

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

John C. Hayes, III, Circuit Court Judge

DAVID STEVENSON BOYD, II,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002560

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JANUARY 9-13, 2012.....	1
APPLICATION FOR POST-CONVICTION RELIEF FILED OCTOBER 30, 2014	1027
RETURN DATED MARCH 30, 2015	1033
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DECEMBER 5, 2016	1038
ORDER OF DISMISSAL FILED DECEMBER 21, 2016.....	1088
INDICTMENTS	1099

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	Case No(s) : 2009GS2302385,
State of South Carolina,	)	2009GS2302386,
Plaintiff,	)	2009GS2302388,
	)	2009GS2302389
-VS-	)	TRANSCRIPT OF RECORD
David Stephenson Boyd, II	)	
Defendant.	)	

January 09-13, 2012
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

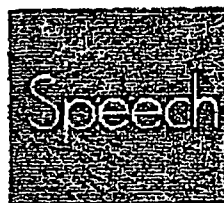
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Volume 1 of 3

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I N D E X

January 9, 2012

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Motions	18			
Jury Qualification	33			
Jury Selection	48			
Batson Motion	57			
Remarks by the Court	65			
Opening Statement				
by Mr. Fretwell	76			
by Mr. Johnson	84			
STATE WITNESSES:				
Adrian Correa				
by Mr. Fretwell	88			
by Mr. Johnson		105		
by Mr. Fretwell			107	
Rene Beauford				
by Mr. Fretwell	108			
Audrey Samec				
by Mr. Fretwell	112			
by Mr. Johnson		115		
David Lee Dill				
by Mr. Fretwell	120			
by Mr. Johnson		144		
by Mr. Fretwell			150	

I N D E X

January 9, 2012 (con't)

DIRECT CROSS REDIRECT RECROSS

STATE WITNESSES (con't):

Sean Rafferty

by Mr. Fretwell	153		
by Mr. Johnson		163	
by Mr. Fretwell			166
by Mr. Johnson			167

January 10, 2012

DIRECT CROSS REDIRECT RECROSS

STATE WITNESSES (con't):

Ramon Rivera

by Mr. Fretwell	169		
by Mr. Johnson		238	
by Mr. Fretwell			251
By Mr. Johnson			254

Doug Wannemacher

by Mr. Fretwell	258		
by Mr. Johnson		307	
by Mr. Fretwell			317
by Mr. Johnson			319

I N D E X

January 10, 2012 (con't)

DIRECT CROSS REDIRECT RECROSS

STATE WITNESSES (con't):

Tim Fuller

by Mr. Fretwell 320

by Mr. Johnson . 347

by Mr. Fretwell 351

Al Cannon

by Mr. Fretwell 353

by Mr. Johnson 361

by Mr. Fretwell 366

by Mr. Johnson 368

by Mr. Fretwell 369

Chris Cooper

by Mr. Fretwell 371

by Mr. Johnson 393

Sean Muserallo

by Mr. Fretwell 408

by Mr. Johnson 416

Mike Fortner

by Mr. Fretwell 418

by Mr. Johnson 428

by Mr. Fretwell 436

I N D E X

January 11, 2012

DIRECT CROSS REDIRECT RECROSS

STATE WITNESSES (con't):

David Weiner

by Mr. Fretwell	442		
by Mr. Johnson		476	
by Mr. Fretwell			498
by Mr. Johnson			503

Bobby Duncan

by Mr. Fretwell	505		
by Mr. Johnson		512	
by Mr. Fretwell			518
by Mr. Johnson			519

Deanna Heger

by Mr. Fretwell	521		
by Mr. Johnson		530	
by Mr. Fretwell			534

Doug Smith

by Mr. Fretwell	535		
by Mr. Johnson		550	
by Mr. Fretwell			553

I N D E X

January 11, 2012 (con't)

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
STATE WITNESSES (con't):				
Iona Ooten				
by Mr. Fretwell	556			
by Mr. Johnson		562		
by Mr. Fretwell				563
Dar Shaw				
by Mr. Fretwell	568			
by Mr. Johnson		598		
by Mr. Fretwell				604
Jackie Kellett				
by Mr. Fretwell	616			
by Mr. Johnson		632		
Brian Deah				
by Mr. Fretwell	635			
Eugene Langan				
by Mr. Fretwell	644			
by Mr. Johnson		647		
John Rinkiff				
by Mr. Fretwell	650			
by Mr. Johnson		654		

I N D E X

January 11, 2012 (con't)

DIRECT CROSS REDIRECT RECROSS

STATE WITNESSES (con't):

Susan Davis

by Mr. Fretwell 665

by Mr. Johnson 668

Eric Whaley

by Mr. Fretwell 669

by Mr. Johnson 672

Laura Jones

by Mr. Fretwell 674

by Mr. Johnson 680

Kara Bennick

by Mr. Fretwell 682

by Mr. Johnson 688

Chris Miller

by Mr. Fretwell 690

by Mr. Johnson 692

by Mr. Fretwell 695

I N D E X

January 12, 2012

DIRECT CROSS REDIRECT RECROSS

STATE WITNESSES (con't):

Don Dickinson

by Mr. Fretwell	719		
by Mr. Johnson		742	
by Mr. Fretwell			747
by Mr. Johnson			749

Emily Reinhart

by Mr. Fretwell	751		

John Roberts

by Mr. Fretwell	766		
by Mr. Johnson		786	
by Mr. Fretwell			789
by Mr. Johnson			793
by Mr. Fretwell			794

Emily Reinhart

by Mr. Fretwell	796		

Ila Simmons

by Mr. Fretwell	798		
by Mr. Erwin	816		
by Mr. Fretwell			824
by Mr. Erwin			828

I N D E X

January 12, 2012 (con't)

DIRECT CROSS REDIRECT RECROSS

STATE WITNESSES (con't):

Verona Gibson

by Mr. Fretwell 832

Lilly Gallman

by Mr. Fretwell 841

by Mr. Johnson 863

State Rests

Motions 882

Remarks to Defendant 889

DEFENSE WITNESSES:

Robin Austin

by Mr. Johnson 892

by Mr. Fretwell 894

Jason Brewer

by Mr. Johnson 895

by Mr. Fretwell 911

By Mr. Johnson 928

Defense Rests

Motions 932

I N D E X

January 13, 2012

DIRECT CROSS REDIRECT RECROSS

Closing Argument

by Mr. Johnson 939

by Mr. Fretwell 962

Jury Charge 990

Jury Deliberation 1010

Verdict 1010

Sentencing of the Court 1013

Certificate of Reporter 1023

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTIONE</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS			
S-1	Photo - Bank of Travelers Rest	18	92
S-2	Photo - Bank of Travelers Rest	18	92
S-3	Photo - Bank of Travelers Rest	18	92
S-4	Photo - Bank of Travelers Rest	18	92
S-5	Photo - Bank of Travelers Rest	18	92
S-6	Photo - Bank of Travelers Rest	18	92
S-7	Photo - Dye packs	18	101
S-8	Photo - Bank of Travelers Rest	18	101
S-9	DVD - Surveillance video	18	96
S-10	DVD - 911 Recording	18	111
S-11	Photo - Bank of Travelers Rest	18	124
S-12	Photo - Bank of Travelers Rest	18	124
S-13	Photo - Bank of Travelers Rest	18	124
S-14	Photo - Bank of Travelers Rest	18	124
S-15	Map	18	127
S-16	Map	18	130
S-17	Map	18	151
S-18	Photo - White Minivan	18	135
S-19	Photo - Truck on Emile & Leone	18	135
S-20	Photo - Truck on Emile & Leone	18	135
S-21	Photo - Truck on Emile & Leone	18	135
S-22	Photo - Truck on Emile & Leone	18	135

EXHIBITS PAGE (con't)

<u>NO.</u>	<u>DESCRIPTIONE</u>	<u>ID</u>	<u>EV</u>
<u>STATE EXHIBITS (con't)</u>			
S-23	Photo - Truck on Emile & Leone	18	135
S-24	Photo - Truck on Emile & Leone	18	135
S-25	Photo - Truck on Emile & Leone	18	
S-26	Photo - Truck on Emile & Leone	18	
S-27	Photo - Truck on Emile & Leone	18	
S-28	Map	18	230
S-29	Blue & White Bandana	18	838
S-30	Map	18	345
S-31	Map	18	464
S-32	Photo - Chain-link Fence	18	470
S-33	(No exhibit offered)		
S-34	Photo - Clothes	18	511
S-35	Photo - Still shot from bank video	18	511
S-36	Photo - Still shot from bank video	18	538
S-37	Photo - Still shot from bank video	18	538
S-38	Photo - Still shot from bank video	18	538
S-39	Photo - Still shot from bank video	18	538
S-40	Photo - Still shot from bank video	18	538
S-41	Photo - Still shot from bank video	18	538
S-42	Photo - Still shot from bank video	18	538
S-43	Photo - Still shot from bank video	18	538
S-44	Photo - Still shot from bank video	18	538

EXHIBITS PAGE (con't)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS (con't)			
S-45	Photo - Still shot from bank video	18	538
S-46	Photo - Still shot from bank video	18	538
S-47	Photo - Still shot from bank video	18	538
S-48	Photo - Still shot from bank video	18	538
S-49	Photo - Still shot from bank video	18	538
S-50	Photo - Still shot from bank video	18	538
S-51	Photo - Still shot from bank video	18	538
S-52	Photo - Still shot from bank video	18	538
S-53	Photo - Boots	18	545
S-54	Photo - Jeans	18	545
S-55	Photo - Gray T-shirt	18	545
S-56	Photo - Jeans	18	545
S-57	Photo - Jeans	18	545
S-58	Photo - Jeans	18	545
S-59	Photo - Jeans	18	545
S-60	Photo - Jeans	18	545
S-61	Photo - Jeans	18	545
S-62	Photo - Jeans	18	545
S-63	Photo - Jeans	18	545
S-64	Akademiks Jeans	18	807
S-65	Uptowntees T-shirt	18	807
S-66	Photo - Still shot from bank video	18	454

EXHIBITS PAGE (con't)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
<u>STATE EXHIBITS (con't)</u>			
S-67	Photo - Still shot from bank video	18	454
S-68	Photo - David Boyd in trauma bay	18	559
S-69	Photo - David Boyd in trauma bay	18	559
S-70	Photo - David Boyd in trauma bay	18	559
S-71	Photo - David Boyd in trauma bay	18	559
S-72	Photo - David Boyd in trauma bay	18	559
S-73	Photo - David Boyd in trauma bay	18	559
S-74	Photo - White Ford van	18	572
S-75	Photo - White Ford van	18	572
S-76	Photo - White Ford van	18	572
S-77	Photo - White Ford van	18	572
S-78	Photo - White Ford van	18	572
S-79	Photo - Neck X-ray/David Dill	18	577
S-80	Photo - Neck X-ray/David Dill	18	577
S-81	Photo - White Ford van	18	
S-82	Photo - White Ford van	18	
S-83	Photo - White Ford van	18	
S-84	Photo - White Ford van	18	
S-85	Photo - White Ford van	18	
S-86	Photo - White Ford van	18	
S-87	Photo - White Ford van	18	
S-88	Photo - White Ford van	18	

EXHIBITS PAGE (con't)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS (con't)			
S-89	Photo - White Ford van	18	
S-90	Photo - White Ford van	18	
S-91	US currency	18	
S-92	Black sock hanging over gear shift	18	
S-93	Photo - Gray/Black gloves	18	587
S-94	Photo - Gray/Black gloves	18	587
S-95	Photo - Gray/Black gloves	18	587
S-96	Photo - black sock over gear shift	18	587
S-97	Photo - black sock over gear shift	18	587
S-98	Photo - Interior of van	18	587
S-99	Photo - Interior of van	18	587
S-100	Photo - Interior of van	18	587
S-101	Photo - Interior of van	18	587
S-102	Photo - Interior of van	18	587
S-103	Photo - Interior of van	18	587
S-104	Photo - Interior of van	18	587
S-105	Photo - Interior of van	18	587
S-106	Photo - Interior of van	18	587
S-107	Photo - Interior of van	18	587
S-108	Photo - Interior of van	18	587
S-109	(No exhibit offered)	18	
S-110	Medical Records - David Boyd	18	937

EXHIBITS PAGE (con't)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS (con't)			
S-111	Buccal Swab - David Boyd	18	847
S-112	(No exhibit offered)		
S-113	Swab from Bandana	18	847
S-114	Swab from Exterior of Black sock	18	847
S-115	Verified chain of custody	755	765
S-116	Verified chain of custody	755	765
S-117	Gallman Report - page 3	850	851
S-118	Gallman Report - page 4	858	858

EXHIBITS PAGE (con't)

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
DEFENSE EXHIBITS			
D-1	Letter of Attorney General		484
D-2	Photo	550	551
D-3	Photo	598	600
D-4	Photo	598	600
D-5	Photo	598	600
D-6	Photo	598	600
D-7	Photo	598	600
D-8	Photo	598	600
D-9	SLED report	786	787
D-10	SLED report	816	818
D-11	SLED report	816	818
D-12	SLED report	816	818
D-13	FBI report	907	907
D-14	FBI report	907	907
D-15	FBI report	907	907

COURT EXHIBITS

C-1	P&E sheet
C-2	P&E sheet
C-3	P&E sheet
C-4	P&E sheet
C-5	Jury Charge

P R O C E E D I N G S

(WHEREUPON, State's Exhibits 1 through 114 are premarked for identification purposes.)

(WHEREUPON, the proceedings begin on the 9th day of January, 2012 at approximately 9:30 a.m.)

THE COURT: All right. We're on the record in the case the State versus David Boyd. Well, now, we're missing Mr. Fretwell. (Pause.)

All right. We're on the record in the State versus David Boyd. My understanding, uh, -- my understanding is that there's some matters that need to be put on the record.

MR. JOHNSON: Yes, Your Honor.

THE COURT: All right. Yes, sir.

MR. FRETWELL: I believe -- the indictment is 2009-GS-23-1985, 9988 and 9989, the State of South Carolina versus David Stephenson Boyd, II. Mr. Boyd is charged with Armed Robbery, with Possession of a Weapon during the Commission of a Violent Crime, receiving or having in possession of stolen goods and Assault and Battery with Intent to Kill.

Your Honor, this is a retrial of a case that was first tried in July of this year that ended in a mistrial. As we have met in chambers, Your

1 Honor, to discuss the issues that were decided in
2 the last case, we wanted to have an opportunity to
3 put those issues on the record at this point. I
4 believe we're mostly in agreement on what those
5 issues are. I'll certainly let Mr. Johnson weigh
6 in at the appropriate time.

7 Your Honor, last time, we held a Jackson v.
8 Deno issue, uh, hearing. At which time, statements
9 made by the defendant to Officer or Investigator
10 David Weiner were determined by the Court to be
11 freely, voluntarily and intelligently made, those
12 statements include, Your Honor, "look me in the
13 eyes", "just kill me", "get this over with", and
14 requesting a soda, asking for a soda. Your Honor,
15 also, uh, there was no objection by defense last
16 time and this time on the State using a map in the
17 opening.

18 Last time, Your Honor, the State sought to
19 try, along with these charges, the charge of
20 illegal possession of a handgun by someone who
21 previously convicted of a violent crime, a crime of
22 violence. The Court decided that it should sever
23 that charge. The State takes the position that that
24 is the law of the case and would not be proceeding
25 with 2009-GS-23-1986.

1 THE COURT: All right.

2 MR. FRETWELL: Your Honor, also the defense
3 last time sought to suppress the introduction of a
4 bandana pretrial. The Court heard testimony on
5 that issue and failed to suppress or failed to
6 grant the defense motion to suppress the bandana at
7 that time. In the progress of the case last time,
8 the State had not introduced the bandana into
9 evidence so that ruling would be ultimately left to
10 this court.

11 THE COURT: All right. Uh, --

12 MR. FRETWELL: Your Honor, the only --

13 THE COURT: And I understand -- my
14 understanding from our conference with defense
15 counsel and you in chambers was that, uh, the Court
16 ruled on the sufficiency of the chain at that
17 time, --

18 MR. FRETWELL: Right.

19 THE COURT: -- but did not rule on
20 admissibility. Rather, held that in abeyance until
21 the point in trial in which the bandana was going
22 to try to be admitted. Is that correct?

23 MR. FRETWELL: That's mostly correct, Your
24 Honor. The chain, up to the point at which the
25 bandana was placed into evidence by Investigator

Motions

21

1 Weiner.

2 THE COURT: All right.

3 MR. FRETWELL: The issue of that chain, once
4 the bandana got to SLED.

5 THE COURT: All right.

6 MR. FRETWELL: Your Honor, one of the other
7 things I can think of that Mr. Johnson reminded me
8 of is that he challenged pretrial the testimony of,
9 uh, at least one of the two medical doctors who
10 were going to testify factually that they observed
11 dye on the hands of the defendant. The Court
12 failed to suppress that motion or suppress that
13 evidence pretrial. I believe mentioned something
14 along the lines of wanting to know more about it
15 and we didn't have the doctors there at that time
16 to be able to testify and for him to make that
17 decision.

18 THE COURT: All right.

19 MR. FRETWELL: The final thing I can think
20 of, Your Honor, is based upon when we left chambers
21 on Friday, Mr. Johnson provided me with information
22 that he was calling an expert in the case. I've
23 done a little bit of investigation on that expert
24 and questioned Mr. Johnson this morning about his
25 intentions with respect to the testimony of the dog

1 handlers. The State would take the position that
2 the dog -- there were four dog handlers called last
3 time in the case that testified. They were
4 qualified as experts and permitted to give expert
5 testimony.

6 THE COURT: Uh-huh.

7 MR. FRETWELL: And the State would take the
8 position that that is now res judicata.

9 THE COURT: But he's wanting to -- he's
10 wanting to call an expert in his case; is that
11 correct?

12 MR. FRETWELL: I'm not certain, Your Honor.

13 THE COURT: All right.

14 MR. FRETWELL: I asked Mr. Johnson this
15 morning if his intention was to prevent the
16 testimony of the experts ---

17 THE COURT: I see.

18 MR. FRETWELL: --- or if it was to qualify
19 his expert as an expert and have him testify.
20 Certainly couldn't do anything about his attempts
21 to have him qualified in his case.

22 THE COURT: All right. Mr. Johnson.

23 MR. JOHNSON: Thank you, Your Honor. First
24 of all, to address the K-9 experts, Your Honor, as
25 I understand it, an expert in one instance may not

1 be an expert in a further instance. I think that
2 needs to be -- they need to be requalified before
3 the Court in regards to this trial. I don't know
4 if their training has lapsed or anything of that
5 nature. I think I'm certainly entitled to voir
6 dire and whether that would be -- is going towards
7 the admissibility of their testimony or whether it
8 goes towards credibility. I think I'm certainly
9 entitled to that.

10 Now, if Your Honor would see fit, maybe it's
11 best if we do the initial voir dire outside the
12 presence of the jury when that time comes. I don't
13 think it would be entirely lengthy. I don't think
14 it would take too much time ---

15 THE COURT: All right.

16 MR. JOHNSON: --- out of the court. But I
17 would respect whichever ruling you decide, Your
18 Honor.

19 THE COURT: I think you are entitled to voir
20 dire expert witness outside the presence of the
21 jury, if that turns out to be appropriate, but
22 certainly in front of the jury as well. It's a new
23 jury. You are entitled to voir dire. All right.
24 So far as your expert that -- or perhaps you have
25 an expert that you might call in your case; is

1 that correct?

2 MR. JOHNSON: Yes, ma'am, Your Honor.

3 THE COURT: All right. But you're not
4 trying to bring that expert in here this morning to
5 get testimony to prevent these dog handlers from
6 testifying?

7 MR. JOHNSON: No, ma'am, Your Honor.

8 THE COURT: All right. Very well. We're in
9 good shape on that. All right. Any matters we
10 need to take up and put any objections on record?

11 MR. JOHNSON: Uh, things are pretty much as
12 he stated as far as how things played previously.
13 I don't know, at this time, is it appropriate to
14 reiterate our arguments with regards to those
15 objections?

16 THE COURT: I think it would be -- I think
17 if you wanted just in the interest of time. You've
18 made those arguments. Since I can not rule on them
19 again, if you made those arguments previously, then
20 if you want to just state, renew your objection and
21 very briefly state your grounds for it, I think in
22 the interest of time, that will protect the record.

23 MR. JOHNSON: Yes, ma'am, Your Honor. First
24 all, again, with regards to the bandana, I
25 reiterate my objection to that. I assume at the

Motions

25

1 appropriate time, it will be ruled. I just ask
2 that the Court be cognizant of -- it might be
3 something when we get to a certain point, again may
4 be something we want to take up outside the
5 presence of the jury.

6 With regards to the statements made by my
7 client to, uh, Detective Weiner at the time of his
8 shooting, at the time he was shot, uh, again, I
9 think that, uh, it violates his 14th Amendment
10 right to due process. I say that in the totality
11 of the circumstances, the statement must be
12 voluntary. One of the main examples given with
13 regards to that type of thing is the threat of
14 physical violence. He was shot three times. He
15 had a gun held on him. I think under the totality
16 of the circumstances, most certainly, that was an
17 involuntary statement.

18 Again, I'd like to reiterate my objection to
19 any testimony with regards to the doctors
20 testifying that they saw bank dye under the
21 defendant's fingernails. I think that that type of
22 testimony is expert testimony. And while they
23 would be experts in certain areas of medical -- as
24 being medical professionals, they would not be
25 qualified to testify as the forensic nature of bank

1 dye. That's something that, uh, we had not yet
2 litigated. But I've made the Court aware that I
3 attempted to challenge it. I think Your Honor may
4 find it wise to maybe even hear the testimony of
5 the experience and education of the forensic people
6 that I anticipate that will testify in comparison
7 to how they identify dye. I think you will find
8 that that would be expert testimony at that time.

9 THE COURT: All right. Well, your
10 objections are noted for the record. Of course,
11 Judge Welmaker's previous rulings stand. As to the
12 things he has not yet -- he did not rule upon the
13 previous trial, we'll address those as we come to
14 them.

15 MR. JOHNSON: Yes, ma'am, Your Honor.

16 MR. FRETWELL: May it please the Court, Your
17 Honor?

18 THE COURT: Yes, sir.

19 MR. FRETWELL: One final thing. If the
20 State would request that the previous record and
21 the testimony and the rulings made by Judge
22 Welmaker be made a part of this record for purposes
23 of any kind of appeal or any kind of further
24 hearing.

25 THE COURT: All right.

1 MR. JOHNSON: One last thing, Your Honor. I
2 apologize. If it may become appropriate to
3 potentially cross-examine or otherwise bring up any
4 testimony at the prior trial, I would ask for maybe
5 a potential instruction as to how to refer to it.
6 Maybe we can refer to it as a prior hearing.

7 THE COURT: I think a prior hearing would be
8 appropriate if there becomes a need, but let's be
9 real careful. If there becomes a need to bring up
10 a prior trial, let's take a break and, at a
11 minimum, let's approach and talk about it.

12 MR. JOHNSON: Yes, ma'am. Understood.

13 THE COURT: Okay. All right. And, uh, just
14 as some background here or, I guess, some laying of
15 groundwork. When you all approach, unless somebody
16 specifically ask that we go off the record, our
17 record would still be running even if we have a
18 private conversation here. So far as approaching
19 the witness, uh, you have blanket permission to
20 approach the witness and do not need to ask to do
21 that.

22 Uh, and so far as when we come back, uh, I've
23 got your proposed voir dire. I've got your
24 objections to the proposed voir dire. I've
25 reviewed both of them. I'm going to ask 1 and 4,

1 some variation of 1 and 4. Anything from the State
2 with regards to proposed voir dire?

3 MR. FRETWELL: No, ma'am.

4 THE COURT: Okay. We're in agreement it's 5
5 and 10, 1 and 2?

6 MR. FRETWELL: Yes, ma'am.

7 THE COURT: And I think we need two
8 alternates with a week-long trial.

9 MR. FRETWELL: I agree.

10 MR. JOHNSON: Yes, sir. Yes, ma'am, Your
11 Honor.

12 THE COURT: Because I know there has been
13 some media coverage, although I personally don't
14 read the news or watch the news and am uninformed
15 -- I really don't need to know the facts of this
16 case. I might be one of the few people that doesn't
17 know the facts of this case. I don't know it at
18 all. Uh, I'm probably going to ask for a few extra
19 jurors just in case. We won't have a lot of room
20 this week so far as our number of jurors. I'm
21 going to ask for a few extra.

22 MR. JOHNSON: Your Honor, we discussed in
23 chambers. In addition to my proposed voir dire,
24 will the court be asking questions with regards to
25 any, uh, previous knowledge, some media coverage or

Motions

29

1 anything of that nature.

2 THE COURT: I did. I most certainly will in
3 this case. My question might be a little more
4 extensive than it normally would be since I do
5 understand that there's been, 'uh, media coverage up
6 until today. I don't know because I don't watch
7 anything, but I do understand there's continuing
8 media coverage as to this case.

9 MR. JOHNSON: Yes, Your Honor.

10 THE COURT: All right. Anything else we
11 need to take up pretrial?

12 MR. FRETWELL: No, ma'am.

13 THE COURT: All right. Anything?

14 MR. JOHNSON: I think there was one issue
15 with regard to the reading of indictments. As I
16 understand it, Possession of Stolen Vehicle may be
17 read as a third property offense.

18 MR. FRETWELL: The indictment, Your Honor,
19 for the -- for the -- I believe it's 2009-GS-23---
20 I'll have to look it up, Your Honor. Your Honor,
21 it is 1985. That particular indictment is indicted
22 as third property offense Possessing or Receiving
23 Stolen Goods as the practice of the Solicitor's
24 office for that particular charge. I agree, Your
25 Honor, that that indictment should not be submitted

1 to the Grand Jury for purposes of deliberation and
2 would assume that the Court would prepare some sort
3 of jury verdict form with respect to the charge.

4 THE COURT: We'll do that. We'll do that.

5 MR. FRETWELL: All right.

6 THE COURT: And when I read the indictments
7 to them, if there's anything in the body of the
8 indictment that references when I read the
9 indictment to them about the case, if there's some
10 reference to a third property offense, I certainly
11 will not say it.

12 MR. FRETWELL: Thank you, Judge.

13 MR. JOHNSON: Thank you, Your Honor.

14 THE COURT: All right. Anything else we
15 think we can take up pretrial or we'll be ready to
16 pick the jury and go?

17 MR. FRETWELL: I believe so, Your Honor.

18 MR. JOHNSON: Yes, Your Honor.

19 THE COURT: All right then. My normal -- my
20 normal time or what my plans are for the rest of
21 the week are to work from about 9:00 until about
22 5:00 or 5:30. If some -- then take maybe about an
23 hour and 15 minutes for lunch everyday. If we have
24 to change that for any reason -- you know tomorrow
25 morning, I've got to go qualify the Grand Jury

Motions

31

1 which will take me a couple of hours probably,
2 which will take me away for probably a couple of
3 hours. I'm going to talk to Judy again about it
4 when I go downstairs. My thought is that we can
5 start tomorrow maybe about 11 o'clock.

6 MR. FRETWELL: Yes, Your Honor.

7 THE COURT: All right. If there's nothing
8 else then, then we'll just -- I'll just wait to get
9 a call from Judge to go downstairs and qualify the
10 jury. All right.

11 MR. FRETWELL: Thank you, Judge.

12 MR. JOHNSON: Thank you, Your Honor.

13 (WHEREUPON, a recess is taken from approximately
14 9:52 a.m. to 11:18 a.m.)

15 THE COURT: Mr. Fretwell, this disclosure
16 mainly is to you. I will let you know that my law
17 clerk, Stan Overby, has informed me that he is good
18 friends of Mr. Erwin. He is good friends -- law
19 school classmates and good friends with Mr. Erwin.
20 He made me aware of that. He says that he
21 certainly feels like he can serve and be fair and
22 impartial in any research he needs to do. But I
23 did want to make that disclosure to you and give
24 you the opportunity to object to his assisting me
25 on this case.

1 MR. FRETWELL: I have no problem with Mr.
2 Overby.

3 THE COURT: All right. Very well then. Mr.
4 Johnson, I'll assume you don't have any objection
5 to that.

6 MR. JOHNSON: No, Your Honor.

7 THE COURT: All right.

8 MR. FRETWELL: I understand his wife is
9 somewhere else in the courthouse. We can swap them
10 out.

11 THE COURT: Oh, yeah. You're right. That's
12 right. She won't come to our office. It seems
13 like he put her on trespass notice or something.
14 (Pause.)

15 Yes, sir.

16 MR. JOHNSON: Pretty quickly. I think
17 you'll find that our witness list is the same
18 except for one name.

19 THE COURT: Oh, okay.

20 MR. JOHNSON: Number 8 on my list is the
21 only person that's not on his list.

22 THE COURT: Is that Lehr?

23 MR. JOHNSON: Lehr.

24 THE COURT: Lehr.

25 MR. JOHNSON: Yeah.

Jury Qualification

33

1 THE COURT: Lehr Brisbin.

2 MR. JOHNSON: Yes. Yes.

3 THE COURT: All right then.

4 (WHEREUPON, the jury enters at approximately
5 11:27 a.m.)

6 THE COURT: All right. Ladies and
7 Gentlemen, y'all can't get away from me. We have
8 determined that you are generally qualified to
9 serve as jurors in Greenville County this week.
10 However, I need to find out if you are particularly
11 qualified to serve in the trial of this case. This
12 is the case in which the defendant, David S. Boyd,
13 has been charged, uh, with several crimes and has
14 pleaded not guilty those. As I told you earlier,
15 he's entitled to a jury trial on those charges.

16 I need to go through a list of questions. And
17 we're going to handle it a little bit differently
18 than we did downstairs. Downstairs, I asked you to
19 form a line at the end and let's discuss whether or
20 not any of the questions applied. This one, I'd
21 like for you to stand. Now, I may ask you to come
22 up to the bench and speak with me privately with
23 the attorneys there. However, I do need for you to
24 respond as we go along, in other words, I guess is
25 the best way to say it. All right.

Jury Qualification

34

1 As I told you, this is the State of South
2 Carolina versus David S. Boyd. He is charged by
3 three indictments with several crimes. I am going
4 to first go through and introduce you to the folks
5 involved in this case and ask you if you are
6 acquainted with or related by blood or marriage to
7 any of these folks.

8 Mr. Johnson, I'm going to ask you to begin, if
9 you would please, and introduce your client to the
10 jury.

11 MR. JOHNSON: My name is Brian Johnson. I'm
12 from here in Greenville, South Carolina. My client
13 is sitting beside me, David Boyd. My co-counsel is
14 Jake Erwin. He's from Spartanburg.

15 THE COURT: All right. Thank you, sir.
16 Ladies and Gentlemen, is any member of the
17 jury panel related by blood or marriage or
18 otherwise acquainted with the defendant in this
19 case, David S. Boyd? And if so, please stand.
20 (No response.)

21 And none are standing.

22 Is any member of the jury panel related by
23 blood or marriage to Mr. Johnson or Mr. Erwin --
24 Erwin or ever been represented by either of these
25 attorneys or otherwise acquainted with either of

Jury Qualification

35

1 these two attorneys involved in the case? If so,
2 please stand. (No response.)

3 And none are standing.

4 Mr. Fretwell, will you stand and introduce
5 yourself and the folks at your table?

6 MR. FRETWELL: May it please the Court, Your
7 Honor?

8 THE COURT: Yes, sir.

9 MR. FRETWELL: Ladies and Gentlemen, my name
10 is Allen Fretwell. I'm a prosecutor here in the
11 13th circuit which is comprised of Greenville and
12 Pickens county. This is my paralegal. She'll be
13 assisting me on this case. The case agent on the
14 case, Investigator Chris Miller of the Greenville
15 County Sheriff's Office. Thank you.

16 THE COURT: Thank you, sir. Has any member
17 of the jury panel ever been represented by Mr.
18 Fretwell, uh, or acquainted by blood or marriage or
19 otherwise -- excuse me -- related by blood or
20 marriage or otherwise acquainted with Mr. Fretwell?
21 If so, please stand. (No response.)

22 Any member of the jury panel -- you were
23 introduced to two other folks at the counsel table.
24 Any member of the jury panel acquainted with those
25 folks or related by blood or marriage? If so,

1. please stand. (No response.)

2. Does any member of the jury panel have a
3. member of your immediate family who is employed by
4. the Greenville County Solicitor's office or, uh, --
5. and if so -- or the Greenville County Sheriff's
6. Office? If so, please stand.

7. Yes, sir.

8. THE JUROR: My wife's the Director of
9. Emergency Communications for Greenville County.

10. THE COURT: All right. And tell me your
11. name and juror number.

12. THE JUROR: William Kiser.

13. THE COURT: All right.

14. THE JUROR: 137.

15. THE COURT: Mr. Kiser, is the fact that she
16. is employed there, do you believe you can still be
17. a fair and impartial juror in the trial of this
18. case?

19. THE JUROR: I believe so.

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

21. All right. Now, I'm going to read to you the
22. indictment -- the indictments in this case. I want
23. to explain to you a little bit about what an
24. indictment is. If you are selected to serve as a
25. juror in this case, you will hear more about what

Jury Qualification

37

1 an indictment is and what an indictment is not.
2 Let me just tell you that an indictment is not
3 evidence of any crime whatsoever. It is simply the
4 document by which the State charges someone with a
5 crime. That is all that it is. It is the best way
6 I know, however, to give you a brief synopsis of
7 the allegations against the defendant to find out
8 if any member of the jury panel is familiar with
9 the facts of this case in any way.

10 The first indictment charges Armed Robbery and
11 Possession of a Weapon during the Commission of a
12 Violent Crime. Count 1 of that indictment alleges
13 that David Stephenson Boyd, II, did in Greenville
14 County on or about the 10th day of December 2008
15 while armed with a deadly weapon or while alleging
16 either by action or words he was armed, while using
17 a representation of a deadly weapon or any object
18 which a person present during the commission of the
19 robbery would reasonably believe to be a deadly
20 weapon, take by means of force or intimidation
21 goods or monies described as U.S. Currency
22 belonging to the Bank of Travelers Rest. I
23 apologize, the Bank of Travelers Rest.

24 Count 2 alleges that David Stephenson Boyd did
25 in Greenville County on or about the 10th day of

1 December 2008 possess or visibly display a handgun
2 during the commission or attempted commission of a
3 violent crime, to wit: armed robbery.

4 Another indictment in this case alleges, uh,
5 charges Assault and Battery with the Intent to Kill
6 and alleges that David Stephenson Boyd, II, did in
7 Greenville county on or about the 10th day of
8 December 2008 willfully, unlawfully and with malice
9 aforethought, either express or implied, commit an
10 assault and battery upon David Dill, D-I-L-L.

11 And finally, uh, -- the final indictment in
12 this case alleges possessing or receiving stolen
13 goods. Uh, the indictment in that case alleges
14 that David Stephenson Boyd, II, did in Greenville
15 county on or about the 10th day of December 2008
16 having, uh, willfully and unlawfully received,
17 brought, possessed or stole goods, chattel or other
18 property belonging to Veronica Cepeda, C-E-P-E-D-A,
19 such goods being valued at more than \$1000
20 described as follows: a 1995 Ford Windstar van and
21 that David Stephenson Boyd knew or had reason to
22 believe the goods, chattels or property to be
23 stolen.

24 Now, has any member of the jury panel -- are
25 you familiar with -- is any member of the jury

Jury Qualification

39

1 panel familiar with the facts of this case

2 . whatsoever? If so, please stand.

3 And none are standing.

4 Okay. Yes, ma'am. Tell me your name and
5 juror number. I think I'm going to want to talk to
6 you up front.

7 THE JUROR: Patty Ballew, number 15.

8 THE COURT: All right. Ms. Ballew, could I
9 ask you to please approach with the attorneys and
10 Mr. Johnson, if you so choose.

11 (WHEREUPON, a bench conference is held with Juror
12 Number 15, Patricia B. Ballew.)

13 THE COURT: Yes, ma'am. Tell me your name
14 and juror number.

15 THE JUROR: Stephanie Anderson, number 6.

16 THE COURT: Yes, ma'am. Would you come
17 forward for me please?

18 (WHEREUPON, a bench conference is held with Juror
19 Number 6, Stephanie G. Anderson.)

20 THE COURT: All right. Ladies and
21 Gentlemen, I've told you a little bit about the
22 facts of this case. I've asked you if you know
23 anything about the facts of this case. Let me ask
24 more specifically. Is there any member of the jury
25 panel who believes that he or she might have been

1 exposed to any media reports. By that, I mean
2 television, newspaper, internet articles, anything
3 of that nature that exposed anything about this
4 case if there are any. Is there any member of the
5 jury panel who believes he or she might have heard
6 something about this case through the media in any
7 way? If so, please stand.

8 All right, sir. Tell me your juror name and
9 number.

10 THE JUROR: My name is Ronnie Baker, Juror
11 number 12.

12 THE COURT: All right. I'm going to ask you
13 to approach. If the attorneys will approach as
14 well.

15 (WHEREUPON, a bench conference is held with Juror
16 Number 12, Ronnie Baker.)

17 THE COURT: Anyone else believe they need to
18 respond to me with regards to any media reports or,
19 uh, if there were any about this particular case?

20 (No response.)

21 No further are standing.

22 Now, Ladies and Gentlemen, I need to go
23 through a list of witnesses with you. I don't want
24 it to scare anyone when you hear this witness list.
25 However, I do not know if any of these witnesses

Jury Qualification

41

1 will be called. But the attorneys are instructed
2 that they have to give me a list of every possible
3 witness in this case so that we can check and see
4 if you are familiar with any of these folks. If it
5 turns out that you are related by blood or marriage
6 or otherwise acquainted with these witnesses in any
7 way, if you would, please stand. I'm going to deal
8 with everyone.

9 At the end, I'm going to -- there's a number
10 of possible witnesses in this case. Now, some of
11 the names are a little bit common. If you think
12 that you might know one of these folks, if you
13 would, just stand at the end please and let's
14 explore it a little bit further. Alright?

15 Let me read the list that the attorneys have
16 submitted to me. Rene Beauford, Rene Beauford,
17 Kara Bennick, Sheena Savonne Boyd, Shela Martin
18 Boyd, Stacy Boyd, Dr. Jason D. Brewer, Michael
19 DeAngelo Byrd, Deputy Al Cannon, Veronica Cepeda,
20 Sergeant Chris Cooper, Adrian Correa, Dr. Brian
21 Dach, Susan Davis, Don --

22 Okay. And I'll speak with you at the end. I
23 appreciate it. I appreciate it.

24 Uh, Susan Davis, Don Dickinson, David Dill,
25 Deputy Bobby Duncan, Investigator Mike Fortner, Amy

1 Nichole Foster, Deputy Tim Fuller, Lilly Gallman,
2 Verona Gibson, J.F. Hamilton, Deputy Hal Harris,
3 Deanna Heger or Heger, H-E-G-E-R.

4 MR. FRETWELL: Heger, Your Honor.

5 THE COURT: Heger. Sorry. I missed it
6 totally. Deanna Heger, Tirissa Johnson,
7 Investigator Laura Jones, Captain Jackie Kellett,
8 Dr. Eugene Langan, Tracy McKinnon, Investigator
9 Chris Miller, Sean Muserallo, Iona Ooten, Sean
10 Rafferty, Deputy Remon J. Rivera, Tammy Rawl,
11 Lieutenant Emily Reinhart, Dr. John Rinkliff, Dr.
12 G.D. Roberts.. Excuse me. I'm so sorry. I just
13 read that totally wrong. John G. D. Roberts. Not
14 a doctor. John G. D. Roberts, Audrey Samec,
15 Special Agent Robert Scott, Sergeant Dar Shaw, Ila
16 or Ila Simmons, Donna Smith, Doug Smith, M/D Doug,
17 Wannemacher, Sergeant David Weiner, Investigator
18 Eric Whaley and I. Lehr Brisbin.

19 Any member of the jury panel acquainted with
20 or otherwise related by blood or marriage to any of
21 these witnesses? And if so, please stand.

22 All right. Ma'am and Sir, I do not need for
23 you to approach. In the white sweater and in the
24 orange sweater, I don't need for you to approach.
25 But ma'am in the black sweater, would you please

Jury Qualification

43

1 approach and the attorneys as well.

2 (WHEREUPON, bench conferences are held with the
3 responding jurors.)

4 THE COURT: All right. Is any member of the
5 jury panel or a member of his or her immediate
6 family ever been the victim of a violent crime or
7 had a close personal friend that would be the
8 equivalent of a family member who was the victim of
9 a violent crime? If so, if you would, please
10 stand.

11 All right. Yes, ma'am. I'm just going to ask
12 you from there. Tell me your name and juror
13 number.

14 THE JUROR: Patty Ballew, Juror Number 15.

15 THE COURT: All right. Yes, ma'am.

16 THE JUROR: The BiLo hold up just a couple
17 of months ago on East North Street.

18 THE COURT: Yes, ma'am.

19 THE JUROR: The gun was pointed at my
20 nephew, Kelvin Waters.

21 THE COURT: Okay. Is the fact that -- the
22 fact that your nephew was one of the victims of
23 that, do you feel like you can be a fair and
24 impartial juror in the trial of this case knowing
25 what the allegations in this case are?

Jury Qualification

1 THE JUROR: I do.

2 THE COURT: Thank you so much, ma'am.

3 I should say, if there's anyone who would like
4 to approach to speak with me about it, that
5 certainly would be fine as well.

6 Yes, ma'am.

7 THE JUROR: It was many years ago. I was
8 working in a grocery store when we were called into
9 the office, held at gunpoint, robbed. Uh, I'm not
10 sure what other details you need.

11 THE COURT: Sure. I understand.

12 THE JUROR: That's sufficient.

13 THE COURT: I certainly understand. Tell me
14 your name and juror number please.

15 THE JUROR: My name is Valerie Downs, juror
16 249.

17 THE COURT: All right. Do you believe,
18 knowing the allegations in this case, you can be a
19 fair and impartial juror in the trial of this case?

20 THE JUROR: Yes, ma'am.

21 THE COURT: All right. Thank you so much.

22 All right. Yes, sir, in the black sweater.

23 Tell me your name and juror number please.

24 THE JUROR: Phil Silas, number 203 -- 203.

25 THE COURT: Yes, sir.

Jury Qualification

45

1 THE JUROR: Uh, my daughter and
2 granddaughter were in an armed robbery at a
3 convenience store. They were held at gunpoint by
4 the robber.

5 THE COURT: Okay.

6 THE JUROR: She survived it.

7 THE COURT: Sure. I'm glad to hear that.
8 Tell me, is the fact that they were victims of
9 violent crime, do you feel like knowing the
10 allegations that you could be a fair and
11 impartial juror in the trial of this case?

12 THE JUROR: Maybe.

13 THE COURT: I understand. Tell me your
14 juror number again.

15 THE JUROR: 203.

16 THE COURT: Thank you so much, sir.

17 All right. Tell me your juror number again.

18 THE JUROR: 192.

19 THE COURT: All right. Thank you, sir. You
20 can have a seat.

21 All right. Now, other than responses that you
22 all have given me with regards -- and I appreciate
23 everyone's candor with me. You've heard the
24 witness list. You've been introduced to the
25 attorneys. You've been introduced to the defendant

1 in this case. We have gone over a little bit about
2 the allegations in this case. Is there any reason
3 that any member of the jury panel believes that he
4 or she, other than what you already responded to me
5 about, any reason that any member of the jury panel
6 could not be a fair and impartial juror in this
7 case? No need to respond to me if you already
8 responded on certain things. But is there any
9 reason that has not been conveyed to me that you
10 could not be a fair and impartial juror in the
11 trial of this case? If so, please stand.

12 All right. Yes, ma'am. I'm going to ask you
13 to come forward please and will the attorneys
14 please approach.

15 (WHEREUPON, a bench conference is held with the
16 responding juror.)

17 THE COURT: Anyone else need to speak to me
18 about any reason you believe you could not be a
19 fair and impartial juror in the trial of this
20 particular case? Any reason other than what has
21 already been conveyed to me? (No response.)

22 All right then. There are no further
23 responses.

24 Any further voir dire from the State?

25 MR. FRETWELL: No, Your Honor.

Jury Selection

47

1 THE COURT: Any further from the defense?

2 MR. JOHNSON: No, ma'am, Your Honor.

3 THE COURT: All right. Ladies and
4 Gentlemen, we are --

5 All right. Will the attorneys please
6 approach?

7 (WHEREUPON, a bench conference is held.)

8 THE COURT: All right. Ladies and
9 Gentlemen, we are now going to move to jury
10 selection in this case. Uh, let me start by saying
11 that there are a million different reasons that an
12 attorney chooses or does not choose a juror in a
13 particular case. Let me tell you, it is nothing
14 personal in any way. I hope you won't take it
15 personally if you are not chosen.

16 We will be calling you briefly to come forward
17 one by one. If your name is called, if you will,
18 come forward. If your name and juror number are
19 called, if you will come forward, these fine
20 bailiffs will show you exactly where to stand in
21 between these two counsel tables but back closer to
22 me just a little bit. Turn and face your fellow
23 jurors. Do not face me.

24 Then the attorneys, as I said, will have the
25 opportunity to decide each side whether or not they

1 would like for you to sit on the trial of this
2 particular case. If you are not chosen, as I said,
3 please don't take it personally. If you will,
4 return to your seat. If you are chosen, we're
5 going to ask you to sit in the jury box until we
6 have our complete jury in this case. When you come
7 up and your name and juror number are called to
8 come forward, if you would, bring your belongings
9 with you just in the event that you are chosen,
10 then you will be prepared to go over and just sit
11 in the jury box. All right. All right. With
12 that, we will begin.

13 THE CLERK: Juror 43, John Cajka.

14 What says the State?

15 MR. FRETWELL: Present Mr. Cajka.

16 THE CLERK: What says the defense?

17 MR. JOHNSON: Please excuse this wit -- uh,
18 this juror.

19 THE CLERK: All right. Mr. Cajka, you may
20 have a seat. You have been excused from this case.

21 Juror 187, Latoria Rayford.

22 What says the State?

23 MR. FRETWELL: Present Ms. Rayford.

24 THE CLERK: What says the defense?

25 MR. JOHNSON: Please seat the juror.

Jury Selection

49

1 THE COURT: Seat the juror?
2 MR. JOHNSON: Yes.
3 THE COURT: Ms. Rayford, please have a seat
4 in the jury box.
5 Juror 228, Mark Vetzel.
6 What says the State?
7 MR. FRETWELL: Present Mr. Vetzel.
8 THE CLERK: What says the defense?
9 MR. JOHNSON: Please excuse the juror.
10 THE CLERK: You may be seated. You have
11 been excused from this case.
12 Juror 250, James Phillips.
13 What says the State?
14 MR. FRETWELL: Present Mr. Phillips.
15 THE CLERK: What says the Defendant?
16 MR. JOHNSON: Please seat the juror.
17 THE CLERK: Mr. Phillips, please have a seat
18 in the jury box.
19 THE COURT: Yes, sir.
20 THE CLERK: Yes, sir.
21 Juror 89, Michael Fallat.
22 What says the State?
23 MR. FRETWELL: Present Mr. Fallat..
24 THE CLERK: What says the Defendant?
25 MR. JOHNSON: Please excuse the juror.

Jury Selection

1. THE CLERK: All right, sir. Please be
2. seated. You have been excused from this case.
3. Juror 213, Ashley Taylor.
4. What says the State?
5. MR. FRETWELL: Please excuse Ms. Taylor from
6. the trial of this case.
7. THE CLERK: All right. Ms. Taylor, please
8. be seated. You have been excused from the trial of
9. this case.
10. Juror 188, Nathan Redding.
11. What says the State?
12. MR. FRETWELL: Present Mr. Redding.
13. THE CLERK: What says the Defendant?
14. MR. JOHNSON: Please seat the juror.
15. THE CLERK: All right, sir. Please have a
16. seat in the jury box.
17. Juror 60, Dana Cockman.
18. What says the State?
19. MR. FRETWELL: Present Ms. Cockman.
20. THE CLERK: What says the Defendant?
21. MR. JOHNSON: Please excuse the juror.
22. THE CLERK: All right, ma'am. You may be
23. seated. You have been excused from this case..
24. Juror 96, Tony Fuchs.
25. What says the State?

Jury Selection

51

1 MR. FRETWELL: Present Mr. Fuchs.
2 THE CLERK: What says the Defendant?
3 MR. JOHNSON: Please seat the juror.
4 THE CLERK: All right, sir. Please have a
5 seat in the jury box.
6 Juror 249, Valerie Downs.
7 What says the State?
8 MR. FRETWELL: Present Ms. Downs.
9 THE CLERK: What says the Defendant?
10 MR. JOHNSON: Please excuse the juror.
11 THE CLERK: All right. Ms. Downs, you may
12 be seated. You have been excused from this case.
13 Juror 176, Darlene Parker.
14 What says the State?
15 MR. FRETWELL: Please excuse Ms. Parker from
16 the trial of this case.
17 THE CLERK: All right. Ms. Parker, you may
18 be seated. You have been excused from this case.
19 Juror 246, Susan Boone-Jones.
20 What says the State?
21 MR. FRETWELL: Present Mrs. Susan Boone-
22 Jones.
23 THE CLERK: What says the Defendant?
24 MR. JOHNSON: Please seat the juror.
25 THE CLERK: Ma'am, please have a seat in

1 the jury box.

2 Juror 195, Joy Satterfield.

3 What says the State?

4 MR. FRETWELL: Present Ms. Satterfield.

5 THE CLERK: What says the Defendant?

6 MR. JOHNSON: Please excuse the juror.

7 THE CLERK: All right, ma'am. You may be

8 seated. You have been excused from this case.

9 Juror 160, Gerald McCauley.

10 What says the State?

11 MR. FRETWELL: Present Mr. McCauley.

12 THE CLERK: What says the Defendant?

13 MR. JOHNSON: Please excuse the juror.

14 THE CLERK: All right, sir. You may be

15 seated. You have been excused from this case.

16 Juror 137, William Kiser.

17 What says the State?

18 MR. FRETWELL: Present Mr. Kiser.

19 THE CLERK: What says the Defendant?

20 MR. JOHNSON: Please excuse the juror.

21 THE CLERK: All right, sir. You may be

22 seated. You have been excused from this case.

23 Juror 15, Patricia Ballew.

24 What says the State?

25 MR. FRETWELL: Present Ms. Ballew.

Jury Selection

53

1 THE CLERK: What says the Defendant?
2 MR. JOHNSON: Please excuse the juror.
3 THE CLERK: All right, ma'am. You may be
4 seated. You have been excused from this case.
5 Juror 184 Rhonda Pruitt.
6 What says the State?
7 MR. FRETWELL: Present Ms. Pruitt.
8 THE CLERK: What says the Defendant?
9 MR. JOHNSON: Please seat the juror.
10 THE CLERK: Ma'am, please have a seat in
11 the jury box.
12 Juror 93, Hardie Fleming.
13 What says the State?
14 MR. FRETWELL: Present Mr. Fleming.
15 THE CLERK: What says the Defendant?
16 MR. JOHNSON: Please seat the juror.
17 THE CLERK: Mr. Fleming, please have a seat
18 in the jury box.
19 Juror 78, Alvin Donnan.
20 What says the State?
21 MR. FRETWELL: Present Mr. Donnan.
22 THE CLERK: What says the Defendant?
23 MR. JOHNSON: Please seat the juror.
24 THE CLERK: Mr. Donnan, please have a seat
25 in the jury box.

Jury Selection

1 Juror 207, Michael Spencer.
2 What says the State?
3 MR. FRETWELL: Present Mr. Spencer.
4 THE CLERK: What says the Defendant?
5 MR. JOHNSON: Please excuse the juror.
6 THE CLERK: Sir, please be seated. You
7 have been excused from this case.
8 Juror 79, James Doss.
9 What says the State?
10 MR. FRETWELL: Present Mr. Doss.
11 THE CLERK: What says the Defendant?
12 MR. JOHNSON: Please seat the juror.
13 THE CLERK: Sir, please have a seat in the
14 jury box.
15 Juror 106, Jay Gully.
16 What says the State?
17 MR. FRETWELL: Present Mr. Gully.
18 THE CLERK: What says the Defendant?
19 MR. JOHNSON: Please seat the juror.
20 THE CLERK: Sir, please have a seat in the
21 jury box.
22 Juror 135, Eliza Dot Kilgore.
23 What says the State?
24 MR. FRETWELL: Present Ms. Kilgore.
25 THE CLERK: What says the Defendant?

Jury Selection

55

1 MR. JOHNSON: Please seat the juror.

2 THE CLERK: Ms. Kilgore, please have a seat

3 in the jury box.

4 Juror 90, Glenn Farmer.

5 What says the State?

6 MR. FRETWELL: Present Mr. Farmer.

7 THE CLERK: What says the Defendant?

8 MR. JOHNSON: Please seat the juror.

9 THE CLERK: Mr. Farmer, please have a seat

10 in the jury box.

11 THE COURT: All right. We'll do one and two

12 on each alternate.

13 THE CLERK: Juror 55, Vickie Taylor.

14 What says the State?

15 MR. FRETWELL: The last name?

16 THE CLERK: Vickie Taylor.

17 MR. FRETWELL: Taylor?

18 THE CLERK: Number 55.

19 MR. FRETWELL: Present Ms. Taylor.

20 THE CLERK: What says the Defendant?

21 MR. JOHNSON: Please excuse the juror.

22 THE CLERK: All right. Ms. Taylor, you may

23 be seated. You have been excused in this case.

24 Juror 1, Annis Alexander.

25 What says the State?

1 MR. FRETWELL: Present Ms. Alexander.
2 THE CLERK: What says the Defendant?
3 MR. JOHNSON: Please seat the juror.
4 THE CLERK: All right. Ma'am, please have a
5 seat in the jury box.
6 THE COURT: One and two.
7 THE CLERK: Juror 206, Stephen Snyder.
8 What says the State?
9 MR. FRETWELL: Present Mr. Snyder.
10 THE CLERK: What says the Defendant?
11 MR. JOHNSON: Please excuse the juror.
12 THE CLERK: All right, sir. You may be
13 seated. You have been excused in this case.
14 Juror 155, Suzy Martin.
15 What says the State?
16 MR. FRETWELL: Present Ms. Martin.
17 THE CLERK: What says the Defendant?
18 MR. JOHNSON: Please seat the juror.
19 THE CLERK: All right. Ma'am, please have a
20 seat in the jury box.
21 THE COURT: All right. Any objection to the
22 manner in which the jury is selected from the
23 State?
24 MR. FRETWELL: Your Honor, we may need to
25 take up an issue.

Batson Motion

57

1 THE COURT: Okay. Ladies and Gentlemen, uh,
2 I'm going to ask you to retire to your jury room
3 briefly. We will be calling for you momentarily.

4 (WHEREUPON, the jury exits at approximately

5 12:18 p.m.)

6 THE COURT: The remaining members of the
7 jury panel, I'm going to ask you to step outside
8 for just a moment please.

9 (WHEREUPON, the jury panel exits at approximately
10 12:19 p.m.)

11 THE COURT: Yes, sir.

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

14 THE COURT: Yes.

15 MR. FRETWELL: Your Honor, with the
16 exceptions of defense strike number 5, number 8 and
17 number 9, those are jurors 249, 137 and 15 for whom
18 it's obvious why the defense struck those jurors
19 and they do not play into the State's objection
20 under Batson versus Kentucky. Every other strike
21 the defense made, including the alternates, the
22 State would request that the defense relay a race
23 neutral reason for why those jurors were struck.
24 They were all Caucasian or white.

25 THE COURT: All right. Mr. Johnson.

1 MR. JOHNSON: Your Honor, first of all, I
2 would respond to the -- obviously I accepted 10
3 other -- 14 other -- 12 other white jurors. Uh,
4 that would be the first one. 241 was the one that
5 was held in the grocery store.

6 THE COURT: Okay.

7 MR. JOHNSON: Let's see. 137, uh, --

8 THE COURT: These are the ones that you have
9 no problem.

10 MR. FRETWELL: I'm very familiar with why he
11 struck those.

12 THE COURT: Those three that he named, he
13 says that he's got no problem with those. The
14 remaining --

15 MR. JOHNSON: Once again, I would reiterate
16 that 12, uh, 14 including the alternates -- 12, 14,
17 including the alternates are of Caucasian ---

18 THE COURT: Yes.

19 MR. JOHNSON: --- race..

20 THE COURT: And I understand that the burden
21 does shift to him to give us a race or gender
22 neutral reason. However, I would say the jury is
23 very representative, does turn out to be very
24 representative of the population. Of course, I
25 understand it's the juror's right to serve.

1 MR. FRETWELL: That's the State's response,
2 Your Honor, is that this is the right by the juror,
3 the individual jurors not to be struck based on
4 their race or gender.

5 THE COURT: Uh-huh.

6 MR. JOHNSON: Your Honor, I could go through
7 it as I see it.

8 THE COURT: Okay. Yes, sir.

9 MR. JOHNSON: Number 43, self-employed.

10 THE COURT: 43?

11 MR. JOHNSON: Yes.

12 THE COURT: All right. That's a reason.

13 MR. JOHNSON: That's the reason why -- you
14 want me to go over the strikes or over the
15 exceptions.

16 THE COURT: I want you to go over the
17 strikes absent those three that they did not
18 choose, I mean, that he did not choose to. Sorry.

19 MR. JOHNSON: Okay. Your Honor, I'll say I
20 suppose Batson calls for me to respond in the -- I
21 fear that he's basically getting some recognizance
22 on how I select my jury.

23 THE COURT: I understand. I do need you to
24 go through each one and give me some race neutral
25 reason.

1 MR. JOHNSON: 228, this person, uh, I have
2 listed in sales.

3 THE COURT: Yes, sir.

4 MR. JOHNSON: Cash register.

5 THE COURT: Certainly.

6 MR. JOHNSON: 89 was sales manager.

7 THE COURT: Yes, sir.

8 MR. FRETWELL: Judge, I couldn't understand
9 him.

10 THE COURT: Sales manager.

11 MR. FRETWELL: Sales manager.

12 MR. JOHNSON: Then 249, I do not need to
13 offer. Uh, --

14 MR. FRETWELL: No.

15 THE COURT: Okay.

16 MR. JOHNSON: 195 is self-employed.

17 THE COURT: Okay.

18 MR. JOHNSON: 160, I don't know if they
19 deliver mail and come in contact with that person
20 that could be dangerous.

21 THE COURT: I see.

22 MR. JOHNSON: I do not need an offer for 137
23 and 15; is that right?

24 MR. FRETWELL: Yes, sir.

25 THE COURT: Okay. All right.

1 MR. JOHNSON: 207 owns a business.

2 THE COURT: Yes, sir.

3 MR. JOHNSON: 55 I struck first for debt
4 collections and now works at A & W cafeteria. I
5 don't know if she collects money or what she does.

6 THE COURT: All right.

7 MR. JOHNSON: But it is a business. 206,
8 construction management. Could be -- I construed
9 it as a business. Certainly not something that you
10 want to -- that's why I struck the ones I struck.

11 THE COURT: Okay. Okay. By you saying, if
12 I understand what you're saying about these
13 business owners and folks like that is that they
14 might be particularly sensitive to the facts in
15 this case?

16 MR. JOHNSON: I considered any other
17 business. This business was held up at gunpoint.
18 If I were a business owner, that is something I
19 certainly want to discourage if I had an
20 opportunity.

21 THE COURT: I see. I see what you're saying
22 about wanting to discourage. I get you. Okay. I
23 get you now. Yes, sir.

24 MR. FRETWELL: Your Honor, my only response
25 is with respect to Juror Number 2 -- I'm sorry, the

1 second juror, Juror 250 is the number, white male,
2 he lists on his information that he is self-
3 employed. He was seated with no objection by the
4 defense?

5 THE COURT: All right. Why -- he is -- what
6 did you say his background was?

7 MR. FRETWELL: He lists that he is self-
8 employed, Your Honor, which I believe was the
9 reason that Mr. Johnson gave for Juror 43, Juror
10 195 and Juror 207 along with Juror 206, the second
11 alternate.

12 THE COURT: And are you -- and so you are
13 arguing that each of these is pretextual because he
14 allowed one person to be seated who was ---

15 MR. FRETWELL: Self-employed.

16 THE COURT: --- self-employed. Okay.

17 Mr. Johnson, can you speak specifically as to
18 why you seated that juror who was self-employed and
19 not others?

20 MR. JOHNSON: Your Honor, quite honestly, I
21 probably would have not sat him if I had known he
22 lived in Travelers Rest.

23 THE COURT: Insofar as his self-employment,
24 would you have struck him.

25 MR. JOHNSON: If I had noticed, I probably

Remarks

63

1 would not have sat him.

2 MR. FRETWELL: That's all the State has,
3 Your Honor.

4 THE COURT: Well, I'm going to find -- I'm
5 going to deny your motion. I find that the defense
6 has put forth a race neutral reason that seems
7 plausible. The one juror who is self-employed,
8 upon further review, the defense says that he
9 mistakenly seated that juror. In light of, uh, --
10 I also take into account the fact that it did seem,
11 although it does not have to be a persuasive
12 reason, it did seem to be a particularly good
13 reason not to seat these jurors. I will deny your
14 motion. All right. That being said, let's go
15 ahead and bring the other members of the jury panel
16 in. I'm going to let them -- anything else we need
17 to take up?

18 MR. FRETWELL: No, Your Honor. Anything
19 from the defense?

20 MR. JOHNSON: Yes, ma'am, Your Honor.

21 THE COURT: Bring them in.

22 (WHEREUPON, the jury panel enters at approximately
23 12:28 p.m.)

24 THE COURT: Ladies and Gentlemen, uh, you
25 have not been selected, as you know, to serve on

1 this particular jury. I am going to ask you to
2 return to your jury assembly room downstairs for
3 further instructions. All right. Thank you.

4 Ma'am in the white jacket there on the end,
5 will you just remain here for one moment? I need
6 to convey something to you real quickly.

7 Everyone else, if you will, return to your
8 jury deliberation.

9 (WHEREUPON, the jury exits at approximately
10 12:29 p.m.)

11 THE COURT: To the attorneys on this case,
12 this has absolutely nothing to do with this
13 particular case.

14 Ma'am, will you step up here for a minute?

15 MR. FRETWELL: Can we be in recess for just
16 a moment?

17 THE COURT: Yes. Let's be in recess for
18 about five minutes.

19 (WHEREUPON, a short recess is taken.)

20 THE COURT: I'm going to give them just some
21 very brief initial instructions. Then I'm going to
22 get them sworn and let them go -- uh, let them go
23 for lunch and then return about two o'clock. All
24 right. During that time, at some point, I might
25 let them stay about five minutes in the jury room.

Remarks

65

1 I'm going to let them, uh, select a foreperson.

2 (WHEREUPON, the jury enters at approximately.

3 12:39 p.m.)

4 THE COURT: Ladies and Gentlemen, uh, you
5 are going to be our jury for the trial in this
6 case. I will tell you that while this is certainly
7 not one of those trials that go on for weeks and
8 weeks, we do believe this trial will take the
9 better part of this week. I do need to inform you
10 about that. I appreciate your service just more
11 than I can tell you.

12 I want to give you some brief initial
13 instructions a couple of minutes, then I'm going to
14 let you go to lunch. Uh, some people are surprised
15 to find out that you can not discuss this case with
16 anyone, even your fellow jurors, while this case is
17 pending until we've heard all the evidence and
18 testimony in this case and you are -- uh, before
19 you are ready to go back and deliberate, you can
20 not discuss this case with anyone.

21 If there's any media attention with regards to
22 this case, I'm going to ask you to please disregard
23 anything. I'm going to ask you to avoid reading
24 the newspaper. I'm going to ask you even over
25 lunch to avoid, uh, looking at the news just in

1 case there is anything like that or anything on the
2 internet.

3 If anyone approaches and tries to talk to you
4 about this case, I want you to identify yourself as
5 a juror on this case to them. I do not believe
6 that anyone involved in this case will try to do
7 something like that. But if they were to -- after
8 you identify yourself as a juror, if they do not
9 immediately quit talking to you, I want you to -- I
10 want y'all to let Mr. Anderson here know about it.
11 He will pass it along to me and promise you I will
12 take care of that situation..

13 Now, I'm going to ask you to be back in your
14 jury room about two o'clock. For the first five
15 minutes that you are back in your jury room, I'm
16 going to ask that you select the juror foreperson
17 from among you.

18 Now, Ms. Martin and Ms. Alexander, you are our
19 alternates in this case. You can not serve as the
20 foreperson on this jury.. I will tell you what your
21 role is already in advance. That is -- you might
22 know. But if one of the jurors had an emergency or
23 I had to remove a juror for cause for some reason,
24 then you would step in and act just as you had been
25 one of the 12 jurors all along. But you'll be with

Remarks

67

1 us for the duration of the trial. If your services
2 are not needed, then before the jurors retire to
3 deliberate, then I'll release you at that time. I
4 do appreciate your service.

5 I will ask the remaining 12 to pick a
6 foreperson from your ranks. I will tell you what a
7 foreperson does. A foreperson's opinion is no more
8 important than any other juror's opinion. Your
9 verdict must be a unanimous one. I will talk to
10 you more about that at length. However, I do need
11 someone who will lead the discussions in the jury
12 deliberation room when it becomes time to
13 deliberate in this case. I will ask you to please
14 choose someone from amongst you who is willing to
15 serve in that capacity. When you return -- Mr.
16 Anderson will direct you -- but the seat for the
17 foreperson will be, sir, where you are sitting with
18 the white shirt and tie on. The foreperson will
19 stay in those seats for the remainder of the trial.

20 Now, I'm going to ask the clerk to administer
21 your juror oath. Then you will be ready to go to
22 lunch. All right.

23 THE CLERK: Stand and raise your hand --
24 right hand for the oath. The proper response is "I
25 will". You shall well and truly try the case 2009-

1 GS-23-1985, the State versus David S. Boyd, II
2 indicted for Possessing or Receiving Stolen Goods,
3 9988 for Armed Robbery and Possession of a Weapon
4 during the Commission of a Violent Crime and 9989
5 for Assault and Battery with Intent to Kill and a
6 true verdict render according to the law and the
7 evidence so help you God: I will?

8 (WHEREUPON, each juror responds.)

9 THE COURT: All right. Thank you. I will
10 again ask you to be back in your jury room at two
11 o'clock. We'll call for you about 2:05. Give you
12 about five minutes to select a juror foreperson.
13 Please do not select a foreperson until all of the
14 12 jurors that are seated in this case have come
15 back from lunch. And please do not, as I said,
16 discuss this case with anyone. Thank you so much.
17 (WHEREUPON, the jury exits at approximately

18 12:45 p.m.)

19 THE COURT: All right. Any matters we need
20 to take up before we break for lunch?

21 MR. FRETWELL: No, Your Honor.

22 THE COURT: All right. Anything from the
23 defense?

24 MR. JOHNSON: No, Your Honor.

25 THE COURT: All right then. We'll be in

Remarks

69

1 recess until two o'clock. Thank you.

2 (WHEREUPON, a lunch recess is taken.)

3 THE COURT: All right. I think we got all
4 of our jurors back. I'm going to give them just an
5 extra minute. They wanted to take a little coffee.
6 So I'll give them a few extra minutes to do that.

7 (WHEREUPON, the jury enters at approximately
8 2:10 p.m.)

9 THE COURT: Ladies and Gentlemen, I
10 appreciate you being so prompt coming back from
11 lunch. That really does help us so much. If you
12 are running behind, of course, we're -- it means
13 that everyone is waiting on you including your
14 fellow jurors. I really do appreciate everybody's
15 promptness.

16 What I'm going to say to you now is not
17 intended to be a charge on the law. This is just
18 an introduction to the trial of this case. I'm
19 going to instruct you on the law applicable to the
20 case at the end of the trial before you retire to
21 consider your verdict. This is merely an
22 explanation of the procedures that will follow in
23 this case so you can better understand what is
24 going on during this trial.

25 The defendant is charged by indictments filed

1 with this court with the crimes of Armed Robbery,
2 Possession of a Weapon during the Commission of a
3 Violent Crime, Possessing or Receiving Stolen Goods
4 and Assault and Battery with Intent to Kill, the
5 elements of which will be explained to you later.
6 The indictment is simply the document by which a
7 charge is brought into court by the State and it is
8 not in any sense evidence of any allegations it
9 contains.

10 The defendant has pled not guilty to these
11 charges. The State, therefore, has the burden of
12 proving each of the elements of the indictment
13 beyond a reasonable doubt. It will be your duty,
14 Ladies and Gentlemen, to determine whether or not
15 the State has met that burden.

16 Your purpose, as jurors, is to find and
17 determine the facts. You are the sole judge of the
18 facts. If I, at any time, make any comment
19 regarding the facts, you must disregard it. You
20 are to determine the facts from the testimony you
21 hear and other evidence which is introduced in
22 court. It is up to you to determine the inferences
23 which you feel may be properly drawn from the
24 evidence. It is especially important that you
25 perform your duty of determining the facts

Remarks

71

1 diligently and conscientiously. Ordinarily, there
2 is no way to correct an erroneous determination of
3 facts by a jury.

4 On the other hand and with equal emphasis, the
5 same law that makes you the judge of the facts
6 makes me the judge of the law of the case. The law
7 as given by the Court is the only law which you may
8 consider.. You must accept it and follow it even
9 though you might at times disagree with it. I can
10 not tell you what the facts are and you can't
11 disagree with me about what the law is or should
12 be. Your job is to take the law as I give it to
13 you and apply it to the facts as you find from the
14 testimony and the witnesses and the other --
15 testimony of witnesses and any other evidence
16 that's introduced. After doing that, you will
17 render your verdict.

18 Until I advise you to begin your
19 deliberations, you must not discuss this case with
20 anyone, including your fellow jurors, your friends,
21 your family members and anyone involved in the
22 case. After the case is submitted to you, you must
23 discuss it only in the jury room with your fellow
24 jurors. The attorneys and parties in this case
25 have been advised that they are not to talk to you

1 at all. So if you see anyone involved in this case
2 and they do not even speak to you in the hall,
3 please don't think they are being rude to you.
4 They are just following my instructions.

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

12 I'll stop for a moment and, uh, in this day
13 and age, I have to give you an additional charge.
14 That is, that you may not do any independent
15 research on this case. A lot of folks, uh, --
16 research is more easily done these days via the
17 internet. You can not do that. You can only
18 consider the testimony and evidence that's
19 presented here in trial.

20 Furthermore, I'm not exactly sure what all
21 these things are, but you can not post on your
22 Facebook page about it if you have such a thing or
23 any other social networking site. You can't tweet
24 about it, whatever a tweet may be. You can not blog
25 about it if you happen to have a blog. It is

Remarks

73

1 important that you keep an open mind and not decide
2 any issue in the case until all the evidence has
3 been presented and the parties have made their
4 closing arguments and I have instructed you on the
5 law of this case.

6 Now, it is your solemn responsibility to
7 determine the guilt or the innocence of the
8 defendant. And your verdict must be based solely
9 on the evidence that is presented during trial and
10 the law as I instruct you during the close of the
11 trial.

12 In just a moment, the Solicitor will make what
13 is called an opening statement in which he will
14 explain to you what the issues in this case are or
15 what he believes they are. The attorney for the
16 defendant may also make an opening statement, but
17 he is not required to do so. What the attorneys
18 tell you during their opening statements is not
19 evidence in this case. It is only their contention
20 as to what the issues are.

21 The evidence in this case will be presented to
22 you by the testimony of sworn witnesses from this
23 witness stand and by exhibits that are introduced
24 into evidence. From time to time, you may hear the
25 attorneys ask if they can approach on a matter of

1 law or it may be necessary for me to excuse from
2 the courtroom. Let me explain to you why I might
3 do something like that. I told you earlier that I
4 can not comment on the facts in any way. The law
5 does not allow me to have an opinion on the facts
6 of the case. You are the judges as to the facts of
7 this case.

8 Sometimes in ruling on a matter of law, it
9 might be necessary for me to comment on a fact in
10 this case. I would not want to influence you in
11 any way. If it's a matter we can take up very
12 quickly up here at the bench, we will do that. If
13 I have to -- if it might take a moment longer, I'll
14 send you to your jury deliberation room while we
15 take up that matter. We'll be as brief as
16 possible. But I don't want you to think that we
17 are hiding the ball from you or that these
18 attorneys are trying to hide anything from you.
19 It's just the procedure that we have to follow so
20 that I will not make any comment as to the facts in
21 this case.

22 Now, you're going to have to determine witness
23 believability. You will do that the same way you
24 do in your everyday ordinary life. You will use
25 your common sense. You will look at the demeanor

Remarks

75

1 of the witnesses. You can believe part of a
2 witness' testimony or none of it or all of it or
3 believe one witness over a number of witnesses or a
4 number of witnesses over one witness. As I said,
5 you will look at demeanor. You will consider
6 whether or not someone has any bias. You will
7 consider if anyone has, uh, -- if anyone has any
8 prejudice and if they have any, uh, interest in the
9 outcome of this case. You have the right to
10 consider anything in the record that will help you
11 to evaluate the testimony of those witnesses. I
12 ask you to pay as close attention as possible to
13 the witnesses and to the arguments of counsel.

14 Now, as I told you, Mr. Foreperson, it is your
15 duty to preside in the jury deliberation room. You
16 will be the one to lead the discussions and to
17 ultimately -- and ultimately, you'll be the one to
18 sign the indictments with your unanimous verdict.

19 In order to preserve everyone's rights, I now
20 need to make sure that there is no objection to my
21 initial instructions. Any from the State?

22 MR. FRETWELL: No, ma'am.

23 THE COURT: Any from the defense?

24 MR. JOHNSON: No, Your Honor.

25 THE COURT: All right. Is the State ready

1 to proceed?

2 MR. FRETWELL: We are, Your Honor.

3 THE COURT: All right. Ladies and
4 Gentlemen, we are ready for opening statements.

5 MR. FRETWELL: May it please the court, Your
6 Honor?

7 THE COURT: Yes, sir.

8 MR. FRETWELL: On December 10th, 2008,
9 Adrian Correa was working as a teller at the Bank
10 of Travelers Rest on White Horse Road alongside
11 fellow tellers, Audrey Samec and Yolanda McCord.
12 Shortly before noon, a man entered the bank with a
13 dark blue bandana across his face. He was wearing
14 a dark hoodie and jeans that were embroidered with
15 brightly colored feathers along the waist. He was
16 wearing gloves and was armed with a dark colored
17 handgun that he pointed at all three tellers
18 demanding money. Adrian, Audrey and Yolanda placed
19 over \$19,000 in cash along with two dye packs into
20 a white plastic bag handed to them by the robber,
21 who snatched the bag and fled from the bank.

22 Adrian described the gunman as a black male
23 nearly six feet tall, approximately 160 to 180
24 pounds. Portions of this incident were captured on
25 the bank's time lapse photo surveillance system.

Opening Statement by Mr. Fretwell

77

1 Immediately after the robbery, Teller Audrey
2 Samec called 911 and advised the suspect had fled
3 the bank in a white Windstar minivan, a vehicle
4 that had been stolen earlier that same morning. As
5 the suspect started to back up and pull out of the
6 bank parking lot, the dye packs activated,
7 releasing CS tear gas and red smoke inside the
8 minivan. The suspect put down the driver's window
9 allowing the red smoke to be seen by David Dill,
10 who was waiting on his fiancé in the parking lot of
11 the Applebee's next door.

12 As the minivan drove past him, Dill pulled
13 through the Applebee's parking lot and began to
14 relay the minivan's direction of travel. Dill
15 followed the minivan as it pulled out and turned
16 left on West Marion Road. He followed the minivan
17 as it then turned right onto Emile Street. The
18 minivan eventually pulled off to the side of the
19 road while the driver, wearing a dark hoodie and
20 dark bandana across his face, was hanging his head
21 out of the window.

22 In order to let 911 know what street they were
23 on, Dill drove past the minivan to the next
24 intersection where he could turn around and
25 continue to monitor the man's activities. Dill

1 observed the driver of the vehicle exit the.
2 minivan, raise his arm in Dill's direction and saw
3 multiple puffs of smoke. One of the bullets from
4 the suspect's gun pierced Dill's windshield, went
5 through his right hand, causing him to drop the
6 phone and lodged in his neck close to his spine.
7 Despite his injuries, Dill managed to retrieve his
8 phone and continue to talk to 911. He was also
9 able to reposition his vehicle and eventually
10 observe the driver enter the nearby woods,
11 information that he was later able to relate to
12 police. Another witness, Shawn Rafferty, who
13 happened upon the scene while the shooting was
14 occurring also observed the driver enter the wooded
15 area right across the road from the stolen minivan
16 that he had abandoned with the dye-stained currency
17 still inside.

18 Since the police K-9 tracking team was
19 training nearby, they arrived on the scene within
20 minutes. Despite the cold and rainy weather
21 conditions, the first K-9 on scene was able to
22 immediately identify a trail of fresh human scent
23 at the point at which the suspect was seen entering
24 the woods..

25 Police vehicles were dispersed and quickly

1 surrounded the wooded area forming a search
2 perimeter that would be effect for several hours.
3 The first K-9 was relieved by a second K-9 who
4 picked up the same trail and tracked the fresh
5 human scent directly to a blue bandana identical to
6 the one depicted in the bank video. The bandana
7 was located about an hour and a half or so after
8 the manhunt began. A third K-9 picked up the same
9 trail and tracked the fresh human scent to a creek
10 within the wooded area and then entered the creek.
11 This K-9 followed the trail until he tired and was
12 unable to continue. Efforts to resume the track
13 and continue the track were unsuccessful as the
14 creek ran in different directions towards Highway
15 253 and Agnew Road. The perimeter was eventually
16 called off around 4:00 to 4:15 that afternoon.

17 And soon thereafter, WYFF reporter Shawn
18 Muserallo and his cameraman were traveling along
19 Agnew Road going back to Highway 253. They slowed
20 when they came to a dip in the road where the creek
21 runs under Agnew Road and Muserallo saw a black
22 male coming up out of the creek soaked up to his
23 chest and looking exhausted. The two made eye
24 contact as the man came up out of the creek and
25 onto Agnew Road. They made eye contact again as

1 the man then went crossed Agnew and entered another
2 wooded area in the direction of Crane Avenue.

3 Shortly thereafter, a resident called to
4 report suspicious activity on Crane Avenue. As
5 police were responding and drove down Crane Avenue
6 from Highway 253, they encountered this defendant,
7 David Stephenson Boyd. He emerged from the woods
8 and approached Crane Avenue. He was drenched and
9 covered in mud and leaves. He was wearing feather
10 embroidered jeans, as depicted on the bank
11 surveillance video, and a gray shirt. The
12 defendant appeared to be exhausted as he crossed
13 Crane Avenue in front of the unmarked police car
14 and then scaled a padlocked gate of a nearby
15 residence.

16 Investigator David Weiner and his partner,
17 Mike Fortner, followed the defendant as he scaled
18 two other fences despite repeated commands by
19 police to stop and surrender. As the defendant
20 scaled the last fence, Investigator Weiner observed
21 the defendant crouch down, look over his shoulder,
22 and began to turn in Weiner's direction. Fearing
23 that the defendant was armed and knowing a civilian
24 witness had already been shot, Investigator Weiner
25 fired three times as he ran for cover, striking the

1 defendant twice in the leg and once in the arm.
2 After being shot, the defendant told Weiner just
3 kill me and get this over with.

4 Reporter Shawn Muserallo arrived on the scene
5 and will testify that the person police took into
6 custody was the same man he had seen coming out of
7 the creek and heading towards Crane Avenue a few
8 minutes earlier. Muserallo will identify this man
9 as the defendant, David Boyd.

10 In addition to the witnesses to the events
11 I've already described, you will also hear from two
12 medical doctors who observed dye on the defendant's
13 hands while in the hospital. You will see the
14 jeans worn by the defendant when he was caught.
15 You will be able to compare the distinctive designs
16 embroidered on these jeans with the images from the
17 bank surveillance video. You will also see the
18 bandana found by the K-9 officers on the trail of
19 fresh human scent that began at the point at which
20 the robber/shooter first entered the wooded area.

21 MR. JOHNSON: Your Honor, permission to
22 approach briefly. I hate to do this, but
23 permission to approach?

24 THE COURT: Uh, yes.

25 (WHEREUPON, a bench conference is held.)

1 THE COURT: You can proceed.

2 MR. FRETWELL: Thank you, Judge.

3 I think I was telling you about the bandana
4 that was found by the K-9 officers. You will have
5 an opportunity to see that, that it was located on
6 the trail that the K-9s picked up at the point at
7 which the individual first was observed entering
8 the wooded area. You will also hear from the DNA
9 expert who analyzed the DNA sample on this bandana
10 and determined that it matches the DNA profile of
11 the defendant, David Boyd.

12 Ladies and Gentlemen, this case is about
13 personal responsibility for one's own decisions.
14 The decision to rob a bank. The decision to carry
15 a loaded gun. The decision to wear gloves. The
16 decision to wear a bandana. The decision to enter
17 a bank. The decision to point a loaded gun at
18 three different tellers and demand money. The
19 decision to take that money. The decision to flee
20 from the bank. The decision to fire that loaded
21 gun several times at a witness. The decision to
22 flee into the woods. The decision to hide in those
23 woods. The decision to continue to run when being
24 ordered by police to stop and surrender.

25 Ladies and Gentlemen, all of these decisions

1 have consequences. The evidence will show on
2 December 10th, 2008 that the defendant set in
3 motion a chain of events that would include the
4 theft of a minivan, the armed robbery of three
5 tellers inside a federally chartered financial
6 institution and the shooting of a civilian witness
7 that would leave that witness fighting for his
8 life.

9 This is an important day for the defendant,
10 but it is also an important day for the citizens of
11 Greenville County and the people of this state.
12 Although the testimony at times may be lengthy,
13 please pay careful attention to all of the
14 evidence. At the conclusion of this case, I will
15 ask you to find this defendant, David Boyd, guilty
16 of Armed Robbery, guilty of Possessing a Weapon
17 During the Commission of a Violent Crime, guilty of
18 receiving or being in possession stolen goods and
19 guilty of Assault and Battery with Intent to Kill.
20 Thank you.

21 THE COURT: Thank you, sir.

22 Mr. Johnson, do you care to make an opening
23 statement?

24 MR. JOHNSON: Yes, ma'am, Your Honor. Your
25 Honor, may it please the court?

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84

Opening Statement by Mr. Fretwell

83

1 THE COURT: Yes, sir.

2 MR. JOHNSON: Solicitor.

3 Ladies and Gentlemen of the jury, uh, I think
4 it's first important to say that when you come in
5 here today, one of the things you are not allowed
6 to throw out is some of the things you learned in
7 life, mainly being common sense. Things that you
8 do everyday. The judge is not going to tell you
9 that's something you have to check at the door.

10 Now, everyday, we investigate things based
11 upon our suspicions. Based upon our
12 investigations, we make a decision. It could be
13 something as simple as, I know I have a little one,
14 but if you have a little one and you have some
15 baby's milk, maybe it's in the fridge or it's been
16 in the freezer, you heat it up. Maybe it's a crock
17 pot. Could be a microwave. One of the things you
18 do is you pull out your wrist and you put a couple
19 of drops on your wrist. You do that because you
20 don't want to burn his mouth. The consequences of
21 the failure to test those things, to practice your
22 due diligence, could burn the little guy or little
23 girl's mouth. That's something that you want to
24 try to prevent.

25 The same type of things that happen in

1 criminal investigations, they get a suspect.
2 Obviously, in this case, David Boyd is the suspect.
3 And then an investigation follows. So what you
4 have to ask yourself here today is what, uh, took
5 place in this investigation and what evidence was
6 gained as part of this investigation. In the case,
7 when the judge gives you an opportunity to
8 deliberate, I ask you to make a decision based upon
9 that investigation -- based upon that evidence.

10 Now, two things before I get started on what
11 type of evidence I expect you to find in this case.
12 We absolutely understand why my client, David Boyd,
13 is the suspect. One of the things the Solicitor
14 said is certainly true is David Boyd was seen by
15 Shawn Muserallo in that area. Shortly thereafter,
16 he was shot. Now, one of the things that you will
17 find that keep coming up is that he wasn't armed.
18 That's just part of the things that -- the
19 investigation started almost immediately. That's
20 one of the things, that's one of the facts that I
21 expect you will base your decision upon in this
22 trial. Now, we also will not disagree that the
23 Bank of Travelers Rest was robbed and that they
24 were shocked. Again, we contend that David Boyd
25 did not commit these crimes, did not commit those

1 crimes. Now, we believe that the evidence will
2 show that instead of my client, David Boyd,
3 committing these crimes, the evidence actually
4 suggests that someone else committed these crimes.
5 Okay.

6 Now, the Solicitor mentioned a bank dye pack
7 going off. So ask yourself, the bank dye pack
8 going off, what were the circumstances of that and
9 did they find any of that type of evidence on my
10 client? Did they find any of the dye from the pack
11 on my client?

12 He mentioned DNA evidence. They found DNA
13 evidence in the van. Ask yourself did they find my
14 client's DNA; did they find the owners of the van
15 DNA or any -- or did they find someone else's DNA
16 also in that van? Does it suggest that someone
17 else committed these crimes?

18 They also did fingerprints in this case. I
19 know the robber was said to wear gloves, but at
20 some point, as I understand it, the gloves weren't
21 on. Ask yourself to analyze the results of the
22 fingerprint test and ask yourself were my client's
23 fingerprints found in the van or was someone else's
24 found?

25 Another test that was taken at least was

1 gunshot residue test. Ask yourself was that
2 tested. If it was tested, does that prove that my
3 client had shot a gun? We have a whole lot of
4 tests that we have here. It's all part of the
5 investigation and it's important, especially in
6 criminal trials. As a result of an investigation,
7 as the result of a decision made by people, such as
8 yourself of the jury, someone's freedom can be
9 taken away.

10 It's very important that you keep an open
11 mind. I expect between the State and even myself,
12 there can be anywhere from 40 to 50 witnesses
13 called. It could be a long trial, but it's very
14 important that you keep an open mind through all
15 the witnesses. Be very patient. Wait until the
16 end when the judge decides for you to deliberate
17 before you make your decision. What I think you'll
18 find is that evidence suggests that my client is
19 not the one who committed these crimes despite what
20 the Solicitor and the police office in this county
21 suggests.

22 Now, another thing I think you'll find is that
23 the State will try to get you to ignore some of the
24 pieces of evidence that I just informed you about.

25 MR. FRETWELL: Objection, Your Honor.

1 Improper argument.

2 THE COURT: Overruled. You can continue.

3 MR. JOHNSON: What I expect you find is the
4 State will try to get you to ignore some of the
5 evidence that's produced as a result of their own
6 investigation. I think you'll find that they
7 collected the evidence, their own state agencies.
8 I think you will find that they tested such
9 evidence. I think you will find that the results
10 were produced by their own people. I think you
11 will find that they'll come here today and ask you
12 to ignore those results. I also think you will
13 find that they will take certain other pieces of
14 evidence and try to stretch or try to fit the
15 pieces of evidence into a puzzle that simply does
16 not fit. Simply does not fit.

17 Again, Ladies and Gentlemen, we come here.
18 before you today. And the Solicitor mentioned my
19 client was shot as a result of an encounter with
20 Police Officer David Weiner. The police officer
21 shot him because he believed him to be dangerous.
22 He shot him cause he believed him to have robbed
23 the bank. He shot him because he believed him to
24 have shot a witness. He believed him to be armed.
25 Right then and there is where the State's case

1 begin to dwindle. My client was not armed. He was
2 shot three times. Again, I just ask you to keep an
3 open mind at this point in time. Wait until all
4 the evidence comes in. I feel confident at the end
5 of this trial that you will find my client, David
6 Boyd, not guilty of these crimes. Thank you.

7 THE COURT: You ready to call your first
8 witness?

9 MR. FRETWELL: Yes, ma'am.

10 THE COURT: All right. Yes, sir.

11 MR. FRETWELL: Your Honor, the State would
12 call Adrian Correa to the stand.

13 THE COURT: Ma'am, come forward and be
14 sworn.

15 THE CLERK: Ma'am, if you'll pause at the
16 end of the bench. Please place your left hand on
17 the Bible and raise your right hand.

18 ADRIAN CORREA

19 having first been sworn, testifies as follows:

20 THE CLERK: Thank you. Please be seated.
21 Please state your full name for the record.

22 THE WITNESS: Adrian Correa.

23 MR. FRETWELL: May it please the court?

24 THE COURT: Yes, sir.

25 DIRECT EXAMINATION

1 BY MR. FRETWELL:

2 Q Ms. Correa, how old are you?

3 A 23.

4 Q You live in Greenville County?

5 A I do.

6 Q How long have you lived here?

7 A All my life.

8 Q Are you married?

9 A No.

10 Q How far did you go in school?

11 A Uh, second year in college.

12 Q And where are you currently employed?

13 A I work at a dentist office.

14 Q And where have you worked previously?

15 A Bank of Travelers Rest and Ulta.

16 Q How long did you work for the Bank of Travelers
17 Rest?

18 A Almost a year.

19 Q All right. Uh, what were your duties and
20 responsibilities at that time?

21 A A bank teller.

22 Q Let me take you to the late morning hours of
23 Wednesday, December 10th, 2008. Were you working for the
24 Bank of Travelers Rest that day?

25 A Yes.

1 Q At which branch were you working?

2 A The White Horse branch.

3 Q Okay. Let me show you what's been premarked as
4 State's Exhibit 1 through 4. I'll ask you if you
5 recognize what's depicted in those photographs.

6 A Yes, sir.

7 Q And do those photographs accurately depict what
8 they show on December 10th, 2008?

9 A Yes.

10 Q All right. What were your working hours that
11 day?

12 A I think it was 8:00 to 6:00 or 5:30.

13 Q All right. And how many tellers -- or how many
14 teller windows are at that branch?

15 A Five.

16 Q Let me show you what's been marked as State's 5
17 and 6. Do those pictures accurately depict what they
18 show and was that the same condition it was on December
19 10th, 2008?

20 A Yes.

21 MR. FRETWELL: Your Honor, the State would
22 move exhibits 1 through 6 into evidence at this
23 time.

24 THE COURT: Any objection?

25 MR. JOHNSON: No, ma'am, Your Honor.

1 THE COURT: All right. And you said those
2 are State's Exhibit what? I'm sorry.

3 MR. FRETWELL: 1 through 6.

4 THE COURT: 1 through 6 are entered without
5 objection.

6 (WHEREUPON, State's Exhibits 1 through 6 are
7 admitted into the record.)

8 MR. FRETWELL: Permission to publish, Your
9 Honor?

10 THE COURT: Yes, sir. I give you blanket
11 permission to publish anything once it's been
12 entered.

13 MR. FRETWELL: Thank you, Judge.

14 BY MR. FRETWELL:

15 Q All right. Ms. Correa, I want you to take a
16 look at these photographs. I'm going to hand you a
17 little laser pointer. Push that little button right
18 there to make that red dot appear. If you can, just
19 orient the jury to what we're looking at in this
20 particular picture.

21 A Uh, this is the White Horse Road branch. This
22 is the front side of the building.

23 Q Okay. Ms. Correa, if you would, if you would
24 speak up and make sure, as much as possible you can speak
25 into that microphone so everyone can hear what you're

1 saying. Okay. If you don't mind, tell me again what
2 does this show.

3 A It's the White Horse Road branch and this is
4 the front side. The front door.

5 Q State's 2.

6 A This is the right side from the front.

7 Q Okay. And State's 3?

8 A That's the left side from the front.

9 Q State's 4?

10 A That's the back side with the drive-thru
11 windows.

12 Q What is beyond the drive-in window that's
13 across that little road there?

14 A The Applebee's.

15 Q Does the Applebee's sit on White Horse Road?

16 A Yeah.

17 Q Okay. All right. Now let me show you State's
18 5. What are we looking at in this picture?

19 A Uh, this is when you come in. This is teller
20 windows that we have.

21 Q Okay. And approximately how many teller
22 windows are depicted in that photograph?

23 A Up front we have -- there's four and then the
24 courier and then you have two back there. Two total
25 windows.

1 Q Okay. And which teller window was yours on
2 December 10th, 2008?

3 A The second one from the left.

4 Q Okay. Let me show you now State's 6. Just
5 kind of orient us to what we're seeing in that picture as
6 well.

7 A It's a side view from the front door. This is
8 Teller 1 and this would be my station.

9 Q Okay. Mr. Anderson, if we could have the
10 lights please, sir.

11 Who was working the other windows with you that
12 particular day?

13 A Yolanda McCord was on my right. Audrey Samec
14 was on my left.

15 Q All right. So Ms. McCord was on the teller
16 window closest to the wall?

17 A Correct.

18 Q And Ms. Samec was on your left?

19 A Correct.

20 Q If you were entering the bank, she would be on
21 your right?

22 A Yes.

23 Q Okay. Was the bank equipped with video
24 surveillance at that time?

25 A Yes, it was.

1 Q Was every second recorded or is it what they
2 call time lapse?

3 A It's time-lapsed.

4 Q Okay. So every few seconds.

5 A Every few seconds, correct.

6 Q Have you reviewed the video of time-lapsed
7 photos?

8 A I have.

9 Q All right. Let me show you what's been marked
10 as Exhibit 9 and ask if you can recognize this disk.

11 A Yes.

12 Q What is that?

13 A It's a disk of the bank robbery. It's got my
14 initials and the date.

15 Q That's how you recognize it?

16 A Correct.

17 Q You've viewed it?

18 A Correct.

19 Q It accurately reflects the events of that day?

20 A Yes.

21 MR. FRETWELL: Your Honor, at this time, the
22 State moves State's 9 into evidence.

23 THE COURT: Any objection?

24 MR. JOHNSON: No objection.

25 THE COURT: All right then. Without

1 objection, State's Exhibit number 9 is admitted.

2 MR. FRETWELL: Thank you.

3 (WHEREUPON, State's Exhibit 9 is admitted into the
4 record.)

5 BY MR. FRETWELL:

6 Q Do you recall what the weather was like that
7 day?

8 A It was, uh, cold and rainy.

9 Q And at some point that morning, did the drive-
10 thru tellers go to lunch?

11 A They did.

12 Q Okay. Did anything unusual happen while those
13 tellers were at lunch?

14 A Uh-huh. We had --

15 Q Tell us about it.

16 A The bank robbery. We had -- it was a quiet
17 morning like always. Our tellers went to lunch, our
18 drive-thru tellers did. Then it was just left with me,
19 Audrey and Yolanda. And it was right before 12 o'clock
20 when we had a man come through the front door. Looked
21 like an ordinary man but he rushed in. He had a dark
22 hoodie on with a ball cap and a dark bandana across his
23 face. He did have gloves on. And in one hand, he had a
24 black gun. In the other hand, he had a white plastic
25 bag.

1 Q Let's talk a little bit more about this
2 individual. About how long was he in the bank?

3 A It felt like 20 minutes. But with the
4 surveillance camera, he was probably in there less than
5 two minutes.

6 Q All right. During that period time, were you
7 able to approximate how tall he was?

8 A About six feet tall.

9 Q Did you give police investigators an idea of
10 how much he weighed?

11 A Yes.

12 Q Approximately what did he weigh?

13 A Between 160 and 180.

14 Q All right. You indicated that he was wearing
15 some sort of hoodie?

16 A Yes.

17 Q Okay. A baseball hat?

18 A Uh-huh.

19 Q A bandana across his face.

20 A Correct.

21 Q Could you see his eyes?

22 A Yes, just a little bit.

23 Q Did he approach your teller window?

24 A He did.

25 Q Could you tell if it was a male or a female?

1 A It was a male. You could tell.

2 Q Could you tell if he was African American,
3 white or Hispanic?

4 A Yes. You could tell he was African American.

5 Q Okay. You indicated that he was wearing jeans.
6 Can you describe the jeans?

7 A They were wash color jeans. They were, like,
8 colored.

9 Q Okay. And what about -- you indicated that he
10 was wearing gloves; is that correct?

11 A Correct. They were black gloves.

12 Q What did the individual do once he approached
13 your teller window?

14 A He demanded for money and told us not to do
15 anything stupid.

16 Q Okay. Did he do anything in connection with
17 asking for money with either item that was in either of
18 his hands?

19 A He waved his gun at all three of us. Then he
20 pushed the white bag underneath my teller window.

21 Q You say he waved his gun. Did he wave it or
22 did he point it at you?

23 A He pointed it at me and then he went from
24 teller to teller.

25 Q He pointed at each of the three tellers?

1 A Correct.

2 Q What, if anything, were his instructions
3 besides don't do anything stupid?

4 A Put the money in the bag.

5 Q All right. And did you indeed put money in the
6 bag?

7 A That's correct.

8 Q Did both Yolanda and Audrey also put money in
9 the bag?

10 A Yes, they did.

11 Q Uh, how did you go about doing that? Did the
12 man move around? Did you move around? How did that all
13 work?

14 A I kept the bag in my teller station. Audrey
15 handed me her money over -- we have a little station.
16 There's a little cubby in between both of us. She handed
17 over that. Then Yolanda came around behind my teller
18 station and put her money in the bag.

19 Q Did you put anything in addition to money in
20 the bag?

21 A I did, a dye pack.

22 Q A dye pack?

23 A Yes.

24 Q All right. What does a dye pack generally look
25 like?

1 A It consists of \$80 of real 20s on top. At the
2 bottom, it's got a fake plate. It looks like a bundle of
3 20s. Once that dye pack is removed from my teller
4 station, once you go out the front door, it sets it off.
5 You only have a couple of minutes before the dye pack
6 blows.

7 Q You know precisely how much time lapses before
8 it activates?

9 A 20, 30 seconds.

10 Q So not a couple of minutes?

11 A I'm sorry. Yes. A couple of seconds.

12 Q Let me show you what's 7 and 8. I ask you if
13 you recognize what's in both 7 -- State's 7 and State's
14 8.

15 A Yes.

16 Q Okay. And the photographs accurately reflect
17 what they purport to reflect?

18 A Yes.

19 Q And that's the condition they were in that day?

20 A Correct.

21 Q Let me show you --

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

24 THE COURT: Any objection?

25 MR. JOHNSON: No objection.

1 THE COURT: All right. Without objection, 7
2 and 8 are admitted.

3 MR. FRETWELL: Mr. Anderson, if I could have
4 the -- yeah. Thank you.

5 (WHEREUPON, State's Exhibits 7 and 8 are admitted
6 into the record.)

7 BY MR. FRETWELL:

8 Q I'll show you first State's Exhibit 7. Are
9 these the dye packs you were referring to?

10 A Okay.

11 Q So this, uh, this portion on the side is actual
12 real money; is that correct?

13 A Correct.

14 Q And the dye, the dye portion would be inside of
15 it...

16 A Correct.

17 Q Also let me show you State's 8. What -- how
18 are -- what are we looking at in this particular
19 photograph?

20 A My teller station.

21 Q Okay. So this is from behind the teller window
22 facing the door?

23 A Correct.

24 Q All right.. Can you use your laser pointer and,
25 uh, show me where do y'all keep the money and the dye

1 packs, et cetera, that you have access to?

2 A Right here.

3 Q Okay. And did you indeed go into that drawer
4 and provide money and dye packs to the person who robbed
5 you?

6 A Yes, sir.

7 Q All right. Mr. Anderson, I think that's good.
8 Is there something that the dye pack rests on?

9 A A metal plate.

10 Q Okay. Do you know the purpose of that metal
11 plate?

12 A Not to set it off. To keep it from setting
13 off.

14 Q While it's in the bank?

15 A Correct.

16 Q How do you -- how are you aware kind of or how
17 were you aware at the time so much about the dye packs
18 and kind of how they work as far as the teller is
19 concerned at that particular time?

20 A We'd just had training on it the week prior.

21 Q Okay. And, uh, so what happened as you pushed
22 the bag of money through the teller window?

23 A He took it and ran off out the front door.

24 Q And what did the robber do -- while he was in
25 the bank, what specifically did he do with the gun?

1 A He just went from each teller station demanding
2 money and said not to do anything stupid..

3 MR. FRETWELL: Your Honor, at this time, the
4 State wishes to publish portions of State's 9.

5 THE COURT: All right.

6 BY MR. FRETWELL:

7 Q So these camera angles, are these cameras
8 located in different areas of the bank?

9 A Yes.

10 Q It cycles through from camera to camera?

11 A Correct.

12 Q Obviously, no audio on this video; is that
13 correct?

14 A Correct..

15 Q Ms. Correa, when you reviewed this video on the
16 date of the incident, you did review it that day?

17 A Yes, I did.

18 Q Were you able to determine anything else about
19 the driver's clothing in addition to what you noticed
20 while the robber was in the bank?

21 A Yeah, that he was wearing a gray t-shirt.
22 underneath his hoodie. He had a marking on the back of
23 his pants on the right side with red markings on it. And
24 he was wearing black tennis shoes.

25 Q Okay. Did you provide this physical and

1 clothing to police and/or the FBI?

2 A I did.

3 Q About how long had you been working at the bank
4 before you were robbed?

5 A About three months.

6 Q And had you ever experienced a robbery before?

7 A Never.

8 Q Based on the video, do you know how long the
9 robber was actually in the bank?

10 A About a minute.

11 Q How long did it feel like he was in the bank at
12 that time?

13 A Forever.

14 Q Do you recall how you felt during and
15 immediately after the robbery?

16 A Very scared and nervous.

17 Q Do, uh, either Yolanda or Audrey or yourself
18 still work at the bank?

19 A No, we don't.

20 Q Have you had any recent contact with Yolanda?

21 A I have not.

22 Q Okay. Please answer any questions that Mr.
23 Johnson or Mr. Erwin may have.

24 THE COURT: Mr. Johnson.

25 MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Ms. Correa, I know -- Ms. Correa, I know we just went over, uh, -- just watched a video. Isn't that correct?

A Correct.

Q Uh, otherwise, you also gave your description of what the robber looked like; isn't that correct?

A Correct.

Q And some of that is based upon the way you saw the video; is that right?

A Uh-huh.

Q And what you communicated was he was wearing a -- he was a man?

A Yes.

Q He was a black man?

A Yes.

Q He was roughly six feet tall?

A Uh-huh.

Q He had a black hoodie on?

A Correct.

Q He also had a hat on?

A Correct.

Q Now, when we say hat, we're talking about a stocking cap or baseball cap or what?

- 1 A Like a base --
- 2 Q A baseball cap with a bill? He had a bandana
- 3 on?
- 4 A Correct.
- 5 Q He had a black or gray gloves? I don't
- 6 remember which one.
- 7 A Black.
- 8 Q Black gloves. He had black gun?
- 9 A Yes.
- 10 Q He had a white plastic bag?
- 11 A Yes.
- 12 Q That's the bag that he used to put the money
- 13 in?
- 14 A Yes.
- 15 Q Okay. And he had on black tennis shoes?
- 16 A Yes.
- 17 Q Now, approximately what time was the bank
- 18 robbed?
- 19 A Right before noon.
- 20 Q Right before noon? Okay. Do you remember if
- 21 the plastic bag had writing on it or not?
- 22 A I don't recall.
- 23 Q And you said Yolanda McCord was working with
- 24 you?
- 25 A Correct.

1 Q And Audrey Samec was working with you?

2 A Yes.

3 Q Okay. At this time, I have nothing further.

4 MR. FRETWELL: Your Honor, very briefly?

5 THE COURT: Sure.

6 REDIRECT EXAMINATION

7 BY MR. FRETWELL:

8 Q With respect to the description of the shoes
9 that the individual was wearing, you got that from
10 looking at the video afterwards?

11 A Yes.

12 Q And you indicated that they were black and you
13 thought that they were tennis shoes?

14 A Yes.

15 Q Were you sure of whether they were tennis shoes
16 or some other kind of shoes?

17 A That's what I recall from the video.

18 Q From looking at the video. Okay.

19 MR. FRETWELL: No other questions, Judge.

20 THE COURT: Anything else, Mr. Johnson, from
21 this witness?

22 MR. JOHNSON: No, ma'am, Your Honor.

23 THE COURT: Sir -- excuse me. Ma'am, you can
24 step down. Sorry.

25 MR. FRETWELL: May it please the court?

Rene Beauford - Direct Examination by Mr. Fretwell

108

1 THE COURT: Yes, sir.

2 MR. FRETWELL: The State would call, uh, Rene
3 Beauford.

4 THE COURT: All right. If you will, come
5 forward and be sworn.

6 THE CLERK: Ma'am, please come forward and
7 pause at the end of the bench. Please your left
8 hand on the Bible and raise your right hand.

9 RENE BEAUFORD
10 having first been sworn, testifies as follows:

11 THE CLERK: Thank you. Please be seated.
12 Please state your full name for the record.

13 THE WITNESS: Ronda Rene Beauford.

14 DIRECT EXAMINATION

15 BY MR. FRETWELL:

16 Q Ms. Beauford, by whom are you employed?

17 A Greenville County Sheriff's Office.

18 Q All right. And what is your position at the
19 Sheriff's Office?

20 A I do 911 research coordinator. I work in the
21 dispatch center doing research for all, any type of
22 information that's received by our dispatch center.

23 Q What are your duties and responsibilities in
24 addition to what you just described?

25 A I, uh, have to review tapes. All of our phone

1 calls are recorded. I also research in our computer-
2 aided dispatch system, which is called a CAD. Any type
3 of call that's entered into our CAD for dispatch to a
4 complaint or whatnot. Uh, I also do training for NCIC
5 which is the National Crime Information Center. And
6 anything else, research or anything that they need me to
7 look or find.

8 Q With respect to the research, do you process
9 requests for tape research on 911 calls and radio
10 traffic?

11 A Yes, I do.

12 Q All right. What happens when someone dials
13 911?

14 A At the point of dialing 911, it immediately
15 starts recording whether or not our dispatcher has picked
16 up or not. Then once it goes into a cue-type situation
17 to where the next available dispatch that's available, it
18 will go to their console for them to pick up on the line.
19 Once they pick up, it's still being recorded. Your
20 conversation between you and the dispatcher, they take
21 the information and then they relay it to the proper
22 authority for dispatch out for emergency assistance.

23 Q Now, is every call recorded?

24 A Yes.

25 Q And are those calls recorded at the time that

1 they are made?

2 A Yes, our calls are recorded automatically and
3 simultaneously for anything that is dialed in or going
4 out of our dispatch center.

5 Q Is that a digital system?

6 A Yes, it is.

7 Q Are these recordings made and stored in the
8 regular course of your business?

9 A Yes, it is.

10 Q Was this procedure in place on December 10th of
11 2008?

12 A Yes, it was.

13 Q In the regular course of your duties, are you
14 routinely asked to retrieve 911 recordings?

15 A Yes, we are.

16 Q Okay. Let me show you what's been marked as
17 State's Exhibit number 10. I'll ask if you recognize
18 this particular exhibit.

19 A Uh, yes, I do.

20 Q How do you recognize it?

21 A That is our case number. The one, it stands
22 for the Sheriff's Office in our records division. Then
23 those are my initials where I have reviewed the recording
24 and initialed it.

25 Q Have you listened to this recording?

1 A Yes, I have.

2 Q Does this recording accurately reflect 911
3 calls that occurred on December 10th, 2008?

4 A Yes, it does.

5 MR. FRETWELL: Your Honor, at this time, we
6 would move State's 10 into evidence.

7 THE COURT: Any objection?

8 MR. JOHNSON: No objection.

9 THE COURT: All right then.

10 (WHEREUPON, State's Exhibit 10 is admitted into the
11 record.)

12 MR. FRETWELL: The witness may be excused,
13 Your Honor. I have no further questions unless
14 Mister --

15 THE COURT: Mr. Johnson, you have any
16 questions for this witness?

17 MR. JOHNSON: I have no questions for this
18 witness.

19 THE COURT: All right, ma'am. You may step
20 down.

21 MR. FRETWELL: And may she be excused, Your
22 Honor?

23 THE COURT: Any objection to that, Mr.
24 Johnson?

25 MR. JOHNSON: No objection.

Audrey Samec - Direct Examination by Mr. Fretwell

112

1 THE COURT: I thank you, ma'am, for being
2 here.

3 MR. FRETWELL: Your Honor, at this time, the
4 State would call Audrey Samec.

5 THE COURT: All right. Ma'am, if you'll come
6 forward and be sworn.

7 THE CLERK: Ma'am, please pause at the end of
8 the bench. Place your left hand on the Bible and
9 raise your right hand.

10 AUDREY SAMEC
11 having first been sworn, testifies as follows:

12 THE CLERK: Thank you. Please be seated.
13 Please state your full name for the record.

14 THE WITNESS: Audrey Samec.

15 DIRECT EXAMINATION

16 BY MR. FRETWELL:

17 Q Ms. Samec, were you also -- let me take you,
18 first of all, to the late morning hours of Wednesday,
19 December 10th, 2008. Were you also working as a teller
20 in the Bank of Travelers Rest on the 12/10/08?

21 A Yes, I was.

22 Q Do you recall what time you arrived at work
23 that morning?

24 A Around, uh, 7:45 to open.

25 Q Okay. And what, if anything, happened shortly

1 before noon that day?

2 A Shortly before noon as we saw on the tape,
3 there was, uh, three of the tellers were at lunch -- two
4 of the tellers were at lunch. And a gentleman walked in
5 the door. His face was covered. He had gloves on, a
6 hoodie over his head. He came up to, uh, Adrian's window
7 and asked her for money and pointed a gun at her and then
8 came to my window and then Yolanda's window and pointed a
9 gun at each one of us and told us to put money in the bag
10 that he had given her.

11 Q Uh, in addition to what you just described, did
12 you notice anything about what kind of pants he was
13 wearing?

14 A He was wearing blue jeans.

15 Q And can you describe --

16 A They were faded, kind of faded.

17 Q Faded blue jeans?

18 A Yes, blue jeans.

19 Q And was the hoodie on the hood up or down?

20 A It was up..

21 Q And you said he demanded money?

22 A Yes.

23 Q From each of you?

24 A Yes.

25 Q And what specifically do you recall him saying

1 to you?

2 A Just to put money in the bag and not do
3 anything, uh, to cause a problem. I don't remember the
4 exact words.

5 Q Was that a difficult experience for you?

6 A Yes.

7 Q Did you put anything besides money into the bag
8 that the robber had handed Adrian?

9 A I put a dye pack in the bag.

10 Q Were there any other customers in the bank at
11 the time you were robbed?

12 A No, there were no customers there.

13 Q And the individual we saw walk in, the white
14 male, kind of in his, maybe 50's that was walking in the
15 lobby of the bank, who was that?

16 A That was Bud Fant. He is the manager of the
17 bank.

18 Q And where was he at the time the robbery
19 occurred?

20 A He was in the break room, I believe, in the
21 back.

22 Q Just stepped through the door of the break
23 room?

24 A Yes.

25 Q Did you contact 911?

1 A Yes.

2 MR. FRETWELL: Your Honor, at this time, I
3 wish to publish track 1 of State's 10.

4 THE COURT: All right.

5 (WHEREUPON, track 1 of State's Exhibit 10 is
6 played.)

7 BY MR. FRETWELL:

8 Q Ms. Samec, do you recall what the weather was
9 like that day?

10 A It was cold and rainy.

11 Q Noticeably cold?

12 A Yes.

13 Q Had you ever experienced a robbery before?

14 A No.

15 Q Do you recall how you felt during and
16 immediately after the robbery?

17 A I was very nervous and upset.

18 Q And have you had any recent contact with
19 Yolanda McCord?

20 A No.

21 Q Please answer any questions that Mr. Johnson
22 may have for you or Mr. Erwin.

23 THE COURT: Mr. Johnson?

24 MR. JOHNSON: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. JOHNSON:

2 Q Ms. Samec, we just listened to the 911 tape.
3 That was you on the other end, right?

4 A Yes, sir.

5 Q Okay. Now, in that 911 tape that we just
6 listened to, you portrayed to the court or you portrayed
7 to the 911 operator that you put a dye pack in the bag?

8 A Yes.

9 Q Now, is this dye pack that you put in there, is
10 this one in addition to what Adrian put in there?

11 A Yes.

12 Q Okay. Do you know of any other dye packs or
13 were there just two?

14 A I think there were just two.

15 Q Just two dye packs. Okay. You also, uh,
16 stated that the robber had a gun?

17 A Yes.

18 Q He had a plastic bag and a plastic bag is what
19 he demanded the money in, right?

20 A Yes.

21 Q Okay. And once again, you put the dye pack in
22 the bag?

23 A Yes, sir.

24 Q All right. And his face was covered?

25 A Yes, I couldn't see.

1 Q He had a hoodie on?

2 A Yes.

3 Q A black hoodie? Now, with hoodie, you mean one
4 that zips up or one you stick your pockets, it's like one
5 big shirt?

6 A Uh, I don't really remember if it was a zip up
7 or not.

8 Q Okay. That's fine. Did you see the hat?
9 Baseball cap?

10 A At the time, I don't think I really noticed the
11 hat.

12 Q Okay.

13 A I was just trying to get money out and get --

14 Q Understood. Trying to make it go as quickly as
15 possible.

16 A Right. Trying to get it over with.

17 Q And you say he escaped in a Windstar van; is
18 that right?

19 A Yes, white van.

20 Q Is it the same van he arrived in?

21 A Yes.

22 Q Okay. Thank you. That's all.

23 THE COURT: Any redirect?

24 MR. FRETWELL: No questions, Judge.

25 THE COURT: Ma'am, you can step down.

Remarks

118

1 Ladies and Gentlemen, if you'll indulge me, I
2 need to take a short break. I don't know if any of
3 you do as well. Let's take about a 10-minute break.
4 All right. Please don't discuss this with anyone in
5 your jury room.

6 (WHEREUPON, the jury exits at approximately
7 3:13 p.m.)

8 THE COURT: All right. Let's be in recess
9 for 10 minutes.

10 MR. FRETWELL: Thank you, Judge.

11 THE COURT: Thank you.

12 (WHEREUPON, a short recess is taken.)

13 (WHEREUPON, the jury enters at approximately
14 3:24 p.m.)

15 THE COURT: A few little housekeeping details
16 before we get back started. First of all, tomorrow,
17 we have our Grand Jury coming in to be qualified for
18 the year.. I think I told you a little bit during
19 jury qualification that our Grand Jury serves with
20 us one day a month for the entire year. So lucky
21 you got called on Monday, rather than Tuesday.

22 And secondly -- and so I have to deal with them
23 tomorrow morning and qualify them. That will take
24 me a little bit of time. So we will not begin
25 tomorrow until 11 o'clock. So in case I forget to

1 tell you at the end of the day because I am very
2 absentminded, we will not begin tomorrow until 11
3 o'clock. That is not any of these attorneys' fault.
4 That is my responsibility that I have to take care
5 of.

6 Secondly, I failed to introduce to you this
7 person sitting beside me. This is my law clerk,
8 Stan Overby. You may see us talking from time to
9 time. He'd love to be talking about anything
10 related to Vanderbilt sports, but that is not what
11 we are talking about. We're talking about he's
12 getting together law for me to be able to charge you
13 on the law at the end of this case. If you see us
14 talking about things, I just wanted to let you know
15 that's what we were doing. And if you see me typing
16 on my computer, I take notes on my computer. So I
17 did not want you to think I'm doing anything else.
18 All right.

19 All that housekeeping taken care of. Are you
20 ready to proceed?

21 MR. FRETWELL: Yes, Your Honor.

22 THE COURT: All right.

23 MR. FRETWELL: Your Honor, the State would
24 call David Dill.

25 THE CLERK: If you would place your left hand

1 on the Bible and raise your right hand.

2 DAVID DILL

3 having first been sworn, testifies as follows:

4 THE CLERK: Thank you. Please be seated.

5 Please state your full name for the record.

6 THE WITNESS: David Lee Dill.

7 DIRECT EXAMINATION

8 BY MR. FRETWELL:

9 Q Mr. Dill, how old are you?

10 A I am 40 years old.

11 Q Do you live in Greenville?

12 A Yes, sir.

13 Q How long have you lived in the Greenville area?

14 A I've lived in Greenville my whole life.

15 Q And how far did you go in school?

16 A I got a degree in business from USC.

17 Q From USC Columbia?

18 A Columbia.

19 Q Okay. Uh, where are you currently employed?

20 A I'm currently employed at Century 3 Industrial
21 Contractors. I'm sorry.

22 Q Okay.. I'm having a little bit of difficulty
23 hearing you. If you don't mind bending that microphone
24 down just a little bit and make sure you keep your voice
25 up really loud so we can hear you all the way over here. .

1 What kind of company is Century 3?

2 A Century 3 is an industrial contractor. We
3 relocate equipment. We also have an office in China. We
4 take businesses that are closing down with their old
5 equipment and make new businesses out of it.

6 Q How long have you worked at Century 3?

7 A Going on three years now.

8 Q What do your job responsibilities entail?

9 A I am the Electrical Project Manager. I am
10 basically over all the electrical for the company.

11 Q How many people do you oversee?

12 A Right now, I have around 60 people.

13 Q Okay. And are you married?

14 A Yes.

15 Q Do you have any children?

16 A I have one daughter that's eight years old.

17 Q Let me take you to the late morning hours of
18 Wednesday, December 10th, 2008. Do you recall what you
19 were doing for lunch that day?

20 A Yes. I had -- uh, was going to Applebee's
21 around 11:30 or a little after to -- I had just pulled
22 into Applebee's to get ready to order lunch with my wife,
23 my fiancé at the time.

24 Q Was there a particular reason that you selected
25 Applebee's that day?

1 A Well, she works for the Post Office and she has
2 30-minute lunches.

3 Q She has what?

4 A She has 30 minute -- minutes to eat lunch.

5 Q Okay.

6 A So what I do is I try to arrive early and call
7 her to find out what she wants to eat. So that day, I
8 pulled into the parking lot and, uh, called her and found
9 out what she wanted and was fixing to proceed to go in to
10 order.

11 Q Okay. And when you were getting ready to go
12 inside the Applebee's, uh, -- well, let me back up for
13 just a minute. Was this something that you did for the
14 first time that day or was this a regular routine for
15 you?

16 A This was a regular routine. I would do it at
17 least three out of four days a week.

18 Q And this Applebee's you say was near or in her
19 postal carrier area?

20 A Yes. It is in her area. She has three or four
21 locations that she can eat in a certain area. That was
22 one of the locations.

23 Q And where were you working at that time?

24 A I was working at Furman University doing the
25 new science wing.

1 Q All right. Once you had made the call to, I
2 guess, your fiancé at the time --

3 A Uh-huh.

4 Q What was her name?

5 A Tammy.

6 Q Tammy. All right. Uh, once you made that
7 phone call and was preparing to go inside, what, if
8 anything, did you see after that?

9 A Well, after I got off the phone with her and
10 was fixing to go in, out of the left corner of my eye, I
11 saw red smoke going up into the air.

12 Q Okay.

13 A And at that moment, I saw a white minivan
14 backing out of the parking space in the front of the Bank
15 of Travelers Rest.

16 Q All right. Let me show you -- what, uh, --
17 once the vehicle backed up, where did it go?

18 A The vehicle had proceeded to come towards me
19 and take a left in front of me.

20 Q Right in front of you?

21 A Yes.

22 Q Okay. Let me show you what's been marked as
23 State's 11 through 14. Take a look at those pictures and
24 tell me if you recognize what's shown in those pictures
25 and if that accurately describes the scene on December

1 10th of 2008.

2 A It does.

3 MR. FRETWELL: Okay. Your Honor, at this
4 time, we would move State's 11 through 14 into
5 evidence.

6 THE COURT: Any objection?

7 MR. JOHNSON: No objection.

8 THE COURT: All right then. They are
9 admitted without objection.

10 (WHEREUPON, State's Exhibits 11 through 14 are
11 admitted into the record.)

12 BY MR. FRETWELL:

13 Q All right. Mr. Dill, you should have a little
14 laser pointer up there. You know how to work that with
15 the little button to get a little red dot to show up?

16 A Yes, sir.

17 Q Okay. If you will, show us basically what are
18 we looking at in this particular picture.

19 A We're looking at White Horse Road right here.
20 We're looking at the front of the Bank of Travelers Rest
21 and the side of Applebee's and the front entrance of
22 Applebee's.

23 Q And this being the Applebee's sign?

24 A Correct.

25 Q All right. Now, let me show you State's

1 Exhibit 12. What are we looking at?

2 A We're looking at the side of Applebee's again
3 here. And we're almost at the front door of the bank,
4 the Bank of TR. And we're looking at the road. This is
5 where I said the van had backed up, came out and took a
6 left at this point. I was facing the bank right in this
7 parking lot area here.

8 Q All right. And State's 13, can you tell us
9 about that photograph?

10 A Again, this is the side of Applebee's. This is
11 the road that the van had traveled in front of me. This
12 is the entrance to the teller's area.

13 Q The drive-thru?

14 A The drive-thru.

15 Q Okay. About where were you parked? Do you
16 recall?

17 A I was parked right in here where this car is
18 at.

19 Q And finally, let me show you State's 14.

20 A This is where the van had come out and taken a
21 left heading down in this direction. Again, this is
22 where I was parked right in this area.

23 Q Okay. As these pictures describe, can you tell
24 us a little bit about the weather conditions that
25 particular day?

1 A It was very cold and a lot of rain that day.

2 Q All right. What did you do -- you said after
3 the vehicle drove past you, what did you do at that
4 point?

5 A At that moment, I had backed out of the spot
6 cause I was still seeing the red smoke come out of the
7 driver's side window. I had pulled out to go away from
8 Applebee's parallel with how he was going. And as soon
9 as he went around the curve to the stop sign, when he got
10 to the stop sign, I had come out of Applebee's to get
11 right behind the minivan.

12 Q All right. Let me show you what's State's 15.
13 Do you recognize what's shown on this?

14 A I do.

15 Q Okay. If you don't mind, would you step down
16 for me please, sir. Come around.

17 A (Witness complies.)

18 Q Without obstructing any of the jurors' view and
19 making sure you keep your voice up for the Court
20 Reporter, will you show us what we're looking at --

21 MR. FRETWELL: I'm sorry. Your Honor, I
22 don't think I moved 15 into evidence. I'll move 15
23 into evidence at this time.

24 THE COURT: Any objection?

25 MR. JOHNSON: No objection.

1 THE COURT: All right.

2 (WHEREUPON, State's Exhibit 15 is admitted into the
3 record.)

4 BY MR. FRETWELL:

5 Q All right. Mr. Dill, if you can kind of show
6 us what these two buildings are, kind of orient us to
7 where we are, where you were and what you saw that
8 particular day.

9 A Again, here is White Horse Road. Here is the
10 Bank of Travelers Rest. Here's the front entrance.
11 Here's the drive-in tellers around back, the bank drive-
12 thru. This is Applebee's. I was parked basically right
13 in here where this white truck is at at the moment.

14 Q When the minivan you saw in front of the bank,
15 when it pulled out of the bank parking lot, will you show
16 us where it went and what you did as a result.

17 A The minivan, when I saw it, it was backing out.
18 When I saw it at this point here, I saw red smoke. The
19 minivan proceeded to travel this way and took a left.
20 Came down. There is a stop sign right here. It stopped
21 here. When it was at this stop sign, I was pulling out
22 of this driveway taking a right.

23 Q Okay. And when the car, when the minivan came
24 in front of you, before the minivan got to you, you would
25 have been able to see the driver's side of the vehicle;

1 is that correct?

2 A Correct.

3 Q Okay. And you saw red smoke coming out of that
4 side?

5 A The driver's side, yes.

6 Q Just the driver's window?

7 A Yes.

8 Q When it was in front of you, you were able to
9 see the passenger side of the vehicle?

10 A Correct.

11 Q Did you see any smoke or any open windows on
12 that side of the vehicle?

13 A No.

14 Q Okay.

15 A Couldn't see in the van.

16 Q Okay. And then you say it went down to that
17 road right there. What's the name of that road?

18 A Uh, West Marion.

19 Q All right. And took a left on West Marion?

20 A Correct. Took a left going towards Wal-Mart.

21 Q All right. You can have a seat.

22 A (Witness complies.)

23 Q Mr. Dill, why did you decide to follow the van?

24 A It was just an instinct.

25 Q Okay.

1 A Instinct of seeing the smoke. Basically that
2 and to call 911 to give them an idea of what I thought
3 had happened.

4 Q What did you think had happened?

5 A Uh, seeing the smoke, I just assumed it was a
6 dye pack and thought the bank had been robbed.

7 Q Did you alert authorities?

8 A I did.

9 Q What generally did you tell the 911 operator?

10 A Basically, I told 911 that I was following a
11 white minivan. It had smoke coming out of the driver's
12 side window. The van was swerving. I had seen that he
13 had robbed the bank because I thought the dye pack went
14 off.

15 Q Okay. And you said you thought the van was
16 swerving while you were talking to 911?

17 A Correct.

18 Q All right. Did you see anything unusual about
19 the vehicle other than it swerving?

20 A Just other than the smoke coming out of the
21 driver's side window and the driver had their head
22 sticking out the window.

23 Q The driver had his/her head out the window.
24 All right. Let me show you now State's Exhibit 16. You
25 recognize what this shows?

1 A I do.

2 Q Okay. If you will, step down again. Come
3 around. Get you your exercise.

4 A (Witness complies.)

5 Q All right. Now, take just a moment --

6 MR. FRETWELL: Once again, Your Honor, I have
7 neglected to put State's 16 into evidence. I would
8 ask to do that at this time.

9 THE COURT: Any --

10 MR. JOHNSON: No objection.

11 THE COURT: All right then. Without
12 objection, State's 16 is entered into evidence.

13 (WHEREUPON, State's Exhibit 16 is admitted into the
14 record.)

15 BY MR. FRETWELL:

16 Q All right. Now, Mr. Dill, can you locate the
17 bank and the Applebee's on this particular map?

18 A I can. This is the Bank of TR and this is the
19 Applebee's.

20 Q And if you don't mind, it might be kind of
21 difficult, but can you kind of step back toward the end
22 of that table just so all the jurors can see, uh, what
23 you are pointing to? Now, using that laser pointer, show
24 us again on this map what you did and observed on that
25 particular day.

1 A Again, here's the bank. I observed the van
2 backing, the smoke coming out and the van coming in this
3 direction, turning this road and coming out to West
4 Marion. I had backed out of my parking spot here, came
5 out, got behind it at the stop sign. The minivan had
6 taken a left. Came down this road.

7 I was on the phone with 911 and the van was
8 swerving. The van, the minivan took a right on this
9 street here. I did not know the name of the street at
10 the time. As I was on the phone with 911, I was able to
11 give them a tag number, but I was not able to give them a
12 street name.

13 When we took this right, the van pulled over.
14 There is a telephone pole in this direction right here.
15 The minivan had swerved and pulled off the road one time
16 and went back on the road and pulled back off the road a
17 second time in front of this light pole. I had went
18 around the van. When I had went around the van, the
19 person had their head sticking out. I went up to Emile
20 and Leone, at this corner at that time.

21 Q And when you drove past the minivan, what, if
22 anything, were you able to tell about the physical
23 description of the driver of the vehicle?

24 A The person, you could tell that it was a black
25 male. You could tell that he had a black hoodie on, a

1 black -- dark bandana and you could see the bill of a
2 ball cap, like a gray ball cap.

3 Q Okay. And, uh, you said that individual was
4 hanging his head out the window?

5 A Out the window.

6 Q Were you able to see if there was anybody else,
7 anybody else in the van at that time?

8 A No.

9 Q There was nobody else?

10 A There was nobody else in the van.

11 Q All right. And then once you got down to the
12 other corner -- you say that was the corner of Emile and
13 Leone?

14 A Uh-huh.

15 Q This street is Leone that you are referring to?

16 A Yes, sir.

17 Q I guess after Emile, it then changes its name
18 to ---

19 A Alma.

20 Q --- Alma Street. Okay. So this is the
21 convergence of three streets right there.

22 A Uh-huh.

23 Q All right. All right. Uh, let me get you to
24 take your seat once again. I'll leave you these for just
25 a moment. I'll ask you to take a look at them in just a

1 second. Once you pulled down to the other street and you
2 turned around, what happened at that point, Mr. Dill?

3 A When I had pulled down to that street and
4 turned around in a parking lot that was there, my vehicle
5 was facing like a 45 towards the van.

6 Q Did you ever -- and the minivan, was it still
7 moving or was it stopped?

8 A The minivan was stopped.

9 Q Did you ever lose sight of the minivan from the
10 bank to where it stopped?

11 A No, I did not.

12 Q What happened once the minivan came to a stop
13 and you were turned around catacorner of the
14 intersection?

15 A When I was catacorner, I seen the person out in
16 the middle of the street. At that time, I saw the right
17 hand come up. I saw a puff of smoke, actually multiple
18 puffs of smoke. Then all of a sudden, I heard a crack.
19 And that's when I had got shot.

20 Q All right. Tell me what happened -- tell the
21 jury what happened once you realized what happened to you
22 in the vehicle. How did you come to know you had been
23 shot?

24 A I come to know that in my right hand. I was
25 talking to 911. The phone was in my right hand, to my

1 ear. The bullet came through here and the phone had fell
2 to the floor. I looked and saw the blood on my hand and
3 saw it dripping onto the truck. I noticed I wasn't able
4 to talk. So I looked up in the mirror and saw that I was
5 shot. I reached down to get my phone again.

6 Q You saw that you had been shot? Where else had
7 you been shot?

8 A I saw that I had been shot in the neck. I had
9 a hole in my neck with blood coming out.

10 Q All right. What did you do at that point?

11 A At that point, I reached down to get my phone
12 again and tried to talk to 911 and tried to explain the
13 intersection that I was at. I was trying to do that
14 before this had happened.

15 Q What, if anything, did you do with your
16 vehicle?

17 A At that time, when I started talking to 911, I
18 put it in drive, went straight across the street, went to
19 the second driveway, took a left into the driveway,
20 backed out and came back to the stop sign.

21 Q All right. You have the pictures. Would you
22 take a look at the stack of pictures that are up there?
23 I believe they are State's 18 through 24.

24 A (Reviewing.)

25 Q You recognize what's depicted on those

1 photographs?

2 A I do.

3 Q Do they accurately reflect what you saw and
4 observed that particular day?

5 A They do.

6 MR. FRETWELL: Your Honor, the State would
7 move State's 18 through 24 into evidence at this
8 time.

9 THE COURT: Any objection?

10 MR. JOHNSON: No objection, Your Honor.

11 THE COURT: All right then.

12 (WHEREUPON, State's Exhibits 18 through 24 are
13 admitted into the record.)

14 BY MR. FRETWELL:

15 Q All right. First of all, Mr. Dill, what are we
16 looking at in this picture? What is that?

17 A We are looking at the minivan that I followed
18 from the bank.

19 Q That's the side of the minivan that you could
20 see?

21 A Yes, sir. The passenger side, yes, sir.

22 Q All right. Uh, let me then show you, uh,
23 State's 19. What intersection is this?

24 A Uh, this is Emile and Leone.

25 Q Show us.

1 A Okay. This is Emile where I was coming down.

2 Q Okay.

3 A This is the intersection. I went in this
4 parking lot, turned around. My truck was facing at a 45
5 here. This is where I got shot.

6 Q All right. And then once you were shot, what
7 did you do?

8 A Again, I picked the phone up and tried to get
9 back on the phone with 911. I went straight across. I
10 saw the sign, which was over here, the street sign. I
11 told 911 which street it was. I went up to the second
12 driveway, pulled in it. Backed back out and came to the
13 stop sign.

14 Q How long did all of that take?

15 A Less than a minute.

16 Q A few seconds?

17 A At the most, probably.

18 Q All right. Let me show you what's been marked
19 as State's 20. What are we looking at on that?

20 A Again, here is the van, the passenger side of
21 the van on Emile. Right in here is the intersection
22 where I was parked at a 45.

23 Q All right. And State's 21.

24 A That is the bullet hole that came through the
25 window that went through my hand and into my neck.

1 Q All right. State's 22.

2 A This is where I was bleeding partially from my
3 neck and mostly from my hand at the time.

4 Q And that's the interior of your truck?

5 A Yes.

6 Q And State's 23, is that the location where your
7 truck ended up when you came to a stop?

8 A Correct. There's a stop sign over here on the
9 right side.

10 Q Okay. And in 24, is that your view back toward
11 the van?

12 A Correct. The van's up this way here.

13 Q Once you got back to the -- on your way back, I
14 guess, to the intersection, where you're returning to
15 that intersection, what, if anything, do you observe
16 about the individual who had shot you?

17 A When I was in the truck, I was fixing to get
18 out. I could see the van here. I could see the person
19 in the middle of the road proceeding towards the woods.

20 Q And I'll show you again State's 20. Here's a
21 little clearer picture. Show me the woods that he went
22 into.

23 A Basically, straight across from the van. It
24 looks a little thicker than it is. There's a little path
25 that's clear right in here. That's the area he proceeded

1 into the woods.

2 Q Okay. Is that information that you were later
3 able to tell police?

4 A Yes.

5 Q Okay.

6 A Yes.

7 MR. FRETWELL: All right. Your Honor, at
8 this time, I would like to publish track 2 of
9 State's 10.

10 THE COURT: All right.

11 (WHEREUPON, track 2 of State's 10 is played.)

12 BY MR. FRETWELL:

13 Q On the 911 call, at some point, were you asked
14 whether you knew where the individual was at that point?

15 A Yes. When I was going straight across, when I
16 passed the intersection to turn around in the driveway, I
17 had taken my eye off the right side. I was trying to get
18 out of the way at the moment. Again, I turned in the
19 second driveway and came back down to the intersection.
-20 In that 15, 20 seconds, I could not see anybody.

21 Q Okay. Uh, what did you do once you got off the
22 phone with -- basically hung up on 911, what did you do
23 at that point?

24 A When I got back to the intersection, I had
25 called my fiancé at the time, Tammy, to tell her what had

1 happened and to be careful in the area because she
2 delivers mail in that perimeter area to inform her what
3 happened. Then, all of a sudden, that's -- just started
4 getting dizzy-headed and I just fell to the ground.
5 That's when the lady behind me got the phone and started
6 talking to Tammy at that moment.

7 Q So were you in the process of trying to get out
8 of your truck?

9 A I was.

10 Q Uh, you were able to see the individual run
11 into the woods. You recall later telling police this
12 information?

13 A Yes.

14 Q All right. Uh, you recall that -- you remember
15 when the police showed up? When they arrived and started
16 helping you?

17 A Not really. I was just in shock. I remember
18 them coming. I don't know how quick it was.

19 Q Okay. What do you remember at all from what
20 happened when the police got there?

21 A I just remember the policeman, David,
22 compressing my neck to try to keep everything from
23 bleeding or anything else.

24 Q Okay. And, uh, do you recall being in the
25 ambulance or seeing the ambulance?

1 A I recall laying on the ground. I know it took
2 an ambulance a long time to get there. I was waiting on
3 an ambulance and then once the ambulance did get there, I
4 remember being loaded. They were asking -- I could hear
5 them asking Tammy some stuff about me just to give them
6 general information. I remember she was talking about my
7 diabetes and other things.

8 Q You remember anything at the hospital?

9 A I do remember -- at the hospital, I do remember
10 a black detec -- I think it was a black detective that
11 come in to ask me some questions. Again, at that moment,
12 I was just out of it and couldn't explain. Other than
13 the bright lights in the emergency rooms, that's what I
14 remember. That's the last thing I remember.

15 Q How long were you in the hospital, Mr. Dill?

16 A I was in the hospital for eight days.

17 Q And what part of those days did you spend in
18 the ICU?

19 A Three of those days, I was in an induced coma.
20 I'm pretty sure it was like seven days total as far as
21 ICU.

22 Q Uh, do you recall talking to anybody else at
23 that time?

24 A I remember talking to Mary Fields and I think
25 there was a guy from the FBI with her.

1 Q What injuries did you sustain to your hand,
2 your right hand, as a result of the shooting, Mr. Dill?

3 A Uh, my right hand, the bullet had went through
4 the bone pretty clear. It had shattered multiples pieces
5 of bone. They had cleaned -- cleaned what they could up.
6 I've got very minimal usage of my pinkie. I think they
7 could have went in there and, what they were saying is
8 put pins and stuff in there to correct it. But we just
9 left it as it was.

10 Q Are you right-handed or left-handed?

11 A Right-handed.

12 Q What other injuries did you sustain as a result
13 of the shooting?

14 A The bullet went -- almost punctured my carotid
15 artery. It had went through the vagus nerve. The vagus
16 nerve controls my heartbeat and controls my stomach. My
17 heartbeat for a long time was beating about 150 to 160
18 beats per minute. So I'll be on medicine for it for the
19 rest of my life. It also controlled my stomach. It
20 controls your gases and everything else. Right now, I'm
21 on medicine for it for the rest of my life. Also, I lost
22 a vocal cord on the right side.

23 Q When did you eventually give a written
24 statement in this case?

25 A Right around a year later.

1 Q Tell us about that year. What was the year
2 like following your shooting?

3 A The year was pretty horrible. I was in bed for
4 at least nine months. I stayed sick the majority of the
5 time. They were trying to figure out a regimen of
6 medicine to correct me. They finally did about a year
7 and a half down the road.

8 Q When you gave that statement, did you indicate
9 to the officers whether or not you have a clear
10 recollection of the events that occurred?

11 A Yeah, I had told that I remembered vividly.

12 Q Did you incur medical bills as a result of
13 being shot?

14 A Uh, a ton.

15 Q In April of 2009, some five months after being
16 shot, were you arrested and subsequently convicted for
17 Breach of Trust?

18 A Yeah, I had pled guilty to Breach of Trust
19 \$5000 and over. This was a company that I had worked
20 for, Ford, Hayes and Lunsford. They had had a -- project
21 managers and superintendents were able to get copper wire
22 that was left over for the jobs as a bonus. In January
23 of that year, they had changed the procedures. Me, I
24 didn't change mine in January, and it caught up with me
25 in April.

1 After that, as of right now, I had paid all the
2 restitution back. They had given me originally five
3 years probation but 18 months if I met all the
4 requirements, which I did. So my 18 months was this
5 month, so I'll be off of probation. And I paid the
6 restitution back.

7 Q Have you sought emotional or psychological
8 assistance as a result of the shooting?

9 A I have.

10 Q Why did you do that?

11 A I was having problems. I couldn't go out at
12 night. I couldn't go out during the rain. Big windows.
13 I was driving a Ford F-150. It had a big window on the
14 front. It just seemed like any time I got in front of
15 windows or rain or anything else, it would just tear my
16 nerves up. I couldn't sleep. I had tons of nightmares.
17 I tried to sleep during the day. I couldn't sleep.
18 Couldn't get any good rest.

19 Q Did you receive any kind of diagnosis as a
20 result of this incident?

21 A It was, uh, -- I was diagnosed as having PTSD,
22 Posttraumatic syndrome.

23 Q Are you currently undergoing counseling?

24 A Yes.

25 Q Is it helping?

1 A A little.

2 Q Did you say you ended up marrying the fiancé
3 that you were meeting in the parking lot that particular
4 day?

5 A That, I did.

6 Q And how long have you been married to Tammy?

7 A Uh, a year and a half, something like that.
8 Two years.

9 Q Put you on the spot. All right. Mr. Dill,
10 please answer any questions the defense may have.

11 MR. JOHNSON: Thank you, Your Honor.

12 THE COURT: Mr. Johnson.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q Mr. Dill, again for the jury, can you point out
16 about where the Applebee's, Wal-Mart area was?

17 A Right here is a Bank of Travelers Rest. Here
18 is the Applebee's.

19 Q Now, again, can you portray for us the route
20 that the robber took and the route that you followed him
21 with?

22 A Yes, sir. In front of the bank, the vehicle
23 backed up at this point. Came down. In between the
24 Applebee's and the Bank of Travelers Rest, there is a
25 road. I don't think it has a name. Pulled down this

1 road. Came right to the stop sign.

2 Q Okay. And then you proceeded to travel down
3 this road?

4 A Yes, sir. Proceeded down West Marion Road and
5 finally a right on Emile.

6 Q Okay. Now, uh, how long do you think it took
7 for you to get that route?

8 A I would say less than two minutes.

9 Q Less than two minutes or so?

10 A Yes, sir.

11 Q And then that's the point where you stopped and
12 you were shot?

13 A Yes, sir. Right here in this intersection.

14 Q Okay. Now, Mr. Dill, how soon did you notice
15 the red smoke coming out of the van?

16 A When the vehicle was backing up.

17 Q And it was backing up in the Applebee's parking
18 lot?

19 A No, in the bank.

20 Q In the bank's parking lot?

21 A Yes, sir.

22 Q Okay. And you stated that the robber had his
23 face or his head hanging out the window?

24 A As soon as it turned onto Marion Road, yes,
25 sir.

1 Q So you were in the Applebee's parking lot;
2 correct?

3 A Yes, sir.

4 Q Then when you saw him drive by, that's when you.
5 saw -- initially saw his face or his head?

6 A No, sir. That was the passenger side that was
7 seeing.

8 Q The passenger side. And you said the passenger
9 side was closed?

10 A Yes, sir.

11 Q Okay. And you didn't see anyone else in the
12 van?

13 A No, sir.

14 Q Uh, then you got a look at him. Correct me if
15 I'm wrong. You got a look at him when you were at Leone
16 and Emile; is that right?

17 A Actually, I saw him first when I passed him
18 when he was parked on the side of the road.

19 Q Okay. Was that on --

20 A That was on Emile.

21 Q Emile. And you said his head was hanging out
22 the window?

23 A Yes, sir.

24 Q And was there smoke coming out of the window?

25 A Yes, sir.

1 Q It was red smoke?

2 A Yes, sir.

3 Q The assumption is that was from the dye pack,
4 right?

5 A The assumption, yes, sir.

6 Q He had on a black hoodie?

7 A Yes, sir.

8 Q What you described as a black or dark-colored
9 bandana?

10 A Yes, sir.

11 Q Baseball cap?

12 A Yes, sir.

13 Q You said it was gray?

14 A Gray-looking bill.

15 Q Okay. Gray-looking bill.

16 A Just the bill is all I saw.

17 Q Okay. Now, you gave, uh, -- you gave a
18 statement in '09 that you just portrayed to the
19 Solicitor. That was roughly about a year later, right?

20 A Uh-huh.

21 Q And you also spoke with Investigator Fields and
22 the FBI guy on the 19th of December roughly?

23 A Yes, sir.

24 Q So you ended up, to a certain extent, giving
25 two different statements?

1 A Well, the day that I had talked to them, I was
2 so high on drugs, they had me medicated. I had no idea
3 what I was doing or what I was eating or anything else.
4 I don't know, to be honest with you, what I told them.

5 Q This would be the -- you talking about the one
6 on the 19th.

7 A 19th.

8 Q Then you gave another statement a year later?

9 A Yes, sir.

10 Q You gave that one to Investigator Fields as
11 well?

12 A Yes, sir.

13 Q Okay. Now, this happened in December -- in the
14 month of December; correct?

15 A December 10th, '08. Yes, sir.

16 Q What was the, uh, -- I know looked at some of
17 the exhibits, but what was the vegetation like on the
18 trees and things of that nature?

19 A It was wintertime. Everything was dead.
20 Actually, that area was cut down at that time.

21 Q That area had been cut down?

22 A Yes, sir.

23 Q What do you mean by cut down? Can you expand
24 on that a little bit?

25 A You could see -- you could see 20 to 30 yards

1 out in the woods.

2 Q Okay. Now, how far away from you when you --
3 well, first of all, let me go back. You were shot by the
4 robber; correct?

5 A Yes, sir.

6 Q Then you proceeded to watch the robber run into
7 the woods; correct?

8 A No, sir. Not at that time. When I was shot, I
9 had proceeded across the road. That's when I was on the
10 phone with 911. They had asked me if I could see the
11 robber, which I couldn't cause I was going straight
12 across. Turned in the driveway, backed out. Came to the
13 intersection. At that point, when I got to the
14 intersection, the person was going into the woods.

15 Q Was going into the woods?

16 A Yes, sir.

17 Q Now, at that point in time, was -- did he still
18 have the hoodie on and everything. Could you tell?

19 A It just looked like he had a hoodie on. But it
20 was -- I couldn't tell.

21 Q You couldn't tell. Are you saying you couldn't
22 see what he looked like or anything of that nature if he
23 did have a hoodie or a mask on?

24 A Well, I saw that everything he had on was dark.
25 At that point, I couldn't see a face.

1 Q You couldn't see a face. Okay. Now, your
2 testimony today is that you believed the shooter to be
3 black or African American. Isn't that right?

4 A Yes, sir.

5 Q Now, is that always what you believed?

6 A Yes, sir.

7 Q Now, initially when you spoke to Investigator
8 Fields and Rob Scott, did you portray that to them?

9 A Initially, like I said, I don't remember what I
10 told them. I was drugged up. That was the statement
11 from the doctor also. I was so heavily medicated, I
12 can't remember what I told them to be honest with you.

13 MR. JOHNSON: Okay. I have nothing further.

14 MR. FRETWELL: Your Honor, briefly?

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. FRETWELL:

18 Q Let me show you State's 17, Mr. Dill. You
19 recognize that particular area?

20 A I do.

21 Q Step down for just a second. Let's talk real
22 briefly about this, when you were at the intersection of
23 Emile and Leone.

24 MR. FRETWELL: I'll move 17 into evidence,
25 Your Honor.

1 MR. JOHNSON: No objection.

2 THE COURT: All right then.

3 (WHEREUPON, State's Exhibit 17 is admitted into the
4 record.)

5 BY MR. FRETWELL:

6 Q When you were at the intersection of Emile and
7 Leone, uh, is this the power pole that you -- can you
8 show us the power pole you were talking about?

9 A It is right... (Pointing.)

10 Q So the van, the minivan is behind the power
11 pole or in front of the power pole?

12 A Yeah, the minivan is behind the power pole
13 basically right in this area.

14 Q So the distance is basically from here to here?

15 A Correct.

16 Q All right. Now, uh, this is the way that you
17 drove off when you drove down to the --

18 A I drove up and actually in this picture you
19 could see the new driveway that I pulled into.

20 Q Okay.

21 A This is the driveway.

22 Q All right.

23 A Backed out and came back to this area here.

24 Q Did that take you very long?

25 A Very few seconds.

1 Q Okay. And then also I think you answered a
2 couple of Mr. Johnson's questions talking about the
3 vegetation. Here on this side is there a lot of high and
4 dense vegetation?

5 A Not at that time.

6 Q All right. And then, as shown in these
7 pictures, and I'll show you State's 19 and 20 again. Is
8 all of it cut or is just parts of it cut?

9 A Just parts of it.

10 Q Okay.

11 A Not all of it.

12 Q All right.

13 A Just parts.

14 Q All right. There are parts where you can see
15 into the woods and there are parts where you can not see
16 into the woods; is that correct?

17 A Correct.

18 Q All right. All right. That's all the
19 questions I have. Thank you, Judge.

20 THE COURT: Anything else, Mr. Johnson?

21 MR. JOHNSON: No, ma'am, Your Honor.

22 THE COURT: All right then. Sir, you can
23 step down.

24 MR. FRETWELL: Your Honor, the State would
25 call Shawn Rafferty.

1 THE CLERK: Sir, please place your left hand
2 on the Bible and raise your right hand.

3 SHAWN RAFFERTY
4 having first been sworn, testifies as follows:

5 THE CLERK: Thank you. Please be seated.
6 Please state your full name for the record.

7 THE WITNESS: Shawn Rafferty.

8 DIRECT EXAMINATION

9 BY MR. FRETWELL:

10 Q Good afternoon, Mr. Rafferty. Mr. Rafferty,
11 how old are you?

12 A 66.

13 Q Do you live in Greenville?

14 A Yes, sir.

15 Q How long have you lived in Greenville?

16 A All of my adult life.

17 Q How far did you go in school?

18 A I got a GED from Greenville Tech.

19 Q You go to high school around here?

20 A Greenville.

21 Q Okay. Where are you currently employed?

22 A At the Mutual Home Stores, a retail furniture
23 store.

24 Q All right. And how long did you work or have
25 you worked at Mutual Home Stores?

- 1 A I'm still with them. It's been over 26 years.
- 2 Q And what's your position or your job title at
- 3 the --
- 4 A Credit Manager.
- 5 Q Credit Manager?
- 6 A Yes, sir.
- 7 Q What does a Credit Manager do?
- 8 A He oversees collections. Looks over the credit
- 9 for new applicants and general book work of that nature.
- 10 Q A numbers job?
- 11 A Yes.
- 12 Q Are you married?
- 13 A Yes, sir.
- 14 Q How long you been married?
- 15 A 43 years.
- 16 Q Do you and your wife have any children?
- 17 A Two children.
- 18 Q Okay. Let me take you to the late morning
- 19 hours of Wednesday, December 10th, 2008. Were you
- 20 working that particular day?
- 21 A No, sir. I was off.
- 22 Q Were you in the vicinity of Emile and Leone
- 23 Street that morning?
- 24 A Yes, I was.
- 25 Q For what purpose?

1. A I was going to Wal-Mart.

2. Q Okay. Uh, which Wal-Mart were you headed to?

3. A On the White Horse Road, the Berea Wal-Mart.

4. Q Okay. Do you recall what the weather was like
5 that day?

6. A Cold, rainy and miserable.

7. Q What time did you arrive in the area of Emile
8 Street that day?

9. A Just before noon.

10. Q All right. Let me show you what has been
11 marked as State's 25 through 27.

12. A (Reviewing.)

13. Q Do you recognize what's shown in those
14 pictures?

15. A Yes, sir. I do.

16. Q Do they accurately reflect what they show?

17. A Yes, sir. They do.

18. MR. FRETWELL: Your Honor, the State would
19 move 25 through 27 into evidence at this time.

20. THE COURT: Any objection?

21. MR. JOHNSON: No objection, Your Honor.

22. THE COURT: All right then. Without
23 objection, they are admitted.

24. BY MR. FRETWELL:

25. Q All right. Mr. Rafferty, what, if anything,

1 did you observe as you pulled onto Emile?

2 A When I was going down Emile Street, there was
3 the white truck sitting catacornered at an intersection
4 of Emile and Leone. Being just a couple of blocks off
5 White Horse Road, I took it that perhaps this individual
6 was lost or something. I was in the pickup truck and I
7 stopped behind him to give him a moment or two or three.
8 A moment or two. Whomever, to gather their thoughts in
9 case they needed to pull off or pull out a certain way.
10 At that time, they made no move.

11 I begin to pull up beside them. When I pulled
12 up beside the truck, I stopped. And I heard a pop.
13 Looked to my right. Seen a whisper of smoke. I looked
14 straight ahead and saw a gentleman in the road. Saw a
15 white van sitting on the side of the road. It appeared
16 his wipers were still running. He motioned for me to
17 come forward. Then he pointed at me. At which time, I
18 backed up rather hurriedly without looking because I was
19 scared.

20 Q Mr. Rafferty, let me show you what we've
21 already put into evidence as State's 25. Before we do
22 that, let me ask you, if you don't mind, just so the jury
23 has some idea of the direction you were coming from. Can
24 you step down just a minute and show the members of the
25 jury where you were and how you encountered this truck

1 and this minivan on Emile Street. Just be mindful of the
2 fact that everybody needs to be able to see you.

3 A Sure. The truck was sitting at that corner
4 right there. I come past the old Schmidt plant and I
5 stopped right there to allow him to move at that time.
6 That's when I went on in that direction.

7 Q All right. And you say when you saw the
8 individual pointing at you, you backed up...

9 A I backed up. I didn't even look behind me. I
10 just mashed the accelerator. I felt fear and I wanted to
11 get out of there.

12 Q Where did you go?

13 A I backed up to this intersection, turned and
14 went this way, come around back onto 253, stopped in the
15 median and called 911.

16 Q All right, sir. Take your place back on the
17 witness stand.

18 A (Witness complies.)

19 Q State's 25, show us, uh, show us what direction
20 you were coming when you first encountered the vehicle.

21 A When I first -- when I first come, I come down
22 this way. And the truck was sitting catcornered right
23 here.

24 Q The truck that's right now, right there at the
25 stop sign?

1 A That's right. That is correct.

2 Q All right. And then, uh, you said that you
3 stopped and waited for the truck to move; is that
4 correct?

5 A That's correct.

6 Q And then you pulled up beside it and then later
7 pulled down. Let me show you what is -- has been marked
8 as State's 26. Is that what you would have seen in front
9 of you, Mr. Rafferty?

10 A That is correct.

11 Q If you can, just tell the jury what you saw in
12 front of you when you pulled past the pickup truck after
13 you heard the pop and saw the smoke.

14 A The gentleman was standing in the road and he
15 motioned with his left hand for me to come forward. And
16 I didn't. Then he pointed at me with his right hand.
17 Then, at that time, he bolted to his left into the woods,
18 right there opposite of the van.

19 Q All right. Let me ask you a question. Can you
20 describe the man that was standing there in the road?
21 Give us a description of it.

22 A I couldn't see his face, but it was an African
23 American male. Without question, he had a hoodie on.

24 Q Do you know if he had a bandana covering his
25 face?

1 A I did not see his face covered at that time,
2 no, sir.

3 Q All right. So you can see him, but you
4 wouldn't be able to recognize him, is that --

5 A That is correct.

6 Q Now, tell me about -- you said he motioned with
7 his left hand; is that correct?

8 A He motioned with his left hand to come forward.

9 Q Okay. Was there glove on that hand at that
10 time?

11 A I did not see a glove.

12 Q And could you see what was in his right hand
13 when he was pointing at you?

14 A Not from where I was. It was raining. I could
15 not tell what was in his right hand.

16 Q Once he did that, you indicate that you got out
17 of there?

18 A Absolutely.

19 Q Let me show you State's 27. Is that basically
20 the direction of travel that you took once you left the
21 intersection?

22 A Now, when I backed up, ---

23 Q Yes, sir.

24 A --- I turned to my left ---

25 Q Yes, sir.

1 A --- and went down and passed the truck who had
2 turned around in that driveway at that time.

3 Q So you saw the truck turning around in --

4 A I saw the truck turn around.

5 Q All right. And coming back to the --

6 A And coming back to the intersection where it
7 finally come to rest.

8 Q All right. How quickly did all this occur, Mr.
9 Rafferty?

10 A In less than a minute no doubt.

11 Q All right. And you indicated that what you did
12 next is you drove to Highway 253 and called the police;
13 is that correct?

14 A That is correct. I pulled into the median and
15 called 911.

16 MR. FRETWELL: All right. Your Honor, at
17 this time, we intend to publish tracks 3 and 4 of
18 State's 10.

19 THE COURT: All right.

20 (WHEREUPON, tracks 3 and 4 of State's Exhibit 10 are
21 played.)

22 BY MR. FRETWELL:

23 Q Mr. Rafferty, you indicated both on your
24 testimony and on your 911 call that you went flying
25 backwards, did you look behind you?

1 A No, I did not.

2 Q All right.

3 A No, I did not.

4 Q When you got to the intersection of Leone and
5 Emile, was anything there? Was -- that pickup truck you
6 described earlier, was it still parked on the side of the
7 road?

8 A When I got to the intersection, I turned back
9 to the left. The pickup was turning around in that
10 driveway. I passed him as he was coming back to the
11 intersection.

12 Q Before you drove down Leone, you could observe
13 the man in the middle of the street who had pointed at
14 you run to your right, his left into the woods; is that
15 correct?

16 A Without question, that's correct.

17 Q Did you go back to Emile and Leone Streets
18 after you talked to the 911?

19 A Per their instructions, I went down and talked
20 to the officer.

21 Q Okay.

22 A Told them everything. They asked me to go to
23 the Law Enforcement Center.

24 Q Did you communicate the direction of travel and
25 specifically where you saw the individual go into the

1 woods to that officer or those officers?

2 A I did.

3 Q You say you went to the Law Enforcement Center?

4 A They asked me to give my testimony.

5 Q Okay. After you -- after you gave -- was it a
6 written statement?

7 A Yes.

8 Q After you gave that written statement, did you
9 then return to this area after you had gone to the Law
10 Enforcement Center?

11 A Yes, I did.

12 Q Okay. And for what purpose were you out there?

13 A They told me to go back out there.

14 Q All right. Did you go out to meet with more of
15 the officers at that time?

16 A Yes, I did.

17 Q What were you doing out there?

18 A They were asking questions about where the
19 individual went into the woods. Where he did -- it was
20 coins in the ground on the pavement.

21 Q You saw some coins on the street?

22 A On the road, yes, sir, that's correct.

23 Q How well do you know the area of Emile and
24 Leone Streets?

25 A Very, very good.

1 Q You live not too far away?

2 A Not too far away.

3 Q Okay.

4 A About a mile.

5 Q And then you describe in your 911 call this
6 area of Emile Street right here as an uninhabited and
7 woodsy; is that correct?

8 A That is correct. Still is.

9 Q All right. Please answer any questions Mr.
10 Johnson or Mr. Erwin may have for you.

11 THE COURT: Mr. Johnson?

12 MR. JOHNSON: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. JOHNSON:

15 Q Now, Mr. Rafferty, you stated earlier that you
16 recognized the shooter or the person that you saw
17 standing in the middle of the road to be African
18 American; correct?

19 A That is correct.

20 Q And you noticed that because you saw his hands;
21 is that right?

22 A I could see at a distance, as I can see someone
23 sitting on this back row, and discern whether they were
24 -- or what race they were just by the face and the hands.

25 Q So you saw his face?

1 A At a distance.

2 Q So what you're saying is you saw his face
3 enough to see it's colored but not enough to recognize
4 what he looks like?

5 A That is correct.

6 Q You also saw his hands and you noticed those to
7 be brown or of African-American descent?

8 A When he motioned me forward, I did not see a
9 glove. I saw the hand that would portray his race, yes.

10 Q Okay. Now, the area where you pointed out to
11 police where the shooter had entered had a telephone
12 pole; is that right? Is that what you testified to?

13 A I didn't mention a telephone pole.

14 Q Okay. You didn't mention a telephone --

15 A I didn't mention a phone pole at all, sir.

16 Q Was there a telephone pole?

17 A I saw the truck at that corner, at the corner
18 of the intersection. But I never made reference to a
19 telephone pole, sir.

20 Q Yes, sir. The area where he ran into the
21 woods, was that area -- was it an area where it was clear
22 or a natural trail or was it a -- you have to climb over
23 branches and logs and stuff? How was that area?

24 A Most woods. Most of this kind in this area
25 dies down this time of the year. So it wouldn't have

1 taken a great amount of effort for anybody to just dash
2 off into the woods.

3 Q So the woods weren't live for vegetation?

4 A No, this time of year.

5 Q No kudzu or --

6 A No kudzu in December.

7 Q Okay. Now, uh, when he ran into the woods, you
8 also stated that he had a hoodie-type thing on. I think
9 I asked you that.

10 A That is correct..

11 Q Did you notice anything else that he may have
12 had on?

13 A I didn't notice anything else.

14 Q Just the hoodie? He did not have gloves on?

15 A I did not see a glove, no.

16 Q Now, did you see a gun?

17 A I did not see a gun.

18 Q You just saw the black hand?

19 A When he motioned me forward, just as you pulled
20 your sleeve up and this sleeve up, you could see the
21 hand. He motioned me forward.

22 Q Yes, sir.

23 A Then the other hand contained what I assumed to
24 be the gun.

25 MR. JOHNSON: Okay. Nothing further at this

1 time, Your Honor.

2 MR. FRETWELL: Briefly, Your Honor.

3 THE COURT: Yes.

4 REDIRECT EXAMINATION

5 BY MR. FRETWELL:

6 Q Mr. Rafferty, the face on the individual you
7 saw in the middle of the street was uncovered.

8 A I could tell, right, that it was not covered.
9 There was no bandana at this point.

10 Q When you talked a little bit about the
11 vegetation there, you ever gone into those woods?

12 A No. No.

13 Q Do you have any idea really how dense it is
14 inside those woods?

15 A No, sir. I do not.

16 Q You have any idea how big that area is in
17 there?

18 A It's pretty -- you know, it's like I said, it's
19 uninhabited. There's no reason for anybody with normal
20 sense to go in there.

21 Q You hadn't been in there?

22 A No, I hadn't.

23 Q You couldn't tell us how thick and dense it was
24 in the middle of those woods?

25 A No, I could not.

1 Q And you didn't go in there with K-9s or any
2 police into the woods?

3 A No, sir.

4 Q Okay.

5 A No, sir.

6 Q Once the individual went into the woods, could
7 you continue to see him running?

8 A No, once he leaped into the woods, I was
9 backing up.

10 Q The pictures that I already showed you, that's
11 what the woods looked like that day?

12 A Yes, that is an accurate portrayal of the
13 landscape. Yes, sir.

14 MR. FRETWELL: All right. No further
15 questions, Your Honor.

16 MR. JOHNSON: Briefly.

17 THE COURT: Yes, sir.

18 RECROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q Mr. Rafferty, you mentioned in your testimony
21 today that you could see that his face wasn't covered
22 when he ran into the woods; correct?

23 A When he was in the road and he motioned for me
24 forward, I did not see a bandana, but I was far enough
25 away that I could not discern or pick him out if he was

1 in a lineup type of setting.

2 Q So when you saw him, you did not see a bandana;
3 is that right?

4 A That is -- that is what -- that is correct.

5 Q At what point did you learn there was a bandana
6 involved?

7 A Not until this last trial.

8 MR. JOHNSON: Nothing further.

9 MR. FRETWELL: No other questions, Judge.

10 THE COURT: Sir, you can step down.

11 MR. FRETWELL: Your Honor, the State would
12 call Deputy Ramon Rivera.

13 THE COURT: All right.

14 THE CLERK: Place your left hand on the Bible
15 and raise your right.

16 RAMON RIVERA

17 having first been sworn, testifies as follows:

18 THE CLERK: Thank you. Please be seated.

19 MR. JOHNSON: Your Honor, permission to
20 approach briefly?

21 THE COURT: Yes.

22 (WHEREUPON, a bench conference is held.)

23 THE COURT: Ladies and Gentlemen, --

24 MR. FRETWELL: Deputy Rivera --

25 THE COURT: Oh, I'm sorry.

1 MR. FRETWELL: I'm sorry.

2 THE COURT: No, I'm so sorry. I did not mean
3 to interrupt you.

4 But, Ladies and Gentlemen, just for your
5 information, we may need to take a brief break in a
6 moment or two. My, uh, -- my plan is to work until
7 about 5:30 today and then we'll break again and
8 resume tomorrow morning at 11:00. All right.

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

11 THE COURT: Yes.

12 DIRECT EXAMINATION

13 BY MR. FRETWELL:

14 Q Deputy Rivera, how long have you worked for the
15 Greenville County Sheriff's Office?

16 A It will be 10 years this August.

17 Q All right. And to what unit are you currently
18 assigned?

19 A I'm currently assigned to the Sheriff's Office
20 K-9 Services Unit.

21 Q How long have you been a K-9 handler?

22 A I been a K-9 handler almost five years.

23 Q Have you received any commendations as a deputy
24 sheriff?

25 A Yes, sir. I have.

- 1 Q Multiple?
- 2 A Three or four or five different letters of
3 commendation and things of that nature.
- 4 Q You have any prior military experience?
- 5 A Yes, sir. I was in the Marine Corp for four
6 years as a combat engineer.
- 7 Q As a what?
- 8 A Engineer.
- 9 Q Okay. What is the name of your K-9 partner?
- 10 A His name is Smeris.
- 11 Q And that's a dog?
- 12 A Yes, that's a dog.
- 13 Q How old is Smeris?
- 14 A He will be eight years old in March.
- 15 Q And how long has Smeris been in service?
- 16 A He's been in service with me almost five years.
17 And then he served with a different handler for, I think,
18 a year and a half or so before that.
- 19 Q All right. And what law enforcement functions
20 does Smeris perform?
- 21 A He is a dual purpose K-9, dual purpose being
22 that he detects drugs and human odor.
- 23 Q Tell us about his involvement with human odor.
- 24 A Okay. He is trained to recognize human odor.
25 We use that for several reasons. The one most important

1 to this case is tracking.

2 Q All right.

3 A In addition, he finds articles that have human
4 odor. If I touch something and the odor transfers, we
5 can ask him to find something with human odor in which
6 case, he'll go look for evidence. He also finds, uh,
7 people in buildings and people in large areas.

8 Q And ultimately, what is he also designed to do
9 with respect to, uh, individuals, the person that you're
10 looking for?

11 A Uh, he is bite trained. We call it aggression
12 control. So he will bite on command or he will bite to
13 defend himself or defend me.

14 Q And that involves apprehension of the suspect?

15 A Yes, sir. Apprehension.

16 Q Was Smeris deployed on a human track on
17 December 10th, 2008?

18 A Yes, sir. He was.

19 Q Had he performed human odor detection prior to
20 that day?

21 A Yes, sir. He had.

22 Q Had he demonstrated reliable?

23 A Yes, sir. He is.

24 Q What kind of training had Smeris received as of
25 12/10/08?

1 A As of that date, we had completed a 600-hour
2 introductory class. They say introductory because it
3 basically gets you from not knowing anything to being on
4 the road working in a proficient manner. In addition to
5 that, we have certified twice with North American Police
6 Work Dog Association, which is basically the association
7 sends two trainers from their organization, two master
8 trainers, and we demonstrate all of our different tasks,
9 that being tracking, area searches, articles searches,
10 drugs and aggression control to those judges. Then
11 they'll sign off on your proficiency saying that the dog
12 is up to par.

13 Q Now, so --

14 A In addition to that -- oh, sorry.

15 Q I'm sorry.

16 A In addition to that, we maintain that
17 certification by doing weekly training. We train every
18 single Wednesday. We'll do a 10-hour day. In those days
19 that we train, we basically cover anything that we think
20 the dog might need. A little more tracking. A little
21 more drug. Just whatever the handler thinks the dog
22 needs for that day.

23 Q As of 12/10/08, how many tracks had Smeris been
24 involved with?

25 A As of that day, we had completed 42 real life

1 tracks.

2 Q All right. How many training tracks?

3 A We had done 63 training tracks. Not counting
4 the tracks that were conducted in the initial 600-hour
5 course.

6 Q All right. And then how many field or on the
7 job deployments had Smeris been involved in as of
8 12/10/08?

9 A Including the 42 tracks, we had conducted 295
10 street deployments.

11 Q And what kind of training had you received as a
12 K-9 handler as of 12/10/08?

13 A Uh, I had received -- let's start with the
14 least formal. We do weekly or monthly roll call
15 training, which discuss case law, we discuss just
16 different tactical techniques, training, things like
17 that. Obviously, the 600-hour which covers training K-9
18 methodology, the K-9 breeds, anatomy, K-9 drives,
19 behaviors, the practical application of that aspect which
20 is actually putting it to use and then case law that
21 governs the uses when we can and can't deploy our dogs.

22 Q And Smeris and you would have been a team for
23 the 40 tracks that you performed, active tracks?

24 A Correct.

25 Q And the 63 training tracks?

1 A Correct. Anything I talk about, it will be as
2 a team.

3 Q Okay.

4 A If I were to change dogs, then those would not
5 count because you are considered through NAPWDA or the
6 North American Police Work Dog Association, you are
7 considered a team. If that team is broken, then your
8 stats no longer count towards that team.

9 Q So the 295 field or on the job deployments,
10 that was as a team also with you and Smeris?

11 A Correct. Me and Smeris, yes, sir.

12 Q Have you or Smeris been certified by the North
13 American Police Work Dog Association or NAPWDA?

14 A Yes, sir. We had certified on 11/29 of '07 and
15 then 12/05 of '08.

16 Q Okay. 12/05 of '08?

17 A Yes, sir.

18 Q So a week before this incident?

19 A Exactly a week before this incident, yes, sir.

20 Q Okay. And as you explained before, that
21 process is a national process of accreditation; is that
22 correct?

23 A Yes, sir. They are a national organization.
24 The purpose for bringing them in is their objective.
25 They have no interest if I pass or fail or if I can or

1 can't do what I'm supposed to or need to do. So we bring
2 them in once a year to certify that a neutral party or a
3 third party had certified us by seeing what we do and
4 ensuring that we did it to a satisfactory standard.

5 Q In addition to everything you described, you
6 say that Smeris went through and continues to go through
7 additional weekly training; is that correct?

8 A Yes, sir. Up until now, we will certify once a
9 year through NAPWDA and we'll train every Wednesday just
10 to maintain the dog's certification standards.

11 Q Every Wednesday?

12 A Every single Wednesday.

13 Q Rain or shine?

14 A Rain or shine.

15 Q Okay. What breed is Smeris?

16 A Smeris is a Belgian Mallinois.

17 Q All right. Is this a breed commonly used for
18 human tracking?

19 A Yes, sir. It is.

20 Q Is this a breed known for its acute power of
21 scent?

22 A Yes, sir. It is.

23 Q Do you keep up with literature and updates in
24 the field of dog handling?

25 A Yes, sir. I do.

1 Q And how long had you been using K-9s in a law
2 enforcement capacity?

3 A The entire time, almost five years or the life
4 of the dog.

5 MR. FRETWELL: Your Honor, at this time, we
6 would move to qualify this deputy, Deputy Rivera, as
7 an expert in K-9 human odor detection.

8 THE COURT: K-9 human odor detection?

9 MR. FRETWELL: Yes, ma'am.

10 THE COURT: Mr. Johnson?

11 MR. JOHNSON: Permission to voir dire, Your
12 Honor?

13 THE COURT: All right. Ladies and Gentlemen,
14 -- well, will the attorneys approach?

15 (WHEREUPON, a bench conference is held.)

16 THE COURT: Ladies and Gentlemen, I'm going
17 to ask you to step to your jury room to take a brief
18 break for a moment.

19 (WHEREUPON, the jury exits at approximately
20 4:52 p.m.)

21 THE COURT: Mr. Johnson.

22 MR. JOHNSON: Thank you, Your Honor.

23 VOIR DIRE EXAMINATION

24 BY MR. JOHNSON:

25 Q Uh, Deputy Rivera, where are you from?

1 A I am from here. I was born in Puerto Rico.

2 Q Uh, when did you move -- where is here? Is
3 here Greenville?

4 A Correct. When I was nine years old, I moved to
5 Mauldin, right near Fountain Inn.

6 Q Now, did you go to Mauldin High School?

7 A No, sir. I went to Hillcrest High School.

8 Q What year did you graduate Hillcrest High
9 School?

10 A 2000 -- no. 1998.

11 Q 1998?

12 A Yes.

13 Q Did you then go on to any college?

14 A Uh, I went right into the Marine Corp. Then,
15 as of last month, I earned my two-year degree, my
16 associate degree.

17 Q What was your degree in?

18 A It was an Associate of Arts in General Studies
19 with a concentration of Spanish.

20 Q What school was this from?

21 A University of Phoenix.

22 Q What type of degree is it? It is a four-year
23 degree? Is it a BS? BA? Or is an associate's degree?

24 A It is a two-year degree.

25 Q Two-year degree?

1 A Yes, sir.

2 Q Uh, have you, uh, as of yet embarked on any
3 sort of further studies as far as your school is
4 concerned?

5 A I don't understand what you're saying.

6 Q You said you just finished at Phoenix, right?

7 A Correct. I just completed the two-year degree,
8 two-year curriculum.

9 Q Maybe I should ask what date did you
10 finish that two-year degree?

11 MR. FRETWELL: Your Honor, can we stop for
12 just a moment and approach?

13 THE COURT: Yes.

14 (WHEREUPON, a bench conference is held.)

15 MR. FRETWELL: Your Honor, the tape recorder
16 is back on.

17 MR. JOHNSON: Turn it off.

18 THE COURT: I appreciate it.

19 THE WITNESS: I finished the first or second
20 week of December.

21 BY MR. JOHNSON:

22 Q Now, you said you finished, uh, you went into
23 the Marine Corp in '98; is that right?

24 A Yes, sir.

25 Q When did you leave the Marine Corp?

1 A 2002.

2 Q 2002. When you left in 2002, what kind of work
3 did you do?

4 MR. FRETWELL: Your Honor, with all due
5 respect, I understand he's voir diring this witness
6 on his expertise in human odor detection by K-9, but
7 we've gone through some of this background material
8 and it doesn't seem to be related to his K-9
9 training.

10 THE COURT: All right. I'm going to allow
11 it.

12 MR. FRETWELL: Okay.

13 MR. JOHNSON: Thank you, Your Honor.

14 THE COURT: Uh-huh.

15 BY MR. JOHNSON:

16 Q What type of work did you do in 2002?

17 A I worked at a manufacturing company for maybe
18 two months. Then I got hired onto the Sheriff's Officer.

19 Q Okay. You been with the Sheriff's Office since
20 that point?

21 A Yes, sir.

22 Q All right. When you went -- first went to the
23 sheriff's office, what type of job was it?

24 A I was a uniform patrol deputy.

25 Q How long were you a uniform patrol deputy?

1 A Give or take two, two and a half years.

2 Q And what, uh, considering this is now 2012,
3 what job did you have next?

4 A Then I went to the traffic division. I spent
5 about two, two and a half years there. Then an opening
6 became available in the K-9 unit and I applied and got
7 the position.

8 Q Okay.. What, uh, -- what type of qualifications
9 do you have to have to have a K-9 handler in the
10 sheriff's office?

11 A Initially, to go in, I think it was two years.
12 Don't quote me. I'm not exactly sure at the time. It's
13 obviously evolved since. Two years at the present rank.
14 I think at least one continuous year of service in the
15 sheriff's office. You had to past an interview board.
16 You had to -- they tested you on your physical condition.
17 In addition to that, you had to have above a certain
18 number on your annual evaluations. It had to be a, I
19 think above average, just to be considered to go in
20 there.

21 Q Okay. And how did you receive your training?

22 A We have in-house training. We basically sent a
23 trainer down to trainer's school. They spent -- I don't
24 know how much time they spent down there. They learned
25 all the stuff that needs to be learned about training a

1 dog, then they'll guide you through your training.

2 They'll teach you how to train your dog as opposed to
3 training your dog and saying here you go.

4 Q Who trained you?

5 A Doug Wannemacher.

6 Q Now, you said you were given Smeris roughly
7 five years ago?

8 A Uh, I think -- I had it written down here. My
9 first training -- my first training sheet that I had, I
10 mean, the first completed week of training was March 5th
11 of '07.

12 Q Okay. And that was your first training with
13 Smeris is what you're saying?

14 A Correct.

15 Q Had you, before that, had your own training by,
16 uh, Deputy Wannemacher or that was your first training
17 period?

18 A Well, that was the beginning of the school.
19 The way it works is you go on your own time, the
20 training, meaning, I want to be a deputy, I'm going to
21 sacrifice some of my time. I'm going to go and see how
22 these guys train. See how they handle a dog. On
23 occasions, go shoot with them to make sure that my
24 marksmanship is up to standard. After you do that so
25 much, then when an availability comes open and you apply

1 and hopefully, you are better prepared for what you're
2 going to go through. But formally on paper, I started
3 that day.

4 Q Okay. Was that the 600-hour course that you
5 started?

6 A Yes, sir.

7 Q Now, uh, in that course, did they train you how
8 to follow human scent with a police dog?

9 A Throughout that class, yes.

10 Q Throughout that class. How long --

11 A They addressed different things at different
12 times.

13 Q But that's one of the things that you did?

14 A Correct.

15 Q Okay. And, uh, is there a certain structure to
16 the course?

17 A I'm sure there is. We're not privy to that
18 situation because we have a lot going on. We're new
19 handlers. We're led through the training. If the
20 trainer says alright, we've gotten to the point we're
21 ready to go on to human odor, then we'll move on to that.
22 But they do it in sections. Different modules.

23 Q Now, is the certification that you received
24 from NAPDA --

25 A NAPWDA.

1 Q NAPWDA?

2 A Yeah.

3 Q Excuse me. Does that apply to both you and
4 Smeris or just you or just Smeris?

5 A That only applies to a team. If I were to
6 change dogs or Smeris was to change handlers, then that
7 certification is void for us.

8 Q Now, when you got Smeris, did you get any
9 information with regards to who may have trained him
10 initially?

11 A Doug Wannemacher trained initially.

12 Q Do you know who his previous handler was?

13 A Yes.

14 Q Do you know the circumstances by which you got
15 Smeris, that Smeris came available?

16 A What does that mean?

17 Q Uh, did the officer leave or his original
18 handler leave or was he fired or what?

19 A He wasn't fired and he didn't leave. It was
20 beyond me why. I don't know. I don't know why he gave
21 up the dog.

22 Q Do you know if he still works for the sheriff's
23 office?

24 A No, he does not work here anymore.

25 Q Okay. Uh, now, with regard to Smeris, when you

1 received him, did you get paperwork with regards to --
2 you said he -- first of all, you said he was a -- I'm
3 sorry. I can't say it. Malli --

4 A A Mallinois.

5 Q A Mallinois, a Belgian Mallinois?

6 A A Belgian Mallinois.

7 Q Belgian Mallinois. When you got Smeris, did
8 you receive paperwork verifying that that's what he was?

9 A I didn't receive a certificate identifying his
10 breed. I don't believe that breed, per say, is as
11 important as a dog's ability. They are initially tested
12 before we get it. It could be the ugliest thing in the
13 world, it may not conform to breed standards, but if they
14 show the traits or the characteristic needed to perform
15 this job, then they are chosen. Once again, I don't do
16 that selection process. It would be up to you to ask
17 Doug Wannemacher if that dog was, you know, up to par
18 when he got him.

19 Q But you don't have -- you don't personally have
20 anything --

21 A I don't have anything before this date.

22 Q Okay. And you say you train once a week?

23 A Yes.

24 Q Uh, do you train on a -- differentiating
25 between human scents?

1 A What does that mean?

2 Q Uh, say you and I --

3 A Yes.

4 Q Do you train on differentiating between my
5 scent and your scent or does the dog just follow human
6 scent?

7 A The dog follows whichever scent you put him on
8 first.

9 Q Okay. And your dog has shown proficiency in
10 differentiating between human scents?

11 A He has shown proficiency in following the scent
12 that he started on. That means ignoring everyone else's
13 track, yes.

14 Q Now, uh, do you know his error rate?

15 A His error rate as opposed -- what do you mean?

16 Q Is he 100 percent of the time if he's following
17 my track that that is the track that he's following?

18 A What we use to show reliability in a dog is
19 certification and controlled training. The reason we use
20 those only and that is per case law is because that is
21 the only environment that we can control. Obviously,
22 weather, temperature affects the track, if somebody got
23 picked up in a car, all of those things are out of our
24 control. The judge, the dog is judged on controlled
25 scenarios.

1 Q So in the controlled scenarios, does he -- has
2 he identified the correct scent 100 percent of the time?

3 A I wouldn't say 100 percent. I would say
4 probably -- if I had to put a number to it, the high 90s.

5 Q High 90s?

6 A Every now and again, if the dogs mess up, it's
7 because we did something wrong. This track may have
8 gotten too close to his return track. The track layer
9 may have forgotten that he laid a track and now you have
10 the same odor making a cross. It's generally
11 identifiable human error on the fault of whoever laid
12 that track.

13 Q Now, can you tell when a dog has mixed up the
14 track as you just described?

15 A Well, he didn't mix it up. That's the problem.

16 Q Can you tell when the dog --

17 A It's the same odor on both tracks. Obviously,
18 we screwed it up for him.

19 Q Can the dog tell when you screwed up or how can
20 you tell when the dog screwed up? When you screwed up,
21 how can you tell when you screwed up --

22 A I think you are misunderstanding what I'm
23 saying.

24 Q Okay.

25 A I say can you lay me a track. Let's say he

1 doesn't know too much about dogs. He says, yeah, I'll do
2 it. Let's just use these roads right here across the
3 street just for reference. I want you to go straight up
4 the road. I want you to go left. I want you to come
5 back and this is where the track ends. That is a
6 controlled track.

7 Let's say Mr. Fretwell decides I've got a
8 better way of doing it. I want to go down the road. I
9 want to go left. I want to go halfway. Then I'm going
10 to come back. If those turns are too close because now
11 we've got one going this way and one going this way, if
12 they are too close, the dog may decide that this odor
13 overlaps with this odor. It probably did as a result of
14 the wind. And he may cut off half of the track and be
15 done in ten yards as opposed to being done in 110 yards,
16 in which case, we can't count it as an error because he
17 started and finished on the same odor. It was simply
18 that Mr. Fretwell did not correctly lay the track and
19 made it where the dog could actually shorten the track.

20 Q Okay.

21 A But he's not wrong if it's on the same odor.

22 Q Okay. Now, uh, how can you tell when a dog
23 needs to be relieved?

24 A You know he's just go when he's --

25 Q Say from a track.

1 A Oh, when to change out?

2 Q Uh-huh.

3 A Okay. I got you. I see what you're saying.

4 Normally, I can notice when he's starting to get tired.

5 He'll start breathing a little bit different. His tongue
6 will get longer. He'll look a little more worn down.

7 Q Okay.

8 A There's not any set point in which you change
9 out a dog. The method that we use is even if your dog is
10 only a little bit tired as opposed to about to pass out
11 tired, if you have a good place to change them out in,
12 and by good place, I mean a place where you can know the
13 track is exactly right here. I have good access to come
14 in. I would go ahead and stop my dog right then and
15 there just because the next track or the best point in
16 the change is on off. Does that make sense?

17 Q Yes, sir.

18 A So it more revolves around the ease of getting
19 somebody else in there and the certainty of the track.

20 Q Now, have you ever personally used Smeris in a
21 law enforcement case other than this one?

22 A In a law enforcement case? Certainly.

23 Q How many?

24 A 295 times as of that date.

25 Q Now, how many times have you testified as a K-9

1 handler?

2 A Uh, I think make maybe once before this one.

3 Q Do you remember the outcome of that?

4 A I do not.

5 Q And do you have access to any of the dog's
6 training records?

7 A I have access to all the dog's training records
8 that were conducted with me.

9 Q What about before you?

10 A No. That's irrelevant. It can not be used in
11 any of my certifications and I can't attest to what the
12 handler did with the dog beforehand. Obviously, if Mr.
13 Fuller was to handle that dog right now, he couldn't use
14 any of my training records. He didn't personally see any
15 of that stuff.

16 MR. JOHNSON: Okay. Your Honor, that's my
17 voir dire.

18 MR. FRETWELL: Can I ask a few questions,
19 Your Honor?

20 THE COURT: I'm sorry?

21 MR. FRETWELL: I can ask a few questions ---

22 THE COURT: Sure.

23 MR. FRETWELL: --- based on what Mr. Johnson
24 just brought out.

25 VOIR DIRE EXAMINATION

1 BY MR. FRETWELL:

2 Q Uh, Deputy Rivera, you testified in your direct
3 that our dog, Smeris, is a Belgian Mallinois; is that
4 correct?

5 A Yes, sir.

6 Q You have any reason to believe that he is not a
7 Belgian Mallinois?

8 A No, sir. He fits all the characteristics which
9 is the traditional black mask around the face, the whiter
10 top of the head, shorter snout and the fact that their
11 temperament is one that is energetic.

12 Q Do you know the process the sheriff's office
13 goes through in order to acquire these particular dogs?

14 A The testing process?

15 Q No, the actual acquisition process of how they
16 go and they purchase these dogs ---

17 A Yes, sir.

18 Q --- by the K-9 unit?

19 A They'll use a certain vendor. At this point,
20 it's a vender in Pennsylvania. Before that -- we do
21 several different ones around here. They'll send the
22 trainer.

23 Q Is this a Humane Society or we talking about a
24 specific breed trainer?

25 A No, this is a broker. These dogs come from

1 Holland or most of them do. This one specifically came
2 from Holland.

3 Q All right. So you have no reason to believe
4 that Smeris is anything other than a Belgian Mallinois;
5 is that correct?

6 A Correct.

7 Q Have you studied what Belgian Mallinois are?

8 A Yes, sir.

9 Q All right. Do you know whether or not that
10 breed is characterized by an acute power of scent?

11 A Yes, sir.

12 Q Have you conducted scent training with Smeris -
13 - in the course of all of this training you described,
14 have you used scent training to train Smeris?

15 A Yes, sir.

16 Q All right. Has Smeris specifically been
17 trained to follow a trail by scent?

18 A Yes, sir.

19 Q And you've indicated, I think to Mr. Johnson,
20 that somewhere in the high 90s, he's correct in a
21 controlled environment?

22 A Obviously, I haven't tallied up those numbers.
23 But there's not hardly any tracks that I remember not
24 finishing or not getting to the end and finding the
25 reward.

1 Q Would you characterize those tracks and that
2 performance as being reliable?

3 A Yes, sir.

4 Q All right. A couple of more questions. When
5 you arrived on Emile and you started your dog on the
6 track, do you know how long, based on your understanding,
7 after the individual went into the woods that your dog
8 was placed in the area to detect the trail or the track?

9 A Are you saying from the time the suspect ran
10 through to the time I started?

11 Q Right. Just approximately how long?

12 A Say less than 15 minutes.

13 Q And at the time that you entered the woods or
14 shortly thereafter, do you know whether a perimeter was
15 established in this area?

16 A I was listening to the radio. People were
17 certainly getting in place.

18 Q Okay. During the course of your track and all
19 the time that you spent in that area on that day, did you
20 and the K-9 team come in contact with anybody else?

21 A No, sir.

22 Q During your track with Smeris, did you have any
23 concerns about whether or not that track had been
24 contaminated in any way or whether he was, as you might
25 call track sure, the entire time that you were tracking

1 the scent that he picked up on Emile Street?

2 A I was sure that he was track sure and that no
3 other scent was interfering with the tracking.

4 MR. FRETWELL: That's all we have, Your
5 Honor.

6 THE COURT: All right. I'm going to find him
7 so qualified in the area of K-9 human odor
8 detection.

9 Uh, now, Mr. Fretwell, what do you think
10 realistically? You think we're going to be able to
11 finish this witness by about 5:30?

12 MR. FRETWELL: Not with cross-examination,
13 Your Honor.

14 THE COURT: All right. Okay. All right.
15 Then, uh, I'd be inclined just to bring the jury
16 back in and let them go for the day. I'd rather do
17 that and then we'll start fresh tomorrow morning at
18 11:00. I apologize.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: All right.

21 MR. FRETWELL: Your Honor, would you also
22 instruct -- just as the law enforcement officers may
23 not understand what it means for the witness to be
24 in the middle of his testimony and his obligations
25 with respect to his testimony.

1 THE COURT: Sure. Sure. I'll just -- just
2 one second. I'm sorry.

3 Sir, overnight, it's just as if you are on the
4 witness stand. In other words, you can't discuss
5 your testimony with anyone. Alright?

6 THE WITNESS: Okay.

7 THE COURT: Okay.

8 (WHEREUPON, the jury enters at approximately
9 5:13 p.m.)

10 THE COURT: Well, I brought you back in to
11 tell you we're letting you go. Sorry about that.
12 Sorry about that. Uh, but in talking with the
13 attorneys, we feel like this witness might be a
14 little longer than I promised you we would leave
15 this evening. I don't want to hold you over.
16 Neither do these attorneys.

17 I would ask you to be back in your jury
18 deliberation room tomorrow morning at maybe about 10
19 until 11:00. We'll start promptly at 11 o'clock.
20 Again, I'll just remind you and I'll sound like --
21 you'll get so tired of hearing me say it. I'll
22 sound like a broken record. Please don't discuss
23 this case with anyone and please do everything you
24 can to avoid any possible media coverage if there is
25 any about this case. All right. Thank you so much.

1 I hope you have a good evening.

2 (WHEREUPON, the jury exits at approximately
3 5:14 p.m.)

4 THE COURT: All right. Is there anything we
5 need to take up before breaking for this evening?

6 MR. FRETWELL: Yes, ma'am.

7 THE COURT: All right.

8 MR. FRETWELL: Very quickly, Your Honor. Uh,
9 one thing that was brought to my attention. I
10 intended for purposes of establishing chain of
11 custody on several items to introduce -- my usual
12 practice to introduce the property and evidence
13 sheet. On the four P&E sheets that I intended to
14 introduce, I realized that they have been signed out
15 twice for trial which would potentially communicate
16 to this jury that this is the second time this case
17 has been tried. Although we have done that on other
18 cases where the case hadn't been reached and we just
19 brought it back. I'm concerned about it in this
20 case enough to wonder if perhaps I should submit
21 these as Court's Exhibits. If I do, then I just
22 need to make some corrections to the exhibit list
23 that I've given to Ms. Johnson with respect to those
24 particular items.

25 THE COURT: And I assume you're talking about

1 possibly keeping one as a Court's Exhibit and
2 redacting something from them. Is that what you're
3 talking about?

4 MR. FRETWELL: Your Honor, I don't think it's
5 important. The testimony would be -- I would
6 instruct the witnesses who are describing the P&E
7 sheets and how they filled it out. Obviously,
8 Investigator Miller, who is the one who signed these
9 items out both times for trial is not going to say I
10 signed it out in July for a trial and I signed it
11 out today. He knows not to do that.

12 THE COURT: All right.

13 MR. FRETWELL: If I don't -- if I submit this
14 sheet to the jury, they're going to know that.

15 THE COURT: Sure.

16 MR. FRETWELL: I don't think --

17 THE COURT: So you are not going to submit it
18 at all?

19 MR. FRETWELL: The chain of custody is a
20 legal issue that I believe I have to meet with the
21 court.

22 THE COURT: Sure.

23 MR. FRETWELL: That's why I think it's
24 appropriate to submit them as Court's Exhibits.

25 THE COURT: All right.

1 MR. FRETWELL: Out of an abundance of concern
2 for any kind of impact they might have on the jury
3 with respect -- I didn't realize that until
4 literally right before we came back over here.

5 THE COURT: All right. Well, I appreciate
6 you catching that. I appreciate you seeing it. Mr.
7 Johnson, that sounds like a fair way to handle it.

8 MR. JOHNSON: Yes, ma'am, Your Honor.

9 THE COURT: All right.

10 MR. FRETWELL: I could try to redact it,
11 Judge.

12 THE COURT: It just draws attention
13 sometimes, I think.

14 MR. FRETWELL: We started to redact and
15 realized it just looks horrible.

16 THE COURT: Right.

17 MR. FRETWELL: It looks like we're trying to
18 hide something.

19 THE COURT: Right. Right. Right. Well, I
20 think that's a fair way to handle it. We'll just --
21 how many did you say? There are four of them?

22 MR. FRETWELL: There are four exhibits. It's
23 four P&E sheets. I messed up on the list that I
24 gave Ms. Johnson. She -- I guess on that list,
25 there's actually five listed, but two of those,

1 State's 66 and 67 are on the same P&E sheet. So
2 there will be four Court's exhibits.

3 THE COURT: Okay. So make them Court's
4 Exhibits 1 through 4. So far as the list, I mean,
5 we just are keeping up with what's been entered and
6 not entered. I don't think we need to change her
7 list except to say --

8 MR. FRETWELL: I just think -- I've already
9 premarked all of the exhibits.

10 THE COURT: Uh-huh.

11 MR. FRETWELL: I've already designated
12 numbers for these as a State's Exhibit. Those are
13 clearly not going to be used as State's Exhibits.
14 There just going to be holes. I will, when I
15 introduce them, try to remember them as a Court's
16 Exhibit and have Ms. Johnson mark them as such
17 before --

18 THE COURT: Okay. All right. Okay. But
19 we're not talking about changing stickers on all the
20 rest of your exhibits.

21 MR. FRETWELL: No, we're just -- no, we're
22 just going to leave some empty holes in the middle.

23 THE COURT: I just wanted to make sure we're
24 on the same page. I apologize.

25 MR. FRETWELL: No, no.

1 THE COURT: Sorry. I'm making it harder than
2 it needs to be.

3 All right. Mr. Johnson, anything we need to
4 take up?

5 MR. JOHNSON: No, ma'am, Your Honor.

6 THE COURT: All right then. If there's
7 nothing further then, if everybody can try to be
8 back in here about 10 until 11:00 tomorrow morning
9 when we'll start. Plan on starting promptly at 11
10 o'clock. I double checked. I think my Grand Jury
11 responsibilities should be ended by then.

12 MR. JOHNSON: Thank you.

13 THE COURT: Thank you.

14 (WHEREUPON, the court recessed for the day at
15 approximately 5:20 p.m.)

Remarks

200

1 P R O C E E D I N G S

2 (WHEREUPON, the court resumed on the 10th day of
3 January, 2012 at approximately 11:09 a.m.)

4 THE COURT: We've got an issue we need to
5 take up. We got a juror yesterday, his last name is
6 Fleming, I believe, am I correct? And he complained
7 of some back trouble yesterday and evidently is
8 unable to get out of bed today to be here and called
9 and said literally he can not get out of the bed.
10 I'm going to take care of him in terms of giving me
11 some sort of proof of verification of that.

12 But we've got, in the immediate, got to deal
13 with this situation before us. Uh, we've got two
14 alternates. In that situation, we have to blindly
15 draw. So we will put the alternate's name on two
16 pieces of paper. I will hold it. I will allow Mary
17 to draw for us. Anyone in disagreement that that's
18 the method I have to employ?

19 MR. FRETWELL: That sounds acceptable to the
20 State.

21 MR. JOHNSON: Sounds acceptable to the
22 defense.

23 THE COURT: All right.

24 MR. FRETWELL: I trust Mary to be fair.

25 THE COURT: I was thinking this morning. It

1 used to be that when you did a drawing like that, it
2 had to be by a young child or -- I think they've
3 changed that now. I don't think Stan -- he doesn't
4 quite qualify.

5 Mr. Boyd, I'll say to you I understand. I just
6 want to say this directly to you and I want to say
7 to everyone involved in this case, we do a little
8 bit of joking around in here from time to time about
9 these kinds of things. I was just joking about my
10 law clerk being young and that sort of thing. That
11 is in no way to diminishes the importance that I
12 know this case is to both sides. We're here all
13 week together. So we -- I just don't want anyone to
14 ever think that we're doing that in any way to be
15 disrespectful.

16 THE CLERK: This is the name.

17 THE COURT: Oh, you shuffled them.

18 THE CLERK: I shuffled them.

19 THE COURT: You shuffled them and drew.

20 So the clerk has written the two names of the
21 alternates, has shuffled them and drawn. Annis
22 Alexander will become our 12th juror. All right.
23 We'll bring the jury -- is there any matter we need
24 to take up before the jury comes back in?

25 MR. FRETWELL: I don't believe so, Your

Remarks

202

1 Honor. I just think that we may need to get that
2 evidence out of that closet. The officer was
3 waiting to get it unlocked. It's now unlocked. He's
4 in the hallway.

5 THE COURT: All right.

6 MR. FRETWELL: We probably can go ahead. I
7 don't know how quickly we'll need that evidence.

8 THE COURT: Okay.

9 MR. FRETWELL: Certainly not for the next
10 couple of witnesses.

11 THE COURT: And sir, you were on the witness
12 stand. You want to retake the witness stand for us?

13 THE WITNESS: Yes, ma'am.

14 THE COURT: All right. Go ahead and bring
15 the jury in.

16 THE BAILIFF: Yes, ma'am.

17 MR. FRETWELL: Judge, I'm going to start
18 with, uh, again reiterating the State's request to
19 have Deputy Rivera qualified as an expert in the K-9
20 odor detection --

21 THE COURT: K-9 human ---

22 MR. FRETWELL: Human odor. I'm sorry.

23 THE COURT: --- odor detection.

24 MR. FRETWELL: K-9 human odor detection..

25 MR. JOHNSON: And, uh, Your Honor, I

1 understand you have ruled, but if I may just put
2 something on the record.

3 THE COURT: Certainly. You want to do it
4 with the jury present?

5 MR. JOHNSON: It's actually probably not
6 necessary.

7 THE COURT: Okay.

8 MR. JOHNSON: I understand you've ruled.

9 THE COURT: Sure.

10 MR. JOHNSON: And that's the way it goes.

11 THE COURT: Absolutely.

12 MR. JOHNSON: But I would just like to put a
13 little something on the record.

14 THE COURT: All right. Go right ahead.

15 MR. JOHNSON: As I understand it, one of the
16 things that they have to do is essentially prove the
17 dog's scent or prove that he's capable of -- has a
18 heightened sense of smell. And one of the things
19 that Deputy Rivera did not know is where the dog
20 comes from. He thinks it's a Belgian Mallinois --
21 excuse me if I'm saying that wrong, a Belgian
22 Mallinois -- but he does not have any paperwork to
23 prove so.

24 THE COURT: Okay.

25 MR. JOHNSON: I suggest to the court that

Remarks

204

1 that should be provided.

2 THE COURT: All right. Well, I appreciate
3 your argument on behalf of your client. However, I
4 am, as I said, going to find him qualified in the
5 area of K-9 human odor detection. I believe he
6 testified, if I remember the testimony correctly,
7 295 tracks that the dog has done. Some number like
8 that and has been through extensive training.

9 THE WITNESS: Yes, ma'am. 42 tracks, 295
10 deployments and 63 training tracks.

11 THE COURT: And so I am going to find him so
12 qualified to give testimony in that area. All
13 right. We're ready.

14 (WHEREUPON, the jury enters at approximately
15 11:15 a.m.)

16 THE COURT: Ladies and Gentlemen, I
17 appreciate you being so punctual today and I hope
18 that each of you had a good evening. I hope you
19 might have gotten to sleep in just maybe a little
20 bit this morning.

21 One order of business we need to take care of
22 before we begin. Ms. Alexander? Yes, ma'am. You
23 may have already been apprised of this but, just so
24 you know, we have unfortunately lost a juror here
25 today or a juror was unable to serve. So you are

1 going to step in his shoes and be one of our 12
2 jurors. I appreciate your service as I do all of
3 your service here today.

4 All right. And sir, I will remind you that you
5 are still under oath.

6 Mr. Fretwell?

7 MR. FRETWELL: May it please the court, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. FRETWELL: Your Honor, at this time, I
11 would like to renew the request by the State after
12 hearing the qualifications of the witness to have
13 Deputy Rivera qualified as an expert in K-9 human
14 odor detection.

15 THE COURT: All right.

16 MR. JOHNSON: I --

17 THE COURT: Yes, and your objection is noted
18 for the record. I am going to qualify him in the
19 area of K-9 human odor detection.

20 Ladies and Gentlemen, normally persons can not
21 give opinion testimony. A person has to testify as
22 to what he or she actually saw, heard or sensed or
23 something of that nature. However, there is an
24 exception when someone is qualified because of
25 education or experience they are permitted to give

1 their opinion in certain areas that the court
2 qualifies them in that way. This witness will be
3 qualified, as you heard, in the area of K-9 human
4 odor detection to give opinion testimony in that
5 area. That does not mean that you must accept the
6 opinion. It is evidence for you to use any way that
7 you see fit.

8 Mr. Fretwell.

9 MR. FRETWELL: Thank you, Judge.

10 DIRECT EXAMINATION (con't)

11 BY MR. FRETWELL:

12 Q Deputy Rivera, let me take you to Wednesday,
13 December 10th, 2008. Were you working that day?

14 A Yes, sir. I was.

15 Q All right. Uh, that day, I think you testified
16 in some of the background provided yesterday that the K-9
17 unit trains weekly. Is that correct?

18 A That's correct.

19 Q What day of the week do they train?

20 A Wednesdays.

21 Q Was December the 10th of 2008 a Wednesday?

22 A Yes, sir. It was.

23 Q All right. Do you recall where the K-9 unit
24 was training that particular day?

25 A Yes, sir. We trained that day at -- it was the

1 old Parker Academy, which is now the Legacy Academy on
2 Woodside Avenue and Bramlett Street.

3 Q Okay. And why were you training at that
4 specific facility that day?

5 A It was cold and rainy. We needed somewhere to
6 get out of the rain. The whole school building would
7 actually suffice for us. So we ended up going there.

8 Q All right. Did you respond to the area of
9 Emile, Alma and Leone Streets that particular day?

10 A Yes, sir. I did.

11 Q For what purpose?

12 A On the radio, even though we are training, we
13 keep our radios on in case anything comes up. We can
14 send one or two guys to go take care of that situation.
15 On that day, we heard the tones. The tones are a little
16 distinct tone that goes off any time anybody is reporting
17 a robbery. The tones went off that day. Because we were
18 so close to the location, I went ahead and got my gear
19 ready and started heading that way.

20 Q Okay. And once you found that information and
21 you got prepared to leave and you left, did you receive
22 any kind of updates while you were on the way to that
23 location?

24 A Yes, sir. The original robbery was supposed to
25 have occurred at TR bank, which is on West Marion and

1 White Horse. Then, on the way there, we got the word
2 that the suspect vehicle or the vehicle that the robber
3 was supposed to be in had gone down West Marion and then
4 down Emile. From there, we kind of got a little
5 miscommunication. Some said the vehicle stopped. Some
6 said they didn't. We heard word about gunshots having
7 taken place at that location. The last word we got until
8 I got there was that somebody had been shot and the
9 suspect fled to the woods.

10 Q All right. Were you the first K-9 officer on
11 the scene?

12 A Yes, sir. I was.

13 Q What other officers came with you or arrived in
14 close proximity to when you arrived?

15 A Shortly after, Deputy Cannon and Deputy Hal
16 Harris showed up.

17 Q Okay.

18 A Just like a minute later.

19 Q All right. What did you do once you arrived at
20 that location?

21 A First thing I did was gather information as to
22 exactly what had taken place, if anybody knew. I made
23 contact with Investigator Weiner. I think he was on
24 scene just a short moment before I was. I asked him what
25 had happened. He said basically the bank had gotten

1 robbed. Somebody had followed the vehicle out and then
2 the person that had seen the vehicle was shot at by the
3 suspect and someone else. They were able to identify
4 that the suspect had gone across the street from where
5 the car was and into the woods into the Westside park
6 area.

7 Q Okay. Were you given a description of the
8 suspect?

9 A We got a black male dressed all in black.

10 Q And you indicate that one of the things that
11 was significant was the location of this vehicle that was
12 on Emile?

13 A Yes, sir.

14 Q Okay. All right. Once the suspect entered the
15 woods, did you have any further information about where
16 the suspect went once he entered the woods?

17 A No, sir. Once he went into the woods, it was
18 unknown. I mean, he could have gone different areas. He
19 could have gone to the park or to the road or to another
20 area. But it was unknown where he went once he entered
21 the woods.

22 Q Once you got that information -- let's put this
23 into perspective.

24 A Okay.

25 Q About how long did it take you to get from the

1 training area to this area on Emile Street?

2 A The first call on the robbery came in at 11:52.
3 I arrived on scene at 11:56. So four minutes.

4 Q So within four minutes of the robbery?

5 A Correct. And the school is about two, maybe
6 three miles from that location. It is pretty close.

7 Q All right. And then once you got there, you
8 spoke with Investigator Weiner and gathered that
9 information. Uh, the next thing you did, is that deploy
10 your dog?

11 A Correct. The next thing I did was what I call
12 harness the dog. You put a tracking harness on it. The
13 purpose of that is so it doesn't choke him out obviously.
14 He's normally on a collar. Put the harness on. Then I
15 briefed the two deputies that covered me. The brief is
16 just something like, hey, I'm going to start here and do
17 this and do that and just kind of, you know, cover me
18 while I do this.

19 Q Before you explain what you specifically did in
20 the deployment of your dog, tell us about how much time
21 elapsed from the time that the call came out and you
22 deployed your K-9 Smeris into the wooded area.

23 A The time I had when I started tracking was
24 12:03. The time the incident came out was 11:52. So
25 about 11 minutes.

1 Q Okay. Now, make us -- let me first of all show
2 you what's already in evidence as State's Exhibit 26. Do
3 you recognize this area right here?

4 A Yes, sir. That's, uh, Emile Street.

5 Q Okay. Is this the area where you deployed your
6 dog?

7 A Yes, sir.

8 Q Would this photograph assist you in explaining
9 how you deployed your dog?

10 A Yes, sir.

11 Q All right. Let me put this up. (Pause.)

12 Just slide your chair back just a little bit.
13 Here's a laser pointer. If you can use that and this
14 picture to show the members of the jury -- go ahead and
15 tell them about how you deploy your K-9 and how you set
16 up. You can use that photograph to show what you did on
17 that particular day.

18 A Okay. The first thing I do is I get him geared
19 up with the proper things to start this track. In this
20 case, it would be a harness. Once I put the harness,
21 what I had him do was -- normally, what we do is use the
22 vehicle which is the vehicle in question, the suspect
23 vehicle. If possible, we'll put him in the vehicle.
24 We'll let him smell the odor inside. In this case, it
25 was just one person. The only odor or the predominant

1 odor would be that suspect odor.

2 Q Okay. Let me ask you a question about, in this
3 particular case, were you able to scent him off the
4 vehicle or was that --

5 A No, sir. In this particular case, because
6 there were deputies kind of around it, looking in it,
7 making sure nobody else was in it. Because there was
8 some sort of irritant, I think something like pepper
9 spray or CS that was coming out of the car, then I
10 decided not to put him in the car. That would be more
11 for him to have to work out in his nose.

12 Q Okay. So that's how you would typically do it,
13 but you didn't do that in this case?

14 A Correct, because of the gas, I didn't do it.

15 Q Can you show the members of the jury how you
16 did deploy your dog?

17 A So if you can imagine this, imagine that I
18 harnessed the dog. The most important thing is to get
19 him to start on the correct odor. Obviously, if we
20 started here, we'd have to contend with all of your
21 odors. This is pretty rugged, pretty desolate. Because
22 it was raining, nobody was out. It would be pretty easy
23 for me to assume that if the guy came out of this door
24 and ran directly across the street, that the guy would
25 have entered anywhere from here to around here. The

1 reports were he ran across the street and right into the
2 woods.

3 What I did was I took about a car length. I
4 came here. Brought that across the street and around a
5 car length ahead is when I told the dog to go ahead and
6 start looking for the odor. Give the dog to command to
7 find the odor. The dog will put his nose down. He will
8 start checking. When he finds the odor, he will start
9 following that odor.

10 In this case, we ended up just going a few feet
11 forward. Just as it was said, the odor led into the
12 woods. The dog went in there. He showed one of the
13 distinct behavior changes, which is what he shows me when
14 he's in that odor. He cuts into the woods and we started
15 tracking.

16 Q Before we talk about -- Mr. Anderson, if we can
17 have the lights back.

18 Before we talk about specifically the track
19 itself, tell us about the responsibilities of Deputies
20 Cannon and Harris while you were deploying your K-9.

21 A Their responsibility is to cover me among other
22 duties. Cover me. What that means is if someone is
23 trying to hurt me or to shoot me or something, because I
24 have the dog lead in one hand, I only have one hand left
25 over. I think we can all agree that to shoot a weapon or

1 to do anything like that, it's nicer to have two hands.

2 So I'm a little bit less reliable in that sense.

3 Other than that, because I'm watching the dog,
4 I may not see a guy that's standing 10 feet to my right
5 or 10 feet to my left. So their job is to protect me
6 and, at the same time, to keep an eye out to my left and
7 right and even ahead of me. My vision, at best, is split
8 between the dog and the situation that surrounds me.

9 In addition to those duties, let's say that we
10 begin moving -- let's say we find a guy that wants to
11 give up and the guy is like, I give up. Well, these dogs
12 are bite trained. It would be hard and it would make me
13 put a person in an unnecessary risk of being bitten if I
14 were to approach him and investigate him. So what I
15 would do in that situation is I would sit tight. A cover
16 deputy would go and make sure he's okay.

17 Whether he's giving up to arrest him, whether
18 it's the wrong guy, hey, man, we've got something going
19 on. Get out of the way. Whether we don't know.
20 Whatever the case may be, these deputies are -- to my
21 right and left, are to assist me in approaching any
22 person that we encounter whether it's a suspect or not.

23 Q In addition to those duties, if, for some
24 reason, your dog needs to be taken out and another dog
25 introduced into the track, can you tell the jury what the

1 cover officers or cover deputies' responsibility would be
2 in that instance?

3 A. Certainly. Because we have two cover deputies,
4 let's say we start tracking in a situation like this,
5 there's no good reference point because you're in the
6 woods. What we would do is, hey, cover number one, my
7 dog is tired. We have to replace him. We say okay.
8 We'd have one cover deputy stand where I'd stop my track.
9 The other cover deputy would walk me out. Once I get
10 out, the new dog would come in. The cover deputy would
11 walk him back in. Then they would inform him the track
12 was last seen or was last obtained at this particular
13 point. That alleviates us having to guess where we had
14 it. We got a guy there left at the scene who could say,
15 right here.

16 Q What kind of purpose do those cover officers
17 serve with respect to potentially contaminating the
18 track?

19 A Well, the good thing about it is because we
20 only have one guy and because this guy has been with me
21 the whole time, it doesn't pose any risk for me, any
22 contamination for me. The dog knows that I smell you, I
23 smell you, I smell you, but there's an unknown odor that
24 goes that way. That's somebody else. We've taught the
25 dogs that that's who you're looking for. That's called

1 scent discrimination, telling the difference between the
2 different odors.

3 With the new deputy that's coming in, because
4 if I'm standing right here and I'm the cover deputy and I
5 know that deputy so-and-so told me that I have the last
6 track at that Bible, I can tell the new deputy, hey, man,
7 they last had it at that Bible and it was going that way.
8 In turn, this new deputy can do what I did and just come
9 around. He would intersect that track. When he
10 intersects, the dog should pick it up and he should go in
11 the correct direction. So that deputy also limits the
12 contamination in that area by avoiding all the walking
13 through the existing track. In other words, we start
14 behind the track and never in front of it.

15 Q All right. Deputy Rivera, once Smeris picked
16 up a scent, as you've indicated, would you tell the
17 members of the jury, first of all, how did you know he
18 picked up a scent? What does your dog do to indicate to
19 you that he has a scent and how that works?

20 A Okay. Let me cover something quick before that
21 just to avoid any confusion. We talked to different
22 fields. We talked to trainers. We talked to police.
23 We've talked to doctors sometimes. You might hear the
24 word "odor", "human odor" and you might hear the word
25 "human scent". They are the same thing. There's no

1 difference. It's just difference in wording. All right.

2 So the reason I know that my dog is tracking is
3 because he does something specific that he doesn't do at
4 any other time when he's following somebody. The first
5 thing that I notice is he goes from random sniffing. He
6 sniff here. Sniff here. Kind of in the air. Kind of
7 not really on the ground. A little bit off of it. When
8 he finds an odor that he's following, that nose comes
9 down. You will see that he starts -- he stops doing that
10 random sniffing. He gets very focused. You will hear
11 his breathing get more intense. It will sound like
12 (demonstrating) as opposed to just puffs here and there.
13 Something else he'll do is he will begin to follow that
14 odor. While he's following that odor, his tail will
15 begin to wag in a wider pattern left and right.

16 The most significant thing about his changes is
17 that he insists on going in that direction. By insist I
18 mean this, if the track ran through this room and I
19 didn't know it and I said, hey, check here, dog.
20 Nothing. Come and check over here. Nothing. When he
21 finds the correct track, this come here, come there
22 doesn't work anymore. Now, to get him off that track, I
23 have to physically pull him off that track. He knows
24 he's right and that's a path of success for him.

25 Q Deputy Rivera, what was the weather like that

1 day?

2 A It was cold and rainy.

3 Q All right. And what effect does rain and cold
4 have on a scent trail?

5 A The environment has a lot of effects on the
6 scent trail. For the purpose of illustrating what scent
7 looks like, scent is actually microscopic particles, dead
8 skin, bacteria coming off of you. It basically fall on
9 the ground or they might even come up and come back down
10 later. If you can imagine that's talcum powder, real
11 fine dust, real fine powder. We squirt it on the ground.
12 That would be the odor. Imagine that as far as cold.

13 You can imagine that cold makes things go up
14 like gas and makes things come down. Hot comes up. Cold
15 comes down. So the cold, in a sense, makes the odor stay
16 lower and makes it kind of settle. You notice that when
17 it's hot, the odor comes up and kind of spreads further.
18 So the cold kind of keeps it tight onto where it falls.
19 The rain affects it because rain washes away things.
20 It's not so much that it takes it or add it. It simply
21 moves it.

22 If I get that talcum powder and I spray it here
23 and I put a shower over it, it's still there, but it kind
24 of splatters with the rain. If any little creek or any
25 little pool forms, that rain or that little pool will

1 actually carry the scent away, which is our main concern
2 with the rain.

3 Q What about the effect of the canopy of trees?

4 A In this case -- in this case, we were lucky.
5 Even though it was raining, the trees helped to dampen
6 the actual impact of the rain on the ground. If you can
7 imagine I had my hand over it to simulate a tree, it may
8 bounce off or it may even drain down the stem or down the
9 trunk of the tree. As opposed to it landing on the
10 actual odor, it kind of helps to channel that water away
11 from what we're tracking.

12 Q And you mentioned the scent that the dog was to
13 pick up. Is there anything about, uh, one scent over
14 another. Say somebody is walking casually versus someone
15 running versus someone's fearful. What impact does any
16 of that have on your dog and how your dog reacts to that
17 scent?

18 A Okay. Well, there's two kinds of scents. I'm
19 glad you brought that up. There's two kinds of scents.
20 One is dead skin falling off. Dead skin may have
21 bacteria. May have residue or whatever, lotion you use.
22 That's human odor. Another type of human odor is what's
23 called a pheromone or a chemical like adrenaline that
24 also comes out through your pores or whatnot. The
25 difference is one is instant. The adrenaline in this

1 case is instant.

2 Adrenaline happens because a body has learned
3 to accommodate for emergency type situations. You don't
4 have to necessarily be scared of something, but scared,
5 being excited kind of makes you have the goose bumps and
6 makes your heart race. When you feel that, it's because
7 you have adrenaline pumping through your system. That
8 comes out of your pores. That settles on the ground just
9 like the odor.

10 The dogs, through experience, or at least
11 Smeris, through experience has learned to recognize when
12 one is and one isn't present, more specifically
13 adrenaline. From experience and doing other tracks with
14 other people, he has learned that when he smells that
15 adrenaline or when I suspect that a person is running
16 scared, he acts much more different. All his behavior
17 changes are more intense. He breathes harder. He
18 searches harder and he pulls harder most of all. So that
19 adrenaline intensifies all of his affects when it is
20 present.

21 Q Let me just clarify something that you just
22 said. Are you saying that the dog reads some kind of
23 adrenaline from you or from the person that the dog is
24 tracking?

25 A From the person that has fled.

1 Q Okay.

2 A He knows what I smell like. Like I said
3 earlier, it's not the issue of what me or my cover deputy
4 smells like. The issue is what the track going away
5 smells like.

6 Q All right.

7 A In this case -- it is my opinion that the
8 suspect was running scared as well as he should have
9 been. There was a lot of adrenaline coming through his
10 system enough for the dog to pick it up and give me those
11 specific behavior changes. The more intense behavior
12 changes are consistent with somebody being scared.

13 Q So your testimony is the dog reacts differently
14 in a real life situation more intensely than he does
15 perhaps even a training exercise; is that correct?

16 A Certainly. Much different.

17 Q Is that what occurred in this particular case?

18 A Yes, sir. It is.

19 Q Once your dog indicates by his behavior that he
20 has picked up a scent trail, what specifically does the
21 dog do? What specific behavior changes does he indicate
22 to you in addition to what you already described about
23 picking up the initial trail?

24 A Well, in addition to the intensified reading,
25 the closer attention to specific areas and the wider

1 tail, he does a serpentine pattern. I take that to mean
2 that he doesn't track only where the odor is but he
3 guides himself by where the odor isn't. Once again, to
4 illustrate, if the person running ran from where I am to
5 that door, obviously, the odor is in a straight line
6 right there.

7 The way that Smeris tracks is I smell it. I
8 don't smell it. I got to come back. I smell it. I
9 don't smell it. I got to come back. Eventually what you
10 see is a serpentine pattern where he tracks by using
11 where the odor is and where the odor isn't by guiding him
12 back and forth. If you were standing behind him as he
13 was tracking, you would see this. I know by the way that
14 he's acting, by the way that he's coming back and forth
15 that the two points at which he comes back is the edge of
16 the odor. Odor kind of just falls and kind of spreads.
17 The two points at which he returns is where the odor is
18 finished and the middle is where the person actually
19 walks.

20 Q With respect to the odor falling, what impact
21 does a terrain or a specific type of terrain have on your
22 dog's ability to track and how long it takes your dog to
23 track?

24 A Obviously, the easiest place to track is nice
25 level grass because the odor falls and settles right

1. there. If you can imagine that odor flows the same path
2. as air, if I have a big steep hill and the odor falls
3. here, it may very well run down the hill just a little
4. bit. The most difficult part is when you're walking on a
5. ridge. Now, if you're walking on a ridge, you have some
6. fall on this side and some fall on this side.. So that
7. the serpentine has gotten wider. It's hard to tell where
8. he's at. That wears him down more because he's having to
9. work harder to figure out where it is and where it isn't
10. as opposed to a nice grassy area.

11. Q All right. How about in a wooded area if you
12. might have a brush pile or something like that? First of
13. all, did you encounter that kind of terrain upon your
14. track. And if so, how did Smeris deal with it?

15. A In this particular track, we went into a very,
16. very dense area. There wasn't a path. It was just
17. cutting through old briars and old kudzu and branches and
18. whatnot. Apparently, at some point, somebody had
19. attempted to clear some of that land out. What we end up
20. with are big brush piles. They are kind of hard to walk
21. over because you start falling through it.

22. Well, the problem that that posed for me is the
23. fact that if the suspect walked near it, obviously being
24. odor like talcum powder, it falls in between all the
25. leaves and all the low branches and eventually settles on

1 the bottom of that pile. The dog doesn't know that the
2 guy is not in there. He's not looking with his eyes as
3 opposed to just his nose. He's having to go back and
4 check all the bottom of those piles, making up his mind
5 that he's not there and moving on to the next one.
6 Because there were so many piles, it was causing him to
7 get tired faster than he normally would on the nice
8 terrain.

9 Q And finally, how important is it that your dog
10 was able to be on the scene and acquire that track within
11 some 10 to 15 minutes from the time potentially that the
12 individual -- what important -- how important is
13 freshness to the track?

14 A Odor is perishable. After a while, it will
15 just dissipate. The environment will alter it and just
16 make it not be there anymore. This particular case,
17 because we showed up within 15 minutes, we started within
18 15 minutes, the odor was still very fresh. The
19 environment had not had a lot of time to have a whole
20 bunch of impact on it.

21 Q Okay. Once you and your team, your dog and
22 your cover officers, entered the woods, what happened?
23 How did the dog lead you?

24 A We entered the woods at probably one of the
25 thickest places out there. That's something that was a

1 flag to me. If you think about human nature, it is human
2 nature to take the path of least resistance. We don't go
3 out and jump fences just to jump them. We walk down the
4 driveway. If we're going camping, we're not like well,
5 let's just cut through the thickest part. You take the
6 trail.

7 In this case, the trail was through the
8 thickest part of the forest or that area. Somebody would
9 have to be really, really scared and not have the time to
10 search for an easier path that took this one. The dog
11 goes in there. He starts doing the serpentine. We start
12 moving through very thick briars. He was very slow
13 moving because the briars were holding me up. I have a
14 lead on him. The lead was getting caught on briars. So
15 I had to slow him down, undo the lead, at the same time,
16 coordinate with the two cover deputies to make sure that
17 I didn't get too far ahead of them since they are my
18 protection.

19 We pass a couple of brush piles. Cleared
20 those. Those were okay. The dog moved on. Finally, we
21 came to an opening. I could see it a little ways up. I
22 knew that that opening gave way to the road near the
23 park.

24 Because the terrain was so tough and because
25 Smeris was starting to wear down, I decided at that point

1 to go ahead and call for a new dog to come replace me.
2 So what I did was, I ensured that I got to a position
3 that was covered enough to have protected the scent and
4 far away enough so nobody could have possibly walked in
5 there. I came out this opening. I watched Smeris
6 through his serpentine. When I was able to pinpoint the
7 serpentine, I got right here. I stopped the dog and I
8 downed him. The dog downed.

9 I call for the next dog. I tell the cover
10 deputy, hey, man, where the dog is is where I last had
11 it. That's where the new guy wants to start. I backed
12 out of the woods. The other cover deputy brought a new
13 handler in with a new dog.

14 Q Deputy Rivera, this being December of the year
15 and I think the difference in the seasons as far as the
16 foliage and et cetera, what effect does the absence of
17 the leaves on the trees, et cetera, have with what you
18 were dealing with on the ground with this wooded area?
19 Could you explain that?

20 A Well, the absence of leaves kind of makes the
21 wind -- takes the wind and makes it more of a factor with
22 that odor. Normally, they are shielding you from the
23 wind and from the rain. There's some of the parts of
24 this park, because that wasn't present, then you are more
25 susceptible to the environment. That's why I had to make

1 sure that from peak to peak is where I had the track and
2 to give them the exact point so the dog could start in
3 the right direction.

4 Q That's with respect to the dog's tracking.
5 Tell me about the difficulty of moving through this
6 terrain, if any, and whether or not there were places
7 that individuals could hide in that area?

8 A There were a lot of places where he could hide
9 which is exactly why we had to go so slow. Normally,
10 nobody would be hiding under a pile of brush, it's been
11 done before. If the dog pays close attention to that, we
12 have to let him search and make sure that he's not in
13 there before we move on. That kind of slows it down
14 some. As far as the terrain, the terrain was just hard
15 to navigate in general. You're having to step over
16 briars. You know what briars feel like. Once you get
17 bit by one, you got to stop and get it off of you and
18 then kind of walk on through. It's not only hard for us
19 for the dog as well. He's got a harness now. Now, the
20 briars are getting caught on his harness, getting caught
21 on his coat, getting caught on everywhere else. It's
22 actually pretty slow moving.

23 Q Is this the, uh, uniform that you would have
24 been using while you were tracking?

25 A Yes, sir. With the exception of I don't have

1 an outer vest on now, this is the uniform. The outer
2 vest goes to about right here and to my waist. It said
3 -- at the time, it said in real bright yellow letters
4 "Greenville County Sheriff's Office K-9 Unit".

5 Q Okay. All right. Let me, uh, have you step
6 down real quickly. I think we'll try to do it like this.
7 If you can stand on that side so you can face the Court
8 Reporter and you can project toward the Court Reporter.
9 You're going to block some people right behind you.

10 A Okay.

11 Q If you can use that pointer and show the
12 members of the jury basically where on the map -- again,
13 I understand this is a wooded area but can you give us
14 some idea of what your --

15 A Yes, sir. This right here is Emile. Emile
16 Street obviously intersects with Leone. I came in
17 through here. I ended up parking somewhere in here. I
18 can see the car parked on the side of the road behind --
19 in this area right here. Supposedly, the suspect went
20 across the street and into this woods in an unknown
21 direction. Like I said earlier, I started about a car
22 length ahead. I started right here. The dog went up and
23 went in. We tracked in an area in here. It's hard to
24 pinpoint what direction exactly we went. I know that
25 right as we were switching our dogs is about right here

1 in this opening, this area here. I could tell that
2 because it's kind of clear. In larger maps, you can see
3 where this kind of comes out on Alma Road or Alma Street
4 right here.

5 Q When you're in this area of the wooded area, do
6 you know which way you are headed?

7 A No, sir.

8 Q Is there any way to tell which direction you
9 are going basically?

10 A No, sir. Once you make that entering here, if
11 you take any turns -- especially with the dog cause the
12 dog is doing his thing. I'm kind of watching him. I
13 know that we're walking in this general direction. But I
14 couldn't tell this -- where this --

15 Q You're not backtracking?

16 A Correct.

17 Q You're not walking around in circles. But you
18 know to pinpoint the direction is difficult.

19 A Correct.

20 Q Let me show you -- 17 is in evidence. Is 28 in
21 evidence? Let me have you come and step back around
22 here. Take a look at that map. Does that assist you?

23 A Yes.

24 Q Does it accurately represent the area of the
25 search perimeter, et cetera?

1 A Yes, sir, it does.

2 MR. FRETWELL: Your Honor, can we move
3 State's 28 into evidence at this time.

4 THE COURT: Any objection? Have you seen
5 it?

6 MR. FRETWELL: This is the --

7 MR. JOHNSON: Okay. Yeah. Sure.

8 THE COURT: All right. Then without
9 objection, State's Exhibit number 28 is in evidence.
10 (WHEREUPON, State's Exhibit 28 is admitted into the
11 record.)

12 BY MR. FRETWELL:

13 Q All right. Now, if you can maybe orient the
14 jury to what we were seeing on the large map.

15 A This right here is Emile Street. I said that I
16 came up this way. There's Alma. There's Leone. I think
17 that little white speckle is the one I saw on the other
18 map. So we would have gone in right here. Gone in this
19 general direction. At some point, came out right in
20 there. There's the spot that I said would come back out
21 to the road. We ended up switching dogs in this area.

22 Q So that -- was that the area or that direction
23 in which you left and the other dog handler came in?

24 A Correct.

25 Q Who was the next dog handler that came in?

1 A The next dog handler was Doug Wannemacher and
2 K-9 Rosco.

3 Q All right. If you can, uh, retake your seat on
4 the stand.

5 A (Witness complies.)

6 Q Did you, uh, -- once you had been replaced by
7 Master Deputy Wannemacher, did you ever redeploy Smeris
8 at any point that day during the course of the track?

9 A I did a while later. I can't think of how much
10 later. It was a pretty good while later. I ended up
11 going over to, uh, a different road called Richards
12 Avenue. Supposedly, the handler at the time was saying
13 that the suspect had gone into the creek. The creek was
14 pretty high that day because of the rain and the terrain
15 across the creek was pretty dense. So what he wanted to
16 do was have me check the opposite side of the creek where
17 the guy had gone in and ensure that he didn't come out.

18 Q If he came out, instead of crossing the creek,
19 they could have just drove around and come around. I
20 could have just started there again. But if he didn't
21 cross the creek, they were going to have to take the
22 plunge. That's what they were trying to avoid, getting
23 into the water.

24 Q In addition to looking for signs of the
25 suspect, were you doing anything else with the dog on

1 that side of the creek with respect to the track that was
2 ongoing?

3 A What I told the dog when we got on that side
4 was to do the odor search, a man odor search, human odor
5 search. So what he would have done was he would have
6 looked for a track or anything the suspect may have
7 dropped he would have probably found or anything that
8 contained human odor. So that's what I told them. I
9 didn't tell them track or look for an article. I told
10 him to go look for human odor.

11 Q Now, did you stand by with your dog while the
12 other, uh, K-9 officers entered the creek?

13 A Yeah. I stood there with the dog until the end
14 of the creek. Once they said that they were going
15 somewhere else, I secured my dog and went on.

16 Q Were you serving as any kind of cover capacity
17 for them as they entered the creek?

18 A Somewhat.

19 Q Okay.

20 A Somewhat. My job was obviously to check and
21 see if anybody was there. But because they were in such
22 a vulnerable position, if you can imagine, you've got one
23 here and one here and you're going down a creek, it would
24 be real simple for somebody who has prepared themselves
25 to shoot at you while you're down in the water. My

1 secondary job was to obviously look out for their safety.
2 If anybody showed themselves in that area. If anybody
3 showed themselves in that area that I didn't search, to
4 obviously protect the deputies against any threat that
5 may have come.

6 Q Last time I'll have you step down.

7 A All right.

8 Q Put this map back over. If you'll just
9 describe the area on this map that you searched the
10 second time that Smeris was deployed. Can you see it
11 from there?

12 A I can.

13 Q Or do I need to angle it.

14 A Earlier, we started here. We stopped there.
15 After we -- after I changed out dogs here, I went ahead
16 and got my car. I drove the perimeter to see if anybody
17 popped out or if anybody looked familiar. I didn't see
18 anybody the whole time I was there.

19 Q They got somewhere in this creek, which I'm
20 going to say was right in here. They called for a dog to
21 search the opposite side of the creek which I said I
22 would do because I was close. I came down the road. I
23 pulled down on Richards Avenue right here where the turn
24 is. I parked in here. I deployed my dog. About a 100-
25 yard area, 300-feet area right there. That's where I did

1 my search. I knew to begin there because I could hear
2 them yelling at me from this side. Obviously, you can't
3 see that very well. From there, they would say, can you
4 hear me. I would say, yeah, I can hear you. I kind of
5 oriented myself with their voice. Then I checked 100
6 yards, 50 yards that way and 50 yards that way, all the
7 way up the creek.

8 Q So once they located you on this side of the
9 creek, you then adjusted your area to include a larger
10 area on this side?

11 A Correct. Once I pinpointed them, let's just
12 say -- obviously, not to scale. But let's just say once
13 I pinpointed them right here, I put myself directly
14 across them and I checked 50 yards that way and 50 yards
15 that way, give or take, it's about 300 feet.

16 Q Do you know for certain where along this creek
17 it was exactly?

18 A I know that it was somewhere here.

19 Q Okay.

20 A I parked at that curve. That curve is like a
21 little road.

22 Q Okay.

23 A I pulled up just into that road in there.
24 Somewhere in here.

25 Q Okay.

Ramon Rivera - Direct Examination by Mr. Fretwell

1 A Kind of hard to pinpoint in the woods, but...

2 Q What is the vegetation and the terrain around
3 this creek? What is it like?

4 A That right there is even thicker than this down
5 here.

6 Q Uh-huh.

7 A To get through here, you literally have to
8 force yourself and force the vegetation as you walk
9 through.

10 Q And is -- can you describe what the creek --
11 did you get a look at the creek?

12 A Once I actually broke all the way through all
13 this and I could see where the creek was, on this side,
14 it seemed like they could just walk in. On this side,
15 where I came in on the other side, it was actually a
16 large drop off where you would have had to jumped in to
17 get to the creek about 10 feet or so.

18 Q Or if you were coming out, you would have to
19 crawl?

20 A You would have to climb.

21 Q Any indication on this side of the creek that
22 anybody had crossed over the creek in that area?

23 A No. There was no vegetation disturbed that was
24 noticeable to me. And looking back at how much I tore up
25 just to get through there would have been impossible for

1 someone to get out without doing as much damage as I did
2 to the vegetation. The dog also did not indicate that he
3 picked up any odor on that area that I searched on this
4 side.

5 Q And which way did the track team move in the
6 creek? Was it this way or that way?

7 A They went right. Once I cleared this side, I
8 told them there's nothing over here. They actually went
9 in and started going down.

10 Q How far down -- do you recall how far down you
11 followed them or provided cover or tracked on the other
12 side?

13 A It was about 100 yards from the place I parked.

14 Q Okay.

15 A So from here, 100 yards that way.

16 Q Okay. So no further down past that way?

17 A No further past that way.

18 Q When you were, you said roving the perimeter.

19 A Yes, sir.

20 Q Were there vehicles all along this perimeter?

21 A Yes, there were cars everywhere. There were
22 cars -- about three or four cars.

23 Q What kind of cars?

24 A Police cars.

25 Q Okay.

Ramon Rivera - Direct Examination by Mr. Fretwell.

1 A With their lights on.

2 Q Okay.

3 A And I'll tell you why that is.

4 Q Okay.

5 A Obviously, if you keep moving, you keep
6 walking, we're going to have to keep tracking you. What
7 we do is we set a perimeter up. Let's just say this is
8 the perimeter, this little box. If we set a car here and
9 a car in the middle and a car in the edge with their
10 lights on, you'd have to be pretty bold to try to walk
11 across that road because somebody will spot you. The
12 idea is to actually get you to lay down long enough for
13 us to eventually catch up to you. If you keep walking,
14 we can't. We could track you, but we'd have to keep
15 going and going and going, much as we did here. The
16 perimeter actually forces the person to seek a high spot
17 or keep moving within your defined area.

18 Q At any point during your initial track, roaming
19 or your track along the creek, did you come in contact
20 with anyone other than the members of the tracking team
21 or other law enforcement officers?

22 A No, sir.

23 Q Okay. All right. Take your seat back on the
24 witness stand. This area that we just described off of
25 Emile, Leone, uh, the Bank of Travelers Rest, White Horse

1 Road, that area, is that all within Greenville county?

2 A Yes, sir.

3 Q Is that the jurisdiction over which you have
4 law enforcement powers?

5 A Yes, sir. It is.

6 Q Please answer any questions the defense counsel
7 may have of you.

8 A All right.

9 THE COURT: Mr. Johnson.

10 MR. JOHNSON: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. JOHNSON:

13 Q Deputy Rivera, I would like to briefly ask you
14 some questions about how you became a K-9 handler.

15 A Okay.

16 Q First of all, as I understand it, you went to
17 school in Greenville county.

18 A I did.

19 Q And that was high school, right?

20 A Yes, sir.

21 Q Then you moved on to the armed services?

22 A Yes, sir. The Marine Corp.

23 Q The Marine Corp, how long were you in the
24 Marine Corp?

25 A Four years.

1 Q At that point, you were hired on to the
2 sheriff's office in roughly '02; is that right?

3 A Yes, sir. August of '02.

4 Q Can you kind of go down your transformation
5 from uniform patrol to the K-9 division?

6 A Yes, sir. Obviously, you begin by going to the
7 academy. You go to the academy and you pass that, you
8 come on to the sheriff's office field training. They
9 cover everything under the sun. If you pass that
10 successfully, then you go on the road as a solo unit for
11 probation for six months or a year. Once you pass that
12 probation, then you are free to transfer out to other
13 divisions if you chose to do that.

14 In my case, I did a year on the road, my
15 probation year. I did another additional year. I
16 transferred to the traffic division. In the traffic
17 division, you are doing the same thing with the exception
18 that your focus is on traffic. Wrecks. You do, like,
19 DUIs, just all the traffic complaints.

20 When I was in traffic, I would volunteer
21 sometime and go train with the K-9 unit at the time. Two
22 years later, a position came open. I applied. I met all
23 the qualifications. I ended up being selected for that
24 position. From that point on, I began working with the
25 K-9 unit. From there, the first thing you do is you go

1 to a trainer's school, to a K-9 field training school.
2 It's 600 hours. You cover all the aspects of K-9
3 training, K-9 methodology, the breed, the anatomy, the
4 behavior changes, practical application. Then you go on
5 to complete the case law which is just basically court
6 rulings that tell you what you can and can't do and how
7 to deploy your dog in a legal manner where you can and
8 can't be.

9 From there, once you complete that 600-hour
10 class, then you go on to doing in-house proficiency which
11 is when two judges from different jurisdictions -- in my
12 case, one from Spartanburg county and one from Travelers
13 Rest -- they come and they judge you. You can do all the
14 things that you are supposed to be doing. In this case,
15 what I was judged on was obedience, drug searching, human
16 area search, human building search, tracking, evidence
17 search, aggression control, which is where the dog bites
18 you and all that good stuff, and then, uh, I think I
19 already said obedience. If you pass that successfully
20 and these two trainers judge you and say that you are up
21 to par, they will sign off on your paperwork.

22 Then you can go on to what's called the field
23 training phase of it. You will last a month or a month
24 in a half with another handler. It's you, your dog and
25 then an experienced handler who is judging you again. If

1 you pass all the -- just like the beginning, if you pass
2 all the field training, then you go on to be by yourself
3 on the road as a solo unit.

4 After that, I went on to complete a
5 certification. It's called a NAPWDA which is the North
6 American Police Work Dog Association. What they do is
7 they judge us on all those same tasks. The reason that's
8 important is because they follow the standard practice,
9 meaning what everybody else in this industry is doing is
10 what they judge you on. In this case, our program is
11 tailored to follow those same things, obedience, drug
12 search, human search, aggression control and tracking.
13 They come in once a year. I don't know where they are
14 from. I think last time we had somebody from North
15 Carolina and somebody from Charleston. They don't have
16 any interest in you passing. The object is to get
17 somebody who has no affiliation to you to certify you.

18 Once you pass that, then you are certified with
19 that organization for the period of one year.
20 Certification covers only you and your dog. If I gave my
21 dog to you, then that certification is no good. Or if
22 you gave me your dog, then that would be no good. It's
23 got to be certifying the team. We keep up that
24 certification through that weekly maintenance training.
25 On every Wednesday, anything that we think we are

1 deficient on, we'll work on it. Anything that you just
2 want to try to see if your dog -- to make sure he's doing
3 it right, we work on that. We work on more case law,
4 legal updates, tactical issues, qualifications. So you
5 maintain that yearly certification with that Wednesday
6 training. And that ensures that when you come around
7 next year to the new certification, you are still up to
8 par.

9 Q Now, who trained you? You and your dog?

10 A The initial class, the 600-hour class was done
11 by Doug Wannemacher.

12 Q Doug Wannemacher, is that someone that we may
13 hear from in this trial?

14 A Yes, I think you'll hear him have some
15 testimony later on.

16 Q Okay. And he trained you. He gave you the --
17 he taught the classes and trained you and your dog to do
18 what you do?

19 A Correct. The way that works is he doesn't just
20 train your dog and give it to you. What he does is he
21 trains you on how to train your dog. If you have a brand
22 new dog that knows nothing and you know nothing, he'll
23 tell you this is what you'd have to do to teach this dog
24 how to do task A, task B, task C. That way, the dog and
25 the handler comes up together.

1 Q Now, outside of this training for K-9 handling,
2 more recently, you finished a degree at Phoenix
3 University; is that correct?

4 A Yes, sir. I did. Last December, I completed
5 like -- a month ago, I finally finished my degree, yes,
6 sir.

7 Q What was your -- what type of degree was that
8 and what was your degree in?

9 A It was an Associates in Arts with a
10 concentration of Spanish.

11 Q So we're talking about a two-year degree,
12 right?

13 A Yes, sir. An Associate degree.

14 Q Okay. Now, your K-9 is trained in human scent
15 detection, right? Or human odor detection?

16 A He's a dual purpose which is drugs and human.

17 Q Okay. All right. Now, I'd like to go -- first
18 of all, let's go back to the map. If it helps you to
19 step down as you did before, that would be good.

20 A Okay.

21 Q If you want, you can stand down as you did
22 before. Now, can you point to the area where your track
23 stopped initially?

24 A Somewhere in the vicinity of the end of this
25 clear corner right here. Somewhere in here.

1 Q So in that part where you stopped, you're
2 stating that the vegetation wasn't as dense?

3 A It wasn't that it was less dense or that it was
4 more dense, it's that I would have a reference point,
5 one, and because it was dense, it was very unlikely that
6 any odors from anybody else would have survived.

7 Q But you came out to this point right around
8 here and there's a clearing there; is that right?

9 A I came out before the clearing. I could see
10 the clearing.

11 Q You could see the -- you stopped before the
12 clearing?

13 A Stopped before the clearing. That's the end of
14 the clearing. I stopped right in here or so.

15 Q Now, what's over here. What's this? What are
16 we seeing?

17 A This is Westside park.

18 Q Westside park. What is that there? Can you
19 tell?

20 A This is a baseball field.

21 Q And that there, is that the same?

22 A Yes, two more baseball fields.

23 Q And this area here, that's a parking lot?

24 A Yes, sir.

25 Q And you know what that area is?

1 A That is the old, old building.. Now, they got a
2 new one in there.

3 Q And that there is a baseball field as well?

4 A Yes, sir.

5 Q Is there -- what is that there?

6 A That's not there anymore. I have never gone
7 back there. That looks like tennis courts.

8 Q Like tennis courts?

9 A Yeah, but I don't know what it is.

10 Q But on this map, that's what it --

11 A That's what it looks like. It looks like
12 tennis courts to me.

13 Q Okay.

14 A I could be wrong.

15 Q This area here, is this a residential area?

16 A Yes, sir.

17 Q Okay. Now, the areas that you were tracking,
18 let me go back. You said that it's easier for scents to,
19 uh, -- for a scent to stay on the grass?

20 A It's -- hang on one second. Got to
21 concentrâte. I almost spilled it.

22 Q Understood.

23 A It's not that it's easier for the scent. It's
24 that if it's flat, it would just fall and settle as
25 opposed to a sloped area where it will fall, settle and

1 then drift as opposed to a real dense vegetation area
2 which it will fall and go through the vegetation onto the
3 ground.

4 On a grass, grassy area, if you have a bit of
5 grass that long, the odor will be on top and at the most
6 an inch below it. If I have a big pile of brush, the
7 odor will be on top and as high as the pile is under it.
8 If you've got a three-foot pile, talking about three feet
9 down, it's harder for the dog to actually make it sure in
10 his head that nobody's in there without checking it more
11 thoroughly than checking the grass.

12 Q Now, you mentioned earlier that the police
13 force of Greenville county had set up a perimeter.

14 A Yes, sir.

15 Q Do you have any knowledge on how big that
16 perimeter was?

17 A From the time that -- I didn't know initially.
18 But once I finished my leg of the track and then I went
19 to ride around to make sure nobody was matching that
20 description, the area covered basically the road
21 surrounding the entire grassy area. Agnew, down
22 Richards, down Marion, down Emile, down Alma and all the
23 way down to Blue Ridge.

24 Q I don't know if you know. Uh, you mentioned
25 earlier that you tracked, say for instance, above the

1 creek for -- in your report, you mentioned that you
2 tracked above the creek about 3000 feet; is that right?

3 A No, I didn't track. I did a human odor search.

4 Q Human odor. Excuse me.

5 A 300 feet, which is about 100 yards.

6 Q You explained the difference. You explained
7 the difference.

8 A Yes, sir.

9 Q But you did it -- uh, a human odor search and
10 that was about 3000 feet?

11 A 300 feet.

12 Q 300 feet?

13 A Yes.

14 Q You sure it's 300?

15 A I'm sure it's 300. I'm sure it's 100 yards.
16 3000 feet would be close to a half a mile.

17 Q Now, what I was trying to ask is how big of an
18 area do you think it is you were searching? The whole K-
19 9 team, the perimeter and everything? How big of an
20 area?

21 A Big.

22 Q Can you -- I'm asking you if you -- if you
23 don't know the answer, that's fine. I'm asking if you --

24 A I can not give you any specific. It's all that
25 between that road and that road, that road and that road.

1 If you can imagine a baseball field that big and you can
2 fit about 100 fields in there. It's pretty big.

3 Q Okay. Now, you have a copy of your report in
4 front of you; is that right?

5 A Yes, sir. I do.

6 Q All right. I'm going to ask you to just define
7 the area where you said that you searched the other side
8 of Richards. Do you see that? Or let me know when you
9 see it.

10 A Yeah, that was a typo. It's 300 feet, not 3000
11 feet. It's 300 feet. It's 100 yards.

12 Q Now, when you do these reports, you have a
13 certain protocol, isn't there?

14 A Say it again?

15 Q When you do these reports, there's a certain
16 protocol, isn't there?

17 A What does that mean?

18 Q Well, you want them to be accurate, right?

19 A You want to put in there what happened, yes.

20 Q You want to be accurate because you know that
21 it's probably going to be subject to some peer review or
22 your superior?

23 A Certainly.

24 Q You know that, say for instance, in this event,
25 this incident happened in December of 2010, right? 2008?

1 A 2008.

2 Q And now we're in January of 2012.

3 A Uh-huh.

4 Q You do a report because you want to -- you
5 could end up testifying or otherwise need it two or two
6 and a half years later whenever it may be.

7 A Correct.

8 Q Uh, how long was your track, the initial track,
9 not the human scent odor search?

10 A The initial track from the vehicle, that
11 distance. It's hard to say because you got to think
12 about -- I don't know what distance I ran to get there.
13 It's hard for me to keep track of this distance. When
14 I'm walking more or less, I'm not thinking about how far
15 I'm walking. I'm just trying to get through it. So
16 obviously, it would be hard for me to estimate how long
17 it was. If I had to put a number on it, 100 to 200
18 yards.

19 Q That take 10, 15, 20 minutes?

20 A Depends on the vegetation. In this case, it
21 took about 15, 16, 17 minutes.

22 Q So your track was, uh, 15, 16, 17 minutes?

23 A Yes, sir. The time I started was 12:03. The
24 time I ended was 12:20. So 17 minutes.

25 Q Now, how do you know when your dog is getting

1 tired?

2 A He looks more tired. His energy level goes
3 down. He looks -- it's hard to say.. He doesn't move as
4 fast, I guess is a better way to say it.

5 Q He doesn't move -- he doesn't track as fast?

6 A Correct. He's not as intent as when he began.
7 He gets less intent. He's still focused. He's still
8 doing what he's supposed to do. Just like when anybody
9 gets tired, you start slowing down.

10 Q Now, when they tire, does that indicate maybe
11 any increased difficulty for keeping the track? Does
12 that indicate anything of that sort?

13 A No, sir.

14 Q Okay. Now, what I'd like to do is refer again
15 to your report.

16 A Okay.

17 Q I'd like for you to find the place where it
18 says K-9 Smeris picked up a track. You see that?

19 A Yes, sir.

20 Q It's about --

21 A About half way down?

22 Q Yes.

23 A Okay.

24 Q I'm going to read a portion for it. Tell me if
25 I read it correctly. Okay?

1 A Yes.

2 Q It says K-9 Smeris picked up a track on the
3 opposite side of the road and we began moving. We
4 tracked for a short distance and came upon the rear of
5 Westside park. Due to heavy rain, it increased
6 difficulty for the K-9. K-9 Smeris began to show signs
7 of tiring.

8 A Yes.

9 Q Did I read that correctly?

10 A Yes.

11 Q At this time, I have nothing further for this
12 witness.

13 MR. FRETWELL: Your Honor, briefly?

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. FRETWELL:

17 Q Deputy Rivera, as to the NAPWDA organization
18 that you described, is that a national accreditation?

19 A Yes, sir. It is.

20 Q So that -- those are standards that are the
21 same basically from state to state?

22 A Yes, sir.

23 Q Not something specific to South Carolina?

24 A No, sir. They actually hold seminars all
25 throughout the United States. Anyone from the United

1 States can sign up and be judged by NAPWDA.

2 Q Okay. And just specifically, uh, along this
3 exit point where you came out of the woods and swapped
4 your dog out with the other dog, if you could sit down
5 for just a second, on that road Alma Street right there,
6 do you recall if there were perimeter units for police
7 vehicles with, uh, stationed along Alma?

8 A Along this road right here?

9 Q Yes, sir.

10 A Yes, sir. There were cars all up and down this
11 road. More specifically, there was a car up at the end
12 of this exactly right here. I remember seeing it.
13 That's kind of how I oriented myself to where I was in
14 the clearing.

15 Q Do you see that vehicle on State's Exhibit 19?

16 A Yes, sir.

17 Q Is that in the location you believed it to be?

18 A Yes, sir. It is.

19 Q Show on the map to the jury where that -- where
20 the location of that vehicle is.

21 A I can see it in the pictures taken from here.

22 Q Yes, sir.

23 A And you can see it all the way down here. You
24 see where the patrol car pulled in. A clearly marked
25 blue Crown Vic, blue police car.

1 Q All right. And those perimeter units, do they
2 have their lights on or off?

3 A Their lights are on and they are normally out
4 of the car looking.

5 Q Okay. And also, along this, I think Mr.
6 Johnson showed you a ballfield right here. Do you know
7 if there's a fence that runs along the back of this
8 ballfield?

9 A Yes, sir. There is. That whole field has a
10 fence around it.

11 Q Okay. And at -- not trying to at all embarrass
12 you, but is English your first language or is it a
13 learned language?

14 A No, it's a learned language.

15 Q And you were originally born?

16 A Puerto Rico.

17 Q Okay. Do you ever have difficulty at times
18 with how you phrase things?

19 A Yes, I, uh, --

20 Q And I've been meaning to ask you about -- you
21 said something about a grassy area. Is this a grassy
22 area or is this a wooded area?

23 A No, that's a wooded area.

24 Q Okay.

25 A A grassy area would be, you know, the nice

1 green, the golf or your front lawn. That's a grassy
2 area. This is like forest.

3 Q Okay. And you are not the officer that set up
4 the perimeter around this area?

5 A No, sir.

6 Q Do you know which officer that was?

7 A I think it was a sergeant.

8 Q Okay. Would have been a sergeant?

9 A Yeah.

10 Q All right. Uh, no further questions.

11 THE COURT: Mr. Johnson, anything else?

12 MR. JOHNSON: Briefly.

13 THE COURT: Yes, sir.

14 **RE CROSS-EXAMINATION**

15 **BY MR. JOHNSON:**

16 Q Now, Deputy Rivera, how long have you been in
17 Greenville?

18 A I've been in -- in Greenville?

19 Q Well, you said you are from Puerto Rico, right?

20 A Yes, I came here when I was eight years old,
21 eight or nine.

22 Q How old are you now?

23 A I'm 31 now.

24 Q 31 years old. Now, when you say you came to a
25 perimeter --

1 A You want me to get down there?

2 Q Sure, if you'd like.

3 A (Witness complies.)

4 Q You mentioned earlier that you saw a car. Can
5 you point to where that car was?

6 A You talking about the police car?

7 Q Yes.

8 A (Pointing.)

9 Q Now, do you have a working knowledge of how
10 perimeters work?

11 A They are there to make the subject we're
12 looking for lay down so that we can catch up with them.

13 Q Now, how many people are each perimeter placed?

14 A Say it again?

15 Q How many people are each perimeter placed?

16 A What do you mean?

17 Q How many people are manning -- say for
18 instance, you've got a car there.

19 A Yeah.

20 Q How many people are at that spot?

21 A One or two.

22 Q One or two?

23 A Yes.

24 Q Uh, I have nothing further at this time.

25 MR. FRETWELL: No questions.

1 THE COURT: Sir, you can step down.

2 THE WITNESS: Thank you.

3 THE COURT: Ladies and Gentlemen, let's take
4 about a five-minute break, very short break. All
5 right.

6 (WHEREUPON, the jury exits at approximately
7 12:16 p.m.)

8 THE COURT: We're in recess for five minutes.

9 MR. FRETWELL: Thank you, Judge.

10 (WHEREUPON, a short recess is taken.)

11 THE COURT: We ready to bring the jury back
12 in?

13 MR. FRETWELL: We are.

14 THE COURT: Mr. Johnson?

15 MR. JOHNSON: Yes, ma'am, Your Honor. I'll
16 remind the court that I would like to voir dire
17 similarly as I did last time.

18 THE COURT: Okay. All right. Then, uh,
19 probably what we'll do is we'll get started with
20 whoever the witness is. I'll allow the jury to have
21 a little bit of a longer lunch today than we have
22 been and we will go through your voir dire and come
23 back. And if the witness is so qualified, then
24 we'll continue with them after lunch.

25 MR. JOHNSON: Yes, ma'am, Your Honor.

1 THE COURT: All right. I was assuming when
2 you said you wanted to voir dire, you're talking
3 about in the same manner outside the presence of the
4 jury?

5 MR. JOHNSON: Yes, Your Honor.

6 THE COURT: I just wanted to be -- sorry. I
7 just didn't want to assume anything.

8 (WHEREUPON, the jury enters at approximately
9 12:35 p.m.)

10 THE COURT: Just to give y'all a preview, I
11 hate sitting someplace and not knowing when I'm
12 going to be able to break and go eat. I just wanted
13 to let you know that we're probably -- I don't know
14 how much longer we're going to go exactly, but just
15 a few more minutes, then we're going to break for
16 lunch. We'll give you a little bit of a longer
17 lunch today than yesterday, but just a little bit
18 longer. All right.

19 Mr. Fretwell, you ready to call your next
20 witness?

21 MR. FRETWELL: Yes, ma'am. May it please the
22 Court? The State calls Master Deputy Doug
23 Wannemacher to the stand.

24 THE CLERK: Thank you, sir. Please place
25 your left hand on the Bible and raise your right

1 hand.

2 DOUG WANNEMACHER

3 having first been sworn, testifies as follows:

4 THE CLERK: Thank you. Please be seated.

5 Please state your full name for the record.

6 THE WITNESS: Douglas James Wannemacher.

7 MR. FRETWELL: May it please the court?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. FRETWELL:

11 Q Master Deputy Wannemacher, how long have you
12 worked for the Greenville County Sheriff's Office?

13 A 12 and a half years.

14 Q And to what unit are you currently assigned?

15 A Uniform patrol.

16 Q To what units have you previously been
17 assigned?

18 A The K-9 services.

19 Q And how long have you been a -- how long were
20 you a K-9 handler?

21 A I was a K-9 handler for eight years.

22 Q What duties did you perform with the K-9 unit?

23 A I was a K-9 handler and I was also a K-9
24 trainer.

25 Q How long were you a K-9 trainer?

1 A I was a K-9 trainer for five years.

2 Q All right. What was the name of your K-9
3 partner for the majority of the time that you were in the
4 K-9 unit?

5 A Rosco.

6 Q And how old is Rosco?

7 A Rosco is 11 years old.

8 Q How long was Rosco in service?

9 A Rosco started at the Greenville County
10 Sheriff's Office in 2002. We retired him in 2011. We
11 pretty much went in service in 2003.

12 Q And now that you are no longer in the K-9 unit,
13 where is Rosco?

14 A Rosco is serving happy retirement at my house.

15 Q What law enforcement functions did Rosco
16 perform?

17 A Uh, Rosco was a utility, uh, police dog.

18 Q Okay. And what does that mean?

19 A Uh, he was certified and trained in narcotic
20 detection. He was trained in human odor. And in those,
21 he would be doing building searches, area searching,
22 tracking and article search, as well as criminal
23 apprehension, which is the bite work and appropriate
24 release and everything like that.

25 Q Was Rosco your partner on December 10th, 2008?

1 A Uh, yes, he was.

2 Q Was he deployed on December 10th, 2008?

3 A Yes, he was.

4 Q Has he performed human odor detection prior to
5 that date?

6 A Uh, yes, he has.

7 Q Has he demonstrated reliable?

8 A Yes, he has through certification through the
9 North American Police Work Dog Association and several
10 other organizations.

11 Q Okay. In your training, has he been proven
12 reliable?

13 A Uh, yes. We've conducted over 115 street
14 deployments and hundreds of training tracks, uh, nine
15 area search deployments and 100s of training area
16 searches, 97 article searches and, once again, hundreds
17 of article searches, street life deployments totaled, at
18 the time, 12/10/2008 was 1160 total deployments.

19 Q That's as of the time of the incident?

20 A Yes.

21 Q All right. What kind of training had you
22 received as of December 10th, 2008?

23 A At that time, I went through a 400-hour class
24 for the basic narcotic and patrol detection course. John
25 Gardner was the trainer at that point. That was what I.

1 did for the initial period learning how to train Rosco.
2 At that point, I also was going through 10 hours of
3 maintenance training weekly with Rosco, as well as
4 keeping and maintaining legal updates and everything else
5 that's needed.

6 Q Were you also a part of all of the 115 tracks
7 that Rosco performed, the nine area searches that Rosco
8 performed, the 97 article searches and the over 2000
9 hours of K-9 training? Was that all with you and Rosco?

10 A Yes, when we keep records for the K-9 services,
11 each K-9 handler team is unique. Rosco was my partner.
12 My numbers start with one for Rosco for the deployment
13 all the way until he retires with me or until, if he
14 needs to, changes handlers, which Rosco never did. It's
15 only what I did with Rosco that counts. So that's how we
16 keep all our stats. Totally, for 2008, for all the K-9s
17 going through, I have somewhere around 5000 hours of
18 continuous training overall through K-9.

19 Q All right. And the year before, 2007, before
20 this incident, did you actually attend to training the
21 school?

22 A Yes, I started the training school in 2006.
23 Metro Dade K-9 Services, which was down in Miami,
24 Florida, with Tony Guzman. Tony Guzman is a trainer. He
25 is well known for training and selling police dogs. He

1 has a kennel out of Miami-Dade and I graduated in 2007.

2 Q Does Mr. Guzman have law enforcement training
3 experience?

4 A Yes, he does. He was a reserve deputy for
5 Miami-Dade.

6 Q How many total hours did you log in K-9
7 training over the course of your time as a K-9 --

8 A I'm well over -- at the time of the incident, I
9 was over 5000. At the time now, I'm over 6000 hours.

10 Q How many overall deployments did you make of K-
11 9s while you were in the K-9 unit?

12 A Uh, total deployments with all my dogs, 1572
13 deployments. With Rosco, 1160 deployments.

14 Q With Rosco?

15 A Yes.

16 Q Have you or Rosco -- I think you indicated
17 earlier been certified by a national organization?

18 A Yes.

19 Q And what's the process that you go through with
20 certification with this organization?

21 A Certification process for the North America
22 Police Work Dog Association is that you bring in
23 certifying judges that evaluate your dog in every area.
24 For example, we do narcotic detection. We have to meet a
25 certain criteria, a certain percentage. We have to do

1 the same thing, pass or fail, for the next ones, which is
2 going to be the tracking, area search, building search,
3 article search, area search and aggression control.

4 Specifically for the tracking aspect of it, you
5 have to locate -- you get a track, a trail unknown to the
6 handler. And the certifying master trainer knows where
7 the trail is. These trails could be a quarter of a mile
8 long. It's going to require three turns, at least two
9 surfaces and there's going to be a cross track laid
10 within 15 minutes of the original track time. That's
11 going to test the scent discrimination of the dog.

12 Also, he went through article search testing
13 where you're given a certain area. It's usually a 60 by
14 60 field. You have three articles that are thrown in
15 there. The composition, you will have at least one
16 metal. From there, you'll have metal and wood. And the
17 composition of the third could be the choice of the
18 master trainer. You have five minutes to locate two of
19 the three.

20 Q How often do you go through this training?

21 A That is going to be every year we have to be
22 certified.

23 Q In addition to that training, did Rosco go
24 through additional training with you on a local level?

25 A Yes, he did. Every Wednesday, we are required

1 10 hours of training. North America Police Work Dog
2 Association to keep the current certification. ballet
3 requires only 16 a month. We're required at the
4 sheriff's office to do 10 hours a week for a total of 40
5 hours for the whole time.

6 Q What breed is Rosco?

7 A Rosco is a German Shepard.

8 Q Is this a breed commonly used for human
9 tracking?

10 A Yes, it is.

11 Q Is this breed known for its acute power of
12 scent?

13 A Yes, he is.

14 Q As a K-9 handler, did you keep up with
15 literature and updates in the field of dog handling?

16 A Yes.

17 Q How long have you been using K-9s in a law
18 enforcement capacity?

19 A Since 2003.

20 Q What duties did you have in addition to regular
21 dog handling?

22 A Dog handling? I also did maintenance training
23 and all new K-9 classes for the Greenville County
24 Sheriff's Office.

25 Q Have you authored any articles or manuals on K-

1 9s in the law enforcement content?

2 A When I started, I started establishing and
3 maintaining a K-9 program for the South Carolina Criminal
4 Justice Academy. I also developed a tactical deployment
5 roll call training for the Sheriff's Office as well as
6 the patrol and narcotic basic course at the sheriff's
7 office.

8 Q Have you been certified as an expert witness in
9 the courts of this state?

10 A Uh, yes, I have.

11 Q In what areas have you been certified?

12 A I been certified in narcotic detection, K-9
13 deployments, human odor detection and K-9 deployments.
14 I've been certified four times as a expert witness
15 involving K-9s and overall -- I can look at my resume, if
16 you let me, how many times I've testified in court.
17 (Pause.)

18 I have testified seven times in K-9 cases.

19 Q Did the -- the deployments you testified
20 concerning, did they deal with human odor in any of these
21 instances?

22 A Yes.

23 Q How many times -- you said you been qualified
24 four times as an expert witness?

25 A Yes.

1 Q And has any court declined to qualify you as an
2 expert witness?

3 A No.

4 Q Have you received any rewards or
5 accommodations?

6 A I received a Medal of Valor for one of my K-9
7 deployments.

8 MR. FRETWELL: Your Honor, at this time, the
9 State would move to qualify Master Deputy Doug
10 Wannemacher as an expert in both K-9 human odor
11 detection and K-9 tracking.

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: Wish to voir dire, Your Honor.

14 THE COURT: All right. Ladies and Gentlemen,
15 we've probably come to a good point for a break.
16 Uh, we need to take up some matters outside of your
17 presence anyway, so it will just work perfectly.
18 I'm going to ask you to be back in your jury room
19 just before 2:15. So just before 2:15, if you will,
20 be back in your jury room. All right.

21 Please -- I know I sound like a broken record.
22 Please don't discuss this case with anyone. Thank
23 you.

24 (WHEREUPON, the jury exits at approximately
25 12:46 p.m.)

1 THE COURT: All right. Mr. Johnson.

2 MR. JOHNSON: Thank you, Your Honor.

3 VOIR DIRE EXAMINATION

4 BY MR. JOHNSON:

5 Q Master Deputy Wannemacher, where are you from?

6 A Uh, West Orange, New Jersey.

7 Q What high school did you attend?

8 A West Orange High School.

9 Q Okay. Then, I'm looking here at your CV. I'm
10 showing you -- what I have is in front of you.

11 A Okay.

12 Q Just so you know what I'm using.

13 A Okay.

14 Q Uh, you studied at Ceten Hall University?

15 A Yes, I did.

16 Q Now, did you go directly to college or did you
17 do something in between?

18 A Directly to college. After I graduated high
19 school, I went to C-Cal University.

20 Q And you got a Bachelor in Arts in Criminal
21 Justice?

22 A Yes.

23 Q Now, uh, with your Criminal Justice Bachelor of
24 Arts, did you study any courses in forensics?

25 A Uh, no, I did not.

1 Q Did you study any courses in animal behavior?

2 A No, I did not.

3 Q Did you take any biology courses?

4 A Uh, yes, basic electives. I had to for the
5 courses.

6 Q Did you take any courses in chemistry?

7 A Uh, no, I didn't need that for the Bachelor of
8 Arts.

9 Q Did you take any courses in scent or odor?

10 A Not at that time.

11 Q Okay. You said you took a course in scent?

12 A Uh, part of the K-9 training school that I took
13 with Tony Guzman in literature and also being a carded
14 data trainer through the North America Police Work Dog
15 Association, I was required to go through and be familiar
16 with articles and be tested by other master trainers
17 throughout the industry.

18 Q Now, specifically with regards to scent, how
19 long was that course?

20 A The course that I had was 400 hours. You're
21 breaking that down. You have narcotic odor. You also
22 have human odor. And the ways to train that and breaking
23 down the K-9's olfactory system and going into systems,
24 it takes some time. I couldn't exactly tell you since I
25 graduated that class in 2007.

1 Q 2007? Okay. Now, besides from, of course,
2 your K-9 training done with Tony Guzman, do you have any
3 additional graduate study that you've done?

4 A No, I do not. I have real life practical
5 experience as well as being an accredited trainer through
6 the North America Police Work Dog Association.

7 Q Now, uh, Tony, uh, Guzman's, uh, course, does
8 it have a name or a title or does he teach at a college
9 or anything like that?

10 A He teaches other police officers how to train
11 K-9s and actually how to deploy them through the scent
12 theory and making them locate the odors of narcotics,
13 explosives, human odor and tracking, also area searches,
14 building searches and article searches.

15 Q Now, you stated he also runs a kennel?

16 A Yes.

17 Q Now, that goes into it -- did you get -- uh, do
18 you know, for example, K-9 Rosco, do you know where he
19 came from?

20 A Do I know where Rosco came from?

21 Q Yes, sir.

22 A Yes, I do.

23 Q Can you tell us?

24 A He came from Belgian.

25 Q From Belgian. Did you go through Tony Guzman's

1 kennel or another kennel or a handler or --

2 A At the sheriff's office, we go to several
3 vendors. One of the vendors we used at that time would
4 have been Charlie Kershner. He actually ended up getting
5 them from -- I don't know how to pronounce his last name,
6 but his first name is Luke over from Belgian.

7 Q All right. Have you, uh, -- did you get or
8 have you main -- did you get and did you maintain
9 paperwork showing that dissent?

10 A The dissent of him being a German Shepard?

11 Q Yes, sir.

12 A Uh, no.

13 Q Uh, previously, Deputy Rivera testified, Deputy
14 Ramon Rivera.

15 A Yeah, Deputy Rivera.

16 Q Now, did you also teach him?

17 A Did I teach him? Yes, I instructed him on how
18 to physically maintain and instruct the K-9.

19 Q How many people do you think you've trained and
20 instructed?

21 A Uh, I've probably -- probably over 30.

22 Q Over 30?

23 A Yeah.

24 Q That include just Greenville county or does it
25 include other places?

1 A It includes other cases. We do maintenance,
2 maintenance training. It's open to surrounding areas per
3 Sheriff Loftis. I have trained Greenville City,
4 Travelers Rest, Mauldin and several other agencies.

5 Q Do you still train?

6 A Do I still train? Yes, I do.

7 Q Okay.

8 A My, uh, -- I actually -- my in-laws own a
9 kennel, so I'm actively involved in canines.

10 Q Now, I'd like to go back to your police
11 experience. Uh, you initially became a police officer
12 for Greenville county when?

13 A Uh, in 1999.

14 Q Uh, was that your first job out of college?

15 A Uh, no, it was not.

16 Q Can you go into that before that time?

17 A When I went into that, trying to get a law
18 enforcement job is kind of, uh, -- especially up in the
19 northern part of the country, in New Jersey, the civil
20 service desk was waiting. At that point, decided, hey, I
21 need to get a job because of college loans. From there,
22 I had family down here. I actually worked for Topps
23 Supplies, which I believe is now Best Buy, in Lost
24 Prevention.

25 Q How long did you do that?

1 A Probably six months before I got out of college
2 and then finally moved down here.

3 Q Okay. Now, when you moved down here, did you
4 initially go to the sheriff's office?

5 A Yes, I got my interview. Once I got
6 interviewed, I went to the academy.

7 Q What was your initial rank?

8 A My initial rank? Uh, deputy.

9 Q Deputy?

10 A Yeah.

11 Q Okay. What does it take to become a master
12 deputy?

13 A What it takes for a master deputy? When it
14 comes through, you have to first be a deputy, then you
15 have to be at the sheriff's office for at least three
16 years. After three years, you have to have above average
17 evaluations. From there, you take an oral board. You
18 have to pass a score, which I believe is a 36 out of 40.
19 From there, it's selected.

20 Q Now, go back to Mr. Tony Guzman.

21 A Uh-huh.

22 Q That's the guy who taught you how to train a
23 dog to identify human scent, uh, human odor?

24 A Yes.

25 Q Can you go a little bit into how he did that?

1 A When he did that?

2 Q How he did that.

3 A How he did that?

4 Q Uh-huh.

5 A From practical experience. We had lectures as
6 well as hands on actually teaching five dogs beginning to
7 end. They basically had to meet the Florida Department
8 of Law Enforcement standards. I had to train five dogs
9 from beginning to end, which is basically a green dog
10 that knows nothing to being able to get certified within
11 that course period.

12 Q And --

13 A I had different breeds. I had German
14 Shepherds, I had Dutch Shepherds, and I had Belgian
15 Mallinois.

16 Q Can you give a general or a more narrow
17 overview on how that works out? A dog goes from, say for
18 instance, from Holland to you, who is green ---

19 A Uh-huh.

20 Q --- to being a dog that can discern between
21 human odor.

22 A Human odor. There's books on this that are
23 1000s of pages long. There's classroom time that
24 literally we spend anywhere from 8 to 40 hours. What
25 would you like?

1 Q They start green and they sniff their first
2 sock.

3 A There's different methods depending on what
4 type of dog and what type of drives. I use a police
5 service. When I looked at it, the PSD program, which is
6 the Police Service Dog, that comes over from Germany.
7 There are different varieties. Why does a dog track?
8 Well, here's the question. He tracks for food. He
9 tracks for water. He tracks for homing, pack. Last one,
10 he does for mating. So if you use those drives and you
11 actually go into the analytical level of the dog and you
12 start using those drives and you hone them, because they
13 are natural, they are instinct, and you use those to
14 start this process. Sometimes I use food drags where I
15 drag the food along a path, eventually weaning out the
16 food. Then, eventually, that's the human odor.

17 Then after that, I know they are good and they
18 understand the command that track means put your nose
19 down and find human scent, I started cross-track where
20 the dog actually -- there's two tracks. The dog now has
21 the first track it's on and another human track coming
22 across it. The dog needs to stay on the track it
23 originally oriented its track. It acquired his trail.
24 It stays on that trail. Those distracting odors mean
25 nothing to it because the original trail is what it's

1 looking for.

2 Q How long does it take to generally teach a dog
3 to stay on the trail?

4 A It all depends on the dog. It depends on the
5 learning curve of the dog. No different than humans, so
6 I really can't determine that on average.

7 Q Well, let's be specific. For example, Rosco ---

8 A Uh-huh.

9 Q --- how long did it take for him?

10 A With Rosco?

11 Q Yeah.

12 A After three or four food drags, after he was
13 doing that, he could easily understand what his ability
14 was to actually track a human. So he learned sooking,
15 very quickly.

16 Q Sooking. Can you explain what that is?

17 A Sooking means to put nose and look for human
18 scent.

19 Q Okay. And, uh, Rosco learned very quickly you
20 said?

21 A Yes.

22 Q Now, uh, past that point, what was Rosco's
23 error rate? How many times did he fail, for example, to
24 find humans he was supposed to in training exercises or
25 otherwise?

1 A In training exercise, I can't tell you. We
2 don't keep up with failure rate. In training, you have
3 to remember we'll looking at module training, which means
4 breaking down the smallest compound, the smallest
5 structure.

6 Say, for example, I'm working on turns for that
7 training session. I may put three or four tracks out
8 just working on turns because I may have an issue with
9 that. You're taking a sterile environment of tracking.
10 If you look at it, you have terrain that plays a big
11 factor. You have age of a trail as a big factor. So all
12 of these elements, when we working on it, we may do a 15-
13 minute trail. We may do an hour trail. So you're
14 breaking the position of this tracking and trailing.
15 You're trying to simplify it to a point where it can't
16 be.

17 Q So -- but y'all don't keep up with any sort of
18 error rate in your training records?

19 A No, because when we have it, we note that it's
20 a problem and we continue to work and fix that issue.

21 Q Okay.

22 A Because where we have it or my certifications
23 -- and I've been certified for tracking at least several
24 times. That right there on his failure rate, he's never
25 failed a certification trail. If you just go by his

1 certification, he's 100 percent.

2 Q Okay. So you just go by his certifications,
3 but is he 100 percent?

4 A Is he -- no dog is 100 percent. But I would
5 say he's in the high 90s and 80s, even in training.

6 Q Okay. Looking again at your CDV, I'm going to
7 -- can you look at the third page for me?

8 A Yeah.

9 Q It says that you are the author of maintaining
10 and establishing a K-9 program. Is that a publication?

11 A What it is is when I went through basic law
12 enforcement to be a basic law enforcement certifier for
13 teaching and renting classes, that was written for the
14 academy.

15 Q So you essentially wrote a manual?

16 A Like a lesson plan and PowerPoint and all that,
17 yes.

18 Q And that's something that's available now?

19 A You should be able to get at the Academy.

20 Q At the ---

21 A I can't --

22 Q --- South Carolina Criminal Justice Academy?

23 A Yeah.

24 Q Does the same thing apply to these other two
25 technical K-9 deployment inserts training and basic

1 K-9 --

2 A That is not going to be at the Academy. That's
3 an in-service thing that's taught through the K-9
4 services. That's been --

5 Q Now, is that also -- excuse me.

6 A That changes as we adapt our program.

7 Q Now, is that also a publication that's added on
8 too?

9 A It hasn't been publicized. It's for law
10 enforcement training at the Greenville Sheriff's Office.

11 Q So is it available to -- say for instance, you
12 were training Deputy Rivera again ---

13 A Yes.

14 Q You know, it would be available to him?

15 A Yes, it would be part of that curriculum.

16 Q Give me one second. (Pause.)

17 Now you say you trained every Wednesday?

18 A Yes, if we're not sick or anything else, yes,
19 we try to make everyone stay a 10-hour maintenance
20 training day.

21 Q Do all the K-9 handlers train together?

22 A We actually break our group up because we're so
23 big. We divide our programs so we have more dog coverage
24 for the county. Usually what we'll do is 10 hours.
25 We'll break a day, say, 9:00 to 7:00 and then we'll bring

1 another group in at 4:00 to 2:00. That's how we work it.
2 So if anybody has problems, because I have to train --
3 when I was in the program, I'd train my dog. Anybody had
4 problems, we met and we discussed our problems if we had
5 any.

6 Q Now, considering it's a short period of
7 training rather than a 600-hour course -- we're talking
8 about a 10-hour period -- can you go into a little bit
9 about what you do?

10 A During that, we go through and we brief each
11 handler what they want to work on. Each dog in the
12 program has their unique training needs. We may set up a
13 deployment that happened during the week where we want to
14 get some practice on it. We cover tactical exercises.
15 We cover tracking. We try to encompass in that 10-hour
16 day everything that we may see.

17 Q You also stated that you keep up with
18 literature and case law on, uh, K-9s?

19 A Yes.

20 Q Uh, can you, uh, say for instance, give me the
21 names of maybe a couple of books that you have on your
22 library or anything of that sort?

23 A Yeah, teaching out by Doc McKenzie.

24 Q By who?

25 A Stephen McKenzie.

1 Q Stephen McKenzie?

2 A Yes, and he also has a lot of books on scent
3 theory and that kind of stuff. Besides that, we go to
4 legal update. I just finished my last legal update was
5 actually going to be, uh, by Rusty Jones, which was
6 December of this year. Also Scent Discrimination
7 Advanced Urban Patrol by Kevin Kocher, C -- I mean, K-O-
8 C-H-E-R. That was actually in 2011.

9 Q K-O-C-H-E-R?

10 A Yeah, K-O-C-H-E-R.

11 Q Okay.

12 A Several of those.

13 Q All right. You maintain training records for
14 your dog, right?

15 A For Rosco, yes.

16 Q Okay. And Rosco at this point, is retired?

17 A Yep, he's happily at home.

18 Q Now, how do you make a decision whether to
19 retire a dog?

20 A We look at, uh, -- what we look at is, number
21 one, being transferred out and it may happen depending on
22 the age. It may not be worth putting a dog through
23 another school to transfer. We also look at is the dog
24 slowing down. Is he an officer safety issue? So we look
25 at the dog. Is the dog needing to retire? Is it time

1 for him to kind of enjoy life while he can? Being a
2 police dog is really physical on them.

3 Q Now, which one was Rosco?

4 A Rosco started to slow down a little bit. He
5 was actually starting to wean out of the program. He
6 started to develop hip dysplasia.

7 Q Hip dysplasia?

8 A Yeah.

9 Q So it's not that he could no longer track, it's
10 that he couldn't move as easily as --

11 A Well, yeah. And it was becoming an officer
12 safety issue. At that point, we said, nope, it's time to
13 start getting a new one. That's when I started to work
14 Os.

15 Q When did he retire?

16 A Rosco would have been retired -- let's see. He
17 would have started in 2000. He technically didn't retire
18 from the sheriff's office until I left. I kept him as
19 demos. We did a lot of demos. We stopped him out of
20 service right around 2000 -- I'm not sure. It was either
21 2009 or 2010.

22 Q 2009 or 2010?

23 A Yeah. The last certification that Rosco
24 received would have been 2000 -- let me just look at this
25 real quick. It would have been 2010. His last

1 certification 12 of 2010.

2 Q I take it you are aware that there were other
3 K-9s involved in this case?

4 A Yes.

5 Q Did you also train those K-9s as well?

6 A Uh, K-9 Smeris. K-9 Smeris, when he first got
7 trained, was trained by John Gardner, the head trainer.
8 I was mentoring under him and considered the assistant
9 trainer. With Deputy Fuller and Croc as well, at the end
10 of the course, I was the trainer.

11 Q At the end of the course, you were the trainer?

12 A Yes, because Deputy Gardner had -- well, Master
13 Deputy Gardner, at that time, left the Sheriff's Office.

14 Q What about K-9 Cash?

15 A K-9 Cash, yes. He was actually trained by
16 Master Deputy Gardner at that time. Master Deputy
17 Gardner, is he still with the Sheriff's Office?

18 A No, he actually is the captain of Travelers
19 Rest Police Department.

20 MR. JOHNSON: I have no further voir dire.

21 THE COURT: All right.

22 MR. FRETWELL: Briefly, Your Honor.

23 THE COURT: All right.

24 VOIR DIRE EXAMINATION

25 BY MR. FRETWELL:

1 Q Master Deputy Wannemacher, first of all, with
2 respect to Rosco, is there any question about whether
3 Rosco is descended from a blood line of known police and
4 military working dogs?

5 A There is no doubt he is a known line.

6 Q Okay. Any question about whether Rosco is
7 descended from a blood line of dogs whose breed is
8 categorized by an acute power of scent?

9 A No doubt.

10 Q All right. And, uh, on the day of November,
11 uh, December 10th, 2008, where you deployed Rosco, do you
12 know approximately how much time elapsed before -- from
13 the time the suspect made the trail or was seen entering
14 the woods and the time you deployed your dog?

15 A I started the track at, uh, -- at 12:20. I
16 don't know when Deputy Ramon ended his track. From
17 there, you're looking at 20 minutes, 28 minutes roughly
18 approximately.

19 Q Certainly less than an hour?

20 A Yes.

21 Q And during the course of your track, was there
22 anything about your track or the trail that Rosco
23 followed that led you to believe there was any kind of
24 contamination of that track or any contamination of the
25 area around that track?

1 A No, it was a -- when I entered the woods and
2 got back to Deputy Cannon, it was heavily wooded, piles
3 all over and I didn't see anybody. So no, I wouldn't
4 believe anybody was in there.

5 Q During the course of your track, was there a
6 perimeter, a secure perimeter in place around the area?

7 A Yeah, one of the best I've seen since I was on
8 K-9.

9 Q Uh, real quickly, K-9s that can't adapt or be
10 trained, do they become working K-9s at the sheriff's
11 office?

12 A No, I've washed out several dogs for that fact,
13 that they can't become police dogs. If they are not
14 going to make it through the criteria, they are not.
15 Continuous evaluation after the selection test.
16 Selection test occurs, they get in the program. Even
17 once they are in the program, we have a year to wash them
18 out. We have done that at the Greenville County
19 Sheriff's Office.

20 Q Obviously, not the situation with Rosco?

21 A No.

22 Q Not the situation with Smeris?

23 A No.

24 Q Not the situation with Cash?

25 A No.

1 Q Not the situation with Os?

2 A No.

3 Q No further questions.

4 THE COURT: Anything else?

5 MR. JOHNSON: Your Honor, I just, uh, like
6 once again to contest the qualification. We have a
7 situation where the Solicitor asked him do you have
8 any reason to believe that this K-9 is not of a
9 certain descent or is not a German Shepard. I don't
10 think that's acceptable. I think they have to
11 produce evidence of such. For that reason, I am
12 opposing his qualifications.

13 THE COURT: I appreciate your argument on
14 behalf of your client. I am going to qualify him in
15 the areas of K-9 human odor detection and K-9
16 tracking. We'll pick up with his testimony at 2:15.
17 We'll be at recess until 2:15.

18 MR. FRETWELL: Judge, if I could just qual --
19 just, uh, clarify that. I think we moved for him to
20 be qualified as a human odor detection K-9 trainer.

21 THE COURT: Okay. Human odor detection and
22 K-9 tracking.

23 MR. FRETWELL: Training.

24 THE COURT: Training. Sorry.

25 MR. FRETWELL: I think his testimony was

1 tracking was part of human odor detection.

2 THE COURT: Okay.

3 MR. FRETWELL: But the training is a separate
4 element.

5 THE COURT: Okay. Should it be K-9 human
6 odor detection or just human odor detection?

7 MR. FRETWELL: K-9 human odor detection and
8 K-9 training.

9 THE COURT: Got it.

10 MR. FRETWELL: Yes, ma'am.

11 THE COURT: And I am going to -- I am going
12 to qualify him in both of those areas. When we
13 return, I'll allow you to move again for him to be
14 qualified on the record and your objection is noted.
15 All right.

16 MR. JOHNSON: Thanks, Your Honor.

17 MR. FRETWELL: Thank you.

18 MR. JOHNSON: So return at 2:00, Your Honor?

19 THE COURT: 2:15.

20 MR. JOHNSON: 2:15?

21 THE COURT: Yes, ma'am.

22 MR. JOHNSON: Thank you, Your Honor.

23 THE COURT: Thank you.

24 (WHEREUPON, a lunch recess is taken from
25 approximately 1:06 p.m. to 2:28 p.m.)

1 THE COURT: Ready to bring the jury back in?

2 MR. FRETWELL: Yes, ma'am.

3 THE COURT: All right.

4 MR. JOHNSON: Your Honor?

5 THE COURT: Yes, sir.

6 MR. JOHNSON: Regards to those maps,
7 essentially what I'm trying to do is I'm trying to
8 procure some sort of copy of those maps as they are.
9 I don't -- I'm not talking about a big old one, a
10 paper sized figure. As I understand, these maps
11 were made by the sheriff's office. I just want to be
12 able to take a picture of the map or have a copy of
13 the maps as they are. I don't have any objection,
14 of course, to putting them in evidence.

15 THE COURT: I don't have any problem with
16 your taking a picture of the map.

17 MR. JOHNSON: Okay.

18 THE COURT: If you've got some means to do
19 so, I don't have a problem with you doing that.

20 Mr. Fretwell, I'm sure you don't have a problem
21 with him doing that, right? Right?

22 MR. FRETWELL: Yes, ma'am.

23 THE COURT: All right.

24 MR. JOHNSON: Thank you, Your Honor. I'll
25 make arrangements to do so.

1 THE COURT: Okay. Let's just do that. All
2 right.

3 (WHEREUPON, the jury enters at approximately
4 2:29 p.m.)

5 THE COURT: Ladies and Gentlemen, I apologize
6 for the delay in getting started back late. I can
7 tell you it is 100 percent due to me. I had a
8 matter come up over the lunch hour that had to be
9 taken care of related to other cases that are going
10 on this week. So I am so sorry. It is certainly
11 not either of these attorneys fault whatsoever.

12 Mr. Fretwell.

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

15 THE COURT: Yes, sir.

16 MR. FRETWELL: Your Honor, at this time, I
17 would renew my request to, uh, qualify Master Deputy
18 Doug Wannemacher as an expert in both K-9 human odor
19 detection and K-9 training.

20 MR. JOHNSON: Subject to our objection, Your
21 Honor.

22 THE COURT: All right. Your objection is
23 noted and I will so qualify him.

24 Ladies and Gentlemen, I've given you some
25 instructions with regard to an expert witness being

1 able to testify as to opinion. . That's different
2 from others -- uh, other witnesses. You may use
3 that testimony however you see fit. However, he
4 will be qualified to give his opinion in the areas
5 of K-9 human odor detection and K-9 training. Thank
6 you.

7 MR. FRETWELL: Thank you, Judge. May it
8 please the Court?

9 BY MR. FRETWELL:

10 Q Master Deputy Wannemacher, were you working on
11 December 10th of 2008?

12 A Yes, I was.

13 Q Did you respond to the area of Emile, Alma and
14 Leone Streets that day?

15 A Yes, I did.

16 Q For what purpose?

17 A Uh, there was an armed robbery to a bank.
18 There was also a call for a possible shooting. So I left
19 K-9 training and responded to the area.

20 Q Did you have any other information about the
21 suspect before you arrived on the scene?

22 A Yes, we did. Black male. We also knew that he
23 was wearing a hoodie and dark clothing at that point.

24 Q How about, uh, his location?

25 A His location, we also had a call then later on

1 when we all responded that a black male had fled from a
2 vehicle in the wood line.

3 Q Into the what?

4 A Wood line.

5 Q Okay. Uh, were you the first K-9 officer on
6 the scene?

7 A No, I was not.

8 Q Who was the first K-9?

9 A Deputy Rivera was on scene.

10 Q And his K-9 is?

11 A K-9 Smeris.

12 Q What were you doing while Rivera's K-9 was
13 conducting or starting the track?

14 A One of our standard procedures, uh, with the K-
15 9 services is we actually respond to an area. We have
16 multiple K-9s working and we start doing a roving
17 perimeter. What we are doing is we're looking to see if
18 an appropriate perimeter was set up at the time.

19 Q At what point did you enter the woods to track?

20 A Uh, Deputy Rivera requested a K-9 to assist. I
21 ended up responding because I was the closest one there.

22 Q And how often are K-9s relieved in the course
23 of a track?

24 A Uh, it depends. We try to switch out K-9s for
25 several reasons. We try to do it when it's a logical

1 point, tactical. We think about doing it at a safe
2 location where we know we're not going to contaminate the
3 track. We try to do it prior to a dog being exhausted.
4 That's why we change out. It depends on -- it's not
5 really a timeframe because terrain really dictates when
6 we're going to switch out.

7 Q Okay. Where did you enter the woods when you
8 went in to relieve the other deputy?

9 A When I came on -- basically, when I came in, I
10 came off O'neil Street. There is a little path that I
11 met Deputy Rivera and went back to where his cover
12 officer was standing by that they last had the known
13 location of that trail.

14 Q All right. Let me pull you down for just a
15 second and show you State's Exhibit 28. If you will
16 stand right over here for me, sir. Are you talking about
17 Emile Street or are you talking about -- where are you
18 talking about that you entered?

19 A When I entered, it would have been off of Alma
20 Street.

21 Q Okay.

22 A I'm sorry about getting the name wrong. Emile
23 Street's here. Right in this area is right approximately
24 where I was called in where there was a car and I met
25 with Deputy Rivera.

1 Q Then you went back into the woods; is that
2 correct?

3 A Yes, I brought my K-9 partner in. He was
4 already -- when I got out of the vehicle, I placed his
5 tracking harness on. When I walked him in, as far as
6 standard procedure, I left him on his white collar and
7 actually heeled it to the location where the track was
8 last known by Deputy Rivera. Deputy Cannon was standing
9 by to let me know where that was.

10 Q What does it mean when you say you heeled him?

11 A Rosco was actually at my side, he was commanded
12 to actually keep on my left side so he's walking under
13 control. He's under control.

14 Q What was the weather like that particular day?

15 A The weather was rainy. It was 50 or 60 degrees
16 -- well, 40 to 50 degrees. I would have to go back to my
17 report. It was cold and rainy and wet. Similar to what
18 it was the other day.

19 Q Was Rosco able to detect a scent trail once you
20 got into the woods?

21 A Once I got into the woods, I met with Deputy
22 Cannon. Deputy Cannon was with Deputy Rivera. He told
23 me where he last had it. What I did with the track is we
24 kind of used -- we're not -- I'm perpendicular to the
25 track. I cut the track trying to locate that scent. The

1 reason we do that is I know where the location K-9 Smeris
2 had it and Deputy Ramon had the trail. I cut it just
3 above that because I know it's not contaminated. And I
4 also had Deputy Cannon telling me if Rosco starts to
5 backtrack on the original track back. I ended up doing
6 that. Rosco ends up cutting the trail. He locates a
7 human scent trail and starts working during the thick
8 brush and heavily wooded area.

9 Q So basically, if you have a, let's say a scent
10 trail that runs right through here ---

11 A Yeah.

12 Q --- the dog wouldn't know which way to go on
13 that trail. That's what the purpose of the cover person
14 is?

15 A Yes.

16 Q Okay.

17 A Yes. We do that. We want to make sure we're
18 acquiring the trail so we cut it across the trail so we
19 can determine if he goes in the right direction or if he
20 starts backtracking. We can just turn him around and
21 have him go the other way.

22 Q Did your dog Rosco acquire a trail?

23 A Yes, he did acquire a trail.

24 Q And how can you tell when he detects a trail?

25 A Uh, Rosco's behavior, each dog has its own

1 body, its own breathing. Rosco's -- when he's in fresh
2 human odor, his hackles go up. He becomes really
3 intense.

4 Let me go back. Anybody ever see a dog when
5 their hair goes up? I mean, when it goes up, that's
6 hackles. That hair starts standing up and that's how I
7 can tell when he's in human odor. It's completely
8 different than training practice. When that -- as Deputy
9 Rivera testified earlier, that adrenalin, there's more
10 skin drafts being let go. That type of scent that the
11 dog picks up, Rosco immediately -- for me, it's great
12 when I have him as a partner. When we're on something,
13 his hackles are up. His tail goes up. His breathing
14 becomes consistent. It's a consistent pattern instead of
15 being sporadic.

16 Q You mentioned something in your training when
17 we were laying the foundation about cross track and scent
18 discrimination. Can you tell us what that means with
19 respect to tracking?

20 A When we start training K-9s, we actually train
21 them so they follow one single track layer and they start
22 going -- they learn that's human scent. As the training
23 gets more advanced, we actually cross -- a different
24 person goes across that trail to make sure when they
25 acquire that original trail that they stay with that,

1 that they don't go, oh, I'm going to go over here. They
2 stay on that original track.

3 We're required -- every year, our certification
4 is going to be a quarter mile track. Unknown to the
5 handler, three turns, two surfaces. Within 15 minutes of
6 that person leaving, they lay a cross trail. That's
7 where we get our certification every year where we know
8 our dog is track sure.

9 Q Track sure is the --

10 A Track sure, acquiring the trail. They are
11 interchangeable.

12 Q And is it your testimony that your dog, Rosco,
13 became track sure that day at the point at which, uh,
14 Deputy Rivera's dog left the track?

15 A Yes. And the reason, the area that I started
16 was heavily wooded. There were piles of woods. Timbers
17 pulled down. There were piles. I got to start in a very
18 heavily wooded area where there was no foot traffic.
19 There was no area for anybody to actually get back there.
20 I started in an area that was not contaminated. When he
21 acquired that, he worked heavily in that wooded area
22 until we came out.

23 Q What way did the track take you through there?

24 A Right around here. In a generic direction.
25 Once you get in there, it's kind of go into the woods,

1 turn around and -- when we came down, we started tracking
2 towards -- coming through here through the thick woods
3 and we started to come up to a, uh, like peak in there.
4 If you could actually be there, it would be a lot easier.
5 We were tracking through the woods. We came up a steep
6 embankment, like a peak. And then it opened up.

7 Q Okay. And, uh, what was the terrain like once
8 you -- you described the heavily wooded area. Can you
9 give us a little bit more description of what it was like
10 on the ground and how difficult it was to get through
11 that area?

12 A On the ground -- I'm a short deputy. I kind of
13 have problems when I start stepping into brush. And it
14 was up there. I had to crawl some spots, especially when
15 we were getting into the logging road. We're talking
16 about briars that were over my head. In the beginning of
17 the trail was woods, wood piles and everything else. At
18 some point, we were at least up to my knees, up to my
19 waist. Going to that area.

20 Q And once you got out to what you called a
21 logging trail or something like that, what was the
22 terrain like at that point?

23 A That actually opens up. It's red clay and
24 rocks. It looked like it was clear cut. It was a little
25 path. But it was wide enough for two or three people to

1 be standing on the side.

2 Q What, if anything, did Rosco come across while
3 on that trail?

4 A As we were tracking down that path, Rosco
5 located a blue bandana.

6 Q Okay. Did you have any information before you
7 started the track about anything to do with a bandana in
8 connection with this case?

9 A Yes. It was being aired over the radio that a
10 blue bandana was used of the person that robbed the bank.

11 Q How specifically did you find out that Rosco
12 had come in contact with that bandana if you can tell the
13 members of the jury?

14 A When Rosco was tracking down, he was tracking
15 down the path. He ended up picking up the article which
16 is consistent with his ability to take up an article
17 search of fresh human odor. When he picked up this
18 article, he did not want to give it back. It was one of
19 the ways Rosco, uh, we do maintenance training.

20 Occasionally, we use a toy at the end of a
21 trail. Sometimes, we use a person at the end of the
22 trail. Rosco's always been trained in his article search
23 for finding evidence. He actually is an aggressive
24 response. He actually picks it up and retrieves it and
25 brings it back to me. Some of the other dogs in the K-9

1 program are passive, where they down on an article.

2 However, Rosco picked it up and brought it back to me.

3 Q What significance is that to you the fact that
4 he picked up the article versus just bypassing it?

5 A We train. During our training, we'll do this,
6 we will put objects up that have different scent on it
7 that are not on the track layers. During training, they
8 don't pick them up. He's trained during that tracking
9 scenario to actually look and continue on the same track.

10 Q And furthermore, besides picking that up in his
11 mouth, is there any significance to the actual mouthing
12 of that item?

13 A When it comes down -- the dogs actually -- the
14 olfactory system is amazing on a dog. The dog actually
15 when it picks it up, the roof of the mouth, the upper
16 teeth, that actually has a direct connector and it's own
17 receptors to the K-9's olfactory which is direct -- where
18 it stores and recognizes what scent it is. It's actually
19 a quick way for a dog.

20 It's kind of like when we taste something.
21 Very similar. Oh, that's an orange. That's what the
22 dog's is. That is why eventually we also use scent
23 articles as well.

24 Q Was the bandana difficult for you to get away
25 from Rosco?

1 A Yeah, because it's pliable, normally most of
2 Rosco's toys and rewards are frigid and long. If I had a
3 piece of red pipe, I would show you where I could just
4 tell them to let go. Since he took as a toy, it was a
5 little wrestling match to get it back.

6 Q Did anything happen to the bandana during that
7 process?

8 A Yes, he tore it.

9 Q If you can retake your seat up on the stand
10 please.

11 A (Witness complies.)

12 Q Let me show you what's been marked as State's
13 29. If you can, down there below, outside the presence
14 of the jury, if you could take a look at the item in that
15 bag and tell me if you recognize that item.

16 A (Reviewing.) It's a -- yes, I do.

17 Q And what is the item?

18 A The item is a blue bandana with some markings
19 on it. It also has -- at the corner of it, it has two
20 holes that would be consistent with Rosco's bite marks.

21 Q And so is that the way that you recognize this
22 item from the bite marks?

23 A Uh, yes.

24 Q What significance, if any, does this bandana
25 have to the track?

1 A Since Rosco located it and we started a trail
2 in a non-contaminated area, we ended up tracking through
3 the woods onto a logging path. And Rosco located this on
4 the trail that I was on. So it was consistent that there
5 was evidence that the person I was tracking was the
6 person we were tracking from at the original start of the
7 bank robbery.

8 Q And what did you do after finding this bandana
9 and you got it away from Rosco?

10 A I placed it in my BDU pocket.

11 Q In your what?

12 A My BDU pocket. If you look at Deputy Rivera's
13 uniform, his pant pocket on his legs, that's where I
14 placed it.

15 Q Okay. And why did you put the bandana in your
16 pocket?

17 A At that point, knowing that I got it from the
18 trail, it could be used as a scent article later and
19 possible evidence. That's why I placed it in my pocket
20 so I could turn it over to the next K-9 officer so he
21 could use it as a scent article.

22 Q All right. After you took the bandana from
23 Rosco, did he reacquire the trail?

24 A Uh, yes.

25 Q Okay.

1 A He continued to go down the logging path for a
2 little bit. At that point, because I was on a path, we
3 figured we'd get people in there without contaminating
4 the rest of the path that we are going forward. We call
5 -- Rosco wasn't tired yet, but we decided at that point,
6 if I went any further, we may not have a good location to
7 actually get somebody in there to change out the dog and
8 also tactical reasons. We were looking for a person that
9 was armed.

10 Q Okay. And did you call for relief for Rosco?

11 A Yes, I did.

12 Q Who came in to relieve Rosco?

13 A Deputy Fuller and K-9 Croc.

14 Q And about how long -- do you have any record of
15 how long Rosco was on the track?

16 A He was on the trail -- trail, track, for about
17 55 minutes.

18 Q And what did you do with the bandana once
19 Deputy Fuller came in?

20 A Once I met with Deputy Fuller, I turned over
21 the bandana to Deputy Fuller.

22 Q Okay. Is it common practice to use found
23 articles of clothing for scent?

24 A Yes, it is. Especially when we have a really
25 uncontaminated area. We find it on the trail. The dog

1 has indicated that there's fresh human odor on it. It is
2 very common that we'll do that.

3 Q Okay. Did you find any other articles?

4 A Uh, not that day.

5 Q I guess what I mean did you find any other
6 articles, did you find any other articles that your dog
7 alerted to along that track?

8 A No, no articles were found by my dog.

9 Q Okay. Did you and Rosco search any other
10 areas?

11 A The next day we were redeployed.

12 Q Let's stay on that day.

13 A Okay.

14 Q After you came out and Deputy Fuller went in,
15 was there any -- was your dog used in any other capacity
16 that day?

17 A Uh, yes. There were several calls that came
18 in. I cleared one house. I believe it was 10 Calvin
19 Avenue.

20 Q Okay.

21 A It was an abandoned trailer.

22 Q Okay.

23 A And I also cleared the sewer system, the pipes
24 under 253 running in -- 253 running into the search area.

25 Q Okay. And you were -- what do you mean by

1 cleared?

2 A Going down to make sure anybody went through
3 there, look for any signs that somebody possibly could
4 have went through there. There was no evidence that
5 somebody had come through the pipes or anything like
6 that.

7 Q Okay. The drainage pipe on West Blue Ridge?

8 A Yeah, 253.

9 Q Is that where the creek runs over?

10 A Yes.

11 Q All right, sir. At any point, did you return
12 to the wooded area?

13 A Uh, the next day, I did.

14 Q Tell us about that.

15 A The next day, we came back. I was requested to
16 do an article search for the possible location of any
17 evidence during the commission of the crime. I was
18 conducted to do a article search of the wooded area on
19 the opposite side of where the suspect originally went
20 into for a possible gun or any evidence that could be
21 there.

22 Q Is that in the vicinity of that minivan?

23 A Yes.

24 Q On the other side of the --

25 A Other side of the minivan.

1 Q Did you find anything?

2 A No. That area was heavily, uh, heavily
3 contained briars. They were dry. The problem is they
4 were real thick. It was very hard for my partner to work
5 through there. Obviously, with the briars, he really
6 didn't want to put his nose down. But I cleared it the
7 best I could with locating no evidence.

8 Q All right. Other than the bandana, did you or
9 any other K-9 officer come across any articles during
10 your search on December the 10th or December the 11th,
11 2008?

12 A Yes. I, uh, -- the next day, we went out and
13 Deputy Harris and K-9 Cash, they were doing a backtrack
14 of where we knew we tracked. We were looking for any
15 type evidence using basically a 15-foot lead cutting it
16 back and forth where we knew we went in an attempt to
17 locate any evidence. It was basically the same track
18 that I took, that Deputy Rivera took and Deputy Fuller
19 took. Hal Harris reworked that whole area. We ended up
20 locating a promotional Prudential pen that Deputy Rivera
21 dropped. He didn't know he dropped it but we ended up
22 finding it the next day.

23 Q So not an article related to anybody you were
24 tracking?

25 A No.

1 Q This is something that a deputy dropped?

2 A Yes, it was -- a deputy dropped it.

3 Q Did you come across anyone during your track on
4 December 10th, 2008?

5 A No, there was, uh, no one inside that search
6 area except cover officers and police officers:

7 Q And I'm not talking about just the person you
8 were tracking but anybody walking through, anybody
9 hanging out or anybody in that area?

10 A No, the area was, uh, -- it was tightly sealed
11 at the perimeter. It was the best perimeter I had seen
12 at the sheriff's office due to the geological area with
13 the roads and everything else and the way we set up.

14 Q Okay. And you are no longer with the K-9 unit;
15 is that correct?

16 A Uh, that is right.

17 Q And you are currently assigned to uniform
18 patrol?

19 A Yes.

20 Q You are actually taking the sergeant board for
21 promotion tomorrow; isn't that right?

22 A Uh, yes.

23 Q And how many sergeant slots are allocated in
24 the Greenville County Sheriff's Office in the K-9 unit?

25 A Uh, one.

1 Q And how many sergeant slots are allocated to
2 uniform patrol?

3 A Four per shift. When you look at that, there
4 are five shifts. So you are looking at 38. So you are
5 looking at 38 positions. There are more opportunity to
6 get promoted in uniform patrol then there would be in
7 K-9.

8 Q So if a master deputy, such as yourself, would
9 like to be promoted to sergeant, would you be more likely
10 to get the one slot in K-9 or one of the slots in uniform
11 patrol?

12 MR. JOHNSON: Your Honor, be careful.
13 Bolstering the witness at this point.

14 THE COURT: All right. I'm going to allow
15 the question.

16 MR. JOHNSON: Yes, ma'am.

17 THE WITNESS: Most likely where the more
18 positions are available, it would be inside uniform
19 patrol.

20 MR. FRETWELL: Thank you, sir. Please answer
21 any questions that, uh, Mr. Johnson or Mr. Erwin may
22 have.

23 THE COURT: Mr. Johnson.

24 MR. JOHNSON: Thank you, Your Honor. Excuse
25 me one second.

1 THE COURT: Certainly. Take your time.

2 (WHEREUPON, there is a pause.)

3 CROSS-EXAMINATION

4 BY MR. JOHNSON:

5 Q Now, Deputy Wann -- Master Deputy Wannemacher,
6 at this point in time, uh, you are a uniform patrol just
7 as you testified to, right?

8 A Yes.

9 Q And Rosco is no longer in service; is that
10 right?

11 A That is true.

12 Q And Rosco retired in 2011?

13 A 2011, yes.

14 Q And he's currently -- he currently lives with
15 you?

16 A Yes.

17 Q Okay. Uh, now, previously, you testified as to
18 some of your, uh, credentials as far as your training and
19 things of that nature?

20 A Yes, sir.

21 Q Now, you are from New Jersey; is that right?

22 A Yes.

23 Q And you attended Ceten Hall University?

24 A Yes. Yes, I did.

25 Q What did you study at Ceten Hall University?

1 A Criminal Justice.

2 Q Now, in your criminal justice program, did you
3 study forensics?

4 A No, I did not.

5 Q Did you study chemistry?

6 A Uh, no, I did not..

7 Q Did y'all study -- did you study scent there?

8 A No, I did not.

9 Q You did later study scent with your dog
10 training, right?

11 A Yes, I did.

12 Q And you studied that with Tony Guzman?

13 A Tony Guzman.

14 Q And he is in Florida?

15 A Yep, at Metro Dade K-9 services.

16 Q And how long was the course that you took down
17 there?

18 A That was over 400 hours.

19 Q Then you came back and you did additional
20 training; is that right?

21 A Yeah, its mentoring under several master
22 trainers through North America Police Work Dog
23 Association.

24 Q Now, who is John Gardner?

25 A John Gardner was a -- the trainer when I first

1 got involved in K-9 services.

2 Q Now, did anyone have K-9 Rosco before you?

3 A No.

4 Q You had Rosco your whole time?

5 A Yes, I did.

6 Q Now, did John Gardner train you to -- train you
7 to train with Rosco?

8 A Yes.

9 Q Now, past your education at Ceten Hall
10 University, did you do any graduate degrees?

11 A No, I did not.

12 Q Okay. Now, if I may ask you to step down ---

13 A Yeah.

14 Q --- for just a minute. Again, can you point
15 out where you started the track?

16 A When I got brought in here, approximately in
17 this area.

18 Q Now, you say you tracked to a logging road.
19 Where was this logging road?

20 A You can't see it on the map, but somewhere in
21 this area right in here.

22 Q So the map is not necessarily representative of
23 what it may look like?

24 A Yeah, that is correct.

25 Q You can't see? Can't see? Can you see the

Doug Wannemacher - Cross-Examination by Mr. Johnson

310 -

1 logging road on the map?

2 A No, I can not.

3 Q How long was the logging road?

4 A I couldn't tell you.

5 Q Couldn't tell me. Can you guess?

6 A No.

7 Q How wide?

8 A Probably put three people wide on it.

9 Q And it was a trail. Uh, was it a natural
10 trail?

11 A I couldn't tell you. I couldn't determine if
12 it was natural or if somebody made it like Duke Power.

13 Q Okay. Now you also stated at some point in
14 your search, you encountered down trees?

15 A Yes.

16 Q Now, were those trees down by natural causes or
17 were they down by someone?

18 A They looked like they were actually knocked
19 down where somebody cleared and cut an area.

20 Q Okay. Uh, now, you also stated that you
21 searched some other areas. Can you point those areas out
22 on the map?

23 A Uh, which day are we talking about?

24 Q I guess the day of the incident.

25 A Okay. The day of the incident when it comes

1 down -- I had Calhoun Avenue which is going to be right
2 here. I can't point out which house that was. That was
3 vacant. There was a vacant house that someone wanted to
4 check out. Possibly somebody could be in there. So I
5 checked that. Nobody was found in there. Sergeant Bolt
6 was with me. There is a pipe right here and a pipe right
7 here which, cause I was the short guy, I got to
8 underneath and check it.

9 Q That's not fair. Now, uh, you got those calls
10 from someone who suspected some activity at those places?

11 A Yeah. Most likely. I can't remember. It was
12 probably somebody on -- it could have been a deputy. It
13 could have been dispatch.

14 Q And they thought it might had to do with
15 whoever you were looking for?

16 A Possibility. We get a lot of calls like that.
17 They start flocking in when the perimeter is so tight and
18 a lot of calls there. Probably had a lot of calls in
19 that day.

20 Q Now, you said that you went back the next day
21 to look for --

22 A Yes.

23 Q The next day?

24 A Yes.

25 Q And where was that area that you searched?

1 A That search area, I basically searched from --
2 this is proximate -- right back here. What we did is I
3 did a half moon and tried to locate anything that I could
4 possibly do in reason, just in case somebody tossed
5 something.

6 Q In case the -- before he ran into the woods,
7 the other officer might have threw something back there?

8 A Yes.

9 Q But you did not locate anything?

10 A No, I did not locate anything in that area that
11 I could find. It was heavily dense. And if my K-9 can't
12 get through it, I won't be able to locate it.

13 Q Now, you stated earlier that the guy you were
14 originally looking for had a hoodie on and dark clothing
15 according to what you received from dispatch?

16 A Yeah. That's -- all I got was the information
17 from dispatch and the other deputies were relaying.

18 Q I like to -- you can have a seat.

19 A (Witness complies.)

20 Q Now, I'd like to go back and ask you some
21 questions with regard to your education in human scent
22 odor -- scent detection.

23 A Okay.

24 Q Now, what does water do to scent?

25 A What does water do to scent? It depends on how

1 much water and depends on what you're doing. You have to
2 remember that scent is a chemical sense. So everything
3 that smells is molecules. Molecules continue to move.
4 You have to remember, for something to be -- for a dog to
5 smell it, it has to be soluble. So water plays a big
6 factor in scent theory.

7 Uh, skin rafts, just when you think about it,
8 you're dry and you have dry skin. What does that dry
9 skin look like? It's white and flaky. What happens
10 when you moisturize it? It rehydrates which actually
11 makes your skin stronger smelling. So water actually
12 enhances a scent picture. It can actually increase it at
13 a certain point.

14 Eventually, in a certain point, for example, in
15 a creek bed, the water may completely wash away the scent
16 because there's so much. A little water is good. Too
17 much water, bad. There's a combination in between.

18 Q Now, when you say wash away, where does the
19 scent molecules go?

20 A They start going to the edge of the creek beds
21 and start going down. They rise due to the temperature
22 and the water, depending on the ambient temperature of
23 the water. December, you're probably looking at a pretty
24 high cold weather. So it's going to go to the creek
25 sides.

1 Q So if you have a -- say for instance, you have
2 a scent that's up creek, the molecules or scent molecules
3 would wash to both edges.

4 A Well, it depends which way the water is flowing
5 too. I can't recall. I never went into the creek.
6 Depending on how that water flowed down the creek.
7 Simply put, when you look at scent, if you a picture a
8 smoke grenade going off, that's what the wind is doing to
9 your scent. It -- picture trees and everything else.
10 Picture draining a pool. You can open up 100 gallons or
11 100,000 gallons. That tells you what the terrain is
12 doing. So if you can kind of put those glasses on, that
13 is what scent is doing.

14 Q So it's not that scent is destroyed, it is
15 otherwise dispersed.

16 A Sometimes. But a lot of times when you're
17 talking about it, the rain we had that day most likely
18 would have helped on the ground when we first started my
19 track and Deputy Rivera's track. Being inside the
20 ground, it would have helped the molecules and the skin
21 rafts actually fall closer to the original track and
22 disperse out.

23 Q Uh-huh. If you have scent molecules and they
24 disperse in certain ways, is it possible to, say for
25 instance, pick up a track on the other side of a bank?

1 A When it comes down to the track when we first
2 started, that's what Deputy Rivera testified to. His dog
3 was working fringe, track, fringe. He was working that
4 odor. It's called a scent picture.

5 Q I don't mean to cut you off. I'm asking in
6 general. In general, let's say you got a stream that's
7 flowing down and you got --

8 A You're not giving me enough information for me
9 to answer that question. I would actually have to
10 physically know which direction the stream is going, what
11 temperature it's out, what temperature is going out and
12 what type of -- there's two many variables to answer
13 that. That's why, tracking, you have to be experienced
14 and have the knowledge. It's not something you can look
15 on a piece of paper and determine.

16 Q Basically, your answer to that is it's complex
17 a question for you to answer it right now?

18 A Not enough variables or information for you to
19 get me to make an accurate answer.

20 Q Understood. That's acceptable. You stated
21 also that K-9 Cash, the next day, also did an article
22 search?

23 A Uh, yes.

24 Q Where did K-9 Cash start?

25 A He would have started where Deputy Rivera

1 started his track. What we do, it's common practice to
2 always do a backtrack of the location trying to figure
3 out where the deputies went to see if we can locate any
4 evidence on the track we took. So you're looking at Cash
5 working back and forth. You're looking at wherever
6 Deputy Ramon went, where I went and wherever Deputy
7 Fuller went. You're looking at the 15 yards on each side
8 of that. Or actually 15 feet. That's the size lead we
9 most likely used.

10 Q Now, are you aware of any other service that
11 K-9 Cash may have participated in?

12 A No, I do not.

13 Q Now, you -- you are the one -- you are one of
14 the people who trained Deputy Rivera; is that right?

15 A Yes.

16 Q Was John Gardner also involved?

17 A Not at that point. He had already left the
18 Sheriff's Office.

19 Q So you taught Rivera his courses or you gave
20 him his training and how to train his dog in scent odor
21 detection and things of that nature?

22 A Yes.

23 Q One second. You stated the logging road, you
24 said you could have maybe put about three people on it?
25 What was the terrain? Was it grass? Was it leaves? Or

1 what was it?

2 A I testified it was red clay and it was rocky.

3 Q Red clay and it was rocky?

4 A Yes.

5 Q Now, was it raining that day? You stated it
6 was raining that day?

7 A At some points, it was light rain. Sometimes
8 it was heavy rain.

9 Q So it was intermittent rain?

10 A Yeah.

11 MR. JOHNSON: I have nothing further at this
12 time.

13 MR. FRETWELL: Briefly?

14 THE COURT: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. FRETWELL:

17 Q Master Deputy Wannemacher, you talked about, in
18 response to one of Mr. Johnson's questions dealing with
19 Smeris, was some logs that looked like they were clear
20 cut. Was it something that looked like it had been clear
21 cut just recently or some time in the past?

22 A Some time in the past. You could tell by the
23 color the wood wasn't fresh. It was starting to gray.
24 So to me, that indicates it's been there for a while.

25 Q And the area around these piles of wood, were

1 they clear cut?

2 A No, that's where the briars were. So somebody
3 clear cut. They fell down and overgrowth came. Winter
4 was there so everything started to die around it.

5 Q And the article search that you performed was
6 just in the immediate vicinity of the minivan; is that
7 right?

8 A Yes.

9 Q So for the rest of this entire area that we've
10 seen -- and I'm not going to make you get back down --
11 but the rest of this entire area here cornered by West
12 Marion, Emile, Richards, this whole area was not subject
13 to an entire article search; is that correct?

14 A No, it would almost -- it would be like a
15 needle in a haystack trying to do it that way.

16 Q Mr. Johnson had asked you if you checked over
17 here as to the minivan just in case somebody tossed
18 something in there before they ran into the woods.

19 A Yes.

20 Q Now, was all of the area along the track, all
21 of this wooded area searched for articles?

22 A No. Just the area where we went back and did a
23 backtrack with the dogs, with Deputy Harris and Cash
24 going back on the trail that we ran the day earlier.

25 Q And finally, you talked about the scent and

1 kind of pulling on the sides, with respect the variables
2 that you may or may not have, if you had taken your dog
3 Rosco into that creek, would you be able to know, based
4 on his behavior where he was actively tracking a suspect?

5 A Absolutely. It's very possible -- we do
6 training all the time in creek beds and train for it.

7 Q Okay. Thank you. No further questions.

8 THE COURT: Mr. Johnson?

9 MR. JOHNSON: Briefly, Your Honor.

10 **RECROSS-EXAMINATION**

11 **BY MR. JOHNSON:**

12 Q Master Deputy Wannemacher, do you keep records
13 for Rosco's training or did you keep records at that
14 time?

15 A Uh, yes.

16 Q Now, is, uh, -- do you keep track of Rosco's
17 error rate?

18 MR. FRETWELL: Your Honor, I believe this is
19 beyond the scope of my redirect?

20 THE COURT: I'll allow it, but let's keep
21 it --

22 MR. JOHNSON: Understood, Your Honor.

23 THE WITNESS: His error rate for
24 certification is zero because he's 100 percent
25 accurate in his certifications. We don't keep an

1 error rate on his training..

2 BY MR. JOHNSON:

3 Q With regards to his training, was he 100
4 percent?

5 A His training, probably I would have to say 80
6 to 90 percent accurate during his training.

7 Q All right.

8 A That's once again a guestimate because I did
9 not keep those numbers.

10 MR. JOHNSON: Thank you.

11 THE COURT: Okay. Anything else?

12 MR. FRETWELL: No questions.

13 THE COURT: You can step down.

14 MR. FRETWELL: Your Honor, the State would
15 call Deputy Tim Fuller.

16 THE COURT: All right.

17 THE CLERK: Sir, please place your left hand
18 on the Bible and raise your right hand.

19 TIM FULLER

20 having first been sworn, testifies as follows:

21 THE CLERK: Thank you. Please be seated.
22 Please state your full name for the record.

23 THE WITNESS: Timothy Fuller.

24 DIRECT EXAMINATION

25 BY MR. FRETWELL:

1 Q What's your first name, Deputy Fuller?

2 A (No response.)

3 Q I need you to state your full name for the
4 record.

5 A I said Timothy. Deputy.

6 Q Deputy Fuller, I apologize.

7 A Deputy Timothy Fuller.

8 Q I'm going to ask you to speak up so I make sure
9 I hear you. How long have you worked for the Greenville
10 County Sheriff's Office, Deputy Fuller?

11 A Eight and a half years.

12 Q To what unit are you currently assigned?

13 A K-9 Services.

14 Q How long have you been a K-9 handler?

15 A Five and a half years.

16 Q What is the name of your K-9 partner?

17 A His name is Croc.

18 Q And how old is Croc?

19 A Croc will be seven in February.

20 Q And how long has Croc been in service?

21 A Five and a half years.

22 Q During that time, who has been Croc's handler?

23 A I have.

24 Q What law enforcement function does Croc
25 perform?

1 A He's a dual purpose K-9, which means he does
2 detection of illegal drugs and human odor as well as
3 aggression control.

4 Q Human odor, does that include the tracking, the
5 area searches, the building searches that the other
6 officers have testified to?

7 A That is correct.

8 Q All right. Was Croc deployed on December 10th,
9 2008?

10 A Yes, he was.

11 Q He performed human odor detection prior to
12 December 10th, 2008?

13 A Yes, he had.

14 Q Has he been demonstrated reliable?

15 A Yes.

16 Q What kind of specific training had Croc
17 received as of December 10th, 2008?

18 A We went through an initial K-9 training course
19 that consisted of 500 hours of training. Up to that
20 point, we had access of 1000 hours of continuous
21 maintenance training which is our every Wednesday
22 training that these other deputies have talked about.

23 Q How about any live tracks or training tracks?
24 How many had --

25 A Up to that point, uh, we had over 150 training

1 tracks and 58 actual tracks.

2 Q What kind of training had you received as of
3 that date?

4 A As of that date, my training is included in
5 that 500 hours of course. I had been through, uh, 500-
6 hour course, the continuous maintenance training. I been
7 through a legal update. I had been certified with NAPWDA
8 at that point ---

9 Q So all of the training that Croc ---

10 A --- three times.

11 Q --- that Croc went through, you had gone
12 through with him?

13 A That's correct.

14 Q You mentioned the NAPWDA training or the North
15 American Police Work Dog Association. You were certified
16 as a team; is that correct?

17 A That's correct.

18 Q And then that's an annual certification?

19 A Yes..

20 Q Does Croc do the weekly maintenance training --
21 is that year round?

22 A Yes..

23 Q And what breed is Croc?

24 A Croc is a German Shepard.

25 Q Is this a breed commonly used for human

1 tracking?

2 A Yes.

3 Q Is this a breed known for it's acute power of
4 scent?

5 A Yes.

6 Q Do you keep up with literature and updates in
7 the field of dog handling?

8 A Yes.

9 Q How long have you been using -- total, how long
10 have you been using K-9s in a law enforcement capacity?

11 A Five and a half years.

12 MR. FRETWELL: Your Honor, at this time, we
13 would move to qualify Deputy Fuller as an expert in
14 K-9 human odor detection.

15 THE COURT: All right. Mr. Johnson?

16 MR. JOHNSON: Voir dire.

17 THE COURT: All right. Ladies and Gentlemen,
18 I'm going to ask you to step to your jury room very
19 briefly.

20 (WHEREUPON, the jury exits at approximately
21 3:09 p.m.)

22 THE COURT: Yes, sir.

23 MR. JOHNSON: Thank you, Your Honor.

24 VOIR DIRE EXAMINATION

25 BY MR. JOHNSON:

1 Q Deputy Fuller, where are you from?

2 A This area. Greenville, Pickens.

3 Q Where did you go to high school?

4 A Pickens High.

5 Q When did you finish?

6 A '99.

7 Q From that point, did you go directly to
8 Charleston Southern?

9 A That's correct.

10 Q And you got a Bachelors degree in Criminal
11 Justice?

12 A That's correct.

13 Q Did you have a course in forensics at that --
14 with regards to your criminal justice degree?

15 A No.

16 Q Did you have any courses on animal behavior?

17 A No.

18 Q Did you take any biology courses?

19 A I may have taken a basic biology course.

20 Q Did you take any courses in chemistry?

21 A I do recall a basic chemistry course.

22 Q Okay. And did you take any courses on scent?

23 A No.

24 Q Did you have any graduate education beyond your
25 bachelors degree at Charleston Southern?

1 A No.

2 Q Now, who taught -- who trained you to be a K-9
3 handler?

4 A Uh, my training was conducted with Master
5 Deputy John Gardner who was the head trainer at the time,
6 Master Deputy Doug Wannemacher was the assistant.

7 Q That was the 500-hour course?

8 A That's correct.

9 Q What was some of the items that you went over
10 in that course?

11 A Uh, there was a lot. Literature in a notebook
12 about that thick -- (Demonstrating) -- that discussed,
13 uh, scent obviously, to give you a working knowledge of
14 the anatomy of the dog, how scent works and, uh, to go
15 over everything that we do, tracking, uh, building
16 searches, uh, legal stuff, tactical stuff, the whole
17 gamut.

18 Q Do you know who composed that notebook?

19 A I would assume John Gardner did.

20 Q John Gardner?

21 A From a variety of resources.

22 Q When did you first get into the police office
23 -- to the sheriff's office?

24 A It was May of 2003.

25 Q Then you became a K-9 handler in June of 2006?

1 A Correct.

2 Q That was after completion of this course?

3 A No, sir. June 2006 was when I started the 500-
4 hour course.

5 Q That's when you started the course?

6 A Yes.

7 Q Now, the dog -- the dog that you had, Croc, was
8 he previously in service before he met you?

9 A No.

10 Q So you and him essentially earned your way
11 together?

12 A Yes.

13 Q You been with him since that point?

14 A That's correct.

15 Q Now, when you got Croc, do you know where he
16 came from?

17 A He came from the Czech Republic.

18 Q And you have papers proving such?

19 A I have a passport, uh, that I can't read
20 because it's in a different language.

21 Q A passport -- the dog's passport?

22 A That's correct. The dog's passport.

23 Q If you have the dog's passport, do you have any
24 certificate from --

25 A I have paperwork from the kennel.

1 Q This is paperwork you can not read?

2 A I can read that one.

3 Q You can read that one?

4 A Yeah. The passport, I can't.

5 Q All right. Now, how did y'all train to, uh,
6 identify and follow human scent?

7 A That's a very broad question.

8 Q What's broad about it? Should I ask you that?

9 A That question can not be answered in several
10 sentences. You're going to have to be more specific.
11 How do we train to follow human scent patterns?

12 Q How do you train to discern between human
13 scents? How did y'all train to do that?

14 A Discern between?

15 Q Say for instance my scent and your scent.

16 A I'm assuming you're getting at scent
17 discrimination.

18 Q Sure. Okay. Well, as been previously
19 testified, basically we start associating something with
20 a human odor, getting the dogs to follow the human scent.
21 Then, obviously, you've got human odor and, uh, odor of
22 crust vegetable, things of that nature. So you want to
23 make sure that they are following the human odor that you
24 put them on. You can prove them off of cross tracks as
25 we talked about. Track links across the trails you want

1 them to follow so that you know that he's following the
2 human odor that he started on.

3 Q How long did it take you and Croc to become
4 certified, to learn scent discrimination as you just
5 described?

6 A What I can tell you is, at the end of our 500-
7 hour, uh, initial training, uh, we went through a
8 certification, in-house certification, which was just a
9 couple of months prior to our national certification.
10 That was very similar as far as, uh, the tracking aspect.
11 involving several surfaces in a cross-track.

12 Q Now, uh, did you keep the training records?

13 A Yes.

14 Q Now, in those training records, did you, uh,
15 did you make note of Croc's error rate?

16 A Error rate? I make note of what I think might
17 be an error. There is no statistic for an error rate,
18 no.

19 Q So you didn't calculate his successes versus
20 his errors and come up with the rate is what you're
21 saying?

22 A No.

23 Q And you have access to those training records
24 now?

25 A Sure.

1 Q Now, you also work the 10-hour course weekly?

2 A Yes.

3 Q And which day -- did you train on this -- let
4 me ask you, did you train on this certain day that was,
5 uh, in question, the 10th of December of 2008?

6 A Yes.

7 Q Where did you train?

8 A At the time of his call, I was almost positive
9 I was at the vet's. I went to get some flea and tick
10 stuff or something like that. So I wasn't with them at
11 the training site at that time.

12 Q But you did train at some point during that day
13 is what you're saying? What time did y'all start
14 training that day?

15 A I don't remember.

16 Q You don't remember what time you started
17 training with your --

18 A Actually, I think that I started off in court
19 that day. I know I was wearing my Class A uniforms when
20 I got to the call. I was still wearing them. So
21 apparently I had gone from court to the vet's office. I
22 don't know if I started training that day or if I started
23 up here. My training records will definitely reflect
24 that.

25 Q Will reflect what time?

1 A Sure. Sure.

2 Q Now, have you ever used your dog in another law
3 enforcement case?

4 A Yes.

5 Q How many?

6 A I have over 1000 deployments.

7 Q In law enforcement cases?

8 A Yes, sir.

9 Q How many of those cases have you been called to
10 testify?

11 A Probably five.

12 Q Were you qualified as an expert in human odor
13 detection?

14 A Uh, once.

15 Q Once? When was that?

16 A That was in July in this case.

17 Q Other than this case?

18 A No.

19 MR. JOHNSON: One second please, Your Honor.

20 BY MR. JOHNSON:

21 Q Did you state earlier that you kept -- I don't
22 remember the answer. Did you state earlier that you kept
23 up with the literature with regard to K-9 handling?

24 A Sure.

25 Q Can you tell me maybe some of the books or

1 otherwise publications that you have on hand like in your
2 office or at your home?

3 A Uh, Police K-9 Magazine is a good one that
4 there's a lot of articles regarding training updates and
5 legal updates, uh, problem solving, tactical issues and
6 stuff like that. The first book that I ever read, I read
7 a couple of times, K-9 officers manual. There's a --
8 there's numerous articles and things of that nature that
9 were included in that initial notebook that I have that
10 are good refreshers that I read throughout.

11 Q So that book you initially read was R.C. Eden?

12 A I thought it was R.S.

13 Q R.S. Eden? I'm sorry. I may have misheard.

14 R.S. Eden.

15 A I think so.

16 Q And it's call what again?

17 A K-9 Officers Manual.

18 Q K-9 Officers Manual.

19 MR. JOHNSON: All right. Your Honor, at this
20 time, I have nothing further.

21 THE COURT: All right.

22 MR. FRETWELL: Briefly, Your Honor.

23 VOIR DIRE EXAMINATION

24 BY MR. FRETWELL:

25 Q Deputy Fuller, is there any question about

1 whether Croc is descended from a blood line of known
2 police and military working dogs?

3 A No.

4 Q Is there any question whether or not Croc is
5 descended from a blood line of dogs whose breed is
6 characterized as an acute power of scent?

7 A No.

8 Q When you deployed Croc on December 10th, 2008,
9 do you know approximately how long after the, uh, initial
10 sighting of the suspect entering the woods your dog was
11 deployed to track?

12 A An hour and 20 minutes or so.

13 Q Okay. And then, uh, during the course of the
14 time that your dog was tracking, was a perimeter in
15 effect?

16 A Yes.

17 Q Was there any indication that there was any
18 kind of contamination of the track during the process of
19 your interaction or your tracking with Croc?

20 A No.

21 Q Okay.

22 MR. FRETWELL: That's all the questions I
23 have.

24 THE COURT: All right.

25 MR. JOHNSON: Briefly?

1 THE COURT: Yes, sir.

2 VOIR DIRE EXAMINATION

3 BY MR. JOHNSON:

4 Q When you and K-9 Croc started to track, what
5 did you use to start the track?

6 A The scent article bandana.

7 Q Did you know where that article had been before
8 you started to track?

9 A Master Deputy Wannemacher handed it to me.

10 Q He handed it to you?

11 A Yes.

12 Q Did you know where it had been before then?

13 A No.

14 MR. JOHNSON: I have nothing further.

15 THE COURT: All right.

16 MR. FRETWELL: Nothing further.

17 THE COURT: All right. I'm going to qualify
18 him in the area of K-9 human odor detect -- K-9
19 human odor detection. Your objection to that is
20 noted. Anything else you need to put on the record?

21 MR. JOHNSON: If I could just put the basis.

22 THE COURT: Sure.

23 MR. JOHNSON: In this instance, I believe he
24 said he had paperwork with regards to the dog.
25 However, I believe also one of the requirements is

1 that, uh, the scent trail must have been otherwised
2 contaminated. He was handed a scent article from
3 someone else when they weren't tracking, which it's
4 pretty obvious he doesn't know where it came from
5 previously. I could suggest that the trail was
6 otherwised contaminated. On that basis, I don't
7 think he should be qualified to testify as to human
8 odor detection or as a K-9 witness.

9 THE COURT: All right. And I see your
10 argument in that regard. However, I do think his
11 testimony, taken with the previous officer's
12 testimony sports that it was a bandana that was
13 identified as the person, had belonged to the person
14 who had been involved in the bank robbery. And thus,
15 I'm going to qualify him as I just stated. All
16 right. Let's bring the jury back in.

17 (WHEREUPON, the jury enters at approximately
18 3:22 p.m.)

19 THE COURT: Mr. Fretwell.

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

22 THE COURT: Yes.

23 MR. FRETWELL: Your Honor, at this time, I
24 would like to renew my request to qualify Deputy Tim
25 Fuller as an expert in K-9 human odor detection.

1 THE COURT: All right. Mr. Johnson, your
2 objection to that is noted and overruled. I will
3 qualify him as such. Ladies and Gentlemen, the
4 instruction I had given you previously with regards
5 to expert witnesses would apply to this witness as
6 well. The court is going to qualify him to give his
7 expert opinion, or his opinion on K-9 human odor
8 detection. Thank you.

9 MR. FRETWELL: May it please the court?

10 THE COURT: Yes, sir.

11 DIRECT EXAMINATION (con't)

12 BY MR. FRETWELL:

13 Q Deputy Fuller, let me take you to Wednesday,
14 December 10th, 2008. Did you participate in a manhunt
15 that day?

16 A Yes.

17 Q Uh, in what way did you participate?

18 A Uh, I was called in to relieve Master Deputy
19 Wannemacher and his K-9 Rosco on the track.

20 Q Where did you enter the woods?

21 A I don't recall exactly. Typically, a routine
22 member comes out and brings you in to meet with them at
23 the last point they had.

24 Q So you would have followed the cover officer;
25 is that correct?

1. A Correct.

2 Q All right. Let me ask what was the weather
3 like that day?

4 A It was cold and heavy rain at times.

5 Q Was Croc able to pick up a scent trail?

6 A Yes.

7 Q All right. Uh, let me ask you this, were you
8 given anything by Deputy Wannemacher in the form of a
9 scent article?

10 A Yes. I met with Deputy Wannemacher. He handed
11 me a bandana. He advised he had located along the track
12 that I could utilize as a scent article. The bandana
13 matched the description given from the armed robbery.

14 Q And if you will look down, I think, on the
15 floor maybe at your feet in a little manilla envelope and
16 what's been marked on the envelope as State's Exhibit 29
17 for identification. If you will, pull that out and tell
18 me if you recognize that to be consistent with the
19 bandana that you were handed by Deputy Wannemacher that
20 day.

21 A It certainly looks consistent.

22 Q How did you use the bandana as a scent article?

23 A What I do is I put it on the ground and then I
24 put -- harness the dog as has been testified to earlier.
25 I put his tracking harness on, which is a cue to him that

1 we're about to start a track. With the scent article
2 sitting in front of him, I downed him on that, which he
3 usually will start sniffing and mouthing the scent
4 article. I will give him his command to track. At which
5 point, he begins to look for the track.

6 Q Okay. And is the other -- not the cover
7 officer that you walked in with, but the other cover
8 officer, was he, uh, still at the location where Rosco
9 and Doug Wannemacher had ended?

10 A Yes.

11 Q Okay. Is that where your track began?

12 A Yes.

13 Q Okay. Uh, once your dog indicated to you that
14 he had a track, where did that track lead?

15 A We began tracking what I felt like was a
16 direction away from Emile Street. We headed down a ways
17 and we came out to, uh, almost like a roadbed along side
18 of the creek bed.

19 Q Okay.

20 A This creek runs from West Marion all the way to
21 West Blue Ridge Drive. We turned right along the edge of
22 the creek for about 100 yards or so. At which time, Cróc
23 begin indicating that the track actually went into the
24 creek.

25 Q Let's talk about that. During the time from

1 the point at which you start to track to the point where
2 you just described, is your dog exhibiting behavioral
3 changes?.

4 A Absolutely.

5 Q What do those behavioral changes mean to you?

6 A It's how we communicate with each other. What
7 Croc will do is he will start a steady hard pull with his
8 head close to the ground, his tail stiff at the base.
9 Uh, his breathing is very intense. He has a steady hard
10 tension on the line.

11 Q He continued that behavior all the way to the
12 creek?

13 A Yes.

14 Q What was the terrain surrounding the creek
15 like?

16 A Surrounding the creek was -- I knew it was a
17 creek. It was more like a river that day. You could
18 hear the running water loudly. May have been able to see
19 the water at points. It was very thick beside the creek.
20 A lot of overgrowth kind of growing over the top of it.
21 You couldn't see into there really. Too thick to see
22 through.

23 Q Let's talk about it for just a minute about
24 this creek. Is this a creek like you might see kind of
25 run through somebody's back yard? What are we talking

Tim Fuller - Direct Examination by Mr. Fretwell

340

1 about in the size of this creek?

2 A I would estimate it that day, uh, probably 12
3 feet wide. At times, it was up to here. I know it was
4 at least that deep at points.

5 Q You gave it away that you went into the creek.
6 Tell me about, uh, what -- once you got to the creek and
7 your dog had tracked to the creek, what did you do at
8 that point and why?

9 A Well, once he was indicating that the trail
10 went into the creek, uh, this was the last thing I wanted
11 to do for various reasons. So the first thing I thought
12 was maybe he ducked into the creek and decided it wasn't
13 a good idea and ducked out. So I started to cut the
14 directions around that area in case he had backtracked,
15 walked back from that spot and headed off in another
16 direction. So I tried to locate the track in leaving
17 that specific area, but I was unsuccessful in locating,
18 uh, a trail leaving that area. At that point, I pretty
19 much determined that he had gone into the creek.

20 Q Uh, were there any other measures that were
21 taken prior to you actually entering the creek?

22 A Sure. Ideally, air support to clear it first.
23 With the weather and the overgrowth -- I think they may
24 have been up at times. But with the overgrowth, over the
25 creek, they couldn't see into it anyway. What we did was

1 got another dog handler, it happened to be Deputy Rivera,
2 to clear, to go on the other side of the creek in case he
3 had just crossed over to see if he could pick up a trail
4 across from us which obviously would likely be him
5 crossing over the creek which would keep us from damaging
6 all our gear and whatnot. And getting into the creek at
7 that point was unsafe as well. We made that attempt
8 although Deputy Rivera was unable to find a trail on that
9 other side of the creek.

10 Q Ultimately, you went in the creek?

11 A Yes.

12 Q How does a K-9 and specifically your K-9 track
13 through a creek?

14 A Uh, Croc will, uh, -- he works bank to bank
15 most the times. Swimming bank to bank. And that's the
16 -- well, first of all, he gets in the creek, which is not
17 something that he just does. But once he does that, he
18 works bank to bank. He's not trying to get out. He's
19 working in the creek bed.

20 Q Why -- why -- why is he going to the sides of
21 the creek?

22 A Well, uh, several reasons. The scent
23 obviously. You can have airborne scent which would land
24 in the creek and along the edges as well as the way the
25 water was running that day. You would have probably

1 grabbing the edges, overgrowth and things like that to
2 hold on as you went down the creek bed. There would be
3 scent from that as well. Maybe also to, uh, so he's not
4 swimming the whole time to get to the edge for a second
5 to bounce off, bounce off. All those combined continues
6 with the intensity of the pull continues.

7 Q What was it like being in the creek that day?

8 A I was freezing cold.

9 Q The cover officers, did they enter the creek as
10 well?

11 A Yes.

12 Q And how, uh, -- when you were in that creek,
13 how far up on you was the water coming?

14 A It varied. I tried to stay where it wasn't
15 submerging all my equipment, but quickly into this search
16 that was done. I knew that was done. It was over my
17 waist most of the time.

18 Q And how would you describe the actual creek
19 itself as you went down in it considering the growth on
20 the sides. What was that like?

21 A It was like going through a tunnel to be honest
22 with you. The overgrowth -- even as high as the water
23 was, there was still a steep embankment for the most part
24 on both sides. Then the overgrowth growing over like
25 this, which it obviously probably never been cut. So you

1 know, you almost had a ceiling over you as well during a
2 lot of it.

3 Q Was it easy to get out of the creek? Could you
4 have gotten out of the creek easily?

5 A No, it would not have been easy.

6 Q Okay. Did you eventually get out of the creek?

7 A Yes.

8 Q And where did you do that?

9 A Uh, we made it almost to Highway 253, Blue
10 Ridge. There was an area where levels out and clears out
11 a little bit and, uh, there's access up to 253 at that
12 point. There's a covered pipe. That's what I remember.
13 That's where we got out.

14 Q A pipe that went across the bridge?

15 A Correct.

16 Q From the point at which you entered the creek
17 til you get to that covered pipe or however you want to
18 describe coming across the creek, was your dog Croc
19 actively tracking that time -- during that time period?

20 A Yes.

21 Q Was there any indication prior to that pipe
22 that the track left the water or the creek?

23 A No, he gave me no indication that the track
24 left the creek bed.

25 Q And how was Croc's physical condition once you

1 got to the pipe?

2 A I felt like he was tiring. There was some
3 panting. Me keeping in mind how long we had been in that
4 creek and how long he had been swimming, I felt like he
5 was probably too tired to continue.

6 Q Okay. Let me have you look at State's 28, if
7 you will.

8 A You want me to get down?

9 Q Please. If you will go over there where Mr.
10 Anderson is, can you show us approximately where along
11 that creek, uh, you first entered. If you could, take
12 just a minute to orient yourself. Deputy Fuller, if you
13 can step about one step to your right. Okay. Thank you.

14 A All right. Uh, it's the middle of the woods.
15 My guess would be that I met up somewhere in here, in
16 this area with Master Deputy Wannemacher, heading in this
17 direction. That's what it felt like. Get in the creek.
18 Travel a short distance. Like I said, I thought it was
19 around 100 yards towards 253 and then into the creek.
20 There's no other options. Go all the way down to right
21 in here is where we got out.

22 Q Okay. Let me also show to you... (Pause.)
23 Do you recognize this map, what that shows?

24 A Yes.

25 Q Okay.

1 MR. FRETWELL: All right. Your Honor, at
2 this time, we move State's Exhibit 30 into evidence.

3 THE COURT: Any objection?

4 MR. JOHNSON: No objection.

5 THE COURT: All right. Without objection,
6 it's in evidence.

7 (WHEREUPON, State's Exhibit 30 is admitted into the
8 record.)

9 BY MR. FRETWELL:

10 Q Tell us a little bit about what area of the
11 other map this map shows.

12 A All right. This is the area that I came to
13 that I thought was about where I got out. This would be
14 that way. I could see the pipe that goes across the
15 water right there. I remember when you get out, you have
16 to cross over another small street, which is much smaller
17 than that one right there in order to get back in 253.

18 Q And was this a good place to get in and out of
19 the creek?

20 A Yes.

21 Q What about before this?

22 A There wasn't a good place.

23 Q Did Croc locate for himself any articles during
24 that track?

25 A No.

1 Q Okay. And the bandana that you received from
2 Deputy Wannemacher, uh, that you said you put it on the
3 ground, you had your dog smell it and then take off, the
4 bandana was left there?

5 A That's correct.

6 Q Uh, Al Cannon, was he one of the cover officers
7 that was there with you?

8 A Yes.

9 Q Was he there at the time that you scented your
10 dog on the bandana?

11 A Yes.

12 Q Did he go into the creek with you?

13 A Yes.

14 Q The whole way?

15 A Yes.

16 Q Come out here with you?

17 A Yes, as far as I recall.

18 Q Did you come in contact with anyone other than
19 these officers that you were with, the K-9 units and
20 potentially anyone else on the perimeter that was law
21 enforcement? Did you come in contact with anybody on
22 your track that was not law enforcement?

23 A No.

24 Q Deputy Fuller, this whole area right here off
25 of 253, Emile and Agnew, is that all within Greenville

1 County?

2 A Yes.

3 Q That's your area of jurisdiction; is that
4 correct?

5 A Yes.

6 Q Please answer any questions that Mr. Johnson
7 may have.

8 THE COURT: Mr. Johnson.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q Since you're already up, we might as well ---

12 A Okay.

13 Q --- do this first.

14 A Sure. Sure.

15 Q While you're already standing up. I couldn't
16 see from that far away. Now, where is -- that's the pipe
17 that you're referring to?

18 A Yes, sir. That's correct.

19 Q Now, first of all, does this reflect what the
20 place would have looked like on that specific date?

21 A I doubt it.

22 Q You doubt it? Say for instance these are cars
23 -- you don't believe these cars were there on this
24 specific day or anything like that?

25 A I would say it's highly unlikely.

1 Q Okay. Now, on that day, there was a perimeter,
2 right?

3 A Yes.

4 Q Now, where was the perimeter in comparison to
5 this map?

6 A What was the perimeter?

7 Q Yes.

8 A I can't tell you to be sure. I know the
9 perimeter was along West Blue Ridge and down Agnew.

10 Q So the perimeter was established in this area
11 here?

12 A This area was part of the perimeter.

13 Q Okay. And you tracked -- you say you tracked
14 up from this area up to there and came out around there,
15 right?

16 A Yes, sir.

17 Q And could you see the police cars or anything?

18 A I don't remember.

19 Q You don't remember?

20 A No.

21 Q You can have a seat.

22 A Okay.

23 Q So you tracked up to the edge of the perimeter
24 and you didn't find any articles and any person?

25 A No, sir.

1 Q You stated earlier you also had air support.
2 They may not have been able to see.

3 A Yeah. They wouldn't have been able to see.

4 Q Okay. And that's according to the --

5 A Correct.

6 Q Now, you mentioned earlier that Croc had
7 indicated that the track had went into the creek, right?

8 A Correct.

9 Q You stated there was some brush and some trees.
10 There was a large amount of it?

11 A There was heavy growth alongside of the creek.

12 Q Now, you didn't enter that way, did you?

13 A In that spot, no.

14 Q How far do you think you went up before you
15 went in?

16 A I don't know. I wouldn't have gone too far but
17 far enough up that I would have been able to see if
18 someone was hiding close to where he indicated going into
19 the creek.

20 Q Now, were you taught by Master Deputy
21 Wannemacher?

22 A He was an assistant to the trainer during my
23 initial course.

24 Q That was Sergeant Gardner at the time?

25 A That was Master Deputy Gardner.

1 Q Master Deputy Gardner?

2 A Yes, sir.

3 Q Apologies. And in addition to your training
4 then, you went to Charleston Southern University, right?

5 A Yes.

6 Q And there, you got a Bachelors in -- tell us.
7 You got a Bachelors in what?

8 A Criminal Justice.

9 Q Criminal Justice. And when you were getting
10 those Bachelors, did you take any classes in forensics?

11 A No.

12 Q Now, do you remember did you take any classes
13 in chemistry or biology?

14 A I recall a Chemistry class. I may have taken a
15 basic biology course.

16 Q Did you take any classes in animal behavior?

17 A No.

18 Q Did you take any classes in scents?

19 A No.

20 Q Now after you placed the bandana on the ground
21 and you scented, you began to track and this is along the
22 logging road, right?

23 A This is in the area of -- yeah, it's a road of
24 some sort.

25 Q What's the larger road look like? Was it

1 grassy? Was it rocky? What did it look like?

2 A It's dirt and rocks and whatnot.

3 Q And was it muddy on this day?

4 A Most likely.

5 Q Now, after you got to the point where you could
6 no longer see the bandana, was somebody back there with
7 it?

8 A Not that I know of.

9 Q So the bandana was left where it was?

10 A Yes.

11 MR. JOHNSON: At this point, I have nothing
12 further of this witness.

13 MR. FRETWELL: Just briefly.

14 THE COURT: Mr. Fretwell.

15 REDIRECT EXAMINATION

16 BY MR. FRETWELL:

17 Q Deputy Fuller, just so I can understand the
18 creek entry, once your dog indicated to you that the
19 track went into the creek, you said you checked the sides
20 of the creek; is that right?

21 A Yes.

22 Q And where did you enter the creek?

23 A We went upstream a short ways.

24 Q Okay.

25 A And entered. My concern was that if he was

1 very close to where he indicated, that we would have come
2 in right on top of him and he would have a pretty ambush
3 for us. I, at least, wanted to create some distance as
4 we entered the creek. Not to mention if the trail went
5 in that direction, then he would, uh, -- upstream, then
6 he would pick up the trail going in that direction
7 anyway.

8 Q So you actually went upstream ---

9 A Correct.

10 Q --- at the point at which the track indicated
11 it was going into the creek?

12 A Correct.

13 Q And once your dog Croc got into the creek, did
14 he give you behavioral signs that indicated he had picked
15 up the scent?

16 A Yeah. Well, basically, we went in there. He
17 did not give me any indication that the track went
18 upstream. So we moved on down at the point that we had
19 originally indicated going into the stream. He again
20 displayed those behavior changes and we started looking
21 there.

22 MR. FRETWELL: That's all the questions.

23 THE COURT: Anything else?

24 MR. JOHNSON: No recross, Your Honor.

25 THE COURT: Sir, you can step down.

1 MR. FRETWELL: May it please the court?

2 THE COURT: Yes, sir.

3 MR. FRETWELL: The State calls Deputy Al
4 Cannon.

5 THE CLERK: Sir, please place your left hand
6 on the Bible and raise your right hand.

7 AL CANNON

8 having first been sworn, testifies as follows:

9 THE CLERK: Thank you. Please be seated.
10 Please state your full name for the record.

11 THE WITNESS: James Alton Cannon, III.

12 DIRECT EXAMINATION

13 BY MR. FRETWELL:

14 Q Deputy Cannon, how long have you worked in the
15 Greenville County Sheriff's Office?

16 A I been employed with the Greenville County
17 Sheriff's Office 11 and a half years.

18 Q And to what unit are you currently assigned?

19 A I'm currently assigned to the K-9 services
20 unit.

21 Q How long have you been a K-9 handler?

22 A Almost seven years.

23 Q Wednesday, December 10th, 2008, did you respond
24 to the area of Emile, Alma and Leone?

25 A I did. Yes.

1 Q How were you involved with the track that day?

2 A When I arrived on the scene, it was decided
3 that Deputy Rivera would utilize his K-9 Smeris and that
4 myself and Deputy Hal Harris would act in a cover
5 capacity for that, uh, -- for the track.

6 Q As cover officers, how much of the track were
7 you involved in?

8 A I stayed on the track the whole time, the
9 duration of the track.

10 Q And what basic way did the track proceed?

11 A We, uh, Deputy Rivera, as he testified earlier
12 to, with his K-9 started tracking the woods opposite or
13 on the other side of Emile, on the other side of where
14 the white van was parked.

15 Q At some point, was Deputy Rivera and K-9 Smeris
16 traded out for Deputy Wannemacher and K-9 Rosco?

17 A Yes.

18 Q Were you there at that time?

19 A I was.

20 Q Were you present when K-9 Rosco came across the
21 scent article, the blue bandana?

22 A Yes, I was.

23 Q All right. I will ask you to check what's on
24 the floor there at your feet in that manilla envelope,
25 State's Exhibit 29 for identification. I'll ask you to

1 look at that bandana and see if you recognize that
2 bandana.

3 A Yes, I do.

4 Q Is that the bandana that you, uh, observed
5 Rosco track, pick up and turn over to, uh, Deputy
6 Wannemacher?

7 A Yes.

8 Q And were you also present when Deputy
9 Wannemacher turned -- I'm sorry. Were you present when
10 Deputy Wannemacher turned that bandana over to Deputy
11 Fuller?

12 A Yes, I was.

13 Q Were you present when Deputy Fuller dropped it
14 on the ground and let his dog smell it and take off?

15 A Yes.

16 Q All right. Furthermore, do you know if that
17 bandana was consistent with the bandana that was reported
18 being used with the robber?

19 A Yes, it was.

20 Q After Deputy Fuller was brought in and Croc
21 started the track, did you go into the creek with Deputy
22 Fuller?

23 A I did.

24 Q Do you recall Rivera and Smeris checking the
25 other side of the creek?

1 A Yes, we requested his help on the other side
2 for safety and to possibly utilize his dog to see if
3 maybe the suspect had crossed over to the other side.

4 Q Can you tell the members of the jury what was
5 it like to be in that creek on that particular day?

6 A It was freezing. The creek was very deep in
7 some areas, fast-moving, uh, it also -- I remember
8 getting into the creek. I was utilizing my county issued
9 long gun due to the circumstances and the fact that the
10 suspect was armed. We already had a gunshot victim.

11 But getting into the creek, it was deep. It
12 had on each side the creek bed came up and it was like an
13 overhead. I remember when we did first come up to the
14 creek bed, we couldn't necessarily see on our side
15 because of those overhangs. Didn't know if the suspect
16 was possibly hiding underneath there. It was a pretty
17 tense situation.

18 Q And at times, how far would the water come on
19 you when you were in that creek?

20 A Several times while we were tracking down the
21 creek where it was up to my neck. Everything got
22 drenched.

23 Q Were you wearing a uniform kind of like what
24 you're wearing today?

25 A Yes.

1 Q Once you got to the pipe that Deputy Fuller
2 described, do you recall being at that pipe?

3 A Yes, I do.

4 Q You recall getting out of the creek?

5 A Yes.

6 Q At that point, could you see anything from
7 Agnew Road and Highway 253 or Blue Ridge?

8 A Yeah, I could see the perimeter. It was a very
9 tight perimeter. I saw police vehicles, marked units
10 with the blue lights activated.

11 Q That's on both Highway 253 and Agnew Road?

12 A Yes, both on 253 and Agnew Road, I saw deputies
13 standing outside their vehicles.

14 Q And what did you do once the track was halted?

15 A I exited the area. There was a lot of deputies
16 out there. A lot of police presence out there. We met
17 at the church parking lot which was almost right across
18 the junction of Agnew and 253 where I believe it was a
19 call for service that came in in another area. I don't
20 know if someone called it in saying something's
21 suspicious. Myself and members of the SWAT team went to
22 check that area to see if we can locate anything.

23 Q I'm going to back you up a little bit.

24 A Sure.

25 Q Once you guys out of the creek there at the

1 pipe, did you try to see if you could pick up that trail
2 and see if it went any further in that area at that
3 point?

4 A Uh, I think we -- I know Deputy Fuller got out
5 with Croc.

6 Q Right.

7 A At that point, we just got out.

8 Q And you were basically right there near the end
9 of the perimeter; is that right?

10 A Yes.

11 Q You met at the church. Then that's when you
12 went to the SWAT call?

13 A That's correct.

14 Q And that was -- when you arrived at that
15 location, were you able to locate anybody?

16 A No, it was over near Claxton Drive, I believe.

17 Q Okay.

18 A Which was actually to the left of West Marion
19 Road.

20 Q Okay.

21 A If you are looking or coming from White Horse
22 Road. I don't recall what the initial call was for.
23 Basically, when a call does come in, we have to respond
24 and answer it. So we got over there and checked the area
25 and did not locate anything.

1 Q Would you have been there with your dog in that
2 capacity or just there checking?

3 A Just there checking.

4 Q At some point, did you meet up with
5 Investigator Weiner?

6 A Yeah, he was actually with us when we went over
7 to Claxton Drive.

8 Q Is that because he's a member of the SWAT team?

9 A That's correct. Yes.

10 Q All right. So once you met up with
11 Investigator Weiner, what, if anything, did you do with
12 him specifically with respect to this track?

13 A Requested the location of the bandana.

14 Q Who did that?

15 A That was David Weiner.

16 Q Okay.

17 A At which point, myself and David Weiner met up
18 with one of our environmental service units ---

19 Q Okay.

20 A --- who drives a pickup truck. This is still
21 -- the perimeter was still tight. We're still in the
22 same areas. We went back into the area. I took David
23 Weiner back to where Deputy Fuller put the bandana down
24 to utilize as a scent article, to retrieve.

25 Q Did the bandana appear to be in the same

1 position?

2 A Yes. Exact same position where Deputy Fuller
3 left it.

4 Q Was it in the same condition as when he left
5 it?

6 A Yes.

7 Q Who secured the bandana?

8 A David Weiner.

9 Q At some point after this, was the perimeter
10 called off?

11 A Yes.

12 Q All right. Did you conduct any additional
13 searches in this area after the perimeter had been called
14 off or the following day?

15 A Yeah, it was the following day. Myself along
16 with Deputy Harris and Sergeant Kellett as well as some
17 SLED agents went back down to the area, to the incident
18 location where Deputy Harris conducted a backtrack of the
19 area of the track taken by us the day before to look for
20 any kind of articles along the track that might have been
21 used.

22 Q Any items located related the tracking suspect?

23 A Not related to the tracking suspect, but the
24 suspect.

25 Q All right. Please answer any questions that

1 Mr. Johnson might have.

2 THE COURT: Mr. Johnson?

3 MR. JOHNSON: Thank you.

4 CROSS-EXAMINATION

5 BY MR. JOHNSON:

6 Q Now, what you just identified with the
7 Solicitor, that was a blue and white bandana, right?

8 A Sir?

9 Q What you just identified for the Solicitor.

10 A Yes.

11 Q Now, you initially believed it to be black and
12 white, isn't that true?

13 A Yes.

14 Q Now, when -- you stated that -- are you
15 familiar with this map?

16 A I am.

17 Q I'll ask you to step down.

18 A Sure.

19 Q Now, you were with Deputy Fuller and Croc when
20 they came out here? When they came out here?

21 A Yeah.

22 Q You stated when you came out, you could see the
23 police cars and the sirens. Is that what you stated?

24 A I could see the blue lights on the police
25 vehicles.

1 Q Okay. And you could see them on Agnew and on
2 West Blue Ridge?

3 A I specifically observed a vehicle on Agnew
4 right at the junction of Blue Ridge and I observed a
5 vehicle right here.

6 Q That was the edge of the perimeter?

7 A Correct.

8 Q All right. Thank you. One second.

9 MR. JOHNSON: Allen, is this in evidence?

10 MR. FRETWELL: I think they all are. What's
11 the number?

12 MR. JOHNSON: This is number 28.

13 MR. FRETWELL: Yes.

14 BY MR. JOHNSON:

15 Q Now, uh, this is -- is this the -- show me the
16 area where y'all tracked to when y'all came down from the
17 creek.

18 A With Deputy Fuller?

19 Q Yes, sir.

20 A And Croc?

21 Q Yes, sir.

22 A Uh, down right around in here in this area.

23 Q Now, where is Claxton?

24 A Claxton is actually over off the map over here
25 to the west of West Blue Ridge.

1 Q So Claxton can't be seen on this map?

2 A No, it can't.

3 Q But it's in this area up here.

4 A That's correct.

5 Q Okay. All right. You can have a seat.

6 A (Witness complies.)

7 Q Now, after you and Deputy Fuller and K-9 Croc
8 came out to the perimeter, y'all called the search off?

9 A No.

10 Q Called the track off.

11 A The -- well, I didn't call the track off.

12 Q Okay. Do you know who called the track off?

13 A Uh, I'm not sure.

14 Q But the track was called off?

15 A I believe so.

16 Q You know what time it was?

17 A I don't recall.

18 Q Okay. Uh, now, the next day, you stated that
19 you went with Deputy Harris. Deputy Harris, does he have
20 a K-9?

21 A He does.

22 Q You went with Deputy Harris and his K-9 and
23 SLED?

24 A A couple of SLED agents, yes, sir, and Sergeant
25 Kellett.

1 Q And Sergeant Kellett. And where did you start?

2 A I actually started -- I got out on Crane
3 Avenue.

4 Q Now, Crane Avenue was where my client was shot;
5 right?

6 A Uh, close to it.

7 Q Okay. Close to it. That's where you started
8 your track and your search?

9 A I believe Deputy Harris moved and started over
10 off of Emile where the track first started.

11 Q Okay. And then you tried to go back and see if
12 you can find any articles of whether there was any
13 clothing or gun or anything?

14 A Yeah. It was just a sweep of where we had
15 gone.

16 Q Okay. And you didn't find anything, is that
17 true?

18 A Uh, I didn't find anything.

19 Q You didn't find anything. Did anybody find
20 anything?

21 A I believe a pen was found.

22 Q Do you know whose pen that was identified to
23 be?

24 A It was Deputy Rivera's.

25 Q Deputy Rivera's pen?

1 A Yes, sir.

2 Q All right. But nothing was found in
3 association with any suspect that you recorded?

4 A No, sir.

5 Q Uh, finally, uh, you stated that you took --
6 after you were with -- once again, you were with Croc and
7 Fuller?

8 A Yes.

9 Q And you went with them when they went up the
10 creek?

11 A Went down the creek.

12 Q Or where --

13 A Towards 253.

14 Q Yeah, towards 253. Detective Weiner --
15 Investigator Weiner?

16 A Investigator.

17 Q Asked you to take him back to where the bandana
18 was?

19 A Yeah. That was over on Claxton Drive when we
20 answered that call for service.

21 Q That was after Claxton Drive?

22 A Yeah. This was after Deputy Fuller and Croc
23 got out. It was after that. We went over to Claxton
24 Drive area and checked that. Then Investigator Weiner
25 inquired on the bandana.

1 Q And you took him back to where the bandana was?

2 A Yes.

3 Q Then he collected the bandana?

4 A That's correct.

5 MR. JOHNSON: I have nothing further.

6 THE COURT: Mr. Fretwell?

7 MR. FRETWELL: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. FRETWELL:

10 Q I think Mr. Johnson asked you about blue versus
11 black bandana. Is this a light blue bandana or a dark
12 blue bandana?

13 A No, it's dark blue.

14 Q And was it wet or dry?

15 A It was wet.

16 Q So we're talking -- would it be fair to
17 classify the color as Navy blue?

18 A Or dark blue. It actually looked black to me
19 when it was wet.

20 Q I'm sorry.

21 A When it was wet.

22 Q All right. It's not wet today?

23 A No, it's not.

24 Q Okay. Uh, when you could see the police
25 vehicles around this edge of 253 and Agnew Road, first of

1 all, are you seeing the vehicles or seeing the lights on
2 the vehicle?

3 A Actually remember seeing the top of the
4 vehicle. Maybe the window up, the windshield up and the
5 lights.

6 Q Okay. Uh, you're down in the creek; is that
7 correct?

8 A Yes.

9 Q All right. Can you -- this map doesn't show it
10 but can you give the jury some idea of -- you know what I
11 mean when I say topography, like height and that kind of
12 thing. Can you tell them how, uh, -- sorry. Step around
13 here please.

14 A Sure.

15 Q Can you give us some idea of the elevation of
16 like let's say Blue Ridge Road and Agnew Road relative to
17 where you were in the creek?

18 A This right here is the pipe. We came down this
19 way. When we got out, it was actually -- the creek area
20 was downwards. When we got out, we actually walked up.
21 As I was walking up, I could see the blue lights on the
22 top of the vehicles, the perimeter units here on Agnew
23 and 253 here, West Blue Ridge Drive.

24 Q I guess what I'm asking is it slopes up pretty
25 steeply right here; isn't that correct?

1 A Yes.

2 Q So this is kind of down in here. This is up
3 higher.

4 A Yes.

5 Q Is that right?

6 A This area right here is a lot higher and this
7 slopes down.

8 Q This is a pretty thickly wooded area; is that
9 right?

10 A Very thick.

11 Q Okay. And just finally, I think Mr. Johnson
12 asked you about a pen that you found related to Deputy
13 Smeris. Are we talking about a pen that's like this or
14 are we talking about a pen that's like this?

15 A No, it's a pen like what you have in your right
16 hand.

17 Q Almost exactly like this?

18 A Yes.

19 MR. FRETWELL: All right. Thank you. No
20 other questions.

21 THE COURT: Mr. Johnson, anything else?

22 MR. JOHNSON: Just very quickly, Your Honor.

23 THE COURT: Sure.

24 RE CROSS-EXAMINATION

25 BY MR. JOHNSON:

1 Q When you were with -- when you were doing the
2 back track, the back search, were you guys actually
3 searching for items?

4 A Well, I was, uh, -- we were basically just
5 looking along the path that we had tracked.

6 Q So you had the dog doing what the dog does as
7 far as scents are concerned?

8 A Deputy Harris had his dog.

9 Q Then you guys are kicking up bushes and stuff.
10 Is that the best way?

11 A Yes. Looking around.

12 Q Okay. All right. Thank you.

13 MR. FRETWELL: Your Honor, just briefly in
14 respect to that.

15 THE COURT: Uh-huh.

16 REDIRECT EXAMINATION

17 BY MR. FRETWELL:

18 Q Did you go along the trail, did you go far
19 enough into the woods ---

20 A No.

21 Q --- to see if anybody thrown anything into the
22 woods?

23 A No.

24 Q Okay.

25 MR. FRETWELL: That's it, Judge.

1 THE COURT: Anything else, Mr. Johnson?

2 MR. JOHNSON: No, ma'am, Your Honor.

3 THE COURT: All right, sir. You can step
4 down.

5 THE WITNESS: Thank you.

6 THE COURT: All right. Ladies and Gentlemen,
7 let's take a break. It might be time for a good
8 break. Uh, let's take about a 10-minute break.

9 (WHEREUPON, the jury exits at approximately
10 4:03 p.m.)

11 THE COURT: Let's be in recess until 4:15.

12 MR. FRETWELL: Thank you, Judge.

13 MR. JOHNSON: Thank you, Your Honor.

14 (WHEREUPON, a short recess is taken.)

15 THE COURT: We ready to bring the jury back
16 in?

17 MR. FRETWELL: Yes, ma'am.

18 THE COURT: Mr. Johnson, you ready for the
19 jury?

20 MR. JOHNSON: Yes, ma'am, Your Honor.

21 THE COURT: All right.

22 (WHEREUPON, the jury enters at approximately
23 4:21 p.m.)

24 THE COURT: I'll tell you, Ladies and
25 Gentlemen, that these bailiffs have told me that

1 y'all are just such a nice and sweet, fun jury to
2 work with. Believe me, they don't always say that,
3 but they definitely have. I really do appreciate
4 it. It makes their job so much easier and makes it
5 a lot better. I certainly do appreciate it.

6 All right. Mr. Fretwell, you ready to proceed?

7 MR. FRETWELL: May it please the court, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. FRETWELL: The State calls Sergeant Chris
11 Cooper.

12 THE CLERK: Sir, if you will, place your left
13 hand on the Bible and raise your right hand.

14 CHRIS COOPER

15 having first been sworn, testifies as follows:

16 THE CLERK: Thank you. Please be seated.
17 Please state your full name for the record.

18 THE WITNESS: Christopher E. Cooper.

19 DIRECT EXAMINATION

20 BY MR. FRETWELL:

21 Q Sergeant Cooper, how long have you worked for
22 the Greenville County Sheriff's Office?

23 A About right at 27 years, sir.

24 Q And to what unit are you currently assigned?

25 A Currently, I'm assigned in Central

1 Investigations Division. I have armed robbery, domestic
2 violence and missing persons.

3 Q And what are your duties and responsibilities
4 as a sergeant over armed robbery and the other areas?

5 A To oversee the supervisors assigned to those
6 specific -- I'm sorry -- to oversee the investigators
7 assigned to those specific cases and make sure those
8 cases are investigated properly.

9 Q And have you supervised any other divisions in
10 the sheriff's office?

11 A Yes, sir. I have been a supervisor in the
12 uniform patrol division.

13 Q Okay. Let me take you to Wednesday, December
14 10th, 2008. What responsibilities did you have that day?

15 A Back then, I was a supervisor in uniform patrol
16 and Bravo platoon. On that particular day, I was a
17 westside supervisor.

18 Q And did you supervise a manhunt perimeter in
19 the area of Emile Street that day?

20 A Yes, I did.

21 Q Is that area within Greenville county?

22 A Yes, sir, it is.

23 Q Is it also within the west side?

24 A Yes, sir. We break the county up into
25 different areas. We had the westside supervisor,

1 southside and eastside as well as a platoon commander who
2 is a lieutenant and I was on the westside.

3 Q What information did you receive about the bank
4 robbery that was unfolded.

5 A That morning, the tones went off. As was
6 testified to earlier, the tones of -- dispatch sends out
7 an alert tone when it's a high priority call such as a
8 robbery. The tones went out. They broadcasted the
9 robbery at, I believe it was the Bank of Travelers Rest
10 on White Horse Road, which was right there near the Wal-
11 Mart on White Horse, West Marion, in that area. Just
12 down from -- just south of Saluda Dam. It's -- on a call
13 like that, they put out a description for the suspect and
14 as much information as they can as soon as they get it.
15 They was putting out information and I was responding to
16 the scene as a supervisor to oversee the investigation.

17 Q All right. And on the way to responding to
18 that scene, did you receive any kind of update?

19 A Yes, we were -- dispatch was updating the call.
20 They do it via the radio and also via MDTs. But they
21 were updating the call on the radio that a suspect, a
22 black male suspect had gotten into a white -- what's
23 described as a white minivan and there was an individual
24 following the suspect. They were giving out the
25 directions that this particular van was going. Kind of

1 like giving a play by play. As they were getting it,
2 they were relaying it to us.

3 Q Did you change the direction of where you were
4 headed based on that information?

5 A Yes. Based on that information, they put out
6 that, during this time, the van had actually pulled over.
7 There was reports that the individual that was following
8 the suspect had been shot. I recognized this as being
9 another crime scene that a supervisor would have to
10 respond to.

11 The area that I was responding from, I would
12 have had to -- driven right through this particular area.
13 I detoured and went to Emile Drive. You call it Emile.
14 I always called it Emile. It's spelled E-M-I-L-E. But,
15 uh, I went to Emile where the gunshot victim was and took
16 control of that scene.

17 Q And what information did you have about the
18 suspect himself as far as where he was?

19 A The information was boloed that he had, uh,
20 jumped out of the van and ran into the wooded area across
21 from the van, right off of Emile.

22 Q I'm going to stop you when you use a term that
23 I think may be --

24 A Boloed?

25 Q Yeah.

1 A BOLO, be on look out. BOLO..

2 Q So that comes from dispatch?

3 A Correct.

4 Q All right. Once you arrived at that area, were
5 you the first unit to arrive at that area?

6 A No.. I was the first supervisor. But there
7 were already -- when I got there, there were already K-9
8 units. There were, uh, -- there was an environmental
9 control deputy. I didn't -- I don't recall which one it
10 was. I do recall it was one of our environmental pickup
11 trucks that were attending to the victim, the gunshot
12 victim. And there were several other units there. I had
13 got there just within just a few minutes. I don't -- I
14 can't tell you exactly how long. But it was a short
15 enough time period that when I pulled up, I could see the
16 white van parked on the side of the road and the driver's
17 window was down. It appeared to me that the dye pack had
18 gone off inside the van because there was still a -- like
19 a red cloud coming from the van.

20 Q All right. As you were arriving, were other
21 units arriving from all over the county?

22 A Yes. At that point, with my responsibility
23 with knowing we've got the K-9s there, we've got a
24 suspect on foot, it was my job to set up a perimeter. I
25 got my map book out. I was familiar with the area to

1 start with having worked there since I was -- worked
2 there since I was in the west side for probably nine
3 continuous years as a uniform patrol deputy and was very
4 familiar with the area.

5 What I visualized in my mind as soon as I got
6 there was kind of like a football field. If I was
7 standing in one end zone the area to which the suspect
8 had run was towards the other end zone with West Marion
9 being one sideline and 253 being the other sideline. And
10 going up towards Agnew Road, Crane Avenue and West Parker
11 as being boundary markers basically is how I visualized
12 it. So that's where I started getting deputies put on
13 that perimeter.

14 Q In fact, by the time you arrived, were deputies
15 already starting to form a perimeter?

16 A Yes. We had -- we had -- there were probably
17 seven or eight westside deputies working that day that
18 were responding to the area. They already positioned
19 themselves. They were advising me on the radio where
20 they were located. I was making notes of it, mental
21 notes as well as visual notes with my map book. I was
22 placing deputies throughout the perimeter. I had -- it
23 just so happened, you know, it was one of those days
24 where everything seemed to fall together as far as a
25 supervisor is concerned. I had a multitude of deputies

1 to choose from. We had the dog team that was training
2 just a few miles away which was good for us. They were
3 responding and had already responded.

4 I had traffic units that -- uh, I was on the
5 phone with Sergeant Bolt who was over the traffic
6 division. I was on the phone with eastside supervisor.
7 Part of the east side borders -- it borders with the west
8 side. I had him send over a couple of eastside units. I
9 had property crimes investigators that were stationed at
10 northern area command which is located on old Buncombe
11 Road, right at Duncan Chapel Road that were responding.
12 So I had just a number of deputies that were responding
13 and were talking to me on the radio and that I was
14 placing on the perimeter.

15 Q As you were placing the individual units around
16 the perimeter, was the K-9 unit already, some of the K-9
17 units already in the woods?

18 A Yes.

19 Q Okay. What is involved in establishing a
20 perimeter?

21 A Well, you have to consider -- the first thing
22 is you want to consider the area that you are trying to
23 contain. That's basically what a perimeter is, what a
24 design for the perimeter units is to form a fence, so to
25 speak, to act as containments to keep a suspect immobile,

1 to keep him from breaking through the barrier. And what
2 the responsibility of those units are is to position
3 themselves where they are assigned, turn on all their
4 blue lights, their flashers and so forth.

5 Naturally, we are not using sirens while we're
6 on the perimeter. The deputies are trained to exit their
7 vehicles and stand beside their vehicles and maintain a
8 visual on the area in which they are contained in. Also,
9 in this situation, it was ideal, number one, because the
10 area we were containing was primarily a wooded area that
11 backed up to westside park. There were not a whole lot
12 of houses or neighborhood streets that we had to worry
13 about. It was pretty much just a rectangle, large
14 rectangle that we were containing. I had a lot of
15 deputies in place fast that were outside of their
16 vehicles with their lights on.

17 Q In addition to the terrain, as far as
18 consideration, what other considerations do you evaluate
19 when you set a perimeter?

20 A You evaluate the time of day and the weather
21 conditions. In this case, we might -- we did check -- I
22 did check on the possibility for the helicopter to, uh,
23 utilize as an air perimeter, just circling the area.
24 Just generally the perimeter and the number of streets
25 that you are trying to cover and the number of units that

1 you have available to you. All of that plays a part.

2 Q How important on the actual perimeter itself is
3 visibility from one unit to the next?

4 A That's what the perimeter is. You want to have
5 deputies in a position where they can see the next
6 deputy. You don't have to have a deputy that can see two
7 square blocks or a half a mile. You want the one deputy
8 to be positioned so that he can stand in his car and look
9 down the road on either side and see another deputy.

10 Just to form a chain basically, a visual chain of
11 deputies, basically just to create a contained area.

12 Q And the weather that day was?

13 A The weather that day was cold, raining and just
14 miserable. It was -- it would drizzle and then it would
15 rain hard and then it would stop raining. It was not a
16 fun-filled sunshine day.

17 Q What about communication? How was
18 communication accomplished throughout the perimeter?

19 A What happened here is we also had SWAT units
20 responding. We had the tracking team. They designate a
21 channel so that they can communicate with one another
22 without interruption. This channel was designated for
23 this particular radio traffic only. Any traffic that was
24 involved, this particular incident was the only traffic
25 that was being transmitted on the channel we were

1 operating on.

2 Q So everything else going on with the rest of
3 the county, they would have been on a different channel?

4 A That's correct.

5 Q Uh, you talked about how many units you had
6 available to send out on this perimeter.

7 A Yes, sir.

8 Q Can you give some ballpark idea of how many
9 officers you may have had out there?

10 A You know, I've tried to think about that. Just
11 probably a conservative number would be anywhere from 40
12 to 50.

13 Q And --

14 A And that's just perimeter units. That's not
15 the units that were there. We had units that had
16 designated to be with a SWAT team member to check any
17 type of calls that might have come in that were possible
18 sightings of this particular individual. We did not have
19 perimeter units breaking away. For instance, the
20 testimony earlier about a Claxton call -- a Claxton Drive
21 call. They had -- they were designated units that that's
22 what they were there for. The perimeter unit's sole
23 responsibility was to perform the containment activity
24 and so we had 40 or 50 of those units and other units
25 that were utilized in different capacities.

1 Q Let's talk specifically about -- I think you
2 touched on the duties of the perimeter personnel such as
3 being outside of the vehicle and blue lights. What other
4 duty would those perimeter personnel have?

5 A They would do well to communicate with one
6 another if they saw something suspicious to check anybody
7 that they spotted walking, trying to leave in a vehicle,
8 trying to come into the perimeter in a vehicle and to
9 broadcast that to the other units. Just -- we wouldn't
10 let anybody in or out unless they had been checked.
11 That's part of their responsibilities.

12 Q Okay. What about traffic on the roads such as
13 West Marion and Agnew Road? Would non-law enforcement
14 traffic be permitted on those roads?

15 A No, unless it was an extreme emergency-type
16 situation or if an individual, in some cases an elderly
17 individual, tried to get home or someone tried to go
18 check on, you know, some sort of special condition would
19 we have let anybody in. But I don't recall that
20 happening in this case.

21 Q If a person is seen by a perimeter unit, what
22 is the responsibility of that perimeter deputy?

23 A To notify myself or another supervisor and the
24 other units in the perimeter what they seen and where so
25 that, uh, it -- basically, when they make notification,

1 since it is a designated channel, if we've got some of
2 the roving units that are available, they are going to
3 respond to that location. The perimeter unit is not
4 going to have to leave his position to go check on that
5 sighting. He's going to continue to broadcast what he
6 sees until somebody is able to check it out.

7 Q Okay. Let me get you to step down, if you
8 will, Sergeant.

9 A Sure.

10 Q 16 has been in evidence. I want to show you
11 this map. I think your voice is plenty loud for the
12 Court Reporter to hear. Just make sure you keep your
13 voice up.

14 A Yes, sir.

15 Q Using this map, and I think you have the laser?

16 A Yes, sir.

17 Q Good. If you'll go ahead and talk about how
18 you set that specific perimeter up that particular day.

19 A All right.

20 Q You got to push the button.

21 A Yeah. Where I responded to was right here on
22 Emile Street. When I -- as I said, when I got there,
23 there were already K-9 units and several other deputies
24 that were on the street we had right here at Leone and
25 Emile or Emile. We had -- we were treating the victim.

1 There were several units that already gotten here.

2 From this point on, I just, as I said in my
3 mind, I visualized this area. This is an outline of West
4 Marion, 253 on up to West Parker. I had units on Agnew,
5 but I also placed units on beyond West Parker, up here on
6 West Parker where it comes in to 253. I had units on 253
7 beyond Agnew. I had units at most of the major
8 intersections and within sight distance of other units is
9 how I set up the perimeter.

10 Q Now, the first units that are on the scene, are
11 they the ones that are closest to the wooded area?

12 A Yes. The first units on the scene were -- as I
13 saw, the K-9 units were already headed into the woods.
14 There were units with them, I guess, discussing what they
15 were going to be doing. But on Emile Street itself or
16 Emile Street itself, there were probably five or six
17 units already there by the time I got there.

18 Q Then, as other units arrived, did you send them
19 out?

20 A As other units headed towards the area, I had
21 units coming from northern. I had units coming from this
22 east side over here. I had units coming from the
23 southern part of the county coming up with southern area
24 units. I directed them to spots. They didn't get close
25 to the scene. They were assigned spots as they were

1 converging on the area.

2 Q Were you able to set up the perimeter fairly
3 quickly?

4 A Yes, this perimeter was set up within, you
5 know, a few minutes. It was in the works. There was a
6 real tight smaller perimeter set up in a very short
7 period of time. Along with that, I had some buffer
8 perimeter units that were beyond where the original units
9 were set up.

10 Q Okay. During that time period the perimeter
11 was in effect -- you can take your seat back -- would you
12 have received, uh, and typically is this the case that
13 you received calls from area residents?

14 A Yes, sir. This was a perimeter that lasted
15 several hours. You know, uh, you know, we're talking
16 probably four hours or so at least that this perimeter
17 lasted, uh, without sitting down and figuring out the
18 times. It was also during midday. There were news
19 helicopters up. You've got 40 or 50 patrol cars parked
20 on these roads at different intervals with their blue
21 lights on and deputies standing beside their cars. Some
22 of them had their patrol rifles. Some of them had
23 shotguns -- that are on a vigilant watch basically.
24 You're going to get some calls. Everybody becomes a
25 little bit paranoid.

1 Q What is reverse 911? What is that?

2 A Reverse 911 is a system in place that we can,
3 uh, -- that communications can dial out versus having
4 people call 911. They can send out messages to
5 individuals that live within a certain area, certain zip
6 code, certain numbers that -- it's an automated message
7 about telling people to stay in and that type of thing or
8 what's going on. Trying to provide some information so
9 that we don't have 10,000 calls, everybody wanting to
10 know what's going on. It's a system that allows, uh, the
11 sheriff's office or law enforcement or emergency medical
12 services the opportunity to inform the public for any
13 questions they might have.

14 Q Would calls -- would calls that have been
15 generated by these reverse 911 calls call back into
16 dispatch?

17 A Yes.

18 Q And you actually maintained a place on the
19 perimeter for a period of time; is that correct?

20 A Correct. What I did was once I felt like I had
21 plenty of perimeter units in place and the scene, the
22 crime scene with the gunshot victim and all that was
23 being processed and everything was under control, which
24 was probably -- I was on a perimeter spot for an hour and
25 a half to two hours or more. Once I felt that I had

1 somebody that could take my spot, I began roving the
2 perimeter just to make sure that, that these deputies, if
3 they needed relief -- you know, you stand outside of your
4 car in the rain for a couple of hours. You may have to
5 have relief for a few minutes to go to the bathroom or go
6 get something to eat. We had units that were roving,
7 myself included, to provide that relief so that we
8 weren't leaving the perimeter with any holes in it.

9 Q Are these the kind of units that would check
10 these calls out that would come in?

11 A Yes, sir.

12 Q So the perimeter would stay in effect?

13 A Yes, sir. The perimeter unit's job is to
14 maintain the perimeter. That's the whole design.

15 Q During the course of the time that this
16 perimeter was in effect, did any of your perimeter units
17 or roving units or anyone come in contact with anybody on
18 foot?

19 A No, sir. We responded to a few calls from
20 concerned citizens that might have heard a dog bark
21 behind their house or thought they saw something that we
22 responded and had units check those particular calls out,
23 such as the Claxton Drive call. But, uh, we never did
24 encounter anybody.

25 Q Anybody -- anybody suspicious in a vehicle

1 trying to get in or leave the area?

2 A No, sir.

3 Q Uh, were you aware that the K-9s had tracked to
4 a specific area in the creek?

5 A Yes, sir.

6 Q Was the perimeter still in effect at that time?

7 A Yes, sir.

8 Q Do you recall when the K-9 units came out of
9 the creek and stopped their track?

10 A I don't recall specifically simply because it
11 was one of those situations where they had mustered or
12 they had gathered prior to where they ultimately came
13 out. It wasn't something that they broadcast as they
14 were doing it. It was an after-the-fact type thing where
15 I was notified that the dogs had exhausted the track. We
16 were going to maintain the perimeter for a while and see
17 what happened.

18 Q That was my question, whether or not the
19 perimeter was still in effect.

20 A The perimeter was -- certainly, the perimeter
21 was in effect. As I said, I don't know how long it was
22 that the dogs called the track off. But the perimeter
23 was in effect probably that afternoon until, I don't
24 know, some time -- 4:00, 4:30ish. Some time in there.

25 Q Okay. And once the perimeter is called off,

1. tell us what happened with those perimeter units.

2. A Well, it was -- that decision is made.

3. Although I was responsible for setting up the perimeter,
4. the responsibility for calling the perimeter is a pay
5. grade above mine. Lieutenant Griffin, uh, at some point,
6. made the declaration that the perimeter units could go
7. back in service. And he broadcasted that out to
8. everybody. What happens is a lot of the perimeter units
9. had been there all day. They haven't done a whole lot
10. except stand there at their vehicles.

11. What they're going to do basically is it
12. becomes an in-motion perimeter. The units will move.
13. But they are still looking. They are not just -- they
14. are turning their blue lights off and they are getting
15. back in their cars and they are pulling away, but the
16. majority of the deputies are basically roving in the area
17. where we had contained just because they had been
18. stationery for so long. A lot of times when a perimeter
19. is called and if a perimeter has been successful in
20. containing the individual we're looking to contain, then
21. when that individual sees the perimeter units are moving,
22. a lot of times, we'll get lucky and they'll move because
23. they think the perimeter is gone and nobody's looking for
24. them anymore. Then they'll move.

25. We capture people that way. That's what I

1 expected would happen on this particular case. That's
2 what most of the deputies hope will happen is that
3 they'll move and then they'll spot somebody who has been
4 laying low all day.

5 Q So calling off the perimeter can actually be a
6 tool that you are using to --

7 A Right. Calling off the perimeter is a -- is a
8 -- I mean, it's helpful if the K-9s haven't tracked to
9 and located the suspect or if some of the other ground
10 units that have checked out some of these calls for
11 suspicious individuals or suspicious noises. If they
12 haven't located anybody, a lot of times when a perimeter
13 is called within just a few minutes, a lot of times,
14 we'll get movement. We'll get other calls. Sometimes we
15 get lucky and catch people.

16 Q From the time that you arrived and set that
17 perimeter up until the time that the perimeter was
18 dismissed, did any perimeter units encounter anyone going
19 in or coming out of the search area on foot that day
20 other than law enforcement?

21 A No, sir.

22 Q What -- and what happened shortly after the
23 perimeter was called off?

24 A Shortly after the perimeter was called, we got
25 a call from Crane Avenue about dogs barking in the woods.

1 I think a dog that doesn't normally bark was behaving in
2 a manner that it didn't normally. We had units
3 dispatched to that area to Crane Avenue which is just
4 beyond Agnew Road. If you are going up 253 towards,
5 let's say Cherrydale from White Horse Road, I don't know
6 if everybody is familiar with this area. Crane Avenue
7 was a short distance beyond where the, uh, tight
8 perimeter had been set. We had a call in the wooded area
9 right behind that. It was in an area that was between
10 Agnew and Crane. We had units going over there to check
11 that out.

12 Q Now, did you -- were you notified by anybody
13 that the unit was out on that street?

14 A Just by radio traffic. It was -- I heard one
15 of the investigators that was over there. It was
16 Investigator Weiner. It was shortly after the call went
17 out. I had two uniform deputies responding over there as
18 well. I didn't -- I don't think Investigator Weiner was
19 actually dispatched. But at that time, he was an armed
20 robbery investigator. He was a SWAT team member.. He was
21 still in the area. He had been checking out some of
22 these suspicious calls. So he was close by. He went to
23 that area as well. He broadcasted that he saw the
24 suspect running.

25 Q Okay. And did you arrive at the area of 20

1 Crane Avenue some time after that?

2 A I did, sir.

3 Q What did you observe as you arrived in that
4 area?

5 A Uh, excuse me, I observed in between two houses
6 -- I don't recall the exact numbers -- but there was a
7 fence line between two houses. I observed a black male
8 suspect -- of course, radio traffic had been broadcasted
9 that Investigator Weiner had actually -- uh, there had
10 been shots fired and that the suspect was down. I
11 observed the suspect handcuffed in custody lying on the
12 fence line between these two houses.

13 Q What was his condition?

14 A He, uh, was -- his condition as far as physical
15 condition, he just looked exhausted to me. He was
16 soaking wet. When I say soaked, we had been out all day
17 standing the perimeter. I had deputies that had been out
18 all day standing the perimeter that were wet. This guy
19 was soaked to the bone. He just looked totally
20 exhausted. He looked dirty. My first thought was he
21 looks as glad that this is over as we are. That was my
22 first thought...

23 Q Did emergency services arrive?

24 A Yes. This individual, it was determined he had
25 been shot a couple of times. EMS was there. Deputy

1 Duncan had handcuffed this individual. EMS responded to
2 treat him. My response there was just to make sure this
3 scene was protected as well and that the deputies were,
4 all the deputies involved were okay. Uh, I assisted
5 Deputy Duncan and EMS in handcuffing the subject to the
6 backboard so that he could be transported to the
7 hospital. And I, uh, asked Deputy Duncan to ride in the
8 ambulance to the hospital with the suspect from that
9 scene. And the two deputies that were my deputies under
10 my command, Deputy Carlisle and Deputy Whitten, I had
11 advised them just to hang around.

12 Naturally -- I'm a former OPS investigator.
13 OPS is our Office of Professional Standards or otherwise
14 known as IA, Internal Affairs. Any time there's an
15 officer-involved shooting, I know that OPS is going to
16 respond. With that knowledge, I just advised them to
17 hang around and make themselves available for our
18 Internal Affairs people.

19 Q When you were assisting EMS and, you said,
20 Deputy Duncan with the suspect, could you tell that he
21 had been shot?

22 A Uh, I could tell there was some blood on his
23 clothing. I couldn't tell where he had been shot at. I
24 didn't ask him. I did ask if he was okay. From what I
25 recall, there wasn't much of a conversation. He was too

1 tired to talk, too tired to speak. I could tell that
2 there was some blood. It was just clothes. I couldn't
3 really tell where he was hit.

4 Q You know whether or not he had blood on his
5 hands or any other part of his body?

6 A I do not. I saw some on the pants that he was
7 wearing, but I don't recall seeing any blood anywhere
8 else.

9 Q What was your focus at that point?

10 A My focus was the deputies make sure everybody
11 was okay and make sure he was secured and ready for
12 transport because naturally, this was a dangerous
13 situation.

14 Q Did you direct any deputies to ride with the
15 ambulance to the hospital?

16 A Yes, I directed Deputy Duncan to.

17 Q All right. Please answer any questions the
18 defense may have of you. Thank you.

19 A Yes, sir.

20 THE COURT: Mr. Johnson.

21 MR. JOHNSON: Thank you, Your Honor. One
22 second please.

23 THE COURT: Sure.

24 CROSS-EXAMINATION

25 BY MR. JOHNSON:

1 Q Could you step down for me?

2 A Yes, sir.

3 Q Now, show us again where your perimeter was set
4 up. Where was the end zone and the other end zone?

5 A I considered Emile to be one end zone.

6 Q Okay.

7 A I personally considered West Parker Road to be
8 the other end zone. I was using Agnew Road and Crane
9 Avenue which turned off of 253 as basically, if you
10 continued the football terminology that I started off
11 with, I would say Agnew was probably the opposing 40 just
12 past midfield.

13 Q Did you have anybody in position in between,
14 say for instance, the K-9 handlers?

15 A I didn't have anybody in position in the woods.
16 I had position -- I had them in position on the boundary
17 lines in between here.

18 Q Maybe a better analogy is a goal line.

19 A I didn't consider Agnew as the goal line. I
20 considered that as midfield.

21 Q Was somebody there?

22 A I had people on midfield, yes. But I also had
23 safeties behind them.

24 Q Understood. That was your corner.

25 A Yes, that was my line backer.

1 Q Your line backer..

2 A Yes.

3 Q So you had somebody right there and you had
4 somebody right there; is that correct?

5 A Yes, sir. I had people lining the sidelines on
6 either side of West Marion Road and also 253 which is
7 West Blue Ridge.

8 Q More or less, you had some unit around this
9 area and then some safeties back there?

10 A Yes, sir. The initial perimeter, the initial
11 perimeter that I wanted to get established was this area
12 from Emile, this box area from Emile down 253 to Agnew
13 back over to West Marion and back down.

14 Q Okay. Now, you mentioned earlier Westside
15 Park. Where is that?

16 A Westside Park falls right in here inside the
17 perimeter.

18 Q What's included? This part, is that included
19 as well?

20 A I'm not sure which property the park consists
21 of. I know the maintained areas where the playgrounds
22 and so forth is right in here and right over here.
23 There's another ballfield. There's some wooded area that
24 has a road that cuts in between it so I think their
25 maintenance people or the park personnel can travel from

1 one area to the other without having to get back on the
2 roadways, uh, through my years of patrol and working on
3 that area, I know we catch people walking on those roads
4 late at night and so forth. It's little cut-through dirt
5 roads that aren't maintained by the county, just roads
6 that were cut for the park personnel.

7 Q Okay. Now, I want to talk -- you mentioned
8 earlier that you got several calls maybe from some other
9 places outside of the perimeter?

10 A Yes, sir.

11 Q One of those areas were, you said Claxton
12 Drive?

13 A Yes, sir. I don't specifically recall Claxton,
14 the Claxton call. The one that sticks out in my mind was
15 Penarth Avenue. Penarth is somewhere in here. I'm not
16 particularly sure. I just remember it being Penarth.

17 Q I hate to ask you. Can you spell Penarth?

18 A P-E-N-A-R-T-H, I believe.

19 Q Okay.

20 A I know there were several calls where several
21 deputies investigated, uh, what individuals thought were
22 funny noises or dog barking or that type of thing. I
23 don't recall there being any specific sightings that were
24 investigated until, I think, towards the end of the
25 perimeter or right after the perimeter was called.

1 Q Do you know what -- do you remember what time
2 the perimeter was called?

3 A I don't remember specifically, sir. But I know
4 it was some time -- somewhere between 4:00, 4:30,
5 somewhere in that time period. I know that the -- the
6 reason I know that is that at that particular time, you
7 have what's called an Echo Platoon, which is a support
8 platoon.

9 They work the peak hours. At that time, they
10 were working 4:00 p.m. until 4:00 a.m. is when their
11 shift works. There were already Echo shifts on the road
12 patrolling. I know it was after 4:00, but it wasn't very
13 long after 4:00. The other supervisors that were
14 working, they would head into the office to start
15 paperwork around 5:00 if you worked the day shift. The
16 supervisors hadn't started going in yet. It was some
17 time between 4:00 and 5:00. I guessing some time close
18 to 4:30.

19 Q Okay. Now, uh, going back to other calls,
20 wasn't there one somewhere around Devay Circle? Do you
21 recall that?

22 A I don't recall, but it is entirely possible,
23 yes, sir.

24 Q What about -- do you recall maybe a lead they
25 followed on Highland Avenue?

1 A No, sir.

2 Q You don't recall that? Okay. Uh, now, --

3 A One of the other reasons I remember Penarth was
4 because at the time it was put out, I was right on top of
5 it. It was somewhere around Claxton, back in this
6 particular area. It's a neighborhood street. It's not
7 one of the main cut-throughs. It's a neighborhood
8 street. As I recall, it is right in here some where. I
9 would say between here and Claxton. I remember it
10 because I had just turned on the north or just turned off
11 of it from one or the other. I remember that particular
12 call. I hadn't seen anything.

13 Q You stated earlier that you remember around the
14 time when, uh, K-9 units came out around that area; is
15 that right?

16 A I don't remember the exact time.

17 Q But you remember --

18 A I remember ultimately them saying they have
19 exhausted the track, yes, sir.

20 Q Now, if -- you gave the orders to put people in
21 the various places on the perimeter, right?

22 A Yes, sir.

23 Q Now, who would make the orders, say for
24 instance, to concentrate on a certain section? Say for
25 instance, if K-9 said track to this area, who would make

1 the determination to, say for instance, put a perimeter
2 or do a -- concentrate manpower around that area?

3 A Well, if the area that they are concentrating
4 on is within the perimeter, then it's going to be
5 whatever -- if it was a K-9, for instance, it would be
6 the K-9 supervisor.

7 Q Uh-huh.

8 A He would utilize his personnel or any of the
9 SWAT personnel that was available. He wouldn't utilize
10 any of the perimeter units because the perimeter units
11 are in place.

12 Q So that's not something you guys can
13 coordinate?

14 A Sure. But if -- he's not going to coordinate
15 it with me because I'm over the perimeter. He knows he's
16 not going to use any perimeter units to draw off of the
17 perimeter to go search a particular area. He's going to
18 utilize maybe some SWAT personnel or somebody over roving
19 units.

20 Q Now, do you know who the K-9 director was at
21 this point?

22 A My understanding is it was Sergeant Mike
23 Kellett.

24 Q Mike Kellett. Now, would he get word that, say
25 for instance, the perimeter is being dispersed?

1 A Uh, --

2 Q Before it happened or would he be able to hear
3 it on the radio?

4 A He would be able to hear it on the radio. I'm
5 also sure that probably prior to it being broadcasted, as
6 I said, as a supervisor, I was in contact with other
7 supervisors on the scene to include Sergeant Kellett,
8 Lieutenant Griffin, Sergeant Smith, who was over some of
9 the property crimes units that were being utilized.
10 Sergeant Bolt who was over -- I was in communication with
11 them. He could have been advised of the perimeter
12 breaking up either by telephone ahead of time, but it
13 would also be broadcasted over the radio.

14 Q Now, uh, this is Crane Avenue here?

15 A Yes, sir.

16 Q Now, at what point did you arrive at Crane
17 Avenue? You remember what time it was?

18 A It was after the perimeter had been broken. I
19 don't recall. It was probably, I'm guessing, between
20 4:30 and 5:00, maybe.

21 Q All right. But you don't know what time it
22 was?

23 A I don't know exactly.

24 Q At this point, I think we're through with the
25 map. I appreciate it. Now, you stated that when you got

1 to Crane Avenue, you saw my client being handcuffed?

2 A He was in handcuffs when I got there, yes, sir.

3 Q And you stated that he was shot?

4 A Yes, sir.

5 Q You know how many times he was shot?

6 A No, sir. I didn't at the time I first arrived.
7 After I had been there for a few minutes and spoken with
8 the Investigators, Investigator Weiner told me that he
9 had fired at him three times.

10 Q Okay. Would you believe me if I told you he
11 was shot three times?

12 A Yes, sir. If you tell me that.

13 Q All right. Now, one of the things you did was
14 you assisted EMS in loading him onto the stretcher?

15 A I handcuffed him. I didn't assist in the
16 actual loading. But when they had to load him, we had to
17 unhandcuff him in order to get him on his back. He was
18 handcuffed behind his back. We didn't want him on the
19 backboard with his hands cuffed behind his back. So I
20 assisted him. Actually unhandcuffed him and maintained
21 him while he was put on the backboard, then I actually
22 handcuffed, I think it was, his right arm to the
23 backboard. He had a cuff on his arm and I cuffed it to
24 the backboard.

25 Q So he was cuffed in front is what you're saying

1 or was he cuffed in back?

2 A He was originally cuffed in back. He was lying
3 faced down when I got there or kind of on his side faced
4 down and his hands were cuffed behind him. When EMS was
5 there to treat him and do what they needed to do, when
6 they go to transport, they were going to place him on a
7 backboard prior to transport. He was unhandcuffed at
8 that point, rolled over and placed on his back onto the
9 backboard. I handcuffed his right hand to a groove in
10 the backboard. The backboard has handles. So one of the
11 cuffs went through the handles. He was handcuffed to the
12 backboard itself.

13 Q Now, you say he was laying face down. Was he
14 lying on the ground or was there like a -- was he lying
15 on like a mat?

16 A He was lying on the ground. He was real close
17 to a fence as if he -- I was later told that he had
18 jumped over the fence from one side to the other. Where
19 he was laying was the area that he was running to prior
20 to him being shot and laying on the ground. He was
21 laying with his feet away from Crane Avenue and his head
22 towards Crane Avenue.

23 Q In any case, you unhooked the cuff in the back?

24 A I didn't unhook him. Bobby Duncan, I believe,
25 unhooked him. I just maintained control of an arm and

1 then rehandcuffed him to the backboard.

2 Q That was the left arm?

3 A No, sir.

4 Q You didn't secure his left arm to the
5 backboard?

6 A If I recall correctly, it was his right arm.

7 Q Okay. You did a report on this, right?

8 A Yes.

9 Q Do you have a copy of that with you?

10 A I do not.

11 Q Okay. Let me see. I've highlighted some. See
12 if you recognize it.

13 A It could well be his left arm. The area --
14 where he was laying with his face facing Crane Avenue
15 when they rolled him over on his back, his left arm would
16 have been on my side. So it very possibly was his left
17 arm.

18 Q Okay. We're just trying to be specific.

19 A Okay.

20 Q So you secured his left arm to the backboard?

21 A Yes, sir.

22 Q Then you also directed Deputy Duncan who had
23 handcuffed him initially?

24 A Yes, sir.

25 Q And you told him to ride with him in the

1 ambulance?

2 A That's correct.

3 Q Okay. One second please. (Pause.)

4 Now, one of the things that you do with the
5 perimeter is you stated that is you direct them to
6 maintain a visual?

7 A That is correct.

8 Q And when you say maintain visual. You mean,
9 say for instance, if this is the area you are searching,
10 you want them to make sure you don't take your eyes off
11 this way?

12 A That's correct.

13 Q So that if someone was to pop out, you would
14 see them?

15 A Well, unless they hear a noise or something.

16 Q Hear a noise. You can look and say that noise
17 is over there, right?

18 A Correct.

19 Q All right. Now --

20 A Or behind them.

21 Q Or behind them.

22 A If I got deputies on a perimeter and they hear
23 a noise behind them, I fully expect them to look behind
24 them to investigate what the noise is. They are directed
25 to maintain a visual direction of the area that they are

1 containing. That doesn't mean that 100 percent of the
2 time that they are going to be focused in this particular
3 area.

4 Q Okay.

5 A They are scanning. They are looking. They are
6 making sure they can maintain contact with other
7 deputies. They are looking to see if the area between
8 them and another deputy -- someone might walk in or walk
9 out or a car or anything might come in that area. So
10 while their focus is towards the containment area, it's
11 also they've got to have some peripheral.

12 Q At a designated perimeter point, did you have
13 one deputy, two deputies, three deputies?

14 A It depended on how they were traveling. If I
15 had units that were assigned that day as double units,
16 then I had two deputies there. If it was an individual,
17 if it was a deputy that was an individual solo unit and
18 there was not a cause to have another deputy there, then
19 he was a solo unit there. So it was a mix.

20 Q So it was a mix between one deputy units and
21 two deputy units?

22 A Correct. Correct.

23 Q Now, when you closed the perimeter down,
24 obviously they are getting in their car and they are
25 leaving wherever they were posted; is that right?

1 A That's correct.

2 Q Like you stated, you want to see what's there
3 and also you want to see what's over here too, right?

4 A I would assume so, yes. Deputies are curious
5 by nature..

6 Q Finally, uh, do you remember -- you stated
7 earlier that you tried to secure a helicopter. Were you
8 able to do that?

9 A I don't think the helicopter was able to fly
10 that day. I don't recall if it was for the weather or if
11 it was for maintenance issues. But, uh, we -- I don't
12 recall exactly what it was.

13 Q Now, finally, there were two shootings. The
14 first one was at Emile?

15 A And Leone.

16 Q And Leone?

17 A Yes, sir.

18 Q And when you arrived there, you stated that you
19 came up to the getaway van, which was later identified as
20 the getaway van?

21 A Yes, sir. I never actually made it -- from the
22 area that I came in, I never actually made it in my
23 vehicle to where the van was parked. I stopped on the
24 side of the road several yards away from it. I had a
25 clear visual of the vehicle. It was -- we were facing

1 opposite directions. The car on the side of the road
2 pulled over in the grassy area. I was on Emile facing
3 the direction that it was traveling from.

4 Q And from your vantage point, you could still
5 see a cloud of red smoke in the van?

6 A Yes, sir.

7 MR. JOHNSON: Okay. I have nothing further
8 for this witness, Your Honor.

9 THE COURT: Mr. Fretwell? Nothing?

10 MR. FRETWELL: Nothing.

11 THE COURT: All right. Sir, you can step
12 down.

13 THE WITNESS: Thank you.

14 THE COURT: Will the attorneys approach for
15 just a moment?

16 (WHEREUPON, a bench conference is held.)

17 THE COURT: Ladies and Gentlemen, just to
18 give you a little bit of a road map, we're going to
19 do one more short witness. Then we will break for
20 the day.

21 MR. FRETWELL: May it please the court?

22 THE COURT: Yes, sir.

23 MR. FRETWELL: The State calls Shawn
24 Muserallo.

25 THE CLERK: Sir, please come forward. Please

1 pause at the end of the bench. Place your left hand
2 on the Bible and raise your right hand. Yes, sir.
3 Left on the Bible.

4 SHAWN MUSERALLO

5 having first been sworn, testifies as follows:

6 THE CLERK: Thank you. Please be seated.

7 Please state your full name for the record.

8 THE WITNESS: Shawn Michael Muserallo.

9 DIRECT EXAMINATION

10 BY MR. FRETWELL:

11 Q Good afternoon, Mr. Muserallo.

12 A Good afternoon.

13 Q By whom are you employed?

14 A WYFF News 4.

15 Q What does your job entail?

16 A News reporter.

17 Q Okay. Let me take you to Wednesday, December
18 10th, 2008. Were you working that day?

19 A Yes, I was.

20 Q What were you doing specifically that day?

21 A I assigned to report on a bank robbery.

22 Q Okay. Were you in the area of the Emile, Leone
23 Street, Agnew Road, 253?

24 A Yes. My job on the story was to cover the
25 search for the suspect in the case and the effect it had

1 on the neighborhood. So I was in that area.

2 Q You recall what time you started your shift
3 that day?

4 A You know, it was around 4:30ish, 5:00
5 o'clockish, 4:30ish.

6 Q Okay. Uh, approximately what time did you
7 arrive, do you know, to the area of the manhunt?

8 A The best I recall it was around that time,
9 around 3:45 or 4:00 o'clock. It was all in that
10 afternoon.

11 Q So the 3:45, 4:00 o'clock time period?

12 A Correct. Yes.

13 Q All right. At some point after arriving in the
14 search area, were you on -- and I mean driving down --
15 Agnew Road?

16 A Yes, sir. I was. It was a long street, yeah.

17 Q All right. Uh, and what were you basically
18 doing in that area, just generally?

19 A We heard that there was a search for a suspect
20 in that area. There was a lot of neighborhoods around
21 that area. My photographer and I were driving in our
22 news vehicle. We were looking to see if anyone was out
23 or we could talk to somebody or get video of the search
24 process itself. So we were headed down Agnew Road headed
25 towards West Blue Ridge Drive.

1 Q And when you were traveling down that road,
2 were there any stations or patrol cars on that road?

3 A No, not at that point.

4 Q Okay. You were headed towards Highway 253?

5 A Correct.

6 Q If you don't mind, if you can step down, I've
7 got a map here. There's a laser pointer right there.
8 You mind just telling the Ladies and Gentlemen of the
9 jury where you were traveling on Agnew Road and what
10 happened as you traveled down there?

11 A At this point, my photographer and I was riding
12 around here on Agnew Road. We were coming down cause we
13 knew Highway 253 was right here. It's a major road. So
14 we were coming down Agnew. Then right here where this
15 blue line is, there's a creek. It's a long road. It
16 kind of dips down. There's a creek there. When we drove
17 up to it, a man popped up out of the creek.

18 As you imagine, we were surprised. I looked
19 out and saw this other guy who had just popped out of the
20 creek look at me. It didn't last very long. We left
21 from there and we drove on. We came up to West Blue
22 Ridge Road. But, uh, basically made contact with someone
23 right there, visual contact with someone right there and
24 kept going.

25 Q So you are on, of course, the right side of the

1 road?

2 A Yes.

3 Q Is that the side of the road that the man
4 popped up?

5 A Yes. Right around this area right here.

6 Q Okay.

7 A The creek comes up to the road. The road
8 actually passes over the creek. When he came up, he was
9 right on the side of the road very close to where I was
10 in the pass -- I was in the passenger seat of the car.
11 So he would have been right over there a few feet away
12 from me.

13 Q So you saw him there?

14 A Yes.

15 Q Is it true that you actually stopped the camera
16 truck or whatever it is?

17 A The news vehicle? It was one of those things
18 that just happened. We went not very far forward. I
19 remember looking at my photographer and asking did that
20 just happen. We both turned around. We saw the man come
21 out over the road and continue on this way. He basically
22 stood there, looked at us. We looked at him. We kept
23 going turn back around and said did that just happen.
24 Then he went over across the road right over there. He
25 ended up running across the road.

1 Q The first time you saw him, about how far were
2 you from him?

3 A Closer than you and I.

4 Q Can you describe him?

5 A Yeah. He was an African-American man. He had
6 on a dark-colored shirt and pants. He was wet. I
7 remember thinking he was wet from here down, chest down.
8 I remember he just looked really tired to me. Looked
9 really exasperated.

10 Q You remember what kind of pants he was wearing?

11 A It was just jeans. I recall jeans. It was so
12 hard because everything was so wet. There was some mud
13 on him too. Everything looked like dark-colored clothing
14 at that point.

15 Q What was the weather like that day?

16 A It was cold, drizzly, that kind of day.

17 Q Do you remember if you made eye contact with
18 the individual?

19 A Yes, I did.

20 Q Okay. And, uh, initially -- how about when you
21 pulled up a little bit further.

22 A At that point, he looked like a figure running
23 across the street.

24 Q Okay.

25 A My closest contact is when we were side by

1 side.

2 Q Did you report what you had seen?

3 A Yes.

4 Q Do you recall to whom you reported?

5 A I called the Sheriff's Office to let them know
6 that, hey, I know you guys are looking for somebody in
7 this area. Somebody just popped up on the side of the
8 road. I wanted to let them know immediately.

9 Q Do you know whether you would have called
10 dispatch? Did you have a contact that you would call
11 within the sheriff's office that you would call as a
12 member of the media?

13 A I would have probably called the PIO, Public
14 Information Officer. It's someone that the news media
15 handles calls with. I think at that point I would have
16 been -- it was one of those things that just happened. I
17 was so startled that I called her at the time. I believe
18 I just told her what I had seen. She relayed everything.

19 Q Do you recall who was the PIO at that time?

20 A Melissa McKenny.

21 Q And what happened after that?

22 A Uh, well, after that happened -- even before --
23 as I was talking to, uh, Melissa, we just kept going. I
24 said it's best now that this happened just to get out of
25 the way. Get out of the way. There's a church over here

1 on West Blue Ridge with a big parking lot. We just kind
2 of hung out over there until we thought everything was
3 okay.

4 Q Did something occur that made you move
5 somewhere else?

6 A We listened to the police scanner. We heard on
7 police scanner traffic that they apprehended the suspect
8 not too far -- they apprehended the suspect not too far
9 from where we were sitting. We actually got in our car
10 and came down Crane Avenue and actually parked and saw
11 deputies taking in who they believed was the suspect.

12 Q Okay. And you went to Crane?

13 A Yes.

14 Q And, uh, what did you do once you arrived and
15 saw police taking an individual into custody?

16 A So to capture the news, the photographer
17 actually shot video of it. I was standing beside him.

18 Q Were you in a position to observe the
19 individual?

20 A Yes, through his camera.

21 Q And were you able to identify him in any way?

22 A Yes. I specifically remember asking him would
23 you zoom in close enough to where I can see if that's the
24 guy we just saw. I remember at that moment saying that
25 was the guy we just saw.

1 Q You recall what it was about the man on the
2 stretcher that you were able to recognize?

3 A His face.

4 Q Okay. And approximately -- again, you are
5 referring to the individual you had seen coming out of
6 the creek?

7 A Correct.

8 Q Approximately how much time passed from the
9 time you saw the African-American male emerge from the
10 creek from the time that you saw him in police custody
11 would you say?

12 A 5, 10, 15 minutes. Not very long. I remember
13 it being a short period of time.

14 Q Do you recognize the individual you saw emerge
15 from the woods being carried away on the stretcher as
16 being in court today?

17 A Yes.

18 Q And could you identify him for us?

19 A Yes. He's over there.

20 Q Could you tell us what color shirt he is
21 wearing?

22 A White shirt.

23 Q Okay.

24 A Uh, sorry. The gentleman sitting in the white
25 shirt --

1 MR. FRETWELL: Your Honor, may the record
2 reflect the witness has identified the defendant?

3 THE COURT: So reflected.

4 MR. FRETWELL: All right. Your Honor, at
5 this time, I have no further questions.

6 THE COURT: All right.

7 MR. FRETWELL: Please answer any questions
8 that Mr. Johnson may have of you. Thank you, sir.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q Now, Shawn, when you saw -- you said you saw my
12 client on the side of the road. Did he pull a gun at
13 you?

14 A No, sir.

15 Q Did he make any sort of threatening gestures
16 towards you?

17 A No, sir.

18 Q Now, was he wearing a -- did he have on a black
19 hoodie or sweatshirt or anything of that nature?

20 A Not that I recall, no.

21 Q Did he have on a ball cap or anything like
22 that?

23 A No. It was just his shaved head.

24 MR. JOHNSON: I have nothing further of this
25 witness:

1 THE COURT: All right. Mr. Fretwell,
2 anything else?

3 MR. FRETWELL: I don't believe so.

4 THE COURT: All right, sir. You can step
5 down.

6 THE WITNESS: Thank you.

7 MR. FRETWELL: May this witness be excused?

8 THE COURT: Any objection?

9 MR. JOHNSON: No.

10 THE COURT: Thank you, sir, for being here.

11 Ladies and Gentlemen, we actually were pretty
12 quick about that witness, a little quicker than I
13 anticipated. If you'll indulge me, let's try if
14 you've got another witness to call.

15 MR. FRETWELL: We do.

16 THE COURT: All right.

17 MR. FRETWELL: The State would call
18 Investigator Mike Fortner.

19 THE CLERK: Sir, please place your left hand
20 on the Bible and raise your right hand.

21 MIKE FORTNER

22 having first been sworn, testifies as follows:

23 THE CLERK: Thank you. Please be seated.

24 Please state your full name for the record.

25 THE WITNESS: Michael E. Fortner.

1 DIRECT EXAMINATION

2 BY MR. FRETWELL:

3 Q Investigator Fortner, how long have you worked
4 for the Greenville County Sheriff's Office?

5 A A little over 18 years now.

6 Q Okay. To what unit are you currently assigned?

7 A Currently, I'm assigned to the Armed Robbery
8 Unit.

9 Q Were you working on December 10th, 2008?

10 A Yes, I was.

11 Q What were you doing that day?

12 A Myself and Investigator Weiner, who was also in
13 robbery at the time, it's actually Sergeant Weiner now,
14 uh, we were out following up on some of our cases that we
15 had assigned to us. It was about noon. So we decided to
16 stop at Taco Bell right there at the intersection of West
17 Blue Ridge Drive, Highway 253 and White Horse Road. We
18 were going to stop at Taco Bell and get something to eat.19 Q Were you guys in two different cars or one
20 vehicle?21 A We were riding together like a double car, I
22 guess you can say.

23 Q That was in Sergeant Weiner's car?

24 A Yes, that's correct.

25 Q What happened as you pulled into the Taco Bell?

1 A We pulled into the Taco Bell. We got ready to
2 park. About that time, the alert tones went out.
3 Dispatch gave out a bank robbery that had just occurred.
4 They gave out the address, Bank of Travelers Rest, and
5 immediately Sergeant Weiner and I knew where that bank
6 was at. We could actually look down the road from where
7 we were at and see the bank.

8 Q And what information was being transmitted by
9 dispatch with respect to the bank robbery?

10 A Well, we pulled out of the Taco Bell. We
11 started heading up towards White Horse Road. Dispatch
12 then later gave out a description of a white van, uh,
13 having pulled away from there. From the information that
14 dispatch was giving us because they were kind of giving
15 us driving directions to where this van was going, it was
16 apparent to us that someone was actually following the
17 van. So Sergeant Weiner activated the blue lights and
18 siren. We responded to the area of West Marion Road. We
19 were told that they went down Emile Drive. We then went
20 down Emile Drive as well trying to catch up with the van.

21 Q You say that Investigator Weiner had activated
22 the sirens at this point?

23 A Yes, sir.

24 Q With the blue lights going?

25 A That's correct, yes, sir.

1 Q Was he moving fairly quickly?

2 A Yes. We were traveling more over the speed
3 limit for sure, yes, sir.

4 Q And I don't know if I caught this. At that
5 point, had you learned that there may have been a gunshot
6 victim on Emile?

7 A As we were turning on to Emile at just about
8 that time, information came out that there was actually a
9 gunshot victim on Emile Drive and, uh, I think, Leone
10 Avenue.

11 Q And what did you observe as you pulled onto
12 Emile Street?

13 A As we were coming down Emile Street, the white
14 van was sitting there on the right hand side of the road.
15 It was parked kind of diagonally like somebody was
16 driving and just abruptly turned the wheel hard to the
17 right half on and half off the road. We pulled up to the
18 van. Investigator Weiner let me out of the car at that
19 time so I could clear the van and make sure there was
20 nobody inside the van at that time. While I was doing
21 that, Investigator Weiner went up to the intersection of
22 Leone Avenue and Emile Drive to attend to the gunshot
23 victim.

24 Q Okay. And so did you clear the van?

25 A I cleared the van, yes, sir.

1 Q How did you do that?

2 A Uh, kind of peeked through the windows real
3 quick to make sure nobody was inside of it. Went around
4 to the front of it and peeked in through the windows to
5 make sure nobody was laying down on the floor of the van
6 or anywhere underneath the seats or anything like that.

7 Q Did you have your weapon drawn at that time?

8 A Yes, I did.

9 Q Okay. So you are looking for somebody actually
10 in the van?

11 A That's correct. Just wanted to make sure
12 nobody else was in the van.

13 Q You recall observing anything about the inside
14 of the van?

15 A When I looked inside the van, I could see money
16 laid out across the back seat kind of behind where the
17 driver's front seat and the driver's -- passenger's seat
18 or front passenger seats at. There was money laying down
19 across the floor of the van.

20 Q So the floor or the seat?

21 A Actually down on the floor. There was some on
22 the seat too. It was just kind of laid out across the
23 back area there.

24 Q Okay. Then what did you do once you had
25 cleared the van?

1 A Once I cleared the van, it was obvious there
2 was nobody in it at that time. Investigator Weiner had
3 called down to me. We're pretty close to each other at
4 this time. He called down to me to let me know that he
5 was, in fact, out with this gunshot victim. I then left
6 the van, walked up to where he was at and assisted him
7 with what I could at that time while Investigator Weiner
8 was attending to the gunshot victim.

9 Q What did you observe as you got up to
10 Investigator Weiner's location?

11 A When I got up there, Investigator Weiner was on
12 the ground with the victim. He had taken the victim's --
13 I think he was wearing a coat and actually taken the coat
14 and applied it to the side of his neck where he had been
15 shot at. Was trying to compress the bleeding, stop the
16 bleeding best he could at that time while he was waiting
17 for EMS to get there.

18 Q And what did you do once EMS arrived?

19 A Once EMS arrived, they transported the gunshot
20 victim. At that time or very shortly thereafter, they
21 activated the SWAT team, which Sergeant Weiner was on.
22 He responded in that capacity. Then I began starting to
23 set up the perimeter that we were talking about earlier.
24 I took a position right there at Emile Drive and I guess
25 it was actually Alma Avenue.

1 Q Right there at that intersection?

2 A Right there. One side of Emile is Leone
3 Avenue. The other side of Emile, it's Alma Drive.

4 Q Okay. And what was your responsibility as part
5 of the perimeter there?

6 A Just to make sure nobody came in or out. Sat
7 there, or actually stood there outside the car there at
8 the corner of the intersection there watching down the
9 roadway. Of course, I could see another deputy down Alma
10 Drive. I could see more down Emile Drive as well.

11 Q Okay. And where did Investigator Weiner go?
12 Do you know?

13 A I don't -- exactly where at, I don't know. I
14 believe he ended up in the woods somewhere assisting the
15 dog team on the track.

16 Q And he's a member of what team?

17 A The SWAT team.

18 Q Was the perimeter eventually dismissed?

19 A Yes, it was.

20 Q Do you recall approximately when it was?

21 A It was right about four o'clock. Right around
22 4:00.

23 Q And what did you do at that point?

24 A I had Investigator Weiner's car because he had
25 left and got a ride with somebody else on the SWAT team.

Mike Fortner - Direct Examination by Mr. Fretwell

424

1 He called me on my phone and asked me to pick him up over
2 on West Marion Road. I drove his vehicle over to West
3 Marion to pick him up. We just swapped. I moved over to
4 the passenger seat. He took over driving. We kind of
5 started heading back towards the Law Enforcement Center
6 at that time.

7 Q What happened as you were on your way back to
8 the Law Enforcement Center?

9 A On the way back to the Law Enforcement Center,
10 a call came out over the radio about a suspicious person
11 having been seen in the area of Crane Avenue. We were
12 just about coming up on Crane Avenue when that call came
13 out. So Investigator Weiner turned down Crane Avenue
14 there off of 253.

15 Q Okay. And what did you see as you pulled down
16 Crane Avenue?

17 A As we came down Crane Avenue, we observed a
18 black male come up out of a field area. He came up onto
19 Crane Avenue, crossed over Crane Avenue. We were
20 approaching him in our car. We were looking at him
21 trying to figure out whether or not he was the guy we had
22 been looking for. The clothing matched. He was clearly
23 dirty, muddy. Leaves stuck to him. That kind of a thing
24 like he had been running around in the woods for a while.
25 He was also very tired looking. He was almost kind of

1 bent over sort of as he was -- I don't know -- trotting,
2 I guess you can say, across the road. We could see him
3 looking at us very intently as though he was probably
4 trying to determine whether or not we were law
5 enforcement or not.

6 Q Let me ask you a question on that. The vehicle
7 that you were in, was that a marked patrol car or not --
8 or an unmarked?

9 A It was an unmarked patrol car. I believe at
10 the time, we had a white Ford Taurus.

11 Q What happened after you saw the individual
12 running up out of the woods and crossing the road?

13 A We could see he was looking at us by trying to
14 figure out if we were law enforcement or not. We were
15 also doing the same thing, trying to figure out whether
16 or not he was the guy we were looking for. He definitely
17 matched physical description, clothing description. As
18 we were watching him, he then jumps over a, uh, like a
19 double gate on the driveway, a fence, wire-type fence.
20 He jumped over that. He turns around and kind of looks
21 back at us still and then he takes off running.

22 At that time, Investigator Weiner and I made
23 the decision to just drive on through the gate.
24 Physically drove through the gate as he was running
25 across the back yard of his house, we were driving

1 through the yard trying to catch up to him. At which
2 time, we come to a fence in the back yard. It was number
3 18 that this guy actually jumped into. Jumped the fence
4 for number 18 Crane. He jumped over a fence separating
5 number 18 and number 20. We pulled up to the fence, got
6 out of our cars, out of our car, drew our guns on the
7 suspect at that time and ordered him to the ground.

8 Q Did he comply?

9 A He did not. Not initially. We gave him
10 several orders to get down on the ground while we had our
11 guns drawn on him. At one point, it looked like he
12 started to make a move to where he was going to actually
13 get down on the ground. At that time, nobody knew where
14 we were at exactly. They knew we were on Crane Avenue
15 somewhere. But other than that, no one knew exactly
16 where we were.

17 So I started to go back towards our car to get
18 on the radio and let everybody know exactly where we were
19 at. By the time, I got halfway, three quarters of a way
20 back to the car, the suspect takes off running again.
21 Investigator -- or Sergeant Weiner jumped over the fence
22 at that time to give foot chase on the suspect. I then
23 went over the fence as well. As I was jumping over the
24 fence, I heard about three gunshots.

25 Q Did you hear anything either before, during or

1 after the gunshots with respect to Investigator Weiner?

2 A I could hear him giving him verbal commands.

3 Exactly what they were, I don't remember. I don't know

4 that I actually could hear what they were. But I could

5 hear him yelling at the suspect. He was actually around

6 the corner of the house of the backyard that we were

7 actually in on number 20. The suspect, when I got there

8 to where Weiner was at, the suspect had actually jumped

9 that fence and was actually in the back yard of number 22

10 Crane Avenue at this time.

11 Q At some point, did uh, Deputy Bobby Duncan

12 arrive?

13 A Yes, uh, knowing that no one knew where we were

14 because we never got a chance to get back to the radio to

15 let everyone know, I went out to the roadway --

16 Investigator Weiner had the suspect covered at this time

17 -- looking for a deputy driving down the road. Bobby, or

18 Deputy Duncan was the first one to come along. I waved

19 him down. He came in and jumped over the fence and

20 handcuffed the guy for us.

21 Q Did you ever speak with the suspect?

22 A Just there at the scene. I asked him what his

23 name was. He said his name was Stephen. He said

24 something about wanting a soda to drink before he died.

25 Q So the suspect indicated he was thirsty?

Mike Fortner - Cross-Examination by Mr. Johnson

428

1 A Yes.

2 Q Do you recognize the suspect you pursued that
3 day being in court today?

4 A Yes, sir. I do.

5 Q Could you just --

6 A Mr. Boyd in the white shirt there next to his
7 attorney.

8 Q Where was the defendant taken after he was
9 arrested?

10 A EMS responded and he was transported to the
11 hospital.

12 Q Please answer any questions Mr. Johnson may
13 have.

14 THE COURT: Mr. Johnson.

15 MR. JOHNSON: Thank you.

16 CROSS-EXAMINATION

17 BY MR. JOHNSON:

18 Q Now, uh, Investigator Fortner, do you have your
19 police reports with you?

20 A Yes, sir. I do.

21 Q You did two of them, right?

22 A Right. I had to write two separate reports,
23 yes, sir.

24 Q Why did you have to write two?

25 A One report is for regular records department

1 that goes with the actual case file. Then, uh, as
2 Sergeant Cooper had said when he was up here, whenever
3 there is some type of a police shooting, OPS, Internal
4 Affairs responds. We have to write a separate report for
5 their investigation as well.

6 Q That's basically when an officer-involved
7 shooting, you know it is going to be investigated?

8 A That's correct. Yes, sir.

9 Q What they are trying to see is, in layman's
10 terms, if the shooting was justified, right?

11 A That's correct. Yes, sir.

12 Q All right. Now, I'd like to go into the events
13 before the shooting, okay?

14 A Okay.

15 Q You stated as my client was crossing the
16 street, he looked at you as he was trying to determine if
17 you were law enforcement?

18 A Yes, sir.

19 Q And that's because you were driving a car
20 that's not what we normally see as law enforcement?

21 A That's correct. Right. It was not marked with
22 any external blue lights or stars, stripes or anything
23 like that.

24 Q So it wasn't equipped with the writing on it or
25 the lights on top of it?

Mike Fortner - Cross-Examination by Mr. Johnson

430

1 A That's right. Yes, sir.

2 Q Now, was this car equipped with like a horn?

3 You know sometimes you hear --

4 A The P.A. system?

5 Q Yeah.

6 A Uh, I don't -- I'm sure it's got one. A lot of
7 investigator cars, the P.A. system is put in the trunk
8 due to the fact there's just no space in a lot of these
9 cars that they give us. Investigator Weiner's, I don't
10 remember offhand if his was in the trunk or if his was
11 inside or not. I don't know.

12 Q But you know that one was not used?

13 A That's correct. Right.

14 Q Okay. So anyhow, you are going across the
15 street. Then he is trying to determine if you are law
16 enforcement. Then he jumps the fence into a house on
17 Crane Avenue?

18 A That's correct. Yes, sir.

19 Q And you follow him. You drive through the
20 fence; isn't that right?

21 A Yes, sir. That's correct.

22 Q Now, was the -- tell me about the fence. Was
23 it a -- was it like a gate or was it a fence?

24 A It is a chain-link fence gate. It's a double
25 gate. It's two gates that swing like this. They come

1 together. This one, I believe, was chained together in
2 the middle. Whoever it was was not home at the time.
3 The gate was closed and fastened together.

4 Q So the gate was actually chained -- it was
5 chained together, not with just like a latch like you see
6 sometimes, but it was actually chained together?

7 A I don't remember the -- seemed to me it was
8 chained. It at least had a padlock on it. I do recall.

9 Q Okay. And so Weiner is driving, right?

10 A That's correct. Yes, sir.

11 Q So Weiner sped up enough to at least break
12 through this chain-linked fence?

13 A That's correct. Yes, sir.

14 Q And, uh, he drove to the point, say for
15 instance, the best way to describe it is you got an area.
16 You are into a yard. He drove his car to the point where
17 you chased him through the yard. Isn't that right?

18 A That's correct. We weren't like on his heels.
19 He's a good 30, 40 feet probably in front of us at this
20 time. Once he jumped over the fence, I guess he figured
21 out that we were law enforcement. Investigator Weiner
22 was still in his SWAT outfit. It does have an
23 embroidered star on it. It's got patches on the
24 shoulders. When he crossed Crane Avenue, we were so
25 close to him that he would have been able to see that on

1 his outfit. He jumps over the fence, yes, sir.

2 Q Let me ask you about the outfit. Does the
3 outfit look like, say for instance, one of these guys in
4 the courtroom?

5 A No. It's like an olive green color.

6 Q So it's an olive green outfit and that's not an
7 outfit that maybe us lay folk would know is a police
8 uniform?

9 A The olive green not necessarily, but the
10 embroidered star and the patches on the shoulders, I
11 would think so, yes.

12 Q But in any case, my client ended up jumping
13 another fence. Isn't that true?

14 A Right. He goes from number 18 Crane Avenue and
15 then he jumps over a fence in the back yard of number 20.

16 Q And Detective Weiner drives his car up to the
17 fence; is that right?

18 A Up to the fence, yes.

19 Q Then you both jump out the car and you pursue?

20 A Actually, we jump out of the car and the
21 suspect jumps over the fence at number 20, he just stops
22 at that point. I mean, he's exhausted right now. He
23 stops at that point and just turns and looks at us which
24 we are getting out of the car. We're drawing down on him
25 and ordering him down to the ground.

1 Q Now, you say he looks at you. Could it be that
2 he's still trying to determine whether you are law
3 enforcement?

4 A Uh, at this time, he knows we're law
5 enforcement. Again, we're identifying ourselves. We've
6 got guns. We've got badges. Investigator Weiner is in
7 his outfit. It says -- I believe, actually, it says
8 "Sheriff" across the front. I believe he had his vest
9 on.

10 Q He's in an olive green outfit?

11 A Correct. Yes, sir.

12 Q And you have your gun pulled at this point?

13 A Yes, sir.

14 Q Now, uh, you stated earlier that, at some
15 point, you begin to go back to the car.

16 A That's right. Yes, sir.

17 Q And this was -- my client in any sort of
18 handcuffs of anything?

19 A At this point, no, sir. He's still standing up
20 refusing to lay down on the ground.

21 Q At that point in time, you say you got Weiner
22 next to you or Weiner on either side of you.

23 A Yeah. He was on my left.

24 Q And you got the gun pointed on him. He's still
25 down on the ground, right?

Mike Fortner - Cross-Examination by Mr. Johnson

434

1 A He's down on the ground.

2 Q You go back to your car with him down on the
3 ground?

4 A That's correct.

5 Q And as you understand, if he were to be the
6 robber or the shooter, he could potentially be armed,
7 right?

8 A Absolutely.

9 Q So you turned your back to him?

10 A That's correct. Go back to the car.

11 Q Okay. Now, you did not see Weiner shoot my
12 client, did you?

13 A That's right. I did not actually see the
14 shooting.

15 Q Now, he shot three times as you understand,
16 right?

17 A That's what I understand. I did hear about
18 three gunshots that day. I do remember that.

19 Q And you did confirm at a later point that, uh,
20 my client was not armed at that point.

21 A Yes, sir.

22 Q And you also learned that no gun was ever found
23 that my client possessed?

24 A That's correct. Yes, sir.

25 Q All right. Uh, you stated when you got -- when

1 you got to where my client was laying, he was laying on
2 the ground, right?

3 A After the shooting?

4 Q After the shooting.

5 A After the shooting, he was. Yes, sir.

6 Q After the shooting, he was laying on the ground
7 and Weiner had his gun on him?

8 A That's correct. Yes, sir.

9 Q Now, this is why I'm not clear. Did you state
10 at that point in time -- did you then go back and
11 actually finish notifying police where you were?

12 A No, at this time, uh, I go out to the roadway
13 in front of number 20 and number 22 Crane Avenue. I go
14 out to the roadway looking for a deputy driving down the
15 road. I knew nobody knew we was on Crane Avenue. When I
16 went out there, Deputy Bobby Duncan was the first deputy
17 rolling up. I just -- I kind of waved him down kind of
18 thing. Kind of let him know where we were at.

19 Q So Weiner still got his gun on him though?

20 A That's correct.

21 Q He's down on the ground and he's shot?

22 A That's right. Yes, sir.

23 Q And at that point, you go to the roadway to
24 flag somebody down, right?

25 A Yes, sir.

1 Q Okay. Now, at some point, you did get to hear
2 my client speak, right?

3 A Yes, sir. I did.

4 Q Now, once again, he's just been shot; is that
5 correct?

6 A Yes, sir. He has..

7 Q And you said he was conscious and he was
8 speaking to you?

9 A Yes, sir.

10 Q And, uh, he told you his name was Steve?

11 A He said Steve, yes.

12 Q And he had just been shot, right?

13 A Yes, sir.

14 Q And uh, he also said that he wanted a soda
15 before he died?

16 A Yes, sir.

17 Q He just been shot three times, right?

18 A Well, at that time, I didn't know how many
19 times. But yes, apparently it turned out it was three
20 times.

21 Q Three times. Thank you.

22 THE COURT: Mr. Fretwell?

23 MR. FRETWELL: Briefly.

24 REDIRECT EXAMINATION

25 BY MR. FRETWELL:

1 Q Investigator Fortner, before -- was the
2 defendant, when he jumped the fence that had the padlock
3 on it, was he running before you guys went through that
4 fence or did he run because you guys --

5 A He had already turned and started running. He
6 already ascertained -- I'm sure he was suspecting that we
7 were law enforcement. Once he jumped over that fence, he
8 kind of looked back behind him. We were still sitting in
9 the road looking at him. That's when he turned and
10 started running again. At that time, that's when we
11 drove through the gate.

12 Q And after you and Investigator Weiner had your
13 guns on the defendant, he was on the ground and maybe
14 attempting to comply, you are saying after that point, he
15 ran and jumped over another fence?

16 A That's correct.

17 Q Why was it important for you to let dispatch
18 know where you were?

19 A We would like to have some help out there, some
20 other deputies that's around the area as well as in the
21 event that he was to take off running again. The more
22 deputies we got saturating the area, the better chance of
23 keeping him contained to even a tighter area than what we
24 had initially.

25 Q Thank you, sir. No further questions.

1 THE COURT: Mr. Johnson?

2 MR. JOHNSON: No recross, Your Honor.

3 THE COURT: All right, sir. You can step
4 down. All right. Ladies and Gentlemen, we've come
5 to a good stopping point for the evening. We'll
6 reconvene tomorrow morning at nine o'clock. If you
7 will, be in your jury room a few minutes before nine
8 o'clock. We'll start at nine o'clock. All right.

9 I know I sound like a broken record, but please
10 don't do any independent research or discuss this
11 case with anyone. All right. Thank you so much. I
12 hope you have a good evening.

13 (WHEREUPON, the jury exits at approximately
14 5:40 p.m.)

15 THE COURT: All right. Anything we need to
16 take up before we adjourn for the evening?

17 MR. FRETWELL: I don't believe so, Your
18 Honor.

19 THE COURT: All right. Anything, Mr.
20 Johnson, from the defense?

21 MR. JOHNSON: Uh, not at this point.

22 THE COURT: All right.

23 MR. JOHNSON: I don't know when it's coming
24 up. I would like to remind the court that I still
25 want a hearing on the admissibility about

1 anything --

2 THE COURT: All right. All right. We'll try
3 to -- tomorrow, what we might do is if we can work
4 it is maybe close to the lunch hour. We may take an
5 abbreviated lunch hour tomorrow. I will let the
6 jury, since they've got to go get something, still
7 have their normal time of about an hour or an hour
8 and 15 minutes. If we can do that near the lunch
9 hour, perhaps I can just ask everybody to bring your
10 lunch for tomorrow.

11 Mr. Boyd, this might be a good point for me
12 just to bring it up. I'm going to talk to you in
13 great length about this later on. I want you to
14 start thinking. You been down this road partways
15 before. We -- I don't know when the State's going
16 to finish their case. We're going to come to the
17 point where you're going to have to decide whether
18 or not you're going to testify. That has to be your
19 decision. It has to be your decision solely. Of
20 course, you'll take into account the advice of your
21 very competent attorneys who, I'm sure, will be
22 talking to you about.

23 I say this to you now because I want you to be
24 thinking about it. I want you to be talking to your
25 attorneys about it. And I want you to be ready at

Remarks

440

1 whatever point. It may be some time tomorrow that
2 this comes up. I want you to be talking to him and
3 not be unprepared when I get to the point when I'm
4 going to have several questions for you in regards
5 to whether or not you're going to testify. All
6 right?

7 MR. BOYD: Yes, ma'am.

8 THE COURT: Mr. Fretwell, uh, tell me this,
9 so far as -- and I know we may be well jumping the
10 gun, but so far as any convictions you might attempt
11 to use for impeachment purposes for Mr. Boyd, have
12 you already apprised Mr. Johnson of any of that?

13 MR. FRETWELL: Judge, I think I have not had
14 that conversation with Mr. Johnson.

15 THE COURT: All right. I'll tell you what,
16 since the hour is getting kind of late right now, if
17 you would, have that discussion with him so that
18 he's prepared to talk to his client about any
19 possible -- I don't know if he has any convictions
20 to use for impeachment. I don't have any idea. In
21 the event that he does, we'll be ready to move on.
22 All right. Thank y'all so much. We'll see you
23 tomorrow and see if we can't really bear down and
24 get back on track.

25 MR. FRETWELL: Thank you, Your Honor.

1 MR. JOHNSON: 9:00 a.m.?

2 THE COURT: 9:00 a.m.

3 MR. JOHNSON: All right. Thank you, Your
4 Honor.

5 THE COURT: Thank you.

6 (WHEREUPON, the court recesses at approximately
7 5:44 p.m.)
8

P R O C E E D I N G S

(WHEREUPON, the court resumes on the 11th day of January, 2012 at approximately 9:12 a.m.)

THE COURT: All right. Anything we need to take up before we bring the jury in?

MR. FRETWELL: I don't believe so, Your Honor.

THE COURT: All right. Anything from the defense?

MR. JOHNSON: No, ma'am, Your Honor.

THE COURT: All right.

(WHEREUPON, the jury enters at approximately 9:12 a.m.)

THE COURT: Good morning, Ladies and Gentlemen. I hope you all had a good evening.

All right. Mr. Fretwell, you ready to proceed?

MR. FRETWELL: Yes, ma'am.

THE COURT: All right.

MR. FRETWELL: Please the court, Your Honor, the State would call Sergeant David Weiner.

THE CLERK: Sir, please place your left hand on the Bible and raise your right hand.

DAVID WEINER

having first been sworn, testifies as follows:

1 THE CLERK: Thank you. Please be seated.

2 Please state your full name for the record.

3 THE WITNESS: David Weiner.

4 MR. FRETWELL: May it please the court, Your
5 Honor? Judge?

6 THE COURT: I'm sorry.

7 MR. FRETWELL: May it please the court?

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. FRETWELL:

11 Q Good morning, Sergeant Weiner.

12 A Morning, sir.

13 Q How long have you worked for the Greenville
14 County Sheriff's Office?

15 A 12 years now.

16 Q To what unit are you currently assigned?

17 A Currently assigned as a supervisor in
18 investigations.

19 Q Okay. And are you a part of any special teams?

20 A I'm also part of a SWAT team for the Sheriff's
21 Office.

22 Q What is a SWAT team?

23 A Uh, if you ever seen the movies, Special
24 Weapons and Tactics. I work part-time team. We respond
25 to calls where deputies can't handle them themselves.

David Weiner - Direct Examination by Mr. Fretwell

444

1 Barricaded suspects, hostage situations, manhunts, things
2 like that.

3 Q All right. And to what other units have you
4 been assigned over the course of your career?

5 A Uniform patrol. I spent seven years patrolling
6 almost -- uh, this beat area where this occurred. I also
7 spent several months working in our Internal Affairs
8 office as a cross trainer. In investigations, I spent
9 almost five years as an armed robbery investigator.

10 Q Let me take you to Wednesday, December 10th,
11 2008. You were working that day.

12 A Yes, sir.

13 Q Do you recall what you were doing that
14 particular morning?

15 A Doing some follow-ups with Investigator
16 Fortner, uh, he and I usually ran around together for the
17 most part. There are four of us down there. He and I
18 would pair up. The other two would pair up and we were
19 doing our follow-ups together.

20 Q Okay. And you recall what you were doing for
21 lunch that day?

22 A We made the decision -- we were on the west
23 side. We made the decision we were going to go to that
24 Taco Bell right at White Horse and Blue Ridge.

25 Q And what happened as you pulled into the Taco

1 Bell?

2 A Pulled into the parking lot and we hear the
3 alert tones. Dispatch puts those out just for very
4 serious crimes, armed robbery, shootings, fires with
5 people trapped, car wrecks with people trapped. So we
6 just stopped and listened to the radio and they gave up
7 the call for the robbery at the Bank of Travelers Rest on
8 White Horse Road.

9 Q Basically, how close were you to that location?

10 A A couple hundred yards.

11 Q Okay.

12 A Straight line down the road.

13 Q And what information were you provided by
14 dispatch at the time that you received this information
15 about the bank robbery?

16 A As soon as the call came out, I went back out
17 onto White Horse and started driving towards the bank,
18 requesting information anything. If it had already
19 happened, I knew somebody had left. I wanted some kind
20 of vehicle or suspect description. They gave out a white
21 van. As soon as they said the van description, they
22 started talking about that it was on West Marion. Then
23 it was turning on Emile Street. I said, you know, I'm
24 thinking to myself you can't see that from the bank.
25 Somebody's following this. I immediately activated my

David Weiner - Direct Examination by Mr. Fretwell

446

1 blue lights and siren and decided it was time to catch up
2 to this guy to try to apprehend him.

3 Q And what was the weather like that particular
4 day?

5 A Cold and rainy. I do remember that.

6 Q Did you receive further updates from dispatch
7 as you turned onto Emile?

8 A We turned on -- I call it Emile. We turned
9 onto Emile. They, just as we were turning, gave out that
10 there was possibly a gunshot victim at Emile and Leone
11 just up the street.

12 Q And are Emile Street and the surrounding area,
13 including the bank, is all that location within
14 Greenville county?

15 A Yes, sir.

16 Q What did you observe as you arrived on Emile
17 Street?

18 A As I take the turn, I can see the white van
19 about halfway down the road pulled off to the side. I
20 could actually see red smoke coming out of the window,
21 which is something that the dispatch had described to us
22 that the witness had seen. I knew then that was
23 obviously our bank robbery suspect vehicle. As we got
24 closer down to it, I turned off my siren and blue lights.
25 I could see up at the top of the street the pickup truck

1 at Emile and Leone. I figured that's where the gunshot
2 victim was. Investigator Fortner got out of the van to
3 deal with it and I drove up to the gunshot victim.

4 Q While you were still at the minivan, did you
5 notice anything unusual about any of the windows, whether
6 the vehicle was on or off?

7 A I don't know if the vehicle was on or off but I
8 know the driver's side window was down cause that's the
9 window the smoke was coming out.

10 Q And you indicated that it was raining that day?

11 A Yes, sir.

12 Q All right. What happened when you proceeded to
13 the -- let me ask you this. When you looked up at the
14 intersection of Leone and Emile, what, if anything, did
15 you see with respect to that truck?

16 A As Fortner gets out, I can see the driver side
17 door of the truck. The driver's side is facing me. It
18 was parked on Leone. I saw the driver's side door open
19 and somebody fall out of the cab of the truck.

20 Q And then you proceeded up to that truck?

21 A Yes, sir.

22 Q What did you, uh, -- what did you see and what
23 did you do once you arrived at that intersection?

24 A Found a white male laying on the ground. He
25 had blood coming from his neck. A pretty substantial

David Weiner - Direct Examination by Mr. Fretwell

448

1 amount from his neck and from his right hand. Uh, he was
2 laying on the ground. I got him to lay down flat on his
3 back. You got to understand, the rain was like today.
4 It was one of those days we probably got several inches
5 of rain, but it was like 30 degrees. Maybe less. It was
6 very cold.

7 I kind of got over him, straddled him, tried to
8 access what wounds he had. I saw the obvious to the
9 neck. So I took out my pocketknife and sliced up, uh, --
10 he was wearing a blue sweater. I cut up a sweater and
11 just jammed it into that hole in his neck to put pressure
12 on it. That's when I saw his right hand as well.

13 Q Were you able to speak to the --

14 A I did. I told him who I was and everything was
15 going to be okay and EMS was on the way. I asked him
16 what his name was. He told me it was David. I asked him
17 where the guy went that shot him.

18 Q Okay. Did he indicate to you where the
19 individual went?

20 A He did. He told me into the woods.. Well, at
21 that time -- if you drive down Emile now, there's
22 actually like a housing development on one side and woods
23 on the other. Back then, it was all woods on both sides.
24 I said to him, I said towards Wal-Mart or away from Wal-
25 Mart. He told me away from Wal-Mart.

1 Q Okay. So how did the search for the suspect
2 begin?

3 A While I was still tending to him, I could hear
4 on the radio that the K-9 units were en route from the
5 old Parker High School, which was just a mile or two
6 away. They were some of the first units on the scene.
7 As they rode by, I just flagged them down to the white
8 van to let them know that that's where the last known
9 location of our suspect was.

10 Q So you communicated the information you had
11 learned from David ---

12 A Yes.

13 Q --- to the K-9 units?

14 A Yes.

15 Q Okay. What did you do at this point once the
16 K-9 units were beginning to deploy?

17 A Some more uniform patrol arrived. I know an
18 environmental unit arrived. I had them actually get out
19 a real first aid kit and start trying to tend to the
20 victim. I was checking on the status of EMS. EMS was
21 reluctant -- and they have policies in place where they
22 don't come into shooting scenes unless we declare them
23 safe. It hadn't yet been communicated to them that the
24 scene was safe. They were waiting on our word. So it
25 took them several minutes to come in to treat Mr. Dill.

David Weiner - Direct Examination by Mr. Fretwell

450

1 Q Once EMS was treating Mr. Dill, what, if
2 anything, did you do?

3 A I started my role as an investigator in armed
4 robbery. I went down to the vehicle, ran the tag through
5 dispatch and waited results for that. They informed me
6 that it had been stolen earlier in the morning from the
7 south end of the county. I believe they told me the
8 vehicle was running when it was stolen.

9 Q You recall how early that morning it was?

10 A Some time around seven o'clock in the morning.

11 Q Do you know based on that information that they
12 provided you an approximate value of the vehicle?

13 A I just know it was greater than \$1000.

14 Q Okay. Once you received that information, uh,
15 did you actually look into the van?

16 A I did. I didn't touch anything. Obviously, I
17 know it's a crime scene. I kind of stuck my head through
18 the window a little bit. The irritant in the dye pack
19 actually tickled my throat and caused me to cough a few
20 times. I looked in the window behind the driver's seat.
21 I could see the money spread out on the floor. It was
22 clear the dye pack had gone off on the money as well.

23 Q At some point, did you return to the gunshot
24 victim?

25 A Yes, sir.

1 Q Okay. And did you -- was he still being worked
2 on? Was he able to get out of the area? What happened
3 with Mr. Dill?

4 A Basically, EMS loaded him up and took him to
5 the hospital.

6 Q Okay. Did you notice anything unusual about
7 the pickup -- the white pickup truck that was sitting
8 there at the intersection?

9 A Mr. Dill's truck?

10 Q That's correct.

11 A It was odd to me because the driver's side was
12 facing me, but the bullet hole was on the passenger side
13 and his injuries were on the passenger's side, his right
14 hand and the right side of neck. And I was not
15 comprehending at the time how in the world that happened
16 if our suspect was down at the white van.

17 Q Right. Did you speak to any other witnesses on
18 the scene?

19 A Right. Investigations brought another witness
20 back that had witnessed the shooting. When he explained
21 it to me, it all made sense. As it turned out, Mr. Dill
22 was coming the opposite direction on Leone. His
23 passenger side was facing the suspect when the shot was
24 fired. After the shot was fired, he drove across the
25 street, pulled into a driveway, turned around, came back

1 to the same intersection. That's why it was opposite to
2 me.

3 Q All right. And what measures -- actually did
4 Mr. Rafferty also communicate to you a description of the
5 suspect?

6 A I just remember him telling me black male, dark
7 clothing, obviously a firearm.

8 Q Okay. And did he give you a direction of
9 travel?

10 A Same direction. Into the woods away from Wal-
11 Mart, directly across from the van.

12 Q What measures had the Greenville County
13 Sheriff's Office taken at that point to locate the
14 suspect?

15 A Very quickly, a tight perimeter was set up.
16 The K-9 units had already established track.

17 Q Okay. Who was in charge of the crime scene on
18 Emile Street at this point?

19 A I was.

20 Q Had other investigators responded to the Bank
21 of Travelers Rest?

22 A Yes, sir.

23 Q What happened to the stolen minivan and the
24 gunshot victim's truck?

25 A The minivan was towed to our forensics. The

1 truck was towed to our service impound lot.

2 Q Do you know whether or not the vehicles were --
3 either of the vehicles were processed on the scene?

4 A No, that's why they were taken away. They were
5 photographed on the scene, but due to the weather and the
6 severity of the crime, the decision was made to process
7 them off scene.

8 Q Okay. Were you provided with any additional
9 information about the robber, in particular, any kind of
10 clothing description while you were on Emile?

11 A While I was on Emile, one of the investigators
12 had brought me a photograph of the bank robbery suspect.
13 It included a very detailed shot of the pants he was
14 wearing. You could see, I thought they were knife blades
15 on the pants, like embroidered colored knife blades into
16 the pants.

17 Q Let me show you what's been marked as State's
18 Exhibit 66 and 67. Are these the photographs that you
19 are referring to?

20 A Yes, sir.

21 Q All right. So these were shown to you while
22 you were on Emile and prior to any kind of efforts on
23 your half -- on your part to locate the suspect?

24 A Yes, sir. Yes, sir.

25 Q Do these pictures accurately reflect what you

David Weiner - Direct Examination by Mr. Fretwell

454

1 were shown that particular day?

2 A Yes, sir.

3 MR. FRETWELL: Your Honor, at this time, we
4 would move State's 66 and 67 into evidence.

5 THE COURT: Any objection?

6 MR. JOHNSON: No objection, Your Honor.

7 THE COURT: All right then. They are so
8 admitted into evidence. She needs the numbers. 66
9 and 67?

10 (WHEREUPON, there is a pause.)

11 THE COURT: All right. That's corrected.
12 117 and 118 are moved into evidence.

13 MR. FRETWELL: Your Honor, we relabeled those
14 as State's 66 and State's 67.

15 THE COURT: All right. All right. I
16 apologize. On the list that I have, they are 117
17 and 118. But you are saying you remarked those 66
18 and 67?

19 MR. FRETWELL: Yes, ma'am.

20 THE COURT: All right. Just for clarity for
21 the record. 66 and 67.

22 MR. FRETWELL: Thank you.

23 (WHEREUPON, State's Exhibit 66 and 67 are admitted
24 into the record.)

25 BY MR. FRETWELL:

1. Q Sergeant Weiner, can you explain to the jury
2. what you were talking about with respect to any
3. distinctive markings on --

4. A Yes, sir. You can see, I'll use this little
5. laser pointer here. This right here. And the detail is
6. much better on the picture. This projector doesn't
7. really do it justice. You can see lines going up the
8. center of each one. They -- to me, they look like knife
9. blades. They are embroidered into the pants on the left
10. side of the pants here that you can see clearly.

11. Q What other details on this photograph were you
12. able to determine about the clothing description or what
13. the suspect was wearing at the time of the robbery?

14. A The dark-colored hoodie, dark-colored bandana,
15. looks blue, the ball cap. Obviously, he's in possession
16. of a firearm. To me, it looks like he's wearing gloves.

17. Q All right. And let me show you State's 67. Is
18. this also a photograph that you were shown?

19. A Yes, sir.

20. Q I'm going to see if I can -- no, that doesn't
21. do any good. Can you show us the area of detail at
22. least? I'll pass these around.

23. A Right. Again, the projector is not doing it
24. justice. The other picture you saw was on this leg.
25. Now, you're seeing this leg. Same pattern here. The

1 dark hoodie. When you see the picture, you can see the
2 blue bandana and the ball cap.

3 Q All right. Thank you, sir.

4 A Yes, sir.

5 Q Did you actually assist in the search for the
6 suspect?

7 A Yes, sir. Yes, sir.

8 Q In what capacity?

9 A Once the crime scene was completed being
10 processed, the vehicles were towed off. My supervisor at
11 the time, Lieutenant Tim Jones, informed me that because
12 I was on the SWAT team, we were going to assist the K-9s
13 in checking any calls that came in for service of
14 suspicious persons or noises.

15 Q Okay. So you suited up with the SWAT team?

16 A Yes, sir.

17 Q And you recall specifically what areas that you
18 and the other SWAT team members checked?

19 A Initially, my crime scene area was the west
20 side aquatic park. I checked all the ballfields. We
21 checked trash cans, bleachers, out buildings. You name
22 it, we checked it. We also checked a culvert that went
23 under the road, under Blue Ridge.

24 Q Let me get you to grab that laser pointer. If
25 you will, step down and just give us an idea of the areas

1 that you and the SWAT team members checked. And for the
2 record, this is State's 28.

3 THE COURT: All right.

4 THE WITNESS: Okay. Westside Aquatic center
5 here. The main building here. There's actually a
6 new one now. It's over here. Brand new pool and
7 all. Very nice. This is an indoor pool, tennis
8 court, ball field. We checked all this. There's
9 actually covered picnic areas, trash cans. We
10 checked everything. Then there's a culvert -- it's
11 actually this right here -- that runs underneath
12 Blue Ridge. A drainage. A concrete pipe. I went
13 in it and went underneath the road to see if we
14 could locate anything there.

15 BY MR. FRETWELL:

16 Q That afternoon on a Wednesday in the rain, how
17 many people were at that park. Do you recall?

18 A Nobody.

19 Q Okay. And is that inside or outside of the
20 formed perimeter fence that had been set up earlier?

21 A Inside.

22 Q Okay. So you are actually inside the perimeter
23 checking those areas, those buildings and those
24 ballfields and everything with respect to that park?

25 A Yes, sir.

1 Q Any other areas that you checked with SWAT
2 initially?

3 A We met up in this church right here.

4 Q Okay.

5 A The parking lot for a few minutes. A call had
6 come out about a suspicious person near Claxton or
7 running towards Claxton. We immediately, lights and
8 sirens, drove over there, checked it. Nothing.

9 Q Okay. Now, you had -- there were perimeter
10 units along West Marion Road ---

11 A Yes, sir.

12 Q --- that area over here. Did any of those
13 perimeter units verify that any person had been sighted
14 or is this a call coming in from an area resident?

15 A Right. An area resident, concerned citizen.
16 There was no movement or anything suspicious reported by
17 perimeter units.

18 Q All right. And when you went over there to
19 check that, do you recall whether or not any K-9 officers
20 went with you?

21 A There were a couple, I think, that went with
22 us. We were predominantly SWAT team.

23 Q Do you recall Al Cannon being with you?

24 A Yes, sir.

25 Q When you cleared the Claxton Drive area call,

1 what, if anything, did you and Deputy Al Cannon do?

2 A When I was on Emile Street over here and Leone,
3 traffic had come up that the K-9s had tracked to a
4 bandana. I questioned him about it while we were in this
5 church parking lot. A call comes out to go check it. I
6 asked him to take me to the bandana so that I could
7 collect it for evidence.

8 Q And did he do that?

9 A He did.

10 Q All right. Did he have any difficulty locating
11 the bandana?

12 A No, sir.

13 Q All right. I would ask you to just take just a
14 minute and look at what's in that manilla envelope up
15 there on the witness stand.

16 A Yes, sir.

17 Q Uh, take a look at it outside the presence of
18 the jury and tell me if you can identify the item that is
19 in there.

20 A (Reviewing.) It's the blue bandana that I had
21 recovered that K-9 officer Cannon showed me.

22 Q All right. And how do you recognize that to be
23 the bandana?

24 A It had holes in it that Deputy Cannon told me
25 came from the dog actually mouthing the item and then

1 kind of taking it away, he had ripped the bandana.

2 Q And once you located the item, what, if
3 anything, did you do with it?

4 A I put it in a bag and secured it in my vehicle
5 once we returned to it.

6 Q Okay. Do you know if you secured it in your
7 vehicle or if you secured it on your person?

8 A Initially, it was on me in my cargo pocket on
9 my pants.

10 Q Okay.

11 A Like I said, when I got back to my vehicle, I
12 secured it in the trunk of a car.

13 Q Okay. The reason I didn't put the map away is
14 I'm going to have to have you come back around.

15 A Yes, sir.

16 Q Once you located that bandana, was there
17 anything else that the SWAT team did, uh, with -- well,
18 first of all, I'll ask you this. Were you aware that the
19 K-9 team eventually stopped in its track?

20 A Yes, sir.

21 Q Okay. At that point, do you recall if there
22 was anything the SWAT team did specifically as a unit to
23 again search that area?

24 A Yes, sir.

25 Q Tell us about that.

1 A We decided just to backtrack and make sure they
2 didn't miss anything. Where the van was parked on Emile,
3 we went into the woods and just spread out almost in a
4 line all of us and just pushed straight towards Agnew
5 Road.

6 Q As SWAT team, you all have weapons?

7 A Yes, sir.

8 Q And your primary focus is people or things?

9 A People.

10 Q All right. And did you locate or come across
11 any person while you were doing that push through the --

12 A No, sir.

13 Q In fact, at any point on the ballfield when you
14 went through there with Deputy Cannon or any time in that
15 area responding to these calls, did you locate any person
16 of suspicion at all?

17 A No, sir.

18 Q Was the perimeter eventually called off?

19 A Yes, sir. Once we completed our push through
20 the woods.

21 Q Do you recall roughly what time of day that
22 was?

23 A 4:15.

24 Q When the perimeter was called off, tell us what
25 you did at that point.

David Weiner - Direct Examination by Mr. Fretwell

462

1 A Pushed to this creek here. I call it a creek.
2 It's 10-to-15 feet wide. That day from the rain, it was
3 moving. It was -- I mean, not like white water rafting,
4 but it was pretty impressive. I'd never seen it like
5 that. So I followed the creek here to this corner at
6 Marion, close to Richards. I called Investigator Fortner
7 on the telephone and asked him to pick me up.

8 Q Okay. And once he arrived, what happened at
9 that point?

10 A It was close to quitting time. We decided that
11 we were going to drive around for a few more minutes and
12 then go back to the office.

13 Q Okay. At some point when you are heading back
14 to the office or leaving the area, uh, what, if anything,
15 did you -- what information did you receive or what
16 happened that would make you decide not to go back to the
17 office?

18 A Right. We went up Richards. Turned down
19 Agnew. While we were traveling down Agnew, we got
20 broadcast by Lieutenant Griffin that somebody had spotted
21 a person, possibly spotted a suspect crossing Agnew Road.
22 Well, I'm on Agnew. I didn't see anything that did
23 happen or is already happening. Then, uh, we came up
24 West Blue Ridge Drive. That's the time the call came out
25 on Crane Avenue.

1 Q All right. So you got a call from Crane
2 Avenue?

3 A Yes, sir.

4 Q Can you tell us about that call and give us an
5 idea of, uh, information you received as a result of that
6 call?

7 A Right. A call had come in for 107 Crane
8 Avenue. I think they said it was a female caller. A dog
9 was barking, had broke off the chain, ran in the woods
10 towards Blue Ridge. Didn't return.

11 Q On Crane Avenue -- can you locate Crane Avenue
12 on that map?

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

14 Q Can you give us an idea about where the
15 residence was where that information came out?

16 A 107 is down here.

17 Q Is that near the -- what's the cross street
18 there?

19 A Nancy Drive.

20 Q Nancy Drive. Okay. Uh, All right. And take a
21 look at the map that's right behind you. Right here.
22 That's State's 31. Does that assist you in giving some
23 more details about that area?

24 A Yes, sir.

25 MR. FRETWELL: Your Honor, I believe we used

David Weiner - Direct Examination by Mr. Fretwell

464

1 this map yesterday, but I think I neglected to move
2 it into evidence. At this time, I would ask that we
3 move State's 31 into evidence.

4 MR. JOHNSON: No objection.

5 THE COURT: All right then.

6 (WHEREUPON, State's Exhibit 31 is admitted into the
7 record.)

8 BY MR. FRETWELL:

9 Q Now, using State's 31, tell the members of the
10 jury what you did once you received that call from Crane
11 Avenue.

12 A Yes, sir. Uh, went straight there. Turned on
13 Blue Ridge. Turned onto Crane Avenue. As we turned on
14 Crane Avenue, I saw a black male crossing the street
15 right in here.

16 Q All right. Tell us a little bit about -- can
17 you describe that black male?

18 A He was, uh, shoulders slumped over. Dragging
19 his feet. Wet to the bone. I mean, I been out in this
20 stuff all day not wearing a raincoat or anything. I was
21 wet here on top. Rain falling down on me. This guy was,
22 like his shirt was sticking to him. Pants were sticking
23 to him a little bit. He was just tired. It looked like
24 it took every bit of energy he had to cross the street.

25 Q Did you have any -- at the time, did you have

1 any kind of idea of what his build was and approximately
2 how tall he was?

3 A Just I think he was average height, average
4 build. Nothing spectacular.

5 Q All right. And when you saw this individual
6 crossing the street, can you describe any kind of
7 interaction, if any, you had with the individual.

8 A Started to drive up. I could see spots on the
9 pants. I actually looked at Fortner and I said that's
10 him. His response to me was that'd be your luck. I
11 continued up Crane Avenue. It was only 100 yards, maybe
12 less. He was looking at us. He was kind of staring us
13 down trying to figure out who we were. Of course, I'm
14 doing the same thing. I'm trying to figure out who he
15 is. And he makes it into the driveway here and jumps the
16 gate. And I knew that -- as we got closer to him, I
17 could actually start to see the detail in the pants.
18 When he jumped that gate and made that action and
19 actually ran to the back yard, I knew then that it was
20 him. That was our guy.

21 Q What information did you have or what did you
22 believe about whether the suspect in this case was armed?

23 A Actually, I knew he was. Not only did I have
24 bank surveillance showing me, but he had actually shot
25 somebody.

David Weiner - Direct Examination by Mr. Fretwell

466

1 Q How important at this point was it for you to
2 apprehend the suspect?

3 A Number one priority. On SWAT, we get all kinds
4 of training above and beyond what normal deputies get.
5 It's always told to us it's a very difficult thing.
6 Innocent people are first, then comes me, then comes the
7 suspect. So innocent people are number one. He already
8 shot one innocent person who was just trying to follow
9 him. So I knew I had to apprehend him at all cost.

10 Q What did you do once he began running through
11 that yard?

12 A Took the turn in the driveway and pushed
13 through the gate.

14 Q Okay. And this was a gate that was locked?

15 A Yes, sir. It actually like -- this is not some
16 kind of barbed wire or eight-foot tall fence. It's like
17 three feet tall and it was falling apart. It actually
18 didn't break in the middle. It kind of came off on one
19 side and just pushed out of the way.

20 Q So you actually drove your car into --

21 A Through the gate. Yes, sir.

22 Q All right. And then what happened at that
23 point?

24 A He was already into the back yard when I broke
25 the gate. So I drove into the backyard. As I come into

1 the back yard, he hops this fence right here. Is that
2 the right one? I'm sorry. I was over a house. I
3 apologize. I think. (Pause.)

4 This is the one here where we ended up. This
5 is the gate. It's right here. I apologize.

6 Q Okay.

7 A He was already in the back yard ---

8 Q All right.

9 A --- as I drove into the gate.

10 Q All right.

11 A As I come into the back yard, he's hopping this
12 fence.

13 Q Okay.

14 A And I knew that fence obviously wasn't going to
15 get driven through. I just stopped. I got out of the
16 car. I drew my firearm and started yelling I was with
17 the sheriff's office. Get on the ground. Sheriff's
18 office, get on the ground. If I stopped to take a
19 breath, Fortner was yelling it. Sheriff's office. Get
20 on the ground.. Get on the ground.

21 I had radioed as we were coming down Crane
22 Avenue that we possibly seen the suspect or spotted him.
23 When I went to the back yard, the microphone -- who knows
24 where it went. I couldn't find it. I'm standing outside
25 my car. I looked. Didn't see it. I just paid attention

David Weiner - Direct Examination by Mr. Fretwell

468

1 to the suspect. He stopped running. He actually turned
2 and faced us. Again, just exhausted. He kind of put his
3 hands up. I thought he was going to give up. I said
4 alright, that's good. So I holstered my weapon and
5 jumped the fence.

6 As soon as I touched that fence, he took off
7 again. He makes it through this back yard. We are
8 around in here. I'm chasing after him. I draw my firearm
9 again. He hops the fence right here. As he hops that
10 fence, he landed on his feet. His butt kind of hit the
11 ground. He was sitting kind of like a frog. He looked
12 over his shoulder at me. So I made the conclusion that
13 he was going to turn -- he was judging me. He was sizing
14 me up. Am I going to stay here and fight or am I going
15 to keep on running? He was just too tired to keep on
16 running. He made the decision to fight. He turned. And
17 I knew he was armed with a gun. He had shot somebody.
18 He had robbed a bank with it. He turned towards me.
19 Over and over, it's repetitively taught to us action is
20 faster than reaction. I think we've all heard that. I
21 did not -- I wanted to be the action, not the reaction.
22 I didn't want to get shot. So as he turned toward me to
23 face me, I fired three times.

24 Q What were you doing as you were firing?

25 A Right. Running towards him. I fired somewhere

1 right about the corner of the house here. He was on the
2 other side of the fence. . . .

3 Q Is that part of your training as well to be
4 moving while you --

5 A Moving and shooting, yes. Generally not
6 running, but we do move and shoot.

7 Q What did you do once you fired your weapon?

8 A He fell to the ground. I continued challenging
9 him, yelling at him. Stay on the ground. Show me your
10 hands. Show me your hands. He kind of laid on his back.
11 About that time, Fortner comes up to me and I yell at
12 him, you know, uniform patrol, get us some help. So he
13 walked to the street here. Didn't find any uniform
14 patrol car. Again, I'm just telling Mr. Boyd to stay on
15 the ground, that kind of thing. He says just look me in
16 the eye and kill me. Just get this over with.

17 Q And what did -- how did you respond?

18 A I told him that's not my job. I'm not there to
19 do that.

20 Q All right. Let me go ahead and have you take
21 your seat again.

22 A (Witness complies.)

23 Q I want to show you what's been marked as
24 State's Exhibit 32 for identification. You recognize
25 that -- what's depicted in that photograph?

1 A Yes, sir.

2 Q What is that?

3 A That's basically my view looking to where Mr.
4 Boyd had been laying down on the ground after I shot him.

5 Q Okay. Does it accurately represent -- other
6 than maybe the time of day --

7 A Right. Well, it was about 4:30. And because
8 of the weather, it was already getting dark. It might
9 not have been that dark, but it was pretty close.

10 Q All right.

11 MR. FRETWELL: At this time, Your Honor, we
12 would move State's 32 into evidence.

13 THE COURT: Any objection?

14 MR. JOHNSON: No objection.

15 THE COURT: All right then.

16 (WHEREUPON, State's Exhibit 32 is admitted into the
17 record.)

18 BY MR. FRETWELL:

19 Q Can you tell us what we're looking at on this
20 particular photograph?

21 A Right. Again, this is like my view looking
22 over the fence. I never crossed that fence. Mr. Boyd
23 did, but I did not. I think what you see over here may
24 be some of his clothing that was removed by EMS. Or, I
25 think, that was a plastic bag, something EMS brought onto

1 the scene, left behind. I mean a C-collar or something
2 like that they use.

3 Q And you mentioned, I think, in your earlier
4 testimony something about a swimming pool. Where is the
5 swimming pool?

6 A Yes, this is an aboveground swimming pool. I'm
7 telling you, I think it's the largest one I've ever seen.
8 I'm very fortunate that I did not end up in that pool.

9 Q Okay.

10 A That's how I can pick which property it was on
11 that map is that swimming pool. It's got a big wood deck
12 around it. It's actually fancy. Very nice.

13 Q Thank you. At some point, did a uniform
14 officer arrive to assist you?

15 A Yes, sir. Deputy Duncan was the first one up
16 there.

17 Q Okay. And once he arrived, what, if anything,
18 did you do?

19 A Once he took control of the suspect and cuffed
20 him, I holstered my weapon and walked away from the
21 scene.

22 Q Do you recognize the defendant in this case?

23 A Yes, sir. Seated there at the table in the
24 blue shirt.

25 Q How do you know?

David Weiner - Direct Examination by Mr. Fretwell

472

1 A From that day when I saw him crossing Crane
2 Avenue where the shots were fired.

3 Q What happened after the shooting?

4 A It's a very -- it's kind of a long process. A
5 little unnerving. They take your firearm from you.
6 They'll give you another one. We wait for everybody to
7 come on scene. You know, our brass, basically, and
8 Internal Affairs. And they will interview you. You'll
9 walk through it one time with them what occurred. Then I
10 returned to my office where they will actually test my
11 hands for gunshot residue. It's where they'll take my
12 firearm and then I go home for the night.

13 Q What did you do with the blue and white
14 bandana?

15 A That got put into P&E before I went home.

16 Q And how do you put that in P&E?

17 A There is a form we fill out that establishes
18 the chain of custody on who touches it, when they touch
19 it, what time they touch it, why they touched it. I fill
20 that out. Then it was after-hours. I'd have to look at
21 the form. But it was more than likely put in a drop box.
22 Now there's lockers. But it's almost like a mail slot in
23 a door. You just throw it into there. It goes into a
24 bucket. It's secure. Nobody can take it out or anything
25 until the morning when our P&E people come to work.

1 Q Let me show you what I've marked as Court
2 Exhibit 1. Is that a copy of the sheet that you filled
3 out?

4 A Yes, sir.

5 Q What kind of information does it generally
6 obtain?

7 A It's got, uh, what type of evidence it is. It
8 has the case number. It has the date and time it was
9 recovered, where it was recovered, a detailed description
10 of what it is and like a label. I always use my
11 initials, D.W. and then 1 through 1000. That's how I
12 label my stuff. Then I sign that I'm the one that's
13 dropping it off. As I mentioned earlier, there's a
14 reason box. I put drop box. Nobody was there when I put
15 it in. I put it in at 6:30 that night. I put it in the
16 drop box.

17 Q All right.

18 MR. FRETWELL: At this time, State would move
19 Court's Exhibit 1 into evidence as a Court's
20 Exhibit.

21 MR. JOHNSON: As a Court's Exhibit.

22 THE COURT: All right then. We'll mark it as
23 an exhibit.

24 BY MR. FRETWELL:

25 Q Was this bandana along with the articles of

David Weiner - Direct Examination by Mr. Fretwell

474

1 clothing removed from the defendant later tested by the
2 forensic laboratory with the South Carolina Law
3 Enforcement Division?

4 A Yes, sir.

5 Q Were you made aware of these results?

6 A Yes, sir.

7 Q At some point after these items were analyzed
8 by the state laboratory, did you turn this bandana and
9 other articles of the defendant's clothing over to
10 Special Agent Robert Scott of the FBI?

11 A Yes, sir.

12 Q For what purpose were these items turned over
13 to Special Agent Scott?

14 A For further testing. SLED indicated to us
15 that, although they tested it, they felt that FBI might
16 be a better specialist in the field. They requested that
17 we send it to them for further testing.

18 Q Were you made aware of the results to the
19 testing by the FBI laboratory?

20 A Yes, sir.

21 Q Did these results differ from the results you
22 received from the State or SLED laboratory?

23 A No, sir.

24 Q Did the FBI results provide you with any
25 additional evidence in this case?

1 A No, sir.

2 Q Why was the decision made to send these items
3 to the FBI for further testing?

4 A Again, just basically at the request of SLED.
5 I make the decision on what gets processed or not. They
6 can't send it unless I approve it. We discussed -- in
7 fact, I had spoken with Mr. Fretwell as well just to make
8 sure that we were doing everything we could.

9 Q In fact, when evidence is released and
10 authorized for testing in a particular case, who
11 generally is in charge of making those decisions?

12 A It's me. Nobody else.

13 Q If you --

14 A Well, if I'm the case officer. I apologize.
15 Yes, sir.

16 Q Okay. Were you the original case agent in this
17 case?

18 A No, sir.

19 Q Who was?

20 A Investigator Mary Fields.

21 Q And why didn't Mary Fields or Investigator
22 Fields make the decisions with respect to the bandana and
23 the articles?

24 A At that time, when this was done and currently,
25 she was in Afghanistan.

1 Q All right. And from the time that she was the
2 original case agent, uh, tell us about, uh, why she's not
3 with the sheriff's office.

4 A She's in Afghanistan. I think she works for
5 Fluor as a private contractor in Afghanistan.

6 Q Do you know why she left the sheriff's office?

7 A She retired.

8 Q Did she retire because of years of service?

9 A Yes, sir.

10 Q Okay. All right.

11 MR. FRETWELL: Your Honor, I'm going to pass
12 State's 66 and 67 to the jury.

13 THE COURT: All right.

14 MR. FRETWELL: Please answer any questions
15 Mr. Johnson may have of you.

16 THE WITNESS: Yes, sir.

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: Your Honor, I will wait until
19 they finish.

20 THE COURT: That will be perfectly fine.

21 (WHEREUPON, there is a pause.)

22 CROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q Sergeant Wein -- Sergeant Weiner?

25 A Yes, sir.

1 Q Sergeant Weiner, uh, let's first, I'll have you
2 step down.

3 A Yes, sir.

4 Q All right. Now, initially, you stated that you
5 did several searches. Let's go over again where you said
6 you searched. You said you and four members of the SWAT
7 did a sweep through here?

8 A That was not the first thing. That was the
9 last thing.

10 Q That was the last thing, but it was one of the
11 searches that you did?

12 A Yes, sir.

13 Q Let's go over in chronological order.

14 A Okay.

15 Q Can you tell us the first search that you did?

16 A The first thing I did because we were down here
17 at Emile and Leone, actually walked on foot right up here
18 into Westside park. We searched into here, in Westside
19 park.

20 Q So you searched this whole area?

21 A Right. The dogs had tracked this way. We
22 wanted to make sure they were tracking the right way. We
23 wanted to check all areas inside the perimeter.

24 Q Now, the second place you searched is where?

25 A Uh, under this. I checked this culvert. Went

- 1 under West Blue Ridge after that.
- 2 Q That's over here?
- 3 A Yes, sir.
- 4 Q And that's Westside park there?
- 5 A Correct.
- 6 Q What's the third place you searched?
- 7 A We checked over towards Claxton on a suspicious
- 8 person call.
- 9 Q Now, Claxton is not on this?
- 10 A Not on the map. It's further over.
- 11 Q Now, Claxton, the call there was by a citizen?
- 12 A Yes, sir.
- 13 Q Similar to the call that was on Crane?
- 14 A Yes, sir.
- 15 Q Now, uh, did you search anywhere else? Or with
- 16 the sweep?
- 17 A The final one was the push through the woods.
- 18 Q Now, you stated earlier that you were looking
- 19 for people. Is that right?
- 20 A Yes, sir.
- 21 Q Now, if you had found something, would you have
- 22 picked it up?
- 23 A Absolutely. If I saw it.
- 24 Q Okay. Yes, sir. You can sit down.
- 25 A Yes, sir.

1 Q Now, you stated when you got on the scene to,
2 uh, Emile, that was the shooting of -- that's where the
3 shooting of David Dill happened, right?

4 A Yes, sir.

5 Q You stated that you noticed that -- first of
6 all, you didn't make any contact with that vehicle.

7 A The white van?

8 Q The white van.

9 A Right, I dropped Fortner off at the white van.

10 Q But you didn't make any contact with it
11 yourself?

12 A No, sir. Not initially.

13 Q Now, you just looked at it from afar. You
14 observed the red smoke coming out of the window?

15 A Yes, sir.

16 Q Now, it was, uh, Cooper who took you to the
17 bandana, right?

18 A No, Cannon.

19 Q Cannon. Excuse me.

20 A Yes, sir.

21 Q Cannon. And Cannon took you to the bandana.
22 Had anybody been watching you at that point?

23 A No, sir.

24 Q Okay. Now, he took you to it. How was it
25 laying?

- 1 A Just laying on the ground.
- 2 Q Just laying on the ground?
- 3 A Yes, sir.
- 4 Q And you picked it up?
- 5 A Correct.
- 6 Q And you put it in one of your cargo pockets.
- 7 That's on your pants?
- 8 A Correct. In a bag.
- 9 Q In a bag. And then at some point -- well, let
- 10 me backtrack. What time did the perimeter closed?
- 11 A 4:15 is what I documented.
- 12 Q 4:15?
- 13 A Yes, sir.
- 14 Q Fortner documented four o'clock. It's about
- 15 the same time, right?
- 16 A Within a couple of minutes.
- 17 Q Now, at some point, you encountered my client,
- 18 right?
- 19 A Yes, sir.
- 20 Q Now, you encountered him on Crane.
- 21 A Correct.
- 22 Q Now, you did reports for this, didn't you?
- 23 A Yes, sir.
- 24 Q You did two of them?
- 25 A Correct.

1 Q Now, one was just a regular report that you
2 could do, right?

3 A Yes, sir.

4 Q And the second one was for the office of -- the
5 OPS, Office of Professional Standards?

6 A Yes, sir.

7 Q Now, the reason why you did that second one is
8 you knew there would be an investigation because it was
9 an officer involved shooting?

10 A Correct.

11 Q In fact, the investigation started almost
12 immediately when Agent Donahue arrived?

13 A Correct.

14 Q Now, Agent Donahue, does he work in your office
15 building?

16 A I think SLED does have an office there. But
17 one of their main ones is here in this building actually.

18 Q In this building?

19 A Yes, sir.

20 Q In any case, you know Agent Donahue.

21 A Yes, sir.

22 Q And isn't it true that Agent Donahue approached
23 you on that very night after the shooting?

24 A Yes, sir.

25 Q Isn't it true that at that point in time you

1 declined to speak with him?

2 A Correct.

3 Q Now, Agent Donahue at some point got the report
4 that you gave?

5 A Yes, sir.

6 Q Like I said, you did two -- do you have your
7 reports with you?

8 A I do.

9 Q Do you have them in your hand?

10 A Yes, sir.

11 Q Okay. I just want to make sure. Now, SLED did
12 do an investigation; isn't that right?

13 A Correct.

14 Q And are you -- aren't you aware that Agent
15 Donahue presented his evidence to the Attorney General?

16 A Yes, sir. That's one of the steps that they
17 take.

18 Q And after they submitted it to the Attorney
19 General or the Attorney General then decides whether to
20 proceed with the case?

21 A Correct.

22 MR. JOHNSON: All right. I'd like to have
23 something marked as merely a Court's Exhibit.

24 (WHEREUPON, Court's Exhibit 5 is marked for
25 identification purposes.)

1 MR. FRETWELL: No objection to it being
2 introduced as a Court's Exhibit.

3 THE COURT: All right. And just so we're
4 clear on what we're doing when we mark something as
5 a Court's Exhibit -- I wanted to say this to you,
6 Mr. Fretwell. I'm marking it as an exhibit. It's
7 not entered into evidence. But it is marked as a
8 Court's Exhibit. That would be Court's Exhibit
9 number 5. All right.

10 MR. JOHNSON: Court's Exhibit number 5.

11 BY MR. JOHNSON:

12 Q I'm handing you what's marked as Court's
13 Exhibit 5. Do you recognize what it is?

14 A I have seen it one time.

15 Q All right. Now, that letter is involving your
16 shooting of my client, isn't it?

17 A I have never read it.

18 Q But you seen it before?

19 A One time, just like -- one time. I never read
20 it.

21 Q But you've never read?

22 A No.

23 Q Is it not involving the shooting of my client?

24 A I do not know, sir.

25 MR. FRETWELL: Your Honor, may we approach?

1 THE COURT: Yes. And why don't you hand me
2 that letter.

3 THE WITNESS: Yes, ma'am.

4 THE COURT: Thank you. I appreciate it.

5 (WHEREUPON, a bench conference is held.)

6 THE COURT: Thank you, Ladies and Gentlemen,
7 for your patience.

8 Yes, sir.

9 MR. JOHNSON: Your Honor, at this time, I
10 would like to mark it as Defense Exhibit number 1.

11 THE COURT: All right then.

12 MR. FRETWELL: No objection.

13 THE COURT: All right. No objection. It
14 will be Defendant's Exhibit number?

15 MR. JOHNSON: Number 1.

16 THE COURT: 1. All right.

17 MR. JOHNSON: I'd also like to ask it be
18 admitted into evidence at this time.

19 THE COURT: All right.

20 MR. FRETWELL: No objection.

21 THE COURT: No objection. All right. Thank
22 you.

23 (WHEREUPON, Court's Exhibit 5 is remarked as
24 Defendant's Exhibit 1 and admitted into the record.)

25 BY MR. JOHNSON:

1 Q Now, Detective Weiner, at this time, I'm
2 showing you what's been marked as Defense Exhibit number
3 1. Now, have I shown you this letter?

4 A Yes, sir.

5 Q Now, do you know the substance of this letter?

6 A Not until I read it, no, sir.

7 Q Okay. Can you read it to yourself really
8 quickly?

9 A Yes, sir. (Reading.) Okay.

10 Q Now, doesn't this form state that there was
11 insufficient evidence to proceed with your prosecution?

12 A Yes, sir.

13 Q Now, I'd like to go to where you shot my
14 client.

15 A Yes, sir.

16 Q Now, you stated that you first saw him on
17 Crane, isn't that true?

18 A Yes, sir.

19 Q I'm going to ask you at this point in time to
20 refer to your police reports. I'm going to use that and
21 go chronologically in both of them.

22 A Okay.

23 Q Now, the first one would be the one that is two
24 pages long. That was the first report you gave, right?

25 A Okay.

David Weiner - Cross-Examination by Mr. Johnson

486

1 Q Now, first of all, what were you wearing on
2 that day?

3 A Initially, I was wearing, uh, like I am today
4 minus the suit jacket.

5 Q Now, what were you wearing when you shot my
6 client?

7 A Uh, my SWAT uniform. A lot like the K-9s
8 uniform, just it's green instead of blue.

9 Q It's green. Did you have your vest on?

10 A No, sir. I had taken that off. It was soaking
11 wet.

12 Q You took that off and you put that in your
13 trunk. So that was in your trunk?

14 A Yes, sir.

15 Q What's on the front of the vest?

16 A My name, SWAT, big Sheriff's badge.

17 Q Now, that's what's on the front of the vest.
18 That vest is now in your car?

19 A No, no, no, no. That's what's on the front of
20 my shirt.

21 Q Now, what's on the front of the shirt?

22 A It says Sheriff's Office on a big patch.

23 Q In a big patch, the Sheriff's office and it's
24 yellow?

25 A No, no. It's green and black.

1 Q Green and black?

2 A Yes, sir.

3 Q Okay. Now, as you got close, you drove through
4 the gate, isn't that true?

5 A Yes, sir.

6 Q Now, you say you were looking for your
7 microphone, but you weren't able to get to that?

8 A Right. I called out on Crane Avenue when we
9 first saw him. I guess I just didn't hang it back up.
10 It's got like a little clip on the dashboard you put it
11 in. I guess I just didn't make it to it. It fell down.

12 Q More of the substance of what actually happened
13 is on the second report and that's the report that you
14 gave to Agent Donahue; isn't that right?

15 A Correct.

16 Q Now, you stated when you got there you said he
17 looked at you but he couldn't tell if you were police.
18 That would be one, two, three, four, the fourth
19 paragraph. That's the last line.

20 A Correct. I put "he looked at us in the car but
21 couldn't tell if we were the police or not."

22 Q Now, this is coming from your point of view
23 obviously.

24 A Right.

25 Q And this is how you are perceiving him to be

1 thinking?

2 A Correct.

3 Q Now, you stated that he kept going and then he
4 got to a locked gate and he continued into the back yard.
5 Isn't that right?

6 A Correct.

7 Q Now, at this point -- at this point in time,
8 you testified that you knew that he was armed and
9 dangerous.

10 A Yes, sir.

11 Q Did he turn out to be armed?

12 A No, sir.

13 Q Now, you stated that you drove through the gate
14 and in the back yard?

15 A Yes, sir.

16 Q In fact, you drove through it to the fact that
17 you drove -- excuse me. You drove through it to the
18 point that the car bottomed out on the other side, right?

19 A No, no. Behind the house was like a patio pad.
20 That's where the car scraped the bottom.

21 Q Okay. I just -- you know where I am in your
22 report, right?

23 A Uh-huh.

24 Q I'm going read it and just ask you if I read it
25 correctly.

1. A Uh-huh.

2. Q I drove over a concrete pad and the car
3. bottomed out on the other side.

4. A Uh-huh.

5. Q Okay. You were looking for your microphone.
6. Once again, you couldn't find it. So you weren't able to
7. use it.

8. A Right.

9. Q Then at some point now -- there was just an
10. exhibit entered where you saw -- you could see from
11. across the fence where my client lay as you -- after he
12. had been shot, right?

13. A Yes, sir.

14. Q Now, there were a series of pictures taken in
15. this instance -- at the scene, right?

16. A Right.

17. Q This isn't the only one?

18. A No.

19. Q Now, there's another picture that shows your
20. car up against the fence of the first yard, right?

21. A Correct.

22. Q So you chased him with your car all the way to
23. the other side of the yard, right?

24. A Correct.

25. Q To the point where the car rested right where

1 the fence was right here. Is that correct?

2 A Yes, sir.

3 Q And at that point in time, you got out of the
4 car.

5 A Yes, sir.

6 Q Now, was Fortner with you?

7 A Yes, sir.

8 Q Now, at what point was Fortner not with you?

9 A When I went to jump the fence to go secure him
10 because I thought he was giving up, Fortner had turned
11 around to get back to the car to the radio. We thought
12 he was giving up.

13 Q Now, when you say you thought he was giving up,
14 you thought he was getting on the ground?

15 A No, he was standing still. He had his hands
16 kind of not all the way up above his head. He was so
17 tired. It was kind of off to his side kind of holding
18 them out. So I decided I'd holster and jump the fence.
19 Right then, in my mind, he didn't pose a threat to me.

20 Q So this is a man that you believed to be armed?

21 A Yes, sir.

22 Q That you believed just shot a witness earlier
23 that day?

24 A Correct.

25 Q And he's not on the ground and in a position

1 like this? He doesn't have his hands up, right?

2 A Correct.

3 Q So you instructed Fortner to leave you so you
4 were by yourself.

5 A I didn't tell him to do anything.

6 Q But Fortner left?

7 A He didn't leave. I mean, we're standing next
8 to my car. It's not like he had to walk 30 feet behind
9 us.

10 Q Did Fortner put his gun back?

11 A I have no idea.

12 Q Did Fortner still have his gun held on you --
13 held on him?

14 A I do not know.

15 Q Did Fortner see you shoot him when you shot
16 him?

17 A No.

18 Q So he didn't see you shoot him when you shot
19 him, so we know that's true.

20 A Right, cause we kept on running.

21 Q So you still got -- you have your gun held on
22 him and Fortner goes to say something to dispatch.

23 A Correct.

24 Q And he's not on the ground. You believed him
25 to be armed.

1 A Correct.

2 Q At some point, you state that he takes off
3 running again?

4 A Yes, sir.

5 Q And you still think he's armed at this point in
6 time?

7 A Correct.

8 Q And he jumps another fence.

9 A Yes, sir.

10 Q Then you stated he turned and he looked at you.

11 A Correct.

12 Q Now, this is different from how he was before
13 when you felt safe enough for Fortner to go dispatch the
14 radio?

15 A Correct.

16 Q The previous time, he wasn't in handcuffs?

17 A That's correct.

18 Q He didn't have his hands up or anything like
19 that.

20 A He had them up, just not above his head. He
21 had them up to his side where I could see palms of both
22 hands plainly.

23 Q Is this good enough for you?

24 A Yes, sir. When you are that tired, yes, sir.

25 Q When you are that tired, that's good enough for

1 you?

2 A That's all he could muster.

3 Q Anyhow, he jumped the fence?

4 A Yes, sir.

5 Q He scaled this fence and that's the fence right
6 there?

7 A (No response.)

8 Q That's that fence?

9 A Oh, yes, sir. The second fence, actually the
10 third fence he jumped.

11 Q The third fence, he jumped?

12 A Yeah.

13 Q So he jumped three fences.

14 A Uh-huh.

15 Q And this is the same man?

16 A Correct.

17 Q And you shot him three times?

18 A Correct.

19 Q Do you know where you shot him?

20 A Where? As he was turning towards me is where I
21 fired. To my understanding, I think one hit him in the
22 left arm. The other two hit him somewhere on the left
23 side here like a leg or hip area.

24 Q You say left arm, you mean at the back of his
25 left arm?

1 A I think so, yes, sir.

2 Q And what about his legs? Like the back of his
3 legs?

4 A I don't know.

5 Q But it was the back of his left arm?

6 A It was all on the left side. That's where --
7 when he was turning to face me is when I fired.

8 Q Did he ever pull a gun at you?

9 A No, sir.

10 Q Did he have a gun?

11 A It's my understanding when he was arrested, he
12 did not.

13 Q Did they ever find a gun?

14 A No, sir.

15 Q Did they find a gun in that yard on Crane
16 Avenue?

17 A No, sir.

18 Q Okay. And then shortly thereafter is when
19 Duncan came and cuffed him, right?

20 A Within a minute or two, yes, sir.

21 Q Within a minute or two. After he had been
22 shot, Fortner left?

23 A Yes, sir. To flag down Duncan.

24 Q To flag down Duncan. And you had your gun held
25 on him at that point in time?

1 A Yes, sir.

2 Q How long was it before someone came back to
3 you?

4 A Like I said, a minute or two.

5 Q A minute or two.. So you were there with him
6 holding the gun on him?

7 A Yes, sir.

8 Q Okay.. Now, forensics came out to the scene,
9 right?

10 A Yes, sir.

11 Q And they collected -- one of the things they
12 did was they cut off my client's clothes, right?

13 A EMS did.

14 Q EMS did that?

15 A Yes, sir.

16 Q Forensics collected that later?

17 A Yes, sir.

18 Q After that point was when what we mentioned
19 about Agent Donahue coming and trying to speak with you,
20 right?

21 A Correct.

22 Q At that point, you declined to speak with him?

23 A Correct.

24 Q Now, today, when you stated you said you saw
25 him across the road, you said you saw spots?

1 A Yes, sir.

2 Q Now, is that what you said in your report?

3 A Yes, sir.

4 Q You said you saw spots in your report?

5 A Yes, sir.

6 Q Now, what else did you see? Did you see him
7 have on a black hoodie?

8 A All I saw was a black shirt. I don't think I
9 saw a hood or a hoodie.

10 Q Did you later collect a black hoodie?

11 A Not that I'm aware of. I did not.

12 Q What about a baseball cap?

13 A I did not.

14 Q You are saying you are the one who is in charge
15 of having things tested, right?

16 A I was asked.

17 Q Did you send things to SLED to be tested?

18 A I didn't send them off to SLED. I sent them
19 off to FBI.

20 Q So you are not -- apologies if I've got this
21 wrong. But as I understood it, you said you are the one
22 in charge of sending things to SLED and sending things
23 to --

24 A The only thing I released was the stuff to go
25 to the FBI.

1 Q Okay. So you released stuff to go to FBI?

2 A Right. Mary Fields had left.

3 Q Mary Fields had gone.

4 A Yes.

5 Q Mary Fields ordered the original tests and you
6 didn't order those.

7 A Correct.

8 Q And you sent stuff to the FBI?

9 A Correct.

10 Q But did you send a black sweatshirt to the FBI?

11 A No, sir.

12 Q Did you send a hat?

13 A No, sir.

14 Q You didn't send a hat either?

15 A No.

16 Q Okay. Now, very briefly, the car you were
17 driving that day, what was it?

18 A I think it was a 2000 white Ford Taurus.

19 Q Was it equipped with the sheriff's office --
20 you know, you go outside and you see a --

21 A Not marked.

22 Q Not marked. Unmarked car. Did it have lights
23 on the top of it or anything?

24 A No, sir. Inside.

25 Q Okay. I have nothing further at this time.

1 THE COURT: All right. Mr. Fretwell.

2 MR. FRETWELL: Redirect, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. FRETWELL:

5 Q Sergeant Weiner, Mr. Johnson asked you about
6 the uniform that you were wearing that day and
7 specifically its markings. Now, this picture that you've
8 been shown and identified and we've put into evidence as
9 State's 32, when this picture was taken, this is taken by
10 forensics; is that correct?

11 A Yes, sir.

12 Q Some time after the shooting occurred?

13 A Correct.

14 Q All right. And so the light -- the lighting
15 here would have been lighter when the actual shooting
16 occurred?

17 A Yes, sir.

18 Q And this light right here, do you know what
19 that's from?

20 A My guess would be a camera flash. Maybe they
21 had like a portable light system set up. I don't know.

22 Q All right. Mr. Johnson asked you if you found
23 something when you went through the woods, would you have
24 picked it up.

25 A Yes, sir.

1 Q All right. Can you describe a little bit about
2 how this was as far as the SWAT team sweeping through the
3 woods?

4 A I don't know what the dog team had been
5 through. Obviously, as I was pushing through it, you
6 would come to like a logging road. We had made the
7 decision just to go straight. That's how I took it. I
8 went straight through it. Some of it was really thick.
9 A lot of briars. Big trees. Small trees. Some of it
10 was really thick. And again, it would open up to a
11 logging road. As much as I wanted to take it, we just
12 kept going straight.

13 Q Was there a lot of undergrowth?

14 A Yes, sir.

15 Q Now, were you walking like this looking around
16 or were you guys marching through the woods?

17 A Marching through the woods. Straightforward.

18 Q Guns in hand?

19 A Yes, sir.

20 Q Eyes up?

21 A Yes, sir.

22 Q Looking around?

23 A Correct.

24 Q Uh, Mr. Johnson asked you a couple of times, I
25 believe, about Special Agent Gene Donahue.