

STATE OF SOUTH CAROLINA

VOLUME I OF II

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable James R. Barber, Circuit Court Judge

RECEIVED

AUG 09 2017

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GERALD AKEEM GADSDEN,

APPELLANT

APPELLATE CASE NO 2016-001286

RECORD ON APPEAL

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ATTORNEYS FOR RESPONDENT

PAGES 1 – 500

# INDEX

|             |   |
|-------------|---|
| INDEX ..... | i |
|-------------|---|

|                                               |   |
|-----------------------------------------------|---|
| TRIAL TRANSCRIPT DATED JUNE 6 – 9, 2016 ..... | 1 |
|-----------------------------------------------|---|

## TESTIMONY

### DR. DONNA SCHWARTZ-MADDOX

|                                           |    |
|-------------------------------------------|----|
| Direct Examination by Ms. Ross .....      | 13 |
| Cross Examination by Ms. Simpson .....    | 17 |
| Cross Examination by Mr. Yarborough ..... | 22 |

|                      |    |
|----------------------|----|
| COURT'S RULING ..... | 38 |
|----------------------|----|

|                                        |    |
|----------------------------------------|----|
| OPENING STATEMENT BY MS. SIMPSON ..... | 41 |
|----------------------------------------|----|

|                                     |    |
|-------------------------------------|----|
| OPENING STATEMENT BY MS. ROSS ..... | 53 |
|-------------------------------------|----|

|                                           |    |
|-------------------------------------------|----|
| OPENING STATEMENT BY MR. YARBOROUGH ..... | 56 |
|-------------------------------------------|----|

## TESTIMONY

### AARON KRETZSCHMAR

|                                              |     |
|----------------------------------------------|-----|
| Direct Examination by Mr. Fretwell .....     | 67  |
| Cross Examination by Mr. Yarborough .....    | 110 |
| Cross Examination by Ms. Ross .....          | 129 |
| Redirect Examination by Mr. Fretwell .....   | 137 |
| Re-Cross Examination by Mr. Yarborough ..... | 140 |
| Re-Cross Examination by Ms. Ross .....       | 142 |

### DAMION RILEY

|                                           |     |
|-------------------------------------------|-----|
| Direct Examination by Mr. Fretwell .....  | 143 |
| Cross Examination by Mr. Yarborough ..... | 155 |
| Cross Examination by Ms. Ross .....       | 167 |

|                      |     |
|----------------------|-----|
| COURT'S RULING ..... | 169 |
|----------------------|-----|

## TESTIMONY

### DAMION RILEY (CONTINUED)

|                                              |     |
|----------------------------------------------|-----|
| Redirect Examination by Mr. Fretwell .....   | 173 |
| Re-Cross Examination by Mr. Yarborough ..... | 174 |
| Re-Cross Examination by Ms. Ross .....       | 178 |

### GRADY TERRELL PUGH

|                                              |     |
|----------------------------------------------|-----|
| Direct Examination by Ms. Simpson .....      | 180 |
| Cross Examination by Mr. Yarborough .....    | 194 |
| Cross Examination by Ms. Ross .....          | 202 |
| Redirect Examination by Ms. Simpson .....    | 206 |
| Re-Cross Examination by Mr. Yarborough ..... | 208 |
| Re-Cross Examination by Ms. Ross .....       | 210 |
| JAMES MIDDLETON                              |     |
| Direct Examination by Ms. Simpson .....      | 211 |
| Cross Examination by Mr. Yarborough .....    | 227 |
| Cross Examination by Ms. Ross .....          | 233 |
| Redirect Examination by Ms. Simpson .....    | 237 |
| Re-Cross Examination by Ms. Ross .....       | 238 |
| MATTHEW ANDERSON                             |     |
| Direct Examination by Ms. Simpson .....      | 239 |
| Cross Examination by Mr. Yarborough .....    | 256 |
| Cross Examination by Ms. Ross .....          | 257 |
| Redirect Examination by Ms. Simpson .....    | 259 |
| DARWIN SHAW                                  |     |
| Direct Examination by Mr. Fretwell .....     | 265 |
| Cross Examination by Mr. Yarborough .....    | 271 |
| Cross Examination by Ms. Ross .....          | 283 |
| CHRISTOPHER GARY                             |     |
| Direct Examination by Ms. Simpson .....      | 285 |
| Cross Examination by Mr. Yarborough .....    | 307 |
| Cross Examination by Ms. Ross .....          | 309 |
| THOMAS MOTES, JR.                            |     |
| Direct Examination by Mr. Fretwell .....     | 311 |
| Cross Examination by Ms. Ross .....          | 324 |
| MATTHEW OWENS                                |     |
| Direct Examination by Ms. Simpson .....      | 332 |
| Cross Examination by Ms. Ross .....          | 352 |
| JAMES PERRY                                  |     |
| Direct Examination by Mr. Fretwell .....     | 359 |
| Cross Examination by Mr. Yarborough .....    | 412 |
| Cross Examination by Ms. Ross .....          | 417 |
| Redirect Examination by Mr. Fretwell .....   | 421 |
| Re-Cross Examination by Mr. Yarborough ..... | 421 |
| DANIEL KELLY                                 |     |

|                                                                                                                           |     |
|---------------------------------------------------------------------------------------------------------------------------|-----|
| Direct Examination by Mr. Fretwell.....                                                                                   | 422 |
| Cross Examination by Mr. Yarborough.....                                                                                  | 429 |
| Cross Examination by Ms. Ross.....                                                                                        | 431 |
| Redirect Examination by Mr. Fretwell .....                                                                                | 432 |
| Re-Cross Examination by Ms. Ross .....                                                                                    | 433 |
| DAVID WEINER                                                                                                              |     |
| Direct Examination by Mr. Fretwell.....                                                                                   | 434 |
| Cross Examination by Mr. Yarborough.....                                                                                  | 507 |
| Cross Examination by Ms. Ross.....                                                                                        | 566 |
| Redirect Examination by Mr. Fretwell .....                                                                                | 597 |
| Re-Cross Examination by Mr. Yarborough .....                                                                              | 600 |
| Re-Cross Examination by Ms. Ross .....                                                                                    | 602 |
| MOTION FOR A DIRECTED VERDICT.....                                                                                        | 605 |
| COURT’S RULING .....                                                                                                      | 606 |
| KEYERA BROOMFIELD-WHITE                                                                                                   |     |
| Direct Examination by Mr. Yarborough.....                                                                                 | 616 |
| Cross Examination by Ms. Simpson.....                                                                                     | 621 |
| Cross Examination by Ms. Ross.....                                                                                        | 624 |
| CHARGE CONFERENCE.....                                                                                                    | 626 |
| CLOSING ARGUMENT BY MS. ROSS .....                                                                                        | 631 |
| CLOSING ARGUMENT BY MR. YARBOROUGH.....                                                                                   | 645 |
| CLOSING ARGUMENT BY MR. FRETWELL.....                                                                                     | 660 |
| CHARGE ON THE LAW .....                                                                                                   | 680 |
| VERDICT .....                                                                                                             | 700 |
| SENTENCING .....                                                                                                          | 704 |
| TRIAL TRANSCRIPT DATED APRIL 11, 2016 .....                                                                               | 712 |
| COURT’S EXHIBIT NO. 5 (PROBATION VIOLATION) .....                                                                         | 717 |
| COURT’S EXHIBIT NO. 11 (SENTENCE SHEETS).....                                                                             | 718 |
| NOTICE OF INTENT TO SEEK SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT<br>THE POSSIBILITY OF PAROLE DATED APRIL 26, 2016..... | 722 |



|                              |     |
|------------------------------|-----|
| INDICTMENT.....              | 723 |
| SENTENCE SHEETS .....        | 726 |
| CERTIFICATE OF COUNSEL ..... | 734 |

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
)  
PLAINTIFF, )  
)  
-VS- )  
)  
JAMES WHITE AND )  
GERALD GADSDEN, )  
DEFENDANTS. )  
\_\_\_\_\_ )

2014-GS-23-03815  
2014-GS-23-10507

TRANSCRIPT OF RECORD  
(VOLUME ONE OF THREE)

JUNE 6 - 9, 2016  
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES R. BARBER

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

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NICOLE SIMPSON, ASSISTANT SOLICITOR

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SUSANNAH ROSS, ESQ.

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INDEXWITNESSPAGE NO.MONDAY, JUNE 6, 2016:

DONNA SCHWARTZ-MADDOX

DIRECT BY MS. ROSS ----- 13

CROSS BY MS. SIMPSON ----- 17

CROSS BY MR. YARBOROUGH ----- 22

THOMAS MOTES, JR.

DIRECT BY MR. FRETWELL ----- 51

CROSS BY MR. YARBOROUGH ----- 61

CROSS BY MS. ROSS ----- 63

MATTHEW OWENS

DIRECT BY MS. SIMPSON ----- 65

CROSS BY MS. ROSS ----- 72

CROSS BY MR. YARBOROUGH ----- 81

REDIRECT BY MS. SIMPSON ----- 82

DAVID WEINER

DIRECT BY MR. FRETWELL ----- 86

CROSS BY MR. YARBOROUGH ----- 98

JAMES MIDDLETON

DIRECT BY MS. SIMPSON ----- 106

OPENING STATEMENTS

MS. SIMPSON ----- 151

MS. ROSS ----- 163

MR. YARBOROUGH ----- 166

INDEXWITNESSPAGE NO.TUESDAY, JUNE 7, 2016 (Volume One of Three):

AARON KRETZSCHMAR

|                           |       |     |
|---------------------------|-------|-----|
| DIRECT BY MR. FRETWELL    | ----- | 177 |
| CROSS BY MR. YARBOROUGH   | ----- | 220 |
| CROSS BY MS. ROSS         | ----- | 239 |
| REDIRECT BY MR. FRETWELL  | ----- | 247 |
| RECROSS BY MR. YARBOROUGH | ----- | 250 |
| RECROSS BY MS. ROSS       | ----- | 252 |

DAMION RILEY

|                           |       |     |
|---------------------------|-------|-----|
| DIRECT BY MR. FRETWELL    | ----- | 253 |
| CROSS BY MR. YARBOROUGH   | ----- | 265 |
| CROSS BY MS. ROSS         | ----- | 277 |
| REDIRECT BY MR. FRETWELL  | ----- | 283 |
| RECROSS BY MR. YARBOROUGH | ----- | 284 |
| RECROSS BY MS. ROSS       | ----- | 288 |

GRADY TERRELL PUGH

|                           |       |     |
|---------------------------|-------|-----|
| DIRECT BY MS. SIMPSON     | ----- | 289 |
| CROSS BY MR. YARBOROUGH   | ----- | 304 |
| CROSS BY MS. ROSS         | ----- | 312 |
| REDIRECT BY MS. SIMPSON   | ----- | 316 |
| RECROSS BY MR. YARBOROUGH | ----- | 318 |
| RECROSS BY MS. ROSS       | ----- | 320 |

INDEXWITNESSPAGE NO.

JAMES MIDDLETON

|                         |       |     |
|-------------------------|-------|-----|
| DIRECT BY MS. SIMPSON   | ----- | 321 |
| CROSS BY MR. YARBOROUGH | ----- | 337 |
| CROSS BY MS. ROSS       | ----- | 343 |
| REDIRECT BY MS. SIMPSON | ----- | 347 |
| RECROSS BY MS. ROSS     | ----- | 348 |

MATTHEW ANDERSON

|                         |       |     |
|-------------------------|-------|-----|
| DIRECT BY MS. SIMPSON   | ----- | 349 |
| CROSS BY MR. YARBOROUGH | ----- | 366 |
| CROSS BY MS. ROSS       | ----- | 367 |
| REDIRECT BY MS. SIMPSON | ----- | 369 |

WEDNESDAY, JUNE 8, 2016 (VOLUME TWO OF THREE) :

DARWIN SHAW

|                         |       |     |
|-------------------------|-------|-----|
| DIRECT BY MR. FRETWELL  | ----- | 375 |
| CROSS BY MR. YARBOROUGH | ----- | 381 |
| CROSS BY MS. ROSS       | ----- | 393 |

CHRISTOPHER GARY

|                         |       |     |
|-------------------------|-------|-----|
| DIRECT BY MS. SIMPSON   | ----- | 395 |
| CROSS BY MR. YARBOROUGH | ----- | 417 |
| CROSS BY MS. ROSS       | ----- | 419 |

THOMAS MOTES, JR.

|                        |       |     |
|------------------------|-------|-----|
| DIRECT BY MR. FRETWELL | ----- | 421 |
| CROSS BY MS. ROSS      | ----- | 434 |

INDEXWITNESSPAGE NO.

MATTHEW OWENS

DIRECT BY MS. SIMPSON ----- 442

CROSS BY MS. ROSS ----- 462

JAMES PERRY

DIRECT BY MR. FRETWELL ----- 469

CROSS BY MR. YARBOROUGH ----- 522

CROSS BY MS. ROSS ----- 527

REDIRECT BY MR. FRETWELL ----- 531

RECROSS BY MR. YARBOROUGH ----- 531

DANIEL KELLY

DIRECT BY MR. FRETWELL ----- 532

CROSS BY MR. YARBOROUGH ----- 539

CROSS BY MS. ROSS ----- 541

REDIRECT BY MR. FRETWELL ----- 542

RECROSS BY MS. ROSS ----- 543

DAVID WEINER

DIRECT BY MR. FRETWELL ----- 544

CROSS BY MR. YARBOROUGH ----- 617

THURSDAY, JUNE 9, 2016 (Volume Three of Three):

DAVID WEINER

CROSS BY MR. YARBOROUGH ----- 662

CROSS BY MS. ROSS ----- 676

REDIRECT BY MR. FRETWELL ----- 707

INDEX

| <u>WITNESS</u>                  | <u>PAGE NO.</u> |
|---------------------------------|-----------------|
| DAVID WEINER                    |                 |
| RE CROSS BY MR. YARBOROUGH----- | 710             |
| RE CROSS BY MS. ROSS -----      | 712             |
| KEYERA BROOMFIELD-WHITE         |                 |
| DIRECT BY MR. YARBOROUGH -----  | 725             |
| CROSS BY MS. SIMPSON -----      | 731             |
| CROSS BY MS. ROSS -----         | 734             |
| CLOSING ARGUMENTS               |                 |
| MS. ROSS -----                  | 741             |
| MR. YARBOROUGH -----            | 755             |
| MR. FRETWELL -----              | 770             |
| CHARGE OF THE COURT -----       | 790             |
| VERDICT OF THE JURY -----       | 809             |
| SENTENCE OF THE COURT-----      | 814             |
| CERTIFICATE OF REPORTER-----    | 821             |

EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u>  | <u>ID</u> | <u>EVIDENCE</u> |
|-----------|---------------------|-----------|-----------------|
| S-1       | 911 RECORDING ----- | 11        | 191             |
| S-2       | PHOTO -----         | 11        | 192             |
| S-3       | PHOTO -----         | 11        | 192             |
| S-4       | PHOTO -----         | 11        | 192             |
| S-5       | PHOTO -----         | 11        | 192             |
| S-6       | PHOTO -----         | 11        | 192             |
| S-7       | PHOTO -----         | 11        | 192             |
| S-8       | PHOTO -----         | 11        | 192             |
| S-9       | PHOTO -----         | 11        | 192             |
| S-10      | PHOTO -----         | 11        | 192             |
| S-11      | PHOTO -----         | 11        | 192             |
| S-12      | PHOTO -----         | 11        | 192             |
| S-13      | PHOTO -----         | 11        | 192             |
| S-14      | PHOTO -----         | 11        | 192             |
| S-15      | PHOTO -----         | 11        | 192             |
| S-16      | PHOTO -----         | 11        | 192             |
| S-17      | PHOTO -----         | 11        | 192             |
| S-18      | PHOTO -----         | 11        | 192             |
| S-19      | PHOTO -----         | 11        | 192             |
| S-20      | PHOTO -----         | 11        | 192             |
| S-21      | PHOTO -----         | 11        | 192             |
| S-22      | PHOTO -----         | 11        | 192             |
| S-23      | PHOTO -----         | 11        | 192             |
| S-24      | PHOTO -----         | 11        | 192             |



EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u>      | <u>ID</u> | <u>EVIDENCE</u> |
|-----------|-------------------------|-----------|-----------------|
| S-25      | PHOTO -----             | 11        | 192             |
| S-26      | PHOTO -----             | 11        | 192             |
| S-27      | PHOTO -----             | 11        | 192             |
| S-28      | PHOTO -----             | 11        | 192             |
| S-29      | PHOTO -----             | 11        | 192             |
| S-30      | PHOTO -----             | 11        | 520             |
| S-31      | MAP -----               | 11        | 214             |
| S-32      | MAP -----               | 11        | 214             |
| S-33      | WASHCLOTH -----         | 11        | 381             |
| S-34      | PHOTO -----             | 11        | 361             |
| S-35      | PHOTO -----             | 11        | 361             |
| S-36      | PHOTO -----             | 11        | 361             |
| S-37      | PHOTO -----             | 11        | 361             |
| S-38      | PHOTO -----             | 11        | 361             |
| S-39      | PHOTO -----             | 11        | 361             |
| S-40      | PHOTO -----             | 11        | 361             |
| S-41      | PHOTO -----             | 11        | 361             |
| S-42      | PHOTO -----             | 11        | 361             |
| S-43      | STATEMENT -----         | 11        | 427             |
| S-44      | CONSENT TO SEARCH ----- | 11        | 431             |
| S-45      | PHONE - KYOCERA -----   | 11        | 431             |
| S-46      | PHOTO - SAMSUNG -----   | 11        | 431             |
| S-47      | PHOTO -----             | 11        | X               |
| S-48      | PHOTO -----             | 11        | X               |

**EXHIBITS**

| <b><u>NO</u></b> | <b><u>DESCRIPTION</u></b> | <b><u>ID</u></b> | <b><u>EVIDENCE</u></b> |
|------------------|---------------------------|------------------|------------------------|
| S-49             | PHOTO -----               | 11               | X                      |
| S-50             | PHOTO -----               | 11               | X                      |
| S-51             | PHOTO -----               | 11               | X                      |
| S-53             | CREDIT CARD- -----        | 11               | 458                    |
| S-54             | DVD -----                 | 11               | X                      |
| S-55             | DVD -----                 | 11               | X                      |
| S-56             | PHOTO -----               | 11               | 517                    |
| S-57             | PHOTO -----               | 11               | 517                    |
| S-58             | PHOTO -----               | 11               | 517                    |
| S-59             | PHOTO -----               | 11               | 517                    |
| S-60             | PHOTO -----               | 11               | 517                    |
| S-61             | PHOTO -----               | 11               | 517                    |
| S-62             | PHOTO -----               | 11               | 517                    |
| S-63             | PHOTO -----               | 11               | 517                    |
| S-64             | PHOTO -----               | 11               | 517                    |
| S-65             | PHOTO -----               | 11               | X                      |
| S-66             | DVD -----                 | 11               | X                      |
| S-67             | DVD -----                 | 11               | X                      |
| S-68A            | REPORT -----              | 536              | X                      |
| S-68B            | REPORT -----              | 536              | X                      |
| S-68C            | REPORT -----              | 536              | X                      |
| S-69             | PHOTO -----               | 11               | 558                    |
| S-70             | PHOTO -----               | 11               | 611                    |

EXHIBITS

| <u>NO</u> | <u>DESCRIPTION</u>                                      | <u>ID</u> | <u>EVIDENCE</u> |
|-----------|---------------------------------------------------------|-----------|-----------------|
| S-71      | PHOTO -----                                             | 708       | 709             |
| D-1-W     | PHOTO -----                                             | 524       | 524             |
| D-2-W     | PHOTO -----                                             | 524       | 524             |
| D-3-W     | PHOTO OF FLIER -----                                    | 639       | 639             |
| D-4-W     | PHOTO -----                                             | 675       | 675             |
| D-1-G     | PHOTO ARRAY -----                                       | 704       | 704             |
| C-1       | SEARCH WARRANT -----                                    | 11        |                 |
| C-2       | PSYCHIATRIC EVAL -----                                  | 30        |                 |
| C-3       | PSYCHIATRIC EVAL -----                                  | 30        |                 |
| C-4       | DR. SCHWARTZ-MADDOX'S CV-----                           | 176       |                 |
| C-5       | PROBATION VIOLATION -----                               | 304       |                 |
| C-6       | DVD -----                                               | 474       |                 |
| C-7       | GADSDEN'S REQUEST TO CHARGE-----                        | 739       |                 |
| C-8       | WHITE'S REQUEST TO CHARGE-----                          | 739       |                 |
| C-9       | AFFIDAVIT OF SERVICE . -----                            | 817       |                 |
| C-10      | AFFIDAVIT OF SERVICE -----                              | 817       |                 |
| C-11      | SENTENCING SHEETS (3)<br>OF CERTIFIED CONVICTIONS ----- | 817       |                 |

1 MONDAY, JUNE 6, 2016 (Volume One of Three):

2 (Whereupon State's exhibits 1 - 51, 53 - 67 and 69 - 70  
3 were marked for identification)

4 (Whereupon Court's exhibit 1 was marked)

5 (Whereupon court convened at 11:27 am)

6 **THE COURT:** All right. Thank y'all. Please be seated,  
7 if you would. All right. I've had some conversation with  
8 the solicitors and Defense counsel. Do y'all have your voir  
9 dire, Ms. Ross and Mr. ---

10 **MS. ROSS:** I do, Your Honor.

11 **THE COURT:** And your witness lists? We're not going to  
12 begin this trial until, at the earliest, 2:30. So we've  
13 advised the jurors to come back at that time so we can  
14 handle some pretrial matters, one of which is relating to a  
15 competency issue based on a motion filed by Ms. Ross and a  
16 report that she provided me last week.

17 Now my understanding from Ms. Ross is there may be some  
18 change in the competency issue based on a further  
19 examination by the doctor. And so we'll flesh that out here  
20 today. We'll want to do that.

21 And apparently we've got a Denno matter that we need to  
22 deal with. Anything else, Mr. Solicitor?

23 **MR. FRETWELL:** Judge, we just have some basic  
24 housekeeping -- I did want to go over with the Court on the  
25 record some of the history of this case with respect to plea

1 offers, and appointment of counsel, substitution of counsel,  
2 life without parole issue. I believe that you may have just  
3 mentioned it, but ---

4 **THE COURT:** Do we have the clients in here?

5 **MR. YARBOROUGH:** Yes, sir.

6 **MS. ROSS:** Judge, I would just ask if we could go ahead  
7 and have a competency hearing ---

8 **THE COURT:** Yeah, we'll do that first because that  
9 could affect everything else.

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

11 **THE COURT:** All right. Ms. Ross, you want to proceed?

12 **MS. ROSS:** Yes, Your Honor. In the past few months  
13 some -- a situation has come to my attention maybe I should  
14 have seen before, but I think a lack of medication to my  
15 client brought it out more clearly such that it questioned  
16 his competency. And I filed a request for a continuance  
17 based on that.

18 And Dr. Maddox did an evaluation based on that and  
19 found him not competent. And this was May 21st that she  
20 evaluated him, but likely to become competent under  
21 medication.

22 Since that time Mr. Gadsden has been medicated at the  
23 Anderson Detention Center. Dr. Schwartz-Maddox went to see  
24 him yesterday, I believe, re-evaluated him and did a second  
25 report stating that she felt at this time, although there

**DONNA SCHWARTZ-MADDOX, M.D. - DIRECT EXAMINATION BY MS. ROSS**

13

1     were some issues, that he was competent.

2             And I would just, since she's the expert, I would call  
3     her to the stand and question her. And you're welcome to  
4     ask any questions you have. But I will go with whatever her  
5     finding is today, suits me. So I'd just call Dr. Schwartz-  
6     Maddox to the stand at this time.

7                             **Donna Schwartz-Maddox, M.D.,**  
8     being duly sworn testified as follows;

9             **MADAME CLERK:** Please have a seat. Will you state your  
10     full name for the record.

11             **DR. SCHWARTZ-MADDOX:** Sure. Donna Schwartz, S-c-h-w-a-  
12     r-t-z, Maddox, M-a-d-d-o-x.

13     **Direct Examination by Ms. Ross:**

14     Q. Dr. Maddox, was that a run-down of essentially what  
15     occurred as far as you evaluating Mr. Gadsden?

16     A. That's correct. But just additionally, Your Honor, I  
17     saw him again today prior to these proceedings.

18     Q. Okay. And what is your opinion as far as his  
19     competency after seeing him, meeting him yesterday and  
20     today?

21     A. Well, even before that, he has a history, Your Honor,  
22     of prior inpatient psychiatric hospitalizations. The only  
23     record that I had available when I saw him on May 21st -- he  
24     had actually been at Patrick Harris Psychiatric Hospital  
25     where I work presently. And I know the doctor that treated

**DONNA SCHWARTZ-MADDOX, M.D. - DIRECT EXAMINATION BY MS. ROSS**

14

1 him very well. And he's a very competent psychiatrist. His  
2 name is Dr. Bamashmus.

3 At that time he had been hospitalized and had been  
4 diagnosed with schizophrenia. The record there indicated  
5 that he cleared very quickly with treatment. So he had a  
6 prior history of inpatient treatment, a prior diagnosis of  
7 schizophrenia.

8 I've learned from today after talking with his mother,  
9 who's very involved and knows his history, that he also had  
10 a prior -- two prior hospitalizations at MUSC. I don't have  
11 those records.

12 The first was in 2011. They transferred him from MUSC  
13 to Bryan Psychiatric Hospital. And then from his attorney I  
14 learned that this past March he also was at MUSC again and  
15 then was released and then confined in Anderson County  
16 Detention Center. So he's got at least four prior  
17 psychiatric hospitalizations. And his diagnosis is  
18 schizophrenia.

19 When I saw him on May 21st, he was very psychotic. He  
20 was very delusional. His delusional system included --  
21 there is a woman named Jigger. And Jigger is the queen of  
22 the devil. And he believed that he converted her into her  
23 religious -- into Christianity. He reported beliefs that  
24 he's the other forgotten son of God, those sorts of things,  
25 very religious preoccupations.

**DONNA SCHWARTZ-MADDOX, M.D. - DIRECT EXAMINATION BY MS. ROSS**

15

1           Wasn't concerned with them as much, but then he also  
2           had some delusions that involved the court, which is why it  
3           was my opinion then that he did not have a rational  
4           understanding of the proceedings. His delusion was that he  
5           could mentally and telepathically communicate with the judge  
6           during his proceedings and influence a verdict. So I had  
7           some concerns about that.

8           I saw him again yesterday. I called the jail. I  
9           actually called the Anderson County Detention Center on  
10          Friday. And I understand that they started his medications  
11          the day that I saw him on May 21st. So there had been some  
12          period of time that he was on medications.

13          I went to the jail yesterday evening to see him again.  
14          I also met with the nurse there. He has been taking his  
15          medications as prescribed. He did miss two doses.

16          When I saw him yesterday he was much more organized.  
17          Even though he still had some psychotic beliefs, he was able  
18          to be redirected. So I had no concerns that he can pay  
19          attention to the proceedings. He clearly trusts his lawyer.  
20          He did not voice any ideas about telepathically  
21          communicating with His Honor.

22          Today when I saw him -- he did take his medicines this  
23          morning. He does have some symptoms of telepathically  
24          communicating with you, but they're not of the nature that  
25          they influence his competency.



DONNA SCHWARTZ-MADDOX, M.D. - DIRECT EXAMINATION BY MS. ROSS

16

1           His words for me -- to me today were that if he  
2       communicated with you and you had some daughters that would  
3       like him to father your grandchildren, he would do that. So  
4       they're kind of a little bit of sexual preoccupation, but  
5       he's able to redirect.

6           So at this time I do think he has a rational and  
7       factual understanding of the proceedings. He clearly trusts  
8       his lawyer. He trusts his attorney. He understands the  
9       nature of the proceedings. He understands the evidence  
10      available to him.

11          So his competency is tenuous, but at this point today,  
12      it's my opinion that he understands what's going on and he's  
13      able to assist in his defense with three caveats. Number  
14      one, he's probably going to be tired during these  
15      proceedings because of the medication. So I would recommend  
16      that he have some caffeine, perhaps, coffee, or a soda, or  
17      something to help him maintain his ability to pay attention.

18          Secondly, he has a very severe side effect from  
19      medications. It's called priapism. And that's basically an  
20      erection that does not go away. It requires medication.  
21      He's not had that since his medications have been started,  
22      but, of course, if something like that were to happen, it's  
23      a medical emergency. So appropriate care would be needed in  
24      that circumstance.

25          And then the third thing I ask -- I informed his lawyer

**DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY MS. SIMPSON**

17

1 it'd probably be helpful for him to have a paper and pencil  
2 so that he can take notes and keep his focus on the  
3 proceedings.

4 **THE COURT:** All right. Ms. Ross, anything further?

5 Q. Would you suggest that also maybe an order be issued  
6 that his medication is continued if he's held here in the  
7 Greenville County Detention Center such that ---

8 A. Absolutely.

9 Q. Such that he can maintain competency throughout the  
10 trial?

11 A. Absolutely. He would decompensate in a matter of a day  
12 most likely. He's just now getting better again. And he  
13 should continue to improve as he takes his medications as  
14 well. Yes, if he were to probably go twenty-four hours  
15 without medication, we may have a different scenario.

16 **MS. ROSS:** That's all the questions I have, Your Honor.

17 **THE COURT:** All right. Mr. Fretwell. Ms. Simpson.

18 **MR. FRETWELL:** Ms. Simpson.

19 **MS. SIMPSON:** Thank you, Your Honor. May it please the  
20 Court. Briefly.

21 **Cross Examination by Ms. Simpson:**

22 Q. And we did not go into your qualifications.

23 **MS. SIMPSON:** And, Your Honor, I have no objection to  
24 Donna Schwartz-Maddox's qualifications as an expert, but we  
25 were not provided a more recent copy of her CV. But if that

**DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY MS. SIMPSON**

18

1     could be made a part of the record, we're not objecting to  
2     qualifying her as an expert in the field of forensic  
3     psychiatry.

4           **MS. ROSS:** And, Judge, I do not have a copy of that,  
5     but I'm sure Dr. Maddox could provide me with one, and I'd  
6     be happy to make it ---

7           **THE COURT:** Well, we'll make it a part of the record.  
8     I've ---

9           **MS. SIMPSON:** Thank you, Your Honor.

10          **THE COURT:** --- lengthy experience of Dr. Schwartz-  
11     Maddox now, I guess, since she's been qualified as an expert  
12     in a number of proceedings in the past. And I would find  
13     her competent as ---

14          **MS. SIMPSON:** Thank you, Your Honor.

15          **THE COURT:** --- an expert.

16     Q.     Just briefly, with respect to your first encounter, you  
17     say that that was not until May 21st of 2016?

18     A.     That's correct, at the Anderson County Detention  
19     Center.

20     Q.     Okay. And that was at the Defense's request ---

21     A.     Correct.

22     Q.     --- regarding his competency?

23     A.     Correct.

24     Q.     And when you evaluated him at that time, what sources  
25     of information did you have available to you specifically?

**DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY MS. SIMPSON**

19

1 A. Only and still to this day, other than the consults  
2 I've done, his Harris Psychiatric hospitalization record.

3 Q. Okay. So everything else that you referred to as far  
4 as the MUSC or the prior diagnosis of schizophrenia  
5 basically was conveyed to you, but there is no medical  
6 documentation that you actually reviewed regarding that?

7 A. That's correct. They're alluded to now in the Bryan,  
8 record and one at MUSC, they're alluded to in the Harris  
9 records. But that's correct, I have not seen any -- have  
10 requested, of course, but have not seen any of those  
11 independent records. He also has a Spartanburg, the  
12 referring hospital, Spartan Memorial records that I have not  
13 seen as well either.

14 Q. Okay. And most of these visits or psychiatric  
15 consults, are you aware that they occurred after some period  
16 of incarceration or incident involving a crime?

17 A. Yes and no. You're absolutely correct. Most of his  
18 mental health care appears to be when there's some legal  
19 situation except for the evaluation at Harris. He had just  
20 gotten released from the Department of Corrections. So that  
21 would have been afterwards. But, yes, most of them have  
22 been in some kind of conjunction with legal proceedings.

23 Q. And in those Pat B. Harris records it does indicate,  
24 though, that he is clearly aware of the Greenville County  
25 charges against him ---

DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY MS. SIMPSON

20

1 A. Yes.

2 Q. --- occurring?

3 A. Yes.

4 Q. And as far as priapism, that is not necessarily a  
5 diagnosis that would affect his mental capacity, correct?

6 A. No, not at all. I just put that on the record for the  
7 Court because it is an emergency. You can actually -- it  
8 requires decompression. And it can actually permanently  
9 impair him. But you're correct, that has -- would not  
10 affect his competency at all.

11 Q. Okay. And with respect to the schizophrenia, you -- a  
12 doctor you work with then, one of your colleagues, actually  
13 did that diagnosis, correct?

14 A. Correct.

15 Q. But you didn't review any of his testing or things that  
16 were done, just the records contained in that diagnosis?

17 A. Correct. They really didn't -- they don't do testing.  
18 He didn't have psychological testing at Patrick Harris, but  
19 we had two separate records. We also had his admission. We  
20 -- the way that we work there, we'll have nurse  
21 practitioners that do the admission, history and physical.  
22 And they'll review all the referring records from the  
23 Spartanburg hospital. And then Dr. Bamashmus had a separate  
24 discharge summary.

25 Q. Okay. And he was at, I believe, Patrick B. Harris for

DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY MS. SIMPSON

21

- 1 a total of four days, ---
- 2 A. Yes.
- 3 Q. --- is that correct?
- 4 A. That's correct.
- 5 Q. March 27th of 2015 to April 1st of 2015?
- 6 A. Correct.
- 7 Q. And as far as medications, the main one he is on right
- 8 now is what?
- 9 A. Prolixin.
- 10 Q. Prolixin? And as long as he's medicated, it's your
- 11 opinion that he is competent to stand trial?
- 12 A. Yes, as of yesterday. I saw a marked improvement
- 13 yesterday compared to April -- May 21st. Even though he
- 14 still has some symptoms, he's able to be redirected, he's
- 15 able to focus, he's able to concentrate. And then some of
- 16 the delusions that, in my opinion, were directly related to
- 17 the Court, they're still there, but not in a way that I
- 18 think it affects his rational competency.
- 19 Q. Okay. And he clearly seems to understand the legal
- 20 proceedings against him?
- 21 A. He does.
- 22 Q. And the charges against him?
- 23 A. He does.
- 24 Q. As well as the nature of the charges against him?
- 25 A. He does.

**DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY**  
**MR. YARBOROUGH**

22

1 Q. And I believe you indicated that he trusts his lawyer  
2 and is able to communicate with her?

3 A. He does.

4 Q. About the proceedings?

5 A. And he's self-protective as well.

6 Q. Self-protective?

7 A. Yes.

8 Q. What does that mean?

9 A. That means he's -- he's interested, he wants a good  
10 outcome. His delusions don't affect his ability to work  
11 with his lawyer to defend his case. He's aware of the  
12 evidence against him, how it can be used to help him.

13 Q. Thank you. And in understanding that evidence, he  
14 clearly understands the roles of people in this courtroom  
15 and is able to respond to stuff related to this case?

16 A. Yes.

17 **MS. SIMPSON:** Beg the Court's indulgence.

18 (Pause)

19 Q. And so it is your opinion here today that he is  
20 absolutely competent to stand trial?

21 A. Yes.

22 **MS. SIMPSON:** Nothing further, Your Honor.

23 **THE COURT:** Mr. Yarborough.

24 **Cross Examination by Mr. Yarborough:**

25 Q. How is he going to do under extended pressure being in

**DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY**  
**MR. YARBOROUGH**

23

1 the courtroom for the next couple of days?

2 A. Well, he understands the appropriateness. He and I  
3 talked about it yesterday. He understands that if he were  
4 to have an issue, he is to communicate with his attorney.  
5 And he demonstrated that, I think, just earlier. When I  
6 took the stand, I saw him stand up and he was -- his  
7 attorney was able to redirect him.

8 Q. So you don't think that he's going to become agitated?

9 A. I can't predict the future. I know that if he -- he's  
10 definitely improved. He's been calm with me. He's been  
11 able to be redirected. He's done well in the Anderson  
12 County Detention Center. When I went there yesterday, it  
13 was pretty noisy and very chaotic, and he has not been  
14 agitated there.

15 He's usually pretty calm by nature. He's paying  
16 attention now. There could be a time where he might get  
17 upset. I can't predict that, but he should be able to be  
18 redirected. And if anything happens, I'm more than glad to  
19 reassess him.

20 Q. Okay. And it's -- you say he's schizophrenic. Is that  
21 an ongoing issue?

22 A. Yes, it is. And we've actually changed the way -- we  
23 have to code the diagnoses differently. So he's currently  
24 in an acute episode. And he's had multiple episodes in the  
25 past.



**DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY**  
**MR. YARBOROUGH**

24

1 Q. Okay. And he's in an acute episode now?

2 A. Yes.

3 Q. And I didn't understand that -- you said that he's  
4 taking medicine for an erection issue. Is that ...

5 A. It's a side effect from his anti-psychotic. So it's  
6 very rare. It's the first case I've seen. And there's  
7 medications that -- if that situation were to happen,  
8 there's medications he would require.

9 Q. Okay. And that's being dealt with ongoingly in the  
10 courthouse or how is that ...

11 A. It hasn't happened yet. Usually the doses of medicine  
12 have been higher when he had that situation, and he's on a  
13 lower dose. When he was at Patrick Harris that wasn't an  
14 issue either. But it's happened before in his MUSC records.  
15 They indicated that. So Dr. Bamashmus at Patrick Harris had  
16 that history. While he was at Patrick Harris those four  
17 days, there wasn't any episodes of it.

18 Q. Okay. With the agitation and the schizophrenia, do you  
19 think that he will understand the testimony and how that  
20 testimony may relate to him?

21 A. Yes.

22 Q. Okay. And you don't see that causing an agitation side  
23 effect in the courtroom?

24 A. Again, I can't predict -- he may become upset. Most  
25 people that are on trial do become upset with certain kinds

**DONNA SCHWARTZ-MADDOX, M.D. - CROSS EXAMINATION BY**  
**MR. YARBOROUGH**

25

1 of testimony. I just can't predict the degree of, you know  
2 -- he should be able to be calmed and be redirected.

3 Q. Okay. Thank you.

4 **MS. ROSS:** I've got no further questions.

5 **THE COURT:** All right. I want to make as a part of the  
6 record the two reports that Dr. Schwartz-Maddox has  
7 submitted. I don't have a -- I don't have a printed copy.  
8 Ms. Ross, you might of the first report even ---

9 **MS. ROSS:** The first report? Here you go.

10 **THE COURT:** --- though you didn't address it in ---

11 **MS. ROSS:** Might need a stapler, but ...

12 **THE COURT:** So you feel very comfortable that he's  
13 capable of going forward to trial, he understands the  
14 proceedings? You believe he understands the potential  
15 effects of this case and the ramifications of what happens  
16 on a conviction?

17 **DR. SCHAWARTZ-MADDOX:** He does. And he understands  
18 you're to sentence him. And we -- when he was specifically  
19 discussing today some of his telepathic powers, and I  
20 reminded him about the jury's role, he was able to say yes,  
21 but the Judge ---

22 **THE COURT:** Let him know ---

23 **DR. SCHWARTZ-MADDOX:** --- sentences me.

24 **THE COURT:** --- that it's life without parole. I'm not  
25 sure whether you were aware of that or not, but -- so he

1 clearly understands that that's a strong potential in this  
2 case?

3 **DR. SCHWARTZ-MADDOX:** He does.

4 **THE COURT:** All right. Anything?

5 **MS. SIMPSON:** No, Your Honor. Just if Dr. Schwartz-  
6 Maddox, or Dr. Ross or, excuse me, co-counsel, Ms. Ross, can  
7 provide a CV to be made a part of the record as well in  
8 addition to her report regarding her qualifications as a  
9 forensic psychiatrist.

10 **MS. ROSS:** And I might have a copy of that. I think  
11 she's qualified as an expert. She's testified a ---

12 **THE COURT:** You want ---

13 **MS. ROSS:** --- lot of times ---

14 **THE COURT:** --- us to go through her ---

15 **MS. SIMPSON:** No. I know she's absolutely qualified.  
16 I have seen her ---

17 **THE COURT:** Well, we don't have ---

18 **MS. SIMPSON:** Don't have any objection ---

19 **THE COURT:** You're licensed to practice in the State of  
20 South Carolina?

21 **DR. SCHWARTZ-MADDOX:** Yes, sir, Your Honor. Actually,  
22 I have ---

23 **THE COURT:** And your practice history has been  
24 psychiatric medicine?

25 **DR. SCHWARTZ-MADDOX:** Yes, sir. I'm the chief of

1 psychiatric inpatient service at Patrick Harris Hospital.

2 Right now I run a forty-five bed unit of females.

3 **THE COURT:** All right. Well, I don't know about --

4 have you got a CV?

5 **MS. ROSS:** I don't, Your Honor.

6 **THE COURT:** All right. Well, then ...

7 **MS. SIMPSON:** I think Dr. Maddox probably ---

8 **THE COURT:** Is there some particular ---

9 **MS. SIMPSON:** --- does have a copy.

10 **THE COURT:** --- reason we want that in, I mean, that's

11 real important?

12 **MS. SIMPSON:** I would like to have that in since we  
13 didn't actually proffer much testimony regarding it, but if  
14 you don't deem it necessary, we're fine with it. Whatever  
15 you ---

16 **THE COURT:** She's a licensed medical doctor in the  
17 State of South Carolina with an emphasis in her practice on  
18 psychiatric medicine. And she's been doing that for more  
19 than ten years. And I'm going to find that she's qualified  
20 as an expert in the field of psychiatry.

21 **MS. SIMPSON:** Thank you, Your Honor.

22 **THE COURT:** If you want to email or fax something to  
23 Ms. Ross' office when you get back about your background,  
24 we'll make it a part of the record.

25 **MS. SIMPSON:** Thank you, Your Honor.

1           **MS. ROSS:** And, Judge, one more thing just to save me  
2 writing an order, can you order from the bench that Mr.  
3 Gadsden's medicated with ---

4           **THE COURT:** I will be happy to. Now, I'm not sure how  
5 we're going to know if this medical emergency occurs unless  
6 he says something ---

7           **MS. ROSS:** Well, it's not that. It's just the  
8 Prolixin, which is keeping him calm.

9           **THE COURT:** Well, I know, but there's a number of  
10 conditions that are involved according to Dr. Schwartz-  
11 Maddox. One, that we need to keep him medicated. He's  
12 voluntarily taking this medicine?

13           **DR. SCHWARTZ-MADDOX:** Yes, sir. He's ---

14           **THE COURT:** I mean, he ---

15           **DR. SCHWARTZ-MADDOX:** --- only missed two doses. And  
16 he took it this morning. He's been taking ---

17           **THE COURT:** I mean, he understands the benefit of the  
18 medicine and he's not indicated to you any reluctance to  
19 take it?

20           **DR. SCHWARTZ-MADDOX:** No.

21           **THE COURT:** All right. So we will do an order. You  
22 might need to do something in writing to send down in  
23 Richland County. I think you would have to do it in writing  
24 three or four times before -- so you might want to do  
25 something to make sure it gets to the jail and maybe the --

1 we have something. But we will order that he continue to  
2 get the medication from Greenville County.

3 Two, that we be aware of this potential medical  
4 problem, Ms. Ross. And you may have to monitor that by if  
5 he tells you something or brings that to your attention.  
6 And what was the third one?

7 **DR. SCHWARTZ-MADDOX:** Yes, sir. Just that he, perhaps,  
8 have some caffeine. His medications make him quite sleepy  
9 in the morning. And it would probably be helpful for him to  
10 have maybe a cup of coffee or soda.

11 **THE COURT:** I don't have an objection to giving him a  
12 soft drink or something. And he can drink it while he's in  
13 the courtroom as well as Mr. Yarborough's client, if he  
14 wants it. Make sure they're in a cup, not a can, or bottle.  
15 All right. Thank you very much.

16 **DR. SCHWARTZ-MADDOX:** You're welcome, Your Honor.

17 **THE COURT:** Any objection to the doctor being excused?

18 **MS. SIMPSON:** No objection from the State, Your Honor.

19 **MR. YARBOROUGH:** No, sir, Your Honor.

20 **THE COURT:** All right. Thank you.

21 **MR. YARBOROUGH:** Your Honor, could we approach briefly?

22 **THE COURT:** Sure.

23 (Whereupon a bench conference was held off the record)

24 (Whereupon the bench conference was ended)

25 **THE COURT:** Here is -- Madame Court Reporter, here is

1 one of Dr. Schwartz-Maddox's report. And I was told that we  
2 would -- did you provide the other one, Ms. Ross?

3 **MS. ROSS:** Pardon me, Your Honor?

4 **THE COURT:** Did you give the clerk the other report?

5 **MS. ROSS:** I did, Your Honor.

6 (Whereupon Court's exhibits 2 and 3 were marked)

7 **THE COURT:** All right. I'm not sure a -- you know, I'm  
8 going to find that he's competent based upon the testimony  
9 of Dr. Schwartz-Maddox and there's no evidence to the  
10 contrary from anybody in this hearing. And she's qualified  
11 as an expert and can offer that opinion.

12 And so we will go forward with the issue. And we will,  
13 again, keep in mind the recommendations that Dr. Schwartz-  
14 Maddox made with respect to his health, physical health, his  
15 being given some appropriate amount of caffeine and just  
16 seeing to it that he gets appropriate medications at the  
17 Greenville County Detention Center. All right. Anything  
18 else with respect to that issue?

19 **MS. ROSS:** No, Your Honor.

20 **MR. FRETWELL:** No, Your Honor.

21 **MR. YARBOROUGH:** No, sir.

22 **THE COURT:** All right. Now, where do we want to go  
23 from here? Do we want to start with the Jackson v. Denno  
24 matter or is there something else we need to address?  
25 Anything that needs to be addressed before any other

1 pretrial?

2 **MR. FRETWELL:** Judge, I anticipate, based on our  
3 conference in chambers, that Ms. Ross in particular will be  
4 making some sort of motion on the record with respect to the  
5 notice of life without parole. I did indicate to the Court  
6 that I'd like to detail a little bit of the prior history in  
7 this case, both the plea offers and discovery just to put it  
8 on the record for purposes of the record.

9 First, with Mr. White, I just want to detail shortly,  
10 he was arrested on February the 17th of 2014. On the 25th  
11 of February of that same year Amanda Wicker from the Public  
12 Defender's Office was appointed and filed a discovery  
13 request with our office.

14 We completed an initial discovery package that was  
15 picked up on March the 10th of 2014 by the Public Defender's  
16 Office. Of course that package is going to be supplemented,  
17 by my count, close to eight, ten, fifteen times over the  
18 course of the next couple of years.

19 They want to bring to the Court's attention that on May  
20 22nd of 2014 a plea offer was extended to Mr. White offering  
21 to allow him to plead guilty to armed robbery, burglary in  
22 the second degree and conspiracy for a term of imprisonment  
23 of twelve years, concurrent. That plea offer expired in  
24 August of that year. He was brought to court in July and  
25 then again in September where Mr. White, through then



1 counsel, Ms. Wicker, indicated that he was rejecting the  
2 plea offer and requested a trial on his charges.

3 Your Honor, fast-forwarding to the first trial date on  
4 both of these cases, November 3rd of 2015, case was not  
5 reached. Again, on January the 12th of this year, the  
6 second trial date in this case, the trial was not reached.

7 On the 20th of January, Your Honor, Mr. Yarborough was  
8 substituted as counsel per Judge Miller's order. That was  
9 -- we provided some additional supplemental discovery to Mr.  
10 Yarborough.

11 On February the 29th, making this a leap year, I  
12 suppose, Judge, there was an email that I sent to Mr.  
13 Yarborough confirming a prior plea offer and entering into  
14 some sort of plea discussions about the renewal of that  
15 offer.

16 We had our trial date number three on March the 1st,  
17 which was continued by Judge Gibbons at that time because of  
18 a federal court conflict that Mr. Yarborough had. At that  
19 time plea offers were extended again as suggested and  
20 directed by Judge Gibbons for both of these individuals to  
21 receive a ten year sentence, which is the mandatory minimum.  
22 Both rejected that offer.

23 On April the 11th the fourth trial date, the Court's  
24 well aware that the case was continued due to Mr. Gadsden's  
25 failure to show up for court. A bench warrant was issued

1 for his arrest.

2 And at that time you heard testimony on a motion to  
3 suppress filed by Mr. Yarborough on Mr. White's behalf. Of  
4 course, we're here today on a fifth trial date.

5 I also want to detail Mr. Gadsden's history of arrest.  
6 On September the 25th of 2014 Ms. Ross is appointed as a 608  
7 attorney. On October the 8th of 2014 -- and filed a  
8 discovery request. We prepared an initial discovery packet,  
9 which was picked up on November the 21st of that year.

10 On November the 12th, Your Honor, of 2014 we extended a  
11 plea offer to Mr. Gadsden to plead guilty to armed robbery,  
12 possession of a weapon during the commission of a violent  
13 crime, burglary in the second degree and conspiracy, and  
14 that he would receive a deferred sentence in anticipation  
15 that he might cooperate against the Co-Defendant. That  
16 offer did expire relatively soon thereafter because the  
17 Defendant was incarcerated and it was one of those things  
18 where we were going to bring him over, give him an  
19 opportunity and then go from there.

20 He had court dates on June the 1st and July the 6th of  
21 2015. He was transported, I believe, on July the 6th of  
22 2015 from the Spartanburg jail. We had reached our first  
23 trial date on November 30th, 2015. The case was not reached  
24 as I have indicated already.

25 After the second trial date, which, of course, was

1 January 12th of this year, on the 29th of February, I  
2 emailed Ms. Ross confirming the prior offer making sure that  
3 there wasn't anything we could do in this particular case.  
4 She emailed me back confirming that she had communicated  
5 that offer and that her client was rejecting it, indicating  
6 that he was not guilty.

7 Third trial date on March the 1st of this year -- on  
8 April the 9th, Your Honor, which was, I believe, the  
9 Saturday before the 11th when we appeared before Your Honor,  
10 in compiling the packet of certified conditions that my  
11 paralegal had given to me, I determined that Mr. Gadsden was  
12 LWOP eligible. There wasn't anything at that point that I  
13 could do.

14 Our office functions in the term of a Life Without  
15 Parole Committee. The trial was to be Monday. There was no  
16 time to submit that information to the Committee as per our  
17 policy. So I did not do that over that weekend.

18 When Mr. Gadsden failed to appear that Monday,  
19 thereafter, that information was submitted to the Committee.  
20 In fact, I filed the paperwork on the 18th of April. We  
21 learned -- I learned in the very early morning hours of the  
22 next day that Mr. Gadsden had been arrested for murder in  
23 Anderson.

24 On the 25th of April the LWOP Committee determined and  
25 designated that LWOP should be sought and gave permission to

1 extend an additional plea offer since that was after the  
2 time all plea offers had expired, which I extended to the  
3 Defendant through counsel. In fact, I sent that to her on  
4 April the 29th permitting her to plead -- her client to  
5 plead guilty to the charges that are on the docket for today  
6 with no LWOP requirement. In fact, we extended that again  
7 when she was not able to see Mr. Gadsden through to the  
8 second term of court in May.

9 We've served notice on Mr. Gadsden in the Anderson  
10 County Detention Center on May the 2nd. Thereafter was when  
11 we extended that plea offer until the 19th of May. Ms. Ross  
12 called me on the 19th and indicated that she had spoken to  
13 Mr. Gadsden. He was not interested in pleading guilty. Two  
14 days later Dr. Schwartz-Maddox met with Mr. Gadsden. And  
15 you are familiar with what's happened until now.

16 Of course, I'll reemphasize for the record, the State  
17 is prepared to allow the Defendant, Mr. Gadsden, to plead  
18 guilty today without enforcing the life without parole  
19 letter. But certainly, after the jury is sworn, that's the  
20 will of our office, that if this case proceeds to trial,  
21 that the State should seek life without parole based on his  
22 prior conviction and this qualified conviction.

23 **THE COURT:** All right. Anything y'all want to add, Mr.  
24 Yarborough and Ms. Ross?

25 **MR. YARBOROUGH:** No, sir, Your Honor.

1           **MS. ROSS:** Judge, we'd just argue that this is, in  
2       essence, punishing Mr. Gadsden for asserting his right to a  
3       trial, which he has. This is his right.

4           Frankly, I don't -- I've questioned that it took over  
5       two years and some months for the solicitor to review the  
6       rap sheet to determine that Mr. Gadsden was eligible for  
7       life without parole. He is, in fact, he was -- he did plead  
8       to assault and battery with intent to kill, but he received  
9       twelve years suspended upon four years of probation back in  
10      2008.

11          I don't think this is a case -- I've certainly seen  
12      longer rap sheets than that that did not get life without  
13      parole. I would argue it violates his Eighth Amendment  
14      right to cruel and unusual punishment. It doesn't compare  
15      to other clients in the same position with a second offense.  
16      And I'd argue that it's vindictive prosecution and,  
17      therefore, I'd object to LWOP being applied as it was  
18      applied in this case at this late date.

19          Furthermore, on that April 11th date, Mr. Gadsden had  
20      been committed at MUSC. And that's why he didn't appear in  
21      court.

22          So based on all those reasons, I don't think he should  
23      be punished for having mental health issues, which he does.  
24      And that, in fact, is what is happening here. And it's also  
25      punishing him for asserting his right to a trial, which is

1 his Constitutional right.

2 **THE COURT:** All right.

3 **MR. FRETWELL:** Your Honor, just briefly in response. I  
4 have to point out that certainly during the course of the --  
5 managing the dockets that both Ms. Ross and I have that we  
6 could overlook things. She certainly admitted that she  
7 didn't see issues with mental competency in her client until  
8 recently. That was the same kind of analogous situation  
9 with me with respect to ordering these out-of-state and  
10 different county convictions.

11 Some of these items that are going to happen later on  
12 in the trial, we prepare a week -- especially if it doesn't  
13 go before -- have to have something to do for the weekend  
14 before trial or I'll go a little bit crazy. So that was my  
15 weekend to prepare for any kind of testimony that might  
16 proceed and how we would potentially impeach the testimony  
17 of the Defendants. And I determined at that time that he  
18 was LWOP eligible.

19 I would point out, Your Honor, and I think Ms. Ross has  
20 referenced this before, that the Defendant in this admission  
21 in the North Charleston Psychiatric Hospital was on the eve  
22 of trial. There's no indication -- we've been provided with  
23 nothing that doesn't indicate that he admitted himself.  
24 It's my understanding from our office communicating with  
25 that facility that one can commit him or herself to that

1 facility and that they will take them in under very low  
2 thresholds, Your Honor, and admit them as patients for some  
3 period of time.

4 I would ask finally on this matter, Your Honor, that  
5 the Court instruct that no reference to possible sentence by  
6 either Defendant be referenced by Defense counsel. It's  
7 certainly not appropriate in the term of either argument,  
8 opening or questioning, that that is the sole province of  
9 the Court.

10 **THE COURT:** All right. Well, I don't -- of course,  
11 I've expressed my opinion about the use of the LWOP in  
12 chambers, but I don't know of anything that the Court can do  
13 to prevent -- that's clearly within the prosecutor's  
14 province. And they've elected to proceed in that matter.

15 I do understand Ms. Ross' concern about the mental  
16 health issues and the past, and I think the solicitor does  
17 as well. That's why he's probably extended his time to  
18 allow that to be withdrawn so that Ms. Ross can have some  
19 conversation with her client now that he's been determined  
20 to be competent, and can assist in this matter, and  
21 understands the issues here today and the gravity of  
22 potential sentences in this matter. So we're going to allow  
23 her to do that.

24 I don't know of anything I can do to assist you in your  
25 request here, Ms. Ross. So your motion to require that I

1 prevent them from going forward is denied because I don't  
2 think I can do that.

3 **MS. ROSS:** Thank you, Judge.

4 **THE COURT:** Yes.

5 **MR. FRETWELL:** May it please the Court. Just a couple  
6 of things. I know that ---

7 **THE COURT:** Is that relating to this?

8 **MR. FRETWELL:** I'm sorry. No, Your Honor.

9 **THE COURT:** Do you have any objection if I query your  
10 client a little bit, Ms. Ross, about his understanding of  
11 the potential penalty?

12 **MS. ROSS:** No, Your Honor.

13 **THE COURT:** Mr. Gadsden, I'm going to get you to raise  
14 your right hand, if you would. I'm not going to ask you  
15 anything about the case, but I want to ask you your  
16 understanding of the potential penalty in this. You  
17 solemnly swear or affirm any evidence, testimony or  
18 statements you give will be the truth, the whole truth and  
19 nothing but the truth?

20 **MR. GADSDEN:** Yes.

21 **THE COURT:** All right. Thank you, sir. You can put  
22 your hand down. I need you to continue to stand and let me  
23 ask you a couple of questions. You've been talking to Ms.  
24 Ross about this case, is that right?

25 **MR. GADSDEN:** Yes.



1           **THE COURT:** And y'all -- you understand that the  
2 solicitor has put you and your lawyer on notice that if we  
3 go forward with this trial and you are convicted of these  
4 serious charges that you potentially could spend the rest of  
5 your life in prison?

6           **MR. GADSDEN:** Yes, sir.

7           **THE COURT:** And that they are -- they have offered for  
8 you to plead to something -- I'm not exactly sure what they  
9 were talking about, but it does -- you could plead with --  
10 to something that would not be life without parole and you  
11 would just be subject to whatever sentence the Court imposed  
12 consistent with what the law requires in terms of if there's  
13 any mandatory sentence. Do you understand that? So they're  
14 giving you an opportunity to plead guilty where you wouldn't  
15 get life without parole. Do you understand that?

16          **MR. GADSDEN:** Yes.

17          **THE COURT:** All right. And your lawyer's going to talk  
18 to you about that, but I just want you to make sure you  
19 understand there's serious consequences if you are -- that  
20 it's out of my hands. I have no control over the sentence  
21 if that is the case. So you talk to Ms. Ross. And I would  
22 tell you to give great consideration to what has been  
23 proposed, okay?

24          **MR. GADSDEN:** Yes, sir.

25          **THE COURT:** All right. Thank you. All right. Mr.

**OPENING STATEMENTS - MS. SIMPSON**

151

1           They're here to assist you in any way they can.  
2           They're experienced people. They know their jobs. So feel  
3           free if you have a question or a problem to bring it to  
4           their attention and they'll either help you with it or  
5           they'll get it to the person that can do whatever we need to  
6           do to assist you. So with that said, Mr. Solicitor, you  
7           ready to proceed?

8           **MS. SIMPSON:** I am, Your Honor. May it ---

9           **THE COURT:** Or Madame Solicitor.

10          **MS. SIMPSON:** --- please the Court.

11          **THE COURT:** I'm sorry.

12          **MS. SIMPSON:** That's fine.

13          **THE COURT:** Ms. Simpson, if you would.

14          **MS. SIMPSON:** Easy money, it's a phrase most  
15          everybody's heard, talked about, thought about, maybe even  
16          dreamed about, but as a general rule getting money isn't all  
17          that easy. Some might inherit it. But that comes with the  
18          loss of a loved one or friend. A lucky few may win it. But  
19          the reality is that most poeple work for their money or earn  
20          it in some way.

21                 But if there is an easy path, it is the unlawful path.  
22                 And that is simply just to take it. And there are those who  
23                 would take what doesn't belong to them, what isn't owed,  
24                 earned or deserved.

25                 And within this category of takers or thieves there are

OPENING STATEMENTS - MS. SIMPSON

152

1 different methods or degrees. Some are kind of sneaky about  
2 it. They may go into a purse or wallet while someone's back  
3 is turned and no one's looking. Others lie, cheat people  
4 out of their money, con artists, things of that nature.

5 But then there are those who would take it by force and  
6 by threats, those who would arm themselves with a deadly  
7 weapon such as a gun and put it to their victim's head. A  
8 statement made loud and clear to a victim staring down the  
9 barrel of a gun, the money or your life. Those like the  
10 Defendants in this case, James White and Gerald Gadsden.

11 And I submit, members of the jury, that when people  
12 commit an armed robbery such as the Defendants did in this  
13 case, they take more than simply money or things, they take  
14 something intangible that their victims never truly recover  
15 from or get back, and that's that personal sense of safety  
16 and security. Especially in a case such as this because  
17 this is not an armed robbery scenario with a drug deal gone  
18 wrong or your quick in and out at the convenience store.  
19 No. This was an inside job.

20 And James White, the inside guy, the employee at the  
21 Olive Garden, armed with the information needed, necessary  
22 to commit this crime to make the Olive Garden and the  
23 victims in this case, Aaron Kretzschmar and Grady Terrell  
24 Pugh, the perfect targets, the perfect prey. High  
25 reward/low risk.

OPENING STATEMENTS - MS. SIMPSON

153

1           And James White got together with this information and  
2   his good friend, Gerald Gadsden, and they planned the  
3   perfect crime, each with a very specific role. And make no  
4   mistake about it, had each of them performed their roles  
5   perfectly and executed everything they were supposed to the  
6   way they were supposed to, and everything gone according to  
7   their plan, we wouldn't be here today.

8           But luckily, they made mistakes. Mistakes which turned  
9   into evidence, evidence which law enforcement followed to  
10   James White, quickly changing his status from that of victim  
11   to perpetrator. And you'll hear how his stories evolved  
12   with that status chain and ultimately led them to his good  
13   friend, Gerald Gadsden, the actual man who came in and  
14   robbed the Olive Garden.

15          And when asked by police whether he knew Gerald Akeem  
16   Gadsden, he completely denied any knowledge of his good  
17   friend. I don't know who you're talking about.

18          So what happened back on January 20th of 2014 at the  
19   Olive Garden restaurant in the Cherrydale area? Well, it  
20   started out like pretty much any other night at the  
21   restaurant, maybe a little bit busier than usual. And the  
22   victim in this case, Aaron Kretzschmar, was the closing  
23   night manager. And he was following his normal routine  
24   after the business had closed to customers at ten pm.

25          And as he went out to check on the two remaining

OPENING STATEMENTS - MS. SIMPSON

154

1 employees, the dishwashers, one of them being the Defendant,  
2 James White, and the other, the victim in this case, Grady  
3 Terrell Pugh, he was suddenly struck in the face. And as he  
4 recovered from the blow, he was staring down the barrel of a  
5 gun. And an unknown stocky, black male wearing a camo style  
6 hoodie ordered him at gunpoint to the safe. And Aaron did  
7 as he was told.

8 And he wasn't quite going fast enough. He kept being  
9 hurried along. And the unknown male at gunpoint had a  
10 flimsy little bag. And he demanded all of the cash. And he  
11 was so greedy that he even wanted the rolled coins, which  
12 caused that flimsy bag to break. And he had to leave in a  
13 hurry, leaving a trail of cash and rolled coins as he left.

14 Now, Aaron immediately called 911. And law enforcement  
15 arrived as well as K-9 units and crime scene investigators.  
16 And you're going to hear from them in this case.

17 And when officers arrived one of the first things they  
18 observed is that a brick had been thrown at the glass, but  
19 that glass on the front door was double paned, and it only  
20 broke one pane. And that brick didn't look as though it had  
21 come from the area around it. And in the doorway propping  
22 those locked doors open was an Olive Garden dishtowel as if  
23 there had to be some help from the inside.

24 So officers began their investigation. And they did a  
25 protective sweep of the place after making contact with Mr.

OPENING STATEMENTS - MS. SIMPSON

155

1 Kretzschmar who told them about what happened. And when the  
2 officers went in they found Mr. Pugh crouched in the fetal  
3 position by the dishwasher station along with the Defendant,  
4 James White. And they conveyed to them what happened.

5 Mr. Pugh was very upset, extremely upset as he  
6 described the attacker very similar to that of Aaron  
7 Kretzschmar's description. James White, by stark contrast,  
8 was very calm, but did give a similar description about what  
9 happened.

10 And you're going to hear from the investigators who  
11 came out. And through the course of this you're also going  
12 to hear from Damion Riley because he was the last employee  
13 to leave. And store policy requires that employees make  
14 sure that the doors lock and latch behind them before they  
15 leave. And he spoke with law enforcement. And he told them  
16 that right before he left he checked the doors as he always  
17 did and that towel propping it open wasn't there.

18 You're also going to hear from a number of other  
19 witnesses, but importantly you're going to hear how a couple  
20 of days later after the incident James White came into the  
21 Law Enforcement Center for an interview. And during that  
22 interview he turned over two phones.

23 One of those phones was his phone and the other one  
24 that he had, he said it was his phone, too, but it was an  
25 old phone that he hadn't used in a while. Now, an analysis

OPENING STATEMENTS - MS. SIMPSON

156

1 of that second phone would reveal or it was later identified  
2 to be Gerald Gadsden wearing a camo style hoodie with stacks  
3 of cash consistent as that taken the night of the robbery  
4 just hours after the robbery occurred on that phone.

5 And on that other phone in Mr. White's possession was a  
6 photograph of the kitchen area, a photograph not just merely  
7 of the Olive Garden restaurant and the dishwashing station  
8 where he worked, but the exact spot where Aaron Kretzschmar  
9 was struck by his assailant.

10 You're also going to hear how law enforcement, as they  
11 learned and connected Mr. White and Mr. Gadsden, that there  
12 are a number of texts and communications between the two.  
13 And I remind you that throughout this James White denied  
14 knowing Gerald Gadsden.

15 And they did a search warrant at Mr. White's residence.  
16 And then at his residence they found a teal pair of pants  
17 containing Gerald Gadsden's credit card. Further evidence  
18 connecting the two.

19 Now you're going to hear about the course of this  
20 investigation. And I ask that you pay particular attention  
21 throughout this case to all the evidence that you hear.

22 Now, good afternoon. I know it's kind of late in the  
23 afternoon, but my name's Nicole Simpson. And I, along with  
24 my co-counsel, Allen Fretwell, together we represent the  
25 State of South Carolina, the citizens of Greenville County

OPENING STATEMENTS - MS. SIMPSON

157

1 and the victims in this case. And as a result of their  
2 actions the Defendants have been charged with armed robbery,  
3 two counts of kidnapping and conspiracy.

4 Now, this is my one and only opportunity to address you  
5 directly. And so I want to thank you now in advance for  
6 your time, your patience and your service in this case. As  
7 you were told, jury service is, perhaps, the greatest  
8 service that a man or woman can render his or her country  
9 during times of peace. Well, that's true here today.

10 And when you got your jury summons in the mail, I'm  
11 sure you had a million other things that you'd rather be  
12 doing, things that you needed to be doing, anything other  
13 than sitting here. But you came here and after careful  
14 consideration and extensive questioning you were selected by  
15 both the State and the Defense to sit as competent,  
16 qualified jurors and decide this case.

17 And no one's going to get up here and say that you  
18 don't have the most important job. And, quite frankly,  
19 members of the jury, our system of justice, it could do  
20 without the lawyers, and it could do without the judges, but  
21 it cannot do without you. And so I thank you.

22 Now, in every criminal case, as Judge Barber told you,  
23 the Defendant is presumed innocent until proven guilty  
24 beyond a reasonable doubt. And as the State, we bear the  
25 burden of proof in this case just as we do in the



OPENING STATEMENTS - MS. SIMPSON

158

1 prosecution of each and every criminal case that comes in  
2 this courtroom.

3 So I will remind you that while we bear the burden,  
4 every defendant who was ever convicted by a jury of his or  
5 her peers started that trial presumed innocent until  
6 ultimately found guilty beyond a reasonable doubt. And I  
7 can tell you that in this case, in this courtroom on these  
8 facts, we welcome our burden.

9 So what is it that we must prove? Well, I'm going to  
10 talk to you just briefly about the charges in this case.  
11 And then the Honorable Judge Barber will instruct you on the  
12 law at the very end of this case.

13 But the Defendants have been charged with armed  
14 robbery. And in South Carolina a person is guilty of armed  
15 robbery if he takes or attempts to take a personal property  
16 of another from the presence of another or the person of  
17 another with the intent to permanently deprive the owner of  
18 its use and while doing so is either armed with a deadly  
19 weapon or the representation of a deadly weapon. I submit  
20 no one's going to get up here and say that this isn't an  
21 armed robbery.

22 Now, they've also been charged with kidnapping. Now,  
23 kidnapping has kind of a long definition, to combine or  
24 confine, decoy, abduct, carry away any person basically --  
25 I'm going to simplify it a little bit. It means to restrict

OPENING STATEMENTS - MS. SIMPSON

159

1 any person's movement or liberty without the authority to do  
2 so.

3 It doesn't have to be what you necessarily see on the  
4 movies, somebody tied up, stuffed into a van and carried  
5 away for a period of time. So when the Defendant, Gerald  
6 Gadsden, went in with a gun out and ordered Grady Pugh to  
7 get on the ground, that's a kidnapping, restriction of  
8 movement by any means whatsoever. And there's no doubt that  
9 when he assaulted Aaron Kretzschmar and ordered him at  
10 gunpoint to the safe and demanded him to put the money in  
11 the bag at gunpoint, that is kidnapping.

12 Now, they're also charged with conspiracy. And in  
13 South Carolina in order to prove a conspiracy we must prove  
14 that the Defendants got together, combined together to  
15 commit an unlawful act. Well, armed robbery and kidnapping  
16 are unlawful acts.

17 And we don't necessarily have to show that there was an  
18 overt act. We can use other evidence to prove the  
19 conspiracy. But here we have both. And I submit that you  
20 can also use the very nature of this crime, the inside job  
21 aspect of it as proof of the conspiracy.

22 And that kind of leads me into my next point. There is  
23 a very important principle of law recognized in the State of  
24 South Carolina. Now it's sometimes referred to as  
25 accomplice liability, but more commonly referred to as the

OPENING STATEMENTS - MS. SIMPSON

160

1 hand of one is the hand of all, meaning the act of one is  
2 the act of all. And the Judge will instruct you that when  
3 two people combined together to commit an unlawful act such  
4 as armed robbery or kidnapping, each is responsible for the  
5 actions of the other.

6 One example I like to use is actually the robbery of a  
7 convenience store. Let's say you have three people. One's  
8 the lookout and two go inside, but only one has a gun. And  
9 during the course of this armed robbery the store clerk gets  
10 murdered. One gun, one bullet that fired the fatal, but all  
11 three are guilty of murder as well as armed robbery because  
12 the hand of one is the hand of all or the act of one is the  
13 act of all. So if you find that this was an inside job with  
14 James White, the inside guy, he is just as guilty as Gerald  
15 Gadsden who was armed with that gun and robbed the Olive  
16 Garden.

17 Now, I said that we must prove to you these things  
18 beyond a reasonable doubt, so what is proof beyond a  
19 reasonable doubt? Well, it is essentially proof that leaves  
20 you firmly convinced of the Defendants' guilt.

21 There are very few things that we know in this world  
22 with absolute certainty. And the law does not require the  
23 State to produce proof that overcomes all doubt or every  
24 possible doubt, but only that doubt which is reasonable.  
25 Proof that leaves you firmly convinced.

**OPENING STATEMENTS - MS. SIMPSON**

161

1           Now, the Judge told you that the evidence in this case  
2     will come to you in two forms. And you must base your  
3     verdict on that evidence. Some of it will be physical  
4     evidence such as pictures or phone calls, things of that  
5     nature, things you can see and touch. But most of it is  
6     going to come, as he said, from right here on this witness  
7     stand.

8           And it will be up to each one of you to judge the  
9     credibility of all the witnesses that come up here to  
10    testify. And credibility is essentially believability. And  
11    in doing so you can believe some of what a witness says, you  
12    can believe all of what a witness says, or you don't have to  
13    believe anything that a witness says.

14          But we do ask that you consider several things. What  
15    was that witness' demeanor on the stand? Was that witness  
16    hesitant or forthright when testifying? Is the testimony of  
17    that witness consistent within itself? Did that witness  
18    have any reason to be bias or prejudiced in this case? And  
19    is the testimony of the witness corroborated or supported by  
20    other evidence in the case?

21          And as I said, you're going to hear from a number of  
22    witnesses, including the victims as well as the law  
23    enforcement officers, some of them who investigated this  
24    case. And you're going to hear testimony regarding an  
25    analysis of the cell phones, which will be very important in

OPENING STATEMENTS - MS. SIMPSON

162

1     this case.

2             And as you listen to these witnesses, I ask that you  
3     pay particular attention to several things. James White was  
4     one of only three people inside the Olive Garden restaurant  
5     when this armed robbery occurred.

6             A day or so later James White had in his possession on  
7     his person a picture of the Defendant on a phone, several  
8     pictures of the Defendant, Gerald Gadsden, holding stacks of  
9     cash wearing that camo hoodie within hours after the robbery  
10    consistent with the description matching all the witnesses  
11    that they gave. And also on his main phone, that picture of  
12    the kitchen area where he worked, the exact spot where the  
13    victim in this case would be assaulted.

14            Consider those along with everything that you hear.  
15    And at the end of the day also remember James White  
16    completely denied knowing Gerald Gadsden.

17            Now, you came to this courthouse with two very  
18    important things. And you'll have them back there when you  
19    deliberate. And you'll take them with you when you leave.  
20    And that's your common sense and what you know about human  
21    nature.

22            And as you decide this case I'm going to ask that you  
23    use your common sense and what you know about human nature.  
24    And when you do I submit your verdict will become clear.  
25    Truth is the mother of justice. And it is your job, your

**OPENING STATEMENTS - MS. ROSS**

163

1 duty here today to find the truth and to seek justice.

2 And at the end of this case my co-counsel, Mr.

3 Fretwell, is going to come before you and he is going to ask  
4 you for a verdict that the evidence will support and that  
5 justice will demand. He's going to ask that you find both  
6 the Defendants, James White and Gerald Gadsden, guilty of  
7 armed robbery, guilty of two counts of kidnapping and guilty  
8 of conspiracy. Thank you.

9 **THE COURT:** Ms. Ross.

10 **MS. ROSS:** May it please the Court.

11 **THE COURT:** Yes, ma'am.

12 **MS. ROSS:** Counsel, ladies and gentlemen, of the jury.  
13 I'm going to see if I can move this over. A picture of a  
14 man holding cash does not mean he stole it. Let me repeat  
15 that. A picture of a man holding cash does not mean he  
16 stole it. It's a common rapper pose. It's a common pose.  
17 And that's what we have here.

18 Gerald Gadsden took a selfie of himself wearing a  
19 camouflage jacket after speaking to his friend, James White,  
20 who was robbed the night before. Not the smartest move. In  
21 fact, a very dumb move. But that does not mean he's guilty  
22 of a crime. That does not mean he committed the robbery.

23 But that is why he's sitting here before you because  
24 once that picture came in, the investigation turned solely  
25 to proving that James -- Gerald Gadsden and James White were

OPENING STATEMENTS - MS. ROSS

164

1 guilty of a crime to the exclusion of all other evidence.  
2 Investigator 101, you don't pick your suspect and then make  
3 the evidence fit. You follow the evidence. That didn't  
4 happen here.

5 Now, Gerald Gadsden, just to give you some background,  
6 has a dream of being a rapper. He wants to be a rap star.  
7 James White is a rapper. He's Jr. G. He does rap. He has  
8 pictures on his cell phone, other pictures of famous  
9 rappers' selfies holding money. Sean Puffy Combs holding  
10 money, selfies. That is a common rapper thing.

11 If you go to a rap club, you can get in front of a  
12 board where cash is dribbling down and they'll take pictures  
13 of you showing all the cash you have. That does not mean  
14 you stole it.

15 Now, I'm just asking you to listen to the evidence here  
16 as it goes through with the mind that I'm not trying to make  
17 the evidence fit that this particular person's guilty, with  
18 the mindset of what does the evidence prove? And if you do  
19 that, it is not going to lead you to guilt of Gerald Gadsden  
20 and James White.

21 Now, I just want to give an example of circumstantial  
22 evidence. And this is what's involved in this case is  
23 circumstantial evidence because I know that is a big --  
24 circumstantial evidence, a picture, a selfie holding cash  
25 the day after a robbery.

OPENING STATEMENTS - MS. ROSS

165

1           However, like I said, he knew James White. They were  
2 friends. They had spoken on the phone after the robbery.  
3 That had been a description. And they never -- my client  
4 never denied knowing James White. That was never part of  
5 this case.

6           I think that's a part that the investigation wants to  
7 set out to you as the biggest thing, and it's not. When you  
8 realize -- the investigator asked do you know Gerald  
9 Gadsden? And on the phone contacts and everywhere the  
10 reference is Keem, Gerald Gadsden, Gerald Akeem Gadsden was  
11 known as Keem. And that's what happened there. And that,  
12 again, just drilling that investigator towards one person  
13 when frankly there were other people there, other things  
14 that happened.

15           Now, just the example of circumstantial evidence that  
16 I'll leave you with before we go, circumstantial evidence,  
17 I'll give you an example of it. You take a cat and you put  
18 it in a box, you tie up that box with twine. And there's  
19 your box with a cat in it.

20           You leave it overnight. Oops, I forgot the most  
21 important part. You drop a mouse in with it. So you've got  
22 cat and mouse in box tied up with twine. You leave  
23 overnight and go back the next day. You untie the box, open  
24 it up and you see a cat smiling up at you with no mouse.

25           Now, that looks like the cat was a murderer and killed



OPENING STATEMENTS - MR. YARBOROUGH

166

1 the mouse and ate it. However, if you look further and  
2 notice a small hole in the bottom of the box, that is  
3 reasonable doubt. That small hole suggests that the mouse  
4 probably got out. And that is reasonable doubt, ladies and  
5 gentlemen.

6 And that is what this circumstantial case is. This  
7 case is full of holes. And the reason the case is full of  
8 holes is because Gerald Gadsden is not guilty. Thank you.

9 **THE COURT:** All right. Mr. Yarborough.

10 **MR. YARBOROUGH:** Thank you, Your Honor. Ladies and  
11 gentlemen of the jury, this is my buddy, my client. This is  
12 James White. You're going to get to know him in this  
13 courtroom today.

14 You're also going to know fairness, you're going to  
15 know justice, you're going to know what your role is, the  
16 jury, which is to listen to the evidence that comes in and  
17 then make a determination of guilt or innocence. Throughout  
18 this trial we're going to point you in the direction of why  
19 my buddy, Mr. White, is innocent.

20 Let me tell you what happened. There was a robbery.  
21 There's no question there was a robbery on January the 20th  
22 of 2014, Olive Garden out there by Cherrydale. I pass it on  
23 my way home every night.

24 About 11:00 at night the place gets robbed, okay? My  
25 client was working in the kitchen as a dishwasher trying to

OPENING STATEMENTS - MR. YARBOROUGH

167

1     earn money to be able to work on his artist, his rap career,  
2     okay? That's what was happening. He's in there working,  
3     he's working for a specific person -- purpose, to try to be  
4     able to take care of his family up here.

5             He lives in -- he lives in North Charleston, but his  
6     girlfriend had moved up here. So he was living there. He  
7     worked at the Olive Garden. He'd gotten a job and he was  
8     working. He was working as a dishwasher, bam, a guy comes  
9     in to rob the place.

10            He gets on the ground in the kitchen and lays on the  
11     ground next to the other alleged victim in this case, and  
12     they stay on the ground while either one or two robbers come  
13     through the place. He said one. I think there's probably a  
14     lot of evidence that's going to show there were probably two  
15     robbers. But you make that decision.

16            He's laying on the ground while an individual is  
17     pointing a gun at him and an individual is hitting another  
18     individual in the head with a gun and the Olive Garden is  
19     being robbed, okay?

20            They called the police. And the police come out there  
21     that night. They come out there that night and they find my  
22     client with the other fellow in the kitchen on the floor.

23            Now, Ms. Simpson said that my client wasn't acting  
24     nervous. Well, that's for you to make that decision whether  
25     or not he was acting nervous that day. But I'll tell you

OPENING STATEMENTS - MR. YARBOROUGH

168

1     what he did do. He gave a statement to the police that  
2     night. He said he was not involved. He said that he did  
3     not know the robber. He tried to give as good a description  
4     as he could.

5             The other people there gave descriptions. The police  
6     checked it out. My client goes down to the police station  
7     two days later, meets with the police officers, gives them a  
8     handwritten statement, tells them where he was, what he saw.

9             For whatever reason the police at that moment make a  
10    big decision in James White's life. They jump at the  
11    conclusion he's involved even though they know -- they know  
12    that it wasn't an inside job.

13            How do they know it's not an inside job? You're going  
14    to hear that there was a rock that was smashed into the side  
15    of the Olive Garden door to try to break open the door that  
16    night. The rock was found, the door was broken. There's no  
17    question about that. That happened. That happened that  
18    night. That happened minutes before the robbery. And when  
19    the police got to the scene they see the rock here.

20            Now, if it's an inside job, if it's an inside job, why  
21    would the rock have been there? I'll tell you what  
22    happened. It's the guy smashed into the thing and probably  
23    somebody left a rag out there that night as people tend to  
24    do to go out and smoke when they're working and closing up a  
25    restaurant. They leave a rag so they can get in and out.

OPENING STATEMENTS - MR. YARBOROUGH

169

1 But people had been coming and going that night.

2 And you'll hear that people saw White back there  
3 washing dishes. He was closing up. He was doing what he  
4 was supposed to be doing. And he tried to cooperate with  
5 the police, okay? He does that.

6 Police don't -- they don't like his story. And they're  
7 going to talk about this -- these pictures on the phone.  
8 Okay.

9 Now, my client works as a dishwasher, okay, but he  
10 wants to be a rapper. And so he has a picture of where he  
11 works on his phone as a dishwasher in the back. So the  
12 State says, oh, my gosh, that should be really big evidence.  
13 That's big evidence. He took a picture of the place that  
14 you wash back there.

15 Now, y'all, you have families, you have friends. You  
16 get -- you get selfies, you get pictures from people. My  
17 kid -- my son is working as a -- he's working as a  
18 dishwasher this summer trying to earn a little extra money.  
19 He takes pictures of where he works.

20 I mean, he's an engineer in school, but he's trying to  
21 earn some money. So it's not that unusual, but the State  
22 wants to jump at the conclusions that because that picture  
23 was there that he should be guilty.

24 Now, I can't tell you why people take pictures of  
25 money, but I can tell you that rappers take pictures of

OPENING STATEMENTS - MR. YARBOROUGH

170

1 money, okay? That happens. I can tell you that there was a  
2 picture on that phone of an individual holding money.

3 But I can tell you that it's going to be pretty obvious  
4 when this case is over with that that money didn't come from  
5 that robbery, okay? And I want you to look for when that --  
6 when that piece of evidence comes in. I want you to look  
7 for it.

8 And I want you to look and I want you to think about  
9 this, that you got two young men on trial and you've got  
10 that moment, that moment when they decided that they were  
11 going to turn their attention to somebody else and they took  
12 that moment and they said, hmm, it must have been an inside  
13 job. Although they knew -- they knew that day that that  
14 rock was sitting there. The rock's sitting there -- if the  
15 rock is there, there ain't no inside job because they  
16 wouldn't have had to do it.

17 Why would they have broken the window if there was an  
18 inside job? It makes no sense. Why would they have hit the  
19 guy upside the head if it was an inside job? It makes no  
20 sense. Why would White be back on the floor in the back of  
21 the kitchen and upset if it was an inside job? It makes no  
22 sense.

23 That's the evidence that's going to come in. And the  
24 evidence, it doesn't make any sense unless you're looking at  
25 it from the eyes of the police officers. And I'm telling

**OPENING STATEMENTS - MR. YARBOROUGH**

171

1     you that that's not your job.

2             Your job over the next two or three days, and I know  
3     that's a long time, but your job over the next two or three  
4     days is to look at the evidence and make a conscience  
5     decision, is there another possible probable reason what  
6     this evidence could lay out? And if you see that, the State  
7     has not met their burden beyond a reasonable doubt.

8             I submit to you there's going to be more than a little  
9     bit. But when the first witness gets on the stand and that  
10    police officer comes and he says I came to the place and you  
11    hear them say that there was a rock slammed against that  
12    door, ask yourself why would they have slammed a rock if  
13    there was an inside job? And why in the heck would James  
14    White be on trial today?

15            And I submit to you when you do all that you're going  
16    to have the ability to render one verdict, and that verdict  
17    is the truth, which is that James White is not guilty of any  
18    of the charges that he's charged with today. Thank you.

19            **THE COURT:** All right. Ladies and gentlemen, one thing  
20    that was brought to my attention after we had selected the  
21    jury. I have another name of a potential witness that may  
22    testify in this trial. And this witness is -- is it Rashard  
23    Lyles?

24            **MR. YARBOROUGH:** Rashard Lyles.

25            **THE COURT:** Rashard Lyles. Ladies and gentlemen, I

1 would inquire at this time is there any member of this jury  
2 panel or any member of the jury panel's immediate family  
3 who's related by blood or connected by marriage, or either  
4 now or in the past has had a close personal relationship  
5 with Rashard Lyles?

6 (No response)

7 **THE COURT:** All right. Thank you. Can counsel step up  
8 here just a minute?

9 (Whereupon a bench conference was held off the record,  
10 in the presence of the jury, but out of their hearing)

11 (Whereupon the bench conference was ended)

12 **THE COURT:** All right. Ladies and gentlemen, I was  
13 just inquiring how long the first witness would be. And the  
14 State -- I normally try and break by 5:30 every afternoon.  
15 And apparently that witness would not finish in the next  
16 forty minutes or so. And so he or she would have to be back  
17 anyway.

18 So we're just going to break for the afternoon at this  
19 time and let you go home. We're going to start at 9:30 in  
20 the morning.

21 Now, one thing you need to keep in mind, one of my  
22 great pet peeves in the world is tardiness. I operate under  
23 the Vince Lombardi rule which says if you're supposed to be  
24 there at 9:30, you're probably best served by being there at  
25 9:15. And as Chris Rock rule, which says you're never

1 early. You're either on time or you're late. So please be  
2 here on time.

3 Do not discuss the case with each other or with anyone  
4 else while you're gone tonight. Do not get on the internet.  
5 If there's something on television, something on the radio,  
6 I don't know of any reason there is, but please exit the  
7 room. Don't read any newspaper articles.

8 You've invested a day in your jury service and you've  
9 got several more to go. And we don't want to do anything to  
10 jeopardize either your service or the rights of the State  
11 and the Defendants.

12 So y'all have a nice evening. They'll show you how to  
13 get out of here. And we'll see you tomorrow morning and  
14 start at 9:30. And you are free to leave.

15 (Whereupon the jury exited the courtroom at 4:50 pm)

16 **THE COURT:** All right. Anything from the State or Ms.  
17 Ross with respect to the inquiry of that Rashard Lyles?

18 **MR. FRETWELL:** No, Your Honor.

19 **THE COURT:** All right. Yes, sir.

20 **MR. FRETWELL:** Judge, the only issue that I have is our  
21 jail for some inexplicable reason requires some sort of  
22 signed document from you to commit these individuals. One  
23 of them, of course, is from another county and one of them  
24 has been taken into custody for the trial of the case.

25 I can try to get somebody to prepare that for you or I



1 don't know if it would suffice for you to write it down on a  
2 sheet of paper, but I don't know why they do that. But they  
3 just require something in writing from the judge to hold  
4 somebody overnight.

5 **THE COURT:** Well, ...

6 **MS. ROSS:** Judge, and then that goes to what Dr. Maddox  
7 was saying this morning. I talked to some people about --  
8 Greenville LEC's procedure is to medically review Mr.  
9 Gadsden's case and decide what medication they think he  
10 should be on, which is totally unacceptable.

11 Given what she said, it seemed like he was taking a  
12 drug called Prolixin and had been taking it for about ten  
13 days. And I'd just ask that if you do have an order  
14 committing them overnight that you state that Mr. ---

15 **THE COURT:** Well, can you and the solicitor get  
16 together in the next five minutes or so and give me an  
17 order?

18 **MS. ROSS:** I can attempt to. I'd have to go back to my  
19 office to get to my computer and prepare it.

20 **THE COURT:** Well, ---

21 **MS. ROSS:** And then I'd be happy ---

22 **THE COURT:** --- he's got an office that's probably  
23 closer than yours. And all you have to do is further order  
24 that he's to be ---

25 **MS. ROSS:** Excellent. Okay.

1           **THE COURT:** --- that he receive whatever medication  
2   that he is to receive on -- as required.

3           **MS. ROSS:** Okay. Then we'll do that.

4           **MR. YARBOROUGH:** And Mr. White said he'll be here in  
5   the morning if you don't want to keep him overnight at the  
6   Greenville County Detention Center. He's made it every  
7   time.

8           **THE COURT:** He'll be here in the morning, and we'll  
9   keep him overnight. So he's in my custody for the rest of  
10   this trial ---

11          **MR. YARBOROUGH:** Yes, sir.

12          **THE COURT:** I'll be back in the office if y'all can do  
13   what you need to do. I guess you don't need to be involved  
14   in that, do you, Mr. Yarborough?

15          **MR. YARBOROUGH:** No, sir, Your Honor.

16               (Whereupon court was in recess at 4:52 pm)

1 Tuesday, June 7, 2016:

2 (Whereupon Court's exhibit 4 was marked)

3 (Whereupon court reconvened at 11:41 am)

4 **THE COURT:** All right. Mr. Solicitor, apparently we've  
5 got everybody here now. Y'all ready to proceed?

6 **MR. FRETWELL:** We are, Your Honor.

7 **THE COURT:** Mr. Yarborough?

8 **MR. YARBOROUGH:** Ready, Your Honor.

9 **THE COURT:** Ms. Ross?

10 **MS. ROSS:** Ready, Your Honor.

11 **THE COURT:** All right. You want to bring the jury in,  
12 please.

13 (Whereupon the jury entered the courtroom at 11:43 am)

14 **THE COURT:** All right, ladies and gentlemen. Good  
15 morning to you again. For the record, because of the delay  
16 here this morning, I spoke to the jury with -- telling them  
17 because of a medical situation we were -- going to be a  
18 little delay in getting started. And I think we're now  
19 ready to proceed, but before we do I need to ask y'all a  
20 couple of questions.

21 First, has anybody had any conversation about this case  
22 with each other or with anyone else since we left yesterday  
23 or were you approached by anybody to discuss this case?

24 **THE JURY:** (Negative responses)

25 **THE COURT:** Anybody do any private inquiry or

**AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL**

177

1 investigation into this case, get on the internet, do  
2 anything, ---

3 **THE JURY:** (Negative responses)

4 **THE COURT:** --- learn about anything or read the  
5 newspaper or listen to the radio or TV?

6 **THE JURY:** (Negative responses)

7 **THE COURT:** All right. Good. I think as you're aware  
8 when we finished yesterday afternoon the State and the  
9 Defendant had made all their opening statements. And the  
10 State, I think, is now ready to proceed with the  
11 presentation of its evidence in its case in chief. So, Mr.  
12 Solicitor, you ready to proceed?

13 **MR. FRETWELL:** May it please the Court, Your Honor.  
14 The State would call Aaron Kretzschmar.

15 **Aaron Kretzschmar**, being  
16 duly sworn testified as follows;

17 **MADAME CLERK:** Have a seat. Will you please state your  
18 full name for the record.

19 **MR. KRETZSCHMAR:** Aaron Matthew Kretzschmar.

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

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

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

23 Q. Mr. Kretzschmar, if you would be so kind, would you  
24 please spell your last name for the court reporter?

25 A. K-r-e-t-z-s-c-h-m-a-r.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

178

1 Q. Thank you, sir. Mr. Kretzschmar, I want you to tell

2 the jury a little bit about yourself. How old are you?

3 A. I'm thirty-three years old.

4 Q. And do you live here in Greenville County?

5 A. I do.

6 Q. How long have you lived in Greenville County?

7 A. About four and a half years.

8 Q. Okay. And you're not married, is that correct?

9 A. I am not.

10 Q. Okay. Your girlfriend is actually here in court with  
11 you today, is that true?

12 A. Yes, she is.

13 Q. Okay. Let me ask you a little bit about your  
14 education. Did you go to school here in Greenville County  
15 or somewhere else?

16 A. Somewhere else. I'm from Indiana.

17 Q. All right. Did you attend college in Indiana?

18 A. I did.

19 Q. Okay. And what college did you go to?

20 A. I went to Purdue University.

21 Q. All right. And what did you study at Purdue?

22 A. Landscape architecture.

23 Q. Landscaping? Okay. Why did you come back -- why did  
24 you come to Greenville?

25 A. I have family down here in Greenville. And I've always

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

179

- 1 loved the south, warmer weather, got tired of the cold  
2 winters in Indiana as a lot of people do, I think. So I  
3 came down here.
- 4 Q. All right. Let's talk about your employment now. How  
5 are you currently employed?
- 6 A. I'm a restaurant manager.
- 7 Q. So not in landscape architecture?
- 8 A. No.
- 9 Q. So you're a restaurant manager at a local restaurant,  
10 is that correct?
- 11 A. Yes, a restaurant here in Greenville.
- 12 Q. Okay. And how -- what are your duties at that  
13 particular establishment?
- 14 A. I'm the kitchen manager primarily, but my duties  
15 involve every -- a little bit of everything in the  
16 restaurant.
- 17 Q. And how long have you been managing restaurants in  
18 Greenville County?
- 19 A. Since shortly after moving here. So about four years  
20 in Greenville County.
- 21 Q. Okay. Well, let me take you back to January of 2014.  
22 Were you -- where were you working at that time?
- 23 A. I was working at the Olive Garden, Cherrydale.
- 24 Q. Near Cherrydale?
- 25 A. Yes.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

180

1 Q. Okay. And what were your responsibilities at the Olive  
2 Garden in January of 2014?

3 A. My official title was the service manager. So I was  
4 overseeing the aspects of the service; hosts, bartenders,  
5 things like that, but on day-to-day basis oversaw the  
6 general operations of the restaurant.

7 Q. Okay. Let me take you to January 20th, a Monday  
8 evening. Were you working that evening?

9 A. Yes.

10 Q. Okay. And were you managing that evening?

11 A. Yes.

12 Q. What was your specific duty that night as a manager?

13 A. I was the closing manager in charge of closing down the  
14 restaurant as the sole manager on duty.

15 Q. Okay. And on weekdays, including Monday, January 2014,  
16 what time did the Olive Garden restaurant close?

17 A. Ten pm.

18 Q. Did you have any managerial duties that were associated  
19 with the close at 10:00?

20 A. Yes. I would -- first priority would be locking the  
21 doors promptly at ten and making sure that -- other things  
22 to do.

23 Q. Okay. Well, let's talk about that for a minute. Were  
24 there multiple doors to the restaurant?

25 A. There are.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

181

1 Q. Okay. And how many public doors? How many doors can  
2 the public go in and out of?

3 A. Just one set of doors at the front.

4 Q. And the rest of the doors around that restaurant, are  
5 they locked all the time?

6 A. Yes.

7 Q. Okay. And, in fact, some of those doors that are in  
8 the kitchen area, are they also alarmed?

9 A. Yes. If the door's opened from the inside, and you  
10 have those other doors will sound an alarm.

11 Q. Okay. Well, let me take you back to the public  
12 entrance doors up front. Once you lock those doors can you  
13 enter from the outside?

14 A. No. From the outside, no.

15 Q. Not without a key?

16 A. No.

17 Q. Okay. Can you exit from the inside?

18 A. Yes.

19 Q. Okay. So do those doors -- are they similar maybe to  
20 this door in the back that has kind of a push bar, safety  
21 mechanism for leaving even when the door is locked?

22 A. Yeah, they'd be similar.

23 Q. Okay. So you can open the door even if it's locked  
24 even from the inside to get out?

25 A. Yes.



AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

182

1 Q. Okay. And on that particular night, January 20th, 2014  
2 did you, in fact, lock those doors at or around 10:00 when  
3 you closed?

4 A. Yes.

5 Q. Okay. How serious is that policy of locking the doors  
6 to Olive Garden and its parent, the Darden Corporation? How  
7 serious is that?

8 A. It's very serious. It was made clear to me when I  
9 started that position and as it is to all people that work  
10 there that that is a terminable offense. You don't get a  
11 second chance on that mistake.

12 Q. So if you don't lock the doors or if you leave the  
13 doors open, that's a firing -- fireable offense?

14 A. Yes, absolutely.

15 Q. And did you communicate that to your staff?

16 A. Yes.

17 Q. All right. Well, let me ask you about this. Let's say  
18 it's after 10:00 and somebody wants to take a smoke break,  
19 what's the policy on that?

20 A. No one is allowed to leave and re-enter. The -- at the  
21 time, I'm not sure about currently, but there's a smoking  
22 section in the restaurant. So after all of the guests are  
23 gone, it would be acceptable for them to smoke in that  
24 smoking section.

25 Q. Okay. And what about any -- on the front doors, those

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

183

1 public entrance doors, in fact, did you have any kind of  
2 signage on the door at that time to alert patrons of the  
3 fact that they wouldn't be able to re-enter?

4 A. Yes.

5 Q. Okay. Were there any exceptions to that particular  
6 policy?

7 A. No. Unfortunately, no.

8 Q. Okay. I imagine you've had to deal with some people  
9 trying to get back in to get their items ---

10 A. Yes. There would be at times guests who would want to  
11 go back out to their car and retrieve something and come  
12 back, and I would, unfortunately, have to tell them that we  
13 cannot allow that.

14 Q. Okay. Let me take you back again to that Monday  
15 evening. Do you know approximately when you finished up  
16 with your duties that evening and were preparing to leave  
17 the restaurant?

18 A. I'd say it was between eleven, 11:30.

19 Q. Okay. And did you -- during that time period did you  
20 have a conversation or encounter an employee by the name of  
21 Damion Riley?

22 A. Yes.

23 Q. And what was the purpose of you meeting or seeing or  
24 talking with Damion that night?

25 A. He was the last of the line cooks in there who had just

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

184

1 finished up cleaning up and doing his duties and was coming  
2 to me to check out to make sure it's okay for him to leave.

3 And I let him know that it was okay for him to go home.

4 Q. Okay. And did you have an idea after he left --  
5 sometime in that time period did you have an idea of who  
6 else was -- remained in the store at that point?

7 A. Yes.

8 Q. And who was that?

9 A. Terrell Pugh and James White, the two dishwashers,  
10 would have been the only two remaining in the building at  
11 that time.

12 Q. All right. And is this Mr. Pugh in the back with the  
13 olive shirt on and the tie?

14 A. Yes.

15 Q. Okay. And can you identify Mr. James White you said  
16 was the other individual that was there?

17 A. The gentleman here in the maroon button down shirt.

18 (Whereupon the witness pointed to the Defendant, James  
19 White)

20 **MR. FRETWELL:** Your Honor, let the record reflect he's  
21 identified the Defendant, James White.

22 **THE COURT:** It does.

23 Q. Take us through what happened once Damion left the  
24 restaurant to the time that you were prepared to leave.  
25 Tell the jury what happened at that point.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

185

1 A. I was just, I guess, waiting for the dishwashers to  
2 finish up. So I had a book that I was supposed to read for  
3 a meeting that was coming up. And I was preparing to just  
4 go out and sit out in the front of the restaurant and read  
5 that book while I waited for them to finish their duties so  
6 I could go -- we could all lock up and go home.

7 Q. So you were finished with the exception of waiting on  
8 the dishwashers to finish, is that correct?

9 A. Yes.

10 Q. Okay. And did you -- was it your purpose to go by and  
11 check on them on the way out to read your book?

12 A. Yeah. I was going to go get status on how long it  
13 would be before they'd be finished.

14 Q. All right. So when you left the office door -- in a  
15 few minutes I'm going to have you take a look at some  
16 pictures so you can describe this a little bit better. But  
17 when you leave the office does that door lock automatically  
18 or did you have to lock it?

19 A. It locks automatically.

20 Q. Okay. And so you carry a key, is that correct?

21 A. Yes.

22 Q. All right. When you left the office, tell the jury  
23 what happened next.

24 A. As I was approaching, going down the corridor towards  
25 the dish area, I kind of round the corner to go towards the

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

186

1 dish area and I'm taken by surprise and hit in the side of  
2 the head. I kind of am reeling and stumble back against the  
3 wall. And I have a gun pointed in my face, and I'm  
4 instructed to go to the safe.

5 Q. And did you?

6 A. Yes. I've always been taught to cooperate. No one's  
7 life is worth that money that's in that office.

8 Q. Okay. So tell the jury what happened next.

9 A. I did as I was told, followed or went down to the  
10 office, opened the door, went inside and opened the safe and  
11 began taking out the money.

12 Q. Okay. And this individual that was there that had  
13 struck you and instructed you to go back to the office to  
14 the safe, did that individual have anything with him --  
15 first of all, was it a male or female?

16 A. It was a male.

17 Q. Caucasian, African American or Latino?

18 A. African American male.

19 Q. Okay. Did that individual provide anything for you to  
20 put the money into?

21 A. When we got into the office, he's kind of standing in  
22 the doorway over me, I'm down there opening the safe, and  
23 there's a clear, plastic, cheap-like bag from -- like you'd  
24 get from a grocery store or a convenience store or something  
25 on the ground that he was instructing me to place the money

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

187

1 -- kind of dump the money into.

2 Q. Did anything happen to you or did he say anything to  
3 you while you were attempting to get the safe open, get the  
4 money out and comply with his commands to put it in that  
5 bag?

6 A. Yeah. He struck me a few times and told me that I  
7 wasn't going fast enough basically, I guess, hurry up. And  
8 I believe about two times struck me and said hurry up,  
9 something along those lines.

10 Q. Do you recall him saying anything else to you with  
11 respect to you not moving ---

12 A. Threatening that he would, I think, pistol whip me  
13 again, which I found confusing because I don't think he ever  
14 hit me with the gun. I think he was hitting me with his  
15 fist.

16 Q. Okay. Do you recall or would you be in a position to  
17 know whether he hit you with his right fist or his left  
18 fist?

19 A. I don't recall. I don't think I really was in a  
20 position to know.

21 Q. Okay.

22 A. I wasn't looking at where the blows were coming from.

23 Q. Okay. When you were putting the -- well, let's go back  
24 just a minute. On Mondays approximately how much money  
25 would have been in that safe that day?

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

188

1 A. I believe thirty-five hundred.

2 Q. Is that -- is that more money than would be normally in  
3 the safe or less money or could you tell us a little bit  
4 about that?

5 A. It would be more money than would be in the safe --  
6 would have been in the safe the previous night or the night  
7 before.

8 Q. And why is that?

9 A. Over the course of the week we drop money, cash money  
10 that comes into the restaurant is dropped into what we call  
11 a drop-safe. That is a separate safe behind the safe that I  
12 have access to.

13 Q. So you don't have access to the drop-safe?

14 A. No. The armored car carrier carries that key.

15 Q. Okay. And when -- and they come to the restaurant on  
16 what day?

17 A. They come on Monday mornings.

18 Q. Okay. And they come to, I guess, access this  
19 unaccessible safe, ---

20 A. Yes.

21 Q. --- correct? And what else do they do? What do they  
22 bring to the restaurant?

23 A. They replenish what we call change fund because we have  
24 to keep -- keep a par level on hand of ones, fives, tens and  
25 quarters and all of that to be able to make change for our

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

189

1 guests. So they replenish that as we drop it down to a  
2 level of a thousand dollars before they come back and refill  
3 it back up to that thirty-five hundred.

4 Q. Well, let's talk about those quarters, and those dimes  
5 and those nickels. They would be contained in that safe as  
6 well?

7 A. Yes.

8 Q. Okay. And when you were being instructed to put the  
9 money into that bag were you given any instructions about  
10 the rolled coins?

11 A. Yes. I think when I had the bulk of the cash money, I  
12 sort of hesitated. And he said, no, all of it. And so I  
13 started grabbing all of the rolled coins as well and dumping  
14 them in there as well.

15 Q. Make sure you lean up toward that microphone.  
16 Sometimes toward the end of your sentence ---

17 A. Oh, okay.

18 Q. --- so we'll know exactly what you're saying. You said  
19 that you grabbed the rolled coins as well?

20 A. Yes.

21 Q. Okay. When you placed the rolled coins in the bag what  
22 began to happen at that point?

23 A. The bag began to rip.

24 Q. Okay. And what happened next?

25 A. At that point he got up, fled the office, left. And I



AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

190

1 closed the door and called 911.

2 Q. Okay. You said he got up, fled and left. Did he leave  
3 anything behind?

4 A. Yes. It was apparent -- there was money on the ground  
5 there in the office. And then afterwards I saw that there  
6 was a trail throughout the restaurant ---

7 Q. Through the kitchen -- do you recall whether there was  
8 money outside?

9 A. Yes, there was money outside. There was money -- there  
10 was just a trail all the way out the door.

11 Q. Okay. All right. And you said that you contacted 911,  
12 is that correct?

13 A. That is correct.

14 Q. Okay. Let me show you what's been marked as State's  
15 exhibit 1. Have you listened or do you recognize this disk?

16 A. Yes.

17 Q. How do you recognize it?

18 A. I signed my initials right there.

19 Q. Okay. Have you listened to this recording?

20 A. Yes.

21 Q. Does this recording accurately reflect the conversation  
22 that you had with 911 dispatchers on the evening of Monday,  
23 January 20th, 2014?

24 A. Yes, it does.

25 **MR. FRETWELL:** Your Honor, at this time the State would

**AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL**

191

1     move State's 1 into evidence.

2           **THE COURT:** Mr. Yarborough.

3           **MR. YARBOROUGH:** Without objection, Your Honor.

4           **THE COURT:** Ms. Ross.

5           **MS. ROSS:** No objection, Your Honor.

6           **THE COURT:** All right. So admitted.

7           (Whereupon State's exhibit 1 was admitted into  
8     evidence)

9     Q. All right. Now, Aaron, I want you to take a look at  
10    what's been marked as State's 2 through 29. And take your  
11    time and look at each photograph as you go through there.  
12    And I'm going to ask you if you recognize the photograph and  
13    also whether it accurately reflects the condition of the  
14    area depicted on the evening of Monday, January 20th, 2014.

15    A. Okay.

16           (Pause)

17    Q. I know those are a lot of pictures, and I apologize.  
18    Just as soon as you finish looking at each one, if you'd let  
19    me know.

20    A. Oh, okay. Yeah, do you want me to identify  
21    individually each one?

22    Q. No, we'll do that in just a moment. What I want to ask  
23    you, have you looked at the entire group?

24    A. No. I'm ---

25    Q. Okay.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

192

1 A. --- partially through.

2 (Pause)

3 A. Okay.

4 Q. You've looked at all those pictures?

5 A. Yes.

6 Q. State's 2 through 29?

7 A. Yes.

8 Q. And do they -- do you recognize the areas that these  
9 photos depict?

10 A. Yes, I do.

11 Q. Are they true and accurate portrayals of the areas that  
12 they depict as of Monday, January 20th, 2014?

13 A. Yes.

14 **MR. FRETWELL:** Your Honor, at this time the State would  
15 move State's exhibits 2 through 29 into evidence.

16 **MR. YARBOROUGH:** Without objection, Your Honor.

17 **MS. ROSS:** No objection.

18 **THE COURT:** All right. So admitted without objection.

19 (Whereupon State's exhibits 2 - 29 were admitted into  
20 evidence)

21 **MR. FRETWELL:** Your Honor, I would like to publish the  
22 exhibits at this time.

23 Q. I'm going to start with the pictures. And I want to  
24 put these pictures up and then I'll hand you a pen that  
25 allows you to depress and create a little dot ---

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

193

1 A. Okay.

2 Q. --- so that we can tell what you're talking about when  
3 you point out the different areas of these photographs. I'm  
4 going to start with State's exhibit 2. If you'll just  
5 simply tell the jury -- what are we looking at in this  
6 particular picture?

7 A. Looks like the front of the restaurant, the Olive  
8 Garden restaurant.

9 Q. Okay. And under that sign can you show the members of  
10 the jury where the front entrance doors would be?

11 A. About right there.

12 Q. And for those jurors that might not be familiar with  
13 the Cherrydale area, could you show them where Pleasantburg  
14 Drive would be from the perspective of this particular  
15 picture?

16 A. Pleasantburg Drive would be on this side of the  
17 restaurant -- of the photo.

18 Q. All right. And where would State Park Road or Highway  
19 253 be?

20 A. Somewhere in this distance right here.

21 Q. Runs on the side?

22 A. Yes.

23 Q. Okay. All right. Now I'm going to show you State's  
24 exhibit 2. Are these the front entrance doors as you  
25 observed them that evening?

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

194

1 A. Yes.

2 Q. Okay. And if you would do me -- would you point out  
3 any cash that you might see in that picture to the attention  
4 of the juror -- jury?

5 A. I see in this area some bills.

6 Q. And does one of the panes of one of the doors appear to  
7 be broken in this picture?

8 A. Yes.

9 Q. And can you point that out?

10 A. (Witness pointed)

11 Q. Okay. Where is the sign that you said that indicated  
12 the policy with respect to no re-entry?

13 A. We've got one here and then one over here.

14 Q. So one on each door?

15 A. Yes.

16 Q. Okay. All right. Now let's look at State's exhibit 4,  
17 just a closeup of what you just described. State's exhibit  
18 5. Do you see something there at the bottom of the doorway  
19 in State's exhibit 5 that would be unusual for the average  
20 night of leaving the restaurant?

21 A. I see a few things.

22 Q. Okay.

23 A. The cash would, obviously, ---

24 Q. Yes, sir.

25 A. A brick here that's out of place. And this is a rag

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

195

1     that was propping that door from closing.

2     Q.    And when you were there that night and eventually had  
3     an opportunity to go up to the entrance area, did you notice  
4     that the doors were, in fact, propped open?

5     A.    Yes, I did.

6     Q.    Okay.  And were they still locked as you had locked  
7     them around 10:00 that evening?

8     A.    Yes.

9     Q.    All right.  Let me show you State's exhibit 6.  Is that  
10    just a closeup -- clearer picture of that brick that you  
11    just described?

12    A.    Yes.

13    Q.    Are you aware of any areas around that restaurant where  
14    either that brick would be used in the construction of the  
15    building or lying around?

16    A.    I am not sure about where the brick came from.

17    Q.    But does it look like anything that the building would  
18    be made of or any kind of construction material that would  
19    be lying around?

20    A.    No, because our building is more of this type of stone.

21    Q.    Okay.  Let me show you State's exhibit 7.  What do you  
22    see unusual in that photograph?

23    A.    There is the white towel right here preventing this  
24    door on the right hand side from closing.

25    Q.    Okay.  And I'm going to show you a closer picture of

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

196

1     that. Do you recognize that towel?

2     A.    Yes.

3     Q.    And how do you recognize it?

4     A.    Those would be our towels that would commonly be used  
5     inside the restaurant in the kitchen for our kitchen staff  
6     cleaning up.

7     Q.    Is it commonly called a dishtowel?

8     A.    It could be. It could be used for dish purposes,  
9     keeping the line clean as well, sanitation purposes.

10    Q.    You can't see it with the lights like this, but let me  
11    see if I can kick one of these lights off. Do you, in fact,  
12    see a little bit of a discoloration of that towel?

13    A.    Yes.

14    Q.    What does that appear to be on there? In your Italian  
15    restaurant?

16    A.    Probably marinara sauce or some other pasta sauce.

17    Q.    Okay. All right. Doesn't come out too easily, does  
18    it?

19    A.    No.

20    Q.    All right. Let me show you State's exhibit 9. A  
21    little hard to see there, but what is lying on that push bar  
22    for the door and at the ground level inside the restaurant?  
23    Can you tell what that is?

24    A.    I cannot actually in this photo.

25           **MR. FRETWELL:** Mr. Frazier, can you kick that light off

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

197

1 and see if you can see it a little better with that light  
2 off.

3 Q. What are those ---

4 A. Oh, okay. Bills.

5 Q. Okay. And we'll just leave the lights off for right  
6 now until we want to bring it up a little bit. So there's  
7 some sort of currency on the bar as well as on the floor --  
8 on the ground, is that correct?

9 A. Yes.

10 Q. Okay. And do you see any portion of that dishtowel on  
11 the side of the door that is not open on this picture?

12 A. I do.

13 Q. Okay. Let me show you -- and unfortunately we might  
14 need to bring the lights back up, but this, again, is a  
15 closer picture of that towel in the door. Is that the way  
16 that the -- if the doors were shut would that be the way  
17 that you observed that towel lying there that night?

18 A. Yeah.

19 Q. Okay. And, in fact, with this picture were both doors  
20 propped open by that particular dishtowel?

21 A. Yes.

22 Q. Okay. I'm going to now take you to a series of  
23 pictures that you looked at starting with State's exhibit  
24 12. And I'd show you just for purposes of familiarizing the  
25 jury with the restaurant and the interior. What is that the



AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

198

1 door to?

2 A. That entrance door here leads into the kitchen.

3 Q. And how do you get to that area from the front of the  
4 restaurant?

5 A. It is -- you kind of go around the host stand area and  
6 then you're in kind of -- right next to the host stand will  
7 be where this picture perspective is from. And then you  
8 have this little doorway. And then straight on ---

9 Q. So it's not a picture taken at those entrance doors?

10 A. No.

11 Q. Okay. So you have to go around a little bit to go back  
12 into the kitchen, is that correct?

13 A. That is correct.

14 Q. All right. So now on State's exhibit 13, if you'd just  
15 show the jury, where was that door to the kitchen that you  
16 just described?

17 A. That would be right -- right about here where we're --  
18 I guess that might be the door itself ---

19 Q. Is that a swinging door?

20 A. Yes, it is.

21 Q. Okay. All right. And then that's the kitchen area  
22 going back there?

23 A. Yes.

24 Q. What is in the very back of that picture?

25 A. That is the dish area.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

199

1 Q. Okay. Let me show you State's exhibit 14. Is that the  
2 area depicted in that other picture in the back?

3 A. Yes.

4 Q. Can you show the jurors, where would the dish area be  
5 specifically in relation to that photograph?

6 A. Your dish area is right here with the sinks, and  
7 dishwashing area right here and then the area where they're  
8 putting away clean dishes towards this side.

9 Q. Now this cable that we see right there closest to us in  
10 the dish area, is that something that separates the kitchen  
11 from the dish area or did the dishwashers stand on this side  
12 of the table?

13 A. They would be on the opposite side of this.

14 Q. Okay. And, in fact, there's an entryway -- one entry,  
15 one exit to the dish area. Where is that in relation to  
16 this photograph?

17 A. Into that dish -- itself?

18 Q. Um-hum (affirmative).

19 A. It is right over here.

20 Q. Okay. And what is -- what do you see on the floor  
21 there in front of the dish area?

22 A. Money.

23 Q. Okay. We'll take a closer look at those items that are  
24 there. In addition to the currency and the rolled coins  
25 that you placed in the bag, did you -- did you place

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

200

1 anything else into that bag at the request of the robber?

2 A. The entire contents of the bar drawer went into that as  
3 well, cash, and change and gift cards that are kept there  
4 for security purposes so they can't be given out.

5 Q. Why would you keep a gift card back there in the safe?

6 A. Because they're kept -- kept locked up so that people  
7 cannot give them away.

8 Q. Okay. And are they, in fact, is there any money on  
9 those cards, do you know?

10 A. No, there would not be. They would need to activate it  
11 before they could be used.

12 Q. Okay. But that's what you put into the bag, is that  
13 correct?

14 A. Yes.

15 Q. Do you see any of those gift cards on the floor right  
16 there?

17 A. Yes. I see ---

18 Q. And do you ---

19 A. --- one here and here.

20 Q. Do you see rolled coins in the type that you placed  
21 into that bag as well?

22 A. Yes.

23 Q. Okay. All right. Let me show you what is marked as  
24 State's exhibit 16. As we're moving around that corner

25 toward the dish area can you explain with your pointer where

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

201

1     that entrance to the dishwasher area is?

2     A.    Right here.

3     Q.    Okay. 'And where was all of that money that was on the  
4     floor that we looked at just a moment ago?

5     A.    Down here towards where we're -- the person, I presume,  
6     is standing when they're taking this photo.

7     Q.    Okay. And that ice machine that you see in that  
8     picture, what's beyond that ice machine?

9     A.    Here is the corridor where -- going this way you head  
10    into the prep kitchen area. Heading this direction you go  
11    to the office.

12    Q.    Okay. Well, let's concentrate for just a moment on  
13    this dish entrance area. I'm going to show you State's  
14    exhibit 17. Is that the actual entry area to the  
15    dishwashing station?

16    A.    Yes.

17    Q.    All right. And quickly with these, State's 18, is that  
18    also taken of that area to the dishroom?

19    A.    Yes.

20    Q.    And finally, do you recognize State's 19?

21    A.    Yes, I do.

22    Q.    Is that -- if you come into the dish area are you able  
23    to go right and left?

24    A.    Yes.

25    Q.    And is this right or left?

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

202

1 A. This is to the right.

2 Q. Okay. And so who would stand in this area with respect  
3 to dishwashing duties? Would it be the person washing the  
4 dishes or the person drying them and putting them away?

5 A. The person drying them and putting them away would be  
6 in this -- this area.

7 Q. Okay. And then the washing person would be to the  
8 left, is that right?

9 A. Yes.

10 Q. Okay. You ever worked the dishwasher or apparatus in  
11 that particular store?

12 A. At times, yes.

13 Q. Okay. Do you remember how that dishwashing process  
14 worked? If you had to pull down the hood or it was a  
15 conveyor belt or ...

16 A. It was a conveyor.

17 Q. Okay. With one of those spray nozzles to spray off the  
18 food?

19 A. Yeah. There's a big sprayer that would be on that left  
20 side, a conveyor that takes the racks through to the right.

21 Q. Okay. And just so -- while we're on that subject, you  
22 said there's one entrance and one exit to that dish area.

23 Can you get out on the side where the dishwashing occurs?

24 A. No.

25 Q. Okay. Let me take you the other direction of the ice

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

203

1 machine. What of particular note can you tell the jury  
2 about this particular area?

3 A. I can tell this is where I was at when I was assaulted.  
4 And this book is what I was carrying in my hand at the time  
5 of that. And I dropped it at that point.

6 Q. And there also appears to be the overturned bucket and  
7 other items over in that general area, is that correct?

8 A. That is correct.

9 Q. Okay. All right. I'm going to show you what's been  
10 marked as State's 30. And I want you to look at it for  
11 yourself and compare it to State's exhibit 20. And tell me  
12 first of all do you recognize the area depicted in State's  
13 30?

14 A. I do.

15 Q. Okay.

16 A. I do.

17 Q. Is it the same general area that we're looking at in  
18 State's 20?

19 A. It is.

20 Q. Was it taken after the robbery or at the time of the  
21 robbery?

22 A. It appears to have been taken at a different point in  
23 time.

24 Q. Different point in time. Okay. So this is not -- it  
25 does not have the overturned bucket or your book on the

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

204

1 floor, is that correct?

2 A. That is correct.

3 Q. Okay. All right. Let me continue with State's exhibit  
4 21. Tell the jury where is the dishwashing area in relation  
5 or, I'm sorry, the ice machine we were just talking about,  
6 where is that in relation to this corridor?

7 A. It would be over here, kind of behind and over here.  
8 This corridor is to the left of what we were just looking  
9 at.

10 Q. And it seems to be stacked with -- what are all those?

11 A. Racks of glassware.

12 Q. Okay. All right. And so the office is where in  
13 relation to this picture?

14 A. Just on the other side of this.

15 Q. Okay. And State's 22, are we now beyond those racks?

16 A. Yes.

17 Q. Okay. Tell the jury what you notice about this  
18 particular picture.

19 A. I notice rolls of coins here on the floor just outside  
20 what is the office door.

21 Q. Okay. And is that the office door -- did that office  
22 door have a window in it?

23 A. Yes.

24 Q. Is State's exhibit 23 that window?

25 A. Yes.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

205

1 Q. All right. And State's exhibit 24, does that appear to  
2 be looking through that window?

3 A. Yes.

4 Q. And can you tell the jury, where is the safe in that  
5 office area that you were getting money out of and putting  
6 into the bag for the robber?

7 A. It is not really visible in this photo. It's down  
8 here.

9 Q. Okay. And ---

10 **MR. FRETWELL:** Mr. Frazier, if you'd click that light  
11 off.

12 Q. It appears -- is that a plate of food on the ---

13 A. Yes. I believe that would have been my dinner.

14 Q. Okay. All right. Let me show you now State's exhibit  
15 25. This is a picture taken in what general area of the  
16 store?

17 **MR. FRETWELL:** If you could turn the light back on, Mr.  
18 Frazier.

19 A. Yeah, it's kind of hard to see. I believe that's  
20 towards where the bread sticks are made. That's just a --  
21 one of our kitchen towels sitting ---

22 Q. Okay. And is that a similar towel to the one that was  
23 in the front door?

24 A. Yes.

25 Q. All right. And 26, a food prep table or something.



AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

206

1           **MR. FRETWELL:** Mr. Frazier, I hate to do this to you,  
2     but if you could click that off.

3     Q.    Do you see that same discoloration on some of the other  
4     -- on that towel as well?

5     A.    Yes.

6     Q.    Okay.

7           **MR. FRETWELL:** Thank you, Mr. Frazier.

8     Q.    This is you?

9     A.    Yes.

10    Q.    Okay. And let me show you State's exhibit 28. Do you  
11    recognize that area of the restaurant?

12    A.    I do.

13    Q.    Okay. And where is that area?

14    A.    That is just before entering the kitchen. This is a  
15    side server station.

16    Q.    Okay. So if we go back to that picture that we had  
17    that showed the -- let's go back to State's exhibit 12.

18    Show the jury, where is this area in relation to State's  
19    exhibit 12?

20    A.    It is over here to the left.

21    Q.    Okay. And so if you go back to State's 28 and off to  
22    the left there appears to also be another exit or entry from  
23    the dining room, is that correct?

24    A.    Yes. This goes out to the main dining room here.

25    Q.    And can you point out where the monitor is for the --

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

207

- 1 well, first of all, you see a screen there and there's a  
2 monitor above it. What is that station right there?
- 3 A. This area would be where to-go orders are taken and  
4 processed.
- 5 Q. Okay. And there's a -- show us where the monitor is  
6 that -- well, let me back up. Do you have a camera on the  
7 exterior of the Olive Garden?
- 8 A. We do.
- 9 Q. Okay. And where -- is it one camera or multiple  
10 cameras?
- 11 A. It is, I believe, just one camera.
- 12 Q. Okay. And the purpose of that camera is what?
- 13 A. To show when curbside pickup orders are out there.
- 14 Q. And do you have -- did Olive Garden have designated  
15 spots for curbside pickup people to park in?
- 16 A. We did.
- 17 Q. Okay. And was the camera trained on those spots?
- 18 A. Yes.
- 19 Q. Okay. So a fairly narrow and constricted view, is that  
20 right?
- 21 A. Yes.
- 22 Q. Okay. And where is the monitor that shows you what  
23 that camera is seeing?
- 24 A. It is right here.
- 25 Q. Okay. Let me show you State's exhibit 29. Is that a

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

208

1 closeup of that particular ---

2 A. Yes.

3 Q. --- monitor? Okay. Let's go back to -- you said you  
4 called 911 and spoke to the dispatcher and explained what  
5 had happened, is that correct?

6 A. That is correct.

7 Q. All right. Can you tell me, how did you describe the  
8 suspect or the individual who had pointed a gun in your face  
9 and directed you to go back to the office?

10 A. I think at that time I said that I couldn't really see  
11 his face very well because I was trying not to look at his  
12 face.

13 Q. Okay. Did you say anything about the fact that he was  
14 an African American male?

15 A. Yes.

16 Q. Did you describe his body type?

17 A. I think I described him as stocky and shorter than  
18 myself.

19 Q. And how tall are you?

20 A. I'm six foot two.

21 Q. Okay. Did you describe anything with respect to what  
22 he was wearing?

23 A. Yes.

24 Q. And how did you describe that?

25 A. A hoodie with possibly camo design of some sort.

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

209

1 Q. Okay. And was that hoodie -- was the robber wearing --  
2 were you able to see whether he was wearing that hoodie when  
3 he was in the store with you? Was it -- the hood up?

4 A. I can't be sure about the hood being up or not.

5 Q. Okay. Do you -- did you -- do you know whether or not  
6 the individual was wearing gloves?

7 A. I do not.

8 Q. But you did say he struck you multiple times, is that  
9 correct?

10 A. That is correct.

11 Q. All right. How about the gun? Did you describe the  
12 gun?

13 A. I described it as a black gun.

14 Q. And do you know whether or not you provided any  
15 information about who else might be in the store to the  
16 dispatcher?

17 A. I did tell them that the other two dishwashers -- the  
18 two dishwashers were the only other people in the building  
19 with me.

20 Q. Okay.

21 **MR. FRETWELL:** At this time, Your Honor, the State  
22 wishes to publish State's exhibit 1.

23 (Whereupon State's exhibit 1, CD, was played for the  
24 jury)

25 (Whereupon the CD was ended)

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

210

1 Q. Aaron, I noticed in there that you yelled for Terrell.

2 Is there a particular reason you called for Terrell?

3 A. I think it's because I'd known Terrell longer, worked  
4 with him longer and he was my contact point because I  
5 trusted him.

6 Q. Okay. And how long -- do you know at that point how  
7 long did Terrell work there?

8 A. I do not know. I believe he worked there prior to when  
9 I worked there.

10 Q. Okay.

11 A. So quite a while.

12 Q. And had the Defendant, Mr. White, been hired since you  
13 were the manager?

14 A. Yes.

15 Q. Do you know approximately how long he had been there?

16 A. I'm not sure on that. I know it was less than a year  
17 because that's approximately how long I had been there.

18 Q. Okay. Now did you, in fact, go upfront and meet with  
19 the police?

20 A. Yes.

21 Q. Okay. And then once you got up there what happened  
22 with respect to the investigation?

23 A. We checked on Terrell and James. And I showed them  
24 around the restaurant where the money was at and everything.  
25 And then I think we ended up taking statements and talked

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

211

1 about what happened.

2 Q. And where did you and the officer locate the Defendant,  
3 Mr. White, and Mr. Pugh?

4 A. They were still behind the -- in the dish area. They  
5 were on the ground still, I think, until the officer had  
6 come -- I think they heard the officer's voice as we were  
7 coming up and felt that it was then safe to come out.

8 Q. And how did they appear?

9 A. As they came up they had been -- I think Terrell looked  
10 like he was a little bit hurt, possibly just from being on  
11 the ground and very shaken up.

12 Q. And how about the Defendant?

13 A. Seemed a lot less shaken up.

14 Q. Okay. When you spoke with them what did they basically  
15 tell you about whether they had seen this individual that  
16 assaulted you?

17 A. I was told that the individual had told them both to  
18 get on the ground beneath the dish area or he would shoot  
19 them.

20 Q. Do you know how long after Damion Riley left your  
21 office that the -- that you decided to come out and you were  
22 assaulted?

23 A. I think it was approximately twenty minutes.

24 Q. Okay. Do you know what Damion might have done from the  
25 time he left your office to the time that he left?

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

212

1 A. I do not.

2 Q. Okay. Did you follow him out or anything like that?

3 A. I did not.

4 Q. Okay. How soon after the robbery did you contact 911?

5 A. Immediately.

6 Q. Okay. And the officer arrived actually while you were  
7 on the phone with 911, is that correct?

8 A. That is correct.

9 Q. All right. With respect to that surveillance or that  
10 video that shows out to the to-go parking spaces, when you  
11 were looking at that particular area with the police did you  
12 notice anything unusual?

13 A. The screen was blanked out and it said on hold as if it  
14 was disabled.

15 Q. Okay. Is that normal?

16 A. That is not normal.

17 Q. Okay. And if you were going to disable that camera, do  
18 you do it from outside the store or from inside?

19 A. From inside.

20 Q. And, in fact, the controls are right there with the  
21 monitor, is that correct?

22 A. Yes, they are.

23 Q. All right. When you were in the office on the ground,  
24 pulling the money out of the safe, at any time was there a  
25 dishtowel in the safe or did you put a dishtowel in the bag

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

213

1 or anything like that?

2 A. No.

3 Q. Okay.

4 **MR. FRETWELL:** Judge, I'm going to show the witness an  
5 item that is sealed and would like to show it to Defense  
6 counsel first. And in order to do so we're going to have to  
7 cut the bag. I think the clerk might have some scissors,  
8 but I just wanted to note it for the record that certainly  
9 both attorneys may look at it to make sure that it is  
10 properly sealed. Mr. Frazier has a knife. That's good.

11 Q. While he's doing that, Aaron, let me ask you this. I  
12 want to show you a couple of maps that have been marked as  
13 State's 31 and 32. Do you know the areas depicted in  
14 State's 31 and 32? You might have to stand up to see the  
15 one below.

16 A. Yes.

17 Q. Do you recognize those areas?

18 A. Yeah. I'm trying to ---

19 **MADAME COURT REPORTER:** You need to speak up.

20 **THE COURT:** You need to speak up. The court reporter  
21 or the jury can't hear you.

22 A. I'm sorry. Yes. The top one, I'm still trying to  
23 figure out exactly what I'm looking at on the bottom one.  
24 But the top one, yes.

25 Q. Well, let me pull it up here so you can see it.



AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

214

1 A. Okay.

2 Q. Do you recognize -- well, you said ---

3 A. I definitely recognize that area. I see where the  
4 Olive Garden is located. And ---

5 Q. Do you see it on this map?

6 A. I do now, yes.

7 Q. Okay. All right. Is, in fact, State's 31 a closer up  
8 of State's 32?

9 A. Yes.

10 Q. Okay.

11 **MR. FRETWELL:** Your Honor, permission to place both  
12 State's exhibit 31 and 32 into evidence and publish to the  
13 jury at this time.

14 **THE COURT:** Mr. Yarborough?

15 **MR. YARBOROUGH:** I don't have any objection.

16 **THE COURT:** Ms. Ross?

17 **MS. ROSS:** No objection.

18 **THE COURT:** So admitted.

19 (Whereupon State's exhibits 31 and 32 were admitted  
20 into evidence)

21 Q. Okay. Step down if you would, Aaron. Bring that  
22 little pointer with you.

23 A. Okay.

24 Q. If I can figure out how to -- let's start off with  
25 State's 32. Do you -- can you step to one side there making

**AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL**

215

1     sure you keep your voice up nice and high both for the jury  
2     and for the court reporter and the Court. Can you show the  
3     jury where in that photograph is the Olive Garden  
4     restaurant?

5     A.    Yes. The Olive Garden would be here.

6     Q.    Okay. And what is this big set of parking spaces and  
7     buildings down here?

8     A.    That's your Cherrydale Shopping Center.

9     Q.    Okay. And do you recognize Pleasantburg Drive here?

10    A.    Yes.

11    Q.    And, in fact, State Park Road or 253 here?

12    A.    Yes.

13    Q.    Okay. All right. Now, let me show you State's exhibit  
14    31. Now is this, in fact, just a closeup of the area we  
15    just talked about? Show the jury where this different --  
16    where that Olive Garden is and what we just described.

17    A.    Okay. Yeah. This is the same photo, the Olive Garden  
18    right here, State Park Road running along here and North  
19    Pleasantburg and your Cherrydale Shopping Center down in  
20    this area.

21    Q.    Okay. And that first photo we looked at that showed us  
22    the sign for Olive Garden and the public entrance doors, can  
23    you show the jury on this map where -- and if you would do  
24    me a favor, and I think you might be obscuring a little bit  
25    of the view from the jury. Please show them where on the

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

216

1 building are those front entrance doors.

2 A. Your front entrance is right here.

3 Q. Okay. And then where are -- do you know where the to-  
4 go spots would be? Can you point those out?

5 A. They were -- I believe you can even see the markings  
6 here.

7 Q. Okay. And do you know -- do you happen to know where  
8 in particular the employees might park?

9 A. The employees would park usually in this area or back  
10 here.

11 Q. Okay. All right. You can take your seat again. At  
12 some point -- you recognize Sergeant Weiner back here, is  
13 that correct?

14 A. I do.

15 Q. Okay. At some point did Sergeant Weiner prepare a  
16 photo lineup and bring it to you?

17 A. He did.

18 Q. Okay. Were you able to identify anybody in that photo  
19 lineup?

20 A. I was not.

21 Q. Okay. Did he also bring to you, based on your  
22 description, a kind of cut-away portion of a picture with --  
23 that revealed some clothing?

24 A. He did.

25 Q. Okay. And did he ask you whether that clothing -- you

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

217

1     recognized that clothing?

2           **MS. ROSS:** And I'd object to that at this point ---

3           **THE COURT:** Sustained.

4           **MS. ROSS:** --- until he may lay a more foundation.

5           **THE COURT:** Well, leading. I mean, it's leading.

6           **MR. FRETWELL:** Okay.

7     Q.     What did Sergeant Weiner do with that cut-away piece of  
8     the photo?

9     A.     He showed me it.

10    Q.     Okay. What -- did he ask you anything about it?

11    A.     He asked me if I -- the description of the clothing  
12    that I gave, he asked if that was what it was.

13    Q.     Okay. And do you recall what you said to him?

14    A.     I think I was unable to give him a definitive yes or  
15    no.

16    Q.     Did you tell him whether it looked like what you saw?

17    A.     I said it looked like it, but that I could not be  
18    positive.

19    Q.     Okay. Let me ask you -- let me go back to something  
20    you said earlier, that you did not get a good look at his  
21    face. Can you tell the jury -- is there any particular  
22    reason that you know you did not get a good look at his  
23    face?

24    A.     Well, somebody holding a gun in my face, I don't want  
25    to see their face because I think that that is incentive for

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

218

1     them to use that gun.

2     Q.    All right.  And do you know if that was part of any  
3     kind of training that you received with respect to your  
4     position as a manager or is that just something that you ...

5     A.    I don't think it's specific training.  I think it's  
6     just something ...

7     Q.    Okay.  This object is now opened.  I want you to take a  
8     look inside and tell me if that appears to be something that  
9     you recognize.  What does that appear to be?

10    A.    Yes.  That appears to be one of the towels used in the  
11   kitchen or the dish area at the Olive Garden.

12   Q.    Okay.  And is it stained consistently with the rag that  
13   was in the front door?

14   A.    Yes, it appears to be used.

15   Q.    Okay.  When you -- after the police got there and took  
16   their pictures, their photographs and did everything did you  
17   recover any of that money that was lying throughout the  
18   restaurant?

19   A.    Yes, after we were, I think, told that it was okay to  
20   do so.  Another manager had come over and assisted me in  
21   counting up all of that money and taking inventory of the  
22   damage and doing what we needed to do as far as reporting  
23   that to powers that be at Olive Garden.

24   Q.    Do you recall approximately how much money you  
25   recovered that you picked up?  And you don't have to be

AARON KRETZSCHMAR - DIRECT EXAMINATION BY MR. FRETWELL

219

1     precise, just give me a range if you can.

2     A.    I think it was in the range of seven to nine hundred  
3     dollars.

4     Q.    Okay.  And that originally in that safe before you put  
5     that money into the bag was about thirty-five hundred, is  
6     that your recollection?

7     A.    Yes.

8     Q.    Okay.  And you didn't pick up any of that money before  
9     being permitted to do so by law enforcement, is that  
10    correct?

11    A.    That is correct.

12    Q.    Okay.  Do you have to have a manager's key or a special  
13    pass code or something to place that to-go camera on hold?

14    A.    No.  I believe it's just something you can do from the  
15    side of the monitor itself.

16    Q.    Just a flip -- flip a switch?

17    A.    Yes.

18    Q.    Okay.  And do you happen to know or do you go by that  
19    station regularly throughout the time of your shift?

20    A.    I do.

21    Q.    Okay.  And would you have noticed if that was on hold  
22    earlier in the day?

23    A.    I think I would.

24    Q.    And do you recall it being on hold before that point  
25    that you noticed it was on hold?

**AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH**

220

1 A. I didn't notice seeing it on hold anytime previously.

2 Q. Okay.

3 **MR. FRETWELL:** Your Honor, that's all the questions I  
4 have.

5 **THE COURT:** Mr. Yarborough.

6 **Cross Examination by Mr. Yarborough:**

7 Q. They gave you a photo lineup to look at to see if you  
8 could identify the person that robbed you?

9 A. Yes.

10 Q. And that was done, what, within a day or two of the  
11 robbery or when was it?

12 A. To my recollection it was Friday of the same week.

13 Q. So like four or five days later?

14 A. Yes.

15 Q. Okay. And you couldn't identify anybody in that  
16 lineup, is that correct?

17 A. That is correct.

18 Q. And you know I represent Mr. White, James White? I  
19 don't know if you knew that. Do you recognize him?

20 A. I do.

21 Q. Do you know him pretty well?

22 A. I do. Well, well enough from working.

23 Q. And you'd actually hired him?

24 A. Yes.

25 Q. And he was a pretty good dishwasher?

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

221

- 1 A. He did a good job.
- 2 Q. And you had him do overtime and got him extra hours
- 3 when you had that availability, is that right?
- 4 A. We did.
- 5 Q. Okay. And so sometimes he might work fifty or sixty
- 6 hours, is that right?
- 7 A. I would say fifty, sixty would be a stretch.
- 8 Q. Would be a stretch, but ---
- 9 A. But, yes, maybe -- maybe slightly over forty at times.
- 10 Q. Okay. And but he was -- he worked hard at being a
- 11 dishwasher?
- 12 A. He -- yes, he did a good job.
- 13 Q. Okay. And now the night of the robbery you said there
- 14 was thirty-five hundred dollars in the safe approximately?
- 15 A. Yes.
- 16 Q. Okay. And did you do an inventory of that money?
- 17 A. Yes.
- 18 Q. Okay. And what did that inventory reveal on what was
- 19 there that night?
- 20 A. It was thirty-five hundred dollars.
- 21 Q. Right. But thirty-five hundred dollars -- I noticed
- 22 that there was some quarters, and nickels and dimes that
- 23 were on the floor.
- 24 A. Yes.
- 25 Q. Okay. And those were in rolls?



AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

222

- 1 A. Yes.
- 2 Q. Okay. And how many rolls of quarters were there?
- 3 A. I don't recall.
- 4 Q. Okay. Dimes?
- 5 A. Don't recall.
- 6 Q. Nickels?
- 7 A. Don't recall.
- 8 Q. Okay. But you had a list of the number of bills that
- 9 were there?
- 10 A. Yes. We take an actual, physical inventory of all of
- 11 the money every night.
- 12 Q. Okay. And what number -- and I know that I saw a
- 13 picture of a hundred dollar bill.
- 14 A. Yes.
- 15 Q. So how many hundreds were there?
- 16 A. I do not know.
- 17 Q. Okay. Twenties, fifties, tens?
- 18 A. Do not know.
- 19 Q. That list existed at some point, right?
- 20 A. Yes.
- 21 Q. I mean, you do an inventory, you got a sheet and it
- 22 goes totals up here, and goes there's (5) one hundred dollar
- 23 bills, and there's (20) twenty dollar bills, and there's
- 24 (10) ten dollar bills and (5) five dollar bills, is that
- 25 right?

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

223

- 1 A. Yes, sir.
- 2 Q. Okay. And so on that night how many -- how many ones
- 3 were there?
- 4 A. I do not know.
- 5 Q. Okay. Does that record exist?
- 6 A. It has at one point and it still may exist, yes.
- 7 Q. Okay.
- 8 A. I don't know what the Olive Garden would have done with
- 9 that at this point.
- 10 Q. Okay. But would it be safe to say that there were at
- 11 least (10) one hundred dollar bills in there?
- 12 A. Typically the higher bills are of less use to us and
- 13 would not be -- would not be as plentiful.
- 14 Q. And so you'd put the as expendable or ---
- 15 A. The drop-safe would typically be where the hundred
- 16 dollar bills would end up.
- 17 Q. Okay. Well, there were a hundred dollar bills -- there
- 18 was at least (1) one hundred dollar bill on the floor,
- 19 right?
- 20 A. I don't recall at this point the denominations of the
- 21 bills.
- 22 Q. Okay. So you don't know the denominations of the bills
- 23 or what was taken out of the safe?
- 24 A. Not at this point, no.
- 25 Q. Right. But you're the one that put it there?

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

224

1 A. Yes.

2 Q. Okay. On the -- on January the 20th there were how  
3 many people working at the Olive Garden from, say, 6:00 to  
4 10:00?

5 A. There could have been approximately twenty to twenty-  
6 five.

7 Q. Twenty to twenty-five individuals working there that  
8 night?

9 A. Yes. That would be approximately, yes.

10 Q. Okay. And all of those individuals would have access  
11 to the entire restaurant, is that right?

12 A. With the exception of the office or the ---

13 Q. In the back back there, that's where you'd keep your  
14 stuff locked up?

15 A. Yes.

16 Q. And you're the only one with access to that back  
17 office?

18 A. Yes.

19 Q. And so do you know the names of the people that worked  
20 that night?

21 A. I do not.

22 Q. Okay. Do you have many of them that are still employed  
23 there?

24 A. I am not currently employed there.

25 Q. Okay.

**AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH**

225

- 1 A. So I do not know.
- 2 Q. You'd say you had how many dishwashers?
- 3 A. We would have had two.
- 4 Q. Two dishwashers. And then you'd have how many waiters
- 5 and waitresses?
- 6 A. Approximately maybe seven.
- 7 Q. Seven. And all seven of those individuals would have
- 8 had access to the computer that would have cut off the
- 9 screen looking out to where the to-go orders were picked up,
- 10 is that correct?
- 11 A. That's correct.
- 12 Q. Okay. And you would have had access to it?
- 13 A. Yes.
- 14 Q. Now, do you know who the last person that left that
- 15 night before you were robbed was?
- 16 A. Damion Riley.
- 17 Q. Okay. And do you know Mr. Riley?
- 18 A. Yes.
- 19 Q. Did you hire Mr. Riley?
- 20 A. I did not personally hire him.
- 21 Q. Okay. And what was Mr. Riley's job there?
- 22 A. He was a saute cook, I believe.
- 23 Q. Okay. And do you know what time he left?
- 24 A. I believe he left shortly after 11:00.
- 25 Q. Okay. He left shortly after 11:00. And at that point

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

226

1     you're back in the office?

2     A.    Yes.

3     Q.    Okay.  And did you stay in the office until you were  
4     robbed?

5     A.    Yes.

6     Q.    Okay.  And you didn't leave?

7     A.    I -- when I left the office is when the robbery  
8     occurred.

9     Q.    Okay.  And so when Mr. Riley left, that rag that's in  
10    the door could have been in that door, is that right?

11           **MR. FRETWELL:**  Objection, Your Honor.  Speculation.

12    Q.    Do you know if the rag was there when Mr. Riley left?

13    A.    I do not.

14    Q.    Okay.  But you didn't see the door after the time Mr.  
15    Riley left.  So you don't know the answer to it?

16    A.    That is correct.

17    Q.    Okay.  Now, does that door automatically lock?

18    A.    It does.

19    Q.    So at night once you're there that door is  
20    automatically locking, is that right?

21    A.    As in when it closes it locks on its own?

22    Q.    Right.

23    A.    Yes.

24    Q.    Okay.  And -- but somebody smashed in that door that  
25    night.

**AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH**

227

- 1 A. It appears they'd broken the outer pane of the glass.
- 2 Q. Okay. And it was -- it appears it was done with that
- 3 big rock that was out by the door or brick, I guess, is a
- 4 better explanation of it.
- 5 A. It appears so, yes.
- 6 Q. Okay. Well, you saw it, right?
- 7 A. Yes.
- 8 Q. Okay. And when you went out and looked at the glass,
- 9 did it appear broken?
- 10 A. The outer pane of the two-paned glass was broken.
- 11 Q. Okay. And it was cracked?
- 12 A. Yes.
- 13 Q. Okay. And at that point when you get out there you saw
- 14 the brick sitting down there, is that right?
- 15 A. I did.
- 16 Q. Okay. And is that -- that brick sitting down there
- 17 normally -- as you showed Mr. Fretwell is normally not
- 18 there?
- 19 A. That is correct.
- 20 Q. Okay. So your assumption was that the glass was broken
- 21 by the brick?
- 22 A. Yes, it was.
- 23 Q. Okay. Now, you said that this rag -- this rag here,
- 24 you said this rag came from where?
- 25 A. I said it looks like one of the rags that we use at the

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

228

1 Olive Garden.

2 Q. Okay. So this is one of the rags that you used at the  
3 Olive Garden. And there are -- are there hundreds of them?

4 A. Yes.

5 Q. A thousand or more?

6 A. Probably hundreds within the restaurant at any time.  
7 Thousands, whatever, at the company that provides them.

8 Q. Okay. And there's probably hundreds with tomato stains  
9 on them?

10 A. Yeah, it's possible.

11 Q. Okay. Well, how about -- well, if it's possible, how  
12 about -- did you know if this is the rag that was in the  
13 door?

14 A. I do not.

15 Q. Okay. And there's not some specific tomato stain on  
16 this rag that appears to be the tomato stain that you  
17 pointed out in that picture, is there?

18 A. No.

19 Q. Okay. So you don't know whether this is the rag or  
20 not?

21 A. I do not.

22 Q. Did they pick -- did the police pick up the rag at the  
23 store that night?

24 A. I do not know.

25 Q. Okay. But was the rag still in the door when you went

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

229

1 back outside?

2 A. When I went to leave at the -- afterwards, after their  
3 investigation?

4 Q. Yeah.

5 A. No, it was not.

6 Q. Okay. And did the door shut at that point? Did it  
7 shut?

8 A. Yes.

9 Q. Okay. And you're not sure when that rag was put into  
10 that door?

11 A. No.

12 Q. Now, when Mr. Riley left that night, who picked him up?

13 A. I do not know.

14 Q. Okay. And how did Mr. -- the person that picked him up  
15 get in the door to tell him he was there?

16 A. They did not.

17 Q. They didn't -- they knocked?

18 A. No. They would not have been permitted in the door  
19 under any circumstances.

20 Q. They wouldn't have been permitted under the -- in the  
21 door under any circumstances. So someone would have had to  
22 have called them or ...

23 A. I presume so.

24 Q. Okay. And you don't know who that person was?

25 A. I do not.



**AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH**

230

1 Q. Now, you said you dropped your book you were looking  
2 at. It must have been frightening.

3 A. Yes.

4 Q. Okay. And at that point did you go back into the area  
5 where the safe was?

6 A. After dropping the book?

7 Q. Yeah.

8 A. Yes.

9 Q. Okay. And you went with an individual that had a gun?

10 A. I did.

11 Q. Okay. And did you see an individual go into the  
12 kitchen with a gun?

13 A. I did not.

14 Q. Okay. But do you know that there was an individual in  
15 the kitchen with a gun?

16 A. Yes.

17 Q. Okay. And you don't know who that person was either?

18 A. I was not able to identify an individual, no.

19 Q. Okay. Now, what was the total take at the Olive Garden  
20 on the 20th?

21 **MR. FRETWELL:** Objection, Your Honor. What's the  
22 relevance of this?

23 **MR. YARBOROUGH:** Well, ---

24 **THE COURT:** Overruled. But, I mean, we've asked that  
25 question, haven't we?

**AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH**

231

1 Q. Do you know what time the waiters and waitresses left  
2 that night?

3 A. I don't know specific times.

4 Q. Okay. Do you know ---

5 **THE COURT:** Whoa, whoa, whoa, whoa. Apparently one of  
6 the jurors wants to take a break. I think what we'll do --  
7 I hate to interrupt you, but I think we're going to just  
8 break for lunch at this time ---

9 **MR. YARBOROUGH:** Okay. Thank you, Your Honor.

10 **THE COURT:** --- if we're going to take a break. All  
11 right.

12 Ladies and gentlemen, I'll let y'all go to lunch.  
13 Again, I'm going to ask you not to discuss the case with  
14 each other or with anybody else while you're gone. I'm  
15 going to ask you to be back here at 2:00 and we'll start  
16 back up at that time. Don't do anything that we're not  
17 supposed to, and we'll see you back here in an hour. Y'all  
18 have a nice lunch.

19 (Whereupon the witness stood up to leave the witness  
20 stand)

21 **THE COURT:** Wait til the jury leaves the courtroom.

22 (Whereupon the jury exited the courtroom at 12:59 pm)

23 **THE COURT:** One of the jurors signaled to the bailiff  
24 that ---

25 **MR. YARBOROUGH:** It was time.

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

232

1           **THE COURT:** --- the juror needed to use -- so rather  
2           than send them out and bring them back. All right. We'll  
3           come back here and start back up at 2:00. You can leave.  
4           Do not discuss your testimony with anybody while you're  
5           gone. All right.

6           (Whereupon court was in recess at 1:00 pm)

7           (Whereupon court reconvened at 2:00 pm)

8           **THE COURT:** You ready to resume, Mr. Yarborough?

9           **MR. YARBOROUGH:** Sir?

10          **THE COURT:** You ready to go?

11          **MR. YARBOROUGH:** Yes, sir.

12          **THE COURT:** All right. Let's bring the jury in, if we  
13          can.

14          (Whereupon the jury entered the courtroom at 2:05 pm)

15          **THE COURT:** All right. Ladies and gentlemen, I hope  
16          you had a nice lunch. Let me ask you again, anybody have  
17          any conversation about this case, were you approached by  
18          anybody to discuss the case while we were at lunch?

19          **THE JURY:** (Negative responses)

20          **THE COURT:** Anybody get on the computer, check on  
21          anything, do your own investigation in any way?

22          **THE JURY:** (Negative responses)

23          **THE COURT:** All right. Good. You'll recall when we  
24          broke for lunch Mr. Yarborough was in the midst of asking  
25          questions of this witness. And, Mr. Yarborough, if you'd

**AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH**

233

1 proceed, please, sir.

2 **MR. YARBOROUGH:** Thank you, Your Honor.

3 **Cross Examination by Mr. Yarborough Continued:**

4 Q. When we broke for lunch I think we were talking about  
5 the mechanism on the side of the computer that allows you to  
6 look outside the pickup service that you have at the  
7 restaurant, is that right?

8 A. I believe so.

9 Q. And you -- you've managed that -- who works that  
10 computer?

11 A. Our -- one of our hosts who would be in charge of  
12 taking to-go orders would be the person using that computer.

13 Q. Okay. And that computer is located -- it's exhibit  
14 number 29, I think. Is that it?

15 A. Yeah, that's the side of it right there.

16 Q. That's the side of it. And where is that -- where is  
17 exhibit 29 located?

18 A. In the service station towards the front of the  
19 restaurant.

20 Q. Towards the front of the restaurant. Up by where they  
21 take the orders for food?

22 A. Yes.

23 Q. Okay. And it's not back in the dishwashing area, is  
24 it?

25 A. No, it is not.

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

234

1 Q. Okay. And the dishwashers are not trained on this  
2 computer, is that correct?

3 A. No.

4 Q. Okay. And so it looks like a normal computer  
5 contraction, but does it have a code?

6 A. No.

7 Q. So how do you turn it on?

8 A. It's always on. But there's a switch somewhere on  
9 there, yes.

10 Q. There's a switch somewhere on ---

11 A. There's a switch somewhere on the device itself.

12 Q. That you turn it off with?

13 A. Yes.

14 Q. Okay. And the dishwashers don't have access to that  
15 switch, right?

16 A. Anyone has access to it.

17 Q. But you'd have to know how to do it?

18 A. Yes, that's true.

19 Q. Okay. And so you would have to be able to know how to  
20 turn the thing on and off in order to work it, is that  
21 correct?

22 A. That is correct.

23 Q. Okay. And you had access to that. Did Damion Riley  
24 have access to that?

25 A. Anyone in the building would have had access to the ---

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

235

1 Q. Well, did you show Damion Riley how to use that  
2 contraction?

3 A. No.

4 Q. Okay. But you showed all the help in the -- the  
5 service people, the people that sell the food, that's who  
6 you show how to work that, right?

7 A. No. It's simply a display. There is no use of the  
8 thing to be trained.

9 Q. Okay. So it's up there, but it's for people to look at  
10 to see if there's somebody outside that they want to place  
11 an order?

12 A. Yes.

13 Q. Okay. And it goes to the parking lot where the to-go  
14 orders are picked up?

15 A. Yes.

16 Q. And it's in the front of the building towards the front  
17 part of that where you walk into the restaurant, is that  
18 right?

19 A. It is in the -- towards the front section of the  
20 building.

21 Q. Sure. So -- and I've been out there. But the bar's  
22 over on the right side and the restaurant's kind of down the  
23 left side. So it's kind of over there in the middle?

24 A. Yes.

25 Q. And the area where the dishwashers work is in the back

AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

236

1 back there, straight down that hall and to the left back in  
2 there?

3 A. Yeah, straight back.

4 Q. Okay. Now, on the -- the evening that you were hit in  
5 the head, do you know if there was one or two people there?

6 A. I have nothing to say that there would be two.

7 Q. Okay.

8 A. I saw one.

9 Q. All right. And the one guy, he went with -- he went  
10 with you to get the money out of the safe area, right?

11 A. Yes.

12 Q. Okay. But somebody went back in the back with the  
13 dishwashers, right?

14 A. That was in the same area that I was approached by the  
15 person, was near the dish area.

16 Q. Okay. So you're approached by the person and he goes  
17 down the hall with you carrying a gun like this or ...

18 A. Yes.

19 Q. Okay. And does he scream at the dishwashers to get on  
20 the floor?

21 A. Not that I heard.

22 Q. You didn't hear him tell the dishwashers to get on the  
23 floor?

24 A. No.

25 Q. Did you tell the police that he pulled the gun on the

**AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH**

237

- 1     dishwashers?
- 2     A.    The dishwashers had told me that.
- 3     Q.    Oh, so ---
- 4     A.    Yes.
- 5     Q.    --- they had told you that.   When?
- 6     A.    When I came out after calling 911, met the police
- 7     officer, that's what the dishwashers had said.
- 8     Q.    Okay.  You didn't see the dishwashers on the floor?
- 9     A.    Not prior to that, no.
- 10    Q.    Okay.  Did -- how did you know the dishwashers were
- 11    still in the building?
- 12    A.    I had to check to see if they were.  My assumption was
- 13    that they were because they were prior to this.
- 14    Q.    Okay.  And were they on the floor when you checked?
- 15    A.    Yes.
- 16    Q.    Okay.  So were they on the floor or were they not on
- 17    the floor?
- 18    A.    They were -- I guess -- I guess when I got there they
- 19    were getting up from the floor.
- 20    Q.    So you saw them get up from the floor?
- 21    A.    Yes.
- 22    Q.    And did you see my client, Mr. White, getting up from
- 23    the floor?
- 24    A.    Yes.
- 25    Q.    Okay.  And you said when you saw him at that point that



AARON KRETZSCHMAR - CROSS EXAMINATION BY MR. YARBOROUGH

238

1 he didn't seem too startled?

2 A. Yes, that was my impression.

3 Q. Okay. But that is sometime after the robber had left,  
4 right?

5 A. That is after the robbery or after ---

6 Q. Okay. So ---

7 A. --- the robber had left.

8 Q. So no question at that point he was not being  
9 threatened in any way?

10 A. At that point, no.

11 Q. Okay. And you've always had a good working  
12 relationship with him?

13 A. Yes.

14 Q. He's always shown up for work?

15 A. Yes.

16 Q. Okay. And what about Damion Riley, do you have a good  
17 working relationship with him?

18 A. Yeah, he was a good employee.

19 Q. He always showed up for work?

20 A. Yes.

21 Q. Okay.

22 **MR. YARBOROUGH:** I don't have anything else, Your  
23 Honor. Thank you.

24 **THE COURT:** Ms. Ross.

25 **MS. ROSS:** Thank you, Your Honor.

AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

239

1     Cross Examination by Ms. Ross:

2     Q.    Hi, there.  Sorry what happened to you.  And I'm  
3     apologizing because I'm going to try to go through kind of  
4     some stuff again.  You stated you were in your office and  
5     you came out and you met a man with a gun who hit you?

6     A.    Yes.

7     Q.    Okay.  Now, so were you right outside the office room  
8     where the safe was at that point?

9     A.    I was down -- I had traveled down the hallway that's  
10    maybe ten, twelve feet long away from the office.

11    Q.    Okay.  So you were walking around that night.  You just  
12    weren't sitting in your office all night?

13    A.    I was -- I was in the office doing my duties.  And then  
14    I got out to continue check on the dishwashers, check on  
15    their progress, which should have been near completion of  
16    getting everything done.  So I was checking on their  
17    progress and then was going to go and do some other things  
18    while I waited for them to finish up.

19    Q.    Okay.  Now, is this after Damion Riley had come and  
20    spoken to you and clocked out and left?

21    A.    Yes.

22    Q.    Okay.  I don't know if you'd know this, but if you did  
23    do you know if he would have spoken to you -- clocked out  
24    before or after that?

25    A.    He should have clocked out after speaking with me.

AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

240

1 Q. All right. Do you recall whether he picked up a W-2  
2 form from you?

3 A. I do not.

4 Q. So you don't recall him doing that?

5 A. No, I don't recall.

6 Q. If he had done that would you have had to go back in  
7 the office and search around and rummage to get it or where  
8 would that be?

9 A. It would be in the office. And I was currently in the  
10 office when I spoke with him. So I would have just grabbed  
11 it and handed it to him. And ---

12 Q. Okay. But you don't recall that?

13 A. I don't recall.

14 Q. Okay. Just going back. You stated that the robber had  
15 a gun and a bag, correct?

16 A. Correct.

17 Q. And didn't -- he did not have a phone. Was he holding  
18 a phone or anything when you saw him?

19 A. I did not see a phone.

20 Q. You did not see a phone?

21 A. (Negative nod).

22 Q. But he had a gun -- a gun and this bag that you said  
23 was pretty flimsy. Were you just going into the safe and  
24 grabbing money and putting it into the bag or did he hand  
25 the bag to you?

AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

241

- 1 A. The bag was on the floor directly in front of the safe.
- 2 Q. Did he ---
- 3 A. Was placed ---
- 4 Q. --- place the bag ---
- 5 A. He placed that on the floor in front of the safe and
- 6 instructed me to put the money into it.
- 7 Q. So I'm assuming he's sort of behind you or right next
- 8 to you as that's occurring?
- 9 A. Yeah. He's -- he's behind and above standing up while
- 10 I'm in a sitting position below him ---
- 11 Q. Okay.
- 12 A. --- getting the money out.
- 13 Q. Now at this point do you -- there were bands that were
- 14 seen around the Olive Garden, you know, kind of drizzled
- 15 along. Bands like money bands?
- 16 A. Yes.
- 17 Q. Do you know what I mean? Not rubber bands, but those
- 18 paper bands that have little adhesive around them?
- 19 A. Yes.
- 20 Q. That just suggests to me that some of this money was
- 21 organized in the safe. Was it all just thrown in the safe
- 22 or were there organized piles of money in the safe that you
- 23 were pulling out?
- 24 A. It's a combination of both. Well, it's organized in
- 25 some way, yes.

AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

242

1 Q. You knew how much it was?

2 A. I did.

3 Q. And you didn't just throw crumpled cash ---

4 A. No. It was stacks of money and organized in different  
5 -- different ways.

6 Q. Okay. Would -- the money that was in bands, would that  
7 have been left over from when the, I forgot what they were  
8 called, when the bank people came and gave you that fifteen  
9 hundred dollars, ---

10 A. Yes.

11 Q. --- every few days? Okay. So some of it was still  
12 left in there, just what you hadn't had to use in change or  
13 whatnot?

14 A. Yes.

15 Q. Now, how long would this period have been in your mind  
16 from the time you first saw the man with the gun to the time  
17 that he started to run off with this bag of money?

18 A. Probably no more than a few minutes.

19 Q. Okay. And was this -- I'm just assuming, was this  
20 after he'd been in the dishroom? Or did he run off into the  
21 dishroom and get everyone down and then run off back the  
22 other way out of the Olive Garden?

23 A. I don't know. I encountered him past the dishroom.

24 And according to the dishwashers afterwards, speaking with  
25 them, that he had approached them prior to -- prior to

AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

243

- 1     attacking me.
- 2     Q.    And then you called 911 from your office, I'm assuming?
- 3     A.    Yes.
- 4     Q.    And we've heard the tape of that. I'm not going to
- 5     review that again. But you gave a description and you said
- 6     you thought that the robber's face was not covered. You
- 7     gave a limited description and said you didn't really see
- 8     him and ---
- 9     A.    Yes.
- 10    Q.    --- you thought his face ---
- 11    A.    I didn't -- I didn't see that it was covered.
- 12    Q.    Okay. Now, Officer Middleton was the first officer on
- 13    the scene, is that correct?
- 14    A.    I believe so.
- 15    Q.    And did you also kind of go through and try to give him
- 16    a more succinct or give him more information as far as a
- 17    description of the robber?
- 18    A.    I believe so. At one point he had me do a formal
- 19    statement.
- 20    Q.    All right. Did he have a picture or anything that he
- 21    showed you or did he just write down notes when he was
- 22    talking to you?
- 23    A.    He just wrote down my account.
- 24    Q.    Okay. And with that account did you tell him that the
- 25    robber had short hair?

AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

244

1 A. I don't recall.

2 Q. You don't recall? Did you tell him that the robber had  
3 no facial hair?

4 A. I don't recall.

5 Q. Okay. And that was a rough time, but you saw that  
6 Officer Middleton was writing notes as you were talking to  
7 him?

8 A. Yes.

9 Q. And did he also talk to the other employees, Mr. White  
10 and Mr. Pugh?

11 A. Yeah, I believe at different times everyone was talked  
12 to basically the same way I was.

13 Q. And I think I asked this, but the police got there  
14 fairly quickly. You were still on the phone with 911 when  
15 the police got there, correct?

16 A. Yes.

17 Q. And then a dog leader came there. Did you ever see the  
18 dog or ---

19 A. I did not.

20 Q. And then I think we've reviewed the video surveillance.  
21 My understanding of that was that it was just showing that  
22 front area where someone would come in and pick up a to-go  
23 order. Is that the front doors?

24 A. Yes, that's its purpose.

25 Q. Wasn't there another video of the parking lot of the

AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

245

- 1 Olive Garden?
- 2 A. Yeah, that would be the same camera.
- 3 Q. Okay. So does that camera record?
- 4 A. I assume it does, but I do not know.
- 5 Q. So possibly if that monitor was turned off that camera
- 6 could have still been recording what was going on outside
- 7 the Olive Garden?
- 8 A. That is a possibility.
- 9 Q. Okay. Just going back -- I guess another man, Itsel
- 10 (phonetics) Santos left shortly before the robbery, is that
- 11 correct?
- 12 A. Yes, that's a female.
- 13 Q. And then -- oh, I apologize. And then Damion Riley
- 14 left very shortly, beforehand, isn't that correct?
- 15 A. Yes.
- 16 Q. Would it surprise you if it was less than ten minutes
- 17 before the time difference?
- 18 A. I don't know the specific time-line, but it could have
- 19 been roughly then.
- 20 Q. Okay. And you think he would have clocked out after
- 21 conversing with you?
- 22 A. I think he would have.
- 23 Q. Now, if he'd gone to get some food to take out or
- 24 anything like that, would he clock out before or after he
- 25 did that just by policy, if he had?



AARON KRETZSCHMAR - CROSS EXAMINATION BY MS. ROSS

246

1 A. Well, by policy he would not be doing that. So I'm not  
2 sure.

3 Q. Okay. Now sitting -- sitting in your office where you  
4 were would you have seen someone from the dishroom pass if  
5 someone had walked past you?

6 A. No.

7 Q. Okay. Would you have been looking up right through  
8 that little window at that specific time or did it -- it  
9 just wouldn't even pass each other?

10 A. It would not pass.

11 Q. Okay. A few days after you were robbed you were shown  
12 a photo lineup with six pictures put in it, is that correct?

13 A. That's correct.

14 Q. Now, do you recall -- photo lineups are sometimes done  
15 in groups of six where they just stick what's called an  
16 array in front of you that's one, two, three, four, five,  
17 six and they say can you pick one? And then sometimes they  
18 take one picture at a time and put down in front of you.  
19 Which one did they do for you?

20 A. I believe it was one at a time.

21 Q. Okay. And at that time when you looked at those  
22 pictures you did not -- you couldn't pick anyone that you  
23 recognized as the robber?

24 A. That's correct.

25 Q. And at a later date you were also shown just a picture

**AARON KRETZSCHMAR - REDIRECT EXAMINATION BY MR. FRETWELL**

247

1 of a coat, I guess, coat material that -- and you couldn't  
2 be sure whether that was the same tan or camouflage that you  
3 saw or not?

4 A. That's true.

5 Q. All right.

6 **MS. ROSS:** I've got no further questions.

7 **THE COURT:** Anything, solicitor?

8 **Redirect Examination by Mr. Fretwell:**

9 Q. Okay. Aaron, you testified with Mr. Yarborough on  
10 cross examination that -- something to the effect of Mr.  
11 Riley leaving shortly after 11:00. Do you have -- is that  
12 an approximation or do you know specifically when Mr. Riley  
13 left that night?

14 A. That's an approximation.

15 Q. And between you and Mr. Riley, who would be in a better  
16 position to know when Mr. Riley left that night?

17 A. I would assume Mr. Riley would know better when he left  
18 than I would.

19 Q. And just so we're clear, Mr. Riley saw you in the  
20 office, is that correct?

21 A. That's correct.

22 Q. Okay. And then when he left the office, you don't know  
23 where he went?

24 A. That's correct.

25 Q. Okay. With respect to a comment, something that Mr.

AARON KRETZSCHMAR - REDIRECT EXAMINATION BY MR. FRETWELL

248

1 Yarborough asked you about the doors and automatically  
2 locking, can you explain -- during business hours,  
3 obviously, someone can come up and open those doors from the  
4 outside, is that true?

5 A. That's true.

6 Q. Okay. Once you lock the doors what part of it  
7 automatically locks?

8 A. It's -- there's a bar on the front basically that locks  
9 ---

10 Q. When the door's shut ---

11 A. --- locking mechanism. And when it -- when it's shut  
12 ---

13 Q. Okay.

14 A. --- it will be locked.

15 Q. So when you say it automatically locks, you're talking  
16 about when a locked door is shut?

17 A. Yes.

18 Q. Okay. I think you -- I think you've ended up telling  
19 Mr. Yarborough that you saw one individual in the kitchen  
20 and inside the restaurant other than employees that night,  
21 is that true?

22 A. That's true.

23 Q. And let's just be clear. Were you assaulted that night  
24 by Damion Riley?

25 A. I was not.

AARON KRETZSCHMAR - REDIRECT EXAMINATION BY MR. FRETWELL

249

- 1 Q. Were you assaulted that night by Terrell Pugh?
- 2 A. I was not.
- 3 Q. And were you assaulted that night by James White?
- 4 A. I was not.
- 5 Q. Okay. Now you've indicated that you're no longer
- 6 employed at Olive Garden. Why did you leave the Olive
- 7 Garden?
- 8 A. I went for a better opportunity elsewhere.
- 9 Q. Maybe in a little nicer location? Weren't you on Main
- 10 Street?
- 11 A. Possibly.
- 12 Q. Okay.
- 13 A. Yes, I was.
- 14 Q. This -- Mr. Yarborough was asking you about this
- 15 monitor that shows what the to-go screen camera captures.
- 16 Let's be clear. Was the monitor turned off or was the
- 17 camera on hold?
- 18 A. The monitor itself was on. It was displaying a blank
- 19 screen with the words on hold.
- 20 Q. Okay. So the monitor was on. The camera was on hold?
- 21 A. Yes.
- 22 Q. Okay. And is it a complex thing to turn that camera to
- 23 hold?
- 24 A. I don't believe so.
- 25 Q. Okay. And I think on that picture that you were

1 showing there was a monitor apparatus above and then there  
2 was a screen and a computer-type apparatus below. What's  
3 that computer and that screen below used for?

4 A. That's used for ringing up orders, cashing out checks,  
5 a general server point of sale computer.

6 Q. Has nothing to do with the camera that's out ---

7 A. Yeah, it has nothing to do with the camera.

8 Q. All right. Finally, you testified with -- as to a  
9 question Mr. Yarborough asked you with respect to his client  
10 that he was not too startled, and that would have occurred  
11 after the people left. At that same time is it your  
12 testimony that Mr. Pugh was startled?

13 A. Yes.

14 Q. How much so?

15 A. He was visibly scared.

16 Q. And Mr. White was not?

17 A. Yeah, that was my impression.

18 Q. Okay.

19 **MR. FRETWELL:** No further questions, Judge.

20 **THE COURT:** Anything, Mr. Yarborough?

21 **MR. YARBOROUGH:** Yeah.

22 **Recross Examination by Mr. Yarborough:**

23 Q. I mean, you ever seen Mr. White scared?

24 A. No, I don't believe so.

25 Q. Okay. So you don't know what he looks like when he's

AARON KRETZSCHMAR - RECROSS EXAMINATION BY MR. YARBOROUGH

251

- 1     scared?
- 2     A.    No.
- 3     Q.    Okay.  And this camera thing, you ever seen Mr. White
- 4     work on that camera?
- 5     A.    No.
- 6     Q.    Okay.  You don't have -- you didn't train him on it?
- 7     A.    No, I did not.
- 8     Q.    Okay.  So when you say it's not hard to work, you'd
- 9     never seen him work it, have you?
- 10    A.    I have not.
- 11    Q.    But -- and you didn't train him on it, right?
- 12    A.    No.
- 13    Q.    But there are twenty other people that you'd trained on
- 14    that camera that worked at the Olive Garden, didn't you?
- 15    A.    No.  No one has been trained on that camera.  There is
- 16    no other purpose for turning it off besides -- I can't
- 17    imagine ---
- 18    Q.    So you're the only one ---
- 19    A.    There is never a cause to turn it off.  I, myself,
- 20    would never turn it off and no other staff member would turn
- 21    it off.
- 22    Q.    Okay.  So nobody else would turn it off, but there are
- 23    twenty-five or thirty other people that had access to that
- 24    camera that night?
- 25    A.    Yes.

**AARON KRETZSCHMAR - RECROSS EXAMINATION BY MS. ROSS**

252

1 Q. Okay. And did you see any of them turn it off?

2 A. No.

3 Q. Do you know what time it was turned off?

4 A. No.

5 Q. Do you know any reason why somebody would turn it off?

6 A. No, I do not.

7 Q. Did you check to see if it was messed up?

8 A. No.

9 Q. Okay. So you just don't know. You're just  
10 speculating. Is that correct?

11 A. I don't know.

12 Q. Okay. You don't know how it got turned off?

13 A. I don't know.

14 Q. Thank you.

15 **MR. YARBOROUGH:** No further questions.

16 **MS. ROSS:** One thing really quickly.

17 **Recross Examination by Ms. Ross:**

18 Q. Did you run a daily labor report that night? Did  
19 Officer Middleton ask you to do that to see when everyone  
20 had left?

21 A. At some point.

22 Q. Okay. And but you say you can't recall, but earlier  
23 you said it was -- it wouldn't surprise you if it was ten  
24 minutes from the time that Damion Riley left to when a  
25 gunman came in and robbed you?

**DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL**

253

1 A. Yeah. I'm not sure exactly what time employees left  
2 that night.

3 Q. All right. But it wouldn't surprise you if it was ten  
4 minutes or less?

5 A. That's a feasible possibility, I suppose.

6 Q. All right. Thank you.

7 **THE COURT:** All right. Thank you, sir. You may step  
8 down.

9 **MR. FRETWELL:** Thank you, Judge. Your Honor, the State  
10 calls Damion Riley.

11 **MADAME CLERK:** Will you please come forward. Put your  
12 left hand on the Bible and raise your right hand.

13 **Damion Riley,** being duly  
14 sworn testified as follows;

15 **MADAME CLERK:** Please have a seat. And will you state  
16 your full name for the record.

17 **MR. RILEY:** Damion Trajad Riley.

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

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

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

21 Q. Mr. Riley, will you spell your name for the court  
22 reporter, please?

23 A. D-a-m-i-o-n T-r-a-j-a-d R-i-l-e-y.

24 Q. Thank you, sir. Mr. Riley, I'm going to ask you a few  
25 questions about yourself. Where do you live? Do you live



DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

254

1 in Greenville County?

2 A. Yes, sir.

3 Q. And have you -- how long have you lived here?

4 A. Well, roughly I've been back in Greenville County for  
5 twelve years.

6 Q. Okay. Were you born here or were you born somewhere  
7 else?

8 A. I was born here.

9 Q. Okay. And tell me, do you have a family?

10 A. Yes.

11 Q. How many children do you have?

12 A. Three.

13 Q. And it's interesting, what are their ages?

14 A. Twenty-one, ten and three.

15 Q. Okay. And where do you -- where are you currently  
16 employed?

17 A. Olive Garden.

18 Q. And how long have you worked at the Olive Garden  
19 restaurant?

20 A. Three years.

21 Q. Okay. And let's just be clear. This is the Olive  
22 Garden at Cherrydale, is that correct?

23 A. Yes.

24 Q. Okay. What are your responsibilities in your job  
25 today?

**DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL**

255

- 1 A. I have various duties, but mostly line.
- 2 Q. When you say line, what does that mean?
- 3 A. Preparation of food and I do also production.
- 4 Q. So you cook?
- 5 A. Yes.
- 6 Q. All right. Were you working the evening of January
- 7 20th, 2014, a Monday evening?
- 8 A. Yes, sir.
- 9 Q. Okay. And do you know what shift you might have been
- 10 working that particular night? Like when you would have
- 11 come in?
- 12 A. 4:30, I believe it was.
- 13 Q. For a five to close shift?
- 14 A. Yes.
- 15 Q. Okay. Do you -- and what time would the store close on
- 16 that Monday?
- 17 A. Ten.
- 18 Q. Okay. And that particular night do you know what time
- 19 approximately you left the restaurant?
- 20 A. It's around 11:20, ---
- 21 Q. Okay.
- 22 A. --- 11:15.
- 23 Q. All right. Why did you have -- what time do you
- 24 normally leave the restaurant?
- 25 A. About 10:30.

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

256

1 Q. Okay. Do you know why you had to stay later that  
2 particular night?

3 A. One of my -- I close at eleven, and I had an extra  
4 station to clean.

5 Q. Okay. What did you do after you completed all of your  
6 closing duties and you've closed this other station?

7 A. I got my W-2's from the office.

8 Q. Okay.

9 A. I had prepared food earlier.

10 Q. You had what?

11 A. Prepared me a meal before I left.

12 Q. Okay.

13 A. I grabbed my meal after I got my W-2's and I proceeded  
14 to leave.

15 Q. Okay. And on the way -- where did you have this  
16 discussion about the W-2's? Was that in the manager's  
17 office?

18 A. In the manager's.

19 Q. And Mr. Aaron Kretzschmar was the manager at that time?

20 A. Yes, sir.

21 Q. Okay. What happened on the way when you were leaving  
22 the manager's office to go do the rest of these things? Did  
23 you have a conversation with anybody?

24 A. Yes, sir.

25 Q. Who did you have a conversation with?

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

257

- 1 A. Defendant James.
- 2 Q. Okay. What did -- how did you know the Defendant
- 3 sitting in the burgundy shirt?
- 4 A. We worked together.
- 5 Q. Okay. And what -- how did you refer to him?
- 6 A. Just Junior, James.
- 7 Q. So you called him Junior?
- 8 A. Yeah.
- 9 Q. Okay. So tell me how you had the conversation with
- 10 Junior and what was said.
- 11 A. He just asked me was I working tomorrow. And I stated
- 12 yes. And then he proceeded to talk.
- 13 Q. Okay. And what did you -- what did he talk to you
- 14 about?
- 15 A. A rap concert he had.
- 16 Q. And what did he tell you about that rap concert?
- 17 A. He made a couple of bands.
- 18 Q. Okay.
- 19 A. You know. He didn't go on and on with it.
- 20 Q. Okay. What did you understand him to mean by a few
- 21 bands or a couple of bands?
- 22 A. Large sums of money.
- 23 Q. Okay. How was -- how did this conversation strike you?
- 24 A. I mean, wasn't nothing out of the, I mean, it was just
- 25 -- I don't know.

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

258

1 Q. Well, let me ask it a different way. Have you had  
2 conversations like that or had you had conversations like  
3 that with Mr. White prior to that time?

4 A. No.

5 Q. Okay. So was this a usual conversation you would have  
6 or was it unusual?

7 A. I guess it was kind of unusual. I mean, but, you know.

8 Q. Did you talk with Mr. White about his life outside of  
9 Olive Garden?

10 A. No, sir.

11 Q. When did you find out that he was even involved in rap?

12 A. That was it.

13 Q. When you had that conversation that night?

14 A. Yeah.

15 Q. Okay. And did he -- did you tell him you were ready to  
16 leave or did you have a discussion about whether you were  
17 getting ready to leave?

18 A. No. He -- he knew I was getting ready to leave.

19 Q. Okay. And this conversation took place where?

20 A. Right there at the dish -- dishroom. The right side of  
21 -- coming from the office, it's a ice machine. And on the  
22 other side is the alley-way to exit.

23 Q. The little entry to the dish room?

24 A. Yes.

25 Q. Is that where this conversation took place?

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

259

1 A. Yes.

2 Q. Okay. And you said you got the food that you'd made  
3 earlier?

4 A. Yes.

5 Q. Which doors did you leave the restaurant through?

6 A. I exited coming from the alley-way. I went straight  
7 through the side -- the front station.

8 Q. Well, let me -- let me stop you right there. You're  
9 talking about an alley-way.

10 A. Yes, sir.

11 Q. I don't suppose any of the jurors have been in the  
12 kitchen of the Olive Garden. So let me ask you -- when you  
13 say alley-way, are you referring to what's depicted on  
14 State's 13? Is that the alley-way that you're talking  
15 about?

16 A. The opposite -- opposite side.

17 Q. Oh, you out -- the same parallel, but on the other  
18 side?

19 A. Yes.

20 Q. Okay. Now is that -- all right. I'm going to show you  
21 State's ...

22 **MR. FRETWELL:** I have to have another light, Mr.

23 Frazier. Okay. All right. Let's stop right there. Let's  
24 give this a minute to clear out. That's not good.

25 Q. I'll tell you what, step down here for a minute. And

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

260

1 I'll ask you can you look in that picture and tell me what  
2 you're talking about the way you left? Does that picture  
3 show the way you left?

4 A. Yes. Come straight past here.

5 Q. Uh-huh (affirmative).

6 **THE COURT:** You need to speak up so the jury can hear  
7 you. And you're standing in front of ...

8 A. Oh, excuse me. Yes. Coming -- the office is back this  
9 way. I'm coming past here. This is the ice machine, the  
10 alley-way, past -- this is the line right here. And it's on  
11 the opposite side of this.

12 Q. So you go back out and go out the front ---

13 A. Make a left.

14 Q. The front?

15 A. Correct.

16 Q. Okay. Do you remember that night whether -- were you  
17 getting picked up or did you drive home?

18 A. I got picked up.

19 Q. Okay. And do you remember if you had to wait much at  
20 all?

21 A. No. She was already there.

22 Q. Okay. You left through the front two, what we'll call  
23 the public entrance doors, is that right?

24 A. That's correct.

25 Q. Do you recall -- do you recall leaving that night?

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

261

- 1 A. Excuse me?
- 2 Q. Do you recall leaving that night?
- 3 A. Yes.
- 4 Q. And going through those doors?
- 5 A. Yes.
- 6 Q. When you went through the doors do you know whether or
- 7 not they shut behind you?
- 8 A. Yes, sir.
- 9 Q. Okay. How do you know that?
- 10 A. Because that's my procedure I use every night.
- 11 Q. Okay. Is there anything about that procedure that is
- 12 required of you?
- 13 A. Yes.
- 14 Q. Tell the jury about that. What's the policy and what's
- 15 -- what does it say?
- 16 A. The servers, they are to ask -- they are asked to at
- 17 least have someone walk out with them so they're not walking
- 18 out alone. And line cooks, it's the same, but a lot of
- 19 people leave different times. And we're asked to close the
- 20 door, if we're closers, and pull on it to make sure that
- 21 it's secure.
- 22 Q. Okay. And what do you understand to be the penalty if
- 23 you do not do that?
- 24 A. Termination, I believe.
- 25 Q. You'd be fired for that?



DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

262

1 A. Yes.

2 Q. Okay. When you left that night did you see any towel  
3 in that doorway whatsoever?

4 A. No, sir.

5 Q. If you had seen a towel in that doorway what would you  
6 have done?

7 A. Removed it.

8 Q. Okay. Let me direct your attention to State's 32, just  
9 a map. And I'm going to have you step down again real  
10 quick. Okay.

11 When you were picked up that night -- first of all, do  
12 you see where the Olive Garden is on that? Can you identify  
13 where the Olive Garden is? The building? Okay. First of  
14 all, can you show me where Cherrydale is? You know where  
15 the Cherrydale Shopping Center is?

16 A. I'd say right here.

17 **THE COURT:** We cannot hear you. So you need to speak  
18 up.

19 A. I want to say right here.

20 Q. Okay. Do you know where -- do you know at what  
21 intersection the Olive Garden sits? What two roads come  
22 together where the Olive Garden is?

23 A. State Park and Pleasantburg.

24 Q. Okay. And where is the intersection of State Park and  
25 Pleasantburg on that particular map?

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

263

1           **THE COURT:** Mr. Solicitor, we're going to have to put  
2 him back up here at this mike. And you'll have to hold --  
3 we can't hear him, ---

4           **MR. FRETWELL:** Okay.

5           **THE COURT:** --- the court reporter can't hear him. So  
6 you can put the ...

7           **MR. FRETWELL:** Well, I'll just ask him the questions,  
8 Judge, without the map.

9 Q. When your -- when your girlfriend came to pick you up,  
10 ---

11          **THE COURT:** Wait a minute. Let him sit down.

12 Q. --- which way would she have been coming?

13 A. She would have been coming from Sulphur Springs.

14 Q. Okay. Down -- and then she would eventually get on  
15 what, State Park?

16 A. No. We would exit on State Park and go back to  
17 Pleasantburg going towards, what is it, 124?

18 Q. Okay. So not Pleasantburg toward Greenville?

19 A. No.

20 Q. The other way?

21 A. Yes, sir.

22 Q. Okay.

23 A. Making a right onto -- making a left onto State Park  
24 and then making a right at the light.

25 Q. When she pulled into the parking lot did you guys drive

DAMION RILEY - DIRECT EXAMINATION BY MR. FRETWELL

264

1     around the store or did you just go out there and she went  
2     right back out the way she came?

3     A.    Yes.

4     Q.    When you left who was still in the restaurant, Mr.  
5     Riley?

6     A.    James, Terrell and Aaron.

7     Q.    And how did you hear about this robbery?

8     A.    I saw it on the news the next morning.

9     Q.    Okay. Let me ask you this. In 2011 you were convicted  
10    for burglary in the second degree and possession of burglary  
11    tools, were you not?

12    A.    Yes, sir.

13    Q.    Okay. Did you plead guilty to that charge?

14    A.    Yes, sir.

15    Q.    Do you have any knowledge or any involvement in the  
16    robbery that occurred that night?

17    A.    No, sir.

18    Q.    I don't think I've asked you to do this, but would you  
19    point out the person you've talked about as Junior or James  
20    White? Could you identify him?

21           (Whereupon the witness pointed to the Defendant, James  
22    White)

23    Q.    What is he wearing?

24    A.    He's got a red with the white polka dot shirt.

25    Q.    Okay.

**DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH**

265

1           **MR. FRETWELL:** Your Honor, let the record reflect he  
2 identified the Defendant.

3       Q.    Do you know anybody by the name of Gerald Gadsden?

4       A.    No, sir.

5       Q.    Do you know the individual who's sitting there in a  
6 light blue shirt?

7       A.    This is my first time seeing him coming to trial.

8       Q.    All right. Please answer any ---

9           **THE COURT:** All right, Mr. Yarborough.

10          **MR. YARBOROUGH:** Can she go first?

11          **MS. ROSS:** Do you mind if I go first or you want to ---

12          **THE COURT:** Yeah, we're going to stay in the same  
13 order.

14          **MR. YARBOROUGH:** Okay. Thank you, Your Honor.

15          **Cross Examination by Mr. Yarborough:**

16       Q.    Are you pretty familiar with this area?

17       A.    Yes, sir.

18       Q.    This is -- where did you say the Olive Garden was?

19       A.    Right across from the Cherrydale.

20       Q.    Okay. It's right across from the Cherrydale.

21       A.    Yes, sir.

22       Q.    And do you see the back back behind the Olive Garden?  
23 That's a pretty -- pretty rough section of town?

24       A.    You can say that. It has been in the ---

25       Q.    Yeah.

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

266

1 A. --- in the past years.

2 Q. There's -- you don't like walking around back there by  
3 yourself late at night, is that fair?

4 A. Yes.

5 Q. And you had worked there how long when this happened?

6 A. Roughly six months.

7 Q. Six months? And you still work there today?

8 A. Yes, sir.

9 Q. Now, that door that Mr. Fretwell keeps on talking  
10 about, the one with the rag in it, did you identify that  
11 door? Did you -- have you seen it broken?

12 A. I can't say that I have.

13 Q. Do you recognize that?

14 A. Yes, sir.

15 Q. Okay. That's State's exhibit number 3. Do you see  
16 what happened to the top of that door up there?

17 A. Yes.

18 Q. Has the glass on that door been broken out?

19 A. No.

20 Q. Let me let you look at it again.

21 A. Yes.

22 Q. And was it broken when you left that night?

23 A. No, sir.

24 Q. But you're the last person that walked out that door  
25 that night, is that correct?

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

267

1 A. That's correct.

2 Q. Okay. And there's a brick down here in the corner,  
3 isn't it?

4 A. Yes, sir.

5 Q. Okay. Was that brick there when you walked out that  
6 night?

7 A. No, sir.

8 Q. Okay. Now, there's also a rag stuck down in the bottom  
9 down there. Have you ever seen that happen before?

10 A. No, sir.

11 Q. Okay. Now, you say you've never -- say that's never  
12 happened before, but you've been working there for how long?

13 A. Three years now.

14 Q. Three years. And sometimes late at night employees  
15 step out that door and they smoke cigarettes, don't they?

16 A. It's the procedure that we cannot come out -- during  
17 business hours we can go out, but after 10:00 it is shut  
18 down. It's against the law.

19 Q. All right. So that rag could have been stuck there by  
20 somebody to go out and smoke cigarettes, isn't that right?

21 **MR. FRETWELL:** Objection, Your Honor. Speculation.

22 Q. Okay. How about this. When somebody goes outside to  
23 smoke, they stick a rag in that door to go out and smoke  
24 cigarettes, right?

25 A. No, sir. It's not procedure.

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

268

1 Q. I'm not saying it's procedure, I'm just saying that's  
2 what happens out there.

3 A. No.

4 Q. So if I went out there at 10:00 at night and I saw that  
5 rag stuck there, then somebody must have put it there.

6 MR. FRETWELL: Objection, Your Honor. It's assuming  
7 facts ---

8 MR. YARBOROUGH: May I ask ---

9 MR. FRETWELL: --- not in evidence.

10 MR. YARBOROUGH: --- him if he's ever seen it before?

11 MR. FRETWELL: He's causing the witness to speculate.

12 THE COURT: He doesn't know how it got there.

13 Q. You don't know how the rag got there?

14 A. No, sir.

15 Q. Okay. But you -- that night, the best of your  
16 knowledge, you were the last person out the door, is that  
17 right?

18 A. Yes, sir.

19 Q. Because when you left Mr. White was there.

20 A. Yes.

21 Q. And the manager was there.

22 A. Yes.

23 Q. And Mr. Pugh was there.

24 A. Yes.

25 Q. Okay. And you and Mr. White are friends, correct?

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

269

- 1 A. Co-workers.
- 2 Q. Co-workers.
- 3 A. Were co-workers.
- 4 Q. Were co-workers. And y'all talked.
- 5 A. Yes.
- 6 Q. Okay. And y'all talked that night, right?
- 7 A. Yes, sir.
- 8 Q. Okay. And the night of the robbery Mr. White told you
- 9 before you left that he had made several bands rapping.
- 10 A. Yes.
- 11 Q. Okay. And he told you he had made money before you
- 12 left that night.
- 13 A. Yes, sir.
- 14 Q. And you're a hundred percent positive about that?
- 15 A. Yes.
- 16 Q. Okay. And he told you that he had made that money
- 17 working down at North Charleston as a rapper, is that right?
- 18 A. Yes, sir.
- 19 Q. They had a party.
- 20 A. Yes.
- 21 Q. And they covered money coming in.
- 22 A. I didn't go and elaborate.
- 23 Q. You didn't go into all the details, but a couple of
- 24 bands means a couple of thousand dollars?
- 25 A. Yes.



**DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH**

270

1 Q. Okay. And all of that conversation between you and Mr.  
2 White took place before the Olive Garden was ever robbed,  
3 isn't that correct?

4 A. That's correct.

5 Q. Okay. And before you left the glass was not broken?

6 A. Yes.

7 Q. Okay. And -- okay. Have you ever walked home from  
8 there at night?

9 A. Yes.

10 Q. Okay. Do you worry about it with that area back up on  
11 the back part of that town?

12 A. No.

13 Q. So what would you -- you'd cross the street over by the  
14 Chick-fil-A and go that way?

15 A. Yes.

16 Q. Okay. Because you wouldn't want to go behind there  
17 because there's -- behind the Olive Garden there's three or  
18 four houses back there that are condemned. You see ---

19 **MR. FRETWELL:** Objection, Your Honor. This is the --  
20 the second or third time he's asked the same question and  
21 the witness has ---

22 **MR. YARBOROUGH:** I haven't asked that question, Your  
23 Honor.

24 **THE COURT:** Overruled.

25 **MR. YARBOROUGH:** Thank you.

**DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH**

271

- 1 Q. You've looked out the back of the parking lot, right?
- 2 A. Yes.
- 3 Q. Okay. And back up -- back up there there are three or
- 4 four houses that have been condemned.
- 5 A. Yes.
- 6 Q. Okay. And those houses have been condemned before all
- 7 this took place, right?
- 8 A. Yes.
- 9 Q. Now, Mr. Fretwell asked you about you had a previous
- 10 charge of burglary, second.
- 11 A. Yes.
- 12 Q. And that took place back in 2011.
- 13 A. Yes.
- 14 Q. And you had a recent probation violation.
- 15 A. No.
- 16 Q. Have you -- you haven't had a probation violation
- 17 between 2011 and now?
- 18 A. No. I fulfilled all my probation and everything.
- 19 Q. And it's complete?
- 20 A. Yes, sir.
- 21 Q. Okay. And you -- do you have a girlfriend?
- 22 A. Yes.
- 23 Q. What's her name?
- 24 A. Lorraine Walker.
- 25 Q. Lorraine Walker. And she's been in significant trouble

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

272

1 ---

2 **MR. FRETWELL:** Objection, Your Honor. What's the  
3 relevance?

4 **THE COURT:** Sustained. Mr. Yarborough.

5 **MR. YARBOROUGH:** Okay.

6 **MR. FRETWELL:** Your Honor, I'd ask that that question  
7 be stricken.

8 **THE COURT:** I don't know how you stricken it, but,  
9 ladies and gentlemen, just disregard that question.

10 Q. I'll show you what's been previously marked as exhibit  
11 number 29. You recognize that?

12 A. Looks like one of the ---

13 **THE COURT:** Can't hear you. Do you recognize it or  
14 not?

15 Q. Do you recognize it?

16 A. Yes.

17 Q. What is that?

18 A. Looks like a monitor.

19 Q. A monitor. You know what kind of monitor?

20 A. No, sir.

21 Q. And you've been working there for how long?

22 A. Three years.

23 Q. Okay. And do you know how to work that monitor?

24 A. No, sir.

25 Q. Okay. And do you know what this monitor does?

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

273

- 1 A. No.
- 2 Q. Okay. But you've been working there for three years,  
3 is that correct?
- 4 A. Yes.
- 5 Q. Do you know how to put this monitor on hold?
- 6 A. No, sir.
- 7 Q. Do y'all use the same kind of towels, these towels  
8 here? This is State's exhibit 25. Do you recognize those  
9 towels?
- 10 A. Yes, sir.
- 11 Q. Do y'all have numerous of those towels out there?
- 12 A. Yes.
- 13 Q. Hundreds?
- 14 A. A few bags.
- 15 Q. Few -- oh, just a few bags?
- 16 A. (Affirmative nod).
- 17 Q. But they're all the same kind that are identified in  
18 State's exhibit number 26?
- 19 A. Yes, sir.
- 20 Q. Okay. And there are numerous of those towels out  
21 there, too, is that correct?
- 22 A. That's correct.
- 23 Q. Okay. Did -- to your knowledge how many people were  
24 working that Sunday night before you left?
- 25 A. I had three on the line. I can't really say how many.

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

274

1 Q. How about this. How many work on a general Sunday  
2 night?

3 MR. FRETWELL: Your Honor, ---

4 A. In the kitchen?

5 MR. FRETWELL: --- I want to object. What does Sunday  
6 have to do with this? The robbery occurred on a Monday.

7 MR. YARBOROUGH: I was going to go Sunday. We'll just  
8 go to Monday, that's fine.

9 Q. How many people work on Monday night?

10 A. As far as servers or line?

11 Q. Servers.

12 A. I can't really tell you that.

13 Q. How about on the line?

14 A. On the line, two.

15 Q. Bartenders?

16 A. One.

17 Q. Servers, would there be more than five?

18 A. Yes.

19 Q. More than ten?

20 A. During the daytime.

21 Q. Okay. And in the evening?

22 A. It varies. All depends on the business we have.

23 Q. Okay. And all of those people would have access to  
24 those rags, correct?

25 A. They don't use those, but they have access to them.

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

275

- 1 Q. Okay. What do you -- what do you mean they don't use  
2 them?
- 3 A. They use napkins.
- 4 Q. They use napkins?
- 5 A. Yellow napkins. Just because the plates that we  
6 prepare, they are hot.
- 7 Q. Because what? I'm sorry.
- 8 A. The plates that we prepare are hot.
- 9 Q. Oh, so you got to use stuff to be able to carry them.  
10 Okay. And so -- but those rags are all over both the bar  
11 and the people that clean the tables use those rags?
- 12 A. Yes.
- 13 Q. Okay. And ---
- 14 A. They're mainly used for sanitary buckets and clean.
- 15 Q. Mr. White had showed you in the past one of his fliers  
16 when he was doing a rap show, right?
- 17 A. Yes.
- 18 Q. Okay. And talks about him being Jr. J or ...
- 19 A. Something to that nature.
- 20 Q. Okay. And it's got his picture on it.
- 21 A. I don't know.
- 22 Q. But you've seen some of the fliers?
- 23 A. I saw one.
- 24 Q. Okay. So did you see that prior to that night?
- 25 A. I don't recall.

DAMION RILEY - CROSS EXAMINATION BY MR. YARBOROUGH

276

1 Q. Okay. So when you -- when you told the solicitor it  
2 was unusual that Mr. White had talked about making bands,  
3 you knew he was a rapper before that?

4 A. I heard it through it.

5 Q. Well, you heard that because he'd told you that, right?

6 A. Yes.

7 Q. Okay. So he told you that before that night.

8 A. But the conversation was unusual because we never  
9 talked like that.

10 Q. Okay. But you know he was a rapper? You knew that's  
11 what he really wanted to do?

12 A. I don't know. I mean, I don't know what he, I mean,  
13 what he tried to pursue in life.

14 Q. Okay. He ---

15 A. We never had -- we never had a personal relationship  
16 outside of work.

17 Q. Okay. You never had a personal relationship, but y'all  
18 discussed that night that he had made two bands.

19 A. Yes.

20 Q. Okay. And you told -- you went and told the police  
21 that two days later, right?

22 A. Yes, sir.

23 Q. Okay. So y'all had some kind of personal relationship  
24 about his business.

25 A. Outside of work, no.

**DAMION RILEY - CROSS EXAMINATION BY MS. ROSS**

277

1 Q. I'm -- nothing further. Thank you.

2 THE COURT: Ms. Ross.

3 MS. ROSS: May it please the Court.

4 **Cross Examination by Ms. Ross:**

5 Q. Hi, there, Mr. Riley. I guess you weren't questioned  
6 that night of the 20th, were you?

7 A. No.

8 Q. You weren't there. You'd already left. You weren't  
9 questioned by the police.

10 A. No.

11 Q. You weren't part of that whole thing. So you didn't  
12 see money strewn everywhere or anything like that?

13 A. No.

14 Q. And you didn't tell law enforcement about seeing anyone  
15 in the parking lot or anything either?

16 A. No, sir. I mean, no, ma'am.

17 Q. And you said your girlfriend, Lorraine Walker, was  
18 there in the car to pick you up?

19 A. Yes.

20 Q. Now, do you know whether she talked to law enforcement?

21 A. No. Well, I think she -- she had got questioned when I  
22 had to go make my statement.

23 Q. So would it make sense that you went in on the 22nd,  
24 two days later, and went to the Law Enforcement Center and  
25 gave a statement to Investigator Weiner?



DAMION RILEY - CROSS EXAMINATION BY MS. ROSS

278

1 A. Yes.

2 Q. Was it Weiner or do you remember?

3 A. Weiner.

4 Q. Okay. Now, did he -- did you tell him that you were on  
5 probation for burglary at that time?

6 A. Yes.

7 Q. You did mention that to him?

8 A. I can't really recall. I think he asked me just basic  
9 questions about the job, I want to say. I can't recall.

10 It's been ---

11 Q. So you ---

12 A. --- a while.

13 Q. --- can't recall whether you told him or not?

14 A. I can't say.

15 Q. Do you recall whether he asked you about that or not?

16 A. He asked me had I been in trouble.

17 Q. Okay. And you don't recall what you said?

18 A. I said yes.

19 Q. Okay. And I think what Mr. Yarborough might have been  
20 getting at, while you didn't have a probation violation  
21 hearing in February ---

22 **MR. FRETWELL:** Objection, Your Honor. Let me see this  
23 document.

24 **MS. ROSS:** I think it's relevant. It goes to bias and  
25 motive, Your Honor.

DAMION RILEY - CROSS EXAMINATION BY MS. ROSS

279

1           **MR. FRETWELL:** Can I see the document?

2           **MS. ROSS:** I apologize.

3           (Pause)

4           **MS. ROSS:** And I think it's impeachment ---

5           **MR. FRETWELL:** Your Honor.

6           **THE COURT:** Ladies and gentlemen, let me get you to  
7 step back to the jury room. Please don't discuss the case  
8 while you're there. And we'll be with you in a moment.

9           (Whereupon the jury exited the courtroom at 2:59 pm)

10          **THE COURT:** What does probation have to do with this?  
11 Doesn't the rule deal with convictions?

12          **MS. ROSS:** Right. But this goes to ---

13          **THE COURT:** Does the rule deal with convictions?

14          **MS. ROSS:** It does. But ---

15          **THE COURT:** All right.

16          **MS. ROSS:** --- also under 608(c) I think -- I think I  
17 can put evidence of character and bias and I can also  
18 impeach. This witness told Mr. Yarborough that he did not  
19 have a probation violation. At that point I ---

20          **THE COURT:** No, he asked him if he violated his  
21 probation.

22          **MS. ROSS:** Well, he did. And there was a pending  
23 violation. He had violated his probation.

24          **THE COURT:** Did he -- well, did the court find that  
25 there was a probation violation?

**DAMION RILEY - CROSS EXAMINATION BY MS. ROSS**

280

1           **MS. ROSS:** Yes, that's what that document says. They  
2           had an out-of-court agreement. And he was in violation of  
3           conditions, and here they are.

4           **THE COURT:** What is the violation?

5           **MS. ROSS:** The violation of conditions he had failed a  
6           drug test and was not paid up on his monies.

7           **THE COURT:** We ain't going into it.

8           **MS. ROSS:** Pardon me?

9           **THE COURT:** We're not going into it.

10          **MS. ROSS:** Not going into it.

11          **THE COURT:** Bring the jury in, please.

12          (Pause)

13          **THE COURT:** All right. Mr. Yarborough, step up here  
14          just a second. Y'all can come, too, but it's not related to  
15          this case.

16          (Whereupon the jury entered the courtroom at 3:04 pm)

17          **THE COURT:** All right, Ms. Ross.

18          **MS. ROSS:** Thank you, Your Honor.

19          **Cross Examination by Ms. Ross Continued:**

20          Q. Mr. Riley, you stated you did give a statement, but two  
21          days later, to Investigator Weiner, is that correct?

22          A. Yes, ma'am.

23          Q. Okay. And in that statement you said what you said  
24          earlier that you went and got your W-2's, you got your  
25          dinner, you talked to Mr. Kretzschmar, you talked to Aaron

DAMION RILEY - CROSS EXAMINATION BY MS. ROSS

281

- 1 and then you left. When did you clock in and out in  
2 relation to doing all those things? Do you recall if it was  
3 before or afterwards?
- 4 A. No, it was after leaving.
- 5 Q. So it was after you'd done all that stuff ---
- 6 A. Yes.
- 7 Q. --- that you'd clocked out? And you went out the front  
8 door?
- 9 A. Yes.
- 10 Q. You said something about some side alley, and I sort of  
11 missed what you meant. But did you walk out the front and  
12 then go around to the side to get into the car where ---
- 13 A. No.
- 14 Q. What?
- 15 A. I was referring to the alley when you come in -- when  
16 you first come into the restaurant.
- 17 Q. I got you. So you were talking about the interior of  
18 the restaurant?
- 19 A. Yes.
- 20 Q. But -- so was Ms. Walker just waiting out in front of  
21 the Olive Garden for you?
- 22 A. Yes.
- 23 Q. And at that point you clocked out and you said the door  
24 closed behind you. Would it surprise you if that clock-out  
25 time -- a staff manager reported that at 11:18 at night?

DAMION RILEY - CROSS EXAMINATION BY MS. ROSS

282

1 Does that sound like the right time?

2 A. No.

3 Q. Well, you testified before you thought it was before --  
4 between 11:15 and 20.

5 A. Yes.

6 Q. What time would you think it would be?

7 A. Probably 11:20, I want to say.

8 Q. Okay. All right.

9 **MS. ROSS:** I beg the Court's indulgence.

10 (Pause)

11 Q. Just one more thing. I just want to clarify a little  
12 bit of the situation. You knew Junior had a flier saying,  
13 look, I have this flier about -- he'd give to you that --  
14 he'd shown you that flier prior to this date, correct? Or  
15 do you recall? Earlier you'd said something about a flier  
16 or seeing a flier that Jr. G was a rapper.

17 A. He had stated ---

18 Q. He, Mr. White.

19 A. --- that.

20 Q. So he'd shown you that, but he didn't show it to you  
21 that night?

22 A. No, ma'am.

23 Q. You're saying that night was the night he came up and  
24 mentioned that he'd made some money.

25 A. Yes. ,

**DAMION RILEY - REDIRECT EXAMINATION BY MR. FRETWELL**

283

1 Q. And when you went two days later and talked to  
2 Investigator Weiner that was the first thing you told him,  
3 essentially about what happened that night.

4 A. Yes.

5 Q. All right. Nothing further.

6 **MR. FRETWELL:** Briefly on redirect, Your Honor.

7 **Redirect Examination by Mr. Fretwell:**

8 Q. Mr. Riley, Mr. Yarborough asked you about crossing over  
9 to the Chick-fil-A and walking that way home.

10 A. Yes.

11 Q. You wouldn't walk the other way because your home was  
12 down towards Sulphur Springs Road, is that right?

13 A. That's correct.

14 Q. Okay. And Mr. Yarborough showed you a picture. And at  
15 first you couldn't tell what he was -- you said the glass  
16 wasn't broken out, it is broken out. Can you put your hand  
17 through that glass in that picture?

18 A. No.

19 Q. Okay. Mr. Yarborough also asked you about that to-go  
20 camera, calling it a monitor, but the to-go camera. Would  
21 you have any reason to want to put that camera on hold?

22 A. No.

23 Q. You told the police about your conversation with Mr.  
24 White because it was usual or unusual?

25 A. It was unusual.

**DAMION RILEY - RECROSS EXAMINATION BY MR. YARBOROUGH**

284

1 Q. Is this the -- is this the flier that you were shown?

2 A. Yes.

3 Q. And what's the date on that flier?

4 A. January 18th, Saturday.

5 Q. Okay. That was the previous weekend?

6 A. Yes.

7 Q. Okay.

8 MR. FRETWELL: No further questions, Judge.

9 **Recross Examination by Mr. Yarborough:**

10 Q. You were shown this flier on January the 18th, is that  
11 right?

12 A. I don't really know the date of it.

13 Q. But you've seen this flier?

14 A. Yes.

15 Q. Okay. And you've seen this flier because this flier  
16 was given to you by -- showed to you by Mr. White?

17 A. Yes.

18 Q. And does it fairly and accurately reflect the flier  
19 that you got from Mr. White?

20 A. I can't really say. I mean, it ---

21 Q. But it looks like it?

22 A. Yes.

23 Q. Okay. And Mr. Fretwell just asked you if it was dated  
24 -- what's the date on it?

25 A. Saturday, January 18th.

**DAMION RILEY - RECROSS EXAMINATION BY MR. YARBOROUGH**

285

- 1 Q. So this flier, you saw it before the robbery?
- 2 A. Yes.
- 3 Q. You either saw it on Saturday the 18th or Sunday the
- 4 19th or Monday the 20th, right?
- 5 A. I didn't see it that Monday.
- 6 Q. Didn't see it that Monday. So I guess Mr. White had
- 7 showed you this thing before -- either you had seen it the
- 8 18th or 19th, is that correct?
- 9 A. Somewhere in there.
- 10 Q. Huh?
- 11 A. Somewhere in there.
- 12 Q. Somewhere in there. And so it really would not have
- 13 been that unusual for him to tell you on the 20th that he
- 14 had made several bands, meaning several thousand dollars at
- 15 his rap concert?
- 16 A. Correct.
- 17 Q. Okay. So when you said it was unusual to Mr. Fretwell,
- 18 that's not true.
- 19 A. Why wasn't it?
- 20 Q. Because you said it was unusual -- if he told you that
- 21 he was having a rap concert on the 18th and then y'all are
- 22 just talking and he says, by the way, I made a couple of
- 23 bands, couple of thousand dollars, that's not an unusual
- 24 conversation.
- 25 A. It is when you don't have a personal relationship with



DAMION RILEY - RECROSS EXAMINATION BY MR. YARBOROUGH

286

1     this person outside of work.

2     Q.    When he showed you this it was either the 18th or 19th,  
3     correct?

4     A.    Yes, I'm thinking.  Yes.

5     Q.    Okay.  Well, it has the date on it, the 18th.  So it's  
6     either the 18th or 19th.  You said it was not the 20th.

7     A.    That's right.

8     Q.    Okay.  So within forty-eight hours he tells you he  
9     makes two bands, which means two grand in your terminology.

10    A.    Yes.

11    Q.    Okay.  And you're saying that's not -- you're saying  
12    that's unusual?

13    A.    Yes.

14    Q.    Why is it -- why is it unusual?

15    A.    'Cause I don't have a personal relationship.

16    Q.    Okay.  Because you don't have a personal relationship,  
17    but you knew that he'd had this concert, right?

18    A.    Yes, I saw it.

19    Q.    Okay.  And that concert took place before this robbery.

20    A.    I'm guessing yes.

21    Q.    Okay.  Well, you're guessing because you saw the date  
22    on it.

23    A.    Right.

24    Q.    Okay.  So there's no question about that, right?

25    A.    Right.

**DAMION RILEY - RECROSS EXAMINATION BY MR. YARBOROUGH**

287

1 Q. Okay. And you told the police that that concert took  
2 place or was over the weekend, which is the last couple of  
3 days -- when you went down and saw the police you said that  
4 the concert was over the weekend, right?

5 A. Yes.

6 Q. Okay. And that concert was in Charleston.

7 A. I presume.

8 Q. Well, I mean, that's what you told the police, right?

9 A. Yes.

10 Q. So you're not presuming it, that's what they -- that's  
11 what you told them. I'm just asking you what you told them.

12 A. Yes.

13 Q. 'Cause you know you're supposed to tell the truth to  
14 this jury, right?

15 A. Yes.

16 Q. Okay. So did he -- did he tell you this before?

17 A. Yes.

18 Q. Okay. So what you told Mr. Fretwell is not true?

19 A. I mean, ...

20 Q. It's not true.

21 **MR. FRETWELL:** Your Honor, I object. What is the  
22 question.

23 **MR. YARBOROUGH:** Okay. I'll move on, Your Honor.

24 **THE COURT:** Thank you.

25 Q. And you're telling this jury that that rag stuck in

**DAMION RILEY - RECROSS EXAMINATION BY MS. ROSS**

288

1     that door was not stuck there by you.

2     A.    No, sir.

3     Q.    You're sure?

4     A.    Yes, sir.

5     Q.    'Cause that was that same conversation you had with the  
6     police that night, right?

7     A.    I never had a conversation with the police that night.

8     Q.    Two days later.

9     A.    Yes.

10    Q.    You said you didn't stick the rag there.

11    A.    Yes.

12    Q.    That's also the night that you said that you hadn't  
13    never heard about this concert, right?

14    A.    Right, and this.

15    Q.    So you told them a story then. Did you not tell them a  
16    story?

17           **MR. FRETWELL:** Your Honor, what is the question?

18           **MR. YARBOROUGH:** It's okay. He knows what the question  
19    is.

20           **THE COURT:** Let me tell you something.

21           **MR. YARBOROUGH:** Yes, sir. I'm sorry.

22           **THE COURT:** You talk to me and not the other attorney.

23           **MR. YARBOROUGH:** Yes, sir. I apologize.

24           **THE COURT:** Ms. Ross, anything?

25    **Recross Examination by Ms. Ross:**

**GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON**

289

1 Q. Were you ever asked to turn over your phones and any of  
2 your personal ---

3 MR. FRETWELL: Objection, ---

4 Q. --- items ---

5 MR. FRETWELL: --- Your Honor. This exceeds the scope  
6 of my redirect. It was about this ---

7 THE COURT: Well, she hasn't asked the question yet.

8 MR. FRETWELL: Okay.

9 Q. Were you asked to turn over any of your -- phone or  
10 personal items to law enforcement?

11 MR. FRETWELL: That exceeds the ---

12 THE COURT: Sustained.

13 MR. FRETWELL: --- scope of my ---

14 MS. ROSS: Okay. Then I'd have no questions.

15 MR. FRETWELL: No questions, Judge.

16 THE COURT: Thank you. You may step down.

17 MR. FRETWELL: Your Honor, may Mr. Riley be excused?

18 THE COURT: Any problem?

19 MR. YARBOROUGH: No, sir, Your Honor.

20 MS. ROSS: No, sir.

21 THE COURT: All right. You're free to leave. Thank  
22 you. All right. Call your next witness.

23 MS. SIMPSON: The State calls Grady Terrell Pugh.

24 Grady Pugh, being duly  
25 sworn testified as follows;

**GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON**

290

1           **MADAME CLERK:** Please have a seat. Will you state your  
2 full name for the record.

3           **MR. PUGH:** Grady Terrell Pugh.

4           **Direct Examination by Ms. Simpson:**

5           Q. And, Mr. Pugh, will you spell your last name for the  
6 court reporter.

7           A. P-u-g-h.

8           Q. How old are you?

9           A. Forty-four.

10          Q. And do you live here in Greenville?

11          A. Yes, ma'am.

12          Q. Are you from this area?

13          A. No, ma'am.

14          Q. Where are you originally from?

15          A. New Jersey.

16          Q. Okay. And how long have you been living in Greenville?

17          A. Five years.

18          Q. Five years? Speak up just a little bit so we can hear.

19 And what brought you to Greenville?

20          A. Two months after my son passed away, I came down here  
21 to be closer to my grandmother.

22          Q. Okay. And did you actually live with your grandmother?

23          A. Yes, ma'am.

24          Q. And are you still living with her now?

25          A. (No response)

**GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON**

291

- 1 Q. Did she pass away recently?
- 2 A. My grandmother passed away last Wednesday.
- 3 Q. Last Wednesday?
- 4 A. Yes, ma'am.
- 5 Q. And -- but you were living with her at the time?
- 6 A. Yes, ma'am.
- 7 Q. Okay. And where -- where do you work now?
- 8 A. I work at Olive Garden, Cherrydale.
- 9 Q. Cherrydale?
- 10 A. Yes, ma'am.
- 11 Q. And how long have you been working at the Olive Garden?
- 12 A. Four years.
- 13 Q. Four years?
- 14 A. Four years, yes.
- 15 Q. And what's your current position?
- 16 A. CT and DMO.
- 17 Q. And that is ---
- 18 A. Certified trainer, dish machine operator.
- 19 Q. Okay. And as a certified trainer, dish machine
- 20 operator, what do you do?
- 21 A. I train all the dish machine operators that they hired
- 22 on.
- 23 Q. Okay. So you're kind of the supervisor for the
- 24 dishwashers?
- 25 A. Yes, ma'am.

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

292

1 Q. And I want to go back to 2014, two years ago. How long  
2 had you been working at the Olive Garden?

3 A. Two years.

4 Q. Two years? And what was your position at that time?

5 A. I had recently just became CT probably -- approximately  
6 a year before that.

7 Q. A year before that?

8 A. I believe so.

9 Q. And at that time were you living -- where were you  
10 living?

11 A. I was still living with my grandmother.

12 Q. Okay. As -- well, first let me back up just a little  
13 bit. Do you know the Defendant, James White?

14 A. Yes, ma'am. Yes, ma'am.

15 Q. Tell the jury how you knew him or how you met him.

16 A. As a co-worker at Olive Garden. He worked beside me in  
17 the dish area.

18 Q. And did you -- first of all, you said your name was  
19 Grady Terrell Pugh. What do people who know you call ---

20 A. Terrell. I never used Grady in school or as far as  
21 group purposes ---

22 Q. Okay. So Terrell is what you go by?

23 A. Yes, ma'am.

24 Q. And how did you know Mr. White? Like what did he go  
25 by?

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

293

- 1 A. Junior.
- 2 Q. Junior? And your relationship with Junior or Mr.
- 3 White, you said that was -- he was your co-worker?
- 4 A. Yes, ma'am.
- 5 Q. Were you actually, I guess, his direct supervisor?
- 6 A. More or less, yes.
- 7 Q. Okay. What did he do for the Olive Garden at that
- 8 time?
- 9 A. He was the dish machine operator.
- 10 Q. Okay. And but you'd been there longer and you were the
- 11 one responsible for training him?
- 12 A. Yes, ma'am.
- 13 Q. And did y'all have a relationship outside of work?
- 14 A. No, ma'am.
- 15 Q. So y'all didn't hang out or go out together?
- 16 A. No, ma'am.
- 17 Q. Okay. I want to turn your attention to the day of this
- 18 incident. Do you recall that day?
- 19 A. Vividly, yes.
- 20 Q. You said vividly?
- 21 A. Yes.
- 22 Q. And that day, do you remember when you went in? Like
- 23 was it a day shift, night shift, double shift?
- 24 A. I believe it was an evening shift, night shift.
- 25 Q. Night shift?



GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

294

1 A. I'm the nighttime closer.

2 Q. Okay. And tell us what happened. Was it -- when you  
3 went in. Was it just a normal day?

4 A. Just an ordinary day.

5 Q. And did James also work that day?

6 A. Yes, ma'am.

7 Q. Do you remember whether he got there before you or  
8 after you?

9 A. I can't recall his shift. I'm sorry.

10 Q. Okay. You just remember that y'all worked together ---

11 A. Yes, ma'am.

12 Q. And working the night shift, what do you do? Like what  
13 are your responsibilities?

14 A. Clean all the dishes and pans and silverware and  
15 sanitize, supposed to clean the floors.

16 Q. Say that last part one time -- I know that you're  
17 probably nervous here today, but slow down just a bit.

18 A. Clean pans and dishes, sanitize our area and clean the  
19 floors and gather all the trash.

20 Q. Okay. And is that what y'all were doing that night?

21 A. Yes.

22 Q. And what time does the Olive Garden actually close?

23 A. Ten pm, Monday through Friday.

24 Q. Ten pm ---

25 A. I'm sorry. Sunday through Thursday, ten pm.

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

295

- 1 Q. Okay. And this was a Monday?
- 2 A. Yes, ma'am.
- 3 Q. Now did you leave right at ten or would you have been
- 4 one of the last people to leave?
- 5 A. One of the last ones to leave.
- 6 Q. Okay. Tell me what happened, what you remember that
- 7 night before you left.
- 8 A. Approximately somewhere in the time between eleven or
- 9 11:30 I was approached by an individual with a gun that
- 10 ordered me to get down, get down on the floor. Me and my
- 11 co-worker got down on the floor, they had directed us or as
- 12 he directed us to. And I don't know what really took place
- 13 as far as what happened after -- 'the next thing I know, when
- 14 I came up the police was there.
- 15 Q. Okay. And so while you were washing dishes, before --
- 16 right before the man came in with a gun -- and was it one
- 17 person that you saw?
- 18 A. Yes.
- 19 Q. Who all was -- do you recall being in the restaurant
- 20 during this time that you were aware of?
- 21 A. That I was aware? Me, James and Aaron.
- 22 Q. And what is Aaron's position?
- 23 A. He's the nighttime manager.
- 24 Q. Night manager? And is the night manager always present
- 25 while you're present?

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

296

1 A. Yes, sir. Yes, ma'am.

2 Q. Okay. So y'all are always the last ones to leave  
3 pretty much?

4 A. Yes. It's the policy that three employees leave out  
5 after close when everything's closed.

6 Q. And you said the man came in and ordered you to the  
7 floor with the gun. What were you doing at the point in  
8 time when he -- when you encountered him?

9 A. I had my back turned. I was loading the machine with  
10 dishes.

11 Q. Let me stop you right there. As far as the dish  
12 machine, can you describe that for the jury and why two  
13 people are essentially working that station? Like what you  
14 were doing.

15 A. I was loading plates on the dish rack, turning them and  
16 putting them into the machine.

17 Q. Okay. So you're the one at the beginning of the  
18 machine that puts them in ---

19 A. Yes, ma'am.

20 Q. --- in order to be washed?

21 A. Yes, ma'am.

22 Q. And that night James was working with you, what was he  
23 doing?

24 A. He catches from when they come out of the machine and  
25 placed them in their proper place.

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

297

- 1 Q. Okay. So they're placed wherever they need to go ---
- 2 A. Yes, ma'am.
- 3 Q. --- at the end of the day. And so you had your back
- 4 turned initially when the man came in. Did you get a good
- 5 look at him or were you able -- what can you tell us about
- 6 the gunman?
- 7 A. I really don't have a description. I was -- I was
- 8 terribly scared for my life more or less than anything. I
- 9 did -- the gun was pointed on me and I just complied to his
- 10 demand.
- 11 Q. Okay. And what did he say to you? Do you recall the
- 12 exact words? And I know it's been a while.
- 13 A. Get the blank on the floor.
- 14 Q. You can say -- I know you don't want to say it, but you
- 15 can use the language that was used.
- 16 A. Get the fuck on the floor.
- 17 Q. Okay. And you did as you were told?
- 18 A. Yes, ma'am.
- 19 Q. And when you got down on the floor, what were you
- 20 doing?
- 21 A. Praying for my life.
- 22 Q. Okay. And the next thing you remember, you said the
- 23 police came?
- 24 A. Yes, ma'am.
- 25 Q. What do you remember once the police got there?

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

298

1 A. I was still on the floor when the police came, actually  
2 into the dish area. And I forgot -- he said are you all  
3 right or something like that. I can't remember exactly what  
4 he said. But when he came in the dish area and got our  
5 attention, it startled me again because I jumped up and hit  
6 my head on the table.

7 Q. Okay. So when the police came in -- and speak up just  
8 a little bit for us.

9 A. I'm sorry.

10 Q. It startled you and you hit your head, actually,  
11 getting up?

12 A. Yes, ma'am.

13 Q. And what were you thinking when the police came in?  
14 How were you thinking?

15 A. I'm about to get shot.

16 Q. Who was beside you during this time?

17 A. James White.

18 Q. Okay. So he was on the floor with you?

19 A. Yes, ma'am.

20 Q. And did you actually see Aaron or hear Aaron at all?

21 A. No, ma'am.

22 Q. So you were just on the floor, but you didn't see or  
23 hear anything?

24 A. Correct.

25 Q. Do you remember the gun, what it looked like?

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

299

1 A. I stated in my statement that I believed it was a big  
2 black semiautomatic.

3 Q. A black semiautomatic?

4 A. Yes.

5 Q. And as far as the description, I know you didn't get a  
6 good look at him, but were you able to give police some  
7 description about his ---

8 A. I said ---

9 Q. --- type and build?

10 A. Yeah. I said he was heavysset, about my height.

11 Q. Okay. And do you remember if he had anything covering  
12 his face?

13 A. I said I think it was a camouflage hood on.

14 Q. A camouflage hood on?

15 A. Yes.

16 Q. So you couldn't really see him that well?

17 A. Exactly.

18 Q. Now, as far as you said you gave the police a  
19 statement, did you actually talk with the officers that  
20 night?

21 A. Yes, ma'am.

22 Q. And did you just talk with them verbally and kind of  
23 tell them what happened?

24 A. Yes, ma'am.

25 Q. And do you remember -- did you, Aaron and the

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

300

1 Defendant, Mr. White, actually speak with an officer?

2 A. I believe we talked to each one individually, yes.

3 Q. Okay. So he separated you all?

4 A. Yes.

5 Q. And you told the officer about what happened?

6 A. Yes, ma'am.

7 Q. And to your knowledge, James White, do you recall where  
8 he was every minute, every second during the time y'all were  
9 doing your job?

10 A. No, ma'am.

11 Q. Okay. But he's the one that actually goes and places  
12 the dishes ---

13 A. In the proper place.

14 Q. --- as you're putting them in the machine?

15 A. Yes.

16 Q. And this is late at night. You're getting ready to go  
17 home?

18 A. Yes. We was in the process of cleaning to go home,  
19 yes.

20 Q. The person you know as Jr. G or Junior, James White, do  
21 you see him in the courtroom here today?

22 A. Yes, ma'am.

23 Q. And can you point him out for the jury?

24 (Whereupon the witness pointed to the Defendant, James  
25 White)

**GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON**

301

- 1 A. The gentleman with the burgundy button up shirt.
- 2 **MS. SIMPSON:** Let the record reflect he's identified
- 3 the Defendant, James White.
- 4 Q. And did you know or do you know Gerald Akeem Gadsden?
- 5 A. No, ma'am. This is my first time seeing him today.
- 6 Q. Now, you said the guy was about your size. How tall
- 7 are you?
- 8 A. Six feet.
- 9 Q. Six feet? And are you still the same weight?
- 10 A. Two fifteen.
- 11 Q. Two fifteen? And do you remember telling the police
- 12 you said about your size? So if you told them 5'10 --
- 13 actually, let me show you this. Do you recognize that?
- 14 (Pause)
- 15 A. Yes.
- 16 Q. And what is it? Is that the statement that you
- 17 ultimately -- a written statement that you gave to police?
- 18 A. Yes -- well, this is the statement that he wrote that I
- 19 gave him.
- 20 Q. Okay. So somebody wrote it out for you, but it's what
- 21 you told him?
- 22 A. Correct.
- 23 Q. And how did you describe the height and weight of the
- 24 gunman?
- 25 A. Approximately 5'10" to six feet.



GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

302

1 Q. And pounds?

2 A. Two hundred pounds.

3 Q. Okay. And do you recall to -- I know he told you at  
4 gunpoint to get on the ground. Were you actually assaulted  
5 or shoved during this incident as well?

6 A. I recall being pushed a little bit, like a little  
7 slight push.

8 Q. Okay. So kind of pushing you to the ground. Not  
9 punching you or anything, but ---

10 A. Right.

11 Q. --- forcing you to the ground?

12 A. Yes.

13 Q. Back in 2008 I believe you were convicted for giving  
14 false information to police?

15 A. Correct.

16 Q. And tell me -- you're still working at the Olive  
17 Garden. Were you scheduled to work -- the night of the  
18 robbery, were you scheduled to work the next day?

19 A. Yes.

20 Q. And were you actually able to go in to work?

21 A. No, ma'am. I didn't go in. I took a few days off. I  
22 was traumatized. I was scared to go back to work after  
23 this.

24 Q. But you did go back to work and you are still working  
25 there?

GRADY PUGH - DIRECT EXAMINATION BY MS. SIMPSON

303

1 A. Yes, ma'am. Correct.

2 Q. And do you still work -- Damion Riley works with you,  
3 too?

4 A. Yes, ma'am.

5 Q. All right. Thank you, Mr. Pugh.

6 **THE COURT:** All right. We're going to take a break  
7 before y'all do your cross examination. Ladies and  
8 gentlemen, I'll let you step back to the jury room and take  
9 a break for about fifteen minutes or so, relax, have some  
10 refreshments. Please don't discuss the case while you're  
11 back there. And we'll bring you back in in just a little  
12 bit.

13 (Whereupon the jury exited the courtroom at 3:32 pm)

14 **THE COURT:** All right. Mr. Pugh, you can step down,  
15 but don't discuss your testimony while we're on break with  
16 anybody, okay?

17 A. Yes, sir.

18 **THE COURT:** All right. We'll stand in recess for  
19 fifteen minutes or so.

20 (Whereupon court was in recess at 3:32 pm)

21 (Whereupon court reconvened at 3:48 pm)

22 **THE COURT:** Yes, ma'am.

23 **MS. ROSS:** Judge, I was just going to make this a Court  
24 exhibit about your ruling before, if that's all right.

25 **THE COURT:** Sure.

**GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH**

304

1           **MS. ROSS:** Thank you.

2           (Whereupon Court's exhibit 5 was marked)

3           **THE COURT:** All right. We ready to go?

4           **MS. SIMPSON:** The State's ready.

5           **THE COURT:** Oh, wait a minute. We've got to bring --  
6 we've got one more ---

7           **MR. YARBOROUGH:** One more and a ---

8           **THE COURT:** --- and a lawyer to bring in here.

9           **MS. ROSS:** Your Honor, I'm right here.

10          **THE COURT:** Oh, there you are.

11          **MS. ROSS:** I'm just getting more room for my client.

12          **THE COURT:** All right. Mr. Pugh, if you'd come back up  
13 here, please, sir. All right. Let's bring the jury in, if  
14 we could, please.

15          (Whereupon the jury entered the courtroom at 3:51 pm)

16          **THE COURT:** All right, folks. Are y'all getting cold  
17 in this room?

18          **JUROR:** Huh?

19          **THE COURT:** Y'all getting cold in this room?

20          **JUROR:** It is freezing in here.

21          **THE COURT:** We figure you'll stay awake. All right.  
22 Mr. Yarborough, you ready to proceed?

23          **MR. YARBOROUGH:** Yes, sir, Your Honor.

24          **Cross Examination by Mr. Yarborough:**

25          Q. Mr. Pugh, how you doing?

**GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH**

305

- 1 A. Fine.
- 2 Q. I'm sorry about the loss ---
- 3 A. Thank you.
- 4 Q. --- of your grandmother. You were -- you were there
- 5 that night when the guy came in with the gun, right?
- 6 A. Yes, sir.
- 7 Q. Did you hear the door get hit by the rock earlier?
- 8 A. No, sir.
- 9 Q. Okay. And so you didn't know how the guy got into the
- 10 ...
- 11 A. No, sir.
- 12 Q. Okay. Now, was there one person or was there two
- 13 people?
- 14 A. I only seen one person.
- 15 Q. Okay. Now, you saw one person and that person was in
- 16 with the kitchen area back where the dishwasher with you and
- 17 my client, Mr. White, right?
- 18 A. Correct.
- 19 Q. Okay. And that person came in and he yelled for you to
- 20 get on the ground.
- 21 A. Correct.
- 22 Q. That must have been very scary.
- 23 A. Yes, sir.
- 24 Q. Okay. And did Mr. White get on the ground?
- 25 A. Yes, sir.

GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH

306

1 Q. Okay. And he got into, I believe you said, a fetal  
2 position?

3 A. Correct.

4 Q. What's a -- what's a fetal position? I just -- what is  
5 a fetal position?

6 A. Well, we was -- it's like the table was -- like that's  
7 the table, so we on our knees and my hands was over my head.

8 Q. Okay. And did y'all get under the table?

9 A. Yeah. Our head -- our upper body was underneath the  
10 table.

11 Q. Okay. And that's back where you're washing the dishes?

12 A. That's -- that's past the sinks.

13 Q. Okay. Whoever came in to rob the place was there with  
14 y'all and yelling at you to get on the ground.

15 A. Correct.

16 Q. Okay. Now, the manager of the store, where was he?

17 A. I believe he was in the office.

18 Q. He was back in the office back in the back part of  
19 there, right?

20 A. I believe so.

21 Q. Okay. Now, if the gunman was in there with you and Mr.  
22 White, what -- who was back there with the manager?

23 A. No one as far as I know of. As far as I know, was no  
24 one in the store but me, James and Aaron.

25 Q. Okay. So -- but I'm talking about the gunman. I'm

**GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH**

307

1 talking about one gunman versus two gunman. If there was a  
2 gunman in the back back there -- you've been in the  
3 courtroom, right, for the whole trial?

4 A. Yes.

5 Q. Okay. And if there was a gunman in the back with the  
6 manager, who was the gunman in there with y'all?

7 A. There was no one else in there with us, I don't  
8 believe.

9 Q. Okay. So you think it was just one person was covering  
10 both areas?

11 A. I believe so.

12 Q. You believe so or do you know so?

13 A. I don't know for certain.

14 Q. Okay. Okay. That's fair. Do you know Mr. White  
15 pretty well?

16 A. As far as work -- everything was work related between  
17 me and Mr. White, yes.

18 Q. Okay. And y'all would -- y'all worked together in the  
19 dishwashing station when y'all worked together, right?

20 A. Correct.

21 Q. Okay. And one person puts the dishes out and the other  
22 person hoses it down and then y'all switch back and forth?

23 A. It varies, but usually, no. Like I'm usually always  
24 the person -- I'm usually always the one running the  
25 machine.

GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH

308

1 Q. Okay. So you're usually running the machine and he  
2 would -- what would that mean he would do?

3 A. He would catch the dishes that comes out and stack  
4 them, dry them and put them in their proper place.

5 Q. Okay. And you knew he had a stage name, right?

6 A. I know him as Junior.

7 Q. Yeah, Junior. And you know he's a rapper?

8 A. Yeah, he mentioned that.

9 Q. Okay. When he mentioned it he told you he was a  
10 rapper?

11 A. Yeah.

12 Q. Okay. And did he tell you that he had had a big rap  
13 concert two days before?

14 A. I don't recall.

15 Q. You don't recall that?

16 A. No, I don't.

17 Q. Okay. So were you present -- you didn't hear him  
18 talking about the rap concert and making two bands with  
19 Aaron?

20 A. Excuse me?

21 Q. Did you not hear him talking about the rap concert and  
22 making two bands with the manager?

23 A. No, sir.

24 Q. Okay. So you weren't present in there when that  
25 conversation took place?

**GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH**

309

1 A. No, sir.

2 Q. Okay. Now, you gave a statement on the 23rd of January  
3 two days -- three days later, correct?

4 A. I don't know exactly the day it was I made the  
5 statement, but ...

6 Q. Okay. Well, let me just ask you this. Is that your  
7 signature?

8 A. Yes.

9 Q. Okay. And is it dated?

10 A. Yes.

11 Q. Okay. So if I say it's the 23rd of January, 2014  
12 you'll agree with me?

13 A. Correct.

14 Q. Okay. And you'll agree with me that you gave that  
15 statement three days after the robbery?

16 A. Correct.

17 Q. Okay. Now, would that be your best recollection of  
18 this, would have been what you gave three days later, or  
19 would it be today?

20 A. Excuse me? Say that again.

21 Q. Okay. Would you remember better three days after the  
22 robbery or would you remember it two and a half years later?

23 A. Three days after the robbery, of course.

24 Q. Okay. Now, that day when y'all were back there working  
25 did Junior, did my client, Mr. White, did he ever leave that



GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH

310

1 kitchen area after y'all got to closing time?

2 A. Apparently he had to. He had to put the dishes away.

3 Q. Well, he had to put the dishes away, but those are back  
4 there, right?

5 A. Yeah.

6 Q. Okay.

7 A. But that's not the only place we store the dishes.

8 When the dishes come out from the machine, it's a shelf that  
9 we put them on until they get pretty fairly hot until we  
10 take them to the designated area so it doesn't back up our  
11 machine operator.

12 Q. Okay. When you gave your statement that night, three  
13 days after this, did you tell the police that Junior never  
14 left that dishwashing area?

15 A. I believe so.

16 Q. Okay. Well, let's -- if you don't -- if you want to  
17 refresh your memory, you can look right here and just see  
18 what it -- this is your handwriting?

19 A. No, sir.

20 Q. Okay. Can you read it?

21 A. Sure. From the time we close, me and James ---

22 **THE COURT:** Whoa, whoa, whoa.

23 **MR. YARBOROUGH:** You'd better speak up.

24 **THE COURT:** No, let him read it to himself and refresh  
25 his ---

**GRADY PUGH - CROSS EXAMINATION BY MR. YARBOROUGH**

311

1           **MR. YARBOROUGH:** Okay.

2           **THE COURT:** --- recollection. And then you can ask him  
3 what you want to ask him.

4           (Pause)

5       Q.    Okay. Does that refresh your recollection?

6       A.    Yes.

7       Q.    Okay. What is your recollection of whether Junior left  
8 the dishwashing area or not that evening?

9       A.    That he didn't leave the area is what I put on the  
10 statement.

11      Q.    Okay. And you said before this statement is a better  
12 recollection of what happened that night than your testimony  
13 today, is that correct?

14      A.    Correct.

15      Q.    Okay. So is it your testimony that from the time we  
16 close, me and Junior stayed in the dishwashing area?

17      A.    Yes, but prior ---

18      Q.    Okay.

19           **MS. SIMPSON:** No. Objection, Your Honor. He can  
20 finish. Mr. ---

21           **THE COURT:** I know he can.

22      A.    Like I -- as I was mentioning to you, as I run the  
23 dishes through the machine and he brings them out and dries  
24 them, he stacks them on a little shelf that's right there on  
25 the table. It's a shelf where we stack the dishes at. At

**GRADY PUGH - CROSS EXAMINATION BY MS. ROSS**

312

1     some point in time he has to take the dishes to the  
2     designated area as well as the pans.

3     Q.    Okay. Well, did you tell the police that that night?

4     A.    No, sir, I didn't.

5     Q.    Okay. But did you just not recall that?

6     A.    I just didn't tell -- I wasn't thinking.

7     Q.    Right. Well, I mean, to your knowledge did Mr. White  
8     have anything to do with this robbery?

9     A.    Not to my own knowledge. I have no -- no knowledge of  
10    it, no.

11    Q.    Did he seem scared when the robber was there?

12    A.    I don't know. I know I was.

13    Q.    Okay. But he -- and he was on the floor right next to  
14    you, right?

15    A.    Yes, sir.

16    Q.    And he was in the fetal position?

17    A.    Yes, sir.

18    Q.    I don't have any further questions.

19    **Cross Examination by Ms. Ross:**

20    Q.    Hey, there. Okay. I represent Gerald Gadsden, who's  
21    sitting right over there. Earlier on direct you said that  
22    was the first time you saw him was today. You didn't know  
23    him, right?

24    A.    Correct.

25    Q.    And you said the first time you'd seen him was today?

**GRADY PUGH - CROSS EXAMINATION BY MS. ROSS**

313

1 A. As far -- yes.

2 Q. Okay. And that's not -- you've seen a picture of him  
3 because you were shown a picture of him in a photo lineup  
4 two days after the robbery ---

5 **MS. SIMPSON:** Objection, Your Honor.

6 **THE COURT:** Sustained.

7 **MS. SIMPSON:** With respect to ---

8 **MS. ROSS:** I'll put it up. Deal with that later.

9 Q. You were shown a photo lineup a couple of days after  
10 the robbery, weren't you?

11 A. Yes.

12 Q. And from that photo lineup you couldn't identify anyone  
13 as the robber, could you?

14 A. Correct.

15 Q. Okay. And then just going back quickly to the  
16 statement you gave, wasn't it in response to the officer's  
17 question that you said that you didn't see Mr. White leave  
18 the area?

19 A. I'm sorry, I misunderstood.

20 Q. Well, I guess if we'd gone over your statement a little  
21 bit, but kind of near the end of it is when you said that as  
22 far as I can remember from the time we closed, me and James  
23 stayed in the dish area.

24 A. Correct.

25 Q. Wasn't that in response to questioning from the officer

GRADY PUGH - CROSS EXAMINATION BY MS. ROSS

314

1 or did you just come up with that?

2 A. Response from questions from officers.

3 Q. So they asked you a question, you thought about it and  
4 gave an answer?

5 A. It was simultaneously.

6 Q. Now, wouldn't you have remembered if Mr. White had  
7 walked out minutes before someone held a gun to your face?

8 A. Not -- not really.

9 Q. You don't think that would have been relevant if like a  
10 couple of minutes before I was robbed he was out of there?

11 A. I'm working. I'm at my job place. I'm not even -- I'm  
12 concentrating on going home.

13 Q. Okay. But at the time you gave the statement you  
14 didn't think about -- you thought he'd stayed there the  
15 whole time and that's why you signed that statement saying  
16 that?

17 A. I signed the statement because they asked was he in the  
18 area. I was being -- thinking that they was talking about  
19 at the particular time the incident took place.

20 Q. Okay. And at that time you didn't know that law  
21 enforcement had decided Mr. White was a suspect, did you?

22 A. No.

23 **MS. SIMPSON:** I ---

24 A. No, ma'am.

25 Q. You didn't know, did you?

GRADY PUGH - CROSS EXAMINATION BY MS. ROSS

315

1 A. Excuse me? Say that again.

2 Q. You didn't know that ---

3 MS. SIMPSON: Objection, Your Honor.

4 MS. ROSS: Judge, it's relevant when he gave this  
5 statement. He's saying he did not know that law enforcement  
6 had pinpointed Mr. White as a suspect.

7 THE COURT: I don't know that that's the case.

8 MS. SIMPSON: Exactly.

9 MS. ROSS: All right.

10 THE COURT: Do we have evidence in here of that, Ms.  
11 Ross?

12 MS. ROSS: Okay. I just didn't hear the basis of the  
13 ---

14 THE COURT: Do we ---

15 MS. ROSS: --- objection.

16 THE COURT: --- have evidence to what you just said?  
17 Well, ---

18 MS. ROSS: No, Your Honor.

19 THE COURT: --- don't be making statements that are not  
20 in evidence.

21 Q. Do you recall the date that you gave your statement?

22 A. Apparently it was the 23rd. That's what's signed off  
23 on the paper.

24 Q. Okay. Can you see what the date is? Does that refresh  
25 your memory?

**GRADY PUGH - REDIRECT EXAMINATION BY MS. SIMPSON**

316

1 A. Yeah, I see it.

2 Q. So can you tell the jury what that date was now?

3 A. 23rd.

4 Q. So that was three days after?

5 A. Correct.

6 Q. All right. Thank you. I've got no further questions.

7 **THE COURT:** Anything?

8 **MS. SIMPSON:** Just brief, Your Honor.

9 **Redirect Examination by Ms. Simpson:**

10 Q. With respect to the photo lineup, you actually -- do  
11 you remember telling police that you don't think you could  
12 pick the gunman out of the photo lineup?

13 A. That's correct.

14 Q. And you actually put that in your statement?

15 A. That's correct.

16 Q. And you went to the Law Enforcement Center three days  
17 after the robbery, correct? Well, it happened on the 20th.  
18 We've just clarified your statement was given on the 23rd.  
19 Or they came to you.

20 A. Yeah, it was an issue about that. I can't exactly say  
21 it was the same day. I'm not -- I know I came down to the  
22 detention center to give my statement. And the detective  
23 that I was supposed to give my statement to, they said he  
24 was out on some type of duty or something.

25 So that's when I got a call from the detective who

GRADY PUGH - REDIRECT EXAMINATION BY MS. SIMPSON

317

1     asked me why I didn't show up at the appointed time to come  
2     make my statement. And once again I told the detective on  
3     the phone I did show up. He said to me, well, you know  
4     we've got cameras here if you're lying to me, et cetera, et  
5     cetera. I said I did -- I seen the officer on the left  
6     behind the petition. And he ---

7     Q.   And they gave -- and you told them that, and then you  
8     gave them a written statement?

9     A.   No. After ---

10    Q.   I mean, they came to you to get a written statement?

11    A.   Exactly.

12    Q.   Okay. So you did tell police what you knew?

13    A.   Yes, ma'am.

14    Q.   Not only that night, but the night -- several days  
15    later?

16    A.   Correct.

17    Q.   And in that statement, the gunman -- actually, I want  
18    to back up. Mr. Yarborough kind of hinted that maybe there  
19    were two people. After the gunman ordered you on the floor  
20    do you know whether he just stayed there yelling at you or  
21    do you even know ---

22    A.   I don't know.

23    Q.   And, like I said, you couldn't see his face?

24    A.   Correct.

25    Q.   And you were just scared, praying for your life?



**GRADY PUGH - RECROSS EXAMINATION BY MR. YARBOROUGH**

318

1 A. Correct.

2 Q. And just to be clear, the dishwasher area, a big deal's  
3 been made, you said several times the responsibility is to  
4 at some point after putting the dishes on the shelf ---

5 **THE COURT:** Let's ask a question.

6 **MS. SIMPSON:** Okay.

7 Q. As far as Mr. White or Junior, where he would have been  
8 placing the dishes, you said they go in a certain place.

9 What do you mean by that? A certain area?

10 A. They go on the line and in the alley.

11 Q. Okay. And then do certain dishes need to go into the  
12 bar area?

13 A. No.

14 Q. Okay. In the alleyway, though?

15 A. In the alleyway, yes.

16 Q. Okay.

17 **MS. SIMPSON:** Nothing further.

18 **THE COURT:** Anything?

19 **MR. YARBOROUGH:** Yes, sir, Your Honor.

20 **Recross Examination by Mr. Yarborough:**

21 Q. You were asked by Ms. Ross about your relationship with  
22 Mr. White. Do you know him pretty well?

23 A. As far as work related, we talked at work.

24 Q. And y'all talked on the phone periodically?

25 A. If we had a conversation, it was more or less work

GRADY PUGH - RECROSS EXAMINATION BY MR. YARBOROUGH

319

1 related as far as scheduling and stuff of that nature or if  
2 he was going to be late or call out or something like that.

3 Q. All right. Did you -- did you -- what's your telephone  
4 number back then?

5 A. I don't remember what number they had on file.

6 Q. Was it ?

7 A. That sounds -- yeah, that's one of my phone numbers.

8 Q. Is that one of your phone numbers? Do you have  
9 multiple phones?

10 A. No. I've had multiple phones since then.

11 Q. Oh, since then you've had multiple phones. And so you  
12 stayed in pretty good contact when you and -- when you and  
13 Mr. White were working together y'all exchanged texts and  
14 talked, right?

15 A. Yes, it's common.

16 Q. Okay. So, I mean, you knew him pretty well?

17 A. Well, I have all of the -- that's underneath my phone  
18 numbers.

19 Q. Okay. But did you text them all?

20 A. Yeah, at one point in time. Yes, it varies. Like I  
21 said, if it's -- if something comes up to whereby they can't  
22 show up for work, more or less my management comes to me to  
23 find someone to cover the shift.

24 Q. Okay. Well, was Mr. White still working with you on  
25 the 22nd?

**GRADY PUGH - RECROSS EXAMINATION BY MS. ROSS**

320

1 A. I wasn't at work on the 22nd.

2 Q. Okay. But were you texting Mr. White on the 22nd?

3 A. I have no recollection. I can't recall.

4 Q. If Mr. White's phone got a text from you on the -- from  
5 on the 22nd would that have been you?

6 A. If that's my phone.

7 Q. That -- well, I was just asking you was that your phone  
8 number?

9 A. Yes.

10 **MR. YARBOROUGH:** I don't have any further questions.

11 Thank you, Your Honor.

12 **MS. ROSS:** Just a few brief questions.

13 **Recross Examination by Ms. Ross:**

14 Q. Do you recall when you were shown the photo lineup  
15 where you were?

16 A. I was at the job. I was in the breakroom.

17 Q. So you were at the Olive Garden?

18 A. Yes, ma'am.

19 Q. Do you recall if that was before or after you gave your  
20 statement?

21 A. After.

22 Q. It was afterwards?

23 A. Yes, ma'am.

24 Q. Okay.

25 **MS. ROSS:** No further questions.

**JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON**

321

1           **THE COURT:** All right. You may step down. All right.

2           You want to call your next witness?

3           **MS. SIMPSON:** The State calls Officer Middleton.

4                               **James Middleton,** being  
5           duly sworn testified as follows;

6           **MADAME CLERK:** Please have a seat. And will you state  
7           your full name for the record.

8           **MR. MIDDLETON:** James Middleton.

9           **Direct Examination by Ms. Simpson:**

10          Q.    Officer Middleton, where are you employed?

11          A.    The Greenville Health System Police Department.

12          Q.    And how long have you been with the Greenville Health  
13          System?

14          A.    I've been with the Greenville Health System about two  
15          -- two and a half years.

16          Q.    Okay. And prior to that where were you working?

17          A.    The Greenville County Sheriff's Office.

18          Q.    And let me back up. What is your current position with  
19          the Greenville County Health System?

20          A.    Police officer, patrolman.

21          Q.    Okay. So you're still in law enforcement?

22          A.    Yes.

23          Q.    Tell the jury just a little bit about your law  
24          enforcement background.

25          A.    Total, I've got about sixteen and a half years,

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

322

1 including time in Ohio, Greenville County Sheriff's Office  
2 and now the Greenville Health System. I've done everything  
3 from uniform patrol, K-9 handler, field training officer.

4 Q. And going back to 2014 where were you working at that  
5 time?

6 A. The Greenville County Sheriff's Office.

7 Q. And in January of that year what was your position?

8 A. I was a uniform patrol deputy.

9 Q. Uniform patrol deputy?

10 A. Um-hum (affirmative).

11 Q. And did you also work with K-9 at some point?

12 A. I did.

13 Q. I may have missed that.

14 A. I had a K-9 at the time, but I was assigned to the  
15 Uniform Patrol Division.

16 Q. Okay. So you may do kind of dual ---

17 A. Yes.

18 Q. --- duties? And as a member of the Uniform Patrol  
19 Division, tell the jury a little bit about your duties and  
20 what you do.

21 A. Uniform patrol, I would -- there'd be calls for  
22 service, people call 911, I would respond to calls, enforce  
23 laws and also being K-9 at the same time, I'd also handle  
24 calls that people needed a K-9 for tracking to find people.

25 Q. When you're on uniform patrol are you assigned to

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

323

1 certain areas?

2 A. Yes, beat areas.

3 Q. How does that work?

4 A. Greenville County -- Greenville County's split up into  
5 ten beat areas. And so you're usually assigned to one  
6 specific beat area.

7 Q. And turning your attention to January of 2014 did you  
8 have an occasion to respond to an armed robbery call?

9 A. Yes.

10 Q. Tell the jury about that.

11 A. We got our radio call for a possible armed robbery in  
12 progress or had just occurred at the Olive Garden in the  
13 Cherrydale area on North Pleasantburg Drive.

14 Q. And was this your beat that you were working that  
15 evening?

16 A. I can't remember if it was my exact beat or the  
17 adjacent beat. Like we call the west side is four beat  
18 areas. So I was either eight or nine. And that's in area  
19 nine. I don't remember which one I was assigned to that  
20 night.

21 Q. Okay. But you're pretty familiar with the areas of  
22 beat and where you worked?

23 A. Yes.

24 Q. And when -- once you got the call, how long did it take  
25 you to actually get there? Were you ...

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

324

1 A. I don't recall exactly. I know it was fairly quick  
2 because I was -- I know I was on-scene fairly quickly for  
3 this call.

4 Q. And when you arrived on the scene were you the first  
5 officer to arrive?

6 A. Yes.

7 Q. And the call came out as an armed robbery call. Did  
8 you have any additional information about what you were  
9 responding to?

10 A. At the time I don't think I did because I believe I got  
11 on the scene fairly quick before they could give additional  
12 information. So I don't -- I don't remember recalling  
13 having any further information when I arrived on-scene.

14 Q. Okay. And what is the address of the Olive Garden that  
15 you responded to?

16 A. Can I refer to my ---

17 Q. Yes.

18 A. --- report? I don't recall the address. It is 3290  
19 North Pleasantburg Drive in Greenville, South Carolina.

20 Q. Okay. So that is here in Greenville. And is that kind  
21 of known as the Cherrydale area?

22 A. Yes.

23 Q. And based on your report what was the time of your  
24 arrival?

25 A. 11:28.

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

325

1 Q. Okay. And when you arrived, I guess, the call goes  
2 out, are other units responding as well ---

3 A. Yes.

4 Q. --- even though you're the first? When you first got  
5 there what did you observe?

6 A. When I first arrived on-scene, walking up to the front  
7 door, I noticed there was coins and dollar bills spread  
8 across the sidewalk leading from the front door, kind of  
9 running around the side of the building.

10 I also noticed a broken brick that was laying right  
11 next to the front door of the building. As I approached the  
12 door there was broken glass. I could see a broken glass  
13 pane from the front door, but there was two panes of glass.  
14 I only noticed the front -- one pane of glass was broken,  
15 the back pane was still intact. So it didn't actually break  
16 all the way through. And then I noticed a white rag that  
17 was rapped or it was laying on the ground which was  
18 prohibiting the door from closing.

19 Q. And who was the first person you made contact with when  
20 you arrived on the scene?

21 A. He was the night manager, Mr. Kretzschmar.

22 Q. Okay. And do you recall where you made contact with  
23 him?

24 A. At the front door.

25 Q. And did he convey to you what had just occurred?



JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

326

1 A. Yes.

2 Q. And based upon what he told you were you aware of  
3 whether or not anybody else was inside or whether the armed  
4 robber was still present?

5 A. After talking with him for, I don't know, it was a very  
6 short period, I wasn't sure -- he wasn't sure if the suspect  
7 was still on-scene. He also made mention there was supposed  
8 to be two employees that were there. He wasn't sure if they  
9 left. So I was unsure if the building was secure at that  
10 time.

11 Q. And in that particular occasion what do you do?

12 A. I waited for at least one more unit to get on-scene.  
13 And we checked the building to make sure there was no more  
14 suspects or anybody else -- just to see if we could find  
15 anybody else in the building.

16 Q. So essentially y'all do kind of a protective sweep.

17 A. Correct.

18 Q. And during that sweep did you find anything?

19 A. Yes.

20 Q. What did you observe?

21 A. While walking through the restaurant we found more  
22 bills, coins scattered throughout the building. While  
23 checking the kitchen area we found two individuals kind of  
24 in the fetal position underneath a counter or underneath a  
25 sink or something -- underneath something in the back corner

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

327

1 of the kitchen.

2 Q. Okay. And the two individuals, did you ultimately  
3 identify who they were?

4 A. Yes.

5 Q. And who were they?

6 A. Mr. White and Mr. Pugh.

7 Q. And would that have been the employees that Mr.  
8 Kretzschmar was referring to?

9 A. Yes.

10 Q. Did you actually find the gunman or anybody else in the  
11 building?

12 A. We did not find anybody else in the building.

13 Q. I'm going to show you what's already been introduced  
14 into evidence, State's 2 through 29. Do you recognize these  
15 photos?

16 A. Yes. These are pictures at the front of the entrance,  
17 pictures of the rag in the door, pictures of the building,  
18 the Olive Garden.

19 Q. Okay. When you observed it that night?

20 A. Yes.

21 **MS. SIMPSON:** Permission for the witness to step down,  
22 Your Honor.

23 **THE COURT:** He may.

24 Q. Okay. If you could, step down. And I'm going to back  
25 up before we move on.

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

328

1           **THE COURT:** All right. I want him on ---

2           **MS. SIMPSON:** We'll switch sides.

3           **THE COURT:** --- this side, speaking back towards the  
4 jury and so the court reporter can hear him.

5           A. Okay.

6           **THE COURT:** And speak up, please, sir.

7           A. Yes, sir.

8           Q. I'm going to show you what's referred to as State's  
9 exhibit 3 that's been mentioned. What do you see here?

10          A. That is the front entrance to the Olive Garden where I  
11 first approached where I came into the Olive Garden.

12          Q. Okay. And the window, describe how it's shattered  
13 because there's been some confusion, I guess, as to ---

14          A. There's, obviously, two doors. There's a window pane  
15 to the right side that you can see is shattered, but it's  
16 two panes of glass. So only the outer pane of glass is  
17 actually broken through. The inside pane of glass was still  
18 fully intact. It wasn't even -- it wasn't cracked or  
19 anything.

20          Q. And can we see that better in State's exhibit 4?

21          A. Yes.

22          Q. Okay. So -- and the brick, point out for the jury  
23 where that is.

24          A. It's right there at the bottom edge of the door to the  
25 right side of the door.

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

329

1 Q. And based on your experience did it look as though the  
2 brick had been thrown at the window?

3 A. That would be my guess since it looked like it bounced  
4 off and was laying on the ground on the outside.

5 Q. And did you make any efforts to determine where that  
6 brick came from or did you know if it was ---

7 A. Just briefly while I was there because we were trying  
8 to -- trying to secure the area. I looked. I didn't notice  
9 any brick from the outside of the building missing or there  
10 was a flower area, and I didn't see a brick missing from  
11 there either.

12 Q. Okay. So it didn't look like it came from the flower  
13 pots or ---

14 A. No.

15 Q. --- any area near the restaurant?

16 A. No.

17 Q. And then in State's exhibit 7 and 9, describe for the  
18 jury what we see here.

19 A. This is the doors coming in. On the very bottom you  
20 can see a white rag that's laying -- basically it's  
21 prohibiting the door from closing or securing. And that's  
22 the white rag that I was saying I saw on the bottom  
23 prohibiting the door from closing.

24 Q. Okay. And we can see it better here, but it's actually  
25 propping open both sides of the door, correct?

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

330

1 A. Yes.

2 Q. In State's 11, that's just a closeup?

3 A. (Affirmative nod).

4 Q. And Mr. Kretzschmar, was he on the inside waiting for  
5 you ---

6 A. Yes.

7 Q. --- to arrive?

8 A. Yes.

9 Q. And I'm going to show you State's 12. As you did the  
10 protective sweep, do you recall where this is? Is that the  
11 area ---

12 A. That looks like going in towards, I believe, going -- I  
13 think this is the door to the kitchen, if I'm not mistaken.

14 Q. Okay. And the kitchen area -- I'm going to show you  
15 State's exhibit 13.

16 A. That's ---

17 Q. Is that the area going into it?

18 A. I believe that's the doorway -- I think that's from the  
19 doorway going into the kitchen.

20 Q. So that's our perspective looking in. Then in State's  
21 14, is this what you described ---

22 A. Yeah, that's ---

23 Q. --- as far as ---

24 A. --- the money and change on the kitchen floor that we  
25 had found when we were searching the building.

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

331

1 Q. And based on Mr. Kretzschmar, and like I said, he gave  
2 you some information. Did he tell you where or show you  
3 where the actual assault took place and the robbery?

4 A. After we searched the building, yes. After we located  
5 the other two individuals, yes.

6 Q. Okay. And as far as locating the other two  
7 individuals, were they in this dishwasher area when you  
8 arrived or do you recall ---

9 A. If I recall correctly -- I can't remember if it was  
10 this corner or this corner, but, yes, they were in the back  
11 corner of that kitchen, yes.

12 Q. Kind of crouched down ---

13 A. Yes.

14 Q. --- in the area? And I'll show you, here we go,  
15 State's exhibit 18. What area are we seeing here?

16 A. That looks like more part of the kitchen and  
17 dishwashing area.

18 Q. Okay. And then State's 16 the same?

19 A. Yeah. More of the kitchen and dishwashing area, yes.

20 Q. In the area when you arrived were buckets overturned,  
21 anything looked somewhat in disarray?

22 A. Yes. That's pretty much what it looked like, buckets  
23 on the ground, the trays on the ground.

24 Q. And the money on the ground?

25 A. And the money on the ground, yes.

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

332

1 Q. Okay. Then I'm going to show you State's 22. What  
2 area did that lead into?

3 A. That looks like the door to the manager's office. It  
4 was off to the side of the kitchen. You had to walk -- go  
5 down a different hallway to it.

6 Q. And when you arrived do you remember if it was locked  
7 and closed or was it ...

8 A. It was closed because he had keys to unlock it for me  
9 to show me where the safe was that he told me that he had to  
10 open up for the suspects.

11 Q. Okay. So he actually had to open that? It did ---

12 A. Yes.

13 Q. --- close and lock on its own?

14 A. Yeah, it was -- I think it was an automatic door  
15 because even while we were in there he had -- I had to sit  
16 there and hold it open.

17 Q. Okay. And then I'm going to show you State's 28. Do  
18 you recognize that?

19 A. That's the counter just outside the kitchen. It's kind  
20 of hard to see. Up here is a, I guess, a video camera  
21 system or a camera where they had -- their surveillance  
22 video, I'm sorry.

23 Q. Okay. And did you actually -- you haven't been in  
24 here, but did you observe the camera? We can't see the  
25 screen, right?

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

333

1 A. Correct.

2 Q. Of the actual camera. While you were there did the  
3 store manager point it out to you?

4 A. He showed it to me, but I believe he said it was on  
5 hold or something like that. He said it was not something  
6 common that it usually said.

7 Q. And did you actually observe it saying it was on hold?

8 A. Yes.

9 Q. Okay. You can have a seat. Now you mentioned that you  
10 had a K-9, but while you were there did you actually call  
11 for K-9 to come out?

12 A. I don't recall if I called for him or since it was put<sup>^</sup>  
13 over the radio he might have already been en route also. I  
14 can't remember if I called or he was already en route.

15 Q. And did crime scene investigators also arrive?

16 A. Yes.

17 Q. Once you encountered, and I'm going to back up just a  
18 little bit, the two employees, Mr. Pugh and Mr. White,  
19 describe what happened.

20 A. When I first located them I announced who I was, I was  
21 the sheriff's office, and basically I had them come out of  
22 the kitchen and had them wait out in the bar area til I  
23 could make sure the rest of the building was secure. That  
24 way I could come and talk to them later to find out what  
25 happened or what they saw.



JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

334

1 Q. And when you encountered Mr. Pugh what did you observe  
2 about him?

3 A. He just seemed very nervous, shaking, kind of  
4 flustered, kind of -- when trying to get a description from  
5 him on what happened, he just -- he was too nervous and  
6 basically told me what he briefly saw before he ducked down  
7 in the corner.

8 Q. Okay. And then did you also speak with the Defendant  
9 in this case, Mr. White?

10 A. Yes.

11 Q. And did he give you a description as well?

12 A. Yes, he did.

13 Q. And what did he tell you specifically based on ---

14 A. If I could -- could I -- if I could refer to this  
15 again.

16 MR. YARBOROUGH: What's he referring to?

17 MS. SIMPSON: His report.

18 A. When I spoke with Mr. White he said that he was in the  
19 kitchen cleaning dishes with Mr. Pugh when an unknown black  
20 male came up behind them and pointed a gun at them and told  
21 them to get on the ground in the corner and that he stayed  
22 there until I found him.

23 Mr. White described the suspect as a black male wearing  
24 a brown or camouflage hoodie and had a black handgun. Mr.  
25 White stated his back was to the suspect when he came in and

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

335

1     only heard him screaming and when he turned around and saw  
2     the gun, he got on the ground and was unable to give me any  
3     further description.

4     Q.    Okay.  So -- and was that description pretty consistent  
5     with what Mr. Kretzschmar and Mr. Pugh gave you?

6     A.    Yes.

7     Q.    And describe James White's demeanor when he was  
8     speaking to you and when you first encountered him.

9     A.    He seemed calm, just wasn't able to give much of a  
10    description, but just nonchalant calm about it.

11    Q.    Once you cleared the scene -- and let me ask you this.  
12    As far as an armed robbery case such as this, you're the  
13    responding officer, correct?

14    A.    Yes.

15    Q.    Are these cases -- do you actually investigate them  
16    yourself or follow up or are they turned over?

17    A.    Usually with a severe crime like this, they're turned  
18    over to our Robbery Division or Violent Crimes Division.

19    Q.    And did you document everything that you did in this  
20    case in the form of a report?

21    A.    Yes.

22    Q.    And was that provided to the Robbery Division?

23    A.    I would assume so, yeah.  I mean, on my copy of the  
24    report, I see it's turned over for followup investigation to  
25    the CID armed robbery.  I didn't physically hand it to them,

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

336

1 but I would assume it was turned over to them, yes.

2 Q. Mr. White, who you encountered and got a statement  
3 from, do you see him in the courtroom here today?

4 A. Yes.

5 Q. And can you point him out for the jury?

6 (Whereupon the witness pointed to the Defendant, James  
7 White)

8 A. He's wearing the burgundy and white polka dotted shirt  
9 sitting down over there.

10 **MS. SIMPSON:** Let the record reflect he's identified  
11 the Defendant, James White.

12 (Pause)

13 Q. Were you -- did you remain present at the scene during  
14 the duration of the investigation ---

15 A. Yes.

16 Q. --- or most of it? So were you there when crime scene  
17 came ---

18 A. Yes.

19 Q. --- to investigate? The dishtowel that was collected,  
20 who actually collected that? Do you recall?

21 A. I'm sorry? The what? The dishtowel?

22 Q. Yes.

23 A. I didn't see it collected 'cause -- but I would assume  
24 CID or forensics would have collected that as part of their  
25 investigation.

**JAMES MIDDLETON - CROSS EXAMINATION BY MR. YARBOROUGH**

337

1 Q. Okay. But you did see the towel in the door propping  
2 the door?

3 A. Yes.

4 Q. And I'm going to show you what's been marked as State's  
5 exhibit 33. The dishtowel we see in there, is that  
6 consistent with what you saw?

7 A. Yes.

8 Q. And did you learn where that dishtowel may have come  
9 from?

10 A. Well, speaking with the first victim or complainant I  
11 spoke to, Mr. Kretzschmar, he advised me that it was a  
12 restaurant dishtowel that they used to wipe down the tables  
13 with.

14 Q. And do you know the name of the forensic technician who  
15 actually came out ---

16 A. If I could refer to my ---

17 Q. Yes.

18 A. Outen, Investigator Outen.

19 Q. And she would have been the one that actually collected  
20 it?

21 A. If -- I would -- yes, she would be the one collecting  
22 -- yes.

23 Q. Thank you, Officer Middleton.

24 **Cross Examination by Mr. Yarborough:**

25 Q. You worked that area?

JAMES MIDDLETON - CROSS EXAMINATION BY MR. YARBOROUGH

338

1 A. Yes, sir.

2 Q. Would you call that area behind there a high crime  
3 area?

4 A. We get calls for service throughout that area, yes.

5 Q. Yeah. I'm talking about behind the -- going up towards  
6 25, behind the Olive Garden and the FedEx over there, that  
7 area in there, is that a high crime area?

8 A. There's parts -- there's certain parts of the  
9 neighborhoods that are, but there's a lot of nice areas  
10 there also.

11 Q. Sure. But the area that's -- if I could show you this.  
12 The area that's right behind there, you work that area on a  
13 regular basis?

14 A. Yes. I worked the west side, which that included part  
15 of that area, yes.

16 Q. Right. And there are some -- in this area there's some  
17 empty houses, houses that have been abandoned where there  
18 are homeless people living?

19 A. I'm not a hundred percent sure if there's homeless  
20 people living there or not. I'm not ---

21 Q. Well, I mean, if you know the houses I'm talking about  
22 that are behind there that have been shut down?

23 A. Off the top of my head I'm not recalling the ones that  
24 are shut down right there, no.

25 Q. Okay. Well, let's -- you work this area, right?

JAMES MIDDLETON - CROSS EXAMINATION BY MR. YARBOROUGH

339

- 1 A. It was part of the west side. I was -- I normally  
2 worked area eight. This is area nine.
- 3 Q. Okay. But you know the area behind the Olive Garden?
- 4 A. Yes.
- 5 Q. Okay. And there are -- there's a small section of the  
6 community back there that's -- it's not a very wealthy  
7 population. Do you agree with that?
- 8 A. Okay.
- 9 Q. I mean, it's a -- it's a crime area back there.
- 10 A. Okay.
- 11 Q. Okay. Would you agree with that?
- 12 A. There are parts of it, yes.
- 13 Q. Okay. Now, did you go back up in that area after you  
14 went in there and looked to see if you saw somebody out  
15 there that night?
- 16 A. I did not, no.
- 17 Q. You went into the -- when you got there you saw the  
18 rock and you saw the broken window, right? And you went  
19 inside.
- 20 A. When I first arrived, yes, I saw the brick on the  
21 ground and the broken window.
- 22 Q. Okay. And you saw the rag in the bottom down there?
- 23 A. Yes.
- 24 Q. Okay. And then you went back and you met the manager  
25 inside the door?

JAMES MIDDLETON - CROSS EXAMINATION BY MR. YARBOROUGH

340

1 A. Yes.

2 Q. Okay. And you went back to look and see if the people  
3 in the back were okay. And that's when you saw Mr. White  
4 and Mr. Pugh in a -- what you said a -- your report said a  
5 fetal -- Mr. White was in a fetal position?

6 A. While searching the building, yes, that's where I found  
7 them.

8 Q. Okay. In the back corner of the kitchen?

9 A. Yes.

10 Q. Okay. And that's where you found Mr. White?

11 A. And Mr. Pugh, yes.

12 Q. And Mr. Pugh. And you talked to Mr. White that night,  
13 right?

14 A. Yes.

15 Q. And what did Mr. White tell you about the robber?

16 A. If I could refer to this again?

17 Q. Sure.

18 A. Kind of what I said before was he was cleaning dishes  
19 and he heard an -- he said it was an unknown black male came  
20 up behind him and pointed a gun at them and told them to get  
21 on the ground. And that's when he said he stayed on the  
22 ground until I found them.

23 He stated that his back was to the suspect initially.

24 When he came in he only heard him screaming. And when he

25 turned around and saw the gun he got on the ground and

**JAMES MIDDLETON - CROSS EXAMINATION BY MR. YARBOROUGH**

341

- 1     wasn't able to give me any further description.
- 2     Q.    Okay.  But now is this not your police report here?
- 3     And I could be wrong.  I thought that was your police
- 4     report.
- 5     A.    That appears to be mine.  That first page, yes.
- 6     Q.    And second page?
- 7     A.    Yes.
- 8     Q.    Okay.  Could you go down to your second paragraph on
- 9     the second page?
- 10    A.    Okay.
- 11    Q.    Okay.  Now, you talked to Mr. White and he gave you
- 12    that statement and you put it down, correct?
- 13    A.    Yes.
- 14    Q.    And that statement was made at that time that night?
- 15    A.    Yes.
- 16    Q.    Okay.  And at that time how did Mr. White describe the
- 17    suspect?
- 18    A.    Mr. White described the suspect as a black male wearing
- 19    a brown or camouflage hoodie and had black handgun.
- 20    Q.    So Mr. White, that night, was cooperating with you?
- 21    A.    Yes.
- 22    Q.    And he told you at that time that the gunman had on
- 23    either a brown or a camouflage hoodie?
- 24    A.    Yes.
- 25    Q.    Okay.  And those were his words to you?



JAMES MIDDLETON - CROSS EXAMINATION BY MR. YARBOROUGH

342

1 A. Yes.

2 Q. Did he say anything else about the suspect?

3 A. He stated his back was turned and the suspect was  
4 screaming. When he turned around he saw that he had a gun  
5 -- saw the gun and got on the ground and was unable to give  
6 a further description.

7 Q. Okay. But he did give you those -- the description of  
8 a camouflage hoodie or a brown jacket?

9 A. Yes. A brown or camouflage hoodie, yes.

10 Q. Okay. And ---

11 A. And a black handgun.

12 Q. When you found him he was in a fetal position?

13 A. Yes.

14 Q. And you'd never met him before?

15 A. I don't recall having met him before, no.

16 Q. So you don't really know what his demeanor was like on  
17 a day-to-day basis, do you?

18 A. No.

19 Q. Did you do any other investigation in this case?

20 A. Basically just speaking with the three individuals that  
21 were there and my initial investigation into the crime scene  
22 or what I first observed when I arrived on the scene, no.

23 Q. Okay. Did you take the rag into evidence?

24 A. No.

25 Q. Okay. But you left the rag sitting there?

**JAMES MIDDLETON - CROSS EXAMINATION BY MS. ROSS**

343

1 A. Yes.

2 Q. Okay. Did you take the brick into evidence?

3 A. No.

4 Q. Okay. You left the brick sitting where you found it?

5 A. Yes.

6 Q. And so if the rag's here, I'm assuming that's the rag  
7 that was in the door, is that correct?

8 A. I would -- I didn't take it into custody. So I  
9 wouldn't a hundred percent know ---

10 Q. I'm asking you a question you don't know the answer to,  
11 and I'm sorry.

12 **MR. YARBOROUGH:** I don't think I have any further  
13 questions.

14 **THE COURT:** All right. Ms. Ross.

15 **MS. ROSS:** Thank you, Your Honor.

16 **Cross Examination by Ms. Ross:**

17 Q. Officer Middleton, you were the first officer on the  
18 scene. And I believe your report reflects that you arrived  
19 at 11:28?

20 A. Yes.

21 Q. And this is just a minute, but would it surprise you if  
22 the incident recall said that you reported -- you arrived at  
23 11:27?

24 A. I -- it could be. I don't know. I'm sorry.

25 Q. You're not in charge of that. So -- but would that

JAMES MIDDLETON - CROSS EXAMINATION BY MS. ROSS

344

1 surprise you if you might have radioed in before ---

2 MS. SIMPSON: Objection, Your Honor, with respect to

3 would it surprise you -- he said what time ---

4 THE COURT: What is the relevance ---

5 MS. SIMPSON: I don't even know.

6 THE COURT: --- if it's 11:27 or 11:28?

7 MS. ROSS: All right. It's one minute. Sorry. That's  
8 what it's about.

9 Q. Now, you can hear -- you're walking in on the 911 tape,  
10 and you were met by the man -- the manager, Aaron  
11 Kretzschmar, isn't that true?

12 A. Yes.

13 Q. And at that point was he still on the phone with 911?

14 A. I don't recall if he was still on the phone or not. I  
15 don't recall that.

16 Q. Okay. Now, when you -- you said you spoke to the three  
17 victims individually. Did you take notes at that time?

18 A. I don't -- I don't recall. I know I didn't take a  
19 written statement from them.

20 Q. Okay.

21 A. I might have jotted down their names and like the  
22 description of what they gave me of the suspect just so I  
23 could give it out over the radio, write it down for my  
24 report.

25 Q. All right. So what you have in that report, it's not

JAMES MIDDLETON - CROSS EXAMINATION BY MS. ROSS

345

- 1 just what you recall days later, it might have been  
2 refreshed by what you wrote down in your notes?
- 3 A. Yeah, it would have been refreshed by that. And I  
4 wrote it while I was on-scene that night, this report.
- 5 Q. Okay. And everything in the report is true and  
6 accurate ---
- 7 A. Yes.
- 8 Q. --- to your recollection ---
- 9 A. Yes.
- 10 Q. --- at that time when you wrote it?
- 11 A. Yes.
- 12 Q. Now, what did you say -- the manager, Aaron  
13 Kretzschmar, what was the description of the robber that he  
14 gave you?
- 15 A. If I could refer to this again?
- 16 Q. Sure. I believe it's on the third page in the middle  
17 of the first paragraph.
- 18 A. Do you want me to give -- of his -- just his  
19 description of the suspect?
- 20 Q. Yes.
- 21 A. Let's see. Mr. Kretzschmar described the suspect as a  
22 black male approximately six feet tall, stocky build, tan  
23 jacket, short hair, no facial hair and a black semiautomatic  
24 handgun.
- 25 Q. All right. So he said tan jacket, not camouflage,

JAMES MIDDLETON - CROSS EXAMINATION BY MS. ROSS

346

1 correct?

2 A. Correct.

3 Q. And he said short hair, not dreadlocks, correct?

4 A. Correct.

5 Q. And he said no facial hair?

6 A. Correct.

7 Q. And that is what you wrote down in your report because  
8 that is what he told you that night right after the event  
9 occurred?

10 A. Yes.

11 Q. You said earlier that you walked in, just briefly, you  
12 said there was a bunch of ones on the floor, but also  
13 weren't there five dollar bills, and twenty dollar bills,  
14 and cards and all kinds of stuff on the floor ---

15 A. I don't recall saying just ones. I just -- I recall  
16 saying just coins, and money or bills.

17 Q. So it was just a lot ---

18 A. I don't recall if they were ones, fives, tens. I just  
19 -- I remember seeing bills and coins on the ground.

20 Q. And did you follow sort of the trail and see where it  
21 ended?

22 A. I did not because I was the first officer on-scene. I  
23 had to secure the scene. So I did not follow it around the  
24 corner. I just saw it went around the corner and that's all  
25 I saw while walking in.

**JAMES MIDDLETON - REDIRECT EXAMINATION BY MS. SIMPSON**

347

1 Q. Okay. But while you were there Deputy Anderson -- a  
2 bunch of other deputies got there and they had a dog and it  
3 tracked?

4 A. Yes, I believe they did.

5 Q. All right.

6 MS. ROSS: I've got no further questions.

7 MS. SIMPSON: Briefly.

8 **Redirect Examination by Ms. Simpson:**

9 Q. She just questioned you regarding Mr. Kretzschmar's  
10 description. Right after that line what does he state about  
11 after he was punched and being able to get a description?

12 A. Mr. Kretzschmar stated that after he was punched and  
13 had a gun pointed in his face, he was unable to think about  
14 getting a better description.

15 Q. So what he gave you was just kind of generally what he  
16 saw?

17 A. Yes.

18 Q. And as far as his demeanor, what was his demeanor like?

19 A. He seemed nervous and flustered to me and was nervous  
20 about trying to get it because as he -- as I just stated, he  
21 was ---

22 MS. ROSS: Judge, I think that's beyond the scope of my  
23 cross.

24 THE COURT: Go ahead.

25 A. As I just stated, he was punched and he was unable to

**JAMES MIDDLETON - RECROSS EXAMINATION BY MS. ROSS**

348

1 think about getting a better description.

2 Q. Okay. And when you do a protective sweep -- we've seen  
3 some pictures in the State's exhibit, but the Olive Garden  
4 restaurant, did you actually do a sweep of the whole  
5 restaurant to make sure ---

6 A. Yes.

7 Q. --- whether anyone was there? So the limited areas  
8 we've seen in the picture, that's not the entire restaurant?

9 A. Correct.

10 Q. And the restaurant is fairly -- can you describe it for  
11 the jury?

12 A. If you walk in the front door -- I know off to the  
13 right hand side is kind of the bar area and there's some bar  
14 tables over there. I believe straight ahead is the doors  
15 leading into the kitchen. And off to the left is the  
16 seating area/dining area. And in the back of the dining  
17 area there's some restrooms.

18 Q. Okay. So it's a fairly large area. And you all  
19 checked the entire area?

20 A. Yes.

21 **MS. SIMPSON:** Nothing further.

22 **THE COURT:** Anything, Mr. Yarborough?

23 **MR. YARBOROUGH:** No, sir, Your Honor.

24 **THE COURT:** Anything?

25 **Recross Examination by Ms. Ross:**

**MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON**

349

1 Q. Just let me -- let's be really clear here. You wrote  
2 down short -- tan jacket, short hair, no facial hair because  
3 that's what the victim told you, correct?

4 A. Yes.

5 Q. And though he was nervous, he still told you that?

6 A. Yes.

7 Q. And then he apologized and said, I'm sorry I don't have  
8 a better description, but that was his description?

9 A. I don't recall him apologizing. He just said he  
10 couldn't think of anything further.

11 Q. All right. Thank you.

12 **THE COURT:** All right. Thank you. You may step down.  
13 Call your next witness.

14 **MS. SIMPSON:** The State calls Matt Anderson. Oh, Your  
15 Honor, may Officer Middleton be excused? He was placed  
16 under the Defense's subpoena as well.

17 **MS. ROSS:** No objection, Judge.

18 **MR. YARBOROUGH:** No objection.

19 **THE COURT:** You can be released.

20 **Matthew Anderson, being**  
21 **duly sworn testified as follows;**

22 **MADAME CLERK:** Please have a seat. And will you state  
23 your full name for the record.

24 **MR. ANDERSON:** Matthew Paul Anderson.

25 **Direct Examination by Ms. Simpson:**



MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

350

1 Q. Deputy Anderson, where are you employed?

2 A. Greenville County Sheriff's Office.

3 Q. And if you could, kind of pull the mike ---

4 A. Greenville County Sheriff's Office.

5 Q. Okay. And what is your position there?

6 A. I'm a K-9 handler.

7 Q. K-9 handler?

8 A. Yes, ma'am. I work a dog, basically.

9 Q. Okay. And how long have you been in law enforcement?

10 A. Pushing seven years at the sheriff's office.

11 Q. Okay.

12 A. Maintained a dog for about three years.

13 Q. Okay. So you've been with the K-9 Unit for ---

14 A. About three years.

15 Q. Three years at that?

16 A. Yes.

17 Q. And as a member of the K-9 Unit, you said you work with  
18 dogs, tell the jury your role and your duties.

19 A. I have a dual purpose dog, which means he does  
20 everything from tracking to narcotics to locating articles.  
21 Good thing about dogs is they love to work. So my dog at  
22 the time was Johnny. And he was a Belgian Malinois. He  
23 looks like a shepherd.

24 He was trained in the art of tracking. He could find  
25 narcotics, marijuana, methamphetamine, heroin, cocaine, any

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

351

1 derivative thereof. If somebody throws something, loses  
2 their keys or whatever, he can also find that. He can find  
3 people in buildings.

4 On a day-to-day basis we pretty much just go around and  
5 help uniform patrol in whatever they need help with. If  
6 they need -- they find -- see a house door kicked in and  
7 they don't know if there's anybody in there, he can go in  
8 and clear it. It gives us a little advantage so we don't  
9 have to put a person in first. I can get a new dog, but  
10 somebody can't get a new daddy. So he's my dog to help you,  
11 basically.

12 Q. Okay. So you kind of said this, but under what  
13 circumstances might you be called out to a scene?

14 A. A lot of different reasons. Probably the most  
15 predominant is things of a violent nature where there's an  
16 inherent risk to an officer or a deputy. That and for  
17 narcotics are probably the two most common.

18 Q. With respect to -- you said your dog was Johnny at the  
19 time?

20 A. Yes, ma'am.

21 Q. As a K-9 handler, describe for the jury, I guess, your,  
22 for lack of a better word, relationship with Johnny. Are  
23 you responsible for training ---

24 A. Absolutely.

25 Q. How does that work?

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

352

1     A.   In Greenville County we're fortunate enough to get our  
2     dog and train it from pretty much ground zero. We'll get a  
3     dog from Holland. Johnny had a Holland passport. So it's  
4     kind of neat. Got him when he was about sixteen months old.  
5     And the only thing he knows how to do is -- they know how to  
6     bite. And it's just biting the French linen.

7             And he doesn't even know how to do anything else yet.  
8     He doesn't know how to sit, lay down, how to track. And we  
9     go through about a six hundred hour course. And that's just  
10    leash time.

11            I'm training these dogs. So as this dog learns, I'm  
12    learning, too. The dog goes home with me. He becomes an  
13    intricate part of my day-to-day work and he becomes part of  
14    the family.

15            The great thing about this is as he's learning how to  
16    track, I'm learning his behaviors in tracking. As he's  
17    learning the different odors, I'm learning his behaviors  
18    that I can't teach. Sometimes his tail will move  
19    differently or his ears will move differently.

20            I can't teach him how to -- I can teach him how to sit,  
21    but those are behaviors that he'll display that I can't  
22    teach him that I have to learn and say, hey, he's trying to  
23    tell me something because, you know, they can't turn around  
24    and say, hey, daddy, this is what I see. That would be kind  
25    of scary.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

353

1           So that's -- it's, like I said, he comes home with me  
2   and that is my dog. I'm the only one who can work him. And  
3   that's about it.

4   Q.   And when you're called out to a scene, for instance, in  
5   a case such as an armed robbery or whether there is a  
6   violent suspect on the loose ---

7   A.   Yes, ma'am.

8   Q.   --- or gunman, when you're actually tracking, what is  
9   your focus? Are you -- do you have deputies assist you for  
10   some purpose?

11   A.   I do. In the matters of that, as I said, I have to  
12   watch my dog to see what he's doing. He'll throw behavior  
13   changes is what we call them. Like I said, it might be  
14   something as simple as his ear moves or his head goes one  
15   way. So during that track I'm going to watch him pretty  
16   much exclusively.

17           Typically I'll have a deputy right over my right or  
18   left shoulder. And he's my eyes. He'll watch for anything  
19   dangerous in front of me. And then if I'm lucky enough to  
20   have a couple of other people with me, they'll watch my left  
21   and my right side as well depending on the severity of the  
22   crime we're tracking for and things like that.

23   Q.   Okay. And what -- with respect to your ability to  
24   establish tracks, what factors affect that or can affect it?

25   A.   Well, there's three large things that we go off of.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

354

1 And let me touch on the dog a little bit. Great things  
2 about the dog is they can scent discriminate.

3 Q. What does ---

4 A. And I'll get into that. We go on a -- let's say a  
5 Burger King. And I'm like, oh, I really smell that whopper.  
6 All I know to do is smell the whopper. He'll smell the  
7 seeds on the bun. He'll smell the bun, the ingredients in  
8 the bun. He'll smell the pickles, the ketchup, the mustard,  
9 every little thing.

10 Studies say that they can scent up to one or two parts  
11 per trillion in terms of scent discrimination. There are  
12 two hundred and forty million scent receptors in their nose.  
13 So it would take four times the number of the people in the  
14 jury to make up one parts of the nose roughly.

15 So using that to our advantage, we go off of basic  
16 human odor. Well, again, three things. You have your human  
17 odor. As we're all sitting here we have skin rash falling  
18 off, hair follicles falling off. Those are our primary  
19 tracking things that we're looking for. That's going to say  
20 this is a person and I need to follow that odor.

21 Q. So like the weather, timing, things of that nature ---

22 A. That's -- I'll get into that. But then we also have  
23 another -- you know, bacteria. As we're walking there's  
24 tiny little bacteria everywhere. You step on them. It's  
25 kind of like yeast in beer. They're tiny, we can't see it,

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

355

1 but they're there. The dogs can smell that.

2 And then we have your final odor, you know, what kind  
3 of deodorant somebody has on, what kind of shoes they have  
4 on. They can tell the difference between tennis shoes or  
5 boots or -- now they don't know it's tennis shoes or boots,  
6 but they can -- those are just little things -- it's stuff  
7 that comes off on the ground when you run or when you step  
8 that people have on them.

9 All of those things combined in what you were talking  
10 about, the type of weather. Weather helps. You know, if  
11 it's cool and everything's settling, the ground odor and  
12 stuff like that likes to stick to moisture. So if we have a  
13 first dew, it's going to stick to that ground a little  
14 better and make it a little easier for my dog.

15 Even the rain, a slight rain will help my dog work that  
16 because it's just going to stick to that. Now, if we have  
17 like a tsunami, it's obviously just going to wash it away.  
18 But even in a river, those sand particles are just sitting  
19 right on top of the water and just float. So contrary to  
20 belief, it actually helps our dog.

21 Extreme heat, it will cook it off a little bit faster.  
22 So we have to get that going a little bit faster. And,  
23 again, same thing with extreme cold. Moderate temperatures,  
24 moderate range, those are the best conditions that we look  
25 for. But extremes in everything, we, you know, those kind

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

356

1 of make it a little more difficult.

2 Q. And so even -- are there occasions where you can't  
3 establish a track and ---

4 A. There are. You have areas where you have a lot, a lot  
5 of foot traffic. You know, an apartment complex where you  
6 have twenty, thirty people walk through one area, it's going  
7 to be really hard to establish, you know, what I'm going  
8 for. And it's going to be, yeah, we did see him run through  
9 here, but we also saw forty-five other people run through  
10 here.

11 It's nice when I have an area that's non-contaminated  
12 where somebody gets there and says, hey, I roped this off  
13 and this is where we believe he went. And then I can take  
14 him in the area.

15 And we already talked about those three, the three big  
16 factors, you know, the human odor, the bacteria and other  
17 things on the person. If there's a fresh scent right there  
18 where everything else is old, he's going to go with that  
19 fresh one. And if I know nobody's been there, that's a  
20 great starting point for me.

21 Q. Okay. And I want to turn your attention to this  
22 incident on January 20th, 2014. Did you get a call to  
23 respond to a certain location?

24 A. Yes, ma'am.

25 Q. Tell the jury about that and where you responded.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

357

1 A. I responded to 3920 South Pleasantburg, Olive Garden.

2 And basically, like I said earlier, my main goal as a dog

3 handler is to help other deputies on the road. Sometimes if

4 we have something like this and the call comes out and we

5 think they left on foot, they're going to request, hey, do

6 we have a dog available? And I'll go over there with my dog

7 and try to get some information to see if I can use my dog

8 to find them -- the person.

9 Q. And when you arrived on the scene did you actually make  
10 contact and figure out what circumstances ---

11 A. Yes.

12 Q. --- you had?

13 A. If I remember correctly, Deputy Middleton was the first  
14 on-scene. And he'd already secured the parking lot. He  
15 told me where the last known area of the Defendant was. He  
16 told me -- I think I had a clothing description and said  
17 that he secured an area in the parking lot.

18 So I took -- let my dog out, took him to that location.  
19 And it's a series of small things that we do to kind of give  
20 the dog clues that we're about to track. So I put him in  
21 the down and I hooked him up to his harness. And he already  
22 immediately pretty much showed behavior changes. Then I  
23 gave him the track command and he started pulling.

24 Q. Okay. I'm going to show you what's already been  
25 entered into evidence as State's exhibit 22. Do you



MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

358

1 recognize this area?

2 A. Yes, ma'am, I do.

3 Q. And what does it show?

4 A. It shows the area of Olive Garden, Poinsette and State  
5 Park, basically the incident location.

6 Q. Okay.

7 **MS. SIMPSON:** Your Honor, permission for the witness to  
8 step down.

9 **THE COURT:** Okay.

10 Q. And if you'll stand on that side and speak up. I don't  
11 really know how to work this thing. And I'm not going to  
12 use the pointer. I think we're close enough. But if you  
13 could, show the jury the area where the Olive Garden is and  
14 where you responded.

15 A. Don't have to worry about my cell phone. But this is  
16 Poinsette. I'm -- just to orient. I believe this is the  
17 Cherrydale area over here, correct?

18 Q. Okay.

19 A. And this is State Park.

20 **MADAME COURT REPORTER:** He needs to speak up.

21 A. I'm sorry. Basically this is Poinsette and Cherrydale.  
22 We have State Park, which runs up this way. So I would have  
23 to say Olive Garden is going to be right in this area.

24 **THE COURT:** Speak up.

25 A. Olive Garden is going to be right here.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

359

1 Q. Okay.

2 A. Yes, because we have the Golden Corral and stuff down  
3 that way. So, yep, this is going to be the Olive Garden  
4 right here.

5 Q. All right. And that's the area you responded to?

6 A. Yes. Looking at it, we came in and I pretty much  
7 pulled right into the parking lot. And the front corner of  
8 the parking lot is going to be where I ended up cutting in.

9 Q. Okay. And the road backing up behind North  
10 Pleasantburg Drive, what is that road that we see on that?

11 A. Sylvania.

12 Q. And is that, as far as travel, is that a heavily  
13 trafficked area in the evening or is it more residential?

14 A. I would say it's very lightly traveled, if at all.  
15 I've been over there a lot. I work that area. And I don't  
16 see many people over there. It's very residential.

17 Q. Okay. And you can take your seat.

18 A. Thank you.

19 Q. Now, you mentioned that your dog, you put him in the  
20 down position and he almost immediately showed behavior  
21 changes. Does that mean that he was beginning to get on  
22 track?

23 A. Yes. We call -- we call it self tracking. They know  
24 the game. They know -- that's why we do it. We put them in  
25 a down and we give them little clues that say this is what

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

360

1 we're about to do.

2 And they're so excited to work that they try to cheat.

3 They try to say, well, I'm going to do this before daddy

4 tells me. So it's like your dogs at home. You put their

5 food bowl down and they want to get to it before it happens.

6 The same thing with a track.

7 These little behavior changes that I spoke about

8 earlier, you know, the ears twitching or the tail moving,

9 even crawling on the ground are some of the things that he

10 will do.

11 Q. And once you establish a track -- I'm actually going to

12 show you State's 34 through 42. Do you recognize these

13 photos?

14 A. Yes, ma'am.

15 Q. And do they fairly and accurately depict the areas in

16 the pictures?

17 A. Yes, ma'am.

18 Q. As you observed them?

19 A. Yes.

20 **MS. SIMPSON:** Your Honor, at this time ---

21 Q. And what is this area, by the way?

22 A. That's right in front of the Olive Garden and then a

23 couple of businesses. If you're looking at the Olive Garden

24 from Pleasantburg, it's going to be to the right.

25 Q. Okay. And the other photos, do these ---

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

361

1 A. It's the area I tracked along.

2 Q. It's the area you tracked?

3 A. Yes.

4 MS. SIMPSON: Your Honor, at this time I would offer  
5 State's 34 through 42 into evidence.

6 MS. ROSS: No objection.

7 MR. YARBOROUGH: No objection, Your Honor.

8 THE COURT: So admitted.

9 (Whereupon State's exhibits 34 - 42 were admitted into  
10 evidence)

11 MS. SIMPSON: Permission for the witness to step back  
12 down.

13 THE COURT: Okay.

14 MS. SIMPSON: Thank you.

15 Q. Okay. I'm showing you first what's been marked as  
16 State's 34.

17 A. Yes.

18 Q. What is this area?

19 A. It looks like the front parking lot of the Olive Garden  
20 just as we're coming in.

21 Q. And is that where you started your track or ---

22 A. Yes, ma'am. That would be roughly the area where I put  
23 Johnny in a down. And if I remember correctly, it was  
24 fairly well secure when I got there.

25 Q. And then State's 35?

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

362

1 A. That's going to be the sidewalk. Again, as you're  
2 looking from Pleasantburg, that's going to be the right side  
3 of the Olive Garden.

4 Q. Now, as far as things that you observed on the track,  
5 you're focused on Johnny, but did you see other things or  
6 did he alert to things?

7 A. As we are -- as we are tracking, he -- we call it  
8 indicating. Like I said earlier, he was trained in  
9 articles. His alert for an article is to down between his  
10 paws, but I gave him a track command. So he's not going to  
11 come to a final response or an alert to those articles, but  
12 he did indicate to articles along the track showing that  
13 there's fresh pools of human odor there. As we were  
14 tracking, I believe Deputy Cannon, Master Deputy Cannon  
15 marked some of them for later collection.

16 Q. Next showing State's 36, is that an example of  
17 something that was marked along the track?

18 A. Yes, ma'am.

19 Q. And what's in this picture?

20 A. It's a hundred dollar bill and, I believe, that's  
21 Master Deputy Cannon's business card.

22 Q. Okay. And as far as -- you said the dog doesn't stop.  
23 You gave the track command. So ---

24 A. Correct.

25 Q. --- at what point -- what were you looking for? A

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

363

1 person or a thing?

2 A. We were looking for a person.

3 Q. Okay.

4 A. But again, we're telling him to find human odor. So  
5 these are pretty clear that they were dropped along the way  
6 just based on his behavior. He would stop, give a head  
7 shake and then keep moving.

8 Q. So in State's 38 and 37, those bills were likely  
9 dropped or at least that's the scent along your track?

10 A. Yes, ma'am. They had fresh human odor on them.

11 Q. Okay. And then in State's 40 and 41, these are things  
12 that were found along the way?

13 A. Yes, ma'am.

14 Q. And what are those?

15 A. They look like coin rolls.

16 Q. Just coin rolls?

17 A. Again, with the business card.

18 Q. And you're focused on the dog. You said Deputy  
19 Cannon's actually the one who's marking the stuff ---

20 A. Yes, ma'am.

21 Q. --- as you continue on?

22 A. Yes, ma'am. If I remember correctly, Master Deputy  
23 Cannon was my immediate cover. And I said, hey, you know,  
24 there's something over there. And he went over there and  
25 found them and marked them.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

364

1 Q. And would it be easier for you to describe on the map  
2 -- I'm going to show you what's already been entered into --  
3 State's 31, the area that you tracked.

4 A. Yes, ma'am. As I said, the Olive Garden's up here.  
5 Here's Pleasantburg. Here's Pleasantburg. Again, here's  
6 State Park and there's Sylvania. The Olive Garden's up  
7 here.

8 As we tracked we came all the way up Pleasantburg  
9 passing several businesses. Along that route, I think, the  
10 dollar bills were up in this area. He pretty much threw a  
11 head shake right out of the gate. And I had to check as he  
12 looks at something or moves his body to show something's  
13 over there.

14 We came up Pleasantburg, down in this area. And,  
15 again, it's been a little while. So I don't remember if  
16 it's this side of the parking lot or this, but we -- this is  
17 the Golden Corral. Pardon me, I have a small cold. I'm  
18 sorry.

19 We came back up Sylvania and tracked up Sylvania. And  
20 if I remember correctly, right back in this general area is  
21 where we found the coin rolls and some other dollar bills.  
22 And we ended the track over here.

23 Q. Okay. So the track kind of comes out and then cuts  
24 around and to the back side, back towards State Park Road?

25 A. Yes, ma'am.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

365

1 Q. Now, did you actually find a person or what -- what  
2 happened?

3 A. Once we got to Sylvania, and I believe it's State Park  
4 over there, what Johnny did was ---

5 Q. You can actually have a seat.

6 A. Excuse me. What Johnny did at that point was basically  
7 came to the intersection of Sylvania and State Park and his  
8 head came up and he started doing circles. And he'd come  
9 back to where the track was, put his head back down on the  
10 ground and then track back out to State Park like it  
11 disappeared. And at that point I chose to call it. And  
12 reason being, it was either a drive-off or I missed  
13 something.

14 Q. So he did the circles and then stopped it as far as  
15 when you caught the track in the middle of the road right  
16 there at State Park and Sylvania?

17 A. Yes, ma'am. And just based on our training, it's  
18 indicative of a drive-off where the odor disappears  
19 somewhere.

20 Q. And as far as the direction, that area that you  
21 described, it was mostly businesses and things on the front  
22 side and then he came up Sylvania Avenue, which was more  
23 residential?

24 A. Yes, ma'am. That's correct.

25 Q. And what time of the evening was this?



**MATTHEW ANDERSON - CROSS EXAMINATION BY MR. YARBOROUGH**

366

1 A. Between eleven at night and midnight, it appears was  
2 the time my track was, if I remember correctly.

3 Q. And were you actually able to locate any type of weapon  
4 or did you find a person?

5 A. No, ma'am. I didn't find either of those.

6 Q. And did you convey all the information that you  
7 retrieved to your fellow investigators with the Robbery  
8 Division?

9 A. Yes, ma'am.

10 Q. Okay. And was that the extent of your involvement in  
11 this case?

12 A. Yes, ma'am, it was.

13 Q. Thank you.

14 A. Thank you.

15 **MR. YARBOROUGH:** Briefly.

16 **Cross Examination by Mr. Yarborough:**

17 Q. You used the term Defendant several times when you were  
18 talking. You don't -- you didn't track my client, Mr.  
19 White, or Mr. Gadsden? You didn't see those guys, you don't  
20 know anything?

21 A. No, sir. I'm just giving a description.

22 Q. And the dollar bills that you found that are in those  
23 pictures, they fairly and accurately represent what those  
24 dollars or hundred dollar bills looked like when you found  
25 them that day?

**MATTHEW ANDERSON - CROSS EXAMINATION BY MS. ROSS**

367

1 A. Yes, sir.

2 Q. Okay.

3 **MR. YARBOROUGH:** I don't have anything further, Your  
4 Honor.

5 **THE COURT:** Ms. Ross.

6 **Cross Examination by Ms. Ross:**

7 Q. And this -- I couldn't see very well at the map. It  
8 sounds like you just tracked a bit around in a circle where  
9 he ended up back towards the Olive Garden, though not right  
10 there?

11 A. That's correct. Yes, ma'am.

12 Q. And that's where it looked like -- I mean, you didn't  
13 see it, right? But that that's where it looked like a car  
14 or something ---

15 A. Yes. And again, we use the term drive-off loosely, but  
16 what we'll do is try to simulate that in training where we  
17 put somebody in a car and drive off and see what the dog  
18 does so we can learn what happens.

19 Q. Okay. So after making that money trail all around the  
20 drive-off place was relatively close to the originating --  
21 the scene of the crime?

22 A. Yes, ma'am. That's correct.

23 Q. Okay. And as far as the time on the scene, do you know  
24 exactly when you arrived on the scene or when the tracking  
25 was or can you give a little more detail than between eleven

MATTHEW ANDERSON - CROSS EXAMINATION BY MS. ROSS

368

1 and twelve?

2 A. I have here that I arrived around 11:17 and time  
3 completed was roughly 12:30 at night. I think it says  
4 12:27.

5 Q. Okay. So would you have been tracking that whole time  
6 or going back ---

7 A. I would have been starting the track or tracking or  
8 marking articles. That would have been the use of time from  
9 the time I arrived there til the time I put the dog back in  
10 the car. Or, ---

11 Q. Well, let me ---

12 A. --- I'm sorry, I couldn't say I was tracking that  
13 entire time.

14 Q. Okay. Let me see if I could -- so you're following the  
15 dog and you're tracking. At that point you're not putting  
16 down little markers as you go?

17 A. No, ma'am.

18 Q. You're tracking and then you came back and started  
19 putting down markers and taking photographs or having  
20 someone take photographs?

21 A. No, ma'am. Master Deputy Cannon may have been placing  
22 markers as we go.

23 Q. Okay.

24 A. So it's easier found when we return.

25 Q. Okay.

**MATTHEW ANDERSON - REDIRECT EXAMINATION BY MS. SIMPSON**

369

1 A. And we also had several other deputies -- I think we  
2 had two other deputies with me tracking.

3 Q. All right. And like you said earlier, there's nothing  
4 that tracks you to Gerald Gadsden? You've never seen him  
5 before and your dog never ---

6 A. That's correct.

7 Q. And you weren't given any items after the fact or  
8 anything for the dog to smell to see if he recognized or if  
9 he could even do that?

10 A. No, ma'am.

11 Q. All right. Thank you.

12 **MS. ROSS:** I've got no further questions.

13 **THE COURT:** Do you have a question?

14 **MS. SIMPSON:** Yes, I do.

15 **Redirect Examination by Ms. Simpson:**

16 Q. Did you track to an actual or did you call the track at  
17 an actual residence or in the middle of the road?

18 A. It was in the middle of an intersection.

19 Q. Okay. And what was that intersection?

20 A. Sylvania and State Park.

21 Q. Okay.

22 **MS. SIMPSON:** Nothing further.

23 **THE COURT:** Thank you. Y'all got anything further?

24 **MR. YARBOROUGH:** No, sir.

25 **MS. ROSS:** No, Your Honor.

1           **THE COURT:** All right. Thank you. You may step down.

2           A. Thank you, Your Honor.

3           **MS. SIMPSON:** And, Your Honor, may this witness be  
4 released as well?

5           **THE COURT:** Not only are we going to release this  
6 witness, we're going to release this jury. Ladies and  
7 gentlemen, we're going to let you go for the night and ask  
8 you to be back here -- we'll start at 9:30 in the morning.

9           Again, I request that you not discuss this case with  
10 each other or with anybody else that you come in contact  
11 with. I also ask that you not do any independent inquiry  
12 tonight, don't get on your computer, don't ride by any  
13 scenes or any locations, don't listen to any radios, watch  
14 any TVs, read the newspapers. And we'll see you tomorrow  
15 morning. Have a nice evening.

16           (Whereupon the jury exited the courtroom at 5:05 pm)

17           (Whereupon court was in recess at 5:06 pm)

18           (End of Volume One of Three)

STATE OF SOUTH CAROLINA  
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA, )  
)  
PLAINTIFF, )  
)  
-VS- )  
)  
JAMES WHITE AND )  
GERALD GADSDEN, )  
)  
DEFENDANTS. )  
\_\_\_\_\_ )

2014-GS-23-03815  
2014-GS-23-10507

TRANSCRIPT OF RECORD  
(VOLUME TWO OF THREE)

JUNE 6 - 9, 2016  
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JAMES R. BARBER

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

ATTORNEY FOR PLAINTIFF:

ALLEN FRETWELL, ASSISTANT SOLICITOR  
NICOLE SIMPSON, ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANTS:

WILLIAM YARBOROUGH, ESQ.  
SUSANNAH ROSS, ESQ.

SUSAN W. HUDGINS  
CIRCUIT COURT REPORTER

1 Wednesday, June 8, 2016 (Volume Two of Three):

2 (Whereupon court reconvened at 9:41 am)

3 **THE COURT:** All right. Before we begin, Ms. Simpson  
4 asked or somebody asked if we could meet in my office and  
5 then she wanted to bring something to my attention about  
6 some contact she had with a juror this morning when the  
7 juror -- she and the juror happened to meet up somewhere in  
8 the courthouse, I guess?

9 **MS. SIMPSON:** No, at the intersection like crossing the  
10 street from the garage.

11 **THE COURT:** Walking to the courthouse. And this juror  
12 inquired as to Ms. Simpson had any knowledge about how long  
13 this case was going to last because of the juror's schedule.  
14 And she wanted to bring it to my attention, bring it to the  
15 attention of Mr. Yarborough and Ms. Ross.

16 And I think we've decided that I would address the jury  
17 about that they should not have any contact with anybody of  
18 any type about this case. Any questions come up, they can  
19 address them to the magistrate, I mean, to the bailiffs or  
20 the clerk or somebody like that and we'll take it from  
21 there. And that's what I intend to do.

22 **MS. SIMPSON:** Thank you, Your Honor.

23 **THE COURT:** Is that a fair representation of what we  
24 did in the chambers?

25 **MS. SIMPSON:** Yes, Your Honor.

1           **THE COURT:** All right. Let's bring the jury in if we  
2 could.

3           (Whereupon the jury entered the courtroom at 9:44 am)

4           **THE COURT:** All right. Good morning, ladies and  
5 gentlemen. Nice to see you this morning. Hope you all had  
6 a nice evening. And, you know, when I asked y'all to be  
7 here at 9:30 that we'd start at 9:30, well, sometimes we  
8 have some housekeeping matters that we have to take up  
9 before we start the morning. And we were working this  
10 morning at 9:30, just couldn't get to you right away.

11           But first before we begin, I need to ask you again,  
12 anybody have any conversation about this case with each  
13 other or with anyone else or been contacted by anybody to  
14 discuss the case in any manner since we left yesterday?

15           **THE JURY:** No, sir.

16           **THE COURT:** All right. Anybody do their own  
17 investigation or inquiry on the computer or otherwise since  
18 we left yesterday?

19           **THE JURY:** No, sir.

20           **THE COURT:** All right. Ladies and gentlemen, it was  
21 reported to me this morning that one of the jurors had some  
22 contact with one of the attorneys involved in the case this  
23 morning about scheduling. And it was unintentional, I  
24 think, in terms of whether that juror knew or that juror  
25 should do that.



1           We've discussed this with each other. And what I want  
2   to tell you, y'all should not talk to anybody about this  
3   case in any way at all. You know, the lawyers are obligated  
4   to not speak to you about it. They're not being rude,  
5   anything like that. Sometimes they don't even know what the  
6   schedule is.

7           So any questions you might have about any of that stuff  
8   that you feel like you need to bring to somebody's  
9   attention, if you'll just take it up with the bailiff and  
10   the bailiff will get it to the appropriate party.

11          I think the question was will we be here Friday? I  
12   asked the attorneys in terms of our evidence and how long --  
13   we not only have evidence, we have the arguments and the  
14   charges. We probably will get this case to you, if  
15   everything goes as we anticipate, on Thursday.

16          So I can't tell you how long, once you get the case,  
17   how long you're going to take with the case. So a lot of  
18   that may be in your hands as opposed to our hands. But,  
19   again, I just caution you, please don't discuss the case in  
20   any way -- anything about it to anybody because it just  
21   causes a little bit of confusion sometimes. All right.

22          As you'll recall when we finished yesterday afternoon  
23   the State was still in the process of putting up its  
24   evidence in its case in chief. And as the solicitor has  
25   indicated, they're ready to go. Mr. Fretwell, you ready to

**DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL**

375

1 call your next witness?

2 **MR. FRETWELL:** Thank you, Your Honor. May it please  
3 the Court. The State would call Sergeant Dar Shaw.

4 **Darwin Shaw**, being duly  
5 sworn testified as follows;

6 **MADAME CLERK:** Please have a seat. And will you state  
7 your full name for the record.

8 **MR. SHAW:** Darwin Shaw, S-h-a-w.

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

10 Q. Good morning, Sergeant Shaw. Sergeant Shaw, how long  
11 -- where are you currently employed?

12 A. With the Department of Public Safety, Forensic  
13 Division.

14 Q. Okay. And how long have you served in that capacity?

15 A. About seventeen and a half years.

16 Q. Okay. And that's here in the Greenville Forensic's  
17 Division?

18 A. It is.

19 Q. All right. How many total years in law enforcement  
20 have you spent?

21 A. Next month will be thirty-nine.

22 Q. And have you always been a forensic investigator or did  
23 you have other responsibilities with law enforcement?

24 A. I worked the roads as a road officer for seven years.

25 Fourteen years I was a detective with our department and now

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

376

1     seventeen and a half years here.

2     Q.    As a forensic technician -- is that part of your job as  
3     well?

4     A.    Yes, sir, it is.

5     Q.    So you're a supervisor and a forensic technician?

6     A.    That's correct.

7     Q.    Okay. As a forensic technician what are some of the  
8     duties that you have on any random crime scene?

9     A.    We respond to crime scenes at the request of agencies  
10    within Greenville County and also any federal or state  
11    agencies. We do everything from taking photographs,  
12    processing for fingerprints, collecting evidence, sometimes  
13    blood stain pattern analysis, bullet trajectory. So we  
14    actually do the crime scene processing for the agencies.

15    Q.    And over the course of your career approximately how  
16    many crimes scenes have you processed?

17    A.    Over seven thousand since I've been with Greenville  
18    County.

19    Q.    All right. Have you been called to testify in court?

20    A.    I have.

21    Q.    Have you been declared an expert in court?

22    A.    I have.

23    Q.    Has any court declined to call you an expert?

24    A.    No, sir.

25    Q.    All right. On January 20th of 2014 was your office,

**DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL**

377

1 the forensic office, involved in the investigation of an  
2 armed robbery at the Olive Garden restaurant at 3290 North  
3 Pleasantburg Drive?

4 A. Yes, sir, they were.

5 Q. And did a forensic tech from your division under your  
6 supervision respond to that incident location?

7 A. Yes, sir.

8 Q. And who was that?

9 A. Iona Outen.

10 Q. All right. Do you -- do you know approximately how  
11 long after the original 911 call Ms. Outen responded?

12 A. It was close to midnight, but I don't know what time  
13 the call came in.

14 Q. Okay. Is Ms. Outen still employed with forensics?

15 A. No, she's not.

16 Q. Okay. Why is she not employed with forensics?

17 A. She had taken family medical leave for the extended  
18 time that she could. And when it was time for her to come  
19 back to work, she turned in her gear and quit.

20 Q. Okay. Who reviewed and signed off on the report that  
21 she did in this case?

22 A. I did.

23 Q. Have you reviewed that report?

24 A. Yes, sir, I have.

25 Q. All right. Do you know what areas of the Olive Garden

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

378

1 restaurant Ms. Outen processed?

2 A. According to the report she processed the main doors  
3 going in, doors going into the kitchen as well as the door  
4 leading to the office.

5 Q. Do you know if she recovered any latent prints from the  
6 scene?

7 A. According to her report, she did.

8 Q. Okay. Do you know the location of where those prints  
9 were taken?

10 A. I believe they are on the wooden door -- the main doors  
11 going into the business.

12 Q. Okay. Do you know if they were on the interior of the  
13 door or the exterior of the door?

14 A. That, sir, I don't know.

15 Q. Okay. Let me show you a copy of -- is this the report  
16 that you reviewed?

17 A. Yes, sir, it is.

18 Q. And does that refresh your recollection as to the  
19 location where those prints were recovered?

20 A. According to this, the prints were obtained from the  
21 interior sides of both sets of the front entrance doors.

22 Q. Okay. And since you've reviewed that report, let me go  
23 back to an earlier question. Does she indicate on that  
24 report when the 911 call occurred and when she responded?

25 A. It says after closing hours.

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

379

1 Q. Okay. Do -- all right. Let me ask you, in your review  
2 of that report, based on the information she was provided,  
3 are these the areas of a restaurant at a crime scene like  
4 this that she should have processed?

5 A. Yes. When speaking with the officers on the scene to  
6 get a synopsis or an idea as to what had occurred, we're  
7 provided the information, we then use our expertise to  
8 determine what areas we feel are suitable for getting  
9 fingerprints.

10 Q. And is an area such as a point of entry or exit  
11 particularly important?

12 A. Absolutely, yes.

13 Q. What issues from a forensic perspective arise when  
14 processing a high trafficked area such as an entrance/exit  
15 door to a restaurant like this?

16 A. Depending upon the texture of the surface itself could  
17 have an effect on whether you can even get fingerprints to  
18 come up. The other thing is because of it being a business,  
19 you have a potential for lifting prints from individuals who  
20 were there for legitimate reasons.

21 Q. Okay. In those instances how likely are you able to  
22 determine who contributed those particular prints?

23 A. All you can do is submit the latents to the examiners.  
24 And then they can make a determination if they have prints  
25 that are -- that they have access to as far as in the

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

380

1 computer system to identify it to.

2 Q. Does everyone, to your knowledge, who touches a surface  
3 leave a print?

4 A. No, sir.

5 Q. Okay. What items were indicated that were collected in  
6 this particular case?

7 A. The only item that was collected was a dishrag that had  
8 been found between -- at the base of the double doors going  
9 into the business.

10 Q. As in addition to the latent prints that were  
11 recovered?

12 A. That's correct.

13 Q. Okay. Let me show you what's already been marked as  
14 State's 33. I'll ask you -- it's not in evidence. So I'd  
15 ask you to look at that in your lap. And look at the item  
16 and tell me if it's possible for you to identify the item.  
17 And then if so, what the item is and how you can identify  
18 it.

19 A. The -- this item, it's a white and green handtowel.  
20 And it says it was collected from the front of the business.  
21 It also has the case number, which matches the case number  
22 on the report.

23 And when we collect evidence, we typically use our  
24 initials. Mine would be DS. So anything I would collect  
25 would be DS and then the number of the item. In this case

**DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH**

381

1 Iona's -- it was IO. And she had in the report it was  
2 collected -- IO-1 was collected, the washcloth, which  
3 matches what's on the barcode that she submitted to property  
4 and evidence.

5 **MR. FRETWELL:** Your Honor, at this time the State would  
6 seek to admit State's exhibit 33 into evidence.

7 **MR. YARBOROUGH:** Without objection.

8 **MS. ROSS:** No objection.

9 **THE COURT:** So admitted.

10 (Whereupon State's exhibit 33 was admitted into  
11 evidence)

12 Q. From a forensic perspective, Sergeant, why would this  
13 dishrag be collected?

14 A. Just because it's part of the crime and it would not  
15 be, from information that we would receive, that it was not  
16 in a normal place of business, that it was -- could  
17 partially be part of the -- part of the crime.

18 Q. Okay. Please answer any questions Defense counsel may  
19 have. Thank you, sir.

20 A. Thank you.

21 **Cross Examination by Mr. Yarborough:**

22 Q. Do you know where that rag was found?

23 A. In the -- according to the -- looking at the  
24 photographs it was found where the doors swing out. At the  
25 base of the door there's a center column. And the dishtowel



DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

382

1     was around that column. It would prohibit both doors from  
2     closing.

3     Q.   And how do you know it prohibited both doors from  
4     closing?

5     A.   Because the photographs show that the doors were not  
6     closed because of the -- of the dishrag.

7     Q.   Okay. Did -- do you know that that's the rag that was  
8     found in the door? Do you have a way of telling that?

9     A.   Yes, sir.

10    Q.   What is that way?

11    A.   Well, when we put evidence into property and evidence  
12    we initial -- put our initials on the item. And in this  
13    case the -- I believe Iona had put her initials on the  
14    dishrag.

15    Q.   Do you believe it or do you see it?

16    A.   I saw it. I had looked at it previously and saw her  
17    initial on the -- on the dishrag.

18    Q.   Okay. And does this appear to be the dishrag?

19    A.   No, sir.

20    Q.   Okay. Why is that?

21    A.   Because those are laying up on the counter. And the  
22    dishrag that was collected was found between the front  
23    doors.

24    Q.   Okay. Can you look at that dishrag?

25    A.   Yes, sir.

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

383

- 1 Q. Will you pull it out? Do you see where that was tested  
2 for latent prints?
- 3 A. No, sir.
- 4 Q. Do you see where it was tested for DNA?
- 5 A. You wouldn't be able to visually see, but it would not  
6 have been.
- 7 Q. It wasn't tested?
- 8 A. That's correct.
- 9 Q. Okay. So there was no -- no tests for prints or DNA  
10 done on that rag?
- 11 A. That's correct.
- 12 Q. Can you hold that rag up? Will you turn it over. Let  
13 me see the left hand. So there was no way to test that for  
14 any kind of saliva or anything that was -- that might have  
15 come from the perpetrator of the crime?
- 16 A. Not that we would have collected, no, sir.
- 17 Q. But, I mean, sweat gets on rags like that, right?
- 18 A. Potentially it could, yes.
- 19 Q. Okay. And that rag had actually -- it's been used,  
20 obviously.
- 21 A. Yes, sir.
- 22 Q. It's been used by somebody to do something. A waiter  
23 or ---
- 24 A. It's dirty, sir. Yes, sir.
- 25 Q. Okay. So if somebody was using it there would have

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

384

1     been a way to test it.

2     A.    Not logically, no.

3     Q.    Okay.  And not logically because of why?

4     A.    Because of the area because when you do a test for DNA,  
5     you would use a Q-tip to swab a specific area.  And then

6     that Q-tip, the filters from that is what is tested for DNA.

7     This, you would have to swab every square inch from edge to  
8     edge, the entire thing front and back in order to try --

9     even try to see if there was any DNA possible on the item.

10    Q.    Okay.  I mean, you didn't -- you didn't do this test,  
11    but the officer that did, Officer Iona, I think it's ---

12   A.    Iona Outen.

13   Q.    Iona Outen, she didn't test it?

14   A.    That's correct.

15   Q.    Okay.  And you're confident that it hasn't been tested?

16   A.    We would not -- we did not, otherwise, it would have  
17   been in her report.

18   Q.    Okay.  And was it in her report that Mr. White, my  
19   client, gave you a DNA sample?

20   A.    No, sir.

21   Q.    Okay.  That was not in the report?

22   A.    That's correct.

23   Q.    Okay.  Now, I'm assuming that you're aware that there  
24   was a brick found by the door.

25   A.    Yes, sir.  I saw that in the photographs.

**DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH**

385

1 Q. Okay. Now, did you test that brick for DNA?

2 A. No, sir.

3 Q. Okay. And -- or did Officer Iona Outen test that rock  
4 for DNA?

5 A. No, sir.

6 Q. Okay. And she didn't test that rock for DNA because  
7 of?

8 A. Who knows when the brick was touched or when it was  
9 handled. It may or may not have been part of the -- of the  
10 crime.

11 Q. Okay. Have you seen the pictures from the crime scene?

12 A. Yes, sir, I did.

13 Q. Okay. And you're aware that in State's exhibit number  
14 3 that the window was smashed in, right?

15 A. Yes, sir, the exterior window.

16 Q. The exterior window was smashed in. And you're aware  
17 that there's a brick right down at the bottom down there,  
18 right?

19 A. Yes, sir.

20 Q. Okay. So you don't think that that -- well, maybe you  
21 don't -- y'all didn't think the brick was important?

22 A. No, that -- I believe that was -- of course, I didn't  
23 work the scene, but with not knowing what, you know, when  
24 that happened as far as when that window was broken, may or  
25 may not be related to the incident.

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

386

1 Q. Okay. You're the head forensics guy, right?

2 A. Okay.

3 Q. Are you?

4 A. I'm a sergeant, yes, sir.

5 Q. Okay. But you were the sergeant over her?

6 A. That's correct.

7 Q. Okay. And you're here to testify on her behalf?

8 A. Yes, sir.

9 Q. Okay. So to your knowledge that was not tested either?

10 A. That's right or it would have been reflected in her  
11 report.

12 Q. Okay. Now, you also see that there are two door  
13 handles on the door, is that correct?

14 A. Yes, sir.

15 Q. Okay. Now, were those door handles dusted for latent  
16 prints?

17 A. The report indicates both doors inside and out were  
18 processed, which would include the door handles.

19 Q. Okay. And do you have that report?

20 A. I have -- I have the report.

21 Q. Okay. And does that report show that Mr. White's  
22 fingerprints were found on that door?

23 A. No, sir, it does not.

24 Q. Okay. And for that matter were Mr. Gadsden's  
25 fingerprints found on that door?

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

387

1 A. That's correct.

2 Q. They were not?

3 A. That's right, they were not.

4 Q. Okay. And neither one of their prints were found on  
5 the rock.

6 A. That's correct.

7 Q. 'Cause the rock wasn't -- the brick wasn't tested?

8 A. It does not show in the report that it was processed,  
9 but because of the texture of it, that was why -- that is  
10 why it would not be processed because of the texture of the  
11 brick.

12 Q. But there are -- you've testified in court where bricks  
13 have been tested before, right?

14 A. I've testified that I have gotten prints off of fired  
15 bricks that have a glossy surface. That's why as a  
16 technician I make the determination when I look at an item  
17 whether it appears to be suitable for being able to retain  
18 latent prints.

19 Q. And did you look at that item in this case?

20 A. Only in the photograph.

21 Q. Only in the photograph. And to your knowledge it  
22 wasn't tested?

23 A. That's correct.

24 Q. Okay. Now, did anyone go back and test the area around  
25 the safe in the Olive Garden for forensic prints?

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

388

1 A. If it's not in the report, then it did not get done.

2 Q. Okay. So nobody checked back there for prints either?

3 A. That's correct.

4 Q. Okay. Now, you're aware that there were rolls of coins  
5 found on the floor, is that correct?

6 A. Yes, sir.

7 Q. From looking at the prints [sic]?

8 A. Yes, sir.

9 Q. Okay. And were those rolls of coins tested for  
10 fingerprints?

11 A. No, sir.

12 Q. Were they tested for DNA?

13 A. No, sir.

14 Q. But that's paper and you could test for that, right?

15 A. For what?

16 Q. For prints or DNA on the paper.

17 A. Possibly prints using chemicals and maybe DNA, touch  
18 DNA possibly.

19 Q. Right. But those tests weren't done either?

20 A. That's correct.

21 Q. Okay. How about -- are you familiar with the area  
22 where there was a camera set up that was used to see whether  
23 or not someone was coming in to pick up carry-out food?

24 A. There was mention of a camera in the report, but I  
25 don't recall, without looking, as far as what it said.

**DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH**

389

- 1 Q. Okay. Will you look to see if it was tested?
- 2 A. The camera?
- 3 Q. Well, the area of the camera.
- 4 A. No, sir. If it was not in the report, it was not
- 5 tested.
- 6 Q. Okay. So it -- to your knowledge, it wasn't tested
- 7 either?
- 8 A. That's correct. Yes, sir.
- 9 Q. Now, there were -- there was a whole area outside of
- 10 the Olive Garden where there was money left out on the road,
- 11 right?
- 12 A. Yes, sir, that's correct.
- 13 Q. Okay. And did -- were those individual pieces of money
- 14 tested for DNA?
- 15 A. No, sir.
- 16 Q. Right. And it's hard to test money for DNA, right?
- 17 A. Again, depending on how much it's been handled.
- 18 Q. Okay. So if a coin, I mean, a hundred dollar bill that
- 19 looks relatively new was there would that make it easier to
- 20 test because it was new?
- 21 A. Test for what?
- 22 Q. Test for DNA.
- 23 A. It wouldn't make any difference.
- 24 Q. Whether it was new or not?
- 25 A. That's right.



DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

390

1 Q. Wouldn't it make a difference whether it was new or not  
2 because it hadn't been handled as much?

3 A. No, sir.

4 Q. Okay. Well, then why wouldn't you have tested it?

5 A. As a -- as a rule, the Forensic Division does not  
6 collect money -- we don't collect money from crime scenes.  
7 If it gets collected the agency -- the agency will either  
8 collect it or if they believe it's part of the -- belongs to  
9 the business, they may return it to the business and no  
10 testing is done.

11 Q. Yeah, but oftentimes money is taken and held while a  
12 trial is pending, isn't it?

13 A. Yes, sir.

14 Q. Okay. And that money's held because it's the -- it's  
15 the best evidence, right?

16 A. It's part of the crime.

17 **MR. FRETWELL:** Objection. I don't understand what the  
18 best evidence means in this ---

19 **MR. YARBOROUGH:** I'll move on, Your Honor.

20 Q. Would it be safe to say that this was a relatively new  
21 hundred dollar bill that was found out there?

22 A. It could be.

23 Q. Okay. Do you -- was that Outz's [sic] card? Whose  
24 card was that?

25 A. No, sir. Those are deputies' business cards prior to

**DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH**

391

1 us responding to a scene. They try to locate potential  
2 evidence. They mark that with business cards to help  
3 expedite the process at the scene.

4 Q. Okay. And so you would agree that that was marked and  
5 then the rolls of quarters were marked, is that correct?

6 A. Yes, sir.

7 Q. Okay. And I believe you've reviewed a picture that has  
8 maybe twenty or thirty bills laying around on the floor.

9 A. I have looked at photos of that, yes, sir.

10 Q. Okay. And none of that was tested?

11 A. That's correct.

12 Q. Okay. And the safe area wasn't tested?

13 A. Not according to the report, that's correct.

14 Q. Okay. And how about the door going into the back room  
15 where the safe was?

16 A. That's the office door. And that was one of the areas  
17 that was processed.

18 Q. Okay. And was there any DNA or fingerprints found  
19 there?

20 A. No, sir. Only the front doors were the only place  
21 where fingerprints were found.

22 Q. Okay. So there were no fingerprints found on that back  
23 door at all?

24 A. Nothing that was submitted, that's correct.

25 Q. Okay. Well, that's the question. If it wasn't

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

392

1 submitted, does that mean it wasn't tested?

2 A. That'd be correct. If it's not submitted, it can't be  
3 tested.

4 Q. Okay. So it wasn't -- it wasn't tested?

5 A. There was nothing -- either nothing there or it was not  
6 suitable or not -- as far as there's not enough  
7 identification, it was noncomparable. You can get bits and  
8 pieces of fingerprints, but it's not enough to make an  
9 identification.

10 Q. Well, let me ask you this. Do you know what was done  
11 there?

12 A. According to the report ---

13 Q. According to the report ---

14 A. That's correct.

15 Q. --- it says what was done in the office.

16 A. That's right.

17 Q. What was?

18 A. Just the processing of the door.

19 Q. Okay. And no prints were found?

20 A. That's correct.

21 Q. I mean, nobody's prints were found?

22 A. There were none submitted. Again, depending upon the  
23 surface of the door, the surface area, the area where you  
24 mostly would touch. It's very common not to have  
25 identifiable prints on those types of areas.

**DARWIN SHAW - CROSS EXAMINATION BY MS. ROSS**

393

1 Q. Okay. Thank you.

2 MR. YARBOROUGH: I don't have anything further.

3 THE COURT: Ms. Ross.

4 **Cross Examination by Ms. Ross:**

5 Q. Hi, there. I was just going over Ms. Outen's report  
6 and I noticed that she wrote the officer observed  
7 Kretzschmar does not have a visible injury to his face. And  
8 that's down at the bottom of the second paragraph. Is that  
9 right?

10 A. That's correct.

11 Q. And I know you weren't there, but that's what the  
12 report says?

13 A. Yes, ma'am, that's what the report says.

14 Q. Okay. And there were photographs of gift cards as  
15 well. And we've kind of covered this, but did you --  
16 wouldn't a card be a good place, a plastic card, to get a  
17 print? Or would you agree or ---

18 A. You -- potentially, yes, you could.

19 Q. But none of the cards were done?

20 A. No. And the only -- looking at the photographs, if all  
21 of this was dumped into a specific area or had not been  
22 handled, the money could have all been put into a bag and  
23 not handled that much.

24 Q. Okay.

25 A. So it may not have been handled except for those people

DARWIN SHAW - CROSS EXAMINATION BY MS. ROSS

394

1     who put it in the cash register or the cash drawer.

2     Q.    Okay.

3           **MS. ROSS:** I beg the Court's indulgence. I'm looking  
4     for a particular exhibit number.

5     Q.    One of these photographs, I believe, had a picture of a  
6     monitor that's been spoken of. And it was a video monitor  
7     that looked like sort of a computer. And it was switched  
8     off. Now, was that -- this would be a plastic monitor and  
9     that there's testimony about a switch on the side. Would  
10    that be something that you could get a print off?

11    A.    Not the switch, no.

12    Q.    Why not?

13    A.    Because it's such a small area. And typically there's  
14    movement when you -- even flipping a light switch, there is  
15    movement of your finger. You can wipe off anything that's  
16    ---

17    Q.    Okay. And how about the monitor itself? Just that  
18    area?

19    A.    If there was anything to have indicated that it had  
20    been handled by a perpetrator, then possibly.

21    Q.    Okay. And the report, I know you weren't there, the  
22    report doesn't reflect that that monitor, that video monitor  
23    that had been switched off, was tested for prints, correct?

24    A.    That's correct.

25    Q.    All right. Thank you.

**CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON**

395

1           **MR. FRETWELL:** No further questions, Judge.

2           **THE COURT:** All right. Thank you, sir. You may step  
3 down.

4           A. Thank you, Your Honor.

5           **MR. FRETWELL:** And, Your Honor, may Sergeant Shaw be  
6 excused?

7           **THE COURT:** Any objection? Ms. Ross?

8           **MR. YARBOROUGH:** No objection.

9           **MS. ROSS:** No objection.

10          **THE COURT:** All right. Yes, sir, you're free to leave.  
11 Thank you.

12          **MS. SIMPSON:** The State calls Chris Gary.

13                                           **Christopher Gary,** being  
14 duly sworn testified as follows;

15          **MADAME CLERK:** Please have a seat. And will you state  
16 your full name for the record.

17          **MR. GARY:** Christopher Adam Gary.

18          **Direct Examination by Ms. Simpson:**

19          Q. Mr. Gary, where are you employed?

20          A. I work for the Greenville County Department of Public  
21 Safety in the Forensic Division.

22          Q. Okay. And how long have you been with the Greenville  
23 Department of Public Safety?

24          A. I've been with Greenville County full-time for seven  
25 years, but prior to that I had the opportunity to work as an

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

396

1 intern. And it was an apprentice-style training program  
2 where I worked for three years learning the basics of latent  
3 print evidence collection and examination and learned the  
4 trade. And then once I graduated college, I began working  
5 there full-time in 2009.

6 Q. Okay. And so you are actually -- what is your position  
7 within the Forensic Division?

8 A. I'm a latent fingerprint examiner.

9 Q. Okay. And exactly what does a latent print examiner  
10 do?

11 A. We receive latent fingerprint evidence from the crime  
12 scene section. We analyze the data that's in those  
13 fingerprints and we compare them to any known standards that  
14 we are requested to compare them to. We then issue reports  
15 based on our findings.

16 Q. And now you used one term, actually two, latent versus  
17 known print. What is meant by the term latent?

18 A. On the surface of your hand you have raised ridges.  
19 And these ridges act much like a rubber stamp that you may  
20 use in your life. And when you come into contact with an  
21 object, you leave behind a replication of that skin.

22 Now, the ink for that stamp, it has to be developed  
23 because normally it's made out of sweat, water or moisture  
24 from your face. And the term latent is Latin for hidden.  
25 So we have to search for those latent fingerprints that are

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

397

1 normally left at a crime scene.

2 We can process those with a fine black powder or a  
3 chemical method in order to make them visible to the naked  
4 eye. We then collect those fingerprints and they are then  
5 from then on determined or called latent fingerprints.

6 Q. Okay. And in your capacity as an actual examiner are  
7 you responsible necessarily for collecting the prints or are  
8 those submitted to you in some way?

9 A. They're normally submitted to me. A portion of my time  
10 is spent processing for latent prints, but the majority of  
11 my time is spent analyzing them.

12 Q. Okay. So you're familiar with the collection process  
13 as far as suitability for prints and things of that nature?

14 A. Yes, that is correct.

15 Q. And can you tell the jury about your educational  
16 background and training.

17 A. Yes. Well, first off I have a bachelor's degree in  
18 biology from the College of Charleston. And in terms of  
19 actual job application/training, in 2009 I was selected by  
20 the National Institute of Justice to go to Largo, Florida  
21 with fourteen other examiners around the country.

22 And in this training course, it was four hundred hours  
23 of classroom training that lasted ten weeks. We learned  
24 everything from the basics of examination. And it was --  
25 the idea of the program and what they achieved was to take



CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

398

1 novice examiners and to train them in everything they would  
2 need to do to testify as experts.

3 After that training was completed I also in 2013 I took  
4 a class that was sponsored by Ron Smith and Associates  
5 called Advanced ACV Methodology. And in 2016, this year,  
6 just this past May, I also participated in the North  
7 Carolina IAI, which is the National or the International  
8 Association for Identification Conference, which lasted for  
9 three days.

10 Q. Okay. And so during the course of, I guess, your  
11 career as a latent print examiner do you, I guess, continue  
12 your educational requirements or stay up-to-date with  
13 respect to courses and training?

14 A. Yes, I do.

15 Q. And how many comparisons would you say you've done over  
16 the course of your career?

17 A. I've conducted hundreds of thousands of comparisons.

18 Q. Okay. And in cases where there are matches made or  
19 things of that nature, is your testing subject to peer  
20 review? Or does someone review it after you?

21 A. Yes. Whenever we make an identification to a suspect  
22 match, it is peer reviewed.

23 Q. Okay.

24 **MS. SIMPSON:** Your Honor, at this time I would offer  
25 Chris Gary as an expert in latent print examination.

**CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON**

399

1           **MS. ROSS:** No objection.

2           **THE COURT:** Pardon me?

3           **MR. YARBOROUGH:** Without objection, Your Honor.

4           **MS. ROSS:** No objection, Your Honor.

5           **THE COURT:** All right. Ladies and gentlemen, we have  
6 what is known as expert witnesses in South Carolina. And  
7 under our rules if scientific, technical or other  
8 specialized knowledge will assist you, the trier of the  
9 facts, in understanding any evidence or determining any fact  
10 that may be an issue in a case, a witness may be qualified  
11 as an expert by virtue by his or her knowledge, skill,  
12 experience, training or education. As such, an expert can  
13 offer an opinion in his or her areas of expertise.

14           You are -- I find this witness qualified as an expert  
15 in the field of latent print examination. You are to give  
16 his testimony such weight and credibility as you deem  
17 appropriate as you will with any and all witnesses who  
18 testify in this trial. Yes, ma'am.

19           **MS. SIMPSON:** Thank you, Your Honor.

20           **Direct Examination by Ms. Simpson Continued:**

21           Q. Before we get to what you did in this case I want to  
22 talk a little bit more about what makes comparison possible  
23 as far as ridge detail and things of that nature.

24           A. Okay.

25           Q. Can you explain that for the jury?

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

400

1 A. Yes. Well, to start off, like I was saying, you leave  
2 that replication behind. Once we process it and collect it  
3 and then it's my job to analyze that data that's present.

4 The first thing that we do when we analyze latent  
5 fingerprints that are submitted to us are determine the  
6 pattern type. There are three pattern types that everyone  
7 have, they're loops, arches and whirls. So with only three  
8 different pattern types, that's not a very exclusive  
9 category that we can separate everyone in because of the  
10 entire population only having three pattern types.

11 The second thing we look for after we determine pattern  
12 type, those ridges that I'm talking about on the surface of  
13 your hands, they don't just start at one point and go all  
14 the way across to the other end of the finger. These  
15 ridges, they divide, they stop and end, there's shorter  
16 ridges, there's longer ridges. And those are the things  
17 that make unique arrangements in the fingerprints that we  
18 can determine individuality.

19 Also, to go a little further, on the surface -- at the  
20 top of those ridges that we're examining, there are also  
21 pores. I believe there's approximately a hundred and eighty  
22 pores on average on your fingertips and around three  
23 thousand on the surface of your palms. Those pores and  
24 placement of those pores also help with individualization.  
25 And then we can compare the fingerprints that we lifted from

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

401

1 the crime scene to a known standard and determine if they  
2 came from the same person.

3 Q. Okay. And going back just a little bit, you said  
4 individualization. Do any, I guess, what does that mean  
5 exactly?

6 A. Okay. So no two people have ever been known to have  
7 the same two fingerprints. Fingerprints are unique to every  
8 individual. And, in fact, all ten fingers on every person  
9 are different as well.

10 So when I talk about and discuss identification, what  
11 I'm talking about is taking that -- the latent print from  
12 the crime scene and comparing it to the known standards that  
13 we have and determining that that is an identification, that  
14 the person that left the fingerprint is the same person that  
15 we're comparing in this case.

16 Q. Okay. So in order to actually do your comparison must  
17 you have a known print to compare it to?

18 A. Yes, I must.

19 Q. And what is a known print? Like, what do you usually  
20 have?

21 A. Okay. So like I was saying with the fingerprint left  
22 at a crime scene, that is an unknown. It's -- we don't know  
23 who it belongs to. And it's our job to determine who it  
24 does belong to.

25 A known print is when we know the individual that is

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

402

1 submitting the fingerprints. We have their name, their date  
2 of birth, their social security number, their race and  
3 gender identifiers. And everything we know about that  
4 person that we know are associated with these fingerprints.

5 The way that we achieve those fingerprints, you can  
6 apply a thin layer of black printer's ink or use electronic  
7 cameras to capture the fingerprint ridges and put them onto  
8 a fingerprint card so that we know that that person is  
9 associated with these fingerprints.

10 Q. Okay. And talk a little bit, if you can, about the  
11 fragility of prints. You've mentioned several times  
12 touching a surface and leaving one. Will I necessarily  
13 leave a fingerprint just because I've touched something?  
14 What ---

15 A. Well, ---

16 Q. --- factors affect that?

17 A. Sorry. First of all, your fingerprints are very  
18 fragile in most situations because they're made out of  
19 moisture, moisture that you excrete from your hands,  
20 moisture when you touch your face and get a little bit of  
21 oil from your face and touch a surface. So if I were to  
22 come along once I touch a surface and wipe that water away,  
23 the sweat that has been left on a surface, I could  
24 potentially obliterate those fingerprints.

25 Also weather has a -- it plays a role in collecting

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

403

1 fingerprints. If it is super dry out, it could dry the  
2 moisture from the surface and you would not -- after we get  
3 there and process it, you would not have a fingerprint left  
4 on the surface because it's evaporated.

5 The individual that's actually putting the fingerprint  
6 onto a surface could play a role. If they have a career or  
7 a job that requires them to use their fingers more, such as  
8 a brick mason, they could be possibly obliterating that skin  
9 and have poor skin and, therefore, not leave good latent  
10 prints for comparison.

11 Q. Okay. So a person's own body chemistry can affect it,  
12 weather can affect it. And explain a little bit more about  
13 the types of surface areas and what are most suitable for  
14 being able to, I guess, lift a print.

15 A. So since fingerprints are fragile in nature, the best  
16 surfaces to retrieve fingerprints from would be any smooth,  
17 clean, glass surface. If you touch a piece of glass, you  
18 would likely leave behind that moisture. And then we could  
19 dust it and retrieve your fingerprint.

20 If someone cleans that glass or, you know, affects that  
21 in any way, it could be obliterated. But a clean surface is  
22 the best place to leave a fingerprint.

23 If a surface is rather dirty or dusty, you would  
24 actually touch it and just remove the dirt and not actually  
25 leave behind a fingerprint. Your fingerprint would actually

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

404

1 have to come in contact with the item that you're touching  
2 in order to leave behind a fingerprint.

3 Q. And you mentioned smooth, soft surfaces. What about  
4 textured surfaces that may be made of things such as dirt or  
5 clay and things of that nature?

6 A. Well, things, like I said, that are dirty, you have a  
7 better chance of just removing the dirt from the object and  
8 not leaving behind your fingerprint.

9 There are some circumstances when you can actually make  
10 a plastic fingerprint such as in clay where you -- like if  
11 you've ever played with play-doh or something of the sort,  
12 when you've actually touched it and you've left your  
13 fingerprint. It's an inverse of your fingerprint because  
14 it's actually made indentions into that surface. But  
15 normally, you know, that's when something can be molded.

16 Things that can't easily be molded such as clothing or  
17 the handle of a gun that's very textured, and oily, and  
18 dirty, those surfaces aren't great for suitable  
19 fingerprints.

20 Q. So you said clothing. For instance, such as a  
21 dishcloth or something of this nature, are you necessarily  
22 going to find suitable prints on something with this item?

23 A. No, you would not.

24 Q. Okay. And if a person is wearing gloves can you expect  
25 to find a print?

**CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON**

405

1     A.    No, you would not.  If you have any fabric or any thick  
2     surface covering your hands, if you were to touch an object  
3     you would not leave behind a fingerprint because your ridges  
4     that are required to touch an object are covered, and you  
5     can't put your fingerprint through the fabric onto the  
6     surface.  The fingerprint itself would have to come in touch  
7     -- in contact with the surface to leave a fingerprint.

8           **MS. SIMPSON:**  I think, Your Honor, one of the jurors  
9     needs a break.

10          **THE BAILIFF:**  The jurors need to go to the restroom.

11          **THE COURT:**  All right.  We'll take a few minute break.  
12     Please do not discuss the case while you're back there.  
13     Matter of fact, we'll take a fifteen minute break.  Don't  
14     discuss the case while you're back there.  And we'll bring  
15     you back in just a few minutes.

16           (Whereupon the jury exited the courtroom at 10:27 am)

17          **THE COURT:**  All right.  We'll take about a fifteen  
18     minute break.  You can step down from the witness chair, but  
19     don't discuss your testimony while we're on break.

20     A.    Yes, sir.

21           (Whereupon court was in recess at 10:28 am)

22           (Whereupon court reconvened at 10:48 am)

23          **THE COURT:**  All right.  Let's bring the jury in if we  
24     could.

25           (Whereupon the jury entered the courtroom at 10:50 am)



**CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON**

406

1           **THE COURT:** All right. Ms. Simpson, if you would  
2     proceed, please, ma'am.

3           **MS. SIMPSON:** Thank you, Your Honor.

4     **Direct Examination by Ms. Simpson Continued:**

5     Q.    I believe we were talking about gloves. Can you -- if  
6     a person is wearing gloves are they going to leave a  
7     fingerprint?

8     A.    No, they will not.

9     Q.    And what is the reason for that?

10    A.    Because the fabric is covering the area that -- of the  
11    friction ridge skin that is needed to come in contact with a  
12    surface. So if it's covering that -- those ridges that need  
13    to come in contact, they would not be able to leave a  
14    fingerprint.

15    Q.    And so this is kind of along the same lines, if I were  
16    to, say, push open a door and I'm wearing a piece of  
17    clothing in between when I push it open, am I going to leave  
18    a fingerprint?

19    A.    You're not, first of all, because the only area that  
20    you have this specialized skin is on the surface of your  
21    hands and the bottoms of your feet. So if you were to open  
22    the door with an elbow or any other part of your body other  
23    than your hands or your feet, it's impossible for you to  
24    leave friction ridge skin detail behind.

25    Q.    Okay. And as far as surface areas, what about the

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

407

1 overlay of fingerprints and multiple people potentially  
2 touching a surface area? Does that affect both the  
3 collection process and the suitability for any print you may  
4 get?

5 A. Yes, it does. If I were to touch a surface and then  
6 someone else were to touch right on top of that, it could  
7 obliterate those fingerprints. It could actually crisscross  
8 them so much that they would be rendered not comparable  
9 because of the -- the detail would be obliterated and you  
10 wouldn't be able to separate the prints because it's a 2-D  
11 surface. So when you both -- the fingerprints go onto it,  
12 you wouldn't be able to tell which is which. And it would  
13 be obliterated at that point.

14 Q. Okay. And some surfaces such as glass surfaces or  
15 even, I guess, the smooth surfaces that we talked about, how  
16 likely is it to potentially smudge or if I don't press down  
17 and hold, like, to mess up a print?

18 A. It is possible to smudge fingerprints. People  
19 generally aren't putting their hands on objects and leaving  
20 nice rolled fingerprints. And that's where the examiner  
21 comes in to determine the distortion and the amount of  
22 smudging and the amount of pressure.

23 And the way they handled it can lead to a fingerprint  
24 being usable and being able to compare it or to it being  
25 determined as smudged. And we have to analyze that and

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

408

1     determine if it is a fingerprint that can be used or not.

2             So when you're handling objects you could be leaving  
3     good fingerprints if you're leaving good, firm touches or  
4     you can just be leaving sweaty smudge marks that you may see  
5     on your car windows from just constantly handling that  
6     surface and not giving a good firm touch.

7     Q.     And in cases, the numerous cases where you've done  
8     comparisons, are all latents that you've received  
9     necessarily suitable for comparison?

10    A.     No, they are not. We receive latents that have little  
11    to no ridge detail and latents that have, you know, that are  
12    close to rolled such as a known fingerprint and everywhere  
13    in between.

14             And every latent fingerprint is different because of  
15    the touching and the amount of pressure and the amount of  
16    surface area that comes in contact with the surface. Every  
17    latent fingerprint is different.

18    Q.     I want to touch on something you just said, surface  
19    area. Explain that a little more for the jury as far as the  
20    size of the surface area and how they may affect your  
21    ability to collect a print.

22    A.     I'd be happy to. So when I talk about surface area,  
23    I'm talking about the entire surface of the hands in this  
24    case. And that means from nailbed to nailbed.

25             Most people, when they're handling a drink, you're

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

409

1     grabbing it -- you have four fingers on, but you can have  
2     the side of the thumb. Now the side of the thumb typically  
3     isn't recorded in a known fingerprint standard.

4             So if I were comparing the latent fingerprints that  
5     were on the can, I could possibly see these four fingers,  
6     but maybe not this because the surface area that is -- that  
7     is left was not on a known fingerprint card. And that's the  
8     same thing with any object.

9             Some objects you handle flush where your fingerprints  
10    are squared at the surface or parallel so that you're going  
11    to leave a good firm touch, but some objects we handle with  
12    the sides of our fingers. And those typically are not able  
13    to be identified due to the placement and the surface area  
14    that they're from.

15    Q.    And what if I had a very small area such as like a  
16    switch on a monitor or something of that nature where I  
17    can't leave a full print or you can only get so much of a  
18    print?

19    A.    That's another possibility. In an examination, we need  
20    enough data to determine if this fingerprint came from this  
21    person that we're comparing it to. If there's too small of  
22    a detail, that fingerprint could be not comparable or  
23    elimination quality only, we don't have enough to identify  
24    it because the surface area is so small. We need enough  
25    detail in that fingerprint to determine if it is from this

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

410

1 person or not.

2 Q. And some of these decisions, while you actually as the  
3 examiner get the prints and do the comparison, those are  
4 made by the crime scene investigator or the person actually  
5 processing the scene, correct, as to whether or not it may  
6 or may not be suitable?

7 A. Yes, that is correct. The crime scene technician is  
8 the gatekeeper for what evidence is sent up to our office.  
9 The crime scene technician is the one processing for latent  
10 prints. And they are trained to process the latent  
11 fingerprints and lift the ones that are comparable to send  
12 to our office.

13 Q. And even with the ones they are able to lift, you're  
14 not necessarily always or are you always able to make some  
15 determination with respect to that print?

16 A. Could you clarify, please?

17 Q. Or come to a conclusion, make a match or compare it?

18 A. Well, we'll come to a conclusion whether it be not  
19 comparable or an identification or that it's comparable, but  
20 we just don't have the known standard for the person that  
21 made the fingerprint.

22 Q. I want to talk and turn your attention to -- actually,  
23 let me show you what's been already introduced as State's  
24 exhibit 6, a brick that was located. Now you didn't  
25 actually go to the scene, correct?

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

411

1 A. That is correct. I did not.

2 Q. But the item pictured in there, the brick, explain to  
3 the jury what factors might affect the ability to collect a  
4 print from an item such as that, if it was not a fired brick  
5 or a smooth glossy surfaced brick.

6 A. Okay. In this picture I do observe a brick. I was not  
7 at the scene. I need to clarify that. I was not at the  
8 scene. I've never seen this brick in person.

9 But on a typical item that -- I have processed bricks  
10 before. Bricks can typically be dirty, or they can be  
11 porous and very textured. And you would not be able to  
12 recover a latent fingerprint from that surface because it's  
13 not smooth and clean. But I've never seen this particular  
14 brick. So I can't testify to that particular brick, but  
15 just bricks in general.

16 Q. Okay. And, again, kind of talking about high traffic  
17 areas as far as, say, a restaurant or the doors to a  
18 restaurant, a highly trafficked area, how likely are you to  
19 collect a print if it's not completely clean and smooth?

20 A. I would say in my personal processing that it's highly  
21 likely to receive fingerprints from highly trafficked doors  
22 because people are coming in and out. They're touching the  
23 doors, they're leaving fingerprints. And at the same time  
24 they could also be taking fingerprints away by touching  
25 fingerprints that were already there and wiping them away.

**CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON**

412

1     So it really just depends on at the time that you process  
2     it, but generally I have a high recovery rate for  
3     fingerprints on a public door.

4     Q.    And so you can get prints, but you may get multiple  
5     prints or they may be smudged because the number of people  
6     that were touching that highly trafficked area, correct?

7     A.    That is correct.

8     Q.    Okay.  So that would affect the prints that you are  
9     able to actually retrieve ---

10     **MR. YARBOROUGH:**  Objection to leading.

11     **MS. SIMPSON:**  I'll rephrase.

12     **THE COURT:**  Sustained.

13     Q.    Actually, let's go to the print that you received in  
14     this case and then we'll come back to that point.  Did you  
15     receive a print for comparison in this case?

16     A.    Yes, I did.

17     Q.    And how did that come to you?

18     A.    In order to -- when a crime scene technician processes  
19     a crime scene, they place the latent fingerprint that's  
20     recovered on the back of a card that has all of the case  
21     information, the address where they recovered it from, a  
22     description of the location that they lifted it from, they  
23     sign it, they date it and they draw a diagram to show where  
24     the fingerprint came from off of the particular item.

25     That latent fingerprint is then placed into an

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

413

1 envelope, which we call a latent print envelope that has  
2 that same information on the outside with case number, the  
3 address, the victim, the crime type, et cetera. It is then  
4 sealed by the technician and initialed and it's placed into  
5 a locked drop-box that only myself and the three other  
6 latent print examiners in my office have a key to. Every  
7 morning, Monday through Friday, if it is a workday, we pick  
8 those latent prints up and bring them to our office for  
9 comparison.

10 Q. Okay. And in this case did you, in fact, receive a  
11 latent for comparison?

12 A. Yes, I did.

13 Q. And tell the jury what you did once you received that  
14 and what your results were.

15 A. I opened the envelope that was sealed. I observed that  
16 it was a whirl fingerprint. And I compared it to two  
17 individuals that were requested to be compared. And they  
18 were negative for the latent print in this case.

19 Q. And the print you received, did you -- are you aware of  
20 where that was actually recovered from based on the print  
21 card?

22 A. Yes, I am.

23 Q. Do you have that on hand or know?

24 A. Yes, I do.

25 Q. Can you tell the jury about that?



CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

414

1 A. Yes. There was one latent lift that was submitted by  
2 the evidence technician. And it was from the interior side  
3 of the left interior exit door above the bar.

4 Q. Okay. And that was the only print that was submitted  
5 to you or -- and you deemed it suitable for comparison?

6 A. That is correct.

7 Q. Let me show you State's exhibit 9, specifically  
8 reference to the portion area of the glass there. What does  
9 that look like to you as far as fingerprints or smudging?

10 A. Honestly, I would have to see the door in person to  
11 determine. It looks like several sweaty deposits on the  
12 door, but judging from the picture, I can't determine if  
13 those are fingerprint smudges, if they're fingerprints or if  
14 they're just, you know, maybe wiped down with a towel. I  
15 can't determine that from here.

16 Q. Okay. But on a surface area such as that, if there  
17 were smudges or if there were overlay where numerous people  
18 had touched it, would you expect to get a suitable print for  
19 comparison?

20 A. I would have to process that particular door and see.  
21 It really depends. Every surface is different. We will  
22 process it and collect any latent prints that are on that  
23 surface.

24 Q. And in this case you only had one that was submitted to  
25 you?

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

415

1 A. That is correct.

2 Q. As far as door handles and things of that nature,  
3 multiple people touching door handles, does that affect the  
4 ability to collect or get a print?

5 A. Yes, it does. And door handles are unique from doors  
6 because doors are -- they're static, they're solid, you push  
7 on them normally with an open hand. Whereas door handles,  
8 they're a little different because you have friction that  
9 comes into play.

10 When you grab a door handle, when you twist it or if  
11 it's a push bar where you push it and you push it tight, you  
12 put more pressure or possibly even smudge prints as you push  
13 on it. And the same with a twisting motion, you're possibly  
14 going to initially grab it and leave a print, but then as  
15 you twist it, you're going to smear or smudge those  
16 fingerprints that you could be leaving.

17 Q. Okay. And in this case you said that you processed in  
18 -- there were two individuals that you compared it to that  
19 were excluded, not a match, correct?

20 A. That is correct.

21 Q. Do you recall the name of those individuals?

22 A. Yes, I do.

23 Q. Can you tell the jury?

24 A. It was James White and Gerald Gadsden.

25 Q. Okay. They were not a match?

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

416

1 A. Yes. They did not make the fingerprint that was  
2 recovered from the door.

3 Q. Okay. And the mere fact, in your expertise, that a  
4 person -- that a print is not found, does that necessarily  
5 mean that a person did not touch the door?

6 MS. ROSS: Objection. I don't think that requires an  
7 expertise.

8 THE COURT: It's a leading question. So we'll sustain  
9 the objection.

10 Q. If I touch a door am I necessarily going to leave a  
11 fingerprint?

12 THE COURT: Still a leading question.

13 Q. Do people always leave fingerprints on items that they  
14 touch?

15 THE COURT: Still a leading question.

16 Q. What can you tell us about items that are touched and  
17 fingerprints that are left as far as will there always be a  
18 fingerprint?

19 A. Like we were talking about earlier, the factors that go  
20 into leaving a fingerprint on a surface, if the surface is  
21 clean versus dirty or if the person has sweat on their  
22 fingers when they touch an object or not, those factors go  
23 into play. You do not always leave a fingerprint when you  
24 touch a surface.

25 If the person, for instance, does not excrete sweat at

**CHRISTOPHER GARY - CROSS EXAMINATION BY MR. YARBOROUGH**

417

1 the normal rate of somebody else and their hands are dry,  
2 when they come into contact with a surface and there's no  
3 moisture there, there's no ink for that stamp that I was  
4 talking about earlier. So they would just touch it with  
5 their dry skin and not leave behind a latent fingerprint.

6 Q. And what about the timing of prints? Can you tell what  
7 time a print was left there, whether it was days, months,  
8 years or hours?

9 A. No. You cannot put any -- there's no scientific basis  
10 to discuss how long a fingerprint was left on a surface or  
11 when it was deposited.

12 **MS. SIMPSON:** I beg the Court's indulgence.

13 (Pause)

14 Q. Thank you.

15 **THE COURT:** Mr. Yarborough, anything?

16 **Cross Examination by Mr. Yarborough:**

17 Q. Did you do any investigation at the scene?

18 A. No, sir, I did not.

19 Q. There are examples in your training that you can get  
20 fingerprints off rocks, right?

21 A. Yes, that is correct.

22 Q. Okay. And you can get them off bricks.

23 A. That is correct.

24 Q. Okay. And you didn't test the brick here?

25 A. I did not.

CHRISTOPHER GARY - CROSS EXAMINATION BY MR. YARBOROUGH

418

1 Q. And you didn't find -- did you test or did anybody  
2 submit to you fingerprints from the roll of quarters -- or I  
3 guess that's nickels.

4 A. No, sir. The only latent lift that I received in this  
5 case was from the interior of the interior left door,  
6 entrance door.

7 Q. The interior left door. So is that it?

8 A. I could not tell you. I was not at the scene. I'm not  
9 sure if that's the door that this came off of or not. I can  
10 only go by the forensic evidence technician's description.

11 Q. Okay. Did you -- did you test this rag?

12 A. No, sir, I did not. The only latent fingerprint I  
13 received in this case was from the door.

14 Q. So you talked about surfaces that you could collect.  
15 You were qualified as an expert, right?

16 A. Yes, sir.

17 Q. Okay. Let me show you this, what's been marked as  
18 State's exhibit number 29. You see that? That's a  
19 computer.

20 A. Okay.

21 Q. Are computers usually pretty good pieces of equipment  
22 to get prints off of?

23 A. It depends on what part of the computer. In my  
24 experience computers have multiple parts. And you would  
25 have to be specific as to what part we're discussing.

**CHRISTOPHER GARY - CROSS EXAMINATION BY MS. ROSS**

419

1 Q. The switch to turn it on or off.

2 A. It would depend on if that switch is smooth or clean.

3 It would depend on if that surface is textured. It would  
4 have several factors. And I would have to process that  
5 surface myself to determine if latent prints ---

6 Q. And you didn't go out there and test this, did you?

7 A. No, sir, I did not.

8 Q. Okay. Now, let's talk about the screen to a computer.

9 Now, that screen where you push hold on the front of the  
10 computer, that takes -- that matches -- if you're pushing  
11 with your finger onto the computer screen, it would leave a  
12 print.

13 A. Not necessarily.

14 Q. Not necessarily? But it could, right?

15 A. It could, yes, sir.

16 Q. Okay. Do you know if that screen was tested?

17 A. No, sir. I have no knowledge of that. If it was ---

18 Q. The only knowledge you have is the one print was taken?

19 A. Yes, sir, that is correct.

20 **MR. YARBOROUGH:** I don't have anything further. Thank  
21 you.

22 **THE COURT:** Ms. Ross.

23 **MS. ROSS:** Thank you. May it please the Court.

24 **Cross Examination by Ms. Ross:**

25 Q. I'm going to show you what's marked as State's exhibit

1     number 3. So that's the front door with the handles. See  
2     how they're metal pull handles?

3     A.    Yes, ma'am.

4     Q.    Can't you get prints off of metal?

5     A.    You can retrieve latent fingerprints off of metal.

6     Q.    Okay. And while sometimes there are no prints and they  
7     can be obliterated, you certainly have had times when prints  
8     were gotten off a metal door and off of handles?

9     A.    Yes, that is correct.

10    Q.    Where you made a match in your experience?

11    A.    Yes, that is correct.

12    Q.    Okay. Now, but here you couldn't make a match? You  
13    just had that one print and you did not make a match to ...

14    A.    Yes. In this case in particular the only latent I  
15    received, again, was from the door. And it was the glass  
16    portion of the door above the bar. That was the only latent  
17    print submitted. And it was negative for Gadsden and White.

18    Q.    Okay. And those were the only two comparisons you were  
19    given, correct?

20    A.    I was given one more name.

21    Q.    Okay. What was that? Do you recall?

22    A.    It was a Damion Riley.

23    Q.    Okay. And that was not a match either?

24    A.    No, it was negative for him as well.

25    Q.    Okay. Now you made those -- did you run the

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

421

1 fingerprints through the fingerprint database at all?

2 A. Yes, I did.

3 Q. And there were no matches there?

4 A. That is correct.

5 Q. Okay. I've got just one more question. Again, my  
6 client, Gerald Gadsden, was not a match?

7 A. That is correct. He was negative in this case.

8 Q. Thank you.

9 **MS. SIMPSON:** No redirect, Your Honor.

10 **THE COURT:** All right. Thank you, sir. You may step  
11 down.

12 **MS. SIMPSON:** And may this witness be excused?

13 **MR. YARBOROUGH:** Yes, sir, Your Honor.

14 **MS. ROSS:** Yes, Your Honor.

15 **THE COURT:** All right. You're free to leave. Thank  
16 you.

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

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

19 **MR. FRETWELL:** The State calls Sergeant Ricky Motes.

20 **Thomas Richard Motes, Jr.,**

21 being duly sworn testified as follows;

22 **MADAME CLERK:** Please have a seat. And will you state  
23 your full name for the record.

24 **MR. MOTES:** Thomas Richard Motes, Jr.

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



THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

422

1           **THE COURT:** Yes, sir.

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

3           Q.    Good morning, Sergeant Motes.

4           A.    Morning.

5           Q.    Where are you currently employed?

6           A.    Currently the sergeant over our Property Crimes Unit  
7           with the Greenville County Sheriff's Office.

8           Q.    And how long have you been a sergeant over property  
9           crimes?

10          A.    Seven months.

11          Q.    Okay. And prior to that time what was your capacity  
12          with the Greenville County Sheriff's Office?

13          A.    Before that I was an investigator with our Office of  
14          Professional Standards Internal Affairs. I did  
15          investigations there. And then prior to that I was in the  
16          Criminal Investigation Division, worked in the Robbery Unit.

17          Q.    So how many years have you been employed by the  
18          Greenville County Sheriff's Office?

19          A.    Approximately fifteen years.

20          Q.    Okay. In January of 2014 in which of these capacities  
21          that you've just described were you working?

22          A.    In the Armed Robbery Unit.

23          Q.    Okay. Let me take you specifically to January 22nd,  
24          2014. At approximately the noon hour or 12:30 were you  
25          working that particular day?

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

423

1 A. I was.

2 Q. Okay. And were you working or at that time were you  
3 working a particular case?

4 A. That's correct.

5 Q. Tell the jury about that case.

6 A. I was assigned the Olive Garden robbery case. Went  
7 down -- I had called the Defendant, who at that time was  
8 just a victim/witness in the case, to come in so that I  
9 could obtain a written statement from him.

10 Q. Okay. And that Thursday that he came in did you meet  
11 with Sergeant Weiner and Mr. White in your office?

12 A. That's correct.

13 Q. Okay. Can you tell the jury a little bit about the  
14 layout of your office?

15 A. In our office, it's kind of like a room this -- about  
16 half the size of this room, but it's an open room. We have  
17 four desks in the big part of the room. Then right in front  
18 of my desk is Sergeant Weiner's desk, at the time, which was  
19 probably ---

20 Q. Let me walk up and you tell me to stop when ---

21 A. Probably about ---

22 Q. Right here?

23 A. Yeah.

24 Q. Okay. When you were talking with the Defendant, Mr.  
25 White, where was ---

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

424

1           **THE COURT:** That indicates about ten feet?

2       A.    About ten feet, yeah.

3           **THE COURT:** For the record.

4           **MR. FRETWELL:** Thank you, Judge.

5       Q.    When you were speaking with the Defendant, Mr. White,  
6       where was he in relation to where you were sitting and where  
7       Sergeant Weiner was?

8       A.    My desk sits right in front of Sergeant Weiner. And he  
9       would be sitting at the end of my desk.

10      Q.    Okay. And is there a door to that particular office  
11      that you ---

12      A.    There is the door to the right, one way in, one way  
13      out.

14      Q.    Okay. Is that door locked?

15      A.    No, sir.

16      Q.    Okay. In fact, outside of that door what do you have?

17      A.    When you go out there's an emergency exit door to the  
18      left, then there's a long hallway with a canteen, restrooms  
19      and then another exit door.

20      Q.    Okay. And in that office itself are you and Sergeant  
21      Weiner the only ones that are in that office or are other  
22      people ---

23      A.    No, there's other -- we had four investigators at the  
24      time and a sergeant in that office.

25      Q.    Okay. And when Mr. White arrived do you know how he

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

425

1     made it to your office?

2     A.    He was escorted down to -- from our lobby area down to  
3     our office.

4     Q.    Okay.  And for what purpose was he there?

5     A.    He was there to give a statement as being a victim in  
6     this case.

7     Q.    Okay.  Was he under arrest at any time ---

8     A.    No, sir.

9     Q.    --- at that point?  Were warrants prepared for his  
10    arrest at that point?

11    A.    No, sir.

12    Q.    Was he placed in handcuffs?

13    A.    No, sir.

14    Q.    Any threats or promises made to him in order to have  
15    him talk to you?

16    A.    No, sir.

17    Q.    Did you communicate anything to him that might suggest  
18    he was not free to leave?

19    A.    No, sir.

20    Q.    All right.  And can you identify, just for the record,  
21    the individual that you've mentioned as James White?  Can  
22    you identify him as being in the courtroom?

23    A.    Sitting at the Defense table in the burgundy shirt.

24           (Whereupon the witness pointed to the Defendant, James  
25    White)

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

426

1           **MR. FRETWELL:** Your Honor, let the record reflect the  
2 witness has identified the Defendant, James White.

3           **THE COURT:** It does.

4           Q. How did you begin your conversation with Mr. White?

5           A. Just the normal interview process of a victim, you  
6 know, introducing who I am, what we're here to do, what  
7 we're here to accomplish, and that was for me to obtain a  
8 written statement of his story of what happened at that --  
9 that night at the Olive Garden.

10          Q. Okay. And so when you explained that to Mr. White what  
11 did he say, if anything?

12          A. Well, he gave the story that he was working in the  
13 dishroom and a guy came in with a hoodie on with a gun and  
14 held them at gunpoint, stood over them and then robbed the  
15 store and left.

16          Q. Okay. And did you type that statement for him?

17          A. No. He was adamant that he wanted to write out his own  
18 statement.

19          Q. Okay. Let me show you what's been marked as State's  
20 exhibit 43. I'll ask you to look at State's exhibit 43. Is  
21 that the statement that you just referenced?

22          A. Yes, it is.

23          Q. Seem to be materially altered in any way?

24          A. No.

25               **MR. FRETWELL:** Your Honor, at this time the State would

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

427

1     move State's 43 into evidence.

2           **MR. YARBOROUGH:** Without objection, Your Honor.

3           **MS. ROSS:** No objection.

4           **THE COURT:** So admitted.

5           (Whereupon State's exhibit 43 was admitted into  
6     evidence)

7     Q.     Sergeant, will you read through that statement and tell  
8     the jury basically what information Mr. White provided you  
9     about that ---

10    A.     Okay.

11    Q.     --- incident on the 20th?

12    A.     This is just a statement that they give freely and  
13     voluntarily and he wrote in his own words. It says I went  
14     to work at 6:15. I clock in and started in the dishroom  
15     washing dishes. About eleven or so a guy with a hood came  
16     to da dishroom and pointed a gun and demanded to get on the  
17     floor and lay down. He then stood guard and I heard  
18     commotion. He then robbed the store.

19    Q.     Okay. And from that statement -- you're the  
20     investigating officer in this case. Are you trying to  
21     determine what charges are appropriate in this case?

22    A.     Correct.

23    Q.     Okay. And what charges, based on the information Mr.  
24     White provided you, did you have some reason to believe had  
25     occurred, what crimes had occurred?

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

428

1 A. That an armed robbery had occurred.

2 Q. And anything else? How about with respect to demanding  
3 that the individuals get on the floor?

4 A. Yeah. Kidnapping would also be another charge that  
5 would be appropriate in that case.

6 Q. Okay. Did he provide you on that form with his -- with  
7 an address that was current at the time?

8 A. He did,

9 Q. Okay. And was his statement, brief as it was,  
10 consistent with the other accounts that you had at that  
11 point of the robbery?

12 A. Yes, from the original report.

13 Q. Okay. And what happened after he wrote out and signed  
14 his statement?

15 A. At that time I asked him if I could look at his cell  
16 phone, asked for consent to search his cell phone and he  
17 agreed. Sergeant Weiner had filled out the information on  
18 the consent to search.

19 And while he was doing that I asked him, do you have  
20 anything else on you? And he said, oh, yeah, I got this old  
21 phone I hadn't used in months. I said, well, do you mind if  
22 I look at it as well? Search it as well? He said, no. And  
23 so I added in on that same consent form that pertinent  
24 information for that phone and at that point had him sign  
25 the consent form.

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

429

1 Q. Okay. I'm going to show you what's been marked as ---

2 THE COURT: Mr. Yarborough.

3 MR. YARBOROUGH: Your Honor, I want to note my previous  
4 objections to this for the record.

5 MS. ROSS: I'd join in that.

6 THE COURT: All right. So noted.

7 Q. I'm going to show you what's been marked as State's 44,  
8 45 and 46. Please keep in mind that these items are not in  
9 evidence yet. So take a look at them in your lap and tell  
10 me if you recognize those items. And if you do, by item  
11 number, if you could just tell the jury what those items are  
12 and how they relate to what you've just testified to.

13 A. Okay. The first one is the Kyocera model item number  
14 DW1, which is a -- the first cell phone that we took from  
15 Mr. White. And the second one is DW2 item, which is the  
16 cell phone that he gave me from his pocket, said that was  
17 his old cell phone.

18 Q. Okay. And those -- and that other item that I think is  
19 numbered first that you haven't mentioned yet, what item  
20 number is that? The consent?

21 A. The consent is 44.

22 Q. Okay. And what is 44? If you could describe that ---

23 A. It is a consent to search where if we, you know, ask  
24 someone may I look at your phone. Whether it be a phone or  
25 a computer or anything like that, we just document that



THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

430

1 information on this form and have them sign it.

2 Q. Do you put some sort of a number on that form that ---

3 A. Yeah. For each phone like a model number, or an MEID  
4 number, or a serial number, whatever is appropriate for that  
5 type of phone. A lot of phones, you can't get inside to see  
6 those numbers, so we document it as best we can.

7 Q. But you did document those kind of numbers on that  
8 particular consent form, is that right?

9 A. We did.

10 Q. Okay. Are all of those exhibits in substantially the  
11 same condition as when you received them or filled them out  
12 and executed them?

13 A. Yes, sir.

14 Q. Okay.

15 **MR. FRETWELL:** Your Honor, at this time the State would  
16 move State's 44 -- 43, 44 -- I'm sorry, 44, 45 and 46 into  
17 evidence.

18 **MR. YARBOROUGH:** Without objection -- with my previous  
19 objections.

20 **THE COURT:** And your previous objections ---

21 **MR. YARBOROUGH:** Previous objections.

22 **THE COURT:** --- to one or more of these items.

23 **MR. YARBOROUGH:** Right. Thank you, Your Honor.

24 **THE COURT:** The same with you, Ms. Ross?

25 **MS. ROSS:** And I'd join in that.

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

431

1           **THE COURT:** All right. I'm going to so admit them  
2 subject to any previous objections you may have made  
3 relating to one or more of -- what is it, 42, 43 and 44?

4           **MR. FRETWELL:** I think it's 44, 45 and 46.

5           **THE COURT:** 44, 45 and 46.

6           **MR. FRETWELL:** Thank you, Your Honor.

7           (Whereupon State's exhibits 44, 45 and 46 were admitted  
8 into evidence)

9           Q. Who took possession of these two phones for evidentiary  
10 purposes?

11          A. Sergeant Weiner.

12          Q. Okay. And those items are marked, you said, DW1 and  
13 DW2?

14          A. That's correct.

15          Q. And whose initials are those?

16          A. David Weiner.

17          Q. Okay. And that's this individual sitting right here?

18          A. That's correct.

19          Q. And what was his relationship to you at the time of  
20 January 22nd, 2014?

21          A. He was our sergeant over our unit.

22          Q. Okay. So he's the supervisor of that unit just like  
23 you supervise the Property Crimes Unit right now?

24          A. That's correct.

25          Q. Okay. What else did you collect that day from

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

432

1 Defendant White?

2 A. I did collect a DNA sample from him.

3 Q. Okay. And is that standard procedure?

4 A. Yes, sir.

5 Q. Okay. To your knowledge was any unknown DNA located or  
6 retrieved in this case against which Defendant White's DNA  
7 could be compared?

8 A. No, sir.

9 Q. Is that unusual?

10 A. No.

11 Q. Okay. Does it make sense to request that a used  
12 dishtowel -- you are familiar of a used dishtowel in this  
13 case?

14 A. Yes.

15 Q. Would it make any sense to compare that against the DNA  
16 of somebody who worked in the restaurant?

17 **MR. YARBOROUGH:** Objection, Your Honor. He's not  
18 qualified to answer that question.

19 **MR. FRETWELL:** He's an investigator. He's the one ---

20 **MR. YARBOROUGH:** Your Honor, he's not ---

21 **THE COURT:** Well, -- leading.

22 **MR. FRETWELL:** Sustained?

23 **THE COURT:** Leading.

24 **MR. FRETWELL:** Oh, leading. Okay.

25 Q. Did you compare his DNA to anything else?

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

433

1 A. To -- the sample was taken so that we could compare it  
2 with any other evidence that was found at the scene.

3 Q. You've already testified there weren't. Did you  
4 compare it to anything from this towel?

5 A. I can't -- I don't have that report. I can't remember.  
6 I'm sure we would have, but I don't have that in front of  
7 me.

8 Q. Okay. So you did not -- you were not involved in that  
9 process?

10 A. I was not.

11 Q. Let's talk about that.

12 A. Okay.

13 Q. As of that day you were the lead investigator in this  
14 particular case.

15 A. That's correct.

16 Q. Can you tell the jury what -- did you continue to be  
17 the lead investigator?

18 A. I wasn't able to.

19 Q. Okay. Tell the jury about that.

20 A. That same day I had to be relieved for a medical issue.  
21 That very day, as soon as I took his statement, I went to  
22 the hospital and was out of work for an extended period of  
23 time.

24 Q. And you left work that day?

25 A. That day.

**THOMAS MOTES, JR. - CROSS EXAMINATION BY MS. ROSS**

434

1 Q. And do you recall how long you were out of work?

2 A. It was over a week.

3 Q. Please answer any questions Defense counsel may have.

4 Thank you, sir.

5 MR. YARBOROUGH: I don't have anything for this

6 witness.

7 THE COURT: Ms. Ross.

8 MS. ROSS: Just briefly.

9 **Cross Examination by Ms. Ross:**

10 Q. Just looking at the consent to search the cell phone,

11 ---

12 A. Yes, ma'am.

13 Q. And it's in the original -- yeah, on that. The second

14 phone was added sort of in a different ink as in later on,

15 is that correct?

16 A. In just a few minutes. I added that because Sergeant

17 Weiner was helping me out filling out this information while

18 I was wrapping up the interview because I ---

19 Q. Okay.

20 A. --- was leaving. And that's when he pulled out this

21 phone here. And that writing is my writing where I wrote

22 Samsung flip phone, MEID. And that serial number is in my

23 handwriting.

24 Q. And then this signature of Mr. White appears to be in

25 the same as the prior handwriting.

THOMAS MOTES, JR. - CROSS EXAMINATION BY MS. ROSS

435

- 1 A. That ---
- 2 Q. Correct?
- 3 A. No. I would say he -- he signed this form after I'd
- 4 got both of these informations [sic] on -- yes, ma'am.
- 5 Q. Okay. And you said Investigator Weiner was there, but
- 6 he never witnesses -- witnessed it, it was just you?
- 7 A. It was just me. No.
- 8 Q. Okay. Now, just as far as Mr. White -- Mr. White had
- 9 come in voluntarily to speak with you?
- 10 A. He did.
- 11 Q. And you sat down and you talked with him voluntarily
- 12 and he consented to the DNA search?
- 13 A. Yes, ma'am.
- 14 Q. And was that recorded?
- 15 A. No, ma'am.
- 16 Q. Isn't it true that now, certainly, it's procedure to
- 17 record interviews?
- 18 A. It's not our -- we don't have a written policy on
- 19 recording interviews at this time. But I do on some cases,
- 20 would record.
- 21 Q. So -- but this one was not, so ---
- 22 A. It was not.
- 23 Q. --- you don't have any backup?
- 24 A. No, ma'am.
- 25 Q. All right.

THOMAS MOTES, JR. - CROSS EXAMINATION BY MS. ROSS

436

1           **MS. ROSS:** I've got no further questions.

2           **MR. FRETWELL:** Nothing further, Your Honor.

3           **THE COURT:** All right. Thank you, sir. You may ---

4       A.    Thank you, Your Honor.

5           **MS. SIMPSON:** Your Honor, with respect to the next  
6       witness, we have a matter of law we need to take up prior to  
7       him taking the stand.

8           **THE COURT:** All right. Ladies and gentlemen, we're  
9       going to take this matter up. I'm going to ask you to step  
10      back to the jury room. Please do not discuss the case while  
11      you're back there. We'll get -- be with you just as soon as  
12      we can.

13           (Whereupon the jury exited the courtroom at 11:26 am)

14           **MR. FRETWELL:** Judge, very briefly. Can Sergeant Motes  
15      be excused?

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

17           **MS. ROSS:** No objection.

18           **MR. FRETWELL:** Thank you.

19           **THE COURT:** You're free to leave.

20           **MS. SIMPSON:** Your Honor, may it please the Court. Our  
21      next witness is Investigator Matt Owens. I did want to  
22      bring up this issue due to Ms. Ross' opening statement prior  
23      to Investigator Owens taking the stand.

24           We did have a Jackson v. Denno regarding the statements  
25      of Gerald Gadsden that would come in through Investigator

1 Owens, however, in Ms. Ross' opening statement, which I did  
2 not object to because I do not know what the Defense would  
3 put up, she referenced the fact that at no point during the  
4 course of the investigation did Gerald Gadsden deny knowing  
5 James White. Well, the reason he didn't is he basically did  
6 not continue the conversation with Investigator Owens, and  
7 when he was ultimately served with these arrest warrants he  
8 invoked and did not speak to law enforcement about the case,  
9 which we cannot go into.

10 So, you know, I've already advised my witness on  
11 certain things, however, I just wanted to caution based on  
12 her opening statement. I have a little concern for any type  
13 of reference regarding some level of cooperation or the fact  
14 that -- essentially trying to backdoor the information that  
15 he never denied knowing James White through this witness,  
16 Investigator Owens.

17 **THE COURT:** I'm not sure I understand what you're  
18 saying.

19 **MS. SIMPSON:** The only statement we have from Gerald  
20 Gadsden, Ms. Ross' client, is coming in pursuant to the  
21 Jackson v. Denno hearing that we held with Investigator  
22 Owens. That is the phone conversation where he was not in  
23 custody at that time. At no point, though, is he asked by  
24 law enforcement does he know James White or anything of that  
25 nature.



1           However, Ms. Ross in her opening statement made the  
2   claim to the jury that Gerald Gadsden never denied knowing  
3   James White. Well, I think that's an impermissible  
4   inference if she's going to get up here and attempt to  
5   elicit that information from Investigator Owens because we  
6   only have the one statement. And like I said, if he intends  
7   to take the stand, that's down the road, but I wanted to  
8   address it just because of her opening statement. That's  
9   it.

10          **THE COURT:** Well, if -- so you're concerned that she's  
11   going to get up and ask this officer did he ever admit  
12   knowing this person?

13          **MS. SIMPSON:** I have some concerns with the way that  
14   question may come out, yes, Your Honor. Because I ---

15          **THE COURT:** And what ---

16          **MS. SIMPSON:** --- know that we cannot ---

17          **THE COURT:** --- would his response be? No, I never  
18   asked him if he knew him.

19          **MS. SIMPSON:** Well, he -- the reason he never asked is  
20   that Gerald Gadsden actually hung up the phone in his face  
21   and would not cooperate with law enforcement or give them a  
22   chance to ask. But that conversation ended ---

23          **THE COURT:** Well, you know, if they took him in and  
24   they arrested him and he invoked his rights, you know, they  
25   could say he never said he knew somebody because he never

1 gave a statement. And the answer would be we never talked  
2 to him. I don't understand the issue here.

3 **MS. SIMPSON:** My issue is the fact that we are not  
4 allowed as the State to go into the fact that he invoked or  
5 exercised his right to remain silent. So the fact that he  
6 never denied knowing James White to -- through this witness  
7 is improper because this witness never had the opportunity  
8 to fully interview him because he did invoke his rights or  
9 would not cooperate with law enforcement.

10 **THE COURT:** Well, you know, we'll just have to deal  
11 with that when it comes up. If he -- if she says did he  
12 ever tell you he knew him? And he says, no, I never asked  
13 him that.

14 **MS. SIMPSON:** And then I would fully intend to go into  
15 why were you unable to ask him that.

16 **THE COURT:** Well, I would fully intend to stop you.  
17 You know, you might be able to say you didn't have the  
18 opportunity or, you know, ...

19 **MS. SIMPSON:** As long as it's not misleading or  
20 confusing to the jury.

21 **THE COURT:** Look, the fact is he never admitted knowing  
22 him. That's the fact of the matter. The fact is that, you  
23 know, it's just not -- I don't see the issue. We'll deal  
24 with it -- if you think some issue comes out in the course  
25 of her cross examination or your direct examination, maybe

1 we can address it again, but I think she clearly can ask him  
2 did he ever admit knowing anybody. And you can on cross  
3 examination, did you ever ask him if he knew anybody.

4 **MS. SIMPSON:** Okay. Thank you, Your Honor. I'll  
5 object if necessary.

6 **MR. FRETWELL:** May it please the Court, Your Honor.  
7 Can I just ask a scheduling question of you? It's 11:30  
8 now. I anticipate that Mr. Owens' testimony/cross is going  
9 to be comparable to Sergeant Motes. I have my next witness  
10 on the way and he'll certainly be here. That leaves me with  
11 two witnesses.

12 One witness, Judge, had surgery this -- not this past  
13 Friday, but a week before, was in the hospital for five  
14 days. He's in a tremendous amount of pain. He is crucial  
15 to the case or I have to have him. I just need about an  
16 hour notice to give him so that he can get over here.

17 He is able to be excused from his job at the sheriff's  
18 office, but he is coming for this case. He's been  
19 subpoenaed, and we have to have him. So I just need to get  
20 an idea of when the Court intends to break or if it could  
21 break after that second witness and give me an opportunity  
22 to have that sergeant come after the lunch hour.

23 **THE COURT:** If you anticipate -- who's your next  
24 witness?

25 **MR. FRETWELL:** It's Investigator Owens, Judge. He's

1     seated right back here.

2           **THE COURT:** All right. And you anticipate his  
3 testimony's going to take twenty minutes.

4           **MR. FRETWELL:** Maybe twenty, twenty-five, maybe.

5           **THE COURT:** All right. So let's say we're at 12:00.

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

7           **THE COURT:** And then who's your witness after that?

8           **MR. FRETWELL:** I have -- he's a very short witness. He  
9 dealt with the phones. He's on the way over here. Then I  
10 would have Sergeant Kelly, who had the surgery. He's short  
11 as well. I could have him on the way.

12          **THE COURT:** Well, why don't we do this. When you  
13 finish your second witness, we'll break for lunch and -- for  
14 an hour or an hour and fifteen minutes. How is that?

15          **MR. FRETWELL:** That's great, Judge. Thank you very  
16 much.

17          **THE COURT:** Always mean to make you happy.

18          (Laughter)

19          **MR. FRETWELL:** I do not want to make you unhappy. So  
20 that's the ---

21          **THE COURT:** Oh, you're not going to do that.

22          **MR. FRETWELL:** That's the key here.

23          **THE COURT:** Okay. Y'all ready?

24          **MR. YARBOROUGH:** Yes, sir.

25          (Whereupon the jury entered the courtroom at 11:35 am)



MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

443

1 for a year or so. And then since 2004 I've been with the  
2 Greenville County Sheriff's Office.

3 Q. And what division do you currently work in?

4 A. I work in the Criminal Investigations Division, CID.

5 Q. And what are your duties and responsibilities?

6 A. Basically within the division we have certain -- I work  
7 with the Robbery Division. And so when a robbery occurs, we  
8 -- there's four investigators in that division. And we are  
9 assigned any and all type of robbery, armed robbery, strong  
10 arm robbery and car jackings, so on and so forth.

11 Q. Okay. And how long have you been within the Robbery  
12 Division of the CID Unit?

13 A. About five and a half years.

14 Q. And you said there are about four or five other  
15 individuals that work with you?

16 A. There's four investigators and then one sergeant.

17 Q. In cases that are not necessarily assigned to you or  
18 where you're not the lead investigator do you often assist  
19 other investigators with their investigations?

20 A. Yes, ma'am, we do.

21 Q. I want to turn your attention to January 20th or,  
22 actually, this case, were you actually asked to assist with  
23 the investigation?

24 A. I was.

25 Q. And on what day and by who were you asked to assist?

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

444

1 A. I was asked -- Sergeant Weiner asked me to assist with  
2 this investigation. Originally he asked me to assist on  
3 January 23rd, 2014.

4 Q. Okay. And I want to direct your attention -- you  
5 assisted with a number of different aspects, ---

6 A. Yes, ma'am.

7 Q. --- correct? On the 23rd did you actually make contact  
8 with one of the victims in this case?

9 A. Can I look at my ---

10 Q. Yes.

11 A. --- report, please? I believe -- yes, I did.

12 Q. And who was that?

13 A. That was Grady Pugh.

14 Q. And where did you actually speak with Mr. Pugh?

15 A. I went to his residence.

16 Q. And when you spoke with him, without telling me what he  
17 told you, was he able to give you a statement?

18 A. Yes, ma'am, he was.

19 Q. Was that statement written or oral?

20 A. It was written.

21 Q. And in that statement what were you asking him about?

22 A. Just details about what occurred, what happened, any  
23 type of description on the perpetrator of the incident.

24 Q. Okay. And did you also ask him with respect to the  
25 individuals who were with him during the incident? Who was

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

445

1 present?

2 A. Yes, ma'am.

3 Q. And who did he ---

4 **MR. YARBOROUGH:** Excuse me, Your Honor.

5 Q. --- indicate ---

6 **MR. YARBOROUGH:** Could she qualify -- she's saying him.  
7 There was a number of individuals there. Could she just  
8 tell us who she's ...

9 **THE COURT:** She's talking about Mr. Pugh.

10 **MS. SIMPSON:** Yes.

11 **MR. YARBOROUGH:** Him is Pugh? Okay. Thank you.

12 Q. Who did Mr. Pugh identify as being with him when the  
13 robbery actually occurred?

14 A. He also stated that Mr. White and then Aaron, the  
15 manager, was also present.

16 Q. On January 24th were you requested to do a search of a  
17 phone?

18 A. I was.

19 Q. Tell the jury what you did and what the results were.

20 A. Basically I was asked to obtain a search warrant on the  
21 phone. Typed up the search warrant. After it was signed I  
22 gave it to -- well, I had the phone -- we call it a phone  
23 dump, but it's -- the technical term is forensics analysis.  
24 Once I was given the information from the phone, I looked at  
25 the results.



MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

446

1 Q. Okay. And ---

2 **MR. YARBOROUGH:** Your Honor, could we approach?

3 (Whereupon a bench conference was held off the record,  
4 in the presence of the jury, but out of their hearing)

5 (Whereupon the bench conference was ended)

6 Q. And once you retrieved the results from the phone what  
7 type of information did you look at?

8 A. The first thing I looked at were the images that were  
9 on the phone.

10 Q. Okay. I'm going to show you what's been marked as  
11 State's 47, 48, 49, 50, 51 for identification purposes only.

12 A. Okay.

13 Q. These have not been introduced. So just make sure you  
14 look at them. So do you recognize those?

15 **MS. ROSS:** I'm going to object to that pursuant to our  
16 prior hearing as far as the search warrant.

17 **MR. YARBOROUGH:** Your Honor, I have -- I'm going to  
18 have another objection, too. If you want us to approach, we  
19 can try to ---

20 **THE COURT:** Ladies and gentlemen, let me let you step  
21 back to the jury room, please. Don't discuss the case.

22 (Whereupon the jury exited the courtroom at 11:42 am)

23 **MR. YARBOROUGH:** If the Court please. I think that  
24 she's trying to introduce pictures of Mr. Gadsden holding  
25 some amount of cash some period of time later. And I'm not

**MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON**

447

1     sure that that information is relevant. They don't have any  
2     way of tying that money to the robbery.

3             And all it does is it's being introduced to prejudice  
4     the jury. I think the fact that he has cash, there's  
5     nothing that ties that cash ---

6             **THE COURT:** First of all, I don't know -- I haven't  
7     seen -- what are the pictures?

8             **MS. SIMPSON:** Your Honor, if I may. These are pictures  
9     that Investigator Owens, once he received the results from  
10    the phone, the flip phone, the Samsung that was consented to  
11    search, which is already in evidence, Investigator Owens  
12    actually reviewed the images on that phone and proceeded  
13    with the investigation from there. I'm not introducing them  
14    at this time, but this is how they're able to identify that  
15    phone as belonging to Mr. Gadsden, which was actually found  
16    on Mr. White's person. If that makes sense.

17            **MR. YARBOROUGH:** Your Honor, I'm objecting to the  
18    pictures.

19            **THE COURT:** All right. So you're attempting to get  
20    verification that this phone at one point in time was in the  
21    custody and control and ownership of Mr. Gadsden?

22            **MS. SIMPSON:** Well, for purposes -- yeah, I mean at one  
23    point. But this investigator is only utilizing it as part  
24    of the course of his investigation. He reviews the images.  
25    At this point we get to his ---

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

448

1           **THE COURT:** So you ---

2           **MS. SIMPSON:** --- identification ---

3           **THE COURT:** So you're not going to introduce them at  
4 the time?

5           **MS. SIMPSON:** No, not at this time.

6           **THE COURT:** Why don't you just ask him did you find Mr.  
7 Gadsden's picture when you downloaded whatever you got? Was  
8 his picture on the phone?

9           **MS. SIMPSON:** Well, we do intend to introduce them down  
10 the road. So I think we need to lay the proper foundation  
11 through this witness in order to make the relevance with  
12 respect to the witness who we will -- that we will actually  
13 be introducing the photos through.

14          **MS. ROSS:** And, again, it's getting the photos in front  
15 of the jury and ---

16          **THE COURT:** Well, she's not attempting to put these,  
17 photos ---

18          **MS. ROSS:** Oh, I know.

19          **THE COURT:** --- in front of the jury ---

20          **MS. ROSS:** Just the existence of the photos.

21          **THE COURT:** --- at this time. I'll allow you to let  
22 him look at these and say, yeah, I had the -- I found  
23 certain photographs, which were photographs of Mr. Gadsden.  
24 And those have been identified for identification purposes  
25 as whatever numbers they are.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

449

1           **MS. SIMPSON:** Yes, Your Honor.

2           **THE COURT:** And then if these things -- and that is --  
3       'cause apparently that's all you want to do at this time,  
4       that he got these photographs off the phone and that they  
5       identified Mr. Gadsden.

6           **MS. SIMPSON:** Right. It's kind of a -- it begins the  
7       process. So it's not going ---

8           **THE COURT:** Well, I mean, then if you attempt to  
9       introduce them at some point in time, then we'll have to  
10      deal with the contents of the photographs.

11          **MR. YARBOROUGH:** Okay. Thank you, Your Honor.

12          **MS. ROSS:** May I just ask, what exhibit numbers are  
13      those photographs?

14          **THE COURT:** Yeah, you may ask that. Did you now want  
15      to know what ---

16          **MS. ROSS:** Well, I'm wondering about is it ---

17          **THE COURT:** What's your question? May you ask that  
18      question or what is ---

19          **MS. ROSS:** Oh, I'm sorry. Are they exhibits 47 through  
20      51?

21          **THE COURT:** They are.

22          **MS. ROSS:** Okay.

23          **MR. YARBOROUGH:** And I think ---

24          **THE COURT:** So I guess the purpose of -- that, one,  
25      you're trying to get them identified so that there's some

**MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON**

450

1 chain at some point in time. And, two, that, hey, Mr.  
2 Gadsden's photograph was on the phone and that's what made  
3 him believe that Mr. Gadsden may have some interest in this  
4 telephone.

5 **MS. SIMPSON:** Yes, Your Honor.

6 **THE COURT:** Either ownership or otherwise. Don't let  
7 the jury see them. And that's it. All right. Anything  
8 further?

9 **MR. YARBOROUGH:** No, sir. Thank you, Your Honor.

10 **MS. SIMPSON:** Thank you, Your Honor.

11 **THE COURT:** All right. Let's bring the jury in. Now,  
12 with respect to the other item, I would think if she asks  
13 does he ever deny, I mean, admit knowing him, you could  
14 probably ask did he ever deny knowing him.

15 **MS. ROSS:** Judge, actually, I don't think I'm going to  
16 ask ---

17 **THE COURT:** I mean, the statement is whatever the  
18 statement is. She could ask did he ever say in his  
19 statement that he went to the beach in November. So ...

20 **MS. SIMPSON:** I think I understand, Your Honor.

21 (Whereupon the jury entered the courtroom at 11:47 am)

22 **THE COURT:** All right, Ms. Simpson.

23 **MS. SIMPSON:** Thank you, Your Honor.

24 **Direct Examination by Ms. Simpson Continued:**

25 Q. Investigator Owens, have you had a chance to review

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

451

1     those photographs?

2     A.    Yes, ma'am.

3     Q.    And do you recognize those photographs?

4     A.    Yes, ma'am.

5     Q.    And what was contained in those images that was of  
6     significance to you or what did you do once ---

7           **MR. YARBOROUGH:**  Objection.

8     Q.    --- you viewed those images?

9           **THE COURT:**  Are you trying -- she's trying to identify  
10    an individual who was in there, correct?

11          **MS. SIMPSON:**  Yes, Your Honor.  He does several steps  
12    to get to that ID based on these images.

13          **THE COURT:**  Get to the individual.

14          **MS. SIMPSON:**  Okay.

15    Q.    Did you identify the individual in those images?

16    A.    At that point or later down the road?

17    Q.    Down the road.  And we'll discuss the process ---

18    A.    Yes.  Yes, I did.

19    Q.    And who was the individual identified in those  
20    photographs?

21    A.    Gerald Gadsden.

22    Q.    And what process did you utilize?  How did you go about  
23    identifying him as being the person in the photographs?

24    A.    Okay.  So when I looked at the photographs I realized  
25    that the picture I was looking at was of a black male

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

452

1 wearing a camouflage, pretty heavy coat with a hood holding  
2 up a ---

3 **MR. YARBOROUGH:** Objection, Your Honor.

4 **THE COURT:** Speak of only the individual.

5 A. Yes, sir. Okay.

6 Q. Let me -- Let me stop you for just a second. With  
7 respect to where the phone came from are you aware of who  
8 handed over that phone?

9 A. Yes, I was.

10 Q. And who was the person that the phone itself came from?

11 A. Mr. White.

12 Q. And were you familiar with what Mr. White looked like?

13 A. Yes, ma'am.

14 Q. And did the person in those images -- were they Mr.  
15 White?

16 A. No, they were not.

17 Q. And why was that significant to you?

18 A. 'Cause that -- basically if I am -- if I have a phone,  
19 I'm going to have pictures of myself or family members,  
20 whatever the case might be. And in this particular picture  
21 it was not of Mr. White.

22 Q. Okay. And it actually turned out to be ---

23 A. Mr. Gadsden.

24 Q. In addition to reviewing the images on the phone what  
25 else did you look at?

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

453

- 1 A. I then started to look at the contact list.
- 2 Q. And what did you notice of significance in the contact  
3 list?
- 4 A. The first contact I noticed was a contact for -- it had  
5 the name of Jr. G on it.
- 6 Q. Jr. G? Why would that stand out to you?
- 7 A. I was aware that Mr. White is a rapper artist and that  
8 his stage name is actually Jr. G.
- 9 Q. And that was in the contact list ---
- 10 A. Yes, ma'am, it was.
- 11 Q. And at this point in time when you're reviewing the  
12 contents of the phone are you aware that that was actually  
13 Gerald Gadsden in those pictures?
- 14 A. At that time I was not, no.
- 15 Q. Okay. So when you looked through the contact list what  
16 did you do or what did you notice?
- 17 A. Okay. So after I noticed Jr. G, I scrolled down and I  
18 looked at the contact that had ma, m-a, on it.
- 19 Q. And what was your purpose of kind of going through to  
20 -- that would lead you to ma as looking at?
- 21 A. Well, in certain situations when we have a cell phone  
22 and we're trying to pinpoint exactly where the cell phone  
23 came from, who it belongs to, you're not going to lie about  
24 who's your ma. So that is a -- and that's why I went to ma.
- 25 Q. Okay. And what did you do once you saw ma?



MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

454

1 A. I called that number.

2 Q. And what happened next?

3 A. I spoke with the lady. And I introduced myself as I'm  
4 with the Greenville County Sheriff's Office. I basically  
5 asked her if she knew the number that I was calling from or  
6 the number of the cell phone.

7 Q. And what was the number of the cell phone that you were  
8 calling from or that you were trying to identify?

9 A. Okay. So I advised her that I had the phone number of  
10 area code .

11 Q. And once you advised her of that number did you explain  
12 to her the reason for calling?

13 A. Yes, ma'am.

14 Q. And did you provide her with a description of the  
15 individual on the phone?

16 A. Yes, ma'am, I did.

17 Q. And was she able to provide you with a name?

18 A. Yes, ma'am, she did.

19 Q. What name did she give you?

20 A. She said Gerald Gadsden.

21 Q. And what was her relationship or the person -- first of  
22 all, who did she identify herself as being?

23 A. As Crystal Gadsden, his mother.

24 Q. Okay. And you actually described the person contained  
25 in the images that I showed you in State's exhibit 47

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

455

1 through 51?

2 A. Yes, ma'am, I did.

3 Q. At that time, as a result of your conversation, did you  
4 actually have a phone number or a way to get in touch with  
5 Mr. Gadsden?

6 A. At that time, no, I didn't.

7 Q. And what did she indicate to you that she would do or  
8 how you could ---

9 **MS. ROSS:** Your Honor, I'd object to any hearsay.

10 **THE COURT:** Sustained.

11 **MS. SIMPSON:** I'll rephrase.

12 Q. As a result of that conversation what did you do?

13 A. I asked her if she could relay a message to Mr. Gadsden  
14 to have him call me so I could talk to him about this  
15 incident.

16 Q. Later on that day or subsequent to that conversation  
17 did you actually confirm that that was Gerald Gadsden now  
18 that you have a name?

19 A. Yes, ma'am, I did.

20 Q. And how did you do that?

21 A. So I went to the South Carolina Department of Motor  
22 Vehicles' website and I typed in Mr. Gadsden's name. And  
23 the system pulled up a driver's license photo of him at  
24 which time it was very clear that Mr. Gadsden's driver's  
25 license looked like the pictures that was on the phone.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

456

1 Q. And what was the full name listed for Mr. Gadsden?

2 A. From the driver's -- it was Gerald Akeem Gadsden.

3 Q. And did it also list a height and weight?

4 A. It did. 5'11", two hundred and forty pounds.

5 Q. Okay. And did you actually turn that information over  
6 to the lead investigator, Sergeant Weiner?

7 A. I did.

8 Q. Turning your attention to January 24th of 2014 what did  
9 you do with respect to this investigation?

10 A. As far as the identification of Mr. Gadsden? Is that  
11 what you're asking me?

12 Q. Yes. If you look at your report, what did you do?

13 A. So after we was able to identify Mr. Gadsden from the  
14 phone, I was able to again ask the, basically, SLED to  
15 obtain a photo lineup for me with Mr. Gadsden's picture in  
16 it.

17 Q. Okay. And once you got that photo lineup what did you  
18 do with it? Did you make contact with any individuals?

19 A. Yes, ma'am. Myself and Sergeant Weiner made contact.

20 Q. And who were those people?

21 A. Excuse me. Let me -- it was -- we went -- spoke with  
22 Terrell and Aaron at the Olive Garden.

23 Q. And did you actually go through the photo lineup  
24 process with either one of those individuals?

25 A. Yes, ma'am. And when we do it, we do it separately.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

457

1 So they're separated at that time.

2 Q. And were either one of them actually able to pick  
3 anyone out of the lineup?

4 A. No, ma'am, they were not.

5 Q. Turning your attention to January 27th of 2014, at this  
6 point in time have you heard back from Mr. Gadsden at all?

7 A. No.

8 Q. And as a result of not hearing back from him, what did  
9 you do?

10 A. I called Crystal back, his mother.

11 Q. And did you, in fact, -- were you able to speak with  
12 her without telling me exactly what she said?

13 A. Yes, ma'am, I was.

14 Q. And at that point did you still have a number for which  
15 to call him?

16 A. No, ma'am.

17 Q. But later on that day did you assist Sergeant Weiner in  
18 another search?

19 A. Yes, ma'am.

20 Q. And can you tell the jury where y'all searched and why?

21 A. At , I believe, apartment .

22 I was told that was the residence of Mr. White.

23 Q. Okay. And in that search did you locate anything of  
24 importance?

25 A. Yes, ma'am. Inside his residence I located a pair of

**MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON**

458

1 teal pants. And inside those pants was a, I believe, it was  
2 a MasterCard. Yes, ma'am. It was a MasterCard with the  
3 name of Gerald Gadsden on it.

4 Q. I'm going to show you what's been marked as State's  
5 exhibit 53. Do you recognize that?

6 A. I do.

7 Q. And what is it?

8 A. It is a debit MasterCard with the name Gerald A.  
9 Gadsden up on it.

10 Q. And does that fairly -- does that fairly and accurately  
11 depict what you actually pulled up -- recovered that day?

12 A. Yes. Yes, ma'am.

13 **MS. SIMPSON:** Your Honor, at this time I would offer  
14 State's 53 into evidence.

15 **MS. ROSS:** No objection, Your Honor.

16 **THE COURT:** So admitted without objection.

17 (Whereupon State's exhibit 53 was admitted into  
18 evidence)

19 Q. Okay. Now with respect to this credit card that you  
20 found, do you remember where it was located?

21 A. In a pair of teal pants.

22 Q. Okay. And this is at Mr. White's residence?

23 A. It -- yes, ma'am.

24 Q. I'm going to show you what's been marked as State's 65  
25 for identification purposes only. In State's 65 do you

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

459

- 1 recognize an article of clothing?
- 2 A. I do.
- 3 Q. And is it -- what is it?
- 4 A. A pair of teal pants.
- 5 Q. And are those consistent with the pair of teal pants in
- 6 which you found the credit card belonging to Gerald Gadsden?
- 7 A. Yes, ma'am.
- 8 Q. And that's State's 65?
- 9 A. (Affirmative nod).
- 10 Q. And do you recognize the person who's actually wearing
- 11 the teal pants in that photo?
- 12 A. Yes, ma'am.
- 13 Q. Who is that person?
- 14 A. Gerald Gadsden.
- 15 Q. And was anything else of significance actually
- 16 recovered from the search warrant?
- 17 A. No, ma'am.
- 18 Q. So y'all didn't recover a gun or anything of that
- 19 nature?
- 20 A. No, ma'am.
- 21 Q. Later on that day did you actually receive a call?
- 22 A. I did.
- 23 Q. And who did you receive a call from?
- 24 A. A Gerald Gadsden.
- 25 Q. What time of the day on the 27th did you receive that

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

460

1 call?

2 A. It was 1500 hours, which is three pm.

3 Q. Three pm? And how did you know it was Gerald Gadsden  
4 calling you?

5 A. He told me that was his name.

6 Q. Okay. And tell us about that conversation, what was  
7 said.

8 A. Basically ---

9 **MS. ROSS:** And I'd object to relevance at this point  
10 under 403.

11 **THE COURT:** Overruled.

12 Q. Can you tell me what was said ---

13 A. Yes, ma'am.

14 Q. --- in that conversation?

15 A. Basically I asked him about his cell phone. And he  
16 replied to me that he lost the cell phone on the 15th at a  
17 club in North Charleston called Club Sho Tyme. I inquired  
18 if he made a report on the cell phone being lost. And he  
19 said, no, quote, it was a -- it was a prepaid phone. So,  
20 okay. I asked him if he would mind coming to the sheriff's  
21 office and speaking with us. And he said that he was  
22 basically out of town.

23 Q. And did you specifically ask him about talking about  
24 the incident?

25 A. Yes, ma'am, I did. And he replied, what are you

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

461

1 talking about? And then I told him that he knows exactly  
2 what I'm talking about.

3 Q. And did he reply to you?

4 A. No.

5 Q. At some point did this conversation end?

6 A. It did.

7 Q. Well, let me back up just a little bit. Did he  
8 indicate anything about getting back in contact with you?

9 A. Yeah. He said -- let me read over this real quick. He  
10 said he would call me back.

11 Q. Okay. Did he -- did you ask him for anything?

12 A. Yes, ma'am. I asked him for his cell phone number.  
13 And I never received one.

14 Q. And did the conversation end?

15 A. Yes, ma'am, it did.

16 **MS. SIMPSON:** Beg the Court's indulgence.

17 (Pause)

18 Q. The person in the photo, the images that you reviewed  
19 on the phone and compared as being Gerald Gadsden, and also  
20 the man in the teal pants, do you see him in the courtroom  
21 today?

22 A. I do.

23 Q. And can you point him out for the jury?

24 A. He's sitting right over there, a teal shirt, long  
25 sleeve shirt.



**MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS**

462

1 (Whereupon the witness pointed to the Defendant, Gerald  
2 Gadsden)

3 **MS. SIMPSON:** Your Honor, let the record reflect he's  
4 identified Gerald Gadsden.

5 **THE COURT:** Mr. Yarborough.

6 **MR. YARBOROUGH:** Your Honor, I don't think I have any  
7 questions for this witness.

8 **THE COURT:** All right. Ms. Ross.

9 **Cross Examination by Ms. Ross:**

10 Q. I just want to go back, the 23rd, just looking at your  
11 report, it looks like you questioned Mr. White's girlfriend,  
12 Katrina Ferguson, is that correct?

13 A. Yes, ma'am.

14 Q. And isn't that because y'all had impounded his car the  
15 prior day after he came in and cooperated with law  
16 enforcement?

17 A. I'll be honest with you, I don't know exactly when he  
18 came in.

19 Q. Okay. Do you know whether the car was impounded?

20 A. Yes, ma'am.

21 Q. Okay. And she met you there. And did you tell her she  
22 could be open to charges herself if ---

23 **MS. SIMPSON:** Objection, Your Honor.

24 Q. --- she didn't cooperate with you?

25 **MS. SIMPSON:** With respect to relevance.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

463

- 1           **MS. ROSS:** It's in the incident report.
- 2           **MS. SIMPSON:** The fact that it's in there doesn't ---
- 3           **THE COURT:** Sustained.
- 4           **MS. ROSS:** Okay.
- 5           **THE COURT:** You can ask her what she said.
- 6           **MS. ROSS:** Okay.
- 7           **THE COURT:** I mean, what he did, if she can't ---
- 8    Q.   Did you ask for consent to search the car?
- 9    A.   I did.
- 10   Q.   And did she give that consent to search the car?
- 11   A.   I believe so.
- 12   Q.   And did you -- did you search the car?
- 13   A.   No, I did not search the car.
- 14   Q.   Okay. Well, do you need to see it and see whether she
- 15   consented to that search?
- 16   A.   Yes, ma'am. Let me just read over this right quick,
- 17   okay?
- 18   Q.   Sure.
- 19           (Pause)
- 20   A.   She did say that she understood, yes, ma'am.
- 21   Q.   Okay. So she did consent?
- 22   A.   Yes, ma'am.
- 23   Q.   Okay. And now did you interview Grady Pugh as well on
- 24   the 23rd?
- 25   A.   Yes, ma'am.

**MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS**

464

1 Q. And didn't he say he did not remember White leaving the  
2 kitchen and he was almost certain that he stayed?

3 A. Yes, ma'am.

4 Q. Okay. And what this was in reference to is the times,  
5 the moments before the armed robbery, correct?

6 **MS. SIMPSON:** Objection, Your Honor.

7 **THE COURT:** What was the question?

8 **MS. ROSS:** That that statement that Mr. Pugh gave  
9 saying that he was certain Mr. White stayed with him back in  
10 the washroom, that was in reference to the time prior to the  
11 robbery.

12 **MS. SIMPSON:** Okay. Maybe I didn't hear the question  
13 completely, but without going into inadmissible hearsay I  
14 think it's misphrasing, mischaracterizing, but ...

15 **THE COURT:** But he testified as to what he said and ...

16 Q. Just to give a reference, what was the context -- what  
17 time period was he talking about when he said that?

18 A. It doesn't say in my -- in my report. It doesn't give  
19 a time-frame.

20 Q. Okay. Now, going back did you also show Mr. Pugh a  
21 photo lineup?

22 A. Yes.

23 Q. Were these the photos in the photo lineup? Do they  
24 appear to be?

25 A. Yes, ma'am. They appear to be, yes, ma'am.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

465

1 Q. Okay. And isn't it true that one of those photos is of  
2 Gerald Gadsden, the man sitting in the courtroom today?

3 A. Yes, ma'am.

4 Q. And isn't it true that in that photo he's got a long  
5 dreadlock hairstyle?

6 A. Yes, ma'am.

7 Q. And isn't it true that he has facial hair as well?

8 **MS. SIMPSON:** Objection, Your Honor, with respect to  
9 kind of the similar objection they made. If she wants to  
10 introduce the photo, I'm fine with that, the photo lineup,  
11 but if she's having him describe everything that's in the  
12 photo with respect to the one person without actually  
13 introducing it.

14 **THE COURT:** I'll let her ask the question.

15 Q. Did he have facial hair?

16 A. Yes, ma'am.

17 Q. And dreadlocks like you said before?

18 A. Yes, ma'am.

19 Q. And when shown those -- that photo -- it wasn't a photo  
20 array. You did it one at a time when you presented that  
21 lineup, correct?

22 A. Yes, ma'am. It was one individual photo at a time.

23 Q. And did Mr. Pugh identify the photo with Gerald  
24 Gadsden?

25 A. No.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

466

1 Q. And, in fact, looking at the photo array, all the men  
2 had dreadlocks in the photo array?

3 A. Yes, ma'am.

4 Q. Now, are you aware of what was found -- were you part  
5 of the investigation when they found some stuff in the car  
6 that Katrina Ferguson consented for you to search?

7 A. I had -- ma'am, I have no idea what was found in the  
8 car.

9 Q. So you don't -- you can't say anything ---

10 A. No, ma'am.

11 Q. --- about that? But you did get a search warrant for  
12 the Samsung flip phone that James White had on his  
13 possession?

14 A. Yes, ma'am.

15 Q. And you said when you searched through that you looked  
16 at the pictures before you looked at the contact  
17 information?

18 A. Yes, ma'am.

19 Q. And one of the contacts was Jr. G, who was Gerald [sic]  
20 White, correct?

21 A. Jr. G was Mr. White, yes.

22 Q. Yes. Okay. Now, when you ran the DMV search to get  
23 this photo that you matched to the picture on the phone, was  
24 there an address there as well?

25 A. Yes, ma'am.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

467

- 1 Q. And did you write a letter to that address saying I  
2 would like to talk to Mr. Gadsden?
- 3 A. No, ma'am.
- 4 Q. All right. And did you get a search warrant for that  
5 address?
- 6 A. No, ma'am.
- 7 Q. And did you also show the lineup to Mr., I mean, Aaron,  
8 and I'm going to butcher his last name, but Aaron, the store  
9 manager, at Olive Garden?
- 10 A. Yes, ma'am.
- 11 Q. And was he able to pick out any ---
- 12 A. No, ma'am.
- 13 Q. So after being shown Gerald Gadsden's picture he was  
14 not able to pick ---
- 15 A. (Negative nod).
- 16 Q. And that was how soon after the 20th, the robbery, when  
17 that lineup array was shown?
- 18 A. Hang on a second. We showed the lineup on the 24th.
- 19 Q. Okay.
- 20 A. On January 24th.
- 21 Q. So that's three to four days later?
- 22 A. Yes, ma'am.
- 23 Q. And at that time neither of them picked Gerald Gadsden  
24 out of that lineup?
- 25 A. No, ma'am.

1           **MS. ROSS:** I've got no further questions.

2           **THE COURT:** Anything?

3           **MS. SIMPSON:** No redirect, Your Honor.

4           **THE COURT:** All right. Thank you, sir. You may step  
5 down.

6           **MS. SIMPSON:** And, Your Honor, may Investigator Owens  
7 be released from his subpoena?

8           **THE COURT:** He may.

9           **MS. ROSS:** No objection.

10          **MR. YARBOROUGH:** No objections.

11       A.   Thank you.

12          **MS. SIMPSON:** Thank you, Your Honor.

13          **MR. FRETWELL:** May it please the Court.

14          **THE COURT:** Yes, sir.

15          **MR. FRETWELL:** If the Court's inclined, the next  
16 witness I have is Investigator Jim Perry. May I call him at  
17 this time?

18          **THE COURT:** You certainly may.

19          **MR. FRETWELL:** I just didn't know if you wanted -- that  
20 was a little bit longer than we had talked about. And I  
21 just didn't know if it was all right to go ahead and call  
22 this next witness.

23          **THE COURT:** Sure.

24          **MR. FRETWELL:** All right. The State calls Investigator  
25 Jim Perry.'

25 A. No, exclusively -- 2002 I established the unit.



JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

470

1 Q. Okay. And what is the purpose of that unit and what  
2 duties do you perform there?

3 A. We do cell phone, computer GPS forensic examination.  
4 We're part of the Internet Crimes Against Children Task  
5 Force. We do the online predator cases. We work cases that  
6 come in from NCMEC, which is the National Center for  
7 Exploited and Missing Children. So -- and then we also work  
8 in the other type of natured crimes that involve cell  
9 phones, computers, that type of thing.

10 Q. Do you talk about computer and cell phone analysis?

11 A. Um-hum (affirmative). I do.

12 Q. That's technical ---

13 MS. ROSS: Judge, I'd stipulate to his expertise in  
14 this ---

15 MR. YARBOROUGH: I will, too, Your Honor.

16 MR. FRETWELL: Your Honor, I'm just going to continue  
17 just so the jury understands what he does.

18 THE COURT: All right.

19 MR. FRETWELL: Thank you, Judge.

20 Q. I lost my train of thought there for a second. You  
21 said you analyze these items. And that's your term for it.  
22 Can you tell the jurors, what do you mean by analyze, let's  
23 say, a cell phone?

24 A. Okay. What we do is we take a cell phone that's  
25 brought in to us, we connect it to a machine, it's called

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

471

1 Cellebrite. And from there we do a -- anything from a  
2 physical extraction, file system extraction or logical  
3 extraction, take that image, go to our forensic computer,  
4 connect it to a software program and then begin the analysis  
5 of the data that's within that device.

6 Q. Does that take all of the data off of that device?

7 Does that program do that?

8 A. It takes all the data that Cellebrite will get.

9 Q. Okay. And let's talk about Cellebrite. What kind of  
10 training specifically have you received in order to perform  
11 your duties as a forensic electronic apparatus examiner or  
12 whatever it is?

13 A. I've been to -- I've been certified by Cellebrite as an  
14 examiner.

15 Q. Any other companies or software?

16 A. Yeah. I mean, I've been to federal, state and private  
17 companies, had training on all those.

18 Q. What about a company called Mobilizer? What's that?

19 A. Mobilize, it's another basically what we call tool in  
20 our toolbox. It's another program that analyzes cell  
21 phones.

22 Q. Okay. Tell us, what is involved in the actual process  
23 of cell phone data recovery?

24 A. The process ---

25 Q. And if you can, just distinguish it a little bit from

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

472

1     what you might do on a computer.

2     A.    Okay.  Cell phone recovery is totally different than

3     computers in that every make and model is different.  We

4     could have the same make phone and different models and we

5     can get different information off each one of the phones.

6     So with cell phones, you don't always get the same type

7     information off the phone, whereas computers are pretty much

8     the universal in what we get minus one that might have been

9     encrypted.

10    Q.    How does -- if you're looking at, let's say, a

11    smartphone versus a flip phone.

12    A.    Correct.

13    Q.    Tell us how that might be ---

14    A.    Smartphones basically -- we call them smartphones, but

15    really they're computers that have a cell phone app.  Where

16    a flip phone, other than taking pictures and some texting,

17    it's a phone.  So those are the two distinct differences

18    between those.

19    Q.    Okay.  And so with you -- let's say, for example, if

20    you're analyzing a smartphone, what kinds of things could

21    you -- what categories of items could you retrieve from that

22    particular phone?

23    A.    We can get -- and again, everything's depending on the

24    make and model of the phone.  We can get emails, text

25    messages, locations, metadata from pictures, just about --

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

473

- 1 anything that can come into a cell phone, we can get.
- 2 Q. I noticed that you might need some water.
- 3 A. Yeah. Thank you.
- 4 Q. Okay. And, obviously, what you can get off of a flip
- 5 phone would be much more reduced, is that -- is that fair to
- 6 say?
- 7 A. Right. Cell phone, flip ---
- 8 Q. I want -- I'm sorry.
- 9 A. Flip phone, you won't get near the data that you will
- 10 off of a smartphone.
- 11 Q. Okay. And let me direct your attention to two items
- 12 that are already in evidence. They're State's exhibit 45
- 13 and 46 for the record, items DW1 and DW2. Do you -- did you
- 14 have any interaction with these particular items in the
- 15 course of your responsibilities ---
- 16 A. I did.
- 17 Q. --- in reference to that particular case number?
- 18 A. I did.
- 19 Q. Okay. And what did you do with those items?
- 20 A. I did a cell phone forensics analysis.
- 21 Q. Okay. At whose direction did you perform the analysis?
- 22 A. The Robbery Division.
- 23 Q. Okay. And as a result of the data recovery that you
- 24 performed were you able to capture data and images from
- 25 these two phones?

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

474

1 A. I was.

2 Q. Upon request did you generate an Excel spreadsheet  
3 containing the data you recovered?

4 A. I did.

5 Q. And did you provide this data in Excel form to anybody?

6 A. I sent a copy to Sergeant Dan Kelly.

7 Q. Okay. Let me let you look at these items, and I'm  
8 going to ask you who -- well, just go ahead, who's Dan  
9 Kelly?

10 (Pause)

11 **THE COURT:** The question is who's Dan Kelly?

12 A. Oh, I'm sorry. He's a sergeant with our Technical  
13 Service Division.

14 (Whereupon Court's exhibit 6 was marked)

15 Q. All right. Let me show you -- let me show you what's  
16 been marked as State's 55, State's 54 and a Court's exhibit.  
17 That is Court's exhibit 6. I'm going to have you look at  
18 Court's exhibit 6, State's exhibit 54 and 55 and ask if you  
19 recognize these items?

20 A. Yes. They're reports that I've viewed that came from  
21 those phones.

22 Q. Okay. And are these the reports that you just  
23 testified to that were in the Excel format?

24 A. Correct.

25 Q. What is Excel?

**JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL**

475

1 A. Excel spreadsheet format.

2 Q. Just basically contains a lot of data, is that right?

3 A. A lot of data.

4 Q. Okay. And are these -- let me ask you individually  
5 about -- let's start with State's 55. Is this a -- what  
6 exactly does this particular exhibit -- as far as the  
7 phone's concerned, which one does it relate to?

8 A. That's related to the Samsung.

9 Q. And have you reviewed that exhibit?

10 A. I have.

11 Q. Does it accurately reflect the data that you removed  
12 from the item known as DW2, a Samsung cell phone?

13 A. It does.

14 Q. Okay.

15 **MR. FRETWELL:** Your Honor, at this time I'd move that  
16 into evidence.

17 **MS. ROSS:** Judge, I would object.

18 **THE COURT:** He's ahead of you.

19 **MS. ROSS:** Oh, sorry.

20 **MR. YARBOROUGH:** Your Honor, I would object to -- based  
21 on a previous objection. I'm also -- the relevancy of what  
22 he's got, I mean, that's a mass amount of material. And I  
23 -- I don't have any reason to know what -- what his purpose  
24 of admitting it is.

25 **MR. FRETWELL:** I'd like to be heard. Judge, it might

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

476

1 be something we should approach on.

2 **THE COURT:** All right. Ladies and gentlemen, let me  
3 let you step back. We won't be long. Don't talk about the  
4 case.

5 (Whereupon the jury exited the courtroom at 12:22 pm)

6 **MR. YARBOROUGH:** Your Honor, I don't have any way of  
7 knowing what he's ---

8 **THE COURT:** Well, I don't know what he's going to --  
9 let's see -- what's this exhibit you want to introduce?  
10 It's some spreadsheet that says -- that's what?

11 **MR. FRETWELL:** It's the contents of the phone that was  
12 taken from the Defendant by or turned over by the Defendant  
13 to Sergeant Motes and Sergeant Weiner, they took into  
14 evidence.

15 **THE COURT:** It's everything that was on the phone?

16 **MR. FRETWELL:** Yes, sir. And I provided all of that to  
17 both counsel as well ---

18 **THE COURT:** Why is everything needed?

19 **MR. FRETWELL:** Well, I'd point out first of all, Judge,  
20 the actual phones are already in evidence.

21 **THE COURT:** I understand that.

22 **MR. FRETWELL:** But this is the -- this is the basis by  
23 which the investigation leaned on this evidence in directing  
24 the course of the investigation ---

25 **THE COURT:** Everything in that phone or were there

1 certain aspects of the information that they used?

2 **MR. FRETWELL:** Certainly there were certain aspects  
3 that were more relevant and credible than the other, yes,  
4 sir.

5 **MS. ROSS:** And there's some highly prejudicial images  
6 on there as far as personal, I would say, ---

7 **MR. FRETWELL:** They don't contain any images. Those  
8 are -- there are no images, is that correct?

9 A. That's correct. That's a ---

10 **MR. FRETWELL:** There's no images ---

11 A. --- spreadsheet.

12 **MR. FRETWELL:** And that's particular because of that  
13 very reason that there were inappropriate photos for ---

14 **THE COURT:** So this is sort of just a catalogue of what  
15 ---

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

17 **THE COURT:** --- was on the phone?

18 **MR. FRETWELL:** That's correct, Judge. And ---

19 **THE COURT:** Not the items themselves?

20 A. Not the visual pictures or videos, anything like that.

21 **MR. FRETWELL:** I'll go a little further, Judge. The  
22 reason there's a Court's exhibit is because of the  
23 smartphone had references on there to inadmissible  
24 information with respect of this individual telling his  
25 girlfriend that he was going to go take a polygraph test.



1           The Court's exhibit has now -- it's not going to the  
2 jury. Mr. Perry last night made sure, absolutely certain,  
3 in fact, we created a new disk, that takes every reference  
4 to polygraph or anything like that from every area of the  
5 phone, not just SNS contacts or texts, but from the timeline  
6 and everywhere off of that exhibit, it does not contain any  
7 of that information.

8           **MR. YARBOROUGH:** How does he even know what, I mean,  
9 he's giving the jury something that we don't even know  
10 what's on there, Judge.

11          **MR. FRETWELL:** Judge, that is not true. I've turned  
12 over exact copies of that Court's exhibit and the other item  
13 that doesn't need to be redacted because it doesn't have  
14 anything like that on it. I've given them to these  
15 attorneys well in advance of this court date, Judge.

16          **MR. YARBOROUGH:** Well, show me what you're -- what is  
17 on that document right there that you're trying to admit  
18 into evidence.

19          **MR. FRETWELL:** It's on the disk.

20          **MR. YARBOROUGH:** Show me what it is.

21          **THE COURT:** Hey, hey.

22          **MR. FRETWELL:** Judge, I apologize, but he keeps  
23 addressing me.

24          **MR. YARBOROUGH:** I apologize. Could you please show me  
25 the documentation of what's on that disk?

1           **MR. FRETWELL:** Judge, as the witness would testify, if  
2 we printed that out, which you can see right there, the  
3 volume of paper that it would take to encompass everything  
4 that was on that smartphone would be unbelievable. But  
5 those disks were turned over to both of these Defense  
6 attorneys well in advance of trial.

7           If they wanted to have somebody take a look at them,  
8 they could look at them themselves, if they wanted to have  
9 an expert take a look at them, they certainly could do that.  
10 And they have all that information.

11           **THE COURT:** So what is the jury going to get out of all  
12 this?

13           **MR. FRETWELL:** The jury is going to get an exhibit that  
14 is compiled from these disks ---

15           **THE COURT:** They're going to get this spreadsheet. And  
16 if they look at that spreadsheet ---

17           **MR. FRETWELL:** No, sir, I'm not going to put in the  
18 whole, I mean, it exists on those disks. But what I intend  
19 to show to the jury is something that I intend to introduce  
20 through my investigating officer, taken from these items  
21 that directed him in the course of his investigation and led  
22 to his arrest of these Defendants. That's exactly what I'm  
23 doing.

24           It's not -- it's not thousands and thousands of pages.  
25 In fact, it's three pieces of paper that I've blown up to

1     about this size, Judge, that looks like a little --  
2     basically a little graph.

3           **MR. YARBOROUGH:** Could we look at those three pieces of  
4     paper?

5           **MR. FRETWELL:** I'm absolutely going to show them to  
6     them, but they're all included in the information that we've  
7     already given to them.

8           **THE COURT:** Well, he wants to see them now. Can you do  
9     that real quick?

10          **MR. FRETWELL:** Sure, we can get them.

11          **THE COURT:** All right. How long will it take you to  
12     look at them?

13          **MR. YARBOROUGH:** I mean, if he says it's three sheets  
14     of paper, it shouldn't take but a second.

15          **THE COURT:** All right. Show it to him real quick.

16          **MR. FRETWELL:** Sure.

17          **THE COURT:** We got to go get them?

18          **MR. FRETWELL:** Yes, sir. They're in my office.  
19     They're blown up in a large size ---

20          **THE COURT:** Oh, so you don't ...

21          **MR. FRETWELL:** I'm not putting them in through this  
22     witness, Judge.

23          **MR. YARBOROUGH:** Well, then if he's not putting them in  
24     through the witness, what's the purpose of putting those  
25     disks ---

1           **THE COURT:** I think to lay the foundation ---

2           **MR. FRETWELL:** Absolutely, Judge.

3           **THE COURT:** --- to be able to ...

4           **MR. YARBOROUGH:** I'm sorry. It's ...

5           **THE COURT:** He's getting this gentleman to testify that  
6 he got all this information off the cell phone. And then  
7 he's -- all that -- if the disk and everything is being  
8 introduced, the disk -- the information on the disk is on  
9 the phones, which are already in evidence and that from that  
10 information Sergeant Weiner, I guess, went and extracted  
11 some of it and used it to try and help in identifying who  
12 did what in this case.

13           **MR. FRETWELL:** That's a more eloquent way of saying  
14 what I was going to say.

15           **THE COURT:** I've never said anything eloquent in my  
16 life.

17           **MS. ROSS:** Can I ask a question just to be -- on the  
18 phones, my understanding was they were inoperable, the jury  
19 can't go back on those phones and scroll through all the  
20 pictures on the phones.

21           **MR. FRETWELL:** That's not -- I don't think that's true  
22 at all. Is that true?

23           A. No, I mean, they ---

24           **MR. FRETWELL:** Can you power up these phones?

25           A. As long as there's a charge on them, they can be looked

1 at. Absolutely.

2 **MS. ROSS:** Well, then I would renew my objection to the  
3 phones. That was not my understanding because when I had  
4 them -- when I looked at them in P&E there was a phone and a  
5 separate battery that was dead. If they can power them up  
6 they're -- those phones are full of private, highly personal  
7 information. There's a picture of my client's body parts  
8 that he took of himself, which is highly prejudicial.  
9 Bringing all this information in is only going to confuse  
10 the issue ---

11 **THE COURT:** Well, ---

12 **MS. ROSS:** --- and it's completely irrelevant.

13 **THE COURT:** Well, we're going to let you look at the  
14 pictures.

15 **MR. FRETWELL:** Judge, I'm not putting any pictures of  
16 her client's ---

17 **THE COURT:** Whatever it is you've got -- if, in fact,  
18 somebody wants to power up the cell phones, we'll deal with  
19 whatever concerns you have at that time. My guess is  
20 nobody's going to power up the cell phones. First of all,  
21 ...

22 **MR. YARBOROUGH:** I don't think it matters or anything.

23 **THE COURT:** They'll be here for days trying to get that  
24 ...

25 **MS. ROSS:** And just to be clear, I received a number of

1 CDs from the State. And some were Mr. Perry's just  
2 extraction reports, which is essentially a spreadsheet,  
3 which I believe is what Mr. Fretwell is talking about. Some  
4 of the DVDs contained essentially what was called the  
5 extraction report, which was just sort of a breakdown of  
6 what was on the phone. Is that what you're talking ---

7 **MR. FRETWELL:** Those are spreadsheets of what I like to  
8 call raw data. And the investigator always argues with me  
9 because I'm not supposed to call it raw. But it's data  
10 collected from those phones in a spreadsheet form. And  
11 that's what it is. And he provided that information to  
12 another technical services sergeant who put that data into  
13 his program and generated another report, which you also  
14 have.

15 **MR. YARBOROUGH:** I'm just looking at the report. I  
16 mean, I'm looking at 10/24/2013.

17 **THE COURT:** Why do you need that report in?

18 **MR. FRETWELL:** Judge, as you said before, this is ---

19 **THE COURT:** Why do you need the report itself in? Why  
20 can't his testimony that he provided certain information to  
21 the -- he ran this thing and then provided it to the -- Mr.  
22 Weiner and Mr. Weiner extracted certain information and then  
23 went and did what he had to do?

24 **MR. FRETWELL:** Because, Judge, it's part of the chain  
25 of showing how one thing comes from the other and that

1 information ---

2 **THE COURT:** Well, I -- is there a lot of information in  
3 that report that's not relevant?

4 **MR. FRETWELL:** Absolutely.

5 **THE COURT:** Well, then why do we need it? Why don't we  
6 need only that portion that he derived from the telephone  
7 that Sergeant Weiner used to do what he did?

8 **MR. FRETWELL:** Just a moment, Judge.

9 (Pause)

10 **THE COURT:** Is there any way to extract from that  
11 report those items that the sergeant used to further his  
12 investigation?

13 A. Yes, sir. I mean, I'd take the disk and have to pull  
14 that information off of it and make another disk.

15 **MS. ROSS:** Well, Judge, I would suggest just a photo  
16 rather than -- I think, again, we're leading into ---

17 **THE COURT:** A what?

18 **MS. ROSS:** Just a photo. Print off what they want the  
19 jury to see so they're not going back with, you know, a disk  
20 with who knows what material on it. I guess we could review  
21 it beforehand to see what's redacted and what's on it, but I  
22 just -- in order not to confuse the jury, I think the simple  
23 way would be to print out those ---

24 **THE COURT:** The disk hasn't been introduced, has it?

25 **MR. FRETWELL:** I attempted to introduce one, Judge.

1           **THE COURT:** All right. Well, there's no reason to  
2 introduce a disk that contains a considerable amount of  
3 irrelevant information that's not relevant to this case. We  
4 can introduce a disk that contains that information that is  
5 relevant and it can be explained that this was extracted  
6 from the whole phone. I don't know how long that would take  
7 somebody to do.

8           **MR. FRETWELL:** Judge, we have pulled out the photos ---

9           **THE COURT:** I understand that. But you just told me  
10 there's a whole lot of irrelevant information on that disk  
11 and on this report.

12           **MR. FRETWELL:** I think I'm starting to confuse the  
13 Court. I'm not talking about we pulled out or redacted  
14 anything. What I'm saying is that we pulled out photographs  
15 and we pulled out a chart of information that Sergeant Kelly  
16 is going to testify he verified was on this report was  
17 generated from the data that Investigator Perry pulled off  
18 of the phone. That's the chain, Judge, for how it goes  
19 through.

20           And I understand the Court's concern. And, perhaps,  
21 the best way to do it is as a Court's exhibit. I never  
22 anticipated that the jury would go back there and spin these  
23 up and make any sense of it. I just -- I have to have  
24 something from which these ---

25           **THE COURT:** Well, I don't know what they'll do at all.



1           **MR. FRETWELL:** I agree. I had to have something from  
2           which these witnesses could testify to with some degree of  
3           reliability.

4           **THE COURT:** Mr. Fretwell, ---

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

6           **THE COURT:** --- your witness can say I ran a -- I've  
7           got all this information off the cell phone.

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

9           **THE COURT:** And I ran a spreadsheet of everything that  
10          it is and I put it on a disk as well.

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

12          **THE COURT:** Now from that I have extracted information  
13          -- well, I guess he can't say I extracted it because he  
14          didn't extract it, Sergeant Weiner did.

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

16          **THE COURT:** But there's just no reason -- and from  
17          that, here is information that was given to Sergeant Weiner.

18          **MR. FRETWELL:** Okay. And certainly I intended to have  
19          him testify to that. It was my understanding that for them  
20          to be able to link that phone which was taken from that  
21          individual to the eventual text and data that came out I  
22          would have to show that that process -- that's the phone ---

23          **THE COURT:** Well, you're getting somebody to testify to  
24          that.

25          **MR. FRETWELL:** Okay.

1           **THE COURT:** And rather than introducing an exhibit that  
2 contains everything, ---

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

4           **THE COURT:** --- an exhibit that is a portion of that  
5 that was given to Weiner and Weiner is going to have to say,  
6 you know, from this I did whatever I did. If they now want  
7 to go back and say, hey, that's not all the information and  
8 there could have been other things, then we'll have to deal  
9 with it at that point in time and they may have a real  
10 problem.

11          **MR. FRETWELL:** Well, I will handle it ---

12          **THE COURT:** Then introduce the whole thing.

13          **MR. FRETWELL:** Yes, sir. I'll handle it that way.

14          **THE COURT:** But we've got a -- we've got to get the  
15 document and the disk that contains only that portion that  
16 was given ...

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

18          **MS. ROSS:** I have one more related concern that I think  
19 is going to come up later. I've seen two of three  
20 photographs so far, exhibit number 30, 64 and 65, which are  
21 said to come off of my client's phone.

22               And I went back and reviewed last night thoroughly, you  
23 know, the hours of CDs that I had handed over and printed up  
24 every image that I had on my client's phone. And there  
25 weren't a whole lot of those, I think, around eighty. And

1 none of those images were him with the teal pants or --  
2 there was another one of inside the Olive Garden. And there  
3 is just simply -- not on the CD that I've got.

4 And I'm concerned that they're kind of coming in around  
5 here, and I've never seen them before. And I have reviewed  
6 those CDs ---

7 **THE COURT:** They're not introducing any images, are  
8 they?

9 **MS. ROSS:** Well, there was a ---

10 **THE COURT:** They've introduced a picture of the --  
11 well, they hadn't introduced that yet. They did it for  
12 identification purposes.

13 **MR. FRETWELL:** Yes, sir. The teal pant photograph, the  
14 item I think she mentioned, State's exhibit 30, and what --  
15 did you mention another one?

16 **MS. ROSS:** 65, I believe.

17 **MR. FRETWELL:** What is that?

18 **MS. ROSS:** That was -- that was the teal pants.

19 **MR. FRETWELL:** Okay.

20 **MS. ROSS:** Then there's 64, holding a Samsung. That, I  
21 do recognize from ---

22 **MR. FRETWELL:** Yes. And, Judge, there's a reason why  
23 she can't find those two pictures on the Samsung data.  
24 They're not from the Samsung phone. They're from Mr.  
25 White's phone. And that's what this officer's about to

1     testify to in a few minutes.

2           **MS. ROSS:**   Okay.  My confusion is on the printout it  
3     says exhibit 65, DW1 -- I apologize.  On 30 it says DW2,  
4     Samsung next to -- so maybe that's ---

5           **MR. FRETWELL:**  It's just an error.

6           **MS. ROSS:**   Okay.  Better.

7           **MR. FRETWELL:**  But just to be clear for the record, the  
8     contents and the items that have been up here with the  
9     exception of the fact that we took a disk that we found last  
10    night to have in other places of the disk inappropriate  
11    information, that -- all of that material had been turned  
12    over to both Ms. Ross and Mr. Yarborough.

13          **MR. YARBOROUGH:**  Your Honor, just because it was turned  
14    over doesn't mean it's admissible.  It's their obligation to  
15    outline exactly ---

16          **THE COURT:**   Well, ---

17          **MR. YARBOROUGH:**  --- what they're trying to ---

18          **THE COURT:**   --- I think they've done that, Mr.  
19    Yarborough.  They've outlined it here.  Now he's  
20    acknowledged that there is a whole lot of information that  
21    really -- it all came off the phone.

22          **MR. YARBOROUGH:**  Yes, sir.

23          **THE COURT:**   And it really is not needed at this point  
24    in time.  But I think they've established they're trying to  
25    get a chain as to how they go from the telephone -- the cell

1 phone to Sergeant Weiner doing whatever he did. They got  
2 the cell phone, they turned it over to this gentleman, he  
3 did an analysis, he then came up with basically a catalogue  
4 of everything that was on that phone. And everything that  
5 was on that phone he put on a CD, right?

6 **MR. FRETWELL:** That's correct, Judge.

7 **THE COURT:** And turned that over to Sergeant Weiner.

8 **MR. FRETWELL:** Sergeant Kelly.

9 **THE COURT:** I mean, Sergeant Kelly.

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

11 **THE COURT:** Now, my guess is they're not going to go  
12 into -- these folks aren't going to ask to look at that  
13 disk.

14 **MR. YARBOROUGH:** Sure.

15 **MR. FRETWELL:** But I'm not going to admit it per your  
16 ruling, Judge. I understand now how the Court wants me to  
17 handle that. I will handle it in the way that I've  
18 established the chain, and I will not ask to have those  
19 admitted.

20 **THE COURT:** Well, I'm not stopping you from having that  
21 admitted which is relevant and which ---

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

23 **THE COURT:** --- allows you to get to Sergeant Kelly.

24 **MR. FRETWELL:** And I freely concede, there is a  
25 ginormous amount of data on one of those disks that have

1 nothing to do with this case.

2 **THE COURT:** All right. So how do we get rid of that?

3 **MR. FRETWELL:** Well, I'm not going to introduce that.

4 I want to introduce the specific photos that were relevant  
5 to this case. And I'm going to introduce the specific  
6 communications that Sergeant Weiner's going to testify to  
7 that were relevant in his investigation and to his charging  
8 of these two Defendants with the crimes they have been  
9 charged.

10 **THE COURT:** Does that satisfy you, Mr. Yarborough?

11 **MR. YARBOROUGH:** Yeah. I'd like to see the pictures  
12 he's trying to admit.

13 **THE COURT:** Well, he sent some ---

14 **MR. FRETWELL:** Judge, ---

15 **THE COURT:** Apparently they ---

16 **MR. FRETWELL:** --- I've got the pictures right here ---

17 **THE COURT:** --- were in their satellite office.  
18 somewhere.

19 **MR. FRETWELL:** They've already seen the two that Ms.  
20 Ross referenced. And I'm going to show them this group of  
21 -- this group of photographs in just a moment.

22 **THE COURT:** Show it to them now.

23 **MR. FRETWELL:** Well, I mean, they do have all of these,  
24 Judge. I mean, ---

25 **THE COURT:** Well, I know, but they don't know which

1 showings in particular you're talking about.

2 **MR. YARBOROUGH:** Your Honor, I'm holding 56, 57, 58,  
3 59, 63 and 64. And I, for the life of me, can't understand  
4 how these pictures are admissible. And I'd like the Court  
5 to review them. They're pictures of Mr. Gadsden holding  
6 money. And I'm just not sure what the relevance of that is,  
7 how this ties to any robbery or anything we're before this  
8 Court on today. And so ...

9 **MR. FRETWELL:** I'd welcome you to see them, Judge.

10 **THE COURT:** Those are the ones that Ms. Simpson had?

11 **MR. YARBOROUGH:** Yes, sir.

12 **MR. FRETWELL:** They're similar to those, Judge.

13 **THE COURT:** Tell me why that money is relevant.

14 **MR. FRETWELL:** Well, Judge, when he's -- if we had done  
15 this as I intended, Judge, the investigator is going to have  
16 specific information about how these photos were created,  
17 when they were created, the timeframe of when ---

18 **THE COURT:** We could still have that.

19 **MR. FRETWELL:** Yes, sir. But I'm explaining to the  
20 Court that's part of the relevancy. If these -- we don't  
21 know when these pictures were taken, they're absolutely not  
22 relevant.

23 But if they -- if, as he will testify, they were taken  
24 within hours of the robbery in -- in clothing matching the  
25 description that all of the victims gave of the robber

1 holding money in a substantial amount consistent with the  
2 amount that was taken out of the safe, that that is  
3 something that the jury is entitled to look at and weigh the  
4 -- whatever weight they're going to place on it for purposes  
5 of determining whether or not that relates to this  
6 particular incident. The investigator believed it is, why  
7 he's charged ---

8 **THE COURT:** I'm going to send this jury to lunch.

9 **MR. FRETWELL:** Okay.

10 **THE COURT:** And we'll have -- we'll let -- I guess  
11 y'all are sort of asking for a proffer at this time.

12 **MR. YARBOROUGH:** Yes, sir.

13 **THE COURT:** And we'll see what they -- who's going to  
14 say that it was taken within an hour or two hours of the  
15 robbery and ---

16 **MR. FRETWELL:** Nobody's going to say that, but he's  
17 going to say that it was taken at a certain distance away  
18 from -- yes, sir.

19 **THE COURT:** I don't know what that means, a certain  
20 distance.

21 **MR. FRETWELL:** Certain period of time, sorry.

22 **THE COURT:** All right. What is the period of time?  
23 That clearly could be ...

24 **MR. FRETWELL:** That they were taken with respect to 56  
25 through 63, which is what ---



1           **THE COURT:** The money photographs?

2           **MR. FRETWELL:** Yes, sir. That they were taken the day  
3 after the robbery. So if the robbery occurred at about  
4 11:20 at night, they were taken the following day.

5           **THE COURT:** All right. If that's the case, I think  
6 it's clearly relevant.

7           **MR. YARBOROUGH:** And so, I mean, based on that you're  
8 going to admit the pictures? Is that the Court's ruling?  
9 So that we can save some time here.

10          **THE COURT:** Well, ---

11          **MR. YARBOROUGH:** I mean, I obviously have made ---

12          **THE COURT:** I don't want to say that I'm going to do  
13 that until I hear it. But, I mean, it sounds to me like  
14 that circumstantially that has some bearing on the case.  
15 And so it would be relevant. It may be more prejudicial  
16 than probative, but ...

17          **MS. ROSS:** And certainly we would argue that under 403  
18 as well. Judge, just one thing that when you break it down,  
19 it is a person in a camouflage jacket holding money. Money,  
20 common thing. Camouflage jacket, common thing. His hair  
21 does not match the description that was given of the suspect  
22 nor does his face.

23          **THE COURT:** And you've got -- just outlined some great  
24 arguments for this jury, don't you?

25          **MS. ROSS:** Well, I would believe -- I would state that

1 that goes to relevance and probative value being outweighed  
2 by the prejudicial effect.

3 **THE COURT:** All right. Well, we'll ---

4 **MS. ROSS:** It's very prejudicial.

5 **THE COURT:** All right. Let's bring the jury in. And  
6 I'm going to -- how long is it going to take us to do this,  
7 Mr. Fretwell?

8 **MR. FRETWELL:** Judge, I don't know.

9 **THE COURT:** This whole proffer. For you to get  
10 somebody to testify, how long? The relationship between the  
11 photographs and the robbery.

12 **MR. FRETWELL:** It's a handful of questions, Judge.  
13 It's a page ---

14 **THE COURT:** All right. So then we'll have to bring him  
15 back so you can finish with him. How long are you going to  
16 be with him when we come back?

17 **MR. FRETWELL:** I would estimate roughly as long as it  
18 takes me to do this proffer. I mean, that's the last of the  
19 questions that I have. Judge, I don't know ---

20 **THE COURT:** Well, I'm trying to figure out when to get  
21 your man over here.

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

23 **THE COURT:** So let's figure that we'll be out of here  
24 by 1:00. Let's figure we'll be back here by 2:00.

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

1           **THE COURT:** Let's figure that by then you can do what  
2           you need to do to conclude your examination of this witness.  
3           And I don't know how long they're going to -- how long y'all  
4           going to need with him?

5           **MR. YARBOROUGH:** I wouldn't think very long, Your  
6           Honor. Thirty minutes.

7           **THE COURT:** All right.

8           **MR. FRETWELL:** Judge, I'm fine to have Sergeant Kelly  
9           here at 2:00. He can last that long. I didn't want him to  
10          come up here, last all over the lunch break and all into  
11          something else. He's fine to wait for the duration of his  
12          testimony.

13          **THE COURT:** All right. Well, you tell him to be here  
14          at 2:15.

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

16          **THE COURT:** And he might have to sit a little bit.

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

18          **THE COURT:** All right. Let's bring the jury in.

19          **MR. YARBOROUGH:** Could you ask the -- him to cover up  
20          those pictures, please.

21                 (Whereupon the jury entered the courtroom at 12:46 pm)

22          **THE COURT:** All right, ladies and gentlemen. We're not  
23          going to finish with what I need to do with these lawyers in  
24          the next five minutes or so. So I'm going to let y'all go  
25          somewhere and warm up and eat.

**JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL**

497

1           And I'm going to ask y'all to be back here at ten  
2   minutes til two. No, wait a minute. 2:00. I'm sorry.  
3   2:00. And I think we ought to be ready to go at that time.  
4   And if we're not, we'll let the lawyers go without lunch.  
5           So y'all have a nice lunch. Do not discuss the case  
6   while you're there. And we'll see you back here at 2:00.  
7   And get warm. I think from what I've read, it'll be warm  
8   outside.

9           (Whereupon the jury exited the courtroom at 12:47 pm)

10          **THE COURT:** All right. You want to ---

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

12          **THE COURT:** --- ask him what you need?

13          **MR. FRETWELL:** May it please the Court.

14          **Proffered Testimony by Mr. Fretwell:**

15   Q. Let me see where I was. I'm not exactly sure where I  
16   stopped off, but does the exhibits that you saw, 54 and 55,  
17   does that contain the -- and, of course, the Court's exhibit  
18   for the unredacted portion, ---

19   A. Right.

20   Q. --- does that contain the information in Excel  
21   spreadsheet form that you extracted from State's exhibit 45  
22   and 46 in this case?

23   A. It does.

24   Q. And is that the information that you then provided to  
25   Sergeant Dan Kelly in the Technical Services Unit?

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

498

1 A. It is.

2 Q. Okay. Were you also able, in addition to this  
3 spreadsheet Excel information, were you also able to recover  
4 photos from these two phones?

5 A. I was.

6 Q. Okay. And what does your data recovery process enable  
7 you to determine about photos or images that are recovered  
8 from cellular phones?

9 A. Photos that are recovered on cell phones can range  
10 anywhere from a picture that was taken by that camera, which  
11 is still on that camera. The information it can give me is  
12 the date and time it was taken. It can tell me that it was  
13 taken by that cell phone.

14 It will say like a Kyocera, whatever kind of phone it  
15 was. It'll give the model number. It can break it down all  
16 the way to telling me the shutter speed, serial number. The  
17 metadata that comes with that can give you aperture, all  
18 kinds of information about that particular picture if it was  
19 taken with that camera.

20 Also if you have photos that are imported or anything  
21 like that, it can have metadata, when it was created, last  
22 access, this type information. So if you delete a photo it  
23 doesn't necessarily mean we won't recover a thumbnail of  
24 that photo somewhere else because the phone will put copies  
25 of that photo in different parts of the phone to make it

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

499

1 easier to access it when you're looking for it. So you can  
2 have anything from no data to when it was taken, by what  
3 phone it was taken, detailed information about that photo.

4 Q. All right. Let me show you State's 56 through 64.  
5 Take a moment and look at the pictures. Tell me if you  
6 recognize what's on there. And then I have some specific  
7 questions for you about that.

8 (Pause)

9 A. Those were photos that were on the Samsung flip phone.

10 Q. And what exhibit number is that for the record?

11 A. I'm sorry, oh, from DW2.

12 Q. That's the property number. How about the State's  
13 exhibit sticker?

14 A. Oh, the State's exhibit?

15 Q. Yes, sir.

16 A. This one would be 55.

17 Q. Okay. And you just a moment ago told the Judge that  
18 some photos you can get data, some photos you can't.

19 A. Correct.

20 Q. Were you able to get data on these particular photos?

21 A. I was.

22 Q. Okay. And what can you tell us about those photos?

23 And let me have you group them from 56 to 63 and then deal  
24 with State's 64 separately.

25 A. On these photos here I was able to tell that they came

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

500

1 off this -- that they were taken by that Samsung phone ---

2 Q. On what date?

3 A. The -- January 21st.

4 Q. What year?

5 A. 2014.

6 Q. Okay. That's those items, right? Pass those up to the  
7 Judge, if you would. When he's finished looking at that,  
8 I'm going to ask you about the other one.

9 A. Okay.

10 (Pause)

11 **MR. FRETWELL:** Judge, were you finished ---

12 **THE COURT:** Yes.

13 **MR. FRETWELL:** I'm sorry.

14 Q. Investigator Perry, look at State's 64. What  
15 information did you determine about State's 64?

16 A. Information -- it appears to be a selfie of the  
17 Defendant holding the Samsung flip phone.

18 Q. Okay. And can you tell whether that photo was taken by  
19 State's exhibit 55? Am I right? DW ---

20 A. DW2. State's exhibit 46.

21 Q. Okay. 46. Can you tell whether that picture was taken  
22 by that Samsung phone?

23 A. I can.

24 Q. Okay. Based on the metadata?

25 A. Um-hum (affirmative). Correct.

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

501

- 1 Q. Okay. Looking at the picture itself, ---
- 2 A. Correct.
- 3 Q. --- can you tell me what phone that is?
- 4 A. The phone -- well, looking at the picture, it's the
- 5 Samsung flip phone.
- 6 Q. And why is that?
- 7 A. Because you can see it in the picture.
- 8 Q. Okay. Pass it up to the Judge, please.
- 9 **THE COURT:** I already saw it.
- 10 **MR. FRETWELL:** You saw the Samsung phone? Yes, sir.
- 11 Q. When was that photo created? What month and year?
- 12 A. That was on December 3rd, 2013.
- 13 Q. All right. Let me show you State's exhibit 30 and 65.
- 14 These photos were recovered from what phone?
- 15 A. They were recovered from the Kyocera.
- 16 Q. Okay. And that is State's exhibit 45, is that correct?
- 17 A. That is correct.
- 18 Q. All right. And were you able to obtain metadata that
- 19 can give you some sort of dating on these two particular
- 20 photos?
- 21 A. One of them I was, one of them I wasn't.
- 22 Q. Okay. Which one were you?
- 23 A. I was able to get metadata off of the picture that --
- 24 30, State's exhibit 30.
- 25 Q. Okay. What can you tell us about State's exhibit 30?



JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

502

1 A. It was created on 1/16/2014.

2 Q. Do you also have a time?

3 A. There's -- yes, 3:57 pm.

4 Q. Thank you. And with respect to 65 what can you tell us  
5 about that particular photo?

6 A. 65, the only thing I can tell you about that one is it  
7 was on the phone. It was in an area called the cash, which  
8 is what the phone uses to make accessing information faster.  
9 So the original picture may have been deleted or must have  
10 been deleted because we didn't find it, but the cash, unless  
11 -- until it gets cleared out, it's still in the phone.

12 MR. FRETWELL: And, Judge, with respect to that  
13 particular picture, even though he can't tell when it was  
14 created or ---

15 THE COURT: What are the pictures?

16 MR. FRETWELL: Yes, sir, I'm sorry. I didn't know you  
17 didn't see it.

18 THE COURT: 30 is -- I don't even know what that is.

19 MR. FRETWELL: Well, Judge, that has already been  
20 identified by Aaron Kretzschmar as being the area in which  
21 the attack or the assault on him took place.

22 THE COURT: All right. So that's inside the Olive  
23 Garden?

24 MR. FRETWELL: In the kitchen, yes, sir.

25 THE COURT: All right.

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

503

1           **MR. FRETWELL:** But I'm speaking of this one that you  
2     have now. The relevance to the State is a couple of things.  
3     First of all, you've heard testimony from Matt Owens that he  
4     participated in a search warrant at the -- at Defendant  
5     White's house, found a pair of teal pants with a card that's  
6     in evidence belonging to Gerald Gadsden. He's identified  
7     the individual in that photo as Gerald Gadsden.

8           You will hear testimony from David Weiner that he spoke  
9     with Mr. White and asked him specifically about Gerald  
10    Gadsden, and he denied knowing who that was. This is for  
11    impeachment of that statement and testing the credibility of  
12    that statement to law enforcement. And, of course, Judge,  
13    overall it links them together for purposes of this crime  
14    that we've charged them with.

15          **MR. YARBOROUGH:** Your Honor, he's going to impeach  
16    somebody that hasn't testified? I mean, he would have to --  
17    Mr. White has not decided whether to exercise his right to  
18    testify or not. But he's talking about impeaching a  
19    collateral statement that Mr. White made. I don't think he  
20    can do that. I don't know where in the rules of evidence  
21    that he thinks he can -- the purpose of that picture.

22          **THE COURT:** Where in the rules of -- I don't think the  
23    rules can speak to this picture, but ...

24          **MR. YARBOROUGH:** He just said that it's for impeachment  
25    purposes. I mean, who's he impeaching?

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

504

1           **MR. FRETWELL:** Judge, I'd be happy to respond.

2           **THE COURT:** Sure.

3           **MR. FRETWELL:** Judge, the rules of evidence permit the  
4 State to put in an admission by a party opponent these  
5 statements that are already in evidence. The rule -- and,  
6 I'm sorry, I don't know the rule number, but certainly the  
7 Court's familiar with the impeachment rule, permits a party  
8 to impeach the evidence that either the other side puts in  
9 or they themselves put in because the ultimate goal of the  
10 justice system is truth. And that's the purpose as the  
11 Court well knows behind the impeachment rule.

12          **MR. YARBOROUGH:** I think first of all, Your Honor, he  
13 ...

14          **MS. ROSS:** I think 607's the credibility of a witness.

15          **MR. YARBOROUGH:** Right. And I ---

16          **THE COURT:** Pardon me?

17          **MS. ROSS:** I thought rule 607 said impeachment is --  
18 you can impeach the credibility of a witness, it says  
19 specifically not a defendant.

20          **THE COURT:** All right.

21          **MR. YARBOROUGH:** He's -- if he's impeaching a  
22 statement, at least under the federal rules he'd have to  
23 give us notice that he was going to use this for impeachment  
24 purposes. And we haven't been put on any notice until just  
25 now ---

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

505

1           **THE COURT:** I don't think you've got to do that here.

2           **MR. YARBOROUGH:** Thank you, Your Honor.

3           **THE COURT:** All right. I'll look at this over lunch.

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

5           **THE COURT:** My concern is -- if you ask me, that's a  
6 highly prejudicial picture.

7           **MR. FRETWELL:** Judge, ---

8           **THE COURT:** And just ...

9           **MR. FRETWELL:** I don't see -- and I'm not trying to be  
10 coy or an advocate or whatever, but what is it particularly  
11 about that ---

12           **THE COURT:** Well, doesn't it look like they're in there  
13 drinking and -- I'll look at it at lunch.

14           **MR. FRETWELL:** Okay. Thank you, Judge. The only other  
15 thing he's going to talk about is with respect to some  
16 particularized contact information or what phone number was  
17 in what phone. And it's about ---

18           **THE COURT:** All right. Well, here's the deal.

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

20           **THE COURT:** I think all those pictures are admissible.

21           **MR. YARBOROUGH:** The pictures of the money as well?

22           **THE COURT:** The pictures of the money as well because  
23 of the closeness in time, the dress. And circumstantially I  
24 think it would be admissible.

25           The question is with the admission of the solicitor,

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

506

1     there's a lot of information on the disk that is not  
2     relevant. And he -- all he's trying to do is get from here  
3     to Mr. Kelly.

4             Now, if y'all want to consent to the fact -- stipulate  
5     to the fact that that information is -- that certain  
6     information was provided to -- derived from the phone and  
7     given to Mr. Kelly and Mr. Kelly, I mean, Mr. Kelly did with  
8     it whatever he did with it, and I guess he's going to  
9     testify to what he did with it, then that's fine. But, I  
10    mean, I seriously doubt whether anybody's going to want to  
11    look at those disks.

12            **MR. FRETWELL:** Well, Judge, I don't intend to put them  
13    in. And I'll just let the Court know, there's a similar set  
14    of disks that Sergeant Kelly created after his program  
15    analyzed this data. And based on the Court's ruling, I do  
16    not intend to introduce those either.

17            But to show that chain I'm going to have them identify  
18    them, and to show that chain how those items that were taken  
19    from this Defendant turned out to be evidence that we're  
20    going to present to the jury.

21            **THE COURT:** All right. Well, I'll allow you to -- do  
22    you understand what he's doing? Basically going to have  
23    this gentleman testify that he got this information off the  
24    phone and in some form gave it to Mr. Kelly.

25            **MR. YARBOROUGH:** And that information is the

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

507

1 information that was just provided to the Court?

2 THE COURT: No, sir. I mean, that the Court just saw  
3 the pictures.

4 MR. YARBOROUGH: Right.

5 THE COURT: So all of the relevant information he will  
6 testify to and the chain. And he will say that it's on the  
7 cell phone and these are disks that I derived from the cell  
8 phone, but the disk won't be admitted.

9 MR. FRETWELL: And, Judge, I think -- they're already  
10 marked as State's exhibits, but I think it would be  
11 important to somehow -- I don't know if we can cause them to  
12 be included in the record because I think they need to be a  
13 part of the record itself.

14 MS. ROSS: Are they Court's exhibit 6?

15 THE COURT: Well, I ...

16 MR. FRETWELL: And we can deal with that after the fact  
17 ---

18 THE COURT: Well, I just want them to consent rather  
19 than making him -- because I don't think we got enough time  
20 to extract, I mean, maybe you can do it in five minutes.  
21 Maybe you could do it at lunch and extract all this stuff  
22 from the -- from that disk and put it on another disk.

23 MR. YARBOROUGH: Your Honor, if what he is admitting is  
24 what you've got in your hand up there minus that one  
25 picture, I've made my previous objections, and we'll stop

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

508

1 right there. He can -- we're not going to challenge the  
2 chain of custody. I've made my objections about the  
3 relevance, but we're not going to challenge the chain of  
4 custody. But the buck stops there.

5 I don't want -- I don't want this big bunch of stuff  
6 showing up here after lunch and he's saying, oh, that's on  
7 that disk, that's on that disk. We've seen it, we've got  
8 it, we're moving forward.

9 **THE COURT:** Well, it might show up after lunch, but  
10 he's represented to us that this is what he wants and this  
11 is ---

12 **MR. FRETWELL:** As far as photographs are concerned,  
13 yes, sir. There's communications that I told you are on  
14 three boards in my office that we intend to introduce not  
15 through this witness, not through Dan Kelly, but through  
16 Sergeant Weiner because he's the investigator.

17 **THE COURT:** But they came off the phone as well?

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

19 **THE COURT:** And they came off the CD that was ---

20 **MR. FRETWELL:** Yes, sir. And that's the purpose of  
21 this chain.

22 **THE COURT:** All right. Well, they're not -- is that --  
23 you're not contesting the chain?

24 **MS. ROSS:** Judge, I don't want to give up contesting  
25 the entire chain ---

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

509

1           **THE COURT:** All right. Well, then if we can't extract  
2 all that, I'll find that all of it will be admissible.

3           **MR. FRETWELL:** Thank you, Judge.

4           **MS. ROSS:** Judge, as to this witness, I stipulate that  
5 this aspect of the chain is fine.

6           **THE COURT:** Well, they've got to get from this witness  
7 to Weiner or this witness to Kelly.

8           **MS. ROSS:** Okay. Then for purposes as far as reference  
9 to the disk, as long as they're not admitted into evidence,  
10 I would stipulate that they looked at information contained  
11 on those disks.

12           **THE COURT:** And that information was provided -- some  
13 of that -- or that information was provided to Weiner and to  
14 -- anybody else?

15           **MR. FRETWELL:** Them. I mean, the discovery process ---

16           **THE COURT:** I mean, it was provided to Kelly.

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

18           **THE COURT:** And to Weiner.

19           **MR. FRETWELL:** And to Weiner. Kelly provided it to  
20 Weiner, yes, sir.

21           **MS. ROSS:** I'm happy to stipulate to that.

22           **THE COURT:** All right. Well, let's go to lunch. If  
23 you'll step down. And don't discuss your testimony while  
24 we're at lunch. And we'll be back here at 2:00.

25           (Whereupon court was in recess at 1:06 pm)



1 (Whereupon court reconvened at 2:10 pm)

2 **THE COURT:** All right. You may have a seat. Okay. We  
3 ready to go? I think we've resolved all the issues that we  
4 had at lunch. The solicitor and Defense counsel have  
5 indicated that you're withdrawing that last photograph.

6 **MR. FRETWELL:** Your Honor, that for the record is  
7 State's exhibit 65.

8 (Whereupon the State withdrew State's exhibit 65 from  
9 the record)

10 **THE COURT:** All right. And then Mr. Yarborough wants  
11 to introduce a couple of photographs. And you are agreeable  
12 so long as one of them is cleaned up with some writing on  
13 it. And I don't know how we can get that done, but ---

14 **MR. YARBOROUGH:** She's ---

15 **MADAME CLERK:** I'm going to get some scissors.

16 **THE COURT:** Hmm?

17 **MADAME CLERK:** Scissors, I guess. He asked for a pair  
18 of scissors.

19 **THE COURT:** Doing this the old fashion way. All right.  
20 Let's bring the jury in, if we could. Are y'all ready to  
21 bring the jury in?

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

23 **MR. YARBOROUGH:** Yes, sir.

24 (Whereupon the jury entered the courtroom at 2:13 pm)

25 **THE COURT:** Ladies and gentlemen, all except this young

1 lady, can I get y'all to step back to the jury room just a  
2 minute, and I'll be right with you.

3 (Whereupon the jury exited the courtroom, except for  
4 juror number 81, Joann Garrett, at 2:14 pm)

5 **THE COURT:** Tell me your name, please.

6 **MS. GARRETT:** Joann Garrett.

7 **THE COURT:** Ms. Garrett, the bailiff just reported that  
8 you're having a migraine headache and you're real concerned  
9 about whether you're going ---

10 **MS. GARRETT:** I just ---

11 **THE COURT:** --- to be able to make it through.

12 **MS. GARRETT:** Yes. I did yesterday. And I've taken  
13 more medicine for it. But sometimes you get nauseated with  
14 it. And I just wanted to make sure that if I alerted him,  
15 he would let me get up and go.

16 **THE COURT:** I mean, I don't want to force you to sit  
17 here if you're not feeling well and sick and you're going to  
18 get worse. I mean, we ---

19 **MS. GARRETT:** No, I've taken something. So I think I'm  
20 going to be okay. I would not want, excuse me, to miss out  
21 what I've already invested, to be honest. I'd like to see  
22 it through.

23 **THE COURT:** Well, we want you to participate and be a  
24 member of this jury, too, but we're not going to require you  
25 to be here if your health is jeopardized in any way or you

**JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL**

512

1     feel so bad. So if you -- if you get to that point, if you  
2     will let me know. We have two alternates. And we can ---

3           **MS. GARRETT:** Okay.

4           **THE COURT:** We can proceed if ---

5           **MS. GARRETT:** Okay.

6           **THE COURT:** But I do not want you to be in here and  
7     just be miserable and not be able to concentrate and do what  
8     you need to do, okay?

9           **MS. GARRETT:** Thank you.

10          **THE COURT:** All right. Let's bring the jury back in.

11                 (Whereupon the jury entered the courtroom at 2:16 pm)

12          **THE COURT:** All right. Mr. Solicitor, if you will  
13     proceed. Ladies and gentlemen, you'll remember we're in the  
14     midst of the solicitor directing this witness. So if you'll  
15     proceed, Mr. Fretwell.

16          **MR. FRETWELL:** Thank you, Your Honor. May it please  
17     the Court.

18     **Direct Examination by Mr. Fretwell Continued:**

19     Q.     Investigator Perry, before we broke I believe I was  
20     asking you about State's exhibit 55 and Court's exhibit  
21     number 6. Okay?

22     A.     Okay.

23     Q.     I want you to tell me -- I can't really recall exactly  
24     how far we went down that line. The item that you recognize  
25     as Court's exhibit 6, what does that item contain?

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

513

- 1 A. This contains a Excel spreadsheet of the Kyocera phone,  
2 DW1, item number DW1.
- 3 Q. That's State's exhibit 45, is that correct?
- 4 A. Correct, I believe.
- 5 Q. Okay. Now, what about State's 55?
- 6 A. Okay. That's an Excel spreadsheet of the Samsung  
7 phone, item DW2, State's -- and I'm not sure which State's  
8 exhibit it is.
- 9 Q. State's 46. Let me get these back up there for you.
- 10 A. DW2 is 46. And DW1 is 45.
- 11 Q. And did you, with respect to Court's exhibit 6 and  
12 State's exhibit 55, did you provide that information to  
13 Sergeant Dan Kelly with the Technical Services Unit?
- 14 A. I did.
- 15 Q. Okay. And that was in an Excel format, was that  
16 correct?
- 17 A. That is correct.
- 18 Q. All right. Were you also able to recover photos from  
19 these two phones?
- 20 A. I did.
- 21 Q. And what does your data recovery process enable you to  
22 determine about photos or images that are recovered from  
23 cellular phones?
- 24 A. Cell phones, when we look at, especially the  
25 smartphones, you have all different kind of images. You

1 have images that are taken by the phone and stored on the  
2 phone. Those images most of the time we can actually get  
3 off of the report showing that that phone was taken by --  
4 that picture was taken by that particular phone, gives the  
5 date and time created. It will give you shutter speed and  
6 just a lot of different data that the phone itself generates  
7 when it takes the picture.

8 From there it goes down to -- if a picture's deleted,  
9 we may not be able to find the actual picture that was  
10 taken, but we can find a thumbnail of it that is stored in  
11 the cash of the phone, which is used to access information  
12 fast or by the phone. And it'll stay there until it gets  
13 cleared out.

14 And then you have other pictures, if there's no data,  
15 other than where it's located on the phone.

16 Q. Just one moment.

17 (Pause)

18 Q. I'm sorry, Investigator Perry. I'm going to show you a  
19 series of photographs that are marked for the record as  
20 State's 56 to 63 and also 64.

21 A. Okay.

22 Q. I may have given you one extra picture, but I want you  
23 to -- I'm going to draw your attention to State's 56 to 64.

24 A. Okay.

25 Q. Okay. Do you recognize those photos?

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

515

1 A. I do.

2 Q. Okay. Now those photos were recovered from which  
3 phone?

4 A. These were recovered from the Samsung flip phone.

5 Q. Which is State's exhibit 46?

6 A. Correct.

7 Q. Okay. What -- you just described a few minutes ago  
8 something about metadata that gives you some information ---

9 A. Correct.

10 Q. --- about photos. Did you, in fact, -- did that phone  
11 provide you with metadata on those particular pictures?

12 A. Right. Since these pictures were actually still on the  
13 phone as the original pictures, the metadata was available  
14 for me to recover.

15 Q. I'm going to do them in two groups. I'm going to have  
16 you look at State's 56 through 63 as a group.

17 A... Um-hum (affirmative).

18 Q. And tell the jury -- what can you tell about those  
19 particular photos?

20 A. I mean, I can tell that the make of camera was a  
21 Samsung. It gives the model number, which was SCHU365,  
22 which is what they -- item 46 is the same type of phone. It  
23 was time captured, data captured. The resolution, it gives  
24 that. It gives the pixel resolution. So it gives ---

25 Q. Maybe I was too broad with my question. Let me try to

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

516

1 see if I can narrow it. Can you tell whether or not items  
2 56 through 63 were taken by State's exhibit 46, the DW2  
3 Samsung?

4 A. Yes, it was.

5 Q. Okay. And can you tell whether those items were taken  
6 or created by that phone?

7 A. They were taken by that phone.

8 Q. Okay. And on what date were they taken or created?

9 A. They were taken on January 21st, 2014.

10 Q. Okay. Now I want you to look at State's 64.

11 A. Okay.

12 Q. What can you tell us about that particular phone with  
13 respect to whether it was taken or created by State's  
14 exhibit 46, the Samsung phone?

15 A. It was -- it also was created by that same phone.

16 Q. And when was that photo taken?

17 A. That photo was taken on December 3rd, 2013.

18 Q. And let's continue with State's exhibit 64.

19 **MR. FRETWELL:** Well, first of all, let me at this time  
20 move these items into ...

21 Q. Are all the photos in the same condition as they were  
22 when you extracted them from the phone?

23 A. They are.

24 Q. From your report?

25 A. (Affirmative nod).

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

517

1           **MR. FRETWELL:** At this time, Your Honor, I'd move  
2 State's 56 through 64 into evidence.

3           **MR. YARBOROUGH:** Just note my previous objections.

4           **MS. ROSS:** Join him.

5           **THE COURT:** All right. So admitted subject to previous  
6 objections.

7           (Whereupon State's exhibits 56 - 64 were admitted into  
8 evidence)

9 Q. Okay. Let's go back to 64 for a minute. In fact, I  
10 want to show that up on the ...

11           **MR. FRETWELL:** Your Honor, permission to publish at  
12 this time.

13           **THE COURT:** You may.

14 Q. So this is State's 64. Your testimony was that this  
15 photograph was taken by the Samsung phone that you've  
16 identified, that we've labeled State's exhibit 46, is that  
17 correct?

18 A. That is correct.

19 Q. Okay. Can you say whose -- what phone is this right  
20 here?

21 A. It's exhibit 46.

22 Q. Okay. Thank you. And the rest of these photographs  
23 also came from that phone. Let me ask you about another set  
24 of photographs. I'm sorry. State's 30 and I think you have  
25 State's 65.



JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

518

1 A. That's correct.

2 Q. Is there metadata associated with State's 30?

3 A. Yes, sir, it is.

4 Q. Okay. What can you tell us about that particular  
5 photograph?

6 A. That particular photograph I can tell you that it was  
7 on the Kyocera cell phone and that it is in the DCIM folder  
8 on the phone, which ---

9 Q. Okay. I think -- you're talking about the wrong  
10 photograph. I want you to look at State's 30.

11 A. 30. Yes, that's ---

12 Q. Not 65.

13 A. Correct.

14 Q. Okay.

15 A. It's in the DCMI folder in the thumbnails, which tells  
16 me that that photo at some point in time, the original photo  
17 was on the phone, deleted, but it stayed in the thumbnail's  
18 folders ---

19 **MR. FRETWELL:** Judge, may we ---

20 A. --- on the phone.

21 **MR. FRETWELL:** May we approach?

22 (Whereupon a bench conference was held off the record  
23 in the presence of the jury, but out of their hearing)

24 (Whereupon the bench conference was ended)

25 Q. Investigator Perry, did you testify during a break with

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

519

1     respect to these two photos?

2     A.     I did.

3     Q.     And during that break did you -- did you testify with  
4     respect to State's 30 about whether it was created on  
5     January the 16th of 2014 at 3:57 pm?

6     A.     That is correct. I didn't get to finish where I was  
7     going with my previous testimony on that. What I was --  
8     where I was going with that was that it was in the  
9     thumbnails, which is part of the folder where pictures are  
10    kept. And that was created on January 16th, 2014.

11    Q.     I apologize.

12    A.     That's okay.

13    Q.     That wasn't part of the -- you didn't -- I didn't let  
14    you expand so much before. And I didn't realize all that  
15    extra information. I just wanted to make sure you weren't  
16    confused between the two ---

17    A.     No. No, I'm not confused between them. That ---

18    Q.     Okay.

19    A.     That is correct.

20    Q.     That's my fault. And I apologize, investigator.

21    A.     That's okay.

22    Q.     Let me ask you about -- so that's State's exhibit 30?

23    A.     That is correct.

24    Q.     Okay. Is it in the same condition as it was when you  
25    extracted it through your report from originally State's

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

520

1 exhibit 45, the Kyocera?

2 A. It is.

3 **MR. FRETWELL:** Your Honor, at this time I'd move  
4 State's 30 into evidence.

5 **MR. YARBOROUGH:** Without objection.

6 **MS. ROSS:** No objection.

7 **THE COURT:** So admitted.

8 (Whereupon State's exhibit 30 was admitted into  
9 evidence)

10 Q. And with respect to State's 65, ---

11 A. Yes.

12 Q. --- what can you tell me about that photograph?

13 A. That photograph is on the phone. It's in the cash area  
14 of the phone. There's no metadata as to the creation. They  
15 weren't on it.

16 Q. Okay. But it was -- it was located on the phone  
17 identified as State's exhibit ---

18 A. That is correct.

19 Q. --- 45, which is the Kyocera?

20 A. Correct.

21 Q. Okay. And what does it generally depict? Does it --  
22 let me ask you this. Is there an individual on that -- in  
23 that picture that's wearing teal pants?

24 A. There is.

25 Q. Okay. Let me also ask you about some contact

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

521

- 1 information.
- 2 A. Um-hum (affirmative).
- 3 Q. With respect to the Samsung phone, which, again, is
- 4 State's 46.
- 5 A. Right.
- 6 Q. Did you find a telephone number with an area code
- 7 in the contacts in that phone?
- 8 A. On the Samsung or the ---
- 9 Q. On the Samsung.
- 10 A. I did.
- 11 Q. And is there a label or some sort of monitor that is
- 12 associated with that particular number?
- 13 A. Yes. Let's see. That one was called -- give me the
- 14 last four on it again.
- 15 Q. .
- 16 A. . Jr. G.
- 17 Q. Thank you. And a second number, a phone number
- 18 , was that in the ---
- 19 A. That was also found.
- 20 Q. What was that labeled?
- 21 A. That was labeled ma, m-a, ma.
- 22 Q. Okay. And then , was that contact found in
- 23 the Samsung phone?
- 24 A. No, it wasn't.
- 25 Q. Anywhere in there?

**JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH**

522

1 A. (Negative nod).

2 Q. , was that found anywhere in the Samsung  
3 phone?

4 A. No, it was not.

5 Q. All right. Now I'm going to ask you one question about  
6 the Kyocera phone and we're finished. , is that  
7 in the Kyocera phone?

8 A. It is in the Kyocera phone.

9 Q. And how is it -- how is it labeled?

10 A. Keem.

11 Q. Thank you.

12 A. K-e-e-m.

13 Q. Just one moment.

14 (Pause)

15 Q. Please answer any questions the Defense counsel may  
16 have.

17 **THE COURT:** Your witness.

18 A. Thank you.

19 **Cross Examination by Mr. Yarborough:**

20 Q. Keem, have you determined who Keem was?

21 A. I'm sorry, I'm -- you're going to ...

22 Q. Keem, the last one you identified, have you determined  
23 whose phone that was?

24 A. I personally have not.

25 Q. Do you know that one of the Defendants has a nickname,

JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH

523

1 Keem?

2 A. No, I do not know.

3 Q. Okay. And do you know one of the Defendants is Jr. G?

4 A. No.

5 Q. You don't know who that -- you found a number of  
6 pictures in there, is that correct?

7 A. That is correct.

8 Q. Okay. And there were a number of rap artists' pictures  
9 in there?

10 A. There were some, yes, sir.

11 Q. Okay. And in those rap artists' pictures there are --  
12 there are pictures of individuals holding large sums of  
13 money.

14 **MR. FRETWELL:** Your Honor, I just want to object  
15 because I'm not sure which phone he's talking about.

16 **MR. YARBOROUGH:** I'm talking about the Samsung -- the  
17 Samsung phone that was identified with Mr. White. I'm  
18 sorry, that's the Kia [sic]. The Kia phone.

19 A. Okay.

20 Q. You've got a list of the pictures and stuff with you  
21 there.

22 A. I don't have a copy of the pictures with me, no, sir.

23 Q. Okay. But you reviewed them.

24 A. I did. It's been a while, but, yes. From what -- the  
25 best of my recollection, there were.

**JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH**

524

1 Q. A number of pictures of individuals with cash, currency  
2 in them?

3 A. A number of individuals or one individual?

4 Q. One individual -- rap artists that had cash.

5 A. You'll have -- I don't recall.

6 Q. Remember seeing this picture in there?

7 A. I mean, I don't recall. There was sixty-seven hundred  
8 photos in there. So I -- I don't recall that that was on  
9 there. I'm not going to say it's not.

10 **MR. YARBOROUGH:** Your Honor, may I approach? Counsel.

11 (Whereupon a bench conference was held off the record  
12 in the presence of the jury, but out of their hearing)

13 (Whereupon the bench conference was ended)

14 **MR. YARBOROUGH:** Your Honor, I'm going to -- pursuant  
15 to no objection of counsel, I'm going to have these marked  
16 as Defense 1 and 2 and have them moved into evidence.

17 **MR. FRETWELL:** No objection.

18 **THE COURT:** All right. Any objection, Ms. Ross?

19 **MS. ROSS:** No, Your Honor.

20 **THE COURT:** All right. So admitted.

21 (Whereupon Defendant White exhibits 1 and 2 were marked  
22 and admitted into evidence)

23 Q. This has been moved in as ---

24 **MADAME COURT REPORTER:** Just a minute.

25 **MR. YARBOROUGH:** Okay. Sorry.

JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH

525

1 (Pause)

2 Q. These two pictures have been moved into evidence as  
3 Defense 1 and Defense 2.

4 A. Okay.

5 Q. Do you recognize those pictures?

6 A. No, sir.

7 Q. Okay. But if I told you those pictures came off the  
8 disk that you have, would you agree with that?

9 A. I would agree with that I don't doubt what you're  
10 telling me.

11 Q. Okay. And Defense 1 is a picture of an individual  
12 holding currency?

13 A. Yeah, he's holding currency and there's currency  
14 floating all around.

15 Q. Okay. And that's a common rap ---

16 **MR. FRETWELL:** Objection, Your Honor. Lack of  
17 foundation.

18 **MR. YARBOROUGH:** Okay.

19 Q. Is that a -- with the pictures you saw, would that be a  
20 common picture in the pictures that you looked at in this  
21 case?

22 **MR. FRETWELL:** Your Honor, I have to object. It  
23 doesn't ---

24 **MR. YARBOROUGH:** He looked at the pictures ---

25 **THE COURT:** Well, let's talk to me.



JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH

526

1           **MR. YARBOROUGH:** Yes, sir.

2           **THE COURT:** I'll let him answer the question. If he  
3 doesn't know, he can't answer it.

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

5       A. I'm sorry. Ask the question again.

6       Q. Okay. You looked at the pictures in this case.

7       A. Correct.

8       Q. Okay. And in those pictures there were a number of  
9 pictures of individuals holding currency.

10      A. Again, a number of individuals, I can't say if there's  
11 any more than these two. And this was on the other phone,  
12 not the one that I saw the other pictures in.

13      Q. Okay. So that was on a separate phone?

14      A. That was on a separate phone. The pictures that we  
15 just entered into evidence, that was on the Samsung. These  
16 came off the Kyocera.

17      Q. Okay. So that came off the Kyocera phone?

18      A. I'm -- you're the one that did it. I ---

19      Q. Okay. No, I don't disagree with you.

20      A. Okay.

21      Q. Okay. And those -- one of those pictures is of an  
22 individual by the name of Junior?

23      A. Jr. G.

24      Q. Okay. And then is there a small picture in the corner  
25 of that picture?

**JAMES PERRY - CROSS EXAMINATION BY MS. ROSS**

527

1 A. Correct.

2 Q. Thank you.

3 **MR. YARBOROUGH:** I don't have any further questions of  
4 this witness.

5 **THE COURT:** Ms. Ross.

6 **MS. ROSS:** May it please the Court.

7 **Cross Examination by Ms. Ross:**

8 Q. If you could just check, under the contacts, the  
9 contact for Keem, was that K-e-e-m?

10 A. Correct.

11 Q. And that was on the Kyocera, which was James White's  
12 phone?

13 A. It was on the Kyocera.

14 Q. Okay. And you couldn't say whether it was -- it was  
15 Officer Weiner that was number one, DW1?

16 A. Let me see.

17 **MR. FRETWELL:** Judge, I don't -- is she asking for the  
18 -- I don't understand what she's asking. I can't imagine  
19 the witness does either.

20 Q. Oh, I'm sorry. The contact Keem was on the Kyocera  
21 phone.

22 A. Correct.

23 Q. And I asked whether that phone belongs to James White.  
24 He couldn't say, but it was DW1.

25 A. That is correct.

JAMES PERRY - CROSS EXAMINATION BY MS. ROSS

528

1 Q. Okay. And DW2 was the Samsung?

2 A. Correct.

3 Q. And that contained the pictures, the images that we've  
4 been -- that you've been testing about -- testifying about  
5 right now?

6 A. Correct.

7 Q. Okay. Now when you looked at the metadata or whatever  
8 about those pictures, had they been deleted on the Samsung  
9 phone?

10 A. No, they had not.

11 Q. And -- and on those images you can't say anymore of the  
12 context of them other than the time they were taken,  
13 correct? You can't say who took them?

14 A. Well, I can tell the one of them.

15 Q. The one in the mirror?

16 A. The one where he's taking it -- yeah.

17 Q. Okay.

18 A. That one I can tell.

19 Q. I'm sorry. On the other ones you can't tell -- you  
20 can't testify for sure ---

21 A. No.

22 Q. --- who took them?

23 A. No.

24 Q. Though admittedly they look like selfies?

25 A. Correct.

JAMES PERRY - CROSS EXAMINATION BY MS. ROSS

529

1 Q. Okay. And just looking at the times on those you said  
2 it was on January 21st in the afternoon. What exact time  
3 were they taken?

4 A. In the neighborhood of 2:30, 2:28. And they just kind  
5 of, you know, a few seconds, minutes later progresses from  
6 2:28 to 2:30 to 2:31 to -- yeah, 2:31's the last.

7 Q. In the afternoon?

8 A. Correct.

9 Q. And so those times appear to be correct times?

10 A. Yes. It's taken from the phone itself, which the phone  
11 gets its time from connecting with the towers.

12 Q. Okay. So from what you're telling me, that's when that  
13 picture -- those pictures were taken?

14 A. Correct.

15 Q. Okay. Now, talking about phones, at one point you  
16 recheck the phones in October of 2015. You've got four  
17 search warrants?

18 A. Right.

19 Q. And that's because there weren't just two phones, were  
20 there?

21 A. No, there were four phones.

22 Q. There were four phones. And one of them was -- I can't  
23 remember the first evidence number. It was something Keem 1  
24 and 2, the ID numbers for the phones.

25 A. On ---

JAMES PERRY - CROSS EXAMINATION BY MS. ROSS

530

1 Q. The evidence numbers.

2 A. The other ones other than these two?

3 Q. Yes.

4 A. They were different -- obviously different item  
5 numbers.

6 Q. They were different items numbers. But isn't it true  
7 that the type of phone -- there was another Kyocera and  
8 another -- and another Samsung? The same model. Just  
9 making it more confusing.

10 A. Actually it was the same -- we had two of the same  
11 models of both phones ---

12 Q. That you were looking at?

13 A. That -- yes.

14 Q. Okay.

15 A. However, the second one that came in was password  
16 protected and we weren't able to look at it.

17 Q. So one of them -- and that was the second ---

18 A. The second ---

19 Q. --- Kyocera?

20 A. --- Kyocera.

21 Q. That you couldn't get anything off. And then the  
22 Samsung, it's not relevant to this ---

23 A. Right.

24 Q. Okay. Apologies for fumbling through.

25 **MS. ROSS:** At this point I have no other questions for

**JAMES PERRY - REDIRECT EXAMINATION BY MR. FRETWELL**

531

1     this witness. Thank you.

2           **MR. FRETWELL:** Very briefly, Your Honor.

3     **Redirect Examination by Mr. Fretwell:**

4     Q. Let me be clear, you analyzed DW1 and DW2 and that's  
5     what you testified to today, is that correct?

6     A. That is correct.

7     Q. Okay.

8           **MR. FRETWELL:** Your Honor, permission to publish these  
9     photographs that are in evidence, 56 through 64.

10          **THE COURT:** You may.

11          **MR. FRETWELL:** Thank you.

12     Q. How many -- how many photos approximately were on that  
13     Kyocera, DW1?

14     A. There was over six thousand, seven hundred ---

15     Q. Okay.

16     A. --- images.

17     Q. All right. Thank you.

18          **MR. FRETWELL:** No further questions, Judge.

19          **THE COURT:** All right. Thank you, sir. You may step  
20     down.

21          **MR. YARBOROUGH:** One question, Your Honor.

22     **Recross Examination by Mr. Yarborough:**

23     Q. There were -- there were two -- you just said there  
24     were two Kiera {sic} phones?

25     A. Kyocera, yes, sir.

**DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL**

532

1 Q. Did they look identical?

2 A. Yes, sir.

3 Q. Okay. And then there was one other phone that you  
4 looked at besides this one?

5 A. That is correct.

6 Q. And what kind of phone was that?

7 A. That was a Samsung.

8 Q. And it was a Samsung just like this phone?

9 A. That is correct.

10 Q. Okay. And ...

11 **MR. YARBOROUGH:** I don't have any further questions.

12 Thank you.

13 **THE COURT:** Thank you, sir. You may step down.

14 **MR. FRETWELL:** Your Honor, may Investigator Perry be  
15 excused?

16 **THE COURT:** You may. Thank you.

17 **MR. FRETWELL:** Thank you, Judge. Your Honor, the State  
18 would at this time call Sergeant Dan Kelly.

19 **MADAME CLERK:** Please come forward.

20 **Daniel Kelly,** being duly  
21 sworn testified as follows;

22 **MADAME CLERK:** Please have a seat. And will you state  
23 your full name for the record.

24 **MR. KELLY:** Daniel Paul Kelly.

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

**DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL**

533

1           **THE COURT:** Yes, sir.

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

3           Q.   Sergeant Kelly, before we get started, did you recently  
4           have surgery?

5           A.   Yes, sir.

6           Q.   Okay. And are you in a little bit of pain?

7           A.   Yes, sir, I am. Thank you.

8           Q.   Okay.

9           **MR. FRETWELL:** Your Honor, with the Court's indulgence,  
10          if Sergeant Kelly needs to step off or step out for a  
11          moment, I just wanted to alert the Court of that at the very  
12          beginning of his testimony.

13          **THE COURT:** Okay. I'm not going to keep anybody up  
14          here that's not feeling well.

15          A.   I think I'll be fine, Your Honor. Thank you.

16          Q.   Sergeant Kelly, how long have you worked at the  
17          Greenville County Sheriff's Office?

18          A.   I've been with Greenville County for twenty years.

19          Q.   And how many total years in law enforcement?

20          A.   I got my first commission in 1989. So about twenty-  
21          seven.

22          Q.   Okay. And what are your -- what is your current  
23          position and responsibilities?

24          A.   I'm the sergeant over the Technical Services Unit with  
25          the Greenville County Sheriff's Office. Encompasses crime



DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

534

1 analysis. It also encompasses video analysis, video  
2 production, cell phone analysis. We take down a report,  
3 website, a few other hats.

4 Q. Do your duties include the analysis of recovered phone  
5 data in connection with cases being investigated by the  
6 Greenville County Sheriff's Office?

7 A. Yes, sir, when requested.

8 Q. In cases where data has been recovered from actual cell  
9 phone devices how do you receive and process the information  
10 you're asked to analyze?

11 A. Usually it comes in several different formats. Most  
12 common is through email if it's small enough. If it's in  
13 the case of a cell phone dump from Cellebrite in the case of  
14 like Investigator Perry would get that to me, it would be on  
15 a disk, on a DVD or a CD.

16 Q. Okay. And is the -- is the kind of information you  
17 work with image or photo based?

18 A. No, sir. Mostly it's -- deals with call logs, call  
19 record details, texts or SMS and that sort of data.

20 Q. Is ---

21 A. And also geolocation data as well.

22 Q. When you say SMS, is that text?

23 A. That's text. It's Serial Message Service, yeah.

24 Q. Have you been qualified as an expert by any court in  
25 this State?

DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

535

- 1 A. Yes, sir, in circuit.
- 2 Q. Okay. In what particular area?
- 3 A. In the use of the GeoTime software.
- 4 Q. Okay. And did you analyze recovered cell phone data in
- 5 this particular case?
- 6 A. Yes, sir.
- 7 Q. Did you generate a report as a result of your analysis?
- 8 A. I did.
- 9 Q. And did you preserve the reports?
- 10 A. I did.
- 11 Q. What I'm going to ask you to take a look at are two
- 12 items of evidence that have been marked for identification.
- 13 They are Court's exhibit 6 and State's exhibit 55. Have you
- 14 reviewed and looked at those -- did you receive those disks
- 15 from Investigator Perry?
- 16 A. Yes, I did.
- 17 Q. And did you take the data -- what did you do with the
- 18 data from those two phones?
- 19 A. I ran those in the GeoTime software, the Call Records
- 20 Tool, specifically. And once it was input through there,
- 21 it's a data visualization program, I put those on disks and
- 22 gave those to Sergeant Weiner.
- 23 Q. Okay. And let's just be clear, State's exhibit 55
- 24 dealt with a Samsung phone and Court's exhibit 6 with a
- 25 Kyocera, is that correct?

DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

536

1 A. That's correct.

2 Q. Okay. Now, let me show you what is going to be marked  
3 as 67 and 66. I'm going to show you State's 66 and 67 and  
4 ask if you recognize these disks?

5 A. Yes.

6 Q. How do you recognize them?

7 A. Those are the disks that I made.

8 Q. Are these your initials?

9 A. Those are my initials.

10 Q. Okay. And can you tell us -- do these disks contain  
11 the reports that you generated from the information you  
12 received from Investigator Perry with respect to this case?

13 A. Yes, they do.

14 Q. Okay. And are those the disks that you turned over to  
15 Sergeant Weiner?

16 A. They are.

17 (Whereupon State's exhibits 68A, 68B and 68C were  
18 marked for identification)

19 Q. Okay. This item is not in evidence. So I just want  
20 you to take a look at what I've marked as 68A, B and C. Do  
21 these look familiar to you?

22 A. Yes, sir, they do.

23 Q. Okay. In fact, did you or is one of your  
24 responsibilities printing large maps like this?

25 A. It is.

DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

537

1 Q. Did you actually print these ---

2 A. I did.

3 Q. --- for the use -- so just so we're absolutely certain,  
4 let me -- have you looked at these three exhibits? Do you  
5 know all three pages?

6 A. I'm familiar with them.

7 Q. I'm trying not to show them to the jury. I want you to  
8 be -- why don't -- no, you can't step down. I want you to  
9 be able to see. Did you at my request take these items that  
10 are on this chart table here, compare them to your report?

11 A. I did.

12 Q. Okay. And are all of these communications contained in  
13 your report?

14 A. They are.

15 Q. Okay. If I did not say the numbers for the record,  
16 68A, B and C, three pages. Now, with respect -- and let me  
17 ask you this question. With respect to State's 68A, B and  
18 C, from which phone did those communications come? Which --  
19 associated with which item number on your report?

20 A. I believe they were with the Samsung.

21 Q. Okay. Is it a Kyocera or a Samsung? If you could  
22 refer to the item number, like the DW1 or 2.

23 A. I believe it's DW2.

24 Q. Okay. Take a look at the top -- and I know you don't  
25 want to be here and you're in a lot of pain. Look at the

DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

538

1 top of that.

2 A. Gotcha. Okay. It would be from the Kyocera.

3 Q. Thank you.

4 A. Sure.

5 Q. And that's DW?

6 A. That would be DW1.

7 Q. Thank you. With respect to DW2, the other phone, did  
8 you determine that a text had been sent by a number  
9 identified as Dezzie in the Samsung contacts and received  
10 and responded to by the Samsung phone on the evening of the  
11 robbery, January 20th, 2014?

12 A. Yes.

13 Q. And what was the content of this communication?

14 A. Can I refer to this ---

15 Q. Yes.

16 A. --- this sheet?

17 Q. Yes.

18 A. The text was sent from a contact identified as Dezzie  
19 that said, you going to be in Anderson tomorrow? And  
20 approximately a minute later a response to Dezzie was, I  
21 don't know yet, but I will let you know.

22 Q. Okay. And approximately what time was that initial  
23 text sent?

24 A. At approximately 22:26.

25 Q. What is that in ---

**DANIEL KELLY - CROSS EXAMINATION BY MR. YARBOROUGH**

539

1 A. I'm sorry, 10:26 pm.

2 Q. Okay. Please answer any questions that Defense counsel  
3 will have. Thank you, sir.

4 A. Thank you.

5 **Cross Examination by Mr. Yarborough:**

6 Q. Who is Dezzie?

7 A. I don't know. It's a contact that was on the ...

8 Q. And Dezzie's phone number is what?

9 A. Looks like it's

10 Q. ...

11 A. .

12 Q. And the responding -- to response to Dezzie's text was  
13 from what number?

14 A. I don't have what number it came from, just what number  
15 it went to.

16 Q. What number did it go to?

17 A. .

18 Q. So the Dez number, , got a text at 10:00  
19 saying are you going to be in Anderson tomorrow?

20 A. Correct.

21 Q. And then whoever texted Dez back said, I don't know.

22 A. I don't know yet, but I will let you know.

23 Q. I don't know yet, but I'll let you know. And that was  
24 done at what time?

25 A. The response was approximately 10:27 pm.

DANIEL KELLY - CROSS EXAMINATION BY MR. YARBOROUGH

540

1           **MR. YARBOROUGH:** One second.

2           (Pause)

3       Q.    You analyzed the phone records in this case?

4       A.    Yes, I did.

5       Q.    Okay. And you saw -- you looked at Mr. White's phone?

6       A.    That is the Kyocera or the Samsung?

7           **MR. FRETWELL:** He doesn't know them by name.

8       A.    I don't know them by name.

9       Q.    Well, I think it's -- is it ---

10          **MR. FRETWELL:** DW1.

11       Q.    DW1. And there was a text sent from DW1 that said you

12       won't believe we've been robbed. Did you see that one?

13       A.    I remember seeing that, yes.

14       Q.    Okay. And there was a response to that one?

15       A.    I don't recall what the response was without looking at

16       it again.

17       Q.    Okay. But did that go to Dez?

18       A.    I don't know.

19       Q.    What do you mean you don't know?

20       A.    I'd have to look at the ---

21       Q.    Well, did ---

22       A.    --- text ---

23       Q.    --- it go ---

24       A.    --- to see if -- there was quite a few texts on that.

25       Q.    Did it go to                               ?

**DANIEL KELLY - CROSS EXAMINATION BY MS. ROSS**

541

1 A. This particular text did. I don't know if the other  
2 one did without looking at it.

3 Q. Okay. Well, can you look at it?

4 A. I don't have -- I don't have that.

5 Q. Okay. Oh, you don't -- okay, I gotcha.

6 A. I don't have those in front of me.

7 **MR. YARBOROUGH:** I don't have any further questions.

8 Thank you, Your Honor.

9 **THE COURT:** Ms. Ross.

10 **Cross Examination by Ms. Ross:**

11 Q. Between the times -- do you know if between the times  
12 of 11:25 and 11:35 on the night of the 20th were there texts  
13 going back and forth then?

14 A. I wouldn't know unless I was able to see the texts.

15 **MR. FRETWELL:** Judge, he doesn't have any document or  
16 any information in front of him. If she -- if Ms. Ross can  
17 provide him with a copy of his report or the State's  
18 exhibit, then I'm sure he can answer the question.

19 **MS. ROSS:** Well, I couldn't even open the report on my  
20 computer. So it's hard to say. But would it be -- beg the  
21 Court's indulgence.

22 (Pause)

23 **MS. ROSS:** Okay. I've got no further questions at this  
24 time.

25 **MR. FRETWELL:** Judge, just briefly.



DANIEL KELLY - REDIRECT EXAMINATION BY MR. FRETWELL

542

1     Redirect Examination by Mr. Fretwell:

2     Q.    Could I see the document that you were looking at,  
3     Sergeant Kelly?  So your testimony was that at 22:27, which  
4     is ---

5     A.    10:27 pm.

6     Q.    --- 10:27 pm a text went to Dezzie?

7     A.    Correct.

8     Q.    From the Samsung phone?

9     A.    (Affirmative nod).

10    Q.    And what does it -- is that the line?  The top one?

11    What does that ---

12    A.    The top one.  It says I don't know yet, but I will let  
13    you know.

14    Q.    Oh, I'm sorry.  These are in reverse ---

15    A.    In reverse.

16    Q.    Okay.  I apologize.

17    A.    Yes.

18    Q.    So ---

19    A.    10:26.

20    Q.    --- at 10:26 a text from Dezzie ---

21    A.    Correct.

22    Q.    --- to the Samsung phone that said what on that bottom  
23    line?

24    A.    You going to be in Anderson tomorrow?

25    Q.    And then a minute later ---

**DANIEL KELLY - RECROSS EXAMINATION BY MS. ROSS**

543

1 A. Correct.

2 Q. --- a text from the Samsung phone?

3 A. To Dezzie that states I don't know yet, but I'll let  
4 you know.

5 Q. Thank you very much. I appreciate that.

6 **MR. FRETWELL:** No further questions, Judge.

7 **MS. ROSS:** Can I just ask one brief question on  
8 recross, I guess?

9 **THE COURT:** I guess if Mr. Yarborough doesn't have some  
10 questions.

11 **MS. ROSS:** I beg ---

12 **MR. YARBOROUGH:** Go ahead.

13 **MS. ROSS:** Sorry.

14 **MR. YARBOROUGH:** No, she ---

15 **MS. ROSS:** Go ahead.

16 **MR. YARBOROUGH:** I'm fine.

17 **THE COURT:** Go ahead, Ms. Ross.

18 **Recross Examination by Ms. Ross:**

19 Q. Were the times -- were the times and numbers the same  
20 on -- well, I take it back.

21 **MS. ROSS:** I don't have any further questions.

22 **THE COURT:** All right. Thank you, sir. You may step  
23 down.

24 **MR. FRETWELL:** And, Judge, may he be excused from the  
25 courthouse?

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

544

1           **THE COURT:** Yes, sir, you're free to leave. Thank you,  
2   sir.

3   A.   Thank you.

4           **MR. FRETWELL:** Thank you, sir. Your Honor, at this  
5   time -- may it please the Court. The State would call  
6   Sergeant David Weiner.

7                                   **David Weiner,** being duly  
8   sworn testified as follows;

9           **MADAME CLERK:** Please have a seat. And will you state  
10   your full name for the record.

11          **MR. WEINER:** David Weiner.

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

13   Q.   Sergeant Weiner, how long have you been employed by the  
14   Greenville County Sheriff's Office?

15   A.   Sixteen years.

16   Q.   Okay. And what is your current position and  
17   responsibilities?

18   A.   I'm a sergeant supervising the Violent Crimes Unit,  
19   Homicide and Robbery.

20   Q.   And those two units, Robbery and Homicide, were  
21   recently joined, is that correct?

22   A.   Correct.

23   Q.   Prior to that time were you assigned to one of those  
24   two units?

25   A.   Specifically to robbery.

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

545

1 Q. Okay. And how long ago did the --- or those units  
2 combine?

3 A. Thirty days.

4 Q. Okay. All right. Let me take you back to January the  
5 20th, 2014. Did you or were you involved or made aware of  
6 an incident that occurred at the Olive Garden on North  
7 Pleasantburg Drive at Cherrydale on January 20th, 2014?

8 A. I was made aware on the 21st, yes, sir.

9 Q. Okay. And according to your investigation  
10 approximately what time did the incident occur?

11 A. Sometime just prior to 11:28 pm on January 20th, but  
12 most likely around 11:25 pm.

13 Q. The location of Olive Garden on North Pleasantburg at  
14 Cherrydale, is that location within Greenville County?

15 A. It is, yes, sir.

16 Q. How did you -- tell us how you became involved in the  
17 case.

18 A. Every morning I receive a copy of any armed robbery or  
19 robbery type incident that occurs in the County. I'll  
20 review each one and then assign them to an investigator. So  
21 I read that case that morning and assigned it to  
22 Investigator Motes.

23 Q. So then he becomes what at that point?

24 A. He becomes the primary investigator.

25 Q. How did -- how did your unit or does your unit handle

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

546

1 cases like this? Does one person do all the work or how do  
2 you handle it?

3 A. Each one is a case-by-case basis. Certain cases can be  
4 opened and closed fairly quickly. A case like this, it gets  
5 in-depth, requires several people from the unit to assist  
6 with paperwork, interviews, collection of evidence, things  
7 of that nature.

8 Q. Kind of like a team?

9 A. Yes, sir.

10 Q. Okay. Can you tell the jury the difference between  
11 what your unit does versus what Officer Middleton, who  
12 initially responded to the scene? What are the difference  
13 of duties there?

14 A. The uniform patrol deputies are your front-line troops.  
15 They answer 911. They pull cars over. They get out with  
16 the suspicious people to try to deter crime.

17 My unit specifically responds to the crime after it's  
18 already occurred. It's a very rare instance where we can  
19 actually prevent one. Generally what we do is investigate  
20 after the fact.

21 Q. Okay. Do you direct that investigation?

22 A. Not generally, no, sir. Only if I see a mistaken step,  
23 if they missed a piece of evidence or didn't interview  
24 somebody I felt they should interview. And I'll learn that  
25 from reading their supplemental reports.

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

547

1 Q. And I asked the wrong question. Does your unit or the  
2 investigator that you assign direct the investigation?

3 A. Yes.

4 Q. Okay. Did you personally meet with an individual by  
5 the name of Damion Riley on January 22nd of 2014?

6 A. Yes, sir, I did.

7 Q. Did you -- were you -- did you participate in any kind  
8 of a written statement that he gave at that time?

9 A. Yes, sir.

10 Q. How did you participate?

11 A. When a witness comes in -- I assisted by talking to  
12 him, just briefly getting to know him a little bit and then  
13 trying to obtain the facts in the incident that occurred. I  
14 will write the statement for him and allow him to make any  
15 additions, deletions or corrections to it. And once he's  
16 happy with the statement provided, he'll sign it.

17 Q. And could you tell me why Damion Riley was asked to  
18 come and provide a statement?

19 A. He was the last person to leave the Olive Garden prior  
20 to the incident occurring. So I wanted to make sure he was  
21 talked with to see if we felt he would be responsible for  
22 putting the dishrag in between the doors.

23 Q. Okay. And when you talk to these witnesses is that  
24 information relevant to the conduct and -- conduct of your  
25 case or your investigation?

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

548

1 A. Yes, sir.

2 Q. Okay. What information did you determine from that  
3 interview with Mr. Riley that was significant to your  
4 investigation?

5 A. A couple of things. The first being that when he  
6 walked outside for fear of losing his job he ensured that  
7 those doors were locked. And second of all, that he ---

8 MR. YARBOROUGH: Objection to hearsay.

9 MR. FRETWELL: Your Honor, it's not being offered for  
10 the truth, it's being offered ---

11 THE COURT: Sustained.

12 MR. FRETWELL: Sustained?

13 THE COURT: He's testifying why he -- the officer did  
14 what he did.

15 MR. FRETWELL: Okay.

16 Q. Go ahead. Repeat your answer.

17 A. That he checked the doors to ensure that they were  
18 locked after he left and also that a -- his girlfriend had  
19 picked him up that night.

20 Q. Were you able to determine when Damion Riley clocked  
21 out that night?

22 A. Yes, sir.

23 Q. Okay. And when was that?

24 A. 11:18 pm.

25 Q. All right. Did you -- did he provide any other

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

549

1 information with respect to -- that was relevant to your  
2 investigation from that interview?

3 A. Just the name of his girlfriend and I think a phone  
4 number where I could speak to her.

5 Q. Okay. If I showed you a copy of your report would that  
6 potentially refresh your recollection?

7 A. I have it up here, sir, if you'd like.

8 Q. Okay. If you'd look at that paragraph and just read  
9 through that and see if your answer changes or if it stays  
10 the same.

11 (Pause)

12 A. Prior to exiting he spoke with the Defendant, Mr.  
13 White.

14 Q. Okay. And what, if anything, was related to you about  
15 that conversation?

16 A. He said Mr. White told him that he made a few thousand  
17 dollars over the weekend rapping in Charleston.

18 Q. All right. And you've been in the courtroom during all  
19 of this testimony. There's a picture up here, State's  
20 exhibit 7. State's exhibit 7, I'm not going to go through  
21 the process of flipping the light on and off, but did you --  
22 were you familiar with this photograph?

23 A. Yes, sir.

24 Q. Okay. And what information did you -- is this what you  
25 were -- when you spoke with Mr. Riley did you specifically



DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

550

1 ask him about what's contained in that photograph?

2 A. Yes, sir.

3 Q. Okay. And his response was what?

4 A. It's a dishtowel or a towel from the Olive Garden.

5 Q. How about whether or not it was there when he left?

6 A. He ensured me that it was not.

7 Q. Okay. Was there any information that was useful to

8 your investigation gleaned by either the forensics

9 department or the K-9 track?

10 A. One print recovered that was not returned to anybody

11 and the K-9 track ending in what they call, I think, a

12 drive-off.

13 Q. And were you aware, I think it's already in evidence,

14 of the towel that was collected from the front door?

15 A. Yes, sir.

16 Q. Okay. On January the 22nd of 2014 did you meet, that

17 same day that you met with Damion Riley, did you also meet

18 with Investigator Motes, who's now Sergeant Motes, and the

19 Defendant, James White?

20 A. Yes, sir.

21 Q. How did that come about?

22 A. Mr. White was invited down to the Law Enforcement

23 Center to give a statement just as Mr. Riley had done.

24 Q. And where did that conversation with Mr. White take

25 place?

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

551

1 A. In the robbery office.

2 Q. Okay. And did -- and this office is similarly laid out  
3 as Sergeant Motes earlier testified, is that correct?

4 A. Yes, sir.

5 Q. Okay. In what capacity was Mr. White being interviewed  
6 at that time?

7 A. As a victim or a witness.

8 Q. Was he under -- was he under arrest?

9 A. No, sir.

10 Q. Was he placed in handcuffs?

11 A. No, sir.

12 Q. Did you communicate anything to him that might suggest  
13 he was not free to leave?

14 A. No, sir.

15 Q. Can you identify him for the Court?

16 A. Yes, sir. He's seated to my right in the maroon shirt  
17 with white polka dots.

18 (Whereupon the witness identified the Defendant, James  
19 White)

20 **MR. FRETWELL:** Your Honor, let the record reflect that  
21 the witness has identified the Defendant, James White.

22 Q. Who was present when you -- did you participate in the  
23 interview?

24 A. Yes, sir.

25 Q. Okay. Who was present when this conversation was going

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

552

1 on? Was it you, Motes and Mr. White?

2 A. Yes, sir.

3 Q. Okay. Were there anybody else -- were any of the other  
4 investigators in there? Do you recall?

5 A. I don't recall, but it's very likely that they were in  
6 and out dealing with other cases or situations.

7 Q. Okay. And at some point did the Defendant, Mr. White,  
8 provide Investigator Motes with a handwritten statement?

9 A. Yes, sir.

10 Q. And you reviewed that statement?

11 A. Yes, sir.

12 Q. Okay. Was the statement -- was the Defendant  
13 restrained at the time that he gave that statement?

14 A. No, sir.

15 Q. Was he restrained at the time you talked to him?

16 A. No, sir.

17 Q. Did you allow him to take any breaks while or before  
18 you talked with him?

19 A. I don't recall him taking one, but if he asked, it's  
20 not an issue, sir.

21 Q. And did he make any requests of you that you recall?

22 A. No, sir.

23 Q. Did you or anyone promise him anything in exchange for  
24 giving you that statement?

25 A. No, sir.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

553

1 Q. Did you coerce or threaten him into talking to you?

2 A. No, sir.

3 Q. To the best of your knowledge were any statements made  
4 by him given freely and voluntarily?

5 A. Yes, sir.

6 Q. Did you come into possession of two cell phones that  
7 have been entered into evidence in this case and identified  
8 as DW1, DW2 or State's 45 and 46?

9 A. Yes, sir.

10 Q. Okay. How did you -- how did you personally come into  
11 possession of those two cell phones?

12 A. They were initially turned over to Investigator Motes,  
13 but shortly after that he had to leave for the day.

14 Q. Okay. And then the DW1, DW2 is your designation?

15 A. Yes, sir, my initials.

16 Q. Where did you place those phones during the pendency  
17 from the time that you received them until today?

18 A. Our property and evidence storage unit.

19 Q. Okay. Did you discuss with Mr. White the conversation  
20 that you had learned from Mr. Riley took place shortly  
21 before the robbery?

22 A. Yes, sir.

23 Q. What specifically did he tell you about that  
24 conversation?

25 A. That he had earned seven thousand, five hundred dollars

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

554

1 rapping in Charleston from door sales or ticket sales from  
2 people entering.

3 Q. And during a break in the interview did you contact the  
4 event promoter?

5 **MR. YARBOROUGH:** Objection, Your Honor. It's going to  
6 be hearsay.

7 **MR. FRETWELL:** I haven't asked ---

8 **MR. YARBOROUGH:** He asked if he contacted him. I know  
9 ...

10 **THE COURT:** Overruled.

11 **MR. FRETWELL:** Thank you, Judge.

12 Q. Did -- during a break in the interview did you contact  
13 the event promoter?

14 A. Yes, sir.

15 Q. Where did you obtain the information to be able to  
16 contact that promoter?

17 A. From a flier located on Mr. White's phone.

18 Q. Okay. Did you have a conversation with that promoter?

19 A. Yes, sir.

20 Q. Okay. After that conversation did you speak to Mr.  
21 White again?

22 A. Yes, sir.

23 Q. Did you inform Mr. White of your conversation with the  
24 promoter?

25 A. Yes, sir.

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

555

1 Q. And what did he say at that time?

2 A. He told me that he earned seven thousand, five hundred  
3 dollars from other rappers paying him, not from the door  
4 ticket sales.

5 Q. So he changed his story at that point?

6 A. Yes, sir.

7 Q. Did you ask him about this seventy-five hundred dollars  
8 that he told Mr. Riley he earned over the weekend or he got  
9 at the concert?

10 A. Yes, sir.

11 Q. And what was his response?

12 A. He told me he'd spent it all on women and booze at the  
13 clubs.

14 Q. Did you ask him where specifically he spent all this  
15 money?

16 A. Yes, sir.

17 Q. And what did he say?

18 **MR. YARBOROUGH:** Your Honor, I'm going to continue to  
19 object to this. This is classic hearsay.

20 **THE COURT:** These are statements from your client.

21 Overruled.

22 A. He said he did not recall.

23 Q. And did you ask him whether or not anybody went with  
24 him?

25 A. Yes, sir.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

556

1 Q. And how did he respond?

2 A. That he didn't remember who.

3 Q. Okay. Did you form an opinion as to why Defendant  
4 White chose to bring up this subject and discuss it with  
5 Damion Riley immediately before the robbery?

6 A. Yes, sir.

7 Q. And did your opinion -- the opinion that you formed,  
8 did it factor into your charging decision?

9 A. Yes, sir.

10 Q. And what was that opinion?

11 A. That he was trying to set the stage for him coming --  
12 soon coming into possession of a large sum of money.

13 Q. On January the 24th, which was now two days later, did  
14 you do anything with respect to -- well, let me ask you  
15 this. Did the Olive Garden restaurant have a camera of any  
16 kind?

17 A. Yes, sir.

18 Q. Okay. What kind of camera did it have and what was its  
19 purpose?

20 A. There was a camera. I believe it's directly over the  
21 front door. And it covered three spots from to-go orders,  
22 if you were to call in, pull in a spot, they'll bring the  
23 food out to you. You don't have to come out of the car.  
24 And that's its sole purpose.

25 Q. Okay. And do you know where the controls for that

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

557

1 camera are located?

2 A. I don't know where -- they were in the restaurant. We  
3 took custody of them so that we could download the disk.

4 Q. Okay. Did you, in fact, get a disk of images from this  
5 camera?

6 A. Yes, sir.

7 Q. And did you make a photograph or an image from that  
8 disk that was relevant to your investigation or you thought  
9 might be relevant to your investigation?

10 A. An image I thought was relevant, yes, sir.

11 Q. Okay. I'm going to show you State's exhibit 69. I'm  
12 going to ask you if you recognize the image and then whether  
13 it accurately reflects what it -- whether you -- it is in  
14 the same condition as it was when you pulled it off the  
15 disk?

16 A. Yes, sir, I recognize it. And it is in proper  
17 condition that I -- from when I pulled it from the disk.

18 Q. Okay. And why was that photo to you -- why did you  
19 think it might have some relevance?

20 A. It is in close time-frame to when I felt the robbery  
21 most likely occurred.

22 Q. And what does it generally depict?

23 A. A vehicle traveling across the parking lot close to  
24 those parking spaces.

25 Q. Okay.



DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

558

1           **MR. FRETWELL:** At this time, Your Honor, the State  
2 would move State's exhibit 69 into evidence.

3           **MR. YARBOROUGH:** Without objection.

4           **MS. ROSS:** No objection.

5           **THE COURT:** So admitted.

6           (Whereupon State's exhibit 69 was admitted into  
7 evidence)

8           Q. What did you do in pursuing this particular photograph  
9 or image in the course of your investigation to determine  
10 whether it did have any relevance to you -- to the incident?

11          A. Released it to the media.

12          Q. Okay. And what was the result of that?

13          A. I was contacted by an area resident.

14          Q. Okay.

15          A. And this resident was able to identify that being their  
16 vehicle and that they were in that area for lawful purposes.

17          Q. Okay. And was it a male or female that called in?

18          A. A female.

19          Q. Okay. All right. Let me now ask you, those two  
20 exhibits, those two cell phones, State's exhibit 45 and 46,  
21 DW1 and DW2, the Kyocera and Samsung flip phone, did you  
22 request that data be extracted from these phones?

23          A. Yes, sir.

24          Q. And once the data was extracted was an analysis  
25 performed by Sergeant Kelly?

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

559

1 A. Yes, sir.

2 Q. Did the data recovery and analysis assist you in your  
3 investigation?

4 A. Yes, sir.

5 Q. And really, how did the results of the analysis of  
6 these two phones affect your investigation?

7 A. They were primarily some of the largest pieces of  
8 evidence for the case in my charging documents.

9 Q. Okay. I'm going to now show you what has been  
10 previously marked as State's exhibit 68A, B and C. Have you  
11 seen these documents before?

12 A. Yes, sir.

13 Q. Okay. And how many document pages are there?

14 A. Three.

15 Q. Okay. And are these documents ones that were compiled  
16 from the information provided to you by Sergeant Kelly?

17 A. Yes, sir.

18 Q. Okay. Are they, first of all, accurate representations  
19 of the data that was on that report?

20 A. Yes, sir.

21 Q. Does it include all the data ---

22 A. No, sir.

23 Q. --- that was on that report?

24 A. No, sir, it does not.

25 Q. Does it necessarily go chronologically line by line

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

560

1 through the report?

2 A. No, sir, it does not.

3 Q. Why are these particular communications on these three  
4 sheets of paper?

5 A. Because they are directly related to the case that  
6 we're here today for.

7 **MR. FRETWELL:** Your Honor, at this time the State would  
8 move State's exhibit 68A, B and C into evidence.

9 **MR. YARBOROUGH:** And, Your Honor, if he's talking about  
10 those poster boards right there, I'd like -- I've got a  
11 matter to take up out of the presence of the jury. I  
12 object.

13 **THE COURT:** All right. Ladies and gentlemen, we'll go  
14 ahead and use this opportunity to take a break. We'll take  
15 about a fifteen minute break. Y'all step back to the jury  
16 room and don't discuss the case.

17 (Whereupon the jury exited the courtroom at 3:19 pm)

18 **MR. YARBOROUGH:** Your Honor, that's the first time  
19 we've seen these reports today. This hasn't been turned  
20 over before to the Defense. I'm not saying that the  
21 substance of what's in here hasn't been turned over, but how  
22 this was determined has not been turned over.

23 If you notice, it's set up in some type of form that  
24 I'm not sure what it is, but I have no way of knowing how it  
25 fairly and accurately represents any evidence that's before

1 the Court. You see there are all these representations of  
2 the word deleted down the sides. I have no idea what that  
3 means, where that comes from or if it's fairly and  
4 accurately -- it hasn't been testified to in this courtroom.

5 First call after the robbery, this of itself is  
6 objectionable.

7 **THE COURT:** I can't see what you're ---

8 **MR. YARBOROUGH:** Well, it's ...

9 **MR. FRETWELL:** Judge, before he gets too far along, I  
10 agree. I have not had the witness -- because I was trying  
11 to keep the exhibits outside the presence of the jury and I  
12 didn't feel like I could go into explaining all that. I'd  
13 be happy to have the officer testify to this exhibit and  
14 what these things are and what they represent.

15 **MR. YARBOROUGH:** But you're not going to try to move  
16 them into evidence or use them in the courtroom?

17 **MR. FRETWELL:** Absolutely.

18 **MR. YARBOROUGH:** Okay. Well, I object.

19 **MR. FRETWELL:** But I agree with him that I haven't laid  
20 the proper foundation because all I've asked him is if he  
21 reviewed it. I didn't ask him what the different colors  
22 mean. I didn't ask him what the term deleted means. I  
23 didn't ask him where -- where these labels from, the empty  
24 spaces. I can do all that. I just couldn't do it with the  
25 jury sitting right there because I didn't want to show it to

1 the jury.

2 So I'm happy -- I'm happy to go through that with the  
3 officer right here and now and you can hear all that  
4 foundation. But he's going to testify to what those words  
5 deleted means, what a completed call is, the labels on the  
6 side, the blank spaces ---

7 **THE COURT:** Well, I'm not sure what Mr. Yarborough's  
8 complaint is. Is it because they're blown up and on a  
9 poster board?

10 **MR. YARBOROUGH:** Well, ---

11 **THE COURT:** Or because you don't like the color scheme  
12 or you, I mean, ---

13 **MR. YARBOROUGH:** Well, all of the above so far, I  
14 agree. But some of this stuff is just really -- it's, I  
15 mean, Your Honor, ---

16 **THE COURT:** Well, it's supposed to be -- if it's not  
17 prejudicial, it shouldn't be introduced by the State.

18 **MR. YARBOROUGH:** Well, how about this, number -- if you  
19 read here, there are a number of women on the jury. I don't  
20 -- this looks like it was done on January the 19th. My home  
21 girl's coming to Two Notch Road. They sell, I mean, it's  
22 just -- there's no reason for that to be -- it's only being  
23 entered to prejudice my client.

24 **MR. FRETWELL:** That is not correct, Judge.

25 **MR. YARBOROUGH:** But, I mean, Judge, ---

1           **THE COURT:** Why don't we ---

2           **MR. YARBOROUGH:** He's talking about prostitution.

3           They're not on charge -- they're not charged here with  
4           having prostituted women. That's what that says right  
5           there. That's talking about they sell their -- I mean, I'm  
6           not saying it's -- he can't -- Judge, he can't sit there and  
7           argue that my client's a bad guy because he's prostituting  
8           women.

9           **MR. FRETWELL:** No, sir. Judge, that's ---

10          **MR. YARBOROUGH:** But that's what it says.

11          **THE COURT:** What's the purpose of that?

12          **MR. FRETWELL:** Judge, this is -- this is the day before  
13          the robbery. In the afternoon he's communicating with  
14          somebody about what a good hotel in -- what a good hotel --  
15          he references Two Notch Road in Columbia and wants to know  
16          the name of a good hotel. That indicates to me that he's  
17          heading down there soon. He's talking about ---

18          **THE COURT:** Who is he?

19          **MR. FRETWELL:** This is ---

20          **THE COURT:** Mr. White?

21          **MR. FRETWELL:** Yeah, Mr. White. These are all from Mr.  
22          White's phone. And he's already referenced in his  
23          conversation with Sergeant Weiner that he spent all his  
24          money on these things, women and clubs and alcohol. And the  
25          State's position is he did do some of that.

1           He set up before the robbery to spend a bunch of money.  
2   After the robbery he went down there -- and I think it's  
3   fair for the jury to determine whether that's exactly what  
4   he did in response to the question that Sergeant Weiner  
5   asked him about what happened to the money.

6           **MR. YARBOROUGH:** That he was prostituting women?

7           **MR. FRETWELL:** Not prostituting ---

8           **MR. YARBOROUGH:** That's exactly what it says.

9           **MR. FRETWELL:** Judge, I just -- I took the texts as  
10   they are. Those are these texts from the Defendant's phone.  
11   If there's a word or two that he wants me to take a magic  
12   marker to, I'll obliterate them. But the idea is that he's  
13   doing exactly what he said to this sergeant, that he spent  
14   money on booze and girls. And that's what he told the  
15   sergeant.

16           Only problem is he did that -- he's talking about doing  
17   it in the future on the 19th. He works on the 20th, no  
18   question. Thereafter, not back to work, that he's telling a  
19   partial truth to the officer.

20           He did spend the money, but it's the money from the  
21   robbery. And he didn't spend seventy-five hundred dollars  
22   at that club down there. He spent his half of the proceeds  
23   of that. And I think it's a fair extrapolation from the  
24   texts that come from his phone.

25           But, Judge, I agree, that word is offensive. I will --

1 I will scratch through that word with a -- I've got a marker  
2 right over here. But it's exactly what he told -- it's  
3 exactly what he told Sergeant Weiner, I spent the money on  
4 girls and booze.

5 **MR. YARBOROUGH:** There's a difference in girls and  
6 booze and prostitution, Allen. You know that.

7 **MR. FRETWELL:** Well, I don't know how to make that text  
8 make sense, but that's exactly what he's saying. He's not  
9 saying he ---

10 **MR. YARBOROUGH:** You're using it to prove a separate  
11 crime in order to prove this crime, which is ---

12 **MR. FRETWELL:** Absolutely not. I'm talking about  
13 confirming what he told to the officer, he did spend money  
14 in that way. He spent it after the robbery in Columbia on  
15 Two Notch and is asking some guy named Trouble where's a  
16 good hotel that's not hot.

17 **THE COURT:** Well, tell how that's relevant.

18 **MR. FRETWELL:** Because, Judge, it shows that what he  
19 said to Sergeant Weiner about spending money -- this is --  
20 he talked to Sergeant Weiner several days later. But he's  
21 telling a partial truth. He did go and spend money on girls  
22 and booze at a club or whatever, but it wasn't money that he  
23 recovered from that weekend down in North Charleston.

24 He knows that because he talked to the promoter down  
25 there. They didn't make any money that weekend. He made



1 money from that robbery and spent that money down there.

2 THE COURT: There's no evidence that he didn't make any  
3 money that weekend. The evidence ---

4 MR. FRETWELL: No, he did make some money, Judge.

5 THE COURT: The evidence is, hey, I made it from the  
6 rap show and then apparently the information was not that.  
7 Then I made it from the people who were putting on the rap  
8 show.

9 MR. FRETWELL: That rapped with him, yes, Judge.

10 THE COURT: So there's no evidence that he didn't make  
11 any money.

12 MR. FRETWELL: That is -- that is correct.

13 THE COURT: I'm not really sure how that -- the fact  
14 that he planned on spending money down there indicates that  
15 there's a robbery.

16 MR. FRETWELL: Well, I would agree that based on the  
17 Court's ruling I'm unable to establish that as well as I had  
18 hoped when this document was prepared, yes, sir. I had -- I  
19 had anticipated that the Court would permit that evidence in  
20 ---

21 THE COURT: What evidence?

22 MR. FRETWELL: The evidence of his conversation with  
23 the promoter ---

24 THE COURT: Well, how are you going to get that in?

25 MR. FRETWELL: I'm not going to get it in.

1           **THE COURT:** I mean, how would you get it in?

2           **MR. FRETWELL:** Because it's not being offered for the  
3 truth. It's being offered to show the reaction of this --  
4 of Mr. ---

5           **THE COURT:** Well, clearly you're trying to say right  
6 now what -- it was offered for the truth because you're  
7 trying to say that he didn't make that kind of money down  
8 there and ...

9           **MR. FRETWELL:** Well, ---

10          **THE COURT:** What else you got on there?

11          **MS. ROSS:** There's a reference first call after  
12 robbery, which is just added in. First call to baby after  
13 robbery, which is -- robbery, which is highly prejudicial  
14 because he just texted her the second it happened saying,  
15 baby, we've just been robbed. And then ---

16          **MR. YARBOROUGH:** And why isn't that ---

17          **MS. ROSS:** --- they clearly ---

18          **THE COURT:** Wait a minute.

19          **MS. ROSS:** And then they've got two months of just back  
20 and forth that's just all put in there ---

21          **THE COURT:** All right.

22          **MS. ROSS:** --- for the prejudicial nature ---

23          **THE COURT:** Ms. Ross. All right. There was some  
24 information in this case that there was a text, hey, we just  
25 got robbed. All right. Is that the text?

1       **MS. ROSS:** Right up here.

2       **THE COURT:** I can't see that far.

3       **MS. ROSS:** I'm sorry, Judge.

4       **THE COURT:** You know, you've got young eyes. So where  
5 is the text, hey, we just got robbed?

6       **MR. FRETWELL:** Could you point it out, Sergeant Weiner?

7       A. It's you won't believe we've been robbed.

8       **THE COURT:** All right. And then ---

9       **MS. ROSS:** And then went a little down, it comments,  
10 under the first call after the robbery was to Keem the next  
11 morning, like twelve hours later. And then the first ---

12       **THE COURT:** Wait a minute.

13       **MS. ROSS:** Somewhere the first call to ---

14       **THE COURT:** All right. Oh, we just got robbed. Wait a  
15 minute. We've been robbed. Then what is ...

16       **MS. ROSS:** Then on -- there's that text. And then  
17 there's a little notation somewhere that says first call  
18 after robbery, which wasn't obviously in discovery. That  
19 was just an addition.

20       **MR. FRETWELL:** Judge, that ---

21       **MS. ROSS:** Comment. And then ---

22       **THE COURT:** Wait a minute. You won't believe we've  
23 been robbed. Where is first call at?

24       **MR. FRETWELL:** Judge, can I have Sergeant Weiner  
25 explain that ---

**DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL**

569

1           **THE COURT:** How could that be the first call after the  
2 robbery when ...

3           **MR. FRETWELL:** If you'll let me ask the witness a few  
4 questions, I think we can clear all of this up.

5           **THE COURT:** Fine.

6           **Proffered Testimony by Mr. Fretwell:**

7           Q. Sergeant Weiner, what does this chart consist of with  
8 respect to the records that were provided to you by Sergeant  
9 Kelly?

10          A. The vast majority of it is texts or SMS messages. The  
11 only time it's a phone call, you'll see this word,  
12 completed, indicates that it's a phone call. Anything in  
13 yellow was something that was deleted off of the phone or an  
14 attempt was made to delete off of the phone. And from here,  
15 this is the 16th of January. We dated down to the 21st on  
16 this page.

17          Q. And what do those spaces mean that are in the third  
18 column on occasion and even in the first and second column  
19 on occasion?

20          A. If there's a blank space, it's just ---

21           **THE COURT:** Well, I mean, tell me what the purpose of  
22 all that is. I can see where you've got ---

23          A. Okay.

24           **THE COURT:** --- calls between White and Keem. And ---

25          A. Yes, sir.

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

570

1           **THE COURT:** --- you want that to be reflected that,  
2       hey, they had some sort of relationship and it's going on.  
3       conveniently after the robbery.

4           **MR. FRETWELL:** It's not just that, Judge. It's ---

5           **THE COURT:** All right. But this thing about we're  
6       going to Charleston and so that's an indication that ---

7           **MR. FRETWELL:** No, sir. I ---

8           **MS. ROSS:** Well, Judge, I should have objected to that  
9       coming in ---

10          **MR. FRETWELL:** Could I finish answering the Court's ---

11          **THE COURT:** What?

12          **MR. FRETWELL:** Your question is what was the relevance?  
13       As I tried to tell you earlier, because of the statements  
14       that were made to Sergeant Weiner, I believe that I would  
15       have in evidence some information that shows that he didn't  
16       make any money in the rap concert that weekend for his  
17       birthday. Therefore, the money that he's spending -- those  
18       texts were evidence of that. If the Court determines that  
19       they're not appropriate, we'll X them out.

20               The rest of this information, Sergeant Weiner can tell  
21       you how every line relates to his investigation and to the  
22       ultimate charging decision and continued investigation of  
23       this case to establish ---

24          **THE COURT:** White, 7:25 am in pink, I mean, yellow.

25       White -- 67 Keem completed -- call deleted. Other than

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

571

1     there was a call from one Defendant to the other, ---

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

3           **THE COURT:** --- what else does anything else on that  
4     piece of paper indicate?

5           **MR. FRETWELL:** Judge, there's all kinds of ---

6           **THE COURT:** No, with that 7:25 call.

7           **MR. FRETWELL:** Right here?

8           **THE COURT:** Yeah.

9           **MR. FRETWELL:** Okay. So this is ---

10          **THE COURT:** No, one more below.

11          **MR. FRETWELL:** Here?

12          **THE COURT:** Yeah. You got White and Keem.

13          **MR. FRETWELL:** Okay. The officer will testify that the  
14     \*67 is what you put in before you block a number. So if  
15     you're calling somebody, you don't want your number to show  
16     up on their phone, you type in \*67.

17          **THE COURT:** All right. And so what? What does that  
18     mean?

19          **MR. FRETWELL:** It's to signal that they want to have  
20     separation, that they want to disassociate and put some  
21     space between the two because they just committed this  
22     robbery. It's evidence of that, Judge. And it's on his own  
23     phone. And then moreover, he deleted it.

24          **THE COURT:** Who -- you mean you're surmising that  
25     that's why they did it?

1           **MR. FRETWELL:** Well, I think I could argue from a fair  
2 understanding of the texts that are on -- that were  
3 recovered from his phone, Judge.

4           **THE COURT:** That that's what they're trying to put  
5 distance between themselves just because \*67?

6           **MR. FRETWELL:** I think that's a fair extrapolation of  
7 that. I think they're free to argue that it's not, Judge.  
8 It's evidence ---

9           **THE COURT:** It's evidence to me ---

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

11          **THE COURT:** --- that White called Keem and put -- and  
12 wanted to block it and that's it.

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

14          **THE COURT:** To try and think that there's some other  
15 meaning there when, you know, you're just getting up  
16 speculating what the deal is.

17          **MR. FRETWELL:** Well, Judge, to the triers of the facts  
18 I'm attempting to put evidence that came from the phone  
19 around the time of the robbery that relate to the robbery.  
20 He talks about in here, he says -- this is the afternoon of  
21 the robbery, some eight hours before. He's texting somebody  
22 named Antwanett. I got something lined up.

23                 And then it -- this is not even the first page. If I  
24 had the first page, Judge, there's other texts that talk  
25 about -- he's communicating with his girlfriend. Don't

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

573

1     worry, I got something planned. I got something lined up.

2     He says that in the preceding days to the robbery.

3             I think it's fair for the State to be able to put that  
4     evidence in front of the jury and argue that what he's  
5     talking about is this robbery. I'm not trying to be  
6     disrespectful, Judge, but that's the evidence ---

7             **THE COURT:** I'm not accusing you of being  
8     disrespectful, ---

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

10            **THE COURT:** --- I'm trying to figure out the relevancy.  
11     I mean, you're just speculating on all that stuff. I got  
12     something lined up. Oh, okay, well, that means that we've  
13     got a robbery planned.

14            **MR. FRETWELL:** Judge, it's the same argument with  
15     respect to those photographs. Because they're close in  
16     time, they have some significance because the argument will  
17     be made by me that they relate specifically ---

18            **THE COURT:** Between Antwanett ---

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

20            **THE COURT:** --- and White? That -- I got something  
21     lined up. I ain't tripping. Y'all be safe 'cause be  
22     worried about y'all. That is supposed to indicate that I'm  
23     getting ready to go do a robbery?

24            **MR. FRETWELL:** I think it's a fair extrapolation with  
25     the rest of the texts that -- I'd like for you to see the



**DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL**

574

1     entire -- all three documents and take a look at it.

2           **THE COURT:** I'll be happy to look at anything you want  
3     me to look at.

4           **MR. FRETWELL:** Thank you, Judge. I'm going to get the  
5     other ...

6           (Pause)

7           **MR. FRETWELL:** Judge, what I'd really like to have  
8     happen is for the officer to tell you exactly the  
9     significance of all of these because that's what he's  
10    prepared to testify to. Would you allow him to do that?

11          **THE COURT:** Well, I don't know. I'll certainly allow  
12    him to start.

13          **MR. FRETWELL:** Yes, sir. All right. Let me get the  
14    ...

15          **THE COURT:** All right. Well, we're going to take about  
16    a ten minute break while we're doing this.

17          **MR. FRETWELL:** Okay.

18          **THE COURT:** You can organize whatever you want.

19          (Whereupon court was in recess at 3:37 pm)

20          (Whereupon court reconvened at 3:46 pm)

21          **THE COURT:** All right. Go ahead.

22    **Proffered Testimony by Mr. Fretwell Continued:**

23    Q.    Sergeant Weiner, can you explain these documents to the  
24    Court and why this information is on here and how it relates  
25    to your investigation?

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

575

1 A. Yes, sir. Is it okay if I go line by line with you,  
2 sir?

3 **THE COURT:** You may.

4 A. If you see a blank here, it's because it's a repeat of  
5 what's exactly above it. So the blank indicates it's from  
6 White. The blank here indicates it's to Keem. Still on the  
7 21st of October.

8 These first three are important to my investigation  
9 because as it continues, again, we go as far back as this  
10 phone had any record of Mr. White talking to Mr. Gadsden.  
11 Every single one of these was deleted. There wasn't a  
12 single contact between Mr. White and Mr. Gadsden that was  
13 left intact. They attempted to delete every single one.

14 We come down here, White sends a text or SMS to Crime  
15 on the 2nd of December. He says, lock me in Saturday,  
16 February 22nd. I'm going to pay you January 22nd.  
17 Important to me because this was two days after the robbery,  
18 all of a sudden now he's going to come into money for  
19 January 22nd.

20 The same day, three minutes later, he text messages an  
21 unknown person Wessie, Weezy, 3:01 pm, you want to get on  
22 the show at Sho Tyme, January 18th, let me know. We making  
23 fliers today.

24 He texted that same individual just a minute later,  
25 this Jr. G, his stage name. This Weezy individual texted

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

576

1 back to him the next minute. Is it okay if I use foul  
2 language? If I just read it?

3 **THE COURT:** That's fine.

4 A. It says, bruh on some real shit. I ain't doing no more  
5 free shows since my CD out. Now that's somebody texting Mr.  
6 White. Mr. White responds back to him, I know what time it  
7 is, my n-i-g. What you charging? And then this individual  
8 writes back to White, one hundred dollars.

9 That is important to me because Mr. White had told me  
10 that at the rap concert on the 18th people had paid him, had  
11 paid Mr. White to rap with him. But this text message, it  
12 clearly contradicts that and says that this individual --  
13 that Mr. White needs to pay this individual to rap with him.

14 And he continues that conversation, Imma lock you in.  
15 He's going to pay the hundred dollars. Seven minutes later  
16 he tells whoever Corey is, add Weezy to the show.

17 He then asks his mother, are you still going to cover  
18 the gas? And mother responds with a two-part text. The  
19 tank will be full, but if y'all got gas money since y'all  
20 not paying the rent, just bring the car back the way y'all  
21 received it. I initially said if you pay your rent I would  
22 cover the gas. But from the looks of it, y'all not.

23 This is important to me with some of these others down  
24 below and on the next couple of pages showing that Mr. White  
25 was experiencing a very difficult time financially, which

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

577

1 gives him the reason for committing this robbery.

2 Again, we have a message here between Brandon and White  
3 on the 3rd of December. He says not a word I like to say.  
4 Uses the N word. I can't hit that lick. Too risky in the  
5 daytime.

6 It's a deleted message. And I've worked armed  
7 robberies now for -- in some capacity for nine years. Hit  
8 that lick is commit a robbery.

9 **THE COURT:** I know what it is.

10 A. White to Keem, again, just these two, what's important  
11 here, White to Keem not long after he talks to this Brandon  
12 fellow and says can't hit the lick, too risky in the  
13 daytime, don't come again. I'll explain tomorrow. And Mr.  
14 Gadsden immediately responds back, word.

15 My thoughts being Mr. White's telling Mr. Gadsden,  
16 don't come by my work anymore. Nobody needs to see your  
17 face anymore.

18 Elite Visa just indicating that he's down to three  
19 dollars and ninety-three cents. Two more contacts. Again,  
20 just continuing to show that any contact between Mr. White  
21 and Mr. Gadsden is deleted.

22 I have Cricket indicating, which is a cell phone  
23 provider, that he needs to pay fifty dollars and forty-one  
24 cents or his phone's going to get cut off.

25 I have Corey, which is the same person that he was

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

578

1 sending a text to about adding somebody to the show. So  
2 most likely the promoter. That Corey fellow is asking Mr.  
3 White, when are you going to send me the other hundred  
4 dollars? A deleted call between Mr. White and Mr. Gadsden.

5 Two more indicating money issues. One from the Visa,  
6 one from the phone. He's below the twenty dollar threshold  
7 for his Elite Visa. And if he doesn't pay fifty dollars by  
8 midnight on this day his phone will get cut off.

9 Baby identified through my investigation by the phone  
10 number is Mr. White's girlfriend, Katrina Ferguson. She's  
11 telling him more money trouble. My car note's going to be  
12 over three hundred with the late charges. He responds back,  
13 I love you. Phone back on because I couldn't get no texts.  
14 So for a couple of days he couldn't pay the bill.

15 This one White -- Mr. White to whoever Ammo is,  
16 , Apartment , we just used that to  
17 show that that premise that we searched was actually, in  
18 fact, his residence.

19 Again, Elite Visa, money trouble. Now he's down to  
20 eighteen cents.

21 Here is Mr. White to his girlfriend, Katrina Ferguson,  
22 on the 31st of December. He sends her a text that says love  
23 you too. Next week my last week working here. Almost  
24 telegraphing that he's done working at Olive Garden. A  
25 deleted between Mr. White and Mr. Gadsden.

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

579

1           Here more money trouble between himself and his  
2 girlfriend. I am on the -- I know ---

3           **THE COURT:** All right. So what you want this to do is  
4 to show that he's having financial difficulties starting  
5 back in October. And because he's having financial  
6 difficulty, you believe that it makes him subject to  
7 committing an armed robbery.

8           **MR. FRETWELL:** It provides motive, Your Honor. It  
9 provides motive.

10          **THE COURT:** You also want to show that because he and  
11 one or more people, I guess maybe they're all White, White  
12 and Keem deleted calls that, in fact, that makes them  
13 suspicious as to an armed robbery.

14          **MR. FRETWELL:** Your Honor, that has to do with two  
15 things. First of all, that the fact that he denies knowing  
16 Mr. Gadsden ---

17          **THE COURT:** I think you can use it for the purpose of  
18 showing that he has had a longstanding relationship ---

19          **MR. FRETWELL:** Sure.

20          **THE COURT:** --- with each other.

21          **MR. FRETWELL:** And the other thing I forgot -- and I  
22 apologize for -- if I got extra excited before. One thing I  
23 did not articulate to the Court I think that is important  
24 that the Defendants are charged with conspiracy in this  
25 case. So certainly a conspiracy occurs before the incident.

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

580

1           And some of these texts that Sergeant Weiner has  
2           pointed out to you show how that process of putting this  
3           together, the motivation for it ---

4           **THE COURT:** I think you can show that they had a  
5           longtime relationship. So you believe that starting in  
6           October of 2015 they started planning this robbery?

7           **MR. FRETWELL:** No, sir. I believe that the evidence --  
8           that they had a relationship starts back to October 13 ---

9           **THE COURT:** And I'm going to allow the Sergeant to  
10          testify that he reviewed the texts and saw or telephone  
11          calls and saw that they had known each other at least since  
12          October 21, 2013 because they've been talking to each other  
13          on and off over that period of time.

14          **MR. FRETWELL:** The second ---

15          **THE COURT:** Many of those conversations between the two  
16          were deleted on their phone. Now, I don't know when they  
17          got deleted. Do we know when they got deleted?

18          A. No, sir.

19          **THE COURT:** So they could have been deleted on October  
20          22nd.

21          **MR. FRETWELL:** Exactly, Judge. The only thing that  
22          this can tell you is the time that the officers collected  
23          the phones from Mr. White, this is his Kyocera, and  
24          submitted them for dumping, at that time they had been  
25          deleted.

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

581

1           The -- I lost my train of thought.

2           **THE COURT:** So if they were deleted on October 22nd,  
3 they really -- that would have no bearing on this case,  
4 would it?

5           **MR. FRETWELL:** All it does is show you, Judge, that  
6 when he denied knowing Mr. Gadsden ---

7           **THE COURT:** Mr. Fretwell, ---

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

9           **THE COURT:** --- I agree, these are great indicators  
10 that these two individuals had a longstanding relationship.

11          **MR. FRETWELL:** A longstanding relationship that they  
12 wanted to hide on their own personal devices by deleting any  
13 indication that they had had any contact with each other  
14 from -- as soon as the phones ---

15          **THE COURT:** So you believe that back in October of 2013  
16 that they were planning all of this -- this event and they  
17 wanted -- they didn't want anybody to know they knew each  
18 other because in two years we're going to do an armed  
19 robbery.

20          **MR. FRETWELL:** I actually think it started, the  
21 planning process, some of this, you know, working on this  
22 bash or whatever it was and these money troubles ---

23          **THE COURT:** He didn't even go to work for the thing til  
24 when?

25          **MR. FRETWELL:** Pardon me, Judge?



DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

582

1           **THE COURT:** When did he go to work for the restaurant?

2           **MR. YARBOROUGH:** Olive Garden.

3           **MR. FRETWELL:** When did he start?

4           **THE COURT:** Yeah.

5           **MR. FRETWELL:** The testimony was that as of January  
6 20th when the robbery occurred, it had been slightly less  
7 than a year.

8           **THE COURT:** All right.

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

10          **THE COURT:** So for a year and a half they were -- he  
11 was planning to go get that job.

12          **MR. FRETWELL:** Planning to get ---

13          **THE COURT:** I think ---

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

15          **THE COURT:** --- that the extent of that -- what we have  
16 shown so far is since October of 2013 they have known each  
17 other and had numerous telephone conversations.

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

19          **THE COURT:** It's a stretch to say back in December of  
20 2013 that he's having financial troubles, so we're going to  
21 commit a robbery.

22          **MR. FRETWELL:** Well, Judge, that's why -- that's why  
23 some of these texts, Judge, are so very important because  
24 he's talking even as of December the 2nd ---

25          **THE COURT:** Mr. Fretwell, ---

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

583

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

2           **THE COURT:** --- that means every single human being in  
3 America that is having financial trouble is a suspect in a  
4 robbery.

5           **MR. FRETWELL:** No, sir. That's one motivation for  
6 committing the robbery. The fact of the matter is he is  
7 contemplating January 22nd as early as ---

8           **THE COURT:** Motive is not an element of this crime.

9           **MR. FRETWELL:** I understand that it's not an element,  
10 Judge, but the Court certainly knows that the State is  
11 entitled to explore elements of motive for purposes of the  
12 jury.

13          **THE COURT:** Well, what else we got here? We're back  
14 down to December?

15          **MR. FRETWELL:** Now, Judge, just to be clear, this 2013,  
16 December, is the month before ---

17          **THE COURT:** I know -- I ---

18          **MR. FRETWELL:** --- the robbery.

19          **THE COURT:** --- understand that. The robbery was six  
20 weeks later.

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

22          **THE COURT:** Thirty-one days, fifty-one days. That's  
23 seven -- over seven weeks later.

24          **MR. FRETWELL:** Yes, sir. And specifically what  
25 Sergeant Weiner pointed out to you about somebody contacting

**DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL**

584

1 Mr. White, telling them they can't hit that lick, they can't  
2 commit that robbery because it's too risky in the daytime  
3 and the very -- what they ---

4 **THE COURT:** What robbery?

5 **MR. FRETWELL:** The very -- the robbery that we're here  
6 for, Judge. Because ---

7 **THE COURT:** There is no evidence that that -- hitting  
8 that lick -- how do you know it wasn't another robbery?

9 **MR. FRETWELL:** Because of the texts that followed.

10 **THE COURT:** Show me what ---

11 **MR. FRETWELL:** The texts that follow in less than five  
12 days, White was contacting Keem telling Mr. Gadsden, don't  
13 come again, I'll explain tomorrow, word. He doesn't want  
14 him to come again, which is my belief, and I think it's a  
15 fair extrapolation, to the restaurant because he doesn't  
16 want to be associated ---

17 **THE COURT:** What else you got?

18 **MR. FRETWELL:** It's like that -- just continue with the  
19 -- I don't know where you stopped.

20 **Proffered Testimony by Mr. Fretwell Continued:**

21 A. Stopped here, sir, where he was telling his girlfriend  
22 my last week working here.

23 **THE COURT:** All right.

24 A. And he talked about the loan ---

25 **THE COURT:** Of course, it wasn't the last week he

**DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL**

585

1     worked there. Three more weeks.

2     A. Correct. Then these next few texts here talk about the  
3     money issues as it's getting closer to the robbery. These  
4     are on the 3rd of January. He tells his girlfriend here,  
5     we'll figure it out. The 4th, the Visa card again dropping  
6     below the balance. Two more deleted items from Mr. Gadsden,  
7     communications.

8             Here is his girlfriend talking about, I'm going to go  
9     to Drays. I don't want to be at the house with your  
10    peoples.

11            And then she asked, did you leave the key? And Mr.  
12    White says my home-boy will be there. It's our belief that  
13    he's referring to Mr. Gadsden because we found his personal  
14    items all in the apartment.

15            Three, asked him how much he spent on EBT card. Two  
16    more deleted items. Again, every contact between Mr. White  
17    and Mr. Gadsden on that phone was deleted.

18            Here's somebody on the 18th that said they don't want  
19    to pay money at the door to his concert. I think these two  
20    comments have been discussed about Columbia.

21            On the 20th, the day of the robbery, he tells this  
22    Antwanett, I got something lined up. I ain't tripping.  
23    Y'all be safe 'cause be worried about ya. Call me. I want  
24    to know what's good on these taxes. I got three names.

25            The next several between himself and his girlfriend,

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

586

1 she's asking, or I'm sorry, he's asking how far away she is.  
2 This is, again, just hours before the robbery. She wants to  
3 know where dude at. He says, he's gone.

4 And then after the robbery occurs she sends him a text,  
5 I guess you're working hard tonight. He responds half an  
6 hour later, this is just under two hours after the robbery  
7 occurred, you won't believe we've been robbed. She says,  
8 shut up. Are you serious? He responds, yeah. Call you  
9 when I leave. Talking with the police. And she says, oh,  
10 my God. Okay.

11 These next few, again deleted, between Mr. Gadsden and  
12 Mr. White, the difference being now he tries to block his  
13 number from Mr. Gadsden so that he cannot see the number  
14 he's calling from.

15 A blocked number sends Mr. White an address of 8105 Two  
16 Notch Road in Columbia, which corresponds back to him going  
17 to the hotel for the girls. Again, he tries to contact Mr.  
18 Gadsden, again deleting that.

19 And then even though he told Ms. Ferguson that I'll  
20 call you when I leave, with the police at 1:19 am he has  
21 several other communications throughout the day. And he  
22 calls his girlfriend at 10:30 in the morning.

23 Also, two days after the robbery, although he said he  
24 didn't know Gerald Gadsden, he types in his full name,  
25 Gerald Akeem Gadsden, social security number and date of

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

587

1 birth.

2 And then this message here between -- Mr. White sends  
3 to Ms. Ferguson, I'm here at the police station now. That  
4 was when he came for his interview. The car's at 4 McGee  
5 Street. Keys are in the armrest in case I don't come out.  
6 I love you. Talk to you later. And her nonchalant response  
7 is just K.

8 **MR. FRETWELL:** And, Judge, one thing with respect to  
9 this particular text that is sent on basically the morning  
10 that Mr. White goes to interview or to provide some  
11 information to law enforcement is he indicates Gerald Akeem  
12 Gadsden's full name, Akeem, which I think Ms. Ross has  
13 already mentioned in opening was supposed to be the  
14 confusion that caused him to say I don't know who Gerald  
15 Gadsden is because he goes by Keem. She said that in the  
16 opening.

17 That's in evidence right there, Judge, the morning that  
18 he went in there and talked to them he knew his full name.  
19 He had -- he had access to his social security number and  
20 date of birth.

21 **THE COURT:** So what -- tell me what it is you want all  
22 this stuff to show. Number one, that they had an ongoing,  
23 long-term relationship.

24 **MR. FRETWELL:** That at some point that Mr. White ---

25 **THE COURT:** That's number one?

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

588

1           **MR. FRETWELL:** That's certainly one element, yes, sir.

2           **THE COURT:** Number two, ---

3           **MR. FRETWELL:** Number two, ---

4           **THE COURT:** --- that he deleted calls -- I don't know  
5 if every -- is every call that he ever made between the two  
6 deleted?

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

8           **THE COURT:** All right. That every call that was ever  
9 made between the two was deleted. What else?

10          **MR. FRETWELL:** The motivation that he was in financial  
11 troubles, which he can testify to that. I see your point,  
12 Judge, on that. He can testify that they were having  
13 financial problems.

14          That he made repeated texts about he's got something  
15 lined up, don't worry, everything's going to be okay, this  
16 is my last work week working there. All of those are  
17 indications of an expectation on Mr. White's part that he  
18 won't be working at Olive Garden very long, that after this  
19 robbery they'll have the money, their financial problems  
20 will be satisfied.

21          And that's the purpose of a lot of this, these texts  
22 are to show his mentality and his mindset prior to ---

23          **THE COURT:** So the other thing is he's -- that long-  
24 term relationship, blocked every call from October up  
25 through -- when would that be, January 21st?

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

589

1           **MR. FRETWELL:** 2nd.

2           **THE COURT:** Or does it go further?

3           **MR. FRETWELL:** Just one day, 22nd.

4           **THE COURT:** I don't see a 22nd block.

5           **MR. FRETWELL:** He's showing the 22nd.

6       A.   No, it's just through the 21st, sir. You're correct.

7           **MR. FRETWELL:** Oh, I'm sorry. I thought you meant the  
8   time period.

9           **THE COURT:** All right. And, number three, he was  
10   having financial trouble.

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

12          **THE COURT:** And what's the -- what else?

13          **MR. FRETWELL:** Just his activity and his conversations  
14   leading up to where he talks about I've got something lined  
15   up, don't worry, we'll be all right. He also talks about  
16   that that's going to be his last time working there about a  
17   week or ten days before the robbery.

18           All of those -- and, Judge, you said just a second ago  
19   that all of his -- his conversations or calls or texts  
20   between the two Defendants were blocked. We're saying they  
21   were deleted. Some were blocked. Those ---

22          **THE COURT:** Right. But -- so that they couldn't be ---

23          **MR. FRETWELL:** Traced, yes, sir.

24          **THE COURT:** Determined what was said.

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



DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

590

1           **THE COURT:** What do you want to say there, Mr. ...

2           **MR. YARBOROUGH:** Your Honor, first of all, I think that  
3 clearly they had some contact. We'll give him that. We'll  
4 stipulate that they had an ongoing relationship from October  
5 to January.

6           **THE COURT:** He wants to do more than stipulate it. So  
7 he's going to put it into evidence. All right. What else?  
8 Tell me what you ---

9           **MR. YARBOROUGH:** Well, I mean, I think the fact that  
10 these phone calls were deleted is -- over a period of time  
11 doesn't have anything -- what does that have to do with a  
12 motive for a robbery?

13          **THE COURT:** I don't know.

14          **MR. YARBOROUGH:** I mean, well, it doesn't.

15          **THE COURT:** I don't know. It could be -- I think they  
16 could put -- he could testify from his examination that  
17 every call that was ever made between the two from October  
18 such and such til after the robbery was deleted and that's  
19 the only one he found. It's a fact. I don't know. The  
20 jury can draw what conclusion it wants to. What else?

21          **MR. YARBOROUGH:** I think the rest of the stuff is  
22 inadmissible. The fact whether or not -- he was a  
23 dishwasher. Whether or not he had money in his AT&T account  
24 is irrelevant.

25          **THE COURT:** All right. What else? So you believe it's

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

591

1 not admissible because it's irrelevant. Some of it's not  
2 admissible because it's ---

3 **MS. ROSS:** Well, a lots of irrelevant and a lot -- it's  
4 the prejudice -- the probative value's outweighed by the  
5 prejudicial effect. With the deleted, that's designed to be  
6 in there just to cause prejudice.

7 And it wasn't that they actually went back and deleted.  
8 Keem is a contact in that phone. Keem is a contact in  
9 White's phone. And the number to dial each time is \*67 and  
10 then the number. So, obviously, when the contact was put  
11 into the phone, he just put \*67 in there and, therefore,  
12 it's deleted all along from start to beginning. I mean,  
13 from October til now because ---

14 **THE COURT:** Wait a minute.

15 **MS. ROSS:** --- every one is deleted.

16 **THE COURT:** So you're saying the first time somebody  
17 puts \*67 in the -- when they make a call it ---

18 **MS. ROSS:** You know, ---

19 **THE COURT:** --- deletes every call that was ever made?

20 **MS. ROSS:** That's what it looks like happening to me  
21 because every single ---

22 **THE COURT:** So you don't know?

23 **MS. ROSS:** --- one -- I don't know.

24 **THE COURT:** Okay. So let's not -- don't tell me  
25 something you don't know.

1           **MS. ROSS:** But it is -- the prejudicial effect of the  
2 deletion makes it look like he's trying to hide something,  
3 which there is no evidence that that's the case. I delete  
4 things from my phone all the time.

5           And the phone -- the phones coming in and all this  
6 evidence coming in in this trial is it's starting to get  
7 more and more, but it's a lot to deal with. And for here,  
8 to use everything that someone says and such personal  
9 context with a smartphone also violates his right to privacy  
10 again ---

11           **THE COURT:** Say that again.

12           **MS. ROSS:** Well, it's ---

13           **THE COURT:** We've already been through the phone  
14 business.

15           **MS. ROSS:** Yeah, I know. It's just there's so much  
16 more information here. And it's -- can easily be taken out  
17 of context. We don't have the people who are on the other  
18 side. They haven't spoken. They don't -- we don't know  
19 what they meant when they replied on those texts. So,  
20 again, I would object to that information, that coming in.

21           **MR. YARBOROUGH:** Your Honor, I'm looking at the phone  
22 records and I see -- I see numerous other phone calls that  
23 were deleted that didn't have anything to do with the  
24 communications between these two individuals. So that --  
25 that's ---

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

593

1           **THE COURT:** Is that right?

2           **MR. FRETWELL:** That's correct, Judge. And certainly  
3 Sergeant Weiner would say that, that there were other phone  
4 calls ---

5           **THE COURT:** All right. Well then you can certainly  
6 cross examine him about that. All right. Well, we're not  
7 going to use these poster boards.

8           Here's what I'm going to allow you to let your officer  
9 testify to; That he got the records, he got the records,  
10 and you went through them to see -- is that when they  
11 started? That October or is ---

12          **MR. FRETWELL:** Let me turn it back ---

13          **THE COURT:** --- is that just the first time you ---

14        A. Judge, I think ---

15          **THE COURT:** --- you saw any contact between these two  
16 individuals?

17        A. That was the first time between the two of them. And I  
18 believe there are records on the phone that go back a lot  
19 further, like maybe he inserted an old ---

20          **THE COURT:** Well, I'm going to let him testify that he  
21 -- in reviewing the records he learned that in -- on October  
22 21st, 2013 these two individuals had been having -- began  
23 having telephone contact with each other either through  
24 telephone calls or texting. And those calls went as long as  
25 -- I don't know how -- I don't know if they went all the way

1 up to the time the first or the second was arrested or --  
2 but you can -- that these contacts continued. That, in  
3 fact, in looking at the -- looking at the records we've  
4 determined that every telephone call or texts -- are texts  
5 deleted too?

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

7 **THE COURT:** Every contact between these two individuals  
8 were deleted at some point in time or another. And, of  
9 course, you don't know when that was, but you do know now  
10 that every call or contact has been deleted.

11 That in -- it appeared that during the course of this  
12 period of time that Mr. White was having financial  
13 difficulties and that that -- the pressure seemed to build  
14 as it went along.

15 I'm going to let them -- what else? What else did you  
16 want to try and share with them?

17 **MR. FRETWELL:** Judge, there were several -- Sergeant  
18 Weiner can find them, but there were references before the  
19 incident to I've got something lined up, something's in the  
20 works, I'm only going to be at this job for one more week or  
21 -- I can't -- Sergeant Weiner can find them probably a lot  
22 faster than I can.

23 **THE COURT:** Well, he can testify that at some point in  
24 time December of 2013 he indicated he might be leaving this  
25 job in the near future.

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

595

1           This I got something lined up, that's just pure  
2   speculation that I've got something lined up. That  
3   something lined up might be, hey, his big rap show that he's  
4   got.

5           **MR. FRETWELL:** But, Judge, that -- it's after the rap  
6   show, Judge. It's after that weekend. And it's, in fact,  
7   on the day of the robbery.

8           **THE COURT:** That what? We started talking about it at  
9   ...

10          **MR. FRETWELL:** I've got something lined up is ...

11          (Pause)

12          **THE COURT:** All right. So after -- so on the day of  
13   the ...

14          (Pause)

15          **MR. FRETWELL:** Judge, basically we just wanted to limit  
16   it to -- with respect to specific texts to around the time  
17   of the robbery. This is a couple of texts in the -- in that  
18   earlier, about a week to a week and a half before where he's  
19   talking about -- to his girlfriend talking about the  
20   financial trouble that we've already shown, the loan with my  
21   check. Don't worry, we gonna be good. We straight. I got  
22   something planned. Damn, I know we figure it out in a few.

23          This is evidence of the fact that he is planning what  
24   occurs on January 20th. I think that's a fair extrapolation  
25   that the jury can make from that language, Judge. I think

1 as finders of the fact that they can determine if that was  
2 him talking to his girlfriend and saying don't worry, I've  
3 got something lined up.

4 Because he repeats it on the day of the robbery, that  
5 afternoon when he says -- 2:33, this is now ten hours --  
6 nine hours before the robbery about, true, I got something  
7 lined up. I ain't tripping. Y'all be safe. He's  
8 continuing to talk about this plan that he has. And it's  
9 relevant because that's the night of the robbery.

10 **MR. YARBOROUGH:** Judge, he has no idea what he's  
11 talking about. Mr. Fretwell has no idea at 2:33 on January  
12 the 20th what he's talking about. He, I mean, ---

13 **THE COURT:** Well, I mean, I disagree with that. Mr.  
14 Fretwell thinks he knows exactly what he's talking about.

15 **MR. YARBOROUGH:** Be safe 'cause we worried about you.  
16 I mean, what's the implication ---

17 **THE COURT:** Well, I don't know why -- I guess they just  
18 want to put everything in there.

19 **MS. ROSS:** Judge, again, I think 603, it's classic,  
20 shouldn't come in. Not to mention law enforcement talked to  
21 this girlfriend. They could have questioned her about all  
22 this stuff if they'd wanted to and bring her in to tell what  
23 it's all about, but they didn't. Instead they want the jury  
24 to look at this in ---

25 **THE COURT:** Well, they're using your client's or Mr.

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

597

1 Yarborough's words, not the person that's responding back.

2 I mean, they didn't need to bring her in.

3 **MR. FRETWELL:** And, Judge, I do think it's significant  
4 that this is a text that kind of bookends the robbery. It  
5 starts that afternoon 2:33, I got something lined up. Call  
6 me. I want to know what go on these tax forms.

7 And then after the robbery when he's going -- the  
8 morning that he reports to the police department to give his  
9 statement, he gives his full name, ---

10 **THE COURT:** Well, ---

11 **MR. FRETWELL:** --- social security number ---

12 **THE COURT:** --- anything that helps identify that these  
13 two people have had contact, I'm going to let you put it in  
14 there.

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

16 **THE COURT:** But we're not going to put the poster board  
17 in. You're going to have to do it by testimony.

18 **MR. FRETWELL:** I understand that, Judge.

19 **THE COURT:** All right. Well, I'll let you put in that  
20 something -- anything that is within a short period of time  
21 of the robbery, such as the day of the robbery, I've got  
22 something lined up. This stuff about talking two days  
23 before the robbery about going to -- going to Columbia ---

24 **MR. FRETWELL:** I understand, Judge, ---

25 **THE COURT:** --- and staying with a bunch of women. I



DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

598

1 mean, he doesn't have the money then.

2 MR. FRETWELL: I understand. I understand your ruling.

3 THE COURT: And that's where we're going to leave it.

4 MR. FRETWELL: Yes, sir.

5 THE COURT: Whatever ties them in together. He can  
6 testify that the records indicate he was having financial  
7 problems. He can testify that every call was deleted. He  
8 can testify that he called him at 7:23 in the morning, the  
9 day after the robbery. So eight hours after the robbery  
10 he's talking to his Co-Defendant.

11 MR. FRETWELL: Okay.

12 THE COURT: And he can talk about that they're talking  
13 about they were going to do something to correct the  
14 problem, but it's got to be -- something was getting ready  
15 to happen. But this other stuff about how far away, on the  
16 back of -- I can't -- on the back something.

17 MR. FRETWELL: Judge, it's not terribly relevant, it  
18 just happened to be on the afternoon of the robbery. So I  
19 just left it in there because I figured if the Court was  
20 going to take it out, it's easier to take it out than put it  
21 in.

22 THE COURT: Well, you know, I understand any objections  
23 you may have, Mr. Yarborough or Ms. Ross, but we've cut it  
24 down to that.

25 MR. FRETWELL: Judge, I'll just need about -- a couple

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

599

1 of minutes to make sure. We went through a couple of these  
2 to figure out what information might be admissible, might  
3 not be admissible. So I'm going to make sure that what he's  
4 reading from up, what's on this poster and what's been  
5 presented to the Court ---

6 **THE COURT:** I don't mind him using the posters to help  
7 him with -- just don't let the jury see it.

8 **MR. FRETWELL:** Well, do you mind if he just uses those  
9 documents because that's a pretty unwieldy ---

10 **THE COURT:** I don't -- he can use whatever he wants ---

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

12 **THE COURT:** --- to make sure that he knows that the --  
13 on whatever date that is, January 22nd he is able to give  
14 Gerald Akeem Gadsden's whatever -- it's hard for me to read  
15 that, date of birth and social security number. Maybe  
16 Sergeant Weiner can remember every date that's on there and  
17 each time.

18 (Pause)

19 **THE COURT:** All right. For the record, Mr. Solicitor,  
20 the reason I'm not permitting, some of the matters that you  
21 wanted on your poster boards in this as evidence is because  
22 I think some of them are just so highly prejudicial, some of  
23 the language in there and some of the incidents talking  
24 about prior licks and a lick, I just think that's too  
25 speculative.

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

600

1           The other is that some of it is just too remote. But  
2   you do have a conspiracy charge. You do have to show some  
3   relationship between these parties over a period of time.  
4   And so we'll go forward. Let's bring the jury in.

5           (Whereupon the jury entered the courtroom at 4:21 pm)

6           **THE COURT:** All right. Mr. Solicitor, you ready to  
7   proceed?

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

9           **THE COURT:** Yes, sir.

10   **Direct Examination by Mr. Fretwell Continued:**

11   Q.   Sergeant Weiner, before the break you had reviewed  
12   these three documents identified as State's exhibit 68A, B  
13   and C and indicated that they were taken from the report  
14   that was generated by Dan Kelly, is that correct?

15   A.   Yes, sir.

16   Q.   And can you just -- in case I did not go over it  
17   before, which two phones, the Kyocera or the Samsung, is  
18   that data related to?

19   A.   This is from the Kyocera that came from Mr. Smith. I'm  
20   sorry, Mr. White.

21   Q.   Okay. And was that the first phone he had?

22   A.   Yes, sir.

23   Q.   Okay. All right. Within the parameters as instructed,  
24   what information from Sergeant Kelly's report did you  
25   determine was integral and relevant to your investigation of

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

601

1     these two individuals for the crimes with which they've been  
2     charged?

3     A.   First was there's established communication between the  
4     contact on Mr. White's phone to the contact labeled Keem  
5     going back to the 21st of October of 2013. And there are  
6     numerous completed calls as well as text messages between  
7     the two.

8     Q.   With respect to that particular issue, how many  
9     contacts from October the 21st of 2013 til the phone was  
10    surrendered or given to you in your office on January the  
11    22nd, how many lines of contact between Mr. White and Mr.  
12    Gadsden did you note on those records? Be they called or  
13    texted.

14    A.   Yes, sir.

15           (Pause)

16    A.   Nineteen, sir.

17    Q.   Nineteen. With respect to those communications,  
18    nineteen communications, how many of those communications  
19    were deleted from that phone?

20    A.   All of them.

21    Q.   How close in time to January 20th, the time of the --  
22    the evening of January 20th you testified approximately  
23    11:25 to 11:28, 27?

24    A.   Yes, sir.

25    Q.   Okay. How many contacts are within three days -- so

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

602

1 the 22nd when he turned it into you, go back about two or  
2 three days before, how many contacts in that time period?

3 A. Five.

4 Q. And, in fact, all five of those are the morning after  
5 the robbery, is that correct?

6 A. Yes, sir.

7 Q. Okay. Is there anything about those contacts that are  
8 different from some other contacts that he -- that Mr. White  
9 may have had with Mr. Gadsden according to those records?

10 A. Those contacts after the robbery -- the phone, whoever,  
11 Mr. White's phone dialed \*67 to block the number before  
12 calling the contact labeled Keem.

13 Q. So what does -- what effect does that have on the phone  
14 that the person's calling if you dial \*67?

15 A. It blocks their number so that they can't see who's  
16 calling them.

17 Q. Could anybody looking at their phone see who was  
18 calling them?

19 A. No, sir. It would just say blocked or private number.

20 Q. And, in fact, that first contact after the robbery came  
21 how many hours after the robbery?

22 A. Are you referring to the first contact between Mr.  
23 White and Mr. Gadsden?

24 Q. After the robbery that's on the record, yes, sir.

25 A. About eight hours.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

603

1 Q. Okay. And after the robbery who was the first person  
2 that Mr. White called?

3 A. Mr. Gadsden.

4 Q. With respect to those records -- secondly, I'm going to  
5 turn your attention to -- what did you determine about those  
6 records with respect to Mr. White, his financial position or  
7 condition?

8 A. The time leading up to the robbery, he was having some  
9 financial difficulties.

10 Q. Is there anything with respect to what Mr. White told  
11 you in your office about that rap concert that these records  
12 address?

13 A. Yes, sir.

14 Q. And tell us what that was and how it addressed it?

15 A. Prior to the date of the concert he's contacting one of  
16 the contacts in his phone about participating in the rap  
17 concert. The individual tells him ---

18 MS. ROSS: And I'd object to the relevance of what he's  
19 about to testify to.

20 THE COURT: Well, I don't know that he can testify what  
21 the individual told him.

22 MS. ROSS: And I'd also object for hearsay purposes.

23 MR. FRETWELL: Okay. Can I just -- let me rephrase the  
24 question.

25 Q. Of what significance was -- did the records display to

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

604

1     you about what you learned from Mr. White about the other  
2     rappers paying him to perform at this ---

3           **MS. ROSS:** And, again, I object to the hearsay. We  
4     don't know about what he received and who that was from or  
5     ---

6           **THE COURT:** Well, I'm going to let him testify to what  
7     his investigation indicated. So he learned from his  
8     investigation, not what somebody told him, but ---

9           **MR. FRETWELL:** Thank you, Judge. Go ahead.

10    A.    There's a text that contradicts Mr. White informing me  
11    that other rappers had to pay him. This, in fact, requests  
12    Mr. White to pay him to participate in the rap concert.

13    Q.    Was it your understanding from those texts that Mr.  
14    White was willing to do that?

15    A.    Yes, sir.

16    Q.    Okay. Among those texts were you able to confirm the  
17    location where you served the search warrant at

18                   , were you able to confirm that that was an  
19    address associated with Mr. White and where he was living at  
20    the time?

21    A.    Yes, sir.

22    Q.    Is there anything in those texts that would indicate  
23    whether or not Mr. White knew Mr. Gadsden's full name and  
24    any kind of personal information such as date of birth,  
25    social security number, or address or anything like that?

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

605

1 A. Yes, sir.

2 Q. Okay. And, in fact, is there a text on the morning  
3 that Mr. White came down to your office that indeed he sends  
4 that information, Mr. Gadsden's full name, Gerald Akeem  
5 Gadsden, with the social security number and the date of  
6 birth to an individual?

7 A. Yes, sir.

8 Q. Okay. And on the afternoon of the -- the afternoon  
9 before the robbery at approximately 2:33 pm does Mr. White  
10 communicate to somebody something of some significance to  
11 you?

12 A. Yes, sir.

13 Q. Can you tell us what that is?

14 A. He makes the statement, true, I got something lined up.  
15 I ain't tripping. Y'all be safe 'cause be worried about ya.

16 Q. Okay. And a week and a half or so before the robbery  
17 is there a communication with respect to these financial  
18 difficulties where Mr. White makes -- sends some texts  
19 indicating something about those financial difficulties?

20 A. Yes, sir.

21 Q. Okay. And what -- and what is the gist of those  
22 communications? Unless the Court will permit him just to  
23 read them outright, just give us what was the gist of those  
24 communications.

25 A. He's indicating that everything will be okay.



DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

606

1 Q. Anything in addition to that?

2 A. We straight. I got something planned. ^

3 Q. Okay. All right. I'm going to set those documents  
4 aside for just a moment and return to asking you about some  
5 other elements of the case. Let me -- you've testified the  
6 incident occurred between approximately -- I think you said  
7 11:25 and 11:28 leading into the 20th. Do these photos that  
8 are in evidence, State's exhibit 56 through 64, did you see  
9 these pictures and what significance did they have to with  
10 respect to the investigation?

11 A. I have viewed the photographs. The pictures depict Mr.  
12 Gadsden wearing a camouflage hooded jacket the day after the  
13 robbery holding a large stack of cash that appears to be  
14 denominations consistent with what Mr. Kretzschmar reported  
15 was stolen.

16 Q. Okay. And let me show you -- did you see the -- do you  
17 have State's exhibit 64 there?

18 A. Yes, sir.

19 Q. What is that? \

20 A. It is Mr. Gadsden taking a picture of himself with the  
21 phone in the image.

22 **MR. FRETWELL:** Judge, I seem to be missing an exhibit,  
23 State's ...

24 **THE COURT:** You know where they are?

25 A. It's right here, sir.

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

607

1           **THE COURT:** You got it?

2       A.    It's up here.

3           **MR. FRETWELL:** I got it. Thank you.

4       Q.    What is State's 30? And tell us what the significance  
5       of that was to your investigation.

6       A.    This was a photograph taken from the date on Mr.  
7       White's phone prior to the robbery, just a couple of days  
8       prior. And it is the ice machine just outside the  
9       dishwashing area that leads to the hallway where Mr.  
10      Kretzschmar's office is. And it's the exact location where  
11      Mr. Kretzschmar was ambushed and attacked before being taken  
12      back to the safe.

13      Q.    And how does that picture, State's 30, compare to this  
14      forensic photo, State's exhibit 20?

15      A.    Almost identical with the exception of the money laying  
16      on the floor, the bucket knocked over.

17           **MR. FRETWELL:** Your Honor, permission to publish these  
18      exhibits.

19           **THE COURT:** All right. Ladies and gentlemen, I caution  
20      you, don't get so engrossed in the pictures that you miss  
21      any questions or responses because you'll have the pictures  
22      in the jury room, but I want you to see them.

23      Q.    And, Sergeant Weiner, earlier I asked Investigator  
24      Perry about some telephone numbers. So I'm going to ask you  
25      about those telephone numbers, but I want to ask you through

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

608

1 your investigation who did you identify those telephone  
2 numbers to be. Was Mr. White -- was he listed as a contact  
3 in Mr. Gadsden's Samsung phone?

4 A. Yes, sir.

5 Q. Okay. The number that Investigator Perry  
6 testified was not found in the Samsung phone at any point or  
7 any place, who did that belong to? An number, the  
8 last four digits.

9 (Pause)

10 A. Tell me the last four again, sir.

11 Q. .

12 A. I don't have -- I don't know in my notes where I'd have  
13 that.

14 Q. Well, let me ask you a question.

15 A. Yes, sir.

16 Q. Was Damion Riley's phone number associated with Damion  
17 Riley at that time located anywhere in the Samsung phone?

18 A. No, sir.

19 Q. Was the number associated with Terrell Pugh at that  
20 time located anywhere in the Samsung phone?

21 A. It was not.

22 Q. And was the number associated with Gerald Gadsden,  
23 Keem, listed as a contact in Mr. White's phone,  
24 the Kyocera?

25 A. It was.

**DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL**

609

1 Q. Were you present when photo lineups were shown to  
2 victims, Aaron Kretzschmar and Terrell Pugh?

3 A. Yes, sir.

4 Q. What, if any, information was provided by either Mr.  
5 Pugh or Mr. Kretzschmar with respect to those photo lineups  
6 for any -- what was their -- were they able to identify  
7 anybody?

8 A. They were not.

9 Q. Okay. What did they tell you about their ability to  
10 identify to begin with?

11 **MS. ROSS:** And I'd object. They've already testified.  
12 He could have easily asked them what they said.

13 **THE COURT:** Sustained.

14 **MR. FRETWELL:** Your Honor, it relates to his  
15 investigation. It's going to show why he makes the next  
16 step, which is what he shows to Mr. Kretzschmar.

17 **THE COURT:** He can't say what they told him.

18 **MR. FRETWELL:** Okay.

19 Q. Did you believe they would be able to identify anybody  
20 from ---

21 A. No, sir.

22 Q. Okay. What did you do with respect to the photo, I  
23 believe you had it up there, of -- well, let me just -- I'll  
24 ask you the question. Let me show you what's been marked as  
25 State's exhibit 70. What is this and what did you do with

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

610

1 it?

2 A. It's a cropped picture from one of the pictures on Mr.  
3 Gadsden's phone of him holding the cash, just showing the  
4 jacket, not showing his face or the money.

5 Q. Why is it cropped?

6 A. I wanted to show the camouflage pattern to Mr.  
7 Kretzschmar because he specifically mentioned it.

8 Q. Okay. And when you showed it to him was he able to  
9 identify it?

10 A. Not positively.

11 Q. Did he indicate -- what did he indicate about it?

12 **MS. ROSS:** And I'd object to hearsay. He's already  
13 testified.

14 **MR. FRETWELL:** Your Honor, it goes to show why he made  
15 -- he takes the next step in his investigation.

16 **THE COURT:** Well, I mean, he can testify to what ...

17 **MR. FRETWELL:** All right, sir.

18 Q. Does it seem -- does it appear to be in the same  
19 condition as it was when you showed it to Mr. Kretzschmar?

20 A. Yes, sir.

21 Q. In fact, is that the actual document that you showed to  
22 Mr. Kretzschmar?

23 A. It is.

24 Q. Okay.

25 **MR. FRETWELL:** At this time, Your Honor, the State