

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions

Honorable James R. Barber, III, Thirteenth Circuit Court Judge

Appellate Case No.: 2016-001302

The State,

Respondent

v.

James Damon Lanar White,

Appellant

APPELLANT'S RECORD ON APPEAL
VOLUME ONE

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September 29, 2017

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE) 2014 GS-23-3815

State of South Carolina,) 2014A2330200739, -41 thru -44

vs.)

James Damon Lanar White,) ORDER

Defendant.)

2016 JUN -6 AM 11:30
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PAUL B. VANCE, CLERK
GREENVILLE, SC

This matter came before the Court on April 11, 2016 on the Defendant's Motion to Suppress Evidence in the form of two cellphones and their contents. At the hearing, the state presented evidence as to the following:

1. On January 20, 2014, an armed man robbed the Olive Garden restaurant near Cherrydale and controlled, at gunpoint, the movement of the three employees. The on-scene investigation led officers to believe the robber was assisted by one of those employees.
2. On January 22, 2014, Greenville County Sheriff's Office (GCSO) Inv. Ricky Motes arranged for Defendant, one of these employees, to come to his office for an interview.
3. Prior to Defendant's arrival, GCSO Sgt. David Weiner pulled Defendant's DMV records to obtain his photograph in preparation for the interview. The records indicated Defendant's driver's license was suspended.
4. Once Defendant arrived, Inv. Motes began to speak with him about the incident and to explain the interview process.
5. At some point, Sgt. Weiner asked Defendant how he arrived at the interview. When Defendant said he was dropped off, Sgt. Weiner told him there were video cameras in the parking lot. Defendant then admitted he had driven to the interview. Sgt. Weiner testified he asked Defendant these questions to determine whether Defendant would be truthful regarding the robbery.
6. Instead of allowing Inv. Motes to type his statement, Defendant insisted he write his own. At some point, Inv. Motes asked if the Kyocera cellphone (DW-1) Defendant was holding was his and if he could look through it. Defendant acknowledged the phone was his and agreed to allow Inv. Motes to search it.
7. Sgt. Weiner prepared a written consent form for Defendant's phone. Sometime later, Investigator Motes asked Defendant if he had anything else on him, and Defendant produced a second cellphone (DW-2: Samsung) from his pocket.

2

2

Defendant claimed the phone, but said he had not used this phone in months. Inv. Motes asked to look through this phone as well, Defendant agreed and handed him the phone. Inv. Motes then added the second phone to the consent form Defendant signed.¹

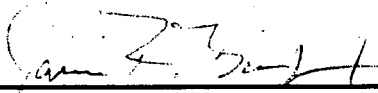
8. Sgt. Weiner then instructed Inv. Matt Owens to obtain a search warrant for the second phone due to concern that its addition to the consent form, in different ink, might raise concerns as to when this information was added.
9. Once the search warrant was executed, Inv. Owens reviewed the phone analysis report and, through additional investigation, determined that the Samsung phone belonged to co-defendant Gerald Gadsden.

THE COURT FINDS that the Defendant orally consented to allow investigators to search both the Kyocera and Samsung phones and that this consent was knowingly, intelligently and voluntarily made.² The Defendant's signature on the written consent form is further evidence of his intent to allow investigators access to the phones and their content.

THE COURT FURTHER FINDS, as to the second phone (DW-2: Samsung), the investigators were entitled to rely on the Defendant's assertion that the phone belonged to him and that he had the authority to consent to its search and were acting with reasonableness and in good faith in relying on those assertions.³

THEREFORE, the Defendant's Motion to Suppress evidence obtained from the search of the Kyocera (DW-1) and Samsung (DW-2) phones at trial is denied.

IT IS SO ORDERED.


The Honorable James R. Barber, III.
Presiding Judge
Thirteenth Judicial Circuit

June 6, 2016
Greenville, South Carolina

¹ Neither Investigator Motes nor Sergeant Weiner were able to recall whether Defendant signed the written consent before or after the addition of the second cellphone, though Weiner testified the Defendant's signature appeared to be in the same ink as the pen used by Motes to add the information on the second phone. Whether the consent was signed before or after the addition of the second phone does not bear on the Court's determination as to whether the Defendant consented to the search of these phones.

² Although Defendant's counsel thoroughly examined the testimony of the State's witnesses, Defendant neither testified nor introduced any evidence during the hearing.

³ Based on the Court's ruling, the Court does not find it necessary to determine the validity of the search warrant obtained for the Samsung phone by Investigator Owens.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE,)
)
 v.)
)
 JAMES WHITE,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 2014-GS-23-003815

MOTION TO SUPPRESS EVIDENCE

FILED-CLERK OF COURT
 PAUL B. WICKENS
 GREENVILLE CO. SC
 2016 APR - 8 PM 12: 10

MOTION

NOW COMES the Defendant, James White, by and through undersigned counsel and makes this motion to suppress all evidence seized from the wrongful search of four cell phones and Defendant's residence on the grounds that: 1) the search incident to arrest was invalid; 2) the consent to search two cell phones produced from the search incident to arrest was involuntarily made; and 3) the warrants to search cellphones and home failed to establish probable cause. The aforementioned searches and seizures violated the Fourth, Fifth and Fourteenth Amendment of the United States Constitution and Article I, Section 3, 10 and 12 of the South Carolina Constitution, and thus all evidence derived therefrom must be suppressed.

Respectfully submitted,

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Greenville, SC
 April 8, 2016

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4
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE,)
)
v.)
)
JAMES WHITE,)
)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
2014-GS-23-003815

DEFENDANT'S MEMORANDUM IN
SUPPORT OF HIS MOTION TO
SUPPRESS EVIDENCE

FILED CLERK OF COURT
PAUL B. WICKENS
GREENVILLE CO. SC

2016 APR -8 PM 12:10

STATEMENT OF FACTS

On January 20, 2014 at approximately 11:30 p.m., an armed African American male robbed Olive Garden Italian Restaurant located at 3290 S. Pleasantburg Drive in Greenville.¹ The robber entered through the restaurant's front doors and made his way through the closed restaurant and came up upon employees Terrell Pugh and Defendant washing dishes.² The robber yelled at Defendant and Pugh to get on the ground and threatened that if they refused, they would be shot.³ The robber then encountered night manager, Aaron Kretzschmar, in the hallway on the way to the restaurant's office.⁴ Kretzschmar was struck in the head before being led to the office to open the safe.⁵ The robber continued threatening and assaulting Kretzschmar while he opened the safe and emptied an indiscernible amount of the safe's \$3,500 into a plastic bag.⁶ The robber

¹ See page 1 of Exhibit A: Greenville County Sheriff's Office Supplemental Report, prepared by responding Officer, James Middleton. All exhibits hereon referred to as "Ex., page number" for simplicity.

² Ex. A, 2.

³ Ex. A, 2.

⁴ Ex. A, 2.

⁵ Ex. A, 2.

⁶ See page 1 of Exhibit B: Aaron Kretzschmar's handwritten statement given to police dated January 22/2014.

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exited through the front doors, leaving stray dollar bills in various amounts strewn throughout the restaurant and outdoors. Kretzschmar remained in the office until police arrived.⁷

Responding officers found a rock near the restaurant's entrance and a partially broken front door window.⁸ The first of two glass panes in the door was broken and a rag was also found in the doorway.⁹ Kretzschmar stated that the rag was the restaurant's and that it should not be in the entranceway.¹⁰ Upon their arrival to the back of the restaurant, police found Pugh and Defendant still on the ground in the fetal position with their hands covering their heads.¹¹ The police reports and the night manager stated they appeared terrorized.

A K-9 police dog tracked the robber's scent, who was believed to have went left upon exiting.¹² The K-9 indicated a positive sign and led Officer Matthew Anderson along Pleasantburg Drive toward Starbucks to the east before losing the scent near Sylvania Road by indicating that the suspect had driven off.¹³ Stray dollar bills were found all along the track.¹⁴ It is of note that the backside of the restaurant backs into a low-income housing area with at least one house being abandoned and inhabited by homeless vagrants.

⁷ Ex. A, 2.

⁸ Ex. A, 1.

⁹ Ex. A, 1.

¹⁰ Ex. A, 2.

¹¹ Ex. A, 1.

¹² See page 2 of Exhibit C: Greenville County Sheriff's Office Supplemental Report, prepared by Officer Matthew Anderson.

¹³ Ex. C, 2.

¹⁴ Ex. C, 2.

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In speaking with police, Kretzschmar, Pugh and Defendant all gave the description of the robber as an African American male, six (6) foot tall, stocky build, with no facial hair, wearing a hooded brown and black camouflage sweat shirt, but were unable to give any other specifics like age, height, weight etc.¹⁵ However, the manager, who was face-to-face with the individual, described the robber as six (6) foot, stocky-build, with no facial hair.

Police also requested a statement from Damion Riley, the last employee to leave the restaurant just minutes before the robbery.¹⁶ Riley told police that before leaving that night, he and Defendant had a conversation about Defendant's rap concert in Charleston the past weekend where he made thousands of dollars.¹⁷ Riley stated that upon leaving at 11:20 p.m., a rag had not been in the doorway and the door had closed behind him.¹⁸ However, Pugh told police that Defendant had been washing dishes with him for some time before the robbery and had not left the kitchen, but even if he had, it was to quickly go to the bathroom long before the robbery.¹⁹

A. Involuntary Consent to Search and Wrongful Search Incident to Arrest

The Fourth Amendment of the United States Constitution and its counterpart in the South Carolina Constitution provide protection against unreasonable searches and

¹⁵ Ex. A, 2.

¹⁶ See page 1 of Exhibit D: Greenville County Sheriff's Office Supplemental Report, prepared by Officer David Weiner and see Exhibit E: Damion Riley's statement to police dated January 22, 2014.

¹⁷ Ex. D, 1.

¹⁸ Ex. E.

¹⁹ Ex. F, 2. Greenville County Sheriff's Office Supplemental Report, prepared by Officer Matthew Owens, and Pugh's statement, dated January 27, 2014.

seizures.²⁰ Searches absent a warrant based upon probable cause are *per se* unreasonable and are limited to defined exceptions.²¹ Consent to search is one exception to the warrant and probable cause requirement; however, the consent is made invalid if it is involuntarily made.²² Whether the consent to search was voluntary or the product of duress or coercion—express or implied—is a question of fact determined by examining the totality of the circumstances.²³ The totality of the circumstances analysis turns on the characteristics of the accused and the manner of the questioning.²⁴ Moreover, characteristics of the accused in this analysis include the vulnerable subjective state of the consenter.²⁵ The prosecution carries the burden of proving that the consent to search was voluntarily made.²⁶

In the present case, Defendant's consent to search the phones in his possession was not voluntarily given. On January 22, 2014, police requested Defendant to come to the law enforcement center (LEC) for an interview regarding the robbery.²⁷ However, Investigators Ricky Motes and David Weiner knew that Defendant's driver's license had been suspended when they requested he come down to the LEC.²⁸ The first question to Defendant was how he traveled to the LEC.²⁹ Hoping to catch him in a lie, the investigators informed Defendant that they have cameras in the parking lot and knew he

²⁰ U.S. Const. amend. IV; S.C. Const. art. 1, § 10.

²¹ E.g., *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043 (1973).

²² *Id.* at 222, 2045.

²³ *State v. Wallace*, 269 S.C. 547, 238 S.E.2d 675 (1977) (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, (1973)).

²⁴ *Bustamonte*, 412 U.S., at 226, 93 S.Ct. at 2047.

²⁵ *Id.* at 228, 2049.

²⁶ *Id.* at 222, 2045.

²⁷ Ex. D, 1.

²⁸ Ex. D, 1.

²⁹ Ex. D, 1.

had been driving.³⁰ Defendant was then told he must take a polygraph or he would be charged with Driving Under Suspension. The Defendant was searched where two cell phones were found. It is not clear if he was under arrest or not at this point. Yet it is clear if the Defendant was subject to further interrogation but he believes he was forced to sign a consent to search the phones. At some point they obtained a search warrant which is filled with absolutely nothing tying these phones or these Defendants to the crime.³¹ It is clear this was a ruse to gather information to gain evidence against the defendant. In State v. Robinson Opinion No. 27617, filed March 30, 2016, the Court has made it clear again that there must be a substantial bases for the probable cause.

At the time of this interview, investigators had only a scintilla of evidence that the robbery had been an inside job, and thus consequently, no warrant to search Defendant's home or car had been obtained. It is clear then that investigators lured Defendant to the LEC on the pretense of Defendant giving a formal witness statement so that they could arrest him for DUS and search his person incident to arrest for evidence to obtain a warrant. This plan is made even more clear by Weiner admitting in his report that this was the first question he asked, and if there are indeed cameras in the parking lot, nothing in the report indicated that they checked the video before the interview, or following their question as to how he arrived at the LEC. Consequently, the interview was planned to conjure a way for police to fish for evidence so that they could obtain a warrant to search further.

The United States Supreme Court has found consent to search involuntary when consent was induced by deceptive practices by law enforcement that were presented as

³⁰ Ex. D, 1.

³¹ Ex. D, 2

requests for submission to a lawful authority.³² In *Bumper v. North Carolina*, police searched a woman's house without a warrant after gaining her consent by informing her that they had obtained a warrant to search.³³ The Supreme Court held the consent invalid because "[w]hen a law enforcement officer claims authority to search a home under a warrant, he announces in effect that the occupant has no right to resist the search."³⁴

The facts in *Bumper* are distinguishable from the case at hand, however the spirit of the Court's reasoning is applicable. The investigators' request for Defendant to come to the station preceded on the front that the encounter would be a routine formal witness statement, a request law enforcement have the legal authority to make. Once Defendant realized that this pretense was part of a grander plan, he felt refusing consent to search would be futile because if police had the authority to trick and lure him to the LEC, then they had authority to search the phones. Therefore, the pretense and the fishing expedition factored into the involuntary nature of Defendant's consent.

Furthermore, as a result of the investigator's plan, Defendant felt entrapped and vulnerable, and thus did not feel that he was free to leave. Seizure or detainment is one of the factors considered in determining whether consent to search is voluntary.³⁵ A seizure occurs when a reasonable man in the defendant's position would not feel that he was free to leave.³⁶ In the present case, a reasonable person would not have felt free to leave in Defendant's situation because: 1) the investigators hoped to find evidence that would sink

³² *Bustamonte*, 412 U.S., at 233, 93 S.Ct. at 2051 (citing *Bumper v. North Carolina*, 391 U.S. 543, 88 S.Ct. 1788 (1968); *Johnson v. United States*, 333 U.S. 10, 68 S.Ct. 367 (1948); *Amos v. United States*, 255 U.S. 313, 41 S.Ct. 266 (1921)).

³³ *Bumper v. North Carolina*, 391 U.S. at 550, 88 S.Ct. at 1792.

³⁴ *Id.* at 548.

³⁵ *Bustamonte*, 412 U.S., at 226, 93 S.Ct. at 2047.

³⁶ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968).

him deeper into trouble, 2) the fishing expedition was fashioned into the normal police practice of obtaining a formal witness statement; and 3) the investigators confronted Defendant with the crime of driving with a suspended license.

Additionally, after already having questioned him about the robbery, the police exacerbated Defendant's vulnerability when they probed about innocent, unrelated events like the previous weekend's rap concert and the money he made.³⁷ Defendant is pursuing a career as a rap artist and often performs at concerts throughout the state where he is not only paid to perform, but also paid by other rappers to participate in the performance. The tones of these questions was condescending and were part of the effort to create links between Defendant's personal life and the robbery when there was no evidentiary or reasonable basis to devise such links.

Coupled with all the factors aforementioned, Defendant felt at the complete mercy of police and consequently, consented to a polygraph exam. This feeling intensified when his nerves from the encounter thus far caused him to fail. Ultimately, the accumulation of the ruse, the confrontation about DUS, the probing into his personal life, and the polygraph exam rendered Defendant with a reasonable feeling that he did not have the right to refuse consent. Thus, his consent to search the phones was involuntary.

Furthermore, even if the consent to search was not involuntary, the search incident to arrest cannot stand. A search incident to a lawful arrest must be conducted substantially contemporaneously with the arrest.³⁸ Furthermore, South Carolina courts have held that searches *immediately* preceding arrests are lawful in cases where the police

³⁷ Ex. D, 1.

³⁸ *State v. Brown*, 289 S.C. 581, 347 S.E.2d 882 (1986).

officer had probable cause to arrest all along.³⁹ The purpose of this exception is to disarm the arrestee for officer safety concerns and to obtain evidence of the crime to prevent its destruction.⁴⁰ From this vein of reasoning, the Supreme Court has held that the contemporaneous requirement of the search prevents its fruits from becoming justification for the arrest itself.⁴¹

In the present case, assuming they did watch the video of Defendant driving into the LEC parking lot, the investigators had probable cause to arrest Defendant for DUS long before he was searched. From the language in the report, 1) the polygraph examination was conducted; 2) the phones seized were looked through, 3) Weiner spoke to someone from the past weekend's rap concert; 4) and Defendant was questioned furthered about the rap concert, its money proceeds, and the robbery before he was arrested.⁴² Although the report gives no estimation as to how much time these events lasted, they surely could not have been so brief to make the arrest after the search immediate or quickly conducted. Further, the lack of contemporaneity here devalued the very purpose of the search incident to arrest exception because the lapse demonstrated that the investigators were not threatened by any weapons Defendant could have been concealing or the possibility of destroyed evidence. The safety and evidence preservation concerns are at the very essence of the exception, and their uselessness here further

³⁹ *State v. Freiburger*, 366 S.C. 125, 620 S.E.2d 737, 740-1 (S.C. 2005)(emphasis added)(citing *State v. Moultrie*, 316 S.C. 547, 551, 451 S.E.2d 31, 34 (Ct. App. 1994).

⁴⁰ *Chimel v. California*, 395 U.S. 752, 763 (1963).

⁴¹ *Smith v. Ohio*, 494 U.S. 541, 543, 110 S.Ct. 1288, 1290 (1990)(quoting *Johnson v. United States*, 333 U.S. 10, 16-17, 68 S.Ct. 367, 370 (1948)); *Sibron v. New York*, 392 U.S. 40, 63, 88 S.Ct. 1889, 1902 (1968); *Henry v. United States*, 361 U.S., 361 98, 102, 80 S.Ct. 168, 171 (1959); *Rawlings v. Kentucky*, 448 U.S. 98, 111, n. 6, 100 S.Ct. 2556, 2564, n. 6 (1980)).

⁴² Ex. D, 2.

demonstrates that the search was used as a fishing expedition, particularly because the investigators knew that they could not possibly discover any evidence of DUS from the search. In this regard, the investigators were using the cellphones to justify the arrest so that they could now attempt to seek a warrant. Additionally, it is important to note that even though the investigators had already induced Defendant to consent to the search, which is questionable since the second phone is "written in" on the search warrant with a different ink, as if it were an after-thought, and both had been looked through even though the second phone was added with a different pen. Clearly at some point after speaking with the defendant; they still obtained a warrant to search the phones' data.⁴³ The subsequent warrant further demonstrates that the investigators knew what they were doing, and were aware that their actions were unlikely to pass constitutional muster.

The images and text messages must be suppressed as fruit of the poisonous tree.

B. Constitutionally Deficient Search Warrants of Cellphones and Home

Even if the consent to search and the search incident to arrest were valid, the wrongful search warrants and the subsequent seizure of items found must be suppressed. The Fourth Amendment requires that searches and seizures must be reasonable and a search warrant must not be issued unless probable cause has been established and scope of the search is stated with particularity.⁴⁴ Probable cause sufficient to support a search

⁴³ See Ex. G, a search warrant and attached affidavit and return prepared by Investigator Matt Owens on January 24, 2014.

⁴⁴ *Kentucky v. King*, 563 U.S. 452, 459, 131 S.Ct. 1849, 1856 (2011)(citing *Payton v. New York*, 445 U.S. 573, 100 S.Ct. 1371 (1980)).

warrant if, considering the totality of the circumstances, there is a fair probability, that evidence or contraband of the crime will be found in a specified place.⁴⁵ Furthermore, probable cause is a fluid concept that turns on examination of probabilities in certain factual contexts.⁴⁶ In issuing a search warrant, the affidavit must contain sufficient underlying facts and information for a neutral and detached magistrate to determine of probable cause has been established.⁴⁷

Here, the affidavit lacked underlying facts and information to support a finding of probable cause, and as a consequence, consequently, Defendant consented to a polygraph exam and his nerves caused him to fail.

The seizure of images and text messages found on the phones in Defendant's possession violated his Fourth Amendment rights because the search was a wrongful search incident to arrest, and thus the images and text messages must be suppressed. The Fourth Amendment of the United States Constitution and its counterpart in the South Carolina Constitution provide protection against unreasonable searches and seizures.⁴⁸ Searches absent a warrant based upon probable cause are *per se* unreasonable and are limited to defined exceptions. A search incident to arrest of the arrestee's person for weapons and destructible evidence falls within the exceptions to the warrant requirement.

For all of the aforementioned reasons, the Defendant respectfully moves this Honorable Court for an Order of Suppression.

⁴⁵ *E.g.*, *State v. Kinloch*, 410 S.C. 612, 617, 767 S.E.2d 153, 155 (2014).

⁴⁶ *Illinois v. Gates*, 462 U.S. 213, 232, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

⁴⁷ *State v. Philpot*, 317 S.C. 458, 454 S.E.2d 905 (Ct. App. 1995).

⁴⁸ U.S. Const. amend. IV; S.C. Const. art. 1, § 10.

Respectfully submitted,

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April 8, 2016
Greenville, South Carolina

EXHIBIT

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05/26/2014-13:12:55

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: cwlthersp0 01/26/2014
16:44:17

Case Number

14000010427

Original
Report☐ Status
Change☒ Victims☐ Additional
Stolen Property

Incident Type 0139 - Robbery Armed

Supplemental
Report☐ Other
Report☐ Additional
Defendants☐ Additional Recovered
Property

Patrol District 09 Page 1 of 3 Pages

ID OVERFLOW

☐ Complainant
☒ Victim #:
☐ Subject
☐ Runaway
☐ Wanted
☐ Arrest
☐ Missing
☐ Jail
☐ Other

Subject Name (Last, First, Middle)

Kretzschmar, Aaron

Victim Relationship To Subject

RU

Ethnicity

Resident

J

W

M

Age

31

Date of Birth

Address

City

Greenville

State

SC

Zip Code

29609

Patrol District

09

Day Phone

Height

Weight

Hair

Eyes

Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.

☒ Victim No. 2☐ Visible Injury☐ Complaint of any

Non-Visible Injuries

Victim Using Alcohol

☒ No☐ Yes☐ Unk

Two-Axle Veh

☐ One Man Veh

ALONE

Explain: ringing right ear and sores

☒ Yes☐ No

Drugs

☒ No☐ Yes

Type:

Subject No.

Using Alcohol

☐ No☐ Yes☐ Unk

Using Drugs

☐ No☐ Yes

Type:

Subject No.

Using Alcohol

☐ No☐ Yes☐ Unk

Using Drugs

☐ No☐ Yes

Type:

Arrestee Armed

☐ Yes☐ No

Weapon Type

Juvenile Disposition

☐ Handled Released☐ Referred To Other Authority☐ On View Arrest☐ Summoned☐ Custody

Arrest Location

Overflow:

Kretzschmar, Aaron: Complainant 1 Victim 2

DOB:

White, James: Victim 3

ADDRESS:

AGE: 34, DOB:

L5 09, RESIDENT: J, RACE: B, SEX: M,

VICTIM REL TO SUBJECT: RU,

Primary:

VISIBLE INJURY: NO, NON-VISIBLE INJURY: NO, USING ALCOHOL: NO,

USING DRUGS: NO

Pugh, Terrell: Victim 4

ADDRESS: 16

SEX: M, AGE: 42, DOB:

RESIDENT: J, RACE: B,

VICTIM REL TO SUBJECT: RU,

Primary: (864)990-7008

VISIBLE INJURY: NO, NON-VISIBLE INJURY: NO, USING ALCOHOL: NO,

USING DRUGS: NO

Narrative:

Upon arrival I found money scattered on the sidewalk in front to the front door to the store. I also observed a broken brick lying on the ground and a large hole in the glass of the front door but it was 2 panes of glass and only 1 pane was broken. I also observed a white rag resembling a restaurant rag lying on the ground and not allowing the doors to close securely. The complainant met me at the front door and stated that an unknown black male came into the store and punched him and then pointed a gun at his face and forced him to open the safe. The complainant initially told me that there were also supposed to be 2 other individuals (Pugh and White) working but thought they left. While checking the restaurant to make sure the suspect also left, since the manager couldn't confirm if the suspect left, I located Mr. Pugh and Mr. White in the fetal position in the back corner of the kitchen. I also located money scattered through the kitchen floor leading from the office to the front door.

I spoke with the 3 victims separately to get their stories:

NARRATIVE

PROPERTY

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

ADMIN

Subject Identified

Subject Located

☒ Active☐ Admin Closed☐ Arrested Under 18☐ Ex-Cleared Under 18☐ Yes☒ No☐ Yes☒ No☐ Unfounded☐ Arrested 18 and Over☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance

☐ Offender Death☐ No Prosecution☐ Victim Declines Cooperation☐ Extradition Denied☐ Juvenile No Arrest

Reporting Officer(s)

Date

Unit#/Star#

Approving Officer

Date

Unit#/Star#

MIDDLETON, JAMES

01/27/2014

E28 / 00998

ROBINSON, HAROLD

01/27/2014

E63 / 00430

Follow Up

☒ Yes☐ No

Investigation

01/27/2014

/00000

CID - Armed Robbery

Agency I.D.

SC0230000

EC5 01/26/2014-13:12:55

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Entl: cwlthersp0 01/26/2014
16:44:17

Case Number

14000010427

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>0139 - Robbery Armed</u>
☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>09</u> Page <u>2</u> of <u>3</u> Pages
ID OVERFLOW	Subject's Name (Last, First, Middle)			
	Victim Relationship To Subject			
	Address			
	City State Zip Code			
	Height Weight Hair Eyes Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.			
☐ Victim No	☐ Visible Injury	☐ Complaint of any Non-Visible Injuries	☐ Victim Using Alcohol	☐ Two-Man Veh
☐ Explain:	☐ Yes ☐ No	☐ Yes ☐ No	☐ No ☐ Yes ☐ Unk	☐ One Man Veh
Subject No.	Using Alcohol	Using Drugs	Drugs	ALONE
	☐ No ☐ Yes ☐ Unk	☐ No ☐ Yes ☐ Unk	Type:	☐ ASSISTED
Arrestee Armed	☐ Yes ☒ No			☐ Arrested on Current Offense
Juvenile Disposition	☐ Handled Released ☐ Referred To Other Authority			☐ Cleared By Arrest on Prior Offense
Arrest Location				☐ On View Arrest ☐ Summoned ☐ Custody

Mr. Kretzschmar (the night manager) stated he had just walked out of the back office when he was surprised by a black male who punched him in the right side of his head causing him to stumble over. Mr. Kretzschmar stated the suspect then pointed a black handgun at his face and forced him back to the office. Mr. Kretzschmar stated he had to unlock the office door and then the safe. Mr. Kretzschmar stated the suspect kept yelling at him to hurry up and made him put the money from the safe into a clear/white, ripped plastic bag. Mr. Kretzschmar stated there was \$3500 in the safe initially. Mr. Kretzschmar stated that once the suspect got a bunch of money, the suspect turned around and left and he stayed in the office until I arrived and had not been out. Mr. Kretzschmar described the suspect as a black male, app. 6-00 tall, stocky build, tan jacket, short hair, no facial hair, and a black semi-automatic handgun. Mr. Kretzschmar stated that after he was punched and had the gun pointed in his face he was unable to think about getting a better description. Even though Mr. Kretzschmar kept rubbing his head where he said he got punched, he refused EMS at this time. Mr. Kretzschmar stated there is at least one camera at the incident location that he knows of but it only shows the front parking lot but was unsure if it recorded video or not since it was currently saying "hold" on the screen which it never says. Mr. Kretzschmar confirmed the rag that was in the door was one of the restaurant's rags but stated it should not be there and that they do not prop the doors open after close.

Mr. White stated that he was in the kitchen cleaning dishes with Mr. Pugh when an unknown black male came up behind them and pointed a gun at them and told them to get on the ground in the corner and that he stayed there until I found him. Mr. White described the suspect as a black male wearing a brown or camouflage hooded and had a black handgun. Mr. White stated his back was to the suspect when he came in and only heard him screaming and when he turned around and saw the gun and got on the ground and was unable give any further description.

Mr. Pugh stated he was in the kitchen cleaning dishes with Mr. White when an unknown black male came up behind them and started yelling at them to get on the ground in the corner. Mr. Pugh stated he only briefly turned around and saw a black male with a black handgun and a brown or camouflage hooded and then got on the ground and he was unable to give any further description either.

Dep. Anderson (K14) responded to the incident location to track with his K9 partner. Dep. Anderson during his track he recovered some cash that dropped along the way (see his supp. for further).

PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value
MAIN	Subject Identified		Subject Located		☒ Active ☐ Admin Closed		☐ Arrested Under 18	
	☐ Yes ☒ No		☐ Yes ☒ No		☐ Unfounded		☐ Arrested 18 and Over	
	Reason For Exceptional Clearance		☐ Offender Death ☐ No Prosecution		☐ Victim Declines Cooperation		☐ Ex-Cleared Under 18	
	Reporting Officer(s)		Date		Unit#/Star#		☐ Ex-Cleared 18 and Over	
	MCDLETON, JAMES		01/21/2014		E28 / 00988		☐ Juvenile No Arrest	
Approving Officer		Date		Unit#/Star#				
ROBINSON, HAROLD		01/24/2014		E03 / 00639				
Follow Up Investigation		☒ Yes ☐ No		Date		Unit#/Star#		
				01/27/2014		100700		

18

Agency I.D.
SC0230000

EC5 01/26/2014-13:12:55

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report

Ent: cwitherspo 01/26/2014
16:44:17

Case Number

14000010427

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>0139 - Robbery, Armed</u>
☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>09</u> Page <u>3</u> of <u>3</u> Pages

I.D. OVERFLOW	☐ Complainant	Subject's Name (Last, First, Middle)		Victim Relationship To Subject	Ethnicity	Residence	Race	Sex	Age	Date of Birth	
	☐ Victim	Address		City	State	Zip Code	Patrol District	Day Phone	Evening Phone		
	☐ Subject	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.					
	☐ Runaway	☐ Victim No. _____	Visible Injury ☐ Yes ☐ No	Complaint of any Non-Visible Injuries ☐ Yes ☐ No	Victim Using Alcohol ☐ No ☐ Yes ☐ Unk	Drugs ☐ No ☐ Yes Type:	Two-Man Veh ☐ One Man Veh ☐ ALONE ☐				
	☐ Wanted	Explain:	Subject No. _____	Using Alcohol ☐ No ☐ Yes ☐ Unk	Using Drugs ☐ No ☐ Yes ☐ Unk Type:	☐ Arrested on Current Offense ☐ Cleared By Arrest on Prior Offense ☐ On View Arrest ☐ Summoned ☐ Custody					

Arrested Armed ☐ Yes ☒ No	Weapon Type	Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority	Arrest Location

Sgt. Cromartie (A4) was advised of the incident and arrived on scene.
 Forensics Unit 920 (Ooten) responded to the incident location to process the incident location.
 The complainant was given the case number for this incident. The complainant also provided a list of employees that were working tonight due to the towel left in the door and the video system being put on hold, which was turned into records

7 wos'owf
 @OWA
 wos'owf

NARRATIVE

PROPERTY

ADMIN

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

Subject Identified ☐ Yes ☒ No	Subject Located ☐ Yes ☒ No	☒ Active ☐ Admin Closed	☐ Arrested Under 18	☐ Ex-Cleared Under 18	
Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest		☐ Unfounded	☐ Arrested 18 and Over	☐ Ex-Cleared 18 and Over	
Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
MIDDLETON, JAMES	01/21/2014	E28 / 00980	ROBINSON, HAROLD	01/24/2014	E33 / 00439
Follow Up Investigation ☒ Yes ☐ No		CIB: Armed Robbe		01/21/2014	/COOCO

EXHIBIT

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1 14 10427

At close (approximately 11:30) I had just finished wrapping up some paperwork. I left the office to check on the progress of the 2 closing dishwashers. I was anticipating being finished in about 15 minutes.

As I came around the corner by the tie machine, I was surprised with a punch to the side of my head. I was knocked off balance and a black gun was put in my face. I was told to take him to the safe. I did as instructed.

As we walked to the safe he kept telling me to hurry and threatened violence. We entered the office and I opened the safe. He ~~then~~ set a cheap plastic bag on the ground and told me to put all the money in the bag. He punched me multiple times as I did so, telling me to hurry up. Once he had gotten most of the money he fled in a hurry (leaving a lot of it spilled on the ground). I then called 911.

-7
2004 15 02

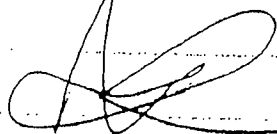
1 14 10427

The 911 operator asked for a description and asked if the other 2 employees were still onsite. I had not left the office yet so I was not sure. I started around the corner for them but did not hear a response. The police arrived at this point, so I ended the call and went up front to meet the officer. As I went up, I surveyed the dish area but did not see them.

The officer and I walked back through as I explained what had happened. He heard a noise coming from the dish area and at this point we went ~~over~~ over there and found Terrell Digh and James White crouched on the floor. They told me they were told if they moved they would be shot. Terrell was visibly scared and shaken. He had difficulty getting up.

We then all came up front to talk with the police and figure out what to do next.

Aaron Kretschmar



1/22/14

EXHIBIT

C

I.D. OVERFLOW	☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>0139 - Robbery Armed</u>																																																							
	☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>09</u> Page <u>2</u> of <u>3</u> Pages																																																							
NARRATIVE	☐ Complainant	Subject's Name (Last, First, Middle)			Victim Relationship To Subject		Ethnicity	Resident	Race	Sex	Age	Date of Birth																																																
	☐ Victim	Address			City	State	Zip Code	Patrol District	Day Phone	Evening Phone																																																		
	☐ Subject	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical Peculiarities, Etc.																																																						
	☐ Runaway	☐ Victim No. _____			☐ Visible Injury Yes ☐ No		Complaint of any Non-Visible Injuries Yes ☐ No		Victim Using Alcohol Yes ☐ No ☐ Unk		Two-Man Veh ☐ One Man Veh ☐ ALONE ☐																																																	
	☐ Wanted	Explain:			☐ Yes ☐ No		Drugs ☐ No ☐ Yes Type:		Detective ☐ Other ☐ ASSISTED ☐																																																			
	☐ Arrest	Subject No. _____			Using Alcohol ☐ No ☐ Yes ☐ Unk				☐ Arrested on Current Offense																																																			
	☐ Missing				Using Drugs ☐ No ☐ Yes Type:				☐ Unk ☐ Cleared By Arrest on Prior Offense																																																			
	☐ Jail																																																											
	☐ Other																																																											
	☐ Other																																																											
PROPERTY	Arrestee Armed ☐ Yes ☒ No			Weapon Type			☐ On View Arrest ☐ Summoned ☐ Custody																																																					
	Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority																																																											
	Arrest Location			Gang Affiliation: NG - Not Gang Related																																																								
	DRUG ALERT: N/A SUSPECT SEARCH: REQUESTED BY: Dep. Middleton E27 COVER PERSONNEL: Dep. Martinez, M.D. Cannon, Dep Wasserman. USE OF SABER ONE: NO USE OF PERIMETER PERSONNEL: Yes																																																											
	***** Supplemental ***** On today's date, 01/20/14 at approximately 23:14 I was requested by Dep. Middleton in order to run a possible track for an armed robbery that had just occurred at the Olive Garden at 3290 S. Pleasantburg Dr.																																																											
	Once on scene I made contact with Dep. Middleton who stated that we where uncertain of a direction of travel but he seemed to have moved to the left of the front door as he was leaving. We "cut" the area in the parking lot that the suspect was believed to have traveled. After a very short while I observed Johnny to set down and display positive behavior changes indicating that he was on a track. I advised M.D. Cannon that I was on the track and requested that he hold traffic and advised my other cover deputies that I was moving along a track. The track began and paralleled Pleasantburg away from Olive Garden towards the Starbucks to the east. We moved directly up the sidewalk and turned into the Golden Corral Parking lot. We worked through the parking lot to Sylvania Rd. Once on the road Johnny continued to show good behavior changes indicating that he was still on a track. Johnny showed several negatives including one in the back yard of a house. We then continued moving along Sylvania towards State Park. As we were moving Johnny gave me several head checks on several items along the road. M.D Cannon took a closer look at the items and found them to be money wrappers and some money that appeared to come from the robbery.																																																											
	Johnny continue the track to the edge of Sylvania and State Park where he showed several negatives and lifted his head while doing circles indicating a possible drive off. The articles that we observed were marked with a small item so that they could be located again and a deputy was requested to stand by with the items. The items were later collected by forensics.																																																											
	After calling the track I returned Johnny to the vehicle. We also found money along the side of the building (two side) near Little Ceasers. It appeared that Little Ceasers had an interior camera that may have captured the fleeing of the suspect. I took no further action																																																											
	<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Status</th> <th>Property Type</th> <th>Quantity</th> <th>Property Make</th> <th>Color</th> <th>Description</th> <th>Serial # / OAN</th> <th>Value</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>												Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value																																								
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ADMIN	Subject Identified		Subject Located		☒ Active ☐ Admin Closed		☐ Arrested Under 18		☐ Ex-Cleared Under 18																																																			
	☐ Yes ☒ No		☐ Yes ☒ No		☐ Unfounded		☐ Arrested 18 and Over		☐ Ex-Cleared 18 and Over																																																			
	Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest																																																											
	Reporting Officer(s)		Date	Unit#/Star#	Approving Officer		Date	Unit#/Star#																																																				
	ANDERSON MATTHEW		01/21/2014	K14 / 01240	DONOHUE, WILLIAM		01/21/2014	K02 / 00828																																																				
				Follow Up Investigation ☐ Yes ☒ No (if yes)																																																								

EXHIBIT

D

EC5 01/26/2014-13:13:50

17:05:15

☐ Original Report ☐ Status Change ☐ Additional Victims ☐ Additional Stolen Property		Incident Type <u>0139 - Robbery: Armed</u>	
☒ Supplemental Report ☐ Other Report ☐ Additional Defendants ☐ Additional Recovered Property		Patrol District <u>09</u> Page <u>1</u> of <u>2</u> Pages	

ID OVERFLOW	☐ Complaintant ☒ Victim #1		Subject's Name (Last, First, Middle)		Victim Relationship To Subject		Ethnicity		Resident		Race		Sex		Age		Date of Birth	
			Olive Garden															
	☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other		Address		City		State		Zip Code		Patrol District		Day Phone		Evening Phone			
			3290 N Pleasantburg Dr		Greenville		SC		29609		09		(864) 271-7756					
			Height Weight Hair Eyes Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.															

☒ Victim No. <u>1</u> Visible Injury ☐ Yes ☒ No Complaint of any Non-Visible Injuries ☐ Yes ☒ No Victim Using Alcohol ☐ Yes ☐ No ☐ Unk Two-Man Veh ☐ One Man Veh ☐ ALONE Detective ☐ Other ☐ ASSISTED	
Explain: Subject No. Using Alcohol ☐ No ☐ Yes ☐ Unk Using Drugs ☐ No ☐ Yes ☐ Unk Type: ☐ Unk ☐ Arrested on Current Offense ☐ Cleared By Arrest on Prior Offense	

Arrestee Armed ☐ Yes ☐ No Weapon Type		☐ On View Arrest ☐ Summoned ☐ Custody	
Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority			
Arrest Location		Gang Affiliation: <u>NG - Not Gang Related</u>	

Overflow:

Kretzschmar, Aaron: Complainant 1, Victim 2
 ADDRESS: [REDACTED], RESIDENT: J, RACE: W, SEX: M, AGE: 31, DOB: 11/10/1982
 VICTIM REL TO SUBJECT: RU,
 Primary: [REDACTED] VISIBLE INJURY: No, Injury Description: ringing right ear and soreness to right side of head, NON-VISIBLE INJURY: No, USING ALCOHOL: No, USING DRUGS: No

White, James: Victim 3
 ADDRESS: [REDACTED], RESIDENT: J, RACE: B, SEX: M, AGE: 34, DOB: [REDACTED]
 VICTIM REL TO SUBJECT: RU,
 Primary: [REDACTED] VISIBLE INJURY: No, NON-VISIBLE INJURY: No, USING ALCOHOL: No, USING DRUGS: No

Pugh, Terrell: Victim 4
 ADDRESS: [REDACTED], RESIDENT: J, RACE: B, SEX: M, AGE: 42, DOB: [REDACTED]
 VICTIM REL TO SUBJECT: RU,
 Primary: [REDACTED] VISIBLE INJURY: No, NON-VISIBLE INJURY: No, USING ALCOHOL: No, USING DRUGS: No

Narrative:
 On January 22nd, 2013 I assisted Inv. Motes with his investigation into this case. I spoke with Damion Riley (B/M [REDACTED]) and obtained a written statement from him. Damion was the last person to leave the restaurant before it got robbed. According to Damion he finished his work for the night and he briefly spoke with James White about working and he said James told him he made a few thousand dollars over the weekend rapping in Charleston. Damion said he then went out the front door to his girlfriend's car and left. I asked James about the front door closing and he was adamant it closed and locked. I showed him a picture of the towel propping the door open and he was adamant that it was not there when he left. I also spoke to Damion's girlfriend, Lorraine Walker ([REDACTED]) and she confirmed she picked him up around 11:20PM and took him straight home.

James white also came to the LEC for an interview. I asked him how he got the LEC (I knew

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value
Stol	20 - Money	UNK	US Currency		US Currency	None	UNK
Rec	20 - Money	UNK	US Currency		US Currency	None	UNK

Subject Identified ☐ Yes ☒ No Subject Located ☐ Yes ☒ No ☒ Active ☐ Admin Closed ☐ Unfounded ☐ Arrested Under 18 ☐ Arrested 18 and Over ☐ Ex-Cleared Under 18 ☐ Ex-Cleared 18 and Over					
Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest					
Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
WEINER, DAVID	01/23/2014	604 / 00630	WEINER, DAVID	01/23/2014	604 / 00630
Follow Up Investigation: ☒ Yes ☐ No		(Officer) Motes		/ 00300	

NARRATIVE

Case remains active.

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

Subject Identified Subject Located

☐ Yes ☒ No ☐ Yes ☒ No

☒ Active ☐ Admin Closed
☐ Unfounded ☐ Arrested Under 18
 ☐ Arrested 18 and Over

☐ Ex-Cleared Under 18
☐ Ex-Cleared 18 and Over

Reason For Exceptional Clearance

☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest

Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#
WEINER, DAVID	01/23/2014	604 / 00630	WEINER, DAVID	01/23/2014	604 / 00630
			Follow Up Investigation	☒ Yes ☐ No	(Officer) Notes

EXHIBIT

E

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

1 14 10427

VICTIM/WITNESS STATEMENT

Case Number 14-10427

Date 1/22/2014

I, Damion Riley (B/M 7-23-74), do hereby give freely and voluntarily this statement to D. Weiner *630 and _____ who have identified themselves to me to be Deputies of the Greenville County Sheriffs Office, Greenville, South Carolina.

I am 39 years old and I reside at _____

I am giving this statement freely and voluntarily. I am not under the influence of any narcotics or alcohol that would affect my judgment. I am allowing Sergeant Weiner to type this statement for me. DTR

I have worked at Olive Garden since August 12th, of 2013. I am employed there to do several things. I assemble meals, I also saute and assist on the grill. I was working this past Monday, the 20th. I got there around 4:40 PM. I worked through the night and was one of the last people to leave. I had to clean up two work stations. When I finished, Junior (I think his real name is James), Terrell, and Aaron (the manager), were the only people left. I got my W2's from Aaron, came back around the corner and Junior was asking me if I was working tomorrow and I told him I was. He told me about a rap concert, he said he made a few bands, I think a few thousand dollars, and that was it. I made myself some food earlier, so I took that and I went out the front door. I went out the front door on the left.

I know the door closed behind me. I heard it close. There was nothing on the ground blocking the door. I would have seen it. I heard the door lock shut.

I haven't heard about anyone talking about the robbery before it happened. The first I heard of it was yesterday on the news. DTR

I have read the above statement of 1 of 1 pages and it is true and correct as best as I recall.

WITNESS:

x

630 604

I have received a copy of this statement.

x Damion T. Riley

Sworn before me this _____ day of _____

NOTARY PUBLIC FOR SOUTH CAROLINA

OF

5/18/09 02091

29

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Case Number 14-10427

Date 1/22/2014

I, Damion Riley (B/M 7-23-74), do hereby give freely and voluntarily this statement to
D. Weiner #30 and _____ who have identified themselves to
me to be Deputies of the Greenville County Sheriffs Office, Greenville, South Carolina.

I am 39 years old and I reside at [REDACTED]

SR - I am giving this statement freely and voluntarily. I am not under the influence of any narcotics or alcohol that would affect my
judgment. I am allowing Sergeant Weiner to type this statement for me. -DTR

TR - I have worked at Olive Garden since August 12th, of 2013. I am employed there to do several things. I assemble meals, I also saute
and assist on the grill. I was working this past Monday, the 20th. I got there around 4:40 PM. I worked through the night and was one
of the last people to leave. I had to clean up two work stations. When I finished, Junior (I think his real name is James), Terrell, and
Aaron (the manager), were the only people left. I got my W2's from Aaron, came back around the corner and Junior was asking me if I
was working tomorrow and I told him I was. He told me about a rap concert, he said he made a few bands, I think a few thousand
dollars, and that was it. I made myself some food earlier, so I took that and I went out the front door. I went out the front door on the
left.

- I know the door closed behind me. I heard it close. There was nothing on the ground blocking the door. I would have seen it. I heard
the door lock shut.

TR - I haven't heard about anyone talking about the robbery before it happened. The first I heard of it was yesterday on the news. -DTR

I have read the above statement of 1 of 1 pages and it is true and correct as best as I recall.

WITNESS:

S/TB 02/02/
DTR 630 6041

[Signature]
I have received a copy of this statement.

Damion T. Riley

Sworn before me this _____ day of _____

NOTARY PUBLIC FOR SOUTH CAROLINA

PF

23 JAN 2014 09 42

EXHIBIT

F

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>0139 - Robbery Armed</u>						
☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>09</u> Page <u>1</u> of <u>4</u> Pages						
I.D. OVERFLOW	☐ Complainant	Subject's Name (Last, first, middle)		Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth
	☒ Victim #1	Olive Garden								
	☐ Subject	Address		City	State	Zip Code	Patrol District	Day Phone	Evening Phone	
	☐ Runaway	3200 N. Pleasantburg Dr.		Greenville	SC	29609	09			
	☐ Wanted	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.				
	☐ Arrest									
	☐ Missing	☒ Victim No. <u>1</u>	Visible Injury ☐ Yes ☒ No	Complaint of any Non-Visible Injuries ☐ Yes ☒ No	Victim Using Alcohol ☐ Yes ☐ No ☐ Unk	Two-Man Veh ☐ One Man Veh ☐ ALONE ☐				
	☐ Jail	Explain:		Drugs ☐ No ☐ Yes Type:		Detective ☐ Other ☐ ASSISTED ☐				
	☐ Other	Subject No. <u> </u>		Using Alcohol ☐ No ☐ Yes ☐ Unk	Arrested on Current Offense ☐					
			Using Drugs ☐ No ☐ Yes Type:	Unk ☐ Cleared By Arrest on Prior Offense ☐						
Arrestee Armed ☐ Yes ☐ No				Weapon Type		On View Arrest ☐ Summoned ☐ Custody ☐				
Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority										
Arrest Location				Gang Affiliation: NG - Not Gang Related						

Overflow:

Kretzschmar, Aaron: Complainant 1, Victim 2

ADDRESS: 3200 N. Pleasantburg Dr. Greenville, SC 29609-09, RESIDENT: J, RACE: W, SEX: M, AGE: 31, DOB: [REDACTED]

VICTIM REL TO SUBJECT: RU,

Primary: [REDACTED], VISIBLE INJURY: No, Injury Description: ringing right ear and soreness to right side of head, NON-VISIBLE INJURY: No, USING ALCOHOL: No, USING DRUGS: No

White, James: Victim 3

ADDRESS: 119 [REDACTED] (Greenville City), RESIDENT: J, RACE: B, SEX: M, AGE: 34, DOB: [REDACTED]

VICTIM REL TO SUBJECT: RU,

Primary: [REDACTED], VISIBLE INJURY: No, NON-VISIBLE INJURY: No, USING ALCOHOL: No, USING DRUGS: No

Pugh, Terrell: Victim 4

ADDRESS: 16 [REDACTED] (Greenville City), RESIDENT: J, RACE: B, SEX: M, AGE: 42, DOB: [REDACTED]

VICTIM REL TO SUBJECT: RU,

Primary: [REDACTED], VISIBLE INJURY: No, NON-VISIBLE INJURY: No, USING ALCOHOL: No, USING DRUGS: No

Narrative:

On 1-23-14, Sgt Weiner requested my assistance with this investigation.

Sgt Weiner advised Katrina Ferguson was at the LEC to pick up her vehicle. I escorted Katrina down to my office and began to speak to her about this incident. Katrina stated she has been dating James White for approx eight years. Katrina gave written consent to allow the GCSO to search her vehicle. I explained the consent to search form to her and she stated she understood and she needed her vehicle back so she could go to work.

When asked, Katrina stated she had no knowledge or involvement in this incident. A short time later, I escorted Katrina out of the office so she could get her vehicle back. On the way up the stairs, I asked her if she knew James' drivers license was suspended, Katrina nodded her head 'yes'. I then advised her she could be arrested for allowing James to driver

PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value
	Stol	20 - Money	UNK	US Currency		US Currency	None	UNK
	Rec	20 - Money	UNK	US Currency		US Currency	None	UNK
ADMIN	Subject Identified		Subject Located		☒ Active ☐ Admin Closed		☐ Arrested Under 18	
	☐ Yes ☒ No		☐ Yes ☒ No		☐ Unfounded		☐ Arrested 18 and Over	
							☐ Ex-Cleared Under 18	
							☐ Ex-Cleared 18 and Over	
	Reason For Exceptional Clearance		☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest					
	Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#		
	OWENS, MATTHEW	01/27/2014	621 / 00971	WEINER, DAVID	01/29/2014	604 / 00630		
				Follow Up Investigation ☐ Yes ☒ No (Officer)				

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Agency I.D.
SC0230000

EC5 01/30/2014-14:34:12

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report Ent: chgl1strap 04/26/2014
05:54:08

Case Number

14000010427

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>0139 - Robbery Armed</u>			
☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>09</u>	Page <u>2</u> of <u>4</u> Pages		

I.D. OVERFLOW	☐ Complainant	Subject's Name (Last, first, Middle)			Victim Relationship To Subject		Ethnicity	Resident	Race	Sex	Age	Date of Birth	
	☐ Victim	Address			City	State	Zip Code	Patrol District	Day Phone	Evening Phone			
	☐ Subject	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.							
	☐ Runaway	☐ Victim No. _____	Visible Injury ☐ Yes ☐ No	Complaint of any Non-Visible Injuries ☐ Yes ☐ No		Victim Using Alcohol ☐ Yes ☐ No ☐ Unk		Two-Man Veh ☐ One Man Veh ☐ ALONE ☐					
	☐ Wanted	Explain:		Drugs ☐ No ☐ Yes Type:		Detective ☐ Other ☐ ASSISTED ☐							
☐ Arrest	Subject No. _____		Using Alcohol ☐ No ☐ Yes ☐ Unk	Using Drugs ☐ No ☐ Yes Type:		☐ Arrested on Current Offense							
☐ Missing					☐ Unk ☐ Cleared By Arrest on Prior Offense								
☐ Jail					☐ On View Arrest ☐ Summoned ☐ Custody								
☐ Other													

Arrestee Armed	☐ Yes ☒ No	Weapon Type		
Juvenile Disposition	☐ Handled Released ☐ Referred To Other Authority			
Arrest Location	Gang Affiliation: NG - Not Gang Related			

her vehicle.

I advised Katrina the location of where her vehicle was at and advised her Inv King would meet her there.

Later in the day, I drove out to 16 Hanover St, where I made contact with Grady Terrell Pugh (victim). There he provided a written statement on the incident. Terrell stated he and James were washing dishes when this incident occurred. He stated they were suddenly approached by a black male, wearing a camo coat with a large hood. Terrell stated the suspect was approx 6'00 and around 200 lbs. When asked, Terrell stated he did not get a good look at the suspect's face. Terrell stated when the suspect entered the kitchen area, he pointed a gun at them and told them to get on the ground. Terrell stated he complied and got on the ground and put his hands over his head. Terrell stated he started to pray. Terrell stated the next thing he remembers is the GCSO startling him when they entered the kitchen. Terrell stated he has no idea what happened after he was told by the suspect to get down. Terrell stated he did not hear the suspect after that.

When asked, Terrell stated, he, James and the manager Aaron were the only employees inside when this incident occurred.

Terrell denied any involvement or knowledge of this incident. When asked, Terrell stated when restaurant closed at 2200 hrs., he and James stayed in the kitchen area washing dishes. Terrell stated he does not remember if James ever left the kitchen area, however he was almost certain he stayed.

When asked about a polygraph, Terrell stated he would have to speak to his family and his pastor before answering that question.

Terrell signed his statement and received a copy.

On 1-24-13, I was asked by Sgt Weiner to obtain a search warrant on a cellular phone (Samsung Verizon flip phone: FCC ID A3LSCHU365) that was found in White's possession.

I then spoke with Judge Hudson who signed a search warrant on the phone. I then provided the phone and search warrant to Detective Kern (GCPD) who executed the warrant.

NARRATIVE

PROPERTY

ADMIN

Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value

Subject Identified	Subject Located	☒ Active ☐ Admin Closed	☐ Arrested Under 18	☐ Ex-Cleared Under 18
☐ Yes ☒ No	☐ Yes ☒ No	☐ Unfounded	☐ Arrested 18 and Over	☐ Ex-Cleared 18 and Over
Reason For Exceptional Clearance ☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest				
Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date
OWENS, MATTHEW	01/27/2014	621 / 00671	WEINER, DAVID	01/29/2014
Follow Up Investigation ☐ Yes ☒ No (Clear)				

Agency I.D.
SC0230000

EC5 01/30/2014-14:34:12

GREENVILLE COUNTY SHERIFF'S OFFICE

Supplemental Report Ent: chgilstrap 04/26/2014
05:54:08

Case Number

14000010427

33

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>0139 - Robbery Armed</u>								
☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>09</u> Page <u>3</u> of <u>4</u> Pages								
I.D. OVERFLOW	☐ Complainant		Subject's Name (Last, First, Middle)		Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth	
	☐ Victim		Address		City	State	Zip Code	Patrol District	Day Phone	Evening Phone		
	☐ Subject		Height		Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.				
	☐ Runaway		☐ Victim No. _____		Visible Injury ☐ Yes ☐ No	Complaint of any Non-Visible Injuries ☐ Yes ☐ No	Victim Using Alcohol ☐ Yes ☐ No ☐ Unk	Two-Man Veh ☐ One Man Veh ☐ ALONE ☐				
	☐ Wanted		Explain:				Drugs ☐ No ☐ Yes Type:	Detective ☐ Other ☐ ASSISTED ☐				
	☐ Arrested		Subject No. _____		Using Alcohol ☐ No ☐ Yes ☐ Unk			☐ Arrested on Current Offense				
☐ Missing			Using Drugs ☐ No ☐ Yes Type:				☐ Unk ☐ Cleared By Arrest on Prior Offense					
☐ Jail							☐ On View Arrest ☐ Summoned ☐ Custody					
☐ Other												
Arrestee Armed ☐ Yes ☒ No Weapon Type _____												
Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority												
Arrest Location _____ Gang Affiliation: <u>NG - Not Gang Related</u>												

NARRATIVE

A short time later, Detective Kerns provided two discs of the results from the phone. When I looked at the CDs, I looked in the image gallery of the phone I noticed on 1-21-14, there is a picture of a black male holding a large sum of money, mostly \$1s and \$5s. Also, the black male was wearing a large camo coat, like the one Terrell stated the suspect was wearing the night of this incident. Also, in the contact list, the name Jr G was located, which is White's nickname. White claims to be a rapper and his stage name is Jr G. When I looked at some text messages, there is a message to White giving him the address of 1000 Pine Gate Dr Spartanburg, SC. At this time, the identity of the person holding the money was unknown. Therefore, I looked at the contacts again and wrote down the number for listed contact as 'Ma'. I called that number (843-312-7089) and spoke with an older lady. I explained to the lady I was an Investigator with the Greenville County Sheriff's Office and I needed to know who this phone belongs to. I gave the phone number (843-826-6554) to this phone. The lady stated she has three sons and there is a lot of people who call her 'ma'. The lady asked me to describe the person on the phone. I explained to her the male appeared to be light skinned and light eyes, with dreads. The lady then stated "Sir, I will give you my son's name, if you tell me what he did". That phrase caught me off guard and I asked her to repeat herself, at which time she did. I explained to her that I could not give her a lot of details about this case. She then asked "Did my son kill someone?" I advised her no. She then asked "Did my son shoot someone?" I advised her no. I then explained to her again I could not give out details about this incident because of the ongoing investigation. The lady then stated "...it must be a robbery then". The lady then stated her son's name was Gerald Gadsden. When asked, she stated her name was Crystal Gadsden. Crystal stated she does not know why Gerald would be in Greenville and that he stays in Spartanburg with his girlfriend. Crystal would not give the name of the girlfriend, nor the address in which Gerald is staying. However, I assume the address is 1000 Pine Gate Dr because that's an address he texted to White. Crystal then stated Gerald is from Charleston area, which is also where White is from. Crystal stated she would give my phone number to Gerald and tell him to call me. I then hung up the phone.

When I put the name Gerald Gadsden in the SC DMV, I found a SC driver's license for a Gerald Akeem Gadsden (163 Pine Bay Dr, Saint Stephen SC: 2-14-90: 5'11: 240: B/M). When I looked at his DL photo, I knew for a fact it was the same person who was holding up the large sum of money, wearing a camo coat in the phone.

I advised Sgt Weiner about the information about Gadsden.

PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value
ADMIN	Subject Identified		Subject Located		☒ Active ☐ Admin Closed ☐ Unfounded		☐ Arrested Under 18 ☐ Ex-Cleared Under 18	
	☐ Yes ☒ No		☐ Yes ☒ No				☐ Arrested 18 and Over ☐ Ex-Cleared 18 and Over	
	Reason For Exceptional Clearance		☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation ☐ Extradition Denied ☐ Juvenile No Arrest					
	Reporting Officer(s)	Date	Unit#/Star#	Approving Officer	Date	Unit#/Star#		
	OWENS, MATTHEW	01/27/2014	621 / 00871	WEINER, DAVID	01/29/2014	604 / 00830		
			Follow Up Investigation ☐ Yes ☒ No (616cr)					

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Agency I.D.
SC0230000

EC5 01/30/2014-14:34:12

GREENVILLE COUNTY SHERIFF'S OFFICE
Supplemental Report Ent: chgllstrap 04/26/2014
05:54:08

Case Number
14000010427

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type <u>0139 - Robbery: Armed</u>					
☒ Supplemental Report	☐ Other Report	☐ Additional Defendants	☐ Additional Recovered Property	Patrol District <u>09</u>	Page <u>4</u> of <u>4</u> Pages				
☐ Complainant ☐ Victim ☐ Subject ☐ Runaway ☐ Wanted ☐ Arrest ☐ Missing ☐ Jail ☐ Other	Subject's Name (Last, first, Middle)		Victim Relationship To Subject	Ethnicity	Resident	Race	Sex	Age	Date of Birth
	Address		City	State	Zip Code	Patrol District	Day Phone	Evening Phone	
	Height	Weight	Hair	Eyes	Facial Hair, Scars, Tattoos, Glasses, Clothing, Physical, Peculiarities, Etc.				
	☐ Victim No. _____	Visible Injury ☐ Yes ☐ No	Complaint of any Non-Visible Injuries ☐ Yes ☐ No	Victim Using Alcohol ☐ Yes ☐ No ☐ Unk	Two-Man Veh ☐ One Man Veh ☐ ALONE ☐				
	Explain:		Drugs ☐ No ☐ Yes Type:	Detective ☐ Other ☐ ASSISTED ☐					
Subject No. _____		Using Alcohol ☐ No ☐ Yes ☐ Unk	Arrested on Current Offense ☐						
		Using Drugs ☐ No ☐ Yes Type:	Unk ☐ Cleared By Arrest on Prior Offense ☐						
Arrestee Armed ☐ Yes ☒ No		Weapon Type		On View Arrest ☐ Summoned ☐ Custody ☐					
Juvenile Disposition ☐ Handled Released ☐ Referred To Other Authority									
Arrest Location		Gang Affiliation: NG - Not Gang Related							

I.D. OVERFLOW

NARRATIVE

On 1-24-14, I assisted Sgt Weiner with developing a six picture photo line up with Gadsden. Due to the fact Gadsden isn't local, I had to use the SC DMV to obtain a line up.

I and Sgt Weiner then responded to the Olive Garden to speak with Terrell and Aaron. While they were separate, I explained to them the photo line up. As a result, neither party picked anyone out of the photo line up.

On 1-27-14, I did not have any messages from Gadsden, therefore I called Crystal back. When I spoke with Crystal, she stated she told Gadsden to call me and she would call him. Crystal stated if Gadsden does not call me today, then she would call and let me know what his phone number is.

On 1-27-14, I assisted Sgt Weiner with the execution of the search warrant for James' apartment (410 Sulphur Springs Rd L5). No one was home at the apartment, therefore a maintenance man provided a key. As a result of the search warrant, I located a Master Card for Gerald Gadsden in a pair of teal color jeans.

Around 1500 hrs on the 27th, I received a phone call from Gadsden. When asked, Gadsden stated he was in Orangeburg and that he would call me back if he could get a ride to Greenville. When asked about his cell phone, Gadsden stated he lost the phone on the 15th at Club Showtime in North Charleston. I asked him if he reported his cell phone being "missing" and he stated no, "it was a prepaid phone". I explained to Gadsden I needed him to come to the Sheriff's Office and talk about the incident. Gadsden asked what I was talking about, at which time I told he knew exactly what I was talking about. Gadsden did not reply. He then advised he would call me back. I asked him for his cell phone number so I could call him, at which time he hung up on me.

This concludes my involvement in this incident thus far.

PROPERTY	Status	Property Type	Quantity	Property Make	Color	Description	Serial # / OAN	Value
ADMIN	Subject Identified ☐ Yes ☒ No		Subject Located ☐ Yes ☒ No		☒ Active ☐ Admin Closed ☐ Unfounded		☐ Arrested Under 18 ☐ Ex-Cleared Under 18	
							☐ Arrested 18 and Over ☐ Ex-Cleared 18 and Over	
	Reason For Exceptional Clearance		☐ Offender Death ☐ No Prosecution ☐ Victim Declines Cooperation		☐ Extradition Denied		☐ Juvenile No Arrest	
	Reporting Officer(s)	Date	Unit#/Star#	Approving Officer		Date	Unit#/Star#	
	OWENS, MATTHEW	01/27/2014	621 / 00071	WEINER, DAVID		01/29/2014	604 / 00030	
			Follow Up Investigation ☐ Yes ☒ No (Criteria)					

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Case Number 1-11-0010427

Date 1-23-14

I, Grady Terrell Pugh, do hereby give freely and voluntarily this statement to
M. Wrens #871/621 and _____ who have identified themselves to
me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 42 years old and I reside at _____
Monday, around 1130pm and 1200am, Me and James were washing
dishes. We closed out 1000 pm. Me, James and Aaron (manager) were
the only people inside. As I was washing dishes, I was startled by a
guy standing by the pan rack, pointing a big black gun at me and James.
He told us to get the fuck on the ground and told us not to move.
I got on the ground and put my hands over my head. I was praying for
my life. The next thing I remember is the officers coming into the kitchen
and startled me. My hands were still behind my head and I had no clue
it was the police. I have no idea what happened after the suspect told us
to get on the ground. I didn't hear the suspect or Aaron during that time.
Everything zoned out with me. I was scared I was going to get shot.
After the police came, they told us to go outside ^{no} in the dining area.
I remember James was on his knees beside me during the robbery. We
both stayed there until the police showed up.
The suspect was approx 5'10-6'00, approx 200 lbs, he was wearing a brown
camo hoodie. I remember the hood being big and I could not get a good
I have read the above statement of 1-2 pages and it is true and correct as best as I recall.

WITNESS:

G. Terrell Pugh
I have received a copy of this statement.

G. Terrell Pugh

Sworn before me this _____ day of _____, _____

NOTARY PUBLIC FOR SOUTH CAROLINA

Greenville County Sheriff's Office

4 McGee St.
Greenville, South Carolina 29601

VICTIM/WITNESS STATEMENT

Case Number 1-14-010427Date 1-23-14

I, Grady Terrell Pugh, do hereby give freely and voluntarily this statement to
Mr. Owens #871/621 and _____ who have identified themselves to
me to be Deputies of the Greenville County Sheriff's Office, Greenville, South Carolina.

I am 42 years old and I reside at _____
look at his face I don't think I could pick him out of a photo
line-up due to his hood covering his face. I do not remember any other
type of clothing or description of the guy. He appeared to be a black male in late 30s.
The gun he had was big and black and I think it was a semi-automatic.
As far as I can remember, from the time we closed, me and James
stayed in the dish area.

I have been working at Olive Garden for two years.

I have no involvement or knowledge of this robbery. I wish I was never
there.

I am not under the influence of any alcohol or illegal drugs/recruites at
this time

I have read the above statement of 22 pages and it is true and correct as best as I recall.

WITNESS:

G. Terrell Pugh
I have received a copy of this statement.

Mr. Owens #871/621

G. Terrell Pugh

Sworn before me this _____ day of _____, _____

NOTARY PUBLIC FOR SOUTH CAROLINA

EXHIBIT

G

STATE OF SOUTH CAROLINA

County of

Greenville 1-14-010427

1 14 10427

SEARCH WARRANTDate 1/24/14Officer Inv. Matt Owens

STATE OF SOUTH CAROLINA

COUNTY OF Greenville 1-14-010427

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-140
March 18, 1978

ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY

OF Greenville

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

1 14 10427

black/gray Samsung Verizon flip cellular phone: FCC ID A3LSCHU365

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Any and all recoverable data from the Samsung Verizon Flip cellular phone (Nafis Holt) to include but not limited to text messages, videos/digital images, call logs, e-mails, picture messages, calendar, contact list, and any other data that would assist in determining the owner of the cell phone or information on the cell phone that is relevant to the crimes of Armed Robbery.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Greenville

, S. C.

January 24

2014



Signature of Judge

(L.S.)

1530 hrs.

STATE OF SOUTH CAROLINA

COUNTY OF 1-14-010427

AFFIDAVIT

Personally appeared before me, one Inv. Matt Owens
 who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
 of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

Any and all recoverable data from the Samsung Verizon Flip cellular phone (Nafis Holt) to include but not limited to text messages,
videos/digital images, call logs, e-mails, picture messages, calendar, contact list, and any other data that would assist in determining
the owner of the cell phone or information on the cell phone that is relevant to the crimes of Armed Robbery.

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

14 10427

black/gray Samsung Verizon flip cellular phone: FCC ID A3LSCHU365

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISES

Affiant is an investigator with the Greenville County Sheriff's Office. Affiant states on 1-21-14, a report of an armed robbery occurred at the Olive Garden at 3290 N Pleasantburg Dr. During this investigation, it was found that a towel was used to prop open the front door, which allowed the suspect to enter the restaurant. The investigation reveals that only three employees were inside the residence during the time of the robbery and it is believed this incident is a result of an inside job. One of the employees inside the restaurant during the time of the incident, James Damon White (B/M [REDACTED]) was questioned about his involvement in this incident and the listed cell phone was seized from his person. In order to complete a fair and thorough investigation, a search of this cellular phone is needed.

Sworn to and Subscribed before me

this 24th day of January, 20 14

Signature of Judge

(L.S.)

Inv. Matt Owens

Affiant

Address 4 McGee StGreenville, SC 29601Phone 864-467-5300

1530 hrs.

RETURN

I received the attached Search Warrant JANUARY 24, 20 14, and have executed it as follows:
On JANUARY 24, 20 14 at 3:30 o'clock 1 M, I searched
(the person) described in the warrant and (the premises)

1 14 10427

I left a copy of the warrant with JUICE
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

ALL DIGITAL DATA ON DEVICE

This inventory was made in the presence of INV. M. OWENS, DET. G. WOOD
AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 27
day of Jan, 20 14 }

Signature of Judge (L.S.)

[Signature]
(Signature of Officer Executing Warrant)
D.A. KERN #341

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>

<u>ID</u>	<u>EVD</u>

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S-43	Statement of James White	18	19
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(All exhibits were returned to law enforcement at the conclusion of the hearing.)

P R O C E E D I N G S

1
2 THE COURT: This is the case of the State of South
3 Carolina vs. James Damon White and Gerald Akeem Gadsden.
4 And my information is that Mr. Gadsden has not made himself
5 available here today. Is that correct, Ms. Ross?

6 MS. ROSS: Yes. That's correct, Your Honor.

7 THE COURT: She had some inclination that that might,
8 in fact, be the case. He had been here on prior occasions,
9 either in custody or not in custody, but had appeared and
10 did not today. I've signed a bench warrant. As a result,
11 we will not be going forward with the trial of this case
12 this week.

13 But there is an outstanding motion to suppress that
14 has been filed by Mr. Yarborough on behalf of his client,
15 James White, that I think we're going to go ahead and hear
16 that motion to suppress here this morning with the
17 understanding that if Mr. Gadsden is located today, then we
18 will look at trying it beginning tomorrow. If he's not
19 located today, then the matter will be carried over. And
20 I'm scheduled to be back in Greenville in June. I think
21 it's the first week in June or so. And assuming that they
22 have located Mr. Gadsden by then, then that case will be
23 called in front of me and we will go forward with the trial
24 at that time. If he's not been located, then we'll have to
25 deal with it, again, see what the solicitor's position is

1 and what Mr. Yarborough and Ms. Ross' position would be at
2 that time.

3 Anything -- is that basically where we are,
4 Mr. Fretwell?

5 MR. FRETWELL: That sounds like the State's
6 recollection of your ---

7 THE COURT: It's my understanding is the motion that
8 we are going to hear this morning, motion to suppress --
9 well, Ms. Ross may tangentially join in.

10 MS. ROSS: I would like to join in that motion.

11 THE COURT: She's hoping that Mr. Yarborough has great
12 success. But it really does not affect her client, and so
13 it's not a matter of -- I mean, it's not his motion.

14 MS. ROSS: We would have made that motion pretrial had
15 he been here, and he would like to join in that motion.
16 And I would argue that since ---

17 THE COURT: My concern, if this is going to be his
18 motion, then I don't know how we're going to hear it today.
19 Either he's going to be found at some point in time or
20 you're seeking to orally join in the motion here today. I
21 know you anticipate Mr. Yarborough doing the bulk of the
22 arguing, but ---

23 MR. FRETWELL: May it please the Court Your Honor.

24 THE COURT: Yes, sir.

25 MR. FRETWELL: I think it's the State's position, I

1 believe it was the Court's position in chambers that
2 Mr. Gadsden doesn't really have a standing to assert this
3 motion at this time. Certainly if, at some later point,
4 Mr. Gadsden was picked up and wanted to attempt at that
5 time to assert a similar type of motion, that would be up
6 to yourself or the other Circuit Court judge who heard that
7 case. But it's my understanding it was filed by
8 Mr. Yarborough.

9 THE COURT: I think that's clear.

10 MR. FRETWELL: Yes, sir.

11 MS. ROSS: Well, the motion, the writing motion was
12 filed, but I had, as a pretrial motion, the motion to
13 suppress.

14 Similarly, on the standing argument, I would argue
15 that Mr. Gadsden has standing because he had a legitimate
16 expectation of privacy as to the pictures and the images
17 that were on his phone. When the police found those images
18 and looked into that information, according to my
19 understanding of the discovery, they had already made
20 contact with "Ma," who was Mr. Gadsden's mother, so they
21 knew it was his phone. They knew it was not Mr. White's
22 phone at that point, and therefore, going in to delve into
23 the private information on that phone would violate
24 Mr. Gadsden's rights.

25 THE COURT: Well, you're really arguing on a different

1 basis than Mr. Yarborough. I haven't heard you say that
2 you have a right of privacy. You believe that you have a
3 right because that, one, he did not consent to the search.

4 MR. YARBOROUGH: He did not consent to the search.

5 THE COURT: And, in addition, when the search warrant
6 was issued, it's an invalid search warrant, so -- and that
7 it's not invalid because of right of privacy.

8 MR. YARBOROUGH: It's invalid on its face.

9 THE COURT: Yes. It's invalid on its face that they
10 failed to state sufficient probable cause as to why the
11 magistrate should issue the search warrant; is that
12 correct?

13 MR. YARBOROUGH: That's correct, Your Honor.

14 And then my third argument would be going to the
15 information that's on the search warrant, is it -- would it
16 be relevant or is it so prejudicial that the Court
17 shouldn't admit it.

18 MS. ROSS: And, Judge, our objection would be as
19 opposed to the phone itself, the information contained on
20 that phone was private to Gerald Gadsden, and therefore,
21 that's where he certainly has standing to object to
22 rummaging through private information contained on his
23 phone. So that's where our motion would go to.

24 We would also join in the argument that looking at
25 that search warrant, we certainly find issue that on its

1 face, it does not give a probable cause to search the
2 phone.

3 So I apologize for complicating things, but that's
4 where his specific argument ---

5 THE COURT: If the right of privacy is the issue, that
6 certainly is separate and distinct from the issue that
7 Mr. Yarborough has indicated to the Court today, and that
8 could be addressed by the Court at some point in time in
9 the future. If you believe that you have standing to
10 contest the validity of either the consent being given by
11 Mr. White or the validity of the search warrant, I'm not
12 sure how you have that at this point in time.

13 I mean, I think the State's position is Mr. White
14 believed the phone to be his and he gave permission. I'm
15 not saying that Mr. Yarborough agrees with that, but I
16 think that's their position, and that you really wouldn't
17 have any standing in that regard if the phone was
18 Mr. White's or he believed it to be his phone, then I don't
19 know how your client could raise the issue of -- I mean
20 have standing to raise that issue.

21 MS. ROSS: On the consent issue, I would concede I
22 agree with you.

23 As far as the search warrant, since the items found on
24 the phone turned out to belong to Mr. Gadsden and they went
25 that step further of looking inside the phone after they

1 knew it was his, I would join in the objection based on the
2 validity of the search warrant, and I would -- because, at
3 some point, they realized that this was not, in fact,
4 Mr. White's phone and continued to go in. So then that
5 would go to potentially it kind of spins out. It could
6 potentially go into a Franks vs. Delaware argument, why
7 didn't they stop once they realized this was -- if they
8 knew it ---

9 THE COURT: When did y'all get the search warrant?

10 MR. FRETWELL: Judge, we got the search warrant before
11 any of the information. And a search warrant was executed.
12 They have to actually dump the phone, provide information
13 in the form of a report and pictures to the officer as a
14 result of the return on that search warrant that was done
15 after, of course, the initial consent was made by
16 Mr. White.

17 THE COURT: So you secured the search warrant before
18 any conversation was ever held by Mr. Gadsden's mother.

19 MR. FRETWELL: That's correct, Judge.

20 THE COURT: So what information would they have at
21 that time that would indicate that it was not Mr. White's
22 phone, Ms. Ross?

23 MS. ROSS: Just from the discovery. And I haven't
24 heard testimony. It looks like the same day the search
25 warrant was issued at 3:00, Mr. Gadsden's mother was spoken

1 to, just according to the incident report. So I haven't
2 heard testimony on the times, whether that was before or
3 after Mr. Gadsden's mother had been spoken to.

4 But certainly, for her to be spoken to, if it was
5 before, they would have had to go into the phone prior to
6 the search warrant.

7 THE COURT: I think that's exactly opposite.

8 MR. FRETWELL: This is the order. The order is search
9 warrant, get the report back, which is the return from the
10 search warrant, find out that there are pictures in there
11 of someone other than this defendant that are of interest
12 to the investigation, they look into the contacts, they
13 find this defendant listed as a contact, they then believe
14 that's not his phone. They find Ma, they call Ma. This is
15 all after the search warrant has been executed.

16 THE COURT: All right. Well, here's what we're going
17 to do. We're going to go forward and see what the facts,
18 how they present themselves. If, in fact, Ms. Ross -- I
19 mean, we're not going to preclude you from filing any sort
20 of motion that you want to file at some point in time in
21 the future, and you can address it even if it's -- but it
22 probably is going to have to be consistent with what ruling
23 that I make. I mean, if I rule that they, in fact, did not
24 contact and find out that there may be some claim by your
25 client as to ownership of this phone until after the search

1 warrant was actually issued, then -- of course, if the
2 search warrant's not valid on its face with them, then I'm
3 not sure what the State's position would be with respect to
4 your client. But probably it would not come in under any
5 circumstances.

6 MS. ROSS: Thank you, Judge.

7 THE COURT: All right. Are you all in a position to
8 go forward at this time, Mr. Fretwell? Have you got your
9 witnesses?

10 MR. FRETWELL: We have our witnesses, Judge. And just
11 for the Court's -- so this doesn't appear to be confusing
12 for the Court, I'm going to have the exhibits marked as
13 they would be in trial, so we're going to be starting with
14 State's Exhibit 43.

15 THE COURT: That's no problem.

16 MR. FRETWELL: If that causes some concern to the
17 Court -- some of these items are exhibits that we intend to
18 introduce in the State's case in chief, others might be,
19 such as the search warrant, something that would be a
20 Court's exhibit. But I just wanted to bring that to your
21 attention.

22 Only one other thing that you mentioned that I wanted
23 to kind of make sure that the record was clear on, I think
24 that you indicated that whether Mr. White believed or it
25 was, in fact, his cell phone with respect to the Samsung

1 phone that turns out to belong to Mr. Gadsden, the State
2 would take the position that we're not absolutely sure
3 whether he believed it was and was mistaken for a phone
4 that was in the car, or if he was just being dishonest with
5 the deputies. Either way, the officers had a good-faith
6 basis to believe that he was claiming the phone as his own,
7 and it wasn't until they got that information back from the
8 search warrant that they were in a position to realize this
9 wasn't his phone, we need to investigate it, has
10 information on it that's relative to the investigation. So
11 I just wanted to clarify that for the Court.

12 Your Honor, at this time, the State will call ---

13 THE COURT: Let me make one other comment, too. We
14 had a little conference in the office this morning, and
15 Mr. Yarborough raised the issue of two other telephones
16 that were apparently found in a vehicle that Mr. White had
17 used to appear at, I guess, the Sheriff's Department or
18 wherever it is that he appeared. And Mr. Yarborough was
19 concerned about whether those phones were going to be able
20 to be available to the State for the trial. And my
21 understanding is that the State has indicated that they
22 have no plans and no interest in those other two phones, so
23 they're not going to be in terms of admissibility of those
24 phones. So that's not an issue here today; is that
25 correct?

1 MR. FRETWELL: The only thing I could think of, Judge,
2 is they are, as we discussed in chambers, two phones in the
3 car that look a lot like the two phones that he had in his
4 pocket. To the extent ---

5 THE COURT: Right. I understand. But it's not a
6 matter of whether you're going into the contents of
7 anything in that phone ---

8 MR. FRETWELL: No, sir.

9 THE COURT: --- that would require either the consent
10 of this individual or a search warrant or some other order
11 that would allow you to have access to any contents of
12 that.

13 MR. FRETWELL: No, sir. There's nothing from those
14 two phones in the car that we intended to introduce into
15 evidence.

16 May it please the Court, Judge.

17 MR. YARBOROUGH: Your Honor, can we ask the Court to
18 sequester these witnesses for the purposes of this hearing?

19 THE COURT: Sure.

20 Do you have a problem with that?

21 MR. FRETWELL: Well, Judge, certainly Sergeant Weiner
22 is the case agent, so he would stay in here. I've got no
23 problems with ---

24 THE COURT: Well, yeah. I mean, whoever the
25 investigating officer is, is ---

1 MR. FRETWELL: That would be Officer Middleton really
2 is not -- I don't think related to these suppression
3 issues, and then Sergeant Matt Owen -- or Investigator Matt
4 Owens certainly can step outside during these proceedings.

5 THE COURT: All right.

6 MR. FRETWELL: May it please the Court, Judge.

7 THE COURT: Yes, sir.

8 MR. FRETWELL: The State would call Sergeant Ricky
9 Motes.

10 WHEREUPON,

11 THOMAS RICHARD MOTES, JR.,

12 After having been duly sworn, testified as follows:

13 THE CLERK: Please state your full name for the
14 record.

15 THE WITNESS: Thomas Richard Motes, Junior.

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

17 THE COURT: Yes, sir.

18 DIRECT EXAMINATION

19 BY MR. FRETWELL:

20 Q Sergeant Motes, how long have you been employed with
21 the Greenville County Sheriff's Office?

22 A Approximately 15 years.

23 Q And what is your current role or position within the
24 Sheriff's Office?

25 A I'm a Sergeant within the Property Crimes Unit.

1 Q And prior to being a sergeant in the Property Crimes
2 Unit, what capacities did you serve in in the Sheriff's
3 Office?

4 A I was an investigator with the Office of Professional
5 Standards Internal Affairs, and also an investigator in CID
6 in the Robbery Division.

7 Q All right. And let me take you back to January 22nd
8 and January 25th of 2014. Were you involved in the
9 investigation of an incident that occurred at the Olive
10 Garden near Cherrydale Shopping Center on the 20th?

11 A Yes, sir.

12 Q Did you -- in fact, initially, were you appointed as
13 the lead investigator in that particular case?

14 A I was.

15 Q Okay. Let me take you to January the 22nd, some two
16 days after the robbery, at approximately 12:30 or during
17 the noon hour on Thursday. Did you meet with Sergeant
18 David Weiner and the defendant James White at the Law
19 Enforcement Center in the Robbery Division office?

20 A Yes, I did.

21 Q And at that time, you were an investigator in Robbery;
22 is that correct?

23 A That's correct.

24 Q Was Sergeant Weiner your supervisor?

25 A Yes, he was.

1 Q Okay. For what purpose was James White, the
2 defendant, called to the office that day or invited to come
3 in?

4 A As a victim witness of this crime.

5 Q Okay. And who made the contact with Mr. White to ask
6 him if he could come in for an interview?

7 A I did.

8 Q Okay. Was he or the defendant Mr. White under arrest
9 at the time that he arrived?

10 A No, he wasn't.

11 Q Was he placed in any handcuffs upon his arrival?

12 A No, sir.

13 Q Did you make any threats or promises to the defendant?

14 A No, I did not.

15 Q Okay. And, in fact, the way your office is set up, if
16 you don't mind letting the Court know, how is your set of
17 offices arranged down there in the basement of the Law
18 Enforcement Center?

19 A It's one big room, open, square room with four desks
20 for investigators, and then in the back corner directly in
21 front of me is the sergeant's desk.

22 Q Okay. And when Mr. White arrived at the Law
23 Enforcement Center, how were you made aware of that?

24 A I was notified from the front desk officer that he was
25 there.

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1 Q And did you go up to get him?

2 A I can't remember if I did or another investigator did.
3 Or sometimes they escort them down to our office.

4 Q And do you know whether, at the time that he was --
5 either you escorted him or someone escorted him down to
6 your office, if he was there by himself or with anybody?

7 A He was by himself.

8 Q Okay. Can you identify the individual that you met
9 with that day, Mr. James White?

10 A Yes. He's sitting right over in the corner there at
11 the defense table.

12 Q With a bow tie?

13 A That's correct.

14 MR. FRETWELL: Let the record reflect Mr. White's been
15 identified by the witness.

16 BY MR. FRETWELL:

17 Q How did you begin your conversation with Defendant
18 White?

19 A Normally, like any other person, you know, introduced
20 myself, let him know who I am, you know, what we're going
21 to be -- the process, I'm here to listen to what you saw,
22 what you heard, what you did during this incident. And
23 that's basically how the conversation started.

24 Q Okay. And with respect to what you wanted to
25 accomplish, what's your end goal at the conclusion of that

1 interview?

2 A Just a good, thorough interview of the witness to find
3 out, you know, details of what happened on that incident
4 night so that I can, you know, put all the pieces of the
5 puzzle together. And he's just one part of that equation.

6 Q Is having a written statement of some sort, is that
7 something that you are attempting to obtain?

8 A Yeah. Normally, we listen to their, you know,
9 statement they give to us verbally, and then we like to,
10 you know, type it up, everybody's on the same page so we
11 know exactly what took place and have some documentation of
12 a formal statement. That's correct.

13 Q Did you explain that to Mr. White when he was sitting
14 there?

15 A I did. Just in that -- about that same manner. But
16 he had told me that he did not want me typing his
17 statement, that he'd write his own statement.

18 Q Okay. What was his demeanor at that time?

19 A Well, not normal for a victim witness to seem to be
20 very hostile toward the police, which I thought was not
21 normal. It's not normal when I'm interviewing a victim or
22 witness that, you know, they say, "No, I don't want you
23 writing any statement for me. I'll write my own
24 statement." Over the course of my years of investigation,
25 that doesn't happen often. I thought that was odd.

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1 Q And did he, in fact, take a statement form and fill it
2 out and provide you with a statement?

3 A He did.

4 Q Was it a detailed statement or a brief statement?

5 A Well, it was very brief, and that's when I started
6 inquiring more about what happened, details of that nature.

7 Q Okay. Do you recall if he provided you on that
8 witness statement his address at the time?

9 A I believe he did.

10 MR. FRETWELL: I'm going to mark this as State's 43.

11 (WHEREUPON, State's Exhibit No. 43 was marked for
12 identification.)

13 BY MR. FRETWELL:

14 Q Show you what's been marked as State's 43. Is that
15 the statement that Mr. White provided you?

16 A Yes, it is.

17 Q Okay. And as you've indicated, it's brief. Did he
18 provide on there where his current address was?

19 A It is. It says 410 Sulfur Springs Road.

20 Q Okay. Now, that statement that you see there, is that
21 in the same form or fashion as a copy and a true and
22 accurate copy of the statement that Mr. White provided in
23 his own handwriting and signed?

24 A Yes, sir, it is.

25 Q Any alterations been made to it?

1 A No, sir.

2 MR. FRETWELL: At this time, for the purpose of this
3 hearing, Your Honor, the State would move 43 into evidence.

4 MR. YARBOROUGH: For the purposes of this hearing.

5 THE COURT: Pardon me?

6 MR. YARBOROUGH: For the purposes of this hearing,
7 without objection.

8 THE COURT: So admitted.

9 (WHEREUPON, State's Exhibit No. 43 was admitted into
10 evidence.)

11 BY MR. FRETWELL:

12 Q All right. Did he, in that statement, Investigator
13 Motes, provide you with the time that he arrived at work?

14 A Yes. It says -- it's hard to read. I apologize.
15 Around 6:15. "I arrived at work at 6:15," I believe it
16 says.

17 Q And did he describe an individual that came into the
18 restaurant? And if so, how did he describe that
19 individual?

20 A He said, "About 11:00 or so, a guy with a hood came to
21 the dish room and pointed a gun and demanded us to get on
22 the floor and lay down. By then, he stood guard, and I
23 heard commotion. He then robbed the store."

24 Q Is that basically the content of the statement?

25 A That is.

1 Q All right. Was his statement, brief as it was,
2 consistent with the other accounts of the robbery?

3 A Yes.

4 Q All right. Now I'm going to show you what we'd like
5 to have marked as State's 44 and 45. I'm going to show you
6 what I'll have marked -- before we get to that, I actually
7 want to show you a -- I'm going to have this item marked as
8 State's Exhibit 44.

9 (WHEREUPON, State's Exhibit Nos. 44, 45 and 46 were marked
10 for identification.)

11 BY MR. FRETWELL:

12 Q What happened after he wrote out and signed his
13 statement, which we've identified as State's Exhibit 43?

14 A We asked him if he had a telephone. He had his cell
15 phone out. I asked if I could look at it. He said "sure."
16 Got him to sign a consent to look at his phone. And I
17 think Sergeant Weiner filled that consent out.

18 Q Okay. I want to show you State's 44, and then I'll
19 have you take a look at State's 45. I'm going to ask you,
20 is State's 44 the consent ---

21 A Yes, it is.

22 Q --- that you just described?

23 And whose handwriting references the first phone that
24 he pulled out, that Defendant White pulled out?

25 A Sergeant Weiner.

1 Q Sergeant Weiner.

2 And then there's additional handwriting on there. Do
3 you recognize that handwriting?

4 A That's my handwriting.

5 Q Okay. Before we go further with that particular
6 exhibit, take a look at what's in State's 45 and tell me,
7 is that the phone that you received from Mr. White in
8 response to your question, "Do you have a cell phone"?

9 A Yes. This looks like the Kyocera that he had out cell
10 phone.

11 Q Okay. Do you know the Property and Evidence item
12 number that's associated with that phone?

13 A I do. It's DW-1.

14 Q And is that, in fact, the item number that's on that
15 envelope in which that phone was found?

16 A It is.

17 Q All right. Okay. And specifically, how did Defendant
18 White describe this particular phone?

19 A Said this was his phone.

20 Q Okay. And why are there two phones listed on the
21 consent form, State's Exhibit 44?

22 A When he got up, I asked him if he had anything else on
23 him, and he said -- and he pulled out another cell phone
24 and said "Oh, this is not my phone," or "I hadn't used this
25 phone in months." He said, "It doesn't really work. I

1 believe it's an old phone that I hadn't used in months."

2 Q So did he indicate it was his phone or was not?

3 A Yeah. He did indicate. He said, "This is my old
4 phone that I haven't used in a while."

5 And that's when I added it to -- that's the reason my
6 handwriting is on the consent to search, because I asked
7 him, "Is it okay if we use -- look at this phone as well?"

8 He said, "Sure."

9 Q Okay.

10 A And so that's when I added it to that consent to
11 search.

12 Q Okay. And then I'll have you take a look at State's
13 Exhibit 46. Is this the second phone that Defendant White
14 produced? And if so, just give us the item number for
15 which it's associated.

16 A Yes. It's a Samsung flip phone, Item DW-2.

17 Q Okay. And is that, indeed, the phone -- the second
18 phone that you took from -- or received from Defendant
19 White that day during the interview?

20 A Yes, sir. It is.

21 Q Okay. Now, one thing that you said is that you asked
22 him if he had anything else on him.

23 A Yeah.

24 Q Can you explain what was going on in the course of
25 your conversations with him or at that point that prompted

1 you to ask the question of do you have anything else on
2 you?

3 A Just because the conversation that was going back and
4 forth in the office, that I wanted to make sure, you know,
5 that we were getting all the information that we needed to
6 get from him.

7 Q Okay. Were you aware that, at some point, he was
8 going down for a polygraph?

9 A Yeah. He had agreed to do a polygraph test, and so
10 before he entered that -- that area, we wanted to make sure
11 that there was nothing else on his person.

12 Q Okay. Is that a standard procedure for you, to ask
13 the individual if they have anything else on them?

14 A Yes, sir. It is.

15 Q Okay. And that's the way in which that conversation
16 took place?

17 A Right. He just reached in, said, "All I've got is
18 this old phone, but I haven't used it in months."

19 Q Okay. Once you took those phones and you executed
20 that consent form ---

21 MR. FRETWELL: And, Your Honor, just for the purposes
22 of this hearing, I'd ask that State's Exhibit 44, 45 and 46
23 be admitted into evidence.

24 MR. YARBOROUGH: Without objection.

25 THE COURT: All right. So admitted.

1 Can I see the consent form, please.

2 (WHEREUPON, State's Exhibit Nos. 44, 45, and 46 were
3 admitted into evidence.)

4 (Pause in proceedings.)

5 MR. FRETWELL: Were you finished?

6 THE COURT: Yes, sir.

7 MR. FRETWELL: Okay. I'm sorry. I'm just waiting for
8 you to finish.

9 BY MR. FRETWELL:

10 Q At any point, Sergeant Motes, did Defendant White
11 indicate to you any reluctance whatsoever to sign the
12 consent form?

13 A No, he didn't.

14 Q Did, at any point, Defendant White indicate to you
15 that he wanted to leave?

16 A No, he didn't.

17 Q In fact, you mentioned that he was going down to take
18 a polygraph at some point. Did he indicate to you -- or
19 maybe I should turn around. Anything to indicate he did
20 not want to go downstairs and take a polygraph?

21 A Nothing.

22 Q Okay. Were you aware of whether or not any breaks
23 were taken other than the break for him to go down and take
24 the polygraph? When he -- after he first came in there, do
25 you know if he asked to use the restroom, asked for a glass

1 of water or anything like that?

2 A No, sir.

3 Q Okay. How far is that room from a restroom?

4 A 40, 50 feet.

5 Q Okay. In that same -- in that same corridor?

6 A Same corridor.

7 Q And you described the squad room as multiple desks,
8 not just your desk and Sergeant Weiner's desk, but there's
9 at least three other desks in that room.

10 A That's correct.

11 Q Now, during the course of this interview, do you know
12 if these other investigators may have been at their desks
13 or in and out of the room?

14 A I recall Investigator Owens was in the room. I don't
15 recall if anyone else was.

16 Q And is it typical for people to come in and out of
17 that room throughout the day?

18 A Oh, yes.

19 Q Did you say, "Oh, yes"?

20 A Quite often.

21 Q How often with some degree of regularity?

22 A All the time, yes.

23 Q Okay. And that door to the room is not shut and
24 locked when you're in the process of a conversation with a
25 suspect, is it?

1 A No, it's not.

2 Q Okay. And that's even the case -- you know, if you
3 had somebody in there that was arrested and charged and in
4 shackles, that's still not the case in that scenario is
5 it ---

6 A That's correct.

7 Q --- is lock and shut that room?

8 A We do not.

9 Q Once those phones were received by you, to whom did
10 you turn those phones over for purposes of logging them
11 into the Property and Evidence room?

12 A Sergeant Weiner.

13 Q Okay. And do you recall a conversation or something
14 from Sergeant Weiner relating to a search warrant on the
15 second phone or is that something that you weren't a part
16 of?

17 A I wasn't part of. I remember that, but I wasn't a
18 part of that investigation.

19 Q All right. And was Sergeant Weiner present when
20 Mr. White pulled both of those phones out of his pockets
21 and turned them over to you?

22 A Yes, sir.

23 Q In fact, his desk is -- if you're sitting at your desk
24 right there, his desk is how close to you? Maybe right
25 about here?

1 A About right there. Uh-huh.

2 Q Okay. And then Mr. White was sitting ---

3 A The corner of my desk.

4 Q -- at the corner of your desk?

5 A Uh-huh.

6 MR. FRETWELL: Okay. Please answer any questions the
7 defense counsel may have of you, Sergeant Motes.

8 CROSS EXAMINATION

9 BY MR. YARBOROUGH:

10 Q You were there when they brought Mr. White down to the
11 area where y'all were talking to him?

12 A That's correct.

13 Q Okay. And you don't remember if you brought him or
14 if ---

15 A No, sir. I don't remember. If I did -- I mean, we're
16 so busy in and out, sometimes the deputy upstairs walks
17 people down to us. I can't recall that day if I did or
18 another investigator went up and got him or walked him out.
19 I can't remember.

20 Q Was Riley, the other guy that worked there, was he
21 still there when White came down there?

22 A Riley. I'm not ---

23 Q You don't remember Riley?

24 A I'm not familiar with who you're talking about.

25 Q When Mr. White got there, you immediately started

1 questioning him about whether or not he had driven to the
2 police station; is that correct?

3 A No, sir. I did not.

4 Q Okay. Were you present when that conversation was
5 had?

6 A I was present, but not in that room.

7 Q Okay. So let's -- tell us -- tell us about that
8 conversation. Who was it that directed those questions
9 towards Mr. White?

10 A That would have been Sergeant Weiner.

11 Q Sergeant Weiner, who's in the courtroom today?

12 A That's correct.

13 Q Okay. And when Mr. White got down there with the idea
14 that y'all were going to take a statement from him, the
15 idea was to question him and to put him on the defensive by
16 asking him how he got down there driving that day; isn't
17 that right?

18 A That is not correct.

19 Q Okay. But those were the questions that were asked by
20 Weiner. You heard them.

21 A I didn't hear -- I was there for the purpose of him
22 being a victim and a witness in a case. I was not -- there
23 was no pre-conversation or anything about him driving.
24 That came out of the blue to me. I knew nothing about that
25 conversation.

1 Q That came out of the blue from who?

2 A From Sergeant Weiner.

3 Q Okay. And -- but when he got there, I mean, if --

4 MR. YARBOROUGH: May I approach, Your Honor?

5 BY MR. YARBOROUGH:

6 Q His statement was Damon White also came to the LEC --
7 he's talking about after he talked to Riley ---

8 MR. FRETWELL: Your Honor, I object. I don't know if
9 he's trying to impeach the witness.

10 MR. YARBOROUGH: Oh, no.. I'm just -- I'm ---

11 THE COURT: Whoa, whoa. Let him --

12 MR. FRETWELL: I'm not sure if he's attempting to
13 impeach this witness with the statement of another witness,
14 but if he is, he should be given an opportunity to either
15 confirm or deny the statement before he's asked to read
16 something from an exhibit.

17 MR. YARBOROUGH: I was -- that's exactly what I was
18 trying to do, and I'll do it in a different way.

19 THE COURT: Ask your question.

20 BY MR. YARBOROUGH:

21 Q Have you reviewed the Code 5 that Sergeant Weiner did?

22 A Not in a long time, no.

23 Q Okay. Now, if I ---

24 MR. YARBOROUGH: Can I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. YARBOROUGH:

2 Q We'll get you to approach that. And can you read
3 right there (indicating).

4 MR. FRETWELL: Your Honor, I still would object. He
5 needs to ask him a question that the witness can say "yes"
6 or "no" to, not ask him or pit him against another witness
7 in this case. It's improper impeachment, even for a
8 hearing.

9 MR. YARBOROUGH: Your Honor, I asked him -- I asked
10 him ---

11 THE COURT: Ask him the question, and if he needs to
12 refresh his memory, then we'll do it after that.

13 BY MR. YARBOROUGH:

14 Q Did Sergeant Weiner ask him when he first got down
15 there how he got to the police station?

16 A I don't know if it's when he first got there. I don't
17 remember. I remember there was a conversation about how he
18 got there.

19 Q Okay. And there was a threat made that he was going
20 to be arrested for driving under suspension; isn't that
21 right?

22 A No, sir. I never heard anybody being threatened to be
23 -- we work in the Felony Unit. We're not -- normally try
24 to threaten somebody with a traffic offense. That's not
25 what we would do.

1 Q Well, go to that first -- the last line ---

2 MR. FRETWELL: Objection, Your Honor. He's asked --
3 he's answered the question. If Mr. Yarborough is
4 attempting to get him to read someone else's report so that
5 he can argue with what he's just stated, that is a question
6 for the person who authored that report. I'd be happy to
7 provide Sergeant Motes with a copy of his report that he
8 could refresh his recollection as to what he did. But he's
9 already answered the question. It's improper and
10 inappropriate for Mr. Yarborough to attempt to have him
11 read somebody else's report and have that somehow conflict
12 with what he's just testified to.

13 MR. YARBOROUGH: I'll ask the question in a different
14 way.

15 BY MR. YARBOROUGH:

16 Q Sergeant Weiner's report says that James White also
17 came to the LEC for an interview, and I asked him how he
18 got to the LEC. I knew his driver's license was suspended,
19 and he said he got a ride. Would that surprise you?

20 A No. That wouldn't surprise me.

21 Q Okay. Why wouldn't it surprise you?

22 A Because if he said that, then he must -- knew what he
23 was talking about.

24 Q Okay. And did you hear that conversation?

25 A I heard some of that conversation. I can't sit here

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1 -- that conversation wasn't important to me at the time,
2 whether he was driving or wasn't driving. I was there
3 looking through my file to interview him about this -- this
4 case, not about him driving. I had nothing to do with
5 that.

6 Q Did you tell him you had cameras in the parking lot,
7 and so if he lied, you would be able to check it out?

8 A I didn't -- I didn't have that conversation with him.

9 Q Did you hear that conversation take place?

10 A I heard that conversation take place.

11 Q Okay. Can you tell us about that conversation?

12 A All I remember is that we do have cameras in our
13 parking lot, we do have cameras out front, in the hallways
14 to that nature, but I -- I was not a part of that
15 conversation. I heard the conversation, but I was not a
16 part of the conversation, so I couldn't sit here and swear
17 under oath this is exactly what was said because I didn't
18 say it.

19 Q Okay. Who was the first person that talked to White
20 that day?

21 A I guess whoever at the front desk would be the first
22 officer, if that's what you're asking.

23 Q Okay. Who were the first investigators in that area
24 that talked to him that day?

25 A I was the first person.

1 Q You were the first person.

2 What was the -- what was your conversation?

3 A Introduced myself to him, told him I was the
4 investigator handling the case, could I get a statement
5 from him so I could do this investigation.

6 Q Okay. Did you ask him about a rap concert that had
7 taken place?

8 A I didn't talk to him about a rap concert. That was a
9 conversation between him and Investigator Owens, if I'm not
10 mistaken.

11 Q Okay. And did you hear that conversation?

12 A I heard -- I heard part of those conversations.
13 Those --

14 Q Okay. And did you hear the conversations between
15 Weiner and White?

16 A I did hear conversation. That's correct.

17 Q Okay. And did those conversations get aggressive?

18 A No. They were just matter-of-fact conversations. I
19 wouldn't say aggressive.

20 Q So it was just a matter of fact that you said that as
21 soon as you began talking to Mr. White, he was upset, he
22 was not -- he wasn't a normal witness that came down to the
23 police station. Isn't that how you couched it for ---

24 MR. FRETWELL: Objection, Your Honor. That is a
25 multiple part question. I can't even follow what the

1 actual question is in this particular case.

2 BY MR. YARBOROUGH:

3 Q Did you just tell Mr. Fretwell that he immediately
4 became confrontational?

5 A I didn't say "immediately." In our conversation when
6 I asked him about doing a statement, that's when he became
7 what I would say not normal. "You're not taking -- I'm not
8 letting you type my statement. I'll write my statement
9 myself," which was, to me, not normal. And it was almost
10 like he had a personal problem with me typing out a
11 statement for him as a victim witness, which was strange.

12 Q But at that point, had you already heard Weiner
13 threaten him with the fact he was going to arrest him?

14 MR. FRETWELL: Objection to characterization as a
15 threat. He's indicated he heard no threat.

16 BY MR. YARBOROUGH:

17 Q Had you heard Weiner ask him about how he'd gotten
18 down there?

19 A He asked him how he got down there. No threats of
20 arrest were ever made in my presence.

21 Q How about did he -- did you hear him say, "There's a
22 camera in the parking lot. We're going to know if you lied
23 to us"?

24 A I do recall a conversation that was said.

25 Q Okay. And is that a threat?

1 A No. I don't take it as a threat.

2 Q But all that took place before you took his statement.

3 A No. It was during our statement. This was not before
4 anything. It was during the statement.

5 Q So you're trying to take this individual's statement
6 while Weiner's making these statements to the individual
7 about how he got there?

8 A That's correct.

9 Q Okay. And so at that point, the victim, Mr. White
10 becomes confrontational; is that correct?

11 A When I asked him to -- if I can type his statement for
12 him, yes.

13 Q And at that point, had he been told that there were
14 cameras in the parking lot if he lied?

15 A At some point, he was told that during the interview.

16 Q I asked you if, before you took the statement, is that
17 what you said to him.

18 A I didn't say that, no.

19 Q Okay. Is that what was said to him in the room while
20 y'all were asking him these questions?

21 A That's correct.

22 Q Okay. And so this statement that White could have
23 interpreted to believe that you were telling him he was
24 going to be arrested was made prior to that; is that
25 correct?

1 A That's ---

2 MR. FRETWELL: I object to the hypothetical and
3 speculative nature of the first part of that question.

4 MR. YARBOROUGH: Your Honor, this is just a ---

5 THE COURT: This is a hearing. There's going to be
6 some latitude. But ask him the question. He claims that
7 he started questioning this guy long before your client was
8 ever confronted by the other police officer. That's what
9 you're trying to get at. Find out when it was.

10 MR. YARBOROUGH: That's what I asked him, and I think
11 he said they're all happening simultaneously.

12 BY MR. YARBOROUGH:

13 Q Correct or not?

14 A This interview, questions were being asked by -- I
15 asked him questions, Sergeant Weiner asked him questions,
16 there were conversations being made by several people. I
17 think I said that clearly before. I never asked him
18 anything about his driving, not one question. That was not
19 my concern.

20 Q Did you ask him about the rap concert?

21 A Did not ask him. That was Investigator Owens, again.

22 Q Did you ask him -- did you tell him that he had to
23 take a polygraph or he was going to be arrested for driving
24 under suspension?

25 A No, sir. Never said that.

1 Q Okay. But did you tell him he had to take a
2 polygraph?

3 A No, sir. I did not.

4 Q So he came down there and he agreed to take a
5 polygraph?

6 A No. I asked him would he take a polygraph. There's a
7 difference between asking someone and telling someone. I
8 can't tell you to do anything. I asked him just like I
9 asked you. "Sir, may I look at your phone?" I treated him
10 just the way I'm treating you. "Sir, may I look at --
11 would you take a polygraph for me?" If he says "yes" or
12 "no," it's just an easy answer.

13 Q Before or after that, had Weiner told him that --
14 asked him these questions about driving under suspension?

15 A It was before the polygraph question, yes.

16 Q Okay. Before the question about giving a statement?

17 A No. It was -- it was during that -- the statement was
18 already taking place. That's the first thing we're going
19 to do is take the statement. He's already telling me
20 what's happening. And then when I ask him, "Hey, I'm going
21 to put this -- I'm going to type this up, get you to sign
22 what you've just told me," that's when he goes, "No, you're
23 not typing anything for me. I'll write my own statement."
24 Like okay. Sure. And that's what he did.

25 Q At that point, did you ask him how he -- or had Weiner

1 asked him how he'd gotten there?

2 A Yes.

3 Q Okay. Thank you.

4 This is the statement he wrote out for you?

5 A Yes, sir. It is.

6 Q And what does that statement say?

7 A His handwriting is really hard to read, especially
8 when I don't have my glasses on, but I'll do my very best,
9 okay? (As read) "I went to work at 6:15. I clocked in and
10 started in the dish room washing dishes about 11:00 or so.
11 A guy with a hood came to the door" -- or "came to" -- I
12 don't know if that's "da" or "door," "dish room and pointed
13 a gun and demanded us to get on the floor or lay down. By
14 then, stood guard and I heard communication" or commotion,
15 maybe -- "commotion. He then ran" -- "he then robbed the
16 store." That's the statement.

17 Q So he fulfilled -- he gave you a statement?

18 A I guess you could call that -- yes. He gave that
19 statement. That's what he wrote.

20 Q Okay. That's what he wrote?

21 A Right.

22 Q Okay. And did you have any reason to disbelieve him
23 at that point?

24 A I had a lot of reasons to ask him some questions about
25 my investigation, yes.

1 Q Okay. And what were those questions?

2 A And this is kind of brief here. I need to know more a
3 little about, you know, any more descriptors, you know,
4 things of that nature, how many other people were in the
5 room, where were you at in the room, things of that nature.

6 Q And do you have those notes?

7 A No. He -- at that point, he was like, "That's what
8 happened." He became very defensive, at that point, like
9 that's all he wanted to say.

10 Q Okay. But he agreed to take a polygraph?

11 A He did.

12 Q He agreed to take a polygraph before or after y'all
13 told him that he was in trouble for driving under
14 suspension?

15 MR. FRETWELL: Objection, Your Honor, not only to the
16 nature of the question, but he's asked this question I
17 don't know how many times.

18 BY MR. YARBOROUGH:

19 Q Before or -- just tell me, before or after.

20 A Ask me, again, please. I'm -- got confused again.

21 Q Did he agree to take the polygraph before or after you
22 told him he was in trouble for the driving under
23 suspension?

24 MR. FRETWELL: Objection, Your Honor.

25 THE COURT: He didn't tell him anything.

1 MR. FRETWELL: Characterization that he told him that
2 he was in trouble, that he hasn't testified to that.

3 BY MR. YARBOROUGH:

4 Q Now, this phone ---

5 A Yes, sir.

6 Q --- where did that phone come from?

7 A It was in his hand.

8 Q It was in his hand when he got down there?

9 A Uh-huh.

10 Q Okay. And did he give you permission to look at that
11 phone?

12 A Yes, he did.

13 Q Okay. And tell me the circumstances in which he gave
14 you permission to look at that phone.

15 A I simply asked him, "May I look at your phone. May I
16 search your phone?"

17 He said, "Yes."

18 Q Okay. When did that happen?

19 A During the interview, probably toward the end of the
20 interview after the statement.

21 Q After the statement.

22 A Yeah.

23 Q Okay. After the statement, had he agreed to take the
24 polygraph?

25 A We hadn't even got to the polygraph, at that point.

1 Q Okay. So you're asking about the phone ---

2 A Right.

3 Q --- before you get to the polygraph?

4 A Right.

5 Q Okay. And what was the purpose of asking him about
6 the telephone?

7 A Part of the investigation. "May I search your phone?
8 May I look at your phone?" Common in every case I've ever
9 worked on.

10 Q Okay. So you asked him if he [sic] could look at --
11 look at your [sic] phone?

12 A I certainly did.

13 Q Okay. And you asked him if he [sic] could take DNA?

14 A I did.

15 Q Did you take DNA?

16 A I believe I did.

17 Q And did you -- what are the results of that DNA?

18 A I don't think we have a result.

19 Q Okay. And so that phone right there that you've got
20 in front of you, which phone is that? Which -- which
21 numbered phone is that?

22 A You want the State's -- Item DW-1.

23 Q That's -- yeah. Model?

24 A Model 5171 MEIDA, about five 0's, 77F88929.

25 Q Okay. And you asked him for permission to search that

1 telephone?

2 A I did.

3 Q Okay. At that point, was he under arrest for driving
4 under suspension?

5 A No, sir. I never talked to him about driving under
6 suspension. I never -- I never told him that, I never
7 heard him being told he was under arrest for driving under
8 suspension. I was still trying to do my investigation and
9 ask him questions, "May I look at your phone," just like I
10 would anybody else.

11 Q But -- but he was placed under arrest for driving
12 under suspension, right?

13 A Not in my presence.

14 Q He was not placed under ---

15 A No, sir. I never saw him being placed under arrest
16 for driving under suspension.

17 Q Okay. Would it surprise you if he was placed under
18 arrest for that?

19 A No.

20 Q What do you mean, no?

21 A It wouldn't surprise me. I heard, at the very
22 beginning, the conversation when Sergeant Weiner asked him,
23 "How did you get here?" That wouldn't surprise me. I
24 mean, he violated a law. But I didn't -- that had nothing
25 to do with what I was doing.

1 Q Okay. So before all these conversations took place,
2 Weiner had told him that he was going to be placed under
3 arrest for driving under suspension?

4 A That's not correct.

5 Q Okay. What did you just say? I'm sorry.

6 THE COURT: Mr. Yarborough, he says he never heard any
7 conversation ---

8 MR. YARBOROUGH: Never heard.

9 THE COURT: --- about anybody being placed under
10 arrest. Never saw anybody. Take it up with Weiner.

11 MR. YARBOROUGH: I will.

12 BY MR. YARBOROUGH:

13 Q Did you fill out this sheet?

14 A I filled out -- well, I filled out that part, that
15 part, that part and that part (indicating). When -- the
16 dark black pen, that's the second phone. Sergeant Weiner
17 filled out the rest of -- he'd already done that on the
18 first phone. I did this on the second phone after we
19 discovered the other phone in his pocket.

20 Q Okay. So this was -- when you discovered that other
21 phone in his pocket, had he been placed under arrest?

22 A No, sir. He was never placed under arrest in my
23 presence.

24 Q Okay. How did you get the other phone out of his
25 pocket?

1 A I asked him, "Sir, do you have anything else on you?"

2 He reaches into his pocket, goes, "Oh, I've got this
3 old phone, but I hadn't used it in a long time."

4 And I said, "Sir, may I search that phone as well?"

5 He said, "Yes. No problem."

6 Q Okay. And so you went back to this form at that
7 point?

8 A That's correct.

9 Q And you wrote in on Line 1 what the number of that
10 phone was and on Line 2 what the number of that other phone
11 was; is that correct?

12 A No, sir. That's not correct. This is all the same
13 phone here, this is all the same phone here (indicating).

14 Q So it's all just one phone?

15 A No. That's one phone, and that's -- the line break
16 right there, that's Phone No. 2.

17 Q Okay. And so you wrote this onto the phone [sic]
18 after this?

19 A I wrote ---

20 Q You wrote that on the phone [sic] after ---

21 A No, no. I wrote that on that consent form after the
22 first one was already written there.

23 Q Right. And at that point ---

24 A This came No. 1, this came No. 2 (indicating).

25 Q Right. And at that point, the consent form had

1 already been signed?

2 A I don't know about that.

3 Q Okay. Some -- I know you're looking.

4 A I'm not looking. I'm looking at you.

5 Q Okay. Somebody -- you wrote this on there.

6 A Right.

7 Q Right. And it -- clearly, this pen here (indicating)
8 is the same pen that's used by Mr. White's signature; is
9 that correct?

10 A That's correct.

11 Q Okay. So this phone, the second phone is written in
12 after Mr. White had signed it.

13 A Okay. It was all -- they're in the same room,
14 investigation. That's all I recall. I don't recall
15 when ---

16 Q Well ---

17 THE COURT: Let him finish.

18 MR. YARBOROUGH: Okay. I'm sorry.

19 THE WITNESS: Like I said, it was the same
20 investigation, same consent. I asked him both times.
21 That's the reason why we put it on the same form. That was
22 the only reason.

23 BY MR. YARBOROUGH:

24 Q At that point, should you not have gotten his
25 permission to search that phone?

1 A I did get his permission, I asked him, "Sir, may I
2 search this phone?"

3 Q Okay. And did you have -- you didn't have him sign
4 it?

5 A He gave verbal consent. We had that form. I can't
6 say whether he signed that first or last. I'm not sure.

7 Q But you're there. You're the one responsible for
8 doing this, right?

9 A Right.

10 Q Right. And it's clearly done at different times.

11 A I made that clear. Sergeant Weiner did the first one,
12 I did the second one. Sergeant Weiner is the one that
13 provided the form. I just did that under his direction.
14 The defendant had given consent to search both of those
15 phones. That was clear.

16 Q But the pen that you used to write in the second
17 phone ---

18 A Is my -- was the personal pen that I was using,
19 correct.

20 Q Right. And that was all done with another pen after
21 the fact of Mr. White having signed this form.

22 MR. FRETWELL: Your Honor, I have to object at this
23 point.

24 THE COURT: He says he doesn't remember. You're not
25 going to make me understand any better. Two different

1 phones, two different times things were written in.
2 Whether it had been signed after both phones were written
3 in or after the first phone was written in, he doesn't
4 remember.

5 MR. YARBOROUGH: Okay.

6 THE COURT: But he says that he got oral consent on
7 both of them, ultimately got his signature.

8 MR. YARBOROUGH: Okay. Just a second, Your Honor.

9 BY MR. YARBOROUGH:

10 Q I'm going to show you your report. And can you read
11 the first three lines of your report into -- do you
12 recognize that report?

13 A I do.

14 Q Can you read the first three lines of that report into
15 the record?

16 A (As read) "On January 22, 2014, James White came into
17 the office to give a statement as a witness to the robbery
18 that occurred at the Olive Garden where he works as a
19 dishwasher. As I was going through my routine of
20 explaining to him about taking his written statement, he
21 became very defensive. He had already lied about driving
22 to the LEC while being under suspension."

23 Q So at that point, was -- your testimony before was not
24 correct. At that point, you knew he had already lied about
25 driving to the LEC.

1 MR. FRETWELL: Objection, Your Honor. Is the question
2 whether his previous testimony was correct or is it the
3 second question?

4 BY MR. YARBOROUGH:

5 Q Is your previous testimony the truth or is the report
6 the truth?

7 A The truth is, is that I heard the conversation that he
8 was under suspension. That's the truth. And I was doing
9 an investigation about a robbery. I was not involved in
10 investigation whatsoever of driving under suspension. I
11 heard a conversation between my sergeant and this defendant
12 about him driving an automobile when he was under
13 suspension.

14 At that point, I was not concerned about that
15 investigation. I didn't know how that was going to turn
16 out. All I knew was I was there to talk to him about this
17 Olive Garden robbery. And that was my whole responsibility
18 in this case.

19 MR. YARBOROUGH: All right. I don't have anything
20 further, Your Honor.

21 THE COURT: Anything?

22 MR. FRETWELL: Nothing on redirect.

23 THE COURT: All right. Thank you. You may step down.

24 THE WITNESS: Thank you, Your Honor.

25 MR. FRETWELL: Judge, we have the officer here that

1 obtained the search warrant for the second phone. In the
2 normal course, we would put him up next to have that
3 information for the Court's consideration with respect to
4 that search warrant that was initiated. So we would call
5 him at this time, if the Court feels that's appropriate. I
6 don't want to ---

7 THE COURT: I want you to call whoever you think you
8 need to call.

9 MR. FRETWELL: I call Investigator Matt Owens.
10 WHEREUPON,

11 MATTHEW OWENS,

12 After having been duly sworn, testified as follows:

13 THE CLERK: Will you state your full name for the
14 record?

15 THE WITNESS: Matthew Owens.

16 MS. SIMPSON: Thank you, Your Honor. May it please
17 the Court.

18 THE COURT: Yes, ma'am.

19 DIRECT EXAMINATION

20 BY MS. SIMPSON:

21 Q Investigator Owens, where are you employed?

22 A Greenville County Sheriff's Office.

23 Q And what is your current position with the Sheriff's
24 Office?

25 A I work in the Robbery Division.

94

1 Q And how long have you been with the Robbery Division?

2 A Five -- about five years.

3 Q And how long have you been in law enforcement?

4 A 15.

5 Q And with respect to the Robbery Division, how are
6 y'all set up? Are there a number of different
7 investigators? a sergeant? How does that work?

8 A Yes, ma'am. There's one sergeant, and then there's
9 four investigators.

10 Q Okay. And with respect to cases that come in, is it
11 unusual if you are not, say, the lead investigator to still
12 assist the lead with different tasks involved in the
13 investigation?

14 A Yes, ma'am. We do that.

15 Q And did you have occasion to become involved in this
16 case?

17 A Yes, ma'am.

18 Q I want to direct your attention specifically to the
19 search warrant that you obtained with respect to one of the
20 phones in this case.

21 A Yes, ma'am.

22 Q Who asked you to get a search warrant?

23 A Sergeant Weiner.

24 Q And let me back up just a little bit. In this case or
25 similar to other robbery cases, do you speak with other

1 investigators involved, specifically the sergeant and the
2 lead about what's going on?

3 A Absolutely. Yes, ma'am.

4 Q And so are you briefed and apprised of all the
5 information as it comes in?

6 A Yes, ma'am.

7 Q And the information that you receive with respect to
8 your task, do you provide that information to the
9 supervisor as well?

10 A Yes, ma'am.

11 Q And when Sergeant Weiner came to you to request a
12 search warrant, specifically what did he ask?

13 A To obtain a search warrant on a Verizon flip phone.

14 Q Okay. And did you, in fact, do that?

15 A I did.

16 Q Tell the Court about that process.

17 A So basically, I will type out a search warrant, and
18 then after -- after it's completed, I will go talk -- speak
19 with the judge. The judge will either issue the search
20 warrant or not. In this case, I believe it was Judge
21 Hudson who signed the search warrant. And then after that,
22 we -- we usually -- usually we go through -- we try and go
23 through the county investigators. In this particular case,
24 because they were busy or something came up where they
25 couldn't do it right away, we had the city police,

1 Investigator Kern completed the search warrant as far as
2 dumping the phone.

3 Q Okay. So you were able to obtain a lawful search
4 warrant?

5 A Yes.

6 Q And you provided information that was your personal
7 knowledge about the case to the magistrate for which that
8 warrant was presented?

9 A Yes, ma'am.

10 Q And after you obtained that search warrant, at that
11 point, you went to have it executed; is that correct?

12 A Yes, ma'am.

13 Q And with respect to the Sheriff's Office and the
14 Greenville City Police Department, how are they located?
15 Where are they located? Same building?

16 A Yeah. Are you talking about who -- who will dump the
17 phones? Is that what you're asking me?

18 Q Well, you told us sometimes you go to county but
19 sometimes you might go to the police department?

20 A Yes, ma'am.

21 Q Are y'all in the same building?

22 A So the county, half of us is in the other building at
23 that County Square, so the guys who actually would --
24 normally would dump the phone, they're actually in --
25 they're located in County Square. The city, they're in the

1 same building as we are.

2 Q Okay. So Detective Kern was closest?

3 A Yes, ma'am.

4 Q And convenient?

5 A Yes, ma'am.

6 Q And once he executed the search warrant, did you
7 receive any information from him?

8 A I did.

9 Q And what did you receive?

10 A I received two disks that had the information from the
11 cell phone from the search warrant I obtained.

12 Q And once you got that information, what did you do
13 with it?

14 A I put it in my computer and started looking at it.

15 Q Okay. When you did, what did you observe on that
16 phone specifically with respect to the images that you saw?

17 A Sure. There was a photo of a black male with dreads,
18 and he was wearing a large camouflage coat, and he was
19 holding up some money. I believe they were wrapped in
20 rubber bands. Mostly ones and fives, I believe.

21 And when I saw that image, I knew, from the -- from
22 what I, you know, had been told from who the suspects were
23 in this case and even after speaking with one of the
24 victims in this case, I knew that the -- one of the
25 suspects was a black male with a large camouflage coat.

1 Q And I'm going to show you what's already been
2 introduced as State's 46, I believe. Is this the phone for
3 which you were requested to get a search warrant and did,
4 in fact, analyze?

5 A Yes, ma'am.

6 MS. SIMPSON: Beg the Court's indulgence.

7 BY MS. SIMPSON:

8 Q Okay. And, again, you assisted with a number of other
9 tasks in this case as well?

10 A Yes, ma'am.

11 Q But with respect to the search warrants and actually
12 obtaining the analysis from a -- for this search warrant of
13 that phone, that would be the extent of that?

14 A Yes, ma'am.

15 Q I'm going to show you what's been marked ---

16 MR. FRETWELL: Judge can I just interrupt the
17 proceedings for just a moment? I just looked back. I
18 notice that we have two of our civilian witnesses. One of
19 them is a victim in the case, another one is a witness that
20 are in the courtroom. I don't -- I don't know that I fully
21 understand the request by the defense initially to
22 sequester witnesses. I want to make sure that we're not in
23 any kind of situation.

24 THE COURT: Are they planning on testifying in this
25 hearing?

1 MR. FRETWELL: Not in this hearing, no. Thank you.

2 (WHEREUPON, Court's Exhibit No. 1 was marked for
3 identification.)

4 BY MS. SIMPSON:

5 Q Investigator Owens, I'm going to show you what has
6 been marked as Court's Exhibit 1. Do you recognize that?

7 A I do.

8 Q And what is it?

9 A This is the search warrant I obtained on January 24th.

10 Q And does it fairly and accurately contain and depict
11 the information that you gave and received?

12 A Yes, ma'am.

13 MS. SIMPSON: Your Honor, at this time, I'd like to
14 hand the search warrant up for your review.

15 THE COURT: I've got a copy of it from Mr. Yarborough.

16 MS. SIMPSON: And, Your Honor, at this point,
17 Investigator Owens has information specifically to the
18 conversation in what would be Denno had Gadsden been here.
19 However, on Mr. Yarborough's search warrant issue, I'm a
20 little confused or perplexed as to how far we need to go
21 with this witness. I believe he's addressed the search
22 warrant, that he obtained it lawfully. So I don't know in
23 addition to his motion exactly what he's arguing with
24 respect to his search warrant. But I believe I may be done
25 with this witness.

1 THE COURT: All right. Well, if you're done ---

2 MS. SIMPSON: At this time.

3 THE COURT: --- we'll let Mr. Yarborough question him.

4 CROSS EXAMINATION

5 BY MR. YARBOROUGH:

6 Q Investigator Owens, you wrote the probable cause
7 affidavit for the search warrant?

8 A I did.

9 Q Okay. And do you have a copy of it with you?

10 A I do not.

11 MS. SIMPSON: I think I took the Court's exhibit copy,
12 which happens frequently.

13 BY MR. YARBOROUGH:

14 Q And the probable cause for this search warrant is
15 found where in this affidavit?

16 A The second page where it's -- halfway down. A little
17 more than halfway down.

18 Q Okay. And so you're the affiant that says that an
19 armed robbery had been reported, right?

20 A Yes, sir.

21 Q And it was found that a towel was used to prop open
22 the front door?

23 A Yes, sir.

24 Q Which allowed the suspect to enter the restaurant,
25 right?

1 A Yes, sir.

2 Q The investigation revealed the only three employees
3 were inside the restaurant during the time of the robbery,
4 and it is believed the incident is a result of an inside
5 job, right?

6 A Yes, sir.

7 Q And one of the employees inside the restaurant during
8 the time of the incident, James Damon White, was questioned
9 about his involvement in the incident, and the listed cell
10 phone was seized, right?

11 A Yes, sir.

12 Q Okay. In order to complete a fair and thorough
13 investigation, a search of this cell phone is needed.
14 Where in this affidavit is there anything that says that
15 fruits of some type of crime would be found in that cell
16 phone?

17 A Well, based on my -- on several cases that I have
18 worked, that the -- when there is a robbery in this
19 situation, I have worked many cases where there are inside
20 jobs. So the reason to search his cell phone is because he
21 was an employee, and we had belief that it was an inside
22 job, that there would be evidence on that phone.

23 Q Where is it -- exactly where does it say that in the
24 affidavit, that based on your experience, you've had this
25 type of investigation? Where does it say that?

1 A It doesn't say that in there.

2 Q No.

3 And so exactly where does it say that there might be
4 fruits of some type of crime on that cell phone?

5 A It does not.

6 Q It doesn't say anything like that.

7 A No, sir.

8 Q And so exactly what was the magistrate's -- well, you
9 don't know. This is just what you presented to the
10 magistrate.

11 A Yes, sir.

12 Q Okay. And that was done when?

13 A That was signed January 24, 2014.

14 Q That was two days after the robbery?

15 A I don't know when ---

16 Q You don't know when the robbery was?

17 A No. I mean, if you can give me the date.

18 Q And how did this particular cell phone get tied to
19 this robbery?

20 A What do you mean?

21 Q The cell phone that you searched or got a search
22 warrant for, how did you tie it to this robbery?

23 A There's evidence on the phone that ---

24 Q Yeah. Where does it -- where does it say that?

25 A I don't -- I don't understand what you're trying

1 to ---

2 Q Well, I mean, you got the search warrant, right?

3 A Yeah. I got the search warrant because I was asked to
4 get the search warrant.

5 Q You were asked to get the search warrant.

6 MS. SIMPSON: Your Honor, if he would just let the
7 witness complete his answer, perhaps he would get it.

8 THE COURT: You don't need to repeat what ---

9 BY MR. YARBOROUGH:

10 Q Go ahead.

11 A So when I was asked to get the search warrant on the
12 phone, I obtained the search warrant on the phone. I had
13 information from speaking with Sergeant Weiner and
14 investigators about why we were getting the search warrant
15 on the phone.

16 Q Okay. And that information was put in this affidavit
17 where?

18 A It says it was -- the information is right here when
19 it says that during this investigation, it was found that a
20 towel used -- that was the reason we got the search warrant
21 on the phone is because we believed that the defendant was
22 -- it was an inside job by him.

23 Q And where does it say that?

24 A It says, "One of the employees inside the restaurant
25 during the time of the incident, James Damon White, was

1 questioned about this -- involvement in this incident, and
2 the listed cell phone was seized from his person."

3 Q Okay. So the phone was taken from him. And how does
4 that phone tie to the robbery right there in that
5 affidavit?

6 A Because we are -- we are trying to solve the robbery,
7 and in doing some of these things is we -- if somebody has
8 an inside job, if someone has knowledge of the robbery,
9 we're going to -- we're going to seize that phone to either
10 disprove that or prove it.

11 Q Right. And that's based on what? Your experience?

12 A Yes, sir.

13 Q And where does it say you have experience doing
14 anything like that in this search warrant?

15 A I've already answered that question. It doesn't.

16 Q It doesn't?

17 A No.

18 Q Okay. So it doesn't say your experience?

19 A Correct.

20 Q It doesn't say why your experience finds that there
21 may be evidence of a crime on that search warrant, right?

22 A Yes, sir.

23 Q And it doesn't say how the phone was tied to the
24 crime?

25 A Well, I believe how the phone was tied to the crime is

1 -- is in there.

2 Q Okay. Where is it?

3 A I was explaining it to you. He is a -- he was -- he
4 was there when the robbery happened. It was an inside job
5 because we -- there was a towel [sic] that was propped
6 open. The only way the person got into the Olive Garden is
7 by this towel's propped open -- the towel was used. So
8 therefore, we decided that the three people inside the
9 restaurant may or may not have left that towel in there,
10 okay?

11 So we're -- we have, based on that -- that fact --
12 because I've worked cases like that before. I know it -- I
13 know it's not in there, but I have, that people who will
14 work for a business will use items to help their, you know,
15 conspirator out, okay? And in this situation, we didn't
16 know if he was involved in it or was not involved in it;
17 therefore, to -- again, to prove or disprove, we took his
18 phone, seized his phone in order to see if there was any
19 information on the robbery that was on his phone.

20 Q Do you know that cell phones are protected under the
21 United States Constitution?

22 MS. SIMPSON: Objection, Your Honor.

23 MR. YARBOROUGH: I don't have any further questions.

24 THE COURT: All right. Anything, Ms. Simpson, now
25 that you know where Mr. Yarborough is going?

1 MS. SIMPSON: I'm sorry?

2 THE COURT: Now that you know where Mr. Yarborough is
3 going. Assume you might.

4 MS. SIMPSON: I still only kind of know, but just one
5 brief question on redirect.

6 REDIRECT EXAMINATION

7 BY MS. SIMPSON:

8 Q With respect to getting search warrants throughout the
9 course of any investigation, have you completed your
10 investigation all the time? Do you know all the facts and
11 circumstances and what evidence will be important that were
12 found?

13 A No.

14 Q And in phones or in cases such as this, is it common
15 for information related to a crime to be found on a cell
16 phone?

17 A Yes, ma'am.

18 Q And in this case, were you aware that it was an inside
19 job potentially based on the facts that you had?

20 A Yes, ma'am.

21 Q And was that information contained in the search
22 warrant itself?

23 A Yes.

24 Q And James White was one of the employees that was
25 inside the location at the time of the robbery, correct?

1 A Yes, ma'am.

2 Q And you took all that information before the judge who
3 issued a lawful search warrant?

4 A Yes, ma'am.

5 MS. SIMPSON: Nothing further, Your Honor.

6 RECROSS EXAMINATION

7 BY MR. YARBOROUGH:

8 Q What other employees' phones were searched?

9 A I -- I can't answer that, sir.

10 Q You didn't do any other?

11 A No, sir.

12 MR. YARBOROUGH: Thank you.

13 THE COURT: Did you have some private conversation
14 with this judge at the time you were taking the affidavit
15 up?

16 THE WITNESS: Private ---

17 THE COURT: Did you discuss the case with the judge at
18 the time?

19 THE WITNESS: Sure. Yes, sir. Yes, sir...

20 THE COURT: And did you orally tell him anything in
21 addition to what was in the affidavit?

22 THE WITNESS: I can't answer that question. I don't
23 know because it's been -- usually how I'll do it is I'll go
24 -- I'll show my search warrant, and then I will talk about
25 the case to the judge.

1 THE COURT: All right. Well, Ms. Simpson just asked
2 you a number of things based on your experience and
3 knowledge about this case is that you considered in seeking
4 to get the affidavit that is not replicated in the
5 affidavit -- I mean so you can get the search warrant. Is
6 that the kind of stuff you talked to the judge about ---

7 THE WITNESS: Yes, sir.

8 THE COURT: --- in addition to what you put in the
9 affidavit?

10 THE WITNESS: Yes, yes. Yeah. Yes, sir.

11 THE COURT: All right. Anything further?

12 MS. SIMPSON: No, Your Honor.

13 THE COURT: Anything?

14 MR. YARBOROUGH: No, sir, Your Honor.

15 THE COURT: All right. You may step down.

16 MR. FRETWELL: Your Honor, the State would call
17 Sergeant David Weiner.

18 WHEREUPON,

19 DAVID WEINER,

20 After having been duly sworn, testified as follows:

21 THE CLERK: Will you state your full name for the
22 record.

23 THE WITNESS: David William Weiner.

24 THE CLERK: Thank you.

25 MR. FRETWELL: May it please the Court.

DIRECT EXAMINATION

BY MR. FRETWELL:

Q Sergeant Weiner, how long have you been employed as a Greenville County Sheriff's deputy?

A 16 years.

Q And what is your current position with the Sheriff's Office?

A I'm a sergeant in the Criminal Investigations Division specifically assigned -- one of the units I'm assigned to is Armed Robbery.

Q And on January 22, 2015 [sic], which is two days after the robbery, did you meet with Investigator Motes and the defendant James White at the Law Enforcement Center in the Robbery office?

A You said '15. We're in twenty --

Q I said '15?

A Yes, sir. I think 2014; is that correct?

Q It is. I'm sorry. I have the wrong ---

A On January 22, 2014, I met with Mr. White. Yes, sir.

Q Thank you.

How did that meeting come about?

A I believe Investigator Motes had spoken with him, I don't know how, by telephone or if he went out there to his house. I don't know. And then Mr. White had agreed to come to the Law Enforcement Center.

1 Q In other words, you didn't call Mr. White and make
2 that invitation on behalf of the Sheriff's Office; is that
3 correct?

4 A Correct.

5 Q Okay. At the time of that interview on the 22nd of
6 2014, who was the lead investigator in that case?

7 A Investigator Motes.

8 Q Okay. And you were his sergeant; is that correct?

9 A Yes, sir.

10 Q All right. To your knowledge, in what capacity was
11 White being interviewed at that time?

12 A As a witness or a victim of a crime.

13 Q Was Defendant White under arrest ---

14 A No, sir.

15 Q --- at the time that he arrived?

16 A No, sir.

17 Q Okay. And was he placed in handcuffs?

18 A No, sir.

19 Q Did you communicate anything to him that might suggest
20 to him that he was not free to leave?

21 A No, sir.

22 Q Okay. Can you identify Mr. White for the jury -- or
23 for the judge?

24 A Yes, sir. Dark blue spotted shirt with a light blue
25 bow tie.

1 Q The defendant?

2 A Yes, sir.

3 Q Who was present when Ricky Motes and yourself
4 interviewed this defendant?

5 A We were the focus of the conversations. I'm not sure
6 if anybody else was there. Investigator Owens may have
7 been in and out, Investigator McCaw [phonetic] may or may
8 not have been in the office at that time. Open door. I
9 don't know who was in or out.

10 Q But this wasn't in an interview-type room where
11 there's a door and a window and all of that.

12 A No, sir.

13 Q Okay. So this interview is taking place actually in
14 the place where you work every day?

15 A Correct.

16 Q At your desk?

17 A Yes, sir.

18 Q Okay. Prior to the interview or during the course of
19 that interview, did Mr. White provide to Investigator Motes
20 a handwritten statement?

21 A In the midst of the interview, yes, sir. He did. He
22 wrote out a statement.

23 Q And is that -- I think we've -- it might be 44.

24 A 43.

25 Q 43.

1 Is that the statement that Mr. White wrote out and
2 provided to Investigator Motes, Sergeant Motes now?

3 A Yes, sir.

4 Q Okay. Do you recall -- well, first of all, what was
5 your first interaction with the defendant when he arrived
6 at the LEC that day in the noon hour?

7 A He was brought down to the office. I don't know who.
8 I thought Investigator Motes had gotten him. He'd come in.
9 They started talking, introducing, and he was a little kind
10 of defensive, Mr. White was. And so I just asked him, I
11 said -- I wanted to kind of get the tone of how the rest of
12 the day was going to go. I said, "Mr. White, how did you
13 get here today?" And he told me he caught a ride. And I
14 said, "Now, come on. You know we've got cameras up there."

15 And he said, "All right. I drove."

16 There was no threat of arrest, there was no
17 insinuation he could be arrested. Driving under suspension
18 is the absolute least of my worries. I'm not even a
19 hundred percent sure I even said anything to him that his
20 license was suspended. I just asked him, "How did you get
21 here?" I just wanted to see if he was going to be truthful
22 with us today with one question.

23 Q Why do you do that?

24 A Just to get a feel for who he is and -- and what his
25 intentions are while he's in our office. And to me, he

1 displayed that he was there to lie.

2 Q At the time that he produced this statement, did you
3 and/or Investigator Motes ask him any kind of follow-up
4 questions?

5 A Initially, Investigator Motes, I think, was trying to.
6 I -- I did ask him a couple questions. There was a delay
7 between when he said he would agree to take the polygraph
8 to when they can get set up.

9 Q I'm talking about before he goes down to the
10 polygraph, okay?

11 So he's written this statement that you've identified,
12 and he hands that to Investigator Motes. Maybe you've seen
13 it at that time. Did you ask him some follow-up or
14 additional questions, you yourself?

15 A The only questions I remember asking him that day were
16 about ---

17 Q The money.

18 A --- some money that he'd come into.

19 Q Right, right. But before we get into what you asked
20 him, at the time that you asked him those questions, that
21 was after he had written this statement; is that correct?

22 A Yes. Yes, sir.

23 Q Was he restrained at that time?

24 A No.

25 Q Did you allow him to take any breaks while or before

1 you talked with him?

2 A I don't remember him taking any, but if he asked if he
3 can have it, he can do as he pleases.

4 Q How close is your office to a restroom?

5 A It's halfway down the hallway of the Law Enforcement
6 Center.

7 Q That's a secure building. Are there locked doors
8 between your office and the restroom?

9 A No, sir. And, in fact, much closer than the restroom
10 is the exit. I mean, there's a door. I think it's locked
11 from the outside, but from the inside, you just push it
12 open.

13 Q And a fire door right there to the left as you come
14 out of your offices?

15 A Yes, sir.

16 Q And at any point, did you hear the defendant make any
17 requests of either you or Investigator Motes with respect
18 to bathroom? water? I'm going to go walk around? I want to
19 smoke a cigarette? Anything like that?

20 A Not that I can recall.

21 Q Okay. Did you or anyone promise the defendant
22 anything in exchange for him talking to you?

23 A No, sir.

24 Q And did you coerce or threaten him in any way to make
25 that statement?

1 A No, sir.

2 Q To the best of your knowledge, were his statements,
3 both the one that was in written form and also the
4 statements he's made to you in response to some of your
5 questions, given freely and voluntarily?

6 A Yes, sir.

7 Q All right. Did you come into possession of the two
8 cell phones indicated as DW-1 and DW-2 during the course of
9 the interview?

10 A Yes, sir.

11 Q Okay. With respect to State's 45, how did you
12 designate that for purposes of Property and Evidence and
13 storage and all of that? How did you indicate that?

14 A I labeled it with my initials, DW, and then 1 being
15 the first piece of evidence that I had taken custody of for
16 the case.

17 Q All right. And then State's 46, that would be the
18 Samsung phone. You labeled that one as DW-2?

19 A Correct, sir. Just being the second piece of evidence
20 that I had come into possession of related to the case.

21 Q All right. Let me ask you, first of all, how did --
22 just to get a sense of order, did you ask him questions
23 about the money before or after he turned over a cell phone
24 to Investigator Motes? Do you recall?

25 A I don't recall in what stage of the interview it was,

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1 to be honest with you.

2 Q Okay. Well, then I'll just handle it this way. Let
3 me ask you first about the cell phones and then we'll move
4 to these questions.

5 A Yes, sir.

6 Q With respect to the first cell phone indicated DW-1,
7 have you seen the item that's marked as, I believe, State's
8 Exhibit -- the consent ---

9 A It's not up ---

10 THE COURT: I gave it to the clerk.

11 BY MR. FRETWELL:

12 Q --- State's Exhibit 44?

13 A Yes, sir.

14 Q Okay. Did you fill out that left portion of that
15 consent?

16 A I did.

17 Q Okay. And I can't remember. Is your signature on
18 there somewhere?

19 A It is not. I just know that's my handwriting.

20 Q Okay. All right. Tell us, number one, how -- were
21 you a witness to how Investigator Motes came into
22 possession of that first cell phone, DW-1?

23 A Yes, sir.

24 Q Okay. And tell us how that came about, and tell us
25 what you did as a result.

1 A Mr. White just had the cell phone in his hand.
2 Investigator Motes asked him, "Do you mind if we take a
3 look at your cell phone?" And he said it wasn't a problem
4 and turned it over.

5 We have these forms for a reason, to protect us
6 against the consent issue. So I filled it out based on
7 that telephone and then brought it to Investigator Motes to
8 have him sign it, and Mr. White signed it.

9 Q And we may be skipping ahead here, but at some point,
10 did the defendant also produce a second cell phone
11 identified as State's Exhibit 46 or DW-2?

12 A Yes, sir.

13 Q Okay. And how did Investigator Motes come into
14 possession of that particular phone?

15 A My recollection on that was I can remember Mr. White,
16 he was sitting down in a chair, and he stood up. And he
17 reached in a pocket and pulled out a phone and said, "This
18 is an old phone I haven't used for a while." I was behind
19 him so his back was facing me. But it was very shortly
20 after this first phone.

21 Q Okay.

22 A But I had this form already filled out and had
23 delivered it to Investigator Motes and put it on his desk.

24 Q Do you recall whether or not -- well, let me ask you
25 this. Did you hear the defendant give permission or

1 consent to Investigator Motes to search both of these
2 phones?

3 A Yes, sir.

4 Q Do you recall whether he signed the form before or
5 after the additional phone was listed on there by
6 Investigator Motes?

7 A I don't know, sir.

8 Q Okay.

9 A I'm not a -- I can't truthfully answer that.

10 Q With respect to the questions that you asked of
11 Mr. White relating to money, first of all, tell the Court
12 what question you asked and why you asked it.

13 A I'd asked him about several thousand dollars I thought
14 that he had received several days -- just a couple days
15 prior to the robbery event. And I had asked that because I
16 had already spoken to a witness who had come in and given a
17 statement that Mr. White had approached him immediately
18 preceding the robbery and mentioned to him that he'd gotten
19 several thousand dollars at a rap concert of which he
20 rapped a couple days earlier.

21 Q Okay. And how did Mr. White respond to your question?

22 A He told me that he'd gotten \$7,500 rapping at a
23 concert in Charleston and that he'd received the money from
24 ticket sales, like door sales, people to get an.

25 Q Okay. And at some point thereafter, did he go down to

1 take the polygraph test?

2 A He did, yes, sir.

3 Q All right. And did you look through his Kyocera
4 phone?

5 A I did. Yes, sir.

6 Q Okay. And what of any note did you see when you were
7 looking through his phone?

8 A There was a flyer for that rap concert in the phone.

9 Q And did you know that based on the date?

10 A I believe it has a date on it. Yes, sir.

11 Q Did you contact the show promoter or the telephone
12 number on the phone?

13 A I called the -- I don't know if it was the promoter.

14 I called the phone number that was listed on the flyer.

15 Q Okay. And did you have a conversation with him about
16 what Mr. White had informed you?

17 A Yes, sir.

18 Q Okay. Just a second.

19 It just occurred to me that I'm asking you questions
20 in anticipation of a Jackson v. Denno, which we're not
21 doing this morning, so I'm going to move on.

22 But let me ask you with respect to did you do anything
23 with respect to the Samsung phone? Did you look through
24 that or flip through that at this point on the 22nd when
25 you were interviewing Mr. White?

1 A I did not.

2 Q Okay. As a result of that information that was
3 written in, I guess, different ink on that exhibit, did you
4 make a decision about whether to obtain a search warrant on
5 that second phone?

6 A Yes, sir.

7 Q And tell the Court why you did that.

8 A I think you've seen the form, sir. It just didn't
9 look right. To me, it looked like defense could make a
10 wonderful argument about how we added that long after the
11 fact. And so I asked Investigator Owens, Hey, help us out
12 and let's get a search warrant because I don't like the way
13 this consent form looks, it being in different ink and
14 different handwriting.

15 Q And Investigator Owens has testified that he went to
16 Judge Hudson and secured that search warrant; is that
17 right?

18 A Yes, sir. We generally specifically use Judge Hudson
19 because he's very objective. We've had him turn things
20 down before, so I always like to use him.

21 Q Is Judge -- you're familiar with Judge Hudson? He
22 knows you're the Robbery Division?

23 A Yes, sir.

24 Q He knows the people in your unit?

25 A Yes, sir.

1 Q Is this the first time you've ever taken a phone to
2 him and asked if you could search that phone?

3 A I've probably done it hundreds of times.

4 Q Did you -- after the polygraph was completed and
5 Mr. White came back upstairs, do you know approximately how
6 long that polygraph process took?

7 A I don't remember in this specific incident. I do know
8 generally, as a rule of thumb, they take a couple hours,
9 hour and a half, two hours.

10 Q Okay. By the time he came back to your office in that
11 afternoon at some point, was he eventually arrested for --
12 and I mean "he," I mean Mr. White eventually arrested for
13 driving under suspension?

14 A Yes, sir.

15 Q Why?

16 A It became apparent after the polygraph, after calling
17 that promoter, that Mr. White was being very untruthful,
18 and I felt very convinced that he was involved with the
19 inside portion of this armed robbery. And my hope was to
20 -- we had a probable cause charge for driving under
21 suspension to put him in jail, and then that would allow us
22 the time without him fleeing or going somewhere for us to
23 make this robbery case. But it took us a lot longer to
24 actually make the case.

25 Q How soon after he went in jail did he get back out; do

1 you recall?

2 A I don't know the answer to that, sir. I don't know if
3 it was that night or the next day. I don't know.

4 Q Could you compare Mr. White's demeanor at the
5 beginning part of the interview when he turned over these
6 phones and his demeanor once he returned from the
7 polygraph?

8 A When he initially came in, he was -- I guess the term
9 I would use would be cavalier. I found it kind of odd.
10 Usually victims or witnesses have never been through
11 anything like this. They just listen to Investigator Motes
12 and they'll take their statement. And we go through a
13 whole talk about I'm going to type this for you; however,
14 you're going to read it, you're going to have the
15 opportunity to make any corrections, deletions, additions,
16 and I'll even keep those old ones so people know what we
17 fixed.

18 It was kind of like to me like he wanted to run the
19 show. He wanted to guide which direction we were going to
20 go. At the end, he was borderline combative. I was
21 actually kind of concerned that he might -- yelling,
22 raising his voice. It was a totally different situation
23 after the polygraph. And that was after we confronted him
24 with the results.

25 Q After you had told him that he did not perform well on

1 the polygraph?

2 A I think the term they use is "deception is indicated."
3 There's like a rating, and he was not good.

4 Q Okay. Was he further cooperative with you after that
5 point?

6 A No. Not at all.

7 Q Okay. So the end of your interview is basically when
8 he was arrested and taken to the LEC; is that right?

9 A Well, we were at the LEC.

10 Q To the jail.

11 A To the detention center.

12 Q To the detention part of the LEC.

13 Before he went down to the polygraph, with respect to
14 looking at these phones and the fact of taking the
15 polygraph itself, what was his demeanor with respect to his
16 decision to do those things?

17 A Like I said, I think he was cavalier, was the term I
18 used. He was cooperative.

19 Q And there was a point at the end where he was not
20 cooperative and wouldn't respond to anything?

21 A Yes, sir.

22 MR. FRETWELL: I'm separating in my mind. We're not
23 doing the Jackson v. Denno. I think I'm done with all the
24 questions that I need to ask you. Please answer any
25 questions that Mr. Yarborough has for you.

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1 THE WITNESS: Yes, sir.

2 CROSS EXAMINATION

3 BY MR. YARBOROUGH:

4 Q In your report that we discussed earlier, the first
5 line in your report discusses that you knew he had -- did
6 not have a driver's license.

7 A That's correct. I had -- before he came in, I had
8 just pulled a DMV report just to see his picture, see what
9 he looked like so I knew who we were talking to when he
10 came in. And I noted on there that it said status was
11 suspended.

12 Q And you asked him about that immediately, is that
13 correct, when you got down there?

14 A That was my first question. He had been down there
15 probably a minute or two, two or three minutes, maybe.

16 Q You'd been down there two or three minutes and you
17 asked him about how he got there?

18 A Yes, sir.

19 Q Okay. And you told him you had a camera out in the
20 parking lot and you could check?

21 A He told me that he'd gotten a ride. And just like I'm
22 talking to you, I said, "Come on, you know we've got
23 cameras out there."

24 And he said, "All right. I drove."

25 And that was the absolute end of that discussion.

1 Q Did you ask him about a rap concert that he had had
2 down in Charleston that last Saturday night? Is that
3 correct?

4 A I did. That was probably, if I had to guess, 15,
5 20 minutes later.

6 Q Okay. And then you told him that you wanted him to
7 take a polygraph; is that right?

8 A I was not involved. Investigator Motes had asked him
9 about that, if I recall.

10 Q Okay. Who made contact with Investigator Laura Jones,
11 the polygrapher person?

12 A I did. Investigator Motes was talking to Mr. White,
13 so I just picked up the phone and called her and asked her
14 if she had the opportunity -- or the time to run a test for
15 us.

16 Q Is it safe to say that things got a little bit
17 combative between you and Mr. White and Mr. White and
18 Mr. Motes, all three of you as you were down there
19 discussing this robbery?

20 A Not until after the polygraph. That's when I --
21 that's when, to me, I think "combative" would be the word
22 for the way he was acting. Yes, sir.

23 Q Okay. But y'all were -- there was no argument about
24 this driving under suspension?

25 A Zero.

1 Q At the time that you knew he was under suspension and
2 that he had driven down there, he was not going to leave
3 that room without being charged, was he?

4 A Well, that's up to him. I didn't expect him to end up
5 like that or indicate deception.

6 Driving under suspension is not something that we
7 generally charge in the Robbery office. It's a very rare
8 occurrence for us.

9 Q But you asked him about it and you checked on it. And
10 so you had a person that was -- that had driven a car down
11 there, and you wanted to ask him more questions, so you
12 made a veiled threat at that point that you were going to
13 place him under arrest.

14 A Zero. Absolutely did not.

15 Q And you're telling me he would have walked out of
16 there that day if he'd have passed that polygraph with the
17 driving under suspension?

18 A Absolutely. It's not my intention to lock him up for
19 that. If I could tell you how many times you come across a
20 16 -- or not 16 -- let's say an 18-year-old high school kid
21 with a bag of marijuana and you start talking to him and
22 you put it in P&E for destruction. You want to help him
23 out. Mr. White, you know, he's a dishwasher at Olive
24 Garden.

25 Q You didn't -- you didn't call and try to contact the

1 owner of that vehicle, Katrina?

2 A I think at some point we did call her. Once we knew
3 that he -- you know, we're towing your car, this is what's
4 going on, we'll let her know.

5 Q All right. So at some point while he's down there,
6 y'all contact Katrina and -- to find out what her car's
7 doing down there?

8 A That was, I think, after he was already under arrest.
9 That was all at the end.

10 Q You're saying that happens after the fact? That
11 doesn't happen while he's taking the polygraph?

12 A I do -- I don't know that I even called her. She was
13 called. I don't remember when it was, but I think it was
14 after he was under arrest, if I recall.

15 Q Okay. And you're -- did you call him and ask him to
16 come down there or did --

17 A I'm pretty sure Investigator Motes did. I didn't have
18 any communication with him till he was down at the Law
19 Enforcement Center.

20 Q Were you at the scene that night?

21 A No, sir.

22 Q You were not at the scene that night.

23 How did you get the case?

24 A Investigator -- well, so the way it works is it's all
25 computer system, but it will tell me here's the cases that

1 have come in from the night before, and I assign them out
2 to investigators after reading them. And I assigned it to
3 Investigator Motes.

4 Q But he told you that when the door out there shut, it
5 locked, talking about the restaurant.

6 A Can you explain who you're talking about when you say
7 "he"?

8 Q Mr. White.

9 When you were interviewing Mr. White, he told you the
10 door shut, that he left. Or the door shut after Riley
11 left.

12 MR. FRETWELL: Judge, I'm confused as to who ---

13 BY MR. YARBOROUGH:

14 Q Didn't you interview Mr. Riley about ---

15 A Okay. I did interview Mr. Riley about the door. Yes,
16 sir.

17 Q Okay. And Mr. Riley told you that the door shut that
18 night; isn't that correct?

19 A Yes, sir.

20 Q And did you ask Mr. White about how the door worked?

21 A I don't specifically remember asking him, but I'm sure
22 he was asked that. It's a logical question to ask him if
23 he knew how that door operated.

24 Q Did you ask him to give you a description of the
25 person that robbed the place?

1 A I did not, sir.

2 Q Did somebody ask him?

3 A Absolutely.

4 Q And so what was your role? Was your role just to try
5 to pressure him with the driving under suspension to get
6 him to take the polygraph? What was your role in this
7 investigation?

8 MR. FRETWELL: Objection, Your Honor, to the compound
9 nature of the question.

10 BY MR. YARBOROUGH:

11 Q What was your role ---

12 THE COURT: I don't know what the -- what does that
13 have to do with anything, what his role was?

14 MR. YARBOROUGH: Well, I -- I'll move on, Your Honor.

15 BY MR. YARBOROUGH:

16 Q You were fairly certain after looking at the consent
17 form and the way it was written, I think your testimony was
18 that there was probably going to be a problem with this
19 consent form and that you needed to get a search warrant.

20 A I felt more comfortable with a search warrant on the
21 second one. Yes, sir.

22 Q On the second phone?

23 A Correct.

24 Q And so you're the one that provided the information to
25 Sergeant -- or Investigator Owens that he put in the

1 affidavit for the search warrant?

2 A I don't know if it singly came from me. The way that
3 office works is we all discuss all our cases. It's an open
4 forum, so he knows the details of the case. I can
5 say ---

6 Q But you thought it was a problem so you wanted to get
7 a search warrant?

8 A As far as the consent searches, I just didn't like the
9 darker ink and different handwriting. I didn't like that,
10 so I asked them. One of the things as a sergeant, you make
11 sure things go right.

12 Q Right. And why did you think it was a problem? Just
13 because of the ink?

14 A Right. Because it's in a different color as the
15 second phone -- or, I'm sorry, the Kyocera is in a lighter
16 ink that I wrote. The Samsung is in a darker ink that
17 Investigator Motes wrote.

18 Q Okay. And Investigator Motes is the one that signed
19 it?

20 A Correct.

21 Q So what you're saying is that Mr. White filled out the
22 form in the lighter ink.

23 A No, no. I filled out the form in the lighter ink, and
24 where it says "signature," the whole bunch of arches there,
25 in fact, to me looks like it's in the darker ink. In fact,

1 it is. It's that same pen that Investigator Motes has.

2 Q Okay. But when he signed it, he signed it in the
3 lighter ink.

4 A No. I filled out the lighter ink. He -- he signed in
5 darker ink.

6 Q You're saying that's darker ink where -- where ---

7 A Yeah. His -- that -- I guess the signature that he
8 writes, that, to me, is the darker ink. Absolutely.

9 Q Where it says Investigator Motes, 251-623?

10 A Yes, sir.

11 Q You wrote that?

12 A No. Motes did.

13 I'm not understanding your question then. I'm sorry.

14 Q So Investigator Motes wrote that?

15 A Yes. He wrote his name and the address.

16 Q Right. And he also wrote the -- filled in the second
17 phone?

18 A Yes, yes.

19 Q Okay. And that was done after Mr. White signed
20 the ---

21 A I don't know the order. But, like I said, Mr. White's
22 signature is in the darker ink.

23 Q Okay.

24 A It's with that same dark pen.

25 MR. YARBOROUGH: I don't have any further questions.

1 MR. FRETWELL: Just very briefly. I want to ask the
2 officer . . .

3 REDIRECT EXAMINATION

4 BY MR. FRETWELL:

5 Q Because Mr. Riley -- or Mr. Yarborough brought up
6 Mr. Riley, were you also present when Mr. Riley was
7 interviewed?

8 A Yes, sir.

9 Q Did you ask him the same question that you asked
10 Mr. White about his -- how he got to the LEC?

11 A I did. Again, I printed off the picture, saw his
12 license was suspended. One of the first questions, I want
13 to just set the tone, "How did you get down here?" And he
14 told me that his girlfriend had brought him down there, and
15 she was up in the lobby.

16 Q Okay. But Mr. White was by himself; is that the case?

17 A Yes, sir.

18 MR. FRETWELL: Okay. No other questions, Judge.

19 THE COURT: All right. Thank you. You may step down.

20 THE WITNESS: Thank you, sir.

21 MR. FRETWELL: Judge, we don't have any other
22 witnesses for purposes of the search warrant issue. I
23 anticipate perhaps Mr. Yarborough may call his client.
24 Would it be possible for us to take about a two-minute
25 break before he does?

1 THE COURT: Well, let's find out.

2 Are you calling any witnesses? I guess he wasn't
3 until you suggested it.

4 MR. FRETWELL: Well, I just -- based on the memo,
5 Judge, I assumed ---

6 THE COURT: The memo seems to argue the last two
7 telephones are the issue. It doesn't seem to be the first
8 two cell phones, to me, in the memorandum.

9 MR. YARBOROUGH: I think I'm going to rely on my memo
10 and rely on the testimony, Your Honor. If you're wanting
11 to hear arguments, I'll ---

12 THE COURT: I'll be happy to hear what -- do you want
13 to take a break?

14 MR. FRETWELL: I do, Judge. And I also want to point
15 out to the Court there's a lot in that memo that is not
16 attributable to any of the police reports. I honestly
17 don't know where it comes from unless it comes from the
18 defendant. So, obviously, if he's not going to call the
19 defendant, I would ask the Court to disregard any of the
20 information.

21 THE COURT: The memo is not evidence.

22 MR. FRETWELL: Yes, sir. Thank you.

23 If we'll take a break, I'll be right back.

24 THE COURT: We'll take about five minutes.

25 (WHEREUPON, a recess is taken at 1:19 p.m.)

1 THE COURT: All right. Mr. Yarborough, do you want
2 to ---

3 MR. YARBOROUGH: Your Honor. In regards to the
4 motion, I think that it is clear that, from my point of
5 view, that once they realized that he was down there, he
6 was driving under suspension, the tone of the discussion
7 changed, and it did become combative, whatever. But I
8 don't believe that he's leaving there with that car out in
9 the parking lot that day. And so everything they're
10 talking to him about are questions that are --- he should
11 have been read his rights, for one thing. Two, the
12 questions they were asking were trying to gather
13 information about the crime that took place at the Olive
14 Garden, and -- but they kind of put him off guard with this
15 problem with driving under suspension.

16 He tried to cooperate and ended up taking a polygraph
17 and ended up allegedly signing a permission to search those
18 phones that were taken from him. One's taken from him, and
19 then they go, "You got anything else on you?" and they take
20 another phone from him. And that one's clearly written in
21 later after he signed the consent to search. I don't think
22 either one of the phones ---

23 THE COURT: Well, I don't think we know that it was
24 written in before because nobody could remember when it was
25 written in. It clearly was written in after the first one

1 was written in, but a different ink and a different
2 individual. But I think the evidence is I don't know
3 whether it was signed before the second one was written in
4 or after it was written in.

5 MR. YARBOROUGH: And I would tell the Court that we do
6 know that answer because that answer is clear from the pen
7 that was used. If you look at that sheet of paper, the pen
8 that ---

9 THE COURT: Well, the only testimony is not what
10 you're saying the evidence shows. The only testimony was
11 from Sergeant Weiner who says it was signed by the thick
12 ink.

13 MR. YARBOROUGH: He said it was signed by different
14 ink later on.

15 THE COURT: The same ink that's -- but put the second
16 phone in is what your client signed. That's what he
17 testified to. They were put in two different times.
18 There's no dispute about that.

19 MR. YARBOROUGH: Right. And what I'm saying is that
20 if they were put in two different times, that they
21 obviously realized there was a problem, and so they got a
22 search warrant. As the testimony was there, I looked at
23 it, I knew it was a problem and so I felt an obligation to
24 get a search warrant. So the police knew there was a
25 problem and they knew that they needed to get a search

1 warrant, which they got a search warrant.

2 Then we go look at that search warrant, and that
3 search warrant's, the four corners on the face, there's
4 absolutely nothing in there that leads one to believe that
5 there's going to be evidence derived from -- evidence that
6 you can find a crime or that that evidence has everything
7 to do with what's on that phone. And you even asked him.
8 They [sic] said, "Well, did you tell him anything more?"
9 They couldn't even say what else they told him. I mean ---

10 THE COURT: Well, I thought he said he told him what
11 he told Ms. Simpson in response to her questions. Did you
12 speak to him about your experience? In general, the
13 evidence will show that the cell phone can be helpful and
14 -- when there's an inside job. I mean, was all this
15 something you considered? And I asked him, did he tell the
16 judge that. And he said, yeah, he told the judge that.
17 And, of course, it would have been under oath because he
18 swore at the time he signed the affidavit.

19 Here's the situation as I see it. And if y'all have
20 any case law, I want you to get it. I've read your
21 memorandum, Mr. Yarborough, and your memorandum appears, to
22 me, to basically focus on those second two phone that they
23 admitted. I mean, that primarily is what you were coming
24 in here to try and get. I guess you thought maybe some of
25 that information that they're relying on that was on Cell

1 Phone No. 2 might have been on Cell Phone 3 or 4.

2 MR. YARBOROUGH: Correct.

3 THE COURT: But the testimony is uncontroverted that
4 your client consented to the cell phones being turned over,
5 both cell -- first 1 and 2. Orally, he orally
6 consented ---

7 MR. YARBOROUGH: Orally.

8 THE COURT: --- consented to. He signed a statement
9 saying he consented to that seems to be uncontroverted that
10 Cell Phone No. 1, he signed it.

11 MR. YARBOROUGH: Okay.

12 THE COURT: There is some question as to the law
13 enforcement says he consented to the second one, and when
14 they did, they filled it in. Now, whether the consent form
15 was signed by your client after the second phone was filled
16 in or before, I don't know. That's a question of fact that
17 I don't have any idea.

18 The sergeant says, "I've decided that there's a
19 potential problem with this consent form, so I sent
20 somebody to get an affidavit." Well, I guess it's a
21 potential problem with respect to proof, but it's not a
22 potential problem if, in fact, what they say is true, that
23 he gave consent to the phones. I mean, you know, I think
24 he's saying, "Man, we've got this form that says in two
25 different inks such-and-such. This may be hard for the

1 jury to buy."

2 MR. YARBOROUGH: Right.

3 THE COURT: "So let's go get a -- let's go get a" --
4 but, if what they say is true, they didn't need any signed
5 form. If he gave oral consent to both phones, they didn't
6 need any consent.

7 Then they go get a -- what do you call it? A search
8 warrant. And the detective says he goes -- the
9 investigator says, I go down -- fill it out and go down
10 there. And basically, this says it's an inside job. And
11 it's not -- it's probably not the most artfully drawn
12 affidavit in the world, but I think it -- I mean, it says
13 that this is an inside job, this is one of the three
14 people, and we got the cell phone, and we want to check it.
15 Well, they're not checking it for any purposes other than
16 what they think it might be helpful in showing whether
17 there's some evidence that will help them solve this crime
18 or some evidence -- they're not just doing this for the fun
19 of it. So, I think, B is led directly from A.

20 And then he says, "And I explain to the judge."

21 You know, these are not lawyers that are getting these
22 affidavits. They are police officers and probably have a
23 -- well, they get lots of them over a career. They
24 probably don't always act as thoroughly as they should
25 have. So I think you've got some problems.

1 But if you've got some cases you want me to look at, I
2 mean, we didn't go into any of the things that you talked
3 about. First thing you start going into, you know, cell
4 phones are protected by the -- you know, they're electronic
5 devices and they're protected by Federal law. Well, that
6 didn't come up in this case, if there's some violation of a
7 Federal law, because they went into the cell phone.

8 And anyway, y'all have -- you got anything else you
9 want to tell me? I think I understand the issues. You
10 need to -- if y'all got some cases that you want me to --
11 that you say that there's improper foundation on this
12 affidavit, that it's not sufficient, then I'll be happy to
13 look at it. I've looked at a number of cases this morning.
14 If you have something that, Mr. Solicitor, you want me to
15 look at, if you got -- I guess you're trying to allege that
16 he was -- and it really is not -- we didn't go into a
17 Jackson v. Denno.

18 So whether they should have mirandized him or not
19 mirandize him is really not before the Court on this issue.
20 And, I guess, if they should have mirandized him, then any
21 fruits as a result of that would not be admissible at that
22 point in time. I think somebody told me at this time he
23 says, "I don't want to talk. I'll write my own statement,
24 but I don't want to answer any questions." Well, you know,
25 do they get to the point, well, hey, we don't believe him

1 right now because he came in and lied right away? And
2 maybe he's going from just a witness and victim to
3 something more, and maybe there's something more than can
4 he get up and leave when he wants to leave or not leave
5 because of that. But that's not an issue before me.

6 So I don't know. If they ask him a question, I just
7 don't know whether the consent -- if there's any way to get
8 around that. And there was nothing, hey, I said he
9 couldn't have it and they forcefully took it from me.

10 MR. YARBOROUGH: I think the consent is on the second
11 -- second phone, Your Honor, where they wrote it in.

12 THE COURT: Well, they -- but nobody said on either
13 phone that they forcefully took it from him, that he
14 resisted, that he didn't want them to have it. The only
15 evidence is he said "yes."

16 But if you've got a case, I need it, and I need it
17 tomorrow. So -- well, I mean, I don't need it tomorrow,
18 but I need it before I leave here.

19 MR. YARBOROUGH: Okay.

20 MR. FRETWELL: I want to respond to something you just
21 said, Judge. I think you're referring to something that I
22 said in chambers, which is not -- it's not accurate in the
23 sense of what the testimony was. And that was I knew there
24 was some point at which, like Sergeant Weiner indicated,
25 the defendant sort of took over.

1 THE COURT: Well, you mean that he said, "I don't want
2 to answer any" -- well, but that's not an issue at this
3 point.

4 MR. FRETWELL: It's not. I just want to make sure I
5 clarify.

6 THE COURT: And I agree. There's no -- there's
7 nothing in the record at this point that he says, "I don't
8 want to answer." But that wouldn't be in the record at
9 this juncture.

10 MR. FRETWELL: Yes, sir. And I think it's mainly a
11 factual divergence. It's really not case driven at this
12 point. There's a disagreement to some extent over how this
13 incident took place. I think the evidence before you is
14 the evidence the State presented. I'm happy to look at
15 additional cases that will address that issue of the
16 affidavit. And if I do find something I want you to
17 consider, we'll get it to you right away.

18 THE COURT: All right. Well, the question is, do you
19 have any cases you're going to want me to look at;
20 Mr. Solicitor?

21 MR. FRETWELL: Only if you want ---

22 THE COURT: I don't want anything. I want -- other
23 than I will look at whatever you give me.

24 MR. FRETWELL: I may pull a case with respect to that
25 affidavit on the search warrant. But more importantly, the

1 case that Mr. Yarborough put in his brief, the Supreme
2 Court case involving North Carolina ---

3 THE COURT: Well, he acknowledges it.

4 MR. FRETWELL: It's just I've got several cases that
5 talk about that things -- that's limited to a situation in
6 which the officers tell a lie.

7 THE COURT: I understand. They said, "We've got a
8 search warrant and let me in."

9 MR. FRETWELL: Then I don't think we're going to have
10 anything for you, Judge.

11 THE COURT: All right. Mr. Yarborough, are you going
12 to have anything?

13 MR. YARBOROUGH: Can I think about it overnight?

14 THE COURT: Sure, sure.

15 Do you want me to get one of you to issue an order, or
16 do you want me to issue a written response? If y'all want
17 that, you'll have to come back to ---

18 MR. FRETWELL: I think it's helpful if you issue a
19 written order. But, I mean ---

20 THE COURT: Well, one of y'all's going to draw it.

21 MR. FRETWELL: Yes, sir. I guess it's going to depend
22 on how you rule.

23 THE COURT: If I rule for Mr. Yarborough, I'll let you
24 write the order.

25 MR. FRETWELL: Yes. It's a legendary sense of humor,

1 Judge. I appreciate that.

2 THE COURT: All right. Well, y'all get me what you
3 want me to get in the next 24, 48 hours.

4 The reason I ask, I don't know how long the
5 solicitor's going to keep me here. I'm coming in tomorrow
6 to do pleas, so I know we have that. I know there's
7 something scheduled for Wednesday for trial. But if that
8 falls apart, and then I don't know if they have something
9 Thursday, you know.

10 MR. FRETWELL: You're not going to stick up here?

11 THE COURT: I'm not going to hang around here waiting
12 on you to send me ---

13 MR. FRETWELL: You're not far away, Judge. We can
14 find you.

15 THE COURT: Y'all want to drive up to Caesar's Head?

16 MS. SIMPSON: Yes.

17 MR. FRETWELL: She's from there, Judge.

18 THE COURT: Well, you know, if you sent the sheriff up
19 there, that would be the first time I ever saw a deputy's
20 car up in Caesar's Head.

21 MR. FRETWELL: I've got one in mind, Judge.

22 THE COURT: But I know they're on the road.

23 MR. FRETWELL: Yes, sir.

24 THE COURT: All right. Well, y'all have a nice
25 afternoon, and we'll be in touch.

1 MR. FRETWELL: Thank you, Judge.

2 MS. SIMPSON: Thank you, Your Honor.

3 *****END OF TRANSCRIPT OF RECORD*****
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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

BEFORE:

THE HONORABLE JAMES R. BARBER

APPEARANCES:

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

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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

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.

1 Fretwell, anything?

2 MR. FRETWELL: Yes, Your Honor. I apologize. There
3 was a use of a polygraph, Judge, in this particular case.
4 And as the Court's well familiar, ---

5 THE COURT: Y'all know better than to mention any kind
6 of potential penalties on any of these cases to the jury.
7 So ---

8 MR. YARBOROUGH: Yes, sir.

9 THE COURT: --- I don't need to tell them, but don't do
10 it.

11 MR. FRETWELL: Thank you, Judge.

12 But with respect to that polygraph, we just wanted the
13 Court to be aware that we have -- there is an exhibit that's
14 coming in that contains some texts by Mr. White that we have
15 redacted to remove any references to the polygraph in case
16 the jury wants to go -- wants to look through it. And
17 certainly we would expect that there be no mention of a
18 polygraph test by any of the witnesses either for the State
19 or the Defense or any of the attorneys involved.

20 THE COURT: Is that an issue, Mr. Yarborough or Ms. ---

21 MR. YARBOROUGH: It's not an issue, Your Honor.

22 MS. ROSS: No, Your Honor.

23 THE COURT: All right. Well, they know that. Anything
24 else?

25 MS. ROSS: I just wanted to put on the record, Mr.

1 Gadsden's case involves some pretrial publicity which
2 occurred regarding the Anderson case where he was arrested,
3 I believe, April 15th, maybe Mr. Fretwell knows, April 17th,
4 April 15th, 18th. There was a lot of news publicity
5 surrounding that. And I would just ask that you consider,
6 Judge, either -- Judge John did instruct the jury pool about
7 how they'd lose their phone during the trial itself, but
8 possibly that they relinquish their phone or computers or
9 certainly understand the importance that they do not go home
10 and Google Mr. Gadsden's name because it's going to come up
11 with some ---

12 **THE COURT:** If you have some instruction you would like
13 for me to consider when we go through voir dire, I would be
14 happy to do so, but I always tell the jury not to discuss
15 the case, don't do any investigation of the case, don't get
16 on the internet, don't Google anything, don't -- I'm not
17 with them.

18 **MS. ROSS:** Judge, one thing I had planned possibly is
19 if it is a guilty verdict to poll the jury and ask them
20 specifically whether they have looked, you know, under oath
21 and ask them whether they've looked anything up online. So
22 maybe some ---

23 **THE COURT:** Every day the jury comes in I ask them
24 that.

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

1 **THE COURT:** Did anybody approach them to discuss the
2 case? Did anybody do any investigating? Get on the
3 internet? Did anything? I ask them every day.

4 **MS. ROSS:** Excellent. Thank you, Your Honor.

5 And then my next issue is a potential witness or victim
6 in this case, Damion Riley, I represented him on a burglary
7 in 2011. I don't believe that is a conflict of interest for
8 me, I don't think it would be for him, but I did want to
9 make the Court aware of that.

10 **THE COURT:** Anybody have -- do y'all have an issue with
11 that, Mr. Solicitor?

12 **MR. FRETWELL:** I don't -- I don't know of any conflict
13 that that creates.

14 **THE COURT:** I don't either, but ---

15 **MS. ROSS:** I don't think so either, but I don't want
16 ---

17 **THE COURT:** If you've got some concern, tell me about
18 it now.

19 **MR. FRETWELL:** I mean, the witness is going to admit
20 the fact that he was so convicted. And I don't believe, if
21 he does that, they're permitted to go into the facts and
22 circumstances of that conviction.

23 **MR. YARBOROUGH:** Depends on how it comes out, Your
24 Honor. I mean, I'm certainly -- if he's testifying against
25 my man, I can cross examine him accordingly about what

1 happened in that guilty plea that took place on -- in 2011
2 and the facts and circumstances surrounding it.

3 **THE COURT:** Say that again.

4 **MR. YARBOROUGH:** If they're -- if the State's calling
5 him, which I am assuming they are, I mean, I plan on cross
6 examining him ---

7 **THE COURT:** About his prior record?

8 **MR. YARBOROUGH:** About his prior record.

9 **THE COURT:** Well, if he admits his record, that's where
10 it ends, right?

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

12 **MR. YARBOROUGH:** Depending on what he says, Judge.

13 **THE COURT:** Well, if he denies it, you may be able to
14 dig a little deeper. But if he admits it, I don't know what
15 basis you have then to go into what happened at the plea or
16 anything like that.

17 **MR. YARBOROUGH:** I agree with you. It just depends on
18 what he says.

19 **THE COURT:** Well, I understand everything is subject to
20 something happening, to somebody opening the door or some
21 issue coming up, but in the general scheme of things, if
22 this fellow is -- acknowledges that he's got some conviction
23 and it's an appropriate query as to that conviction under
24 our rules, then I think that ends it.

25 **MR. FRETWELL:** And, Judge, along those same lines,

1 certainly the only way that this could be a conflict is if
2 Ms. Ross were to somehow use privileged communications that
3 she had at the time ---

4 **MS. ROSS:** I have no intent of doing that, Your Honor.

5 **THE COURT:** Well, it isn't her privilege, is it?

6 **MR. FRETWELL:** Exactly. So that -- she wouldn't -- if
7 she did that in her representation of this client, I think
8 that might create a conflict. The problem is as the Court's
9 already talked about, if he admits the burglary conviction,
10 you can't go -- you can't go further.

11 **THE COURT:** All right.

12 **MR. FRETWELL:** So I don't think there is one.

13 **THE COURT:** We understand. I don't see anything that
14 is a problem based on what we've discussed here today. And
15 I don't know what he might say with respect to the prior
16 conviction or convictions, if they're going to come out.
17 But we have rules of evidence that relate to that, and we
18 will follow those rules of evidence.

19 **MS. ROSS:** Thank you, Your Honor.

20 Finally, we have already dealt with the issue of the
21 search warrant and suppression of a photograph that was
22 found ---

23 **THE COURT:** Well, we really hadn't -- if you note, the
24 order doesn't address the search warrant. That ---

25 **MS. ROSS:** Well, true. It addressed the consent.

1 **THE COURT:** The consent of the -- and, again, I have
2 signed the order today. I've been given a proposed order by
3 the solicitor. And I think my recollection is he had sent
4 both parties a copy of that consent. I ---

5 **MS. ROSS:** And I have that proposed order before me,
6 but I don't have the final.

7 **THE COURT:** Well, there's nothing of substance. I just
8 tried more to say that this was -- that there was evidence
9 to that because I'm going to instruct the jury they
10 ultimately are the true fact-finders in the case as to
11 whether it might have been voluntary or not voluntary or ---

12 **MS. ROSS:** And that's fine, Your Honor. I don't think
13 that applies really to my client because my client, Gerald
14 Gadsden, did not give consent for his phone to be searched.

15 And we would argue that once that search went into the
16 photographs and personal materials inside of that phone,
17 we'd argue that occurred after law enforcement discovered
18 that it, in fact, was not Mr. White's phone, it was Gerald
19 Gadsden's phone. So once they found out they were looking
20 into Gerald Gadsden's phone, then Mr. White's consent was no
21 longer applicable and, therefore, we would argue that it was
22 an invasion of Mr. Gadsden's privacy rights to have further
23 delving into all the voicemails and personal photographs on
24 what turned out to be Gerald Gadsden's phone.

25 **MR. FRETWELL:** Your Honor, just so the Court's aware,

1 in doing the Jackson v. Denno we'll have many of the same
2 witnesses that we had at the suppression hearing. Certainly
3 Ms. Ross can ask them again the facts and circumstances
4 surrounding the phone dump of her client's phone, which was
5 handed over to authorities and they believed it to be Mr.
6 White's older phone that he hardly uses anymore. You'll
7 hear those facts.

8 Also in the Jackson v. Denno, Judge, you'll hear that
9 one of the officers made contact with Mr. Gadsden. Mr.
10 Gadsden's response was that he had a cell phone, that he
11 lost that cell phone several days before even the robbery
12 occurred.

13 And we would certainly point to the Court that the
14 State versus Brown case, which is 414 S.C. 14, a Court of
15 Appeals case from 2015 -- it's not squarely on point because
16 in that situation, Judge, the phone had been locked. In
17 this particular situation the phone was not locked.

18 But that case stands for the proposition that if you
19 don't make any efforts after the fact to try to get your
20 phone, that you have abandoned it, and that is an exception
21 to the warrant requirement. We would argue both that the
22 officers had a good faith basis for looking into the phone
23 upon the consent of the person who possessed that phone,
24 that they did not need or require a warrant to look at it
25 under those circumstances.

1 Secondarily, based on the communication with Mr.
 2 Gadsden, himself, after the fact, he indicated that he had
 3 lost his phone, in essence, abandoning it. An officer will
 4 testify that he asked Mr. Gadsden if he tried to find it or
 5 report it. And he said something to the effect of, no, it's
 6 just a burner phone or it's a prepaid phone or something
 7 along those lines.

8 That brings us into the purview of State versus Brown.
 9 If the Court does not accept which the State believes is the
 10 case in this situation that it was a good faith basis on
 11 behalf of the officers in looking at the contents of that
 12 phone, the testimony was last time, the testimony would be
 13 this time that the information they received is what led
 14 them to believe that the phone might not be Mr. White's.

15 And that was after the phone had been dumped that they
 16 looked through it, they saw these pictures, they identified
 17 an individual ma, mama, mother, something, and called that
 18 person to determine whose phone it actually was. When they
 19 were provided a name, they looked that name up in the
 20 database, saw a picture that matched the pictures that were
 21 on the phone. And they believed that to be his phone at
 22 that point and confirmed that with his mother.

23 So, Judge, that's the State's position. We certainly
 24 can -- we're going to proffer testimony in the form of
 25 Jackson v. Denno anyway. Certainly if Defense counsel has

1 any questions she wants to ask those witnesses with respect
2 to that particular issue, the Court can be re-familiarized.

3 I recognized that argument because I think it was the
4 same argument that Ms. Ross made the last time. And it just
5 -- it has the order inverted. The officers got the
6 information, then realized that it wasn't Mr. White's phone
7 and attempted to determine whose phone it was probably
8 because they had a phone they didn't know who it belonged
9 to, but there was information on that phone that made that
10 information relevant to the investigation they were
11 pursuing.

12 **MS. ROSS:** And, Judge, I apologize to make this really
13 complex, but they then -- they had gotten that information
14 pursuant to the search warrant. And I know your ruling was
15 that Mr. White consented, but they waited until they got the
16 search warrant to get that information. And I would
17 certainly disagree with the order of the way things
18 happened. But there's no question that they knew that it
19 was not ---

20 **THE COURT:** All right. Well, ---

21 **MS. ROSS:** --- Mr. White's phone.

22 **THE COURT:** --- let's address that at the end of
23 whatever testimony that may come up that you think might be
24 supportive of your position.

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

1 And also on -- I distinguished the State v. Brown case
2 because there a phone -- a strange phone was left at the
3 scene of a burglary. So the phone in itself would
4 immediately be evidence. And I draw your attention to Judge
5 Aphrodite Konduros' dissent in that case as well.

6 **THE COURT:** All right. What else we got?

7 **MR. FRETWELL:** Judge, the only thing before the Jackson
8 v. Denno is I just would ask the Court at this time to make
9 sure -- since we've called the case, Mr. White would be in
10 custody during any breaks from here on out.

11 **THE COURT:** They both will be in custody.

12 **MR. YARBOROUGH:** Your Honor, he's been here half a
13 dozen times. And we haven't even picked a jury yet. I'd
14 like to be able to take him back over to my office and work
15 on the case during lunch ---

16 **THE COURT:** You going to bring him back?

17 **MR. YARBOROUGH:** Yeah, I'd bring him back.

18 **THE COURT:** All right.

19 **MR. YARBOROUGH:** I'll make sure he's here.

20 **THE COURT:** All right. But understand once this case
21 is called and we bring a jury up, he will be in my custody.
22 I mean, I'll consider any motions that you might want to
23 make at that time, but until I rule, he's in the custody of
24 the Court.

25 **MR. YARBOROUGH:** Thank you, Your Honor.

1 **THE COURT:** Not to go anywhere but with the deputies.

2 MR. YARBOROUGH: Yes, sir.

3 **THE COURT:** Anything else?

4 MR. FRETWELL: I don't believe so, Your Honor.

5 THE COURT: Y'all want to call your witnesses?

6 **MR. FRETWELL:** We have one Jackson v. Denno witness who
7 is on the way from the hospital. And we would -- we have
8 Sergeant Motes available. So if the Court's inclined, we
9 can start with Sergeant Motes at this time.

10 **THE COURT:** I'm inclined to having a hearing. You can
11 call who you want to have.

12 **MR. FRETWELL:** Thanks, Judge.

13 Thomas Motes, Jr., 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. MOTES:** Thomas Richard Motes, Jr.

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

19 THE COURT: Yes, sir.

20 Direct Examination by Mr. Fretwell:

21 Q. Sergeant Motes, did you meet with Sergeant Weiner and
22 the Defendant, James White, at the Law Enforcement Center in
23 the Robbery Division office?

24 A. Yes, I did.

25 Q. And did you meet with them on January the 22nd, 2014 at

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1 approximately two -- 12:30 pm?

2 A. Yes, I did.

3 Q. For what purpose was Mr. White there?

4 A. We'd had an armed robbery that occurred at the Olive
5 Garden, and I had been assigned this case. And he was there
6 as one of the victim witnesses in the case.

7 Q. And who had arranged this meeting?

8 A. I'd called and arranged that meeting.

9 Q. Okay. And you were calling in your capacity as the
10 lead investigator on that case at that time, is that true?

11 A. That's correct.

12 Q. Okay. Was Defendant White under arrest at the time
13 that he came to the Law Enforcement Center?

14 A. No, he wasn't.

15 Q. Had you prepared warrants for his arrest at that time?

16 A. No, sir.

17 Q. Was he placed in handcuffs when he arrived?

18 A. No, sir.

19 Q. Were any threats or promises made to the Defendant?

20 A. No, sir.

21 Q. Did you communicate anything to him that might suggest
22 he was not free to leave?

23 A. No, sir.

24 Q. Okay. And just for the record, if I can have you at
25 this time identify the Defendant, James White.

1 (Whereupon the witness pointed to the Defendant, James
2 White)

3 A. He's in the burgundy shirt sitting at the Defense
4 table.

5 **MR. FRETWELL:** Your Honor, just let the record reflect
6 the witness has identified the Defendant, Mr. White.

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

8 Q. How did your -- how did you begin your conversation
9 with Defendant White?

10 A. Just basic information, you know, why he was there, you
11 know, need to know how long you've worked there, you know,
12 what happened that evening, you know, basically just a
13 rapport stage and, you know, finding out what he knew about
14 the case about what happened.

15 Q. And the goal of that interview or that contact that you
16 had with him, is that to eventually have a written
17 statement?

18 A. That's correct.

19 Q. What was his demeanor when you explained to him this
20 process of how you were going to interview him and take a
21 written statement from him?

22 A. Well, the beginning part was normal conversation until,
23 I mean, we talked about the case. And then when I said,
24 well, at this point we'll put it all down in writing is when
25 he became very defensive, said that he didn't need -- he

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1 didn't need me to write anything for him, he'd write his own
2 statement.

3 Q. Okay. And was his behavior typical of victims in this
4 kind of situation?

5 A. No, sir.

6 Q. Why not?

7 A. Well, most of the time victims are more cooperative and
8 most of the time are wanting you to, you know, write --
9 write out their statement to help them as opposed to them
10 having to do it themselves.

11 Q. Okay. Now, let me take just a moment to see if I can
12 have you describe the location where this statement was
13 taking place. How is your office or how was the office you
14 were in at the time set up?

15 A. It's an open room like this, open desk. There's four
16 desks and then the sergeant's desk. And it's just
17 everything's open.

18 Q. Well, I think we did this in the other hearing, but
19 approximately from where you are, tell me when I'm about ---

20 A. About right there.

21 Q. This is where Sergeant Weiner's desk would ---

22 A. Yes.

23 Q. --- be from where you were?

24 A. Correct.

25 Q. And Mr. White would be somewhere in the middle of ---

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- 1 A. That's correct.
- 2 Q. --- you, is that correct? All right. And there's a
3 door to this room, is that right?
- 4 A. That's correct. To the right of the room there is a
5 door, ---
- 6 Q. Does that ---
- 7 A. --- one way in, one way out.
- 8 Q. Does that door -- is that door locked?
- 9 A. No.
- 10 Q. Okay. In fact, there are other desks in that room as
11 well, is that correct?
- 12 A. That's correct. Three other investigators.
- 13 Q. Are they in and out during any given moment?
- 14 A. Yes.
- 15 Q. Okay. That hallway that that door goes to, right when
16 you come out of the hallway there's a emergency exit to the
17 outside, is that correct?
- 18 A. That's correct.
- 19 Q. All right. And then on that hallway as well there's
20 bathrooms, water fountain, drink machines, is that true?
- 21 A. That's correct. And another exit.
- 22 Q. All right. Coming back to the statement that Mr. White
23 eventually provided you, how detailed was that statement?
- 24 A. Very brief.
- 25 Q. All right. And, in fact, I'm going to show you what's

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1 been marked as State's exhibit 43. This is the same exhibit
2 that was shown to you during the ---

3 A. That's correct.

4 Q. --- suppression hearing? In that statement what did he
5 basically tell you or write down was his recollection of the
6 robbery event?

7 A. He went to work that night, was washing dishes, someone
8 came in with a gun and made them lay on the floor and robbed
9 them, and robbed the store.

10 Q. And the guy stood -- stood guard, is that -- is that in
11 that statement?

12 A. I believe he did say somebody stood over him or
13 something. If you'd like, I can read this. It's ---

14 Q. Sure.

15 A. --- very brief.

16 Q. All right.

17 A. I went to work at 6:15. I clocked in and started in
18 the dishroom washing dishes. About eleven or so a guy with
19 a hood came to the -- I think it's da dishroom and pointed a
20 gun and demanded us to get on the floor or lay down. He
21 then stood guard and I heard commotion. He then robbed the
22 store.

23 Q. Okay. And in that statement did he also provide you
24 with the address that he had at the time?

25 A. He did.

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1 Q. And what was that?

2 A. It's 410 Sulphur Springs Road.

3 Q. Okay.

4 MR. FRETWELL: Your Honor, for the purposes of this
5 hearing then we'd admit State's exhibit 43. I know it's
6 already in evidence from the suppression hearing. We'd
7 admit it at this time for the Court's consideration.

8 MR. YARBOROUGH: I don't have anything, Your Honor.

9 THE COURT: All right.

10 (Whereupon State's exhibit 43 was admitted into
11 evidence for this hearing)

12 Q. Was his statement, brief as it was, was it not
13 consistent with the other accounts of the robbery?

14 A. From what I have read in the original report, yes.

15 Q. Okay. What happened after he wrote out and signed his
16 statement?

17 A. At that point we were just ending the interview. There
18 was another investigation that needed to be done. He had a
19 cell phone. We'd asked him about the phone.

20 And as he got up, Sergeant Weiner had already started
21 filling out a consent to search that he'd given us
22 permission to look at. I asked him if he had anything else
23 on him. And he said, yeah, this old phone that I don't use
24 anymore, hadn't used in months, he pulls it out of his
25 pocket.

1 Q. All right. Let me show you ---

2 MR. FRETWELL: Judge, the one bit of confusion that I
3 have is that these hearings kind of overlap in the sense
4 that certainly his consent is a statement that we would --
5 we would seek to introduce. The Court's already found that
6 his statement was voluntary, knowing and intelligent in the
7 sense of the consent that he provided for the review of the
8 phones. I don't want to make extra work for this particular
9 -- for this particular hearing, but this is, indeed, a
10 statement that the State seeks to admit.

11 THE COURT: Anything?

12 MR. YARBOROUGH: You talking about the statement that
13 he just read into evidence? I mean, we don't have a problem
14 with that. I don't understand -- if Allen's asking for, I
15 mean, Mr. Fretwell's asking for something more than what is
16 -- was just read into evidence, I'd like to know that.

17 I think these discussions about whether or not he was
18 combative or all that stuff is -- I don't -- that's not
19 admissible, but whether he wants to get the statement in,
20 that's one thing. He can read the statement all he wants
21 to.

22 THE COURT: Well, the Jackson v. Denno is to determine,
23 one, if it was voluntarily given. If he ---

24 MR. YARBOROUGH: He wrote the statement.

25 THE COURT: If he wasn't in custody, they're not

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1 obligated to give any advice of rights. If he was in
2 custody, then did they give him advice of rights?

3 And I don't know -- I don't know what y'all's position
4 is with respect to the statement. If you believe that the
5 statement was -- is okay, then, obviously, we ---

6 **MR. YARBOROUGH:** The statement's okay. I mean, we've
7 already put on the record that we don't agree that there was
8 consent given for the search of the telephones. That's a
9 different issue.

10 **THE COURT:** Well, he's talking about the statement
11 right now.

12 **MR. FRETWELL:** Judge, I'm talking about the consent.
13 The consent ---

14 **MR. YARBOROUGH:** He's talking about the consent for the
15 phone.

16 **MR. FRETWELL:** The reason that I would bring this up
17 normally in the context of a Jackson v. Denno is that it is
18 a -- it is a document that was authored by or acknowledged
19 by the Defendant. Now the Court has already determined that
20 the consent was valid. And that's reflected in the order.

21 Normally I would go through this process ---

22 **THE COURT:** Well, I determined that there was evidence
23 that there was a consent given. I mean, ultimately -- the
24 ultimate decision's going to have to be made by the jury.
25 So I'm going to let that come in.

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1 MR. YARBOROUGH: Okay.

2 MR. FRETWELL: Judge, I'll skip ahead to the specific
3 statements with respect to the phone.

4 Direct Examination by Mr. Fretwell Continued:

5 Q. And I'll -- I think the way I asked you last time was
6 why were there two phones listed on there. What was it that
7 the Defendant, Mr. White, said to you when he pulled out the
8 first phone?

9 A. Let me refer to my notes.

10 Q. Oh, I'm sorry. I can't -- I have to look back at the
11 transcript. I don't know if you said he had it out already
12 or whatever, but ---

13 A. No, he had -- he had his phone out. Then when he got
14 up he said -- I said, do you have anything else on you? And
15 he said, yeah, I have this old phone that I haven't used in
16 months. And that's the reason why I then went and added the
17 second phone to the consent to search.

18 Q. But the answer to both -- to your questions about
19 consent for both phones is that you could -- that the
20 Defendant said that you could search those, is that correct?

21 A. That's correct.

22 Q. Okay. And then ---

23 MR. FRETWELL: I think that's all the questions I have
24 for this witness, Judge.

25 THE COURT: Ma'am, I don't want to hear any noise back

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1 there. Excuse me, Mr. Yarborough.

2 **MR. YARBOROUGH:** That's okay.

3 Cross Examination by Mr. Yarborough:

4 Q. You're saying that you received consent to search the
5 second phone?

6 A. Yes, sir.

7 Q. Okay. And did you tape that?

8 A. Did I do what?

9 Q. Did you tape it?

10 A. Tape?

11 Q. With a phone recorder?

12 A. No.

13 Q. Did you have it written out?

14 A. Yeah, we -- he did -- he signed a consent.

15 Q. He signed the consent for the first phone.

16 A. No, he signed the consent for both phones.

17 Q. But the second phone was done later.

18 A. Just -- later would have been maybe a couple of minutes
19 later. And all I did is added the second one. Then he
20 signed it after looking at both -- after speaking about both
21 phones, then he signed the consent.

22 Q. But why did you have him sign it twice?

23 A. I didn't have him sign it twice. He signed it one time
24 for both phones.

25 Q. But one is in a different type of ink, right?

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- 1 A. Yes. Sergeant Weiner filled out the first part. And
2 then just moments, a few minutes later is when he was asked
3 do you have anything else on you? He produced the second
4 phone. And that's the reason why I signed.
- 5 Q. That's why you signed what?
- 6 A. Adding that phone to the consent.
- 7 Q. Okay. So did you go through all the same questions
8 again with him that he didn't have to turn -- didn't have to
9 consent to that?
- 10 A. Exactly. It was -- he was there of his own free will.
11 I said, do you mind if we search ---
- 12 Q. And he's cooperative?
- 13 A. Very cooperative saying, yeah, you can search it.
- 14 Q. Okay. So what -- all I'm trying to say is now you're
15 saying he's cooperative and a little while ago you said he
16 wasn't cooperative.
- 17 A. No, because you're talking about a different
18 circumstance. The first circumstance was -- if you want me
19 to explain?
- 20 Q. Yeah.
- 21 A. Okay.
- 22 Q. I'm listening.
- 23 A. Okay.
- 24 Q. Okay.
- 25 A. The first circumstance was -- is that when he refused

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1 for me to write his statement, that's the only part that I
2 said that he was not cooperative.

3 Q. Okay. So he cooperated?

4 A. Totally he cooperated with the whole process. He came
5 in, gave a statement, gave consent and left our office.

6 Q. Okay. So -- and that's your testimony is he was
7 cooperative?

8 A. I think that was part of my testimony that he
9 cooperated with the investigation.

10 Q. Okay.

11 A. That's correct.

12 Q. Thank you.

13 A. You're welcome.

14 **THE COURT:** All right. Anything further from the
15 State?

16 **MR. FRETWELL:** I don't know if ...

17 **MS. ROSS:** Judge, I don't have any ---

18 **Cross Examination by Ms. Ross:**

19 Q. You never spoke to Mr. Gadsden or looked at the phone
20 after this ---

21 A. I spoke -- I spoke to him earlier in the investigation.
22 I went to see him in jail, and he refused to talk to us.
23 But other than that, that's -- I didn't speak to him after
24 this encounter.

25 Q. Okay. I don't think Mr. Gadsden was in jail when this

THOMAS MOTES, JR. - CROSS EXAMINATION BY MS. ROSS

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1 occurred.

2 A. No, ma'am. This -- this was during when he was wanted
3 on charges.

4 Q. On other ---

5 A. Right.

6 Q. --- non-related ---

7 A. Right.

8 Q. --- charges? And you know you're not going to mention
9 any of that ---

10 A. That's correct.

11 Q. Okay. And so -- but as far as this ---

12 A. But you asked me if I had, and so ---

13 Q. Right.

14 A. --- I wanted to let you know.

15 Q. Okay. Well, thank you.

16 A. Yeah.

17 Q. But as far as this case, ---

18 A. I did not.

19 Q. --- you had no involvement with him, nor did you have
20 any involvement in getting the search warrant for that
21 second phone ---

22 A. No, ma'am.

23 Q. All right. Thank you. I've got no further questions.

24 **THE COURT:** All right. Thank you, sir. You may step
25 down.

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25 A. I was deputy to the Robbery Division.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. And did you have occasion to become involved in this
2 case?

3 A. I did.

4 Q. And did you actually participate in assisting the
5 investigation in a number of different ways?

6 A. I did.

7 Q. I want to focus your attention on your conversation
8 with Gerald Gadsden and what led to that conversation.

9 A. Okay.

10 Q. Tell the Court how you learned about Mr. Gadsden, what
11 circumstances.

12 A. Only from the search warrant from the ---

13 Q. From the phone.

14 A. Okay. So Sergeant Weiner asked me to obtain a search
15 warrant on a cell phone. It was a Verizon flip phone. I
16 spoke with Judge -- I believe it was Judge Hudson. He
17 signed the search warrant on the phone.

18 I gave the phone and the search warrant to Detective
19 Kerns, who is employed by the Greenville City Police
20 Department. He was going to do the phone dump to the -- on
21 the phone. It was closer as -- his office is in our
22 building. So it was closer and it was, you know, more of a
23 timely manner.

24 A little while later Detective Kern gives me the
25 results from the phone. I begin to look through the phone.

1 I look at some images.

2 Q. And what stood out to you with respect to the images
3 and your knowledge of where this phone came from?

4 A. The -- one of the images, it was a black male wearing a
5 large camouflage coat, holding up a large sum of money. I
6 knew from part of the investigation and actually even
7 interviewing a witness that the suspect in this incident was
8 wearing a camouflage coat with a hood.

9 Q. And were you also aware that this phone had actually
10 been taken from Mr. James White's person?

11 A. Yes, I was.

12 Q. So the images were not of him, but of another person?

13 A. Correct.

14 Q. And with this information what was your next step?
15 What did you then do?

16 A. I scrolled through the contacts. And I saw -- there's
17 two contacts I could -- that stood out. One was a name for
18 Jr. G.

19 Q. And why was that one kind of important to you or stood
20 out to you?

21 A. That is the nickname that Mr. White has or rapper name,
22 stage name, however you want to call it. That's what he has
23 when he performs. So, anyway, ---

24 Q. And that was listed in the contacts?

25 A. In -- yes. Yes, ma'am.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. And what was the other one that stood out to you?

2 A. I looked at ma, m-a, ma.

3 Q. And what did you do upon finding ma?

4 A. I called that number, and I spoke with a lady. We had
5 a conversation. I asked her whose phone number this, you
6 know, belonged to.

7 Q. And without going into the details specifically of that
8 conversation, at some point did you describe to her the
9 image on the phone?

10 A. I did.

11 Q. And what was her response as far as ---

12 MS. SIMPSON: And, Your Honor, at this time let me just
13 state and put on the record, and I apologize, I meant to do
14 this before getting up here. There is a portion of this
15 conversation in which is -- actually Mr. Gadsden's mother is
16 inquiring as to Investigator Owens why he needs to know,
17 basically who this is, it's her son, did he commit murder,
18 it must have been an armed robbery then. The witness has
19 been instructed not to go into any of that or bring any of
20 that up. So I'd just -- I meant to put that on the record
21 prior to him taking the stand.

22 MS. ROSS: Thank you. And clearly it's irrelevant and
23 prejudicial, and we'd object to that coming in. But thank
24 you.

25 MS. SIMPSON: Yeah, we have no intention of going

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

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1 there.

2 Direct Examination by Ms. Simpson Continued:

3 Q. Did you provide her with a description of the
4 individual?

5 A. I did.

6 Q. And did she ultimately identify who that individual
7 was?

8 A. Yes, she did.

9 Q. Who did she state that it was?

10 A. It was her son, Gerald Gadsden.

11 Q. And did she also identify who she was?

12 A. Yes, Crystal Gadsden.

13 Q. And once she identified her son to you, what did she
14 indicate that she would do with respect to you needing to
15 contact her or him?

16 A. I provided her my phone number and asked her to have
17 him call me.

18 Q. Okay. And what happened next with respect to receiving
19 any calls or not receiving any calls?

20 A. Do you mind if I look at my notes for a second?

21 Q. Yes, please.

22 A. I know there was -- let's see. I spoke with her on the
23 24th. And I didn't hear anything from Mr. Gadsden. And
24 then on the 27th, January 27th, 2014 I called Crystal back
25 and asked her if she spoke with him. After the conversation

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

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1 I ended up getting a phone call from Gerald Gadsden.

2 Q. And just so we're clear, at any point at this time had
3 she provided you with a number or a way to contact him?

4 A. No. She said if I -- if I didn't hear from him that
5 she would call me back and give me his phone number.

6 Q. Okay. But did you actually hear from him ---

7 A. I did.

8 Q. --- that same day?

9 A. Yes, ma'am.

10 Q. And what time approximately did you get -- receive a
11 call from Mr. Gadsden?

12 A. Around 1500 hours, three pm.

13 Q. Three pm? And tell the Court about your conversation
14 and him identifying himself as Mr. Gadsden. :

15 A. He said that he was in Orangeburg. I asked him if he
16 had a cell phone. And he said, yeah, he'd lost it at a
17 club. He lost it on the 15th at Club Sho Tyme in North
18 Charleston. I asked him if he reported it to the police.
19 He said, no, that it was, quote, it was a prepaid phone.

20 Q. And so -- but he did admit to having a cell phone?

21 A. Yes.

22 Q. Did you indicate that you needed to talk to him or the
23 nature of why you were questioning him?

24 A. I did. I asked him that he needed to come down to the
25 Greenville County Sheriff's Office.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Okay. And at some point did your conversation end?

2 A. Yes, ma'am, it did.

3 Q. And did you actually -- this conversation occurred over
4 the phone, correct?

5 A. Yes, ma'am.

6 Q. And had any arrest warrants been taken out on Mr.
7 Gadsden at this time?

8 A. Oh, I -- I don't know. I don't think so.

9 Q. And but he was not in custody?

10 A. No.

11 Q. And you actually did not see him at that time?

12 A. No.

13 Q. Did you have any further contact with Mr. Gadsden
14 during the course of this investigation?

15 A. When I got -- myself and Sergeant Motes went down to
16 wherever we went to when he was arrested, down at the lower
17 part of the State, and talked to him, but that's it. He
18 refused to talk.

19 MS. SIMPSON: Your Honor, we won't be mentioning ---

20 A. Yes.

21 MS. SIMPSON: --- that he refused to talk. Nothing
22 further at this time.

23 THE COURT: I wouldn't mention that he's in jail
24 either.

25 MS. ROSS: Beg the Court's indulgence.

1 (Pause)

2 Cross Examination by Ms. Ross:

3 Q. Just briefly. Looking through -- you stated on the
4 27th around -- I thought you said around six pm, but would
5 it surprise you if your records said 1500, three pm that you
6 received a call from Mr. Gadsden?

7 A. Yeah, that's what -- that's what I said.

8 Q. Is that what you said?

9 A. Yes, ma'am.

10 Q. Okay. And then did you record that phone conversation?

11 A. No, ma'am.

12 Q. So is there any record of that phone conversation?

13 A. No, ma'am.

14 Q. And at that point you didn't inform him to turn himself
15 in or anything like that?

16 A. No, ma'am.

17 Q. Did -- okay. Well, let me go into the search warrant.
18 You got the search warrant because Investigator Weiner told
19 you to go and get a search warrant?

20 A. Yes, ma'am.

21 Q. Did he inform you that they'd gotten consent already
22 and didn't need a search warrant at that point?

23 A. Ma'am, I -- I don't recall. I just -- he just asked me
24 to get the search warrant. So I ---

25 Q. Okay.

1 A. --- went to get the search warrant.

2 Q. So you didn't know anything about any kind of consent
3 for that phone?

4 A. No, ma'am.

5 Q. You were just told to go get a search warrant?

6 A. Yes, ma'am.

7 Q. And that's what you did. I believe -- I'll just show
8 you ---

9 MS. ROSS: If I may approach.

10 Q. Can you just take a look at this and -- does this look
11 like the search warrant that you went and got? I believe
12 it's from Judge Hudson.

13 A. Yes, it is.

14 Q. And at that point does it make any mention of a consent
15 to search in the affidavit?

16 A. One second, let me read it.

17 Q. Okay.

18 (Pause)

19 A. No.

20 Q. And had you looked in the phone at the point when you
21 went to get the search warrant?

22 A. After I got the search warrant.

23 Q. So you made no mention of what was on the phone because
24 you had not looked at the contents of the phone until after
25 you ---

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

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1 A. Correct.

2 Q. --- got this search warrant? Okay. And then after you
3 got that search warrant you felt that you were clear to go
4 and have Investigator Kerns, I believe, ---

5 A. Yes, ma'am.

6 Q. --- look at the records, and he handed you over a disk?

7 A. Yes, ma'am.

8 Q. Okay. And at that point you looked at the disk. At
9 any point looking at that did you realize that this was not,
10 in fact, Mr. White's phone, that it belonged to someone
11 else?

12 A. After it was all said and done, after the images and
13 speaking with people, yes, that it was correct that it was
14 not Mr. White's phone.

15 Q. And were Mr. White's pictures on the phone?

16 A. I don't remember.

17 Q. Well, how about the fact you said Gerald G was listed
18 as a contact on the phone?

19 A. Jr. G.

20 Q. Jr. G.

21 A. Yes, ma'am.

22 Q. Okay. And that was Mr. White, correct?

23 A. Yes, ma'am.

24 Q. And how did you know that at that point?

25 A. That that was him?

- 1 Q. Yeah.
- 2 A. It was -- that was his stage name as a rapper.
- 3 Q. And had ---
- 4 A. It was ---
- 5 Q. --- Investigator Weiner told you that?
- 6 A. Well, they spoke about it during when he was down
- 7 there. So, I mean, I could -- I was listening to, you know,
- 8 some of the conversation, but nothing ...
- 9 Q. All right.
- 10 A. When you're down there, when you have people coming in
- 11 and out, every once in a while something you hear kind of
- 12 sticks to you.
- 13 Q. Now didn't it suggest to you that maybe that wasn't Jr.
- 14 G's phone if that was a contact in the phone?
- 15 A. Yes, ma'am.
- 16 Q. All right. And so at that point you were questioning,
- 17 this looks like it's not Mr. White's phone, this could be
- 18 someone else's?
- 19 A. Correct.
- 20 Q. And then you called ma, and that was someone else's
- 21 mother?
- 22 A. Yes, ma'am.
- 23 Q. Okay.
- 24 MS. ROSS: I've got no further questions. Judge, would
- 25 you like a copy -- the Court's copy of the exhibit or the

1 search warrant?

2 **THE COURT:** Is the search warrant an issue in this
3 case? I thought y'all had basically abandoned it on the
4 basis that you had consent at the time and we didn't go into
5 it about ---

6 **MS. ROSS:** Well, Judge, I'd just like to put that on
7 the record that ---

8 **THE COURT:** Wait a minute. Wait a minute.

9 **MS. ROSS:** Okay.

10 **MR. FRETWELL:** Judge, I think Ms. Ross is attempting to
11 use the fact that they obtained a search warrant as some
12 sort of suggestion that they believe they didn't have
13 consent. Not only has the Court already ruled on that
14 issue, I think you, when in reviewing the transcripts from
15 the hearing last time, you said something to the effect of
16 cops are not lawyers. They will do things to -- well, we've
17 got consent, let's also get a search warrant, let's also do
18 this to kind of back things up. That's exactly what the
19 State's position is.

20 The only reason that the search warrant is an issue and
21 my belief is because Ms. Ross wants to somehow suggest that
22 they didn't believe they had consent and so that's why they
23 went and got the search warrant so we can get back on the
24 search warrant issue.

25 I'll remind the Court that even at the hearing last

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

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1 time, even though it's not in the order, the Court found
2 that the search warrant affidavit was sufficient. But
3 that's the best explanation I can give you, Judge.

4 **THE COURT:** Well, I did. I made a finding that he
5 indicated -- the deputy indicated that when he got the
6 search warrant in addition to the affidavit he had some
7 conversation -- I'm going from memory for several -- had
8 some conversation with the magistrate and also told him some
9 things about getting the magistrate, which added some
10 additional information for probable cause in getting the
11 search warrant.

12 But I specifically ruled that there was evidence that
13 he had consented to -- Mr. White had consented to the law
14 enforcement having access to both of the telephones, that he
15 had pulled them out, given the second one to the guy, the
16 officer and said, here this is, and do as you're going to
17 do.

18 At some point in time there was another officer, I
19 don't know who that was that testified last time, well, I
20 had a little bit of concern. So I decided let's, you know,
21 you can't go wrong by trying to get something in addition to
22 what we've got already. And so if that's an issue as to
23 whether there's consent, I mean, the sufficiency of the
24 search warrant, then we need to -- we'll need to do another
25 order on that.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

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1 If, in fact, you want to -- I've ruled that there was
2 consent, Ms. Ross. If you want to attack that in the minds
3 of the -- that the police really didn't think so, then
4 you're opening the door to the search warrant itself. And,
5 you know, we'll have to go from there.

6 If it's a credibility thing that you're seeking to
7 attack, then ...

8 **MS. ROSS:** I understand. My recollection of the last
9 hearing two months ago was that -- because my client wasn't
10 here at that time. And the ruling was it was consent either
11 -- anyway. I didn't argue my objections to the search
12 warrant and to the consent. And I did not put on the record
13 my client's objection to it, arguing that it may be his, you
14 know, Article 1, Section 10 and Fourth Amendment rights to
15 privacy ---

16 **THE COURT:** Well, ---

17 **MS. ROSS:** --- once they found that it was not, in
18 fact, Mr. White's phone, the one he consented ---

19 **THE COURT:** Well, of course, this officer testified
20 that he didn't realize that until after he'd already looked
21 at everything. And, you know, I don't know what suspicions
22 he had early on that may or may not be -- he was told to go
23 get a search warrant, and somebody's rap name was on the
24 search warrant, I mean, on the phone.

25 And he, you know, that may have aroused something, but,

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

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1 I mean, he said I didn't really realize this was anybody's
2 phone, I mean, not this person's phone until after I'd done
3 all that stuff, talked to the mom, talked to -- looked at
4 the pictures and done all that. So ...

5 **MR. FRETWELL:** And, Judge, we're going to continue with
6 that in the questioning of this witness, but I think it's
7 important the Court understand -- Defense counsel seems a
8 little confused in this regard. This witness is testifying
9 that he got the search warrant on the phone, that when the
10 return came back with the dump of the phone, that's where
11 he's getting these photos, these contact -- it's not from
12 the phone itself.

13 **THE COURT:** Oh, I understand.

14 **MR. FRETWELL:** I think that's the confusion that Ms.
15 Ross has that somehow he looked through the phone,
16 determined it wasn't him and then got -- then went and got a
17 search warrant. And that's just not the order, Judge.

18 **THE COURT:** I realize that.

19 Cross Examination by Ms. Ross Continued:

20 Q. Well, I'll go ahead and ask. When I get a disk showing
21 what's on the phone records, I get a list of contacts first.
22 That's what shows up first. Is that what showed up first
23 when you got yours? When you go down ---

24 A. Well, when you get the disk back it just -- you could
25 open what you're -- you can open other things. You can open

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

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1 images, if you want to look at images first. You can open
2 contacts. You can open emails. So it's not like ---

3 Q. Okay. So the jury's not here. What did you do?

4 A. I looked at the images.

5 Q. So you got the phone ---

6 A. Yes. The first thing I did is looked at -- looked at
7 the images. I looked at the image gallery. And that's when
8 I saw a black male wearing a large camouflage coat with a
9 hoodie holding up what appeared to be a large sum of money.

10 Q. And just going back to that. And what time was this
11 again?

12 A. What time ---

13 Q. When you looked at the images?

14 A. You mean as far as the date goes? I had the ---

15 Q. Did you ---

16 A. I obtained the warrant on January 24th. And then on --
17 it was, yes, it was on the 24th. January 24th was when I --
18 when I received the disk back from the phone.

19 Q. Okay. And so you went first to images?

20 A. Um-hum (affirmative).

21 Q. And then you went down and looked at contacts?

22 A. Yes, ma'am.

23 **MS. ROSS:** Beg the Court's indulgence.

24 (Pause)

25 Q. And ---

MATTHEW OWENS - CROSS EXAMINATION BY MR. YARBOROUGH

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1 MS. ROSS: I've got no further questions.

2 Cross Examination by Mr. Yarborough:

3 Q. How long did it take you to get the images off that
4 telephone?

5 A. I didn't get the images off the telephone.

6 Q. How -- well, you used that word or Mr. Fretwell used
7 this word dump.

8 A. Yes, sir.

9 Q. When did it dump so that you could look at it?

10 A. When I -- when I got the -- received the search warrant
11 from the phone, I gave it to -- after the search warrant was
12 signed, I gave it to Detective Kerns with the City.

13 Q. Okay.

14 A. What he does, you're going to have to ask him. I don't
15 know how that process works. You plug the phone up to a
16 computer and, I mean, all the information is put onto a CD.
17 So ...

18 Q. Okay. And when did he give you that CD?

19 A. I just -- in my report it says a short time later.

20 Q. Well, does that mean a day? Does ---

21 A. Yes, sir, ---

22 Q. --- that mean ---

23 A. --- it was that day.

24 Q. Okay. And then you immediately looked at it?

25 A. Yes, sir.

MATTHEW OWENS - REDIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Okay. Now, you said that you talked to Gadsden about
2 where his phone was?

3 A. Yes, sir.

4 Q. Okay. And at that time he told you he lost his phone
5 in North Charleston?

6 A. Yes, sir, at Club Sho Tyme.

7 Q. At Club Sho Tyme?

8 A. Yes, sir.

9 Q. Okay. Thank you.

10 MS. SIMPSON: Briefly, Your Honor.

11 Redirect Examination by Ms. Simpson:

12 Q. I believe, Investigator Owens, that Ms. Ross asked you
13 or stated something to the effect that you told him not to
14 turn -- that you didn't request that he turn himself in? Do
15 you have a copy of your report in front of you?

16 A. I do.

17 Q. I want to direct you to page 4, specifically to the
18 portion where you start -- I explained to Gadsden I needed
19 him to come to the sheriff's office and talk about the
20 incident.

21 A. Yes.

22 Q. Can you read what your conversation was after that?
23 What Gadsden stated?

24 A. Gadsden asked what I was talking about, at which time I
25 told -- I told -- it says he. It should be him. But I told

1 -- he knew exactly what I was talking about. Gadsden did
2 not reply. He then advised me he would call me back. I
3 asked him for his cell phone number so I could call him.

4 Q. And at that point did the conversation just end?

5 A. Yes.

6 Q. And just to be clear with respect to your conversation
7 with Mr. Gadsden, he stated he lost his phone on the 15th at
8 Club Sho Tyme?

9 A. Yes, ma'am.

10 Q. Prior to the actual robbery?

11 A. Yes, ma'am.

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

13 **THE COURT:** Anything further, Ms. Ross?

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

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

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

17 **THE COURT:** All right. Okay. Thank you. Anything
18 further?

19 **MR. FRETWELL:** Your Honor, the State would call
20 Sergeant Weiner.

21 **MS. SIMPSON:** Your Honor, with respect to statements
22 regarding Gerald Gadsden, those are the only statements the
23 State would be seeking to introduce. And we submit they
24 were clearly freely and voluntarily waived, he was not in
25 custody. So I don't know if Defense has any objection to

1 those statements coming in.

2 MS. ROSS: I beg the Court's indulgence. What were the
3 statements again?

4 MS. SIMPSON: The testimony of the witness regarding
5 the phone conversation that we just had. Specifically
6 Investigator Owens testified that at around 3:00 on the 27th
7 he received a phone call from Gadsden. When asked, Gadsden
8 stated he was in Orangeburg and he would call me back if he
9 could get a ride to Greenville.

10 When asked about his cell phone, Gadsden stated he lost
11 his phone on the 15th at Club Sho Tyme in North Charleston.
12 I asked him if he reported his cell phone being missing and
13 he stated, no, it was a prepaid phone.

14 I explained to Gadsden that I needed to him -- needed
15 him to come to the sheriff's office and talk about the
16 incident. Gadsden asked what I was talking about, at which
17 time I told him he knew exactly what I was talking about.
18 Gadsden did not reply.

19 He then advised he would call me back. I asked him for
20 his cell phone number so I could call him. And that would
21 be the extent of what we ---

22 MS. ROSS: And I object to that, Your Honor.

23 THE COURT: Object to what?

24 MS. ROSS: I'd object to that statement coming in
25 whatsoever.

1 **THE COURT:** On what basis?

2 **MS. ROSS:** Because my client said he didn't say that,
3 for what it's worth. But as far as the objection, I don't
4 think it's necessarily a statement against party interest.
5 So I'd object to it as hearsay at this time.

6 **MS. SIMPSON:** First of all, we don't have any
7 information that her client didn't -- unless she wants to
8 put him up on the stand ---

9 **THE COURT:** Well, ---

10 **MS. SIMPSON:** --- with respect to or didn't say that.

11 **THE COURT:** She's just gratuitously telling us that her
12 client didn't say that. So ...

13 **MS. SIMPSON:** Well, with respect to what's on the
14 record ---

15 **THE COURT:** Well, Ms. Simpson, I understand what she's
16 saying. And I understand what you're saying. So I'm going
17 to find that the statements were voluntarily given. He was
18 not in custody. He didn't have to be Mirandized at that
19 time. And he gave a statement freely and voluntarily. And
20 we will admit that portion.

21 **MS. SIMPSON:** Thank you.

22 **MS. ROSS:** Thank you, Your Honor.

23 **THE COURT:** Anything else?

24 **MS. SIMPSON:** Nothing with that witness.

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

1 **MR. FRETWELL:** Continuing on with Mr. White's
2 statements, Judge. This is Sergeant David Weiner.

3 **David Weiner,** being duly
4 sworn testified as follows;

5 **MADAME CLERK:** Please have a seat. And will you state
6 your full name for the record.

7 **MR. WEINER:** David Weiner.

8 **MADAME CLERK:** Thank you.

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

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

11 **Cross Examination by Mr. Fretwell:**

12 Q. All right. Sergeant Weiner, Sergeant Motes has already
13 described the area where this took place. I'm going to get
14 -- I'm going to take you straight to your conversations, if
15 any, with Mr. White on January the 22nd of 2014 at
16 approximately 12:30, 1:00. Did you, in fact, have a
17 conversation of some substance with Mr. White?

18 A. Yes, sir.

19 Q. How did you begin that conversation?

20 A. I believe Investigator Motes had brought him downstairs
21 or he came downstairs. I had a brief introduction. And I
22 asked Mr. White a question about how he got to the Law
23 Enforcement Center.

24 **MR. FRETWELL:** And, Your Honor, I'm kind of in a -- I'm
25 stuck here. Typically we would not introduce evidence or

1 testimony or anything that would relate to a criminal
2 offense. I have asked the officer to tell the Court about
3 his conversation with the understanding the Court may
4 instruct him that that testimony is inadmissible and should
5 not be mentioned in front of the jury. But for purposes of
6 this hearing I'm just going to have the officer tell the
7 Court what happened.

8 Q. All right. Sergeant Weiner, tell us what happened when
9 you asked Mr. White a question about how he got there.

10 A. I asked him how he got to the Law Enforcement Center.
11 He told me he got a ride.

12 Q. Okay. And did you make any response to that?

13 A. Just nonchalantly told him, come on, man, you know we
14 got cameras up there. And he responded that he drove.

15 Q. Okay. Who was present when you interviewed or when you
16 spoke to the Defendant?

17 A. The only two I could say for sure were myself and
18 Investigator Motes. I don't know -- very possible a couple
19 of other guys from the office, but I don't know.

20 Q. Okay. And at some point at the -- in the Defendant
21 White's conversation with Investigator, at that time, Motes,
22 did White provide Investigator Motes with a handwritten
23 statement?

24 A. Yes, sir.

25 Q. Okay. And to your knowledge how did that come about?

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

1 A. I heard Investigator Motes and Mr. White talking back
2 and forth a little bit about what had occurred.
3 Investigator Motes asked him to -- at that time the way we
4 were taking statements was we would type the statement out
5 for you. We would present to you what we believed was what
6 you were trying to convey and allow you to make any
7 additions, deletions or corrections.

8 Q. And how did Mr. White respond to that?

9 A. He did not like that option. He stated that he wanted
10 to write his own statement.

11 Q. Okay. And was the Defendant restrained at the time of
12 this interview?

13 A. No, sir.

14 Q. Did you allow him to take any breaks while or before
15 you talked with him?

16 A. I don't remember him taking any, but if he would have
17 asked, we would have happily granted it.

18 Q. Well, did he ask -- did he make any requests of you ---

19 A. No, sir.

20 Q. --- to take a break? Do you recall him making any
21 requests of Investigator Motes to take a break?

22 A. Not that I recall, sir.

23 Q. Did you or anyone promise the Defendant anything in
24 exchange for making a statement?

25 A. No, sir.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

1 Q. Did you or anyone coerce or threaten him into making a
2 statement?

3 A. No, sir.

4 Q. To the best of your knowledge were the Defendant's
5 statements given freely and voluntarily?

6 A. Yes, sir.

7 Q. Did you come into possession of -- I'm sorry. I'm
8 going to skip over this -- the only thing I want to ask you
9 with respect to two phones that came from Mr. White is did
10 you hear Mr. White talk about who -- what these phones were?

11 A. Yes, sir.

12 Q. And what did you hear him say?

13 A. The first phone presented was his primary phone. I
14 believed that to be the only phone he had in his possession.
15 I had filled out the sheet, recorded the serial number, IMEI
16 number off the back of the phone.

17 Q. And then he came up with another phone?

18 A. Subsequently he comes up with a second phone.

19 Q. And we're speaking specifically about his statements.
20 What did he -- what do you recall him saying about that
21 second phone?

22 A. What I recall is that he -- him stating it was an old
23 phone he hadn't used in several months and that it did not
24 work.

25 Q. Did you hear Investigator Motes ask him if he could

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

1 search these phones?

2 A. Yes, sir.

3 Q. Okay. And what was his response with respect to both
4 of these phones?

5 A. That he could -- that the phones could be searched.

6 Q. Okay. Did you discuss with this Defendant a
7 conversation he had with Damion Riley in which he talked
8 about coming into a lot of money?

9 A. Yes, sir.

10 Q. All right. How did you -- how did you ask him about
11 that and how did he respond?

12 A. I'd previously spoken with Mr. Riley. And so I'd asked
13 Mr. White about a rap concert from the weekend prior because
14 he had told Mr. Riley about it. And Mr. White stated that
15 he did perform at a rap concert and received, if I'm not
16 mistaken, seven thousand, five hundred dollars for
17 performing there.

18 Q. Okay. Did you ask Mr. White how he came to possess
19 that particular amount of money?

20 A. Yes, sir.

21 Q. And what was his response?

22 A. That it came from ticket sales or door entrance when
23 people pay to come inside.

24 Q. Okay. And during a break in the interview that you had
25 with him did you contact the event promoter?

1 A. Yes, sir.

2 Q. How did you come about doing that?

3 A. On Mr. White's phone was a flier, an image of a flier
4 for that concert. And I called the number listed for the
5 promoter.

6 Q. I'm going to show you what's been marked as State's
7 exhibit 69. Is this the flier that you referred to?

8 A. Yes, sir.

9 Q. Okay. And does it have a telephone number on there?

10 A. It does.

11 Q. And is that the number that you contacted?

12 A. Yes, sir.

13 Q. Okay. And is that flier also dated?

14 A. Well, it dates the event.

15 Q. Okay.

16 A. It doesn't date the flier.

17 Q. I'm sorry. The date of the event was when?

18 A. Saturday, January 18th.

19 Q. And the robbery that you were investigating occurred on
20 Monday, the 20th, is that correct?

21 A. Yes, sir.

22 Q. All right. Did you ask the promoter about the
23 information that you had received from Mr. White?

24 A. Yes, sir.

25 Q. Did the promoter provide you with information relating

1 to whether or not that information that you had received was
2 ---

3 MR. YARBOROUGH: Your Honor, ---

4 Q. --- true?

5 MR. YARBOROUGH: --- I'm going to object to that whole
6 line of questioning. That's hearsay.

7 MR. FRETWELL: Judge, I can go through and talk about
8 why it's not hearsay. But the simple fact is it provides
9 some basis for why the officer went back and asked Mr. White
10 about it after the fact. So it certainly is not being
11 offered for the truth. It's being offered to show why the
12 officer did what he did. It also is -- could be for
13 purposes of demonstrating that the witness' first statement
14 was not true based on the fact that he changed his story the
15 second time.

16 MR. YARBOROUGH: Your Honor, it is hearsay. It's
17 classic hearsay. He's -- I don't have the opportunity to
18 cross examine that witness about -- well, I don't know what
19 he said, but about what he might have said. And what he's
20 trying to do is he's trying to elicit that testimony so that
21 it tends to prove that this -- my client was lying.

22 Now, if he wants to bring that person up from the Sho
23 and call him, that's one thing, but he can't -- he can't get
24 into what the conversation of that officer had with a guy
25 that he doesn't know, doesn't know that -- he knows a

1 telephone number he dialed, but that's it. He doesn't have
2 any proof or the ability to show that that testimony is true
3 ---

4 **THE COURT:** What is it you're saying that it's not
5 being offered for the truth of the matter asserted?

6 **MR. FRETWELL:** It's not being offered for the truth.
7 Judge, I could care less how much money they made at this
8 event. The information that he receives from that promoter,
9 he confronts Mr. White with it after he comes back upstairs
10 and Mr. White changes his story. That is the salient and
11 probative information there is that he had one story, he
12 changed it to another based on the information that the
13 officer was able to ---

14 **THE COURT:** Well, we're not going into the
15 conversation. If you want to ask him as a result of your
16 investigation to get certain information you did something,
17 but it clearly is hearsay if you're -- if you're trying to
18 rely on the truth of what this guy told you wherever he was
19 and then confronting the witness and he's giving a different
20 story. So we're not going to do that.

21 You know, also, in one of your -- one of the things
22 he's done here is talk about what the other investigating --
23 the questions the other investigating officer asked. And he
24 can't go into those questions.

25 **MR. FRETWELL:** Judge, that was simply for your purposes

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

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1 as to whether or not he was there, was available and heard
2 the testimony for purposes ---

3 **THE COURT:** Well, he can testify, yeah, I -- anything
4 he heard this witness say, he can say. And he can say, you
5 know, that as a result of being questioned did he give an
6 answer. And, you know, but clearly you're going into the
7 specifics of whatever the question is. And I think you are
8 relying ---

9 **MR. FRETWELL:** And, Judge, I think based on your ruling
10 I've been inarticulate in what I've said. What I meant to
11 say is the information that he received from the promoter,
12 he took that information and gave it to Mr. White. Mr.
13 White changed his story from what he had previously said.
14 The different story is not that it was different from what
15 the promoter gave. It doesn't matter. The fact is that he
16 had one story and he changed it to something-else.

17 **THE COURT:** You can talk about he conducted an
18 investigation and went back to the witness and the witness
19 gave different information. But you're not going into the
20 specifics of whatever the promoter told him.

21 **MR. FRETWELL:** Yes, sir. We'll do that.

22 Direct Examination by Mr. Fretwell Continued:

23 Q. Sergeant White, or Sergeant Weiner, after your
24 conversation with the promoter did you -- did you have
25 another conversation with Defendant White?

1 A. Yes.

2 Q. And did you relate to him the information that you had
3 been provided by the promoter?

4 MR. YARBOROUGH: I'm going to object to that ---

5 THE COURT: Sustained. You know, I really don't care
6 what you tell me here today, but if that question comes out
7 in the trial, it would be sustained. I mean, we don't have
8 a jury here. So

9 MR. FRETWELL: Okay.

10 Q. When you spoke to Mr. White again did you bring up the
11 subject of the event in Charleston?

12 A. Yes.

13 Q. Did -- what did Mr. White tell you at that time?

14 A. That he'd actually received the seven thousand, five
15 hundred dollars from other rappers that were present at the
16 event, and they had to pay him to perform under his name.

17 Q. Did you ask him where this money went?

18 A. Yes.

19 Q. And what was his response?

20 A. That he'd spent it on alcohol and women.

21 Q. Okay. And did you ask him where?

22 A. Yes, sir.

23 Q. Okay. And what was his response?

24 A. At the club.

25 Q. All right. Did you ask him what specific club?

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

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1 A. I'm sorry?

2 Q. How did you hear from him? In what -- what context?

3 A. I called his, I believed to be his girlfriend, to try
4 to reach him because we had his phone.

5 Q. But on the 25th of 2014, January, how did you hear from
6 him?

7 A. He called me.

8 Q. That's what I want. Approximately what time did he
9 call you?

10 A. Ten pm.

11 Q. All right. And what, if anything, what number appeared
12 to alert you to who was calling?

13 A. It was a blocked number.

14 Q. Did you speak to Mr. White at that time?

15 A. Yes, sir.

16 Q. Can you characterize his demeanor in the way he was
17 speaking with you?

18 A. I noted it as agitated.

19 Q. Okay. Did he tell -- what did you ask him and how did
20 he respond?

21 A. I asked him to come in to view the lineup.

22 Q. Okay. And what -- how did he respond to that?

23 A. That he could come in on the 10th or the 11th of
24 February.

25 Q. All right. Did you -- did you tell him specifically

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

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1 about Mr. Gadsden's phone and the photos that you found on
2 the phone?

3 A. I told him that I had Mr. Gadsden's phone and that it
4 had photos. I didn't go into a description of the photos.

5 Q. Okay. And how did he respond to the information about
6 Mr. Gadsden?

7 A. He said he did not know who Gerald Gadsden was.

8 Q. And then what did you do?

9 A. He hung up.

10 Q. Just a second.

11 (Pause)

12 Q. All right. Please answer any questions Defense counsel
13 may have.

14 A. Yes, sir.

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

16 Q. That number came in from a blocked telephone?

17 A. Yes, sir.

18 Q. And you identified Mr. White how?

19 A. Well, he told me that's who he was. And I had talked
20 to him before. I could recognize his voice.

21 Q. Okay. And you asked him questions?

22 A. Yes, sir.

23 Q. And he answered those questions?

24 A. Some of them, yes, sir.

25 Q. Okay.

1 **MR. YARBOROUGH:** Your Honor, I'd like to go ahead and
2 get into this issue that somehow or another Mr. Fretwell is
3 -- all these witnesses are giving their opinions about how
4 these Defendants answered questions. They're not experts on
5 how -- they use the word agitated. They use the word --
6 that he did answer -- these guys are sitting at the police
7 station, they're talking to them, but they want to say that
8 the answers they're giving are not given truthfully because
9 they're saying they're agitated, they're upset. I just
10 would like for them to just respond and say the answer to
11 the question was X and not give an opinion as to how these
12 people were responding.

13 **THE COURT:** Well, ---

14 **MR. YARBOROUGH:** They're not experts in that.

15 **THE COURT:** Well, I don't know about that. They're not
16 being offered as experts in that.

17 **MR. YARBOROUGH:** Over and over I hear these terms.

18 **THE COURT:** Well, you're the one that lets them do
19 that, but ---

20 **MR. YARBOROUGH:** Well, I'm ---

21 **THE COURT:** --- what difference does it make whether he
22 appeared to be agitated or not?

23 **MR. FRETWELL:** Pardon me?

24 **THE COURT:** What difference does it make that he
25 appeared to be agitated or wasn't agitated?

1 **MR. FRETWELL:** I think the witness would testify

2 **THE COURT:** Because he's agitated he's not going to
3 tell the truth?

4 **MR. FRETWELL:** No, absolutely ---

5 **MR. YARBOROUGH:** That's exactly ---

6 **MR. FRETWELL:** --- not.

7 **MR. YARBOROUGH:** --- why he's doing it.

8 **THE COURT:** What matter is it whether he's agitated or
9 not?

10 **MR. FRETWELL:** In that he is not responding and acting
11 in the way in which other victims typically act. That's the
12 ---

13 **THE COURT:** That is -- there's no basis in fact because
14 one person acts one way that that indicates somebody else
15 acting a different way has anything to do -- we're not going
16 into that. He called and talked to him. I recognized his
17 voice. I talked to him in the past. I asked him these
18 questions. Here were his answers. Period.

19 Now let's go into the -- anything else?

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

21 **THE COURT:** Do y'all object to the admission of these
22 statements?

23 **MR. YARBOROUGH:** Admissions of the statements, not the
24 opinions of the officers about how the statements were made.

25 **THE COURT:** Well, I mean, the opinions might be

1 relevant if there's some basis for the opinion and it is --
2 it is relevant. But just saying he's agitated is not a
3 basis. But I can't -- you'll have to address those as they
4 come up.

5 **MR. YARBOROUGH:** Okay. And I asked the court reporter
6 to make a copy of what the other officer said that they were
7 being cooperative.

8 **THE COURT:** Now, let's go to this issue about that you
9 brought up to start with, Mr. Fretwell, about you asking how
10 he got here.

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

12 **THE COURT:** Well, we're not going into -- I knew he had
13 his driver's license suspended. So, you know, I guess what
14 you're trying to do is based on some incident that occurred
15 when he got there your officers became suspicious of what he
16 said later on because he wasn't truthful initially?

17 **MR. FRETWELL:** No, sir. No, sir.

18 **THE COURT:** All right. What's the basis of the ---

19 **MR. FRETWELL:** I did not even intend to ask him about
20 those questions. Those were things that Defense counsel
21 asked him a lot about during the suppression hearing. And I
22 would think typically in front of a jury that wouldn't have
23 any place at all.

24 **THE COURT:** Well, they may think it's important. If
25 they do, then they can open the door, but we're not going

1 to. You're not going to.

2 MR. FRETWELL: That's right.

3 THE COURT: If they open the door, then, obviously, you
4 can go into it any way you want to.

5 MR. FRETWELL: Yes, sir.

6 THE COURT: All right. I'm going to find with consent
7 -- that these statements -- he wasn't in custody, that he
8 was -- this was just an investigation into the incident and
9 in doing so he had a right to talk to them, the Defendant
10 had the right to leave at any time or hang up at any time,
11 whatever he wanted to do, that they were freely and
12 voluntarily made, there was no intimidation, or force, or
13 pressure or anything like that that was given to them.
14 Again, I will charge the jury that ultimately that is their
15 decision to determine beyond a reasonable doubt that that
16 was done so. All right. Anything further?

17 MR. FRETWELL: Judge, the only -- we have the witness
18 -- the one final witness on some statements by Mr. White at
19 the scene of the incident. Let me just check real quickly
20 here, Your Honor.

21 THE COURT: And who -- this is another officer?

22 MR. FRETWELL: Yes, sir.

23 THE COURT: All right. Well, I think we may -- it's
24 twenty something after one, and we need to let these court
25 staff and court reporters go -- court reporter have lunch

1 and y'all probably need that. So we can address that real
2 quick when they get back.

3 **MR. FRETWELL:** Yes, sir. And, Judge, I'm probably
4 going to want to ask you a little bit about that particular
5 set of questions. So I think over the lunch break would be
6 great to look at that.

7 **THE COURT:** All right. Mr. Yarborough, you didn't give
8 me any voir dire or a witness list. And I didn't see a
9 witness list from you.

10 **MS. ROSS:** No, Your Honor, I don't have a witness list
11 at this time.

12 **THE COURT:** Other than your potential client would be
13

14 **MR. YARBOROUGH:** I don't have a witness list.

15 **THE COURT:** All right. Well, we're going to break for
16 lunch. I'm going to ask everybody to be back here at
17 twenty-five after one, I mean, two. Mr. White, you
18 understand I'm allowing you to go with Mr. Yarborough?

19 **MR. WHITE:** Yes, sir.

20 **THE COURT:** You need to make sure you come back here
21 with him when he comes back. If you fail to come back, you
22 understand we may proceed without you, and that would not be
23 a good thing for you. In addition, if we go forward or even
24 if we don't, we will issue a bench warrant and you will be
25 sought and ultimately apprehended and no telling how long

1 you'll sit in jail before ---

2 **MR. WHITE:** Yes, sir.

3 **THE COURT:** So just make sure you get back here. Mr.
4 Yarborough, I'm trusting that you will do whatever you can
5 to ---

6 **MR. YARBOROUGH:** Yes, sir. 2:25, Your Honor?

7 **THE COURT:** Yeah, we'll take an hour.

8 (Whereupon court was in recess at 1:23 pm)

9 (Whereupon court reconvened at 2:43 pm)

10 **THE COURT:** All right. Thank y'all. Please be seated.

11 **MR. YARBOROUGH:** Your Honor, Ms. Ross and I were just
12 talking about -- we were just trying to make sure which of
13 the witnesses they had here and if the witnesses would be
14 sequestered during the trial. We'd ask that they be
15 sequestered.

16 And then I know that we were looking for Mr. Pugh,
17 Middleton, and Riley, just making sure they were -- are they
18 under subpoena by the State or ...

19 **MR. FRETWELL:** They're all under subpoena, Your Honor.
20 Mr. Pugh's grandmother died. He's attending her funeral
21 today. That's where he is.

22 **THE COURT:** Well, don't depend on the State having your
23 witnesses. So ---

24 **MR. YARBOROUGH:** We were hoping since they had been
25 subpoenaed that the State wouldn't release them.

1 **MR. FRETWELL:** Judge, the only thing that's happened is
2 that I've instructed Mr. Pugh that he can go to his
3 grandmother's funeral today and that we would take him out
4 of order tomorrow.

5 **MR. YARBOROUGH:** That's fine. Just if he -- we'd just
6 ask the State not release those individuals from the
7 subpoena that they're already under. We have subpoenas for
8 them.

9 **THE COURT:** Y'all have a problem with making sure
10 they're here?

11 **MR. FRETWELL:** No, Your Honor. With respect to
12 sequestration, it's my understanding that Defense needs to
13 articulate some sort of basis for that. It's just not that
14 their preference is that they're sequestered.

15 **MR. YARBOROUGH:** Your Honor, it appears that from the
16 way the case is laid out ---

17 **THE COURT:** We're going to sequester. We ---

18 **MR. YARBOROUGH:** Thank you.

19 **THE COURT:** They're allowed to have any victims they
20 may have. They're allowed to have whoever their chief
21 investigating officer is and you're allowed to have your
22 Defendants.

23 **MR. YARBOROUGH:** Thank you, Your Honor.

24 **THE COURT:** What else?

25 **MR. YARBOROUGH:** I think that's it, Your Honor.

1 **THE COURT:** I assume y'all were not able to do
2 anything, correct?

3 MS. ROSS: No, Your Honor.

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

5 **THE COURT:** All right. Well, everybody proceeds at
6 their own peril.

7 **MR. FRETWELL:** Judge, I don't know -- do they have any
8 witness lists?

9 **THE COURT:** Apparently not. They've not given me any.

10 **MR. FRETWELL:** Judge, we just have Mr. -- Officer
11 Middleton and then we can proceed forward.

12 **MS. SIMPSON:** The State calls Officer Middleton to the
13 stand.

14 James Middleton, being
15 duly sworn testified as follows;

16 **MADAME CLERK:** Please have a seat. And will you state
17 your full name for the record.

18 **MR. MIDDLETON:** James Middleton.

19 **MADAME CLERK:** Thank you.

20 Direct Examination by Ms. Simpson:

21 Q. Officer Middleton, where are you currently employed?

22 A. With the Greenville Health System Police Department.

23 Q. And back in January of 2014 where were you working?

24 A. The Greenville County Sheriff's Office.

25 Q. And what was your position there?

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

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1 A. I was a uniform patrol deputy.

2 Q. And as a uniform patrol deputy on January 20th of 2014
3 did you have occasion to become involved in this case?

4 A. I did.

5 Q. And what was your role?

6 A. I was given a call for service. And I was the first
7 officer on-scene for a reported armed robbery at the Olive
8 Garden.

9 Q. Okay. And when you arrived on the scene -- I'm going
10 to direct your attention to Mr. James White. How did you
11 make contact with him?

12 A. I initially made contact with him when I was searching
13 the building to make sure the suspect was gone or anybody
14 else in the building. I found him along with someone else
15 in the fetal position underneath the counter in the back of
16 the kitchen.

17 Q. And did you announce your presence at that time?

18 A. Yes.

19 Q. And during the course of this as the responding officer
20 did you actually speak with the individuals who were present
21 at the scene?

22 A. Yes.

23 Q. And was Mr. White one of those individuals?

24 A. Yes.

25 Q. And tell us about your conversation, specifically what

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

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1 he told you about what happened.

2 A. He basically stated he was in the back washing dishes
3 and he heard someone screaming. And he turned around and
4 saw -- he described a black male in a dark hooded sweatshirt
5 with a handgun who started yelling at him to get down. And
6 he told me that he got down underneath the counter until I
7 found him.

8 Q. Okay. And I want to direct your attention -- do you
9 have a copy of your report with you?

10 A. I do.

11 Q. To page 2 on the specifics of your conversation with
12 Mr. White as it relates to his description of the clothing
13 ---

14 A. Okay.

15 Q. --- that the black male was wearing.

16 A. He was wearing a brown camouflage hoodie and had a
17 black handgun.

18 Q. And what did he state next?

19 A. That's when he said the suspect came in screaming.

20 Q. And was his back facing him or was he facing him or his
21 back to him?

22 A. He made it sound like his back was to him because he
23 said he turned around and saw him with a gun, and that's
24 when he got on the ground. And he was unable to give any
25 further description.

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

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1 Q. Okay. And was this conversation with him documented
2 only in your written report?

3 A. Yes.

4 Q. Okay. So y'all had an oral conversation?

5 A. Yes.

6 Q. And was that the extent of your conversation with Mr.
7 White that evening?

8 A. Yes.

9 Q. And can you point out Mr. James White, who you spoke
10 with?

11 A. He's, I guess, the burgundy, white dot shirt.

12 (Whereupon the witness pointed to the Defendant, James
13 White)

14 **MS. SIMPSON:** Your Honor, let the record reflect he's
15 identified the Defendant, James White.

16 **THE COURT:** I hope it does. Anything?

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

18 **THE COURT:** All right. Thank you. You may step down.

19 **MS. SIMPSON:** Your Honor, we would just offer that into
20 evidence as it was freely and voluntarily made. It's clear
21 that at this point in the investigation he was treated as a
22 victim and provided the information to Officer Middleton.

23 **THE COURT:** All right. I'm going to find that the
24 statements made by Mr. White at the scene of the incident
25 will be admitted, that he was not in custody, he was in

1 investigative stage and he made his statements freely and
2 voluntarily of his own accord, did not need to be Mirandized
3 and he wasn't under any threat in any way. We will admit
4 them -- admit the statement.

5 With respect to the issue of the -- Mr. Gadsden and the
6 telephone, I'm going to find that the -- that that will be
7 admissible, that Mr. Gadsden, based on the testimony that
8 has been admitted, I mean, introduced here today, there's
9 evidence that he abandoned the phone, said he lost it at a
10 club somewhere in the lower part of the State and made no
11 effort to recover it, didn't contact the police, it was sort
12 of a standard cell phone, and he didn't feel that was
13 necessary. In addition, he represented to the police that
14 it was Mr. White's phone in his possession and he had the
15 apparent authority to give permission on the phone. All
16 right. Anything further?

17 **MR. YARBOROUGH:** That's it, Your Honor.

18 **MR. FRETWELL:** Nothing from the State, Your Honor.

19 **THE COURT:** Ms. Ross, that covers your ---

20 **MS. ROSS:** Yes, Your Honor.

21 **THE COURT:** All right. Let's bring us a jury up.

22 Anybody look at the voir dire? Anybody have any objections
23 to them?

24 (Pause)

25 **THE COURT:** Are we going forward on all -- there's five

1 counts, two kidnapping, one burg, second, one ---

2 **MR. FRETWELL:** No, Your Honor. Armed robbery, two
3 counts of kidnapping and conspiracy for both of the
4 Defendants.

5 **THE COURT:** All right. So the burgs are gone?

6 **MR. FRETWELL:** The burglaries are gone. And the weapon
7 charge on Mr. Gadsden, we're not moving forward on.

8 **THE COURT:** All right. Ms. Ross, did you have
9 something that you wanted me to look at in terms of voir
10 dire? Didn't you tell me some issue -- concern you had?

11 **MS. ROSS:** Yeah. I address it a lot in request number
12 7. If there's any member of the jury who's heard about
13 these Defendants, their names or this case through pretrial
14 media or news, please come forward.

15 And I would emphasize that I would ask that jurors who
16 have issues -- I also have a question about any jury panel
17 member -- of violent crime, they come forward and express
18 that so that they don't taint the rest of the jury pool by
19 going into detail about what their issues may or may not be.

20 **MR. YARBOROUGH:** May I approach, Your Honor? I've got
21 one name that we may call as a witness that my client just
22 added.

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

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

25 **MR. FRETWELL:** With respect to the request for the voir

1 dire from the Defense, the biggest thing that I have noticed
2 and would point out is that anything that the Court would
3 ask with respect to whether there are any jurors that might
4 know the State would also -- that you'd be reciprocal on all
5 of those -- all of those questions so that it does not
6 appear that you're singling out one group of people over the
7 other. And I'd make that from Ms. Ross' requests that
8 basically talk about anybody that is affiliated with the
9 State or the Attorney General's Office or anything else that
10 -- I think traditionally the judges in this circuit have
11 asked is anybody related by blood, marriage or relationship
12 with either of the parties, the Solicitor's Office, with
13 either of the Defense -- the Defendants, any of these
14 individuals on the list. That's certainly -- we expect in
15 every case. But to signal out a group and without having
16 that reciprocity, I think, might tend to ---

17 **THE COURT:** If you have some group you want me to ask
18 about on the solicitor's -- I don't of any group the
19 solicitor has.

20 **MR. FRETWELL:** Well, I mean, with respect to, you know,
21 the CAV, and the MADD and all those groups, there's also the
22 Innocent Project, the Prisoner's Rights, any kind of -- any
23 kind of advocacy group in particular ---

24 **THE COURT:** You'd better write down those names then.
25 I don't think the jury will know what the advocacy group is.

1 **MR. FRETWELL:** If you just use the catchall word of any
2 kind of advocacy group, I think that might -- that might
3 just -- in favor of the Defendants or victims.

4 **THE COURT:** Well, I can't promise you that.

5 **MR. YARBOROUGH:** You mind if I slide over there with
6 her?

7 **THE COURT:** Sir?

8 **MR. YARBOROUGH:** You mind if I slide over there with
9 her?

10 **THE COURT:** You'd better ask her that.

11 **MR. YARBOROUGH:** I don't think she'd mind now.

12 **THE COURT:** You don't know that.

13 Now if I don't ask one of the voir dire, y'all assume
14 that I determined that that wasn't appropriate. You can ask
15 that I ask it again at the end, but ...

16 Now what I'm kind of thinking we might do, it may take
17 us the rest of the afternoon to get this jury and open. And
18 we might break at that point, come back in the morning and
19 call your next witness. Did you have somebody you needed to
20 deal with here today that ...

21 **MR. FRETWELL:** Judge, what we have is we have a witness
22 who is later in the case that provided some information
23 after some of the other events had occurred that apparently
24 needs to get out of here Wednesday. So we're trying to get
25 it to fit in somewhere tomorrow in a place that makes sense

1 to the jury, just talking about information that comes a
2 little bit later in the recitation of the case. We just
3 wanted to see how far we could get today.

4 **THE COURT:** There has been somebody in this courtroom
5 in shorts. Are they with you? Is that one of your
6 witnesses 'cause we ain't letting anybody testify in that
7 dress. And nobody with shirts out.

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

9 **THE COURT:** They can sit in the courtroom, but ...

10 (Pause)

11 (Whereupon the jury panel entered the courtroom at 3:02
12 pm)

13 **THE COURT:** All right. Ladies and gentlemen, good
14 afternoon to you. Sorry to ask you to come back at 2:30 and
15 we're not getting to you until three, but we've had a number
16 of pretrial matters that we've had to deal with this morning
17 and early afternoon in the case that's getting ready to be
18 called for trial.

19 This case that we are dealing with now is the State of
20 South Carolina versus James Damon Lanar White and the State
21 of South Carolina versus Gerald Akeem Gadsden. And these
22 two individuals have been charged with multiple offenses
23 each.

24 Each has been charged with the offense of armed
25 robbery, each has been charged with two offenses of

1 kidnapping and each has been charged with the offense of
2 conspiracy. And in just a moment I will read you the
3 allegations in the respective indictments.

4 For your information, I'm Judge Barber. I'm a circuit
5 judge. I reside permanently in Richland County, South
6 Carolina. For all you Clemson folks, the home of the
7 fighting Gamecocks.

8 Although, I like working up here in Greenville, I'm
9 what is called an active-retired judge. After nineteen
10 years I retired last year, but they let me hold court as
11 much as I wish to hold it. And I will do one week and
12 month.

13 And from the months of April through December my one
14 week is spent in Greenville or Pickens County because y'all
15 are about twelve degrees cooler where we live up in -- we
16 have a house in Caesar's Head. And so it's survivable up
17 there. Even Greenville's hot -- cooler than the famously
18 hot Columbia.

19 Anyway, it's good to be here with you today. And we
20 have a trial that we're probably going to last a good
21 portion of this week.

22 I want you to keep a couple of things in mind, ladies
23 and gentlemen, as a result of your being potentially a juror
24 in a criminal case. One is in every instance when a
25 defendant comes into a courtroom, he or she is presumed to

1 be innocent. And that presumption of innocence remains with
2 that defendant throughout the course of the trial and would
3 only change if jurors, after hearing all the evidence and
4 applying the law, determines, in fact, that that defendant
5 is guilty. That is one of the basic bedrocks of our
6 criminal justice system.

7 The other is that the burden of proving the defendant
8 guilty of any and all charges rests upon the State of South
9 Carolina. And the State must prove the defendant guilty of
10 each and every charge as to each charge by proof beyond a
11 reasonable doubt, which is a heavy burden placed upon the
12 State, but it is one that they generally gladly accept.

13 Now as I told you, we have two Defendants in this case.
14 Each is charged with armed robbery. And the indictments
15 allege that each Defendant did in Greenville County, South
16 Carolina on or about the 20th day of January, 2014 while
17 armed with a deadly weapon or alleging either by action or
18 words that he was armed or using a representation of a
19 deadly weapon or any object with a -- which a person present
20 during the commission of a robbery would reasonably believe
21 to be a deadly weapon and did take by means of force or
22 intimidation goods or monies currently described as U.S.
23 currency belonging to the Olive Garden from the person or
24 presence of Aaron Kretzschmar.

25 Each is also charged with the offense of kidnapping in

1 which each Defendant, the indictment alleges, did in
2 Greenville County on or about the 20th day of January, 2014
3 unlawfully seize, abduct, confine, inveigle, decoy or carry
4 away Aaron Kretzschmar without the authority of law.

5 As to count three, the indictment for kidnapping, each
6 Defendant is charged in that they did unlawfully seize,
7 abduct, confine, inveigle, decoy or carry away Grady Terrell
8 Pugh without the authority of law.

9 In addition, each Defendant is charged with the offense
10 of conspiracy wherein the indictments allege that they did
11 in Greenville County on or about the 20th day of January,
12 2014 wilfully and unlawfully combined with each other for
13 the purpose of accomplishing an unlawful object or an
14 unlawful object by unlawful or a lawful object by unlawful
15 means, that being armed robbery and/or kidnapping.

16 As I told you to these indictments, ladies and
17 gentlemen, the Defendants have entered pleas of not guilty.
18 So the burden now falls upon the State of South Carolina to
19 attempt to prove these Defendants guilty and prove them
20 guilty beyond a reasonable doubt.

21 Now, ladies and gentlemen, these indictments are not
22 evidence in the case. And they're not to be considered by
23 you for any purpose other than the indictments have put
24 these Defendants on notice of their respective charges.

25 Before we begin the trial I have certain questions that

1 I want to ask you, and I have certain individuals that I
2 would like to introduce to you. First, ladies and
3 gentlemen, I would like to introduce to you Mr. James White,
4 who is one of the Defendants in this matter. Mr. White, if
5 you would please stand and face the jury.

6 Ladies and gentlemen, this is Mr. James White. And I
7 would inquire at this time is there any member of this jury
8 panel or any member of the jury panel's immediate family who
9 is related by blood or connected by marriage, or either now
10 or in the past has had a close personal relationship with
11 Mr. White, or either now or in the past has had an
12 employment or a business relationship with Mr. White? If
13 so, please stand.

14 (No response)

15 **THE COURT:** Thank you, sir.

16 Now, ladies and gentlemen, I'd like to introduce to you
17 Mr. Gerald Akeem Gadsden. Mr. Gadsden's standing now,
18 ladies and gentlemen. And I would inquire at this time is
19 there any member of this jury panel or any member of the
20 jury panel's immediate family who is related by blood or
21 connected by marriage, or either now or in the past has had
22 a close personal relationship with Mr. Gadsden, or either
23 now or in the past has had an employment or a business
24 relationship with Mr. Gadsden? If so, please stand.

25 (No response)

1 **THE COURT:** All right. Thank you, sir.

2 Ladies and gentlemen, in most instances when parties
3 come into court, they are represented by attorneys. In this
4 instance the State of South Carolina is represented by the
5 Solicitor's Office of the Fifth, I mean, Thirteen Judicial
6 Circuit. Those attorneys on behalf of the solicitor are Mr.
7 Allen Fretwell and Ms. Nicole Simpson. Both of these
8 individuals are members of the South Carolina Bar and
9 employed with the Solicitor's Office in the Thirteenth
10 Judicial Circuit.

11 And I would inquire at this time is there any member of
12 this jury panel or any member of the jury panel's immediate
13 family who is related by blood or connected by marriage to
14 either Mr. Fretwell or Ms. Simpson or any other person
15 employed within the Solicitor's Office, or either now or in
16 the past has had employment or a business relationship with
17 the Solicitor's Office or any individuals employed in the
18 Solicitor's Office? If so, please stand. Yes, ma'am, your
19 name?

20 **MS. MULLIKIN:** Brenda Mullikin. My son worked for the
21 Solicitor's Office. I guess it was two summers ago.

22 **THE COURT:** All right. The fact that you had a son
23 that was employed at the Solicitor's Office, would that
24 prevent you from listening to the evidence in this case and
25 based upon such evidence rendering a fair and impartial

1. verdict?

2. **MS. MULLIKIN:** No.

3. **THE COURT:** All right. Thank you, ma'am. Yes, sir,
4. your name?

5. **MR. THURMAN:** I'm Robert Jeremy Thurman.

6. **THE COURT:** All right. Mr. Thurman, what's your
7. situation?

8. **MR. THURMAN:** My wife works for the Solicitor's Office
9. currently right now, Shannon.

10. **THE COURT:** Your wife is employed in the Solicitor's
11. Office?

12. **MR. THURMAN:** Yes, sir.

13. **THE COURT:** All right. I think I'm going to excuse you
14. from service on this case. If you'll just have a seat.
15. Madame Clerk, if y'all will take his name ...

16. (Whereupon juror 222, Jeremy Thurman, a black male, was
17. excused from the jury panel)

18. **MADAME CLERK:** What is your juror -- what is your
19. number?

20. **MR. THURMAN:** 222.

21. **MADAME CLERK:** Thank you.

22. **THE COURT:** All right. Ladies and gentlemen, I'm now
23. going to -- in this instance -- the Defendants are also
24. represented by counsel. And representing Mr. White is Mr.
25. William Yarborough. And this is Mr. Yarborough standing

1 right now. And representing Ms. Gadsden is -- Mr. Gadsden
2 is Susannah Ross. Ms. Susannah Ross, she's standing as
3 well.

4 And these two individuals are also members of the South
5 Carolina Bar. They both practice privately here in
6 Greenville County. It's where their offices is, although,
7 they practice throughout the State of South Carolina from
8 time to time.

9 And I would ask you at this time is there any member of
10 this jury panel or any member of the jury panel's immediate
11 family who's related by blood or connected by marriage, or
12 either now or in the past has had a close personal
13 relationship with Mr. Yarborough or Ms. Ross, or either now
14 or in the past has had an employment or a business
15 relationship with Mr. Yarborough, or Ms. Ross, or their
16 office, or either now or in the past has been represented by
17 Mr. Yarborough or Ms. Ross? If so, please stand.

18 (No response)

19 **THE COURT:** All right. Thank y'all.

20 Ladies and gentlemen, I now want to read you the names
21 of some potential witnesses in this case. And if any of
22 them are here, which I doubt they are, don't have much room
23 in the courtroom, I'd ask them to stand so the jury can see
24 who they are.

25 Deputy Matt Anderson of the Greenville County Sheriff's

1 Office, Chris Gary of the Department of Public Safety,
2 Investigator Laura Jones of the Greenville County Sheriff's
3 Office, Sergeant Dan Kelly of the Greenville County
4 Sheriff's Office, Detective David Kern of the Greenville
5 Police Department, Mr. Aaron Kretzschmar, Officer James
6 Middleton of the Greenville Health System Police,
7 Investigator Ricky Motes of the Greenville County Sheriff's
8 Office, Investigator Matt Owens of the Greenville County
9 Sheriff's Office, Investigator Jim Perry of the Greenville
10 County Sheriff's Office, Grady Terrell Pugh, Damion Riley,
11 Jermaine Lowe, Sergeant Dar Shaw, Sergeant David Weiner of
12 the Greenville County Sheriff's Department.

13 Now I would inquire at this time, ladies and gentlemen,
14 is there any member of this jury panel or any member of the
15 jury panel's immediate family who is related by blood or
16 connected by marriage, or either now or in the past has had
17 a close personal relationship with any of these individuals,
18 or either now or in the past has had employment or a
19 business relationship with any of those individuals? If so,
20 please stand. Yes, sir, your name?

21 **MR. COLLINS:** Robert Collins. David Weiner was a
22 crossing guard at -- where I was -- had school.

23 **THE COURT:** All right. The fact that you had that
24 history with Mr. Weiner, would that prevent you from
25 listening to the evidence in this case and based upon such

1 evidence rendering a fair and impartial verdict?

2 **MR. COLLINS:** No, sir.

3 **MR. YARBOROUGH:** Could we get his jury number, Your
4 Honor?

5 **THE COURT:** Your jury number, please?

6 **MR. COLLINS:** 53.

7 **THE COURT:** Sir?

8 **MR. COLLINS:** 53.

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

10 Has any member of this jury panel or any member of the
11 jury panel's immediate family ever been the victim of an
12 armed robbery, or a kidnapping, or a violent crime? If so,
13 I'm going to ask you to stand and come down, individually.
14 The bailiffs will help you come down and meet with me right
15 in front of our court reporter here, and you can tell me
16 what you need to tell me.

17 (Whereupon a bench conference was held on the record in
18 the presence of the jury panel, but out of their hearing):

19 **THE COURT:** Your name, please?

20 **MS. NORDEEN:** Kassidy Nordeen, 175.

21 **THE COURT:** All right. Tell me what is your situation.

22 **MS. NORDEEN:** My father was convicted of armed robbery
23 and passed away the other day.

24 **THE COURT:** The fact that you have that history, would
25 that prevent you from listening to the evidence in this case

1 and based upon such evidence render a fair and impartial
2 verdict?

3 **MS. NORDEEN:** Does that mean being biased?

4 **THE COURT:** Can you be fair?

5 **MS. NORDEEN:** Probably not.

6 **THE COURT:** You cannot be fair?

7 **MS. NORDEEN:** I don't think so.

8 **THE COURT:** Okay. Well, I'll excuse you from service
9 on this jury. If you'll have a seat.

10 **MS. NORDEEN:** Thank you.

11 (Whereupon juror 175, Kassidy Nordeen, a white female,
12 was excused from the jury panel)

13 (Whereupon the bench conference was ended)

14 **THE COURT:** Is there any member of this jury panel or
15 any member of the jury panel's immediate family who is
16 currently or previously been employed by any local State or
17 Federal Prosecutor's Office or -- including the Solicitor's
18 Office, Attorney General's Office, U.S. Attorney's Office?
19 If so, please stand. Yes, sir.

20 **MR. THURMAN:** Do I need to stand again? I'm sorry.

21 **THE COURT:** Yes, sir. Tell me your name again.

22 **MR. THURMAN:** Robert Jeremy Thurman.

23 **THE COURT:** All right. Well, I've already excused you.
24 So I can't do that but once.

25 (Laughter)

1 **MR. THURMAN:** Just wanted to make sure ---

2 **THE COURT:** You don't need to stand anymore. You're
3 out like Wallace's eye. Yes, ma'am?

4 **MS. MULLIKIN:** My son was an intern ---

5 **THE COURT:** All right. Again, the fact that your son
6 formerly worked at the Solicitor's Office, would that
7 prevent you from listening to the evidence in this case and
8 ---

9 **MS. MULLIKIN:** No, sir.

10 **THE COURT:** --- based upon such evidence rendering a
11 fair and impartial verdict?

12 **MS. MULLIKIN:** No, sir.

13 **THE COURT:** And give me your jury number again, please,
14 ma'am.

15 **MS. MULLIKIN:** 168.

16 **THE COURT:** All right. Thank you, ma'am.

17 Any member of this jury panel a member of, or belong
18 to, or contributed to any organization the primary purpose
19 of which is the promotion of law enforcement or the
20 promotion of any defense related groups? If so, please
21 stand.

22 (No response)

23 **THE COURT:** Ladies and gentlemen, this -- the
24 allegations in these indictments relate to an incident that
25 occurred on or about January of 2014 and it involves an

1 armed robbery, kidnapping and conspiracy at a local Olive
2 Garden restaurant. Does any member of this jury panel have
3 any knowledge or remember reading, seeing or hearing
4 anything relating to this incident? If so, please stand.
5 Yes, sir, your name?

6 **MR. CASH:** Chris Cash.

7 **THE COURT:** All right. Mr. Cash, what's your number?

8 **MR. CASH:** It's 44.

9 **THE COURT:** All right. You have some recollection of
10 the incident?

11 **MR. CASH:** Yes, sir. I remember it was on my
12 daughter's birthday.

13 **THE COURT:** It was on your daughter's birthday?

14 **MR. CASH:** That's correct.

15 **THE COURT:** The fact that you have some recollection of
16 it, would it prevent you from listening to the evidence in
17 this case and based upon such evidence rendering a fair and
18 impartial verdict?

19 **MR. CASH:** No, sir.

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

21 Any member of this jury panel discussed this issue with
22 -- this incident with anyone? If so, please stand.

23 (No response)

24 **THE COURT:** Has any member of this jury panel formed or
25 expressed an opinion as to the guilt or the innocence of

1 either Mr. Gadsden or Mr. White in this matter? If so,
2 please stand.

3 (No response)

4 **THE COURT:** Is there any member of this jury panel who
5 is conscious of any interest, or any bias, or any prejudice
6 for or against either of the Defendants in this case? If
7 so, please stand.

8 (No response)

9 **THE COURT:** Any member of this jury panel who is
10 conscious of any interest, bias, or prejudice for or against
11 the State of South Carolina? If so, please stand.

12 (No response)

13 **THE COURT:** Can each member of this jury panel give
14 both the State and the Defendants a fair and impartial
15 trial? If you believe you cannot be fair and impartial,
16 please stand at this time.

17 (No response)

18 **THE COURT:** All right. Any further inquiry from the
19 State?

20 **MR. FRETWELL:** None, Your Honor.

21 **THE COURT:** Anything from the Defendants?

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

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

24 **MS. ROSS:** Judge, only as I requested on my ---

25 **THE COURT:** All right. Okay. Madame Clerk.

1 **MADAME CLERK:** When I call your jury number or name,
2 please stand. And do you want them to go to the jury box
3 then or do you want them to wait?

4 **THE COURT:** Say that again.

5 **MADAME CLERK:** Once they're selected do you want them
6 -- okay.

7 Juror number 59, Debra Dasilva.

8 (Whereupon juror 59, Debra Dasilva, a white female,
9 stood)

10 **MADAME CLERK:** No, stay -- ma'am, ---

11 **THE COURT:** Ma'am, you can just keep your seat, if you
12 would.

13 **MADAME CLERK:** Stand back.

14 **MS. DASILVA:** Okay.

15 **MADAME CLERK:** Okay. And then if you're chosen, bring
16 your things with you and then come and take a seat in the
17 jury box.

18 **MS. DASILVA:** Okay.

19 **MADAME CLERK:** What says the State?

20 **MR. FRETWELL:** Please present Ms. Dasilva.

21 **MADAME CLERK:** What says Defendant White?

22 **MR. YARBOROUGH:** Present the juror.

23 **MS. ROSS:** Please seat the juror.

24 **MADAME CLERK:** You may bring your things and have a
25 seat in the jury box.

1 Juror number 30, Jody Boyle.

2 (Whereupon juror 30, Jody Boyle, a white male, stood)

3 **MADAME CLERK:** What says the State?

4 **MR. FRETWELL:** Present Mr. Boyle.

5 **MADAME CLERK:** What says the Defendant?

6 **MR. YARBOROUGH:** Please present Mr. Boyle.

7 **MS. ROSS:** Please seat Mr. Boyle.

8 **MADAME CLERK:** You may bring your things and have a

9 seat in the jury box.

10 Juror number 83, Todd Gillespie. What says the State?

11 (Whereupon juror 83, Todd Gillespie, a white male,

12 stood)

13 **MR. FRETWELL:** Present Mr. Gillespie.

14 **MADAME CLERK:** What says the Defendant?

15 **MR. YARBOROUGH:** Please present the juror.

16 **MS. ROSS:** Please seat the juror.

17 **MADAME CLERK:** You may bring your things and have a

18 seat in the jury box.

19 Juror number 168, Brenda Mullikin.

20 (Whereupon juror 168, Brenda Mullikin, a white female,

21 stood)

22 **MADAME CLERK:** What says the State?

23 **MR. FRETWELL:** Present Ms. Mullikin.

24 **MADAME CLERK:** What says the Defendant?

25 **MR. YARBOROUGH:** Please present the juror.

1 MS. ROSS: Please excuse this juror.

2 MADAME CLERK: You may take a seat. No, no. Ms. Ross,
3 did you say ---

4 MS. ROSS: I said excuse.

5 THE COURT: You're excused, Ms. Mullikin.

6 MADAME CLERK: Right. You may have a seat.

7 Juror number 194, Margaret Register.

8 (Whereupon juror 194, Margaret Register, a white
9 female, stood)

10 MADAME CLERK: What says the State?

11 MR. FRETWELL: Please present Ms. Register.

12 MADAME CLERK: What says the Defendant?

13 MR. YARBOROUGH: Please excuse Ms. Register.

14 MADAME CLERK: You may take your seat.

15 Juror number 179, Greg Owens..

16 (Whereupon juror 179, Greg Owens, a white male, stood)

17 MADAME CLERK: What says the State?

18 MR. FRETWELL: Present Mr. Owens.

19 MADAME CLERK: What says the Defendant?

20 MR. YARBOROUGH: Please swear the juror.

21 MADAME CLERK: Ms. Ross?

22 MS. ROSS: Please seat the juror.

23 MADAME CLERK: You may bring your things and have a
24 seat in the jury box.

25 Juror number 161, Michelle Mitchell.

1 (Whereupon juror 161, Michelle Mitchell, a white
2 female, stood)

3 **MADAME CLERK:** What says the State?

4 **MR. FRETWELL:** Please present Ms. Mitchell.

5 **MADAME CLERK:** What says the Defendant?

6 **MR. YARBOROUGH:** Please excuse her.

7 **MADAME CLERK:** Okay. You're excused.

8 Juror number 81, Joann Garrett.

9 (Whereupon juror 81, Joann Garrett, a white female,
10 stood)

11 **MADAME CLERK:** What says the State?

12 **MR. FRETWELL:** Present Ms. Garrett.

13 **MADAME CLERK:** What says the Defendant?

14 **MR. YARBOROUGH:** Please present the juror.

15 **MS. ROSS:** Please seat the juror.

16 **MADAME CLERK:** You may bring your things and have a
17 seat in the jury box.

18 Juror number 241, Jason Wise.

19 (Whereupon juror 241, Jason Wise, a white male, stood)

20 **MADAME CLERK:** What says the State?

21 **MR. FRETWELL:** Present Mr. Wise.

22 **MADAME CLERK:** What says the Defendant?

23 **MR. YARBOROUGH:** Please present the juror.

24 **MS. ROSS:** Please seat the juror.

25 **MADAME CLERK:** You may bring your things and have a

1 seat in the jury box.

2 Juror number 66, Holly Dowling.

3 (Whereupon juror 66, Holly Dowling, a white female,
4 stood)

5 **MADAME CLERK:** What says the State?

6 **MR. FRETWELL:** Present Ms. Dowling.

7 **MADAME CLERK:** What says the Defendant?

8 **MR. YARBOROUGH:** Please present the juror.

9 **MS. ROSS:** Please excuse Ms. Dowling.

10 **MADAME CLERK:** You may take your seat.

11 Juror number 163, Ashley Moore.

12 (Whereupon juror 163, Ashley Moore, a white female,
13 stood)

14 **MADAME CLERK:** What says the State?

15 **MR. FRETWELL:** Present Ms. Moore.

16 **MADAME CLERK:** What says the Defendant?

17 **MR. YARBOROUGH:** Please present the juror.

18 **MS. ROSS:** Please seat the juror.

19 **MADAME CLERK:** You may bring your things and have a
20 seat in the jury box.

21 Juror number 124, David Johnson.

22 (Whereupon juror 124, David Johnson, a white male,
23 stood)

24 **MADAME CLERK:** What says the State?

25 **MR. FRETWELL:** Present Mr. Johnson.

1 **MADAME CLERK:** What says the Defendant?

2 **MR. YARBOROUGH:** Please excuse Mr. Johnson.

3 **MADAME CLERK:** You may take your seat.

4 Juror number 10, Rhetta Atkins.

5 (Whereupon juror 10, Rhetta Atkins, a white female,
6 stood)

7 **MADAME CLERK:** What says ---

8 **THE COURT:** Juror number what?

9 **MADAME CLERK:** 10, 1-0.

10 **THE COURT:** Oh, okay. I'm sorry.

11 **MADAME CLERK:** That's all right. What says the State?

12 **MR. FRETWELL:** Present Ms. Atkins.

13 **MADAME CLERK:** What says the Defendant?

14 **MR. YARBOROUGH:** Please present Ms. Atkins.

15 **MS. ROSS:** Please excuse Ms. Atkins.

16 **MADAME CLERK:** You may take your seat.

17 Juror number 218, Robert Starler [sic].

18 (Whereupon juror 218, Robert Statler, a white male,
19 stood)

20 **MADAME CLERK:** What says ---

21 **THE COURT:** Statler?

22 **MADAME CLERK:** What says the State?

23 **MR. FRETWELL:** Please excuse the juror from the trial
24 of this case.

25 **MADAME CLERK:** You may take your seat.

1 Juror number 93, Jennifer Grooms.

2 (Whereupon juror 93, Jennifer Grooms, a white female,
3 stood)

4 **MADAME CLERK:** What says the State?

5 **MR. FRETWELL:** Please present Ms. Grooms.

6 **MADAME CLERK:** What says ---

7 **MR. YARBOROUGH:** Please present Ms. Grooms.

8 **MS. ROSS:** Please excuse Ms. Grooms.

9 **MADAME CLERK:** You may take your seat.

10 Juror number 77, Cynthia Fulmer.

11 (Whereupon juror 77, Cynthia Fulmer, a white female,
12 stood)

13 **MADAME CLERK:** What says the State?

14 **MR. FRETWELL:** Present Ms. Fulmer.

15 **MR. YARBOROUGH:** Please excuse Ms. Fulmer.

16 **MADAME CLERK:** You may take your seat.

17 Juror number 232, Stewart White.

18 (Whereupon juror 232, Stewart White, a white male,
19 stood)

20 **MADAME CLERK:** What says the State?

21 **MR. FRETWELL:** Please present Mr. White.

22 **MADAME CLERK:** What ---

23 **MR. YARBOROUGH:** Please present Mr. White.

24 **MS. ROSS:** Please seat Mr. White.

25 **MADAME CLERK:** You may bring your things and have a

1 seat in the jury box.

2 Juror number 193, Alan Redmon.

3 (Whereupon juror 193, Alan Redmon, a white male, stood)

4 **MADAME CLERK:** What says the State?

5 **MR. FRETWELL:** Present Mr. Redmon.

6 **MADAME CLERK:** What says the Defendant?

7 **MR. YARBOROUGH:** Please present Mr. Redmon.

8 **MS. ROSS:** Please seat Mr. Redmon.

9 **MADAME CLERK:** You may bring your things and have a
10 seat in the jury box.

11 Juror number 134, Grant Knox.

12 (Whereupon juror 134, Grant Knox, a white male, stood)

13 **MADAME CLERK:** What says the State?

14 **MR. FRETWELL:** Please present Professor Knox.

15 **MADAME CLERK:** What says the Defendant?

16 **MR. YARBOROUGH:** Please excuse Mr. Knox.

17 **MADAME CLERK:** You may take your seat.

18 Juror number 109, Robert Hogan.

19 (Whereupon juror 109, Robert Hogan, a white male,
20 stood)

21 **MADAME CLERK:** What says the State?

22 **MR. FRETWELL:** Present Mr. Hogan.

23 **MADAME CLERK:** What says the Defendant?

24 **MR. YARBOROUGH:** Please present the juror.

25 **MS. ROSS:** Please seat the juror.

1 **MADAME CLERK:** You may bring your things and have a
2 seat in the jury box.

3 Juror number 151, Clark Mays.

4 (Whereupon juror 151, Clark Mays, a white male, stood)

5 **MADAME CLERK:** What says the State?

6 **MR. FRETWELL:** Present Mr. Mays.

7 **MADAME CLERK:** What says the Defendant?

8 **MR. YARBOROUGH:** Please present Mr. Mays.

9 **MS. ROSS:** Please excuse Mr. Mays.

10 **MADAME CLERK:** You may take your seat.

11 Juror number 26, Randy Boes.

12 (Whereupon juror 26, Randy Boes, a white male, stood)

13 **MADAME CLERK:** What says the State?

14 **MR. FRETWELL:** Please excuse Mr. Boes from the trial of
15 this case.

16 **MADAME CLERK:** You may take your seat.

17 Juror number 227, Tammy Wade.

18 (Whereupon juror 227, Tammy Wade, a white female,
19 stood)

20 **MADAME CLERK:** What says the State?

21 **MR. FRETWELL:** Present Ms. Wade.

22 **MADAME CLERK:** What says the Defendant?

23 **MR. YARBOROUGH:** Please present Ms. Wade.

24 **MS. ROSS:** Please excuse Ms. Wade.

25 **MADAME CLERK:** You may take your seat.

1 **MADAME CLERK:** Juror number 204, Aaron Sanders.

2 (Whereupon juror 204, Aaron Sanders, a white male,
3 stood)

4 **MADAME CLERK:** What says the State?

5 **MR. FRETWELL:** Present Mr. Sanders.

6 **MADAME CLERK:** What says the Defendant?

7 **MR. YARBOROUGH:** Please excuse Mr. Sanders.

8 **MADAME CLERK:** You may take your seat.

9 Juror number 162, Andy Moehlenbrock.

10 (Whereupon juror 162, Andy Moehlenbrock, a white male,
11 stood)

12 **MADAME CLERK:** What says the State?

13 **MR. FRETWELL:** Present Mr. Moehlenbrock.

14 **MADAME CLERK:** What says the Defendant?

15 **MR. YARBOROUGH:** Please present the juror.

16 **MS. ROSS:** Please excuse Mr. Moehlenbrock.

17 **MADAME CLERK:** You may take your seat.

18 Juror number 102, James Harris.

19 (Whereupon juror 102, James Harris, a white male,
20 stood)

21 **MADAME CLERK:** What says the State?

22 **MR. FRETWELL:** Present Mr. Harris.

23 **MADAME CLERK:** What says the Defendant?

24 **MR. YARBOROUGH:** Please present Mr. Harris.

25 **MS. ROSS:** I beg the Court's indulgence.

1 (Pause)

2 MS. ROSS: Please seat the juror.

3 MADAME CLERK: You may bring your things and have a
4 seat in the jury box.

5 THE COURT: All right. We're going to do two
6 alternates. Everybody will get one strike on each
7 alternate.

8 MADAME CLERK: Juror number 108, Alexandria Hill.

9 (Whereupon juror 108, Alexandria Hill, a white female,
10 stood)

11 MADAME CLERK: What says the State?

12 MR. FRETWELL: Present Ms. Hill.

13 MADAME CLERK: What says the Defendant?

14 MR. YARBOROUGH: Please present this juror.

15 MS. ROSS: Please seat the juror.

16 MADAME CLERK: You may bring your things and have a
17 seat in the jury box.

18 Juror number 94, Kelley Hagan.

19 (Whereupon juror 94, Kelley Hagan, a white female,
20 stood)

21 MADAME CLERK: What says the State?

22 MR. FRETWELL: Present Ms. Hagan.

23 MADAME CLERK: What says the Defendant?

24 MR. YARBOROUGH: Please excuse the juror.

25 MADAME CLERK: You may take your seat.

1 Juror number 4, Donna Allen.

2 (Whereupon juror 4, Donna Allen, a white female, stood)

3 **MADAME CLERK:** What says the State?

4 **MR. FRETWELL:** Present Ms. Allen.

5 **MADAME CLERK:** What says the Defendant?

6 **MS. ROSS:** Okay. Please seat the alternate.

7 **MADAME CLERK:** You may bring your things and have a
8 seat.

9 **THE COURT:** All right. Anything from the State with
10 respect to the composition of the jury?

11 **MR. FRETWELL:** Nothing, Your Honor.

12 **THE COURT:** Anything from Mr. White?

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

14 **THE COURT:** Anything from Mr. Gadsden?

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

16 **THE COURT:** All right. Ladies and gentlemen of the
17 jury panel that did not get selected, I thank you very much
18 for making yourselves available. I'm going to ask if you
19 will return back downstairs to the jury assembly room. You
20 will get further instructions at that time. Y'all have a
21 nice afternoon. And you are free to return back downstairs.

22 (Whereupon the remaining jurors exited the courtroom)

23 **THE COURT:** All right. Madame Clerk, can we swear the
24 jury.

25 **MADAME CLERK:** Will you please rise and raise your

1 right hand. And the correct response to the oath is I will.
2 You shall well -- you shall well and truly try the case
3 2014-GS-23-3815, State versus James Damon Lanar White and
4 2014-GS-23-10507, Gerald Akeem Gadsden indicted for armed
5 robbery, kidnapping and conspiracy and a true verdict
6 rendered according to the law and evidence so help you God.
7 I will.

8 **THE JURY:** I will.

9 **MADAME CLERK:** Thank you. You may have a seat.

10 **THE COURT:** All right. Ladies and gentlemen, before I
11 turn this over to the attorneys I'm going to take a few
12 minutes and tell you a little bit about this process in case
13 you've not served on a jury before or it's been some time
14 since you have served on a jury.

15 The first thing I want to tell you is, as I've
16 mentioned earlier, these -- each of these Defendants have
17 been charged with the criminal offense of -- that's in the
18 indictment of armed robbery, two counts of kidnapping and
19 one count of conspiracy.

20 And basically the indictments allege that these two
21 individuals did commit an armed robbery at an Olive Garden
22 here in Greenville County on or about January 20, 2014, and
23 that they had conspired with each other to commit the armed
24 robbery and/or the kidnapping and that the kidnapping
25 resulted as a result of these individuals having committed

1 the armed robberies -- armed robbery.

2 To these charges the Defendants have pled not guilty,
3 which means that they are in here saying they did not do
4 this. And it is -- the burden is on the State of South
5 Carolina to prove these Defendants guilty and to prove them
6 guilty beyond a reasonable doubt of all the counts.

7 Now, ladies and gentlemen, I told you earlier that we
8 have two basic principles of our criminal justice system.
9 And you need to keep them in mind throughout the course of
10 this trial. And that is these Defendants come into this
11 courtroom presumed to be innocent. And that presumption of
12 innocence remains with them and will remain with them
13 throughout the course of this trial and would only change if
14 you find one or more of them guilty beyond a reasonable
15 doubt after you have heard the evidence and applied the law.

16 You also need to understand that these Defendants have
17 no burden whatsoever in this case. The burden of proving
18 them guilty and proving them guilty beyond a reasonable
19 doubt falls upon the State. The Defendants don't have to do
20 anything. And what they do in this trial, I'm sure, depends
21 on how the evidence unfolds during the course of the trial,
22 but they do not have to do anything because the burden of
23 proof does not fall on them in any way. They have no burden
24 whatsoever.

25 Now this case is very, very important because these are

1 serious charges. And we want to do everything we can,
2 ladies and gentlemen, to make sure that both of these
3 Defendants receive a fair and impartial trial. And one of
4 the ways that I'm going to ask you to do that is you not
5 discuss this case with each other or with anyone else at any
6 time during the course of the trial and that you only
7 discuss it after you have been given specific instructions
8 by me that you can discuss it and discuss it during the
9 course of your deliberations.

10 So any time we take a break and you go back to the jury
11 room, do not discuss the case. When we take a break and you
12 go home in the evening, do not discuss the case with your
13 family, or your friends, or anybody that you come in contact
14 with. Well, the course -- on the course of the trial we go
15 to lunch in the daytime and you go out and have lunch with
16 someone, do not discuss the case with each other.

17 And the reason I ask you to do that, I ask you not to
18 discuss the case with each other is because I don't want you
19 to begin formulating any opinion about the case until you're
20 given both the State and the Defendant a full opportunity to
21 put whatever they wish to put in front of you for your
22 consideration in the course of this trial.

23 If you go back and start talking about it, you may
24 begin to formulate an opinion. If you go home and talk to a
25 neighbor, a friend or a family member, I can promise you

1 this, they've not heard the first bit of evidence in this
2 case, but they'll have an opinion. And they'll voice that
3 opinion. So please do not discuss it with anyone. You are
4 to decide this case based upon the evidence that's put forth
5 in front of you here in this courtroom during the course of
6 the trial.

7 Now, I'm also going to ask, ladies and gentlemen, that
8 you not do anything to conduct your own investigation or
9 make your own inquiry about this case. So that means don't
10 get on the internet, don't get on Google, don't get on the
11 computer, don't read a newspaper, don't listen to anything
12 on the radio, don't watch anything on TV that has anything
13 to do with this case.

14 I will ask you each and every time that we break to not
15 discuss the case with each other or with anyone else. I'll
16 ask you each time you come back in the courtroom after
17 having been outside the courthouse whether you've discussed
18 this case with anyone, whether you made any sort of inquiry
19 at all. And I expect you to do that. We want to make sure
20 that this trial is conducted in a way that it needs to be
21 conducted.

22 Now, ladies and gentlemen, the way the trial will take
23 place, the first thing that's going to happen is these
24 lawyers are going to have an opportunity to get up and speak
25 to you. It's called an opening statement. And the State

1 will go first. The State will go first throughout the
2 course of this trial, because as I told you, the burden of
3 proof rests upon the State of South Carolina, because of
4 that they get to go first.

5 The opening statement is an opportunity for the lawyers
6 to get up and introduce themselves to you and to tell you a
7 little bit about this case so that you have some
8 understanding of what is going to unfold over the next
9 several days. It's not an argument. It's a chance for them
10 to educate you or inform you about this case before they
11 actually begin calling of evidence.

12 After the solicitor goes, then both counsel for the
13 Defendants will have an opportunity to make their opening
14 statement. And their statements will be similar to the type
15 of statement that the State made.

16 When both -- all sides have completed their opening
17 statements, then the State will go forward with the
18 presentation of the State's evidence. I assume that most of
19 the State's evidence will come in by way of testimony from
20 witnesses.

21 Those witnesses will be put under oath. They'll get in
22 this witness box right here, and they'll tell you what
23 information they have about this case. They've seen
24 something, heard something, smelled something, tasted
25 something. They have some knowledge from one of their

1 senses, and they will tell you what that information is.

2 Other type of evidence that could come in could be
3 things like documents, photographs, things of that nature.
4 That type of evidence is actually introduced, it's given an
5 exhibit number, and that evidence will go with you to the
6 jury room during the course of your deliberations.
7 Testimony, ladies and gentlemen, will go with you in your
8 memory. So it is absolutely essential that you pay close
9 attention to what is being said during the course of this
10 trial. If you can't hear somebody, if you don't understand
11 what they're saying, signal to me in some way, raise your
12 hand, and we'll make sure they speak up or that they speak
13 more clearly.

14 The third type of evidence that could come in is what
15 we call a stipulation. And that's where the parties
16 stipulate or agree as to some fact or some matter. If
17 there's a stipulation, the lawyers will tell me, and I will
18 tell you, and then you are to accept that as though that has
19 been presented here in the courtroom.

20 Now, after the State has concluded the presentation of
21 its evidence, then the Defendants are given an opportunity
22 to put up any evidence the Defense wishes to offer. As I
23 said, there's no burden on the Defendants. So they don't
24 have to do anything.

25 We probably won't know what, if anything, they're going

1 to do until after the State has concluded the presentation
2 of their evidence. If the Defendants offer evidence, I
3 would assume it would be of similar nature to the -- as the
4 State, and that is most of it would be testimony from
5 witness or witnesses.

6 When both sides have concluded the presentation of
7 their evidence, ladies and gentlemen, then the lawyers are
8 given another opportunity to speak with you. And this is
9 what we call a closing argument.

10 And the closing argument is a little bit different than
11 the opening statement in that the closing argument is the
12 chance for the lawyers to recap what they believe the
13 evidence has been introduced into the trial. It's a chance
14 for them to emphasize to you what they would like you to
15 seriously consider and discuss in the course of your
16 deliberations. It's an opportunity for these lawyers to
17 attempt to convince or persuade you as to why you should
18 return a verdict for their respective client.

19 When both sides have completed the presentation of
20 their closing arguments, then I will charge you or instruct
21 you as to the law. You will then retire to the jury room,
22 begin your deliberations and ultimately render a verdict as
23 to each and every count in this indictment..

24 Now, ladies and gentlemen, I told you that these
25 indictments that I have explained to you earlier are notice

1 documents. They're the documents that have put the
2 Defendant on notice of the particular charges. And that's
3 the only way you should consider them. They're not
4 evidence. They're not to be considered by you for any other
5 purpose.

6 I also want to tell you this. I want you to listen
7 very carefully to what the lawyers say during the course of
8 the trial. These are good lawyers. They're experienced
9 lawyers. And pay close attention to what they say. But
10 understand that what the lawyers tell you is not evidence.
11 Evidence only comes in in the manner that I explained to you
12 earlier.

13 These lawyers are advocates for their respective
14 clients. It's their responsibility to represent their
15 clients and their clients' position. Pay close attention
16 because they drive the case, but understand that what they
17 tell you is not evidence in this case.

18 All right. I think with that said -- y'all need to --
19 y'all want to take a little break before we begin the
20 opening statements? Are y'all ready to go? We've been up
21 here an hour or so.

22 **JUROR:** Bathroom.

23 **THE COURT:** All right. Well, I tell you what we'll do,
24 we'll take about fifteen minutes, allow you to go back to
25 the jury room and use the restroom, relax for just a minute.

1 Again, I remind you, you have very limited knowledge
2 about this case. Do not discuss it with each other or with
3 anyone else at all while you're out of this courtroom. All
4 right. If y'all will step back to the jury room.

5 (Whereupon the jury exited the courtroom at 3:54 pm)

6 **THE COURT:** All right. We'll take a few minutes break.
7 I don't think we're going to get beyond opening statements
8 today, Mr. Solicitor.

9 **MR. FRETWELL:** Judge, ---

10 **THE COURT:** I expect -- what are you going to take,
11 fifteen minutes or so? And they'll do the same. I mean,
12 we'll be close to 5:00 at that time.

13 **MR. FRETWELL:** And it's fine, Judge. The victim wanted
14 to see if we could get his testimony in today, but it's
15 certainly up to the discretion of the Court as to how far we
16 go.

17 **THE COURT:** Well, how long -- that victim's testimony
18 would probably be ...

19 **MR. FRETWELL:** I think with -- I think with cross
20 examination it would probably put us past 5:00.

21 **THE COURT:** Well, I generally work til 5:30. You think
22 you can finish by 5:30 with all of it? Well, we'll just
23 see.

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

25 **THE COURT:** All right. We'll take a few minutes.

1 (Whereupon court was in recess at 3:56 pm)

2 (Whereupon court reconvened at 4:09 pm)

3 **THE COURT:** All right. Y'all ready to go? The jury
4 ready? Bring them in.

5 (Whereupon the jury entered the courtroom at 4:10 pm)

6 **THE COURT:** All right. Ladies and gentlemen, you know,
7 something that I forgot to do was introduce you to some of
8 the most important people that are involved in this trial,
9 some of the folks that are sitting with me and sitting with
10 you.

11 This young lady sitting in front of me is Susan
12 Hudgins, who is our court reporter. She's taking down
13 everything that's said in this courtroom. So if you say
14 something, she'll get it down, you'll be on record for
15 posterity.

16 Seated next to her is Janine Shamey, who is our clerk.
17 And she -- as you've seen the work she does. She's helped
18 me a lot up to this point, and she'll be helping me
19 throughout the course of the trial.

20 The two people you'll have the most contact with are
21 our bailiffs. And Mr. Frazier and Ms. Monson, Mr. Frazier
22 here, Ms. Monson in the back. And they'll be the ones that
23 will help you out of the courtroom, back to the jury room,
24 greet you when you come back from lunch or come in the
25 morning.

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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

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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.

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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

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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.

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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

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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

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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

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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

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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

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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.

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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

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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

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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

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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.

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

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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

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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

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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.

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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

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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

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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

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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

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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

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.

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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.

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.

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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

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

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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.

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

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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

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?

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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

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

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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

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.

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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 ---

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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?

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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

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

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

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

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.

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

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

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?

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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

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

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.

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.

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 --

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

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.

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)

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

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?

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

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.

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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

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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

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

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

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

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?

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?

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?

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- 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?

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?

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.

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

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.

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

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

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

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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?

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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.

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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

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

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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 ---

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

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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

- 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

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.

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

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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?

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

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

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

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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

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?

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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

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.

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.

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

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

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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?

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

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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?

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

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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?

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

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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

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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

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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?

- 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

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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

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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

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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.

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

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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?

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

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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?

- 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

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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.

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

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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?

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

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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.

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

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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

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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

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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.

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

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

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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

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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

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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

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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. Yarbrough:**

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.

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

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.

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

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:**

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

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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

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- 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

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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?

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

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- 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.

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

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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.

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

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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?

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

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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

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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?

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

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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?

- 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

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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

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

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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?

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

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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

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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

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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

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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

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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

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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

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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

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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?

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

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 864-990-7008?

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

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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 1-800-990-7008 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.

25 A. Total, I've got about sixteen and a half years,

JAMES MIDDLETON - DIRECT EXAMINATION BY MS. SIMPSON

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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

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

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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.

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

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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

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

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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.

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

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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.

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

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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

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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
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.

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

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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,

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.

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JAMES MIDDLETON - CROSS EXAMINATION BY MR. YARBOROUGH

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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

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?

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

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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

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

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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

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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