

ORIGINAL

STATE OF SOUTH CAROLINA

Volume I of II

In The Court of Appeals

APPEAL FROM ORANGEBURG COUNTY

Deadra L. Jefferson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYKEEM KALANI MAY,

APPELLANT

APPELLATE CASE NO. 2014-001827

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

V. HENRY GUNTER, JR.
Assistant Attorney general
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorney for Appellant

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
140 N. Main Street, Suite 102
Summerville, SC 29483-6443
(843) 871-2640

Attorneys for Respondent

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
) FIRST JUDICIAL CIRCUIT
 COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYKEEM MAY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 1 OF 5

held before the Honorable Deadra L. Jefferson
 Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
 in the Orangeburg County Courthouse
 Orangeburg, South Carolina
 on August 11, 2014, Commencing at 12:16 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Harrison Bell, Esquire
Ashley Cornwell, Esquire
First Circuit Solicitor's Office
Post Office Box 1525
Orangeburg, South Carolina 29116

FOR THE DEFENDANT:

Breen Stevens, Esquire
Doug Mellard, Esquire
First Circuit Public Defender's Office
Post Office Box 1112
Orangeburg, South Carolina 29116

STATE OF SOUTH CAROLINA
VS.
TYKEEM MAY,
DEFENDANT.

VOLUME 2 OF 5

held before the Honorable Deadra L. Jefferson
Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
in the Orangeburg County Courthouse .
Orangeburg, South Carolina
on August 12, 2014, Commencing at 10:44 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Harrison Bell, Esquire
Ashley Cornwell, Esquire
First Circuit Solicitor's Office
Post Office Box 1525
Orangeburg, South Carolina 29116

FOR THE DEFENDANT:

Breen Stevens, Esquire
Doug Mellard, Esquire
First Circuit Public Defender's Office
Post Office Box 1112
Orangeburg, South Carolina 29116

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State vs. Tykeem May
Jury Voir Dire
May 12, 2014

PROCEEDINGS

[Whereupon, the jury panel is duly sworn by the clerk of court]

JURY VOIR DIRE

THE COURT: Please permit me to share with you some guidelines for your service this week.

By order of the Chief Justice, there can be no pagers, cellphones, tablets -- I'm trying to think. There are so many devices that can be -- you cannot have them.

[Off the record momentarily]

THE COURT: Some courthouses allow you to bring them in. We have to collect them. Other courthouses don't allow you to bring them in, which is I think the most prudent policy because then they don't have to go through taking your phones from you and giving them back to you. There is a reason that we do that, is because you're the fact-finders and on phones now you have access to the Internet and other sources of information and so we have to be able to maintain your impartiality during the process.

When you come to the courthouse, if you are selected for a jury please do not interact with anyone in or about the courthouse that you do not recognize to be a fellow juror. The reason for that is that

State vs. Tykeem May
Jury Voir Dire
May 12, 2014

1 there are many witnesses in cases. People look very
2 different outside the courtroom than in the courtroom.
3 We would not want you to have an innocent conversation
4 with someone and have that conversation
5 misinterpreted. In other words, we would not want
6 someone to think that you're improperly discussing the
7 facts or circumstances of a case. So to the best of
8 your ability, please do not interact with anyone,
9 again, that you do not recognize to be a fellow juror.

10 We would ask that you be prompt. It is not fair
11 when we must delay the proceedings because someone is
12 tardy. By the same token, if you run into some
13 difficulty getting to the courthouse in the morning,
14 please let us know, call us, because we can make
15 arrangements to assist you.

16 And in addition to that, I will tell you at the
17 beginning, so that you're aware of it, there will be
18 many times during this process when you are waiting on
19 us. Please know that we do not take your time for
20 granted, but there are many parts of the proceeding
21 that we have to insulate you from, again, because you
22 are the fact-finders. Sometimes we have to take up
23 matters of law that we cannot allow you to be privy to
24 because, again, we would not want to affect your
25 objectivity. So please know that if you're waiting on

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Jury Voir Dire
May 12, 2014

1 us, we're working. And in most instances, we have
2 started working long before you have arrived at the
3 courthouse. So, again, please know that we value your
4 time and we do not take it for granted.

5 If an emergency occurs at home, work, or
6 otherwise, I'm sure there's a number the clerk's
7 office will provide you with. Please make us aware of
8 it, even if it is during the course of jury duty. We
9 don't want you distracted trying to attend to
10 something when, again, in most instances we can assist
11 you with that responsibility.

12 Court generally begins at 9:30. We try to
13 conclude court as close to five o'clock as possible,
14 knowing that you have other obligations that you must
15 attend to during the day.

16 Again, as I've indicated, we only have one
17 criminal case to try this week, which we're going to
18 take probably another five-minute break and then we
19 will begin the jury-selection process. And, again,
20 that's the only jury that we will select. So anyone
21 who is not selected for that panel, even though we
22 will probably have you call back after a certain time
23 for certain jury instructions, it's probably unlikely
24 that we will try another case this week. So as a
25 practical matter, if you're not selected for this

State vs. Tykeem May
Jury Voir Dire
May 12, 2014

1 case, then your jury service for the week will be
2 concluded.

3 I am going to give you a five-minute recess to
4 stretch your legs. You don't have to leave the
5 courtroom. You can stay, if you like. But be back
6 promptly at ten of 11:00, at which time we will begin
7 jury selection. Thank you very much.

8 [Whereupon, a recess is taken from 10:48 a.m. to
9 10:54 a.m.]

State v. Tykeem May
Arraignment
August 12, 2014

ARRAIGNMENT OF DEFENDANT

THE COURT: Sir, if you would stand.

[Whereupon, Mr. May complies]

THE CLERK OF COURT: The State alleges --

Indictment number 2014-GS-38-0189. How do you
wish to plead?

MR. MAY: Not guilty.

THE CLERK OF COURT: How do you wish to be
tried?

MR. MAY: By my state and my country.

THE CLERK OF COURT: We wish you --

MR. MAY: God and my country. I'm sorry.

THE CLERK OF COURT: We wish you Godspeed.

- - -

- - -

- - -

State v. Tykeem May
Jury Voir Dire
August 12, 2014

JURY VOIR DIRE

1
2 THE COURT: Ladies and gentlemen, we are going
3 to select a jury for the cases of the State of South
4 Carolina vs. Tykeem Kalami May. They are indictments
5 2014-GS-38-189 and 190 for the offenses of armed
6 robbery and possession of a weapon during the
7 commission of a violent crime.

8 Those indictments allege as follows: that on or
9 about September 8th, 2013, in Orangeburg County, the
10 defendant, Tykeem Kalami May did, by use of force,
11 threat or intimidation, while armed with a deadly
12 weapon or by alleging either by words or action that
13 he was armed while using the representation of a
14 deadly weapon or any object which a person present
15 during the commission of the robbery reasonably
16 believed to be a deadly weapon, take and carry away
17 goods and/or monies from the person or presence of the
18 victim, Quantavious Montgomery and/or the Keg, with
19 the intent to permanently deprive the victim of
20 possession of the goods or monies, such weapon or
21 alleged weapon described as a rifle, alleging this
22 offense to be in violation of Code Section 16-11-330.
23 And that in Orangeburg County on or about September
24 8th, 2013, the defendant, Tykeem Kalami May, did
25 visibly display or have in his possession a rifle

State v. Tykeem May
Jury Voir Dire
August 12, 2014

1 during the commission of a violent crime, as defined
2 by section 16-1-60 of the South Carolina Code of Laws
3 as amended, to wit, armed robbery, alleging this
4 offense to be a violation of Section 16-23-490 of the
5 Code of Laws, and alleging both of these actions to be
6 against the peace and dignity of the State of South
7 Carolina.

8 We're going to go through a process that is
9 called voir dire in jury selection, which is simply a
10 legal term meaning that I'm going to ask you some
11 questions so that the attorneys can more effectively
12 exercise their peremptory challenges in jury
13 selection. If a question applies to you, please stand
14 and in a loud and clear voice give us your name, your
15 juror number, an answer to the question, if
16 applicable, and remain standing until the Court has
17 completed questioning you.

18 Before we go through that process, I'm going to
19 ask counsel for the State to introduce himself, anyone
20 who will be assisting him in the trial of this case,
21 and also give us the names of the lawyers in his
22 office and, as well, have counsel for the defense to
23 provide us with the same information and have his
24 client stand and face the panel.

25 You may proceed.

State v. Tykeem May
Jury Voir Dire
August 12, 2014

1 MR. BELL: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MR. BELL: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. BELL: My name is Harrison Bell. I'm a
6 senior assistant solicitor for the First Judicial
7 Circuit, which is Orangeburg, Dorchester and Calhoun
8 Counties. I work for your elected solicitor,
9 Mr. Davis Pascoe. In our office are Tommy Scott,
10 who's a deputy solicitor -- Ashley Cornwell will be
11 assisting me. Sarah Ford, Joshua Edwards, and Mandy
12 Kimmons are the other attorneys. I hope I got
13 everyone.

14 THE COURT: Is that everybody in both offices?

15 MR. BELL: That's in Orangeburg. I didn't go
16 through Dorchester County.

17 THE COURT: To the best of your ability, if you
18 could.

19 MR. BELL: Okay. Also we have in Dorchester
20 County Don Sorenson, who's a senior assistant
21 solicitor. We have Kyle Ward. We have Glen Justis,
22 we have Phil Giese. We also have Anna Welch, and we
23 have Vergil Deas, the juvenile prosecutor now. Oh,
24 I'm sorry. And Ted Lupton, who works in Calhoun
25 County.

State v. Tykeem May
Jury Voir Dire
August 12, 2014

1 THE COURT: Thank you.

2 You may proceed, Mr. Stevens.

3 MR. STEVENS: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. STEVENS: Good morning. My name is Breen
6 Stevens. I'm in the Orangeburg County Public
7 Defender's Office. With me here today is Doug
8 Mellard. Together we represent Mr. Tykeem May, our
9 client.

10 In our office here in Orangeburg County I work
11 for the circuit public defender. His name is Mark
12 Leinedecker. His office is down in Summerville. In
13 our office here in Orangeburg County we have the chief
14 deputy public defender. Her name is Payton -- we also
15 have Cole Fitchett. We have Ms. Minh Lee. We also
16 have another attorney named Mark Wise in our office,
17 as well. We also have several legal assistants,
18 including Sarah Martin, Laura Kyser. We also have
19 several other attorneys in some of our other offices,
20 including obviously the circuit public defender Mark
21 Leinedecker. We also have Mary Lematte, Ashley
22 Chisholm, John Loy down in Summerville, and Martin
23 Orenbacks in Calhoun County.

24 THE COURT: Did you have your client stand and
25 face the panel?

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Jury Voir Dire
August 12, 2014

1 Sir, if you would stand and face the panel,
2 please.

3 [Whereupon, Mr. May complies]

4 THE COURT: Thank you.

5 Again, ladies and gentlemen, I'm going to ask
6 you a series of questions. If any of the questions
7 apply to you, please stand and in a loud and clear
8 voice give us your name, your juror number, and an
9 answer to the question, if applicable, and remain
10 standing until the Court has completed questioning
11 you.

12 Is there any member of the panel related by
13 blood or marriage to Tykeem May or Quantavious
14 Montgomery? If so, please stand at this time.

15 [Whereupon, there is no response]

16 THE COURT: Does any member of the panel have a
17 close personal or social relationship with Tykeem May
18 or Quantavious Montgomery or anyone who is employed
19 with or has any ownership interest in the Keg? If so,
20 please stand at this time.

21 Yes, sir. If you would give us your name and
22 your juror number.

23 MR. CALLOWAY: Kerchia Calloway. I don't
24 remember my jury number.

25 THE COURT: Your last name is Calloway?

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Jury Voir Dire
August 12, 2014

1 THE CLERK OF COURT: 24.

2 THE COURT: Number 24. Yes, sir?

3 MR. CALLOWAY: Quantavious Montgomery and I are
4 fraternity brothers and -- who actually owns the
5 Keg --

6 THE COURT: I'm sorry. Say that one more time.
7 Y'all are fraternity brothers and what else?

8 MR. CALLOWAY: Yes. And the owner of the Keg,
9 we have -- we own Campus Corners housing. We're
10 business partners --

11 THE COURT: You're business -- okay. Sir, I'm
12 going to excuse you from the trial of this case.

13 MR. CALLOWAY: So I can leave now?

14 THE COURT: No. I need you to stay with us.

15 I assume there is no exception from the State or
16 the defense?

17 MR. STEVENS: No, ma'am.

18 MR. BELL: No, Your Honor.

19 THE COURT: And is there any member of the panel
20 related by blood or marriage to anyone who has any
21 ownership interest in, is employed with, or works in
22 any supervisory capacity at the Keg? If so, please
23 stand at this time.

24 [Whereupon, there is no response]

25 THE COURT: The following are a list of

State v. Tykeem May
Jury Voir Dire
August 12, 2014

1 potential witnesses in this case. I would ask that
2 you listen very carefully. Kevin Dukes, John Caddell,
3 Emonie Ford, Delissa Simpson, Danny McDaniel, Alfred
4 Doctor, R.C. Carter, Quantavious Montgomery, Kenny
5 Pifer, of the Orangeburg Department of Public Safety,
6 Lieutenant R. Culler, Orangeburg County Sheriff's
7 Office, Sargent John Caddell, Corporal Kevin Dukes,
8 both of the Orangeburg County -- Orangeburg Department
9 of Public Safety, Alfred Doctor, Henry Graham, Debbie
10 Byrd, the Orangeburg Department of Public Safety,
11 Captain Carl Schultz, Orangeburg Department of Public
12 Safety, Thomas Gibson, Lieutenant Anthony Robinson,
13 and Donny Hall.

14 Is there any member of the panel related by
15 blood or marriage to any of the people that I have
16 just listed, or does anyone have a close personal or
17 social relationship with any of these individuals? If
18 so, please stand at this time.

19 Yes, sir. Give us your name and your juror
20 number.

21 MR. DAVIS: Kerry Davis, number 41.

22 THE COURT: I'm sorry, sir. I can't hear you.

23 MR. DAVIS: Kerry -- Carroll Davis, number 41.

24 THE COURT: Yes, sir?

25 MR. DAVIS: And Sargent John Caddell married my

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August 12, 2014

1 first cousin.

2 THE COURT: And how would you characterize your
3 relationship with him? Are you close or do you just
4 pass at -- I mean, just sort of come in contact with
5 one another socially?

6 MR. DAVIS: I would say we're pretty close, like
7 hanging out and stuff.

8 THE COURT: Sir, as a result of this
9 relationship, do you feel that you can remain fair and
10 impartial?

11 MR. DAVIS: [No response]

12 THE COURT: There's no right or wrong answer. I
13 just need you to search your heart. And if you feel
14 that you can't be, there's nothing wrong with that
15 answer.

16 MR. DAVIS: No, ma'am.

17 THE COURT: Sir, you'll be excused from the
18 trial of this case only. Thank you. You may take
19 your seat. Remain with us.

20 Has any member of the panel ever been
21 represented by any of the attorneys involved in this
22 case or by any of the lawyers in their offices? If
23 so, please stand at this time.

24 [Whereupon, there is no response]

25 THE COURT: Is there any member of the panel

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August 12, 2014

1 related by blood or marriage to, or have a close
2 personal, social or business relationship, with any of
3 the attorneys involved in this case, any of the
4 lawyers in their offices, or anyone who is employed in
5 any capacity in their offices? If so, please stand at
6 this time.

7 [Whereupon, there is no response]

8 THE COURT: Has any member of the panel formed
9 or expressed any opinion about any issue or matter
10 involved in this case? If so, please stand at this
11 time.

12 [Whereupon, there is no response]

13 THE COURT: Is there any member of the panel
14 aware of any bias or prejudice toward either the State
15 or the defense in this case? If so, please stand at
16 this time.

17 [Whereupon, there is no response]

18 THE COURT: Is there any member of the panel who
19 was a member of the grand jury which issued the
20 indictments in this case? If so, please stand at this
21 time.

22 [Whereupon, there is no response]

23 THE COURT: Is there any member of the panel who
24 has watched, read, or listened to any media accounts
25 about this case? That includes any articles in the

State v. Tykeem May
Jury Voir Dire
August 12, 2014

1 newspaper, any reports on television or radio, as well
2 as anything that could have been on the Internet. If
3 so, please stand at this time.

4 [Whereupon, there is no response]

5 THE COURT: Does any member of the panel have
6 any moral, philosophical, or religious opposition to
7 sitting in judgment of a fellow human being? If so,
8 please stand at this time.

9 [Whereupon, there is no response]

10 THE COURT: Is there any member of the panel
11 who's a member of or contributor to any group which
12 has as its primary concern the enforcement of law --
13 the promotion of law enforcement or victims' rights?
14 These groups would include, but are not limited to,
15 Mothers Against Drunk Driving, Students Against Drunk
16 Driving, Citizens Against Violent Crime, People
17 Against Rape, Citizens Advocating a Return to Decency
18 and Ethics, Parents Empowered to Save Teens, or any
19 other type community watch group. If so, please stand
20 at this time.

21 [Whereupon, there is no response]

22 THE COURT: Is there any member of the panel who
23 has ever been a victim of a violent crime? If so,
24 please stand at this time.

25 [Whereupon, there is no response]

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Jury Voir Dire
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1 THE COURT: Is there any member of the panel who
2 is related to anyone who is currently employed in law
3 enforcement? If so, please stand at this time.

4 Yes, ma'am. Tell us your name and juror number.

5 MS. HAMPTON: Cheryl Hampton. I think it's 76.

6 THE CLERK OF COURT: 77.

7 THE COURT: Yes, ma'am?

8 MS. HAMPTON: My brother, Christopher Hampton,
9 is a Charleston County sheriff deputy.

10 THE COURT: As a result of this experience, do
11 you feel that you can remain fair and impartial and
12 render a fair and impartial decision in this case
13 based solely on the evidence as it will be presented
14 and on the law as the Court will instruct?

15 MS. HAMPTON: Yes, ma'am.

16 THE COURT: Thank you, ma'am. You may take your
17 seat.

18 Is there any member of the panel who was
19 previously employed in any form of law enforcement
20 agency? If so, please stand at this time. Not
21 current, but previous. If so, and you feel this
22 applies, please stand at this time.

23 [Whereupon, there is no response]

24 THE COURT: Is there any member of the panel who
25 has a moral, philosophical, or religious opposition to

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1 the ownership of firearms? If so, please stand at
2 this time.

3 [Whereupon, there is no response]

4 THE COURT: Is there any member of the panel who
5 is a member of the National Rifle Association? If so,
6 please stand at this time.

7 [Whereupon, there is no response]

8 THE COURT: Does any member of the panel know of
9 any reason whatsoever why he or she should not serve
10 as a juror in this case, with particular emphasis
11 being placed on your ability to be fair and impartial
12 to both the State and the defense? If so, please
13 stand at this time.

14 [Whereupon, there is no response]

15 THE COURT: Are there any additional questions
16 from the State?

17 MR. BELL: None from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. STEVENS: Not at this time, Judge.

20

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STRIKING OF THE JURY

THE COURT: Strikes will be five and ten.

Come demonstrate for me how the jurors need to come forward. Can somebody do that for me? Thank you, ma'am. I appreciate your volunteering.

THE BAILIFF: As your name is called, come here to the front. Bring all your personal belongings with you. And the defense and State will ask the questions.

THE COURT: Ladies and gentlemen, again, as the bailiff has instructed, if your name is called, please come forward, stand at the front of the podium, and we will either seat or excuse you as a juror.

We appreciate your patience during this process. If you would give the clerk your attention.

[Off the record momentarily]

THE COURT: Ladies and gentlemen, bear with us. We've gone to an electronic system and it just takes us a moment. We used to -- I remember the times when every person's number was placed in a big old barrel and we actually had a blind person, pursuant to the statute, pull all the juror's name.

But what's so funny to me, and I'm sure there is some statistical reason for this that's beyond my math capability, it seems that even when we had the blind

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1 person doing it, when the computer does it it's almost
2 exactly duplicated. Funniest thing to me. I'm sure
3 that, again, there's some mathematical or statistical
4 explanation, but it's far beyond my mental acumen to
5 figure that one out. But it's really interesting to
6 have observed this.

7 In Charleston we had a huge barrel that was
8 probably almost as big as two of those podiums. And
9 we would turn it and hear all the capsules making
10 noise. And, literally, we had a person from the
11 Commission for the Blind who came and picked the
12 names. But it's just really interesting how it still
13 turns out the same way when we do it with a computer.

14 So if you would just give us a few moments to do
15 those strike sheets, we'll then begin the process.

16 [Off the record momentarily]

17 THE COURT: Okay. If you would -- once the
18 first one is done, if you will give her your attention
19 she will begin the selection process.

20 And then, again, if your name is called, please
21 come forward with all of your belongings and we'll
22 either seat or excuse you.

23 [Off the record momentarily]

24 THE CLERK OF COURT: Juror number 36, Ida
25 Crosby.

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1 [Whereupon, Ms. Crosby comes forward]

2 THE CLERK OF COURT: What says the State?

3 MR. BELL: Present the juror.

4 THE CLERK OF COURT: What says the defense?

5 MR. STEVENS: Please seat the juror.

6 [Whereupon, Ms. Crosby is seated in the jury box
7 as a juror]

8 THE CLERK OF COURT: Juror Number 155, Makeisha
9 Sharrow.

10 [Whereupon, Ms. Sharrow comes forward]

11 THE CLERK OF COURT: What says the State?

12 MR. BELL: Present the juror.

13 THE CLERK OF COURT: What says the defense?

14 MR. STEVENS: Please seat the juror.

15 THE CLERK OF COURT: Have a seat in the jury
16 box. Thank you.

17 [Whereupon, Ms. Sharrow is seated in the jury
18 box as a juror]

19 THE CLERK OF COURT: Juror Number 15, Aaron
20 Briggman.

21 [Whereupon, Mr. Briggman comes forward]

22 THE CLERK OF COURT: What says the State?

23 MR. BELL: Excuse the juror from this trial.

24 THE CLERK OF COURT: You may return to your
25 seat, sir.

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1 THE BAILIFF: You may be seated back in the
2 panel. Thank you.

3 [Whereupon, Mr. Briggman returns to the
4 audience]

5 THE CLERK OF COURT: Juror Number 133, Tracy
6 Pelzer.

7 [Whereupon, Ms. Pelzer comes forward]

8 THE CLERK OF COURT: What says the State?

9 MR. BELL: Present the juror.

10 THE CLERK OF COURT: What says the defense?

11 MR. STEVENS: Please excuse the juror.

12 THE CLERK OF COURT: You may return to your
13 seat.

14 [Whereupon, Ms. Pelzer returns to the audience]

15 THE CLERK OF COURT: Juror Number 17, Ladeidra
16 Brown.

17 [Whereupon, Ms. Brown comes forward]

18 THE CLERK OF COURT: What says the State?

19 MR. BELL: Present the juror.

20 THE CLERK OF COURT: What says the defense?

21 MR. STEVENS: Please seat the juror.

22 THE CLERK OF COURT: You may have a seat in the
23 jury box. Thank you.

24 [Whereupon, Ms. Brown is seated in the jury box
25 as a juror]

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1 THE CLERK OF COURT: Juror Number 39, Laurie
2 Dantzler.

3 [Whereupon, Ms. Dantzler comes forward]

4 THE CLERK OF COURT: What says the State?

5 MR. BELL: Present the juror.

6 THE CLERK OF COURT: What says the defense?

7 MR. STEVENS: Please strike the juror.

8 THE CLERK OF COURT: You may return to your
9 seat, ma'am.

10 [Whereupon, Ms. Dantzler returns to the
11 audience]

12 THE CLERK OF COURT: Juror Number 174, Kathleen
13 Sweatman.

14 [Whereupon, Ms. Sweatman comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. BELL: Present the juror.

17 THE CLERK OF COURT: What says the defense?

18 MR. STEVENS: Please seat the juror.

19 THE CLERK OF COURT: You may have a seat in the
20 jury box.

21 [Whereupon, Ms. Sweatman is seated in the jury
22 box as a juror]

23 THE CLERK OF COURT: Juror Number 164, Xavier
24 Stephens.

25 [Whereupon, Mr. Stephens comes forward]

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1 THE CLERK OF COURT: What says the State?

2 MR. BELL: Excuse the juror from this trial.

3 THE CLERK OF COURT: You may return to your
4 seat, sir.

5 [Whereupon, Mr. Stephens returns to the
6 audience]

7 THE CLERK OF COURT: Juror Number 2, Wilford
8 Arant.

9 [Whereupon, Mr. Arant comes forward]

10 THE CLERK OF COURT: What says the State?

11 MR. BELL: Present the juror.

12 THE CLERK OF COURT: What says the defense?

13 MR. STEVENS: Please strike the juror.

14 THE CLERK OF COURT: Please return to your seat.

15 [Whereupon, Mr. Arant returns to the audience]

16 THE CLERK OF COURT: Juror Number 50, Stephen
17 Eaddy.

18 [Whereupon, Mr. Eaddy comes forward]

19 THE CLERK OF COURT: What says the State?

20 MR. BELL: Please excuse the juror from this
21 trial.

22 THE CLERK OF COURT: You may return to your
23 seat.

24 [Whereupon, Mr. Eaddy returns to the audience]

25 THE CLERK OF COURT: Juror Number 200, Jaquetta

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1 Zimmerman.

2 [Whereupon, Ms. Zimmerman comes forward]

3 THE CLERK OF COURT: What says the State?

4 MR. BELL: Present the juror.

5 THE CLERK OF COURT: What says the defense?

6 MR. STEVENS: Present the juror.

7 THE CLERK OF COURT: You may have a seat in the
8 jury box, ma'am.

9 [Whereupon, Ms. Zimmerman is seated in the jury
10 box as a juror]

11 THE CLERK OF COURT: Juror Number 29, John Carr.

12 [Whereupon, Mr. Carr comes forward]

13 THE CLERK OF COURT: What says the State?

14 MR. BELL: Present the juror.

15 THE CLERK OF COURT: What says the defense?

16 MR. STEVENS: Please strike the juror.

17 THE CLERK OF COURT: You may return to your
18 seat.

19 [Whereupon, Mr. Carr returns to the audience]

20 THE CLERK OF COURT: Juror Number 22, Kayla
21 Butler.

22 [Whereupon, Ms. Butler comes forward]

23 THE CLERK OF COURT: What says the State?

24 MR. BELL: Present the juror.

25 THE CLERK OF COURT: What says the defense?

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1 MR. STEVENS: Please seat the juror.

2 THE CLERK OF COURT: You may have a seat in the
3 jury box.

4 [Whereupon, Ms. Butler is seated in the jury box
5 as a juror]

6 THE CLERK OF COURT: Juror Number 101, Katheryn
7 Kennerly.

8 [Whereupon, Ms. Kennerly comes forward]

9 THE CLERK OF COURT: What says the State?

10 MR. BELL: Present the juror.

11 THE CLERK OF COURT: What says the defense?

12 MR. STEVENS: Please seat the juror.

13 THE CLERK OF COURT: Have a seat in the jury
14 box. Thank you.

15 [Whereupon, Ms. Kennerly is seated in the jury
16 box as a juror]

17 THE CLERK OF COURT: Juror Number 81, Dorothy
18 Hollis.

19 [Whereupon, Ms. Hollis comes forward]

20 THE CLERK OF COURT: What says the State?

21 MR. BELL: Present the juror.

22 THE CLERK OF COURT: What says the defense?

23 MR. STEVENS: Please seat the juror.

24 THE CLERK OF COURT: You may have a seat in the
25 jury box.

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1 [Whereupon, Ms. Hollis is seated in the jury box
2 as a juror]

3 THE CLERK OF COURT: Juror Number 14, Laurie
4 Brenn.

5 [Whereupon, Ms. Brenn comes forward]

6 THE CLERK OF COURT: What says the State?

7 MR. BELL: Present the juror.

8 THE CLERK OF COURT: What says the defense?

9 MR. STEVENS: Please seat the juror.

10 [Whereupon, Ms. Brenn is seated in the jury box
11 as a juror]

12 THE CLERK OF COURT: Juror Number 121, Larry
13 Moorer.

14 [Whereupon, Mr. Moorer comes forward]

15 THE CLERK OF COURT: What says the State?

16 MR. BELL: Present the juror.

17 THE CLERK OF COURT: What says the defense?

18 MR. STEVENS: Please seat the juror.

19 THE CLERK OF COURT: Have a seat in the jury
20 box.

21 [Whereupon, Mr. Moorer is seated in the jury box
22 as a juror]

23 THE CLERK OF COURT: Juror Number 193, Roy
24 Williams.

25 [Whereupon, Mr. Williams comes forward]

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1 THE CLERK OF COURT: What says the State?

2 MR. BELL: Present the juror.

3 THE CLERK OF COURT: What says the defense?

4 MR. STEVENS: Please strike the juror.

5 THE CLERK OF COURT: You may return to your
6 seat.

7 [Whereupon, Mr. Williams returns to the
8 audience]

9 THE CLERK OF COURT: Juror Number 65, Frank
10 Gantt.

11 [Whereupon, Mr. Gantt comes forward]

12 THE CLERK OF COURT: What says the State?

13 MR. BELL: Present the juror.

14 THE CLERK OF COURT: What says the defense?

15 MR. STEVENS: Please seat the juror.

16 THE CLERK OF COURT: You may have a seat in the
17 jury box.

18 [Whereupon, Mr. Gantt is seated in the jury box
19 as a juror]

20 THE CLERK OF COURT: Juror Number 90, Elaine
21 Jeffcoat.

22 [Whereupon, Ms. Jeffcoat comes forward]

23 THE CLERK OF COURT: What says the State?

24 MR. BELL: Present the juror.

25 THE CLERK OF COURT: What says the defense?

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1 MR. STEVENS: Please seat the juror.

2 THE CLERK OF COURT: You may have a seat in the
3 jury box, ma'am.

4 [Whereupon, Ms. Jeffcoat is seated in the jury
5 box as a juror]

6 THE COURT: Two alternates. Strikes are one and
7 two.

8 THE CLERK OF COURT: Juror Number 7, Anthony
9 Blocker.

10 [Whereupon, Mr. Blocker comes forward]

11 THE CLERK OF COURT: What says the State?

12 MR. BELL: Present the juror.

13 THE CLERK OF COURT: What says the defense?

14 MR. STEVENS: Please seat the juror.

15 THE CLERK OF COURT: You may have a seat in the
16 jury box, sir.

17 [Whereupon, Mr. Blocker is seated in the jury
18 box as an alternate juror]

19 THE CLERK OF COURT: Juror Number 163, Tammie
20 Steele.

21 [Whereupon, Ms. Steele comes forward]

22 THE CLERK OF COURT: What says the State?

23 MR. BELL: Present the juror.

24 THE CLERK OF COURT: What says the defense?

25 MR. STEVENS: Please present the juror.

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1 THE CLERK OF COURT: You may have a seat in the
2 jury box, ma'am.

3 [Whereupon, Ms. Steele is seated in the jury box
4 as an alternate juror]

5 THE COURT: The jury has been selected. Are
6 there any motions from the State?

7 MR. BELL: Yes, Your Honor, the State does.

8 THE COURT: Please approach.

9 [Whereupon, an off-the-record bench conference
10 is held]

11 THE COURT: Ladies and gentlemen, we thank you
12 for your patience. We have selected the panel for
13 this case. If you would call the jury information
14 line after six o'clock, there will be a message to let
15 you know if we have further need of your services.

16 Again, we appreciate your patience. I hope
17 everyone has a wonderful day. You're excused with the
18 Court's appreciation.

19 [Whereupon, the jury panel exits at 11:35 a.m.]

20 THE COURT: Ladies and gentlemen, please stand
21 and raise your right hand so that the clerk can
22 administer the oath to you.

23 [Whereupon, the jury is duly sworn by the clerk
24 of court as follows: do you solemnly swear or affirm
25 that you shall well and truly try and true deliverance

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1 make between the State of South Carolina and the
2 defendant at the bar, whom you shall have at charge,
3 and a true verdict give according to the evidence, so
4 help you God]

5 THE COURT: Please answer by saying, I do.

6 THE COURT: Thank you, ladies and gentlemen.
7 You may take your seats.

8 We're going to take a very brief break so that I
9 can talk about some scheduling matters with the
10 attorneys. I anticipate that we will have opening
11 argument and opening instructions and then break for
12 lunch.

13 During this break, please do not discuss the
14 case among yourselves. Please don't speculate about
15 what you think the case may or could be about.

16 Again, we appreciate your patience. I'm going
17 to turn you over to the able hands of your caretaker.
18 Go with her, please.

19 [Whereupon, the jury exits the courtroom at
20 11:36 a.m.]

21 THE COURT: Now, I was thinking what we could do
22 is do the Court's opening instructions, opening
23 arguments, and then break with this jury for lunch and
24 then handle the other things which we need to take
25 care of.

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1 [Off the record momentarily]

2 THE COURT: I'm thinking about starting back at
3 2:00 with this jury, after we do openings.

4 MR. BELL: That sounds fine.

5 THE COURT: Does that sound good for everybody?

6 Were there any exhibits that needed to be pre-
7 marked that y'all can agree on? If you have a
8 disagreement, I don't need to hear about it right now.
9 But if you've got something you've agreed on, I would
10 like for you to go ahead and have the court reporter
11 pre-mark it.

12 MR. BELL: Well, I've got pictures and --

13 [Off the record momentarily]

14 MR. BELL: We've got a series of photographs,
15 Number 1, Your Honor.

16 THE COURT: Well, they would be marked
17 individually.

18 Do y'all agree on all of them?

19 MR. STEVENS: Well, so long as they actually
20 have the proper witnesses to enter them into evidence,
21 Judge, yes, ma'am.

22 THE COURT: Well, I only want to know what you
23 agreed on to be pre-marked so I can go ahead and put
24 it on the record. If you disagree or there's some --
25 then you'll just have to do what you need to do and

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1 follow the procedure.

2 But I only need to know about what's being
3 marked and admitted without objection.

4 MR. STEVENS: Like I said, I don't think we can
5 just stipulate to everything right now. I think we'll
6 just --

7 THE COURT: Then we'll do what we need to do.

8 MR. STEVENS: Okay. Thank you, Judge.

9 THE COURT: But they need to be pre-marked so I
10 know what is being referring to.

11 MR. STEVENS: Okay.

12 THE COURT: So go ahead and pre-mark them.

13 MR. STEVENS: Thank you, Judge.

14 THE COURT: You're welcome.

15 THE CLERK OF COURT: Do you want them marked for
16 ID, Judge?

17 THE COURT: Yeah. Mark them individually so
18 we'll have --

19 [Whereupon, State's Exhibit Numbers 1 through 22
20 are marked by the court reporter]

21 THE COURT: Mr. Stevens, did you have an
22 opportunity to follow up on the matter that we
23 discussed on yesterday, which was the attempt to
24 retrieve the receipt from Walmart?

25 MR. STEVENS: I did, Your Honor.

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1 THE COURT: Did you meet with any success?

2 MR. STEVENS: Not as of yet.

3 We're still in the process. We've spoken with
4 managers at Walmart. We are in the process of trying
5 to obtain any copies of any receipts from the
6 electronics department from that date and a time range
7 of 2:00 to 4:00 p.m. If we can get them, we'll get
8 them.

9 THE COURT: Okay. Perfect. I just wanted to --
10 that was the only thing that we had not -- I wanted to
11 follow up on just for purposes, again, of post
12 conviction relief and what he indicated he was
13 dissatisfied with -- I use that term loosely -- or
14 that he felt you had not followed up on. So I wanted
15 to make sure just that we had a contemporaneous record
16 that you had, in fact -- had investigated it and what
17 the results were that you were in in the process of
18 investigating it. That's fine.

19 And, sir, is that your understanding?

20 MR. MAY: Yes, ma'am.

21 THE COURT: Okay. Perfect.

22 MR. STEVENS: If I may just point out an
23 additional thing?

24 THE COURT: Sure.

25 MR. STEVENS: There was the other matter where

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1 he alleged that --

2 THE COURT: You know what? About confidence.

3 MR. STEVENS: Yes, ma'am.

4 THE COURT: And I had made a mental note of that
5 when I was on my way home last night --

6 MR. STEVENS: Yes, ma'am.

7 THE COURT: -- and meant to ask you about that,
8 as well. I'm so glad you reminded me.

9 MR. STEVENS: Yes, ma'am.

10 THE COURT: Yes, sir?

11 MR. STEVENS: I didn't want to interrupt the
12 Judge yesterday.

13 THE COURT: No. We had a long day yesterday.

14 MR. STEVENS: We did.

15 THE COURT: We had a full Monday.

16 MR. STEVENS: Yeah.

17 THE COURT: Yeah.

18 MR. STEVENS: And there was a little -- actually
19 not a little, but a lot taken -- about it.

20 First I would like to say, first and foremost, I
21 don't talk to other clients about a client's case.
22 That's just a general flat-out we don't do that.

23 Second of all, I don't want to say I have a lot
24 of canned responses for clients, but I have a lot of
25 well-used explanations for law, procedure, for

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1 everything, particularly involved in, you know, our
2 opening meetings which for me takes typically anywhere
3 from a half an hour to forty-five minutes.

4 And then, you know, looking on, I -- no, I would
5 not have done that. So that's one.

6 I understand I spoke for Mr. May. He may want
7 to speak out again, he may not. I don't intend to
8 speak for him on his motion.

9 THE COURT: Have you determined the name of this
10 person that he's referring to?

11 MR. STEVENS: Yes, ma'am. Mr. Sikes.

12 THE COURT: And is he, in fact, a client of
13 yours?

14 MR. STEVENS: He is a client of mine, Judge.

15 THE COURT: And do you have any -- and I know
16 you can't read somebody's mind, and it's speculative
17 to a great degree, and we know the jailhouse grapevine
18 is ripe with information, most of which is unreliable.
19 Can you think of any reason why he would go to Mr. May
20 and basically contrive this?

21 MR. STEVENS: I have no idea, Judge.

22 But what I do know, and without disclosing
23 additional confidences --

24 THE COURT: Absolutely.

25 MR. STEVENS: -- of former clients, I have been

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1 made aware that there are people alleging my client is
2 speaking about his case in the facility. In fact,
3 I've actually had to back out of at least one case
4 already and make sure that person was appointed
5 outside counsel --

6 THE COURT: Because of a conflict?

7 MR. STEVENS: Because of that conflict. And I'm
8 not allowed to go ahead and disclose --

9 THE COURT: Well, I --

10 MR. STEVENS: -- any names or --

11 THE COURT: Yeah.

12 MR. STEVENS: -- anything about the clients or
13 any details --

14 THE COURT: Yeah.

15 MR. STEVENS: But --

16 THE COURT: Well, I can anticipate you would
17 have had a conflict, because then he could have
18 potentially have used what he heard against him, which
19 puts you in a real bad conflict --

20 MR. STEVENS: Yes, ma'am.

21 THE COURT: -- situation.

22 MR. STEVENS: So I noticed on the State's -- I
23 wanted to point out I noticed on the State's witness
24 list that the name is not on there whatsoever, so I do
25 not anticipate anything unless it's a surprise

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1 rebuttal witness by the State, at which obviously we
2 would make a motion before the Court.

3 THE COURT: Okay.

4 MR. MAY: May I address the Court, Your Honor?

5 THE COURT: Sure.

6 MR. MAY: I also wanted to say on the record I
7 didn't have any animosity towards Mr. Stevens. I was
8 just reciting what --

9 THE COURT: Oh. No, I -- and the Court did not
10 take it that way.

11 MR. MAY: And I also regard it as Mr. Sikes
12 probably heard Mr. Stevens, like you said, talking to
13 a secretary or someone about something that he needed
14 them to do with any contact with a witness. And
15 that's probably how he came back and relayed that
16 information to me. I was under the wrong intent --
17 under the wrong impression at the time. And I just
18 wanted to apologize.

19 THE COURT: So you don't have any concerns that
20 he was discussing your case with anybody, is what
21 you're telling me?

22 MR. MAY: No, ma'am.

23 Actually, I went back and I -- asked him about
24 that yesterday and it seemed like he kind of folded
25 under the confrontation. So I'm really trying to

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1 dismiss it due to the fact I believe Mr. Stevens has
2 more credibility than Mr. Sikes does. I also want to
3 apologize to Mr. Stevens on the record.

4 THE COURT: Okay. Well, then that -- perfect.
5 Wonderful. Okay.

6 And I don't think there's anything else
7 regarding PCR matters that we touched on yesterday
8 that we need to go over. I think we've covered
9 everything, haven't we?

10 MR. STEVENS: I believe so, ma'am, yes.

11 THE COURT: Perfect. All right.

12 We can let everybody back in the courtroom.

13 [Whereupon, the jury enters the courtroom at
14 12:10 p.m.]

15 THE COURT: Thank you, ladies and gentlemen, for
16 your patience.

17 As I instructed earlier, the case that we are
18 about to try is the case of the State of South
19 Carolina versus Tykeem Kalami May . What I am now
20 going to give you are what we -- are a brief
21 instruction, procedurally, so that -- and a brief
22 instruction of the case so you will know how we will
23 be proceeding during the course of this trial. I will
24 instruct you or charge you on the law applicable to
25 this case at the end of the trial, before you retire

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1 to consider your verdict. And when you hear me use
2 the word charge, charge is a legal term of art that
3 simply means instruction. So charge and instructions
4 are interchangeable words for purposes of these
5 proceedings.

6 And as I've already explained, this is merely an
7 explanation of the procedure that we will follow in
8 the trial of this case so that you will better
9 understand what is happening. You will be given the
10 opportunity to take notes. On the first page or the
11 front page of your notebook, please write your juror
12 number so that you will be able to identify which
13 notebook belongs to you. I will give you some further
14 instructions regarding note-taking near the conclusion
15 of this instruction.

16 The defendant is charged, by two indictments
17 filed in this court, with the crimes of armed robbery
18 and the possession of a weapon during the commission
19 of a violent crime, the elements of which I will
20 explain to you at the conclusion of the case before
21 you retire to deliberate.

22 The indictment, ladies and gentlemen, is simply
23 the charge by which the case is brought or processed
24 into court and is not in any sense evidence of any of
25 the allegations the indictments may contain.

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1 The defendant has pled not guilty to the
2 indictments. The State, therefore, has the burden of
3 proving each of the elements of the indictments beyond
4 a reasonable doubt and it will be your duty, ladies
5 and gentlemen, to decide whether the State has met
6 that burden or not.

7 Your purpose as jurors is to find and determine
8 the facts. You are the sole judges of the facts in
9 this case. If at any time I make any comment
10 regarding the facts, you must disregard it. The
11 constitution of our state does not allow a trial judge
12 to intimate or state or have any opinion about the
13 facts of a case tried by a jury. You are to determine
14 the facts from the testimony you hear and the other
15 evidence that will be introduced into the record. It
16 is up to you to determine the inferences which you
17 feel may be properly drawn from the evidence. It is
18 especially important that you determine your duty of
19 determining the facts diligently and conscientiously
20 because ordinarily there is no way to correct an
21 erroneous determination of facts made by a trial jury.

22 On the other hand, and with equal emphasis, the
23 same law that makes you the judges of the facts makes
24 me the judge of the law. The law as given by the
25 Court is the only law you may consider. You must

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1 accept and follow it, even though you may disagree
2 with the Court about it. I cannot tell you what the
3 facts are, and you cannot disagree with the Court
4 about what the law is or what the law should be.

5 Your responsibility, ladies and gentlemen, is to
6 take the law as I instruct it during the course of the
7 trial and at the conclusion of the trial and apply it
8 to the facts as you find them from the testimony of
9 the witnesses and the other evidence that will be
10 introduced. After doing that, you will render your
11 verdict, a true and just verdict, under the solemn
12 oath that you have taken as jurors in this case.

13 Until I advise you to begin your deliberations,
14 you must not discuss this case with anyone. That
15 includes among yourselves, your family members,
16 friends, or otherwise. And after the case is
17 submitted to you, you must discuss it only in the jury
18 room among your fellow jurors.

19 The attorneys and the parties have been
20 instructed that they're not to speak with you at all.
21 So if you should see them in the hallway, or even at a
22 local restaurant at lunch or perhaps going to your
23 cars in the evening, and they don't speak with you,
24 please don't think they're being unfriendly or
25 untoward. They're simply strictly following the

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1 Court's instruction.

2 Again, this instruction comes from hard-fraught
3 experience. We would not want an innocent
4 conversation to be misinterpreted. Most courthouses
5 have pretty much everything recorded. You see these
6 little bubbles in the courtroom? They record
7 everything that we're doing, as well as the ones you
8 see in the hallways and otherwise. And, also, in this
9 age of technology it is not uncommon for people to use
10 their tablets and telephones and otherwise to record
11 someone talking to someone. And having had this
12 experience before, I don't want to try to look for you
13 and try to determine what you were talking about. As
14 southerners, we're very social and we can have the
15 most animated conversations about the weather, about
16 the draft, about golf tournaments, and people during
17 litigation have a heightened suspicion and they will
18 assume that you're talking about the case instead of
19 having an innocent conversation. So please strictly
20 abide by that instruction.

21 You are not to read, watch or listen to any
22 media accounts about this case. That includes
23 anything that may be printed in the newspaper, on the
24 Internet, radio, or television. You must not consider
25 anything you may read or heard about this case outside

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1 the courtroom, whether before or during the course of
2 this trial. And you're strictly instructed not to do
3 any independent research of any type. That includes
4 any type of Google searches, satellite kind of
5 searches to look at locations or otherwise, or any
6 other matter or information that is involved in this
7 case, on the Internet. As the fact-finders, you are
8 bound by your oath to decide this case according to
9 the testimony that you will hear from the lips of the
10 sworn witnesses and the other evidence that will be
11 introduced.

12 It is essential that you maintain an open mind
13 and not decide any issue in this case until all of the
14 evidence has been presented, the parties have made
15 their closing arguments, and I've instructed you on
16 the law applicable to this case.

17 It is your solemn responsibility to determine
18 the guilt or innocence of the defendant and your
19 verdict must be based solely on the evidence as it is
20 presented to you in this trial and on the law that I
21 will instruct you during and at the close of this
22 trial.

23 In just a moment the solicitor will make what is
24 called an opening statement, in which he will outline
25 for you what he believes the evidence will show in

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1 this case. The defendant may also make an -- the
2 defendant's counsel may also make an opening
3 statement, although he is not required to do so.

4 I would ask that you give the attorneys your
5 undivided attention but keep in mind that what they
6 say is not evidence. It is only their contention as
7 to what they believe the facts will show in this case.
8 The evidence in this case will be presented to you,
9 again, by the testimony of sworn witnesses and from
10 exhibits that may be introduced.

11 From time to time, you may hear one of the
12 attorneys say something like, Your Honor, I object.
13 Just as in sports, business, or any other structured
14 activity, there are certain rules that the attorneys
15 must obey in the presentation of evidence. These
16 rules have a definite purpose. They ensure that you
17 receive the most trustworthy and reliable evidence
18 available. An objection is the procedure that an
19 attorney uses to call a possible violation of these
20 rules to my attention as the judge of this court and
21 for this reason, you should never hold an attorney's
22 objection against them. Nor should you conclude, from
23 the Court overruling or sustaining an objection, that
24 I favor one side or the other.

25 Also, from time to time you will hear the

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1 attorneys say, Your Honor, I have a matter -- we have
2 a matter of law to take up, or they may ask to
3 approach the bench or I may ask them to approach the
4 bench. And sometimes it may even be necessary for us
5 to excuse you from the courtroom for a short while
6 while we discuss matters of law. The reason we do
7 this, as I've explained, is that you are the finders
8 of the facts and sometimes when I'm discussing matters
9 of law with the attorneys, it might be necessary for
10 me to make some comment about the facts in connection
11 with ruling whether a statute applies, or a procedural
12 rule or an evidentiary rule, and for this reason, we
13 exclude you from the courtroom so that in no way will
14 you be influenced by anything that the Court may say
15 or do in connection with the facts of this case.

16 In determining what the true facts are in this
17 case, you must decide whether or not the testimony of
18 a witness or witnesses is believable. It is my
19 responsibility to rule as a matter of law as to
20 whether certain testimony is admissible at all or not.
21 But once it is admitted, ladies and gentlemen, whether
22 or not you believe it is solely a matter for you to
23 determine. In deciding whether to believe a witness,
24 you have a right to consider the interest of any
25 witness, the bias of any witness, the prejudice of any

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1 witness, the opportunity for the witness to have seen
2 the things and matters about which the witness may
3 testify, and the way the witness acts on the witness
4 stand, something we commonly refer to as demeanor.
5 You have a right to consider anything that is in the
6 record that will help you evaluate the testimony of
7 the witnesses. That means, ladies and gentlemen, that
8 it is your duty to pay close attention to the
9 witnesses, to observe them, to listen to them, and to
10 pay close attention to the attorneys and the Court.
11 Although I know that it is very difficult, especially
12 in a room without windows, please do not allow
13 yourself to wander but give strict attention to the
14 testimony so that at the end of the case, after you've
15 heard the arguments of the attorneys and the Court's
16 instructions on the law, you will then be in a
17 position to determine what the true facts are, apply
18 the law to those facts, and thus render a true and
19 just verdict in this case.

20 During the course of this trial, you will be
21 given the opportunity to take notes. Note-taking is a
22 privilege that you may choose to exercise or choose
23 not to exercise. You are not required to take notes.
24 Not everyone finds note-taking helpful to them. If
25 you should decide to take notes, please don't try to

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1 record everything that is said. I can tell you it's
2 physically impossible. And I count myself as a very
3 good note taker. But even with that, the mind is a
4 funny thing the way it processes information. And
5 even if you were to try to take down something
6 verbatim, you will find that you will commonly
7 substitute words that you use regularly for a word
8 that was actually used. Sometimes you will put the
9 end of a sentence at the beginning of a sentence. It
10 just depends on how your mind processes information.
11 So please don't try to record everything that is said.
12 Even a moderate speaker speaks about 200 words a
13 minute. I'm in the middle of my nineteenth year of
14 sitting on the bench and I find that during that
15 process I probably talked a lot slower at year one
16 than I now talk now. I have to really make myself
17 slow down. But even a moderately -- a person who
18 speaks slowly still speaks about 200 words a minute.
19 And that's a lot of words. The only reason the court
20 reporter can do it is because they are very trained in
21 a specialized form of taking down the record. It is
22 so very essential that you rely on your powers of
23 observation as you observe the witnesses. So please
24 do not allow note-taking to become a distraction to
25 you. You may want to keep an outline of the main

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1 points that are being made and the main arguments that
2 are being made so that when you deliberate regarding
3 this case, you can allow your notes to refresh your
4 memory.

5 Your notes, ladies and gentlemen, are not to be
6 shared with anyone else. They are for the sole
7 purpose of refreshing your own memory. And they will
8 be left in the courtroom during breaks and recesses.
9 We will secure them during any evening recesses. And
10 that's to make sure there's no premature deliberation
11 -- premature temptation to prematurely deliberate
12 regarding anything you may have heard before any
13 breaks or recesses.

14 Again, I would remind you that your notes are
15 for your specific and your individual purposes. They
16 are only to be used to refresh your own memory. And
17 likewise, please be reminded that your notes should
18 not be considered any more reliable than someone
19 else's memory. Someone else's memory should be
20 considered just as reliable as the notes that may have
21 been taken by a fellow juror.

22 Also, I would instruct you that during the
23 course of your jury service, please do not blog about
24 your jury service. Please do not make any mention of
25 your jury service on any social networking site.

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1 There are so many now, I really have lost track. When
2 they got to Vine and all that, I just admitted to
3 myself that I'm a dinosaur and that I have very little
4 interest in social media. But I recognize that a lot
5 of people do and that what you think may be an
6 innocent comment on a social networking site -- you
7 would be amazed the people, during the day, that troll
8 those sites and will call the jury coordinator and say
9 that you made a comment on your site. Somebody that
10 doesn't even know you will call us and say, so-and-so
11 made a comment on Instagram or did a video on Vine or
12 made a comment on facebook, and I understand they're
13 on jury duty. And that requires us to go through a
14 whole other process. So I have found that the best
15 course is just not to make any comment because words
16 are always subject to interpretation. And so it's
17 best just not to do that during your jury service.

18 It is your added duty, Madam Forelady, to write
19 out the jury's verdict and write out any questions
20 that the jury may have during its deliberations. But
21 I'll give you further instructions regarding that at
22 the conclusion of the case.

23 Ladies and gentlemen, the foreperson is simply
24 an administration function. That person fills out the
25 verdict form and writes out any questions that you may

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1 have during jury deliberation. That person does not
2 have any greater vote or voice than any other juror.
3 And it's purely a random process that the Court
4 employs in foreperson selection so that a cross-
5 section of the community is represented. Again, I
6 emphasize they don't have any greater vote or voice
7 than you do.

8 In order to preserve everyone's rights, I'm
9 going to give the parties the opportunity to take
10 exception to anything that the Court has said by way
11 of opening instruction.

12 Any exceptions from the State?

13 MR. BELL: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. STEVENS: No, Your Honor.

16 THE COURT: Ladies and gentlemen, I would ask
17 that you give the attorneys your undivided attention
18 in opening argument.

19 The State may proceed.

20 MR. BELL: Thank you, Your Honor. May it please
21 the Court?

22 THE COURT: Yes, sir.

23 MR. BELL: Mr. Stevens.

24 - - -

25 - - -

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OPENING STATEMENT

MR. BELL: Madam Forelady, ladies and gentlemen of the jury, the lure of easy money, assuming taking a rifle and going to a convenience-store business and robbing it is easy money, is why we're here this afternoon now, since we started this morning. That's what this case is about, ladies and gentlemen.

Back on September 8th of last year, 2013, at the Keg, which is a business located at John C. Calhoun and Bleakly Street in the city of Orangeburg, an individual who had on a cap, had on something covering his face, red sunglasses, went in with a rifle, assault type rifle, and robbed the Keg on a Sunday -- early Sunday afternoon, back then. Robbed them of about \$200 and then went away.

What the State's case will show you, ladies and gentlemen, is that through the investigation of the Orangeburg Department of Public Safety, they were able to identify a suspect and then accumulate evidence that pointed at this man, Tykeem May, seated at the table, committed that armed robbery. And that is what he's charged with, armed robbery and the possession of a weapon during the commission of a violent crime. And that's why we're here today, the trial of that case.

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1 Ladies and gentlemen, as you heard earlier, my
2 name is Harrison Bell, and along with Ashley Cornwell
3 -- we work for the solicitor's office. We're the
4 prosecutors in South Carolina. It is our job and it
5 is our honor, our duty, to prosecute criminal cases
6 against people that have been charged with crimes. It
7 is also part of our job, and it is part of our burden
8 of proof, that we are required to prove a person
9 guilty of a crime that he is charged with because it
10 is a fundamental concept of law in South Carolina and
11 of the United States that Mr. May, as he is seated, is
12 innocent until the State proves him guilty beyond all
13 reasonable doubt. And that is our job and that's what
14 we will do. As you heard from the judge, she said
15 that you will hear evidence and witnesses to do that.
16 And that is what we're here to do. We will present
17 testimony from the stand, we will present exhibits,
18 photographs, and other items of evidence to prove our
19 case against Mr. May.

20 And, remember, we must prove our case beyond all
21 reasonable doubt. Which I think partly is defined in
22 our law as it leaves a jury seeking the truth, firmly
23 convinced of the defendant's guilt. Reasonable doubt
24 is not a doubt -- a hundred-percent doubt. It is not
25 doubt beyond a shadow of a doubt. The State is not

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1 required to go that far, because there's nothing
2 perfect in this life except death, and some people
3 would say taxes. But there's only one -- I call it
4 one certain in life, and that's death. Otherwise,
5 everything is open to interpretation and speculation.
6 And that's why our standard is beyond a reasonable
7 doubt.

8 Ladies and gentlemen, our case will show you
9 that after that day in September 8th, that detectives
10 with the Orangeburg Department of Public Safety were
11 able to identify a suspect, Mr. May, and they
12 furthered their investigation and they were able to
13 find evidence that shows that Mr. May was the person
14 that committed the armed robbery on that day.

15 Now, as I stated, and Judge Jefferson told you,
16 as well, she is the judge of the facts -- excuse me --
17 judge of the law in this case. What she says about
18 the law -- you have just taken an oath that says you
19 must follow the law as she gives it to you. What you
20 think about the law, whether you think the law is bad,
21 good, terrible, or whatever, cannot enter into it
22 because you have sworn that oath to follow the law.

23 But she's not the only judge in the courtroom.
24 I think as she stated, as well, you are judges, as
25 well, individually and together. You are the sole

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1 judges of the facts in this courtroom. Nobody can
2 tell you how to find those facts. Judge Jefferson
3 can't tell you how to find those facts, I can't tell
4 you how to find those facts, the defense can't tell
5 you how to find those facts. That is solely up to
6 you.

7 The question is how do you do that? What do you
8 do? What's your job? Well, your job, at the end of
9 this case we'll ask you to render a verdict in this
10 case based on all the testimony you hear from the
11 stand and any and all exhibits that may be presented
12 to you during the course of this trial.

13 Now, you're probably asking, well, testimony,
14 how do I tell if somebody is lying or not lying? I
15 wish I could tell you how to do that. I can't.
16 Nobody can. What we can suggest to you, ladies and
17 gentlemen, is that you do as you do in everyday life
18 when you're talking to friends, family, even
19 strangers, about how they're talking to you and how
20 they act and, as Judge Jefferson said, their demeanor.
21 You can usually tell if somebody is telling you a lie
22 or not.

23 And that's all we ask you to do here, ladies and
24 gentlemen. All we're asking you to do is find the
25 truth in this case from the facts that are presented

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1 to you -- it's not a hard job -- because at the end,
2 you'll take these facts that you'll find during the
3 course of this trial, you'll take the law that she
4 charges you at the end of the trial, and you'll meld
5 those together to reach a verdict, has the State given
6 you the facts that prove the charges and each and
7 every element.

8 Now, as I stated, armed robbery -- he's charged
9 with armed robbery. Mr. May is charged with armed
10 robbery, and possession of a weapon during the
11 commission of a violent crime. I'll tell you a little
12 bit what armed robbery is. Basically, what the
13 definition of armed robbery is in our law is stealing
14 or larceny. Larceny is the taking of goods or
15 property of another with the intention to deprive them
16 permanently thereof. That's the legal definition.
17 But it's stealing. Taking those by force and
18 intimidation, that makes it robbery. The stealing by
19 force and intimidation makes it robbery. And if a
20 person is doing that force and intimidation while
21 armed with a deadly weapon, that makes it armed
22 robbery. So we must prove that there was a taking, a
23 stealing, by force and intimidation and that the
24 person was armed with a deadly weapon at the time.
25 Those are what the State must prove to you, and that

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1 that individual is the person that did it.

2 As to the possession of a weapon, well, if you
3 find that the State has proven its case as to armed
4 robbery, then you consider possession of a weapon
5 during the commission of a violent crime. Which
6 basically says you either have in your possession a
7 weapon -- which a rifle would be a weapon during the
8 commission of a violent crime. Which in South
9 Carolina, armed robbery is defined as a violent crime
10 by statute. But if you were to find the State did not
11 prove its case, you wouldn't even have to worry about
12 the second charge. The armed robbery is the main
13 charge, and the other one goes with it.

14 Now, ladies and gentlemen, I don't anticipate
15 this case to be long, not long and drawn out, not like
16 you see on TV, been going on weeks and weeks.
17 Hopefully, it will be Thursday at the latest that
18 we'll finish this case. Doesn't mean it's not
19 important. It's important to the defendant because
20 his jeopardy is in your hands, but it's also important
21 to the State and to the proprietors of the Keg and to
22 our community at large that we enforce our laws when
23 somebody violates those laws. And that's what the
24 State is concerned about, as well.

25 Now, ladies and gentlemen, again, all I do --

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1 all I want to do is ask you to listen carefully. And
2 this is not going to be like TV, as Judge Jefferson
3 told you first thing this morning. I don't believe
4 anybody is going to jump up in the back of the
5 courtroom and say, I did it. We're not going to
6 finish this case in an hour plus commercials. This is
7 real life. And so I ask you to take it as real life
8 and not as TV.

9 Again, ladies and gentlemen, the State will show
10 you in the end sufficient evidence and facts to find
11 the defendant, Tykeem May, guilty of both charges,
12 armed robbery and possession of a weapon during the
13 commission of a violent crime. Thank you.

14 THE COURT: You may proceed.

15 MR. STEVENS: Thank you, Judge. May it please
16 the Court?

17 THE COURT: Yes, sir. You may proceed.

18 MR. STEVENS: Solicitor.
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OPENING STATEMENT

MR. STEVENS: Inconsistencies are reasonable doubts, and there are inconsistencies in the evidence in this case.

At the time of September 8th, 2013, Tykeem May, my client, had not just one job but two. You're going to hear that he had a job at Dollar General and you're also going to hear that he had another job at TKL Securities. Inconsistencies in this case.

You're also going to hear that on the date that the Keg was robbed, Tykeem May was actually with his girlfriend, Ms. Emonie Ford. They went to Walmart together, went shopping. They went to Sonic together. They ate. They came home together. We get inconsistencies with the State's case.

Now, the State is going to produce witnesses and other types of evidence, as well, but the evidence of the identity of the robber is going to be based on circumstantial evidence. And to the extent the State relies upon circumstantial evidence, the circumstances must be consistent with each other. And, yet, there are inconsistencies in the State's evidence.

You're going to see -- you're going to see that there's no true identification of Tykeem May by the clerk, even when they actually allegedly developed a

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1 suspect. You're not going to see any CSI proof like
2 DNA or footwear impressions or tire impressions from
3 the State. It's all circumstantial. And there are
4 inconsistencies in the State's case, and
5 inconsistencies are reasonable doubts.

6 Now, me, along with my co-counsel, Doug Mellard,
7 we represent Tykeem May. And we're glad to. We truly
8 are. What we want you to do is also pay attention to
9 the witnesses, pay attention to the evidence, and pay
10 attention to the law, the law regarding circumstantial
11 evidence and the law regarding reasonable doubt.
12 Reasonable doubt. Sometimes that would be doubt that
13 a reasonable -- would cause a reasonable person to
14 hesitate to act. And inconsistencies are reasonable
15 doubts.

16 At the end of this case we're going to have a
17 chance to talk again and we're going to ask you to
18 apply the law, and the law of reasonable doubt and the
19 law of circumstantial evidence. Because when you do,
20 we are confident you will find what we do, that Tykeem
21 May is not guilty of armed robbery and he is not
22 guilty of a possession of a firearm during the
23 commission of a violent offense. Thank you.

24 THE COURT: Madam Forelady, ladies and
25 gentlemen, we're going to take advantage of this break

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1 in testimony to take our lunch recess.

2 During the break, again, I emphasize that you
3 should not discuss this case among yourselves or with
4 anyone else. Please do not allow yourselves to be
5 exposed to any media coverage and please don't have
6 any contact with anyone in or about the courthouse
7 when you return. And your caretaker will show you how
8 to come directly back to your jury room.

9 We're going to resume at two o'clock. I have
10 some other cases that I need to dispose of, that are
11 unrelated to this case, before we can all go to lunch.
12 That will probably take us until about one o'clock.
13 So we'll resume at 2:00, because I have to give the
14 staff adequate time, of course, to refresh themselves
15 and have lunch as well.

16 I hope y'all have a good lunch. And we'll see
17 you at two o'clock. If you would leave your notepads
18 in your seats.

19 [Whereupon, the jury exits the courtroom at
20 12:39 p.m.]

21 THE COURT: Is there anything before we break
22 for lunch? From the State?

23 MR. BELL: No, Your Honor.

24 THE COURT: None from the defense, Judge.

25 THE COURT: Have a great lunch. I'll see y'all

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1 at 2:00.

2 MR. STEVENS: Thank you, ma'am.

3 THE COURT: You're welcome.

4 Mark that as a Court's Exhibit for me.

5 [Court's Exhibit Number 1 is marked by the court
6 reporter]

7 [Whereupon, Court's Exhibit Number 2 is marked
8 by the court reporter]

9 [Whereupon, a recess is taken from 12:40 p.m. to
10 2:04 p.m.]

11 THE COURT: Is the State ready to proceed?

12 MR. BELL: The State is ready.

13 THE COURT: Is the defense ready to proceed?

14 MR. STEVENS: We're still getting our client.

15 THE COURT: That's fine.

16 Now, while we're waiting on Mr. May, I need to
17 advise you both that I do not take speaking
18 objections, which means if you have an objection, I
19 will ask you the basis of that objection and you
20 should be able to succinctly state that for me,
21 whether it be leading, pitting, relevance. There are
22 a myriad of objections that could be raised. I do not
23 take argument unless I needed it in aid of making a
24 decision. So if I need argument, I will excuse the
25 jury for that purpose. Otherwise, I'll make a

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1 contemporaneous ruling.

2 Any questions from the State?

3 MR. BELL: None from the State, Your Honor.

4 THE COURT: From the defense?

5 MR. STEVENS: No, ma'am.

6 THE COURT: All right. Are we ready to proceed?

7 MR. BELL: The State is ready, Your Honor.

8 THE COURT: Is the defense ready?

9 MR. STEVENS: The defense is ready.

10 THE COURT: Who is the State's first witness?

11 MR. BELL: Quantavious Montgomery.

12 THE COURT: Where is he?

13 MR. BELL: He is out in the hall.

14 THE COURT: You need to get him. I don't want
15 to have to wait.

16 You can go ahead and get the jury now.

17 THE BAILIFF: Yes, Your Honor.

18 THE COURT: Thank you.

19 [Whereupon, the jury enters the courtroom at
20 2:05 p.m.]

21 THE COURT: Ladies and gentlemen, I hope that
22 you-all had a pleasant lunch recess. The sky
23 certainly opened up, didn't it, without any warning.
24 I heard that on the roof and I thought, is that rain,
25 it was just sun shining a minute ago. But I'm glad

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1 everybody has arrived safely.

2 We're now going to resume with testimony. And I
3 would ask that you give the attorneys your undivided
4 attention.

5 You may call your witness. The State may
6 proceed.

7 MR. BELL: Thank you, Your Honor.

8 If it please the Court, the State would call
9 Quantavious Montgomery to the stand.

10 THE COURT: Sir, if you would come to the stand
11 and be sworn.

12 [Whereupon, Mr. Montgomery comes forward]

13 THE CLERK OF COURT: Would you please place your
14 left hand on the Bible and raise your right hand,
15 please.

16 [Whereupon, Mr. Montgomery is duly sworn by the
17 clerk of court as follows: do you hereby swear or
18 affirm that the evidence you shall present to the
19 Court will be the truth, the whole truth, and nothing
20 but the truth, so help you God]

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you. You may have a seat.

23 [Whereupon, Mr. Montgomery takes the witness
24 stand]

25 THE CLERK OF COURT: Please state your name for

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1 the record and spell your last name.

2 THE WITNESS: Quantavious Montgomery.

3 THE CLERK OF COURT: Spell your last name.

4 THE WITNESS: Spell my last name? M-O-N-T-G-O-
5 M-E-R-Y.

6 THE COURT: You may proceed.

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Quantavious Montgomery
Direct Examination by Mr. Bell
August 12, 2014

1. QUANTAVIOUS MONTGOMERY,
2. Having Been First Duly Sworn,
3. was Examined and Testified as Follows:

4. DIRECT EXAMINATION

5. BY MR. BELL:

6. Q. Mr. Montgomery, are you employed?

7. A. Yes. I'm the manager.

8. Q. Manager of what?

9. A. The Keg.

10. Q. And where is the Keg located?

11. A. Down to 409 John C. Calhoun.

12. Q. In the city of Orangeburg?

13. A. Yes, sir.

14. Q. Do you do anything else besides work?

15. A. I go to school down here.

16. Q. Where do you go to school?

17. A. South Carolina State. I'm a graduate. I'm in
18. grad school right now.

19. Q. How long have you been working at the Keg?

20. A. It'll be a year this month.

21. Q. This is August.

22. A. Yes, sir.

23. Q. So you started in August of 2013?

24. A. Yes, sir.

25. Q. And I want to direct your attention to September

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1 of 2013, September 8th. Do you recall something happened
2 to you that day?

3 A. That's when the store got robbed, on that
4 Sunday.

5 Q. Okay. And you were working at the Keg that
6 Sunday?

7 A. Yeah. Yes, sir.

8 Q. Was anybody else working with you?

9 A. On sundays there's only one person because you
10 can't sell beer on sundays. So there's just one person.

11 Q. And what do y'all sell on Sunday?

12 A. Lottery, cigarettes, tobacco products, snacks,
13 stuff like that.

14 Q. Okay. What time do you open on Sundays? What
15 time did you open in --

16 A. We open at noon, like right when people get out
17 of church. Yes, sir.

18 Q. So you open at noon. And how long are you open
19 on Sunday?

20 A. About like six hours, because I ain't going to
21 be there all day.

22 Q. So back on September 8th, which was a Sunday,
23 2013, you opened at noon?

24 A. Yeah.

25 Q. And you closed at -- well, you usually closed at

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1 6:00 back then?

2 A. Yes, sir.

3 Q. Now, you stated that you -- the store got
4 robbed. Do you recall about what time that was?

5 A. I don't remember the time. I just remember I
6 was outside.

7 Q. Okay. But it was after noon?

8 A. Yeah. I know it was after I opened the door.
9 So, yeah, after noon.

10 Q. Can you tell the jury what happened?

11 A. I was standing outside, because on Sundays
12 business is slow. And I had just started working there.
13 A lot of customers, they didn't really understand that the
14 store was opened on Sunday so you have to be outside or
15 have the door open to let people know, you know, that
16 we're open.

17 So I'm outside. Parked my car on the side of
18 the store and I'm just outside, just sitting down outside
19 on the wall, like what the tape shows or whatever. And I
20 just noticed somebody walking to my left. I was leaning
21 down like this. And somebody was coming this way. And I
22 noticed like a gun. So I'm just like, oh, well, it's time
23 for me to run. And then by the time I kind of ran to the
24 corner I heard a noise like, hey, you know. I didn't want
25 to take any chances so I just turned around, went in the

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1 store, gave -- focused on the little registers, in the
2 bag, gave the money away. Because my boss taught me if we
3 get robbed, it's not worth your life so just -- you know,
4 just get the money out and just keep moving.

5 Q. And how many registers were there?

6 A. There's two registers in the Keg. But mainly
7 just one on Sundays because we don't make much money.

8 Q. Now, you said you saw a gun. What kind of gun
9 did you see?

10 A. It looked like a -- it was an AK-47.

11 Q. Can you describe it as best you can?

12 A. Assault rifle that you see in a lot of movies
13 and -- brown and -- I just saw it like from this angle
14 when he walked past me.

15 Q. Mr. Montgomery, I'm going to show you what's
16 been marked State's 17 for identification, that and this
17 clip. Does this look like the gun that you saw on
18 September 8th, 2013?

19 A. Yeah.

20 If you flip it this way, it definitely would
21 look like -- like flip it downward.

22 Q. Like this?

23 A. Yeah. Like this way --

24 Q. With that in there? That looks like the gun
25 that was displayed to you?

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1 A. Yeah.

2 Q. And then once he took the money, what happened?

3 A. He left. And I locked the store and then called
4 the police.

5 Q. And did the police come?

6 A. Yeah.

7 They came like say about fifteen -- fifteen
8 minutes later. Actually, I first called my boss first and
9 then I called the police.

10 Q. Who did you call?

11 A. Brother Graham. Well, my boss, Henry Graham.

12 Q. And then you called the police?

13 A. Yes, sir.

14 Q. And they came?

15 A. Yeah.

16 Q. And did you give them a statement?

17 A. Yeah.

18 I wrote this right here. Flashback. Yeah, it's
19 right here.

20 Q. And talking -- as part of talking to the police,
21 did you give them a description of the person that robbed
22 you, as best you can remember?

23 A. Yeah.

24 At the time I remember like when I was coming
25 back in the store, all I remember is the person hollered

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1 to me. They had dreds. And I remember they had like a
2 mask on so you couldn't see their face. And I wasn't
3 really trying to look, anyway.

4 Q. Have any other coverings about the body?

5 A. Not really. I just know -- oh. He had gloves.
6 I do remember gloves. I don't know what color they were,
7 though.

8 Q. Did he say anything to you during all of this?

9 A. I mean, it's like, hurry up, get the money, get
10 the money in the bag, and all -- and just flipping --
11 flipping money to the bag.

12 Q. Now, let me ask you this. As working at the
13 Keg, does the store -- is it a store by itself? Let me
14 ask you that.

15 A. Sir?

16 Q. The Keg: is it a store by itself, or is there
17 anything near it or what?

18 A. Well, on Sundays it's definitely a store by
19 itself. But during the week it's next door to a liquor
20 store, Green's Package Store or whatever. But it's its
21 own single store, but it's connected right next to a
22 liquor store.

23 Q. And as working there as a manager, are you aware
24 of any security systems that the Keg has?

25 A. I just know like when I first worked there,

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1 there's only one way in and one way out. The first thing
2 I asked them was, well, if something go down, what
3 happens. And they told me about the cameras that's all
4 around the store. And then the liquor store owns the -- I
5 guess some other cameras that -- the corner behind the
6 store and on the sides. I didn't even know my car was
7 blocked in during that day.

8 Q. And since that time, have you seen a video of
9 what happened that day --

10 A. Yeah.

11 Q. -- that were taken from those cameras?

12 A. Yeah. They showed it to me.

13 Q. And let me show you what's been marked as
14 State's 22 for identification and ask if I've shown you
15 this disk that has a little M on it.

16 A. It was a surveillance -- yeah.

17 Q. And the video that you saw, does that accurately
18 reflect what went on when you were present?

19 A. Yeah.

20 I was getting robbed at the store, putting money
21 in the bag, and then that was it. Those are the main
22 points --

23 Q. And that accurately reflects the person that
24 robbed you and everything that he had?

25 A. Yeah.

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1 MR. BELL: Your Honor, we would offer State's 22
2 into evidence.

3 THE COURT: Any objection?

4 MR. STEVENS: Simply that we raise our prior 901
5 argument.

6 THE COURT: Actually, the objection is
7 foundation. You need to lay the appropriate
8 foundation that it's kept in the ordinary course of
9 business.

10 Will be marked for ID only at this point.

11 MR. BELL: Okay.

12 THE COURT: He can authenticate it as to if it's
13 an accurate depiction, but you still have to establish
14 that it was kept in the ordinary course and how it was
15 kept.

16 MR. BELL: And I'll go -- I'll go --

17 THE COURT: And the objection on authentication
18 is overruled. Videos are self-authenticating unless
19 you have some good-faith evidence that it's been
20 hypothecated in same way. You may proceed.

21 Q. [Mr. Bell] But the video that you saw, the
22 video that's contained on this disk, accurately reflects
23 what went on that day; is that correct?

24 A. Yeah. Yes, sir.

25 Q. And are you aware that the cameras are on?

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August 12, 2014

1 A. Yeah. The cameras are on 24/7, so --

2 Q. And that's your security system. That's what
3 you do.

4 Do you have anything to do with the camera
5 system?

6 A. No.

7 Matter of fact, after that robbery, which was
8 the first robbery, that's when I got the code for the
9 camera or whatnot.

10 Q. But as far as you know, the cameras are kept on
11 in the normal course of business and they record
12 everything going on --

13 A. Uh-huh.

14 Q. -- 24/7?

15 A. Uh-huh.

16 MR. BELL: Your Honor, we would then now offer
17 it.

18 THE COURT: Overruled.

19 He has not established that he's the person in
20 charge of that or has that responsibility for the
21 business.

22 MR. BELL: Okay.

23 THE COURT: ID only, subject to foundation.

24 MR. BELL: Thank you, Your Honor.

25 Q. [Mr. Bell] And as I said, you gave a

Quantavious Montgomery
Direct Examination by Mr. Bell
August 12, 2014

1 description to the police?

2 A. Sir?

3 Q. Did you give a description of the person to the
4 police?

5 A. Yes.

6 Q. What kind -- what was the description you gave
7 the police?

8 A. I told them I remember that he was tall, had
9 dreds, and a mask on.

10 Q. Okay. Was he --

11 A. And that he was -- that he was lighter-skinned
12 than me, from what I looked at.

13 Q. Was he a white male or a black male or a --

14 A. I would say a lighter-skinned than I am.

15 Q. Okay. But was he a white male or a black male
16 or --

17 A. Oh. Black.

18 Q. -- a Japanese male or --

19 A. Black.

20 Q. Okay. So he was a light-skinned --

21 A. He was just lighter than me.

22 Q. And you stated that you saw that he had dreds
23 on?

24 A. Yeah.

25 I saw -- I just saw dreds from the mask.

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1 Everything was covered up so -- and I wasn't trying to
2 look at no face. So I was just -- I just saw like dreds
3 coming from the little street when I was coming in from
4 the video. So, yeah.

5 MR. BELL: Thank you, Mr. Montgomery. Please
6 answer any questions that Mr. Stevens may have for
7 you.

8 THE COURT: You may proceed.

9 MR. STEVENS: Thank you, Judge. May it please
10 the Court?

11 THE COURT: Yes, sir. You may proceed.

12 MR. STEVENS: Good afternoon, Mr. Montgomery.
13 My name is Breen Stevens. I represent the defendant,
14 Tykeem May.

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Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

CROSS-EXAMINATION

BY MR. BELL:

Q. What I would like to do first is ask you some questions about September 8, 2013. All right?

A. Oh. Okay.

Q. So you were working that day?

A. Yes, sir.

Q. And that was at the Keg?

A. Yes.

Q. And you actually saw the robber?

A. I was in the robbery.

Q. You were in the robbery. Okay.

A. So, yeah, I guess I did see him, too.

Q. You saw a gentleman walk on up?

A. Yeah. From a first-person perspective.

Q. Okay. And his face was covered?

A. Yeah. I didn't see -- I didn't see the face.

Q. And the eyes were covered, too?

A. Yeah. Everything was covered up.

Q. And his head was covered, too; right?

A. Yeah, besides like the little dreds I saw.

Q. Now, you said when you first walked on up you leaned back?

A. What do you mean when I first walked up?

Q. Well, no, no. Not when you --

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August 12, 2014

1 A. I was already like leaning back right here and I
2 seen -- when I was looking at my phone -- all I had was a
3 flyswatter, my phone, and like keys. And I just noticed
4 somebody was coming this way out of my left-eye angle. I
5 just noticed the gun this way. That's when I leaned back
6 and I looked up.

7 Q. So you just leaned back?

8 A. Yeah.

9 Q. And then after that you ran?

10 A. Yeah.

11 I was like -- because he was going inside the
12 store. I guess he thought I was a regular person. So I
13 thought, well, here's my chance, time to go.

14 Q. And so when you ran, you ran in the direction
15 away from the store?

16 A. Yeah.

17 Q. And you passed --

18 A. Almost -- basically passes the -- I think from
19 the video it shows me almost going to the fence, like past
20 through the fence, but I all-the-way turned. I would have
21 been gone. So --

22 Q. So you passed up a little alleyway?

23 A. Yeah.

24 Q. And that's where your car was parked?

25 A. Well, my car was parked farther down the side of

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 the store.

2 Q. The side of the store?

3 A. Yeah.

4 Q. I see.

5 And you didn't see any of the cars over there,

6 either?

7 A. No, sir. But I didn't go that direction.

8 Q. Your car is the red car?

9 A. Yeah.

10 It was a Nissan Honda -- I mean, Nissan Maxima.

11 Q. And you didn't see any of the cars over in that
12 direction?

13 A. No, sir.

14 Q. Not a white Dodge?

15 A. Huh-uh.

16 I didn't look that way. I was walking -- or
17 running towards like the Hot Spot.

18 Q. So you did look that way?

19 A. No, I didn't look that way. Like when I was
20 running, I was running straight from the --

21 Q. I got you.

22 A. -- from where I'm at -- from here's the Keg,
23 here's my car over here. I can't see my car because it
24 was blocked from the store. And here's the fence.

25 Q. I got you.

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 A. I run to the fence that way to, you know --

2 Q. You turned around and you walked on back?

3 A. Huh-uh. Well, when I turned around, yeah. I
4 turned around this way.

5 Q. Okay. And passed that little space between the
6 Keg and the fence?

7 A. Yeah.

8 But I didn't see like my car or the white
9 car.

10 Q. Okay. So you didn't see --

11 A. I didn't look that way.

12 Q. I got you.

13 Now, you were the only person working that day?

14 A. Yes, sir.

15 Q. And at that time, there was no one else inside
16 the store?

17 A. At that time, no.

18 Q. Now, eventually the robber left?

19 A. Yes, sir.

20 Q. On foot?

21 A. Well, he walked out the store, yeah. Because I
22 didn't look after to see where he was going. I just
23 locked and then called the police.

24 Q. And it was in the direction of the Hot Spot?

25 A. Sir?

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 Q. The direction the robber left.

2 A. I have no idea the direction he left after he
3 left out of the store.

4 Q. You saw him leave on foot?

5 A. Yeah, he was on foot out of the store.

6 Q. And you waited?

7 A. No.

8 I waited -- I waited for like five minutes to
9 lock the store from the inside. I didn't go look at the
10 cameras. I didn't look at the door or anything like that.

11 Q. So you did lock the door?

12 A. Yeah.

13 Q. And that was the door to the store.

14 And you said you didn't follow him out?

15 A. No.

16 Q. And you made a phone call; right?

17 A. Yeah.

18 Q. You called the owner?

19 A. Yeah.

20 Q. And you made another call; right?

21 A. Yeah.

22 Q. You called 911?

23 A. Yeah.

24 Q. And then the police arrived?

25 A. Yeah.

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 Q. And you gave a statement; right? I'm sorry. I
2 need an answer.

3 A. Oh. Yes, sir. Yes, sir.

4 THE COURT: Sir, you need to say yes or no.

5 A. Yes.

6 Q. [Mr. Stevens] And you gave that statement to an
7 officer?

8 A. Yes.

9 Q. And you said the robber was taller than you?

10 A. Yes.

11 Q. And in your statement you told them he was from
12 five eleven to six foot?

13 A. Yeah. From my perspective.

14 Q. Now, you also said that he wore a gray hoodie?

15 A. I think I did, yes, sir.

16 Q. All right. And you also said that he wore
17 gloves?

18 A. Yeah, I do remember gloves.

19 Q. But you did not see the robber arrive in a white
20 Dodge Caliber?

21 A. No, sir.

22 Q. And you didn't see anybody get out of a white
23 Dodge Caliber?

24 A. No, sir.

25 Q. And you didn't see anybody get into a white

Quantavious Montgomery
Cross-Examination by Mr. Stevens
August 12, 2014

1 Dodge Caliber?

2 A. No, sir.

3 Q. And you didn't see anybody leave in a white
4 Dodge Caliber?

5 A. No, sir.

6 MR. STEVENS: Court's indulgence?

7 THE COURT: Uh-huh.

8 MR. STEVENS: Thank you, sir. No further
9 questions.

10 THE COURT: Any redirect?

11 MR. BELL: Yes, Your Honor.

12 THE COURT: You may proceed.

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Quantavious Montgomery
Redirect Examination by Mr. Bell
August 12, 2014

REDIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Montgomery, you stated that your -- where was your car parked?

A. On the left side of the store.

Q. Let me show you what's been marked State's 1 for identification and ask if you can identify that picture.

A. Yeah. The right side of the store.

Q. And this is a picture of what?

A. Oh. Well, who do I like -- who do I like turn it in to?

Q. No. Just tell me what this is a picture of.

A. This is a picture of the Keg, and this is a picture of my car.

Q. And that's where your car was on September 8th, 2013?

A. Yes, sir.

MR. BELL: Your Honor, we would offer this as State's 1.

THE COURT: Any objection?

MR. STEVENS: No objection, Judge.

THE COURT: Marked and admitted, without objection, as State's 1.

[Whereupon, State's Exhibit Number 1 is admitted into evidence by the Court]

Quantavious Montgomery
Redirect Examination by Mr. Bell
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1 Q. [Mr. Bell] Let me show you what's been marked
2 as State's 2 for identification and ask if you can
3 identify that picture.

4 A. That's the back of the Keg.

5 Q. Okay. And there's a vehicle there. Was that
6 vehicle --

7 A. The only vehicle is my vehicle.

8 Q. That's your vehicle.

9 A. Yes, sir.

10 Q. That's what I'm asking you.

11 A. Oh. Yeah, that's it.

12 Q. Okay. That's your vehicle?

13 A. Uh-huh.

14 Q. And that's where it was parked on September 8th,
15 2013?

16 A. Yes, sir.

17 Q. That's how it was on September 8th, 2013?

18 A. Yes, sir.

19 MR. BELL: Your Honor, we would offer this as
20 State's 2 into evidence.

21 THE COURT: any objection?

22 MR. STEVENS: No objection.

23 THE COURT: Number 2 marked and admitted without
24 objection.

25 [Whereupon, State's Exhibit Number 2 is admitted

Quantavious Montgomery
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August 12, 2014

1 into evidence by the Court]

2 Q. [Mr. Bell] Let me show you what's been marked
3 as State's 3 and ask if you can identify that.

4 A. That's the back of the liquor store. Yeah.
5 They're the store that's got the cameras like this.

6 Q. Okay. And then where is the Keg? Can you show
7 the Keg in this relation?

8 A. In the left part. Got a drain and stuff right
9 there.

10 MR. BELL: We offer State's 3 for
11 identification.

12 THE COURT: Any objection?

13 MR. STEVENS: No objection, Judge.

14 THE COURT: Marked and admitted without
15 objection.

16 [Whereupon, State's Exhibit Number 3 is admitted
17 into evidence by the Court]

18 Q. [Mr. Bell] Now, Mr. Montgomery, when you were
19 out front looking at the -- did any vehicles pull up out
20 front?

21 A. No. I was out there for about a good ten
22 minutes.

23 Q. And is there any other parking around that
24 area?

25 A. I mean, yeah, like a little lot with a Kim's

Quantavious Montgomery
Redirect Examination by Mr. Bell
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1 this and that. That's the only lot where other parking
2 could be.

3 Q. Is there anything in the rear of the buildings?

4 A. I don't believe so.

5 Q. Is there a parking area back there?

6 A. I don't think so.

7 Q. But if there was a vehicle back there, you
8 wouldn't have been able to see it, would you?

9 A. No.

10 Q. Or if there was a vehicle on the side of the
11 building behind your car, you wouldn't have been able to
12 see it, would you?

13 A. No. We don't have them cameras.

14 MR. BELL: Thank you, Mr. Montgomery.

15 THE COURT: Any objection to the witness being
16 excused? From the State?

17 MR. BELL: No, Your Honor.

18 THE COURT: From the defense?

19 MR. STEVENS: None, Your Honor.

20 THE COURT: Sir, you are excused.

21 [Whereupon, Mr. Montgomery is excused and exits
22 the witness stand]

23 THE COURT: You may proceed.

24 MR. BELL: The State would call Henry Graham.

25 THE COURT: Sir, if you would come in this

Quantavious Montgomery
Redirect Examination by Mr. Bell
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1 direction to be sworn.

2 [Whereupon, Mr. Graham comes forward]

3 THE CLERK OF COURT: Would you please place your
4 left hand on the Bible and raise your right hand.

5 [Whereupon, Mr. Graham is duly sworn by the
6 clerk of court as follows: do you hereby swear or
7 affirm that the evidence you shall present to this
8 Court will be the truth, the whole truth, and nothing
9 but the truth, so help you God]

10 THE WITNESS: Yes.

11 THE COURT: Thank you. You may have a seat.

12 [Whereupon, Mr. Graham takes the witness stand]

13 THE CLERK OF COURT: Would you please state your
14 name for the record and spell your last name.

15 THE WITNESS: Henry Graham. G-R-A-H-A-M.

16 THE COURT: You may proceed.

17 MR. BELL: Thank you, Your Honor.

18 THE COURT: You're welcome.

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Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

HENRY GRAHAM,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Graham, how are you employed?

A. Self-employed.

Q. And what do you do as being self-employed?

A. Owner of the Keg.

Q. And how long have you owned the Keg?

A. About fifteen months now.

Q. And it's located where?

A. 409 John C. Calhoun.

Q. And are there any other businesses around
there?

A. Yes. There's an ABC store right next door.

Q. Do you own that?

A. No.

Q. Who owns that?

A. Marion Green.

Q. And do you have any business relationship with
Mr. Green?

A. Rent the building, that the Keg is located, from
Mr. Green.

Q. And do you recall last September 8th when your

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 business was robbed?

2 A. Yes.

3 Q. Mr. Montgomery, is he your employee?

4 A. Yes. He's the manager.

5 Q. And were you called to come down there?

6 A. Yes.

7 Q. And your business, do you have a security system
8 there?

9 A. Surveillance, yes.

10 Q. Video surveillance?

11 A. Yes.

12 Q. And what does that entail?

13 A. I think it's eight cameras located around the
14 building and inside the building.

15 Q. And do you maintain that or is that maintained
16 by somebody else?

17 A. We maintain it.

18 Q. Do you have access to the video that's fed
19 there?

20 A. I do.

21 Q. Now, on this particular occasion on September
22 8th, were you asked to access the video because of the
23 robbery?

24 A. Yes.

25 Q. Were you able to do it?

Henry Graham
Direct Examination by Mr. Bell
August 12, 2014

1 A. Yes.

2 Q. You were able to access the video?

3 A. With some help.

4 Q. With some help?

5 A. Right.. I had to call the company that installed
6 it.

7 Q. Okay. And what company was that?

8 A. Blackwater Security.

9 Q. Okay. And do you deal with a particular person
10 there?

11 A. Yes. Don. And I can't remember Don's last
12 name.

13 Q. Donny Hall; would that be correct?

14 A. Donny. Donny Hall. You're right. Yeah.

15 Q. And he works on your video and maintains it, as
16 well?

17 A. Yes.

18 Q. And how do you -- do you keep the cameras on
19 twenty-four hours seven?

20 A. Yes.

21 Q. Do you have any -- you have access to it as the
22 owner; is that correct?

23 A. Yes.

24 Q. Does anybody else have access? Or did anybody
25 have access back in last September 8th? Any other

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1 employee?

2 A. No.

3 Q. And did Mr. Hall have access to it?

4 A. Not unless he was let in the building. So I
5 would say no.

6 Q. But, I mean, when you called him he would go in
7 and --

8 A. Oh. Yes. Yes.

9 Q. -- maintain it or do whatever needed to be done?

10 A. Right. Yes.

11 Q. And did you -- it was on September 8th that the
12 video was taken, or was it another day, if you recall?

13 A. Taken by?

14 Q. The police. Or obtained by the police.

15 A. And I can't recall. It could have been that
16 day, yeah, but I can't recall.

17 Q. All right. Have you observed the video that day
18 of the robbery?

19 A. Yes.

20 Q. And the time stamps and all that and --

21 A. Yes.

22 Q. -- Mr. Montgomery being there?

23 A. Yes.

24 Q. Do you own the security of all the cameras
25 around, or just for the Keg inside and outside?

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1 A. Just for the Keg.

2 Q. But you're aware there's other security --

3 A. Yes.

4 Q. -- around the perimeter, as well?

5 A. Yes.

6 Q. Now, on September 8, 2013, were you asked by the
7 police to determine if money was taken and if so, how
8 much?

9 A. Yes.

10 Q. And did you do that?

11 A. Yes.

12 Q. And how did you do that?

13 A. We pulled the register tape. We always keep a
14 certain amount in the cash register and then we pulled the
15 register tape to check the sales for that day.

16 Q. And did you give them some type of written
17 report reflecting what your loss was?

18 A. Yes.

19 Q. Let me show you -- well, I haven't marked this
20 one. Sorry.

21 THE COURT REPORTER: 25 for ID.

22 [Whereupon, State's Exhibit Number 25 is marked
23 by the court reporter]

24 Q. [Mr. Bell] Let me show you what's been marked
25 as State's 25 for identification and ask if that's the

Henry Graham
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1 report that you gave to police to figure out how much, if
2 any, money had been taken.

3 A. Yes.

4 Q. And what was the amount?

5 A. 281.65.

6 MR. BELL: Your Honor, we would offer this as
7 State's 25.

8 MR. STEVENS: Without objection, Judge.

9 THE COURT: Marked and admitted without
10 objection.

11 [Whereupon, State's Exhibit Number 25 is
12 admitted into evidence by the Court]

13 Q. [Mr. Bell] And that was a Sunday, wasn't it, on
14 September 8th?

15 A. Yes.

16 Q. What time do y'all open -- or did y'all open
17 back then on Sunday?

18 A. We opened at 12:00, closed at 6:00.

19 Q. 12:00 noon?

20 A. Uh-huh.

21 Q. I guess that's because you don't sell -- can't
22 sell alcohol on Sunday?

23 A. Right. Exactly.

24 MR. BELL: All right. Thank you, Mr. Graham.

25 Please answer any questions that Mr. Stevens may have

Henry Graham
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1 for you.

2 THE COURT: You may proceed.

3 MR. STEVENS: Thank you, Judge.

4 THE COURT: You're welcome.

5 MR. STEVENS: May it please the Court.

6 THE COURT: Yes.

7 MR. STEVENS: Good afternoon, Mr. Graham.

8 THE WITNESS: Hello.

9 MR. STEVENS: My name is Breen Stevens. I
10 represent the defendant, Tykeem May.

11 THE WITNESS: Right.

12 MR. STEVENS: Pleased to meet you.

13 THE WITNESS: Good to meet you, as well.

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Henry Graham
Cross-Examination by Mr. Stevens
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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Now, you established pretty clearly you are the owner of the Keg; right?

A. Yes.

Q. Yes, sir.

And you owned it on September 8, 2013; right?

A. Yes.

Q. And you recall that day; right?

A. Right. Yes.

Q. You were first called by Montaveous -- I'm sorry -- Quantavious Montgomery?

A. Yes.

Q. And then you came to the store?

A. Correct.

Q. And that was in the afternoon?

A. Yes.

Q. You were the one that was robbed; right?

A. Yes.

Q. And you attempted to access the videos?

A. Right.

Q. But your password didn't work; right?

A. Did not work.

Q. So at that moment, at the time you were not able to access it?

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1 A. Well, didn't know the password.

2 Q. I see.

3 So because of that, you weren't able to access
4 it; right?

5 A. Right.

6 Q. I got you.

7 I won't keep you here very long, sir. I just
8 want to make clear. You were not present there during the
9 robbery, were you?

10 A. No.

11 Q. Okay. So you did not personally witness the
12 robber?

13 A. No.

14 Q. That means you did not personally witness
15 whether the robber was on foot?

16 A. No.

17 Q. And you didn't notice whether the robber was
18 driving?

19 A. No.

20 MR. STEVENS: Thank you, sir.

21 No further questions, Your Honor.

22 THE COURT: Any redirect of the witness?

23 MR. BELL: No, Your Honor.

24 THE COURT: Any objection to the witness being
25 excused?

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1 MR. BELL: No, Your Honor.

2 THE COURT: From the State?

3 MR. BELL: Not at all.

4 THE COURT: From the defense?

5 MR. STEVENS: None, Your Honor.

6 THE COURT: Sir, you are excused.

7 THE WITNESS: Thank you.

8 MR. BELL: Thank you, Mr. Graham.

9 [Whereupon, Mr. Graham is excused and exits the
10 witness stand]

11 THE COURT: You may proceed.

12 MR. BELL: The State would call Donny Hall.

13 [Whereupon, Mr. Hall comes forward]

14 THE CLERK OF COURT: Please place your left hand
15 on the Bible and raise your right hand.

16 [Whereupon, Mr. Graham is duly sworn by the
17 clerk of court as follows: do you hereby swear or
18 affirm that the evidence you shall present to this
19 Court will be the truth, the whole truth, and nothing
20 but the truth, so help you God]

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Thank you. You may have a seat.

23 [Whereupon, Mr. Hall takes the witness stand]

24 THE CLERK OF COURT: Please state your name
25 again for the record and spell your last name.

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1 THE WITNESS: My name is Donny Hall, Jr. Last
2 name H-A-L-L.

3 THE COURT: You may proceed.

4 MR. BELL: Thank you, Your Honor.

5 THE COURT: You're welcome.
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Donnie Hall
Direct Examination by Mr. Bell
August 12, 2014

DONNIE HALL,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Hall, how are you employed?

A. Right now I'm self-employed.

Q. And self-employed doing what?

A. Install closed-circuit television, which is
security cameras, for houses and businesses.

Q. Okay. And how long have you been self-employed
doing that?

A. Well, all together, eight years. I worked for
Blackwater for one year.

Q. And when did you work for Blackwater?

A. That was this past year. Stopped right around
in December.

Q. So it was basically December 2012 to 2013?

A. Yes, sir.

Q. And you've been doing security systems for how
long?

A. It's been right around eight, nine years. Yes,
sir.

Q. And what do you do with security -- I mean,
what --

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1 A. Everything. Basically, on my own, for my own
2 business, I basically install everything from the wiring
3 to the networking, installing the type of cameras they
4 want depending on, you know, how many TVLs they want. It
5 just really depends on what the customer is asking for at
6 the time.

7 Q. And what's a TVL?

8 A. Lines and resolution, basically. Television
9 lines.

10 Q. And that's like the 710 and 1080 --

11 A. Right.

12 Q. -- that we have on --

13 A. Yes, sir.

14 Q. -- the big-screen TVs and all that?

15 A. Yes, sir.

16 Q. Did you either -- as you're working for yourself
17 or with Blackwater, did y'all work with the Keg or have an
18 account with the Keg?

19 A. Yes, sir.

20 Q. And what about Green's Liquor Store?

21 A. I did that one, as well, yes, sir.

22 Q. You did both?

23 A. Uh-huh.

24 Q. And what did you do for that -- those two
25 businesses?

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1 A. Both of them I, you know, did all the wiring,
2 installed everything, installed the cameras, set
3 everything up for them.

4 Q. And do you do anything else besides -- do you
5 have any kind of continuing relationship with them?

6 A. Yes, sir.

7 I keep contact with them. But also, if they
8 need anything, they have my number to call me. Once I
9 install a system, they own the system. It's not like ADT
10 or anything like that where you actually pay a monthly
11 fee. If they need anything maintained or anything, they
12 call me and I come take care of it at the time. Or if
13 they have an event that happens, they call me and I
14 actually come and back up the system for them.

15 Q. And what do you mean by backing up the system?

16 A. I take the information off the hard drive inside
17 the DVR. It has a hard drive like a computer. And I take
18 the information off that, put it onto a jump drive and
19 then at that time it's up to whether -- you know, if they
20 want to take the jump drive or I can actually put it on a
21 disk for them.

22 Q. Now, specifically with the Keg and Green's
23 Liquor Store, is it one security system for the whole --

24 A. No, sir.

25 Q. -- both businesses?

Donnie Hall
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1 A. There's two separate -- there's one in the store
2 side and there's another one in the liquor store side.

3 Q. And what did -- what do these security systems
4 -- what do they entail?

5 A. On the store side -- they both have QC systems.
6 But on the store side, he actually has an eight-channel
7 system. And on the liquor store side, he actually has a
8 larger system but only eight cameras, which is a sixteen-
9 channel system.

10 Q. And what -- you said a Q --

11 A. It's a QC-QS. It's the type of DVR system that
12 they have.

13 Q. And how did they -- I mean, how did you install
14 what cameras go to the Keg and what cameras go to the --

15 A. Because of the way the store is divided in half
16 -- you know, the left side, if you're facing the back --
17 or if you're facing the front, say the left side is the
18 liquor store and the right side is what they classify as
19 the Keg. All the cameras on the right side are hooked to
20 the store portion; all the cameras on the left side are
21 hooked to the liquor store. Even when it comes to the
22 outside and the inside, they're separated. They're just
23 divided down the middle.

24 Q. Okay. Now, were you asked back last September,
25 back September 8th, to access the Keg's DVR system because

Donnie Hall
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1 of an incident?

2 A. Yes, sir.

3 Q. Do you recall when you were asked to do that?

4 A. I do not recall the exact date. I do recall
5 that I had to actually go there twice. Yes, sir.

6 Q. Okay. And who did you go there for?

7 A. Well, I was called and I came there for the
8 police department.

9 Q. Did you meet a police officer there?

10 A. Yes, sir.

11 Q. Do you recall who that was?

12 A. Mr. Dukes.

13 Q. And you said you went two times. Why did you go
14 two times?

15 A. Because we had to make sure on the footage,
16 because remember the times on those DVRs are off.

17 Q. And you've seen the video footage --

18 A. Yes, sir.

19 Q. -- is that correct?

20 A. Uh-huh.

21 Q. And you said that the times were off; is that
22 correct?

23 A. Yes, sir.

24 Q. How far were they off?

25 A. They both varied. They were off by a few hours.

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1 And I can't remember exact -- because it's been awhile. I
2 don't know exactly.

3 Q. And how did these systems keep time or date or
4 whatever?

5 A. What they do is when you initially set it up,
6 you can go in and manually set the time and the date. But
7 what happens is because it's not like a regular-based
8 thing where we come every month or something like that --

9 MR. STEVENS: Objection. 702.

10 THE COURT: It doesn't require specialized
11 knowledge. It's within the ambient of his what he
12 does for a living. He's established that he has a
13 foundational knowledge of how these systems operate
14 and that these are the systems he actually installed.
15 Overruled.

16 You may proceed.

17 Q. [Mr. Bell] Go ahead.

18 A. What happens is these systems, just like a hard
19 drive, you know, they need to shut down to reset
20 themselves. The reason for that is, you know, if you run
21 something too long and you never reset it, it eventually
22 starts to act up, especially hard drives. So we set them
23 to where every thirty days they actually reset themselves.
24 But in doing that, they actually -- there's nobody there
25 to actually go in and manually change the dates and times

Donnie Hall
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1 back. So that's why we have to -- when somebody calls us
2 for an event, that's why we have to look at what time it's
3 showing at that. And if they tell us like, well, it
4 happened last Tuesday at this time, we do the math from
5 where -- you know what I'm saying -- from where they were
6 off to make it -- find out where the footage is.

7 Q. And it took you going in there to realize that
8 the times were off; is that correct?

9 A. Yes, sir.

10 And the reason we have to do it twice is because
11 there is two systems in there. And so what we had on this
12 one -- and they were installed on different days. So
13 that's why where the time was off on this one, it was
14 different on the other one.

15 Q. So the times would be consistent on one system
16 but they may be different between the two systems?

17 A. Yes, sir.

18 Q. By minutes or hours or whatever --

19 A. It could be hours. It could even be days.

20 Q. Okay. Now, have you seen -- have you been shown
21 what's been marked State's 23?

22 A. Yes, sir.

23 Q. And that contains -- is what's on State's 23
24 video that you downloaded from the system at the Keg and
25 Green's Grocery?

Donnie Hall
Direct Examination by Mr. Bell
August 12, 2014

1 A. Yes, sir.

2 Q. And who did you turn those over to?

3 A. I turned those over to Mr. Dukes.

4 Q. And you gave kind of all the videos for a
5 specific or a certain time range; is that correct?

6 A. Yes, sir.

7 Usually they'll give me -- what we'll do is
8 we'll go two hours before and two hours after, just to
9 make sure that -- you know, in case somebody was coming
10 around before or after.

11 Q. And this video I'll show you just has very small
12 excerpts of different cameras; is that correct?

13 A. Yes, sir.

14 Q. It doesn't have the whole two hours --

15 A. It doesn't have the whole --

16 Q. -- or whatever?

17 A. Yes, sir.

18 Q. It's about six minutes.

19 And does that accurately reflect what you
20 downloaded and what is from those camera systems --

21 A. Yes, sir.

22 Q. -- that you downloaded back in September of last
23 year?

24 A. Yes, sir, it is.

25 MR. BELL: Your Honor, we would offer State's 23

Donnie Hall
Direct Examination by Mr. Bell
August 12, 2014

1 into evidence.

2 THE COURT: Any objection?

3 MR. STEVENS: No, Your Honor.

4 THE COURT: Marked and admitted without
5 objection.

6 State's 23? Is that correct?

7 MR. BELL: Yes, Your Honor, State's 23.

8 [Whereupon, State's Exhibit Number 23 is marked
9 by the court reporter]

10 [Whereupon, State's Exhibit Number 23 is
11 admitted into evidence by the Court]

12 MR. BELL: And because of this way, we're going
13 to withdraw what's been marked as State's 22 for
14 identification, because it's contained within State's
15 23.

16 THE COURT: Well, it's already marked as ID so
17 it will remain marked for ID.

18 MR. BELL: Okay. But I just wanted to kind of
19 put that for the record as why it wasn't entered.

20 MR. BELL: Your Honor, at this time may we
21 publish State's 23 to the jury via the TV, computer
22 TV?

23 I hate to ask you, but I might have to ask you
24 to come down. I know you've got a bad back.

25 [Whereupon, Mr. Hall complies]

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1 [Whereupon, Video, State's Exhibit Number 23, is
2 played for the jury, with questions from Mr. Bell]

3 [Whereupon, State's Exhibit Number 23 is not
4 transcribed by the court reporter]

5 Q. [Mr. Bell] Does this show one of the camera
6 angles there?

7 A. Yes, sir. That's from the register side.

8 Q. And the time says 9:49. Is that accurate, as
9 far as you know?

10 A. As far as what's on the DVR. But that's not the
11 correct time.

12 Q. Could somebody go in and change the time on the
13 DVR?

14 A. No, sir.

15 If you change it, what happens is it'll go to a
16 format and it will actually erase all of the footage
17 that's on there.

18 Q. So you've kind of got to take it for what it is;
19 is that correct?

20 A. You've got to take it for what it is.

21 Q. And a lot of these store security systems, based
22 on your experience some are accurate, some aren't, is that
23 correct, based on --

24 A. Right.

25 Based on -- when it comes to the reset, now, if

Donnie Hall
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1 the customer wants to go in there on that day and reset it
2 every time. But it'll still be off by so many minutes,
3 especially if you're using more than one system in a
4 store.

5 Q. I'm going to play it and -- that's a different
6 camera? That's --

7 A. Yes.

8 Q. -- channel 7? Of which store?

9 A. That's the liquor store side. You can tell
10 because it's pointing towards the Keg side where the trash
11 can is.

12 Q. And the time should be consistent with all the
13 liquor store cameras; is that correct?

14 A. Yes, sir.

15 Q. All right. We'll stop that. That's camera 7,
16 which is -- which side is that?

17 A. That there's on the store side.

18 Q. Okay. Now, this view kind of looks bleached out
19 or something; is that --

20 A. Yes, sir. It's a different camera than the rest
21 of them. This is actually one that mister -- for the
22 store side, Mr. Graham only ordered so many, but it would
23 actually hold an extra camera so he brought this one from
24 his house. This one here is what we call -- remember we
25 were talking about the lines of resolution? This is 420.

Donnie Hall
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1 The rest of the cameras are 600.. That's why it looks --

2 Q. What difference does that make?

3 A. It's a lower-grade camera.

4 Q. So that's kind of why it's --

5 A. That's why it looks that way.

6 Q. This is on the Keg side?

7 A. Yes, sir.

8 Q. And that has a different time.

9 MR. STEVENS: Judge, hearsay. I'm sorry, Your
10 Honor. Leading.

11 THE COURT: Sustained, leading. Rephrase.

12 Q. [Mr. Bell] Camera seven, which side is it on?

13 A. That's on the Keg side.

14 Q. And there's a different time than what we just
15 saw?

16 A. Yes, sir.

17 Q. And is that because it's a different system?

18 A. It is. Because it's on a different DVR.

19 Q. On what -- and this is camera eight. On which
20 side?

21 A. The store side. Because you can see that's
22 where he's getting ready to go in.

23 Q. And that color is a little cooler or whatever?

24 A. It's because that's a 600.

25 Q. And that's camera four.

Donnie Hall
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1 A. And that's in the store -- that's on the store
2 side.

3 And you'll notice that, yes, they have a little
4 bit different -- they have -- the lighting is different
5 from the inside and outside. So the IRs play a difference
6 in it.

7 Q. That's camera two?

8 A. Yes. Still on the store side. Yes, sir.

9 Q. And this is camera three?

10 A. Yes, sir. Still on that same store side.

11 Q. Now we're back to camera eight. Is that still
12 the store?

13 A. Yes, sir. That's the store side.

14 And that's that same one that's got that the
15 lower monitor resolution.

16 Q. Camera 7?

17 A. And now we're back to -- with the store side.

18 And that one is on the liquor store side, as
19 well.

20 [Whereupon, State's Exhibit Number 23 concludes]

21 MR. BELL: Okay. You can have a seat.

22 [Whereupon, the witness retakes the witness
23 stand]

24 Q. [Mr. Bell] Mr. Hall, let me show you two
25 stills. Let me show you what's been marked as State's 4

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1 for identification and ask if that appears to be a screen
2 shot from the video.

3 A. It is. Yes, sir.

4 Q. Taken directly from the video?

5 A. Yes, sir. On the store side.

6 MR. BELL: Your Honor, we would offer State's 4
7 into evidence.

8 THE COURT: Any objection?

9 MR. STEVENS: Without objection, Judge.

10 THE COURT: Marked and admitted without
11 objection.

12 [Whereupon, State's Exhibit Number 4 is admitted
13 into evidence by the Court]

14 Q. [Mr. Bell] and let me show you what's been
15 marked as State's 5 for identification and ask if that's
16 also a screen shot from a different camera.

17 A. It is, yes, sir, from -- and this is from the
18 liquor store side.

19 MR. BELL: Your Honor, we would offer this as
20 State's 5 into evidence.

21 THE COURT: Any objection?

22 MR. STEVENS: No.

23 THE COURT: Marked and admitted without
24 objection.

25 [Whereupon, State's Exhibit Number 5 is admitted

Donnie Hall
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1 into evidence by the Court]

2 MR. BELL: Thank you, Mr. Hall. Please answer
3 any questions Mr. Stevens has.

4 THE WITNESS: Yes, sir.

5 THE COURT: You may proceed.

6 MR. STEVENS: Judge, may it please the Court?

7 THE COURT: Yes, sir.

8 MR. STEVENS: Good afternoon, Mr. Hall.

9 THE WITNESS: Good afternoon, sir.

10 MR. STEVENS: My name is Breen Stevens. I
11 represent Tykeem May.

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Donnie Hall
Cross-Examination by Mr. Stevens
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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Now, you said you were self-employed with Blackwater Security; right?

A. Yes, sir. Well, I was employed for Blackwater Security. I was self-employed before that.

Q. So that's not your company?

A. Right.

Q. But you've been installing these security systems for approximately eight or nine years now?

A. Yes, sir.

Q. That takes some special knowledge or skill to do, or can any average Joe off the street just walk in --

A. No. You have to learn -- yes, sir, you have to learn some things.

Q. So some serious training involved, as well; right?

A. Yes, sir. And you have to continue to learn, as well.

Q. Along the way?

A. Yes, sir.

Q. I got you.

So it's a pretty specialized trade?

A. Yes, sir.

Q. Now, let's talk about the DVRs and the separate

Donnie Hall
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1 security systems. I want to focus your attention on that.

2 A. Okay.

3 Q. You said that there are two systems inside that
4 building; correct?

5 A. Yes, sir. Well, inside the building, yes, sir,
6 in different locations.

7 Q. Locations, as well? Right.

8 Now, you said that the times can be off;
9 correct?

10 A. Yes, sir.

11 Q. But you yourself can't specifically say exactly
12 how off they are from each other; right?

13 A. Right.

14 In other words, you can go in there -- like say
15 if you call me today and I went in there and you said,
16 okay, it happened Thursday between 1:00 and 2:00. Now
17 what you could do is see -- at that time you can see how
18 far it is off because then you can actually look and say,
19 okay, well, it's showing this date and time. So you can
20 do the math to find out exactly when that was.

21 Q. Right.

22 But you can't specifically say, well, this one
23 and that one are totally off by this specific amount?

24 A. When you look at each one you can.

25 Q. When you compare them?

Donnie Hall
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1 A. Right.

2 Q. But when you do compare them, if one does show
3 something happening on one system, it's not necessarily
4 overlapping with the other?

5 A. They are running -- they're basically running at
6 the same time. They just show different days and times
7 because they're two different units. That's all.

8 Q. But if one actually says, for example, five
9 o'clock --

10 A. Right.

11 Q. -- and the other one actually shows, I don't
12 know, 5:05 --

13 A. Uh-huh.

14 Q. -- one might actually be telling five o'clock
15 and the other one actually telling 5:05, were actually
16 running at the same time; right?

17 A. Right. Yes, sir. You would have to do the math
18 to know.

19 Q. Right.

20 But it's also possible they're running the same
21 time?

22 A. What do you mean by running at the same time?

23 Q. It's possible that they're both accurate?

24 A. Oh. That would be -- not on the same location,
25 no, because you'd think they're two separate units.

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1 If they're running at the exact same time --
2 there's no way they can both have -- it's about like --
3 when it comes to those type of systems, this -- of course,
4 you have more advanced systems that you can buy. But a
5 lot of people can't afford those, which is what's called
6 IP systems, which I'm sure you've seen, and those are dead
7 on the money. But when you come to those --

8 Q. But what we're talking about is possibilities.

9 A. Right.

10 If you set them up, they might show a minute
11 difference. But I doubt they're going to run on the same
12 exact time, because they're two separate units. You would
13 actually have to have them side by side and flip them on
14 at the exact same time.

15 MR. STEVENS: And, again, Judge, we would just
16 simply --

17 THE COURT: You elicited the question. You
18 can't object.

19 MR. STEVENS: Well, I understand, Judge.

20 THE COURT: When you elicit a question, you
21 elicit the response.

22 MR. STEVENS: I understand, Judge.

23 THE COURT: Under Rule 702, what he's testifying
24 to doesn't require the specialized training and
25 experience required of an expert. He's testifying

Donnie Hall
Cross-Examination by Mr. Stevens
August 12, 2014

1 based on his rational perception and his employment.
2 It's something he does every day.

3 MR. STEVENS: Yes, ma'am.

4 And our entire -- just for the record, we're
5 indicating that our entire line of questioning was
6 premised on --

7 THE COURT: I've already noted your objection.
8 I've overruled it.

9 If you elicit the question, it elicits the
10 information. I don't think you have standing to
11 object to it.

12 MR. STEVENS: Thank you, Judge.

13 THE COURT: So be careful in the way you posture
14 your question.

15 MR. STEVENS: Thank you, Your Honor.

16 THE COURT: You may proceed.

17 Q. [Mr. Stevens] Like we were saying, though: but
18 when it does come actually to it, the times are what the
19 times are?

20 A. Right.

21 MR. STEVENS: Thank you, sir.

22 THE WITNESS: Yes, sir.

23 MR. STEVENS: No further questions.

24 THE COURT: Any redirect of the witness?

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Donnie Hall
Redirect Examination by Mr. Bell
August 12, 2014

REDIRECT EXAMINATION

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BY MR. BELL:

Q. Let me go back. You stated that you went, on this particular occasion, on two different times; is that correct?

A. Yes, sir.

Q. For the police?

A. Yes, sir.

Q. And through working with the system, did you determine that the time was off?

A. Yes, sir. We noticed that right away. Yes, sir.

Q. And do you recall how far -- it looked like it was about four hours. Is that about right, what you remember?

A. It looked. But I can't remember exactly.

MR. BELL: Thank you, Mr. Hall. Nothing further.

THE COURT: Any objection to the witness being excused? From the State?

MR. BELL: None from the State, Your Honor.

THE COURT: From the defense?

MR. STEVENS: No, Your Honor.

THE COURT: Sir, you're excused.

[Whereupon, Mr. Hall is excused and exits the

Donnie Hall
Redirect Examination by Mr. Bell
August 12, 2014

1 witness stand]

2 THE COURT: You may call your next witness.

3 MR. BELL: The State would call Lieutenant
4 Anthony Robinson.

5 [Whereupon, Mr. Robinson comes forward]

6 THE CLERK OF COURT: Please place your left hand
7 on the Bible and raise your right hand.

8 [Whereupon, Mr. Robinson is duly sworn by the
9 clerk of court as follows: do you hereby swear or
10 affirm that the evidence that you shall present in
11 this case today will be the truth, the whole truth,
12 and nothing but the truth, so help you God]

13 THE WITNESS: Yes.

14 THE COURT: Thank you. Please have a seat.

15 [Whereupon, Mr. Robinson takes the witness
16 stand]

17 THE CLERK OF COURT: State your name again for
18 the record and spell your last name.

19 THE WITNESS: It's Lieutenant Anthony Robinson.
20 Robinson: R-O-B-I-N-S-O-N.

21 THE CLERK OF COURT: Thank you.

22 THE COURT: You may proceed.

23 MR. BELL: Thank you, Your Honor.

24 THE COURT: You're welcome.

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Anthony Robinson
Direct Examination by Mr. Bell
August 12, 2014

ANTHONY ROBINSON,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Robinson, where are you employed?

A. Orangeburg Department of Public Safety.

Q. And how are you employed there?

A. Shift supervisor.

Q. And you're a Lieutenant; is that correct?

A. Yes.

Q. What are your duties as a lieutenant as shift supervisor?

A. Well, I'm in control of several people on the shift. Well, actually, I'm in control of the whole shift. Just monitor -- to monitor all -- my duties, whatever duties I have that day and -- basically.

Q. Do you respond to calls at times?

A. Yes, sir.

Q. And was that your position back in September of last year?

A. Yes, a shift supervisor on that day.

Q. And I want to direct your specific attention to September 8th, 2013.

A. Okay.

MIA PERRON, CVR-CM-M

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Anthony Robinson
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1 Q. Were you working on that day?

2 A. Yes, sir.

3 Q. Were you working a particular shift?

4 A. Yes, sir. Alpha shift.

5 Q. Excuse me?

6 A. Alpha.

7 Q. And what is Alpha shift in your organization?

8 A. It's -- the A shift is just the first shift that
9 -- it's basically just one shift. We've got four shifts,
10 Alpha, Bravo, Charlie, and Delta.

11 Q. And what time is Alpha shift from -- to and
12 from?

13 A. I think that morning we were working -- we came
14 on at 7:45 to 8:00 p.m. 7:45 a.m. to 8:00 p.m.

15 Q. And during the course of your shift that shift,
16 did you have an occasion to be called to a place called
17 the Keg in the city of Orangeburg?

18 A. Yes.

19 Q. And why were you called there?

20 A. We had received a dispatch I think around about
21 almost two o'clock, two o'clock that afternoon, saying
22 there was a robbery that just occurred. And I was -- at
23 that time, I think I was stationary right there on 301 at
24 -- 301 and Magnolia, right across from McDonald's, just
25 sitting around just monitoring traffic. And when the call

Anthony Robinson
Direct Examination by Mr. Bell
August 12, 2014

1 came in, I just turned around and started to go ahead in
2 that direction. But I think my dispatcher had stated that
3 there was -- the subject who had robbed them was actually
4 walking down the street -- was told by the cashier, was
5 walking down 301, maybe walking down 301. So I started
6 looking in that area to see if I could find him. And
7 Officer Doctor went to the actual scene.

8 Q. And you're going from basically the middle of
9 town where -- the intersection of 601 and 301; is that
10 correct?

11 A. Yes.

12 Q. And you're heading back out like you're going
13 towards Interstate 26 --

14 A. Yes.

15 Q. -- and Chestnut?

16 A. Yes, sir.

17 Q. And when you were going that way once you got
18 the call, you said you were looking to see if you saw
19 anybody?

20 A. Right. I started searching the area to see if I
21 could see.

22 Because I think at that time they said it was --
23 the guy giving us a brief description, that he may be
24 carrying an assault rifle. I said, if somebody's carrying
25 an assault rifle on 301, I'm going to see them. So I was

Anthony Robinson
Direct Examination by Mr. Bell
August 12, 2014

1 riding around looking.

2 And then I started cutting around the other --
3 around the -- down other streets like Whitman and -- I
4 think it was Whitman, Clarendon and other stuff -- other
5 areas in that vicinity.

6 Q. So you went down 301 towards the Keg; is that
7 correct?

8 A. Right.

9 Q. And did you see anybody --

10 A. No.

11 Q. -- fitting the description --

12 A. No, sir.

13 Q. -- walking along --

14 A. No, sir.

15 Q. What other businesses? Is there another
16 convenience store down before that?

17 A. Hot Spot. The Hot Spot is there. Then like I
18 said, right there.

19 Q. And then did you stop at the Keg or did you go
20 farther or did you --

21 A. I actually stopped at the Keg, checked on
22 Officer Doctor to see what kind of information we were
23 going to -- what he was receiving. And when I got there I
24 started listening to what the cashier was saying, I saw
25 him making -- started called my dispatcher, started making

Anthony Robinson
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1 some phone calls to call out the investigator on call, the
2 CSI personnel on call, as well as a K-9 unit.

3 Q. Now, you said before that you rode around trying
4 to see if you saw anybody on foot?

5 A. Yes, sir.

6 Q. Did you see anybody matching the description?

7 A. No. No, sir.

8 Q. And what investigator responded at that time?

9 A. Who was the investigator?

10 Q. Yes, sir.

11 A. It was Sargent Hague.

12 Q. Okay. And the CSI, who was --

13 A. That would be Sargent Gibson.

14 Q. And you said something about the dogs were
15 called out?

16 A. Yeah.

17 I called the county's K-9 unit. I was unable to
18 get in touch with our K-9 unit, so we called the county
19 K-9. They were closer, so they came out. And I think it
20 was Corporal Harter at that time.

21 Q. And did you talk with the clerk there that was
22 robbed?

23 A. Briefly, yes.

24 Q. And you got a description of the individual?

25 A. Yes, sir.

Anthony Robinson
Direct Examination by Mr. Bell
August 12, 2014

1 Q. And Officer Doctor was there, as well?

2 A. Right.

3 Q. And he did most of the talking to the clerk; is
4 that correct?

5 A. Right.

6 Q. Is he with your --

7 A. No.

8 He's no longer with our -- he left, he resigned.
9 I think he was going to another department, I believe.

10 Q. And how long did you stay around the Keg in that
11 capacity?

12 A. I sat around a little bit and listened to what
13 he was saying, trying to get some information. And then
14 when he explained to me he was outside -- the cashier,
15 when he was outside that the subject came around the
16 building. And if I'm facing the building from 301, it
17 would be on the right side. Came around the building and
18 that's when he noticed him. And I assumed -- I said,
19 well, let me backtrack where he was at. So I said, I'm
20 going to go back that direction and see if I can see
21 anything.

22 Q. Did you see anything?

23 A. Well, I noticed some gloves that were by a trash
24 can and I said, well, why -- you know, there's some drugs
25 just sitting -- I mean, gloves were just sitting there.

Anthony Robinson
Direct Examination by Mr. Bell
August 12, 2014

1 So I went back and I asked the clerk was he wearing any
2 gloves, and he told Officer Doctor that he may have been
3 wearing some gloves. And so he walked back and said
4 that's possible, the gloves. So then I cornered off that
5 area and I went back.

6 And like I said, I wanted to wait until the CSI
7 got there. Not -- well, the CSI and the K-9 unit to get
8 there, too, on the scene.

9 Q. Do you know if the K-9 unit found anybody?

10 A. Not really.

11 I don't think -- I think they tracked to Metz
12 Trailer Park or Mell's Court or something, basically. But
13 I don't think -- they talked to somebody there but it
14 wasn't the right person, didn't look like the right
15 person.

16 MR. MELLARD: Objection, Your Honor. Hearsay.

17 THE COURT: It's within the scope of the
18 information.

19 Overruled. Not offered for its truth.

20 Q. [Mr. Bell] And is that basically all you had
21 done with this -- at this particular time?

22 A. Yes, sir.

23 And I waited on -- like I said, I waited on
24 scene with the CSI and the investigator. I think the
25 owner arrived a short period of time later, was trying to

Anthony Robinson
Direct Examination by Mr. Bell
August 12, 2014

1 get the camera systems up, was unable and said he would
2 have to call somebody to try to get the camera system up.

3 MR. BELL: Thank you, Lieutenant Robinson.

4 Please answer any questions the defense has.

5 THE COURT: You may proceed.

6 MR. MELLARD: Just a few questions.

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Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

CROSS-EXAMINATION

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BY MR. MELLARD:

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Q. So you responded and you called out the K-9 unit; is that correct?

5

A. Yes.

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Q. And you found some gloves?

7

A. Yes, sir.

8

9

I saw some gloves right by the trash can, the big green container.

10

11

Q. And you said the dogs tracked. I assume they tracked based on the gloves?

12

A. No. From the -- from the area, I would assume.

13

14

15

But the gloves were there, so I'm not sure if that -- those were his gloves or were somebody else's gloves. I just found gloves there.

16

17

Q. And you said the dogs tracked. What does that -- tell us what that means.

18

19

A. Well, they picked up a scent and they was following a scent in that area.

20

Q. Now, did you follow the K-9 unit?

21

22

A. No. Officer Metz, another officer on my shift, did.

23

24

Q. So all you know is you called out the K-9 unit and the K-9 unit picked up a scent and they tracked it?

25

A. They picked up a scent, yes.

Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

1 MR. MELLARD: That's all I have.

2 THE COURT: Any redirect?

3 MR. BELL: Nothing further, Your Honor.

4 THE COURT: Any objection to the witness being
5 excused? From the State?

6 MR. BELL: [No response]

7 THE COURT: Any exception to the witness being
8 excused?

9 MR. BELL: No, Your Honor.

10 THE COURT: From the defense?

11 MR. STEVENS: No, Your Honor.

12 THE COURT: Officer, you're excused.

13 [Whereupon, Mr. Robinson is excused and exits
14 the witness stand]

15 THE COURT: Madam Forelady, ladies and
16 gentlemen, you-all have been sitting a little over an
17 hour. I'm going to give you a quick restroom break.

18 During the break please do not discuss the case.
19 And please leave your notepads in your seats. If you
20 would go with your caretaker, please.

21 [Whereupon, the jury exits the courtroom at
22 3:07 p.m.]

23 THE COURT: We'll be at ease until 3:20.

24 [Whereupon, a recess is held from 3:08 p.m. to
25 3:23 p.m.]

Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

1 THE COURT: Is the State ready to proceed?

2 MR. BELL: Yes, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. STEVENS: The defense is ready, Judge.

5 THE COURT: All right. Please bring in the

6 jury.

7 THE BAILIFF: Yes, Your Honor.

8 [Whereupon, the jury enters the courtroom at

9 3:23 p.m.]

10 THE COURT: Ladies and gentlemen, I hope you
11 enjoyed your break. We'll now resume testimony.

12 You may call your next witness.

13 MR. BELL: The State would call Officer Kenny
14 Pifer, please.

15 THE COURT: Sir, if you would come forward to be
16 sworn.

17 [Whereupon, Mr. Pifer comes forward]

18 THE CLERK OF COURT: Please place your left hand
19 on the Bible and raise your right hand.

20 [Whereupon, Mr. Pifer is duly sworn by the clerk
21 of court as follows: do you hereby swear or affirm
22 that the evidence that you shall present to the Court
23 today will be the truth, the whole truth, and nothing
24 but the truth, so help you God]

25 THE WITNESS: I do.

Anthony Robinson
Cross-Examination by Mr. Mellard
August 12, 2014

1 THE COURT: Thank you. Please have a seat.

2 [Whereupon, Mr. Pifer takes the witness stand]

3 THE CLERK OF COURT: Please state your name
4 again for the record and spell your last name.

5 THE WITNESS: Kenneth Pifer. P-I-F-E-R.

6 THE COURT: You may proceed.

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Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

KENNETH PIFER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Where are you employed?

A. Orangeburg Department of Public Safety.

Q. And in what capacity are you employed there?

A. Patrol officer.

Q. And how long have you been employed with the
Orangeburg Department of Public Safety?

A. Just over ten years now.

Q. And what are your duties as a patrol officer?

A. Just answer calls for service, as well as
respond to calls for service and any call that may come in
through our dispatch center for a call for service
involving police or fire department.

Q. And I want to direct your attention back to
September of 2013. Were you working with the Department
of Public Safety then?

A. Yes.

Q. And specifically I think on September 14th --

A. Yes.

Q. -- 2013, were you on duty that day?

A. I was.

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 Q. And what were you doing? What kind of duty were
2 you doing that day?

3 A. Just on a regular routine patrol that day.

4 Q. And did you have an occasion to assist with a
5 traffic stop of a county officer, county deputy?

6 A. I did.

7 Q. And who did you assist with?

8 A. Lieutenant Randy Culler.

9 Q. And he's with the Orangeburg County Sheriff's
10 Office?

11 A. Yes, sir, Orangeburg County.

12 Q. And where did that occur?

13 A. Boulevard Street, just across from State Credit
14 Union, a bank there.

15 Q. Okay. Was that location in the city of
16 Orangeburg or --

17 A. It's in the city of Orangeburg.

18 Q. How did you come to assist him?

19 A. He called me.

20 Q. And where were you at the time?

21 A. I was -- I believe I was traveling on the Ellis
22 Avenue, just around the corner.

23 Q. And what did you do when you came up to where he
24 was?

25 A. I just pulled up to the traffic stop and just

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 positioned my vehicle to get a view of the car and got out
2 of my vehicle and just took a look at the -- in the
3 passenger side, just to make sure nothing suspicious or
4 illegal was inside the vehicle, and just stood by and
5 watched as Lieutenant Culler conducted his traffic stop.

6 Q. And did you observe what kind of vehicle he had
7 pulled over?

8 A. It was a white Dodge Caliber.

9 Q. Was there any significance to that vehicle or --

10 A. We just received a tip that it was possibly
11 involved in an armed robbery at the Keg.

12 Q. I mean, how did you -- what kind of tip? Or
13 what are we talking about?

14 A. We were given photographs from surveillance from
15 the business itself.

16 Q. Okay. And was that through your department?

17 A. That was through our department, yes.

18 Q. And other departments had that, as well?

19 A. Yes.

20 Q. The sheriff's department --

21 A. The sheriff's department, yes.

22 Q. Now, going back to you, what kind of vehicle
23 were you in?

24 A. My fully-marked Crown Victoria, public safety
25 written on the side of it. Fully marked.

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 Q. And it's got, what, red and blue lights, I
2 think; is that correct?

3 A. That's correct.

4 Q. Your emergency lights?

5 A. Correct.

6 Q. And what other kind of equipment do you have
7 inside?

8 A. Video camera, radar, computer.

9 Q. And did you have your video that day on
10 September 14th?

11 A. Yes, I did.

12 Q. And when you went to that traffic stop with
13 Lieutenant Culler, did you activate that system?

14 A. I did.

15 Q. And what were you trying to do by activating
16 that system?

17 A. Just, you know, look at the driver that was
18 driving. He had matched the description of the possible
19 suspect we were looking for. So we were just trying to
20 get a look at him and identify him, let the investigators
21 go from there with it.

22 Q. And afterward, I mean, did you do that? I mean,
23 you gave -- the video showed the vehicle itself?

24 A. I did.

25 I believe I zoomed in on the tag where you could

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 clearly see the tag number. And then got out and
2 positioned it where you could see the occupant while
3 Lieutenant Culler was out talking with him and get a good
4 physical description and get a good look at him.

5 Q. Okay. And does your video have audio, as well?

6 A. It does.

7 Q. And what kind -- I mean, how is the audio set up
8 with your --

9 A. It's a -- we wear a body mike. It's a piece on
10 our body.

11 And it records, Your Honor.

12 Q. Who was doing most of the conversing with that
13 person?

14 A. Lieutenant Culler was. Yes.

15 Q. And you were kind of close with your microphone?

16 A. I was.

17 Q. Let me show you what's been marked as State's 26
18 for identification. And it's a video disk. Have you seen
19 that video?

20 A. I have.

21 Q. Okay. And does it accurately reflect what went
22 on that day?

23 A. Yes, it does.

24 Q. And you use the video in the course of your work
25 as a police officer, is that correct --

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 A. Correct.

2 Q. -- when you make stops and all --

3 A. Correct.

4 Q. -- to record stops? I mean, any traffic stops,
5 DUIs or anything else that may --

6 A. Correct.

7 Q. -- you're investigating?

8 And you activated it that day --

9 A. Yes, I did.

10 Q. -- on that stop?

11 MR. BELL: Your Honor, we would offer State's 26
12 into evidence.

13 THE COURT: Any objection?

14 MR. MELLARD: Two, Your Honor. Foundation and
15 hearsay.

16 THE COURT: Please approach.

17 [Whereupon, an off-the-record bench conference
18 is held]

19 THE COURT: Madam Forelady, ladies and
20 gentlemen, I have a very brief matter of law to take
21 up.

22 During this break, please do not discuss the
23 case. And please leave your notepads in your seats.
24 We appreciate your patience.

25 [Whereupon, the jury exits the courtroom at

Kenneth Pifer
Direct Examination by Mr. Bell
August 12, 2014

1 3:30 p.m.]

2 [Whereupon, video played out of the presence of
3 the jury]

4 [Whereupon, video is not transcribed by the
5 court reporter]

6 THE COURT: For what purpose is the video being
7 offered?

8 MR. BELL: To show that -- I'm kind of -- I'm
9 having to go ahead of myself, but I'm going to come
10 back with Investigator Dukes that they were on the
11 lookout for a white Dodge Caliber because of that.
12 And this is the stop, six days after the robbery,
13 where they identify the -- they found a white Dodge
14 Caliber. They found an individual driving it who was
15 -- looked similar to the descriptions given. And they
16 got the information, they got the tag number, to who
17 it was registered to, they got his information, to
18 further the investigation.

19 THE COURT: Now, why do I have to -- we have to
20 see this whole video? That's shown in the first
21 twenty seconds, basically. He can testify as to what
22 they did. Because all I really can hear in the
23 background in Eric Clapton and Lela.

24 MR. BELL: That's right.

25 THE COURT: I don't hear much else. I hear a

Kenneth Pifer
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1 bunch of mumbling, but I don't hear anything audibly
2 or clearly, other than the radio. And what he says
3 really I can't ascertain any relevance to it other
4 than him dropping his friends off at his baby mama's
5 house and it's his girlfriend's car and they paid \$25
6 for somebody to tint the windows and does he need to
7 take it for somebody to check it. I mean, I --

8 MR. BELL: Well, I mean, the main video is
9 identifying the driver, identifying the vehicle and
10 that thing.

11 THE COURT: I think you can show that in the
12 first twenty seconds, with him being stopped, with
13 Mr. May getting out of the vehicle, them interacting.
14 I don't know that any of the audio is necessary.

15 And this witness is here. He was there. He
16 rationally perceived it. He can testify that, I
17 stopped him based on this description, this is what I
18 did as a result, I ran the tags, this is who it came
19 back to.

20 Because you really cannot hear it audibly. I
21 mean, you can hear bits and pieces of it. And I've
22 got pretty good hearing. But I suspect the jury would
23 be back there wanting to replay it and have us turn --
24 and need audio to augment it.

25 And I just don't know that it really adds very

Kenneth Pifer
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1 much, other than -- I mean, for the purpose that
2 you're offering it, I think you can accomplish that
3 without playing the whole thing and without the audio.

4 MR. BELL: Well, I have no problem. The first
5 shows the license plate and the individual getting out
6 for just a few seconds with the vision of who -- who
7 we've got -- and I can have them -- both officers
8 testify about the information.

9 THE COURT: I would think that's acceptable to
10 the defense.

11 MR. MELLARD: Yes, Your Honor. Yes, ma'am.

12 THE COURT: Okay. Can we proceed?

13 [Off the record momentarily]

14 MR. BELL: As modified, it's State's -- I can't
15 remember what the number is because I've got it in the
16 computer set up to go. Is that in evidence now?

17 THE COURT: Well, I would think what you need to
18 do is remark that one as a Court's Exhibit because it
19 depicts the entire stop.

20 But if you could burn one that just depicts that
21 short portion, because the jury shouldn't have to come
22 back in here and watch a video, if they want to see
23 it, once it's entered into evidence. Can you do that?

24 MR. BELL: I don't know that I can, because it's
25 embedded in another program. The other video I have

Kenneth Pifer
Direct Examination by Mr. Bell
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1 no problem because I've got the raw video. But this
2 one is embedded in a program from the police
3 department.

4 THE COURT: Well, why don't we investigate
5 whether we can do it or not.

6 Right now we'll just mark it as a Court's
7 Exhibit until we can get an answer about whether you
8 can burn another one.

9 MR. BELL: Well, I can get an answer hopefully
10 right here.

11 UNIDENTIFIED: I should be able to have one
12 burned for you with no problem.

13 THE COURT: Yeah. And if you --

14 MR. BELL: Just about the first, I don't know --

15 THE COURT: Tell him exactly the starting point
16 and the stopping point so that he can go ahead and
17 burn that. And then that is what will come into
18 evidence. And then the State's 26 will be
19 alternatively now marked as a Court's Exhibit because
20 it's the entirety of the video with the audio.

21 THE COURT REPORTER: State's 26 for ID is now
22 Court's Exhibit --

23 THE COURT: Whatever the number is.

24 [Off the record momentarily]

25 THE COURT: And then that will become State's

Kenneth Pifer
Direct Examination by Mr. Bell
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1 26. Is there any exception to the admission of that
2 document as redacted per the Court's instruction?

3 MR. MELLARD: No, ma'am.

4 THE COURT: And I'm giving the State leave to do
5 that over the evening recess and provide that for the
6 record.

7 MR. BELL: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 All right. Are we ready?

10 MR. BELL: Yes, ma'am.

11 THE COURT: Is the defense ready?

12 MR. MELLARD: Yes.

13 THE COURT: Please bring in the jury.

14 MR. BELL: What number was that, because I think
15 I still have --

16 THE COURT REPORTER: 26. And then I'm going to
17 move it --

18 THE COURT: It's not 26.

19 THE COURT REPORTER: It's going to be 26 --

20 THE COURT: The original is now Court's 3.

21 THE COURT REPORTER: If you'll give it to me
22 when you get through, I'll remark it.

23 MR. BELL: Okay.

24 THE COURT REPORTER: Thank you.

25 [Whereupon, the jury enters the courtroom at

Kenneth Pifer
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1 3:53 p.m.]

2 THE COURT: Ladies and gentlemen, we'll now
3 resume testimony.

4 Mr. Bell, you may proceed.

5 MR. BELL: Thank you, Your Honor. I think we --
6 I think I was at the point of offering it into
7 evidence, State's 26.

8 THE COURT: 26 has been marked and admitted
9 without objection.

10 [Whereupon, State's Exhibit Number 26 is
11 admitted into evidence by the Court]

12 MR. BELL: Yes, Your Honor. May I publish it to
13 the jury?

14 THE COURT: Yes, sir. You may proceed.

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Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

CONTINUED DIRECT EXAMINATION

BY MR. BELL:

Q. Before I start playing it, Officer Pifer, that is the video from your vehicle that you engaged?

A. Correct. That is the vehicle.

Q. And what street is that on?

A. That's Boulevard Street.

[Whereupon, State's Exhibit Number 26 is played for the jury, with questions from Mr. Bell]

[Whereupon, State's Exhibit Number 26 is not transcribed by the court reporter]

Q. [Mr. Bell] And who is that in front of you?

A. That's Lieutenant Culler in front of me. We're turning onto Fairfield Street. It's across from State Credit Union on Boulevard Street.

Q. And that's the vehicle that he's pulling over?

A. That's the vehicle, the white vehicle. It'll turn in and get a better view of it here.

Q. That was a view of the license plate?

A. Correct. Yeah.

Q. And that's Deputy Culler --

A. That is.

Q. And that's the driver?

A. That is.

Q. And that's who?

Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

1 A. That would be me.

2 Q. And that's the driver?

3 A. That's the driver.

4 [Whereupon, State's Exhibit Number 26, video,
5 concludes]

6 Q. [Mr. Bell] Now, Officer Culler, you were there

7 -- I mean, Officer Pifer, excuse me. Lieutenant Culler
8 made contact with the driver; is that correct?

9 A. Correct.

10 Q. And were you listening? Did he get information,
11 identifying information --

12 A. He did.

13 Q. -- from the driver?

14 And also information about the vehicle?

15 A. Yes, sir.

16 Q. Stuff like his driver's license and the license
17 plate and all that information?

18 A. Yes, sir.

19 Q. And you were privy to all that information as
20 well?

21 A. Yes, sir.

22 Q. Did you hear all that information being given?

23 A. I did.

24 Q. And what did you do with that information that
25 you -- that was ascertained from that stop?

Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

1 A. I just -- I copied it down and e-mailed it to
2 Detective Caddell.

3 Q. When did you -- did you e-mail it right then or
4 did you -- was it some time later?

5 A. I'm not a hundred percent sure if it was that
6 day or not.

7 Q. Okay. Let me show you this, if I can refresh
8 your recollection. Is that a copy of the e-mail that you
9 sent?

10 A. It's a forwarded copy. But, correct, it is a
11 copy on the bottom from where I sent it to -- at 3:24 that
12 day, on September 14th. I e-mailed Detective Caddell and
13 he forwarded it to Detective Dukes. Yes.

14 Q. But all the identifying information --

15 A. Correct.

16 Q. -- was what you put in there?

17 A. This is -- yeah, this is --

18 Q. What information did you put in? The name of
19 the driver?

20 A. Yeah.

21 Q. And what was his name?

22 A. Driver, Tykeem May; date of birth, GL
23 number that he gave us to identify himself with; the tag
24 number; and owner of the vehicle.

25 Q. And what -- did he give you an address?

Kenneth Pifer
Continued Direct Examination by Mr. Bell
August 12, 2014

1 A. He did. He gave us an address of
2 , is where he stated that he lived.

3 Q. And who was the owner of the vehicle?

4 A. It had dual owners on there. Charles Brown and
5 Tanya Brown.

6 Q. And why did you send that information to
7 Detective Caddell?

8 A. It was just suspicion, but, you know, the
9 information that had been given out from an armed robbery
10 that had previously occurred.

11 Q. And y'all were looking for a vehicle like that;
12 is that correct?

13 A. That is correct.

14 Q. And at that time, the description that you had
15 of the individual involved, did that driver match the
16 description, as you saw?

17 A. He did.

18 Q. And is that kind of what heightened your
19 interest?

20 A. It was.

21 MR. BELL: Thank you, Officer Pifer.

22 Please answer any questions the defense

23 Mr. Mellard has.

24 THE COURT: You may proceed.

25 MR. MELLARD: Just a couple of questions.

Kenneth Pifer
Cross-Examination by Mr. Mellard
August 12, 2014

CROSS-EXAMINATION

BY MR. MELLARD:

Q. The September 14th stop, you said you were working that day?

A. Yes, sir, I was.

Q. And I believe you had -- you were looking for a white or silver Dodge Caliber; is that correct?

A. Would be. Yes, sir, that's correct.

Q. You weren't sure if it was white, weren't sure it was silver. Okay.

A. Yes, sir.

Q. And a white Caliber was stopped that day?

A. Yes, sir.

Q. But you didn't do the stop?

A. No, sir.

Q. You just called for -- you called for backup, I guess?

A. Lieutenant Culler did on the stop.

Q. Called you for backup?

A. Yes, sir, because -- yes, sir.

Q. And my understanding, the stop was for window tint; is that correct?

A. Yes, sir.

Q. So window tint, we're talking the window was too dark or something?

Kenneth Pifer
Cross-Examination by Mr. Mellard
August 12, 2014

1 A. Correct.

2 Q. All right. And I believe a warning ticket was
3 issued for the --

4 A. Yes, sir.

5 Q. Did you issue that ticket?

6 A. I did not.

7 Q. You did not. Okay.

8 Just so we're clear. You didn't respond to the
9 robbery at the Keg?

10 A. No, sir, I did not.

11 Q. You weren't there?

12 A. I was not there.

13 Q. Weren't there when it happened?

14 A. No, sir.

15 Q. Didn't witness anything?

16 A. No, sir.

17 MR. MELLARD: All right. One second.

18 THE COURT: Uh-huh.

19 MR. MELLARD: That's all the questions I have.

20 THE COURT: Any redirect?

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Kenneth Pifer
Redirect Examination by Mr. Bell
August 12, 2014

REDIRECT EXAMINATION

BY MR. BELL:

Q. Officer Culler [sic], but you -- for lack of a better term, I think this is an old thing, but y'all were on the be on the lookout for a vehicle and an individual?

A. That's correct.

Q. Did y'all have anything to help you identify vehicles or individuals?

A. We had the surveillance video from the business itself that was robbed.

Q. Did you have anything in your vehicle that --

A. I had a photocopy. I did, yes, sir.

Q. Okay. Of the vehicle?

A. Of the vehicle and the suspect.

MR. BELL: Okay. Thank you.

THE COURT: Any objection to the witness being excused? From the State?

MR. BELL: No, Your Honor.

THE COURT: From the defense?

MR. MELLARD: No, ma'am.

THE COURT: Sir, you're excused.

[Whereupon, Mr. Pifer is excused and exits the witness stand]

THE COURT: You may call your next witness.

MR. BELL: The State would call Lieutenant

Kenneth Pifer
Redirect Examination by Mr. Bell
August 12, 2014

1 Randall Culler.

2 [Whereupon, Mr. Culler comes forward]

3 THE CLERK OF COURT: Please place -- raise your
4 right hand.

5 [Whereupon, Mr. Culler is duly sworn by the
6 clerk of court as follows: do you hereby swear or
7 affirm that the evidence that you shall present to the
8 Court in this case will be the truth, the whole truth,
9 and nothing but the truth, so help you God]

10 THE WITNESS: I do.

11 THE COURT: Thank you. You may have a seat.

12 [Whereupon, Mr. Culler takes the witness stand]

13 THE CLERK OF COURT: Please state your name
14 again for the record and spell your last name.

15 THE WITNESS: My name is Randy Culler.

16 C-U-L-L-E-R.

17 THE COURT: You may proceed.
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Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

RANDALL CULLER,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. And you're Lieutenant Culler; is that correct?

A. Yes, sir.

Q. And where are you employed?

A. Orangeburg County Sheriff's Office.

Q. And how are you employed there?

A. I'm a lieutenant in the patrol division.

Q. And how long have you been in law enforcement?

A. I started with the sheriff's office in '96.

Q. And you've been with the sheriff's office ever
since?

A. Yes, sir.

Q. So that's eighteen years almost?

A. Going on eighteen.

Q. Yeah.

And what do you do as a lieutenant over the
patrol division?

A. I oversee a shift.

I've got several guys underneath me that
basically when the shifts are running, any of the calls
for service or any of the activities that we're doing, I

Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

1 oversee everything.

2 Q. And were you working back on September the 14th
3 of last year, 2013?

4 A. Yes, sir.

5 Q. What times were you working on that day?

6 A. I believe it would have been day shift, so it
7 should have been from 7:00 in the morning until 7:00 in
8 the evening.

9 Q. And during your shift, did you have an occasion
10 to make a traffic stop on a vehicle on Boulevard?

11 A. Yes, sir, I did.

12 Q. What kind of vehicle was it?

13 A. It was a white Dodge Caliber with tinted
14 windows.

15 Q. And why did you make that stop?

16 A. I believe like the day before, or one day that
17 week, I had received I believe either a text or -- I
18 believe I got some pictures from a public safety officer,
19 I believe it was Officer Pifer with public safety. He had
20 told me they had an armed robbery that occurred at the Keg
21 and they basically gave me pictures of the vehicle that
22 was involved and somewhat of a picture of the suspect that
23 was involved with it.

24 Q. And so on that day, when did you first see the
25 white Dodge Caliber?

Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

1 A. I was leaving the law complex. I was at the
2 traffic light that's located there at Ellis Avenue and
3 Chestnut Street, and I was actually stopped at the red
4 light, and I observed a white Dodge Caliber coming down
5 Chestnut and he made a left turn onto Ellis in front of
6 me. And when he -- when I observed the car, I knew it
7 looked very familiar as the one that was in that picture
8 of the video.

9 Q. And so what did you do then?

10 A. Well, at first, I -- you know, he turned in
11 front of me so I had to wait on my light to change. So as
12 I was catching up to him, he actually turned into a yard.
13 So I said, well, I'm going to go down the road and sit
14 down the road and see who gets out of it to see who's
15 driving the vehicle.

16 So I went and parked a short distance away and
17 just sat on the side of the road. And I observed a
18 gentleman get out of the vehicle. And he stayed at a
19 residence there on Ellis for a little bit. And then when
20 he got back in the vehicle and drove off, that's when I
21 initiated a traffic stop on him.

22 Q. And when did you get -- how did you get in
23 behind him or what -- how did that transpire?

24 A. I'm not sure of the name of the street that I
25 was at. I think I was at Colleton Street, or something

Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

1 like that, and Ellis Avenue. And basically when he passed
2 by me, he passed right in front of me. I was kind of
3 parked at an intersection. And I was at the stop sign and
4 he passed right in front of me. So as soon as he passed
5 me, I turned out behind him.

6 Q. And where did he go from there?

7 A. He traveled down Ellis to the interjection of
8 Boulevard, Boulevard and Ellis, and he made a right turn
9 on Boulevard.

10 And at that point I activated my blue lights and
11 he pulled into the parking lot of the old Lewis Dukes
12 station there on Boulevard.

13 Q. Were there any other law enforcement officers
14 involved at this time?

15 A. Officer Pifer.

16 Q. And how did he become involved?

17 A. I called him.

18 Actually, when I saw the vehicle turn in front
19 of me and I said it looked very similar to the one in the
20 picture, or actually looked identical to it, I called in
21 and I said, I see a vehicle that's fitting the exact
22 description of the vehicle that you gave me a picture of.
23 And I said, it went to a house on Ellis, you know, I'm
24 sitting on it. And the guy got out and went to a house.

25 So he went ahead and headed in my direction so

Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

1 we could stop the vehicle to identify the guy.

2 Q. Okay. And you stopped at that station; is that
3 correct?

4 A. That's correct.

5 Q. And what did you do?

6 A. Basically went up, told him who I was, asked him
7 for his driver's license and his registration, and told
8 him why I stopped him. Went back to my vehicle. Spoke to
9 Officer Pifer, gave him the information. Wrote the
10 warning. I wrote him -- I actually wrote him a warning
11 for a window-tint violation. And basically we cut him
12 loose.

13 Q. Okay. What did you tell him that you stopped
14 him for?

15 A. I told him -- initially, I told him that it was
16 a window-tint violation. And also I told him that we had
17 been given a description of a vehicle. At that time I
18 told him it was for shoplifting, that we had a store that
19 gave us a description as a vehicle for shoplifting and,
20 you know, that I was stopping him to identify him to see
21 if he was the suspect in that shoplifting. Naturally, I
22 didn't want to say, I stopped you for armed robbery and he
23 had an out-of-state driver's license and then he flee the
24 area and we not be able to locate him.

25 Q. But you -- in fact, you were stopping him

Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

1 because the vehicle looked like the vehicle that everybody
2 was looking for?

3 A. That's correct.

4 Q. And who did you identify the driver as?

5 A. Mr. Tykeem May, I think is his name.

6 That's that gentleman that's sitting right
7 there.

8 Q. You're identifying the defendant as the driver
9 of that vehicle that you pulled that day?

10 A. Yes, sir.

11 MR. BELL: Your Honor, I would ask that the
12 record reflect that the witness has identified the
13 defendant.

14 THE COURT: You may proceed.

15 Q. [Mr. Bell] And did you determine who owned the
16 vehicle?

17 A. I did.

18 I don't recall the exact name of who owned it,
19 but I believe Mr. May told me the vehicle belonged to his
20 girlfriend.

21 Q. And what did you do with this -- did he give you
22 an address where he was living?

23 A. He -- I got a -- when I asked for his driver's
24 license, he gave me a Virginia license. So naturally he
25 had a Virginia license, I believe it was. So with him

Randall Culler
Direct Examination by Mr. Bell
August 12, 2014

1 having a Virginia license, driving a car from South
2 Carolina, one of my initial questions was, you know, what
3 are you doing here, who's car is it, and, you know, why
4 are you driving it. And he explained to me that it was
5 his girlfriend's, you know, vehicle.

6 And I don't recall the exact address that the
7 vehicle came back to but I believe I asked him did he live
8 at that address or did he live at another address, since
9 his driver's license was out of Virginia, Virginia
10 license. And he gave me an address, I believe it was
11 in Orangeburg.

12 Q. At that time, you just -- you gave him a warning
13 ticket and let him go; is that correct?

14 A. That's correct.

15 Q. And the information you got at the stop was
16 passed on; is that right?

17 A. That's correct. I passed that information on to
18 Officer Pifer.

19 Q. Okay. And he passed it on to --

20 A. To the investigators.

21 MR. BELL: Thank you, Lieutenant Culler. Please
22 answer any questions the defense has for you.

23 THE COURT: You may proceed.

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Randall Culler
Cross-Examination by Mr. Stevens
August 12, 2014

CROSS-EXAMINATION

BY MR. STEVENS:

Q. Let me get this straight. You stopped the guy, you told him that it was a window-tint violation --

A. Right.

Q. -- and that he was a shoplifting suspect --

A. That's correct.

Q. -- but that was a lie? That wasn't true?

A. The window tint wasn't a lie.

And the shoplifting side of things, naturally, like I explained in the beginning, being a felony charge of a violent nature like that, you know, not just for officer safety but to not -- if he is a suspect, I wouldn't want to say, hey, you did an armed robbery yesterday or this week, I'm trying to identify you, go ahead and flee back to Virginia. So, yeah, that's what I told him.

Q. So you lied to him?

A. So I told him a shoplifting, yeah. I didn't tell him the correct charge of what he was possibly involved in. But it did involve a store, yes.

Q. And the description -- you said that you were texted a description, I believe?

A. Yes, sir.

I don't recall -- I know I had a picture of it.

Randall Culler
Cross-Examination by Mr. Stevens
August 12, 2014

1 I believe it was a texted picture on my phone, I believe.

2 Q. A white or a silver Dodge Caliber? Is that what
3 you --

4 A. It was a white Dodge Caliber with tinted
5 windows.

6 Q. And did you know anything about that Dodge
7 Caliber?

8 A. Just a white Dodge Caliber.

9 Q. It could have been from Columbia, could have
10 been from Charleston?

11 A. Could have been from anywhere.

12 Q. Could have been from New Jersey?

13 A. Could have been.

14 Q. You didn't know anything about it?

15 A. No, sir.

16 Q. Now, you issued a warning ticket; is that
17 correct?

18 A. Yes, sir.

19 Q. And that was for the window tint?

20 A. Yes, sir.

21 Q. Now, just so I'm -- I want to make sure I've got
22 everything.

23 You didn't respond to any robbery on the Keg or
24 anything like that?

25 A. No, sir.

Randall Culler
Cross-Examination by Mr. Stevens
August 12, 2014

1 Q. Didn't witness anything?

2 A. No, sir.

3 MR. STEVENS: No more questions.

4 THE COURT: Any redirect?

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Randall Culler
Redirect Examination by Mr. Bell
August 12, 2014

REDIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Culler, besides the car, did you have any other photographs you testified to?

A. Yes, sir.

They gave me a picture of the vehicle and a picture of the suspect involved --

MR. STEVENS: Objection, Your Honor.

THE COURT: Basis?

MR. STEVENS: It is beyond the scope of cross-examination.

THE COURT: Approach.

[Whereupon, an off-the-record bench conference is held]

THE COURT: You may proceed.

MR. BELL: Nothing further, Your Honor.

THE COURT: Any objection to the witness being excused? From the State?

MR. BELL: No, Your Honor.

THE COURT: From the defense?

MR. STEVENS: No, ma'am.

THE COURT: Sir, you're excused.

THE WITNESS: Thank you.

THE COURT: You're welcome.

[Whereupon, Mr. Culler is excused and exits the

Randall Culler
Redirect Examination by Mr. Bell
August 12, 2014

1 witness stand]

2 THE COURT: You may call your next witness.

3 MR. BELL: The State would call Kelvin Dukes to
4 the stand.

5 [Whereupon, Mr. Dukes comes forward]

6 [Whereupon, Mr. Dukes is duly sworn by the clerk
7 of court as follows: do you hereby swear or affirm
8 that the evidence that you shall present to the Court
9 in this case will be the truth, the whole truth, and
10 nothing but the truth, so help you God]

11 THE WITNESS: I do.

12 THE COURT: Thank you. You may have a seat.

13 [Whereupon, Mr. Dukes takes the witness stand]

14 THE CLERK OF COURT: Please state your name
15 again and spell your last name.

16 THE WITNESS: My name is Kevin Christian Dukes.
17 The last name is spelled D-U-K-E-S.

18 THE COURT: You may proceed.
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Kevin Dukes
Direct Examination by Mr. Bell
August 12, 2014

KEVIN DUKES,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Where are you employed, sir?

A. With the Orangeburg Department of Public Safety.

Q. And how are you employed there?

A. Currently I'm an investigator, a general investigator. I investigate crimes anywhere from shoplifting to homicide.

Q. What's your rank?

A. I am -- I know I'm wearing corporal stripes, but actually I'm a newly-promoted sargent.

Q. Sargent Dukes; is that correct?

A. Yes.

Q. And how long have you been with the Orangeburg Department of Public Safety?

A. About seven and a half years.

Q. And is that how long you've been in law enforcement?

A. Yes.

Q. And how long have you been doing investigation?

A. Close to three years now.

Q. And you do -- do you do any special type of

Kevin Dukes
Direct Examination by Mr. Bell
August 12, 2014

1 investigations or --

2 A. Like I say, it can range anywhere from
3 shoplifting, cases such as this, armed robbery, cases of a
4 violent nature, misdemeanor cases, felony cases.

5 Q. And you were working as a detective with the
6 Department of Orangeburg -- the Orangeburg Department of
7 Public Safety back in September of last year?

8 A. Correct.

9 Q. And did you get assigned a case, the robbery of
10 the Keg --

11 A. Yes.

12 Q. -- that occurred in that month?

13 A. Yes.

14 Q. And when did you get assigned that?

15 A. I was actually off when the robbery occurred. I
16 was off that Monday. I think the robbery actually
17 occurred on the 8th and I actually picked up the case on
18 the 10th.

19 Q. Okay. And when you picked up the case, what did
20 you do?

21 A. Really, to start out with I didn't have a whole
22 lot at first. I was able to go back and make contact with
23 the victim that was there during the armed robbery.
24 Talked with him. I didn't get a written statement from
25 him. He had already provided the officers, who responded

Kevin Dukes
Direct Examination by Mr. Bell
August 12, 2014

1 originally, with a written statement. He verbally gave me
2 a statement that was consistent with the written statement
3 that he had already given.

4 I also made contact with a Donnie Hall, which
5 was able to access the video system there, and I was able
6 to retrieve video footage that was captured on camera
7 during that incident.

8 Q. And when did you obtain that video footage?

9 A. That was on the 12th, I believe.

10 Q. And he accessed all the cameras at that
11 particular location?

12 A. He accessed the cameras first in the Keg side,
13 and then we went to the liquor store side -- I think they
14 call it Green's Package Shop -- because they have two
15 separate DVR systems.

16 Q. And the Keg, do you know what the address of the
17 Keg is?

18 A. I believe it is 408 -- 409 John C. Calhoun
19 Drive.

20 Q. And that's in the --

21 A. It's within the city limits of Orangeburg.

22 Q. And what county is it in?

23 A. It's in Orangeburg County.

24 Q. And what did you do? Once you got the video,
25 what did you do?

Kevin Dukes
Direct Examination by Mr. Bell
August 12, 2014

1 A. I went back and started reviewing it, and
2 through the sequential events was able to ascertain that
3 during the armed robbery that a white Dodge Caliber pulled
4 behind Green Street -- through the rear driveway, the
5 Green Street -- or the Green's Package Shop, continued on
6 around to where the Keg was. There's a dumpster there.
7 Pulls forward to where the dumpster is. And then he --
8 the Dodge Caliber backs, kind of concealing itself, on the
9 right side of the Keg. From that --

10 Q. And then the video showed the actual robbery?

11 A. It showed the robbery. Correct.

12 Q. And the person that committed the robbery?

13 A. Correct. Yes, sir.

14 MR. STEVENS: Objection. Leading.

15 THE COURT: Basis? Sustained, leading.

16 Rephrase.

17 Q. [Mr. Bell] What did you do next with the video?

18 A. Got in touch with our liaison, which handles our
19 media --

20 Q. Well, let me go back and -- you were looking at
21 the video. You say that you watched the vehicle come in
22 the back?

23 A. Correct.

24 Q. What else did you watch of the video?

25 A. From that point on, it's -- you can't actually

Kevin Dukes
Direct Examination by Mr. Bell
August 12, 2014

1 see anybody get out of the car. But from the next camera,
2 you see the upper torso of a black male, appeared to be
3 light-skinned. His head was covered. He was wearing
4 glasses. He was stooped down actually in between the Keg,
5 the right side of the Keg if you were facing it from 301.
6 And I believe it was the victim's car that was parked on
7 that side.

8 From there it switches to a front camera and you
9 actually see him -- I call it shotgunning. If you've ever
10 watched football, they hold the football down by the leg
11 to kind of conceal it. You could see the same male
12 subject is standing -- he actually passes by the victim,
13 who is smoking a cigarette and texting. And he was
14 kneeling down by the wall near the front door of the Keg.
15 The subject with the rifle is actually holding it down his
16 right side. The victim looks up and sees it and you can
17 see the shock in his eyes. The subject with the rifle
18 continues on into the store. He goes in one or two steps.

19 You can see the victim take out. He's trying
20 to get out of there. So originally he's trying to run
21 toward the general direction of the Hot Spot, which is
22 right down the road. You can see the subject come back to
23 the door --

24 MR. STEVENS: Objection.

25 THE COURT: Basis?

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1 MR. STEVENS: 403.

2 THE COURT: Please approach.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: Sustained. Proceed.

6 Q. [Mr. Bell] Sargent Dukes, let me ask you this
7 question. How many times or how long did you study all
8 these videos that were involved in the robbery?

9 A. I didn't count it, but numerous, numerous,
10 numerous hours.

11 Q. And as a police officer investigating, the
12 information that you got from the victim and the videos,
13 were you able to kind of get a description of the person
14 that committed the robbery?

15 A. Correct. Yes, sir.

16 Q. And what description did you come up with, based
17 on your observations?

18 A. It would have been a light-complected, almost
19 reddish complected, black male, at least shoulder-length
20 dreds. Viewing it on my computer, I could see that the
21 black male had the portion up here that you could see --
22 because most of his face was covered -- you could see
23 thin, arched eyebrows in there. I didn't see any
24 distinguishable tattoos on the bare arms or anything. And
25 he was, in my estimation from looking at the video, six

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1 foot, six foot two, with a relatively muscular type build.
2 Not big, but just a muscular type build.

3 Q. And you had the information of a description of
4 the perpetrator and the vehicle. What did you do with
5 that information?

6 A. We actually put it out.
7 Our media-relations person with our department,
8 we put a clip of it in the Times and Democrat on their
9 mobile website where you can log in on the website.

10 And I think they also put an article in the
11 paper, and I think in that article it showed a picture of
12 the white Dodge Caliber and of the suspect.

13 I also printed up some papers with a picture of
14 the suspect from like the waist down, and also the Dodge
15 Caliber. I circulated that out to our patrol officers as
16 well as some of the officers with the county. It was more
17 or less the investigators at the county that I circulated
18 them.

19 Q. And after that, after you did all that, did you
20 have anything to do with this case?

21 A. I did.

22 Q. What? What was the next thing that happened --

23 A. The next thing that happened? Through the
24 information that was obtained through the traffic stop,
25 the vehicle came back registered to Emonie Ford. We were

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1 able to get an address where she resided, which was

2

3 I also -- with cases like this, I consult with
4 at the time was my immediate supervisor. He was a sargent
5 at that time. He's a lieutenant now, John Caddell. So we
6 collaborated together to, you know, continued this
7 investigator.

8 Q. Let me stop you and ask you --

9 A. Sure.

10 Q. -- the information you got about the vehicle,
11 that was from Lieutenant -- that was from Officer Pifer
12 and Lieutenant Culler with the sheriff's department?

13 A. Right. Through a text -- I originally got it
14 through a text message. Correct.

15 I did have a chance to speak with Lieutenant
16 Culler after that and he reaffirmed the text message.
17 Same thing with Officer Pifer. We talked about it.

18 Q. Let me -- did you watch the video of the traffic
19 stop?

20 A. I did, yes.

21 Q. And based on watching the video, did that
22 dissuade you or encourage you about that --

23 A. I thought we were moving in the right direction.
24 It wasn't enough at that time that I would have actually
25 arrested somebody, but it was enough that encouraged me to

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1 go further because I felt we were moving in the right
2 direction. The description of the male subject, the
3 overall description, matched and the description of the
4 car did match.

5 Q. And so you got an address that the vehicle went
6 back to; is that correct?

7 A. Correct.

8 Q. And what did y'all do next after you discussed
9 this with Lieutenant Caddell?

10 A. There were two locations that we had to actually
11 look out for because on information that I got from
12 Lieutenant Culler and Officer Pifer that backed him up on
13 the stop, Mr. May I think gave them an address of -- it
14 was a Brandon Street address. I can't remember the exact
15 numerics, but it was a Brandon Street address. Brandon
16 runs off of Marshall Street right across from Marshall
17 school, if you're familiar with the area.

18 So the next morning I came out early, probably
19 around 8:00 or ten o'clock. I put eyes -- I started
20 surveilling from a distance. I was actually in the school
21 parking lot, had binoculars, and I surveilled the address
22 that was provided to me where Mr. May was supposedly
23 living at the time.

24 Sargent Caddell came out a little bit later than
25 I did because he had some family obligations that he had

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1 to fulfill. But when he came out, I let it be known that
2 I was watching Brandon Street. He went and he started
3 surveillance at the

4 While we were both conducting surveillance, I
5 was able to communicate with him, after me watching for
6 several hours, that I had seen no movement at that
7 address. He relayed to me that he.--

8 MR. STEVENS: Objection. Hearsay.

9 MR. BELL: I will --

10 THE COURT: Within a certain realm, pursuant to
11 State vs. Weaver, he can say what led up to the
12 foundation of his investigator.

13 But be very careful about him repeating what
14 someone said if it's offered for its truth.

15 Q. [Mr. Bell] After conversing with Lieutenant
16 Caddell, what did you do?

17 A. After conversing with Lieutenant Caddell, and I
18 didn't see any movement where I was at, I moved from my
19 location.

20 And, actually, Lieutenant Caddell knew the
21 persons who owned the apartment complex that the Brandon
22 Street address came back to. We were able to confirm
23 through that source that Mr. May did not live at that
24 address. He may have --

25 MR. STEVENS: Objection. Hearsay again, as to

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1 the last --

2 THE COURT: Basis of his objection -- I mean,
3 the basis of his investigation and how he developed a
4 suspect. It's not being offered for its truth, it's
5 being offered to show the steps they followed as they
6 developed -- in this case was.

7 Overruled pursuant to State vs. Weaver.

8 You may proceed.

9 MR. BELL: Thank you.

10 THE COURT: You're welcome.

11 Q. [Mr. Bell] Where did you go once you determined
12 that nobody was there?

13 A. Once I determined nobody was there, I actually
14 relocated and took Sargent Caddell's position at
15 -- , just a short distance down the road,
16 where I could actually keep eyes on the house.

17 We were just trying to establish if Mr. May did
18 indeed live at that address instead of the Brandon Street
19 address.

20 While I was sitting there, I did observe Mr. May
21 at one point to come out on the porch. I can't remember
22 whether he smoked a cigarette or was texting on the phone,
23 but he was on the porch for just a short time. He turned
24 around and he went back into the house.

25 Q. Let me stop and ask you a question. When you

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1 went back there, did you observe any vehicles around that
2 address?

3 A. I did. The white Dodge Caliber was at that
4 address.

5 From that point on -- I had already obtained
6 photographs from South Carolina State College. Mr. May
7 had told Lieutenant Culler that he was a student at South
8 Carolina State College, so I was able to make contact with
9 South Carolina State P.D. They did provide me a photo of
10 him, as well as his girlfriend, Emonie Ford. She was a
11 current student there. I was able to find out through
12 them that he was actually -- he was a student but he was
13 not currently enrolled at the time. But they were able to
14 provide me photographs of both.

15 I was able to -- while I was still watching the
16 house, I was able to see Ms. Ford actually come out of the
17 house. They had a rather large dog, and she came out and
18 she walked the dog. And I actually had to relocate my
19 vehicle, I was in an unmarked vehicle, because I did not
20 want her to see me sitting and watching.

21 Q. Let me ask -- let me stop and ask you a
22 question.

23 A. Sure.

24 Q. Where was Lieutenant Caddell at this point?

25 A. Lieutenant Caddell, we stayed on the phone

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1 together and I was relaying anything that I saw. What we
2 were doing was looking at the totality --

3 Q. Well, my question is was he still there --

4 A. No.

5 Q. -- at ?

6 A. No, sir.

7 Q. When did he leave?

8 A. He left when I took his position, and the best
9 of my recollection, it was just the time that it was
10 starting to get dark. So I'm guessing right around 6:30,
11 seven o'clock, somewhere right around in there.

12 Q. All right. And you observed Mr. May there --

13 A. Yes.

14 Q. -- is that correct?

15 A. Correct.

16 Q. And you observed who you believed to be

17 Ms. Ford?

18 A. Correct.

19 Q. And you observed a white Dodge Caliber there?

20 A. Correct.

21 Q. Okay. What did y'all do next or decide to do
22 next?

23 A. I talked with Lieutenant Caddell. We felt that
24 we had enough probable cause to be able to obtain a search
25 warrant. We had a suspect that -- or we had an individual

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1 that matched the overall description of the suspect from
2 the armed robbery. We had a vehicle that matched the
3 vehicle from the armed robbery. So Lieutenant Caddell was
4 able to approach one of the magistrates and did obtain a
5 search warrant.

6 Q. And you stayed at the house; is that correct?

7 A. I stayed at the house the whole time. Yes, sir.

8 MR. STEVENS: Judge, at this time we renew our
9 pretrial motion.

10 THE COURT: It will noted --

11 MR. STEVENS: Thank you, Judge.

12 THE COURT: You're welcome.

13 MR. STEVENS: And just so we're clear. I don't
14 want to have another mistake before --

15 MR. BELL: Objection --

16 THE COURT: I don't think you have to make a
17 continuing objection. I think the Supreme Court has
18 spoken very clearly about --

19 MR. STEVENS: As with the 702 objection. Yes,
20 ma'am. Thank you.

21 THE COURT: Well, I don't know what you're
22 referring to now --

23 MR. STEVENS: -- is what I'm saying. Yes,
24 ma'am.

25 THE COURT: We have error preservation. You

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1 need to make a contemporaneous objection and I'll
2 rule.

3 MR. STEVENS: Thank you, Judge.

4 THE COURT: Thank you.

5 Q. [Mr. Bell] Corporal Dukes, let me show you a
6 couple of photographs. First of all, I want to show you
7 what's been marked State's 6 for identification and ask if
8 you can identify that photograph.

9 A. That's the residence I was watching. That's
10

11 Q. And that's how it was --

12 A. That's the front.

13 Q. And that was how it was that night?

14 A. Yes. Correct.

15 MR. BELL: Your Honor, we would offer State's 6
16 into evidence.

17 THE COURT: Any objection?

18 MR. STEVENS: No, ma'am.

19 THE COURT: Marked and admitted without
20 objection.

21 [Whereupon, State's Exhibit Number 6 is admitted
22 into evidence by the Court]

23 Q. [Mr. Bell] I'm going to show you what's been
24 marked as State's 7 for identification and ask if you can
25 identify it.

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1 A. Yes.

2 That's the front right corner of the residence,
3 with the white Dodge Caliber parked beside the house in
4 the driveway.

5 Q. And that's how it was that night?

6 A. Correct.

7 MR. BELL: Your Honor, we would offer State's 7
8 into evidence.

9 THE COURT: Any objection?

10 MR. STEVENS: Just obviously with the prior
11 search warrant objection we had before.

12 THE COURT: That's not tied into that objection.
13 You need to look at the picture and tell me if you
14 have a contemporaneous objection --

15 MR. STEVENS: Yes, ma'am.

16 THE COURT: -- to State's 7.

17 [Whereupon, Mr. Bell and Mr. Stevens confer]

18 THE COURT: Is there any objection to State's 7?

19 MR. STEVENS: Simply that it was part of the
20 execution of the search warrant, when it was taken --

21 THE COURT: No speaking objections. Is there a
22 basis for the objection?

23 MR. STEVENS: Just our prior objection to the
24 Court to the search warrant.

25 THE COURT: That wasn't a part of the in-camera

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1 hearing. You need to approach. I need to know the
2 basis of the objection.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: The objection is noted and
6 overruled.

7 THE COURT: Number 7 --

8 MR. BELL: Yes, Your Honor.

9 THE COURT: -- is marked and admitted.

10 [Whereupon, State's Exhibit Number 7 is admitted
11 into evidence by the Court]

12 Q. [Mr. Bell] Let me show you what's been marked
13 as State's Exhibit 9 for identification and ask you if you
14 can --

15 A. Correct. That's the rear of a Dodge Caliber
16 that belonged to a Ms. Ford.

17 Q. And it shows what on the rear?

18 A. It shows the license tag and a Butler -- I
19 believe Butler Automobile Dealership sticker down at the
20 bottom. It also says Dodge Caliber.

21 Q. And that's from the night of --

22 A. Correct.

23 Q. -- that you were there?

24 A. Yes.

25 MR. BELL: Your Honor, we would offer State's 9

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1 into evidence.

2 THE COURT: Any objection?

3 MR. STEVENS: The same as before, Judge.

4 THE COURT: Noted and overruled.

5 You may proceed. Number 9, State's, marked and
6 admitted.

7 [Whereupon, State's Exhibit Number 9 is admitted
8 into evidence by the Court]

9 Q. [Mr. Bell] And finally, let me show you what's
10 been marked as State's 11 for identification and ask if
11 you can identify that.

12 A. That's the front of the same vehicle.

13 Q. And that's how it was that night --

14 A. Correct. Yes, sir.

15 Q. -- with the sticker that's on the --

16 A. The sticker that's on the driver's side.

17 Q. -- windshield?

18 A. Correct. Yes, sir.

19 MR. BELL: And we would offer this as State's
20 11, Your Honor.

21 MR. STEVENS: Same as before, Judge.

22 THE COURT: Noted and overruled. Marked as
23 State's 11.

24 [Whereupon, State's Exhibit Number 11 is
25 admitted into evidence by the Court]

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1 [Off the record momentarily]

2 THE COURT: You may proceed.

3 Q. [Mr. Bell] Lieutenant Culler [sic], at some
4 point you said that Sargent Caddell went and got a search
5 warrant. Did other officers come to your location?

6 A. Yes.

7 Q. And when these other officers came to your
8 location, what did you do?

9 A. I stayed where I was at until -- they had
10 organized the County SRT team. Because of the nature of
11 the crime, we felt that there was a good chance that there
12 was an assault rifle inside the residence. And any time
13 that happens, we want to be prepared for worse situations.
14 So we got the county SWAT team, worked in conjunction with
15 my superiors, my immediate supervisor, which was John
16 Caddell, also my division commander at the time,
17 Lieutenant Carl Shultz, he came out, as well as our CSI
18 person, Thomas Gibson.

19 Q. And when this was going on, did you participate
20 in that or did you go and do something else?

21 A. Once they arrived on scene and they were going
22 to execute, I did move just on the outside perimeter just
23 as precaution. Because if anything did break loose, you
24 want all personnel to be able to stay close. But I didn't
25 take part as far as in searching the house or executing

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1 the search warrant.

2 Q. What did you do from then on?

3 A. From that point, Mr. May was secured. He came
4 out but he was separated from Ms. Ford. We detained Ms.
5 Ford because at that point we didn't know maybe if she may
6 be involved. And we took them back to headquarters in
7 separate vehicles. Once we got back to headquarters --

8 Q. Okay. Let me ask you this. And at that point,
9 you separated those individuals?

10 A. Yes, sir.

11 Q. And you talked to Ms. Ford; is that correct?

12 A. Yes, sir.

13 Q. And did you get a statement from Ms. Ford?

14 A. I did. Yes, sir.

15 Q. Okay. And after that, did you go back to the
16 house?

17 A. No, I do not believe I did go back to the house
18 at all that night because it was some time dealing with
19 Ms. Ford, and then when we immediately finished our talk
20 with Mr. May.

21 Q. And by then, stuff was coming back and coming
22 in, is that correct, that --

23 A. Correct.

24 When she sat down and was giving her statements,
25 I --

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1 Q. I just want -- you talked to Ms. Ford and she
2 gave you a statement; is that correct?

3 A. Yes, sir.

4 MR. BELL: One moment, Your Honor.

5 THE COURT: Uh-huh.

6 Q. [Mr. Bell] Let me backtrack a little bit. From
7 your viewing of the video that occurred at the scene --

8 A. Correct.

9 Q. -- and from reviewing your case file, being that
10 -- you're the case detective; is that correct?

11 A. Yes, sir.

12 Q. I believe we had testimony earlier that
13 Lieutenant Robinson located some gloves; is that correct?

14 A. Yes, sir.

15 Q. And based on what you observed from the video
16 and all, did that glove have anything to do in -- those
17 gloves have anything to do in your investigation?

18 A. No, sir.

19 Q. Did anybody -- the video showing anybody going
20 over there --

21 A. No, sir.

22 Q. -- from the time of the robbery?

23 A. No, sir.

24 MR. BELL: Thank you, Sargent Dukes. Please
25 answer any questions that the defense may have for

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1 you.

2 THE COURT: You may proceed.

3 MR. STEVENS: Thank you, Judge. May it please
4 the Court.

5 THE COURT: Yes, sir.

6 MR. STEVENS: Agent, how are you?

7 THE WITNESS: Doing good. How about yourself?

8 THE WITNESS: Doing well.

9 MR. STEVENS: Sargent Dukes now?

10 THE WITNESS: Yes, sir.

11 MR. STEVENS: My name is Breen Stevens. I
12 represent the defendant, Mr. May. Good seeing you
13 today.

14

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Sargent Dukes, I would first like to ask you some questions about your investigation, sir.

A. All right.

Q. It was on September 10th, 2013, that you went to the Keg; right?

A. That I actively started investigating it. Yes, sir.

Q. And that's when you went to the Keg?

A. No. Originally, let's see -- give me just one second.

THE WITNESS: Bear with me, Your Honor.

[Whereupon, the witness reviews documents]

A. Yeah. On the 10th I made contact with -- it was actually the victim, Mr. Montgomery, at the Keg. Yes, sir.

Q. [Mr. Stevens] You were not there on the 8th; right?

A. No, I was not.

Q. Or the 9th?

A. No.

Q. It was the 10th?

A. Yes.

Q. And you were there about the robbery?

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1 A. Yes.

2 Q. And the robbery occurred on the 8th?

3 A. Yes, sir.

4 Q. All right. So that means you weren't there when
5 it happened?

6 A. No, sir.

7 Q. You didn't personally see it happen?

8 A. No, sir.

9 Q. But you did write a report about your
10 investigation?

11 A. Correct. Yes, sir.

12 Q. I would like just for me to just ask a few
13 questions about report-writing in your job.

14 A. Sure.

15 Q. You've received a lot of training on how to
16 write reports; right?

17 A. Not actually.

18 Q. No?

19 A. Not actually, no.

20 Q. Have you received any training on how to write
21 reports?

22 A. We do. But we've gone away from --
23 traditionally, we used a lot of police verbiage and such.
24 Now we try to use more plain talk.

25 We do have training at our -- the only training

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1 I've had is actually at my department. It's not been
2 training that I've gone to the criminal justice academy
3 for.

4 Q. But you have gone to the criminal justice
5 academy; correct?

6 A. I have. Yes, sir.

7 Q. And you've received extensive training at that
8 criminal justice academy; correct?

9 A. Not for report-writing. But for other things,
10 yes, sir.

11 Q. Okay. But you have written a lot of reports?

12 A. Yes, sir.

13 Q. And you do have a dangerous job; right?

14 A. Yes.

15 Q. Okay. I mean, you carry a gun to protect
16 yourself?

17 A. Yeah. We're also --

18 Q. That's right.

19 You do that to protect other officers, as well;
20 right?

21 A. Correct.

22 Q. And also to protect citizens; right?

23 A. Correct.

24 Q. And, obviously, thankfully you're here today;
25 right?

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1 A. Yes, sir.

2 Q. But you could get injured?

3 A. Correct.

4 Q. Or you could have an accident; right?

5 A. Correct. Yes, sir.

6 Q. And if you were injured or unavailable, then
7 other officers would have to rely on reporting your
8 investigation?

9 A. Correct.

10 Q. And so after drafting a report, it's filed for
11 later use?

12 A. Correct.

13 Q. And your supervisor sees it?

14 A. Generally they do.

15 Q. Attorneys see it?

16 A. On our original reports -- when an original
17 report is written, generally your supervisors have to
18 check off on them. When you make it back to
19 investigations where I am, that's no so much the case.
20 Sometimes they do, sometimes they don't, go back to review
21 them.

22 Q. Okay. But it does happen?

23 A. It does happen. Yes, sir.

24 Q. Clearly, the prosecutors see it?

25 A. Yes, sir.

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- 1 Q. Defense attorneys have to see it?
- 2 A. Yes, sir.
- 3 Q. Judges might see it?
- 4 A. Yes, sir.
- 5 Q. So a lot of folks essentially will review your
- 6 report; right?
- 7 A. Correct.
- 8 Q. And so you want them to be as accurate and
- 9 truthful as possible; right?
- 10 A. Correct.
- 11 Q. Let's get back to the report of this incident.
- 12 Okay? You met with Mr. Quantavious Montgomery; correct?
- 13 A. Correct.
- 14 Q. And that was on the 10th?
- 15 A. I believe that was on the 10th, yes, sir.
- 16 Q. And he was the store clerk at the Keg; right?
- 17 A. Yeah.
- 18 Well, he was actually, I think, the manager.
- 19 Q. The manager.
- 20 And he was there during the robbery?
- 21 A. Sir?
- 22 Q. He was there during the robbery?
- 23 A. Yes.
- 24 Q. No one else, as far as no other employees?
- 25 A. Just him.

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1 Q. And you learned that after the Keg was robbed,
2 he locked the door?

3 A. Correct.

4 Q. Now, when you were there on the 10th, he didn't
5 give you a copy of the videos, did he?

6 A. No.

7 Q. But you are aware that at least until the 8th,
8 when other officers are there, you're aware that they did
9 try to conduct --

10 A. Correct.

11 Q. -- an investigation? I mean, that's --

12 A. Yeah.

13 Q. -- part of your duties as basically the
14 investigating attorney --

15 A. Yes, sir.

16 Q. -- the investigating officer; right?

17 A. Yes, sir.

18 Q. So you're aware that there was a dog track
19 involved, as well; correct?

20 A. Yes.

21 Q. And that dog track actually led to a residence;
22 right?

23 A. Yes.

24 Q. In fact, it tracked down Bleakly Street?

25 A. Yes, based off the scent of the gloves.

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1 Q. But it tracked down Bleakly Street?

2 A. Tracked down -- I have the report right here, if
3 you would like to see it. I wasn't there for that,
4 either. That's kind of secondhand information. But I do
5 have a copy of that report.

6 Q. But as the overall investigating officer, you're
7 aware that there was a dog track; right?

8 A. Yes.

9 Q. And it tracked to a trailer park?

10 A. Tracked to a trailer park.

11 Q. And that was in --

12 A. It was actually down by Metz Laundromat.

13 Q. Down by Metz. Is it Mell's Court?

14 A. I believe it's Mell's Court address, is what it
15 gives us.

16 Q. Mell's Court address. Okay.

17 And, in fact, someone answered that door?

18 A. Yes.

19 Q. And it was a man?

20 A. Yes.

21 Q. And his name was Ed Glover?

22 A. Yes.

23 Q. And an officer spoke with him. It was Officer
24 Hardin; right?

25 A. Yes.

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1 Q. But Officer Hardin did not go inside the trailer
2 at that time?

3 A. I do not think he went inside the trailer, no,
4 sir.

5 Q. Well, so it's your understanding from the
6 investigation you don't believe he went inside at the
7 time?

8 A. I do not believe, from what I have, no, sir.

9 Q. All right. And in an attempt, you also visited
10 Mr. Glover's trailer?

11 A. I did. Correct.

12 Q. And that's at

13 A. Yes.

14 It's the second trailer on the lefthand
15 side.

16 Q. And Mr. Glover was there?

17 A. Yes.

18 Q. As was Ms. Retisha DeWalt?

19 A. Correct.

20 Q. Let's talk about when you came back from the Keg
21 on September 12th, 2013. All right? Okay. So you came
22 back there to the keg of September 12th, 2013, and you got
23 a copy of the surveillance video; right?

24 A. Correct.

25 Q. So let's focus a bit on those videos. First of

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1 all, we know it's -- according to your notes, it's
2 maintained by Blackwater Security Systems; correct?

3 A. Correct.

4 Q. And those videos have time stamps?

5 A. Yes.

6 Q. Okay. And --

7 MR. STEVENS: Court's indulgence.

8 THE COURT: Uh-huh.

9 [Whereupon, Defendant's Exhibit Numbers 1
10 through 13 are marked by the court reporter]

11 Q. [Mr. Stevens] Officer Dukes, I'm going to show
12 you what's been pre-marked as Defendant Exhibits 2 through
13 13.

14 A. Sure.

15 Q. All right?

16 MR. STEVENS: May I approach, Your Honor?

17 THE COURT: Uh-huh.

18 MR. STEVENS: Thank you, ma'am.

19 Q. [Mr. Stevens] I just want you to look through
20 those, if you can, please.

21 A. Sure.

22 [Whereupon, the witness reviews documents]

23 Q. [Mr. Stevens] And while you're looking through
24 those, do those accurately reflect screen shots from the
25 video cameras, the surveillance cameras?

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1 A. Yes, they do.

2 MR. STEVENS: Judge, we would like to admit
3 these as Defendant's --

4 THE COURT: Did you show them to opposing
5 counsel?

6 MR. BELL: I've seen them, Judge. No objection.

7 THE COURT: They'll be marked and admitted as --
8 they need to be marked separately.

9 MR. STEVENS: Yes, ma'am.

10 THE COURT REPORTER: They are Defendant's 2
11 through 13.

12 THE COURT: 2 through 13 without objection.

13 MR. STEVENS: Thank you.

14 THE COURT: You're welcome. You may proceed.

15 MR. STEVENS: We've got a little bit of
16 paperwork here to take care of. Beg the Court's
17 indulgence.

18 THE COURT: Uh-huh.

19 [Whereupon, State's Exhibit Numbers 2 through 13
20 are admitted into evidence by the Court]

21 THE COURT REPORTER: 2 through 13 are entered.

22 MR. STEVENS: Thank you.

23 Q. [Mr. Stevens] I would first like to show you
24 Defendant's Number 7, if I may.

25 MR. STEVENS: Judge, may I approach?

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1 THE COURT: You may.

2 MR. STEVENS: Thank you, Your Honor.

3 Q. [Mr. Stevens] Here you go. And that is of
4 camera seven from the store, outside; correct?

5 A. That's outside camera seven.

6 Q. Right. And it has a time stamp on there; right?

7 A. Yes.

8 Q. And the time stamp says what?

9 A. 9:47:17.

10 Q. Thank you.

11 I would like to show you now Defendant's Exhibit

12 8. And that's also the red car on the side; correct?

13 A. The same camera. Yes, sir.

14 Q. And in that same camera, you can see --

15 A. 9:47:22.

16 Q. And in both of those, you actually see someone
17 dressed or garbed as the robber --

18 A. Correct. Yes, sir.

19 Q. -- in the reflection in the window; right?

20 A. Correct. Yes, sir.

21 Q. Okay. Next, I would like to show you
22 Defendant's Exhibit 2.

23 A. Okay.

24 Q. This is camera four, indoors; correct?

25 A. Correct.

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1 Q. And it also has a time stamp; correct?

2 A. Yes, sir.

3 Q. And what does the time stamp say?

4 A. 9:47:43.

5 Q. Now I would like to show you Exhibit Number 3.

6 And --

7 A. The time stamp is 9:48:48.

8 Q. And what is -- that shows the robber leaving;
9 correct?

10 A. Without looking at it moving, I would assume so.

11 Q. And now I would like to show you Defendant's
12 Exhibit Number 4. It's again the outside camera?

13 A. Yes.

14 Q. And that's also the robber leaving?

15 A. Yes.

16 Q. And what's the time stamp on that?

17 A. 9:48:51.

18 Q. Now, Defendant's Exhibit 5. That's the side
19 camera again?

20 A. Correct.

21 Q. And you can see the red car in there; correct?

22 A. Correct.

23 Q. And you can also see the reflection of the
24 robber walking past; correct?

25 A. I can't see the reflection. You can point it

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- 1 out to me, but I can't.
- 2 Q. Would it help with Defendant's Exhibit 6?
- 3 A. Yes. In that one, I can clearly see it. Yes,
- 4 sir.
- 5 Q. And, again, comparing 5 and 6?
- 6 A. Yes.
- 7 Q. And the time stamps?
- 8 A. 9:48:54.
- 9 Q. Now, clearly it was about a four-hour time
- 10 difference; correct?
- 11 A. Yes, sir. I can't remember exactly what it -- I
- 12 know it was around a four-hour time difference.
- 13 Q. I would like to show you Court's Exhibit Number
- 14 9. I'm sorry. Defense Exhibit Number 9. Sorry.
- 15 A. Yes.
- 16 Q. And that shows the car arriving?
- 17 A. Correct.
- 18 Q. And the time stamp is?
- 19 A. 9:49:44.
- 20 Q. And Defense Exhibit Number 10? That's also the
- 21 car arriving?
- 22 A. Correct.
- 23 Q. And the time stamp?
- 24 A. It's 9:48. Excuse me. 9:49:51.
- 25 Q. All right. And here?

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1 A. Is 9:50.

2 Q. And that's the car leaving?

3 A. Correct. 9:54:50.

4 Q. 9:54:50. And this one?

5 A. Is 9:54:55.

6 Q. 9:54:55. Thank you, Mr. Dukes.

7 A. You're welcome.

8 Q. Now, you said you studied these videos?

9 A. I did.

10 Q. And you actually even tracked the times yourself
11 in your notes?

12 A. I did as good as I could. Yes, sir.

13 Q. So I think you did quite an admirable job. You
14 tracked exactly what we just covered.

15 Now, all of the images we have of -- that we
16 covered from essentially the robber coming in from the
17 outside, walking around the front, going inside, and then
18 walking back outside and back out, all occurred between
19 9:47 and late into 9:48, according to the time stamps?

20 A. According to the time stamps. Correct.

21 Q. That's correct.

22 So, essentially, just like a little over --
23 almost three minutes is what we're looking at?

24 A. Roughly.

25 Q. Okay. And the videos of the cars occurred over

Kevin Dukes
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1 a period of approximately four minutes, almost five;
2 right?

3 A. I didn't add it up.

4 Q. And according to the time stamps, they actually
5 occurred afterward?

6 A. I misunderstand your question.

7 Q. According to the time stamps, the car arrived
8 after the robbery time stamps in the photographs?

9 A. The cameras that are controlled by -- on the --

10 Q. The robbery time stamps occurred before the car
11 time stamps?

12 A. According to the camera system that the robbery
13 was captured on.

14 Q. We can look at it again. You would agree that
15 9:47 and 9:48 occur before 9:50 through 54?

16 A. Yeah.

17 Q. Okay. I think that should suffice.

18 Now, again, you've seen the videos?

19 A. Yes.

20 Q. And the videos do not show a person driving?

21 A. You can't clearly see a person driving.

22 Q. And they don't show a person dressed like the
23 robber getting out?

24 A. No.

25 Q. And they don't show a person dressed like the

Kevin Dukes
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1 robber getting in?

2 A. No.

3 MR. STEVENS: Court's indulgence.

4 THE COURT: Uh-huh.

5 Q. [Mr. Stevens] Now, you said that after
6 examining the videos --

7 A. Yes.

8 Q. -- you also put together a couple of clips --

9 A. Correct.

10 Q. -- and you circulated those to some officers?

11 A. Correct.

12 THE WITNESS: That's actually a --

13 MR. STEVENS: Thank you, sir.

14 Q. [Mr. Stevens] So this is what you actually
15 circulated?

16 A. Correct.

17 Q. And in here, you didn't just say a white Dodge
18 Caliber; correct?

19 A. I did not.

20 Q. In fact, you said a white or silver Dodge
21 Caliber, probably white?

22 A. Correct.

23 Q. And that is what was circulated to all the other
24 officers?

25 A. Correct.

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1 MR. STEVENS: Court's indulgence.
2 MR. STEVENS: Uh-huh.
3 MR. STEVENS: Nothing further at this time.
4 THE COURT: Any redirect?
5 MR. STEVENS: Thank you, sir.
6 MR. BELL: Yes.
7 THE COURT: You may proceed.
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Kevin Dukes
Redirect Examination by Mr. Bell
August 12, 2014

REDIRECT EXAMINATION

BY MR. BELL:

Q. Sargent Dukes, let me show you what's been entered as State's 5 and ask if you recognize that from the video.

A. I do.

Q. And that is a picture of what?

A. A white Dodge Caliber.

Q. So it is a white Dodge Caliber that's in that picture?

A. Correct.

From some of the video that I viewed, depending on where the car was in the shadowing --

I'm getting up in age. I'm not old, but I'm forty-three. My eyesight is not the best in the world.

When I initially viewed the video, I couldn't distinguish whether it was a -- like a light silver or a white, from looking at the pictures that were displayed on the monitor. I was going more toward the white color, just based on what I saw. But I couldn't clearly -- in some pictures like this one, it looked like pictures like this. I can't really distinguish between the silver and --

Q. Okay. Thank you.

MR. BELL: One moment.

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1 Q. [Mr. Bell] Sargent Dukes, when you got the
2 videos and started looking at them, you're aware of the
3 time lag on the videos; is that correct?

4 A. Correct.

5 Q. And did you talk to anybody about that?

6 A. When I contacted Donnie Hall, he actually came
7 to burn them -- I actually tried to obtain the video the
8 day before, which would have been on the 11th. We tried
9 to figure out the time difference. And the first time I
10 tried to get the video, we failed. He burned a copy of
11 some footage but I found out immediately, when I took it
12 back to headquarters, that it was not the right footage we
13 were looking for. When I went back on the 12th, he
14 actually -- the day prior he was in a hurry so he was
15 rushing, so he didn't actually view the video, he just
16 tried to burn the time frame that we thought we were
17 looking for. When we went back on the 12th, he was not as
18 pressed for time so we actually looked at some of the
19 video as it played to make sure we captured it from the
20 cameras.

21 MR. BELL: One moment.

22 THE COURT: Uh-huh.

23 MR. BELL: Nothing further, Sargent Dukes.

24 THE COURT: Any objection to the witness being
25 excused? From the State?

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1 MR. BELL: Your Honor, he's my case officer so
2 he'll stay.

3 THE COURT: Subject to re-call. From the
4 defense?

5 MR. STEVENS: No, ma'am.

6 THE COURT: Sir, you're excused, subject to
7 being re-called.

8 THE WITNESS: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 [Whereupon, Mr. Dukes is excused and exits the
11 witness stand]

12 THE COURT: Ladies and gentlemen, we're going to
13 take advantage of this break in testimony to take our
14 evening recess.

15 During the break, please do not discuss the case
16 in any manner whatsoever. Please leave your notepads
17 in your seats. We'll secure them during the evening
18 recess. And please follow all of the additional
19 instructions that I gave you regarding posting to any
20 social networking sites, as well as watching, reading
21 or listening to any media accounts about this case.
22 And I suspect there will be an article in the paper at
23 some point, because I think I saw one of the reporters
24 for the Time and Democrat here. So especially guard
25 yourselves and just -- I probably, I guess, would have

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1 somebody skim the newspaper for me in the morning, if
2 you're one of those people that read it first thing,
3 to make sure that you don't read anything that could
4 possibly be in the media.

5 Now, I need to ask a quick question. Bear with
6 me one moment.

7 Mr. Moorer, what time is your appointment in the
8 morning? Do you remember?

9 MR. MOORER: I'm thinking, ma'am, it's probably
10 3:30.

11 THE COURT: I think what we'll do is why don't
12 you go ahead and come in in the morning and then we'll
13 accommodate your appointment so that I can make sure
14 you get there on time. Okay?

15 MR. MOORER: All right.

16 THE COURT: Thank you-all so much. Y'all have a
17 good evening. See you tomorrow at 9:30. Come
18 directly to your jury room.

19 [Off the record momentarily]

20 [Whereupon, the jury exits the courtroom at
21 9:48 p.m.]

22 THE COURT: Is there anything -- we have --
23 Mr. Moorer has a doctor's appointment tomorrow and he
24 was protected for tomorrow, but we may have to -- I
25 wouldn't close and charge after three o'clock anyway.

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1 So we'll probably have to make some adjustment.

2 And then we have a young man, who I protected
3 for Thursday, who has his orientation at Tech. So I
4 will find out what time that is on tomorrow to see if
5 we need to work around his schedule, as well. But
6 we'll just kind of play it by ear and we'll take it
7 from there.

8 MR. BELL: As a matter of housekeeping: on
9 State's -- well, I think it's now Court's 3 --

10 THE COURT REPORTER: State's 26.

11 MR. BELL: -- State's 26. --

12 THE COURT: Yes, sir.

13 MR. BELL: -- we have inquired -- Sargent Dukes
14 inquired and they cannot cut it, they cannot --

15 UNIDENTIFIED: They can't get just a clip or an
16 excerpt from that video, for legal purposes, Your
17 Honor. They would have to rely -- you would just get
18 another copy.

19 But on this video you can manually stop it where
20 you want to stop it, and he can disable the sound.

21 MR. BELL: I mean, if they want to watch it --

22 THE COURT: Yeah. Yeah. We'll just have to
23 bring them back in here.

24 And we'll mark that as State's 26 and take off
25 the Court's -- because I can't restrict --

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1 THE COURT REPORTER: I never marked it. I was
2 just waiting.

3 THE COURT: Yeah. I can't restrict -- if we
4 have the whole thing, and they're in the jury room,
5 they may watch the whole thing and I didn't admit the
6 whole thing. So we'll just have to -- if they want to
7 watch it again, I'll just have to make them aware that
8 they'll have to come in here to watch it.

9 THE COURT REPORTER: Do you want it now entered?
10 26?

11 THE COURT: 26, as redacted. But it's really
12 not redacted. It's sort of fiction until it's
13 redacted. But we'll work with it.

14 [Whereupon, State's Exhibit Number 26 is marked
15 by the court reporter]

16 [Off the record momentarily]

17 THE COURT: Is there anything else before we
18 adjourn for the evening? From the State?

19 MR. BELL: Nothing from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. STEVENS: Nothing from the defense.

22 THE COURT: Have a good evening. See y'all at
23 9:30. Make sure the court reporter has all the
24 exhibits.

25 [JURY TRIAL ADJOURNS AT 5:01 PM]

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYKEEM MAY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 3 OF 5

held before the Honorable Deadra L. Jefferson
 Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
 in the Orangeburg County Courthouse
 Orangeburg, South Carolina
 on August 13, 2014, Commencing at 9:24 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Harrison Bell, Esquire
Ashley Cornwall, Esquire
First Circuit Solicitor's Office
Post Office Box 1525
Orangeburg, South Carolina 29116

FOR THE DEFENDANT:

Breen Stevens, Esquire
Doug Mellard, Esquire
First Circuit Public Defender's Office
Post Office Box 1112
Orangeburg, South Carolina 29116

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John Caddell
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PROCEEDINGS

THE COURT: Who is the State's next witness?

MR. BELL: The State is Lieutenant Caddell.

THE COURT: Is he present?

MR. BELL: Yes, Your Honor. He's seated in the courtroom.

THE COURT: Okay. Please bring in the jury.

THE BAILIFF: 'Yes, Your Honor.

[Whereupon, the jury enters the courtroom at 9:49 a.m.]

THE COURT: Good morning, ladies and gentlemen. I hope everyone had a pleasant and restful evening.

We are now going to resume testimony. I would ask that you give the attorneys your attention.

The State may proceed.

MR. BELL: Thank you, Your Honor. If it please the Court.

The State would call Captain -- Lieutenant. I'm sorry. Lieutenant Caddell.

[Off the record momentarily]

[Whereupon, Mr. Caddell comes forward]

THE CLERK OF COURT: Put your left hand on the Bible and raise your right hand, please.

[Whereupon, Mr. Caddell is duly sworn by the clerk of court as follows: do you hereby swear or

John Caddell
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August 13, 2014

1 affirm that the evidence that you present today in
2 this case will be the truth, the whole truth, and
3 nothing but the truth, so help you God]

4 THE WITNESS: I do.

5 THE CLERK OF COURT: Thank you. You may have a
6 seat.

7 [Whereupon, Mr. Caddell takes the witness stand]

8 THE CLERK OF COURT: Please state your name
9 again for the record and spell your last name.

10 THE WITNESS: John Caddell.

11 THE CLERK OF COURT: Thank you.

12 THE WITNESS: C-A-D-D-E-L-L.

13 THE COURT: You may proceed, Mr. Bell.

14 MR. BELL: Thank you, Your Honor.

15 THE COURT: You're welcome.

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John Caddell
Direct Examination by Mr. Bell
August 13, 2014

JOHN CADDELL,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Caddell, where are you employed?

A. With the Orangeburg Department of Public Safety.

Q. And in what capacity are you employed there?

A. Currently, I supervise the patrol division.

Q. And how long have you been doing that?

A. That's a recently-appointed position. For a few weeks now.

Q. How long have you been in law enforcement?

A. Approximately thirteen years.

Q. And how long have you been with Orangeburg Department of Public Safety?

A. Approximately eleven.

Q. And before you were the lieutenant over the patrol division, what were your duties?

A. Before, I was first sargent over the investigations division.

Q. And how long did you do that?

A. I was supervisor for about a year. Total investigations, about four years.

Q. And I'm going to direct you back to September of

John Caddell
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1 last year, 2013. What was your -- what were your duties
2 then?

3 A. Then, I was supervisor of investigations
4 division.

5 Q. And did you have an occasion to assist now
6 Sargent Dukes with an armed robbery investigation?

7 A. Yes, sir.

8 Q. And what was the investigation about?

9 A. The investigation was concerning an armed
10 robbery of the Keg located on John C. Calhoun Drive in the
11 city of Orangeburg.

12 Q. And how did you get involved in that
13 investigation?

14 A. Sargent Dukes had requested some assistance. He
15 was -- he had given me information and asked for help with
16 the case, and also with some surveillance and other
17 things, search warrants.

18 Q. And once you became involved, what did you do to
19 familiarize yourself with the case?

20 A. Once I became involved, of course I pulled the
21 case file, which the case file includes everything about
22 the case. I read the report, the initial report, from the
23 responding officers, seen what evidence there was. There
24 was a video. I watched the video of the actual armed
25 robbery that took place. There was other pictures that

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1 was gathered by Detective Dukes, of the defendant that he
2 identified. Took a look at those pictures, did
3 comparisons. Basically did an investigation to
4 familiarize myself with the case.

5 Q. And I guess kind of during the couple of days
6 afterwards, you kind -- y'all were kind of at a dead-end
7 with trying to find a suspect; is that correct?

8 A. Yes, sir.

9 Q. And later on, a couple of days after that, did
10 something happen that kind of started the investigation or
11 got it going --

12 A. Yes, sir.

13 I believe it was September the 14th I received
14 an e-mail from Officer Kenneth Pifer stating that himself
15 and Lieutenant Randy Culler, with the sheriff's office,
16 had stopped a person of interest that matched the
17 description and the vehicle description of a picture that
18 was put out by Detective Dukes.

19 Q. And what did you do with that information?

20 A. At that time, I relayed the information over to
21 Detective Dukes. He came into my office. I pulled the
22 in-car video camera from Officer Kenneth Pifer's in-car
23 dash cam.

24 Q. And based on that, did that help or deter your
25 investigation?

A. The defendant was -- it was -- we were trying to determine exactly where the defendant's residence was, or what we refer to as where he's laying his head. We had two addresses that we had to determine. One was I believe which is located over by Clark Middle School kind of over in the north side of town. The other location was -- I believe it was At that time, Detective Dukes went and sat surveillance up on

John Caddell
Direct Examination by Mr. Bell
August 13, 2014

1 one residence, I set surveillance up on the other
2 residence.

3 Q. You were at the ?

4 A. Initially, I was at .

5 Q. How long did you stay there, approximately, as
6 best you can remember?

7 A. Several hours.

8 Q. Okay. What did you observe there?

9 A. I did observe the defendant driving up in the
10 vehicle, the white Dodge Caliber that was seen on Officer
11 Pifer's video as well as the video that was from the Keg.

12 He got out of the vehicle, went into the house.
13 At that point, Detective Dukes had called me and said that
14 he hadn't seen any movement or anything over on Brandon
15 Street.

16 Q. And did you do something in regards to that
17 Brandon Street address?

18 A. Yes, sir.

19 What I did is I -- from working in Orangeburg
20 for so long, you get to know people. And I know the guy
21 that owned the apartments over there. So to determine if
22 he was staying there, I called the owner of those
23 apartments.

24 Q. And based on that phone call, what as your
25 determination?

John Caddell
Direct Examination by Mr. Bell
August 13, 2014

1 A. It was my determination that he didn't live on
2 Brandon Street.

3 Q. Now, the person you saw drive up in -- what kind
4 of vehicle was it?

5 A. A white Dodge Caliber, I believe it was.

6 Q. Okay. Do you see him in the courtroom today?

7 A. Yes, sir.

8 Q. Could you point him out, please, for the jury?

9 A. It's Mr. May, sitting at the far end of
10 defendant's table.

11 Q. With dreds; is that correct?

12 A. That's correct.

13 Q. After that, what happened after you determined
14 that he wasn't living at the Brandon Street address, or it
15 was determined that it wasn't there?

16 A. Once we determined that he wasn't living there,
17 we focused our efforts on the Wilkinson Street address to
18 determine whether he was actually staying there.

19 At that point, Detective Dukes swapped out with
20 me. He ran surveillance on it. And he -- and after him
21 sitting and running surveillance, he advised me that he
22 had seen the defendant step out of the house, you know,
23 just kind of hang around on the porch smoking a cigarette
24 or, you know, basically information that would lead me to
25 believe that he was staying there.

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1 Q. Okay. And where did you go?

2 A. I went to headquarters -- or I went to my office
3 at my headquarters, over there by the post office on
4 Middleton Street, to start to prepare a search warrant.

5 Q. Let me show you what's been entered as State's 6
6 in evidence and ask if you recognize that photograph.

7 A. That is the residence located on Wilkinson
8 Street.

9 Q. And that's the one that you had surveillance on?

10 A. Initially. Yes, sir.

11 Q. And let me show you what's been marked as
12 State's 7, that's in evidence, and ask if you can identify
13 that photograph.

14 A. That is also the same photograph or the same
15 residence on Wilkinson Street, taken at a different angle
16 to include the driveway, which is where the white Dodge
17 Caliber was parked where I initially saw Mr. May pull up
18 in.

19 Q. So that's the vehicle you saw pull up?

20 A. That's correct.

21 Q. With Mr. May driving?

22 A. That's correct.

23 Q. The defendant driving?

24 A. That's correct.

25 Q. Now, you said that you had gone back to the

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1 office and it was decided to prepare a search warrant?

2 A. That's correct.

3 Q. What were you going to search?

4 A. The residence located at

5 Q. And what do you do when you prepare a search
6 warrant?

7 A. Basically, you have to identify three things on
8 a search warrant. You have to identify the residence that
9 you want to search, the property that you're looking for,
10 and your statement of probable cause as to why you believe
11 that the items you want is in that location that you're
12 looking in.

13 Q. And I guess -- and the connection of the person
14 to the place --

15 A. That's correct. That's in my statement of
16 probable cause as to why I'm looking for those items in
17 that residence.

18 Q. So you typed -- is that a form or something you
19 type up?

20 A. Yes, sir.

21 It's a standardized form that we use that we
22 fill in the information.

23 Q. And once you filled out that form, what did you
24 do?

25 A. Once I filled out that form, I contacted Judge

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1 Clariday, who is a magistrate with Orangeburg County.
2 Took it to him. Presented my probable cause and all the
3 information and to let him determine if I had enough to
4 actually gain a search warrant.

5 Q. Lieutenant Caddell, let me show you what's been
6 marked as State's 21 and ask if you can identify that..

7 A. That is a copy of the search warrant that I
8 prepared.

9 Q. And it has your signature in there?

10 A. That's correct.

11 Q. And it has the signature of Judge Clariday?

12 A. That's correct.

13 Q. And when you go there, are you put under oath as
14 to your -- the facts of the statement in an affidavit?

15 A. Yes, sir.

16 Q. And was that done, as well?

17 A. Yes, sir.

18 Q. And did you sign that he swore you?

19 A. Yes, sir.

20 MR. BELL: Your Honor, we would offer this as
21 State's 21..

22 THE COURT: Marked for ID only at this time.

23 Q. [Mr. Bell] Now, once you had that search
24 warrant, State's 21 for identification, signed, what did
25 you do with it?

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1 A. I then contacted the division commander. Me and
2 him met. We also contacted the SRT, or SWAT team
3 commander for the Orangeburg County Sheriff's Office,
4 because the residence was located in the county and not
5 the city. So we contacted the county to assist with the
6 execution of the warrant.

7 Q. And who's your division commander?

8 A. Captain Carl Shultz.

9 Q. And where did you go once you had the warrant
10 signed?

11 A. Once the warrant was signed we went to the main
12 complex off Ellis Avenue, which is the sheriff's office
13 complex, where we briefed the sheriff's office on the
14 incident and basically all the tactical information, to
15 serve the warrant.

16 Q. And then where did you go?

17 A. At that point, we left and went straight to
18 and executed the warrant.

19 Q. Okay. And who actually executed the warrant?
20 What individuals?

21 A. That conducted the search?

22 Q. Yes.

23 A. The search was conducted by my self, Captain
24 Shultz, and Sargent -- or crime scene investigator Thomas
25 Gibson.

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1 Q. Now, when you went to that residence to execute
2 the search, were there -- was anybody there at that time?

3 A. When we made entry into the house to secure the
4 residence, there was the defendant, Mr. May, his
5 acquaintance, girlfriend, whatever their relationship is,
6 Ms. Emonie -- I believe I'm pronouncing that right --
7 Ford.

8 Q. And what was done with them?

9 A. They were detained, for officer safety, and
10 removed from the residence. At that point they were read
11 the search warrant and given a copy of it as to the
12 exactly what was going on.

13 Q. And what were y'all looking for?

14 A. During the video of the search warrant, we could
15 see -- I mean, I'm sorry. During the video of the armed
16 robbery we could see the clothing of what the defendant
17 was wearing, or the clothing the perpetrator was wearing
18 when he went into the Keg, the rifle that he was carrying.
19 It was a wooden stock SKS type assault rifle, had the long
20 banana clip that was hanging from it.

21 MR. STEVENS: Objection, Judge.

22 THE COURT: Basis?

23 MR. STEVENS: 702, knowledge for the basis --

24 THE COURT: He's a police officer. I would
25 think he has sufficient knowledge to be able to

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1 identify what was from the video.

2 It's overruled.

3 Q. [Mr. Bell] And when you went in and y'all
4 searched, did you find items that, to your knowledge,
5 apparently were evidence that fit the robbery?

6 A. Yes, sir.

7 Q. Do you recall what was found?

8 A. I can go through them one by one and tell you
9 exactly what was found. One thing that we were looking
10 for, during the video of the robbery you can see a pair of
11 white-and-black stripped tennis shoes. They -- I don't
12 want to say it's unique, but it's not a common pattern.
13 It's a -- it was a pair of black-and-white Nike shoes that
14 matched that description of the ones on the video. They
15 were size ten and a half. We also found a pair of red-
16 framed sunglasses. We also found the wooden stock SKS
17 type assault rifle with the banana clip magazine. We also
18 found several bullets that went into the gun. And we also
19 found \$50 in U.S. currency, which was one 20-dollar bill
20 and three 10-dollar bills.

21 Q. First, let me show you what's been entered as
22 State's 4. It's been testified to as a screen shot from
23 the video of the robbery. Have you seen that video?

24 A. Yes, sir, I have.

25 Q. And does that represent a picture of the

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1 individual that would rob the Keg on September the 8th?

2 A. That's correct.

3 Q. And could you step down and show the jurors the
4 items that you were specifically talking about, some items
5 of clothing and the weapon?

6 A. Okay. The only thing that this picture does not
7 show -- well, it barely shows it. The shoes --

8 MR. BELL: Let me hold you up.

9 THE WITNESS: I'm sorry.

10 MR. BELL: Let them all see it.

11 A. The --

12 THE WITNESS: Can everybody see that?

13 MR. STEVENS: Judge, we object.

14 THE COURT: Please don't interact with the jury.
15 And I need you to stand back just --

16 We don't have any equipment -- you don't have an
17 Elmo or anything to --

18 MR. BELL: No, Your Honor, we don't have an
19 Elmo.

20 THE COURT: You may need to pass it around once
21 he's done that. But, yeah.

22 MR. STEVENS: Objection. We would also, for the
23 record, say he can testify to what he recovered there
24 but when it comes to the photograph, it pretty much
25 explains itself.

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1 THE COURT: Let me see the photograph.
2 Approach.

3 [Whereupon, an off-the-record bench conference
4 is held]

5 THE COURT: The objection is sustained.

6 Q. [Mr. Bell] Lieutenant Caddell, based on
7 State's 4, what items were you looking for? Just what
8 were you looking for? Don't go into the description.
9 Just what were you looking for? Show the jury.

10 A. What we were looking for, or what we found?

11 Q. What you were looking for when you got the
12 search warrant.

13 A. What we were looking for was the skull cap, the
14 sunglasses, the shawl or bandana, the tee-shirt, this
15 rifle here, the wooden-stock SKS type assault rifle with
16 the banana clip, and the black-and-white stripped shoes,
17 along with the faded -- with the jeans with the faded
18 front.

19 Q. Okay. Thank you.

20 [Whereupon, the witness retakes the witness
21 stand]

22 Q. [Mr. Bell] Lieutenant Caddell, let me show you
23 what's been marked as State's 16 for identification and
24 ask if you can identify that photograph.

25 A. That is a photograph of one of the bedrooms

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1 located inside the residence of

2 Q. And what --

3 MR. STEVENS: At this time, we simply renew our
4 pretrial argument regarding the search warrant and
5 anything --

6 THE COURT: Noted and overruled.

7 MR. STEVENS: Thank you, Judge.

8 THE COURT: You're welcome.

9 Based on the Court's previous ruling.

10 MR. BELL: Okay.

11 THE COURT: You may proceed.

12 MR. BELL: Thank you, Your Honor.

13 Q. [Mr. Bell] And what is the significance of that
14 particular bedroom?

15 A. This is the bedroom where most of the items were
16 found

17 MR. BELL: Your Honor, we would offer this as
18 State's 16.

19 THE COURT: Marked and admitted, subject to the
20 earlier objection.

21 [Whereupon, State's Exhibit Number 16 is
22 admitted into evidence by the Court]

23 MR. BELL: Again, if you could come down and
24 just step away from the jury. You may have to come
25 here and do it twice.

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1 Q. [Mr. Bell] Kind of show -- you said you found
2 shoes. Can you show them approximately where you found
3 the shoes?

4 A. The shoes were located in this closet here in
5 the far corner. This is the closet that was in the corner
6 of the bedroom, which goes back behind this door here.
7 The shoes were located -- where you can see all these
8 boxes of shoes, they were located back here in the back
9 corner.

10 MR. BELL: And you might want to just kind of
11 show them over here so they can --

12 MR. STEVENS: Judge, if he could just pass them
13 to the jury instead of having him to be in the jury.

14 THE COURT: Well, if he wants to point out where
15 he located certain items in the photograph, he's
16 allowed to do that.

17 MR. STEVENS: Yes, ma'am.

18 THE COURT: Unfortunately, we don't have the
19 technology necessary to be able to do it all at one
20 time so after he does that, you can pass the
21 photograph around.

22 MR. BELL: Okay.

23 A. This is the closet here that was located in the
24 bedroom. On this kind of -- where the doors open, there's
25 space on either side. The shoes were located in this back

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1 corner here.

2 MR. BELL: All right. I'm going to refer to it
3 a couple more times, so I'll kind of pass it to the
4 jury after I kind of finish with it.

5 THE COURT: That's fine.

6 [Whereupon, the witness retakes the jury stand]

7 Q. [Mr. Bell] Let me show you what's been marked
8 State's 13 for identification and ask if you can identify
9 that photograph.

10 A. This is a close-up photograph of the same closet
11 in that back corner that I was explaining.

12 Q. And what does it show in that back corner?

13 A. It shows exact -- that shows a close-up video
14 exactly where the shoes were located.

15 MR. STEVENS: Could we have a continuing
16 objection to any evidence from the search, based upon
17 our prior pretrial motion?

18 THE COURT: Well, no speaking objections. Is it
19 based --

20 MR. STEVENS: Based upon our pretrial motion.

21 THE COURT: Noted and overruled.

22 MR. STEVENS: Thank you.

23 THE COURT: You're welcome. Based on the
24 Court's previous ruling.

25 Q. [Mr. Bell] You can continue.

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1 A. I'm sorry.

2 This is a photograph that shows -- it's
3 basically a close-up of that photograph. It takes a
4 picture of the back end of the closet in exactly the
5 location where the shoes were found.

6 MR. BELL: Your Honor, we would offer this as
7 State's 13.

8 THE COURT: Marked and admitted, subject to the
9 earlier objection and overruled.

10 [Whereupon, State's Exhibit Number 13 is
11 admitted into evidence by the Court]

12 Q. [Mr. Bell] Let me show you what's been marked
13 as State's 20 for identification and ask if you can
14 identify what's in that bag.

15 A. Can I take them out?

16 These are the -- these are the actual shoes that
17 were located and seized subject to the search warrant.

18 MR. STEVENS: Judge, same objection.

19 THE COURT: Noted and overruled.

20 MR. STEVENS: Thank you.

21 THE COURT: You're welcome.

22 MR. BELL: Your Honor, we would offer these,
23 State's 20, into evidence.

24 THE COURT: Admitted subject to the objection
25 and overruled.

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1 [Whereupon, State's Exhibit Number 20 is
2 admitted into evidence by the Court]

3 Q. [Mr. Bell] While you're looking at that,
4 Lieutenant Caddell, can you tell the size of those shoes?

5 A. The size of the shoes are located in the tongue.
6 It's U.S. size ten and a half.

7 MR. BELL: Okay. You can just put them back in
8 here.

9 [Whereupon, the witness complies]

10 Q. [Mr. Bell] Now, after you found the shoes, were
11 other items found in that bedroom?

12 A. That's correct.

13 Q. What else was found?

14 A. The sunglasses and the rifle was found.

15 Q. Where were the sunglasses found?

16 A. The sunglasses were found -- the closet is here,
17 there is a table that sits here, and they were found on
18 that table.

19 Q. Okay. Let me show you State's 16 and ask if you
20 could point out the glasses. You can probably just stand
21 up and point at it. Because I'll pass that photo around.

22 A. This is the same photograph of the -- where the
23 closet --

24 MR. STEVENS: Objection --

25 THE COURT: Noted and overruled.

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1 MR. STEVENS: Thank you, Judge.

2 A. This is the same closet, same bedroom, where the
3 shoes were. The shoes were here. The sunglasses were
4 located right here on the top of the table.

5 Q. [Mr. Bell] Okay. Thank you.

6 Let me show you what's been marked as State's 8
7 for identification and ask if you can identify that.

8 A. This is a closeup of that same bedroom, the --
9 basically, that same picture but a closeup of where the
10 glasses were actually found.

11 MR. BELL: Your Honor, we would offer State's 8
12 into evidence.

13 THE COURT: Marked and admitted subject to the
14 objection.

15 [Whereupon, State's Exhibit Number 8 is admitted
16 into evidence by the Court]

17 Q. [Mr. Bell] Lieutenant Caddell, let me show you
18 what's been marked as State's 19 for identification and
19 ask if you can identify that.

20 A. These are the actual sunglasses that are in the
21 picture that was taken and entered into evidence.

22 MR. STEVENS: Again, Judge, same objection.

23 THE COURT: Overruled.

24 MR. BELL: And we would offer State's 19 into
25 evidence, Your Honor.

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1 THE COURT: Admitted, subject to the objection
2 and overruled.

3 [Whereupon, State's Exhibit Number 19 is
4 admitted into evidence by the Court]

5 Q. [Mr. Bell] Okay. Now, you said what else was
6 found in that bedroom?

7 A. The wooden stock SKS type assault rifle.

8 Q. Let me show you what's been marked as State's 10
9 for identification and ask if you can identify that.

10 A. Oh. This is a closeup, an extremely closeup
11 view, of the other side of the closet, the location where
12 --

13 MR. STEVENS: Objection.

14 THE COURT: Basis?

15 MR. STEVENS: Same objection.

16 THE COURT: Overruled.

17 MR. STEVENS: Thank you.

18 THE COURT: You're welcome.

19 A. This is a closeup of that same closet, but the
20 left side of it where the assault rifle was found.

21 Q. [Mr. Bell] And where is the assault rifle in
22 that picture?

23 A. It's hard to see, but it's tucked back in this
24 corner right here.

25 MR. BELL: We would offer State's 10 into

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1 evidence, Your Honor.

2 THE COURT: Marked and admitted, subject to the
3 objection.

4 [Whereupon, State's Exhibit Number 10 is
5 admitted into evidence by the Court]

6 MR. BELL: Catch up with the court reporter.
7 Sorry.

8 Q. [Mr. Bell] Lieutenant Caddell, let me show you
9 what's been marked as State's 17 and State's 18 for
10 identification and ask if you can identify these.

11 A. This is the actual -- and there's a gun lock on
12 it, so it's safe. This is the actual wooden-stock SKS
13 type assault rifle and --

14 MR. STEVENS: Objection. Same objection.

15 THE COURT: Noted and overruled.

16 A. And this is the magazine, or what's commonly
17 referred to as a clip, banana clip, that fits this rifle.

18 Q. [Mr. Bell] And when you found it, were they
19 separate?

20 A. It was together.

21 Q. Okay. And did you check, or did somebody check,
22 or were you there present when somebody checked, to see if
23 it was loaded at the scene?

24 A. I was there. I didn't check it, and I don't
25 know if it was loaded or not. I do know that there was

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1 rounds found with it. But they were in the magazine but I
2 do not know if there was one in the chamber.

3 Q. But you were aware that there were bullets in
4 the magazine?

5 A. That's correct.

6 Q. And showing you 18, what's been marked as
7 State's 18 for identification.

8 A. Those are the bullets that were found.

9 MR. BELL: Your Honor, we would offer State's 17
10 and 18 into evidence.

11 THE COURT: Objection?

12 MR. STEVENS: Objection to both, Judge.

13 THE COURT: Noted and overruled. Be admitted,
14 State's 17 and 18.

15 [Whereupon, State's Exhibit Number 17 is
16 admitted into evidence by the Court]

17 [Whereupon, State's Exhibit Number 18 is
18 admitted into evidence by the Court]

19 Q. [Mr. Bell] Let me show you State's 14 for
20 identification and ask if you could identify that.

21 A. Those are the 762 -- or the rifle rounds that
22 were found in the magazine of the gun.

23 Q. And that's how they were found on the night
24 of --

25 A. That's correct.

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1 Q. What was the date of the search warrant?

2 A. September the 15th.

3 Q. And that's how they were that night?

4 A. That's correct.

5 MR. BELL: Your Honor, we would offer State's 14
6 into evidence.

7 THE COURT: Marked and admitted, subject to the
8 objection.

9 Q. [Mr. Bell] Let me show you what's been marked
10 State's 15 for identification and ask if you can identify
11 that.

12 A. This was a picture -- this was a picture of the
13 SKS once it was taken outside of the closet. Because the
14 way the closet was constructed, it was tucked back in a
15 corner and it was hard to get an overall picture of it
16 where it sat so we took a picture of it where it sat,
17 pulled it out, and then took another picture. And it just
18 so happens the sunglass and the shoes are also -- that we
19 found are in that picture.

20 Q. And that's how you found that rifle on that
21 night; is that correct?

22 A. That's the condition the rifle was found in.
23 That's correct.

24 MR. BELL: Your Honor, we would offer State's 15
25 into evidence.

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1 THE COURT: It's admitted, subject to the
2 objection.

3 Q. [Mr. Bell] Now, Lieutenant Caddell, you said
4 you were looking on some other items, based on the video
5 of the person that robbed the store?

6 A. That's correct.

7 Q. Did you find anything that -- a covering for the
8 mouth?

9 A. The red bandana or the shawl, we did not locate
10 it.

11 Q. You said you were looking for a hat or
12 something?

13 A. It was a -- well, it was commonly called a
14 beanie or a skull type cap with a chain design on it.

15 Q. Okay. Did you that?

16 A. No, we did not.

17 Q. And you said you were looking for jeans that
18 were distinctive?

19 A. The jeans was a dark in color -- it was dark-
20 colored jeans with a faded front. We actually found
21 numerous pairs of jeans. That's actually kind of a common
22 looking jean.

23 Q. In fact, if you -- I'm going to show you State's
24 10 and ask if you see anything in there.

25 A. That's some of the jeans that we found.

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1 Q. And did you take any into evidence?

2 A. We did not take any of the jeans into evidence.

3 Q. Why not?

4 A. There were so many pairs of them, it was hard to
5 determine which one was actually used.

6 Q. And these items that were taken into evidence
7 that night, who actually took them into evidence?

8 A. I believe it was Sargent Thomas Gibson, with the
9 crime scene unit.

10 Q. And who else was there, as well, with you?

11 A. It was Captain Carl Shultz.

12 He is also a member of the crime scene unit, so
13 I'm unsure which one of those actually took the items and
14 put them into evidence.

15 Q. And let me show you, as part of State's 21 for
16 identification. At the end there's a sheet. What is that?

17 A. That's the return sheet. That's basically a
18 list of the items that was found. And it was made -- and
19 it also tells that the inventory was made of what we took
20 and who it was made in the presence of.

21 Q. And whose writing is that?

22 A. I believe it's Sargent Thomas Gibson's.

23 Q. And that inventory was made in the presence of
24 who?

25 A. It was made in the presence -- it says

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1 Lieutenant Shultz, not Captain Shultz, and myself.

2 MR. BELL: Your Honor, I would offer the search
3 warrant into evidence.

4 THE COURT: I had it marked for ID. I have it
5 under advisement.

6 MR. BELL: Okay.

7 THE COURT: Proceed.

8 MR. BELL: One moment.

9 Q. [Mr. Bell] When y'all were looking for the
10 stuff, were y'all just kind of blindly looking or did you
11 have any directions as to where it was located?

12 A. We were getting directions from -- initially,
13 when we served the search warrant, all the residents were
14 detained. We then took them to our office, our
15 headquarters, to speak with them.

16 Detective Dukes at the time was talking to
17 Ms. Ford, who stated that she was --

18 MR. STEVENS: Objection. Hearsay. Competition
19 clause.

20 THE COURT: Please approach.

21 [Whereupon, an off-the-record bench conference
22 is held]

23 THE COURT: The objection is sustained.

24 You may proceed.

25 Q. [Mr. Bell] Were you -- let me go back a little

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1 bit. In searching for the items, were you in contact with
2 anybody?

3 A. Sargent Dukes.

4 Q. Sargent Dukes. And he was relaying information
5 to you?

6 A. That's correct.

7 Q. That A&G [phonetic] was bonding these items?

8 A. That's correct.

9 Q. What other things, Lieutenant Caddell --
10 Lieutenant Caddell, let me show you what's been marked as
11 State's 24 and ask if you can identify this.

12 A. That's a map, city of Orangeburg.

13 Q. Okay. And you're familiar with the city of
14 Orangeburg --

15 A. That's correct.

16 Q. -- and the streets in the city of Orangeburg and
17 near the city of Orangeburg?

18 A. Yes, sir.

19 Q. And does it -- is this a specific kind of area
20 of Orangeburg?

21 A. This is the area of 301 North, just before you
22 get to the bypass.

23 Q. Does it show the place that was robbed, the Keg,
24 on that? You can look at it.

25 A. Yes, sir, it does.

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1 MR. BELL: Your Honor, we would offer this as
2 State's 24.

3 THE COURT: Any objection?

4 MR. STEVENS: No, Your Honor.

5 THE COURT: Marked and admitted without
6 objection.

7 [Whereupon, State's Exhibit Number 24 is marked
8 by the court reporter]

9 [Whereupon, State's Exhibit Number 24 is
10 admitted into evidence by the Court]

11 Q. [Mr. Bell] I'm going to ask you to come down
12 and we're going to kind of do this in sections. If you
13 could show the jury number one, point out -- I'll hold it
14 for you and you can point out -- where is the Keg located?

15 A. The Keg is located here.

16 Q. Okay. And what is --

17 A. This is 301, John C. Calhoun Drive.

18 Q. And what's this cross street? What's it
19 intersecting with?

20 A. This is Bleakly Street.

21 Q. And you stated that you went to -- eventually
22 went to Wilkinson Street; is that correct?

23 A. Yes, sir.

24 Q. Can you show the general area where Wilkinson --
25 it's not -- is it on this map?

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1 A. Wilkinson is not on this map.

2 This is Dorchester, Liberty, Monroe. Right
3 where Liberty Street and Monroe Street meet, Wilkinson
4 starts here and goes up. And then Russell Street is here.

5 Q. And the house was on Wilkinson?

6 A. The house was on Wilkinson, just down from
7 Russell. So if this map would continue, it would be
8 somewhere in this area here.

9 MR. BELL: Thank you, Lieutenant Caddell.

10 Please answer any questions the defense may have for
11 you.

12 THE COURT: You may proceed.

13 MR. STEVENS: Thank you, Judge. May it please
14 the Court.

15 THE COURT: Yes, sir.

16 MR. STEVENS: Thank you.

17 Good morning, Lieutenant Caddell. How are you
18 doing today?

19 THE WITNESS: Good morning. I'm doing well.

20 MR. STEVENS: My name is Breen Stevens. I
21 represent the defendant, Tykeem May. Just going to
22 ask you a couple of questions, if that's all right.

23 THE WITNESS: That's fine.

24 - - -

25 - - -

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. I'm going to ask you some questions about
September 14th, 2013; all right?

A. Okay.

Q. Now, you indicated you were working that day;
right?

A. September the 14th?..

Q. September the 14th.

A. That was the day before the search warrant. I
don't remember if I was working that day or not. I do
know I was -- I came in.

Q. So you came in that day?

A. Once I eventually got the information from
Officer Pifer.

Q. So you got information from Officer Pifer that
day?

A. That's correct.

Q. And once you got the information, then you came
into work?

A. I don't remember. I don't know if I was already
here or if I came in.

Q. But you did come into work?

A. That's correct.

Q. And you had pictures in your possession of a

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1 possible robber in a car; right?

2 A. Yes, sir.

3 Q. And specifically you were looking for a white or
4 silver Dodge Caliber; right?

5 A. Yes, sir.

6 Q. And on the 14th, you saw a Dodge Caliber at
7

8 A. Not on the 14th. I believe the -- I went over
9 to the area of Wilkinson Street on the 15th.

10 Q. And did you write a report about this?

11 A. The 15th was when the search warrant was signed.
12 That was the day that we run surveillance.

13 Q. Did you write an incident report about this?

14 A. No, sir.

15 Q. Well, let's talk about the 15th. All right?
16 You contacted Corporal Dukes that day?

17 A. He was already -- we were already working in
18 conjunction on everything.

19 Q. But you were in contact with each other around
20 3:00 p.m.?

21 A. We were in contact with each other. I can't
22 tell you what times we were in contact with each other.

23 Q. But you were in contact with each other that
24 day; correct?

25 A. Yes, sir.

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1 Q. And at around 3:00 p.m., you guys were in
2 contact; correct?

3 A. I'm assuming.

4 Q. You saw Tykeem May that day?

5 A. On the 14th?

6 Q. On the 15th.

7 A. On the 15th? Yes, sir.

8 Q. And you were specifically looking for Tykeem
9 May; correct?

10 A. That's correct.

11 Q. And that was based off information from the
12 traffic stop the day before; correct?

13 A. That's correct.

14 Q. So you weren't looking for any other light-
15 skinned or red-skinned African-American male with
16 dreadlocks?

17 A. No, sir.

18 Q. And you were specifically looking for him at
19 that address; correct?

20 A. That's correct.

21 Q. Because at that address is where a white Dodge
22 Caliber was located; correct?

23 A. That's correct.

24 Q. And that's where Emonie Ford lived; right?

25 A. Yes. Yes, sir.

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1 Q. And it's her car; right?

2 A. Yes, sir.

3 Q. And then you went back to the Orangeburg
4 Department of Public Safety headquarters? .

5 A. That's correct.

6 Q. And you also met with Corporal Dukes?

7 A. Not at headquarters. He was actually running
8 surveillance on Wilkinson Street when I went back to
9 headquarters.

10 Q. So later that evening, you went back to
11 headquarters to get a search warrant; right?

12 A. That's correct.

13 Q. Let's talk about that search warrant. You swore
14 to it?

15 A. That's correct.

16 Q. And you were the affiant; right?

17 A. That's correct.

18 Q. Now, when you swear to it, you present that
19 information to the judge; right?

20 A. Took.

21 Q. And the judge considers what you have in the
22 affidavit; right?

23 A. That's correct.

24 Q. And he didn't ask you to add more?

25 A. No, sir.

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1 Q. And let's talk about that. So you swore in your
2 affidavit that the subject was a light-skinned black male?

3 A. That's correct.

4 Q. And that the clerk described him as being red-
5 skinned?

6 A. That's correct.

7 Q. And that the clerk described the subject as
8 having thin, arching eyebrows?

9 A. That information was given to me by Detective
10 Dukes. I didn't actually speak partially one-on-one with
11 him.

12 Q. But the affidavit says -- that you swore to says
13 that the clerk described the subject to have thin, arching
14 eyebrows?

15 A. That's correct.

16 Q. And long dreds approximately shoulder length?

17 A. That's correct.

18 Q. And you never personally spoke with the clerk
19 before September 15th?

20 A. The only information that I gained from the
21 clerk was retrieved directly from Detective Dukes.

22 Q. But you did read the clerk's written statement
23 before September 15th; right?

24 A. That's correct.

25 Q. And in that written statement it says nothing

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1. about thin, arching eyebrows?

2. A. I don't exactly remember what was in the
3. statement.

4. Q. Okay. And it also says, in the affidavit that
5. you swore to, that on video it was discovered that the
6. subject drove up to the business; right?

7. A. That's correct.

8. Q. In a white Dodge Caliber?

9. A. That's correct.

10. Q. Right?

11. And in the video itself, what you've seen;
12. right?

13. A. Yes, sir.

14. Q. You can't see who is driving the car?

15. A. That's correct.

16. Q. You can't see anyone getting in the car?

17. A. No, sir.

18. Q. You can't see anyone getting out of the car?

19. A. No, sir.

20. Q. And the time stamps don't match; right?

21. A. I'm assuming so. I didn't pay attention to the
22. time stamps.

23. Q. Well, let's get back to the warrant itself.

24. Now, you were looking for items from the robbery; right?

25. A. That's correct.

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1 Q. Items like an assault rifle with a banana clip?

2 A. That's correct.

3 Q. Stonewashed-looking jeans with faded fabric in
4 the front?

5 A. That's correct.

6 Q. Black-and-white stripped tennis shoes?

7 A. That's correct.

8 Q. A red shawl or bandana?

9 A. That's correct.

10 Q. Red sunglasses?

11 A. That's correct.

12 Q. And a black beanie or skullcap with a circular
13 chain design wrapping around it?

14 A. That's correct.

15 Q. Now let's focus on the search itself; right?

16 You were present when the search warrant was executed?

17 A. That's correct.

18 Q. And that was executed on

19 A. That's correct.

20 Q. And yet you did not find certain things;
21 correct?

22 A. That's correct.

23 Q. You did not recover any jeans at all, did you?

24 A. We did not enter any into evidence.

25 Q. Even though that's specifically something you

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1 were looking for in the warrant; correct?

2 A. That's correct.

3 Q. You didn't find or recover any red shawl or
4 bandana?

5 A. No, sir.

6 Q. Even with direction from Corporal Dukes?

7 A. That's correct.

8 Well, I was given information that it was there,
9 by Detective Dukes, and --

10 Q. But with their direction, you didn't find
11 anything there, did you?

12 A. That's correct.

13 Q. And you're also looking for a black beanie or
14 skullcap with a circular chain design wrapping around it;
15 right?

16 A. That's correct.

17 Q. You didn't find that, either, did you?

18 A. No, sir.

19 MR. STEVENS: Court's indulgence.

20 THE COURT: Uh-huh.

21 MR. STEVENS: No further questions at this time,
22 Judge.

23 THE COURT: Any redirect of the witness?

24 MR. BELL: Yes, Your Honor.

25 THE COURT: You may proceed.

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REDIRECT EXAMINATION

BY MR. BELL:

Q. Lieutenant Caddell, again, you were asked about the jeans; is that correct?

A. That's correct.

Q. You didn't take any jeans. Were there jeans present, the faded style or whatever --

A. Numerous pairs.

Q. And why didn't you take them into custody?

A. Because we couldn't determine which ones were used. There was approximately ten pairs.

Q. They looked similar?

A. Yes, sir.

Q. And you didn't know which one was which?

A. That's correct.

Q. You didn't even know if all of them were his or not?

A. That's correct.

Q. There were two people that lived --

MR. STEVENS: Leading, Judge.

THE COURT: Sustained. Leading.

Q. [Mr. Bell] Whose jeans were they?

A. Based upon the size and the style, they were of men's style, we could only assume --

MR. STEVENS: Speculation, Judge.

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1 THE COURT: Based on his rational perception as
2 investigating the incident and to -- well, sustain
3 more than that -- he's entitled to rehabilitate his
4 witness, based on your cross-examination. Overruled.

5 You may proceed.

6 MR. BELL: Okay.

7 THE COURT: But he needs to have a foundation of
8 what he's testifying about.

9 MR. BELL: Thank you, Lieutenant Caddell.
10 That's all.

11 THE COURT: Any objection to the witness being
12 excused subject to re-call? From the State?

13 MR. BELL: No, Your Honor.

14 THE COURT: From the defense?

15 MR. STEVENS: Not from the defense, Judge.

16 THE COURT: Sir, you're excused, subject to
17 re-call.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 MR. BELL: Your Honor, may I publish these
23 pictures to the jury?

24 THE COURT: You may.

25 [Whereupon, Mr. Bell proffers documents to the

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1 jury]

2 MR. BELL: Your Honor, may we approach?

3 THE COURT: Yes.

4 [Whereupon, an off-the-record bench conference
5 is held]

6 THE COURT: Madam Forelady, ladies and
7 gentlemen, I have a very brief matter of law to take
8 up.

9 During this break, please do not discuss the
10 case and please leave your notepads in your seats. We
11 appreciate your patience.

12 [Whereupon, the jury exits the courtroom at
13 10:38 a.m.]

14 THE COURT: Okay. What's the issue?

15 MR. BELL: Your Honor, as I stated, our next
16 witness is Emonie Ford. She's a State's witness but
17 she's also been noticed as an alibi witness for the
18 defense. And I'm necessarily asking for her direct
19 testimony, but mainly redirect, probably, that we be
20 allowed under 611(c) to have a little flexibility in
21 our questions, because she may start becoming a
22 witness for the defense during cross-examination, and
23 to allow us to lead some because she is becoming a
24 witness with -- identified with an adverse party under
25 611(c).

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1 THE COURT: We don't have those rules anymore as
2 it regards hostile witnesses.

3 MR. BELL: Well, I mean --

4 THE COURT: But I'll have to -- I don't think
5 anybody knows what she's going to say.

6 MR. BELL: That's true, Your Honor --

7 THE COURT: We'll have to cross that bridge when
8 we come to it.

9 MR. BELL: But I was just kind of -- because I
10 got her up there, to alert the Court.

11 THE COURT: Yeah. I'm going to have to take
12 that one as it comes. I'm going to have to see what
13 she says.

14 MR. BELL: But like I said, not necessarily
15 during my direct but maybe during my redirect.

16 THE COURT: Yeah. I'll have to cross that
17 bridge when we come to it and see what she actually
18 says.

19 MR. BELL: Okay.

20 THE COURT: Yeah. Because I'm not sure --

21 MR. BELL: Well, that's true, Your Honor.

22 THE COURT: -- with sufficient particularity
23 what she's going to say.

24 MR. BELL: All I have is an idea and -- don't
25 think any of us have.

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1 THE COURT: Even just like the weather, folks
2 change. Who knows.

3 MR. BELL: That's --

4 THE COURT: Yeah. I wish I were clairvoyant. I
5 could be off in Vegas -- I'm being sarcastic. Not
6 sarcastic, but you know what I mean. A little levity.

7 But I don't think anybody knows what she's going
8 to say and I think we have to take it as it comes and
9 see what she says and then I'll cross that bridge when
10 we come to it.

11 MR. BELL: Well, I just kind of wanted to alert
12 the Court as kind of where I was heading.

13 THE COURT: Well, I sort of anticipated that,
14 because I saw her on both lists. So I assumed -- and
15 I had not had the opportunity yet to ask if, in
16 accordance with the rules, the defense had given you
17 notice of alibi.

18 MR. BELL: Yes, Your Honor.

19 THE COURT: I noticed in their request they have
20 asked for an alibi instruction. But I don't know that
21 -- when I looked at the file in the clerk's office, if
22 there was any indication of a notice of alibi. So I
23 had intended to ask that question and just had not
24 gotten around to it. But my assumption was that
25 apparently the defense thought there was something

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1 favorable she was going to say for them, because they
2 had her on their list and that you-all had, based on
3 our pretrial discussions, some favorable information
4 from her, as well. So I think we're going to have to
5 kind of see where all that leads.

6 MR. BELL: And, Your Honor, I will say for the
7 record that they did property notice an alibi witness.
8 I think she was the only alibi witness. And,
9 likewise, we filed a return for the Rule.

10 MR. STEVENS: That's correct, Judge. That's my
11 understanding, also, from my records.

12 THE COURT: And I appreciate that clarity for
13 the record.

14 Let's see how it goes and we'll go from there.

15 MR. BELL: Okay.

16 MR. STEVENS: Judge?

17 THE COURT: Yes, sir?

18 MR. STEVENS: If we may allow my client to take
19 a restroom break?

20 THE COURT: Sure. Why don't we all take a
21 restroom break.

22 MR. STEVENS: Thank you, ma'am. I appreciate
23 it.

24 THE COURT: You're welcome.

25 [Whereupon, a recess is held from 10:41 to

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1 10:48 a.m.]

2 THE COURT: Is the State ready to proceed?

3 MR. BELL: The State is ready, Your Honor.

4 THE COURT: The defense ready to proceed?

5 MR. STEVENS: The defense is ready, Judge.

6 THE COURT: Please bring in the jury.

7 THE BAILIFF: Yes, Your Honor.

8 THE COURT: Thank you, ma'am.

9 [Whereupon, the jury enters the courtroom at
10 10:50 a.m.]

11 THE COURT: Ladies and gentlemen, I hope you
12 enjoyed your break.. We'll now resume testimony.

13 The State may proceed.

14 MR. BELL: The State would call Emonie Ford.

15 THE COURT: Ma'am, if you would come forward to
16 be sworn.

17 [Whereupon, Ms. Ford comes forward]

18 THE CLERK OF COURT: Please place your left hand
19 on the Bible and raise your right hand.

20 [Whereupon, Ms. Ford is duly sworn by the clerk
21 of court as follows: do you hereby swear or affirm
22 that the evidence that you give today will be the
23 truth, the whole truth, and nothing but the truth, so
24 help you God]

25 THE WITNESS: Yes, ma'am.

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1 THE CLERK OF COURT: Thank you. You may have a
2 seat.

3 [Whereupon, Ms. Ford takes the witness stand]

4 THE CLERK OF COURT: Please state your name
5 again for the record and spell --

6 THE WITNESS: Emonie Ford.

7 THE CLERK OF COURT: -- and spell your last
8 name.

9 THE WITNESS: F-O-R-D.

10 THE CLERK OF COURT: Thank you.

11 THE COURT: Ma'am, if you could spell your first
12 name, as well, for the benefit of the court reporter.

13 The witness: E-M-O-N-I-E.

14 THE COURT: Thank you so much.

15 You may proceed.

16 MR. BELL: Thank you.

17 THE COURT: You're welcome.

18

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EMONIE FORD,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Emonie: is that the correct pronunciation?

A. Yes.

Q. Emonie, are you employed?

A. No.

Q. Are you a student?

A. Yes.

Q. Where are you a student?

A. South Carolina State University.

Q. Now, how long -- what year are you -- I guess
you're going into a new year now?

A. Senior year.

Q. You're a senior?

A. Yes.

Q. What are you majoring in?

A. Fashion merchandising.

Q. And were you a student last year in 2013?

A. Yes, I was.

Q. And where do you live?

A.

Q. And were you living there in September of last

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1 year?

2 A. Yes, I was.

3 Q. How long have you lived at that address?

4 A. For about four years.

5 Q. And where is that Wilkinson Street located?

6 A. Off of Russell, right across from the school.

7 Q. From South Carolina State?

8 A. Yes.

9 Q. Is that where you're going to school?

10 A. Yes, South Carolina State.

11 Q. Back in September, 2013, was anybody living with
12 you?

13 A. Yes. Tykeem May and Alexis.

14 Q. And who is Tykeem May?

15 A. My boyfriend.

16 Q. Do you see him in the courtroom this morning?

17 A. Yes.

18 Q. Could you point him out, please?

19 A. He's right here [indicates].

20 Q. With the dreds over there on --

21 A. Yes, with the dreds.

22 Q. And back in September of 2013, how long had
23 Tykeem lived with you?

24 A. He had just moved in from staying with somebody
25 else, so it probably was like three months. It was like

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1 during the summer time he moved back in.

2 Q. So two, three, four months, something --

3 A. Yes.

4 Q. -- like that?

5 A. Uh-huh.

6 Q. And I want to go back to September, in September
7 of last year, 2013. Did you have an occasion to have some
8 contact with police officers?

9 A. No. Well, I had before then, because somebody
10 broke in my house. But not really.

11 Q. There were no police officers that came to your
12 house back then?

13 A. Oh. Yes. They came in with a -- I guess a
14 search warrant, looking for Tykeem.

15 Q. And when they came to your house with a search
16 warrant, did you have any idea what they -- what it was
17 about?

18 A. No, I didn't.

19 Q. And when they came to the search warrant, they
20 came to search the search warrant, what did they do?

21 A. Basically, I was sleeping and then they bust in
22 the door. Somebody put a gun to the back of my head, put
23 their knee in my back, had me down on the floor. Put me
24 in handcuffs, took me outside, sat me down. And then
25 that's when I went off with another female police officer.

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1 Q. Okay. And where did you go to?

2 A. I came to the jail -- or, I don't know, like a
3 building by the jail.

4 Q. And did you talk with anybody there?

5 A. Yes.

6 Q. Who did you talk with?

7 A. I talked with a black female police officer with
8 sort hair and a male Caucasian police officer.

9 Q. You talked with --

10 A. Yes.

11 Q. -- this officer?

12 A. Yes.

13 Q. Sargent Dukes?

14 A. Yes.

15 Q. And when you were there, did he show you
16 anything?

17 A. Yes. He showed me a video surveillance.

18 Q. And what did it show that you remember?

19 A. They see a car that looked like mine driving
20 from -- I don't know the name of the street, but driving
21 from the street to the back of the Keg. And then from the
22 back of the Keg, he showed me somebody like walking to and
23 from the Keg with a gun and leaving the Keg.

24 Q. Now, when you saw this video, when you saw that
25 video, you stated that you recognized the car, that it

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1 looked like yours; is that correct?

2 A. Yes.

3 Q. What kind of car did you have back then?

4 A. An '09 Dodge Caliber.

5 Q. Did you recognize anything else in the video?

6 A. My glasses and scarf. Well, something similar
7 to when it was pointed out.

8 Q. What kind of glasses? Do you recall?

9 A. Some red frames.

10 Q. And what kind of scarf?

11 A. It was like a checkerboard kind of looking
12 scarf.

13 Q. And where was that scarf -- where did you see
14 that in the video?

15 A. Over -- supposedly over the face or the mouth of
16 the person.

17 Q. Did you see anything else in the video that you
18 recognized?

19 A. The gun. That's it. Yeah, the gun.

20 Q. Where had you seen the gun before?

21 A. In the house.

22 Q. Okay. And whose gun was that?

23 A. It was Tykeem's gun.

24 Q. And you pointed those out to Sargent Dukes?

25 A. Yeah. When he asked about them, yes.

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1 Q. Did he ask where they were in your house?

2 A. Yes, he did.

3 Q. And you told him where they were?

4 A. Yeah, the glasses and the scarf. Yeah.

5 Q. Where did you tell them the scarf was?

6 A. Over the window shield of -- a window in a room,
7 in a guest bedroom.

8 Q. And where did you tell them that the glasses
9 were?

10 A. On a table, a glass table, that my TV was
11 sitting on.

12 Q. Did they ask you anything about shoes?

13 A. Yes.

14 Q. What did they --

15 A. They asked about my shoes that were in the back
16 seat.

17 Q. They were in the back seat on that night when
18 the police came?

19 A. Yeah.

20 Q. What did they ask you about those?

21 A. They asked me -- they asked me if they were his,
22 because I guess he had similar shoes on at the time. But
23 they asked me if they were his. But they were mine. We
24 had the same shoes.

25 Q. Okay. How did you come to have the same shoes

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1 as he did?

2 A. He got them first, and then I liked them so I
3 went and got some.

4 Q. So he had them sometime -- when did you buy
5 those shoes, do you recall, about?

6 A. I don't.

7 Q. Sometime before the police came to your house?

8 A. Yeah. It had to have been before.

9 Q. What size shoe do you wear?

10 A. Seven and a half in boys.

11 Q. Now, did they ask you about -- did they tell you
12 when this robbery happened?

13 A. At the time?

14 Q. Yes.

15 A. No, they didn't tell me at the time. But like
16 once they sat me down and explained what was going on,
17 then that's when I figured everything out.

18 Q. And did they ask you about what was going on
19 about where you were and where Tykeem was at the time they
20 told you or when the robbery happened?

21 A. Yes.

22 Q. And what did you tell the police about that?

23 A. At the time, I estimated a time based on happy
24 hour at Sonics, because we went -- I remember that day we
25 went to Walmart and then after Walmart we went to Sonics.

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1 Q. And when is happy hour at Sonic?

2 A. 2:00 to 5:00.

3 Q. So in the afternoon sometime, you and Tykeem
4 went to Walmart and hit the happy hour; is that correct?

5 A. Yes.

6 Q. Did he have your vehicle at some point during
7 that day?

8 A. I'm not sure, but he probably did because he
9 usually uses my vehicle. We both use it. It was nothing
10 out of the ordinary for him to, you know, get my keys and
11 take my car.

12 Q. Let me show you -- let me show you this and ask,
13 first, if you can say what that is.

14 A. Okay. Do you want me to just read it?

15 Q. No. First of all, what is it?

16 A. It's a voluntary statement.

17 Q. Okay. Is it your statement?

18 A. Yes.

19 Q. Could that refresh your recollection about what
20 you told the police about September 8th?

21 A. Yes.

22 Q. Do you want to take a moment to look for it --
23 or to read it over?

24 A. Yes.

25 Q. Did you say what -- if Tykeem had your vehicle

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1 or not that morning?

2 A. Yes, he did.

3 Q. Did you -- were you with it when he had it?

4 A. No.

5 Q. And what did you say about it?

6 A. I didn't know where he went or where he left to
7 go.

8 Q. So at some point on September 8th, before y'all
9 went to Walmart and Sonic, he went off by himself with
10 your vehicle?

11 A. Yes.

12 Q. The white Dodge Caliber?

13 A. Yes.

14 Q. I want to show you some pictures, Ms. Ford.

15 First of all, let me show you what's been introduced into
16 evidence as State's 6 and ask if you recognize that.

17 A. Yes.

18 Q. What is that?

19 A. My house.

20 Q. And let me show you what's been marked as
21 State's 7 and ask if you recognize that picture.

22 A. Yes.

23 Q. And what is that?

24 A. My car and my house.

25 Q. And that's your car at the house?

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1 A. Uh-huh.

2 Q. Let me show you what's been marked as -- or
3 what's been entered as State's 9, into evidence, and ask
4 if you recognize that.

5 A. Uh-huh.

6 Q. And what is that?

7 A. My car, the back of my car, and the license
8 plate.

9 Q. That's the license plate on your car?

10 A. Yes.

11 Q. And it's got -- Beaufort, South Carolina. Is
12 that where you live --

13 A. Uh-huh.

14 Q. -- or where your family is from?

15 A. Yes.

16 Q. And let me show you what's been marked as
17 State's 11, that's into evidence, and ask if you recognize
18 that.

19 A. Yes. The front of the car.

20 Q. And up on the windshield, what's on the
21 windshield there?

22 A. My sticker, so I can get on base.

23 Q. Okay. What base is that?

24 A. Any military base.

25 Q. So there's a white sticker with writing on it?

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1 A. MC Beaufort. MCS Beaufort.

2 Q. Let me show you what's been marked as State's 20
3 into evidence and ask if you recognize these.

4 A. Yes.

5 Q. And what are these?

6 A. King Grippies sneakers.

7 Q. And whose are they?.

8 A. Tykeem's.

9 Q. They were in your house?

10 A. Uh-huh.

11 Q. And they were in your house back on September
12 15th --

13 MR. STEVENS: Objection. Leading.

14 THE COURT: Watch the leading.

15 Q. [Mr. Bell] Do you know where they were in your
16 house?

17 A. Not exactly. Maybe in the closet on the floor.

18 Q. Let me show you what's been marked State's 13.
19 and ask if that -- is that your --

20 A. Yes.

21 Q. -- in your house --

22 A. Uh-huh.

23 Q. -- and where the shoes were?

24 A. In the closet.

25 Q. Let me show you what's been marked as State's 19

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1 -- and I'll pull them out -- and ask if you recognize
2 those.

3 A. Yes.

4 Q. What are those?

5 A. My glasses.

6 Q. Red glasses?

7 A. Red frames.

8 Q. How long have you had those?

9 A. For a while.

10 Q. What's a while? Before September of last year?

11 A. No. Well, I got them at a photo shoot from my
12 photographer around that time. I can't remember exactly
13 the date.

14 Q. Let me show you what's been marked as State's
15 17, into evidence, and ask if you recognize this.

16 A. Yes.

17 Q. What is that?

18 A. A gun.

19 Q. Have you seen this gun before?

20 A. Yes, I have.

21 Q. Where have you seen it?

22 A. It was at my house.

23 Q. Whose gun is it?

24 A. Tykeem's.

25 Q. And he had it at your house?

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1 A. Yeah. In the process of selling it, supposedly.

2 Q. Let me add: did you realize it was still at
3 your house?

4 A. No.

5 Q. What did you think had happened to it?

6 A. I thought he sold it.

7 Q. Let me show you what's been marked as State's --
8 or has been entered into evidence. Do you recognize that
9 picture?

10 A. Yeah.

11 Q. What is that?

12 A. The inside of the closet. It must be, because
13 those jeans -- yeah. The inside of the closet.

14 Q. And there are some jeans in there?

15 A. Yes.

16 Q. Whose jeans are those?

17 A. Mine.

18 Q. Yours.

19 Were there other jeans in your house?

20 A. Yes.

21 Q. Were there some that were yours?

22 A. Yes.

23 Q. Were some Tykeem's?

24 A. Yes.

25 Q. Similar type jeans?

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1 A. Yes.

2 Q. After you went to the police station and talked
3 to them and gave a statement, what happened?

4 A. We sat outside for a little while, then one of
5 the officers took me home.

6 Q. They didn't arrest you for this, did they?

7 A. No, they did not.

8 Q. Did you know anything about a robbery at the
9 Keg --

10 A. No, I did not.

11 Q. -- the week before?

12 A. No.

13 MR. BELL: One moment, Your Honor.

14 Q. [Mr. Bell] Let me show you what's entered, as
15 State's evidence, State's Number 5. And this is a screen
16 shot. Does that show the vehicle that you saw on the
17 video?

18 A. Yes.

19 Q. And it looks like your vehicle?

20 A. Yes.

21 Q. You told the police it looked like your vehicle?

22 A. Yes.

23 Q. And let me show you what's been entered as
24 State's 4. And this is a screen shot from the video. Did
25 you see that from the video?

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1 A. Yes.

2 Q. And that shows the individual that was robbing
3 the Keg?

4 A. Yes.

5 Q. And you saw familiar things. You said you saw
6 glasses that looked like yours?

7 A. Yes.

8 MR. STEVENS: Judge, he's leading again.

9 THE COURT: Sustained. Leading. Rephrase.

10 MR. BELL: I'm kind of recapitulating.

11 THE COURT: No leading.

12 Q. [Mr. Bell] What did you see that was familiar
13 to you?

14 A. The glasses and the scarf was familiar.

15 Q. Anything else?

16 A. The gun looked familiar.

17 MR. BELL: Thank you, Ms. Ford. Please answer
18 any questions the defense has for you.

19 THE COURT: You may proceed.

20 MR. STEVENS: Thank you, Judge. May it please
21 the Court.

22 THE COURT: Yes, sir.

23 MR. STEVENS: Good morning, Ms. Ford. How are
24 you today? My name is Breen Stevens. I represent the
25 defendant, Mr. Tykeem May.

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. All right, Emonie. I'm going to ask you some questions, first, about -- just kind of go over a little bit about what they --

A. Okay.

Q. First of all, you indicated you're a student; right?

A. Yes.

Q. At South Carolina State University?

A. Yes.

Q. And that you're not presently employed?

A. Right.

Q. Well, then, now let's ask some questions about Tykeem.

A. Okay.

Q. Okay? Now, you knew Tykeem then; right?

A. Yes.

Q. And you've known him since about 2010?

A. Yes.

Q. And he has had a job; right?

A. Yes.

Q. And, in fact, as of September 8th, 2013, he was employed; right?

A. Yes, he was, at Dollar General.

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1 Q. So he had a daytime job at Dollar General?

2 A. Yes. He also was starting a job with security,
3 with this guy named Hogue [phonetic].

4 Q. So he had a job at Dollar General and he had
5 another job, as well; right?

6 A. Yes.

7 Q. And this job was with TKL Security; right?

8 A. Yes.

9 Q. Working security for clubs?

10 A. Uh-huh.

11 Q. And that was primarily at night?

12 A. Yes.

13 Q. So he worked in the daytime?

14 A. At Dollar General.

15 Q. And he worked in the nighttime at TKL?

16 A. Uh-huh.

17 Q. So he's a hardworking young man?

18 A. Yes.

19 Q. And you don't know him to be a hat person, do
20 you?

21 A. No.

22 Q. All right, Emonie. Let's talk about some items
23 in your house. All right?

24 A. Okay.

25 Q. Now, you have sunglasses; right?

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- 1 A. Uh-huh.
- 2 Q. And, in fact, you like sunglasses?
- 3 A. Yeah. I have a collection.
- 4 Q. You like them to the point where you collect
- 5 them?
- 6 A. Yes.
- 7 Q. And you actually have a pair of red sunglasses?
- 8 A. Yes.
- 9 Q. And these red sunglasses were common?
- 10 A. Yes.
- 11 Q. And, in fact, you can't remember specifically
- 12 when you got your red sunglasses?
- 13 A. No.
- 14 Q. But you do remember you got them at a photo
- 15 shoot?
- 16 A. Yes.
- 17 Q. And at the photo shoot, they were actually
- 18 handed out to people at the photo shoot?
- 19 A. Well, me and my photographer are close like
- 20 that, so if I wanted to take something from -- he would
- 21 let me.
- 22 Q. I got you.
- 23 And you don't remember if this photo shoot was
- 24 before or after September 9th?
- 25 A. No, I don't.

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1 Q. Now, you said you also had a scarf?

2 A. Yes.

3 Q. And the scarf you keep on a door?

4 A. Uh-huh.

5 Q. Right? And it's actually covering a window on
6 the door?

7 A. Yes.

8 Q. And it's in your home; right?

9 A. Yes.

10 Q. Acting kind of like a shade?

11 A. Yes.

12 Q. And I want you to focus on September 8th, 2013.

13 A. Okay.

14 Q. You did not notice your red scarf missing on
15 September 8th, 2013?

16 A. No. It's still there. And it's pink.

17 Q. It's pink?

18 A. Yeah. My scarf is pink.

19 Q. So you have a pink scarf, not a red scarf?

20 A. Right.

21 Q. And this scarf you did not notice missing on
22 September 8th?

23 A. No. It's still there.

24 Q. And you were at your home on September 8th?

25 A. Yes.

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1 Q. You were there in the morning?

2 A. Uh-huh.

3 Q. And you were there a little bit into the
4 afternoon; right?

5 A. Yeah, after we came back from Walmart or Sonic
6 or whatever.

7 Q. Well, let's talk about that. Let's focus on
8 September 8th itself, as well. Now, you stated that
9 Tykeem used your car in the morning; right?

10 A. Uh-huh.

11 Q. Okay. And that wasn't unusual?

12 A. No.

13 Q. And you also noted at the time he was still in
14 the process of talking with his boss at TKL Security?

15 A. Yes.

16 Q. All right. And he came back?

17 A. Yes.

18 Q. And y'all left together?

19 A. Yes.

20 Q. About 1:40 p.m.?

21 A. Yes.

22 Q. And you remember because you wanted to make it
23 to Sonic's happy hour?

24 A. Yes.

25 Q. After you were finished shopping --

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- 1 A. Yes.
- 2 Q. -- at Walmart?
- 3 A. Uh-huh.
- 4 Q. So you didn't want to go directly to Sonic?
- 5 A. No.
- 6 Q. So you went to Walmart with Tykeem?
- 7 A. Yes.
- 8 Q. You shopped there?
- 9 A. Yes.
- 10 Q. With Tykeem?
- 11 A. [No response]
- 12 Q. And when you got there, it was actually around
- 13 2:00 p.m.?
- 14 A. Yes.
- 15 Q. And then you left Walmart?
- 16 A. Yeah. And went to Sonics.
- 17 Q. And when you left Walmart, you were with Tykeem?
- 18 A. Yes.
- 19 Q. And you left at about 3:00 p.m.?
- 20 A. Yeah. Estimated, yeah.
- 21 Q. And then finally you got to stop at Sonics?
- 22 A. Right.
- 23 Q. Because you love Sonics --
- 24 A. Yes, I do.
- 25 Q. And then you both came home?

Emonie Ford
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- 1 A. Uh-huh.
- 2 Q. Still together?
- 3 A. Yes.
- 4 Q. And you actually arrived home at about
- 5 3:40 p.m.?
- 6 A. Approximately, yes.
- 7 Q. All right, Emonie. I'm just going to ask you a
- 8 couple of brief questions about September 15th.
- 9 A. Okay.
- 10 Q. All right?
- 11 Tykeem was with you on that evening; right?
- 12 A. Yes.
- 13 Q. And the police actually raided your home?
- 14 A. Yes.
- 15 Q. Put a gun to your head?
- 16 A. Yes.
- 17 Q. Handcuffed you?
- 18 A. Yes.
- 19 Q. Drug you outside?
- 20 A. Yeah.
- 21 Q. You were placed into a police car?
- 22 A. Yes.
- 23 Q. And you were taken to the station?
- 24 A. Yes.
- 25 Q. And that's where you were questioned?

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1 A. Yes.

2 Q. You were scared?

3 A. I was.

4 Q. But one thing you're sure about is you
5 definitely went with Tykeem May to go shopping --

6 A. Yes.

7 Q. -- on the 8th?

8 A. Yes.

9 Q. At about 1:40 p.m.

10 MR. STEVENS: Court's indulgence.

11 THE COURT: Uh-huh.

12 MR. STEVENS: No further questions at this time,
13 Judge.

14 Thank you, Ms. Ford.

15 THE COURT: Any redirect fo the witness?

16 MR. BELL: Yes, Your Honor.

17 THE COURT: You may proceed.

18

19

20

21

22

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24

25

Emonie Ford
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REDIRECT EXAMINATION

BY MR. BELL:

Q. You stated on cross-examination that you had known Tykeem since 2010; is that correct?

A. Yes.

Q. Where did you meet him?

A. I met him at a party.

Q. What kind of party?

A. Like a college party.

Q. Did he go to college?

A. Yes, he did.

Q. Where did he go?

A. He went to South Carolina State.

Q. In September, was he still going to college?

A. No, he wasn't.

Q. Why not?

MR. STEVENS: Judge, beyond the scope.

THE COURT: Approach for me, please.

[Whereupon, an off-the-record bench conference is held]

THE COURT: The objection is overruled. Within the scope of cross. As to motivation and finances.

Q. [Mr. Bell] Again, you said he was not in school in September of 2013?

A. Right.

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1 Q. Did you know why?

2 A. Because they were still considering him an out-
3 of-state student, so his tuition was more.

4 Q. And what does that -- what does that mean?

5 A. He couldn't pay his tuition. That's why he got
6 another job.

7 Q. Now, on cross-examination you were talking about
8 the scarf.

9 A. Uh-huh.

10 Q. And you told Mr. Stevens it was a pink scarf.

11 A. It is.

12 Q. When I asked you about it, you said it was a red
13 checkerboard.

14 A. No, I didn't tell you that.

15 Q. You said it on direct, a red checkerboard scarf.

16 A. I said it was checkerboard. I never said it was
17 red.

18 Q. You said it was a red scarf on the video.

19 MR. STEVENS: Judge --

20 A. No, I did not.

21 MR. STEVENS: -- badgering the witness.

22 THE COURT: I'm going to give him a little
23 latitude. It goes to her credibility and a consistent
24 statement. I'm going to give him a little latitude.

25 But watch --

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1 MR. BELL: Yes, ma'am.

2 THE COURT: -- don't badger. You may proceed.

3 Q. [Mr. Bell] So it's a pink scarf? Pink
4 checkerboard is what --

5 A. Yes, it is.

6 Q. -- you're saying now?

7 A. It's a pink scarf.

8 Q. Is it a pink checkerboard or a pink scarf?

9 A. Pink checkerboard. Pink with black lines --
10 black checkerboard.

11 Q. Now, you were asked on cross-examination about
12 you and Tykeem going to Sonic and Walmart; is that
13 correct?

14 A. Yes.

15 Q. And the reason you wanted to go to Sonic was?

16 A. For happy hour.

17 Q. And when is -- or when was happy hour back last
18 year, September, 2013?

19 A. It was probably 2:00 to 4:00, but it's 2:00 to
20 5:00 now.

21 Q. So there is a two-hour window when you could --
22 when you can get to Sonic; is that correct?

23 A. Right.

24 Q. And you told Mr. Stevens that y'all went at
25 1:40 p.m.; is that right?

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1 A. Yes. I estimated it.

2 Q. Is that exact time?

3 A. It's an estimated time.

4 Q. It's an estimated time. So it could have been
5 later, a little later?

6 A. Well, it was towards the beginning of happy
7 hour.

8 Q. So it could have been 2:00, it could have been
9 2:15 --

10 A. Right.

11 Q. -- that y'all left?

12 And then you went to Walmart. And how long were
13 y'all at Walmart?

14 A. We never stay in Walmart long. Probably like
15 thirty, forth minutes.

16 Q. So if you left at 2:15 and stayed in Walmart
17 thirty minutes, that would have put you at Sonic about
18 three o'clock; is that correct? That would have been the
19 middle of the afternoon.

20 A. Exactly.

21 Q. And could that have been the time that you were
22 there?

23 A. It could have.

24 Q. You don't know the exact times that you-all left
25 and went; is that correct?

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1 A. No, not the exact time.

2 Q. Now, when you left to go to Walmart with Tykeem,
3 when did he get back home prior to that? Back to your
4 house.

5 A. After Walmart?

6 Q. No. Before.

7 A. Before Walmart?

8 Q. Before. You said he had gone off with your car
9 by himself.

10 A. Yeah.

11 Q. And he came back at some point; correct?

12 A. Yes.

13 Q. And how long after he came back did y'all leave?

14 A. Probably like twenty minutes. I got dressed and
15 we left.

16 Q. But the 1:40 time that you said y'all left, you
17 didn't look at a clock, did you?

18 A. No.

19 MR. BELL: Thank you, Ms. Ford. Nothing
20 further.

21 THE COURT: Any objection to the witness being
22 excused? From the State?

23 MR. BELL: None from the State, Your Honor.

24 THE COURT: From the defense?

25 MR. STEVENS: None from the defense, Judge.

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1 THE COURT: Ma'am, you're excused.

2 THE WITNESS: Thank you.

3 THE COURT: You're welcome.

4 [Whereupon, Ms. Ford is excused and exits the
5 witness stand]

6 THE COURT: The State may proceed.

7 MR. BELL: We call Captain Carl Shultz.

8 [Whereupon, Mr. Shultz comes forward]

9 [Whereupon, Mr. Shultz is duly sworn by the
10 clerk of court as follows: do you hereby swear or
11 affirm that the evidence you shall give today will be
12 the truth, the whole truth, and nothing but the truth,
13 so help you God]

14 THE WITNESS: I do.

15 THE CLERK OF COURT: Thank you. You may have a
16 seat.

17 [Whereupon, Mr. Shultz takes the witness stand]

18 THE CLERK OF COURT: Please state your name
19 again for the record and spell your last name.

20 THE WITNESS: Carl Wayne Shultz. S-H-U-L-T-Z.

21 THE COURT: You may proceed.

22 MR. BELL: Thank you.

23 THE COURT: You're welcome.

24 - - -

25 - - -

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CARL SHULTZ,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Mr. Shultz, where are you employed?

A. With the Orangeburg Department of Public Safety.

Q. And how are you employed?

A. I'm a captain in charge of investigators and
forensic services.

Q. And how long have you been with the Orangeburg
Department of Public Safety?

A. With Public Safety, seven years. Law
enforcement, twenty-one.

Q. And how long have you been over investigations
and evidence; is that correct?

A. Evidence and forensics, the last seven.
Investigations, two and a half.

Q. And you're now a captain; is that correct?

A. Correct.

Q. How long have you been a captain?

A. About a month. I had been captain [phonetic]
for two years.

Q. Do you recall in September, 2013, you being
involved in the execution of a search warrant?

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1 A. I do.

2 Q. Do you recall where that occurred?

3 A. On -- if I can review my notes, get the exact
4 address.

5 It was

6 Q. And who was along with you?

7 A. Sargent Caddell, John Caddell, Thomas Gibson,
8 and Sargent Dukes.

9 Q. And who was Thomas Gibson?

10 A. He was a crime scene investigator that worked
11 with me. He's now employed with the Lexington Police
12 Department.

13 Q. And during the execution of the search warrant
14 -- I think it was testified to -- but y'all took some
15 county officers, as well; is that correct?

16 A. Correct. We did.

17 Q. And that was the special operations team, the
18 SWAT?

19 A. Correct. The SWAT team.

20 Q. And do you recall why that was?

21 A. Based on the nature of the crime being an armed
22 robbery and there was weapons involved, and the house was
23 located in the jurisdiction of the sheriff's office, so we
24 brought them in.

25 Q. And y'all made -- they made entry before y'all

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1 did?

2 A. Correct.

3 Q. And they were doing that because they didn't
4 know what you were going to find?

5 A. They didn't know what we were going to find.

6 Q. And once all that was settled, did you
7 participate in the search of the residence?

8 A. I did.

9 Q. And there were several items that were taken
10 into evidence; is that correct?

11 A. Correct. Correct.

12 Q. They were found, cataloged, and taken into
13 evidence?

14 MR. STEVENS: Judge, leading.

15 THE COURT: Sustained. Leading. Rephrase.

16 MR. BELL: Your Honor --

17 THE COURT: I'll give you some latitude, but --
18 I understand why you're doing it, but technically he's
19 correct.

20 You may proceed.

21 MR. BELL: I understand, Your Honor.

22 Q. [Mr. Bell] Who did you -- you participated in
23 the search warrant; is that correct? The execution?

24 A. Yes.

25 Q. And who officially, for the department, took

Carl Shultz
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1 items into custody?

2 A. I did.

3 Q. And let me show you a couple of items that we
4 have. We have State's 20. And I'll show you what's been
5 entered as State's 20 and ask if you recognize it.

6 A. I do.

7 Q. And these are what shoes?

8 A. Nike shoes with number twenty-four written on
9 the side of them.

10 Q. And you took them into custody. And what date
11 did you take them into custody?

12 A. On that same day, on the 13th.

13 Q. And let me show you what's been marked as
14 State's 20 -- actually, 20 and, I'm sorry, this is 17,
15 State's 17, and ask if you recognize that.

16 A. I do. That is a rifle that was found in the
17 closet of the bedroom of the home at

18 Q. And, also, 18 goes along with that.

19 A. Correct. That is the bullets that were in the
20 magazine.

21 Q. And you took that into possession?

22 A. I did. That's my handwriting and initials on
23 that bag.

24 Q. And these were during the execution of the
25 search warrant?

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1 A. Correct.

2 Q. And, finally, State's 19.

3 A. It's a pair of red sunglasses that was also
4 found in the bedroom at .

5 Q. And you took possession of them?

6 A. I did take possession of those.

7 Q. And those items that you just testified you took
8 possession of, what did you do with them?

9 A. I packaged them -- prepackaged them at the
10 scene, took them back to our evidence lab, and did some
11 further packaging and processing, and then placed them
12 into our evidence room via the lockers.

13 Q. Okay. And when did you place them into
14 evidence?

15 A. On the 17th, at 2:14.

16 MR. BELL: Thank you, Captain Shultz. Please
17 answer any questions they have.

18 THE COURT: Any questions for the witness?

19 MR. STEVENS: May it please the Court?

20 THE COURT: Yes, sir.

21 MR. STEVENS: It's still morning, so good
22 morning, Captain Shultz. How are you today?

23 THE WITNESS: Good morning. I'm good. How are
24 you?

25 MR. STEVENS: I'm very well.

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CROSS-EXAMINATION

BY MR. STEVENS:

Q. Just so we're clear. You were present when the
search warrant was executed on

A. Yes, sir. Correct.

Q. And that was September 15th, 2013?

A. Correct.

Q. And just to be clear, you did not recover any
red scarf; correct?

A. No, sir.

Q. And you did not recover a black beanie with a
chain design around it; correct?

A. No.

Q. Which would be on the hat; right?

A. Correct.

Q. You did not recover that?

A. Did not.

Q. And you did not recover any jeans with faded
fronts, did you?

A. No.

MR. STEVENS: Thank you, sir. No further
questions.

THE COURT: Any redirect?

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REDIRECT EXAMINATION

BY MR. BELL:

Q. Did you see any items like that?

A. We saw similar items, yes.

Q. Such as?

A. There was a lot of clothing. There was jeans in the house. There were scarfs. We just didn't see any that looked exactly like that, so we didn't take them.

MR. BELL: Thank you.

THE COURT: Any objection to the witness being excused?

MR. BELL: No, Your Honor.

THE COURT: From the defense?

MR. STEVENS: No, ma'am.

THE COURT: Sir, you're excused.

THE WITNESS: Thank you.

THE COURT: You're welcome.

[Whereupon, Mr. Shultz is excused and exits the witness stand]

THE COURT: The State may proceed.

MR. BELL: Your Honor, let me check with the court reporter just one moment.

THE COURT: Uh-huh.

[Off the record momentarily]

MR. BELL: Your Honor, with the pending ruling

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1 on item 21 --

2 THE COURT: Are you ready to rest?

3 MR. BELL: Well --

4 THE COURT: I know what I've taken under
5 advisement.

6 MR. BELL: But I just wanted to make sure that
7 my evidence is -- I'm sorry.

8 The State rests, Your Honor.

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, the State has rested their case. We have a
11 few matters of law we need to take up, after which we
12 will resume the trial.

13 During this break, please have no discussion
14 among yourselves. And please leave your notepads in
15 your seats. We appreciate your patience.

16 [Whereupon, the jury exits the courtroom at
17 11:28 a.m.]

18 THE COURT: I took State's 21 under advisement
19 because I assumed that there was going to be an
20 objection and I didn't want to take up the time to
21 send the jury in and out.

22 Is there any exception to the request to
23 introduce State's 21, which is the search warrant?

24 MR. STEVENS: Judge, we do object to it.

25 THE COURT: Basis of the objection?

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1 MR. STEVENS: Well, first and foremost, it's a
2 document by law enforcement and therefore is not
3 really included under the business record exceptions
4 for hearsay. It is a document that does contain
5 affidavits. And, frankly, it is a hearsay document in
6 all that it actually contains, number one.

7 Number two, we believe that it's prejudicial --

8 THE COURT: How is it hearsay when it's the word
9 of the proponent, the person who actually testified?
10 It's his words.

11 MR. STEVENS: Yes, ma'am. But --

12 THE COURT: You had the opportunity to cross-
13 examine him regarding those words.

14 MR. STEVENS: We did, Your Honor.

15 But it's similar to -- our position is that it
16 would be similar to an incident report where it's
17 literally going to have the State's version of events
18 --

19 THE COURT: An incident report has other
20 people's statements in it.

21 MR. STEVENS: Yes, ma'am. As does this
22 document. This document literally tracks the
23 investigation of the report. In fact, they say they
24 gain this information from the clerk, they gain this
25 information, and on and on and on. So, therefore,

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1 when we actually look at the document itself, it
2 contains hearsay. Within hearsay, multiple levels.

3 THE COURT: But you've had an opportunity to
4 cross-examination every single person that provided
5 that information. And the information in there is
6 consistent with what they've testified to. Correct?

7 MR. STEVENS: Yes. We have had the opportunity
8 to go ahead and cross-examine them, Judge.

9 However, the document itself is also hearsay.
10 They can't get it in as a business record because,
11 much like an incident report, it's not under that
12 exception.

13 THE COURT: You're talking -- what incident
14 report? You lost me.

15 MR. STEVENS: I'm sorry.

16 It would still be hearsay. There are multiple
17 levels of hearsay, is our position. In order for it
18 to actually come into evidence the State must, as the
19 proponent, provide the hearsay exception to every
20 single hearsay within hearsay occurrence. Our
21 position is they've not yet done so. They're simply
22 saying this document is what it is, it speaks for
23 itself. And it does actually contain multiple
24 incidences of hearsay within hearsay.

25 And our position is also if the State attempted

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1 to say the document itself wasn't hearsay, was
2 attempted to be entered into evidence under the
3 business record exception, it would still be much like
4 an incident report for police officers, which is
5 specifically not allowed to come in under that
6 exception.

7 THE COURT: Anything further?

8 MR. STEVENS: No, ma'am. Thank you.

9 THE COURT: You may respond, Mr. Bell.

10 MR. BELL: Your Honor, I think that my position
11 is that the State is required to prove a case against
12 a defendant. We have to prove every element.

13 THE COURT: You don't have to prove probable
14 cause. That's a matter of law for the Court. You
15 have to establish that by a preponderance of the
16 evidence, and I've already ruled that you've done
17 that.

18 I guess I was a little -- the reason I took it
19 under advisement, I was trying to figure out for what
20 purpose it was being offered. I can't think of any
21 instance where I've had the State seek to introduce
22 the search warrant --

23 MR. BELL: I was just doing it --

24 THE COURT: -- in their case in chief.

25 MR. BELL: I was doing it to show evidence of

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1 how the police gained entry, how they were able to
2 develop the case, and they were -- under the law, were
3 able to gain entry to search for these items.

4 THE COURT: But your officer testified to that,
5 didn't he?

6 MR. BELL: I mean, it's just an instrument that
7 I was using as part of it. I mean, everything's been
8 testified into that. It's required by state law. And
9 I think it's just part of the State's case, part of
10 our case, of how we did what we did and why we did
11 what we did.

12 MR. STEVENS: Judge, may I say one other thing?

13 THE COURT: Uh-huh.

14 MR. STEVENS: Thank you, ma'am.

15 It also does contain the signature of a judge
16 indicating his probable cause.

17 An additional ground for why it should remain
18 out is that whenever there's an incidence where
19 another body, particularly a judicial body, gave it's
20 blessing over something, it might serve to actually
21 indicate to the jury or the juror's minds to lower the
22 burden of proof, in other words, saying, look, a judge
23 has already signed off on this, we should do --

24 THE COURT: Again, I've already determined as a
25 matter of law that there's probable cause. The jury

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1 doesn't have to determine probable cause.

2 MR. STEVENS: Yes, ma'am.

3 THE COURT: Yeah. They're to determine the
4 elements of an offense, which is whether your client
5 did -- whether your client meets the elements --

6 MR. STEVENS: Yes, ma'am.

7 THE COURT: -- of armed robbery pursuant to the
8 statute. The execution of a search warrant has
9 nothing to do with that.

10 MR. STEVENS: Yes, ma'am.

11 THE COURT: What they found may well corroborate
12 the State's theory. But --

13 MR. STEVENS: Therefore, Judge, in addition to
14 the other grounds already stated, we also raise Rule
15 401 for relevance, and also Rule 403.

16 THE COURT: I'll think about it.

17 MR. STEVENS: Thank you.

18 THE COURT: Anything further, Mr. Bell?

19 MR. BELL: No, Your Honor.

20 THE COURT: Okay. I'm going to think about it a
21 little more.

22 All right. Now that the State has rested --
23 well, let me make another question. Does he have any
24 record that the State would be seeking to use --

25 MR. BELL: No, Your Honor.

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1 THE COURT: -- will be seeking to use to impeach
2 his credibility?

3 MR. BELL: No, Your Honor. He, in fact, has no
4 prior record that we're aware of.

5 THE COURT: I think you told me that earlier,
6 and I apologize for not remembering.

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MOTION FOR A DIRECTED VERDICT

THE COURT: Now that the State has rested, are there any motions?

MR. STEVENS: Yes, ma'am.

At this time, we respectfully move for a directed verdict of acquittal on armed robbery and for possession of a firearm during the commission of a violent offense.

Our position is that there is no direct or substantial circumstantial evidence on the element on identity. The State has produced circumstantial evidence; however, based upon what has been presented, Judge, it merely rises to the level of suspicion of guilt rather than substantial circumstantial evidence. Accordingly, we respectfully request the Court to enter a directed verdict of acquittal for armed robbery. And because the offense of possession of a firearm during the commission of a violent offense is dependent upon conviction of a violent offense, in this instance armed robbery, it should likewise be directed as an acquittal.

Thank you, Judge.

THE COURT: You're welcome.

Would the State like to respond?

MR. BELL: Yes, Your Honor.

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1 First of all, I would take exception that it's
2 totally circumstantial. I would argue that there is
3 direct evidence. We have a video that shows an
4 individual that has black-and-white sneakers, he's got
5 a covering over his -- over his mouth, he's got red
6 sunglasses, he's using an assault type rifle with a
7 banana clip with a wooden stock, that those items, a
8 rifle with a wooden stock, a banana clip, a red
9 sunglasses, and tennis shoes or athletic shoes that
10 match the what is in the video were found at his house
11 along with a -- we say that a white -- and the video
12 shows that there was a white Dodge Caliber vehicle
13 used, which the defendant had access. I tend to think
14 that's more direct evidence than circumstantial
15 evidence, but we could argue about that.

16 But, anyway, I think we're concerned with the
17 existence of evidence, not the weight. And I think
18 that the evidence the State has presented, plus the
19 description of the individual, a light-skinned black
20 male with dreds, it turns out the defendant is a
21 light-skinned black male with dreds. I think that all
22 of this evidence that the State has presented has
23 singularly focused and shown one conclusion, that the
24 defendant is the person who committed the armed
25 robbery. An armed robbery was committed. And, also,

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1 that a weapon was used during the commission of an
2 armed robbery for the second indictment. And that
3 this is certainly a jury question. There's more than
4 enough evidence to send it to the jury for them to
5 decide the matter.

6 THE COURT: Considering the evidence in the
7 light most favorable to the State, the Court is
8 concerned with the existence or nonexistence of
9 evidence and not its weight. It's not for the Court
10 to act as the fact-finder. It must only determine if
11 there is direct or substantial circumstantial evidence
12 reasonably tending to prove the elements of 16-11-330,
13 which is armed robbery, and 16-23-490, which is
14 possession of a weapon during the commission of or
15 attempt to commit a violent crime, rising to the level
16 of that being the direct and/or substantial
17 circumstantial evidence reasonably tending to prove
18 the defendant's guilt. That proof does not have to
19 rise above or prove guilt to the exclusion of any
20 other reasonable hypothesis. And the Court, again, is
21 not -- or does not have the prerogative to weigh
22 evidence. I am not the fact-finder.

23 A directed verdict is only appropriate when
24 there is an absence of evidence or where the evidence
25 merely raises a suspicion of guilt. And suspicion

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1 implies a belief or opinion as to guilt based upon
2 facts and circumstances not amounting to proof. But,
3 again, the trial court is not required to find the
4 evidence for his guilt to the exclusion of any other
5 reasonable hypothesis.

6 In order to establish armed robbery, the State
7 must prove several elements beyond a reasonable doubt,
8 that being that the defendant took property from the
9 presence or person of another person, that the
10 defendant carried away the property intending to
11 permanently deprive the owner of the property and keep
12 the property for his own use, that the taking or
13 carrying away of the property was done with violence
14 or by putting the owner of the property in fear of
15 violence. And then the State must prove that the
16 defendant was armed with a deadly weapon or that the
17 defendant either by action or words while using a
18 representation of a deadly weapon [phonetic].

19 And in order to establish possession of a weapon
20 during the commission of a violent crime, the State
21 must establish that the defendant was armed with a
22 firearm and was in the -- and he must have been found
23 guilty of a violent crime, as defined by 16-1-160, of
24 which armed robbery is clearly within that category of
25 violent crime.

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1 I find for the record that there is both direct
2 and substantial circumstantial evidence reasonably
3 tending to prove the defendant's guilt, without going
4 through each of the elements. We have the direct
5 testimony of the victim in this case, a Mr.
6 Quantavious Montgomery, regarding a description of the
7 person who committed this armed robbery with an
8 assault rifle, and that a certain sum of money was --
9 which has been documented, was taken from the Keg,
10 which is the store where he was a manager.

11 There is also, in combination with that, direct
12 evidence in the form of a video from this convenience
13 store that purports to show an individual strikingly
14 similar to the defendant.

15 In combination with that, we then have the use
16 of a vehicle which, in the direct testimony of
17 Ms. Emonie Ford, she identified as her vehicle not
18 only at her residence at the execution of the search
19 warrant but also at the convenience store where she
20 said once the police began to question her, all of the
21 events came together for her and then everything made
22 sense and she then understood what they were talking
23 about and it became clear to her what had happened on
24 that day.

25 And she did, in fact, identify her vehicle, as

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1 well as corroborating that the defendant in this case
2 had the use of her vehicle and she was not present
3 with him and that he was absent from the residence
4 during a window of time which gave him the opportunity
5 to have committed this offense, which, again, is
6 corroborated by a picture of her vehicle at this
7 convenience store.

8 Then have connected with that, the
9 circumstantial evidence, which I guess you could
10 interpret it as direct or circumstantial evidence,
11 that being those items that were found pursuant to the
12 valid search warrant at the residence that the
13 defendant shared with Ms. Ford, that being the
14 sunglasses and the sneakers that were consistent with
15 the description given by the victim, as well as that
16 which is corroborated by the video from the
17 convenience store.

18 So based on what has been presented to the Court
19 at this point, in the light most favorable to the
20 State, there is both direct and substantial
21 circumstantial evidence reasonably tending to prove
22 the defendant's guilt, which certainly rises above
23 suspicion.

24 And this record does not have an absence of
25 evidence. What has been raised by the defendant

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1 are -- certainly goes to the -- certainly goes to the
2 weight of the fact of the -- goes to the weight to be
3 accorded the facts that have been presented.
4 Certainly, they can argue that the State has failed to
5 prove the identity of their client, and certainly they
6 can argue regarding the credibility of the witnesses
7 who've testified. Again, that's not for the Court to
8 parcel out or to weigh or to sift to, as the Court
9 does not sit as the fact-finder.

10 And so therefore the motion for directed verdict
11 is denied.
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DEFENDANT'S RIGHTS

THE COURT: Now, sir, if you would stand for me, please, and raise your right hand to be sworn.

[Whereupon, Mr. May is duly sworn by the Court as follows: do you swear or affirm the testimony you give will be the truth]

MR. MAY: I do.

THE COURT: You can put your right hand down.

I need you to speak up a little bit more for me. You're a little soft-spoken.

If you would state your full name for the record.

MR. MAY: Tykeem Kalami May.

THE COURT: Sir, at this time I'm going to explain certain of your rights to you. If you do not understand anything that I say, please let me know. If you want me to explain anything in more detail, please let me know.

Do you understand?

MR. MAY: Yes, I do.

THE COURT: Sir, we have now reached the stage of the trial where you may present your defense. You have the rights of protection as given to you by the fifth amendment of the United States Constitution which reads, in part, that no person shall be

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1 compelled in any criminal case to be a witness against
2 himself. This means that you cannot be required to
3 testify in this case. If you desire to testify, that
4 decision must be made freely and voluntarily and
5 intelligently, of course with legal advice and with
6 full knowledge of the consequences of your decision to
7 testify, as well as your protection under and pursuant
8 to the United States and the South Carolina
9 Constitution.

10 You have a right to testify, as I've already
11 explained. However, no one can make you testify.
12 This is a personal right and no one can waive that
13 right except you. If you decide to testify, you will
14 be subject to the same rules that govern other
15 witnesses. You will be examined and cross-examined
16 just as you've seen the other witnesses in this case.
17 And you may be examined and cross-examined on any
18 relevant issue in this case.

19 In addition, if you have any convictions
20 involving dishonesty or for false statement or
21 punishable by imprisonment for more than one year and
22 this Court determines that the probative value of
23 admitting this evidence outweighs its prejudicial
24 effect to you, the solicitor will be able to introduce
25 your record to attack your credibility. But I will

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1 inform you that you have no record, so the State has
2 indicated that they are not seeking to introduce any
3 evidence of that type to impeach your credibility.

4 If you decide to testify, this decision on your
5 part must be made freely, voluntarily and
6 intelligently, with knowledge of the protections given
7 to you by the fifth amendment and the consequences of
8 your decision to testify.

9 If you decide not to testify, I will instruct
10 the jury that they cannot give the fact that you did
11 not testify any consideration whatsoever. In fact, I
12 will instruct them that you have no burden of proof in
13 this case, that the burden of proof remains on the
14 State to prove each and every element of the offense
15 charged beyond a reasonable doubt, that there is to be
16 no inference of guilt drawn from your lack of
17 testifying and, in fact, that there is to be no
18 prejudice to you by not testifying and the fact that
19 you did not testify should not be discussed in their
20 deliberations in any manner whatsoever.

21 It is left entirely up to you whether or not you
22 testify. You may speak with your attorney, your
23 family members, friends or others, but the final
24 decision is left entirely up to you.

25 Sir, do you understand your rights as I've just

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1 explained them to you?

2 MR. MAY: Yes, Your Honor.

3 THE COURT: Do you need to ask me any questions
4 about what I've just explained to you?

5 MR. MAY: No, Your Honor. But I would like
6 to --

7 THE COURT: Give me one second. You're getting
8 a little ahead of me.

9 Have you discussed with your attorneys whether
10 you should or should not testify?

11 MR. MAY: That's what I would like to do.

12 THE COURT: Well, it's a yes or no answer.

13 MR. MAY: No.

14 THE COURT: You have not discussed with him
15 whether you should or should not testify?

16 MR. STEVENS: We have had previous conversation,
17 Judge.

18 THE COURT: That's why I need him to answer.

19 I need you to listen to what I'm asking. Have
20 you discussed with your attorneys whether you should
21 or should not testify?

22 MR. MAY: Yes, Your Honor.

23 THE COURT: Do you need to speak with them any
24 further at this time?

25 MR. MAY: Yes, Your Honor.

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1 THE COURT: Okay. We'll take a short recess and
2 you-all talk with him. Let me know when you have
3 concluded speaking with him.

4 MR. STEVENS: Yes, ma'am.

5 THE COURT: Thank you.

6 [Whereupon, a recess is taken from 11:47 a.m. to
7 12:06 p.m.]

8 THE COURT: Sir, if you would stand for me,
9 please. I will remind you that you're still under
10 oath.

11 Have you fully discussed with your lawyers
12 whether you should or should not testify?

13 MR. MAY: Yes, Your Honor.

14 THE COURT: Do you need to speak with them any
15 further at this time?

16 MR. MAY: No, Your Honor.

17 THE COURT: And, sir, do you wish to testify?

18 MR. MAY: Yes, Your Honor.

19 THE COURT: And you can take your seat, sir.

20 Now, are there any other witnesses? And bear
21 with me one second.

22 [Whereupon, the Court reviews documents]

23 THE COURT: You have listed a Miss Delicia
24 [phonetic] Simpson?

25 MR. STEVENS: Yes, Your Honor.

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1 THE COURT: Are you calling her?

2 MR. STEVENS: No, ma'am.

3 THE COURT: A Dammie McDaniel [phonetic]?

4 MR. STEVENS: I don't believe it's necessary
5 calling her, Judge.

6 THE COURT: And we also have Mr. May. So other
7 than your client, you have no other witnesses;
8 correct?

9 MR. STEVENS: Correct, Judge.

10 THE COURT: And, also, I need to clear the
11 courtroom for just a quick moment. There are some
12 other matters I need to follow up with counsel on.

13 MR. BELL: Your Honor --

14 THE COURT: It should only take a moment.
15 Yes?

16 MR. BELL: For the Court's consideration, I
17 think we talked about this earlier in passing not
18 knowing what was going to happen. Since the defendant
19 has indicated he's going to take the stand, he did
20 give a statement to the police. Now, whether --

21 THE COURT: Do you plan to use it?

22 MR. BELL: I may use it in cross-examination.

23 THE COURT: If you do -- well, you would be only
24 able to use it, if it's inconsistent, to impeach him.

25 MR. BELL: I may -- I mean, I may do that. It

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1 just depends on how the testimony comes out.

2 THE COURT: Well, that's the only way you would
3 be able to use it. Or to refresh his memory.

4 MR. BELL: Probably be towards refreshing --

5 THE COURT: Only two ways.

6 MR. BELL: Probably refreshing memory is how I
7 would use it.

8 THE COURT: Okay. Are we going to need a
9 Jackson v. Denno?

10 MR. STEVENS: Well, that's just it, Judge. I
11 understand the State's position that the only time
12 they would use it would be on cross-examination.
13 However, our position is that --

14 THE COURT: That's a direct question. Yes or
15 no?

16 MR. STEVENS: Yes, ma'am, we want a Jackson v.
17 Denno hearing.

18 THE COURT: All right. I'm going to deal with
19 this, then we'll deal with that.

20 MR. BELL: Okay.

21 THE COURT: And I need a copy of the statement.

22 MR. BELL: Your Honor, I'll hand you a copy of
23 his.

24 THE COURT: That's not your only copy, is it?

25 MR. BELL: It's my copy. But I have the

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1 original from the police officer that I would actually
2 enter into evidence.

3 THE COURT: I can make a copy.

4 [Off the record momentarily]

5 THE COURT: You told me earlier that one of the
6 strategies that you were concerned about was
7 preserving last argument.

8 MR. STEVENS: Yes, ma'am.

9 THE COURT: But at this point, you've already
10 introduced evidence and your client is going to
11 testify. So I assume you've already gone over with
12 him, strategically, that change in strategy? I --

13 MR. STEVENS: Yes, ma'am.

14 THE COURT: -- know that's redundant.

15 MR. STEVENS: Yes, ma'am. At the time we
16 entered in --

17 THE COURT: You don't have to explain to me. I
18 just need to preserve for the record that y'all
19 discussed that.

20 MR. STEVENS: Yes, we have.

21 THE COURT: And, sir, that's correct? Your
22 lawyer has discussed with you that change in strategy?

23 MR. MAY: Yes, ma'am.

24 THE COURT: Now, you can take your seat.

25 [Whereupon, Mr. May complies]

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1 THE COURT: What about the --

2 MR. STEVENS: Walmart receipts.

3 THE COURT: Yeah. That will be my last
4 question.

5 MR. STEVENS: We've been following up on that
6 all day long. I spoke with my legal assistant about
7 it. She said she still has calls into that facility,
8 again, that Walmart here. They have not been able to
9 -- she has not been able to contact them today. We
10 were able to contact them yesterday and try and track
11 down where things may be, but this morning they've
12 been totally unresponsive. So I'll --

13 THE COURT: There's not another manager in the
14 store you can talk to?

15 MR. STEVENS: Well, I've been in court all
16 morning long. I'm going to try to get downstairs and
17 talk with them myself.

18 THE COURT: You'll probably have some time to
19 deal with it anyway, because we have a juror that has
20 a doctor's appointment at 3:30 and I promised him he
21 was going to be able to go to that.

22 MR. STEVENS: Yes, ma'am.

23 THE COURT: So I doubt we're going to close and
24 charge today, because I would think I would need to
25 give him at least a thirty-minute lead time. I don't

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1 even know where his doctor's appointment is. I
2 assumed it was in Orangeburg.

3 Could you find out for me where -- because it
4 may be in Columbia or Charleston.

5 [Off the record momentarily]

6 THE COURT: So I think thirty minutes will be
7 sufficient.

8 Okay. I just wanted to follow up on the receipt
9 for the Walmart. All right. You can let everybody
10 else in --

11 MR. STEVENS: I will say that if we're going to
12 try and be able to make use of the receipt, it would
13 have to be during his testimony.

14 THE COURT: Yeah. But I'll give you leave to
15 reopen the record if you have to. I'm not going to
16 stop in the middle of his testimony and wait and see
17 if we can find a receipt.

18 MR. STEVENS: Thank you, Judge.

19 [Off the record momentarily]

20 THE COURT: 21, which was the search warrant and
21 the company return, the objection is sustained
22 pursuant to State vs. Arther, which is A-R-T-H-E-R,
23 State vs. Latham, and State vs. Smith, all of which
24 holds that a search warrant and an accompanying
25 affidavit are not admissible.

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JACKSON V. DENNO HEARING

1
2 THE COURT: Now we need to deal with whether his
3 statement -- and I've read his statement, it's fairly
4 brief, and the necessity of a Jackson v. Denno
5 hearing.

6 What is the State's position?

7 MR. BELL: Your Honor, I mean, our position is
8 that we don't feel we need one. However, we will hold
9 one if the Court deems it necessary.

10 THE COURT: What is your rationale for not
11 needing one?

12 MR. BELL: Your Honor, [a], it's not an
13 incriminating statement.

14 THE COURT: Well, you could incriminate him with
15 it, based on these time lines in here, if he says
16 something inconsistent.

17 MR. BELL: That's correct, Your Honor.

18 But I think if we were using it -- if we were to
19 use it, it would be used to either impeach him or
20 refresh his memory. We're not using it as a
21 substantive piece of evidence.

22 And I believe that when he puts himself on the
23 stand he, as any other witness, he opens him up --

24 THE COURT: Well, he's not like any other
25 witness. He has due-process rights.

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1 MR. BELL: I agree.

2 But I believe that once he gets on the stand, he
3 is like all other witnesses and prior statements,
4 inconsistent or consistent, are fair game.

5 THE COURT: Not if they're made to the police.
6 It's a whole different ball of wax. Him getting on
7 the stand does not negate the need for a Jackson v.
8 Denno hearing.

9 I've read the statement. I'm trying to figure
10 out what in it inculcates him.

11 MR. STEVENS: Yes. A couple of points. First
12 of all, obviously it was made in custody. Second of
13 all, we specifically request a Jackson v. Denno
14 hearing because if it was given under duress --

15 THE COURT: Yeah. But do you have any real
16 good-faith basis that it was under duress or was
17 coerced in any way and that he did not sign the waiver
18 of rights?

19 MR. STEVENS: What we would show through
20 testimony would show that, yes, he was handcuffed,
21 yes, he felt under duress with guns pointed at his
22 head, he was dragged to --

23 THE COURT: If that's the case, then every
24 defendant is under duress.

25 MR. STEVENS: Yes, ma'am.

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1 Also, at the time he was actually -- well, had
2 several drinks that night beforehand. And under all
3 the conditions --

4 THE COURT: He was pretty clear and cogent at
5 the time and place --

6 I mean, we can -- I guess, you know, there comes
7 a point when you determine -- we'll have the hearing.
8 I don't know that it makes any appreciable difference,
9 but we're going to have it.

10 Usually, you have a Jackson v. Denno hearing
11 when really there is some real good-faith basis that
12 your client -- regarding the voluntariness and whether
13 they were, in fact, Mirandized and whether the
14 statement really, in fact, inculcates your client in
15 some way.

16 In this instance, there might reasonably be the
17 ability for the State to draw some distinction, in
18 these time lines that he provided in the statement,
19 such that it would rise to the level of impeaching
20 him.

21 And I understand you're making that motion to
22 protect yourself on post conviction relief, and I'm
23 not going to fault you for it. But let's move along,
24 because I've got a jury waiting.

25 MR. BELL: The State would call Sargent Dukes,

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1 Your Honor.

2 THE COURT: Sir, if you would come forward to be
3 sworn.

4 [Whereupon, Mr. Dukes comes forward]

5 [Whereupon, Mr. Dukes is duly sworn by the clerk
6 of court as follows: do you hereby swear or affirm
7 that the evidence you shall present will be the truth,
8 the whole truth, and nothing but the truth, so help
9 you God]

10 THE WITNESS: I do.

11 MR. BELL: And, Your Honor, if I may lead a
12 little bit at the beginning --

13 THE COURT: In the interest of time, yeah. You
14 may proceed.

15 Please state your full name for the record.

16 THE WITNESS: Kevin Christian Dukes. Do you
17 need me to spell my last name?

18 THE COURT: Yeah, just to be consistent. Thank
19 you.

20 THE WITNESS: Last name is D-U-K-E-S.

21 THE COURT: You may proceed.

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Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

KEVIN DUKES,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. BELL:

Q. Sargent Dukes, I think we've had your testimony before. And to get to where we need to be, I think you testified under oath, prior to, that on September 15th you went to the house at and that you and other officers took the defendant, Tykeem May, into custody along with Ms. Ford; is that correct?

A. Correct.

Q. And what did you do with Mr. May when he was taken into custody there?

A. They were separated. Him and Ms. Ford were separated. Both Ms. Ford and Mr. May were taken to our headquarters, 1320 Middleton Street, for interrogation purposes.

Q. And who talked to Mr. May?

A. Myself.

Q. And when you went to talk to Mr. May, where did you talk to him?

A. I talked to him at my desk, which is back in investigations.

Q. Is it a particular room?

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 A. It's an open area. We have partitions. I think
2 we have nine desks altogether, and we just have
3 partitions. But it's not closed off. It's very open.

4 Q. Was Mr. May in handcuffs, or not, when you were
5 talking to him?

6 A. He was in handcuffs but we had removed them from
7 the back, so he would be more comfortable, and put them in
8 the front.

9 Q. Now, when he was taken into custody, I think you
10 also testified, and others, that the county's SWAT team or
11 SRT team went in --

12 A. Correct.

13 Q. I mean, they put them in handcuffs and they
14 probably put them at gunpoint at the location; correct?

15 A. Correct.

16 Q. Because of the circumstances?

17 A. Correct. Because of the nature of the crime.

18 Q. When you brought him back to your headquarters
19 on Middleton Street, police headquarters, DPS
20 headquarters, he was at your desk?

21 A. Uh-huh.

22 Q. And you changed -- he was in handcuffs?

23 A. Correct.

24 Q. And you changed them where he was comfortable?

25 A. Correct.

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 Q. Did you ask him if he wanted anything to eat or
2 drink?

3 A. I can't remember specifically if I asked him
4 that. But it was available to him. Had he have asked, it
5 would have been made available to him.

6 Q. Okay. Did he ask to go to the restroom at any
7 time?

8 A. I can't remember. I don't believe so, to the
9 best of my recollections. But I don't remember.

10 Q. And how was his demeanor? How was he acting?

11 A. Like most people that get taken into custody.
12 He was quiet. He only answered if he was asked a
13 question.

14 Q. Now, when you started talking to him, what's the
15 first thing that you did?

16 A. I Mirandized him. What we did is actually --
17 may I look at it? We have a form, a Miranda rights form,
18 that -- so we can have it documented, that I actually read
19 out to them.

20 First of all, I ask them can they read and write
21 and what's their educational level. I can't remember what
22 his answer was, as far as the education, but I think he
23 told me he was currently still in college. But I asked
24 him could he read and write okay and he stated that he
25 could. So what I did is I verbally read, verbatim, each

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 line out.

2 At the top you actually have the Miranda
3 warnings. I gave him or handed him a pen --

4 Q. Go ahead. I'm listening.

5 A. -- handed him a pen and I asked him, at
6 completion of each one, did he understand that. He stated
7 that he did, and he provided his initials by each
8 sentence.

9 At the very bottom of it I asked him again, do
10 you understand the statement as a whole. He stated that
11 he did, and he provided his signature.

12 Q. And I'm going to show you this document and ask
13 is that what you're referring to.

14 A. Yes. Correct.

15 Q. And what rights did you read to him?

16 A. If you want me to read it to you, I can read it.

17 Q. Yes, please. Read them as they -- and what did
18 -- you read it to him? How did you do it? How did you
19 read it to him?

20 A. He was sitting next to me at the desk and I
21 explained to him what I was going to read to him and the
22 reason I was going to read it to him, that we were
23 investigating the armed robbery and because he was a
24 person of interest, that before I could question him or
25 talk to him that he had to understand his rights.

Jackson v. Denno Hearing
Kevin Dukes
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1 And basically what I did is I took the form and
2 I put it in front of him and I gave him a pen and asked
3 him that if he understood each statement, each sentence
4 that I read, to provide his signature on it. And I read
5 out to him, you have the right to remain silent; anything
6 you say can be used against you in court; you have the
7 right to talk to a lawyer for advice before we ask you any
8 questions and to have him with you during questioning; if
9 you cannot afford a lawyer, one will be appointed for you
10 before any questioning if you wish; if you decide to
11 answer questions now without a lawyer present, you will
12 still have the right to stop answering at any time; you
13 also have the right to stop answering at any time until
14 you talk to a lawyer.

15 And at completion of that I asked him, do you
16 understand this as a whole, and he provided his signature.

17 Q. Okay. And you stated that he initialed each
18 line as you --

19 A. He initialed by each line as we went.

20 Q. And what does that initial signify?

21 A. I imagine it would be his initials, Tykeem --

22 Q. But what do they signify, though?

23 A. That he understood what was read to him.

24 Q. And after you read him all that, you read him a
25 waiver of rights, as well --

Jackson v. Denno Hearing
Kevin Dukes
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1 A. Correct. At the bottom of the form. Correct.

2 Q. -- that basically states that he read the
3 statements of his rights and he understands what his
4 rights are, et cetera?

5 A. Correct.

6 Q. And he signed it? That's his signature?

7 A. He did. Correct.

8 Q. And whose signature is at the bottom?

9 A. That's myself and -- at the time, I think she
10 was a corporal. It was Latisha Walker.

11 Q. And did he, in actuality, based on your
12 observations, understand what was going on?

13 A. Correct. He stated so by providing his
14 signature and verbally.

15 Q. But, I mean, did you -- did he seem to
16 understand it?

17 A. Yes.

18 Q. Was he -- did he appear under the influence of
19 any substances or --

20 A. No.

21 Q. And did he say if he had had anything to drink
22 or ingested --

23 A. I didn't ask.

24 Being an officer, I didn't detect any alcohol or
25 any substances that I could detect coming from his

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 persons.

2 MR. BELL: The Miranda rights form we would
3 offer as a Court's Exhibit.

4 THE COURT: I apologize.

5 [Off the record momentarily]

6 THE COURT: Any exception from the defense?

7 MR. STEVENS: No, Judge.

8 THE COURT: Then it will be a Court's Exhibit
9 for the purposes of this hearing.

10 THE COURT REPORTER: Court's 1 for the Jackson-
11 Denno.

12 THE COURT: Thank you.

13 [Whereupon, Jackson v. Denno Court's Exhibit
14 Number 1 is marked by the court reporter]

15 Q. [Mr. Bell] And let me show you this second
16 piece of paper and ask you if you can identify that.

17 A. That's a voluntary statement form. And at that
18 time he was not under arrest, he was just being detained
19 for this crime. But it was a voluntary statement of
20 pretty much his actions on the date of the armed robbery,
21 which would have been September the 8th.

22 Q. And who wrote the body of that form?

23 A. He did.

24 Q. Who wrote his -- did you write his name or did
25 he write his name?

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 A. No. He wrote his name.

2 Q. And whose signatures are at the bottom?

3 A. Would be myself and I believe that's Latisha
4 Walker.

5 Q. And how did -- did you ask him several questions
6 or did you just ask him to write what's --

7 A. I asked him directly if he had anything to do
8 with the armed robbery. His demeanor was he kind of
9 wanted to open up and talk to me. But he kept his
10 conversation limited.

11 I asked him if he could, you know, write out
12 where he was that day, did he remember where he was on
13 September the 8th, and that's pretty much what he did on
14 here.

15 Q. And that's what he wrote?

16 A. Correct. Yes, sir.

17 Q. Did you force him to write this?

18 A. No, sir. Not at all.

19 Q. Did you tell him what to write?

20 A. No, sir.

21 Q. Did you offer him anything to sign these
22 forms --

23 A. No, sir.

24 Q. -- Court's 1?

25 Let me --

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 MR. BELL: This second one, Your Honor, I would
2 offer as Court's 2 or Court's --

3 THE COURT: Any objection?

4 MR. STEVENS: No objection.

5 THE COURT: Marked and admitted as Court's next
6 in line.

7 THE COURT REPORTER: Court's 2 for the Jackson-
8 Denno.

9 [Whereupon, Jackson v. Denno Court's Exhibit
10 Number 2 is marked by the court reporter]

11 Q. [Mr. Bell] And both of these, Court's 1 for the
12 Jackson v. Denno and Court's 2 for the Jackson v. Denno, I
13 was asking you did you offer him anything to write this or
14 sign his name on any of these documents.

15 A. Not at all.

16 Q. Did you --

17 A. And I explained to him again -- even when I read
18 him the Miranda warnings and the waiver of rights, before
19 I put the statement form in front of him I told him, I
20 said, look, you don't have to write a statement; if you
21 want to talk to a lawyer, you know, that's your right.
22 I'm not a high-pressured type person.

23 Q. Did you force him?

24 A. No. Not at all.

25 Q. Did you put a gun to his head and make him write

Jackson v. Denno Hearing
Kevin Dukes
Direct Examination by Mr. Bell

1 this?

2 A. Not at all.

3 Q. Was he under any duress to write a statement?

4 A. No.

5 Q. He did it freely and voluntarily, as far as you
6 saw?

7 A. Yes.

8 Q. And this is his statement?

9 A. Yes.

10 Q. He understood what was going on?

11 A. Yes.

12 Q. And the person that gave the statement, could
13 you point him out? Is he in the courtroom?

14 A. It's the defendant, Mr. May.

15 MR. BELL: Nothing further, Your Honor.

16 THE COURT: Any questions for the witness?

17 MR. STEVENS: Yes, Judge.

18 THE COURT: You may proceed.

19 MR. STEVENS: How are you doing, sir.

20 THE WITNESS: How are you.

21 MR. STEVENS: Just briefly.

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Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

CROSS-EXAMINATION

BY MR. STEVENS:

Q. You said you separated both Mr. May and Ms. Ford?

A. Correct.

Q. And you took both of them to headquarters for interrogation?

A. Our headquarters. Correct.

Q. And they were taken that night from their home; right?

A. That's correct.

Q. At

A. Correct.

Q. And that was in the middle of the night; right?

A. Correct.

Q. Okay. And you said the SRT team was used; right?

A. They were. Yes, sir.

Q. What does SRT stand for?

A. It's basically a special response and tactics team. Whenever we feel -- if we're going to execute a search warrant or we're taking police action where either an officer's life or a citizen's life is going to be in danger or there may be deadly weapons present, it's not uncommon for us to use that type of team. Because it was

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 in the county, we had to contact the county SRT team.

2 Q. It's kind of like a SWAT team?

3 A. Correct. Yes, exactly.

4 Q. So the SWAT team hit the house?

5 A. Yes.

6 Q. And they were handcuffed?

7 A. Yes.

8 Q. Guns were pointed, obviously?

9 A. I wasn't in the house, but I would assume so,
10 yes, sir.

11 Q. Okay. They were put in cars?

12 A. Yes.

13 Q. Taken to headquarters?

14 A. Yes.

15 Q. And you said that they were separated; right?

16 A. Yes.

17 Q. Now, you said he was eventually taken over to
18 your cubicle?

19 A. Yes.

20 Q. He didn't start out in your cubicle?

21 A. He didn't start out in my --

22 Q. Where did they initially have him?

23 A. I'm not sure exactly where he went, because
24 initially Ms. Ford was at my cubicle.

25 Q. I see. But he was still handcuffed while he was

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 there; right?

2 A. Correct.

3 Q. And you did have an opportunity to speak with
4 him; right?

5 A. I did. Yes, sir.

6 Q. And when you spoke with him, did he ask any
7 questions?

8 A. He was pretty -- he was pretty quiet. I mean,
9 he really didn't say anything. Unless I asked him a
10 specific question, he really didn't give an answer --

11 Q. -- it out?

12 A. Yeah.

13 Q. Okay. So he asked you why he was there?

14 A. To my knowledge, I don't remember. I think I
15 explained that to him once we got in.

16 Q. I see.

17 You said you don't remember whether he asked to
18 go to the bathroom?

19 A. Correct. I do not remember.

20 Q. Now, you said they were Mirandized, that you
21 read it out for him; right?

22 A. Correct.

23 Q. You also said that he was not under arrest at
24 the time?

25 A. He was not. He was detained.

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 Q. Detained. Okay.

2 So he was not free to go; right?

3 A. He was not free to go.

4 Q. Okay. He was in the police station?

5 A. Correct.

6 Q. In handcuffs?

7 A. Correct.

8 Q. And Mirandized?

9 A. Correct.

10 Q. And being asked questions about his potential --

11 A. Involvement --

12 Q. -- involvement in a robbery?

13 A. Correct.

14 Q. So you would agree that that was a question that
15 would lead to potentially inculpatory statements; right?

16 A. I understand that, yes.

17 Q. Now, did he ever ask about an attorney?

18 A. I think once -- once I started talking with him,
19 he didn't really. Because I specifically asked him did he
20 have anything to do with the robbery. Of course, he
21 denied it. I asked him could he recount the events of
22 where he was at on September the 8th and I explained to
23 him that I know that was a week prior, you know, if he
24 could give me -- if he couldn't provide exact times, just
25 to basically lay out where he was at that day, which he

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 did in the voluntary statement.

2 I also explained to him that I had already
3 talked with Ms. Ford and that several of the items that
4 were in the video she had pointed out to me, such as her
5 car, the shoes, the rifle and such.

6 And at that point -- I can't remember whether he
7 specifically asked for a lawyer but from his demeanor, I
8 assumed he didn't want to talk anymore. I didn't want to
9 push the issue, so I just discontinued questioning.

10 Q. Do you remember if he said, you know, do you
11 think I need a lawyer to you?

12 A. I can't remember. I mean, that's been over a
13 year ago. I can't specifically remember that.

14 Had he done that, I would have gave him that
15 opportunity. I would have quit questioning and just gave
16 him the opportunity to make contact with a lawyer or get a
17 public defender.

18 Q. Okay. Thank you.

19 MR. STEVENS: Court's indulgence?

20 THE COURT: Uh-huh.

21 MR. STEVENS: No further questions at this time.

22 THE COURT: Any redirect?

23 MR. BELL: No, Your Honor.

24 THE COURT: Sir, you may step down.

25 THE WITNESS: Thank you.

Jackson v. Denno Hearing
Kevin Dukes
Cross-Examination by Mr. Stevens

1 [Whereupon, Mr. Dukes is excused and exits the
2 witness stand]

3 THE COURT: Any further witnesses from the
4 State?

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

6 THE COURT: Any further witnesses from the
7 defense?

8 MR. STEVENS: Court's indulgence, Judge.

9 THE COURT: Yes, sir.

10 MR. STEVENS: Yes, ma'am.

11 THE COURT: You may proceed.

12 MR. STEVENS: Thank you. For purposes of the
13 Jackson v. Denno hearing, the defense calls Tykeem
14 May.

15 THE COURT: Sir, if you would come to this
16 stand. I'll remind you you are still under oath.

17 [Whereupon, Mr. May comes forward]

18 THE COURT: Once seated, please state your full
19 name for the record and spell your last name for the
20 court reporter.

21 THE WITNESS: Tykeem Kalami May. Last name,
22 M-A-Y.

23 THE COURT: You may proceed.

24 MR. STEVENS: Thank you, Judge.

25 THE COURT: You're welcome.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

TYKEEM MAY,

Having Been First Duly Sworn,
was Examined and Testified as Follows:

DIRECT EXAMINATION

BY MR. STEVENS:

Q. Tykeem, I want to talk about the night of
September 15, 2013.

A. All right.

Q. Do you remember it?

A. Vaguely.

Q. Okay. Where were you that night?

A. September 13.

Q. No, no. 15th.

A. 15th. Okay. September 15th, I was at
Ms. Ford's residence.

Q. Is that at

A. Yes.

Q. Did you have anything to drink that night?

A. Yes. Throughout the day, I was drinking.

Q. Okay. And about what time did you start
drinking?

A. About 7:30, I believe, p.m.

Q. P.M. Okay. What did you drink?

A. I had about -- I bought a six-pack of Miller
Highlife and I was just drinking one of them, you know.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 And I believe it was Sunday, so I was -- no. I believe it
2 was Sunday. I'm not quite sure. But I believe it was a
3 Sunday, so I was watching football and drinking. The
4 Highlifes, I don't really call that heavy drinking
5 because, you know, you can drink a beer every now and
6 then. But by the time I got done, I drunk about five.

7 Q. And any other drinks?

8 A. I had a couple shots of gin.

9 Q. Were you able to get to sleep that night?

10 A. No. I dozed off for a second, though, sitting
11 on the front -- on the front couch.

12 Q. Were you woken up that night?

13 A. Yes.

14 Q. What happened?

15 A. The front door was kicked open or somehow
16 opened. I don't know if they kicked it or used a
17 battering ram or something. But they barged -- some
18 people barged in. They never announced who they were. I
19 just put one and two together. I was thrown to the
20 ground, a gun was pointed at my head. There was threats
21 to shoot the dog. Well, it wasn't my dog, it was
22 Ms. Ford's dog but I help take care of him. And he
23 threatened to shoot the dog. Then they put me and
24 Ms. Ford in handcuffs. And when they took us to the
25 front, I asked a plethora of times what exactly was going

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 on, and no one told me. And then when I seen the cars
2 outside, I knew that it was police. So then I asked what
3 was going on again and they told me they would tell me at
4 the station.

5 Q. So where did they put you next?

6 A. They put me in the back of a police car.

7 Q. And where did they take you?

8 A. They took me to the station.

9 Q. Where in the station did they take you?

10 A. To an interrogation room.

11 Q. Were you still handcuffed?

12 A. Yes.

13 Q. Did you say anything about the handcuffs?

14 A. Yes.

15 I told them that it was too tight and that it
16 was uncomfortable because they were behind my back. And
17 once I did that, they moved them to the front for me.

18 Q. Did you speak with Corporal Dukes?

19 A. Yes.

20 Q. Did you ask him anything?

21 A. Yes. Actually, I asked him -- he came in and he
22 introduced himself. And I asked him -- once he started to
23 talk to me, I asked him what was this obtaining to. And
24 he really didn't go in too much detail. And he just
25 started asking me what I did on September 8th.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 And then I asked him, do you think I need a
2 lawyer. And when I asked him that, he said, do you think
3 you need a lawyer. And I said, well, I don't feel as if I
4 do; lawyers are for people who think they did something or
5 they're guilty and I still wanted to know exactly what I
6 was there for.

7 Q. All right. Did you stay in the room?

8 A. For a brief second he left out.

9 Q. So you were left in the room at the time? Or
10 were you left in the room at the time?

11 A. Yes, I was, with another officer.

12 Q. Did Corporal Dukes comes back?

13 A. Yes, he did.

14 Q. What happened next?

15 A. When he came back, he started to question me
16 about the whereabouts of that night. He told me to write
17 a statement, and I wrote the statement.

18 But at the time, he was just asking me stuff
19 like, you know, if he -- what exactly he said? I don't
20 want to -- I want to get exactly what he said. He said
21 something of the effects of if you help me out, I'll help
22 you out, or something like that. And I was kind of
23 confused because I was trying to figure out what exactly
24 he wanted me to do, like you --

25 Q. Did you feel under duress or coerced?

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 A. Yes.

2 Q. What did you do?

3 A. I wrote the statement, thinking to the best of
4 my ability. Still kind of confused and dazed from the
5 whole incident. And I gave him the statement. He left
6 out with it.

7 Q. Did anyone come back in?

8 A. Yes.

9 Ms. Walker, Latisha, she came back in with the
10 statement and laid it down.

11 Q. So she had the statement, brought it back and
12 laid -- did you say. Okay.

13 Did she say anything to you?

14 A. Yes.

15 She told me that, I don't believe the statement
16 is true, and something about we're just going to act like
17 you didn't write that statement and you can write again
18 what really happened. And I told them to the best of my
19 knowledge that is what happened.

20 Q. Did anyone else come back into the interrogation
21 room?

22 A. Kevin Dukes.

23 Q. Did they keep you in the interrogation room at
24 that time?

25 A. Yes.

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 But once Kevin Dukes came in and started to
2 question me, he took me to a cubicle and showed me a
3 video.

4 Q. What videos did he show you?

5 A. He showed me what he said was a robbery from the
6 Keg on September 8th. And he said that -- he asked where
7 was I at on that date, he didn't believe my statement.
8 And I told him that the statement that I wrote was to the
9 best of my knowledge and that, you know, I didn't know
10 anything about a robbery.

11 So he kept I guess you could say badgering me,
12 because he kept insisting, yes, you do know, yes, you do
13 know. And then he went as far as to say -- or Ms. Walker
14 went as far as to say, I know that's you right there, and
15 tried to describe stuff on the robbery and say that was
16 me. And I said, no, ma'am, that's not me. And then he
17 said, so you didn't rob the Hot Spot. And I said, the Hot
18 Spot, I thought you said the Keg. And he said, you know
19 what I'm talking about. And I was like, no. And he was
20 like, if you help me out, I'll help you out. He said that
21 again. And after I denied it again, I caught my head and
22 shook my head because I just couldn't believe that I was
23 being accused of something like this.

24 Then he told them to just put the handcuffs back
25 in the front -- I mean, behind me, and they took me to the

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 station. But at that point, he Mirandized me right when
2 they put the handcuffs behind me. I was standing on the
3 wall and he told me, don't try to escape because it won't
4 do any good. And I reassured him, why would I try to
5 escape, I'm not guilty, I didn't do anything. And then
6 they took me to the county jail.

7 Q. Were any threats, verbal threats, made to you?

8 A. No, not -- none other than him -- I felt like
9 him telling me to help me out or I'll help you out or you
10 won't see the light of day, that could be somewhat of a
11 threat. But --

12 Q. I got you.

13 Now, this is -- just to make sure we're clear.
14 Is this on the same night you actually drink one to two
15 shots of gin and five Miller Highlife beers?

16 A. Yes.

17 Q. Were you thinking clearly when you wrote your
18 statement?

19 A. No.

20 I was really under duress and I was -- I just
21 had -- I was -- my mind was everywhere.

22 Q. Was all the information a hundred percent
23 accurate?

24 A. No.

25 Q. So from your perspective, was your statement

Jackson v. Denno Hearing
Tykeem May
Direct Examination by Mr. Stevens

1 freely, knowingly, and voluntarily made?

2 A. No.

3 MR. STEVENS: Okay. Thank you. Please answer
4 any questions.

5 THE COURT: You may proceed.
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Jackson v. Denno Hearing
Tykeem May
Cross-Examination by Mr. Bell

CROSS-EXAMINATION

BY MR. BELL:

Q. When do you say that they gave you Miranda warning, Mr. May?

A. They showed me the paper. And that was after I wrote the statement they showed me the paper and I initialed it and I signed the bottom.

But I really was -- when I was initialing and signed the bottom, it was read to me but I wasn't really thinking about what was going on. I was trying to figure out still why I was being accused and everything. And then they read my Miranda rights again, right before they put the handcuffs from the front to the back.

Q. Now, when did you say they showed you the paper, which is Court's 1 for this hearing?

A. They showed me that after I wrote the statement.

Q. After you wrote the statement? That's your testimony?

A. Yes.

Q. And you just initialed these willy-nilly?

A. No.

He actually started to read it and then when he read it he was like, just initial beside there. And I started -- he said, if you understand. And I initialed and then I signed it.

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1 Q. Did you understand what he was saying?

2 A. Yes.

3 I was familiar with the Miranda rights, but I
4 just -- like I said, I was intoxicated at the time and I
5 felt like I was under duress, so I was just trying to help
6 him as much as possible.

7 Q. So are you saying that they forced you to write
8 this statement?

9 A. Actually, like I said, I was trying to help him
10 as much as possible and when I gave him the statement, I
11 wasn't thinking clearly.

12 Q. But every time they tried to say that this
13 statement's incorrect you said, that's my statement;
14 right?

15 A. No.

16 Actually, he didn't come back and say that.
17 Ms. Latisha -- I forget her name. But she came in and
18 laid the statement down and said that, we know that this
19 isn't your statement, tell us what really happened. And I
20 told them to the best of my knowledge that was what
21 happened. But at that time, I was intoxicated.

22 Q. But that statement, to the best of your
23 knowledge, was what happened?

24 A. At that -- at that point in time.

25 Q. So their offers of helping you or your feeling

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1. of coercion didn't change your mind, did it?

2. A. No.

3. Q. I mean, you didn't say that you were involved in
4 a robbery, did you -- an armed robbery, did you?

5. A. No, sir.

6. Q. They didn't force you into saying that, did you
7 [phonetic]

8. A. No, sir.

9. Q. You weren't coerced into saying that, were you?

10. A. No, sir.

11. Q. You told them what you say you did and kept to
12 that statement; is that correct?

13. A. Yes, sir, I did.

14. Q. Okay. And your version is that they gave you
15 Miranda afterwards; is that right?

16. A. Yes.

17. Q. Did they -- but did they force you to write this
18 statement, which is Court's 2?

19. A. Other than giving me the sheet and telling me to
20 write what happened that night, no.

21. Q. Did they tell you what to write down?

22. A. No.

23. Q. You wrote this down; right?

24. A. Yes. I've been --

25. Q. Knowingly, you wrote this down?

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1 A. I've been told to recount my what I did on
2 September the 8th.

3 Q. Okay. And you wrote what you remembered you did
4 on September 8th at that time; right?

5 A. Yes, at that time.

6 Q. They didn't force you to write that down, they
7 just told you to; right?

8 A. Yes.

9 Q. And you stated that Mr. Dukes -- you asked him
10 if the question was that you stated to Mr. Dukes, Sargent
11 Dukes, do you think I need an attorney; is that correct?

12 A. Yes.

13 Q. Is that the statement you said?

14 A. Yes.

15 Q. And he didn't tell you one way or the other, did
16 he?

17 A. He inferred that, I don't believe you do -- no.
18 it was either, I don't believe -- something to the effect
19 of, I don't believe you do or what do you -- it was, do
20 you think you need an attorney.

21 Q. So he just was asking you back, do you think you
22 need an attorney?

23 A. No.

24 Q. He's a police officer; right? He's not there to
25 help give you advice; right?

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1 A. Huh-uh.

2 Q. And your statement, if I remember correctly, was
3 -- and correct me if I'm wrong -- was, I don't think I
4 need one. Right?

5 A. Yes.

6 MR. BELL: Okay. No further --

7 A. I don't think I need one because I'm not guilty.

8 MR. BELL: Nothing further, Your Honor.

9 THE COURT: Any redirect?

10 MR. STEVENS: No, Judge.

11 THE COURT: Sir, you may step down.

12 [Whereupon, Mr. May is excused and exits the
13 witness stand]

14 THE COURT: Any further witnesses?

15 MR. STEVENS: No further witnesses from us,
16 Judge.

17 THE COURT: Any further witnesses from the
18 State?

19 MR. BELL: No, Your Honor.

20 THE COURT: Glad to hear any argument.

21 MR. STEVENS: I'm sorry, Judge?

22 THE COURT: I said I'll be glad to hear any
23 argument, if there is any.

24 MR. STEVENS: Thank you, Judge.

25 We have heard some evidence of a -- regarding

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1 this hearing from the witness indicating that he did
2 feel duress, did feel coerced. When it comes to the
3 issue of coercion, it's to be viewed from the
4 perspective of the accused. He's also indicated that
5 the information in there, you know, might have been
6 accurate to what he actually thought that day or at
7 that moment. We also know that he doesn't feel it was
8 accurate because of the mental condition that he was
9 in at the time, due to being under the influence.

10 Additionally, Judge, he's indicated that that
11 was his way of asking for an attorney and none was
12 given at the time and the interrogation did not end at
13 that moment. That's evidence in the record from our
14 client.

15 From now Sargent Dukes, he indicated that
16 although it's contradictory evidence as far as what he
17 would have done, he did at least acknowledge that
18 there was conversation about an attorney. It simply
19 was my recollection to testimony.

20 Based on those circumstances, Judge, we would
21 move to have his statement suppressed --

22 THE COURT: Any response from the State?

23 MR. BELL: Yes, Your Honor.

24 I would say that his answer was extremely clear:
25 he didn't ask for an attorney, he just asked do you

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1 think I need an attorney. And I think our courts are
2 pretty clear, both South Carolina and federal are --
3 and I hate to use this term, but they -- you have to
4 use the magic words, I need an attorney. I think
5 there's a couple of cases in South Carolina where
6 asking for a mother, or do you think I need this, do
7 not amount to I want an attorney on that.

8 Otherwise, I think that the testimony from the
9 officer was that he read him his Miranda warnings,
10 explained it to him. Didn't appear to be under the
11 influence or anything, or wasn't asked that. Seemed
12 to be coherent, he was quiet. And I think part of the
13 standard is coercion or duress to overcome the will of
14 the defendant to force him into writing something that
15 isn't true or whatever. And he's testified what he
16 wrote was what he remembered he did on that day. And
17 they kept coming at him, according to his testimony,
18 and offering him stuff to help him out, and all this,
19 and it did not overcome his will. He stuck to his
20 guns and said, that's what I remember, that's what I
21 wrote. He wrote it. He wasn't told what to write.

22 I think, Your Honor, he was given his Miranda
23 warnings, he was given them freely and voluntarily and
24 he wrote the statement freely and voluntarily, and his
25 will was not overcome by coercion, duress, force, et

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1 cetera.

2 THE COURT: In order to use a statement provided
3 by the defendant, the State must prove by a
4 preponderance of the evidence that the statement was
5 given freely, voluntarily, knowingly and intelligently
6 with knowledge of the Miranda warning.

7 I find the testimony of -- and I don't want to
8 get his title incorrect. Is it investigator, sargent,
9 lieutenant?

10 MR. BELL: Sargent.

11 THE COURT: Sargent.

12 I find the testimony of Sargent Dukes credible
13 on the issue. He testified that the defendant was
14 taken into custody. Clearly, he was detained. The
15 Miranda warnings were appropriate. No questioning was
16 embarked upon prior to the defendant being properly
17 Mirandized and those appropriate warnings were given,
18 as evidenced by Miranda warnings that have been
19 entered in as a Court's Exhibit.

20 There is no indication, from the defendant's
21 signature or otherwise, or where he initialed each of
22 these rights, that he was incapable of signing or
23 providing his signature. And his signature and
24 initials, by its nature, is independent corroborative
25 proof of his understanding the rights and

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1 acknowledging each of the rights.

2 I find credible the officer's testimony that he
3 was not impaired in any way, that there was no
4 indication of the use of alcohol in or about his body
5 -- that means the odor -- or any other objective signs
6 of him having been impaired, that there was no duress
7 employed in the taking of the statement, and no
8 promises were given or offered to him.

9 Now, there has been some indication by the
10 defendant that on the date of this incident, that he
11 was not a heavy drinker but he had had five or six
12 beers and a couple of shots. There really is no clear
13 indication as to the scope of time that that would
14 have taken place and whether his body would have had
15 the ability to have basically have eliminated this
16 alcohol, as his indication was he was not a heavy
17 drinker, he had bought a six-pack and had drunk them
18 over the course of the day. I do not find credible
19 his testimony that he was impaired.

20 I do find credible his testimony, and I think
21 what is most persuasive and dispositive on the issue,
22 is the colloquy between he -- and I don't know that it
23 actually took place the way he represented it. But he
24 was adamant on the stand, and I would imagine was
25 adamant at the time, that he said he didn't need a

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1 lawyer, that lawyers are for guilty people and he was
2 not guilty and he did not need a lawyer. He did not
3 invoke his right to counsel and, therefore -- if
4 someone says -- if you read somebody's rights to them
5 and they said, do you think I need a lawyer, the
6 police can use reasonable deception. They don't have
7 to tell him he needs a lawyer. That's his decision.
8 And he's been fully informed of his Miranda warnings.

9 It was a bit, really, of a game that was being
10 played. If someone told me -- and I've done this long
11 enough to know that when you offer somebody a lawyer,
12 if they want one they ask for it and they're
13 articulate about it and they don't hesitate about it,
14 whether it be during the beginning of a statement, in
15 the middle of a statement, or near the end of a
16 statement, or even when they reinitiate contact with
17 the police. But I don't really know that that's here
18 or there as regards any applicable analysis to this
19 situation.

20 But very clearly, he was Mirandized and if he
21 wanted a lawyer, very clearly he was advised that if
22 you can't afford one we'll get one for you. So he
23 knew that it was available to him and he did not avail
24 himself of it. And, again, he said very clearly that,
25 I don't need a lawyer because I have not done anything

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1 wrong. And he reinforced that at least two to three
2 times during the course of his testimony.

3 I do not find credible his testimony that he was
4 promised something. Again, police can use reasonable
5 deception. They do it all the time. They say, you
6 help yourself, we'll help you. That does not rise to
7 the level of some promise as an inducement to
8 inculcate oneself. And that very clearly, the
9 statement that he gave, while he indicates he was
10 impaired in some way, that he was not aware of his
11 surroundings, and he was under duress, is quite self-
12 serving and to his benefit. So that flies in the face
13 of his voracity regarding him being under duress or
14 somehow being unfamiliar with what he was doing, not
15 oriented as to time and place. It's just not
16 supported by even his testimony as it regards this
17 hearing.

18 And he indicated that he was familiar with the
19 Miranda rights. And I think at this point in our
20 history of the country, I think even a five-year-old
21 is -- knows what the Miranda warnings are. If anybody
22 has watched a police show, they know. I mean, a child
23 can recite it to you, you have the right to remain
24 silent. Even if they're being funny about it or
25 they're being -- I mean, people now, even in arguments

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1 with significant others and otherwise, will say I'm
2 going to take -- I'm taking the fifth, I'm going to
3 remain silent because I don't want you to use what I
4 say against me. So I think almost everybody, unless,
5 of course, they have some limited, you know, cognitive
6 ability, is familiar with the Miranda warnings. And
7 he's indicated that he was, in fact, familiar with
8 those. But I just have no independent corroboration
9 in the record that he was intoxicated and not thinking
10 clearly.

11 Therefore, the motion to suppress his statement
12 is denied.

13 Now, and upon further inspection of the
14 statement, I think it is more than appropriate that we
15 had a Jackson v. Denno hearing because it is his
16 theory that he did not need to rob any place because
17 he had two jobs, he was gainfully employed and
18 supporting himself. And I would assume the State will
19 use one of these statements in his statement to
20 impeach him, which is that he called his mother to
21 talk to her about getting money, which flies in the
22 face of the defendant's theory and is -- can be used
23 to impeach his credibility on that issue.

24 But I think even if there weren't any
25 impeachable evidence, you can't just use a defendant's

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1 statement because he takes the stand, is procedural,
2 as his due process rights are invoked and the Court
3 needs to make an independent finding as to the
4 freeness and voluntariness of the statement and
5 whether it was, in fact, intelligently made with
6 knowledge of his protections given by the fifth
7 amendment, that being his Miranda warnings.

8 It's already been marked as a Court's Exhibit.
9 I don't know if the State is actually going to employ
10 it. I don't know that he will answer inconsistently.
11 But certainly they can use it for that purpose. And
12 the motion is denied.

13 MR. STEVENS: Judge --

14 THE COURT: Yes, sir?

15 MR. STEVENS: -- if I may have a moment with my
16 client, I believe --

17 THE COURT: Is that going to alter his decision
18 potentially?

19 MR. STEVENS: Yes, ma'am, it may.

20 THE COURT: Yeah. Y'all go talk. But please be
21 quick, because --

22 MR. STEVENS: Yes, ma'am.

23 THE COURT: -- my jury has been sitting --

24 MR. STEVENS: This won't take --

25 THE COURT: -- for over an hour now --

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1 MR. STEVENS: -- but just a moment.

2 THE COURT: -- and I'm not pressuring you. I
3 want to give you enough time to speak with him. But I
4 also need to be mindful of the needs of my jury.

5 MR. STEVENS: Yes, ma'am. Thank you.

6 THE COURT: Thank you.

7 [Whereupon, Mr. Stevens and Mr. May confer]

8 THE COURT: Have you completed speaking with
9 your client?

10 MR. STEVENS: I have, Your Honor.

11 THE COURT: Sir, stand for me, please. I'll
12 remind you you're still under oath.

13 [Whereupon, Mr. May complies]

14 THE COURT: Have you spoken further with your
15 attorneys about whether you should or should not
16 testify?

17 MR. MAY: Yes, Your Honor.

18 THE COURT: Do you need to speak with them any
19 further?

20 MR. MAY: No, Your Honor.

21 THE COURT: Sir, do you wish to testify?

22 MR. MAY: No, I do not.

23 THE COURT: So I assume you just need to rest in
24 the presence of the jury --

25 MR. STEVENS: Yes, ma'am.

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1 THE COURT: -- Mr. Stevens? Okay.

2 Now, we have some scheduling --

3 You can take your seat.

4 [Whereupon, Mr. May complies]

5 THE COURT: We have some scheduling we need to
6 discuss, because we have a juror that has a doctor's
7 appointment and I promised him during jury
8 qualification that I would make sure he meets that
9 appointment today. It is at 3:30 and I would think
10 that he would need to leave here by at least 3:00 to
11 be timely, because I'm sure he doesn't want to be
12 rushing, you know, in traffic and otherwise, to get
13 where he's going.

14 We still need to have lunch which,
15 conservatively, if we went to lunch that would be two
16 o'clock. And I doubt -- I know the jury charge is at
17 least twenty-five minutes. So there's no way we would
18 be able to have argument and charge and let them start
19 deliberations.

20 So what I'm thinking is that we'll go ahead and
21 let the defense rest in the presence of the jury, and
22 then we'll have charge conference and otherwise, and
23 then we'll resume in the morning at 9:30 with closing
24 argument and instruction.

25 Is there any exception from the State in

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1 proceeding in that way?

2 MR. BELL: Your Honor, I agree with that way but
3 I also think -- what about -- isn't there a juror that
4 has a conflict tomorrow, as well?

5 THE COURT: No. He's not on the panel. That's
6 a technical student who was --

7 THE COURT: [Off the record momentarily]

8 I thought it was that young man, but it's not.
9 I went back and looked back at my numbers and he's not
10 on the panel.

11 There's a young man I protected, number 164, for
12 orientation at Tech on Thursday. He's not on the
13 panel.

14 MR. BELL: Okay. I'm sorry. My mistake.

15 THE COURT: No. I thought he was, for some
16 reason. But when I -- as soon as I got in this
17 morning, I went and looked back through the list and
18 the only person that we have with a conflict is the
19 gentleman that has the doctor's appointment at 3:30
20 today.

21 I don't think I protected -- even if somebody is
22 protected on Friday, I don't think that's going to
23 pose a problem for us unless -- you know, but stranger
24 things have happened. I had a half a day wreck
25 deliberate for three days. You just never know.

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1 MR. BELL: I know. I've been in the courthouse
2 till one o'clock in the morning, so I understand.

3 THE COURT: Yeah. Believe me, I hold the record
4 in Charleston for 3:00 a.m. And that's -- I promised
5 that would never happen again.

6 [Off the record momentarily]

7 MR. BELL: But, otherwise, no objection.

8 THE COURT: Yeah. But he's not on the panel.
9 I'm sorry to belabor the point. He's not. I thought
10 he was, but he's not.

11 MR. BELL: Okay. But no objection, from the
12 State, proceeding as the Court has --

13 MR. STEVENS: None from the defense, Judge.

14 THE COURT: Any exception from the defense?
15 Okay.

16 And then what I'll do is I'll go ahead and let
17 them go. I'll let you rest in their presence, I'll go
18 ahead and let them go for the day, then we'll do
19 charge conference and then we can all go eat.

20 MR. BELL: Okay.

21 MR. STEVENS: Thank you.

22 MR. BELL: Thank you.

23 THE COURT: You can get the jury for me, please.

24 THE BAILIFF: Yes, Your Honor.

25 THE COURT: Thank you, ma'am.

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1 And do we have anything for the afternoon?

2 [Off the record momentarily]

3 MR. STEVENS: Judge, do you want me to renew our
4 motion for directed verdict before or after the jury
5 comes in?

6 THE COURT: We can do it after.

7 MR. STEVENS: Thank you, ma'am.

8 [Off the record momentarily]

9 [Whereupon, the jury enters the courtroom at
10 1:05 p.m.]

11 THE COURT: Ladies and gentlemen, we appreciate
12 your patience. That took a little bit longer than we
13 anticipated. Please know that we don't take your time
14 for granted.

15 We'll now resume with the trial. The defense
16 may proceed.

17 MR. STEVENS: Thank you, Judge. May it please
18 the Court.

19 THE COURT: Yes, sir.

20 MR. STEVENS: At this time, the defense rests.

21 THE COURT: Thank you so much.

22 Ladies and gentlemen, both the State and the
23 defense have rested their cases.

24 The next part of the process is closing argument
25 and the Court's instructions. Normally what we would

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1 do is we would go to lunch for an hour, come back, and
2 then start that process. But I promised one of your
3 fellow members that I would make sure he met an
4 appointment this afternoon, so we're going to adjourn
5 for the afternoon so that he can meet that obligation.
6 And you can't control how long closing arguments are
7 going to take or how long deliberation will take and
8 so we would not want him stuck here with us, so to
9 speak, and not be able to meet that obligation.

10 So we're going to break for the afternoon.
11 We'll resume in the morning at 9:30 with closing
12 arguments and the Court's instruction.

13 While both the State and the defense have rested
14 their cases, it is absolutely essential that you
15 maintain your impartiality and you not discuss this
16 case among yourselves or with anyone else until you
17 have heard the closing arguments and the Court's
18 instructions and until I release you to deliberate in
19 your jury room in the privacy of your jury room.

20 I know it might seem simple to discuss what
21 you've heard with someone but to do that, by its very
22 nature, is deliberations because it requires you to
23 think about what you've heard, it requires you to
24 process it and to draw conclusions upon it. And that,
25 by its very nature, as I've explained, is a part of

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1 the deliberative process. And it is essential that
2 you do that among your fellow jurors so that you will
3 have the give-and-take of one another's thought
4 process, as well as having been equipped with the
5 Court's instructions on the law, as well as the
6 parties' positions in argument.

7 Please do not -- and I'm aware that there are
8 some media reports about this case probably in the
9 paper and other forms of media. I would instruct you
10 that you strictly guard yourselves against reading,
11 watching, or listening to any of those reports, as
12 well as doing any independent research on the internet
13 and reading any older reports regarding this case.

14 As I've explained, as the fact-finders you are
15 charged with determining what the facts are in this
16 case, which means you must do that according to the
17 testimony that you have heard from the sworn witnesses
18 and the other evidence that has been introduced. So I
19 would ask that you strictly guard yourselves in that
20 regard.

21 And please don't make any comments regarding
22 your status on any social networking sites. And
23 please don't have any contact with anyone in or about
24 the courthouse when you return in the morning. You're
25 going to come directly to your jury room and as soon

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1 as all of you arrive, we will then resume with closing
2 argument and instruction.

3 You-all have been so very good-natured with
4 us, and very patient, and we appreciate it. I hope
5 you-all have a wonderful afternoon. Have a good
6 lunch. We'll see you in the morning at 9:30.

7 If you would leave your notepads, leave them in
8 your chairs, the bailiffs will collect them and we'll
9 secure them during the recess.

10 [Whereupon, the jury exits the courtroom at
11 1:09 p.m.]

12 THE COURT: [Off the record momentarily]
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Renewed Motion for a Directed Verdict
By Mr. Stevens
August 13, 2014

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RENEWED MOTION FOR A DIRECTED VERDICT

THE COURT: Are there any motions, now that the
defense has rested their case?

MR. STEVENS: Yes, ma'am.

We would simply renew our prior motion for
directed verdict.

THE COURT: Any response from the State?

MR. BELL: Your Honor, we would stick to our
prior response to the motion.

THE COURT: And the Court will deny the motion
based on its previous ruling and incorporate it in
this portion of the record.

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State v. Tykeem May
Charge Conference
August 13, 2014

CHARGE CONFERENCE

[Whereupon, Court's Exhibit Number 1 is marked
by the court reporter]

[Whereupon, Court's Exhibit Number 2 is marked
by the court reporter]

THE COURT: Okay. We'll do charge conference
and then we'll move along.

[Off the record momentarily]

THE COURT: I will give the jury a general
instruction regarding their responsibility and my
responsibility.

How they are to judge witness credibility and
believability.

Will give them a general instruction regarding
the fact that the defendant did not testify.

Will give them a general instruction regarding
direct versus circumstantial evidence, and I will
use -- employ that new language about circumstantial
evidence. Although I don't think it's particularly
different from what we generally used. And in this
case, and normally where there is a great amount of
direct evidence, I don't use it. But in this case
it's a combination of both direct and circumstantial
evidence so I will use that additional language.

I will give them an instruction, a general

State v. Tykeem May
Charge Conference
August 13, 2014

1 instruction, that the charge, the arrest and the
2 indictment are not evidence, as well as on the
3 presumption of innocence.

4 I will instruct Victor vs. Nebraska on
5 reasonable doubt.

6 And then I will charge the elements of 16-11-
7 330, which I think we're all familiar with so I won't
8 belabor the time to go through each and every one of
9 those.

10 I will then instruct on the elements of
11 possession of a firearm during -- well, possession of
12 a weapon during the commission of a violent crime,
13 which is 16-23-90 -- 490, which also incorporates the
14 definitional section of 16-1-60. And, again, we're
15 all familiar with those elements, so I'm not going to
16 go through those again.

17 I also will instruct on identification, as well
18 as alibi.

19 I will then give a general instruction regarding
20 multiple charges and the responsibility of the State
21 to prove each beyond a reasonable doubt.

22 And I will then give a general instruction on
23 the form of the verdict.

24 As regards the State's request, which in Court's
25 Number 2 on reasonable doubt, I'll use the standard

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Charge Conference
August 13, 2014

1 instruction, which is Victor vs. Nebraska.

2 On the defendant's request Number 1, which is
3 marked as a group, their request, Court's 1, I will
4 use my standard instruction on direct and
5 circumstantial evidence, as I've already shared with
6 you-all.

7 I will use my standard instruction on
8 identification, which is request number 2. I will use
9 my standard instruction, which is Victor vs. Nebraska,
10 which is reasonable doubt. And I will use my standard
11 instruction on alibi, which is request number 4.
12 Number 5 is inapplicable because the statement of the
13 defendant was not introduced, nor utilized in the
14 course of the trial.

15 Are there any exceptions to the charge as
16 proposed? From the State?

17 MR. BELL: None from the State, Your Honor.

18 THE COURT: From the defense?

19 MR. STEVENS: So long as, you know,
20 circumstantial evidence from Logan is utilized, as
21 well, as the Court indicated it will be, we have no
22 problem with that, Judge.

23 Regarding identity as an element of the offense

24 --

25 THE COURT: I can't hear you. I'm sorry.

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1 MR. STEVENS: I apologize, Judge.

2 THE COURT: That's okay.

3 MR. STEVENS: Regarding our request number 2,
4 I'm unfamiliar with the Court's standard charge.

5 THE COURT: Mine is far more detailed than yours
6 and it's a reflection of the accurate statement of
7 South Carolina law.

8 MR. STEVENS: Thank you, Judge.

9 And regarding reasonable doubt --

10 THE COURT: And it does state that the State
11 must prove identity beyond a reasonable doubt.

12 MR. STEVENS: Thank you, Judge.

13 And regarding reasonable doubt, does the Court's
14 general charge also include --

15 THE COURT: I don't like that language because I
16 think it's confusing. I use Victor vs. Nebraska,
17 straight from the case.

18 MR. STEVENS: Thank you, Judge.

19 We would just simply, you know, renew our
20 request for that charge.

21 THE COURT: And I'll note it for the record.

22 MR. STEVENS: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 MR. STEVENS: And the Court has indicated that
25 request number 4 is granted -- we appreciate that --

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1 the alibi instruction.

2 THE COURT: Yeah. I'm going to use my standard
3 instruction.

4 MR. STEVENS: Thank you, Judge.

5 And it's clear that, you know, the Denno
6 instruction is not necessary, so we would respectfully
7 withdraw that form.

8 THE COURT: Yeah. I've already had it marked,
9 so I'll just mark it withdrawn for the record.

10 MR. STEVENS: Thank you, Judge.

11 THE COURT: You're welcome.

12 All right. Give me one moment. And I assume
13 there are no requests for any lessor-included
14 instructions. That's why I didn't include that. Is
15 that accurate?

16 MR. STEVENS: That's correct, Judge.

17 MR. BELL: That's correct.

18 THE COURT: And if y'all will give me just one
19 second, we have the verdict forms for you-all. If
20 you-all could approach for me to review those.

21 [Off the record momentarily]

22 MR. BELL: Your Honor, I'm sorry. I just
23 thought of one other thing that --

24 THE COURT: What's that?

25 MR. BELL: -- that the State would not object

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1 to, because I think I said in my opening statement --
2 and I think you could also add the language that -- I
3 mean, if they don't find him guilty of armed robbery,
4 I mean, there is no need to consider the --

5 THE COURT: My instructions already encompass
6 that.

7 MR. BELL: Okay.

8 MR. STEVENS: Thank you, Judge.

9 THE COURT: It's one of those conditional things
10 that --

11 MR. BELL: Right.

12 THE COURT: -- unless he's guilty of a violent
13 crime, he can't be guilty of --

14 MR. BELL: Exactly.

15 THE COURT: -- and if they were to, I would just
16 sit as the thirteenth juror and nullify it --

17 MR. BELL: Right.

18 THE COURT: -- because you can't have one
19 without the other.

20 MR. BELL: That's correct.

21 THE COURT: Yeah. And, again, we'll fix those
22 scribner's errors, so you can just ignore those.

23 [Whereupon, counsel review documents]

24 THE COURT: Any exception to the form of the
25 verdict? From the State?

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1 MR. BELL: None from the State, Your Honor.

2 THE COURT: From the defense?

3 MR. STEVENS: No, ma'am.

4 THE COURT: All right. Is there anything else
5 we need to take up before we adjourn for the
6 afternoon? From the State?

7 MR. BELL: Your Honor, I would state that just
8 for tomorrow, I think what I anticipate is opening on
9 the law and then allowing the defense to do their
10 argument and --

11 THE COURT: Yeah. I'm going to get to that in
12 just a second. But other than -- I'm talking about
13 like charge conference or --

14 MR. BELL: No, Your Honor.

15 THE COURT: -- or exhibits.

16 Anything else that we need to cover? Because
17 I'm going to have to make an estimate of how long it's
18 going to take us so I can determine when I mean going
19 to have lunch for the jury.

20 I assume the State is going to open and close?

21 MR. BELL: That's correct, Your Honor.

22 THE COURT: How long do you think your argument
23 will be? Just give me an estimate. I'm not going to
24 necessarily hold you to it.

25 MR. BELL: Total, I would say forty minutes or

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1 so.

2 THE COURT: Altogether?

3 MR. BELL: Altogether.

4 THE COURT: How long will the closing for the
5 defense be?

6 MR. STEVENS: Probably between thirty to forty
7 minutes, Judge. Perhaps -- it depends on how I can
8 actually measure the rate of the speech.

9 THE COURT: It's hard sometimes. I have to
10 catch myself because some days I'm --

11 MR. STEVENS: Yes, ma'am.

12 THE COURT: Yeah. When you're used to saying
13 stuff --

14 I think we'll order lunch for the jury and plan
15 to have it by noon. It looks like -- you know, give
16 or take, you always have a late juror. I think
17 conservatively we're looking at like 11:30 getting it
18 to the jury. So I'll just plan to have the clerk
19 bring their lunch in at noon, then we'll go from
20 there.

21 I need you-all to get with the court reporter
22 for me and make sure all the exhibits are there that
23 she has marked -- and make sure you think, I guess,
24 the technical term, the notes, make sure y'all's stuff
25 is accurate according to what she has.

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1 If you're going to use any technical equipment
2 during closing, I would ask that you test that this
3 evening or this afternoon and make sure it's working
4 as it should, and be ready to roll at 9:30 in the
5 morning.

6 MR. STEVENS: Thank you, Judge.

7 THE COURT: All right. Thank y'all. Have a
8 good afternoon.

9 [JURY TRIAL ADJOURNS AT 1:19 P.M.]

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
 VS.)
)
 TYKEEM MAY,)
)
 DEFENDANT.)

JURY TRIAL

VOLUME 4 OF 5

held before the Honorable Deadra L. Jefferson
 Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
 in the Orangeburg County Courthouse
 Orangeburg, South Carolina
 on August 14, 2014, Commencing at 9:38 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
 Post Office Box 31865
 Charleston, South Carolina 29417-1865
 1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Harrison Bell, Esquire
Ashley Cornwell, Esquire
First Circuit Solicitor's Office
Post Office Box 1525
Orangeburg, South Carolina 29116

FOR THE DEFENDANT:

Breen Stevens, Esquire
Doug Mellard, Esquire
First Circuit Public Defender's Office
Post Office Box 1112
Orangeburg, South Carolina 29116

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THE COURT: Is the State ready to proceed?

MR. BELL: Yes, Your Honor.

THE COURT: Is the defense ready?

MR. STEVENS: We are, Your Honor.

THE COURT: Y'all bear with me just one moment
so I can check something.

And did y'all go through all the exhibits with
the court reporter and make sure everything was in
place?

THE COURT REPORTER: Yes, ma'am.

MR. BELL: Yes, Your Honor.

THE COURT: And you have all the exhibits, Miss
Hilda?

THE COURT REPORTER: Yes, ma'am.

THE COURT: Is there any technology that's going
to be utilized in closing arguments that needed to be
tested to make sure it's working?

MR. BELL: Yes, Your Honor.

I was going to use Power Point. I set it up and
have tested it.

THE COURT: And you tested it?

MR. BELL: I tested it first thing this morning,
ran through it, and it was working then. That's all I
can promise the Court.

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1 [Off the record momentarily]

2 THE COURT: Do you have the original indictment,
3 Mr. Bell?

4 MR. BELL: Your Honor, I think they're kept in
5 the clerk's file.

6 THE COURT: Do we have the original indictment?
7 Ready to proceed with argument? From the State?

8 MR. BELL: Yes, Your Honor, the State is ready
9 to proceed.

10 THE COURT: From the defense?

11 MR. STEVENS: Yes, Your Honor.

12 THE COURT: Please bring in the jury.

13 [Whereupon, the jury enters the courtroom at
14 9:55 a.m.]

15 THE COURT: Does everybody have their notebooks
16 and their pens?

17 All right. Good morning, ladies and gentlemen.
18 I hope that everyone had a pleasant afternoon and
19 evening.

20 As I indicated on yesterday, both the State and
21 the defense have rested their cases. We have now
22 reached the stage of the trial where we will have
23 closing argument and the Court's instruction.

24 I would ask that you give the attorneys your
25 undivided attention.

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1 You may proceed.
2 MR. BELL: Thank you, Your Honor.
3 THE COURT: You're welcome.
4 MR. BELL: Please the Court?
5 THE COURT: Yes, sir.
6 MR. BELL: Mr. Stevens?

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Closing Statement by Mr. Bell
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CLOSING STATEMENT

1
2 MR. BELL: Madam Forelady, ladies and gentlemen
3 of the jury, at this juncture of the trial, these are
4 closing arguments. The State has an opportunity to
5 open and talk to you a little bit about how we see the
6 law. Then I'll be sitting down and Mr. Stevens will
7 be getting up and arguing about the facts, and he will
8 sit down and I will have another chance to come up and
9 argue the State's version of the facts.

10 At this juncture, before I start talking about
11 the law, I would just like to take this opportunity to
12 thank each and every one of you for your participation
13 this week in jury service. Believe me, we're
14 painfully aware that you had rather be somewhere else
15 this week than sitting in the Orangeburg County
16 courthouse and sitting on a jury. But I hope you
17 understand your importance in our criminal justice
18 system because without you, without your
19 participation, we would have no criminal justice
20 system. You are the basis, you are the bedrock, of
21 the criminal justice system. And I also hope that
22 you've learned something this week, learned how it
23 works, and can take that from it. So, again, from the
24 First Judicial Circuit of Orangeburg County, State of
25 South Carolina, we thank you kindly for your

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1 participation this week.

2 Now, ladies and gentlemen, as you're aware, in
3 this case the defendant is charged with two crimes.
4 He's charged with the crime of armed robbery and he's
5 charged with the crime of possession of a firearm
6 during the commission of a violent crime. And the
7 State, of course, has the burden of proving those
8 charges and has the burden of proving each element of
9 those charges.

10 And let me start talking about those charges.
11 First of all, armed robbery. As I stated, armed
12 robbery is taking goods from someone with the intent
13 to deprive them, goods, money, property, whatever.
14 That's larceny. That's stealing. The added thing is
15 you have to do it by force, threats, intimidation, by
16 putting another person in fear in the taking of those
17 goods. And, of course, the final one is you use a
18 deadly weapon to do that force, intimidation. Those
19 are the elements the State must prove each element
20 beyond all reasonable doubt.

21 The next crime, possession of a firearm during
22 the commission of a violent crime. This one is pretty
23 easy, that it's unlawful for a person to be in
24 possession of a firearm, or visibly display what
25 appears to be a firearm, during the commission of a

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1 violent crime. And that's defined by statute and Her
2 Honor will define that for you. But armed robbery is
3 defined as a violent crime in that statute. And,
4 fairly simply, if you don't find the defendant guilty
5 of armed robbery, you don't even have to worry about
6 this charge. This charge is if you decide that the
7 State has proven its case beyond all reasonable doubt
8 that the defendant is guilty of armed robbery, then
9 you consider this charge.

10 Ladies and gentlemen, we also have to talk about
11 some terms in a legal sense during -- for this case.
12 And the one that's thrown around, and the one I've
13 just talked about, reasonable doubt. Reasonable doubt
14 is one of those terms in the law that's hard to
15 define. It's kind of what some people have said, you
16 know, you can't define it but you kind of know it when
17 you see it. One attempt at a definition in this is,
18 as I said earlier, there are few certain things in
19 life. And the State is not required to prove a person
20 one hundred percent guilty. It generally can't be
21 done. Sometimes you can get close, but there's always
22 some uncertainty in it. And we don't have to prove a
23 person beyond a shadow of a doubt. If some of y'all
24 like old movies, when you hear shadow of a doubt,
25 that's about the same thing. It's reasonable doubt is

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1 the standard we must prove.

2 And what the law has said about reasonable doubt
3 is that proof of reasonable doubt is proof that leaves
4 a person, a reasonable person, searching for the truth
5 firmly convinced of the guilt of the defendant.
6 That's what reasonable doubt is in our state. Think
7 about that while you're listening to all the
8 arguments.

9 We're also talking -- I've also talked about,
10 and Her Honor talked about at the beginning of the
11 trial, roles in this trial. Her Honor, Judge
12 Jefferson, is the judge of the law. And as I told you
13 earlier, you took an oath that you will follow the law
14 as charged to you, regardless of what you think about
15 it. You have to follow the law as she charges you,
16 because she is the judge of the law.

17 But you, ladies and gentlemen, are the judges of
18 the facts. You've listened to testimony from the
19 witness stand. You've seen exhibits. These exhibits
20 go back with you to the jury room during your
21 deliberations. You have the opportunity to look
22 through them as much as you want -- and nobody can
23 tell you how to do that -- until you're satisfied with
24 what you're looking for. You can look at the videos
25 as much as you want, you can look at the pictures as

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1 much as you want. And what you do is you take that,
2 you apply the law that Her Honor would charge you at
3 the end of the trial after we're finished arguing, you
4 put them together and you reach a verdict. And as I
5 told you, we're looking for the truth in this case.

6 You're also going to hear a charge, and you will
7 hear some argument about direct evidence and
8 circumstantial evidence. Direct evidence and
9 circumstantial evidence aren't really two types of
10 evidence. They're just ways you get to the evidence.
11 And they're equal-weighted. There's no difference
12 between them.

13 Direct evidence is evidence that you get through
14 your senses, that you see, that you hear, that you
15 touch, that you taste, that you feel, I saw that.
16 Circumstantial evidence is a little different. It's
17 some fact that you find that leads you to another fact
18 or another conclusion.

19 I'll give you an example. Especially the last
20 week or so, you come to the courthouse, you get out,
21 there's water falling. You're getting wet, there's
22 puddles forming, there's steam rising on the road.
23 You see and you feel and you know it's raining because
24 you see it, you feel it, you hear it, you can even
25 smell it sometimes. Now, this week you've been in the

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1 courtroom. There are no windows here. Like you left
2 yesterday. You come in in the morning, it's sunny,
3 bright, dry, everything. Three hours later you go to
4 lunch, you go outside, it's cloudy, the road and
5 sidewalk is wet, there are puddles, there's steam
6 rising from the road. Now, you know that it's wet,
7 there are puddles, there's steam rising from the road,
8 it's cloudy. You put those facts together: it must
9 have rained. That's circumstantial evidence. It's
10 just as good as if you saw it yourself, because you
11 can put those together and, oh, it rained.

12 So ladies and gentlemen, those are the major
13 types of the law that you'll be dealing with in this
14 case.

15 At this time I'm going to sit down and allow
16 Mr. Stevens to come up and give his argument on the
17 facts, and I will be back up after his argument.
18 Thank you very much.

19 THE COURT: Mr. Stevens, you may proceed when
20 you're ready.

21 MR. STEVENS: Thank you, Judge. May it please
22 the Court. Mr. Bell.

23 THE COURT: Yes, sir.

24 MR. STEVENS: Just a moment.

25 THE COURT: Yes, sir.

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CLOSING ARGUMENT

MR. STEVENS: Inconsistencies are reasonable doubts. At the time we started our discussion at the beginning of this trial, this is what we've seen throughout the State's circumstantial evidence on the critical issue on the identity of the robber.

Now, the State just opened on the law, but what's really interesting is that he did not even touch on how the law teaches you on how to interpret and apply circumstantial evidence. You're going to hear that from the judge. Just to give you a preview, this is what it says. To the extent the State relies on circumstantial evidence, all of the circumstances must be consistent with each other and, when taken together, point conclusively to the guilt of the accused beyond a reasonable doubt and if these circumstances merely portray the defendant's behavior as suspicious, proof has failed.

It's not an instruction about the weight between direct and circumstantial evidence, the value, it's how you interpret your decision. Again, noticeably absent from the State's opening on the law because they know there are many inconsistencies in the circumstantial evidence.

Let's take a look. We were first presented with

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1 Mr. Quantavious Montgomery, the clerk. Right? Okay.
2 What did he actually say about the identity of the
3 robber? He said he couldn't see; right? Why? His
4 face was covered. It was covered with a red shawl or
5 a bandana or a red cloth, right, and sunglasses. Oh.
6 And the hat, too. Right? Okay. Well, he was
7 actually right about that. But we also know that that
8 red cloth had tassels on it. Right? We do. We also
9 know that he said that there was a gray hoodie -- we
10 also know that he said that there were clothes worn --
11 red cloth with tassels. We know gray hoodie. Right?
12 Gloves. And it's not just -- we can actually look.
13 For example, that's the evidence that's going to be on
14 the video provided, of course, by the State --

15 But if he was wrong about the gray hoodie, if he
16 was wrong about the gloves, would it be a surprise if
17 he was wrong about the dreadlocks? This is Defense
18 Exhibit 2. It shows from the back. Yeah, we can see
19 the tassels. We don't see any dreadlocks. This is the
20 evidence you will have to look at it while you're back
21 there. Use it. So what we know is identification was
22 off. He couldn't identify the guy.

23 What else do we know? We know from Mr.
24 Montgomery that he didn't see a white car. I asked
25 him. He said so. Right? We know that when Mr.

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1 Montgomery was actually outside and the -- he was
2 actually -- why was he outside? He was outside
3 because it was Sunday and if it was Sunday, he wanted
4 to make sure people knew that they were open. Right?
5 That's why he was sitting outside. There were no
6 customers in there. How do you know? He acknowledged
7 that. Right?

8 Now, what do we know? I understand that the
9 side camera, the color is off. It was bleached out.
10 The State acknowledges that they're the ones that put
11 that into evidence. And it's a fact. Right? But
12 what we do know is that when he saw the guy go by him,
13 what did he do? He got up and he went. He went away,
14 didn't he? Smart move. But when he did, what did he
15 do, where did he go? This is a better color picture
16 than State's 2. He went over in that direction,
17 toward Highway 301 that cuts right in front of the
18 Keg. And, yes, even after that, there's a fence. And
19 when he was walking -- in other words, if this is the
20 Keg, he went this way. Past this alleyway. And
21 there's a fence over here, too. And it was over by
22 that fence is where he stopped. And that's where he
23 turned around and walked diagonally back toward the
24 door of the Keg.

25 Now, knowing that, the evidence is here. It's

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1 for you to see, for you to infer. You have peripheral
2 vision. He says he didn't look in that direction.
3 But you have peripheral vision. I asked him, did you
4 see a white car. No.

5 Look here. This is not just a small little
6 space. That car, according to the State's theory, if
7 it was there at that time, would have been right here.
8 Right here. And yet, he didn't see it, did he?
9 Didn't see it.

10 What's another opportunity he would have had to
11 see a white car? Well, we also know that when he was
12 actually sitting out front, he was there. Basically
13 open for business -- wanted to let them know they're
14 there. Highway 301 goes right in there. Defendant's
15 Exhibit 9 shows a still frame of the video. And that
16 white car comes turning around that corner. Came off
17 of 301. It would have passed right in front of him.
18 Now, he didn't ask him, did you see a car pass in the
19 road in front of you. Answer, no. Any time before
20 the robbery? No, he didn't. No white car --

21 Inconsistencies in the State's circumstantial
22 evidence. And inconsistencies are reasonable doubts.

23 What else do we know? We know that he was
24 inside the store after the robbery. Right? He said
25 the robber left out the door. Did you follow him?

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1 No. Smart again. What did he do? He locked the
2 door. Smart guy. What did he do? He called his boss
3 and he called 911. But if you remember from this
4 witness stand, he waited five minutes. Five minutes
5 before he made calls. That's a heck of a head start
6 for someone on foot.

7 Speaking of on foot, that's how the evidence
8 from the State shows the burglar arrived. Again, the
9 color is washed out. I understand. Nonetheless, the
10 robber is walking on in from the side on foot. And
11 there is the -- you'll have those back there to look
12 at.

13 What else? We know that not only did the robber
14 come from that direction on foot, we also know that
15 the robber left that direction on foot, don't we? We
16 certainly do. We have even more about that. Again,
17 in the evidence for you to see.

18 Leaving again. We'll get to the times later.

19 What happened next? An officer responded. The
20 responding officer did not testify. That officer
21 contacted the shift supervisor. Why not? That's a
22 smart idea, too. Right? Lieutenant Robinson, we
23 heard from Lieutenant Robinson, didn't we? He was the
24 shift supervisor that day. Why didn't the State bring
25 him up?

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1 The State is trying to cover up the fact that
2 there was a five-minute gap. They're trying to show
3 you that it was immediate, that they immediately
4 looked in the area and no one could have been on foot
5 because the lieutenant drove around the whole
6 neighborhood. We know that's untrue. We know Mr.
7 Montgomery waited five minutes to call officer -- the
8 shift supervisor. Over five minutes. Big concern.
9 That's when Lieutenant Robinson started driving
10 around.

11 Lieutenant Robinson got there. And what did he
12 do after he got there? Smart man. He called for K-9
13 assistance, a dog, a tracking dog. Very smart. What
14 else do we know that he actually said? Did the dog
15 track? Yeah, the dog tracked. My co-counsel, Doug
16 Mellard, asked, did he track out the gloves? No, he
17 didn't track out the gloves, he got the scent from the
18 area. From the area. Now, I understand Sargent Dukes
19 testified, no, he got it off the gloves. But let's
20 also be very clear. Lieutenant Robinson called K-9
21 and Lieutenant Robinson testified to us that K-9
22 tracked off the area, not the gloves.

23 And that dog did hunt. Where did it go? It
24 tracked. It racked on foot, not in the car, not in a
25 pick-up truck. The dog was walking, and so was the K-

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1 9 handler, and they went on foot, followed that track,
2 followed that scent, to where? A trail in Mell's
3 Court Trailer Park behind Metz Laundry. Not far.

4 They get there. Anybody answer? Yes. Who
5 answered? A man. Did you arrest him? No. Why?
6 Well, didn't match the description. Well, we know the
7 clerk's description was off.

8 Also, another question. Hey, did you think to
9 check inside? No, nobody checked inside. Didn't
10 check inside. Great. Didn't look for -- even if they
11 don't think he looked like the description, they
12 didn't look for a guy inside that may match the
13 description because, after all, that's where the dog
14 tracked. Nope. Didn't look for a gun in there.
15 Nope. Didn't look for a red tasseled shawl? No.
16 Didn't look for sunglasses? No. Didn't look for
17 jeans with very faded fronts? No. Didn't look. That
18 was the day of the robbery.

19 So what do we know? They looked after over five
20 minutes. Right? We also know that the K-9 tracked to
21 a trailer. And we know what? They didn't search the
22 trailer. Not my evidence. The State's evidence. Not
23 our witnesses. The State's witnesses. Officers. The
24 one who was there on the scene that day. That's
25 what's in evidence. Those are inconsistencies, and

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1 inconsistencies are reasonable doubts.

2 What else do we know? We know a couple of days
3 later that now Sargent Dukes went over there. A
4 little while after that, he got some videos. Great.
5 The problem is we know that the videos are
6 inconsistent. How do we know that? Let's look at the
7 time stamps -- we know that there's a robber seen --
8 that someone similarly matching the description of the
9 robber is seen walking on foot between Mr.
10 Montgomery's car and the Keg. And, again, I
11 apologize. This is the bleached-out camera.
12 Everything is lighter and off-color. Nonetheless,
13 that's what we've got. Time stamped 9:47. What else
14 do we know? We also know that the robber enters the
15 store at about 9:47. Actually, 9:47 and 43 seconds.
16 Right? We also know that the robber exited the store
17 when? 9:48 and 48 seconds. There he is walking out.
18 You'll have these back there with you. We also know
19 that at 9:48 and 51 seconds the robber walks out of
20 the store, right across the front, on foot. What else
21 do we know? We know that at 9:48 we see the robber is
22 actually walking back through there again. Not just
23 in one picture, but we've got two. One shows the
24 reflection in the mirror of the vehicle and the other
25 the actual picture of his face. Here. There's his

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1 arm. His face is going to be in the next one.

2 What else do we know? We know that the car did
3 not even arrive, on its own videos, until afterwards.
4 In fact, it's at 9:49. The picture I've already shown
5 you, when you see the car coming in around the corner
6 off of 301, the same one that he said he didn't see
7 when he was standing out front. That one. Okay?

8 What else do we know? We see that at 9:49 and
9 51 seconds, Dodge Caliber is setting in. We see at 9
10 minutes, 50 seconds, that it's still going in. We see
11 at 9 minutes 54 -- I'm sorry -- 9:54 and 50 seconds,
12 it's coming out. We see at 9:54 and 55 seconds, it's
13 driving out. Now, all of that is after the robbery.
14 All of that is after the robber left on foot.

15 Now, the State knows these are a problem.
16 Really does. All right? That's why the video footage
17 isn't just of a single video. Watch the whole time.
18 No. The evidence in the record that you see of the
19 videos shows video footage of this camera over here,
20 and magically over here following to the car, and then
21 over here again following the car. And then, wait a
22 second. It goes back in time. And then it follows,
23 different cameras, of the guy walking in between the
24 car and the Keg and then going around inside. And
25 then come back out and it goes back over to a

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1 different time stamp. Video. They want you to look
2 past the obvious. They want you to look past the time
3 stamps. They want you to believe their time line,
4 despite the fact the time stamps are off, according to
5 them.

6 So what do they do? Oh, I'll just try and fix
7 that. Well, they got the video guy, Mr. Hall. Right?
8 Well, he could conclusively say they were off by about
9 four hours, all of them. Great. Well, what about the
10 actual differential in difference in minutes? He
11 could not give you an opinion. He's not an expert.
12 He didn't do any math for that. He didn't personally
13 check to see a differential in the minutes themselves
14 and tell you conclusively they are off by this many
15 minutes each and therefore it should go along with the
16 State's time line. Couldn't do that because he
17 didn't. And he couldn't give an opinion on it because
18 he's not an expert.

19 What did he finally agree to at the end of my
20 cross with him? The time stamp is what it is.
21 Frankly, that's what the State is left with. Again,
22 not our burden. It's the State's. Not our
23 inconsistencies. The State's. And inconsistencies
24 are reasonable doubts.

25 What happened next? We know that there were

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1 pics taken from those videos. Right? Notice is sent
2 out. What does the notice say? The officers who
3 actually had notice said, oh, yeah. Said be on the
4 lookout for what? A white or silver Dodge Caliber. A
5 white or silver. They didn't know. They know this is
6 off. Right? They don't even know.

7 What else do we know? We know that on the 14th
8 the car was stopped. It was stopped by Lieutenant
9 Culler. He testified right here. That was great.
10 His reason? The description matched. But what does
11 he say to the driver? Window tint. I hate to break
12 it to you, but some police do lie. You saw it and
13 heard it on that stand.

14 Now, he called Officer Pifer from the Department
15 of Public Safety. Okay. What did Pifer say? He
16 testified here, as well. He said it matched the
17 description of a possible suspect we were looking for.
18 And what was his basis? Light-skinned male. In
19 Orangeburg, South Carolina, Claflin University --
20 South Carolina State University. Orangeburg, South
21 Carolina. His basis. He matched the description.
22 Why? Light-skinned male. That's what you heard in
23 the evidence. You didn't hear other reasons. You
24 didn't hear anything else tacked on. His reason,
25 light-skinned male.

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1 Now, what are we going to do with that
2 information? Once we have information, they have --
3 they're going to need Tykeem May. They have the
4 address of Emonie Ford, his partner. Once they have
5 that, they just confirmed where they lived, got a
6 warrant and executed it --

7 Kicked the door in. Know they're home in the
8 middle of the night. Guns drawn, on the ground,
9 cuffed -- searched the place. Not just one person,
10 but a lot of people in that home searching.
11 Professional people. In fact, we even heard from
12 Lieutenant Mr. Shultz up here. He testified he's got
13 a lot of experience with this, he's really good at it.
14 Okay. He is.

15 Let's talk about the search. What are they
16 looking for? I mean, to search, obviously they're
17 searching for something. They were searching for an
18 assault rifle with a banana clip, stone-washed-looking
19 jeans with faded fabric in front, black-and-white
20 stripped tennis shoes, a red shawl or bandana, red
21 sunglasses. Oh, and don't forget, a skull cap with a
22 circular design running around it. All right?

23 Let's break those down. What did they find?
24 Let's talk about the assault rifle. This is what they
25 found. Now, the best thing about this is it has -- on

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1 the State's own evidence that it admitted -- it has a
2 serial number. This is not a one-of-a-kind item,
3 handmade and crafted by some craftsman up in New
4 England. Nope. This is a product that is made by the
5 thousands in China. How do we know? It's stamped.
6 It says 004082, and then -- so at least 4,082 of these
7 that we know of -- it's all right there. It's got
8 room for more right there. It's like this. That
9 means at the bare minimum, there are another 4,081 of
10 these, of this model, out there. The State has proven
11 no evidence in this record whatsoever, there couldn't
12 be other rifles like this out there. It's an assault
13 rifle made in China. Mass production, out there by
14 the thousands.

15 What else do we know? Thousands of rifles like
16 that. No evidence that things on there are unique.
17 Not from any expert witness on the stand. Nothing.

18 What else? Nike sneakers. Really? Another
19 product made in China. Right? I think commonsense
20 tells us thousands, if not more. Right? Nike
21 sneakers. Thousands of them. Thousands. In fact, we
22 know they're so common, even his girlfriend has a
23 pair. And yet, even though they claim that this is
24 one of the things they were looking for, and even
25 though we know the robber took off in between, there's

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1 a fence there, I don't know if he jumped it, don't
2 know if he didn't. But what we do know is that
3 there's at least some dirt around there. Where are
4 the footwear impressions? How do we know that those
5 sneakers were the ones specifically worn by the
6 robber? No footwear impressions. But someone wearing
7 black shoes make the same footwear impression as mine.
8 No evidence in there from the State that those
9 sneakers were the ones used by the robber. They just
10 seemed to look alike. Thousands of them.

11 What else do we know? Oh, yeah. The red
12 sunglasses. That's good. Red sunglasses. How do we
13 know? The State's witness said so. Emonie Ford,
14 right here. Not only that, she doesn't even remember
15 if she actually got them before or after the case --
16 the offense. We do know she got them from a photo
17 shoot. The State didn't conclusively prove that she
18 had those beforehand. Inconsistencies.
19 Inconsistencies are reasonable doubts.

20 And that's what they found. What else? Oh,
21 yeah. Comments. What didn't they find? Let's ask
22 ourselves. They knew what they were looking for.
23 They had professionals looking for it. They had
24 Lieutenant Shultz, who's got years of experience on
25 this matter. What did they not find? Well, they

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1 didn't find a skullcap, right, at all. Not only that,
2 we heard from Emonie Ford that Tykeem May is not a hat
3 person, he's not a hat guy, he doesn't wear hats.

4 What else did we learn? Oh, that's right.
5 Let's talk about stone-washed-looking faded jeans or
6 jeans with faded fabric on the front. All right? The
7 State tried to make a big deal about those, saying,
8 well, there were lots around there. Right? Not only
9 were there a lot around there but, you know, if --
10 they could have been similar-matched. Right? Really?

11 Let's talk about that. These are acid-washed
12 jeans. Very, very, very bright, vivid colors. And
13 the other ones, no fading whatsoever. Was there other
14 clothing around there? Yeah. But what did Sargent
15 Shultz say? He didn't collect them. Why? Well, he
16 didn't collect them. And then on redirect, when they
17 tried to rehabilitate the witness when he said he
18 didn't collect them, what did he say? There were lots
19 others around there. Why didn't you collect them?
20 Well, they were trying to get him to corroborate what
21 the other guy said. Well, there were just too many.
22 First time I ever heard that, not collect the
23 evidence just because there's too many pair of jeans.
24 Really?

25 Now, Lieutenant Shultz said something very

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1 different. Lieutenant Shultz said, and I quote him,
2 they didn't look exactly like that. The jeans that
3 were there in didn't look exactly
4 like the ones in the robbery. And the State's own
5 witness, who was there executing the search warrant,
6 who's got years of experience executing search
7 warrants and looking for stuff to use in evidence,
8 said they didn't look exactly like that. You know,
9 which corroborates what Emonie Ford said: those are
10 her jeans. She said that, State's witness.

11 And, finally, did they find the red shawl was
12 collected here? Red shawl with tassels. We know that
13 it was worn by the robber in the video. Didn't find
14 it. Didn't find it at all. We know that she does
15 have a large piece of cloth like that but it's not
16 red, it's pink. Right? She said so. And not only
17 that, it's not like it was hiding. It was there on
18 her window. A door going to the outside, used as a
19 window shade. And what else did Ms. Ford tell us?
20 She said, no, I didn't notice that anything was
21 missing; that shawl, I didn't notice it was missing at
22 all on the 8th. It was there. In fact, it was there
23 for the police and yet the police, with all those
24 years of experience on searching and knowing what to
25 look for, didn't even collect that. Why? It didn't

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1 match. No red shawl at all with tassels. Doesn't
2 exist, not in that house. And these are all
3 inconsistencies in the State's circumstantial evidence
4 regarding identity. As we know, inconsistencies are
5 reasonable doubts.

6 I love this. The shawl is great. You know why?
7 They had the witness up there. Honest to goodness, I
8 don't think they showed this. Well, she confirmed her
9 shawl's not red, it's pink. It also corroborates why
10 officers would have neglected it. They were looking
11 for a red shawl with tassels. Officers with years of
12 experience, they didn't find a red shawl with tassels.
13 You know why? She doesn't have one. She has a pink
14 shawl used as a window covering.

15 And the State also tried to make a deal about,
16 oh, well, the officers were getting directions from
17 Corporal -- or from Sargent Dukes. Sargent Dukes is
18 talking to her at the station. Even with the
19 direction of her through Dukes, the people on the
20 scene still didn't find a red shawl with tassels. It
21 was pink. It doesn't exist. These are all
22 inconsistencies. And inconsistencies are reasonable
23 doubts. You know why they didn't find it? It's not
24 there.

25 Let's also talk about what happened that day.

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1 Alibi. State's witness, Ms. Ford, was up here. What
2 did she say? About 1:40 p.m. they left. To go where?
3 Walmart. What did they do? Some shopping. After
4 that, where did they go? They went to Sonics for
5 Sonic happy hour. Who doesn't like Sonic happy hour?
6 Discounted slushies, right? They like them. After
7 they stopped there at Sonics for Sonic happy hour,
8 they went back home. About 3:40 p.m. is about the
9 time they got back.

10 Now, just think about alibi. The defense
11 doesn't have to prove it. The State has to disprove
12 it. There's no burden on us. No burden on Tykeem
13 May. Don't you put one there. You keep it where it
14 belongs, on the State.

15 What else do we know? We know that he worked
16 two jobs. What about those two jobs? What's
17 interesting about them are the details. He worked one
18 the day and one the night. Tykeem May is a
19 hardworking young man. He has a daytime job at Dollar
20 General. He was excited because he recently picked up
21 a job, according to Ms. Ford, as well, at TKL Security
22 -- about two weeks before, as well -- in other words,
23 whether or not he was still in school, S.C. State
24 University, the man worked. So what I'm trying to
25 tell you is contrary to the State's first words to

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1 you, there was no lure of easy money pulling at Tykeem
2 May because the evidence shows that Tykeem May is a
3 hardworking young man with no motive to steal.

4 Now, as we said, all of these inconsistencies
5 are present in the State's circumstantial evidence.
6 All right? And as we said, inconsistencies are
7 reasonable doubts. In other words, each one of these
8 by themselves, or maybe a few of them, or all
9 together, amount to reasonable doubt. All of them.
10 Not quite Baskin-Robbins. We've got twenty-three.
11 Baskin-Robbins has thirty-one. But, still, you can
12 pick your plate. Twenty-three individual reasons, and
13 more if you look at the evidence even harder.

14 Now, this isn't horseshoes. Close doesn't
15 count. We have the highest standard for the burden of
16 proof in the -- actually, in the justice system at
17 all, is beyond a reasonable doubt.

18 Now, I won't have an opportunity to speak to you
19 again. What I ask is that you apply the law to the
20 facts. And, yes, including the section of law the
21 State conveniently left out and didn't provide to you
22 at the beginning but that you will hear from the judge
23 regarding how to analyze and apply circumstantial
24 evidence. It's the heart of this case regarding
25 identity.

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1 I want you to hold the State to its burden
2 because it's the State's burden, not ours. Because if
3 you do, I'm confident that you will find, for one or
4 more or all of these reasons, not guilty.

5 Let's also talk about this. Even though your
6 decision is supposed to be unanimous for the burden,
7 it doesn't say it has to be unanimous for your reason
8 of doubt. One person could have one or more reasons
9 that are different from another person's reasons that
10 are different from another person's reasons. What is
11 necessary is that you just agree, yeah, there's
12 reasonable doubt in this case.

13 We have reasonable doubts and reasonable doubt
14 means not guilty, period. If you apply the law, the
15 facts in this case, I'm confident you'll find that
16 Tykeem May is not guilty, because Tykeem May is not
17 guilty of armed robbery and he is not guilty of
18 possession of a firearm during the commission of a
19 violent crime. Thank you.

20 THE COURT: You may proceed when you're ready.

21 MR. BELL: Thank you.

22 THE COURT: You're welcome.

23 MR. BELL: May it please the Court.

24 THE COURT: Yes, sir.

25 MR. BELL: Mr. Stevens.

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CLOSING ARGUMENT

MR. BELL: Ladies and gentlemen of the jury, as I stated when I started out with this case, the lure of easy money leads people to do strange things. Leads people to do armed robbery. Leads people to do all kinds of crazy things to try to find money. And that's why we're here this week. And I'll talk about that more a little later. I want to go to that.

The first thing that we know in this case, the one thing we know, is an armed robbery happened back on September 8th, 2013. We know it from the testimony of Quantavious Montgomery and we know it from the videos that we presented from September 8th at the Keg on John C. Calhoun Drive, 409, approximately 2:00 p.m. in the afternoon. That we know.

But first of all, I've got to talk a little bit about the videos. I'll talk about Mr. Montgomery. And all of these are from these bad -- these inconsistencies. But what Mr. Stevens has also overlooked are the consistencies. And he's overlooked a lot of evidence to get to those inconsistencies. And he's also confused direct and circumstantial evidence because, ladies and gentlemen, direct evidence is Quantavious Montgomery getting up on the stand saying, I was there; a person, a light-skinned

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1 black male with a gray skullcap or gray hoodie, with
2 dreadlocks -- and remember, he's at ground level with
3 the man. These camera angles are at an angle above.
4 He got to see them. He got to experience it -- who
5 had red sunglasses, who had a shawl or bandana around
6 his face, who had an assault rifle. That's direct
7 evidence, that's not circumstantial evidence. The
8 video cameras, that's direct evidence, not
9 circumstantial evidence. So the State's case is not
10 all founded on circumstantial evidence. We're founded
11 mostly on direct evidence. And I'll tell you that.

12 But let's talk about the cameras. He wants to
13 make a big thing about the cameras: they're off,
14 therefore it's an inconsistency. It's not, ladies and
15 gentlemen. I'll be willing to bet -- let's just talk
16 about the little time, the five increments. I'll bet
17 if we were to go around the courtroom, people that
18 have got watches, I'll bet you maybe three people
19 might have the exact time on a watch. And remember,
20 this is two different camera systems. Mr. Hall got up
21 here, the guy that installed the system, who maintains
22 these systems, two different systems -- so it's not
23 one system that keeps time for all of them. There was
24 the Green's Liquor Store part, there was the outside
25 cameras, and the Keg's part that has the other outside

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1 cameras and inside cameras.

2 We also know that the robbery happened after
3 12:00 p.m. on Sunday, because they didn't open until
4 12:00 p.m. Who testified to that? Mr. Montgomery and
5 Mr. Graham. So the robbery had to occur between 12:00
6 p.m. and 2:00 p.m. when the police arrived, after they
7 were called. We know that. So we know the cameras
8 are off. Judge from that. But we had Mr. Hall. He
9 wasn't an expert but he was the guy that installed the
10 system, knows the system, and says they can be off.
11 That was his example, like watches can be off a minute
12 or two. And that's not -- that's not outside the
13 realm of possibility. We're not asking you to make a
14 big leap of faith, a big factual leap. That's
15 something -- anything built by man is not perfect.

16 But, also -- let's talk about it. Let's talk
17 further about it, about the car. He wants to make a
18 big thing, inconsistency, oh, Mr. Montgomery ran up
19 the street and he didn't see a car behind there.
20 Well, number one, his car was parked there. We can
21 see it in the pictures. Look at that from the Keg and
22 look at the side. His car is parked there. And,
23 number two, a man just walked by him with an assault
24 rifle. Is he looking to see if a white car is around
25 this building? He's keeping his eye on that man with

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1 that assault rifle. Wouldn't you? Wouldn't anybody?

2 And notice where the individual walks on that
3 side camera that he makes a big deal about. This
4 camera [indicates]. That's Mr. Montgomery's car on
5 the side of the business, on the right side as you're
6 looking at it from 301. He walks this way -- or he
7 walks this way when he's going, and this way when he's
8 back. Where does the video show that that car is
9 parked? Back here. Why didn't he just walk up the
10 road? It's an easier getaway. Either side. Across
11 the street. But he goes specifically back to that
12 car. And the further thing, there is no evidence that
13 there was a car after the robbery there. Why did the
14 -- why did that car just pull in, sit there for a
15 couple of minutes, and pull out? Nobody came in. If
16 it's after the robbery, as they want you to say, Mr.
17 Montgomery locked it up, called his boss, called the
18 police. Why is that car there? That's the only car
19 that's there, other than Mr. Montgomery's. Oh, well,
20 he didn't see a white car drive by or drive away when
21 he was sitting outside. Look at the video. What was
22 he doing? He was playing with his phone. He's not
23 noticing. He has no reason to notice what cars are
24 coming. Cars are coming up and down the thing. He
25 probably couldn't tell you if a red, blue, green,

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1 yellow car came. He had his attention elsewhere.

2 That's not an inconsistency.

3 Now, he gave you a description. He did -- I'll
4 give him that. The gloves. I'll give you the gloves
5 as an inconsistency, because I'll flat out say -- you
6 can see the video -- that person who robbed is not
7 wearing gloves. They're not wearing gloves. Oh, but
8 the dog tracked somebody when the police got there and
9 they just went and knocked on the door. Okay.

10 I mean, we were given some specific -- Sargent
11 Dukes was given some specific, oh, they tracked with
12 the gloves. Well, okay. Let's take what Mr. Stevens
13 suggested. They just sniffed the air. Okay. It's a
14 store, ladies and gentlemen. How many people have
15 been there on Saturday? How many people have been
16 there Sunday morning? They could have -- that dog
17 could have tracked anybody. And we've got Lieutenant
18 Robinson that came. He looked around to see if
19 anybody was on foot with the description they had. He
20 didn't see anybody. He tried.

21 So, ladies and gentlemen, we have Mr.
22 Montgomery's description. Then -- oh, and remember.
23 I forgot. Let me go back to the dog. Yes, they went
24 to the trailer that day. But he overlooked another
25 time. Sargent Dukes followed up, as good police work

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1 you should, a couple of days later. He went to that
2 trailer and talked to the people. Did y'all see
3 anything? You know, trying to find out. Because they
4 had gone cold. They didn't know. They were working
5 every angle they could find. And that was about the
6 only one they had at the time. But then he got the
7 video and looked at the video. And he got the
8 description, too, when he talked to Mr. Montgomery.
9 And they got the description.

10 And here's where we are, ladies and gentlemen.
11 By September 12th, we've got a black male with light
12 skin with dreadlocks who's driving a white Dodge
13 Caliber. Oh, and something else. If you look at the
14 video, you look at this picture -- let me find it.
15 One moment. Anyway, you can look at the picture in
16 evidence. But look at the video, too. You can notice
17 when the vehicle comes in, it backs in and comes
18 straight to the camera. And if you look at the white
19 corner of the windshield, you see something irregular.
20 It looks like a little white sticker. Look at it.
21 Look at it hard, because it's important. I'll get to
22 that in just a few minutes. Not inconsistent.

23 But the robber was wearing red sunglasses, a
24 gray hat or hoodie. Red sunglasses, gray hat or
25 hoodie, scarf or bandanna, jeans with fading, white-

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1 and-black athletic shoes -- look at the shoes -- with
2 a rifle with a banana clip, a wood stock with strap
3 goes to the description of the robber of the Keg on
4 September 8th. And what do the police do? What do
5 they do? He gets a picture of the Caliber, because he
6 knows it's involved. We know it's involved. It's got
7 to be. There's no other explanation. It's not an
8 inconsistency. And he gets a picture of the robber
9 and he puts it out, puts it out to his department and
10 Orangeburg County to be on the lookout, let's look for
11 a white or silver. The only reason he says he put
12 silver is because of the different things. But we
13 know it's a white Dodge Caliber. There's no question
14 it's white.

15 What happens next? Good police work.
16 Lieutenant Culler, with the county, he's coming --
17 he's coming from the complex on Ellis and he happens
18 to see, right there at the intersection of Chestnut
19 and Ellis, low and behold it's a white Dodge Caliber.
20 Peaks his interest; I've got the picture, let's check
21 it out. So he goes and he sees the vehicle stopped on
22 Ellis and he goes up to see what's going on. He sees
23 people getting out. He sees something -- somebody get
24 out that looks -- oh, kind of fits the description; I
25 think we need to check this out.

14 So what do they do? They get his address,
15 which, as it turns out, was a lie. They get the
16 license tag, they get the registration. They find
17 that Emonie Ford is one of the co-owners. Sargent
18 Dukes goes over to South Carolina State, checks him
19 out, gets his information, gets her information, where
20 she lives, . And what do they do? They
21 don't run and make an arrest or anything. They do
22 more good police work: let's go check this out; let's
23 see what's going on. They check the Brandon Street
24 address. He sat there for six hours to see if
25 somebody came. Nobody came. Lieutenant Caddell

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1 testified he went to the What
2 was there? A white Dodge Caliber. Who was there?
3 Mr. May. He saw him. He identified him. He was
4 there. He was going in and out.

5 So Mr. Dukes comes, after they determine that he
6 didn't live at Brandon Street, and they watched a
7 little more. Sargent Dukes watched. Saw him come out
8 and smoke a cigarette. Saw Ms. Ford walk up the
9 street with the dog.

10 Lieutenant Caddell went back to the office and
11 they decided it's worth getting a search warrant.
12 It's a lead. It's a hot lead. We've got to check it
13 out. So they got a search warrant. They got a search
14 warrant and they went to the house. And they took the
15 county SRT team because it's a county address. And
16 they're going to check out a possible armed robbery
17 suspect who had an assault rifle in this robbery. How
18 do you think the police are going to go in there?
19 They're just going to walk in, hey, how you doing?
20 No. They're going to make sure that they're safe and
21 everybody else is safe.

22 So they go in and they have to do it by
23 surprise, just so you get the jump on them to make
24 sure nothing bad happens. And I'm sorry they had to
25 handcuff them, but they didn't know what they were

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1 walking into. Sorry they had to put a gun to their
2 head. That's no big deal. That's police work.
3 That's to make sure people are safe, the police
4 officers and the citizens, that nothing bad happens.
5 And, fortunately, nothing did.

6 So we have a couple of things going on at the
7 same time, ladies and gentlemen. We've got Sargent
8 Dukes and another officer taking Mr. May and Ms. Ford
9 back to their police station, and we've got officers
10 who are searching.

11 Well, Sargent Dukes testified -- and then
12 Ms. Ford herself testified, they took me back to the
13 police station and showed me a video. And what did
14 she say? Oh, that looks like my car. Oh, those look
15 like my sunglasses. Oh, that looks like my shawl
16 that's in my house. And, oh, that gun looks like a
17 gun that Tykeem has had, I thought he sold it. And
18 they do the search warrant. What did they find in the
19 house? They find red sunglasses, that Ms. Ford said
20 were hers, that the robber was wearing. They find a
21 pair of Nike shoes. They had found her pair and she
22 said, oh, my boyfriend Tykeem has got a pair just like
23 them, I bought them. And the significant part is if
24 you look at State's 4 and you look at those shoes, you
25 can see the Nike switch on the bottom.

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1 And, oh, they found an assault rifle, if you
2 look in the picture, that's like that, with a wood
3 stock, with a banana clip. And if you look at those
4 pictures, this is the rifle with a strap. Because it
5 keeps getting hung up with him. And they found it
6 loaded. So apparently he came to the robbery ready
7 for business.

8 They didn't find the scarf. They saw jeans that
9 were similar to what they saw. They saw, as I said,
10 the white Dodge Caliber that, guess what, has a
11 sticker in the left corner, the driver's side corner,
12 the same vehicle.

13 Ladies and gentlemen, don't be fooled by the
14 defense. We have all these items. Black male, light-
15 skinned, with dreadlocks. He was driving a white Dodge
16 Caliber, white window sticker, red sunglasses. We'll
17 give in. We didn't find the gray hat or hoodie. You
18 had Ms. Ford identifying, oh, that's my scarf, in the
19 video, jeans at the house that had faded fronts or
20 acid washed or whatever -- however the defense wants
21 to character [phonetic] -- they're going to -- they're
22 going to split that hair. White-and-black athletic
23 shoes, with a rifle with a banana clip, a wood stock,
24 and a strap. You put all those together, ladies and
25 gentlemen, they line up one trail to that man, the

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1 defendant. No inconsistencies, no circumstantial.
2 But all those together can only lead one way, straight
3 to that man.

4 Oh. But Emonie said that they didn't go to --
5 they left at 1:40 to go to Sonics and Walmart. Well,
6 she said it was around there. She didn't say, upon
7 cross or upon further questioning, it could have been
8 2:00, it could have been 2:15, it could have been
9 2:40. Her main focus was getting to Sonic between
10 2:00 and 4:00 for happy hour. You heard. That's what
11 she was wanting to do. And she got there. Twenty
12 minutes at Walmart, then we went to Sonic, then we
13 came home.

14 Now, I think the defense attorney said, well,
15 she said they got home at 3:40. She may or may not
16 have said that. I can't -- I don't remember. But, I
17 mean, if it was 3:40, I mean, we're talking an hour if
18 they left at 2:40. And we don't have it on the map,
19 but they live maybe five minutes away from the Keg.

20 But he's a hardworking man. She said he's a
21 hardworking man, he doesn't need the money. Well,
22 that's not all she said. She said he had two jobs.
23 He had told the police that he was a student at State.
24 But he wasn't. Or he had been. That's where she met
25 him. But he wasn't a student. Well, why wasn't he a

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1 student? Because he didn't have money. He didn't
2 have money for tuition. That's why he got a second
3 job. That's what she said. He needed money. Let's
4 get rid of that inconsistency, too. He needed money,
5 quick money, easy money.

6 Make no mistake, ladies and gentlemen. The only
7 way that you can find the defendant not guilty is to
8 pick apart little things here and there. But you have
9 to -- you can't do it -- it's like a puzzle. You have
10 to put all these pieces together. And it's like a
11 jigsaw puzzle. If you put enough pieces together, you
12 don't have to have a hundred percent of the pieces
13 together to understand what the picture is about. You
14 just have to have a goodly number. And that's what
15 the State has presented you, ladies and gentlemen. We
16 presented you a goodly number of all the identifying
17 factors of the individual that robbed the keg on
18 September 8th, 2013.

19 Now, I talked a little bit about reasonable
20 doubt and circumstantial evidence. And the defense
21 said, oh, well, they were scared to talk about
22 circumstantial or direct evidence because there's so
23 many inconsistencies. Well, the only reason I didn't,
24 because I can't -- I couldn't talk about the facts.
25 Well, here are the facts, ladies and gentlemen. The

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1 direct evidence, plus what circumstantial evidence
2 there is, points in only one direction, as I said,
3 conclusively: the guilt of the defendant.

4 Now, about reasonable doubt. As I told you,
5 it's proof that leaves a person looking for the truth
6 firmly convinced of the defendant's guilt. For
7 instance, you came into this courtroom earlier this
8 week, Tuesday, not knowing a thing about this case
9 except maybe it was an armed robbery. And now you
10 have to ask yourself has the State given you enough
11 evidence where you are firmly convinced that the
12 defendant is guilty of the charges. And I argue that
13 we have.

14 It is not your duty, ladies and gentlemen, as
15 jurors, to search for reasonable doubt, but to test
16 the State's case whether we have proven it beyond all
17 reasonable doubt. That's the test. And I disagree
18 with the defense. Inconsistencies, they're not
19 necessarily reasonable doubt. For instance, people
20 can see the same thing. You, ladies and gentlemen,
21 will go back in the jury room here in a few minutes
22 and talk about this case, and you will have heard and
23 seen things differently. We perceive things
24 differently as human beings. We see something that
25 somebody else doesn't, or they hear something that we

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1 don't. Those are inconsistencies. But that doesn't
2 mean anybody is lying. That doesn't mean it's
3 reasonable doubt. It just means we're human. So not
4 all inconsistencies are reasonable doubt. I'll give
5 them -- he said the gloves. Fine.

6 And, ladies and gentlemen, I will also tell you
7 as jurors, and reasonable doubt, you can have
8 reasonable doubt about a particular fact that has been
9 brought out or not brought out. You can have a
10 reasonable doubt as to that fact. But because you
11 have reasonable doubt about one fact does not rise to
12 reasonable doubt about guilt. You can just dismiss
13 that fact and consider other facts. That's your
14 prerogative as jurors. But I'm just trying to give
15 you guidance that if you think there's one fact that's
16 inconsistent and is reasonable doubt, you can ignore
17 it. But you still can consider other factors towards
18 guilt.

19 Ladies and gentlemen, the State has given you
20 more than enough evidence. We have proven beyond all
21 reasonable doubt Tykeem May is guilty of armed robbery
22 and guilty of possession of a firearm during the
23 commission of a violent crime. What are the
24 probabilities? Think about it. What are the
25 probabilities that all these factors came together to

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1 him? You can think about it, as the defense did. Oh,
2 there's four million of these made. Okay. You've got
3 one out of four million. Okay. There are 100,000
4 Dodge Calibers made. Well, he had access to one Dodge
5 Caliber. So what are the chances that a person that
6 owns a Dodge Caliber owns a Chinese assault rifle?
7 Okay? What is the chance that that individual is a
8 black male who's light-skinned with dreadlocks? You've
9 got to multiply those together. Who had access to red
10 sunglasses, a scarf or bandana, and jeans? Those are
11 all factors. That takes the odds less and less than
12 it's not him. But it is him. That's what the State
13 has done to prove beyond a reasonable doubt by those
14 factors that he is the person that robbed the Keg on
15 September 8th, 2013.

16 Ladies and gentlemen, all we ask, as I said, on
17 behalf of the State of South Carolina, Orangeburg
18 County, Quantavious Montgomery and the Keg, is that
19 you do justice.

20 I'll leave you with this last thought. Smart
21 man, Albert Einstein, once said the world is a
22 dangerous place to live not because of the people who
23 are evil, but because of the people who don't do
24 anything about it. Ladies and gentlemen, do something
25 about it. Do justice. Find Tykeem May guilty of

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1 armed robbery. Find him guilty of possession of a
2 firearm during the commission of a violent crime.
3 Thank you.

4 THE COURT: Madam Forelady, ladies and
5 gentlemen, we're going to take a very brief restroom
6 break, after which we will have -- we will have the
7 Court's instruction.

8 During this break, please do not discuss the
9 case in any manner whatsoever. And please leave your
10 notepads in your seats. You can go with your
11 caretaker, please.

12 [Whereupon, the jury exits the courtroom at
13 11:07 a.m.]

14 THE COURT: We'll be at ease for however long it
15 takes for the jury to use the restroom.

16 [Whereupon, a recess is taken from 11:07 to
17 11:18 a.m.]

18 THE COURT: Is the State ready to proceed?

19 MR. BELL: The State is ready.

20 THE COURT: Is the defense ready to proceed?

21 MR. STEVENS: The defense is ready, Judge.

22 THE COURT: Please bring in the jury.

23 [Whereupon, the jury enters the courtroom at
24 11:20 a.m.]

25

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CHARGE OF THE COURT

1
2 THE COURT: During this trial, ladies and
3 gentlemen, you and I have certain duties to perform. As
4 the trial judge, it is my responsibility to preside over
5 the trial of this case. I also have the duty to rule upon
6 or pass upon the admissibility of evidence offered during
7 this trial. You are to consider only the competent
8 evidence that is before you. You are to consider only the
9 testimony which has been presented from this witness
10 stand, together with any other exhibits which have been
11 made a part of the record in this case.

12 I have the additional duty to charge or instruct
13 you on the law applicable to this case. As the presiding
14 judge, I'm the sole judge of the law of this case and it
15 is your duty as jurors to accept and apply the law as I
16 now state it to you. If you have a preconceived idea as
17 to what the law is or what the law ought to be in a case
18 or in this case, and it should not agree with what I now
19 tell you the law is, you are obligated under your oath to
20 abandon this preconception on your part because you are
21 sworn to accept the law and apply the law precisely as I
22 now state it to you.

23 In every case tried in this court before a jury,
24 the jury becomes the sole and exclusive judges of the
25 facts in a case. You, the jury, are the judges of the

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1 facts in this case. This Court is the judge of the law.
2 The constitution of our state has declared that a trial
3 judge shall not intimate, state, comment upon, or make any
4 statement to a trial jury about the facts in a case.
5 Since you, the jury, are the sole judges of the facts in
6 this case, you are not to infer anything from what I've
7 said during the progress of this trial in ruling upon the
8 admissibility of evidence or otherwise, or anything that I
9 say now to you during the course of this instruction, that
10 I have any opinion about the facts. The law does not
11 allow me to have an opinion about the facts. This is a
12 matter solely for you, the jury, to determine.

13 As jurors, then, it is your duty, as I have
14 instructed you, to determine the effect, the value, the
15 weight, and the truth of the evidence presented during
16 this trial.

17 Necessarily, you must assess the credibility of
18 witnesses who have testified in this case. Credibility is
19 simply a legalistic term which means believability. It
20 becomes your duty as jurors to analyze and to evaluate the
21 evidence and determine that evidence which convinces you
22 of its truth. Some of the things you may consider as you
23 decide whether or not to believe a witness' testimony
24 about a particular matter include: what was the manner
25 and appearance of the witness who testified; was he or she

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1 straightforward or hesitate in answering; was the
2 testimony of a witness consistent or inconsistent; how did
3 the witness come to know the facts that he or she
4 testified to or what was his or her ability to know these
5 facts; if there is some reason a witness would want to
6 give testimony which would help or hurt one side or the
7 other -- in other words, was the witness biased or
8 prejudiced -- and was the testimony of a witness
9 strengthened or weakened by other testimony or evidence.

10 I further instruct you that in determining the
11 question of the credibility or believability of witnesses
12 who have testified, you may believe one witness as against
13 several witnesses or several witnesses as against one
14 witness. You may believe a part of the testimony of a
15 witness and reject the remaining part of the testimony of
16 that same witness. And if you have a good and sound
17 reason, you may believe the testimony of a witness in its
18 entirety or reject the testimony of a witness in its
19 entirety. You may consider the demeanor of a witness,
20 that is, the manner and appearance of the witness from the
21 witness stand. You can believe as much or as little of
22 each witness' testimony as you think proper.

23 Ladies and gentlemen, throughout this process
24 you have but one objective, to seek the truth regardless
25 of its source.

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1 I further instruct you that there are two types
2 of evidence which are presented during a trial: direct
3 evidence and circumstantial evidence. Direct evidence is
4 the testimony of a person who asserts or claims to have
5 actual knowledge of a fact, such as an eyewitness.
6 Circumstantial evidence is proof of a chain of facts and
7 circumstances indicating the existence of a fact. The law
8 makes absolutely no distinction between the weight or
9 value to be given to either direct or circumstantial
10 evidence, nor is a greater degree of certainty required of
11 circumstantial evidence than of direct evidence.

12 As I've already instructed, there are two types
13 of evidence which are generally presented during a trial:
14 direct evidence and circumstantial evidence. Direct
15 evidence directly proves the existence of a fact and does
16 not require deduction. Circumstantial evidence is proof
17 of a chain of facts and circumstances indicating the
18 existence of a fact. Crimes may be proven by
19 circumstantial evidence and the law makes no distinction
20 between the weight or value to be given to either direct
21 or circumstantial evidence. However, to the extent the
22 State relies on circumstantial evidence, all of the
23 circumstances must be consistent with each other and, when
24 taken together, point conclusively to the guilt of the
25 accused beyond a reasonable doubt. If these circumstances

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1 merely portray the defendant's behavior as suspicious, the
2 proof has failed.

3 Ladies and gentlemen, you should weigh all of
4 the evidence in this case. The State has the burden of
5 proving the defendant guilty beyond a reasonable doubt.
6 This burden rests with the State, regardless of whether
7 the State relies on direct evidence, circumstantial
8 evidence, or some combination of the two. After weighing
9 all of the evidence, if you are not convinced of the guilt
10 of the defendant beyond a reasonable doubt, you must find
11 the defendant not guilty. Conversely, if you are
12 convinced of the guilt of the defendant beyond a
13 reasonable doubt, then you must find him guilty.

14 I instruct you, ladies and gentlemen, that the
15 fact that the defendant was arrested, charged, and
16 indicted in this case is not evidence in this case and
17 cannot be considered by you as evidence of guilt in this
18 case, nor does it create any presumption or inference of
19 guilt. This documentation, ladies and gentlemen, is
20 simply the formal written instrument or instrument which
21 contain the charge or charges made against a defendant.
22 They simply serve as the formal documentation by which a
23 case is brought or processed through the court system.

24 The defendant has pled not guilty to the
25 indictment and that plea casts the burden on the State to

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1 prove the defendant guilty, because a person charged with
2 committing a criminal offense in South Carolina is never
3 required to prove himself innocent.

4 I instruct you, Madam Forelady, ladies and
5 gentlemen, that it is a cardinal and important rule of the
6 law of evidence that a defendant in a criminal trial, no
7 matter what the seriousness of the charge made against him
8 may be, will always be presumed to be innocent of the
9 crime for which he is indicted unless his guilt has been
10 proven by evidence satisfying you of that guilt beyond a
11 reasonable doubt. This presumption of innocence does not
12 cease when you retire to deliberate but it accompanies the
13 defendant from the time of his appearance throughout the
14 trial, until you reach a verdict in this case. Our
15 Supreme Court has said that the presumption of innocence
16 is like a robe of righteousness placed about the shoulders
17 of the defendant and it remains with him and assigns him
18 to that class, the innocent, until that presumptive robe
19 of righteousness has been stripped from his person by
20 evidence satisfying you of that guilt beyond a reasonable
21 doubt.

22 Madam Forelady, ladies and gentlemen, the
23 presumption of innocence is not mere legal theory. It is
24 not just a legal phrase. It is a substantial right to
25 which every defendant is entitled unless you, the jury,

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1 are satisfied, from the evidence, of his guilt beyond a
2 reasonable doubt.

3 The State has the burden of proving the
4 defendant guilty beyond a reasonable doubt. Some of you
5 may have served as jurors in civil cases where you were
6 told that it is only necessary to prove that a fact is
7 more likely true than not true, such as by the greater
8 weight or the preponderance of the evidence. In criminal
9 cases, the State's proof must be more powerful than that.
10 It must be beyond a reasonable doubt. Proof beyond a
11 reasonable doubt is proof that leaves you firmly convinced
12 of the defendant's guilt. There are very few things in
13 this world that we know with absolute certainty and in
14 criminal cases the law does not require proof that
15 overcomes every possible doubt. If, based on your
16 consideration of the evidence, you are firmly convinced
17 that the defendant is guilty of the crime charged, you
18 must find the defendant guilty. If, on the other hand,
19 you think there is a real possibility that the defendant
20 is not guilty, you must give him the benefit of that doubt
21 and find him not guilty.

22 The defendant is charged with armed robbery. In
23 order to prove this offense, the State must first prove
24 beyond a reasonable doubt that the defendant took personal
25 property from the person or presence of another person.

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1 Property is in the presence of a person if it is within
2 the person's reach, inspection, observation or control, so
3 that the person could, if not overcome with violence or
4 prevented by fear, keep possession of the property. The
5 State must also prove beyond a reasonable doubt that the
6 defendant carried the property away, intending to
7 permanently deprive the owner of the property and keep the
8 property for the defendant's own use. The slightest
9 removal of the property or the complete possession of the
10 property, even for an instant, by the defendant is
11 sufficient to show a taking and carrying away of the
12 property. The taking and carrying away of the property
13 must have been done with violence or by putting the owner
14 of the property in fear of violence. Finally, the State
15 must prove beyond a reasonable doubt that the defendant
16 was armed with a deadly weapon or that the defendant,
17 either by action or words, while using a representation of
18 a deadly weapon or object, during the robbery. A deadly
19 weapon is any article, instrument, or substance which is
20 likely to cause death or great bodily harm. Whether an
21 instrument has been used as a deadly weapon depends on the
22 facts and circumstances of each case. The following are
23 examples of instruments which may be deadly weapons: a
24 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
25 slingshot, metal knuckles, a firebomb, a Molotov cocktail,

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1 gasoline, a razor, and lighter fluid. A gun may be a
2 deadly weapon even if it is not operating.

3 Ladies and gentlemen, I instruct you that these
4 are simply evidentiary facts to be considered by you along
5 with the other evidence in the case -- in the case and
6 it's for you, the jury, to give it the effect, value and
7 weight you decide it should receive. So in summary, the
8 State may prove armed robbery by establishing the
9 commission of a robbery and either of these two additional
10 elements: that the robber was armed with a deadly weapon
11 or that the robber alleged that he or she was armed with a
12 deadly weapon, either by action or words, while using a
13 representation of a deadly weapon or any object which a
14 person present during the commission of the robbery
15 reasonably believed to be a deadly weapon.

16 The defendant is charged with possession of a
17 weapon during the commission of or attempt to commit a
18 violent crime. The State must prove beyond a reasonable
19 doubt that the defendant was in the possession of a
20 firearm or visibly displayed what appeared to be a firearm
21 during the commission of a violent crime. A firearm means
22 any machine gun, automatic rifle, revolver, pistol, or any
23 weapon which will, is designed to, or may be readily
24 converted to expel a projectile. In order to find the
25 defendant guilty of possession of a weapon during the

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1 commission of a violent crime, you must first find the
2 defendant guilty of either committing a violent crime or
3 attempting to commit a violent crime. I instruct you that
4 armed robbery is a violent crime as defined by South
5 Carolina Code Section 16-1-60.

6 Ladies and gentlemen, an issue in this case is
7 the identification of the defendant as the person who
8 committed the crime charged. The State has the burden of
9 proving identity beyond a reasonable doubt. You must be
10 satisfied beyond a reasonable doubt of the accuracy of the
11 identification of the defendant before you may convict the
12 defendant. Identification testimony is an expression or
13 belief of impression by a witness. You must determine the
14 accuracy of the identification of the defendant. You must
15 consider the believability of each identification witness
16 in the same way as any other witness. You may consider
17 whether the witness had an adequate opportunity to observe
18 the offender at the time of the offense. This will be
19 affected by things like how long or short a time was
20 available, how far or close the witness was, the lighting
21 conditions, and whether the witness had a chance to see or
22 know the person in the past. Once again, I instruct you
23 the burden of proof on the State extends to each and every
24 element of the crime charged. And this specifically
25 includes the burden of proving beyond a reasonable doubt

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1 the identity of the defendant as the person who committed
2 the crime. If after examining the testimony you have a
3 reasonable doubt as to the accuracy of the identification,
4 you must find the defendant not guilty.

5 Bear with me just one moment. I apologize.

6 The defendant has raised the defense of alibi.
7 In order to establish an alibi, it must be shown that the
8 defendant was at another specified place at the time the
9 crime was committed and that it was therefore impossible
10 for the defendant to have been at the scene of the crime.
11 Mere denial of presence at the scene of a crime does not
12 constitute an alibi. There is no burden on the defendant
13 to prove an alibi. The burden is on the State to prove
14 beyond a reasonable doubt that the defendant was actually
15 present at the scene of the crime, actually participated
16 in it, and was not somewhere else. In other words, the
17 State has the burden of disproving the defendant's alibi
18 defense.

19 Ladies and gentlemen, I instruct you and
20 emphasize that the fact that the defendant did not testify
21 is not a factor to be considered by you in any way in your
22 deliberative process and in your consideration on the
23 question of the guilt or innocence of the defendant. It
24 must not be considered by you in any manner whatsoever. A
25 defendant has the constitutional right to remain silent

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1 and the assertion of this right must not be considered by
2 you in your deliberation. I repeat, under your oath you
3 are to draw absolutely no conclusion whatsoever from the
4 fact that the defendant in this case did not testify. The
5 fact that this defendant did not testify is not to be
6 discussed in any manner whatsoever during your jury
7 deliberation. The burden of proof, as I have stated to
8 you, is on the State. The defendant is not required to
9 prove his innocence. The burden of proof remains on the
10 State to prove guilt beyond a reasonable doubt.

11 There are two indictments in this case and they
12 allege two separate and distinct offenses against the
13 defendant. And these indictments are as follows: 2014-
14 GS-38-189, armed robbery, and 190, possession of a weapon
15 during the commission of a violent crime. Each indictment
16 alleges and charges a separate and distinct offense. You
17 must decide each indictment separately on the evidence,
18 and the law applicable to it, uninfluenced by your
19 decision as to any other indictment. The defendant may be
20 convicted or acquitted on any or all of the offenses
21 charged, and you will be asked to write a separate verdict
22 of guilty or not guilty for each indictment.

23 Ladies and gentlemen, there are several options
24 of verdicts in this case and I will go over those with
25 you. You don't need to try to write those down, because

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1 the verdict forms go into the jury room with you. And
2 they are as follows. As to indictment 2014-189, we, the
3 jury, by unanimous consent find the defendant guilty of
4 armed robbery or not guilty. And as to indictment 190,
5 we, the jury, by unanimous consent find the defendant
6 guilty of possession of a weapon during the commission of
7 a violent crime, or not guilty.

8 Ladies and gentlemen, I emphasize that there is
9 absolutely no significance whatsoever to the order in
10 which I've stated these potential verdicts. It is simply
11 that one must be stated first.

12 Ladies and gentlemen, your verdict must be a
13 unanimous one, which means that all twelve of you must
14 agree in order to reach a verdict in this case.

15 Madam Forelady, when the jury has agreed on a
16 verdict, you should fill out the verdict form, sign and
17 date the form, knock on the door and advise the bailiffs
18 that the jury has reached a verdict in this case. Also,
19 if the jury has any questions during deliberations, it is
20 your responsibility to write out those questions and
21 follow the same process by signing and dating the question
22 and also knocking on the door and advising the bailiff
23 that the jury has a question.

24 Ladies and gentlemen, if you have any questions
25 during deliberations, I need to advise you that there will

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1 be a delay in our response and that is because there is a
2 process that we must follow in answering your questions.
3 So know if you have a question, there will be a delay
4 because we have to follow that procedure in order to
5 answer your question.

6 And, again, ladies and gentlemen, your verdict
7 must be a unanimous one.

8 I'm going to ask that you return to your jury
9 room but do not yet begin your deliberations. And please
10 leave your notepads in your seats. There are some brief
11 matters of law that I need to take up with the attorneys
12 that may require further instruction or additional
13 instruction. If you would go with the bailiff. And after
14 we resolve those matters, I'll let you know when you will
15 be allowed to begin deliberations and when the alternates
16 will be excused.

17 [Whereupon, the jury exits the courtroom at
18 11:40 a.m.]

19 THE COURT: Any exceptions from the State?

20 MR. BELL: None from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. STEVENS: No, ma'am.

23 THE COURT: All right. Can y'all make sure that
24 all of the evidence is in place?

25 And then I need you to sit tight so I can excuse

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1 the alternates.

2 And I think there's a gun -- there's a lock on
3 the gun, isn't there?

4 MR. BELL: Yes, there is. And the bullets are
5 being --

6 THE COURT: I think the bullets can go as long
7 as there's -- if there's a lock on it. There's no way
8 it can be loaded or --

9 MR. BELL: There's a clip in it.

10 THE COURT: Yeah. As long as there's a lock on
11 it, that can go back.

12 [Off the record momentarily]

13 THE COURT: I'm going to -- actually, I'm going
14 to excuse the alternates and I'm going to have the
15 foreperson come out and let her know that we have the
16 video and they have to ask to watch it because we
17 don't have the equipment to send back to them to watch
18 it.

19 Is there any exception from the State?

20 MR. BELL: No, Your Honor.

21 THE COURT: From the defense?

22 MR. STEVENS: None, Your Honor.

23 THE COURT: I need you to get all the evidence
24 together. Who does that? Okay. I need you to get
25 all the evidence together.

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1 [Off the record momentarily]

2 THE COURT: When you come back, bring me the
3 alternate and leave the foreperson on the other side
4 of the door until I'm done talking to the alternate.
5 But tell them don't begin their deliberations yet.

6 [Whereupon, the alternate jurors enter the
7 courtroom]

8 THE COURT: We want to thank you for your time
9 and attention to this case. Being an alternate can
10 really be thankless but when we need you, it's so very
11 essential. And I've watched you both. You've been
12 timely and you've been incredibly attentive. I hope
13 that jury service has been educational for you, even
14 though you didn't get to deliberate.

15 And we -- your lunch -- the bailiffs have
16 already gone to get your lunch, so if you could
17 accommodate us by hanging around with us so that at
18 least you can take your lunch with you if you would
19 like to.

20 You are welcome to discuss this case but I would
21 ask that you not do it until after Friday when the
22 entire panel is dismissed. You're also welcome to
23 hang around, if you would like, to see how the verdict
24 comes out. But I would imagine you have some other
25 things you might need to do today. But if you would

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1 like to stay, please let the bailiff know and we'll
2 accommodate you. We'll put you in a comfortable spot.

3 [Off the record momentarily]

4 THE COURT: If you need a work excuse today, you
5 can get it in the clerk's office. Otherwise, we'll
6 mail those to you along with your check.

7 I hope that you-all had a good experience. I
8 hope it's been educational for you. You are excused
9 with the Court's profound thanks.

10 [Off the record momentarily]

11 [The evidence goes to the jury at 11:45 a.m.]

12 [Whereupon, the foreperson enters the courtroom]

13 THE COURT: Madam Forelady, I wanted you to
14 advise the jury that the bailiffs have already gone to
15 pick up their lunch and that it will be here shortly,
16 and also that they can begin their deliberations.

17 There is one piece of evidence, the video. We
18 don't have the equipment to send into the jury room
19 with you so if you-all would like to watch it, just
20 let us know and we'll bring you back in to accommodate
21 that request.

22 THE FOREPERSON: Okay.

23 THE COURT: Thank you very much.

24 Okay. The record should reflect that the jury
25 has begun its deliberations at 11:45.

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1 Is there anything we need to take up before
2 recess of these proceedings until we get further
3 instructions from the jury? From the State?

4 MR. BELL: Nothing from the State, Your Honor.

5 THE COURT: From the defense?

6 MR. STEVENS: No, ma'am.

7 THE COURT: And I would ask that y'all stay
8 close in the event we have any questions.

9 MR. BELL: Yes, Your Honor.

10 THE COURT: And I'll let you know when you're
11 free to go get some lunch.

12 MR. STEVENS: Thank you, Judge.

13 THE COURT: You're welcome.

14 [Whereupon, a recess is taken from 11:46 a.m. to
15 1:15 p.m.]

16 THE COURT: I don't know why the Keg part didn't
17 process into my head. I'm sorry. The one of the
18 robbery and the one of the -- the one of the robbery
19 and the one of the robber going into the Keg and
20 leaving. Yeah, so that's the one from the convenience
21 store.

22 THE COURT: Any exception from the State?

23 MR. BELL: None, Your Honor.

24 THE COURT: From the defense?

25 MR. STEVENS: No, ma'am.

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1 THE COURT: Please have the note marked as a
2 Court's Exhibit.

3 [Whereupon, State's Exhibit Number 3 is marked
4 by the court reporter]

5 MR. BELL: Your Honor, the bailiff retrieved
6 that State's 23 so I can cue it up.

7 THE COURT: Okay. Are we ready? Have we got
8 everything all cued up?

9 MR. BELL: Yes, Your Honor.

10 THE COURT: Please bring in the jury.

11 THE BAILIFF: Thank you, Your Honor.

12 [Whereupon, the jury enters the courtroom]

13 THE COURT: Ladies and gentlemen, in response to
14 your note, we're going to replay the video. I've
15 instructed the solicitor to pull the monitor as close
16 as possible to the jury box so that you-all will have
17 a clear view. If you need to replay it again, just
18 let us know and we will accommodate you.

19 You may proceed, Mr. Bell.

20 [Off the record momentarily]

21 THE COURT: Ladies and gentlemen, I need to
22 advise you that you cannot talk while you're watching
23 the video, or make any attempts to deliberate.

24 You may continue.

25 [Whereupon, States Exhibit Number 23, video, is

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1 played for the jury]

2 [Whereupon, the video is not transcribed by the
3 court reporter]

4 THE COURT: Does the jury wish to see the video
5 again, or is that sufficient? If you wish to see it
6 again, raise your hand.

7 Play it again. Thank you.

8 [Whereupon, State's Exhibit Number 23, video, is
9 played for the jury]

10 [Whereupon, the video is not transcribed by the
11 court reporter]

12 THE COURT: Is that it? Okay.

13 Thank you, ladies and gentlemen. If you need
14 anything further, do not hesitate to let us know.

15 [Whereupon, the jury exits the courtroom at
16 1:18 p.m.]

17 [Off the record momentarily]

18 THE COURT: We'll be at ease until we get
19 further instructions from the jury.

20 [Whereupon, a recess is taken from 1:20 p.m. to
21 2:30 p.m.]

22 THE COURT: Madam Forelady, ladies and
23 gentlemen, I received your note and the response to
24 that note, I'm going to give you an additional
25 instruction. And it has to do with continuing to

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1 deliberate. And, again, my comments will be very
2 brief and by way of further instruction.

3 [Whereupon, Court's Exhibit Number 4 is marked
4 by the court reporter]

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ALLEN CHARGE

1
2 THE COURT: As I've already instructed you, you
3 are the sole finders and judges of the facts and evidence
4 in this case. As the judge, I've already instructed you
5 that I'm not permitted to even give a hint as to how I
6 might feel about any factual matter in this case. And, in
7 fact, I have no opinion factually about this case and
8 certainly could give you no hint as to what verdict ought
9 to be brought in this case. It is my duty to state the
10 law of the case, as I have done, and it is your duty to
11 deliberate regarding this case.

12 But I can say this, that when a matter is in
13 dispute, it is not always easy for even two men to agree,
14 or two persons, or two men or two women to agree. When
15 twelve must agree, it becomes obviously correspondingly
16 more difficult. But it is important that litigation and
17 this litigation be ended if it may be ended without a
18 single one of you doing violence to your own conscience.
19 No juror is expected to give up an opinion based on
20 reasoning satisfactory to himself or herself merely for
21 the purpose of being in agreement. And I want to be very
22 clearly understood on that. You are not called upon often
23 to try cases. There are forty-nine circuit judges whose
24 work it is to try cases from day to day throughout the
25 year. It is very unusual, almost unheard of, for a jury

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1 to go out and promptly return with a verdict. This is
2 what would happen if a jury normally was in agreement to
3 begin with. At the same time, we usually are able to get
4 a verdict. What that means is that it is normal for
5 jurors to disagree at first. But the fact that we
6 normally get a verdict also means that after reasonable
7 persons lay aside all extraneous matters and determine to
8 decide a case on the basis of the law and the evidence,
9 they are able to come to a common understanding and are
10 able to write a verdict.

11 It has never been intended that the verdict of a
12 jury should be the verdict of any one person. On the
13 other hand, the verdict of the jury is the collective
14 reasoning of all persons put together. And that is why we
15 have a jury, so that we may have the benefit of collective
16 thought and collective reasoning. It becomes your duty to
17 tell the other jurors how you feel about the case and why
18 you think as you do. And I'm sure that each of you have
19 been doing that. On the other hand, it becomes the other
20 juror's duty to exchange views with you. And you should
21 listen to each other and give to the other's thought such
22 meaning as you think it should have. And so to some
23 degree, it can be said that jury service is a matter of
24 give and take.

25 If you are not able to agree on a verdict, it

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1 just means that at some future term of court, before some
2 other judge perhaps, that some other jury will sit where
3 you are. The same participants will come and the same
4 lawyers probably will come, and they ask basically the
5 same question and presumably and probably they will get
6 much the same answers and we will go through the whole
7 process again. And I have no reason now to think that any
8 other twelve citizens of Orangeburg County will be able
9 and more capable of solving this controversy than the
10 twelve of you.

11 And so I am going to ask you at this time to
12 deliberate further and see if you can reach a verdict in
13 this case. And I want to close this part of this added
14 instruction by reminding each of you that while it is
15 important that litigation be ended, it should not be ended
16 in the form of a verdict by a juror doing violence to his
17 own conscience. No juror is expected to give up an
18 opinion based on reasoning satisfactory to himself or
19 herself merely for the purposes of being in agreement.

20 And with that added instruction, I'm going to
21 ask that you retire and deliberate further.

22 Madam Forelady, if the jury is after this point
23 still unable to reach a unanimous verdict, please advise
24 the Court of that but do not provide the Court with any
25 numerical breakdown.

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1 You-all may go with the bailiff, please.

2 [Whereupon, the jury exits the courtroom at 2:34
3 p.m.]

4 THE COURT: Any exceptions from the State?

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

6 THE COURT: From the defense?

7 MR. STEVENS: No, ma'am.

8 THE COURT: All right. We'll wait for
9 instructions from the jury.

10 MR. BELL: Thank you.

11 THE COURT: You're welcome.

12 [Whereupon, a recess is taken from 2:34 p.m. to
13 3:02 p.m.]

14 THE COURT: I'm going to allow one of their
15 members to attend a doctor's appointment. Is there
16 any -- and they will resume their deliberations in the
17 morning at 9:30. Is there any objection to that from
18 the State?

19 MR. BELL: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. STEVENS: None from the defense, Judge.

22 THE COURT: Would you ask her to bring in the
23 jury for me, please.

24 [Whereupon, the jury enters the courtroom at
25 3:03 p.m.]

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1 THE COURT: Madam Forelady, ladies and
2 gentlemen, one of your member needs to attend a
3 doctor's appointment on today. And I knew there was
4 somebody else on the panel, I just couldn't remember
5 who it was and so I apologize. But we're going to
6 adjourn for the evening so that he can take care of
7 that responsibility, and we will resume jury
8 deliberations in the morning at 9:30.

9 During the break, please do not discuss the case
10 among yourselves or with anyone else. Please do not
11 have any contact with anyone in or about the courtroom
12 when you return in the morning.

13 Please do not watch, read or listen to any media
14 accounts about this case. I will tell you in advance
15 that there are several articles in the Times and
16 Democrat. There has been a writer here who's been
17 following the story. So guard yourselves not to read
18 any of those articles. And I'm not aware of anything
19 on radio or television but if there is, please do not
20 watch or listen to it, and please do not do any
21 independent research on the internet. And please do
22 not make any comments regarding your jury service on
23 any social networking site.

24 I hope that you-all have a great evening. We'll
25 see you in the morning at 9:30. And come directly to

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1 your jury room at that time.

2 [Whereupon, the jury exits the courtroom at 3:05
3 p.m.]

4 THE COURT: Any exceptions from the State?

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

6 THE COURT: Any exceptions from the defense?

7 MR. STEVENS: No, ma'am.

8 THE COURT: We'll see y'all in the morning at
9 9:30.

10 [Whereupon, a recess is taken from 3:05 p.m. to
11 3:12 p.m.]

12 [Whereupon, Juror Number 36 and Juror Number 17
13 enter the courtroom]

14 JUROR 1: -- up there, you know, up here, giving
15 their testimony --

16 THE COURT: Yes, ma'am.

17 JUROR 1: -- someone in the audience waved at
18 someone that was on the jury and they waved back.

19 THE COURT: Okay.

20 JUROR 1: And so that's what we was wondering.

21 THE COURT: How do you know that person that
22 waved was affiliated with the case?

23 JUROR 1: There was -- the witness that was
24 here. The witness --

25 JUROR 2: We don't necessarily know what

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1 affiliation they had with the witness --

2 JUROR 1: Yeah. There was just --

3 JUROR 2: -- but they came with the witness.

4 THE COURT: Okay. Why does that make you -- I
5 guess I'm trying to figure out -- because some people
6 are just friendly and they just know each other. They
7 may know each other in passing. And because somebody
8 knows someone that's affiliated with a witness doesn't
9 mean that that person knows --

10 JUROR 2: And we don't have -- that's all the
11 information we have, so we don't know -- we don't
12 really know.

13 THE COURT: Yeah. And I didn't see that happen,
14 so I don't really know how to gauge that.

15 Okay. What else did you want to tell me?

16 JUROR 2: That was it.

17 JUROR 1: Yeah.

18 THE COURT: That was it. You-all think -- are
19 you trying to tell me that that's affecting the
20 impartiality of the jury?

21 JUROR 2: Maybe. I can't really give you a
22 definite answer on that. I feel like it --

23 THE COURT: I --

24 JUROR 2: But I can't tell you for sure because
25 I don't know what -- I don't know if -- I don't know

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1 what relation they had to the juror, I don't know what
2 relation they had to the witness. I don't know.

3 THE COURT: Which juror is it that you're
4 indicating waved back?

5 JUROR 2: I don't know his number.

6 THE COURT: Do you know his name?

7 JUROR 2: Gantt.

8 THE COURT: Okay. You-all can go back to your
9 jury room, but do not discuss what you've discussed
10 with me, with anyone, okay?

11 [Whereupon, Juror Number 36 and Juror Number 37
12 exit the courtroom]

13 THE COURT: I need the juror that has some
14 travel problems tomorrow.

15 [Whereupon, Juror Number 22 enters the
16 courtroom]

17 THE COURT: Ma'am, you indicated -- tell me your
18 name and your juror number.

19 MS. BUTLER: Kayla Butler, Number 22.

20 THE COURT: And you indicated you had some
21 concerns with the bailiff?

22 MS. BUTLER: No. I had a concern about
23 tomorrow. I actually had a trip planned for tomorrow.
24 I have to leave Orangeburg by 12:00 noon. I didn't
25 expect it to last --

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1 THE COURT: I wish you had told me that, yeah,
2 during jury qualification. At this time, I can't
3 excuse you because I've already let the alternates go,
4 so I'm going to need you to hang in there with us and
5 I'll try my best to accommodate you so that you're
6 able to go on your trip, because vacations are
7 important. And we'll do our best to accommodate you.
8 Thank you.

9 [Whereupon, Juror Number 22 exits the courtroom]

10 THE COURT: Now I need Mr. Gantt, if he's still
11 here.

12 THE BAILIFF: He went to his appointment. That
13 was the reason you --

14 THE COURT: Oh. Mr. Gantt went to -- oh. I'm
15 thinking about Mr. Moorer instead of -- who am I
16 thinking about.

17 THE BAILIFF: Mr. Moorer was on yesterday.

18 THE COURT: Mr. Moorer was yesterday.

19 THE BAILIFF: And Mr. Gantt today.

20 THE COURT: Okay. I will voir dire him in the
21 morning.

22 Is there any exception to that from the State?

23 MR. BELL: Excuse me, Your Honor. I was --

24 THE COURT: I said I'm going to have to voir
25 dire him in the morning. Is there any exception from

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1 the State? He's already left for his appointment.

2 MR. BELL: No, Your Honor.

3 THE COURT: From the defense?

4 MR. STEVENS: No, Your Honor.

5 THE COURT: And what I will do is I'm just going
6 to ask him if this, in fact, happened, who it was that
7 waived to him. He may say, nobody waived at me. If
8 he does, that ends it. If he does, then I'll ask who
9 was it, is that person any relationship to you, and
10 I'll just go from there, and then ask if it affects
11 his partiality. Okay?

12 Any exception from the State?

13 MR. BELL: None from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. STEVENS: No, ma'am.

16 Just for my own records, if I may know the
17 number of the juror who had travel plans for tomorrow
18 at noon?

19 THE COURT: Number 22.

20 MR. STEVENS: Thank you, Judge.

21 THE COURT: Have a good evening.

22 MR. BELL: Thank you, Your Honor.

23 [JURY TRIAL ADJOURNS AT 3:16 P.M.]

24

25

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG) CASE NO.: 2014-GS-38-00189

STATE OF SOUTH CAROLINA)
)
VS.)
)
TYKEEM MAY,)
)
DEFENDANT.)

JURY TRIAL

VOLUME 5 of 5

held before the Honorable Deadra L. Jefferson
Hilda Jordan, Circuit Court Reporter, 1st Judicial Circuit
in the Orangeburg County Courthouse
Orangeburg, South Carolina
on August 15th, 2014, Commencing at 9:28 a.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

FOR THE STATE:

Harrison Bell, Esquire
Ashley Cornwell, Esquire
First Circuit Solicitor's Office
Post Office Box 1525
Orangeburg, South Carolina 29116

FOR THE DEFENDANT:

Breen Stevens, Esquire
Doug Mellard, Esquire
First Circuit Public Defender's Office
Post Office Box 1112
Orangeburg, South Carolina 29116

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Court's Exhibit Number 5
[Note From The Jury]

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PROCEEDINGS

THE COURT: I understand one of the jurors would like to speak to me.

Is there any exception from the State?

MR. BELL: None from the State.

THE COURT: From the defense?

MR. STEVENS: No, Your Honor.

THE COURT: Please bring in the jury.

They have not started deliberating; correct?

THE BAILIFF: That's correct, Your Honor.

THE COURT: Thank you, ma'am.

[Whereupon, Mr. Gantt, Juror Number 65, enters the courtroom]

THE COURT: Yes, sir. How are you?

THE BAILIFF: Your Honor, the juror is requesting privacy.

THE COURT: Well, I can't speak with you without everybody hearing it. So I don't know any other way to tell you that. Everybody is entitled to hear what you're going to tell you. I would ask that you be as candid as possible, and I will give you every consideration necessary.

If you would give us your name for the record, and your juror number.

MR. GANTT: Frank Gantt. The juror number

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1 is 65.

2 THE COURT: Yes, sir, Mr. Gantt. Is there
3 something you wanted to share with the Court?

4 MR. GANTT: Not really. I don't want to discuss
5 it out loud --

6 THE COURT: Well, can you tell me in general
7 what it concerns? Don't tell me anything about the
8 jury deliberations, however, because those are
9 confidential and they can't be disclosed pursuant to
10 the Rules. But is it something involving jury
11 deliberations, or what does it involve? Something
12 personal?

13 MR. GANTT: It was something also involved with
14 the trial. It was something also involved in
15 deliberations.

16 THE COURT: Involving the deliberations. Is it
17 involving something specific about deliberations,
18 meaning discussions in the deliberations?

19 MR. GANTT: Yes.

20 THE COURT: Okay. Then you can't disclose that
21 to me because that's confidential.

22 What is it about the trial that you wanted to
23 disclose to me?

24 MR. GANTT: A gesture that was made.

25 THE COURT: Okay. Tell me what that gesture was

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1 and who was it made towards?

2 MR. GANTT: It was made -- I think it was made
3 towards me, and it was somebody that -- I don't really
4 know the person like that. I don't know them from
5 being around.

6 THE COURT: And who was it? Do you know the
7 person's name?

8 MR. GANTT: Not their full name.

9 THE COURT: And do you remember who they came
10 with, or were they just in the gallery with someone
11 else who was here on the case?

12 MR. GANTT: That was in the gallery with someone
13 else.

14 THE COURT: Who was here on another case or on
15 this case?

16 MR. GANTT: No. On this case.

17 THE COURT: And they -- when you said gesture,
18 tell me, what did they do?

19 MR. GANTT: It was just a single, hey, just like
20 seeing me --

21 THE COURT: Like in passing?

22 MR. GANTT: -- like they sat in the beginning or
23 the front of the -- at the beginning of the trial you
24 asked you if you was to know anybody in the case, that
25 you have a certain decision about it and would that

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1 help you base your decision. And my answer is no. I
2 don't know that person like that.

3 THE COURT: Okay. So let's back up. Do you
4 know who the person came to court with?

5 MR. GANTT: Yes.

6 THE COURT: Who did they come with?

7 MR. GANTT: One of the witnesses.

8 THE COURT: And which witness? Do you remember
9 the name of which witness it was?

10 MR. GANTT: Emonie Ford.

11 THE COURT: Now, do you know how this person
12 knows Ms. Ford?

13 MR. GANTT: Obviously, they are roommates.

14 THE COURT: Did you know that before we started
15 the trial?

16 MR. GANTT: No, I did not know that. I did not
17 know -- all of my answer was already based on it.
18 That was at the end of, what, Wednesday, and I already
19 had my own thoughts in my head. And that person came
20 to me and that's what happened -- that's really what
21 affect deliberation.

22 THE COURT: Because somebody saw this person
23 motion to you?

24 MR. GANTT: Yes.

25 THE COURT: And you think that they feel now

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1 that you're predisposed because of that gesture?

2 MR. GANTT: Yeah. Yeah.

3 THE COURT: Do you know this person's name?

4 MR. GANTT: No, I do not know their first --
5 I don't know their full name. I know their first
6 name --

7 THE COURT: What's their first name?

8 MR. GANTT: Alexis.

9 THE COURT: Okay. And how do you know Alexis?

10 MR. GANTT: Her and my girlfriend, they used to
11 work together. But, I mean, we never had no
12 friendship. I never hold a conversation with this
13 girl. I just seen her around.

14 THE COURT: Like in passing?

15 MR. GANTT: Yeah.

16 And where does your girlfriend -- or where does
17 your girlfriend work?

18 MR. GANTT: She's a dancer.

19 THE COURT: And here in Orangeburg?

20 MR. GANTT: No. Outside of Orangeburg.

21 THE COURT: And does she still work there?

22 MR. GANTT: Yes.

23 THE COURT: And does Alexis still work there?

24 MR. GANTT: No. They only worked together for a
25 short period of time.

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1 THE COURT: And about how long ago would you
2 estimate that was?

3 MR. GANTT: Oh. About a year. At least around
4 a year.

5 THE COURT: Around a year ago?

6 MR. GANTT: Yes.

7 And like I say, I never had any ties with this
8 girl. I've never had any -- hold a full conversation
9 with her. Because, I mean -- point me out like that.

10 THE COURT: So you're saying you had no
11 friendship with her? You just saw her --

12 MR. GANTT: No, I didn't --

13 THE COURT: -- in passing a few times?

14 MR. GANTT: Yeah. That's it.

15 THE COURT: And so when she motioned or waved to
16 you, you just did an automatic reflex and you just
17 waved back to her?

18 MR. GANTT: Yeah. That's all it was. Like I
19 said, we don't have any kind of friendship.

20 THE COURT: And would you -- how long ago would
21 you say is the last time you saw her in passing?

22 MR. GANTT: She goes to State. One day I was
23 riding towards State and I seen her walking down the
24 street.

25 THE COURT: How long ago was that?

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1 MR. GANTT: Probably like two months ago. I
2 just seen her walking on the street. She didn't even
3 see me. I just looked and I was like, is that her.

4 THE COURT: But you didn't have any interaction
5 with her?

6 MR. GANTT: No, I didn't have no interactions
7 with her.

8 THE COURT: Sir, as a result of this motion, I
9 guess is a better way, or gesture, has that in any way
10 affected your ability to be fair and impartial in this
11 case?

12 MR. GANTT: No, it has not.

13 THE COURT: Do you still feel you can remain
14 fair and impartial?

15 MR. GANTT: Yes, I can.

16 THE COURT: Do you feel you can render a fair
17 and impartial decision in this case based solely on
18 the evidence as it has been presented in this court
19 and on the law as the Court has instructed you?

20 MR. GANTT: Yes.

21 THE COURT: Do you feel as a result of this
22 gesture that you have formed any fixed opinions about
23 this case?

24 MR. GANTT: No. I already have -- I got my own
25 thoughts.

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1 THE COURT: If you would step into the hallway
2 with the bailiff for me. And please do not discuss
3 anything that I have discussed with you with any of
4 your fellow jurors.

5 MR. GANTT: All right.

6 [Whereupon, Mr. Gantt, Juror Number 65, exits
7 the courtroom]

8 THE COURT: Anything from the State? Any
9 further questions of the -- any voir dire of the
10 juror?

11 MR. BELL: I think we just need to ask him one
12 question. And, I mean, I think we gleaned it from the
13 information, but I think we just need to ask him if he
14 knows Emonie Ford because of that relationship with
15 her roommate.

16 THE COURT: Okay. I'll ask that.

17 Any exception from the defense?

18 MR. STEVENS: Not the question, Judge. My
19 position is simply --

20 THE COURT: I don't want any position. I want
21 to know if you have any further questions.

22 MR. STEVENS: Not for the voir dire questions.

23 THE COURT: Okay.

24 [Whereupon, Mr. Gantt, Juror Number 65, enters
25 the courtroom]

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1 THE COURT: And, sir, I have one additional
2 question for you. Do you know Emonie Ford?

3 MR. GANTT: No, I do not know her.

4 THE COURT: Have you ever had any contact with
5 her?

6 MR. GANTT: No, never did.

7 THE COURT: Okay. Thank you, sir. If you would
8 step right back into the hallway.

9 [Whereupon, Mr. Gantt, Juror Number 65, exits
10 the courtroom]

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State v. Tykeem May
Motion For a Mistrial
August 15, 2014

MOTION FOR A MISTRIAL

1
2 THE COURT: In light of the fact that the juror
3 has indicated he can remain fair and impartial, that
4 he has had no relationship with this individual, that
5 the gesture that was made to him came as a bit of a
6 surprise to him, and that it was an automatic reflex
7 in responding to her, that he has formed no fixed
8 opinions regarding this case, is there any exception
9 to him remaining on the panel? From the State?

10 MR. BELL: No, Your Honor.

11 THE COURT: From the defense?

12 MR. STEVENS: Yes, Judge.

13 THE COURT: Okay.

14 MR. STEVENS: Based upon the notes we received
15 yesterday, it was an eleven-one split. It's clear --

16 THE COURT: And that's enuring to your benefit.
17 It's very clear from the note, yeah, that he's your
18 hold up.

19 MR. STEVENS: I understand, Judge, and that's
20 our point. Jurors Number 36 and 17 obviously were
21 both using -- I believe our position is that -- trying
22 to have the Court pressure him, as well. It's a clear
23 intimidation to try to either have him cave or have
24 him kicked off.

25 THE COURT: The jurors are very steadfast in

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1 their positions. I've had jurors hold out for three
2 or four days. You know, people don't like being
3 bullied. It's not something they respond to
4 positively. I can tell you, based on what I have
5 observed of him, that he is -- he's not somebody that
6 would be subject to being intimidated. And if he were
7 going to cave, he would have caved long before they
8 told me what they told me yesterday if he's going to
9 be subject to any --

10 And I have had a situation once where one juror
11 turned all eleven jurors.

12 MR. STEVENS: Just such --

13 THE COURT: Strange dynamics. You never know
14 what a jury is going to do.

15 MR. STEVENS: Yes, ma'am.

16 THE COURT: They're very unpredictable. They're
17 twelve individuals armed with, most importantly,
18 common sense, which lawyers I find through the legal
19 education process seem to come to -- you know, they
20 just kind of flesh it out of our brains when they
21 educate us and we tend to look at things in a very
22 sterile, legal way.

23 But jurors, in their lay capacity, have an
24 inordinate amount of common sense. They have what I
25 feel is a very clear moral compass about what they

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1 feel. And once they have listened to the facts of the
2 case, they formulate their opinions, they apply the
3 law to it.

4 Very clearly, if he were going to be pressured
5 or intimidated, it would have been long before now.
6 And it has been my experience, through the years of
7 having dealt with jurors, I can honestly say I've
8 never had a situation where a juror was intimidated in
9 that way such that they felt compromised in being able
10 to deliberate.

11 What generally happens is jurors have a give and
12 take and then at some point, either it's going to be a
13 hung jury or they're going to come to some mutual
14 consensus. And generally, of course, if it is a
15 guilty verdict, I'm sure you-all will poll the jury
16 and we would then know individually how each juror
17 felt. And, again, based on my years of experience,
18 I've had jurors during the poll say, no, that's not my
19 decision.

20 So I have a great deal of confidence in jurors
21 and their ability to be fair and impartial. It has
22 been my experience that when they cannot be they are
23 very straightforward and they tell you that, because
24 they have nothing to gain or benefit from the process.
25 They are truly objective in their view of the facts of

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1 a case. And they undertake their oath very seriously.

2 Based on prevailing case law, as well as the
3 statute, what I have to determine from an objective
4 standpoint and, in some ways, subjective standpoint,
5 is whether he can be fair and impartial, whether he
6 has formed some fixed opinion about the facts in this
7 case as a result of some outside influence, that being
8 something he may have heard, read, or had some
9 involvement in prior to his involvement in the case or
10 during the presentation of the case or during the
11 deliberation.

12 The internal operations of the deliberative
13 process, there's always pressure in the deliberative
14 process because people are expressing their opinions
15 with one another. Some people are more
16 confrontational than others. And that's just a part
17 of the human dynamic. And that does not rise to the
18 level of the kind of intimation that is contemplated
19 by case law.

20 I questioned him really very -- in a very
21 detailed way as to what his -- as to what exactly --
22 and I missed it. And I watched -- I mean, I was fixed
23 on watching Ms. Ford's testimony. I watched the
24 people she came with. I watched them when they left
25 the courtroom, and I did not see this gesture.

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1 Apparently some other folk did. I would imagine a
2 gesture of that kind was very quick and fleeting. But
3 he has no control over someone waiving at him or
4 motioning at him. And he has no control over -- you
5 know, she may have just said, oh, I know him from
6 working with his girlfriend.

7 And most people -- again, lay people who are not
8 involved in the process do not understand the
9 significance of making a gesture at someone, such as
10 not to do it.

11 But he was very clear and very up-front, and
12 that's -- he does not know Ms. Ford. He now knows
13 this Alexis person to apparently be a roommate of
14 Ms. Ford's. His only interaction with Alexis was that
15 she used to work at a dance club with his girlfriend,
16 which was over a year ago, that he has no ties to her,
17 he's never had a conversation with her, he doesn't
18 have any friendship with her, the last time he saw her
19 was walking down the street two months ago and at that
20 time he had no interaction with her, that he was very
21 adamant that he has his own thoughts about this case
22 and he's formed no fixed opinions about it, and that
23 he can remain fair and impartial, and therefore I have
24 no basis to remove him from the panel.

25 Quite frankly, although the jury is not supposed

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1 to give me a numerical breakdown, they did. And it
2 appears that any break in it enures to your client's
3 benefit. I can discern no prejudice from what has
4 been disclosed.

5 But, again, jurors are -- juries are interesting
6 sociological studies. You just never know what's
7 going to happen.

8 But even if he changes his mind, that doesn't
9 mean that he was pressured to do it. As I indicated
10 to them -- and I'm assuming that's his impression or
11 his opinion. I have no idea. He might not be the
12 eleven-to-one that they referred to.

13 But if they follow my instructions, being the
14 Allen charge, it is their responsibility to give and
15 take. And which -- to share their opinions, the basis
16 of those opinions, which may -- somebody may be
17 inordinately persuasive and may -- and, by the same
18 token, there may be some of the eleven that they've
19 referred to during that process that may well change
20 their opinions. That's why the deliberative process
21 is -- that's why the Rules provide that no portion of
22 it is to be disclosed to anyone and that the Court
23 certainly can't act on it. Because perception is
24 reality and what one person may perceive, the other
25 twelve -- or eleven may not perceive, or what eight

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August 15, 2014

1 may perceive, the others may not perceive. So it's a
2 very complex dynamics.

3 But I can discern no basis to remove the juror
4 from the panel, so the motion to remove him is denied.

5 MR. STEVENS: Thank you, Judge.

6 THE COURT: You're welcome.

7 Now, I guess we'll await and see what their
8 preference is for us.

9 [Off the record momentarily]

10 THE COURT: So why don't we see where they are
11 at 11:00 and at 11:00 have the bailiff ask them if
12 they want us to get lunch for them. Let them know
13 that it's going to take an hour. And then if they say
14 yes, go ahead and give their orders and go ahead and
15 order their lunch.

16 MR. STEVENS: Judge, one more thing, please.

17 THE COURT: Uh-huh.

18 MR. STEVENS: If I may, just for clarification
19 of our position when we're saying, you know, our
20 belief is that the eleven are trying to intimidate the
21 one hold-out, I think our motion was one for a
22 mistrial rather than to remove the juror.

23 THE COURT: I'm sorry. I misunderstood you.

24 MR. STEVENS: I apologize.

25 THE COURT: Well, it's all about the same.

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Motion For a Mistrial
August 15, 2014

1 MR. STEVENS: Yes, ma'am.

2 THE COURT: It would be the same effect. To
3 remove him or to grant a mistrial is all the same
4 thing.

5 MR. STEVENS: And so you really get the --

6 THE COURT: Yes. There is no basis for a
7 mistrial. A mistrial is an extreme remedy that should
8 only be invoked when there is no other remedy.

9 But, again, there is no basis to remove the
10 juror, which would be the only basis to grant a
11 mistrial.

12 I suspect they're going to remain hung, but
13 we'll see.

14 MR. STEVENS: Thank you, ma'am.

15 THE COURT: I've been wrong. Like I said, I had
16 a jury out one time in Charleston where similar -- not
17 similar -- well, actually, it was a little more
18 because the jurors told me that one was being hostile
19 toward the other eleven. But two hours later, she had
20 convinced the eleven. You just never know. It's a
21 complicated dynamic.

22 MR. STEVENS: Thank you, Judge.

23 THE COURT: Yes. You're welcome.

24 But I have no reason to believe that the twelve
25 of them cannot be fair and impartial and that they'll

State v. Tykeem May
Motion For a Mistrial
August 15, 2014

1 engage in the give-and-take that jurors are supposed
2 to do in the deliberative process.

3 So we'll be at ease until we get further
4 instructions from them.

5 THE BAILIFF: Your Honor, it's okay to take the
6 exhibits now?

7 THE COURT: Yeah. And their notebooks.

8 And let Mr. Gantt go on back in the jury room.
9 Well, actually, bring him out here for me just one
10 more second. I just need to reinforce he doesn't need
11 to discuss anything.

12 [Whereupon, Mr. Gantt, Juror Number 65, enters
13 the courtroom]

14 THE COURT: Sir, we appreciate your candor with
15 the Court and I would just ask that you not discuss
16 anything you've discussed with the Court with your
17 fellow jurors.

18 MR. GANTT: Yes.

19 THE COURT: Okay?

20 MR. GANTT: All right.

21 THE COURT: Thank you, sir.

22 [Whereupon, Mr. Gantt, Juror Number 65, exits
23 the courtroom]

24 THE COURT: The record should reflect that the
25 jury resumed their deliberations at 9:51.

State v. Tykeem May
Motion For a Mistrial
August 15, 2014

1 [Whereupon, a recess is taken from 9:51 to
2 10:44 a.m.]

3 THE COURT: Do we have equipment that can go
4 into the jury room for them to watch this video?

5 MS. CORNWELL: We may have to send one of our
6 laptops back there, and I don't know if you want to do
7 that.

8 THE COURT: Does it have other stuff on it?

9 MS. CORNWELL: Yes, Your Honor. As well as
10 internet access and all that.

11 MR. BELL: If I can get the disk and test it and
12 see if it'll play on --

13 THE COURT: Yeah.

14 MR. BELL: But I'm not --

15 THE COURT: Why don't we see if it does.
16 Because they want to watch it and they really want to
17 deliberate about it and I don't think they should have
18 to do that in here with us.

19 MR. BELL: Could you ask them for the disk? Of
20 course, I'm not sure how well this DVD player works.

21 [Whereupon, a recess is taken from 10:45 to
22 10:51 a.m.]

23 THE COURT: -- of the car. We want to be able
24 to stop the video at certain points.

25 And I've marked that as Court's 5.

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Motion For a Mistrial
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1 [Whereupon, Court's Exhibit Number 5 is marked
2 by the court reporter]

3 [Whereupon, a recess is taken from 10:52 a.m. to
4 11:09 a.m.]

5 THE COURT: All right. Is the State ready to
6 proceed?

7 MR. BELL: The State is ready, Your Honor.

8 THE COURT: Is the defense ready to proceed?

9 MR. STEVENS: The defense is ready, Judge.

10 THE COURT: You can bring in the jury.

11 THE BAILIFF: Yes, Your Honor.

12 THE COURT: Thank you, ma'am.

13 [Whereupon, the jury enters the courtroom at
14 11:12 a.m.]

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State v. Tykeem May
Verdict
August 15, 2014

VERDICT

1
2 THE COURT: Madam Forelady, is it correct that
3 the jury has reached a verdict?

4 THE FOREPERSON: Yes, ma'am.

5 THE COURT: If you would give the verdict form
6 to the bailiffs, please.

7 THE BAILIFF: Your Honor, may I approach?

8 THE COURT: Yes, ma'am.

9 [Whereupon, the bailiff proffers documents to
10 the Court]

11 THE COURT: Thank you, ma'am.

12 Sir, if you would stand.

13 [Whereupon, Mr. May complies]

14 THE COURT: Madam Clerk, if you would publish
15 the verdict.

16 THE CLERK OF COURT: In the matter of indictment
17 number 2014-GS-38-0189, State of South Carolina versus
18 Tykeem Kalami May, we, the jury, by unanimous consent,
19 find the defendant guilty of armed robbery on this
20 date, August the 15th, 2014, by the Madam Forelady.
21 As to the indictment number 2014-GS-38-0190, we, the
22 jury, by unanimous consent, find the defendant guilty
23 of possession of a weapon during the commission of a
24 violent crime. And this is also dated August 15th,
25 2014, by Madam Forelady.

State v. Tykeem May
Verdict
August 15, 2014

1 THE COURT: Ladies and gentlemen, if this be
2 your verdict, please indicate by raising your right
3 hand.

4 Sir, are you not raising your right hand because
5 it's not your verdict? Okay. Let the record indicate
6 that all twelve raised their right hand.

7 You may be seated.

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State v. Tykeem May
Polling of the Jury
August 15, 2014

POLLING OF THE JURY

THE COURT: Is there any request to poll the jury? From the State?

MR. BELL: None from the State, Your Honor.

THE COURT: From the defense?

MR. STEVENS: Yes, Judge, we request to poll the jury.

THE COURT: Madam Clerk, if you would begin the poll of the jury.

Ladies and gentlemen, if you would give the clerk your attention. And she's going to ask you two questions. She's going to call out your juror number. You should indicate by raising your right hand that that is, in fact, you. And she will ask you is this your verdict and is this still your verdict, in which you will provide an answer for the record.

THE CLERK OF COURT: Ida Crosby --

THE COURT: Actually, do it by juror number. Number 36.

THE CLERK OF COURT: Number 36, is this your verdict?

JUROR NUMBER 36: Yes, ma'am.

THE CLERK OF COURT: Is it still your verdict?

JUROR NUMBER 36: Yes, ma'am.

THE CLERK OF COURT: Thank you. You may be