excuse this juror.

12 THE COURT: You may be seated, Ms. Joyner.

13 MADAM CLERK: Juror Number 119, Lodosha Jenkins.
14 What says the State?

15 MR. BANNON: Please present this juror.

16 MADAM CLERK: What says the Defense?

17 MR. WEIDNER: Please excuse Ms. Jenkins.

18 MADAM CLERK: Juror Number 29, Benjamin Bowen.
19 What says the State?

20 MR. BANNON: Please excuse Mr. Bowen.

21 MADAM CLERK: Juror Number 68, Sandy Dolan. What
22 says the State?

23 MR. BANNON: Please present Ms. Dolan.

24 MADAM CLERK: What says the Defense?

25 MR. WEIDNER: Please excuse this juror.

1 MADAM CLERK: Juror Number 82, Kevin Ford. What
2 says the State?
3 MR. BANNON: Please present Mr. Ford.
4 MADAM CLERK: What says the Defense?
5 MR. WEIDNER: Please swear Mr. Ford.
6 THE COURT: Come on around, Mr. Ford.
7 MADAM CLERK: Juror Number 150, Gary McCarney.
8 What says the State?
9 MR. BANNON: Please present Mr. McCarney.
10 MADAM CLERK: What says the Defense?
11 MR. WEIDNER: Please excuse Mr. McCarney.
12 MADAM CLERK: Juror Number 66, James Depew. What
13 says the State?
14 MR. BANNON: Please excuse Mr. Depew.
15 MADAM CLERK: Juror Number 247, Karen Wyskiel.
16 What says the State?
17 MR. BANNON: Please present this juror.
18 MADAM CLERK: What says the Defense?
19 MR. WEIDNER: Please excuse this juror.
20 MADAM CLERK: Juror Number 20, Sandra Benninger.
21 What says the State?
22 MR. BANNON: Please present this juror.
23 MADAM CLERK: What says the Defense?
24 MR. WEIDNER: Please excuse this juror.
25 MADAM CLERK: Juror Number 104, James Harbison.

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1 What says the Defense?

2 MR. BANNON: Please present Mr. Harbison.

3 MADAM CLERK: What says the Defense?

4 MR. WEIDNER: Please excuse this juror.

5 MADAM CLERK: Juror Number 130, David Kunkel. What
6 says the State?

7 MR. BANNON: Please excuse this juror.

8 MADAM CLERK: Juror Number 49, Cheryl Chapman.
9 What says the State?

10 MR. BANNON: I'm sorry. What was the name?

11 MADAM CLERK: Juror Number 49, Cheryl Chapman.

12 MR. BANNON: Please present this juror.

13 MADAM CLERK: What says the Defense?

14 MR. WEIDNER: Please excuse this juror.

15 MADAM CLERK: Juror Number 13, Bryan Barnes. What
16 says the State? Does the State strike due to cause?

17 MR. BANNON: No. Please present this juror.

18 MADAM CLERK: What says the Defense?

19 MR. WEIDNER: Please swear the juror.

20 THE COURT: Come on around, sir.

21 MADAM CLERK: Juror Number 214, Timothy Speigner.

22 Does the State strike due to cause?

23 MR. BANNON: No. Please present this juror.

24 MADAM CLERK: What says the Defense?

25 MR. WEIDNER: Please swear the juror.

1 MADAM CLERK: Juror Number 231, Jonathan Vuola.
2 Would the State strike due to cause?
3 MR. BANNON: No. Please present the juror.
4 MADAM CLERK: What says the Defense?
5 MR. WEIDNER: Ma'am, may we approach on this juror?
6 THE COURT: You may.
7 OFF-THE-RECORD BENCH CONFERENCE, OUT
8 OF HEARING OF JURORS. PRESENT: THE
9 COURT, MR. BANNON, MR. WEIDNER.
10 END BENCH CONFERENCE.
11 MR. WEIDNER: Please swear the juror.
12 THE COURT: Come on around, Mr. Vuola.
13 MADAM CLERK: Juror Number 102, William Guise.
14 Does the State strike due to cause?
15 MR. BANNON: No. Please present this juror.
16 MADAM CLERK: What says the Defense?
17 MR. WEIDNER: Please swear the juror.
18 THE COURT: Come on around, sir.
19 MADAM CLERK: Juror Number 154, Susan McKinley.
20 Does the State strike due to cause?
21 MR. BANNON: No. Please present this juror.
22 MADAM CLERK: What says the Defense?
23 MR. WEIDNER: Please swear this juror.
24 THE COURT: Come on around, Ms. McKinley.
25 MADAM CLERK: Juror Number 45, Harris Byas.

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1 MR. BANNON: Would you say the name, again, please.

2 MADAM CLERK: Harris Byas, Juror Number 45. State
3 strike due to cause?

4 MR. BANNON: No. Please present this juror.

5 MADAM CLERK: What says the Defense?

6 MR. WEIDNER: Please swear the juror.

7 THE COURT: Come on around, Mr. Byas.

8 MADAM CLERK: Juror Number 184, Teresa Rivers.
9 State strike due to cause?

10 MR. BANNON: No. Please present this juror.

11 MADAM CLERK: What says the Defense?

12 MR. WEIDNER: Move to strike for cause.

13 THE COURT: You need to come talk to me?

14 OFF-THE-RECORD BENCH CONFERENCE, OUT
15 OF HEARING OF JURORS. PRESENT: THE
16 COURT, MR. BANNON, MR. WEIDNER:
17 END BENCH CONFERENCE.

18 MR. WEIDNER: Please excuse this juror.

19 THE COURT: You may be seated, ma'am.

20 MADAM CLERK: Juror Number 172, Michael Perkins.
21 The State strike due to cause?

22 MR. BANNON: No. Please present the juror.

23 MADAM CLERK: The Defense strike due to cause?

24 MR. WEIDNER: Please swear the juror.

25 THE COURT: Come on around, sir.

1 MADAM CLERK: Juror Number 189, Beverly Rossier.
2 Juror Number 189, strike due to cause for the State?
3 MR. BANNON: No. Please present the juror.
4 MADAM CLERK: For the Defense, strike due to cause?
5 MR. WEIDNER: Juror Number 19, Dennis Bennett. For
6 the State? Juror Number 19, strike due to cause?
7 MR. BANNON: Just one second.
8 MADAM CLERK: Okay.
9 MR. BANNON: No strike for cause. Please present
10 the juror.
11 MADAM CLERK: For the Defense, strike due to cause?
12 MR. WEIDNER: No, ma'am.
13 MADAM CLERK: Juror Number 25, Matthew Botkins.
14 And for the State, strike due to cause?
15 MR. BANNON: No. Please present the juror.
16 MADAM CLERK: And for the Defense, strike due to
17 cause?
18 MR. WEIDNER: No, ma'am.
19 THE COURT: All right. We're going to choose two
20 alternates. The strikes are one and two.
21 MADAM CLERK: Juror Number 218, Michael Szynski.
22 What says the State?
23 MR. BANNON: Please present this juror.
24 MADAM CLERK: What says the Defense?
25 MR. WEIDNER: Please excuse the juror.

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1 MADAM CLERK: Juror Number 248, Sheila Yaw. What
2 says the State?

3 MR. BANNON: Please present this juror.

4 MADAM CLERK: What says the Defense?

5 MR. WEIDNER: May we approach on this one, on Ms.
6 Yaw?

7 THE COURT: You may.

8 OFF-THE-RECORD BENCH CONFERENCE, OUT
9 OF HEARING OF JURORS. PRESENT: THE
10 COURT, MR. BANNON, MR. WEIDNER.
11 END BENCH CONFERENCE.

12 MR. WEIDNER: Please excuse this juror.

13 MADAM CLERK: Have a seat. Juror Number 131,
14 Victoria Kyle. What says the State?

15 MR. BANNON: You said it was 131?

16 MADAM CLERK: Victoria Kyle.

17 MR. BANNON: Please excuse this juror.

18 MADAM CLERK: And Juror Number 198, William Sharpe.
19 And for the State, strike due to cause?

20 MR. BANNON: Please present this juror.

21 MADAM CLERK: And for the Defense?

22 MR. WEIDNER: May we approach on this?

23 THE COURT: You may. Come on up.

24 OFF-THE-RECORD BENCH CONFERENCE;
25 OUT OF HEARING OF JURORS. PRESENT:

1 THE COURT, MR. BANNON, MR. WEIDNER.

2 END BENCH CONFERENCE.

3 MR. WEIDNER: I have no challenge for cause.

4 MADAM CLERK: So, he's being seated?

5 THE COURT: Come on around, Mr. Sharpe. Could I
6 see the attorneys for a moment.

7 OFF-THE-RECORD BENCH CONFERENCE, OUT

8 OF HEARING OF JURORS. PRESENT: THE

9 COURT, MR. BANNON, MR. WEIDNER.

10 END BENCH CONFERENCE.

11 THE COURT: All right. Thank you. All right,
12 gentlemen. Are there anything else we need to take up
13 for the juror from the State?

14 MR. BANNON: Not from the State.

15 THE COURT: From the Defense?

16 MR. WEIDNER: No, ma'am.

17 BY THE COURT:

18 THE COURT: Welcome, ladies and gentlemen. I'm
19 sure you understand you are first jury this week and my
20 only jury this week, and I want to welcome you here to
21 jury service. I want to give you just a few game rules
22 before we go ahead and break for the afternoon.

23 Ladies and gentlemen, you are going to report
24 tomorrow morning where we are going to begin the trial
25 of this case, with evidence for you. To begin, though,

1 for me to tell you kind of what to expect, ladies and
2 gentlemen. If you were able to get into the courthouse
3 today, you got a cell phone on you or a computer, I'm
4 going to ask that you leave it back in your car when you
5 come back or at home. And the reason why is there's so
6 much information you can get from a cell phone or a
7 computer. And again, you are going to have everything
8 you need to decide this case right here in this
9 courtroom. It would be highly inappropriate for you to
10 be influenced by any outside source. So therefore, we
11 don't want you to bring cell phones. If you have a
12 family member or someone that may need to reach you
13 while you're performing your jury service here, I want
14 you to give the number to the clerk of court's office.
15 They simply need to state your name, and that you are in
16 Carmen Mullen's jury. And I assure you I will get you
17 immediately if there are any problems or any concern.
18 All right?

19 Additionally, ladies and gentlemen, you are not to
20 discuss, not only with each other until the case has
21 been sent to you for deliberations. But also, when you
22 go home this afternoon or see a family member or maybe
23 colleagues, and they inevitably are going to have to
24 tell you something about something and they know nothing
25 about this case. So, again, it would be inappropriate

1 for you to be influenced. So, out of an abundance of
2 caution, the only thing you are permitted to say when
3 you go home talking to your spouse, colleague, whoever,
4 is that you've been chosen in a criminal trial as a
5 juror. You are not to say the charges and you're not to
6 say the attorneys involved or any of the parties
7 involved in the case, or even potential witnesses. And
8 I appreciate you doing that, ladies and gentlemen.

9 I will also tell you that I've instructed the
10 parties and the witnesses in this case, because you're
11 going to be coming and going from the courthouse over
12 the next couple of days, not to speak to you in their
13 coming and going. And the reason why is, even an
14 innocent conversation in the parking lot, it is such a
15 gorgeous day out, can be misconstrued. And I assure
16 you, it always gets reported back, and then I'm going to
17 have to query you on what the conversation was about,
18 just to make sure it wasn't inappropriate. Out of an
19 abundance of caution, they know not to even speak to
20 you. So, if they pass you in the hall, and they don't
21 even smile and say hello, they're not being rude.
22 Please understand, they're simply following my orders.
23 All right?

24 And additionally, ladies and gentlemen, if any of
25 you are bloggers or Facebookers or anyone who's on any

1 type of social networking site, you are not to post on
2 that site that you are sitting on jury duty, or
3 certainly, anything about the case during the progress
4 of the case. Of course, it invites comment. And again,
5 I wouldn't want anyone inappropriately trying to contact
6 you or influence you in any way about the case.

7 Ladies and gentlemen, I respectfully ask that you
8 be on time. I cannot start until all 13 of you are
9 here. I can tell you that we are going to do our best
10 to make sure we are timely, which is one of the reasons
11 that's why I am taking up pretrial matters today, so we
12 can be ready to accept you into the courtroom tomorrow
13 morning at 9:30 and not have you wait at all.

14 Again, if you run into car trouble or have any kind
15 of a problem in getting here tomorrow morning, please
16 call the clerk's office, because we are going to be
17 looking for you. All right?

18 Ladies and gentlemen, lastly, you are not to read
19 or listen to anything about this case. I don't believe
20 it is going to be on the news or in the newspaper. But
21 out of an abundance of caution, if you were going to
22 open a newspaper tomorrow or turn on the news and
23 there's anything about this case, you are to close it
24 and disregard it. Of course, it is not factual. It is
25 not correct. And again, it would be inappropriate for

1 you to be influenced by it. So, again, out of an
2 abundance of caution, I ask you not to read or watch.

3 If there were something on the news or in a
4 newspaper, I'm going to ask you under oath whether or
5 not you have read it or looked at it. And of course,
6 that includes your spouse looking at it and telling you
7 whether or not or what was in it. All right?

8 Ladies and gentlemen, I want to tell you how much
9 we appreciate you being here. You're going to help us
10 resolve this case. Your simple presence also helps us
11 resolve many other cases here this week. I can't do my
12 job, nor can any other person in this courtroom do their
13 job, without the jury. So, please understand that you
14 are the most important people in this courtroom. We're
15 going to do our very best to make you're time here --
16 which I'm confident that, in the end, you will feel
17 certainly rewarding and worthwhile.

18 But more importantly than that, ladies and
19 gentlemen, were you to have a controversy in the future,
20 whether or not it would be criminal in nature or civil
21 in nature, I want you to feel comfortable, and I know
22 you will appreciate looking at 13 people in Beaufort
23 County that will decide your matter fairly and
24 impartially. And ladies and gentleman, I have every
25 confidence this jury's going to to that.

1 At this time, what I'm going to finally do is
2 excuse you back to your jury room. Tomorrow morning,
3 when you report at 9:30, you're going to report to your
4 jury room, and you're going to come in an entirely
5 separate door.

6 The bailiff's are going to give you a few
7 additional instructions. The only last thing I'd ask
8 you to do, ladies and gentlemen, is that, when you go
9 back to your jury room and receive a few more jury
10 instructions this afternoon, and it is noon, it's right
11 at 12:00, ladies and gentlemen, I need to ask you to
12 elect a foreperson. That foreperson doesn't have
13 anymore say than anybody else. They're simply the
14 person I communicate with in regard to scheduling.

15 And additionally, ladies and gentlemen, it's the
16 person who will facilitate the conversation in the jury
17 room when the case is sent to you for deliberation.

18 I'm going to ask, ladies and gentlemen, that that
19 foreperson take the very first, front row seat each time
20 you come into the courtroom. The rest of you are free
21 to move around each time you come in and serve.

22 I'm going to ask that my alternates stay in the
23 back, as well, so I can keep you there and know where
24 you are, sir.

25 But again, the rest of you are free to move around

1 as the trial proceeds. All right?

2 I will lastly tell you -- and it feels pretty good
3 in here today, which I don't say too often. They're
4 always laughing at me a little bit, you all. We can
5 come in tomorrow and it can be like a meat locker. I'm
6 telling you. So, one thing I cannot control in this
7 courthouse. So, if you are prone to getting cold, I
8 suggest wearing layers, because it can be 90 and it
9 could be 60, so. We do have blankets here if you need
10 them. But I warn you ahead of time, you may want to
11 bring a sweater just in case. All right?

12 Again, thank you for your service. I look forward
13 to seeing you all tomorrow morning at 9:30. Thank you.

14 BAILIFF: Come with me, please.

15 JURORS LEAVE COURTROOM 12:02 p.m.

16 THE COURT: All right. Thank you. Ladies and
17 gentlemen, I'm trying to figure out what Judge Kinard is
18 doing over there right now. I do want to tell you, I
19 feel very fortunate having him here. Judge Kinard was
20 the longest-serving circuit judge among the judges here.
21 I think you had twenty -- how many? I think you had
22 twenty-three. Twenty-two or twenty-three years, and he
23 has recently retired. He is from Camden, South
24 Carolina. And we have the good fortune that he has
25 grandchildren here, and he has bought a house in

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1 Beaufort. Now, he still has his house in Camden, he has
2 his lake house. He also does have a Beaufort house.

3 And it's wonderful and I am fortunate that he is
4 here, because in this circuit, while we have five
5 counties, we only have two judges, and the other judge
6 is sitting in Walterboro. So, I need help, and he's
7 always wonderful to be here.

8 At this time, he is taking up some matters next
9 door, and I'm going to go see exactly what he's doing.
10 I'm going to try very hard to get you all out of here
11 before lunch. I probably can do that. What I'm going
12 to invite you to do while I'm speaking with him about if
13 he's prepared to pull a jury, I'm going to allow you to
14 go ahead, refresh yourselves. In about ten minutes or
15 so, I will come back and will tell you, or either he
16 will come back and pull this jury. All right? I
17 appreciate it.

18 We're going to be at ease for about ten minutes.
19 Dr. Szynski, you are fine to go. Thank you. All right.
20 We'll be at ease for about ten minutes, you all.

21 OFF THE RECORD 12:03 P.M.

CERTIFICATE OF REPORTER

DAY ONE, MARCH 19, 2012 PARTIAL TRANSCRIPT OF TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing March 19, 2012 Partial Transcript of Trial is a true, accurate, and complete record of the proceedings had on said date in the case of State of South Carolina versus Terrance L. Seabrook, Beaufort County, South Carolina, Court of General Sessions, Case Numbers 2010-GS-07-02320 and 02321; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter is attached to the original transcript and digitally signed. Copies of this transcript are not authorized for use without my original signature affixed hereto, except by the South Carolina Courts.

Witness my signature February 17, 2015.

S/Wanda H. Rowe

Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2010-GS-07-02321 & 2010-GS-07-02320

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

MARCH 20, 2012

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

TERRANCE L. SEABROOK

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

AND A JURY

APPEARANCES

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DEFENDANT'S:

No defendant exhibits were admitted.

COURT:

No Court exhibits were admitted.

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1 DAY TWO, MARCH 20, 2012:

2 BY THE COURT:

3 THE COURT: Good morning. Good morning.

4 MR. BANNON: Good morning.

5 MR. WEIDNER: Good morning.

6 THE COURT: All right. You ready to go?

7 MR. BANNON: Your Honor, I think that we might have
8 some stuff we need to put on the record.

9 THE COURT: Okay.

10 MR. BANNON: Last night, I went through and edited
11 the interviews with Mr. Seabrook. I've given a copy of
12 both of the interviews to Mr. Weidner, and he's had a
13 chance to listen to them. I don't know if there's any
14 objections that he has to what remains on the tapes, and
15 if he'd like to put them on the record now.

16 THE COURT: Mr. Weidner.

17 MR. WEIDNER: I have listened to the tapes. I
18 agree that they do not contain any objectionable stuff
19 that we have talked about. The difficult part was I
20 have not had a chance to compare it with the originals
21 to see if there's additional information on that that
22 may have been cut out that, obviously, that I would want
23 to be in front of the jury as far as the statement in
24 terms of a complete statement. And I was trying to do
25 that before you got here, ma'am, but obviously, I'm

1 trying to work with two computers and compare two
2 things, and I just haven't had time to get that done.
3 So, that would be my only objection, is that, I don't
4 have time to compare the two. Actually, I told you -- I
5 haven't had time to compare the two, so I don't know if
6 favorable material has been removed that it would have
7 otherwise wanted. I can try to do that --

8 THE COURT: Can you look at it over the lunch hour,
9 and you can look at it and see what it is.

10 MR. WEIDNER: I'm going to try to get that done.

11 THE COURT: Okay.

12 MR. WEIDNER: And then, we can take it up at that
13 point. I just need a little more time. I can probably
14 do that during a break.

15 THE COURT: Sounds good. Okay. We'll try -- I'll
16 try to give you some time so you can get it done.

17 MR. WEIDNER: Thank you, ma'am.

18 THE COURT: Absolutely. Yes.

19 MR. BANNON: So, your honor, if you'd like, because
20 Baird or Chapman will have to testify before they can
21 come in, obviously, so, would you just like to alert the
22 Court when I'm sort of getting ready?

23 THE COURT: That would be great, and we can take a
24 little break.

25 MR. BANNON: If we can to do that, perhaps a lunch

1 break would be appropriate.

2 THE COURT: That would be great, if it's time, yes.
3 That's fine by me. Mr. Bannon, do you have all of your
4 witnesses set to come in today and testify?

5 MR. BANNON: Yes, your Honor.

6 THE COURT: So we're not going to have to wait for
7 anyone for the morning, correct? Even though I believe
8 we'll probably argue and charge in the morning, I just
9 want to make sure you anticipate getting everyone up.

10 MR. BANNON: I anticipate everyone will testify
11 today. That's what I'm --

12 THE COURT: Perfect.

13 MR. BANNON: I mean, everybody's set to come today,
14 and I'm trying to get finished. I'm more than willing
15 to stay 'til 6:00 o'clock to get that finished, and you
16 know, I think we will be able to.

17 THE COURT: Okay. All right. I was just
18 considering ordering lunch for this jury today just to
19 kind of make our time more narrow because of
20 (inaudible).

21 MR. BANNON: And that would be fine with me, your
22 Honor.

23 THE COURT: Okay. All right. Well, let's go ahead
24 and bring the jury. Oh, very quickly, did you come up
25 with any case law, Mr. Weidner? I'm assuming in

1 reference to the statements that he made.

2 MR. WEIDNER: I did not. I may try to do that
3 again before they come in.

4 THE COURT: Okay.

5 MR. WEIDNER: I had just a limited amount of time
6 to get a number of things accomplished. I have an idea
7 where you're headed, so.

8 THE COURT: All right. Let's go ahead and bring
9 the jury in, then.

10 JURY ENTERS COURTROOM.

11 BAILIFF: The jury is seated, your Honor.

12 THE COURT: Thank you. Good morning, ladies and
13 gentlemen. Pleasure to see you. I will tell you that
14 the lawyers have been hard at work this morning
15 streamlining this case to put it forward for you more
16 quickly.

17 Ladies and gentlemen, at this time, we will begin
18 the trial of this case. What I am going to do is have
19 LaSandra from the clerk's office swear you in as the
20 jury in this case. I am going to make a few brief
21 remarks about how the trial is going to unfold, and
22 then, you're going to hear the attorneys both make
23 opening statements, and then they will begin presenting
24 evidence to you. All right?

25 So, LaSandra, if you will, please, swear the jury

1 in.

2 JURORS SWORN, MADAM CLERK:

3 MADAM CLERK: Ladies and gentlemen, will you please
4 stand, please, and raise your right hand for me. Raise
5 your right hand, please. Do you solemnly swear or
6 affirm that you shall well and truly try and (inaudible)
7 between the State of South Carolina and the accused at
8 the Bar, and a true verdict give according to the
9 evidence, so help you God? Please answer by saying I
10 do.

11 RESPONSES FROM JURORS.

12 MADAM CLERK: You may be seated.

13 GENERAL CHARGE, BY THE COURT:

14 THE COURT: Thank you, ladies and gentlemen. What
15 I am now going to say to you is intended to serve as an
16 introduction to the trial of this case. These remarks
17 are not a charge on the law. I am going to instruct you
18 on the law that is applicable in this case at the end of
19 the trial. This is merely an explanation as to how the
20 trial is going to unfold and the procedures that we're
21 going to follow, so you can better understand what's
22 happening.

23 Ladies and gentlemen, the defendant in this case,
24 Mr. Seabrook, is charged by indictments that are filed
25 in this court with the offenses of armed robbery and

1 kidnaping, the elements of which I will explain to you
2 at the end of the trial.

3 Ladies and gentlemen, an indictment is simply the
4 charge by which a case is brought into the court, and it
5 is not, in any sense, evidence of any of the allegations
6 it contains.

7 Ladies and gentlemen, the defendant, Mr. Seabrook,
8 has pled not guilty to these indictments. The State,
9 therefore, has the burden of proving each of the
10 elements of each of the indictments beyond a reasonable
11 doubt. And it's your duty, ladies and gentlemen of the
12 jury, to decide whether the State has met that burden.

13 Now, your purpose as jurors is to find and
14 determine the facts. You, the jury, are the sole judge
15 of all facts in this case. If, at any time, I make any
16 comment regarding the facts of this case, you must
17 disregard it.

18 Ladies and gentlemen, you are only to determine the
19 facts of this case from the testimony you're going to
20 hear from the witness stand right here, and any other
21 evidence that's introduced in this case. It is up to
22 you to determine the inferences which you feel may be
23 properly drawn from that evidence. Please understand
24 that it is especially important that you perform your
25 duty of determining the facts of the case diligently and

1 conscientiously, because, ordinarily, there is no way to
2 correct an erroneous determination of the facts by a
3 jury.

4 Ladies and gentlemen, on the other hand, and with
5 equal emphasis, the same law that makes you the judges
6 of the facts, makes me the judge of the law. The law as
7 given by the Court is the only law that you may
8 consider. You must accept and follow it, even though
9 you may disagree with it. I cannot tell you what the
10 facts of this case are, and you cannot disagree with me
11 about what the law is or what you think the law ought to
12 be.

13 Your job is to take the law as I give it to you,
14 and apply it to the facts as you find them, and from
15 there, render a true and just verdict under the oath you
16 just took.

17 Ladies and gentlemen, until I advise you to begin
18 your deliberations, you must not discuss this case with
19 anyone, and that includes your fellow jurors, family
20 members, friends. And ladies and gentlemen, after the
21 case is submitted to you, you may only discuss it in the
22 jury room, with your fellow jurors.

23 Again, the attorneys and the parties have been
24 instructed not to speak with you as they come and go
25 during the trial of this case. So, again, if you happen

1 to pass them and they don't even say hello, they're not
2 being unfriendly. They are simply following my orders.

3 Ladies and gentlemen, additionally, during the
4 trial, you are not to read, listen to, or watch any news
5 reports about this case, and that includes anything that
6 may be in the newspapers, on the Internet, radio, or
7 television.

8 Ladies and gentlemen, you must not consider
9 anything that you may have read or heard about the case
10 outside the courtroom, whether before or during the
11 trial of this case. Please understand how important it
12 is that you keep an open mind and not decide any issue
13 in this case until all of the evidence has been
14 presented, the parties have made their closing
15 arguments, and I have instructed you on the law that's
16 applicable to this case.

17 Now, please understand that it is your solemn
18 responsibility to determine the guilt or innocence of
19 the defendant, and your verdict must be based solely,
20 again, on the evidence that's presented to you in this
21 trial. And again, also on the law as I instruct you at
22 the close of the trial.

23 Now, ladies and gentlemen, just in a moment, the
24 Solicitor, Mr. Bannon, is going to make what is called
25 an opening statement, in which he's going to explain to

1 you what the issues are in this case, or what he thinks
2 the issues are in this case. And the attorney, Mr.
3 Weidner, is also going to make an opening statement,
4 although he is not required to do so. What these
5 attorneys tell you in their opening statements is not
6 evidence in this case. Again, it is only their
7 contention as to what they believe the issues are and
8 what the evidence will show.

9 I remind you, ladies and gentlemen, the evidence
10 will come to you by testimony of sworn witnesses from
11 the witness stand and any other exhibits that are
12 entered into the case, as well as any stipulations the
13 attorneys may enter into.

14 Now, from time to time during the trial of the
15 case, you may hear one of the lawyers say something
16 like, your Honor, I believe we have a matter of law we
17 need to take up with you; or I myself may need to call
18 them to the Bar and have a conference on the side; or I
19 may send you back to the jury room to discuss the
20 matters with the attorneys. What I want you to
21 understand is, we aren't hiding anything. Oftentimes,
22 when I have to rule as a matter of law whether or not
23 certain evidence is admitted, I may make a comment on
24 the facts of the case. And again, I would never want
25 anything I do to influence you on your determination of

1 the facts of the case. So, out of an abundance of
2 caution, we do it in private.

3 Ladies and gentlemen, in determining what the true
4 facts are in the case, you must decide whether or not
5 the testimony of the witnesses is believable. It's my
6 responsibility to rule as a matter of law whether or not
7 certain testimony is admitted, but once the testimony is
8 admitted, whether or not you believe it is solely for
9 you to determine.

10 In deciding whether to believe a witness, you have
11 the right to consider the interest of the witness, the
12 bias of the witness, the prejudice of the witness. And
13 you can look at the opportunity that that witness had to
14 see and hear the things about which they're testifying.
15 You can also look at the way the witness acts on the
16 witness stand.

17 Ladies and gentlemen, you have the right to use and
18 consider anything that is in the record to help you
19 evaluate the testimony of a witnesses.

20 And so, respectfully, ladies and gentlemen, I ask,
21 because this case is going to be relatively short, I'm
22 going to ask that you do not take notes, but simply sit
23 back, watch, so you can actively remember at the end of
24 the case, during your deliberations, the testimony that
25 was presented from the witness stand.

1 Ladies and gentlemen, in order to preserve
2 everyone's rights in this case, I'm going to ask the
3 attorneys if there's anything additional they would like
4 me to instruct you with. If not, we're going to go
5 ahead and begin the trial.

6 Anything further from the State?

7 MR. BANNON: No, your Honor.

8 THE COURT: From the Defense?

9 MR. WEIDNER: No, thank you, ma'am.

10 THE COURT: Ladies and gentlemen, we are going
11 begin the trial. Mr. Bannon.

12 MR. BANNON: Thank you, your Honor. And may it
13 please the Court.

14 THE COURT: Yes, sir.

15 OPENING STATEMENT ON BEHALF OF

16 THE STATE, BY MR. BANNON:

17 MR. BANNON: Ladies and gentlemen, when you hear
18 hoof beats, you think about horses, not zebras. What I
19 mean by that is that the easiest and the simplest
20 explanation is the right explanation.

21 Now, what we're going to be talking about are the
22 events that occurred on October the 4th of 2010, at 1702
23 Sea Island Parkway, which is an Exxon gas station. Now,
24 on that particular day, a normal day, John Kirkpatrick
25 was working at the gas station. He works there as a

1 clerk. During parts of his shift when people weren't in
2 the store, he'd go out and take a smoke break. And as
3 you can see from the time stamp, this is about 20 'til
4 7:00 o'clock in the evening.

5 Now, in this particular frame, Mr. Seabrook is in
6 this SUV. He's sitting right over here, along with
7 another gentleman named Shatike Shabazz. In fact, if
8 you look closely, you can see Mr. Shabazz. He dressed
9 all in white (inaudible). You can see him sitting there
10 in the driver's side seat. Mr. Shabazz gets out of the
11 car, and he walks into the store. And the clerk goes in
12 with him. Mr. Shabazz grabs an ice tea. He goes to the
13 front of the register, and he pays for his items with
14 Mr. Kirkpatrick, and then he returns to the SUV. Mr.
15 Seabrook is still inside the SUV with Mr. Shabazz.

16 Now, at about 10 'til 7:00 o'clock, you see an
17 individual get out of the car. Look closely at this
18 photograph. You're going to -- going to get an
19 opportunity to look closely. You'll see it's a blue
20 shirt, white piping, dark pants, white shoes. You see
21 the person, he's run around the SUV, and he disappears
22 off kind of right in the area of the men's restroom.
23 Then, Mr. Shabazz drives away.

24 Mr. Kirkpatrick is still inside, busy with
25 customers at this particular point in time. And this

1 fellow you see right over here in the brown and white
2 striped shirt is a guy named Sammy Washington. He's
3 hanging out in front of the store. And Mr. Kirkpatrick
4 is going to be able to tell you a little bit about him.

5 Now, a little after 7:00 o'clock, Mr. Shabazz
6 returns in the SUV, and he speaks with Mr. Washington.
7 Unable to find Mr. Seabrook, Mr. Shabazz leaves again.
8 Everything's quiet inside the store. Mr. Kirkpatrick is
9 just putting in his shift, doing his work.

10 At about 6 past 7:00 o'clock, Mr. Kirkpatrick goes
11 outside to grab another smoke, because there's nobody
12 inside the store. He goes back outside. Mr.
13 Washington's still hanging out, and he's hopped on top
14 of one of those -- it's a newspaper dispenser. He's up
15 there and he's hanging out.

16 A van stops at the station, and two fellows fill up
17 their tires with air. Then, at 1908, about 8 minutes
18 past 7:00 o'clock, you see the same person wearing a
19 blue shirt with white piping and dark pants and white
20 shoes. He's wearing a mask. And he comes out of the
21 same area as the men's bathroom. And he has a gun. He
22 forces Mr. Kirkpatrick back into the store. He's got the
23 gun pointed right at his head. And you can take a look,
24 and you can see that this person has been very careful.
25 He's wearing gloves. He has on a mask. He has his

1 weapon. He has it all planned out and he's ready to go.

2

3 He forces Mr. Kirkpatrick at gunpoint back to the
4 register. Opens the till. Mr. Seabrook collects all
5 the cash, grabs a couple cigarettes and takes off, all
6 the while still wearing the same blue shirt with white
7 piping and dark pants and white shoes. And he takes off
8 in the direction of .

9 Mr. Kirkpatrick waits on the ground, makes sure
10 that everything is fine. He actually checks outside to
11 make sure everybody's gone, and then he calls 911.

12 That's essentially the case that you're going to
13 hear today.

14 Now, what the issue in this case is -- you're going
15 to get a chance to look at this video. I don't think
16 anybody is going to dispute that an armed robbery and
17 kidnaping occurred that day. You can take a look at it.
18 Someone comes out with a gun; points it at another
19 person's head; forces him back in the store; and empties
20 the register. That's armed robbery. That's the
21 kidnaping.

22 What we're here to try to figure out is who was
23 that person in the blue shirt with the white piping and
24 the dark pants and the white shoes. We're going to
25 submit evidence to you today that that was Mr. Seabrook.

1 And now, as Mr. Seabrook sits here today, what the
2 judge is going to tell you, and what Mr. Weidner knows,
3 what I know, is that, when you come to Court, you're
4 innocent until proven guilty. That's what we're here to
5 do. It's the State's effort to try and prove beyond a
6 reasonable doubt that Mr. Seabrook is the one who robbed
7 the store, because I think that we can all agree that
8 the store was robbed and the clerk was forced at
9 gunpoint back inside the store, which is a kidnaping.
10 So, that's what we're here to talk about today -- who is
11 that person in the blue shirt with the white piping and
12 the dark pants and the white shoes.

13 We're going to submit evidence to you today, ladies
14 and gentlemen, which will convince you beyond a
15 reasonable doubt that Mr. Seabrook is guilty.

16 Some people say that, when a criminal defendant
17 comes before the Court, he's cloaked in a rope of
18 righteousness in his presumption of innocence, and that
19 he wears that throughout the trial. Now, what we're
20 going to do today is, what the State aims to do is to
21 take that cloak off his shoulders and expose him for
22 what he really is, a street criminal. We're going to
23 take the cloak off his back today and we're going to
24 expose him.

25 Now, I can't take the mask off the person in that

1 video, but we're going to show you evidence that's going
2 to leave you firmly convince beyond a reasonable doubt
3 that the person who is hiding behind that mask is the
4 person who's hiding behind the robe of righteousness
5 that he's entitled to today. That's what the State's
6 going to submit to you and that's what the State's going
7 to prove. And at the end of this case, I'm going to
8 come back to you; I'm going to ask you to find Mr.
9 Seabrook guilty of armed robbery and guilty of
10 kidnaping. Thank you.

11 OPENING STATEMENT ON BEHALF OF

12 THE DEFENDANT, BY MR. WEIDNER:

13 MR. WEIDNER: I like that nice, simple, shows one
14 facet of the case. You know, when you get up in the
15 morning you're going to make yourself an omelette. All
16 right. You get an omelette pan out, get some eggs out,
17 mix them up, turn the heat on. Go rummage in the back
18 of the frig for something else like mushrooms, cheese,
19 whatever you're going to put on it. You make your
20 omelette, you gotta take time. All right. You gotta
21 let the eggs sort of gel, and then you've got to put the
22 stuff in it. Then you got to flip it, which I haven't
23 quite mastered yet. But anyhow, you got to flip it over
24 and cook it. It takes time. All right. And you have
25 to be careful with it.

1 Now, sometimes what happens is you're making your
2 omelette and it sticks and you tear it, or you're late
3 for going to church or you're late for going to the
4 soccer game with your kids, you get in a hurry, and you
5 say, ah, forget it, I'll just make scrambled eggs. All
6 right. Well, that's fine. You scramble the eggs, sort
7 of fixed like an omelette, four of them. You kind of
8 messed it up, so what do you do? You eat your meal; you
9 go on about your business.

10 A trial and an investigation are processes just
11 like making an omelette. Okay? They take time. You
12 have to pay attention. You have to be careful about
13 what you're doing.

14 Now, in this investigation, I'm asking you to pay
15 real close attention to this investigation. What Mr.
16 Mr. Seabrook is hoping you will do is not what the law
17 enforcement and prosecution's office has done, which is
18 to jump to conclusions. All right. Because there's
19 more going on here than just neat, half-framed,
20 pictures. All right. There's a lot more going on here.
21 And we're going to ask you to watch the witnesses.
22 Listen to what they testify about. Listen to what their
23 motives are.

24 What happened was, law enforcement figured out that
25 Mr. Shabazz was driving a vehicle. And they went and

1 talked to him. But they also could see clearly that
2 there was a skinny, black man got out of the vehicle and
3 went in to do what he did in the store. So what law
4 enforcement did was, they next -- they grabbed the next
5 skinny, black guy that they see with Mr. Shabazz, which
6 happened to be Mr. Seabrook. All right. And because
7 he's the next guy, they focused on him. And what
8 happens when you focus in one area, you start looking
9 away or discarding things that don't add up. All right.

10 Now, all that's going to be played out in here, and
11 you're going to get an opportunity to figure out what
12 happened here. And that's why it's going to be so
13 important. It's not that simple, as they would like you
14 to believe. There's more moving parts to this thing.

15 What I would like you to do is pay very close
16 attention, because this is incredibly important to Mr.
17 Seabrook. Pay very close attention to the witnesses and
18 see if you can figure out what was really going on here.
19 And I'll give you a hint -- watch the video carefully.
20 You're going to have all the tools you need to figure
21 out what's really going on, if you watch the video very
22 carefully. Thank you.

23 THE COURT: Call your first witness.

24 MR. BANNON: The State calls Deputy Paul.

25 THE COURT: Come forward, sir.

3-19-12 STATE V. SEABROOK DIRECT - ADAM PAUL ORIGINAL

1 MADAM CLERK: If you'd place your left hand on the
2 Bible, and raise your right hand for me, please. Do you
3 solemnly swear to truthfully answer all questions asked
4 of you by this Court, so help you God?

5 DEPUTY ADAM PAUL: I do.

6 MADAM CLERK: Please be seated. State your name
7 and spell it for the Court, please.

8 DEPUTY ADAM PAUL: Adam Paul, A/d/a/m P/a/u/l.

9 DEPUTY ADAM PAUL

10 DIRECT EXAMINATION, BY MR. BANNON:

11 Q Good morning, sir. Where do you work?

12 A Beaufort County Sheriff's Office.

13 Q How long have you been working there?

14 A About a year and a half, almost two years.

15 Q And what are your job responsibilities there?

16 A I'm a -- a road patrolman, Northern Division.

17 Q Okay. And what does that mean, if you could just
18 tell us real briefly?

19 A I respond to calls, citizens calling in. I enforce
20 traffic.

21 Q And if a call comes out that a crime has occurred,
22 what do you do, if you get a call like that?

23 A Respond to the incident location where the call
24 came from, where the crime occurred; speak with the
25 individuals there, whoever called in; and assess the

1 situation.

2 Q Okay. So, when you come upon -- when you come upon
3 a crime scene, and you're one of the initial responders,
4 what are some of the things that you're trained to do?

5 A It varies with each call, but you know, first,
6 obviously, is try to secure the scene; make sure no harm
7 can be done to anybody while we're there. Identify --
8 try to identify who called in, and interview them.

9 Q And do you make contact with people who are present
10 at the scene?

11 A Try to make contact with everybody present.

12 Q Were you working for the Sheriff's Office on
13 October the 4th of 2010?

14 A Yes, sir.

15 Q And were you still working as a patrolman at that
16 point in time?

17 A Yes, sir.

18 Q And did you have an opportunity to go to 1702 Sea
19 Island Parkway in Saint Helena, South Carolina?

20 A I did.

21 Q And why did you go there?

22 A I was -- got a call at Dispatch advising me that
23 somebody had called in from the gas station there that
24 they had been just robbed; that they -- that somebody
25 came in and robbed them.

3-19-12 STATE V. SEABROOK DIRECT - ADAM PAUL ORIGINAL

1 Q Okay. And that location, could you just tell us
2 real briefly where that's sort of located.

3 A 1702 Sea Island Parkway?

4 Q Yes, sir.

5 A It's on Saint Helena, in Beaufort County. It's
6 down Highway 21, almost to , just before
7 Harbor Island.

8 Q Okay. Where were you when you received the call
9 about this robbery?

10 A I was still on Lady's Island. We had just left
11 shift leave, and I was trying to make my way out to my
12 area, which was Saint Helena for that -- that evening.
13 And I was still on Lady's Island, trying to get out
14 there.

15 Q Okay. And do you know about how long it took for
16 you to arrive on scene?

17 A It took about 10, 15 minutes for us to get out
18 there.

19 Q Okay. And who was present when you arrived on the
20 scene?

21 A The clerk, Sean Kirkpatrick, he was standing out
22 front. And another individual, Sammy Washington, he was
23 in the parking lot.

24 Q Okay. And was anyone else there?

25 A Not to my recollection.

1 Q When you said that, when you respond to a crime
2 scene, one of the things you do is you try to make sure
3 that the area is secure. Did you do that in this case?

4 A As best we could.

5 Q Okay. And so, what did you do to try to ensure
6 that the area was secure?

7 A Well, first, immediately went up to who we believed
8 was the clerk, and you know, asked him what had
9 happened; where'd the -- where'd the individuals go, you
10 know, who supposedly robbed him. And he said they had
11 fled. So we quickly glanced around the area. I went
12 inside with him, and there was nobody in there. At that
13 time, the scene was secure.

14 Q Okay. And when you secure a scene, are people
15 allowed to come in and out freely?

16 A No, sir.

17 Q Okay. Once you had secured the scene, what sort of
18 -- sort of what happened next? What happened with the
19 investigation?

20 A The field training officer, who I was riding with
21 at the time, went and talked with Mr. Washington, and
22 asked him, you know, if he saw anything, what happened.
23 I spoke with Mr. Kirkpatrick and got the basic
24 information about, you know, description of the suspect.
25 Relayed that information to Dispatch to other officers.

3-19-12 STATE V. SEABROOK DIRECT - ADAM PAUL ORIGINAL

1 Q Okay. Now, when you arrive at this sort of
2 investigation, is that something that patrol officers
3 handle, or are there other officers who handle these
4 sorts of crimes and investigations?

5 A Most of the time, the on-duty investigator is
6 called out, and they respond out to the crime such as
7 this.

8 Q Okay. Who was the on-duty investigator that
9 evening?

10 A Sergeant Chapman.

11 Q Okay. And did he ever arrive on the scene?

12 A He arrived shortly after we did.

13 Q Okay. And did you have any other involvement in
14 the case once you were sort of relieved by Investigator
15 Chapman?

16 A Went and set up perimeter down the road on
17 for the tracking team to come out.

18 Q Okay. And did anything occur while you were out in
19 that area?

20 A Not in my area.

21 MR. BANNON: Okay. No further questions, your
22 Honor.

23 THE COURT: Sir.

24 MR. WEIDNER: Thank you, ma'am.

25 DEPUTY ADAM PAUL

1 CROSS-EXAMINATION, BY MR. WEIDNER:

2 Q So, you don't know who robbed the place. You don't
3 have any idea who robbed this place. By the time you --
4 it was already over by the time you got there.

5 A Yes, sir.

6 Q You don't know who the person in the mask is.

7 A No, sir.

8 MR. WEIDNER: Nothing further, ma'am.

9 THE COURT: Anything further, Mr. Bannon?

10 MR. BANNON: No, your Honor. May this witness be
11 excused?

12 THE COURT: Without objection, Mr. Weidner?

13 MR. WEIDNER: Without objection.

14 THE COURT: You are excused, sir. Thank you.

15 MR. BANNON: Your Honor, the State calls Sean
16 Kirkpatrick.

17 THE COURT: Come forward, Mr. Kirkpatrick. Right
18 here, sir.

19 MADAM CLERK: Would you place your left hand on the
20 Bible, and raise your right hand for me, sir. Do you
21 solemnly swear to truthfully answer all questions asked
22 of you by this Court, so help you God?

23 SEAN KIRKPATRICK: Yes, ma'am.

24 MADAM CLERK: Please be seated. State your name
25 and spell it for the Court, sir.

3-20-12 STATE V. SEABROOK DIRECT - KIRKPATRICK ORIGINAL

1 SEAN KIRKPATRICK: Sean Kirkpatrick. S/e/a/n
2 K/i/r/k/p/a/t/r/i/c/k.

3 SEAN KIRKPATRICK

4 DIRECT EXAMINATION, BY MR. BANNON:

5 Q Good morning, sir. Where do you work?

6 A Currently, I work at Dominos.

7 Q Okay. And did you ever work at the Exxon gas
8 station on Sea Island Parkway?

9 A Yes, sir.

10 Q Okay. What did you do out there?

11 A I was general clerk. I managed day-to-day
12 operations. Cashier. Stock. Cleaning. Customer
13 interaction.

14 Q And were you working there on October the 4th,
15 2010?

16 A Yes, sir. I was pulling a double that day.

17 Q And do you remember that evening?

18 A For the most part.

19 Q Okay. Did anything happen that night?

20 A I was held at gunpoint while the cash drawer was
21 emptied out, and the gentleman left.

22 Q Do you know who that person was?

23 A No, sir, I do not.

24 Q Could you describe the person?

25 A African-American male, about 5-4 to 5-8. Slender

1 built. Wearing a *Scream* Halloween mask.

2 Q Okay. And do you know the gentleman who's sitting
3 over here in the sort of brownish grey, checked shirt?

4 A Yes, sir, I do.

5 Q And who is that?

6 A I know him by -- as Terrance. He was one of my
7 regulars out at the gas station.

8 Q And by *regulars*, you just mean that he came in the
9 store frequently?

10 A I saw him about four, maybe five times a week.

11 Q And do you remember, did Terrance come into the
12 store that day?

13 A Not that I recall.

14 Q And if you know, do you know where Terrance was
15 living at the time?

16 A No, sir.

17 Q Okay. Was that a busy evening at the gas station?

18 A I believe it was a Monday, if I remember correctly,
19 and Mondays generally were kind of really slow.

20 Q Okay. And on slow evenings, when nobody's in the
21 store, what do you do?

22 A Start on stock. Smoke a lot of cigarettes. Wait
23 'til closing time.

24 Q And where do you take your smoke breaks? Do you
25 take them inside the store or outside the store?

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1 A You can't smoke inside the store, so I take them
2 right by the front door, outside.

3 Q Okay. And on that particular evening, while you
4 were taking a smoke break, can you tell us what
5 happened.

6 A I went out for a smoke break. Got about quarter
7 way down on a cigarette. One of my regulars was sitting
8 on the news stand. He said something to me. I don't
9 really know what he said. And I had another customer
10 come inside, so I walked inside. Dealt with the
11 customer. They left, so I went back outside to finish
12 my cigarette. When I squatted back down to, you know,
13 finish my cigarette, the gentleman that I described with
14 the *Scream* mask on, walked up, put a gun under my chin,
15 and said to get inside. I said something along the
16 lines of I'm in the middle of the smoke break; will you
17 give me a minute. And then, he forced me into the
18 store. Told me to open the cash register. I just
19 opened it up. He started taking all the money out of
20 the drawer. Then, he told me to get face down on the
21 ground, and he left. I waited a few seconds, got up,
22 flicked my cigarette outside, cause I still had that.
23 Locked the door up, and then phoned Dispatch to send out
24 the police.

25 Q Okay. And you said that the person was searing a

1 *Scream* mask.

2 A Yes, it's the -- the white -- white face mask with
3 a black hood, from the movie *Scream*.

4 A Okay. And was the person wearing gloves?

5 A Yes, sir.

6 Q And did you see where the person came from?

7 A No. The person came from would have been my right
8 side. I didn't -- I was kind of looking down at the
9 ground while I was smoking. I wasn't really expecting
10 anything going on. Those things never happen, so.

11 Q Okay. And I think you might have said this, but
12 how was the person who robbed you built? Was he fat?
13 Was he slender?

14 A He was slender, like me.

15 Q Okay.

16 A Probably between 120 to 160 pounds.

17 Q Okay. And once the person leaves the store with
18 the money, do you see which way he goes?

19 A No.

20 Q Okay. Is there a surveillance system set up at the
21 store?

22 A Yes, sir. There's a -- it's been a while. It's
23 either a four- or six-camera system. I can't really
24 remember.

25 Q Okay. And --

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1 MR. BANNON: Permission to approach the witness,
2 your Honor.

3 THE COURT: You may.

4 BY MR. BANNON:

5 Q Mr. Kirkpatrick, I'd like to show you what has been
6 marked State's Exhibit Number 1 and Number 2. If you'd
7 take a look at Number 1 for me first. Do you recognize
8 it?

9 A Yes, sir.

10 Q And have you been able to view this before?

11 A Yes, sir.

12 Q And how do you know that?

13 A Because my initials are right here on the corner.

14 Q Okay. And is this a fair and accurate depiction of
15 the recordings of that evening?

16 A Yes, sir.

17 Q And now, I'd like to show you what's been marked
18 State's Exhibit Number 2, with the same questions.

19 A Yes, sir. My signature's in the corner, so I've
20 seen this copy before.

21 COURT REPORTER: You need to speak up a little bit.

22 A I'm sorry. And yes, it's a fair and accurate
23 description of what happened.

24 Q Okay.

25 MR. BANNON: Your honor, at this time, the State

1 would move Exhibit -- State's Exhibit 1 and 2 into
2 evidence.

3 THE COURT: Without objection?

4 MR. WEIDNER: Without objection.

5 THE COURT: They're admitted without objection.

6 ITEMS DESCRIBED AS RECORDINGS OF
7 THAT EVENING MARKED STATE'S EXHIBIT
8 NUMBERS 1 AND 2, ADMITTED AS EVIDENCE.

9 MR. BANNON: Permission to publish to the jury,
10 your Honor.

11 THE COURT: You may.

12 BY MR. BANNON:

13 Q I'd like to ask you a couple of questions, if I
14 could.

15 A Okay.

16 Q So, who is this fellow in the blue shirt?

17 A That would be me.

18 Q All right. And this is at about 6:30 in the
19 evening?

20 A I guess.

21 Q Okay. And so, each of these cameras are pointing
22 at a different location. If you could, just briefly
23 describe to me sort of what this one's pointing at.

24 A That would be the rear counter area.

25 Q Okay. And what is this Camera Number 2 pointing

1 at?

2 A Mostly the counter area, and a little bit of the
3 coffee area.

4 Q Okay. Just at a different angle.

5 A Yes, sir.

6 Q And where is Camera Area Number 3 pointing at?

7 A That's pointing at the inside of the store.

8 Q Okay. And Camera Area Number 4?

9 A Goes to the parking lot area.

10 Q Okay. And so, just to sort of get an idea of what
11 the inside of the store looks like, this door, does that
12 correspond to anything shown in Camera Area Number 4?

13 A If you look at -- if you look at the black mat
14 sitting directly to my right, down in the right-hand
15 corner of the bottom picture, that would be the front
16 door to the store.

17 Q Okay. So, this area right here is the front of the
18 store, and this area is the front of the store?

19 A Yes, sir.

20 Q Okay. And so, from this angle, the front door of
21 the store would be to your left. Camera Number 2.

22 A Yes, sir.

23 Q Okay. And Camera Number 3, the front door, is also
24 kind of to your left.

25 A Actually, with Camera 3, the front door is kind of

1 to your left like, but that camera was basically
2 directly over the door.

3 MR. BANNON: And your Honor, with the Court's
4 permission, may I skip ahead to sort of the more
5 relevant portions of the tape?

6 THE COURT: You may. If you need to stop at any
7 point, just let me know. Okay?

8 MR. BANNON: I'm just -- I'm pausing it at what the
9 time stamp says is 18:33, and I'm going to try to skip
10 ahead close to 18:40.

11 BY MR. BANNON:

12 Q Okay. And so, it looks like you're outside
13 smoking.

14 A Yes, sir.

15 Q And is anybody in the store at this point?

16 A No, sir. I was the only one working out there.

17 Q Okay.

18 THE COURT: Mr. Bannon, I'm having and the jurors
19 are having a hard time seeing the layout you're
20 referring to.

21 MR. BANNON: I'm sorry, your Honor. I'll move to
22 the other side.

23 THE COURT: There you go. Thank you, sir.

24 MR. BANNON: I'm a door, not a window.

25 THE COURT: Mr. Bannon, I hate to say this, but now

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1 you're blocking my view. There you go.

2 MR. BANNON: Your Honor able to see? Sorry about
3 that.

4 BY MR. BANNON:

5 Q And so, from the looks of it, this is what you
6 would call a slow evening at the gas station.

7 A Average evening, actually, sir.

8 Q Okay. So, looks like you have a customer.

9 A Yes, sir.

10 Q Okay. Had you ever seen this person before?

11 A Maybe.

12 Q Do you know who he is?

13 A No.

14 Q So, this person in the light, he pays you.

15 A Yes, sir.

16 Q Okay.

17 MR. BANNON: Your Honor, again, with permission,
18 I'd like to skip ahead about ten minutes to another more
19 relevant portion of the video, unless everyone would
20 like to watch the business of the Exxon that evening.

21 THE COURT: (Inaudible.)

22 BY MR. BANNON:

23 Q So, you're still inside dealing with customers at
24 this point?

25 A Yes, sir.

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1 MR. BANNON: Your Honor, just notice I've enlarged
2 Camera Number 4.

3 BY MR. BANNON:

4 Q This person, he just seems to run off camera right
5 around in that area. What's located on that side of the
6 store?

7 A There's an exterior restroom that's located in the
8 alcove that's kind of off to the right and kind of in
9 the middle of the store area.

10 Q Okay. And he goes off camera in that area?

11 A Yes, sir.

12 MR. BANNON: And then, your Honor, I'd like to skip
13 ahead probably about ten minutes or so.

14 BY MR. BANNON:

15 Q Okay. Mr. Kirkpatrick, if I could bring your
16 attention to Camera Number 4. Do you know who that
17 fellow is who's walking up to the store?

18 A I can't really see from this far away, sir.

19 Q Okay.

20 MR. BANNON: Could you enhance Camera 1.

21 A Oh, yes, sir, I know who that is now. It's Sammy.
22 He was one of my other regulars.

23 Q Okay. And so, Sammy Washington?

24 A I'm not sure of his last name, sir.

25 Q And it looks like he's wearing a striped shirt.

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1 A Yes, sir.

2 Q Now, Mr. Kirkpatrick, I think you said earlier that
3 you don't expect for something like this to ever happen;
4 do you?

5 A No, sir..

6 Q Okay. So, is it -- well, did you ever have any
7 conversations with Mr. Seabrook or with anybody else
8 regarding a planned robbery at the store?

9 A No, sir. Most of the regulars, they joke around
10 about, you know, they tell me the store got robbed
11 frequently. They're like, what you going to do if the
12 store gets robbed. I'm like, nobody's going to kill my
13 ass; not my money; I don't really care.

14 Q Okay.

15 A But that's about the only conversation with regards
16 to a robbery that I've had with anybody.

17 Q Okay. So, this person here, that's still Sammy?

18 A Yes, sir.

19 Q Okay.

20 MR. BANNON: Your Honor, I'd like to switch disks
21 at this point, because this one doesn't contain the
22 entire events of that evening.

23 THE COURT: Okay.

24 MR. BANNON: And so, I'm stopping 19:05.

25 THE COURT: You all okay? Anyone need a break?

1 MR. BANNON: And now I'm putting in what's been
2 marked as State's Exhibit Number 2. It's going to
3 re-start at 19:04:16. Okay. Now, the fellow in the
4 striped shirt, where is that sort of -- you can see kind
5 of in the lower right-hand corner. Is that over by the
6 men's room, kind of?

7 A It's just past the men's room, slightly, about six
8 feet.

9 Q Is there anything else located over there?

10 A There's two newspaper stands. One's for the
11 *Beaufort Gazette* and one for -- I can't remember what
12 that one is.

13 Q And so, now, kind of looks like you can see a leg
14 just sort of hanging out there swinging in Number 4. Do
15 you need me to enlarge it?

16 A I -- I can't see that, sir.

17 Q That right there.

18 A Right there.

19 Q And is that where Mr. Washington was?

20 A Yes, sir. Sammy was sitting out in the *Beaufort*
21 *Gazette* newspaper stand.

22 Q What is this located over there?

23 A That would be a (inaudible).

24 Q And so, is that the person that had a gun that
25 evening?

1 A Yes, sir.

2 Q And did he take you back inside?

3 A Yes, sir.

4 Q Okay. Did he have the gun the whole time?

5 A As far as I knew.

6 Q Looks like he's holding the gun to the back of your
7 head. Is that correct?

8 A Yes, sir.

9 Q And is there any way for you behind the cash
10 register to see what's going on outside the store?

11 A No, sir.

12 Q Okay. Is that why you're still just crouched down
13 like that?

14 A Yes, sir.

15 Q And what are you doing here?

16 A That's when I called 911 to let them know I'd been
17 robbed. No, I retract that. That was -- I called my
18 boss to let him know I got robbed, and he told me to
19 lock the store.

20 Q Okay. And is that sign an open/closed sign? It's
21 hanging on the window. It looks like you (inaudible.)

22 A Yes.

23 Q And so then, when you get back to the cash
24 register, is that when you call 911?

25 A Yes, sir.

1 Q Okay. And did you see the person in the blue
2 shirt, with the gun and the mask, at all again that
3 evening?

4 A Not that I know, sir.

5 MR. BANNON: With the Court's permission, without
6 objection, I'll pause it or just -- or stop the tape at
7 this point in time.

8 THE COURT: Okay.

9 BY MR. BANNON:

10 Q Now, a couple of days after the robbery, did you
11 ever have a conversation with Terrance that you talked
12 about earlier?

13 A Yes, sir.

14 Q Okay. And where was that?

15 A It was in Port Royal.

16 Q Okay.

17 A I don't really know the name of the area. It's
18 down by that Kangaroo Express, that little set of town
19 homes right there.

20 Q Okay. So, was at one of the town homes, or was it
21 at the Kangaroo Express?

22 A It was at one of the town homes.

23 Q Okay. And what was going on that day?

24 A I rode with a friend. There was somebody's
25 birthday party or something. It was just a gathering,

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1 more or less.

2 Q Okay. And did you know anybody at the party? That
3 you knew or think you knew, or were you just going there
4 with a friend?

5 A I was just going with my friend. He asked me if I
6 wanted to go to a party with him. I just figured why
7 not.

8 Q Okay. And when you go to this party with your
9 friend, that's when you see Mr. Seabrook?

10 A Yes, sir.

11 Q Okay. And did you speak with him?

12 A Yeah, he walked in. He asked me how it was going.
13 I said just got robbed the other night. And he's like,
14 oh, what was up with that. I was like, I don't really
15 know; some dude just came in with looked like a .45, put
16 it to my head; started talking crap to him; and then he
17 left.

18 Q Okay. And did Mr. Seabrook, or Terrance, did he
19 ask you any questions about how much money was taken?

20 A No, I don't think so. I can't really remember.

21 Q Okay. Now, let me ask you a little bit about your
22 memory. You said that basically remember that area, and
23 kind of -- you went through the conversation with
24 Terrance. Was anything going on at that time that might
25 have affected your memory?

1 A I was getting clean from heavy drug use.

2 Q And the conversation that you had with Terrance,
3 was this a -- was this an angry or heated conversation
4 in any way, or just sort of started talking?

5 A Just a casual, you know, just two people just
6 shooting, you know, shooting crap.

7 Q Okay.

8 MR. BANNON: Beg the Court's indulgence, your
9 Honor.

10 No further questions.

11 SEAN KIRKPATRICK

12 CROSS-EXAMINATION, BY MR. WEIDNER:

13 Q How long had you worked at that store? How long
14 had you worked at that store when this took place?

15 A I'm not entirely -- roughly six to eight months.

16 Q All right. And you had -- you'd referred to
17 several customers as regular customers.

18 A There's customers I saw on a daily basis.

19 Q And you described Terrance as being a regular
20 customer.

21 A Yes, sir.

22 Q And so, by regular, he came in, he bought stuff,
23 you all talked, he left.

24 A He didn't always buy every -- anything, but he
25 normally came in once a day just -- he was always riding

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1 with someone else.

2 Q So, over that six-or-eight-month period, you had
3 had regular conversations with him four or five times a
4 week.

5 A Honestly, no, never had too many conversations with
6 him. I mean, he was just coming in, and I just mainly
7 remember him cause his favorite phrase was how you doing
8 today, family.

9 Q Okay. Now, the procedures at the store, how much
10 money was normally supposed to be in the till, if you
11 will?

12 A Honestly, I don't remember anymore. I want to say
13 it should be -- it should have been no more than a
14 hundred dollars at a time.

15 Q Okay. And that's because, as it got more than
16 that, what were you supposed to do?

17 A We would collect the extra cash, mostly twenties,
18 twenties and hundreds and fifties, from that, and put
19 them in an envelop and put it in the safe.

20 Q Okay. So, you had a drop safe.

21 A Yes, sir, we had a drop safe that was bolted to the
22 floor.

23 Q And had you made all of your drops that day?

24 A No, there was a few I just sat on top of the safe.
25 I just -- you know, customers come in as I was trying to

1 do drops. Like I said, I was working at that, so, I
2 really wasn't into working that day.

3 Q And do you know how many -- strike that. Do you
4 know how much money was taken?

5 A No, sir, I don't.

6 Q Have you ever heard an amount mentioned?

7 A Not that I can recall.

8 Q Now, did I understand that you had -- you hadn't
9 seen the fellow who approached you in the video prior to
10 that taking place.

11 A As far as I know, no.

12 Q And when he came up to you, did you see anything
13 that you recognized? Tattoos? (Inaudible.) Anything?
14 Hair?

15 A No, just, you know, hands, gloves, shirt, mask.

16 Q And nothing else that you recognized.

17 A His body language was kind of off like he wasn't
18 wanting to really do the robbery, but that was about it.

19 Q And when he took you behind the counter, at one
20 point I think you had said, or told law enforcement,
21 that he said something along the lines of are we cool;
22 and you said, *yeah, man, we're cool.*

23 A Yeah. That's when he had the gun to my head when I
24 was pushed against the floor, right before he left. If
25 you saw in the video, he squatted down to speak to me.

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1 That's when he was saying, you know, are we cool, are we
2 cool. And I was like, yes. He had a gun to my head. I
3 mean.

4 Q All right. Now, when was your last day out there?

5 A That was my last day.

6 Q And the friend that you went to this party two days
7 later, at which you encountered Terrance Seabrook, that
8 friend's name was Quincy Holmes, right?

9 A Yes, sir.

10 Q And you knew him from out on the Island, as well.

11 A I've known him since seventh grade.

12 Q And you mentioned that your memory may be somewhat
13 clouded because of prior heavy drug use.

14 A Yes, sir.

15 Q You were in the Air Force.

16 A Yes, sir.

17 Q You got out, because you got a charge of drug abuse
18 or drug abuse.

19 A Yes, sir.

20 Q All right. And you admit that you were using drugs
21 during a period of time that you worked at the store.

22 A Yes, sir.

23 MR. WEIDNER: Nothing further.

24 THE COURT: Mr. Bannon.

25 SEAN KIRKPATRICK

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1 RE-DIRECT EXAMINATION, BY MR. BANNON:

2 Q I'm pretty sure I asked, but you that mentioned you
3 had -- there's only supposed to be about a hundred
4 dollars in the till Is that correct?

5 A Yes, sir.

6 Q And overages were supposed to be put in the safe,
7 which was bolted to the ground.

8 A Yes, sir.

9 Q Okay. I'm just showing what's been entered into
10 evidence as State's Exhibit Number 1. All right. I
11 think this might be the best view. All right. Where is
12 the safe located?

13 A About at my knee level when I'm standing there
14 direct center of black mat.

15 Q Okay. So, it's right around in there?

16 A No. A little further over.

17 Q Down or up?

18 A That way.

19 Q Down here?

20 A No. Up.

21 Q Up here?

22 A Yes, sir.

23 Q Okay. So, the safe is right there.

24 A Yes, sir.

25 Q Okay. And you said that you had a couple of drops,

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1 which were still on top of the safe at the time of the
2 robbery?

3 A Yes, sir.

4 Q Okay. Now, did the assailant, did he take those?

5 A No.

6 Q Okay. Did you point out to him that there was a
7 bunch of extra money just sitting right there on top of
8 the safe?

9 A No, I didn't.

10 Q Okay. And I think you will hear testimony that you
11 don't recall how much money was taken out of the till.

12 A No, sir.

13 Q But you know the money was taken from the till.

14 A Oh, yes, sir. Everything except for the coins.

15 Q Okay. All of the bills.

16 A Yes, sir.

17 Q The paper money.

18 MR. BANNON: No further questions.

19 BY THE COURT:

20 THE COURT: Any objection to Mr. Kirkpatrick being
21 excused?

22 MR. BANNON: Not from the State.

23 MR. WEIDNER: No, ma'am.

24 THE COURT: You're excused, sir. Thank you.

25 Ladies and gentlemen, we're going to take a very

1 short break. I'm going to send you back to your jury
2 room. I need to instruct you again. Do not discuss
3 this case. It would be inappropriate to do so. Get a
4 cup of coffee, refresh yourselves. We're going to bring
5 you back in, in about five minutes.

6 Okay. We'll be right back. Thank you.

7 JURORS LEAVE COURTROOM.

8 MR. BANNON: Your Honor, just as a matter of
9 housekeeping, --

10 THE COURT: Yes, sir.

11 MR. BANNON: -- I think that I probably have two
12 more witnesses, one of which I expect to be very brief.
13 Another one I expect to take a good bit longer.

14 THE COURT: Okay.

15 MR. BANNON: So, I think, possibly, after that
16 second witness has testified, it might be a good time to
17 take a lunch break, if that pleases the Court.

18 THE COURT: Okay.

19 MR. BANNON: And give Mr. Weidner some time to
20 review those recordings.

21 THE COURT: Sounds good. Okay?

22 MR. WEIDNER: Thank you, your Honor.

23 THE COURT: We'll take four or five minutes and be
24 back.

25 OFF THE RECORD.

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1 BACK ON THE RECORD.

2 BY THE COURT:

3 JURY ENTERS COURTROOM.

4 BAILIFF: The jury is seated, your Honor.

5 THE COURT: Thank you. Welcome back, ladies and
6 gentlemen. Mr. Bannon, if you'd call your next witness.

7 MR. BANNON: Thank you, your Honor. The State
8 calls Corporal Angstadt to the stand.

9 CORPORAL ERIC ANGSTADT: Corporal Eric Angstadt,
10 Beaufort County Sheriff's Office.

11 THE COURT: Come on forward, Corporal.

12 MADAM CLERK: Would you place your left hand on the
13 Bible and raise your right hand for me, please. Do you
14 solemnly swear to truthfully answer all questions asked
15 of you by this Court, so help you God?

16 CORPORAL ERIC ANGSTADT: I do.

17 MADAM CLERK: Please be seated. State your name
18 and spell it for the Court, please.

19 CORPORAL ERIC ANGSTADT: Corporal Eric Angstadt,
20 Beaufort County Sheriff's Office.

21 THE COURT: Sir, would you spell your last name for
22 my court reporter.

23 CORPORAL ERIC ANGSTADT: A/n/g/s/t/a/d/t.

24 THE COURT: Thank you, sir.

25 CORPORAL ERIC ANGSTADT

1 DIRECT EXAMINATION, BY MR. BANNON:

2 Q And Corporal, where do you work?

3 A At Beaufort County Sheriff's Office.

4 Q How long have you been working there?

5 A Six years.

6 Q What do you do for the Sheriff's Office?

7 A Right now I'm the road patrol, K-9 handler for the
8 Sheriff's Office.

9 Q And what do you mean when you say that you're a K-9
10 handler?

11 A I have a Belgium (inaudible), and we are a dual
12 purpose K-9 unit, so we train in narcotics and tracking.

13 Q Okay. And are you in investigations or are you on
14 patrol?

15 A Patrol.

16 Q And as part of patrol, do you respond when you get
17 a call that a crime has occurred?

18 A Yes, sir.

19 Q And is that always specific to your functions as a
20 K-9 officer, or sometimes is it just as a regular police
21 officer?

22 A Just regular. But I also respond to any high-risk
23 calls throughout the county.

24 Q Okay. And what training have you received in
25 regards to the handling of your dog?

1 A We -- I go through a basic handler's school, which
2 was 2010 we went to basic handler's school. And in
3 January of this year, we just completed another training
4 class for about a week. And we got certified. I got
5 certified as a Master Handler.

6 Q And is it always with the same dog?

7 A Right -- yes, with a patrol dog, yes.

8 Q Okay. And what dog are you currently with?

9 A K-9 (inaudible).

10 Q Okay. And what K-9 were you working with back in
11 October of 2010?

12 A Rusty. It's bloodhound.

13 Q And what experience had you had with Rusty in using
14 Rusty to track human beings?

15 A We -- we started training with -- I started
16 training with the blood hounds in 2008. And we trained
17 basically with Rusty and a couple other dogs were our
18 primary dogs. So, we would always -- every week, we
19 would always train with them. And then, if (inaudible),
20 we would use them, as well.

21 Q Okay.

22 MR. BANNON: Your Honor, at this time, I'd ask that
23 Corporal Angstadt be certified as an expert witness in
24 the field of dog tracking.

25 MR. WEIDNER: May I voir dire the witness?

1 THE COURT: Of course.

2 CORPORAL ERIC ANGSTADT

3 VOIR DIRE, BY MR. WEIDNER:

4 Q Who did you get your certification from?

5 A ASCT. It's American Society of K-9 Trainers.

6 MR. WEIDNER: Without objection, your Honor.

7 BY THE COURT:

8 THE COURT: All right. Ladies and gentlemen,
9 typically, an expert -- or, I'm sorry -- typically, a
10 witness is not allowed to testify to opinions or
11 conclusions. However, we do allow an exception if we
12 qualify someone in the area of an expertise, based on
13 professional experience or education. In this case,
14 Corporal Angstadt is being qualified in the area of dog
15 tracking.

16 Of course, that opinion is for you to use as you
17 see appropriate, and certainly as compared to any other
18 evidence in the case.

19 CORPORAL ERIC ANGSTADT

20 CONTINUE DIRECT EXAMINATION, BY MR. BANNON:

21 Q Okay. Corporal Angstadt, were you working on
22 October the 4th of 2010 in your capacity as a sheriff's
23 officer.

24 Q And were you with -- did you have your K-9 Rusty
25 with you that evening?

1 A Well, he responded with the blood hound wagon. I
2 was -- I'd still -- I had time there. We were just
3 starting to train together.

4 Q Okay. And why did you -- well, did you have an
5 opportunity to go to 1702 Sea Island Parkway?

6 A Yes, sir.

7 Q And why did you go out there?

8 A For an armed robbery.

9 Q And was that -- in what capacity were you going?
10 Just as a patrolman, or in your capacity as a K-9
11 handler?

12 A In my capacity as a K-9 handler.

13 Q Okay. And when you arrived on scene, what did you
14 do?

15 A We secured the front of the building, like we would
16 do any direction that the suspect would leave. We
17 secure the last known location of the suspect so we have
18 a fresh starting point for the track.

19 Q And then, if you could just explain briefly the --
20 well, how do you get the dog to follow where someone
21 went? What's the process that you go through to do
22 that?

23 A If we have a starting point, which is the direction
24 of travel, we would start the dog in that general area.
25 Depending on the wind and (inaudible). And we give him

1 a track command. And then, he starts tracking.

2 Q Okay. Did you have the direction of travel in this
3 particular instance?

4 A Yes.

5 Q Okay.

6 A And where was that?

7 A After we reviewed the video, it should be to the
8 right of the gas pumps.

9 Q Okay. So, sort of just in this area?

10 A Yes, sir, but closer towards the vegetation area.

11 Q Okay. And was the K-9 able to strike a track?

12 A Yes, sir.

13 Q Okay. And what roadway is located over in this
14 general area?

15 A Sea Island -- you're right in front on Sea Island
16 Parkway.

17 Q And are there any cross streets over here?

18 A Yes, there's a couple dirt road cross streets.

19 Q Okay. Once the dog struck the track, where did the
20 dog take you?

21 A We tracked along the right side of the Sea Island
22 Parkway. It'd be towards the Harbor Island/Fripp Island
23 area. And I believe the first road that we came to, I
24 think it was Day -- Daylily Road or Grayson Allen.

25 Q Would looking at your report refresh your

1 recollection as to exactly what road it was?

2 A Yes, sir.

3 Q Okay.

4 MR. BANNON: Beg the Court's indulgence, your
5 Honor. Permission to approach, your Honor.

6 THE COURT: You may.

7 BY MR. BANNON:

8 Q If you could just take a look at a copy of your
9 report.

10 A Daylily was the first road that we came to.

11 Q Okay. And so, once you came upon Daylily, where
12 did the dog take you then?

13 A We -- we then tracked to the -- it would have been
14 the next crossroad, which was Grayson, Grayson Allen
15 Road. And there was a dirt parking lot that we -- that
16 the dog started circling.

17 Q Okay. And what does it mean when the dog starts to
18 circle.

19 A When he gets to a point that he -- that there's a
20 change around there, like if somebody would have left
21 the area, you know, he would go nose up. He gives a
22 body language change, saying that, all right, he's --
23 the scent was just here, so now, he's just trying to
24 search for it. So, when he did that there, we started
25 to cut him in a 360-degree circle around the

1 intersection. So, we went just -- just past Grayson
2 Allen road, and then to the left, and brought him along
3 Sea Island Parkway. And we completed our circle, and
4 then went up Grayson Allen just a little bit to see if
5 the dog -- if the person that we were tracking went to
6 the right or the left, or continued straight.

7 Q Okay. And so, is it your opinion that the tract
8 ended at that dirt, sort of, parking area that you
9 described?

10 A Yes, sir, because we also went done to the next
11 intersection, which was Sea Island Parkway/
12 and Seaside Road. And we also cut him in there to
13 see if he went any further. If the suspect went any
14 further than that.

15 Q And did you encounter anyone who you considered a
16 suspect during this dog track?

17 A No, sir.

18 MR. BANNON: Thank you, your Honor. No further
19 questions.

20 CORPORAL ERIC ANGSTADT

21 CROSS-EXAMINATION, BY MR. WEIDNER:

22 Q Is it corporal?

23 A Yes, sir.

24 Q You said on the -- if I could get you to reflect,
25 I'm referring to the picture that's on the white board.

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CROSS - ANGSTADT

ORIGINAL

1 You said that your dog struck a track and it was closer
2 to the foliage or closer to --

3 A To the foliage there.

4 Q And took you down the road where the track ended.

5 A Yes, sir.

6 Q And that was the end of your involvement?

7 A Yes, sir.

8 Q Were there any tire tracks there or anything else
9 there? Cigarette butts? Anything?

10 A No, there were no tire tracks that I can recall,
11 sir.

12 Q And so, you weren't there when the armed robbery
13 took place.

14 A I can't -- I responded afterwards.

15 Q And so, you don't know who was in the mask in the
16 video?

17 A No, sir.

18 Q And to your knowledge, Rusty doesn't know.

19 A No, sir.

20 MR. WEIDNER: No further questions.

21 THE COURT: Anything further?

22 MR. BANNON: Nothing further, your Honor. May this
23 witness be excused?

24 THE COURT: Any objection?

25 MR. WEIDNER: No, ma'am.

1 THE COURT: Corporal Angstadt, you're excused, sir.
2 Thank you. Call your next witness.

3 MR. BANNON: Thank you, your Honor. The State
4 calls Mr. Shatike Shabazz.

5 THE COURT: Okay. Come on up sir, right over here.
6 Place your left hand on the *Bible*, and raise your right
7 hand, sir.

8 MADAM CLERK: Do you solemnly swear to truthfully
9 answer all questions asked of you by this Court, so help
10 you God?

11 SHATIKE J. SHABAZZ: Yes, ma'am.

12 MADAM CLERK: Please be seated. State your name
13 and spell it for the Court, please.

14 SHATIKE J. SHABAZZ: Shatike J. Shabazz.
15 S/h/a/t/i/k/e J. S/h/a/b/a/z/z.

16 SHATIKE J. SHABAZZ

17 DIRECT EXAMINATION, BY MR. BANNON:

18 Q Good afternoon, Mr. Shabazz. What do you do for a
19 living?

20 A Executive chef.

21 Q Okay. Back in 2010, were you doing anything
22 different?

23 A Yeah, I had my own record label.

24 Q Okay. And at that particular point in time, were
25 you familiar with the individual seated right over here

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DIRECT - SHABAZZ

ORIGINAL

1 in the grey and brown checked shirt?

2 A Yes, sir.

3 Q Okay. And who is that person?

4 A Terrance Seabrook.

5 Q And how long have you known him?

6 A Probably about 15 years.

7 Q Okay. And is it a friendly relationship or a
8 professional relationship or?

9 A Friendly relationship.

10 Q Okay. And where was Mr. Seabrook staying in early
11 October of 2010?

12 A Well, I mean, he was staying with his mother, but
13 he stayed with me for four days.

14 Q Okay. In your home?

15 A Yes, sir.

16 Q And are you familiar with a person named Shawn
17 Boyd?

18 A Yes, sir.

19 Q Okay. Do you know him by any other names?

20 A Carnage.

21 Q And how do you know Mr. Boyd?

22 A He was my artist.

23 Q Okay. And so, was Carnage sort of his performer's
24 name?

25 A Yeah.

1 Q Okay. And was he rap artist?
2 A Yes, sir.
3 Q And what kind of car was Mr. -- did Mr. Boyd own
4 back in October of (inaudible).
5 A A royal blue Ford Explorer.
6 Q Okay. Did you ever borrow Mr. Boyd's -- excuse me
7 -- Mr. Boyd's Ford Explorer?
8 A Yes, sir.
9 Q All right. And does it have sort of big, chrome
10 wheels on it?
11 A Twenty-two inches.
12 Q Okay. And now, Mr. Shabazz, have you ever gone by
13 a different name?
14 A Bruiser.
15 Q What was your given name?
16 A (Inaudible.)
17 Q Okay. And were you present at the -- I guess call
18 it the Russ (phonetic spell) store on October the 4th of
19 2010?
20 A Yes, sir.
21 Q Okay. And how did you get to the store that
22 evening?
23 A I took Terrance there.
24 Q Okay. And what car were you guys in?
25 A The Explorer.

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DIRECT - SHABAZZ

ORIGINAL

1 Q Okay. Was it Mr. Boyd's Explorer?

2 A Yes, sir.

3 Q And what time of day did you go there? Was it in
4 the evening? Afternoon?

5 A Yeah, in the evening time.

6 Q And why did you and Mr. Seabrook go to the gas
7 station that evening?

8 A Well, I was going to get a phone back, Number 1.

9 Q Okay. What phone were you going to get back?

10 A A phone that I had loaned Terrance.

11 Q Okay. And who had this phone?

12 A A guy named Sub.

13 Q Okay. And was Terrance helping you with that?

14 A Yes.

15 Q So, you and Terrance are looking for this fellow
16 named Sub.

17 A Yeah.

18 Q Okay. Were you supposed to meet him there?

19 A Yeah.

20 Q Okay. And why was Terrance helping you look for
21 this phone?

22 A Well, I had loaned Terrance the phone. The phone
23 actually wasn't my phone, but somehow Sub got a hold of
24 ht phone.

25 Q Okay.

1 A So, I was looking for him to give him the money
2 that was owed so I could get the phone back.

3 Q Okay. So, the phone that you had given to Mr.
4 Seabrook had somehow gotten into the possession of Sub.
5 And so, you were just attempting to get your phone back,
6 and Terrance was sort of helping you, because it was --
7 the phone was getting (inaudible).

8 A Yeah.

9 Q Okay. Do you know why Mr. Seabrook gave Sub the
10 phone?

11 A Well, apparently, Terrance owed Sub some money.

12 Q Okay. And when you arrived at Russ's store, what
13 did you do when you arrived?

14 A Well, we waited for a few minutes. We supposed to
15 wait there 'til he got there. He never showed up. I
16 went in the store and bought a Black and Mild Snapple
17 tea.

18 Q Did you pay for that stuff?

19 A Yes, sir.

20 Q Okay. What did you do once you bought those items?

21 A Went back in the truck.

22 Q Okay. And who was in the truck at that point?

23 A Me and Terrance.

24 Q Was anybody else there -- in there?

25 A No.

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DIRECT - SHABAZZ

ORIGINAL

1 Q Okay. At any point did Mr. Seabrook get out of the
2 car?

3 A Yes, sir.

4 Q Okay. And why did he get out of the car?

5 A Number 1, I got tired of playing games with Sub.

6 Q Okay. And so, once Mr. Seabrook got out of the
7 car, did you stay at the store, or did you leave?

8 A No. I left and went to my mother's house.

9 Q You went to your mother's house. At any point did
10 you come back to the store?

11 A Yes, sir, I did.

12 Q Okay. Why did you come back to the store?

13 A Well, because the situation that was going on with
14 Terrance and Sub. I didn't want Terrance to get in
15 trouble (inaudible), so I came back to get him.

16 Q Okay. What trouble would Terrance had gotten into?

17 A Well, (inaudible) altercation (inaudible).

18 Q Okay. Trouble between Terrance and Sub.

19 A Um-hmm.

20 Q Okay. Was this over the money that Terrance owed
21 him?

22 A Yes, sir.

23 Q And do you know why Terrance owed him this money?

24 A I didn't -- it's really just a rumor.

25 Q Okay. And so, when you came back, did you find

1 Terrance?

2 A No. Uh-uh.

3 Q Okay. Was anybody else there?

4 A Yeah, a guy standing outside.

5 Q Okay. Do you know who that person was?

6 A Nuh-uh.

7 Q Just some guy.

8 A Uh-huh.

9 Q Okay. Did you speak with him?

10 A Yes, sir.

11 Q What did you all speak about?

12 A I asked him did you see a slim, black guy that I

13 just now dropped off here.

14 Q Okay. And was he able to answer you?

15 A Yeah, he said no.

16 Q Okay. And how long were you at the store when you

17 came back the second time?

18 A Not -- not really too much longer. I was, as we

19 call it, frequent flying. Because the guy was trying to

20 borrow two dollars from me.

21 Q That guy who was talking to you at the car?

22 A Uh-huh.

23 Q Okay. And so, after you spoke with him, you said

24 you left?

25 A Yeah.

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DIRECT - SHABAZZ

ORIGINAL

1 Q Okay. Did you come back to the store after that?

2 A No, sir.

3 Q Okay. Did you see Terrance at all the rest of that
4 evening?

5 A No, sir.

6 Q Okay. Did you see Terrance again in the days or
7 weeks afterwards?

8 A Yeah.

9 Q Okay. Where did you Terrance?

10 A He came back to my house.

11 Q And did you ever see Mr. Seabrook at a party that
12 you were having?

13 A Yes, sir.

14 Q And when was that?

15 A I can't really remember. It was Shawn Boyd's
16 birthday. It was a surprise birthday party. Terrance
17 helped me with that.

18 Q Okay. And so, you saw him that evening. Did you
19 see him at any other point? Did you ever see him at the
20 Air Station?

21 A Who? Terrance?

22 Q Yeah.

23 A Yeah, he rode with me at the Air Station.

24 Q Okay. And why did you guys to the Air Station?

25 A Went to go pick up Shawn Boyd.

1 Q And were you and Mr. Boyd's car at that point?

2 A Yes, sir.

3 Q Now, Mr. Shabazz, I'd like to show you what has
4 already been admitted into evidence, and some of the
5 security footage from the store that evening.

6 MR. BANNON: And with this Court's permission, I'll
7 skip ahead to the much relevant portions.

8 THE COURT: You may.

9 BY MR. BANNON:

10 Q Mr. Shabazz, do you recognize this area?

11 A Yes, sir.

12 Q And where is it?

13 A The grocery store.

14 Q Okay. I apologize for the delay. Unfortunately,
15 on this recording, you can't just slide it to sort of
16 the exact point in time.

17 Now, is that you getting out of that car?

18 A Yes, sir.

19 Q Okay. It looks like you're wearing a white hat and
20 a --

21 A Wearing a New York Yankees hat.

22 Q Okay. And who's -- is there anyone inside the car?

23 A Yes, sir.

24 Q Who is that?

25 A Terrance.

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DIRECT - SHABAZZ

ORIGINAL

- 1 Q Okay. And is that the tea that you said you got?
- 2 A Yeah.
- 3 Q Okay. And now, is that still you going back to the
- 4 car?
- 5 A Yes, sir.
- 6 Q And once you've gone inside, was Sub at the Exxon
- 7 station? Can you see him on any of the camera footage?
- 8 A Right there.
- 9 Q Okay. And now, had Mr. Seabrook ever spoken to you
- 10 about a plan to rob the store?
- 11 A No, sir.
- 12 Q So, as far as you're concerned, you're just looking
- 13 for this guy named Sub.
- 14 A Yeah.
- 15 Q Okay.
- 16 MR. BANNON: And with the Court's permission, I'd
- 17 like to skip ahead again.
- 18 BY MR. BANNON:
- 19 Q Before I do that, once you got back into the car,
- 20 did the two of you leave, or did you stay there for a
- 21 little bit?
- 22 A No, we stayed there for a while.
- 23 Q Okay. Is it fair to say about ten minutes or so?
- 24 A Yeah.
- 25 Q Okay. And so, this is still you and Mr. Seabrook

1 in the dark-colored SUV?

2 A Yes, sir.

3 Q Do you know who this person is? Is it Mr.

4 Seabrook?

5 A Yeah.

6 Q Okay. Now, who's that getting out of the car?

7 A Terrance.

8 Q And did you see where Terrance went?

9 A No. Huh-uh.

10 Q Okay. And so, once he gets out of the car, is that
11 you leaving?

12 A Yes, sir.

13 Q Now, looks like on the videotape -- we can back it
14 up -- but it looks like Terrance is wearing a blue and
15 white polo shirt, with dark pants and white shoes.

16 A I mean, on the video, I mean, I don't even remember
17 what Terrance had on. But I think he had like some
18 jeans on. And I know me and my girl went to Walmart and
19 bought him some stuff.

20 Q Mr. Shabazz, I'd like to show you what's been
21 marked as State's Exhibit Number 26. What is that?

22 A Black pants, white shoes.

23 Q Well, let me ask you. Is this like a still image
24 from the video that we just watched?

25 A Yeah.

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DIRECT - SHABAZZ

ORIGINAL

1 Q Does it look like it's a fair copy of what was on
2 the screen? You just have to say yes or no.

3 A Yes, sir.

4 Q All right.

5 MR. BANNON: Your Honor, at this time, the State
6 would move State's Exhibit Number 26 into evidence.

7 THE COURT: Any objection?

8 MR. WEIDNER: (Inaudible.)

9 THE COURT: (Inaudible) prior objection.

10 ITEM IDENTIFIED AS PHOTOGRAPH

11 MARKED STATE'S EXHIBIT NUMBER 26,

12 ADMITTED INTO EVIDENCE.

13 BY MR. BANNON:

14 Q And so, right there, is that the SUV that you're
15 in?

16 A Yes, sir.

17 Q Okay. And Mr. Seabrook?

18 A Yes, sir.

19 MR. BANNON: Permission to publish to the jury,
20 your Honor.

21 THE COURT: Without objection.

22 BY MR. BANNON:

23 Q I think you already testified to this, but once you
24 left, where did you go?

25 A My mother's house.

- 1 Q Were you there for very long?
- 2 A No.
- 3 Q About how long would you say you were there?
- 4 A Probably about three minutes.
- 5 Q Okay. And then, once you left your mother's
- 6 store, where did you go?
- 7 A I came right back to the store.
- 8 Q Okay. Where does your mother live?
- 9 A Right there on
- 10 Q Okay. And where is in relation to
- 11 this?
- 12 A Back this way here.
- 13 Q Back up this way?
- 14 A Yeah.
- 15 Q Is it close by or is it far away?
- 16 A Close by.
- 17 Q Okay. And so, is this you coming back in the dark-
- 18 colored SUV?
- 19 A Uh-huh.
- 20 Q And you said that you spoke with someone that
- 21 evening, just a fellow who was hanging around out front?
- 22 A Yeah.
- 23 Q Is that the fellow that you were talking to?
- 24 A Yes.
- 25 Q Okay. Did you ask him about Mr. Seabrook's

1 whereabouts?

2 A Yes, sir.

3 Q And he said that he hadn't seen anyone like that.

4 A Said he ain't seen nobody.

5 Q Okay. And did he ask you for a couple of dollars?

6 A Yes, sir.

7 Q Did you give him anything?

8 A No.

9 Q Okay. Did you guys talk about anything else?

10 A No. I was actually (inaudible) back (inaudible).

11 Q And then you drove away?

12 A Yes, sir.

13 Q Did you return to the store at all that evening?

14 A No, sir.

15 MR. BANNON: No further questions.

16 THE COURT: Okay.

17 SHATIKE J. SHABAZZ

18 CROSS-EXAMINATION, BY MR. WEIDNER:

19 Q Mr. Holmes [sic], do you know a fellow by the name
20 of Quincy Holmes? I'm sorry. Mr. Shabazz. Do you know
21 a fellow by the name of Quincy Holmes?

22 A Yes, sir.

23 Q Who is Quincy Holmes?

24 A My stepbrother.

25 Q And do you know a fellow by the name of

1 Kirkpatrick?

2 A The clerk?

3 Q Little, white dude?

4 A Yeah.

5 Q Okay. Do you know who that one was?

6 A Yeah.

7 Q Okay. And do you know anything about the
8 relationship between those two people?

9 A No.

10 Q Do you know whether or not Mr. Kirkpatrick was a
11 drug user?

12 A Did I what?

13 Q Do you know whether or not Mr. Kirkpatrick was a
14 drug user?

15 A From my understanding, yes.

16 Q And do you know whether or not, from time to time,
17 Mr. Quincy Holmes had given some pills to Mr.
18 Kirkpatrick?

19 A Yeah.

20 Q And did they -- you said -- you mentioned, I think,
21 that they had shown up at a party that you were giving a
22 couple of days later. Did they show up together?

23 A Yeah.

24 Q And do you know whether or not Mr. Kirkpatrick at
25 that time was using drugs?

1 A Yeah, he went to smoke mari -- mari -- marijuana,
2 yeah.

3 Q All right. Went outside to smoke a blunt, right?
4 Now, who is Sub?

5 A I don't know. I know who he is, but, you know,
6 that's -- that's his street name.

7 Q Isn't his name Steven Jenkins?

8 A Yeah, I think so.

9 Q Now, in the videos and that day, you drove by the
10 store several times. I think you can be seen driving
11 in, and then you drive off. Then, you come in from
12 another direction, drive off. Drive in again. And
13 that's where you testimony is now that you let Mr.
14 Seabrook out of the car.

15 A Um-hmm. Yes.

16 Q And then, you drove back again, and that's when you
17 were seen talking to Mr. Washington.

18 A Yes, sir.

19 Q And you were sitting in the area of the parking lot
20 that was on the right side, to the right of the
21 building, if you're facing the highway.

22 A Yes, sir.

23 Q And you're saying that you didn't see anybody
24 standing in that area of the building.

25 A No. No, sir.

1 Q And it's your testimony that Mr. Sammy Washington,
2 when you asked him if he'd seen Terrance, he said he
3 hadn't seen him.

4 A That's his name?

5 Q This fellow.

6 A That's his name?

7 A How do you know that guy?

8 A I don't.

9 Q Okay. The guy who was begging.

10 A Right.

11 Q Right. Did you ask him if he'd seen anybody?

12 A Yes, sir.

13 Q And what did he say?

14 A No.

15 Q So, he hadn't seen anybody either.

16 A Huh-uh.

17 Q Now, when you were previously -- do you remember
18 talking to the detective, the investigator?

19 A Yes, sir.

20 Q And at that time, do you recall giving a
21 description of what Terrance Seabrook was wearing?

22 A A striped shirt. (Inaudible.)

23 Q How about dark green pants and a white golf shirt,
24 all white? Dingy white.

25 A Yeah.

1 Q So, not a blue shirt with a -- or a white shirt
2 with white strikes and a blue?

3 A The reason why I gave that -- that statement,
4 because like I said, Terrance stayed at my house for
5 four nights, and had the same clothes on. And me and my
6 girl went and took Terrance to Walmart and bought him
7 some clothes. That's why I know that.

8 Q Well, did you buy him any clothes that had a blue
9 front with white piping on the sides.

10 A Burgundy -- a burgundy sweatsuit. Underwear,
11 t-shirts, sox, deodorant, soap, toothbrush, toothpaste.
12 Stuff like that.

13 Q Have you seen the video?

14 A Yes, sir.

15 Q You've been shown the video by the State, right?

16 A That's right.

17 Q So, you've seen the video of when the person comes
18 out of the side with the gun?

19 A Uh-huh. Yes sir.

20 Q You've seen that. And you've looked at it
21 carefully?

22 A Yes, sir.

23 Q Is that Terrance Seabrook?

24 A Not to me.

25 Q Why?

1 A The person's really not built like Terrance. The
2 person had broader, more shoulders. Terrance is real
3 skinny. Terrance shoulders didn't sit high.

4 Q All right. And is it your testimony that the
5 person that does this is different from the person that
6 got out of the car?

7 A Yeah. To me.

8 Q Now, respect to this whole sequence of events,
9 you've been granted immunity, haven't you?

10 A Yes, sir.

11 Q And you've been told by the State you are granted
12 immunity --

13 A Yes, sir.

14 Q -- for anything that might have been involved if
15 you identify Terrance as the person get out of that car.

16 A Yes, sir.

17 Q And that's why you're identifying the person
18 getting out of that car as Terrance.

19 A Well, that don't mean that's the person that got
20 out of the truck.

21 Q The person that got out of the SUV.

22 A Right.

23 Q So, you're complying your grant of immunity.

24 A No, I'm not, necessarily.

25 Q Okay. So, you're saying you're not complying with

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1 your grant of immunity?

2 A No. What I'm saying, there were only two people in
3 my truck. In that truck.

4 Q Earlier in the day there had been at least four
5 people, right?

6 A No.

7 Q Are you sure?

8 A Yeah.

9 Q And so, now it's your testimony that the person
10 getting out of the truck was Terrence, but the person
11 who walks up is not Terrance.

12 A Doesn't look like Terrance.

13 MR. WEIDNER: I have no further questions, your
14 Honor.

15 THE COURT: Okay. Mr. Bannon.

16 MR. BANNON: Thank you, your Honor.

17 SHATIKE J. SHABAZZ

18 RE-DIRECT EXAMINATION, BY MR. BANNON:

19 Q Mr. Shabazz, Mr. Weidner -- well, let me start
20 first. In the past, you were also charged with robbery
21 that occurred at the store, correct?

22 A Yes, sir.

23 Q Okay. And then, a couple of weeks ago, those
24 charges were dismissed.

25 A Yes, sir.

1 Q Okay. And I filed a grant of immunity.

2 A Yes, sir.

3 Q Before I filed the grant of immunity, did I talk to
4 you about anything?

5 A No, sir.

6 Q Okay. Did I contact you in any way?

7 A No, sir.

8 Q Okay. Did I ask you to ever fictionalize or make
9 anything up about who anybody was in the video or what
10 you did that night?

11 A No, sir.

12 Q Okay. When I did speak with you, did I just ask
13 you to tell the truth?

14 A Yes, sir.

15 Q All right. And now, back around October of 2010,
16 you were arrested by the police in connection with this,
17 correct?

18 A Yes, sir.

19 Q And Investigator Chapman at the Sheriff's Office,
20 he interviewed you, correct?

21 A Yes, sir.

22 Q Was that on October 25th of 2010?

23 A I don't quite remember.

24 Q But it was around that time period. It could have
25 been October 25th?

1 A Yeah.

2 Q Okay.

3 A Yes, sir.

4 Q And in that interview, do you remember telling
5 Investigator Chapman that you were at Russ's store that
6 night?

7 A Yes, sir.

8 Q Do you remember telling Investigator Chapman that
9 you and Mr. Seabrook were looking for Sub that evening?

10 A Yes, sir.

11 Q Do you remember telling Investigator Chapman that
12 Terrance owed Sub \$60.00 for the phone, and another
13 \$130.00 for a gun?

14 A No.

15 Q Do you disagree with all of that, or just the gun
16 part?

17 A The gun part.

18 Q Okay. Now, do you remember telling police that you
19 told Terrance that you could either come back to your
20 house or that he could stay there?

21 A Yeah.

22 Q And do you remember telling the police what his
23 decision was?

24 A Yeah.

25 Q Okay.

1 A Yes, sir.

2 Q And that, when you were at Russ's store, Terrance
3 got out of your car.

4 A Yes, sir.

5 Q Okay. And that was back in October of 2010.

6 A Yes, sir.

7 Q Okay. And did I -- were your charges dismissed
8 before or after October of 2010?

9 A After.

10 Q Okay. When we talked, was that before or after
11 2010?

12 A After.

13 Q Okay. Did I ever promise you anything in exchange
14 for you to testify here today?

15 A No, sir.

16 Q Okay. Is it fair to say that Terrance is your
17 friend?

18 A Yeah, Terrance is a good friend.

19 Q Stayed at your house for a couple of days.

20 A Hangs around my kids.

21 Q Helped him out when he needed some clothes.

22 A Yeah.

23 Q Drive him around if he needed a ride?

24 A Yes, sir.

25 MR. BANNON: Just need to swap out the video real

1 quick, your Honor.

2 THE COURT: Okay.

3 MR. BANNON: What was being shown is State's
4 Exhibit 1, and I'm going to put in State's Exhibit 2.

5 BY MR. BANNON:

6 Q Now, Mr. Shabazz, you've seen this before, correct?

7 A Yes, sir.

8 Q And so, Mr. Weidner asked if you thought that this
9 person was Mr. Seabrook?

10 A Yes, sir.

11 Q Okay. And your answer is that you don't think it's
12 Mr. Seabrook.

13 A Right?

14 Q Okay. And that's because he's looks a little bit
15 bigger than Mr. Seabrook is.

16 A Yes, sir.

17 Q But looking at the video, it looks like this person
18 is wearing a blue and white shirt with dark-colored
19 pants and white shoes. Is that correct?

20 A Yes, sir.

21 Q Okay. And now, earlier, you testified, when
22 Terrance got out of the car, he was wearing a blue and
23 white striped shirt, with dark pants and white shoes,
24 correct?

25 A Yes.

1 Q Okay. So, essentially, what your testimony is, is
2 that you think -- well, you don't think this is Mr.
3 Seabrook, but he's essentially wearing exactly the same
4 thing or something very similar as what Mr. Seabrook was
5 wearing that evening.

6 A Yeah, I guess so.

7 Q Okay.

8 A I mean, if you look at the guy, the guy's back is
9 big. Terrance back's (inaudible) right there.
10 (Inaudible) referring from that distance. Or even when
11 you refer to the guy around the corner, around the
12 counter.

13 Q Mr. Shabazz, I'm going to show you what has been
14 marked as State's Exhibit Number 27. Okay? Go ahead
15 and take a look at that. And now, you just watched the
16 video. And does that appear to be a still image from
17 that video?

18 A Yeah.

19 Q Does it appear to be a fair and accurate still of
20 that bottom right-hand screen, the person walking away
21 from the robbery?

22 A Yeah.

23 Q Okay. And so, the person --

24 A Yes, sir.

25 Q Okay. And so, the person in this picture, the guy

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1 with the blue shirt, blue and white shirt, dark pants
2 and white shirt, it's your testimony that, that, in your
3 opinion, is not Mr. Seabrook. I'll withdraw the
4 question.

5 A I really can't say.

6 MR. BANNON: Your Honor, at this time, the State
7 would move State's Exhibit 27 into evidence.

8 THE COURT: Any objection?

9 MR. WEIDNER: No objection.

10 THE COURT: Without objection.

11 ITEM IDENTIFIED AS PHOTOGRAPH MARKED
12 STATE'S EXHIBIT NUMBER 27, ADMITTED
13 AS EVIDENCE.

14 MR. BANNON: No further questions for Mr. Shabazz.

15 THE COURT: Re-cross?

16 SHATIKE J. SHABAZZ

17 RE-CROSS-EXAMINATION, BY MR. WEIDNER:

18 Q Mr. Shabazz, you've gone now from he was wearing --
19 well, I've already forgotten the iterations. He was
20 wearing blue jeans. Then it was dark green pants, white
21 golf shirt, dingy white shirt. Now, Mr. Bannon's asked
22 you again wasn't he wearing the blue and the white. And
23 you're saying now -- is it your testimony now that's
24 what he was wearing?

25 A Looking at -- listen, you got to understand

1 something. When this incident took place, that's the
2 recollection I have of what Terrance had on.

3 Q Which one?

4 A He had on a white golf shirt.

5 Q Okay. So, not the blue and white.

6 A The only person that was in my truck was Terrance.
7 According to that video, that's the color that is on
8 that paper.

9 Q Mr. Bannon -- Mr. Bannon asked you, *you haven't*
10 *been promised anything, have you.* Remember that
11 question?

12 A Yes, sir.

13 Q You have been promised something pretty big, and
14 that is that you won't be prosecuted for anything in
15 connection with this, right? Isn't that a pretty big
16 promise?

17 A When you put it like that.

18 Q Well, I'm putting it like that. Isn't that a
19 pretty big promise?

20 A That's the way you putting it. I mean, that's the
21 way you putting it to me now, but that's not the way he
22 put it to me when he talked to me.

23 Q Okay. But just so we're clear, you know you can
24 pretty much say what you want to, as long as you say
25 that Terrance gets out of that car. Right?

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RE-CROSS - SHABAZZ

ORIGINAL

1 A Can I speak frank to you?

2 Q Sure.

3 A Let me explain something to you. Terrance is a
4 real good friend. I've known Terrance for multiple
5 years. If I thought that was Terrance, I would say that
6 was Terrance. Okay? I lost a whole lot behind this
7 case. So, if I thought that was a good friend that made
8 me lose a lot of stuff, yeah, I would say that was him.

9 Q So, are you now saying that's not Terrance that got
10 out of that car?

11 A I don't -- no, that's Terrance who got out of my
12 truck.

13 Q Okay.

14 A Only two people in that truck, me and Terrance.

15 Q So, the one thing that you're sure of --

16 A Is that Terrance got --

17 Q -- is that, that was Terrance, and that's the one
18 thing that your grant of immunity rests on, right?

19 A However you want to put it.

20 MR. WEIDNER: No further questions.

21 THE COURT: Any further, Mr. Bannon?

22 SHATIKE J. SHABAZZ

23 RE-RE-CROSS-EXAMINATION, BY MR. BANNON:

24 Q The first time when you spoke with Investigator
25 Chapman, --

1 A Um-hmm.

2 Q -- you said that you dropped off Terrance Seabrook
3 at the store.

4 A Yes, sir.

5 Q Had you been promised immunity at that point in
6 time?

7 A No, sir.

8 Q And that was back in 2010?

9 A Yes, sir.

10 Q And now, after you've been granted immunity, is it
11 your testimony that that was Terrance that you dropped
12 off at the store?

13 A Yes, sir.

14 MR. BANNON: No further questions, your Honor.

15 THE COURT: Nothing further?

16 MR. WEIDNER: No, ma'am.

17 THE COURT: All right. Any objection to Mr.
18 Shabazz being excused?

19 MR. WEIDNER: No.

20 MR. BANNON: Not from the State.

21 THE COURT: You're excused, sir. Thank you.

22 MR. BANNON: And your Honor, at this time, I think
23 it would be a good point in time to take a lunch break.

24 BY THE COURT:

25 THE COURT: Ladies and gentlemen of the jury, we're

3-20-12 STATE V. SEABROOK

ORIGINAL

1 trying very hard to move this case along for you. By
2 the clock back there, it is almost 1:00 o'clock. I am
3 going to ask that you take a short lunch break, if
4 that's all right with you. I was hoping you all could
5 be back by 2:00 o'clock. If anyone is running a little
6 tardy, I don't want you to worry about it. I can't
7 start 'til all 13 of you are here. But again, if we
8 could keep as close to that time frame as possible,
9 we'll be able to keep the case going and keep it in
10 front of you. All right?

11 Ladies and gentlemen, I do need to, again, caution
12 you not to discuss the case. You've not heard all the
13 evidence. Do not do any of your own independent
14 research over lunch hour. Go get a bite to eat, come
15 back. We look forward to seeing you all at 2:00
16 o'clock, when we'll go ahead and continue the case.
17 Thank you.

18 JURORS LEAVE COURTROOM.

19 BAILIFF: The jury is clear, your Honor.

20 THE COURT: Thank you. Do you need to look at
21 anything else over the lunch hour as far as videos for
22 the rest of it? You're okay.

23 MR. WEIDNER: No, ma'am. I've watched that video a
24 gazillion times, which is (inaudible).

25 THE COURT: Okay. All right. You all go grab

1 something to eat, and we'll back, and I will see you all
2 then. Okay? Thank you.

3 MR. BANNON: And your Honor, at that point, would
4 it be okay if we take up the matter of the audio
5 recording? just because I'd like to know where I stand
6 before I put my witness in regard those statements on
7 the stand:

8 THE COURT: Again, I'm sorry. What's the
9 objection?

10 MR. BANNON: Well, it --

11 MR. WEIDNER: The objection was, ma'am, that I
12 don't know -- I agree that there's nothing in there
13 about prior activities or convictions or any of those
14 things about which we were concerned.

15 THE COURT: Okay.

16 MR. WEIDNER: But I don't know -- and perhaps Mr.
17 Bannon and I can sit down and he can point out the parts
18 that he's taking stuff out, because there may have been
19 stuff that was taken out that would be favorable to me
20 that I would not want to have out. In other words, if
21 he --

22 THE COURT: I understand what you're saying, but I
23 can't look at that and know. So, you need to sit down
24 with him and take a look at it and determine if he took
25 out anything that you, in fact, wanted in.

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ORIGINAL

1 MR. BANNON: I'm afraid I don't have any notes. I
2 just sort of listened to it, and as I went, I sort of --

3 THE COURT: Deleted.

4 MR. BANNON: Yeah, I deleted. I mean, that's what
5 we talked about. And I mean, I can certainly tell the
6 Court I didn't go through and delete, you know,
7 testimony where Mr. Seabrook says I didn't do it for any
8 of this stuff, or you know, I was here, I was there.

9 THE COURT: The problem is -- Jim, you gave him a
10 copy.

11 MR. BANNON: I have given him a copy.

12 THE COURT: Obviously, (inaudible). You look at
13 it. We're going to have to compare it to the original
14 you have and make sure nothing's missing. And you've
15 got an hour to do it, so, we'll go ahead and get that
16 done. Okay?

17 MR. WEIDNER: Thank you.

18 THE COURT: Thank you.

19 MR. BANNON: Thank you, your Honor.

20 OFF THE RECORD.

21 BACK ON THE RECORD.

22 BY THE COURT:

23 THE COURT: All right. We need to put a couple of
24 things on the record. (Inaudible.) Mr. Weidner,
25 whenever you're ready.

1 MR. WEIDNER: Yes, ma'am. I understand that the
2 State intends to offer the two statements that I had, in
3 motions practiced, objected to, to recorded statements.
4 And I wish to renew my motion now and my objection to
5 both of those for the record.

6 THE COURT: And you found a basis for your
7 objection other than your prior argument yesterday. Is
8 that correct?

9 MR. WEIDNER: Yes, ma'am. I'm relying on my prior
10 argument.

11 THE COURT: All right. Respectfully, I'm denying
12 that motion.

13 MR. WEIDNER: Yes, ma'am.

14 THE COURT: They are statements. I think they
15 (inaudible) and they show inconsistency, and I think
16 it's appropriate to put them in.

17 There's one other issue we need to put on the
18 record.

19 MR. WEIDNER: The only other issue, I think, that
20 we're referring to is, in our efforts to redact out
21 portions of the tapes that would address my client's
22 prior conviction or prior record, we inadvertently
23 redacted some language that I had asked to be included,
24 specifically, that, when the officer asked my client
25 about why would Shabazz be pointing a finger at you, my

1 client responds, well, he knows more than he's letting
2 on and he knows who was involved, and that's why he's
3 pointing a finger at me.

4 That's kind of important language that I had not
5 wanted redacted. And we've agreed that the appropriate
6 solution is that I can ask that question of the officer,
7 and we're going to take care of it that way.

8 THE COURT: And he's going to say yes, in fact, he
9 did say that. Obviously, we're not going to talk about
10 any prior record.

11 MR. WEIDNER: Right. And I think that was -- was
12 that the other issue?

13 MR. BANNON: Yeah. I don't think that there's
14 anything else, your Honor. In fact, that should take
15 care of it.

16 THE COURT: Okay. All right. Well, let's go ahead
17 then. You're good to go to bring the jury in?

18 BAILIFF: Yes, ma'am. I'm good to go.

19 THE COURT: Bring them on in.

20 JURORS ENTER COURTROOM.

21 BAILIFF: The jury is seated, your Honor.

22 THE COURT: Thank you. Welcome back, ladies and
23 gentlemen. I trust you had a good lunch. At this time,
24 we're going to go ahead and continue the trial of this
25 case. Mr. Bannon, if you'll call your next witness.

1 MR. BANNON: Thank you, your Honor. The State
2 calls Agent Pierce.

3 THE COURT: Okay. Come on up.

4 MADAM CLERK: Place your left hand on the *Bible*,
5 and raise your right hand for me, sir. Do you solemnly
6 swear to truthfully answer all questions asked of you by
7 this Court, so help you God?

8 AGENT MICHAEL JAMES PIERCE: So help me God, I do,
9 yes, ma'am.

10 MADAM CLERK: Please be seated. State your name
11 and spell it for the Court.

12 AGENT MICHAEL JAMES PIERCE: Michael James Pierce.

13 AGENT MICHAEL JAMES PIERCE

14 DIRECT EXAMINATION, BY MR. BANNON:

15 Q Good afternoon, Agent Pierce.

16 A Sir.

17 Q Where do you work?

18 A I work for the Naval Criminal Investigative Service
19 right here in Beaufort.

20 Q And what does that mean, exactly?

21 A We're a federal civilian law enforcement agency,
22 mainly responsible for handling -- handling criminal
23 activity that has some type of Navy or Marine Corps
24 nexus to it.

25 Q Okay. And where are you currently stationed?

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DIRECT - PIERCE

ORIGINAL

1 A My office is on Marine Corp Air Station, Beaufort.

2 Q And were you ever in the service?

3 A I was, yes, sir.

4 Q What branch?

5 A United States Marine Corps.

6 Q Okay. And are you still in the service, or is that
7 terminated?

8 A That has terminated, sir. I -- I retired after 20
9 years in the Marine Corps.

10 Q And did you work -- or was your work involved in
11 criminal investigations when you were with the Corps, as
12 well?

13 A It was, yes, sir, for 15 years of my Marine Corps
14 time.

15 Q Okay. And in October of 2010, were you a civilian
16 at that point?

17 A I was, yes, sir.

18 Q Okay. And were you still stationed here at the Air
19 Station here in Beaufort?

20 A Yes, sir, I was.

21 Q Okay. Were you working on October 13th of 2010?

22 A I was, yes, sir.

23 Q Okay. And was there a meeting set on that date?

24 A There was.

25 Q Okay. Who was at that meeting?

1 A Detective Chapman from Beaufort County. He had
2 contacted a fellow co-worker of mine, Stephanie Rushtan
3 (phonetic spell), and asked her if she could arrange to
4 use our interview room to interview a Marine regarding a
5 case that he was working on.

6 Q And do you know what that Marine's name was?

7 A I don't recall without my notes, sir, the Marine's
8 name. I know he was a staff sergeant in the Marine
9 Corps. I don't recall his name.

10 Q Was it a Staff Sergeant Shawn Boyd?

11 A Boyd was the last name, yes, sir.

12 Q And why were you meeting with Investigator Chapman
13 and Staff Sergeant Boyd?

14 A Detective Chapman had let Stephanie know that Staff
15 Sergeant Boyd's vehicle fit the description of a vehicle
16 used in an armed robbery somewhere in Beaufort County;
17 and that he had wanted to interview Staff Sergeant Boyd
18 regarding that armed robbery and his potential vehicle's
19 use in it; and just asked if he could use out -- it
20 could be a room to orchestrate that.

21 Q Okay. And so, this was out at the Air Station.

22 A It was, yes, sir.

23 Q And was it during the daytime, the night time?

24 A It was during the day, some time around lunch time,
25 sir.

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DIRECT - PIERCE

ORIGINAL

1 Q Okay. And during the interview with Staff Sergeant
2 Boyd, did anything unusual occur?

3 A As far as the interview with Staff Sergeant Boyd
4 I'm not privy to anything that happened. I wasn't in
5 that interview room with him. While he was being
6 interviewed by Detective Chapman, Agent Rushtan, my co-
7 worker, went to the Seven-Day Store, which is across the
8 street. She walked over there. When she came back, she
9 told me that there was two individuals in the vehicle
10 that met the description of who Detective Chapman might
11 have been looking for.

12 Q Okay. And so, when she tells you that, what do you
13 do?

14 A I took my camera and I went outside and attempted
15 to take the best I could of photographs of the
16 individuals that were in the vehicle so I could show
17 them to Detective Chapman.

18 Q Okay.

19 Q And did you take any photographs?

20 A I did. I took several photographs, yes, sir.

21 Q Okay. And how many people did you take photographs
22 of?

23 A It was two individuals, sir.

24 Q Okay.

25 MR. BANNON: Permission to approach, your Honor.

1 THE COURT: You may.

2 BY MR. BANNON:

3 Q Agent, I'm going to show you what's been marked as
4 State's Exhibit 7 through 22. And if you could, take a
5 look at all these exhibits; and then, when you're done,
6 just indicate to me that you're finished.

7 A All finished, sir.

8 Q And what are they photographs of?

9 A These photographs are of a blue Ford Explorer that
10 was sitting in the parking lot where my offices is
11 aboard the Air Station, with at least one individual in
12 from the driver's seat that you can see. And then,
13 there were additional photographs. Once we realized
14 these individuals had no affiliation to be on base and
15 they weren't allowed to be on base, we called the
16 Provost Marshall's Office, which is the on-base police
17 department, and asked them to come escort these two
18 individuals off -- off base, because they had no
19 affiliation and they shouldn't have been there.

20 Q Okay.

21 A So, while they -- the military police showed up so
22 they could escort them off base, they took photographs
23 of the entire event, so we could see exactly who was
24 getting out of the vehicle.

25 Q Okay. So, they were taken off base, but they

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DIRECT - PIERCE

ORIGINAL

1 weren't arrested.

2 A They were not, no, sir.

3 Q Are those photographs fair and accurate depictions
4 of the two people who arrived -- who came on the base in
5 the SUV, and then were escorted off by the Military
6 Police?

7 A They are, yes, sir. I took every one of these
8 photographs myself.

9 MR. BANNON: Your Honor, the State would move
10 State's Exhibits 7 through 22 into evidence at this
11 time.

12 THE COURT: Is there any objection?

13 MR. WEIDNER: If we could approach on that.

14 THE COURT: You may.

15 OFF-THE-RECORD BENCH CONFERENCE,

16 OUT OF HEARING OF JURORS.

17 END BENCH CONFERENCE.

18 BY MR. BANNON:

19 MR. BANNON: Okay, your Honor, so I would ask that
20 State's Exhibits 8, 18, 19, 20, and 22 be admitted into
21 evidence.

22 THE COURT: Without objection.

23 ITEMS IDENTIFIED AS PHOTOGRAPHS

24 MARKED STATE'S EXHIBIT NUMBERS

25 8, 18, 19, 20, AND 22, ADMITTED AS

1 EVIDENCE.

2 BY MR. BANNON:

3 Q . Were you present -- well, let me ask you a
4 question. Do you see anyone in the courtroom today who
5 are one of the individuals who came on the base in the
6 dark SUV?

7 A I do, yes, sir.

8 Q Could you point him out for us.

9 A The gentleman sitting to my left right over here.

10 Q Okay. And what color shirt is he wearing?

11 A Brown with white stripes, sir.

12 Q Okay.

13 MR. BANNON: Let the record reflect the witness
14 identified the defendant.

15 BY MR. BANNON:

16 Q And were you present -- or, did he ever identify
17 himself?

18 A To me, he did not. I don't recall if the Military
19 Police asked for identification when they escorted them
20 to the front gate. He did not identify himself to me,
21 no.

22 Q Okay. So, you didn't get a name, but that's the
23 person who you saw on the base.

24 A That's exactly right, yes, sir.

25 Q Okay. And were you ever able to determine who was

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CROSS - PIERCE

ORIGINAL

1 the owner of the car that they were driving onto the
2 base?

3 A We did, yes, sir.

4 Q And who is the owner of that vehicle?

5 A Staff Sergeant Boyd.

6 Q Okay. Now, was the car returned to Staff Sergeant
7 Boyd, as far as you know?

8 A Yes, sir. Yes.

9 MR. BANNON: No further questions, your Honor.

10 AGENT MICHAEL JAMES PIERCE

11 CROSS-EXAMINATION, BY MR. WEIDNER:

12 Q How are you, Agent Pierce?

13 A Good afternoon, sir.

14 Q All right. So, civilians aren't allowed on base
15 unless they're sponsored aboard, right?

16 A That's exactly right.

17 Q And those two individuals had not been properly
18 sponsored aboard.

19 A As far as I know, they were not, yes, sir.

20 Q And you said that they fit the basic description of
21 someone that Investigator Chapman had told you he was
22 looking for.

23 A Yes, sir, that's right.

24 Q Was basic description heavy-set, black guy skinny,
25 black guy.

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CROSS - PIERCE

ORIGINAL

1 A Large -- large black male and an older, smaller,
2 black male, I believe, yes, sir.

3 Q Anymore to it than that?

4 A Not that I recall right now, no, sir.

5 Q Okay. So, it could have been any combination of
6 large, black males and small, black males.

7 A Sure.

8 Q Just happened to be these two guys, right?

9 A Yes, sir.

10 Q And you said that you -- was it you or was it your
11 co-worker that interviewed Staff Sergeant Boyd?

12 A I did not. I don't believe my co-worker did
13 either. I think he was only interviewed by Detective
14 Chapman. If she sat in on the interview, I just don't
15 recall if she had or not, but I did not.

16 Q Okay. Now, what'd you do? You called over the
17 squadron and said, hey, I want this Marine over here
18 now; let's talk to him.

19 A Agent Rushtan probably did ask to -- ask -- she
20 probably called his command, Sergeant Major, take --
21 send this Marine down to R.F. office to be interviewed.

22 Q All right. Now, as part of that work-up of having
23 that Marine come over, did you do a sort of a normal on
24 the Marine in terms of checking whether or not the
25 Marine had weapons registered or anything like that?

3-20-12 STATE V. SEABROOK

CROSS - PIERCE

ORIGINAL

1 A I believe Agent Rushtan did do a Clear-Out. Clear-
2 Out is an on-base data base for law enforcement
3 purposes. She did check the CLEOT for Detective
4 Chapman, yes, sir.

5 Q Right. And that's because, if a Marine's going to
6 have a weapon on the base, they've got to have them sent
7 over to the L.F. Department, to the armory and LTI,
8 which I forget what that means, but checked over, and
9 then, they can store them in the armory.

10 A That's right, yes, sir.

11 Q So, did you all check? Did Staff Sergeant Boyd
12 have any weapons?

13 A I didn't do the check, so I don't know if he had
14 any or not, sir.

15 MR. WEIDNER: Okay. No further questions.

16 THE COURT: Nothing further?

17 MR. BANNON: No, your Honor.

18 THE COURT: All right.

19 MR. BANNON: May this witness be excused?

20 THE COURT: Any objection to Agent Pierce being
21 excused from anyone?

22 MR. WEIDNER: No, ma'am.

23 THE COURT: You're excused, sir. Thank you.

24 AGENT PIERCE: Thank you.

25 THE COURT: Mr. Bannon, call your next witness.

1 MR. BANNON: Yes, your Honor. The State calls
2 Investigator Brian Baird.

3 THE COURT: Okay.

4 MADAM CLERK: Place your left hand on the *Bible*,
5 and raise your right hand for me, please. Do you
6 solemnly swear to truthfully answer all questions asked
7 of you by this Court, so help you God?

8 INVESTIGATOR BRIAN MARK BAIRD: So help me, God, I
9 do.

10 MADAM CLERK: Please be seated. State your name
11 and spell it for the Court, please.

12 INVESTIGATOR BRIAN MARK BAIRD: Brian Mark Baird.
13 B/a/i/r/d.

14 INVESTIGATOR BRIAN MARK BAIRD

15 DIRECT EXAMINATION, BY MR. BANNON:

16 Q And Investigator Baird, can you tell us where you
17 work.

18 A I work for the Beaufort County Sheriff's Office.

19 Q How long have you been working there?

20 A Just over ten years.

21 Q And what do you do there for the Sheriff's Office?

22 A Currently, I'm master sergeant over the Special
23 Investigations Unit, and it handles Internal Affairs
24 Investigations and Special Investigations assigned by
25 the Sheriff from time to time, and other technical

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DIRECT - BAIRD

ORIGINAL

1 duties.

2 Q And did you have an opportunity on November the 3rd
3 of 2010 to talk to Mr. Terrance Seabrook?

4 A Yes, sir, I did.

5 Q Okay. And do you see the person that you spoke
6 with in the courtroom today?

7 A Yes, sir. He's seated next to the counselor there,
8 with a kind of tan-ish plaid shirt on.

9 Q Okay. And where did you speak with him?

10 A At my office in the Beaufort County Sheriff's
11 Office.

12 Q Was he in custody at that point, or was he out of
13 custody?

14 A He was in custody. He was brought to my office in
15 handcuffs. Once he arrived in my office, I had them
16 remove the handcuffs so we could talk.

17 Q Okay. And in your conversations with him, did you
18 read him sort of what's called and known as his *Miranda*
19 warnings?

20 A Yes, sir, I did.

21 Q And did you also have a written version of these
22 warnings?

23 A Yes, sir, I did. I read it to him off the form.

24 Q I'd like to have you take a look at what's been
25 marked State's Exhibit 30. And do you recognize that?

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DIRECT - BAIRD

ORIGINAL

1 A Yes, sir. This is the -- well, a copy of the
2 *Miranda* rights form used to advise him of his rights.

3 Q Okay. And I think that you said that you read it
4 to him from the form?

5 A That's correct. What I do is, I put it on a
6 clipboard, and I kind of hold it between he and I, very
7 close to each other, (inaudible) within inches of each
8 other, just kind of holding it like that so he could
9 read along with me as I read it to him.

10 Q Okay. So, you read it to him, and he also had a
11 chance to read it himself.

12 A As I was reading, yes, sir.

13 Q Okay. And at the end, did he sign the piece of
14 paper that the two of you had gone over?

15 A Yes, sir. He signed, actually, that he understood
16 his rights, and he also signed the waiver portion where
17 he was waiving his rights.

18 MR. BANNON: Your Honor, at this time, the State
19 would move State's Exhibit Number 30 into evidence.

20 THE COURT: Any objection?

21 MR. WEIDNER: No, ma'am.

22 THE COURT: Without objection.

23 ITEM IDENTIFIED AS WRITTEN VERSION

24 OF *MIRANDA* RIGHTS MARKED STATE'S

25 EXHIBIT NUMBER 30, ADMITTED AS EVIDENCE.

1 BY MR. BANNON:

2 Q Okay. And now, Investigator, if you could please
3 read to us, as you read to Mr. Seabrook, the rights.

4 A Yes, sir. Basically, I said this is a Beaufort
5 County Sheriff's Office Statement of Rights form. I
6 said your rights are:

7 *Before I ask you any questions, you*
8 *must understand what your rights are. You*
9 *have the right to remain silent. Anything*
10 *you say can and will be used against you in*
11 *a court of law.*

12 *You have the right to talk to an attorney*
13 *before I ask you any questions, and to have*
14 *him or her present with you during this*
15 *questioning. If you decide to answer questions*
16 *now without an attorney present, you will*
17 *still have the right to stop answering at*
18 *any time.*

19 And it says:

20 *I've read this statement of my rights,*
21 *and I understand what my rights are.*

22 I asked if is that all true, correct. He said,
23 yes. And that's when I gave it to him to sign that he
24 understood that.

25 Okay. Then, the next portion is the waiver

1 portion. I said:

2 *This is the waiver of your rights.*

3 Then I said:

4 *I am willing to make a statement and*
5 *answer questions. I do not want an attorney*
6 *at this time. I understand and know what I*
7 *am doing. No promises or threats have been*
8 *made. No pressure or coercion of any kind*
9 *used against me.*

10 I asked him if that was all true and correct, and he
11 said it was. And then, he signed that portion of the
12 form waiving his rights, agreeing to talk to me.

13 Q When you spoke with him, did he seem to understand
14 the conversation that you two were having?

15 A Yes, sir.

16 Q Okay. Did he appear to be under the influence of
17 any drugs or alcohol at the time you were talking to
18 him?

19 A No, sir.

20 Q Did you make any threats or use any force to get
21 him to speak with you that day?

22 A No, sir.

23 Q Okay. Did he make any complaints, you know, about
24 being in any discomfort or needing anything when you
25 were speaking with him?

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DIRECT - BAIRD

ORIGINAL

1 A No, sir, not at all.

2 Q Okay. And once you were finished going over the
3 *Miranda* rights form -- I'll take that from you -- did he
4 indicate that he wished to make a statement?

5 A Yes, sir, eventually, he agreed to talk to me about
6 what had happened.

7 Q Okay. And was Investigator Chapman present for the
8 majority of that interview?

9 A Once he agreed to tell us what happened, yes, sir.

10 Q Okay.

11 A He came into the room. Mr. Seabrook was using
12 what's commonly referred to as street names for
13 individuals. I wasn't familiar with all the street
14 names. I didn't know who he was talking to and talking
15 about. So, at that point, I went and got Mr. Chapman to
16 come from my office, where he was watching on the
17 closed-circuit T.V. He came to the room, the interview
18 room, and actually sat down, because I needed Mr.
19 Chapman to be able to see who they were talking about.

20 Q Okay. And once Investigator Chapman came into the
21 room, were you still present?

22 A For a short amount of time, and then I stepped out
23 of the room.

24 Q Okay. For the time that you were present, did Mr.
25 Seabrook indicate that he wished to speak to you and

1 Investigator Chapman?

2 A Yes, sir. (Inaudible.) He said, *I'll tell you*
3 *what really happened*, is what he said. And then, he
4 began to tell the story.

5 Q Okay. To your knowledge, was the entirety of that
6 interview recorded by Investigator Chapman?

7 A Yes. When he came in the room, he had brought his
8 recorder with him, and (inaudible.)

9 MR. BANNON: Okay. Thank you, your Honor. No
10 further questions.

11 THE COURT: Any questions?

12 INVESTIGATOR BRIAN MARK BAIRD

13 CROSS-EXAMINATION, BY MR. WEIDNER:

14 Q Master Sergeant Baird, --

15 A Yes, sir.

16 Q -- were you actually there during the interview, or
17 you were just there for the purposes of you read him the
18 *Miranda* rights, and then did you leave, or did you
19 actually sit in for part of the interview?

20 A Just for the very -- just a couple of minutes of
21 it. Then, I stepped out. Once I saw that they were
22 continuing on the path of discussing the issue, to make
23 sure that what he had told me is what he was also
24 telling Mr. Chapman.

25 Q And during the -- I'm sorry. Go ahead.

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CROSS - BAIRD

ORIGINAL

1 A I said, *and at that point, I stepped out.*

2 Q And during any portion of that interview that you
3 had with him -- let me rephrase that. At every portion
4 of the interview that you had with him, he told you he
5 didn't have anything to do with the robbery at Russ's
6 store.

7 A What he said was that he didn't do the actual
8 robbery. He said he discussed it with another
9 individual to -- to do it. Had looked at, possibly even
10 handled the gun, but did not actually go into the store
11 to do the robbery.

12 Q Right. He said that somebody had approached him,
13 and he said he didn't want anything to do with it.

14 A Yes, sir.

15 MR. WEIDNER: Nothing further.

16 THE COURT: Anything further?

17 MR. BANNON: No, your Honor.

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

19 Any objection to Master Sergeant Baird being excused
20 from anyone?

21 MR. BANNON: No, your Honor.

22 THE COURT: You're excused, sir.

23 A Okay.

24 THE COURT: Thank you. The State will call their
25 next witness.

1 MR. BANNON: Yes, your Honor. The State calls
2 Investigator Brian Chapman.

3 THE COURT: Come on up.

4 MADAM CLERK: Place your left hand on the *Bible*,
5 and raise your right hand for me, please. Do you
6 solemnly swear to truthfully answer all questions asked
7 of you by this Court, so help you God?

8 STAFF SERGEANT BRIAN CHAPMAN: Yes, ma'am, I do.

9 MADAM CLERK: Please be seated. State your name
10 and spell it for the Court, please.

11 STAFF SERGEANT BRIAN CHAPMAN: Staff Sergeant Brian
12 Chapman, C/h/a/p/m/a/n.

13 STAFF SERGEANT BRIAN CHAPMAN

14 DIRECT EXAMINATION, BY MR. BANNON:

15 Q And Investigator Chapman, where do you work?

16 A I'm employed at the Beaufort County Sheriff's
17 Office.

18 Q And what do you do there at the Sheriff's Office?

19 A I am supervisor for a group of investigators in
20 Hilton Head and Bluffton.

21 Q And how long have you been in the Sheriff's Office?

22 A I've been an employee in the Sheriff's Office since
23 November 2002.

24 Q And when you say that -- well, back in 2010, were
25 you still a supervisor then, of investigations?

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DIRECT - CHAPMAN

ORIGINAL

1 A No, sir, I was not.

2 Q What were you doing at that point in time?

3 A I was a general assignment criminal investigator
4 for the Northern Division in Beaufort County.

5 Q Okay. When you say that you were an investigator,
6 sort of, you know, in layman's terms, what does that
7 mean?

8 A Any major crimes that are reported to the Beaufort
9 County Sheriff's Office that require special attention
10 are assigned to a criminal investigators, and that was
11 what I was employed to do.

12 Q Okay. And were you working as a criminal
13 investigator on October the 4th of 2010?

14 A Yes, sir, I was.

15 Q And on that day, were you called out to 1702 Sea
16 Island Parkway in Saint Helena, South Carolina?

17 A Yes, sir, I was.

18 Q And why were you called out there?

19 A There had been a report to 911 of an armed robbery.

20 Q When you arrived on the scene, what did you do?

21 A I began collecting information from the responding
22 officers to assess the situation, to see if I needed to
23 call anyone else for help, and to figure out what was
24 going on, and to figure out what I needed to do.

25 Q Okay. And who was present on the scene when you

1 arrived?

2 A I believe Deputy Paul, Corporal Draisen, Corporal
3 Nelson, several other officers. And a gentleman by the
4 name of Sammy Washington was on the scene.

5 Q Okay. Was the scene secured when you arrived?

6 A Yes, it had already been secured by the patrol
7 officers.

8 Q Okay. Were you able to identify, I guess, who the
9 victim was or who called 911?

10 A Sean Kirkpatrick.

11 Q And were you able to speak with him?

12 A Yes, I was.

13 Q And was he cooperative with you?

14 A Yes, sir.

15 Q And I believe you said there was another individual
16 there, Sammy Washington.

17 A Yes, sir.

18 Q Did you have an opportunity to speak with him?

19 A I did.

20 Q And was Mr. Washington cooperative?

21 A No, sir, he was not.

22 Q Did you notice anything about him?

23 A I did.

24 Q What was that?

25 A He was intoxicated.

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DIRECT - CHAPMAN

ORIGINAL

1 Q Okay. And as part of your investigations, was the
2 K-9 team utilized?

3 A Yes, sir. We contacted the bloodhound tracking
4 team to respond to our location.

5 Q And did they respond?

6 A They did.

7 Q Okay. And to your knowledge, did they find anyone
8 or discover any evidence during their investigation?

9 A They tracked or traced just out from the store
10 called Grayson Allen Road. Their like a -- it's
11 basically a dirt road. There's another dirt portion
12 just off of Sea Island Parkway, and they tracked in that
13 area. At that point, they lost the scent. And no other
14 evidence was recovered by them.

15 Q Okay. And now, when you come to a crime scene, is
16 there -- what physical evidence are you looking for when
17 you come to a crime scene?

18 A Anything. See if the suspect left anything behind,
19 fingerprints, clothing, money that they may have dropped
20 if they were running away. Anything.

21 Q Okay. Do you have any training in sort of lifting
22 latent fingerprints?

23 A Yes, sir.

24 Q Okay. What about in collection of DNA?

25 A Yes, sir.

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DIRECT - CHAPMAN

ORIGINAL

1 Q Okay. And in this particular situation, did -- or
2 based on your investigation, did you attempt to lift any
3 fingerprints?

4 A No, sir, I didn't.

5 Q Okay. Were you able to recover or view at any
6 point in time the security video?

7 A I did.

8 Q And was there an area of the store that you were
9 particularly interested in?

10 A There was. In the video, you can clearly see an
11 individual with a blue shirt and white stripe get out of
12 a dark-colored SUV and go to an area on the side of the
13 store where the men's restroom is, and goes in that
14 direction. That was previously. And then, later on,
15 you can see the same individual exit that same area and
16 begin the incident.

17 Q Okay. And I think that you said that you didn't
18 attempt to take any fingerprints?

19 A Yes, sir.

20 Q Now, are you talking about the men's room?

21 A Yes, sir.

22 Q Okay. Well, I guess, why did you decide not to try
23 to take any fingerprints in that area?

24 A After reviewing the video, you can clearly see that
25 the subject has gloves on his hands. And when I went

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DIRECT - CHAPMAN

ORIGINAL

1 inside the men's bathroom and reviewed the area where
2 the suspect was in there without gloves, the door and
3 the area where he would have been had soap and dirt and
4 other contaminants -- contaminants on it. If I made an
5 attempt, it would just mess up everything I have. I
6 wouldn't be able to get any results from it.

7 Q Okay. Did you make any attempts to take any swabs
8 of DNA from the bathroom area?

9 A I did.

10 Q Okay. Where did you attempt to swab, or where did
11 you swab?

12 A I did -- I swabbed the area of the toilet. Figured
13 maybe at the time frame that the suspect's been in
14 there, he maybe used the bathroom, so I swabbed the area
15 of the toilet in that area, and also, the inside door
16 handle. If he was in -- again, if he was in there for
17 an extended period of time, he may have touched the
18 inside handle.

19 MR. BANNON: Permission to approach, your Honor.

20 THE COURT: You may.

21 BY MR. BANNON:

22 Q I'd like to show you what has been marked as for
23 evidence State's Exhibits 3 and 4. If you'd take a look
24 at those. When you're collecting DNA evidence, what do
25 you do in attempt to preserve that evidence?

1 A If it's -- if I'm collecting a wet sample, I allow
2 it to dry. And then, if it's a -- if it's a dry sample,
3 I'll wet the swabs, collect the dry sample that way to
4 make it wet. Then allow that to dry. Then, take it,
5 put it in paper evidence bag.

6 Q Okay. And did you recognize State's Exhibits 3 and
7 4?

8 A I do.

9 Q And what are they? Exhibits 3 and 4.

10 A This one here, this is a paper evidence bag
11 containing two swabs from the inside bathroom door
12 handle, with this case number, regarding this incident.
13 My last name. *Collected by Chapman.* This is my
14 handwriting and my signature on the bottom. This one is
15 a paper evidence bag and two swabs from the toilet. And
16 then, the case number from this incident; my name,
17 indicating I'm the one that collected; my badge number;
18 and then my signature is here. That's also my
19 handwriting.

20 Q Okay. And so, did you put these items under these
21 paper bags?

22 A Yes, I did.

23 Q Okay. And did you seal them?

24 A I did.

25 Q Okay. And in examining them, do they appear to be

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DIRECT - CHAPMAN

ORIGINAL

1 the same items that you collected on the date of October
2 the 4th, 2010?

3 A Yes, sir, it is.

4 MR. BANNON: Your Honor, at this time, the State
5 would move State's Exhibit 3 and 4 into evidence.

6 THE COURT: Any objection?

7 MR. WEIDNER: No, ma'am.

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

9 ITEM IDENTIFIED AS EVIDENCE BAG
10 CONTAINING TWO SWABS FROM INSIDE
11 BATHROOM, DOOR HANDLE, MARKED STATE'S
12 EXHIBIT NUMBER 3, ADMITTED AS EVIDENCE.

13 ITEM IDENTIFIED AS EVIDENCE BAG
14 CONTAINING TWO SWABS FROM TOILET,
15 MARKED STATE'S EXHIBIT NUMBER 4,
16 ADMITTED AS EVIDENCE.

17 BY MR. BANNON:

18 Q I know you said you spoke to Mr. Washington
19 initially, but after taking a look at the video, did you
20 ever re-interview him?

21 A I attempted again. And several other officers had
22 attempted to talk to Mr. Washington in an attempt to
23 gain information. And he was belligerent. Refused to
24 cooperate.

25 Q Okay. And now then, so, you respond to the scene;

1 you collect your physical evidence; you have a copy of
2 this videotape. Could you please tell us about your
3 investigation. Sort of armed with what you found out at
4 the scene, would you tell us what your next step is.

5 A Making contact with the people in the community to
6 see if anybody had any information is my first starting
7 point.

8 Q Now, were you ever able to determine who the owner
9 was of the car that's seen in the video?

10 A Yes, sir.

11 Q And who did you determine to be the owner of that
12 car?

13 A Shawn Boyd.

14 Q And did you ever meet with Mr. Boyd?

15 A Yes, I did.

16 Q And where did you meet with him?

17 A United States Marine Corps Air Station.

18 Q Okay. And could you give us a description of Mr.
19 Boyd.

20 A Mr. Boyd is 5-10, probably about 250 pounds, white
21 male. He had a Marine-style hair cut, high and tight.

22 Q Okay. And why did you want to speak with Mr. Boyd?

23 A His vehicle had been identified as possibly being
24 involved in the robbery, so I wanted to make contact
25 with him to see what he knew. At the time, I just had a

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DIRECT - CHAPMAN

ORIGINAL

1 name. I didn't know yet Mr. Boyd was a white male. I
2 wanted to talk to him to see what he knew.

3 Q Were you able to determine what the license plate
4 was of Mr. Boyd's vehicle?

5 A I was.

6 Q And do you know that offhand?

7 A Not off the top of my head, no, sir.

8 Q Okay. Well, let me ask you something. Were you
9 able to, during the course of your investigation, were
10 you able to observe a similar SUV bearing the same
11 license plate of car that belonged to Mr. Boyd?

12 A Yes, I did.

13 Q Okay. Where did you see that car?

14 A I saw that car parked in a driveway on an area
15 called , the residence of Shatike Shabazz.

16 Q Okay. And when you observed this car at Mr.
17 Shabazz' residence, did you take any photographs?

18 A Yes, I did.

19 MR. BANNON: Permission to approach, your Honor.

20 THE COURT: You may.

21 BY MR. BANNON:

22 Q I'd like to have you take a look at what's been
23 marked as State's Exhibits 5 and 6. And do you
24 recognize those photographs, sir?

25 A Yes, sir.

1 Q And are they -- what are they of?

2 A These are photographs I took from my vehicle of
3 Shawn Boyd's Explorer parked in the driveway of the
4 residence of Shatike Shabazz.

5 Q Okay. And are they a fair and accurate depiction
6 of that vehicle?

7 A Yes, sir, they are.

8 MR. BANNON: All right, your Honor, at this time,
9 the State would move Exhibits 5 and 6 into evidence.

10 THE COURT: Without objection?

11 MR. WEIDNER: Without objection.

12 THE COURT: 5 and 6 are in evidence.

13 MR. BANNON: And beg the Court's indulgence, your
14 Honor.

15 ITEMS IDENTIFIED AS PHOTOGRAPHS

16 MARKED STATE'S EXHIBIT NUMBERS 5

17 AND 6, ADMITTED AS EVIDENCE.

18 BY MR. BANNON:

19 Q Getting back to the license plate, would your
20 incident report maybe refresh your recollection as to
21 what the license plate was that you were looking for Mr.
22 Boyd's vehicles?

23 A Yes, sir, it would.

24 Q I'm going to show you a copy of your police report
25 -- or a one-page section out of it. And if you could

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DIRECT - CHAPMAN

ORIGINAL

1 take a look at that, and indicate to me if it's
2 refreshed your recollection.

3 A Yes, sir, it has.

4 Q What was the license plate?

5 A State of South Carolina. as in . as in

6 . as . .

7 Q Okay. And it's tough to make out on those
8 photographs, but is that the same vehicle as the license
9 plate that corresponds to Mr. Boyd's vehicle?

10 A Yes sir, it is.

11 Q Thank you, sir.

12 A Yes, sir.

13 Q I'll take that page back now. Now, I think, going
14 back a little bit to your interview with Mr. Boyd, did
15 anything unusual happen while you were out there at the
16 Marine Corps Air Station?

17 A For the Mr. Boyd specifically, no. But while we
18 were conducting the interview, the vehicle that Mr.
19 (inaudible) -- that was involved in the incident, was
20 actually parked in the parking lot at the NCIS office,
21 and there were a several individuals inside of the
22 vehicle.

23 Q Okay. And were you ever able to determine who was
24 inside the vehicle?

25 A I believe special Agent Pierce took several

1 pictures of the two individuals that were in the
2 vehicle. He forwarded those to me. The large
3 individual identified as Shatike Shabazz. And the
4 second individual, I didn't have any idea who he was. I
5 didn't know his name. I had never seen him before.

6 Q Okay. And was Mr. Shabazz ever arrested in
7 connection with this crime?

8 A Yes, he was.

9 Q And could you -- what was his description that, you
10 know, the height, the weight, at the time of his arrest?

11 A Six-foot-four. 300 pounds maybe. Right around
12 there.

13 Q Okay. And the second individual who was with Mr.
14 Shabazz at the Air Station? Did you ever have an
15 opportunity to speak with him?

16 A I did.

17 Q Okay. And do you see the person that you spoke
18 with in the courtroom today?

19 A Yes, I do.

20 Q And could you point him out for us.

21 A It's actually the gentleman sitting right next to
22 counsel. Got a brown shirt with white stripes on it.

23 Q And well, when you were speaking with him, were you
24 able to determine who he was?

25 A Yes.

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DIRECT - CHAPMAN

ORIGINAL

1 Q And who is he?

2 A Terrance Lamont Seabrook.

3 Q And where did you speak with him?

4 A In my office.

5 Q And was Mr. Seabrook in custody at the time when
6 you spoke with him?

7 A Yes, he was.

8 Q Okay. And what day did you speak with him?

9 A I don't remember the exact date. November. First
10 part of November maybe.

11 Q Okay. And when you were speaking with him, was he
12 in handcuffs or was he out of handcuffs?

13 A He was in handcuffs.

14 Q Did he appear to be under the influence of any
15 drugs or alcohol at the time you spoke to him?

16 A No, he did not.

17 Q Did you have any problems speaking with him? Did
18 he understand everything that you were saying, and you
19 were able to understand everything he was saying?

20 A He understood everything that we were talking
21 about.

22 Q Okay. And did you make him any promises in order
23 to get him to try to speak with you?

24 A I did not make him any promises.

25 Q Okay. Did you make any threats towards him to try

1 to get him to speak with you?

2 A No, I did not.

3 Q Okay. Did he have any complaints of any physical
4 ailments or any needs or wants that he needed when you
5 were speaking with him?

6 A No, he did not.

7 Q And when you were speaking with him, did you go
8 through what are commonly known as *Miranda* warnings?

9 A Yes, I did.

10 Q Okay. Did you do that orally, or just orally?

11 A I also put Beaufort County Sheriff's Office *Miranda*
12 form in front of us and read off of that.

13 Q Okay. I'd like to have you take a look at what has
14 been marked as State's Exhibit Number 31. Do you
15 recognize it?

16 A Yes, I do.

17 Q And what is it?

18 A This is the Beaufort County Sheriff's Office
19 statement of *Miranda* rights in regards to this case.
20 The State *Miranda* rights.

21 Q And you said you went through it with Mr. Seabrook.

22 A Yes, I did.

23 Q Okay. When you were done with it, did he sign it?

24 A No, he did not sign it.

25 Q And why not?

1 A His handcuffs were still on behind his back, so he
2 was not able to hold a pen and write on the paper.

3 Q Okay. Could you please -- you said you read it to
4 him. Could you go through the form with us just as you
5 went through it to him.

6 A Sure. Whereby, this is -- I'm going to read you
7 your Miranda rights. Before I ask you any
8 questions, you must understand your rights.

9 The first one is, you have the right to
10 remain silent. Do you understand that? Yes
11 or no?

12 Anything you say can and will be used
13 against you in a court of law. Do you
14 understand that? Yes or no?

15 You have the right to talk with an
16 attorney for advice before we ask you any
17 questions. Do you understand that? Yes
18 or no?

19 If you cannot afford an attorney, one
20 will be appointed for you before any questions,
21 if you wish? Do you understand that? Yes or
22 no?

23 If you decide to answer questions now
24 without an attorney, you still have the
25 right to stop answering at any time.

1 *You also have the right to stop answering*
2 *at any time until you talk to an attorney.*

3 *Do you understand that? Yes or no?*

4 The last part is called a waiver of rights. The
5 first one says:

6 *I have read the Statement of My Rights*
7 *and I understand what my rights are.*

8 If they can't read or don't understand it, I would
9 move to the second one:

10 *I cannot read, and the statement has*
11 *been read to me sufficiently, so that I*
12 *understand what my rights are.*

13 And then, the last one:

14 *I am willing to make a statement and*
15 *answer questions. I do not want an attorney*
16 *at this time. I understand and I know what*
17 *I'm doing. No promises or threats have been*
18 *made to me, or no pressure or coercion of*
19 *any kind has been used against me.*

20 Then, if they weren't handcuffed, I would have him
21 sign it. And I will ask him how many grades he
22 completed in school, and have that information. And
23 then, again, I would have them sign it and complete the
24 date and time. Then I would sign it, as well.

25 Q Okay. And once you went through that, did Mr.

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DIRECT - CHAPMAN

ORIGINAL

1 Seabrook indicate whether or not he was willing to speak
2 with you?

3 A He did.

4 MR. BANNON: Your Honor, at this time, the State
5 would move State's Exhibit 31 into evidence.

6 THE COURT: Any objection?

7 MR. WEIDNER: No, ma'am.

8 THE COURT: In evidence without objection.

9 ITEM IDENTIFIED AS MIRANDA RIGHTS
10 FORM AND WAIVER OF RIGHTS MARKED
11 STATE'S EXHIBIT NUMBER 31, ADMITTED
12 AS EVIDENCE.

13 BY MR. BANNON:

14 Q And now, when you were speaking with Mr. Seabrook,
15 could you sort of give us a physical description like,
16 how tall is he? Do you know?

17 A I'd say probably between 5-7 and 5-10, 130 pounds.

18 Q Okay. And do you know where he was living at the
19 time?

20 A My understanding he was possibly living with his
21 mother in

22 Q Okay. And , is in the
23 area of Russ store, the store that was involved in this
24 particular case?

25 A Yes, it is.

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DIRECT - CHAPMAN

ORIGINAL

1 Q Now, earlier, I asked what date you spoke with Mr.
2 Seabrook. On the Sheriff's Office form, could you tell
3 us what day it's dated there?

4 A It's date November 2nd of 2010.

5 Q Okay. How many times did you interview Mr.
6 Seabrook?

7 A I interviewed Mr. Seabrook twice.

8 Q Okay. And once on the second, obviously. And when
9 was the second time?

10 A The following day.

11 Q And was that the time that we just heard
12 Investigator Baird speak about?

13 A Yes, it was.

14 Q Okay. Let's talk about the first time that you
15 spoke with Mr. Seabrook on November the 2nd. Was that
16 interview recorded?

17 A Yes, it was.

18 Q Okay. I'd like to show you what has been marked as
19 State's Exhibit Number 28, and tell me what it says on
20 there.

21 A This is a copy of an interview with Terrance
22 Seabrook.

23 Q Okay.

24 MR. BANNON: Your Honor, at this time, the State
25 would move Exhibit 28 into evidence.

3-20-12 STATE V, SEABROOK

DIRECT - CHAPMAN

ORIGINAL

1 THE COURT: Without objection?

2 MR. WEIDNER: No.

3 THE COURT: Subject to prior.

4 ITEM IDENTIFIED AS COPY OF INTERVIEW

5 WITH TERRANCE SEABROOK MARKED STATE'S

6 EXHIBIT NUMBER 28, ADMITTED AS EVIDENCE.

7 MR. BANNON: And permission to publish, your Honor?

8 THE COURT: You may publish.

9 MR. BANNON: I apologize, your Honor, my computer's
10 gone to sleep.

11 BY THE COURT:

12 THE COURT: Ladies and gentlemen of the jury, if you
13 would like to stand and take a stretch. Does anyone
14 need a break? Do you all need a break?

15 RESPONSES FROM JURORS.

16 THE COURT: You need some coffee. All right,
17 ladies and gentlemen. We try to be very user friendly
18 around here, at least in my courtroom. We are going to
19 take a very brief break. I am going to excuse you all
20 to go back to the jury room. Again, do not discuss this
21 case. It wouldn't be appropriate.

22 Feel free to bring a cup of coffee back. whatever
23 you need to keep you going. All right? Thank you.

24 OFF THE RECORD.

25 BACK ON THE RECORD.

1 BY THE COURT:

2 THE COURT: All right. You all ready to bring the
3 jury in?

4 MR. BANNON: Yes, your Honor.

5 THE COURT: Let's bring them in.

6 JURORS ENTER COURTROOM.

7 BAILIFF: The jury is seated, your Honor.

8 THE COURT: Thank you. Welcome back, ladies and
9 gentlemen. All right. Let's continue.

10 MR. BANNON: Thank you, your Honor. And at this
11 time, with the Court's permission, I'll publish what has
12 been entered into evidence as State's Exhibit Number 28.

13 THE COURT: All right.

14 STAFF SERGEANT BRIAN CHAPMAN

15 CONTINUE DIRECT EXAMINATION, BY MR. BANNON:

16 STATE'S EXHIBIT NUMBER 28, INTERVIEW

17 WITH TERRANCE SEABROOK FROM NOVEMBER 2,

18 2010, PLAYING.

19 BY MR. BANNON:

20 Q And so, that was the interview from November the
21 2nd.

22 A Yes, sir.

23 Q And now, you could hear a what sounded like a
24 woman's voice. Who else was present in that interview?

25 A Sergeant Christine Wilson.

B-20-12 STATE V, SEABROOK

DIRECT - CHAPMAN

ORIGINAL

1 Q Now, was that her voice that we heard?

2 A Yes, it was.

3 Q Okay. Now, I think we had spoken a little bit
4 about this, but you had an opportunity to sit down with
5 Mr. Seabrook for a second time the next day. Is that
6 correct?

7 A Yes, sir, I did.

8 Q Okay. And were you in there for the entire
9 interview?

10 A No, not initially.

11 Q Okay. Who was in there with Mr. Seabrook before
12 you?

13 A That would be Master Sergeant Brian Baird.

14 Q Okay. And were you able to sort of observe what
15 was going on between Mr. Baird and the defendant?

16 A I was, through closed-circuit television.

17 Q Okay. And so, after Investigator Baird read the
18 defendant his *Miranda* warnings, what did you do?

19 A I begin watching this interview with him.

20 Q Okay. And at any point in time did you enter the
21 room?

22 A I did.

23 Q Okay. And did you conduct an interview with the
24 defendant?

25 A Yes, I did.

1 Q Okay. I'm going to show you what has been marked
2 State's Exhibit 29. And was that interview recorded?

3 A Yes, it was.

4 Q And could you take a look at what is marked as
5 State's Exhibit Number 29, and tell me if you recognize
6 it.

7 A This is a C.D. recording of the interview with
8 Terrance Seabrook on November 3, 2010.

9 Q Okay.

10 MR. BANNON: And your Honor, at this time, the
11 State would move State's Exhibit Number 29 into
12 evidence.

13 MR. WEIDNER: Subject to.

14 THE COURT: Subject to your prior objection, it's
15 in evidence.

16 ITEM IDENTIFIED AS C.D. OF INTERVIEW
17 WITH TERRANCE SEABROOK, NOVEMBER 3,
18 2010, MARKED STATE'S EXHIBIT NUMBER 29,
19 ADMITTED AS EVIDENCE.

20 MR. BANNON: Permission to publish, your Honor.

21 THE COURT: You may.

22 BY MR. BANNON:

23 Q So, I think it's fair to say that the second
24 statement differs from the first statement.

25 A Yes, sir.

B-20-12 STATE V, SEABROOK

DIRECT - CHAPMAN

ORIGINAL

1 Q Because, initially, in the first statement, and
2 correct me if I'm wrong, --

3 MR. WEIDNER: Objection, ma'am.

4 THE COURT: Don't lead, Mr. Bannon.

5 MR. WEIDNER: He's going to start testifying.

6 MR. BANNON: Well, --

7 THE COURT: Don't lead, Mr. Bannon.

8 MR. BANNON: I apologize, your Honor.

9 BY MR. BANNON:

10 Q Essentially, what was Mr. Seabrook's position on
11 his involvement in the robbery in the first interview?

12 A Well, he says he -- he wasn't there, but he put
13 himself as being with multiple people during the same
14 time. And he kept jumping from story to story. Then he
15 would go off a tangent that wasn't related to what we
16 were talking about. And he was with Stephanie. Then he
17 was with his mother. Then he was with another female
18 that he didn't know. And then he went back and he was
19 with Stephanie.

20 Q And what was his basic position during the second
21 interview that you conducted (inaudible).

22 MR. WEIDNER: Objection, ma'am.

23 THE COURT: Basis?

24 MR. WEIDNER: They've heard the tape. They can
25 assess it for themselves. What their asking -- what

1 he's asking for is to do an interpretation of what
2 they've heard. They know what they've heard.

3 THE COURT: You can ask the question, Mr. Bannon.

4 BY MR. BANNON:

5 Q So, essentially, what was his -- what was his story
6 the second time?

7 A Well, again, he changed his story multiple times.
8 He said he was -- first, during that afternoon, he was
9 with Mr. Shabazz and a couple of other people in the
10 vehicle. Then, he was -- later on he was with Mr.
11 Shabazz and his daughter in the vehicle. Then, later
12 on, it was just gone to Beaufort, and he was there all
13 night. Then he was with his mother. And then he was
14 back with Stephanie. And he kept changing again.

15 MR. BANNON: Thank you. No further questions.

16 STAFF SERGEANT BRIAN CHAPMAN

17 CROSS-EXAMINATION, BY MR. WEIDNER:

18 Q Staff Sergeant, good afternoon. All right, now, on
19 the 4th of October, you responded to the area, you said
20 secured the area and started trying to assess the
21 situation. All right?

22 A Yes, sir.

23 Q And you looked at the video that we saw earlier.

24 A Yes, sir.

25 Q And it was from that, that you decided that the

1 suspect for which you searched was a black male, five-
2 foot-seven and skinny.

3 A That, and what Mr. Kirkpatrick had told me.

4 Q All right. And then, the dogs came out and they
5 tracked up to the -- towards Fripp Island, right?

6 A That's correct.

7 Q Now, that's -- Bruiser's mom lives right up there,
8 right?

9 A I believe she said she lives on ,
10 which is the same general direction.

11 Q Right. And so, presumably, his adopted brother or
12 some of his other kin would be up that way, as well.

13 A Yes, sir.

14 Q And that could include his adopted brother, Quincy
15 Holmes.

16 A Yes, sir.

17 Q And that was the direction in which the person seen
18 in the video ran after the events we see in the video,
19 right?

20 A Yes, it was.

21 Q Now, on 6 and 7 October, you said you didn't try to
22 get fingerprints because the area was too contaminated.

23 A That's correct.

24 Q And you said it was contaminated it was soap and
25 other --

1 A There's different sources of contaminants on the
2 door and other areas that I knew would mess up my
3 processing.

4 Q Okay. But you went ahead and tried to get DNA,
5 right?

6 A Yes, sir.

7 Q All right. Wouldn't the contaminants affect that,
8 as well?

9 A Not necessarily, sir.

10 Q All right. Why is that?

11 A I'm not a scientist, so I couldn't testify what
12 exact breakdown is, but I know the certain contaminants
13 that mess up processing for fingerprints.

14 Q Okay. But you never even bothered to get DNA from
15 my client, did you?

16 A I don't believe so, sir.

17 MR. BANNON: Objection as to relevancy.

18 THE COURT: Overruled. You may ask it.

19 BY MR. WEIDNER:

20 Q Now, you also said that, in your notes you've got
21 written here, that you were receiving information --
22 turn the page. On the 6th and 7th you wrote that you
23 were, the 6th and the 7th, again was provided
24 information that a guy by the street name of Bruiser was
25 involved in the robbery. Who's talking to you, there?

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CROSS - CHAPMAN

ORIGINAL

1 A During my time at the Beaufort County Sheriff's
2 Office, I made multiple contacts with people. On Lady's
3 Island and Saint Helena is where I spent the majority of
4 my time. And I've handed out cards and contact
5 information. And from time to time, people in the
6 community, if they hear about events, they'll call me
7 and let me know about things. Generally, they wish to
8 remain anonymous, because they don't want to have their
9 name published in a report, so they'll call and leave me
10 messages. Call and say, hey, Mr. Chapman, this is what
11 I hear on the street.

12 Q So, who was that?

13 A That would have been one of those people.

14 Q And you didn't -- you don't know who that was?

15 A If they said they wish to remain anonymous, then I
16 wouldn't have taken down any of their information.

17 Q And you don't recall that now.

18 A No, sir, I don't.

19 Q But based upon that information, you set up an
20 interview with -- well, you apparently drove around
21 looking for a vehicle and found it at Shatike Shabazz,
22 Walter Jenkins', house, right?

23 A That's correct.

24 Q Okay. And then, you also tied that to the Marine,
25 Shawn Boyd.

1 A Correct, the vehicle was registered in Shawn Boyd's
2 name.

3 Q And so, you set up an interview.

4 A Correct.

5 Q That vehicle was in the parking lot on the 12th,
6 right?

7 A I don't remember the exact date, but when I went to
8 the Air Station, that vehicle was there.

9 Q It was the day that you went to the Air Station?

10 A Yes, sir.

11 Q And you don't recall what day that was?

12 A Not off the top of my head, no, sir, I don't.

13 Q If I was to show you a copy of your incident -- of
14 your report, would that help refresh your recollection
15 of the date?

16 A Yes, it would.

17 MR. WEIDNER: May I approach the witness, ma'am?

18 THE COURT: You may.

19 A That would be October 13th of 2010, yes, sir.

20 MR. WEIDNER: Let the record show I'm retrieving
21 the document from the witness.

22 BY MR. WEIDNER:

23 Q So, it was the 13th.

24 A Yes, sir.

25 Q And that was the date at which you were informed

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CROSS - CHAPMAN

ORIGINAL

1 and those pictures were taken of Shatike Shabazz and
2 Terrance Seabrook, right, at the Air Station?

3 A Yes, it is.

4 Q So, it was at that point, that's your first view of
5 a skinny, black male, right? That's with Shatike or
6 Bruiser.

7 A Correct.

8 Q So, is it at that point that you focused on
9 Terrance Seabrook, right?

10 A That's when I received the information that's who
11 that person was that was with Mr. Shabazz that day.

12 Q Right.. And he fit the description of the person
13 for whom you were searching.

14 A He did fit the description of the person.

15 Q Who is Sub? Do you know?

16 A Sub is a street name for Steven Jenkins.

17 Q And he's a cousin to Walter Jenkins..

18 A I'm not sure of the exact relation, but the last
19 name is the same. I don't know their exact relation
20 that they have.

21 Q Isn't he also a skinny, black male that lives in
22 Saint Helena, 5-6, 5-7?

23 A No, sir. Mr. Jenkins is extremely tall.

24 Q Now, when you interviewed Mr. Seabrook, he
25 indicated to you that, on the day that all this was

1 happening, that he had seen Walter Jenkins with four
2 other people, right?

3 A I believe that's correct.

4 Q That would have been Steven Jenkins and two others,
5 Jean Money and Dollar (phonetic), they were in the car
6 that day?

7 A I don't know if they were the car. That's what Mr.
8 Seabrook --

9 Q That's what he told you, though, right?

10 A Yes, sir.

11 Q Now, let's talk about that, because you've got a
12 couple of interviews here. So, I'm assuming that you
13 went to what, investigator school?

14 A Yes, sir, I did.

15 Q And what kind of classes do they give you all in
16 interrogation technique?

17 A Interviews, interrogations, body language, that
18 sort of stuff.

19 Q Right, basic processes for interview, for
20 interrogation?

21 A Yes, sir.

22 Q And do they introduce you to certain techniques
23 involved in interrogating people?

24 A They do.

25 Q All right. And some of those interrogation

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CROSS - CHAPMAN

ORIGINAL

1 techniques would be, for example, to press as though you
2 know more than you do, right?

3 A That is one, yes.

4 Q So, for example, you used that technique in this
5 case when you were interviewing Terrance Seabrook when
6 you said I've talked to the driver, he's put me in --
7 he's put you in the vehicle; why don't you just tell me
8 why. Do you remember that in the tape?

9 A I do remember that in the tape.

10 Q You were pressing for information, you were
11 asserting stuff that you didn't yet know, right?

12 A Well, I asked -- I talked to Mr. Seabrook after I
13 had already spoke to Shatike Shabazz, and he gave me
14 that information.

15 Q Well, what Shatike Shabazz had told you was -- you
16 wrote that Shabazz advised that he'd been told that
17 Terrance was the one who had robbed the store. Right?

18 A I believe that's in my report.

19 Q So, if he had said something about Shabazz -- that
20 Terrance was in the car with me, you would put that in
21 your report; wouldn't you?

22 A It would have been, yes, sir.

23 Q So, at least at that point, you had spoken with
24 Shabazz, but you had not -- he had not, meaning Mr.
25 Shabazz had not, placed Terrance Seabrook in the car

1 with him at that point, right?

2 A I believe he referred to Mr. Seabrook as the one he
3 dropped off at the store.

4 Q All right. So, next technique, pitting witnesses
5 against each other or alleged co-conspirators. Isn't
6 that another technique that you're trained to use?

7 A Yes.

8 Q In other words, you talk to one, and then you talk
9 to the other, and then you go back to the other and say
10 whether they did it or not that Mr. Seabrook, Mr.
11 Shabazz is saying this, what do you say to that. Right?

12 A Yes, sir.

13 Q And then, you go back and you say, well, Mr.
14 Shabazz, Mr. Seabrook is saying Y; what do you have to
15 say about that. Right?

16 A Correct.

17 Q And that's another technique that you're trained to
18 use.

19 A Yes.

20 Q And you did use it in this incidence; didn't you?
21 You talked to both of them.

22 A I did talk to both.

23 Q And you said that one had said something about the
24 other and the other had said something about the first
25 guy. You went -- you did the back-and-forth thing with

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CROSS - CHAPMAN

ORIGINAL

1 them; didn't you?

2 A I did for Mr. Seabrook, right.

3 Q Now, Master Sergeant Baird, he's former Marine;
4 isn't he?

5 A Yes, he is.

6 Q And he was a CID investigator.

7 A Yes, sir.

8 Q And he was with NIS back then. It's now NCIS,
9 Naval Criminal Investigative Service.

10 A Yes, that is true.

11 Q And he retired out of the Marine Corps.

12 A Yes.

13 Q And then he came to work with the Sheriff's
14 Department.

15 A Yes, sir.

16 Q Do you know whether or not he was a drill
17 instructor in the Marine Corps?

18 A That, I do not know.

19 MR. BANNON: Your Honor, I would just object as to
20 relevance. I don't see what kind of bearing
21 Investigator Baird's career has.

22 THE COURT: Okay. I'm assuming he's going to tie
23 that, right.

24 BY MR. WEIDNER:

25 Q Another technique you're trained to use is sort of

1 good guy/bad guy, otherwise, good-cop/bad-cop thing,
2 right?

3 A Yes, sir.

4 Q And you all used that in this instance, right?

5 A At no point did I yell at Mr. Seabrook or try to
6 intimidate him.

7 Q I'm not -- I'm not alleging that you did any of
8 that. What I'm saying is, you interviewed him, and you
9 sent him over to Master Sergeant Baird where he was
10 interviewed, and then he was brought back to you for an
11 interview, right?

12 A That's correct.

13 Q It was after his interview with Master Sergeant
14 Baird that he was brought back to you, and you started
15 talking about, okay, let's talk about what really
16 happened. Right?

17 A Yes, I did, (audible).

18 Q Because he was concerned about the gun issue;
19 wasn't he?

20 A I believe he was, yes.

21 Q Right. Because before, he had said Shatike didn't
22 have a gun; he didn't know anything about a gun. And
23 this time he was saying, well, Shatike, I saw a gun with
24 Shatike.

25 A Right. That's what he said.

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CROSS - CHAPMAN

ORIGINAL

1 Q And Shatike, if Shatike had a gun, he would have
2 been a felon in possession of a weapon, right?

3 A Right. At the time, I would have checked his
4 charges to see if that was true or not.

5 Q But if that were true, it would cause problems for
6 Shatike; wouldn't it?

7 MR. BANNON: I would object, as it calls for
8 speculation.

9 BY MR. WEIDNER:

10 Q Now, you had several interviews with Terrance
11 Seabrook.

12 A I interviewed him twice, yes, sir.

13 Q And on each occasion, the one thing he was clear
14 about was, I didn't have anything to do with it.

15 A He did repeat that.

16 Q Even after you interrogate him with pressing
17 something that you -- pressing a claim, pitting
18 witnesses, good cop/bad cop, at all times he said, I'm
19 telling you, I didn't have anything to do with this and
20 I don't know what's going on. Or words to that effect.

21 A Yes.

22 Q And then, he started trying to help you, because he
23 was trying to tell you who might be involved. Right?
24 And then you asked him who could have done it; who could
25 have done it.

1 A I did ask him that when he first started spouting
2 off names.

3 Q Right, because you asked him -- and he, at one
4 point says, he knows more than he's letting on, meaning
5 Shatike, right?

6 A That's true.

7 Q And you had asked him why would he be pointing a
8 finger at you?

9 A I did ask him that.

10 Q One reason that he could be pointing a finger at
11 Mr. Seabrook is because he's been told that Mr. Seabrook
12 has been pointing a finger at him, right?

13 A I can't say why someone would say that.

14 Q But he gave you some information that, for example,
15 he mentioned that Quincy Holmes and that clerk fellow
16 are pretty close, right?

17 A He did say that.

18 Q And he knew there were drug deals going on back and
19 forth there.

20 A At the store or between --

21 Q Well, he said that they were providing the clerk
22 with drugs, right and pills?

23 A He did say that, yes, fir.

24 Q And he also mentioned, when you said who else could
25 have been involved, he said Quincy Holmes, his brother,

1 and Craig (phonetic spell) Jenkins had all been involved
2 in what was going on around the store there.

3 A He mentioned the name Quincy Holmes. The other
4 two, I don't -- I can't remember if those were the names
5 he said.

6 Q All right. He also mentioned (inaudible) Money and
7 Dollar. Do you remember that?

8 A Yes, sir.

9 Q And Quincy Holmes is another skinny, black fellow
10 that lives on Saint Helena, right?

11 A He's small. Can't see -- I wouldn't describe him
12 as skinny.

13 Q Okay. And he is Walter Jenkins' adopted brother.

14 A If that's what Mr. Jenkins said. I don't
15 personally know the relation between them.

16 Q So, you had a number of people that you had
17 information about that would fit the general
18 description. What did you do to follow up on that?

19 A In regards to Quincy Holmes, I know Quincy Holmes
20 to be 5-foot-2 to 5-foot-3, and approximately 140 to 150
21 pounds. He does not meet the description of the subject
22 in that video.

23 The other name, Steven Jenkins, he's extremely
24 tall. He's probably six-foot-three, (inaudible) hundred
25 and something pounds. Has dread locks down the middle

1 of his back. I know that that is not that person in
2 that video. The other names, the street names of Dollar
3 Dog, (inaudible), I have no information as regards to
4 who those people are.

5 Q Well, but you know people on Saint Helena.

6 A I do.

7 Q And you could go find out.

8 A I could ask around, but I don't have any
9 information who those individuals are, so I have not
10 developed that information.

11 Q And you didn't develop that information.

12 A No, sir, I did not.

13 Q Because you had already identified Terrance
14 Seabrook as being around Shatike Shabazz on the 13th of
15 October.

16 A Mr. Shabazz identified Terrance Seabrook as the
17 person that got out of his vehicle in that parking lot.

18 Q Meaning at the Air Station.

19 A No, at the store.

20 Q That's after he'd been granted a grant of immunity,
21 right?

22 A No.

23 Q When did he do that before?

24 A He told me when I interviewed that Terrance
25 Seabrook was the one that got out of his vehicle.

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- 1 Q And no where in your report does that appear.
- 2 A That was said (inaudible) with Terrance Seabrook.
- 3 Q All right. Well, that's different. He was with
- 4 him that day. Is it illegal to be friends with
- 5 somebody?
- 6 A It is not illegal to be friends with anyone.
- 7 Q And what you wrote in your report was that he had
- 8 been around him that day, or with him that day.
- 9 A Are you referring to as Shabazz saying that or Mr.
- 10 Seabrook?
- 11 Q Shabazz.
- 12 A He said he was with Terrance Seabrook and that's
- 13 the person that was with him at the store.
- 14 MR. WEIDNER: No further questions.
- 15 THE COURT: Mr. Bannon?
- 16 MR. BANNON: Yes, your Honor.
- 17 STAFF SERGEANT BRIAN CHAPMAN
- 18 RE-DIRECT EXAMINATION, BY MR. BANNON:
- 19 Q A couple of things, Investigator Chapman.
- 20 A Yes, sir.
- 21 Q Mr. Weidner asked you if you ever collected Mr.
- 22 Seabrook's DNA.
- 23 A Yes, he did.
- 24 Q Did you ever attempt to collect Mr. Seabrook's DNA?
- 25 A I don't recall that, no, sir.

1 Q Did the DNA that -- well, let me ask you this. Why
2 didn't you attempt to collect Mr. Seabrook's DNA?

3 A Because, for our comparisons at the time when this
4 was done, our lab needed a -- a standard sample from a
5 subject. And in order to do that, they had to process
6 what they had. And if they don't have anything to
7 compare it to, there would be no reason to get Mr.
8 Seabrook's DNA.

9 Q Okay. And to your knowledge, was there any DNA
10 suitable for comparison found on the items that you
11 submitted for DNA?

12 A To my knowledge, there was no suitable DNA that was
13 found on the swabs.

14 Q Okay. So, if there's no -- so why -- so, if there
15 was no DNA on the swabs, why didn't you attempt to
16 collect Mr. Seabrook's DNA?

17 A There's nothing to compare it to.

18 Q Okay. Now, we've talked a great deal about your
19 report and what you spoke to Mr. Shabazz about.

20 A Yes, sir.

21 Q What I would like for you to do, take a look -- is
22 that a copy or a page from your report?

23 A Yes, sir, it is.

24 Q Take a look at that third paragraph. What I would
25 like you to do is read that second sentence in the third

1 paragraph and tell me what that says.

2 A This is an interview with Shatike Shabazz on 10-25-
3 2010.

4 *Shabazz advised that he knows how it*
5 *looks, but he was not involved in the incident.*
6 *Shabazz stated that the last thing he did*
7 *was drop Terrance off at the store around*
8 *6:30 to 7:00 p.m., and then he went to his*
9 *mother's house.*

10 Q Okay. So, Mr. Shabazz told you back in October of
11 2010 that the last thing he did was drop Terrance off at
12 the store.

13 A He said the last thing he did was drop Terrance off
14 at the store.

15 Q Okay. Now, Mr. Weidner seemed to insinuate that
16 the State had offered Mr. Shabazz immunity in exchange
17 for that statement. Did you ever offer Mr. Shabazz
18 immunity in exchange for the statement that you took
19 from him on October the 25th?

20 A I never anyone anything in exchange for a
21 statement.

22 Q Okay. To your knowledge, had any member of the
23 State given Mr. Shabazz immunity in October of 2010?

24 A No.

25 Q Okay.

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1 MR. BANNON: No further questions, your Honor.

2 INVESTIGATOR BRIAN CHAPMAN

3 RE-CROSS-EXAMINATION, BY MR. WEIDNER:

4 Q Of course, you didn't offer any immunity; you don't
5 have the authority to do that; do you?

6 A No, sir.

7 Q But you know that the prosecutor has offered him
8 immunity to testify at this trial, right?

9 A Yes, sir.

10 Q Now, so we're clear, no DNA, no DNA evidence ties
11 Terrance Seabrook to the area.

12 A There was no useable DNA found on the swabs.

13 Q No fingerprints.

14 A There were no fingerprints.

15 Q No other high-speed, low drag, really cool, CSI
16 stuff ties Terrance Seabrook to that crime scene; does
17 it?

18 A No, sir.

19 Q In fact, the only thing that you have that ties
20 Terrance Seabrook to that crime scene is the testimony
21 of Shatike Shabazz.

22 A Correct.

23 MR. WEIDNER: No further questions.

24 MR. BANNON: Nothing further from the State, your
25 Honor.

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DIRECT - DONAHUE

ORIGINAL

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

3 A Thank you very much.

4 MR. BANNON: Your Honor, the State calls John
5 Donahue.

6 MADAM CLERK: Place your left hand on the *Bible*.
7 Raise your right hand for me, sir. Do you solemnly
8 swear to truthfully answer all the questions asked of
9 you by this Court, so help you God?

10 JOHN DONAHUE: I do.

11 MADAM CLERK: Please be seated. State your name
12 and spell it for the Court.

13 JOHN DONAHUE

14 DIRECT EXAMINATION, BY MR. BANNON:

15 Q Good morning, sir. Would you please state and
16 spell your name for the record, sir.

17 A John Donahue, D/o/n/a/h/u/e.

18 Q Where do you work, sir?

19 A I work at the Beaufort County Sheriff's Office
20 Forensic Services Laboratory.

21 Q What do you do there at the laboratory?

22 A I'm the DNA technical leader at the laboratory,
23 which means that I'm responsible for DNA testing, as
24 well as all the quality oversight and DNA laboratory
25 validation and new procedures, maintenance of equipment.

1 Generally, I'm responsible for all of the DNA operations
2 of the lab.

3 Q Okay. And is it fair to say that your job involves
4 forensic DNA analysis comparison?

5 A That's part of my job, yes.

6 Q And do you need any education in order to be able
7 to do that line of work?

8 A Yes.

9 Q And where did you go to school and what did you
10 study?

11 A My bachelor's degree is from the University of
12 Tennessee. Major in zoology. My master's degree is
13 from the Indiana University with a major in
14 microbiology.

15 Q And have you received any training specifically
16 related to forensic DNA analysis and comparison?

17 A Yes, I have.

18 Q And could you please tell us about that.

19 A I was Trained by the Texas Department of Public
20 Safety in forensic DNA analysis. I was trained by the
21 Applied BioSystems Corporation in the operation of the
22 genetic analyzer that we utilize; all the test
23 procedures that we use; the equipment that we use. In
24 addition, I'm required to undergo continuing education
25 every year to maintain current knowledge of DNA testing

1 procedures.

2 Q And have you ever been certified as an expert
3 witness in the field of DNA, forensic DNA analysis and
4 comparison here in South Carolina.

5 A Yes.

6 MR. BANNON: Your Honor, at this time, we would ask
7 that Mr. Donahue be certified as an expert witness in
8 the field of forensic DNA analysis comparison.

9 THE COURT: Any voir dire?

10 MR. WEIDNER: Can we approach on a matter?

11 THE COURT: You may.

12 OFF-THE-RECORD BENCH CONFERENCE,

13 OUT OF HEARING OF JURORS.

14 END BENCH CONFERENCE.

15 THE COURT: Ladies and gentlemen, in this case, Mr.
16 Donahue has been qualified in the area of forensic DNA
17 analysis. Again, he can give his opinion in that area.
18 Again, ladies and gentlemen, that is for you to use as
19 you see appropriate as compared to any other evidence
20 that's been entered into this case.

21 Need a break? Okay. Absolutely. Ladies and
22 gentlemen, I'm going to send you back to your jury room
23 very briefly. Again, do not discuss this case, and
24 we'll be right back with you.

25 Please, Mr. Foreperson, just knock on the door when

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1 you all are ready to come back in the courtroom. We're
2 going to sit tight. Okay?

3 MR. FOREPERSON: Thank you.

4 THE COURT: Thank you, sir. All right, you all,
5 we're going to be at ease for about five minutes. Don't
6 go too far. I know you haven't even started yet, but of
7 course, don't discuss your testimony.

8 And you're welcome to step down, if you'd like,
9 sir.

10 JURORS LEAVE COURTROOM.

11 OFF THE RECORD.

12 BACK ON THE RECORD.

13 ON-THE-RECORD BENCH CONFERENCE,

14 OUT OF PRESENCE OF JURORS.

15 BY THE COURT:

16 THE COURT: Thank you all. Please be seated. All
17 right. Are we ready to you, you all?

18 MR. BANNON: Yes, your Honor.

19 THE COURT: Bring the jury in.

20 BAILIFF: The jurors are entering, your Honor.

21 JURORS ENTER COURTROOM.

22 BAILIFF: Your Honor.

23 THE COURT: Thank you, Bob. Welcome back, you all.
24 Let's go ahead and continue.

25 JOHN DONAHUE, CONTINUE

1 DIRECT EXAMINATION, BY MR. BANNON:

2 Q Mr. Donahue, based on your training experience, can
3 you tell me a little bit about what touch DNA is?

4 A Well, it'd be easier to start just by explaining
5 what DNA is first, and then (inaudible). DNA basically
6 is the -- the building block that makes up your body.
7 It's chemical. DNA stands for deoxyribonucleic acid.
8 It's present in all the cells of your body. So, in the
9 nucleus of your cells, you have chromosomes.

10 Chromosomes are made of the DNA. DNA are codes for all
11 the specific processes in the body; how you look; how
12 tall you are; the color of your hair; all your physical
13 characteristics.

14 DNA is present in the nucleus of the cells. So,
15 any cell that's in your body that has a nucleus has DNA
16 in it. For example, white blood cells, skin cells,
17 muscle cells, bone, all of these types of cells have DNA
18 in them.

19 DNA that's in your body is specific to you, except
20 in the case of identical siblings. Identical twins,
21 they have the same DNA. However, if you're just a
22 regular brother or a sister, your DNA is different from
23 your brother or sister.

24 Because it's present in all the cells of your body,
25 we can test DNA that's left at crime scenes and compare

1 it to DNA recovered from known people.

2 So, DNA can be left in any type of or any number of
3 ways at a crime scene. It could be in blood. It could
4 be in saliva. Or it could be in what's called touch DNA,
5 which is, essentially, an item's been handled or touch
6 in some ways it is possible to collect DNA from those
7 touched items and test it. And in regard to touch DNA,
8 is it -- well, is fair to say that touch DNA is where
9 sort of the skin-to-surface contact, and then you test
10 that surface to see if, you know, someone's skin left
11 DNA or whoever touched it left DNA on that surface?

12 A Yes, that's correct.

13 Q Okay. And how common is it to find DNA from skin-
14 to-surface contact?

15 A Well, that's a difficult question to answer in that
16 way. Finding DNA isn't necessarily difficult. Finding
17 DNA that you can interpret a result from is -- from
18 touch DNA, is much more DNA than, say, from something
19 like blood. Blood has a lot of DNA in it. Saliva has a
20 lot of DNA in it. Touch DNA typically does not have a
21 lot of DNA in it, so getting a result that's
22 interpretable with touch DNA is not easy.

23 Q Okay. And if someone were, say -- if someone were
24 wearing a glove on their hand, and then touched and
25 item, would you expect to find that person's DNA on the

1 item that they just touched?

2 A If there were DNA on the outside of the glove,
3 maybe. But that all depends on how much is there.

4 Q Okay. In this particular case, were you -- well,
5 let me show you what's been admitted into evidence as
6 State's Exhibit 3 and 4. Could you tell me if you
7 recognize these items.

8 A I do.

9 Q And what are they?

10 A These are two packages that I performed DNA testing
11 on in this case.

12 Q And could you please tell us what the results of
13 your testing was on the items in each package.

14 A So, the first package that I tested were two swabs
15 labeled as being from inside a bathroom door handle.
16 From that, those two swabs, I recovered what we call a
17 minimal DNA profile that was not suitable for comparison
18 to known standards. What that means is that, I didn't
19 get enough there to make any kind of a determination as
20 to who it could have come from.

21 Q Okay.

22 A The second set of swabs were labeled as two swabs
23 from a toilet. I did not obtain any DNA from them. So,
24 I could not even attempt to make a comparison, because I
25 didn't find anything.

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1 Q Okay. So, essentially, on the items from the
2 toilet there is no DNA on that item.

3 A Correct?

4 Q Okay. And on the other item, there might be some,
5 but it's not suitable to make a comparison between a
6 known individual's DNA and whatever is on that swab.

7 A There was some present. I attempted to test it.
8 There was not enough there for me to make even a guess
9 as to who it could have come from.

10 Q Okay.

11 MR. BANNON: No further questions from Mr. Donahue.

12 JOHN DONAHUE

13 CROSS-EXAMINATION, BY MR. WEIDNER:

14 Q So, just so I'm clear, you took a swab of a toilet
15 at a Exxon gas station and couldn't find any DNA on it.

16 A That's correct.

17 MR. WEIDNER: Thank you.

18 THE COURT: Anything further, Mr. Bannon?

19 MR. BANNON: Not from Mr. Donahue.

20 THE COURT: Any objection to Mr. Donahue being
21 excused from anyone?

22 MR. BANNON: No, your Honor.

23 THE COURT: You are excused, sir. Thank you. Mr.
24 Bannon, call your next witness.

25 MR. BANNON: Your Honor, the State calls

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1 Investigator Jeff Vortisch.

2 THE COURT: Come on in, sir.

3 MADAM CLERK: Would you place your left hand on the
4 Bible, and raise your right hand for me, please. Do you
5 solemnly swear to truthfully answer all questions asked
6 of you by this Court, so help you God?

7 SERGEANT JEFF VORTISCH: Yes, I do.

8 MADAM CLERK: Would you state your name and spell
9 it for the Court, please.

10 SERGEANT JEFF VORTISCH: Sergeant Jeff Vortisch,
11 J/e/f/f/ V/o/r/t/i/s/c/h.

12 SERGEANT JEFF VORTISCH

13 DIRECT EXAMINATION, BY MR. BANNON:

14 Q Good afternoon, sir. And could you please tell us
15 where you work?

16 A Beaufort County Detention Center.

17 Q And how long have you worked there?

18 A Four years.

19 Q And what are your responsibilities over at the
20 Detention Center?

21 A I run the Office of Professional Standards,
22 basically, internal affairs, training, MAIT phone
23 system, fingerprinting, computers.

24 Q Okay. What I'd like to talk to you about is about
25 the phone system. Could you please tell us a little bit

1 about the phone system.

2 A Yes, sir. When someone is booked into our jail,
3 they're assigned an OCA number. It's a unique
4 identifier. It never changes. At the same time,
5 they're booked, the corporal opens a phone account with
6 the same number. So, when that person makes a phone
7 call, our system prompts them to input this five-digit
8 number into the phone system. It then prompts them to
9 say their name. And if the call goes through or is
10 accepted, that number is automatically placed onto a
11 specific caller list associated with this five-digit
12 number.

13 So, in essence, if I wanted to use his number to
14 make phone calls, I have to call his numbers; I couldn't
15 call any of mine, because my number is not on his list.
16 That's -- that's how we know who's making phone calls.

17 Q Okay. And in, I guess, the springtime of 2011, was
18 Mr. Seabrook housed over at the Detention Center?

19 A Yes, sir..

20 Q And the phone call -- or, did he make any phone
21 calls while he was at the Detention Center?

22 A Yes, sir.

23 Q I'd like to show you what has been marked State's
24 Exhibit 37 and 38. If you can take a look at those and
25 tell me if you recognize them.

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1 A Number 37 is a disc that it created on the 24th of
2 February, 2012. Has my initials on it, under subpoena.
3 The second subpoena -- the fifth subpoena received in
4 February of that year. Number 38 is a disc I created on
5 the second subpoena, February of 2012, (inaudible). I
6 also initialed that disc.

7 Q Okay. And with your initials, do what's on the
8 disc represent a fair and accurate depictions of the
9 recordings of the phone calls that Mr. Seabrook placed
10 in the spring of 2011?

11 A Yes, sir.

12 MR. BANNON: Your Honor, at this time, the State
13 would move State's Exhibit 37 and 38 into evidence.

14 THE COURT: Without objection.

15 MR. WEIDNER: Subject to --

16 THE COURT: Prior. Gotcha.

17 ITEM IDENTIFIED AS DISC OF MR.
18 SEABROOK'S PHONE CALLS, CREATED
19 BY JOHN VORTISCH, FEBRUARY 24, 2012,
20 MARKED STATE'S EXHIBIT NUMBER 37,
21 ADMITTED AS EVIDENCE.

22 ITEM IDENTIFIED AS DISC OF MR.
23 SEABROOK'S PHONE CALLS, CREATED
24 BY JOHN VORTISCH, FEBRUARY 2012,
25 MARKED STATE'S EXHIBIT NUMBER 38,

1 ADMITTED AS EVIDENCE.

2 MR. BANNON: And your Honor, at this time, I would
3 beg the Court's indulgence in publishing three of these
4 phone calls.

5 THE COURT: Okay. (Inaudible.)

6 MR. BANNON: Your Honor, for the record I'm playing
7 the phone call placed by Mr. Seabrook on February the
8 8th, 2011, at 8:56 in the morning, to phone

9
10 THE COURT: Okay.

11 MR. BANNON: That's the portion, that particular
12 portion we'd like to play. The next -- pardon me, your
13 Honor, I just need to swap out the discs. That was
14 what's on State's Exhibit Number 38. This is State's
15 Exhibit 37.

16 And your Honor, this telephone call was placed on
17 March the 26th of 2011, at 8:24 in the evening, to phone
18 number

19 (Inaudible).. This recording is from April 28,
20 2011, at 9:28 in the morning, to the same phone number
21 that's read in the record before.

22 THE COURT: Okay.

23 MR. BANNON: And that's the end of that recording.
24 And your Honor, at this time, I would just beg the
25 Court's indulgence to take up a small matter with the

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1 Court Reporter.

2 THE COURT: Okay. And also, after that, can I
3 speak to the attorneys.

4 MR. BANNON: No further questions for Investigator
5 Vortisch, your Honor.

6 THE COURT: Okay. Anything further?

7 MR. WEIDNER: No, ma'am.

8 THE COURT: You are excused, sir. Thank you.

9 A Thank you.

10 THE STATE RESTS.

11 MR. BANNON: Your Honor, at this time, the State
12 rests.

13 BY THE COURT:

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, at this time, the State has rested their case.
16 And there is a brief matter of law that I need to take
17 up with the attorneys. I'm going to bring you right
18 back here in just a moment, and I'm going to tell you
19 how we're going to proceed for the remainder of the day.
20 And I can tell you, I think we're pretty much done for
21 the day, just to let you know, but I need to keep you
22 here for just a couple of minutes. Okay?

23 Again, do not discuss the case. It wouldn't be
24 appropriate to do so at this time. We'll be back.

25 JURORS LEAVE COURTROOM.

1 BAILIFF: Jury's clear, your Honor.

2 MOTIONS:

3 THE COURT: All right. Any motions?

4 MR. WEIDNER: Motion for a finding of not guilty.

5 COURT REPORTER: I'm sorry. I didn't hear you.

6 MR. WEIDNER: Motion for a finding of not guilty.

7 THE COURT: Okay. Motion for a directed verdict.

8 MR. WEIDNER: Yes, ma'am, directed verdict.

9 THE COURT: Respectfully, sir, obviously, weighing
10 the evidence in the light most favorable to the State, I
11 do think there is evidence, both direct and
12 circumstantial, from which this jury could determine
13 that your client was guilty of these two offenses. I
14 think that the circumstantial evidence of Mr. Shabazz
15 placing your client in the car with him; him getting
16 out; and that short -- the shirt, the blue and white
17 shirt; him going somewhere for a while, and then that
18 being the same person that comes back and arm robs and
19 kidnaps Mr. Kirkpatrick, yes, is I think enough to send
20 it to the jury, and I am going to send it to the jury.
21 All right?

22 MR. WEIDNER: Yes, ma'am.

23 THE COURT: Thank you, sir.

24 DEFENDANT'S RIGHTS, BY THE COURT:

25 THE COURT: At this time, Mr. Weidner, is it

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1 appropriate for me to go over your client's rights?

2 MR. WEIDNER: Yes, ma'am.

3 THE COURT: Mr. Seabrook, if you would please just
4 stand, I want to go ahead and swear you in. And what
5 I'm going to do is go over your right to testify or not
6 testify. Okay, sir. So, if you'll just raise your
7 right hand, Mr. Seabrook.

8 Do you swear or affirm the testimony you give to be
9 the truth, so help you God?

10 DEFENDANT SEABROOK: I do.

11 THE COURT: All right, sir. At this time, what I'm
12 going to do is explain to you certain rights that you
13 have. If there's anything that I say that you don't
14 understand, Mr. Seabrook, please ask me to stop and ask
15 me to re-phrase. I'm happy to do so. Okay? Can you
16 hear me, sir?

17 DEFENDANT SEABROOK: Yes.

18 THE COURT: All right, sir. And I'm going to need
19 you to speak to me and articulate. My court reporter's
20 taking down everything everyone says. And we need to be
21 able to hear you for the record. All right, sir?

22 DEFENDANT SEABROOK: Yes.

23 THE COURT: Thank you, sir. Sir, we've reached the
24 stage in the trial where you may present your defense.
25 you have the right to claim the protections that are

1 afforded to you by the *Fifth Amendment* to the
2 *Constitution*, which states in part that no person shall
3 be compelled in any criminal case to testify against
4 themselves. Sir, this means that you cannot be required
5 to testify.

6 However, sir, you do need to know that you have the
7 right to testify if you so choose. But what you need to
8 understand, sir, is, if you do decide to testify in this
9 case, you're going to be subject to the same rules that
10 govern the other witnesses and you may be examined and
11 cross-examined on any relevant issues of this case. In
12 addition, sir, if you have any past convictions
13 involving dishonesty or false statements or for crimes
14 that are punishable by imprisonment for more than one
15 year, and this Court determines that the probative value
16 of admitting that evidence outweighs its prejudicial
17 effect to you, the Solicitor is going to be able to
18 cross-examine you on those convictions to attack your
19 credibility, sir.

20 I want to make sure you understand, Mr. Seabrook,
21 that this decision to testify or not testify is a
22 personal decision, and it must be made by you, and of
23 course, with counsel, Mr. Weidner. But again, you must
24 choose to testify or not testify freely, voluntarily,
25 and intelligently, with the knowledge of the protections

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1 that are afforded to you by the *Fifth Amendment*, sir.

2 Sir, if you decide to testify or not to testify in
3 this case, I'm going to instruct the jury in my jury
4 charge, that they are not even allowed to discuss that
5 in the jury room. My charge goes along the lines of is
6 that no man or woman is required to prove themselves
7 innocent. The burden is on the State to prove a
8 defendant's guilty beyond a reasonable doubt. And I
9 will tell them that, if you choose not to testify.

10 Have you understood what I've explained to you in
11 regards to your *Fifth Amendment* rights, Mr. Seabrook?

12 DEFENDANT SEABROOK: Yes ma'am.

13 THE COURT: And have you had an opportunity to
14 speak with your lawyer as to whether or not you'd like
15 to testify?

16 DEFENDANT SEABROOK: I'd like to speak to him a
17 little bit more, if you don't mind, please.

18 THE COURT: Okay. All right. What I'm going to do
19 is this. We're going to go ahead and take a recess for
20 just a moment, and I'm going to let you have a few more
21 conversations.

22 And have we turned over to Mr. Weidner, and are you
23 satisfied, Mr. Weidner, as far as his past record, what
24 he can be cross-examined on?

25 MR. WEIDNER: Yes, ma'am.

1 THE COURT: You are. Is that correct?

2 MR. WEIDNER: Yes, ma'am.

3 THE COURT: All right, sir. All right. Now, I'm
4 sure that you've explained that with your client, and I
5 know that you've spoken with him before about whether or
6 not he should testify. But of course, in light of
7 hearing all the testimony, you may need to speak with
8 him a few minutes more. I am going to step down, sir,
9 and we'll be back shortly. And you go ahead and have
10 that conversation. All right?

11 DEFENDANT SEABROOK: Thank you.

12 THE COURT: Thank you.

13 OFF THE RECORD.

14 BACK ON THE RECORD.

15 BY THE COURT:

16 THE COURT: All right. Mr. Seabrook, you just
17 stand again, sir. And I just remind you that you're
18 still under oath. Have you had an opportunity, sir, to
19 talk to your lawyer about whether or not you wish to
20 testify?

21 DEFENDANT SEABROOK: Yes, I did.

22 THE COURT: Sir, do you want to testify in this
23 case?

24 DEFENDANT SEABROOK: I wish not to at this time,
25 your Honor.

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1 THE COURT: All right, sir. And I want to make
2 sure you understand that and you need to know, and of
3 course, that you tell me that you have made this
4 decision freely, intelligently, and knowingly. Is that
5 correct, sir?

6 DEFENDANT SEABROOK: Yes, I have, your Honor.

7 THE COURT: Thank you, Mr. Seabrook. You may be
8 seated, sir. All right.

9 What I'm going to do, Mr. Weidner, I'm going to
10 bring the jury in. I'm going to have you rest for the
11 record. I am going to excuse them for the day. And I
12 am going to have them come back tomorrow morning at
13 10:00 o'clock. You're going to renew your motions for
14 me, and we're going to discuss the jury charge, so we
15 can come straight in tomorrow morning and go right into
16 closings. Okay?

17 MR. WEIDNER: Yes, ma'am.

18 THE COURT: Is that all right with everybody?

19 MR. WEIDNER: Yes, ma'am, your Honor.

20 THE COURT: All right. Thank you. All right.
21 Let's bring them in.

22 BAILIFF: Jury's entering, your Honor.

23 JURY ENTERS COURTROOM.

24 BAILIFF: Your Honor, the jury is seated.

25 THE COURT: Thank you. Welcome back, ladies and

1 gentlemen. Mr. Weidner, at this time?

2 DEFENSE RESTS.

3 MR. WEIDNER: At this time, the Defense rests.

4 THE COURT: Ladies and gentlemen, at this time, the
5 defense has also rested their case. What is left for us
6 to do is hear the closing arguments from the attorneys,
7 and I go ahead and charge you on the law that's
8 applicable to this case. Obviously, that's going to
9 take some time, so we're going to go ahead and break for
10 the evening.

11 Ladies and gentlemen, even though you have heard
12 all the evidence in this case, you have not heard the
13 lawyers' closing arguments, now my charge on the law.
14 And it would be inappropriate for you to not only
15 discuss this case or do any independent research or do
16 anything at all in connection with this case, other than
17 go home and have a good night's rest, and come back
18 tomorrow morning.

19 Ladies and gentlemen, I'm going to ask that you be
20 back at 10:00 o'clock tomorrow morning, because,
21 inevitably, I'm going to have to talk to the lawyers
22 about something, and rather than have you waiting back
23 there on us, come in at 11:00 o'clock, where we'll go
24 ahead and bring you into the courtroom and we will go
25 ahead --

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1 COURT REPORTER: 11:00 or 10:00 o'clock?

2 MR. WEIDNER: 10:00 or 11:00 o'clock.

3 COURT REPORTER: You said 11:00.

4 THE COURT: Did I say 11:00?

5 COURT REPORTER: Um-hmm.

6 MR. WEIDNER: Yeah.

7 THE COURT: Oh, I apologize. (Inaudible.) Would
8 you all prefer 11:00, though? I can certainly be
9 amenable if that would be helpful in any way. Let's go
10 ahead and keep it at 10:00, if that's fine with you all.

11 I will tell you, ladies and gentlemen, if, for some
12 reason, we go into the lunch hour, I want you to know
13 that we will bring in lunch for you. It would not be
14 gourmet. I'll be the first to tell you that, but of
15 course, I don't want you to worry about that. So,
16 anyway. My bailiffs take care of you, though. No
17 question.

18 So, again, ladies and gentlemen, we will part for
19 the evening. Again, do not discuss this case. If there
20 is anything in the newspaper, on the Internet, radio,
21 T.V. -- I haven't seen anything thus far -- please do
22 not look at it, watch it, read it. Again, just come on
23 back. We look forward to seeing you all at 10:00 a.m.
24 tomorrow morning.

25 JURORS LEAVE COURTROOM.

1 RENEWED MOTIONS, BY MR. WEIDNER:

2 THE COURT: All right. You want to go ahead and
3 renew your motions, Mr. Weidner.

4 MR. WEIDNER: Yes, ma'am. Your Honor, my motions
5 on the evidence (inaudible) expected, the phone calls --

6 COURT REPORTER: Can you speak up just a --

7 MR. WEIDNER: I'm sorry. I'm used to practicing in
8 a courtroom over at Parris Island, and if you talked up
9 there, it's got better acoustics. It tears the paint
10 off the wall.

11 I'm renewing my motions, obviously, to exclude the
12 evidence of the phone calls and the tape recordings that
13 we played here.

14 THE COURT: And also, you're renewing your motions
15 for a directed verdict.

16 MR. WEIDNER: Yes, I am renewing that one, as well.

17 THE COURT: All right. Respectfully, sir, I am
18 denying all those motions. I'm re-denying those motions
19 based on my prior rulings. Again, I believe there is
20 adequate evidence in this case to send this to a jury.
21 And I am going to leave it to the jury's province to
22 decide this case.

23 DISCUSSION REGARDING CHARGE:

24 THE COURT: Gentlemen, I am going to go through
25 what I intend to charge, if anyone has any specific

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1 requests to charge, let me know. I don't think there's
2 anything out of the ordinary in this case whatsoever, so
3 I'm going to go through and just tell you how I am going
4 to charge.

5 I am going to charge, obviously, that the
6 presumption of innocence; that the standard is
7 reasonable doubt. And I charge both sides of it, that
8 both the Solicitors want and the defense attorneys want.
9 I explain to the jury that they are the judge of the
10 facts; I am the judge of the law.

11 I explain to them direct and circumstantial
12 evidence. I will also give them a charge on expert
13 witness testimony. I will also give them a charge on
14 the credibility of the witnesses. I will also give them
15 a charge on the fact that the defendant did not testify
16 should not be discussed back in the jury room.

17 I will charge them that they are two separate
18 charges; the jury needs to find each independent and
19 separate from one another.

20 I will charge them on armed robbery. And I will
21 also charge them on kidnaping. I will charge them on
22 identity of the defendant as the assailant in the case.
23 And I will just charge them that go ahead and it's got
24 to be a unanimous decision; it's got to be a decision of
25 all twelve jurors.

1 Is there anything further that you would like to
2 request a charge, from the State?

3 MR. BANNON: No, your Honor.

4 THE COURT: From the defense?

5 MR. WEIDNER: No, ma'am.

6 THE COURT: Okay. If you think of anything
7 overnight, just let me know in the morning.

8 You all, I am going to tell you that I'm going to
9 be coming in probably right about 9:45. I actually have
10 something I have to do in the morning, in addition, to
11 boot camp, so, in between. So, I will let you know.
12 And if you need anything, or if, for some reason, you
13 have an additional request to charge, please don't be
14 shy in coming back to chambers and give them to Alison.
15 My secretary's here. Or me. Whoever you can find.
16 Okay?

17 MR. WEIDNER: Yes, ma'am. Thank you.

18 THE COURT: All right. And gentlemen, I know that
19 you both were pretty brief in your opening statements.
20 I'm not limiting you, and I would never limit a lawyer
21 in closing arguments, but could I guess that you both
22 are going to be pretty brief? It's been a one-day trial
23 for the most part. So, I can expect that. Is that
24 correct? I mean, no one anticipates to go an hour and a
25 half; do they?

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ORIGINAL

1 MR. BANNON: Oh, no, ma'am. It's not going to be
2 anything like that. No.

3 MR. WEIDNER: (Inaudible) long (inaudible.)

4 THE COURT: Okay. All right. All right,
5 gentlemen. Well, I look forward to seeing you all
6 tomorrow morning. Again, if you need anything, come in,
7 in the morning and let us know. Okay? Thank you.

8 MR. BANNON: Thank you, ma'am.

9 THE COURT: Thank you.

10 END DAY TWO, MARCH 20, 2012.

3-20-12 STATE V. SEABROOK

ORIGINAL

STATEMENT OF TRANSCRIBING REPORTER

DAY TWO, MARCH 20, 2012

TRANSCRIPT OF TRIAL

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby state that the foregoing March 20, 2012, Transcript of Trial was transcribed to the best of my ability from the audio records of the court reporter present, Debbie Everett, in the case of State of South Carolina versus Terrance L. Seabrook, Beaufort County, South Carolina, Court of General Sessions, Case Numbers 2010-GS-07-02321 and 2010-GS-07-02320; that I am of neither kin, counsel, nor interest to any party hereto.

This Statement of Transcribing Reporter is attached to the original transcript, along with my digital signature. Copies of this transcript are not authorized for use without my original signature and Copy stamp affixed thereto.

Witness my signature February 16, 2015.

S/Wanda H. Rowe

Wanda H. Rowe, CVR-M
Official Court Reporter

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT) COURT OF GENERAL SESSIONS
3) No. 2010 GS 07 2321; 2320

4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 TERRANCE L. SEABROOK)
9 Defendant)

10 Beaufort, South Carolina
11 March 21, 2012

12
13 B E F O R E :

14 HONORABLE CARMEN T. MULLEN, Judge, and a Jury

15
16 A P P E A R A N C E S :

17 For the State: JAMES BANNON, Esq.
 Assistant Solicitor

18 For the Defendant: LARRY WEIDNER, Esq.

19
20 Reporter Present: DEBORAH EVERETT

21
22 HARRIET P. BENNETT
23 Reporter, S. C. Court Administration
24 46 Regency Oaks Drive
25 Summerville, SC 29485

I N D E X

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14 NOTE: This all that is available for transcript in
15 the within case.

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1 TRANSCRIPTION NOTE:

2 Motions noted as being held March 19, 2012,
3 were not available for transcription.

4 Trial matters heard on March 20, 2012, were
5 not available for transcription.

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1 (The within matter came before the Court on March
2 21, 2012)

3 THE COURT: Thank you. Please be seated.

4 It is my understanding that an issue has come up.

5 SOLICITOR: Yes, Your Honor. The State intends to
6 play as demonstrative evidence sort of splices of audio
7 which are from the audio recordings which have been ad-
8 mitted into evidence from Mr. Seabrook's statements, I
9 believe the second and the third.

10 I believe Mr. Weidner had an objection to one of the
11 statements which is going to be played. In that state-
12 ment Mr. Seabrook said, I was with Stephanie -- to be honest
13 I can't recall -- if you'd like I can try to bring it up
14 -- I can't remember if he says -- if he's saying this to
15 his mother or to a police officer -- I was with Stephanie,
16 and even Stephanie said that I was with her.

17 I do remember that was on the phone actually. Actu-
18 ally, I think that was over the phone that I'm speaking
19 about, and I can play it for you.

20 MR. WEIDNER: It's not when he was on the phone. He
21 was relaying -- the problem is that during some of the
22 audio and when he's speaking with Investigator Chapman, he
23 talks about phone calls and conversations which he had with
24 his mother, some of which are telephone calls he made from
25 the jail that are in evidence.

1 SOLICITOR: However, this is off an audio recording.
2 He relates the contents of a conversation that he had, and
3 I'd be happy to play it.

4 This is from the November 3rd interview.

5 THE COURT: While you're looking for that, why don't
6 you tell me your objection.

7 MR. WEIDNER: I just want to say this up front, that
8 there are a couple of places where he gets very close, de-
9 pending on how he presents it and how he argues it, that
10 is either in my mind burden-shifting or commenting on my
11 client's right to remain silent and not present evidence.

12 For example, the natural evidence where his momma
13 says -- the deputy says, you can't comment on where's
14 Stephanie; he can't say where's the momma.

15 THE COURT: He can't make that comment because I agree
16 with you that is burden-shifting because clearly your
17 client doesn't have to prove anything.

18 However, what he is trying to play is in evidence, so
19 unless you are arguing that it is taking things out of
20 context that can be an issue, but it is already in evi-
21 dence. They've heard it.

22 As long as he doesn't state that again, why didn't
23 he bring Stephanie; why didn't they bring the momma -- he
24 can't comment on that or make that argument.

25 SOLICITOR: I apologize but it is not my intention

1 to comment on she is not testifying in the case. It is
2 simply we're trying to show the conflict in what he's say-
3 ing.

4 First he's saying I was with Stephanie, I was with
5 this person, I was with this person. It's not meant as
6 a comment.

7 THE COURT: You will not comment in any way obviously
8 that where are all these people. You can't do that, and
9 you certainly would never -- I don't think Mr. Bannon would
10 ever comment on that.

11 The Defendant has the right to remain silent and not
12 testify.

13 MR. WEIDNER: Part of my concern is because the state-
14 ments are out of context. It highlights what is an out of
15 context statement about I was with Stephanie; even she says
16 I was with her

17 Again, that gets awfully close to begging the question
18 why hasn't Stephanie appeared in front of these jurors.

19 THE COURT: The problem I have is that is already evi-
20 dence that's in the case. I don't see the harm in it.

21 If it was something that wasn't already in, I would
22 have a problem, but it's already been put in front of them.

23 MR. WEIDNER: The whole idea behind the argument is
24 to highlight those things that -- he certainly could argue
25 that at first he said he was with Stephanie and then he

1 was and on and on and on.

2 THE COURT: I don't see any reason why he can't play
3 it again since it is already in evidence. Unless it takes
4 something out of context which I don't see how that state-
5 ment could. It is what it is.

6 MR. WEIDNER: The next statement would have to be to
7 explain what everybody was saying.

8 THE COURT: That would be another issue. I think we
9 are fine as far as what I understand he's using it for.
10 I guess I will need you to -- if you do have an objection
11 with however it comes out, you need to raise it immediately.

12 I know you will try hard not to interrupt him, but,
13 Mr. Bannon, you have the ability to be clear. I know you
14 do very technical work yourself, which is very impressive,
15 but you have the ability to quickly stop if there is an
16 objection.

17 SOLICITOR: Your Honor, the way it's set up on this
18 particular recorder, there is each statement, and then
19 there is a ten to twenty second break before the next state-
20 ment comes.

21 This particular statement is very short so I think if
22 Mr. Weidner has an objection after that is played and he
23 simply says objection there should be time to stop it be-
24 fore it moves on to anything else.

25 We can take up whatever matter of law we need to take

1 up at that time.

2 THE COURT: Okay, we'll go ahead and do that.

3 Obviously, there is no argument after the -- we'll
4 take it up at side bar and you will stop whatever recording
5 it is on.

6 We'll go from there.

7 Okay, I understand from my law clerk you all have
8 seen the verdict form and the State does not object. Is
9 that correct?

10 SOLICITOR: Correct.

11 MR. WEIDNER: Defense doesn't object.

12 THE COURT: All right, anything else we need to take
13 up?

14 SOLICITOR: Not from the State.

15 MR. WEIDNER: No, maam.

16 THE COURT: You put in no evidence, correct?

17 MR. WEIDNER: Yes, maam.

18 THE COURT: So you get the last argument. All right.
19 We're ready to go. Let's bring the jury in.

20 (Jury returned to Courtroom)

21 THE COURT: Good morning, ladies and gentlemen. It's
22 a pleasure to see you all.

23 At this time, you're going to hear the closing argu-
24 ments from the attorneys, and then I will charge you on
25 the law that is applicable to this case.

1 Then we will send this case to you.

2 Mr. Bannon.

3 SOLICITOR: May it please the Court?

4 THE COURT: Yes, sir.

5 SOLICITOR: When you hear hoof beats I want you to
6 think horses, not zebras. That's what I told you at the
7 very beginning of this case.

8 In the case that the State has presented, it's exactly
9 what I told you it was going to be. What I told you the
10 other day was that on October 4th of 2010 the gas station
11 at 1702 Sea Island Parkway was robbed. Mr. Kirkpatrick
12 was working as the clerk at that particular time, and he
13 was taking a smoke break as an SUV drove up in the yard.

14 Mr. Shabazz said he was in the car and that Mr.
15 Seabrook was in the car; that nobody else was in the car
16 with them.

17 Mr. Shabazz identified himself as the person who gets
18 out of the car and goes inside of the store; gets himself
19 an iced tea and I believe a mild cigar; returns back to
20 the car and they both stay in the SUV for about ten min-
21 utes, at which point in time Mr. Shabazz says he tells Mr.
22 Seabrook you can either come home with me or you can stay
23 right here, and Mr. Seabrook decided to stay there. You
24 see him get out of the car on the videotape.

25 If you take a look at that, you can see a person with

1 a blue shirt with white piping, dark colored pants, white
2 shoes.

3 I urge you when you are back in your jury room de-
4 liberating to take a look, and you can see that is a person
5 wearing a blue shirt, white piping, dark colored pants,
6 white shoes, who gets out of that car.

7 That is what you can see on the tape. Mr. Shabazz
8 told you that was Mr. Seabrook.

9 Then you can see on the tape the person runs around
10 the side and he disappears off the screen over here, and
11 in this area is where the men's bathroom is on the outside
12 of the business.

13 Mr. Shabazz drives away and Mr. Kirkpatrick is still
14 busy with his customers. You see Mr. Shabazz returns as
15 Jackie Washington goes over to the car and speaks with Mr.
16 Shabazz.

17 Mr. Shabazz (inaudible) a skinny black male. Mr.
18 Washington (inaudible).

19 Mr. Washington is still out front. Mr. Shabazz leaves
20 in the vehicle. Everything seems fine.

21 Mr. Kirkpatrick is outside taking another smoke
22 break, and Mr. Washington's leg is near the newspaper stands,
23 and then a van pulls up and stops at the station.

24 All of a sudden you see a person coming out of the
25 area of the restroom which is where we saw Mr. Seabrook

1 last go, and you see a person emerge, and you see he has a
2 light sort of skeletal mask on, like a scream mask.

3 Then he approaches the clerk, takes out a gun and he
4 forces him back in the store, and you can see here he's
5 wearing a blue shirt, white piping, dark pants, white shoes,
6 the exact same outfit that Mr. Seabrook was wearing, I guess
7 seventeen minutes earlier, when he got out of Mr. Shabazz's
8 car.

9 Now, he took the time to conceal his face. He took
10 the time to cover up his hands, but he didn't bother to
11 change clothes.

12 So while he tried his best to hide his identity from
13 you, he made a mistake. He made a mistake. He didn't
14 change clothes.

15 He forces him back in the store, and you can see right
16 here a nice shiny weapon -- looks like a forty-five --
17 pointed right at the base of Mr. Kirkpatrick's head.

18 He takes him over to the register, and you can see here
19 clearly that nice blue shirt with white piping. He opens
20 the till, he collects the cash, and this is interesting,
21 because, if you take a look, this is where it gets really
22 grim.

23 You see the glove? You see his arm is exposed and he
24 looks like a dark-skinned black male. You can see that he
25 is wearing a glove.



1 someone off the street, put them in the back of a van and
2 drive away.

3 That's what we all kind of think about when we think
4 about a kidnapping, but in South Carolina kidnapping is
5 the intentional taking of a person and causing him to be
6 detained against his will.

7 Okay? That's what the Judge is going to instruct you
8 on, and what I will submit to you is that right here Mr.
9 Kirkpatrick was doing exactly what he wants to do -- he's
10 going outside and wishes he was at home; he said he didn't
11 want to be at work.

12 But he was outside enjoying a nice night, having a
13 smoke break, and Mr. Seabrook approaches with a pistol, he
14 points it at him and forces him inside.

15 He's been detained against his will, at this point in
16 time with a gun to the back of his head, and Mr. Seabrook
17 could have taken him anywhere he wanted.

18 How do we know that? Because Mr. Seabrook took him
19 exactly where he wanted him to go. He took him right be-
20 hind the cash register, had him open it up. Does that
21 look like that's what Mr. Kirkpatrick wanted him to be
22 doing that evening? Absolutely not.

23 That is kidnapping in the State of South Carolina. He
24 was detained against his will.

25 The Judge is also going to charge you on reasonable

1 doubt. A reasonable doubt is interesting because there's
2 a couple of different ways to define it.

3 It is the kind of evidence that would leave a reason-
4 able person firmly convinced of a person's guilt. It's
5 the kind of evidence where if they heard it a reasonable
6 person wouldn't hesitate to act.

7 So the way I like to think about it is if you were
8 walking down the street after you'd heard all the evidence
9 in this case, and someone came up to you and said, what
10 have you been up to? Well, I was on this jury.

11 What was it about? Well, this fellow gets dropped
12 off at a store and you could see he's wearing a blue shirt,
13 with white piping. It looks like he runs into the rest-
14 room and then about fifteen minutes later a guy comes out
15 of the restroom and he's wearing a blue shirt with white
16 piping, white shoes, but now he's got a gun and a mask on,
17 and he robs the store and forces the clerk back inside.

18 Well, that person is going to be like, oh, that guy's
19 guilty, right? Yep. That's all that it takes, whether or
20 not there is enough evidence to convince a reasonable per-
21 son of someone's guilt, make them firmly convinced of that
22 guilt.

23 That's what we're doing here today. When you're hear-
24 ing those hoof beats, they are horses and not zebras.

25 Now, the Defense might get up here and try to say,

1 well, sure, all they did was look for the first skinny
2 black male who fits the general description, since no one
3 could see the person's face.

4 Well, he's the only skinny black male that Mr. Shabazz
5 dropped off at the store that day who was wearing a blue
6 shirt with white piping, dark pants and white shoes.

7 Don't buy any possible explanation. When you hear
8 hoof beats, think horses and not zebras, because the person
9 who comes up wearing the blue shirt with white piping and
10 dark pants is the same person who comes back to rob the
11 store.

12 Really, when you think about it, you heard from Mr.
13 Shabazz. He testified, and he is the person who says Mr.
14 Seabrook is the one who he dropped off at the store, and,
15 yes, the State has granted him immunity in order to allow
16 him to testify before you.

17 But there are other things you can consider when you
18 think about someone's credibility. In fact, you also heard
19 evidence that before there was ever any granting of immu-
20 nity, back in October of 2010, Mr. Shabazz said exactly the
21 same thing.

22 He said, I drove over there to the gas station. I
23 asked Terrance if he wanted to come back to my house and
24 chill or if he wanted to stay here, and then Terrance said
25 he wanted to stay there, and he hopped out of the car.

1 That's what you can think about. You can think about
2 whether or not someone is being consistent with their
3 story in deciding whether or not what story you'd like
4 to believe.

5 The other person who gave an interview to the police
6 or two interviews was Mr. Seabrook. Now, Mr. Seabrook --
7 I will show you and I think you can hear on the tape that
8 he is very, very fast on his feet.

9 It seems like he can give you a good detailed story
10 at the drop of a hat, but the problem is that he can't keep
11 any of it straight. He can't keep them straight from one
12 day to the next. He can't even keep them straight within
13 the same conversation he's having with the police officers.

14 We heard testimony that the first time he talked to the
15 police he said, I don't know what you're talking about; I
16 wasn't there at all.

17 Then he tells the police the next day, well, I might
18 have been with Shabazz, and maybe he handed me a gun, but
19 there is no way that I could have possibly committed this
20 -- I definitely didn't commit this robbery, even though he
21 puts himself in the car with Mr. Shabazz on the day that
22 the crime was committed.

23 He puts himself handling the weapon which, if you
24 take a look back at the video, is the shiny forty-five.

25 A shiny forty-five is what was used in the robbery.

1 He also said, if you listen to the recording, well,
2 there were seventeen rounds in the gun and one in the cham-
3 ber.

4 Now, let me ask you something. You're in the car
5 with somebody else and they are basically like, do you know
6 what time it is? It's time to go make some money, and he
7 draws out this gun, and the reaction is, no, I don't want
8 any part of this.

9 Are you going to take that gun from him, take the clip
10 out, count the number of rounds that are in there, and
11 then see if there's one in the chamber? But in fact he
12 never handed it back and said, sorry. That doesn't make
13 any sense.

14 Now, the person who might know how many rounds were
15 loaded into the gun, whether or not there is one in the
16 chamber, is the kind of person who is careful enough to
17 make sure he has a mask with him, gloves in his pocket, so
18 he knows he is ready to go if he needs them, and that
19 the gun is fully loaded.

20 Now, doesn't that sound like the kind of or maybe the
21 very person who might commit an armed robbery?

22 Not the kind of person who would never commit an armed
23 robbery and told Mr. Shabazz, I would never do that.

24 That's what he would do. He would examine everything
25 and give it back to him. Does that make a lot of sense?

1 Let's also think about what Mr. Shabazz said.. Mr.
2 Shabazz said that he and Mr. Seabrook were friends; that
3 they'd been friends for years; that he was letting Mr.
4 Seabrook stay at his house; that he was around his kids.

5 He would give him rides places. It seems obvious
6 that Mr. Seabrook was having problems with money because
7 Mr. Shabazz said he and his wife took him to the store and
8 bought him some clothes and some toiletries. I think he
9 even said a maroon sweatsuit.

10 If you take a look at the day when Mr. Shabazz and
11 Mr. Seabrook were out on the gas station, look at the pants
12 Mr. Seabrook was wearing. He's wearing maroon sweatpants.
13 They are the sweatpants Mr. and Mrs. Shabazz bought for
14 him.

15 All of these things you can take into account when
16 considering someone's credibility.

17 Now, also, when Mr. Shabazz was on the stand Mr.
18 Weidener asked him when the video -- he asked him, is
19 this the same guy? Is this Terrance? The guy you dropped
20 off? Mr. Shabazz said, no, that's not Terrance; that is
21 not my friend, Terrance. He couldn't bring himself to
22 say it was Terrance.

23 But you remember when I showed him the two pictures
24 that he took a long look at that, he couldn't bring himself
25 to say whether it was or it wasn't.

1 He didn't want to see his good friend, Terrance, get
2 in trouble.

3 The evidence is quite clear, ladies and gentlemen.
4 The person Mr. Shabazz let out of the car was wearing a
5 blue shirt with white piping, dark pants, white shoes, and
6 that was Mr. Seabrook, and it wasn't but a few minutes
7 later when Mr. Seabrook commenced this robbery.

8 Now, look at some of the stories that Terrance told
9 you. I would submit to you that although Mr. Seabrook may
10 be very, very fast on his feet that these stories are fab-
11 rications, and every single one seems to conflict with
12 the other one.

13 So the first one on November the second of 2010, when
14 he's speaking with Investigator Talbot he says that he had
15 a seizure at Stephanie's house at the birthday party in
16 Beaufort; caught a ride and went home, and that Mr.
17 Shabazz called him up on the phone and asked him if he
18 wanted to lay some grout in his driveway, and that he de-
19 finitely doesn't want to get mixed up with Walter Jenkins.

20 (Portion of a video being played of portion of inter-
21 view)

22 Okay. Now, the very next day when he's talking to
23 Investigator Chapman, he says he's at home; he's just
24 taken his medication; around four o'clock or twenty past
25 four all of a sudden the bruiser, (inaudible) Bass, comes

1 over to his house and he's got four people in the car with
2 him.

3 Now, think about it yourselves. Did you hear that in
4 the first statement?

5 (Portion of video being played of interview)

6 No, and this is the same person who the day before had
7 said he didn't want to get mixed up, and now these people
8 are coming over to his house in a van. Excuse me, the
9 jeep.

10 And now let's hear what he says to Investigator
11 Chapman just after that on November third, that same inter-
12 view from what we just heard.

13 (Portion of video being played of interview)

14 You look through this interview in a little bit more
15 detail. You need to ask yourselves does any of this make
16 any sense at all. First of all, he said that he doesn't
17 want to get involved with Mr. Shabazz -- Mr. Jenkins,
18 and so he says that, okay, well, on the third I was with
19 Mr. Shabazz because he came over to my house in a jeep and
20 he had four people with him.

21 He says this was about twenty past four in the after-
22 noon, and he says, no, I don't want to get mixed up with
23 you, no, no. Mr. Shabazz leaves.

24 Then sometime after that, after four o'clock, four
25 twenty, in the afternoon, Mr. Shabazz comes back and he
20

1 says do you want to come with me to my daughter's school?

2 Now, first of all, I don't know of a lot of schools
3 you would take your daughter to at twenty past four in the
4 afternoon on a Monday. That doesn't make a lot of sense.

5 So keep that in the back of your mind, and you also
6 have to consider that this is the person who Mr. Seabrook
7 had said had just come up to him sometime earlier with
8 four people and he believed asked him to be involved in a
9 robbery, and that despite that fact he is totally willing
10 to take him up on this innocuous invitation, to take his
11 daughter to school. Does that make any sense at all?

12 Then at that point when they're taking -- they are
13 on the way to take his daughter to some sort of a night
14 school in the evening, and this is when Mr. Shabazz takes
15 out a gun and gives it to Mr. Seabrook, and Mr. Seabrook
16 is so appaled at the idea of committing a robbery that he
17 checks to see if a few rounds are in the chamber, see what
18 kind of gun it is, and see if there is one ready to go.
19 Does that make any sense at all?

20 Now, the next statement goes back to what he told
21 Investigator Chapman on November second.

22 (Portion of video being played of interview)

23 He said he went to his mother's, and he had no idea
24 the store got robbed when he asked him. I had no idea the
25 store got robbed.

1 Now, remember he said he went to his mom's house.

2 (Portion of video being played of interview)

3 And now on November third he is back with Stephanie
4 when he is relating the story to his mother -- ~~not~~ with
5 Mr. Shabazz riding in the car and he shows him the gun.

6 And going back to the first interview with the Inves-
7 tigator -- where were you on the night that all this hap-
8 pened? I was right here in Beaufort at five o'clock to
9 twelve in the morning.

10 Right here next to Chisholm Funeral Home -- the house
11 right before you get to the (inaudible), and whose house
12 is that? She's renting the house.

13 (Portion of video of interview being shown)

14 So now he says I was in Beaufort at a house with a
15 woman I know; she's Bruiser's cousin; we're really good
16 friends; I don't remember her name; we were just hanging
17 out the whole evening.

18 Well, that's interesting because if you think back to
19 the first statement he made, he said on November 2nd he
20 was at Stephanie's house; that he was at a birthday party
21 and then caught a ride and went home at some point.

22 Now in this same interview he says he was with Bruiser's
23 cousin, a woman, and they are good friends even though he
24 doesn't know what her name is; they were hanging out all
25 that evening, and then he didn't get back out of Beaufort

1 from this lady's house until the next morning.

2 Out of all this stuff, you need to ask yourselves what
3 makes the most sense. Out of the different versions of
4 events that you've heard, which is the one you can believe?

5 If you believe Mr. Shabazz's testimony, which was
6 consistent from now back to when he first talked with the
7 police, back in 2010, or -- I don't know -- the five dif-
8 ferent stories that Mr. Seabrook has, some of which conflict
9 from minute to minute, and with the same people that he's
10 talking to.

11 Who seems more credible? I have tried to let you
12 visualize what happened that evening from the evidence we
13 have. Now, the description that we get from the Clerk is
14 that there was a skinny black male, around five foot seven.

15 That represents many possibilities, millions if not
16 billions of possibilities. Could be any skinny black male
17 who is roughly five foot seven. It puts Mr. Seabrook right
18 there.

19 Now, Mr. Shabazz identifies Mr. Seabrook as the per-
20 son who gets out of his car. Okay? So we'll mark that as
21 being Mr. Seabrook.

22 And you can see on the video this person is wearing a
23 blue shirt, dark pants and white shoes. Again, any one can
24 be that skinny black male, wearing a blue, white piped
25 shirt, dark pants, white shoes.

1 But right here is Mr. Seabrook that we know got out
2 of that car.

3 Here they are together where it looks like the pants
4 Mr. Seabrook is wearing are the pants Mr. Shabazz had
5 brought for him as he testified.

6 Now, Mr. Shabazz testified he dropped him off at the
7 gas station so they didn't stay together at that time,
8 and that was the explanation.

9 On the third when Mr. Seabrook decides to say, okay,
10 let me tell you what really happened, what he does tell
11 you is that he describes the gun. Now, it could be that
12 he described the gun and didn't commit the robbery, or he
13 describes the gun because he's the one who was holding the
14 gun that evening.

15 He knows exactly how many bullets are loaded, and he
16 knows whether or not there is one in the chamber. Then he
17 says that Shabazz came back and asked him to take -- help
18 him take his daughter to school so he puts himself in the
19 car with the gun and with Shabazz, but then says it wasn't
20 me; couldn't possibly be; I definitely didn't do it.

21 Ladies and gentlemen, take a look at all of the evi-
22 dence, listen to hoof beats, and the only possible conclus-
23 ion you can come to, the only conclusion that a reasonable
24 person can come to is that it was Mr. Seabrook who commit-
25 ted this crime.

1 That's what the State has proven, and that's what I'm
2 asking you to go back in the jury room, consult the evidence
3 and remember what we're talked about here today -- I'd ask
4 you to come back with a verdict of guilty as to armed robbery and kidnapping.

5
6 Thank you.

7 (Colloquy at the bench between counsel and the Court
8 off the record)

9 MR. WEIDNER: May it please the Court? Mr. Bannon.

10 As I told you, if you're going to make an omelet,
11 there has got to be a process -- you have to take the process
12 properly. If you mix up the process, you will get
13 scrambled eggs with stuff in it.

14 That is kind of what's happened here. Rather than go
15 through the process to make an omelet, what they've done
16 is they've taken snippets or various pieces of audio and
17 video and shown it to you, but it has moved out of context.
18 Only one time have they shown you the whole video through.

19 Remember in the opening I asked you to watch the video
20 and what you've got is they started the investigation and
21 if you jump to conclusions it leads you down a certain
22 pathway, and that causes you to miss other aspects of the
23 case.

24 When that happens, you start not paying attention to
25 what is going on, and when you try to fix it, just like you

1 try to fix your omelet you just messed up, you pour hot
2 sauce all over it, and you wind up with scrambled eggs
3 and stuff.

4 In this case, what you wind up with is to give Walter
5 Jenkins, A K A Shabazz, A K A Justice, A K A Bruiser, im-
6 munity.

7 That is the one guy they know that is involved, and
8 they've got to give him immunity, but what does that do?
9 Counsel says, well, you should believe it because he's
10 been consistent.

11 Well, if they had believed him, they wouldn't have
12 locked him up, and if they had believed him they wouldn't
13 have had to give him immunity to get him to come in here
14 and testify.

15 And what did they give him immunity to? What's the
16 one thing they gave him immunity to do? You heard the
17 testimony. The guy was all over the place, except for the
18 the one thing that he knew he had to say to keep his immu-
19 nity, and that was, the guy who got out of the car was
20 Terrance Seabrook.

21 That's the only thing he had to say, the only thing
22 he had to get right. He was all over the place as to
23 Seabrook and where they were.

24 An interesting thing is that when you peel all of
25 these pieces away, all you are left with is this, that

1 the State -- remember when I asked the Staff Sergeant if
2 he had any DNA -- the Sergeant have you got any DNA evi-
3 dence or any fingerprints? Any witness identification?

4 Mr. Kirkpatrick had working there seven, eight, nine
5 months. He says Mr. Seabrook is a regular customer, in
6 there four or five times a week, six times a week, and we
7 all have not heard Mr. Seabrook's voice, and Mr. Kirkpatrick
8 said he didn't recognize his voice.

9 So they've got whatever they've got, but what do they
10 have that fits Mr. Seabrook?

11 The only thing they've got is the testimony of Mr. Shabazz,
12 so really what they're asking you to do is to
13 find Mr. Seabrook guilty of armed robbery and kidnapping
14 based only upon what Mr. Shabazz said.

15 Now, they talk about reasonable doubt. Reasonable
16 doubt is the kind of doubt that causes a person to pause
17 in weighing important personal matters. Believe me,
18 this is an important personal matter to Mr. Seabrook, a
19 weighty matter to Mr. Seabrook, so if you've got a doubt
20 you cannot find Mr. Seabrook guilty based only on the
21 testimony of Mr. Walter Jenkins A K A Shabazz A K A
22 Justice A K A Bruiser.

23 You have to think about that. Well, you have just
24 paused, and that is a reasonable doubt. That is exactly
25 what it is.

1 That is what they are asking you to find him guilty on.

2 That's what they are saying the identification is.

3 You would have to go back in the jury room and say,

4 I believe that, no question; it wasn't Quincy Holmes, his
5 brother, his cousin -- wasn't one of these other two guys,
6 and, remember, even Mr. Kirkpatrick admitted drug prob-
7 lems; they were all doing drugs out there.

8 People were saying there was drug deals going back
9 and forth. So who got out of the car, and the interesting
10 thing is that once they give Shabazz immunity what have
11 they given him?

12 He's sitting back with a get out of jail free card.
13 Not only for himself because he can't be prosecuted --
14 he can say whatever he wants, but also for whoever was
15 with him. Right? Because now he can say if it was his
16 brother or his cousin or any of the other guys that was
17 with him -- he can say, oh, no, it was Terrance.

18 They don't have any way to verify or not verify that.
19 They don't have anything, so now he can point the finger
20 on whatever guy was with him, and he pointed it at
21 Terrance.

22 What I remember when I was talking to Staff Sergeant
23 Chapman -- I said, there's a process for interrogating
24 people. One of the processes is you go talk to this
25 guy and talk to this guy, and say, hey that fellow says

1 you were with him, and or they say to Mr. Shabazz, Mr.
2 Shabazz, Terrance says this, and right now what they
3 have done is try to create distrust between the parties
4 in the hopes they will start talking about each other.

5 He tells them, hey, man, this and this, and he gets
6 out of trouble. That's a nice deal. That's about as
7 good as it gets.

8 Another very interesting point -- the Solicitor in
9 his opening statement and again just now says, well,
10 there's no question that an armed robbery took place
11 here. I don't think anybody is going to question that
12 an armed robbery took place here.

13 I am, and I do, and I will explain to you why. There
14 is two questions you have to ask. One is, who done it,
15 and, two, what did they do?

16 Now, one of you is already on track with this because
17 you picked up on it, but let's walk this through.

18 Armed robbery is larceny. Larceny is taking some-
19 thing of value, or something with intent to permanently
20 deprive the owner of it. A robbery is taking something
21 of value from a person intending to deprive him of it,
22 and this is the element the Solicitor left out -- through
23 force, threats or violence, and, of course, armed robbery
24 is taking something from somebody through force, threats
25 or violence and while armed, and in this case with a gun.

1 They have to prove each and every one of those ele-
2 ments, and it's interesting that the Solicitor left out
3 the key element he has to prove because that is, inter-
4 estingly enough, the one that is missing.

5 Remember I asked you to watch the video and let's
6 not take it out of context? Let's just watch it through
7 and you tell me.

8 What's really going on here? Here's the video, and
9 this is just before the events take place.

10 (Portion of video being shown)

11 You see Mr. Walter Jenkins out here? You see this
12 family come out and they walk over and they give something
13 to Mr. Jenkins, a sandwich or something, and he walks
14 back.

15 He stands over there by his paper box, and I'm just
16 going to let this play, if you'll indulge me for the
17 thirty seconds.

18 As I say, watch the video carefully.

19 Now, Mr. Washington and you see somebody walking in
20 with the white shoes. You see it, whoever that is. He's
21 wandering around over there. He walks out, stands there
22 and looks in the window.

23 He's still there, and Mr. Washington walks out, goes
24 back over to his box, and has a seat. All right, here comes
25 our clerk.

1 Watch this sequence of events. Now here's the
2 clerk's head. He's got the long sideburns here.

3 You can see the way he walks out and he's going to
4 light a cigarette. Now watch him turn his head. You see
5 the foot. That's whoever that was, and he is stepping
6 out there. You can clearly see him there.

7 Look at the clerk. He's looking right at him. Look
8 at the top of his head. He's pointed right at him. The
9 clerk said, I didn't see nothing before that guy came up
10 and showed me the gun, and yet when he walks out he is
11 looking right at the guy who starts to come out.

12 Then this car is pulling in, so this guy over here
13 steps back and the clerk leans forward to kind of gauge
14 that fellow -- he backs up against the wall again. Do
15 you see that?

16 What's going on there? You're a clerk and you're
17 standing outside your store. You're going to smoke a
18 cigarette. You look over and you see a guy in a mask
19 with a gun step out, and you step back and finish your
20 cigarette. Really?

21 So that these fellows come up and they're going to
22 fix their tire. You can see it was the guy with the
23 piping on his shirt, blue shirt with the piping -- if
24 you need me to go back, I'll show it to you. You can
25 look at it as much as you want in the jury room.

1 But that was the same person. He just saw a man
2 with a mask and gun so he sticks around enjoying his
3 cigarette.

4 These fellows drive off, and now it's clear again.
5 Here's our guy with the mask who shows up now. He's
6 smoking the cigarette, sees the guy coming, and he's next
7 in the door. He already knows he's coming because he's
8 already seen him.

9 The guy comes up and what does he do? He's got a
10 guy with a scream mask coming at him -- if somebody is
11 coming at you -- you're a store clerk or teller, and
12 somebody's coming at you with a mask and a gun, and you
13 don't drop your cigarette.

14 Just another day in paradise. Then watch what hap-
15 pens. The fellow sticks him up with the gun. This is
16 a mighty polite armed robbery because he holds the door
17 for the fellow with the gun. He goes like this and he
18 holds the door for him.

19 You go first. No, no, no, you go ahead.

20 Now they walk into the store and they come around
21 to the counter, and the teller opens the drawer for him.
22 Of course, you've got to push the right button.

23 The armed robber goes for the cash in the drawer.
24 He doesn't drop his cigarette. Now watch -- he's taking
25 the money out of the till, but then what happens?

1 He gets all the money out of the till and the clerk
2 -- don't forget there's money underneath the tray. Do
3 you see that? The clerk is the one who pulls the tray
4 out for him -- don't forget the money there.

5 He's still smoking his cigarette and gets down on
6 the ground. Got to make this look good. He grabs a
7 couple of Kools.

8 The clerk is going to finish his cigarette. He's
9 just got robbed. The guy leaves now, and he picks up
10 the phone to call law enforcement or call somebody. He
11 finishes his cigarette. Gives his partner time to get
12 down the road.

13 He's still enjoying the cigarette. Now he's going
14 to close the drawer up and go throw his cigarette out.
15 He calls the boss first to let him know they've been
16 robbed. Then he got around to calling the cops.

17 What he's doing is he's buying time. Right?

18 Armed robbery is taking something, in this case
19 money, from the possession of someone with use of force,
20 threats or violence. Where is the threats or use of
21 force or violence?

22 If we are in cahoots, you know I'm not going to do
23 anything, and there is no threats or use of force or vio-
24 lence. What you just saw was a larceny by whoever it
25 was who just stole from the store.

1 Remember that Kirkpatrick said he left the next day.
2 You also heard a lot about the money, and Kirkpatrick
3 said, well, yeah, there shouldn't have been more than
4 a Hundred or Hundred and Fifty Dollars in the till be-
5 cause I was supposed to make drops, but I believe you --
6 you heard testimony that there was a dust-up between
7 Kirkpatrick and Bruiser's brother, Quincy Holmes, at a
8 party two day later when all these people finally get
9 together.

10 They are seen out back talking. Hey, I thought it
11 was Three Hundred Fifty Dollars taken; I thought it was
12 Five Hundred Seventy Dollars taken.

13 Where is the money? What happened was there was
14 Three Hundred Fifty Dollars taken out of the till, and
15 there was another Two Hundred and change that he got sep-
16 arate on the deal.

17 That's what they were fussing about. Man, you did
18 me wrong in this deal. You took -- I thought it was a
19 Three Hundred and Fifty Dollar deal, and you took some
20 more money from there. I hear it was Five Hundred instead
21 of Three Hundred.

22 Buddy, you did me wrong, and they got into it.

23 The State has an obligation to prove to you beyond
24 a reasonable doubt, to a moral certainty, every element of the
25 offense of armed robbery and kidnapping.

1 The first problem they've got is identification.
2 They can take all the statements they want but they are
3 still asking you to find Terrance Seabrook guilty based
4 solely upon the testimony of Walter Jenkins Shabazz,
5 Justice, Bruiser -- who has every good reason to try to
6 direct law enforcement away from his brother or cousin
7 or whoever that was, and to point them to Terrance
8 Seabrook.

9 Then even regardless of who you believe it was,
10 your eyes are not out of context with what you just
11 watched; they will tell you what's going on.

12 People's actions speak louder than words. That
13 clerk steps out and looks, sees a guy, lights up a cig-
14 arette. The guy backs off -- people come in, and he backs
15 off because a car pulls in.

16 Then he comes over and opens the door for him; they
17 go in and he takes money out of the tray. The clerk
18 says, hey, don't forget the stuff under the tray; the guy
19 leaves. The clerk waits a while, smokes a cigarette,
20 and calls his boss. That is a larceny. It's not an
21 armed robbery, not a kidnapping, because the element
22 they have to show is threats of force or violence, and
23 it's not there.

24 So they have the burden of proving all of this be-
25 yond a reasonable doubt. You have to be convinced of

1 each and every element. If you are not, that's reason-
2 able doubt.

3 If you don't believe Shabazz, that's reasonable
4 doubt.

5 I submit to you that there is all kinds of doubt
6 in this case, so I'm asking you to go back and deliber-
7 ate; look at the video as many times as you would like
8 or as you need to, and be advised you can expand that if
9 you need to.

10 I've looked at it a bazillion times, and if you
11 look at it you will see exactly what happened, and you
12 see a larceny take place, not an armed robbery.

13 So the question then is who did it and what did they
14 do?

15 You've got to answer both of those questions beyond
16 a reasonable doubt and you can't say that was Terrance
17 Seabrook. You can't do that. He is not guilty.

18 THE COURT: Mr. Foreperson, members of the jury, you
19 have listened very patiently and attentively to the pre-
20 sentation of the evidence in this case. I want to thank
21 you for that.

22 Also, you've listened to the very able arguments
23 made for the State by Solicitor Jim Bannon and on behalf
24 of the Defendant by Mr. Larry Weidner.

25 Ladies and gentlemen, it now becomes the duty of

1 the Trial Judge under the Constitution of this State to
2 instruct and charge you on the law that is applicable
3 in this case.

4 It is your duty as jurors to accept and apply the
5 law as I will now state it to you.

6 As jurors, it is your exclusive duty to decide all
7 issues of fact in this case. Both the State and the De-
8 fendant have the right to expect that you will carefully
9 consider and evaluate the testimony and the evidence,
10 and to apply the law of the case to that evidence.

11 By doing so, both the State of South Carolina and
12 the Defendant will receive a fair and impartial trial in
13 this matter.

14 Now, the State of South Carolina by the Bill of
15 Indictment in this case charge the Defendant, Terrance
16 Seabrook, with armed robbery and kidnapping.

17 I remind you that the fact that the Defendant was
18 arrested, charged and indicted in this case is not evi-
19 dence in this case and cannot be considered as guilt or
20 evidence in the case, nor does it create any presumption
21 or inference of guilt.

22 An Indictment is simply the formal written instru-
23 ment which contains the charge against a defendant, and
24 it is the formal document which brings the case into this
25 Courtroom.

1 Ladies and gentlemen, the Defendant, Mr. Terrance
2 Seabrook, has pled not guilty to the Indictment, and that
3 plea puts the burden on the State to prove the Defen-
4 dant guilty beyond a reasonable doubt.

5 A person charged with committing a criminal offense
6 in South Carolina is never required to prove themself
7 innocent. I charge you that it is an important rule of
8 law that a defendant in a criminal trial, no matter what
9 the seriousness of the charges may be, will always be
10 presumed innocent of the crime for which the indictment
11 was issued unless guilt has been proven by evidence sat-
12 isfying you, the jury, of that guilt beyond a reasonable
13 doubt.

14 Ladies and gentlemen, this presumption of innocence
15 does not end when you begin your deliberations, but it
16 accompanies the Defendant throughout the trial until
17 you, the jury, reach a verdict of guilt based on evi-
18 dence satisfying you of that guilt beyond a reasonable
19 doubt.

20 Ladies and gentlemen, the presumption of innocence
21 is like a robe of righteousness that is placed upon the
22 shoulders of the Defendant, and it remains with the De-
23 fendant until it has been stripped from him by evidence
24 which satisfies you of the Defendant's guilt beyond a
25 reasonable doubt.

1 Ladies and gentlemen, the presumption of innocence
2 is not a mere legal theory. It's not just a legal phrase
3 we use. It is a substantial right to which every Defen-
4 dant is entitled unless you, the jury, are satisfied of
5 the Defendant's guilt beyond a reasonable doubt.

6 Now, the term reasonable doubt must be given its
7 plain and ordinary meaning in this case. However, to
8 an extent I may define it for you. A reasonable doubt
9 is the kind of doubt that would cause a reasonable per-
10 son to act in the most important of their personal de-
11 cisions.

12 A Defendant is entitled to every reasonable doubt in
13 the case. If upon any issue of fact you have a reason-
14 able doubt as to how that issue should be resolved, you
15 must resolve that reasonable doubt in favor of the De-
16 fendant.

17 Now, ladies and gentlemen, some of you may have
18 served as jurors in a civil case where you are only told
19 that it was necessary to prove that a fact is more likely
20 true than not true. It is what we call the greater
21 weight of the presumption of evidence.

22 In criminal cases, the State's proof must be more
23 powerful than that. It must be beyond a reasonable
24 doubt.

25 Proof beyond a reasonable doubt is proof that leaves

1 you firmly convinced of the Defendant's guilt.

2 Now, ladies and gentlemen, there are very few things
3 in this world that we know with absolutely certainty.
4 In a criminal case, the law does not require proof that
5 overcomes every possible doubt.

6 If, based on your consideration of the evidence,
7 you are firmly convinced that the Defendant is guilty of
8 the crimes charged, you must find the Defendant guilty.

9 If, on the other hand, you think there is a real
10 possibility that the Defendant is not guilty, you must
11 give the Defendant the benefit of the doubt and find
12 him not guilty.

13 Now, I remind you that during the trial you and I
14 have certain duties to perform. As the Trial Judge, it
15 is my responsibility to preside over the trial of the
16 case, and I also have the duty to rule on the admissibil-
17 ity of the evidence that is offered during the trial.

18 Now, ladies and gentlemen, you are to consider only
19 the competent evidence before you. You are to consider
20 only the testimony which has been presented from the wit-
21 ness stand and the exhibits which have been made a part
22 of the record in this case.

23 I have the additional duty to charge you the law
24 that is applicable to this case. As the Presiding Judge,
25 I am the sole judge of the law, and it is your duty as

1 jurors to accept and apply the law as I now state it to
2 you.

3 If you have any ideas as to what the law is or what
4 the law ought to be, and it does not agree with what I
5 now tell you the law is, you must abandon this idea be-
6 cause you are sworn to accept the law and to apply the
7 law exactly as I state it to you.

8 Ladies and gentlemen, in every case tried in this
9 Court before a jury, the jury becomes the sole and exclu-
10 sive judges of the facts. The Trial Judge cannot state
11 or make comment on, make any statement on, the facts of
12 the case to a trial jury, since you, the jury, are the
13 sole judges of the facts of the case.

14 You are not to infer from anything I may have said
15 during the progress of this trial or in ruling on admis-
16 sibility of evidence or otherwise, or anything I have
17 said now to you during the course of this instruction,
18 that I have an opinion about the facts of this case.

19 The law does not allow me to have an opinion about
20 the facts of this case. Again, this is a matter solely
21 for you, the jury, to determine.

22 Now, ladies and gentlemen, there are typically two
23 kinds of evidence that are presented during a trial;
24 that is, direct evidence and circumstantial evidence.

25 Direct evidence is the testimony of a person who

1 claims to have actual knowledge of a fact, such as an
2 eyewitness. It is evidence which immediately establishes
3 the main fact to be proved.

4 Circumstantial evidence is proof of a chain of facts
5 indicating the existence of a fact. It is evidence that
6 immediately establishes collateral facts from which a
7 main fact may be inferred.

8 Circumstantial evidence is based on inference and
9 not on personal knowledge or observation.

10 Ladies and gentlemen, the law makes absolutely no
11 distinction between the weight or value to be given for
12 either direct or circumstantial evidence, nor is a
13 greater degree of certainty required of circumstantial
14 evidence than direct evidence.

15 You should weigh all the evidence in this case, and,
16 after weighing all the evidence, if you are not con-
17 vinced of the guilt of the Defendant beyond a reasonable
18 doubt you must find him not guilty.

19 Ladies and gentlemen, it is your duty to determine
20 the credibility of witnesses who have testified in this
21 case. Credibility simply means believability.

22 It becomes your duty as jurors to analyze and eval-
23 uate the evidence and determine which evidence convinces
24 you of its truth.

25 In determining the believability of witnesses who

1 have testified in this case, you may believe one witness.
2 over several witnesses or several witnesses over one
3 witness. You may believe a part of the testimony of a
4 witness and reject the remaining part of that same
5 witness' testimony.

6 You may believe the testimony of a witness in its
7 entirety or reject the testimony of a witness in its
8 entirety, and you may consider whether any witness has
9 exhibited to you any interest, bias, prejudice or other
10 motive in this case.

11 Ladies and gentlemen, you may also consider the
12 appearance and manner of the witness while they were on
13 the witness stand.

14 Now, the rules of evidence ordinarily do not allow
15 someone to testify as to opinions or conclusions. An
16 exception to this rule exists for witnesses we call ex-
17 pert witnesses. Any witness who by education or experi-
18 ence has become expert in some art, science or profession
19 may give an opinion as to the subject the witness claims
20 to be an expert in, and also to give the reasons for the
21 opinion.

22 You should consider any expert opinion given by an
23 expert and give it such weight as you believe that it
24 deserves. If you decide an expert witness' opinion is
25 not based on sufficient education or experience, or if

1 you decide that the reasons given in support of that
2 opinion are not sound, or that the opinion is outweighed
3 by other evidence in the case, you may disregard that
4 opinion entirely.

5 An expert witness' testimony is to be given no
6 greater weight than that of other witnesses simply be-
7 cause that witness is an expert.

8 You do not have to accept an expert witness' opin-
9 ion even though it is uncontradicted.

10 Now, ladies and gentlemen, I instruct you and empha-
11 size that the fact that the Defendant did not testify in
12 this case is not a factor to be considered by you in any
13 way in your deliberations and in your consideration of
14 the guilt or innocence of the Defendant it must not be
15 considered by you in any manner whatsoever.

16 A Defendant has the constitutional right to remain
17 silent, and the assertion of this right must not be con-
18 sidered by you in your deliberations. I repeat, under the
19 oath that you took, you are to draw no conclusion whatso-
20 ever from the fact that the Defendant did not testify.

21 The fact that the Defendant did not testify should
22 not even be discussed in the jury room.

23 Again, the burden of proof, as I stated to you, is
24 upon the State. The Defendant is not required to prove
25 his innocence, and the burden of proof remains on the

1 State to prove guilt beyond a reasonable doubt.

2 Now, ladies and gentlemen, the Indictments in this
3 case allege different offenses against Terrance Seabrook,
4 and those charges are armed robbery and kidnapping. Each
5 charge is a separate and distinct offense. You must de-
6 cide each charge separately on the evidence and the law
7 applicable to it, uninfluenced by your decision as to
8 any other charge, and, Mr. Foreperson, you will be asked
9 to write a separate verdict of guilty or not guilty, fol-
10 lowing the instructions on the verdict form as to each
11 of the two charges.

12 Now, ladies and gentlemen, the Defendant is charged
13 first with armed robbery. In order to prove this of-
14 fense the State must first prove beyond a reasonable doubt
15 that the Defendant took personal property from the person
16 or presence of another person.

17 Ladies and gentlemen, property is in the presence of
18 a person if it is within the person's reach, inspection,
19 observation, or control, so that the person could, if not
20 overcome with violence or prevented by fear, keep possession
21 of the property.

22 The State must also prove beyond a reasonable doubt
23 the Defendant carried the property away, intending to per-
24 manently deprive the owner of the property and to keep
25 the property for the Defendant's own use.

1 The slightest removal of the property or the complete
2 possession of the property, even for an instant, by a De-
3 fendant is sufficient to show a taking and carrying away of
4 property.

5 Ladies and gentlemen, the taking and carrying away of
6 the property must have been done with violence or by putting
7 the owner of the property in fear of violence, and, finally,
8 ladies and gentlemen, the State must prove beyond a reason-
9 able doubt that the Defendant was armed with a deadly weapon
10 during the robbery.

11 Now, a deadly weapon is any article, instrument or sub-
12 stance which is likely to cause death or great bodily harm,
13 and whether an instrument has been used as a deadly weapon
14 depends on the facts and circumstances of each case.

15 Ladies and gentlemen, the following are instruments
16 which may be deadly weapons: A pistol; a shotgun; a rifle;
17 a dirk; a dagger; razor; gasoline; a bomb; and on it goes.
18 I also tell you that a gun may be a deadly weapon even if it
19 is not operated.

20 Ladies and gentlemen, the Defendant is also charged
21 with kidnapping. To prove kidnapping, the State must
22 show that the Defendant knowingly and unlawfully seized, con-
23 fined, inveigled, kidnapped or carried away another person
24 without the authority of law.

25 To do a thing unlawfully is to do it wilfully against

1 the law, and knowingly means with knowledge, consciously and
2 not accidentally. Seize means to hold forcefully, and con-
3 fine means to limit, restrict or enclose within bounds, or
4 to shut or keep in. Enveigle means to lure, entice or
5 by other deceitful means. Decoy means to lure or entice a
6 person into a trap.

7 Ladies and gentlemen, to kidnap is to remove a person
8 against his will by unlawful force or by fraud, and abduct
9 means to carry out secretly by force for any illegal purpose,
10 to carry away.

11 The State does not have to prove the Defendant did all
12 of these things. Instead, if you find beyond a reasonable
13 doubt the Defendant did any of these things you may find the
14 Defendant guilty of kidnapping.

15 Ladies and gentlemen, something done without authority
16 of law is something the law does not sanction, permit, allow,
17 condone, or provide justification for.

18 The kidnapping does not have to be for any personal
19 monetary gain whatsoever.

20 Now, ladies and gentlemen, in order to establish criminal
21 liability, criminal intent is required. For example, the
22 mental state required has to be proven by the purpose, intent,
23 knowledge, recklessness, or criminal negligence.

24 Criminal intent must be proven by the State beyond a
25 reasonable doubt. Criminal intent is always a matter that

1 must be determined by the jury in the circumstances surround-
2 ing the situation.

3 Ladies and gentlemen, there is no way to prove intent to
4 a mathematical certainty. There is no way medical science
5 could dissect a person's brain and determine what that person
6 had in mind.

7 So the law says that criminal intent may be inferred
8 from the circumstances. This is how you make a determination
9 of whether or not the element requiring intent was present.
10 It is not necessarily by direct and positive evidence. In-
11 tent may be determined by inference in the same way as any
12 other facts, by taking into consideration the acts of the
13 parties and all the facts and circumstances in the case.

14 Again, criminal intent is a mental state, a conscious-
15 ness of wrongdoing, and it is up to you to determine what the
16 Defendant intended to do, based on the circumstances shown
17 to have existed.

18 Ladies and gentlemen, criminal intent can arise from
19 action or a failure to act, or it may arise from negligence,
20 (inaudible) to consequences that is considered by the law
21 to be criminal intent.

22 Now, ladies and gentlemen, I remind you that the bur-
23 den of proof in this case is on the State, and the burden of
24 proof beyond a reasonable doubt extends to every element of
25 the crimes charged, and this specifically includes the burden

1 of proving beyond a reasonable doubt the identity of the
2 Defendant as the person who committed these crimes.

3 Identification testimony is an expression of belief or
4 impression by a witness. You must determine the accuracy of
5 the identification of the Defendant. You must consider the
6 believability of each identification witness in the same
7 way as any other witness.

8 Ladies and gentlemen, you must be satisfied beyond a
9 reasonable doubt of the accuracy of the identification of
10 the Defendant before you may find the Defendant guilty.

11 On the other hand, if after examining the testimony
12 you have a reasonable doubt as to the accuracy of the
13 identification, you must find the Defendant not guilty.

14 Mr. Foreperson and members of the jury, as you retire
15 to begin your deliberations I wish to express the hope that
16 each of you is mindful of the importance of your respon-
17 sibility here today.

18 You are not called upon very often to serve as jurors,
19 and the proper performance of that duty requires that each
20 of you reach the height of freeing your mind of all im-
21 proper influences. You and I are acting for the community,
22 and that is why we must see to it that this trial is fair
23 and the verdict is just.

24 You have observed that the presiding officer is always
25 addressed as Your Honor. The reason is that the Court is

1 entrusted with the honor of the community, the honor of
2 this State, the honor of this Country, in seeing that
3 every case tried here receives fair and impartial just-
4 ice, and you, the jury, take into your care and keeping
5 the preservation of this community, the honor of this
6 State, the honor of this Country.

7 Now, please don't get the idea that I am trying to
8 intimate to you how I think you should decide this case.
9 Again, as I told you, under the law of the State of South
10 Carolina you, the jury, are the sole judges of the facts
11 of the case. It would be highly improper for me to in-
12 fluence your decisions, so, again, I am not trying to
13 tell you what your verdict should be, but as the presiding
14 officer of this Court I am vitally concerned that what-
15 ever verdict you reach will result in you going back to
16 your jury room and confining your consideration to the
17 evidence and to the law that you have heard here in this
18 Courtroom over the last two days, rendered fairly and impar-
19 tially, as I have every confidence you will.

20 Ladies and gentlemen, everyone is entitled to just-
21 ice in this case. Both the State and the Defendant. You
22 owe no support or sympathy to anyone.

23 Now, Mr. Foreperson, I remind you that your verdict
24 must be unanimous. It must be the verdict of all of you.

25 My clerk has prepared a verdict form which simply has

1 the case caption, State of South Carolina, County of
2 Beaufort, State of South Carolina versus Terrance
3 Seabrook, and the Indictment number.

4 It asks two questions, both of which you must answer.
5 As to Indictment Number 2010 2321, the charge of armed
6 robbery, we, the jury, unanimously find the Defendant,
7 Terrance Seabrook, either not guilty or guilty.

8 Ladies and gentlemen, don't infer from the order I
9 put guilty or not guilty any suggestion. In every single
10 trial my law clerk reverses those words as he assists me
11 with the verdict form.

12 As to the second question, Indictment 2010 2320,
13 the charge of kidnapping, we, the jury, unanimously find
14 the Defendant, Terrance Seabrook, and again not guilty or
15 guilty.

16 Mr. Foreperson, there is a line for you to sign and to
17 to date. When you have reached a unanimous verdict, I
18 ask that you simply knock on the jury room door and we
19 will accept you back into the Courtroom to receive your
20 verdict.

21 Ladies and gentlemen, for the very last time I'm
22 going to send you back to your jury room and tell you not
23 to begin your deliberations. If there is something fur-
24 ther that the lawyers want me to instruct you on the law,
25 I will bring you back into the Courtroom and do that.

1 If not, Mr. Foreperson, I'm going to send back the
2 verdict form as well as all the evidence that has been
3 entered into this case, and that's going to be your sig-
4 nal to begin your deliberations.

5 I will also tell you that I am assuming we are
6 going to go ahead and send back the computer with you
7 probably so you are able to see the videos if you would
8 like to do that.

9 I will also tell you, Mr. Foreperson, that while I do
10 have a Court Reporter taking down everything verbatim,
11 there is no transcript of any of this, so if there is
12 certain testimony that you would like played back I can
13 bring you back into the Courtroom and we can play it by
14 audio and we will all listen to it together.

15 All right, again, thank you for your patience. I
16 will send you back to your jury room but do not begin
17 your deliberations until you are instructed to do so.

18 (Jury excused from Courtroom)

19 THE COURT: Any exceptions or additions to the charge
20 by the State?

21 SOLICITOR: No, maam.

22 THE COURT: From the Defense?

23 MR. WEIDNER: No, maam.

24 THE COURT: All right, here is the verdict form and
25 let's make sure we have all the evidence together.

1 (Jury instructed to commence deliberations, having
2 been taken verdict form and evidence admitted in the
3 case)

4 (Whereupon, the Court stood at ease as to this case for
5 a period, until the matter was continued)

6 THE COURT: All right, the jury would like the law-
7 ful definition of armed robbery.

8 Bring them out.

9 (Jury returned to Courtroom)

10 THE COURT: Mr. Foreperson, you have sent me a note
11 requesting the lawful definition of armed robbery. Is
12 that correct, sir?

13 FOREPERSON: Yes, Your Honor.

14 THE COURT: All right, I'm going to go ahead and
15 recharge you on the law of armed robbery.

16 The Defendant is charged with armed robbery. In
17 order to prove this offense the State must first prove
18 beyond a reasonable doubt that the Defendant took personal
19 property from the person or presence of another person.

20 Property is in the presence of a person when it is
21 within the person's reach, inspection, observation or
22 control, so that the person could, if not overcome with
23 violence or prevented by fear, keep possession of the
24 property.

25 The State must also prove beyond a reasonable doubt

1 that the Defendant carried the property away, intending
2 to permanently deprive the owner of it, and to keep the
3 property from the Defendant's own use.

4 The slightest removal of the property or the complete
5 possession of the property even for an instant by a De-
6 fendant is sufficient to show a taking and carrying away of
7 the property.

8 The taking and carrying away of the property must
9 have been done with violence or by putting the owner of
10 the property in fear.

11 Finally, the State must prove beyond a reasonable
12 doubt that the Defendant was armed with a deadly weapon
13 during the robbery.

14 A deadly weapon is any article or instrument or
15 substance which is likely to cause death or great bodily
16 harm. Whether an instrument has been used as a deadly
17 weapon depends on the facts and circumstances of each
18 case.

19 The following are examples of instruments which may
20 be deadly weapons: A pistol; a shotgun; a rifle; a dirk;
21 a dagger; a knife; a slingshot; gasoline; a firebomb.

22 A gun may be a deadly weapon even if it is not oper-
23 ated.

24 Mr. Foreperson, is that what you wanted to hear?

25 FOREPERSON: Yes, Your Honor.

1 THE COURT: Thank you. The bailiff will take you
2 back to your jury room.

3 (Jury excused to jury room to continue deliberations)

4 THE COURT: All right, we'll be at ease until I hear
5 back from them.

6 (Court stood at ease for a brief period until the
7 matter was resumed)

8 THE COURT: It's my understanding we have a verdict
9 in our case. Bring in the jury.

10 (Jury returned to Courtroom)

11 THE COURT: Mr. Foreperson, I understand the jury
12 has reached a verdict?

13 FOREPERSON: That's correct, Your Honor.

14 THE COURT: Please hand up the verdict form to the
15 bailiff. (Examining verdict form)

16 Thank you.

17 If the Defendant would rise? In the State of South
18 Carolina versus Terrance Seabrook, as to Indictment 2010
19 GS 07 2321, we, the jury, unanimously find the Defendant,
20 Terrance Seabrook, guilty.

21 As to Indictment Number 2010 GS 07 2320, the charge
22 of kidnapping, we, the jury, unanimously find the Defen-
23 dant, Terrance Seabrook, not guilty.

24 Ladies and gentlemen, if this is your verdict would
25 you please indicate by raising your right hands?

1 Thank you. You may be seated.

2 Mr. Weidener and Mr. Seabrook, would you like for me
3 to poll the jury?

4 MR. WEIDENER: Yes, please.

5 (Whereupon, the jurors were polled individually and
6 they all indicated this was their verdict and the verdict
7 stands)

8 THE COURT: Is there anything further for this jury,
9 from the State?

10 SOLICITOR: Nothing from the State.

11 MR. WEIDENER: No, maam.

12 (Jury excused by the Court)

13 THE COURT: You may come around for sentencing.

14 SOLICITOR: I hand you up a copy of the sentencing
15 sheet along with the original Indictments.

16 Your Honor, on February 3, 2012, the State noticed
17 Mr. Seabrook of our intent to seek life without parole.
18 I'm handing a copy of the original notice which was served
19 on Mr. Seabrook and his attorney, along with a copy of
20 the proof of service which was served by Ms. Green over
21 at the detention center.

22 Your Honor, I'm handing up a copy of his prior con-
23 victions. Most notably, first, 98 GS 07 0986. Mr.
24 Seabrook was sentenced to thirteen years in the Depart-
25 ment of Corrections for the crime of armed robbery, which

1 is the history for requesting life without parole.

2 I hand up certified copies to Your Honor, and I have
3 other copies if Your Honor would like a copy of those.
4 I am just as happy to read them off for the record.

5 THE COURT: Go ahead.

6 SOLICITOR: Your Honor, in Indictment Number 93 GS 07
7 7837, Mr. Seabrook pled guilty to the charge of resist-
8 ing arrest.

9 In 96 GS 07 1204, Mr. Seabrook pled guilty to a charge
10 of carrying a pistol in violation of South Carolina gun
11 laws.

12 In 1996 GS 07 1453, Mr. Seabrook pled guilty to a
13 charge of resisting arrest.

14 And I have one last indictment, Number 90 GS 07 2187,
15 a conviction for grand larceny, and I'll hand up those to
16 the Court.

17 Your Honor, the State has no other position than
18 the statute for life without parole has been triggered
19 by this record.

20 THE COURT: I understand. Anything else you'd like
21 to say?

22 SOLICITOR: No, Your Honor.

23 THE COURT: Anything you would like to say in behalf
24 of your client, or anything he would like to say?

25 MR. WEIDENER: If I could have just a moment, maam/

1 (Brief pause in proceeding)

2 MR. WEIDENER: No, maam, my client has nothing to
3 say.

4 THE COURT: Subject to the statute and subject the
5 notice, Mr. Seabrook, you have now been convicted of two
6 of the most serious offenses, and I believe the State did
7 properly serve you with your notice of their intent to
8 seek life without parole.

9 You obviously have been convicted, and I am sentenc-
10 ing you to the Department of Corrections on Indictment
11 Number 2010 2321 for armed robbery for a period of
12 life without the possibility of parole.

13 Good luck to you, Mr. Seabrook.

14 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter for
3 South Carolina Court Administration, hereby certify that
4 the foregoing Transcript was prepared from the records of
5 Deborah Everett to the best of my ability, having been
6 heard in the Court of General Sessions for Beaufort
7 County on March 21, 2012.

8 This is the only portion of the trial of the case
9 that is available for transcription.

10 Further, I am neither of kin or counsel to any
11 party to his action, nor do I have any interest in the
12 matter.

13 March 27, 2013

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF BEAUFORT) CASE NO.: 2010-GS-07-2321

THE STATE OF SOUTH CAROLINA,)
)
)
)

v.)

TRANSCRIPT OF RECORD

TERRANCE SEABROOK,)
)
)

DEFENDANT.)
)

APRIL 5TH, 2012
 BEAUFORT, SOUTH CAROLINA
 BEFORE THE HONORABLE CARMEN T. MULLEN, JUDGE.

APPEARANCES:

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 14TH JUDICIAL CIRCUIT SOLICITOR'S OFFICE
 BLUFFTON, SOUTH CAROLINA
 Attorney for the State of South Carolina

MR. ROBERT WIDENER, ESQUIRE
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 Attorney for the Defendant

Rebecca H. Hill
 Official Court Reporter

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EXHIBITS

NONE.

1 THE COURT: All right. Sir, it's your motion.

2 MR. WIDENER: Yes, ma'am, if you recall at trial, at
3 the conclusion of the trial, I had moved for a new trial and
4 I had sought to renew all of my objections at trial. The
5 Court indicated that the Court was going to consider it and
6 make some determination.

7 The two biggest issues that I've got, and I think I
8 raised one of them, that we had not discussed at the
9 conclusion of the trial was the notion of inconsistent
10 findings. Obviously, I've seen Mr. Bannon's Return to my
11 motion, and really, the argument I guess to be made is that
12 while I understand the law is fairly well settled with
13 respect to the issue of inconsistent findings and the Court
14 has said that we can have those. When I raised the case
15 law, and in particular the case cited by Mr. Bannon, I think
16 a distinction to be drawn is this that in that Alexander
17 case what the Court said was essentially, you know, it could
18 be that the jury was going to find him guilty of one or the
19 other, and they kind of flip the coin and they found him
20 guilty of one; they may have been going to do him a favor on
21 the other and find him not guilty. He was going to be
22 guilty of something, and therefore, there is no prejudice to
23 be suffered by the accused and that may well be the case in
24 that case, but in our case, I would submit that it's
25 different for the following reason, and that is my client

1 was facing life without parole, and so it's not as though
2 the judge can go in and in sentencing somehow find some
3 fairness there.

4 In this case, the sentence was statutory. This Court
5 didn't have -- everybody's hands were tied once it's bound,
6 and that situation is different than the situation wherein
7 you have an inconsistent finding that is not laboring or
8 suffering under the notion that it's life without parole.
9 So that's the distinction I would draw in making this motion
10 that this is a different situation than that which is that
11 which the case law is based upon.

12 THE COURT: I appreciate it, sir. Mr. Bannon?

13 MR. BANNON: Your Honor, I would just simply rely on
14 what's in the State's memorandum. Specifically, respond to,
15 I suppose, Mr. Widener's point of view is that I just don't
16 think that we should retroactively go back and discern what
17 was in the minds of the jurors that came back with a
18 verdict, which the State would argue, first of all, the
19 verdict isn't inconsistent, and even if it were, South
20 Carolina has done away with the law of inconsistency. Where
21 I can sort of see how one might say that it were
22 inconsistent is, say for example, if Mr. Seabrook had been
23 charged with possession of a weapon during commission of a
24 violent crime, and he had been found guilty of armed
25 robbery, but not of possession of a weapon during the

1 commission of a violent crime, those might have been
2 inconsistent, but simply finding that the teller wasn't
3 inveigled or carried away to the jury's -- to the level that
4 they were convinced beyond a reasonable doubt, that isn't
5 inconsistent with the fact that Mr. Seabrook robbed the
6 store. So in response to that, the State would simply say
7 that there is no inconsistency of verdict, and even if there
8 was, it really is a moot point anyway.

9 THE COURT: Okay. I can say, respectfully, just
10 looking back on the case and, clearly, I was the trial
11 judge, he was convicted of the armed robbery, he was
12 acquitted of the kidnapping, and based on the video, which
13 we clearly saw what would allegedly be the entire incident,
14 for the most part, I think probably the victim's attitude,
15 and for me, I can tell you probably the most telling thing,
16 and I think it's often difficult for jurors to understand
17 kidnapping, because they expect, and I think one of you even
18 said it in your opening statement or closing statement, that
19 we think of kidnapping as taking someone and throwing them
20 in the trunk of the car and taking them away and all you
21 have to do is confine them or order them in a specific
22 space.

23 I can see where this jury would have difficulty finding
24 that he was, in fact, kidnapped as he continued to smoke his
25 cigarette throughout the entire incident, and I'm talking

1 about the victim. And additionally, when being put after
2 taking the money out of the till and giving it to the
3 alleged defendant, that he continued to smoke a cigarette,
4 as he is on the ground kneeling as ordered by the alleged
5 defendant.

6 And again, I think the jury had a hard time wrapping
7 their head around kidnapping. Again, that's for me to
8 speculate. I can look at the facts, obviously, I'm not to
9 judge them, but I don't see where what they have found based
10 on that type of evidence that came in as being inconsistent,
11 and again, because armed robbery and kidnapping have
12 separate elements, clearly, we all understand and recognize
13 that. I do not think it is an inconsistent verdict. So
14 respectfully, I'm going to deny your motion based upon that.

15 MR. WIDENER: The other point that I have, I've argued
16 a couple of times, so I don't want to belabor it, because I
17 don't want to be arguing. I understand your ruling, but I
18 still am hung up on the admission of the statements. I
19 still take the position that an admission has to be a
20 confession is a complete acknowledgement of guilt of the
21 crime in a trial and admission is, they call it the little
22 brother of a confession, wherein they have to make an
23 affirmative statement, a declaratory statement, declarative
24 -- second grade English. There's declarative,
25 interrogatory, exclamatory, and one other thing, but this

1 has to be a declarative statement of fact that says what
2 goes to the elements of the defense and all he ever did was
3 deny and I've looked and I can't believe this hasn't been
4 somehow decided before, but the case law is fairly replete
5 with instances where an accused has wanted to use his
6 statement, but denying involvement to show that he was,
7 first of all, to bolster his testimony, and second, to show
8 that he was cooperative with law enforcement, and in each of
9 those cases, the Court has said, nope, it's not coming in,
10 because it's not an admission; it's therefore hearsay, and
11 they wouldn't let it in to be used by the accused.

12 And that's my argument; then, it shouldn't be allowed
13 by the Government. I mean, the whole reason we have hearsay
14 is to avoid the situation where a jury uses some statement
15 that is made out of court for an improper purpose, and in
16 this case, that's essentially what the state argued was he's
17 lying about a whole bunch of stuff; he must be guilty.
18 Well, that's not a proper use of those statements. So my
19 position is that they were hearsay, because they weren't
20 admissions, and therefore, improperly admitted.

21 THE COURT: Okay. And I understand. Mr. Bannon, go
22 ahead.

23 MR. BANNON: Well, I would just respond, Your Honor,
24 that it seems as though we're chasing our own tail with
25 this. An admission by the very definition in the rules is

1 not necessarily a confession. An admission is simply a
2 statement by a defendant, which is then going to be used
3 against him by his opponent.

4 THE COURT: Provided there is a finding that obviously
5 it was voluntarily given, pursuant to Miranda.

6 MR. BANNON: And we went through the Denno hearings,
7 and I think it's quite clear from the record that he was
8 mirandized, he was in custody, but he was mirandized and he
9 seemed to be coherent on the recordings and he was able to
10 give an affirmative response to law enforcement that he
11 wished to make a statement.

12 So it's just short of twisting the word regarding the
13 term admission is that an admission is not synonymous with a
14 confession. It's simply -- in this particular case, I think
15 most tellingly, Mr. Seabrook admits to being in the car with
16 Mr. Chabaz. He admits to handling the gun which was used in
17 the crime and he admits to knowing how many bullets were in
18 the gun. These are obviously admissions, even though they
19 are not a full and total confession, or capitulation, to
20 having committed the crime.

21 And secondly, and lastly, I understand Mr. Widener's
22 argument regarding a defendant using a prior statement of
23 his own. However, that's not the situation that we're
24 dealing with. This isn't a defendant, or an accused,
25 looking to use self-serving hearsay saying, "Well, I said

1 this in the past, so then I didn't commit the robberies."
2 So I should be able to say, "Well, I said in the past," and
3 therefore, it's true. This is the state using Mr.
4 Seabrook's own words against him, not bolstering his own
5 statements, which are improper under the rules of evidence,
6 regardless, in order to provide evidence that he's given to
7 the State against himself. So it's just sort of an apples
8 and oranges argument, and I think that we're dealing with
9 apples, not necessarily oranges.

10 THE COURT: All right. Anything else, y'all?

11 MR. WIDENER: No, Your Honor.

12 THE COURT: Well, respectfully, we did discuss that at
13 trial; we did raise it, and I appreciate that. Again, I am
14 going to deny it based on, again, what we stated at trial
15 and certainly here. I think it was proper testimony to be
16 admitted. Anything else, y'all?

17 MR. BANNON: Not from the State.

18 MR. WIDENER: No, ma'am.
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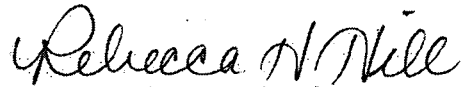
STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Civil Court/PCR Term for Beaufort County, South Carolina, on the 5th day of April 2012.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

April 30, 2013



Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2010-GS-07-02320 & 2010-GS-07-02321

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

APRIL 15, 2015

TRANSCRIPT OF RECONSTRUCTION HEARING

BEAUFORT, SOUTH CAROLINA

TERRENCE SEABROOK

DEFENDANT

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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4-15-15 STATE V. SEABROOK

RECONSTRUCTION HEARING

1 BEGINNING 12:44 P.M.

2 BY THE COURT:

3 THE COURT: All right. We're here with Mr.
4 Seabrook. Come on up. All right, you all. How do we
5 want to proceed on this? I mean, I understand we need
6 to get -- and you tell me exactly how you want to do, as
7 far as to reconstruct the record.

8 MS. CAUDY: Sure. What I plan to do is to call the
9 two law enforcement officers who testified at the
10 *Jackson v. Denno* hearing; and then call Mr. Weidner; and
11 then Mr. Seabrook; and then let Lynorr take over, Ms.
12 Musser take over; and do Jim Bannon.

13 THE COURT: Okay. Sounds good. All right. Wanda,
14 are you okay?

15 COURT REPORTER: I need your name, if you don't
16 mind.

17 MS. CAUDY: Sure. It's Lara, L/a/r/a, Caudy,
18 C/a/u/d/y.

19 COURT REPORTER: And I need the case number.

20 MS. CAUDY: Sure. It's 2010-GS-07-02320 and
21 02321.

22 THE COURT: Wanda, this is a reconstruction
23 hearing. We have portions of the transcript in this
24 case.

25 You filed an appeal, correct?

1 MS. CAUDY: Correct.

2 THE COURT: Okay.

3 MS. CAUDY: Mr. Weidner filed the notice of appeal,
4 and then, when the Office of Appellate Defense tried to
5 get the transcript, there were missing portions.

6 THE COURT: And what ended up happening was, is, I
7 think we have -- we don't have any pretrial. Am I
8 correct in that we don't have the pretrial motions?
9 What we have is qualifications, voir dire, and then, do
10 we have -- I think we have opening statements, though.
11 Am I correct?

12 MS. CAUDY: We have openings.

13 THE COURT: We have opening statements. We didn't
14 have the pretrial. It seems that we were able to piece
15 together, and we have Day 1, 2, and 3. So, other than
16 that, other than the pretrial, was there anything else
17 we didn't have, Ms. Caudy?

18 MS. CAUDY: There are a few sections that are
19 inaudible throughout the March 20th transcript that I do
20 intend to go into, just briefly, but not too much focus
21 on that.

22 THE COURT: Okay. So, that was Day 2?

23 MS. CAUDY: Correct.

24 THE COURT: Okay. All right. Whenever you're
25 ready.

1 MS. CAUDY: I call Brian Chapman, please.

2 MADAM CLERK: Please raise your right hand, and
3 place your left hand on the *Bible*. Do you solemnly
4 swear or affirm to truthfully answer all questions asked
5 of you by this court, so help you God?

6 MASTER SERGEANT BRIAN CHAPMAN: I do.

7 MADAM CLERK: Thank you. You may be seated.
8 Please state and spell your name, for the Court's
9 record.

10 THE COURT: Good to see you. And just so I am
11 correct and just for my notes, because I went through
12 and re-read the transcript again, and obviously, as the
13 trial judge, Investigator Chapman was the one that read
14 Mr. Seabrook his rights on the November 2, 2010
15 statement that he gave. Is that correct?

16 MS. CAUDY: That is correct.

17 THE COURT: And then, the next day, just so I was
18 clear, I think it was Investigator Baird that read him
19 his rights on the November 3, 2010 interview. Is that
20 correct?

21 MS. CAUDY: That is correct.

22 THE COURT: Okay. Just so I --

23 MS. CAUDY: But Investigator Chapman was also
24 involved in that November 3rd, as well.

25 THE COURT: Right. I have that, actually, on that

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DIRECT - CHAPMAN

1 first one, that Chris Wilson was also in there, as well.
2 I have Chris Wilson and Chapman on that first interview;
3 and then, I have Baird and Chapman on the second
4 interview, correct?

5 MS. CAUDY: That's correct.

6 THE COURT: Okay.

7 MASTER SERGEANT BRIAN CHAPMAN

8 DIRECT EXAMINATION, BY MS. CAUDY:

9 Q Mr. Chapman, where do you work?

10 A Beaufort County Sheriff's Office.

11 Q And what is your current title?

12 A Master Sergeant.

13 Q Okay. Were you the lead investigator in this case?

14 A Yes, ma'am.

15 Q Okay. And do you remember testifying at Mr.
16 Seabrook's trial?

17 A Yes, ma'am.

18 Q Did you testify pretrial and during -- and before
19 the jury?

20 A I would have, yes, ma'am.

21 Q Okay. We'll probably just -- I'm just going to
22 focus on your pretrial testimony, which would have taken
23 place during the *Jackson v. Denno* hearing. What was the
24 topic of your pretrial testimony?

25 A Honestly, ma'am, I -- I don't remember. It

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1 probably would have been *Miranda* if it was *Jackson v.*

2 *Denno*.

3 Q The Judge just went over the two dates. So, Mr.
4 Seabrook was interviewed on November 2, 2010, and
5 November 3, 2010? Do you recall what time the interview
6 began on November 2, 2010?

7 A No, ma'am, I do not.

8 Q Do you recall who else was present in the room when
9 Mr. Seabrook was interviewed?

10 A I believe it was Sergeant Christine Wilson.

11 Q Do you recall where the interview took place?

12 A At the Beaufort County Sheriff's Office,
13 investigations office.

14 Q Okay. Would that have been your office at the
15 time?

16 A Yes, ma'am.

17 Q Okay. Tell me about the room where the interview
18 took place.

19 A It's a -- we call it a multi-purpose room. It's --
20 I believe it's a kitchen with a round table. There's a
21 door, an exit door to the right. There's a
22 refrigerator. There's a sink, a water cooler, then an
23 office off to the left.

24 Q Do you recall testimony about whether Mr. Seabrook
25 was in custody at the time?

1 A Yes, ma'am.

2 Q Had he been served with warrants at the point of
3 interview, before you started the interview?

4 A He was placed under arrest.

5 Q Do you recall whether you testified that he was in
6 handcuffs during the interview?

7 A Yes.

8 Q Do you recall testifying about reading him his
9 *Miranda* rights?

10 A Yes.

11 Q Did the prosecutor ask you to go through the
12 *Miranda* rights as you would have advised Mr. Seabrook
13 during the interview?

14 A I believe he would have, yes.

15 Q And what was your testimony in that regard?

16 A Then, I would have read off the Beaufort County
17 Sheriff's Office *Miranda* form, word for word.

18 Q Okay. And what were the contents of that form?

19 A It's the basic *Miranda* warning that law enforcement
20 uses throughout the country. Then, at the bottom,
21 there's also a portion telling them that they -- they're
22 acknowledging their rights, and they agree to talk to
23 me, or they don't agree to talk to me. And there's
24 signature blocks, and then a line about their education,
25 how many grades they completed in school.

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1 Q Okay. Do you recall testifying about whether Mr.
2 Seabrook initialed each one of those rights on the form?

3 A Yes.

4 Q Okay. So, he did, in fact, initial those -- those
5 rights on the form on November 2nd?

6 A No, he did not initial them. He was in handcuffs.

7 Q Okay.

8 A Therefore, he did not initial them.

9 Q Okay. I'm assuming, then, your testimony would
10 have been that he did not sign the form, because he was
11 also in handcuffs.

12 A Correct.

13 Q Okay.

14 A And I believe that's noted on the form itself, that
15 he's handcuffed.

16 Q And then, your testimony for the bottom of the
17 form, the waiver of rights, would have been the same.
18 He could not have testified because he was in handcuffs,
19 or he could not have signed.

20 A Correct.

21 Q You mentioned that the form talked about the
22 education and age. Did you testify about what level of
23 education Mr. Seabrook had at the time of the interview
24 and his age?

25 A If I was reading the exact form that was given to

1 Mr. Seabrook, it would have said what his amount of
2 education was at the bottom.

3 Q Okay. So, you don't recall your testimony about
4 his level of education or age?

5 A No, ma'am.

6 Q Do you recall testifying about whether he was under
7 the influence of drugs or alcohol at the time of the
8 interview?

9 A I believe I did, yes, ma'am.

10 Q And what was your testimony in that regard?

11 A At -- at the time I was talking to him, he didn't
12 appear to be under the influence of anything.

13 Q Do you recall testifying about whether any promises
14 or threats had been made to Mr. Seabrook during the
15 interview?

16 A Yes. That's also in that, the latter portion,
17 where we're -- the advisement of rights.

18 THE COURT: Can I ask you a question? We should
19 have that exhibit, if it was entered. Was it?

20 MS. MUSSER: Your Honor, it was -- I believe that
21 it was.

22 THE COURT: I would guess that it was, too.

23 MS. CAUDY: And my understanding, from reading the
24 transcript, is that the same form would have been marked
25 as State's Exhibit 31.

1 THE COURT: Right.

2 MS. MUSSER: So, the State, at some point, was
3 going to move to put that, what I believe is a copy of
4 State's -- if not, we would like to have it referenced
5 for -- to the trial Exhibit Number 31.

6 THE COURT: Okay. So, you've been provided a copy
7 of all the trial exhibits, correct?

8 MS. CAUDY: That's correct.

9 THE COURT: I just wanted to make sure. Okay. So,
10 is there any reason why, as we're sitting here guessing
11 what's happening, that we just don't give him a copy of
12 it, so he knows? Does that make sense?

13 MS. CAUDY: I have no objection to it.

14 A I testified in -- about it in the trial, so.

15 THE COURT: Exactly. So,

16 MS. MUSSER: And Judge, how would that -- would
17 that be marked as a court exhibit or a State exhibit, at
18 this point?

19 MS. CAUDY: If you think it's necessary to mark it
20 as an exhibit. It's already State's Exhibit --

21 THE COURT: It's already State's Exhibit 31 in the
22 trial of this case.

23 MS. CAUDY: Right.

24 THE COURT: I don't know that we necessarily --
25 unless you want to start making all of these exhibits

1 for the reconstruction hearing.

2 MS. MUSSER: Judge, that was my understanding of
3 what we were required to do, so that the appellate court
4 would be able to, as closely as possible, look and see
5 what would have happened within the context of the
6 *Jackson v. Denno* hearing itself. So, we would just ask
7 that it be marked either as a state's exhibit or a court
8 exhibit.

9 THE COURT: Let's just mark it as a -- let's just
10 make it -- mark it as a court's exhibit, and that way --
11 and give him the benefit of it, so. That's the only way
12 it's going to exactly mirror, or as closely as possible,
13 mirror what his testimony was, because it was entered at
14 the trial, so.

15 MS. CAUDY: I'm just trying to get a cleaner copy
16 than the one I was given.

17 THE COURT: Okay. Let me ask you this.

18 A Yes, ma'am.

19 THE COURT: Have you had an opportunity to re-read
20 transcript that we passed over?

21 A I did not, your Honor.

22 THE COURT: Okay.

23 A It's -- a lot of pages, I couldn't remember exactly
24 what's on there.

25 THE COURT: I understand. Okay. That's okay.

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1 A But I do remember reading that we did testify about
2 that, so.

3 THE COURT: Okay.

4 MS. CAUDY: This is the one that has the State's
5 Exhibit 31 sticker on it, so it's the exact exhibit.

6 THE COURT: Thank you. Perfect.

7 A Thank you.

8 THE COURT: Thank you.

9 ITEM IDENTIFIED AS *MIRANDA* FORM

10 MARKED COURT'S EXHIBIT NUMBER 1.

11 BY MS. CAUDY:

12 Q So, based on that form, what was his level of
13 education at the time of the interview?

14 A Completed high school, twelve grades.

15 Q And does the form actually mention his age, or just
16 the date of the interview?

17 A It has the date and time of the interview that's
18 noted on the top; and then, it's also the date and time
19 of the interview is on the bottom. It doesn't reference
20 his age.

21 Q Okay. And what time did the interview start?

22 A At 1340 hours.

23 Q Okay. Which, that would have been 1:40 in the
24 afternoon?

25 A Yes, ma'am.

1 Q Okay. Are the time on the top of the form and the
2 time on the bottom of the form, are they the same?

3 A They are.

4 Q Okay. Did you answer the question about what your
5 testimony was about the promises and threats, if you had
6 made any promises or threats to Mr. Seabrook?

7 A I did, down here at the bottom. The last one, the
8 waiver of rights, which I would have read, which would
9 have been on video.

10 *I'm willing to make a statement and answer*
11 *questions. I do not want an attorney at*
12 *this time. I understand and know what I*
13 *am doing. No promises or threats have been*
14 *made to me, and no pressure or coercion of*
15 *any kind has been used against me.*

16 COURT REPORTER: Could we just speak up a little,
17 and --

18 A Yes, ma'am.

19 COURT REPORTER: Yeah, everybody. And then --

20 A Do I need to repeat any of that?

21 THE COURT: I'm sorry. Yes, when you're reading
22 it, it's so much harder for her, and I apologize.

23 COURT REPORTER: I think I got it, but I mean, I
24 know I got it, but.

25 A Okay. Just let me know if I need to clarify.

1 MS. CAUDY: Yes, ma'am.

2 BY MS. CAUDY:

3 Q Now that you have the form, will you please go
4 through the *Miranda* rights that you had read Mr.
5 Seabrook?

6 A Sure. This is the *Beaufort County Sheriff's Office*
7 *Statement of Miranda Rights*.

8 Before we ask you any questions, you
9 must understand your rights. You have the
10 right to remain silent.

11 Yes or no.

12 That's what I would ask him, yes or no.

13 Anything you say can and will be used
14 against you in the court of law.

15 Again, yes or no.

16 You have the right to talk to an
17 attorney for advice before we ask any
18 questions.

19 Again, yes or no.

20 If you cannot afford an attorney, one
21 will be appointed for you before any questions,
22 if you wish.

23 Again, yes or no.

24 If you decide to answer questions now,
25 without an attorney, you have -- still have

1 the right to stop answering at any time.

2 You also have the right to stop answering
3 at any time until you talk to an attorney.

4 Again, yes or no.

5 Then, I would tell them,

6 This last part is a waiver of rights.

7 The first one is:

8 I've read the statement of my rights,
9 and I understand what my rights are.

10 Again,

11 Do you understand that? Yes or no?

12 The second one is:

13 I cannot read, and the statement has
14 already been read to me sufficiently, so that
15 I understand what my rights are.

16 Again,

17 Yes or no.

18 And then, the last part again, I'll re-read that.

19 I'm willing to make a statement and
20 answer questions. I do not want an attorney
21 at this time. I understand and know what I
22 am doing. No promises or threats -- no threats
23 have been made to me, and no pressure or
24 coercion of any kind has been used against me.
25 Then, there would be the signature, again, on this

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1 form. It's noted that he was handcuffed; the amount of
2 education; then, the witness's signature blocks. It
3 would be myself, Sergeant Chris Wilson. Then another
4 signature block for the person that's being read the
5 *Miranda* rights; date and time.

6 Q Okay. Thank you. Was the interview audio- or
7 video-taped?

8 A It was audio- and video-taped.

9 Q Okay. So, would the advisement of rights have
10 appeared on that audiotape?

11 A It would have been recorded.

12 Q Do you recall testifying whether Mr. Seabrook
13 appeared to understand his rights as you had read them
14 to him?

15 A I believe so, yes, ma'am.

16 Q Do you recall testifying about what Mr. Seabrook
17 said during this interview?

18 A I probably would have been asking questions about
19 his -- what he said.

20 Q Okay. And what would your testimony have been?

21 A And I couldn't tell you exactly word for word what
22 I said during the -- during the thing.

23 Q Okay. Do you recall testifying about how long this
24 interview lasted?

25 A No, ma'am.

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DIRECT - CHAPMAN

1 Q Do you recall testifying about whether you offered
2 Mr. Seabrook any bathroom breaks, snacks, or drinks?

3 A I believe I was asked that.

4 Q Okay. And what was your testimony in that regard?

5 A Again, word for word, it was a long interview, a
6 long transcript, so I don't -- I couldn't tell you
7 exactly what was said.

8 Q Okay. Well, not word for word, but do you remember
9 offering Mr. Seabrook a bathroom break or a snack?

10 A I -- I don't remember that. No, ma'am.

11 Q Do you remember, at the end of this interview,
12 requesting that Mr. Seabrook take a polygraph the
13 following morning?

14 A I asked him if he would be willing to take one, I
15 believe.

16 Q Okay. And what was your testimony about Mr.
17 Seabrook's response?

18 A He agreed to take a polygraph.

19 Q What was your testimony about the following day,
20 November 3rd interview? More specifically, what time
21 did Mr. Seabrook -- what time was he brought over to the
22 Sheriff's Department?

23 A I don't remember exactly what time he was picked
24 up.

25 Q Okay. I'm assuming he was still in custody.

1 A Yes, ma'am.

2 Q Were you present when the polygraph was
3 administered?

4 A No, ma'am, I was not present.

5 Q Did you testify about who administered the
6 polygraph?

7 A Yes.

8 Q And what was your testimony?

9 A Master Sergeant Brian Baird administered the
10 polygraph.

11 Q Did you testify about how long the polygraph
12 lasted?

13 A I don't recall that. And if I may clarify, I
14 believe it was referenced in the -- in the testimony
15 that was on interview. I don't know if the word
16 *polygraph* was used.

17 Q Okay. Do you recall testifying about what the
18 results of the polygraph were?

19 A I don't remember testifying to that.

20 Q Do you recall testifying about your role in the
21 November 3, 2010 interview?

22 A Yes.

23 Q And what was your testimony in that regard?

24 THE COURT: Ms. Caudy, I apologize. Where, in the
25 testimony, do you have that he was polygraphed? Did I

1 just --

2 MS. CAUDY: It doesn't appear in his trial
3 testimony.

4 THE COURT: Okay.

5 A Like I say, I clarified. I believe it was
6 referenced in the trial, as he was interviewed a second
7 time the following day.

8 THE COURT: Okay. But was it a polygraph, or no?
9 It was.

10 MS. MUSSER: Yes, ma'am.

11 THE COURT: Okay. I apologize. Okay.

12 BY MS. CAUDY:

13 Q Do you remember -- did you recall -- do you recall
14 your testimony about when you became involved in the
15 interview on November 3, 2010?

16 A Yes.

17 Q And what was your testimony in that regard?

18 A That Master Sergeant Baird asked me to come in the
19 interview.

20 Q Do you recall testifying why Master Sergeant Baird
21 asked you to come into the interview room?

22 A I believe it was in reference to Mr. Seabrook
23 wanting to give more information regarding the case.

24 Q Okay. Did Master Sergeant Baird read him his
25 *Miranda* rights before you entered the room?

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1 A I believe he did. I wasn't -- again, I wasn't
2 present at that, so.

3 Q Do you recall any testimony about you watching the
4 interview on closed-circuit television?

5 A Yes.

6 Q And what was your testimony in that regard?

7 A That I watched it on closed-circuit T.V.

8 Q When you watched it on closed-circuit television,
9 did you watch Master Sergeant Baird read him his *Miranda*
10 rights?

11 A I don't remember that.

12 Q Do you recall testifying about who else was present
13 during the second interview?

14 A I believe it was just me and Master Sergeant Baird
15 were present, along with Mr. Seabrook.

16 Q Do you recall testifying if Master Sergeant Baird
17 was present throughout the entire interview after you
18 became involved?

19 A I don't remember.

20 Q Do you recall testifying about whether the second
21 interview was audio- or video-recorded?

22 A I believe it was recorded via audio.

23 Q Do you recall testifying about when that audio- or
24 video-recording would have started?

25 A No, ma'am.

1 Q Do you recall, on cross-examination, Mr. Weider
2 asking you any questions about your training, in regards
3 to interview or interrogation techniques?

4 A Yes.

5 Q And what was your testimony in that regard?

6 A There were various pointed questions that Mr.
7 Weidner asked -- asked me, in regards to specific
8 techniques. So, I would've answered whatever the
9 specific question was he was talking about.

10 Q Do you recall any of those specific questions?

11 A I believe there was a reference to, go interview
12 one subject; then, go and interview another subject;
13 coming back to the first subject; and going back and
14 forth. I believe he also made reference to what they
15 refer to as good cop/bad cop.

16 Q Could you be more specific in how that relates to
17 this specific case?

18 A That was just a question that was asked of me.

19 Q Did he ask you any questions about interviewing
20 Shatike Shabazz before you interviewed Mr. Seabrook?

21 A I believe he did.

22 Q Did he ask you about using Mr. Shabazz's alleged
23 statements as a technique to get Terrence to -- Mr.
24 Seabrook to, perhaps, give you more information?

25 A I believe that was along the same lines of

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1 questioning, of going -- interviewing one person, going
2 to another person, and then going back. I believe
3 that's -- I believe that was along the same lines.

4 Q Okay. So, the two people you would have been
5 talking about during your testimony would have been
6 Shatike Shabazz and Mr. Seabrook.

7 A Correct.

8 Q Do you recall Mr. Weidner asking you about telling
9 Mr. Seabrook, during the second interview, about what
10 Mr. Shabazz had allegedly said?

11 A I don't remember that. No, ma'am.

12 Q Do you recall testifying about what Mr. Seabrook
13 said during the second interview?

14 A Yes.

15 Q And what was your testimony in that regard?

16 A Again, that was a lengthy conversation. I couldn't
17 tell you, word for word, but I remember bouncing from
18 story to story, going back and forth between different
19 versions of what he said happened.

20 Q Okay. Do you remember any of the specific
21 versions, as you called them, about what Mr. Seabrook
22 had said?

23 A I don't remember, no, ma'am.

24 Q Do you recall your testimony about how long the
25 second interview lasted, from when he was -- Mr.

1 Seabrook was first polygraphed, until the completion of
2 the interview?

3 A No, ma'am.

4 Q Do you recall testifying about whether Mr. Seabrook
5 asked for any bathroom breaks or food or drink during
6 this second interview?

7 A No, ma'am.

8 Q Do you recall testifying about whether Mr. Seabrook
9 was made any promises or threats during the second
10 interview?

11 A No, ma'am.

12 Q No, you don't recall; or, no, he wasn't offered
13 any?

14 A No, ma'am, I don't remember.

15 Q Okay. Do you recall testifying about whether Mr.
16 Seabrook was under the influence of drugs or alcohol
17 during the second interview?

18 A I don't remember that.

19 MS. CAUDY: I have no further question.

20 COURT REPORTER: Do you have the exhibit?

21 A I've got it right here.

22 MS. CAUDY: You may need that. I'm not sure.

23 COURT REPORTER: Just hold it.

24 MS. MUSSER: May I inquire, your Honor?

25 THE COURT: Yes.

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CROSS - CHAPMAN

1 MASTER SERGEANT BRIAN CHAPMAN

2 CROSS-EXAMINATION, BY MS. MUSSER:

3 Q Master Sergeant Chapman, the trial that we've been
4 talking about for Mr. Seabrook occurred March 19th,
5 20th, and 21st of 2012, correct?

6 A Yes, ma'am, I believe so.

7 Q Do you have a specific recollection of when the
8 *Jackson v. Denno* hearing took place, whether it was
9 Monday, March 19th, or some point in February?

10 A I do not remember that.

11 Q Do you recall -- there was no substantial gap, in
12 other words, from when you would have testified for the
13 *Jackson v. Denno*, versus in the trial?

14 A Again, I don't remember the time frame of that.

15 Q Okay. When you testified at trial, it was
16 certainly much closer in your memory than it is today, a
17 couple years later, correct?

18 A Significantly, yes.

19 Q Have you had a chance to review your trial
20 testimony for, I believe it was on March 20th of 2012?

21 A I did review a copy of it, yes, ma'am.

22 Q Okay. And that somewhat refreshes your
23 recollection, correct?

24 A Yes, ma'am.

25 Q And was your testimony that you -- during the trial

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CROSS - CHAPMAN

1 was consistent with your testimony during the *Jackson v.*
2 *Denno* hearing, correct?

3 A Yes, ma'am.

4 MS. MUSSER: Your Honor, as a result of that, I
5 don't know, since it's kind of uncharted territory here
6 with a reconstruction hearing, the State would ask that
7 Master Sergeant Chapman's testimony from the trial,
8 which he has now indicated is consistent with his
9 testimony during the *Jackson v. Denno*, be marked as, I
10 guess, State's 1.

11 THE COURT: Okay.

12 MS. MUSSER: And that would be for the trial
13 transcript, Page 118 through 160, and includes Master
14 Sergeant Chapman's direct -- all of his direct
15 testimony, as well as the questions that Mr. Weidner
16 asked him on cross.

17 THE COURT: Okay.

18 MS. MUSSER: Because he covered the topic. So,
19 with that, I would just ask that that be marked as
20 State's 1.

21 THE COURT: Okay.

22 ITEM IDENTIFIED AS MASTER SERGEANT
23 BRIAN CHAPMAN'S TRIAL TESTIMONY
24 MARKED STATE'S EXHIBIT NUMBER 1,
25 ADMITTED AS EVIDENCE.

1 BY MS. MUSSER:

2 Q You've indicated that, with respect to the first
3 interview, that, I believe, occurred on November 2nd of
4 2010, we've put the *Miranda* form that's in front of you,
5 marked Court's Exhibit 1, you indicated that that was
6 audio- and video-recorded, correct?

7 A I don't remember if it was audio and video or audio
8 -- or just audio. I know that there was an interview
9 that was recorded, and that was submitted.

10 Q Okay. And the testimony on your direct during the
11 trial was that, I believe, State's Exhibit 28 was the
12 audio recording from November 2nd of 2010. Is there any
13 portion of the interview, in your contact with Mr.
14 Seabrook, that took place outside of the recording?

15 A The only contact I would have had, outside of the
16 recording, would be when the officer brought him from
17 where he was located to my office, and that transition
18 from the front door, into where he was interviewed.
19 Then, when he got in there, the recording would have
20 been turned on; the interview would have taken place.
21 And then, after he -- the interview was over, whatever
22 administrative procedures took place after that, the
23 filling out of a ticket, or, you know, what have you, a
24 victim's form, et cetera, et cetera. From there, to him
25 leaving the interview room office, and then being

1 transported to the Detention Center.

2 Q Okay. So, aside from what you just described, all
3 of your conversations with him and your reading of the
4 rights took place on that audio? In other words, you
5 didn't ask him any questions when he was in the hallway,
6 correct?

7 A No, ma'am.

8 Q You didn't say to him, hey, I promise you, you
9 know, you'll get a get-out-of-jail-free card if you just
10 tell us what we want to know on the tape.

11 A No.

12 Q No conversations like that, correct?

13 A No, ma'am.

14 Q At any point during your contact with him, was your
15 gun drawn in any way?

16 A Absolutely not.

17 Q Was he physically touched, harmed?

18 A Obviously, if he's in -- he's in handcuffs, he
19 would be escorted, for safety reasons.

20 MS. CAUDY: I believe the focus of this hearing is
21 to ask him questions about his recollection of his
22 testimony and not re-hear the matter. I believe her
23 questions, the Solicitor's questions, are focused on re-
24 trying that hearing, as opposed to reconstructing it.

25 MS. MUSSER: I can re-phrase it.

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CROSS - CHAPMAN

1 THE COURT: Okay.

2 BY MS. MUSSER:

3 Q Master Sergeant Chapman, at any point during your
4 testimony for the *Jackson v. Denno* hearing, did you
5 testify with respect to the voluntariness of Mr.
6 Seabrook's statement?

7 A I would have testified to that, yes, ma'am.

8 Q As part of that, did your testimony -- it didn't
9 include any indication that Mr. Seabrook was physically
10 punched or harmed in any way.

11 A No, ma'am.

12 Q With respect to your testimony at the *Jackson v.*
13 *Denno* hearing, did Mr. Weidner ask you questions about
14 how that hearing -- or how your conversation took place?

15 A Again, I don't -- I couldn't tell you one hundred
16 percent, but normally, I would be asked those --
17 similar-type questions.

18 Q Did Assistant Solicitor Jim Bannon ask you, had Mr.
19 Seabrook wanted to take a bathroom break, would that
20 have been granted?

21 A I don't remember if I was asked that question or
22 not.

23 Q Okay. But just so we're clear, the sum of your
24 conversation would have been on the audio recording
25 marked as State's Exhibit 28, during the course of the

1 trial?

2 A Yes, ma'am.

3 MS. MUSSER: And your Honor, I guess, just that we
4 incorporate that by reference.

5 BY MS. MUSSER:

6 Q Now, as far as the second conversation on November
7 3rd of 2010, that was included in the testimony that you
8 reviewed for the trial, correct?

9 A Yes, ma'am.

10 Q You've already indicated that that was consistent
11 with your recollection of the *Jackson v. Denno* hearing?

12 A Yes, ma'am.

13 Q During the course of the trial, you were asked to
14 listen to State's Exhibit 28 and 29, which were the
15 audio recordings, correct?

16 A Yes, ma'am.

17 Q You had signed those, correct?

18 A Yes.

19 Q So, as part of that, was your recollection and what
20 you testified to in the *Jackson v. Denno* hearing,
21 consistent of what was on, also, State Exhibit 29, the
22 audio recording from November 3rd?

23 A Yes, ma'am.

24 Q Do you have any recollection from the *Jackson v.*
25 *Denno* hearing as to any indication that this was not a

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RE-DIRECT - CHAPMAN

1 voluntary statement given by Mr. Seabrook?

2 A No, ma'am.

3 Q Do you have any recollection from your testimony
4 from the *Jackson v. Denno* hearing that there was
5 anything to indicate that Mr. Seabrook did not
6 understand his rights?

7 A No, ma'am.

8 Q Do you have any recollection from your testimony
9 during the *Jackson v. Denno* hearing that there was
10 anything to indicate that Mr. Seabrook would have been
11 under the influence of drugs or alcohol or medication,
12 giving rise to an inference that he didn't understand?

13 A I don't remember, no, ma'am.

14 COURT REPORTER: I'm sorry, your answer? *I don't?*

15 A I don't remember.

16 MS. MUSSER: I have nothing further, your Honor.

17 MS. CAUDY: May it please the Court?

18 THE COURT: Yes, ma'am.

19 MASTER SERGEANT BRIAN CHAPMAN

20 RE-DIRECT EXAMINATION, BY MS. CAUDY:

21 Q Do you recall who the judge was during your
22 testimony?

23 A I don't remember. For the *Denno* hearing?

24 Q Correct.

25 A I don't remember who that was.

1 Q Do you recall whether your testimony, your pretrial
2 testimony, took place in the afternoon, on Monday, March
3 19th, or in the morning, on March 20th?

4 A I do not remember that.

5 Q Do you recall what the judge's ruling was on this
6 issue?

7 A I don't remember that.

8 MS. CAUDY: No further questions.

9 BY THE COURT:

10 THE COURT: Anything further of him?

11 MS. CAUDY: No, your Honor.

12 THE COURT: All right. Can I just ask, did we hear
13 this before the Monday of trial?

14 MS. CAUDY: There is some mixed information that
15 this hearing perhaps took place in front of a different
16 judge in February. This case was originally called for
17 trial in February of 2012, and was continued when the
18 co-defendant was offered immunity. And the original
19 information that I had was that this hearing took place
20 in front of, I want to say, Judge Kinard, in February of
21 2012. It could have been Judge Young. Judge Young is
22 the one that granted the continuance on, I believe, it
23 was February 26.

24 THE COURT: Does Mr. Bannon or Mr. Weidner, either
25 one of you have a recollection of that?

1 LARRY WEIDNER: Ma'am, my recollection is that we
2 did not do it before the start of the trial. My
3 recollection was that it went, at some point, and I
4 can't break it out in my mind, and I've really tried, I
5 think -- but again, this is low probability of certainty
6 here, that, what happened was, we came to trial, ready
7 to go to trial in February. On the eve of trial, the
8 government granted Shatike Shabazz a grant of immunity
9 to testify against my client, and so, I moved to
10 continue. That motion was granted, and I -- I think,
11 but I -- I think that, because we had everybody there,
12 we went ahead and said, let's do this *Jackson v. Denno*,
13 because I had raised it. But I can't -- I just don't
14 have that broken out in my mind clearly. That's where I
15 think it went down, was --

16 THE COURT: Mr. Bannon, do you have any
17 recollection?

18 JIM BANNON: Not a clear recollection, your Honor.
19 I know that we did it, but I honestly couldn't tell
20 you --

21 THE COURT: When?

22 JIM BANNON: -- when we did it.

23 LARRY WEIDNER: I'm almost positive it was not
24 before we started the trial in March. It would -- it
25 predates our trial. I just don't know if it was the day

1 -- when I asked for the continuance, or if it was
2 scheduled for another date that we did it. I just can't
3 break that out in my mind.

4 THE COURT: Okay. Ms. Musser, do you have extra
5 copies of it, the actual -- and I don't know, I'm
6 thinking that, if I heard it, if it would help me
7 remember whether or not I was the one that heard it, but
8 it was played at trial anyway, I presume, right? So, I
9 either heard it once or twice. I'm not sure which, so.

10 MS. CAUDY: If it helps, your Honor, when Mr.
11 Weidner renewed his objections to the statements, you
12 did say, *based on prior ruling yesterday*, or *based on*
13 *prior arguments made yesterday*, which leads me to
14 believe that it did occur in front of your Honor in
15 March.

16 I also checked with every single court reporter in
17 Beaufort in February for those two dates, the 25th and
18 26th -- or, I'm sorry, it would have been the 27th and
19 28th, and none of them had recollection or records of a
20 *Jackson v. Denno* hearing.

21 THE COURT: I can tell you that it would be highly
22 unusual for a trial judge that, if the case was
23 continued at their term of court, to go ahead and say,
24 well, yeah, let's go ahead and hear the *Jackson v.*
25 *Denno*, particularly in a case where, like this one, we

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RE-DIRECT - CHAPMAN

1 know there's two interviews, and that requires the
2 judge to go listen to it ahead of time, before they come
3 out and rule on it, if that makes sense, or be able to
4 hear --

5 I usually like to hear, actually, the interviews.
6 And I need to hear the interviews before I actually have
7 come out and let them testify. That's why it's
8 something we've always talked about, the Solicitor's
9 Office, I say, if we're doing this Monday, and if there
10 isn't a substantial amount of break in time, or if the
11 interview is -- or, you know, unusually lengthy, that,
12 give them to me ahead of time, so I can have heard them,
13 so we aren't sitting here waiting in court for the
14 judge. And usually, it's me sitting in the back and
15 listening to the interviews.

16 So, I would be surprised, highly surprised, if,
17 after a continuance, a judge agreed to go ahead and hear
18 the Jackson v. Denno. Because, typically, a judge would
19 say, let's go ahead and just -- if it's going to be
20 continued, let the trial judge handle that. So, I just
21 -- I find that very unusual, so. Okay. Sorry. I'm
22 trying to -- I'm trying to figure out if I can remember,
23 to help you in any way. I would be surprised that if I
24 didn't hear it.

25 MS. CAUDY: May it please the Court?

1 THE COURT: Yeah.

2 MS. CAUDY: I believe on February 27, 2012, they
3 did select a jury that Monday morning; and then,
4 pretrial motions would have been held that Monday
5 afternoon; is when, based on information, the *Jackson v.*
6 *Denno* hearing could have taken place.

7 THE COURT: Okay.

8 MS. CAUDY: Now, the motion for a continuance was
9 not heard or granted until the following morning, which
10 was Tuesday, before any opening statements or testimony
11 was given.

12 THE COURT: Okay. So, you're right. They could
13 have done a *Jackson v. Denno* that afternoon. Okay.
14 We're just trying to figure out how we can get to
15 figuring out who it was. Apparently, according to my
16 law clerk, my notes indicate that Judge Young and I were
17 both the two trial judges here doing General Sessions
18 that week; that I was hearing -- or started a case,
19 Julius Rooks. So, it is likely that it could have been
20 Roger Young as the judge hearing it, and I see Mr.
21 Seabrook's head bobbing. Do you remember what he looks
22 like, Mr. Seabrook?

23 DEFENDANT SEABROOK: Kind of older gentleman.

24 THE COURT: Older gentleman?

25 DEFENDANT SEABROOK: Yes.

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RE-DIRECT - CHAPMAN

1 THE COURT: Sorry.

2 MS. CAUDY: Judge Young is the one who granted the
3 continuance. I do have that transcript.

4 THE COURT: Okay.

5 MS. CAUDY: So, I'm assuming he would have been the
6 judge on that motion, as well.

7 THE COURT: I assume he would have, too. Okay.
8 I'm just trying to kind of get to the point and figure
9 out what -- okay. Okay. So, now, I understand where
10 our confusion is, is that we may have had two *Jackson v.*
11 *Denno* hearings. Okay. Okay. I'm sorry. Go ahead, you
12 all. Are you done with Master Sergeant Chapman? Are we
13 all done with him?

14 MS. MUSSER: Yes, your Honor.

15 MS. CAUDY: Yes, your Honor.

16 THE COURT: You may step down.

17 MASTER SERGEANT BRIAN CHAPMAN: Do you want the
18 exhibit?

19 THE COURT: Leave that right there.

20 MASTER SERGEANT BRIAN CHAPMAN: Thank you, your
21 Honor.

22 THE COURT: Thank you, sir.

23 COURT REPORTER: Thank you.

24 MASTER SERGEANT BRIAN CHAPMAN: Yes, ma'am.

25 MS. CAUDY: I call Master Sergeant Brian Baird.

1 MADAM CLERK: Please raise your right hand, and
2 place your left hand on the *Bible*. Do you solemnly
3 swear or affirm to truthfully answer all the questions
4 asked of you by this Court, so help you God?

5 LIEUTENANT BRIAN BAIRD: So help me God, I do.

6 MADAM CLERK: You may be seated. Please state and
7 spell your name, for the Court's records.

8 LIEUTENANT BRIAN BAIRD: Brian Mark Baird,
9 B/a/i/r/d.

10 LIEUTENANT BRIAN BAIRD

11 DIRECT EXAMINATION, BY MS. CAUDY:

12 Q Lieutenant Baird, where do you work?

13 A Beaufort County Sheriff's Office.

14 Q Do you recall being involved in Mr. Terrence -- or
15 Mr. Seabrook's prosecution?

16 A Yes.

17 Q Do you recall testifying at Mr. Seabrook's trial?

18 A At the trial, yes, I do.

19 Q Do you recall testifying twice, once pretrial and
20 once before the jury?

21 A I don't recall the specifics of the pretrial, but I
22 know, because I advised him of his *Miranda* rights during
23 my portion with him, that I believe we did do a *Jackson*
24 *v. Denno*.

25 Q Do you recall actually testifying at a *Jackson v.*

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1 Denno hearing?

2 A Not specific to that one. We've done -- I do so
3 many of them that I don't recall the specifics of this
4 one, but.

5 Q Okay. Do you recall testifying -- well, if you
6 don't recall the testimony in the *Jackson* -- even
7 testifying at a *Jackson v. Denno* hearing, then how are
8 you going to recall your testimony? is my concern.

9 A I can tell you that I have a trial transcript from
10 my testimony there, and my testimony at any *Jackson v.*
11 *Denno* would be the same as what I testified to in the
12 trial. And therefore, I would -- believe it would be
13 identical testimony in both.

14 Q Do you think there's any matters that you might
15 have testified about pretrial that wouldn't have been
16 admissible for the jury, for example, a polygraph?

17 A I -- during the pretrial motion, I believe I was
18 asked what was the nature of the -- my contact with him,
19 and I said he was brought to me for a polygraph
20 examination. Obviously, we wouldn't be mentioning that
21 in the actual presence of the jury. I would have
22 referred to it as a technical scientific interview I
23 conducted with him. Something to -- something to that
24 effect.

25 COURT REPORTER: *A technical scientific interview?*

1 A Something to that effect. I usually refer to them
2 as, like, a technical interview or something along that
3 line.

4 Q Do you recall testifying pretrial what date you
5 administered the polygraph on Mr. Seabrook?

6 A It was November 3, 2010, I believe.

7 Q Do you recall testifying where the polygraph was
8 given?

9 A In the polygraph suite, in the Beaufort office, the
10 office right here in Beaufort, at the main headquarters
11 building of the Sheriff's Office.

12 Q Do you recall being asked about your qualifications
13 to administer polygraph examination?

14 A I don't believe that even came up, because they
15 were -- during the pretrial, we knew we were not going
16 to be talking about the polygraph during the pretrial,
17 so I believe that we just focused on the *Miranda* rights
18 portion.

19 Q Okay. In that regard, then, do you recall reading
20 Mr. -- or advising Mr. Seabrook of his rights before you
21 gave the polygraph examination?

22 A Yes, I do.

23 Q Okay. Can you explain your testimony, expand on
24 that testimony. What would you have advised Mr.
25 Seabrook?

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1 A Again, there was a -- the *Miranda* rights form for
2 the polygraph that I used.

3 MS. MUSSER: Judge, I can hand up the *Miranda* form.
4 It was marked in the trial as, I believe, State's
5 Exhibit 30. We would just ask that it be Court's
6 Exhibit 2.

7 THE COURT: Okay.

8 DOCUMENT IDENTIFIED AS *MIRANDA* FORM,
9 MARKED COURT'S EXHIBIT NUMBER 2.

10 BY MS. CAUDY:

11 A Thank you. This is a copy of the *Miranda*, the
12 Beaufort County Sheriff's Office *Miranda* rights that we
13 use. It's Document Number 7 in the polygraph report
14 file.

15 Q Do you recall testifying or being asked to explain
16 exactly what you advised Mr. Seabrook before the
17 polygraph?

18 A Yes. I was actually asked how I advised him, the
19 manner in which I did. And then, I was actually asked
20 to read the form into the record.

21 Q And will you please do that for us today.

22 A Yes. Basically, we were sitting very close. It's
23 a relatively small room, where the polygraph room is set
24 up. I had it on a clipboard. I displayed it in between
25 the two of us, so we can both see it. I asked him to

1 read it along with me as I read it to him. And it's
2 Beaufort County Sheriff's Office statement of your
3 rights. It says:

4 *Before I ask you any questions, you*
5 *must understand your rights.. You have the*
6 *right to remain silent. Anything you say*
7 *can and will be used against you in a*
8 *court of law.*

9 *You have the right to talk to an*
10 *attorney before I ask you any questions,*
11 *and have him or her present during this*
12 *questioning.*

13 *If you decide to answer questions now*
14 *without an attorney present, you will still*
15 *have the right to stop answering at any time.*
16 *It says:*

17 *I have read this statement of my rights,*
18 *and I understand my rights and what my rights*
19 *are.*

20 I said -- I then turned to Mr. Seabrook and said:

21 *Is that all true and correct?*

22 And he said:

23 *Yes, it is.*

24 I said:

25 *Sign right here on this line.*

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1 I handed him a pen; he signed on the line.

2 Then, I said:

3 *Now, this next portion here is your*
4 *waiver of rights.*

5 I said:

6 *I am willing to make a statement and*
7 *answer questions. I do not want an attorney*
8 *at this time. I understand and know what I*
9 *am doing. No promises or threats have been*
10 *made. No pressure or coercion of any kind*
11 *used against me.*

12 I asked if that was all true and correct, and he
13 said, again, it is, and he signed the form indicating
14 the same. I then signed the form, as well. Slightly
15 below that is the information about the polygraph, and I
16 don't believe we mentioned that on the record in there,
17 but it was -- it's polygraph number was P-10-N110. The
18 date was 11/03/2010. So, it actually was 2010, not '12.
19 I think the trial was in '12. Sorry about that. And
20 then, the examiner was myself, Baird.

21 Q Do you recall testifying about whether Mr. Seabrook
22 signed the waiver of rights form and agreed to take the
23 polygraph exam?

24 A Yes. I -- as I was going through the form, and
25 saying, you know, yes, he agreed that he understood it,

1 and he signed it, he agreed. This is just his *Miranda*
2 rights form. There's a separate polygraph consent form
3 that we did not go over, again, because it was specific
4 to the polygraph. So, that was separate from the
5 *Miranda* rights form.

6 Q Okay. So, pretrial, you're telling me that you
7 would have just gone through the *Miranda* warnings, as
8 opposed to any warnings related to the polygraph?

9 A That is correct.

10 Q Do you recall testifying that Mr. Seabrook was in
11 custody at the time?

12 A Yes, I testified that, when he arrived at the room,
13 he was in handcuffs. When they brought him into the
14 room, I asked the deputy to remove the handcuffs, so he
15 was not in handcuffs during the polygraph.

16 Q Do you recall testifying about what questions you
17 asked Mr. Seabrook during the polygraph?

18 A No. Again, specific, the polygraph itself was not
19 utilized during the trial, so we did not talk at all
20 about the actual polygraph procedure itself.

21 Q Do you recall testifying about informing Mr.
22 Seabrook about the results of the polygraph?

23 A I did not testify anything to do with anything
24 about the actual polygraph.

25 Q Do you recall Mr. Weidner asking you about whether

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1 you told Mr. Seabrook that the results of his polygraph
2 were deceptive?

3 A No, we did not discuss anything about the polygraph
4 during the trial.

5 Q Okay. Do you recall testifying about whether Mr.
6 Seabrook was under the influence of drugs or alcohol
7 during the polygraph and interview?

8 A Yes, they asked me about that. They asked me if I
9 felt he was under the influence of any alcohol or
10 whatever, and he had come straight from the jail. I
11 knew he had been in -- under detention at that point.
12 And therefore, I said I did not believe he was under the
13 influence of any narcotics or any type of alcohol or
14 anything like that.

15 Q Do you recall testifying about how long Mr.
16 Seabrook had been in detention at that point?

17 A I don't believe I was asked that.

18 Q Do you recall testifying about whether any threats
19 or promises were made to Mr. Seabrook during the
20 polygraph and interview?

21 A During the interview portion, I believe they asked
22 me if he had been threatened in any way or anything like
23 that; if I had promised him anything. And again, I
24 think I said no. As it says in the form there:

25 *No pressure or coercion used against*

1 you.

2 Q Do you recall testifying about whether the
3 polygraph or interview was audio- or video-recorded?

4 A The interview, I was asked if the interview
5 afterwards, after the polygraph, was recorded, and I
6 testified that Brian Chapman had brought his audio
7 recorder into the room with him. At that point, we were
8 not recording actual polygraph examinations. We didn't
9 begin doing that, I believe it was 2013 or so, is when
10 we started actually video- and audio-recording all
11 polygraphs. Prior to that, we did not record them.

12 Q Do you recall testifying about whether, when you
13 read Mr. Seabrook his *Miranda* rights, whether that
14 portion of the interview was audio- or video-recorded?

15 A I don't believe I was asked.

16 Q Do you recall testifying about whether the actual
17 interview of Mr. Seabrook took place in the same room as
18 the polygraph?

19 A I know when I read my transcript, I know I -- I
20 said Brian Chapman joined me in that room, and he'd be,
21 during that portion, he was in there doing the interview
22 of Mr. Seabrook.

23 Q So, that --

24 A So, it happened in the same room.

25 Q Do you recall testifying about when Mr. Chapman

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1 entered the room?

2 A Just --

3 Q At what stage in the interview?

4 A Just that after the polygraph, you know, we --
5 without saying polygraph, I had gone back in to start to
6 interview him. He began using some street names and
7 such, is what I commonly called them. I actually had no
8 idea who he was talking about at that point. I had been
9 out of investigations for a little while at that point,
10 regular investigations at that point. And so, I stopped
11 him, and I went and got Brian Chapman to come into the
12 room, because I knew he'd be more familiar with those
13 names.

14 Q Do you recall testifying that, when Brian Chapman
15 entered the room, that is when the audio- and video-
16 recording began?

17 A What I said was that he brought his audio recorder
18 into the room, and was recording.

19 Q Do you recall testifying whether you remained in
20 the room while Brian Chapman interviewed Mr. Seabrook?

21 A That's -- I testified that I stayed in the room for
22 a couple of minutes, a few minutes, a short period of
23 time, I think, is what I referred to it as, just to make
24 sure Mr. Seabrook was still talking about the same
25 information; that there was a smooth transition from

1 myself to Brian Chapman. And then, Brian Chapman
2 continued, and I excused myself.

3 Q Do you recall who the judge was during your
4 testimony, during your pretrial testimony, for the
5 *Jackson v. Denno* hearing?

6 A I don't. I'm sorry.

7 Q Do you recall whether your testimony during the
8 *Jackson v. Denno* hearing happened in February of 2012,
9 or March of 2012?

10 A I do not.

11 MS. CAUDY: No further questions.

12 LIEUTENANT BRIAN BAIRD

13 CROSS-EXAMINATION, BY MS. MUSSER:

14 Q Good morning, Lieutenant.

15 A Good morning, ma'am.

16 Q You've indicated that you had the chance to read
17 your trial testimony, which would have taken place on
18 March 20th of 2012. Is that correct?

19 A That is correct, ma'am.

20 Q And based on your recollection, that is consistent
21 with what you would have testified to at the *Jackson v.*
22 *Denno* hearing?

23 A Yes.

24 MS. MUSSER: Your Honor, at this time, I would ask
25 Lieutenant Baird's trial testimony, starting with Page

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1 110, through Page 117, I'd just ask that that be marked
2 as State's 2.

3 THE COURT: Okay. It's marked as such.

4 ITEM IDENTIFIED AS TRIAL TESTIMONY
5 OF BRIAN BAIRD MARKED
6 STATE'S EXHIBIT NUMBER 2, ADMITTED
7 AS EVIDENCE.

8 BY MS. MUSSER:

9 Q Sir, do you have -- based on your recollection of
10 what your testimony was, was there any indication that
11 the defendant was under the influence of anything at any
12 point that you talked to him?

13 A No. He -- there was no indication at all.

14 Q Was there any indication, again, based on your
15 recollection of your testimony with respect to the
16 *Jackson v. Denno* hearing, that Mr. Seabrook didn't
17 understand the rights that you gave him?

18 A No. In fact, I testified that he said he did
19 understand them, and he agreed it was all true.

20 Q Okay. At any point during -- based on your
21 recollection of your testimony, did you have your gun
22 drawn or physically assault Mr. Seabrook in any way?

23 A No, I did not.

24 MS. MUSSER: No further questions, your Honor.

25 MS. CAUDY: I have no further questions.

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

2 LIEUTENANT BRIAN BAIRD: Thank you, ma'am.

3 MS. CAUDY: Call Larry Weidner to the stand.

4 THE COURT: Are we going to need either one of
5 these officers again, or?

6 MS. CAUDY: I don't see any need for them.

7 THE COURT: Ms. Musser?

8 MS. MUSSER: I don't believe so, your Honor.

9 THE COURT: Okay. Well, let's go ahead.

10 Gentlemen, if you wish to be excused, you're welcome to,
11 either way. If you want to stay, of course, you may
12 stay, as well. Thank you.

13 LIEUTENANT BRIAN BAIRD: Thank you, Judge.

14 LARRY WEIDNER: Good afternoon.

15 THE COURT: Good afternoon.

16 MADAM CLERK: Please raise your right hand, and
17 place your left hand on the *Bible*.

18 LARRY WEIDNER: I walked past it, sorry. I'm
19 usually on that side of these things.

20 THE COURT: Exactly.

21 MADAM CLERK: Do you solemnly swear or affirm to
22 truthfully answer all the questions asked of you by this
23 Court, so help you God?

24 LARRY WEIDNER: Yes, ma'am.

25 MADAM CLERK: You may place your hand down. Please

1 state and spell your name, for the Court's record.

2 LARRY WEIDNER: My name is Larry Weidner. Last
3 name spelled W/e/i/d, as in Delta, n/e/r.

4 LARRY WEIDNER

5 DIRECT EXAMINATION, BY MS. CAUDY:

6 Q Just by way of foundation, you were appointed to
7 represent Mr. Seabrook on his armed robbery and
8 kidnaping charges?

9 A Yes, ma'am.

10 Q Do you recall when you were appointed?

11 A When I was appointed? Fall time of -- when did we
12 try this? 2000 --

13 Q '12.

14 A -- '12? So, fall time of 2011. Best I can do.

15 Q Do you recall the case being called to trial in
16 February of 2012?

17 A Yes, ma'am.

18 Q Do you recall the judge that the case was called to
19 trial in front of?

20 A I don't. I can't remember who it was.

21 Q Could not. Do you recall what took place in
22 February before the case was continued?

23 A It seems like -- my recollection is not great.

24 What I seem to recall, and I've got a jury list, where
25 we had, apparently, looked -- I mean, we had,

1 apparently, qualified a jury. And then, at some point,
2 there was a flurry of activity, because, up until that
3 point, Shatike Shabazz was not going to testify against
4 my client. And then, they offered him a grant of
5 immunity, and there was a flurry of activity, at which
6 -- I mean, I had my entire case set and ready to go, and
7 this was going to completely change the trial, or the
8 theory of the defense, if you will. So, I asked for a
9 continuance, and I -- I remember being afraid the judge
10 wasn't going to grant it, and he -- and then, he said,
11 if this had come a little bit sooner, last week or so,
12 I'd be inclined to grant a continuance, but since we're
13 getting ready to start the trial, he granted me some
14 time to re-set. That's what I remember. Because I --
15 what I'm really remembering is, I was afraid he was
16 going to make me go forward, and I was going to have to
17 sort of call in and change the whole trial tactic on the
18 fly.

19 Q So, Mr. Shabazz was offered immunity the first day
20 of the trial in February. Is that your recollection?

21 A Well, it was either that Monday or Tuesday. So,
22 for example, we would have come in and picked a jury, or
23 qualified a jury on Monday; and probably started the
24 next morning. So, it was either -- I can't remember --
25 it was in that time gap, within that 24-hour period

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1 between the time we got in here to pick the jury, and
2 the time that we would have started the trial, is what
3 happened.

4 Q Is your recollection?

5 A It was either Monday or Tuesday morning.

6 Q So, your recollection is that you actually did
7 select a jury on that Monday in February?

8 A I know we qualified one. I don't remember -- I
9 don't remember whether we actually selected one or not.
10 I know we qualified one.

11 Q Do you recall if any pretrial motions were heard on
12 that Monday in February, that afternoon?

13 A As I previously stated, I -- I thought we went
14 ahead -- I thought we had done the *Jackson v.* -- I
15 remember the *Jackson v. Denno* hearing being separate
16 from the trial starting in March. My recollection is
17 that, when we came in March, we went straight to it, and
18 I don't remember a separate *Jackson v. Denno* hearing in
19 March. Now, whether we did it that the afternoon,
20 before we were starting the trial, or we did it as a
21 separate hearing in and of itself, I can't break that
22 out in my memory.

23 Q If a separate *Jackson v. Denno* hearing was not held
24 in March, does that mean that Judge Mullen never would
25 have ruled on this issue?

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1 A Well, I mean --

2 MS. MUSSER: Well, I mean, we're -- he's really
3 speculating, at this point.

4 BY MS. CAUDY:

5 Q So, you don't recall whether Judge Mullen ruled on
6 this issue or not?

7 A I don't recall.

8 Q Okay. Moving on to March, then, of 2012. The
9 trial was held on the 19th, the 20th, and the 21st. Do
10 you recall what took place on the afternoon of Monday,
11 March 19th, 2012?

12 A Not specifically.

13 Q Do you recall whether a *Jackson v. Denno* hearing
14 was held on that afternoon?

15 A No.

16 Q But you recall that, obviously, at some point,
17 whether it was February or March of 2012, that a *Jackson*
18 *v. Denno* hearing did take place.

19 A We did -- we did do a *Jackson v. Denno* hearing. I
20 just can't break out, in my mind, when it was done, or
21 before which judge.

22 COURT REPORTER: I'm sorry. *I just can't break out*
23 *in my mind, what?*

24 LARRY WEIDNER: Exactly when it was done or before
25 which judge.

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1 BY MS. CAUDY:

2 Q Okay. Well, whenever the *Jackson v. Denno* hearing
3 did take place, do you recall what witnesses testified
4 during the *Jackson v. Denno* hearing?

5 A I know that Master Sergeant Baird testified. I
6 know that Master Sergeant -- this is an interesting
7 seat. Master Sergeant Brian -- Brian I'm drawing a
8 blank on your last name.

9 MASTER SERGEANT BRIAN CHAPMAN: Chapman.

10 A Chapman. We've been friends a long time. I know
11 Master Sergeant Brian Chapman testified. I can't
12 remember whether Chris Williams -- Wilson, who is also
13 an investigator, testified or not.

14 Q Do you recall whether Mr. Seabrook testified?

15 A I don't remember if I put him up or not.

16 Q Do you recall which -- the order of the witnesses
17 that testified?

18 A No.

19 Q Do you recall Mr. Chapman's testimony?

20 A No.

21 Q Do you recall Mr. Baird's testimony?

22 A No. I mean, again, if you're asking me specifics
23 -- I mean, I know lines of questions I would have gone
24 down with them, but based upon what I can see in my
25 notes and what I remember about the case, but I can't --

1 I can't remember exactly what I asked him. No, ma'am.

2 Q Do you recall what arguments you made in an effort
3 to suppress Mr. Seabrook's statements that were audio-
4 taped on November 2, 2012, and November 3, 2010? I
5 apologize, 2010.

6 A Well, I've been going back through my notes, and I
7 think -- okay. So, there was -- there were issues with
8 the tapes, and the -- there were issues with the tapes,
9 and I knew there was going to be issues about
10 admissibility, because they were going to want to use
11 them. And so, I was headed down the line that there was
12 -- I know I went into whether or not -- because there
13 were -- I thought there were -- I seem to remember there
14 were three interviews. There was the first interview,
15 if I remember right, with -- with Master Sergeant
16 Chapman and Detective Wilson, and that was where they
17 asked him if he would be willing to take a polygraph.
18 And Mr. Seabrook said yes, so they took him to Mister --
19 to Master Sergeant Baird, and he got in there. I do
20 remember there being a polygraph.

21 I thought what happened was, they went in, they got
22 him in front of Brian Baird, or Master Sergeant Baird,
23 and that's when Mr. Seabrook said, okay, I'll tell you
24 what happened, so they brought Master Sergeant Chapman
25 back in. And that -- then, they interviewed him there;

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1 and then, I thought there was another time that they
2 talked to Mr. Seabrook in the jail after that. I -- I
3 seem to recall there were three, but anyway.

4 I was arguing that there was a certain amount of
5 coercion for that, because they were essentially saying,
6 fine, we're going to give you this polygraph. I mean,
7 my understanding is that, that can be a technique that
8 is sometimes used. They'll give a person a polygraph,
9 and either before they tell them what the results are or
10 something, they say, okay, now, do you want to tell us
11 anything else? And that leads to a discussion, which
12 often leads to, in my experience, the person providing
13 more information. So, I understand polygraphs, the way
14 they're used by interrogators is, and the way I was
15 trying to use it as an interrogator, is to sort of free
16 their time up.

17 You can bring him in; you say, hey, this is the
18 deal, you know, we want you to run on a polygraph.
19 Okay. Now, before we talk anymore about this polygraph,
20 why don't you tell us what else you want us to know?
21 And then, the accused is sitting there saying, well, you
22 know, maybe they -- maybe I ran; maybe I didn't run
23 clean, and maybe -- and so, they start talking.

24 And that's what I felt like was the technique that
25 had been used here, was that they had brought him in,

1 and they sort of -- I don't want to say threatened,
2 because that's not the word I'm looking for -- but they
3 had called his bluff about the polygraph, and then, that
4 had induced him to start talking again, after he had
5 terminated the first interview.

6 And so, I felt like that was coercive, and that's
7 one of the lines that I was going after, was that they
8 were using this investigative tool in a course and
9 manner to get him to talk to them again, after they had
10 already interviewed him once.

11 Q I can clarify. So, your testimony was that there
12 were actually three interviews?

13 A I thought there were three. I thought they talked
14 to him -- they did the polygraph, and then they looped
15 back and talked to him again.

16 Q Okay. So, he had one -- the first interview was
17 separate, with Investigator Chapman. And then, there
18 was a second interview where he was given the polygraph.
19 And then, there was a whole third interview where he
20 was, again, interviewed by Chapman? Is that your
21 recollection?

22 A The first one, I thought he was interviewed by
23 Chapman and Wilson. That's when they said, do you want
24 to take a polygraph? He said, fine, I'll take a
25 polygraph. Well, then, they said, fine, let's go, and

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1 they took him in the polygraph room; and that's when he
2 told them, okay, and I'll tell you what really happened.
3 And then, they had another interview. And I thought
4 there was a third interview, which would have been, I
5 think, Master Sergeant Chapman. The second interview
6 was Master Sergeant Chapman, and briefly with Master
7 Sergeant Baird. The first interview was Master Sergeant
8 Chapman and Detective Wilson.

9 Q Okay. So, you --

10 A Now, I could be wrong about that third interview,
11 but I thought there was a third interview.

12 Q So, your testimony is that part of your objection
13 to the admissibility of Mr. Seabrook's statements were
14 coercive techniques used by the law enforcement officers
15 because of this polygraph? Is that correct?

16 A Because of the manner in which it was offered -- in
17 order to get him or induce him to speak further with
18 them, after he had already essentially stopped talking
19 to them, yes.

20 Q Is it your recollection that the officers or the
21 officer had told him that his responses to the polygraph
22 showed deception, and that was part of the technique
23 used by the officers?

24 A I don't remember that. In fact, my recollection is
25 that they brought him in and got him set up, and that's

1 when he said -- so I -- I'm -- I was surprised to hear
2 from Investigator Baird that there was a polygraph,
3 because I didn't remember there being a polygraph. I
4 thought when they brought him in and said, okay, we're
5 ready to go; that's when he said, oh, okay, well,
6 listen, let me tell you the whole story. So, I didn't
7 think -- I don't remember there ever being a polygraph
8 actually run on him.

9 Q Okay. I understand.

10 A That's my recollection.

11 Q Okay. And you said there were three parts to your
12 objection. So, in addition to the course of techniques
13 used, what were the other two portions of your objection
14 to the admissibility of his statement -- statements?

15 A Well, I mean, they're sort of altogether. The
16 polygraph was being utilized as an interrogation tool to
17 get him to talk to them more after he had already
18 stopped talking to them. Of course, the environment,
19 both -- when they were interviewing him, it was both in
20 the jail, and he's got two cops talking to him there.
21 And then, you've got him brought before an interrogator
22 in an interrogation room, in a polygraph room. You
23 know, the environment itself was, in my mind, or at
24 least the argument was that it was coercive.

25 And then, there was something about the -- I think

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1 there was some element of that that I argued was sort of
2 a good cop/bad cop technique that they used on him, that
3 I also found was coercive. I don't remember the
4 specifics of it. I just remember -- it might have been
5 having to do with the interview between Deputy Wilson
6 and Master Sergeant Chapman. There's something about
7 the way that interview went down that I started digging
8 into, to try to figure out, okay, well, what was going
9 on there? And so, that -- I was also after that, but I
10 don't -- that's all I can remember. I just remember the
11 points that I was looking at.

12 Q So, you think, perhaps, your argument was that
13 Master Sergeant Chapman was good cop or bad cop, and
14 that Investigator Wilson was either good cop or bad cop.
15 And they're using that technique to get a statement from
16 Mr. Seabrook.

17 A Yes. That's -- that's the general theory I think I
18 was operating under. I don't remember any specific
19 questions.

20 Q Do you remember asking Master Sergeant Chapman
21 questions about that technique, in order to support your
22 argument?

23 A Again, I don't remember any specific questions. I
24 don't -- when I prepare for a trial, I have areas in
25 which I want to delve, because, if I write my questions

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1 out, I might miss an answer. So, I remember areas that
2 I wanted to get into, and I would've asked questions
3 into those areas. Specific questions, no, I don't
4 remember.

5 Q Do you remember Master Sergeant Chapman's response,
6 or his testimony in regards to your questions?

7 A At the *Jackson v. Denno* hearing?

8 Q Correct.

9 A No.

10 Q Okay. Are there other parts to your objection that
11 you have not gone over, as to why you argued Mr.
12 Seabrook's statements should be excluded?

13 A I'm trying to get -- I've got just -- I think --
14 let me see. Well, I mean, there were -- well, yeah,
15 there were a couple other -- well, let's see what I've
16 got here. I mean, there was a whole area of whether or
17 not these were actually even admissions. That was the
18 day after.

19 Q Do you recall citing any rules of evidence in
20 support of your argument that his statements were not an
21 admission?

22 A Well, yeah, there was -- so, my note -- I've got a
23 note in here and some research that talks about whether
24 or not these were confess -- and I think this was an
25 objection that I made later, on the global basis, to the

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1 admission of all of the tapes, which was that there's a
2 difference between a confession and admission. And
3 first of all, you have to get over 403, as to whether or
4 not it's even relevant.

5 Q Did you make an objection pursuant to Rule 203?

6 A 403. Sorry. Yeah, and I think I made one on a --
7 I want to say I made one on, like, 803(d)(2). I don't
8 know, I'm not --

9 Q Could it have been Rule 801?

10 A It's bad when I start doing the rules.

11 Q Yeah. Rule 801(b)(2)?

12 A Might be. I know it had to do with hearsay, and
13 then, there was the whole issue of admissions versus
14 confessions, and whether or not they should come in.
15 And my -- essentially, the theory that I was going on
16 is, that they were going to try to use what they claimed
17 were confessions or admissions against him, and they
18 wanted to put these tapes in, and then start impeaching
19 him, and that, therefore, those should have been
20 excluded, because you can't do that. You can't -- it's
21 burden-shifting to say, okay, we're going to put in his
22 statements, and then, we're going to say -- start
23 impeaching him before he's even taken the witness stand,
24 if he was going to take the witness stand. So, they're
25 impeaching him with his own testimony before he's even

1 testified. You can't do that. So, my position was that
2 that's what they were trying to do with these tapes, and
3 that that's why they should have been excluded.

4 Q Okay. You said --

5 A Or not admitted unless or until my client took the
6 witness stand. Then, he would have been fair game for
7 them to impeach. Now, if he got up there and gave
8 whatever, you know, version of facts that he wanted to
9 give, then they would have been fine to impeach him with
10 all of these prior statements. But prior to that, these
11 were not confessions or admissions, and therefore,
12 should not have been admitted up front, because, again,
13 what -- what the Solicitor is doing was, he was putting
14 the evidence in, and then impeaching, essentially trying
15 to get my guy to testify, and then impeach him before my
16 guy actually ever testified. And I was saying, you
17 can't do that, and that was my objection, my global
18 objection, to the Solicitor putting the tapes on in his
19 case in chief.

20 So, I was trying to keep all of that out; and then,
21 if the course of Mr. Seabrook got up and testified, so
22 much the better. Then, he could have at him for an
23 impeachment. But up until he did that, I was saying
24 that you can't -- you can't impeach him. And again,
25 these were not declarative statements, I did it; and

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1 they were not -- so, you didn't have a confession, and
2 you didn't have an admission. Or if you had an
3 admission, and they could bring that in on a secondary
4 issue, they were trying to do that to impeach what he
5 had already said.

6 I don't know if I'm making sense, but that was
7 where I was headed. And therefore, I said, again, if
8 you want to try to impeach him with these things after
9 he testifies, so be it, because, of course, I knew he
10 wasn't going to testify. But I didn't think they should
11 be able to do that up front, and I made a continuing
12 objection on that point, and I know that, at one point,
13 there was one that was garbled, and -- and I've seen it
14 in the record -- I know it's one of the issues, and --
15 and I said, objection. And the judge said, something,
16 subject to your continuing objection. And I said, yes,
17 ma'am. And that's, I'm sure, what I was referring to,
18 because I didn't think that should come in, in the case-
19 in-chief.

20 Q I'll get back to that later objection further on.
21 Do you ever use the term *burden shifting* in your
22 argument?

23 A Well, yeah, I thought they were shifting the burden
24 to my client by trying to use those -- let me think that
25 through. I had two arguments. I was arguing that they

1 were trying to shift the burden, and that -- well, it's
2 all the same thing -- and that they were trying to --
3 okay; so, let's think this through. By putting up what
4 they claimed were confessions or admissions before he
5 had testified, they were essentially shifting the burden
6 to him, to answer -- okay, well, what's -- I mean, the
7 next step is, okay, well, why don't you tell us what the
8 truth is? So, they're shifting the burden to him, to
9 come in and testify, or put him on the -- on the stand
10 to testify, okay, this is really what happened. Or,
11 they're -- they're implicating his presumption of
12 innocence and not -- no obligation to testify, because,
13 if he doesn't, then that's a glaring question that's
14 left out there for the witness -- for the jury, as well.

15 So, he's either going to testify -- I mean, I'm
16 trying to place him on the horns of a dilemma, and both
17 of those are impermissible. You can't shift the burden
18 to the defendant, ever, and they were essentially
19 saying, well, you should call witnesses; you should --
20 they were -- on the text, there was questions about a
21 girlfriend and about his mom. And so, they were
22 shifting the burden for him to produce witnesses to
23 support or corroborate. And if he didn't, then, you
24 know, it implicates his presumption of innocence for the
25 jury, because then, they're going to say, well, why

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1 didn't he testify? Why didn't he -- he must be guilty.

2 Q To break it down more, then, so, you cited *Rule*
3 403, and said that they weren't relevant. Did you also
4 argue that --

5 A Yes, I'm sorry.

6 Q -- prejudicial value outweighed the probative
7 value?

8 A Yeah, I said they weren't relevant. They were more
9 prejudicial than probative, and that they were going to
10 use them for inappropriate purposes.

11 Q So, then, you argued 403, and then *Rule 801(d)(2)*,
12 which was that it was not an admission?

13 A Right.

14 Q And then, you also argued burden shifting.

15 THE COURT: I think it was *801(d)(4)* that you
16 argued, but keep going.

17 A Yeah. One of those 80 --

18 THE COURT: It was -- yes, it was *801(d)(4)*,
19 admissions by an accused. Okay.

20 MS. CAUDY: (d)(2); (d)(4) doesn't exist.

21 THE COURT: Oh, I'm sorry. I have an old rule
22 book, but it's an admission by an accused.

23 A The admission -- it was an admission confession.

24 THE COURT: Sorry.

25 MS. CAUDY: Okay.

1 BY MS. CAUDY:

2 Q And then, your last portion of that motion was that
3 the techniques used by the officer was coercive, a
4 coercive environment.

5 A Coercive environment. There were elements of, you
6 know, they were shifting cops back and forth, so there
7 was some, you know, elements of -- I mean, good cop/bad
8 cop is not really, but, you know, certainly, the
9 technique is to keep them off guard. You're answering
10 questions for this officer; then, all of the sudden,
11 you've got -- you've got a different cop, and they're
12 asking you questions. You know, I'm not necessarily
13 sure I like the term good cop/bad cop, but the balancing
14 back and forth. So, he goes in, he's with Master
15 Sergeant Chapman; then, boom, he's with Baird; and then,
16 boom, he's with Chapman. On the first one, he's in
17 there, apparently, with Investigator Wilson, and then
18 with Investigator Chapman, you know.

19 Q Did you make any objection about pitting the
20 witnesses?

21 A Well, that was part of the technique, because
22 that's -- I mean, that's an interrogation technique that
23 -- that I believe that they used, which is, you know,
24 you talk to one, and then you talk to the other, and
25 you start getting, hey, you know, Shabazz is over here

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1 saying this about you, Mr. Seabrook. And then, you go
2 in there and you say, hey, Seabrook's over here saying
3 this about you, Mr. Shabazz. And you start pitting the
4 witnesses against each other to find holes, if they
5 exist, in their -- in their testimony.

6 Q Did you cite any specific case law in support of
7 your argument?

8 A I don't remember that.

9 Q Do you recall who -- I know we've been over this.
10 So, you don't recall who the judge was during the
11 *Jackson v. Denno* hearing?

12 A No, ma'am.

13 Q Do you recall what the ruling was by that judge,
14 whoever it was?

15 A That it was non-coercive. I mean, that the
16 statements could come in.

17 Q Okay. Did the judge find that Mr. Seabrook had
18 voluntarily and knowingly and freely waived his *Miranda*
19 rights?

20 A That would follow. I mean, I -- yes.

21 COURT REPORTER: *That would follow?*

22 A Yes, ma'am.

23 Q Did you cite the definition of an admission?

24 A I don't know if I cited a definition. I know that
25 I had research, and I can see, obviously, I was -- I had

1 research on the distinction between admissions and
2 confessions, because I see -- I have seen, in the
3 transcript, where I essentially use the same words.

4 A confession is a complete acknowledgment
5 of guilt of the crime on trial. An admission
6 is any other statement of a fact relevant
7 to the charge made by the accused and
8 offered against him as evidence of the facts.
9 Such an admission has been termed a little
10 brother of a confession.

11 I used that term somewhere in trial, so, I,
12 obviously, was reading from some -- I don't know that I
13 quoted any case. I was reading out of this -- I was
14 reading out of some research that I had done, though.

15 Q When the judge, whoever it was, made the ruling,
16 did that judge address each one of your arguments? Did
17 the judge address 403? Did the judge address the
18 argument that it wasn't an admission, in addition to
19 finding that Mr. Seabrook had voluntarily waived his
20 Miranda rights?

21 A At the *Jackson v. Denno* hearing?

22 Q Correct.

23 A I don't remember any -- I don't remember -- I know
24 that we got into that again during the trial, because
25 that was important to me, but I don't remember -- I

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1 can't say that they did or they didn't. I really don't
2 have a clear recollection of the *Jackson v. Denno*
3 hearing.

4 Q Okay. So, besides recalling that the judge ruled
5 that the statements were admissible, and that he had
6 voluntarily waived his rights, you don't recall anything
7 else in regards to the ruling?

8 A No. No, because it's, you know, you lost. Okay.
9 Move on. Got to re-set and figure out the next thing
10 you've got to deal with. So, I checked it off as, I
11 lost that motion, so.

12 Q Do you recall whether the judge cited any cases in
13 support of his or her ruling?

14 A I don't remember anything about that.

15 Q Do you recall what the prosecutor argued, in
16 response to your arguments about the *Jackson v. Denno*
17 hearing?

18 A About the *Jackson v. Denno* hearing?

19 Q Right.

20 A No, I don't remember any.

21 Q What did Mr. Bannon argue in response?

22 A I don't remember.

23 Q Okay. Moving on from the *Jackson v. Denno* hearing,
24 do you -- actually, let me ask one more question on
25 followup. Do you recall requesting that portions of Mr.

1 Seabrook's audio statement be redacted, if it was played
2 before the jury?

3 A Are you talking at trial?

4 Q Right. When the tape was played for the jury, do
5 you recall if portions were redacted?

6 A Well, there were a lot of portions redacted,
7 because Mr. Bannon's pretty adept at Garage Band on his
8 computer, and I know that he was -- he was picking out
9 the portion -- we had a, you know, a little back-and-
10 forth about which portions were going to get played,
11 because I remember objecting to the whole thing, for the
12 reasons that I cited earlier. I thought the whole thing
13 should be kept out, unless or until my client took the
14 witness stand. Once the Court ruled against me on that
15 issue, then there was some back-and-forth about --

16 THE COURT: The edited video. Because I can tell
17 you that that's in my notes, is that, then, you
18 objected; based on the edited video, because your
19 concern was that possible favorable information had been
20 removed, in addition to the objected-to material that we
21 couldn't let in. I mean, that's specifically in my
22 notes.

23 A So, that -- that would have been what happened,
24 yeah.

25 COURT REPORTER: I'm sorry. Speak up.

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1 A That would have been what happened, and that makes
2 sense to me, because I remember hearing -- I remember
3 there were portions where Mr. Seabrook was being
4 investigated, and he was saying -- he kept saying, I
5 didn't do it. So, I mean, once the Court was going to
6 let it in, then, I had to work with it.

7 So, then, I had -- then, the objective was to get
8 in all of the points of time when Mr. Seabrook was
9 saying I wasn't there; I didn't do it. You know, the
10 more times I could get the jury to hear him say, I
11 didn't do it, on the record -- on the video, the better.
12 So, I think that they were talking about editing or
13 leaving some portions of that out, and at that point, I
14 wanted that in, because that was going to be my fallback
15 position.

16 Q Do you recall whether there were any specific
17 portions you wanted to be redacted?

18 A I don't remember.

19 Q I guess I'll be more specific, then. Do you recall
20 whether Mr. Seabrook mentioned being on probation, or
21 his prior record during his statement?

22 A I know that was an issue I was concerned about. I
23 -- but if you're asking me if I specifically remember
24 objecting to it, I would have, I mean, in the normal
25 course, under -- I didn't want that in, so I would have

1 objected to it. But I don't remember specifically --

2 THE COURT: And I would have clearly kept it out,

3 so.

4 A Yeah. So, I don't remember, but I don't -- I can

5 sit here and tell you that I did. I -- I would have.

6 Q Okay. Were there any portions that you asked to be
7 redacted that were not redacted?

8 A I can't remember.

9 Q Okay. All right. Now, finally, moving on from the
10 *Jackson v. Denno* hearing, do you remember any other
11 motions in limine that you made, pretrial, besides the
12 *Jackson v. Denno* hearing?

13 A Again, I -- I think I made a motion. I don't
14 remember if it was in limine or not, but I'm pretty sure
15 I made the motion that I wanted the -- initially, I
16 wanted the videos, all of them, kept out, for the
17 reasons I stated before.

18 Q And you're saying videos. What are you referring
19 to when you say videos?

20 A The confe -- the confessions.

21 THE COURT: The two audios.

22 A Yeah. The audios. I'm sorry, the audios, yeah.
23 The interviews. I mis-spoke.

24 THE COURT: Statements.

25 A Statements. I didn't think they were confessions

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1 or admissions.

2 THE COURT: The statements by the defendant.

3 BY MS. CAUDY:

4 Q In addition to that objection, the *Jackson v. Denno*
5 completely separate, were there any motions in limine
6 that you had made?

7 A Not that I recall. I was pretty focused on the
8 audio stuff.

9 Q Do you recall requesting that Mr. Seabrook's
10 pretrial detention telephone calls that were made at the
11 Detention Center --

12 A Oh, man.

13 Q -- whether those should be excluded from the trial?

14 A I don't -- I -- I remember that issue, but I don't
15 remember what I did with it.

16 Q Do you remember how many telephone calls the
17 Solicitor wanted to admit into evidence?

18 A No. I just remember there were a whole lot of
19 telephone calls.

20 Q Do you recall why the Solicitor wanted to admit
21 certain telephone calls into evidence?

22 A Well, again, it all circled back to, he was trying
23 to impeach my client before my client even took the
24 witness stand.

25 Q So, is your memory that, on these telephone calls,

1 Mr. Seabrook was talking about his guilt or innocence in
2 the armed robbery?

3 A Oh, I think I remember -- there -- okay. So.
4 There was at least one where Terrence was talking to --
5 Mr. Seabrook was talking to someone. I think it was his
6 mom. And there was some statement in there about, if
7 Shatike doesn't say nothing and I don't say nothing,
8 they got nothing. And I think Mr. Bannon wanted that
9 in, and I was trying to keep that out.

10 And there may have been -- there were a couple of
11 phone calls with his mom, where all he was doing was
12 saying, I wasn't there, and I wasn't involved, or
13 something like that. And I think I was making the same
14 objection. Well, that -- he's was talking to his mom.
15 What relevance does that have? He's saying he's not
16 there.

17 Q So, you made a 403, 403 objection.

18 A Yeah, I'm sure I -- I probably did. I don't
19 remember specifically. I'm sorry.

20 Q Okay. Do you remember whether you argued that what
21 Mr. Seabrook said on those telephone calls are not an
22 admission, similar to your *Jackson v. Denno* argument?

23 A Yeah. When I -- when I'm talking about admissions
24 or that whole issue, I'm talking about anything that
25 they sought to admit with -- that Mr. Seabrook had said,

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1 whether it was audio- or video-taped. Whatever -- if it
2 was a statement or admission that they were -- or what
3 they allege was a confession or admission, whether by
4 audio or video, that was important to me, and I was
5 trying to keep that excluded. So, I was objecting to
6 that.

7 Q Okay. Did you take any notes throughout the trial
8 about what was going on?

9 A About what? I'm sorry.

10 Q About -- are there any notes during your pretrial
11 testimony or your pretrial objections, or any notes
12 throughout the trial itself?

13 A Well, I took notes throughout the trial.

14 MS. MUSSER: And your Honor, I believe that Counsel
15 is going out of line with respect to Counsel's notes
16 during the trial. I think the trial transcript speaks
17 for itself, and we're not reconstructing the trial
18 transcript. So, I don't know how Mr. Weidner's notes as
19 to the trial portion would be relevant, since we have
20 that transcript. And I think that record, you know, is
21 self-explanatory and speaks for itself, unless there is
22 some portion that was specifically inaudible that
23 Counsel is going to ask Mr. Weidner about. But just his
24 overall thoughts, I don't know how that helps us
25 reconstruct what has been lost, because we have -- we

1 have that --

2 MS. CAUDY: And I agree with that, your Honor.

3 THE COURT: Okay.

4 MS. CAUDY: The only notes that I would seek to
5 admit as an exhibit would be Mr. Weidner's notes, if he
6 can identify them about the *Jackson v. Denno* hearing in
7 particular.

8 THE COURT: Okay.

9 MS. CAUDY: He does have some notes about the
10 testimony of Mr. Chapman and I believe Mr. Baird, and
11 about what his actual objections were. He also has some
12 notes about the jail calls, what they contained, and
13 about his objections to those jail calls.

14 BY MS. CAUDY:

15 Q Can you identify these? Those are your notes?

16 A This is my handwriting. Yes, I can identify these.
17 These are my notes. Are you asking me to translate?

18 Q If you would like to, that would be helpful. Yes,
19 sir.

20 A All right. So, Staff Sergeant Chapman apparently
21 testified, and I asked him what I would consider the
22 usual questions about issues about the arrest, whether
23 or not Mr. Seabrook was in handcuffs, whether or not he
24 had been *Mirandized*. I guess, copies of those documents
25 were offered and admitted.

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1 First interview was where Terrence was -- or Mr.
2 Seabrook was saying, I didn't do anything. There was a
3 discussion about whether or not he was on probation and
4 what for, and I had made a note to make sure that I
5 moved to exclude that. I also, I guess, moved to -- or
6 made a note to object or to move that these recordings
7 were more prejudicial than probative.

8 I mean, you've got -- if they get it in front of a
9 jury, and he's being interviewed by law enforcement. I
10 asked -- I must have asked Master Sergeant Chapman about
11 -- because my client was taking epilepsy drugs, and I --
12 obviously, I went into whether or not that would affect
13 his ability to understand. Yeah. And then, these are
14 all the things I'd said before. Apparently, I guess,
15 the Court found, or whoever it was, found it was
16 voluntarily and admissible.

17 And then, I made notes, again, when I talked to you
18 about was -- I had concerns that the jury would go
19 beyond drawing impermissible conclusions, 403 relevance,
20 outweighs, it's too remote, and *Fifth Amendment*.
21 They're essentially forcing him to testify to answer all
22 these things -- these questions that are going to be
23 left in the jury's mind after they play these tapes.
24 So, all of the things that I've told you previously.

25 Q You mentioned epilepsy. So, did you argue --

1 A No, it looks like there was three interviews,
2 because I've got one, two, and three here.

3 Q Are those the jail calls?

4 A Oh, they might be the jail calls. I don't -- let's
5 see.

6 Q You mentioned the epilepsy. Did you test -- did
7 you argue that, perhaps, Mr. Seabrook was under the
8 influence of these epilepsy drugs and, therefore, didn't
9 knowingly or voluntarily waive his *Miranda* rights?

10 A I remember -- I remember having that question in my
11 mind, but I don't remember whether I went after that or
12 not. I just don't remember.

13 Q Is there anything from your notes that jogs your
14 memory about the jail calls?

15 A Well, these are -- sure. Yeah, the one was, again,
16 where they were -- they were trying to get in where
17 Terrence, or Mr. Seabrook, was talking to his mom, I
18 think, and saying, hey, they're trying to pit us against
19 each other and get us both to turn; and if nobody says
20 nothing, they got nothing, kind of a thing. And then,
21 there were -- and I felt like that was, obviously,
22 prejudicial and not an admission and all those things.
23 There was one where he was talking to his girlfriend. I
24 think it was his girlfriend. I don't remember. I know
25 he was trying to get a hold of somebody so that they

1 could talk, but it was going to come off to the jury
2 like he was trying to put together, you know, a story
3 with whoever was involved. I think it was Shatike
4 Shabazz, and I didn't want that coming in.

5 Q So, your recollection is that Mr. Seabrook, on the
6 telephone call, said that he needed to talk to Mr.
7 Shabazz.

8 A Right.

9 Q And you made an objection relevant to that.

10 A Right.

11 COURT REPORTER: I'm sorry, was your answer, right?

12 A Yes. I'm sorry.

13 Q And again, what was your specific objection in that
14 regard, then?

15 A That he was trying to talk to Bruiser, or Shatike
16 Shabazz.

17 Q Correct.

18 A Well, all of them. I mean, it's -- how is more
19 relevant? How is it relevant?

20 Q So, it was a 403 objection?

21 A Yeah. I mean, he can talk to -- he can talk to
22 people, but the -- it's more prejudicial than probative,
23 because what they were trying to do was draw the
24 inference that they were trying to get -- he was trying
25 to get in touch with him to get his story straight.

1 Well, I don't -- you know, I was trying to say, how are
2 you going to -- I mean, if he wants to talk to a friend
3 of his, he can do that. That doesn't mean they're
4 getting their story straight, but certainly, the jury is
5 going to be left with that question, and I thought that
6 was more prejudicial than probative.

7 Q And then, again, you said your other objection was
8 the fact that what he said was not an admission.

9 A Yeah. I stuck to the -- that was a line I stuck
10 pretty hard to, I thought.

11 Q Okay.

12 A Or tried to.

13 Q Were the jail calls redacted? What was actually
14 played before the jury?

15 A I don't remember.

16 Q Were there any portions of the jail call that you
17 requested to be redacted that were not redacted?

18 A I don't remember.

19 Q Were there any portions of the jail call that you
20 asked not to be redacted that were redacted?

21 A I don't remember. I don't remember.

22 Q Do you recall who the judge was that heard this
23 motion in limine?

24 A No.

25 Q Do you recall what the judge's ruling was on this

1 motion?

2 A I lost, so it must have ruled against me.

3 Q Did the judge make specific rulings on each of your
4 arguments?

5 A I don't recall. I recorded it in my little, small
6 brain as I lost.

7 Q Okay. Did you cite any case law or any rules of
8 evidence in support of your arguments against the jail
9 calls?

10 A At the *Jackson v. Denno*, or at the trial?

11 Q In the motion in limine, did you support -- did you
12 cite any cases or rules of evidence to support your
13 objection? This is, again, all still pretrial.

14 A Well, we're back to, I was arguing that it was 80
15 -- whatever it is, 801(d)(2), or whatever, and --

16 THE COURT: That it wasn't an admission. You did
17 argue that, ad nauseam, by the way. You really did.
18 And I think I just kept repeatedly ruling that --

19 A She did.

20 THE COURT: -- in criminal cases, statements by an
21 accused -- and I can remember specifically, the State
22 pointing out, Mr. Bannon; I'll go ahead and give you
23 credit for this -- that Mr. Seabrook, in his two
24 interviews, gave different information about who he was
25 with. Once, it was his girlfriend; once, it was his

1 mother. And he was using it to show that there was two
2 different stories going on, if not more, and I remember
3 him arguing that there were three or four going on, or
4 something else. That's what I remember during the case
5 of it. And, I mean, I can tell you, I know I clearly
6 ruled that the statements, you know, were in compliance
7 with *Miranda*, and he was in custody. They were in
8 compliance, and they weren't coerced, so. But yes, I
9 will say that you hung onto that it wasn't an admission.
10 A And I remember losing every time, so that's
11 consistent.

12 THE COURT: Yes. Okay.

13 MS. CAUDY: Okay.

14 BY MS. CAUDY:

15 Q I just want to go through a few of the inaudible
16 sections of the March 20, 2012, transcript that, I
17 think, are relevant. Actually, the first one I would
18 start with is during jury selection, and that was on
19 March 19. There's just one portion of the transcript
20 that is clear. Your response was not transcribed.

21 MS. MUSSER: I'm sorry, can you tell us what page
22 you're on, and again, what date.

23 THE COURT: Sure. March 19, 2012. It's on Page
24 19. It's at the top, the Madam Clerk, requests whether
25 the Defense wants to strike due to cause. It has --

1 MS. MUSSER: What line number?

2 THE COURT: Line 4 through 6 is what I'm focused
3 on.

4 A What page?

5 MS. CAUDY: Page 19.

6 MS. MUSSER: Mr. Weidner has a copy up there.

7 A I've got a copy, yes. Line 4.

8 BY MS. CAUDY:

9 Q It says, on Line 4:

10 *Madam Clerk: For the Defense, strike*
11 *due to cause.*

12 And then, it has your name, but clearly, it's the
13 clerk speaking again, and your response is missing. Do
14 you recall whether you requested to strike Juror 189 for
15 cause?

16 A I'm looking at -- okay. I'm at the wrong page.
17 You said Page 19?

18 Q Page 19, Lines 4 through 6.

19 A On March 19.

20 Q That is correct.

21 A Page 19, 4 through 6.

22 MS. MUSSER: I'm sorry, is there a portion that
23 you're saying is inaudible, or just that the way the
24 transcript is typed? It's missing the spot where it
25 says Madam Clerk.

1 MS. CAUDY: It's missing -- it's missing whatever
2 Mr. Weidner's response is.

3 A Okay. Let's see.

4 THE COURT: Where is this?

5 MS. CAUDY: Page 19 --

6 THE COURT: I'm looking at it.

7 MS. CAUDY: Line 5. It says:

8 *Mr. Weidner: Juror Number 19, Dennis*
9 *Bennett. For the State?*

10 That's clearly the clerk speaking, and Mr.
11 Weidner's response to her, to the clerk's previous
12 question on Line 4 is missing.

13 MS. MUSSER: Okay. But the line before that, it
14 says:

15 *Madam Clerk: For the Defense, strike*
16 *due to cause?*

17 And then, he responds:

18 *Juror Number 19, Dennis Bennett.*

19 MS. CAUDY: That's clearly not his response; So,
20 that clearly came from the clerk.

21 THE COURT: Right. And I can go ahead and just tell
22 you that I'm sure it was that he shook his head; because
23 I'm assuming, at this point, they both have exhausted
24 all their strikes.

25 MS. CAUDY: They have.

1 THE COURT: I mean, that's what had happened, so.
2 And I hate to say I can assume, but I'm sure Mr. Weidner
3 just did a head, you know, side-to-side nod, which is my
4 fault in a trial court. Either the court reporter
5 missed it, or I didn't make him verbally say that on the
6 record, so.

7 MS. CAUDY: Okay.

8 THE COURT: That's how that happens.

9 MS. CAUDY: Okay.

10 BY MS. CAUDY:

11 Q Moving on, then, to the March 20th transcript, Page
12 22, Line. Page 22, Line 9.

13 A On the 20th? One, two.

14 Q During Mr. Bannon's opening statement. It's not
15 particularly significant, but just so we have a complete
16 record. It says, on Line 9, I believe he's referring to
17 Mr. Seabrook, and Mr. Bannon says:

18 *All in white (inaudible).*

19 Do you remember the rest of his sentence?

20 A No, I don't remember. I mean, if I saw the picture
21 we were talking about, maybe, but.

22 Q Okay. On Page 46, again, on the March 20th
23 transcript. It's during Mr. Kirkpatrick's testimony.
24 Mr. Bannon is asking him questions on direct
25 examination. Line 23 -- well, if you go up to Line 22,

1 it says, Mr. Bannon says:

2 *What is this located over there?*

3 To give background, I believe Mr. Kirkpatrick is
4 describing the scene before the armed robbery occurs.
5 Again, his question on Line 22 was:

6 *What is this located over there?*

7 And Mr. Kirkpatrick, on Line 23, says:

8 *That would be a (inaudible).*

9 Do you remember what his response was?

10 A Let's see. Okay. So, they're talking about Mr.
11 Washington here. Let me start, okay. The right-hand
12 corner.

13 THE COURT: What page number are you on, again?

14 MS. CAUDY: Page 46, Line 23. The following
15 question seems like --

16 A It's like a leg or a foot or something, is what he
17 was talking about. It was --

18 COURT REPORTER: I'm sorry, I didn't hear you.

19 A It was either a leg or a foot. That would be a --
20 I don't remember specifically, but he was -- I think he
21 was trying to discern between Mr. Washington and where
22 he said he was alleging that Mr. Seabrook was. Because
23 he's talking about Mr. Washington sitting on the
24 newspaper.

25 Q And then, the following question, it seems like

1 he's referring to the armed robber.

2 A Yeah. I -- I mean, it would be -- I think he's
3 talking about the foot that can be seen in the -- if I'm
4 remembering the right picture, Mr. Washington is sitting
5 on the newspaper things. And then, just off farther,
6 you can see a foot in the -- in the frame. I think
7 that's what he's talking about.

8 Q On Page 47, again, of the March 20th transcript,
9 this is still during Mr. Kirkpatrick's direct
10 examination. Mr. Bannon asks, on Line 20:

11 *Okay. And is that sign an open/close*
12 *sign? It's hanging on the window. It looks*
13 *like you (blank).*

14 Do you know what Mr. Bannon said?

15 A Okay. Let me read this.

16 Q Or do you recall what he said? Page 47.

17 THE COURT: Thank you.

18 A I think he asked him did he turn it off, as in, he
19 was closing the store and locking it.

20 Q Did he turn the sign to closed? Is that what
21 you're referring to?

22 A *It looks like you -- I don't know, it would have*
23 *been -- shut it off or something, yes.*

24 Q Okay.

25 A Because he was asking about what he was doing, you

1 know, in the time between the time the person with the
2 gun left and he called his boss, and if I remember
3 right, the guy went up and did something. He locked the
4 door, and I think he shut the light out or something.

5 Q Turning to Page 52, on the March 20th transcript.
6 This is during your cross-examination of Mr.
7 Kirkpatrick. On Line 12, you ask:

8 *And when he came up to you, did you*
9 *see anything that you recognized? Tattoos,*
10 *(inaudible), anything? Hair?*

11 Do you recall what that inaudible was? What did
12 you ask Mr. Kirkpatrick?

13 A I think I -- I probably said markings, because, I
14 mean, that's sort of the way I would have asked that.
15 Tattoos, markings, hair, anything you saw. I think it's
16 probably markings.

17 Q Okay. On Page 59 of the transcript on March 20,
18 2012. It's under the direct examination of Officer
19 Angstadt, I believe, is how you pronounce his name. I
20 could be saying that wrong. He was the K-9 handler.
21 And then, on Line 19, part of his response is inaudible.
22 He's referring to his training experience with tracking,
23 using bloodhounds. He says:

24 *I started training with the bloodhounds*
25 *in 2008, and we train, basically, with Rusty*

1 *and a couple of other dogs were our primary*
2 *dogs. So, we would, always, every week, we*
3 *would always train with them. And then, at*
4 *(blank), we would use them, as well.*

5 Do you recall what that inaudible portion was on
6 Line 19?

7 A I -- I don't, specifically. I think he was saying
8 that if something happened, we'd use them, as well,
9 meaning, they would break -- you know, they would get
10 the dogs out and go tracking. Because the questions
11 were -- they had tried to track whoever away from the
12 scene of the crime, and I think it was K-9 Rusty that
13 they brought out there. So, I think he was saying, we
14 train with the same dogs all the time. We train with
15 them, and if something happens, we take them out. So, I
16 think what he was saying, and then, if something
17 happens, we use them, as well.

18 Q Okay. On Page 61, which is a couple pages later,
19 again, it's during Mr. -- or Officer Angstadt's
20 response. He says:

21 *If we have a starting point, which is*
22 *their direction of travel, we would start*
23 *the dog in that general area, depending on*
24 *the wind and (inaudible).*

25 Do you recall what Mr. Angstadt's response was?

1 A I think it was the weather, but. I think it was
2 weather. I think it was depending on the wind and
3 weather, that's how they start the dogs.

4 Q Okay. Turning to Page 68, again, I'm on March 20,
5 2012, statement on Lines 3 and 4. This is during the
6 direct examination of Shatike Shabazz, and Mr. Bannon
7 asks him:

8 *And what kind of car was Mr. -- Mr.*

9 *Boyd owned back in October of (blank)?*

10 I'm assuming that's the year. Okay. Do you recall
11 what the year was?

12 A Well, let me see. I think it was the year of the
13 alleged offense -- or, the year of the offense.

14 Q Which would have been in 2010.

15 A Yeah. Let's see.

16 *Okay. And where was Mr. Seabrook*
17 *staying in early October of 2010?*

18 *So, it was --*

19 *Yeah, he keeps -- he keeps referring back to 2010,*
20 *so I'm assuming that that's also 2010.*

21 Q Okay. On Line 16, Mr. Bannon asks Mr. Shabazz what
22 his given name is, and it's inaudible. Do you recall
23 what Mr. Shabazz's given name was?

24 A You know, I think I used that in argument, because
25 I used all of his names in the argument.

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1 Q Does Walter Jenkins ring a bell?

2 A Yeah. It was like, Walter Jenkins, a.k.a. Bruiser,
3 a.k.a. I think I used all of them when I was arguing.

4 Q So, you recall his response being, on Line 16, as
5 Walter Jenkins.

6 A Yes.

7 Q On Page 70.

8 A Yeah, Walter Jenkins. That's right.

9 Q Line 7, Mr. Bannon is asking Shabazz, again,
10 questions on direct examination. I guess we'll start
11 from the beginning, on Line 3. It says:

12 *So, the phone that you had given to*
13 *Mr. Seabrook had somehow gotten into the*
14 *possession of Sub. And so, you were just*
15 *attempting to get your phone back, and*
16 *Terrence was sort of helping you, because*
17 *it was -- the phone was getting (inaudible).*

18 Do you recall what the rest of Mr. Bannon's
19 question was?

20 A I think it was used, because, when you go back,
21 it's -- there were -- Mr. Seabrook and, I guess, Mr.
22 Shabazz were looking for this fellow named Sub, because
23 he says,

24 *Okay. And why was Terrence helping*
25 *you look for the phone?*

1 Well, I had loaned Terrence the phone.
2 The phone wasn't -- the phone actually wasn't
3 my phone, but somehow, Sub got a hold of it.
4 A hold of the phone. Okay. So, I was
5 looking for him to give him the money that
6 was owed, so I could get the phone back.

7 So, the phone that you had given Mr.
8 Seabrook had somehow gotten in the possession
9 of Sub. And so, you were sitting, attempting
10 to get your phone back, and Terrence was,
11 sort of, helping you, because it was --
12 the phone was getting used.

13 I think, is what he said.

14 Q Okay. Moving, then, to the next page, Page 71.
15 Again, this is on direct examination of Mr. Shabazz. On
16 Line 12, Mr. Bannon asks him:

17 Why did he come back to the store?

18 And Mr. Shabazz says:

19 Well, because the situation that was
20 going on with Terrence and Sub. I didn't
21 want Terrence to get in trouble, (inaudible),
22 so I came back to get him.

23 A I think he said, with Sub.

24 Q Okay. And then, finally:

25 What trouble would Terrence have gotten

1 into?

2 And then, Mr. Shabazz says:

3 *Well, (inaudible) altercation (inaudible).*

4 A I don't remember --

5 Q Do you recall what his response was?

6 A I don't remember the exact words, but I remember
7 that Shabazz was saying that he was worried that Sub was
8 going to beat up Terrence. So, it would have been
9 something --

10 COURT REPORTER: Was going to do what with
11 Terrence?

12 A Beat up or hurt. Because I said, well, there would
13 have -- you know, something like, well, there would have
14 been an altercation. He was worried about that. I
15 remember that.

16 Q Okay. Turn to Page 77. This inaudible portion is
17 related to an objection that I believe you made. It's
18 unclear from the record. The Solicitor is seeking to
19 admit State's Exhibit Number 26, which is a photograph.
20 The Court asks you whether you have any objection, and
21 your response is inaudible. And then, the Court says:

22 *(Inaudible), prior objection.*

23 Do you recall whether you made an objection and
24 what your objection was?

25 A I think I said same objection, because I was

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1 hanging on two objections. So, I think what I said was,
2 same objection; and she -- the Court said, *subject to*
3 *your prior objection*.

4 Q Okay.

5 A And then, we were off. That's -- yeah, that's what
6 I think happened.

7 Q Do you recall what your objection was previously,
8 then, and what you were renewing? If I can show you
9 State's Exhibit 26, to refresh your recollection, I can
10 do that.

11 A Yeah. What was it. Was it a tape or something?

12 Q It was a photograph.

13 THE COURT: Of the Explorer? Is that what --
14 what's it a photograph of?

15 MS. CAUDY: It's a photograph -- yeah.

16 A I don't remember.

17 Q My understanding from the Clerk's Office is that
18 State's Exhibit 26 is a still shot from the surveillance
19 video at the gas station.

20 MS. MUSSER: I'd stipulate that's what it is.

21 THE COURT: Okay.

22 BY MS. CAUDY:

23 A I would have thought it was an audio of something.
24 I would have thought it was something audio, because I
25 was -- I was keeping that bone in my mouth on that one.

1 I was trying to -- okay. So, let's see.

2 THE COURT: It's right here. Right there.

3 A No, I know, but I'm trying to get a context.

4 I mean, on the video, I mean, I don't
5 even remember what Terrence had on or nothing.

6 There's a continuing objection out there somewhere.

7 THE COURT: Yes, and I can tell you, I'm looking on
8 Page 77 where I ruled. And then, he asks -- Mr. Bannon
9 asks to publish it, and I say without objection, which,
10 clearly, is wrong, because it was subject to your prior
11 objection.

12 BY MS. CAUDY:

13 Q You said there was some sort of continuing
14 objection.

15 A Well, that's what I'm trying to figure out there,
16 because I would have said same objection. So, I had --

17 Q My reading of the record is that there's no
18 objections that appear in the trial transcript. All the
19 motions and objections would have been made during that
20 pretrial hearing.

21 A Why would I say object to --

22 Q Could your objection have been based on the fact
23 that the video of the surveillance footage had already
24 been shown and, therefore, photographs from that video
25 were not necessary, or irrelevant?

1 MS. MUSSER: Or cumulative.

2 BY MS. CAUDY:

3 Q Or cumulative.

4 A I mean, it sounds good. I just can't remember what
5 my -- you know, I can't -- I honestly --

6 Q Okay.

7 A I think -- I mean, I was trying to stick to the
8 line that said none of this audio/video stuff should
9 come in, unless or until Mr. Seabrook testifies. And
10 then, he could be cross-examined on it, or impeached
11 with it. So, I mean, that's consistent, but I -- I'm
12 not -- I can't tell you that that's exactly what -- I
13 mean, like I said, you articulate it well. I --
14 probably a lot better than I can, but I didn't -- I
15 can't swear to that. I -- I know I had a continuing
16 objection.

17 THE COURT: This is being shown during Mr.
18 Shabazz's testimony.

19 MS. CAUDY: That's not correct.

20 MS. MUSSER: Was it --

21 THE COURT: Yes.

22 MS. MUSSER: Right.

23 THE COURT: And Mr. -- he was in the car. Is that
24 your car? I mean.

25 MS. MUSSER: Correct. And I think that they had

1 already played the video, which --

2 THE COURT: Right.

3 MS. MUSSER: This is a still of the robbery
4 occurring, and they had already played that under Mr.
5 Kirkpatrick. So, he was just -- Mr. Bannon was showing
6 --

7 THE COURT: Him a blow-up picture that was just a
8 still.

9 MS. MUSSER: Of a still, of the same video.

10 THE COURT: Right.

11 MS. MUSSER: And I thought I remember reading
12 something in there where he objected; that the video
13 spoke itself; but I could be wrong.

14 A I'm sorry. I don't know.

15 BY MS. CAUDY:

16 Q You don't recall raising anything regarding the
17 surveillance footage or the still shots, pretrial?

18 A Let me look.

19 THE COURT: So, you're asking him whether or not he
20 raised, as a pretrial motion, or objected to the camera
21 footage at the gas station?

22 MS. CAUDY: That's correct. I mean, he's saying,
23 *same objection*. I don't recall him ever raising another
24 objection about this issue, besides what Ms. Musser
25 seems to recollect.

1 BY MS. CAUDY:

2 A Actually, I think, pretrial, I raised objections
3 involving unfair prejudice, which we've talked about,
4 confusing the issues, which is the same 403, and
5 misleading the jury.

6 Q If you don't recall, I can just move on.

7 A I don't remember. I have a note here, *admission*
8 *more likely than not that he committed the -- yeah,*
9 *that's not relevant to this. I don't -- I don't have*
10 *it. I'm sorry, I don't -- I don't remember.*

11 Q Turning to Page 79 of the transcript, this is your
12 cross-examination of Mr. Shabazz. It looks like you're
13 asking him about what Mr. Shabazz had talked to Sammy
14 Washington about. You say, on Line 9:

15 *Did you guys talk about anything else?*

16 And Mr. Shabazz's response on Line 10 is:

17 *No, I was actually (inaudible) back*
18 *(inaudible).*

19 Do you recall what Mr. Shabazz's response was?

20 A Okay. Okay. So. I don't remember. I don't
21 remember what that was.

22 Q Turning to Page 82, then, still Mr. Shabazz's
23 cross-examination. On Line 20, you ask him:

24 *And at that time, do you recall giving*
25 *a description of what Terrence Seabrook was*

1 wearing?

2 And Line 22, Mr. Shabazz says:

3 *A striped shirt, (inaudible).*

4 Do you recall what the rest of his response was?

5 A Now, this is me cross-examining --

6 Q That's correct.

7 A Okay.

8 Q I believe you're asking him about what he had
9 previously told the detective Mr. Seabrook was wearing
10 that day. It seems to me that you don't recall, and you
11 can, perhaps, give a speculation, or a speculative
12 answer.

13 A Yeah, I'm just trying to read ahead of it and get
14 context here.

15 Q Okay.

16 A I think he said -- I -- well, I'll have to look at
17 it here, but I think he said jeans, because, at one
18 point, Shatike Shabazz said that they had bought Mr. --
19 I mean, I can probably figure that out. I think he said
20 jeans, because at one point, he had testified something
21 about that he and his wife, that Mr. Seabrook was on
22 hard times, and they had taken him to WalMart and bought
23 him clothes, or something like that, and had bought him
24 jeans. And I think he told -- I mean, I guess we could
25 look at the cops' statement, but I think he said a

1 striped shirt and jeans.

2 Q Okay. If it helps, I believe his testimony was
3 that he and his wife bought Mr. Seabrook a maroon
4 jumpsuit.

5 A Oh. I don't know. I don't know what that was.
6 Description, he was wearing a striped shirt.

7 Q Moving on to Page 90.

8 A Well, I mean, we can figure that out, because it's
9 got -- I was obviously asking about something that's
10 contained in the investigator's report.

11 Q Okay.

12 A And it's whatever was paired with the striped
13 shirt. I was asking about that, because I was obviously
14 trying to set it up as an inconsistency.

15 Q Correct.

16 A So, whatever was in the report's what it was.

17 Q Okay. Moving on to Page 90. Again, this looks
18 like it's the re-direct examination of Mr. Shabazz. It
19 looks like Mr. Bannon asked Mr. Shabazz whether --
20 whether Mr. Seabrook was wearing -- let's see.

21 A Let's see.

22 Q His question is -- I'm sorry, on Page -- on Line 3.

23 A Yeah.

24 Q He's essentially wearing exactly the same thing, or
25 something very similar, as to what Mr. Seabrook was

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1 wearing that evening. So, it seems to me that he is --
2 that Mr. Bannon is referring to what the armed robber
3 was wearing in the surveillance footage.

4 And then, Mr. Shabazz offers, on Line 8:

5 *I mean, if you look at the guy, the*
6 *guy's back is big. Terrence back blank or*
7 *inaudible.*

8 *Right there. Inaudible.*

9 Referring to that distance. Referring to that
10 distance:

11 *Even when you referred to the guy*
12 *around the corner -- around the counter.*

13 Do you recall what Mr. Shabazz's answer was? It's
14 a bit confusing because of the inaudible sections.

15 A I don't know. I don't know. I can't piece that
16 together in my mind.

17 Q Okay.

18 A Mr. Bannon was trying to say -- I mean, he was
19 trying to -- it was re-cross, but he was almost
20 impeaching his witness, because Mr. Shabazz had been all
21 over the page about. And so, Mr. Bannon, as I recall,
22 was saying:

23 *The guy's wearing the same clothes*
24 *when he gets out here, and here's another*
25 *picture, and he's right here, and you're*

1 telling me that you don't think those are
2 the two same people?

3 I mean, that was the line of questioning, but I
4 don't remember exactly what was said, but that's the
5 link he was trying to draw.

6 Q Okay. And Mr. Shabazz's response seems to be that
7 he is distinguishing the armed robber on the video from
8 Mr. Seabrook, because he says, on Line 8:

9 *If you look at the guy, the guy's back*
10 *is big. Terrence back -- back is --*

11 What is Terrence's back? It seems like he's trying
12 to distinguish the two.

13 A Well, Mr. Shabazz tried to testify that he didn't
14 think it was Terrence Seabrook, because Terrence is a
15 little fellow, and this other guy, that looked like a
16 big guy on the video to him. So, he was trying to say
17 that he didn't think that was Terrence Seabrook, because
18 Terrence is -- is smaller than that guy, and that guy
19 was bigger, looking at his back, or something like that.
20 There was a line there where he was -- he was trying to
21 draw that distinction, that he -- he was -- I'm
22 repeating -- he thought Terrence was too little to be
23 that guy, or that's what he was testifying to.

24 Q Okay. That clears it up. Moving to Page 97.

25 MS. MUSSER: What about 95?

1 BY MS. CAUDY:

2 Q Okay. Page 95. I must have overlooked an
3 inaudible section. It looks like the jurors are out of
4 the courtroom, and the Court asks:

5 *Do you need to look at anything else*
6 *over the lunch hour as far as videos or the*
7 *rest of it? You're okay.*

8 And your response is, on Line 23:

9 *No, ma'am. I've watched that video a*
10 *gazillion times, which is (inaudible).*

11 Do you recall what the rest of your sentence was?

12 A Like, fine, or something. I mean, I was just
13 saying, I watched that; I don't need to see it again --

14 Q Okay.

15 A -- is, essentially, the intent, whatever I said.

16 Q Okay. And then, Page 97, Line 12, it looks like
17 part of the Court's response is inaudible. It looks
18 like there is a discussion about redacting the audio-
19 taped statements that Mr. Seabrook gave. Mr. Bannon
20 says that he went through the statement and deleted
21 sections. The Court says:

22 *The problem is, Jim, you gave him a copy.*

23 And Mr. Bannon says:

24 *I gave -- I have given him a copy.*

25 And then, the Court says:

1 *Obviously (inaudible). If you look*
2 *at it, we're going to have to compare it*
3 *to the original you have, and make sure*
4 *nothing's missing.*

5 Do you recall what the Court said on Line 12?

6 A Let me look here. Okay. So, I was worried about
7 them putting stuff in about his prior record or
8 something, to which I had objected. And then --

9 THE COURT: And you were worried about him taking
10 out things that you thought were potentially favorable
11 to your client, as well.

12 A Right. Him denying --

13 THE COURT: So, I, over the lunch hour, said,
14 you're going to have to compare the original to what Mr.
15 Bannon is putting in.

16 BY MS. CAUDY:

17 Q It looks like the Court's just asking you to look
18 at it over the lunch hour.

19 A I think she said:

20 *Obviously, you're going to have to look*
21 *at it.*

22 Q Okay. All right. Page --

23 THE COURT: I can tell you, when we came back on
24 the record, and it says:

25 *All right. We need to put a couple of*

1 *things on the record.*

2 A Um-hmm.

3 THE COURT: I can tell you, normally, what I say in
4 there, and it probably was an aside. I probably looked
5 up to make sure I had a court reporter in the room, both
6 attorneys, and Mr. Seabrook, because that's typically
7 what I have to do before I go, *okay, Mr. Weidner,*
8 *whenever you're ready.* That would be my very best guess
9 of what I said. I probably looked up to make sure
10 everyone was here that needed to be here, so.

11 A I would have said all right.

12 THE COURT: After lunch.

13 MS. CAUDY: Okay.

14 A I -- I -- yeah. She would have said, all right,
15 Mr. Weidner, whenever you're ready.

16 COURT REPORTER: I'm sorry, I didn't hear you.

17 A She would have said, all right, Mr. Weidner,
18 whenever you're ready, is what she usually says to me.

19 BY MS. CAUDY:

20 Q Okay. And then, the next page, then, Page 98. It
21 looks like you're renewing your objection to the
22 admissibility of the statements.

23 THE COURT: Once again, he argued -- I can tell you
24 this part -- once again, he argued that they weren't
25 admissions and they weren't confessions, and I said,

1 they are -- and I said, and just like I've been saying
2 here, they are statements. I think they are statements,
3 and they show inconsistency, and I think it's
4 appropriate to put them in, so.

5 BY MS. CAUDY:

6 Q And just to draw your attention to Line 7, you do
7 say your prior argument yesterday. So, looks like --
8 that's what led me to believe the *Jackson v. Denno*
9 hearing did, like, take place in March.

10 A Was this the -- this was the first day -- or, this
11 was the second day, though, wasn't it?

12 Q It was the second day. It's Tuesday, March 20th.

13 A Is that when we went on the record on this thing?
14 Well, maybe it did. I just --

15 THE COURT: Yes, I would agree with you, the way it
16 states.

17 A Yeah.

18 THE COURT: Because it looks like you visited it.
19 And I can tell you, too, I don't think I would have
20 allowed anyone to play anything that I hadn't heard
21 first, at trial. I just -- I don't think that that
22 would have occurred. So.

23 BY MS. CAUDY:

24 Q Moving on to Page 112, then.

25 A Yeah. Oh, yeah, that makes sense. She said:

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1 *They're statements. I think they're*
2 *statements, and they show inconsistency.*

3 Yeah, that's --

4 Q Okay.

5 A I'm sure that's probably what she said.

6 Q And then --

7 A Because we were -- we -- we were knocking heads
8 over statements, or --

9 THE COURT: It was literally admission statements.
10 It was admissions, confessions, and I called them
11 statements.

12 A Yeah.

13 THE COURT: And I still hold by that. I think,
14 quite frankly, I still think I'm right. So, anyway.

15 A Well, you're the judge, ma'am, so you get to do
16 that.

17 THE COURT: Anyway. No, that's all right. You
18 know what, not anymore, I'm not. The Court of Appeals
19 will decide what it is.

20 A Um-hmm.

21 BY MS. CAUDY:

22 Q On Page 112, this is during the direct examination
23 of Lieutenant Baird. It looks like Mr. Bannon asks him
24 -- and I think at 3:

25 *And I think that you said that you*

1 read it to him from the form.

2 And the response is:

3 That's correct. What I do is, I put
4 it on a clipboard, and I kind of hold it
5 between he and I, very close to each other,
6 (inaudible), within inches of each other.

7 THE COURT: Do you recall what that --

8 A I think he said -- well, I mean, I can speculate.
9 I don't have an absolute clear recollection, but I think
10 he said, usually, within inches. I mean, I -- I think
11 he testified that earlier today. He's talking about in
12 close proximity, so that the -- the accused can read it
13 along with him.

14 Q Okay. And then, Page 116, this is the cross-
15 examination. On Page 115, the question from Mr. Bannon
16 was Line 24:

17 Okay. So, for the time that you were
18 present, did Mr. Seabrook indicate that he
19 wished to speak to you or Mr. Chapman, or
20 Investigator Chapman.

21 And the response on Line 2 was:

22 Yes, sir, (inaudible). He said, I'll
23 tell you what really happened.

24 Do you recall what the inaudible portion was, on
25 Line 2?

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1 A I don't know. I think he said, yes, sir, he did.
2 Let me look at that again. I think he said, yes, sir,
3 he did.

4 Q Okay. Moving down to Line 8, it looks like the
5 question from Mr. Bannon was on Line 5:

6 *To your knowledge, what -- what was --*
7 *to your knowledge, was the entirety of that*
8 *interview recorded by Investigator Chapman?*
9 And the response is:

10 *Yes. When he came in the room, he had*
11 *brought his recorder with him and (inaudible.)*

12 A I think he said he turned it on.

13 Q Okay. Page 129, the direct examination of Master
14 Sergeant Chapman. Line 19 is what I'm focusing on. It
15 looks like the question was, by Mr. Bannon:

16 *I'll take that page back now. Now, I*
17 *think, going back a little bit to your*
18 *interview with Mr. Boyd, did anything*
19 *unusual happen while you were out there*
20 *at the Marine Corps Air Station?*

21 *For me --*

22 The response:

23 *For me -- for the -- for Mr. Boyd*
24 *specifically, no. But while we were*
25 *conducting the interview, the vehicle*

1 that Mr. (Blank) that was involved in
2 the incident.

3 Do you recall what that response was?

4 A I think it was Mr. Shabazz.

5 THE COURT: I think so, too.

6 A Because he had borrowed the vehicle, and he had
7 been responsible for it, and there were some hard
8 feelings, because he'd caused an accident in it, if I
9 remember right. So, it was Mr. Shabazz.

10 BY MS. CAUDY:

11 Q Okay. Page 141. Still the direct examination of
12 Master Sergeant Chapman. It looks like Mr. Bannon asks,
13 on Line 20:

14 And what was his basic position during
15 the second interview that you conducted
16 (inaudible)?

17 And then, you make an objection. Do you recall
18 what the rest of Mr. Bannon's question was that you
19 objected to?

20 A Let me see. What was Mr. Seabrook's personal
21 involvement -- I think it's: and what was the basic
22 position during the second interview that you conducted
23 with Mr. Seabrook?

24 Q Okay.

25 A And I objected to it.

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1 MS. MUSSER: And that may be where I got that.

2 MS. CAUDY: I was just going to say that.

3 MS. MUSSER: That may be where I got that.

4 MS. CAUDY: Okay.

5 BY MS. CAUDY:

6 Q Page 152, the cross-examination of Master Sergeant
7 Chapman. The question that you ask on Line 13 was:

8 *It was after his interview with Master*
9 *Sergeant Baird that he was brought back to*
10 *you, and you started talking about, okay,*
11 *let's talk about what really happened, right?*

12 And Line 17:

13 *Yes, I did. (Inaudible).*

14 A I don't know. I don't know what that was.

15 Q Okay. On Page 155, this is still the cross-
16 examination of Master Sergeant Chapman. On Line 6, you
17 ask:

18 *All right. You also mentioned (inaudible)*
19 *Money and Dollar.*

20 THE COURT: Do you remember that? Do you recall
21 what that inaudible portion was?

22 A That's a name. He was using street names. I think
23 it was Sub. Let's see. Let's -- let me get a context
24 here.

25 Okay.

1 I think it's Sub. Sub, Money, and Dollar, as I
2 remember. They all ran together. So, I think he's
3 talking about -- because they're -- let me think. There
4 was a question about -- there was a line in this case
5 about whether or not Sub had done it, and Shatike was
6 trying to point the finger, particularly after he got
7 immunity, whether he was trying to -- because Sub and
8 Shatike Shabazz were cousins. And I think I was -- I
9 said Sub, because there was a question about whether or
10 not Shatike Shabazz was pointing his finger at Mr.
11 Seabrook, as opposed to Sub, because he was trying to
12 protect Sub. I think it's Sub.

13 Q Okay. And then, further down the page, you ask
14 Chapman:

15 *So, you had a number of people that*
16 *you had information about that would fit the*
17 *general description. What did you do to*
18 *follow up on that?*

19 And his response further down the page is on Line
20 23:

21 *The other name is Steven Jenkins. He's*
22 *extremely tall. He's probably six-foot three,*
23 *(inaudible), a-hundred-and-something pounds.*

24 I'm assuming he's referring to his weight. Do you
25 recall what his testimony was in that inaudible portion?

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1 A And maybe.

2 Q What?

3 A I think he said and maybe.

4 Q Okay.

5 A And maybe a hundred and something pounds.

6 Q Okay. On Page 156, the next page, this is still
7 Chapman's response. On Line 1, he says:

8 I know that that is not the person in
9 that video. The other names, the street
10 names of Dollar, Dog, (Blank), I have no
11 information as it regards who those people
12 are.

13 I'm assuming that's also referring to other street
14 names?

15 A I think it's Sub.

16 Q Okay.

17 Q On Page 157, this is the re-direct examination of
18 Mr. Chapman. Mr. Bannon asks, on Line 1:

19 And nowhere -- and nowhere in your
20 report does that appear.

21 And Mr. Chapman says:

22 That was said (inaudible) with Terrence
23 Seabrook.

24 Do you recall what that inaudible portion was?

25 A Let me look here. I don't remember. I don't know

1 what -- I don't know.

2 Q Okay.

3 A Sorry.

4 Q Moving on to Page 171, on Line 5. On Line 5, this
5 is the direct examination of Officer Vortisch --

6 A Vortisch, yeah.

7 Q -- Vortisch, thank you. It looks like he's
8 referring to State's Exhibit 37 and State's Exhibit 38.
9 And he says, on Line 4:

10 *Number 30 is a disc I created on the*
11 *second subpoena, February of 2012 (inaudible).*
12 *I also initialed the disc.*

13 Do you recall what his inaudible statement was?

14 OFF-THE-RECORD BENCH CONFERENCE.

15 PRESENT: THE COURT, BAILIFF.

16 END BENCH CONFERENCE.

17 THE COURT: If you all don't mind, I know you're
18 getting close to finishing up, but can we take just a
19 five-minute break, if that's all right with everybody.

20 A That's fine.

21 OFF THE RECORD 3:04 P.M.

22 BACK ON THE RECORD 3:27 P.M.

23 BY THE COURT:

24 THE COURT: All right. You can continue.

25 MS. CAUDY: Okay.

1 BY MS. CAUDY:

2 Q Picking up where we left off, looks like Page 171.
3 I'm not sure if you answered that question or not. Line
4 4 and 5, referring to:

5 *State's Exhibit Number 38 is a disc*
6 *I created on the second subpoena, in February*
7 *of 2012.*

8 THE COURT: Do you recall what that inaudible
9 portion was?

10 A I think it was a date. He was explaining the
11 methodology by which he identifies things that he
12 creates, pursuant to subpoena. So, I think it was a
13 date, but I don't know what it was.

14 Q Would that have been a date of one of the jail
15 phone calls?

16 A I think he was talking about the date that he
17 created the -- well, it might be, I don't know. Let's
18 see. I don't know. It may be, I don't know.

19 Q Okay.

20 A He was talking about how the jail phone system
21 works. All right. He says:

22 *Number 37 is a disc that it created, --*
23 *which would be the system, --*
24 *on the 24th. Has my initials on it*
25 *under subpoena, the second subpoena. The*

1 *fifth subpoena, received in February of that*
2 *year. Number 38 is a disc I created on the*
3 *second subpoena, February of 2012.*

4 I don't know. It could -- I don't know what that
5 is. We'd have to ask him.

6 Q Okay. On the following page, 172, down on Line 19,
7 it looks like Mr. Bannon is talking about the telephone
8 calls that he is playing for the jury. It says:

9 *(Inaudible). This recording is from*
10 *April 28, 2011.*

11 Do you recall what that inaudible portion was?
12 Perhaps it was just a transition to the next phone call.

13 A I don't know. I don't know what he said.

14 Q Okay. And then, lastly, on Page 182. It looks
15 like the State has already rested, and you're renewing
16 your motions and objections. On Line 4, you say:

17 *Yes, ma'am, your Honor. My motions on*
18 *the evidence (inaudible) expected the phone*
19 *calls.*

20 And then, it looks like you might have repeated
21 yourself, because the court reporter asks you to speak
22 up. And you said, on Line 7:

23 *I'm used to practicing in a courtroom*
24 *over at Parris Island.*

25 Hold on, that's not relevant.

1 On Line 11, you say:

2 I'm renewing my motions, obviously, to
3 exclude the evidence of the phone calls and
4 the tape recordings that we played here.

5 So, it looks like, perhaps, on Line 5, you had
6 stated what you repeated later on, on 11/02/13.

7 A I think I said, yes, ma'am, your Honor. My motions
8 on the evidence, as expected, the phone calls.

9 Q Okay.

10 A Because, I mean, we -- she knew that was coming,
11 and everybody knew I was going to renew those

12 COURT REPORTER: I'm sorry, you're fading on me.

13 A I'm sorry, ma'am. I think that she -- I said, as
14 expected, because I -- I was digging in on those
15 objections.

16 Q And I have one follow-up question that I forgot to
17 ask you earlier. Do you recall whether, during the
18 Jackson v. Denno hearing, the unredacted portions or the
19 unredacted audiotapes of Mr. Seabrook's statements were
20 marked as Court's exhibits?

21 A I don't remember. Sorry.

22 Q Okay. It looks to me, the -- it looks like the
23 Clerk of Court's exhibit form lists two CDs as Court's
24 Exhibit 1 and 2, and there's no record on the
25 transcripts we have of what Court's Exhibits 1 and 2

1 are. If they aren't the unredacted CDs of Mr.
2 Seabrook's audio-taped statements, do you recall what
3 else those CDs could be?

4 A Let me see if I wrote something in a note.

5 Sorry, I just packed everything up, so I don't know
6 if -- I've got to find it again. You say they're
7 court's exhibit, not prosecution exhibit?

8 Q That's correct.

9 A What do you have as Prosecution Exhibits 1 and 2?
10 Are those the videos?

11 Q No, the videos are State's Exhibit 26 and State's
12 Exhibit 27. Wait. It does list Plaintiff's Exhibits --
13 or State's Exhibits 1 and 2 as CDs.

14 A Okay.

15 Q And then, State's Exhibit 28 and 29, also, CDs.

16 A I don't know. I don't know what the Court's
17 exhibits were, because I didn't write that in my notes.

18 Q Okay.

19 A Or, at least the notes that I have.

20 Q Okay.

21 MS. CAUDY: I have no further questions.

22 THE COURT: So, are you questioning what they were,
23 at this point?

24 MS. CAUDY: It's my understanding they are -- were
25 unredacted.

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1 THE COURT: That's what I'm assuming they would be,
2 the unredacted --

3 MS. CAUDY: Correct.

4 THE COURT: Okay.

5 MS. CAUDY: That is my understanding of what they
6 are.

7 THE COURT: The court's exhibits. Okay.

8 LARRY WEIDNER

9 CROSS-EXAMINATION, BY MS. MUSSER:

10 Q So, as far as -- and I just want to make sure that
11 I understand. There are basically three different
12 principles of what your fundamental trial objections
13 were. We have the *Jackson v. Denno* hearing, with
14 respect to the admissibility of the two interviews that
15 Mr. Seabrook gave, correct?

16 A Right.

17 Q And those were the interviews from November 2nd and
18 November 3rd, correct? And those were the subject at
19 the *Jackson v. Denno* hearing, to, you know, as we all
20 know, to determine whether they were voluntarily and
21 knowingly given, correct?

22 A They were the interviews by Wilson and Chapman, and
23 Chapman and Baird. I don't remember the dates, but
24 those are the ones that I was talking about.

25 Q Okay. Okay. Now, had there been -- and you were

1 -- you denote *Rule 5* issue in this case. From my
2 understanding, it seemed like it was a fairly friendly
3 trial, if you will. In other words, it wasn't overly-
4 contentious. There wasn't a lot of ongoing objections
5 during the trial, correct?

6 A I would call it a gentleman's -- a gentlemanly
7 trial, yes.

8 Q Okay. So, because there was no discovery issue,
9 had there been a third interview with Master Sergeant
10 Chapman, you certainly would have inquired about that,
11 correct?

12 A I would have.

13 Q In the trial, and in the *Jackson v. Denno* hearing.

14 A I would have.

15 Q Okay. So, we have the admissibility of -- or, the
16 *Jackson v. Denno* hearing, to determine if it was
17 voluntary. But then, there was also an issue -- you
18 were raising an issue, with respect to the admissibility
19 of the defendant's interviews with law enforcement,
20 correct? In other words, you weren't claiming -- you
21 weren't claiming the admissibility issue, because we had
22 already talked about that, where you said that it wasn't
23 -- your understanding differed from the Court's;
24 whereas, the judge had said, look, I'm saying that these
25 are admissible; these interviews are admissible in the

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1 State's case-in-chief, not as what you're proposing, and
2 that the defendant would have to testify. So, that's
3 the second main trial issue, correct?

4 COURT REPORTER: I'm sorry, *that's the second* what?

5 Q Main trial issue.

6 A I mean, I think we're headed in the same direction.
7 The issue was, as we've said repeatedly, the issue was
8 the distinctions to be drawn between confessions and
9 admissions; and then, the judge telling, or saying,
10 well, they're statements, and they're admissible.

11 Q Right. I don't think it makes -- okay. So, you
12 have the *Jackson v. Denno* hearing. The judge says, I
13 find they're knowingly and voluntarily and freely given.

14 A Right.

15 Q That's step one.

16 A Right.

17 Q Step two would then be, you're saying, okay, well,
18 Judge, I still don't think they should come in, even
19 though you found that they were voluntarily given for
20 these evidentiary admissibility issues.

21 A Right.

22 Q Okay.

23 A 403, more prejudicial than probative.

24 Q Right.

25 A Right.

1 Q And then, there was the third set of audio
2 recordings, because today, we've been interchanging
3 audio recordings, a little frequently. So, the record's
4 clear, there were two for his interviews, as
5 distinguished by his jail phone calls, correct? The
6 calls that he placed from the jail --

7 A Right. There were --

8 Q -- were clearly, there's no law enforcement
9 involved in that at all.

10 A Right. He was just making phone calls.

11 Q So, your recollection is that the jail calls, as
12 testified to by the Lieutenant Vortisch, had nothing
13 whatsoever to do with the *Jackson v. Denno* hearing,
14 because, clearly, he was in his cell; there's no law
15 enforcement there; there's no one prompting him to make
16 these jail calls. The sole issue that the jail phone
17 calls came up was in the context of admissibility and
18 the *Rules of Evidence*.

19 A The *Jackson v. Denno* hearing was -- yeah, limited
20 to law enforcement interrogation of my client.

21 Q Okay.

22 A And whether or not it was voluntary. The phone
23 calls were a separate issue of admissibility that had to
24 do with, again, 403 and the other things that I've
25 stated.

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1 Q Okay. Now, you testified that you weren't
2 particularly sure whether the *Jackson v. Denno* hearing
3 happened in February or March, correct?

4 A Or at another -- I don't remember. We either had a
5 *Jackson v. Denno* hearing, or we had it in February, or
6 we had it right prior to the trial in March, and I can't
7 break that out in my memory.

8 Q And you don't have any kind of recollection that
9 the *Jackson v. Denno* hearing was decided separately than
10 these other pretrial issues, with respect to
11 admissibility of the jail calls or the --

12 A Again, I just can't break that out in my memory. I
13 don't -- I don't remember when that happened.

14 Q Okay. And it's fair to say that this wasn't your
15 first trial, right?

16 A No, ma'am.

17 Q Okay. So, had Master Sergeant Chapman gotten on
18 the stand, or Lieutenant Baird, gotten on the stand and
19 testified to something completely different than they'd
20 said, let's go with the day before, you would have
21 called them on the carpet for that. You would have
22 said, well, wait a minute; didn't you tell us yesterday
23 it was such and such?

24 A Yes, I would have used -- I would hope that I would
25 have been astute enough to use any inconsistencies in

1 cross-examination of them.

2 Q Okay. So, it's fair to say, then, that their
3 testimony is consistent with what they would have
4 testified to at the *Jackson v. Denno* hearing?

5 Otherwise, you would have asked them about that.

6 A I mean, I recall no gross inconsistencies. If
7 there had been some, I would hope that I would have
8 asked about them.

9 Q Now, if another judge had ruled on the pretrial
10 issues, and then you came to court, again, it's fair to
11 say that you would have gone over that with Judge
12 Mullen, correct? In other words, at some point, you and
13 Mr. Bannon would have had to have said, oh, wait a
14 minute; by the way, Judge, Jones decided this, this,
15 this, and this?

16 A It's accurate to say that I would have tried to get
17 a second bite at the apple. I would have tried to get
18 Judge Mullen to re-hear the thing if I had lost the
19 first time, because of the lapse in time or whatever. I
20 mean, I would have taken a shot at it for sure.

21 Q Right. And fair to say that either Mr. Bannon, or
22 Judge Mullen probably would have said, no, it doesn't
23 work that way; I have Judge so-and-so's notes. But to
24 your recollection, there's no -- there weren't any notes
25 or court orders or anything from a different judge,

1 other than Judge Mullen.

2 A Again, for whatever reason, I don't have anything
3 from -- I don't know if -- at the time that we tried
4 this, my assistant had been with me, I think, for about
5 12 years, was leaving. So, the files -- this file
6 didn't quite get closed the way I would normally file --
7 close it. So, I cannot lay my hands on my notes from
8 the *Jackson v. Denno*, as far as I can tell, although
9 there are some in there that say *Jackson v. Denno*, but
10 they're not dated. So, there's -- there's something not
11 right about this, and what I'm saying is, I can't
12 remember when or what happened there. I just -- I'm
13 trying, but I can't. I've tried really hard.

14 Q Okay. And it's fair to say, though, that, when Mr.
15 Bannon provided you the statements of, or copies of the
16 CDs containing his, Mr. Seabrook's, audio you would have
17 listened to them, correct?

18 A Yes.

19 Q Okay. And I think we can glean, from what we have
20 in the trial transcript that -- and maybe it refreshes
21 your recollection, where Mr. Seabrook, on -- during his
22 interview, reference that he was on probation; that he
23 had been to see his probation officer that day; and
24 that's why he knew he didn't have any involvement with
25 the gun, because he's not allowed to have guns. To your

1 recollection, is that the portion that was redacted?

2 A I -- I -- I know we redacted the -- well, at least,
3 I think we did -- redacted the portion about his prior
4 record, and seeing his probation officer, because, I
5 mean, that would have been highly prejudicial.

6 Q So, okay. I had -- and I don't know why I pulled
7 this out, but I pulled out, with respect to Page 98,
8 the --

9 MS. MUSSER: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MS. MUSSER:

12 Q On the trial transcript, I have where you talk
13 about your prior arguments, with respect to the
14 statements. And by that, I just want to make sure the
15 record is clear, you're talking about his statements to
16 law enforcement. You're not referring to the jail calls
17 at that particular time, correct?

18 MS. CAUDY: What page?

19 MS. MUSSER: 98, I'm sorry. And it starts Line 9.

20 BY MS. MUSSER:

21 A You know, I don't know if we were referring to -- I
22 don't know if -- I mean, we were calling -- or, at
23 least, I -- I think was calling statements, as in,
24 things he has said.

25 Q Let me ask it another way. Do you have any

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1 recollection of -- we know that you made your argument
2 about, collectively, all his statements, jail calls, and
3 to law enforcement.

4 A Right. That's my problem, because I'm trying to
5 break it out.

6 Q Being inadmissible under the theory that you
7 argued, that, okay, well, because he hasn't testified,
8 technically, trying to impeach him, Court said, no, I
9 view it as a statement; these are statements he made;
10 it's presumably something that wouldn't be conflicting
11 statements, unless, you know -- and that's evidence; so,
12 therefore, it comes in, because it's probative of why
13 somebody would give multiple statements. Right?

14 And then, with respect to the jail calls --

15 COURT REPORTER: Did you want him to answer that?

16 Q Yeah. Sorry.

17 A Okay. So, here's where this gets muddy. Mr.
18 Bannon was creating discs of -- of statements that he
19 wanted to have admitted. And they may have included
20 both statements made during the interviews, not the
21 interviews themselves, but statements made during the
22 interviews and statements made during -- on the phone
23 calls, and that's how come we started getting this
24 muddying of statements. And that's why I'm having a
25 hard time breaking it out, when we say, statements,

1 these two statements. I'm not sure what we were
2 referring to there. I don't know if we're referring to
3 the two interviews, or if we're referring to -- let me
4 look at the context of the -- it's Page 98.

5 Q And as you review them, perhaps it would be helpful
6 if you could recollect whether or not Judge Mullen would
7 have made two separate analyses for either one. In
8 other words, presumably, the State's theory is, okay, he
9 gave statements to Sergeant -- I'm sorry, Master
10 Sergeant Chapman and they were conflicting. Jail calls,
11 he's talking to, you know, his mom about what, you know,
12 what's going to happen at the trial; and, you know, as
13 long as Mr. Shabazz stays quiet, I'm good; which is more
14 of a, like, consciousness-of-guilt-type argument. But
15 it doesn't sound like, reading the trial transcript,
16 that Judge Mullen -- in other words, she blanketly said,
17 they're statements; they're coming in. So, the same
18 legal analysis applied to both.

19 A I'm not sure that I would presume to --

20 THE COURT: I wouldn't, either.

21 A In fact, let me just read the page before and see
22 if I can figure out what we had happen here.

23 Q Of course.

24 THE COURT: What page are you on?

25 A Well, I'm starting on 95. And she's talking

1 about --

2 THE COURT: Okay.

3 BY MS. MUSSER:

4 Q I guess my point is, had there been two separate
5 statements, then, what would, the record would kind of
6 outline that.

7 A I didn't understand the question.

8 Q From what I've gathered from your testimony today,
9 it's your recollection, the ones that you were objecting
10 to his statements, particularly to law enforcement,
11 where Mr. Bannon's argument was, well, he gave several
12 different versions of where he was when he was
13 interviewed by law enforcement; and you say, Judge
14 Mullen, please don't let that in; I think that's trying
15 to impeach my client before, or shifting the burden to
16 get him to testify, so that, he explains why the stories
17 were different. Judge Mullen says, no, I disagree;
18 they're his statements; they're coming in.

19 A No, I think we were talking about statements not
20 only to law enforcement, but also statements that he had
21 made to his mom. Because, essentially, it was all --

22 THE COURT: I would say no.

23 A I don't -- no?

24 THE COURT: Sorry, I completely disagree with you.
25 I think it's for two different reasons.

1 A I just don't remember. I --

2 THE COURT: It's for two different reasons that the
3 different statements came in. No, in that case, it was
4 -- I'm talking about the November 2nd and 3rd statements
5 to law enforcement. I can tell you, I'm talking about
6 that.

7 A I know those were, clearly, those weren't -- that
8 was my -- I just don't remember about the phone calls.
9 I can't -- let me look at this and see if I can -- we
10 were talking about the video, which would have been of
11 the recorded -- of the inter -- the law enforcement
12 interviews.

13 THE COURT: It would have been the interviews. I
14 can tell you that I would not have mixed the two of
15 those, because they come in for two separate reasons.
16 So, I wouldn't be mixing those two.

17 BY MS. MUSSER:

18 Q And I believe, on one of the jail calls, he says to
19 another -- whoever he was calling -- it was a male on
20 the phone, yes, they have -- they were talking about
21 doing a lick, and yes, they have me on audio and video;
22 and yes, I'm facing ten years and five years, was also
23 part of the jail calls.

24 A I think we were treating them different, only
25 because we took up the issue as -- says, the Judge

1 asked:

2 *Do we need to take up anything else*
3 *over the lunch hour, as far as the videos*
4 *or the rest of it?*

5 I said:

6 *I've watched the video before.*

7 And then, Mr. Bannon said, at that point:

8 *Would it be okay if we take the matter*
9 *of the audio recording?*

10 So, I think we were treating them -- that lends me
11 to believe that I'd like to know where I stand before
12 putting witnesses on, in regard to those statements, on
13 the stand.

14 Q Right. Referring back to the law enforcement
15 interviews that had to be redacted, because he mentioned
16 his priors and the fact that he was on probation. Is
17 that right?

18 A We were talking about separate things. We were
19 talking about separate things, because that's when we
20 got into the whole turning fight about whether or not
21 stuff that I wanted in had been taken out, meaning, when
22 he was talking to his mom. So, that was a separate
23 argument.

24 Q Right. So, the issue is the redaction. Okay.
25 Because, then, I notice, further down, the line -- I

1 believe it was Mr. -- Lieutenant Vortisch was
2 testifying, and I am on Page 171, Line 12, where Mr.
3 Bannon is referencing State's Exhibit 37 and 38, which
4 we know are the jail calls.

5 A Um-hmm. Yes.

6 Q And then, the Court says, *without objection*. And
7 then, you say, *subject to*; and then, the Court says,
8 *prior, got you*. But that statement refers back to the
9 fact about the admissibility.

10 THE COURT: Ms. Musser, repeat that one more time.
11 Just to let --

12 MS. MUSSER: Okay.

13 A We're clearly talking about the phone call.

14 THE COURT: Yeah, clearly. That's what I think, as
15 well. There's no question, it's the phone calls.

16 A Yeah.

17 MS. MUSSER: Right.

18 THE COURT: *Subject to your* -- I cut you off and
19 said, *got you*. Your prior objection is to not letting
20 the phone calls come in.

21 A Right.

22 MS. MUSSER: Right. And I was just trying to
23 establish the basis for which the Court let them in, and
24 Counsel's specific objection, so when it's looked at,
25 they don't know -- no one has to guess as to why Judge

1 Mullen let it in.

2 A Well, that -- that's not a question for me.

3 COURT REPORTER: I'm sorry? What did you say,
4 *that's not a question?*

5 A I said, that's not really a question for me.

6 THE COURT: It's a statement.

7 BY MS. MUSSER:

8 Q Okay. So, you don't have any recollection of why
9 she let it in?

10 A I didn't -- I wouldn't presume to --

11 Q Okay.

12 A I mean, she let it in. You know, the -- what it
13 says there is what it was.

14 Q And then, there was one other thing I wanted to
15 clarify. With respect to the discovery and your review
16 of it, do you remember Staff Sergeant Chapman's report
17 talking about -- there were several people that used
18 street names, correct?

19 A Yes.

20 Q There was a Sub. There was a Big Dollar, and there
21 was somebody named G Money.

22 A I remember those names.

23 Q Okay. Did you ever -- do you have a recollection
24 of hearing Sub in the context of money? In other words,
25 when you testified today, as to Page 155, on Line 6.

1 A There was a Sub that was a cousin of somebody.

2 Q Right. But on Line 6, the one part that was
3 inaudible. This is your cross of Staff Sergeant
4 Chapman.

5 He mentioned the names Quincy Holmes.

6 The other two, I don't -- I can't remember
7 if those were the names he said.

8 Question: All right. He mentioned
9 (inaudible) Money and Dollar.

10 On direct, you said you thought that might have
11 been Sub, but I'm also refreshing your recollection, or
12 seeing if your recollection is refreshed, that there was
13 also a person named G Money in the discovery. There was
14 a G Money, Big Dollar.

15 A Okay. That's entirely possible.

16 Q Okay.

17 A That's the best I can do, because at the time I
18 tried this, I was also trying another case that was just
19 replete with street names. So, there were all these
20 names, Bunny and G Money and Dollar, and I remember Sub
21 with this one, I remember. So, it's possible that I
22 could be confusing those two cases, because I had two
23 cases running around in my head. Just tons of, you
24 know, I don't want to digress too far, but my partner
25 and I literally spent two days on a white board, trying

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1 to figure out who all the players were, from the names
2 in the other case. So, I --

3 Q Okay. That's all I have.

4 A It's possible. I can't break it out.

5 MS. MUSSER: That's all I have, your Honor.

6 THE COURT: Okay.

7 MS. CAUDY: I have just one follow-up question,
8 your Honor.

9 THE COURT: Yes.

10 LARRY WEIDNER

11 RE-DIRECT EXAMINATION, BY MS. CAUDY:

12 Q When the jails calls were played before the jury,
13 do you recall whether only Mr. Seabrook's statements
14 were played; or was the person he was talking to, were
15 that person's statements also played before the jury?

16 A I don't know, but the -- the -- the exhibits
17 themselves should have whatever was played to the jury.
18 I mean, I don't remember, as I sit here. I haven't
19 listened to them.

20 Q Okay. I think it's possible that Mr. Bannon just
21 played certain portions without actually redacting the
22 exhibit.

23 A I'm fairly confident that we had -- Mr. Bannon and
24 I, during the course of this, spent a fair amount of
25 time, essentially, outside of the courtroom, negotiating

1 what was going to get on those discs.

2 Q The jail calls. I'm just referring to the jail
3 calls right now.

4 A On any of the -- on any of the exhibits that were
5 entered, --

6 Q Okay.

7 A -- we -- we spent a fair amount of time outside of
8 court negotiating what was getting on those things.

9 COURT REPORTER: *What was going?*

10 LARRY WEIDNER: What was getting on those discs.

11 A So, you know, whatever -- the discs would be that
12 which was admitted, and if there was somebody else
13 talking on there or not, I don't remember. I just
14 remember listening to discs, and -- and going back and
15 forth about, okay, well, I don't think that's
16 admissible, and -- or, I don't think that should come
17 in; and he either agreed with me or he didn't; or he
18 wanted to put something in, and I disagreed, or he
19 didn't. And what couple that we couldn't ultimately
20 work out between us, we came in and talked to the judge
21 about, and they went in. So, the discs that were
22 admitted are the -- are the original best evidence of
23 whatever that was played before the jury. And that was
24 preserved.

25 THE COURT: And do you even see in the transcript.

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1 at that portion where I actually ruled on any part of
2 it? I mean, other than, I think we agree, anything else
3 that would have been incriminating, but I don't recall
4 ruling on anything. I thought you all were in pretty
5 much agreement.

6 A We worked very well together trying this case in
7 terms of adversaries working towards a resolution. I
8 mean, we -- I recall having a pretty good, at times,
9 sporting negotiation go on about what should go on
10 there; and then, ultimately coming in and say, okay,
11 we've solved our problems; and the Judge saying, all
12 right, let's go; get the jury in here, and let's hit it.
13 So, I don't remember a lot of in-court fussing.

14 THE COURT: I don't think there was any, that I can
15 recall. And from looking at the transcript, I don't
16 think there was any, as far as the jail calls are
17 concerned. I think the portion that you were getting to
18 was what you thought was relevant, and didn't want to
19 waste a bunch of time. I mean, we know that it's based
20 on, there's no expectation of privacy using from
21 calling, using a jail phone. I mean, we all know that.
22 And so, they were coming in. It was, then, whether or
23 not what was in those jail phone calls is relevant. And
24 so, if he was talking about, you know, where his grandma
25 or whatever, that probably wasn't relevant, and you

1 probably both agreed that that didn't need to come in,
2 but other portions of it, so.

3 But anything having to do with the case, you know,
4 as long as it complied with the *Rules of Evidence*,
5 which, it did, it's admissible. So, there -- I don't
6 recall there being any fights over any specific -- I
7 don't remember anyone, you know, pinpointing this
8 portion of it; I want it in; I don't want it in; and me
9 ruling on it. And I mean, I don't see it in the
10 transcript, either.

11 A No, I think that all happened between us.

12 THE COURT: I think it did, too. I think you all
13 agreed, and I think you both knew what was admissible.

14 A Right. I had 403 problems, and he had --

15 THE COURT: Yes.

16 A You know, we were having to negotiate that, because
17 I was arguing, obviously, the stuff about his background
18 was not coming in.

19 THE COURT: Right.

20 A And he conceded that that was going to be the case.
21 And then, I -- I was arguing more prejudicial and
22 probative on some other stuff. I mean, we went back and
23 forth, like I said, at times, fairly -- fairly spirited,
24 but, you know, collegial. I mean, we sorted it out
25 amongst ourselves, and then came in, and I don't

1 remember any real dust-ups over the evidence in court.
2 We managed to work it out.

3 BY MS. CAUDY:

4 Q I can tell you that I've listened to the State's
5 exhibits that contained the jail calls, and they're not
6 redacted. One of the telephone calls is nine minutes
7 long. At one point, Mr. Seabrook's brother gets on the
8 phone with another inmate. There's several portions
9 that are completely not relevant, perhaps prejudicial.
10 And that's where my questioning came from, was, if you
11 recall if -- whether it was only Mr. Seabrook's
12 statements that were played for the jury, or whether
13 statements made by other people on the call were also
14 played before the jury.

15 A Well, I mean, your question --

16 THE COURT: That's for Mr. Bannon. Because, what
17 he does is a lot of start and stops. Do you remember if
18 you actually fixed the CD that went in? And when I say
19 fixed it, that you actually deleted those portions, or
20 were you just starting and stopping at certain parts,
21 when it was played for the jury? I can tell you that,
22 what we typically do, if what we don't have is a clean,
23 redacted hard copy, that, as an exhibit, does not go
24 back to the jury. If, for some reason, they wanted it
25 re-played in their deliberations, we would bring them

1 back out here and do it again.

2 But I don't know. That's probably a better
3 question for Mr. Bannon. I mean, can you answer that
4 for me? Because, if it was done at lunch hour, right
5 before it was published, I have a hard time believing
6 you would have been able to actually do it on a hard
7 copy, and eliminate.

8 JIM BANNON: Well, I know that, when it came to
9 statements which were made to the investigators, I
10 believe those, I was actually able to redact.

11 THE COURT: I believe that, too.

12 A Right.

13 THE COURT: Because you can anticipate, because you
14 knew what wasn't coming in back then, or --

15 JIM BANNON: Correct.

16 THE COURT: -- at least, could -- we're talking
17 about the telephone calls.

18 JIM BANNON: When it comes to the telephone calls,
19 because it's -- my recollection is they were
20 proprietary. I mean, you can't sort of get in there and
21 just edit it.

22 THE COURT: Right.

23 JIM BANNON: So, I don't believe there was any way
24 to edit it. Typically, what I did in those situations
25 was, say, we're going to play this portion of this phone

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1 call, starting at second number, blah, blah, blah, and
2 going to blah, blah, blah, to the jury.

3 THE COURT: Okay.

4 MS. CAUDY: I have no further questions.

5 A And that may have been what we did.

6 THE COURT: I thought so.

7 A Because we didn't -- we didn't spend any long nine
8 minutes listening to anything.

9 THE COURT: I don't remember it, either. That --
10 that --

11 A So, we would have played targeted things.

12 BY MS. CAUDY:

13 Q The specific time -- the specific time these
14 started and stopped is not on the record, and I guess
15 that's why I was asking what was actually played for the
16 jury.

17 A Yeah. I know we didn't play any long, nine-minute
18 calls home to Mom or anything like that.

19 THE COURT: Yes.

20 MS. CAUDY: Well, then, I'm assuming you didn't let
21 the other inmates' conversation go before the jury.

22 THE COURT: No.

23 A No, that -- yeah, I mean. So, there were targeted
24 --

25 THE COURT: Well, that, I wouldn't allowed in, so.

1 A Yeah, that wouldn't -- we wouldn't do any of that.

2 THE COURT: Even if they had missed that. Okay.

3 Anything further?

4 MS. CAUDY: No, your Honor.

5 MS. MUSSER: No, your Honor.

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

7 LARRY WEIDNER: Thanks, ma'am. Thank you.

8 MS. MUSSER: Did I leave my copy up there?

9 LARRY WEIDNER: You did. It's right here.

10 MS. MUSSER: Thank you.

11 LARRY WEIDNER: Those weren't mine.

12 MS. CAUDY: I believe that the note premarked as
13 Defendant's Exhibit 1, and this is just State's Exhibit
14 26.

15 COURT REPORTER: You're not marking them.

16 MS. CAUDY: No, this is just State's Exhibit 26 at
17 the trial.

18 And I call Terrence Seabrook to the stand.

19 THE COURT: Come on up, Mr. Seabrook.

20 MADAM CLERK: Hi. Please raise your right hand,
21 and place your left hand on the *Bible* as best as you
22 can. Do you solemnly swear or affirm to truthfully
23 answer all the questions asked of you by this court, so
24 help you God?

25 DEFENDANT SEABROOK: Yes, ma'am.

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1 MADAM CLERK: You may be seated. Please state and
2 spell your name, for the Court's record.

3 DEFENDANT SEABROOK: Terrence Seabrook.
4 T/e/r/r/e/n/c/e, S/e/a/b/r/o/o/k.

5 TERRENCE SEABROOK

6 DIRECT EXAMINATION, BY MS. CAUDY:

7 Q Mr. Seabrook, do you remember being charged with
8 armed robbery and kidnaping back in 2010?

9 A Yes.

10 Q Who was your trial counsel?

11 A Mr. Larry Weidner.

12 Q Did you originally proceed to trial in February of
13 2012?

14 A To my recollection, yes.

15 Q Do you recall who the trial judge was in February
16 of 2012?

17 A Mrs. Mullins.

18 Q In February of 2012?

19 A At the time, yes.

20 Q Okay. Do you recall why your trial was continued
21 in February of 2012?

22 A To my recollection, it was the fact that they had
23 issues and things they had to take care of, and last-
24 minute things needed to be taken care of.

25 Q Okay. Do you recall whether a *Jackson v. Denno*

1 hearing was held in February, before your trial was
2 continued?

3 A Yes, it was.

4 Q Do you recall who testified during that *Jackson v.*
5 *Denno* hearing?

6 A The detective and Mr. Vortisch was here. He was
7 here in the building. And Mr. Weidner asked --

8 Q But did he actually testify? I'm just asking who
9 testified during that hearing.

10 A Actually, no, he didn't -- he didn't -- he didn't
11 say anything. He didn't say anything.

12 THE COURT: I'm sorry.

13 COURT REPORTER: We need to --

14 THE COURT: Okay.

15 COURT REPORTER: Mr. Seabrook, would you scoot up,
16 and I'll get this out of your way. Scoot on up there
17 just a little bit more.

18 DEFENDANT SEABROOK: Thank you.

19 COURT REPORTER: There. There we go.

20 BY MS. CAUDY:

21 Q You said the detective testified during the *Jackson*
22 *v. Denno* hearing. Which detective are you referring to?
23 Do you remember his name?

24 A The officers that was on the scene, basically.

25 Q Okay. Do you recall what their testimony, about

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1 your statement, do you recall what their testimony was
2 about?

3 A One, he said that the statements that were made at
4 the time, he said I made two different statements. But
5 at the same time, he asked me to explain what the
6 situation was, and I explained it to him. And from the
7 way it was explained to him, it came up that it -- I was
8 saying two different statements, which, it was only one
9 statement, so. I was told it was best, so.

10 Q Okay. Do you recall whether the officers who
11 testified during the *Jackson v. Denno* hearing testified
12 that they read you your *Miranda* rights?

13 A Yes.

14 Q Do you recall whether they testified whether you
15 agreed to give a statement and voluntarily waived your
16 rights?

17 A Yes.

18 Q Do you recall Mr. Weidner asking Detective Chapman
19 -- he's one of the officers who interviewed you,
20 correct?

21 A Yes.

22 Q Do you recall Mr. Weidner asking Investigator
23 Chapman about his interrogation techniques while he was
24 interviewing you?

25 A Yes.

1 Q And what was Detective Chapman's response to Mr.
2 Weidner's questions about the interrogation techniques?

3 A Mr. Weidner had asked him, he says, is it -- is it
4 -- is it your tactics that you use between Shabazz and
5 him, like, going back and forth, saying a statement to
6 -- saying that Shabazz made this statement; and then,
7 coming back and telling Mr. Seabrook that this is what
8 Mr. Shabazz said; and then, going back to Shabazz, and
9 telling Shabazz this is what I said about him, to get a
10 statement, to get a horsed [sic] statement, at that
11 time. Which, I asked him, I said:

12 *Well, if Shabazz is saying this, saying*
13 *that, then, why isn't Shabazz's statement being*
14 *read to me, so I will have the full understanding*
15 *as to what Shabazz is being said.*

16 And he said:

17 *Well, we don't need to do that.*

18 MS. MUSSER: Objection. I'm sorry. Is Mr.
19 Seabrook testifying as to his recollection of the
20 interview, or what Staff Sergeant Chapman -- I think he
21 started out saying what Staff Sergeant Chapman said
22 during the trial. But then, I think that last part was
23 his recollection of what actually happened during the
24 interview, so.

25 BY MS. CAUDY:

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1 A This is -- I'm saying that Mr. Chapman came to me,
2 and asked me the very same statement that I just said,
3 in the interview room.

4 Q Okay. Well, let's move on from that point, then.
5 Do you recall any testimony regarding, during the
6 *Jackson v. Denno* hearing, regarding Lieutenant Baird
7 giving you a polygraph exam?

8 A He told me, at the point where I walked into the
9 building, he greeted me, and I greeted him.

10 Q I'm just asking you about do you recall the
11 testimony.

12 A As far as him saying that, oh, he read me -- he
13 read me his *Miranda* rights, and that -- that I had
14 failed the polygraph test, and would I like to make a
15 statement.

16 Q Okay.

17 A And then --

18 Q So, that's what the testimony was during the
19 *Jackson v. Denno* hearing.

20 A Yes.

21 Q Okay. Do you recall what Mr. Weidner's objection
22 was to the admissibility of your statements?

23 A He said that the statements were coerced, and that
24 the tactics that Mr. Chapman had used, that they wasn't
25 professional tactics.

1 Q Okay. And do you recall any other objections to
2 the admissibility of your statements, besides the
3 coercive nature of the interrogation?

4 A Besides that they wasn't -- he wasn't clear as to
5 what they were saying, and what they were trying to do.

6 Q Okay. So, it's your recollection that Judge Mullen
7 was the judge who made the ruling on the admissibility
8 of the statements and heard the *Jackson v. Denno*
9 hearing.

10 A Yes.

11 Q Do you recall what Judge Mullen's ruling was? I
12 mean, obviously, she ruled that the statements were
13 admissible. Do you recall what her specific ruling was?

14 A What I re -- what I -- what I recollect from her
15 saying is that, she ruled that the statements were
16 admissible because she said she didn't -- she didn't see
17 any relevancy as to not ruling into the favor as to the
18 statements being ruled in, because she said they were
19 statements, not confessions.

20 Q Did she find that you had knowingly and voluntarily
21 waived your *Miranda* rights?

22 A From what I understood, yes.

23 Q Did she find that, despite the -- despite Mr.
24 Weidner's argument that your statement was given, based
25 on a coercive interrogation technique, did she find,

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1 nonetheless, that your statements were given
2 voluntarily?

3 A Yes.

4 Q Do you recall any other pretrial motions that were
5 raised by Mr. Weidner before the start of your trial?

6 A Besides the evidence dealing with the phone calls
7 and the statements, no.

8 Q Okay. Tell me what your memory is of the objection
9 related to the telephone calls you made in pretrial
10 detention.

11 A The phone calls I made at pretrial -- in the
12 lockup, was simply to my mother. Basically, she asked
13 me questions as far as what was my recollection as to
14 what happened.

15 Q Okay. The question is, do you recall what Mr.
16 Weidner's objection was to the telephone calls, not what
17 was actually said during them.

18 A He said that he object, your Honor, because he said
19 they didn't have any relevancy on the case.

20 Q Okay. Do you recall whether he made any sort of
21 objection, not only to the jail calls, but also to your
22 statements regarding the fact that you never made any
23 sort of admission, you never admit guilt. Do you recall
24 an objection related to that?

25 A The objection that I recall to that is to the fact

1 that, when he -- when Mr. Weidner said that, point-
2 blank, when I was talking to my mother, there was never
3 an admission of guilt at all, whatsoever. And he felt
4 that shouldn't be allowed to be played in front of the
5 jury.

6 Q Okay. Do you recall whether any portions of the
7 jail calls were redacted, or maybe more specifically, do
8 you recall what portions were actually played for the
9 jury?

10 A Actually, the first part, that the second phone
11 call that I made to my mother, that was redacted,
12 because her conversation was never heard. They only
13 played the first part of the conversation.

14 Q Okay.

15 A Which was me speaking to her. And the second part
16 that they played was me talking to my brother, and
17 another inmate had got on the phone, was talking to him
18 about something else, and it was his crime that they
19 were talking about, which was, he was about to plead out
20 to ten years.

21 Q And was that portion, where the other inmate was
22 speaking to your brother, was that the portion played
23 for the jury?

24 A Yes, that was -- I heard that.

25 Q Okay. So, in addition to your own voice, did your

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1 mother's voice -- was her statements ever played for the
2 jury?

3 A Not that I heard.

4 Q Okay. So, it's your recollection that your
5 statements made during the jail calls, perhaps some of
6 the statements made by this other inmate --

7 A Um-hmm.

8 Q -- were also played before the jury?

9 A Yes.

10 Q Okay. Are there any other motions that arose
11 during the trial, besides -- or objections during the
12 trial made by Mr. Weidner, besides the *Jackson v. Denno*
13 issue, related to your statements and the jail calls.
14 Do you recall any other motions or objections?

15 A He made a motion for --

16 Q We have a record of the motion for a directed
17 verdict. Were there any other motions?

18 A Yes, he made a motion for a directed verdict.

19 Q Okay. So, besides that motion --

20 A And then, he made a --

21 Q -- were there any other motions?

22 A -- a motion for -- let's see. There was another
23 motion that he made. There was another motion that he
24 made. There was a motion for -- for -- for -- I think
25 it was an evidentiary hearing motion, I believe. Either

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1 that, or it was -- it was one -- it was one -- one of
2 the motions that -- that I -- I was questioning about.
3 I was like, wow.

4 Q Do you have any other sort of specific recollection
5 as to what that motion was?

6 A No.

7 Q Do you recall whether he objected to the
8 admissibility of the surveillance footage from the
9 convenience store?

10 A Yes, that would be Picture 26, that he rejected,
11 that he made a motion to.

12 Q Okay. Based on the transcript, it appears that he
13 did renew an objection to State's Exhibit 26, which was
14 a photograph.

15 A Right.

16 Q Do you recall what his -- what Mr. Weidner's
17 objection was to that picture, or in that regard, that
18 he had made pretrial?

19 A No, I don't remember what -- exactly what he said.

20 Q Okay. So, he's renewing an objection to State's
21 Exhibit Number 26, but you don't recall what that
22 objection was.

23 A No, I don't recall what that is. I remember him
24 make an objection to that.

25 THE COURT: I think it was a new objection, I can

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1 tell you that, because I don't think he objected to the
2 video to begin with. I don't recall that, not as a
3 pretrial. I mean, it's a video of Mr. Shabazz's car
4 coming and going from the gas station, and I don't think
5 there's any basis to object for it. I think the only
6 basis your objection could have been is that, somehow,
7 it's cumulative, or focusing in on one point in time, in
8 an entire sequence of events, and that's the only thing
9 I can imagine it being on. Anyway.

10 MS. CAUDY: I have no further questions.

11 THE COURT: Sir, do you have a Coke? Would you
12 like a Coca-Cola, or?

13 DEFENDANT SEABROOK: No, ma'am.

14 THE COURT: No? You okay? Cookies or anything?

15 DEFENDANT SEABROOK: No, thank you.

16 THE COURT: You all right?

17 DEFENDANT SEABROOK: Yes, ma'am.

18 THE COURT: Okay. Do you need some water?

19 DEFENDANT SEABROOK: No, ma'am.

20 THE COURT: You sure?

21 DEFENDANT SEABROOK: Positive.

22 THE COURT: Okay.

23 TERRENCE SEABROOK

24 CROSS-EXAMINATION, BY MS. MUSSER:

25 Q Good afternoon, Mr. Seabrook.

- 1 A Good day.
- 2 Q So, your testimony is that, when did you -- what
- 3 did you say that the *Jackson v. Denno* hearing happened?
- 4 A This happened on the 12th.
- 5 Q Twelfth of what?
- 6 A May.
- 7 Q Twelfth of May?
- 8 A Or March, excuse me.
- 9 Q All right. So, March 12 of 2012?
- 10 A Yes.
- 11 Q Okay. And your trial, that was in the month of
- 12 March, as well, of 2012, correct?
- 13 A Yes..
- 14 Q So, your testi --
- 15 COURT REPORTER: You need to speak up, please. You
- 16 need to scoot up.
- 17 Q So, your testimony is that you have the *Jackson v.*
- 18 *Denno* hearing, and you already told us today how
- 19 officers that were, you know, the first officers on site
- 20 were there --
- 21 A Um-hmm.
- 22 Q -- as well. Is that right?
- 23 A Yes. It was the building.
- 24 Q And Lieutenant Vortisch was there?
- 25 A Yes, he was here.

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1 Q And then, you go right -- you go -- it's all at
2 the same time of your trial, correct?

3 A Right before.

4 Q Right before. So, the day before?

5 A Say, okay, we -- we didn't go to trial for a week,
6 so. Because he needed to take -- Mr. Weidner, he needed
7 to take care of some last-minute things, so he had -- it
8 was -- it was -- they was told right there in front of
9 all of us to go ahead and get this thing cracking, so we
10 can go ahead and get this stuff taken care of, because
11 I'd been sitting in the county jail for 17 months.

12 Q Okay. So, my understanding, from what you tell us
13 today, is, so, you have your hearing on your *Jackson v.*
14 *Denno*.

15 A Um-hmm.

16 Q Right? That was the only thing that was raised
17 that day --

18 A Um-hmm.

19 Q -- was about whether your statement was voluntary
20 --

21 A Right.

22 Q -- or whether it was coerced.

23 A Right.

24 Q Right? And the only argument that Mr. Weidner made
25 was saying that it was coerced, because of the

1 techniques that they used, correct?

2 A Correct.

3 Q There wasn't any other reason that he said that it
4 was coerced, right?

5 A Correct.

6 Q All right. And the judge then gives you a week, a
7 week break.

8 A Um-hmm.

9 Q Is that right?

10 A Correct.

11 Q And then, the following week, you come back. Is
12 that your recollection?

13 A Correct.

14 Q Okay. And what you just -- the questions that you
15 answered for Ms. Caudy about the -- Mr. Weidner's
16 objections about the statements --

17 A Right.

18 Q -- that all happened during the trial, right?

19 A Yes.

20 Q Not the week or the day before.

21 A We had motions hearings, like, that morning of --
22 right before the first day, which is on the 19th. We
23 had issues that we needed to take care of that day. So,
24 they approached the Bench, and they took care of the
25 issues. Then, she -- she asked them about the motions

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1 and all that stuff, and they made their motions, and
2 they -- then, they went into arguments afterwards.

3 Q Okay. And then, the Judge denied all Mr. Weidner's
4 motions, right?

5 A Right.

6 Q For the reasons that she stated today?

7 A Yes.

8 Q Okay.

9 MS. MUSSER: I don't have anything further, Judge.

10 MS. CAUDY: I have nothing further.

11 THE COURT: Okay. You may step down, Mr. Seabrook.

12 MS. CAUDY: Do you want to call Jim Bannon as your
13 witness?

14 MS. MUSSER: Who?

15 MS. CAUDY: Do you want to call Jim Bannon as your
16 witness? Do you want to do direct or cross?

17 MS. MUSSER: Do you want to call him as your
18 witness, or do you want her to call him, is what she's
19 asking you.

20 MS. MUSSER: Oh, it doesn't matter. It doesn't
21 matter.

22 THE COURT: Okay.

23 MS. CAUDY: I guess I can call him, then.

24 THE COURT: Come on up, Mr. Bannon.

25 MADAM CLERK: Please raise your right hand, and

1 place your left hand on the *Bible*. Do you solemnly
2 swear or affirm to truthfully answer all the questions
3 asked of you by this Court, so help you God?

4 JIM BANNON: I do.

5 MADAM CLERK: You may place your hand down. Please
6 state and spell your name, for the Court's record.

7 THE COURT: First off, I want to know, Mr. Bannon,
8 other than, we will state your name as B/a/n/n/o/n, for
9 the record. Do you have any recollection of there being
10 a month earlier *Jackson v. Denno* hearing in this case?

11 JIM BANNON: I don't have any specific recollection
12 of it. I think that if we -- if the continuance was
13 granted on Tuesday, that we probably would have held one
14 on Monday, as that's our typical practice. But I don't
15 have any specific memory of doing one that day.

16 THE COURT: And Ms. Caudy, you said you have gone
17 and pulled, obviously, it was Judge Young and I that
18 were there that term of court. And have we gone and
19 looked at the court reporters, as far as any transcripts
20 having been done for -- after jury selection, on that
21 February day, and through the afternoon?

22 MS. CAUDY: I have. Actually, you were not a judge
23 during that week in Beaufort. I believe the two judges
24 were -- I know Judge Young was one of them. I don't
25 believe you were even a judge during that week. But

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1 yes, we have exhausted every single court reporter we
2 could think of.

3 THE COURT: Are you sure? Because my law clerk
4 thinks I was here.

5 MS. CAUDY: Well, then, I could be wrong.

6 THE COURT: And that's --

7 MS. CAUDY: I could be wrong.

8 THE COURT: -- I just want to make sure we all are
9 on the same page, and if something is out there and
10 exists, I want to have it.

11 MS. MUSSER: And Judge, that does conflict with the
12 information that I had received from -- because, when I
13 asked Ms. Everett, who, as you know, had -- when she was
14 subpoenaed, came and brought the rest of the tapes, she
15 said that you weren't here, either, so.

16 THE COURT: Okay.

17 MS. MUSSER: Perhaps, if it's determined that --
18 and your law clerk has better notes -- someone could
19 then ask Ms. Everett to double-check her records.

20 THE COURT: Right.

21 MS. MUSSER: Because she might have summarily
22 dismissed the request, thinking that you weren't even
23 here, and not -- and not --

24 MS. CAUDY: I mean, my recollection is based on
25 looking at the terms of court on sccourts.org, and

1 saying, you know, indicating that you weren't a judge
2 that week, if I recall correctly.

3 THE COURT: And it was an after-the-fact. You
4 looked in it as an after-the-fact?

5 MS. CAUDY: Correct.

6 THE COURT: Okay.

7 MS. CAUDY: Within the last six months, probably.

8 THE COURT: Okay.

9 MS. CAUDY: All I have is the transcript from
10 February 28th, which has the motion for a continuance,
11 and Judge Young granted the continuance. And then --

12 THE COURT: And this is 2012?

13 MS. CAUDY: That's correct. And the court reporter
14 was Amanda Haffenden. And she tells me she has
15 absolutely nothing from February 27, 2012, for Mr.
16 Seabrook's case.

17 THE COURT: Okay.

18 MS. MUSSER: And I confirmed that, as well, your
19 Honor.

20 THE COURT: Okay. And that actually sounds right,
21 because that's typically when -- that's right before I
22 would take vacation, first week in March, so. Yeah, I
23 think you're right. I don't think I was here.

24 MS. CAUDY: I'm not sure if any matters were heard
25 on Monday, or whether they just started, first thing

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DIRECT - BANNON

1 with the motion for a continuance that Tuesday morning,
2 and it was granted. I don't know.

3 THE COURT: Okay.. I'm sorry. All right. Go ahead
4 and continue. I apologize.

5 JIM BANNON

6 DIRECT EXAMINATION, BY MS. CAUDY:

7 Q Mr. Bannon, I'm assuming you were the solicitor who
8 tried Mr. Seabrook's case back in 2012? Is that
9 correct?

10 A That's correct.

11 Q Okay. And I know we've just gone through this, but
12 in February of 2012, the case was called, and then a
13 motion for a continuance was granted.

14 A Correct.

15 Q Okay. And then, it was continued until March. And
16 then, on March 19, 2012, you all began with jury
17 selection.

18 A That Monday of court, we started, yes.

19 Q Okay. And then, after jury selection, do you
20 recall whether you broke for lunch, or you immediately
21 went into pretrial motions?

22 A Typically -- well, I don't recall. Typically, we
23 would break for lunch, and come back shortly after
24 lunch, to complete pretrial matters.

25 Q But you believe that pretrial matters were heard on

1 that Monday afternoon, as opposed to early Tuesday
2 morning.

3 A That would -- that would be our practice, is to do
4 them that afternoon.

5 Q Okay. Do you recall which judge presided over the
6 *Jackson v. Denno* hearing?

7 A In -- in -- in --

8 Q Well, obviously, if it occurred in March, it was
9 Judge Mullen.

10 A Correct.

11 Q Are you sure that it actually occurred in March,
12 and Judge Mullen heard that matter, or do you recall it
13 occurring in February?

14 A I honestly don't recall. I know -- I know that one
15 was done. You know, it's also possible that two was
16 done, or two of them were held.

17 Q Okay. So, you're saying it's possible that Judge
18 Young or some other young -- some other judge ruled on
19 the motion in February, and then Judge Mullen wanted to
20 re-hear the matter, and make her own ruling.

21 A It is possible, but I do not recall.

22 Q Okay. Do you recall what witnesses testified
23 during the *Jackson v. Denno* hearing?

24 A It would have been Chapman, Baird. I don't
25 believe, at least my recollection is that I don't

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DIRECT - BANNON

1 believe Chris Wilson testified. And I don't believe
2 that we had Staff Sergeant Vortisch testify during --
3 regarding the jail phone calls. I think it was just the
4 interrogation of Mr. Seabrook.

5 Q Do you recall whether Mr. Seabrook testified during
6 that *Jackson v. Denno* hearing?

7 A It is my recollection that he did not.

8 Q Do you recall the order that you called the
9 witnesses?

10 A No, I do not.

11 Q Do you recall Mr. -- or Lieutenant Baird's
12 testimony?

13 A I'm sorry. Could you repeat the question?

14 Q Do you recall Lieutenant Baird's testimony?

15 A During the *Jackson v. Denno*?

16 Q Correct.

17 A Not specifically, no.

18 Q Do you recall what questions you asked Lieutenant
19 Baird?

20 A They would have been very similar to the ones that
21 I asked him during the direct examination during the
22 trial.

23 Q Do you recall questioning him about a polygraph
24 exam?

25 A During the *Jackson v. Denno*? I would have, because

1 at least, I recall that, initially, he was going to give
2 Mr. Seabrook a polygraph examination. And so, I think I
3 would have, you know, inquired about what that entailed.

4 Q Do you recall what Lieutenant Baird's testimony was
5 in that regard, about the polygraph?

6 A Well, you know, he would have testified as to his
7 experience and his training, in regards to administering
8 polygraph examinations, and the procedure that he goes
9 through to administer them.

10 Q And do you recall what his specific testimony was,
11 regarding what his qualifications were, what the
12 procedure was?

13 A I know he's received a great deal of training in
14 regards to administering polygraphs, but I do not
15 recall specifically what they are.

16 Q Do you recall him testifying about what questions
17 he asked Mr. Seabrook during the polygraph examination?

18 A I don't specifically recall.

19 Q Do you recall Mr. Baird talking about whether he
20 informed Mr. Seabrook that the results of his polygraph
21 examination were deceptive, or inconclusive?

22 A No, I don't recall.

23 Q Do you recall asking Lieutenant Baird about
24 reading Mr. Seabrook his *Miranda* rights on the November
25 3, 2010 interview?

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1 A That is one of the questions that I would have
2 gone through with him during a *Jackson v. Denno*
3 hearing, but I don't specifically recall.

4 Q Do you recall asking him about whether Mr.
5 Seabrook waived his *Miranda* rights, and agreed to give
6 a statement?

7 A I would have asked him about that, yes.

8 Q Do you recall --

9 A And I think that we -- we ultimately entered
10 *Miranda* waiver forms into evidence. And so, I would
11 have gone through those forms with him during the
12 *Jackson v. Denno* hearing, as well.

13 Q Do you recall Master Sergeant Chapman's testimony
14 during the *Jackson v. Denno* hearing?

15 A Not specifically, aside from that it was very
16 similar to his statements during the -- his direct
17 examination.

18 Q Do you recall Mr. Weidner's objection to the
19 admissibility of Mr. Seabrook's statements?

20 A Well, as, you know, I do recall that there was a
21 -- sort of an ongoing objection to, you know, the facts
22 to whether or not these were admissions or statements.
23 And I remember hearing those objections, or Judge
24 Mullen heard them, and we sort of, you know, we just
25 argued our sides, in regards to his objections as to

1 relevancy, and the other rules of procedure and
2 evidence.

3 Q Okay. Do you recall whether Mr. Weidner objected,
4 pursuant to *Rule 403*?

5 A I would imagine that he would have, but I don't
6 specifically remember.

7 Q Do you recall whether Mr. Weidner argued that the
8 interrogation tactics used by law enforcement were
9 coercive?

10 A I would imagine that he would have, because during
11 *Jackson v. Denno* hearings, that's typically what
12 defense attorneys do.

13 Q But you don't recall his specific argument.

14 A I do not.

15 Q Do you recall what your arguments were in response
16 to Mr. Weidner's arguments?

17 A Well, in regards to the coerciveness argument, I'm
18 sure I responded that it wasn't a coercive situation,
19 that he was *Mirandized*, both orally and in writing,
20 and, you know, didn't appear to be under the influence
21 of any drugs or alcohol, and that, you know, he made a
22 knowing waiver of his rights. And so, you know, there
23 wasn't any danger of coercion.

24 In regards to the -- to the *403* arguments, I mean,
25 I think, or at least, in my opinion, I think that it's

1 pretty clear that the statements are relevant as to,
2 you know, material facts. You know, I also think, and
3 it would be my recollection that, you know, I think, in
4 response, is that, you know, as to whether or not there
5 was, you know, I don't even think they're being
6 admitted for the truth of the matter asserted. They're
7 being admitted for the lack of the truth of the matter
8 asserted.

9 Q Okay. Do you recall whether Mr. Weidner cited any
10 case law in support of his arguments?

11 A I do not recall.

12 Q Do you recall what the judge's ruling was on the
13 *Jackson v. Denno* issue?

14 A I remember that the statements, not all of them in
15 their entirety, but that we were going to be permitted
16 to play the statements, is that they were freely and
17 voluntarily given.

18 Q Do you recall whether the judge gave an individual
19 ruling on each of Mr. Weidner's arguments, meaning that
20 the statements weren't coercive under 403; and then,
21 whether they were an admission or not?

22 A I don't recall whether they were individual. If
23 Judge Mullen sort of went down one-by-one, by each of
24 those, or whether or not she just made a blanket
25 statement that she found that -- that they were

1 admissible.

2 Q And you mentioned the redactions. So, your
3 recollection is that certain portions of the audio
4 statements were redacted.

5 A Yes. None of the tele -- none of the phone
6 recordings from the jail, but of the statements, yes,
7 ma'am, I redacted those, and provided them to Mr.
8 Weidner.

9 Q Do you remember what portions Mr. Weidner wanted
10 redacted?

11 A Well, I know that there were statements regarding
12 Mr. Seabrook's criminal history, and as well as, you
13 know, him being on -- I can't recall if it was
14 probation or parole, at the time. And, you know, as I
15 recall, I sort of -- I just agreed with him that those
16 weren't going to be admissible. And so, those were,
17 you know, some of the things that we took out, or that
18 I took out.

19 Q Do you recall Mr. Weidner requesting any portions
20 of the statement be redacted that were not actually
21 redacted?

22 COURT REPORTER: I'm sorry, would you repeat that.
23 *Do you recall?*

24 Q Do you recall whether Mr. Weidner requested any
25 portions of the statement be redacted that were not

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1 actually redacted?

2 A It would be my recollection that, ultimately, we
3 agreed on exactly what was admitted. If there was some
4 sort of disagreement, you know, I know that, you know,
5 in reviewing the record, there was conversations about
6 Mr. Weidner having time to fully review them. If, you
7 know, there was something on there, then, I'm sure that
8 it would have been brought up before the judge. And
9 so, it's my recollection that, you know, the redacted
10 copies that I provided to him, you know, were
11 acceptable.

12 Q Moving on to the jail call objection, then. Do
13 you recall if Mr. Weidner's objection was to the jail
14 calls?

15 A Not specifically, no. I mean, I know that, you
16 know, part of the -- part of the purpose of playing the
17 jail phone calls is that, you know, he makes statements
18 that tend to -- when I say he, I mean Mr. Seabrook --
19 makes statements to other individuals over the phone,
20 which not only tend to incriminate him, but when they
21 don't incriminate him, they conflict with previous
22 versions of events that he had -- he had given to
23 investigators, or to -- on other phone conversations.

24 Q Well, what was Mr. Weidner's specific objection to
25 the jail calls, then?

1 A Well, I -- I don't remember, specifically,
2 offhand. But I believe that portions of them were
3 regards to relevance objections, and also, his -- his
4 running objection as to, you know, these -- the
5 differing stories offered by Mr. Seabrook, as to
6 whether or not they were admissible and burden-
7 shifting.

8 Q Okay. Do you remember making any arguments in
9 response to Mr. Weidner's motion?

10 A Not specifically, but I believe that my response
11 would have been, you know, the -- you know, it's
12 permissible to play these things, because we're not
13 burden-shifting here, that these are, you know,
14 literally, the defendant's, you know, his version of
15 events. And so, how can you give, you know, your
16 version of events, whether they differ from one time or
17 another, and then say, well, no, you're not allowed to
18 play these. I mean, to me, it just doesn't really hold
19 a lot of water.

20 Q Do you recall Judge Mullen's ruling on the issue?

21 A Well, I -- I don't recall specifically, but I know
22 that I was allowed to play portions of the jail tapes.

23 Q Do you recall what portions were actually played?

24 A That, I do not recall.

25 Q Do you recall whether only Mr. Seabrook's voice

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1 appeared before the jury, or whether other -- the
2 people he was talking to, that their voices also
3 appeared; or could be heard by the jury when it was
4 played?

5 A I'm almost positive that there were both sides of
6 the conversations on the recordings.

7 Q Do you recall Mr. Weidner making any other motions
8 or objections, besides the two major -- *Jackson v.*
9 *Denno* issue and the jail call issue?

10 A No. Aside from that, I don't recall there being
11 any objections.

12 Q Okay. You might have just answered this question,
13 but do you recall any sort of objection to the
14 surveillance footage?

15 A No. In fact, I mean, you know, part of why I
16 think Larry tried a great case is that, he wanted -- he
17 wanted the tape to be in evidence, at least, I presume
18 he wanted it to be in evidence, based off of his
19 position, just as much as I did.

20 Q Do you recall why he would have objected to
21 State's Exhibit 26, which is a photograph, or still
22 shot, of the surveillance footage?

23 MS. CAUDY: May I approach, your Honor?

24 THE COURT: You may.

25 BY MS. CAUDY:

1 A Do I know -- the question was, do I know why he
2 would have objected to it?

3 Q Or why did he object to it?

4 A I don't recall. I don't know if -- I know this is
5 a still which I removed from the video. So, I don't
6 know if his objection was that it was duplicative, as
7 it was already evidence, but I can't recall,
8 specifically.

9 Q Do you recall whether he raised that pretrial, or
10 did it come up during the course of the trial?

11 A I don't remember handling it pretrial, so it must
12 have come up during the course of the trial.

13 Q Okay. I overlooked this question. Do you recall
14 whether Mr. Weidner cited any case law in support of
15 his argument, that the jail call should be
16 inadmissible?

17 A I don't recall.

18 Q Did you take any notes during the course of the
19 trial?

20 A Yes, I did.

21 Q Do you have those notes?

22 A No. I believe they're in the Solicitor's Office
23 possession. I don't have them.

24 Q Okay.

25 MS. CAUDY: I guess I have no further questions.

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1 MS. MUSSER: I apologize, your Honor.

2 THE COURT: That's okay.

3 MS. CAUDY: I have no further questions.

4 JIM BANNON

5 CROSS-EXAMINATION, BY MS. MUSSER:

6 Q I just have one question, in regards to the jail
7 calls. As an officer of the Court, would you have
8 attempted to have admitted another inmate, their jail
9 calls, at Mr. Seabrook's trial?

10 A No, I don't believe I would have.

11 Q Okay.

12 A And if I would have tried, I think I would have
13 been stopped, by not only Mr. Weidner, but also, Judge
14 Mullen.

15 Q Okay. So, is it fair to say that the -- only the
16 portion of the jail calls that was played was as it
17 directly related to Mr. Seabrook?

18 A That's my recollection, yes, ma'am.

19 Q And with respect to the trial, trial notes, you
20 did an outline prior, in preparation for trial,
21 correct?

22 A Correct.

23 Q You created work product, the bullet points, and
24 as you were asking questions in the trial, you worked
25 simultaneously, right, taking down notes, correct? It

1 was like you do when you're on trial. You ask a
2 question, and you're waiting for the response, and
3 that's your focus, correct?

4 A No. Typically, the only notes I really take
5 during the trial is, you know, if Mr. Weidner, you
6 know, in this instance, we're cross-examining someone,
7 I might take a few -- I would hand-write notes on the
8 bullet points I'd already generated for my re-direct,
9 but.

10 Q Okay.

11 A I don't keep, like -- like, a notebook. At least,
12 I didn't as a prosecutor, because you don't really have
13 time to do that.

14 Q And when you and I met, with respect -- you had a
15 chance to look at your trial notebook, and that was --
16 in other words, you didn't have any private notes that
17 you took with you after you left the Solicitor's
18 Office, correct?

19 A Absolutely not.

20 Q Okay. So, this would be it, so.

21 A Correct.

22 Q And when we look through, you didn't -- there
23 weren't any notes that you saw about pretrial --
24 pretrial notes or anything that could assist us in
25 reconstructing this?

1 A Not that I saw, no.

2 Q Okay.

3 MS. MUSSER: Judge, I don't have anything further.
4 Thank you.

5 MS. CAUDY: Nothing further.

6 THE COURT: You may step down, Mr. Bannon. Thank
7 you.

8 JIM BANNON: Thank you, your Honor.

9 THE COURT: I've got to tell you, for a separate
10 conversation with a different-voiced person, from
11 someone else as an inmate, Mr. Weidner would have had
12 to fallen asleep, I would have had to fall asleep, and
13 my law clerk would have had to have fallen asleep; and
14 I'm going to go ahead and throw it out there, I don't
15 specifically remember the court reporter, but the court
16 reporter would, too, because I can tell you that I have
17 had, in a case, a court reporter, in a case where
18 someone was charged with two separate, different things
19 that we weren't trying together, and the Solicitor
20 tried to put in and tried to play, which was the wrong
21 interview, and the court reporter caught it. So, I
22 mean, it just -- that one, I just don't think happened.
23 There's just -- there's no way. That's too many people
24 that would have missed it. And it would have been
25 obvious to everyone, because we would have had a change

1 of voice, so. Okay. All right. Anything else we need
2 to do?

3 MS. CAUDY: The one thing that I would ask your
4 Honor to do, if you're willing, is to put your
5 recollection on the record, as to what you recall your
6 rulings being. It's --

7 BY THE COURT:

8 THE COURT: For the *Jackson v. Denno*? I'm trying
9 so hard to remember what any pretrials would be, other
10 than a *Jackson v. Denno*. Obviously, we had that,
11 because it was admitted in. I can tell you that
12 hearing both Chapman and Baird testify today, and I
13 remember specifically that there were the two separate
14 interviews, November 2nd, November 3rd, you know, I had
15 my notes that it was Christine Wilson and Chapman on
16 November 2nd. It was November 3rd, interview was Baird
17 and Chapman, and I do remember the whole -- that
18 Chapman was behind the surveillance, and at some point,
19 came in, because Mr. Seabrook was talking about some
20 different people and some street names that Baird just
21 wasn't familiar with. And so, he wanted Chapman in
22 there to help him. I can remember specifically, you
23 know, I -- I should have my regular standard book that
24 basically has, you know, a synopsis. Of course, it's
25 our *Bench Book* for circuit court judges, on a *Jackson*

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1 v. *Denno* hearing, and obviously, that you need to make
2 first, a determination as to whether or not he was in
3 custody; and then, of course, you know, determined that
4 he was in custody; and that his, you know, statements
5 were made freely and voluntarily. He went through, was
6 *Mirandized* to my satisfaction. I don't think he was
7 coerced in any way.

8 I mean, I can tell you that, in my nine years on
9 the Bench, I have -- I have suppressed, or not allowed
10 into, statements by the defendant. Let's put it that
11 way. And they're -- and based on, not even,
12 necessarily, and I know, obviously, the burden is
13 pretty difficult for a defense attorney to overcome. I
14 mean, coercion, you've got to show a lot. Yeah, we all
15 know here that you can use these different
16 interrogation techniques, and they are allowed and
17 permitted, subject with the defendant's well-being
18 overborne. And in this case, I believe he spoke not
19 once, but twice, freely, to these officers. I don't
20 find any coercion whatsoever. There was a lengthy
21 discussion, and I agree, Mr. Wegmann, that was -- Mr.
22 Weidner -- that his repeated objection was, is, I don't
23 think these are admissions; I think they are just, you
24 know, him talking, or statements. And I remember, it
25 was Mr. Bannon that brought it up, that he simply said,

1 listen, the problem is, at one point, he says that, on
2 this day and time, he was with his mother; and then,
3 another time, he says at the same day and time he was
4 with his girlfriend; and I think it was the story that
5 changed.

6 And, again, I will tell you this. I relied on,
7 and I'm sure, I could bet my life on it, that I relied
8 on the courtroom evidence and the book, where it talks
9 about 801(d)(2), and where it talks about admissions by
10 accused. And it goes through, and it actually says the
11 word, statements, you know. And statements made by an
12 accused, either prior to arrest, are admissible against
13 that person's admissions; and statements made after
14 arrest, provided they comply with *Miranda*, are
15 admissible.

16 I'm trying to think if I had one -- I had one
17 other case, and I want to say it was before this, where
18 that became a question. And I wish I had looked it up
19 and thought of what it was, but I truly believe, and
20 again, unless I'm wrong, and it is an error of law, you
21 know, the Court of Appeals or the Supreme Court wants
22 to overturn me, I believe it is a statement, and it's
23 admissible, particularly when it goes to show the
24 conflicts.

25 I can't think of any other pretrial motion that

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1 was heard in this case. The only typical ones I would
2 normally hear would maybe be to have the witnesses
3 sequestered. But in this case, I don't even think that
4 was necessary, because, if I'm correct, at that time,
5 was Shabazz out? At the time of this trial, was he
6 out?

7 JIM BANNON: Yes, ma'am.

8 THE COURT: And do you all remember whether or not
9 -- did he come in through a back door to testify, or
10 did he just -- was he sitting in the courtroom?

11 JIM BANNON: It was my recollection that he was --
12 he was sitting outside, and I brought him in.

13 THE COURT: Okay. And the only other pretrial
14 motion I can imagine was a sequestration of witnesses,
15 which would be kind of like a general swoop. But I
16 don't know, even, how much that would be necessary,
17 other than, you know, I can imagine -- yes.

18 LARRY WEIDNER: I think that's one we worked out.

19 THE COURT: Okay.

20 JIM BANNON: Yeah. I mean, I typically have no
21 objection to witnesses being sequestered.

22 THE COURT: And you agree to it. And the only
23 person I can imagine that you would be concerned about
24 in this case, because it's not like there were five
25 witnesses to whatever happened. What you had was

1 Shabazz, who said he dropped him off when he was there;
2 and then, you have, you know, Baird, Chapman -- and Ms.
3 Wilson didn't testify -- basically saying as to what he
4 said, but the interviews speak for themselves. They
5 were recorded. So, I can't imagine -- I'm sitting here
6 trying to think through what other pretrial motions
7 would be in this case, and I just don't see any.

8 I can tell you that I do not believe that the
9 phone conversations were brought up pretrial at all. I
10 think they were at the time of trial, because the
11 typical -- the Solicitor's Office, usually, what they
12 do is, they start monitoring the jail phone calls a
13 week or two, or going through and getting the
14 transcripts a week or two before trial, and they
15 continue to monitor them through the trial. I've had,
16 certainly, that happens all the time, all during, to
17 see if they say anything. So, that would not have been
18 a pretrial motion.

19 And again, as far as those phone calls, talking
20 about, you know, whether or not if he stays quiet and
21 Shabazz stays quiet, they can't point the finger at
22 each other, I mean, there's, again, my ruling was based
23 on there's no admission, you know, there's no
24 expectation of privacy on a jail phone call between he
25 and whoever he calls. The recorded -- recorded phone

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1 call says, you know, this is, when you pick it up,
2 says, this is a recorded phone call from the Beaufort
3 County Detention Center, so. And then, I -- the only
4 thing I would rule on is whether or not I deemed it was
5 relevant.

6 I mean, if he was talking about, what did you cook
7 for dinner tonight, Mama, you know, that probably isn't
8 relevant; although, I don't see how that's all that
9 hurtful or incriminating. But again, I don't think I
10 would have sat here and let them play nine minutes of
11 just back and forth; and I certainly wouldn't have let
12 them play anything having to do with another inmate
13 talking about to his brother. That just -- I don't
14 know. So, I'm trying to think of anything else that I
15 have special recollection.

16 In that February term, what week did you say it
17 was? February what?

18 MS. CAUDY: Monday, February 27th.

19 THE COURT: Okay. And this is 2012, correct?

20 MS. CAUDY: Correct.

21 THE COURT: I've got to tell you, my calendar has
22 me down being here in Beaufort.

23 MS. CAUDY: Okay.

24 THE COURT: On my personal calendar, and it says,
25 *General Sessions, Beaufort*. So, my law clerks have me

1 down as that. It could be very possible that I either
2 switched with someone. I can tell you that, if you'd
3 said it was 2013, I could say I know I wasn't here that
4 week. But the year before, I typically take that week
5 as my vacation, because it was my third daughter's
6 spring break, the same, every year, and we would always
7 go skiing. That's how I remember that time, period's
8 always that first week in March, so. That would be
9 right, then, like, 27, 28; and then, one, two, three,
10 that would be her break, so. My office has it down
11 that I was here. So, I am sorry, but I just -- I'm not
12 ringing a bell of having heard it. I don't know.

13 Short of me -- if you want me to call Roger Young,
14 I can certainly call and ask him whether or not, you
15 know, he recalls this at all. I can tell you,
16 personally, I think I would have been angry had the
17 Solicitor's Office just turn a witness, and granted
18 someone immunity a day after we pulled a jury. I would
19 have been angry that it was at the eleventh hour,
20 ruining our trial schedule, which is why, of course,
21 you know, any judge would have granted that
22 continuance. I mean, again. Yes.

23 MS. MUSSER: Judge, I do have -- I found in the
24 file, there is a clocked copy of the granting of
25 transactual immunity. It looks like it was clocked

1 February 28th of 2012. Just -- I don't know, and it
2 looks like that's when the nolle pros for Mr. Shabazz
3 was signed, as well.

4 I did have a question, though. I don't know
5 whether your Honor would have, I guess, feelings, what
6 you would have done, had another judge heard the
7 pretrial. Say, Judge Young did hear it.

8 THE COURT: I think I would have re-heard it. I
9 think I would have re-heard it, for myself, just to
10 make sure.

11 MS. MUSSER: And made your own findings, because
12 they would have influenced, obviously, the course of
13 the trial.

14 THE COURT: I just, I have a hard time -- and you
15 know, I went back and looked at that, as far as how
16 much of the pretrial would be binding on me. And
17 again, I mean, it would be my position it would need to
18 be heard again; because, then, it would be a second
19 error. If that judge made that error, and then I went
20 to trial, and I hadn't heard it before it was played,
21 that would be yet another error made by me. And so, I
22 probably -- I am sure I heard it, because I don't think
23 -- I would never allow anything that would be played
24 for a jury that I hadn't heard. Now, whether or not I
25 ruled on it, or if I went with a prior ruling, I

1 believe that I would have listened to it, heard it, and
2 made sure, and I think I would have re-heard it, if it
3 was someone else.

4 The other thing I was trying to figure out, as far
5 as whether or not it was Roger Young or myself is,
6 because I'm the chief administrative judge, I would
7 have typically taken the what I consider to be the
8 harder and longer case, if that makes sense, for the
9 week. This case was fairly short, although I will put
10 out the point in March, I had no idea, and you can read
11 it in the sentencing sheet, and I remember this,
12 specifically -- I had no idea that the State had served
13 him with life without parole. And because you can see,
14 clearly, and I remember being surprised, and being this
15 is a relatively short, quick case. And again, you
16 know, there was no choice but to sentence him to life
17 without parole, because they had noticed it. So, I can
18 just remember that being, to me, surprising.

19 Although, again, I mean, I stand by everything I
20 did, certainly. As far as my rulings, I thought
21 everything was correct, because, after they did say
22 that, I kind of did an, oh, goodness, you know. And
23 Mr. Seabrook was just like he is now. He seems to
24 have a very nice demeanor. It just seems to be -- you
25 know --

1 I understand his record is what it is, but I can
2 remember going back and thinking, you know, okay; and
3 looking back at everything, as far as my rulings were
4 concerned, and feeling very comfortable. . . Because, I
5 ruled, I'm assuming, on the trial motions, so I'm sure
6 I did, so. I know I went back and re-visited that,
7 just absolutely made sure, because I understand the
8 significance of this.

9 So, I still -- it's like I said, it still bothers
10 me not knowing if I did it in February or if some other
11 judge did it.

12 And I just -- I don't know why, but again, my
13 office has me down as here, which, I've got to tell
14 you, I'm going to go email Court Administration and
15 tell them, now I one hundred percent understand why you
16 want to know exactly what we do every day, where we
17 are, and what motions we hear, because, again, we don't
18 have the full recollection.

19 I'll even tell you that I went back so far as
20 looking at my calendar, where I saw I had what I
21 thought was either motions or conference calls, to see
22 if they were call-in numbers, versus in person. And I
23 can tell you, what I saw was one call-in and number for
24 that week, on that day, on Monday, and then another one
25 with no call-in number. I think I was here that week,

1 and both of you think I wasn't, which is bothersome to
2 me. But I've got it down; my law clerk has it down
3 that I was here that February term, so. For what
4 that's worth, and not that it even matters, but again,
5 it's bothersome to me, so. Anything else that you
6 need, as far as clarification?

7 I mean, I will say this, for the record, and the
8 Court of Appeals understands this, and you know,
9 whoever sits and hears this, but looking at the *Jackson*
10 *v. Denno*, and how it was testified to in the hearing
11 and the statements that were made, I think they very
12 much paralleled, obviously, what was probably argued at
13 pretrial. And then, all the ground is laid to show
14 that it wasn't coerced; that it was freely and
15 voluntarily given; that he was in custody. Other than
16 that, I don't know that I have that much to add.

17 You know, I can tell you, I pulled what was my law
18 clerk's notes at the time. I pulled what I had. I re-
19 read the transcript, and that was actually read when I
20 got it. I didn't do it last night, but I did it
21 before, and I actually did read a little bit of it.
22 And the one issue I think that you all had raised was
23 whether or not -- or Mr. Weidner had raised -- was
24 whether or not there was inconsistent verdicts, because
25 he was not charged on the kidnaping. And I remember

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1 specifically that that is -- not that I'm any great
2 predictor of what a jury is going to do, because, not
3 necessarily, but I remember saying, it's going to be a
4 question of whether or not they get him on kidnaping;
5 because, you know, Mr. whatever-his-name, Kirkpatrick,
6 or whoever he was, seemed to be pretty nonchalant about
7 it all, so. You know, it was kind of a, you know,
8 whether or not he was actually kidnaped. I mean, I can
9 technically -- he certainly met the definition and the
10 elements of it, but the jury just didn't buy it, you
11 know, so. They seemed pretty nonchalant about it.

12 I do remember this, being very nonchalant about
13 finishing a cigarette, calling his boss, and then
14 calling the police. So, that's kind of unusual. I
15 don't know if that was just his character. And in my
16 mind, there was a question of whether or not he was in
17 on it, so, you know. But other than that, I don't
18 think I have anything to add. Anything that --

19 Do you have any other questions?

20 MS. MUSSER: No, your Honor.

21 THE COURT: Do you have anything? Anything I can
22 --

23 MS. CAUDY: I do have a question about the Court of
24 Appeals order.

25 THE COURT: Yes.

1 MS. CAUDY: And what your understanding of the
2 order is, meaning, do you believe that you have to find
3 or make a ruling on whether the record could be
4 reconstructed, or whether it cannot be reconstructed?

5 THE COURT: I think I do have to make a ruling,
6 because I've had to do this before, in reference to
7 Debbie Everett.

8 MS. CAUDY: Okay. And will you accept arguments on
9 that issue, then?

10 THE COURT: Sure.

11 MS. CAUDY: Okay.

12 THE COURT: Sure.

13 MS. CAUDY: Before I came here today, I didn't
14 think that I'd have to make this motion, but I was
15 pretty shocked by how little some of the officers
16 recalled, and what Mr. Weidner recalled. And it seems
17 like a lot of their testimony was just a summary of,
18 this is probably what I did, or, oh, I probably said
19 this, and we really have no idea what the officers
20 really testified about pretrial. I mean, we do have
21 their trial testimony, but I believe, obviously, there
22 are going to be some topics that were not discussed
23 before the jury.

24 THE COURT: I can tell you this. You can say,
25 obviously, but I wouldn't say obviously, because in a

1 *Jackson v. Denno*, I pretty much hold them to whether or
2 not it was coerced. Because a lot of times, defense
3 attorneys try to go on a fishing expedition, where they
4 want to hear all of the testimony about the entire
5 event and everything they've done. And we try very
6 hard to narrow it, so it isn't an hour-long, like I
7 said, fishing expedition, to find out everything he's
8 going to testify beforehand. So, I don't know how much
9 outside it would go, other than meeting the elements,
10 and making sure that it's valid and it wasn't coerced
11 under *Jackson v. Denno*, so. I don't know if I would
12 say that's a fair statement.

13 MS. CAUDY: Okay. The only things that I would
14 think about are the talking about the polygraph,
15 because, obviously, that wouldn't have been presented
16 before the jury. And I --

17 COURT REPORTER: I'm sorry, *obviously, that*
18 *wouldn't have come before the jury?*

19 MS. CAUDY: That wouldn't have been presented
20 before the jury.

21 THE COURT: Let me ask you a question. Did Mr.
22 Seabrook ever state in his testimony here today whether
23 or not he was polygraphed? I mean.

24 DEFENDANT SEABROOK: Yes.

25 MS. CAUDY: I don't recall.

1 THE COURT: I mean, I don't think he -- I don't
2 think he said it today, did he? I don't think he said
3 -- I think they were talking to him about it, but were
4 you ever polygraphed?

5 DEFENDANT SEABROOK: Yes, I was.

6 THE COURT: You were.

7 DEFENDANT SEABROOK: Yes.

8 THE COURT: And was it on that second interview,
9 that next day?

10 DEFENDANT SEABROOK: Yes.

11 THE COURT: That you were polygraphed. Okay.

12 DEFENDANT SEABROOK: Yes.

13 MS. CAUDY: And we do have all the discovery
14 materials related to that, as to what questions were
15 asked, and the officer did find that he gave deceptive
16 answers.

17 THE COURT: Okay.

18 MS. CAUDY: And I do believe --

19 COURT REPORTER: That he gave what kind of
20 answers?

21 MS. CAUDY: Deceptive.

22 THE COURT: Deceptive. The answer is -- okay.
23 Well, I mean, I can tell you, none of that would have
24 ever come in, because, obviously, a polygraph would
25 never come in, in any way, shape, or form.

1 MS. CAUDY: Right. Which is one thing I can think
2 about that would have been testified pretrial that we
3 really don't have good evidence on at this stage. I
4 also don't think, not only do we not have the specific
5 testimony from pretrial, we also don't have the
6 specific arguments that were made.

7 Now, we do have a general summary of what Mr.
8 Weidner objected to, and a general summary of what your
9 ruling would have been, but we don't have the specific
10 arguments. We don't know whether he cited any case
11 law. He's saying he doesn't recall.

12 To me, it's just -- it's too vague. It's going to
13 be really hard for me to write a brief of appellant,
14 based on what we've done here today. I can't quote
15 what Mr. Weidner said. I think it's just going to be a
16 struggle to make those arguments on appeal. And based
17 on that, and based on *State versus Ladson*, which is --
18 the cite on that is 373, S.C. 320. It's a Court of
19 Appeals case from 2007. And *Ladson* says that there has
20 to be a sufficient record for a meaningful appellate
21 review. And what *Ladson* focuses on the fact that there
22 has to be, in light of our specific error preservation
23 rules in South Carolina, that the objection, obviously,
24 has to be specific, and there has to be a specific
25 ruling on the objection. And I just don't think that,

1 based on what we've done here today, that I can argue
2 in a brief of appellant as to what the specific motion
3 and objection was. And based on that regard, I would
4 ask your Honor to find that the motion -- that the
5 record cannot be reconstructed.

6 THE COURT: Ms. Musser.

7 MS. MUSSER: Thank you, your Honor. Naturally,
8 the State is asking for you to find that the record was
9 amply and in a meaningful way reconstructed. I think
10 it is clear, from the testimony that you heard today,
11 that Sergeant Chapman and Lieutenant Baird testified in
12 relative, close proximity from when the *Jackson v.*
13 *Denno* hearing to the point where it was consistent.

14 We've heard that the only argument put forth by
15 Mr. Weidner with respect to the *Jackson v. Denno*, is
16 that it wasn't voluntary because, and that he was
17 coerced due to the techniques. And I even asked the
18 defendant on that, I said, that was the only -- that
19 was the only chief complaint there, was the technique
20 that they used. There wasn't -- there wasn't -- and
21 your Honor said to keep that narrowly focused. So, I
22 think that that record can be, because I asked both
23 officers, you know, was your testimony in the *Jackson*
24 *v. Denno* hearing consistent with the trial testimony?
25 And given the fact that, you know, that Counsel said

1 that that was the primary argument for the *Jackson v.*
2 *Denho* hearing, I think that's clear, and I think that's
3 -- it could be reviewed in a meaningful -- after a
4 meaningful -- whatever that language is.

5 THE COURT: Right.

6 MS. MUSSER: Additionally, I think it was made
7 abundantly, ad nauseam clear that the issue with
8 respect to the statements was the argument of the
9 interpretation as to the relevancy, and whether it
10 would come in as a hearsay exception as a statement of
11 the defendant. And that, also, is clear, and there's
12 -- that theme runs throughout, you know, the testimony
13 that we've re-created today, through the trial. Your
14 Honor has set forth, you know, very specific thoughts
15 of how you would have ruled, and why you would have
16 ruled. And I think that that's all the appellate court
17 would need, as to what the objection was. We've
18 addressed that, and why it was -- the fact that it was
19 denied.

20 THE COURT: Right.

21 MS. MUSSER: And why it was denied. So, I think
22 that I would just ask you to deem that the record has
23 been reconstructed. Thank you.

24 RULING:

25 THE COURT: Well, I will tell you, I was very

1 concerned at the beginning of this, because, as the
2 Supreme Court well knows, I did have some issues with
3 Debbie Everett, and we've had to reconstruct a few
4 cases, and some we haven't been able to, and I'll be
5 the first to admit that. I will say, in this case,
6 though, after Ms. Everett was brought in, and we went
7 further, I mean, we were able to get all the testimony
8 except the pretrial, *Jackson v. Denno* hearing.

9 And I know John Few has said this before, when he
10 reads a transcript to review and hear an appeal, he'll
11 tell you that he reads the closing argument first,
12 because that tells him where they went and where they
13 were going. And in this case, I think, based on,
14 particularly, because, in a *Jackson v. Denno* hearing,
15 obviously, the Court had to make a finding that it
16 wasn't against, you, know, coerced, or against
17 someone's interest, and that it was in compliance with
18 *Miranda* when they were in custody, for it even to come
19 in. So, there had to be that finding made by the
20 Court, even if we don't have a transcript of it.

21 And additionally, again, we all know the standard
22 is different for the judge reviewing something, and
23 whether or not it's compliant in the *Jackson v. Denno*,
24 by a preponderance of the evidence standard, versus for
25 the jury to believe or not believe, because we know

1 what the jury charge is to the jury.

2 So, again, the State would have to put all of
3 those factors down to prove to a jury, on top, that it
4 was not coerced, or not suggested, or something along
5 those lines. So, again, short of that, I really think
6 that, in fact, it was able to be reconstructed, and
7 that portion should be adequate for review by the Court
8 of Appeals.

9 Someone correct me if I'm wrong. I have made that
10 finding. I think they can, themselves, as well,
11 though, make their own finding, that there wasn't an
12 adequate record. So, I think they get the next level
13 of being able to layer, and say, we can't decide on
14 this or we can. So, I truly believe they can, and
15 again, because the Jackson v. Denno hearing, you know,
16 number one, was because it was admitted, and we know it
17 went in. I think it's pretty established, so, on the
18 record. Anything else from anybody? No?

19 MS. MUSSER: Nothing from the State, your Honor.

20 MS. CAUDY: (SHOOK HEAD.)

21 THE COURT: I hope we don't ever have to do this
22 again.

23 MS. CAUDY: I agree.

24 THE COURT: Okay. Okay. Well, thank you, Mr.
25 Weidner. I appreciate it.

4-15-15 STATE V. SEABROOK

CROSS - BANNON

1 LARRY WEIDNER: You're welcome, ma'am.

2 THE COURT: I'm sure, at the next level, if this
3 isn't overturned, is that you will be at a PCR. So,
4 we'll all be back. Okay?

5 LARRY WEIDNER: All right.

6 THE COURT: But thank you. I appreciate it.

7 MS. MUSSER: Thank you, your Honor.

8 THE COURT: Thank you. Thank you all for having
9 him here. I appreciate it.

10 DETENTION CENTER PERSONNEL: Yes, ma'am.

11 THE COURT: Good luck to you, Mr. Seabrook.

END PROCEEDING 5:04 P.M.

4-15-15 STATE V. SEABROOK

CROSS - BANNON

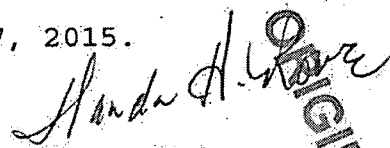
CERTIFICATE OF REPORTER

APRIL 15, 2015 TRANSCRIPT OF RECONSTRUCTION HEARING
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 15, 2015, Transcript of Reconstruction Hearing is a true, accurate, and complete record of the proceedings had and exhibits admitted on said dates, in the case of State of South Carolina versus Terrence Seabrook, Beaufort County, South Carolina, Court of General Sessions, Case Numbers 2010-GS-07-02320 & 2010-GS-07-02321; that I am of neither kin, counsel, nor interest to any party hereto.

A CERTIFICATE OF REPORTER IS ATTACHED TO THE ORIGINAL OF THIS TRANSCRIPT AND CONTAINS MY DIGITAL SIGNATURE. PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER. UNAUTHORIZED COPYING OF THIS TRANSCRIPT IS PROHIBITED.

Witness my signature June 7, 2015.


S/Wanda H. Rowe
Wanda H. Rowe, CVR-M
Official Court Reporter

JUN 22 2015

OFFICE OF
PUBLIC DEFENSE

MO56515
516

STATE OF SOUTH CAROLINA)

INDICTMENT #
2010-GS-07-2320
2010-GS-07-2321

v.

Terrance Seabrook,
Defendant

Order Denying Defendant's
Motion for a New Trial

BEAUFORT COUNTY, S.C.
CLERK OF COURT

2012 APR 27 PM 4:18

Handwritten notes: "Handwritten notes" and "12/10/2012/05/15"

COMES NOW, the State of South Carolina, by the 14th Circuit Solicitor and through the undersigned Assistant, hereby asks this Court to deny the Defendant's motion for a new trial.

This Court heard the Defendant's Motion for a new trial based on April 5, 2012. The Defendant's motion was based on the following grounds:

1. Inconsistency of verdict, and
2. Improper admittance of Defendant's statements at trial.

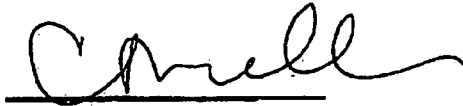
This Court is denying Mr. Seabrook's motion for a new trial on each ground.

First, the verdict was not inconsistent. Second, South Carolina has done away with the concept of an "inconsistent" verdict. *State v. Alexander*, 303 S.C. 377, 383 (S.C. 1991). As such, this Court denies Mr. Seabrook's motion based on an inconsistency of verdict.

Lastly, the Defendant asked that a new trial be granted as the statements entered into evidence against him were not "admissions" for the purpose of SC. R. EV. 801(d)(2). However, it is clear that the purpose of Rule 801 that statements that a defendant makes shall be admitted into evidence against him at trial provided they comply with the requirements of *Miranda* and Voluntariness.

This Court hereby **DENIES** the Defendant's motion for a new trial for the reasons stated above.

It is so ordered,

A handwritten signature in cursive script, appearing to read 'C. Mullen', is written over a horizontal line.

Carmen Mullen

Circuit Court Judge

April 25, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

STATE OF SOUTH CAROLINA,
Respondent

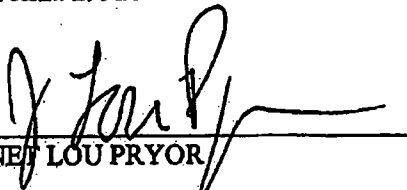
v.

TERRANCE SEABROOK
AppellantIN THE COURT OF GENERAL SESSIONS
14TH JUDICIAL CIRCUIT
CASE NO: 10-GS-07-2321

CERTIFICATE OF SERVICE

I, Janet Lou Pryor, Legal Assistant to Larry W. Weidner II, Esquire, have served a copy of the Notice of Appeal from a Sentence Imposed by the Court of General Sessions by, depositing in the U.S. Mail copy of same in a properly addressed envelope, certified return receipt requested with sufficient postage affixed on May 3, 2012, addressed as follows:

Mr. James T. Bannon
Assistant Solicitor
P.O. Box 1880
Bluffton, South Carolina 29910


 JANET LOU PRYOR

Beaufort, South Carolina
3 May 2012

STATE OF SOUTH CAROLINA
COUNTY OF BEAFORT

State of South Carolina,
Respondent,

v.

Terrance L. Seabrook,
Appellant.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No. 2010-GS-07-2321
Appellate Case No. 2012-212388

ORDER

2015 AUG 12 PM 1:5
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Pursuant to a reconstruction hearing in the above referenced matter held in Beaufort County on April 15, 2015, I adopt all oral findings from the reconstruction hearing and find the trial record was sufficiently reconstructed for meaningful appellate review.

AND IT IS SO ORDERED.



The Honorable Carmen T. Mullen
Fourteenth Judicial Circuit Court Judge

Beaufort, South Carolina
This 12 day of August, 2015

BEAUFORT COUNTY SHERIFF'S OFFICEYOUR RIGHTS

Before I ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say, can and will be used against you in a court of law.

You have the right to talk to an attorney before I ask you any questions and to have him/her present with you during questioning.

If you decide to answer questions now, without an attorney present, you will still have the right to stop answering questions at any time.

I have read this statement of my rights and I understand what my rights are.

Signed [Signature]

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressures or coercion of any kind, has been used against me.

Signed [Signature]

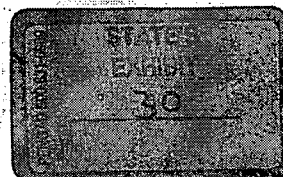
Witness [Signature]

PG-Case # P-10-N110

Date 11-03-10

Examiner [Signature]

DOCUMENT # 7



**ORIGINAL
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VOLUME II of II
APR 14 2016
SC Court of Appeals

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRANCE SEABROOK,

APPELLANT

APPELLATE CASE NO. 2015-001495

RECORD ON APPEAL

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Appellate Defender

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Attorneys for Respondent

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 1 (DVD OF SURVEILLANCE FOOTAGE)
STATE'S EXHIBIT NO. 2 (DVD OF SURVEILLANCE FOOTAGE)
STATE'S EXHIBIT NO. 26 (PHOTOGRAPH)
STATE'S EXHIBIT NO. 28 (CD OF INTERVIEW)
STATE'S EXHIBIT NO. 29 (CD OF INTERVIEW)
STATE'S EXHIBIT NO. 37 (CD OF TELEPHONE CALL)
STATE'S EXHIBIT NO. 38 (CD OF TELEPHONE CALL)

Case Number: 20121004775

BEAUFORT COUNTY SHERIFF'S OFFICE

STATEMENT OF MIRANDA RIGHTSPLACE Sheriff's Office
DATE 11-02-10 TIME 1340

BEFORE WE ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS.

- () 1. You have the right to remain silent.
- () 2. Anything you say can and will be used against you in a court of law.
- () 3. You have the right to talk to an attorney for advice before we ask you any questions.
- () 4. If you cannot afford an attorney, one will be appointed for you before any questioning, if you wish.
- () 5. If you decide to answer questions now, without an attorney, you will still have the right to stop answering at any time. You also have the right to stop answering at any time until you talk to an attorney.

WAIVER OF RIGHTS

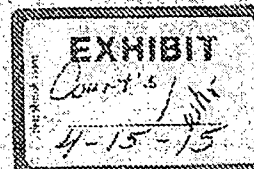
- () I have read this statement of my rights and I understand what my rights are.
- () I cannot read and the statement has been read to me sufficiently so that I understand what my rights are.
- () I am willing to make a statement and answer questions. I do not want an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

SIGNATURE IndaffroAMOUNT OF EDUCATION: I have completed 12 grade in school.SIGNATURE IndaffroDATE 11-02-10 TIME 1340

Witness [Signature]

Witness [Signature]

Witness _____



Recruitment
Hearing

SCSD Form 101 (12/01/02)

WITNESSES

Chapman/BCSO

ARREST WARRANT NUMBER

MO56515

ACTION OF GRAND JURY

True Bill

B. Smith
Foreperson of Grand Jury
Date:

DEC 16 2010

VERDICT

Foreperson of Petit Jury
Date:
INDICT

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

Dec.
November Term 2010

THE STATE

vs.

Terrance Seabrook

Indictment for

Kidnapping / Kidnapping

SC Code: 16-03-0910
CDR Code:0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

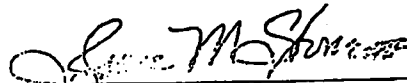
INDICTMENT
2010GS0702320

At a Court of General Sessions, convened on November 18, 2010, the Grand Jurors of Beaufort County present upon their oath:

Kidnapping / Kidnapping

That in Beaufort County, South Carolina, on or about October 4, 2010, the Defendant, Terrance Seabrook, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Sean Kirkpatrick, without authority of law; all in violation of Section 16-3-910 of the Code of Laws of South Carolina, (1976, as amended)

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



Solicitor

WITNESSES

Chapman/BCSO

ARREST WARRANT NUMBER

M056516

ACTION OF GRAND JURY

B. Smith
Foreperson of Grand Jury
Date:

DEC 16 2010

VERDICT

Foreperson of Petit Jury
Date:
INDICT

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

Dec.
November Term 2010

THE STATE

vs.

Terrance Seabrook

Indictment for

**Robbery / Armed Robbery, robbery while armed
or allegedly armed**

SC Code: 16-11-0330(A)
CDR Code: 0139

rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
Hereby appear in my own proper person
and plead guilty to the within indictment or
to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

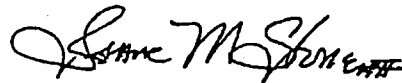
INDICTMENT
2010GS0702321

At a Court of General Sessions, convened on November 18, 2010, the Grand Jurors of Beaufort County present upon their oath:

Robbery / Armed Robbery, robbery while armed or allegedly armed

That on or about October 4, 2010, in Beaufort County, South Carolina, the Defendant, Terrance Seabrook, at 1702 Sea Island Parkway St. Helena, SC, by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Sean Kirkpatrick with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws, 1976, as amended.

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



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."

April 14, 2016


Lara M. Caudy
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

APR 14 2016

506

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

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April 14, 2016


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ATTORNEY FOR APPELLANT