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Volume I of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYRONE DARIUS ELLISON,

APPELLANT

APPELLATE CASE NO. 2014-002337

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS
2 COUNTY OF DORCHESTER CASE NO. 2013-GS-18-01271
3 2014-GS-18-00325

4 STATE OF SOUTH CAROLINA)
5 vs.) TRANSCRIPT OF RECORD
6 TYRONE ELLISON)

7 OCTOBER 20-24, 2014
8 ST. GEORGE, SC
9

10 B E F O R E:

11 HONORABLE D. CRAIG BROWN, JUDGE, AND A JURY

12
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15 PHIL GIESE, ESQUIRE
16 Attorneys for the State

17 JAMES FALK, ESQUIRE
18 Attorney for the Defendant

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1 P R E T R I A L H E A R I N G I N D E X

2

3 WITNESS DIRECT CROSS REDIRECT RECROSS

4 ROBERT BENNETT, PH.D.

5 MR. FALK 15

6 MR. SORENSON 28

7 MR. FALK 41

8

9

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1 Honor.

2 THE COURT: Yes, sir.

3 MR. SORENSON: At this time the State calls the case of
4 the *State v. Tyrone Darius Ellison*, two indictments, Your
5 Honor: 2013-GS-18-1271, charging Mr. Ellison with one count
6 of entering a bank, depository or building and loan
7 association with intent to steal; Indictment 2014-GS-18-325,
8 charging him with one count of armed robbery.

9 THE COURT: Ladies and gentlemen, the State has called
10 the case of *the State of South Carolina v. Tyrone Darius*
11 *Ellison*. Mr. Ellison is charged in two separate indictments,
12 first with the offense of entering a bank, depository or
13 building and loan association with intent to steal.

14 This particular indictment reads that in Dorchester
15 County, South Carolina on or about April 1, 2013, the
16 defendant, Tyrone Darius Ellison, unlawfully did enter the
17 SunTrust Bank, a building or part of a building occupied as a
18 bank, depository or building and loan association, with the
19 intent to steal money, securities for money or property,
20 either by force, intimidation or threats, in violation of
21 Section 16-11-380 of the South Carolina code of laws.

22 The second indictment that I hold is a charge for armed
23 robbery. The indictment reads as follows: "That on or about
24 April 1, 2013, in Dorchester County, the defendant,
25 Tyrone Darius Ellison, did by use of force, threats or

1 intimidation and while armed with a deadly weapon or while
2 alleging, either by words or action, that he was armed while
3 using a representation of a deadly weapon or any object which
4 a person present during the commission of the robbery
5 reasonably believed to be a deadly weapon, take and carry
6 away goods and/or monies belongings to SunTrust Bank from the
7 person or presence of Roberta Bass and/or Quinn Rustin with
8 intent to permanently deprive the victim of possession of the
9 goods or monies, such weapon or alleged weapon described as a
10 handgun. This offense, being in violation of Section
11 16-11-330 of the South Carolina code of laws."

12 Now, ladies and gentlemen, the indictments that I hold
13 in my hand which I have read to you is not evidence in this
14 case. Please understand that they are simply the charging
15 documents by which this case or these cases are brought into
16 this court.

17 To these charges the defendant, Mr. Tyrone Darius
18 Ellison, has pled not guilty. He has pled not guilty to each
19 of these charges. Therefore, the State of South Carolina
20 bears the burden of proving his guilt beyond a reasonable
21 doubt as to each charge.

22 Now, before we go forward in selecting a jury, there are
23 several questions that I must ask of you. Is there any
24 member of the jury panel that has ever been related by blood,
25 connected by marriage, had a close personal, business or

1 CLERK OF COURT: Defense?

2 MR. CLEVELAND: Defense strikes Mr. Schroeder.

3 CLERK OF COURT: Please have a seat back in the
4 audience.

5 Juror No. 77, Christie Kelleher.

6 (White female comes to the front of the courtroom.)

7 CLERK OF COURT: What says the State?

8 MR. SORENSON: Please present Ms. Kelleher.

9 CLERK OF COURT: Defense?

10 MR. FALK: Please seat Ms. Kelleher.

11 CLERK OF COURT: Please have a seat in the jury box.
12 Alternate No. 2.

13 THE COURT: Are there any matters of law we need to take
14 up with regard to jury selection from the State?

15 MR. SORENSON: No, Your Honor.

16 THE COURT: Defense counsel?

17 MR. FALK: No, Your Honor.

18 THE COURT: Ladies and gentlemen, you all have been
19 selected as fair and impartial jurors in this case. What I
20 am going to do is I'm going to ask you to step to the jury
21 room for just a minute. Step to the jury room for just a
22 minute. Do not -- you're going to hear me say this over and
23 over. Do not discuss the case until you're instructed to do
24 so. I'll get you back out here as quickly as possible.

25 Everybody else remain seated while the jury exits the

1 courtroom, please.

2 (The jury retires to the jury room at 3:59 p.m.)

3 THE COURT: Ladies and gentlemen, those of you who are
4 seated out in the audience, you were not selected as a juror
5 in this particular case. What I am going to do at this time
6 is I am going to excuse you all for the balance of today and
7 for tomorrow. What I am going to ask you to do, it's my
8 understanding each of you were given this card with juror
9 information on here; is that correct? Does anybody not have
10 this card?

11 I'm going to ask that you call the telephone number back
12 that's on this card. It's about three fourths of the way
13 down. Call that number tomorrow night after 6:00. After
14 6:00. And that will give you instructions as to what you are
15 to do with regards to Wednesday and possibly the remainder of
16 the week.

17 Anything from the State before I release this?

18 MR. SORENSON: No, Your Honor.

19 THE COURT: Defense counsel.

20 MR. FALK: No, Your Honor.

21 THE COURT: You all are free to go. Please make sure
22 you call that number back tomorrow night after 6:00. Thank
23 you.

24 (Jury panel exits the courtroom.)

25 THE COURT: Mr. Sorenson, can you come up for a minute,

1 please.

2 I'm just asking him what about the remainder of the
3 week. You can come up here if you want to.

4 (Judge and attorneys confer.)

5 (The jury enters the courtroom at 4:02 p.m.)

6 THE COURT: You all can be seated as you come in, okay?

7 I need Ms. Cheslek and then Ms. Kelleher to sit in those
8 back two, right there. Ms. Kelleher and Ms. Cheslek, did I
9 pronounce that correctly? You two are the only ones that
10 have an assigned seat right now, okay?

11 The rest of you, as you come in and out of here, you can
12 sit wherever you so desire.

13 Now, at some point in time, a foreperson will be
14 selected for the jury. Once the foreperson is selected, they
15 will sit where this young lady is seated. Other than that,
16 those are the only three people that have assigned seats
17 throughout the trial of this case. So as you come in and out
18 of the courtroom, you can sit wherever you so desire, unless
19 you're selected as a foreperson and except for my two
20 alternates. They've got to sit in one of those two seats
21 back there.

22 Now, what I'm going to do, ladies and gentlemen, at this
23 time, I am going to excuse you all for the balance of the
24 evening, okay? Rather than start the trial of this case this
25 late in the evening, I am going to excuse you for the balance

1 of the evening.

2 What I am going to ask you to do is to please be back in
3 the jury room tomorrow morning at 9:00, at 9:00, and we will
4 start the trial of this case as promptly at that time as
5 possible.

6 During your overnight break, during any breaks that I
7 give you, please understand that you are not to discuss this
8 case with anyone. You know very little about this case at
9 this point other than what I've read you in the indictment.
10 And I have told you that that is not evidence in this case.

11 Evidence in this case will be elicited from this witness
12 stand, the witnesses and any evidence, items of evidence that
13 may be introduced during the course of this trial. You are
14 not to discuss this case with anyone, whether it be your
15 family, friends, coworkers, anyone, until you're instructed
16 to do so by this Court.

17 Furthermore, you are instructed not to do any
18 independent investigation on your own, whether it be online
19 or whatever. Again, you are to decide this case based solely
20 upon the evidence and testimony that's presented in this
21 courtroom and nowhere else.

22 Is there anything from the State before I release the
23 jury for the balance of the day?

24 MR. SORENSON: No, Your Honor.

25 THE COURT: Defense counsel?

1 MR. FALK: No, Your Honor.

2 THE COURT: All right. I'm going to let you go for the
3 day. Please be back at 9:00 in the morning, and we will
4 start the trial of this case at that time. The bailiffs
5 here, they will show you where you need to return to, okay?
6 You all are free to go at this time.

7 (The jury retires to the jury room at 4:05 p.m.)

8 THE COURT: Anything from the State at this time? I
9 know up here at sidebar you indicated that you all wanted to
10 put something on the record that you all were in agreement
11 with.

12 MR. SORENSON: The only thing I guess is that since we
13 have a few minutes here at the end of the day, Your Honor, is
14 Mr. Falk had filed a motion in limine dealing with a couple
15 issues, some 404(b) matters and then also the defendant's
16 prior record.

17 I've told Mr. Falk that I think the two issues that he
18 had regarding kind of prior bad conduct, the alleged bad
19 conduct on the part of his client would involve his prior
20 criminal conviction for an assault and battery with intent to
21 kill. I would not be intending to try to get into that in
22 our case in chief. I mean, we can address that, I guess.

23 THE COURT: If he takes the stand and opens that door,
24 that's a whole different ball of wax.

25 MR. SORENSON: We can address that, I guess, at the

1 appropriate time.

2 THE COURT: Right.

3 MR. SORENSON: So as far as our case in chief, that I
4 don't have a problem with. And then I have told him, along
5 with the prior lawyers that were involved in this, that we
6 would not be seeking to go into the July 1st bank robbery
7 which he's been indicted for also.

8 THE COURT: Okay.

9 MR. SORENSON: Now, obviously, you know, if something
10 pops up where I think he's opened the door to that or
11 something, I would approach and we'll take that up at that
12 point in time, but we've instructed our witnesses and we will
13 continue to instruct them that we are not -- we are only
14 dealing with the April 1st bank robbery.

15 THE COURT: Right. And this was discussed back in
16 chambers, and I asked you to do that as well, to convey to
17 your witnesses not to go into that.

18 All right. Anything else?

19 MR. SORENSON: That would be all from the State, Your
20 Honor.

21 MR. FALK: Your Honor, regarding the 609 issue, if my
22 client took the stand and did not open the door to his
23 character, would you still consider whether or not his prior
24 record could be excluded under 403? I mean, I think the
25 statute does allow that when a defendant witness takes the

1 stand, there's still another 403 balancing analysis.

2 THE COURT: Right. Right.

3 MR. FALK: And provided I don't open the door, saying my
4 guy come in and say he's an Eagle Scout or something like
5 that.

6 THE COURT: Well, I'll take it under consideration when
7 and if the matter arises. Once I advise him of his rights
8 and whether or not he decides to testify, we'll go from
9 there.

10 All right. Anything else?

11 MR. SORENSON: For right now, no, sir.

12 THE COURT: Anything else?

13 MR. FALK: No, Your Honor.

14 THE COURT: All right. 9:00 in the morning.

15 Yes?

16 MR. FALK: Your Honor, different judges are different.
17 When you object, do you want to come right up, or do you want
18 us to stand and give the rules or what do you want --

19 THE COURT: All I want is your objection and for you to
20 state your grounds for your objection.

21 MR. FALK: Okay.

22 THE COURT: No arguing objections on the record in the
23 presence of the jury. Don't allow that, improper.

24 MR. FALK: Thank you.

25 THE COURT: If I feel like I do need argument, then I'll

1 send the jury out. I'll recognize the objecting party and
2 hear from them at that time.

3 MR. FALK: Yes, sir.

4 THE COURT: Anything further, Mr. Sorenson?

5 MR. SORENSON: No, sir.

6 THE COURT: Mr. Falk?

7 MR. FALK: No, sir.

8 THE COURT: See you all tomorrow morning at 9:00.

9 (Trial of the case adjourned for the day at 4:10 p.m.)

10 (Trial of the case resumed on 10/21/14.)

11 (State's Exhibits 1-13, 18-29 and 37-44 premarked for
12 identification.)

13 THE COURT: Mr. Sorenson, with consent from my
14 understanding of Mr. Falk, came back and showed me a letter
15 or a handwritten note that was dropped off in the solicitor's
16 office. Did you have a chance to look at that, Mr. Falk?

17 MR. FALK: I did, Your Honor.

18 THE COURT: Anything, any motions or anything?

19 MR. FALK: Yes, Your Honor, we'd ask to exclude the
20 juror, and if we can have two alternates, if we could go
21 forward.

22 THE COURT: Well, this is what I'm going to do: I'm
23 going to pull that juror out. I want to find out what, if
24 any, relationship there is there.

25 My questions to the jury yesterday did not ask

1 specifically about any relationship with the solicitor,
2 Mr. Pascoe. My questions did certainly ask whether or not
3 they knew of any reason whatsoever why they could not be fair
4 and impartial to both the State and the defense.

5 And what I am going to do is I am going to pull her in
6 here at sidebar. I'm going to ask her the basis or what
7 prompted the writing of that note, what relationship, if any,
8 there is with Mr. Pascoe or anybody else in the solicitor's
9 office and whether or not -- I'll see what her responses are
10 to make a determination as to whether or not I believe any
11 further questioning needs to take place.

12 MR. FALK: Thank you.

13 THE COURT: If you will get me No. 4, Ms. Anne Ayer,
14 please.

15 (The Court's Exhibit 1 marked for identification.)

16 MR. SORENSON: Court's Exhibit 1 is two pages, Your
17 Honor. The original I think may just be one page, but it was
18 folded up, and it's been photocopied.

19 (Juror enters the courtroom.)

20 THE COURT: If you'll stop right there. Madam Clerk,
21 please swear her in.

22 CLERK OF COURT: If you'll place your left hand on the
23 Bible, raise your right hand. State your full name for the
24 record.

25 THE WITNESS: Anne Sharp Ayer.

1 ANNE AYER,

2 being first duly sworn, testified as follows:

3 THE COURT: How you doing, Ms. Ayer?

4 THE JUROR: Fine.

5 THE COURT: Can you identify this, what's been marked as
6 Court's Exhibit No. 1? It's a copy of something.

7 THE JUROR: Yes, sir, I gave this.

8 THE COURT: Is that a letter or a handwritten note that
9 you wrote to Mr. Pascoe?

10 THE JUROR: Yes, sir.

11 THE COURT: Can you tell me what the basis of that or
12 what prompted the writing of that note to Mr. Pascoe, who is
13 the solicitor here.

14 THE JUROR: I actually gave it to him before I even came
15 in here yesterday morning.

16 THE COURT: Okay.

17 THE JUROR: And I had no clue that I shouldn't have done
18 that.

19 THE COURT: I understand.

20 THE JUROR: But it's -- I used to work -- I was human
21 resources director for 28 years with Dorchester County.

22 THE COURT: Okay.

23 THE JUROR: And they terminated my employment in July of
24 2013.

25 THE COURT: Okay.

1 THE JUROR: And there is some -- I had filed a lawsuit
2 with the county, against the county.

3 THE COURT: Okay.

4 THE JUROR: And I just simply wanted to talk to him
5 about that.

6 THE COURT: Okay.

7 THE JUROR: Yes, sir.

8 THE COURT: Do you have any kind of social relationship
9 with Mr. Pascoe at all?

10 THE JUROR: No, sir. I haven't seen Solicitor Pascoe
11 probably in two years.

12 THE COURT: Okay. Well, as a matter of precaution,
13 that's why I called you out here. It was brought to my
14 attention, and this was given to Mr. Pascoe yesterday. And
15 like I said, as a matter of precaution, I wanted to question
16 you about it.

17 If you are allowed to remain and serve on this jury, do
18 you believe you could be fair and impartial to both the State
19 and the defense in this case?

20 THE JUROR: Yes, sir, absolutely. I -- this is just,
21 like, the second time I've come in the Courthouse, you know,
22 since all that happened to me a year ago.

23 THE COURT: Okay.

24 THE JUROR: And I just -- and, in fact, I left
25 Judge Blunt a thank you note because she helped a friend of

1 mine -- one of her clerks helped a friend of mine. I left
2 them both a note. That was just my way of saying "thank you"
3 and --

4 THE COURT: All right. Well, I'm going to let you stay
5 with us right now. You can return to the jury room. Do not
6 discuss what I brought you out here for.

7 THE JUROR: Absolutely.

8 THE COURT: And I'll get you all back out here in just a
9 minute, okay?

10 THE JUROR: Yes, sir.

11 THE COURT: Thank you.

12 (Juror exits the courtroom.)

13 THE COURT: Mr. Falk, anything from you at this time?

14 MR. FALK: Yes, Your Honor. I'd like to renew my motion
15 to exclude the juror. She possibly has a reason for bias. I
16 don't know if her wanting to communicate with the solicitor
17 was possibly a means to curry favor in this lawsuit that she
18 has, or I mean, I don't know what her bias -- I mean,
19 certainly she doesn't have a -- doesn't seem like she -- even
20 though she has a lawsuit against the State and it's obviously
21 going to be of financial benefit to her -- excuse me, against
22 the county, and obviously she'd reap a financial benefit,
23 because it sounds like it's an unlawful termination lawsuit.

24 And I'm just -- don't know if that possibly could be
25 floating in the back of her mind that, you know, she'd rather

1 be on the good side of some people in county government as
2 opposed to the bad side. I mean, I think this goes beyond
3 just the fact that she had an employment relationship with
4 the county, but I think this lawsuit raises concerns of
5 potential bias.

6 And I appreciate her responses to the question, but I
7 still have concerns. And we have two alternates. It's not
8 going to be that long of a trial. I don't think we'll run
9 out of alternates. And there's a lot at stake here.

10 THE COURT: Mr. Sorenson.

11 MR. SORENSON: I'll leave it in Your Honor's discretion.

12 THE COURT: All right. Here's what I'm going to do: I
13 really do not see -- she's answered my questions and is
14 confident that she could be fair and impartial, but as a
15 matter of precaution, and certainly taking into consideration
16 Counsel's argument, Mr. Falk, we do have two alternates.

17 And this is what I'm going to do: I am going to excuse
18 her from service on this case because it could be perceived
19 from the standpoint of her being favorable to the State in an
20 effort to gain preferential or preferable testimony or help
21 on the back end from the solicitor, could be perceived as
22 such.

23 And while I do not believe that is the case at all, we
24 operate -- we operate, in a lot of cases and in many
25 instances, under the perception, the appearance -- the

1 appearance.

2 So what I'm going to do, Madam Clerk, I need two
3 alternates. And the way that they are -- we determine who is
4 going to serve at this point, they need to be put in a cup or
5 something, both names, and draw them out. And the one that's
6 drawn and the one that's the alternate who serves. It's not
7 in the order that they were selected. That's how the statute
8 reads. It's different in criminal than civil.

9 CLERK OF COURT: Michelle Cheslek.

10 THE COURT: She was the first one that was selected.
11 Ms. Cheslek will no longer be an alternate; she will serve as
12 an active member of this jury.

13 Is there anything else from the State at this time?

14 MR. SORENSON: No, Your Honor.

15 THE COURT: Defense counsel?

16 MR. FALK: We'd move to sequester the witnesses,
17 separate the witnesses.

18 MR. SORENSON: I don't have any objection. We'd just
19 ask, Detective Monroe is our lead investigator.

20 THE COURT: I'll allow him to remain in the courtroom.
21 Could you bring me Ms. Ayer back out here, please.

22 (Juror enters the courtroom.)

23 THE COURT: Ms. Ayer, do you have anything back in the
24 jury room?

25 THE JUROR: Yes, sir, my keys.

1 THE COURT: Go ahead and get your keys. I'm going to
2 excuse you from service as a matter of precaution. After
3 discussion with the attorneys, the ultimate decision was my
4 decision. I appreciate you being forthright and honest with
5 me about it. It is simply as a matter of precaution. I
6 believe everything you had to say to me, but the appearance,
7 possible appearance, appearance, gave me a little bit of
8 concern. And that's why we select alternates, okay?

9 THE JUROR: Okay.

10 THE COURT: That's why we select alternates. I'm going
11 to excuse you from service. I think you've got that jury
12 card. Please call that number back after 6:00 tonight and do
13 not discuss when you go back in there to get your keys why
14 you're being excused. You're free to go, okay?

15 THE JUROR: Thank you.

16 THE COURT: Thank you.

17 (Juror exits the courtroom.)

18 THE COURT: Anything before I bring the jury in?

19 MR. SORENSON: No, sir.

20 MR. FALK: No, Your Honor.

21 THE COURT: Bring the jury please, ma'am.

22 (The jury enters the courtroom at 9:21 a.m.)

23 THE COURT: You all can be seated. Please be seated.

24 Ms. Cheslek.

25 THE JUROR: Yes.

1 THE COURT: You can be seated right here. Where's
2 Ms. Kelleher?

3 THE JUROR: Right here.

4 THE COURT: Ms. Cheslek, you are no longer an alternate
5 in this case. The only person that has an assigned seat
6 right now is Ms. Kelleher.

7 Madam Clerk, would you swear the jury, please.

8 (Jury duly sworn.)

9 THE COURT: Ladies and gentlemen, we are about to try
10 the case of the State of South Carolina versus Tyrone Darius
11 Ellison, but before we begin the trial of this case, I will
12 tell you that this trial will probably be different from what
13 you might expect.

14 Many people do not have the chance to attend actual
15 court sessions as you're doing now and may think from
16 watching television or movies or reading books that trials
17 are always full of high drama, intense action and riveting
18 circumstances.

19 Now, while all of these things may be true at times,
20 this trial, ladies and gentlemen, is not for entertainment.
21 It is a fundamental part of our democracy. A search for the
22 truth in an effort to make sure that justice is done between
23 the parties.

24 Searching for the truth and making sure that justice is
25 done is often slow, deliberate and repetitive, the opposite

1 of what you may have seen on television or in movies or read
2 in books. This courtroom is a place of honor, dedicated to
3 the protection and preservation of citizens' rights through
4 what many have called the greatest justice system ever
5 created.

6 Now, the attorneys appearing before you, ladies and
7 gentlemen, are advocates for the parties that they represent,
8 but first and foremost, they are officers of the Court, sworn
9 to uphold the integrity and fairness of our judicial system
10 and to help you in the search for the truth. You should
11 expect them to be professional, competent and ethical in the
12 representation of their clients' interests.

13 Now, what I will now say to you, ladies and gentlemen,
14 is intended as an introduction to the trial of this case.
15 These remarks are not a charge on the law in this case. I
16 will instruct you on the law applicable to this case at the
17 end of the trial before you retire to consider your verdict.
18 This is merely an explanation of the procedure that we will
19 follow in the trial of this case so that you may better
20 understand what may be happening.

21 Now, the defendant in this case, ladies and gentlemen,
22 is charged by an indictment filed in this Court with the
23 crimes of armed robbery and entering a bank or depository or
24 building and loan association with intent to steal. The
25 elements of each of those charges will be explained to you

1 later.

2 The indictment, ladies and gentlemen, is simply the
3 charging document by which this case is brought into this
4 court, and it is not in any sense evidence of any of the
5 allegations that it contains.

6 The defendant has pled not guilty to these charges;
7 therefore the State of South Carolina bears the burden of
8 proving each of the elements of the indictment beyond a
9 reasonable doubt. It will be your duty, it will be your
10 duty, ladies and gentlemen, to decide whether the State has
11 met that burden.

12 Your purpose as jurors is to find and determine the
13 facts. You are the sole judge of the facts. If at any time
14 I make any comment regarding the facts, you must disregard
15 it. You are to determine the facts from the testimony you
16 hear and the other evidence introduced in court. It is up to
17 you to determine the inferences which you feel may properly
18 be drawn from the evidence.

19 It is especially important that you perform your duty,
20 ladies and gentlemen, diligently and conscientiously, because
21 ordinarily there is no way to correct an erroneous
22 determination of the facts by a jury.

23 On the other hand and with equal emphasis, the same law
24 that makes you the judge of the facts makes me the judge of
25 the law. The law, as given by the court, is the only law

1 that you may consider. You must accept and follow it even
2 though you may disagree with it.

3 I cannot tell you all, ladies and gentlemen, what the
4 facts are, and you cannot disagree with me about what the law
5 is or should be. Your job is to take the law as I give it to
6 you and apply it to the facts as you find them from the
7 testimony of the witnesses and any other evidence that is
8 introduced. After doing that, you will render your verdict,
9 a true and just verdict under the solemn oath that you just
10 took as jurors.

11 Now, until I tell you to begin your deliberations, you
12 must not discuss this case with anyone, including your fellow
13 jurors, friends, family members and anyone involved in the
14 case. The attorneys and the parties in this case have been
15 advised that they are not to talk to you at all. So if you
16 see anyone involved in this case and they don't speak to you,
17 they are not being unfriendly; they're simply following this
18 Court's instructions.

19 Now, during your deliberations, you may only discuss the
20 case in the jury room with your fellow jurors, because they
21 have seen and heard the same evidence that you have.
22 However, you must not discuss the case with anyone other than
23 your fellow jurors until you have returned a verdict and the
24 case is at an end.

25 I remind you that you must decide this case, ladies and

1 gentlemen, based solely on the evidence presented here in
2 this courtroom. This means that during the trial, you must
3 not conduct any independent research about this case, the
4 facts of the case, the evidence presented in the case, or the
5 people or organizations involved in any way in the case.
6 Please do not try to find out information from any source
7 outside of this courtroom.

8 In other words, you must not look at dictionaries or
9 other reference materials, search the Internet, websites or
10 blogs or use any other electronic tools to get information
11 about this case to help you decide the case. You may not use
12 computers, telephones, cell phones, smart phones, tablets,
13 the Internet or other tools of technology with communication
14 capabilities at any time while you are in the courtroom or
15 during your deliberations.

16 During your breaks for meals or overnight, if necessary,
17 you may use these devices. However, you must not use those
18 devices to communicate with anyone about this case until the
19 case is over.

20 This means that you must not use phone calls, emails,
21 text messages, instant message, Twitter or any blog, chat
22 room or website, including Facebook, Google plus, Myspace,
23 Linked In, YouTube or any social media websites to send or
24 receive information about this case.

25 This includes information about a party, a witness, an

1 attorney or a court officer, news accounts about the case,
2 research on topics raised, any topics you may think would be
3 helpful in deciding the case or any testimony presented by
4 any witness.

5 During the trial, do not read, listen to or watch any
6 news reports about the case, if any. This includes anything
7 that may be in the newspapers or on the Internet, radio or
8 television. You must not consider anything, ladies and
9 gentlemen, that you may have read or heard about the case
10 outside of this courtroom, whether before or during the
11 trial.

12 Information on television, radio, the Internet or from
13 other sources might be wrong or incomplete. In our judicial
14 system, it is important that you are not influenced by
15 anything or anyone outside of this courtroom. If you become
16 aware of another juror's violation of these instructions,
17 please inform the Court immediately.

18 It is important, ladies and gentlemen, that you keep an
19 open mind and not decide any issue in the case until all of
20 the evidence has been presented, the parties have made their
21 closing arguments and I have instructed you on the law in
22 this case.

23 It is your solemn responsibility to determine the guilt
24 or innocence of the defendant, and your verdict must be based
25 solely on the evidence as it is presented to you in this

1 trial and on the law, as I instruct you, during and at the
2 close of the trial.

3 Now, in just a moment, the solicitor will make what is
4 called an opening statement in which the solicitor will
5 explain to you the issues in this case or at least what the
6 solicitor thinks the issues are. The attorney for the
7 defendant may also make an opening statement, although he is
8 not required to do so.

9 What the attorneys tell you, ladies and gentlemen,
10 during their opening statements is not evidence in this case.
11 It is only their contention as to what the issues are. The
12 evidence in this case will be presented to you by the
13 testimony of sworn witnesses from this witness stand and/or
14 by exhibits that may be introduced into evidence.

15 Now, from time to time during the trial you may hear one
16 of the attorneys say something like, "Your Honor, I believe
17 that we have a question of law or a matter of law to discuss
18 with you," or, "Your Honor, may we approach the bench." Or
19 sometimes I myself might find it necessary to excuse you from
20 the courtroom for a short while so the attorneys and I can
21 discuss a matter of law.

22 The reason for this is because you are the judge of the
23 facts in this case, and sometimes when I am discussing
24 matters of law with the attorneys, it may be necessary for me
25 to make some comment as to the facts in connection with

1 ruling whether or not a particular law applies.

2 I am not supposed to tell you all what I think the facts
3 are, so I will excuse you from the courtroom while these
4 discussions take place so that in no way will you be
5 influenced by anything that I might say or do in connection
6 with the facts.

7 Now, in determining what the true facts are in this
8 case, you must decide whether or not the testimony of the
9 witnesses is believable. It will be my responsibility to
10 rule as a matter of law as to whether certain testimony is
11 admissible or not, but once the testimony is admitted,
12 whether or not you believe it is solely for you to determine.

13 Now, in deciding whether to believe a witness, you have
14 the right to consider the interest of any witness, the bias
15 of any witness, the prejudice of any witness, the opportunity
16 for the witness to have seen the matters and things about
17 which the witness may testify and the way the witness acts on
18 the witness stand.

19 You have the right to consider anything that is in the
20 record that will help you evaluate the testimony of the
21 witnesses. That means, ladies and gentlemen, that it is your
22 duty to pay close attention to these witnesses, to observe
23 the witnesses, to listen to the witnesses and to pay close
24 attention to the attorneys and to the Court.

25 Please don't let your thoughts wander, but give strict

1 attention to the testimony in this case so that at the end of
2 all the testimony, after the arguments of counsel and the
3 charge on the law by the Court, you will then be in a
4 position to determine what the true facts are and to apply
5 the law to those facts and thus render a true and just
6 verdict.

7 Now, later in this case, a foreperson will be selected
8 to preside over deliberations in the jury room. It will be
9 the foreperson's added duty to preside in the jury room and
10 be the jury spokesperson here in court. It will also be the
11 foreperson's duty to write the verdict, but I will give the
12 foreperson further instructions about that at the conclusion
13 of the case.

14 Now, in order to preserve everyone's rights, I will give
15 the attorneys an opportunity to object to anything that I
16 have said. Any exceptions or any objection to anything that
17 I have said to the jury by the State?

18 MR. SORENSON: No, Your Honor.

19 THE COURT: Defense counsel?

20 MR. FALK: No, Your Honor.

21 THE COURT: All right. Ladies and gentlemen, we are now
22 going to begin the trial of this case. The State is
23 recognized for opening statements.

24 MR. GIESE: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. GIESE: Good morning. On April 1st, 2013,
2 Roberta Bass and Quinn Rustin were working at the SunTrust
3 Bank on Dorchester Road. It was Roberta's first day.

4 As they were starting to get settled, as Quinn was
5 starting to show Roberta, you know, the lay of the land in
6 there, a black male walks in wearing a wig, a visor,
7 sunglasses and holding a gun and a latex glove. And the
8 State submits to you that the man who did that, who walked in
9 the store that day and proceeds to rob Quinn Rustin and
10 Roberta Bass is Tyrone Ellison, who's seated over there
11 (indicating).

12 Now, my name is Phil Giese. We met earlier. This is
13 Don Sorenson. We represent the State of South Carolina in
14 prosecuting Mr. Ellison. Mr. Ellison stands charged, as the
15 judge told you, with two crimes: Armed robbery and entering
16 a bank with the intent to steal.

17 Now, as the judge informed you, he's going to instruct
18 you on the law at the end of this trial, but I'm going to
19 give you a little preview of that right now.

20 In South Carolina, to be found guilty of armed robbery,
21 Mr. Ellison must be found to have robbed another person or
22 persons while armed with a deadly weapon or while armed with
23 something that could be perceived as a deadly weapon, pretty
24 simple.

25 Entering a bank with intent to steal is also pretty

1 simple. The State must show that Mr. Ellison entered the
2 SunTrust Bank with the intent to steal money from that bank.
3 Okay? That's just a little preview of the law.

4 Now, the State is required to prove that Mr. Ellison
5 committed those crimes beyond a reasonable doubt, and it's
6 our burden to do so. And in this case, the State accepts
7 that burden.

8 Reasonable doubt, and you're going to hear some more
9 about reasonable doubt throughout the trial. Reasonable
10 doubt is not any and all doubt, okay? It's reasonable doubt.
11 It's any doubt that would cause a reasonable person to
12 hesitate to act. If at the end of this trial you're firmly
13 convinced that Mr. Ellison committed these offenses, it's
14 your duty at that point to find him guilty.

15 Now, let's go back to kind of what all you're going to
16 hear about this week. As I said, on April 1st of 2013,
17 Quinn Rustin and Roberta Bass were working as tellers at the
18 SunTrust Bank on Dorchester Road. Again, it was Roberta's
19 first day. In the morning, Quinn's kind of showing her the
20 lay of the land, you know, their policies, what they do to
21 open the bank, that sort of thing.

22 And at around 10, between 10 and 10:30, a black male
23 walks in with a wig, a visor, sunglasses and holding a gun
24 with a latex glove on. He approaches the teller desk,
25 Ms. Rustin and Ms. Bass see him approach. He approaches the

1 teller desk, lifts himself over the teller desk and behind
2 into the area where Quinn and Roberta are standing, holding
3 them at gunpoint, and tells them to empty their drawers.

4 Now, because it's Roberta's first day, her drawer is
5 empty and she opens her drawer and he sees that it's empty.
6 However, Quinn's drawer has money in it. She empties the
7 entire drawer. There's four separate drawers inside of
8 there, gives him all the cash that they had in that drawer.
9 He takes it, puts it in a little bag and leaves, hops back
10 over the counter and runs out.

11 Meanwhile in an office kind of to the side of the teller
12 desk, there's another bank employee. Ms. Bonnie Weeks is
13 meeting with a customer. His name's David Lewis. He kind of
14 hears the commotion. They both kind of hear the commotion.
15 They see the black male wearing the wig leave, and Mr. Lewis
16 gets up and follows him out.

17 He sees him take off, the man with the wig on, sees him
18 take off and disappear into a wooded area right there in the
19 Coosaw Creek area. He then sees that black male reappear out
20 of the wooded area. Mr. Lewis is driving his car around,
21 looking for him.

22 He sees him reappear without it the wig, without the
23 visor, without the gun and the latex glove. And he takes
24 off. He hops into a green Honda Civic -- and that's going to
25 be important in this case -- hops into a green Honda civic

1 and drives off, gets away, essentially.

2 Law enforcement arrives. They begin their
3 investigation, and they go to that wooded area. They take
4 officers to that wooded area where Mr. Lewis saw him
5 disappear into. And in that wooded area they find a wig.
6 They find a visor. They find a gun and they find a latex
7 glove, okay? And they collect those items.

8 They end up sending those items off to a forensic
9 scientist, and the forensic scientist matches DNA -- they
10 pulled DNA off those items -- from the wig, the visor and the
11 latex glove, and that DNA is linked to Tyrone Ellison.

12 And you're going to hear from that forensic scientist
13 this week. You're going to hear from all the bank employees
14 that were in the bank that day about what happened, as well
15 as Mr. Lewis. You're going to hear from law enforcement
16 about their investigation of this case.

17 You're also going to hear from some individuals who will
18 link Mr. Ellison to that green Honda Civic I mentioned
19 earlier that they see the bank robber disappear into. And as
20 I said, you're going to hear from the forensic scientists
21 about their testing and the DNA they pulled off those items.

22 And the State contends after hearing all that and after
23 seeing all the evidence -- you're also going to see footage
24 of the robbery itself from bank surveillance video. Taking
25 all that into account, at the end of this trial, the State's

1 going to ask you to return guilty verdicts against
2 Mr. Ellison, thank you.

3 THE COURT: Mr. Falk.

4 MR. FALK: Good morning.

5 THE JURY: Good morning.

6 MR. FALK: Sometime around the 1st of July 2013, my
7 client was involved in an automobile accident. He was
8 traveling in a car. There was an accident. Following the
9 accident, the next thing he knows is he's being charged with
10 a robbery that occurred on April 1st. This was the first
11 time my client knows anything about this robbery.

12 And then also on July 1st, picture his parents, sometime
13 late in the day in July, members of North Charleston police
14 detectives come up and start talking to his parents. They
15 advise them that there's been an automobile accident and it's
16 been a serious accident and some people could be hurt and I
17 think possibly even some people may not survive the accident.

18 Without telling my client where -- without telling my
19 client's parents where he is, they start asking him
20 questions, because at this time they think they had developed
21 some testimony or some evidence that linked my client to this
22 accident on April 1st, considering his parents then don't
23 find out where this child is until July 2nd but only after
24 they subject his mother to some questioning.

25 Now, the only thing simple about this case -- and, I

1 mean, we'll certainly contend that somebody broke into the
2 bank or walked into the bank. Somebody robbed the bank, but
3 it's not simple to say that my client robbed the bank. Well,
4 certainly there's nobody in the -- everybody in the --
5 everybody's description who has seen that person who robbed
6 the bank, they certainly described the disguise, but nobody
7 described my client.

8 My client wasn't there. My client knows where he was on
9 April 1st and you'll hear testimony about where he was on
10 April 1st.

11 The prosecution has indicated that something important
12 is about the car. My client did have a car, did have a Honda
13 Civic. His mother bought him a Honda Civic. It was kind of
14 a beater. It was kind of torn up, not probably the car that
15 somebody like my client wanted to drive around in.

16 His idea was he got the car. He was going to flip it,
17 make a couple of bucks on it and save some more money in
18 order to buy a car that's maybe more appropriate for what he
19 wanted to be driving around in. Young man, doesn't want to
20 be driving around in a beat-up car, radio broke, paint all
21 torn up if he could do something different. My client got
22 rid of the car.

23 You're going to hear testimony that they're going to try
24 to link the car to my client. You're going to hear testimony
25 from us that says my client wasn't in possession of the car

1 at the time of the robbery.

2 The prosecution's also indicated that there's forensic
3 evidence here, that there's some DNA evidence here, but
4 you're also going to hear from our DNA expert, and the DNA
5 evidence is not always conclusive. And there's some
6 questions with the DNA -- although there may be a link with
7 my client, it also shows that there was other DNA present on
8 those items.

9 You'll also find out that there's not any other type of
10 fingerprints left in the bank. You know, how somebody could
11 come into the bank, rob it and then leave without leaving any
12 fingerprint evidence that certainly would identify to my
13 client, you're going to have to consider how that happened.

14 You've heard about a gun coming in. You're going to
15 have to consider why there were no fingerprints on this gun.
16 There's a lot there that they're not able to prove because my
17 client wasn't there at the time.

18 This is kind of like a jigsaw puzzle. I mean, consider
19 that you're trying to put together a jigsaw puzzle and you've
20 got two different pictures, but somehow you drop the box and
21 all the pieces are on the floor. The prosecution wants you
22 to pick up the pieces and put it together to make their
23 picture.

24 But I contend that once you hear our evidence, you're
25 not going to be able to put the picture together because

1 there's going to be some pieces that you know are important
2 that just don't fit in the prosecution's picture.

3 This is the first time my client's going to have the
4 opportunity since July -- since the 1st of July, probably
5 about the 2nd of July, he's been in custody, July 2nd, 2013.
6 This is his first opportunity to come in here and tell you --
7 and let you know what his side of the story is.

8 I need you all to give your attention to this case.
9 It's a very serious case. These are obviously very serious
10 charges. It's going to have significant implications on my
11 client. I need you all to please look at this evidence with
12 an open mind. Wait until you can hear our side of the story
13 before you reach a decision in this case. Thank you.

14 THE COURT: Call your first witness.

15 MR. GIESE: State calls Quinn Rustin.

16 CLERK OF COURT: Place your left hand on the Bible,
17 raise your right hand, state your full name for the record.

18 THE WITNESS: Quinn Rustin.

19 QUINN RUSTIN,
20 being first duly sworn, testified as follows:

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

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION BY MR. GIESE:

24 Q. Ms. Rustin, where do you work?

25 A. SunTrust Bank on Dorchester Road.

1 Q. And how long have you worked there?

2 A. I've worked at that location for four years.

3 Q. What are your duties there?

4 A. I help open accounts, customer service, teller
5 transactions, everything.

6 Q. Okay. What were your duties there on April 1st of 2013?

7 A. I was training Roberta Bass, and she just started that
8 day.

9 Q. What were you training her as?

10 A. A teller.

11 Q. Okay. Were you working as a teller that day?

12 A. Yes.

13 Q. Kind of describe the events of when you arrived at work.

14 A. We were just preparing everything for her. When she got
15 in, I was showing her the ropes, "This is how we do things
16 here. This is where we keep stuff here." And as -- as we
17 were going over everything --

18 Q. What happened -- what happened at that point?

19 A. He came in the doors, and as soon as he came in through
20 the second set of doors, he kind of stopped and kind of
21 crouched down and pulled a gun out of his pocket. He was
22 wearing this straight wig, sunglasses and visor. And it's
23 just not natural for someone to be dressed like that to come
24 in.

25 Q. Let me stop you right there. What made you think it was

1 a wig?

2 A. You could just tell. It's -- the hair looked synthetic,
3 too shiny and you could just tell.

4 Q. Okay. What did he look like?

5 A. You could tell it was a man wearing a wig.

6 Q. Okay.

7 A. He had facial hair, big sunglasses. It was a visor and
8 not a baseball cap.

9 Q. Do you remember what kind of facial hair it was?

10 A. Like a light mustache and little bit of, like, chin --

11 Q. Okay. At some point does he approach the counter?

12 A. He does. He ran up with the gun out saying, "Give me
13 all your money."

14 Q. Let me stop you right there. At some point did he go
15 back behind the teller desk?

16 A. He did. Once he reached the counter, he put his hands
17 on the counter with the gun, and I could see the gun had a
18 silver barrel and it looked just like one that my husband
19 had. So I realized that it was a real gun at that point.
20 And when he put his hands up on the counter, he realized that
21 he could jump it, and that's what he did.

22 Q. Okay. What happened next?

23 A. He said, "Open all the drawers." And he had -- he had
24 Roberta open hers and me open mine, and then he had the gun
25 on both of us, and then Roberta moved back. And as I opened

1 mine, you could see that I had the money. Since Roberta had
2 just started, she didn't have anything. And he told me,
3 "Give me all the money."

4 So as I'm scooping the money out of my drawer, it hit
5 the side wall and just flew all over the place. He told me
6 to pick it up, reach down and pick everything up. And he
7 kept saying, "Give me all your money. Open all the drawers.
8 Give me all your money."

9 So I had to open my second drawer, too, and I had to
10 bend down on the ground to pick up all the money. And
11 underneath the other teller station, some of my bills went
12 underneath that. I had to go underneath there to pick that
13 up.

14 Q. Were you just -- were you handing the money to him?

15 A. I was, and he -- it was a combination of both handing
16 him the money and trying to shove it into -- he had like a
17 little fanny pack. It was small, small bag that he had, and
18 he kept saying, "Give me all your money." So at one point I
19 handed him my coin tray, too, but -- and he told me cash
20 only.

21 Q. Okay. At some point did he leave?

22 A. Yes. He --

23 Q. Can you describe how he left?

24 A. Once I gave him all the money, and he could see in my
25 drawers, he took a step back and finished shoving all the

1 money into his little bag, and he steps up on the chair to
2 jump back over the counter. As he jumped over the counter,
3 he dropped his gun on the other side. He bends over, picks
4 it up and he walks out of the branch.

5 And that just, I couldn't believe that. He comes
6 running in, and then he just walks out like he had all the
7 time in the world.

8 Q. Are you and Roberta still behind the teller desk at this
9 point?

10 A. We're still behind the desk, yes.

11 Q. Okay. He walks -- all right. And describe him walking
12 out.

13 A. He's casually walking out. He looks over and sees that
14 Bonnie's in her office with a client, and then he gets to the
15 door and he starts pulling on the doors. We have a sign on
16 the door that says "push" so everyone knows how to leave.
17 And so he starts pulling on the doors, and he's starting to
18 panic at this point, and you can tell.

19 And he doesn't realize, as he's pushing, to pull the
20 door back, that the door is opening. He actually breaks our
21 doors as he's trying to get out. Finally I yell "push," and
22 right as he's turning around to try and get out, he drops his
23 gun again. He picks it up and then he runs out.

24 Q. Okay. And at some point did law enforcement arrive?

25 A. Yes, they came shortly afterwards.

1 Q. Okay. Just one moment, Your Honor.

2 May I approach the witness, Your Honor?

3 THE COURT: Yes.

4 Q. Quinn, I'm showing you what's been premarked as State's
5 Exhibit 18. You can hold it. Do you know what that is?

6 A. Yes, sir. This is the video of the robbery.

7 Q. Did you have the opportunity to view that video before
8 these proceedings?

9 A. Yes, sir.

10 Q. Is that a fair and accurate representation of what took
11 place that day?

12 A. Yes, sir.

13 Q. Of what you just testified to?

14 A. Yes, sir.

15 MR. GIESE: Your Honor, at this time the State would
16 move State's Exhibit 18 into evidence.

17 THE COURT: Any objection?

18 MR. FALK: No objection, Your Honor.

19 THE COURT: Without objection, State's Exhibit No. 18
20 admitted into evidence.

21 (State's Exhibit 18 admitted into evidence.)

22 MR. GIESE: Your Honor, may I publish it for the jury?

23 THE COURT: Yes, sir.

24 Q. Quinn, there's one right in front of you. And before I
25 start playing this video, can you kind of describe what the

1 jury's looking at here?

2 A. This is the start of the day. This is the teller line.

3 I'm at my station, and that's where Roberta will be starting

4 once we get her situated.

5 Q. Okay.

6 A. So we're just going over --

7 Q. And is that behind the teller desk?

8 A. It is, yes, sir.

9 Q. Can you identify yourself back there?

10 A. I'm in the gray.

11 Q. And you can draw on the screen if you use your finger.

12 A. Okay. This is me (indicating).

13 Q. And then is Roberta back there too?

14 A. This is Roberta (indicating).

15 Q. Okay.

16 (Video played.)

17 Q. Quinn, is that a fair and accurate representation of
18 what happened to you that day?

19 A. Yes, sir.

20 Q. I'm going to show you a couple more angles. Where are
21 we looking at here?

22 A. This is when you first enter in. That's the lobby.

23 Q. Okay.

24 A. That's after the second set of doors.

25 Q. Okay. So where would the door be in relation?

1 A. Just right behind it.

2 Q. Okay. I'm going to ask you to watch again, if you don't
3 mind.

4 A. Yes, sir.

5 (Video played.)

6 Q. Quinn, is that the guy, the man that robbed you?

7 A. Yes, sir.

8 MR. GIESE: Just one more moment, Your Honor. May I
9 approach the witness again, Your Honor?

10 THE COURT: Yes, sir.

11 Q. Quinn, I'm showing you what's been premarked as State's
12 Exhibit 20. Do you recognize that?

13 A. Yes, sir.

14 Q. Can you tell me what that is?

15 A. That is him entering the bank.

16 Q. Okay. Is that the man that came in the bank and robbed
17 the bank?

18 A. Yes, sir.

19 Q. Is that a fair and accurate portrayal of that man?

20 A. Yes, sir.

21 MR. GIESE: Your Honor, at this time the State would
22 like to move State's 20 into evidence.

23 THE COURT: Any objection?

24 MR. FALK: No objection.

25 THE COURT: Without objection, State's Exhibit 20

1 admitted into evidence.

2 (State's Exhibit 20 admitted into evidence.)

3 Q. All right. Now, I'm showing you what's been premarked
4 as State's Exhibit 27. Do you recognize that?

5 A. Yes, sir.

6 Q. And can you tell the jury what that is?

7 A. That is him leaving the bank.

8 Q. That's who leaving the bank?

9 A. That's the robber.

10 Q. And that's a fair and accurate portrayal of the person
11 that robbed you that day?

12 A. Yes, sir.

13 MR. GIESE: At this time, Your Honor, the State would
14 move State's 27 into evidence.

15 THE COURT: Any objection?

16 MR. FALK: No objection.

17 THE COURT: Without objection, State's Exhibit 27 also
18 admitted into evidence.

19 (State's Exhibit 27 admitted into evidence.)

20 MR. GIESE: No further questions at this time, Your
21 Honor.

22 THE COURT: Cross-examination.

23 MR. FALK: Thank you, Your Honor.

24 CROSS-EXAMINATION BY MR. FALK:

25 Q. Ms. Rustin, do you recall giving a statement to the

1 police in this case?

2 A. Yes, sir.

3 Q. Do you recall saying that you saw the robber touch
4 Roberta's drawer?

5 A. Yes, sir.

6 Q. Okay. Did you get a good look at his hands?

7 A. Yes, sir.

8 Q. Thank you.

9 And did you notice whether or not he was wearing gloves?

10 A. I believe so. I remember seeing the gun more than his
11 hands.

12 Q. Okay. But you said you saw him touch the drawer?

13 A. Yes. I saw him when he touched the counter, as he was
14 getting ready to go over, and then he reached -- he reached
15 over.

16 Q. So is it your testimony that he was wearing gloves on
17 both hands?

18 A. I don't remember.

19 Q. When you said he touched Roberta's drawer, was he using
20 the hand -- he did that with not his gun hand, correct?

21 A. Correct.

22 Q. Thank you.

23 Do you recall which officer you gave the statement to?

24 A. No, sir.

25 Q. Okay. Do you recall him asking you about whether or not

1 you remembered anything significant about him or if you could
2 describe him?

3 A. Yes, sir.

4 Q. When you were giving that description, were you trying
5 to say everything you knew about him?

6 A. Everything that I could remember.

7 Q. Okay. And so when you were making that description, you
8 were doing your best to try and identify him to the extent
9 that you knew; is that right?

10 A. Yes, sir.

11 Q. Thank you.

12 I noticed in your statement, though, that you didn't say
13 anything about his facial hair, and you certainly didn't say
14 anything about any hair on his chin. Are you sure you're not
15 just now seeing my client and deciding that he had hair on
16 his chin?

17 A. Yes, sir.

18 Q. Wouldn't you have wanted to give that information to the
19 detective at the time, though?

20 A. Yes, sir.

21 Q. Okay. But you didn't at the time?

22 A. No, sir.

23 Q. Okay. Thank you.

24 Now, in your statement you had said that, and I'm not
25 really as familiar with bank operations as obviously you are,

1 but I believe the detective asked you something about was
2 there anything else you noticed about him. And you had
3 said -- do you recall saying that the one thing that you sort
4 of noticed about him was that he knew about multiple drawers
5 behind the bank?

6 A. Yes, sir.

7 Q. And why did that surprise you?

8 A. Because most people don't know about bank procedures.

9 Q. So do you think maybe that might have been somebody who
10 had possibly been working at a bank?

11 A. Had some knowledge of bank operations, yes, sir.

12 Q. One moment.

13 You had said that he opened up, he was pushing against
14 the door; is that right?

15 A. Yes, sir.

16 Q. And that wasn't with his gun hand?

17 A. No, sir. It was pulling -- he was pulling against the
18 door.

19 Q. Okay. And he wasn't pulling against the door with his
20 gun hand, was he?

21 A. With both hands.

22 Q. Okay.

23 A. At one point.

24 Q. Okay. But you didn't -- when you gave your statement,
25 you didn't tell the officer that he was wearing gloves on

1 both hands; is that correct?

2 A. I don't remember.

3 MR. FALK: Okay. If I can approach the witness, please.

4 THE COURT: Yes, sir.

5 (Defendant's Exhibit 1 marked for identification.)

6 Q. Let me give you an opportunity to review the statement.

7 A. Yes, sir.

8 Q. Have you had a chance to read through it?

9 A. Yes, sir.

10 Q. Is that a fair and accurate -- is that the statement
11 that you gave?

12 A. Yes, sir.

13 Q. Okay. And after having a chance -- and do you think
14 there was anything that you omitted from the statement? I
15 mean, is there anything that you said that wasn't on the
16 statement?

17 A. Yes, sir.

18 Q. Well, after having reviewed the statement, do you recall
19 now whether or not, can you say whether or not you told him
20 that he was wearing gloves on both hands?

21 A. No, sir.

22 MR. FALK: All right. No further questions.

23 THE WITNESS: I have a question.

24 THE COURT: You can't ask questions. You get to answer
25 only.

1 THE WITNESS: Okay.

2 MR. FALK: Thank you.

3 THE COURT: Is that marked for identification purposes
4 only?

5 MR. FALK: Yes, Your Honor.

6 THE COURT: Not being introduced into evidence?

7 MR. FALK: No, it's not.

8 THE COURT: Any redirect?

9 MR. GIESE: Just one moment, Your Honor.

10 THE COURT: All right.

11 MR. GIESE: No further questions, Your Honor.

12 THE COURT: Ma'am, you may step down. Thank you.

13 Call your next witness, please.

14 MR. GIESE: State calls Roberta Bass.

15 CLERK OF COURT: Please place your left hand on the
16 Bible, raise your right hand and state your full name for the
17 record.

18 THE WITNESS: Roberta Ann Bass.

19 ROBERTA BASS,
20 being first duly sworn, testified as follows:

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

22 THE COURT: Yes, sir.

23 DIRECT EXAMINATION BY MR. GIESE:

24 Q. Ms. Bass, where do you work now?

25 A. Ocean Eye.

1 Q. Okay. And where did you work prior to that?

2 A. SunTrust Bank.

3 Q. Okay. And how long had you worked at Sun -- how long
4 did you work for SunTrust Bank?

5 A. The one here in South Carolina?

6 Q. The one on Dorchester Road.

7 A. From April 1st, 2013, to September 19th, I think, this
8 year.

9 Q. Okay. Of this year?

10 Okay. Do you remember your first day at work?

11 A. Yes.

12 Q. Can you tell the jury what happened when you first
13 arrived at work?

14 A. Got there that morning, met with everybody, kind of went
15 through what the typical job is as a teller, went behind the
16 teller line and was kind of set up on my computer and --

17 Q. Did you meet Quinn?

18 A. Yes.

19 Q. Okay and --

20 A. I met John and Quinn.

21 Q. -- what were you and Quinn doing?

22 A. We were just talking about, you know, how things go and
23 what we do and what takes place and just a daily basis as a
24 teller.

25 Q. Okay. And what else happened?

1 A. We were kind of sitting and standing on our seats, and
2 usually when somebody comes in, you stand up. And the door
3 opened and we stood up and kind of looked at each other and
4 we just -- we just saw somebody just run towards us and --

5 Q. Can you describe that person? To the best of your --
6 what you can remember.

7 A. About five-nine, five-ten, black.

8 Q. What was he wearing?

9 A. He had -- it looked like a wig with like a visor and
10 sunglasses and kind of loose clothing.

11 Q. Okay. And at some point did he walk up to the teller
12 counter?

13 A. He kind of like walk/ran up to the teller counter.

14 Q. Okay. And what was he doing?

15 A. Holding a gun.

16 Q. Okay. What happened next?

17 A. He pointed the gun, and then he put his hands on the
18 counter like this (indicating) and jumped over and said,
19 "Open all the drawers. Open all the drawers."

20 I had opened mine and mine were empty still because it
21 was my first day. And Quinn had opened hers, and he stood
22 between us and he goes, "Open all the drawers, all the
23 drawers. I want them all open. I want all the money," and
24 just, you know, talking quick.

25 And so I was going around trying to show him that

1 there's no other drawers. And as I was standing up against
2 the wall, he's like, "Get down. No, stand up."

3 So I just stood there, and Quinn was continuing to put
4 money in his bag. And then he went back over the counter
5 and --

6 Q. How did he exit?

7 A. He jumped back over the counter like -- he came in
8 between Quinn and I, but then he, like, pushed my chair out
9 of the way, went off to the side, dropped something, picked
10 it up and then kind of like walked around the rope thing or
11 whatever and then gradually walked out.

12 Q. Did you notice a weapon in his hand?

13 A. Yes, absolutely.

14 Q. Did you get a good look at the weapon?

15 A. Yes.

16 Q. Can you kind of describe the weapon --

17 A. It was --

18 Q. -- to the best of your ability?

19 A. -- a black gun. I mean, there was no other way to
20 describe it.

21 Q. Okay. And which hand was he holding it in? Do you
22 remember?

23 A. His right hand.

24 Q. Okay. Did he have gloves on?

25 A. It looked like he had some kind of gloves or something.

1 I don't know if he had it wrapped around things or if he had
2 it totally on, but he had something.

3 Q. Okay. And what color were the gloves or was the glove
4 or whatever you saw?

5 A. I can't remember that.

6 Q. Okay.

7 A. The color.

8 Q. But it was something wrapped around the gun?

9 A. He had something.

10 Q. Okay. And did you watch him leave?

11 A. We stood right where we were at, and we could see part
12 of him going out. And as he was going out, he was trying
13 to -- you've got to push the doors. He was trying to pull on
14 the doors, and he was pulling so hard that it basically broke
15 the frame of the door. And then after that, he went on
16 out --

17 Q. Okay.

18 A. -- and left the scene.

19 Q. At some point did law enforcement arrive?

20 A. Yes.

21 Q. Okay. Roberta, I'm about to show you on the screen
22 here, and there's a screen right there in front of you,
23 what's been entered into evidence as State's 17 (sic).
24 Describe to the jury what, kind of, we're looking at, what
25 angle we're looking at here.

1 A. What angle --

2 THE COURT: Hold on a minute. You're referring to 18, I
3 believe, not 17.

4 MR. GIESE: I apologize, Your Honor. You're correct.

5 THE COURT: To be clear for the record. I'm sorry,
6 ma'am.

7 Restate your question.

8 Q. Ms. Bass, you're looking at what's been entered into
9 evidence as State's 18, State's Exhibit 18. Can you
10 describe -- first of all, have you had the opportunity to
11 view this beforehand?

12 A. Yes.

13 Q. Can you describe what we're looking at here?

14 A. This is behind us.

15 Q. Is that behind the teller desk?

16 A. It's behind the teller line.

17 Q. Okay. And are you in this video?

18 A. Yes. I'm in the green jacket.

19 Q. Okay. And who else is with you there?

20 A. That's Quinn.

21 Q. Okay. I'm going to ask you just to watch this video,
22 and then I'm going to have a question for you afterwards.

23 (Video played.)

24 Q. Roberta, is that a fair and accurate representation of
25 the events that you just described that happened to you that

1 day?

2 A. Yes.

3 Q. And let me show you --

4 MR. GIESE: May I approach the witness, Your Honor?

5 THE COURT: Yes, sir.

6 Q. Showing you what's been entered into evidence as State's
7 Exhibit 27, can you tell me what that is a picture of?

8 A. It's a picture of the kid that robbed us.

9 MR. GIESE: Okay. No further questions, Your Honor, at
10 this time.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION BY MR. FALK:

13 Q. You said that you saw the gun; is that correct?

14 A. Mm-hmm.

15 Q. What part of the gun --

16 THE COURT: I need a "yes" or a "no" answer.

17 THE WITNESS: I'm sorry.

18 THE COURT: That's okay.

19 THE WITNESS: Yes, sir.

20 THE COURT: Thank you.

21 Q. Okay. And so what part of the gun was visible to you?
22 Was that the barrel? I mean the part where the bullet comes
23 out.

24 A. I guess so, yes. I don't know much about guns, but yes.

25 Q. Okay. Thank you.

1 You had an opportunity to look at his hands?

2 A. Did I look at his hands?

3 Q. Did you have an opportunity to see his hands?

4 A. As much as I could, yes.

5 Q. Was he wearing gloves on his hands?

6 A. I don't recall if he was wearing gloves. I remember
7 seeing something in his hands. I don't know if it was a
8 glove or a cloth. I remember seeing something in his hands.

9 Q. So it wasn't something that was over his fingers, right?

10 A. I don't remember.

11 Q. Do you recall giving a statement in this case?

12 A. Yes.

13 Q. Did you describe -- in your statement, did you describe
14 the witness as having wearing dreads that you saw underneath
15 the wig?

16 A. I thought it was dreads or the -- part of the wig. It
17 looked like a lot of hair under a visor or a hat.

18 Q. What's your description of dreads?

19 A. Just wavy hair, like knotted hair.

20 Q. Okay. Like all braided up together? You know, like you
21 see pictures of Bob Marley, Rastafarian, those kinds, is that
22 what you meant by dreads?

23 A. Well, not long Bob Marley hair, but just thick, you
24 know, braided -- not braided, but wavy, ratty hair.

25 Q. Okay. In your statement you said that it looked like

1 those were underneath the wig.

2 A. Mm-hmm.

3 Q. Is that your statement still? Is that still your
4 belief?

5 A. It looked like it was part of the wig or underneath the
6 wig, yes. I could not tell if it was part of the wig or
7 underneath the wig, but it looked like there was something
8 fake on the head.

9 MR. FALK: One moment, please.

10 THE COURT: Those of you on the front row of the jury,
11 can you all see okay with those TV's up or do you want them
12 put back down? If you want to put them back down, please
13 feel free to do so, okay?

14 Q. Just to be clear, when you were talking about something
15 wrapped around the gun, was that around the barrel part of
16 the gun or the handle part of the gun?

17 A. Looked like he had something on his hand --

18 Q. Okay.

19 A. -- to hold it with.

20 MR. FALK: No further questions.

21 THE COURT: Any redirect?

22 MR. GIESE: No, Your Honor. Thank you.

23 THE COURT: Ma'am, you may step down. Thank you.

24 THE WITNESS: Thank you.

25 THE COURT: Call your next witness.

1 MR. SORENSON: State calls Bonnie Weeks.

2 CLERK OF COURT: Please place your left hand on the
3 Bible, raise your right hand and state your full name for the
4 record.

5 THE WITNESS: Bonnie Jean Weeks.

6 BONNIE WEEKS,
7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. SORENSON:

9 Q. Good morning, Ms. Weeks.

10 A. Good morning.

11 Q. If you would, please tell the jury where it is that
12 you're employed.

13 A. SunTrust Bank on Dorchester.

14 Q. Okay. And do you know what the address is of that bank?

15 A. 8610 Dorchester Road.

16 Q. Is that located in Dorchester County?

17 A. Yes.

18 Q. And if you would, tell the jury what you do at SunTrust.

19 A. I'm a personal banker.

20 Q. And how long have you worked there?

21 A. For eight years.

22 Q. So obviously back in -- on April 1st of last year, 2013,
23 you were employed there at that time?

24 A. Yes.

25 Q. Were you working that -- I believe it was Monday

1 morning?

2 A. Yes.

3 Q. And if you would, tell the jury, kind of explain to the
4 jury where it is that your office is located.

5 A. If you walk in through the front doors, there's an
6 office immediately to your left, but there's a second office
7 to your left right before the bathrooms. I'm in that second
8 office to the left.

9 MR. SORENSON: May I approach the witness, Your Honor?

10 THE COURT: Yes, sir.

11 Q. Let me show you what's been marked as State's Exhibit
12 No. 5. Do you recognize that photograph?

13 A. Yes.

14 Q. Okay. And what does that photograph depict?

15 A. The lobby and the entryway to the teller stations.

16 Q. And on State's Exhibit No. 5, would you be able to kind
17 of point essentially to where your office is located --

18 A. Yes.

19 Q. -- in regulation to this?

20 A. Where the officer in the red shirt and the gray shirt
21 are and she's holding up her hand, she's basically pointing
22 towards my office. It's right back there.

23 MR. SORENSON: Your Honor, we offer State's Exhibit 5
24 into evidence.

25 THE COURT: Any objection?

1 MR. FALK: No objection.

2 THE COURT: State's Exhibit No. 5 admitted into evidence
3 without objection.

4 (State's Exhibit 5 admitted into evidence.)

5 Q. And this basically is now looking kind of from the lobby
6 area at the teller stations?

7 A. Uh-huh.

8 Q. Is that correct?

9 A. Right.

10 Q. And you testified a moment ago, Ms. Weeks, that kind of
11 where this officer and the lady and the two females, it looks
12 like --

13 A. Yes.

14 Q. -- that are kind of right there --

15 A. Uh-huh.

16 Q. -- the one officer has got their arm up?

17 A. Pointing.

18 Q. They're kind of pointing, and that would be the
19 direction that officer was pointing basically would be
20 towards the -- going to your office?

21 A. Yes. It's a glass wall that looks out into the -- a
22 glass window.

23 Q. And do you have windows in your office?

24 A. Yes.

25 Q. Okay. Where do your windows in your office look out to?

1 A. There's a window behind me that looks out over the
2 parking lot and towards Steel City. It's like one of those
3 windows where you walk into the window and you can see all
4 around you kind of thing. And then there's a window into the
5 lobby. My entire -- I don't really have a wall looking into
6 the lobby. I just have a glass window thing, a glass door.

7 Q. So you can see, though, from your office out into the
8 parking lot --

9 A. Uh-huh.

10 Q. -- and I guess is there a road that kind of runs --

11 THE COURT: Please let him finish his question before
12 you answer. And if it's a question that warrants a "yes" or
13 "no" answer, please give him a "yes" or "no" answer as
14 opposed to an "uh-huh" or "huh-uh."

15 THE WITNESS: Okay.

16 THE COURT: That's just to make sure that the record's
17 clear, okay?

18 THE WITNESS: Yes, sir.

19 THE COURT: Thank you, Ms. Weeks.

20 Mr. Sorenson, you may continue.

21 MR. SORENSON: Thank you, Your Honor.

22 Q. So that window that overlooks the parking lot, there's a
23 street that runs there also. What's the name of that street?

24 A. Club Course Drive.

25 Q. Okay. And that runs from Dorchester Road to, I guess --

1 A. Patriot Pointe?

2 Q. Okay. And I guess Coosaw Creek is back there also?

3 A. Yes.

4 Q. Now, that morning, Ms. Weeks, about 10:30 that morning,
5 did you have any customers in the bank that you were
6 assisting?

7 A. Yes.

8 Q. Okay. And are you aware -- do you recall now who that
9 was that you were assisting that morning?

10 A. David Lewis.

11 Q. And where were you and Mr. Lewis located at that morning
12 about 10:30?

13 A. I was sitting at my desk and he was sitting facing me
14 across the desk.

15 Q. And from where Mr. Lewis was sitting, would he be able
16 to see the lobby of the bank?

17 A. No.

18 Q. So it's to his back, I guess?

19 A. Yes.

20 Q. Now, tell the jury then, about 10:30 that morning, did
21 something happen in the bank that kind of drew your attention
22 out into the lobby area?

23 A. Yes.

24 Q. Tell the jury what that was that happened.

25 A. I was dealing with Mr. Lewis, and there was some

1 commotion, and I heard the person running by saying, "Open
2 your drawers. Open your drawers." At that point I just
3 realized, Okay, you know, what's going on? Is this kids
4 playing out there? Is it something going on? So, yes, I
5 looked through the window to see what was going on.

6 Q. Okay. And did you see what was happening out there?

7 A. Yes.

8 Q. Okay. And did it appear to be somebody joking around
9 out there?

10 A. No.

11 Q. And describe to the jury how many people did you see out
12 in the lobby area when you looked out from your office?

13 A. I only saw one person rush by.

14 Q. And from where you're seated at your desk, could you see
15 actually Ms. Rustin and Ms. Bass behind the teller line where
16 they are?

17 A. No, sir.

18 Q. So you saw a person go by your office. What direction,
19 where were they heading?

20 A. They were headed towards the teller line.

21 Q. Okay. And describe that person as you saw -- that you
22 saw go by your office and your window.

23 A. As I saw him through my lobby window, it was just a
24 black blur and -- as he rushed by.

25 Q. Okay. What did you do at that point in time when you

1 saw that person and kind of heard what was going on out
2 there?

3 A. I said to Mr. Lewis, I think we're being robbed, and
4 Mr. Lewis confirmed that he had the same idea. So I reached
5 over and I picked up the phone and I dialed 911.

6 Q. And did you get through to 911?

7 A. Yes.

8 Q. Okay. And were you on the phone with them while the
9 robbery was actually going on inside the bank?

10 A. Yes.

11 Q. Now, at some point in time, did you have an occasion to
12 see what you described as just being a blur going by
13 initially? Did you have an occasion to see that person
14 again?

15 A. I did see him as I was looking at my computer screen. I
16 thought he fell. He went down towards the floor. I made
17 sure to keep my eyes on the computer screen because I was on
18 the phone with 911, and I didn't really want that to be found
19 out.

20 And he went by again. And then as he exited the
21 building, 911 asked me if I knew which direction he went. So
22 I stood in my window that overlooks the parking lot and Club
23 Course Drive and relayed to the 911 person what I was
24 watching.

25 Q. Okay. What was that that you were seeing in looking out

1 your window then?

2 A. I was watching him run by my window, down towards Steel
3 City, which is the restaurant behind us, and following Club
4 Course Road -- Drive, he crossed the street and went into the
5 woods.

6 Q. And describe -- did you then have, from seeing him come
7 kind of exiting the bank and then coming outside your window
8 and watching him go down the road, did you have a little
9 better opportunity to see him and get a description of the
10 person you saw at that time?

11 A. Yes.

12 Q. Okay. And describe for the jury, then, that person that
13 you saw.

14 A. Okay. He had on some chocolate milk kind of colored
15 pants, cargo pants, too big, but that's how the kids wear
16 them now. He had on a hoodie. It was black with some gray
17 kind of fur in the hood, and it seemed to me it was a wig of
18 long black hair.

19 Q. How about -- could you tell if it was a male or a
20 female?

21 A. No. Just by the clothes, I would assume it was a guy,
22 but I didn't know for sure.

23 Q. Okay. But you never saw a face to be able to see that?

24 A. Right.

25 Q. Okay. And how about whether it was African-American or

1 a Caucasian?

2 A. No.

3 Q. Couldn't tell that either from -- all right.

4 And how about just kind of the overall kind of physical
5 build of the person you saw?

6 A. Skinny.

7 Q. Skinny?

8 A. His clothes were much larger than he was.

9 Q. And how about tall, short, medium?

10 A. Not very tall.

11 Q. Not very tall?

12 A. Probably around my height, five-seven. That's what I
13 would assume as he was running.

14 Q. Yet again, you're observing him kind of running away
15 from you basically down the road?

16 A. Yes.

17 Q. And what -- so you're on the phone with 911 kind of
18 describing some of this stuff to them as it's going on?

19 A. Yes.

20 Q. Did Mr. Lewis stay in the office with you?

21 A. No. Mr. Lewis -- I had my back to Mr. Lewis looking out
22 of the window, and while I was on the phone with 911, and the
23 next thing I knew, Mr. Lewis ran by my window. So he had
24 gone after the young man.

25 Q. And you testified that the last time you saw the

1 individual, he was kind of crossing the street kind of near
2 Steel City Pizza, going into the wooded area?

3 A. Yes.

4 Q. Let me show you --

5 MR. SORENSON: May I approach, Your Honor?

6 THE COURT: Yes, sir.

7 Q. Ms. Weeks, let me show you State's Exhibit No. 1 and ask
8 you if you recognize that map.

9 A. Yes.

10 Q. You've seen this map before?

11 A. Mm-hmm.

12 Q. Okay. And does this kind of depict, show the area of
13 where the bank, SunTrust Bank is located, Steel City Pizza is
14 located and the wooded area you saw the person run into?

15 A. Yes.

16 MR. SORENSON: At this time we offer State's Exhibit 1
17 into evidence.

18 THE COURT: Any objection?

19 MR. FALK: No objection.

20 THE COURT: Without objection, State's Exhibit No. 1
21 admitted into evidence.

22 (State's Exhibit 1 admitted into evidence.)

23 Q. Now, Ms. Weeks, are you able to kind of get yourself
24 oriented to what you're looking at?

25 A. Yes.

1 Q. Could you kind of point out -- and I think you can kind
2 of touch the screen and it'll put a dot -- initially kind of
3 where the bank is located?

4 A. (Witness complies.)

5 Q. Okay. And you had testified earlier that your window
6 kind of overlooked the parking lot and Club Course Road.

7 A. Uh-huh.

8 Q. So kind of draw, show the jury where Club Course Road is
9 that you're talking about.

10 A. (Witness complies.)

11 Q. Okay. And back at the beginning of where you started
12 that line, what main road is that, then, that the bank is
13 located on?

14 A. That's Dorchester Road.

15 Q. Okay. And if you would show the jury where Steel City
16 Pizza is located at then.

17 A. Well, over there (indicating).

18 Q. It's at the end of that little strip mall right there?

19 A. It's at the ending of the shopping center.

20 Q. And so as you observed the individual run by your window
21 and then kind of down Club Course Road, kind of show
22 approximately where you saw the individual cross into the
23 street and into the wooded area.

24 A. (Witness complies.)

25 Q. Okay. And I guess just kind of if you could do a little

1 circle of kind of the wooded area that you're talking about
2 the person -- I guess it won't let you circle. I'm sorry.

3 A. Right there (indicating).

4 Q. Okay. So into that wooded area?

5 A. Uh-huh.

6 Q. All right. And did you see the person again after that,
7 after they went into the wooded area?

8 A. No.

9 Q. And Mr. Lewis, you said you saw him come out and kind of
10 come by your window also. Do you know where he went at that
11 point in time?

12 A. He got -- he started to run, and then he came back and
13 got in his truck and took off in his truck.

14 Q. Okay. Do you know where he went at that point in time?

15 A. No.

16 MR. SORENSON: Thank you. Thank you, Ms. Weeks. That's
17 all I have. Please answer any questions Mr. Falk has.

18 THE COURT: Cross-examination.

19 MR. FALK: We have no questions.

20 THE COURT: You may step down.

21 Call your next witness.

22 MR. SORENSON: State calls John Baker.

23 CLERK OF COURT: Please place your left hand on the
24 Bible, raise your right hand and state your full name for the
25 record.

1 THE WITNESS: John Baker.

2 JOHN BAKER,

3 being first duly sworn, testified as follows:

4 THE COURT: Mr. Baker, as you're answering questions, I
5 want you to pretend or suppose that you're speaking to that
6 lady in the very back corner of the jury box back there.
7 Make sure everybody hears you.

8 THE WITNESS: Okay.

9 THE COURT: If it warrants a "yes" or "no" answer,
10 please give me a "yes" or "no" for the record to make sure
11 the record is clear. Please do not talk at the same time
12 that the questions are being asked, okay? Let them finish
13 the questions before you answer.

14 THE WITNESS: Okay.

15 THE COURT: All right, Mr. Sorenson.

16 MR. SORENSON: Thank you, Your Honor.

17 DIRECT EXAMINATION BY MR. SORENSON:

18 Q. Good morning, Mr. Baker.

19 A. Good morning.

20 Q. If you would tell the jury where it is that you're
21 employed.

22 A. I work for SunTrust Bank and I'm the manager at the
23 branch 8610 Dorchester Road.

24 Q. Okay. And that's in Dorchester County?

25 A. Yes, sir.

1 Q. Okay. And how long have you been employed with
2 SunTrust, first of all?

3 A. Little over nine years.

4 Q. Okay. And how long have you been employed in the
5 capacity of the manager of that SunTrust on Dorchester Road?

6 A. Since it opened about four years ago.

7 Q. And I want to turn your attention back to the morning of
8 April 1st of 2013, were you working that morning?

9 A. Yes, sir.

10 Q. Okay. And what other employees were working that
11 morning of April 1st at your branch?

12 A. Bonnie Weeks, Roberta Bass and Quinn Rustin.

13 Q. Okay. So the three young ladies that the jury's just
14 heard from?

15 A. Yes, sir.

16 Q. And it's my understanding that this was Ms. Bass's first
17 day working at that branch?

18 A. That is correct. It's the first day that she worked for
19 me.

20 Q. And when you enter the bank, if you would, tell the jury
21 where is your office located at, Mr. Baker.

22 A. As you enter the bank, my office is to the right of the
23 entrance.

24 MR. SORENSON: May I approach the witness, Your Honor?

25 THE COURT: Yes, sir.

1 Q. Let me show you a couple photographs, State's Exhibit
2 No. 3 and 4. Do you recognize those photographs?

3 A. Yes, sir.

4 Q. And they depict the entrance area of the bank and then
5 also where your office is located at?

6 A. Yes, sir.

7 MR. SORENSON: Your Honor, at this time we'd offer
8 State's 3 and 4 into evidence.

9 THE COURT: Any objection?

10 MR. FALK: No objection.

11 THE COURT: Without objection, State's Exhibit 3 and 4
12 admitted into evidence.

13 (State's Exhibits 3-4 admitted into evidence.)

14 Q. And initially, this State's Exhibit No. 3, Mr. Baker,
15 what's depicted in State's Exhibit No. 3?

16 A. The entrance, the entranceway to the bank.

17 Q. So that's the front door, and that picture is taken --

18 A. Looking from the inside of the bank out.

19 Q. Now, you testified that when you come in those doors,
20 where is your office located at?

21 A. When you come in, it's to the right.

22 Q. Showing you State's Exhibit No. 4, does that show your
23 office?

24 A. That is correct, right there (indicating).

25 Q. Where my finger is located?

1 A. Yes, sir.

2 Q. Now, that morning, Mr. Baker, of April 1st, about 10:30
3 that morning, where were you located at in the bank?

4 A. I was sitting in my office.

5 Q. And did you have anybody in the bank (sic) with you?

6 A. I did not.

7 Q. Were you aware at that time whether there were any
8 customers in the bank, either at the teller line or with
9 Ms. Weeks in her office?

10 A. I don't really remember, to be real honestly with you,
11 okay?

12 Q. That's fine. But you did not have anybody in your
13 office with you?

14 A. That is correct.

15 Q. Okay. And did you know -- let me ask you this: Did you
16 know where Ms. Rustin and Ms. Bass were about 10:30 when you
17 were in your office?

18 A. Yes, sir, they were behind the teller line.

19 Q. And how about Ms. Weeks?

20 A. I knew she was in her office.

21 Q. Okay. Just wasn't sure at that time whether she had a
22 customer with her or not?

23 A. That is correct.

24 Q. Okay. Now, at some point about 10:30 that morning,
25 Mr. Baker, did something happen inside the bank that kind of

1 caught your attention?

2 A. Yes, sir.

3 Q. Tell the jury what that was.

4 A. I just heard a commotion, and I was facing away from the
5 front of the bank, working on some papers on my desk, and I
6 turned around because I heard a commotion, didn't know
7 exactly what it was. And then I looked up and then I saw a
8 head pop up from behind our check-writing counter, and a
9 person then walked very rapidly out of the bank and went
10 through the front doors, tried to get through the front
11 doors, had trouble pushing instead of pulling, but tried to
12 get out the door.

13 Q. Okay. So prior to that initial kind of commotion you
14 heard and then looking down and you said you saw somebody
15 kind of pop up from behind one of the counters out there?

16 A. Yes.

17 Q. Had you heard anything or realized that a robbery was
18 going or anything like that prior to that?

19 A. I just heard noises, okay, like something got dropped
20 and clattered on the floor and whatever, and then I saw the
21 head pop up.

22 Q. So at that point in time when you saw the person go by,
23 tell the jury what you noticed about the person that you then
24 saw kind of walking briskly by, back to the front door area.

25 A. He had something all over his head and just walking

1 really fast, trying to get out the doors. I came out of my
2 office, looked at the ladies behind the teller line and --
3 and I don't remember if we communicated. I'm not even really
4 sure, but I knew something had happened.

5 And so my job then is to get to the front doors and lock
6 them, okay, so that nothing can come back into the branch.
7 And when I was going that way, I saw that individual go by,
8 and you can look from my office to the other side of the
9 bank, and I can see -- there are windows there out into the
10 parking lot, and I saw that person go by those windows. So I
11 went out of the branch and around the corner of the door so I
12 could see the person going down the road.

13 MR. SORENSON: May I approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 Q. Showing you State's Exhibit No. 2, are you familiar with
16 that photograph?

17 A. That is the front entrance to the bank.

18 Q. Okay. And does that show also the area then that you
19 would have seen this individual going?

20 A. That is correct.

21 MR. SORENSON: Your Honor, at this time we'd offer
22 State's 2 into evidence.

23 THE COURT: Any objection?

24 MR. FALK: No objection.

25 THE COURT: Without objection, State's Exhibit 2

1 admitted into evidence.

2 (State's Exhibit 2 admitted into evidence.)

3 Q. And looking at this photograph, Mr. Baker, where would
4 the front doors of the bank be located at in relation to the
5 photograph?

6 A. Right there, the front doors are just right there.
7 That's a window next to the front door (indicating).

8 Q. So just off to this side of the picture --

9 A. That is correct.

10 Q. -- if you panned around, you'd see the two -- the front
11 doors.

12 And you testified then that you saw -- you went out
13 around the corner. Is this basically the corner of the bank
14 you came around?

15 A. That is correct.

16 Q. And then where did you see this individual fleeing to at
17 that time?

18 A. They were -- he was going down the road, and none of
19 those cars were there. I mean, the parking lot was basically
20 empty, okay?

21 Q. I believe these are a handful of law enforcement
22 vehicles --

23 A. That is correct. Yes, there were no cars there at that
24 time.

25 Q. So you had, at that time, a clear view looking down?

1 A. Of the road.

2 Q. I guess Club Course Road?

3 A. Club Course Drive, yes, sir.

4 Q. And did you see where this individual went?

5 A. I watched him go down the road and went down that road
6 probably 150 to 200 yards, and then he cut left into the
7 woods that lined that road.

8 Q. Now, did you point that information out to anybody out
9 there?

10 A. Yes. One -- there was a client in the bank, and he came
11 out at the same time I did. And he said, "Did you see where
12 he went?"

13 And I pointed and said, "Yes, he just went into those
14 woods right there (indicating)."

15 Q. Now, do you know, are you familiar with who that person
16 is that you were talking to?

17 A. Don't know what his name is, no.

18 Q. And after kind of pointing that information out to that
19 customer that had come out, where -- what did you do at that
20 time?

21 A. Then I went back into the bank. I locked the doors and
22 then started our procedures when something like this happens.

23 Q. And law enforcement had been notified?

24 A. That is correct.

25 Q. Did they respond out there?

1 A. They were there very quickly.

2 Q. And that's the North Charleston Police Department; is
3 that correct?

4 A. Yes, sir.

5 Q. And let me ask you this: The jury's already seen some
6 of it with a couple of the other employees, but I guess is
7 there a surveillance system in the bank?

8 A. There is.

9 Q. And did you go about then that morning getting with your
10 security people and getting that security footage provided to
11 law enforcement?

12 A. I just give them the contact numbers and stuff to do
13 that, because then it goes directly to them. It doesn't go
14 through me.

15 Q. But you made sure that was done that morning with law
16 enforcement?

17 A. That is correct, yes, sir.

18 Q. And have you had an opportunity to view that
19 surveillance video?

20 A. Yes, sir.

21 Q. And the jury's seen, I guess, a couple different angles.
22 I'm not going to -- but is that -- ultimately, there are a
23 whole handful of different angles that are contained in that
24 CD that was provided to law enforcement?

25 A. Yes, sir.

1 Q. Now, Mr. Baker, as part of your job also then, did you
2 make an attempt to determine how much money was taken from
3 your bank that morning?

4 A. We as a bank, that's not my position. We have an
5 auditor, and then our area manager comes in, and they do what
6 we call they count the cash down so that they know exactly
7 how much was gone.

8 Q. And are you aware of about how much money was taken that
9 morning?

10 A. Can I look and see? I've got it written down in my
11 pocket. Is that all right? Yes, sir, it was \$6,032.

12 Q. And that would have all been taken from Ms. Rustin's
13 area?

14 A. That is correct. She was the only one that had a drawer
15 that morning.

16 Q. Let me ask you this, Mr. Baker: The individual that you
17 saw kind of walking past you and then that you observed
18 basically kind of running down Club Course Drive, are you
19 able to describe him for the jury?

20 THE COURT: Hold on a minute. I've got a juror that
21 needs a break.

22 MR. SORENSON: I'm sorry.

23 THE COURT: Hold on a minute. I'm going to let all of
24 you step to the jury room. Do not discuss the case, and I'll
25 get you back out here as quickly as possible. Please step to

1 the jury room.

2 (The jury retires to the jury room at 10:44 a.m.)

3 THE COURT: We'll stand down for just a few minutes.

4 Mr. Baker, you may step down, but do not, do not discuss
5 your testimony with anyone, okay? You can step down. We'll
6 stand down for a few minutes.

7 (Recess held.)

8 THE COURT: All right. Anything from the State before I
9 bring the jury back out?

10 MR. SORENSON: No, sir.

11 THE COURT: Defense counsel?

12 MR. FALK: No, Your Honor.

13 THE COURT: All right. Bring me the jury, please.

14 (The jury enters the courtroom at 10:59 a.m.)

15 THE COURT: I hope everyone's refreshed now and ready to
16 proceed.

17 State, you're recognized. You may continue direct
18 examination.

19 MR. SORENSON: Thank you. That would be all I have for
20 this witness, Your Honor.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION BY MR. FALK:

23 Q. You've been with the bank for four years, this branch
24 for four years?

25 A. Yes, sir.

1 Q. Okay. Are you familiar with the loss prevention
2 practices that the bank has: For example, dye packs, bait
3 money?

4 A. Yes, sir.

5 Q. I mean, that falls under your supervision?

6 A. Yes, sir.

7 Q. There was no bait money recovered in this case, was
8 there?

9 A. Not to my knowledge.

10 MR. FALK: No further questions.

11 THE COURT: Any redirect?

12 MR. SORENSON: Just very briefly.

13 REDIRECT EXAMINATION BY MR. SORENSON:

14 Q. Do you know, was a dye pack used?

15 A. No, sir.

16 Q. Do you know whether there was any bait money that was
17 given to the robber that morning?

18 A. The bank does not have what we classify as what you
19 would call bait money where we keep track of the numbers.
20 What our bait money does is when it's pulled, it sets an
21 alarm off, a silent alarm. So we don't have money inside the
22 drawer that is serial numbered that is given out, that is
23 not, that -- we don't have that kind of bait money.

24 Q. And on April 1st, the bank robbery that occurred at your
25 branch on April 1st, was any money given that would have had

1 a tracking device in it?

2 A. No, sir.

3 Q. Is that something that subsequently -- the steps that
4 your bank has taken -- taken steps to now attempt to do?

5 A. Yes, sir.

6 Q. Okay. But on April 1st, so that wasn't -- so there
7 wasn't any dye pack given. There wasn't any kind of tracking
8 device or anything like that in the money that was given to
9 the robber that morning?

10 A. That is correct.

11 MR. SORENSON: Thank you, Mr. Baker.

12 MR. FALK: Just recross.

13 RECROSS-EXAMINATION BY MR. FALK:

14 Q. Did the silent alarm go off in this case?

15 A. I don't know. I mean, to the best of my knowledge, yes,
16 but it's silent; so we don't hear it. It goes at the alarm
17 company.

18 Q. In your investigation of this case, did you ever find
19 out whether or not an alarm went off and whether or not the
20 money was triggered -- the alarm was triggered?

21 A. You know, I don't know, because we also dialed 911 at
22 the same time.

23 MR. FALK: Thank you.

24 THE COURT: Sir, you may step down. Thank you.

25 THE WITNESS: Thank you.

1 MR. SORENSON: May he be excused, Your Honor?

2 THE COURT: Any objection to him being excused?

3 MR. FALK: No, Your Honor.

4 THE COURT: Sir, you're excused. You may leave. You
5 have no further responsibilities under your subpoena.

6 THE WITNESS: Thank you.

7 THE COURT: You're free to go.

8 THE WITNESS: Thank you.

9 THE COURT: Have a good day.

10 Call your next witness.

11 MR. SORENSON: State calls David Lewis.

12 CLERK OF COURT: If you'll place your left hand on the
13 Bible, raise your right hand, state your full name for the
14 record.

15 THE WITNESS: David Lewis.

16 DAVID LEWIS,
17 being first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. SORENSON:

19 Q. Good morning, Mr. Lewis.

20 A. Good morning.

21 Q. If you would, please tell the jury how old you are.

22 A. 64.

23 Q. Okay. And what do you do for a living?

24 A. I'm retired.

25 Q. And you live in the Summerville area?

1 A. Yes. I live in Wescott Plantation off Dorchester Road.

2 Q. And back in April of last year, of 2013, were you doing
3 some of your banking at that time with the SunTrust Bank on
4 Dorchester Road?

5 A. Yes, I was.

6 Q. And specifically on the morning of April the 1st of
7 2013, were you at the SunTrust Bank on Dorchester Road that
8 morning?

9 A. Yes, I was.

10 Q. Okay. And around 10:30 that morning, who were you
11 interacting with at the bank?

12 A. I had went in the bank and sat down and talked to Bonnie
13 about some IRA money.

14 Q. And do you remember where you were sitting and meeting
15 with her in the bank?

16 A. When you walk in the bank, she's got the second office
17 on the left-hand side, great big window overlooking the
18 parking lot.

19 Q. And when you -- and you were sitting in there?

20 A. Yes.

21 Q. Okay. And when you were sitting, kind of tell the jury
22 how are you oriented then to the lobby of the bank. Are you
23 facing it, back to it or --

24 A. Okay. I'm sitting across as I am here. Bonnie was on
25 the other side of the desk. The window and the parking lot

1 is to my right, and the bank tellers are just to the left
2 behind me.

3 Q. Okay. So from where you're sitting, can you really see
4 what's going on out in the lobby without kind of turning and
5 looking?

6 A. No.

7 Q. And tell the jury then about 10:30 that morning, as
8 you're sitting in Ms. Bonnie Weeks' office with her, kind of
9 what happened.

10 A. Bonnie and I were talking, and where I'm sitting, you
11 can see to the right of me the window and see the parking
12 lot. A guy walked by, and I'm afraid in my lifetime I've
13 been in a couple robberies, and the first thing I noticed is
14 this fellow's passing by me and he's all cloaked up, and it's
15 summertime, and I've got on shorts, and he is dark hoodie,
16 hair, dark glasses, dark pants, baggy clothes, coming around
17 the corner, and I was thinking to myself, "Oh, boy, here we
18 go."

19 And within a couple minutes, he walked in, went behind
20 us. I seen him -- glanced just to see him go by. And Bonnie
21 said to me, she said, "David, don't turn around and look over
22 your shoulder, but I think we're being robbed." And she kind
23 of give me that look.

24 And I said, "Well, you've got a button to push? Push
25 the button and get on the phone and let's see what happens."

1 And you could hear some shuffling going on. I couldn't
2 hear what anybody was saying, and she got on the phone. The
3 fellow went out the door, come around, walked past me again
4 and then went down the street.

5 About that time I stood up. Bonnie stood up, and we're
6 describing the fellow as he's walking away. And as he gets
7 past the window where I can't see any longer, I walked out
8 the front. The bank manager was standing there watching the
9 guy go down the street. I jumped in my truck and I went
10 after him.

11 Q. Okay. And you said that you all were describing the
12 robber to law enforcement. Could you describe for the jury,
13 you have a little bit about the clothing, but kind of
14 describe the person that you saw that morning?

15 A. I couldn't recognize the person because I didn't see him
16 in the face. But as he walked by, the first thing you saw
17 when he walked by was he was -- his clothes were too big on
18 him, and he looked bigger than what he was. As he passed us
19 and went down the street, I think he was about five-six to
20 five-eight, probably 160 pounds.

21 As he was running away from the bank, he had a hoodie on
22 and the hoodie fell off and he had a big head of dreadlocks,
23 which looked way too big for his head, so I'm assuming at
24 that point that I didn't think that was his real hair.

25 As he ran away, again, I went out and went after him.

1 And when I went by him, he was in the woods. I went past him
2 up to the next intersection, which is about another 100 yards
3 away. And when I turned around, a car was coming at me. It
4 was a middle-class neighborhood and an old model Honda was
5 coming at me with this big guy in it, another black fellow.
6 And I knew right away that's not the right neighborhood.

7 So I turned my truck around real fast. When the fellow
8 got to the intersection of the road, the fellow that was in
9 the woods then came out and got in the car and they sped off,
10 and I went after them.

11 Now, the fellow that came out of the woods didn't have
12 all the clothes on that the fellow that went in the woods.
13 There was no longer dreadlocks anymore. There was no longer
14 a big heavy coat and that kind of stuff. He got in the car,
15 and I followed him.

16 Q. Okay. Let me just kind of back you up a little bit. So
17 you said you come out and get in your truck and head kind of
18 down the road, the direction you saw the person kind of
19 running?

20 A. The bank manager was standing at the bank. And what he
21 had done is went out the bank, went down the side and was
22 running down the side of the road, and then he crossed the
23 street and went in the woods. And the bank manager was
24 saying, "There he goes. He's going into the woods."

25 And we seen him cross the street like he was going in

1 the woods, and at that point I jumped in my truck and went
2 after him.

3 Q. Okay. And you testified that when you go kind of past
4 that wooded area, what is off to the left?

5 A. There was a small apartment complex right in that
6 section of woods there.

7 Q. Is that where you turned into?

8 A. I turned into there.

9 Q. And as you turned into that apartment complex, what did
10 you see?

11 A. Well, as soon as you turn into the apartment complex, of
12 course there's houses right there, but I didn't go, but, I
13 don't know, 30, 40 yards and there was a car coming at me.
14 And the car, again, was an older model, dark green Honda with
15 another fellow in it.

16 And like I said, it was probably a predominantly white
17 neighborhood in the upper middle class. The car just didn't
18 fit the spot, so I just assumed that might be what I was
19 after. So I turned the truck around and went back out.

20 Q. And you said -- I think you described that as kind of an
21 older -- and what color was that Honda?

22 A. Dark green.

23 Q. And what condition was that vehicle in?

24 A. It was old. It was -- the paint was faded. It was a
25 four-door car and it had been abused a little bit.

1 Q. And so as you turned around then, and obviously somebody
2 was -- the person you described, there was somebody driving
3 that vehicle, right?

4 A. Exactly.

5 Q. Okay. And did you then -- you testified that you then
6 saw somebody come out of the woods and get in the passenger
7 side of that vehicle?

8 A. That's exactly right.

9 Q. And did that appear to be the same person that you had
10 seen run into the woods but just no longer was kind of
11 dressed and hair the same way as the person that you saw go
12 in the woods?

13 A. Yes.

14 Q. Now, at that point in time, as that vehicle then went to
15 exit the apartment complex, which direction did it go?

16 A. It turned left, went down Coosaw Creek Parkway, I think,
17 and got to the intersection. There was a red -- there was a
18 traffic light there. The light was red. I was driving a
19 black unmarked Chevrolet police truck, okay? And so they
20 knew right away when I turned around that I had seen them and
21 I was after them.

22 MR. FALK: Objection, Your Honor. I'm not sure --

23 THE COURT: What's the grounds for your objection?

24 MR. FALK: He's professing what he believes my client
25 knew.

1 THE COURT: Hold on, come up here.

2 What's your objection?

3 MR. FALK: That he is not qualified to give an opinion
4 about what my clients were thinking when they saw the black
5 truck.

6 MR. SORENSON: He's basically just describing their
7 actions.

8 Q. Mr. Lewis, just --

9 THE COURT: Restate your question, Mr. Sorenson.

10 MR. SORENSON: Yes, Your Honor.

11 Q. Mr. Lewis, if I could just -- just kind of -- I want you
12 just to describe for the jury what the vehicle did, not
13 necessarily what they may have been --

14 A. Okay.

15 Q. -- thinking, because obviously you weren't in the
16 vehicle with them.

17 But so you turned your truck around and proceeded also,
18 took a left back onto the road that runs beside the bank?

19 A. Yes.

20 Q. And followed them? So basically you're going away from
21 the bank at this point in time?

22 A. That's exactly right.

23 Q. And you indicated that you came up, there's a red light,
24 I guess, at Patriot Boulevard and Coosaw Creek or Club Course
25 Drive?

1 A. Yes, sir.

2 Q. When that older green four-door Honda came to that
3 light, was it red or green?

4 A. The light was red.

5 Q. Okay. And what --

6 A. They ran the red light.

7 Q. What did you do at that point in time?

8 A. I followed behind them. I turned left to follow behind
9 them as they turned the corner. As we both turned the
10 corner, just got through the intersection, a marked police
11 car was coming my direction heading for the bank; and I waved
12 out the window trying to get the officer's attention. He
13 didn't appear to see me, I don't think, so I pursued the car
14 down the street, hoping to get some more information or a tag
15 number or something.

16 Q. So you were heading down now Patriot Boulevard?

17 A. That's correct.

18 Q. And describe for the jury how -- I mean, this Honda, how
19 was it driving at that time?

20 A. The Honda probably sped up to almost 100 miles an hour
21 with me right behind them, so it was very apparent they knew
22 I was there. When it got -- there was no traffic on the road
23 at the very beginning, but as we got a mile or two down the
24 road, we started running into traffic.

25 And the fellows that I was behind started zigzagging in

1 and out of cars, and I backed off and stopped at that point
2 because it was too dangerous for me to keep on doing that.

3 Q. And ultimately, where did you go then after you kind of
4 backed off and stopped following their vehicle?

5 A. I turned around and came right back to the bank.

6 Q. Let me ask you, the direction that you were following
7 them on Patriot Boulevard, you had testified that you live in
8 Wescott Plantation?

9 A. Yes.

10 Q. Would that be the way that you could go to go back to
11 Wescott?

12 A. Yes.

13 Q. And that's the direction that you were following the
14 vehicle?

15 A. Yes.

16 Q. Now, ultimately you had described the vehicle earlier.
17 Were you able to get the license tag of the vehicle?

18 A. Yes. I was trying to memorize the number, chase the car
19 and use my telephone and do all kind of things at one time,
20 and I tried to memorize the number the best I could, but when
21 I turned around and came back, the one thing that I
22 recognized, number one, it was a South Carolina license
23 plate, and I wasn't sure exactly whether it was a 153, the
24 first three numbers, or a 193, but that was generally what it
25 was. I gave that description to the police.

1 Q. Okay. You told them that morning back at the bank?

2 A. Yes.

3 Q. So a South Carolina tag with the first three numbers
4 either 153 or 193?

5 A. Yes.

6 MR. SORENSON: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 MR. SORENSON: Thank you, Mr. Lewis, please answer any
9 questions Mr. Falk has.

10 THE COURT: Cross-examination.

11 CROSS-EXAMINATION BY MR. FALK:

12 Q. You said when the -- when you saw somebody coming out of
13 the woods, he was no longer wearing the hoodie and the
14 jacket; is that correct?

15 A. Yes, sir.

16 Q. And you said that you all were going about 100 miles an
17 hour when you passed the police car?

18 A. No, sir. I said I turned the corner after running a red
19 light behind them, and the police car was making the turn
20 going to the bank. At that point we were probably only doing
21 20 or 30 miles an hour, starting to accelerate.

22 MR. FALK: One moment, please.

23 No further questions.

24 THE COURT: Any redirect?

25 MR. SORENSON: No, Your Honor.

1 THE COURT: Sir, you may step down, thank you.

2 MR. SORENSON: May he be excused?

3 THE COURT: Any objection to him being excused,

4 Mr. Falk?

5 MR. FALK: No, Your Honor.

6 THE COURT: Sir, you may be excused. You have no
7 further responsibility under your subpoena. You're free to
8 go. Have a good day.

9 Call your next witness.

10 MR. GIESE: State calls Officer Jeremy Ledford.

11 CLERK OF COURT: Place your left hand on the Bible,
12 raise your right hand and state your full name for the
13 record.

14 THE WITNESS: Jeremy Michael Ledford.

15 JEREMY LEDFORD,
16 being first duly sworn, testified as follows:

17 MR. GIESE: May it please the Court, Your Honor.

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION BY MR. GIESE:

20 Q. Officer Ledford, where do you work?

21 A. City of North Charleston, North Charleston Police
22 Department.

23 Q. And what are your duties with the police department?

24 A. I'm currently assigned to our gang unit, the gang
25 intervention unit.

1 Q. Okay. Were those your duties on April 1st, 2013?

2 A. Yes, sir.

3 Q. And can you kind of describe those duties?

4 A. Our team, what we do is we currently identify and track
5 criminal gang members. What we do is we'll use a lot of
6 different sources from intelligence gathering techniques to
7 identify them, from what different sets, and try to monitor
8 them and eventually go up for state and federal prosecution.

9 Q. Do you assist in other areas with law enforcement?

10 A. Yes, sir. We are certified law enforcement officers, so
11 if there's a call that goes out, even though we're, you know,
12 attached to a different team, if a certain call goes out,
13 we're close to it, then we'll assist them as well.

14 Q. Do you remember April 1st, 2013?

15 A. Yes, sir.

16 Q. What happened that day?

17 A. Actually, the call came out across the radio. The -- it
18 was -- the tones were dropped, is what we call it, so we knew
19 it was kind of a higher priority call, and I happened to be
20 just a couple miles down the street from the scene of that.
21 Just due to my close proximity to the call, I went ahead and
22 responded.

23 Q. Where was that?

24 A. I was at -- when I responded, I believe I was at the
25 intersection of Dorchester and Parquet Drive.

1 Q. Okay. And where did you respond to?

2 A. I believe 8601 Dorchester. It was Dorchester and Coosaw
3 Boulevard.

4 Q. Okay. And --

5 A. The SunTrust Bank.

6 Q. Okay. And what was it in reference to?

7 A. It was in reference to a possible bank robbery.

8 Q. Describe for the jury what you observed when you arrived
9 on scene.

10 A. When I arrived on the scene, there were several other
11 marked units that were already on scene because of the way
12 the call had come out. They were kind of saturation --
13 saturating the area, trying to look for the -- any suspects
14 that had fled the business.

15 When I arrived on scene, I had set up just south of the
16 actual bank itself, waited for another unit to get on the
17 opposite side and then we actually exited our vehicles and
18 approached the business.

19 Q. Okay. What happened next?

20 A. As we approached the front doors, we were going to go
21 ahead and enter the bank to make sure that there was nobody
22 left inside the bank that was hostile. We got to the front
23 door and the front doors were locked, so we had -- actually
24 had to wait -- the other officer and I had to wait for the
25 branch manager to unlock the front door for us to enter.

1 Q. Okay. Did you eventually enter?

2 A. Yes, sir, we did.

3 Q. And what did you do inside?

4 A. Once we entered the bank, we conducted a sweep of the
5 inside of the bank just to make sure that everybody was safe,
6 started talking to employees, getting general description
7 from employees of, you know, who had fled the business, what
8 had taken place, direction of travel, where they may have ran
9 to, just pretty much make sure everybody was okay inside.

10 Q. Did you determine a place of travel, as you said?

11 A. Yes, sir. We were told that upon the suspect exiting
12 the actual front of the bank, from inside the bank looking
13 out, that they went out the front doors and went to the
14 right, and after they went to the right, that they lost sight
15 of him and were no longer able to view him.

16 Q. Okay. Did you go out there?

17 A. After -- after my part inside the bank was over with, I
18 did exit the -- exit the bank and went down. We were told
19 that the exterior of the bank, near that wood line is where
20 he ended up running through. And I exited the bank and went
21 back over there to assist the K-9 handler that was called to
22 the scene.

23 Q. Okay. And what K-9 handler was there, was at the scene?

24 A. Sergeant Sharp.

25 Q. Officer Ledford, I'm showing you what's been entered

1 into evidence as State's Exhibit 1. Can you kind of
2 describe -- first of all, what is that?

3 A. That's the intersection of Dorchester Road and Club
4 Course.

5 Q. Is the SunTrust Bank you responded to in this
6 photograph?

7 A. Yes, sir, it is.

8 Q. And you can mark on the screen. Can you show the jury
9 where?

10 A. Right here (indicating).

11 Q. And what was the route that you were told the suspect
12 fled to?

13 A. I was told that he -- the suspect fled, went around the
14 right-hand side of the building and crossed over into the
15 wood line and back up (indicating).

16 Q. And that's the route you went as well?

17 A. Yes, sir.

18 Q. Describe for the jury what you did once you got to the
19 wood line.

20 A. Once I got to the wood line, we already had the K-9 that
21 was doing the initial track to try and, you know, locate the
22 suspect. During the track itself, Sergeant Sharp entered the
23 wood line. And once the track -- we ended up just right over
24 here where there is the back of I believe it's the apartment
25 complex, kind of like the manager's office, and that's where

1 we had stopped at (indicating).

2 We were actually on the way back -- as I was assisting
3 Sergeant Sharp, we were on the way back to put the dog away,
4 and the dog actually just kind of went back in the woods on
5 his own. He, you know, kind of picked up another scent or
6 whatever the case may be and went back in the wood lines.

7 I actually stayed back out on the outside of the wood
8 line. I guess there was some other evidence that was
9 located, and I stayed on the outside of that, the wood line
10 right at the roadway, to be kind of a physical marker for our
11 crime scene units, our forensics units, so that when they
12 arrived on scene when they were finished processing the
13 inside of the bank, that they would know exactly where that
14 they needed to enter the wood line to go look for other items
15 that were located.

16 Q. Did crime scene eventually go to the wooded area?

17 A. Yes, sir. When they were finished processing the inside
18 of the bank, they came down, and as -- with me standing on
19 the side of the roadway being a physical marker, we told them
20 that that was the place that they needed to enter to be able
21 to recover items that were located in the woods.

22 Q. Okay. After you directed crime scene to that area, what
23 else did you do, what happened next?

24 A. From that, once crime scene entered the wood line where
25 I was marking for them, my duties were done. The inside of

1 the bank had been turned over to detectives. Forensics had
2 already processed it, and my part was complete.

3 Q. So you went back out on the road --

4 A. I left the scene and went back in service, yes, sir.

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

7 No further questions for this witness, Your Honor.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION BY MR. FALK:

10 Q. You said that your involvement, that your normal scope
11 of duties is with gang involvement?

12 A. Yes, sir.

13 Q. During the course of the investigation of this bank
14 robbery, did any leads get developed as to possible gang
15 involvement in this?

16 A. No, sir. We actually didn't follow up on this case with
17 that angle at all, not from our unit.

18 Q. If it just didn't come to your attention, could it have
19 come to somebody else's attention in your unit, or would you
20 know about it?

21 A. Typically, the way our department works, if there's any
22 type of gang involvement from any angle, we're supposed to be
23 notified for us to eventually be able to run the actual gang
24 angle on that. So we would have or should have been notified
25 if there was any type of gang involvement.

1 Q. House of Murdah, M-U-R-D-A-H, is that a gang?

2 A. House of Murdah?

3 Q. Yes.

4 A. Not that our unit is aware of, no, sir.

5 MR. FALK: Nothing further.

6 THE COURT: Any redirect?

7 MR. GIESE: No, Your Honor.

8 THE COURT: Sir, you may step down. Thank you.

9 THE WITNESS: Thank you, Your Honor.

10 MR. GIESE: May this witness be excused, Your Honor?

11 THE COURT: Any objection?

12 MR. FALK: No objection.

13 THE COURT: Sir, you're excused. You're free to go.

14 You have no further responsibility under your subpoena. Have
15 a good day.

16 THE WITNESS: Thank you, sir. And you as well.

17 THE COURT: Call your next witness.

18 MR. GIESE: State calls Sergeant Ken Sharp.

19 CLERK OF COURT: If you'll please place your left hand
20 on the Bible, raise your right hand and state your full name
21 for the record.

22 THE WITNESS: Kenneth W. Sharp.

23 KENNETH SHARP,
24 being first duly sworn, testified as follows:

25 MR. GIESE: May it please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION BY MR. GIESE:

3 Q. Good morning, Sergeant. Where do you work?

4 A. I work for the City of North Charleston.

5 Q. And what are your duties?

6 A. Currently assigned to our K-9 unit. I'm the sergeant
7 over the unit.

8 Q. Okay. Were those your duties on April 1st of 2013?

9 A. Yes, they were.

10 Q. Do you remember that day?

11 A. Yes, I do.

12 Q. What happened that day?

13 A. That day I was requested to respond to the SunTrust Bank
14 to conduct a track for a robbery which had just occurred.

15 Q. Okay. Sir, were you kind of the on-call K-9 person?

16 A. Yes. Well, I was the only K-9 that was available at
17 that time.

18 Q. Describe for the jury what happened when you first
19 arrived. What did you observe?

20 A. When I first arrived, I met with the sergeant that was
21 on scene. He informed me of the incident which had occurred
22 at the bank. I was given a last direction of travel for the
23 fleeing suspect, and that's when I retrieved my K-9 and
24 started the actual track.

25 Q. What was the last direction of travel?

1 A. Last direction of travel was on the right-hand side of
2 Coosaw Creek Boulevard behind the bank.

3 Q. I'm showing you what's been entered into evidence as
4 State's 1. It's going to pop up on your screen there. Can
5 you -- first of all, do you recognize this?

6 A. Yes, I do.

7 Q. What is this showing?

8 A. This is a aerial photo of Dorchester Road and Club
9 Course Drive.

10 Q. Okay. And I had asked you previously about his
11 direction of travel. Can you kind of show on the map what
12 was shown to you or told to you?

13 A. It was on the map where the blue X is. It was actually
14 across the street and a little bit towards Dorchester Road in
15 this grassy area where I was last (indicating) --

16 Q. You can kind of use your finger and draw on there. Just
17 kind of show the general vicinity.

18 A. (Witness complies.)

19 Q. Okay. And so did you go to that wooded area?

20 A. Yes, I did. I deployed my K-9 around that area and I
21 tracked down the grass and right around here is where we
22 crossed the street (indicating).

23 Q. Okay. What happened next?

24 A. After we crossed the street, my K-9 led me down to an
25 area right around in here (indicating), and we went into the

1 wood line, which would have been to the left.

2 Now, when we went into that wood line, I found an area
3 in the grass that was a combination of tall grass on the
4 outside or just on the outside of the wood line where it
5 appeared that someone or something had been laying down
6 there.

7 Q. And let me stop you before we go too far. What's your
8 training as a K-9 officer? Can you kind of give us a little
9 background on that?

10 A. I've been with the unit for about 13 years. I'm
11 currently working my third police K-9. I'm the trainer at
12 North Charleston. I've conducted training around Georgia and
13 South Carolina and North Carolina. I've been to several
14 seminars, training seminars in the area.

15 Q. And the K-9 you currently have is the one that you had
16 on April 1st of 2013?

17 A. That is correct.

18 Q. Okay. And I kind of interrupted you there. What
19 happened once you get to that apartment area? What happened
20 next?

21 A. After we found this area on the grass where -- that I
22 described earlier, my K-9 kind of pretty much circled. So at
23 the time, I assumed that that was the direction or where the
24 person had fled through. We were in the process of walking
25 back to the vehicles, and we were on this side of the road

1 (indicating), and right around in this spot right here, my
2 K-9 took a right and actually entered the wood line right in
3 here (indicating).

4 Q. Okay.

5 A. It appeared that he was on another trail.

6 Q. And did you follow him into the wood line?

7 A. Yes. As soon as we entered the wood line, we got about
8 30 feet in and we came across a black hat that was lying on
9 the ground and that -- at the time my dog picked up the hat
10 and had it in his mouth.

11 Q. Okay. What else did you find?

12 A. We told him to let go of the hat or I told him to let go
13 of the hat. We continued to track, and from there in
14 sequence, we located a single glove. It looked like a
15 medical glove that you would use, a wig, and a we also found
16 a pistol that was lying on the ground too.

17 Q. Okay. And did you alert crime scene of that?

18 A. Yes, sir.

19 Q. Or what's your protocol at that point?

20 A. At that time we usually have somebody stand by with the
21 evidence, and I'll continue -- I'll continue to work my dog.

22 Q. Okay.

23 A. So we had -- I believe it was Officer Ledford we had
24 stand by, and I continued my track through the woods, and we
25 pretty much did a half moon and came right back into this

1 area where the dog had initially led to where the grass was
2 all laid down.

3 Q. Okay. And describe the grass being laid down. What was
4 the significance of that and how did you notice that?

5 A. I noticed it because all the other grass in the area, it
6 was very tall grass, but it was standing up, and it was laid
7 down on. It wasn't broken grass, so it looked like somebody
8 had laid down there to try and conceal themselves.

9 I don't believe it was an animal. The only animals that
10 are in the area are deer and wild boar, and I don't believe
11 they're going to bed down that close to the housing area.

12 MR. GIESE: Beg the Court's indulgence.

13 May I approach the witness, Your Honor?

14 THE COURT: Yes, sir.

15 Q. Sergeant Sharp, I'm showing you what's been premarked as
16 State's Exhibit 6. Can you describe that, please?

17 A. That's going to be the black hat that we first located
18 going into the woods.

19 Q. Is that the hat your dog located originally?

20 A. Yes, it is.

21 Q. And I'm showing you what's been marked as State's
22 Exhibit 7. What's that a picture of?

23 A. That's a close-up of the black hat.

24 Q. Are those both fair and accurate depictions of the black
25 hat that was found, discovered by you on April 1st, 2013?

1 A. Yes, it is.

2 MR. GIESE: Your Honor, at this time the State would
3 move to have State's 6 and 7 entered into evidence.

4 THE COURT: Any objection?

5 MR. FALK: No objection.

6 THE COURT: Without objection, State's Exhibits 6 and 7
7 admitted into evidence.

8 (State's Exhibits 6-7 admitted into evidence.)

9 Q. All right. Sergeant Sharp, I'm showing you what's been
10 premarked as State's Exhibit 8. Do you recognize that?

11 A. Yes, I do.

12 Q. And what's that a photo of?

13 A. That's the single latex glove.

14 Q. And is that a fair and accurate representation of the
15 glove that was found that day?

16 A. Yes, it is.

17 MR. GIESE: Your Honor, at this time the State would
18 move to have State's Exhibit 8 entered into evidence.

19 THE COURT: Any objection?

20 MR. FALK: No objection.

21 THE COURT: Without objection, so admitted, State's
22 Exhibit 8.

23 (State's Exhibit 8 admitted into evidence.)

24 Q. Sergeant, now I'm showing you what's been premarked as
25 State's Exhibit 9. Do you recognize that?

1 A. Yes, I do.

2 Q. Can you describe that?

3 A. That's a close-up picture of the latex glove.

4 Q. Is that a fair and accurate representation of that latex
5 glove?

6 A. Yes, it is.

7 MR. GIESE: Your Honor, at this time the State would
8 move to have State's 9 entered into evidence.

9 THE COURT: Any objection?

10 MR. FALK: No objection.

11 THE COURT: Without objection, State's Exhibit 9
12 admitted.

13 (State's Exhibit 9 admitted into evidence.)

14 Q. All right, Sergeant, now State's Exhibit 10. Do you
15 recognize that?

16 A. Yes, I do.

17 Q. And what is that?

18 A. That's the handgun that we found on the track.

19 Q. Okay. Is that a fair and accurate representation of the
20 handgun you found on April 1st, 2013?

21 A. Yes, it is.

22 MR. GIESE: Your Honor, the State would move that
23 State's Exhibit 10 be entered into evidence.

24 THE COURT: Any objection?

25 MR. FALK: No objection.

1 THE COURT: Without objection, State's Exhibit 10
2 admitted.

3 (State's Exhibit 10 admitted into evidence.)

4 Q. Sergeant Sharp, this is State's Exhibit 11. Can you
5 describe that for us?

6 A. Yes, it's a close-up of the handgun.

7 Q. Is that a fair and accurate representation of the
8 handgun you found on April 1st, 2013?

9 A. Yes, it is.

10 MR. GIESE: Your Honor, the State moves to have State's
11 11 entered into evidence.

12 THE COURT: Any objection?

13 MR. FALK: No objection.

14 THE COURT: Without objection, State's Exhibit 11
15 admitted.

16 (State's Exhibit 11 admitted into evidence.)

17 Q. All right, now, State's Exhibit 12, Sergeant, can you
18 describe that for us?

19 A. Yes. That's going to be the wig that we found on the
20 track.

21 Q. Is that a fair and accurate representation of the wig
22 found on April 1st, 2013?

23 A. Yes, it is.

24 MR. GIESE: At this time, Your Honor, the State moves to
25 have State's 12 entered into evidence.

1 THE COURT: Any objection?

2 MR. FALK: No objection.

3 THE COURT: State's 12 admitted without objection.

4 (State's Exhibit 12 admitted into evidence.)

5 Q. Finally, Sergeant, this is State's Exhibit 13. Do you
6 recognize that?

7 A. Yes. That's a close-up of the wig.

8 Q. And is that a fair and accurate representation of the
9 wig found on April 1st, 2013?

10 A. Yes, sir.

11 MR. GIESE: Your Honor, at this time the State moves to
12 have Exhibit 13, State's Exhibit 13 moved into evidence.

13 THE COURT: Any objection?

14 MR. FALK: No objection.

15 THE COURT: Without objection, State's Exhibit 13
16 admitted.

17 (State's Exhibit 13 admitted into evidence.)

18 MR. GIESE: Your Honor, may I publish these for the
19 jury?

20 THE COURT: Yes, sir.

21 Q. Sergeant, can you describe that photo for the jury,
22 please?

23 A. Yes, sir. This is going to be the black hat that my K-9
24 picked up on the track in his mouth.

25 Q. Okay. Is that the first thing your K-9 located that

1 day?

2 A. Yes, it is.

3 Q. Okay. That's State's Exhibit 6, for the record. I'm
4 showing you what's been entered into evidence as State's
5 Exhibit 7. Can you describe that for the jury, please?

6 A. That's a close-up picture of the black hat.

7 Q. I'm showing you what's been marked as State's Exhibit 8.
8 Can you describe that, please?

9 A. Yes. This is going to be the latex, single latex glove
10 that we found.

11 Q. Okay. Can you kind of circle it on there? Can you see
12 it?

13 A. (Witness complies.)

14 Q. Sergeant, this is State's Exhibit 9. Can you describe
15 that?

16 A. That's a close-up of the latex glove.

17 Q. Is that -- and is that in the same position as what was
18 on the previous picture?

19 A. Yes, it is.

20 Q. Okay. It's just a close-up view?

21 A. Correct.

22 Q. All right. This is State's Exhibit 10. Can you
23 describe that, please?

24 A. Yes. This is going to be the handgun that we found on
25 the track.

1 Q. Can you circle the handgun on there?

2 A. (Witness complies.)

3 Q. Okay. And that's where the handgun was when you found
4 it?

5 A. Correct.

6 Q. This is State's Exhibit 11. Can you describe that for
7 us?

8 A. This is a close-up of the handgun.

9 Q. This has been entered into evidence as State's
10 Exhibit 12. Do you recognize that?

11 A. Yes, that's going to be the wig.

12 Q. And this is State's Exhibit 13. Can you describe that
13 for us?

14 A. That's a close-up of the wig, sir.

15 Q. Sergeant, can you describe where all these items were
16 found, and were they all found in the same general vicinity
17 or --

18 A. They were in the general vicinity, but it was as we
19 proceeded throughout the track, you know, the hat and then
20 this item and then this item and then this item, as if to be
21 discarded as a person was going through the woods.

22 Q. Okay. That wooded area, and how big is that area, would
23 you estimate?

24 A. It's not very big, in that general area maybe a quarter
25 of an acre. When you enter the woods, you can see through to

1 the other side.

2 Q. Okay. After you alerted crime scene to these items,
3 what did you do next?

4 A. After we completed the track, I returned to my vehicle
5 and placed my dog back in the truck.

6 Q. And then you went back out, back out on the road?

7 A. Correct.

8 Q. So that was -- was that the extent of your involvement?

9 A. Yes, it was.

10 MR. GIESE: I have no further questions, Your Honor.

11 THE COURT: Cross-examination.

12 CROSS-EXAMINATION BY MR. FALK:

13 Q. How far was the wig found relative to this area of
14 grass? You had talked about an area of grass --

15 A. Maybe 60, 75 yards.

16 Q. Okay. And the way that a K-9 works is that it's
17 locating these by a scent?

18 A. Honestly, it's all depending on who you talk to.
19 There's a couple different theories on how K-9 track. It's
20 basically skin graphs or disturbance on the ground is how a
21 dog tracks, but he distinguishes items because it's a
22 different smell than what the smell of the ground is.

23 Q. Once a K-9 finds one item does it, does it -- is it
24 trained to keep looking for additional items?

25 A. If we tell the dog to continue to search, yes.

1 Q. And as part of the search, you would have wanted to find
2 all the items in that area; is that correct?

3 A. That's correct.

4 Q. And the K-9 didn't locate any other items in the area?

5 A. No, just those items that we described.

6 MR. FALK: No further questions.

7 THE COURT: Any redirect?

8 MR. GIESE: No, Your Honor.

9 THE COURT: Sir, you may step down, thank you.

10 MR. GIESE: May this witness be excused?

11 THE COURT: Yes, sir. So you are excused. You have no
12 further responsibility under the subpoena. You're free to
13 go. Have a nice day.

14 THE WITNESS: Thank you, sir.

15 THE COURT: Call your next witness.

16 MR. SORENSON: State calls Terrance Bryant.

17 CLERK OF COURT: Please place your left hand on the
18 Bible, raise your right hand and state your full name for the
19 record.

20 THE WITNESS: Terrance Bryant.

21 TERRANCE BRYANT,
22 being first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. SORENSON:

24 Q. Good morning, Terrance.

25 A. Good morning.

1 Q. If you would, tell the jury how old you are.

2 A. I'm approximately 27 years old, just had a birthday on
3 September 23rd.

4 Q. So you just turned 27?

5 A. Yes, sir.

6 Q. Okay. And where do you currently live, Terrance?

7 A. 108 Bragg Street, Norway, South Carolina.

8 Q. And Norway is in what county?

9 A. Orangeburg County.

10 Q. Orangeburg County. And who do you live there with?

11 A. With my girlfriend and our three children.

12 Q. Okay. And what's your girlfriend's name?

13 A. Chyronda Youmans.

14 Q. Okay. And how old are your three kids?

15 A. We have -- the oldest one is 15; the middle one is ten;
16 and the youngest one is two.

17 Q. Okay. And those are all her children?

18 A. Probably the last one. That's me and hers, the youngest
19 one, the two-year-old.

20 Q. The other two -- obviously the 15-year-old is not yours,
21 because you would have been 12, right?

22 A. Yes, sir.

23 Q. Okay. So the youngest of the three children that live
24 there is actually your biological child; is that correct?

25 A. Yes, sir.

1 Q. And when is her birthday?

2 A. Her birthday is March 29th.

3 Q. And so this year, 2014, March 29th, how old did she turn
4 that birthday?

5 A. Two.

6 Q. So on March 29th of 2013, that was her first birthday?

7 A. First birthday.

8 Q. And let me ask you, do you know the defendant,
9 Tyrone Ellison?

10 A. Yes, sir.

11 Q. And how about his family, do you know his mother and
12 stepfather?

13 A. I knew his mother.

14 Q. And how long have you known Mr. Ellison?

15 A. I'm going to say approximately around 12 years.

16 Q. And back in early 2013, were you friends with
17 Mr. Ellison?

18 A. Yes, sir.

19 Q. Now, back -- kind of back you up to March into the early
20 part of April of 2013, Terrance, were you living in Norway
21 with Ms. Youmans at that time?

22 A. Yes, sir.

23 Q. And what were you doing for a living back during that
24 time?

25 A. During that time I'm approximately going to school at

1 Denmark Tech and doing odd jobs.

2 Q. And are you still in school at Denmark Tech?

3 A. Yes, sir.

4 Q. And how about Ms. Youmans?

5 A. Yes, sir.

6 Q. Same thing, in school also?

7 A. Yes, sir.

8 Q. And were you receiving financial aid back in the spring
9 of 2013?

10 A. Yes, sir.

11 Q. To go to school at Denmark Tech?

12 A. Yes, sir.

13 Q. All right. Let me ask you this: In March of 2013, did
14 you and Chyronda have a vehicle?

15 A. No, sir.

16 Q. Were you looking for a vehicle during that time period?

17 A. We had discussed it and was planning on purchasing one.

18 Q. Let me ask you, in March of 2013, did you have a
19 driver's license?

20 A. No, sir.

21 Q. How about Chyronda, did she have a driver's license?

22 A. No, sir.

23 Q. Okay. Who was ultimately -- were you looking to get a
24 vehicle for, though, out of the two of you all?

25 A. My girlfriend.

1 Q. And in March of 2013, did Mr. Ellison know that you were
2 looking for a vehicle? Was he aware of that --

3 A. I'd say around the end of March, yes, sir.

4 Q. The end of March? Okay.

5 And now let me ask you this, Mr. Bryant: At some point
6 in time, did Mr. Ellison, the defendant, Tyrone Ellison,
7 contact you about possibly selling you a vehicle?

8 A. Approximately April 1st of 2013, which is the same day
9 we received our second half of our check from Denmark Tech,
10 he called me that morning. And as we -- it was just a normal
11 conversation. It wasn't about a vehicle or anything and come
12 up that I would let him know that we was at Denmark Tech
13 receiving our funds, and we were looking for a vehicle. At
14 that time he brought it to my attention that he had a vehicle
15 that he would like to sell.

16 Q. Okay. And you said -- how do you know what day that
17 was?

18 A. I knew what day was that exactly because, like I said,
19 on the 29th of March was a Friday, which was my daughter
20 first birthday. That Saturday, which was the 30th, it was a
21 festival in our -- where we live at in our little town. That
22 Sunday was Easter, and that Monday is the second part of our
23 check was given to us, that morning.

24 Q. Okay. And did you all cash that check?

25 A. I didn't specifically cash my check. She cashed hers

1 that day.

2 Q. Okay.

3 A. I still had, like, I'm going to say approximately four,
4 five hundred dollars from the check we received two weeks
5 before that.

6 Q. So by "she," you mean your girlfriend, Chyronda?

7 A. Yes, sir.

8 Q. So she cashed a check that day, April 1st?

9 A. That same day, April 1st.

10 Q. Okay. And where did you all cash or she cash that
11 check?

12 A. She cashed it at a liquor store in Orangeburg.

13 Q. Okay. And was that where you had cashed previous checks
14 also --

15 A. Previous checks.

16 THE COURT: Hold on. Let him finish his question before
17 you speak. My court reporter is trying to take down what
18 both of you are saying and she can't take down when both of
19 you are talking, okay? So please let him finish his
20 question. Thank you, sir.

21 You may continue, Mr. Sorenson.

22 MR. SORENSON: Thank you, Your Honor.

23 Q. So you're sure that it is the Monday after your
24 daughter's birthday, so April the 1st?

25 A. Yes, sir.

1 Q. Okay. And ultimately, did you get a call sometime later
2 that day from Mr. Ellison indicating that he did, in fact,
3 want to sell you that vehicle?

4 A. Yes, sir, approximately 4:00, around about 4 or 5:00.

5 Q. That afternoon?

6 A. Mm-hmm.

7 Q. And where were you at when he called you?

8 A. I was in Norway.

9 Q. And did -- do you know back in April of -- you know, on
10 April 1st of 2013, do you know where Mr. Ellison was living
11 then?

12 A. Yes, sir. He was approximately living in Wescott
13 Plantation.

14 Q. That's in Summerville?

15 A. Yes, sir.

16 Q. And did you make arrangements then to meet up with him
17 to see if you were, in fact, interested in buying this
18 vehicle he had?

19 A. Yes, sir.

20 Q. Okay. And did he come to you in Norway or you go to him
21 in Summerville or how did that work out?

22 A. We had meet at a gas station in Walterboro, South
23 Carolina.

24 Q. Is that kind of in the middle, I guess, between the two
25 of you all?

1 A. Yes, sir.

2 Q. And let me ask you, how did you get to -- given the fact
3 that you may have been buying a vehicle, how did you get to
4 that gas station in Walterboro?

5 A. My girlfriend cousin took me there.

6 Q. Okay. And what is his name?

7 A. T.J.

8 Q. T.J.

9 A. Timothy.

10 Q. Is T.J. still with us?

11 A. No, sir.

12 Q. He's passed away since April of 2013?

13 A. Yes, sir.

14 Q. But he gave you a ride there?

15 A. Yes, sir.

16 Q. And how about Mr. Ellison, did he arrive at that gas
17 station in Walterboro?

18 A. When I got to the gas station, Mr. Ellison was already
19 there.

20 Q. And was he with anybody?

21 A. Probably two people. I know it was a male and a female.
22 I couldn't really see them because of the tinting on the van,
23 the white van that was already there with Mr. Ellison.

24 Q. So those other two people were in a white van?

25 A. Yes, sir.

1 Q. From what you saw of them, did you recognize either one
2 of them?

3 A. No, sir.

4 Q. And now, how about Mr. Ellison? Let me just make sure
5 just for the record. The person we're referring to, do you
6 see him in the courtroom?

7 A. Yes, sir.

8 Q. Okay. And point him out for the jury.

9 A. Right there (indicating).

10 Q. What's he wearing at the defense table?

11 A. Like a turquoise blue shirt.

12 Q. So he was at the gas station in Walterboro when you got
13 there that afternoon of April the 1st?

14 A. Yes, sir.

15 Q. Okay. And did he have a vehicle with him?

16 A. He had the green Honda. I guess that was -- he drove
17 the green Honda, and the people in the white van was his ride
18 back from the gas station.

19 Q. Okay. And describe for the jury that green Honda that
20 Mr. Ellison had with him that afternoon of April the 1st.

21 A. It was a 2000 green Honda Civic, four doors, and it was,
22 like, a cute car, a good car.

23 Q. What condition was it in? I mean, was it brand-new
24 looking or --

25 A. No. It was fair. It was fair.

1 Q. Okay. And ultimately did you agree to buy that vehicle
2 from Mr. Ellison that afternoon?

3 A. Yes, sir.

4 Q. Okay. And did you pay him that afternoon?

5 A. Yes, sir.

6 Q. What did you pay him?

7 A. I counted out \$900.

8 Q. Okay. You gave that to Mr. Ellison?

9 A. Yes, sir.

10 Q. Now, at that time did you then take possession of that
11 vehicle that afternoon?

12 A. I took possession of that vehicle that afternoon, but
13 after I paid him the \$900, you know, we talked for another
14 five minutes as I approximately looked at the car, and he
15 took his tag off the Honda, and I replaced it with another
16 tag.

17 Q. All right. Did you see the tag that he took off of it?
18 I mean, do you have any idea what the tag was or anything of
19 that nature?

20 A. No, sir.

21 Q. Now let me ask you: Did you -- when you then purchased
22 that 2000 Honda Civic from him that afternoon, did
23 Mr. Ellison -- did you all fill out any paperwork, like a
24 bill of sale or anything like that, indicating that he was
25 selling you the vehicle that afternoon?

1 A. No, sir.

2 Q. Did he give you, "he" being Mr. Ellison, give you any
3 paperwork kind of relating to that Honda Civic that
4 afternoon?

5 A. Yes, sir.

6 Q. And let me show you State's Exhibit No. 39. Is this
7 some of the paperwork that was given to you by Mr. Ellison
8 that afternoon of April 1st of 2013?

9 A. Yes, sir.

10 MR. SORENSON: Your Honor, at this time we'd offer
11 State's 39 into evidence.

12 THE COURT: Any objection?

13 MR. FALK: No objection.

14 THE COURT: State's 39 admitted into evidence without
15 objection.

16 (State's Exhibit 39 admitted into evidence.)

17 Q. And you ultimately provided this to us and law
18 enforcement; is that correct?

19 A. Yes, sir.

20 Q. And this paperwork kind of reflects when Mr. Ellison had
21 purchased the vehicle from an individual named James Lee?

22 A. Yes, sir.

23 Q. Okay. And does it -- and what day does it indicate on
24 the paperwork that you were given that Mr. Ellison came into
25 possession of this vehicle?

1 A. March 23rd, 2013.

2 Q. About eight or nine days prior to you getting the
3 vehicle?

4 A. Yes, sir.

5 Q. All right. Now, at some point in time after then taking
6 possession that afternoon of that Honda Civic, did you -- and
7 let me just ask you while I'm -- before I forget, on this
8 paperwork, does it have the vehicle identification number on
9 the paperwork in several spots?

10 A. Yes, sir.

11 Q. There, second page here too (indicating)?

12 A. Yes, sir.

13 Q. Now, at some point in time after you took possession of
14 that vehicle, did you and Chyronda, either of you, attempt to
15 go register that vehicle with the Department of Motor
16 Vehicles?

17 A. Yes, sir. We attempted that that Friday, which was
18 April the 5th, 2013.

19 Q. Okay. And were you able to register that vehicle in
20 either your name or Ms. Youmans' name?

21 A. No, sir.

22 Q. And why was that that you were unable to do that?

23 A. The lady at the DMV told us that we have the wrong
24 paperwork. We would have to have a South Carolina
25 paperwork --

1 Q. Okay.

2 A. -- title for it.

3 Q. Okay. And ultimately in the paperwork you received,
4 there wasn't any title nor -- was there any paperwork showing
5 basically Mr. Ellison selling you --

6 A. No, sir.

7 Q. -- or Ms. Youmans the vehicle?

8 A. No, sir.

9 Q. As a result of that, what did you do?

10 A. I contacted his mother. And when I contacted his
11 mother, I let her know and explained to her what the DMV lady
12 told me, and which -- you know, she shook it off and told me
13 she would get it straight. Well, she came and, I'd say,
14 possibly two days after I called her, she came and got the
15 paperwork from me.

16 Q. That's this paperwork here (indicating)?

17 A. Yes, sir.

18 Q. All right. And did she leave you any paperwork when she
19 took that paperwork or just --

20 A. No, sir. She didn't leave me any paperwork, but she
21 took the paperwork. Approximately another week, week and a
22 half later, we received an envelope in the mail.

23 Q. Okay. And who was that envelope from?

24 A. That was from Tyrone mother.

25 Q. Okay. What is her name?

1 A. Ms. Annette.

2 Q. Okay. Do you remember -- do you know her last name?

3 A. McKinney.

4 Q. McKinney. Okay.

5 And in that envelope then that you received back from
6 Ms. McKinney, what was in that envelope?

7 A. It was basically the same paperwork that Tyrone gave me,
8 but all the dates was the 23rd, the same dates that was on
9 Tyrone paper, but every line where you supposed to sign at
10 was empty.

11 Q. Let me show you. So you got this paperwork, State's 39,
12 back from Ms. McKinney. Then additionally, let me show you
13 State's Exhibit No. 43. Let me show you State's 43.

14 Mr. Bryant, do you recognize that document?

15 A. Yes, sir.

16 Q. And how did that document come into your possession?

17 A. That was in the envelope that Ms. Annette sended me on
18 the 16th.

19 MR. SORENSON: Your Honor, at this time we'd offer
20 State's 43 into evidence.

21 THE COURT: Any objection?

22 MR. FALK: No objection.

23 THE COURT: Without objection, State's Exhibit 43
24 admitted.

25 (State's Exhibit 43 admitted into evidence.)

1 Q. And, Mr. Bryant, what is this document --

2 A. That's a bill of sale.

3 Q. And who does that indicate -- who is that filled out as
4 being the name of the seller of the vehicle?

5 A. Tyrone Ellison.

6 Q. And is it asking then -- let me ask you, is there a date
7 that's filled in on there?

8 A. It is, but it's -- it's military time or something.

9 Q. What's the date, March the what?

10 A. 23rd, '13. It's March, '13. '13.

11 Q. This is 23 March, then looks like 13..13 or something
12 like that?

13 A. Yes, sir.

14 Q. Did you fill out any of this paperwork?

15 A. No, sir.

16 Q. Whose information is filled up at the top?

17 A. That's the seller to Tyrone and Tyrone.

18 Q. Okay. So that's selling it to, and who is it saying is
19 the buyer of the vehicle?

20 A. Me.

21 Q. And let me ask you, that information, that March 23rd
22 date, is that the correct date? Is that the date that you
23 took possession of the vehicle?

24 A. No, sir.

25 Q. And how about in the middle here where it's got the

1 price of the vehicle, \$1100; is that what you paid

2 Mr. Ellison for the vehicle?

3 A. No, sir.

4 Q. As a result of getting this, did you fill it out and
5 take this to the Department of Motor Vehicles?

6 A. No, sir.

7 Q. And why didn't you do that?

8 A. Because at that time, my first reason because I'm not
9 the one who was gonna take it to the DMV. My girlfriend
10 was -- Chyronda Youmans was going to register the car. And
11 at that time, we noticed that the car wasn't running.

12 Q. Let me ask you this: Is the date accurate that you
13 were -- that you purchased the vehicle on this paperwork you
14 received from them?

15 A. No, sir.

16 Q. Yet again, did you hold on to this and ultimately turn
17 it over to law enforcement?

18 A. Yes, sir.

19 Q. What did you ultimately end up doing with that Honda
20 Civic?

21 A. I'd say approximately around October, November, it was
22 getting rough, and I sold it.

23 Q. Who did you sell it to?

24 A. I actually don't know.

25 Q. Was it an individual?

1 A. Yes, sir. It was like -- I know he owns a car, like,
2 auto mechanic shop.

3 Q. All right. And how much did you sell the vehicle for
4 then?

5 A. \$450.

6 Q. During that time period from when you had the vehicle on
7 April 1st up until October or so when you sold it, I mean,
8 were you still driving it while it was operable during that
9 time period?

10 A. No, sir.

11 Q. Was it being driven at all during that time period?

12 A. No, sir. Because approximately two weeks, I'd say about
13 two weeks after we purchased the car, two and a half weeks,
14 it wasn't running anymore.

15 Q. And did you ever get the paperwork straightened out
16 where you could register it with the Department of Motor
17 Vehicles?

18 A. No, sir.

19 Q. So it was never registered in your name; is that
20 correct -- or Chyronda Youmans' name; is that correct?

21 A. Never.

22 Q. Okay. Let me ask you this: Were you ever contacted
23 kind of later on in 2013 again by Ms. McKinney about trying
24 to purchase that vehicle back or get you to sell that vehicle
25 back to somebody?

1 A. Yes, sir.

2 Q. Did you do that?

3 A. No, sir.

4 Q. And do you know who that was that she was trying to get
5 you up with to give that vehicle --

6 A. Personally, no.

7 Q. And when -- do you know about when that would have
8 occurred?

9 A. It had to have been -- it had to have been around the
10 time that I sold the vehicle, because I -- by the time I
11 noticed the inbox to my Facebook, I already had done sold it.

12 Q. So sometime in that October/November area?

13 A. Yes, sir.

14 MR. SORENSON: Beg the Court's indulgence.

15 That would be all I have for this witness, Your Honor.

16 THE COURT: Cross-examination.

17 MR. FALK: May I have a moment, please, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION BY MR. FALK:

20 Q. You had testified, according to your testimony, it was
21 April 1st Tyrone called you sometime. Could you just repeat
22 when he called you first, what time of day it was?

23 A. It was approximately around 11.

24 Q. 11:00?

25 A. Yes, sir.

1 Q. And it was during the course of this telephone call that
2 you told him that you wanted to buy a car; is that correct,
3 or that you were looking for a car?

4 A. Yes, sir.

5 Q. Now, you were kind of keeping track of -- you had
6 testified that you get paid or you get student aid money
7 from?

8 A. Denmark Tech.

9 Q. Denmark Tech, okay. And you were talking something, I
10 think you said this was your second payment that you were
11 looking for?

12 A. Yes, sir.

13 Q. When did you get the first payment?

14 A. The first one came, like, March, I want to say
15 March 15th.

16 Q. Okay. And you had talked about your girlfriend,
17 Ms. Youmans?

18 A. Yes, sir.

19 Q. And does she also get -- is it your understanding she
20 also gets payments?

21 A. Yes, sir.

22 Q. Okay. Would she have gotten those at about the same
23 time?

24 A. Yes, sir.

25 MR. FALK: May I approach, Your Honor.

1 THE COURT: Yes, sir.

2 (Judge and attorneys confer.)

3 Q. You've been in trouble with the law in the past?

4 A. Yes, sir.

5 Q. Okay. Do you have a prior felony conviction?

6 A. Yes, sir.

7 Q. Can you tell me what that's for?

8 A. That's for strong-arm robbery, attempted strong-arm
9 robbery.

10 Q. Do you know the date of that conviction?

11 A. The date of that conviction was April 27th, 2007.

12 Q. The date of the conviction?

13 A. Yes, sir.

14 Q. Okay. But you're off of parole, aren't you?

15 A. Excuse me?

16 Q. Did you have a term of probation?

17 A. Yes, sir. I came home on parole.

18 MR. SORENSON: Your Honor, objection. I think this is
19 beyond the scope of what he's allowed to --

20 THE COURT: Objection sustained.

21 MR. FALK: No further questions.

22 THE COURT: Can the lawyers approach for just a minute,
23 please.

24 (Judge and attorneys confer.)

25 BY MR. FALK:

1 Q. Just to clear something up, your arrest date was in
2 2007; is that correct?

3 A. Yes, sir.

4 Q. But you actually -- you got sentenced in 2009; is that
5 correct?

6 A. No, sir. I got sentenced in 2008.

7 Q. In 2008?

8 A. Yes, sir.

9 MR. FALK: No further questions.

10 THE COURT: Any redirect?

11 MR. SORENSON: No, Your Honor.

12 THE COURT: Sir, you may step down. Thank you.

13 MR. SORENSON: May he be excused?

14 THE COURT: Any objection to him being excused,
15 Mr. Falk?

16 MR. FALK: Your Honor, we would like to have him
17 available for further testimony.

18 THE COURT: Mr. Sorenson?

19 MR. SORENSON: May we just approach?

20 THE COURT: Yes, sir.

21 (Judge and attorneys confer.)

22 THE COURT: Mr. Bryant, I'm going to let you go for the
23 day, but you're still under subpoena. You need to make sure
24 that they have contact information for you if needed, okay?

25 THE WITNESS: Yes, sir.

1 THE COURT: You're free to go for the day. And not to
2 discuss your testimony.

3 Call your next witness.

4 MR. SORENSON: State calls Chyronda Youmans.

5 THE COURT: Anybody on the jury need a break? Everybody
6 okay?

7 CLERK OF COURT: If you'll place your left hand on the
8 Bible, raise your right hand and state your full name for the
9 record.

10 THE WITNESS: Chyronda Faith Youmans.

11 CHYRONDA YOUMANS,
12 being first duly sworn, testified as follows:

13 DIRECT EXAMINATION BY MR. SORENSON:

14 Q. Good afternoon, Ms. Youmans.

15 A. Hey.

16 Q. How are you doing?

17 A. All right.

18 Q. If you would, tell the jury, please, where you live.

19 A. I live in Norway, South Carolina.

20 Q. Okay. And who do you live there with?

21 A. I live with Terrance and my three kids.

22 Q. Okay. And Terrance, what relationship is Terrance to
23 you?

24 A. My boyfriend.

25 Q. Okay. And you said you have three children. How many

1 of them are Terrance's?

2 A. I got a two-year-old and I'm pregnant now.

3 Q. And your two-year-old's a little girl?

4 A. Yes, sir.

5 Q. And when is her birthday?

6 A. March 29, 2012.

7 Q. So on March 29th of 2013, obviously that was her first
8 birthday?

9 A. Yes.

10 Q. Now, let me ask you this: The jury has just heard
11 testimony about a Honda Civic. Do you recall Terrance coming
12 into possession of a Green Honda Civic?

13 A. Yes, sir.

14 Q. Let me ask you this: Did you go with him when he
15 purchased that Honda Civic?

16 A. No, sir.

17 Q. And do you know what day it is that he got that vehicle,
18 though?

19 A. We got it on the 1st.

20 Q. 1st of?

21 A. Of April.

22 Q. Okay. Of what year?

23 A. 2013.

24 Q. And how do you know that he got it that day?

25 A. Because we got our school refund that same day.

1 Q. And who -- did either one of you cash a check that day?

2 A. I did.

3 Q. And where was it that you cashed that check?

4 A. At a liquor store in Orangeburg on the 1st.

5 Q. And do you remember about how much that check was for?

6 A. 2,000, a little over 2,000.

7 Q. And was any of that money used to purchase that Honda
8 Civic?

9 A. Yes, sir.

10 Q. And whose car was that ultimately going to be, was the
11 plan for it to be?

12 A. It was gonna be my car, but after we had problems with
13 it at the DMV, it never went through.

14 Q. And to get to that now, did you have an occasion at some
15 point in time to go to the Department of Motor Vehicles in an
16 attempt to register that vehicle?

17 A. Yes, sir.

18 Q. Okay. Was there anything else that you had to take care
19 of that day before you could register that vehicle?

20 A. Yes. I had to pay some reinstatement fees and a seat
21 belt ticket for my daughter that day.

22 Q. And do you remember what day it was that you went and
23 did that?

24 A. It was like on the 5th.

25 Q. Okay. Let me show you State's Exhibit No. 44. Do you

1 recognize that document?

2 A. Yes, sir.

3 Q. And is that your receipt from actually paying that
4 reinstatement fee --

5 A. Yes, sir.

6 Q. -- and doing all that?

7 A. Yes, sir.

8 Q. And does that indicate what day, up at the top there,
9 that was done?

10 A. Yes, sir.

11 Q. When is that?

12 A. April 5th.

13 Q. Okay. Of 2013?

14 A. '13, yes, sir.

15 MR. SORENSON: Your Honor, at this time we'd offer
16 State's 44 into evidence.

17 THE COURT: Any objection?

18 MR. FALK: No objection.

19 THE COURT: Without objection, State's Exhibit 44
20 admitted into evidence.

21 (State's Exhibit 44 admitted into evidence.)

22 Q. Now, on that day, Ms. Youmans, that you paid that
23 reinstatement fee, I guess, for your license; is that
24 correct?

25 A. Yes.

1 Q. Were you able to register the vehicle that day?

2 A. No, sir.

3 Q. Now let me ask you this: Back during March and April of
4 2013, did you know the defendant, Tyrone Ellison?

5 A. Yes.

6 Q. And was he friends of yours or friends of your
7 boyfriend, Mr. Bryant's?

8 A. Friends of my boyfriend.

9 Q. Let me ask you this: Were you aware of why you were
10 unable to register the vehicle when you tried to?

11 A. All I was told that we didn't have the right, correct
12 paperwork.

13 Q. Now let me ask you, as a result of that, did you attempt
14 to get the correct paperwork, or did Terrance attempt to --

15 A. Terrance.

16 Q. -- kind of straighten all that out?

17 A. Mm-hmm.

18 Q. And to your knowledge, was that ever done?

19 A. No. No, sir.

20 Q. Okay. The vehicle ever registered in your name that
21 you're aware of?

22 A. No, sir.

23 Q. And do you know how long you all had that vehicle before
24 it was gotten rid of?

25 A. Maybe it sat there about three months.

1 MR. SORENSON: Thank you, Ms. Youmans, that's all I
2 have.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION BY MR. FALK:

5 Q. Did you also receive student aid checks from Denmark in
6 March, mid March?

7 A. Yes, sir.

8 Q. Do you know about the date?

9 A. Around the 15th.

10 Q. Okay. And I'm not sure if you testified to this: Did
11 they tell you what was wrong with the paperwork?

12 A. All they did say was it was incorrect paperwork to
13 get -- you know, to register.

14 Q. And you're the one who took the paperwork; is that
15 right?

16 A. Yes.

17 Q. And they just told you it was wrong?

18 A. Yes. Because I had -- I also had to -- with dealing
19 with mine with the charges that I had for my reinstatement, I
20 also had to go. And they was putting me on SR-22 to -- for
21 all that. So that was it.

22 Q. So did you ever advise Ms. McKinney what was wrong with
23 the paperwork?

24 A. Well, actually Terrance spoke with her on that. I never
25 spoke with her about the paperwork at all.

1 Q. I thought you -- so was he with you when you tried to
2 register?

3 A. Yes, he was with me when I registered, yes.

4 MR. FALK: No further questions.

5 THE WITNESS: Yes.

6 THE COURT: Any redirect?

7 MR. SORENSON: No, Your Honor.

8 THE COURT: Ma'am, you may step down, thank you.

9 THE WITNESS: Thank you.

10 MR. SORENSON: May she be excused?

11 THE COURT: Any objection to her being excused?

12 MR. FALK: None.

13 THE COURT: Without objection, you are excused, ma'am.

14 You have no further responsibility under your subpoena.

15 You're free to go. Have a nice day.

16 THE WITNESS: Okay. All right.

17 MR. SORENSON: If she could just be -- because obviously
18 she lives with Mr. Bryant, since he is not excused, just that
19 obviously they're not supposed to talk about it.

20 THE COURT: He can go for the day.

21 MR. SORENSON: They just shouldn't be talking about
22 their testimony.

23 THE COURT: Correct, correct.

24 Do you understand that, ma'am?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay, thank you.

2 Call your next witness.

3 MR. SORENSON: May we approach, Your Honor?

4 THE COURT: Yes, sir.

5 (Judge and attorneys confer.)

6 THE COURT: All right. Ladies and gentlemen, what we're
7 going to do at this time is we're going to break for lunch.
8 I'm going to let you go to lunch. I'm going to ask that you
9 be back here at 1:45. At 1:45, please be back in your jury
10 room, and we will resume the trial of this case as promptly
11 at that time as possible.

12 Do not, do not discuss the case at all, do not do any
13 independent investigation on your own. As I told you from
14 the outset, you are to decide this case based solely upon the
15 testimony and evidence that's presented in this courtroom and
16 nowhere else. You all are free to go. Please be back at
17 1:45. Thank you.

18 (The jury retires to the jury room at 12:17 p.m.)

19 THE COURT: Anything before we break? You all were
20 talking up here at sidebar, Mr. Falk asked about Dr. Bennett
21 for Friday morning.

22 MR. FALK: Yes, sir.

23 THE COURT: It's my intention that we put up -- or the
24 State has put up nine witnesses thus far. It is my intention
25 to try to finish all testimony tomorrow. That's my

1 intention, so I'm not going to wait until Friday morning for
2 Dr. Bennett to take the stand. He needs to be prepared to go
3 tomorrow morning at the latest.

4 MR. FALK: Thank you, Your Honor.

5 THE COURT: Okay?

6 MR. FALK: Well, could I at least -- could I be
7 protected until 3? I'm just -- he was here in the morning
8 and, I mean, he was here yesterday. Obviously he's got other
9 commitments and I'm just trying to be sensitive to his time.

10 THE COURT: I understand that, but he is under subpoena,
11 I suppose, or should be.

12 MR. FALK: Yes. And I just thought as a -- if you could
13 say 1, I'll say 1. I just want to see if I can just sort of
14 narrow it down.

15 THE COURT: I understand, but I can't gauge where the
16 State's going to be in their case. I don't have any idea
17 what you may or may not put up. You're the only one that
18 knows that. State's got 37 witnesses named on here and
19 you've got approximately seven. We're rolling right along on
20 this thing. And I told you all once we started, we were
21 going to go.

22 MR. FALK: I appreciate that. I'm just trying to
23 accommodate --

24 THE COURT: And I understand what you're trying to do
25 and I understand that he's got other commitments, but once

1 the case is started, he needs -- and it may be a situation
2 that as we proceed along, and Charleston's, what, an hour and
3 15 minutes from here, maybe?

4 MR. FALK: Maybe, yes.

5 THE COURT: And that's where he is, it may be a
6 situation that the State rests around lunchtime tomorrow. I
7 don't know. I mean, I don't know if the State's going to
8 call all 37 witnesses.

9 MR. SORENSON: We're not, Your Honor.

10 THE COURT: They only know that.

11 MR. SORENSON: We're not, Your Honor. I can assure you
12 of that.

13 THE COURT: I wouldn't anticipate you doing it. Just in
14 my experience, State typically names a lot of witnesses and
15 they make a decision as the case proceeds who they may call
16 and who they may not need to call, but I would ask that you
17 have him at least available from 1:00 on tomorrow.

18 MR. FALK: Thank you.

19 THE COURT: And that you -- he doesn't necessarily have
20 to be sitting up here, but he has to be on standby ready to
21 be here within the hour, so to speak. How about that?

22 MR. FALK: Thank you, Your Honor.

23 THE COURT: Okay. Anything before we break for lunch?

24 MR. SORENSON: No, sir.

25 THE COURT: All right. Be back at 1:45, please. Thank

1 you.

2 (Lunch recess held.)

3 (State's Exhibits 14, 16, 17 and 36 premarked for
4 identification.)

5 THE COURT: State ready to proceed?

6 MR. SORENSON: Yes, sir.

7 THE COURT: Defense counsel?

8 MR. FALK: Yes, Your Honor.

9 THE COURT: All right. Bring me the jury, please,
10 ma'am.

11 (The jury enters the courtroom at 1:49 p.m.)

12 THE COURT: Ladies and gentlemen, hope you all had a
13 nice lunch and are ready to proceed this afternoon.

14 At this time I'm going to recognize the State to call
15 your next witness, please.

16 MR. GIESE: Thank you. May it please the Court, Your
17 Honor, State calls James Marion Lee.

18 CLERK OF COURT: Please place your left hand on the
19 Bible and raise your right hand and state your full name for
20 the record.

21 THE WITNESS: James Marion Lee.

22 JAMES LEE,
23 being first duly sworn, testified as follows:

24 MR. GIESE: May it please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 DIRECT EXAMINATION BY MR. GIESE:

2 Q. Mr. Lee, where do you live?

3 A. In Lake City, South Carolina.

4 Q. And how long have you lived there?

5 A. All my life.

6 Q. Okay. Where are you currently employed?

7 A. Madison Auto Sales out of Scranton, South Carolina.

8 Q. What do you do there?

9 A. Buy and sell cars, wholesale mainly.

10 Q. Okay. And that's what you do for a living?

11 A. Yes, sir.

12 MR. GIESE: Okay. May I approach the witness, Your
13 Honor?

14 THE COURT: Yes, sir.

15 Q. Mr. Lee, I'm showing you what's been entered into
16 evidence as State's Exhibit 39.

17 A. Yes, sir.

18 Q. Do you recognize that?

19 A. Yes, sir.

20 Q. What is that?

21 A. That's a bill of sale from me to Tyrone Ellison.

22 Q. Okay. And can you kind of -- hold on. Let me grab that
23 from you. I'm going to put it up on the screen.

24 A. Yes, sir.

25 Q. Do you see it there on your screen, sir?

1 A. Yes, sir.

2 Q. Can you take the jury through what all that says on
3 there?

4 A. That's James Marion Lee, my old address, that I sold it
5 March 23rd on a Honda Civic to Tyrone -- what is it,
6 Tyrone Ellison out of Summerville.

7 Q. And then what's down there?

8 A. That's my signature and his signature.

9 Q. Okay.

10 A. And the mileage exempt.

11 Q. And why'd you put the date there?

12 A. The date -- the date of sale.

13 Q. To signify when you sold it?

14 A. When I sold it to him, yes, sir.

15 Q. Can you kind of describe how you came about selling this
16 vehicle?

17 A. Friend of mine I used to work with years ago at Nan Ya
18 Plastics out of Lake City, Moses Woods, he introduced me
19 to -- I think her name is Annette. It's Tyrone's mother, and
20 they were needing a cheap car, cheap, reliable car.

21 Q. And Mr. Woods, how well do you know him?

22 A. Just through work-related, you know, buying and selling
23 some cars, cheap cars throughout the community.

24 Q. Had you done this kind of thing with him before, that
25 kind of arrangement?

1 A. Yes, sir.

2 Q. And at some point, Mr. Woods informed you that

3 Ms. McKinney would like to buy a vehicle?

4 A. Yes, sir.

5 Q. Did he give you a certain type of vehicle that she
6 wanted to buy?

7 A. Just something cheap.

8 Q. Okay.

9 A. Just something reliable, cheap, reliable, that was all.

10 Q. And in your head, you just -- you remembered you had
11 this vehicle?

12 A. Yes.

13 Q. Do you remember what color the vehicle was?

14 A. I think it was like a dark green.

15 Q. Okay.

16 A. Kind of faded a little bit, dark green color.

17 Q. And what kind of vehicle?

18 A. Honda Civic.

19 Q. Okay. Do you remember how much you sold it for?

20 A. I think it was around 1,000 bucks.

21 MR. GIESE: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 MR. GIESE: I have nothing further, Your Honor.

24 Please answer any questions Mr. Falk may have.

25 THE COURT: Cross-examination.

1 CROSS-EXAMINATION BY MR. FALK:

2 Q. When did you purchase the car?

3 A. I don't recall. I think I got it from the county auto
4 auction. The dates on it, I have a paper trail on it.

5 Q. One moment, please. Do you recall whether or not you'd
6 had it for a couple of days?

7 A. No, sir, I had it for a while.

8 Q. Okay.

9 A. Yes, sir.

10 Q. So more than one or two days?

11 A. Yes, sir.

12 Q. Do you recall how much you paid for it?

13 A. Like I said, I think it was around \$1,000.

14 MR. FALK: No further questions.

15 THE COURT: Any redirect?

16 MR. GIESE: Yes, Your Honor, briefly.

17 REDIRECT EXAMINATION BY MR. GIESE:

18 Q. Sir, you testified that you had the car for a little
19 while.

20 MR. GIESE: May I approach the witness?

21 THE COURT: Yes, sir.

22 Q. I'm showing you what's been marked as State's 39. It's
23 Page 3 of this document. What does that document say?
24 What's --

25 A. This is the day that I bought the car.

1 Q. And what does it say? What does that say? What's the
2 date?

3 A. The date was March the 20th.

4 Q. Of what year?

5 A. Of 2013.

6 Q. Okay. And why is that date -- you know, you mentioned
7 you had the car for a while. Why that date,
8 March 20th, 2013?

9 A. Only thing I can think of, it was a misprint. It should
10 have been '14. Other than that, that's it.

11 MR. GIESE: May I approach the witness again, Your
12 Honor?

13 THE COURT: Yes.

14 Q. Mr. Lee, you sold the car to Mr. Ellison, and you
15 testified it was on March 23rd of 2013.

16 A. Mm-hmm.

17 Q. This paperwork says March 20th, 2013.

18 A. Right.

19 Q. You testified on cross-examination that you had the car
20 for a while, and it would indicate you only had it for three
21 days, based on the dates.

22 A. Right.

23 Q. Did you buy the car off your lot? How did that --

24 A. Yes, sir.

25 Q. Can you describe that for us?

1 A. What I meant to say was how that works is when I buy it
2 through my dealership, I had it for a while. But when I
3 actually bought it as an individual myself, it was only for a
4 few days.

5 Q. And that's the March 20th date?

6 A. Right. Yes, sir.

7 Q. Okay.

8 A. I'm sorry about that.

9 MR. GIESE: No problem. Nothing further, Your Honor.

10 THE COURT: Anything further, Mr. Falk?

11 MR. FALK: No redirect.

12 THE COURT: Recross?

13 MR. FALK: No. Excuse me.

14 THE COURT: You may step down. Thank you.

15 THE WITNESS: Yes, sir. Thank you.

16 MR. GIESE: May this witness be excused, Your Honor?

17 THE COURT: Any objection to him being excused?

18 MR. FALK: No, Your Honor.

19 THE COURT: Without objection, sir, you're excused.

20 You're free to go. You have no further responsibility under
21 your subpoena. Thank you for being here. Have a nice day.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Call your next witness, please.

24 MR. GIESE: State calls Detective Karen MacDonald.

25 CLERK OF COURT: Please place your left hand on the

1 Bible, raise your right hand and state your full name for the
2 record.

3 THE WITNESS: Karen MacDonald.

4 KAREN MACDONALD,
5 being first duly sworn, testified as follows:

6 MR. GIESE: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION BY MR. GIESE:

9 Q. Detective MacDonald, where do you work?

10 A. City of North Charleston Police Department.

11 Q. And what are your duties there?

12 A. I currently work as a detective in the white
13 collar/fraud investing unit.

14 Q. Were those your duties in April of 2013?

15 A. Yes.

16 Q. At some point in the course of your duties, were you
17 asked to take buccal swabs from Tyrone Ellison?

18 A. Yes.

19 Q. Can you describe the buccal swab process for the jury?

20 A. I get out a buccal swab, which is sealed in a package,
21 kind of a plastic/paper combination package. I open the top,
22 pull out the swab, make sure I'm wearing gloves, ask the
23 subject to open their mouth, then rub the swab on the inside
24 of the cheeks to get the epithelial cells, then place the
25 swab back into the package and seal it.

1 And then when I'm placing it into evidence, I place that
2 into a paper bag, seal that, tape it shut and initial the
3 bag.

4 Q. Did you follow that process when you took buccal swabs
5 from Tyrone Ellison?

6 A. Yes.

7 Q. What's the purpose of taking buccal swabs?

8 A. To get samples for DNA.

9 Q. DNA testing?

10 A. Yes.

11 Q. What did you do after you took the buccal swabs from
12 Tyrone Ellison?

13 A. I secured it in a paper bag and taped it shut and placed
14 it in the evidence locker.

15 Q. Is that standard protocol for the police department?

16 A. Yes.

17 Q. Can you kind of describe the evidence locker, how that
18 works?

19 A. We have a series of lockers inside the evidence room.
20 We also have a large -- looks like a giant mailbox, but it's
21 like a safe. You can put stuff in there too. Once you put
22 it in there, you can't get it out. And the lockers have
23 individual locks on them with different combinations, and
24 when you put it in a locker, you close the lock and you can't
25 open it unless you know the combination.

1 MR. GIESE: I beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 Q. Detective MacDonald, do you remember the day you took a
4 buccal swab from Tyrone Ellison?

5 A. I believe it was July 17th.

6 Q. Of what year?

7 A. 2000 -- might have been 2014, could have been '13. I
8 believe it was 2013.

9 MR. GIESE: Thank you.

10 I beg the Court's indulgence.

11 (State's Exhibit 45 marked for identification.)

12 MR. GIESE: May I approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 Q. I'm showing you what's been premarked as State's
15 Exhibit 45. Do you recognize that?

16 A. Yes.

17 Q. Can you explain what that is?

18 A. It's chain of custody sheet that I fill out whenever I
19 place any evidence in the evidence room.

20 Q. After reading that, do you know now what day you took
21 the buccal swabs from Mr. Ellison? Is it written on there
22 anywhere?

23 A. July 17, 2013.

24 Q. Okay. And that would -- because you wrote that date on
25 there, that would be the day that you took the buccal swabs?

1 A. Yes.

2 Q. Couldn't be a different day. Okay.

3 A. No.

4 MR. GIESE: Nothing further, Your Honor.

5 THE COURT: Cross-examination?

6 MR. FALK: No questions.

7 THE COURT: Is that marked for identification only.

8 MR. GIESE: Yes, yes, sir.

9 THE COURT: Ma'am, you may step down.. Thank you.

10 THE WITNESS: Thank you.

11 MR. SORENSON: Please the Court, Your Honor.

12 THE COURT: Yes, sir.

13 MR. SORENSON: State calls Lisa Kubicko.

14 CLERK OF COURT: Please place your left hand on the
15 Bible, raise your right hand and state your full name for the
16 record.

17 THE WITNESS: Lisa Kubicko.

18 LISA KUBICKO,
19 being first duly sworn, testified as follows:

20 THE COURT: Spell your last name for the court reporter,
21 please, ma'am.

22 THE WITNESS: K-U-B-I-C-S-K-O.

23 DIRECT EXAMINATION BY MR. SORENSON:

24 Q. Investigator Kubicko, if you would, tell the jury where
25 you're employed.

1 A. With the North Charleston Police Department as a
2 civilian crime scene technician.

3 Q. And how long have you been employed with the North
4 Charleston Police Department in that capacity?

5 A. It will be four years in December.

6 Q. And as a civilian crime scene technician, explain to the
7 jury, if you would, just kind of what your day-to-day duties
8 and responsibilities are with North Charleston.

9 A. We respond to any crime scene, whether it be burglaries,
10 robberies, homicides, shootings, suicides. We'll document
11 the scene with photographs, collect evidence, package the
12 evidence, prepare it to go to SLED for testing, testify in
13 court.

14 Q. And I want to turn your attention, if I could,
15 Investigator, back to the morning, early afternoon of
16 April 1st of 2013. Did you have an occasion that day to
17 respond out to the SunTrust Bank on Dorchester Road in
18 Dorchester County?

19 A. Yes.

20 Q. And are you aware of about what time it was that you
21 arrived out there?

22 A. About 10:30.

23 Q. Do you have a report that you did in this case?

24 A. Yes.

25 Q. Would that help kind of refresh your memory as far as

1 dates and times?

2 A. Yes.

3 Q. Okay. Bear with me one second.

4 A. I believe I have on the report 1:30.

5 Q. Mm-hmm.

6 A. Is that accurate?

7 Q. Yes, ma'am. That was the -- the robbery happened at
8 10:30, so you weren't out there right when the robbery
9 happened; is that correct?

10 A. No, sir.

11 Q. Okay. Do you want this to help refresh your memory for
12 anything or do you -- no? Okay. So about 1:30 you think?

13 A. Yes.

14 Q. All right. And describe for the jury, when you got out
15 to the bank, kind of what the scene was like when you got
16 there as far as what was going on at the bank.

17 A. Yes. When I got there, I walked into the bank and I
18 noticed there were several detectives on scene. They were
19 talking to the bank employees, witnesses and such. The front
20 doors were propped open so that people weren't touching them
21 so we could come and do our job, and they were trying to get
22 the surveillance video from the managers. It had to be
23 emailed to them.

24 Q. And did you have an opportunity then to speak briefly
25 with the detectives on the scene just to kind of get an idea

1 what, you know, you were dealing with out there before you
2 began processing that scene?

3 A. Yes.

4 Q. And then you made reference that part of what they were
5 trying to do is at least to get some still photographs to
6 look at. Did you have an opportunity ultimately to kind of
7 do that there at the scene?

8 A. Yes.

9 Q. And have you had an opportunity not only at the scene
10 but also kind of after the fact to have gone through and
11 looked at some of the still photographs that have been --

12 A. Yes.

13 Q. I want to just --

14 MR. SORENSON: May I approach the witness, Your Honor?

15 THE COURT: Yes, sir.

16 Q. Let me show you State's Exhibits 19 and then 20 through
17 26 and 28. If you could look through those items.

18 Do you recognize all those still photographs?

19 A. Yes.

20 Q. Are those photographs some of which that you reviewed
21 out there at the bank that day, some of which you reviewed
22 kind of since then in kind of going back and reviewing the
23 case?

24 A. Yes.

25 MR. SORENSON: Your Honor, at this time we'd offer

1 State's 19, 21 through 26 and 28 into evidence.

2 THE COURT: Any objection?

3 MR. FALK: No objection.

4 THE COURT: Without objection, State's Exhibits, 19, 21
5 through 26 and 28 admitted into evidence.

6 (State's Exhibits 19, 21-26, 28 admitted into evidence.)

7 Q. Now, describe for the jury then what did you after kind
8 of getting an idea of what you were dealing with out there,
9 tell the jury how you went about processing and what you did
10 out there at that scene at the bank that early afternoon.

11 A. Started by taking overall photographs of the bank from
12 different angles just to show the layout of the bank. After
13 talking with detectives, I was told, and, you know, seeing
14 some pictures through the surveillance pictures that were
15 emailed, where the suspect came in, where he jumped over the
16 counter, where he jumped back over the counter to leave, to
17 get an idea of where the suspect may have made contact with
18 the counter, looking for places where I could collect DNA
19 from or fingerprints.

20 So once I was done taking overall photographs, I began
21 processing the counter for fingerprints. I also had another
22 CST, crime scene technician, with me who began processing the
23 front doors.

24 Q. Okay. And obviously from looking at, like, State's
25 Exhibit No. 20, you knew that the robber came in the front

1 door; is that correct?

2 A. Yes.

3 Q. And I guess you also knew that he had gone out the front
4 door?

5 A. Yes.

6 Q. And you testified that you handled kind of processing
7 around the counter and, at least from at least the stills
8 that you looked at initially, it was obvious that he had gone
9 over the counter --

10 A. Yes.

11 Q. -- during the robbery; is that correct?

12 A. Yes.

13 Q. So based on that kind of information that you had from
14 the still photographs, you processed or attempted to process
15 the counter?

16 A. Yes.

17 Q. The teller counter?

18 A. Yes.

19 Q. And let me ask you, were you able to find any prints --
20 let me ask you this -- anywhere in the bank that ended up
21 matching Tyrone Ellison?

22 A. No.

23 Q. Let me ask you this: Have you had an opportunity since
24 then to go back and view not only just the still photographs
25 out there but actually look at the whole video itself?

1 A. Yes.

2 Q. Tell the jury, in looking at the video, does it appear
3 that the suspect in this case is wearing gloves?

4 A. No.

5 Q. Okay. Now, does it appear that he is -- has anything in
6 his hands, though, when he is coming in the front door?

7 A. Yes.

8 Q. Okay. How about when he is going over the counter?

9 A. Yes.

10 Q. Going back over the counter?

11 A. Yes.

12 Q. And then going out the front door?

13 A. Yes.

14 Q. And in viewing that video, is there any spot that you
15 saw where it appeared that the suspect actually touched with
16 his hands, as far as grabbing a door or putting his fingers
17 down on a counter or anywhere, that you observed on that
18 video?

19 A. With a full hand, no, I did not observe that at any
20 point in time.

21 Q. Okay. And if I could, you've had an opportunity to view
22 the surveillance video?

23 A. Yes.

24 Q. Okay. And if I could, I want to go through and just
25 kind of show you some of those, go to a couple spots on the

1 video that show the suspect coming in the bank, going over
2 the counter and then ultimately leaving the bank, okay, so
3 you can kind of point out to the jury what you're talking
4 about.

5 A. Okay.

6 Q. And, Investigator Kubicko, ultimately this video or the
7 CD that was produced and put into evidence has a whole bunch
8 of camera angles; is that correct?

9 A. Yes.

10 Q. What I want to go to is initially the front entry.

11 THE COURT: That's Exhibit 18, State's 18?

12 MR. SORENSON: This State Exhibit 18, yes, Your Honor.

13 THE COURT: Thank you.

14 Q. Let me show you, looking at State's Exhibit No. 18, the
15 camera angle from the front entry. As the suspect is
16 approaching the door, does it appear that he has anything in
17 that left hand as he is reaching to open the door?

18 A. Yes.

19 Q. So given that, would you expect to find any prints of
20 that suspect on that outside door handle as they're coming in
21 that interior door there?

22 A. It depends on a bunch of different factors.

23 Q. The fact that he's got something in his hand that is --

24 A. Yes. Exactly how he grabbed that door would depend, but
25 I wouldn't be surprised if not.

1 Q. You have to actually touch it with your skin, right, to
2 leave a fingerprint; is that correct?

3 A. Right, yes.

4 Q. Now, as the individual is approaching the teller
5 counter, can you tell whether he's got items in both of his
6 hands at that point in time?

7 A. Yes.

8 Q. And obviously, we observed when he came in the door
9 earlier, it appeared he had some sort of black pouch or
10 something in his left hand that he opened the door with?

11 A. Yes.

12 Q. And what does he appear to have in his right hand as
13 he's approaching the tellers?

14 A. A handgun.

15 Q. And as he goes up and over the counter, does he ever let
16 go of either one of those items as he's going over the
17 counter?

18 A. No.

19 Q. So as he comes back behind the counter here, dealing
20 with Ms. Rustin and Ms. Bass behind the counter, is there any
21 time where it appears that he touches any items back behind
22 the counter?

23 A. No.

24 Q. I'll let it play until he goes back over.

25 Now, as he prepares to go back over the counter here,

1 yet again, does he have items in both of his hands as he's
2 going back over the counter?

3 A. Yes.

4 Q. I now want to jump to Teller Station 3. We'll go back
5 with him coming over the counter initially.

6 Looking at 10:29:09 coming up here, again, there as you
7 see him come over the counter, what does he appear to have in
8 his right hand?

9 A. A handgun and a white glove.

10 Q. I'm going to get to that in a second. Well, actually,
11 let me talk about that while I've got that here. So you kind
12 of later on have an opportunity not necessarily that day but
13 kind of as the investigation continued later on to go back
14 and observe this still photograph that's on the video right
15 here?

16 A. Yes.

17 Q. And obviously you've seen what you described as a
18 handgun. What does it appear he's holding the handgun with?

19 A. It's a white latex glove.

20 Q. And I'm going to get to the significance of that in a
21 few minutes. So that's him coming over there. This is
22 Teller Station 2's camera. And does that picture show him
23 holding in his left hand the pouch there?

24 A. Yes.

25 Q. And then lastly, I want to go to -- back to the front

1 entry when the suspect is leaving the bank. Bear with me one
2 second. Let me get about 20 seconds further down here.

3 10:30 a.m. and 9 seconds coming up, the suspect
4 approaches the exit door. What does he appear to have in his
5 right hand as he is opening that door to leave the bank?

6 A. The white latex glove.

7 Q. That is in his hand as he's pulling on the door?

8 A. Yes.

9 Q. Given your experience and what you had an opportunity to
10 go back and observe kind of after the fact, was it surprising
11 to you that you did not find, you know, any -- I mean,
12 assuming for argument's sake that he is the robber that was
13 in the bank, is it surprising, given what you observed kind
14 of going back and going through the video, that you did not
15 find any prints of his?

16 A. No.

17 Q. Now, as far as that counter goes, did you have an
18 opportunity not only to attempt to process it for
19 fingerprints, did you attempt to swab it at all for potential
20 DNA?

21 A. Yes. After I processed it, you know, when we process,
22 sometimes we'll see smudges or see the powder kind of clump
23 up to suggest that maybe there's some kind of substance
24 there, sweat or whatnot. So in one particular spot, I
25 thought I may have saw a smudge or some kind of substance, so

1 that's what I swabbed on the countertop.

2 Q. Okay. And did that swab, and I'm going to get to items
3 that went out to SLED in a little while, but is that one of
4 the items that ultimately was sent out to SLED to see if they
5 could get any DNA off of it?

6 A. Yes.

7 Q. Now, while you were in processing the bank and
8 photographing and attempting to find evidence in the bank,
9 did you learn of -- did you become aware of some other items
10 being found nearby?

11 A. Yes.

12 Q. And where were those items found?

13 A. They were found in a wooded area.

14 Q. And where was that wooded area located in relation to
15 the bank?

16 A. Looking at the front of the bank, it was off to the left
17 side across the street.

18 Q. And I guess when you became aware of that, had an
19 officer already found those items?

20 A. Yes.

21 Q. Tell the jury kind of when you went over into that
22 wooded area, kind of describe what was going on over there
23 when you went over that way.

24 A. We were informed that they had found several items in
25 the wooded area. So while we were still dealing with the

1 bank, I gave one of the officers my yellow evidence placards
2 that we normally use so that they could go ahead and mark
3 those items so that they weren't overlooked or missed later.

4 So once we were cleared up from the bank, we went over
5 there, me and the other CST that was with me, and we took
6 photographs of the evidence, overall photos, to try and see,
7 okay, this is where No. 1 was and relate that to where No. 2
8 is so you can kind of show how everything was dropped,
9 possibly as the suspect was fleeing away.

10 So we took the overall photographs and close-up
11 photographs of each item and then we collected them.

12 Q. And ultimately, Investigator Kubicksko, did you collect
13 some items from out in that wooded area?

14 A. Yes.

15 Q. And tell the jury what those items were that you
16 collected.

17 A. Item No. 1 was a black visor; Item No. 2 was the white
18 latex glove; Item No. 3 was a .380 Accu-Tek handgun; and Item
19 No. 4 was a black wig.

20 Q. And if I could show you State's Exhibits 14 through 17.
21 I just ask you if you recognize those. What are --

22 A. And the gun, I assume, too.

23 Q. Yes, I'm sorry.

24 How many items do you have up there, three? I'll show
25 you State's Exhibit 16 here.

1 A. Yes.

2 Q. And what are those four items, State's 14, 15, 16, 17?

3 A. These are the four items that I found or officers found
4 in the woods that I later photographed and collected.

5 MR. SORENSON: Your Honor, at this time we'd offer
6 State's 14, 15, 16 and 17 into evidence.

7 THE COURT: Any objection?

8 MR. FALK: No objection.

9 THE COURT: State's Exhibits 14, 15, 16 and 17 admitted
10 without objection.

11 (State's Exhibits 14-17 admitted into evidence.)

12 MR. SORENSON: And for the record, Your Honor, 14 is the
13 visor; 15 is the latex glove; 16 is the handgun; 17 is the
14 wig.

15 THE COURT: All right.

16 Q. And, Investigator Kubicko, let me show you State's
17 Exhibits No. 6 and 7. Do you recognize those?

18 A. Yes.

19 Q. And what are those? What are State's 6 and 7 a picture
20 of?

21 A. Those were photographs that were taken of these items in
22 the woods.

23 Q. What items depicted specifically in State's 6 and 7?
24 I'm sorry?

25 A. The visor.

1 Q. So that would have been this item right here? That was
2 the visor that you collected?

3 A. Yes.

4 Q. That day out in the woods?

5 THE COURT: And that's Exhibit what?

6 MR. SORENSON: That is State's Exhibit 14.

7 THE COURT: Thank you.

8 Q. And then you said your Marker No. 2, depicted as State's
9 Exhibits 8 and 9, is what?

10 A. The white latex glove.

11 Q. And that white latex glove was collected also?

12 A. Yes.

13 Q. And that is what? It's wrapped up in here, but it's
14 that -- that latex glove is wrapped up in here?

15 A. Yes.

16 Q. And going out to the State Law Enforcement Division?

17 A. Yes.

18 THE COURT: That's Exhibit what?

19 MR. SORENSON: That's Exhibit 15. I'm sorry, Your
20 Honor.

21 Q. And then your Marker 3, I believe you had testified,
22 shown in State's Exhibits 10 and 11 is what kind of handgun.

23 A. .380 Accu-Tek.

24 Q. And that gun that was found out in the woods, was it
25 loaded when you found it?

1 A. No.

2 Q. Did it -- describe what kind of gun is that? I mean,
3 you said a 3 -- is it a revolver or semiautomatic?

4 A. Semiautomatic handgun.

5 Q. Okay. And did it have a clip with it?

6 A. It did not have a magazine in it.

7 Q. Okay.

8 A. And no rounds in the chamber.

9 Q. And that then is State's Exhibit No. 16 that you
10 collected?

11 A. Yes.

12 Q. Is that correct?

13 And then lastly, Marker 4, let me show you State's
14 Exhibit No. 12 and 13. Does that show -- I guess that 12
15 shows kind of the relationship between a couple items; is
16 that correct?

17 A. Yes.

18 Q. And State's Exhibit No. 13 a close-up of what?

19 A. The black wig.

20 Q. Those items, yet again, found and recovered in the
21 woods?

22 A. Yes.

23 Q. To the left of the bank?

24 A. Yes.

25 Q. And let me show you State's Exhibit No. -- back on

1 State's Exhibit No. 12, kind of in the background there, what
2 is that that's up in the background kind of where my finger
3 is?

4 A. It appears to be the fence that's around the pool of
5 that apartment complex back there.

6 Q. I mean, where? There's an apartment complex kind of on
7 the other side of that woods there?

8 A. Yes. Back around the woods.

9 Q. So these items are in fairly close proximity to that
10 apartment complex?

11 A. Yes.

12 Q. And, yet again, then that wig, State's Exhibit No. 17,
13 this is the wig, the wig that was found in the woods
14 (indicating)?

15 A. Yes.

16 Q. And were all those items from you kind of viewing not
17 only the still photos but the video also all consistent with
18 the items that the bank robber had --

19 A. Yes.

20 Q. -- in his possession during the bank robbery?

21 A. Yes.

22 Q. Let me kind of now go through. Since those items were
23 collected, I want to go through kind of what you did with
24 those items. Starting with the wig, so State's Exhibit
25 No. 17, what did you do with this wig when you got it back to

1 the North Charleston Police Department?

2 A. What I did with the wig was tried to collect DNA from
3 it. So when we collect DNA, we think of how someone may have
4 left DNA on the item. You know, a hat, for example, you
5 know, you wear it over your forehead where you might sweat a
6 lot. So that would be something that we would think about,
7 where we want to swab that hat to obtain the DNA.

8 So for the wig, I'm thinking of on the inside of it,
9 which would be against your head. So we used sterile
10 cotton-tipped swabs. There's two in a package. What we'll
11 do is we'll put a few drops of distilled water on one swab
12 and swab the area that we're interested in and then go back
13 over it with a dry swab. Then they're packaged and dried,
14 sealed. Everything's submitted to the evidence property room
15 with a chain of custody.

16 Q. So those swabs were taken, sealed, put into evidence.
17 And how about the wig? Was it also then packaged, sealed and
18 put into the evidence room?

19 A. Yes.

20 Q. And ultimately, are you aware of what got sent out to
21 SLED for them to attempt to do DNA --

22 A. Yes.

23 Q. -- with regard to the wig?

24 A. Yes.

25 Q. What got sent out to SLED?

1 A. We sent the wig to SLED.

2 Q. So the swabs that you initially took are still in
3 evidence --

4 A. Yes.

5 Q. -- is that correct, if needed --

6 A. Yes.

7 Q. -- down the road?

8 A. Yes. We try -- sometimes we try to swab the items
9 instead of just sending the item itself, just to save SLED's
10 time, because then it would have to go through their evidence
11 processing unit to do the swabs and then go to the DNA unit.
12 So sometimes we try to do that to avoid that step, but in
13 this case, there's probably a lot more DNA on that wig than
14 what I can obtain from just one swab, so it was best to just
15 go ahead and send the wig itself.

16 Q. And then looking at State's Exhibit No. 14, the visor,
17 what did you do with the visor?

18 A. I did the same thing: I swabbed the inside rim of it
19 for DNA.

20 Q. And those swabs still maintained at North Charleston?

21 A. Yes.

22 Q. And what happened to State's Exhibit 14, this item?

23 A. That was also sent to SLED for DNA testing.

24 Q. These items -- the wig, 17, and the visor, 14 -- were
25 they packaged together or separately when they're sent out to

1 SLED?

2 A. Separately.

3 Q. Now, how about the gun, State's Exhibit No. 16? First
4 of all, were you able to do any kind of trace on the gun to
5 find out who it belonged to?

6 A. Yes.

7 Q. All right. And what were the results of that?

8 A. The results, you might have to give me it to refresh my
9 memory, but it came back to a dealer in Philadelphia, I
10 believe.

11 Q. And that was?

12 A. Many years ago.

13 Q. Purchased back -- someone had it back in 1993; is that
14 correct?

15 A. Yes.

16 Q. Okay.

17 A. So since then there's been no trace of where it's been.

18 Q. All right. Now, as far as that gun, though, as far as
19 processing that gun, what, if anything, did you do with that
20 gun when you -- after you obtained it on April the 1st of
21 2013?

22 A. We always want to try and do DNA before fingerprinting
23 if we're going to do both, because once we swab it, we could
24 mess up the fingerprints. So for the gun, what we want to do
25 is swab the textured areas of it, areas where we would not

1 get a fingerprint from. So I swabbed the grip of it and the
2 textured parts of the slide for DNA.

3 Q. That would be the grip, this part here (indicating)?

4 A. Yes.

5 Q. And then the slide, this part up in here (indicating)?

6 A. Yes, or the --

7 Q. Or right here where it's kind of --

8 A. Yes, the textured side of it. And that's just kind of
9 the standard or what we usually do with all of the guns.

10 And then I -- to process it for fingerprints, I put it
11 in a superglue fuming chamber. What that does is, you put
12 the gun in a chamber with some water and some superglue on
13 heating thing, and it will create a fume that will adhere to
14 the fingerprints on the firearm. So I did that and then
15 observed it and then I used black powder to see if anything
16 developed.

17 Q. And did you find any possible fingerprints on the gun?

18 A. Yes, I found one and examined that.

19 Q. Did you attempt to compare that to Tyrone Ellison's
20 fingerprints?

21 A. Yes.

22 Q. And what were the results of that --

23 A. It was inconclusive.

24 Q. And just explain to the jury what "inconclusive" means?

25 A. Meaning it did not have enough characteristics to make

1 an identification or an exclusion.

2 Q. Could be his fingerprint, could not be; there's no way
3 you can tell one way or the other --

4 A. Correct.

5 Q. -- and tell this jury one way or the other; is that
6 correct?

7 A. Correct.

8 Q. But no other prints that didn't match his; is that
9 correct? There were no fingerprints you lifted that you
10 could say are definitely not Tyrone Ellison's?

11 A. No.

12 Q. Just that one possible print that was basically
13 inconclusive?

14 A. Correct.

15 Q. Correct? All right.

16 Now, ultimately, the swabs that you talked about taking
17 from the textured area for DNA, were those swabs ultimately
18 sent out to State Law Enforcement Division?

19 A. Yes.

20 Q. Now, lastly, the latex glove that you collected, State's
21 Exhibit No. 15, tell the jury what you initially did when you
22 first collected this latex glove.

23 A. When I collected it, again, I swabbed it for DNA, trying
24 to think of if someone was wearing the glove, because at this
25 point in time, I was still under the assumption that someone

1 was wearing the glove possibly. So I swabbed the fingertip
2 area and some of the palm as if someone were wearing it.

3 Then it later became known from the video that the
4 suspect wasn't wearing the glove, instead they just had it
5 crunched up in their hand around the object.

6 Q. Initially, though, when you first processed this
7 April 1st or 2nd or so, you're swabbing the fingertip area,
8 assuming somebody was wearing it?

9 A. Yes.

10 Q. Is that what you testified?

11 And ultimately then, that swab that you took of that
12 glove, were they sent out to State Law Enforcement Division
13 for DNA testing?

14 A. Yes.

15 Q. Those initial swabs? Okay.

16 A. I also processed it for fingerprints, but there was
17 nothing.

18 Q. No fingerprints on the glove?

19 A. Yes.

20 Q. Now, ultimately, was the -- these items were all
21 returned from the State Law Enforcement Division, obviously?

22 A. Yes.

23 Q. We got them here. Okay.

24 Still packaged separately?

25 A. Yes.

1 Q. Okay. How about this latex glove? You said that you
2 had taken swabs and the swabs went out to SLED?

3 A. Yes.

4 Q. Where was this latex glove then kind of in the interim
5 after the swabs go out to State Law Enforcement Division?

6 A. Still in our evidence property room.

7 Q. And it's sealed in your evidence property room?

8 A. Yes.

9 Q. With your signatures indicating -- so nobody -- you
10 could tell if somebody had tampered with it?

11 A. Right. I would have signed the chain of custody
12 releasing it to the evidence unit. They would have signed it
13 receiving it, and that's where it would stay until someone
14 else signed it out.

15 Q. Now, you kind of alluded to this, but ultimately in May
16 of this year, May of 2014, did you have an opportunity in
17 preparing for this case for court to go back and view the
18 video specifically with regards to that latex glove that was
19 found?

20 A. Yes.

21 Q. And yet again, showing you State's Exhibit No. 25, the
22 still photograph, does that kind of depict what you're
23 talking about as far as that latex glove, somebody appearing
24 to be holding the gun with it?

25 A. Yes.

1 Q. So as a result of that, what then was done in May of
2 this year with that latex glove that you had collected,
3 State's Exhibit No. 15?

4 A. We sent the glove itself to SLED for further DNA
5 testing.

6 Q. They requested to basically swab the entire glove at
7 that point in time?

8 A. Yes.

9 Q. And additionally then, in May of this year, was State's
10 Exhibit No. 16, the gun, was it also sent out to SLED?

11 A. Yes.

12 Q. And what was the purpose of sending it out to SLED?

13 A. For them to swab the entire thing and try and collect
14 DNA from it.

15 Q. So I believe it was May 16th of this year, that's when
16 those -- basically that glove, State's 15, and the gun,
17 State's 16, both of those items were sent to the State Law
18 Enforcement Division?

19 A. Yes. We initially are only allowed to send five items
20 to SLED for violent crimes, so that's why we sent five
21 initially. Once they come back, then we're allowed to send
22 more, so that's when we did this.

23 Q. So initially, the swabs from the wig went -- I mean,
24 sorry, the wig went.

25 A. Mm-hmm.

1 Q. The visor went. The swabs you took from the gun?

2 A. Yes.

3 Q. The swab you took -- swabs you took from the fingertips
4 and the palm of the latex glove?

5 A. Yes.

6 Q. And then I believe you testified earlier the swab you
7 took from the counter?

8 A. Yes.

9 Q. Those five items went out initially?

10 A. Yes.

11 Q. Subsequent to getting information and reports back, two
12 additional items were sent out for some further testing --

13 A. Yes.

14 Q. -- is that correct?

15 A. Mm-hmm.

16 MR. SORENSON: Beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 MR. SORENSON: I believe that's all I'd have,
19 Investigator. Please answer any questions Mr. Falk has.

20 THE COURT: Cross-examination?

21 MR. FALK: Thank you, Your Honor.

22 CROSS-EXAMINATION BY MR. FALK:

23 Q. So you had the latex glove, and you were looking for
24 fingerprints in that; is that correct?

25 A. Yes, after I swabbed for DNA.

1 Q. So it is possible to have fingerprints on a latex glove?

2 A. It is possible.

3 Q. Okay. So if I had a latex glove and I pressed my hand
4 between a latex glove and a hard surface, would you expect to
5 see a fingerprint on that?

6 A. It would depend on other factors.

7 Q. But would it be possible?

8 A. It could be possible, yes.

9 Q. And so when you swabbed the glove originally, where did
10 you -- where did you swab on the -- this is your hand. If
11 your glove's a hand, excuse me. If your hand is a glove,
12 where did you swab?

13 A. I don't recall specifically which finger that I could
14 tell you.

15 Q. Would you have only done one finger area?

16 A. I don't recall.

17 Q. Let me look at the exhibits here.

18 MR. FALK: May I approach the witness?

19 THE COURT: Yes, sir.

20 Q. I'm showing you what's been marked as Exhibit 9.

21 Where's the inside or the outside on a latex glove?

22 A. It would depend on how the person wore it and how they
23 took it off.

24 Q. So based on that, can you tell whether or not that glove
25 was inside out?

1 A. No, I can't.

2 Q. So did you look on both sides of the glove for -- did
3 you look on both sides of the glove for fingerprint details?

4 A. Yes.

5 Q. And you found none?

6 A. No.

7 Q. So I assume then you would have swabbed both sides of
8 the glove, wouldn't you have?

9 A. No. Because I swabbed before I fingerprinted. After I
10 fingerprinted it, I superglue fumed it, so then everything
11 was superglued.

12 Q. So once it's fumed, you can't --

13 A. You can, but that's not what we -- we do. I wouldn't
14 assume to get anything after that. I'm not a DNA expert. I
15 wouldn't know how that would work.

16 Q. So once you fumed it, you would -- I'm sorry. You fumed
17 the glove, and then you would assume you couldn't get any
18 more DNA from it; is that what you're saying?

19 A. To my knowledge, I had already obtained the DNA before I
20 processed it. I don't know right then and there whether I
21 obtained DNA or not, so I swabbed the glove and then fumed it
22 for fingerprints.

23 Q. And were you saying that then once it's fumed for
24 fingerprints, you couldn't go back and look for additional
25 DNA?

1 A. I don't know that. I'm not a DNA expert, so I wouldn't
2 know what the chances are of that working.

3 Q. What exactly is a fuming process?

4 A. Cyanoacrylate superglue fuming. What they do is, we
5 have a superglue fuming chamber. We fill a dish up with
6 water and then put another little tin cup in there with about
7 a quarter size of superglue, and the heat creates a fume with
8 the vapor and turns the superglue into a fume, which adheres
9 to the fingerprints.

10 Q. How did you mark the latex glove to know what side that
11 you had swabbed?

12 A. I did not mark it.

13 Q. And from where it was there, how did you -- when the
14 glove was presented to you, was it crunched up like we saw in
15 the photograph there in Exhibit 9?

16 A. How it was in the photograph is exactly how it was when
17 I collected it.

18 Q. And did you then straighten it out or try and put it one
19 way or the other?

20 A. Yes, when I was in the lab swabbing it.

21 Q. And it's your testimony today that you're sure that you
22 only swabbed one side of the glove?

23 A. I do not recall.

24 Q. Now let's talk about the gun for a minute. I think when
25 you -- you said you viewed the video a couple of times?

1 A. Yes.

2 Q. And doesn't it -- does it appear that the person who was
3 robbing the bank bent down a couple of times to pick up the
4 gun?

5 A. I'm not sure what they were picking up, because it was
6 hidden behind the counter in the video. I didn't see that,
7 but when they went to exit the bank, the suspect did drop
8 something and pick it up. And then when the suspect left the
9 first set of doors, dropped something again and picked it up.

10 Q. Were you able to determine what he had dropped each
11 time?

12 A. The first -- on the other side of the counter, I don't
13 recall what it was. By the doors, I believe it was the white
14 latex glove that was dropped.

15 Q. You said that the top area of the gun is something that
16 would hold DNA?

17 A. Yes.

18 Q. And I believe you were saying it was that side right
19 there, these diagonal lines (indicating)?

20 A. Yes.

21 Q. Would DNA be transferred if -- certainly if somebody was
22 wearing a glove, you wouldn't expect DNA to be transferred to
23 anything else from his hands; is that correct?

24 Let's say if somebody's wearing a glove and they drop a
25 gun and they pick the gun up, would you expect DNA to get.

1 transferred to the gun?

2 A. From their hand?

3 Q. Yes.

4 A. It's possible. It depends on -- what we're doing is
5 we're trying to get the touch DNA, which is from your skin
6 cells. So it all depends on how much, you know, you're
7 sweating, if you're not sweating, how much skin cells you're
8 shedding and whatnot, it's all dependent on all those things.

9 MR. FALK: One moment, please.

10 THE COURT: Yes, sir.

11 Q. And there was only one glove recovered, right? You only
12 looked at one glove?

13 A. I did, yes.

14 MR. FALK: I have no further questions.

15 THE COURT: Any redirect?

16 MR. SORENSON: No, sir.

17 THE COURT: Ma'am, you may step down. Thank you.
18 Call your next witness.

19 MR. GIESE: State calls Clarissa Mack.

20 CLERK OF COURT: Place your left hand on the Bible and
21 raise your right hand. State your full name for the record.

22 THE WITNESS: Clarissa Mack.

23 CLARISSA MACK,

24 being first duly sworn, testified as follows:

25 MR. GIESE: May it please the Court, Your Honor.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION BY MR. GIESE:

3 Q. Ms. Mack, where are you currently employed?

4 A. South Carolina Department of Motor Vehicles.

5 Q. And how long have you been employed there?

6 A. 13 years.

7 Q. What are your duties there?

8 A. Custodial records -- well, I have access to all the
9 records, do vehicle research, from 1929 up to today's date.

10 Q. Okay. And how long have you been doing that?

11 A. 13 years.

12 Q. In the course of your duties, are you required to
13 testify to records?

14 A. Yes.

15 Q. About how many times do you think you've testified as to
16 DMV records?

17 A. Maybe once a month.

18 Q. Okay. And you testified about records kept by the DMV
19 in the ordinary course of business?

20 A. Correct.

21 Q. Can you describe some -- what types of things have you
22 testified to?

23 A. Title histories, verifying if there's title fraud, VIN
24 numbers, if VIN numbers have been taken off original plates
25 and switched out to another vehicle, title histories, lien

1 holder information.

2 MR. GIESE: Okay. Beg the Court's indulgence, Your
3 Honor.

4 THE COURT: Yes.

5 MR. GIESE: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 Q. Ms. Mack, I'm showing you what's been premarked as
8 State's Exhibit 40. Do you recognize that?

9 A. I do.

10 Q. Can you kind of describe for the jury what that is?

11 A. This is a vehicle plate history. This tells you when
12 the vehicle plate was issued to the vehicle and if the plates
13 was turned in or is currently on the vehicle.

14 Q. And what's the plate on that?

15 A. The plate on this plate history is 1533 FX.

16 Q. Okay. And that's what would be found on the license
17 plate?

18 A. Correct.

19 Q. Okay. And who is that plate registered to?

20 A. Tyrone Darius Ellison.

21 Q. Okay. Before I go on, is that a fair and accurate
22 representation of the plate history of 1533 FX?

23 A. Correct.

24 MR. GIESE: Your Honor, at this time the State would
25 move State's 40 into evidence.

1 THE COURT: Any objection?

2 MR. FALK: No objection.

3 THE COURT: Without objection, State's Exhibit 40

4 admitted into evidence.

5 (State's Exhibit 40 admitted into evidence.)

6 Q. And I may have just asked you this, but when does it say

7 Mr. Ellison was issued that plate?

8 A. November 14th, 2012.

9 Q. Okay. Is there anywhere on there or in that packet that
10 says when Mr. Ellison surrendered that plate?

11 A. Yes. The plate was turned in on 4/13/2013.

12 Q. And how do you know that?

13 A. I have the receipt attached.

14 Q. And can you kind of explain how Mr. Ellison's name would
15 be put on there? Did he have to fill out paperwork, anything
16 along those lines?

17 A. Right. Once you get a vehicle and you register it in
18 your name, you would come to the DMV and fill out a Form 400,
19 pay 14 -- \$15, and if you want to expedite it, it's \$35.
20 Then they issue you a plate and your title.

21 MR. GIESE: Okay. May I approach the witness again,
22 Your Honor?

23 THE COURT: Yes.

24 Q. All right. I'm now showing you what's been premarked
25 State's Exhibit 41. Do you recognize that?

1 A. Yes. This is a vehicle title history.

2 Q. Okay. And what is a vehicle title history?

3 A. The history is basically the chain of who all has -- the
4 vehicle has been titled to.

5 Q. Is that a fair and accurate representation of the
6 vehicle title history? Actually, before I ask that, what's
7 the VIN number on that vehicle?

8 A. It's a 1996 Ford, and the VIN is 1 F, Frank; A, Apple;
9 L, Larry; P, Paul; 54 N, Nancy; X, X-ray; T, Tom; A, Apple
10 299688.

11 Q. And is that a fair and accurate representation of that
12 VIN number that you just remarked on title history?

13 A. It is.

14 MR. GIESE: At this time, Your Honor, State would move
15 to have State's Exhibit 41 entered into evidence.

16 THE COURT: Any objection?

17 MR. FALK: No objection.

18 THE COURT: Without objection, State's Exhibit 41
19 admitted into evidence.

20 (State's Exhibit 41 admitted into evidence.)

21 Q. And is there a date on there where it says Mr. Ellison
22 purchased the title on that vehicle?

23 A. It was purchased on 4/16/2013.

24 Q. Okay. And, again, is there paperwork filled out that
25 puts Mr. Ellison's name on that form?

1 A. Yes. You would fill out a Form 400 and submit it to the
2 DMV.

3 Q. Okay. So it's the same type of paperwork?

4 A. Correct.

5 Q. Okay. I'm now showing you what's been marked as State's
6 Exhibit 42.

7 A. Thank you.

8 Q. Do you recognize that?

9 A. Yes.

10 Q. And what is that?

11 A. This is the DL credentials that we have on file.

12 Q. Okay. And who's that for?

13 A. Tyrone Darius Ellison.

14 Q. And is that a fair and accurate representation of the
15 driver's license photo the DMV has on file on Mr. Ellison?

16 A. Yes, it is.

17 MR. GIESE: Your Honor, at this point, the State would
18 ask to move State's Exhibit 42 into evidence.

19 THE COURT: Any objection?

20 MR. FALK: No objection.

21 THE COURT: Without objection, 42 admitted into
22 evidence.

23 (State's Exhibit 42 admitted into evidence.)

24 MR. GIESE: Just one moment, Your Honor.

25 Q. Okay. I'm just going to kind of recap, Ms. Mack.

1 MR. GIESE: May I approach the witness, Your Honor?

2 Q. That's State's 40. Can you tell the jury what vehicle
3 is on that form?

4 A. It's a 2002 Hyundai Elantra.

5 Q. And that's the -- that's the plate history for what
6 license plate?

7 A. 1533 FX.

8 Q. Okay. Now State's 41, what vehicle is that the title
9 history for?

10 A. A 1996 Ford Taurus.

11 Q. And is there a VIN number on there?

12 A. Yes.

13 Q. Can you read that again, please?

14 A. 1FALP54NXTA299688.

15 Q. Okay. Thank you.

16 Did you ever check to see if VIN number
17 2HGEJ6614YH538330, which is belonging to a Honda Civic, did
18 you ever check to see if that was registered to
19 Tyrone Ellison?

20 A. Yes.

21 Q. And what were the results of you checking that?

22 A. This vehicle he has never owned.

23 Q. Okay. So he would never have gone to the DMV and filled
24 out paperwork on that vehicle?

25 A. Correct.

1 MR. GIESE: Nothing further, Your Honor.

2 THE COURT: Cross-examination.

3 CROSS-EXAMINATION BY MR. FALK:

4 Q. When you testified that the car was never owned, is it
5 more accurate to say that the car was never registered?

6 A. Yes. It's a possibility that he could have bought the
7 car, but he never bought it to have it registered into his
8 name.

9 Q. If a car is bought in another state and you're going to
10 transfer title, what is the procedure there?

11 A. You would just --

12 Q. Are you familiar with that procedure? Do you know what
13 forms need to be filled out?

14 A. Yes. It's the same procedure as the South Carolina
15 title.

16 Q. Do you have to obtain a South Carolina title first?

17 A. Yes. Well, it's -- for instance, if he has a North
18 Carolina title, he bought a vehicle from North Carolina, all
19 they do is sign over on the back that they sold it to him,
20 and he would bring that form, that North Carolina title, to
21 South Carolina DMV and fill out a Form 400 and get the South
22 Carolina title issued in his name.

23 MR. Falk: No further questions.

24 THE COURT: Any redirect?

25 MR. GIESE: No, Your Honor.

1 THE COURT: Ma'am, you may step down. Thank you.

2 THE WITNESS: Thank you.

3 MR. SORENSON: May this witness be excused?

4 THE COURT: Any objection?

5 MR. FALK: No objection.

6 THE COURT: Without objection, you're excused. You have
7 no further responsibility --

8 THE WITNESS: Thank you.

9 THE COURT: -- under your subpoena. Thank you for being
10 here. Have a nice day.

11 (Witness excused.)

12 THE COURT: All right. Ladies and gentlemen, we are
13 going to take a break at this time. I'm going to ask you to
14 step to the jury room. Do not discuss the case. Do not
15 discuss the case. We'll get you back out here as quickly as
16 possible. Thank you.

17 (The jury retires to the jury room at 2:58 p.m.)

18 THE COURT: We'll stand down for a few minutes.

19 (Recess held.)

20 THE COURT: State ready to proceed?

21 MR. SORENSON: State is, Your Honor.

22 THE COURT: Defense counsel?

23 MR. FALK: Yes, Your Honor.

24 THE COURT: Bring in the jury, please.

25 (The jury enters the courtroom at 3:09 p.m.)

1 THE COURT: Mr. Sorenson, you're recognized. Call your
2 next witness, please.

3 MR. SORENSON: Thank you, Your Honor. State calls
4 Betty Butler.

5 CLERK OF COURT: Please place your left hand on the
6 Bible and raise your right hand, state your full name for the
7 record.

8 THE WITNESS: Betty Walker Butler...

9 BETTY BUTLER,
10 being first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. SORENSON:

12 Q. Good afternoon, Ms. Butler.

13 A. Good afternoon.

14 Q. If you would, please tell the jury where it is that
15 you're employed.

16 A. I'm employed with the South Carolina Law Enforcement
17 Division, also known as SLED.

18 Q. And how long have you been employed at SLED?

19 A. Over 18 years.

20 Q. And what department do you work in?

21 A. I'm a forensic technician in the DNA case work.

22 Q. Okay. And if you would, just kind of briefly describe
23 for the jury your kind of duties and responsibilities in that
24 department.

25 A. As a forensic technician, I do perform presumptive tests

1 for blood, semen. I look for hairs, fibers, body fluids or
2 anything that could be of value to a particular case.

3 Q. Okay. As part of that, are you sometimes submitted
4 items and asked to process them in an attempt to possibly
5 determine ownership of those items or who may have been
6 wearing an item?

7 A. Yes, I do.

8 Q. And if you would, and I guess, Ms. Butler, have you had
9 an opportunity then, as a result of processing items in that
10 department, had an opportunity to come and testify in court
11 about those procedures and your findings?

12 A. Yes, I have.

13 Q. About how many times have you testified, do you think?

14 A. Over 39 times.

15 Q. And specifically in this case, did you have some items
16 submitted to you to be processed to attempt to determine
17 ownership or who may have been wearing an item?

18 A. Yes, I did.

19 Q. And what were those items that you received in this
20 case?

21 A. SLED Item No. 1, black visor; and SLED Item No. 2, a
22 black wig.

23 Q. And when you're dealing with, like, a visor or a wig,
24 some kind of head wear, describe for the jury how you go
25 about processing those items to attempt to get DNA to

1 determine ownership or who may have been wearing those items,
2 such as a ball cap or a visor or a wig.

3 A. When I receive, for instance, Item No. 1, a black visor,
4 the most -- when you wear a visor, you wear it and you sweat
5 around the head a lot of times, or you even get hair on it.
6 So what we do is go on the inside of the particular visor.
7 We scrape the inside on a clean white paper and we scrape it
8 first and we swab it.

9 And we also take up the -- with a clean swab, take up
10 whatever we scrape off that particular item. Then we have to
11 put it out to dry. After we do that, then we put it into an
12 envelope, seal it with our initials, the date, and then we
13 heat seal it. And we also put initials, the date and sign it
14 and send it to further testing.

15 Q. Okay. And when you're dealing with a ball cap or a
16 visor, are there any other items, like on the brim area, any
17 reason that you might swab the brim area of a visor or a hat?

18 A. The reason why we would do a brim, when you put on a
19 visor, you normally touch it with your hands, either left or
20 right. It depends on if you're right-handed or left-handed,
21 you normally touch it. So what we do is we scrape the brim
22 also and swab it to see if anybody have touched that
23 particular spot on the visor or a wig.

24 For instance, in this case, when you put a wig on, you
25 sweat around your head a lot, and we do the inside of a wig,

1 where we scrape it first on clean paper, on different clean
2 paper, and we take up that particular scrapings that we do,
3 and we also swab around the band of the wig.

4 And I said before, you put that particular swab to dry.
5 Once it dries, we seal into that heat-seal envelope, initial,
6 date it and put it into a heat-seal pouch.

7 Q. Specifically now turning to this case, and you've kind
8 of made reference a little bit to it initially, but when you
9 ultimately submitted -- I believe it was -- your item was
10 SLED No. 1, but State's Exhibit No. 14.

11 Is that the item that was submitted to you, Ms. Butler?

12 A. State's Exhibit No. 14 is SLED Item No. 1.

13 Q. Now, tell the jury what you did as far as processing
14 State's Exhibit No. 14.

15 A. State's Exhibit No. 14 is a black visor. On the inside
16 of this band right here, we scraped the inside of this, and
17 we also swabbed the inside. And this part of the brim, this
18 section here where you normally touch, we did the same -- I
19 did the same thing for this, around the edges, where you can,
20 where you touch it and put it on the head itself.

21 Q. Then ultimately, once those swabs were taken, what was
22 done with those swabs from State's Exhibit No. 14, your Item
23 No. 1?

24 A. Once the swabs has been taken, I mark the area, which is
25 SLED Item No. 1.1. I mark the area. Also put the lab number

1 on it, which is L 134837, have to do that, and then I use a
2 clean swab, like I said before. I put it into a gold coin
3 envelope, put it up to dry. Once it dries, I seal it into
4 that particular envelope, I put my initials, the date, and I
5 also seal it into a heat-seal pouch, where I put my initials
6 and date and also sign it, and I send it to, for further
7 testing.

8 Q. And when was that that you did that with those to
9 process that item and created basically your Item 1.1, the
10 swabs from that visor?

11 A. June 5th, 2013.

12 Q. Okay. So June 5, 2013. Then ultimately those items
13 would have ultimately made it to the DNA analyst, the swabs
14 that you took from the item?

15 A. Yes, they did.

16 Q. In this case, that's Catherine Leisy; is that the DNA
17 analyst involved in this case?

18 A. Yes, that's correct.

19 Q. Now showing you State's Exhibit No -- I believe it's 17,
20 ask you if you received that item out at SLED.

21 A. Yes, I did.

22 Q. And describe now for the jury what you did with State's
23 Exhibit No. 17, and I think that's probably your Item 2; is
24 that correct?

25 A. State's Exhibit No. 17, SLED Item No. 2. The band

1 that's -- that cloth band that's around here (indicating). I
2 scraped these around here and here and swabbed around here
3 (indicating).

4 And once I -- once I did that, I took up the scrapings
5 that I did, put it into the gold coin envelope, set it up to
6 dry. Once it was dry, I seal it into that gold coin
7 envelope, then put it into a heat-sealed pouch, then I
8 initial and date the seal and I sign it and date it, and I
9 sent it to further testing to the DNA analyst, which is
10 Catherine Leisy.

11 Q. Okay. And yet again, as to State's Exhibit 17, your
12 Item 2, that wig, what day did you process that item?

13 A. June 5th of 2013.

14 Q. And then on June 5th of 2013, so you would have -- would
15 have let those swabs dry, and they would have been sealed in
16 an envelope and then forwarded on to the DNA analyst?

17 A. That's correct.

18 Q. And after you finished with the items themselves, I
19 guess they would go back to the agency, the wig and the
20 visor?

21 A. That's correct.

22 Q. And any further, I guess, testing on those items would
23 then be done by Agent Leisy, as far as not on the wig and the
24 visor, but on the swabs that you created from those items; is
25 that correct?

1 A. That's correct.

2 MR. SORENSON: That's all I have from this witness, Your
3 Honor.

4 THE COURT: Cross-examination.

5 CROSS-EXAMINATION BY MR. FALK:

6 Q. I believe you testified that you scraped the band of
7 both the wig and the visor?

8 A. That's correct.

9 Q. And what do you use to scrape that with?

10 A. I use a plastic sterile -- what we call as a scraper to
11 scrape the band with. It's a plastic -- well, like a small
12 plastic knife-type thing.

13 Q. Okay. And when you are -- when you were scraping the
14 band, you were following SLED procedures?

15 A. That's correct.

16 Q. And you've been trained by SLED as to how to do these
17 scrapings?

18 A. That's correct.

19 Q. And I believe, certainly when you were demonstrating the
20 process, it looked as though you were scraping the entire
21 circumference of both the hat and the wig; is that correct?

22 A. That's correct.

23 Q. So was it your goal in that instance to obtain all the
24 DNA evidence that might be on that hat and that wig?

25 A. No. The goal was to get a fair enough evidence on the

1 particular swab for a profile, if possible.

2 Q. How much is a fair enough evidence?

3 A. It's normally the -- the whole area, because that's what
4 touches the skin, and that's why we do it.

5 Q. I'm not trying to argue with you. I'm just trying to
6 see. So your goal is to scrape the entire circumference and
7 get the DNA evidence off of that; is that correct?

8 A. That's correct.

9 Q. Okay. Would there be any reason why you couldn't have
10 scraped half of the band?

11 A. We could have, but that's not part of our protocol.
12 It's to do the whole entire band to get the best profile that
13 we can.

14 Q. So if you were ever asked to -- let's say a situation
15 came up where they asked you to go back again and get some
16 scrapings off the band of the hat or the wig. Would you
17 expect to be able to find anything?

18 A. It's a possibility.

19 Q. Well, isn't your goal to be thorough to try and get all
20 of that information, all that --

21 A. We don't know whether we have everything or not. What
22 we do when we scrape everything, we really do it in the
23 blind, because skin cells, you can't really see it. You are
24 trying to get the best evidence that you possibly can when
25 you do the whole entire band.

1 Q. So the protocol and the goal is to be as thorough as
2 possible; is that correct?

3 A. That's correct.

4 Q. No part of the goal of the protocol is to leave any
5 material on there?

6 A. We don't know whether we leave anything or not because
7 you can't see it. Skin cells are something where you
8 can't -- you can't really see it. You're just doing the best
9 possible job that you can.

10 Q. If you scraped half of the visor and ran a test, could
11 you then scrape the other half of the visor and run a test?

12 A. Perhaps you can.

13 Q. So, I mean --

14 A. It's a possibility.

15 Q. -- would there be any reason why scraping, running a
16 test on half the visor first would stop you from running a
17 test on half of the visor -- the other half of the visor?

18 A. That's not -- our protocol is to scrape the whole entire
19 band of the item that we doing.

20 MR. FALK: No further questions.

21 THE COURT: Any redirect?

22 MR. SORENSON: A couple things, Your Honor.

23 REDIRECT EXAMINATION BY MR. SORENSON:

24 Q. If I'm understanding you, Ms. Butler, I mean, you're
25 trying to do a thorough job; is that correct?

1 A. That's correct.

2 Q. Okay. And when you're dealing with, in cases like this,
3 when you're trying to determine ownership or who was wearing
4 an item such as a visor, and you kind of touched on this, can
5 you -- I mean, these skin cells, are they visible to the
6 naked eye?

7 A. No, they are not.

8 Q. Okay. So looking at State's Exhibit 14 today, I mean,
9 can you tell if there's DNA on that just looking at it with
10 the naked eye?

11 A. No, you cannot.

12 Q. And back on June the 5th of 2013, looking at that same
13 item and the wig also, could you tell looking at them whether
14 there's DNA there?

15 A. No, you could not, not the naked eye.

16 Q. This isn't a situation where you had a stain that you
17 were collecting from, like a blood stain or a semen stain or
18 something like that; is that correct?

19 A. That's correct.

20 Q. That, I guess, would be a little different because you
21 know exactly where you're trying to collect it from; is that
22 correct?

23 A. Yes. That's a different test altogether.

24 Q. Because it's your testimony in this case, I mean, you
25 feel like you did a thorough job processing these items to

1 give Agent Leisy the best opportunity to get DNA results from
2 these items; is that correct?

3 A. That's correct.

4 MR. SORENSON: Thank you, Ms. Butler.

5 THE COURT: Mr. Falk.

6 RECROSS-EXAMINATION BY MR. FALK:

7 Q. Mr. Sorenson asked you about if there was a blood stain
8 and how this is different from that; is that correct?

9 A. Yes, he did.

10 Q. Have you ever -- have you ever processed a blood stain?

11 A. Yes, I have.

12 Q. If you process a blood stain, do you use the entire
13 stain in order to run your test?

14 A. No, we -- no, we do not. What --

15 Q. Go ahead. You were going to say something?

16 A. What we do on a blood -- because we have to take -- look
17 at the blood stain. We have to cut the whole stain. We use
18 just a small portion, because you could actually see it, get
19 a small portion and then cut the whole entire blood stain out
20 and then forward that to the DNA analyst.

21 Q. So on something like a blood stain, there's an
22 opportunity to come back a second time and retest it?

23 A. No. We send the whole thing to the DNA analyst, and
24 they don't always use all the blood stains. Sometimes they
25 use what they need and send what they don't need back to the

1 agency.

2 Q. And what they sent back to the agency, have you ever had
3 an -- been called on to reprocess what's been sent back to
4 the agency?

5 A. Not the particular blood stain. Maybe we're looking for
6 another -- I've had cases where perhaps we get a
7 representative sample of the blood, because the blood is
8 other different places on the particular item. And what we
9 do is get a representative sample of that particular blood,
10 and every now and again we might have to go and get another
11 sample from a different spot and send to the analyst.

12 MR. FALK: No further questions.

13 THE COURT: Ma'am, you may step down. Thank you.
14 Call your next witness.

15 MR. SORENSON: Thank you, Your Honor, State calls
16 Ashley Bell.

17 May Ms. Butler be excused, Your Honor.

18 THE COURT: Any objection?

19 MR. FALK: No objection.

20 THE COURT: Without objection, ma'am, you are excused.
21 Thank you for being here.

22 CLERK OF COURT: Please place your left hand on the
23 Bible, raise your right hand, state your full name for the
24 record.

25 THE WITNESS: Ashley Bell.

1 ASHLEY BELL,

2 being first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. SORENSON:

4 Q. Good afternoon, Ms. Bell.

5 A. Hi.

6 Q. If you would, tell the jury where it is that you're
7 employed.

8 A. I am employed with the South Carolina Law Enforcement
9 Division, more commonly referred to as SLED.

10 Q. Okay. And what do you do at SLED?

11 A. I am a forensic serologist.

12 Q. And how long have you been -- first of all, tell the
13 jury a little bit what your background is.

14 A. I have a bachelor of science degree in biochemistry from
15 Washington and Lee University.

16 Q. And how long have you been employed at SLED?

17 A. Approximately two and a half years.

18 Q. And tell the jury a little bit what your duties are out
19 there in that department.

20 A. I examine items of evidence for potential biological
21 evidence. I collect those potential areas of biological
22 evidence and perform serological tests for possible
23 biological stains, such as blood, semen and saliva. I then
24 make cuttings from those items of evidence and forward that
25 for DNA analysis. And lastly, I generate reports, and based

1 upon my findings and my examinations, and I testify to those
2 reports.

3 Q. Now, also, are there occasions where you're, instead of
4 actually making cuttings of items, where you're actually
5 processing items to see if there is touch DNA, if somebody
6 has touched or handled an item?

7 A. That is correct.

8 Q. And describe to the jury how that -- how you would go
9 about doing that if you had an item of clothing or an item
10 such as a gun that was presented to you. How would you go
11 about processing those items for potential DNA?

12 A. Mm-hmm. If I am given an item such as a gun to process
13 for touch DNA, I would begin by using a cotton-tipped swab,
14 sterile swab. I would moisten it with sterile water. I
15 would go through and swab the entire gun.

16 I would next take another swab that's dry, though, in
17 this case I would not moisten it, and swab the entire item in
18 the exact same areas again. And we're hoping to be able to
19 pick up potential skin cells that way.

20 Q. And specifically in this case, did you have a couple
21 items that were submitted to you back in June of this year
22 for your processing?

23 A. Yes, sir, I did.

24 Q. And what were those items that were submitted to you and
25 that you were asked to process for possible DNA evidence?

1 A. I received SLED's Item 6, which was a handgun, and I
2 also received SLED's Item 7, which was one latex glove.

3 Q. And showing -- I guess just kind of going in order that
4 you told the jury, showing you State's Exhibit No. 16. Let
5 me ask you if you recognize that item.

6 A. I do recognize the item. On the outside of the box, I
7 see where I placed special SLED tape with the date and my
8 signature. And when I open up the box, I also see the paper
9 that I processed the gun on top of, and that is labeled with
10 the unique SLED lab number, item number, my initials and the
11 date.

12 Q. And what day did you process that gun, Ms. Bell?

13 A. It was on June 16, 2014.

14 Q. And tell the jury how you went about processing that
15 gun.

16 A. Again, I used a cotton-tipped sterile swab, I moistened
17 it with water and I would have swabbed the entire outside of
18 the gun. I would have then taken a dry cotton-tipped sterile
19 swab, swabbed the entire outside of the item again. I
20 allowed those swabs to dry, and then I packaged them.

21 Q. And those items were then subsequently forwarded on, I
22 guess, to the DNA analyst?

23 A. Correct. I would have placed them into a coin envelope
24 that has the unique SLED lab number, item number, and it's
25 taped with my initials and date on the back.

1 Q. And that gun was SLED Item 6, so what did the swab that
2 you then created, did that have an item number, too, then?

3 A. It did. It was given what we call a -- we have parent
4 items, which would -- the gun would have been the parent
5 item, and off of that, I created a child, if you will. The
6 swabs were the child, so they were given Item 6.1.

7 Q. Okay. And that was sent -- and are you aware in this
8 case it was Agent Leisy, Catherine Leisy, that did the DNA
9 testing in this case?

10 A. Yes, sir.

11 Q. Now, did you also receive, let me show you State's
12 Exhibit No. 15.

13 A. Yes, I do recognize it, again, because it has the unique
14 SLED lab number and label, item number. I see where I wrote
15 "Return to agency" on it and the last seal that was made was
16 by myself with my initials and the date. I also can see on
17 the back of the packaging that that lab number is there, that
18 item number, my initials and the date.

19 Q. And that item is, I guess, your SLED Item No. 7; is that
20 correct?

21 A. Correct, yes, sir.

22 Q. And what was that item?

23 A. That item was a glove, a clear or white latex glove.

24 Q. And tell the jury what you did with that latex glove.

25 A. My processing would have been very similar as it was to

1 the gun. I would have used another cotton-tipped sterile
2 swab, moistened it with some sterile water, and I was
3 instructed to swab only the outside of the glove as it was
4 submitted.

5 I then used a dry cotton-tipped sterile swab and swabbed
6 the exact same areas on the entire exterior of the glove.
7 Again, I would have had allowed those swabs to dry, and then
8 I would have packaged them into a coin envelope with the SLED
9 lab number, the now children number, item number, which would
10 have been 7.1, and I would have sealed that envelope with
11 tape with my initials and the date.

12 Q. Okay. And what date was that done?

13 A. That was done on the same day, which would have been
14 June 16, 2014.

15 Q. And you indicated that you ultimately turned those items
16 over to Agent Leisy?

17 A. Yes, sir.

18 Q. Did you hand deliver them to her?

19 A. Yes, sir.

20 Q. That -- after you -- right after you finished
21 processing?

22 A. After the swabs were allowed to dry and packaged back
23 into the coin envelope and then into a heat-sealed pouch,
24 which is sealed and labeled with my initials and date, I
25 would have manually transferred those items over to

1 Agent Leisy.

2 Q. And as far as the glove goes, so your instructions
3 basically when you received the glove, you swabbed just
4 basically the entire -- what was the way the glove was, the
5 entire exterior of the glove?

6 A. Correct. I was instructed to swab the outside of the
7 glove as it was submitted. So I didn't turn it inside out or
8 anything like that. However it was given to me when I laid
9 it out on the processing paper, that was considered the
10 outside, and that is what I swabbed.

11 Q. And you did basically the entire part --

12 A. The entire, yes, sir.

13 Q. Okay. And so those items then, so it was -- what you
14 created and was then submitted to Agent Leisy would have been
15 Item 6.1 and Item 7.1; is that correct, swabs from the gun,
16 swabs from the glove?

17 A. Yes, sir, that is correct.

18 MR. SORENSON: Okay. Thank you, Ms. Bell.

19 THE COURT: Cross-examination.

20 MR. FALK: Thank you.

21 CROSS-EXAMINATION BY MR. FALK:

22 Q. When you are trying to recover DNA material, you're
23 using the swab because it can get down into -- let me
24 rephrase the question.

25 On an item such as this, which has raised and lowered

1 surfaces, for example, on this handle area. And I'm not sure
2 what you want to call this area right there (indicating),
3 where it's got raised and lowered surfaces, the DNA, the
4 material is going to collect not just on the top, but it's
5 going to collect down in the bottom; is that right? Is it
6 possible that skin cells or whatever would collect down in
7 those crevices?

8 A. It is possible. I'm swabbing the entire outside of the
9 gun, so whatever parts of that gun were touched, that is
10 where my swab is going to swab and pick up.

11 Q. And so the swab would go down into the crevices as well?

12 A. If there are grooved parts along the outside of the gun,
13 then yes, sir, the swab would go into there as well.

14 Q. And what would leave -- you had said -- what kind of
15 items, what kind of fluids could be on there that would leave
16 DNA?

17 A. Essentially, if we're swabbing for touch DNA, we're
18 hoping to pick up epithelial or skin cells that were left
19 behind from whoever handled the item.

20 MR. FALK: No questions.

21 MR. SORENSON: Nothing further, Your Honor.

22 THE COURT: Ma'am, you may step down. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: Call your next witness.

25 MR. SORENSON: State calls Catherine Leisy.

1 CLERK OF COURT: Please place your left hand on the
2 Bible and raise your right hand. State your full name for
3 the record.

4 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

5 CATHERINE LEISY,
6 being first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. SORENSON:

8 Q. Good afternoon, Agent Leisy.

9 A. Good afternoon.

10 Q. If you would, tell the jury where you're employed.

11 A. I work for the South Carolina Law Enforcement Division,
12 more commonly known as SLED. I am a forensic scientist
13 assigned to the DNA and serology unit.

14 Q. Okay. And if you would, tell the jury how long you've
15 been employed at SLED.

16 A. I've worked at SLED for approximately eight and a half
17 years.

18 Q. And how long of that have you been in the DNA
19 department?

20 A. The entire time.

21 Q. And if you would, tell the jury a little bit about your
22 educational background.

23 A. I have a bachelor of science degree in genetic
24 engineering from Cedar Crest College in Allentown,
25 Pennsylvania, prior to my time here with SLED, I spent

1 approximately four years working at a private DNA testing
2 facility known as Orchid Cellmark, where I ran the same types
3 of tests and analysis that I do here at SLED.

4 I am also required to participate in continuing
5 education, which consists of training seminars and
6 conferences that relate to specific topics in DNA and
7 forensic testing.

8 Q. And have you had an opportunity, Agent Leisy, to testify
9 in court about your findings in regards to the field of DNA
10 identification?

11 A. Yes, sir.

12 Q. And approximately how many times have you testified?

13 A. Over 50 times now in several counties within the South
14 Carolina, as well as several different states throughout the
15 country and United States Federal Court.

16 Q. Been qualified as an expert on those 50-some-odd
17 occasions?

18 A. Yes, sir.

19 MR. SORENSON: Your Honor, at this time we'd offer
20 Agent Leisy as an expert in the field of DNA analysis.

21 MR. FALK: No objection.

22 THE COURT: Ladies and gentlemen, Agent Leisy is being
23 offered as an expert in DNA forensic testing and DNA
24 analysis. Let me explain this to you. Normally, a person
25 cannot give opinion testimony normally. When a person

1 testifies, they must testify as to what they saw, heard or
2 sensed by smell or something of that nature.

3 However, there is an exception when someone is qualified
4 because of education or experience. They are permitted to
5 give their opinion in certain areas if the Court qualifies
6 them that way. This witness is being qualified as an expert
7 in the area of forensic testing and DNA analysis to give
8 opinion testimony in that area.

9 That does not mean that you must accept the opinion, but
10 it is evidence for you to use in any way that you see fit and
11 give it the weight and credibility that you believe is
12 appropriate.

13 Mr. Sorenson.

14 MR. SORENSON: Thank you, Your Honor.

15 BY MR. SORENSON:

16 Q. Agent Leisy, if you would, kind of briefly kind of
17 describe for the jury what DNA is.

18 A. DNA stands for deoxyribonucleic acid. It's the genetic
19 material found in all of our body cells with the exception of
20 our red blood cells. DNA is fashioned of structures called
21 chromosomes, which contain our genes. And genes are code for
22 our physical characteristics, such as our height or our eye
23 color.

24 We inherit one copy of DNA from our mother and one from
25 our father and, therefore, we have two copies of every gene.

1 Now, approximately 99.9 percent of an individual's DNA is
2 identical to that of everyone else's, and it's the variation
3 in that remaining .1 percent that allows us to tell different
4 people apart.

5 Q. And as DNA relates to a criminal case, kind of explain
6 typically how you're getting involved.

7 A. My job is to try and develop what's known as a DNA
8 profile from biological material that has been left at a
9 crime scene or on an item of evidence. I can then compare
10 that DNA profile to the DNA profile of a known individual
11 whose sample has been submitted for comparison. And
12 essentially we're just trying to see if the DNA profile from
13 the evidence matches the DNA profile of the known individual.

14 Q. And as far as your DNA, tell the jury where -- you know,
15 where -- I think you said the only spot it's not found is in
16 your red blood cells; is that correct?

17 A. Correct.

18 Q. All right. So your skin cells?

19 A. Correct.

20 Q. Have DNA?

21 A. They do.

22 Q. Your -- I guess your white blood cells, so your -- if
23 you left blood at a scene, you can get a DNA profile from
24 that?

25 A. That's correct.

1 Q. How about a semen stain at, let's say, a scene of a
2 criminal sexual assault?

3 A. That's correct. Typically what we're looking for is
4 semen, saliva, blood or skin cells that have been transferred
5 by an individual coming in contact with an item.

6 Q. And your DNA in those four different areas that you
7 talked about, is your DNA the same in all four of those
8 areas?

9 A. Yes, it is.

10 Q. Okay. So if you had -- you know, a suspect left blood
11 at a crime scene, you could hopefully generate a DNA profile
12 from that blood at the crime scene and compare it to a DNA
13 profile gotten from buccal swabs or cheek swabs --

14 A. That's correct.

15 Q. -- collected from him?

16 A. Yes, sir.

17 Q. And if you would, describe briefly for the jury what
18 type of DNA testing do you use out at SLED.

19 A. We utilize what is known as PCR-STR testing. PCR stands
20 for polymerase chain reaction. It's a technique that allows
21 us to make copies of the specific locations in DNA that we
22 need to test, and those locations are call STRs or short
23 tandem repeats.

24 And an STR is simply a location in our DNA where a short
25 core unit of DNA repeats a certain number of times. We make

1 copies of those locations of our DNA and then count the
2 number of repeats. We then assign a number to that repeat
3 unit.

4 So let's say at one location I inherit eight copies from
5 my mom and eight copies from my dad, my DNA type at that
6 location would just be an 8, because that's the number of
7 repeats that I had at that location.

8 We test 15 STR locations, as well as a location known as
9 amelogenin, which tells us the gender of the DNA, and that
10 overall collection of 15 STR locations and the gender marker
11 gives us what we call a DNA profile.

12 Q. You can then compare that profile between the two
13 samples?

14 A. That's correct.

15 Q. To see whether they match or not?

16 And DNA testing, is that something that's pretty widely
17 done throughout the country at this point in time?

18 A. It is. This is the most common use of DNA in forensic
19 testing throughout -- really throughout the world at this
20 point.

21 Q. Obviously, these days, you know, it's used not only to
22 possibly prove that somebody was at a crime scene but it also
23 can be used the opposite, to basically, you know, exonerate
24 an individual; is that correct?

25 A. It can, yes, sir.

1 Q. Now, talk on, just real briefly before I get into the
2 evidence that was submitted in this case, a little bit about
3 the lab out at SLED. Is it an accredited lab?

4 A. We are accredited by the American Society of Crime
5 Laboratory Directors' laboratory accreditation board. It's
6 basically a voluntary program that the lab chooses to
7 participate in to show that we meet certain standards and
8 guidelines that have been set to ensure consistency and
9 quality in forensic testing.

10 Q. And that's something that was in effect back during
11 the -- throughout the course of your involvement in this
12 case?

13 A. That's correct.

14 Q. And let me ask you, do you ultimately, you know,
15 generate and keep the paperwork and all of the -- kind of the
16 charts and stuff that are generated? Are they all stuff that
17 are preserved and can be turned over to any other expert if
18 they need to review your findings?

19 A. It is. We generate a case folder that contains all of
20 our bench notes and all of the results of our testing. Those
21 notes are used to then write a report documenting what tests
22 were performed, what the results were and what our
23 interpretations of those reports were. That information can
24 then be reviewed by other scientists, if necessary.

25 Q. And lastly, before you're able to -- if you are the

1 person that is actually doing an analysis on a case, before
2 you can actually issue and sign a report and issue that, is
3 there any kind of review process that goes on before that can
4 be done?

5 A. There is. Anytime I complete lab work on a case, I then
6 generate my report. The report then goes through a technical
7 review, done by another qualified analyst, essentially to
8 make sure all of our lab protocols were followed and the work
9 was done correctly.

10 It then undergoes an administrative review, which is
11 really more crossing T's, dotting I's, making sure that all
12 of the lab work and everything has been completely finished.
13 The report is then signed and sent -- disseminated for
14 review.

15 Q. All right. Now, Agent Leisy, I want to now specifically
16 turn you to this case that we're here for today. Did you
17 ultimately receive I think it's about six items of evidence
18 for you to do DNA on?

19 A. I did.

20 Q. And if you would, tell the jury what those items were
21 that you received to perform DNA analysis on.

22 A. I received numerous swabs in this case.

23 Q. I guess seven.

24 A. The first would be SLED Item 1.1, which was identified
25 as a swab taken from a black visor; SLED Item 2.1, swab taken

1 from a wig; SLED Item 3, which was identified as a swab taken
2 from the side and grip of a .380 handgun; SLED Item 4, swab
3 from left counter; SLED Item 5, swabs from a latex glove.

4 I also received buccal swabs, which are just cotton
5 swabs taken from the inside of an individual's cheek to be
6 given -- used as a known standard. The swabs were identified
7 as belonging to Tyrone Ellison.

8 Q. And then were you subsequently -- and that was all done
9 back and you received all those items, I think they were all
10 initially submitted back in 2013?

11 A. That's correct.

12 Q. Was there also then a subsequent submission of a couple
13 additional items?

14 A. There was.

15 Q. Okay. And did you receive any items from that
16 subsequent submission?

17 A. Additionally I received SLED Item 6.1, another set of
18 swabs taken from a .380 auto handgun, as well as swabs 7.1,
19 which were taken from a latex glove.

20 Q. And the items that are the .1 items, the 1.1, 2.1, 6.1
21 and 7.1, did those items go through somebody else out at your
22 agency before they made it to you?

23 A. They did.

24 Q. And so where would they have gone before they made it to
25 you?

1 A. SLED items 1.1 and 2.1, the swabs from the black visor
2 and black wig, were taken by evidence processing technician
3 Betty Butler; and Swabs 6.1 and 7.1, the swabs from the gun
4 and swabs from the latex glove were taken by forensic
5 serologist Ashley Bell.

6 Q. Now, Item 3, the swab from the handgun; Item 4, the swab
7 from the left counter; and Item 5, the initial swabs from the
8 white latex glove, did those swabs just come directly to you
9 from the law enforcement agency?

10 A. They did. They were submitted after having been
11 collected from -- by the local law enforcement.

12 Q. Now, did you have an opportunity then, Agent Leisy, to
13 attempt to see whether you could get a DNA profile from
14 ultimately those, I guess, five, six, seven, eight items,
15 including the buccal swabs from Mr. Ellison?

16 A. Yes, sir, I did.

17 Q. And if you would, I guess probably the best way to do it
18 is just kind of go through them in numerical order. First of
19 all, as far as the buccal swab that you received from
20 Mr. Ellison, were you able to develop a DNA profile from that
21 buccal swab?

22 A. I was.

23 Q. And I guess I probably should get you to explain, what's
24 a buccal swab? The jury's heard that term a few times.

25 A. Buccal swab is what we most commonly use now for known

1 DNA standards for an individual. It's really just a sterile
2 cotton swab, very similar to a Q-tip. It is rubbed against
3 the inside of an individual's cheek to collect cells from the
4 inside of their mouth. We can then develop a DNA profile
5 from that swab. We use that profile as their known standard
6 in comparison to evidence profiles.

7 Q. From that cheek swab, that buccal swab, were you able to
8 develop a DNA profile for Mr. Ellison?

9 A. I was.

10 Q. And was it a complete profile?

11 A. Yes, sir.

12 Q. And was it a single, lone profile or was there any kind
13 of mixture involved to it?

14 A. There was no indication of a mixture.

15 Q. I guess would that suggest to you it was properly
16 collected? I mean, it wasn't contaminated in any way, shape
17 or form?

18 A. There was no indication of an issue with the standard at
19 all.

20 Q. So then did you have an opportunity then to process
21 those other seven items in an attempt to see if you could
22 develop a DNA profile to compare to Mr. Ellison?

23 A. Yes, sir.

24 Q. And I guess starting with Item 1.1, the swab from the
25 black visor, if you would, tell the jury your results from

1 processing Item 1.1.

2 A. The DNA profile developed from the swab from the black
3 visor is a mixture of at least two individuals. The DNA
4 profile developed from a major contributor to this mixture
5 matches the DNA profile developed from Tyrone Ellison, and
6 the probability of randomly selecting an unrelated individual
7 having a DNA profile matching the major contributor to this
8 mixture is approximately 1 in 2.2 quintillion.

9 Q. Describe for the jury, I mean, how big is
10 2.2 quintillion?

11 A. That large a number would be significantly larger than
12 the current population of the earth.

13 Q. All right. To make sure I understand this now, tell the
14 jury what you mean by a mixture.

15 A. A mixture indicates that we have DNA from more than one
16 person. In this particular mixture, we have what we consider
17 to be a major contributor. That means that one individual
18 left significantly more DNA than the others did. That allows
19 us to essentially pull out their lone profile, because the
20 intensity of the signal given off by their DNA is so much
21 greater.

22 If we can pull out a major contributor profile, as we
23 did in this case, it allows us to compare that directly to
24 the profile of a known individual for identification
25 purposes.

1 Q. In this case there was that major contributor, and it
2 was, I guess, based on the probability, a pretty significant
3 major contributor?

4 A. Yes, sir.

5 Q. And that matched the defendant, Tyrone Ellison?

6 A. It did match the profile I developed for Mr. Ellison,
7 yes.

8 Q. So what does that mean with regards to that swab from
9 the inside of that visor?

10 A. Within a reasonable degree of scientific certainty it is
11 my opinion that Mr. Ellison is the major contributor of DNA
12 developed from the visor.

13 Q. And yet again, this case with that, we're dealing with
14 basically skin cells, I mean, when you're processing
15 something for ownership?

16 A. Typically, yes. There can be other bodily fluids
17 present. There was only an ownership request, meaning we're
18 trying to determine who may have worn it or who may have been
19 in physical contact with it. So really what we're looking
20 for is skin cells that may have been transferred during
21 physical contact with it.

22 Q. And is it your opinion within a reasonable degree of
23 scientific certainty then that Mr. Ellison would have either
24 worn or been in contact with that visor?

25 A. It's my opinion that his DNA is present on the item. I

1 can't necessarily say how it was transferred to the item, but
2 it is my opinion he is the major contributor to the DNA
3 profile found on that item.

4 Q. And that was -- and Ms. Butler had testified that she
5 collected that swab, I think, on June -- bear with me one
6 second, June 5th of 2013?

7 A. I would have to refer to my notes to give a specific
8 date.

9 Q. Okay. That's all right. So that's as to Item 1.1. How
10 about as to Item 2.1?

11 A. SLED Item 2.1 was the swab taken from a black wig. The
12 DNA profile developed from this item is also a mixture of at
13 least two individuals, and the DNA profile developed from the
14 major contributor to this mixture also matches the DNA
15 profile of Tyrone Ellison. And, again, the probability of
16 randomly selecting an unrelated individual having a DNA
17 profile matching this major contributor is approximately 1 in
18 2.2 quintillion.

19 Q. Yet again, it's a mixture, so we've got somebody else's
20 DNA. Somebody else has been in contact or left some DNA on
21 this item besides Mr. Ellison; is that correct?

22 A. Correct. There's at least one other contributor of DNA
23 to the item.

24 Q. But the major contributor, yet again, 1 in
25 2.2 quintillion matches the defendant, Tyrone Ellison?

1 A. That's correct.

2 Q. How about Item 3, the swab from the .380 that was
3 submitted by law enforcement agency?

4 A. The DNA profile developed from our SLED Item 3, the
5 swabs from the handgun, was a partial DNA profile, and
6 Mr. Ellison is excluded as a possible contributor to this
7 mixture.

8 Q. So you did get a partial, a partial DNA profile from
9 that?

10 A. That's correct.

11 Q. But you could exclude him from that, so it's somebody
12 else that has left that partial DNA on that gun?

13 A. That's correct. Mr. Ellison was excluded as a possible
14 contributor to the profile I was able to develop.

15 Q. All right. How about State's Exhibit -- or SLED Item
16 No. 4, the swabs taken from the counter at the bank?

17 A. A partial DNA profile was developed from the swabs from
18 the counter, and Mr. Ellison was excluded as a possible
19 contributor.

20 Q. Kind of similar to the gun? I mean, it's not a complete
21 profile but still exclude Mr. Ellison, though; is that
22 correct?

23 A. Yes, sir. It was very limited information on that
24 particular sample. I was not able to develop a full profile,
25 but, in my opinion, Mr. Ellison is excluded as a possible

1 contributor to that profile.

2 Q. And then lastly, in kind of the initial submission to
3 you, your SLED Item No. 5, the swabs that were taken from the
4 latex glove that were initially submitted by the North
5 Charleston Police Department?

6 A. From SLED Item 5, swabs from the latex glove, a partial
7 DNA profile was developed, and Mr. Ellison was excluded as a
8 potential contributor.

9 Q. And yet again that's not -- was not a full DNA profile?

10 A. Correct.

11 Q. But what was there, you excluded Mr. Ellison; is that
12 correct?

13 A. Yes, it is.

14 Q. Now, subsequent to that, I believe you testified
15 earlier, did you ultimately have in June of this year, of now
16 2014, a couple other items that were submitted out to SLED
17 for some further testing?

18 A. Yes, sir.

19 Q. And we heard Ms. Bell testify earlier about basically
20 creating Items 6.1 and 7.1, the swabs from the .380 auto
21 handgun and the swabs from that white latex glove. Were
22 those two items, your Item 6.1 and your Item 7.1 submitted to
23 you to see if you could develop a DNA profile from those
24 items?

25 A. They were.

1 Q. And if you would, tell the jury what the results of your
2 findings on those two items were.

3 A. The DNA profile developed from SLED Item 6.1, swabs from
4 the handgun, is a mixture of at least three individuals, and
5 Tyrone Ellison is excluded as a possible contributor to this
6 mixture.

7 And in regard to SLED Item 7.1, swabs taken from the
8 white latex glove, the DNA profile developed is a mixture of
9 at least two individuals, and the DNA profile developed from
10 the major contributor to this mixture also matches the DNA
11 profile of Tyrone Ellison.

12 The probability of randomly selecting an unrelated
13 individual having a DNA profile matching the major
14 contributor to this mixture is approximately 1 in
15 2.2 quintillion.

16 Q. So similar to basically the same results as you had from
17 the swabs from the visor and swabs from the wig; is that
18 correct?

19 A. That's correct.

20 Q. So ultimately, once you got done reviewing and analyzing
21 all this evidence, basically those three items that you found
22 the defendant's DNA on, a probability of 1 in 2.2 quintillion
23 on all three of those items; is that correct?

24 A. Correct. The same statistics would apply to the DNA
25 profile of the major contributors to those mixtures matching

1 the profile developed from Mr. Ellison's standard.

2 Q. I guess that was a complete DNA profile that you were
3 able to get of Mr. Ellison's on all three of those items?

4 A. Yes, sir.

5 Q. You've talked about kind of the controls that are in
6 place out at SLED as far as the review process and all of
7 that. Was that all done in the case?

8 A. It was.

9 Q. So it was -- a technical review was done on both of
10 these reports before they were issued?

11 A. Yes.

12 Q. And then also what was the other type of review you
13 talked --

14 A. We do an administrative review.

15 Q. Administrative review. So that was done also on both of
16 these before you issued them?

17 A. That's correct.

18 Q. So within a reasonable degree of scientific certainty,
19 you can tell this jury, Agent Leisy, what about the
20 defendants DNA with regards to the swabs from the visor, the
21 swabs from the wig and the swabs from the latex glove that
22 were created, that were done by Ms. Bell?

23 A. It is my opinion within a reasonable degree of
24 scientific certainty that Mr. Ellison is the major
25 contributor of DNA to those mixtures.

1 MR. SORENSON: Thank you, Agent Leisy, please answer any
2 questions that Mr. Falk has.

3 THE COURT: Cross-examination.

4 MR. FALK: Thank you.

5 CROSS-EXAMINATION BY MR. FALK:

6 Q. You had testified earlier that when you originally ran a
7 DNA profile on the gloves and you generated an analysis of
8 that, that you did not find any DNA on the glove; is that
9 correct?

10 A. No, there was a partial DNA profile developed. I was
11 able to exclude Mr. Ellison from that partial profile.

12 Q. Thank you.

13 Could you just review for me, how much contact does it
14 take in order to transfer an epithelial cell?

15 A. It takes very limited contact. To rub your finger along
16 the surface of a table would leave epithelial cells. Really
17 any contact would cause some form of transfer of skin cells
18 to an object.

19 Q. If I clap my hands over a table, am I going to throw off
20 any epithelial cells?

21 A. It's possible.

22 Q. Now, just so we're clear on your testimony, you can't
23 say with any degree of certainty that Mr. Ellison was ever
24 wearing that wig; is that correct?

25 A. That's correct. I can't testify to how the DNA was

1 transferred, just that at some point it was transferred to
2 these items.

3 Q. And that, of course, would go along with the visor as
4 well?

5 A. Yes, sir.

6 Q. Sometime around May 13, 2014, did you get a request to
7 look at the gun, I mean, to look at the glove again?

8 A. I would have to double-check on the exact date, but I
9 was submitted a request to retest the item.

10 MR. Falk: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 MR. FALK: I'll mark that as Defendant's Exhibit 2, I
13 mean, for purposes --

14 THE COURT: Identification purposes?

15 MR. FALK: Identification purposes.

16 (Defendant's Exhibit 2 marked for identification.)

17 Q. That document right there, can you tell me what that is?

18 A. This is what we refer to as our submission paperwork or
19 packing slip. These forms include information given to us by
20 the law enforcement agency that is submitting the case. It
21 includes items, descriptions, exactly what tests are to be
22 performed, suspect names, any sort of that information. It
23 also can include detailed instructions as to how we're to
24 test a particular item.

25 Q. I had asked you originally did you know about the time

1 that you received that. After looking over that, do you have
2 a better understanding what time you received that or what
3 date?

4 A. The form indicates that it was received on May the 13th
5 of this year.

6 Q. Okay. Does that form have any directions on it for you?

7 A. Yes, it does.

8 Q. And what were you directed to do?

9 A. Would you like me to read it or --

10 Q. That's fine.

11 A. As the comment section reads on this form, it was
12 directed to my attention, resubmitted for Solicitor
13 Don Sorenson. Please try to obtain suspect DNA from handgun.
14 Swab already obtained from texture area on slide and grip
15 then processed with cyanoacrylate. Please try to obtain
16 suspect DNA from white latex glove.

17 Would you like me to read the whole --

18 Q. No, that's fine. I'll take that back.

19 So when you got this form, you were directed to try and
20 find Mr. Ellison's DNA on it?

21 A. I was directed to reswab the particular items to try and
22 develop DNA profile for comparison purposes.

23 Q. It says -- you had read it said, "Please try to obtain
24 suspect DNA from the handgun"?

25 A. That was how it was submitted, yes, sir.

1 Q. So you were sort of directed to look for Mr. Ellison's
2 DNA?

3 A. That's not how I would read it. That's how it's written
4 out. To us the, purpose is to develop any potentially
5 probative or informative profile that may be on a particular
6 item. I don't go looking through items to find a particular
7 person. My job is to develop a DNA profile for comparison.

8 Q. Can you explain what CODIS is, C-O-D-I-S?

9 A. CODIS stands for combined DNA index system. It's an
10 electronic database that is maintained by the FBI. It
11 consists of DNA profiles collected from crime scenes as well
12 as those of known of criminal offenders. We can use that
13 database to try and identify previously unknown DNA profiles
14 developed from items of evidence.

15 Q. And are there any guidelines as to what type of DNA
16 profiles can go into CODIS?

17 A. There are.

18 Q. Was any of the DNA that was taken from the wig or the
19 visor submitted to CODIS?

20 A. Yes. The DNA profile developed -- the major DNA profile
21 developed from SLED Item 1.1, the swab from the black visor,
22 was submitted for CODIS comparison.

23 MR. FALK: One moment, please.

24 May I approach the witness, Your Honor?

25 THE COURT: Yes, sir.

1 Q. I'm going to show you a document we're going to have as
2 Defendant's Exhibit 3, just for identification purposes.

3 (Defendant's Exhibit 3 marked for identification.)

4 Q. I asked you earlier to look at this document right here.

5 THE COURT: Was that No. 2?

6 MR. FALK: I was going to ask her to reconfirm that.

7 THE WITNESS: Yes, sir.

8 Q. And that's the document that we looked at before that I
9 referred to as Exhibit No. 2?

10 A. Yes, sir.

11 Q. Thank you.

12 THE COURT: Thank you, Mr. Falk.

13 Q. So Exhibit No. 3 that you're looking at, is that a
14 report that you prepared?

15 A. Yes, it appears to be a copy of the initial report that
16 I prepared for this case.

17 Q. Is there anywhere on the report that it reveals your
18 results for Item 1.1?

19 A. There is.

20 Q. In the section about your results for Item 1.1, did you
21 make any reference about whether or not that was suitable for
22 CODIS entry?

23 A. I did indicate on the report that the major contributor
24 was entered into the combined DNA index system for
25 comparison.

1 Q. When we're talking about this gigantic number, 1 in
2 2.2 quadrillion, if you were recovering DNA from the
3 headband, does that mean that the DNA is all around the
4 headband?

5 A. In terms of my statistics and the profile developed, it
6 means that the DNA was present on the swab as it was
7 presented to me. Where exactly it was on the headband as it
8 was collected during processing can't necessarily be
9 determined. I mean, you can't look at a visor or wig and
10 say, "Well, I can see the skin cells right there."

11 We test an area that we believe would be a good
12 representation of where skin cells are most likely to be
13 based on what the item is, how it would be worn, where it
14 would be in contact with your body.

15 Q. But you have no way of knowing how large a section of
16 materials were found on the headband; is that correct?

17 A. Again, my understanding is just that the entire headband
18 was processed, that cells from around the entire band would
19 have been collected. I can't say specifically where on the
20 band they were before they were transferred to the swab
21 during collection.

22 Q. Now let me ask the question this way: Let's say --
23 let's maybe not talk about skin cells. Let's talk about
24 whether or not there was a drop of blood on the headband, and
25 you would do a DNA analysis on that; is that correct?

1 A. If that were the request for that particular item, yes,
2 sir.

3 Q. Okay. And when you're saying the major contributor on
4 that, that just means of the speck of blood that's on there,
5 it's more of somebody else's. It's more one person's than
6 another; is that correct?

7 A. It would just mean that of the DNA that I was able to
8 collect, regardless of its source, in that amount of DNA,
9 that one particular individual contributed more DNA than did
10 anyone else.

11 Q. So nothing that you have testified to can talk to how
12 much DNA was on any of the items; is that correct?

13 A. The specific results in different portions of the test
14 can indicate roughly how much DNA was present. I can't give
15 you an exact measurement of how much DNA was on the item as
16 it was collected by law enforcement. I can just give you an
17 idea of how much we were able to collect during our testing
18 process.

19 Q. How much do you need to collect?

20 A. Really very small amounts.

21 Q. And what is a very small amount?

22 A. We target approximately one nanogram of DNA. It's
23 difficult to really explain. I mean, you're talking just
24 maybe a few hundred cells. It doesn't take very much
25 material at all.

1 MR. FALK: One moment, please.

2 THE COURT: Yes, sir.

3 Q. And on the handle of the gun, you talked about partial
4 DNA profiles?

5 A. Yes, sir.

6 Q. What would be a reason why there would not be a full DNA
7 profile?

8 A. Most commonly it's just that there's not enough DNA
9 present, and when we try to make copies of the DNA that we're
10 interested in testing, there aren't enough copies for us to
11 be able to get a signal. There can also be issues with
12 degradation. Different environmental factors can cause to
13 break down DNA, and as the DNA would break down, it makes it
14 more difficult for us to develop a profile.

15 Q. But, again, you testified that it only takes slight
16 contact to transfer an epithelial cell; is that correct?

17 A. That's correct.

18 Q. And you testified that a nanogram, a nanometer of DNA
19 would be sufficient?

20 A. Correct, or even a little bit less.

21 Q. Yet there was no DNA -- Mr. Ellison's DNA was not on the
22 gun; is that correct?

23 A. There was no indication to me of Mr. Ellison's DNA being
24 in that mixture. Again, I can only speak to the profile I
25 was able to develop, but based on that profile, I believed it

1 appropriate to exclude Mr. Ellison as a contributor.

2 Q. And that is the same as on the DNA that came from the
3 counter; is that correct?

4 A. That's correct. There was only a partial DNA profile
5 developed from the counter, and Mr. Ellison was excluded.

6 MR. FALK: I have no further questions.

7 THE COURT: Any redirect?

8 MR. SORENSON: Just real briefly, Your Honor.

9 REDIRECT EXAMINATION BY MR. SORENSON:

10 Q. Agent Leisy, when you're dealing with epithelial or skin
11 cells, tell the jury how you can go about transferring them
12 onto an item.

13 A. Typically, any type of physical contact. Again, if your
14 skin comes in contact with a particular item, you would
15 expect there to be some level of transfer, but if you were
16 sweating, you would expect your sweat to increase the amount
17 of transfer.

18 You know, as counselor pointed out, really clapping your
19 hands, even that can cause some shedding of cells. It
20 depends quite a bit on, you know, the conditions and on the
21 person that you're concerned about, but really any type of
22 physical contact will cause some level of transfer.

23 Q. So if you're wearing an item, obviously that would be
24 physical contact?

25 A. You would expect a form of transfer, yes, sir.

1 Q. And Mr. Falk asked you about -- kind of along those same
2 lines, but if you did handle an item, you would expect to
3 find skin cells, but is it also something that can be removed
4 easily from an item?

5 A. DNA can be removed. It could be wiped off. Again,
6 depending on environmental conditions, it could be degraded.
7 Also, when you're dealing with mixtures, it could be that
8 other people left more of their DNA on an item than a
9 particular individual of interest, which could basically mask
10 their DNA profile.

11 To exclude someone from a mixture just means that based
12 on the information I was able to develop, I have excluded
13 them as a potential contributor.

14 Q. And obviously, in order to get your skin cells onto an
15 item by handling the item, you actually have to handle the
16 item, right? I mean, let's say you had a glove on and you
17 handled an item. I mean, you wouldn't necessarily expect to
18 find your skin cells on that item you picked up; is that
19 correct?

20 A. Correct. If you had a solid barrier, such as a latex
21 glove, you would expect that to prevent transfer from your
22 skin to a particular item.

23 Q. That's what I was getting at. Thank you Agent Leisy.

24 A. Yes, sir.

25 THE COURT: Mr. Falk, anything further?

1 MR. FALK: No recross.

2 THE COURT: Ma'am, you may step down. Thank you.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Can the lawyers approach, please.

5 (Judge and attorneys confer.)

6 THE COURT: All right. Ladies and gentlemen, what we
7 are going to do at this time is we are going to stop for the
8 balance of today. We've been going hard at it all day long.
9 I'm going to ask that you be back in your jury room tomorrow
10 morning at 9:30. 9:30. Not 9, 9:30, okay.

11 During your overnight break, my instructions remain the
12 same: Do not discuss the case at all. Do not do any
13 independent investigation on your own. You're to decide this
14 case based solely, based solely upon the evidence of
15 testimony presented in this courtroom, nowhere else.

16 Anything further from the State before I release the
17 jury for the balance of the day?

18 MR. SORENSON: No, sir.

19 THE COURT: Defense counsel?

20 MR. FALK: No, Your Honor.

21 THE COURT: Let me say this to you real quick, then I'll
22 let you go: When you all return in the morning, I'm going to
23 ask that you all select a foreperson. I will say this: That
24 Ms. Kelleher cannot be your foreperson, okay? So it will be
25 from you 12 there. If you all will select your foreperson

1 when you come back in the morning. Write it on a piece of
2 paper.

3 Ma'am, would you please make sure that they have
4 something to write on in there, something to write with.
5 Write it on a piece of paper and give it to the bailiff when
6 you all come out in the morning so she can give it to me.
7 And that foreperson will be seated where this young man's
8 seated right now, okay?

9 At this time you all are free to go. See you all
10 tomorrow morning at 9:30. Thank you.

11 (The jury retires to the jury room at 4:21 p.m.)

12 THE COURT: Anything further from the State at this
13 time?

14 MR. SORENSON: I don't think so. My only -- if you
15 wanted to maybe address his -- I know we're not quite at the
16 end of our case, but just to have him -- advise him of his
17 rights to testify so he'd have the overnight to kind of --
18 I'll leave that up to Your Honor, but obviously we have a few
19 minutes time right now.

20 THE COURT: I'll go ahead and do that. Just as a matter
21 of precaution, and I'm sure that Mr. Falk has already talked
22 to him about his right to testify, but that's certainly
23 something that we can go ahead and do.

24 Madam Clerk, will you swear the defendant.

25 Sir, if you would please stand.

1 CLERK OF COURT: Please raise your right hand, state
2 your full name for the record.

3 THE WITNESS: Tyrone Darius Ellison.

4 TYRONE DARIUS ELLISON,
5 being first duly sworn, testified as follows:

6 THE COURT: Sir, you are Tyrone Darius Ellison?

7 I need a verbal response from you, okay?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What I am going to do at this time is I am
10 typically -- or what happens at the conclusion of the State's
11 case, the State's indicating to me that they -- at sidebar
12 here in the presence of your counsel that they intend on
13 putting up, I think, three more witnesses before they rest,
14 okay?

15 What I am going to do, give you the overnight. For
16 purposes of making your decision, I am going to advise you of
17 your constitutional rights. Now, you have the right, and I
18 want you to understand that you have the right to present a
19 defense in this case. You have the right to claim the
20 protections given to you by the Fifth Amendment to the
21 constitution of the United States, and that amendment states
22 in part that no person, no person shall be compelled in any
23 criminal case to be a witness against himself.

24 This means that you cannot be required to testify in
25 this case. You have the right to testify on your own behalf;

1 however, however, no one can make you testify. This is a
2 personal right, and no one can waive this right except you.

3 If you decide to testify in the trial of your case, you
4 will be subject to the same rules that govern other
5 witnesses, and you may be examined and cross-examined on any
6 relevant issue in this case.

7 In addition, if you have any convictions involving
8 dishonesty or false statement or for crimes punishable by
9 imprisonment for more than a year, and this Court determines
10 that the probative value of admitting the evidence outweighs
11 its prejudicial effect to you, the solicitor will be able to
12 introduce your record to attack your credibility.

13 If you decide to testify, this decision on your part
14 must be freely, voluntarily and intelligently made with the
15 knowledge of the protections given to you by the Fifth
16 Amendment and the consequences of your decision to testify.

17 If you decide not to testify, I will instruct the jurors
18 that they cannot, that they cannot give the fact that you did
19 not testify any consideration whatsoever and that there is to
20 be absolutely no prejudice to you because you did not
21 testify.

22 Now, it is left entirely up to you whether or not you
23 testify. You may talk with your attorney, your family, your
24 friends or anyone else, but the final decision, the final
25 decision will be left entirely up to you. Do you understand

1 what I've explained to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions about what I've
4 explained to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: Now what I will do is I'm going to give you
7 the overnight. Certainly you have continuing time overnight
8 to further discuss this with your lawyer, family or whoever
9 you so desire, but as I've told you before, that ultimate
10 decision as to whether or not you testify in the trial of
11 your case is left entirely up to you, and I will give you the
12 overnight to certainly consider that, because I certainly
13 expect us to get -- for the State to rest its case tomorrow.

14 And at that time, you will have an opportunity to either
15 testify and/or put up any defense that you so desire, and I
16 will request you concerning your desire to testify. Do
17 you understand me?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. Anything further, Mr. Falk, at
20 this time?

21 MR. FALK: Not on this subject, but I think there's
22 another subject.

23 THE COURT: All right. You may be seated, sir.

24 Yes, sir.

25 MR. FALK: As you know, this was -- a lot of evidence

1 was produced in this case about an April 1 and a July 1
2 event, and when I picked up the case, I was focusing on the
3 April 1 event. In part of the discovery in the July 1 event
4 were some latex gloves that were found, you know, in July
5 pursuant to a search warrant of the black Taurus that
6 Mr. Ellison was driving at the time.

7 I guess had I appreciated the fact that these things
8 were going to be introduced into evidence since I kind of
9 categorized them as that case that I'm not handling versus
10 this case, I probably would have brought this to the Court's
11 attention at the beginning of the trial with a motion in
12 limine and maybe we could address it then, but when they come
13 in, I'm going to move that they be suppressed, because I
14 don't think that they are going to be relevant evidence and I
15 think it's going to be prejudicial.

16 I think there's a significant gap in time between -- I
17 mean, it's not the same car. It's three months later. It's
18 a relatively mundane item that was found in the glove box of
19 the car, but I think in the context of this case, it's going
20 to be highly prejudicial to my client. So we would -- I
21 would move -- I am moving in limine that those be excluded
22 from testimony, from introduction.

23 THE COURT: Mr. Sorenson.

24 MR. SORENSON: Thank you, may it please the Court, Your
25 Honor.

1 THE COURT: Yes.

2 MR. SORENSON: Just to kind of give you kind of a full
3 background so you understand what we're talking about here,
4 as Your Honor has heard, you know, it's the State's position
5 that the individual that committed this bank robbery on
6 April 1st was basically using this white latex glove to hold
7 the gun, uses it to open the door on the way out. That
8 item's recovered. Heard testimony that it's our position
9 that his DNA is found on that latex glove.

10 Subsequent to his arrest three months later, they
11 execute a search warrant on his black Ford Taurus and find in
12 the glove box -- it's not really a glove box, the center
13 console of that vehicle, three white latex gloves.

14 And we've got them. They're still sealed in the
15 envelope from when they were collected that day. I was
16 waiting for the person to open it so there's no -- there have
17 been some allegations that maybe we took one of these gloves
18 and that's what got resubmitted to SLED, so that's why this
19 has not even been opened yet.

20 But it's our position that this would be relevant just
21 to show, I mean, while it's a mundane item, I still think
22 it's still a fairly unique item to have somebody to have in
23 their position when one of the same type of item was used in
24 a bank robbery three months earlier, and I think in that
25 regard, it is relevant evidence.

1 THE COURT: Are they the same type of gloves?

2 MR. SORENSON: I mean, they're similar white latex
3 gloves. I mean, we can -- I haven't opened them to, you
4 know, compare if they're the exact same brand. I mean, he
5 worked at Burger King. I have no doubt that that's probably
6 where they came from was his job.

7 But at the same time, I mean, he's got white latex
8 gloves in his car three months later from when one was used
9 in a bank robbery three months prior. It would be our
10 position that they are -- that it is relevant.

11 THE COURT: Anything else, Mr. Falk?

12 MR. FALK: I've made my case.

13 THE COURT: I'll let you know in the morning. If you
14 want to submit me case law on it overnight, I'll let you do
15 that.

16 MR. FALK: Thank you.

17 THE COURT: Forward it to my law clerk, please, sir, and
18 she can forward it to me.

19 (Trial of the case adjourned for the day.)

20 (Trial of the case resumed on 10/22/14.)

21 THE COURT: State ready to proceed?

22 MR. SORENSON: Yes, Your Honor, I guess the only issue I
23 think we need to address first is the matter of the latex
24 gloves, because that would be our first witness that we would
25 be seeking to call.

1 THE COURT: Any further argument on that from defense
2 counsel?

3 MR. FALK: Yes, Your Honor. I did not find a case that
4 was really sort of on all fours to the facts that we have
5 here. It's our contention that there is no relationship -- I
6 mean, that -- the issue is whether or not my client owned the
7 latex -- owned that particular latex glove that was found at
8 the scene.

9 It's not a situation, and in that, this latex glove was
10 found three months later. Whatever latex gloves were found
11 in the car are certainly not the ones at the scene.

12 Now, it seems to me that this comes closer to trying to
13 show admission through 406 as habit and character evidence
14 that my client was in the habit of having, purchasing latex
15 gloves, and certainly one instance of another similar
16 situation is certainly not enough evidence to prove habit and
17 character.

18 I think this would be similar to the situation in which
19 a cigarette butt was found at the scene and it was a Marlboro
20 Light cigarette butt and three months later you found a pack
21 of Marlboro Lights in the defendants car, and I think the
22 jury would certainly want to jump to the conclusion that my
23 client smoked Marlboro Lights, but certainly there's no
24 strong connection between the two.

25 And if the Court, I mean, I have no -- I have no

1 question that the evidence is relevant, but I think, under
2 this situation, the prejudicial value outweighs its
3 relevance, because I think its relevance is small as compared
4 to the probability of prejudice that my client would face if
5 they're allowed to know that at three months later in a
6 different automobile the defendant had a latex glove which
7 was similar to a latex glove found at the scene, and it
8 clearly was not the latex glove found at the scene.

9 Again, this is not a situation where possibly somebody
10 identified the defendant of having a gun, that gun was not
11 recovered, but then three months later somebody said, "Yeah,
12 I knew Mr. McKinney had a gun like that." So we know that
13 we're not talking about the actual piece of evidence. This
14 is similar evidence and, again, I think that its prejudicial
15 value far outweighs its probative value.

16 THE COURT: All right. With respect to Defendant's
17 objection or motion to suppress, the latex gloves that were
18 found in the automobile, with all due respect, Court does
19 find such is relevant in this case. It is probative, and the
20 prohibitive value is not outweighed by the prejudicial
21 effect, and, therefore, I'm going to allow the gloves to come
22 in.

23 Anything further at this time, Mr. Sorenson?

24 MR. SORENSON: No, sir.

25 THE COURT: Mr. Falk.

1 MR. FALK: No, Your Honor.

2 THE COURT: But your objection is so noted for the
3 record.

4 MR. FALK: Thank you.

5 THE COURT: Okay. Anything else? Bring me the jury,
6 please.

7 (The jury enters the courtroom at 9:49 a.m.)

8 THE COURT: I see that you all have selected a
9 foreperson, and that foreperson is Mr. Davis.

10 JUROR NO. 33: Yes, sir.

11 THE COURT: Juror No. 33; is that correct?

12 JUROR NO. 33: Yes, sir. Good morning.

13 THE COURT: Good morning, sir.

14 If you'll hand this to the court reporter, mark that as
15 a court's exhibit.

16 (The Court's Exhibit 2 marked for identification.)

17 THE COURT: Sir, that will be your assigned seat
18 throughout the remainder of this trial.

19 Hope you all had a restful evening last night and are
20 ready to proceed here today.

21 At this time I'm going to recognize the State. Call
22 your next witness, please, sir.

23 MR. SORENSON: Thank you. The State calls Al Hallman.

24 CLERK OF COURT: Please place your left hand on the
25 Bible, raise your right hand and state your full name for the

1 record.

2 THE WITNESS: Al Hallman.

3 AL HALLMAN,

4 being first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. SORENSON:

6 Q. Good morning, Mr. Hallman.

7 A. Morning.

8 Q. If you would, tell the jury where you're currently
9 employed.

10 A. Currently I am employed by Kmart in North Charleston.

11 Q. Okay. And what do you do at Kmart?

12 A. I am the loss prevention team lead.

13 Q. And prior to being employed by Kmart, where did you work
14 prior to that?

15 A. The North Charleston Police Department.

16 Q. What did you do at the North Charleston Police
17 Department?

18 A. I was -- well, towards the end of my career, I was the
19 supervisor of the forensic investigations unit.

20 Q. And how long did you work for North Charleston?

21 A. 26 years.

22 Q. And so back in July of 2013, of last year, where were
23 you employed at that time?

24 A. City of -- oh, last year?

25 Q. Of 2013.

1 A. What month?

2 Q. July.

3 A. I was employed as a civilian investigator with the
4 forensic investigations unit at North Charleston Police
5 Department.

6 Q. Okay.

7 A. Sorry about that.

8 Q. That's okay.

9 And you said part of your duties were basically working
10 in the crime scene department?

11 A. That's correct.

12 Q. And as part of those duties, do you have occasions where
13 you processed and searched vehicles as a result of search
14 warrants that may have been obtained in cases?

15 A. Yes, sir.

16 Q. And I want to turn your attention, if I could,
17 Mr. Hallman, back to July 1st of last year, I guess that
18 evening, the evening of July 1st of 2013. And did you have
19 an occasion that evening to execute a search warrant on a
20 1996 black Ford Taurus?

21 A. Yes, sir, I did.

22 Q. And if you would, do you have the VIN number on that
23 Ford Taurus documented in your records?

24 A. Yes, sir, I do.

25 Q. Can you just publish that for the record?

1 A. Yes. 1FALP54N, November, XTA299688.

2 Q. And that black Ford Taurus, did you recover any -- let
3 me ask you this specifically -- any latex gloves out of that
4 Ford Taurus?

5 A. Yes, I did.

6 Q. And how many did you recover?

7 A. Three.

8 Q. And if you would, tell the jury where those gloves were
9 located.

10 A. They were located inside the center console between the
11 two front seats.

12 Q. And did you document those latex gloves by way of
13 photographing them?

14 A. Yes, I did.

15 Q. And showing you State's Exhibit No. 37, do you recognize
16 that photograph?

17 A. Yes, sir, I do.

18 Q. And what is contained in State's Exhibit 37?

19 A. That is a photograph of the gloves in the center console
20 as they were when I located them.

21 Q. Okay. And let me show you State's Exhibit No. 36, ask
22 you if you recognize State's Exhibit No. 36.

23 A. I do. This is the evidence bag in which I packaged the
24 gloves after they were removed from the vehicle.

25 Q. And did you document on that bag, you know, what you

1 collected and where they were collected and the date and all
2 that?

3 A. Yes, I did.

4 MR. SORENSON: Okay. Your Honor, at this time we'd
5 offer State's 36 and 37 into evidence.

6 THE COURT: Subject to Defendant's objection, so
7 admitted.

8 (State's Exhibits 36-37 admitted into evidence.)

9 MR. SORENSON: Thank you, Your Honor.

10 Q. State's Exhibit No. 37, that, again, is a photograph of
11 the latex gloves?

12 A. Correct.

13 Q. And yet again, where is that located in that Taurus?

14 A. That's in the center console between the two front
15 seats.

16 Q. You indicated there were three gloves?

17 A. Yes.

18 Q. Okay. And State's Exhibit No. 36, are those three
19 gloves in there? You can open that now if you need to.

20 A. Can I remove them?

21 Q. Yes, sir.

22 A. Yes, they are. Those are the gloves that I recovered.

23 Q. One, two, three latex gloves; is that correct
24 (indicating)?

25 A. Yes.

1 Q. And when you collected those latex gloves, you put them
2 on, I guess, 7/2/13 at 12:30 in the morning; is that correct?

3 A. That is correct. That's the time and date that I
4 removed them from the vehicle.

5 Q. From the black Ford Taurus. And did you seal them at
6 that point in time in this bag?

7 A. I did.

8 Q. And obviously this bag has been opened and is open now,
9 but --

10 A. Correct.

11 Q. -- did you have an opportunity to view this evidence
12 bag, this item, a few weeks ago in preparation for court
13 today?

14 A. Yes. It was a couple weeks ago when I met with you at
15 my place of employment and you presented the bag to me and it
16 was unopened with my initials still across the evidence tape.

17 Q. So you could tell nobody had tampered with it --

18 A. No.

19 Q. -- as of a couple weeks ago?

20 A. No. My evidence tape was still intact.

21 Q. Now let me ask you also, in that vehicle, were there
22 any -- was there any forms of ID belonging to the defendant,
23 Tyrone Ellison, that were found in that vehicle?

24 A. Yes, sir, there were.

25 Q. And what was that that was found in the vehicle?

1 A. There was a South Carolina driver's license,
2 No. 100841451, belonging to Mr. Ellison, and there was also a
3 Heritage Trust Federal Credit Union ID card also belonging to
4 Mr. Ellison.

5 Q. And where were those two ID's of Mr. Ellison found in
6 that Ford Taurus?

7 A. They were also in the center console.

8 Q. Same area that the gloves were found?

9 A. Yes, sir.

10 MR. SORENSON: Thank you, Mr. Hallman, that's all I
11 have.

12 THE COURT: Cross-examination.

13 MR. FALK: One moment, Your Honor.

14 THE COURT: Yes, sir.

15 MR. FALK: No questions of the witness.

16 THE COURT: Sir, you may step down. Thank you.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Call your next witness, please.

19 MR. SORENSON: Thank you. May it please the Court,
20 State calls Detective Jason Monroe.

21 Is Mr. Hallman excused, Your Honor?

22 THE COURT: Any objection, Mr. Falk?

23 MR. FALK: No, Your Honor.

24 THE COURT: Without objection, sir, you are excused.
25 You have no further responsibilities under your subpoena.

1 You're free to go. Have a nice day.

2 THE WITNESS: Thank you, Judge.

3 CLERK OF COURT: Raise your right hand, state your full
4 name for the record.

5 THE WITNESS: Philip Jason Monroe.

6 PHILIP JASON MONROE,
7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. SORENSON:

9 Q. Good morning, Detective Monroe.

10 A. Good morning.

11 Q. If you would, tell the jury, please, where it is that
12 you're employed.

13 A. I work for the City of North Charleston Police
14 Department.

15 Q. And if you would, tell us what you do at the City of
16 North Charleston Police Department.

17 A. Currently I'm assigned as a white-collar investigator in
18 our criminal investigations division.

19 Q. And how long have you been with North Charleston?

20 A. 11 years.

21 Q. And as part of your duties as a white-collar
22 investigator, do bank robberies fall under the realm of cases
23 that you respond to and then subsequently do the follow-up
24 investigation on?

25 A. Yes. My unit responds to all bank robberies and works

1 with the FBI to prosecute.

2 Q. And specifically turning your attention back to the
3 morning of April 1st of 2013, did you respond to the SunTrust
4 Bank that morning in relation to a bank robbery that had
5 occurred?

6 A. Yes, I did.

7 Q. Okay. And tell the jury, if you would, when you
8 responded to the SunTrust that morning, kind of what
9 capacity, what was your role in responding that morning.

10 A. When the call originally went out, Sergeant Kuechler had
11 identified this bank robbery as being assigned to me, making
12 me the lead detective. When I arrived at 8610 Dorchester
13 Road, the SunTrust Bank, I entered. There was already a
14 couple people inside, investigators, patrolman, that were
15 securing the interior of the bank.

16 I then directed the other responding detectives to take
17 statements and attempt to gather evidence and assist in any
18 way they could.

19 Q. And ultimately that morning, were the employees of the
20 bank interviewed by either yourself or other detectives and
21 officers that responded?

22 A. Yes.

23 Q. And did you become aware of a witness by the name of
24 David Lewis that had purportedly been involved in a short
25 chase of the alleged getaway vehicle?

1 A. Yes. Detective Serrudo informed me that Mr. Lewis had
2 given pursuit and was giving his statement.

3 Q. Okay. Did --

4 A. And I spoke with him.

5 Q. Okay. Did you have an opportunity then as the lead
6 investigator to kind of follow up and review that statement
7 given by Mr. Lewis?

8 A. Yes, I did.

9 Q. And ultimately then on the morning of April 1st, 2013,
10 within 30 to 45 minutes of the robbery occurring, did you all
11 have a description then that you were looking for of a
12 possible vehicle in this case?

13 A. I did, yes. Mr. Lewis --

14 Q. What was -- go ahead. I'm sorry.

15 A. Mr. Lewis had provided us with a description of an
16 older, four-door, dark green Honda that was seen fleeing the
17 area where the suspect came out of the woods and entered the
18 vehicle. He gave me the partial tag of either 153 or 193,
19 which I then relayed to our crime analysis people, asking for
20 them to start pulling tags.

21 Q. Did he also indicate what state tag that was?

22 A. Yes. He said it was a South Carolina tag. He was
23 positive of that.

24 Q. Now, ultimately, when you were out at the bank that
25 morning, did you all have an opportunity to have some kind

1 of -- on the scene actually to actually start reviewing some
2 of the still photos from the -- that were sent from the
3 bank's security office?

4 A. Yes, I did. I had been in contact with Steve Starnes of
5 SunTrust Bank security, who was sending me images via email,
6 also sending images to Mr. Baker's computer inside the --
7 inside the bank itself. And we were able to watch clips of
8 the video in Mr. Baker's office when they were emailed to us.

9 Q. Okay. And part of that, did you find in any of those
10 still photographs that were sent to you any that possibly
11 showed that getaway vehicle?

12 A. Yes, I did.

13 Q. Okay. I'm showing you State's Exhibit No. 19.

14 MR. SORENSON: May I approach the witness, Your Honor?

15 THE COURT: Yes, sir.

16 Q. Are you familiar with that still photograph?

17 A. Yes, I am.

18 Q. And where is that? If you would kind of point the
19 vehicle out that you're referring to.

20 A. The dark green, right there (indicating).

21 Q. Right where my finger is right there?

22 A. Yes, sir.

23 Q. Okay. And kind of describe for the jury where that is
24 located at in relation to the bank.

25 A. That is the rear of the bank where the drive-through ATM

1 and drive-through service lanes are at and the front side of
2 Steel City Pizza in that shopping center in the parking lot
3 between the two.

4 Q. Is that Steel City over here where my finger is
5 pointing?

6 A. Yes, it is.

7 Q. From your investigation, that vehicle, as seen in the
8 back parking lot, matched the description of the vehicle that
9 Mr. Lewis gave to you?

10 A. Yes, it does.

11 Q. Now, as part of the stills that you reviewed that
12 morning at the bank, were those also stills that contained
13 possible pictures of the suspect inside the bank?

14 A. Yes, there were.

15 Q. Specifically showing you State's Exhibits 27 and 28, ask
16 you if you recognize those items.

17 A. Yes, I do.

18 Q. Okay. And what are those two items?

19 A. Those are pictures of the suspect exiting the bank after
20 committing the robbery.

21 MR. SORENSON: I believe they're both in evidence. Do
22 you have both of them, Your Honor, in --

23 THE COURT: Yes, sir. 27 and 28 were admitted by
24 Investigator Kubicsko.

25 Q. So that morning then out at the bank, you all had

1 basically this still photo in your possession that morning?

2 A. I did, yes.

3 Q. And as a result of having a possible photo of the
4 suspect and at least a description and a possible distant
5 photo of the getaway vehicle, was anything done with that
6 information?

7 A. Yes, it was -- I passed it up the chain of command. It
8 was disbursed to the rest of the agency to be on the lookout
9 for the green Honda with the partial tag, also the suspect as
10 a light-skinned possible black male that was no longer
11 disguised, because we had found the items.

12 Q. That was going to be my next question. So obviously, in
13 looking through those still photographs, it appears that the
14 individual has long hair; is that correct?

15 A. Yes, sir.

16 Q. Were you aware out there on the scene that State's
17 Exhibit No. 17, this black wig, was found in the woods near
18 the bank?

19 A. Yes, sir, I was.

20 Q. And is that consistent with the hair that is seen on the
21 suspect?

22 A. Yes, sir.

23 Q. In the bank?

24 A. Exactly.

25 Q. Are you also aware that State's Exhibit No. 14, this

1 visor, was found out there at the scene?

2 A. Yes, sir.

3 Q. And yet again, is that consistent with the visor that is
4 being worn by the suspect in the video?

5 A. Yes, it is, the emblem on the side is exact.

6 Q. Specifically looking at the -- I guess the right side of
7 the visor, is there something on that, on State's Exhibit
8 No. 14?

9 A. Yes, there is.

10 Q. What is that? I mean, the --

11 A. It's a silver circular design of some sort, metal
12 buckle.

13 Q. Okay. And looking at State's Exhibit No. 28, is that
14 consistent with appearing to be some sort of emblem in the
15 same spot on the visor in State's Exhibit No. 28?

16 A. Yes, it is.

17 Q. And also, were you aware that a gun was found out there
18 at the scene?

19 A. I was.

20 Q. In the woods? And yet again, was the gun consistent
21 with the gun that is depicted in the still photographs and
22 the video from the bank?

23 A. Yes, it is.

24 Q. And lastly, were you aware that a white latex glove was
25 found also out there in the wooded area in the vicinity of

1 the visor, the wig and the gun?

2 A. Yes, I was.

3 Q. And yet again, in looking back at the still photographs,
4 is that white latex glove depicted in those still photographs
5 in the video from the bank robbery?

6 A. Yes, it is.

7 Q. And what is the role that you were able to detect of
8 that white glove in the video and the stills?

9 A. While reviewing the video, we were able to observe the
10 suspect holding the white latex glove in the palm of his hand
11 over the gun so that the glove was not on the hand, as it
12 should naturally be worn, but more balled up and around the
13 grip of the gun as to prevent skin contact to the gun. And
14 he -- it remained that way until he dropped it at the front
15 door when he was exiting.

16 Q. Now, Detective Monroe, you had indicated that you had
17 that partial tag and the fact that you were looking for an
18 older, green Honda. Were you ultimately able to, through
19 your investigation and the photographs and all, determine
20 what kind of Honda you were looking for?

21 A. Yes, I was.

22 Q. And what was that?

23 A. We determined that through the photos and researching
24 the automated license plate reading and the SCDMV vehicle
25 database that the vehicle was between a 1999 and a 2001 Honda

1 Civic. Myself and Sergeant Kuechler went to the Honda
2 dealership and showed exploded -- blown-up pictures of the
3 vehicle from different cameras that we found, and they were
4 able to identify it as such, as a Honda Civic.

5 Q. Okay.

6 A. Between those years.

7 Q. Okay. And so ultimately, during -- you know, the bank
8 robbery happened on April 1st. Over the coming weeks and
9 months, did you all attempt to find an older model, green
10 Honda Civic with a license tag beginning with 153 or 193?

11 A. Yes, sir, I did.

12 Q. And were you ever able to, either from just, you know,
13 obviously just being on patrol and having people be on the
14 lookout or through searching DMV databases, were you ever
15 able to find an older model, green Honda Civic that contained
16 a South Carolina license plate beginning with 153 or 193?

17 A. No, I was not.

18 Q. Now, Detective Monroe, did you become aware that the
19 defendant, Tyrone Ellison, was taken into custody on
20 July 2nd of 2013?

21 A. Yes, I was.

22 Q. And showing you State's Exhibit No. 29, is this a photo
23 that was taken of him that day when he was taken into custody
24 on July 2nd of 2013?

25 A. Yes, it is.

1 MR. SORENSON: Okay. Your Honor, at this time we'd
2 offer State's 29 into evidence.

3 THE COURT: Any objection?

4 MR. FALK: No objection.

5 THE COURT: Without objection, State's Exhibit No. 29
6 admitted into evidence.

7 (State's Exhibit 29 admitted into evidence.)

8 Q. So on July 2nd of 2013, this is how Tyrone Ellison
9 looked?

10 A. Yes, it was.

11 Q. Obviously, looking at this, there is some injury to his
12 right eye, forehead, kind of going down to his cheekbone
13 area?

14 A. Yes, sir.

15 Q. Are you aware, was he involved in a car accident
16 sometime in the proximity to when he was arrested?

17 A. Yes. On July 1st he was involved in a car accident.

18 Q. And is that what that injury is a result of?

19 A. Yes.

20 Q. Okay. So back on April 1st of 2013, that injury was not
21 on his face at the time the bank robbery occurred?

22 A. Not that I'm aware of, no, it was not.

23 Q. And you're aware of, back in July at least of 2013, what
24 the defendant's height and approximate weight and physical
25 build was?

1 A. Yes, sir.

2 Q. And tell the jury, please, what that --

3 A. We estimated from the video and the still photos that he
4 was between 5 foot 7, 5 foot 9, 150 to 160 pounds.

5 Q. Okay. But what about the defendant? I'm talking
6 about --

7 A. Oh, yes, he is -- what did I do with it? I don't have
8 his exact -- the DMV printout in front of me.

9 Q. Okay.

10 A. Which I did have.

11 Q. Let me show you State's Exhibit No. 42. And does that
12 indicate his -- at least on his driver's license what his
13 height and weight is?

14 A. Yes. 5 foot 9 and 160 pounds, and that's the same
15 printout I had.

16 Q. And from having an opportunity to observe Mr. Ellison,
17 at least back on July 2nd of 2013, I mean, was that
18 consistent with his height and weight when you observed him
19 in July of 2013?

20 A. Yes, it was.

21 Q. Hadn't put on a whole lot of weight or anything of that
22 nature?

23 A. No, he had not.

24 Q. Let me ask you now, and you kind of referenced looking
25 at the video and kind of doing -- kind of judging, in looking

1 at the defendant, Tyrone Ellison, in your observations of him
2 and what you're aware of him from photographs and all in July
3 of 2013, is he consistent or inconsistent with the individual
4 that you observed in the bank robbing the bank on April 1st
5 of 2013?

6 A. He's consistent with the suspect.

7 Q. Consistent in physical build?

8 A. Physical build, skin tone.

9 Q. How about facial hair?

10 A. The facial hair, yes, sir. The pencil mustache is
11 clearly visible in the still photos.

12 Q. Okay. And going back to State's Exhibit No. 28, what's
13 depicted kind of -- kind of facial hair that you observe in
14 State's Exhibit 28?

15 A. He has a skinny mustache on -- and what appears to maybe
16 be a minute amount of chin hair. It's hard to tell from
17 the --

18 Q. In looking at -- yet again, we have a driver's license
19 photo in State's Exhibit No. 42, any facial hair in the
20 driver's license photo?

21 A. Yes, there is. Similar mustache and similar chin hair
22 is present.

23 Q. And then yet again on July 1st or July 2nd, when this
24 photo's taken, what facial hair does he still have on July
25 2nd?

1 A. He still has a mustache and small amount of chin hair.

2 Q. Obviously looking at him here in the courtroom today,
3 similar?

4 A. Same exact, yes, sir.

5 Q. The last thing I just want to touch on,
6 Detective Monroe, you were in here when Mr. Hallman testified
7 a few minutes ago, correct?

8 A. Yes, sir.

9 Q. You heard when he had testified that when he had an
10 opportunity to review this packaging a few weeks ago, it was
11 still sealed and appeared it had not been tampered with, so
12 nobody had removed a glove or tampered with the items that he
13 placed in here back on the evening, early morning hours of
14 July 2nd?

15 A. Yes, sir.

16 Q. Did you actually have an opportunity yesterday to
17 actually open this bag here in the courtroom in front of us
18 all?

19 A. I did, yes, sir.

20 Q. Okay. And what was in the -- in this when you opened it
21 yesterday afternoon?

22 A. Three latex gloves.

23 Q. Same thing that's in it right now?

24 A. Same thing that I saw come out of it today.

25 Q. Same thing as documented on here as having been

1 collected on July 2nd?

2 A. Yes, sir.

3 MR. SORENSON: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. SORENSON: Thank you, Detective. Please answer any
6 questions Mr. Falk has.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION BY MR. FALK:

9 Q. During the course of your investigation, were any other
10 leads as other potential suspects --

11 A. Yes.

12 Q. -- uncovered?

13 A. Yes.

14 Q. Were there any other leads that came through Crime
15 Stoppers?

16 A. Yes.

17 Q. Could you explain which ones those were?

18 A. We had -- I don't have them directly in front of me.
19 I've noted a couple of them in my synopsis. Crime Stopper
20 tips came in that -- if you'll give me one second, I'll give
21 you the exact information.

22 That Laquan Reed, also known as Juan, may have been the
23 suspect. He is supposed to be a homosexual gang member of a
24 group of people called the House of Murder. We researched
25 his known associates, where he was at, and found him not to

1 be a viable suspect.

2 Q. When you found out that Mr. Reed was a gang suspect, did
3 you refer that information to Detective Ledford?

4 A. No. I spoke with the supervisor at the gang
5 intelligence unit. He told me that that was not an organized
6 criminal gang; therefore, it had no relevance to their unit.

7 Q. Did anybody give -- what was the description of
8 Laquan Reed?

9 A. 5 foot 8, 5 foot 9, 160 pounds; however, he was dark
10 skinned.

11 Q. Was there any description as to his age?

12 A. 35 years old.

13 Q. There's nothing from the photographs that you've
14 identified that would make you think that -- you've had an
15 opportunity to identify Mr. Reed, excuse me. You've had --
16 when you looked at the photograph --

17 A. I'm sorry. I wear hearing aids and I can't really hear
18 you.

19 Q. I totally apologize.

20 Mr. Ellison doesn't look like a 35-year-old man, does
21 he?

22 A. Not to me.

23 Q. Okay. Was there another -- were there any other leads
24 developed?

25 A. I remember receiving a Crime Stopper tip for another

1 person, but when I looked it up on the day of the robbery, he
2 was in prison. I just don't have the name in front of me.

3 Q. Okay. Is it safe to say that once you focused on the
4 car that you didn't follow up on these other leads?

5 A. No, that's not safe to say.

6 Q. Who went to speak with the other associates of Mr. Reed,
7 of Laquan Reed?

8 A. Myself, Sergeant Kuechler.

9 Q. How many did you speak with?

10 A. A few. I can't give you the exact number. I don't
11 remember.

12 Q. Now, when you took -- when you -- in the course of -- we
13 already heard testimony earlier, I believe yesterday, and you
14 were certainly in court that day, that there were no
15 fingerprints that were identified inside the bank?

16 A. Yes.

17 Q. That Mr. Ellison's fingerprints were not found inside
18 the bank; is that correct?

19 A. That is correct.

20 Q. And so during your course of investigation, did anyone
21 else uncover any fingerprints?

22 A. No. There were never any fingerprints uncovered during
23 the course of the investigation.

24 Q. You had said that -- earlier in your testimony you said
25 that the suspect, that the person who came out of the woods

1 you assumed was a suspect after he had shed his disguise; is
2 that correct?

3 A. Yes, sir.

4 Q. And you were here earlier when the K-9 officer searched
5 the area and he said that the items that they found were the
6 wig and the visor, the gun and the glove; is that correct?

7 A. Yes, sir.

8 Q. And he didn't say that they found a jacket or a hoodie;
9 is that correct?

10 A. No, sir.

11 Q. That certainly is part of the disguise, is that --

12 A. I would say he was wearing it, so yes, it would be part
13 of his disguise.

14 Q. Were you here in -- and you were here in court yesterday
15 when Mr. Lewis testified and you heard him testify that the
16 person coming out of the woods was not wearing the jacket and
17 the hood?

18 A. I heard him say that, yes.

19 Q. But was there any ever effort to go and find the jacket
20 and the hood?

21 A. There was.

22 Q. And what was the result of that?

23 A. Myself and several other detectives spent two hours in
24 the wood line and in Coosaw Commons walking around,
25 attempting to locate any further evidence.

1 Q. And since it hasn't been introduced, I assume it was
2 never found?

3 A. There was nothing else located in that wood line.

4 Q. Now, Mr. Lewis also testified that he is the only person
5 who saw the person coming out of the woods without the
6 disguise on; is that correct?

7 A. Yes.

8 Q. Did you ever have -- did you ever pursue a photo pack
9 identification to see if he could identify the person, since
10 he's the one who saw him without a costume?

11 A. We did.

12 Q. Was that ever successful?

13 A. Negative. No.

14 Q. So in the course of your investigation, there's nobody
15 who ever identified Mr. Ellison as being the person inside
16 the bank?

17 A. No.

18 Q. By facial?

19 A. No. They all said that they weren't able to because of
20 the disguise.

21 Q. And certainly Mr. Lewis wasn't able to either then?

22 A. No.

23 Q. In addition to Mr. Lewis, did other people have an
24 opportunity to look at a photo pack? For example, I didn't
25 see it in your report. Did Quinn Rustin look?

1 MR. SORENSON: Your Honor, may we approach.

2 (Judge and attorneys confer.)

3 THE COURT: Go ahead, Mr. Falk.

4 Q. In the photograph there, you identified that it might
5 look like he had chin hair; is that correct?

6 A. Yes, sir.

7 Q. But that photograph is pretty blurry, is it not?

8 A. Yes, it is.

9 Q. Okay. The only thing that is clear is the thin
10 mustache; is that not correct?

11 A. Yes.

12 Q. Have you --

13 A. In that photo, yes.

14 Q. Beg your pardon?

15 A. In that photo that I viewed, yes.

16 Q. That's certainly not an -- you've had an opportunity to
17 investigate. Would you say that it's certainly not uncommon
18 for African-American men to have a thin mustache like that?

19 A. I've encountered several of them in my 11 years of law
20 enforcement, yes.

21 Q. So that's not really a distinctive feature, is it?

22 A. I would say in this circumstance, based on the evidence
23 at hand, that it is a distinguishing mark, because the
24 disguise conceals all other descriptors except for the skin
25 tone and the facial hair.

1 MR. FALK: One moment, please.

2 THE COURT: Yes, sir.

3 Q. You had testified earlier that there were no
4 fingerprints that identified Mr. Ellison?

5 A. No.

6 Q. Were there ever any palm prints or any other print
7 identification that identified other people?

8 A. There were no IDs made that I'm aware of in this case.

9 Q. So there were no other IDs. I'm just saying were any
10 other prints of any kind recovered from the bank?

11 A. I believe they lifted some prints off the counter, but
12 after reviewing the video, it was not where he crossed. It's
13 a bank counter. It's going to have lots of fingerprints on
14 it.

15 Q. And, again, with Mr. Lewis, he was not able to
16 identify -- he was not close enough to him to be able to
17 identify him when he was chasing the suspect into the woods;
18 is that correct?

19 A. No.

20 MR. FALK: I have no further questions.

21 THE COURT: Any redirect?

22 MR. SORENSON: Just a couple things, Your Honor.

23 REDIRECT EXAMINATION BY MR. SORENSON:

24 Q. Mr. Falk, Detective Monroe, had asked you about a
25 Laquan Reed?

1 A. Yes, sir.

2 Q. And you noted that in your report, is that correct, that
3 that information had come in just through Crime Stoppers?

4 A. I did, yes, sir.

5 Q. And Crime Stoppers--

6 A. It was a Crime Stopper that was emailed to me.

7 Q. And that's just an anonymous tip. I mean, anybody can
8 call in and don't have to leave their name or any
9 information; is that right?

10 A. Yes, I received several Crime Stopper tips via email.
11 Mostly on a daily basis they come in.

12 Q. And you had indicated in -- and Mr. Falk had asked you,
13 and I'm just looking at your report, and your report makes it
14 look like you're talking about one person, where I think it
15 kind of came out that maybe you were talking about two, and I
16 just want to clarify that.

17 A. Yes.

18 Q. Remember he had asked you if you had gotten a Crime
19 Stopper tip regarding a Laquan Reed, and you'd indicated that
20 yes, it had come in, and kind of what his affiliation
21 allegedly was and all that? Do you recall that line of
22 questioning?

23 A. Yes, sir.

24 Q. Okay. And in your report, do you have in here how you
25 eliminated Laquan Reed as a suspect? I'm looking at the

1 bottom of the -- at least my Page 3. It's under April 4th of
2 your notes.

3 A. Oh, Laquan Reed is in prison on the date and time of the
4 robbery.

5 Q. Okay. So he was -- so as it came across, at least I got
6 the impression that you were telling Mr. Falk there were two
7 separate people that you kind of eliminated. Looking at
8 this, it looks like that's Laquan Reed that you -- that's the
9 tip you received, and you eliminated him as a suspect because
10 of the fact that he was incarcerated on April 1st?

11 A. Yes.

12 Q. Is that correct? Okay.

13 And Mr. Falk asked you about showing lineups of
14 Mr. Ellison. And just so I understand, I mean, as far as
15 Tyrone Ellison, prior to July 1st, July 2nd of 2013, did you
16 have any idea who Tyrone Ellison was --

17 A. I had no clue.

18 Q. -- in that three-month period of time?

19 A. I did not.

20 Q. And yet again, looking through your notes, I mean, did
21 you actually show a lineup of Tyrone Ellison to David Lewis?
22 Because I don't see that noted in here, and that's why I --

23 A. I did not, no.

24 Q. Okay. And that's what I want to clarify, because the
25 gist of the questions I got on cross-examination was that he

1 was unable to identify Tyrone Ellison at a lineup?

2 A. Yes.

3 Q. Do you know whether he was shown a lineup of
4 Tyrone Ellison?

5 A. I do not know that he was shown one. I do not
6 believe -- I did not show him one, nor did one of my
7 investigators.

8 Q. Okay. So as I said, I was a little confused about that
9 on cross-examination. And yet again, I mean, for a lineup of
10 Tyrone Ellison to have been shown, it theoretically couldn't
11 have been done before sometime in July, so over three months
12 later anyway, right?

13 A. Yes.

14 Q. Because he wasn't a suspect or known to you all as a
15 potential suspect prior to that; is that correct?

16 A. Yes, sir.

17 MR. SORENSON: That would be all I'd have, Your Honor.
18 Thank you.

19 THE COURT: Any recross?

20 RECROSS-EXAMINATION BY MR. FALK:

21 Q. So in that period between April and July, the only
22 identification characteristics you had for the suspect of the
23 robbery was an African-American male between 5 foot 7 and
24 5 foot 10, 160 pounds with a thin mustache?

25 A. You are correct.

1 Q. Certainly -- would it be -- in your investigation of
2 robberies, would that -- do you think that a lot of people in
3 the North Charleston area would fit that general
4 characteristics?

5 A. I think there would be a lot, yes.

6 MR. FALK: Thank you.

7 THE COURT: Sir, you may step down. Thank you.

8 THE WITNESS: Thank you.

9 MR. SORENSON: May I approach, Your Honor?

10 THE COURT: Yes, Mr. Falk.

11 (Judge and attorneys confer.)

12 THE COURT: Ladies and gentlemen, I'm going to ask you
13 to step to the jury room for just a minute. Do not discuss
14 the case. Do not discuss the case. I'll get you back out
15 here as quickly as possible.

16 (The jury retires to the jury room at 10:30 a.m.)

17 (Recess held.)

18 THE COURT: Is the State ready to proceed now?

19 MR. SORENSON: Yes, sir.

20 THE COURT: Defense counsel?

21 MR. FALK: Yes, Your Honor.

22 THE COURT: Please bring me the jury.

23 (The jury enters the courtroom at 10:49 a.m.)

24 THE COURT: At this time I am going to recognize the
25 State. All the jurors are back in the courtroom. Call your

1 next witness, please.

2 MR. SORENSON: Thank you. The State calls Terry Blanks.

3 CLERK OF COURT: Please place your left hand on the
4 Bible, raise your right hand and state your full name for the
5 record.

6 THE WITNESS: Terry Elizabeth Blanks.

7 TERRY BLANKS,
8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. SORENSON:

10 Q. Good morning, Ms. Blanks.

11 A. Good morning.

12 Q. If you would, please tell us where it is that you're
13 employed.

14 A. GEICO Insurance Company.

15 Q. And where is your office located at?

16 A. Maken, Georgia.

17 Q. And how long have you been employed with GEICO?

18 A. 30 years.

19 Q. Okay. If you would, tell the jury what your current
20 duties and responsibilities are with GEICO.

21 A. I'm the compliance analyst. One of the things that I do
22 is prepare documents from subpoenas or any type of
23 investigation. I also make sure that our procedures are
24 correct with state laws, regulations.

25 Q. And so therefore, if somebody were to subpoena some

1 records for court, you would be the person that would supply
2 those records?

3 A. Yes.

4 Q. And then also if -- as today, if a records custodian is
5 needed in court, would you typically be the person then that
6 would come testify?

7 A. Yes.

8 Q. And are records regarding vehicles insured with GEICO,
9 are they kept during the regular and ordinary course of
10 business with GEICO?

11 A. Yes.

12 Q. And ultimately, Ms. Blanks, were you requested, through
13 a subpoena from the State, to provide some records pertaining
14 to your Policy 4286108024?

15 A. Yes.

16 Q. And I'm going to show you what's been marked as
17 State's 38.

18 Let me show you --

19 MR. SORENSON: If I could, may I approach the witness,
20 Your Honor?

21 THE COURT: Yes, sir.

22 Q. Let me show you State's Exhibit 38. Do you recognize
23 that document?

24 A. Yes, sir.

25 Q. And were those the records that you provided to us

1 regarding that policy number that I just indicated a moment
2 ago?

3 A. Yes, sir.

4 Q. And those are kept in the regular course of business by
5 GEICO?

6 A. Yes, sir.

7 Q. And I guess is it the regular practice of GEICO in
8 insuring a vehicle to keep reports and records such as these?

9 A. Yes, sir.

10 MR. SORENSON: Your Honor, at this time we'd offer
11 State's 38 into evidence.

12 THE COURT: Any objection?

13 MR. FALK: No objection.

14 THE COURT: Without objection, State's Exhibit 38
15 admitted in evidence.

16 (State's Exhibit 38 admitted into evidence.)

17 Q. And, Ms. Blanks, if you would, tell the jury who is the
18 policy owner for those records that you have before you,
19 State's Exhibit 38?

20 A. Tyrone Darius Ellison.

21 Q. And what is Mr. Ellison's address that you had on file
22 for him back during that time period?

23 A. 5048 Carrington Court, Summerville, South Carolina
24 29485.

25 Q. And let me ask you, do those documents that you have

1 before you show what vehicles Mr. Ellison had insured through
2 GEICO from the period the end of calendar year 2012 through
3 2013?

4 A. Yes.

5 Q. All right. And specifically, if we could kind of go
6 through those records, was there an insurance policy issued
7 to Mr. Ellison back on October 31st of 2012?

8 A. Yes. That's when his policy was effective.

9 Q. Okay. And what was the initial vehicle that was insured
10 by Mr. Ellison?

11 A. A 2002 Hyundai Elantra.

12 Q. And do you have on that Hyundai Elantra -- bear with me
13 one second.

14 Do you have a VIN number on that Hyundai Elantra?

15 A. Yes.

16 Q. And could you publish that for the jury?

17 A. KMHDN45D22U363994.

18 Q. And showing you State's Exhibit No. 40, this is a
19 vehicle plate history that was introduced into evidence
20 yesterday for a plate 1533 FX. Is that the same VIN number
21 that's located on that document?

22 A. Yes, it is.

23 Q. I believe you indicated that policy was effective, I'd
24 asked you, October 31, 2012?

25 A. Yes, sir.

1 Q. Okay. And did Mr. Ellison subsequently, at some point
2 in time, insure another vehicle with GEICO?

3 A. Yes.

4 Q. And when was that policy issued?

5 A. March 24, 2013.

6 Q. Okay. Let me ask you if -- with GEICO, typically is it
7 done over the phone, calling a representative over the
8 telephone?

9 A. It can be over the phone or on the Internet.

10 Q. And if I were to either go online or to call your number
11 on the telephone today and ask, you know, that I wanted to
12 insure a vehicle with you, when then would that insurance
13 become effective posting on the paperwork you have?

14 A. The coverage would be bound or deleted from the date or
15 time of the phone call or the time that it goes on the
16 Internet, but all insurance policies will show the effective
17 separation date as of 12:01 a.m. the next working day.

18 Q. So if on your paperwork you've got that policy as being
19 issued on March 24th of 2013, what date would that mean that
20 you all were actually contacted to have that policy in
21 effect?

22 A. March 23rd.

23 Q. And yet again, what -- and I'm not sure if I got to this
24 part or not, what was the vehicle then on March 23rd,
25 effective March 24th of 2013, what kind of vehicle was

1 insured by GEICO for Mr. Ellison?

2 A. A 2000 Honda Civic.

3 Q. Okay. And do you have the VIN number on that Honda
4 Civic?

5 A. Yes.

6 Q. And could you publish that for the Court?

7 A. 2HGEJ6614YH538330.

8 Q. And did that -- at the time then that that Honda Civic
9 was insured effective March 24, 2013, did you all still have
10 the Hyundai Elantra insured for Mr. Ellison?

11 A. No, it was removed.

12 Q. And if I could also, just like I did a moment ago, let
13 me show you State's Exhibit No. 39, which is in evidence,
14 which is a South Carolina Department of Motor Vehicles bill
15 of sale. As you just published that VIN number for the Honda
16 Civic that you insured, let me ask you --

17 MR. SORENSON: May I approach the witness, Your Honor?
18 I apologize.

19 THE COURT: Yes.

20 Q. Is that the same VIN number that is located on State's
21 Exhibit No. 39?

22 A. Yes, it is.

23 Q. Now, that policy that was issued on March 24th or was
24 effective March 24th of 2013 for the Honda Civic, was that
25 policy at some point in time renewed?

1 A. It was.

2 Q. And when was it renewed?

3 A. March 28.

4 Q. So essentially four days later. I mean, is that just
5 how your -- I guess your policy cycle goes --

6 A. Yes.

7 Q. -- that it would have? Okay.

8 And so on March 28th of 2013, tell the jury with regards
9 to that 2000 Honda Civic kind of what happened with regards
10 to that policy, that GEICO policy.

11 A. The policy was offered for renewal for May 1st, 2013
12 through November 1st of 2013.

13 Q. All right. Now, let me ask you this, at some point in
14 time prior to May 1st, was that policy on that Honda Civic
15 canceled?

16 A. Yes.

17 Q. And when was that that it was canceled?

18 A. It was canceled effective April the 11th.

19 Q. And if it was effective April 11th, then when would you
20 all have been notified to cancel that policy?

21 A. April 10.

22 Q. And then so effective April 11, did Mr. Ellison have a
23 vehicle that was insured by GEICO?

24 A. No.

25 Q. On April 11th?

1 A. No.

2 Q. Now, subsequent to that did there come a time when he
3 did, in fact, have another vehicle insured by GEICO?

4 A. Yes.

5 Q. And when did that occur and what was that vehicle?

6 A. The policy was reissued on April 16th to be effective
7 April 17th for a 1996 Ford Taurus.

8 Q. And at the time then that that Ford Taurus, insurance on
9 that Ford Taurus was issued, effective April 17th I think you
10 said; is that correct?

11 A. Yes, sir.

12 Q. Was the Honda Civic then had been removed from the
13 policy a week prior?

14 A. Yes.

15 Q. And I guess my final question, Ms. Blanks, in the
16 records that you provided that you have testified about
17 today, back on April 1st of 2013, what was the only vehicle
18 that GEICO had insured for Tyrone Darius Ellison on April 1st
19 of 2013?

20 A. The 2000 Honda Civic.

21 MR. SORENSON: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 MR. SORENSON: Thank you, Ms. Blanks. Please answer any
24 questions Mr. Falk has.

25 THE COURT: Cross-examination.

1 CROSS-EXAMINATION BY MR. FALK:

2 Q. If I called up GEICO and said I wanted to buy a month's
3 worth of insurance, is that possible?

4 A. We do not write short-term policies. We'll write a
5 policy for a six-month period.

6 Q. And so always -- anytime you buy an insurance policy
7 through GEICO, it's going to show a coverage period of six
8 months?

9 A. Correct.

10 Q. If there was a transfer of ownership of a car, if
11 somebody was driving a car and the title hadn't been
12 transferred, would it still be covered? Let's say somebody
13 bought insurance from GEICO.

14 A. Yes, sir.

15 Q. And lent the car to somebody else, two weeks later lent
16 the car to somebody else, and there was an accident. Would
17 GEICO still have liability for the accident?

18 A. It would depend on whether there was a bill of sale of
19 the vehicle or on the vehicle.

20 Q. So bill of sale would be the thing that would trigger
21 GEICO no longer having liability?

22 A. Correct.

23 Q. So the person who was still on the bill of sale, so
24 any -- so if I bought a policy with GEICO, and until my name
25 showed up on a bill of sale showing that it had been sold to

1 somebody else, it's still covered by GEICO; is that correct?

2 A. Say that one more time.

3 Q. I know. It was a bad question. I apologize.

4 The bill of sale is what triggers -- the bill of sale is
5 what triggers GEICO no longer being responsible for the car?

6 A. Yes.

7 Q. Okay. And if I called you up and said, "Look, I sold
8 that car," you would still wait till you had the bill of
9 sale, would you not?

10 A. We would not. We would go ahead -- if the policy owner
11 calls and says, "I want to cancel the policy. I sold the
12 vehicle," we would cancel the policy for the next day.

13 MR. FALK: No further questions.

14 THE COURT: Anything further, Mr. Sorenson?

15 MR. SORENSON: No, Your Honor.

16 THE COURT: Ma'am, you may step down. Thank you.

17 MR. SORENSON: May she be excused, Your Honor?

18 THE COURT: Any objection?

19 MR. FALK: No objection.

20 THE COURT: Ma'am, you are excused. You're free to go.

21 You have no further responsibility under your subpoena.

22 Thank you for being here.

23 Call your next witness.

24 MR. SORENSON: Your Honor, at this time the State would
25 rest.

1 THE COURT: All right. Ladies and gentlemen, the State
2 has rested its case, and there are, at this time, some
3 matters of law that I need to take up outside of your
4 presence. I'm going to ask you to step to the jury room
5 while I take up these matters. Do not, do not discuss the
6 case. I'll get you back out here as quickly as possible.
7 Please go to the jury room.

8 (The jury retires to the jury room at 11:03 a.m.)

9 THE COURT: I want to make this clarification on the
10 record: When Investigator Monroe was on the stand, he was
11 questioned concerning Exhibits 27 and 28, and Mr. Sorenson
12 inquired as to whether or not those exhibits had been
13 admitted into evidence, and the Court indicated that they had
14 been admitted into evidence through Lisa, Investigator
15 Lisa Kubicsko.

16 Going back and looking at my notes, it appears that 28
17 was admitted through Investigator Kubicsko, while 27 was
18 admitted through Quinn Rustin.

19 MR. SORENSON: That would be --

20 THE COURT: I just wanted to make that clarification.
21 They were admitted into evidence. I just misspoke in stating
22 that both of them were through Kubicsko, when, in fact, 27
23 was admitted through Mr. Rustin -- excuse me,
24 Ms. Quinn Rustin, and 28 was through Investigator Kubicsko.

25 Anything else?

1 MR. SORENSON: No, sir.

2 THE COURT: All right. Anything at this time, Mr. Falk?

3 MR. FALK: Your Honor, my client would move for a
4 directed verdict at this time.

5 THE COURT: Anything by way of argument?

6 MR. FALK: Yes, Your Honor, we think that the State's
7 case has some -- that the State has been unable to prove the
8 identity of -- the State has certainly done a very good job
9 of proving that the bank was robbed on April 1st, but there
10 is significant questions in the testimony regarding whether
11 or not my client is the person who robbed the bank on that
12 day.

13 We think that the testimony is speculative and it's
14 going to cause the jury to draw some conclusions that aren't
15 necessarily fair, and, therefore, we think that directed
16 verdict would be proper.

17 THE COURT: All right. Mr. Sorenson, anything in
18 response?

19 MR. SORENSON: Real briefly, Your Honor.

20 Obviously, as Your Honor's aware, I think the standard
21 at this point in time is looking at things in the light most
22 favorable to the State. And I'm not sure if Your Honor's --
23 how close you've seen them, but obviously there's stills and
24 the video that I know you've seen the video up there on your
25 screen that it would be our position is very consistent with

1 what you see of the suspect's face with the defendant,
2 consistent with his driver's license photo, his booking photo
3 from three months later and even him sitting in the courtroom
4 today.

5 There are items that are apparent on the video that are
6 found in the woods where the suspect ran to where the State
7 has put up testimony that the defendant's DNA was found on
8 three of those items, 1 in 2.2 quintillion probability that
9 he's the major contributor on the DNA.

10 Additionally, there's a description of the getaway
11 vehicle used that I think we have linked through records and
12 evidence that we can put the defendant in possession of that
13 type of vehicle with access to a license tag matching the
14 partial tag given by the witness on April 1st of 2013. I
15 think in the light of all that, it clearly makes this a jury
16 issue, Your Honor.

17 THE COURT: Under the law and looking at the evidence in
18 the light most favorable to the State, the Court is
19 respectfully denying defendant's motion for a directed
20 verdict. The trial Court is concerned with the existence or
21 nonexistence of evidence, not its weight. Certainly there is
22 existence of evidence of guilt of the defendant.

23 Furthermore, if there is any direct evidence, direct
24 evidence or any substantial circumstantial evidence, the
25 Court is required to submit the case to the jury.

1 Furthermore, if there is evidence, proof-positive facts
2 and circumstances which reasonably tend to prove the guilt of
3 the accused, the matter of the case should be submitted to
4 the jury. This evidence that's been presented by the State
5 certainly raises more than a suspicion of guilt; therefore,
6 the Court believes that it will be appropriate under the law
7 to submit the case to the jury for them to determine whether
8 or not the defendant is guilty of the crimes for which he is
9 charged.

10 Anything further at this time, Mr. Sorenson?

11 MR. SORENSON: Not from the State, Your Honor, no, sir.

12 THE COURT: Defense counsel? Anything further at this
13 time?

14 MR. FALK: Not at this time, Your Honor.

15 THE COURT: All right. What I am going to do, yesterday
16 before we broke for the day, I advised the defendant of his
17 rights, those rights being -- concerning his right to testify
18 and to present a defense.

19 Sir, if you would stand again, Mr. Ellison.

20 Madam Clerk, if you'd place him under oath once again,
21 please.

22 CLERK OF COURT: Please raise your right hand, state
23 your full name for the record.

24 THE DEFENDANT: Tyrone Darius Ellison.

25 TYRONE DARIUS ELLISON,

1 being first duly sworn, testified as follows:

2 THE COURT: Mr. Ellison, I advised you of your rights
3 yesterday before we broke and wanted to give you the
4 overnight break to consider the rights that I explained to
5 you yesterday. What I am going to do is I am going to go
6 over those rights once again with you, once again with you.

7 Now, we have now reached the stage of the trial where
8 you may present your defense. You have the right to claim
9 the protections given to you by the Fifth Amendment to the
10 United States Constitution, and that amendment states in part
11 that no person, no person shall be compelled in any criminal
12 case to be a witness against himself.

13 This means that you cannot be required to testify. You
14 have the right to testify on your own behalf; however, no one
15 can make you testify. This is a personal right and no one
16 can waive this right except you. If you decide to testify,
17 you will be subject to the same rules that govern other
18 witnesses and you may be examined and cross-examined on any
19 relevant issue in this case.

20 In addition, if you have any convictions involving
21 dishonesty or false statement or for crimes punishable by
22 imprisonment for more than a year and this Court determines
23 that the prohibitive value of admitting this evidence
24 outweighs its prejudicial effect to you, the solicitor will
25 be able to introduce your record to attack your credibility.

1 If you decide to testify, this decision on your part
2 must be freely, voluntarily and intelligently made with
3 knowledge of the protections given to you by the Fifth
4 Amendment and the consequences of your decision to testify.

5 If you decide not to testify, I will instruct the jurors
6 that they cannot, that they cannot give the fact that you did
7 not testify any consideration whatsoever. Furthermore, and
8 that there is to be absolutely no prejudice to you because
9 you did not testify.

10 Now, whether or not you testify is left entirely up to
11 you. You may talk with your attorney, as I told you
12 yesterday, your family, your friends or anyone else, but the
13 final decision as to whether or not you testify is left
14 entirely up to you. Do you understand what I have explained
15 to you?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you have any questions about what I've
18 explained to you?

19 THE DEFENDANT: No.

20 THE COURT: Have you discussed with your attorney
21 whether or not you should testify?

22 THE DEFENDANT: Yes.

23 THE COURT: Do you need any more time to talk with your
24 attorney about whether or not you should testify.

25 THE DEFENDANT: No.

1 THE COURT: Do you wish to testify in the trial of your
2 case?

3 THE DEFENDANT: No.

4 THE COURT: All right. Anything further from the State
5 at this time?

6 Sir, you may be seated.

7 MR. SORENSON: Not from the State, Your Honor, no.

8 THE COURT: Mr. Falk, anything further?

9 MR. FALK: He had said that he didn't want to testify --

10 THE COURT: Could you stand up, please.

11 MR. FALK: I'm sorry, Your Honor.

12 THE COURT: That's okay.

13 MR. FALK: My client said that he didn't want -- that he
14 was exercising his right not to testify, just -- I'm not sure
15 if he understood that his parents were here if he just wanted
16 to -- one last.

17 THE COURT: I'll give him an opportunity to talk with
18 his parents. Do you want to talk with your parents,
19 Mr. Ellison, before you make that final decision?

20 THE WITNESS: Sure.

21 THE COURT: As I told you before now, you can talk to
22 whoever you so desire, all right, whether it be your family,
23 your friends, your lawyer or whoever, but the ultimate
24 decision is up to you, is up to you, whether or not you
25 testify. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you need any more time to talk to your
3 family or anybody?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. We'll stand down for just a few
6 minutes. I'll let you talk with your family, but, again,
7 that final decision is up to you. All right.

8 We'll stand at ease for just a minute.

9 (Recess held.)

10 THE COURT: All right. We stood down for a minute for
11 Mr. Ellison to talk with his family.

12 Mr. Ellison, did you have a chance to talk with your
13 family?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Do you need any more -- stand, please, sir.
16 Do you need any more time to talk to anybody?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you wish to testify in the trial of your
19 case?

20 THE DEFENDANT: No, sir.

21 THE COURT: Anything further at this time, Mr. Falk?

22 MR. FALK: No, sir.

23 THE COURT: What I'm going to do at this time, I'm going
24 to bring the jury out. I'm going to recognize defense
25 counsel for you to present whatever case you so desire.

1 MR. FALK: Thank you.

2 THE COURT: And we'll proceed at that time.

3 Anything further from the State before we bring the jury
4 back out?

5 MR. SORENSON: No, Your Honor.

6 THE COURT: Please bring me the jury.

7 (The jury enters the courtroom at 11:38 a.m.)

8 THE COURT: Mr. Foreman, ladies and gentlemen of the
9 jury, at this time I am going to recognize defense counsel.

10 Mr. Falk, you're so recognized.

11 MR. FALK: Thank you, Your Honor. At this time we'd
12 like to call Annette McKinney to the stand.

13 THE COURT: All right. Somebody get her, please.

14 CLERK OF COURT: Please place your left hand on the
15 Bible, raise your right hand and state your full name for the
16 record.

17 THE WITNESS: Annette McKinney.

18 ANNETTE MCKINNEY,

19 being first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. FALK:

21 Q. Ms. McKinney, could you please state your relationship
22 to Mr. Ellison.

23 A. I'm his mother.

24 Q. And what is your current occupation?

25 A. I'm a 26-year-old -- 26-year, excuse me, civil service

1 worker and a 19-year vet for the US Airforce.

2 Q. For?

3 A. The US Airforce.

4 Q. Could you say that again?

5 A. I've been working civil service 26 years, and I'm also
6 part-time, excuse me, in the reserves for 19 years.

7 Q. Okay. Thank you.

8 Did you ever live near the intersection of Dorchester
9 Road and Club Course Drive? Did you ever live in the Coosaw
10 Creek subdivision?

11 A. Yes, sir.

12 Q. When was that?

13 A. Between 2005 and 2007 before I bought my current house.

14 Q. Okay. Thank you.

15 Now, did you ever have an opportunity to buy a car for
16 your son?

17 A. Yes, sir.

18 Q. And can you tell me what car you purchased for him?

19 A. I purchased a Honda Accord -- a Honda Civic.

20 Q. Okay. And do you know about what time of -- what time
21 of year or what day that was that you purchased it?

22 A. It was last year. It was March the 23rd.

23 Q. Okay. And how do you remember that date?

24 A. Because of the paperwork that we had when we filled it
25 out that day at my kitchen table with the car dealer that

1 came along.

2 Q. And how did that car get into your possession?

3 A. A friend of mine who I used to work with, he knows --

4 Q. Excuse me. How did that car get delivered to you?

5 A. It was brought by the car dealer on a flat bed.

6 Q. Okay. And how did you go about finding that car?

7 A. Through a friend of mine who knows the car salesman who
8 buys cars from auctions.

9 Q. Okay. What was your goal in purchasing the car?

10 A. For my son to get back and forth to work.

11 Q. At that time do you recall where he was working?

12 A. At Burger King.

13 Q. Do you know, there's been some testimony that the car --
14 do you know if he ever sold the car?

15 A. Yes, he did.

16 Q. And do you know about what time of year he sold that
17 car?

18 A. He sold it last year when he purchased the car.

19 Q. How close to when the car was delivered to your house
20 was it -- I mean, so the car showed up to your house on
21 March 23rd; is that correct?

22 A. Yes.

23 Q. Okay. And did you ever see the car after that day?

24 A. Not after that Saturday, that was on a Saturday, no,
25 sir.

1 Q. Okay. Now, at this time where was Mr. Ellison living?

2 A. He was at my house.

3 Q. Okay. Did he spend every night at your house?

4 A. Not every night. He's an adult. He had a girlfriend.
5 Sometimes he stayed at her house.

6 Q. Okay. When did you find out about approximately when he
7 no longer had the car?

8 A. The following Monday, which was the 25th, that
9 afternoon.

10 Q. And how did you come about finding out?

11 A. Well, I came home from work, I opened the door and maybe
12 around, I want to say -- I'm not exactly sure of the time,
13 but I got off work at 3:30, so maybe around 5:00, he pulls
14 up. His girlfriend is driving, and he gets out the passenger
15 side and I meet him at the door and first thing I said is,
16 "Where is your car?"

17 Q. And based on his -- without telling me what his response
18 is, but based on his response, did you think he still had the
19 car?

20 A. No.

21 Q. What was your reaction to that?

22 A. I was upset.

23 Q. Why were you upset?

24 A. Because I had just purchased the car two days ago or
25 three days ago, and he didn't have it in his possession.

1 Q. So your son was working at the time, wasn't he?

2 A. Yes.

3 Q. So how was he getting back and forth to work?

4 A. Well, his girlfriend, she wasn't working and she would
5 take him. I worked at the Air Force base directly across the
6 street from the Burger King. I had to be at work at 7. I
7 would drop him off, which I had to get up a little bit early,
8 take him and then go to work. So between that and him
9 bumming rides and his girlfriend bringing him back and forth,
10 that's how he got back and forth at home.

11 Q. Did he ever explain to you why he turned away having a
12 free car?

13 A. He said he wished I had talked to him first. He was
14 looking at another car on Craigslist.

15 Q. What kind of car was that?

16 A. It was a 19 -- between a 1997 or a 1999 Ford Taurus SHO.

17 Q. Okay. Did he ever tell you why he wanted one car versus
18 the other?

19 A. Well, he never said he wanted the green car, but as his
20 mother, he had another car that broke down and was sitting in
21 our driveway, and I had a chance to let the car dealer take
22 that car with him and give me the Honda. And I thought when
23 I showed him the Honda, it wasn't a nice-looking car, but to
24 me, as a mother, it will get you to Point A to Point B.

25 Q. Okay. Did you ever try and get auto insurance on the

1 car?

2 A. On the Honda?

3 Q. On the Honda.

4 A. Yes, sir.

5 Q. And what day was that?

6 A. The same day that I purchased the vehicle, I called
7 GEICO the same day, and they emailed me or faxed me the
8 insurance card, but it didn't go into effect, they said,
9 until 24 hours.

10 Q. You said that a couple days later, though, you were
11 aware that your son no longer had that car; is that correct?

12 A. Correct.

13 Q. Why did you not cancel the insurance?

14 A. Because he hadn't even gotten paid for the car, and, in
15 my knowledge, the paperwork was still at the house. So I
16 said -- he said, well, he's supposed to be getting the money
17 for the car in a week, and I was like, "Well, this car is
18 your responsibility until you get the money for it," so I
19 didn't cancel the insurance.

20 Q. Okay. And let me just caution you, please don't try and
21 tell me anything that he said.

22 A. I'm sorry. Okay, I'm sorry.

23 Q. Okay. And so your concern was the canceled -- you had a
24 concern about cancelling the policy until you knew it was no
25 longer your car, I guess?

1 A. Yes.

2 Q. Okay. And how did you find the Civic?

3 A. I called a friend of mine I used to work with, and he
4 knows a person who buys cars from auctions, and I just said,
5 you know, "If you could find me a cheap car, my son's car
6 broke down and he's bumming rides back and forth."

7 And he said, "Let me ask my friend whose name is
8 Mr. Marion."

9 And a day or so he called me back and said, "Well, he
10 just purchased a Honda." And he said, "It's not a looker,
11 but it's got a good" --

12 Q. Again, please --

13 A. I'm sorry.

14 Q. Thank you.

15 A. Sorry.

16 Q. I'm sorry. So we were talking about Mr. Marion. How
17 did you get in touch with Mr. Marion? Who was that?

18 A. Through my friend, Mr. Woods, who knows him.

19 Q. Did you ever have any subsequent conversations with
20 Mr. Woods about the car?

21 A. Yes.

22 Q. Can you tell me what you told him?

23 A. I told him a couple days later that "You're not going to
24 believe that the car you just helped me get for my son is
25 gone. He sold it."

1 Q. You were frustrated at the time?

2 A. Oh, yes.

3 Q. And I'm not sure if you said this earlier, but what is
4 your address?

5 A. My current address?

6 Q. Your current address.

7 A. It's 5048 Carrington Court, Summerville.

8 Q. Okay. Where does -- during April of 2013, where was
9 your son getting his mail?

10 A. At my residence.

11 Q. Okay. Has your son ever gone to college?

12 A. He applied to go to college; he didn't physically go.

13 Q. Okay. Do you know what plans he had made for paying for
14 college?

15 A. First he was going to go through for financial aid, and
16 then that was his main plan.

17 Q. Had you ever made any savings for his college?

18 A. Yes, I did.

19 Q. Can you tell me about how much money you had set aside?

20 A. I set aside for the -- for the -- well, I meant to say
21 the last three years. It was the three years prior to him
22 becoming an adult, I set aside \$800 a month, which was \$9600
23 I had a year put aside in a separate bank account, and I said
24 to myself, he ever decides to go to school, I would be able
25 to afford him that opportunity.

1 Q. Did you ever transfer that money to him?

2 A. I transferred 20,000. I had more than that at the time
3 in my account, but I only transferred 25,000 into his
4 account, I mean, excuse me, 20,000. I had more than 20, but
5 20,000 I transferred into his account.

6 Q. When you say "his account," was that one that you all
7 were on jointly?

8 A. No, it was his account separately.

9 Q. Okay. When you say "transferred," was that --

10 A. It was a wire transfer to his account from mine.

11 Q. Do you know what bank you would transfer the money to?

12 A. USAA.

13 MR. FALK: Okay. May I approach the witness?

14 THE COURT: Yes.

15 (Defendant's Exhibit 4 marked for identification.)

16 MR. FALK: Let me ask a few more questions.

17 Q. After you put the money into his account, were you ever
18 concerned that he was going to go and blow the money on a car
19 or something?

20 A. No.

21 Q. When his -- so where did he get the bank statements for
22 that account?

23 A. To my residence.

24 Q. Did you ever open up his mail?

25 A. Yes.

1 Q. Which mail did you open up?

2 A. I opened up his bills and maybe the bills that come from
3 car tax, that kind of stuff, anything bill related.

4 Q. Did you open up his bank statements?

5 A. Yes.

6 Q. When you opened up his bank statements, did you ever
7 look at it to see if the money that you had put there was
8 still there?

9 A. I did check the balance.

10 Q. At any time before April 1st, so in March of 2013, do
11 you think you looked at his bank statement?

12 A. Yes, I looked at it every month.

13 Q. And so then you also looked at it in April and May?

14 A. Yes.

15 Q. And your purpose of looking at the bank statement was
16 what?

17 A. Just to monitor the account.

18 Q. Okay. And in the course of your monitoring his account,
19 did you ever have reason to believe that he had spent that
20 money?

21 A. No.

22 Q. So did you ever have any reason to believe that on
23 April 1st, 2013 he no longer had \$20,000 in his account, plus
24 or minus?

25 A. It was still in there April of 2013.

1 Q. Thank you.

2 Now, you had testified that you were opening up his -- I
3 think you testified that you opened up some of his mail. I
4 think you testified that maybe car tax bills, and you already
5 testified that you opened up his bank statements; is that
6 correct?

7 A. Yes, sir.

8 Q. Okay. Did you ever have any discussions with him about
9 his credit, his credit history?

10 A. Yes, I did.

11 Q. And what were your discussions about that?

12 A. Well, I was trying to explain to him, you know, as he
13 was getting, you know, older, I said -- because he had
14 mentioned before about maybe buying -- you know, getting his
15 own place one day, buying furniture. And I said, "Well, let
16 me tell you about credit."

17 It was never -- when I was a child, it was never
18 discussed with me, so I always try and let him know, in my
19 opinion, it's not like you have money you can go ahead and do
20 something -- anything you want to do, you're basically a
21 number, and that number is your credit score, especially for
22 his day and time.

23 I mean, coming up, not so bad, but this generation, try
24 to be responsible and pay your bills and you can get anything
25 you want without having to pay for it up front. You can get,

1 you know, credit.

2 And he didn't, you know, really understand the gist of
3 it, but I did go over that with him, because it was never
4 done -- did to me with my parents. They paid cash for
5 everything.

6 Q. Do you know if he ever opened up any accounts?

7 A. Did I open up any accounts?

8 Q. Do you know if he ever opened up any --

9 A. Yes, he opened --

10 Q. Just --

11 A. Yes, I did.

12 Q. Okay. And how did you know that he had opened up
13 accounts?

14 A. Because the statement came to the house.

15 Q. And those statements were addressed to him?

16 A. Yes.

17 Q. And where were those statements mailed?

18 A. They were mailed to the Carrington Court, where I live
19 at.

20 Q. Okay. And what was your purpose for -- I mean, you
21 explained your purpose for opening up his statements, his
22 bank statements because you kind of wanted to make sure that
23 your money was still there?

24 A. Mm-hmm.

25 Q. Right?

1 A. Yes.

2 Q. And what was your purpose in opening up his credit card
3 statements?

4 A. To make sure the -- at least the minimum monthly balance
5 was paid each month.

6 Q. And were you opening up every credit card statement?

7 A. Yes.

8 Q. Do you know if he had -- do you know specifically what
9 credit cards he may have had?

10 A. I know he had American Express, maybe a gas card,
11 something -- I'm not sure everything, but I do know American
12 Express definitely.

13 Q. So how do you know it was an American Express card?

14 A. I have American Express card. I know what they look
15 like.

16 Q. Okay.

17 A. I know he had an American Express card. I've seen the
18 card.

19 Q. You saw the card?

20 A. Yes.

21 Q. Okay. And did you have an opportunity to look at his
22 American Express cards?

23 A. Yes.

24 Q. And is this a card that you opened for him, this
25 American Express account?

1 A. No. He went on -- he would get preapproved offers in
2 the mail sometimes, because if I can explain, when he was 16
3 years old, I talked to a credit counselor, and I was advised
4 that at 16, if I put him on as an authorized user on some of
5 my accounts, it would help as he got older to build a credit
6 score starting up starting at 16, which he never -- I never
7 gave him the card, but that's pretty much primary at an age
8 that he was -- he was getting preapproved offers, because he
9 kind of like had a small history based on being an authorized
10 user on some of my accounts at 16.

11 Q. Do you know whether or not in March and April of 2013 he
12 had the American Express card?

13 A. Yes, he had it.

14 Q. And you said that you looked at his bills. Did you ever
15 have any concerns about that he was keeping current with his
16 American Express card?

17 A. No, the bill never stayed high, so the payments would
18 always reflect that they were paid on time.

19 Q. Thank you.

20 Did you ever come in -- were you ever informed sometime
21 around July of 2013 that your son was in an automobile
22 accident?

23 A. Yes.

24 Q. And can you tell me what day that was?

25 A. July 1st.

1 Q. Okay. And when did you -- how did you find out?

2 A. The police came to my house and told me.

3 Q. Did they tell you where your son was?

4 A. No.

5 Q. What did they tell you -- specifically what did they
6 tell you about the accident? Did they say it was a fender
7 bender?

8 A. No. They -- they came to my house and told me -- first
9 they asked me is my son named Tyrone Ellison. I said "yes."

10 And they said that there's been an accident.

11 And, you know, as a mother I was like, "What?"

12 And they said, "Yes, it's a bad accident." Car, I think
13 hit -- ran into a tree and there was a lot of blood in the
14 car and they don't think anybody could have survived it.

15 Q. Okay. After you got that news, when did you first see
16 your son?

17 A. Maybe the next day or two days later.

18 Q. Okay. Did you ever -- was that in a hospital?

19 A. No. It was at the -- it was County Hall, I believe,
20 on -- off of Mall Drive. It was at a police station.

21 MR. FALK: I have no further questions. Please answer
22 Mr. Sorenson's questions.

23 THE COURT: Cross-examination.

24 MR. SORENSON: Thank you, Your Honor. May it please the
25 Court.

1 CROSS-EXAMINATION BY MR. SORENSON:

2 Q. Good morning, Ms. McKinney.

3 A. Good morning.

4 Q. My name is Don Sorenson. I think we've probably seen
5 each other a few times, so I'm not sure we've ever actually
6 met; is that correct?

7 A. Yes, sir.

8 Q. I just have a few things I want to go over with what you
9 testified about with Mr. Falk.

10 Back in April of 2013 you were living at -- I think the
11 address you gave was 5048 Carrington Court; is that correct?

12 A. Yes, sir.

13 Q. And that's located in the Wescott Plantation
14 subdivision?

15 A. Yes, sir.

16 Q. And I believe you testified that was your son's, I
17 guess, physical address where he got his mail, but he wasn't
18 staying there all the time?

19 A. Not every single night, sir.

20 Q. But he obviously was, had lived at that residence with
21 you and was familiar with that area; is that correct?

22 A. Yes, sir.

23 Q. And you had testified that at one point in time several
24 years back, you had actually lived in Coosaw Creek; is that
25 correct?

1 A. Yes, sir.

2 Q. Did he live with you when you lived there?

3 A. He was in high school, yes, sir.

4 Q. Okay. So yet again, familiar with that intersection of
5 not only Dorchester Road and Club Course Drive but kind of
6 the back way that you can go if you're at -- you're familiar
7 with where, like, Steel City Pizza is?

8 A. Well, that wasn't there in 2005.

9 Q. That's right. I guess a lot of that is new, but he --

10 A. Yes, it is.

11 Q. But back in 2013 when you were living in Wescott,
12 Mr. Ellison would have been -- your son -- aware of kind of
13 that back way to get into Wescott Plantation going down
14 Patriot Boulevard; is that correct?

15 A. There's a lot of ways to get in Wescott.

16 Q. Let me ask you this: How old is your son?

17 A. He turned 25 August 22nd.

18 Q. So back at the time of this bank robbery, he was 23 and
19 not quite 24 years old, is that correct, in April of 2013?

20 A. Yes, sir, that would be correct.

21 Q. And it's your testimony, during that period of time,
22 your 23-year-old son was living off and on with you; is that
23 correct?

24 A. Yes, sir.

25 Q. All right. And basically, it sounds like from your

1 testimony, I mean, you were pretty much keeping up with all
2 of his financial bank statements, credit card statements that
3 you were opening and keeping up with all of that stuff for
4 your 23-year-old son; is that correct?

5 A. I was looking at it, yes, I was.

6 Q. And let me talk about this money that you say that you
7 set aside for your son. You've testified to the jury that
8 you had transferred about \$20,000 into an account
9 belonging -- that was in your son Tyrone Ellison's name; is
10 that correct?

11 A. Yes.

12 Q. All right. And that occurred, I guess, sometime in
13 March maybe or somewhere prior to March?

14 A. I believe it was -- I think -- I believe it was December
15 of 2012. It wasn't the month before; it was months before
16 April that the money had been in there.

17 Q. Okay. And the fact of the matter, Ms. McKinney, is
18 while you had put that money in that account in his name, he
19 didn't know it was there; is that correct?

20 A. He eventually knew it was there. He didn't know the day
21 I transferred it, no.

22 Q. He eventually knew it was there when you told him a
23 couple months ago talking to him on the telephone; is that
24 correct?

25 A. I don't recall what the conversation could have been

1 about. I'm sure that at one point in time we did discuss the
2 money being in his account.

3 Q. And the fact of the matter, Ms. McKinney, is -- and
4 honestly, Mr. Falk has told the jury this, your son was
5 arrested back on July 2nd, and he's been at the detention
6 center since then; is that correct?

7 A. Yes.

8 Q. And you have an opportunity, I guess, to probably visit
9 him occasionally but also to talk to him on the phone almost
10 every day; is that correct?

11 A. Yes, it is.

12 Q. Let me ask you this: Do you recall back on July 28th of
13 this year, of 2014, having a phone conversation with your son
14 where you told him that "There's \$20,000 in your savings
15 account that I had put there that you didn't know I had put
16 there. I put it there last year in March, money you didn't
17 have access to. They don't know if you have access to it or
18 not."

19 Do you remember talking to your son and telling him that
20 you had just discovered that, recalled that you put that
21 money in the bank and were thankful that you found that
22 because now he would be able to try to use that as an
23 argument, "Why would I rob a bank if I had \$20,000 in the
24 bank?" But the fact of the matter is, he didn't know it was
25 there on April 1st of 2013; is that correct?

1 A. I would -- I know me and my son probably had several
2 conversations. Like I said, it's been over a year that he's
3 been there, and I'm sure we discussed certain things, and
4 that could have been one of them. I'm not 100 percent sure.

5 We did discuss -- I know we did discuss, go over his
6 case, of course, and we did discuss items that -- you know,
7 we did discuss money, maybe, and other things, but it wasn't
8 for him to use as any type of an alibi, because the money was
9 there before he was arrested.

10 Q. Okay. Then you had another conversation with him
11 actually during that same conversation where you made the --
12 where you made the statement to him that "That was your own
13 money. They don't know if that was yours or not. I put that
14 money in your account to get it from my account. My name
15 ain't on that account at USA Bank. All they know is you got
16 \$20,000 in your account."

17 Yet again, under the same conversation, you're telling
18 him for the first time that, "Guess what I discovered?
19 Aren't we lucky? I just so happened to put money into your
20 account prior to this bank robbery."

21 A. That was not the first time that I was telling him,
22 maybe on the phone during that police conversation or on that
23 phone -- taped phone conversation could have been the first
24 time that I mentioned it during the phone conversation, but
25 that's not the first time I mentioned that he had \$20,000 in

1 his account.

2 Q. Okay. Let me ask you this, and I have got the calls. I
3 mean, we can take a break and you can listen to them, if that
4 would help refresh your memory --

5 A. I'm not denying that --

6 THE COURT: Hold on a minute.

7 THE WITNESS: I'm sorry, sir.

8 THE COURT: Hold on a minute. Let him finish his
9 statement or question.

10 THE WITNESS: Okay, sir.

11 THE COURT: And then you answer.

12 Same goes, let her finish before you proceed --

13 MR. SORENSON: Yes, Your Honor.

14 THE COURT: -- with any further questioning.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: Okay? All right. You may continue,
17 Mr. Sorenson.

18 Q. I've got the calls if you want to listen to them. We
19 can ask the Court for a break and you can listen to them if
20 that would help refresh your memory.

21 A. I don't have to listen to them.

22 Q. Okay. And do you know -- not only have you talked to
23 your son, but you also talked to other inmates at the jail
24 that have called you on his behalf about his case; is that
25 correct?

1 A. When he couldn't make a phone call, there could have
2 been another inmate calling me.

3 Q. Okay. And do you recall on July 28th of this year, of
4 2014, about 5:00 in the afternoon, having a conversation with
5 a young man by the name of Shawn Kitt who was incarcerated
6 over at the detention center, at least was back at that point
7 in time?

8 A. I really don't know the exact names of the inmate.
9 There are different ones that call. I'm not sure who
10 Shawn Kitt is without seeing the face.

11 Q. Okay. But obviously you're talking to them on the
12 phone, so you don't see their faces; is that correct?

13 A. I come visit at the jail and I do see inmates at the
14 jail.

15 Q. This is a phone conversation on July 28th of 2014 with
16 an individual by the name of Shawn Kitt where you told
17 Mr. Kitt, "I also had \$20,000 in his savings account that he
18 didn't know about because it was just money I had transferred
19 in there, you know, so I didn't have it on a noninterest
20 bearing account, so I just moved it there." God works in
21 mysterious ways, because last year I just happened to put
22 that money in his account. It was only in his name, but he
23 didn't know about it. I put \$20,000 in his account."

24 Do you admit or deny making that statement to an inmate
25 that called you on your son's behalf from the Dorchester

1 County Detention Center on July 28th of 2014, 5:00 in the
2 afternoon?

3 A. That conversation could have taken place for the simple
4 fact that my son's previous attorney -- there's things that I
5 said on the tape to different people that called my house,
6 and I don't know who the persons were calling my house, but
7 there were different occasions I did talk to different people
8 who were giving me the status of my son and his -- I guess
9 his physical demeanor.

10 So if he couldn't make a phone call, then there were
11 people who would call me and say, "Your son is doing okay,"
12 and pass on messages like that.

13 Q. But let me ask my question again and I'll try to
14 simplify it. That kind of statement that I just read out to
15 you --

16 A. Mm-hmm.

17 Q. -- do you admit to making that statement or deny you
18 made that statement?

19 A. That statement could have been made.

20 Q. So that means "yes," you did make it? Because as I
21 said, would it help if I played it for you?

22 A. I'm saying that I don't know who this Dwayne person is
23 offhand. So as I said, if that person was the conversation
24 that you -- that they taped, then that would have been the
25 person. I don't know who -- I don't know these people

1 personally..

2 Q. Okay. I understand that. It's a conversation with an
3 individual named Shawn Kitt, who is in -- was in jail at
4 least on July 28th of 2014. Regardless of whether you know
5 who that person is, do you admit or deny telling another
6 inmate in a phone conversation what I just read out to the
7 jury?

8 A. I don't deny. If you have the tape, then obviously I
9 must have said it.

10 Q. It's your testimony now, though, that what you told that
11 inmate is not true, that you didn't tell that inmate the
12 truth then? Because that's not the same as what you just
13 told this jury a few minutes before --

14 A. I'm saying --

15 THE COURT: Hold on. Hold on. Let him finish,
16 please --

17 THE WITNESS: I'm sorry.

18 THE COURT: -- before you answer.

19 THE WITNESS: Okay.

20 THE COURT: Go ahead, Mr. Sorenson.

21 Q. So is that the truth or is what you just told this jury
22 before I got into this the truth?

23 A. That's one phone call. There could be phone calls that
24 could lead into other conversations. If that phone call was
25 made, I'm sure that was not the first phone call that I just

1 happened to say to this inmate -- give him all that detail.
2 That would have been a first-phone-call discussion.

3 My thing is, people -- my son got out -- when my son is
4 in jail 23 hours a day, he comes out one hour a day, and he
5 gets to use the phone for 15 minutes. So if other inmates
6 are allowed to make a phone call to me to give me his
7 well-being or something, they did that for him.

8 Q. But this information that you told your son and you told
9 this other inmate, Shawn Kitt, you had just discovered that
10 information, is that correct, back this past summer, several
11 months ago?

12 A. I knew I had put the money in his account. I knew -- I
13 know that because I'm the one who transferred it in there.
14 It's nothing I just discovered. I knew the money was in
15 there when I transferred it.

16 Q. But the fact of the matter is back on April 1st, 2013,
17 your son did not know he had \$20,000 sitting in a bank
18 account that he had access to; is that correct?

19 A. He had his statements to view his statements and know he
20 had \$20,000 in his account. I opened his mail but put it in
21 his dresser, so it's not like I kept the mail for him.

22 Q. So that's not the truth then when you were making these
23 phone conversations and told them that he didn't know about
24 it?

25 A. These inmates, I don't know who the inmates are. I

1 don't know if they talked to my son and tried to corroborate
2 information. I don't know these people personally.

3 Q. There's quite a handful of them that you talked to
4 pretty regularly out there; is that correct?

5 A. I admit that some people might say, "Can you call my
6 mother for me?" And being a mother, and they don't have a
7 phone, I mean, the jail system works that way, unfortunately.
8 Everybody doesn't have privilege to call their parents or
9 someone.

10 Q. Now let me ask you this: Let's kind of move on from
11 that. Let's talk about this Honda Civic. It's your
12 testimony today, and obviously we are about 19 months after
13 the fact, but it's your testimony that your son purchased
14 that Honda Civic, kind of, I guess you paid for it, but got
15 that Honda Civic on March 23rd, 2013; is that correct?

16 A. Yes.

17 Q. All right. And that is easy to tell because we have the
18 paperwork that shows that, is that correct, where your son
19 signed State's Exhibit 39?

20 MR. SORENSON: May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 Q. Your son signed that bill of sale indicating that he
23 purchased that vehicle from James Marion Lee; is that
24 correct?

25 A. Yes.

1 Q. And Mr. Lee is the car salesman that your friend knew?

2 A. Yes.

3 Q. Is that correct?

4 So there's no doubt about it that that car came into
5 your son's possession on March 23rd of 2013; is that correct?

6 A. Looking at the paperwork, that's correct.

7 Q. And it's your testimony that you purchased that car for
8 him to be able to go back and forth to work, because he was
9 employed at Burger King at that time; is that correct?

10 A. Yes.

11 Q. And the reason he needed a car was because the prior
12 vehicle he had, which was the Hyundai Elantra, had either
13 broken down or he'd gotten into an accident or some reason it
14 wasn't operable; is that correct?

15 A. Yes.

16 Q. Okay. And let me ask you, how much did you -- do you
17 recall how much you paid for that vehicle?

18 A. It was \$1100, and Mr. Marion took off \$400 to let him
19 take the Hyundai Elantra with him.

20 Q. Okay. So basically you paid on \$1100 for that, and then
21 he paid you \$400 basically for the Elantra, but that's
22 basically how it worked out, right?

23 A. Yes, sir.

24 Q. And you all at that point in time then called GEICO and
25 got insurance put on that vehicle?

1 A. Yes, sir.

2 Q. And it's your testimony now that you never saw that
3 vehicle again; is that correct?

4 A. Not after that Saturday, I don't recall ever seeing it
5 again.

6 Q. Okay. And it's your testimony that your son told you on
7 Monday the 25th that he had gotten rid of the car; is that
8 correct?

9 A. Yes.

10 Q. Now let me ask you this, Ms. McKinney, and this kind of
11 goes into the next line of questioning Mr. Falk had asked you
12 about: Did you have an occasion late on July 1st and then
13 again the morning of July 2nd to have the North Charleston
14 Police Department come out and talk to you at your house?

15 A. Yes.

16 Q. Okay. And Mr. Falk had asked you that they had informed
17 you that your son had been in a serious automobile accident;
18 is that correct?

19 A. Yes.

20 Q. And that wasn't the only reason they were there, though,
21 right? They were actually looking for your son at that point
22 in time; is that correct?

23 A. Yes.

24 Q. And as a result of that, they had some conversations
25 with you about things that were going on; is that correct?

1 A. They had -- we had conversation, yes.

2 Q. Okay. And part of them talking to you, they spoke to
3 you about this bank robbery that occurred on April 1st of
4 2013; is that correct?

5 A. Yes.

6 Q. And part of that conversation was then questioning you
7 about what vehicle your son owned back at that point in time;
8 is that correct?

9 A. That's not the evening, not when the police came. That
10 was when the detectives came.

11 Q. Okay. The detective is a police officer. You realize
12 that, right?

13 A. I'm sorry. I'm just confused if you're talking about
14 the day that I was notified.

15 Q. Okay. I'm sorry. I apologize for that. Specifically
16 that question I am talking about the following day --

17 A. Okay.

18 Q. -- they do come back out and talk to you and it's
19 actually a detective that talks to you.

20 A. Yes, sir.

21 Q. It's Detective Repman I think is his name?

22 A. I don't recall his name.

23 Q. But he came out specifically to question you about the
24 April 1st bank robbery; is that correct?

25 A. He came to show me some photos.

1 Q. Okay. And part of that questioning involved what
2 vehicle your son owned and was driving back in April, on
3 April 1st of 2013; is that correct?

4 A. I don't recall him saying April the 1st. I recall him
5 asking me did he own a vehicle. I don't recall us making the
6 day of April the 1st.

7 Q. Okay. He did inform you at some point in time that
8 that's when the bank robbery occurred; is that correct?

9 A. When the bank robbery occurred and he had the car was
10 two different pieces of information, sir.

11 Q. Okay. But needless to say, he asked you about that
12 vehicle; is that correct?

13 A. Yes.

14 Q. All right. And you told Detective Repman that your son
15 had a Honda Civic; is that correct?

16 A. Yes.

17 Q. Okay. And then he showed you some photographs of a
18 vehicle. You said, I believe, initially you weren't sure,
19 looking at the photographs, what kind of vehicle that was but
20 ultimately that it could be your son's vehicle; is that
21 correct?

22 A. After he told me what kind of vehicle it was. I thought
23 it was a Saturn.

24 Q. Okay. But after looking at it him telling you that's a
25 Civic, your testimony -- your statement to him was that could

1 be? It's consistent?

2 A. What he was telling me, first, I thought the car was
3 blue. He told me it was green. It was just the coloring of
4 the photos. So, I mean, he's a detective. I don't know what
5 he knew when they took the picture, but he was telling me it
6 could be a green car or it could be a Honda.

7 If he was telling me that, it didn't look like that, but
8 that's what he was explaining to me it was, then I wasn't
9 going to argue with him, because he was presenting the
10 picture to me.

11 Q. Okay. Ultimately you told him, though, that your son
12 owned a dark green Honda Civic?

13 A. At one point, yes, sir.

14 Q. At one point in that time. And they obviously were
15 asking you about the location of that Honda Civic; is that
16 correct?

17 A. I wasn't sure if it was him or the night before, but I
18 was asked that question.

19 Q. In fact, ultimately, that's how the name Terrance Bryant
20 comes up is you tell them that's who bought the vehicle from
21 your son; is that correct?

22 A. I told that -- I know I told that to the police the
23 night they came to my house about the car accident, yes, sir.

24 Q. And the fact of the matter is that you told -- you told
25 law enforcement that night before the following day on

1 July 2nd that you didn't remember the dates, you didn't
2 remember the dates that your son got the vehicle or got rid
3 of the vehicle; is that correct?

4 A. Yes, because the paperwork had already been gone.

5 Q. You didn't have -- as I said, it's easy now to refresh
6 your memory what day he got the vehicle --

7 A. Right.

8 Q. -- because you've got the paperwork.

9 So you didn't know when he -- when he had the vehicle or
10 when he got rid of it, and you made the comment that he only
11 had that vehicle for a few weeks. You told the detective,
12 Detective Repman, that -- on July 2nd of 2013 that you
13 weren't, that was part of the reason why you weren't sure
14 about the picture you were looking at because your son only
15 had that vehicle for a few weeks?

16 A. That few weeks, sir, was the whole time with the
17 insurance and everything in his name. That's the few weeks
18 I'm discussing, not his ownership, the two weeks. And if you
19 look at the car, I mean the GEICO card, it was about two
20 weeks when I canceled it. So once everything was out of his
21 name, that's the two weeks that I'm referring to.

22 Q. Okay. So when they specifically asked you the question
23 how long, how much time between the time that he bought and
24 sold the Civic, and your answer was, "Maybe a few weeks," I
25 mean, you were talking about -- you were thinking at that

1 point in time, you know, "Well, it was on my insurance for a
2 few weeks?"

3 A. No, sir. What I'm thinking about at that time is that I
4 had a conversation with Terrance Bryant about the vehicle,
5 and I knew that that vehicle was sold to him, and my
6 information to Terrance Bryant is that I need to get the
7 paperwork and everything adjusted, so that's something that I
8 knew, and I knew it took a couple of weeks for that to happen
9 before everything actually got removed from my son, but the
10 ownership was that day, that Saturday..

11 Q. The 23rd?

12 A. Yes.

13 Q. And the fact of the matter is you have no documentation
14 that supports your son giving the vehicle to Terrance Bryant
15 on March 25th, though?

16 A. Terrance Bryant would have that documentation because I
17 gave it to him.

18 Q. All right. While we're on that, in fact, let me show
19 you State's Exhibit --

20 MR. SORENSON: May I approach, Your Honor?

21 THE COURT: Yes, sir.

22 Q. Show you State's Exhibit No. 43. Is that the
23 documentation you sent to him as far as the bill of sale
24 goes?

25 A. That would be the documentation, when Terrance came to

1 my house, he didn't have a bill of sale at all, and the
2 reason why he didn't have a bill of sale is when my son gave
3 him the car, you don't just say, "Here's the car." You have
4 to have -- he needed the bill of sale to show that he had
5 ownership, as Mr. Marion gave my son a bill of sale.

6 So Terrance did not have a bill of sale, I guess, when
7 he tried to contact motor vehicles, so I said, "You bring a
8 bill of sale, and you'll be able to get the car registered."
9 That was my main problem. When they made this sale, what
10 documentation did Bryant -- I mean, Terrance Bryant have?
11 That's what I was explaining to my son, you just can't say,
12 "Here's the car," you know, and that's a done deal. The car
13 has to be registered and titled properly.

14 Q. The fact of the matter is that vehicle was never
15 properly registered by your son at all, correct?

16 A. He only kept it for one day, so he wouldn't have had
17 time to do that.

18 Q. So you bought it -- it's your testimony that you bought
19 him this car to go back and forth to work, and your
20 23-year-old son promptly sold it the same day basically; is
21 that correct?

22 A. What is correct is that my son didn't ask me to get the
23 car. I took it upon myself to get a car for him to get back
24 and forth to work because it was reasonably priced.

25 Q. And he was so grateful that he turned around and sold

1 it, according to your testimony, the following day or
2 according to --

3 A. I can't say he was -- I can't say he was grateful, but
4 my thing is that he was appreciative of the car, but as time
5 went on, I realized that Mr. Bryant was in search of a car,
6 and my son was helping him out, more or less. He had just
7 had a baby and everything, and my son had his eye on another
8 vehicle, which he did purchase off Craigslist in April.

9 So it wasn't like I would say my son was ungrateful. I
10 made that determination as a mother, I'd rather him have a
11 nice vehicle to get back and forth to work versus having to
12 ask people to take him back and forth.

13 Q. And of course, I mean, if he sold this vehicle as you
14 say on the 24th of March, I mean, it was almost a month that
15 he still would have been relying upon rides back and forth to
16 work then --

17 A. No, he purchased his Ford Taurus in around the middle of
18 April, so it would only have been a couple of weeks.

19 Q. About three weeks then, right?

20 A. If you do the math, it could be like two or three weeks.

21 Q. And when he purchased that, it got put on his insurance,
22 correct?

23 A. Yes, just as the Honda did.

24 Q. And that vehicle is -- the insurance is effective,
25 according to the GEICO records, effective April 17th?

1 A. That could have been correct, if that's what that
2 paperwork says.

3 Q. All right. And let me ask you this: Something else
4 that you told the detective when they were questioning you
5 about that vehicle the morning of July 2nd, you had made the
6 comment to them that he had had the vehicle for a few weeks,
7 okay, and you explained that what you meant about that --

8 A. Yes.

9 Q. That didn't mean he actually physically had it. And you
10 also told them that you had went, after he got the vehicle,
11 and got the windows tinted a couple days later for him.

12 A. On the Ford Taurus?

13 Q. No, ma'am. This is -- they're not talking to you about
14 a Ford Taurus. They're asking you about the Honda Civic.
15 It's right after the line of questioning, "How long between
16 the time that he bought and sold the Civic?"

17 You said maybe a few weeks, told them it didn't have a
18 radio in it and that she had gotten the windows -- that you
19 had gotten the windows tinted a couple days later. After the
20 windows were tinted, he was -- I saw him walking, had gotten
21 dropped off, and he told me at that time that he had sold the
22 car to Terrance.

23 Do you remember telling Detective Repman that on the
24 morning of July 2nd, 2013?

25 A. What I remember telling him in my -- when we were

1 talking about the car is that when he showed me the car prior
2 to me allowing him to record me, when he showed me the car,
3 it had tinted windows.

4 When we purchased the car, it did not have tinted
5 windows, and I'm assuming that Terrance got the car -- the
6 windows tinted because the picture was after the first of
7 April or April the 1st when he was showing me the pictures.
8 The windows did not come tinted.

9 Q. I understand that. So do you admit or deny telling
10 Detective Repman on July 2nd of 2013, and they were recording
11 you. So, I mean, you're aware that there's a recording of --

12 A. I allowed them to do the recording.

13 Q. That they had asked you how long a time between the time
14 that your son bought and sold the Civic, and you told them a
15 few weeks. And we talked about that, that the car didn't
16 have a radio, that you had gotten the windows tinted a couple
17 days later, and that after the windows were tinted, you saw
18 your son walking and had gotten -- and being dropped off by
19 somebody, and he told you at that point in time that he had
20 sold the car to Terrance. Do you admit or deny telling
21 Detective Repman that on July 2nd, 2013?

22 A. What I can remember from last year about the car is --

23 MR. SORENSON: Your Honor, can I get her to answer the
24 question?

25 THE COURT: Please answer the question either "yes" or

1 "no," and if you want to have an opportunity to explain it,
2 you can do so, but answer the question first "yes" or "no"
3 and then follow up. If you want to explain, you may do so.

4 THE WITNESS: Yes.

5 Q. You told him that? Okay.

6 A. I believe that that was part of a conversation about
7 windows tinted.

8 Q. About the Honda Civic? And yet again, I mean, if you
9 want, I will play it for you if that will help refresh your
10 memory.

11 A. My thing -- well, sir, my thing about answering "yes" or
12 "no" and -- and -- and talking to the detective is when he
13 showed me the pictures, I -- before he recorded me, he showed
14 me the car. I didn't even recognize the car.

15 And as far as windows being tinted, I'm knowing that
16 after -- after everything happened, the fact that Terrance
17 got the windows tinted, because he told Mr. Woods he got the
18 windows tinted when he tried to sell the car back.

19 Q. But that is not what you told law enforcement back on
20 July 2nd of 2013, correct? You told them you got the windows
21 tinted. You found out that he sold the car to Terrance after
22 you had gotten the windows tinted; is that correct?

23 A. If that's what he recorded, I'm -- if that's what he
24 recorded, I could have got confused about the cars, because
25 he did get the Ford Taurus windows tinted.

1 Q. Would you like for us to play it? I mean --

2 A. If I could have said that. I'm not saying that -- on
3 that point in time, I'm thinking about my son and being in
4 the hospital, and I could have had told him that.

5 MR. SORENSON: May we approach, Your Honor?

6 (Judge and attorneys confer.)

7 THE COURT: You may continue, Mr. Sorenson.

8 MR. SORENSON: Thank you, Your Honor. Beg the Court's
9 indulgence one second.

10 THE COURT: Yes, sir.

11 Q. And as part of that, a part of that interview with
12 Detective Repman on the morning of July 2nd of 2013, as I
13 indicated, you know, they were questioning you about this
14 April 1st bank robbery; is that correct?

15 A. Yes.

16 Q. Okay. And as part of that, they also showed you a
17 photograph from that bank robbery; is that correct?

18 A. They showed me several photos, sir.

19 Q. Okay. But specifically they showed you a photograph
20 from that April 1st bank robbery; is that correct?

21 A. Yes.

22 Q. Okay. And let me show you State's Exhibits No. 28 and
23 27.

24 MR. SORENSON: May I approach the witness, Your Honor?

25 THE COURT: Yes.

1 Q. And the photograph that they showed you, Ms. McKinney,
2 was essentially a photograph of the robber showing basically
3 that part of his features; is that correct?

4 MR. FALK: Your Honor, I object to the foundation of
5 this. I don't think there's been any proof that those are
6 the photographs that were shown to her.

7 MR. SORENSON: I'm asking her. She can say "yes" or
8 "no."

9 THE COURT: Restate your question. Hold on a second.
10 Restate your question, Mr. Sorenson, referring to
11 Exhibits 27 and 28 that are in front of her.

12 MR. SORENSON: Yes, sir.

13 Q. I've handed you two photographs up there that are in
14 evidence, Ms. McKinney. Are either of those photographs the
15 same kind of orientation or possibly the same photograph that
16 was shown to you by Detective Repman on the morning of
17 April -- I'm sorry, of July 2nd, 2013 to ask you about what
18 you may or may not recognize about the person in that
19 photograph?

20 A. If I'm not mistaken, the photos that he showed me were
21 black and white photos.

22 Q. Okay. Well, was it a black-and-white photo of one of
23 those photos?

24 A. It's no -- it's like these photos show a lot of, like,
25 area in the background. The photos that he showed me were

1 black and white. They were more like close-up pictures.

2 Q. Okay. But the same orientation of the suspected robber?

3 A. These ones look totally different.

4 Q. Okay. But you do remember him showing you a photograph
5 from the bank robbery on April 1st of it 2013; is that
6 correct?

7 MR. FALK: Your Honor, I object, again on the
8 foundation. He's still saying that it was a --

9 THE COURT: Hold on a minute.

10 MR. FALK: I'm sorry.

11 THE COURT: Approach.

12 (Judge and attorneys confer.)

13 THE COURT: You may continue, Mr. Sorenson.

14 MR. SORENSON: Thank you.

15 Q. Ms. McKinney, isn't it a fact on the morning of July 2nd
16 of 2013, when Detective Repman came out to you, that he told
17 you he was showing you a photograph from the bank robbery at
18 the SunTrust Bank on April 1st of 2013? That's my first
19 question. Just disregard those photos in front of you.
20 Isn't that a fact that he told you that?

21 A. He told me he wanted to show me some photos. I'm not
22 100 percent sure if he mentioned about a bank. He asked me
23 can I see -- can he show me some pictures.

24 Q. So you deny that he told you it was -- that this was a
25 photo from a bank robbery?

1 A. When he came to my house, he asked me, "I want to show
2 you" -- "Can I show you some photos," sir. That's what -- I
3 do remember that conversation, and he showed me several
4 photos prior to showing me some separate black-and-white
5 photos.

6 Q. All right. And do you admit or deny that he told you
7 that -- when showing you a photograph that he said, "This is
8 a photo from a bank robbery"? Do you remember him saying
9 that?

10 A. I don't remember, but he could have said that. I do not
11 remember, sir, if he said it was from a bank robbery or just,
12 "Can I show you some photos?"

13 Q. Okay. And what was your -- when he showed you that
14 photograph that I submit was referencing the April 1st bank
15 robbery, what was your response as to the person that was
16 depicted in that photograph to Detective Repman?

17 A. The photos that he showed me, they were black-and-white
18 photos, and when he first showed me -- first of all, he
19 showed me a group of pictures, and they kind of looked like
20 bunch of guys heads in a row. And he said, "Does any of
21 these look like your son?"

22 And I said "no." And he showed me some other pictures.
23 I don't know if they were mugshots because they were close
24 together. They were in black and white.

25 Q. That's not what I'm talking about. I don't know what --

1 I'm talking about the photograph that he showed you, a single
2 photograph that told you this is a photo from a bank robbery
3 and asked you to look at that photograph. Do you remember
4 that and having --

5 A. I don't remember him saying any photo was from a bank
6 robbery. Now, he had it recorded, but I don't remember that
7 conversation. I don't remember him saying, "This is a photo
8 from a bank robbery."

9 Q. Okay. It is recorded.

10 A. If it is recorded, I don't -- I mean, you asked me do I
11 remember, so I don't remember the conversation.

12 Q. He could very well have said that to you, though --

13 A. He could have said that.

14 Q. That photograph, what was your response, and I'm not
15 talking about a series of photographs, that photograph, what
16 was your response as to whether that resembles your son or
17 not in that photograph?

18 A. The photograph that he showed me, the single photograph
19 he showed me, sir, prior to him recording me, after -- when
20 he showed me the single photograph, my thing is that is
21 50 percent could be my son. And he said why do I say
22 50 percent? Because I said he's black.

23 And that's before he recorded me, because he had showed
24 me so many other pictures, and it's like, it was a young
25 black guy, so 50 percent, you're black. If it was a white

1 person, that's a 0 percent. 50 percent, I said, "Well, he's
2 black."

3 Q. Okay. Well, the fact of the matter is there's a little
4 more to your description in your explanation to him; is that
5 correct, Ms. McKinney?

6 A. This is prior to him recording me. We had a
7 conversation. And once -- once I had told him things before
8 he said, "Now I'm going to record you," because --

9 Q. Well, let's talk about the recording, because that's
10 what I have a recording of.

11 A. Mm-hmm, yes, sir.

12 Q. The fact of the matter is when he was recording you,
13 what did you tell him about the person in that photograph?

14 A. What I remember when he asked can he record me now, he
15 pulled the photo out that he had at that time, and I looked.
16 I said -- I don't remember exactly the words, but I --
17 something like, "I don't know." I was looking at it kind of
18 hard, and I said, "Well," because all the hair and stuff.

19 He said, "Well, just" -- I think he said something about
20 just try to -- I think he told me, "Well, that's a wig," or
21 something when I was saying about some dreads or something.
22 I believe he told me that was -- that's a wig. And then he
23 said, "Just look closely."

24 And I said, "I'm not sure."

25 And finally he was kind of like pointing around

1 different things on the picture, like, you know, "Look here
2 and there."

3 And eventually I said, "It could be him."

4 And he said, "Well, how sure are you?"

5 And I said 75 percent, the 50 percent being that he was
6 black.

7 Q. And the fact of the matter is the way that conversation
8 went is that he asked you, made the comment, "This is a photo
9 from a bank robbery," and your response -- do you admit or
10 deny that your response to that question was, "That resembles
11 my son's mouth and nose. I don't know what he was wearing,
12 but that resembles my son right there"? Do you admit telling
13 him that?

14 A. If he has that recorded for that picture that he showed
15 me, it wasn't these photos, but the picture that he showed
16 me, if he had that recorded, we didn't -- there was one photo
17 he showed me in particular, when I finally looked at it, I
18 said it could be 75 percent, the 50 percent being it was a
19 young black guy, the 25 percent there were some features, as
20 there were with the other photos I was shown.

21 Q. And ultimately, part of when he got you, and you say
22 this multiple times to him, that in looking at that,
23 obviously the hair throws you off, because your son back in
24 April of 2001 didn't have long hair; is that correct?

25 A. 2001?

1 Q. I mean 2013. I'm sorry. The time of this bank robbery,
2 your son did not have long hair; is that correct?

3 A. If this bank robbery was April the 1st, he had short
4 hair.

5 Q. Correct. So part of what threw you off initially in
6 looking at that and why you're not 100 percent sure is
7 because that person obviously appears to have long hair; is
8 that correct?

9 A. That wasn't the only thing that threw me off. That was
10 just one of several things that threw me off.

11 Q. Okay.

12 A. I can't see the person's -- the picture that he showed
13 me was better than this one, but I couldn't even see the eyes
14 or any features around the face or anything because there was
15 so much hair and then like a hat or something on, so I didn't
16 know who that photo was.

17 Q. But you tell him on multiple occasions that it resembles
18 your son's nose, resembles your son's mouth; is that correct?

19 A. On the photo that he showed me, which is not these
20 photos.

21 Q. That's my question. The photo he showed you, you told
22 them that it resembled your son's nose and your son's mouth
23 multiple occasions; is that correct?

24 A. I don't know it was multiple occasions, but if he has me
25 recorded -- then if he has me recorded and I said it more

1 than once on that particular photo and that's what it was --
2 and another thing, prior to him showing me the photos, he
3 said once I identify my son, I can go see him.

4 And I'm not going to sit here on this stand and lie that
5 I was -- my mind, looking at those pictures, I'm concerned
6 about my son, thinking he had been seriously injured in a car
7 accident.

8 So I don't remember word for word, sir. I was never --
9 I was not in my right state to have a conversation with
10 someone telling you that your son was in a major car accident
11 and they don't think anyone survived. So if I misquoted
12 something, I'm sorry.

13 Q. And I understand. And you obviously, I mean, you've met
14 with Mr. Falk; is that correct?

15 A. Yes.

16 Q. Okay. Has he not gone over and played this audio
17 recording for you about what you told the police?

18 A. Mr. Falk was not the first attorney.

19 Q. Well, I mean, there have been a couple. And, I mean,
20 his previous lawyer, Mr. Bolus, I mean, did either Mr. Bolus
21 or Mr. Falk ever let you listen to what you told the police?

22 A. Mr. Bolus just transcribed it to me in his wording,
23 "Don't worry about that because" -- this and that. That's
24 why he's not here today because I did not hear the recording.

25 Q. Okay. So you didn't ask Mr. Falk if you could listen to

1 that --

2 A. Mr. Falk gave me --

3 THE COURT: Hold on a minute. Hold on.

4 THE WITNESS: I'm sorry.

5 THE COURT: It's not usual --

6 THE WITNESS: I'm sorry, Your Honor.

7 THE COURT: -- be on a stand -- it's okay -- be on the
8 stand and be questioned about things, but it's very
9 important, very, very important that only one person speak at
10 a time, okay? So please --

11 THE WITNESS: I'm so sorry, Your Honor.

12 THE COURT: -- pause for a second, let him finish and
13 then you're free to answer the question how you deem
14 appropriate, okay?

15 THE WITNESS: Yes, sir.

16 THE COURT: You may continue, Mr. Sorenson.

17 MR. SORENSON: Thank you, Your Honor.

18 Q. So you've never -- have you ever heard this audio
19 recording?

20 A. Mr. Falk did give me a copy of the audio. And to this
21 day I -- there were so many other things going on, I still
22 have not played that audio.

23 Q. Okay. It might be a good idea to go home and do that.

24 THE COURT: Mr. Sorenson, ask the questions and let her
25 answer, all right?

1 MR. SORENSON: Yes, sir.

2 Q. Let me ask you this: With regards to -- and you had
3 made the comment that they ultimately let you, you know --
4 and they did ultimately let you meet with your son later on
5 that day, is that correct, down at the North Charleston
6 Police Department?

7 A. Yes, sir.

8 Q. Okay. And the fact -- in fact, you had a conversation
9 and talked to him for a pretty good length of time; is that
10 correct?

11 A. Yes.

12 Q. And, you know, told your son that the officers had been
13 very respectful, very nice to you up to that point in time.
14 I mean, they hadn't mistreated you at all; is that correct?

15 A. I never had a problem with the officers, no, sir.

16 Q. All right. And the fact of the matter is that that
17 evening, I mean, about 40 minutes into you talking to your
18 son, I mean, you told him that they had shown you a picture
19 from an April bank robbery where the person was wearing a
20 wig; is that correct?

21 A. I could have shown -- told my son that he -- I was shown
22 some pictures, yes. And the reason why I was even there was
23 I thought I was supposed to be visiting my son. I didn't
24 know I was in there -- they were sending me in there to
25 interrogate him.

1 Q. Well, and I'm not getting into what -- anything he said
2 to you. My only question was the fact that you told him that
3 law enforcement, that the police had showed you a picture
4 from an April bank robbery and the person was wearing a wig.
5 I mean, you told your son that; is that true or -- correct or
6 incorrect?

7 A. I was in there for a long time, and I'm sure I told my
8 son the police was at my house asking questions and
9 everything. I'm sure we had that type of discussion about a
10 picture.. Word for word, I can't tell you 16 months later
11 what happened when I was inside there. I was looking at the
12 injuries on his face.

13 Q. Yet again, you can't -- you don't deny that you may have
14 said that if that --

15 A. I may have --

16 Q. -- if that's recorded.

17 THE COURT: Hold on.

18 Go ahead, Mr. Sorenson.

19 Q. If that's recorded, I mean, you don't deny that, that
20 you told him, I mean, just very specifically that you had
21 seen a photograph from a bank robbery from April where the
22 person was wearing a wig; is that correct?

23 A. I'm sure that I told my son when I met with him
24 everything that was told to me when the police had came,
25 because at that time, I didn't know what was going on. So

1 when they told me to go in there, they were telling me to ask
2 him questions, because he wouldn't give a statement.

3 So -- and he still didn't give one when I was in there.
4 He asked for an attorney. And then he had told me that he --
5 his ribs were sore. He hadn't eaten all day. And when I
6 went out and told the officers he hadn't eaten, they went and
7 bought him Chick-fil-A and told me to go back in there and
8 continue talking to him.

9 Q. All right. And let me back up. I've got one more
10 series of questions dealing with -- I've got a couple other
11 things I want to talk about, but one more thing dealing with
12 the interview with Detective Repman on the morning of
13 July 2nd.

14 You had made this comment earlier that you ultimately
15 told them that you were 75 percent sure that was your son in
16 the picture that they showed you; is that correct?

17 A. Yes.

18 Q. Okay. And the reason why, because I asked you why,
19 initially they had asked you, "On a percentage scale, how
20 sure are you?"

21 And you told them, you know, looking at it, "I would say
22 a good 75 percent." And you told them that was because of
23 the mustache and just looking at the side-view, it looks like
24 his mouth, and I think you used the word -- the term
25 "fixture."

1 So looking at the picture that they showed you, it had a
2 mustache consistent with your son's mustache, and the mouth
3 feature looked consistent, 75 percent consistent to you as
4 being your son; is that correct?

5 A. I'm not sure of the mustache part, but the pictures were
6 black and white and dark, so I wasn't sure -- I'm not sure.
7 If he has that recorded, like I said, I'm not sure. But he
8 did tell me once I identified my son, I could go see him, and
9 I almost felt like I was under duress, identify him or you
10 don't see your son.

11 MR. SORENSON: Okay. May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 Q. You're saying here today you did not see this picture
14 before at the police station?

15 A. I don't remember seeing this one.

16 Q. Showing you State's Exhibit 28, let me ask you this
17 today: Is that consistent or inconsistent with your son
18 Tyrone Ellison?

19 A. Is what consistent, sir?

20 Q. Consistent with the mustache?

21 A. Is this person supposed to have a mustache in the
22 picture?

23 Q. You don't see a mustache on the picture, a thin pencil
24 mustache just like your son has?

25 THE COURT: And that's Exhibit 28, right?

1 MR. SORENSON: Yes, sir.

2 THE WITNESS: I don't know if that's -- I don't know if
3 that's drawn in or that is a mustache. I can't tell on this
4 picture it. Like you said, pencil. I don't know what
5 that --

6 Q. So somebody may have drawn that into the picture?

7 A. You did mentioned the word "pencil" yourself. It looks
8 like a line going across, so that could be makeup. I don't
9 know what that is. I can't tell if it's a mustache from that
10 picture.

11 Q. That's fine. Otherwise, facial, what you can see of the
12 face that's not disguised, is it consistent --

13 A. It looks like it's a beard on there. He doesn't have a
14 beard.

15 Q. So that's inconsistent then? Your testimony is that
16 does not look like your son Tyrone Ellison?

17 A. To me it does not look like him. That person has a
18 beard in the picture on the side. I can't tell from that
19 picture.

20 THE COURT: Hold on a minute. Does the jury need a
21 break?

22 Okay. I've got one juror shaking their head "yes." I'm
23 going to stop for right now. Step to the jury room for just
24 a minute. Step to the jury room for just a minute. We'll
25 try to finish with this witness before we take a lunch break,

1 all right? Get you back out here as quickly as possible. Go
2 ahead.

3 (The jury retires to the jury room at 12:44 p.m.)

4 THE COURT: Can the lawyers approach at sidebar?

5 (Judge and attorneys confer.)

6 THE COURT: We'll stand down for just a minute.

7 Ma'am, you can step down, but, you cannot discuss your
8 testimony. Do not discuss your testimony.

9 THE WITNESS: Yes, Your Honor.

10 (Recess held.)

11 THE COURT: Anything from the State before I bring the
12 jury back out?

13 MR. SORENSON: No, Your Honor.

14 THE COURT: All right. It's almost, like, 8 minutes
15 until 1. We need to wrap this up so we can let this jury go
16 to lunch.

17 MR. SORENSON: Yes, sir.

18 THE COURT: All right.

19 MR. SORENSON: Yes, sir.

20 THE COURT: Anything from defense counsel before I bring
21 the jury back in?

22 MR. FALK: No, Your Honor.

23 THE COURT: Please bring me the jury.

24 (The jury enters the courtroom at 12:52 p.m.)

25 (State's Exhibit 46 marked for identification.)

1 THE COURT: Mr. Sorenson, you may continue.

2 MR. SORENSON: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 Q. A couple more lines of questioning, Ms. McKinney. Let
6 me show you what's been marked for ID as State's Exhibit
7 No. 46.

8 MR. SORENSON: May I approach the witness?

9 THE COURT: Yes.

10 Q. You see that's a still photograph from the bank video
11 that's in evidence from Teller Station 2, April 1st 2013 at
12 10:29 and 10 seconds. Do you see on the left wrist of that
13 individual the bracelet that appears to be on that wrist?

14 A. There's something on the wrist. I don't know if it's a
15 bracelet. Can't tell what that is.

16 Q. Something consistent with a bracelet at that time on
17 that video?

18 A. I don't know what that is. It looks like it could be
19 some skin drawings. I don't know what that looks like.

20 Q. Okay. Well, let me ask you this: Did your son ever
21 wear a bracelet on his left wrist?

22 A. I never recognized if he had a bracelet on.

23 MR. SORENSON: Okay. And can I mark another photo just
24 for ID purposes?

25 (State's Exhibit 47 marked for identification.)

1 Q. I'm showing you State's Exhibit No. 47.

2 MR. SORENSON: Just -- may I approach the witness, Your
3 Honor?

4 THE COURT: Yes.

5 Q. Just showing you -- that's just for ID, so keep it
6 down -- State's Exhibit No. 47, do you recognize the person
7 that's in that photograph on the right?

8 A. Yes.

9 Q. And who is that?

10 A. On the right is my son.

11 Q. Okay. And what is he wearing on his left wrist in that
12 picture?

13 A. A watch.

14 Q. And what else, ma'am?

15 A. Well, looks like a gold watch.

16 Q. May I have this back?

17 A. Yes.

18 THE COURT: Let me see the photograph, please.

19 MR. FALK: Your Honor, may we approach?

20 (Judge and attorneys confer.)

21 THE COURT: Go ahead, Mr. Sorenson.

22 MR. SORENSON: We'll come back to that on a break, Your
23 Honor.

24 THE COURT: Okay.

25 MR. SORENSON: I'll move on for right now.

1 THE COURT: All right.

2 Q. And the last -- I believe the last thing I want to ask
3 you about, Ms. McKinney, is Terrance Bryant. Mr. Bryant, you
4 know Mr. Bryant; is that correct?

5 A. Yes, sir.

6 Q. He was a friend of your son's; is that correct?

7 A. Yes, sir.

8 Q. He's got family members that are friends of your
9 son's --

10 A. Yes, sir.

11 Q. -- things of that nature, may at one point in time lived
12 in your neighborhood even I think; is that correct?

13 A. Yes, sir.

14 Q. All right. And the fact of the matter is you, on
15 September 29th of 2013, so about a little less than three
16 months after your son was arrested, you contacted
17 Terrance Bryant trying to get him to sell that green Civic
18 back to your friend Moses; is that correct?

19 A. No.

20 Q. All right. Do you deny sending him a message saying,
21 "Hey, the guy wants to come and buy the car today. He will
22 come pick it up. He don't know nothing about Tyrone in jail,
23 so just give him the paperwork and take the money. LOL. His
24 name is Moses, and his phone number is 843-616-1320. Call
25 him ASAP with your address because today is good for him."

1 Do you deny sending --

2 A. I deny sending that. I did not -- I didn't contact him,
3 because Bryant was trying to buy -- sell the car back. I
4 didn't try to get him to sell the car back. That wouldn't do
5 me any good to sell the car back. I had no -- I had no
6 interest in the car.

7 Q. So you did send him that message?

8 A. From Mr. Woods, yes. Mr. Woods was planning on buying
9 the vehicle from him, yes.

10 Q. Okay. And of course, if that vehicle got sold back to
11 Moses Woods, where it came from initially, there would never
12 be any trace to that vehicle coming back to your son at all,
13 correct?

14 MR. FALK: Your Honor, I object. Speculation.

15 THE COURT: I'll sustain the objection. Go ahead.

16 Q. The best of your knowledge, your son had never
17 registered that vehicle with the Department of Motor
18 Vehicles; is that correct?

19 A. That's correct.

20 Q. And after April 1st, it definitely was not in
21 Summerville, South Carolina; is that correct?

22 A. That's correct.

23 Q. Let me ask you this: Do you know where your son was the
24 morning of April 1st, 2013, from firsthand personal
25 knowledge? Was he with you?

1 A. He wasn't with me. I was at work, and I assume he was
2 at work as well.

3 MR. SORENSON: That's all I'd have, Your Honor. Thank
4 you.

5 THE COURT: Any redirect?

6 MR. FALK: No redirect.

7 THE COURT: Ma'am, you may step down. Thank you.

8 Ladies and gentlemen, it is about 1 minute until 1.
9 What we're going to do is I am going to give you a lunch
10 break at this time. I'm going to ask that you be back at
11 2:15, 2:15, and we will resume the trial of this case as
12 promptly at that time as possible.

13 Do not, do not discuss the case. Do not discuss the
14 case at all. Do not do any independent investigation on your
15 own. You are to decide this case, as I've told you from the
16 outset, based solely upon the testimony and evidence in this
17 courtroom and nowhere else.

18 Anything from the State before I release the jury for
19 lunch?

20 MR. SORENSON: No, Your Honor.

21 THE COURT: Defense counsel?

22 MR. FALK: No, Your Honor.

23 THE COURT: Please be back at 2:15. Thank you.

24 (The jury retires to the jury room at 1:00 p.m.)

25 THE COURT: Anything else, Mr. Sorenson?

1 MR. SORENSON: The only thing, I guess, to kind of put
2 on the record the sidebar we had with regards to State's
3 Exhibit 47.

4 THE COURT: Yes, sir.

5 MR. SORENSON: It was my -- and I talked to Mr. Falk
6 about this, you know, kind of during the break right before
7 we came back to finish up my cross-examination, and obviously
8 my intention is, I mean, I understand the prejudicial effect
9 of this photograph and did not want to put it into evidence,
10 so I was hoping Ms. McKinney would concede that her son had a
11 gold bracelet on his left wrist.

12 And obviously when she didn't then, you know, at that
13 point in time, it was going to be my intention to seek to
14 move that into evidence. I think in talking to Mr. Falk at
15 sidebar, you know, I assume he may need to touch base with
16 his client a little bit, but that there's some -- that they
17 might be willing to stipulate that Mr. Ellison has, on prior
18 occasions, worn a gold bracelet on his left wrist.

19 THE COURT: Mr. Falk?

20 MR. FALK: In discussing with my client, I certainly am
21 concerned about the prejudicial effect of that photograph
22 coming in. We would stipulate that at one time, you know,
23 he's worn a gold bracelet. Let me argue it to the jury.

24 THE COURT: All right. Well, I'll advise the jury of
25 such stipulation without introducing that photograph, State's

1 Exhibit 47.

2 MR. SORENSON: Do you want us to write something out? I
3 mean, I've done that before. I mean --

4 THE COURT: That's fine. Yes, just write something
5 out --

6 MR. SORENSON: -- just briefly write out to mark it as a
7 Court's Exhibit.

8 THE COURT: -- and do it as a court's exhibit to the
9 stipulation.

10 MR. FALK: Were we just on the record?

11 THE COURT: Yes.

12 MR. FALK: Okay. I just wanted the record to reflect
13 that my client and I discussed the stipulation.

14 THE COURT: Right. And I just walked down here beside
15 the court reporter because I wanted to look at the
16 photographs.

17 Okay. Anything else before we break for lunch?

18 MR. SORENSON: No, Your Honor.

19 THE COURT: Mr. Falk?

20 MR. FALK: No, Your Honor.

21 THE COURT: All right. 2:15. 2:15.

22 (Lunch recess held.)

23 THE COURT: All right. Anything from the State before I
24 bring the jury in?

25 MR. SORENSON: The only thing, Your Honor, and I put up

1 on the bench up there the stipulation. I've shown that to
2 Mr. Falk, and I think we're in agreement. I don't know if we
3 need to mark that as a court's exhibit or something.

4 THE COURT: Is that right, Mr. Falk? You've seen this.

5 MR. FALK: Yes, Your Honor, I have. It's consistent
6 with what we had talked about.

7 THE COURT: All right. When the jury comes back out, I
8 will read them this stipulation and have it marked as a
9 court's exhibit. My only question of that is as a court's
10 exhibit, does it go back with the jury? Which it would not.

11 MR. SORENSON: I think -- and I've only had a
12 stipulation, and I've dealt with a few times before, Your
13 Honor, and I think in those occasions, that's the way we've
14 handled it is just had it marked as a court's exhibit, have
15 Your Honor either -- I think I've actually published it on
16 some other occasions if it was during my case in chief.

17 And then obviously it's evidence, and, I mean, you would
18 address that, I guess, during your jury charge.

19 THE COURT: I will propose having it marked as a state's
20 exhibit in that case.

21 MR. FALK: Or it could be a joint exhibit. Whatever.

22 THE COURT: Madam Court Reporter, what is your --

23 Well, why don't we make it a state's exhibit, and I'll
24 convey to the jury that you all have each entered into the
25 stipulation, agreed to it.

1 (State's Exhibit 48 marked for identification.)

2 (State's Exhibit 48 admitted into evidence.)

3 THE COURT: Anything else before we bring the jury out,
4 Mr. Sorenson?

5 MR. SORENSON: No, Your Honor.

6 THE COURT: What I will do is I will let you publish
7 that. I'll let you publish it.

8 MR. SORENSON: Okay. Are you going to explain to the
9 jury kind of what a stipulation is or --

10 THE COURT: I mean, I can just tell the jury that --
11 I'll publish it, and I'll tell the jury that a stipulation is
12 simply an agreement of the parties.

13 MR. SORENSON: Okay, thank you.

14 THE COURT: Not an issue in contention.

15 Mr. Falk, are you ready to proceed?

16 MR. FALK: He's just -- I just spoke with him. He's
17 going to run into the restroom and he's going to run right
18 back. He just drove up.

19 THE COURT: All right.

20 (Brief pause.)

21 THE COURT: All right. If you'll bring me the jury,
22 please.

23 (The jury enters the courtroom at 2:24 p.m.)

24 THE COURT: All right. Mr. Foreman, ladies and
25 gentlemen of the jury, before we go any further, let me

1 explain something to you real quick and read something to
2 you. The parties -- and I say "parties," I'm referring to
3 the State and defense -- have entered into what's called a
4 stipulation. In other words, they have entered into an
5 agreement, into an agreement.

6 And that agreement, which has been marked as State's
7 Exhibit No. 48, reads as follows: "The State and the defense
8 have entered into a stipulation that the defendant,
9 Tyrone Ellison, has in the past worn a gold bracelet on his
10 left wrist."

11 That has been marked as an exhibit and will be part of
12 the evidence in this case. I'll hand this back to the court
13 reporter. I wanted to explain that to you and read that to
14 you at this stage in the trial.

15 At this time I'm going to recognize defense counsel.
16 Call your next witness, please, sir.

17 MR. FALK: We call Dr. Robert Bennett, please.

18 CLERK OF COURT: Please place your left hand on the
19 Bible and raise your right hand. State your full name for
20 the record.

21 THE WITNESS: Robert Bennett.

22 ROBERT BENNETT,
23 being first duly sworn, testified as follows:

24 THE COURT: Mr. Falk.

25 DIRECT EXAMINATION ON VOIR DIRE BY MR. FALK:

1 Q. Mr. Bennett, could you please tell us your current
2 occupation.

3 A. I am a forensic scientist, practicing that profession
4 full-time in Charleston, South Carolina.

5 Q. And what are your qualifications?

6 A. I have a pharmacy degree from the Medical University of
7 South Carolina as well as a Ph.D. degree from the Medical
8 University of South Carolina, specializing in drugs and
9 alcohol and other toxicology works, which has expanded into
10 all fields of forensic sciences, including DNA testing.

11 Q. Have you had any additional courses after your
12 postgraduate degrees?

13 A. Yes. I've taken many continuing education courses
14 through, for example, The National Institute of Justice.

15 Q. Have you ever had the opportunity to testify as a
16 witness before in a court in South Carolina?

17 A. Many times over the past 20 years.

18 Q. Can you tell me, have you testified for -- I mean,
19 obviously I've called you as an expert. Have you ever --
20 have you ever testified for somebody who wasn't a defendant?

21 A. Yes. I've testified for both sides approximately equal
22 proportion.

23 Q. Okay. And you've also testified in family court?

24 A. Yes. As well as many other courts: Criminal courts,
25 federal courts, various types of courts.

1 MR. FALK: Your Honor, at this time we'd like to move to
2 have Dr. Bennett qualified as an expert in the field of
3 forensic science.

4 THE COURT: Mr. Sorenson?

5 MR. SORENSON: I have no objection with regards to that
6 field.

7 THE COURT: Ladies and gentlemen, Dr. Bennett is being
8 qualified or is qualified as an expert in the field of
9 forensic science. I previously gave you a charge on expert
10 testimony. That charge remains the same. It does not mean
11 that you must accept the opinion, but it is evidence for you
12 all, for you all to use in any way that you see fit and give
13 it the weight and credibility that you believe is
14 appropriate.

15 All right, Mr. Falk, you may continue.

16 DIRECT EXAMINATION BY MR. FALK:

17 Q. Dr. Bennett, have you had an opportunity to do any work
18 in Mr. Ellison's case?

19 A. Yes, I have.

20 Q. Okay. And can you tell me generally what that was?

21 A. I was provided with two evidence items that I performed
22 some additional DNA testing on. One item was a black wig
23 that SLED had previously analyzed for DNA, another was a
24 black visor that SLED had previously analyzed for DNA.

25 MR. FALK: May I approach the witness?

1 THE COURT: Yes, sir.

2 Q. I'm going to show you State's Exhibit 14. Does State's
3 Exhibit 14 look like the visor that you --

4 A. It is the visor that I previously analyzed.

5 Q. And you also testified regarding a wig?

6 A. Correct.

7 Q. I'm going to show you State's Exhibit 17.

8 A. This is also the same item that I previously analyzed
9 for DNA.

10 Q. Thank you.

11 And so you picked those items up from?

12 A. The North Charleston Police Department.

13 Q. And did somebody from either the solicitor's office or
14 the North Charleston Police Department pick those back up
15 from your office?

16 A. Yes.

17 Q. Now, you had testified -- you just testified that you
18 did some additional DNA investigation on this?

19 A. Correct.

20 Q. Okay. Can you tell us what you did regarding the visor?

21 A. Initially I obtained the procedure that SLED had used to
22 perform their DNA analysis. Specifically, I reviewed the
23 report that was published by SLED on the particular items. I
24 also had a direct conversation with the SLED DNA technician
25 who performed a DNA extraction off the item.

1 In that conversation I was able to receive the exact
2 procedure that was used on both items. At that point I
3 incorporated that procedure into my protocol to repeat, as
4 exactly as much as I possibly could, that exact same DNA
5 extraction with the goal of determining if I could achieve
6 the same results that SLED had achieved.

7 Q. So can you tell me, can you describe what you did to
8 extract the DNA?

9 A. After having a conversation with the DNA analyst at
10 SLED, she informed me that she performed two procedures in
11 extracting DNA from the item. The first was a swabbing
12 procedure in which a sterile cotton-tipped applicator swab
13 was moistened and then rubbed on the entire surface of the
14 portion of each item that would come in contact with the
15 head. This is the area that would most likely contain DNA.

16 She swabbed the entire headband surface and then
17 subsequently after that took a sharp object, such as an
18 X-ACTO knife, and scraped the entire surface in attempt to
19 remove any dislodged particles that may contain DNA. And she
20 informed me that she scraped the entire headband surface on
21 both items and then swabbed the scrapings as well and then
22 submitted both of those swabs for DNA analysis.

23 Q. If you were given this visor initially, would you have
24 used the same method for, I mean, just as far as scraping and
25 swabbing? Is that the way you would attempt to extract DNA

1 from a visor?

2 A. No, I would not. I would swab and/or scrape a portion
3 of the visor in attempt to --

4 Q. Let me just rephrase my question. I wasn't -- I just
5 wanted to know, scraping and swabbing is generally the
6 technique used?

7 A. Yes, it's a common practice.

8 Q. Okay. Now, did the technician give you any information
9 as to how much of the visor and the wig that she swabbed,
10 that she scraped and swabbed?

11 A. She reported that she swabbed and scraped the entire
12 headband portion, the entire circumference.

13 Q. And was that for both the wig and the visor?

14 A. Correct.

15 Q. By scraping and swabbing, would you expect to remove
16 most of the DNA from the -- the areas that you scraped and
17 swabbed, would you expect to remove all the DNA from that
18 area?

19 A. Yes. Because that would be intent and purpose of doing
20 the swabbing and the scraping. The swabbing will usually
21 obtain DNA from most any items. If a person who is
22 extracting DNA wants to maximize DNA extraction, not only
23 will they swab, but if it's an item that is porous in nature,
24 such as the fabric on these evidence items, the person would
25 also do scraping.

1 That procedure maximizes the extraction of whatever DNA
2 is present, and that would be normal procedure to maximize
3 DNA extraction from an item.

4 Q. She had testified that she scraped and swabbed the
5 entire circumference of both the visor and the wig?

6 A. Correct.

7 Q. If you were given this task originally, would you have
8 done the same?

9 A. No, I would not.

10 Q. Can you explain your answer?

11 A. I would have swabbed and scraped a portion of the item,
12 just enough to be able to perform a DNA analysis. For
13 example, and this is somewhat arbitrary, depending on the
14 size of the evidence item, a third of the item.

15 Every piece of DNA, every piece of evidence item that is
16 submitted to me for DNA extraction for subsequent analysis
17 has to be evaluated on a case-by-case basis. If the item is
18 large, then we potentially have a lot of DNA to work with, if
19 the item is small, not so much.

20 In the cases where it's a small evidence item, such as a
21 ring or something of that nature, then I might go ahead and
22 swab the entire surface to maximize DNA extraction, because
23 we have to have enough starting DNA to be able to do the DNA
24 analysis, amplify the DNA and continue the DNA analysis.

25 But if the item is large, like a hat or piece of

1 clothing, then I would not need to swab the entire surface
2 containing DNA, I would swab a portion that I would consider
3 would be sufficient to obtain DNA.

4 Now, the reason for that is --

5 Q. Let me ask you another --

6 A. Sure.

7 Q. Now, DNA is -- you could describe DNA as a speck of
8 somebody's body that has fallen onto the hat or --

9 A. Well, DNA does come from a cell, the nucleus of the
10 cell, and it would have to come from a cellular portion of
11 the body, whatever that cellular portion is.

12 Q. How small of the -- lack of a better word -- piece of
13 DNA would be necessary in order for you to do your test? Do
14 you need a cup of it?

15 A. Well, with the technology we have today, we have a
16 procedure called PCR, which stands for polymerase chain
17 reaction, which allows us to take a small amount of DNA and
18 make copies of it, literally millions and millions of copies.
19 And that has allowed us to take very small amounts of DNA,
20 amplify it until we have a quantity that is -- now can be
21 analyzed.

22 Previously, before PCR, we needed a lot of DNA to start
23 with, because we were just analyzing what we could collect
24 off the evidence item. Now we can take just a small portion
25 of DNA.

1 At this point we have the technology that if we can get
2 just a few cells, we can actually amplify that DNA through
3 polymerase chain reaction technology and have plenty of DNA
4 for testing. So with today's current DNA testing technology,
5 we would only need a small amount of DNA to start with.

6 Q. Is that -- again, just to get a rough order of
7 magnitude, are we talking about a tablespoon, a teaspoon, a
8 grain of salt?

9 A. So small that it's invisible to the naked eye.

10 Q. I believe there's testimony about a micron?

11 A. Yes, extremely small amount.

12 Q. How small is a micron?

13 A. Smaller than the diameter of a human hair.

14 Q. Okay. Thank you.

15 So one micron of DNA would be enough to do this test?

16 A. Potentially, yes. Now, the more DNA we have to start
17 with, the more we can amplify that DNA, so it's always better
18 to start with as much DNA as we can possibly get.

19 Q. Is it your understanding that SLED has the technology to
20 do PCR DNA testing?

21 A. They do.

22 Q. Do you know if that was done in this case?

23 A. It was.

24 Q. Now, when you said earlier that you would consider maybe
25 doing -- of course it would depend on the size, that you

1 would consider maybe doing a third of the potential area; is
2 that correct?

3 A. Correct.

4 Q. Now, if you did a third of it, and you ran your tests,
5 would that have any effect on someone's ability to go back
6 and retest some of the remaining two thirds?

7 A. None whatsoever. In fact, that's the purpose of only
8 taking a third is to allow remaining evidence to be
9 subsequently analyzed, if necessary.

10 Q. So if they had taken a smaller amount, it could be
11 reanalyzed either by another party or SLED could have done
12 their -- maybe needed to do their own reanalysis?

13 A. Correct.

14 Q. Now, did you have an opportunity to -- so you did DNA
15 testing on the visor and the wig?

16 A. Yes. The first round of DNA testing that I performed
17 was to mimic as close as possible the exact same DNA
18 extraction and testing that SLED did to see if I could obtain
19 the same results.

20 Q. And were you able to do that?

21 A. I was not.

22 Q. When you say you were not, what does that mean?

23 A. The results of my DNA analysis, I was unable to extract
24 sufficient DNA to complete a profile.

25 Q. So it wasn't that you just weren't able to, for some

1 reason, duplicate the results, you couldn't get enough DNA to
2 start with?

3 A. That is correct.

4 Q. Okay. Do you have a conclusion as to why that would be
5 necessary?

6 A. Yes. The -- I think I understand your question is why
7 did I get --

8 Q. Why did you not get any results?

9 A. Correct, yes. When SLED swabbed and scraped the item,
10 they did a very thorough job. They essentially removed all
11 DNA that was there, which was their intent. That's the whole
12 purpose of both swabbing and scraping is to attempt to remove
13 as much DNA as you possibly can. They were successful at
14 that.

15 Q. So then the original testing of both the wig and the
16 visor, there was more than one individual's DNA was found on
17 each item?

18 A. According to SLED's analysis, yes.

19 Q. SLED said that. So there could have been other people's
20 DNA. So had you had more DNA to work with or more area to
21 work with, you could have possibly found somebody else's DNA
22 on the visor or the wig; is that correct?

23 A. That is possible, yes.

24 Q. Is there any other conclusions to draw from the fact
25 that you were unable to find any DNA on the wig and the

1 visor?

2 A. Well, in my attempt to swab and scrape it using the same
3 method that SLED performed, once that result did not reveal a
4 sufficient DNA for analysis, I then did subsequent additional
5 DNA analysis.

6 Q. You can't rule out that there was never any DNA there to
7 start with, though?

8 A. That is true.

9 Q. Did you have an opportunity -- once you got those
10 results, did you have an opportunity to go further with --

11 A. Yes, I did.

12 Q. And can you explain what that was?

13 A. With the permission of the Court, I was able to obtain
14 the evidence items back in my possession, which I was able to
15 perform what's called destructive specimen DNA extraction.
16 What that means is I was able to actually take a cutting of
17 the evidence item and attempt to remove any DNA that might be
18 embedded in the fabric as opposed to the DNA that's just on
19 the surface.

20 Since I was unable to obtain DNA on the surface, the
21 next logical step would be to see if I could obtain any DNA
22 that might be embedded in the fabric.

23 Q. How would DNA have gotten embedded in the fabric?

24 A. That typically occurs when the item is worn multiple
25 times, in which DNA is put on top of DNA over and over again,

1 much like someone wearing a hat repeatedly over and over
2 again, in which the headband portion of a hat gets repeatedly
3 stained with cells and sweat. The DNA gets continually
4 pushed into the fabric, but that's more common with an item
5 that's worn repeatedly.

6 Q. Could it also be on a visor?

7 A. It could, if the visor typically was worn repeatedly.

8 Q. It's not just a hat. A hat, a visor, something like
9 that, they're both the same?

10 A. Yes, they both function the same as far as the headband
11 piece.

12 Q. And what were your results?

13 A. Well, I took cuttings of the fabric and attempted to
14 remove any embedded DNA that might be there. I also expanded
15 the number of DNA markers. The original DNA testing was on
16 13 loci or segments of DNA.

17 I expanded that testing to 41 loci or segments of DNA,
18 including segments of DNA that were smaller in size, because
19 smaller DNA is less susceptible to degradation, whereas
20 larger fragments of DNA aren't. So expanding the number of
21 loci to smaller fragments does increase the possibility of
22 finding viable DNA.

23 So in my second DNA testing, of which I took a cutting
24 of the fabric to try to remove any embedded DNA and expanded
25 the number of DNA segments tested, the result of that DNA

1 analysis was that I was unable to extract sufficient DNA to
2 perform an analysis or to create a profile, the analysis was
3 performed, but the results was zero DNA present.

4 Q. If the DNA got embedded into the sweatband on a visor,
5 is that likely to come off or be able to be extracted through
6 the scraping and swabbing?

7 A. The scraping and swabbing is more to collect the surface
8 DNA on the evidence item, whereas the cutting is designed to
9 extract the DNA embedded deeper into the fabric.

10 Q. One moment, please.

11 There was testimony that the visor was located by a K-9,
12 when the North Charleston Police Office found the visor as a
13 result of a K-9 search?

14 A. Okay.

15 Q. Is there any reason to think that a K-9, through the
16 process of that coming in contact with the visor, could have
17 contaminated the sample?

18 A. That potentially could occur, but the DNA technology of
19 today is able to separate human versus nonhuman DNA. And so
20 even if the dog had actually picked up the item in his mouth,
21 then the DNA analysis for human DNA would still be able to be
22 performed.

23 Now, that's not to say that the dog's saliva, with its
24 enzymes, would have degraded some of the DNA. That's very
25 possible, but any DNA that's still remaining would not be

1 interfered with with the K-9 DNA.

2 Q. And so at the end of the day, you were unable to find
3 any DNA by scraping the sweatband on the visor or on the wig,
4 and you were unable to find any DNA that was impregnated
5 further deeper into both the sweatband and the wig; is that
6 correct?

7 A. Well, when you refer to the sweatband, I'm referring to
8 the headband portion.

9 Q. Headband.

10 A. And I performed -- on the headband portion, I performed
11 a swabbing, I performed a scraping and I performed a cutting
12 and on the cutting did an expanded analysis and in all my --
13 all those DNA attempts was unable to obtain sufficient DNA to
14 create a profile.

15 Q. Just so there's no misunderstanding, could you pick up
16 the bag that has the visor in it and show what we're talking
17 about as far as the area that you scraped and swabbed?

18 A. The portion that comes in contact with the head is the
19 portion that contains the area that is most in contact with
20 the skin, and so I would swab and scrape the entire surface
21 to repeat what SLED had performed. And if you notice on the
22 inside of the headband, there is a section removed, and
23 that's the cutting that was taken for the final analysis.

24 And the wig itself, which is available for viewing, if
25 necessary, on the inside has a fabric portion. That's the

1 headband portion that sits on the crown of the head, and
2 the -- that the hair, the synthetic hair fibers are embedded
3 into that crown portion and comes out to create a wig look.

4 But the part of the wig that holds itself onto the head
5 is a headband approximately one inch in width and covers the
6 circumference of the head, and it's that portion that I
7 swabbed and scraped and took cuttings of to perform DNA
8 analysis.

9 Q. Are you aware of any best practices for extracting DNA
10 from a hat or a headband?

11 A. Well, the goal of any DNA technician is to extract
12 enough DNA to perform the analysis. However, there has to be
13 a balance in doing that. For example, if one has an item
14 that needs to be extracted to the maximum, but yet the item
15 would never be needed or used for any other purpose, then the
16 procedure would be to consume the entire evidence item to
17 maximize extraction and, therefore, in finding enough DNA to
18 perform an analysis.

19 However, typically and commonly and somewhat
20 universally, the procedure in forensics is to only take a
21 portion that is needed to perform the analysis, and the
22 reason for that is it is important to retain enough of the
23 evidence item for any subsequent analysis that might be
24 needed for forensic purposes.

25 And this is a procedure that is standard procedure in

1 the world of forensics. In all of my dealings with
2 colleagues, in all of my training and all of my education,
3 it's routinely accepted that you only use enough of the
4 evidence item that you have to complete the analysis, mainly
5 for the purpose that if any subsequent analysis needs to be
6 performed, that evidence item is available to have that
7 analysis performed.

8 Q. So is it your opinion that the better practice would be
9 to scrape a section of it, test it, and depending on what are
10 the results of that, to go back and scrape it or try to
11 obtain more DNA?

12 A. In my opinion, yes. Because if a portion of the
13 evidence item is used for DNA extraction and no evidence is
14 found, no DNA is found, there's nothing to prevent you from
15 going back and getting more. It's there. You have it.

16 You just -- the only restriction is the economics behind
17 that, because if you use a portion of the evidence item for
18 DNA analysis and don't find any DNA and then you have to go
19 back and do an additional extraction and subsequent
20 additional DNA analysis, and that takes time and resources to
21 do that.

22 So if you're in a situation where you have to
23 economically maximize your resources, then a DNA technician
24 might opt to consume the entire evidence item in an attempt
25 to get the job done the first time.

1 Q. But is it your opinion that there was no reason for them
2 to try and consume all the DNA first without saving a portion
3 for retesting?

4 A. It's my opinion that the procedure that should have been
5 used is to use a portion of the item and attempt to
6 characterize the DNA on that portion with the goal of saving
7 sufficient amount of the evidence for any subsequent
8 analysis.

9 Q. And the amount when you went back for the cutting, about
10 how big a piece did you remove from the visor?

11 A. This visor shows a good example in which the portion
12 that I cut for extraction is approximately a tenth of the
13 entire surface available, but it was a portion that was inch,
14 inch and a half, which is plenty of material for extraction
15 of DNA.

16 And it's on the portion that would contain the most
17 amount of DNA, the portion right at the front of the head,
18 touching the skin, as opposed to the remainder touching the
19 hair.

20 MR. FALK: I have no further questions.

21 THE COURT: Cross-examination.

22 MR. SORENSON: May it please the Court, Your Honor.

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION BY MR. SORENSON:

25 Q. Good afternoon, Dr. Bennett.

1 A. Good afternoon, Mr. Sorenson.

2 Q. I've got a few things for you, questions about -- and
3 you hold yourself out as a forensic scientist; is that
4 correct?

5 A. Correct.

6 Q. And as a result, I mean, you offer your services in a
7 variety of fields; is that correct?

8 A. Correct.

9 Q. I'm kind of looking through your website. Toxicology?

10 A. That's my main focus.

11 Q. Drug testing?

12 A. Yes.

13 Q. DNA analysis?

14 A. Yes.

15 Q. Hair and fiber comparisons?

16 A. Correct.

17 Q. Blood spatter analysis?

18 A. Yes.

19 Q. Shoe print and tire print comparisons?

20 A. I can provide that service, yes.

21 Q. Questioned documents, in other words to determine
22 whether an individual wrote a particular document by
23 comparing it to known handwriting samples?

24 A. I have performed that service for forensic cases in the
25 past, yes.

1 Q. Fingerprint analysis?

2 A. Yes.

3 Q. Gunshot residue analysis?

4 A. I have that capability, yes.

5 Q. Firearm and ballistic analysis?

6 A. I can assist in that, yes.

7 Q. Okay. And crime scene reexamination?

8 A. Yes.

9 Q. So that's a little bit of -- that's basically what every
10 department out at State Law Enforcement Division handles; is
11 that correct?

12 A. It's fairly comprehensive, yes.

13 Q. Of course, State Law Enforcement Division, you're aware
14 that they, in each of those departments, have individuals
15 that have dedicated their entire lives to those particular
16 fields that they are then experts in, as opposed to kind of a
17 jack of kind of all fields, jack-of-all-trades, correct?

18 A. Correct. That's correct.

19 Q. Okay. And in this case, you testified that you were
20 provided two items to look at. That's the wig and the visor;
21 is that correct?

22 A. Correct.

23 Q. In fact, you did receive other items besides those two;
24 is that correct?

25 A. Correct.

1 Q. All right. You received State's Exhibit No. 15, this
2 latex glove; is that correct?

3 A. Correct.

4 Q. You haven't done any testing at all on this latex glove;
5 is that correct?

6 A. I have not touched that item, correct.

7 Q. And also, in addition to being provided those items, you
8 were, prior to, I think, probably even getting possession of
9 those items, you received, and I don't know if it was given
10 to you in a CD form or if it had been printed out and given
11 to you, but basically SLED's entire case file dealing with
12 their processing and analyzing those items; is that correct?

13 A. Correct.

14 Q. Okay. So you had an opportunity to then review the
15 procedures that they used and the results of their analysis
16 and ultimately the opinions that were reached by the DNA
17 analysts at SLED?

18 A. Yes.

19 Q. And it's your testimony then that your attempt then
20 initially was to essentially repeat, attempt to repeat what
21 SLED did in processing just those two items, not -- you said
22 you didn't mess with the latex glove at all; is that correct?

23 A. That's correct.

24 Q. It's my understanding, I know you've testified about
25 this prior also, that ultimately you were unable to get a DNA

1 profile when you basically repeated exactly what SLED did on
2 those two items as far as swabbing and scraping those two
3 items, the wig and the visor; is that correct?

4 A. Correct.

5 Q. And it's my understanding that your -- and I believe
6 Mr. Falk asked you this, that the steps that were used by
7 Ms. Betty Butler at SLED are the -- otherwise basically the
8 common practice used when processing items such as this in an
9 attempt to determine ownership or who may have worn that
10 item, that the steps that she took were the common practice
11 within the field?

12 A. They are common practice in order to maximize DNA
13 extraction.

14 Q. Okay. And I'm going to get -- not necessarily how much
15 was processed but just the steps that were taken?

16 A. Correct, yes.

17 Q. And let me ask you this: When you're dealing with an
18 item of evidence, such as a hat or a visor or a wig, or even
19 if you had initially a shirt, but I think more so with a hat,
20 a visor or a wig, and you're trying to -- and it's submitted
21 to you in an attempt to determine who may have been wearing
22 that item, what exactly are you looking for? What are you
23 trying to collect off of that item when you process it?

24 A. Skin cells.

25 Q. And are those skin cells visible to the naked eye?

1 A. No.

2 Q. So you can't look at -- like when those items arrived
3 out at SLED back shortly after this bank robbery in -- on
4 April 1st of 2013, when Ms. Butler, you know, took that visor
5 out of the packaging and began to process it, she couldn't
6 look at it and say, "Oh, there are the skin cells, so I'm
7 going to collect them from right here"?

8 A. Correct. You can't see DNA.

9 Q. Now obviously it's just a little different situation if
10 let's say you had a T-shirt that was submitted that had a
11 large blood stain on it. That would be a different situation
12 because that's something that's visible to the naked eye, so
13 you kind of know where you're targeting on that item; is that
14 correct?

15 A. Essentially correct. You can't see the DNA there, but
16 you can see the items that caused the stain, which most
17 likely contain the DNA.

18 Q. So you'd have, yet again, kind of a target. I mean, you
19 wouldn't -- I mean, if a T-shirt was submitted to you with an
20 apparent stain that tested positive for blood with a, you
21 know, presumptive test on it, if you were going to process
22 that item, then obviously you're not going to take cuttings
23 from all of those parts of the item, you're going to focus
24 your attention on that stain; is that correct?

25 A. Initially, yes. But if I didn't find any DNA on that

1 stain, for whatever reason, such as potential degradation,
2 then I would actually look at nonstained portions.

3 Q. Okay.

4 A. But you're right, the first target would be the visible
5 stain.

6 Q. But when you're dealing with an item that you're solely
7 dealing with trying to determine ownership looking for skin
8 cells, you don't have that luxury of having something focus
9 your attention to a specific part of the item initially,
10 though; is that correct?

11 A. That is correct.

12 Q. And I guess what I kind of get out of your testimony,
13 Dr. Bennett, is that with regards to what Ms. Butler did, and
14 you had an opportunity, and you mentioned this in your direct
15 examination, that not only did you review all of the
16 paperwork and all that was submitted to you from SLED, but
17 they -- I mean, you were able to call up there and talk to
18 the -- Ms. Betty Butler, the analyst that processed those
19 items and then also Catherine Leisy, the DNA analysis that
20 ultimately performed the DNA testing?

21 A. Yes.

22 Q. And they were cooperative with you?

23 A. Yes.

24 Q. Spoke to you and answered whatever questions you had
25 about how they went about processing those items; is that

1 correct?

2 A. Correct. They answered all my questions, provided
3 details that I needed.

4 Q. And what I get out of your testimony is that basically
5 your only kind of criticism of how they went about doing
6 their job was that they were overly thorough in how they did
7 their job?

8 A. That's one way to put it, yes.

9 Q. And I'm not sure how much, because I don't know what was
10 provided to you in talking to the defense counsel, but let me
11 ask you this: Would it change things in any way, because you
12 talked about this economic -- I mean, obviously if you have
13 to do DNA testing, I mean, you obviously could do a tiny
14 swab, and then if you didn't get anything, could do another
15 tiny swab. And it could go on forever and ever before you
16 finally maybe tested the whole item. I mean, and that just
17 is not economically sound?

18 A. That is correct, yes.

19 Q. And, of course, you're dealing with, in this case, a
20 bank robbery that happened on April 1st of 2013. These items
21 were processed by Ms. Butler, and that should have been in
22 the paperwork you were provided on June 5th of 2013. And of
23 course, at that point in time, the bank robbery hadn't been
24 solved. I mean, he hadn't been arrested yet. He hadn't been
25 identified as a suspect.

1 So law enforcement's goal, would you agree with me, at
2 that point in time, is trying to -- I mean, there is a bank
3 robber on the loose. There is potential evidence that might
4 help identify that bank robber. I mean, that should be law
5 enforcement's goal at that point in time; is that correct?

6 A. That is correct, in my opinion.

7 Q. And ultimately, they did a thorough job. Now, let me
8 ask you this: You said when you dealt with taking the
9 cuttings, and I'm going to kind of get to that, but it kind
10 of reminded me of something, the subsequent testing you did
11 of the hat, hat and the visor where you took, you know, the
12 cutting --

13 A. Correct.

14 Q. -- from around. You didn't -- I mean, your results from
15 what you tested, you didn't get any DNA, correct?

16 A. Correct.

17 Q. But you said -- I mean, you didn't ultimately end up
18 testing that entire cutting; is that correct?

19 A. Correct. The cutting was just too much volume to test.

20 Q. And part of that is where you obviously focused, because
21 while it's a visor and while it's a wig, they're typically --
22 that headband, there's only a portion of it that's going to
23 come into contact necessarily with the skin typically?

24 A. Right, typically the forehead portion.

25 Q. Right. I mean, unless you got kind of like my head, now

1 obviously a little more skin's going to come into contact?

2 A. Yes.

3 Q. And it's your suggestion that they should have only,
4 when they initially swabbed and scraped the item, should have
5 only done a third to a half of the item; is that correct?

6 A. Correct.

7 Q. Now, would it be your suggestion if they did that, then
8 they still should be focusing, I mean, on the area that would
9 most likely come in contact with skin; is that correct?

10 A. Correct, yes.

11 Q. So even if they had done that, if they had processed,
12 you know, the front half of the visor and the front half of
13 the wig and got the DNA results they got, if you went back
14 and attempted to then swab and scrape the rest of the item
15 that wouldn't necessarily come into contact with the skin if
16 the person had hair, you may still not find any DNA results,
17 is that correct, on the other part of the item?

18 A. Correct. But let me clarify. The portion that comes in
19 contact with the skin on the forehead portion, that item, a
20 third of that item is what should be tested.

21 Q. Okay. So they should only be testing and swabbing a
22 very small section of that whole object then to start with is
23 your testimony?

24 A. In this case example where we're assuming that the
25 wearer of the item had hair and only the forehead portion was

1 in contact with the headband portion, then the forehead
2 portion, only a third of that should have been used for
3 testing is my opinion.

4 Q. Okay. Yet again, obviously you're looking at it coming
5 from a different standpoint as an expert hired by the defense
6 kind of after the fact as opposed to law enforcement on the
7 front end when they are trying to solve an unsolved crime?

8 A. Correct.

9 Q. And you testified about that kind of subsequent testing
10 that you did. And yet again, the State, you didn't -- nobody
11 objected to you getting those items back into your possession
12 and doing whatever additional testing you wanted to do on
13 those items, on the latex glove?

14 A. Correct.

15 Q. Or any other items that were in evidence at North
16 Charleston Police Department; is that correct?

17 A. That is correct.

18 Q. And you testified about that kind of subsequent testing
19 you did. You're looking for DNA that would be -- that's
20 embedded into the fabric?

21 A. Correct.

22 Q. Is that correct? And that is something, I believe you
23 testified about it today, but you would typically find more
24 commonly in an item that's, you know, repeatedly worn?

25 A. Correct.

1 Q. And I think I asked you the other day in the pretrial
2 hearing we had, you know, I've got a softball hat that, I
3 mean, I wear every time I play softball. It's in the trunk
4 of my car and probably hasn't been washed in the last ten
5 years. I mean, you're more likely to find my DNA embedded in
6 the headband of that hat; is that correct?

7 A. Much more likely.

8 Q. As opposed to an item such as a wig and a visor that
9 somebody wore one time as a disguise during a bank robbery;
10 is that correct?

11 A. That is correct.

12 Q. And Mr. Falk asked you about there had been some
13 testimony earlier from one of the responding officers that
14 had a K-9 out there, that the K-9 had gone over and actually
15 alerted initially on the visor and had initially picked the
16 visor up, then was given a command, dropped it and then it
17 was collected after that.

18 If I understand your testimony correct, I mean, you can
19 tell the difference between human DNA and animal DNA; is that
20 correct?

21 A. Correct.

22 Q. Especially K-9 DNA?

23 A. Correct.

24 Q. And if anything, you said -- I mean, obviously I guess
25 if a dog got ahold of that and, you know, went to town

1 gnawing on it, it could essentially degrade whatever human
2 DNA was on there and affect your ability to get DNA and get
3 results off of the item; is that correct?

4 A. That potential does exist, yes.

5 Q. Okay. A dog picking up an item and putting it back down
6 is not going to suddenly turn the DNA that's on it into
7 somebody else's DNA, though, are they?

8 A. That's correct.

9 Q. Okay. So if an expert's testified that Tyrone Ellison's
10 DNA is on that visor, the fact that the dog picked it up
11 isn't going to really have an affect on that; is that
12 correct?

13 A. That's correct.

14 Q. The last thing, Dr. Bennett, now, you testified as part
15 of what you received out in your lab for you to go over was
16 not only those two items to attempt to test them but also all
17 the worksheets and everything basically that SLED created in
18 result as part of this case; is that correct?

19 A. Correct.

20 Q. And you had an opportunity, as part of your review, to
21 review all that stuff; is that correct?

22 A. Yes.

23 Q. And I think you've already said this, but it's your
24 opinion that they did a thorough job; is that correct?

25 A. Correct.

1 Q. And, if anything, in your opinion might be they did too
2 thorough of a job or tested -- did a little more than they
3 should have done to start with; is that correct?

4 A. Correct.

5 Q. Okay. So anything in the stuff, though, that you have
6 reviewed about the procedures used by SLED that suggests that
7 they did anything inappropriate?

8 A. I reviewed the SLED reports and I reviewed many, many
9 SLED reports over the years. The SLED report in this case,
10 all the SLED reports in this case, after thoroughly reviewing
11 those reports, I find no anomalies or discrepancies in this
12 report as compared to all the other SLED reports issued that
13 I've reviewed over the years. So no evidence of any
14 abnormalities or any causes of concern within the report.

15 In subsequent communication with the DNA analyst, I was
16 not able to pick up on any indication that any unknowns were
17 there or any confusions were there or if any discrepancies
18 were brought to light.

19 Q. So there's nothing, I mean --

20 And you had been retained on other cases in the past to
21 review SLED's results? I mean --

22 A. Many times.

23 Q. -- DNA cases specifically?

24 A. Yes, many times.

25 Q. So you're aware of, you know, they're an accredited

1 agency?

2 A. Yes.

3 Q. And they have guidelines that they have to follow before
4 they can issue a report?

5 A. Yes.

6 Q. And you're aware those were all followed in this case?

7 A. It was.

8 Q. So other than the fact that you, you know, weren't able
9 to kind of go back behind them and attempt to retest and see
10 if you could develop DNA, there's nothing, you're telling
11 this jury, that they did as far as -- basically to contradict
12 the results they got, however; is that correct?

13 A. I was unable to either confirm or refute their findings
14 because there was insufficient DNA to create a profile.

15 Q. Let me ask you this: If you had, in swabbing, because
16 you're aware, in looking at the report or the reports, that
17 there was a mixture, right?

18 A. Correct.

19 Q. Okay. And that -- and Ms. Leisy testified yesterday
20 that Tyrone Ellison was the major contributor on that
21 mixture, a pretty significant major contributor, would you
22 agree?

23 A. Correct.

24 Q. 1 in 2.2 quintillion?

25 A. According to SLED reports, yes.

1 Q. I mean, if that's accurate, that means he came in
2 contact with those items, correct?

3 A. Most likely.

4 Q. If you had been able to recreate, let's say you went
5 back and you got a DNA profile, a minor DNA profile that
6 didn't match the defendant's, that would mean obviously that
7 somebody else had contact with that item at some point in
8 time, correct?

9 A. That is correct.

10 Q. And of course SLED's results already tell us that,
11 right?

12 A. Correct.

13 Q. Because there's a minor contributor, so somebody
14 somewhere along the line has either had contact with that wig
15 or contact when they put it on somewhere or in a store,
16 wherever it was bought, or the previous owner or somebody has
17 already had contact with it?

18 A. Correct.

19 Q. So if you were able to get results from some independent
20 testing, that would basically just confirm that; is that
21 correct?

22 A. Correct.

23 Q. It would -- still wouldn't say that he wasn't wearing it
24 on April 1st; is that correct?

25 A. If we're assuming that the results I obtained would be

1 the same that SLED obtained, then you are correct..

2 Q. Well, even if your results came back, as I said, that
3 you didn't find his DNA on wherever you were able to swab or
4 whatever was left on there, that still wouldn't say that he
5 wasn't wearing the item on April 1st of 2013, correct?

6 A. That is true, yes.

7 MR. SORENSON: Beg the Court's indulgence.

8 Thank you, Dr. Bennett.

9 THE COURT: Any redirect?

10 REDIRECT EXAMINATION BY MR. FALK:

11 Q. The purpose to double-check a scientific experiment is
12 not just to read the procedure that the scientist did but is
13 actually to try and recreate it; is that correct?

14 A. That standard scientific principle is taught from high
15 school on up, yes.

16 Q. So if you recreated the procedure as SLED did and you
17 got a different result, that could mean that SLED didn't
18 follow the procedure that they'd written down or that there
19 was a mistake in the procedure; is that correct?

20 A. That's correct.

21 Q. But the way to be sure is to retest?

22 A. That's the only way to be assured.

23 MR. FALK: No further questions.

24 THE COURT: Mr. Sorenson?

25 MR. SORENSON: Just briefly.

1 RECROSS-EXAMINATION BY MR. SORENSON:

2 Q. But yet in this case, you're dealing with an item where
3 it's not visible to the naked eye, so you don't know if
4 you've taken all the item off of it or anything, right, when
5 you're processing it?

6 A. That's correct.

7 Q. All right. So there's no way for Ms. Butler to have
8 known if she'd removed all the DNA when she swabbed and
9 scraped it, is that correct, looking at the item?

10 A. Yes. Since DNA is not visible and there was no visible
11 spots or stains, such as blood, then she has essentially no
12 idea where the DNA is on the item. She can only go by using
13 logical thinking of where the DNA most likely would or should
14 be, based on the function of the item.

15 MR. SORENSON: Okay. Thank you.

16 THE COURT: Doctor, you may step down. Thank you.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness, please.

19 MR. FALK: We would call Ms. Chunte Green.

20 THE COURT CLERK: If you'll place your left hand on the
21 Bible and raise your right hand and state your full name for
22 the record.

23 THE WITNESS: Chunte Green.

24 CHUNTE GREEN,

25 being first duly sworn, testified as follows:

1 DIRECT EXAMINATION BY MR. FALK:

2 Q. Ms. Green, what is your current occupation?

3 A. I'm a shift manager at Burger King.

4 Q. And how long have you been a shift manager at Burger
5 King?

6 A. For 14 years.

7 Q. So have you been -- so you were obviously a shift
8 manager at Burger King on April 1st, 2013?

9 A. Yes, I was.

10 Q. Okay. What are the duties of the shift manager?

11 A. I control inventory. I do the schedules. I make sure
12 my crew, I have enough crew basically to take care of the
13 whole restaurant. Customer service.

14 Q. Can you tell me -- can you sort of describe the
15 workforce that you had at -- what Burger King are you at?

16 A. I'm at 3262, which is at 6889 Dorchester Road, North
17 Charleston 29418.

18 Q. All right. Thank you.

19 Can you sort of describe the work crew that you had in
20 April of 2013?

21 A. We didn't have crew. It was a handful of us. We was
22 going through managers trying to get a GM. It was hard.
23 Basically we had, like, a minimum of people that came to
24 work, and all of us was -- the same people was working every
25 day, every other day, except, you know, I didn't work on

1 Mondays because I take care of my mom, but we didn't have
2 anyone. It was awful.

3 Q. Did Tyrone Ellison ever work at that Burger King?

4 A. Yes. Tyrone was a big help, one of our biggest help.

5 Q. If you could just limit your response to my question.

6 So he did work at that Burger King?

7 A. Yes.

8 Q. Okay. And was he working at that Burger King in the
9 first part of 2013?

10 A. Yes.

11 Q. Was he working there in April of 2013?

12 A. Yes.

13 Q. Can you explain what his responsibilities were at the
14 Burger King?

15 A. Tyrone was our grill guy, our porter. He did the truck.
16 He handled the maintenance, any maintenance we had. He was a
17 big help.

18 Q. Was he the only male that was working at that time?

19 A. Yes.

20 Q. When you said he was the porter, what does that mean?

21 A. The porter, he -- he controls the fryers, the
22 maintenance of the building, like, he did our trucks, he did,
23 like, a lot of stuff. Like, he was the only guy, so we
24 relied on him a lot.

25 Q. Can you tell me when deliveries would come to the store?

1 A. Deliveries are on Monday and Thursdays.

2 Q. Okay. And so did you get a delivery at that store on
3 April 1st, 2013?

4 A. Yes.

5 Q. But you had testified that you don't work on Monday; is
6 that correct?

7 A. I do not -- I didn't work on Monday.

8 Q. But you know that the store got replenished; is that
9 right?

10 A. Yes.

11 Q. So you know the delivery was made?

12 A. Yes.

13 Q. Do you have any other way to know that the delivery was
14 made?

15 A. I mean.

16 Q. Did you look at the receipts?

17 A. You can check the receipts. You can even check the
18 books. Monday and Thursdays are our delivery days.

19 Q. Who would take care of the delivery trucks?

20 A. Tyrone.

21 Q. And when did the -- when does the delivery truck show
22 up?

23 A. Anytime from 6 a.m. in the morning to 12:00 at night.

24 Q. Okay. Do you know who unloaded the delivery truck on
25 April 1st, 2013?

1 A. Tyrone did.

2 MR. SORENSON: I'm going to object to that.

3 THE COURT: Grounds for your objection?

4 MR. SORENSON: No personal knowledge.

5 THE COURT: Well, see if you can lay the foundation for
6 that.

7 Q. How long had you worked at the Burger King?

8 A. 14 years.

9 Q. Was it ever your experience that the truck drivers would
10 unload their own trucks?

11 A. No.

12 Q. Would any -- has a truck ever -- did anyone else ever
13 unload the trucks?

14 A. No. We had one guy, that guy was Tyrone. In April he
15 did it.

16 MR. SORENSON: I'm going to still object, Your Honor.

17 THE COURT: Can the lawyers approach?

18 (Judge and attorneys confer.)

19 THE COURT: Go ahead, Mr. Falk.

20 Q. Did Tyrone ever come to work when he wasn't clocking in?

21 A. Yes.

22 Q. On what occasions would that be?

23 A. When, you know, he would reach 40 max, because we called
24 him in because we were shorthanded and we didn't have any
25 help, he would come in off the clock and help us out.

1 Q. What do you mean by "40 max"?

2 A. He got his -- he worked his 40 hours and he know we
3 didn't have anybody, he would come in. So we called him,
4 "Can you please come help us out?" He came and helped us
5 out.

6 MR. FALK: No further questions.

7 THE COURT: Cross-examination.

8 MR. SORENSON: Thank you. May it please the Court, Your
9 Honor.

10 THE COURT: Yes, sir.

11 CROSS-EXAMINATION BY MR. SORENSON:

12 Q. Ms. Green, let me ask you, at Burger King, you all have
13 latex gloves at Burger King?

14 A. Um --

15 Q. Gloves such as this that you would have access to
16 working back in the kitchen preparing food?

17 A. Mm-hmm, yes.

18 Q. And it's your testimony that you did not work on
19 Mondays; is that correct?

20 A. I didn't work on Monday.

21 Q. All right. And I think we've heard testimony, I don't
22 think there's any dispute, April 1st of 2013 was a Monday, so
23 you did not work that day?

24 A. But I did help do the schedule. I did do the schedule.

25 Q. Okay. And it's your testimony that Tyrone Ellison was

1 on the schedule --

2 A. Yes, he was.

3 Q. -- for that day?

4 Okay. And it's your testimony, but obviously you were
5 not there, so you do not know --

6 A. I wasn't there.

7 Q. -- firsthand knowledge whether he was at work that
8 morning or not; is that correct?

9 A. No.

10 Q. Okay. And your testimony a short while ago was that
11 Tyrone Ellison was the only male that worked there?

12 A. In the morning times.

13 Q. Okay. How about a young man by the name of -- and I
14 don't know if the name is backwards or forward on here, but
15 Tyrone Bailey?

16 A. Tyrone Bailey is a young guy. He worked at nighttime.
17 Tyrone was -- Tyrone Ellison was the adult that worked in the
18 morning time that helped. Tyrone Bailey barely got hours.

19 Q. Okay. So if the Burger King records show that
20 Tyrone Bailey worked on April 1st of 2013 from 6:18 in the
21 morning to 10:28 in the evening, that would be inaccurate?

22 A. That would be inaccurate. Tyrone Ellis would work early
23 in the morning.

24 Q. Tyrone Ellis?

25 A. Tyrone Ellison would work early in the morning.

1 Q. Okay. But you weren't there, so you don't know that for
2 a fact?

3 A. But I know Tyrone Bailey is not a morning person.

4 Q. Okay. And how about Christopher Coburn, do you know
5 Mr. Coburn?

6 A. Yes.

7 Q. Okay. So that's another male, right?

8 A. Yes. But Chris rarely comes to work.

9 Q. Okay.

10 A. It was always Tyrone Ellison that came to work and did
11 our truck, sir.

12 Q. And that could have been every other Monday --

13 A. No.

14 Q. -- but specifically on Monday, April 1st of 2013, you
15 don't have any firsthand knowledge who was at work unloading
16 the trucks that morning; is that correct?

17 A. That is correct.

18 Q. Because you were not there?

19 A. I was not there.

20 Q. Okay. And as far as -- I mean, other than getting
21 called up about this, I mean, there's nothing else about
22 April 1st of 2013 that stands out to you, right? Other than
23 the fact that you've been called to court to testify about
24 things?

25 A. But if he didn't had showed to work, they would have

1 called my phone and asked did I hear from Tyrone, did he
2 come, do I know what's going on, because he's always come to
3 work.

4 Q. Okay. All right. But, of course, the records from your
5 corporate office would help kind of clarify all that, is that
6 correct also, about who worked that day and actually got paid
7 for working what hours?

8 A. Like I stated, there was times he came to work and he
9 didn't get paid because he already did his 40 hours, but he
10 still helped us out. And Mondays was the truck day, so he
11 always came.

12 Q. Okay. So he would just show up on Mondays whether --
13 it's your testimony, even though you weren't there on
14 Mondays, but he would show up on Mondays whether he was
15 scheduled and whether he was going to get paid or not and he
16 would just work?

17 A. Because we had a minimum of people, and everybody knew
18 their schedule, and he knew that Mondays and Thursday was the
19 truck day and we needed help, with the women needed help
20 because we couldn't do it, so he would be there and he would
21 help us.

22 Q. And if the records show that Tyrone Bailey and
23 Christopher Coburn worked that morning, then that's obviously
24 inaccurate, despite the fact that you were not there that
25 morning; is that correct?

1 A. It wasn't him, but he always worked on Mondays.

2 MR. SORENSON: I have nothing further from this witness,
3 Your Honor.

4 THE COURT: Any redirect?

5 MR. FALK: No, Your Honor.

6 THE COURT: Ma'am, you may step down. Thank you.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Call your next witness, please.

9 MR. FALK: Defense would call Candida Hocog Payne.

10 CLERK OF COURT: Please place your left hand on the
11 Bible and raise your right hand, state your full name for the
12 record.

13 THE WITNESS: Candida Hocog Payne, C-A-N-D-I-D-A,
14 H-O-C-O-C-O-G, P-A-Y-N-E.

15 CANDIDA HOCOG PAYNE,
16 being first duly sworn, testified as follows:

17 THE WITNESS:

18 THE COURT: Mr. Falk:

19 DIRECT EXAMINATION BY MR. FALK:

20 Q. Do people frequently call you Ms. Candida or Ms. Candy?

21 A. Candy.

22 Q. Is it okay if I go forward on that?

23 A. Yes, sir.

24 Q. Okay. Ms. Candida, do you know Tyrone Ellison?

25 A. Yes, sir, I work with him.

1 Q. And where do you work?

2 A. Burger King. On Dorchester Road.

3 Q. Okay. He doesn't work there anymore; is that correct?

4 A. Well, he's not there.

5 Q. Yes. Did you work there in April of 2013?

6 A. Yes, sir.

7 Q. Were you working there on April 1st of 2013?

8 A. Yes, sir.

9 Q. How do you know that you were working on April 1st?

10 A. Because it's April Fool's Day.

11 Q. Was there -- okay. And were you on the clock that day?

12 A. No. Our system was down, and our supervisor just write
13 our name.

14 Q. Okay. Did you ever -- do you recall -- do you recall
15 Mr. Ellison ever being driven to work, somebody driving him?

16 A. I can't hear you.

17 Q. You are currently working at the Burger King?

18 A. Yes, sir.

19 Q. Okay. Now, you've had -- and you are sure that on
20 April 1st, 2013 Mr. Ellison was working with you on that day?

21 A. Yes, sir, because that's our truck day.

22 Q. Okay. And who usually would unload the truck?

23 A. Sir?

24 Q. Who would unload the truck?

25 A. Tyrone and another fellow.

1 Q. Now, have you had a brush with the law? Do you have a
2 criminal record?

3 A. Yes, sir.

4 Q. Can you tell me what that is?

5 A. It's shoplifting.

6 Q. Beg your pardon?

7 A. Shoplifting.

8 Q. Do you realize today that you are giving sworn
9 testimony?

10 A. Sir?

11 Q. Do you realize today that you've taken an oath to tell
12 the truth?

13 A. Yes, sir.

14 Q. Do you realize today that if you are not telling the
15 truth that that could be a felony?

16 A. Sir, I do have a felony record.

17 Q. Do you realize -- do you appreciate that if you are not
18 telling the truth today that that would be a felony?

19 A. Yes, sir.

20 MR. FALK: No further questions.

21 THE COURT: Cross-examination.

22 MR. SORENSON: Please the Court.

23 CROSS-EXAMINATION BY MR. SORENSON:

24 Q. Ms. Hocog Payne, you told the jury you had a conviction
25 for shoplifting; is that correct?

1 A. Yes, and other charges.

2 Q. Yes, it's a little more than just the shoplifting, isn't
3 it?

4 A. Yes, sir.

5 Q. Okay. Let's kind of go through that, if we could, okay?

6 A. Yes, sir.

7 Q. In kind of looking at the records that I've been able to
8 find, you've got from 2000 -- just going back the last ten
9 years, from 2005, a defrauding a hotel or a restaurant
10 conviction?

11 A. Yes, sir.

12 Q. Okay. Financial transaction card fraud conviction?

13 A. I believe so.

14 Q. Okay. False statement to obtain some sort of license?

15 A. Yes, sir.

16 Q. That was all in 2005. Got a shoplifting conviction from
17 2006, another shoplifting from 2008?

18 A. Yes, sir.

19 Q. Is that correct? You've got, let's see here, two more
20 counts of basically shoplifting third or greater from 2008?

21 A. Yes, sir.

22 Q. Another one of the same thing from 2009?

23 A. Yes, sir.

24 Q. Another one from 2013?

25 A. Yes, sir.

1 Q. In fact, that was just a couple months prior to what
2 you're testifying about now, right?

3 A. Yes, sir.

4 Q. Okay. Now, it's your testimony, if I understand this,
5 that you were working on April 1st of 2013; is that correct?

6 A. Yes, sir.

7 Q. All right. And so the Burger King records would show
8 that, is that correct, that you were working?

9 A. It should.

10 Q. Okay. And, in fact, those records have you working from
11 11:43 to 4:30 in the afternoon that day; would that be
12 accurate?

13 A. Well, I come in early when my supervisor call me.

14 Q. All right. But so those records, though, it wouldn't
15 surprise you that they have you working because your
16 testimony is that you worked that day; is that correct?

17 A. Yes, sir, I worked.

18 Q. Okay. And it's your testimony that Mondays are truck
19 day, and you know that Tyrone Ellison and another fellow
20 unloaded the truck; is that correct?

21 A. Yes, sir.

22 Q. Who is that other fellow?

23 A. I believe, I'm not -- I'm not sure. I can't say the
24 person's name. It most likely is him and Christopher.

25 Q. Okay. It's most likely him and Christopher? Let me --

1 A. Yes. But I know Tyrone was there to unload the truck.

2 Q. Okay. So you're positive that the man that's sitting
3 over here charged with a bank robbery, you're positive it was
4 him, but you're unsure about who the other person was?

5 A. Yes, sir.

6 Q. All right. And you -- ma'am, obviously we're talking
7 about something that happened, I guess, 18 and a half months
8 ago; is that correct? I mean, April 1st of 2013, you realize
9 we're talking about last year, right, 2013?

10 A. Yes, sir. Yes, sir.

11 Q. Okay. So we're talking, you know, a significant period
12 of time ago; is that correct?

13 A. Yes, sir.

14 Q. All right. And you did you also give kind of an
15 affidavit about that day; is that correct?

16 A. Yes, sir.

17 Q. And who did you give that affidavit to? Do you
18 remember?

19 A. I'm not sure.

20 Q. You're not sure? Do you know -- do you know the
21 document I'm talking about? Do I need to show it to you to
22 refresh your memory?

23 A. Yes, sir.

24 MR. SORENSON: May I approach, Your Honor?

25 THE COURT: Yes.

1 Q. Do you recall giving that affidavit?

2 A. Oh, yes, sir, that was to another attorney.

3 Q. Okay. And that was for Mr. Ellison; is that correct?

4 A. Yes, sir.

5 Q. Okay. And what is the date that you gave that affidavit
6 about the events of April 1st of 2013? What's the date on
7 there, ma'am? And I'm not sure if it's on the front page or
8 the last page where you signed it.

9 A. This say 3/19.

10 Q. So March 19th, and that would be of this year, of 2014?

11 A. Yes, sir.

12 Q. So that was almost a year after the day we're talking
13 about; is that correct?

14 A. Yes, sir.

15 Q. And this affidavit you gave is basically about what
16 you're saying you're swearing to be the truth about what
17 happened on April 1st of 2013; is that correct?

18 A. Yes, sir.

19 Q. And in that you indicated that obviously you were
20 working at the Burger King, that you knew Mr. Ellison; is
21 that correct?

22 A. Yes, sir.

23 Q. Okay. That your manager was Ms. Green, who just
24 testified, you kind of talked about your duties there and the
25 fact that you were working almost every day; is that correct?

1 A. Yes, sir.

2 Q. And let me get to the part I wanted to get at here. And
3 you told when you gave this affidavit that you were sure that
4 Mr. Ellison was working that day, right?

5 A. Yes, sir.

6 Q. Okay. And you reference because it was April Fool's
7 Day; is that correct?

8 A. Yes, sir.

9 Q. Okay. And that ultimately after work that he took you
10 home in a black Ford Taurus; is that correct?

11 A. I'm not -- I'm not sure of -- I'm not -- I'm not really
12 sure of the car, the make and model. I'm not that good.

13 MR. SORENSON: Okay. May I approach, Your Honor?

14 THE COURT: Yes.

15 Q. Okay. And this -- yet again, this is sworn by you to be
16 the truth back on March the 19th of 2014. Looking at
17 Item 11, Section 11, when you gave that sworn affidavit to
18 Mr. Ellison's lawyer, I mean, what did you say he took you
19 home in that day?

20 A. It looked like a Ford Taurus.

21 Q. I mean, what did you put on there?

22 A. Taurus.

23 Q. Okay. It was a black Ford Taurus also. It was a black
24 vehicle, right?

25 A. It's dark color.

1 Q. All right. So when you gave this affidavit that you
2 said that you took you home on -- that he took you home that
3 day after work in the black Ford Taurus. That's what you
4 told his lawyer. I mean, you provided -- the police didn't
5 get this from you, right?

6 A. Yes, that's what I said.

7 Q. All right. And let me ask you this: You also put in
8 here that you remembered a young man by the name of
9 Chris Coburn working that day also; is that correct?

10 A. Yes, Christopher was there.

11 Q. Okay. Was he the other person unloading the truck?

12 A. Well, he came in a little bit later.

13 Q. All right. And yet again, I mean, the first time you
14 talked to anybody and gave any kind of statement about the
15 events of April 1st of 2013 was when you gave this affidavit
16 on March 19th of 2014; is that correct?

17 A. Yes, sir.

18 Q. So almost a year later. And you've been in contact with
19 the defendant's mother, right? I mean, she's been in contact
20 with you?

21 A. Today to bring me to court.

22 Q. Okay. Have you all talked about what you were going to
23 testify about?

24 A. No, sir.

25 MR. SORENSON: That would be all I'd have, Your Honor.

1 Thank you.

2 THE COURT: Any redirect?

3 REDIRECT EXAMINATION BY MR. FALK:

4 Q. Did you know that Tyrone had a black Taurus?

5 A. No, sir.

6 Q. Did you know that he had a black car?

7 A. Sir?

8 Q. Did you ever see him driving a black car?

9 A. Well, I wear glasses, so, you know, I'm also colorblind.

10 MR. FALK: No further questions.

11 MR. SORENSON: Just real briefly, Your Honor.

12 RECROSS-EXAMINATION BY MR. SORENSON:

13 Q. As to that last thing, well, who told you to put -- I
14 mean, if you're saying you're colorblind, you're colorblind
15 and you're not sure about the type of vehicle, who told you
16 in this affidavit to put black Ford Taurus then?

17 A. Because I know a lot about cars.

18 Q. Okay. Well, I guess let me go back to my original
19 question then on cross-examination. Did he give you a ride
20 home in a black Ford Taurus that day?

21 A. It's a dark color car, sir.

22 Q. Okay. Well, is it a Ford Taurus?

23 A. I'm not sure. But because the Ford -- a lot of cars are
24 made similar to the Taurus.

25 Q. Well, I guess I'm a little confused. In one sentence

1 you're saying you know a lot about cars and then --

2 A. Yes, I do.

3 Q. -- in another one you're saying you don't know about
4 cars.

5 A. I know a lot about the shape of the cars, that different
6 cars are made but the same shape.

7 Q. Okay. My question then is who told you to put black
8 Ford Taurus on here?

9 A. Myself.

10 Q. Okay. Because that's the car that you remember him
11 giving you a ride home that day?

12 A. Yes, sir.

13 MR. SORENSON: Okay. Thank you.

14 THE COURT: Ma'am, you may step down. Thank you.

15 Call your next witness.

16 MR. FALK: Call Dennis McKinney.

17 CLERK OF COURT: Please place your left hand on the
18 Bible, raise your right hand and state your full name for the
19 record.

20 THE WITNESS: Dennis Calvin McKinney.

21 DENNIS MCKINNEY,
22 being first duly sworn, testified as follows:

23 DIRECT EXAMINATION BY MR. FALK:

24 Q. Mr. McKinney, could you tell me where you work?

25 A. I am a DOD police officer at the naval weapon station.

1 I'm a staff sergeant United States Army Reserves. I'm a
2 boxing trainer at Title Boxing Club and a professional
3 fighter.

4 Q. With DOT?

5 a. DOD, Department of Defense.

6 Q. Oh, Department of Defense.

7 And are you related to Tyrone Ellison?

8 A. Yes, sir, I am.

9 Q. Can you tell us how?

10 A. I'm his father.

11 Q. All right. He's your stepson?

12 A. Yes.

13 Q. Okay.

14 A. But I don't consider him my stepson. I treat him like
15 my own blood ran through his veins. That's my son.

16 Q. Were you aware that -- and you're married to
17 Annette McKinney?

18 A. Yes, sir.

19 Q. And you all live in the same house?

20 A. Yes.

21 Q. Okay. Were you aware that she bought him a car in
22 March of 2013?

23 A. Yes.

24 Q. Do you know anything about that?

25 A. I know when she bought it for him. I think it was a

1 Saturday morning, and then shortly after that, he sold it to
2 one of his friends. I know she was upset about it.

3 Q. Did you ever see the car after it showed up at your
4 house on -- the car showed up at your house; is that correct?

5 A. Yes, it did.

6 Q. And how many times did you see that car?

7 A. Just that Saturday morning.

8 Q. Okay. And did you ever get any information -- did you
9 have any firsthand information that he had -- was no longer
10 driving that car?

11 A. I had no idea.

12 Q. Okay. Did you ever see somebody else driving him?

13 A. I think once I seen it that morning, you know, because I
14 work on Sunday, Monday, Tuesday, Wednesday. I seen it
15 Saturday morning, and then I didn't see my son again until
16 maybe that Monday. And I found out probably by that Monday
17 or Tuesday that the car was gone, so --

18 Q. Okay. So by Monday or Tuesday, he was no longer driving
19 that car?

20 A. No. He had sold it. His mom was asking why did he sell
21 it. She was kind of upset with him.

22 Q. And that was a couple of days after it showed up?

23 A. Yes.

24 MR. FALK: No further questions.

25 THE COURT: Cross-examination.

1 MR. SORENSON: Beg the Court's indulgence.

2 I have no questions, Your Honor.

3 THE COURT: Sir, you may step down. Thank you.

4 THE WITNESS: Thank you, sir.

5 THE COURT: Call your next witness.

6 MR. FALK: Defense rests.

7 THE COURT: Will the lawyers approach at sidebar for a
8 minute?

9 (The following was held on the record, out of the
10 hearing of the jury.)

11 MR. FALK: Your Honor, we would renew our motion for
12 directed verdict. We believe that the defense has put on
13 evidence regarding an alibi, and he can't be in two places at
14 one time. And we put on further evidence that he was no
15 longer in possession of the car after March 23rd, 2013, and
16 that car was clearly identified as being located outside the
17 bank.

18 THE COURT: The Court's rulings remain the same. Court
19 is not authorized to weigh the evidence, not authorized to
20 weigh it. There is sufficient evidence for the case to go to
21 the jury, and I will let it go to the jury now. I remind you
22 on your rebuttal, keep them confined to what they're
23 rebutting, so to speak.

24 MR. SORENSON: It's a records custodian from Burger
25 King.

1 (The following was held in open court, in the hearing of
2 the jury.)

3 THE COURT: Okay. Ladies and gentlemen, the defense has
4 rested in the case. I have been advised by the State that
5 they are allowed to, under the rules and in certain
6 situations, to call what is termed as a rebuttal witness,
7 which I am going to allow.

8 I'm going to recognize the State at this time. Call
9 your witness.

10 MR. GIESE: State calls Sam Powers.

11 CLERK OF COURT: Place your left hand on the Bible,
12 raise your right hand and state your full name for the
13 record.

14 THE WITNESS: Samuel Jeffrey Powers.

15 SAMUEL POWERS,
16 being first duly sworn, testified as follows:

17 (State's Exhibits 49-50 marked for identification.)

18 MR. GIESE: May it please the Court, Your Honor.

19 DIRECT EXAMINATION BY MR. GIESE:

20 Q. Mr. Powers, where do you work?

21 A. I work for the Capital Restaurant Group.

22 Q. And how long have you worked there?

23 A. Since August of 2012.

24 Q. And what are your duties there?

25 A. I'm the IT manager, so I handle everything basically

1 that has electricity going through it, all the computers,
2 physical, actually fixing broken equipment at the
3 restaurants, administrative work, you name it --

4 Q. Let me stop you there. What is Capital Management
5 Group? What exactly do they do?

6 A. It's a Burger King franchisee, so it's -- the owner of
7 it basically is a franchisee of 27 restaurants, 27 Burger
8 Kings.

9 Q. Okay. Is one of those Burger Kings Burger King
10 Store 3262 on Dorchester Road?

11 A. Yes, it is.

12 Q. And is one of your duties at Capital Management Group
13 checking and keeping employment records for that store?

14 A. It is, yes. But we basically have -- the point-of-sale
15 company keeps all of our records, and we kind of, you know --

16 Q. Can you describe that relationship?

17 A. Yes, yes, definitely. So basically, they get employment
18 records basically downloaded every night. They have actually
19 all the records going back to the beginning of the Capital
20 Restaurant Group, which I believe has been five years now,
21 and, you know, they basically obviously provide us our
22 point-of-sale equipment and software and do data retention
23 for us also. That's pretty much the extent of it.

24 Q. Okay. And are those records, are they kept in the
25 ordinary course of business?

1 A. Yes, absolutely.

2 Q. At some point were you asked to pull the records for
3 April 1st of 2013 at that Burger King store I mentioned?

4 A. Yes.

5 Q. Did you pull those records?

6 A. Yes, I did.

7 MR. GIESE: May I approach the witness, Your Honor?

8 THE COURT: Yes.

9 MR. FALK: Your Honor, I object to where I believe this
10 testimony's going.

11 THE COURT: What's the grounds for your objection?

12 MR. FALK: Hearsay, best evidence rule and the
13 confrontation approach.

14 THE COURT: If you all will approach at sidebar.

15 (Judge and attorneys confer.)

16 THE COURT: Ladies and gentlemen, I have a matter of law
17 I need to take up outside of your presence. I'm going to ask
18 you to step to your jury room. Do not discuss the case.
19 I'll get you back out here as quickly as possible.

20 (The jury retires to the jury room at 3:49 p.m.)

21 THE COURT: Go ahead, Mr. Giese.

22 MR. GIESE: Thank you, Your Honor.

23 (The following was held in open court, out of the
24 presence of the jury.)

25 DIRECT EXAMINATION IN CAMERA BY MR. GIESE:

1 Q. Is one of your duties for the Capital Restaurant Group
2 when records are subpoenaed, are you required or is it one of
3 your duties to provide those records and to come to court and
4 testify about those records?

5 A. Yes, yes. I have -- this is the first time I've
6 testified, but I have provided, you know, employment records
7 for legal proceedings, yes.

8 Q. So you've received subpoenas for employment records
9 before?

10 A. Yes, yes.

11 Q. Approximately how many times, do you think?

12 A. Probably four times.

13 Q. Okay. But it's your job at Capital Management Group?
14 You're in charge of that?

15 A. Yes, I am. I'm in charge of that, all data.

16 Q. Okay. Are you involved in the relationship between the
17 point-of-sale system and Capital Management Group?

18 A. Yes, absolutely. I'm the liaison between the --

19 Q. So you contact them when you're asked to get records --

20 A. Yes.

21 Q. -- when records have been subpoenaed?

22 A. Basically, yes.

23 MR. GIESE: May I approach the witness, Your Honor?

24 THE COURT: Yes.

25 Q. Mr. Powers, I'm showing you what's premarked as State's

1 Exhibit 49. Do you recognize that?

2 A. Yes.

3 Q. Is that a "yes"?

4 A. Yes. That's correct, yes.

5 Q. Did you have the opportunity to view this disc?

6 A. I did, yes. I looked at it.

7 Q. And what is on this disc?

8 A. It's a spreadsheet of the time punches from that date at
9 that -- at Burger King 3262, and it's got, you know, employee
10 information, names, lots of details.

11 Q. Are these the records that you received from the
12 point-of-sale company?

13 A. Yes.

14 Q. Did you do anything to doctor those records in any way?

15 A. No, absolutely not, no.

16 Q. Okay. Is this a fair and accurate representation of
17 both the employees' information who worked at that Burger
18 King as well as the timecard information from April 1st of
19 2013?

20 A. You mean like details about --

21 Q. Is it a fair and accurate representation of those two
22 things?

23 A. Oh, yes, it is.

24 Q. Okay. Now let me show you what State's Exhibit --
25 premarked as State's Exhibit 50. Do you recognize that?

1 A. Yes.

2 Q. What is this?

3 A. That is basically a list of all the people that worked
4 that day, according to the system.

5 Q. Okay. And this is a list that Mr. Sorenson generated.
6 Did you check this list?

7 A. Yes, yes.

8 Q. And you made sure all the information on the list is
9 adequate?

10 A. Yes.

11 Q. Is correct?

12 A. Right. It is. It matches.

13 Q. Okay. And is that a fair and accurate representation of
14 the employees at the Burger King 3262, their timecard punch
15 in and punch out?

16 A. Yes.

17 Q. Okay. And the employee IDs that -- in this little sheet
18 have been connected with names. Are those the correct names?

19 A. Yes, absolutely.

20 Q. Okay. And you checked that beforehand?

21 A. I did, yes.

22 MR. GIESE: Okay. Actually, let me -- it would be at
23 this point, Your Honor, the State would ask that State's 49
24 and 50 be moved into evidence.

25 THE COURT: Have you got any questions of this witness?

1 MR. FALK: Well, Your Honor, I don't see any way that
2 we're going to put 50 into evidence because that's a document
3 that's prepared by the prosecution, and it certainly can't,
4 just that alone is not going to fit under the confrontation
5 clause.

6 That's not a business record. That's a document that
7 the prosecution prepared, and, therefore, it's not -- I don't
8 believe that it would be proper to admit under the
9 confrontation clause, because it's got testimonial hearsay in
10 it that was prepared in anticipation of this litigation.

11 THE COURT: My question was do you have any questions of
12 this witness?

13 MR. FALK: I'm sorry, Your Honor. .

14 THE COURT: That's okay.

15 MR. FALK: I thought you asked me about the document.

16 THE COURT: Then I'm going to hear argument if you have
17 any questions of him. You may or may not, but I want to know
18 that first.

19 CROSS-EXAMINATION IN CAMERA BY MR. FALK:

20 Q. You prepared that spreadsheet; is that correct?

21 A. Yes, yes.

22 Q. When was that prepared?

23 A. When it was requested. I'm not sure of the exact date
24 off the top of my head. You know, I'm just not sure. I know
25 it's been a few months.

1 Q. So has it been in the last six months?

2 A. I believe so. It was a while ago. It was probably
3 about six months ago.

4 Q. Now, does that spreadsheet that you prepared six months
5 ago, does that have the actual timecard data on it?

6 A. Yes, yes, it does. It's the -- basically a poll from
7 the database of the point-of-sale system, so it has a lot of
8 unnecessary data in there, too, or just, you know, extra sort
9 of stuff just for the POS system.

10 Q. But those are not the actual timecard punches; is that
11 correct? It's a summary of the timecard punches?

12 A. Well, it's -- I mean, it's -- it's -- it's -- it's what
13 they -- yes, I mean, it's what the system recorded. I mean,
14 it's -- it's the -- it's what the point-of-sale system has in
15 its database. I mean, it's -- I don't really know. I mean,
16 that's --

17 Q. And you pulled that information out of the database six
18 months ago?

19 A. Yes, yes.

20 Q. Okay. What's the software program that the database
21 uses?

22 A. It's Micros is the point-of-sale company, and it's just
23 a Sequel database, SQL database server.

24 Q. Beg your pardon?

25 A. Sequel is just a database programming language

1 basically.

2 Q. Is it a software program? Is it like, you know,
3 PeopleSoft or something like that?

4 A. Yes, it's like a software.

5 Q. Who prepared it, who prepared that -- who prepared that
6 program to draw the information out of the database?

7 A. It was, it would be the point-of-sale company, not
8 myself.

9 Q. Okay. So do you have any information as to how that
10 information is drawn out of the database?

11 A. Um --

12 Q. Do you have any firsthand information?

13 A. Not really, no.

14 Q. Okay. Do you know what procedures the point-of-sale
15 company has to monitor the accuracy of the database?

16 A. No, not really, no.

17 Q. Do you know if it's ever monitored for accuracy?

18 A. I'm not sure. I assume it is. I hope it is, but, I
19 mean, I'm not sure.

20 Q. Do you know what kind of precautions that the database
21 company has to prevent loss of that information?

22 A. No, not really.

23 Q. What kind of procedures does the database company have
24 to verify the accuracy?

25 A. You know, that's a good question. I'm not sure.

1 Q. Now, this spreadsheet, is that something that's
2 prepared, that spreadsheet that you had prepared for the
3 prosecution, is that something that you prepare every day?

4 A. No, no, it's not. What it is is basically I have a
5 historical record going back to the beginning of the company
6 that was about a year ago, or not about a year ago. It
7 was -- it was within -- it was within the past year. And
8 it's basically got all the data from that point going back
9 four years from the point-of-sale company.

10 And now we actually have a new company which is storing
11 the data for us, which is a separate company, but that's all
12 happened within the past few months.

13 Q. Has it happened since you prepared this report?

14 A. No, it was before.

15 Q. So the data started with the point-of-sale company, and
16 now it's being maintained by another company?

17 A. Right. Well, we're basically -- just for storage, yes,
18 like just a backup, like a redundancy, like a -- you know, in
19 case we -- you know, the systems crash and we lose the data
20 basically.

21 Q. And I believe I said this earlier, there's not a daily
22 printout from this information, is there?

23 A. I do not do a daily printout, no.

24 Q. Do you know specifically how the information is entered
25 into the database?

1 A. There's different ways, so the way it's supposed to work
2 is people clock in and out on the actual point-of-sale
3 workstations, and that automatically takes it over to the
4 database. And then, you know, the manager of the restaurant,
5 the general manager can, you know, fix time punches if
6 somebody forgets to clock in or clock out.

7 Q. Do you know specific -- is that -- is your answer to my
8 question, is that how the data from this particular Burger
9 King that we're talking about gets entered into the database?

10 A. Yes.

11 Q. So it can be -- it can be entered in one of two ways,
12 either from timecard punches or the manager can make
13 adjustments?

14 A. Right, exactly.

15 Q. Is there any way by looking at that sheet that you can
16 tell which of those adjustments are made by the -- which of
17 those entries into the database are made by the manager and
18 which ones are made by the timecard punches?

19 A. Yes. There is a column where the -- if you make a
20 manual adjustment to it, where you have to specify why you
21 made the manual adjustment. So if it was, you know, an
22 administrative reason or forgot to clock out, but that's just
23 someone -- you know, that they will manually enter. If it's
24 blank, basically then you can tell that it was an automatic.

25 Q. Is there any effort to make a follow-up on those entries

1 in the database when they're done manually?

2 A. Sorry, can you repeat the question?

3 Q. Do you personally make any efforts to follow up on those
4 entries into the database that are done manually?

5 A. Oh, to verify, like, if they are accurate?

6 Q. Yes.

7 A. No. No, I don't. That's more of an operational thing.

8 MR. FALK: Your Honor, I have no further questions. I
9 have no further questions.

10 THE COURT: Anything else from the State?

11 MR. SORENSON: Beg the Court's indulgence.

12 Nothing further, Your Honor.

13 THE COURT: I'll be happy to hear from you, Mr. Falk, by
14 way of argument.

15 MR. FALK: Your Honor, I'd object to the entry of
16 this --

17 THE COURT: Which one? They are two separate exhibits.

18 MR. FALK: Yes. Exhibit No. 50 first. That was the one
19 sheet of paper; is that correct?

20 THE COURT: Prepared by the prosecution. All right.

21 MR. FALK: I would object to that because I believe that
22 has testimonial hearsay on it by a witness who's not going to
23 be able to testify. I don't believe we're going to put the
24 prosecutor on the stand. I think, therefore, there's a
25 confrontation clause issue that that is testimonial hearsay

1 that is being prepared in anticipation of litigation, and I
2 think that's disqualified under *Crawford v. Washington*.

3 I also make an objection to the database itself on the
4 basis that it is hearsay evidence, because I do not think
5 that this witness is a qualified custodian of records for
6 this database.

7 I cite the Court to *State v. McFarland* which, is 279
8 S.C.2d 327, 306 S.E.2d 611 (1983). I believe that's a South
9 Carolina Supreme Court case. And I'd also cite the Court to
10 review *State v. Rice*, which is a Court of Appeals case from
11 2007. That's 375 S.C. 302, 652 S.E.2d 409.

12 And finally I'll draw the Court's attention to the
13 *SCNB v. Jones*, 302 S.C. 154, 394 S.E.2d 323. That's a South
14 Carolina Supreme Court case from 1990, and if you read the
15 reviews of those cases in South Carolina, *State v. McFarland*,
16 the trial court properly refused to admit medical records
17 when there was no one who could testify to the identity,
18 mode, preparation or whether the report was made in the
19 regular course of business at or near the time of the
20 accident. Those were regarding medical records that were
21 maintained.

22 We have somebody here -- excuse me, then I'd also go on
23 to draw the Court's attention to, as I cited, *Rice*, where a
24 business record without evidence about the manner in which it
25 is prepared, the source of its information does not meet the

1 requirements of the Uniform Business Records As Evidence Act,
2 nor does it hit an exception to the business records
3 exception to the hearsay rule.

4 And, again, the SCNB court (sic) is going to draw you to
5 the same conclusion, that on the hearsay question, since this
6 is not a record itself that this gentleman prepared or is
7 keeping, what is being prepared and kept is a database, and
8 there is nobody -- and had this been a record somebody would
9 be there to testify as to the manner in which the data
10 actually went in, what methods are done in order to protect
11 the integrity of the data, the accuracy of the data.

12 I think this witness has testified that he is unaware
13 whether or not he can even testify to the fact that all the
14 data on that sheet came from a timecard punch or a manager.
15 And he certainly testified that any of the data on the sheet
16 that came from a manager he has not followed up on.

17 I think he's also testified that, yes, he doesn't know
18 that they have any type of procedure to -- that there's any
19 type of protocol for checking about loss of data. There
20 is -- he could not speak to whether or not there are any
21 measures taken to make sure that the data is accurate.

22 And I think most importantly, this printout was done six
23 months after the April 1st, 2013; therefore, it is not a
24 business record that is kept at or near the time. There is a
25 significant gap in time between April 1st, 2013 and when this

1 record was prepared. And, therefore, this printout he has is
2 not a contemporaneous business record.

3 And there was testimony that they do not print out every
4 day; there's no printout done daily, and this is a business
5 record that was prepared nine months later at the request of
6 the prosecution, so --

7 And finally, I think we have a best evidence question
8 here because these are copies. This is somehow a duplicate
9 of the actual data, the actual timecard data. I think he
10 said "timecard punches." But it's not actually a copy of the
11 timecard punches and there's no explanation why we don't have
12 the actual timecard punches.

13 So I think we have problems in this -- on this business
14 record because this witness is not qualified as a custodian;
15 therefore, the information contained in the business record
16 is hearsay. It is a duplicate of the actual information that
17 we are looking for; therefore it's a best evidence question.

18 And to the extent that he's not a records custodian and
19 that he printed out this data at the request of the
20 prosecution, I think that comes back around to being a
21 Sixth Amendment confrontation clause question, because now we
22 clearly have testimonial hearsay, and it was done at the
23 direction of the prosecution. In order -- excuse me, Your
24 Honor.

25 Crawford will not, a regular business record is not

1 included in Crawford because that is an exception to the
2 confrontation clause. The business records have never --
3 there are court decisions that say that business records were
4 never contemplated as being the type of hearsay that was
5 contemplated by the Crawford decision, but since I don't
6 think that these records constitute a business record, then
7 this is clearly hearsay testimony. This is clearly hearsay
8 evidence which is testimony.

9 And, for example, somebody could have made an entry.
10 They said the manager could have made entries into this
11 database, could have made daily entries into this database.
12 If there were, we don't know what they are.

13 And, two, if those types of entries were made, it would
14 be the person who made the entry that I would have an
15 opportunity to cross-examine. This gentleman has no
16 information regarding the accuracy of any information that
17 went in.

18 THE COURT: All right. Mr. Giese.

19 Mr. Sorenson.

20 MR. GIESE: Your Honor, although Mr. Powers doesn't call
21 himself the records custodian, I mean, he's the one for his
22 company who is designated to deal with these things, with
23 testifying, with subpoenas, if records are subpoenaed, and he
24 went through the proper channels. He got the point-of-sale
25 system. They gave him all those records.

1 And Mr. Falk's argument that it's not contemporaneous,
2 these records are immediately stored once you punch your
3 timecard. I mean, that's what that system is for. So
4 that Mr. Falk saying that these aren't contemporaneous, the
5 State would argue that that's just not right.

6 In regards to the summary that Mr. Sorenson prepared,
7 you know, Mr. Powers checked and verified on the Excel
8 spreadsheet that he got from the point-of-sale company that
9 all these numbers were correct, that all these names were
10 correct, and the State was just simply trying to, you know,
11 make it a more readable, more readable document.

12 But, Your Honor, the State would ask that -- would first
13 argue that Mr. Powers is the records custodian for Capital
14 Management Group in regards to not only employment
15 identification but timecard punch in and punch out.

16 THE COURT: What's on Exhibit 49?

17 MR. GIESE: Your Honor, it's the Excel spreadsheet that
18 Mr. Powers was testifying about. Basically it's three tabs.
19 One of the tabs is -- it kind of has an employment
20 identification number as well as employee information. For
21 example, Tyrone Ellison has a number assigned, his address,
22 his phone number, that sort of thing.

23 And then another tab is the timecard punch in and punch
24 out for April 1st of, 2013, and it's kind of got -- it's got
25 where they punched in and punched out, the employee ID, what

1 time they punched in, what time they punched out and then the
2 approximate amount of time they worked, kind of a decimal
3 figure.

4 The third one -- and then the third tab is just another
5 having to do with employee information, employee records.
6 But it's for everyone that is at that particular Burger King
7 that we've been discussing.

8 THE COURT: Mr. Falk.

9 MR. FALK: I mean --

10 THE COURT: You never did address 49. I think all your
11 argument was -- contained Exhibit 50; is that right?

12 MR. FALK: 49 is the spreadsheet.

13 THE COURT: 50 was what they prepared, which you have an
14 objection to.

15 MR. FALK: I have a -- I would renew my objections
16 regarding 49.

17 THE COURT: Okay.

18 MR. FALK: I think that 49, Exhibit 49, for the same
19 reasons I spoke about before, 49 is inadmissible hearsay.
20 It's not the best evidence of the information that they are
21 purporting to enter, and in that, this gentleman is not the
22 custodian, is not properly qualified as a custodian of these
23 records. It becomes testimonial hearsay, which is offered --
24 which was prepared in anticipation of this litigation, and
25 it's a violation of the confrontation clause as found in

1 *Crawford v. Washington.*

2 Let me reiterate the fact that this gentleman is not the
3 custodian nor has he represented himself to be the custodian
4 of the point-of-sale people, who is -- which I do believe he
5 has testified to is the entity that maintains these records
6 and then passes them along.

7 So at most, I should have the opportunity to
8 cross-examine the point-of-sale person, because it is
9 ultimately his business, that entity's business records,
10 which are being offered as evidence here.

11 THE COURT: Okay. Anything else from the State?

12 MR. GIESE: No, Your Honor.

13 THE COURT: Well, I don't believe it is testimonial
14 hearsay or testimonial as argued by defense counsel. I don't
15 believe it falls under exclusion pursuant to best evidence.
16 I'm going to step down for just a minute. I'll let you know
17 what my ruling is in just a second.

18 (Recess held.)

19 THE COURT: All right. What I am going to do, I will
20 not allow Exhibit No. 50 to be admitted into evidence;
21 however, I will allow Exhibit No. 49 to be admitted into
22 evidence.

23 In looking back at the rule on the hearsay exceptions
24 under records of regularly conducted activity, it talks
25 about it's shown by the testimony of the custodian or other

1 qualified witness. I believe that this witness has been
2 qualified as an other qualified witness to testify concerning
3 those records, but subject to defense counsel's objection,
4 I'm going to allow the testimony as well as Exhibit 49 into
5 evidence.

6 (State's Exhibit 49 admitted into evidence.)

7 THE COURT: Anything further at a time?

8 MR. FALK: Your Honor, how -- may I just ask how is the
9 jury going to -- is the jury going to look at the --

10 THE COURT: Spreadsheet?

11 MR. FALK: -- the spreadsheet?

12 THE COURT: On Exhibit 49? That's up to the State.
13 Now, how they are able to, I'm going to leave that up to
14 them.

15 Mr. Giese.

16 MR. GIESE: Your Honor, we would kind of just be linking
17 it with Mr. Powers' testimony that he reviewed the
18 spreadsheet and what he surmised from it. I don't know that
19 they have any way to view it that --

20 THE COURT: Can you pull up what's on that disc in here?

21 MR. GIESE: We can put it on the laptop --

22 MR. SORENSON: We can pull it up. I mean, I think
23 ultimately the question is going to be, "Have you reviewed
24 State's Exhibit No. 49 and does it show whether
25 Tyrone Ellison worked on April 1st of 2013?"

1 He's going to say "no."

2 THE COURT: Okay.

3 MR. SORENSON: I mean, at that point in time, and just
4 to get clarification, Your Honor, I understand that you're
5 not going to let us use State's Exhibit No. 50.

6 THE COURT: Which was prepared by you.

7 MR. SORENSON: Which was -- it was my intention that I
8 plan on using this as a demonstrative exhibit during my
9 closing argument then.

10 THE COURT: Okay.

11 MR. SORENSON: Because it's prepared from what the
12 jury's going to have in evidence, and obviously they want
13 access to a laptop to sit and review all those -- I mean,
14 they can do that as part of their deliberation.

15 MR. GIESE: Or we can even -- if we bring them back out
16 and show them if they're in the middle of their deliberation,
17 they want to see the disc.

18 THE COURT: Mr. Falk.

19 MR. FALK: I just have concerns that certainly the
20 information on the disc is not totally straightforward and it
21 takes some consideration about what the columns mean. I
22 mean, I've gone through the disc obviously. I know -- I
23 think there's 250 columns going this way (indicating).

24 THE COURT: Well, I mean, State needs to lay that
25 foundation.

1 MR. SORENSON: That was the purpose of me creating
2 Item 50 was it helped simplify what are some confusing
3 looking records.

4 THE COURT: That may just prolong the examination of
5 this witness in doing that.

6 MR. SORENSON: Yes, sir.

7 THE COURT: You know, in the rule, let me ask you this:
8 I mean, under Rule 1006, it deals with summaries of
9 information. Do you want to look at that rule real quick?

10 MR. FALK: Yes, Your Honor.

11 THE COURT: Mr. Falk.

12 MR. FALK: Well, obviously I think that the underlying
13 data is inadmissible, but I understand the Court's order, but
14 I still think you would have to go line by line, and this
15 person would have to check each entry in there to confirm
16 those entries on that summary.

17 THE COURT: Well, is that something that can be
18 clarified through direct examination?

19 MR. SORENSON: Which on direct I did ask that, Your
20 Honor.

21 MR. FALK: But he's linking up. I mean, it was
22 Mr. Sorenson that linked up this information, pulled it off
23 the spreadsheet, cut and pasted it together.

24 THE COURT: I understand.

25 MR. FALK: And I mean --

1 THE COURT: Well, under that rule, under the rule that I
2 just referred you to, does it matter who prepared it if he
3 can testify and substantiate that it's consistent with the
4 documentation and information that he prepared and that he
5 provided to the State? That's my question.

6 MR. FALK: I guess it would depend on the witness's
7 testimony.

8 MR. GIESE: I believe he testified to that. We gave
9 him -- I mean, we showed him that to make sure that he
10 checked that all the information on that was accurate, and I
11 asked him that, too, on the stand. He said, "Yes, sir."

12 MR. FALK: He was checking from his memory. He didn't
13 open up the database.

14 MR. SORENSON: He was given that.

15 MR. GIESE: Beforehand.

16 MR. SORENSON: He was given that four months ago to
17 double-check.

18 THE COURT: He what?

19 MR. SORENSON: He was given this. I mean, obviously we
20 can ask Mr. Powers. I gave this to him, a copy of this,
21 months ago when I met with him in anticipation of this trial
22 going in August, because obviously I wanted him to be able to
23 testify that this was accurate, so this was given to him when
24 I met with him, I mean, probably three months ago.

25 THE COURT: Anything else, Mr. Falk?

1 MR. FALK: No, Your Honor.

2 THE COURT: Anything else from the State?

3 MR. GIESE: No, Your Honor.

4 THE COURT: What I'm going to ask the State to do is,
5 and I hate to, but I am, if you can lay the foundation, and
6 maybe you did. I'm not going to go back and reread
7 everything that was already in the transcript as to what you
8 asked.

9 I think you did, but as a precautionary matter, if you
10 can lay the groundwork through direct examination of this
11 witness, I'll reserve my ruling on the admissibility of
12 No. 50 at this time, all right..

13 MR. GIESE: Yes, sir.

14 THE COURT: All right. Bring me the jury, please.

15 (The jury enters the courtroom at 4:35 p.m.)

16 THE COURT: Mr. Giese, you may continue, sir.

17 MR. GIESE: Thank you, Your Honor. And I may backtrack
18 here a little. May I approach the witness again?

19 THE COURT: Yes.

20 CONTINUED DIRECT EXAMINATION BY MR. GIESE:

21 Q. Mr. Powers, showing you again what's been premarked as
22 State's Exhibit 49. Do you recognize that?

23 A. Yes.

24 Q. And what is contained on this disc?

25 A. That is the actual data in its original form from the

1 point-of-sale company as far as the timecard punches for that
2 Burger King.

3 Q. Okay. Did you have the opportunity to review this disc
4 beforehand?

5 A. Yes.

6 Q. Is that a fair and accurate representation of the
7 timecard punches from that Burger King 3262 on Dorchester
8 Road from April 1st of 2013?

9 A. Yes. As far as I know, yes, yes.

10 MR. GIESE: At this time, Your Honor, the State would
11 move State's 49 into evidence.

12 THE COURT: Subject to defense counsel's objection, so
13 admitted.

14 (State's Exhibit 49 admitted into evidence.)

15 MR. GIESE: May I approach the witness again, Your
16 Honor?

17 THE COURT: Yes.

18 Q. All right. I'm now showing you what's been premarked as
19 State's Exhibit 50. Do you recognize that?

20 A. Yes.

21 Q. Okay. What is that?

22 A. This is the -- the data in the spreadsheet on the disc
23 there is -- has a bunch of different tabs and hundreds of
24 columns, and this is basically a summary of the time punches
25 from that, from that bigger spreadsheet. The bigger

1 spreadsheet is -- can be confusing. It's got all kinds of ID
2 numbers and different types of stuff.

3 Q. Okay. Did you check to make sure that all the items on
4 that piece of paper match correctly with the items from
5 State's Exhibit 49?

6 A. Yes, I did. Yes, yes.

7 Q. So all the information on that State's Exhibit 50 is
8 fair and accurate --

9 A. Yes.

10 Q. -- as to who worked on April the 1st of 2013?

11 A. Mm-hmm, yes.

12 Q. And that same information, that can be found in State's
13 Exhibit 49?

14 A. Correct, yes. We could double-check it, yes.

15 Q. Okay. And would you consider the evidence on State's
16 Exhibit 49 that's located on that disc, can you kind of
17 describe what that is?

18 A. Right. So it is basically a -- just a dump of the data
19 from the point-of-sale company, what they actually -- what
20 the system actually recorded. It's just -- it's just the
21 system records as they are. I mean, that's --

22 Q. Is it voluminous?

23 A. What do you mean?

24 Q. Is it a lot of information on the one spreadsheet?

25 A. Yes, it is. Yes, yes.

1 Q. What program is used on that?

2 A. The spreadsheet's actually just a Microsoft Excel
3 document.

4 Q. Okay. And on Microsoft Excel, how is the data on there
5 separated for the timecard punch? What's it look like?

6 A. Oh, okay. So it's basically a bunch of columns that
7 have different information, like employee ID and the -- you
8 know, the address of the restaurant, that type of stuff. And
9 then it has rows, I believe, that show the actual time
10 punches for a given day or basically lists all of the -- rows
11 of all of the employee IDs that -- and what time they punched
12 in, what time they punched out, and then a bunch of sort of
13 extra data.

14 And then it has another tab that has a list of all the
15 employees that work at that restaurant are, you know, that --
16 historically going back since the beginning of the company,
17 and it has their names and their employee ID.

18 So the way to verify it is to look at the -- on the
19 sheet that has the actual time punches, it has the employee
20 IDs, and you can go to the other tab and match the employee
21 ID to the name.

22 Q. Okay. So there's a lot of information on there?

23 A. Yes, there's quite a bit, yes.

24 Q. And it's your testimony that all the information that is
25 on State's Exhibit 50 was taken and verified from State's

1 Exhibit 49?

2 A. Yes, that's -- yes, yes, I did. I checked it, yes.

3 Q. And you verified yourself that that's correct?

4 A. Yes.

5 MR. GIESE: At this time, Your Honor, the State would
6 move to have State's Exhibit 50 entered into evidence.

7 MR. FALK: Your Honor, may I ask the witness some
8 questions about the exhibit?

9 THE COURT: Any objection?

10 MR. GIESE: No, Your Honor.

11 THE COURT: Go ahead.

12 MR. FALK: May I approach?

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION ON VOIR DIRE BY MR. FALK:

15 Q. When was that piece of paper prepared? Exhibit 50 that
16 you have there, when was that prepared?

17 A. I believe it was -- I'm not sure of the exact date, but
18 I believe it was -- it was months ago. It was probably -- it
19 was brought to me by the -- I guess the State, maybe three
20 months ago.

21 Q. Is there anything on that piece of paper by which you
22 can tell when it was prepared?

23 A. No, no, not at all.

24 Q. When you reviewed a summary that you received from the
25 solicitor's office, did you make any markings on that piece

1 of paper to indicate --

2 A. No.

3 Q. So do you have any firsthand knowledge that that is the
4 piece of paper that you reviewed?

5 A. I mean, I cannot be absolutely sure this is the exact
6 paper, no, that was -- that was shown to me.

7 Q. So if that's not the exact paper that was shown to you,
8 then you would need to reverify all the entries on there; is
9 that correct?

10 A. I mean, yes, probably, yes.

11 Q. If a typo, if an innocent typo was made on there, you
12 would have no way of knowing unless you knew for sure that
13 you looked at that piece of paper originally; is that
14 correct?

15 A. Yes, yes, absolutely. I mean, yes. I do not, like,
16 take a, you know, photo on my phone of the sheet and have
17 something to compare to, you know, that this is the original
18 sheet of paper. It looks identical to me.

19 Q. Well, it looks identical because it has columns and
20 names and ID numbers; is that correct?

21 A. And just looking at the names, you know, it just -- it
22 does look -- it looks familiar to me, but --

23 Q. Do you recall the name of every employee who's at that
24 store?

25 A. No.

1 Q. Do you recall the employee ID numbers of every employee
2 at that store?

3 A. No.

4 Q. The dates of hire?

5 A. No.

6 MR. FALK: Your Honor, I would object to the
7 introduction of this as a -- as a -- admissible as a summary
8 under 1006 without further verification that that is actually
9 the piece of paper that he reviewed.

10 THE COURT: Anything from the State?

11 MR. GIESE: Nothing further, Your Honor.

12 THE COURT: Objection sustained.

13 MR. GIESE: May I approach the witness?

14 THE COURT: Yes.

15 CONTINUED DIRECT EXAMINATION BY MR. GIESE:

16 Q. All right. Mr. Powers, I've already asked you this, but
17 you've reviewed all the information on the timecard
18 punch in/punch out from April 1st of 2013 at that Burger King
19 store?

20 A. Yes. I mean, from the original --

21 Q. On the Excel spreadsheet.

22 A. On the actual, yes, I did, yes.

23 Q. Did you also review the employee information for
24 Tyrone Ellison?

25 A. Yes.

1 Q. And based on your review of the employee information of
2 Mr. Ellison and the timecard punch in/punch out information
3 from April 1st, based on your review of that spreadsheet,
4 does it appear to you that Tyrone Ellison clocked in or
5 clocked out at any point on April 1st of 2013?

6 A. No. I did check that. There's no record of it.

7 MR. GIESE: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 MR. GIESE: Nothing further, Your Honor.

10 THE COURT: Cross-examination. Anything further,
11 Mr. Falk?

12 MR. FALK: Yes, Your Honor.

13 THE COURT: Go ahead.

14 CROSS-EXAMINATION BY MR. FALK:

15 Q. You had testified that Exhibit No. -- I've got my
16 numbers confused.

17 THE COURT: 49.

18 Q. You testified that 49 is an Excel spreadsheet?

19 A. Mm-hmm.

20 THE COURT: Is that a "yes"?

21 THE WITNESS: Yes, it is.

22 THE COURT: Thank you.

23 THE WITNESS: Yes, sir.

24 Q. Is that the format in which the evidence is -- in which
25 the timecard swipes are originally collected by the

1 point-of-sale company?

2 A. 49?

3 Q. Is the Excel spreadsheet, does the point-of-sale company
4 which keeps and maintains all this data, is it originally
5 maintained as an Excel spreadsheet?

6 A. No, it's not.

7 Q. So that's a translation of the original data?

8 A. That's correct, yes.

9 Q. And has there ever been an opportunity when somebody has
10 made entries into, has made changes in that data which has
11 not been reflected by the timecard swipes?

12 A. Can you elaborate or repeat that question?

13 Q. I'm sorry, that was a poor question.

14 What is the way that the data can get into that, into
15 the database that's kept by the point-of-sale company?

16 A. There's only two ways, and that is by actually punching
17 in with a timecard number and that -- like you would at the
18 workstation, at the registers; or the manager, the general
19 manager can make manual adjustments.

20 Q. Is there any way to tell if the manager has made a
21 manual adjustment?

22 A. There is a way to tell, yes. There is a way if
23 something has been adjusted, yes. If something's been
24 adjusted, there is a way it can be audited, yes.

25 Q. Can you explain what that way is?

1 A. Well, if there is a -- if there is a change to
2 something, you have to specify why you changed it, so there's
3 a column. If you just delete something, that would be --
4 there is a -- you know, an audit history of all changes made.

5 Q. And when you reviewed that summary and when you provided
6 this Excel database, did you review the audit summaries for
7 that store for April 1st?

8 A. No, no, I didn't.

9 Q. So if the manager of that store made an adjustment
10 possibly in order to keep the total store hours down or keep
11 the employees under 40 and deleted somebody from the sheet,
12 that would not be reflected; you would not know that, would
13 you?

14 A. I don't think so, no.

15 Q. The Excel spreadsheet which is on that disc, would there
16 be any reason why you would prepare that? I mean, do you use
17 that spreadsheet in your ordinary course of business?

18 A. Well, yes. So yes, basically that spreadsheet was
19 directly from the point-of-sale company for that -- the day
20 and time asked for. We have another spreadsheet that has
21 everything in it. It has all restaurants, all dates for the
22 entire company history. And so I have -- yes, yes. I mean,
23 we've had this come up before, yes, where I've had to pull
24 the records, yes.

25 Q. Is that this -- does the point-of-sale company, are they

1 responsible for generating the payroll?

2 A. No, we have an accounting firm, like an accounting --
3 accountant.

4 Q. What data does the accounting firm use for generating
5 the payroll information?

6 A. They get it from the point-of-sale data.

7 Q. Do they use that spreadsheet?

8 A. I am not sure, actually. I don't know. I don't believe
9 so, but I don't know.

10 Q. They would use different data?

11 A. Yes, I think so, yes.

12 Q. So is really the only reason why you would generate a
13 spreadsheet like that is, for example, this situation where
14 somebody in a lawsuit has a question or if there's litigation
15 of some sort?

16 A. I mean, it's -- I mean, mostly -- it's mostly -- I mean,
17 yes, that's the main purpose, but generally to have a copy of
18 the historical records.

19 Q. But that spreadsheet that you prepared, the main purpose
20 for preparing a document like that is to prepare for some
21 type of litigation; is that correct?

22 A. Well, yes, sir. I was asked for it, yes. I was asked
23 for the employee, you know, time punches for that day at that
24 restaurant.

25 Q. But the company that makes the payroll, which is a

1 crucial daily function or weekly function of the business,
2 does not use that spreadsheet?

3 A. They don't use that, no. They don't get their data in
4 that format.

5 MR. FALK: Your Honor, of course I renew my objection
6 that this is --

7 THE COURT: So noted for the record. So noted for the
8 record.

9 Any redirect?

10 MR. GIESE: No, Your Honor.

11 THE COURT: Sir, you may step down. Thank you.

12 Anything further from the State?

13 MR. SORENSON: No, sir.

14 THE COURT: Can the lawyers approach for scheduling
15 purposes, please?

16 (Judge and attorneys confer.)

17 THE COURT: Ladies and gentlemen, what we're going to do
18 at this time, I am going to excuse you for the balance of
19 today and also going to excuse you for the balance of
20 tomorrow, okay? And I apologize for having to do this, but I
21 have a prior -- I have a prior engagement with regards to
22 work that I have to handle tomorrow. Therefore, I am going
23 to ask that you all be back here Friday morning, Friday
24 morning, at 9:30, at 9:30.

25 Now, you have heard all of the testimony that you are

1 going to hear in this case. The only thing that remains are
2 closing arguments by counsel and my charge on the law to you,
3 okay. That is all that remains.

4 During your break over the next day and a half, so to
5 speak, you know what my instructions are, and I'm going to
6 ask you Friday morning when you come back here whether or not
7 you abided by my instructions, okay? Please do not discuss
8 the case at all with anyone. Do not do any independent
9 investigation on your own.

10 You've heard all the facts in this case. You've heard
11 all the evidence. That which remains is only arguments of
12 counsel and my charge on the law and the case will be given
13 to you for you to make a decision on it at that point in
14 time. So please be back Friday morning at 9:30.

15 Anything further from the State before I release the
16 jury?

17 MR. SORENSON: No, sir.

18 THE COURT: Defense counsel?

19 MR. FALK: No, sir.

20 THE COURT: All right. Please be back at 9:30 Friday
21 morning, and we will continue and resume or finish this case
22 on Friday. Thank you.

23 (The jury retires to the jury room at 4:54 p.m.)

24 THE COURT: All right. It was discussed at sidebar that
25 Mr. Falk indicated that he had some proposed charges. I've

1 asked him to get those to my law clerk, as well as get a copy
2 of those to Mr. Sorenson.

3 Furthermore, I indicated to the lawyers at sidebar to be
4 back here Friday morning at 9:00, at 9:00 so we can have a
5 brief jury charge at that time.

6 It was previously discussed as far as whether or not --
7 I don't know if this was on the record or not. I know it was
8 discussed up here at sidebar about procedural -- from a
9 procedural standpoint whether or not Mr. Falk needed to make
10 any further motions.

11 I will want to note for the record that all prior
12 motions as made by Mr. Falk are so noted at this time, as
13 well for purposes of protecting his client and preserving any
14 issues that may be there for purposes of appellate issues. I
15 want to make sure that that is noted for the record and the
16 Court's rulings remain the same on that.

17 MR. FALK: I appreciate that we're reserving all motions
18 that I made; however, I think I have to renew a motion that
19 wasn't made on the record, so that the Court could reflect
20 that I renewed my motion for a directed verdict.

21 THE COURT: Absolutely. And that was what I meant as
22 well.

23 MR. FALK: Thank you.

24 THE COURT: So thank you for clarifying that.

25 All right. All prior motions and the renewal of such

1 motions are so noted, and the Court's rulings remain the
2 same.

3 Anything else?

4 MR. SORENSON: Just briefly. When you charge on armed
5 robbery, is part of your standard charge that the -- in the
6 case of if it's a gun that it doesn't need to be operable for
7 it to qualify as a deadly weapon? As long as that's part of
8 it. If not, I was going to get you something to say on that.

9 THE COURT: Yes, it's in there.

10 MR. SORENSON: Seems like I remember that being part of
11 the standard charge.

12 THE COURT: It's not within the perpetrator's purview,
13 so to speak. It's within the alleged victim's.

14 MR. SORENSON: Yes, sir.

15 THE COURT: Yes, it's in there.

16 MR. SORENSON: Thank you.

17 THE COURT: All right. 9:00 Friday morning. Thank you.
18 (Trial of the case adjourned for the day.)

19 (Trial of the case resumed on 10/24/14.)

20 THE COURT: The remainder of individuals that are not
21 involved in this case, I want them out of the courtroom right
22 now, there's a matter I need to take up, and it will be on
23 the record, but issue I need to take up.

24 If you'll put somebody by the back door to make sure
25 there's nobody else coming in. Are the jurors up here yet,

1 Mr. Moultrie?

2 MAJOR MOULTRIE: Yes, sir, they're all in their room.

3 THE COURT: Could you bring out Juror William -- and the
4 lawyers, I want the lawyers to approach. We're going to do
5 this at sidebar. Juror No. 151, Mr. William White.

6 (Juror enters the courtroom.)

7 (The following was held at sidebar.)

8 THE COURT: Hi, Mr. White, how are you doing this
9 morning?

10 THE JUROR: Pretty good.

11 THE COURT: Stand right here with your back facing that
12 way. Place your left hand on the Bible, raise your right
13 hand.

14 WILLIAM WHITE,
15 being first duly sworn, testified as follows:

16 THE COURT: Lawyers, you all can come up here. It's my
17 understanding -- I want you to face this way and look at me.
18 It's my understanding that somebody -- that you have conveyed
19 somebody had approached you about this case asking you to
20 vote a certain way; is that correct?

21 THE JUROR: Yes, sir.

22 THE COURT: Do you know who that individual was that
23 approached you?

24 THE JUROR: No, sir.

25 THE COURT: Was it somebody that's been a witness in the

1 trial of this case?

2 THE JUROR: No, sir. I believe it's somebody related to
3 the defendant. The discussion wasn't too long. I just told
4 them to leave from my front porch.

5 THE COURT: Excuse me, they came to your house?

6 THE JUROR: Yes.

7 THE COURT: When was this?

8 THE JUROR: This was yesterday before I went to work
9 last night. It was around maybe 4.

10 THE COURT: Did you get their name?

11 THE JUROR: No, but I know it was on behalf of the
12 defendant.

13 THE COURT: What were they driving?

14 THE JUROR: Nothing, sir, they just walked off my front
15 porch.

16 Let me ask you this: When you guys made us jurors, you
17 didn't set up blank guidelines what to do if something like
18 that happens, so I just went to work.

19 THE COURT: Say that again now.

20 THE JUROR: When you guys decided who would be jurors,
21 you didn't -- you didn't say, "Do this in case this happens,"
22 so I -- it was really no way for me to react to that.

23 THE COURT: You're okay. You did exactly what you were
24 supposed to do this morning.

25 Was it a white male, black male?

1 THE JUROR: Black male.

2 THE COURT: Approximate age?

3 THE JUROR: I want to say early 30s, about my height,
4 kind of stocky.

5 THE COURT: Do you have any questions, Mr. Sorenson?

6 MR. SORENSON: I don't believe so.

7 THE COURT: Mr. Falk?

8 MR. FALK: No.

9 THE COURT: Let me ask you this question: Do you know
10 whether or not anybody else in the jury has been approached
11 in this case?

12 THE JUROR: No, sir, but I wasn't sure if that fell
13 under your rules as don't speak about the case, but I did let
14 them know just because I'm a family man and, you know, I
15 think they would want to know to be careful, so I did let
16 them know.

17 THE COURT: Let me ask you this: If you were allowed to
18 remain on this jury, do you believe you could be fair and
19 impartial and decide the case based upon the evidence as
20 presented in this courtroom?

21 THE JUROR: No, sir, with my military background, I feel
22 like if somebody is desperate enough to approach me on behalf
23 of the defendant, then I believe they are guilty.

24 THE COURT: And you do not believe you can be fair and
25 impartial?

1 THE JUROR: To be honest with you, based on the evidence
2 that was presented to me and him approaching me, no, I've
3 already decided, Your Honor.

4 THE COURT: Mr. Sorenson?

5 MR. SORENSON: I don't have anything.

6 THE COURT: Excuse him.

7 MR. FALK: I would excuse him, but I have another
8 concern now.

9 THE COURT: And you haven't discussed it with the rest
10 of the jury?

11 THE JUROR: I just let them know that I was approached
12 and for them to be careful, you know.

13 THE COURT: Okay. I'm going to excuse you. I want
14 whoever you all need to get up here to investigate this
15 matter to talk to him, because that is a serious crime,
16 approaching a jury -- juror.

17 MR. SORENSON: Can I ask him one question?

18 THE COURT: Yes.

19 MR. SORENSON: I don't have the stuff in front of me.

20 Do you live in the town limits or in the county? I
21 mean, obviously you live in Dorchester County, but is it in
22 the town limits of Summerville or --

23 THE JUROR: I live right on Ladson Road, and that's
24 like, I want to say, ten minutes from Wescott.

25 THE COURT: Is that Dorchester County?

1, MR. SORENSON: It's Dorchester County. Do you know, are
2 you within the town limits of Summerville?

3 THE JUROR: Yes.

4 MR. SORENSON: You're within the town limits? I just
5 need to figure out what agency I need to contact.

6 THE COURT: Anything, Mr. Falk?

7 MR. FALK: Regarding this witness? No, Your Honor.

8 THE COURT: Regarding this juror. Have you got anything
9 else?

10 MR. SORENSON: I don't think so. I've got a pretty good
11 idea who it is, so it's just a matter of getting ahold of law
12 enforcement and having them put the person in a lineup to
13 come show him, most likely. I'm 95 percent sure who it is
14 based on some talking to my investigator from conversations
15 that they overheard at the jail yesterday.

16 THE COURT: Mr. White, I apologize this happened to you.
17 This is not something that should happen and not something
18 that ordinarily happens, but you did the absolute right thing
19 in letting the Court know what went on and what has happened,
20 and I hope that you will continue to cooperate in this
21 investigation, because this is something that cannot be
22 taking place in our society, in our judicial system.

23 So all right. I'm going to let you go. You're free to
24 go. You're done for the week. If anybody, if anybody else
25 tries to get in touch with you about this case, you contact

1 the solicitor's office or the sheriff's department
2 immediately.

3 MR. SORENSON: Contact law enforcement initially.

4 THE COURT: Immediately, okay?

5 Mr. Falk?

6 MR. FALK: Should we ask who was in the jury room when
7 he said this?

8 THE COURT: Was it said to all the jurors?

9 THE JUROR: Yes.

10 THE COURT: Now, what I'm going to do is I'm going to
11 pull the entire panel out and just ask them whether or not
12 they can be fair and impartial based upon what Mr. White has
13 conveyed to them, okay?

14 Thank you, Mr. White. Have a good weekend. All right.

15 Mr. Sorenson, can you come here a minute?

16 Mr. Falk, do you want him to remain here for the
17 investigator to get here?

18 Are you Dorchester County?

19 MR. SORENSON: He's North Charleston. If he can hang
20 out, that would be great, if you're off anyway, because that
21 may solve -- it's just going to take -- it's going to take me
22 a few minutes to obviously figure out what we're doing
23 next before I can get free to get ahold of somebody. I'll be
24 able to get an answer pretty quick.

25 THE COURT: They're going to take you to a jury room

1 back there. Thank you, Mr. White.

2 (Juror exits the courtroom.)

3 THE COURT: I'm going to bring the jury out here. I
4 don't mind if the people come back in here now. I just
5 didn't want him looking at them, that's why I had him turn
6 his back to the defendant for purposes of this discussion.

7 You can let whoever back in now.

8 (The following was held in open court.)

9 THE COURT: Anything, Mr. Sorenson, before I bring the
10 jury out?

11 MR. SORENSON: I don't believe so, Your Honor.

12 THE COURT: Mr. Falk?

13 MR. FALK: Not at this time, Your Honor.

14 THE COURT: Bring me the jury, please.

15 Can the lawyers approach while the jury's coming in the
16 courtroom?

17 (Judge and attorneys confer.)

18 THE COURT: Mr. Moultrie, clear the courtroom.

19 (Jury enters the courtroom at 9:52 a.m.)

20 THE COURT: Good morning, ladies and gentlemen.

21 Ma'am, if you'll slide over to this chair right here
22 (indicating).

23 I brought you out this morning because it was brought to
24 my attention by Mr. White, one of your fellow jurors, Juror
25 No. 151, that someone approached him yesterday about this

1 case. It's my understanding he conveyed that to you all; is
2 that correct?

3 THE JURY: (Indicating affirmatively.)

4 THE COURT: Now, I have excused Mr. White from
5 continuing to serve on this jury. He did -- and I say that
6 to say, he didn't do anything wrong, okay? He did absolutely
7 nothing wrong. In fact, he did exactly what he was supposed
8 to do, and that was to convey to someone up here about the
9 issue of someone approaching him.

10 Now, I brought you all out here to ask you this
11 question: Based upon your knowledge that someone approached
12 Mr. White about this case, asking him to vote in a certain
13 way, do you as jurors -- is there anybody on this jury panel
14 that does not believe that they can be -- continue to be fair
15 and impartial in this case and decide this case based solely
16 upon the evidence and the testimony that's been presented in
17 this courtroom?

18 Is there anybody on this jury panel that does not
19 believe that they can be fair and impartial to both the State
20 and the defendant and decide this case based solely upon the
21 evidence? If you do not believe you can be fair and
22 impartial, please raise your right hand.

23 (None raised.)

24 THE COURT: All right. Let me ask you this question:
25 Has anybody else on this jury been approached by anyone,

1 anyone in any way, shape or form, whether it was eye to eye,
2 person to person, social media or anything? If anybody on
3 this jury panel has been approached in any way, shape or form
4 and asked to vote a certain way concerning this particular
5 case, if so please raise your right hand.

6 (None raised.)

7 THE COURT: Let the record reflect that no one has
8 raised their hand.

9 And I'm going to ask this question again: Do you still
10 believe that you can decide this case based solely upon the
11 evidence and testimony that's presented in this courtroom and
12 nowhere else, being fair and impartial to both the State and
13 the defendant? Anybody do not believe they can be fair and
14 impartial?

15 (None respond.)

16 THE COURT: I'm going to ask you to step to the jury
17 room for just a minute while I consult with the attorneys.
18 Please step back to the jury room.

19 (The jury retires to the jury room at 9:54 a.m.)

20 THE COURT: All right. Anything from the State,
21 Mr. Sorenson?

22 MR. SORENSON: Nothing from the State, no, sir. I think
23 they answered your question appropriately that they can still
24 be fair and impartial, and we're prepared to go forward.

25 THE COURT: Mr. Falk?

1 MR. FALK: Your Honor, at this time we would move for a
2 mistrial.

3 THE COURT: On the basis of what?

4 MR. FALK: Well, the first juror said and when he was --
5 had an opportunity to talk with you on a one-on-one and he
6 said that the first -- what came to his mind is that only --
7 that's something only a guilty man would do, and he said
8 based on his military background, but I certainly believe
9 that it's not military background, that would be a common
10 notion that anybody would have that somebody so desperate to
11 make that type of plea is sort of grasping at straws.

12 And although I appreciate the fact that Your Honor asked
13 each -- asked the jurors collectively in panel that question
14 twice, I'm still concerned about whether or not that thought
15 isn't still in the back of their mind somewhere and that they
16 have all -- they can't help but already believe that my
17 client is guilty of the crimes that he's charged because of
18 this act was done by somebody, apparently one of his agents.

19 THE COURT: Anything in response, Mr. Sorenson?

20 MR. SORENSON: Just it would be our position, Your
21 Honor, this basically would be rewarding him for -- I submit
22 to you -- what I believe is going to ultimately show to be
23 his complicit behavior in this.

24 THE COURT: Sir, I'm sorry.

25 MR. SORENSON: I think ultimately we're going to be able

1 to show that he was involved in this, just from what I'm --
2 little preliminary investigation that we've gathered, there
3 is -- there is a phone call yesterday afternoon between him
4 and another individual where they talk about and they
5 reference Margaret, which is the street that that juror lived
6 on is Margaret Street, and taking care of something on
7 Margaret, so I think --

8 THE COURT: I'm going to step off right now. I'm going
9 to look at a little bit of law on something. In the years
10 I've practiced law and the years that I have been on the
11 bench, hadn't had this happen before, but I am -- without
12 seeing some law at this point, I am not inclined to grant a
13 mistrial, because there is absolutely nothing that could
14 prohibit it from going on again and again and again and again
15 unless the entire jury panel, every time this young man's
16 tried, is sequestered and put up in a hotel room, and that's
17 not the way our system works. It's not supposed to work that
18 way on every occasion, only situations I've seen that take
19 place are in death penalty cases.

20 And it would -- I tend to agree with Mr. Sorenson. It
21 would be, in some sense, rewarding the defense for something
22 that you, Mr. Falk, certainly absolutely had no control over.

23 So I'm going to step down for just a minute. I'm going
24 to look at a couple things.

25 MR. FALK: Could I just respond to Mr. Sorenson's

1 comment on the record?

2 THE COURT: Yes, sir, you may.

3 MR. FALK: I would just like to say that if a mistrial
4 was granted, I don't think my client certainly had the
5 wherewithal to know that if this was found out, even if he
6 was part of it, that this would be the consequence that he
7 would have.

8 And I'm not sure that he's going to reap a benefit,
9 because I am sure that he's going to be reindicted, so I
10 don't think that this certainly could have been a calculated
11 move on his part to try and get a mistrial in this case.

12 MR. SORENSON: I think it's a calculated --

13 THE COURT: I'm going to stand down for just a minute.

14 MR. SORENSON: Wouldn't be a calculated move to get a
15 mistrial; it would be a calculated move to get a hung jury.

16 (Recess held.)

17 THE COURT: All right. After stepping off the bench and
18 going and looking at some law, and after Mr. Falk has made a
19 motion for a mistrial, the Court's position remains the same,
20 and that is the Court is denying the defendant's motion for a
21 mistrial under *State v. McDaniel*, 275 S.C. 222. Whether a
22 mistrial should be declared where there has been
23 communication between jurors and outsiders is a matter
24 resting within the sole or sound discretion of the trial
25 court.

1 Under *State v. Carrigan*, 284 S.C. 610, a defendant must
2 show prejudice resulting from the outside influence on the
3 jury in order to obtain a mistrial.

4 Under *State v. Kelly*, 331 S.C. 132, in a criminal
5 prosecution, the conduct of the juror should be free from all
6 extraneous or improper influences. Misconduct that does not
7 affect the jury's impartiality will not undermine the
8 verdict.

9 Relevant factors to be considered pursuant to *State v.*
10 *Kelly*, the number of jurors exposed. In this case, one juror
11 was approached. One juror was approached, according to the
12 juror that I brought in here, and I've already indicated on
13 the record who that juror was. I think it was Juror 151,
14 Mr. White. One juror was approached about voting in a
15 particular manner.

16 Having said that, it's abundantly clear that he conveyed
17 that issue or that fact to the remainder of the jury panel,
18 the fact that he was approached about voting a certain way,
19 so all of the jurors, in some sense, were exposed to it but
20 were not approached about voting a certain way.

21 Furthermore, the weight of the -- the additional -- an
22 additional factor the Court is to take into consideration is
23 the weight of the evidence properly before the jury. In this
24 particular case, in the Court's view, based upon what's been
25 presented in here, there is substantial evidence of his guilt

1 here. There is substantial evidence of his guilt here, from
2 the photographs of the bank robber to the wig to the hat to
3 the visor -- all of which include his -- to the glove, all of
4 which included his DNA.

5 Furthermore, the evidence tying him to the automobile
6 that was seen by him getting into the green Honda, numerous
7 factors adding up that I believe weigh in favor of the State
8 here.

9 And finally, the likelihood of the curative measures
10 were effective in reducing the prejudice. I have brought the
11 entire remainder of the jury panel, which we're down to 12
12 now. We're down to 12. Brought the entire panel out here,
13 asked them whether or not any of them individually have been
14 approached by any outside party concerning this case.

15 None of which indicated they had been. Further inquired
16 as to whether or not, on more than one occasion I asked the
17 question to them, giving them ample opportunity to respond to
18 me as to whether or not what had happened affected their
19 ability in any way, in any way to be fair and impartial to
20 both the State and the defendant and decide this case based
21 solely, based solely upon the evidence and testimony that's
22 been presented in this courtroom.

23 Not one juror, not one juror gave any indication in any
24 way, shape or form, that their ability to be fair and
25 impartial has been impaired.

1 Therefore, taking those factors into consideration, but
2 so noting Mr. Falk's motion for a mistrial for appellate
3 purposes -- if he's convicted, it will be there -- I am
4 respectfully denying your motion for a mistrial.

5 All right. Anything further from the State?

6 MR. SORENSON: No, sir.

7 THE COURT: Defense counsel?

8 MR. FALK: No, sir.

9 THE COURT: All right.

10 MR. FALK: And we're going to do the charges next?

11 THE COURT: Yes. We're fixing to bring them out and
12 finish this case, yes, sir.

13 MR. FALK: But the objections to the chart that's in
14 front -- I'm confused.

15 THE COURT: What I wanted to do, Mr. Falk, was wrap up
16 the issue pertaining to your motion for mistrial.

17 MR. FALK: Okay. All right.

18 THE COURT: That's what I was asking you about on that.

19 MR. FALK: All right. Thank you.

20 THE COURT: Now, it's my understanding there's nothing
21 further from the State or defense counsel concerning the
22 mistrial issue; is that right, Mr. Sorenson?

23 MR. SORENSON: That would be correct, Your Honor.

24 MR. FALK: That's correct, Your Honor.

25 THE COURT: Having said all that, prior to us having to

1 address this issue, there was a charging conference in my
2 chambers. Mr. Sorenson, Mr. Giese and Mr. Falk were in my
3 chambers and we went through the charge in its entirety.

4 Mr. Falk had requested a spoliation charge, which I can
5 only assume, and please correct me if I'm incorrect, a
6 spoliation charge related to the testing and the destruction,
7 so to speak, of items of evidence that were tested by the
8 State; is that right, Mr. Falk?

9 MR. FALK: That is correct, Your Honor.

10 THE COURT: Being the wig and the visor.

11 MR. FALK: That's correct, Your Honor.

12 THE COURT: Okay. I have respectfully, and I told
13 Mr. Falk back in chambers that I was not going to charge any
14 kind of spoliation. And I have -- I'm denying that request,
15 but his objection at this time is so noted for the record.

16 Furthermore, there was an issue that was brought up back
17 in chambers concerning fees pertaining to defense counsel's
18 expert. There was no -- and I told the lawyers back in
19 chambers there was no testimony whatsoever about his --
20 Dr. Bennett's fees.

21 And I was not charging anything pertaining to fees, that
22 I was going to give the standard charge as it relates to
23 expert testimony and for the jury to use such testimony as
24 they deem appropriate or they deem fit. But again, Mr.
25 Falk's objection to that is so noted for the record as well.

1 It's my understanding also, furthermore, that the
2 lawyers reviewed the verdict form. Are there any further
3 objections or anything that I have failed to put on the
4 record from the State?

5 MR. SORENSON: No, Your Honor.

6 THE COURT: Mr. Falk?

7 MR. FALK: No, Your Honor.

8 THE COURT: All right. The order of closing arguments.
9 Is the State going to open on the law?

10 MR. SORENSON: Yes, sir.

11 THE COURT: All right. State will open on the law,
12 followed by Mr. Falk's closing arguments, concluded by the
13 State. That's the order of arguments pursuant to defense
14 counsel or defendant putting up evidence in this case, all
15 right?

16 How long do you all expect on closing arguments,
17 Mr. Sorenson? I want your time estimation as it relates to
18 together of the law and closing.

19 MR. SORENSON: Together, together probably 45 minutes.

20 THE COURT: This case took two days to try. I mean,
21 let's try to narrow it a little bit more than 45 minutes.

22 All right. How about you, Mr. Falk?

23 MR. FALK: I think I'm probably closer to 25 minutes to
24 30.

25 THE COURT: Okay. I mean, I'm not going to sit here and

1 say, Mr. Sorenson, when it strikes such and such, you've got
2 to sit down, but I just don't want -- don't start repeating.

3 MR. SORENSON: Yes, sir.

4 THE COURT: You've done this plenty of times, I know.

5 MR. SORENSON: Yes, sir.

6 THE COURT: And Mr. Falk as well, but just kind of --

7 MR. SORENSON: Yes, sir.

8 THE COURT: I don't want to hear, and I doubt the jury
9 wants to hear everything that every witness said on that
10 witness stand. But anyway, if you start repeating yourself,
11 I may clear my throat a couple times, which means you need to
12 start wrapping it up, okay?

13 MR. SORENSON: Yes, sir.

14 THE COURT: Anything else before I bring the jury out
15 from the State?

16 MR. SORENSON: If we can just have a second, I guess, to
17 get everybody back in the courtroom.

18 THE COURT: Yes, you can bring everybody back in the
19 courtroom now.

20 And before they -- Mr. Giese, hold on just a second. I
21 want to put this on the record, that in handling all these
22 issues pertaining to concerns about outside influence on the
23 jury, I had everybody that was seated in the audience exit
24 the courtroom. Defendant has been in here with his lawyer
25 the entire time. I want that on the record.

1 But the purpose in me clearing the courtroom is, one,
2 not knowing exactly who may have approached Mr. White. The
3 defendant's family was in here, and I didn't want anybody
4 seated out in that audience that may have been involved in
5 some contact or possible contact with this jury, for anybody
6 on the jury to in any way feel that they were being
7 intimidated, so to speak, by anybody sitting in this
8 courtroom, and that was why I had everybody exit the
9 courtroom, okay?

10 MR. SORENSON: Yes, sir.

11 THE COURT: All right. You can let them in now.

12 All right. If you'll bring me in the jury, please.

13 (The jury enters the courtroom at 10:20 a.m.)

14 THE COURT: All right. Mr. Foreman, ladies and
15 gentlemen of the jury, as I told you when we left here
16 Wednesday afternoon, the only thing that remained was closing
17 arguments and my charge on the law to you. At this time the
18 order in which this will take place is I will recognize the
19 State, the State will open on the law, but ultimately I'm the
20 instruction of the law, okay? What I tell you the law is,
21 that's what the law is.

22 The State will open on it, followed by defense counsel,
23 closing argument, and then the State will conclude with
24 closing arguments, okay?

25 So at this time, Mr. Sorenson, you're recognized, sir, .

1 on behalf of the State.

2 MR. SORENSON: Thank you. May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 MR. SORENSON: Mr. Falk.

6 Mr. Foreman, ladies and gentlemen of the jury, I want to
7 start off by thanking you, thanking you for the attention
8 that you've given to us the last couple days. As His Honor
9 told you, we've reached that part of the trial now where
10 we're getting ready to do closing arguments.

11 And as he told you, what I'm going to do is just take a
12 few minutes of your time and just kind of talk to you just
13 real briefly about some of the legal -- the legal matters
14 involved in the case, what Mr. Ellison's charged with, things
15 of that nature. It shouldn't be more than five to seven
16 minutes.

17 Then when I sit down, Mr. Falk will have an opportunity
18 to come before you. And then after he is done, I'm going to
19 have an opportunity to come once again before you and talk to
20 you about the facts in this case.

21 Now, as you've heard on multiple occasions, Mr. Ellison
22 is charged with two separate indictments, one charging him
23 with armed robbery and one charging him with entering a bank
24 with intent to steal, stemming out of the same incident from
25 the morning of April 1st, 2013.

1 And very simply, as you were told by Mr. Giese back
2 on -- back Tuesday morning, armed robbery is essentially the
3 taking of property or goods from another person or their
4 presence with the intent to permanently deprive them of those
5 goods or, in this case money, while armed with a deadly
6 weapon or the representation of a deadly weapon, in this case
7 a handgun.

8 You're going to hear from His Honor that the handgun in
9 the case does not even have to be operable. In this case it
10 may or may not have been loaded. When it was found in the
11 woods shortly afterward, it was unloaded. But the mere fact
12 that he presented a handgun that obviously Ms. Rustin and
13 Ms. Bass did not know whether it was loaded or not, that
14 would be armed robbery.

15 Entering a bank with intent to steal is exactly what it
16 sounds like. If you enter a bank or a financial institution
17 with the intent to steal money from that bank, through either
18 force, threats or intimidation, you're guilty of that charge.
19 You don't even actually have to get the money, just the mere
20 fact of going into a bank with intent to steal, in this case
21 armed with a deadly weapon, would make you guilty of entering
22 a bank with intent to steal.

23 As Mr. Giese told you, in this case, just like every
24 other case throughout our country, the burden of proof in
25 every criminal case is on the State. We have to prove the

1 defendant guilty beyond a reasonable doubt. Notice I didn't
2 say "beyond any doubt," "beyond a shadow of a doubt." Beyond
3 a reasonable doubt.

4 And very simply what that means, ladies and gentlemen,
5 is after you've considered all the testimony, all the
6 physical evidence that's been brought before you, after
7 you've considered all of that, if you're firmly convinced in
8 the defendant's guilt, then under the oath that you took
9 Tuesday morning, you must find Tyrone Ellison guilty of armed
10 robbery and entering a bank with intent to steal.

11 The flip side of that, if there's a real possibility in
12 your mind that he's not guilty, then under that same oath,
13 you must find him not guilty. You must find him not guilty.

14 If you noticed, when I said after considering all the
15 witnesses and all the evidence, because just like I told you,
16 just like you're going to hear from His Honor, the defense
17 has no burden in this case. You're going to hear that you
18 can't -- the fact that the defendant did not testify is not
19 something that can come into your deliberations at all. He
20 has that absolute right.

21 They don't have to ask questions. Mr. Falk didn't have
22 to ask a single question of a single witness in this
23 courtroom. They don't have to call witnesses to the witness
24 stand. They don't have to put evidence in. Could have done
25 none of that and the burden is still on us to prove to you on

1 April 1st of 2013, beyond a reasonable doubt, his guilt.

2 I submit to you, ladies and gentlemen, once they start
3 doing that, once they start calling witnesses to that witness
4 stand, they're subject to the same scrutiny as any other
5 witness that's called before you.

6 So you and you alone, ladies and gentlemen, ultimately,
7 as Judge Brown has told you, he's the judge of the law. He
8 determines what the law is in the case, and you're bound
9 under your oath to follow that, whether you agree with it,
10 disagree with it.

11 Just like he's the judge of the law, the 12 of you, when
12 you get back in that jury room, are the judges of the facts.
13 You and you alone can tell us, ultimately, through your
14 verdict, what happened on the morning of April 1st, 2013, and
15 the way you do that is by judging the credibility or, in
16 other words, the believability of the witnesses that have
17 testified before you, the credibility of the evidence that's
18 been presented here in court. And that's not only of the
19 State's witnesses but of the defense's witnesses also.

20 And you may ask yourself, "Well, how are we prepared to
21 do that job?" Well, obviously when you showed up here Monday
22 afternoon, the 12 of you, I imagine most of you were probably
23 kind of hoping you'd be back in your own lives right now and
24 not sitting here on a Friday morning listening to me.

25 At the same time, I submit to you the 12 of you have

1 been preparing for this, whether you know it or not, every
2 day of your lives. You judge the credibility and the
3 believability of people that you deal with all the time,
4 whether it's your spouses, your significant others, your
5 children, coworkers, family and friends. Every day you have
6 to do that.

7 What are some of the factors that go into determining
8 that credibility of a person when they're telling you
9 something? What is their demeanor? Are they hesitant? Are
10 they forthright about their -- are they wavering when they
11 tell you something? Are they evasive in their answers? Do
12 they have some bias or prejudice, some stake in the outcome
13 in what happens in court this week?

14 What they told you, is it corroborated by other
15 witnesses and by other evidence, or does other evidence
16 contradict what they told you? What was their opportunity to
17 observe what they came in and testified to you about?

18 Lastly you can consider, you've heard from several
19 witnesses that had a prior criminal history, and you get to
20 consider that also in determining their credibility.

21 At the end of the day, ladies and gentlemen, this whole
22 process is basically like putting together a jigsaw puzzle.
23 The witnesses that you've heard are pieces of that puzzle.
24 The evidence that's been presented are pieces of that puzzle.
25 And all I ask you, ladies and gentlemen, is to just please

1 keep an open mind when Mr. Falk comes up before you and give
2 me an opportunity when he's done to come back before you and
3 show you how the pieces of this puzzle fit together.

4 So I submit to you I've proved Tyrone Ellison is guilty
5 beyond a reasonable doubt. I submit to you in this case the
6 evidence proves him guilty beyond any doubt that he went into
7 that SunTrust Bank on the morning of April 1st of 2013, armed
8 with a handgun, and robbed those two young ladies of over
9 \$6,000. Thank you.

10 THE COURT: Mr. Falk.

11 MR. FALK: May it please the Court.

12 THE COURT: Yes, sir.

13 MR. FALK: Solicitors.

14 Good morning. There's no question that a crime was
15 committed at the SunTrust Bank on that morning on April 1st.
16 You saw the video. You saw the suspect walk in. You saw the
17 suspect walk out.

18 There's equally no question that no one, none of the
19 employees of the bank that day were able to identify my
20 client as being that suspect. You didn't hear from
21 Bonnie Weeks, you didn't hear from Roberta Bass, you didn't
22 hear from Quinn Rustin that they were able to identify my
23 client.

24 The only real witness, the only real eye witness in this
25 case was David Lewis. You'll recall he was the man who

1 followed the suspect out of the bank. He first followed him
2 out on foot and then he got to some point when he decided to
3 come back and get his car.

4 He said he saw the man coming out of the woods, and the
5 man he saw coming out of the woods was not wearing a wig, was
6 not wearing a visor, didn't have a handgun, and he got into a
7 green Honda. I think it's at this time that Mr. Lewis went
8 back and got his truck and started in pursuit after the green
9 Honda.

10 I think the only description Mr. Lewis was able to give
11 of the man who came out of the woods was he was an
12 African-American man, maybe about the same size as the
13 defendant. He really couldn't give any more description of
14 him. He probably gave a better description of the driver of
15 the green Honda.

16 But he did notice one thing about the green Honda, which
17 sort of struck me. He said that the car didn't fit that
18 neighborhood. He didn't think that sort of an older car with
19 two African-Americans in it was -- fit that neighborhood at
20 Wescott Plantation.

21 And there's also one other thing that he noticed or
22 maybe he didn't notice. He said that the person who came out
23 of the woods was not wearing a coat, was not wearing a
24 hoodie. Now, everybody who -- and you saw the -- you'll have
25 a chance, I'm sure, to see the video again. The person who

1 came out of the bank certainly had on a coat, certainly had
2 on a hoodie.

3 Now, you heard the testimony from the K-9 patrolman who
4 first saw the depression in the grass, and that maybe alerted
5 the dog, and then the dog went further. Maybe about 75 yards
6 later, 75 yards from this depression in the grass, they found
7 the wig. The dog alerted on the wig. The dog alerted on the
8 visor, the glove, and the dog found the gun. The dog did not
9 find the jacket, didn't find the hoodie.

10 Detective Malone testified that his men canvassed that
11 area for two hours trying to find the hoodie, trying to find
12 the jacket. They were unable to. You have to ask yourself,
13 "Where's the jacket? Where's the hoodie?" I submit to you
14 it's still possible that that was still being worn by the
15 person who was going the other way when somebody exited the
16 woods and got into the green car.

17 I think that's a big gap in this story, because the
18 thing that connects the suspect from the bank to the green
19 car is the testimony of Mr. Lewis seeing one man wearing a
20 hoodie, jacket and going into the woods and seeing another
21 man coming out of the woods.

22 Now, obviously if they found the -- if they found the
23 jacket, if they found the hoodie in the woods, I wouldn't be
24 up here talking about that, but they didn't. And certainly
25 there's no reason to think that the K-9 wouldn't have found

1 it. You certainly wouldn't think that if that was in that
2 area why police officers couldn't have found it.

3 Now, you heard some forensic evidence in this case. You
4 heard -- you heard about fingerprint evidence, but you didn't
5 hear anybody say that my client, Tyrone Ellison's
6 fingerprints were in the bank that day. Tyrone Ellison's
7 fingerprints were not found on that gun and they were not
8 found on the glove.

9 Excuse me for a minute, I'm sorry.

10 Now, I'm sure the State is going to argue that the
11 reason they didn't find any fingerprints is that the suspect
12 had a glove in his hand or had something in his hand, was in
13 between, you know, somehow blocked him from making contact
14 with any of the surfaces. And if you look at the video, it
15 probably does look like there was something in his hand.

16 And I'm sure you -- as I was saying, I'm sure you're
17 going to see this tape a couple more times. And if you look
18 at the tape, you'll also see that when the suspect was
19 leaving the bank, he dropped something when he was passing in
20 front of the tellers, and then he -- when that suspect got to
21 the front door, he dropped something maybe once or twice.
22 And actually, it looks like he kicks something.

23 I asked Detective Malone whether or not he thought that
24 the suspect had dropped the gun. He said he thought it was
25 maybe the glove that he dropped, but I submit it's probably

1 the gun, because that's the thing that's going to be kicked,
2 you know, if he tried to reach for it, and the glove isn't
3 going move like that.

4 Now, the prosecution's going to say, "Well, this is easy
5 to explain because he had the gloves and it was the gloves in
6 between. He had the gloves on there to protect his fingers
7 from touching any of the surfaces." But nobody says that he
8 was wearing the gloves. He said that the glove was some kind
9 of crunched up in his hand.

10 Now, first of all, Investigator Kubicsko testified that
11 prints could have been found from these latex gloves.
12 There's no reason why you couldn't have lifted a print from a
13 latex glove. And certainly, if the glove is between your
14 hand, and even if you had a gun in between here and you were
15 pressing down on that, that would certainly -- you would
16 expect that to leave a print, but there's no print found on
17 that glove.

18 But the -- I'm just trying to figure how this glove
19 could have completely covered his hand from touching any
20 surface, because it's not like it was on. If he was here,
21 and so this gentleman was reaching down to pick this up and
22 he's reaching down to pick something up again, but still,
23 each time he reached down to pick something up, there was
24 nothing -- he didn't -- there were no prints left. There
25 were no prints from Tyrone Ellison anywhere in the bank.

1 And you have to appreciate the fact that this whole
2 thing happens in about 73 seconds. So, I mean, it's not like
3 he was -- he could have carefully picked something up. I
4 mean, he was moving fast. You'll see the suspect was moving
5 fast, but there were still no fingerprints. There's no palm
6 prints on the glove.

7 Now, Investigator Kubicsko said that she looked on both
8 sides of this glove, but she couldn't find any fingerprints.
9 She checked one side, then didn't see any, then pulled it
10 inside out and checked the other side, and there's still no
11 fingerprints on the glove. And that's the item that's
12 supposedly between the suspect and the gun, the counter, the
13 door handles.

14 Now, there's also, you're going to hear some more about
15 DNA evidence, but there's no DNA evidence that was found on
16 the gun. And you heard testimony from Catherine Leisy that
17 even brief contact would be expected to possibly transfer
18 what they call epithelial cells, skin cells, from one area to
19 another.

20 Now, the amount of skin cells that can be transported or
21 moved back and forth is a very small amount. Catherine Leisy
22 testified that a mere micron of bodily matter is all that's
23 enough to be able to detect DNA, from just a micron. And I
24 went on Wikipedia last night to just find out how big a
25 micron is, and there's 25,000 microns in an inch, so that is

1 a very, very small piece.

2 And again, the State, I'm sure, is going to testify --
3 or the State will certainly argue that the reason why there
4 was no DNA on the gun is because of -- again, of the gloves.
5 But even a small, even the slightest contact is going to --
6 could leave epithelial levels.

7 And also, you heard from Ashley Bell that when she
8 tested the gun, when she swabbed the gun, she had a Q-tip
9 swab so it could get down into the crevices there, and she
10 still was not able to recover even a micron of Mr. Ellison's
11 DNA from the gun.

12 And again, when you're going to see that video and
13 you're going to see him leaving the front door, he's looking
14 frazzled, and to think that that person would be conscious
15 enough to, you know, make sure the glove was fully over his
16 hand when he picks -- when he tries to pick up the gun,
17 that's for you to decide.

18 Now, Catherine Leisy testified that there was more than
19 one person's DNA on the wig and on the visor, and she
20 testified that my client's was on it, but she also testified
21 that there was at least one other person's DNA on the glove,
22 on the wig and on the visor. And she certainly can't testify
23 whose DNA was on the wig or on the visor last.

24 Now, the glove was swabbed. You heard
25 Inspector Kubicsko say that she swabbed the gun -- she

1 swabbed the glove on April 3rd. And when those swabs of the
2 gloves were analyzed, no DNA was found.

3 The explanation for that was that the -- when the --
4 Investigator Kubicsko swabbed the glove, she only looked on
5 one side of it, and possibly she must have had looked on the
6 wrong side of the glove, but you heard Investigator Kubicsko
7 say that she couldn't tell which was the right side of the
8 glove and which was the wrong side of the glove.

9 And when I showed her a picture of it, you couldn't
10 tell, and when you look at the glove on the ground, you can't
11 tell. It's a latex glove, and it's not like it's a larger
12 glove with a fleece lining on the inside. There is no inside
13 or outside.

14 But why would she only look on one side? She didn't try
15 to look on both surfaces, or maybe she did try to look on
16 both surfaces, but she said that she only looked on one
17 surface of the glove. Even though she looked on both
18 surfaces to look for fingerprints, she only looked on one
19 side -- she's testified that she only looked on one surface
20 when she was looking for the DNA evidence.

21 And you also heard that on May 13th, 2014, 13 months
22 later, Catherine Leisy, the State's -- SLED's DNA expert,
23 testified that she received a message, and it said, "Try and
24 obtain the suspect's DNA from the glove and try and obtain
25 the suspect's DNA from the gun."

1 It wasn't, "Let's retest this." It was try and obtain
2 the suspect's DNA from those two items. And as directed,
3 they reported that then DNA evidence was recovered from the
4 glove.

5 Now, this case, there were two times when some of the
6 evidence, some of the physical evidence was retested. You
7 have the retesting of the glove and you have Dr. Bennett's
8 retesting of the hat and the visor.

9 Now, you heard Dr. Bennett testify that he followed the
10 same protocols that SLED followed when they tried to remove
11 to see if there were any, what they said, epithelia cells,
12 skin cells, from the sweatband on the visor and on the hat.

13 Followed the same scraping, swabbing first, I guess, and
14 then scraping, but Dr. Bennett wasn't able to find any DNA,
15 certainly couldn't find my client's DNA on the wig and the
16 visor. He could not duplicate the State's testing from those
17 two items.

18 Now, I think the State is going to argue that, Well, the
19 reason why Dr. Bennett wasn't able to find any DNA was
20 because the State and Ms. Bennett [sic], when she was
21 scraping, she did such a thorough job there that they removed
22 any possibility that there be any additional skin cells, any
23 epithelial cells, any source for DNA from those two items.

24 And so on the one -- on the hand, the explanation why
25 Dr. Bennett couldn't find any DNA on the wig and on the visor

1 was because the State was -- had such a thorough protocol,
2 such a thorough procedure for removing it that there was none
3 left, that they got every single piece.

4 Now we're going to compare that protocol, then what must
5 have been followed, we're going to believe the testimony on
6 the first -- on the first attempt to find DNA on the glove to
7 Investigator Kubicsko, who said that she just swabbed it one
8 time, didn't find anything.

9 So you have this one real thorough examination on one
10 side and then just a cursory swabbing of the glove on the
11 other side, so it's hard to reconcile those two things. You
12 have, on one hand -- on one hand SLED is really thorough and
13 they're going to get everything, and on the one hand, "Well,
14 we're only going to maybe test half the item."

15 You can't even reconcile Investigator Kubicsko's attempt
16 to find DNA on the glove with her attempt to find
17 fingerprints on the glove. I mean, she looked on both sides
18 of the glove for fingerprints but only one side of the glove
19 for DNA.

20 Again, we weren't able to find any DNA on the visor and
21 on the wig. And also, Dr. Bennett testified that he went a
22 little step further, because he -- you heard him testify that
23 on something like a visor, something that's worn frequently,
24 you could expect to find a person's DNA so into that area,
25 sort of impregnated deep into there, so maybe just a scraping

1 of the outside surface, there would still be DNA that was
2 sort of, as I said, impregnated down into that surface.

3 And so he took a cutting from that, and he analyzed the
4 cutting, so he was looking at the entire -- on the section
5 that he cut, he was looking at the entire sweatband to see if
6 anything could have had dug into there. And he was unable to
7 find Tyrone Ellison's DNA after that second testing.

8 Again, so if this visor was worn by somebody on more
9 than one occasion, you would expect for there to be DNA into
10 the sweatband. There wasn't any. We couldn't find any.
11 SLED didn't look for any. SLED says they found my client's
12 DNA on the sweatband, found somebody else's DNA on the
13 sweatband.

14 Again, let's compare Investigator Kubicsko to Ms.
15 Butler, who said that when she swabbed -- look at the
16 thoroughness on there. She said that she swabbed down into
17 the crevices on this to look for DNA, but again, I just -- I
18 don't know the explanation why when they first looked at the
19 gloves, there was DNA on it, and when it came back a second
20 time, they found DNA on it.

21 The State was certainly trying to maximize their efforts
22 to recover anything from this sweatband of the wig and on the
23 visor. And really, their efforts were intent to maximize it
24 so that they couldn't repeat that and nobody else could look.

25 So, I mean, their efforts -- what they're saying is

1 their thoroughness in trying to extract the DNA from the
2 visor was really designed so that you couldn't really come
3 back and test it again. So we really had no opportunity. If
4 Tyrone Ellison's DNA was on the visor, we had no opportunity
5 to retest those results, because there was nothing left for
6 us to test.

7 And my client's story, my client has an alibi. Now, I'm
8 sure it would be great if he had an ironclad alibi, but he
9 got picked up three months later, but he remembered that on
10 April 1st, my client was working at the Burger King on
11 April 1st, 2013. It was a Monday. It was the first of the
12 month, and that's the day the trucks come in.

13 You heard Ms. Green testify, who is the manager of that
14 Burger King, that my client is the one that they looked to to
15 unload the trucks. The truck got unloaded that day. Now,
16 she wasn't there that day, but she knows that my client was
17 the guy who unloaded the trucks. The truck was unloaded that
18 day.

19 We also know from Ms. Candida. She testified that she
20 was with my client that day. That's April. Why does she
21 remember it was that day that the truck was there? Because
22 she remembers it was April Fool's Day. It was April 1st.
23 That's how she remembers that she was with my client at the
24 Burger King that day, that morning.

25 Now, you heard Ms. Green testify that there were times

1 that the employees wound up having to work at the Burger King
2 and they weren't on the books. You heard her testify about
3 getting too many hours, going over 40 hours.

4 Maybe some of you all have had that experience of
5 working someplace either, where your employer was trying to
6 keep you on a part-time rate or the -- or for whatever
7 reason, you weren't able to get any overtime, but still work
8 needed to be done, and some employees went in and did the
9 work even if they weren't going to get fully compensated for
10 it that day.

11 Now, the State, they called Sam Powers from the
12 corporate office of the company that owns that Burger King
13 franchise. I think they brought him in today to try and tell
14 you that they weren't on the books that day, that they
15 weren't working that day. I just don't believe that.
16 Regardless, Mr. Powers was the one to come in and testify
17 about -- to that matter.

18 You have the Burger King. You have the store. You have
19 the store level. That's where Ms. Green works. Then you
20 have this company that owns these Burger Kings and manages
21 them, but you also know that Mr. Powers testified that
22 somebody else is the one that keeps track of all the data
23 when the employees are working those days.

24 He talked about they -- they take care of that
25 information and they tell it to the corporate entity whether