

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 TWO

Counsel for Respondent:

Counsel for Appellant:

Honorable Alan Wilson
V. Henry Gunter, Jr.
PO Box 11549
Columbia, SC 29211

William G. Yarborough, III
522 N. Church Street
Greenville, SC 29601

William W. Wilkins, III, Solicitor
Thirteenth Judicial Circuit
305 E. North Street
Greenville, SC 29601

Paul Wickensimer, Clerk of Court
305 E. North Street
Greenville, SC 29601

INDEX

Order Denying Motion to Suppress.....	1-2
Motion to Suppress.....	3-41
Transcript of Hearing on Motion to Suppress.....	42-141
a. Testimony	
i. Thomas Motes, Jr.	
-Direct by Mr. Fretwell.....	54
-Cross by Mr. Yarborough.....	68
ii. Matthew Owens	
-Direct by Ms. Simpson.....	90
-Cross by Mr. Yarborough.....	97
-Redirect by Ms. Simpson.....	103
-Recross by Mr. Yarborough.....	104
iii. David Weiner	
-Direct by Mr. Fretwell.....	106
-Cross by Mr. Yarborough.....	121
-Cross by Ms. Ross.....	835
-Redirect by Mr. Fretwell.....	866
-Recross by Mr. Yarborough.....	869
-Recross by Ms. Ross.....	871
Trial Transcript.....	142-980
a. Pretrial Matters.....	
i. <i>Jackson v. Denno</i> hearing.....	
-Thomas Motes, Jr.	
-Direct by Mr. Fretwell.....	174
-Cross by Mr. Yarborough.....	184
-Cross by Ms. Ross.....	186
-Matthew Owens	
-Direct by Ms. Simpson.....	188
-Cross by Ms. Ross.....	195
-Cross by Mr. Yarborough.....	204
-Redirect by Ms. Simpson.....	205

-David Weiner	
-Direct by Mr. Fretwell.....	209
-Cross by Mr. Yarborough.....	220
-James Middleton	
-Direct by Ms. Simpson.....	228
b. Opening Statements	
-Opening Statement by Ms. Simpson.....	272
-Opening Statement by Ms. Ross.....	284
-Opening Statement by Mr. Yarborough.....	287
c. Testimony	
i. Aaron Kretzschmar	
-Direct by Mr. Fretwell.....	298
-Cross by Mr. Yarborough.....	341
-Cross by Ms. Ross.....	360
-Redirect by Mr. Fretwell.....	368
-Recross by Mr. Yarborough.....	371
-Recross by Ms. Ross.....	373
ii. Damion Riley	
-Direct by Mr. Fretwell.....	374
-Cross by Mr. Yarborough.....	386
-Cross by Ms. Ross.....	398
-Redirect by Mr. Fretwell.....	404
-Recross by Mr. Yarborough.....	405
-Recross by Ms. Ross.....	410
iii. Grady Terrell Pugh	
-Direct by Ms. Simpson.....	410
-Cross by Mr. Yarborough.....	461
-Cross by Ms. Ross.....	469
-Redirect by Ms. Simpson.....	473
-Recross by Mr. Yarborough.....	475
-Recross by Ms. Ross.....	477
iv. James Middleton	
-Direct by Ms. Simpson.....	478
-Cross by Mr. Yarborough.....	494
-Cross by Ms. Ross.....	500
-Redirect by Ms. Simpson.....	504
-Recross by Ms. Ross.....	505

v. Matthew Anderson	
-Direct by Ms. Simpson.....	506
-Cross by Mr. Yarborough.....	523
-Cross by Ms. Ross.....	524
-Redirect by Ms. Simpson.....	526
vi. Darwin Shaw	
-Direct by Mr. Fretwell.....	532
-Cross by Mr. Yarborough.....	538
-Cross by Ms. Ross.....	550
vii. Christopher Gary	
-Direct by Ms. Simpson.....	552
-Cross by Mr. Yarborough.....	575
-Cross by Ms. Ross.....	577
viii. Thomas Motes, Jr.	
-Direct by Mr. Fretwell.....	579
-Cross by Ms. Ross.....	592
ix. Matthew Owens	
-Direct by Ms. Simpson.....	600
-Cross by Ms. Ross.....	620
x. James Perry	
-Direct by Mr. Fretwell.....	627
-Proffered Testimony Direct by Mr. Fretwell.....	655
-Direct by Mr. Fretwell.....	670
-Cross by Mr. Yarborough.....	680
-Cross by Ms. Ross.....	683
-Redirect by Mr. Fretwell.....	689
-Recross by Mr. Yarborough.....	689
xi. Daniel Kelly	
-Direct by Mr. Fretwell.....	690
-Cross by Mr. Yarborough.....	697
-Cross by Ms. Ross.....	699
-Redirect by Mr. Fretwell.....	700
-Recross by Ms. Ross.....	701
xii. David Weiner	
-Direct by Mr. Fretwell.....	702
-Proffered Testimony Direct by Mr. Fretwell.....	726
-Direct by Mr. Fretwell.....	756
-Cross by Mr. Yarborough.....	775

-Cross by Ms. Ross.....	835
-Redirect by Mr. Fretwell.....	866
-Recross by Mr. Yarborough.....	869
-Recross by Ms. Ross.....	871
 xiii. Keyera Broomfield-White	
-Direct by Mr. Yarborough.....	884
-Cross by Mr. Simpson.....	890
-Cross by Ms. Ross.....	893
 d. Motions	
-Motion for Directed Verdict by Mr. Yarborough.....	872
-Motion for Directed Verdict by Ms. Ross.....	874
-Renewed Motion for Directed Verdict by Mr. Yarborough.....	895
-Renewed Motion for Directed Verdict by Ms. Ross.....	895
 e. Closing Arguments	
-Closing Argument by Ms. Ross.....	901
-Closing Argument by Mr. Yarborough.....	914
-Closing Argument by Mr. Fretwell.....	929
 f. Jury Charges.....	949
 g. Verdict.....	968
 h. Sentencing.....	973
 Indictments.....	981-982
 Sentencing Sheets.....	983-986
 State's Trial Exhibits: 47-51, 56-60, 64;	
a. 47 – Photo – Codefendant Gadsden holding cash (DW-2 Samsung).....	987
b. 48 – Photo – Cash 1 (DW-2 Samsung).....	993
c. 49 – Photo – Cash 2 (DW-2 Samsung)	994
d. 50 – Photo – Cash 3 (DW-2 Samsung)	995
e. 51 – Photo – Cash 4 (DW-2 Samsung)	996

f. 56 – Photo – Codefendant Gadsden holding cash (DW-2 Samsung).....	988
g. 57 – photo – Codefendant Gadsden holding cash (DW-2 Samsung).....	989
h. 58 – photo – Codefendant Gadsden holding cash (DW-2 Samsung).....	990
i. 59 – photo – Codefendant Gadsden holding cash (DW-2 Samsung).....	991
j. 60 – Cash 1 (DW-2 Samsung).....	997
k. 64 – Gadsden holding Samsung (DW-2 Samsung).....	992

Certificate of Counsel.....	998

Affidavit of Service.....	999

September 29, 2017

William G. Yarborough, III
522 N. Church Street
Greenville, South Carolina 29601
(864) 331-1612 Office
(864) 370-0022 Fax
WGYarborough@gmail.com

Attorney for Appellant

JAMES MIDDLETON - CROSS EXAMINATION BY MS. ROSS

344

1 surprise you if you might have radioed in before ---

2 MS. SIMPSON: Objection, Your Honor, with respect to
3 would it surprise you -- he said what time ---

4 THE COURT: What is the relevance ---

5 MS. SIMPSON: I don't even know.

6 THE COURT: --- if it's 11:27 or 11:28?

7 MS. ROSS: All right. It's one minute. Sorry. That's
8 what it's about.

9 Q. Now, you can hear -- you're walking in on the 911 tape,
10 and you were met by the man -- the manager, Aaron
11 Kretzschmar, isn't that true?

12 A. Yes.

13 Q. And at that point was he still on the phone with 911?

14 A. I don't recall if he was still on the phone or not. I
15 don't recall that.

16 Q. Okay. Now, when you -- you said you spoke to the three
17 victims individually. Did you take notes at that time?

18 A. I don't -- I don't recall. I know I didn't take a
19 written statement from them.

20 Q. Okay.

21 A. I might have jotted down their names and like the
22 description of what they gave me of the suspect just so I
23 could give it out over the radio, write it down for my
24 report.

25 Q. All right. So what you have in that report, it's not

JAMES MIDDLETON - CROSS EXAMINATION BY MS. ROSS

345

1 just what you recall days later, it might have been
2 refreshed by what you wrote down in your notes?

3 A. Yeah, it would have been refreshed by that. And I
4 wrote it while I was on-scene that night, this report.

5 Q. Okay. And everything in the report is true and
6 accurate ---

7 A. Yes.

8 Q. --- to your recollection ---

9 A. Yes.

10 Q. --- at that time when you wrote it?

11 A. Yes.

12 Q. Now, what did you say -- the manager, Aaron

13 Kretzschmar, what was the description of the robber that he
14 gave you?

15 A. If I could refer to this again?

16 Q. Sure. I believe it's on the third page in the middle
17 of the first paragraph.

18 A. Do you want me to give -- of his -- just his
19 description of the suspect?

20 Q. Yes.

21 A. Let's see. Mr. Kretzschmar described the suspect as a
22 black male approximately six feet tall, stocky build, tan
23 jacket, short hair, no facial hair and a black semiautomatic
24 handgun.

25 Q. All right. So he said tan jacket, not camouflage,

JAMES MIDDLETON - CROSS EXAMINATION BY MS. ROSS

346

- 1 correct?
- 2 A. Correct.
- 3 Q. And he said short hair, not dreadlocks, correct?
- 4 A. Correct.
- 5 Q. And he said no facial hair?
- 6 A. Correct.
- 7 Q. And that is what you wrote down in your report because
- 8 that is what he told you that night right after the event
- 9 occurred?
- 10 A. Yes.
- 11 Q. You said earlier that you walked in, just briefly, you
- 12 said there was a bunch of ones on the floor, but also
- 13 weren't there five dollar bills, and twenty dollar bills,
- 14 and cards and all kinds of stuff on the floor ---
- 15 A. I don't recall saying just ones. I just -- I recall
- 16 saying just coins, and money or bills.
- 17 Q. So it was just a lot ---
- 18 A. I don't recall if they were ones, fives, tens. I just
- 19 -- I remember seeing bills and coins on the ground.
- 20 Q. And did you follow sort of the trail and see where it
- 21 ended?
- 22 A. I did not because I was the first officer on-scene. I
- 23 had to secure the scene. So I did not follow it around the
- 24 corner. I just saw it went around the corner and that's all
- 25 I saw while walking in.

1 Q. Okay. But while you were there Deputy Anderson -- a
2 bunch of other deputies got there and they had a dog and it
3 tracked?

4 A. Yes, I believe they did.

5 Q. All right.

6 MS. ROSS: I've got no further questions.

7 MS. SIMPSON: Briefly.

8 Redirect Examination by Ms. Simpson:

9 Q. She just questioned you regarding Mr. Kretzschmar's
10 description. Right after that line what does he state about
11 after he was punched and being able to get a description?

12 A. Mr. Kretzschmar stated that after he was punched and
13 had a gun pointed in his face, he was unable to think about
14 getting a better description.

15 Q. So what he gave you was just kind of generally what he
16 saw?

17 A. Yes.

18 Q. And as far as his demeanor, what was his demeanor like?

19 A. He seemed nervous and flustered to me and was nervous
20 about trying to get it because as he -- as I just stated, he
21 was ---

22 MS. ROSS: Judge, I think that's beyond the scope of my
23 cross.

24 THE COURT: Go ahead.

25 A. As I just stated, he was punched and he was unable to

JAMES MIDDLETON - RECROSS EXAMINATION BY MS. ROSS

348

1 think about getting a better description.

2 Q. Okay. And when you do a protective sweep -- we've seen
3 some pictures in the State's exhibit, but the Olive Garden
4 restaurant, did you actually do a sweep of the whole
5 restaurant to make sure ---

6 A. Yes.

7 Q. --- whether anyone was there? So the limited areas
8 we've seen in the picture, that's not the entire restaurant?

9 A. Correct.

10 Q. And the restaurant is fairly -- can you describe it for
11 the jury?

12 A. If you walk in the front door -- I know off to the
13 right hand side is kind of the bar area and there's some bar
14 tables over there. I believe straight ahead is the doors
15 leading into the kitchen. And off to the left is the
16 seating area/dining area. And in the back of the dining
17 area there's some restrooms.

18 Q. Okay. So it's a fairly large area. And you all
19 checked the entire area?

20 A. Yes.

21 **MS. SIMPSON:** Nothing further.

22 **THE COURT:** Anything, Mr. Yarborough?

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

24 **THE COURT:** Anything?

25 **Recross Examination by Ms. Ross:**

1 Q. Just let me -- let's be really clear here. You wrote
2 down short -- tan jacket, short hair, no facial hair because
3 that's what the victim told you, correct?

4 A. Yes.

5 Q. And though he was nervous, he still told you that?

6 A. Yes.

7 Q. And then he apologized and said, I'm sorry I don't have
8 a better description, but that was his description?

9 A. I don't recall him apologizing. He just said he
10 couldn't think of anything further.

11 Q. All right. Thank you.

12 **THE COURT:** All right. Thank you. You may step down.
13 Call your next witness.

14 **MS. SIMPSON:** The State calls Matt Anderson. Oh, Your
15 Honor, may Officer Middleton be excused? He was placed
16 under the Defense's subpoena as well.

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

18 **MR. YARBOROUGH:** No objection.

19 **THE COURT:** You can be released.

20 **Matthew Anderson, being**
21 duly sworn testified as follows;

22 **MADAME CLERK:** Please have a seat. And will you state
23 your full name for the record.

24 **MR. ANDERSON:** Matthew Paul Anderson.

25 **Direct Examination by Ms. Simpson:**

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

350

- 1 Q. Deputy Anderson, where are you employed?
- 2 A. Greenville County Sheriff's Office.
- 3 Q. And if you could, kind of pull the mike ---
- 4 A. Greenville County Sheriff's Office.
- 5 Q. Okay. And what is your position there?
- 6 A. I'm a K-9 handler.
- 7 Q. K-9 handler?
- 8 A. Yes, ma'am. I work a dog, basically.
- 9 Q. Okay. And how long have you been in law enforcement?
- 10 A. Pushing seven years at the sheriff's office.
- 11 Q. Okay.
- 12 A. Maintained a dog for about three years.
- 13 Q. Okay. So you've been with the K-9 Unit for ---
- 14 A. About three years.
- 15 Q. Three years at that?
- 16 A. Yes.
- 17 Q. And as a member of the K-9 Unit, you said you work with
- 18 dogs, tell the jury your role and your duties.
- 19 A. I have a dual purpose dog, which means he does
- 20 everything from tracking to narcotics to locating articles.
- 21 Good thing about dogs is they love to work. So my dog at
- 22 the time was Johnny. And he was a Belgian Malinois. He
- 23 looks like a shepherd.
- 24 He was trained in the art of tracking. He could find
- 25 narcotics, marijuana, methamphetamine, heroin, cocaine, any

1 derivative thereof. If somebody throws something, loses
2 their keys or whatever, he can also find that. He can find
3 people in buildings.

4 On a day-to-day basis we pretty much just go around and
5 help uniform patrol in whatever they need help with. If
6 they need -- they find -- see a house door kicked in and
7 they don't know if there's anybody in there, he can go in
8 and clear it. It gives us a little advantage so we don't
9 have to put a person in first. I can get a new dog, but
10 somebody can't get a new daddy. So he's my dog to help you,
11 basically.

12 Q. Okay. So you kind of said this, but under what
13 circumstances might you be called out to a scene?

14 A. A lot of different reasons. Probably the most
15 predominant is things of a violent nature where there's an
16 inherent risk to an officer or a deputy. That and for
17 narcotics are probably the two most common.

18 Q. With respect to -- you said your dog was Johnny at the
19 time?

20 A. Yes, ma'am.

21 Q. As a K-9 handler, describe for the jury, I guess, your,
22 for lack of a better word, relationship with Johnny. Are
23 you responsible for training ---

24 A. Absolutely.

25 Q. How does that work?

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

352

1 A. In Greenville County we're fortunate enough to get our
2 dog and train it from pretty much ground zero. We'll get a
3 dog from Holland. Johnny had a Holland passport. So it's
4 kind of neat. Got him when he was about sixteen months old.
5 And the only thing he knows how to do is -- they know how to
6 bite. And it's just biting the French linen.

7 And he doesn't even know how to do anything else yet.
8 He doesn't know how to sit, lay down, how to track. And we
9 go through about a six hundred hour course. And that's just
10 leash time.

11 I'm training these dogs. So as this dog learns, I'm
12 learning, too. The dog goes home with me. He becomes an
13 intricate part of my day-to-day work and he becomes part of
14 the family.

15 The great thing about this is as he's learning how to
16 track, I'm learning his behaviors in tracking. As he's
17 learning the different odors, I'm learning his behaviors
18 that I can't teach. Sometimes his tail will move
19 differently or his ears will move differently.

20 I can't teach him how to -- I can teach him how to sit,
21 but those are behaviors that he'll display that I can't
22 teach him that I have to learn and say, hey, he's trying to
23 tell me something because, you know, they can't turn around
24 and say, hey, daddy, this is what I see. That would be kind
25 of scary.

1 So that's -- it's, like I said, he comes home with me
2 and that is my dog. I'm the only one who can work him. And
3 that's about it.

4 Q. And when you're called out to a scene, for instance, in
5 a case such as an armed robbery or whether there is a
6 violent suspect on the loose ---

7 A. Yes, ma'am.

8 Q. --- or gunman, when you're actually tracking, what is
9 your focus? Are you -- do you have deputies assist you for
10 some purpose?

11 A. I do. In the matters of that, as I said, I have to
12 watch my dog to see what he's doing. He'll throw behavior
13 changes is what we call them. Like I said, it might be
14 something as simple as his ear moves or his head goes one
15 way. So during that track I'm going to watch him pretty
16 much exclusively.

17 Typically I'll have a deputy right over my right or
18 left shoulder. And he's my eyes. He'll watch for anything
19 dangerous in front of me. And then if I'm lucky enough to
20 have a couple of other people with me, they'll watch my left
21 and my right side as well depending on the severity of the
22 crime we're tracking for and things like that.

23 Q. Okay. And what -- with respect to your ability to
24 establish tracks, what factors affect that or can affect it?

25 A. Well, there's three large things that we go off of.

1 And let me touch on the dog a little bit. Great things
2 about the dog is they can scent discriminate.

3 Q. What does ---

4 A. And I'll get into that. We go on a -- let's say a
5 Burger King. And I'm like, oh, I really smell that whopper.
6 All I know to do is smell the whopper. He'll smell the
7 seeds on the bun. He'll smell the bun, the ingredients in
8 the bun. He'll smell the pickles, the ketchup, the mustard,
9 every little thing.

10 Studies say that they can scent up to one or two parts
11 per trillion in terms of scent discrimination. There are
12 two hundred and forty million scent receptors in their nose.
13 So it would take four times the number of the people in the
14 jury to make up one parts of the nose roughly.

15 So using that to our advantage, we go off of basic
16 human odor. Well, again, three things. You have your human
17 odor. As we're all sitting here we have skin rash falling
18 off, hair follicles falling off. Those are our primary
19 tracking things that we're looking for. That's going to say
20 this is a person and I need to follow that odor.

21 Q. So like the weather, timing, things of that nature ---

22 A. That's -- I'll get into that. But then we also have
23 another -- you know, bacteria. As we're walking there's
24 tiny little bacteria everywhere. You step on them. It's
25 kind of like yeast in beer. They're tiny, we can't see it,

1 but they're there. The dogs can smell that.

2 And then we have your final odor, you know, what kind
3 of deodorant somebody has on, what kind of shoes they have
4 on. They can tell the difference between tennis shoes or
5 boots or -- now they don't know it's tennis shoes or boots,
6 but they can -- those are just little things -- it's stuff
7 that comes off on the ground when you run or when you step
8 that people have on them.

9 All of those things combined in what you were talking
10 about, the type of weather. Weather helps. You know, if
11 it's cool and everything's settling, the ground odor and
12 stuff like that likes to stick to moisture. So if we have a
13 first dew, it's going to stick to that ground a little
14 better and make it a little easier for my dog.

15 Even the rain, a slight rain will help my dog work that
16 because it's just going to stick to that. Now, if we have
17 like a tsunami, it's obviously just going to wash it away.
18 But even in a river, those sand particles are just sitting
19 right on top of the water and just float. So contrary to
20 belief, it actually helps our dog.

21 Extreme heat, it will cook it off a little bit faster.
22 So we have to get that going a little bit faster. And,
23 again, same thing with extreme cold. Moderate temperatures,
24 moderate range, those are the best conditions that we look
25 for. But extremes in everything, we, you know, those kind

1 of make it a little more difficult.

2 Q. And so even -- are there occasions where you can't
3 establish a track and ---

4 A. There are. You have areas where you have a lot, a lot
5 of foot traffic. You know, an apartment complex where you
6 have twenty, thirty people walk through one area, it's going
7 to be really hard to establish, you know, what I'm going
8 for. And it's going to be, yeah, we did see him run through
9 here, but we also saw forty-five other people run through
10 here.

11 It's nice when I have an area that's non-contaminated
12 where somebody gets there and says, hey, I roped this off
13 and this is where we believe he went. And then I can take
14 him in the area.

15 And we already talked about those three, the three big
16 factors, you know, the human odor, the bacteria and other
17 things on the person. If there's a fresh scent right there
18 where everything else is old, he's going to go with that
19 fresh one. And if I know nobody's been there, that's a
20 great starting point for me.

21 Q. Okay. And I want to turn your attention to this
22 incident on January 20th, 2014. Did you get a call to
23 respond to a certain location?

24 A. Yes, ma'am.

25 Q. Tell the jury about that and where you responded.

1 A. I responded to 3920 South Pleasantburg, Olive Garden.
2 And basically, like I said earlier, my main goal as a dog
3 handler is to help other deputies on the road. Sometimes if
4 we have something like this and the call comes out and we
5 think they left on foot, they're going to request, hey, do
6 we have a dog available? And I'll go over there with my dog
7 and try to get some information to see if I can use my dog
8 to find them -- the person.

9 Q. And when you arrived on the scene did you actually make
10 contact and figure out what circumstances ---

11 A. Yes.

12 Q. --- you had?

13 A. If I remember correctly, Deputy Middleton was the first
14 on-scene. And he'd already secured the parking lot. He
15 told me where the last known area of the Defendant was. He
16 told me -- I think I had a clothing description and said
17 that he secured an area in the parking lot.

18 So I took -- let my dog out, took him to that location.
19 And it's a series of small things that we do to kind of give
20 the dog clues that we're about to track. So I put him in
21 the down and I hooked him up to his harness. And he already
22 immediately pretty much showed behavior changes. Then I
23 gave him the track command and he started pulling.

24 Q. Okay. I'm going to show you what's already been
25 entered into evidence as State's exhibit 22. Do you

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

358

1 recognize this area?

2 A. Yes, ma'am, I do.

3 Q. And what does it show?

4 A. It shows the area of Olive Garden, Poinsette and State
5 Park, basically the incident location.

6 Q. Okay.

7 **MS. SIMPSON:** Your Honor, permission for the witness to
8 step down.

9 **THE COURT:** Okay.

10 Q. And if you'll stand on that side and speak up. I don't
11 really know how to work this thing. And I'm not going to
12 use the pointer. I think we're close enough. But if you
13 could, show the jury the area where the Olive Garden is and
14 where you responded.

15 A. Don't have to worry about my cell phone. But this is
16 Poinsette. I'm -- just to orient. I believe this is the
17 Cherrydale area over here, correct?

18 Q. Okay.

19 A. And this is State Park.

20 **MADAME COURT REPORTER:** He needs to speak up.

21 A. I'm sorry. Basically this is Poinsette and Cherrydale.
22 We have State Park, which runs up this way. So I would have
23 to say Olive Garden is going to be right in this area.

24 **THE COURT:** Speak up.

25 A. Olive Garden is going to be right here.

1 Q. Okay.

2 A. Yes, because we have the Golden Corral and stuff down
3 that way. So, yep, this is going to be the Olive Garden
4 right here.

5 Q. All right. And that's the area you responded to?

6 A. Yes. Looking at it, we came in and I pretty much
7 pulled right into the parking lot. And the front corner of
8 the parking lot is going to be where I ended up cutting in.

9 Q. Okay. And the road backing up behind North
10 Pleasantburg Drive, what is that road that we see on that?

11 A. Sylvania.

12 Q. And is that, as far as travel, is that a heavily
13 trafficked area in the evening or is it more residential?

14 A. I would say it's very lightly traveled, if at all.
15 I've been over there a lot. I work that area. And I don't
16 see many people over there. It's very residential.

17 Q. Okay. And you can take your seat.

18 A. Thank you.

19 Q. Now, you mentioned that your dog, you put him in the
20 down position and he almost immediately showed behavior
21 changes. Does that mean that he was beginning to get on
22 track?

23 A. Yes. We call -- we call it self tracking. They know
24 the game. They know -- that's why we do it. We put them in
25 a down and we give them little clues that say this is what

1 we're about to do.

2 And they're so excited to work that they try to cheat.

3 They try to say, well, I'm going to do this before daddy

4 tells me. So it's like your dogs at home. You put their

5 food bowl down and they want to get to it before it happens.

6 The same thing with a track.

7 These little behavior changes that I spoke about

8 earlier, you know, the ears twitching or the tail moving,

9 even crawling on the ground are some of the things that he
10 will do.

11 Q. And once you establish a track -- I'm actually going to
12 show you State's 34 through 42. Do you recognize these
13 photos?

14 A. Yes, ma'am.

15 Q. And do they fairly and accurately depict the areas in
16 the pictures?

17 A. Yes, ma'am.

18 Q. As you observed them?

19 A. Yes.

20 **MS. SIMPSON:** Your Honor, at this time ---

21 Q. And what is this area, by the way?

22 A. That's right in front of the Olive Garden and then a
23 couple of businesses. If you're looking at the Olive Garden
24 from Pleasantburg, it's going to be to the right.

25 Q. Okay. And the other photos, do these ---

1 A. It's the area I tracked along.

2 Q. It's the area you tracked?

3 A. Yes.

4 MS. SIMPSON: Your Honor, at this time I would offer
5 State's 34 through 42 into evidence.

6 MS. ROSS: No objection.

7 MR. YARBOROUGH: No objection, Your Honor.

8 THE COURT: So admitted.

9 (Whereupon State's exhibits 34 - 42 were admitted into
10 evidence)

11 MS. SIMPSON: Permission for the witness to step back
12 down.

13 THE COURT: Okay.

14 MS. SIMPSON: Thank you.

15 Q. Okay. I'm showing you first what's been marked as
16 State's 34.

17 A. Yes.

18 Q. What is this area?

19 A. It looks like the front parking lot of the Olive Garden
20 just as we're coming in.

21 Q. And is that where you started your track or ---

22 A. Yes, ma'am. That would be roughly the area where I put
23 Johnny in a down. And if I remember correctly, it was
24 fairly well secure when I got there.

25 Q. And then State's 35?

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

362

1 A. That's going to be the sidewalk. Again, as you're
2 looking from Pleasantburg, that's going to be the right side
3 of the Olive Garden.

4 Q. Now, as far as things that you observed on the track,
5 you're focused on Johnny, but did you see other things or
6 did he alert to things?

7 A. As we are -- as we are tracking, he -- we call it
8 indicating. Like I said earlier, he was trained in
9 articles. His alert for an article is to down between his
10 paws, but I gave him a track command. So he's not going to
11 come to a final response or an alert to those articles, but
12 he did indicate to articles along the track showing that
13 there's fresh pools of human odor there. As we were
14 tracking, I believe Deputy Cannon, Master Deputy Cannon
15 marked some of them for later collection.

16 Q. Next showing State's 36, is that an example of
17 something that was marked along the track?

18 A. Yes, ma'am.

19 Q. And what's in this picture?

20 A. It's a hundred dollar bill and, I believe, that's
21 Master Deputy Cannon's business card.

22 Q. Okay. And as far as -- you said the dog doesn't stop.
23 You gave the track command. So ---

24 A. Correct.

25 Q. --- at what point -- what were you looking for? A

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

1 person or a thing?

2 A. We were looking for a person.

3 Q. Okay.

4 A. But again, we're telling him to find human odor. So
5 these are pretty clear that they were dropped along the way
6 just based on his behavior. He would stop, give a head
7 shake and then keep moving.

8 Q. So in State's 38 and 37, those bills were likely
9 dropped or at least that's the scent along your track?

10 A. Yes, ma'am. They had fresh human odor on them.

11 Q. Okay. And then in State's 40 and 41, these are things
12 that were found along the way?

13 A. Yes, ma'am.

14 Q. And what are those?

15 A. They look like coin rolls.

16 Q. Just coin rolls?

17 A. Again, with the business card.

18 Q. And you're focused on the dog. You said Deputy
19 Cannon's actually the one who's marking the stuff ---

20 A. Yes, ma'am.

21 Q. --- as you continue on?

22 A. Yes, ma'am. If I remember correctly, Master Deputy
23 Cannon was my immediate cover. And I said, hey, you know,
24 there's something over there. And he went over there and
25 found them and marked them.

1 Q. And would it be easier for you to describe on the map
2 -- I'm going to show you what's already been entered into --
3 State's 31, the area that you tracked.

4 A. Yes, ma'am. As I said, the Olive Garden's up here.
5 Here's Pleasantburg. Here's Pleasantburg. Again, here's
6 State Park and there's Sylvania. The Olive Garden's up
7 here.

8 As we tracked we came all the way up Pleasantburg
9 passing several businesses. Along that route, I think, the
10 dollar bills were up in this area. He pretty much threw a
11 head shake right out of the gate. And I had to check as he
12 looks at something or moves his body to show something's
13 over there.

14 We came up Pleasantburg, down in this area. And,
15 again, it's been a little while. So I don't remember if
16 it's this side of the parking lot or this, but we -- this is
17 the Golden Corral. Pardon me, I have a small cold. I'm
18 sorry.

19 We came back up Sylvania and tracked up Sylvania. And
20 if I remember correctly, right back in this general area is
21 where we found the coin rolls and some other dollar bills.
22 And we ended the track over here.

23 Q. Okay. So the track kind of comes out and then cuts
24 around and to the back side, back towards State Park Road?

25 A. Yes, ma'am.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. SIMPSON

365

1 Q. Now, did you actually find a person or what -- what
2 happened?

3 A. Once we got to Sylvania, and I believe it's State Park
4 over there, what Johnny did was ---

5 Q. You can actually have a seat.

6 A. Excuse me. What Johnny did at that point was basically
7 came to the intersection of Sylvania and State Park and his
8 head came up and he started doing circles. And he'd come
9 back to where the track was, put his head back down on the
10 ground and then track back out to State Park like it
11 disappeared. And at that point I chose to call it. And
12 reason being, it was either a drive-off or I missed
13 something.

14 Q. So he did the circles and then stopped it as far as
15 when you caught the track in the middle of the road right
16 there at State Park and Sylvania?

17 A. Yes, ma'am. And just based on our training, it's
18 indicative of a drive-off where the odor disappears
19 somewhere.

20 Q. And as far as the direction, that area that you
21 described, it was mostly businesses and things on the front
22 side and then he came up Sylvania Avenue, which was more
23 residential?

24 A. Yes, ma'am. That's correct.

25 Q. And what time of the evening was this?

MATTHEW ANDERSON - CROSS EXAMINATION BY MR. YARBOROUGH

366

1 A. Between eleven at night and midnight, it appears was
2 the time my track was, if I remember correctly.

3 Q. And were you actually able to locate any type of weapon
4 or did you find a person?

5 A. No, ma'am. I didn't find either of those.

6 Q. And did you convey all the information that you
7 retrieved to your fellow investigators with the Robbery
8 Division?

9 A. Yes, ma'am.

10 Q. Okay. And was that the extent of your involvement in
11 this case?

12 A. Yes, ma'am, it was.

13 Q. Thank you.

14 A. Thank you.

15 **MR. YARBOROUGH:** Briefly.

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

17 Q. You used the term Defendant several times when you were
18 talking. You don't -- you didn't track my client, Mr.
19 White, or Mr. Gadsden? You didn't see those guys, you don't
20 know anything?

21 A. No, sir. I'm just giving a description.

22 Q. And the dollar bills that you found that are in those
23 pictures, they fairly and accurately represent what those
24 dollars or hundred dollar bills looked like when you found
25 them that day?

MATTHEW ANDERSON - CROSS EXAMINATION BY MS. ROSS

367

1 A. Yes, sir.

2 Q. Okay.

3 **MR. YARBOROUGH:** I don't have anything further, Your
4 Honor.

5 **THE COURT:** Ms. Ross.

6 **Cross Examination by Ms. Ross:**

7 Q. And this -- I couldn't see very well at the map. It
8 sounds like you just tracked a bit around in a circle where
9 he ended up back towards the Olive Garden, though not right
10 there?

11 A. That's correct. Yes, ma'am.

12 Q. And that's where it looked like -- I mean, you didn't
13 see it, right? But that that's where it looked like a car
14 or something ---

15 A. Yes. And again, we use the term drive-off loosely, but
16 what we'll do is try to simulate that in training where we
17 put somebody in a car and drive off and see what the dog
18 does so we can learn what happens.

19 Q. Okay. So after making that money trail all around the
20 drive-off place was relatively close to the originating --
21 the scene of the crime?

22 A. Yes, ma'am. That's correct.

23 Q. Okay. And as far as the time on the scene, do you know
24 exactly when you arrived on the scene or when the tracking
25 was or can you give a little more detail than between eleven

MATTHEW ANDERSON - CROSS EXAMINATION BY MS. ROSS

1 and twelve?

2 A. I have here that I arrived around 11:17 and time
3 completed was roughly 12:30 at night. I think it says
4 12:27.

5 Q. Okay. So would you have been tracking that whole time
6 or going back ---

7 A. I would have been starting the track or tracking or
8 marking articles. That would have been the use of time from
9 the time I arrived there til the time I put the dog back in
10 the car. Or, ---

11 Q. Well, let me ---

12 A. --- I'm sorry, I couldn't say I was tracking that
13 entire time.

14 Q. Okay. Let me see if I could -- so you're following the
15 dog and you're tracking. At that point you're not putting
16 down little markers as you go?

17 A. No, ma'am.

18 Q. You're tracking and then you came back and started
19 putting down markers and taking photographs or having
20 someone take photographs?

21 A. No, ma'am. Master Deputy Cannon may have been placing
22 markers as we go.

23 Q. Okay.

24 A. So it's easier found when we return.

25 Q. Okay.

1 A. And we also had several other deputies -- I think we
2 had two other deputies with me tracking.

3 Q. All right. And like you said earlier, there's nothing
4 that tracks you to Gerald Gadsden? You've never seen him
5 before and your dog never ---

6 A. That's correct.

7 Q. And you weren't given any items after the fact or
8 anything for the dog to smell to see if he recognized or if
9 he could even do that?

10 A. No, ma'am.

11 Q. All right. Thank you.

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

13 **THE COURT:** Do you have a question?

14 **MS. SIMPSON:** Yes, I do.

15 **Redirect Examination by Ms. Simpson:**

16 Q. Did you track to an actual or did you call the track at
17 an actual residence or in the middle of the road?

18 A. It was in the middle of an intersection.

19 Q. Okay. And what was that intersection?

20 A. Sylvania and State Park.

21 Q. Okay.

22 **MS. SIMPSON:** Nothing further.

23 **THE COURT:** Thank you. Y'all got anything further?

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

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

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

2 A. Thank you, Your Honor.

3 **MS. SIMPSON:** And, Your Honor, may this witness be
4 released as well?

5 **THE COURT:** Not only are we going to release this
6 witness, we're going to release this jury. Ladies and
7 gentlemen, we're going to let you go for the night and ask
8 you to be back here -- we'll start at 9:30 in the morning.

9 Again, I request that you not discuss this case with
10 each other or with anybody else that you come in contact
11 with. I also ask that you not do any independent inquiry
12 tonight, don't get on your computer, don't ride by any
13 scenes or any locations, don't listen to any radios, watch
14 any TVs, read the newspapers. And we'll see you tomorrow
15 morning. Have a nice evening.

16 (Whereupon the jury exited the courtroom at 5:05 pm)

17 (Whereupon court was in recess at 5:06 pm)

18 (End of Volume One of Three)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

JAMES WHITE AND)
GERALD GADSDEN,)

DEFENDANTS.)
_____)

2014-GS-23-03815

2014-GS-23-10507

TRANSCRIPT OF RECORD
(VOLUME TWO OF THREE)

JUNE 6 - 9, 2016
GREENVILLE, SOUTH CAROLINA

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

1 Wednesday, June 8, 2016 (Volume Two of Three):

2 (Whereupon court reconvened at 9:41 am)

3 **THE COURT:** All right. Before we begin, Ms. Simpson
4 asked or somebody asked if we could meet in my office and
5 then she wanted to bring something to my attention about
6 some contact she had with a juror this morning when the
7 juror -- she and the juror happened to meet up somewhere in
8 the courthouse, I guess?

9 **MS. SIMPSON:** No, at the intersection like crossing the
10 street from the garage.

11 **THE COURT:** Walking to the courthouse. And this juror
12 inquired as to Ms. Simpson had any knowledge about how long
13 this case was going to last because of the juror's schedule.
14 And she wanted to bring it to my attention, bring it to the
15 attention of Mr. Yarborough and Ms. Ross.

16 And I think we've decided that I would address the jury
17 about that they should not have any contact with anybody of
18 any type about this case. Any questions come up, they can
19 address them to the magistrate, I mean, to the bailiffs or
20 the clerk or somebody like that and we'll take it from
21 there. And that's what I intend to do.

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

23 **THE COURT:** Is that a fair representation of what we
24 did in the chambers?

25 **MS. SIMPSON:** Yes, Your Honor.

1 **THE COURT:** All right. Let's bring the jury in if we
2 could.

3 (Whereupon the jury entered the courtroom at 9:44 am)

4 **THE COURT:** All right. Good morning, ladies and
5 gentlemen. Nice to see you this morning. Hope you all had
6 a nice evening. And, you know, when I asked y'all to be
7 here at 9:30 that we'd start at 9:30, well, sometimes we
8 have some housekeeping matters that we have to take up
9 before we start the morning. And we were working this
10 morning at 9:30, just couldn't get to you right away.

11 But first before we begin, I need to ask you again,
12 anybody have any conversation about this case with each
13 other or with anyone else or been contacted by anybody to
14 discuss the case in any manner since we left yesterday?

15 **THE JURY:** No, sir.

16 **THE COURT:** All right. Anybody do their own
17 investigation or inquiry on the computer or otherwise since
18 we left yesterday?

19 **THE JURY:** No, sir.

20 **THE COURT:** All right. Ladies and gentlemen, it was
21 reported to me this morning that one of the jurors had some
22 contact with one of the attorneys involved in the case this
23 morning about scheduling. And it was unintentional, I
24 think, in terms of whether that juror knew or that juror
25 should do that.

1 We've discussed this with each other. And what I want
2 to tell you, y'all should not talk to anybody about this
3 case in any way at all. You know, the lawyers are obligated
4 to not speak to you about it. They're not being rude,
5 anything like that. Sometimes they don't even know what the
6 schedule is.

7 So any questions you might have about any of that stuff
8 that you feel like you need to bring to somebody's
9 attention, if you'll just take it up with the bailiff and
10 the bailiff will get it to the appropriate party.

11 I think the question was will we be here Friday? I
12 asked the attorneys in terms of our evidence and how long --
13 we not only have evidence, we have the arguments and the
14 charges. We probably will get this case to you, if
15 everything goes as we anticipate, on Thursday.

16 So I can't tell you how long, once you get the case,
17 how long you're going to take with the case. So a lot of
18 that may be in your hands as opposed to our hands. But,
19 again, I just caution you, please don't discuss the case in
20 any way -- anything about it to anybody because it just
21 causes a little bit of confusion sometimes. All right.

22 As you'll recall when we finished yesterday afternoon
23 the State was still in the process of putting up its
24 evidence in its case in chief. And as the solicitor has
25 indicated, they're ready to go. Mr. Fretwell, you ready to

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

375

1 call your next witness?

2 **MR. FRETWELL:** Thank you, Your Honor. May it please
3 the Court. The State would call Sergeant Dar Shaw.

4 **Darwin Shaw,** being duly
5 sworn testified as follows;

6 **MADAME CLERK:** Please have a seat. And will you state
7 your full name for the record.

8 **MR. SHAW:** Darwin Shaw, S-h-a-w.

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

10 Q. Good morning, Sergeant Shaw. Sergeant Shaw, how long
11 -- where are you currently employed?

12 A. With the Department of Public Safety, Forensic
13 Division.

14 Q. Okay. And how long have you served in that capacity?

15 A. About seventeen and a half years.

16 Q. Okay. And that's here in the Greenville Forensic's
17 Division?

18 A. It is.

19 Q. All right. How many total years in law enforcement
20 have you spent?

21 A. Next month will be thirty-nine.

22 Q. And have you always been a forensic investigator or did
23 you have other responsibilities with law enforcement?

24 A. I worked the roads as a road officer for seven years.
25 Fourteen years I was a detective with our department and now

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

376

1 seventeen and a half years here.

2 Q. As a forensic technician -- is that part of your job as
3 well?

4 A. Yes, sir, it is.

5 Q. So you're a supervisor and a forensic technician?

6 A. That's correct.

7 Q. Okay. As a forensic technician what are some of the
8 duties that you have on any random crime scene?

9 A. We respond to crime scenes at the request of agencies
10 within Greenville County and also any federal or state
11 agencies. We do everything from taking photographs,
12 processing for fingerprints, collecting evidence, sometimes
13 blood stain pattern analysis, bullet trajectory. So we
14 actually do the crime scene processing for the agencies.

15 Q. And over the course of your career approximately how
16 many crimes scenes have you processed?

17 A. Over seven thousand since I've been with Greenville
18 County.

19 Q. All right. Have you been called to testify in court?

20 A. I have.

21 Q. Have you been declared an expert in court?

22 A. I have.

23 Q. Has any court declined to call you an expert?

24 A. No, sir.

25 Q. All right. On January 20th of 2014 was your office,

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

377

1 the forensic office, involved in the investigation of an
2 armed robbery at the Olive Garden restaurant at 3290 North
3 Pleasantburg Drive?

4 A. Yes, sir, they were.

5 Q. And did a forensic tech from your division under your
6 supervision respond to that incident location?

7 A. Yes, sir.

8 Q. And who was that?

9 A. Iona Outen.

10 Q. All right. Do you -- do you know approximately how
11 long after the original 911 call Ms. Outen responded?

12 A. It was close to midnight, but I don't know what time
13 the call came in.

14 Q. Okay. Is Ms. Outen still employed with forensics?

15 A. No, she's not.

16 Q. Okay. Why is she not employed with forensics?

17 A. She had taken family medical leave for the extended
18 time that she could. And when it was time for her to come
19 back to work, she turned in her gear and quit.

20 Q. Okay. Who reviewed and signed off on the report that
21 she did in this case?

22 A. I did.

23 Q. Have you reviewed that report?

24 A. Yes, sir, I have.

25 Q. All right. Do you know what areas of the Olive Garden

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

378

1 restaurant Ms. Outen processed?

2 A. According to the report she processed the main doors
3 going in, doors going into the kitchen as well as the door
4 leading to the office.

5 Q. Do you know if she recovered any latent prints from the
6 scene?

7 A. According to her report, she did.

8 Q. Okay. Do you know the location of where those prints
9 were taken?

10 A. I believe they are on the wooden door -- the main doors
11 going into the business.

12 Q. Okay. Do you know if they were on the interior of the
13 door or the exterior of the door?

14 A. That, sir, I don't know.

15 Q. Okay. Let me show you a copy of -- is this the report
16 that you reviewed?

17 A. Yes, sir, it is.

18 Q. And does that refresh your recollection as to the
19 location where those prints were recovered?

20 A. According to this, the prints were obtained from the
21 interior sides of both sets of the front entrance doors.

22 Q. Okay. And since you've reviewed that report, let me go
23 back to an earlier question. Does she indicate on that
24 report when the 911 call occurred and when she responded?

25 A. It says after closing hours.

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

379

1 Q. Okay. Do -- all right. Let me ask you, in your review
2 of that report, based on the information she was provided,
3 are these the areas of a restaurant at a crime scene like
4 this that she should have processed?

5 A. Yes. When speaking with the officers on the scene to
6 get a synopsis or an idea as to what had occurred, we're
7 provided the information, we then use our expertise to
8 determine what areas we feel are suitable for getting
9 fingerprints.

10 Q. And is an area such as a point of entry or exit
11 particularly important?

12 A. Absolutely, yes.

13 Q. What issues from a forensic perspective arise when
14 processing a high trafficked area such as an entrance/exit
15 door to a restaurant like this?

16 A. Depending upon the texture of the surface itself could
17 have an effect on whether you can even get fingerprints to
18 come up. The other thing is because of it being a business,
19 you have a potential for lifting prints from individuals who
20 were there for legitimate reasons.

21 Q. Okay. In those instances how likely are you able to
22 determine who contributed those particular prints?

23 A. All you can do is submit the latents to the examiners.
24 And then they can make a determination if they have prints
25 that are -- that they have access to as far as in the

DARWIN SHAW - DIRECT EXAMINATION BY MR. FRETWELL

380

1 computer system to identify it to.

2 Q. Does everyone, to your knowledge, who touches a surface
3 leave a print?

4 A. No, sir.

5 Q. Okay. What items were indicated that were collected in
6 this particular case?

7 A. The only item that was collected was a dishrag that had
8 been found between -- at the base of the double doors going
9 into the business.

10 Q. As in addition to the latent prints that were
11 recovered?

12 A. That's correct.

13 Q. Okay. Let me show you what's already been marked as
14 State's 33. I'll ask you -- it's not in evidence. So I'd
15 ask you to look at that in your lap. And look at the item
16 and tell me if it's possible for you to identify the item.
17 And then if so, what the item is and how you can identify
18 it.

19 A. The -- this item, it's a white and green handtowel.
20 And it says it was collected from the front of the business.
21 It also has the case number, which matches the case number
22 on the report.

23 And when we collect evidence, we typically use our
24 initials. Mine would be DS. So anything I would collect
25 would be DS and then the number of the item. In this case

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

381

1 Iona's -- it was IO. And she had in the report it was
2 collected -- IO-1 was collected, the washcloth, which
3 matches what's on the barcode that she submitted to property
4 and evidence.

5 **MR. FRETWELL:** Your Honor, at this time the State would
6 seek to admit State's exhibit 33 into evidence.

7 **MR. YARBOROUGH:** Without objection.

8 **MS. ROSS:** No objection.

9 **THE COURT:** So admitted.

10 (Whereupon State's exhibit 33 was admitted into
11 evidence)

12 Q. From a forensic perspective, Sergeant, why would this
13 dishrag be collected?

14 A. Just because it's part of the crime and it would not
15 be, from information that we would receive, that it was not
16 in a normal place of business, that it was -- could
17 partially be part of the -- part of the crime.

18 Q. Okay. Please answer any questions Defense counsel may
19 have. Thank you, sir.

20 A. Thank you.

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

22 Q. Do you know where that rag was found?

23 A. In the -- according to the -- looking at the
24 photographs it was found where the doors swing out. At the
25 base of the door there's a center column. And the dishtowel

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

382

1 was around that column. It would prohibit both doors from
2 closing.

3 Q. And how do you know it prohibited both doors from
4 closing?

5 A. Because the photographs show that the doors were not
6 closed because of the -- of the dishrag.

7 Q. Okay. Did -- do you know that that's the rag that was
8 found in the door? Do you have a way of telling that?

9 A. Yes, sir.

10 Q. What is that way?

11 A. Well, when we put evidence into property and evidence
12 we initial -- put our initials on the item. And in this
13 case the -- I believe Iona had put her initials on the
14 dishrag.

15 Q. Do you believe it or do you see it?

16 A. I saw it. I had looked at it previously and saw her
17 initial on the -- on the dishrag.

18 Q. Okay. And does this appear to be the dishrag?

19 A. No, sir.

20 Q. Okay. Why is that?

21 A. Because those are laying up on the counter. And the
22 dishrag that was collected was found between the front
23 doors.

24 Q. Okay. Can you look at that dishrag?

25 A. Yes, sir.

1 Q. Will you pull it out? Do you see where that was tested
2 for latent prints?

3 A. No, sir.

4 Q. Do you see where it was tested for DNA?

5 A. You wouldn't be able to visually see, but it would not
6 have been.

7 Q. It wasn't tested?

8 A. That's correct.

9 Q. Okay. So there was no -- no tests for prints or DNA
10 done on that rag?

11 A. That's correct.

12 Q. Can you hold that rag up? Will you turn it over. Let
13 me see the left hand. So there was no way to test that for
14 any kind of saliva or anything that was -- that might have
15 come from the perpetrator of the crime?

16 A. Not that we would have collected, no, sir.

17 Q. But, I mean, sweat gets on rags like that, right?

18 A. Potentially it could, yes.

19 Q. Okay. And that rag had actually -- it's been used,
20 obviously.

21 A. Yes, sir.

22 Q. It's been used by somebody to do something. A waiter
23 or ---

24 A. It's dirty, sir. Yes, sir.

25 Q. Okay. So if somebody was using it there would have

1 been a way to test it.

2 A. Not logically, no.

3 Q. Okay. And not logically because of why?

4 A. Because of the area because when you do a test for DNA,
5 you would use a Q-tip to swab a specific area. And then

6 that Q-tip, the filters from that is what is tested for DNA.

7 This, you would have to swab every square inch from edge to
8 edge, the entire thing front and back in order to try --

9 even try to see if there was any DNA possible on the item.

10 Q. Okay. I mean, you didn't -- you didn't do this test,
11 but the officer that did, Officer Iona, I think it's ---

12 A. Iona Outen.

13 Q. Iona Outen, she didn't test it?

14 A. That's correct.

15 Q. Okay. And you're confident that it hasn't been tested?

16 A. We would not -- we did not, otherwise, it would have
17 been in her report.

18 Q. Okay. And was it in her report that Mr. White, my
19 client, gave you a DNA sample?

20 A. No, sir.

21 Q. Okay. That was not in the report?

22 A. That's correct.

23 Q. Okay. Now, I'm assuming that you're aware that there
24 was a brick found by the door.

25 A. Yes, sir. I saw that in the photographs.

1 Q. Okay. Now, did you test that brick for DNA?

2 A. No, sir.

3 Q. Okay. And -- or did Officer Iona Outen test that rock
4 for DNA?

5 A. No, sir.

6 Q. Okay. And she didn't test that rock for DNA because
7 of?

8 A. Who knows when the brick was touched or when it was
9 handled. It may or may not have been part of the -- of the
10 crime.

11 Q. Okay. Have you seen the pictures from the crime scene?

12 A. Yes, sir, I did.

13 Q. Okay. And you're aware that in State's exhibit number
14 3 that the window was smashed in, right?

15 A. Yes, sir, the exterior window.

16 Q. The exterior window was smashed in. And you're aware
17 that there's a brick right down at the bottom down there,
18 right?

19 A. Yes, sir.

20 Q. Okay. So you don't think that that -- well, maybe you
21 don't -- y'all didn't think the brick was important?

22 A. No, that -- I believe that was -- of course, I didn't
23 work the scene, but with not knowing what, you know, when
24 that happened as far as when that window was broken, may or
25 may not be related to the incident.

- 1 Q. Okay. You're the head forensics guy, right?
- 2 A. Okay.
- 3 Q. Are you?
- 4 A. I'm a sergeant, yes, sir.
- 5 Q. Okay. But you were the sergeant over her?
- 6 A. That's correct.
- 7 Q. Okay. And you're here to testify on her behalf?
- 8 A. Yes, sir.
- 9 Q. Okay. So to your knowledge that was not tested either?
- 10 A. That's right or it would have been reflected in her
- 11 report.
- 12 Q. Okay. Now, you also see that there are two door
- 13 handles on the door, is that correct?
- 14 A. Yes, sir.
- 15 Q. Okay. Now, were those door handles dusted for latent
- 16 prints?
- 17 A. The report indicates both doors inside and out were
- 18 processed, which would include the door handles.
- 19 Q. Okay. And do you have that report?
- 20 A. I have -- I have the report.
- 21 Q. Okay. And does that report show that Mr. White's
- 22 fingerprints were found on that door?
- 23 A. No, sir, it does not.
- 24 Q. Okay. And for that matter were Mr. Gadsden's
- 25 fingerprints found on that door?

1 A. That's correct.

2 Q. They were not?

3 A. That's right, they were not.

4 Q. Okay. And neither one of their prints were found on
5 the rock.

6 A. That's correct.

7 Q. 'Cause the rock wasn't -- the brick wasn't tested?

8 A. It does not show in the report that it was processed,
9 but because of the texture of it, that was why -- that is
10 why it would not be processed because of the texture of the
11 brick.

12 Q. But there are -- you've testified in court where bricks
13 have been tested before, right?

14 A. I've testified that I have gotten prints off of fired
15 bricks that have a glossy surface. That's why as a
16 technician I make the determination when I look at an item
17 whether it appears to be suitable for being able to retain
18 latent prints.

19 Q. And did you look at that item in this case?

20 A. Only in the photograph.

21 Q. Only in the photograph. And to your knowledge it
22 wasn't tested?

23 A. That's correct.

24 Q. Okay. Now, did anyone go back and test the area around
25 the safe in the Olive Garden for forensic prints?

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

388

- 1 A. If it's not in the report, then it did not get done.
- 2 Q. Okay. So nobody checked back there for prints either?
- 3 A. That's correct.
- 4 Q. Okay. Now, you're aware that there were rolls of coins
- 5 found on the floor, is that correct?
- 6 A. Yes, sir.
- 7 Q. From looking at the prints [sic]?
- 8 A. Yes, sir.
- 9 Q. Okay. And were those rolls of coins tested for
- 10 fingerprints?
- 11 A. No, sir.
- 12 Q. Were they tested for DNA?
- 13 A. No, sir.
- 14 Q. But that's paper and you could test for that, right?
- 15 A. For what?
- 16 Q. For prints or DNA on the paper.
- 17 A. Possibly prints using chemicals and maybe DNA, touch
- 18 DNA possibly.
- 19 Q. Right. But those tests weren't done either?
- 20 A. That's correct.
- 21 Q. Okay. How about -- are you familiar with the area
- 22 where there was a camera set up that was used to see whether
- 23 or not someone was coming in to pick up carry-out food?
- 24 A. There was mention of a camera in the report, but I
- 25 don't recall, without looking, as far as what it said.

1 Q. Okay. Will you look to see if it was tested?

2 A. The camera?

3 Q. Well, the area of the camera.

4 A. No, sir. If it was not in the report, it was not
5 tested.

6 Q. Okay. So it -- to your knowledge, it wasn't tested
7 either?

8 A. That's correct. Yes, sir.

9 Q. Now, there were -- there was a whole area outside of
10 the Olive Garden where there was money left out on the road,
11 right?

12 A. Yes, sir, that's correct.

13 Q. Okay. And did -- were those individual pieces of money
14 tested for DNA?

15 A. No, sir.

16 Q. Right. And it's hard to test money for DNA, right?

17 A. Again, depending on how much it's been handled.

18 Q. Okay. So if a coin, I mean, a hundred dollar bill that
19 looks relatively new was there would that make it easier to
20 test because it was new?

21 A. Test for what?

22 Q. Test for DNA.

23 A. It wouldn't make any difference.

24 Q. Whether it was new or not?

25 A. That's right.

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

390

1 Q. Wouldn't it make a difference whether it was new or not
2 because it hadn't been handled as much?

3 A. No, sir.

4 Q. Okay. Well, then why wouldn't you have tested it?

5 A. As a -- as a rule, the Forensic Division does not
6 collect money -- we don't collect money from crime scenes.
7 If it gets collected the agency -- the agency will either
8 collect it or if they believe it's part of the -- belongs to
9 the business, they may return it to the business and no
10 testing is done.

11 Q. Yeah, but oftentimes money is taken and held while a
12 trial is pending, isn't it?

13 A. Yes, sir.

14 Q. Okay. And that money's held because it's the -- it's
15 the best evidence, right?

16 A. It's part of the crime.

17 **MR. FRETWELL:** Objection. I don't understand what the
18 best evidence means in this ---

19 **MR. YARBOROUGH:** I'll move on, Your Honor.

20 Q. Would it be safe to say that this was a relatively new
21 hundred dollar bill that was found out there?

22 A. It could be.

23 Q. Okay. Do you -- was that Outz's [sic] card? Whose
24 card was that?

25 A. No, sir. Those are deputies' business cards prior to

1 us responding to a scene. They try to locate potential
2 evidence. They mark that with business cards to help
3 expedite the process at the scene.

4 Q. Okay. And so you would agree that that was marked and
5 then the rolls of quarters were marked, is that correct?

6 A. Yes, sir.

7 Q. Okay. And I believe you've reviewed a picture that has
8 maybe twenty or thirty bills laying around on the floor.

9 A. I have looked at photos of that, yes, sir.

10 Q. Okay. And none of that was tested?

11 A. That's correct.

12 Q. Okay. And the safe area wasn't tested?

13 A. Not according to the report, that's correct.

14 Q. Okay. And how about the door going into the back room
15 where the safe was?

16 A. That's the office door. And that was one of the areas
17 that was processed.

18 Q. Okay. And was there any DNA or fingerprints found
19 there?

20 A. No, sir. Only the front doors were the only place
21 where fingerprints were found.

22 Q. Okay. So there were no fingerprints found on that back
23 door at all?

24 A. Nothing that was submitted, that's correct.

25 Q. Okay. Well, that's the question. If it wasn't

DARWIN SHAW - CROSS EXAMINATION BY MR. YARBOROUGH

392

1 submitted, does that mean it wasn't tested?

2 A. That'd be correct. If it's not submitted, it can't be
3 tested.

4 Q. Okay. So it wasn't -- it wasn't tested?

5 A. There was nothing -- either nothing there or it was not
6 suitable or not -- as far as there's not enough
7 identification, it was noncomparable. You can get bits and
8 pieces of fingerprints, but it's not enough to make an
9 identification.

10 Q. Well, let me ask you this. Do you know what was done
11 there?

12 A. According to the report ---

13 Q. According to the report ---

14 A. That's correct.

15 Q. --- it says what was done in the office.

16 A. That's right.

17 Q. What was?

18 A. Just the processing of the door.

19 Q. Okay. And no prints were found?

20 A. That's correct.

21 Q. I mean, nobody's prints were found?

22 A. There were none submitted. Again, depending upon the
23 surface of the door, the surface area, the area where you
24 mostly would touch. It's very common not to have
25 identifiable prints on those types of areas.

1 Q. Okay. Thank you.

2 MR. YARBOROUGH: I don't have anything further.

3 THE COURT: Ms. Ross.

4 Cross Examination by Ms. Ross:

5 Q. Hi, there. I was just going over Ms. Outen's report
6 and I noticed that she wrote the officer observed
7 Kretzschmar does not have a visible injury to his face. And
8 that's down at the bottom of the second paragraph. Is that
9 right?

10 A. That's correct.

11 Q. And I know you weren't there, but that's what the
12 report says?

13 A. Yes, ma'am, that's what the report says.

14 Q. Okay. And there were photographs of gift cards as
15 well. And we've kind of covered this, but did you --
16 wouldn't a card be a good place, a plastic card, to get a
17 print? Or would you agree or ---

18 A. You -- potentially, yes, you could.

19 Q. But none of the cards were done?

20 A. No. And the only -- looking at the photographs, if all
21 of this was dumped into a specific area or had not been
22 handled, the money could have all been put into a bag and
23 not handled that much.

24 Q. Okay.

25 A. So it may not have been handled except for those people

DARWIN SHAW - CROSS EXAMINATION BY MS. ROSS

394

1 who put it in the cash register or the cash drawer.

2 Q. Okay.

3 **MS. ROSS:** I beg the Court's indulgence. I'm looking
4 for a particular exhibit number.

5 Q. One of these photographs, I believe, had a picture of a
6 monitor that's been spoken of. And it was a video monitor
7 that looked like sort of a computer. And it was switched
8 off. Now, was that -- this would be a plastic monitor and
9 that there's testimony about a switch on the side. Would
10 that be something that you could get a print off?

11 A. Not the switch, no.

12 Q. Why not?

13 A. Because it's such a small area. And typically there's
14 movement when you -- even flipping a light switch, there is
15 movement of your finger. You can wipe off anything that's
16 ---

17 Q. Okay. And how about the monitor itself? Just that
18 area?

19 A. If there was anything to have indicated that it had
20 been handled by a perpetrator, then possibly.

21 Q. Okay. And the report, I know you weren't there, the
22 report doesn't reflect that that monitor, that video monitor
23 that had been switched off, was tested for prints, correct?

24 A. That's correct.

25 Q. All right. Thank you.

2 **THE COURT:** All right. Thank you, sir. You may step
3 down.

5 **MR. FRETWELL:** And, Your Honor, may Sergeant Shaw be
6 excused?

9 MS. ROSS: No objection.

10 **THE COURT:** All right.. Yes, sir, you're free to leave.

11 Thank you.

13 Christopher Gary, being
14 duly sworn testified as follows;

15 **MADAME CLERK:** Please have a seat. And will you state
16 your full name for the record.

18 Direct Examination by Ms. Simpson:

20 A. I work for the Greenville County Department of Public
21 Safety in the Forensic Division.

22.. Q. Okay. And how long have you been with the Greenville
23 Department of Public Safety?

24 A. I've been with Greenville County full-time for seven
25 years, but prior to that I had the opportunity to work as an

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

396

1 intern. And it was an apprentice-style training program
2 where I worked for three years learning the basics of latent
3 print evidence collection and examination and learned the
4 trade. And then once I graduated college, I began working
5 there full-time in 2009.

6 Q. Okay. And so you are actually -- what is your position
7 within the Forensic Division?

8 A. I'm a latent fingerprint examiner.

9 Q. Okay. And exactly what does a latent print examiner
10 do?

11 A. We receive latent fingerprint evidence from the crime
12 scene section. We analyze the data that's in those
13 fingerprints and we compare them to any known standards that
14 we are requested to compare them to. We then issue reports
15 based on our findings.

16 Q. And now you used one term, actually two, latent versus
17 known print. What is meant by the term latent?

18 A. On the surface of your hand you have raised ridges.
19 And these ridges act much like a rubber stamp that you may
20 use in your life. And when you come into contact with an
21 object, you leave behind a replication of that skin.

22 Now, the ink for that stamp, it has to be developed
23 because normally it's made out of sweat, water or moisture
24 from your face. And the term latent is Latin for hidden.
25 So we have to search for those latent fingerprints that are

1 normally left at a crime scene.

2 We can process those with a fine black powder or a
3 chemical method in order to make them visible to the naked
4 eye. We then collect those fingerprints and they are then
5 from then on determined or called latent fingerprints.

6 Q. Okay. And in your capacity as an actual examiner are
7 you responsible necessarily for collecting the prints or are
8 those submitted to you in some way?

9 A. They're normally submitted to me. A portion of my time
10 is spent processing for latent prints, but the majority of
11 my time is spent analyzing them.

12 Q. Okay. So you're familiar with the collection process
13 as far as suitability for prints and things of that nature?

14 A. Yes, that is correct.

15 Q. And can you tell the jury about your educational
16 background and training.

17 A. Yes. Well, first off I have a bachelor's degree in
18 biology from the College of Charleston. And in terms of
19 actual job application/training, in 2009 I was selected by
20 the National Institute of Justice to go to Largo, Florida
21 with fourteen other examiners around the country.

22 And in this training course, it was four hundred hours
23 of classroom training that lasted ten weeks. We learned
24 everything from the basics of examination. And it was --
25 the idea of the program and what they achieved was to take

1 novice examiners and to train them in everything they would
2 need to do to testify as experts.

3 After that training was completed I also in 2013 I took
4 a class that was sponsored by Ron Smith and Associates
5 called Advanced ACV Methodology. And in 2016, this year,
6 just this past May, I also participated in the North
7 Carolina IAI, which is the National or the International
8 Association for Identification Conference, which lasted for
9 three days.

10 Q. Okay. And so during the course of, I guess, your
11 career as a latent print examiner do you, I guess, continue
12 your educational requirements or stay up-to-date with
13 respect to courses and training?

14 A. Yes, I do.

15 Q. And how many comparisons would you say you've done over
16 the course of your career?

17 A. I've conducted hundreds of thousands of comparisons.

18 Q. Okay. And in cases where there are matches made or
19 things of that nature, is your testing subject to peer
20 review? Or does someone review it after you?

21 A. Yes. Whenever we make an identification to a suspect
22 match, it is peer reviewed.

23 Q. Okay.

24 **MS. SIMPSON:** Your Honor, at this time I would offer
25 Chris Gary as an expert in latent print examination.

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

1 **MS. ROSS:** No objection.

2 **THE COURT:** Pardon me?

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

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

5 **THE COURT:** All right. Ladies and gentlemen, we have
6 what is known as expert witnesses in South Carolina. And
7 under our rules if scientific, technical or other
8 specialized knowledge will assist you, the trier of the
9 facts, in understanding any evidence or determining any fact
10 that may be an issue in a case, a witness may be qualified
11 as an expert by virtue by his or her knowledge, skill,
12 experience, training or education. As such, an expert can
13 offer an opinion in his or her areas of expertise.

14 You are -- I find this witness qualified as an expert
15 in the field of latent print examination. You are to give
16 his testimony such weight and credibility as you deem
17 appropriate as you will with any and all witnesses who
18 testify in this trial. Yes, ma'am.

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

20 **Direct Examination by Ms. Simpson Continued:**

21 Q. Before we get to what you did in this case I want to
22 talk a little bit more about what makes comparison possible
23 as far as ridge detail and things of that nature.

24 A. Okay.

25 Q. Can you explain that for the jury?

1 A. Yes. Well, to start off, like I was saying, you leave
2 that replication behind. Once we process it and collect it
3 and then it's my job to analyze that data that's present.

4 The first thing that we do when we analyze latent
5 fingerprints that are submitted to us are determine the
6 pattern type. There are three pattern types that everyone
7 have, they're loops, arches and whirls. So with only three
8 different pattern types, that's not a very exclusive
9 category that we can separate everyone in because of the
10 entire population only having three pattern types.

11 The second thing we look for after we determine pattern
12 type, those ridges that I'm talking about on the surface of
13 your hands, they don't just start at one point and go all
14 the way across to the other end of the finger. These
15 ridges, they divide, they stop and end, there's shorter
16 ridges, there's longer ridges. And those are the things
17 that make unique arrangements in the fingerprints that we
18 can determine individuality.

19 Also, to go a little further, on the surface -- at the
20 top of those ridges that we're examining, there are also
21 pores. I believe there's approximately a hundred and eighty
22 pores on average on your fingertips and around three
23 thousand on the surface of your palms. Those pores and
24 placement of those pores also help with individualization.
25 And then we can compare the fingerprints that we lifted from

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

1 the crime scene to a known standard and determine if they
2 came from the same person.

3 Q. Okay. And going back just a little bit, you said
4 individualization. Do any, I guess, what does that mean
5 exactly?

6 A. Okay. So no two people have ever been known to have
7 the same two fingerprints. Fingerprints are unique to every
8 individual. And, in fact, all ten fingers on every person
9 are different as well.

10 So when I talk about and discuss identification, what
11 I'm talking about is taking that -- the latent print from
12 the crime scene and comparing it to the known standards that
13 we have and determining that that is an identification, that
14 the person that left the fingerprint is the same person that
15 we're comparing in this case.

16 Q. Okay. So in order to actually do your comparison must
17 you have a known print to compare it to?

18 A. Yes, I must.

19 Q. And what is a known print? Like, what do you usually
20 have?

21 A. Okay. So like I was saying with the fingerprint left
22 at a crime scene, that is an unknown. It's -- we don't know
23 who it belongs to. And it's our job to determine who it
24 does belong to.

25 A known print is when we know the individual that is

1 submitting the fingerprints. We have their name, their date
2 of birth, their social security number, their race and
3 gender identifiers. And everything we know about that
4 person that we know are associated with these fingerprints.

5 The way that we achieve those fingerprints, you can
6 apply a thin layer of black printer's ink or use electronic
7 cameras to capture the fingerprint ridges and put them onto
8 a fingerprint card so that we know that that person is
9 associated with these fingerprints.

10 Q. Okay. And talk a little bit, if you can, about the
11 fragility of prints. You've mentioned several times
12 touching a surface and leaving one. Will I necessarily
13 leave a fingerprint just because I've touched something?

14 What ---

15 A. Well, ---

16 Q. --- factors affect that?

17 A. Sorry. First of all, your fingerprints are very
18 fragile in most situations because they're made out of
19 moisture, moisture that you excrete from your hands,
20 moisture when you touch your face and get a little bit of
21 oil from your face and touch a surface. So if I were to
22 come along once I touch a surface and wipe that water away,
23 the sweat that has been left on a surface, I could
24 potentially obliterate those fingerprints.

25 Also weather has a -- it plays a role in collecting

1 fingerprints. If it is super dry out, it could dry the
2 moisture from the surface and you would not -- after we get
3 there and process it, you would not have a fingerprint left
4 on the surface because it's evaporated.

5 The individual that's actually putting the fingerprint
6 onto a surface could play a role. If they have a career or
7 a job that requires them to use their fingers more, such as
8 a brick mason, they could be possibly obliterating that skin
9 and have poor skin and, therefore, not leave good latent
10 prints for comparison.

11 Q. Okay. So a person's own body chemistry can affect it,
12 weather can affect it. And explain a little bit more about
13 the types of surface areas and what are most suitable for
14 being able to, I guess, lift a print.

15 A. So since fingerprints are fragile in nature, the best
16 surfaces to retrieve fingerprints from would be any smooth,
17 clean, glass surface. If you touch a piece of glass, you
18 would likely leave behind that moisture. And then we could
19 dust it and retrieve your fingerprint.

20 If someone cleans that glass or, you know, affects that
21 in any way, it could be obliterated. But a clean surface is
22 the best place to leave a fingerprint.

23 If a surface is rather dirty or dusty, you would
24 actually touch it and just remove the dirt and not actually
25 leave behind a fingerprint. Your fingerprint would actually

1 have to come in contact with the item that you're touching
2 in order to leave behind a fingerprint.

3 Q. And you mentioned smooth, soft surfaces. What about
4 textured surfaces that may be made of things such as dirt or
5 clay and things of that nature?

6 A. Well, things, like I said, that are dirty, you have a
7 better chance of just removing the dirt from the object and
8 not leaving behind your fingerprint.

9 There are some circumstances when you can actually make
10 a plastic fingerprint such as in clay where you -- like if
11 you've ever played with play-doh or something of the sort,
12 when you've actually touched it and you've left your
13 fingerprint. It's an inverse of your fingerprint because
14 it's actually made indentions into that surface. But
15 normally, you know, that's when something can be molded.

16 Things that can't easily be molded such as clothing or
17 the handle of a gun that's very textured, and oily, and
18 dirty, those surfaces aren't great for suitable
19 fingerprints.

20 Q. So you said clothing. For instance, such as a
21 dishcloth or something of this nature, are you necessarily
22 going to find suitable prints on something with this item?

23 A. No, you would not.

24 Q. Okay. And if a person is wearing gloves can you expect
25 to find a print?

1 A. No, you would not. If you have any fabric or any thick
2 surface covering your hands, if you were to touch an object
3 you would not leave behind a fingerprint because your ridges
4 that are required to touch an object are covered, and you
5 can't put your fingerprint through the fabric onto the
6 surface. The fingerprint itself would have to come in touch
7 -- in contact with the surface to leave a fingerprint.

8 MS. SIMPSON: I think, Your Honor, one of the jurors
9 needs a break.

10 THE BAILIFF: The jurors need to go to the restroom.

11 THE COURT: All right. We'll take a few minute break.

12 Please do not discuss the case while you're back there.

13 Matter of fact, we'll take a fifteen minute break. Don't
14 discuss the case while you're back there. And we'll bring
15 you back in just a few minutes.

16 (Whereupon the jury exited the courtroom at 10:27 am)

17 THE COURT: All right. We'll take about a fifteen
18 minute break. You can step down from the witness chair, but
19 don't discuss your testimony while we're on break.

20 A. Yes, sir.

21 (Whereupon court was in recess at 10:28 am)

22 (Whereupon court reconvened at 10:48 am)

23 THE COURT: All right. Let's bring the jury in if we
24 could.

25 (Whereupon the jury entered the courtroom at 10:50 am)

1 **THE COURT:** All right. Ms. Simpson, if you would
2 proceed, please, ma'am.

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

4 **Direct Examination by Ms. Simpson Continued:**

5 Q. I believe we were talking about gloves. Can you -- if
6 a person is wearing gloves are they going to leave a
7 fingerprint?

8 A. No, they will not.

9 Q. And what is the reason for that?

10 A. Because the fabric is covering the area that -- of the
11 friction ridge skin that is needed to come in contact with a
12 surface. So if it's covering that -- those ridges that need
13 to come in contact, they would not be able to leave a
14 fingerprint.

15 Q. And so this is kind of along the same lines, if I were
16 to, say, push open a door and I'm wearing a piece of
17 clothing in between when I push it open, am I going to leave
18 a fingerprint?

19 A. You're not, first of all, because the only area that
20 you have this specialized skin is on the surface of your
21 hands and the bottoms of your feet. So if you were to open
22 the door with an elbow or any other part of your body other
23 than your hands or your feet, it's impossible for you to
24 leave friction ridge skin detail behind.

25 Q. Okay. And as far as surface areas, what about the

1 overlay of fingerprints and multiple people potentially
2 touching a surface area? Does that affect both the
3 collection process and the suitability for any print you may
4 get?

5 A. Yes, it does. If I were to touch a surface and then
6 someone else were to touch right on top of that, it could
7 obliterate those fingerprints. It could actually crisscross
8 them so much that they would be rendered not comparable
9 because of the -- the detail would be obliterated and you
10 wouldn't be able to separate the prints because it's a 2-D
11 surface. So when you both -- the fingerprints go onto it,
12 you wouldn't be able to tell which is which. And it would
13 be obliterated at that point.

14 Q. Okay. And some surfaces such as glass surfaces or
15 even, I guess, the smooth surfaces that we talked about, how
16 likely is it to potentially smudge or if I don't press down
17 and hold, like, to mess up a print?

18 A. It is possible to smudge fingerprints. People
19 generally aren't putting their hands on objects and leaving
20 nice rolled fingerprints. And that's where the examiner
21 comes in to determine the distortion and the amount of
22 smudging and the amount of pressure.

23 And the way they handled it can lead to a fingerprint
24 being usable and being able to compare it or to it being
25 determined as smudged. And we have to analyze that and

566

1 determine if it is a fingerprint that can be used or not.

2 So when you're handling objects you could be leaving
3 good fingerprints if you're leaving good, firm touches or
4 you can just be leaving sweaty smudge marks that you may see
5 on your car windows from just constantly handling that
6 surface and not giving a good firm touch.

7 Q. And in cases, the numerous cases where you've done
8 comparisons, are all latents that you've received
9 necessarily suitable for comparison?

10 A. No, they are not. We receive latents that have little
11 to no ridge detail and latents that have, you know, that are
12 close to rolled such as a known fingerprint and everywhere
13 in between.

14 And every latent fingerprint is different because of
15 the touching and the amount of pressure and the amount of
16 surface area that comes in contact with the surface. Every
17 latent fingerprint is different.

18 Q. I want to touch on something you just said, surface
19 area. Explain that a little more for the jury as far as the
20 size of the surface area and how they may affect your
21 ability to collect a print.

22 A. I'd be happy to. So when I talk about surface area,
23 I'm talking about the entire surface of the hands in this
24 case. And that means from nailbed to nailbed.

25 Most people, when they're handling a drink, you're

1 grabbing it -- you have four fingers on, but you can have
2 the side of the thumb. Now the side of the thumb typically
3 isn't recorded in a known fingerprint standard.

4 So if I were comparing the latent fingerprints that
5 were on the can, I could possibly see these four fingers,
6 but maybe not this because the surface area that is -- that
7 is left was not on a known fingerprint card. And that's the
8 same thing with any object.

9 Some objects you handle flush where your fingerprints
10 are squared at the surface or parallel so that you're going
11 to leave a good firm touch, but some objects we handle with
12 the sides of our fingers. And those typically are not able
13 to be identified due to the placement and the surface area
14 that they're from.

15 Q. And what if I had a very small area such as like a
16 switch on a monitor or something of that nature where I
17 can't leave a full print or you can only get so much of a
18 print?

19 A. That's another possibility. In an examination, we need
20 enough data to determine if this fingerprint came from this
21 person that we're comparing it to. If there's too small of
22 a detail, that fingerprint could be not comparable or
23 elimination quality only, we don't have enough to identify
24 it because the surface area is so small. We need enough
25 detail in that fingerprint to determine if it is from this

1 person or not.

2 Q. And some of these decisions, while you actually as the
3 examiner get the prints and do the comparison, those are
4 made by the crime scene investigator or the person actually
5 processing the scene, correct, as to whether or not it may
6 or may not be suitable?

7 A. Yes, that is correct. The crime scene technician is
8 the gatekeeper for what evidence is sent up to our office.
9 The crime scene technician is the one processing for latent
10 prints. And they are trained to process the latent
11 fingerprints and lift the ones that are comparable to send
12 to our office.

13 Q. And even with the ones they are able to lift, you're
14 not necessarily always or are you always able to make some
15 determination with respect to that print?

16 A. Could you clarify, please?

17 Q. Or come to a conclusion, make a match or compare it?

18 A. Well, we'll come to a conclusion whether it be not
19 comparable or an identification or that it's comparable, but
20 we just don't have the known standard for the person that
21 made the fingerprint.

22 Q. I want to talk and turn your attention to -- actually,
23 let me show you what's been already introduced as State's
24 exhibit 6, a brick that was located.. Now you didn't
25 actually go to the scene, correct?

1 A. That is correct. I did not.

2 Q. But the item pictured in there, the brick, explain to
3 the jury what factors might affect the ability to collect a
4 print from an item such as that, if it was not a fired brick
5 or a smooth glossy surfaced brick.

6 A. Okay. In this picture I do observe a brick. I was not
7 at the scene. I need to clarify that. I was not at the
8 scene. I've never seen this brick in person.

9 But on a typical item that -- I have processed bricks
10 before. Bricks can typically be dirty, or they can be
11 porous and very textured. And you would not be able to
12 recover a latent fingerprint from that surface because it's
13 not smooth and clean. But I've never seen this particular
14 brick. So I can't testify to that particular brick, but
15 just bricks in general.

16 Q. Okay. And, again, kind of talking about high traffic
17 areas as far as, say, a restaurant or the doors to a
18 restaurant, a highly trafficked area, how likely are you to
19 collect a print if it's not completely clean and smooth?

20 A. I would say in my personal processing that it's highly
21 likely to receive fingerprints from highly trafficked doors
22 because people are coming in and out. They're touching the
23 doors, they're leaving fingerprints. And at the same time
24 they could also be taking fingerprints away by touching
25 fingerprints that were already there and wiping them away.

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

412

1 So it really just depends on at the time that you process
2 it, but generally I have a high recovery rate for
3 fingerprints on a public door.

4 Q. And so you can get prints, but you may get multiple
5 prints or they may be smudged because the number of people
6 that were touching that highly trafficked area, correct?

7 A. That is correct.

8 Q. Okay. So that would affect the prints that you are
9 able to actually retrieve ---

10 **MR. YARBOROUGH:** Objection to leading.

11 **MS. SIMPSON:** I'll rephrase.

12 **THE COURT:** Sustained.

13 Q. Actually, let's go to the print that you received in
14 this case and then we'll come back to that point. Did you
15 receive a print for comparison in this case?

16 A. Yes, I did.

17 Q. And how did that come to you?

18 A. In order to -- when a crime scene technician processes
19 a crime scene, they place the latent fingerprint that's
20 recovered on the back of a card that has all of the case
21 information, the address where they recovered it from, a
22 description of the location that they lifted it from, they
23 sign it, they date it and they draw a diagram to show where
24 the fingerprint came from off of the particular item.

25 That latent fingerprint is then placed into an

1 envelope, which we call a latent print envelope that has
2 that same information on the outside with case number, the
3 address, the victim, the crime type, et cetera. It is then
4 sealed by the technician and initialed and it's placed into
5 a locked drop-box that only myself and the three other
6 latent print examiners in my office have a key to. Every
7 morning, Monday through Friday, if it is a workday, we pick
8 those latent prints up and bring them to our office for
9 comparison.

10 Q. Okay. And in this case did you, in fact, receive a
11 latent for comparison?

12 A. Yes, I did.

13 Q. And tell the jury what you did once you received that
14 and what your results were.

15 A. I opened the envelope that was sealed. I observed that
16 it was a whirl fingerprint. And I compared it to two
17 individuals that were requested to be compared. And they
18 were negative for the latent print in this case.

19 Q. And the print you received, did you -- are you aware of
20 where that was actually recovered from based on the print
21 card?

22 A. Yes, I am.

23 Q. Do you have that on hand or know?

24 A. Yes, I do.

25 Q. Can you tell the jury about that?

CHRISTOPHER GARY - DIRECT EXAMINATION BY MS. SIMPSON

414

1 A. Yes. There was one latent lift that was submitted by
2 the evidence technician. And it was from the interior side
3 of the left interior exit door above the bar.

4 Q. Okay. And that was the only print that was submitted
5 to you or -- and you deemed it suitable for comparison?

6 A. That is correct.

7 Q. Let me show you State's exhibit 9, specifically
8 reference to the portion area of the glass there. What does
9 that look like to you as far as fingerprints or smudging?

10 A. Honestly, I would have to see the door in person to
11 determine. It looks like several sweaty deposits on the
12 door, but judging from the picture, I can't determine if
13 those are fingerprint smudges, if they're fingerprints or if
14 they're just, you know, maybe wiped down with a towel. I
15 can't determine that from here.

16 Q. Okay. But on a surface area such as that, if there
17 were smudges or if there were overlay where numerous people
18 had touched it, would you expect to get a suitable print for
19 comparison?

20 A. I would have to process that particular door and see.
21 It really depends. Every surface is different. We will
22 process it and collect any latent prints that are on that
23 surface.

24 Q. And in this case you only had one that was submitted to
25 you?

1 A. That is correct.

2 Q. As far as door handles and things of that nature,
3 multiple people touching door handles, does that affect the
4 ability to collect or get a print?

5 A. Yes, it does. And door handles are unique from doors
6 because doors are -- they're static, they're solid, you push
7 on them normally with an open hand. Whereas door handles,
8 they're a little different because you have friction that
9 comes into play.

10 When you grab a door handle, when you twist it or if
11 it's a push bar where you push it and you push it tight, you
12 put more pressure or possibly even smudge prints as you push
13 on it. And the same with a twisting motion, you're possibly
14 going to initially grab it and leave a print, but then as
15 you twist it, you're going to smear or smudge those
16 fingerprints that you could be leaving.

17 Q. Okay. And in this case you said that you processed in
18 -- there were two individuals that you compared it to that
19 were excluded, not a match, correct?

20 A. That is correct.

21 Q. Do you recall the name of those individuals?

22 A. Yes, I do.

23 Q. Can you tell the jury?

24 A. It was James White and Gerald Gadsden.

25 Q. Okay. They were not a match?

1 A. Yes. They did not make the fingerprint that was
2 recovered from the door.

3 Q. Okay. And the mere fact, in your expertise, that a
4 person -- that a print is not found, does that necessarily
5 mean that a person did not touch the door?

6 MS. ROSS: Objection. I don't think that requires an
7 expertise.

8 THE COURT: It's a leading question. So we'll sustain
9 the objection.

10 Q. If I touch a door am I necessarily going to leave a
11 fingerprint?

12 THE COURT: Still a leading question.

13 Q. Do people always leave fingerprints on items that they
14 touch?

15 THE COURT: Still a leading question.

16 Q. What can you tell us about items that are touched and
17 fingerprints that are left as far as will there always be a
18 fingerprint?

19 A. Like we were talking about earlier, the factors that go
20 into leaving a fingerprint on a surface, if the surface is
21 clean versus dirty or if the person has sweat on their
22 fingers when they touch an object or not, those factors go
23 into play. You do not always leave a fingerprint when you
24 touch a surface.

25 If the person, for instance, does not excrete sweat at

1 the normal rate of somebody else and their hands are dry,
2 when they come into contact with a surface and there's no
3 moisture there, there's no ink for that stamp that I was
4 talking about earlier. So they would just touch it with
5 their dry skin and not leave behind a latent fingerprint.

6 Q. And what about the timing of prints? Can you tell what
7 time a print was left there, whether it was days, months,
8 years or hours?

9 A. No. You cannot put any -- there's no scientific basis
10 to discuss how long a fingerprint was left on a surface or
11 when it was deposited.

12 **MS. SIMPSON:** I beg the Court's indulgence.

13 (Pause)

14 Q. Thank you.

15 **THE COURT:** Mr. Yarborough, anything?

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

17 Q. Did you do any investigation at the scene?

18 A. No, sir, I did not.

19 Q. There are examples in your training that you can get
20 fingerprints off rocks, right?

21 A. Yes, that is correct.

22 Q. Okay. And you can get them off bricks.

23 A. That is correct.

24 Q. Okay. And you didn't test the brick here?

25 A. I did not.

1 Q. And you didn't find -- did you test or did anybody
2 submit to you fingerprints from the roll of quarters -- or I
3 guess that's nickels.

4 A. No, sir. The only latent lift that I received in this
5 case was from the interior of the interior left door,
6 entrance door.

7 Q. The interior left door. So is that it?

8 A. I could not tell you. I was not at the scene. I'm not
9 sure if that's the door that this came off of or not. I can
10 only go by the forensic evidence technician's description.

11 Q. Okay. Did you -- did you test this rag?

12 A. No, sir, I did not. The only latent fingerprint I
13 received in this case was from the door.

14 Q. So you talked about surfaces that you could collect.
15 You were qualified as an expert, right?

16 A. Yes, sir.

17 Q. Okay. Let me show you this, what's been marked as
18 State's exhibit number 29. You see that? That's a
19 computer.

20 A. Okay.

21 Q. Are computers usually pretty good pieces of equipment
22 to get prints off of?

23 A. It depends on what part of the computer. In my
24 experience computers have multiple parts. And you would
25 have to be specific as to what part we're discussing.

1 Q. The switch to turn it on or off.

2 A. It would depend on if that switch is smooth or clean.

3 It would depend on if that surface is textured. It would
4 have several factors. And I would have to process that
5 surface myself to determine if latent prints ---

6 Q. And you didn't go out there and test this, did you?

7 A. No, sir, I did not.

8 Q. Okay. Now, let's talk about the screen to a computer.

9 Now, that screen where you push hold on the front of the
10 computer, that takes -- that matches -- if you're pushing
11 with your finger onto the computer screen, it would leave a
12 print.

13 A. Not necessarily.

14 Q. Not necessarily? But it could, right?

15 A. It could, yes, sir.

16 Q. Okay. Do you know if that screen was tested?

17 A. No, sir. I have no knowledge of that. If it was ---

18 Q. The only knowledge you have is the one print was taken?

19 A. Yes, sir, that is correct.

20 **MR. YARBOROUGH:** I don't have anything further. Thank
21 you.

22 **THE COURT:** Ms. Ross.

23 **MS. ROSS:** Thank you. May it please the Court.

24 **Cross Examination by Ms. Ross:**

25 Q. I'm going to show you what's marked as State's exhibit

CHRISTOPHER GARY - CROSS EXAMINATION BY MS. ROSS

420

- 1 number 3. So that's the front door with the handles. See
2 how they're metal pull handles?
- 3 A. Yes, ma'am.
- 4 Q. Can't you get prints off of metal?
- 5 A. You can retrieve latent fingerprints off of metal.
- 6 Q. Okay. And while sometimes there are no prints and they
7 can be obliterated, you certainly have had times when prints
8 were gotten off a metal door and off of handles?
- 9 A. Yes, that is correct.
- 10 Q. Where you made a match in your experience?
- 11 A. Yes, that is correct.
- 12 Q. Okay. Now, but here you couldn't make a match? You
13 just had that one print and you did not make a match to ...
- 14 A. Yes. In this case in particular the only latent I
15 received, again, was from the door. And it was the glass
16 portion of the door above the bar. That was the only latent
17 print submitted. And it was negative for Gadsden and White.
- 18 Q. Okay. And those were the only two comparisons you were
19 given, correct?
- 20 A. I was given one more name.
- 21 Q. Okay. What was that? Do you recall?
- 22 A. It was a Damion Riley.
- 23 Q. Okay. And that was not a match either?
- 24 A. No, it was negative for him as well.
- 25 Q. Okay. Now you made those -- did you run the

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

421

1 fingerprints through the fingerprint database at all?

2 A. Yes, I did.

3 Q. And there were no matches there?

4 A. That is correct.

5 Q. Okay. I've got just one more question. Again, my
6 client, Gerald Gadsden, was not a match?

7 A. That is correct. He was negative in this case.

8 Q. Thank you.

9 **MS. SIMPSON:** No redirect, Your Honor.

10 **THE COURT:** All right. Thank you, sir. You may step
11 down.

12 **MS. SIMPSON:** And may this witness be excused?

13 **MR. YARBOROUGH:** Yes, sir, Your Honor.

14 **MS. ROSS:** Yes, Your Honor.

15 **THE COURT:** All right. You're free to leave. Thank
16 you.

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

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

19 **MR. FRETWELL:** The State calls Sergeant Ricky Motes.

20 **Thomas Richard Motes, Jr.,**

21 being duly sworn testified as follows;

22 **MADAME CLERK:** Please have a seat. And will you state
23 your full name for the record.

24 **MR. MOTES:** Thomas Richard Motes, Jr.

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

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

422

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

2 Direct Examination by Mr. Fretwell:

3 Q. Good morning, Sergeant Motes.

4 A. Morning.

5 Q. Where are you currently employed?

6 A. Currently the sergeant over our Property Crimes Unit
7 with the Greenville County Sheriff's Office.

8 Q. And how long have you been a sergeant over property
9 crimes?

10 A. Seven months.

11 Q. Okay. And prior to that time what was your capacity
12 with the Greenville County Sheriff's Office?

13 A. Before that I was an investigator with our Office of
14 Professional Standards Internal Affairs. I did
15 investigations there. And then prior to that I was in the
16 Criminal Investigation Division, worked in the Robbery Unit.

17 Q. So how many years have you been employed by the
18 Greenville County Sheriff's Office?

19 A. Approximately fifteen years.

20 Q. Okay. In January of 2014 in which of these capacities
21 that you've just described were you working?

22 A. In the Armed Robbery Unit.

23 Q. Okay. Let me take you specifically to January 22nd,
24 2014. At approximately the noon hour or 12:30 were you
25 working that particular day?

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

423

1 A. I was.

2 Q. Okay. And were you working or at that time were you
3 working a particular case?

4 A. That's correct.

5 Q. Tell the jury about that case.

6 A. I was assigned the Olive Garden robbery case. Went
7 down -- I had called the Defendant, who at that time was
8 just a victim/witness in the case, to come in so that I
9 could obtain a written statement from him.

10 Q. Okay. And that Thursday that he came in did you meet
11 with Sergeant Weiner and Mr. White in your office?

12 A. That's correct.

13 Q. Okay. Can you tell the jury a little bit about the
14 layout of your office?

15 A. In our office, it's kind of like a room this -- about
16 half the size of this room, but it's an open room. We have
17 four desks in the big part of the room. Then right in front
18 of my desk is Sergeant Weiner's desk, at the time, which was
19 probably ---

20 Q. Let me walk up and you tell me to stop when ---

21 A. Probably about ---

22 Q. Right here?

23 A. Yeah.

24 Q. Okay. When you were talking with the Defendant, Mr.
25 White, where was ---

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

424

1 **THE COURT:** That indicates about ten feet?

2 A. About ten feet, yeah.

3 **THE COURT:** For the record.

4 **MR. FRETWELL:** Thank you, Judge.

5 Q. When you were speaking with the Defendant, Mr. White,
6 where was he in relation to where you were sitting and where
7 Sergeant Weiner was?

8 A. My desk sits right in front of Sergeant Weiner. And he
9 would be sitting at the end of my desk.

10 Q. Okay. And is there a door to that particular office
11 that you ---

12 A. There is the door to the right, one way in, one way
13 out.

14 Q. Okay. Is that door locked?

15 A. No, sir.

16 Q. Okay. In fact, outside of that door what do you have?

17 A. When you go out there's an emergency exit door to the
18 left, then there's a long hallway with a canteen, restrooms
19 and then another exit door.

20 Q. Okay. And in that office itself are you and Sergeant
21 Weiner the only ones that are in that office or are other
22 people ---

23 A. No, there's other -- we had four investigators at the
24 time and a sergeant in that office.

25 Q. Okay. And when Mr. White arrived do you know how he

1 made it to your office?

2 A. He was escorted down to -- from our lobby area down to
3 our office.

4 Q. Okay. And for what purpose was he there?

5 A. He was there to give a statement as being a victim in
6 this case.

7 Q. Okay. Was he under arrest at any time ---

8 A. No, sir.

9 Q. --- at that point? Were warrants prepared for his
10 arrest at that point?

11 A. No, sir.

12 Q. Was he placed in handcuffs?

13 A. No, sir.

14 Q. Any threats or promises made to him in order to have
15 him talk to you?

16 A. No, sir.

17 Q. Did you communicate anything to him that might suggest
18 he was not free to leave?

19 A. No, sir.

20 Q. All right. And can you identify, just for the record,
21 the individual that you've mentioned as James White? Can
22 you identify him as being in the courtroom?

23 A. Sitting at the Defense table in the burgundy shirt.

24 (Whereupon the witness pointed to the Defendant, James
25 White)

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

426

1 **MR. FRETWELL:** Your Honor, let the record reflect the
2 witness has identified the Defendant, James White.

3 **THE COURT:** It does.

4 Q. How did you begin your conversation with Mr. White?

5 A. Just the normal interview process of a victim, you
6 know, introducing who I am, what we're here to do, what
7 we're here to accomplish, and that was for me to obtain a
8 written statement of his story of what happened at that --
9 that night at the Olive Garden.

10 Q. Okay. And so when you explained that to Mr. White what
11 did he say, if anything?

12 A. Well, he gave the story that he was working in the
13 dishroom and a guy came in with a hoodie on with a gun and
14 held them at gunpoint, stood over them and then robbed the
15 store and left.

16 Q. Okay. And did you type that statement for him?

17 A. No. He was adamant that he wanted to write out his own
18 statement.

19 Q.. Okay. Let me show you what's been marked as State's
20 exhibit 43. I'll ask you to look at State's exhibit 43. Is
21 that the statement that you just referenced?

22 A. Yes, it is.

23 Q. Seem to be materially altered in any way?

24 A. No.

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

1 move State's 43 into evidence.

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

3 **MS. ROSS:** No objection.

4 **THE COURT:** So admitted.

5 (Whereupon State's exhibit 43 was admitted into
6 evidence)

7 Q. Sergeant, will you read through that statement and tell
8 the jury basically what information Mr. White provided you
9 about that ---

10 A. Okay.

11 Q. --- incident on the 20th?

12 A. This is just a statement that they give freely and
13 voluntarily and he wrote in his own words. It says I went
14 to work at 6:15. I clock in and started in the dishroom
15 washing dishes. About eleven or so a guy with a hood came
16 to da dishroom and pointed a gun and demanded to get on the
17 floor and lay down. He then stood guard and I heard
18 commotion. He then robbed the store.

19 Q. Okay. And from that statement -- you're the
20 investigating officer in this case. Are you trying to
21 determine what charges are appropriate in this case?

22 A. Correct.

23 Q. Okay. And what charges, based on the information Mr.
24 White provided you, did you have some reason to believe had
25 occurred, what crimes had occurred?

1 A. That an armed robbery had occurred.

2 Q. And anything else? How about with respect to demanding
3 that the individuals get on the floor?

4 A. Yeah. Kidnapping would also be another charge that
5 would be appropriate in that case.

6 Q. Okay. Did he provide you on that form with his -- with
7 an address that was current at the time?

8 A. He did, 410 Sulphur Springs Road.

9 Q. Okay. And was his statement, brief as it was,
10 consistent with the other accounts that you had at that
11 point of the robbery?

12 A. Yes, from the original report.

13 Q. Okay. And what happened after he wrote out and signed
14 his statement?

15 A. At that time I asked him if I could look at his cell
16 phone, asked for consent to search his cell phone and he
17 agreed. Sergeant Weiner had filled out the information on
18 the consent to search.

19 And while he was doing that I asked him, do you have
20 anything else on you? And he said, oh, yeah, I got this old
21 phone I hadn't used in months. I said, well, do you mind if
22 I look at it as well? Search it as well? He said, no. And
23 so I added in on that same consent form that pertinent
24 information for that phone and at that point had him sign
25 the consent form.

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

1 Q. Okay. I'm going to show you what's been marked as ---

2 THE COURT: Mr. Yarborough.

3 MR. YARBOROUGH: Your Honor, I want to note my previous
4 objections to this for the record.

5 MS. ROSS: I'd join in that.

6 THE COURT: All right. So noted.

7 Q. I'm going to show you what's been marked as State's 44,
8 45 and 46. Please keep in mind that these items are not in
9 evidence yet. So take a look at them in your lap and tell
10 me if you recognize those items. And if you do, by item
11 number, if you could just tell the jury what those items are
12 and how they relate to what you've just testified to.

13 A. Okay. The first one is the Kyocera model item number
14 DW1, which is a -- the first cell phone that we took from
15 Mr. White. And the second one is DW2 item, which is the
16 cell phone that he gave me from his pocket, said that was
17 his old cell phone.

18 Q. Okay. And those -- and that other item that I think is
19 numbered first that you haven't mentioned yet, what item
20 number is that? The consent?

21 A. The consent is 44.

22 Q. Okay. And what is 44? If you could describe that ---

23 A. It is a consent to search where if we, you know, ask
24 someone may I look at your phone. Whether it be a phone or
25 a computer or anything like that, we just document that

1 information on this form and have them sign it.

2 Q. Do you put some sort of a number on that form that ---

3 A. Yeah. For each phone like a model number, or an MEID
4 number, or a serial number, whatever is appropriate for that
5 type of phone. A lot of phones, you can't get inside to see
6 those numbers, so we document it as best we can.

7 Q. But you did document those kind of numbers on that
8 particular consent form, is that right?

9 A. We did.

10 Q. Okay. Are all of those exhibits in substantially the
11 same condition as when you received them or filled them out
12 and executed them?

13 A. Yes, sir.

14 Q. Okay.

15 **MR. FRETWELL:** Your Honor, at this time the State would
16 move State's 44 -- 43, 44 -- I'm sorry, 44, 45 and 46 into
17 evidence.

18 **MR. YARBOROUGH:** Without objection -- with my previous
19 objections.

20 **THE COURT:** And your previous objections ---

21 **MR. YARBOROUGH:** Previous objections.

22 **THE COURT:** --- to one or more of these items.

23 **MR. YARBOROUGH:** Right. Thank you, Your Honor.

24 **THE COURT:** The same with you, Ms. Ross?

25 **MS. ROSS:** And I'd join in that.

1 **THE COURT:** All right. I'm going to so admit them
2 subject to any previous objections you may have made
3 relating to one or more of -- what is it, 42, 43 and 44?

4 **MR. FRETWELL:** I think it's 44, 45 and 46.

5 **THE COURT:** 44, 45 and 46.

6 **MR. FRETWELL:** Thank you, Your Honor.

7 (Whereupon State's exhibits 44, 45 and 46 were admitted
8 into evidence)

9 Q. Who took possession of these two phones for evidentiary
10 purposes?

11 A. Sergeant Weiner.

12 Q. Okay. And those items are marked, you said, DW1 and
13 DW2?

14 A. That's correct.

15 Q. And whose initials are those?

16 A. David Weiner.

17 Q. Okay. And that's this individual sitting right here?

18 A. That's correct.

19 Q. And what was his relationship to you at the time of
20 January 22nd, 2014?

21 A. He was our sergeant over our unit.

22 Q. Okay. So he's the supervisor of that unit just like
23 you supervise the Property Crimes Unit right now?

24 A. That's correct.

25 Q. Okay. What else did you collect that day from

1 Defendant White?

2 A. I did collect a DNA sample from him.

3 Q. Okay. And is that standard procedure?

4 A. Yes, sir.

5 Q. Okay. To your knowledge was any unknown DNA located or
6 retrieved in this case against which Defendant White's DNA
7 could be compared?

8 A. No, sir.

9 Q. Is that unusual?

10 A. No.

11 Q. Okay. Does it make sense to request that a used
12 dishtowel -- you are familiar of a used dishtowel in this
13 case?

14 A. Yes.

15 Q. Would it make any sense to compare that against the DNA
16 of somebody who worked in the restaurant?

17 **MR. YARBOROUGH:** Objection, Your Honor. He's not
18 qualified to answer that question.

19 **MR. FRETWELL:** He's an investigator. He's the one ---

20 **MR. YARBOROUGH:** Your Honor, he's not ---

21 **THE COURT:** Well, -- leading.

22 **MR. FRETWELL:** Sustained?

23 **THE COURT:** Leading.

24 **MR. FRETWELL:** Oh, leading. Okay.

25 Q. Did you compare his DNA to anything else?

THOMAS MOTES, JR. - DIRECT EXAMINATION BY MR. FRETWELL

433

1 A. To -- the sample was taken so that we could compare it
2 with any other evidence that was found at the scene.

3 Q. You've already testified there weren't. Did you
4 compare it to anything from this towel?

5 A. I can't -- I don't have that report. I can't remember.
6 I'm sure we would have, but I don't have that in front of
7 me.

8 Q. Okay. So you did not -- you were not involved in that
9 process?

10 A. I was not.

11 Q. Let's talk about that.

12 A. Okay.

13 Q. As of that day you were the lead investigator in this
14 particular case.

15 A. That's correct.

16 Q. Can you tell the jury what -- did you continue to be
17 the lead investigator?

18 A. I wasn't able to.

19 Q. Okay. Tell the jury about that.

20 A. That same day I had to be relieved for a medical issue.
21 That very day, as soon as I took his statement, I went to
22 the hospital and was out of work for an extended period of
23 time.

24 Q. And you left work that day?

25 A. That day.

THOMAS MOTES, JR. - CROSS EXAMINATION BY MS. ROSS

434

1 Q. And do you recall how long you were out of work?

2 A. It was over a week.

3 Q. Please answer any questions Defense counsel may have.

4 Thank you, sir.

5 MR. YARBOROUGH: I don't have anything for this

6 witness.

7 THE COURT: Ms. Ross.

8 MS. ROSS: Just briefly.

9 **Cross Examination by Ms. Ross:**

10 Q. Just looking at the consent to search the cell phone,

11 ---

12 A. Yes, ma'am.

13 Q. And it's in the original -- yeah, on that. The second

14 phone was added sort of in a different ink as in later on,

15 is that correct?

16 A. In just a few minutes. I added that because Sergeant

17 Weiner was helping me out filling out this information while

18 I was wrapping up the interview because I ---

19 Q. Okay.

20 A. --- was leaving. And that's when he pulled out this

21 phone here. And that writing is my writing where I wrote

22 Samsung flip phone, MEID. And that serial number is in my

23 handwriting.

24 Q. And then this signature of Mr. White appears to be in

25 the same as the prior handwriting.

1 A. That ---

2 Q. Correct?

3 A. No. I would say he -- he signed this form after I'd
4 got both of these informations [sic] on -- yes, ma'am.

5 Q. Okay. And you said Investigator Weiner was there, but
6 he never witnesses -- witnessed it, it was just you?

7 A. It was just me. No.

8 Q. Okay. Now, just as far as Mr. White -- Mr. White had
9 come in voluntarily to speak with you?

10 A. He did.

11 Q. And you sat down and you talked with him voluntarily
12 and he consented to the DNA search?

13 A. Yes, ma'am.

14 Q. And was that recorded?

15 A. No, ma'am.

16 Q. Isn't it true that now, certainly, it's procedure to
17 record interviews?

18 A. It's not our -- we don't have a written policy on
19 recording interviews at this time. But I do on some cases,
20 would record.

21 Q. So -- but this one was not, so ---

22 A. It was not.

23 Q. --- you don't have any backup?

24 A. No, ma'am.

25 Q. All right.

THOMAS MOTES, JR. - CROSS EXAMINATION BY MS. ROSS

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

2 **MR. FRETWELL:** Nothing further, Your Honor.

3 **THE COURT:** All right. Thank you, sir. You may ---

4 A. Thank you, Your Honor.

5 **MS. SIMPSON:** Your Honor, with respect to the next
6 witness, we have a matter of law we need to take up prior to
7 him taking the stand.

8 **THE COURT:** All right. Ladies and gentlemen, we're
9 going to take this matter up. I'm going to ask you to step
10 back to the jury room. Please do not discuss the case while
11 you're back there. We'll get -- be with you just as soon as
12 we can.

13 (Whereupon the jury exited the courtroom at 11:26 am)

14 **MR. FRETWELL:** Judge, very briefly. Can Sergeant Motes
15 be excused?

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

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

18 **MR. FRETWELL:** Thank you.

19 **THE COURT:** You're free to leave.

20 **MS. SIMPSON:** Your Honor, may it please the Court. Our
21 next witness is Investigator Matt Owens. I did want to
22 bring up this issue due to Ms. Ross' opening statement prior
23 to Investigator Owens taking the stand.

24 We did have a Jackson v. Denno regarding the statements
25 of Gerald Gadsden that would come in through Investigator

1 Owens, however, in Ms. Ross' opening statement, which I did
2 not object to because I do not know what the Defense would
3 put up, she referenced the fact that at no point during the
4 course of the investigation did Gerald Gadsden deny knowing
5 James White. Well, the reason he didn't is he basically did
6 not continue the conversation with Investigator Owens, and
7 when he was ultimately served with these arrest warrants he
8 invoked and did not speak to law enforcement about the case,
9 which we cannot go into.

10 So, you know, I've already advised my witness on
11 certain things, however, I just wanted to caution based on
12 her opening statement. I have a little concern for any type
13 of reference regarding some level of cooperation or the fact
14 that -- essentially trying to backdoor the information that
15 he never denied knowing James White through this witness,
16 Investigator Owens.

17 **THE COURT:** I'm not sure I understand what you're
18 saying.

19 **MS. SIMPSON:** The only statement we have from Gerald
20 Gadsden, Ms. Ross' client, is coming in pursuant to the
21 Jackson v. Denno hearing that we held with Investigator
22 Owens. That is the phone conversation where he was not in
23 custody at that time. At no point, though, is he asked by
24 law enforcement does he know James White or anything of that
25 nature.

1 However, Ms. Ross in her opening statement made the
2 claim to the jury that Gerald Gadsden never denied knowing
3 James White. Well, I think that's an impermissible
4 inference if she's going to get up here and attempt to
5 elicit that information from Investigator Owens because we
6 only have the one statement. And like I said, if he intends
7 to take the stand, that's down the road, but I wanted to
8 address it just because of her opening statement. That's
9 it.

10 **THE COURT:** Well, if -- so you're concerned that she's
11 going to get up and ask this officer did he ever admit
12 knowing this person?

13 **MS. SIMPSON:** I have some concerns with the way that
14 question may come out, yes, Your Honor. Because I ---

15 **THE COURT:** And what ---

16 **MS. SIMPSON:** --- know that we cannot ---

17 **THE COURT:** --- would his response be? No, I never
18 asked him if he knew him.

19 **MS. SIMPSON:** Well, he -- the reason he never asked is
20 that Gerald Gadsden actually hung up the phone in his face
21 and would not cooperate with law enforcement or give them a
22 chance to ask. But that conversation ended ---

23 **THE COURT:** Well, you know, if they took him in and
24 they arrested him and he invoked his rights, you know, they
25 could say he never said he knew somebody because he never

1 gave a statement. And the answer would be we never talked
2 to him. I don't understand the issue here.

3 **MS. SIMPSON:** My issue is the fact that we are not
4 allowed as the State to go into the fact that he invoked or
5 exercised his right to remain silent. So the fact that he
6 never denied knowing James White to -- through this witness
7 is improper because this witness never had the opportunity
8 to fully interview him because he did invoke his rights or
9 would not cooperate with law enforcement.

10 **THE COURT:** Well, you know, we'll just have to deal
11 with that when it comes up. If he -- if she says did he
12 ever tell you he knew him? And he says, no, I never asked
13 him that.

14 **MS. SIMPSON:** And then I would fully intend to go into
15 why were you unable to ask him that.

16 **THE COURT:** Well, I would fully intend to stop you.
17 You know, you might be able to say you didn't have the
18 opportunity or, you know, ...

19 **MS. SIMPSON:** As long as it's not misleading or
20 confusing to the jury.

21 **THE COURT:** Look, the fact is he never admitted knowing
22 him. That's the fact of the matter. The fact is that, you
23 know, it's just not -- I don't see the issue. We'll deal
24 with it -- if you think some issue comes out in the course
25 of her cross examination or your direct examination, maybe

1 we can address it again, but I think she clearly can ask him
2 did he ever admit knowing anybody. And you can on cross
3 examination, did you ever ask him if he knew anybody.

4 **MS. SIMPSON:** Okay. Thank you, Your Honor. I'll
5 object if necessary.

6 **MR. FRETWELL:** May it please the Court, Your Honor.
7 Can I just ask a scheduling question of you? It's 11:30
8 now. I anticipate that Mr. Owens' testimony/cross is going
9 to be comparable to Sergeant Motes. I have my next witness
10 on the way and he'll certainly be here. That leaves me with
11 two witnesses.

12 One witness, Judge, had surgery this -- not this past
13 Friday, but a week before, was in the hospital for five
14 days. He's in a tremendous amount of pain. He is crucial
15 to the case or I have to have him. I just need about an
16 hour notice to give him so that he can get over here.

17 He is able to be excused from his job at the sheriff's
18 office, but he is coming for this case. He's been
19 subpoenaed, and we have to have him. So I just need to get
20 an idea of when the Court intends to break or if it could
21 break after that second witness and give me an opportunity
22 to have that sergeant come after the lunch hour.

23 **THE COURT:** If you anticipate -- who's your next
24 witness?

25 **MR. FRETWELL:** It's Investigator Owens, Judge. He's

1 seated right back here.

2 THE COURT: All right. And you anticipate his
3 testimony's going to take twenty minutes.

4 MR. FRETWELL: Maybe twenty, twenty-five, maybe.

5 THE COURT: All right. So let's say we're at 12:00.

6 MR. FRETWELL: Yes, sir.

7 THE COURT: And then who's your witness after that?

8 MR. FRETWELL: I have -- he's a very short witness. He
9 dealt with the phones. He's on the way over here. Then I
10 would have Sergeant Kelly, who had the surgery. He's short
11 as well. I could have him on the way.

12 THE COURT: Well, why don't we do this. When you
13 finish your second witness, we'll break for lunch and -- for
14 an hour or an hour and fifteen minutes. How is that?

15 MR. FRETWELL: That's great, Judge. Thank you very
16 much.

17 THE COURT: Always mean to make you happy.

18 (Laughter)

19 MR. FRETWELL: I do not want to make you unhappy. So
20 that's the ---

21 THE COURT: Oh, you're not going to do that.

22 MR. FRETWELL: That's the key here.

23 THE COURT: Okay. Y'all ready?

24 MR. YARBOROUGH: Yes, sir.

25 (Whereupon the jury entered the courtroom at 11:35 am)

1 **THE COURT:** All right. Ms. Simpson, this your witness?

2 **MS. SIMPSON:** Yes, Your Honor. May it please the
3 Court.

4 **THE COURT:** All right. You can call your witness,
5 please, ma'am.

6 MS. SIMPSON: State calls Investigator Matthew Owens.

7 Matthew Owens, being duly
8 sworn testified as follows;

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

11 MR. OWENS: Matthew Owens.

12 Direct Examination by Ms. Simpson:

13 Q. Investigator Owens, where are you employed?

14 A. The Greenville County Sheriff's Office.

15 Q. And what is your position there?

16 A. I am a master deputy in the Robbery Division.

17 Q. And how long have you been in law enforcement?

18 A. In law enforcement, six -- fifteen years.

19 Q. And has all of that time been with the Greenville
20 County Sheriff's Office?

21 A. No, ma'am.

22 Q. Tell the jury about your background in law enforcement.

23 A. I started in 2001, worked at the Spartanburg County

24 Sheriff's Office for a couple of years. And then I went to

25 work at the Greenville/Spartanburg Airport Police Department

1 for a year or so. And then since 2004 I've been with the
2 Greenville County Sheriff's Office.

3 Q. And what division do you currently work in?

4 A. I work in the Criminal Investigations Division, CID.

5 Q. And what are your duties and responsibilities?

6 A. Basically within the division we have certain -- I work
7 with the Robbery Division. And so when a robbery occurs, we
8 -- there's four investigators in that division. And we are
9 assigned any and all type of robbery, armed robbery, strong
10 arm robbery and car jackings, so on and so forth.

11 Q. Okay. And how long have you been within the Robbery
12 Division of the CID Unit?

13 A. About five and a half years.

14 Q. And you said there are about four or five other
15 individuals that work with you?

16 A. There's four investigators and then one sergeant.

17 Q. In cases that are not necessarily assigned to you or
18 where you're not the lead investigator do you often assist
19 other investigators with their investigations?

20 A. Yes, ma'am, we do.

21 Q. I want to turn your attention to January 20th or,
22 actually, this case, were you actually asked to assist with
23 the investigation?

24 A. I was.

25 Q. And on what day and by who were you asked to assist?

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

444

1 A. I was asked -- Sergeant Weiner asked me to assist with
2 this investigation. Originally he asked me to assist on
3 January 23rd, 2014.

4 Q. Okay. And I want to direct your attention -- you
5 assisted with a number of different aspects, ---

6 A. Yes, ma'am.

7 Q. --- correct? On the 23rd did you actually make contact
8 with one of the victims in this case?

9 A. Can I look at my ---

10 Q. Yes.

11 A. --- report, please? I believe -- yes, I did.

12 Q. And who was that?

13 A. That was Grady Pugh.

14 Q. And where did you actually speak with Mr. Pugh?

15 A. I went to his residence.

16 Q. And when you spoke with him, without telling me what he
17 told you, was he able to give you a statement?

18 A. Yes, ma'am, he was.

19 Q. Was that statement written or oral?

20 A. It was written.

21 Q. And in that statement what were you asking him about?

22 A. Just details about what occurred, what happened, any
23 type of description on the perpetrator of the incident.

24 Q. Okay. And did you also ask him with respect to the
25 individuals who were with him during the incident? Who was

1. present?

2. A. Yes, ma'am.

3. Q. And who did he ---

4. **MR. YARBOROUGH:** Excuse me, Your Honor.

5. Q. --- indicate ---

6. **MR. YARBOROUGH:** Could she qualify -- she's saying him.

7. There was a number of individuals there. Could she just

8. tell us who she's ...

9. **THE COURT:** She's talking about Mr. Pugh.

10. **MS. SIMPSON:** Yes.

11. **MR. YARBOROUGH:** Him is Pugh? Okay. Thank you.

12. Q. Who did Mr. Pugh identify as being with him when the
13. robbery actually occurred?

14. A. He also stated that Mr. White and then Aaron, the
15. manager, was also present.

16. Q. On January 24th were you requested to do a search of a
17. phone?

18. A. I was.

19. Q. Tell the jury what you did and what the results were.

20. A. Basically I was asked to obtain a search warrant on the
21. phone. Typed up the search warrant. After it was signed I
22. gave it to -- well, I had the phone -- we call it a phone
23. dump, but it's -- the technical term is forensics analysis.

24. Once I was given the information from the phone, I looked at
25. the results.

0048

1 Q. Okay. And ---

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

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

5 (Whereupon the bench conference was ended)

6 Q. And once you retrieved the results from the phone what
7 type of information did you look at?

8 A. The first thing I looked at were the images that were
9 on the phone.

10 Q. Okay. I'm going to show you what's been marked as
11 State's 47, 48, 49, 50, 51 for identification purposes only.

12 A. Okay.

13 Q. These have not been introduced. So just make sure you
14 look at them. So do you recognize those?

15 **MS. ROSS:** I'm going to object to that pursuant to our
16 prior hearing as far as the search warrant.

17 **MR. YARBOROUGH:** Your Honor, I have -- I'm going to
18 have another objection, too. If you want us to approach, we
19 can try to ---

20 **THE COURT:** Ladies and gentlemen, let me let you step
21 back to the jury room, please. Don't discuss the case.

22 (Whereupon the jury exited the courtroom at 11:42 am)

23 **MR. YARBOROUGH:** If the Court please. I think that
24 she's trying to introduce pictures of Mr. Gadsden holding
25 some amount of cash some period of time later. And I'm not

1 sure that that information is relevant. They don't have any
2 way of tying that money to the robbery.

3 And all it does is it's being introduced to prejudice
4 the jury. I think the fact that he has cash, there's
5 nothing that ties that cash ---

6 **THE COURT:** First of all, I don't know -- I haven't
7 seen -- what are the pictures?

8 **MS. SIMPSON:** Your Honor, if I may. These are pictures
9 that Investigator Owens, once he received the results from
10 the phone, the flip phone, the Samsung that was consented to
11 search, which is already in evidence, Investigator Owens
12 actually reviewed the images on that phone and proceeded
13 with the investigation from there. I'm not introducing them
14 at this time, but this is how they're able to identify that
15 phone as belonging to Mr. Gadsden, which was actually found
16 on Mr. White's person. If that makes sense.

17 **MR. YARBOROUGH:** Your Honor, I'm objecting to the
18 pictures.

19 **THE COURT:** All right. So you're attempting to get
20 verification that this phone at one point in time was in the
21 custody and control and ownership of Mr. Gadsden?

22 **MS. SIMPSON:** Well, for purposes -- yeah, I mean at one
23 point. But this investigator is only utilizing it as part
24 of the course of his investigation. He reviews the images.
25 At this point we get to his ---

1 **THE COURT:** So you ---

2 **MS. SIMPSON:** --- identification ---

3 **THE COURT:** So you're not going to introduce them at
4 the time?

5 **MS. SIMPSON:** No, not at this time.

6 **THE COURT:** Why don't you just ask him did you find Mr.
7 Gadsden's picture when you downloaded whatever you got? Was
8 his picture on the phone?

9 **MS. SIMPSON:** Well, we do intend to introduce them down
10 the road. So I think we need to lay the proper foundation
11 through this witness in order to make the relevance with
12 respect to the witness who we will -- that we will actually
13 be introducing the photos through.

14 **MS. ROSS:** And, again, it's getting the photos in front
15 of the jury and ---

16 **THE COURT:** Well, she's not attempting to put these
17 photos ---

18 **MS. ROSS:** Oh, I know.

19 **THE COURT:** --- in front of the jury ---

20 **MS. ROSS:** Just the existence of the photos.

21 **THE COURT:** --- at this time. I'll allow you to let
22 him look at these and say, yeah, I had the -- I found
23 certain photographs, which were photographs of Mr. Gadsden.
24 And those have been identified for identification purposes
25 as whatever numbers they are.

1 **MS. SIMPSON:** Yes, Your Honor.

2 **THE COURT:** And then if these things -- and that is --
3 'cause apparently that's all you want to do at this time,
4 that he got these photographs off the phone and that they
5 identified Mr. Gadsden.

6 **MS. SIMPSON:** Right. It's kind of a -- it begins the
7 process. So it's not going ---

8 **THE COURT:** Well, I mean, then if you attempt to
9 introduce them at some point in time, then we'll have to
10 deal with the contents of the photographs.

11 **MR. YARBOROUGH:** Okay. Thank you, Your Honor.

12 **MS. ROSS:** May I just ask, what exhibit numbers are
13 those photographs?

14 **THE COURT:** Yeah, you may ask that. Did you now want
15 to know what ---

16 **MS. ROSS:** Well, I'm wondering about is it ---

17 **THE COURT:** What's your question? May you ask that
18 question or what is ---

19 **MS. ROSS:** Oh, I'm sorry. Are they exhibits 47 through
20 51?

21 **THE COURT:** They are.

22 **MS. ROSS:** Okay.

23 **MR. YARBOROUGH:** And I think ---

24 **THE COURT:** So I guess the purpose of -- that, one,
25 you're trying to get them identified so that there's some

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

450

1 chain at some point in time. And, two, that, hey, Mr.
2 Gadsden's photograph was on the phone and that's what made
3 him believe that Mr. Gadsden may have some interest in this
4 telephone.

5 **MS. SIMPSON:** Yes, Your Honor.

6 **THE COURT:** Either ownership or otherwise. Don't let
7 the jury see them. And that's it. All right. Anything
8 further?

9 **MR. YARBOROUGH:** No, sir. Thank you, Your Honor.

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

11 **THE COURT:** All right. Let's bring the jury in. Now,
12 with respect to the other item, I would think if she asks
13 does he ever deny, I mean, admit knowing him, you could
14 probably ask did he ever deny knowing him.

15 **MS. ROSS:** Judge, actually, I don't think I'm going to
16 ask ---

17 **THE COURT:** I mean, the statement is whatever the
18 statement is. She could ask did he ever say in his
19 statement that he went to the beach in November. So ...

20 **MS. SIMPSON:** I think I understand, Your Honor.

21 (Whereupon the jury entered the courtroom at 11:47 am)

22 **THE COURT:** All right, Ms. Simpson.

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

24 **Direct Examination by Ms. Simpson Continued:**

25 Q. Investigator Owens, have you had a chance to review

1 those photographs?

2 A. Yes, ma'am.

3 Q. And do you recognize those photographs?

4 A. Yes, ma'am.

5 Q. And what was contained in those images that was of
6 significance to you or what did you do once ---

7 **MR. YARBOROUGH:** Objection.

8 Q. --- you viewed those images?

9 **THE COURT:** Are you trying -- she's trying to identify
10 an individual who was in there, correct?

11 **MS. SIMPSON:** Yes, Your Honor. He does several steps
12 to get to that ID based on these images.

13 **THE COURT:** Get to the individual.

14 **MS. SIMPSON:** Okay.

15 Q. Did you identify the individual in those images?

16 A. At that point or later down the road?

17 Q. Down the road. And we'll discuss the process ---

18 A. Yes. Yes, I did.

19 Q. And who was the individual identified in those
20 photographs?

21 A. Gerald Gadsden.

22 Q. And what process did you utilize? How did you go about
23 identifying him as being the person in the photographs?

24 A. Okay. So when I looked at the photographs I realized
25 that the picture I was looking at was of a black male

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

452

1 wearing a camouflage, pretty heavy coat with a hood holding
2 up a ---

3 **MR. YARBOROUGH:** Objection, Your Honor.

4 **THE COURT:** Speak of only the individual.

5 A. Yes, sir. Okay.

6 Q. Let me -- Let me stop you for just a second. With
7 respect to where the phone came from are you aware of who
8 handed over that phone?

9 A. Yes, I was.

10 Q. And who was the person that the phone itself came from?

11 A. Mr. White.

12 Q. And were you familiar with what Mr. White looked like?

13 A. Yes, ma'am.

14 Q. And did the person in those images -- were they Mr.
15 White?

16 A. No, they were not.

17 Q. And why was that significant to you?

18 A. 'Cause that -- basically if I am -- if I have a phone,
19 I'm going to have pictures of myself or family members,
20 whatever the case might be. And in this particular picture
21 it was not of Mr. White.

22 Q. Okay. And it actually turned out to be ---

23 A. Mr. Gadsden.

24 Q. In addition to reviewing the images on the phone what
25 else did you look at?

1 A. I then started to look at the contact list.

2 Q. And what did you notice of significance in the contact
3 list?

4 A. The first contact I noticed was a contact for -- it had
5 the name of Jr. G on it.

6 Q. Jr. G? Why would that stand out to you?

7 A. I was aware that Mr. White is a rapper artist and that
8 his stage name is actually Jr. G.

9 Q. And that was in the contact list ---

10 A. Yes, ma'am, it was.

11 Q. And at this point in time when you're reviewing the
12 contents of the phone are you aware that that was actually
13 Gerald Gadsden in those pictures?

14 A. At that time I was not, no.

15 Q. Okay. So when you looked through the contact list what
16 did you do or what did you notice?

17 A. Okay. So after I noticed Jr. G, I scrolled down and I
18 looked at the contact that had ma, m-a, on it.

19 Q. And what was your purpose of kind of going through to
20 -- that would lead you to ma as looking at?

21 A. Well, in certain situations when we have a cell phone
22 and we're trying to pinpoint exactly where the cell phone
23 came from, who it belongs to, you're not going to lie about
24 who's your ma. So that is a -- and that's why I went to ma.

25 Q. Okay. And what did you do once you saw ma?

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

- 1 A. I called that number.
- 2 Q. And what happened next?
- 3 A. I spoke with the lady. And I introduced myself as I'm
- 4 with the Greenville County Sheriff's Office. I basically
- 5 asked her if she knew the number that I was calling from or
- 6 the number of the cell phone.
- 7 Q. And what was the number of the cell phone that you were
- 8 calling from or that you were trying to identify?
- 9 A. Okay. So I advised her that I had the phone number of
- 10 area code 843-826-6554.
- 11 Q. And once you advised her of that number did you explain
- 12 to her the reason for calling?
- 13 A. Yes, ma'am.
- 14 Q. And did you provide her with a description of the
- 15 individual on the phone?
- 16 A. Yes, ma'am, I did.
- 17 Q. And was she able to provide you with a name?
- 18 A. Yes, ma'am, she did.
- 19 Q. What name did she give you?
- 20 A. She said Gerald Gadsden.
- 21 Q. And what was her relationship or the person -- first of
- 22 all, who did she identify herself as being?
- 23 A. As Crystal Gadsden, his mother.
- 24 Q. Okay. And you actually described the person contained
- 25 in the images that I showed you in State's exhibit 47

1 through 51?

2 A. Yes, ma'am, I did.

3 Q. At that time, as a result of your conversation, did you
4 actually have a phone number or a way to get in touch with
5 Mr. Gadsden?

6 A. At that time, no, I didn't.

7 Q. And what did she indicate to you that she would do or
8 how you could ---

9 **MS. ROSS:** Your Honor, I'd object to any hearsay.

10 **THE COURT:** Sustained.

11 **MS. SIMPSON:** I'll rephrase.

12 Q. As a result of that conversation what did you do?

13 A. I asked her if she could relay a message to Mr. Gadsden
14 to have him call me so I could talk to him about this
15 incident.

16 Q. Later on that day or subsequent to that conversation
17 did you actually confirm that that was Gerald Gadsden now
18 that you have a name?

19 A. Yes, ma'am, I did.

20 Q. And how did you do that?

21 A. So I went to the South Carolina Department of Motor
22 Vehicles' website and I typed in Mr. Gadsden's name. And
23 the system pulled up a driver's license photo of him at
24 which time it was very clear that Mr. Gadsden's driver's
25 license looked like the pictures that was on the phone.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

456

1 Q. And what was the full name listed for Mr. Gadsden?

2 A. From the driver's -- it was Gerald Akeem Gadsden.

3 Q. And did it also list a height and weight?

4 A. It did. 5'11", two hundred and forty pounds.

5 Q. Okay. And did you actually turn that information over
6 to the lead investigator, Sergeant Weiner?

7 A. I did.

8 Q. Turning your attention to January 24th of 2014 what did
9 you do with respect to this investigation?

10 A. As far as the identification of Mr. Gadsden? Is that
11 what you're asking me?

12 Q. Yes. If you look at your report, what did you do?

13 A. So after we was able to identify Mr. Gadsden from the
14 phone, I was able to again ask the, basically, SLED to
15 obtain a photo lineup for me with Mr. Gadsden's picture in
16 it.

17 Q. Okay. And once you got that photo lineup what did you
18 do with it? Did you make contact with any individuals?

19 A. Yes, ma'am. Myself and Sergeant Weiner made contact.

20 Q. And who were those people?

21 A. Excuse me. Let me -- it was -- we went -- spoke with
22 Terrell and Aaron at the Olive Garden.

23 Q. And did you actually go through the photo lineup
24 process with either one of those individuals?

25 A. Yes, ma'am. And when we do it, we do it separately.

1 So they're separated at that time.

2 Q. And were either one of them actually able to pick
3 anyone out of the lineup?

4 A. No, ma'am, they were not.

5 Q. Turning your attention to January 27th of 2014, at this
6 point in time have you heard back from Mr. Gadsden at all?

7 A. No.

8 Q. And as a result of not hearing back from him, what did
9 you do?

10 A. I called Crystal back, his mother.

11 Q. And did you, in fact, -- were you able to speak with
12 her without telling me exactly what she said?

13 A. Yes, ma'am, I was.

14 Q. And at that point did you still have a number for which
15 to call him?

16 A. No, ma'am.

17 Q. But later on that day did you assist Sergeant Weiner in
18 another search?

19 A. Yes, ma'am.

20 Q. And can you tell the jury where y'all searched and why?

21 A. At 410 Sulphur Springs Road, I believe, apartment L-5.
22 I was told that was the residence of Mr. White.

23 Q. Okay. And in that search did you locate anything of
24 importance?

25 A. Yes, ma'am. Inside his residence I located a pair of

MATTHEW OWENS - DIRECT EXAMINATION BY MS. SIMPSON

1 teal pants. And inside those pants was a, I believe, it was
2 a MasterCard. Yes, ma'am. It was a MasterCard with the
3 name of Gerald Gadsden on it.

4 Q. I'm going to show you what's been marked as State's
5 exhibit 53. Do you recognize that?

6 A. I do.

7 Q. And what is it?

8 A. It is a debit MasterCard with the name Gerald A.
9 Gadsden up on it.

10 Q. And does that fairly -- does that fairly and accurately
11 depict what you actually pulled up -- recovered that day?

12 A. Yes. Yes, ma'am.

13 **MS. SIMPSON:** Your Honor, at this time I would offer
14 State's 53 into evidence.

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

16 **THE COURT:** So admitted without objection.

17 (Whereupon State's exhibit 53 was admitted into
18 evidence)

19 Q. Okay. Now with respect to this credit card that you
20 found, do you remember where it was located?

21 A. In a pair of teal pants.

22 Q. Okay. And this is at Mr. White's residence?

23 A. It -- yes, ma'am.

24 Q. I'm going to show you what's been marked as State's 65
25 for identification purposes only. In State's 65 do you

1 recognize an article of clothing?

2 A. I do.

3 Q. And is it -- what is it?

4 A. A pair of teal pants.

5 Q. And are those consistent with the pair of teal pants in
6 which you found the credit card belonging to Gerald Gadsden?

7 A. Yes, ma'am.

8 Q. And that's State's 65?

9 A. (Affirmative nod).

10 Q. And do you recognize the person who's actually wearing
11 the teal pants in that photo?

12 A. Yes, ma'am.

13 Q. Who is that person?

14 A. Gerald Gadsden.

15 Q. And was anything else of significance actually
16 recovered from the search warrant?

17 A. No, ma'am.

18 Q. So y'all didn't recover a gun or anything of that
19 nature?

20 A. No, ma'am.

21 Q. Later on that day did you actually receive a call?

22 A. I did.

23 Q. And who did you receive a call from?

24 A. A Gerald Gadsden.

25 Q. What time of the day on the 27th did you receive that

1 call?

2 A. It was 1500 hours, which is three pm.

3 Q. Three pm? And how did you know it was Gerald Gadsden
4 calling you?

5 A. He told me that was his name.

6 Q. Okay. And tell us about that conversation, what was
7 said.

8 A. Basically ---

9 **MS. ROSS:** And I'd object to relevance at this point
10 under 403.

11 **THE COURT:** Overruled.

12 Q. Can you tell me what was said ---

13 A. Yes, ma'am.

14 Q. --- in that conversation?

15 A. Basically I asked him about his cell phone. And he
16 replied to me that he lost the cell phone on the 15th at a
17 club in North Charleston called Club Sho Tyme. I inquired
18 if he made a report on the cell phone being lost. And he
19 said, no, quote, it was a -- it was a prepaid phone. So,
20 okay. I asked him if he would mind coming to the sheriff's
21 office and speaking with us. And he said that he was
22 basically out of town.

23 Q. And did you specifically ask him about talking about
24 the incident?

25 A. Yes, ma'am, I did. And he replied, what are you

1 talking about? And then I told him that he knows exactly
2 what I'm talking about.

3 Q. And did he reply to you?

4 A. No.

5 Q. At some point did this conversation end?

6 A. It did.

7 Q. Well, let me back up just a little bit. Did he
8 indicate anything about getting back in contact with you?

9 A. Yeah. He said -- let me read over this real quick. He
10 said he would call me back.

11 Q. Okay. Did he -- did you ask him for anything?

12 A. Yes, ma'am. I asked him for his cell phone number.
13 And I never received one.

14 Q. And did the conversation end?

15 A. Yes, ma'am, it did.

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

17 (Pause)

18 Q. The person in the photo, the images that you reviewed
19 on the phone and compared as being Gerald Gadsden, and also
20 the man in the teal pants, do you see him in the courtroom
21 today?

22 A. I do.

23 Q. And can you point him out for the jury?

24 A. He's sitting right over there, a teal shirt, long
25 sleeve shirt.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

1 (Whereupon the witness pointed to the Defendant, Gerald
2 Gadsden)

3 **MS. SIMPSON:** Your Honor, let the record reflect he's
4 identified Gerald Gadsden.

5 **THE COURT:** Mr. Yarborough.

6 **MR. YARBOROUGH:** Your Honor, I don't think I have any
7 questions for this witness.

8 **THE COURT:** All right. Ms. Ross.

9 **Cross Examination by Ms. Ross:**

10 Q. I just want to go back, the 23rd, just looking at your
11 report, it looks like you questioned Mr. White's girlfriend,
12 Katrina Ferguson, is that correct?

13 A. Yes, ma'am.

14 Q. And isn't that because y'all had impounded his car the
15 prior day after he came in and cooperated with law
16 enforcement?

17 A. I'll be honest with you, I don't know exactly when he
18 came in.

19 Q. Okay. Do you know whether the car was impounded?

20 A. Yes, ma'am.

21 Q. Okay. And she met you there. And did you tell her she
22 could be open to charges herself if ---

23 **MS. SIMPSON:** Objection, Your Honor.

24 Q. --- she didn't cooperate with you?

25 **MS. SIMPSON:** With respect to relevance.

1 MS. ROSS: It's in the incident report.

2 MS. SIMPSON: The fact that it's in there doesn't ---

3 THE COURT: Sustained.

4 MS. ROSS: Okay.

5 THE COURT: You can ask her what she said.

6 MS. ROSS: Okay.

7 THE COURT: I mean, what he did, if she can't ---

8 Q. Did you ask for consent to search the car?

9 A. I did.

10 Q. And did she give that consent to search the car?

11 A. I believe so.

12 Q. And did you -- did you search the car?

13 A. No, I did not search the car.

14 Q. Okay. Well, do you need to see it and see whether she
15 consented to that search?

16 A. Yes, ma'am. Let me just read over this right quick,
17 okay?

18 Q. Sure.

19 (Pause)

20 A. She did say that she understood, yes, ma'am.

21 Q. Okay. So she did consent?

22 A. Yes, ma'am.

23 Q. Okay. And now did you interview Grady Pugh as well on
24 the 23rd?

25 A. Yes, ma'am.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

464

1 Q. And didn't he say he did not remember White leaving the
2 kitchen and he was almost certain that he stayed?

3 A. Yes, ma'am.

4 Q. Okay. And what this was in reference to is 'the times,
5 the moments before the armed robbery, correct?

6 **MS. SIMPSON:** Objection, Your Honor.

7 **THE COURT:** What was the question?

8 **MS. ROSS:** That that statement that Mr. Pugh gave
9 saying that he was certain Mr. White stayed with him back in
10 the washroom, that was in reference to the time prior to the
11 robbery.

12 **MS. SIMPSON:** Okay. Maybe I didn't hear the question
13 completely, but without going into inadmissible hearsay I
14 think it's misphrasing, mischaracterizing, but ...

15 **THE COURT:** But he testified as to what he said and ...

16 Q. Just to give a reference, what was the context -- what
17 time period was he talking about when he said that?

18 A. It doesn't say in my -- in my report. It doesn't give
19 a time-frame.

20 Q. Okay. Now, going back did you also show Mr. Pugh a
21 photo lineup?

22 A. Yes.

23 Q. Were these the photos in the photo lineup? Do they
24 appear to be?

25 A. Yes, ma'am. They appear to be, yes, ma'am.

1 Q. Okay. And isn't it true that one of those photos is of
2 Gerald Gadsden, the man sitting in the courtroom today?

3 A. Yes, ma'am.

4 Q. And isn't it true that in that photo he's got a long
5 dreadlock hairstyle?

6 A. Yes, ma'am.

7 Q. And isn't it true that he has facial hair as well?

8 **MS. SIMPSON:** Objection, Your Honor, with respect to
9 kind of the similar objection they made. If she wants to
10 introduce the photo, I'm fine with that, the photo lineup,
11 but if she's having him describe everything that's in the
12 photo with respect to the one person without actually
13 introducing it.

14 **THE COURT:** I'll let her ask the question.

15 Q. Did he have facial hair?

16 A. Yes, ma'am.

17 Q. And dreadlocks like you said before?

18 A. Yes, ma'am.

19 Q. And when shown those -- that photo -- it wasn't a photo
20 array. You did it one at a time when you presented that
21 lineup, correct?

22 A. Yes, ma'am. It was one individual photo at a time.

23 Q. And did Mr. Pugh identify the photo with Gerald
24 Gadsden?

25 A. No.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

1 Q. And, in fact, looking at the photo array, all the men
2 had dreadlocks in the photo array?

3 A. Yes, ma'am.

4 Q. Now, are you aware of what was found -- were you part
5 of the investigation when they found some stuff in the car
6 that Katrina Ferguson consented for you to search?

7 A. I had -- ma'am, I have no idea what was found in the
8 car.

9 Q. So you don't -- you can't say anything ---

10 A. No, ma'am.

11 Q. --- about that? But you did get a search warrant for
12 the Samsung flip phone that James White had on his
13 possession?

14 A. Yes, ma'am.

15 Q. And you said when you searched through that you looked
16 at the pictures before you looked at the contact
17 information?

18 A. Yes, ma'am.

19 Q. And one of the contacts was Jr. G, who was Gerald [sic]
20 White, correct?

21 A. Jr. G was Mr. White, yes.

22 Q. Yes. Okay. Now, when you ran the DMV search to get
23 this photo that you matched to the picture on the phone, was
24 there an address there as well?

25 A. Yes, ma'am.

MATTHEW OWENS - CROSS EXAMINATION BY MS. ROSS

467

1 Q. And did you write a letter to that address saying I
2 would like to talk to Mr. Gadsden?

3 A. No, ma'am.

4 Q. All right. And did you get a search warrant for that
5 address?

6 A. No, ma'am.

7 Q. And did you also show the lineup to Mr., I mean, Aaron,
8 and I'm going to butcher his last name, but Aaron, the store
9 manager, at Olive Garden?

10 A. Yes, ma'am.

11 Q. And was he able to pick out any ---

12 A. No, ma'am.

13 Q. So after being shown Gerald Gadsden's picture he was
14 not able to pick ---

15 A. (Negative nod).

16 Q. And that was how soon after the 20th, the robbery, when
17 that lineup array was shown?

18 A. Hang on a second. We showed the lineup on the 24th.

19 Q. Okay.

20 A. On January 24th.

21 Q. So that's three to four days later?

22 A. Yes, ma'am.

23 Q. And at that time neither of them picked Gerald Gadsden
24 out of that lineup?

25 A. No, ma'am.

1 MS. ROSS: I've got no further questions.

2 THE COURT: Anything?

3 MS. SIMPSON: No redirect, Your Honor.

4 THE COURT: All right. Thank you, sir. You may step
5 down.

6 MS. SIMPSON: And, Your Honor, may Investigator Owens
7 be released from his subpoena?

8 THE COURT: He may.

9 MS. ROSS: No objection.

10 MR. YARBOROUGH: No objections.

11 A. Thank you.

12 MS. SIMPSON: Thank you, Your Honor.

13 MR. FRETWELL: May it please the Court.

14 THE COURT: Yes, sir.

15 MR. FRETWELL: If the Court's inclined, the next
16 witness I have is Investigator Jim Perry. May I call him at
17 this time?

18 THE COURT: You certainly may.

19 MR. FRETWELL: I just didn't know if you wanted -- that
20 was a little bit longer than we had talked about. And I
21 just didn't know if it was all right to go ahead and call
22 this next witness.

23 THE COURT: Sure.

24 MR. FRETWELL: All right. The State calls Investigator
25 Jim Perry.

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

469

1 James Perry, being duly
2 sworn testified as follows;

3 MADAME CLERK: Please have a seat. And will you state
4 your full name for the record.

5 MR. PERRY: James Phillip Perry.

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

7 THE COURT: Yes, sir.

8 Direct Examination by Mr. Fretwell:

9 Q. Investigator Perry, good afternoon.

10 A. Afternoon.

11 Q. Are you employed with the Greenville County Sheriff's
12 Office?

13 A. I am.

14 Q. How long have you been employed by the Greenville
15 County Sheriff's Office?

16 A. I've been twenty years with the Greenville County
17 Sheriff's Office.

18 Q. How many total years in law enforcement?

19 A. I've got thirty-three years total law enforcement.

20 Q. Okay. And what are your current duties and
21 responsibilities within the Greenville County Sheriff's
22 Office?

23 A. I work in the Computer Forensics Division Unit.

24 Q. Do you do that exclusively or are you on the road ---

25 A. No, exclusively -- 2002 I established the unit.

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

470

1 Q. Okay. And what is the purpose of that unit and what
2 duties do you perform there?

3 A. We do cell phone, computer GPS forensic examination.
4 We're part of the Internet Crimes Against Children Task
5 Force. We do the online predator cases. We work cases that
6 come in from NCMEC, which is the National Center for
7 Exploited and Missing Children. So -- and then we also work
8 in the other type of natured crimes that involve cell
9 phones, computers, that type of thing.

10 Q. Do you talk about computer and cell phone analysis?

11 A. Um-hum (affirmative). I do.

12 Q. That's technical ---

13 MS. ROSS: Judge, I'd stipulate to his expertise in
14 this ---

15 MR. YARBOROUGH: I will, too, Your Honor.

16 MR. FRETWELL: Your Honor, I'm just going to continue
17 just so the jury understands what he does.

18 THE COURT: All right.

19 MR. FRETWELL: Thank you, Judge.

20 Q. I lost my train of thought there for a second. You
21 said you analyze these items. And that's your term for it.
22 Can you tell the jurors, what do you mean by analyze, let's
23 say, a cell phone?

24 A. Okay. What we do is we take a cell phone that's
25 brought in to us, we connect it to a machine, it's called

1 Cellebrite. And from there we do a -- anything from a
2 physical extraction, file system extraction or logical
3 extraction, take that image, go to our forensic computer,
4 connect it to a software program and then begin the analysis
5 of the data that's within that device.

6 Q. Does that take all of the data off of that device?

7 Does that program do that?

8 A. It takes all the data that Cellebrite will get.

9 Q. Okay. And let's talk about Cellebrite. What kind of
10 training specifically have you received in order to perform
11 your duties as a forensic electronic apparatus examiner or
12 whatever it is?

13 A. I've been to -- I've been certified by Cellebrite as an
14 examiner.

15 Q. Any other companies or software?

16 A. Yeah. I mean, I've been to federal, state and private
17 companies, had training on all those.

18 Q. What about a company called Mobilizer? What's that?

19 A. Mobilize, it's another basically what we call tool in
20 our toolbox. It's another program that analyzes cell
21 phones.

22 Q. Okay. Tell us, what is involved in the actual process
23 of cell phone data recovery?

24 A. The process ---

25 Q. And if you can, just distinguish it a little bit from

1 what you might do on a computer.

2 A. Okay. Cell phone recovery is totally different than
3 computers in that every make and model is different. We
4 could have the same make phone and different models and we
5 can get different information off each one of the phones.
6 So with cell phones, you don't always get the same type
7 information off the phone, whereas computers are pretty much
8 the universal in what we get minus one that might have been
9 encrypted.

10 Q. How does -- if you're looking at, let's say, a
11 smartphone versus a flip phone.

12 A. Correct.

13 Q. Tell us how that might be ---

14 A. Smartphones basically -- we call them smartphones, but
15 really they're computers that have a cell phone app. Where
16 a flip phone, other than taking pictures and some texting,
17 it's a phone. So those are the two distinct differences
18 between those.

19 Q. Okay. And so with you -- let's say, for example, if
20 you're analyzing a smartphone, what kinds of things could
21 you -- what categories of items could you retrieve from that
22 particular phone?

23 A. We can get -- and again, everything's depending on the
24 make and model of the phone. We can get emails, text
25 messages, locations, metadata from pictures, just about --

1 anything that can come into a cell phone, we can get.

2 Q. I noticed that you might need some water.

3 A. Yeah. Thank you.

4 Q. Okay. And, obviously, what you can get off of a flip
5 phone would be much more reduced, is that -- is that fair to
6 say?

7 A. Right. Cell phone, flip ---

8 Q. I want -- I'm sorry.

9 A. Flip phone, you won't get near the data that you will
10 off of a smartphone.

11 Q. Okay. And let me direct your attention to two items
12 that are already in evidence. They're State's exhibit 45
13 and 46 for the record, items DW1 and DW2. Do you -- did you
14 have any interaction with these particular items in the
15 course of your responsibilities ---

16 A. I did.

17 Q. --- in reference to that particular case number?

18 A. I did.

19 Q. Okay. And what did you do with those items?

20 A. I did a cell phone forensics analysis.

21 Q. Okay. At whose direction did you perform the analysis?

22 A. The Robbery Division.

23 Q. Okay. And as a result of the data recovery that you
24 performed were you able to capture data and images from
25 these two phones?

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

1 A. I was.

2 Q. Upon request did you generate an Excel spreadsheet
3 containing the data you recovered?

4 A. I did.

5 Q. And did you provide this data in Excel form to anybody?

6 A. I sent a copy to Sergeant Dan Kelly.

7 Q. Okay. Let me let you look at these items, and I'm
8 going to ask you who -- well, just go ahead, who's Dan
9 Kelly?

10 (Pause)

11 **THE COURT:** The question is who's Dan Kelly?

12 A. Oh, I'm sorry. He's a sergeant with our Technical
13 Service Division.

14 (Whereupon Court's exhibit 6 was marked)

15 Q. All right. Let me show you -- let me show you what's
16 been marked as State's 55, State's 54 and a Court's exhibit.
17 That is Court's exhibit 6. I'm going to have you look at
18 Court's exhibit 6, State's exhibit 54 and 55 and ask if you
19 recognize these items?

20 A. Yes. They're reports that I've viewed that came from
21 those phones.

22 Q. Okay. And are these the reports that you just
23 testified to that were in the Excel format?

24 A. Correct.

25 Q. What is Excel?

1 A. Excel spreadsheet format.

2 Q. Just basically contains a lot of data, is that right?

3 A. A lot of data.

4 Q. Okay. And are these -- let me ask you individually
5 about -- let's start with State's 55. Is this a -- what
6 exactly does this particular exhibit -- as far as the
7 phone's concerned, which one does it relate to?

8 A. That's related to the Samsung.

9 Q. And have you reviewed that exhibit?

10 A. I have.

11 Q. Does it accurately reflect the data that you removed
12 from the item known as DW2, a Samsung cell phone?

13 A. It does.

14 Q. Okay.

15 **MR. FRETWELL:** Your Honor, at this time I'd move that
16 into evidence.

17 **MS. ROSS:** Judge, I would object.

18 **THE COURT:** He's ahead of you.

19 **MS. ROSS:** Oh, sorry.

20 **MR. YARBOROUGH:** Your Honor, I would object to -- based
21 on a previous objection. I'm also -- the relevancy of what
22 he's got, I mean, that's a mass amount of material. And I
23 -- I don't have any reason to know what -- what his purpose
24 of admitting it is.

25 **MR. FRETWELL:** I'd like to be heard. Judge, it might

1 be something we should approach on.

2 THE COURT: All right. Ladies and gentlemen, let me
3 let you step back. We won't be long. Don't talk about the
4 case.

5 (Whereupon the jury exited the courtroom at 12:22 pm)

6 MR. YARBOROUGH: Your Honor, I don't have any way of
7 knowing what he's ---

8 THE COURT: Well, I don't know what he's going to --
9 let's see -- what's this exhibit you want to introduce?
10 It's some spreadsheet that says -- that's what?

11 MR. FRETWELL: It's the contents of the phone that was
12 taken from the Defendant by or turned over by the Defendant
13 to Sergeant Motes and Sergeant Weiner, they took into
14 evidence.

15 THE COURT: It's everything that was on the phone?

16 MR. FRETWELL: Yes, sir. And I provided all of that to
17 both counsel as well ---

18 THE COURT: Why is everything needed?

19 MR. FRETWELL: Well, I'd point out first of all, Judge,
20 the actual phones are already in evidence.

21 THE COURT: I understand that.

22 MR. FRETWELL: But this is the -- this is the basis by
23 which the investigation leaned on this evidence in directing
24 the course of the investigation ---

25 THE COURT: Everything in that phone or were there

1 certain aspects of the information that they used?

2 **MR. FRETWELL:** Certainly there were certain aspects
3 that were more relevant and credible than the other, yes,
4 sir.

5 **MS. ROSS:** And there's some highly prejudicial images
6 on there as far as personal, I would say, ---

7 **MR. FRETWELL:** They don't contain any images. Those
8 are -- there are no images, is that correct?

9 A. That's correct. That's a ---

10 **MR. FRETWELL:** There's no images ---

11 A. --- spreadsheet.

12 **MR. FRETWELL:** And that's particular because of that
13 very reason that there were inappropriate photos for ---

14 **THE COURT:** So this is sort of just a catalogue of what
15 ---

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

17 **THE COURT:** --- was on the phone?

18 **MR. FRETWELL:** That's correct, Judge. And ---

19 **THE COURT:** Not the items themselves?

20 A. Not the visual pictures or videos, anything like that.

21 **MR. FRETWELL:** I'll go a little further, Judge. The
22 reason there's a Court's exhibit is because of the
23 smartphone had references on there to inadmissible
24 information with respect of this individual telling his
25 girlfriend that he was going to go take a polygraph test.

1 The Court's exhibit has now -- it's not going to the
2 jury. Mr. Perry last night made sure, absolutely certain,
3 in fact, we created a new disk, that takes every reference
4 to polygraph or anything like that from every area of the
5 phone, not just SNS contacts or texts, but from the timeline
6 and everywhere off of that exhibit, it does not contain any
7 of that information.

8 **MR. YARBOROUGH:** How does he even know what, I mean,
9 he's giving the jury something that we don't even know
10 what's on there, Judge.

11 **MR. FRETWELL:** Judge, that is not true. I've turned
12 over exact copies of that Court's exhibit and the other item
13 that doesn't need to be redacted because it doesn't have
14 anything like that on it. I've given them to these
15 attorneys well in advance of this court date, Judge.

16 **MR. YARBOROUGH:** Well, show me what you're -- what is
17 on that document right there that you're trying to admit
18 into evidence.

19 **MR. FRETWELL:** It's on the disk.

20 **MR. YARBOROUGH:** Show me what it is.

21 **THE COURT:** Hey, hey.

22 **MR. FRETWELL:** Judge, I apologize, but he keeps
23 addressing me.

24 **MR. YARBOROUGH:** I apologize. Could you please show me
25 the documentation of what's on that disk?

1 **MR. FRETWELL:** Judge, as the witness would testify, if
2 we printed that out, which you can see right there, the
3 volume of paper that it would take to encompass everything
4 that was on that smartphone would be unbelievable. But
5 those disks were turned over to both of these Defense
6 attorneys well in advance of trial.

7 If they wanted to have somebody take a look at them,
8 they could look at them themselves, if they wanted to have
9 an expert take a look at them, they certainly could do that.
10 And they have all that information.

11 **THE COURT:** So what is the jury going to get out of all
12 this?

13 **MR. FRETWELL:** The jury is going to get an exhibit that
14 is compiled from these disks ---

15 **THE COURT:** They're going to get this spreadsheet. And
16 if they look at that spreadsheet ---

17 **MR. FRETWELL:** No, sir, I'm not going to put in the
18 whole, I mean, it exists on those disks. But what I intend
19 to show to the jury is something that I intend to introduce
20 through my investigating officer, taken from these items
21 that directed him in the course of his investigation and led
22 to his arrest of these Defendants. That's exactly what I'm
23 doing.

24 It's not -- it's not thousands and thousands of pages.
25 In fact, it's three pieces of paper that I've blown up to

1 about this size, Judge, that looks like a little --
2 basically a little graph.

3 MR. YARBOROUGH: Could we look at those three pieces of
4 paper?

5 MR. FRETWELL: I'm absolutely going to show them to
6 them, but they're all included in the information that we've
7 already given to them.

8 THE COURT: Well, he wants to see them now. Can you do
9 that real quick?

10 MR. FRETWELL: Sure, we can get them.

11 THE COURT: All right. How long will it take you to
12 look at them?

13 MR. YARBOROUGH: I mean, if he says it's three sheets
14 of paper, it shouldn't take but a second.

15 THE COURT: All right. Show it to him real quick.

16 MR. FRETWELL: Sure.

17 THE COURT: We got to go get them?

18 MR. FRETWELL: Yes, sir. They're in my office.
19 They're blown up in a large size ---

20 THE COURT: Oh, so you don't ...

21 MR. FRETWELL: I'm not putting them in through this
22 witness, Judge.

23 MR. YARBOROUGH: Well, then if he's not putting them in
24 through the witness, what's the purpose of putting those
25 disks ---

1 **THE COURT:** I think to lay the foundation ---

2 **MR. FRETWELL:** Absolutely, Judge.

3 **THE COURT:** --- to be able to ...

4 **MR. YARBOROUGH:** I'm sorry. It's ...

5 **THE COURT:** He's getting this gentleman to testify that
6 he got all this information off the cell phone. And then
7 he's -- all that -- if the disk and everything is being
8 introduced, the disk -- the information on the disk is on
9 the phones, which are already in evidence and that from that
10 information Sergeant Weiner, I guess, went and extracted
11 some of it and used it to try and help in identifying who
12 did what in this case.

13 **MR. FRETWELL:** That's a more eloquent way of saying
14 what I was going to say.

15 **THE COURT:** I've never said anything eloquent in my
16 life.

17 **MS. ROSS:** Can I ask a question just to be -- on the
18 phones, my understanding was they were inoperable, the jury
19 can't go back on those phones and scroll through all the
20 pictures on the phones.

21 **MR. FRETWELL:** That's not -- I don't think that's true
22 at all. Is that true?

23 A. No, I mean, they ---

24 **MR. FRETWELL:** Can you power up these phones?

25 A. As long as there's a charge on them, they can be looked

1 at. Absolutely.

2 MS. ROSS: Well, then I would renew my objection to the
3 phones. That was not my understanding because when I had
4 them -- when I looked at them in P&E there was a phone and a
5 separate battery that was dead. If they can power them up
6 they're -- those phones are full of private, highly personal
7 information. There's a picture of my client's body parts
8 that he took of himself, which is highly prejudicial.
9 Bringing all this information in is only going to confuse
10 the issue ---

11 THE COURT: Well, ---

12 MS. ROSS: --- and it's completely irrelevant.

13 THE COURT: Well, we're going to let you look at the
14 pictures.

15 MR. FRETWELL: Judge, I'm not putting any pictures of
16 her client's ---

17 THE COURT: Whatever it is you've got -- if, in fact,
18 somebody wants to power up the cell phones, we'll deal with
19 whatever concerns you have at that time. My guess is
20 nobody's going to power up the cell phones. First of all,
21 ...

22 MR. YARBOROUGH: I don't think it matters or anything.

23 THE COURT: They'll be here for days trying to get that
24 ...

25 MS. ROSS: And just to be clear, I received a number of

1 CDs from the State. And some were Mr. Perry's just
2 extraction reports, which is essentially a spreadsheet,
3 which I believe is what Mr. Fretwell is talking about. Some
4 of the DVDs contained essentially what was called the
5 extraction report, which was just sort of a breakdown of
6 what was on the phone. Is that what you're talking ---

7 **MR. FRETWELL:** Those are spreadsheets of what I like to
8 call raw data. And the investigator always argues with me
9 because I'm not supposed to call it raw. But it's data
10 collected from those phones in a spreadsheet form. And
11 that's what it is. And he provided that information to
12 another technical services sergeant who put that data into
13 his program and generated another report, which you also
14 have.

15 **MR. YARBOROUGH:** I'm just looking at the report. I
16 mean, I'm looking at 10/24/2013.

17 **THE COURT:** Why do you need that report in?

18 **MR. FRETWELL:** Judge, as you said before, this is ---

19 **THE COURT:** Why do you need the report itself in? Why
20 can't his testimony that he provided certain information to
21 the -- he ran this thing and then provided it to the -- Mr.
22 Weiner and Mr. Weiner extracted certain information and then
23 went and did what he had to do?

24 **MR. FRETWELL:** Because, Judge, it's part of the chain
25 of showing how one thing comes from the other and that

1 information ---

2 **THE COURT:** Well, I -- is there a lot of information in
3 that report that's not relevant?

4 **MR. FRETWELL:** Absolutely.

5 **THE COURT:** Well, then why do we need it? Why don't we
6 need only that portion that he derived from the telephone
7 that Sergeant Weiner used to do what he did?

8 **MR. FRETWELL:** Just a moment, Judge.

9 (Pause)

10 **THE COURT:** Is there any way to extract from that
11 report those items that the sergeant used to further his
12 investigation?

13 A. Yes, sir. I mean, I'd take the disk and have to pull
14 that information off of it and make another disk.

15 **MS. ROSS:** Well, Judge, I would suggest just a photo
16 rather than -- I think, again, we're leading into ---

17 **THE COURT:** A what?

18 **MS. ROSS:** Just a photo. Print off what they want the
19 jury to see so they're not going back with, you know, a disk
20 with who knows what material on it. I guess we could review
21 it beforehand to see what's redacted and what's on it, but I
22 just -- in order not to confuse the jury, I think the simple
23 way would be to print out those ---

24 **THE COURT:** The disk hasn't been introduced, has it?

25 **MR. FRETWELL:** I attempted to introduce one, Judge.

1 **THE COURT:** All right. Well, there's no reason to
2 introduce a disk that contains a considerable amount of
3 irrelevant information that's not relevant to this case. We
4 can introduce a disk that contains that information that is
5 relevant and it can be explained that this was extracted
6 from the whole phone. I don't know how long that would take
7 somebody to do.

8 **MR. FRETWELL:** Judge, we have pulled out the photos ---

9 **THE COURT:** I understand that. But you just told me
10 there's a whole lot of irrelevant information on that disk
11 and on this report.

12 **MR. FRETWELL:** I think I'm starting to confuse the
13 Court. I'm not talking about we pulled out or redacted
14 anything. What I'm saying is that we pulled out photographs
15 and we pulled out a chart of information that Sergeant Kelly
16 is going to testify he verified was on this report was
17 generated from the data that Investigator Perry pulled off
18 of the phone. That's the chain, Judge, for how it goes
19 through.

20 And I understand the Court's concern. And, perhaps,
21 the best way to do it is as a Court's exhibit. I never
22 anticipated that the jury would go back there and spin these
23 up and make any sense of it. I just -- I have to have
24 something from which these ---

25 **THE COURT:** Well, I don't know what they'll do at all.

644

1 **MR. FRETWELL:** I agree. I had to have something from
2 which these witnesses could testify to with some degree of
3 reliability.

4 **THE COURT:** Mr. Fretwell, ---

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

6 **THE COURT:** --- your witness can say I ran a -- I've
7 got all this information off the cell phone.

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

9 **THE COURT:** And I ran a spreadsheet of everything that
10 it is and I put it on a disk as well.

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

12 **THE COURT:** Now from that I have extracted information
13 -- well, I guess he can't say I extracted it because he
14 didn't extract it, Sergeant Weiner did.

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

16 **THE COURT:** But there's just no reason -- and from
17 that, here is information that was given to Sergeant Weiner.

18 **MR. FRETWELL:** Okay. And certainly I intended to have
19 him testify to that. It was my understanding that for them
20 to be able to link that phone which was taken from that
21 individual to the eventual text and data that came out I
22 would have to show that that process -- that's the phone ---

23 **THE COURT:** Well, you're getting somebody to testify to
24 that.

25 **MR. FRETWELL:** Okay.

1 **THE COURT:** And rather than introducing an exhibit that
2 contains everything, ---

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

4 **THE COURT:** --- an exhibit that is a portion of that
5 that was given to Weiner and Weiner is going to have to say,
6 you know, from this I did whatever I did. If they now want
7 to go back and say, hey, that's not all the information and
8 there could have been other things, then we'll have to deal
9 with it at that point in time and they may have a real
10 problem.

11 **MR. FRETWELL:** Well, I will handle it ---

12 **THE COURT:** Then introduce the whole thing.

13 **MR. FRETWELL:** Yes, sir. I'll handle it that way.

14 **THE COURT:** But we've got a -- we've got to get the
15 document and the disk that contains only that portion that
16 was given ...

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

18 **MS. ROSS:** I have one more related concern that I think
19 is going to come up later. I've seen two of three
20 photographs so far, exhibit number 30, 64 and 65, which are
21 said to come off of my client's phone.

22 And I went back and reviewed last night thoroughly, you
23 know, the hours of CDs that I had handed over and printed up
24 every image that I had on my client's phone. And there
25 weren't a whole lot of those, I think, around eighty. And

1 none of those images were him with the teal pants or --
2 there was another one of inside the Olive Garden. And there
3 is just simply -- not on the CD that I've got.

4 And I'm concerned that they're kind of coming in around
5 here, and I've never seen them before. And I have reviewed
6 those CDs ---

7 **THE COURT:** They're not introducing any images, are
8 they?

9 **MS. ROSS:** Well, there was a ---

10 **THE COURT:** They've introduced a picture of the --
11 well, they hadn't introduced that yet. They did it for
12 identification purposes..

13 **MR. FRETWELL:** Yes, sir. The teal pant photograph, the
14 item I think she mentioned, State's exhibit 30, and what --
15 did you mention another one?

16 **MS. ROSS:** 65, I believe.

17 **MR. FRETWELL:** What is that?

18 **MS. ROSS:** That was -- that was the teal pants.

19 **MR. FRETWELL:** Okay.

20 **MS. ROSS:** Then there's 64, holding a Samsung. That, I
21 do recognize from ---

22 **MR. FRETWELL:** Yes. And, Judge, there's a reason why
23 she can't find those two pictures on the Samsung data.
24 They're not from the Samsung phone. They're from Mr.
25 White's phone. And that's what this officer's about to

1 testify to in a few minutes.

2 **MS. ROSS:** Okay. My confusion is on the printout it
3 says exhibit 65, DW1 -- I apologize. On 30 it says DW2,
4 Samsung next to -- so maybe that's ---

5 **MR. FRETWELL:** It's just an error.

6 **MS. ROSS:** Okay. Better.

7 **MR. FRETWELL:** But just to be clear for the record, the
8 contents and the items that have been up here with the
9 exception of the fact that we took a disk that we found last
10 night to have in other places of the disk inappropriate
11 information, that -- all of that material had been turned
12 over to both Ms. Ross and Mr. Yarborough.

13 **MR. YARBOROUGH:** Your Honor, just because it was turned
14 over doesn't mean it's admissible. It's their obligation to
15 outline exactly ---

16 **THE COURT:** Well, ---

17 **MR. YARBOROUGH:** --- what they're trying to ---

18 **THE COURT:** --- I think they've done that, Mr.
19 Yarborough. They've outlined it here. Now he's
20 acknowledged that there is a whole lot of information that
21 really -- it all came off the phone.

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

23 **THE COURT:** And it really is not needed at this point
24 in time. But I think they've established they're trying to
25 get a chain as to how they go from the telephone -- the cell

1 phone to Sergeant Weiner doing whatever he did. They got
2 the cell phone, they turned it over to this gentleman, he
3 did an analysis, he then came up with basically a catalogue
4 of everything that was on that phone. And everything that
5 was on that phone he put on a CD, right?

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

7 THE COURT: And turned that over to Sergeant Weiner.

8 MR. FRETWELL: Sergeant Kelly.

9 THE COURT: I mean, Sergeant Kelly.

10 MR. FRETWELL: Yes, sir.

11 THE COURT: Now, my guess is they're not going to go
12 into -- these folks aren't going to ask to look at that
13 disk.

14 MR. YARBOROUGH: Sure.

15 MR. FRETWELL: But I'm not going to admit it per your
16 ruling, Judge. I understand now how the Court wants me to
17 handle that. I will handle it in the way that I've
18 established the chain, and I will not ask to have those
19 admitted.

20 THE COURT: Well, I'm not stopping you from having that
21 admitted which is relevant and which ---

22 MR. FRETWELL: Yes, sir.

23 THE COURT: --- allows you to get to Sergeant Kelly.

24 MR. FRETWELL: And I freely concede, there is a
25 ginormous amount of data on one of those disks that have

1 nothing to do with this case.

2 **THE COURT:** All right. So how do we get rid of that?

3 **MR. FRETWELL:** Well, I'm not going to introduce that.
4 I want to introduce the specific photos that were relevant
5 to this case. And I'm going to introduce the specific
6 communications that Sergeant Weiner's going to testify to
7 that were relevant in his investigation and to his charging
8 of these two Defendants with the crimes they have been
9 charged.

10 **THE COURT:** Does that satisfy you, Mr. Yarborough?

11 **MR. YARBOROUGH:** Yeah. I'd like to see the pictures
12 he's trying to admit.

13 **THE COURT:** Well, he sent some ---

14 **MR. FRETWELL:** Judge, ---

15 **THE COURT:** Apparently they ---

16 **MR. FRETWELL:** --- I've got the pictures right here ---

17 **THE COURT:** --- were in their satellite office
18 somewhere.

19 **MR. FRETWELL:** They've already seen the two that Ms.
20 Ross referenced. And I'm going to show them this group of
21 -- this group of photographs in just a moment.

22 **THE COURT:** Show it to them now.

23 **MR. FRETWELL:** Well, I mean, they do have all of these,
24 Judge. I mean, ---

25 **THE COURT:** Well, I know, but they don't know which

1 showings in particular you're talking about.

2 **MR. YARBOROUGH:** Your Honor, I'm holding 56, 57, 58,
3 59, 63 and 64. And I, for the life of me, can't understand
4 how these pictures are admissible. And I'd like the Court
5 to review them. They're pictures of Mr. Gadsden holding
6 money. And I'm just not sure what the relevance of that is,
7 how this ties to any robbery or anything we're before this
8 Court on today. And so ...

9 **MR. FRETWELL:** I'd welcome you to see them, Judge.

10 **THE COURT:** Those are the ones that Ms. Simpson had?

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

12 **MR. FRETWELL:** They're similar to those, Judge.

13 **THE COURT:** Tell me why that money is relevant.

14 **MR. FRETWELL:** Well, Judge, when he's -- if we had done
15 this as I intended, Judge, the investigator is going to have
16 specific information about how these photos were created,
17 when they were created, the timeframe of when ---

18 **THE COURT:** We could still have that.

19 **MR. FRETWELL:** Yes, sir. But I'm explaining to the
20 Court that's part of the relevancy. If these -- we don't
21 know when these pictures were taken, they're absolutely not
22 relevant.

23 But if they -- if, as he will testify, they were taken
24 within hours of the robbery in -- in clothing matching the
25 description that all of the victims gave of the robber

1 holding money in a substantial amount consistent with the
2 amount that was taken out of the safe, that that is
3 something that the jury is entitled to look at and weigh the
4 -- whatever weight they're going to place on it for purposes
5 of determining whether or not that relates to this
6 particular incident. The investigator believed it is, why
7 he's charged ---

8 **THE COURT:** I'm going to send this jury to lunch.

9 **MR. FRETWELL:** Okay.

10 **THE COURT:** And we'll have -- we'll let -- I guess
11 y'all are sort of asking for a proffer at this time.

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

13 **THE COURT:** And we'll see what they -- who's going to
14 say that it was taken within an hour or two hours of the
15 robbery and ---

16 **MR. FRETWELL:** Nobody's going to say that, but he's
17 going to say that it was taken at a certain distance away
18 from -- yes, sir.

19 **THE COURT:** I don't know what that means, a certain
20 distance.

21 **MR. FRETWELL:** Certain period of time, sorry.

22 **THE COURT:** All right. What is the period of time?
23 That clearly could be ...

24 **MR. FRETWELL:** That they were taken with respect to 56
25 through 63, which is what ---

1 **THE COURT:** The money photographs?

2 **MR. FRETWELL:** Yes, sir. That they were taken the day
3 after the robbery. So if the robbery occurred at about
4 11:20 at night, they were taken the following day.

5 **THE COURT:** All right. If that's the case, I think
6 it's clearly relevant.

7 **MR. YARBOROUGH:** And so, I mean, based on that you're
8 going to admit the pictures? Is that the Court's ruling?
9 So that we can save some time here.

10 **THE COURT:** Well, ---

11 **MR. YARBOROUGH:** I mean, I obviously have made ---

12 **THE COURT:** I don't want to say that I'm going to do
13 that until I hear it. But, I mean, it sounds to me like
14 that circumstantially that has some bearing on the case.
15 And so it would be relevant. It may be more prejudicial
16 than probative, but ...

17 **MS. ROSS:** And certainly we would argue that under 403
18 as well. Judge, just one thing that when you break it down,
19 it is a person in a camouflage jacket holding money. Money,
20 common thing. Camouflage jacket, common thing. His hair
21 does not match the description that was given of the suspect
22 nor does his face.

23 **THE COURT:** And you've got -- just outlined some great
24 arguments for this jury, don't you?

25 **MS. ROSS:** Well, I would believe -- I would state that

1 that goes to relevance and probative value being outweighed
2 by the prejudicial effect.

3 **THE COURT:** All right. Well, we'll ---

4 **MS. ROSS:** It's very prejudicial.

5 **THE COURT:** All right. Let's bring the jury in. And
6 I'm going to -- how long is it going to take us to do this,
7 Mr. Fretwell?

8 **MR. FRETWELL:** Judge, I don't know.

9 **THE COURT:** This whole proffer. For you to get
10 somebody to testify, how long? The relationship between the
11 photographs and the robbery.

12 **MR. FRETWELL:** It's a handful of questions, Judge.
13 It's a page ---

14 **THE COURT:** All right. So then we'll have to bring him
15 back so you can finish with him. How long are you going to
16 be with him when we come back?

17 **MR. FRETWELL:** I would estimate roughly as long as it
18 takes me to do this proffer. I mean, that's the last of the
19 questions that I have. Judge, I don't know ---

20 **THE COURT:** Well, I'm trying to figure out when to get
21 your man over here.

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

23 **THE COURT:** So let's figure that we'll be out of here
24 by 1:00. Let's figure we'll be back here by 2:00.

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

1 **THE COURT:** Let's figure that by then you can do what
2 you need to do to conclude your examination of this witness.
3 And I don't know how long they're going to -- how long y'all
4 going to need with him?

5 **MR. YARBOROUGH:** I wouldn't think very long, Your
6 Honor. Thirty minutes.

7 **THE COURT:** All right.

8 **MR. FRETWELL:** Judge, I'm fine to have Sergeant Kelly
9 here at 2:00. He can last that long. I didn't want him to
10 come up here, last all over the lunch break and all into
11 something else. He's fine to wait for the duration of his
12 testimony..

13 **THE COURT:** All right. Well, you tell him to be here
14 at 2:15.

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

16 **THE COURT:** And he might have to sit a little bit.

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

18 **THE COURT:** All right. Let's bring the jury in.

19 **MR. YARBOROUGH:** Could you ask the -- him to cover up
20 those pictures, please.

21 (Whereupon the jury entered the courtroom at 12:46 pm)

22 **THE COURT:** All right, ladies and gentlemen. We're not
23 going to finish with what I need to do with these lawyers in
24 the next five minutes or so. So I'm going to let y'all go
25 somewhere and warm up and eat.

1 And I'm going to ask y'all to be back here at ten
2 minutes til two. No, wait a minute. 2:00. I'm sorry.
3 2:00. And I think we ought to be ready to go at that time.
4 And if we're not, we'll let the lawyers go without lunch.
5 So y'all have a nice lunch. Do not discuss the case
6 while you're there. And we'll see you back here at 2:00.
7 And get warm. I think from what I've read, it'll be warm
8 outside.

9 (Whereupon the jury exited the courtroom at 12:47 pm)

10 **THE COURT:** All right. You want to ---

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

12 **THE COURT:** --- ask him what you need?

13 **MR. FRETWELL:** May it please the Court.

14 **Proffered Testimony by Mr. Fretwell:**

15 Q. Let me see where I was. I'm not exactly sure where I
16 stopped off, but does the exhibits that you saw, 54 and 55,
17 does that contain the -- and, of course, the Court's exhibit
18 for the unredacted portion, ---

19 A. Right.

20 Q. --- does that contain the information in Excel
21 spreadsheet form that you extracted from State's exhibit 45
22 and 46 in this case?

23 A. It does.

24 Q. And is that the information that you then provided to
25 Sergeant Dan Kelly in the Technical Services Unit?

656

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

498

1 A. It is.

2 Q. Okay. Were you also able, in addition to this
3 spreadsheet Excel information, were you also able to recover
4 photos from these two phones?

5 A. I was.

6 Q. Okay. And what does your data recovery process enable
7 you to determine about photos or images that are recovered
8 from cellular phones?

9 A. Photos that are recovered on cell phones can range
10 anywhere from a picture that was taken by that camera, which
11 is still on that camera. The information it can give me is
12 the date and time it was taken. It can tell me that it was
13 taken by that cell phone.

14 It will say like a Kyocera, whatever kind of phone it
15 was. It'll give the model number. It can break it down all
16 the way to telling me the shutter speed, serial number. The
17 metadata that comes with that can give you aperture, all
18 kinds of information about that particular picture if it was
19 taken with that camera.

20 Also if you have photos that are imported or anything
21 like that, it can have metadata, when it was created, last
22 access, this type information. So if you delete a photo it
23 doesn't necessarily mean we won't recover a thumbnail of
24 that photo somewhere else because the phone will put copies
25 of that photo in different parts of the phone to make it

1 easier to access it when you're looking for it. So you can
2 have anything from no data to when it was taken, by what
3 phone it was taken, detailed information about that photo.

4 Q. All right. Let me show you State's 56 through 64.
5 Take a moment and look at the pictures. Tell me if you
6 recognize what's on there. And then I have some specific
7 questions for you about that.

8 (Pause)

9 A. Those were photos that were on the Samsung flip phone.

10 Q. And what exhibit number is that for the record?

11 A. I'm sorry, oh, from DW2.

12 Q. That's the property number. How about the State's
13 exhibit sticker?

14 A. Oh, the State's exhibit?

15 Q. Yes, sir.

16 A. This one would be 55.

17 Q. Okay. And you just a moment ago told the Judge that
18 some photos you can get data, some photos you can't.

19 A. Correct.

20 Q. Were you able to get data on these particular photos?

21 A. I was.

22 Q. Okay. And what can you tell us about those photos?

23 And let me have you group them from 56 to 63 and then deal
24 with State's 64 separately.

25 A. On these photos here I was able to tell that they came

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

500

1 off this -- that they were taken by that Samsung phone ---

2 Q. On what date?

3 A. The -- January 21st.

4 Q. What year?

5 A. 2014.

6 Q. Okay. That's those items, right? Pass those up to the
7 Judge, if you would. When he's finished looking at that,
8 I'm going to ask you about the other one.

9 A. Okay.

10 (Pause)

11 **MR. FRETWELL:** Judge, were you finished ---

12 **THE COURT:** Yes.

13 **MR. FRETWELL:** I'm sorry.

14 Q. Investigator Perry, look at State's 64. What
15 information did you determine about State's 64?

16 A. Information -- it appears to be a selfie of the
17 Defendant holding the Samsung flip phone.

18 Q. Okay. And can you tell whether that photo was taken by
19 State's exhibit 55? Am I right? DW ---

20 A. DW2. State's exhibit 46.

21 Q. Okay. 46. Can you tell whether that picture was taken
22 by that Samsung phone?

23 A. I can.

24 Q. Okay. Based on the metadata?

25 A. Um-hum (affirmative). Correct.

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

501

1 Q. Okay. Looking at the picture itself, ---

2 A. Correct.

3 Q. --- can you tell me what phone that is?

4 A. The phone -- well, looking at the picture, it's the
5 Samsung flip phone.

6 Q. And why is that?

7 A. Because you can see it in the picture.

8 Q. Okay. Pass it up to the Judge, please.

9 **THE COURT:** I already saw it.

10 **MR. FRETWELL:** You saw the Samsung phone? Yes, sir.

11 Q. When was that photo created? What month and year?

12 A. That was on December 3rd, 2013.

13 Q. All right. Let me show you State's exhibit 30 and 65.

14 These photos were recovered from what phone?

15 A. They were recovered from the Kyocera.

16 Q. Okay. And that is State's exhibit 45, is that correct?

17 A. That is correct.

18 Q. All right. And were you able to obtain metadata that
19 can give you some sort of dating on these two particular
20 photos?

21 A. One of them I was, one of them I wasn't.

22 Q. Okay. Which one were you?

23 A. I was able to get metadata off of the picture that --
24 30, State's exhibit 30.

25 Q. Okay. What can you tell us about State's exhibit 30?

1 A. It was created on 1/16/2014.

2 Q. Do you also have a time?

3 A. There's -- yes, 3:57 pm.

4 Q. Thank you. And with respect to 65 what can you tell us
5 about that particular photo?

6 A. 65, the only thing I can tell you about that one is it
7 was on the phone. It was in an area called the cash, which
8 is what the phone uses to make accessing information faster.
9 So the original picture may have been deleted or must have
10 been deleted because we didn't find it, but the cash, unless
11 -- until it gets cleared out, it's still in the phone.

12 MR. FRETWELL: And, Judge, with respect to that
13 particular picture, even though he can't tell when it was
14 created or ---

15 THE COURT: What are the pictures?

16 MR. FRETWELL: Yes, sir, I'm sorry. I didn't know you
17 didn't see it.

18 THE COURT: 30 is -- I don't even know what that is.

19 MR. FRETWELL: Well, Judge, that has already been
20 identified by Aaron Kretzschmar as being the area in which
21 the attack or the assault on him took place.

22 THE COURT: All right. So that's inside the Olive
23 Garden?

24 MR. FRETWELL: In the kitchen, yes, sir.

25 THE COURT: All right.

1 **MR. FRETWELL:** But I'm speaking of this one that you
2 have now. The relevance to the State is a couple of things.
3 First of all, you've heard testimony from Matt Owens that he
4 participated in a search warrant at the -- at Defendant
5 White's house, found a pair of teal pants with a card that's
6 in evidence belonging to Gerald Gadsden. He's identified
7 the individual in that photo as Gerald Gadsden.

8 You will hear testimony from David Weiner that he spoke
9 with Mr. White and asked him specifically about Gerald
10 Gadsden, and he denied knowing who that was. This is for
11 impeachment of that statement and testing the credibility of
12 that statement to law enforcement. And, of course, Judge,
13 overall it links them together for purposes of this crime
14 that we've charged them with.

15 **MR. YARBOROUGH:** Your Honor, he's going to impeach
16 somebody that hasn't testified? I mean, he would have to. --
17 Mr. White has not decided whether to exercise his right to
18 testify or not. But he's talking about impeaching a
19 collateral statement that Mr. White made. I don't think he
20 can do that. I don't know where in the rules of evidence
21 that he thinks he can -- the purpose of that picture.

22 **THE COURT:** Where in the rules of -- I don't think the
23 rules can speak to this picture, but ...

24 **MR. YARBOROUGH:** He just said that it's for impeachment
25 purposes. I mean, who's he impeaching?

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

1 **MR. FRETWELL:** Judge, I'd be happy to respond.

2 **THE COURT:** Sure.

3 **MR. FRETWELL:** Judge, the rules of evidence permit the
4 State to put in an admission by a party opponent these
5 statements that are already in evidence. The rule -- and,
6 I'm sorry, I don't know the rule number, but certainly the
7 Court's familiar with the impeachment rule, permits a party
8 to impeach the evidence that either the other side puts in
9 or they themselves put in because the ultimate goal of the
10 justice system is truth. And that's the purpose as the
11 Court well knows behind the impeachment rule.

12 **MR. YARBOROUGH:** I think first of all, Your Honor, he
13 ...

14 **MS. ROSS:** I think 607's the credibility of a witness.

15 **MR. YARBOROUGH:** Right. And I ---

16 **THE COURT:** Pardon me?

17 **MS. ROSS:** I thought rule 607 said impeachment is --
18 you can impeach the credibility of a witness, it says
19 specifically not a defendant.

20 **THE COURT:** All right.

21 **MR. YARBOROUGH:** He's -- if he's impeaching a
22 statement, at least under the federal rules he'd have to
23 give us notice that he was going to use this for impeachment
24 purposes. And we haven't been put on any notice until just
25 now ---

1 **THE COURT:** I don't think you've got to do that here.

2 **MR. YARBOROUGH:** Thank you, Your Honor.

3 **THE COURT:** All right. I'll look at this over lunch.

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

5 **THE COURT:** My concern is -- if you ask me, that's a
6 highly prejudicial picture.

7 **MR. FRETWELL:** Judge, ---

8 **THE COURT:** And just ...

9 **MR. FRETWELL:** I don't see -- and I'm not trying to be
10 coy or an advocate or whatever, but what is it particularly
11 about that ---

12 **THE COURT:** Well, doesn't it look like they're in there
13 drinking and -- I'll look at it at lunch.

14 **MR. FRETWELL:** Okay. Thank you, Judge. The only other
15 thing he's going to talk about is with respect to some
16 particularized contact information or what phone number was
17 in what phone. And it's about ---

18 **THE COURT:** All right. Well, here's the deal.

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

20 **THE COURT:** I think all those pictures are admissible.

21 **MR. YARBOROUGH:** The pictures of the money as well?

22 **THE COURT:** The pictures of the money as well because
23 of the closeness in time, the dress. And circumstantially I
24 think it would be admissible.

25 The question is with the admission of the solicitor,

664

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

506

1 there's a lot of information on the disk that is not
2 relevant. And he -- all he's trying to do is get from here
3 to Mr. Kelly.

4 Now, if y'all want to consent to the fact -- stipulate
5 to the fact that that information is -- that certain
6 information was provided to -- derived from the phone and
7 given to Mr. Kelly and Mr. Kelly, I mean, Mr. Kelly did with
8 it whatever he did with it, and I guess he's going to
9 testify to what he did with it, then that's fine. But, I
10 mean, I seriously doubt whether anybody's going to want to
11 look at those disks.

12 **MR. FRETWELL:** Well, Judge, I don't intend to put them
13 in. And I'll just let the Court know, there's a similar set
14 of disks that Sergeant Kelly created after his program
15 analyzed this data. And based on the Court's ruling, I do
16 not intend to introduce those either.

17 But to show that chain I'm going to have them identify
18 them, and to show that chain how those items that were taken
19 from this Defendant turned out to be evidence that we're
20 going to present to the jury.

21 **THE COURT:** All right. Well, I'll allow you to -- do
22 you understand what he's doing? Basically going to have
23 this gentleman testify that he got this information off the
24 phone and in some form gave it to Mr. Kelly.

25 **MR. YARBOROUGH:** And that information is the

1 information that was just provided to the Court?

2 **THE COURT:** No, sir. I mean, that the Court just saw
3 the pictures.

4 **MR. YARBOROUGH:** Right.

5 **THE COURT:** So all of the relevant information he will
6 testify to and the chain. And he will say that it's on the
7 cell phone and these are disks that I derived from the cell
8 phone, but the disk won't be admitted.

9 **MR. FRETWELL:** And, Judge, I think -- they're already
10 marked as State's exhibits, but I think it would be
11 important to somehow -- I don't know if we can cause them to
12 be included in the record because I think they need to be a
13 part of the record itself.

14 **MS. ROSS:** Are they Court's exhibit 6?

15 **THE COURT:** Well, I ...

16 **MR. FRETWELL:** And we can deal with that after the fact
17 ---

18 **THE COURT:** Well, I just want them to consent rather
19 than making him -- because I don't think we got enough time
20 to extract, I mean, maybe you can do it in five minutes.
21 Maybe you could do it at lunch and extract all this stuff
22 from the -- from that disk and put it on another disk.

23 **MR. YARBOROUGH:** Your Honor, if what he is admitting is
24 what you've got in your hand up there minus that one
25 picture, I've made my previous objections, and we'll stop

JAMES PERRY - PROFFERED TESTIMONY BY MR. FRETWELL

1 right there. He can -- we're not going to challenge the
2 chain of custody. I've made my objections about the
3 relevance, but we're not going to challenge the chain of
4 custody. But the buck stops there.

5 I don't want -- I don't want this big bunch of stuff
6 showing up here after lunch and he's saying, oh, that's on
7 that disk, that's on that disk. We've seen it, we've got
8 it, we're moving forward.

9 **THE COURT:** Well, it might show up after lunch, but
10 he's represented to us that this is what he wants and this
11 is ---

12 **MR. FRETWELL:** As far as photographs are concerned,
13 yes, sir. There's communications that I told you are on
14 three boards in my office that we intend to introduce not
15 through this witness, not through Dan Kelly, but through
16 Sergeant Weiner because he's the investigator.

17 **THE COURT:** But they came off the phone as well?

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

19 **THE COURT:** And they came off the CD that was ---

20 **MR. FRETWELL:** Yes, sir. And that's the purpose of
21 this chain.

22 **THE COURT:** All right. Well, they're not -- is that --
23 you're not contesting the chain?

24 **MS. ROSS:** Judge, I don't want to give up contesting
25 the entire chain ---

1 **THE COURT:** All right. Well, then if we can't extract
2 all that, I'll find that all of it will be admissible.

3 **MR. FRETWELL:** Thank you, Judge.

4 **MS. ROSS:** Judge, as to this witness, I stipulate that
5 this aspect of the chain is fine.

6 **THE COURT:** Well, they've got to get from this witness
7 to Weiner or this witness to Kelly.

8 **MS. ROSS:** Okay. Then for purposes as far as reference
9 to the disk, as long as they're not admitted into evidence,
10 I would stipulate that they looked at information contained
11 on those disks.

12 **THE COURT:** And that information was provided -- some
13 of that -- or that information was provided to Weiner and to
14 -- anybody else?

15 **MR. FRETWELL:** Them. I mean, the discovery process ---

16 **THE COURT:** I mean, it was provided to Kelly.

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

18 **THE COURT:** And to Weiner.

19 **MR. FRETWELL:** And to Weiner. Kelly provided it to
20 Weiner, yes, sir.

21 **MS. ROSS:** I'm happy to stipulate to that.

22 **THE COURT:** All right. Well, let's go to lunch. If
23 you'll step down. And don't discuss your testimony while
24 we're at lunch. And we'll be back here at 2:00.

25 (Whereupon court was in recess at 1:06 pm)

1 (Whereupon court reconvened at 2:10 pm)

2 **THE COURT:** All right. You may have a seat. Okay. We
3 ready to go? I think we've resolved all the issues that we
4 had at lunch. The solicitor and Defense counsel have
5 indicated that you're withdrawing that last photograph.

6 **MR. FRETWELL:** Your Honor, that for the record is
7 State's exhibit 65.

8 (Whereupon the State withdrew State's exhibit 65 from
9 the record)

10 **THE COURT:** All right. And then Mr. Yarborough wants
11 to introduce a couple of photographs. And you are agreeable
12 so long as one of them is cleaned up with some writing on
13 it. And I don't know how we can get that done, but ---

14 **MR. YARBOROUGH:** She's ---

15 **MADAME CLERK:** I'm going to get some scissors.

16 **THE COURT:** Hmm?

17 **MADAME CLERK:** Scissors, I guess. He asked for a pair.
18 of scissors.

19 **THE COURT:** Doing this the old fashion way. All right.
20 Let's bring the jury in, if we could. Are y'all ready to
21 bring the jury in?

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

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

24 (Whereupon the jury entered the courtroom at 2:13 pm)

25 **THE COURT:** Ladies and gentlemen, all except this young

1 lady, can I get y'all to step back to the jury room just a
2 minute, and I'll be right with you.

3 (Whereupon the jury exited the courtroom, except for
4 juror number 81, Joann Garrett, at 2:14 pm)

5 **THE COURT:** Tell me your name, please.

6 **MS. GARRETT:** Joann Garrett.

7 **THE COURT:** Ms. Garrett, the bailiff just reported that
8 you're having a migraine headache and you're real concerned
9 about whether you're going ---

10 **MS. GARRETT:** I just ---

11 **THE COURT:** --- to be able to make it through.

12 **MS. GARRETT:** Yes. I did yesterday. And I've taken
13 more medicine for it. But sometimes you get nauseated with
14 it. And I just wanted to make sure that if I alerted him,
15 he would let me get up and go.

16 **THE COURT:** I mean, I don't want to force you to sit
17 here if you're not feeling well and sick and you're going to
18 get worse. I mean, we ---

19 **MS. GARRETT:** No, I've taken something. So I think I'm
20 going to be okay. I would not want, excuse me, to miss out
21 what I've already invested, to be honest. I'd like to see
22 it through.

23 **THE COURT:** Well, we want you to participate and be a
24 member of this jury, too, but we're not going to require you
25 to be here if your health is jeopardized in any way or you

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

1 feel so bad. So if you -- if you get to that point, if you
2 will let me know. We have two alternates. And we can ---

3 **MS. GARRETT:** Okay.

4 **THE COURT:** We can proceed if ---

5 **MS. GARRETT:** Okay.

6 **THE COURT:** But I do not want you to be in here and
7 just be miserable and not be able to concentrate and do what
8 you need to do, okay?

9 **MS. GARRETT:** Thank you.

10 **THE COURT:** All right. Let's bring the jury back in.

11 (Whereupon the jury entered the courtroom at 2:16 pm)

12 **THE COURT:** All right. Mr. Solicitor, if you will
13 proceed. Ladies and gentlemen, you'll remember we're in the
14 midst of the solicitor directing this witness. So if you'll
15 proceed, Mr. Fretwell.

16 **MR. FRETWELL:** Thank you, Your Honor. May it please
17 the Court.

18 **Direct Examination by Mr. Fretwell Continued:**

19 Q. Investigator Perry, before we broke I believe I was
20 asking you about State's exhibit 55 and Court's exhibit
21 number 6. Okay?

22 A. Okay.

23 Q. I want you to tell me -- I can't really recall exactly
24 how far we went down that line. The item that you recognize
25 as Court's exhibit 6, what does that item contain?

1 A. This contains a Excel spreadsheet of the Kyocera phone,
2 DW1, item number DW1.

3 Q. That's State's exhibit 45, is that correct?

4 A. Correct, I believe.

5 Q. Okay. Now, what about State's 55?

6 A. Okay. That's an Excel spreadsheet of the Samsung
7 phone, item DW2, State's -- and I'm not sure which State's
8 exhibit it is.

9 Q. State's 46. Let me get these back up there for you.

10 A. DW2 is 46. And DW1 is 45.

11 Q. And did you, with respect to Court's exhibit 6 and
12 State's exhibit 55, did you provide that information to
13 Sergeant Dan Kelly with the Technical Services Unit?

14 A. I did.

15 Q. Okay. And that was in an Excel format, was that
16 correct?

17 A. That is correct.

18 Q. All right. Were you also able to recover photos from
19 these two phones?

20 A. I did.

21 Q. And what does your data recovery process enable you to
22 determine about photos or images that are recovered from
23 cellular phones?

24 A. Cell phones, when we look at, especially the
25 smartphones, you have all different kind of images. You

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

514

1 have images that are taken by the phone and stored on the
2 phone. Those images most of the time we can actually get
3 off of the report showing that that phone was taken by --
4 that picture was taken by that particular phone, gives the
5 date and time created. It will give you shutter speed and
6 just a lot of different data that the phone itself generates
7 when it takes the picture.

8 From there it goes down to -- if a picture's deleted,
9 we may not be able to find the actual picture that was
10 taken, but we can find a thumbnail of it that is stored in
11 the cash of the phone, which is used to access information
12 fast or by the phone. And it'll stay there until it gets
13 cleared out.

14 And then you have other pictures, if there's no data,
15 other than where it's located on the phone.

16 Q. Just one moment.

17 (Pause)

18 Q. I'm sorry, Investigator Perry. I'm going to show you a
19 series of photographs that are marked for the record as
20 State's 56 to 63 and also 64.

21 A. Okay.

22 Q. I may have given you one extra picture, but I want you
23 to -- I'm going to draw your attention to State's 56 to 64.

24 A. Okay.

25 Q. Okay. Do you recognize those photos?

1 A. I do.

2 Q. Okay. Now those photos were recovered from which
3 phone?

4 A. These were recovered from the Samsung flip phone.

5 Q. Which is State's exhibit 46?

6 A. Correct.

7 Q. Okay. What -- you just described a few minutes ago
8 something about metadata that gives you some information ---

9 A. Correct.

10 Q. --- about photos. Did you, in fact, -- did that phone
11 provide you with metadata on those particular pictures?

12 A. Right. Since these pictures were actually still on the
13 phone as the original pictures, the metadata was available
14 for me to recover.

15 Q. I'm going to do them in two groups. I'm going to have
16 you look at State's 56 through 63 as a group.

17 A. Um-hum (affirmative).

18 Q. And tell the jury -- what can you tell about those
19 particular photos?

20 A. I mean, I can tell that the make of camera was a
21 Samsung. It gives the model number, which was SCHU365,
22 which is what they -- item 46 is the same type of phone. It
23 was time captured, data captured. The resolution, it gives
24 that. It gives the pixel resolution. So it gives ---

25 Q. Maybe I was too broad with my question. Let me try to

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

516

1 see if I can narrow it. Can you tell whether or not items
2 56 through 63 were taken by State's exhibit 46, the DW2
3 Samsung?

4 A. Yes, it was.

5 Q. Okay. And can you tell whether those items were taken
6 or created by that phone?

7 A. They were taken by that phone.

8 Q. Okay. And on what date were they taken or created?

9 A. They were taken on January 21st, 2014.

10 Q. Okay. Now I want you to look at State's 64.

11 A. Okay.

12 Q. What can you tell us about that particular phone with
13 respect to whether it was taken or created by State's
14 exhibit 46, the Samsung phone?

15 A. It was -- it also was created by that same phone.

16 Q. And when was that photo taken?

17 A. That photo was taken on December 3rd, 2013.

18 Q. And let's continue with State's exhibit 64.

19 **MR. FRETWELL:** Well, first of all, let me at this time
20 move these items into ...

21 Q. Are all the photos in the same condition as they were
22 when you extracted them from the phone?

23 A. They are.

24 Q. From your report?

25 A. (Affirmative nod).

1 **MR. FRETWELL:** At this time, Your Honor, I'd move
2 State's 56 through 64 into evidence.

3 **MR. YARBOROUGH:** Just note my previous objections.

4 **MS. ROSS:** Join him.

5 **THE COURT:** All right. So admitted subject to previous
6 objections.

7 (Whereupon State's exhibits 56 - 64 were admitted into
8 evidence)

9 Q. Okay. Let's go back to 64 for a minute. In fact, I
10 want to show that up on the ...

11 **MR. FRETWELL:** Your Honor, permission to publish at
12 this time.

13 **THE COURT:** You may.

14 Q. So this is State's 64. Your testimony was that this
15 photograph was taken by the Samsung phone that you've
16 identified, that we've labeled State's exhibit 46, is that
17 correct?

18 A. That is correct.

19 Q. Okay. Can you say whose -- what phone is this right
20 here?

21 A. It's exhibit 46.

22 Q. Okay. Thank you. And the rest of these photographs
23 also came from that phone. Let me ask you about another set
24 of photographs. I'm sorry. State's 30 and I think you have
25 State's 65.

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

518

1 A. That's correct.

2 Q. Is there metadata associated with State's 30?

3 A. Yes, sir, it is.

4 Q. Okay. What can you tell us about that particular
5 photograph?

6 A. That particular photograph I can tell you that it was
7 on the Kyocera cell phone and that it is in the DCIM folder
8 on the phone, which ---

9 Q. Okay. I think -- you're talking about the wrong
10 photograph. I want you to look at State's 30.

11 A. 30. Yes, that's ---

12 Q. Not 65.

13 A. Correct.

14 Q. Okay.

15 A. It's in the DCMI folder in the thumbnails, which tells
16 me that that photo at some point in time, the original photo
17 was on the phone, deleted, but it stayed in the thumbnail's
18 folders ---

19 **MR. FRETWELL:** Judge, may we ---

20 A. --- on the phone.

21 **MR. FRETWELL:** May we approach?

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

24 (Whereupon the bench conference was ended)

25 Q. Investigator Perry, did you testify during a break with

1 respect to these two photos?

2 A. I did.

3 Q. And during that break did you -- did you testify with
4 respect to State's 30 about whether it was created on
5 January the 16th of 2014 at 3:57 pm?

6 A. That is correct. I didn't get to finish where I was
7 going with my previous testimony on that. What I was --
8 where I was going with that was that it was in the
9 thumbnails, which is part of the folder where pictures are
10 kept. And that was created on January 16th, 2014.

11 Q. I apologize.

12 A. That's okay.

13 Q. That wasn't part of the -- you didn't -- I didn't let
14 you expand so much before. And I didn't realize all that
15 extra information. I just wanted to make sure you weren't
16 confused between the two ---

17 A. No. No, I'm not confused between them. That ---

18 Q. Okay.

19 A. That is correct.

20 Q. That's my fault. And I apologize, investigator.

21 A. That's okay.

22 Q. Let me ask you about -- so that's State's exhibit 30?

23 A. That is correct.

24 Q. Okay. Is it in the same condition as it was when you
25 extracted it through your report from originally State's

JAMES PERRY - DIRECT EXAMINATION BY MR. FRETWELL

520

1 exhibit 45, the Kyocera?

2 A. It is.

3 MR. FRETWELL: Your Honor, at this time I'd move
4 State's 30 into evidence.

5 MR. YARBOROUGH: Without objection.

6 MS. ROSS: No objection.

7 THE COURT: So admitted.

8 (Whereupon State's exhibit 30 was admitted into
9 evidence)

10 Q. And with respect to State's 65, ---

11 A. Yes.

12 Q. --- what can you tell me about that photograph?

13 A. That photograph is on the phone. It's in the cash area
14 of the phone. There's no metadata as to the creation. They
15 weren't on it.

16 Q. Okay. But it was -- it was located on the phone
17 identified as State's exhibit ---

18 A. That is correct.

19 Q. --- 45, which is the Kyocera?

20 A. Correct.

21 Q. Okay. And what does it generally depict? Does it --
22 let me ask you this. Is there an individual on that -- in
23 that picture that's wearing teal pants?

24 A. There is.

25 Q. Okay. Let me also ask you about some contact

1 information.

2 A. Um-hum (affirmative).

3 Q. With respect to the Samsung phone, which, again, is
4 State's 46.

5 A. Right.

6 Q. Did you find a telephone number with an area code 843-
7 642-6518 in the contacts in that phone?

8 A. On the Samsung or the ---

9 Q. On the Samsung.

10 A. I did.

11 Q. And is there a label or some sort of monitor that is
12 associated with that particular number?

13 A. Yes. Let's see. That one was called -- give me the
14 last four on it again.

15 Q. 6518.

16 A. 6518. Jr. G.

17 Q. Thank you. And a second number, a phone number 843-
18 312-7089, was that in the ---

19 A. That was also found.

20 Q. What was that labeled?

21 A. That was labeled ma, m-a, ma.

22 Q. Okay. And then 864-498-8067, was that contact found in
23 the Samsung phone?

24 A. No, it wasn't.

25 Q. Anywhere in there?

JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH

522

1 A. (Negative nod).

2 Q. 864-990-7008, was that found anywhere in the Samsung
3 phone?

4 A. No, it was not.

5 Q. All right. Now I'm going to ask you one question about
6 the Kyocera phone and we're finished. 843-826-6554, is that
7 in the Kyocera phone?

8 A. It is in the Kyocera phone.

9 Q. And how is it -- how is it labeled?

10 A. Keem.

11 Q. Thank you.

12 A. K-e-e-m.

13 Q. Just one moment.

14 (Pause)

15 Q. Please answer any questions the Defense counsel may
16 have.

17 **THE COURT:** Your witness.

18 A. Thank you.

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

20 Q. Keem, have you determined who Keem was?

21 A. I'm sorry, I'm -- you're going to ...

22 Q. Keem, the last one you identified, have you determined
23 whose phone that was?

24 A. I personally have not.

25 Q. Do you know that one of the Defendants has a nickname,

1 Keem?

2 A. No, I do not know.

3 Q. Okay. And do you know one of the Defendants is Jr. G?

4 A. No.

5 Q. You don't know who that -- you found a number of
6 pictures in there, is that correct?

7 A. That is correct.

8 Q. Okay. And there were a number of rap artists' pictures
9 in there?

10 A. There were some, yes, sir.

11 Q. Okay. And in those rap artists' pictures there are --
12 there are pictures of individuals holding large sums of
13 money.

14 **MR. FRETWELL:** Your Honor, I just want to object
15 because I'm not sure which phone he's talking about.

16 **MR. YARBOROUGH:** I'm talking about the Samsung -- the
17 Samsung phone that was identified with Mr. White. I'm
18 sorry, that's the Kia [sic]. The Kia phone.

19 A. Okay.

20 Q. You've got a list of the pictures and stuff with you
21 there.

22 A. I don't have a copy of the pictures with me, no, sir.

23 Q. Okay. But you reviewed them.

24 A. I did. It's been a while, but, yes. From what -- the
25 best of my recollection, there were.

JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH

1 Q. A number of pictures of individuals with cash, currency
2 in them?

3 A. A number of individuals or one individual?

4 Q. One individual -- rap artists that had cash.

5 A. You'll have -- I don't recall.

6 Q. Remember seeing this picture in there?

7 A. I mean, I don't recall. There was sixty-seven hundred
8 photos in there. So I -- I don't recall that that was on
9 there. I'm not going to say it's not.

10 **MR. YARBOROUGH:** Your Honor, may I approach? Counsel.

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

13 (Whereupon the bench conference was ended)

14 **MR. YARBOROUGH:** Your Honor, I'm going to -- pursuant
15 to no objection of counsel, I'm going to have these marked
16 as Defense 1 and 2 and have them moved into evidence.

17 **MR. FRETWELL:** No objection.

18 **THE COURT:** All right. Any objection, Ms. Ross?

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

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

21 (Whereupon Defendant White exhibits 1 and 2 were marked
22 and admitted into evidence)

23 Q. This has been moved in as ---

24 **MADAME COURT REPORTER:** Just a minute.

25 **MR. YARBOROUGH:** Okay. Sorry.

1 (Pause)

2 Q. These two pictures have been moved into evidence as
3 Defense 1 and Defense 2.

4 A. Okay.

5 Q. Do you recognize those pictures?

6 A. No, sir.

7 Q. Okay. But if I told you those pictures came off the
8 disk that you have, would you agree with that?

9 A. I would agree with that I don't doubt what you're
10 telling me.

11 Q. Okay. And Defense 1 is a picture of an individual
12 holding currency?

13 A. Yeah, he's holding currency and there's currency
14 floating all around.

15 Q. Okay. And that's a common rap ---

16 **MR. FRETWELL:** Objection, Your Honor. Lack of
17 foundation.

18 **MR. YARBOROUGH:** Okay.

19 Q. Is that a -- with the pictures you saw, would that be a
20 common picture in the pictures that you looked at in this
21 case?

22 **MR. FRETWELL:** Your Honor, I have to object. It
23 doesn't ---

24 **MR. YARBOROUGH:** He looked at the pictures ---

25 **THE COURT:** Well, let's talk to me.

JAMES PERRY - CROSS EXAMINATION BY MR. YARBOROUGH

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

2 **THE COURT:** I'll let him answer the question. If he
3 doesn't know, he can't answer it.

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

5 A. I'm sorry. Ask the question again.

6 Q. Okay. You looked at the pictures in this case.

7 A. Correct.

8 Q. Okay. And in those pictures there were a number of
9 pictures of individuals holding currency.

10 A. Again, a number of individuals, I can't say if there's
11 any more than these two. And this was on the other phone,
12 not the one that I saw the other pictures in.

13 Q. Okay. So that was on a separate phone?

14 A. That was on a separate phone. The pictures that we
15 just entered into evidence, that was on the Samsung. These
16 came off the Kyocera.

17 Q. Okay. So that came off the Kyocera phone?

18 A. I'm -- you're the one that did it. I ---

19 Q. Okay. No, I don't disagree with you.

20 A. Okay.

21 Q. Okay. And those -- one of those pictures is of an
22 individual by the name of Junior?

23 A. Jr. G.

24 Q. Okay. And then is there a small picture in the corner
25 of that picture?

JAMES PERRY - CROSS EXAMINATION BY MS. ROSS

527

1 A. Correct.

2 Q. Thank you.

3 **MR. YARBOROUGH:** I don't have any further questions of
4 this witness.

5 **THE COURT:** Ms. Ross.

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

7 **Cross Examination by Ms. Ross:**

8 Q. If you could just check, under the contacts, the
9 contact for Keem, was that K-e-e-m?

10 A. Correct.

11 Q. And that was on the Kyocera, which was James White's
12 phone?

13 A. It was on the Kyocera.

14 Q. Okay. And you couldn't say whether it was -- it was
15 Officer Weiner that was number one, DW1?

16 A. Let me see.

17 **MR. FRETWELL:** Judge, I don't -- is she asking for the
18 -- I don't understand what she's asking. I can't imagine
19 the witness does either.

20 Q. Oh, I'm sorry. The contact Keem was on the Kyocera
21 phone.

22 A. Correct.

23 Q. And I asked whether that phone belongs to James White.
24 He couldn't say, but it was DW1.

25 A. That is correct.

6086

JAMES PERRY - CROSS EXAMINATION BY MS. ROSS

528

1 Q. Okay. And DW2 was the Samsung?

2 A. Correct.

3 Q. And that contained the pictures, the images that we've
4 been -- that you've been testing about -- testifying about
5 right now?

6 A. Correct.

7 Q. Okay. Now when you looked at the metadata or whatever
8 about those pictures, had they been deleted on the Samsung
9 phone?

10 A. No, they had not.

11 Q. And -- and on those images you can't say anymore of the
12 context of them other than the time they were taken,
13 correct? You can't say who took them?

14 A. Well, I can tell the one of them.

15 Q. The one in the mirror?

16 A. The one where he's taking it -- yeah.

17 Q. Okay.

18 A. That one I can tell.

19 Q. I'm sorry. On the other ones you can't tell -- you
20 can't testify for sure ---

21 A. No.

22 Q. --- who took them?

23 A. No.

24 Q. Though admittedly they look like selfies?

25 A. Correct.

1 Q. Okay. And just looking at the times on those you said
2 it was on January 21st in the afternoon. What exact time
3 were they taken?

4 A. In the neighborhood of 2:30, 2:28. And they just kind
5 of, you know, a few seconds, minutes later progresses from
6 2:28 to 2:30 to 2:31 to -- yeah, 2:31's the last.

7 Q. In the afternoon?

8 A. Correct.

9 Q. And so those times appear to be correct times?

10 A. Yes. It's taken from the phone itself, which the phone
11 gets its time from connecting with the towers.

12 Q. Okay. So from what you're telling me, that's when that
13 picture -- those pictures were taken?

14 A. Correct.

15 Q. Okay. Now, talking about phones, at one point you
16 recheck the phones in October of 2015. You've got four
17 search warrants?

18 A. Right.

19 Q. And that's because there weren't just two phones, were
20 there?

21 A. No, there were four phones.

22 Q. There were four phones. And one of them was -- I can't
23 remember the first evidence number. It was something Keem 1
24 and 2, the ID numbers for the phones.

25 A. On ---

1 Q. The evidence numbers.

2 A. The other ones other than these two?

3 Q. Yes.

4 A. They were different -- obviously different item
5 numbers.

6 Q. They were different items numbers. But isn't it true
7 that the type of phone -- there was another Kyocera and
8 another -- and another Samsung? The same model. Just
9 making it more confusing.

10 A. Actually it was the same -- we had two of the same
11 models of both phones ---

12 Q. That you were looking at?

13 A. That -- yes.

14 Q. Okay.

15 A. However, the second one that came in was password
16 protected and we weren't able to look at it.

17 Q. So one of them -- and that was the second ---

18 A. The second ---

19 Q. --- Kyocera?

20 A. --- Kyocera.

21 Q. That you couldn't get anything off. And then the
22 Samsung, it's not relevant to this ---

23 A. Right.

24 Q. Okay. Apologies for fumbling through.

25 **MS. ROSS:** At this point I have no other questions for

1 this witness. Thank you.

2 **MR. FRETWELL:** Very briefly, Your Honor.

3 **Redirect Examination by Mr. Fretwell:**

4 Q. Let me be clear, you analyzed DW1 and DW2 and that's
5 what you testified to today, is that correct?

6 A. That is correct.

7 Q. Okay.

8 **MR. FRETWELL:** Your Honor, permission to publish these
9 photographs that are in evidence, 56 through 64.

10 **THE COURT:** You may.

11 **MR. FRETWELL:** Thank you.

12 Q. How many -- how many photos approximately were on that
13 Kyocera, DW1?

14 A. There was over six thousand, seven hundred ---

15 Q. Okay.

16 A. --- images.

17 Q. All right. Thank you.

18 **MR. FRETWELL:** No further questions, Judge.

19 **THE COURT:** All right. Thank you, sir. You may step
20 down.

21 **MR. YARBOROUGH:** One question, Your Honor.

22 **Recross Examination by Mr. Yarborough:**

23 Q. There were -- there were two -- you just said there
24 were two Kiera {sic} phones?

25 A. Kyocera, yes, sir.

DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

532

1 Q. Did they look identical?

2 A. Yes, sir.

3 Q. Okay. And then there was one other phone that you
4 looked at besides this one?

5 A. That is correct.

6 Q. And what kind of phone was that?

7 A. That was a Samsung.

8 Q. And it was a Samsung just like this phone?

9 A. That is correct.

10 Q. Okay. And ...

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

12 Thank you.

13 **THE COURT:** Thank you, sir. You may step down.

14 **MR. FRETWELL:** Your Honor, may Investigator Perry be
15 excused?

16 **THE COURT:** You may. Thank you.

17 **MR. FRETWELL:** Thank you, Judge. Your Honor, the State
18 would at this time call Sergeant Dan Kelly.

19 **MADAME CLERK:** Please come forward.

20 **Daniel Kelly,** being duly
21 sworn testified as follows;

22 **MADAME CLERK:** Please have a seat. And will you state
23 your full name for the record.

24 **MR. KELLY:** Daniel Paul Kelly.

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

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

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

3 Q. Sergeant Kelly, before we get started, did you recently
4 have surgery?

5 A. Yes, sir.

6 Q. Okay. And are you in a little bit of pain?

7 A. Yes, sir, I am. Thank you.

8 Q. Okay.

9 **MR. FRETWELL:** Your Honor, with the Court's indulgence,
10 if Sergeant Kelly needs to step off or step out for a
11 moment, I just wanted to alert the Court of that at the very
12 beginning of his testimony.

13 **THE COURT:** Okay. I'm not going to keep anybody up
14 here that's not feeling well.

15 A. I think I'll be fine, Your Honor. Thank you.

16 Q. Sergeant Kelly, how long have you worked at the
17 Greenville County Sheriff's Office?

18 A. I've been with Greenville County for twenty years.

19 Q. And how many total years in law enforcement?

20 A. I got my first commission in 1989. So about twenty-
21 seven.

22 Q. Okay. And what are your -- what is your current
23 position and responsibilities?

24 A. I'm the sergeant over the Technical Services Unit with
25 the Greenville County Sheriff's Office. Encompasses crime

DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

534

1 analysis. It also encompasses video analysis, video
2 production, cell phone analysis. We take down a report,
3 website, a few other hats.

4 Q. Do your duties include the analysis of recovered phone
5 data in connection with cases being investigated by the
6 Greenville County Sheriff's Office?

7 A. Yes, sir, when requested.

8 Q. In cases where data has been recovered from actual cell
9 phone devices how do you receive and process the information
10 you're asked to analyze?

11 A. Usually it comes in several different formats. Most
12 common is through email if it's small enough. If it's in
13 the case of a cell phone dump from Cellebrite in the case of
14 like Investigator Perry would get that to me, it would be on
15 a disk, on a DVD or a CD.

16 Q. Okay. And is the -- is the kind of information you
17 work with image or photo based?

18 A. No, sir. Mostly it's -- deals with call logs, call
19 record details, texts or SMS and that sort of data.

20 Q. Is ---

21 A. And also geolocation data as well.

22 Q. When you say SMS, is that text?

23 A. That's text. It's Serial Message Service, yeah.

24 Q. Have you been qualified as an expert by any court in
25 this State?

1 A. Yes, sir, in circuit.

2 Q. Okay. In what particular area?

3 A. In the use of the GeoTime software.

4 Q. Okay. And did you analyze recovered cell phone data in
5 this particular case?

6 A. Yes, sir.

7 Q. Did you generate a report as a result of your analysis?

8 A. I did.

9 Q. And did you preserve the reports?

10 A. I did.

11 Q. What I'm going to ask you to take a look at are two
12 items of evidence that have been marked for identification.

13 They are Court's exhibit 6 and State's exhibit 55. Have you
14 reviewed and looked at those -- did you receive those disks
15 from Investigator Perry?

16 A. Yes, I did.

17 Q. And did you take the data -- what did you do with the
18 data from those two phones?

19 A. I ran those in the GeoTime software, the Call Records
20 Tool, specifically. And once it was input through there,
21 it's a data visualization program, I put those on disks and
22 gave those to Sergeant Weiner.

23 Q. Okay. And let's just be clear, State's exhibit 55
24 dealt with a Samsung phone and Court's exhibit 6 with a
25 Kyocera, is that correct?

1 A. That's correct.

2 Q. Okay. Now, let me show you what is going to be marked
3 as 67 and 66. I'm going to show you State's 66 and 67 and
4 ask if you recognize these disks?

5 A. Yes.

6 Q. How do you recognize them?

7 A. Those are the disks that I made.

8 Q. Are these your initials?

9 A. Those are my initials.

10 Q. Okay. And can you tell us -- do these disks contain
11 the reports that you generated from the information you
12 received from Investigator Perry with respect to this case?

13 A. Yes, they do.

14 Q. Okay. And are those the disks that you turned over to
15 Sergeant Weiner?

16 A. They are.

17 (Whereupon State's exhibits 68A, 68B and 68C were
18 marked for identification)

19 Q. Okay. This item is not in evidence. So I just want
20 you to take a look at what I've marked as 68A, B and C. Do
21 these look familiar to you?

22 A. Yes, sir, they do.

23 Q. Okay. In fact, did you or is one of your
24 responsibilities printing large maps like this?

25 A. It is.

1 Q. Did you actually print these ---

2 A. I did.

3 Q. --- for the use -- so just so we're absolutely certain,
4 let me -- have you looked at these three exhibits? Do you
5 know all three pages?

6 A. I'm familiar with them.

7 Q. I'm trying not to show them to the jury. I want you to
8 be -- why don't -- no, you can't step down. I want you to
9 be able to see. Did you at my request take these items that
10 are on this chart table here, compare them to your report?

11 A. I did.

12 Q. Okay. And are all of these communications contained in
13 your report?

14 A. They are.

15 Q. Okay. If I did not say the numbers for the record,
16 68A, B and C, three pages. Now, with respect -- and let me
17 ask you this question. With respect to State's 68A, B and
18 C, from which phone did those communications come? Which --
19 associated with which item number on your report?

20 A. I believe they were with the Samsung.

21 Q. Okay. Is it a Kyocera or a Samsung? If you could
22 refer to the item number, like the DW1 or 2.

23 A. I believe it's DW2.

24 Q. Okay. Take a look at the top -- and I know you don't
25 want to be here and you're in a lot of pain. Look at the

696

DANIEL KELLY - DIRECT EXAMINATION BY MR. FRETWELL

538

1 top of that.

2 A. Gotcha. Okay. It would be from the Kyocera.

3 Q. Thank you.

4 A. Sure.

5 Q. And that's DW?

6 A. That would be DW1.

7 Q. Thank you. With respect to DW2, the other phone, did
8 you determine that a text had been sent by a number
9 identified as Dezzie in the Samsung contacts and received
10 and responded to by the Samsung phone on the evening of the
11 robbery, January 20th, 2014?

12 A. Yes.

13 Q. And what was the content of this communication?

14 A. Can I refer to this ---

15 Q. Yes.

16 A. --- this sheet?

17 Q. Yes.

18 A. The text was sent from a contact identified as Dezzie
19 that said, you going to be in Anderson tomorrow? And
20 approximately a minute later a response to Dezzie was, I
21 don't know yet, but I will let you know.

22 Q. Okay. And approximately what time was that initial
23 text sent?

24 A. At approximately 22:26.

25 Q. What is that in ---

1 A. I'm sorry, 10:26 pm.

2 Q. Okay. Please answer any questions that Defense counsel
3 will have. Thank you, sir.

4 A. Thank you.

5 Cross Examination by Mr. Yarborough:

6 Q. Who is Dezzie?

7 A. I don't know. It's a contact that was on the ...

8 Q. And Dezzie's phone number is what?

9 A. Looks like it's 864-377-4917.

10 Q. 864-377 ...

11 A. 4917.

12 Q. And the responding -- to response to Dezzie's text, was
13 from what number?

14 A. I don't have what number it came from, just what number
15 it went to.

16 Q. What number did it go to?

17 A. 864-377-4917.

18 Q. So the Dez number, 864-377-4917, got a text at 10:00
19 saying are you going to be in Anderson tomorrow?

20 A. Correct.

21 Q. And then whoever texted Dez back said, I don't know.

22 A. I don't know yet, but I will let you know.

23 Q. I don't know yet, but I'll let you know. And that was
24 done at what time?

25 A. The response was approximately 10:27 pm.

5/2
698

- 1 **MR. YARBOROUGH:** One second.
- 2 (Pause)
- 3 Q. You analyzed the phone records in this case?
- 4 A. Yes, I did.
- 5 Q. Okay. And you saw -- you looked at Mr. White's phone?
- 6 A. That is the Kyocera or the Samsung?
- 7 **MR. FRETWELL:** He doesn't know them by name.
- 8 A. I don't know them by name.
- 9 Q. Well, I think it's -- is it ---
- 10 **MR. FRETWELL:** DW1.
- 11 Q. DW1. And there was a text sent from DW1 that said you
- 12 won't believe we've been robbed. Did you see that one?
- 13 A. I remember seeing that, yes.
- 14 Q. Okay. And there was a response to that one?
- 15 A. I don't recall what the response was without looking at
- 16 it again.
- 17 Q. Okay. But did that go to Dez?
- 18 A. I don't know.
- 19 Q. What do you mean you don't know?
- 20 A. I'd have to look at the ---
- 21 Q. Well, did ---
- 22 A. --- text ---
- 23 Q. --- it go ---
- 24 A. --- to see if -- there was quite a few texts on that.
- 25 Q. Did it go to 864-377-4917?

1 A. This particular text did. I don't know if the other
2 one did without looking at it.

3 Q. Okay. Well, can you look at it?

4 A. I don't have -- I don't have that.

5 Q. Okay. Oh, you don't -- okay, I gotcha.

6 A. I don't have those in front of me.

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

8 Thank you, Your Honor.

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

10 **Cross Examination by Ms. Ross:**

11 Q. Between the times -- do you know if between the times
12 of 11:25 and 11:35 on the night of the 20th were there texts
13 going back and forth then?

14 A. I wouldn't know unless I was able to see the texts.

15 **MR. FRETWELL:** Judge, he doesn't have any document or
16 any information in front of him. If she -- if Ms. Ross can
17 provide him with a copy of his report or the State's
18 exhibit, then I'm sure he can answer the question.

19 **MS. ROSS:** Well, I couldn't even open the report on my
20 computer. So it's hard to say. But would it be -- beg the
21 Court's indulgence.

22 (Pause)

23 **MS. ROSS:** Okay. I've got no further questions at this
24 time.

25 **MR. FRETWELL:** Judge, just briefly.

1 Redirect Examination by Mr. Fretwell:

2 Q. Could I see the document that you were looking at,
3 Sergeant Kelly? So your testimony was that at 22:27, which
4 is ---

5 A. 10:27 pm.

6 Q. --- 10:27 pm a text went to Dezzie?

7 A. Correct.

8 Q. From the Samsung phone?

9 A. (Affirmative nod).

10 Q. And what does it -- is that the line? The top one?

11 What does that ---

12 A. The top one. It says I don't know yet, but I will let
13 you know.

14 Q. Oh, I'm sorry. These are in reverse ---

15 A. In reverse.

16 Q. Okay. I apologize.

17 A. Yes.

18 Q. So ---

19 A. 10:26.

20 Q. --- at 10:26 a text from Dezzie ---

21 A. Correct.

22 Q. --- to the Samsung phone that said what on that bottom
23 line?

24 A. You going to be in Anderson tomorrow?

25 Q. And then a minute later ---

DANIEL KELLY - RECROSS EXAMINATION BY MS. ROSS

543

1 A. Correct.

2 Q. --- a text from the Samsung phone?

3 A. To Dezzie that states I don't know yet, but I'll let
4 you know.

5 Q. Thank you very much. I appreciate that.

6 **MR. FRETWELL:** No further questions, Judge.

7 **MS. ROSS:** Can I just ask one brief question on
8 recross, I guess?

9 **THE COURT:** I guess if Mr. Yarborough doesn't have some
10 questions.

11 **MS. ROSS:** I beg ---

12 **MR. YARBOROUGH:** Go ahead.

13 **MS. ROSS:** Sorry.

14 **MR. YARBOROUGH:** No, she ---

15 **MS. ROSS:** Go ahead.

16 **MR. YARBOROUGH:** I'm fine.

17 **THE COURT:** Go ahead, Ms. Ross.

18 **Recross Examination by Ms. Ross:**

19 Q. Were the times -- were the times and numbers the same
20 on -- well, I take it back.

21 **MS. ROSS:** I don't have any further questions.

22 **THE COURT:** All right. Thank you, sir. You may step
23 down.

24 **MR. FRETWELL:** And, Judge, may he be excused from the
25 courthouse?

1 **THE COURT:** Yes, sir, you're free to leave. Thank you,
2 sir.

3 A. Thank you.

4 **MR. FRETWELL:** Thank you, sir. Your Honor, at this
5 time -- may it please the Court. The State would call
6 Sergeant David Weiner.

7 David Weiner, being duly
8 sworn testified as follows;

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

11 MR. WEINER: David Weiner.

12 Direct Examination by Mr. Fretwell:

13 Q. Sergeant Weiner, how long have you been employed by the
14 Greenville County Sheriff's Office?

15 A. Sixteen years.

16 Q. Okay. And what is your current position and
17 responsibilities?

18 A. I'm a sergeant supervising the Violent Crimes Unit,
19 Homicide and Robbery.

20 Q. And those two units, Robbery and Homicide, were
21 recently joined, is that correct?

22 A. Correct.

23 Q. Prior to that time were you assigned to one of those
24 two units?

25 A. Specifically to robbery.

1 Q. Okay. And how long ago did the --- or those units
2 combine?

3 A. Thirty days.

4 Q. Okay. All right. Let me take you back to January the
5 20th, 2014. Did you or were you involved or made aware of
6 an incident that occurred at the Olive Garden on North
7 Pleasantburg Drive at Cherrydale on January 20th, 2014?

8 A. I was made aware on the 21st, yes, sir.

9 Q. Okay. And according to your investigation
10 approximately what time did the incident occur?

11 A. Sometime just prior to 11:28 pm on January 20th, but
12 most likely around 11:25 pm.

13 Q. The location of Olive Garden on North Pleasantburg at
14 Cherrydale, is that location within Greenville County?

15 A. It is, yes, sir.

16 Q. How did you -- tell us how you became involved in the
17 case.

18 A. Every morning I receive a copy of any armed robbery or
19 robbery type incident that occurs in the County. I'll
20 review each one and then assign them to an investigator. So
21 I read that case that morning and assigned it to
22 Investigator Motes.

23 Q. So then he becomes what at that point?

24 A. He becomes the primary investigator.

25 Q. How did -- how did your unit or does your unit handle

1 cases like this? Does one person do all the work or how do
2 you handle it?

3 A. Each one is a case-by-case basis. Certain cases can be
4 opened and closed fairly quickly. A case like this, it gets
5 in-depth, requires several people from the unit to assist
6 with paperwork, interviews, collection of evidence, things
7 of that nature.

8 Q. Kind of like a team?

9 A. Yes, sir.

10 Q. Okay. Can you tell the jury the difference between
11 what your unit does versus what Officer Middleton, who
12 initially responded to the scene? What are the difference
13 of duties there?

14 A. The uniform patrol deputies are your front-line troops.
15 They answer 911. They pull cars over. They get out with
16 the suspicious people to try to deter crime.

17 My unit specifically responds to the crime after it's
18 already occurred. It's a very rare instance where we can
19 actually prevent one. Generally what we do is investigate
20 after the fact.

21 Q. Okay. Do you direct that investigation?

22 A. Not generally, no, sir. Only if I see a mistaken step,
23 if they missed a piece of evidence or didn't interview
24 somebody I felt they should interview. And I'll learn that
25 from reading their supplemental reports.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

547

1 Q. And I asked the wrong question. Does your unit or the
2 investigator that you assign direct the investigation?

3 A. Yes.

4 Q. Okay. Did you personally meet with an individual by
5 the name of Damion Riley on January 22nd of 2014?

6 A. Yes, sir, I did.

7 Q. Did you -- were you -- did you participate in any kind
8 of a written statement that he gave at that time?

9 A. Yes, sir.

10 Q. How did you participate?

11 A. When a witness comes in -- I assisted by talking to
12 him, just briefly getting to know him a little bit and then
13 trying to obtain the facts in the incident that occurred. I
14 will write the statement for him and allow him to make any
15 additions, deletions or corrections to it. And once he's
16 happy with the statement provided, he'll sign it.

17 Q. And could you tell me why Damion Riley was asked to
18 come and provide a statement?

19 A. He was the last person to leave the Olive Garden prior
20 to the incident occurring. So I wanted to make sure he was
21 talked with to see if we felt he would be responsible for
22 putting the dishrag in between the doors.

23 Q. Okay. And when you talk to these witnesses is that
24 information relevant to the conduct and -- conduct of your
25 case or your investigation?

1 A. Yes, sir.

2 Q. Okay. What information did you determine from that
3 interview with Mr. Riley that was significant to your
4 investigation?

5 A. A couple of things. The first being that when he
6 walked outside for fear of losing his job he ensured that
7 those doors were locked. And second of all, that he ---

8 **MR. YARBOROUGH:** Objection to hearsay.

9 **MR. FRETWELL:** Your Honor, it's not being offered for
10 the truth, it's being offered ---

11 **THE COURT:** Sustained.

12 **MR. FRETWELL:** Sustained?

13 **THE COURT:** He's testifying why he -- the officer did
14 what he did.

15 **MR. FRETWELL:** Okay.

16 Q. Go ahead. Repeat your answer.

17 A. That he checked the doors to ensure that they were
18 locked after he left and also that a -- his girlfriend had
19 picked him up that night.

20 Q. Were you able to determine when Damion Riley clocked
21 out that night?

22 A. Yes, sir.

23 Q. Okay. And when was that?

24 A. 11:18 pm.

25 Q. All right. Did you -- did he provide any other

1 information with respect to -- that was relevant to your
2 investigation from that interview?

3 A. Just the name of his girlfriend and I think a phone
4 number where I could speak to her.

5 Q. Okay. If I showed you a copy of your report would that
6 potentially refresh your recollection?

7 A. I have it up here, sir, if you'd like.

8 Q. Okay. If you'd look at that paragraph and just read
9 through that and see if your answer changes or if it stays
10 the same.

11 (Pause)

12 A. Prior to exiting he spoke with the Defendant, Mr.
13 White.

14 Q. Okay. And what, if anything, was related to you about
15 that conversation?

16 A. He said Mr. White told him that he made a few thousand
17 dollars over the weekend rapping in Charleston.

18 Q. All right. And you've been in the courtroom during all
19 of this testimony. There's a picture up here, State's
20 exhibit 7. State's exhibit 7, I'm not going to go through
21 the process of flipping the light on and off, but did you --
22 were you familiar with this photograph?

23 A. Yes, sir.

24 Q. Okay. And what information did you -- is this what you
25 were -- when you spoke with Mr. Riley did you specifically

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

550

1 ask him about what's contained in that photograph?

2 A. Yes, sir.

3 Q. Okay. And his response was what?

4 A. It's a dishtowel or a towel from the Olive Garden.

5 Q. How about whether or not it was there when he left?

6 A. He ensured me that it was not.

7 Q. Okay. Was there any information that was useful to

8 your investigation gleaned by either the forensics

9 department or the K-9 track?

10 A. One print recovered that was not returned to anybody

11 and the K-9 track ending in what they call, I think, a

12 drive-off.

13 Q. And were you aware, I think it's already in evidence,

14 of the towel that was collected from the front door?

15 A. Yes, sir.

16 Q. Okay. On January the 22nd of 2014 did you meet, that

17 same day that you met with Damion Riley, did you also meet

18 with Investigator Motes, who's now Sergeant Motes, and the

19 Defendant, James White?

20 A. Yes, sir.

21 Q. How did that come about?

22 A. Mr. White was invited down to the Law Enforcement

23 Center to give a statement just as Mr. Riley had done.

24 Q. And where did that conversation with Mr. White take

25 place?

1 A. In the robbery office.

2 Q. Okay. And did -- and this office is similarly laid out
3 as Sergeant Motes earlier testified, is that correct?

4 A. Yes, sir.

5 Q. Okay. In what capacity was Mr. White being interviewed
6 at that time?

7 A. As a victim or a witness.

8 Q. Was he under -- was he under arrest?

9 A. No, sir.

10 Q. Was he placed in handcuffs?

11 A. No, sir.

12 Q. Did you communicate anything to him that might suggest
13 he was not free to leave?

14 A. No, sir.

15 Q. Can you identify him for the Court?

16 A. Yes, sir. He's seated to my right in the maroon shirt
17 with white polka dots.

18 (Whereupon the witness identified the Defendant, James
19 White)

20 **MR. FRETWELL:** Your Honor, let the record reflect that
21 the witness has identified the Defendant, James White.

22 Q. Who was present when you -- did you participate in the
23 interview?

24 A. Yes, sir.

25 Q. Okay. Who was present when this conversation was going

1 on? Was it you, Motes and Mr. White?

2 A. Yes, sir.

3 Q. Okay. Were there anybody else -- were any of the other
4 investigators in there? Do you recall?

5 A. I don't recall, but it's very likely that they were in
6 and out dealing with other cases or situations.

7 Q. Okay. And at some point did the Defendant, Mr. White,
8 provide Investigator Motes with a handwritten statement?

9 A. Yes, sir.

10 Q. And you reviewed that statement?

11 A. Yes, sir.

12 Q. Okay. Was the statement -- was the Defendant
13 restrained at the time that he gave that statement?

14 A. No, sir.

15 Q. Was he restrained at the time you talked to him?

16 A. No, sir.

17 Q. Did you allow him to take any breaks while or before
18 you talked with him?

19 A. I don't recall him taking one, but if he asked, it's
20 not an issue, sir.

21 Q. And did he make any requests of you that you recall?

22 A. No, sir.

23 Q. Did you or anyone promise him anything in exchange for
24 giving you that statement?

25 A. No, sir.

1 Q. Did you coerce or threaten him into talking to you?

2 A. No, sir.

3 Q. To the best of your knowledge were any statements made
4 by him given freely and voluntarily?

5 A. Yes, sir.

6 Q. Did you come into possession of two cell phones that
7 have been entered into evidence in this case and identified
8 as DW1, DW2 or State's 45 and 46?

9 A. Yes, sir.

10 Q. Okay. How did you -- how did you personally come into
11 possession of those two cell phones?

12 A. They were initially turned over to Investigator Motes,
13 but shortly after that he had to leave for the day.

14 Q. Okay. And then the DW1, DW2 is your designation?

15 A. Yes, sir, my initials.

16 Q. Where did you place those phones during the pendency
17 from the time that you received them until today?

18 A. Our property and evidence storage unit.

19 Q. Okay. Did you discuss with Mr. White the conversation
20 that you had learned from Mr. Riley took place shortly
21 before the robbery?

22 A. Yes, sir.

23 Q. What specifically did he tell you about that
24 conversation?

25 A. That he had earned seven thousand, five hundred dollars

1 rapping in Charleston from door sales or ticket sales from
2 people entering.

3 Q. And during a break in the interview did you contact the
4 event promoter?

5 MR. YARBOROUGH: Objection, Your Honor. It's going to
6 be hearsay.

7 MR. FRETWELL: I haven't asked ---

8 MR. YARBOROUGH: He asked if he contacted him. I know
9 ...

10 THE COURT: Overruled.

11 MR. FRETWELL: Thank you, Judge.

12 Q. Did -- during a break in the interview did you contact
13 the event promoter?

14 A. Yes, sir.

15 Q. Where did you obtain the information to be able to
16 contact that promoter?

17 A. From a flier located on Mr. White's phone.

18 Q. Okay. Did you have a conversation with that promoter?

19 A. Yes, sir.

20 Q. Okay. After that conversation did you speak to Mr.
21 White again?

22 A. Yes, sir.

23 Q. Did you inform Mr. White of your conversation with the
24 promoter?

25 A. Yes, sir.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

555

1 Q. And what did he say at that time?

2 A. He told me that he earned seven thousand, five hundred
3 dollars from other rappers paying him, not from the door
4 ticket sales.

5 Q. So he changed his story at that point?

6 A. Yes, sir.

7 Q. Did you ask him about this seventy-five hundred dollars
8 that he told Mr. Riley he earned over the weekend or he got
9 at the concert?

10 A. Yes, sir.

11 Q. And what was his response?

12 A. He told me he'd spent it all on women and booze at the
13 clubs.

14 Q. Did you ask him where specifically he spent all this
15 money?

16 A. Yes, sir.

17 Q. And what did he say?

18 **MR. YARBOROUGH:** Your Honor, I'm going to continue to
19 object to this. This is classic hearsay.

20 **THE COURT:** These are statements from your client.

21 Overruled.

22 A. He said he did not recall.

23 Q. And did you ask him whether or not anybody went with
24 him?

25 A. Yes, sir.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

556

1 Q. And how did he respond?

2 A. That he didn't remember who.

3 Q. Okay. Did you form an opinion as to why Defendant
4 White chose to bring up this subject and discuss it with
5 Damion Riley immediately before the robbery?

6 A. Yes, sir.

7 Q. And did your opinion -- the opinion that you formed,
8 did it factor into your charging decision?

9 A. Yes, sir.

10 Q. And what was that opinion?

11 A. That he was trying to set the stage for him coming --
12 soon coming into possession of a large sum of money.

13 Q. On January the 24th, which was now two days later, did
14 you do anything with respect to -- well, let me ask you
15 this. Did the Olive Garden restaurant have a camera of any
16 kind?

17 A. Yes, sir.

18 Q. Okay. What kind of camera did it have and what was its
19 purpose?

20 A. There was a camera. I believe it's directly over the
21 front door. And it covered three spots from to-go orders,
22 if you were to call in, pull in a spot, they'll bring the
23 food out to you. You don't have to come out of the car.
24 And that's its sole purpose.

25 Q. Okay. And do you know where the controls for that

1 camera are located?

2 A. I don't know where -- they were in the restaurant. We
3 took custody of them so that we could download the disk.

4 Q. Okay. Did you, in fact, get a disk of images from this
5 camera?

6 A. Yes, sir.

7 Q. And did you make a photograph or an image from that
8 disk that was relevant to your investigation or you thought
9 might be relevant to your investigation?

10 A. An image I thought was relevant, yes, sir.

11 Q. Okay. I'm going to show you State's exhibit 69. I'm
12 going to ask you if you recognize the image and then whether
13 it accurately reflects what it -- whether you -- it is in
14 the same condition as it was when you pulled it off the
15 disk?

16 A. Yes, sir, I recognize it. And it is in proper
17 condition that I -- from when I pulled it from the disk.

18 Q. Okay. And why was that photo to you -- why did you
19 think it might have some relevance?

20 A. It is in close time-frame to when I felt the robbery
21 most likely occurred.

22 Q. And what does it generally depict?

23 A. A vehicle traveling across the parking lot close to
24 those parking spaces.

25 Q. Okay.

1 **MR. FRETWELL:** At this time, Your Honor, the State
2 would move State's exhibit 69 into evidence.

3 **MR. YARBOROUGH:** Without objection.

4 **MS. ROSS:** No objection.

5 **THE COURT:** So admitted.

6 (Whereupon State's exhibit 69 was admitted into
7 evidence)

8 Q. What did you do in pursuing this particular photograph
9 or image in the course of your investigation to determine
10 whether it did have any relevance to you -- to the incident?

11 A. Released it to the media.

12 Q. Okay. And what was the result of that?

13 A. I was contacted by an area resident.

14 Q. Okay.

15 A. And this resident was able to identify that being their
16 vehicle and that they were in that area for lawful purposes.

17 Q. Okay. And was it a male or female that called in?

18 A. A female.

19 Q. Okay. All right. Let me now ask you, those two
20 exhibits, those two cell phones, State's exhibit 45 and 46,
21 DW1 and DW2, the Kyocera and Samsung flip phone, did you
22 request that data be extracted from these phones?

23 A. Yes, sir.

24 Q. And once the data was extracted was an analysis
25 performed by Sergeant Kelly?

1 A. Yes, sir.

2 Q. Did the data recovery and analysis assist you in your
3 investigation?

4 A. Yes, sir.

5 Q. And really, how did the results of the analysis of
6 these two phones affect your investigation?

7 A. They were primarily some of the largest pieces of
8 evidence for the case in my charging documents.

9 Q. Okay. I'm going to now show you what has been
10 previously marked as State's exhibit 68A, B and C. Have you
11 seen these documents before?

12 A. Yes, sir.

13 Q. Okay. And how many document pages are there?

14 A. Three.

15 Q. Okay. And are these documents ones that were compiled
16 from the information provided to you by Sergeant Kelly?

17 A. Yes, sir.

18 Q. Okay. Are they, first of all, accurate representations
19 of the data that was on that report?

20 A. Yes, sir.

21 Q. Does it include all the data ---

22 A. No, sir.

23 Q. --- that was on that report?

24 A. No, sir, it does not.

25 Q. Does it necessarily go chronologically line by line

1 through the report?

2 A. No, sir, it does not.

3 Q. Why are these particular communications on these three
4 sheets of paper?

5 A. Because they are directly related to the case that
6 we're here today for.

7 **MR. FRETWELL:** Your Honor, at this time the State would
8 move State's exhibit 68A, B and C into evidence.

9 **MR. YARBOROUGH:** And, Your Honor, if he's talking about
10 those poster boards right there, I'd like -- I've got a
11 matter to take up out of the presence of the jury. I
12 object.

13 **THE COURT:** All right. Ladies and gentlemen, we'll go
14 ahead and use this opportunity to take a break. We'll take
15 about a fifteen minute break. Y'all step back to the jury
16 room and don't discuss the case.

17 (Whereupon the jury exited the courtroom at 3:19 pm)

18 **MR. YARBOROUGH:** Your Honor, that's the first time
19 we've seen these reports today. This hasn't been turned
20 over before to the Defense. I'm not saying that the
21 substance of what's in here hasn't been turned over, but how
22 this was determined has not been turned over.

23 If you notice, it's set up in some type of form that
24 I'm not sure what it is, but I have no way of knowing how it
25 fairly and accurately represents any evidence that's before

1 the Court. You see there are all these representations of
2 the word deleted down the sides. I have no idea what that
3 means, where that comes from or if it's fairly and
4 accurately -- it hasn't been testified to in this courtroom.

5 First call after the robbery, this of itself is
6 objectionable.

7 **THE COURT:** I can't see what you're ---

8 **MR. YARBOROUGH:** Well, it's ...

9 **MR. FRETWELL:** Judge, before he gets too far along, I
10 agree. I have not had the witness -- because I was trying
11 to keep the exhibits outside the presence of the jury and I
12 didn't feel like I could go into explaining all that. I'd
13 be happy to have the officer testify to this exhibit and
14 what these things are and what they represent.

15 **MR. YARBOROUGH:** But you're not going to try to move
16 them into evidence or use them in the courtroom?

17 **MR. FRETWELL:** Absolutely.

18 **MR. YARBOROUGH:** Okay. Well, I object.

19 **MR. FRETWELL:** But I agree with him that I haven't laid
20 the proper foundation because all I've asked him is if he
21 reviewed it. I didn't ask him what the different colors
22 mean. I didn't ask him what the term deleted means. I
23 didn't ask him where -- where these labels from, the empty
24 spaces. I can do all that. I just couldn't do it with the
25 jury sitting right there because I didn't want to show it to

1 the jury.

2 So I'm happy -- I'm happy to go through that with the
3 officer right here and now and you can hear all that
4 foundation. But he's going to testify to what those words
5 deleted means, what a completed call is, the labels on the
6 side, the blank spaces ---

7 **THE COURT:** Well, I'm not sure what Mr. Yarborough's
8 complaint is. Is it because they're blown up and on a
9 poster board?

10 **MR. YARBOROUGH:** Well, ---

11 **THE COURT:** Or because you don't like the color scheme
12 or you, I mean, ---

13 **MR. YARBOROUGH:** Well, all of the above so far, I
14 agree. But some of this stuff is just really -- it's, I
15 mean, Your Honor, ---

16 **THE COURT:** Well, it's supposed to be -- if it's not
17 prejudicial, it shouldn't be introduced by the State.

18 **MR. YARBOROUGH:** Well, how about this, number -- if you
19 read here, there are a number of women on the jury. I don't
20 -- this looks like it was done on January the 19th. My home
21 girl's coming to Two Notch Road. They sell, I mean, it's
22 just -- there's no reason for that to be -- it's only being
23 entered to prejudice my client.

24 **MR. FRETWELL:** That is not correct, Judge.

25 **MR. YARBOROUGH:** But, I mean, Judge, ---

1 **THE COURT:** Why don't we ---

2 **MR. YARBOROUGH:** He's talking about prostitution.
3 They're not on charge -- they're not charged here with
4 having prostituted women. That's what that says right
5 there. That's talking about they sell their -- I mean, I'm
6 not saying it's -- he can't -- Judge, he can't sit there and
7 argue that my client's a bad guy because he's prostituting
8 women.

9 **MR. FRETWELL:** No, sir. Judge, that's ---

10 **MR. YARBOROUGH:** But that's what it says.

11 **THE COURT:** What's the purpose of that?

12 **MR. FRETWELL:** Judge, this is -- this is the day before
13 the robbery. In the afternoon he's communicating with
14 somebody about what a good hotel in -- what a good hotel --
15 he references Two Notch Road in Columbia and wants to know
16 the name of a good hotel. That indicates to me that he's
17 heading down there soon. He's talking about ---

18 **THE COURT:** Who is he?

19 **MR. FRETWELL:** This is ---

20 **THE COURT:** Mr. White?

21 **MR. FRETWELL:** Yeah, Mr. White. These are all from Mr.
22 White's phone. And he's already referenced in his
23 conversation with Sergeant Weiner that he spent all his
24 money on these things, women and clubs and alcohol. And the
25 State's position is he did do some of that.

1 He set up before the robbery to spend a bunch of money.
2 After the robbery he went down there -- and I think it's
3 fair for the jury to determine whether that's exactly what
4 he did in response to the question that Sergeant Weiner
5 asked him about what happened to the money.

6 **MR. YARBOROUGH:** That he was prostituting women?

7 **MR. FRETWELL:** Not prostituting ---

8 **MR. YARBOROUGH:** That's exactly what it says.

9 **MR. FRETWELL:** Judge, I just -- I took the texts as
10 they are. Those are these texts from the Defendant's phone.
11 If there's a word or two that he wants me to take a magic
12 marker to, I'll obliterate them. But the idea is that he's
13 doing exactly what he said to this sergeant, that he spent
14 money on booze and girls. And that's what he told the
15 sergeant.

16 Only problem is he did that -- he's talking about doing
17 it in the future on the 19th. He works on the 20th, no
18 question. Thereafter, not back to work, that he's telling a
19 partial truth to the officer.

20 He did spend the money, but it's the money from the
21 robbery. And he didn't spend seventy-five hundred dollars
22 at that club down there. He spent his half of the proceeds
23 of that. And I think it's a fair extrapolation from the
24 texts that come from his phone.

25 But, Judge, I agree, that word is offensive. I will --

1 I will scratch through that word with a -- I've got a marker
2 right over here. But it's exactly what he told -- it's
3 exactly what he told Sergeant Weiner, I spent the money on
4 girls and booze.

5 **MR. YARBOROUGH:** There's a difference in girls and
6 booze and prostitution, Allen. You know that.

7 **MR. FRETWELL:** Well, I don't know how to make that text
8 make sense, but that's exactly what he's saying. He's not
9 saying he ---

10 **MR. YARBOROUGH:** You're using it to prove a separate
11 crime in order to prove this crime, which is ---

12 **MR. FRETWELL:** Absolutely not. I'm talking about
13 confirming what he told to the officer, he did spend money
14 in that way. He spent it after the robbery in Columbia on
15 Two Notch and is asking some guy named Trouble where's a
16 good hotel that's not hot.

17 **THE COURT:** Well, tell how that's relevant.

18 **MR. FRETWELL:** Because, Judge, it shows that what he
19 said to Sergeant Weiner about spending money -- this is --
20 he talked to Sergeant Weiner several days later. But he's
21 telling a partial truth. He did go and spend money on girls
22 and booze at a club or whatever, but it wasn't money that he
23 recovered from that weekend down in North Charleston.

24 He knows that because he talked to the promoter down
25 there. They didn't make any money that weekend. He made

1 money from that robbery and spent that money down there.

2 **THE COURT:** There's no evidence that he didn't make any
3 money that weekend. The evidence ---

4 **MR. FRETWELL:** No, he did make some money, Judge.

5 **THE COURT:** The evidence is, hey, I made it from the
6 rap show and then apparently the information was not that.
7 Then I made it from the people who were putting on the rap
8 show.

9 **MR. FRETWELL:** That rapped with him, yes, Judge.

10 **THE COURT:** So there's no evidence that he didn't make
11 any money.

12 **MR. FRETWELL:** That is -- that is correct.

13 **THE COURT:** I'm not really sure how that -- the fact
14 that he planned on spending money down there indicates that
15 there's a robbery.

16 **MR. FRETWELL:** Well, I would agree that based on the
17 Court's ruling I'm unable to establish that as well as I had
18 hoped when this document was prepared, yes, sir. I had -- I
19 had anticipated that the Court would permit that evidence in
20 ---

21 **THE COURT:** What evidence?

22 **MR. FRETWELL:** The evidence of his conversation with
23 the promoter ---

24 **THE COURT:** Well, how are you going to get that in?

25 **MR. FRETWELL:** I'm not going to get it in.

1 **THE COURT:** I mean, how would you get it in?

2 **MR. FRETWELL:** Because it's not being offered for the
3 truth. It's being offered to show the reaction of this --
4 of Mr. ---

5 **THE COURT:** Well, clearly you're trying to say right
6 now what -- it was offered for the truth because you're
7 trying to say that he didn't make that kind of money down
8 there and ...

9 **MR. FRETWELL:** Well, ---

10 **THE COURT:** What else you got on there?

11 **MS. ROSS:** There's a reference first call after
12 robbery, which is just added in. First call to baby after
13 robbery, which is -- robbery, which is highly prejudicial
14 because he just texted her the second it happened saying,
15 baby, we've just been robbed. And then ---

16 **MR. YARBOROUGH:** And why isn't that ---

17 **MS. ROSS:** --- they clearly ---

18 **THE COURT:** Wait a minute.

19 **MS. ROSS:** And then they've got two months of just back
20 and forth that's just all put in there ---

21 **THE COURT:** All right.

22 **MS. ROSS:** --- for the prejudicial nature ---

23 **THE COURT:** Ms. Ross. All right. There was some
24 information in this case that there was a text, hey, we just
25 got robbed. All right. Is that the text?

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

570

1 **THE COURT:** --- you want that to be reflected that,
2 hey, they had some sort of relationship and it's going on
3 conveniently after the robbery.

4 **MR. FRETWELL:** It's not just that, Judge. It's ---

5 **THE COURT:** All right. But this thing about we're
6 going to Charleston and so that's an indication that ---

7 **MR. FRETWELL:** No, sir. I ---

8 **MS. ROSS:** Well, Judge, I should have objected to that
9 coming in ---

10 **MR. FRETWELL:** Could I finish answering the Court's ---

11 **THE COURT:** What?

12 **MR. FRETWELL:** Your question is what was the relevance?

13 As I tried to tell you earlier, because of the statements
14 that were made to Sergeant Weiner, I believe that I would
15 have in evidence some information that shows that he didn't
16 make any money in the rap concert that weekend for his
17 birthday. Therefore, the money that he's spending -- those
18 texts were evidence of that. If the Court determines that
19 they're not appropriate, we'll X them out.

20 The rest of this information, Sergeant Weiner can tell
21 you how every line relates to his investigation and to the
22 ultimate charging decision and continued investigation of
23 this case to establish ---

24 **THE COURT:** White, 7:25 am in pink, I mean, yellow.

25 White -- 67 Keem completed -- call deleted. Other than

1 there was a call from one Defendant to the other, ---

2 MR. FRETWELL: Yes, sir.

3 THE COURT: --- what else does anything else on that
4 piece of paper indicate?

5 MR. FRETWELL: Judge, there's all kinds of ---

6 THE COURT: No, with that 7:25 call.

7 MR. FRETWELL: Right here?

8 THE COURT: Yeah.

9 MR. FRETWELL: Okay. So this is ---

10 THE COURT: No, one more below.

11 MR. FRETWELL: Here?

12 THE COURT: Yeah. You got White and Keem.

13 MR. FRETWELL: Okay. The officer will testify that the
14 *67 is what you put in before you block a number. So if
15 you're calling somebody, you don't want your number to show
16 up on their phone, you type in *67.

17 THE COURT: All right. And so what? What does that
18 mean?

19 MR. FRETWELL: It's to signal that they want to have
20 separation, that they want to disassociate and put some
21 space between the two because they just committed this
22 robbery. It's evidence of that, Judge. And it's on his own
23 phone. And then moreover, he deleted it.

24 THE COURT: Who -- you mean you're surmising that
25 that's why they did it?

1 **MR. FRETWELL:** Well, I think I could argue from a fair
2 understanding of the texts that are on -- that were
3 recovered from his phone, Judge.

4 **THE COURT:** That that's what they're trying to put
5 distance between themselves just because *67?

6 **MR. FRETWELL:** I think that's a fair extrapolation of
7 that. I think they're free to argue that it's not, Judge.
8 It's evidence ---

9 **THE COURT:** It's evidence to me ---

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

11 **THE COURT:** --- that White called Keem and put -- and
12 wanted to block it and that's it.

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

14 **THE COURT:** To try and think that there's some other
15 meaning there when, you know, you're just getting up
16 speculating what the deal is.

17 **MR. FRETWELL:** Well, Judge, to the triers of the facts
18 I'm attempting to put evidence that came from the phone
19 around the time of the robbery that relate to the robbery.
20 He talks about in here, he says -- this is the afternoon of
21 the robbery, some eight hours before. He's texting somebody
22 named Antwanett. I got something lined up.

23 And then it -- this is not even the first page. If I
24 had the first page, Judge, there's other texts that talk
25 about -- he's communicating with his girlfriend. Don't

1 worry, I got something planned. I got something lined up.

2 He says that in the preceding days to the robbery.

3 I think it's fair for the State to be able to put that

4 evidence in front of the jury and argue that what he's

5 talking about is this robbery. I'm not trying to be

6 disrespectful, Judge, but that's the evidence ---

7 **THE COURT:** I'm not accusing you of being

8 disrespectful, ---

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

10 **THE COURT:** --- I'm trying to figure out the relevancy.

11 I mean, you're just speculating on all that stuff. I got

12 something lined up. Oh, okay, well, that means that we've

13 got a robbery planned.

14 **MR. FRETWELL:** Judge, it's the same argument with

15 respect to those photographs. Because they're close in

16 time, they have some significance because the argument will

17 be made by me that they relate specifically ---

18 **THE COURT:** Between Antwanett ---

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

20 **THE COURT:** --- and White? That -- I got something

21 lined up. I ain't tripping. Y'all be safe 'cause be

22 worried about y'all. That is supposed to indicate that I'm

23 getting ready to go do a robbery?

24 **MR. FRETWELL:** I think it's a fair extrapolation with

25 the rest of the texts that -- I'd like for you to see the

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

1 entire -- all three documents and take a look at it.

2 **THE COURT:** I'll be happy to look at anything you want
3 me to look at.

4 **MR. FRETWELL:** Thank you, Judge. I'm going to get the
5 other ...

6 (Pause)

7 **MR. FRETWELL:** Judge, what I'd really like to have
8 happen is for the officer to tell you exactly the
9 significance of all of these because that's what he's
10 prepared to testify to. Would you allow him to do that?

11 **THE COURT:** Well, I don't know. I'll certainly allow
12 him to start.

13 **MR. FRETWELL:** Yes, sir. All right. Let me get the
14 ...

15 **THE COURT:** All right. Well, we're going to take about
16 a ten minute break while we're doing this.

17 **MR. FRETWELL:** Okay.

18 **THE COURT:** You can organize whatever you want.

19 (Whereupon court was in recess at 3:37 pm)

20 (Whereupon court reconvened at 3:46 pm)

21 **THE COURT:** All right. Go ahead.

22 Proffered Testimony by Mr. Fretwell Continued:

23 Q. Sergeant Weiner, can you explain these documents to the
24 Court and why this information is on here and how it relates
25 to your investigation?

1 A. Yes, sir. Is it okay if I go line by line with you,
2 sir?

3 **THE COURT:** You may.

4 A. If you see a blank here, it's because it's a repeat of
5 what's exactly above it. So the blank indicates it's from
6 White. The blank here indicates it's to Keem. Still on the
7 21st of October.

8 These first three are important to my investigation
9 because as it continues, again, we go as far back as this
10 phone had any record of Mr. White talking to Mr. Gadsden.
11 Every single one of these was deleted. There wasn't a
12 single contact between Mr. White and Mr. Gadsden that was
13 left intact. They attempted to delete every single one.

14 We come down here, White sends a text or SMS to Crime
15 on the 2nd of December. He says, lock me in Saturday,
16 February 22nd. I'm going to pay you January 22nd.
17 Important to me because this was two days after the robbery,
18 all of a sudden now he's going to come into money for
19 January 22nd.

20 The same day, three minutes later, he text messages an
21 unknown person Wessie, Weezy, 3:01 pm, you want to get on
22 the show at Sho Tyme, January 18th, let me know. We making
23 fliers today.

24 He texted that same individual just a minute later,
25 this Jr. G, his stage name. This Weezy individual texted

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

1 back to him the next minute. Is it okay if I use foul
2 language? If I just read it?

3 **THE COURT:** That's fine.

4 A. It says, bruh on some real shit. I ain't doing no more
5 free shows since my CD out. Now that's somebody texting Mr.
6 White. Mr. White responds back to him, I know what time it
7 is, my n-i-g. What you charging? And then this individual
8 writes back to White, one hundred dollars.

9 That is important to me because Mr. White had told me
10 that at the rap concert on the 18th people had paid him, had
11 paid Mr. White to rap with him. But this text message, it
12 clearly contradicts that and says that this individual --
13 that Mr. White needs to pay this individual to rap with him.

14 And he continues that conversation, Imma lock you in.
15 He's going to pay the hundred dollars. Seven minutes later
16 he tells whoever Corey is, add Weezy to the show.

17 He then asks his mother, are you still going to cover
18 the gas? And mother responds with a two-part text. The
19 tank will be full, but if y'all got gas money since y'all
20 not paying the rent, just bring the car back the way y'all
21 received it. I initially said if you pay your rent I would
22 cover the gas. But from the looks of it, y'all not.

23 This is important to me with some of these others down
24 below and on the next couple of pages showing that Mr. White
25 was experiencing a very difficult time financially, which

1 gives him the reason for committing this robbery.

2 Again, we have a message here between Brandon and White
3 on the 3rd of December. He says not a word I like to say.
4 Uses the N word. I can't hit that lick. Too risky in the
5 daytime.

6 It's a deleted message. And I've worked armed
7 robberies now for -- in some capacity for nine years. Hit
8 that lick is commit a robbery.

9 **THE COURT:** I know what it is.

10 A. White to Keem, again, just these two, what's important
11 here, White to Keem not long after he talks to this Brandon
12 fellow and says can't hit the lick, too risky in the
13 daytime, don't come again. I'll explain tomorrow. And Mr.
14 Gadsden immediately responds back, word.

15 My thoughts being Mr. White's telling Mr. Gadsden,
16 don't come by my work anymore. Nobody needs to see your
17 face anymore.

18 Elite Visa just indicating that he's down to three
19 dollars and ninety-three cents. Two more contacts. Again,
20 just continuing to show that any contact between Mr. White
21 and Mr. Gadsden is deleted.

22 I have Cricket indicating, which is a cell phone
23 provider, that he needs to pay fifty dollars and forty-one
24 cents or his phone's going to get cut off.

25 I have Corey, which is the same person that he was

1 sending a text to about adding somebody to the show. So
2 most likely the promoter. That Corey fellow is asking Mr.
3 White, when are you going to send me the other hundred
4 dollars? A deleted call between Mr. White and Mr. Gadsden.

5 Two more indicating money issues. One from the Visa,
6 one from the phone. He's below the twenty dollar threshold
7 for his Elite Visa. And if he doesn't pay fifty dollars by
8 midnight on this day his phone will get cut off.

9 Baby identified through my investigation by the phone
10 number is Mr. White's girlfriend, Katrina Ferguson. She's
11 telling him more money trouble. My car note's going to be
12 over three hundred with the late charges. He responds back,
13 I love you. Phone back on because I couldn't get no texts.
14 So for a couple of days he couldn't pay the bill.

15 This one White -- Mr. White to whoever Ammo is, 410
16 Sulphur Springs Road, Apartment L-5, we just used that to
17 show that that premise that we searched was actually, in
18 fact, his residence.

19 Again, Elite Visa, money trouble. Now he's down to
20 eighteen cents.

21 Here is Mr. White to his girlfriend, Katrina Ferguson,
22 on the 31st of December. He sends her a text that says love
23 you too. Next week my last week working here. Almost
24 telegraphing that he's done working at Olive Garden. A
25 deleted between Mr. White and Mr. Gadsden.

1 Here more money trouble between himself and his
2 girlfriend. I am on the -- I know ---

3 **THE COURT:** All right. So what you want this to do is
4 to show that he's having financial difficulties starting
5 back in October. And because he's having financial
6 difficulty, you believe that it makes him subject to
7 committing an armed robbery.

8 **MR. FRETWELL:** It provides motive, Your Honor. It
9 provides motive.

10 **THE COURT:** You also want to show that because he and
11 one or more people, I guess maybe they're all White, White
12 and Keem deleted calls that, in fact, that makes them
13 suspicious as to an armed robbery.

14 **MR. FRETWELL:** Your Honor, that has to do with two
15 things. First of all, that the fact that he denies knowing
16 Mr. Gadsden ---

17 **THE COURT:** I think you can use it for the purpose of
18 showing that he has had a longstanding relationship ---

19 **MR. FRETWELL:** Sure.

20 **THE COURT:** --- with each other.

21 **MR. FRETWELL:** And the other thing I forgot -- and I
22 apologize for -- if I got extra excited before. One thing I
23 did not articulate to the Court I think that is important
24 that the Defendants are charged with conspiracy in this
25 case. So certainly a conspiracy occurs before the incident.

1 And some of these texts that Sergeant Weiner has
2 pointed out to you show how that process of putting this
3 together, the motivation for it ---

4 **THE COURT:** I think you can show that they had a
5 longtime relationship. So you believe that starting in
6 October of 2015 they started planning this robbery?

7 **MR. FRETWELL:** No, sir. I believe that the evidence --
8 that they had a relationship starts back to October 13 ---

9 **THE COURT:** And I'm going to allow the Sergeant to
10 testify that he reviewed the texts and saw or telephone
11 calls and saw that they had known each other at least since
12 October 21, 2013 because they've been talking to each other
13 on and off over that period of time.

14 **MR. FRETWELL:** The second ---

15 **THE COURT:** Many of those conversations between the two
16 were deleted on their phone. Now, I don't know when they
17 got deleted. Do we know when they got deleted?

18 A. No, sir.

19 **THE COURT:** So they could have been deleted on October
20 22nd.

21 **MR. FRETWELL:** Exactly, Judge. The only thing that
22 this can tell you is the time that the officers collected
23 the phones from Mr. White, this is his Kyocera, and
24 submitted them for dumping, at that time they had been
25 deleted.

1 The -- I lost my train of thought.

2 **THE COURT:** So if they were deleted on October 22nd,
3 they really -- that would have no bearing on this case,
4 would it?

5 **MR. FRETWELL:** All it does is show you, Judge, that
6 when he denied knowing Mr. Gadsden ---

7 **THE COURT:** Mr. Fretwell, ---

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

9 **THE COURT:** --- I agree, these are great indicators
10 that these two individuals had a longstanding relationship.

11 **MR. FRETWELL:** A longstanding relationship that they
12 wanted to hide on their own personal devices by deleting any
13 indication that they had had any contact with each other
14 from -- as soon as the phones ---

15 **THE COURT:** So you believe that back in October of 2013
16 that they were planning all of this -- this event and they
17 wanted -- they didn't want anybody to know they knew each
18 other because in two years we're going to do an armed
19 robbery.

20 **MR. FRETWELL:** I actually think it started, the
21 planning process, some of this, you know, working on this
22 bash or whatever it was, and these money troubles ---

23 **THE COURT:** He didn't even go to work for the thing til
24 when?

25 **MR. FRETWELL:** Pardon me, Judge?

1 **THE COURT:** When did he go to work for the restaurant?

2 **MR. YARBOROUGH:** Olive Garden.

3 **MR. FRETWELL:** When did he start?

4 **THE COURT:** Yeah.

5 **MR. FRETWELL:** The testimony was that as of January
6 20th when the robbery occurred, it had been slightly less
7 than a year.

8 **THE COURT:** All right.

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

10 **THE COURT:** So for a year and a half they were -- he
11 was planning to go get that job.

12 **MR. FRETWELL:** Planning to get ---

13 **THE COURT:** I think ---

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

15 **THE COURT:** --- that the extent of that -- what we have
16 shown so far is since October of 2013 they have known each
17 other and had numerous telephone conversations.

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

19 **THE COURT:** It's a stretch to say back in December of
20 2013 that he's having financial troubles, so we're going to
21 commit a robbery.

22 **MR. FRETWELL:** Well, Judge, that's why -- that's why
23 some of these texts, Judge, are so very important because
24 he's talking even as of December the 2nd ---

25 **THE COURT:** Mr. Fretwell, ---

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

2 **THE COURT:** --- that means every single human being in
3 America that is having financial trouble is a suspect in a
4 robbery.

5 **MR. FRETWELL:** No, sir. That's one motivation for
6 committing the robbery. The fact of the matter is he is
7 contemplating January 22nd as early as ---

8 **THE COURT:** Motive is not an element of this crime.

9 **MR. FRETWELL:** I understand that it's not an element,
10 Judge, but the Court certainly knows that the State is
11 entitled to explore elements of motive for purposes of the
12 jury.

13 **THE COURT:** Well, what else we got here? We're back
14 down to December?

15 **MR. FRETWELL:** Now, Judge, just to be clear, this 2013,
16 December, is the month before ---

17 **THE COURT:** I know -- I ---

18 **MR. FRETWELL:** --- the robbery.

19 **THE COURT:** --- understand that. The robbery was six
20 weeks later.

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

22 **THE COURT:** Thirty-one days, fifty-one days. That's
23 seven -- over seven weeks later.

24 **MR. FRETWELL:** Yes, sir. And specifically what
25 Sergeant Weiner pointed out to you about somebody contacting

1 Mr. White, telling them they can't hit that lick, they can't
2 commit that robbery because it's too risky in the daytime
3 and the very -- what they ---

4 **THE COURT:** What robbery?

5 **MR. FRETWELL:** The very -- the robbery that we're here
6 for, Judge. Because ---

7 **THE COURT:** There is no evidence that that -- hitting
8 that lick -- how do you know it wasn't another robbery?

9 **MR. FRETWELL:** Because of the texts that followed.

10 **THE COURT:** Show me what ---

11 **MR. FRETWELL:** The texts that follow in less than five
12 days, White was contacting Keem telling Mr. Gadsden, don't
13 come again, I'll explain tomorrow, word. He doesn't want
14 him to come again, which is my belief, and I think it's a
15 fair extrapolation, to the restaurant because he doesn't
16 want to be associated ---

17 **THE COURT:** What else you got?

18 **MR. FRETWELL:** It's like that -- just continue with the
19 -- I don't know where you stopped.

20 **Proffered Testimony by Mr. Fretwell Continued:**

21 A. Stopped here, sir, where he was telling his girlfriend
22 my last week working here.

23 **THE COURT:** All right.

24 A. And he talked about the loan ---

25 **THE COURT:** Of course, it wasn't the last week he

1 worked there. Three more weeks.

2 A. Correct. Then these next few texts here talk about the
3 money issues as it's getting closer to the robbery. These
4 are on the 3rd of January. He tells his girlfriend here,
5 we'll figure it out. The 4th, the Visa card again dropping
6 below the balance. Two more deleted items from Mr. Gadsden,
7 communications.

8 Here is his girlfriend talking about, I'm going to go
9 to Drays. I don't want to be at the house with your
10 peoples.

11 And then she asked, did you leave the key? And Mr.
12 White says my home-boy will be there. It's our belief that
13 he's referring to Mr. Gadsden because we found his personal
14 items all in the apartment.

15 Three, asked him how much he spent on EBT card. Two
16 more deleted items. Again, every contact between Mr. White
17 and Mr. Gadsden on that phone was deleted.

18 Here's somebody on the 18th that said they don't want
19 to pay money at the door to his concert. I think these two
20 comments have been discussed about Columbia.

21 On the 20th, the day of the robbery, he tells this
22 Antwanett, I got something lined up. I ain't tripping.
23 Y'all be safe 'cause be worried about ya. Call me. I want
24 to know what's good on these taxes. I got three names.

25 The next several between himself and his girlfriend,

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

586

1 she's asking, or I'm sorry, he's asking how far away she is.
2 This is, again, just hours before the robbery. She wants to
3 know where dude at. He says, he's gone.

4 And then after the robbery occurs she sends him a text,
5 I guess you're working hard tonight. He responds half an
6 hour later, this is just under two hours after the robbery
7 occurred, you won't believe we've been robbed. She says,
8 shut up. Are you serious? He responds, yeah. Call you
9 when I leave. Talking with the police. And she says, oh,
10 my God. Okay.

11 These next few, again deleted, between Mr. Gadsden and
12 Mr. White, the difference being now he tries to block his
13 number from Mr. Gadsden so that he cannot see the number
14 he's calling from.

15 A blocked number sends Mr. White an address of 8105 Two
16 Notch Road in Columbia, which corresponds back to him going
17 to the hotel for the girls. Again, he tries to contact Mr.
18 Gadsden, again deleting that.

19 And then even though he told Ms. Ferguson that I'll
20 call you when I leave, with the police at 1:19 am he has
21 several other communications throughout the day. And he
22 calls his girlfriend at 10:30 in the morning.

23 Also, two days after the robbery, although he said he
24 didn't know Gerald Gadsden, he types in his full name,
25 Gerald Akeem Gadsden, social security number and date of

1 birth.

2 And then this message here between -- Mr. White sends
3 to Ms. Ferguson, I'm here at the police station now. That
4 was when he came for his interview. The car's at 4 McGee
5 Street. Keys are in the armrest in case I don't come out.
6 I love you. Talk to you later. And her nonchalant response
7 is just K.

8 **MR. FRETWELL:** And, Judge, one thing with respect to
9 this particular text that is sent on basically the morning
10 that Mr. White goes to interview or to provide some
11 information to law enforcement is he indicates Gerald Akeem
12 Gadsden's full name, Akeem, which I think Ms. Ross has
13 already mentioned in opening was supposed to be the
14 confusion that caused him to say I don't know who Gerald
15 Gadsden is because he goes by Keem. She said that in the
16 opening.

17 That's in evidence right there, Judge, the morning that
18 he went in there and talked to them he knew his full name.
19 He had -- he had access to his social security number and
20 date of birth.

21 **THE COURT:** So what -- tell me what it is you want all
22 this stuff to show. Number one, that they had an ongoing,
23 long-term relationship.

24 **MR. FRETWELL:** That at some point that Mr. White ---

25 **THE COURT:** That's number one?

1 **MR. FRETWELL:** That's certainly one element, yes, sir.

2 **THE COURT:** Number two, ---

3 **MR. FRETWELL:** Number two, ---

4 **THE COURT:** --- that he deleted calls -- I don't know
5 if every -- is every call that he ever made between the two
6 deleted?

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

8 **THE COURT:** All right. That every call that was ever
9 made between the two was deleted. What else?

10 **MR. FRETWELL:** The motivation that he was in financial
11 troubles, which he can testify to that. I see your point,
12 Judge, on that. He can testify that they were having
13 financial problems.

14 That he made repeated texts about he's got something
15 lined up, don't worry, everything's going to be okay, this
16 is my last work week working there. All of those are
17 indications of an expectation on Mr. White's part that he
18 won't be working at Olive Garden very long, that after this
19 robbery they'll have the money, their financial problems
20 will be satisfied.

21 And that's the purpose of a lot of this, these texts
22 are to show his mentality and his mindset prior to ---

23 **THE COURT:** So the other thing is he's -- that long-
24 term relationship, blocked every call from October up
25 through -- when would that be, January 21st?

1 MR. FRETWELL: 2nd.

2 THE COURT: Or does it go further?

3 MR. FRETWELL: Just one day, 22nd.

4 THE COURT: I don't see a 22nd block.

5 MR. FRETWELL: He's showing the 22nd.

6 A. No, it's just through the 21st, sir. You're correct.

7 MR. FRETWELL: Oh, I'm sorry. I thought you meant the
8 time period.

9 THE COURT: All right. And, number three, he was
10 having financial trouble.

11 MR. FRETWELL: Yes, sir.

12 THE COURT: And what's the -- what else?

13 MR. FRETWELL: Just his activity and his conversations
14 leading up to where he talks about I've got something lined
15 up, don't worry, we'll be all right. He also talks about
16 that that's going to be his last time working there about a
17 week or ten days before the robbery.

18 All of those -- and, Judge, you said just a second ago
19 that all of his -- his conversations or calls or texts
20 between the two Defendants were blocked. We're saying they
21 were deleted. Some were blocked. Those ---

22 THE COURT: Right. But -- so that they couldn't be ---

23 MR. FRETWELL: Traced, yes, sir.

24 THE COURT: Determined what was said.

25 MR. FRETWELL: Yes, sir.

1 **THE COURT:** What do you want to say there, Mr.

2 **MR. YARBOROUGH:** Your Honor, first of all, I think that
3 clearly they had some contact. We'll give him that. We'll
4 stipulate that they had an ongoing relationship from October
5 to January.

6 **THE COURT:** He wants to do more than stipulate it. So
7 he's going to put it into evidence. All right. What else?
8 Tell me what you ---

9 **MR. YARBOROUGH:** Well, I mean, I think the fact that
10 these phone calls were deleted is -- over a period of time
11 doesn't have anything -- what does that have to do with a
12 motive for a robbery?

13 **THE COURT:** I don't know.

14 **MR. YARBOROUGH:** I mean, well, it doesn't.

15 **THE COURT:** I don't know. It could be -- I think they
16 could put -- he could testify from his examination that
17 every call that was ever made between the two from October
18 such and such til after the robbery was deleted and that's
19 the only one he found. It's a fact. I don't know. The
20 jury can draw what conclusion it wants to. What else?

21 **MR. YARBOROUGH:** I think the rest of the stuff is
22 inadmissible. The fact whether or not -- he was a
23 dishwasher. Whether or not he had money in his AT&T account
24 is irrelevant.

25 **THE COURT:** All right. What else? So you believe it's

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

591

1 not admissible because it's irrelevant. Some of it's not
2 admissible because it's ---

3 **MS. ROSS:** Well, a lots of irrelevant and a lot -- it's
4 the prejudice -- the probative value's outweighed by the
5 prejudicial effect. With the deleted, that's designed to be
6 in there just to cause prejudice.

7 And it wasn't that they actually went back and deleted.
8 Keem is a contact in that phone. Keem is a contact in
9 White's phone. And the number to dial each time is *67 and
10 then the number. So, obviously, when the contact was put
11 into the phone, he just put *67 in there and, therefore,
12 it's deleted all along from start to beginning. I mean,
13 from October til now because ---

14 **THE COURT:** Wait a minute.

15 **MS. ROSS:** --- every one is deleted.

16 **THE COURT:** So you're saying the first time somebody
17 puts *67 in the -- when they make a call it ---

18 **MS. ROSS:** You know, ---

19 **THE COURT:** --- deletes every call that was ever made?

20 **MS. ROSS:** That's what it looks like happening to me
21 because every single ---

22 **THE COURT:** So you don't know?

23 **MS. ROSS:** --- one -- I don't know.

24 **THE COURT:** Okay.. So let's not -- don't tell me
25 something you don't know.

1 **MS. ROSS:** But it is -- the prejudicial effect of the
2 deletion makes it look like he's trying to hide something,
3 which there is no evidence that that's the case. I delete
4 things from my phone all the time.

5 And the phone -- the phones coming in and all this
6 evidence coming in in this trial is it's starting to get
7 more and more, but it's a lot to deal with. And for here,
8 to use everything that someone says and such personal
9 context with a smartphone also violates his right to privacy
10 again ---

11 **THE COURT:** Say that again.

12 **MS. ROSS:** Well, it's ---

13 **THE COURT:** We've already been through the phone
14 business.

15 **MS. ROSS:** Yeah, I know. It's just there's so much
16 more information here. And it's -- can easily be taken out
17 of context. We don't have the people who are on the other
18 side. They haven't spoken. They don't -- we don't know
19 what they meant when they replied on those texts. So,
20 again, I would object to that information, that coming in.

21 **MR. YARBOROUGH:** Your Honor, I'm looking at the phone
22 records and I see -- I see numerous other phone calls that
23 were deleted that didn't have anything to do with the
24 communications between these two individuals. So that --
25 that's ---

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

593

1 **THE COURT:** Is that right?

2 **MR. FRETWELL:** That's correct, Judge. And certainly
3 Sergeant Weiner would say that, that there were other phone
4 calls ---

5 **THE COURT:** All right. Well then you can certainly
6 cross examine him about that. All right. Well, we're not
7 going to use these poster boards.

8 Here's what I'm going to allow you to let your officer
9 testify to; That he got the records, he got the records,
10 and you went through them to see -- is that when they
11 started? That October or is ---

12 **MR. FRETWELL:** Let me turn it back ---

13 **THE COURT:** --- is that just the first time you ---

14 A. Judge, I think ---

15 **THE COURT:** --- you saw any contact between these two
16 individuals?

17 A. That was the first time between the two of them. And I
18 believe there are records on the phone that go back a lot
19 further, like maybe he inserted an old ---

20 **THE COURT:** Well, I'm going to let him testify that he
21 -- in reviewing the records he learned that in -- on October
22 21st, 2013 these two individuals had been having -- began
23 having telephone contact with each other either through
24 telephone calls or texting. And those calls went as long as
25 -- I don't know how -- I don't know if they went all the way

1 up to the time the first or the second was arrested or --
2 but you can -- that these contacts continued. That, in
3 fact, in looking at the -- looking at the records we've
4 determined that every telephone call or texts -- are texts
5 deleted too?

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

7 **THE COURT:** Every contact between these two individuals
8 were deleted at some point in time or another. And, of
9 course, you don't know when that was, but you do know now
10 that every call or contact has been deleted.

11 That in -- it appeared that during the course of this
12 period of time that Mr. White was having financial
13 difficulties and that that -- the pressure seemed to build
14 as it went along.

15 I'm going to let them -- what else? What else did you
16 want to try and share with them?

17 **MR. FRETWELL:** Judge, there were several -- Sergeant
18 Weiner can find them, but there were references before the
19 incident to I've got something lined up, something's in the
20 works, I'm only going to be at this job for one more week or
21 -- I can't -- Sergeant Weiner can find them probably a lot
22 faster than I can.

23 **THE COURT:** Well, he can testify that at some point in
24 time December of 2013 he indicated he might be leaving this
25 job in the near future.

1 This I got something lined up, that's just pure
2 speculation that I've got something lined up. That
3 something lined up might be, hey, his big rap show that he's
4 got.

5 **MR. FRETWELL:** But, Judge, that -- it's after the rap
6 show, Judge. It's after that weekend. And it's, in fact,
7 on the day of the robbery.

8 **THE COURT:** That what? We started talking about it at
9 ...

10 **MR. FRETWELL:** I've got something lined up is ...

11 (Pause)

12 **THE COURT:** All right. So after -- so on the day of
13 the ...

14 (Pause)

15 **MR. FRETWELL:** Judge, basically we just wanted to limit
16 it to -- with respect to specific texts to around the time
17 of the robbery. This is a couple of texts in the -- in that
18 earlier, about a week to a week and a half before where he's
19 talking about -- to his girlfriend talking about the
20 financial trouble that we've already shown, the loan with my
21 check. Don't worry, we gonna be good. We straight. I got
22 something planned. Damn, I know we figure it out in a few.

23 This is evidence of the fact that he is planning what
24 occurs on January 20th. I think that's a fair extrapolation
25 that the jury can make from that language, Judge. I think

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

1 as finders of the fact that they can determine if that was
2 him talking to his girlfriend and saying don't worry, I've
3 got something lined up.

4 Because he repeats it on the day of the robbery, that
5 afternoon when he says -- 2:33, this is now ten hours --
6 nine hours before the robbery about, true, I got something
7 lined up. I ain't tripping. Y'all be safe. He's
8 continuing to talk about this plan that he has. And it's
9 relevant because that's the night of the robbery.

10 **MR. YARBOROUGH:** Judge, he has no idea what he's
11 talking about. Mr. Fretwell has no idea at 2:33 on January
12 the 20th what he's talking about. He, I mean, ---

13 **THE COURT:** Well, I mean, I disagree with that. Mr.
14 Fretwell thinks he knows exactly what he's talking about.

15 **MR. YARBOROUGH:** Be safe 'cause we worried about you.
16 I mean, what's the implication ---

17 **THE COURT:** Well, I don't know why -- I guess they just
18 want to put everything in there.

19 **MS. ROSS:** Judge, again, I think 603, it's classic,
20 shouldn't come in. Not to mention law enforcement talked to
21 this girlfriend. They could have questioned her about all
22 this stuff if they'd wanted to and bring her in to tell what
23 it's all about, but they didn't. Instead they want the jury
24 to look at this in ---

25 **THE COURT:** Well, they're using your client's or Mr.

1 Yarborough's words, not the person that's responding back.

2 I mean, they didn't need to bring her in.

3 **MR. FRETWELL:** And, Judge, I do think it's significant
4 that this is a text that kind of bookends the robbery. It
5 starts that afternoon 2:33, I got something lined up. Call
6 me. I want to know what go on these tax forms.

7 And then after the robbery when he's going -- the
8 morning that he reports to the police department to give his
9 statement, he gives his full name, ---

10 **THE COURT:** Well, ---

11 **MR. FRETWELL:** --- social security number ---

12 **THE COURT:** --- anything that helps identify that these
13 two people have had contact, I'm going to let you put it in
14 there.

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

16 **THE COURT:** But we're not going to put the poster board
17 in. You're going to have to do it by testimony.

18 **MR. FRETWELL:** I understand that, Judge.

19 **THE COURT:** All right. Well, I'll let you put in that
20 something -- anything that is within a short period of time
21 of the robbery, such as the day of the robbery, I've got
22 something lined up. This stuff about talking two days
23 before the robbery about going to -- going to Columbia ---

24 **MR. FRETWELL:** I understand, Judge, ---

25 **THE COURT:** --- and staying with a bunch of women. I

754

1 mean, he doesn't have the money then.

2 MR. FRETWELL: I understand. I understand your ruling.

3 THE COURT: And that's where we're going to leave it.

4 MR. FRETWELL: Yes, sir.

5 THE COURT: Whatever ties them in together. He can
6 testify that the records indicate he was having financial
7 problems. He can testify that every call was deleted. He
8 can testify that he called him at 7:23 in the morning, the
9 day after the robbery. So eight hours after the robbery
10 he's talking to his Co-Defendant.

11 MR. FRETWELL: Okay.

12 THE COURT: And he can talk about that they're talking
13 about they were going to do something to correct the
14 problem, but it's got to be -- something was getting ready
15 to happen. But this other stuff about how far away, on the
16 back of -- I can't -- on the back something.

17 MR. FRETWELL: Judge, it's not terribly relevant, it
18 just happened to be on the afternoon of the robbery. So I
19 just left it in there because I figured if the Court was
20 going to take it out, it's easier to take it out than put it
21 in.

22 THE COURT: Well, you know, I understand any objections
23 you may have, Mr. Yarborough or Ms. Ross, but we've cut it
24 down to that.

25 MR. FRETWELL: Judge, I'll just need about -- a couple

1 of minutes to make sure. We went through a couple of these
2 to figure out what information might be admissible, might
3 not be admissible. So I'm going to make sure that what he's
4 reading from up, what's on this poster and what's been
5 presented to the Court ---

6 **THE COURT:** I don't mind him using the posters to help
7 him with -- just don't let the jury see it.

8 **MR. FRETWELL:** Well, do you mind if he just uses those
9 documents because that's a pretty unwieldy ---

10 **THE COURT:** I don't -- he can use whatever he wants ---

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

12 **THE COURT:** --- to make sure that he knows that the --
13 on whatever date that is, January 22nd he is able to give
14 Gerald Akeem Gadsden's whatever -- it's hard for me to read
15 that, date of birth and social security number. Maybe
16 Sergeant Weiner can remember every date that's on there and
17 each time.

18 (Pause)

19 **THE COURT:** All right. For the record, Mr. Solicitor,
20 the reason I'm not permitting, some of the matters that you
21 wanted on your poster boards in this as evidence is because
22 I think some of them are just so highly prejudicial, some of
23 the language in there and some of the incidents talking
24 about prior licks and a lick, I just think that's too
25 speculative.

1 The other is that some of it is just too remote. But
2 you do have a conspiracy charge. You do have to show some
3 relationship between these parties over a period of time.
4 And so we'll go forward. Let's bring the jury in.

5 (Whereupon the jury entered the courtroom at 4:21 pm)

6 **THE COURT:** All right. Mr. Solicitor, you ready to
7 proceed?

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

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

10 **Direct Examination by Mr. Fretwell Continued:**

11 Q. Sergeant Weiner, before the break you had reviewed
12 these three documents identified as State's exhibit 68A, B
13 and C and indicated that they were taken from the report
14 that was generated by Dan Kelly, is that correct?

15 A. Yes, sir.

16 Q. And can you just -- in case I did not go over it
17 before, which two phones, the Kyocera or the Samsung, is
18 that data related to?

19 A. This is from the Kyocera that came from Mr. Smith. I'm
20 sorry, Mr. White.

21 Q. Okay. And was that the first phone he had?

22 A. Yes, sir.

23 Q. Okay. All right. Within the parameters as instructed,
24 what information from Sergeant Kelly's report did you
25 determine was integral and relevant to your investigation of

1 these two individuals for the crimes with which they've been
2 charged?

3 A. First was there's established communication between the
4 contact on Mr. White's phone to the contact labeled Keem
5 going back to the 21st of October of 2013. And there are
6 numerous completed calls as well as text messages between
7 the two.

8 Q. With respect to that particular issue, how many
9 contacts from October the 21st of 2013 til the phone was
10 surrendered or given to you in your office on January the
11 22nd, how many lines of contact between Mr. White and Mr.
12 Gadsden did you note on those records? Be they called or
13 texted.

14 A. Yes, sir.

15 (Pause)

16 A. Nineteen, sir.

17 Q. Nineteen. With respect to those communications,
18 nineteen communications, how many of those communications
19 were deleted from that phone?

20 A. All of them.

21 Q. How close in time to January 20th, the time of the --
22 the evening of January 20th you testified approximately
23 11:25 to 11:28, 27?

24 A. Yes, sir.

25 Q. Okay. How many contacts are within three days -- so

1 the 22nd when he turned it into you, go back about two or
2 three days before, how many contacts in that time period?

3 A. Five.

4 Q. And, in fact, all five of those are the morning after
5 the robbery, is that correct?

6 A. Yes, sir.

7 Q. Okay. Is there anything about those contacts that are
8 different from some other contacts that he -- that Mr. White
9 may have had with Mr. Gadsden according to those records?

10 A. Those contacts after the robbery -- the phone, whoever,
11 Mr. White's phone dialed *67 to block the number before
12 calling the contact labeled Keem.

13 Q. So what does -- what effect does that have on the phone
14 that the person's calling if you dial *67?

15 A. It blocks their number so that they can't see who's
16 calling them.

17 Q. Could anybody looking at their phone see who was
18 calling them?

19 A. No, sir. It would just say blocked or private number.

20 Q. And, in fact, that first contact after the robbery came
21 how many hours after the robbery?

22 A. Are you referring to the first contact between Mr.
23 White and Mr. Gadsden?

24 Q. After the robbery that's on the record, yes, sir.

25 A. About eight hours.

1 Q. Okay. And after the robbery who was the first person
2 that Mr. White called?

3 A. Mr. Gadsden.

4 Q. With respect to those records -- secondly, I'm going to
5 turn your attention to -- what did you determine about those
6 records with respect to Mr. White, his financial position or
7 condition?

8 A. The time leading up to the robbery, he was having some
9 financial difficulties.

10 Q. Is there anything with respect to what Mr. White told
11 you in your office about that rap concert that these records
12 address?

13 A. Yes, sir.

14 Q. And tell us what that was and how it addressed it?

15 A. Prior to the date of the concert he's contacting one of
16 the contacts in his phone about participating in the rap
17 concert. The individual tells him ---

18 MS. ROSS: And I'd object to the relevance of what he's
19 about to testify to.

20 THE COURT: Well, I don't know that he can testify what
21 the individual told him.

22 MS. ROSS: And I'd also object for hearsay purposes.

23 MR. FRETWELL: Okay. Can I just -- let me rephrase the
24 question.

25 Q. Of what significance was -- did the records display to

1 you about what you learned from Mr. White about the other
2 rappers paying him to perform at this ---

3 **MS. ROSS:** And, again, I object to the hearsay. We
4 don't know about what he received and who that was from or
5 ---

6 **THE COURT:** Well, I'm going to let him testify to what
7 his investigation indicated. So he learned from his
8 investigation, not what somebody told him, but ---

9 **MR. FRETWELL:** Thank you, Judge. Go ahead.

10 A. There's a text that contradicts Mr. White informing me
11 that other rappers had to pay him. This, in fact, requests
12 Mr. White to pay him to participate in the rap concert.

13 Q. Was it your understanding from those texts that Mr.
14 White was willing to do that?

15 A. Yes, sir.

16 Q. Okay. Among those texts were you able to confirm the
17 location where you served the search warrant at 410 Sulphur
18 Springs Road, were you able to confirm that that was an
19 address associated with Mr. White and where he was living at
20 the time?

21 A. Yes, sir.

22 Q. Is there anything in those texts that would indicate
23 whether or not Mr. White knew Mr. Gadsden's full name and
24 any kind of personal information such as date of birth,
25 social security number, or address or anything like that?

761

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

605

1 A. Yes, sir.

2 Q. Okay. And, in fact, is there a text on the morning
3 that Mr. White came down to your office that indeed he sends
4 that information, Mr. Gadsden's full name, Gerald Akeem
5 Gadsden, with the social security number and the date of
6 birth to an individual?

7 A. Yes, sir.

8 Q. Okay. And on the afternoon of the -- the afternoon
9 before the robbery at approximately 2:33 pm does Mr. White
10 communicate to somebody something of some significance to
11 you?

12 A. Yes, sir.

13 Q. Can you tell us what that is?

14 A. He makes the statement, true, I got something lined up.
15 I ain't tripping. Y'all be safe 'cause be worried about ya.

16 Q. Okay. And a week and a half or so before the robbery
17 is there a communication with respect to these financial
18 difficulties where Mr. White makes -- sends some texts
19 indicating something about those financial difficulties?

20 A. Yes, sir.

21 Q. Okay. And what -- and what is the gist of those
22 communications? Unless the Court will permit him just to
23 read them outright, just give us what was the gist of those
24 communications.

25 A. He's indicating that everything will be okay.

1 Q. Anything in addition to that?

2 A. We straight. I got something planned.

3 Q. Okay. All right. I'm going to set those documents
4 aside for just a moment and return to asking you about some
5 other elements of the case. Let me -- you've testified the
6 incident occurred between approximately -- I think you said
7 11:25 and 11:28 leading into the 20th. Do these photos that
8 are in evidence, State's exhibit 56 through 64, did you see
9 these pictures and what significance did they have to with
10 respect to the investigation?

11 A. I have viewed the photographs. The pictures depict Mr.
12 Gadsden wearing a camouflage hooded jacket the day after the
13 robbery holding a large stack of cash that appears to be
14 denominations consistent with what Mr. Kretzschmar reported
15 was stolen.

16 Q. Okay. And let me show you -- did you see the -- do you
17 have State's exhibit 64 there?

18 A. Yes, sir.

19 Q. What is that?

20 A. It is Mr. Gadsden taking a picture of himself with the
21 phone in the image.

22 MR. FRETWELL: Judge, I seem to be missing an exhibit,
23 State's ...

24 THE COURT: You know where they are?

25 A. It's right here, sir.

1 **THE COURT:** You got it?

2 A. It's up here.

3 **MR. FRETWELL:** I got it. Thank you.

4 Q. What is State's 30? And tell us what the significance
5 of that was to your investigation.

6 A. This was a photograph taken from the date on Mr.

7 White's phone prior to the robbery, just a couple of days

8 prior. And it is the ice machine just outside the

9 dishwashing area that leads to the hallway where Mr.

10 Kretzschmar's office is. And it's the exact location where

11 Mr. Kretzschmar was ambushed and attacked before being taken

12 back to the safe.

13 Q. And how does that picture, State's 30, compare to this
14 forensic photo, State's exhibit 20?

15 A. Almost identical with the exception of the money laying
16 on the floor, the bucket knocked over.

17 **MR. FRETWELL:** Your Honor, permission to publish these
18 exhibits.

19 **THE COURT:** All right. Ladies and gentlemen, I caution
20 you, don't get so engrossed in the pictures that you miss
21 any questions or responses because you'll have the pictures
22 in the jury room, but I want you to see them.

23 Q. And, Sergeant Weiner, earlier I asked Investigator

24 Perry about some telephone numbers. So I'm going to ask you

25 about those telephone numbers, but I want to ask you through

1 your investigation who did you identify those telephone
2 numbers to be. Was Mr. White -- was he listed as a contact
3 in Mr. Gadsden's Samsung phone?

4 A. Yes, sir.

5 Q. Okay. The number 864-498-8067 that Investigator Perry
6 testified was not found in the Samsung phone at any point or
7 any place, who did that belong to? An 864 number, 8067 the
8 last four digits.

9 (Pause)

10 A. Tell me the last four again, sir.

11 Q. 8067.

12 A. I don't have -- I don't know in my notes where I'd have
13 that.

14 Q. Well, let me ask you a question.

15 A. Yes, sir.

16 Q. Was Damion Riley's phone number associated with Damion
17 Riley at that time located anywhere in the Samsung phone?

18 A. No, sir.

19 Q. Was the number associated with Terrell Pugh at that
20 time located anywhere in the Samsung phone?

21 A. It was not.

22 Q. And was the number associated with Gerald Gadsden,
23 Keem, 843-826-6554 listed as a contact in Mr. White's phone,
24 the Kyocera?

25 A. It was.

1 Q. Were you present when photo lineups were shown to
2 victims, Aaron Kretzschmar and Terrell Pugh?

3 A. Yes, sir.

4 Q. What, if any, information was provided by either Mr.
5 Pugh or Mr. Kretzschmar with respect to those photo lineups
6 for any -- what was their -- were they able to identify
7 anybody?

8 A. They were not.

9 Q. Okay. What did they tell you about their ability to
10 identify to begin with?

11 MS. ROSS: And I'd object. They've already testified.
12 He could have easily asked them what they said.

13 THE COURT: Sustained.

14 MR. FRETWELL: Your Honor, it relates to his
15 investigation. It's going to show why he makes the next
16 step, which is what he shows to Mr. Kretzschmar.

17 THE COURT: He can't say what they told him.

18 MR. FRETWELL: Okay.

19 Q. Did you believe they would be able to identify anybody
20 from ---

21 A. No, sir.

22 Q. Okay. What did you do with respect to the photo, I
23 believe you had it up there, of -- well, let me just -- I'll
24 ask you the question. Let me show you what's been marked as
25 State's exhibit 70. What is this and what did you do with

1 MS. ROSS: Right up here.

2 THE COURT: I can't see that far.

3 MS. ROSS: I'm sorry, Judge.

4 THE COURT: You know, you've got young eyes. So where
5 is the text, hey, we just got robbed?

6 MR. FRETWELL: Could you point it out, Sergeant Weiner?

7 A. It's you won't believe we've been robbed.

8 THE COURT: All right. And then ---

9 MS. ROSS: And then went a little down, it comments,
10 under the first call after the robbery was to Keem the next
11 morning, like twelve hours later. And then the first ---

12 THE COURT: Wait a minute.

13 MS. ROSS: Somewhere the first call to ---

14 THE COURT: All right. Oh, we just got robbed. Wait a
15 minute. We've been robbed. Then what is ...

16 MS. ROSS: Then on -- there's that text. And then
17 there's a little notation somewhere that says first call
18 after robbery, which wasn't obviously in discovery. That
19 was just an addition.

20 MR. FRETWELL: Judge, that ---

21 MS. ROSS: Comment. And then ---

22 THE COURT: Wait a minute. You won't believe we've
23 been robbed. Where is first call at?

24 MR. FRETWELL: Judge, can I have Sergeant Weiner
25 explain that ---

767

DAVID WEINER - PROFFERED TESTIMONY BY MR. FRETWELL

569

1 **THE COURT:** How could that be the first call after the
2 robbery when ...

3 **MR. FRETWELL:** If you'll let me ask the witness a few
4 questions, I think we can clear all of this up..

5 **THE COURT:** Fine.

6 **Proffered Testimony by Mr. Fretwell:**

7 Q. Sergeant Weiner, what does this chart consist of with
8 respect to the records that were provided to you by Sergeant
9 Kelly?

10 A. The vast majority of it is texts or SMS messages. The
11 only time it's a phone call, you'll see this word,
12 completed, indicates that it's a phone call. Anything in
13 yellow was something that was deleted off of the phone or an
14 attempt was made to delete off of the phone. And from here,
15 this is the 16th of January. We dated down to the 21st on
16 this page.

17 Q. And what do those spaces mean that are in the third
18 column on occasion and even in the first and second column
19 on occasion?

20 A. If there's a blank space, it's just ---

21 **THE COURT:** Well, I mean, tell me what the purpose of
22 all that is. I can see where you've got ---

23 A. Okay.

24 **THE COURT:** --- calls between White and Keem. And ---

25 A. Yes, sir.

1 it?

2 A. It's a cropped picture from one of the pictures on Mr.
3 Gadsden's phone of him holding the cash, just showing the
4 jacket, not showing his face or the money.

5 Q. Why is it cropped?

6 A. I wanted to show the camouflage pattern to Mr.
7 Kretzschmar because he specifically mentioned it.

8 Q. Okay. And when you showed it to him was he able to
9 identify it?

10 A. Not positively.

11 Q. Did he indicate -- what did he indicate about it?

12 **MS. ROSS:** And I'd object to hearsay. He's already
13 testified.

14 **MR. FRETWELL:** Your Honor, it goes to show why he made
15 -- he takes the next step in his investigation.

16 **THE COURT:** Well, I mean, he can testify to what ...

17 **MR. FRETWELL:** All right, sir.

18 Q. Does it seem -- does it appear to be in the same
19 condition as it was when you showed it to Mr. Kretzschmar?

20 A. Yes, sir.

21 Q. In fact, is that the actual document that you showed to
22 Mr. Kretzschmar?

23 A. It is.

24 Q. Okay.

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

1 would move State's 70 into evidence.

2 **MR. YARBOROUGH:** Your Honor, I would object to State's
3 70. I mean, it's just a cut up piece of paper. I don't
4 think it has any relevance. The witness said he couldn't
5 identify him.

6 **MR. FRETWELL:** Judge, that's not even -- that's not --
7 I think -- can we approach?

8 **THE COURT:** No. I'm going to admit it. He indicated
9 he couldn't exactly say ---

10 **MR. FRETWELL:** Thank you.

11 **THE COURT:** --- that was it. It's a picture of a piece
12 of cloth.

13 (Whereupon State's exhibit 70 was admitted into
14 evidence)

15 Q. Let me take you to January 25th, 2014. Did you attempt
16 to make contact with either Mr. White or his girlfriend,
17 Katrina Ferguson?

18 A. Yes, sir.

19 Q. For what purpose?

20 A. I wanted Mr. White to review the photo lineup
21 containing Mr. Gadsden.

22 Q. Okay. And why did you want to contact Ms. Ferguson?

23 A. Because I knew that I had Mr. White's phone. So it was
24 the only available phone number for him that I knew of.

25 Q. Did you hear from Mr. White regarding the photo lineup

1 of Mr. Gadsden?

2 A. Yes, sir.

3 Q. When was that?

4 A. He called me at ten pm on January 25th.

5 Q. 2014?

6 A. 2014, yes, sir.

7 Q. Okay. He called you in what manner or of what number?

8 A. Blocked his numbers so that I couldn't see what it was.

9 Q. Okay.

10 **MS. ROSS:** And I'd object to whether -- how he knew it
11 was him and hearsay.

12 **MR. FRETWELL:** That's fair, Judge.

13 Q. When you received a phone call on January the 25th,
14 2014, approximately ten pm did you recognize the voice that
15 was on the phone with you?

16 A. Yes, sir.

17 Q. How did you know who that was?

18 A. I'd already spoken to Mr. White several times.

19 Q. And who was it?

20 A. It was Mr. White.

21 Q. Okay. Did you tell Mr. White at that time during that
22 conversation about what you had pulled off of Mr. Gadsden's
23 phone that you -- that he had in his possession when he came
24 to see you?

25 A. Yes, sir.

1 Q. What -- what did you tell him?

2 A. I told him that I had these pictures of an individual
3 holding a large amount of cash with a camouflage jacket.

4 Q. And did you identify that individual to Mr. White?

5 A. I did.

6 Q. And what did you tell him?

7 A. That I'd identified him as Gerald Gadsden.

8 Q. And how did he respond?

9 A. He said he didn't know who Gerald Gadsden was.

10 Q. Was there anything more to the conversation?

11 A. No, sir.

12 Q. Okay. Do you know -- could you identify Defendant
13 Gerald Gadsden?

14 A. Yes, sir.

15 Q. Can you identify him for the record?

16 A. He's seated next to his counsel, Ms. Ross, in the
17 bluish colored shirt.

18 (Whereupon the witness pointed to the Defendant, Gerald
19 Gadsden)

20 Q. Okay.

21 **MR. FRETWELL:** Your Honor, let the record reflect that
22 the witness has identified the Defendant, Gerald Gadsden.

23 **THE COURT:** So noted.

24 Q. Based on your investigation did you determine that
25 there was a connection between Defendant White and Gadsden?

1 A. Yes, sir.

2 Q. All right. And what factors primarily did you consider
3 in your charging decision?

4 A. That there were several -- it was clear to me that the
5 robbery at the Olive Garden was an inside job. Somebody had
6 made an attempt to break the window to make it appear as
7 though they had forced their way in, but they were
8 unsuccessful.

9 Q. Let me ask you a question about that. Was there any
10 way to enter that restaurant through that broken outer pane
11 of the window?

12 A. Only that the door was propped open with a dishrag.

13 Q. And what condition were the locks on those front doors
14 when officers arrived?

15 A. They were still locked.

16 Q. All right.

17 A. So I knew that the towel had been placed there by
18 somebody that was inside the business, of course, it being a
19 towel from the Olive Garden itself. Based on the statements
20 from the three individuals inside, Mr. Kretzschmar said he'd
21 been punched in the face and shoved around in the office,
22 Mr. Pugh had been pushed to the floor, Mr. White made no
23 indication that he'd been assaulted at all.

24 I'd also received numerous stories from Mr. White
25 regarding his source of income that he described to Mr.

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

615

1 Riley whether they be from door sales, from rappers paying
2 him, then, of course, the information gleaned from the
3 phone.

4 I also had Mr. White in possession of Mr. Gadsden's
5 phone in his pocket when he came to our interview. And he
6 tried to cover up the fact that it was Mr. Gadsden's phone
7 by claiming that it was his own and that it was inoperable
8 and had not been used for several months when, in fact, it
9 was current and working properly.

10 I also had the pictures of Mr. Gadsden shortly after
11 the robbery wearing a jacket, a rain jacket described by the
12 -- similar to -- described by the victims and witnesses as
13 well as him holding large amounts of ones and five dollar
14 bills, which was confirmed by Mr. Kretzschmar's -- the
15 probable denominations that were stolen that night.

16 And also Mr. White denying that he had any knowledge of
17 who Mr. Gadsden was when, in fact, I had a text the day he
18 came to speak to me listing his entire full name, first
19 name, middle name, last name, social security number, date
20 of birth.

21 I also had the search warrant at his residence that
22 revealed the MasterCard that belonged to Mr. Gadsden at Mr.
23 White's residence.

24 I also noted that Mr. Gadsden himself fits the physical
25 description provided by the victims and witnesses as far as

DAVID WEINER - DIRECT EXAMINATION BY MR. FRETWELL

1 height and weight. I believe that's what I used, sir.

2 There was one other item also ---

3 Q. Okay.

4 A. --- that came into play with this case, which was the
5 ruling out Mr. Riley by the video system in that he clocked
6 out at 11:18 and the video system was still functioning at
7 11:22 pm and was turned off after 11:22 because I had an
8 image after Mr. Riley had left the restaurant.

9 Q. And I think you've already testified to any
10 significance you placed on the conversation that Mr. White
11 and Mr. Riley had at the time. Is that ---

12 A. Yes, sir.

13 Q. --- something also that factored ---

14 A. Yes, sir.

15 Q. Are you the one that obtained the warrants for both Mr.
16 White and Mr. Gadsden in this case?

17 A. Yes, sir.

18 Q. Mr. Weiner or Sergeant Weiner, with respect to the
19 towel, the brick and these other items that Mr. Yarborough
20 and Ms. Ross have been talking about with respect to DNA or
21 latent testing, can you give the jury some of your rationale
22 with respect to these items? Why tests were or were not
23 performed and your rationale for making those decisions.

24 A. Yes, sir. The towel itself I would expect to have Mr.
25 White's DNA on it. He's a dishwasher at the restaurant. It

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

617

1 would not surprise me to find it.

2 The brick, I didn't have. The forensic technician made
3 a decision not to process it. And that's the decision
4 forensics made. I can't decide what they saw or didn't see.
5 They felt it was unsuitable for -- so they did not process
6 it.

7 Q. Okay. And with respect to the money and the coins, the
8 safe and all of that, did you have any evidence or
9 information that the robber, the gunman had come in contact
10 or put his or her hands on those items?

11 A. No, sir.

12 Q. Okay. Thank you, Sergeant Weiner. Please answer any
13 questions Defense counsel has.

14 A. Yes, sir.

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

16 Q. Sergeant Weiner, you said it was significant to you
17 that there had been deleted phone calls between Mr. White
18 and Mr. Gadsden.

19 A. Correct.

20 Q. Okay. And you said there were how many?

21 A. Count them again?

22 Q. Yeah, ---

23 A. Okay.

24 Q. --- we're going to count a lot, fourteen, fifteen.

25 A. Nineteen.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

- 1 Q. Nineteen. Okay. Now did you look at that same phone
2 for the month of October, prior to the robbery?
- 3 A. The phone records were reviewed, yes, sir.
- 4 Q. Okay. And so would it be accurate that there were
5 thirty-two deleted texts in October?
- 6 A. Very possible, yes, sir.
- 7 Q. And seventy-four deleted texts in -- through November?
- 8 A. Okay.
- 9 Q. And fifty-nine in December?
- 10 A. Very possible, yes, sir.
- 11 Q. So the fact that there were texts deleted between Mr.
12 White and Mr. Gadsden really has no relevance to this case,
13 does it?
- 14 A. Well, it was the fact that every text and every phone
15 call between the two were deleted.
- 16 Q. But there -- there were very many deleted texts, right?
- 17 A. Yes, sir.
- 18 Q. Okay. So -- and those texts were deleted by Mr. White
19 or on his phone?
- 20 A. They're deleted on the phone.
- 21 Q. Okay. So the significance of fifteen is when you talk
22 about the number of deleted texts is insignificant, right?
- 23 A. Nineteen, sir.
- 24 Q. Nineteen. Nineteen. Would you agree that it's
25 insignificant?

1 A. No, 'sir, 'cause it's every communication between Mr.

2 Gadsden and Mr. White.

3 Q. Well, I mean, it's obvious Mr. White deleted a lot of
4 texts?

5 A. Yes, sir.

6 Q. That's not unusual?

7 A. No, sir.

8 Q. People do that all the time?

9 A. Yes, sir.

10 Q. You're not going to go charge everybody that deletes a
11 text with a crime?

12 A. No, sir.

13 Q. Okay. So -- now the door was -- there was a rag in the
14 door, is that correct?

15 A. Wrapped around the post at the base of the door, yes,
16 sir.

17 Q. Wrapped around the post. And how many people worked at
18 that Olive Garden that day?

19 A. I don't know the exact answer, sir.

20 Q. How many did you interview?

21 A. I interviewed Mr. Riley and participated in Mr. White's
22 ---

23 Q. Okay. And you didn't interview the other twenty people
24 that were working there that night?

25 A. No, sir.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

- 1 Q. You didn't call them?
- 2 A. No, sir.
- 3 Q. You didn't talk to them?
- 4 A. No, sir.
- 5 Q. Okay. And so you don't know if any of those people may
- 6 have left that rag there or not?
- 7 A. I know they did not, sir.
- 8 Q. Because you know who left the rag there?
- 9 A. Mr. Riley was the last one out and said the door was
- 10 locked without a rag there, sir.
- 11 Q. And so this jury is supposed to believe that Mr. Riley
- 12 knew that, right?
- 13 A. That's what he told me, sir.
- 14 Q. Okay. And you've investigated Mr. Riley?
- 15 A. Yes, sir.
- 16 Q. And he has some issues?
- 17 A. I don't know what you mean by issues, sir.
- 18 Q. He's been convicted of crimes of moral turpitude.
- 19 **THE COURT:** All right.
- 20 **MR. FRETWELL:** Thank you, Judge.
- 21 **THE COURT:** That's not proper.
- 22 Q. Mr. -- did you investigate Mr. Riley's background?
- 23 A. Yes, sir.
- 24 Q. Okay. And so at the time that you said Mr. Riley left,
- 25 who picked him up?

- 1 A. His girlfriend.
- 2 Q. Okay. And she picked him up in what car?
- 3 A. I don't know what kind of car it was, sir.
- 4 Q. Okay. Did you interview his girlfriend?
- 5 A. I spoke to her on the telephone, yes, sir.
- 6 Q. Okay. And did you find out what kind of car it was?
- 7 A. I did not ask her, sir.
- 8 Q. And did you -- the tapes you reviewed, did you see that
- 9 car in the parking lot?
- 10 A. No, sir.
- 11 Q. Okay. So you don't -- there's a chance that she did
- 12 not pick him up because you didn't see a picture of that
- 13 car, right?
- 14 A. She told me she picked him up, sir.
- 15 Q. She told you she picked him up, but the evidence
- 16 indicated that that wasn't true, right?
- 17 A. I'm not sure I understand the question, sir.
- 18 Q. Okay. Well, you had pictures of -- that were operating
- 19 around that area prior to Mr. Riley leaving the Olive
- 20 Garden?
- 21 A. Yes, sir.
- 22 Q. You got that picture of the car right there.
- 23 A. It's a ---
- 24 Q. Right?
- 25 A. --- very narrow camera view that shows three parking

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

622

1 spots. And, in fact, if you were on -- well, I'd say the
2 right side of the road driving through the parking lot,
3 close to the doors, the camera wouldn't catch you.

4 Q. Okay. But you didn't see any other cars coming in that
5 parking lot?

6 A. Not around the time of the robbery, sir.

7 Q. Okay. And didn't you think it was worth it to
8 interview her?

9 A. I did, sir.

10 Q. And did you interview her and what did she say?

11 A. That she picked him up and took him home, sir.

12 Q. Okay. And what time did she pick him up?

13 A. Can I refer? Do you mind?

14 Q. To your notes?

15 A. Well, to the supplemental.

16 Q. Sure.

17 A. Around 11:20 pm, sir.

18 Q. Okay. And the robbery took place at what time? What
19 time was the phone call in from the robbery?

20 A. I don't know what -- the exact time the phone call came
21 in. The first deputy responded -- in his report, 11:28.

22 Q. At 11:28. So eight minutes later the place is robbed,
23 the robber has left and there's a phone call, or, no,
24 there's not even a -- there's a phone call made and a deputy
25 has arrived at the scene.

781
Oct

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

623

1 A. I'm not understanding your question, sir.

2 Q. Okay.

3 A. I actually didn't hear a question.

4 Q. At 11:20 he clocks out.

5 A. 11:18, sir.

6 Q. Well, the picture at 11:20, what was that of?

7 A. It's not a picture, sir. His girlfriend told me it was
8 about 11:20 when she picked him up.

9 Q. Okay. So 11:18, 11:20 she picks him up.

10 A. Yes, sir.

11 Q. Okay. And then there is a phone call made to the
12 police station indicating there was a robbery at the Olive
13 Garden.

14 A. Yes, sir.

15 Q. And that phone call was made when?

16 A. I don't know the exact time, sir. I guess if we figure
17 out how long the phone call is and subtract that from
18 Officer Middleton's response time of 11:28, probably about,
19 I'd guess 11:27, 11:26.

20 Q. Okay. You don't think it took Officer Middleton longer
21 than that to get to the Olive Garden?

22 A. No, sir.

23 Q. Okay. So you're going to give him two or three
24 minutes?

25 A. Yes, sir.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

624

1 Q. Okay. So we're backing that up from 11:20 -- I think
2 your time's 11:28. So we're back to 11:25.

3 A. Correct.

4 Q. Okay. And what you're saying is that somebody went and
5 put that rag down, right?

6 A. Yes, sir.

7 Q. After Mr. Riley left. Is that correct?

8 A. Yes, sir.

9 Q. Okay. That's your -- that's how you think this case
10 happened, somebody put the rag down and then someone came
11 and smashed the window, right?

12 A. Mr. White put the rag down and Mr. Gadsden smashed the
13 window, yes, sir.

14 Q. You don't know that Mr. White put that rag down, do
15 you?

16 A. That's why I made that charge, sir.

17 Q. But you don't -- how do you know Mr. White put that rag
18 down?

19 A. I had the probable cause, sir, for the warrant.

20 Q. Did you see him put it down?

21 A. No, sir.

22 Q. You're sworn to tell the truth in here.

23 A. Yes, sir.

24 Q. Okay. So you don't know he put that down?

25 A. It's my belief that Mr. White put the rag ---

1 Q. Okay. So we're backing that up from 11:20 -- I think
2 your time's 11:28. So we're back to 11:25.

3 A. Correct.

4 Q. Okay. And what you're saying is that somebody went and
5 put that rag down, right?

6 A. Yes, sir.

7 Q. After Mr. Riley left. Is that correct?

8 A. Yes, sir.

9 Q. Okay. That's your -- that's how you think this case
10 happened, somebody put the rag down and then someone came
11 and smashed the window, right?

12 A. Mr. White put the rag down and Mr. Gadsden smashed the
13 window, yes, sir.

14 Q. You don't know that Mr. White put that rag down, do
15 you?

16 A. That's why I made that charge, sir.

17 Q. But you don't -- how do you know Mr. White put that rag
18 down?

19 A. I had the probable cause, sir, for the warrant.

20 Q. Did you see him put it down?

21 A. No, sir.

22 Q. You're sworn to tell the truth in here.

23 A. Yes, sir.

24 Q. Okay. So you don't know he put that down?

25 A. It's my belief that Mr. White put the rag ---

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

1 Q. It's your belief, but you don't know that?

2 A. It's my belief, sir, that he put the rag ---

3 Q. It's your belief, but you don't know it?

4 A. That's what I know, sir. It's my ---

5 Q. How do you know that?

6 A. Because it's my belief that he put the rag there, sir.

7 **THE COURT:** All right. He's answered the question.

8 Q. So it's your belief that the rag was placed down there
9 at some time after 11:18?

10 A. Yes, sir.

11 Q. Okay. And it's your belief that someone smashed the
12 window to the Olive Garden, right?

13 A. Well, actually, I know both of those events occurred.

14 Q. Okay. You -- well, let's go back. How do you know
15 that that rag was placed there before you got to the scene,
16 before Officer Middleton got there?

17 A. It's documented in his report that when he arrived the
18 rag was in the door, sir.

19 Q. Okay. But you don't know when that rag was placed
20 there?

21 A. After Mr. Riley left, sir.

22 Q. Okay. But it could have been placed there when
23 somebody left the Olive Garden.

24 A. Nobody left between Mr. Riley leaving and then the
25 robbery, sir.

1 Q. Okay. And how do you know that?

2 A. Because there were only four people left inside. Then
3 Mr. Riley leaves, there's only three. When the responding
4 deputy arrives, there's ---

5 Q. And how do you know that? Were you there?

6 A. It's in his report, sir.

7 Q. In whose report?

8 A. In Officer Middleton's report, sir.

9 Q. And Officer Middleton knows who was there in between
10 that period of time?

11 A. He knows ---

12 **MR. FRETWELL:** I'm going to object to the argumentative
13 nature of the question.

14 **THE COURT:** Let's ask the question and not be ---

15 Q. How do you know who was in the Olive Garden at the time
16 it was robbed?

17 A. It is in Mr. -- in Officer Middleton's report and it's
18 also from the statements I took from the witnesses.

19 Q. Okay. You took statements from who?

20 A. Mr. Riley and then participated in Mr. White's.

21 Q. Okay. And who else?

22 A. That was it.

23 Q. You -- okay. So you took Mr. Riley's statement?

24 A. Yes, sir.

25 Q. And Mr. Riley's the one that told you that the rag

786

1 wasn't there at the time he left?

2 A. Correct.

3 Q. Okay. And did he -- did he say that the window was
4 broken or not broken?

5 A. It was not broken.

6 Q. Okay. And so it's your belief that that window was
7 broken after Mr. Riley left the scene?

8 A. Yes, sir.

9 Q. Okay. And it's your belief that Mr. White was inside?

10 A. Correct.

11 Q. The manager, Mr. ...

12 A. Kretzschmar.

13 Q. Kretzschmar was inside?

14 A. Yes, sir.

15 Q. And who else?

16 A. Grady Terrell Pugh.

17 Q. And Grady Terrell Pugh. The three of them were in the
18 building?

19 A. As well as an armed robberer.

20 Q. Or two?

21 A. One, sir.

22 Q. How do you know there was one?

23 A. Because they described one individual, sir.

24 Q. But -- well, let's think about this. Have you got
25 pictures of the Olive Garden? The inside?

1 A. Not up here, sir.

2 Q. Okay. Let's get them. You were the investigator.

3 Okay. That's the picture of the window broken, right?

4 A. Yes, sir.

5 Q. Okay. Did you try to reach your hand through that
6 broken window to see if you could open that door?

7 A. Did I personally do it? No, sir. I didn't want to cut
8 my arm.

9 Q. What?

10 A. I don't want to cut my arm on anything.

11 Q. Well, ---

12 A. There was a solid intact piece of glass behind that
13 window.

14 Q. Okay. But did it not go to the door?

15 A. Did what not go to the door, sir?

16 Q. Couldn't you open that window by going to the -- stick
17 your hand through the window and go in to the door?

18 A. Oh, no, sir, not at all.

19 Q. Okay. Did you try?

20 A. I did not try. There was a solid intact piece of glass
21 behind the broken window. It was two panes, like for
22 insulation. There's a glass on the outside just like at
23 home and a glass on the inside. Some were triple paned.

24 Q. Okay.

25 A. This rock only broke one pane. There was a solid

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

- 1 intact glass behind that, sir.
- 2 Q. All right. And you believe that the person slammed
3 that rock up against that door for what reason?
- 4 A. To make it appear as though it was not an inside job.
- 5 Q. So you -- you think that somebody planned that in
6 advanced?
- 7 A. Yes, sir.
- 8 Q. Okay. Now, there's traffic going up and down
9 Cherrydale right there in front of the Olive Garden, isn't
10 there?
- 11 A. There is a road there, but at 11:30 on a Monday, I
12 wouldn't expect much traffic, sir.
- 13 Q. Okay. But there's a road that the Chick-fil-A faces,
14 the movie theater faces, the -- there's a hamburger place
15 right there and then ---
- 16 A. There's a Five Guys there, sir.
- 17 Q. Five Guys is there.
- 18 A. Um-hum (affirmative).
- 19 Q. And that road is what?
- 20 A. North Pleasantburg Drive, sir.
- 21 Q. Okay. And that is a very busy road in Greenville,
22 South Carolina, isn't it?
- 23 A. During the daytime, yes, sir.
- 24 Q. Do you live out that way?
- 25 A. I do, yes, sir.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

630

1 Q. I do, too. I live in Travelers Rest. And I travel ---

2 MR. FRETWELL: Objection.

3 THE COURT: All right. You're not testifying. Ask a
4 question, Mr. Yarborough.

5 Q. Okay. When you -- when you drive down that road in the
6 evening there is the possibility of traffic out there, isn't
7 there?

8 A. Yes, sir.

9 Q. Okay. And so a person that was going to rob the Olive
10 Garden that knew that there was a rag stuck in the door to
11 get in, why would he smash that window?

12 A. To cover up the fact that it was an inside job, sir.

13 Q. So you think these guys got together and planned this?
14 This is your -- your synopsis?

15 A. Yes, sir. That's why I made a conspiracy charge.

16 Q. Okay. All right. I'm just trying to figure it out.
17 And it's your testimony you can't get inside that door by
18 throwing that rock at it?

19 A. If you threw it hard enough to break both panes, yes,
20 sir. But it was not thrown hard enough.

21 Q. Okay. And so you think that that simple rag stuck down
22 in the bottom there is what allowed them to get into that
23 door, right?

24 A. Yes, sir.

25 Q. You don't think somebody let them in?

1 A. They did let them in by placing the rag there, sir.

2 Q. Okay. And that rag right there is supposed to hold
3 those two doors shut?

4 A. Open, sir.

5 Q. Hold it open, is that ---

6 A. It did ---

7 Q. --- right?

8 A. Correct.

9 Q. And that's what you believe happened?

10 A. There's photographic evidence of it doing that, sir.

11 Q. Where's the photographic evidence?

12 A. It's in the pictures, sir.

13 Q. Well, can you show it to me?

14 A. Yes, sir.

15 Q. Okay.

16 A. In this one here you can see the left door slightly
17 propped, but there's some other pictures. In fact, this one
18 also shows the left door propped. And then there's some
19 that show it from the inside that show the right door
20 propped open also from it.

21 Q. Okay. So that inside door is what you're talking
22 about?

23 A. That's not the inside door, sir. That's from the
24 inside looking out. That's the doors.

25 Q. Okay. But at that point when that picture's taken, how

1 many people have been in and out that door?

2 A. I don't know the answer to that, sir.

3 Q. More than five?

4 A. I don't know the answer to that, sir.

5 Q. Okay. But police officers have been in and out that
6 door?

7 A. Yes, sir.

8 Q. Okay. And so that rag has moved?

9 A. Not that I'm aware of, sir.

10 Q. Did anybody -- did Sergeant Middleton take a picture of
11 this rag in the door when he got there?

12 A. Officer Middleton did not, sir.

13 Q. Did you take it when you got there?

14 A. I didn't respond that night, sir.

15 Q. Okay. So you weren't there?

16 A. Not that night, sir.

17 Q. Now I'll show you another picture of the rag, okay?
18 See that picture?

19 A. Yes, sir.

20 Q. Okay. Does that picture look like the rag has moved?

21 A. It looks to me as though the door has been opened, sir.

22 Q. Okay. So the door's coming in and coming out. So
23 people are coming in and out the door, right?

24 A. Well, we know Officer Middleton did a protective sweep
25 of the business, sir. So I know he went in..

- 1 Q. Okay.
- 2 A. He's also trained not to disturb evidence, sir.
- 3 Q. Now, you see the line of five dollar bills out there?
- 4 A. I can see some bills. From here I can't tell the
- 5 denomination, sir.
- 6 Q. There are (4) five dollar bills?
- 7 A. I see five, sir.
- 8 Q. (5) five dollar bills. Do they all look like they're
- 9 in pretty good shape?
- 10 A. I can't tell that from the picture. I see (5) five
- 11 dollar bills, sir.
- 12 Q. Do they look flat?
- 13 A. None of them appear flat, sir.
- 14 Q. Do they look relatively new?
- 15 A. I can't tell the age from the photograph, sir.
- 16 Q. What?
- 17 A. I cannot tell the age of those bills from the
- 18 photograph, sir.
- 19 Q. I'm just asking you do they appear flat and maybe bent
- 20 a little bit?
- 21 A. They do not appear flat to me, sir.
- 22 Q. Okay. In Mr. White's telephone he does not list Mr.
- 23 Gadsden's name, he calls him Keem, right?
- 24 A. Correct, sir.
- 25 Q. Okay. So that's how he knows him is Keem?

793

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

634

1 A. Yes, sir.

2 Q. Okay. So when you asked him who Gerald Gadsden is, he
3 knows him as Keem.

4 A. That's his nickname, sir, Keem.

5 Q. Keem. But that's -- that's how he knows him is Keem?

6 A. But he knows his full name, sir.

7 **MS. ROSS:** I object to what he knows, him testifying of
8 what he knows and what he doesn't know -- the evidence in
9 the case.

10 **THE COURT:** You object to what he knows and what he
11 doesn't ---

12 **MS. ROSS:** Well, I object -- I object to the
13 investigator testifying that Mr. White knew him as Gerald
14 Akeem Gadsden. He does not know what ---

15 **MR. FRETWELL:** Objection, Your Honor, to the character
16 -- she's not testifying.

17 **THE COURT:** Overruled.

18 Q. Let's go back to -- we were talking about where they
19 went in to the -- the robbery. You see this picture?

20 A. Yes, sir.

21 Q. Okay. And what is that?

22 A. That's a -- there's a door leading to the office just
23 around the ice cooler, short hallway, maybe fifteen feet,
24 ten feet. And there's a door that could be secured for the
25 manager to block out the noise of the kitchen and all. And

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

1 there's a small window in that door that allows you to view
2 into the office and, obviously, if you're in the office,
3 look out.

4 Q. And when you're in the office where the money was that
5 was stolen, right?

6 A. That is where the safe is, yes, sir.

7 Q. That's where the what?

8 A. The safe.

9 Q. The safe is. So the robber went in there to get the
10 money, right?

11 A. Yes, sir.

12 Q. Okay. And this area is of some -- significantly
13 farther away from where the guys were washing dishes?

14 A. Maybe fifteen feet.

15 Q. Fifteen, twenty, twenty-five feet?

16 A. I wouldn't go that high, sir.

17 Q. Okay.

18 A. Ten or twelve ---

19 Q. How about this, the manager of the store goes into this
20 office where he says he's been hit and he has a gun held to
21 him and the two individuals, one of them being my client,
22 and one of them being Mr. Pugh, were on the floor over by
23 the dishwasher and they say that ---

24 **MR. FRETWELL:** Objection. What's the question, Judge?

25 **MR. YARBOROUGH:** I'm getting ---

1 **THE COURT:** Ask the question.

2 Q. Let's go back to this. You said there were not two
3 robbers?

4 A. Correct.

5 Q. Okay. Now what I'm saying is one robber is here,
6 right?

7 A. At some point the individual robs Mr. Kretzschmar,
8 striking him in the face and forcing him back to that office
9 after visiting Mr. Pugh and Mr. White in the dishwashing
10 area.

11 Q. Right. And where he's telling Mr. Pugh and Mr. White
12 to get on the ground.

13 A. Which they did.

14 Q. Which they did. They did get on the ground, ---

15 A. Yes, sir.

16 Q. Okay. And Mr. Pugh told you that Mr. White got on the
17 ground.

18 A. Yes, sir.

19 Q. And Mr. White told you he got on the ground.

20 A. Correct.

21 Q. Mr. White came down and gave you a statement.

22 A. He wrote a statement, yes, sir.

23 Q. Okay. And he told you at that time that he had had a
24 concert with his rap down in North Charleston.

25 A. Yes, sir.

1 Q. Okay. And at that point you knew that he had told Mr.
2 Pugh that he had made some money at that concert.

3 A. Mr. Riley, sir.

4 Q. Mr. Riley. Made two bands.

5 A. Yes, sir.

6 Q. Okay. And he had shown Mr. Riley a little card, the
7 card that's in evidence that showed that there'd actually
8 been a concert that day, is that correct?

9 **MR. FRETWELL:** Objection, Your Honor. I'm not sure
10 that -- if he wants to show the witness what he's talking
11 about. To just happen to refer to something that might be
12 in evidence, there are sixty ---

13 **MR. YARBOROUGH:** I can -- they're up here, sir.

14 Q. You can look at that one. There's a bigger one, I
15 think, the State put in. Did you get a copy of that for --
16 with your investigation?

17 A. From Mr. White's phone, I got a copy of his flier, sir.

18 Q. You got a copy of his flier?

19 A. Yes, sir.

20 Q. And you brought that flier to court. Right? Did you?

21 A. I don't know if it was entered into evidence or not,
22 sir.

23 **MR. FRETWELL:** It's not in evidence. It's been
24 identified, but it's not in evidence.

25 Q. Is this the one that you saw?

1 A. Can I -- can I look at it a little closer, sir? I'm
2 sorry.

3 (Pause)

4 A. It's one similar. It appears identical. I don't think
5 that's the exact one I saw, but it's one just like that,
6 sir.

7 Q. Okay. And did -- did you print that off the phone?

8 A. Yes, sir.

9 Q. Okay. And you printed that as part of your
10 investigation?

11 A. Clarify. This did not come off the phone. This was
12 from Facebook.

13 Q. You printed it -- but you printed that off from
14 Facebook?

15 A. I think I printed it -- well, I don't have access to
16 Facebook. It was printed from Facebook.

17 Q. Okay. But you recognize that as something you got as
18 part of your investigation?

19 A. Yes, sir.

20 Q. Okay.

21 **MR. YARBOROUGH:** Your Honor, I thought it'd been moved
22 into evidence. I'd move it into evidence at this time as
23 Defense exhibit 3.

24 **MR. FRETWELL:** No objection, Judge.

25 **THE COURT:** So admitted.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

1 (Whereupon Defendant White exhibit 3 was marked and
2 admitted into evidence)

3 Q. So I thought that you had said earlier that you got the
4 telephone number to call the guy in North Charleston from
5 that flier. Is that incorrect?

6 A. No, that's correct. There was a flier on his phone,
7 but this one's printed from Facebook, looks like almost a
8 month later.

9 Q. Okay. And what is the date of that concert?

10 A. It says Saturday, January 18th. No year.

11 Q. Okay. And prior to the robbery your investigation
12 showed that Mr. White had discussed this concert with Mr.
13 Riley?

14 A. Correct. Yes, sir.

15 Q. And that was in Mr. Riley's statement that he gave to
16 you?

17 A. Yes, sir.

18 Q. And at that point in your investigation what did you
19 learn that Mr. White told Mr. Riley about that concert?

20 A. That he had earned two bands.

21 Q. What did you think that meant?

22 A. Two thousand dollars.

23 Q. Okay. And you said that you discussed that with Mr.
24 White and he gave you several explanations about that, is
25 that correct?

1 A. Two, sir.

2 Q. Two -- two of them. And what that was about how he got
3 paid.

4 A. I don't know if it was how he got paid. It was how the
5 money was earned. I don't know how he got paid. I don't
6 know if it was cash, check. It was how he -- how the money
7 was earned.

8 Q. Okay. Well, I mean, you don't refute that that took
9 place?

10 A. Not at all, sir.

11 Q. Okay. And it took place two days before the robbery?

12 A. Yes, sir.

13 Q. Okay. And Mr. White had told Mr. Riley about that
14 beforehand?

15 A. That was not discussed with me, sir.

16 Q. Okay. But you are the lead investigator and you have
17 looked at that?

18 A. Looked at the flier? I have looked at ---

19 Q. No. Looked at Mr. Riley's statement.

20 A. Yes, sir.

21 Q. And in Mr. Riley's statement it says what?

22 A. That he stopped him -- stopped Mr. Riley as Mr. Riley
23 was about to leave and explained to him that he had a
24 concert on Saturday and earned two bands, sir.

25 Q. Okay. So they had discussed it?

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

800

641

1 A. After the concert, prior to the robbery, sir.

2 Q. After the concert, prior to the robbery?

3 A. Yes, sir.

4 Q. Okay. And you don't have any reason to doubt that?

5 A. No, sir.

6 Q. Now did you talk to the -- to the promoter in

7 Charleston?

8 A. I called a lower part of the State area code and

9 telephone number that was on the flier, sir.

10 Q. Okay. And did you go down there and do any

11 investigation?

12 A. No, sir.

13 Q. Okay. But my client had told you that he had had this

14 concert?

15 A. Yes, sir.

16 Q. And you were following leads?

17 A. Yes, sir.

18 Q. And so you didn't think it was important to do that?

19 A. I spoke to the individual who answered the phone on

20 that sheet, sir, about the concert.

21 Q. And they said the concert took place?

22 A. Yes, sir.

23 Q. And there was -- you didn't have any reason to question

24 that?

25 A. No, sir.

1 Q. Okay. You just didn't agree with what the individual
2 told you on the telephone and you did no follow up?

3 A. No, sir, I didn't -- it's not that I didn't agree with
4 him. I just took what he said and told Mr. White.

5 Q. Did you try to follow it up?

6 A. No, sir. Well, I did -- well, I did with Mr. White.

7 Q. And he told you he made a couple of bands or a couple
8 of ---

9 A. No, sir. He told me seven thousand, five hundred
10 dollars.

11 Q. Okay. So he -- he told you he made some money?

12 A. Yes, sir, seven thousand, five hundred dollars.

13 Q. Okay. And did you have any reason to doubt that?

14 A. Yes, sir.

15 Q. Okay. And what was that? What -- what led you to
16 doubt that?

17 A. When I called that phone number, the individual
18 identified as the promoter told me that the concert did not
19 go well, they took in maybe one thousand dollars and that
20 Mr. White was paid one hundred dollars.

21 Q. Okay. And did you ever try to follow that up?

22 A. No further than that phone call, sir.

23 Q. Okay. So ---

24 A. Except for confronting Mr. White with that.

25 Q. All right. So if there's evidence that backs that up,

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

643

1 you don't know it?

2 A. I confronted Mr. White with what was told to me, sir.

3 Q. Right. And he -- and he said that they were wrong.

4 A. No. He changed his story and told me, well, I didn't
5 get it from the door sales, the other rappers paid me.

6 Q. Okay.

7 A. Which the promoter may not know about.

8 Q. Okay. Well, -- and so that's what -- that's what you
9 found, right?

10 A. Yes.

11 Q. Okay. And in looking at the phone records that you've
12 talked about in here today, did it appear to you that --
13 that there was communication from Mr. White to a -- some
14 individuals about something that happened the 19th of
15 January?

16 A. I don't know what you're referring to, sir.

17 Q. Okay.

18 A. I don't know anything about the 19th.

19 Q. The 19th. Have you looked at his phone records for the
20 19th of January?

21 A. I have some of them here, sir.

22 Q. Okay. Well, look at the one you've got up there, the
23 19th.

24 (Pause)

25 A. I have two text messages listed for the 19th, sir.

1 Q. Okay. And they weren't deleted.

2 A. They are deleted, sir.

3 Q. They are deleted.

4 A. They're marked -- they were -- when you say deleted,
5 they were deleted by the user of the phone, but our
6 software's still able to recover them. Not all, but a lot
7 of it.

8 Q. Okay. But it does show that, perhaps, he spent some
9 money on the 19th, right?

10 A. I don't know that it shows he spent any money, sir. I
11 don't -- I don't see where it says that.

12 Q. Okay. But the records speak for themselves.

13 A. I don't see where it says he spent money, sir.

14 Q. Okay. Did you check or did you have forensics check
15 the brick in this case to see if there was any DNA found on
16 it?

17 A. The forensic technician on-scene made a judgment call
18 based on her experience and training that the rock could not
19 be processed, sir.

20 Q. Okay. And do you have that rock?

21 A. No, sir.

22 Q. Okay. So that's an important piece of evidence that is
23 not available anymore?

24 A. I did not consider it important, sir. And neither did
25 she.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

645

1 Q. Okay. But if we had that rock today we could check it,
2 right?

3 A. You could check it, yes, sir.

4 Q. Okay. And you haven't or you did check DNA on this
5 rag?

6 A. No, sir.

7 Q. Okay. You didn't? But you got DNA from my client, but
8 you didn't check the rag?

9 A. Correct.

10 Q. But you said you would have expected to find DNA on
11 that rag?

12 A. No, I said I would have expected to find his DNA on
13 that rag.

14 Q. Right. But -- but you didn't.

15 A. I didn't check it, sir. That was the reason why I
16 didn't check it.

17 Q. This is what's in evidence here, right?

18 A. Yes, sir.

19 Q. And you're the lead investigator?

20 A. Yes, sir.

21 Q. And you didn't check it?

22 A. I made a decision not to have DNA searched for on that
23 rag because I expected to find Mr. White's DNA on it because
24 he works there and handles them. It would show me
25 absolutely nothing other than he handled the dishrag at the

1 Olive Garden.

2 Q. Well, he could have been the one that handled the
3 dishrag that put it in the corner if you'd checked the DNA,
4 right?

5 A. He placed it at the base of the door, sir, not in the
6 corner.

7 Q. Well, you don't know that he placed it -- he put it in
8 the base of the door. We've been through that.

9 **MR. FRETWELL:** Objection, Your Honor. Argumentative.

10 Q. You haven't checked that?

11 A. It has not been checked for DNA, sir, that's correct.

12 Q. Okay. You didn't. The rock hasn't been checked for
13 fingerprints?

14 A. Not that I'm aware of, sir. Again, that was a call
15 that the forensic technician made out on the scene.

16 Q. Now, these pictures here are -- where's the -- you want
17 to step down in front of the jury.

18 A. Yes, sir.

19 Q. Where's the Olive Garden?

20 A. The Olive Garden is located right here.

21 Q. Okay. And this is the main road. That's North
22 Pleasantburg.

23 A. Yes, sir.

24 Q. And that's State Park Road.

25 A. Yes, sir.

1 Q. And behind Olive Garden are all these houses.

2 A. There is a small neighborhood back there. Sylvania,
3 Orlando. I don't think you can see it -- I think Apopka
4 Avenue runs over here. I worked this beat area for about
5 seven years when I started at the sheriff's office.

6 Q. All right. And there's some -- there's some what I'd
7 -- what I'd describe as crack houses back over here.

8 A. There are some vacant homes. And there's some low
9 income housing there, sir.

10 Q. Okay. And back up here off State Park Road?

11 A. No. Those are actually a lot nicer. In fact, just
12 over here is Montebello, probably one of the highest priced
13 ---

14 Q. Well, not -- Montebello's about half a mile back up in
15 there?

16 A. Maybe. Probably less than -- substantially -- if you
17 go the way the crow flies, substantially less.

18 Q. Okay. But to get there it would be ---,

19 A. By driving, yes, sir.

20 Q. Yeah. But you'd still have to go through this rough
21 section of town?

22 A. I don't consider this rough, sir. In my seven years
23 working this beat area, I don't believe I ever answered a
24 call on Sylvania Avenue. Now, Orlando, I know I've been to
25 calls to and Apopka down here. But, again, it's a lower

1 income housing, but not crazy high crime.

2 Q. If you drove up to that house right down there in the
3 corner would you see chairs and a grill sitting out in the
4 front of that house on Sylvania Avenue?

5 MR. FRETWELL: Your Honor, what's the relevance? Your
6 Honor, I object.

7 THE COURT: Sustained.

8 MR. YARBOROUGH: Your Honor, ---

9 Q. But it's safe to say that there are houses all around
10 there?

11 A. Yes, sir.

12 Q. And did you investigate any of that to see if someone
13 from there had robbed the Olive Garden?

14 A. No, sir.

15 Q. Okay.

16 THE COURT: Mr. Yarborough, we're going to break in
17 five minutes. So ---

18 MR. YARBOROUGH: Okay.

19 THE COURT: --- I'm not telling you you need to quit,
20 you just need to find a spot in five minutes that you can
21 recess for the evening.

22 Q. The dog -- you followed the path of the dog, right?

23 A. I did not follow it, but I know the path the dog took,
24 sir.

25 Q. Okay. Well, the path of the dog goes back to that

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

649

1 area, right?

2 A. It actually ends at State Park and Sylvania.

3 Q. Right. And that's the area we were pointing to?

4 A. Well, it's part of it, yes, sir.

5 Q. It's what?

6 A. It's part of that area, yes, sir.

7 Q. Okay. And do you know where this picture was found,
8 exhibit number 36?

9 A. I do not know. Somewhere along the path of the money
10 that was dropped. I don't know where it was.

11 Q. Okay. And would you agree with me that that hundred
12 dollar bill's in good shape?

13 A. Again, from the photograph, I can't tell. It's a
14 hundred dollar bill. I'm not denying that.

15 Q. Okay. But would -- if you look at it, you would not
16 describe that hundred dollar bill as in good shape?

17 A. Certainly much better than other hundred dollar bills
18 I've seen, yes, sir.

19 Q. Okay. Did you check it for fingerprints?

20 A. That money was returned. I didn't have access to it,
21 sir.

22 Q. But you could ---

23 A. No, there was no need to, sir.

24 Q. What do you mean there's no need to?

25 A. Mr. Kretzschmar had provided that he put the money in

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

650

1 the bag. And then when the robber ran out, the bag broke.

2 So there's no contact between the robber and the money, just

3 Mr. Kretzschmar and the bag.

4 Q. Okay. So what you're saying is that -- that the robber
5 never touched any of this money?

6 A. Well, not the money that's on the ground.

7 Q. And you ---

8 A. Mr. Kretzschmar ---

9 Q. --- know that exactly how?

10 A. Mr. Kretzschmar put the money in the bag. The robber
11 flees with the bag. The coins break the bag and drop the
12 money out.

13 Q. So you made a decision not to have this tested?

14 A. I didn't make the decision, the forensic technician
15 did.

16 Q. But you're the lead agent, right?

17 A. I am not aware of this case when that money was
18 returned, sir.

19 Q. And there's -- was money up and down the sidewalk?

20 A. I'd have to see that picture, if I could tell you where
21 it was, it's possible. I know there was some beside the
22 Olive Garden. I think they even found some close to
23 Sylvania.

24 (Pause)

25 A. Yeah, this is the sidewalk next to the Olive Garden.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

651

1 The building next to it -- has like a Little Caesars and
2 maybe a FedEx or UPS store in it. And that's what these
3 sidewalk pictures are.

4 Q. Okay.

5 A. And this one with the car is behind the Olive Garden on
6 -- I believe on Sylvania.

7 Q. Okay. Did you have any -- any of this tested for DNA
8 or fingerprints?

9 A. Again, sir, not my call to make. I was not notified of
10 the case until after that money had been returned. But the
11 same argument.

12 Q. Okay. Do you know how much money was returned?

13 A. I don't know the exact amount. That was Mr.
14 Kretzschmar.

15 Q. Okay. And Mr. -- do you know how much money -- what
16 numerical dollars were stolen?

17 A. Not the exact amount. It was approximately three
18 thousand, five hundred dollars with between seven and nine
19 hundred dollars returned.

20 Q. Okay. So does that mean twenty-eight hundred dollars
21 was stolen or forty-two hundred dollars was stolen?

22 A. Well, you can't have -- no, initially in the safe was
23 about thirty-five hundred dollars.

24 Q. Okay. So then twenty-eight hundred dollars leaves.

25 A. Roughly. Between twenty-eight and twenty-seven or

1 twenty-six hundred.

2 Q. Okay. And do you -- do you know what types of bills
3 those were?

4 A. Predominantly ones, fives and tens.

5 Q. Okay. And how do you know that?

6 A. Because Mr. Kretzschmar's statement to the other
7 investigators that that was the change that they needed.

8 Q. And who did he tell that to?

9 A. It would have been -- I have actually heard that from
10 him, but he also told it to whoever took his statement. I'd
11 have to look and see who it was.

12 Q. But if he testified in court that he didn't know, was
13 he telling the truth when he testified in court or ---

14 **MR. FRETWELL:** Objection, Your Honor.

15 **THE COURT:** Mr. Yarborough.

16 Q. Did you hear him testify in court?

17 A. I did.

18 Q. Okay. And did you hear what he said?

19 A. I did.

20 Q. And what did he say?

21 A. He said that predominantly it would be ones, fives and
22 tens, there'd be very few one hundreds because this was the
23 money they used for the change to the patrons.

24 Q. And you're saying he said that in this courtroom?

25 A. Yes, sir, that's what I heard. He said ---

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

653

1 **THE COURT:** All right.

2 A. Sorry.

3 **THE COURT:** We're going to break for the evening.

4 Ladies and gentlemen, I'm going to let y'all go home. We're
5 going to start tomorrow morning at 9:30. I'm going to ask
6 that you not discuss the case with each other or with
7 anybody else while you're gone tonight.

8 I'm going to ask you to do me one favor when you come
9 in in the morning. If y'all would select a foreperson of
10 this jury before we begin. I anticipate that you will get
11 the case tomorrow and -- it'll probably be tomorrow morning
12 or late morning. And I'm going to need a foreperson. And
13 we will give that person instructions at the same time we
14 give the jury instructions.

15 So don't get on the computer, don't run by any
16 locations, don't do anything other than go home, rest and
17 relax a little bit, come in tomorrow and we'll put you back
18 to work. So y'all have a nice evening and we'll see you in
19 the morning.

20 (Whereupon the jury exited the courtroom at 5:28 pm)

21 **THE COURT:** All right. Sir, you can step down.

22 A. Thank you, sir.

23 **THE COURT:** We'll see you in the morning. Don't
24 discuss your testimony ---

25 A. Yes, sir.

1 **THE COURT:** --- with anybody while you're off the
2 stand. Let me ask a couple of things. Anybody have any
3 charges they want me to look at?

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

5 **THE COURT:** Mr. Yarborough, you have any idea how long
6 you're going to be with this witness tomorrow?

7 **MR. YARBOROUGH:** Probably no more than thirty minutes,
8 Your Honor.

9 **THE COURT:** Thirty more minutes?

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

11 **THE COURT:** All right. Ms. Ross?

12 **MS. ROSS:** It depends -- I'm going to go through it
13 tonight and try to check off all the points that someone
14 else has made. So I think I can do it in ---

15 **THE COURT:** Thirty minutes?

16 **MS. ROSS:** Yeah.

17 **THE COURT:** All right. And then do you anticipate
18 putting up a case?

19 **MR. YARBOROUGH:** A brief one, Your Honor.

20 **THE COURT:** Brief being thirty minutes?

21 **MR. YARBOROUGH:** Thirty minutes.

22 **THE COURT:** Ms. Ross, do you anticipate putting up any
23 evidence?

24 **MS. ROSS:** I do not, Your Honor.

25 **THE COURT:** All right. And then you'll have any reply.

1 I don't know whether y'all anticipate that at this time.

2 All right.

3 **MS. ROSS:** Can I have one thing? I know it's too late.

4 I didn't make a contemporaneous objection, but Investigator
5 Kelly testified to a couple of texts made about an hour
6 before the robbery saying are you going to be in Anderson in
7 the am? And I don't know what's the response.

8 I really hadn't seen that and didn't know what it meant
9 or was coming from and thought it would be clarified, but it
10 hasn't been. So I'd move to strike those if you would
11 consider that, for the jury just to strike that part of the
12 record.

13 **THE COURT:** You're a little late on that one.

14 **MR. FRETWELL:** And, Judge, we provided that information
15 to Ms. Ross.

16 **MS. ROSS:** I know. It was in a different form. And
17 then ---

18 **THE COURT:** All right. Well, we're not going to strike
19 it.

20 **MS. ROSS:** All right. And then, I guess, in light of
21 that -- well, I'll wait for tomorrow.

22 **THE COURT:** These just general charges?

23 **MS. ROSS:** Mostly general. I asked for State v.

24 Edwards on -- here, Allen, I'm sorry, on circumstantial

25 evidence. I understand the state of the law today, however,

1 I think that language is relevant in the Constitution. So
2 I'd ask for that.

3 THE COURT: All right.

4 MR. FRETWELL: Judge, do you charge Grippon for
5 circumstantial evidence?

6 THE COURT: Do I charge what?

7 MR. FRETWELL: State versus Grippon.

8 THE COURT: Grippa?

9 MR. FRETWELL: Grippon. G-r-i-p-p ---

10 THE COURT: The last case that I knew was Marbury
11 versus Madison. If you want, I mean, I can show you my
12 charge. I charge what I believe to be the current law on it
13 and ---

14 MR. FRETWELL: That is satisfactory with the State,
15 Judge.

16 THE COURT: They're both good. And we've got a ---

17 MR. FRETWELL: Thank you for that, Judge.

18 THE COURT: I'll show you my -- I'll show you what I'm
19 going to charge before we charge in the morning. I'll show
20 you the verdict form.

21 MS. ROSS: All right.

22 MR. FRETWELL: Thank you, Judge.

23 MS. SIMPSON: Thank you, Your Honor.

24 MR. FRETWELL: Have a good night.

25 THE COURT: Y'all have a nice evening.

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

2 (Whereupon court was in recess at 5:32 pm)

3 (End of Volume Two of Three)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENVILLE

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

2014-GS-23-03815

2014-GS-23-10507

-VS-)

TRANSCRIPT OF RECORD
(VOLUME THREE OF THREE)JAMES WHITE AND)
GERALD GADSDEN,)DEFENDANTS.)
_____)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

1 Thursday, June 9, 2016 (Volume Three of Three):

2 (Whereupon court reconvened at 9:36 am)

3 **THE COURT:** Based on what y'all told me yesterday, I
4 anticipate that we should finish with the sergeant here in
5 an hour or so. I anticipate going into -- well, you're
6 going to rest at that point in time. You say you have a
7 very short -- if you call anybody it'll be very short?

8 **MR. YARBOROUGH:** That's correct. Yes, sir.

9 **THE COURT:** Get to -- go to closings by about eleven.
10 Figure we'll finish closings by 11:15.

11 **MR. FRETWELL:** That'd be great, Judge.

12 **THE COURT:** Well, my point is, I was asking them to
13 prepare for the jury for lunch, that we would eat sometime
14 about one.

15 **MR. YARBOROUGH:** So bring it in?

16 **THE COURT:** I'm going to bring it in for them and let
17 them -- so that's sort of my time-frame. And we'll take a
18 break after sometime about 10:30, quarter til eleven to
19 allow the jury to order and then we can chat at that time
20 about charges. I don't know if y'all have had a chance to
21 see Ms. Ross' proposed charges and whether there's any
22 objection to anything.

23 **MR. FRETWELL:** I didn't hear that last part, Judge.

24 **THE COURT:** If there's any objections to any of their,
25 if there are. I'll tell you, Ms. Ross, on my reasonable

1 doubt, it's sort of a combination of hesitate to act and --
2 what's the other ...

3 **MR. FRETWELL:** Firmly convinced.

4 **THE COURT:** Yeah, firmly convinced. So ...

5 **MR. FRETWELL:** Judge, on another matter, while the
6 jury's out and we have this opportunity, do you want to know
7 what convictions the State would introduce against the
8 Defendants should they happen to take the stand? Do you
9 want that information?

10 **THE COURT:** Well, I mean, I don't necessarily need it,
11 if you've talked to them about it.

12 **MR. FRETWELL:** I certainly turned over all the -- all
13 the information. I just didn't know if you wanted that
14 information for purposes of your voir dire of the
15 Defendants.

16 **THE COURT:** I mean, I just ask them, I mean, if they
17 understand if there's any prior record, it would be
18 admissible under the rules if they -- their credibility may
19 be related to that on cross examination.

20 **MS. ROSS:** You want a copy ---

21 **THE COURT:** Of what?

22 **MS. ROSS:** Of my requests for instructions ---

23 **THE COURT:** Sure. I'm going to need a copy back. So
24 if we're going to talk about them -- you can make a copy?

25 **MADAME CLERK:** Yes.

1 (Pause)

2 **THE COURT:** All right. We have the jury. The State
3 ready to proceed?

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

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

6 **MR. YARBOROUGH:** Yes, sir, Your Honor.

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

8 **MS. ROSS:** Yes, Your Honor.

9 **THE COURT:** All right. You can bring the jury in.

10 (Whereupon the jury entered the courtroom at 9:38 am)

11 **THE COURT:** All right. Good morning to you, ladies and
12 gentlemen. Nice to see you this morning. I hope all of
13 y'all had a nice evening last night and ready to go to work
14 again this morning.

15 As we do every day, I need to ask did anybody have any
16 conversation about this case or were you approached by
17 anyone since we left yesterday afternoon?

18 **THE JURY:** No, sir.

19 **THE COURT:** Anybody do any independent investigation,
20 or computer inquiry or anything of that nature since we left
21 yesterday?

22 **THE JURY:** No, sir.

23 **THE COURT:** All right. Good. Just for the attorneys'
24 information, Mr. Stewart White has been selected as
25 foreperson of the jury. You Mr. White?

1 **MR. WHITE:** Yes, sir.

2 **THE COURT:** Well, you and I will have a little
3 conversation after everything's done and tell you some of
4 your responsibilities as foreperson. Of course, it will be
5 in the same room with all your other colleagues. I
6 appreciate your willingness to serve.

7 The State is still in the process of its case in chief
8 being put up. And I think Mr. Yarborough was examining the
9 Sergeant here. So, Mr. Yarborough, I'll ask if you would
10 proceed, sir.

11 **MR. YARBOROUGH:** Thank you.

12 **Cross Examination by Mr. Yarborough Continued:**

13 Q. Sergeant Weiner, we were talking yesterday when we left
14 about your investigation, is that correct?

15 A. Yes, sir.

16 Q. And your investigation revealed that Mr. Riley left the
17 Olive Garden sometime between 11:18 and 11:20, is that your
18 testimony?

19 A. He clocked out at 11:18, sir.

20 Q. He clocked out at 11:18 and it took him some time to
21 leave. So 11:18 -- we'll give -- we'll give you 11:18,
22 okay? That's what time he clocked out. Is that fair?

23 A. Yes, sir.

24 Q. Okay. Now, do you -- the call into the police station
25 about the robbery came from who?

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

663

1 A. From Mr. Kretzschmar.

2 Q. Okay. And that came in at what time?

3 A. I don't know the exact time. My report indicates what
4 time the first officer went on-scene. I listened to the 911
5 call. And it lasts maybe a couple of minutes. He goes on-
6 scene at 11:28. So I'd say roughly 11:25.

7 Q. Okay. So seven minutes after Mr. Riley leaves?

8 A. Yes, sir.

9 Q. Okay. And your belief was that it was an inside job,
10 the robbery, is that right?

11 A. Yes, sir.

12 Q. Okay. And that belief stemmed from the fact that there
13 was a white Olive Garden towel stuck down in the bottom down
14 there?

15 A. Yes, sir.

16 Q. Okay. And you knew that Mr. Riley was the last person
17 to leave.

18 A. Yes, sir.

19 Q. Okay. So did you subpoena Mr. Riley's phone records?

20 A. No, sir.

21 Q. Okay. Did you check Mr. Riley's DNA against the
22 dishtowel that was in the door?

23 A. No, sir.

24 Q. Okay. Did you check Mr. -- did you interview Mr.
25 Riley?

1 A. Yes, sir.

2 Q. He came down and gave you his statement?

3 A. Yes, sir.

4 Q. Okay. And did you try to substantiate what Mr. Riley
5 told you?

6 A. Yes, sir.

7 Q. And you did that by calling his girlfriend?

8 A. Yes, sir.

9 Q. Okay. Did you do anything else to substantiate what
10 Mr. Riley told you?

11 A. Confirmed what time he clocked out of the business,
12 sir.

13 Q. Okay. But we've already discussed that. And you said
14 that was 11:18.

15 A. Correct.

16 Q. Okay. And do you know if Mr. Riley got some food after
17 the time he left and the time he, I mean, after the time he
18 clocked out and the time he walked out the door?

19 A. He indicated to me the last thing he did was clock out,
20 sir.

21 Q. Okay. So you're saying the last thing he did, 11:18,
22 he clocks out and the robbery call comes in seven minutes
23 later?

24 A. Yes, sir.

25 Q. And there's no question that somebody broke the window

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

1 out there?

2 A. Correct.

3 Q. And it appeared from your investigation that the window
4 was broken by a brick.

5 A. I don't know that -- some kind of rock. I don't know
6 if it's a brick, sir.

7 Q. Okay. Well, you've seen the photographs.

8 A. Yes, sir.

9 Q. And we looked at them yesterday.

10 A. Yes, sir.

11 Q. And there's a brick down in the right hand corner.

12 A. There's some kind of rock, stone. I don't know that
13 it's a brick, sir.

14 Q. Okay. Do you have it?

15 A. I do not, sir.

16 Q. Did you ever have it?

17 A. No, sir.

18 Q. So it's never been tested for anything?

19 A. No, sir.

20 Q. And so it's never been tested for Mr. Riley's
21 fingerprints?

22 A. No, sir.

23 Q. Okay. Now, Mr. Riley came down and gave you his
24 statement and he told you that when he was -- when he left
25 Aaron was there, James was there and Mr. Pugh was there.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

666

1 A. Yes, sir.

2 Q. Okay. And he said that my client, Mr. White, and Mr.
3 Pugh were back there washing dishes.

4 A. He didn't tell me where they were. He said they were
5 still in there.

6 Q. Okay. So he didn't know where they were?

7 A. No, sir.

8 Q. But you talked to Mr. Kretzschmar and he said they were
9 back there washing dishes.

10 A. I think he assumed they were washing dishes. But he
11 was in his office, sir.

12 Q. When Officer Middleton got there, they're on the floor
13 by the dishwasher -- by the dishwashing machine, right?

14 A. Yes, sir.

15 Q. Okay. And at that point you interviewed Mr. Pugh.

16 A. I did not interview Mr. Pugh, sir.

17 Q. You never interviewed Mr. Pugh?

18 A. No, sir.

19 Q. Did you get Mr. Pugh's statement in your investigation?

20 A. Yes, sir.

21 Q. And did that statement say that Mr. White didn't leave
22 from the time Mr. Riley left til the time the store was
23 robbed?

24 A. I believe it said the best he could remember he did not
25 leave, sir.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

667

1 Q. Okay. The best he could remember. So he said the best
2 he could remember is that Mr. White didn't leave the
3 dishwashing area.

4 A. Yes, sir.

5 Q. Okay. And at that point you didn't think it was
6 important to test that towel for Mr. White's DNA?

7 A. No, sir.

8 Q. Because as you said yesterday, you knew you'd find Mr.
9 White's DNA on that towel?

10 A. I don't know that I would find it, but I would expect
11 to find it, sir.

12 Q. You would expect to find it. So wouldn't that be
13 important in your investigation?

14 A. No, sir. He's a dishwasher at the Olive Garden. I
15 expect his DNA on a dishtowel.

16 Q. But there were twenty other people working there that
17 night.

18 A. Yes, sir.

19 Q. Twenty other people had access to dish -- I mean, to
20 towels at the Olive Garden.

21 A. Yes, sir.

22 Q. Okay. And so it could have had somebody else's DNA on
23 it.

24 A. Yes, sir.

25 Q. But you didn't test it?

1 A. No, sir.

2 Q. Now, you got descriptions of the robbers from the
3 reports that were taken that night, right?

4 A. I got the description of a robber, sir.

5 Q. Got the description of a robber.

6 A. Yes, sir.

7 Q. And that description said the robber had short, cropped
8 hair.

9 A. Could I refer to the ---

10 Q. Sure.

11 A. --- original report? Thank you.

12 (Pause)

13 A. One witness described short hair.

14 Q. Short hair. Okay. Now, at the time of the robbery
15 Gadsden had dreadlocks, right?

16 A. Some kind of twisty braids. I think dreadlocks are
17 more of the long clumped together hair. These were like
18 twisty little braids, if I recall.

19 Q. Let me ask you if you recognize this picture.

20 A. Yes, sir, I've seen it.

21 Q. Okay. And do you see Gadsden in there?

22 A. On the far right in the teal pants.

23 Q. Okay. And what's his hair look like?

24 A. He has twisty little braids, sir.

25 Q. Twisty little braids or twisty long braids?

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

- 1 A. They're little skinny braids that come about to his
2 cheeks, maybe. Is that right? In that picture, as far as I
3 know.
- 4 Q. Okay. But there are braids on that hair?
- 5 A. Yes, sir.
- 6 Q. That's not short, cropped hair, is it?
- 7 A. That's not what I would call short hair, sir.
- 8 Q. Okay. So you knew that Gadsden at the time of this
9 robbery had this long hair, right?
- 10 A. Yes, sir.
- 11 Q. Okay. And -- but you put his picture in a photo lineup
12 anyway as far as your investigation.
- 13 A. Yes, sir.
- 14 Q. And you showed that photo lineup to Mr. Pugh.
- 15 A. Yes, sir.
- 16 Q. And he could not pick out the robber.
- 17 A. No, sir.
- 18 Q. Okay. And you showed that photo lineup to Mr. Riley.
- 19 A. No, sir.
- 20 Q. You never showed the photo lineup to Mr. Riley.
- 21 A. He did not view the robber, sir.
- 22 Q. He what?
- 23 A. He never saw the robber, sir.
- 24 Q. He never saw -- he never saw the robbery.
- 25 A. No, sir.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

670

1 Q. So you never showed it to him.

2 A. No, sir.

3 Q. Okay. And did you show it to Mr. Kretzschmar?

4 A. Yes, sir.

5 Q. And when you showed it to Mr. Kretzschmar could Mr.

6 Kretzschmar pick out Mr. Gadsden?

7 A. No, sir.

8 Q. Okay. And so at that point did you not think you

9 needed to do some more investigation?

10 A. At that time I determined that I had probable cause to

11 make an arrest, sir.

12 Q. I said did you -- did you feel like you should do some

13 more investigation?

14 A. No, sir. I felt we'd gone as far as we could with this

15 case.

16 Q. Okay. And you had -- you had the two people that were

17 in there that had been robbed, two of the three people in

18 there that had been robbed that had looked at a photo lineup

19 and they could not pick out Gadsden?

20 A. Yes, sir.

21 Q. Okay. And that didn't make you wonder?

22 A. Not one bit, sir.

23 Q. Didn't make you wonder one bit?

24 A. No, sir.

25 Q. Now, right after that Mr. White told you that he had

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

671

1 made some money at a rap concert.

2 A. Yes, sir.

3 Q. Okay. And somehow or another you confirmed that there
4 was a rap concert held on -- two days before, right?

5 A. Yes, sir.

6 Q. Two days before the robbery?

7 A. Yes, sir.

8 Q. Okay. And that didn't make you question where the
9 money had come from?

10 A. It did, sir.

11 Q. It did?

12 A. Yes, sir.

13 Q. Okay. And so when it made you question you made a
14 phone call to somebody and that was it? That's ---

15 A. Yes, ---

16 Q. --- all you did?

17 A. Yes, sir.

18 Q. You didn't go down, you didn't interview anybody?

19 A. No, sir.

20 Q. You didn't try to ask the promoter of the concert or
21 anybody that was there if there were -- there was money
22 made?

23 A. No, sir.

24 Q. And if there was money made that would have changed
25 your opinion.

1 A. There was money made, sir. I testified to that
2 earlier.

3 Q. Well, you testified there was a hundred dollars, but if
4 -- you also knew that one of your witnesses said that Mr.
5 White had said there was two bands made.

6 A. I testified that one thousand dollars was made at the
7 event, that Mr. White was paid one hundred dollars, sir.

8 Q. Okay. The one thousand -- but you knew that he had
9 said he'd made more money than that.

10 A. Yes, sir.

11 Q. Okay. And so you didn't want to follow up and check
12 that out?

13 A. I did, sir.

14 **MR. FRETWELL:** Your Honor, at this point I'm going to
15 object. We went into this yesterday.

16 **THE COURT:** Mr. Yarborough, ---

17 **MR. YARBOROUGH:** I'll move on, Your Honor.

18 Q. Show you number 62. Do you recognize that picture?

19 A. Yes, sir.

20 Q. And what is that picture?

21 A. A large stack of bills that would appear to be one
22 dollar bills taken from Mr. Gadsden's phone the day after
23 the robbery.

24 Q. Okay. And does it have two bands on it?

25 A. Looks like a rubber band doubled over to me.

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

673

1 Q. Okay. But you see there's two wraps on it?

2 A. Yes, sir.

3 Q. Okay. And that picture came off of Gadsden's phone,
4 right?

5 A. Yes, sir.

6 Q. And this picture came off of Gadsden's phone, too,
7 didn't it?

8 A. Yes, sir.

9 Q. Okay. Now let's discuss Gadsden's hair in this
10 picture.

11 A. Yes, sir.

12 Q. How does that hair look?

13 A. Again, those twisty -- probably about almost jaw line
14 at that point, they appear.

15 Q. Would it -- you don't think that gets all the way down
16 to the shoulders? You want to look at it closer?

17 A. He -- it's a hood. It's touching the hood, sir.

18 Q. Okay. You see the hair in the right hand corner?

19 A. My opinion is it comes to about his jaw line and it's
20 touching the hood, sir.

21 Q. Would you agree the picture speaks for itself?

22 A. It is a photograph, sir.

23 Q. What?

24 A. I don't understand your question.

25 Q. Would you agree the picture speaks for itself?

1 **THE COURT:** I agree the picture speaks for itself.

2 Let's move on.

3 **MR. YARBOROUGH:** Thank you.

4 Q. And that picture has the same money in it that you just
5 identified, right?

6 A. I don't know that it's the same money, sir.

7 Q. So this was another picture that came off of there?

8 A. Yes, sir.

9 Q. Okay. And that has a stack of ones and fives, does it
10 appear?

11 A. Yes, sir.

12 Q. Okay. And that's Defense exhibit, I mean, State's
13 exhibit 60?

14 A. Yes, sir.

15 Q. And this picture, which was from the -- you believe
16 that's from the concert?

17 A. I don't know when it's from, sir.

18 Q. Okay. But it's got Mr. White and Gadsden's picture on
19 it, right?

20 A. Yes, sir. They're both in the picture together.

21 Q. Okay. And would Gadsden's hair be consistent with the
22 way it's seen in these pictures?

23 A. Yes, sir.

24 Q. Okay.

25 **MR. YARBOROUGH:** And I think without objection we've

DAVID WEINER - CROSS EXAMINATION BY MR. YARBOROUGH

675

1 agreed this will be Defense 4?

2 **MR. FRETWELL:** Judge, I don't have an objection to the
3 picture.

4 **THE COURT:** So admitted without objection.

5 **MS. ROSS:** No objection.

6 (Whereupon Defendant White exhibit 4 was marked and
7 admitted into evidence)

8 Q. Did you ever find a camouflage jacket?

9 A. No, sir.

10 Q. Camouflage jackets are pretty normal wear?

11 A. I don't know that it's normal wear. I don't have a
12 camouflage jacket, sir.

13 Q. Well, you work in Greenville, right?

14 A. Yes, sir.

15 Q. And the concert took place on January 18th, right?

16 A. Yes, sir.

17 Q. And the weather in Greenville's chilly, right?

18 A. The concert was in Charleston, sir. But it's chilly in
19 Greenville.

20 Q. Would it be chilly in Charleston?

21 A. I don't know, sir.

22 Q. But it would be chilly in Greenville. So people wear
23 jackets, right?

24 A. Yes, sir.

25 Q. Did you look and see who else clocked out around the

1 time that Mr. Riley did?

2 A. No, sir.

3 Q. Okay. So you don't know how many people clocked out
4 around 11:00?

5 A. No, sir.

6 Q. And you didn't do any check on that?

7 A. No, sir.

8 Q. And did you -- did you ask any of the employees -- just
9 one second.

10 (Pause)

11 **MR. YARBOROUGH:** I don't have anything further. Thank
12 you.

13 **THE COURT:** All right. Ms. Ross.

14 **MS. ROSS:** Thank you, Your Honor. May it please the
15 Court.

16 **Cross Examination by Ms. Ross:**

17 Q. Okay. I'm going to go sort of in chronological order
18 and kind of move along. Is it fair to say you're the lead
19 investigator on the case?

20 A. After Investigator Motes left, yes, ma'am.

21 Q. And you're familiar with the entire file, the CDs,
22 incident reports?

23 A. To the best of my ability, yes, ma'am.

24 Q. Okay. I just want to pull out incident recall. Can I
25 show you the incident recall in the case? Or can you tell

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

677

1 the jury what an incident recall is?

2 A. I don't know what that is, ma'am, unless you show it to
3 me.

4 Q. Do you know what that is? Have you ever seen one of
5 those before?

6 A. Yeah. We call them a CAD report.

7 Q. Okay. Can you tell the jury what that is?

8 A. Just as the dispatchers enter into the computer system,
9 you can maybe even hear keystrokes going on while 911 -- it
10 enters in the calls so that all the dispatchers in the
11 center can see it. And so even though she's talking to Mr.
12 Kretzschmar on the phone, another dispatcher's dispatching
13 Officer Middleton to the robbery. And this is just like a
14 chronological set of events. As each car goes on-scene,
15 they mark it, as forensics go on-scene, they mark it and so
16 forth.

17 Q. And you can see I've highlighted two items on there but
18 made no other changes to the CAD report, correct? And I ---

19 A. I don't know ---

20 Q. --- just wanted ---

21 A. Yes, ma'am.

22 Q. Okay. I just wanted to highlight -- when does it say
23 the case was opened?

24 A. At 11:25 pm.

25 Q. Okay. So that means 911 was called at 11:25?

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

678

1 A. According to the CAD report's time, yes, ma'am.

2 Q. Okay. Is that Central Mean Time or ---

3 A. I don't know, ---

4 Q. --- is that the correct time?

5 A. --- but it's very accurate. Yes, ma'am.

6 Q. Okay. And accuracy is part of the job, right?

7 A. Yes, ma'am.

8 Q. And then it says at 23:27, which is 11:27, James

9 Middleton is on the scene.

10 A. Yes, ma'am.

11 Q. And he said 11:28, but 11:27 could have been when he
12 radioed in the parking lot and said I'm on the way in, I'm
13 on the scene, right?

14 A. Yes, ma'am.

15 Q. You don't know that that ---

16 A. Right. There could have been a time discrepancy
17 between his mobile data terminal and this CAD report.

18 Q. Okay. Would you like to see it some more?

19 A. No, ma'am.

20 Q. Okay. Now, you -- when you said before, you weren't on
21 the scene, you didn't become involved in the case until
22 January 22nd, two days later?

23 A. The following morning I read the reports and assigned
24 it to Investigator Motes.

25 Q. Okay. Well, then, I guess in your report you talked

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

679

1 about having Damion Riley and James White come down to the
2 LEC on January 22nd.

3 A. Yes, ma'am.

4 Q. And Damion Riley came first. You spoke to him first,
5 correct?

6 A. Yes, ma'am.

7 Q. And did you ask him if he drove down to the LEC? Did
8 you ask him how he got there?

9 A. I did, yes, ma'am.

10 Q. And what did he say?

11 A. That he got a ride.

12 Q. Okay. Now, he was the last to leave the Olive Garden
13 before the robbery. And we've established he clocked out at
14 11:18. And he said he was picked up at 11:20, correct?

15 A. He clocked out at 11:18. His girlfriend didn't have
16 any record of time. So she thought it was around 11:20 when
17 she took him home.

18 Q. Okay. And you talked to Lorraine Walker, his
19 girlfriend, on the phone, correct?

20 A. Yes, ma'am.

21 Q. Now, you never interviewed her personally, did you?

22 A. No, ma'am.

23 Q. Did you take a picture of her car or were you familiar
24 with what kind of car she had?

25 A. No, ma'am.

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

680

1 Q. And you didn't write out a report or statement, you
2 just made a phone call and she confirmed she picked up
3 Damion Riley?

4 A. Yes, ma'am.

5 Q. Okay. Did you ever run her rap sheet or look into any
6 kind of record she might have?

7 A. No, ma'am.

8 Q. Now, Damion Riley gave a written statement to you on
9 the 22nd, correct?

10 A. Yes, ma'am.

11 Q. Okay. And then he said that James White had bragged
12 about making a few bands, and we've kind of gone over that,
13 at a rap show.

14 A. Yes, ma'am.

15 Q. And based on that you called a venue and you thought
16 that -- eventually thought that he didn't really make as
17 much money as he'd said.

18 A. Not based on Mr. Riley's statement, no, ma'am.

19 Q. Okay. I'll skip over that and we can come back later.
20 Riley said that he'd finished work, collected his W-2 from
21 Aaron Kretzschmar that day and he came around the corner to
22 the manager's office where the safe was and then went and
23 got some food and then clocked out and left. Is that your
24 recollection of his statement?

25 A. He would have got the W-2 -- I don't want to get

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

681

1 confused, but the W-2, the safe and Kretzschmar were all in
2 the same place. So he went around, talked to Mr.

3 Kretzschmar, got his W-2, walked out, picked up his food,
4 clocked out and left.

5 Q. Okay. And you were here in the courtroom, Aaron
6 Kretzschmar did not recall giving Damion Riley a W-2 that
7 night, did he?

8 A. No, ma'am.

9 Q. And he never made any mention of that to law
10 enforcement that night or in his statement.

11 A. No, ma'am.

12 Q. And then going on, Riley said he was sure the door shut
13 and locked behind him, correct?

14 A. Yes, ma'am.

15 Q. Now, at one point you said -- don't even want to touch
16 it, but the dishrag, you didn't test it for DNA because if
17 it showed it wouldn't prove anything because if White's DNA
18 was on there you wouldn't be surprised, correct?

19 A. Yes, ma'am.

20 Q. Do you recall saying that? Now, this is assuming
21 White's DNA would be on there. If Riley's DNA was on there,
22 that would be another story, wouldn't it?

23 A. No, ma'am.

24 Q. Well, he was not a dishwasher, was he?

25 A. No, ma'am. But those are the towels that the kitchen

1 uses in the back.

2 Q. I believe he testified, and you might have been in the
3 courtroom, that he used a different kind of towel, like a
4 little yellow rag ---

5 MR. FRETWELL: Objection, Your Honor. Not only is she
6 testifying with that, but she's pitting one witness against
7 another.

8 THE COURT: Sustained.

9 Q. Were you in the courtroom during the -- when Mr. Riley
10 testified?

11 A. Yes, ma'am.

12 MR. FRETWELL: Same objection, Your Honor.

13 THE COURT: I'm going to let her ---

14 MS. ROSS: Judge, I think I can ask this question.

15 THE COURT: You can ask what question you're going to
16 ask and we'll determine whether you can ask it.

17 MS. ROSS: Thank you, Judge.

18 Q. So my question was isn't it true that if Damion Riley's
19 DNA was on that rag it could be significant?

20 A. No, ma'am.

21 Q. And your position is that Damion Riley did use those
22 rags all the time?

23 A. Yes, ma'am.

24 Q. But you were in the courtroom yesterday. Did he say he
25 used those rags all the time?

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

683

1 A. His statement that I ---

2 Q. Day before yesterday.

3 A. --- observed was that the servers used some kind of
4 yellow napkins, but in the back they used dishtowels.

5 Q. Okay. So you don't recall him saying anything about we
6 used yellow towels to deal with the heat when we're cooking?

7 A. I remember him talking about the servers using those to
8 carry the plates, ma'am. I don't remember him saying that.
9 His statement was that they used those towels to wipe down
10 counters and prep areas.

11 Q. Okay. Now, however, that being said, wouldn't it be
12 significant if his DNA was on the rag when he said he never
13 saw the rag ---

14 **MR. FRETWELL:** Objection, Your Honor. This is probably
15 the third time she's asked this same question, Judge.

16 **THE COURT:** All right. Overruled. We'll give him one
17 more chance to answer it.

18 A. I would expect his DNA to be on there just like I would
19 Mr. White's, ma'am.

20 Q. All right.

21 A. It would not surprise me.

22 Q. Now, Riley said the door shut and locked behind him.

23 And his job was on the line, wasn't it? If he didn't -- if
24 he let that door stay open, that's a terminable offense?

25 A. Yes, ma'am.

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

684

1 Q. And so would you have expected him to admit leaving the
2 door open if he had?

3 A. I would hope he would tell the truth to law
4 enforcement, ma'am.

5 Q. But according to Aaron Kretzschmar he would have been
6 fired for that?

7 A. Yes, ma'am.

8 Q. Now, you didn't ask, and we've been through this, you
9 didn't ask to search his phone. You didn't ask him to hand
10 over his phone, did you?

11 A. No, ma'am.

12 Q. You didn't ask to take a swab of his DNA, did you?

13 A. No, ma'am.

14 Q. You didn't get a search warrant for his house or his
15 car?

16 A. No, ma'am.

17 Q. Or should I say Lorraine Walker's car? Now, Riley
18 didn't mention he was in trouble for burglary to you, did
19 he?

20 A. No, ma'am.

21 Q. And you were in the courtroom day before yesterday and
22 he testified that he did tell you he'd been in trouble,
23 didn't he?

24 A. Not that I recall, ma'am.

25 Q. All right. And if he had mentioned that would that be

1 relevant to you in any manner that he had -- he was in
2 trouble for burglary?

3 A. To me it would depend on how old the charge was and
4 what kind of charge it is.

5 Q. Now, on this charge, we're not on trial for burglary,
6 but you originally took out a warrant for burglary as well?

7 A. Yes, ma'am.

8 Q. Okay. Now, just to go over it, the employer records
9 confirmed that David -- Damion Riley clocked out at 11:18
10 and 911 was called at 11:25. So that's a seven minute
11 difference there, right?

12 A. Yes, ma'am. That's assuming the clock at Olive Garden
13 is in line with our clock at dispatch. It could also be off
14 a little bit.

15 Q. Okay. Did you find any evidence to ---

16 A. No.

17 Q. --- that it was off ---

18 A. I would assume if it was off it would be a brief amount
19 of time.

20 Q. Okay. I want to move on to the Olive Garden
21 surveillance video because I was a little confused about
22 that and I wanted to clarify it. You -- in my discovery I
23 received this image. It's in evidence, a good nice color
24 copy.

25 A. Yes, ma'am.

1 Q. Do you recognize this image?

2 A. Yes, ma'am.

3 Q. Okay. And what's the clock stamp time?

4 A. 11:22.

5 Q. Okay. So assuming the video timing is correct on the
6 Olive Garden video, that suggests that this car drove
7 through around 11:22?

8 A. Yes, ma'am. I checked the clock. It was correct. If
9 it was not I would have documented it.

10 Q. Okay. And so that's two minutes after Michelle [sic]
11 Walker estimated that they -- Damion Riley and she had left,
12 right?

13 A. Yes, ma'am.

14 Q. And could she explain her certainty about the time?
15 You said before she just wasn't -- she estimated that time.

16 A. That was just her estimate of time was 11:20.

17 Q. Okay.

18 A. I went off Mr. Riley's clock-out time, which was 11:18.

19 Q. And on this car -- you put it out -- you were trying to
20 find the car, so you put it ---

21 **MR. FRETWELL:** Objection, Your Honor. That particular
22 photo is not in evidence. If she wants to get the photo in
23 evidence and share that with the jury, that's fine, but that
24 photo ---

25 **MS. ROSS:** Okay.

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

687

1 MR. FRETWELL: --- is not in evidence.

2 MS. ROSS: Sorry. I'm not trying to show it to the
3 jury.

4 Q. You know the picture I'm talking about?

5 A. Yes, ma'am.

6 Q. With that picture, you put it out on the news and said,
7 anyone seen this car?

8 A. Yes, ma'am.

9 Q. And you got a call from a neighbor lady or a lady who
10 lived nearby?

11 A. Yes, ma'am.

12 Q. Now, and she said that was her?

13 A. Yes, ma'am.

14 Q. That was probably her. Now, did she give any reason
15 she could have any certainty of the time?

16 A. Yes, ma'am.

17 Q. What was that reason?

18 A. She went to the Burger King drive-thru and cut through
19 the parking lot to avoid the traffic light at 291 and State
20 Park Road. And she had her receipt.

21 Q. Did she have her receipt? And ---

22 A. Yes, ma'am.

23 Q. --- it said 11:22 or 23 ---

24 A. I think it was like 24 or something to that effect.

25 Q. Okay. So that's how you knew that that was that?

1 A. Yes, ma'am.

2 Q. Okay. Well, that makes -- that helps. And then going
3 back to the video, you said the video must have been turned
4 off around 11:22 because this was in it. And I just -- just
5 to ask, so did -- was this the last image and then 11:23,
6 boom?

7 MR. FRETWELL: Your Honor, I'm going to object to the
8 compound nature of the question. She's asked two different
9 things. I'd just object to the compound nature of the
10 question.

11 Q. How did you know the video had been turned off at
12 11:22?

13 A. I don't know that it was turned off at 11:22. I don't
14 know that that was the last image. But I know it was
15 functioning at 11:22. And it was not functioning at 11:28.

16 Q. Did you look at the -- did you look at the whole video?

17 A. I did, but that was the only car. I don't recall what
18 time the video went off.

19 Q. Did the -- you don't recall at all? I mean, could it
20 have not gone off until after 11:30?

21 A. No, no. There were no patrol cars on the video or
22 anything. It turned off shortly after that vehicle.

23 Q. Okay. And you say -- so when it turns off is it just a
24 stopped image like in crime movies where it's just showing
25 the parking lot and it just stops and there's still an image

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

1 there? Or does it just go black?

2 A. From what I recall, it just -- it ends, the recording
3 ends.

4 Q. And you don't recall what time it ended?

5 A. No, ma'am. It was not long after that vehicle.

6 Q. Okay. Let's see. Okay, moving on. James White came
7 to the LEC after Damion Riley, correct?

8 A. Yes, ma'am.

9 Q. And he came to your office at your request? You'd
10 asked him to come down?

11 A. I think Investigator Motes requested him, but ---

12 Q. Okay.

13 A. --- at the request of law enforcement, yes, ma'am.

14 Q. Okay. And you questioned him about the rap show. And
15 then you called -- and this time you called the unknown male
16 about the rap show that the number was on the flier?

17 A. Yes, ma'am.

18 Q. And he didn't seem to confirm what Mr. White was
19 saying?

20 A. He did not, ma'am.

21 Q. And White gave his statement. And you knew his
22 nickname was Jr. G and he said he was a rapper.

23 A. I don't know if I -- I don't know if I knew that at
24 that time, but I know now.

25 Q. Okay.

1 A. At some point during the investigation that was
2 discovered.

3 Q. Yeah, and when you saw this it helped?

4 A. Yes, ma'am.

5 Q. And then he consented to his phone search on that day,
6 right?

7 A. Yes, ma'am.

8 Q. And he consented to the DNA search on that day?

9 A. Yes, ma'am.

10 Q. And at that point you got a warrant on him for a
11 driving infraction and arrested him and impounded his car,
12 correct? During that day?

13 A. I don't know if it was a warrant or a ticket. But that
14 is correct, he ---

15 Q. Okay.

16 A. Yes, ma'am.

17 Q. Okay. Now, just going back, I want to show you this
18 real quick. This is the consent to search for the phones.

19 A. Yes, ma'am.

20 Q. We've heard some testimony, the second phone was kind
21 of handed over later after the fact time?

22 A. My understanding was within a minute or two of the
23 first phone, the second phone comes out of the pocket.

24 Q. Were you there?

25 A. Yes, ma'am.

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

691

1 Q. Okay. So it wasn't your understanding, that's what --
2 you were there?

3 A. Yes, ma'am.

4 Q. Okay. And because of the different color inks, a
5 couple of days later you went ahead and said let's just go
6 get a warrant, be on the safe side before we go in and
7 search these phones.

8 A. Yes, ma'am.

9 Q. Okay. Now, I just want to go -- I'm skipping around.
10 I need to get back in order. You talked to or someone in
11 law enforcement talked to Mr. White's girlfriend, Katrina
12 Ferguson, the next day when she came to pick up her car.

13 A. Yes, ma'am.

14 Q. And at that point she was upset.

15 A. Yes, ma'am.

16 Q. And she was asked to consent to the search of
17 everything in the vehicle and she consented, didn't she?

18 A. Yes, ma'am.

19 Q. And in that vehicle two more phones were found.

20 A. Yes, ma'am.

21 Q. And it was a -- I'm going to mispronounce this, Kialata
22 or -- it was a similar Kialata and a similar Samsung, almost
23 identical phones, two more.

24 A. Yes, ma'am.

25 Q. That were found in the car. Now, those -- there's a

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

692

1 search warrant. Those phones were searched as well and
2 nothing relevant came off those phones, right? The ones
3 found in the car.

4 A. One was password locked. We never could determine.

5 Q. Okay.

6 A. And to my knowledge, the second one, no, ma'am.

7 Q. But she consented to the search, they found them and
8 they were -- they were out there.

9 A. Yes, ma'am.

10 Q. Now, skipping to January 25th, this is five days after
11 the robbery, James White called your office from a blocked
12 phone and he was upset, wasn't he?

13 A. He called my cell phone, ma'am.

14 Q. So you'd given him your cell phone number and ---

15 A. Yes, ma'am.

16 Q. --- he'd called that cell phone. And at that point he
17 said he had no idea who Gerald Gadsden was and hung up on
18 you.

19 A. That is some of the conversation, yes, ma'am.

20 Q. Okay. Now, during that conversation you didn't refer
21 him to the contact Keem you saw in his phone, did you?

22 A. No, ma'am.

23 Q. And this hang up was after you'd arrested him for a
24 driving ticket and were beginning to threaten to charge him
25 with the burglary.

1 A. I informed him of the potential charges, ma'am.

2 Q. So that's the context of him saying I don't know Gerald
3 Gadsden and hanging up?

4 A. I don't know if those were his last words, but he
5 denied knowing Gerald Gadsden and he did hang up on me.

6 Q. Okay. Now, on January 27th, a week after the incident,
7 about a week, you swore out a search warrant for Jamie
8 White's home?

9 A. Can I look at this just to see what the date was? Do
10 you mind?

11 **THE COURT:** You may.

12 Q. You could if I was more organized.

13 A. I should have ---

14 Q. Oh, you ---

15 A. --- it in here.

16 Q. --- it? Okay.

17 A. Yes, ma'am.

18 (Pause)

19 A. Yes, ma'am, January 27th.

20 Q. All right. And on the search warrant, it's based on
21 suspected guns, money and evidence or robbery that might be
22 found in his home.

23 A. Yes, ma'am.

24 Q. And in the home you found a Jr. G -- I don't know if
25 it's in evidence, a rap CD that said Jr. G on it, like a --

1 well, CD that said Jr. G on it.

2 A. Yes, ma'am.

3 Q. And a pair of teal pants with a credit card in them
4 with the name Gerald Gadsden on them.

5 A. Yes, ma'am.

6 Q. And in the pocket.

7 A. Yes, ma'am.

8 Q. Any guns found?

9 A. No, ma'am.

10 Q. Any gift cards or sums of money found?

11 A. No, ma'am.

12 Q. And at that point or right around then there was a
13 search of the phone, the phones. Are you familiar with
14 those searches of the phones?

15 A. Yes, ma'am.

16 Q. You said there were phone calls to Keem over a month
17 long period, correct?

18 A. It went back to October, ma'am.

19 Q. And there were three calls on January 18th, is that
20 correct?

21 A. I would have to look.

22 Q. Do you have that there with you?

23 A. I do have a smaller of this, over by the boards.

24 Q. You don't have all four hundred pages?

25 A. There are no calls between Keem -- between Mr. Gadsden

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

695

1 and Mr. White on the 18th.

2 Q. Okay. From -- okay. Well, then there was reference to
3 a text to Antwanett giving the name Gerald Akeem Gadsden and
4 a social security number.

5 A. Yes, ma'am.

6 Q. Do you recall that?

7 A. Yes, ma'am.

8 Q. And isn't the context of that text -- doesn't it say
9 taxes or information for tax returns or something about
10 taxes?

11 A. All I have is a text showing that exact information,
12 ma'am.

13 **MS. ROSS:** Beg the Court's indulgence.

14 (Pause)

15 Q. We'll come back to that. Now, looking through the
16 pictures on Mr. White's phone isn't it true there were a
17 number of images like this? Of money, and rap singers, and
18 rap singers holding money?

19 A. Of large denominations, yes, ma'am.

20 Q. All right. And there was this flier.

21 A. Yes, ma'am.

22 Q. All showing a clear interest in rap.

23 A. Yes, ma'am.

24 Q. And is cut an album clear interest to being a rap
25 singer and going to a concert?

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

696

1 A. Yes, ma'am.

2 Q. Now, going to the Samsung phone, there were no calls to
3 or from Keem, and this was testified to before, the day
4 before the robbery, were there?

5 A. No, ma'am.

6 Q. And the day after there were four, correct?

7 A. There's five.

8 Q. Okay. And those were starting about -- was it 7:45 in
9 the morning?

10 A. 7:23, ma'am.

11 Q. Okay. On 2 or 3. They're just going through the
12 afternoon, right?

13 A. Just the morning, ma'am.

14 Q. And that's kind of the end of the calls at all on that
15 phone. The phone just -- the last call was on January 21st
16 until it's in State's possession and y'all make the call.

17 A. I'm not one hundred percent sure, but that was the last
18 call on that phone, ma'am.

19 Q. Okay. And this picture and all these money pictures
20 were all taken after the phone calls between James White and
21 Gerald Gadsden, correct?

22 A. The way I reviewed the files and interpreted them, they
23 were taken about the same time.

24 Q. Okay. Now, the -- we heard testimony before from
25 Investigator Perry that said the time on the phone was

1 correct. And the time for these shots are around 2:00,
2 2:30, right in there, is that correct?

3 A. Again, the way I interpreted it because the phone lists
4 pictures and ---

5 Q. Well, not to interpretation.

6 **MR. FRETWELL:** Your Honor, ---

7 Q. The photograph was taken ---

8 **MR. FRETWELL:** Objection, Your Honor. The witness
9 hasn't finished his answer.

10 A. The phone listed pictures in Standard Time and
11 Greenwich Mean Time, which is a five hour difference. So I
12 took the five hours off. The phone calls themselves are
13 listed in Eastern Standard Time, but the photographs and the
14 way the phone was in ---

15 Q. Okay.

16 A. --- Greenwich Mean Time, ---

17 Q. Now, Investigator ---

18 A. --- which is a five hour difference.

19 Q. --- Perry, the phone expert yesterday, said nothing
20 about that.

21 A. (No response)

22 Q. Okay. Now, going on, the contact for Gerald in Mr.
23 White's phone said Keem, K-e-e-m, correct?

24 A. Yes, ma'am.

25 Q. Now, going to the text messages on the Samsung phone,

1 yesterday in court a few text messages were brought in
2 between Mr. Gadsden and someone who in the contacts was
3 Dezzie, is that correct?

4 A. I heard that discussed, yes, ma'am.

5 Q. Okay. So I'm showing you a printout of the other text
6 messages to give you some context around that time period.
7 Does that look familiar to you?

8 A. Yes, ma'am.

9 Q. Okay. So there was testimony yesterday that there was
10 a text, you gonna be in Anderson tomorrow. And then the
11 reply was -- and that was from Dezzie. And the reply from
12 Keem was don't know yet. And that was on January 20th, 2014
13 around 10:30? 10:20, 10:30, correct?

14 A. In the evening, yes, ma'am. Again, I'll point out,
15 this one says UTC plus zero, which is that Universal Time,
16 which is a five hour difference.

17 Q. Okay. As a non-expert on the phones I would ask you
18 not to make ---

19 **MR. FRETWELL:** Your Honor, I'm going to object. She's
20 ---

21 Q. --- assumptions on ...

22 **MR. FRETWELL:** She's asking the witness about
23 information. Either he's qualified to talk about it or she
24 needs to have somebody else ---

25 **THE COURT:** He gave his response.

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

1 **MS. ROSS:** Okay.

2 **THE COURT:** You don't like it, you can cross him on
3 that response.

4 **MS. ROSS:** All right.

5 Q. You're not an expert on these phone records, are you?

6 A. No, ma'am.

7 Q. Okay. If you don't mind turning to the part -- the
8 next page.

9 A. Yes, ma'am.

10 Q. That just shows the prior texts. And it says at 10:11
11 Dezzie texted what up, bro, correct?

12 A. That's not the first one in the transaction, but, yeah,
13 he or she says WYD, which I believe is short for what are
14 you doing?

15 Q. Okay. And if you could just respond. Gerald responded
16 at 10:14, looking at Face/Off, the John Travolta movie. He
17 just said looking at Face/Off, correct?

18 A. That's most of it, yes, ma'am. I don't know if you're
19 just trying to avoid the expletive in there, but mine has an
20 expletive in it.

21 Q. Yes. I thought it was unnecessary to say, shit, you
22 looking at Face/Off. That's what it says.

23 A. I just wanted to get the ---

24 Q. Okay.

25 A. --- complete statement in there.

1 Q. That's great. At 10:16 it says, is it good? Response,
2 yeah, it's an old movie. Dezzie responds, correct. Is that
3 what it says?

4 A. Yeah, it is -- he sends back, yeah, it is okay, it is a
5 old movie.

6 Q. And Dezzie responds at 10:23, LOL, ick, what you
7 talking about that movie is good, correct?

8 A. I think the IK means I know what you talking about that
9 movie is good.

10 Q. Sorry.

11 A. Yes, ma'am.

12 Q. That shows my -- okay. And then Gerald says, it is.

13 A. Yes, ma'am.

14 Q. And then Dezzie asks, are you going to Anderson
15 tomorrow?

16 A. You gonna be in Anderson tomorrow, yes, ma'am.

17 Q. Okay. So that's the context of the Anderson thing,
18 nothing about the robbery?

19 A. I don't see anything about a robbery, ma'am.

20 Q. Okay. Now, Mr. or Officer Middleton was the first on
21 the scene and interviewed the manager, Aaron Kretzschmar,
22 correct?

23 A. Yes, ma'am.

24 Q. And he described the robber and he said, remember, you
25 were in the courtroom, he said he took notes at the time he

1 was talking to him, to Aaron, correct?

2 A. There was some discussion about notes, but I never
3 heard if he actually took them.

4 Q. Okay. And said that it was a black male, six foot,
5 stocky build, tan jacket, short hair and no facial hair,
6 black semiautomatic gun.

7 A. Yes, ma'am. That's what he put in here.

8 Q. Okay. He didn't say a hoodie, did he?

9 A. Mr. Kretzschmar did not, no, ma'am.

10 Q. And you're saying that Mr. Pugh didn't get a look at
11 all. So Mr. Kretzschmar was the one who saw him. He didn't
12 say a hoodie, just said ---

13 **MR. FRETWELL:** Objection, Your Honor. What's ---

14 **THE COURT:** Sustained.

15 **MR. FRETWELL:** --- the question?

16 **MS. ROSS:** Sorry.

17 Q. He didn't say a hoodie, did he?

18 **MR. FRETWELL:** She's ---

19 **THE COURT:** He just ---

20 **MR. FRETWELL:** --- mentioning different ---

21 **THE COURT:** --- answered that question before you asked
22 it again.

23 **MS. ROSS:** All right.

24 Q. Now, on January 24th you went to the Olive Garden
25 yourself, correct?

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

702

1 A. Yes, ma'am.

2 Q. Or am I getting you confused with ---

3 A. No, ma'am. It was about dinnertime.

4 Q. Okay. And at that point did you administer the lineup
5 or did I -- was it Investigator Motes?

6 A. Investigator Motes was not there. I believe
7 Investigator Owens ---

8 Q. Owens.

9 A. --- was with me.

10 Q. Okay. So it was the both of you that did the lineup?

11 A. Yes, ma'am.

12 Q. And did you take the photographs from the lineup and
13 put them in property and evidence?

14 A. Yes, ma'am.

15 Q. And they were color pictures?

16 A. No, ma'am.

17 Q. They were black and white photos?

18 A. Yes, ma'am.

19 Q. Do you have them with you today?

20 A. Yes, ma'am.

21 Q. May I see them?

22 A. They're in a bag behind Mr. Fretwell. You want me to
23 get them for you, ma'am?

24 Q. If you could, that would be great.

25 (Pause)

DAVID WEINER - CROSS EXAMINATION BY MS. ROSS

1 Q. And -- do you recognize these pictures?

2 A. Yes, ma'am.

3 Q. Are those the pictures that you showed to Mr.

4 Kretzschmar and Mr. Pugh?

5 A. Yes, ma'am.

6 Q. And is Gerald Gadsden's photograph in that group?

7 A. Yes, ma'am.

8 Q. And the reason they all have longer braids is because

9 ---

10 **MR. FRETWELL:** Your Honor, I'm going to object again.

11 **THE COURT:** Sustained. Those pictures aren't in
12 evidence.

13 **MS. ROSS:** Apologies, Judge.

14 Q. Now, were either Pugh or Kretzschmar able to pick out
15 Gerald Gadsden from this lineup?

16 A. No, ma'am.

17 **MS. ROSS:** And I'll go ahead and offer these into
18 evidence at this time.

19 **MR. FRETWELL:** May I see them?

20 (Pause)

21 **MS. ROSS:** And I assume it's okay to put the other
22 pictures in evidence along with Mr. Gadsden's picture even
23 though they weren't involved. There are no privacy issues
24 or anything.

25 **THE COURT:** Well, I don't know what other pictures

1 you're talking about.

2 **MS. ROSS:** They're just part of the array.

3 **MR. FRETWELL:** No objection, Your Honor.

4 **THE COURT:** Any objection, Mr. Yarborough?

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

6 **THE COURT:** So admitted.

7 (Whereupon Defendant Gadsden exhibit 1 was marked and
8 admitted into evidence)

9 Q. Okay. All the photos show people with longish braids,
10 correct?

11 A. Yes, ma'am.

12 Q. And that's because in a photo array you don't want one
13 person to stand out ---

14 A. Yes, ma'am.

15 Q. --- from the others such that someone looking at it
16 would just say one of these things is not like the other and
17 just pick them?

18 A. Yes, ma'am.

19 Q. Now, that being said, Mr. Gadsden is certainly more
20 light skinned than the others, correct?

21 A. I think there was one more that had it. That's why I
22 did it in black and white. I did not make this photograph
23 array. It was provided to me by SLED.

24 Q. Okay.

25 A. I didn't have a picture of Mr. Gadsden.

1 Q. And have you seen it -- isn't it true that he's got
2 sort of light green and blue -- sort of lighter eyes?

3 A. Yes, ma'am.

4 MS. ROSS: And I'd like to publish this to the jury.

5 THE COURT: Sure.

6 Q. Now, going back, Mr. Gadsden was not identified. At
7 the same time you showed Aaron Kretzschmar a picture of the
8 jacket, and that's in evidence, just a picture of the selfie
9 with the face cut out, just of the jacket, correct?

10 A. Yes, ma'am.

11 Q. And he couldn't say that was the same jacket for sure,
12 could he?

13 A. Not for sure, no, ma'am.

14 Q. Now, Mr. Pugh was not shown a picture of the jacket,
15 you said, right?

16 A. No, ma'am.

17 Q. And he did say, his prior testimony, that he did not
18 change at that time during the lineup was that Mr. White had
19 not left the washroom that he could recall prior to the
20 robbery. Or he said from the time of closing Mr. White did
21 not leave -- I don't remember Mr. White leaving the washroom
22 or something to that effect, correct?

23 A. In his original statement to law enforcement that's
24 what he said. I remember him in here saying that the dishes
25 had to be put away.

1 Q. Did you write that down anywhere?

2 A. I did in talking not with Mr. Pugh, but with the
3 management.

4 Q. So it's not in your report?

5 A. It is.

6 (Pause)

7 A. Report dated January 28th, 2014, page 3 of 5, the
8 bottom paragraph. I'd already spoken with the management at
9 Olive Garden and they confirmed that someone washing the
10 dishes has to put them away at various locations around the
11 restaurant after they are washed.

12 Q. Okay. Is this the last paragraph?

13 A. Yes, ma'am, on page 3 of 5.

14 Q. Isn't it the third sentence I asked Pugh about White
15 leaving the dishwashing station close to the time of the
16 robbery, but Pugh said they washed dishes together til the
17 incident happened?

18 A. Yes, ma'am.

19 Q. And that's what you wrote in your incident report,
20 correct?

21 A. Yes, ma'am.

22 (Pause)

23 **MS. ROSS:** Beg the Court's indulgence.

24 (Pause)

25 **THE COURT:** Anything further, Ms. Ross?

1 **MS. ROSS:** Judge, I'm looking for -- to see if they can
2 find that text. If you'll just give me one more minute.

3 (Pause)

4 **MS. ROSS:** Never mind. We don't need to wait. I've
5 got no further questions.

6 **THE COURT:** All right. Thank you. Anything in
7 redirect?

8 **MR. FRETWELL:** Just briefly.

9 **Redirect Examination by Mr. Fretwell:**

10 Q. Sergeant Weiner, let me take you back to Mr.
11 Yarborough's examination. At that time you said -- he'd
12 asked you a question about the inside job and was that based
13 on a towel in the door, and you responded that it was. Was
14 that the only thing in this case that led you to believe
15 this was an inside job?

16 A. No, sir.

17 Q. Okay. What are the other items that you relied on in
18 determining this was an inside job?

19 A. One of the primary things was the window being broken,
20 but not completely. If the doors are propped open, there's
21 no need to break that window. So the window was broken to
22 conceal that it was an inside job. It was just -- it was
23 their job -- somebody's job to pick up the towel and they
24 forgot. Maybe Officer Middleton got there too fast, I don't
25 know.

1 Q. Okay. And then in Mr. White's statement, and you may
2 have a copy of it up there with you, but it's in evidence,
3 and I just can't locate it.

4 A. I have one, sir.

5 Q. Does Mr. White in his statement reference a man with a
6 hood?

7 A. Yes, sir.

8 Q. I'm going to have an item marked.

9 (Whereupon State's exhibit 71 was marked for
10 identification)

11 Q. State's exhibit 71, do you -- was that among the
12 forensic photographs that you reviewed in this -- in your
13 investigation of this case?

14 A. Yes, sir.

15 Q. Do you recognize that photograph?

16 (Pause)

17 Q. I'm not going to ask you where -- where it ---

18 A. I'm trying to place where it is. It's some of the
19 money trail that was dropped. I think it's just outside the
20 manager's office. I'm not a hundred percent sure on that.

21 Q. Okay. But that particular photograph is a photo that
22 you reviewed in your investigation?

23 A. Yes, sir.

24 **MR. FRETWELL:** Your Honor, at this time I would ask
25 that State's 71 be placed in evidence.

DAVID WEINER - REDIRECT EXAMINATION BY MR. FRETWELL

1 **MR. YARBOROUGH:** Without objection.

2 **MS. ROSS:** No objection.

3 **THE COURT:** So admitted.

4 (Whereupon State's exhibit 71 was admitted into
5 evidence)

6 Q. Mr. Yarborough spent quite a bit of time yesterday
7 asking you about flat bills or new bills. What -- what
8 appears to be the condition of that bill right there?

9 A. It's a ten dollar bill from what I can tell. It's
10 either bended or missing a corner. It does appear slightly
11 wrinkled. It's hard to tell from the picture, sir.

12 Q. Okay. To the questions that Ms. Ross asked you, she
13 gave you a time-line of Mr. Riley about picking up food,
14 clocking out and leaving. Did he -- have you not also
15 testified that you understood that he spoke to the
16 Defendant, Mr. White, before he left?

17 A. Yes, sir.

18 Q. Ms. Ross asked you about a burglary charge that you
19 made in this case. Did you determine in your investigation
20 that the robber, Mr. Gadsden, entered the building
21 unlawfully?

22 A. That's what I determined, yes, sir.

23 Q. With the intent to commit a crime inside?

24 A. Yes, sir.

25 Q. And was that at night?

1 A. Yes, sir.

2 Q. And are those the elements of the burglary charge?

3 A. Yes, sir.

4 Q. And finally, the pictures I think that are -- been up
5 on the -- that you just looked at just a moment ago, the
6 photographs, those pictures are DMV photographs, is that
7 correct, prepared by SLED?

8 A. That's my understanding where SLED gets them is from
9 the driver's database.

10 Q. So those aren't necessarily taken at any point near the
11 time of this particular incident?

12 A. No, sir.

13 **MR. FRETWELL:** No further questions, Your Honor.

14 **THE COURT:** Anything?

15 **MR. YARBOROUGH:** Briefly.

16 **Recross Examination by Mr. Yarborough:**

17 Q. You're saying the text messages are five hours off?

18 **MR. FRETWELL:** Your Honor, that exceeds the scope of my
19 redirect.

20 **THE COURT:** Sustained.

21 **MR. YARBOROUGH:** Judge, this came out in what Ms. Ross
22 was asking him.

23 **THE COURT:** Well, he's the one that redirected.

24 Q. Mr. Fretwell just asked you about Mr. White's
25 statement. And did he tell you that the robber had a

1 camouflage hoodie?

2 A. The statement reads saw a guy with a hood. Doesn't
3 mention camouflage, sir.

4 Q. Okay. He said a guy with a hood. And that's -- that's
5 the statement that was given by my client right here, Mr.
6 White, the written one.

7 A. Yes, sir.

8 Q. The written one.

9 A. Yes, sir.

10 Q. He said that -- a guy with a hood.

11 A. Yes, sir.

12 Q. Okay. And he had come down there freely and
13 voluntarily and given you that statement?

14 A. Yes, sir.

15 Q. Did he tell you anything else in that statement about a
16 description about the robber?

17 **MR. FRETWELL:** I didn't hear the question, Judge.

18 Q. In that statement you're referring to did he tell you
19 anything about the -- anything else about the description of
20 the robber?

21 A. No, sir.

22 Q. The one Mr. Fretwell asked you about.

23 A. No, sir.

24 Q. So could you -- could you read that statement?

25 A. I went to work at 6:15. I clocked in and started in

DAVID WEINER - RECROSS EXAMINATION BY MS. ROSS

712

1 the dishroom washing dishes about eleven or so. A guy with
2 a hood came to da dishroom and pointed a gun and demanded us
3 to get on the floor and lay down. He then stood guard and I
4 heard commotion? He then robbed the store.

5 Q. Thank you.

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

7 **THE COURT:** Anything, Ms. Ross?

8 **MS. ROSS:** Just real quick.

9 **Recross Examination by Ms. Ross:**

10 Q. I'm thinking back -- looking at my notes on the 911
11 call of Aaron Kretzschmar and he described a tan camo-ish
12 jacket, correct, or do you recall?

13 A. Yes, ma'am.

14 Q. And he said he didn't believe the face was covered,
15 correct?

16 A. Yes, ma'am.

17 Q. All right.

18 **MS. ROSS:** No further questions.

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

20 A. Thank you, sir.

21 **MR. FRETWELL:** Your Honor, at this time the State
22 rests.

23 **THE COURT:** All right. Ladies and gentlemen, I'm going
24 to let y'all step out. I'm anticipating that we might be
25 able to get this case to you sometime around one or so. And

1 what we're going to do is order lunch. So I'm going to get
2 you to do a menu while we're on break. And I can take up
3 some matters with these attorneys while we're on break.

4 So the State has rested, which means it's now completed
5 the presentation of its evidence in its case in chief. And
6 I'll bring you back just as soon as I can. Y'all step back
7 and relax. Don't talk about the case and get yourself a
8 lunch.

9 (Whereupon the jury exited the courtroom at 10:43 am)

10 **THE COURT:** All right. Is there anything we need to
11 take up?

12 **MR. YARBOROUGH:** Your Honor, at this time I don't
13 believe the State has met its burden. And the Defense would
14 move for a dismissal based on a directed verdict.

15 There's no evidence before this Court that ties my
16 client, Mr. White, to the robbery. In fact, he went down
17 and he cooperated with the police officers. There's nothing
18 else past that. There's no statement, there's no -- there's
19 nothing that ties him except for -- giving the statement the
20 benefit of the doubt, there's a picture of an individual
21 holding some money. And I don't think that's enough to send
22 it to the jury on kidnapping and armed robbery or
23 conspiracy.

24 **THE COURT:** All right. Anything from the State?

25 **MR. FRETWELL:** Your Honor, certainly there is evidence.

1 The crimes were committed. The State's pointed to the
2 evidence that this individual was one of the three
3 individuals that was inside the restaurant at the time of
4 the incident.

5 The investigation indicated that this was an inside
6 job, that the Defendant, Mr. White, went to meet with
7 officers, he had in his possession a phone that belonged to
8 Mr. Gadsden, on that phone within hours of the robbery are
9 photographs of an individual matching the description given
10 by all of the individuals inside the restaurant at the time
11 of the robbery, that individual in that picture is holding
12 stacks of money.

13 When asked about that individual, Mr. White denied
14 knowing that individual even though the investigation
15 suggested that they had a lot of contact back and forth,
16 which was removed or deleted from his personal smart phone
17 at sometime before coming to the Law Enforcement Center and
18 that phone was turned over to investigations.

19 Your Honor, I think there is sufficient evidence to
20 allow this matter to go to the jury and upon which they
21 could/can determine a verdict of guilty.

22 **THE COURT:** All right. Well, the directed verdict --
23 the standard for a directed verdict, is there any direct
24 evidence or any substantial circumstantial evidence that
25 this offense was committed and committed by this Defendant?

1 I think this is a hand of one, hand of all case in terms of
2 the State's allegations and in addition to a conspiracy
3 charge.

4 And there's clearly evidence an armed robbery occurred.
5 There's clearly evidence that this armed robbery occurred as
6 a result of somebody inside helping somebody to get into the
7 building and commit the offense. There's evidence that
8 these two individuals had a relationship and the
9 relationship was ongoing. There's evidence that both
10 parties had some money at some point in time. And, you
11 know, it's a circumstantial case, but there is evidence. So
12 I'm going to deny your motion.

13 **MR. YARBOROUGH:** Thank you, Judge.

14 **MS. ROSS:** Judge, I, too, would make a motion for
15 directed verdict pursuant to rule 19 of the South Carolina
16 Rules of Criminal -- of Criminal Procedure. I would hand up
17 State v. Odom in support of my motion. Again, substantial
18 circumstantial evidence is required. We argue that that
19 does not exist here.

20 Also, there's no proof or sufficient proof of all the
21 elements. Certainly a conspiracy has to show some meeting
22 of the minds. And that did not exist here that I saw in the
23 evidence. In fact, what I saw in the evidence is mostly
24 near conjecture and suspicion about a suspicious looking
25 picture. So I, too, would move for a directed verdict at

1 this point.

2 **THE COURT:** All right. Again, there's substantial
3 circumstantial evidence. Clearly there's evidence of it may
4 have been an inside job, it took the inside person to assist
5 the outside person to commit the offense. In order for that
6 to occur there had to be some effort on the two parties to
7 get together and plan this thing. So I'm going to deny your
8 motion.

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

10 **THE COURT:** All right. Let's talk about what -- is
11 your client going to testify, Mr. Yarborough?

12 **MR. YARBOROUGH:** No, sir, Your Honor. I've discussed
13 it with him at length. If you want to voir dire ---

14 **THE COURT:** Yes, sir. Mr. White, let me get you to
15 stand if you would, please, sir, and raise your right hand.
16 I'm not going to ask you anything about the elements or the
17 facts of this case. I'm going to talk to you about do you
18 understand your rights with respect to testifying or not
19 testifying, okay?

20 **MR. WHITE:** Okay.

21 **THE COURT:** Do you solemnly swear or affirm any
22 evidence, testimony or statements you give to be the truth,
23 the whole truth and nothing but the truth?

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

25 **THE COURT:** All right. Now, you're represented by Mr.

1 Yarborough in this case, correct?

2 MR. WHITE: Yes, sir.

3 THE COURT: And you've had ample opportunity to talk to
4 Mr. Yarborough about the case?

5 MR. WHITE: Yes, sir.

6 THE COURT: And one of the rights that you have in this
7 case is to testify, to get up and tell your side of the
8 story. Do you understand that?

9 MR. WHITE: Yes, sir.

10 THE COURT: And in addition you also have the right to
11 not testify. You don't have -- you have no burden of proof
12 in this case. You don't have to prove anything. So you do
13 not have to testify. Do you understand that?

14 MR. WHITE: Yes, sir.

15 THE COURT: Mr. Yarborough has indicated that you've
16 elected not to testify. Is that correct?

17 MR. WHITE: Yes, sir.

18 THE COURT: You understand, of course, if, in fact,
19 that occurs, I will instruct the jury that they can't even
20 consider the fact that you did not testify in this case. So
21 they can't go back to the jury room and talk about, well,
22 Mr. White didn't testify. Do you understand that?

23 MR. WHITE: Yes, sir.

24 THE COURT: Again, you also -- if you elected to
25 testify, you understand you would be subject to cross

1 examination by the State of South Carolina and Ms. Ross, I
2 guess, and they could attempt to impeach you? And that
3 would include asking you about any prior record that you
4 might have for which I know of none, but if you testified we
5 would discuss that before that came out and they could
6 attack you in that regard. Do you understand that?

7 **MR. WHITE:** Yes, sir.

8 **THE COURT:** All right. Now this decision not to
9 testify, you've made it after having ample consultation with
10 your attorney?

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

12 **THE COURT:** It is your decision?

13 **MR. WHITE:** Yes, sir.

14 **THE COURT:** Nobody else has forced you to take -- make
15 that decision?

16 **MR. WHITE:** (Negative nod). No, sir.

17 **THE COURT:** I need you to answer because the court
18 reporter has to take it down. Hadn't had any alcoholic
19 beverages in the last twenty-four hours?

20 **MR. WHITE:** No, sir.

21 **THE COURT:** Haven't taken any drugs, had any medication
22 in the last twenty-four hours?

23 **MR. WHITE:** No, sir.

24 **THE COURT:** All right. This decision is being made
25 freely and voluntarily?

1 **MR. WHITE:** Yes, sir.

2 **THE COURT:** It's being made knowingly and

3 intelligently?

4 **MR. WHITE:** Yes, sir.

5 **THE COURT:** And there's no reason other than your

6 making the decision that you do not want to testify, is that

7 correct?

8 **MR. WHITE:** Yes, sir.

9 **THE COURT:** All right. Thank you, sir. Anything you

10 would like to inquire of your client, Mr. Yarborough?

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

12 **THE COURT:** All right. You believe he understands his

13 right with respect to testifying or not testifying?

14 **MR. YARBOROUGH:** He does, Your Honor.

15 **THE COURT:** You've clearly reviewed that with him ---

16 **MR. YARBOROUGH:** I've clearly reviewed it with him on

17 several occasions.

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

19 All right. Mr. Gadsden, have y'all elected to testify

20 or not testify?

21 **MS. ROSS:** Not testify.

22 **THE COURT:** All right.

23 **MS. ROSS:** He's in agreement with that.

24 **THE COURT:** All right. Mr. Gadsden, let me get you to

25 raise your right hand, if you would, please, sir. You

1 solemnly swear or affirm any evidence, testimony or
2 statement you give will be the truth, whole truth and
3 nothing but the truth?

4 MR. GADSDEN: Yes, sir.

5 THE COURT: All right. Now, you can put your hand
6 down. I'm not going to ask you anything about the case
7 itself or the facts of the case. I just wanted to see if
8 you understand your rights, okay?

9 MR. GADSDEN: (Affirmative nod).

10 THE COURT: I need you to answer me ---

11 MR. GADSDEN: Yes, sir.

12 THE COURT: --- now so that ---

13 MR. GADSDEN: Yes, sir.

14 THE COURT: --- our court reporter can take down what
15 you're saying. If you shake your head, you're not going to
16 be able to get that down, okay?

17 MR. GADSDEN: Yes, sir.

18 THE COURT: All right. Now, you've had -- you're
19 represented by Ms. Ross?

20 MR. GADSDEN: Yes, sir.

21 THE COURT: And you've had an opportunity to talk to
22 her about this matter and get whatever advice she wants to
23 give you and you tell her whatever you want to tell her
24 about the matter, is that correct?

25 MR. GADSDEN: Yes, sir.

1 **THE COURT:** And you've discussed whether you would
2 testify or not testify, is that right?

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

4 **THE COURT:** And you've elected not to testify, is that
5 correct?

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

7 **THE COURT:** All right. And you understand that you
8 have the right to testify if you'd like to? You can get up
9 in this jury, I mean, this witness box right here under oath
10 and tell the jury your side of the story, whatever you want
11 to tell them. You understand that?

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

13 **THE COURT:** And, of course, if you do so you understand
14 you're subject to being cross examined in this matter. And
15 if you have any prior record, which probably do based on the
16 fact that I've been given notice that you are -- they're
17 seeking life without parole. Any prior criminal record you
18 have or anything else that they could do to attempt to
19 impeach you or attack your credibility, they would do so.
20 Do you understand that?

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

22 **THE COURT:** All right. Now, you also have the right
23 not to testify. Do you understand that? The Constitution
24 gives you that right. Do you understand that?

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

1 **THE COURT:** You don't have to prove anything in this
2 case. The State of South Carolina has to prove it. And
3 they have to prove you guilty beyond a reasonable doubt.
4 You have no burden. Do you understand that?

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

6 **THE COURT:** And, of course, if you don't testify, I
7 will instruct the jury that the jury can't even consider the
8 fact that you did not testify when they go back to deliver
9 [sic] this case. They can't even talk about that. Do you
10 understand that?

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

12 **THE COURT:** Now, this decision that you are making, is
13 this your decision?

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

15 **THE COURT:** Anybody force you to make that decision?

16 **MR. GADSDEN:** No, sir.

17 **THE COURT:** Anybody threaten you, coerce you to make
18 that decision?

19 **MR. GADSDEN:** No, sir.

20 **THE COURT:** You're doing so voluntarily, is that
21 correct?

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

23 **THE COURT:** All right. And you're doing so knowingly,
24 is that correct?

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

1 **THE COURT:** Now, have you had any alcoholic beverages
2 in the last twenty-four hours?

3 **MR. GADSDEN:** No, sir.

4 **THE COURT:** I know you're taking some medication. You
5 understand what we're talking about here today?

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

7 **THE COURT:** Does that medication affect your ability to
8 make a decision as to whether you want to testify or not
9 testify?

10 **MR. GADSDEN:** No, sir.

11 **THE COURT:** So this decision is your decision and your
12 decision alone?

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

14 **THE COURT:** All right. Ms. Ross, anything you want me
15 to further inquire of your client?

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

17 **THE COURT:** Anything you want to inquire of your
18 client?

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

20 **THE COURT:** You believe that you've had ample
21 opportunity to discuss his testifying or not testifying?

22 **MS. ROSS:** I do.

23 **THE COURT:** Do you believe he understands his rights
24 and his election?

25 **MS. ROSS:** Yes.

1 **THE COURT:** Even though he's taken some medication in
2 the last twenty-four hours?

3 **MS. ROSS:** Yes.

4 **THE COURT:** All right. Thank y'all. All right. Mr.
5 Yarborough, you going to call witnesses?

6 **MR. YARBOROUGH:** I'm going to call one, possibly two.

7 **THE COURT:** All right. Ms. Ross, do you anticipate
8 calling any witnesses?

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

10 **THE COURT:** All right. Well, let's take about five
11 minutes or so and y'all can relax and use the restroom. And
12 then we'll come back and start back up, okay?

13 (Whereupon court was in recess at 10:55 am)

14 (Whereupon court reconvened at 11:09 am)

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

16 **MR. YARBOROUGH:** Your Honor, Ms. Ross went first in
17 opening. So I was going to let her go first again, if
18 that's okay with the Court and go after her in closing.

19 **THE COURT:** Do y'all have any objection to that?

20 **MR. FRETWELL:** Judge, I know we are the last ones up.
21 Other than that, we don't have any position.

22 **THE COURT:** All right. If that's what y'all want. All
23 right. Let's -- are we ready to go? Are you ready, Mr.
24 Yarborough?

25 **MR. YARBOROUGH:** Yes, sir, Your Honor.

KEYERA BROOMFIELD-WHITE - DIRECT EXAMINATION BY
MR. YARBOROUGH

1 **THE COURT:** All right. Let's bring the jury in. You
2 talking about in your closing, right?

3 MR. YARBOROUGH: Yes, sir.

4 (Whereupon the jury entered the courtroom at 11:11 am)

5 **THE COURT:** All right, ladies and gentlemen, as you
6 know, the State has rested. And the Defense now has the
7 opportunity to put up any evidence the Defense wishes to
8 offer. Mr. Yarborough, do y'all intend to call any
9 witnesses?

10 **MR. YARBOROUGH:** Yes, sir. I'd call Keyera Broomfield-
11 White.

12 **MADAME CLERK:** Please come forward.

13 Keyera Broomfield-White,
14 being duly sworn testified as follows;

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

17 MS. BROOMFIELD-WHITE: Keyera Yasmine Broomfield-White.

18 **MADAME COURT REPORTER:** Could you spell that, please?

19 MS. BROOMFIELD-WHITE: It's K-e-y-e-r-a Broomfield, B-
20 r-o-o-m-f-i-e-l-d-White as in the color.

21 **THE COURT:** Did we voir dire this witness?

22 MR. YARBOROUGH: Sir?

23 **THE COURT:** Did I voir dire this witness?

24 MR. FRETWELL: No, Your Honor.

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

KEYERA BROOMFIELD-WHITE - DIRECT EXAMINATION BY
MR. YARBOROUGH

1 **THE COURT:** Tell me your name again. Keyera White?

2 **MS. BROOMFIELD-WHITE:** It's Broomfield-White.

3 **THE COURT:** All right. Ladies and gentlemen, you'll
4 recall at the beginning of the trial I introduced you to a
5 number of -- read the names of a number of potential
6 witnesses that would testify. Apparently this individual's
7 name was not given to me. So I would inquire at this time
8 is there any member of this jury panel or any member of the
9 jury panel's immediate family related by blood or connected
10 by marriage or either now or in the past has had a close
11 personal relationship with Keyera White, is that ---

12 **MS. BROOMFIELD-WHITE:** Keyera Broomfield-White.

13 **THE COURT:** Keyera Broomfield-White or either now or in
14 the past has had an employment or business relationship with
15 Ms. White. If so, please stand.

16 (No response)

17 **THE COURT:** All right. Thank you, Mr. Yarborough.

18 **MR. YARBOROUGH:** Thank you.

19 **Direct Examination by Mr. Yarborough:**

20 Q. Ms. White, where are you from?

21 A. Charleston, South Carolina.

22 Q. Okay. And how old are you?

23 A. Twenty-one.

24 Q. And do you -- what kind of work do you do in
25 Charleston?

KEYERA BROOMFIELD-WHITE - DIRECT EXAMINATION BY
MR. YARBOROUGH

1 A. Well, I'm from Charleston. I live in Beaufort, South
2 Carolina. And I do housekeeping.

3 Q. Okay. And you've been doing that for some period of
4 time?

5 A. Yes. I just started the housekeeping actually about
6 two months ago, but before then I was working at a Wal-Mart
7 deli.

8 Q. Okay. And do you know Mr. White?

9 A. Yes.

10 Q. Are you related to him?

11 A. Yes. That's my uncle.

12 Q. That's your uncle. Were you at a party in Charleston
13 in January of 2014?

14 A. Yes, sir. He threw a party over there. And he had a
15 welcome home/birthday celebration for the January birthdays.

16 Q. Okay. And were there a number of people that were
17 celebrating birthdays that day?

18 A. Yes. It was about seven birthday celebrations that we
19 had including mine and my mother's. And ---

20 Q. Okay. And what's your mother's birthday?

21 A. Hers is on the 18th.

22 Q. Okay. And what day was the party?

23 A. On the 18th.

24 Q. Is that how you remember it?

25 A. Yes.

KEYERA BROOMFIELD-WHITE - DIRECT EXAMINATION BY
MR. YARBOROUGH

1 Q. Okay. Were there a lot of people at the party?

2 A. Yeah. Towards the end of the night around 11:30/12:00
3 we had probably about two fifty, three hundred people out
4 there.

5 Q. And did -- was there a charge to get in?

6 A. Yes. My friend, Chelsea, I know she had to pay ten
7 dollars to get in. And the guys, I had like six guys that
8 came with me, they had to pay more than her. Exact amount,
9 I'm not sure, but I know it was more than ten.

10 Q. It was more than ten? And you said approximately how
11 many people were there?

12 A. Two fifty to three hundred.

13 Q. Okay. And do you know Mr. Gadsden?

14 A. Not personally, but I have seen him.

15 Q. Okay. And did you see him that night?

16 A. Yes.

17 Q. Do you recognize this picture that's been previously
18 marked as Defense exhibit number 4?

19 A. Yes.

20 Q. Okay. And where was that picture taken?

21 A. I don't know where it was taken, but I do recognize the
22 picture.

23 Q. Okay. Does it look like the night of the party?

24 A. Yeah. That's what he was wearing that night.

25 Q. Okay. And is he in that picture?

KEYERA BROOMFIELD-WHITE - DIRECT EXAMINATION BY
MR. YARBOROUGH

888
729

- 1 A. Yes.
- 2 Q. And do you see his hair?
- 3 A. Yes.
- 4 Q. How would you describe his hair?
- 5 A. Dreadlocks.
- 6 Q. Dreadlocks? Is that what you have?
- 7 A. No, these are braids.
- 8 Q. Those are ---
- 9 A. Singles.
- 10 Q. --- braids? And what's the difference in braids and
- 11 dreadlocks?
- 12 A. Braids is just like weaving of the hair. They take
- 13 your hair and weave and braid it where dreadlocks is your
- 14 real hair that they twist and lock it together.
- 15 Q. Okay. And is your uncle in this picture?
- 16 A. Yes.
- 17 Q. And which one is he?
- 18 A. The one in the middle in the orange shirt with the hat,
- 19 ---
- 20 Q. Okay.
- 21 A. --- the orange looking hat.
- 22 Q. Did he perform that night?
- 23 A. Yes, he did.
- 24 Q. And did a number of other people perform that night?
- 25 A. Yes.

KEYERA BROOMFIELD-WHITE - DIRECT EXAMINATION BY
MR. YARBOROUGH

1 Q. You recognize this, which has been previously marked as
2 Defendant's exhibit 3?

3 A. Yes. That's the flier that we had. And I'm actually
4 on it.

5 Q. And that's the flier from the party?

6 A. Yes.

7 Q. Okay. And you said approximately how many people were
8 there?

9 A. Two fifty to three hundred.

10 Q. Okay. And the party lasted for about how long?

11 A. I got there around nine something. It went on past
12 1:00, I believe. It was probably over like 1:30, maybe two.
13 I'm not sure exact. I left a little early that night.

14 Q. Okay. Let me ask you this. Was there a -- was there a
15 cash bar there?

16 A. A what?

17 Q. A bar, a cash bar where you buy alcohol.

18 A. Oh, yeah.

19 Q. Okay. But did you buy any alcohol?

20 A. No. I was underage.

21 Q. Okay. But did you see people buy alcohol?

22 A. Yes.

23 Q. Okay. And do you know anything else about the party?
24 How many other people were singing?

25 A. I was there when he performed. And I think one other

KEYERA BROOMFIELD-WHITE - CROSS EXAMINATION BY MS. SIMPSON

731

1 person performed with him. I didn't stay throughout all the
2 performances, but I know that they still had other
3 performances left when I had left.

4 Q. Okay.

5 A. But I was tired. So I left.

6 Q. Right. And you said when you left there were
7 approximately two hundred and fifty to three hundred people
8 there?

9 A. Yes. People were consistently coming.

10 Q. Okay. And was there a line to get in?

11 A. When I left, everybody was just kind of like already in
12 there. And when I first got there, there wasn't a line
13 because I got there before everybody else appeared.

14 Q. Okay. And you had in excess of six friends with you?

15 A. Six to seven. I only had one female friend with me.
16 It was just Chelsea. The rest of them were guys. That's
17 how I knew that they had to pay more because they said that
18 they paid more than ten dollars to get in.

19 Q. Okay. I don't have any further questions. Answer
20 anything Mr. Prosecutor may have.

21 **MS. SIMPSON:** May it please the Court.

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

23 Q. Ms. White, you said James White's your uncle, right?

24 A. Yes, ma'am.

25 Q. And are y'all pretty close?

1 A. Yes, we are.

2 Q. Okay. And you grew up in Charleston. He's from
3 Charleston, too.

4 A. Yes.

5 Q. And you're actually still in the Beaufort, low country
6 area.

7 A. Yes.

8 Q. And you're how old?

9 A. Twenty-one.

10 Q. Twenty-one. And you said this was a concert, a
11 birthday bash he put on for everybody's kind of January
12 birthday, right?

13 A. Yeah, like the people that he knew. Like me, my mom
14 and my cousin, we all have birthdays in January. And we
15 hadn't seen him in a while. So he wanted to do something
16 for him coming back as a local artist as well as us for our
17 birthdays.

18 Q. Okay. So this is a birthday bash for you.

19 A. Um-hum (affirmative).

20 Q. And you still had to pay to get in?

21 A. I didn't have to pay.

22 Q. You didn't have to pay?

23 A. Ladies were actually free up until a certain time, ---

24 Q. And I think earlier ---

25 A. --- but ---

KEYERA BROOMFIELD-WHITE - CROSS EXAMINATION BY MS. SIMPSON

733

1 Q. --- you said they paid ten dollars to get in?

2 A. Yeah, my friend, Chelsea, she had to pay. She didn't
3 come with me. She appeared after I got there. I got there
4 before a lot of people got there, me and my boyfriend at the
5 time.

6 Q. Okay. And you said you got there about 9:30.

7 A. Um-hum (affirmative).

8 Q. And you left about when?

9 A. I left around 1:30.

10 Q. 1:30. And you love your uncle, right?

11 A. Of course.

12 Q. And your mother was there.

13 A. No, my mother didn't come. She's on there, but she
14 didn't come with us.

15 Q. She's on there?

16 A. Yeah.

17 Q. So I believe LJ, Tina, Keyera, ---

18 A. My mother's Tina.

19 Q. --- Jessica, all that's family, though?

20 A. Not all. Our family, Big Boy's family and my mother,
21 Tina, is family. The rest are like friends or so.

22 Q. Okay. But like I said, you -- ladies were free for a
23 period of time?

24 A. Yes, ma'am.

25 Q. And you don't really know even about what went on at

1 the Olive Garden on the 20th, right?

2 A. No.

3 Q. You don't know anything about this armed robbery at
4 all?

5 A. No.

6 Q. But you do know your uncle?

7 A. Yes.

8 Q. And you love him?

9 A. Yes.

10 **THE COURT:** Anything, Ms. Ross?

11 **Cross Examination by Ms. Ross:**

12 Q. Even though you didn't pay you know some money was
13 taken in that night?

14 A. Yes, because I had a friend -- some other friends to
15 meet me up there because it was for like birthdays. My
16 birthday was just a few days previous on the 15th. So they
17 met me up there to celebrate my birthday with me. And they
18 got there later than I did. And they had to pay to get in.

19 Q. Okay. So you know they took in some money ---

20 A. Yes.

21 Q. --- that night? Okay. And you're not -- you love your
22 uncle, but you're not lying for him, are you?

23 A. Of course not.

24 Q. Thanks.

25 **THE COURT:** Anything further?

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

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

3 A. Thank you.

4 **MR. YARBOROUGH:** That's the Defense case, Your Honor.

5 **THE COURT:** All right. Ms. Ross, anything from your
6 client?

7 **MS. ROSS:** Closing -- going straight into closing?

8 **THE COURT:** All right. Ladies and gentlemen, ---

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

10 **THE COURT:** --- the State is -- anything in reply?

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

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

13 **THE COURT:** Well, I mean from the State. That means
14 we've concluded the presentation of the evidence in the
15 case, ladies and gentlemen. The next phase of the trial is
16 the lawyers have an opportunity to speak to you. And as a
17 matter of fact -- and when we finish that, then I will go
18 into the charge.

19 Before we begin, ladies and gentlemen, I have to review
20 with the attorneys the charge that I'm going to give. And
21 this will take about five minutes. So I'm going to let you
22 step back into the jury room. Don't get too comfortable
23 because we're going to bring you right back. And then we'll
24 go into the closing arguments.

25 (Whereupon the jury exited the courtroom at 11:22 am)

1 **THE COURT:** All right. Let me -- anything further we
2 want ...

3 **MR. YARBOROUGH:** Your Honor, I'd renew my motion at
4 this time for a directed verdict.

5 **MS. ROSS:** I will as well, Your Honor.

6 **THE COURT:** Based on the same arguments you made
7 earlier, is that correct?

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

9 **MS. ROSS:** Yes. And I would also renew our pretrial
10 motions as well. For what it's worth, I'd like to preserve
11 on the record.

12 **THE COURT:** All right. Y'all want to step up here a
13 second? Did you want to say something, Ms. Simpson?

14 **MS. SIMPSON:** Your Honor, I was just going to -- when
15 we address the jury instructions, we do have objections to
16 both, some of Mr. Yarborough's ---

17 **THE COURT:** I haven't seen anything from Mr.
18 Yarborough. So ...

19 **MS. SIMPSON:** We received something ...

20 **THE COURT:** He likes to keep me out of the loop. I
21 want y'all to look at the verdict forms and let me tell you
22 how I'm going to amend them a little bit.

23 **MS. ROSS:** And my request number four is not
24 applicable. I apologize. I made this a long time ago. And
25 I did not ---

1 **MS. SIMPSON:** Okay. That was my first objection.

2 **MS. ROSS:** That's just something I put in to remind
3 myself ahead of time. That's not applicable.

4 **THE COURT:** Do y'all want to go back to my room, my
5 office or do you want to do that here?

6 **MS. SIMPSON:** However you want to do it, Your Honor.

7 **THE COURT:** Let me show you the verdict forms. And
8 they're both the same for both Defendants. And they -- the
9 only thing I was going to do is I was going to write the two
10 alleged victims on top of one of the -- each of the
11 kidnapping charges so that they -- apparently that's a
12 Greenville -- that's a Greenville verdict form.

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

14 **THE COURT:** All right. I'm not going to charge any of
15 the -- any of the proposed charges from Ms. Ross because I
16 think my charges include all of them. And number four is
17 not -- is not ---

18 **MS. ROSS:** Applicable.

19 **THE COURT:** --- applicable.

20 **MS. ROSS:** Judge, if you'd just make it a Court
21 exhibit, that's fine. Just the request.

22 **THE COURT:** Do y'all have any objections to anything,
23 Mr. ---

24 **MS. SIMPSON:** Pretty much all of them, Your Honor. The
25 -- with respect to the burden of proof, I would just say

897

897

1 that's included in your standard -- clean slate language,
2 all that.

3 Your direct and circumstantial evidence, we'd prefer
4 the standard charge for that as well. As far as the
5 determining the credibility of witnesses, the fact that the
6 law enforcement's testimony is highlighted under there, I've
7 been doing ---

8 **THE COURT:** I'm not going to charge that.

9 **MS. SIMPSON:** Okay. Additionally, Your Honor, the
10 accomplice Co-Defendant testimony, ---

11 **MR. YARBOROUGH:** I mean, I put that in earlier.

12 **MS. SIMPSON:** Okay. So that's out.

13 With respect to the charges on the actual armed robbery
14 and the laws itself, we would ask that you charge the
15 statute, so not the language that Mr. ---

16 **THE COURT:** I've got a charge.

17 **MS. SIMPSON:** --- Yarborough has put in there.

18 And ...

19 **MR. YARBOROUGH:** You will charge the -- my presumption
20 of innocence and the ---

21 **THE COURT:** I have a presumption of innocence, burden
22 of proof.

23 **MS. SIMPSON:** And finally, ---

24 **THE COURT:** You don't want to hear what Mr. Yarborough
25 has to say, Ms. Ross?

1 (Whereupon Ms. Ross exited the courtroom)

2 **MS. SIMPSON:** Okay. So you're just charging his

3 absolute last paragraph about the -- all of Mr. Yarborough's
4 we would object to with respect to the actual statutes and
5 the law and that you just charge the law.

6 **MR. YARBOROUGH:** You've got to charge the statute.

7 **MS. SIMPSON:** Yeah, but he's added additional language
8 which speak to the facts of the case.

9 **THE COURT:** I've got a charge on criminal conspiracy,
10 kidnapping and armed robbery, ---

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

12 **THE COURT:** --- which I think it's consistent with the
13 statute. But if you young folks -- we'll make these Court
14 exhibits, each of the instructions provided by Mr.
15 Yarborough and Ms. Ross.

16 (Whereupon Court's exhibits 7 and 8 were marked)

17 **THE COURT:** Are y'all going to open on the law?

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

19 **THE COURT:** Y'all agree to waive ---

20 **MR. FRETWELL:** Unless Mr. Yarborough wants to hear from
21 me twice.

22 **MR. YARBOROUGH:** We'll waive. Or I will.

23 **THE COURT:** I'll ask her when she comes in. How long
24 do you anticipate your closing, Mr. Yarborough?

25 **MR. YARBOROUGH:** Thirty minutes at the most, maybe not

1 ---

2 **THE COURT:** How long do you anticipate Ms. Ross?

3 **MR. YARBOROUGH:** Probably less, I would guess.

4 **THE COURT:** All right. How long do you anticipate Mr.
5 Fretwell?

6 **MR. YARBOROUGH:** Could go on for days.

7 **THE COURT:** Well, he'll be doing it with an empty
8 courtroom.

9 **MR. FRETWELL:** Judge, I'm not sure exactly how long
10 mine is. I will certainly get through it as quickly as I
11 possibly can. But, of course, I don't know what issues ---

12 **THE COURT:** We've got an hour and a half. So divide it
13 up three ways ---

14 **MR. FRETWELL:** I'll do my best, Judge.

15 (Whereupon Ms. Ross entered the courtroom)

16 **THE COURT:** All right.

17 **MR. YARBOROUGH:** Yes, sir, Your Honor.

18 **THE COURT:** Ms. Ross, I made your -- put those charges
19 a ---

20 **MS. ROSS:** Thank you, Your Honor.

21 **THE COURT:** --- Court exhibit along with Mr.
22 Yarborough's. All right. Ladies and gentlemen, let's bring
23 the jury in, if we could.

24 (Whereupon the jury entered the courtroom at 11:31 am)

25 **THE COURT:** All right. Ladies and gentlemen, as I told

1 you, this is the opportunity for the lawyers to speak to
2 you. And normally in a criminal case the State, because it
3 has the burden of proof, has the opportunity to make two
4 closing arguments. One, they open on the law and then they
5 have an opportunity to close in full after the Defendants
6 have made their closing.

7 **MR. FRETWELL:** Your Honor, the State waives its
8 opening.

9 **THE COURT:** I understand that.

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

11 **THE COURT:** I haven't gotten to that, but I appreciate
12 the help.

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

14 **THE COURT:** In this instance the solicitor has elected
15 with the consent of the Defendants to waive the opening on
16 the law and will just make the closing arguments. So with
17 that said, Ms. Ross, my understanding is you're going to go
18 first, is that correct?

19 **MS. ROSS:** Yes, Your Honor. May it ---

20 **THE COURT:** All right. If ---

21 **MS. ROSS:** --- please the Court, ---

22 **THE COURT:** --- you would, please, ma'am.

23 **MS. ROSS:** --- counsel.

24 Ladies and gentlemen of the jury, hurry up and wait. I
25 know y'all have been working hard all week and paying

CLOSING ARGUMENTS - MS. ROSS

742

1 attention. And I really appreciate it on behalf of my
2 client, Gerald Gadsden, who's sitting over there.

3 I just pointed to him, but if you'll recall back over
4 the days of this trial, only one other witness pointed to
5 Gerald Gadsden this entire trial, and that was one of the
6 photo people who pointed him out as, you know, this photo
7 which was on his phone.

8 And like I said in the beginning, that is some strong
9 circumstantial evidence. I don't deny it, but it's not
10 proof beyond a reasonable doubt. And that's all the State
11 gave you. And I'd submit if it was him there would have
12 been something more.

13 Now, I'd like to take you back to those first witnesses
14 that the State put up, the victims, the eyewitnesses. And
15 one that hit me a lot is when Mr. Pugh identified Mr. White
16 from the stand up there. He said, that's Mr. White, the guy
17 that I work with. And then to Gerald Gadsden he said, I've
18 never seen that man before today in response to the State's
19 questioning.

20 And I came up just to make sure y'all heard that and in
21 cross asked him, so you never saw him before today? And he
22 said, no. And I reminded him, well, you saw his picture two
23 days afterwards when you looked at this lineup. And at that
24 point he did not identify Mr. Gadsden as the robber. And I
25 would state or submit that someone -- he talked about the

CLOSING ARGUMENTS - MS. ROSS

1 gun, how scared he was, if someone was robbed they might
2 say, yeah, he looks a little familiar, not I've never seen
3 that man in my life.

4 Now he was scared and didn't get a good look. I know
5 that. But your job as the jury is to see if the State has
6 proven guilt beyond a reasonable doubt. And when one of the
7 victims says I've never seen that man before in my life,
8 that is reasonable doubt, ladies and gentlemen.

9 Moving on to Aaron Kretzschmar. I just want to take
10 you back to that first day, it seems like a long time ago,
11 but that was when the State chose to put up all the
12 witnesses who were robbed, victims who could not identify
13 Gerald Gadsden. None did. They all saw this lineup.

14 And I put it in so you could see it. He's a little bit
15 distinctive looking. He does have braids. Maybe they're
16 not dreads down his back, but they're braids. And they're
17 fairly long and a little bit big. He's got pretty light
18 eyes and he's got facial hair.

19 Mr. Kretzschmar said, I saw his face. He was a black
20 male, heavy set, six foot. Was there a lot of people
21 fitting that description? That's not proof beyond a
22 reasonable doubt. With short hair and no facial hair.

23 And he said he saw his face. This man does not have
24 short hair and no facial hair. This picture attributed to
25 the next day. Does not have short hair and no facial hair.

CLOSING ARGUMENTS - MS. ROSS

1 And that's because Gerald Gadsden was not the guy in the
2 Olive Garden who robbed them. He is the wrong guy.

3 Now, there was a lot about hoodie. The word was
4 mentioned so many times in opening. How could they know
5 with a hoodie? Well, Kretzschmar told you, he saw his face,
6 described short hair. And he said jacket. He did not say
7 hoodie. And maybe it was a jacket with a hood. And maybe a
8 hood was pulled up at one point and then went down. But the
9 description you heard is not Gerald Gadsden. And that's
10 because he was not the robber.

11 Just going back to the beginning, that cat in the box
12 all tied up, and you see the hole in the bottom, and maybe
13 the mouse got out the hole, this case is full of holes. And
14 I tried to bring some of those out during the trial. And I
15 hope it came across. I hope I made sense because there's a
16 lot here.

17 One is Damion Riley. We've made a big deal about
18 Damion Riley because it's so strange. He signed out right
19 before the robbery. And he really wasn't adequately
20 investigated. Maybe if he didn't do it, I don't think he
21 turned around and ran back in and he was the robbery [sic].
22 Someone got out of his car.

23 If you'll go back to thinking about what you heard
24 about the -- I think it was Deputy Anderson, the dog handler
25 who talked about dogs and how great they smell and

CLOSING ARGUMENTS - MS. ROSS

1 everything. And he said it kind of came back around to the
2 corner right near the Olive Garden, this trail of money as
3 if it was picked up right there. He was just simply not
4 investigated. His phone wasn't searched. His home wasn't
5 searched.

6 Going back to these shots, there was a lot made of what
7 was deleted and what was not deleted. These photos were
8 never deleted off the phone. And this is the phone that
9 James White accidentally, whether he was confused with the
10 other phone in the car or not accidentally, carried into the
11 Law Enforcement Center with him and handed over to the
12 police to search. They were right there.

13 They turned on the phone, boom, there are these
14 pictures. That's how incriminating these guys thought those
15 pictures were because Mr. Riley's phone was full of pictures
16 just like that. It's a common image. It's on the cover --
17 cover of rap magazines, Snoop Dog dripping in money, it's
18 just a thing.

19 And these guys, whether it was wise or not, did not
20 think it was a thing that was going to get them prosecuted
21 for armed robbery.

22 **MR. FRETWELL:** Object to the testimony, Your Honor.
23 That's not in evidence.

24 **THE COURT:** Stay within the record.

25 **MS. ROSS:** I'll move on, Judge.

CLOSING ARGUMENTS - MS. ROSS

746

1 And you've heard enough. Neither victim picked Mr.
2 Gadsden out of the lineup. Shown -- I don't have it in
3 front of me, but y'all -- it's somewhere in here, shows a
4 picture just of the jacket. Mr. Kretzschmar couldn't be
5 positive about the jacket.

6 And just looking at it, this is just me, and everything.
7 I tell you is just me saying it. I want you to think about
8 what you heard from the witnesses. That's the testimony.
9 I'm just trying to help you process it 'cause I've been
10 working on the case.

11 Looking at that, I think this is more of a green jacket
12 than a tan jacket. It's a camo, but the original 911 call
13 said a tan camo-ish jacket, for what it's worth. It was
14 hard to get -- get that out, camo is camo. It's certainly
15 not as popular as jeans, but it's something that we've all
16 seen.

17 This evidence is not proof beyond a reasonable doubt.
18 And a lot of times I don't like to go on about the State's
19 burden of proof beyond a reasonable doubt because to me the
20 question is if -- the proof will be there. These lineups,
21 someone would pick something. There would be something more
22 than what the State is serving up for you that Gerald
23 Gadsden committed that robbery. And the reason there's not
24 is because he didn't. He's not guilty.

25 And we talk about that, he didn't testify. He pled not

1 guilty. And with that plea he told you what he had to say.
2 He's not guilty. What more he could say -- I wasn't there,
3 I don't know anything. That's what he can add to this
4 situation. He pled not guilty. He had no duty to testify.
5 His constitutional right is to not testify. And he couldn't
6 have told you anything more than you already know that he
7 pled not guilty.

8 Now, going to -- I'm just going to look through some of
9 the witnesses and look at my notes to see if I've missed
10 something here.

11 One thing I did mention about Aaron Kretzschmar, on the
12 stand he said, yeah, it could have been less than ten
13 minutes before Damion Riley -- between when Damion Riley
14 left and the robbery. So he said that. There's no, you
15 know, -- and he was up-front and credible. He did not
16 identify my client.

17 Damion Riley, on the other hand, said something about
18 the W-2. I don't know what's up with getting the W-2,
19 whether that matters, but Aaron Kretzschmar had no memory of
20 that. And I don't know what's going on with that.

21 I don't know whether he's saying it as an excuse why
22 his prints might be in the office, you know, since -- they
23 didn't search for his prints, but him saying he went in
24 there to get his W-2. Maybe he was trying to cover for that
25 or cover something. I don't know. I'm not -- I'm not in

1 the State's business to prosecute. I'm just saying these
2 are holes, these are reasonable doubt.

3 They didn't test the towel for his DNA. The thing
4 about he's so sure the towel wasn't in there, okay, well,
5 let's go with that. He's so sure the towel was in there and
6 that creates a window of seven minutes where these guys, in
7 the State's theory, must have telepathically communicated to
8 each other. Come during this seven minute window. This is
9 the time where the doors open.

10 And the State presented you no way that they could have
11 communicated that. How would White ever control when Damion
12 Riley got his meal, did all his stuff and walked out the
13 door to run afterwards and put in a rag?

14 The timing -- that theory is impossible, ladies and
15 gentlemen. Or if not impossible -- I don't even think they
16 could have synchronized their watches, because again, how
17 would they know when Damion Riley was going to leave? It
18 just -- it doesn't make sense. And that's because Gerald
19 Gadsden's not guilty. It doesn't make sense because he
20 didn't do it.

21 It makes it easier for me to ask questions like -- to
22 be brave enough to ask one of the victims, so you're saying
23 you've never seen him before in your life, on cross?
24 Because I know the answer. And as a lawyer, you never ask a
25 question you don't know the answer to. I mess that up

CLOSING ARGUMENTS - MS. ROSS

1 sometimes. But I certainly wouldn't open up for him to say,
2 come to think of it, I think I do recognize that guy. And I
3 did open that up because he's not guilty.

4 Ah, one more thing about Damion Riley. I think of it
5 as one of those shows when, I don't know, books, money's
6 being hunted or someone's being hunted and they take a stick
7 and they throw it over there so dogs run over and go over
8 there. That's exactly what Damion Riley did with this
9 rapper show comment.

10 He's throwing the scent off him and putting it on
11 White. He's saying, I'm not suspicious, this guy is because
12 he said he made a lot of money and he's saying -- he
13 probably is saying that to cover that he did that robbery.

14 So he threw -- he effectively threw the investigator
15 off the scent and put it square on White. And I submit to
16 you that he might have done that for a reason, I don't know.

17 But we also know, according to Investigator Weiner, he
18 lied about his prior record. He didn't tell Weiner he had a
19 record. Yet he told y'all, think back two days ago from the
20 stand, I told him I was in trouble for burglary. That's
21 what he told y'all. But Investigator Weiner said he didn't
22 tell him that. So that wasn't part of the consideration of
23 his investigation.

24 Terrell Pugh, there's no question he said White did not
25 leave the dishroom. That's what he said. That's what he

CLOSING ARGUMENTS - MS. ROSS

1 said again. At the time that's what he said. To change it
2 now, okay, but I will submit to you, given this timeline
3 window we have of seven minutes, this tiny amount of time, I
4 think someone -- a victim would have commented, White was
5 acting suspiciously. Pugh never said he was acting
6 suspiciously or didn't seem scared.

7 But he was down there with him. And he never said,
8 it's weird, White was suspicious, and he ran off and left
9 right before the robbery. He said none of that because that
10 wasn't true. He would have said it at the time if it was
11 true.

12 Going around testimony two days ago, because it was a
13 while ago, Officer Middleton, remember him? He wrote down
14 notes. And he put those notes in the report. And again, at
15 the time, tan coat, short hair, no facial hair. Not this
16 guy.

17 Prints, none. There was a lot of testimony, no prints.
18 Phone, again, there we go. Money is money. Everyone has
19 cash. It's not evidence of a crime. And I shouldn't say
20 everyone has cash. Everyone has seen some cash. Cash is
21 like the most common thing going. Camo coats, not so much,
22 but pretty much up there.

23 Phone calls, now there were calls after the robbery,
24 but not before between White and Gadsden. And to set
25 something up, they need to be before or at least close

CLOSING ARGUMENTS - MS. ROSS

1. before. There were none a few days before, I believe the
2. testimony was. One time asked during the three days before
3. and after how many calls? Four calls afterwards was the
4. original testimony.

5. And the picture was taken after the calls. So it might
6. be likely that White would tell his friend, Keem, I was just
7. robbed by this guy in a camo jacket. You mean like this?
8. You know, going back to these pictures. Like this, yo?
9. Pretty dumb to take a picture like that. But he talked --
10. he knew what had happened to James ---

11. **MR. FRETWELL:** Your Honor, I'm going to object to
12. Defense counsel putting in -- trying to put in front of the
13. jury statements that are not in evidence.

14. **THE COURT:** Stay within the record.

15. **MS. ROSS:** All right, Your Honor.

16. Going to the text messages, I asked Investigator Weiner
17. -- yesterday some text messages came up that were on Gerald
18. Gadsden's phone. And I asked Officer Weiner about them
19. today. And you heard the testimony. It was about a movie
20. they saw. This is supposedly an hour before the robbery.
21. They were brought in yesterday to suggest he was going to
22. Anderson, kind of planning for the robbery or a code.

23. I don't know what it was, but there was more context to
24. that. And I wanted to share that with you. And I think it
25. shows again not guilty of this crime, reasonable doubt,

911

CLOSING ARGUMENTS - MS. ROSS

752

1 certainly. The phone expert said nothing about the time
2 being off on the phone. They said the time was fine.

3 Just to give you a little bit of the context. Mr.
4 White -- the State's going to talk about -- Mr. White said
5 he did not know a Gerald Gadsden. That is a big part of
6 this case. And it's coming in -- I asked Mr. Weiner because
7 I wanted to give y'all a little context of that. The
8 context of that was what you heard from the stand.

9 Well, what I heard was, you know, I'm thinking about
10 charging you with these crimes, I've just arrested you for
11 traffic thing, I just searched your car, you started out
12 cooperating and now I'm aiming in -- being in for you. That
13 was the context. And I'd submit that White's reaction of
14 saying I don't know Gerald Gadsden, click, is a normal
15 reaction and not indicative of being part of a crime.

16 Now, just some things. Gerald Gadsden's case must be
17 considered separately from James White's case. And I
18 represent Gerald Gadsden. And I just bring in some of Mr.
19 White's situation because I think there deserves some
20 explanation for why he might have acted like he did.

21 But I represent Gerald Gadsden. And you have to
22 consider the proof the State submitted to you against him.
23 He had a rap style picture of himself on the phone, no
24 question. But there's no gun, there's no DNA, there's no
25 more connection.

CLOSING ARGUMENTS - MS. ROSS

1 They didn't go search his house. They went and
2 searched White's house and found a pair of pants with his
3 MasterCard in it. Not guilty -- crime of anything that he
4 had a MasterCard and probably had some money.

5 I'd ask that if you go back in the jury room and start
6 deliberating, and I think that's where we might be. In the
7 first few minutes if any of y'all are thinking, you know,
8 I'm not sure that this proof is substantial, I'd submit to
9 you -- I'd ask you to go with that. That's reasonable
10 doubt. They have to prove guilt beyond a reasonable doubt.

11 And if you're struggling at that point and you don't
12 want to go with that, I'd ask you to think back to the first
13 day of this trial when the victims testified and none of
14 them picked out or pointed to Gerald Gadsden.

15 And you can go and ask for that testimony again if you
16 want to hear it. And you can ask for whatever testimony you
17 want. And I think it will show you a lack of proof.
18 Certainly not substantial proof or proof beyond a reasonable
19 doubt.

20 Then quite often juries are split and they don't, you
21 know, they're split and they can't decide. Some say yes and
22 some say no. I would ask you to consider if people are
23 saying not guilty -- the burden of proof is on the State.
24 And you have to give the Defendant the benefit of that
25 burden of the proof.

913

CLOSING ARGUMENTS - MS. ROSS

754

1 And I'd say if people are saying not guilty, I'd ask
2 you to go with that, of not guilty. You must be unanimous
3 not guilty, I mean, unanimous guilty, not not guilty. And
4 with that if you are split, the Judge will come and give you
5 what's called an Allen charge saying go back and think some
6 more.

7 A lot of times they will not remind you again that the
8 State must prove guilt beyond a reasonable doubt. That's so
9 important. They have that burden and they have not done
10 that here. And that's why at the beginning I talked about
11 the holes in this -- the holes in the box and the holes in
12 this case. There's so many there.

13 I know I'm missing a lot. I have a lot more notes. I
14 tend to be note-bound. And I apologize for the lack of
15 polish. This is a huge case for my client, Gerald Gadsden.
16 Thank you for the consideration you've given to it. I'd ask
17 you after the State's closing and other closings -- I won't
18 get a chance to talk again, but I'd ask you to think about
19 what I might have responded or what I could have told you or
20 think about the testimony that came out that is reasonable
21 doubt.

22 And think about what I might have said because I can't
23 get up and talk again. And think about that time-line and
24 the impossibility -- the difficulty of pulling this off like
25 the State's submitting it was pulled off is huge.

CLOSING ARGUMENTS - MR. YARBOROUGH

755

1 And the reason is because it's a contorted case.
2 They're trying to contort all the evidence into proving that
3 this picture means guilt. And the problem is, it doesn't
4 because he wasn't guilty.

5 And that's why they didn't pick him up. And that's why
6 all this evidence doesn't fit. So I'd ask you to go and
7 deliberate and I'd ask you to give Mr. Gadsden the benefit
8 of reasonable doubt and find him not guilty.

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

10 **MR. YARBOROUGH:** Thank you, Your Honor.

11 Ladies and gentlemen, of the jury, so it's been a long
12 case. And this is nothing but a circumstantial case. My
13 client, Mr. White, has pled not guilty. And he had nothing
14 to do with this robbery. He was a victim. He was a victim
15 that tried to cooperate with the police.

16 The people that were robbed besides Mr. White all said
17 that the person that robbed them had a -- short hair, lights
18 colored -- lights colored -- colored skin and they had an
19 opportunity to view him. Now, to believe that Mr. White had
20 something to do with this you would have to believe that Mr.
21 Gadsden had something to do with this.

22 Now, Mr. Gadsden had these braids on the night of the
23 robbery, okay? We know that for a lot of reasons because
24 two days before, Mr. Gadsden had these braids, okay? This
25 is a significant piece of evidence in this case.

CLOSING ARGUMENTS - MR. YARBOROUGH

756

1 This should have sent Investigator Weiner looking at
2 least for other evidence of this robbery. He should have
3 looked because it's clear that the person that witnesses
4 said created the robbery, did the robbery was not this
5 individual in this picture, okay?

6 Let's talk about this picture. This picture is a
7 picture of money. It also has bands on it, okay? This
8 picture was taken after the robbery, twelve, fourteen hours
9 after the robbery. It was taken by Mr. Gadsden. And it is
10 a picture of money that I submit to you is not close to the
11 money that was stolen at the Olive Garden.

12 I want you to look at this money real closely. This
13 money -- there's pictures of ones, okay? It's pictures of
14 ones. You can take it back there and look at it closely.
15 But I want you to look at it, and I want you to use your
16 common sense, okay?

17 It's a Sunday night at the Olive Garden and the manager
18 is closing up. And he takes the money and puts it in the
19 safe. There is all kinds of hundred dollars, fifty dollars,
20 twenty dollars, ten dollars, five dollars, one dollars.
21 There are all smooth bills that haven't been munched up like
22 this. They haven't been handled. They haven't been like
23 they've been inside a bar, okay? Or inside a nightclub
24 where they're selling tickets.

25 These tickets -- this money came from that nightclub.

CLOSING ARGUMENTS - MR. YARBOROUGH

9/16
757

1 You can look at it and you can tell. You can use your
2 judgment as a jury to look at this. And without these
3 pictures, nobody's sitting here, right?

4 Because this rag right here -- what does this rag tell
5 you? This rag could have told you something, but
6 Investigator Weiner made a decision -- he made a decision.
7 You heard him say that on the stand. He said from this jury
8 stand right here, he said, I made a decision that I knew
9 James White had done this because the rag was there.

10 I kept on trying to say how could you say that? How
11 could you say that, Investigator Weiner? Because I know.
12 Because I know.

13 Now, I'll tell you this. You're the gatekeeper.
14 You're the guy -- you're the jury that makes the decision if
15 -- can he just come in here and say he knows? Don't you
16 want something more? Don't you want to ask another
17 question? Don't you want to have this tested? Don't you
18 want to look? You're talking about serious charges. Don't
19 you want to ask more, okay?

20 Maybe the night those rags were found -- say I don't
21 need to ask more. I don't need to ask more. But then you
22 get two witnesses to come down to the police station and
23 they say I was in there and Mr. White was in the back of the
24 -- washing dishes, and he was with me, and he never left.
25 He never left that area.

CLOSING ARGUMENTS - MR. YARBOROUGH

758

1 That was the testimony that was given by the witnesses
2 two days after the robbery. That was what was put into the
3 statements, okay? That's the best evidence. He said,
4 that's it. That's the best evidence. And he didn't leave.
5 He didn't leave that kitchen. Mr. White didn't leave that
6 kitchen that night.

7 Now, Mr. White is working hard as a dishwasher. He's
8 also a rapper. Now, don't hold it against him for being a
9 rapper. Don't hold it against him because he raps. He
10 tells you the truth, he raps.

11 Now, for you to believe that he was involved in this,
12 okay, you would have had to decide -- he would have had to
13 come up with this in advance. He would have had to say,
14 okay, I'm going to put on a nightclub show in advance to be
15 able to determine where this money came from.

16 Now, how could an individual do that? How could an
17 individual decide months in advance to put on a show and
18 then have a show and they say, well, you know, the good
19 thing about that show is that after the show we can go rob
20 the Olive Garden and take pictures of the money from the
21 Olive -- take pictures of the money from the show and we can
22 say it didn't come from the Olive Garden? Now, do you think
23 anybody's that smart?

24 Well, let me ask you this. When that became a question
25 shouldn't Investigator Weiner gone and looked for more

CLOSING ARGUMENTS - MR. YARBOROUGH

1 evidence? Shouldn't he have gotten in the car and driven
2 down to Charleston and found out what -- what kind of money
3 was made at that party? Shouldn't he have gotten the names
4 of the other people that were involved in throwing that
5 party and found out how much money was involved in that
6 party?

7 Because he had pictures of it. He was told where the
8 money came from. Here you go. He had pictures. He had
9 this. So didn't he owe another check? But, no, he was so
10 sure -- he was so sure that night because that rag was there
11 it was an inside job.

12 And Riley, who we know had a prior record for burglary,
13 Riley had just left. We know it had to have been White.
14 White was on the inside. We had to know -- I submit to you
15 Weiner made that decision on his own because he didn't want
16 to do anything more. He owed us more of an investigation.
17 He owed you more information to bring into this courtroom,
18 okay? Mr. Fretwell can only give you what he's got. And he
19 ain't got it.

20 Where's the brick, okay? Where's the brick? They
21 didn't keep the brick because they didn't want to talk about
22 the broken glass, right? They don't want to talk about the
23 broken glass because why would you break the glass? Why
24 would you break the glass out there if it was an inside job?

25 I'll tell you what happened. You could think and you

CLOSING ARGUMENTS - MR. YARBOROUGH

760

1 could surmise that the guy threw the rock at the glass
2 thinking he could bust open the door. Whoever the robber
3 was -- whoever the robber was slammed the rock into the
4 glass and all of a sudden the door moves, okay? The door
5 moves because there's a rag in the door.

6 Now, you go why is there a rag in the door? Several
7 reasons why there's a rag in the door. One possible reason
8 is people are going in and out that door to smoke late at
9 night, okay? They're cleaning up, they want to go outside.
10 They've got reasons to take the garbage outside, okay?

11 How you going to get in and out to take the garbage? You
12 got to stick the rag in the door so you can get in and out.

13 Another way to do it. You got people coming and
14 picking each other up from work late at night. You've got
15 twenty other people leaving that restaurant that night. And
16 they're coming and people are in there doing their shifts.
17 They stick the rag in the door so people can come by and
18 pick them up, all right?

19 That rag could have been in there for a long time.
20 They don't want to look at that rag to see whose DNA was on
21 it because they don't want to know who put the rag there.
22 They wanted to assume it was an inside job. They wanted to
23 assume it was an inside job.

24 I don't know why they wanted to assume it was an inside
25 job. Maybe because it was easier. I have no idea. Maybe

CLOSING ARGUMENTS - MR. YARBOROUGH

1 it's easier to call a job an inside job. I don't know.

2 Doesn't -- doesn't matter. It's not -- but it's your

3 decision to say stop, stop, there's some questions here.

4 I've got -- I need some more evidence, okay?

5 So you go what do the witnesses say about who did the

6 robbery? The witnesses say that the robber had short,

7 cropped hair. Not Gerald Gadsden.

8 What else do they have that ties White to this? Okay.

9 You've got the phone, all right? The phone goes to the

10 police station. Now, this -- these smart, super criminal

11 James White, who's planned this really in-depth robbery who

12 says I'm going to throw a rock at the window to throw

13 everybody off.

14 He's so dumb he walks down to the police station with

15 the phone in his pocket that's got pictures from the

16 robbery? Come on. That doesn't make any sense. Why would

17 he do that? That doesn't make any sense.

18 The reason he did it was because he got his phone mixed

19 up. They said there were four phones. They said that two

20 of the phones looked alike. They said two phones looked

21 alike. He got his phone mixed up, obviously, with his

22 buddy, Gadsden. The phones got mixed up. Gadsden's got

23 pictures from the -- from the money that he got paid from

24 the -- from the concert down in Charleston. He's got that

25 money. That's the money that came out of there. That's

CLOSING ARGUMENTS - MR. YARBOROUGH

762

1 what it looks like.

2 Maybe part of that money belongs to my client, Mr.

3 White, but it's two bands, two bands. Mr. White tells Mr.

4 Riley that he made two bands at the concert, okay? He tells

5 the police he makes money at the concert. You heard a

6 witness come to the courtroom, said there were people paying

7 ten dollars and more to get into the concert, and there were

8 two hundred to three hundred people in there. And there was

9 a cash bar that was running over there.

10 (Whereupon a juror stood up)

11 **THE COURT:** We have one that needs to use the restroom.

12 So we're going to take about a couple of minutes, five

13 minute break. Ladies and gentlemen, I'll let you step back

14 to the jury room. We're only going to be a minute. Don't

15 discuss the case while you're there.

16 (Whereupon court was in recess at 12:06 pm)

17 (Whereupon court reconvened at 12:13 pm)

18 **THE COURT:** All right. Are we ready?

19 **THE BAILIFF:** Yes, sir.

20 **THE COURT:** Bring them in.

21 (Whereupon the jury entered the courtroom at 12:13 pm)

22 **THE COURT:** All right, Mr. Yarborough.

23 **MR. YARBOROUGH:** Thank you, Your Honor. I didn't mean

24 to run y'all out of here. This is -- I can sit here and try

25 to beat this case into the ground. But I can tell you from

CLOSING ARGUMENTS - MR. YARBOROUGH

1 looking at the evidence that has come in that there are
2 several different possible scenarios how this happened... And
3 two of those scenarios just don't have anything to do with
4 my client, Mr. White.

5 One scenario is that the rag was put there by Mr. Riley
6 or somebody else. And somebody else left that door ajar and
7 they had somebody coming to help them, okay? That's a
8 possible scenario, okay?

9 The other scenario is what I told you before is that
10 the rag was just there and when somebody smashed the door,
11 the door jarred and they went in. And there is plenty of
12 reason to believe that that area over there next to the
13 Olive Garden would attract a robber to that area at night.

14 Now, I don't believe the scenario that the solicitor's
15 office is submitting. And I don't believe that you should
16 believe that because I don't see why someone that was
17 planning a robbery out there with the traffic that's out
18 there at night would try to smash that window. If you're
19 planning it, and you know you can get in, why in the heck
20 would you smash that thing thinking that you could get
21 caught on camera or caught on -- by somebody driving by and
22 they see you? So I don't think that scenario works.

23 I think the correct scenario is that somebody else had
24 something to do with it. They smashed it. The door jarred.
25 They go in, they rob the place, they get away back up the

CLOSING ARGUMENTS - MR. YARBOROUGH

764

1 woods where the dog tracked them down and they're gone and
2 they're sitting there thinking that nobody's ever going to
3 come get them.

4 But the scenario that the solicitor's office wants you
5 to believe that Mr. White and Mr. Gadsden got together and
6 planned this thing is crazy. It's crazy. Because you would
7 have to believe that they were so smart and so bright in
8 planning this thing that they're going to smash a rock
9 through the window to kind of send you off on another
10 direction, okay?

11 They're going to have a party two days before the
12 robbery. They're going to have a party down in Charleston
13 two days before the robbery and -- so that they can take
14 pictures of money later on so that they could bring that --
15 bring that evidence into court and say, hey, well, that's
16 where that money came from.

17 That would also -- why -- why -- why would Mr. White,
18 if he was planning a robbery, the day before tell a witness
19 that's in there that he had made two bands, two bands, that
20 was what he told the guy, I made two bands -- I made two
21 bands at my rap concert. Two bands, okay?

22 Two bands, let's think about this, two bands. The girl
23 that came in that testified, she said that there was two
24 hundred to three hundred people there. And you start adding
25 that up, and that's easily two bands, which is the money he

CLOSING ARGUMENTS - MR. YARBOROUGH

1 came -- came away with, which is easily and more probably
2 the money in this picture, okay?

3 Now, we would know -- we would know if the money in
4 this picture was the money from the robbery if one thing
5 would have happened, okay? That one thing would have been
6 they could have taken the sheet, the checkout sheet from the
7 Olive Garden on the 20th of January and they could have said
8 to you there were four hundred ones, fifty tens. They could
9 have said all that. That sheet existed somewhere, okay?

10 Now, there was an argument between what Investigator
11 Weiner said and what Mr. Kretzschmar said. Mr. Kretzschmar
12 said nobody asked me for it. Investigator Weiner said, oh,
13 we got it, we did it. But that's just like everything
14 Investigator Weiner said in this case is he believes that
15 because he says it, because he says it, because he says that
16 James White stuck this rag in the door down here, that James
17 White stuck that rag -- I said, how do you know he stuck it
18 in there? I know. How do you know? I know.

19 And so if James White doesn't stick this rag in there,
20 James White's not on trial, okay? The only person that says
21 James White stuck this rag in there is Weiner. And Weiner
22 says he wasn't there. He wasn't there for three or four
23 days later.

24 If the -- if James White doesn't stick that rag there,
25 he's not on trial. He didn't stick the rag there. They

CLOSING ARGUMENTS - MR. YARBOROUGH

766

1 could have looked -- they could have looked for DNA. They
2 could have looked.

3 Why -- why would James White sit there and tell them a
4 description of the robber, okay? Why would he tell them a
5 description of the robber on the night of the robbery and go
6 down to the police station two days later if he was guilty?
7 Why would he point -- why would he point the finger at
8 somebody? He wasn't -- he tried to cooperate with the
9 police.

10 And then they get mad at each other, okay? They get
11 mad at each other because Investigator Weiner starts making
12 threats at James. You know exactly what happened. And he's
13 -- he hangs up and he gets mad. And he says in a fit of
14 anger -- he says in a fit of anger he doesn't know who
15 Gadsden is because he knows him as Keem. Every one of the
16 phone records that came in here, he was known as Keem.
17 Keem, not Gadsden.

18 And you know -- you can use -- you can go back in the
19 jury room and take your own personal experience. Sometimes
20 when you get excited and when you get upset, your memory's
21 not exactly right, okay? I know mine's not.

22 And I keep going back to these pictures. These
23 pictures -- these pictures, okay? This person -- this
24 person right here has dreads. I might have misspoken with
25 dreads or whatever you call the other things. I'm not sure

CLOSING ARGUMENTS - MR. YARBOROUGH

1 about it. But those are dreads. The robber didn't have
2 dreads. The robber didn't have dreads. And we know that
3 Gadsden had dreads, okay?

4 And we know that this isn't the money from the robbery
5 because it doesn't look like money that would have come out
6 of the Olive Garden. We know that. Well, we could have
7 known -- we could have known who touched this. We could
8 have known who threw that rock. We could have at least
9 looked at the rock. We could have looked at that brick. We
10 could have tested it.

11 You know, instead we just assume, oh, no, we're not
12 going to have to -- we're not going to have to. We're going
13 to figure it out because I'm Investigator Weiner and I know
14 what happened. Just because he knows what happened and he
15 says it doesn't mean that's what you're supposed to buy.
16 He's selling you something because he doesn't want to do
17 this other stuff.

18 Now, it looks interesting that there are -- that
19 Investigator Perry can't even get the phone straight, okay?
20 So there's four phones. They're all the same -- two of them
21 are matching phones. Investigator Perry testified to that.
22 So, obviously, these phones could have gotten mixed up at
23 different times.

24 And, obviously, there could have ended up pictures that
25 Gadsden took in White's pocket because they, you know, they

CLOSING ARGUMENTS - MR. YARBOROUGH

768

1 knew each other. They were friends. There's no question
2 they worked together on this concert. I mean, we've got
3 pictures there. You've got pictures. You can take them
4 back in the jury room and you can look at them.

5 I'd submit to you, ladies and gentlemen, that this is a
6 very, very weak, weak circumstantial case. And when you
7 have a weak circumstantial case as the Solicitor's Office
8 has, you, the jurors, and the Judge is going to tell you the
9 law, you can judge the facts and you can say that it does
10 not rise to beyond a reasonable doubt. You can say there
11 are other ways to apply those circumstantial pieces of
12 evidence that are different than the way the State presents
13 them. You as the juror -- jury has the right to do that.

14 And I'd submit to you that in doing the right thing you
15 have to do it here. You've got to go back in the jury room
16 and look at the evidence and look at the small, small
17 circumstantial evidence, if there is even any circumstantial
18 evidence against Mr. White, it is -- it is so weak. It is
19 -- it is -- it is so small.

20 There were twenty other people that walked out of that
21 restaurant that night that had access to that rag. Twenty
22 other people. Did they look? Did they check? No. Did Mr.
23 White try to cooperate? Yes. Did he give a statement?
24 Yes. Did he go down to the police station? Yes. Is that
25 the action of somebody that's guilty? No, it's not.

CLOSING ARGUMENTS - MR. YARBOROUGH

1 Then they find these pictures of this money. And they
2 jump, oh, my gosh, we got him. We got him. We jumped to
3 conclusion. We jumped to a conclusion. He's told them that
4 he made money at the concert and they don't check it out.
5 They don't follow it up. We had to do it. We had to bring
6 it in to you. That's not enough to convict him.

7 Where -- where is the other evidence? Where is the
8 other evidence to convict my client, my buddy, James White?
9 The man that was washing dishes that night, they got a gun
10 pulled on him, got on the ground, they didn't think he was
11 upset enough, whatever that means.

12 How does a person know how upset somebody's supposed to
13 be when they've been robbed? How do they know? It's just a
14 fluff. That's fluff. They're trying to throw fluff at you
15 to try to convict an innocent man.

16 And then you've got these pictures. And I submit to
17 you, it would have been easy pie to go figure out how many
18 ones and fives were left over at the Olive Garden. And I'll
19 tell you what, these guys are good. Weiner's good. He
20 would have looked if he would have thought it would have
21 helped him, but he knew it wouldn't help him. And if the
22 money doesn't help him, then there's absolutely no case
23 against either one of them.

24 You know, it's hard. Y'all got a hard job. And the
25 Judge is going to charge you on the law. And he's going to

CLOSING ARGUMENTS - MR. FRETWELL

770

1 tell you it's your responsibility to go back and make these
2 decisions. I'm just telling you, there are two or three
3 different ways to look at this thing. And all you got to do
4 is find one.

5 And it's the State's burden -- you ask Mr. Fretwell
6 when he gets up here in a minute, it's his burden to prove
7 these guys guilty beyond a reasonable doubt. And he ain't
8 come close.

9 I submit to you in regards to Mr. White there's only
10 one verdict. And that's a verdict that speaks the truth,
11 which is not guilty to all charges. Thank you.

12 **THE COURT:** Mr. Fretwell.

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

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

15 **MR. FRETWELL:** Mr. Yarborough, Ms. Ross.

16 Good afternoon, ladies and gentlemen. They tell you in
17 law school never -- never thank a jury, but it kind of
18 struck me as odd. Don't thank them because they're not
19 there listening to you because they have a choice. They're
20 there because they have to.

21 I'm going to disregard that advice in this situation
22 and I'm going to thank you, but I'm not going to thank you
23 for being here. I've watched you throughout the trial. And
24 the fact that you're engaged in the process, you're
25 listening and responding to the evidence is all that a trial

CLOSING ARGUMENTS - MR. FRETWELL

930
771

1 attorney can ask for.

2 Now, I'm also a little bit at a loss for words, which
3 is unusual for a lawyer because from that stand Sergeant
4 Weiner laid out the evidence in this case both on my
5 questioning and under cross examination by Mr. Yarborough
6 and Ms. Ross far better than I could do, but that's what a
7 trial is.

8 A trial is evidence that's put before you, compelled to
9 be here, but fair and impartial members of the community to
10 test that evidence. Test it through cross examination to
11 determine whether at the conclusion of the trial you are
12 firmly convinced of the Defendants' guilt.

13 So while I feel at a loss for words, and I think that
14 Sergeant Weiner's testimony is sufficient, I know you're all
15 expecting a closing from me. And I'm going to give that to
16 you.

17 The Judge has also informed me that he's going to pull
18 my PowerPoint presentation if I go too long. So you don't
19 have anything to worry about in that regard, I'm pretty
20 sure. Okay. All right.

21 Hopefully this technology will work. I want to start
22 off by talking to you all about what happened immediately
23 before the robbery. You heard testimony that the Defendant,
24 Mr. White, spoke to Damion Riley as he's leaving, that he
25 discussed his recent cash windfall with him.

CLOSING ARGUMENTS - MR. FRETWELL

772

1 He also told that story, told that account to Sergeant
2 Weiner when he gave -- he gave his statement in this case.
3 And he -- he determined that it was unusual. And then the
4 robbery occurs moments after Riley leaves.

5 Why is this significant and why is this my first slide?
6 Because I think it speaks volumes about a couple of things.
7 First of all, as Sergeant Weiner told you, it makes sense if
8 you're planning a robbery to tell somebody at least that you
9 might be coming into a lot of money.

10 But secondly, and possibly more importantly, the fact
11 that he -- that Mr. White talked to Damion Riley as he left
12 -- and I think you heard on cross examination or direct
13 examination Mr. Riley tell you, he knew I was leaving
14 because he had been there a lot longer than normal, that he
15 had to clean two stations. Normally clocked out about
16 10:30-ish. This time he's clocking out almost at twenty
17 after eleven.

18 So Mr. White sees him, they have a conversation about
19 this windfall and then Mr. Riley leaves at that point. And,
20 ladies and gentlemen, I submit that you can take from that
21 evidence that Mr. White was trying to determine when Mr.
22 Riley would leave so that the robbery could begin.

23 In fact, what that did, in essence, was even the odds.
24 Mr. Riley is the wild card. He's in the restaurant, he's
25 in the cook area, he's in the kitchen where he is. Once

CLOSING ARGUMENTS - MR. FRETWELL

1 he's gone, you now have Mr. White and Mr. Pugh in the
2 dishroom. And you have a robber that comes in and confronts
3 one on one the manager.

4 After all, one of the questions that came up earlier in
5 this investigation for me was who robs an Olive Garden? You
6 rob a bank, you rob a convenience store, you rob a place
7 with quick cash, you might burglarize a store that has a lot
8 of electronic gadgets, but who goes into an Olive Garden at
9 night to rob it?

10 I don't know if y'all are familiar with Olive Garden,
11 but sometimes it's the most difficult thing to determine in
12 an Olive Garden is where's the restroom? It's circuitous.
13 You're trying to find this, trying to find that.

14 Who robs an Olive Garden? Unless, ladies and
15 gentlemen, you have a friend on the inside, a friend that
16 can tell you what time or what day of the week is the best
17 week to rob because that individual sees every single week
18 the armored car service come on Monday, a person who can --
19 who knows the doors are locked, but also has the ability to
20 put something in those doors to prop them open for you to
21 come in, a person who can press hold on the only camera that
22 that person knows operates in that store.

23 So let's talk for a little bit about police
24 investigation. And I want to speak to this in this sense.
25 There's no question, ladies and gentlemen, from Mr.

CLOSING ARGUMENTS - MR. FRETWELL

774

1 Kretzschmar, Mr. Pugh and from the Defendant in his
2 statement that a robbery occurred at gunpoint where Mr. Pugh
3 was told to get on the floor and if he moved he would be
4 shot, and the manager was taken by force back to the office
5 where he was robbed at gunpoint after being assaulted a
6 number of times and that individual left the store. There's
7 no question that those crimes occurred.

8 Yet Defense counsel would have you believe that law
9 enforcement officers of sergeant rank and all of these
10 individuals thought we found a guy who likes to rap, he must
11 be the one that committed the crime. And, ladies and
12 gentlemen, I'd submit that's offensive.

13 It's as offensive, but not -- it's not as offensive as
14 saying that because an Olive Garden's located near a -- an
15 area that might have a lower socioeconomic income that's not
16 Montebello, that that must be a crime area. That people are
17 attracted to these areas because that's all that live in
18 that area is vagrants, and homeless, and criminals or
19 whatever. But that's offensive, ladies and gentlemen. And
20 that's just not the case or that Olive Garden would be
21 ordering a lot of windows.

22 But this police investigation and jumping to the
23 conclusion that this -- that Mr. White is the one that
24 committed the crime would leave the actual robber out there
25 to do it again and again. Their job, ladies and gentlemen,

CLOSING ARGUMENTS - MR. FRETWELL

775

1 is to stop crime, to prevent crime.

2 And I would submit to you that much more important than
3 the fact that he said he got it at a rap concert was that
4 you have one of three people inside a store on what these
5 officers had determined to be an inside job that as telling
6 somebody prior to the robbery, hey, I made a lot of money.
7 In fact, he comes to the LEC afterwards, the office, and
8 says, I made seventy-five hundred dollars..

9 So in this investigation, let's take a look at it. I'm
10 not afraid of this broken glass. This broken glass is one
11 of the most important things that you can look at in this
12 case. It absolutely eliminates, with those doors locked,
13 that everyone has testified were locked, that anyone can
14 make entry into that building without the rag in -- on the
15 ground and around that turn-stop.

16 So I think the question was asked at some point, well,
17 why would you -- if you knew it was an inside job, why would
18 you have the towel if you had the rock? That doesn't make a
19 lot of sense.

20 Well, it's dark out there. We know it's dark out
21 there. Contrary to what Mr. Yarborough says, you can drive
22 by and that's what -- that's what that area looks like at
23 night. You can't see the front doors.

24 He tossed that rock, you hear a crash. You've already
25 got a plan in place that allows you to get through that door

1 with this towel, that props open both doors. But if you
2 don't have that towel, then there's some problems. You
3 could throw that rock at the glass as he did and you can't
4 get in.

5 There's another problem. You might have a hole like
6 that way up there, you might not be 6'5" like I am with the
7 ability to reach all the way in and open that bar. So
8 you've got a problem there.

9 But more importantly, you're planning this in a way
10 that you won't be recognized. A lot of thought and planning
11 went into this. You put your arm in there and you cut it on
12 that glass, at that point you're leaving blood evidence.

13 What's the best way to do this? Throw the rock at the
14 glass, have the glass break, go in through the doors that
15 are already propped, commit your crime, your robbery, and
16 grab that towel on the way out. And like that, ladies and
17 gentlemen, the State would submit is -- was the plan in this
18 case.

19 Now, that brick was not from the immediate area. That
20 was the testimony, which is, of course, some evidence of
21 planning, bringing it with you to the area, not just some
22 rock that you grabbed from the parking lot, but a brick, and
23 that it was coordinated by the use and the placement of that
24 towel.

25 Again, we talked about this. Olive Garden policy

936
777

CLOSING ARGUMENTS - MR. FRETWELL

1 dictated you could be terminated. I think -- I can't
2 remember exactly how many times Mr. Yarborough tried to get
3 Mr. Riley to say that people take smoke breaks and they put
4 the towel in the door. And he was clear, you don't go out
5 those doors after close and expect to come back inside.
6 Smoke break all day. There's a smoking area in the
7 restaurant, but you don't go out those doors and come back.

8 And, ladies and gentlemen, if you get your magnifying
9 glass and look at that picture I just showed you, that's the
10 sign right there still attached to that intact interior
11 piece of glass. The locked doors could only be accessed
12 from the inside.

13 This is interesting to me. They're not locking these
14 doors because of this high crime area behind them. They're
15 locking the doors because they're a restaurant. They want
16 to go home.

17 If you let patrons come in after 10:00, there's more
18 food to be prepared. It pushes -- all the side jobs go
19 later and later and people don't get out til 1:00, 2:00.
20 Guess who that -- guess who that costs money? Salaries.
21 And it costs the company. The company wants those doors
22 locked at 10:00. And that's why they're so serious about
23 it.

24 Damion Riley confirmed those doors were locked. He
25 indicates he left, clocked out at 11:18 and that he left by

1 11:20, just to put it at the latest time possible.

2 And what about that to-go camera? Mr. Yarborough has
3 spoken I don't know how many times about the twenty some
4 individuals that were working that night. Well, we recall
5 the camera was still running at 11:22. So if you left
6 before 11:22, which at 11:22 we know there were three people
7 in the store. You didn't press -- you didn't press hold on
8 that camera. Why? Because we have a picture that was taken
9 at 11:22. The camera's still operating at that point. And
10 Mr. Yarborough doesn't want you to focus on that.

11 So what were the conclusions? That early on it was an
12 inside job, there was evidence of planning, preparation and
13 coordination, specifically with White's conversation with
14 Riley, the camera being on hold. And probably most
15 importantly, that towel in the door.

16 What was the plan? Mr. Yarborough has asked the
17 question a number of times, and I'm going to answer it. Why
18 would you take the brick? Why would Mr. White cooperate
19 with police and give a similar vague description as
20 everybody else? Because it was made to look like a random
21 act and Mr. White was supposed to be a victim according to
22 the plan, but mistakes were made.

23 This is something that was -- this is an adage or a
24 saying that has been in place for a long time, that the best
25 laid plans often go awry. I always thought it was odd that

CLOSING ARGUMENTS - MR. FRETWELL

1 it's best laid plans of mice and men. And I understand the
2 men reference. I didn't understand the mouse reference
3 until I realized that it was written in the 1700s by a
4 Scottish poet by the name of Robert Burns, who wrote the
5 poem To a Mouse. Makes a lot more sense that way.

6 But why is a phrase taken from a poem in the 1700s
7 still relevant today? Because this is still true. You can
8 plan and you can plan, you can plan to use your PowerPoint
9 presentation, it might not work, so what do you do? You
10 have backup.

11 Sometimes things happen that have a positive effect.
12 Sometimes you need to go to the restroom, and a juror needs
13 to go to the restroom, and that juror has to go, so you get
14 an opportunity to go.

15 But why is this true, ladies and gentlemen? Because
16 people make mistakes. And mistakes were made that night, no
17 question.

18 And I want you to focus on this because this is --
19 this, in my opinion, is where all of this starts to unravel.
20 The flimsy plastic bag that Mr. Gadsden brought in there to
21 get that money coupled with his request that he have the
22 rolled coins is what set all of this in motion.

23 Now, there was a mistake that was made before that
24 time. He threw the brick at the window and it didn't go all
25 the way through, but that could be rectified on the way out.

CLOSING ARGUMENTS - MR. FRETWELL

780

1 And take it -- if you've got plenty of time, grab that
2 towel, make sure that is broken and leave.

3 This is what caused the mistakes to happen. Because at
4 that point the bag breaks almost immediately. There's a
5 loss of coins and currency starting at the office and goes
6 all the way outside, all the way up until that dog track
7 ends close to, not these residences behind the Olive Garden,
8 but to the road, the State Park Road, the intersection of
9 Sylvania and State Park Road.

10 This causes a distraction for the robber. He's now
11 trying to salvage what he can. And I would submit, ladies
12 and gentlemen, that what's going to go first are the items
13 that are not bundled, the loose currency. That's what
14 scatters. The stacks that remain that are bandaged together
15 or bound together, they don't fall. They stay in the bag.

16 But as he's trying to get out of the door with all of
17 those -- with all of the money that he can salvage, he
18 doesn't do anything about the fact or even perhaps notice
19 that he didn't break the door on the way in. He doesn't
20 take the towel out from around the door, which if he had
21 taken, ladies and gentlemen, and that hole was all the way
22 through the glass, those investigators wouldn't have a clue
23 what happened in this case.

24 Now, they might suggest who robs an Olive Garden?
25 Maybe it was an inside job. They wouldn't have any evidence

CLOSING ARGUMENTS - MR. FRETWELL

1 of that. They wouldn't have any -- they would look at the
2 employees, but when you have three people and you have all
3 the facts that they knew in this -- in this case, they were
4 able to really examine those employees and ask, can I look
5 at your cell phone? Can I look at that other cell phone?

6 And it wasn't even on the first cell phone that they
7 got -- that they received the information that started as
8 Sergeant Weiner indicated them down the path of we need to
9 take a closer look at this guy. This is -- this is somebody
10 who matches the description, who has a large amount of money
11 taken hours after the robbery occurs.

12 Failure to remove that camera from hold, and if you're
13 not fighting to keep money in a bag and you have a clear
14 head, you only have three things to do on the way out. Take
15 it off hold, grab the towel, check to make sure those -- the
16 glass is completely broken. Not a chance with money
17 spilling everywhere and you're just trying to get out of
18 that restaurant, every man for himself.

19 James White's reaction on-scene was simply a failure
20 because although he was attempting to act like a victim, he
21 knew he was never in any danger. In fact, he was there in
22 case Mr. Pugh decided, hey, I'm going go for the -- he's
23 turned his back on us, I'm going to go for the telephone or
24 something like that. No, no, no, no, no, he's got a gun.
25 Just settle down.

CLOSING ARGUMENTS - MR. FRETWELL

782

1 So that's under control. That gives the robber the
2 opportunity to turn his back on those two dishwashers and
3 lie in wait for the manager to come out of his office. You
4 heard that from Officer Middleton's testimony as well as Mr.
5 Kretzschmar.

6 Let's look at Mr. White's mistakes after the fact
7 because they didn't just stop with -- of the scene. He
8 brought that Samsung phone to the police. We might even
9 back up a little bit and say Mr. Gadsden made a pretty big
10 mistake by taking these photos with the money in the attire
11 that he wore when he robbed the store hours after the
12 robbery. Maybe that's where the mistake occurred. Because
13 if those photos aren't taken, it doesn't matter if his phone
14 is in Mr. White's pocket.

15 But as Ms. Ross and Mr. Yarborough pointed out to you
16 in Mr. White's girlfriend's car there was a phone that was
17 just like that. It's very possible that he was confused and
18 thought he did have his old phone. You ever been to a party
19 and picked up somebody else's cell phone on the way out and
20 you realized outside that your code doesn't work?

21 Or you go to a car, you try the key, looks just like my
22 car, the key doesn't work. And you're clicking that thing
23 and nothing's happening.

24 So it quite -- it may quite be that he walked in there,
25 didn't think he had any kind of incriminating information on

CLOSING ARGUMENTS - MR. FRETWELL

783

1 him. By the way, at that time we know he's deleted from his
2 phone every communication he had with Mr. Gadsden,
3 including, ladies and gentlemen, if you recall the
4 testimony, you can have it played back, this picture that
5 was in the cash of the -- sorry -- catch of the phone of Mr.
6 White's phone, but deleted. All referenced. These photos
7 were taken hours after the robbery. They matched the
8 witnesses' description of the robber.

9 And, ladies and gentlemen, Mr. White's own statement,
10 you can take a look at it yourself, says a man in a hood
11 came over to rob them. In a hood. Not incidentally from
12 the back when he turned around and looked the other way, I
13 saw it was a hoodie. He said in a hood.

14 If that hood is around your face in a restaurant, in
15 the kitchen area of a restaurant, which believe me, are not
16 that bright, what can you see? Can you see that the hair is
17 long or short, it's pulled back? Does that look like some
18 person -- one person might call that facial hair, another
19 person might not. If I don't shave at night and in the
20 morning, by the time it comes 5:00 it looks like I have
21 facial hair.

22 So the robber's description, a stocky black male,
23 approximately six foot and two hundred pounds wearing a
24 camouflage jacket and a hoodie. You heard the testimony --
25 slips my mind right now, of the officer who pulled -- I

CLOSING ARGUMENTS - MR. FRETWELL

784

1 think it was Sergeant Weiner, who pulled together the photo
2 lineup from DMV photos that the Defense placed in evidence.
3 It's right here. And by the way, you know, your license
4 goes ten years. So this has no bearing to the time of the
5 incident.

6 But one thing that was important was that he was able
7 to -- and indicate from the DMV records, and it's clear he
8 had an opportunity to view him, that at the time he took his
9 license photo he was five foot -- 5'11". And your height
10 doesn't vary that much until you get really older and you
11 start maybe to lean over a little bit. The weight might.
12 And his weight was two hundred and forty pounds.

13 So spot on with the description. Camouflage jacket and
14 hoodie. Not just the camouflage jacket, but also the fact
15 that it had a hoodie described by all occupants including
16 White. And, in fact, Mr. Kretzschmar indicated he wasn't a
17 hundred percent positive, but it looked like the gunman's
18 clothing when he was shown this cropped photo.

19 White's account of the cash windfall, he comes to the
20 law enforcement office to talk to Sergeant Weiner and he
21 says, I made seventy-five hundred dollars from ticket sales
22 at the rap concert. Changed his story after being
23 confronted by Sergeant Weiner, who had called the promoter.
24 The promoter said, yeah, we made a thousand dollars overall,
25 his share was a hundred. Okay.

200
944

CLOSING ARGUMENTS - MR. FRETWELL

785

1 Well, it didn't come from ticket sales. Other rappers
2 paid me to rap with them. Okay. So they made a thousand
3 dollars overall, but the other rappers that were there paid
4 seven and a half times the total gross receipts to just rap
5 with him at a birthday party for primarily his family and
6 friends. It's not believable. It's not credible.
7 Moreover, the evidence indicates as Sergeant Weiner
8 indicated from the text information that someone said I
9 don't do this for free, that he had to pay that individual
10 to rap at this -- at this birthday bash. The reality,
11 ladies and gentlemen, he's just setting the stage for having
12 a lot of cash.

13 And he had to say something when he came back down to
14 the police office. By the way, much was made about two
15 bands he made. He said a couple of bands at the restaurant
16 to Mr. Riley, but then when he gets to the sheriff's
17 department he says seventy-five hundred. It's easy to not
18 remember something if it's not true.

19 At that point Sergeant Weiner asked him, well, what
20 happened to the money? He says, I went to the club. I
21 spent it all on girls and booze. All right. What club? I
22 don't remember. Okay. Who went with you so we can talk to
23 those people and confirm this? I don't know.

24 Mr. Yarborough talked about how Sergeant Weiner didn't
25 follow up on this when he didn't know what club, nor who

1 went with him so that he could corroborate or invalidate any
2 of that information.

3 **MS. ROSS:** Judge, just one thing on the PowerPoint, I'd
4 make an objection, with the quotes it's suggesting that this
5 is evidence, exactly what's said. And I'd just ask that the
6 jury know that this is what the lawyer's telling them and
7 not what they've seen in evidence.

8 **MR. FRETWELL:** If it's not clear, I prepared this
9 PowerPoint, that's my fault. And just like you should not
10 take my word for the evidence, you certainly shouldn't take
11 the rendition of either of these attorneys for the -- for
12 what the evidence was.

13 Your own recollection and even if you have to come in
14 and have the transcript or the testimony played back to you
15 is what you should rely on. That's evidence. This is --
16 none of this is. You're the finders of the fact.

17 **THE COURT:** All right. Move along.

18 **MR. FRETWELL:** So he denies to Sergeant Weiner that he
19 knows Gadsden despite having Gadsden's phone in his pocket,
20 despite each being a contact in each other's phone, numerous
21 calls, texts and messages, including blocked calls. Why do
22 you call your friend after the robbery *67 so your number
23 won't show up in their phone again and again? Distance.
24 It's after the robbery, we're putting distance, we're
25 deleting contact information, pictures that puts them

CLOSING ARGUMENTS - MR. FRETWELL

787

1 together.

2 And you also have this text from White's phone, and you
3 can go back and listen to the testimony if you want, that
4 happened the morning that Mr. White was going to see
5 Sergeant Weiner and the other detectives where he sent
6 Gerald Akeem Gadsden's birth date, social security number to
7 somebody named Antwanett. For what purpose? It doesn't
8 matter. He knew his full name. He even had his vital
9 information.

10 So the fact that he would say, Gerald Gadsden, I don't
11 know who that is, I know somebody named Keem, is ridiculous.
12 And despite Gadsden's pants and credit card located in
13 White's apartment, which were found at that search warrant.

14 What reason would White have to deny knowing Gadsden?
15 The only person involved in this incident, you've heard the
16 testimony from Jim Perry about whether those phone numbers
17 were located in Gadsden's phone, Terrell Pugh, Damion Riley,
18 is James White.

19 Let's look at Gadsden's Samsung phone, what Gadsden
20 tells Matt Owens, Investigator Matt Owens back here about
21 that phone. Investigator Owens asks him about it. He said,
22 I lost it on the 15th at Club Sho Tyme. Club Sho Tyme?
23 Hmm, that sounds familiar. That is on the flier, which is
24 not readily accessible. That's where the birthday bash on
25 the 18th was. Not the 15th, but on the 18th.

1 And we know a picture was taken with that phone of all
2 this money and the camouflage the day after the robbery.
3 But by this time -- by this time when Matt Owens speaks to
4 Gadsden, White's already been there. White realizes they
5 have Gadsden's phone, those pictures are on Gadsden's phone.

6 So what's Gadsden's response? Oh, I -- I -- he wants
7 to go well before the weekend so there's no connection to
8 the robbery. I lost it all the way back on the 15th. I'm
9 sure about the 15th. Did you follow up with anybody? No.

10 Gadsden already knows from White police have his phone
11 and he knows the police may find incriminating material on
12 the phone. He wants to distance himself from Mr. White.

13 White's Kyocera phone, one of the most amazing things
14 to find is that four days before the robbery, this is
15 Thursday before the weekend party in Charleston, there's a
16 picture taken in the area of the kitchen. The testimony was
17 that the dish area was behind and that this was the exact
18 location of where the manager, Aaron Kretzschmar, was
19 assaulted. That's on Mr. White's phone four days earlier.

20 It's not a selfie. Here, I'm at work. This is where I
21 work. This is where I work all right. This is the exact
22 spot where the attack occurred. How do we know that? Well,
23 we have interestingly enough a forensic photo depicting the
24 area of the assault. And they look remarkably similar.

25 Ladies and gentlemen, Ms. Ross said in her opening,

CLOSING ARGUMENTS - MR. FRETWELL

789

1 flashing money and a photo doesn't make you guilty of a
2 crime. But as Ms. Simpson told you in her opening, this was
3 a planned crime made to look like a random act and mistakes
4 were made.

5 Flashing money doesn't make you guilty of a crime.
6 Seems true until you realize that that matches the
7 witnesses' description, the individual on that photo matches
8 the witnesses' description in build and in clothing was
9 taken hours after the robbery on a phone in White's
10 possession, one of three people working inside at the time
11 of the robbery who has a photo of the assault location in
12 his phone that was there four days earlier of a person White
13 claims not to know.

14 Ladies and gentlemen, I told you the purpose of a trial
15 is to test evidence. And at the end of that trial if that
16 evidence leaves you -- leaves you firmly convinced that
17 these Defendants conspired together to commit an armed
18 robbery and kidnapping during that process of Aaron
19 Kretzschmar and Terrell Pugh, then, ladies and gentlemen,
20 they are guilty as charged.

21 In a few moments after the Judge has charged you on the
22 law, you will have an opportunity to go back to your jury
23 room and deliberate. And the whole goal of that
24 deliberation is to come up with a verdict. And the word
25 verdict is taken from the Latin word *veridictus*, to speak

CHARGE OF THE COURT

790

1 the truth. On behalf of the people of Greenville County, I
2 would ask you to render a just and guilty verdict.

3 **THE COURT:** All right. Ladies and gentlemen of the
4 jury, the indictments in this case allege several different
5 offenses against each of the Defendants. The charges in
6 this case against each Defendant are armed robbery, two
7 kidnapping charges and a criminal conspiracy charge.

8 Ladies and gentlemen, the indictments allege that each
9 Defendant did in Greenville County on or about January 20th,
10 2014 while armed with a deadly weapon, or while alleging
11 either by action or words they were armed with a deadly
12 weapon, or a representation of a deadly weapon, or any
13 object which a person present during the commission of the
14 robbery would reasonably believe to be a deadly weapon take
15 by means of force or intimidation goods, monies described as
16 U.S. currency belonging to the Olive Garden from the person
17 or presence of Aaron Kretzschmar.

18 The indictments also allege that each Defendant did in
19 Greenville County on or about January 20th, 2014 unlawfully
20 seize, abduct, confine, inveigle, decoy or carry away Aaron
21 Kretzschmar without the authority of law.

22 Indictments as to each Defendant allege that each
23 Defendant did on or about January 20th, 2014 unlawfully
24 seize, abduct, confine, inveigle, decoy or carry away Gary
25 [sic] Terrell Pugh without the authority of law.

CHARGE OF THE COURT

791

1 And the indictments also allege that each Defendant did
2 on or about January 20th, 2014 wilfully and unlawfully
3 combined with the other Defendant for the purpose of
4 accomplishing an unlawful object or an unlawful object or a
5 lawful object by unlawful means, and that was armed robbery
6 and/or kidnapping.

7 I'll remind you that the fact that each Defendant was
8 arrested, charged and indicted in this case is not evidence
9 in the case and cannot be considered by you as evidence of
10 guilt in this case. Nor does it create any presumption or
11 inference of guilt. The indictments are simply the formal
12 written instruments which contain the charges made against
13 each Defendant. They are the formal documents by which this
14 case is brought into this court.

15 Now, each indictment charges a separate and distinct
16 offense. You must decide each indictment separately or each
17 charge separately on the evidence and the law applicable to
18 that charge uninfluenced by your decision as to any other
19 charge.

20 A Defendant may be convicted or acquitted on any or all
21 of the offenses charged, although, you cannot find the
22 Defendant guilty of criminal conspiracy unless you find the
23 Defendant has, in fact, committed an armed robbery or other
24 offenses. You will be asked, Mr. Foreman, ladies and
25 gentlemen, to write a separate verdict of guilty or not

CHARGE OF THE COURT

1 guilty as to each charge.

2 Now, there are two Defendants in this case, each of
3 which is charged with all of the criminal offenses for which
4 I just told you. The case of each Defendant and the verdict
5 and the evidence and the law concerning that Defendant
6 should be considered separately and individually.

7 Your verdict does not have to be the same for all
8 Defendants. The fact that you may find one Defendant guilty
9 or not guilty should not control your verdict as to the
10 other Defendant when more than one person is charged with a
11 crime.

12 If the evidence warrants it, you may convict one and
13 acquit the other or you may acquit both or you may convict
14 both or you may -- it will depend on your view of the
15 testimony and the evidence. You must take each Defendant
16 and consider the evidence as to that Defendant and my
17 instructions to you on the law. You will then write a
18 separate verdict of guilty or not guilty for each individual
19 Defendant.

20 Now, to the indictments, ladies and gentlemen, the
21 Defendants have entered pleas of not guilty, which places
22 upon the State of South Carolina the burden of proving the
23 Defendants guilty. A person charged with committing an
24 offense in South Carolina is never required to prove himself
25 innocent.

CHARGE OF THE COURT

793

1 I charge you that it is a vital important rule of the
2 law of evidence that the defendant in a criminal trial, no
3 matter how great or how serious may be the offense for which
4 he may be charged, must always be presumed innocent until
5 the guilt has been proven beyond a reasonable doubt. This
6 presumption of innocence remains with the Defendant at all
7 times, from the moment of his appearance in this court
8 throughout the trial and until the jury has upon the
9 testimony and the evidence presented reached a verdict of
10 guilty beyond a reasonable doubt.

11 For it is the solemn duty of the jury if not clearly
12 convinced of the defendants guilt beyond a reasonable doubt
13 to acquit the defendant. So the burden of proof is upon the
14 State to establish by evidence to your satisfaction the
15 guilt beyond a reasonable doubt as to these Defendants here
16 on trial for the crimes of armed robbery, kidnapping and
17 criminal conspiracy.

18 Now, what is a reasonable doubt? A reasonable doubt is
19 the kind of doubt that would cause a reasonable person to
20 hesitate to act. If you have such a doubt as to the guilt
21 of the Defendant, then he would be entitled to a verdict of
22 not guilty. Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the Defendant's guilt.

24 Reasonable doubt may arise from the evidence which is
25 in the case or from the absence or lack of evidence in the

CHARGE OF THE COURT

1 case. To think that a defendant is probably guilty or the
2 circumstances are suspicious is not enough. You alone must
3 make the determination of whether or not reasonable doubt
4 exists as to the guilt of the -- each Defendant.

5 Now, ladies and gentlemen, there are two types of
6 evidence which are generally presented during a trial,
7 direct evidence and circumstantial evidence. Direct
8 evidence directly proves the existence of a fact and does
9 not require deduction.

10 Circumstantial evidence is a proof of a chain of facts
11 and circumstances indicating the existence of a fact.
12 Crimes may be proven by circumstantial evidence. The law
13 makes no distinction between the weight or value to be given
14 to either direct or circumstantial evidence.

15 However, to the extent that the State relies on
16 circumstantial evidence, all the circumstances must be
17 consistent with each other and when taken together point
18 conclusively to the guilt of accused beyond a reasonable
19 doubt. If these circumstances merely portray the
20 defendant's behavior as suspicious, the proof has failed.

21 The State has the burden of proving the Defendant
22 guilty beyond a reasonable doubt. This burden rests with
23 the State regardless of whether the State relies on direct
24 evidence, circumstantial evidence or some combination of the
25 two.

CHARGE OF THE COURT

1 Mr. Foreman, ladies and gentlemen of the jury, under
2 the Constitution and laws of South Carolina you are the
3 finders of the facts in this case. I do not have the right
4 to pass upon the facts or even express any opinion I may
5 have as to them. Nor may I intimate in any way what I may
6 think about the guilt or the innocence of a defendant.

7 You are the sole judges of the credibility. And by
8 that I mean the believability of the witnesses who testified
9 in this case. In passing upon their credibility you may
10 take into consideration many things such as the demeanor or
11 the manner of testifying of that witness, whether the
12 witness had reason to be biased or prejudiced, whether a
13 witness' testimony was contradicted on the one hand or
14 supported and corroborated on the other hand.

15 You do not determine the credibility or believability
16 by counting the number of witnesses who may have testified
17 for one side or the other. You may believe a small portion
18 of a witness' testimony and disregard the larger or vice
19 versa.

20 Now, you've heard testimony of witnesses who have
21 special knowledge, skill, experience, or training or
22 education in particular professions or occupation who have
23 given their opinions as experts as to matters in which they
24 are skilled. In determining the weight to be given such
25 opinion you should consider the qualifications and the

955

CHARGE OF THE COURT

796

1 credibility of the expert and the reason for the opinion.
2 You are not bound by such an opinion. Give it the weight,
3 if any, to which you deem it is appropriate.

4 Now, a statement alleged to have been made by one or
5 more of the Defendants has been admitted into evidence in
6 this case. While the Court has determined that the
7 statements are admissible, I instruct you that you make the
8 ultimate decision of whether or not the Defendant made the
9 statement.

10 If a Defendant did make the statement, you must
11 determine whether the statement was made by the Defendant
12 voluntarily and of his own free will. This means that the
13 Statement was not caused by pressure, or by force, or fear,
14 threats, coercion, or intimidation, or by hope, or a promise
15 of leniency or any reward of any kind.

16 In determining whether a statement was voluntary you
17 should consider the characteristics of the Defendant and the
18 details of the questions. Some of the factors that you must
19 consider are the age of the Defendant, the Defendant's
20 education or lack of education, the Defendant's mental
21 ability or capacity, the Defendant's IQ or intelligence, the
22 Defendant's background and environment, the place and length
23 of any detention, the nature of the questioning and the
24 advice or lack thereof to the Defendant of his
25 Constitutional rights including, but not limited to the

CHARGE OF THE COURT

1 right to remain silent, that any statement can be used
2 against him in a court of law, the right to have a lawyer,
3 if he could not afford a lawyer, a lawyer would be
4 appointed, that he could stop making a statement at any
5 time. You must carefully consider all these surrounding
6 circumstances before you give any weight to an alleged
7 statement.

8 The State has the burden of proving beyond a reasonable
9 doubt any statement was voluntary. If you determine it was,
10 you may give it the consideration which you deem proper.
11 You must decide the weight, if any, should be given to the
12 alleged statement.

13 Now, there's been evidence presented that a witness may
14 have made prior statements which are not consistent with a
15 witness' later testimony. You may use this evidence to
16 decide whether to believe a witness. You also may use
17 evidence of any earlier contradictory statements to
18 determine the truth of subsequent statements.

19 It is up to you to decide whether to believe the
20 earlier statements a witness has shown to have knowingly
21 testified untruthfully concerning any material matter. You
22 may consider this in determining whether to trust the
23 witness' testimony or -- as to other matters. You may
24 reject all testimony of that witness or give it -- all or
25 part of the testimony you think that it deserves in terms of

CHARGE OF THE COURT

1 weight.

2 Now, a person who has a past criminal record is
3 competent to testify during trial. A past record does not
4 affect the ability of that witness to testify. The past
5 record may only be considered by you, if at all, in
6 determining the witness' believability.

7 Remember, you are the sole judges of the facts in this
8 case and the believability of any and all witnesses. All
9 these things you will consider bearing in mind that you
10 should give both Defendants the benefit of a reasonable
11 doubt.

12 Now, the same Constitution and laws which make you the
13 finders of facts of the evidence -- and the evidence as I
14 discussed with you make me the sole and only instructor of
15 the law. You must accept the law as correct as I charge it
16 to you and apply it to the evidence as you find it and then
17 reach your verdict.

18 Finally, I charge you that you should not be concerned
19 about what you think the law ought to be or what you wished
20 the law is, but rather what I charge you the law to be.

21 Now, I instruct you and emphasize that the fact that a
22 Defendant did not testify is not a factor to be considered
23 by you in any way in your deliberations and in your
24 consideration on the questions of the guilt or the innocence
25 of the Defendant. It must not be considered by you in any

CHARGE OF THE COURT

1 manner whatsoever.

2 A defendant has the Constitutional right to remain
3 silent. And the assertion of this right must not be
4 considered by you in your deliberations. I repeat, under
5 your oath you are to draw no conclusions whatsoever from the
6 fact that the Defendant in this case did not testify.

7 I instruct, Mr. Foreman, it's your responsibility to
8 see that those discussions do not take place. The fact that
9 the Defendant did not testify should not even be discussed
10 in the jury room.

11 The burden of proof, as I stated to you, is on the
12 State. The Defendant is not required to prove his
13 innocence. The burden of proof remains on the State to
14 prove the Defendants' guilt beyond a reasonable doubt.

15 Now, ladies and gentlemen, as you know, the Defendant
16 is charged with armed robbery. In order to prove this
17 offense the State must prove beyond a reasonable doubt that
18 the Defendant took personal property from the person or
19 presence of another person.

20 Property is in the presence of a person if it is within
21 the person's reach, inspection, observation or control so
22 that the person could, if not overcome with violence or
23 prevented by fear, keep possession of the property.

24 The State must also prove beyond a reasonable doubt
25 that the Defendant carried the property away intending to

CHARGE OF THE COURT

1 permanently deprive the owner of the property and to keep
2 the property for the Defendant's own use. The slightest
3 removal of the property or the complete possession of the
4 property, even for an instance, by the Defendant is
5 sufficient to show a taking and carrying away of the
6 property. The taking and carrying away of the property must
7 have been done with violence or by putting the owner of the
8 property in fear of violence.

9 Finally, the State must prove beyond a reasonable doubt
10 that the Defendant was armed with a deadly weapon during a
11 robbery. A deadly weapon is any article, instrument or
12 substance which is likely to cause death or great bodily
13 harm.

14 Whether an instrument has been used as a deadly weapon
15 depends on the facts and circumstances of each case. The
16 following are examples of instruments which may be deadly
17 weapons; a pistol, a shotgun, a rifle, a knife, metal
18 knuckles, a razor, gasoline. A gun may be a deadly weapon
19 even if it is not operating.

20 The Defendants are each charged with two counts of
21 kidnapping. The State must prove beyond a reasonable doubt
22 that a Defendant knowingly and unlawfully seized, confined,
23 inveigled, decoyed, kidnapped, abducted, or carried away
24 another person without authority of law.

25 To do a thing unlawfully is to do it wilfully against

CHARGE OF THE COURT

801

1 the law. Knowingly means with knowledge, consciously, not
2 accidentally. Seized means to take hold of suddenly or
3 forcibly. Confined means to limit, restrict or enclose
4 within bounds, imprison, or shut or keep in -- keep in.
5 Kidnap is to remove a person against his will by unlawful
6 force or by fraud.

7 The State does not have to prove all -- the Defendant
8 did all of the things above. Instead, if you find that
9 beyond a reasonable doubt the Defendant did any of the
10 things, you may find the Defendant guilty of kidnapping.

11 Something done without authority of law is something
12 which the law does not sanction, permit, allow, condone or
13 provide justification for. Kidnapping does not have to be
14 for any personal or monetary gain for any illegal purpose,
15 but may be for any reason whatsoever.

16 Now, the Defendants are charged with criminal
17 conspiracy. The State must prove beyond a reasonable doubt
18 that the Defendants combined with one or more persons for
19 the purpose of committing an unlawful act or committing a
20 lawful act by unlawful means. There must be a mutual
21 understanding, agreement or common intention and plan. Mere
22 passive knowledge or consent to the criminal conduct of
23 another is not enough to make a person a conspirator. There
24 must be guilty knowledge and participation.

25 Similarly, the mere fact the Defendant may have

CHARGE OF THE COURT

1 associated with another person or met with another person
2 and discussed common aims and interests does not necessarily
3 establish proof of the existence of a conspiracy or that the
4 Defendant was involved in a conspiracy.

5 On the other hand it is not necessary that the
6 agreement be a formal one, that it be in writing, that the
7 person's holding a meeting and expressly state the terms of
8 the common plan or that the agreement be stated in words
9 between them. The agreement of a criminal conspiracy may
10 come into being through an implied, mutual understanding.

11 The wilful, intentional and knowing adoption by two or
12 more persons of a common plan is sufficient. No overt acts
13 need to be shown to establish a conspiracy. Conspiracy may
14 be shown by circumstantial evidence and the conduct of the
15 parties.

16 In order to convict the Defendant of conspiracy the
17 State must prove beyond a reasonable doubt not only the
18 Defendant knew of the unlawful conduct, but the Defendant
19 agreed to combine with the other persons for the purpose of
20 accomplishing the unlawful conduct.

21 Now, ladies and gentlemen, if a crime is committed by
22 two or more people who are acting together in committing a
23 crime, the act of one is the act of all. A person who joins
24 with another to commit an unlawful act is criminally
25 responsible for everything done by the other person which

CHARGE OF THE COURT

1 happens as a probable or natural consequence of the acts
2 done in carrying out the common plan and purpose.

3 For example, two people can be guilty of killing
4 another person when only one of the two had a gun. There
5 was only one bullet and only one of the two fired the gun
6 that caused the death. If two or more people are together,
7 acting together, assisting each other in committing the
8 offense, the act of one is the act of all or as it is
9 sometimes said, the hand of one is the hand of all.

10 Now, mere presence at the scene is not sufficient to
11 prove someone guilty of a crime. A defendant's presence
12 where a scene is -- where a crime is being committed or mere
13 association with the person who commits a crime does not
14 make a defendant an accomplice or an aider and abettor for
15 the person committing the crime.

16 The burden is on the State to prove every element of
17 the crime charged. If you find after reviewing all the
18 evidence that the State has proved that the Defendant was
19 only present at the scene of a crime, they have not proved
20 beyond a reasonable doubt any other participation of the
21 crime, then you must find the Defendant not guilty. The law
22 is that proof of the Defendant at the scene of the crime is
23 not sufficient to find someone guilty.

24 Now, Mr. Foreman, and ladies and gentlemen of the jury,
25 you have been selected as fair and impartial jurors to

CHARGE OF THE COURT

1 impartially try and determine the facts of this case. And
2 when you comply with your oath to do so, then no one will
3 have a right to criticize your verdict and you will have
4 fully discharged your duty as a juror.

5 You are to decide this case according to the testimony
6 that you have heard from the lips of the sworn witnesses
7 along with any other evidence introduced. I charge you that
8 as jurors you must decide the issues in this proceeding
9 without bias and without prejudice to any party.

10 You cannot allow yourself to be governed by sympathy,
11 by prejudice, by passion, by public opinion or by any other
12 arbitrary factor. Both the State and the Defendant have the
13 right to expect that each of you will carefully and
14 impartially consider all the evidence in this case and that
15 you will follow the law as I have explained it to you.

16 Now, Mr. Foreman, ladies and gentlemen, I have prepared
17 two verdict forms here, one for each Defendant. Each
18 verdict form has the four charges for which each Defendant
19 is charged.

20 Each verdict form has two possible verdicts that you
21 can reach as to each charge. For example, as to the charge
22 of armed robbery, we, the jury, find the Defendant guilty or
23 not guilty. As to the charge of kidnapping, we, the jury,
24 find the Defendant guilty or not guilty.

25 With respect to the two kidnapping charges I have

CHARGE OF THE COURT

1 written the name of the two alleged victims on top of that
2 particular charge, one being Aaron Kretzschmar and the other
3 being Grady Terrell Pugh.

4 As to the charge of criminal conspiracy, we, the jury,
5 find the Defendant guilty or not guilty. You will be asked
6 to determine the verdict on each of the charge with each of
7 the Defendants.

8 Now, ladies and gentlemen, your verdict must be the
9 unanimous verdict of all twelve jurors. It cannot be 11/1,
10 9/3, 7/5. It has to be the unanimous verdict of all twelve
11 jurors.

12 Mr. Foreman, what I'm going to ask you to do, as you
13 determine the verdict of each Defendant as to each charge,
14 I'm going to ask you to check what that is, guilty or not
15 guilty, and initial by your check. When you have reached a
16 verdict as to both Defendants on all the charges, I'm going
17 to ask you to sign the verdict form.

18 The verdict is -- well, it's dated as I prepared it
19 yesterday. I'm changing the date to June 9. It says June
20 8. So you don't need to date it. Once you have determined
21 your verdict and reached your verdict on all the charges as
22 to both Defendants, then, I think, what you do, you push a
23 button or do something in there, right?

24 **THE BAILIFF:** Yes, sir.

25 **THE COURT:** In Richland County, we just knock on the

CHARGE OF THE COURT

806

1 door and the bailiff comes and gets you. But when you do
2 that, if you will -- the bailiff will explain what you do
3 once you've reached the verdict on both Defendants as to all
4 charges. Then we will bring you back into the courtroom so
5 that you can have your verdicts published.

6 Now, in just a moment I'm going to ask everybody but
7 the alternates to step back to the jury room. When you get
8 back to the jury room, do not begin your deliberations. I
9 have to review with the attorneys the charges that I just
10 gave you.

11 If they believe I either failed to instruct you in some
12 way or additional -- or incorrectly instructed, and I agree
13 with them, I'll bring you back and give you those
14 instructions. If not, I will have these verdict forms along
15 with all of the evidence that has been introduced brought to
16 the jury room and you can begin your deliberations.

17 Now, as you know, we've ordered lunch. And that lunch
18 should be back in your jury room. You can deliberate and
19 eat, you can eat and not deliberate, whatever you want to
20 do, but just make sure that all of you agree that whatever
21 you're doing, everybody agrees to it. All right.

22 If y'all will step back to the jury room. Do not begin
23 your deliberations. And we will be with you momentarily.

24 (Whereupon the jury exited the courtroom at 1:24 pm)

25 **THE COURT:** All right. Ladies, apparently all of your

1 colleagues survived the four day ordeal. And so we're going
2 to be able to allow them to go forward with the
3 deliberations. And we're going to be able to turn you
4 loose.

5 I don't know how you feel about that. I've had jurors
6 tell me different things. Sometimes they say, man, I stayed
7 there and worked like the dickens and listened and I sure
8 wanted to participate in that verdict. And sometimes they
9 say, man, I'm sure glad I don't have to make that decision.

10 But when you get a lengthy jury-- trial like we had,
11 it's essential that we have alternates because oftentimes we
12 lose a juror or two in the trial. So I do thank you very
13 much for your service.

14 You are going to get a lunch. And you are welcome to
15 stay up here. We'll put you in a jury room somewhere and
16 y'all can eat and talk about what you would have done or you
17 can take your lunch and go wherever you want to go.

18 I'm going to turn you loose from any further jury
19 service. I don't know if there's any other trials going on
20 in here.

21 You should get a strong token of appreciation of the
22 people of Greenville County by a check at some point in time
23 in the future, which will be very little. But we can't
24 operate without y'all as you've -- I'm sure you've seen in
25 this process.

1 And I hope if you have the opportunity to serve in the
2 future that you will make yourself available because you are
3 critical to the process.

4 Now, I know Ms. Simpson said y'all are more important
5 than I am, and it hurt my feelings a little bit, but you are
6 essential because you're the same as me. You're the judges
7 of the facts, and I'm the judge of the law. So I thank you
8 very much. And we'll turn you loose.

9 And I guess if y'all will take their badges and give
10 them their lunch. And if they want a place to eat and stay
11 up here, then provide that to them, and give them something
12 to drink and their food. If you eat here, maybe I'll come
13 down and speak to you. So, all right. Thank y'all. Y'all
14 have a nice -- if I don't see you, y'all have a nice
15 weekend.

16 (Whereupon the alternates exited the courtroom)

17 (Whereupon someone in the gallery stood up to leave)

18 **THE COURT:** All right. Ma'am, if you'll have a seat.
19 Please have a seat. I'm not finished. Any further --
20 anything from the State with respect to the instructions?

21 **MS. SIMPSON:** No, Your Honor.

22 **THE COURT:** Anything from Mr. Yarborough?

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

24 **THE COURT:** Anything from Ms. Ross?

25 **MS. ROSS:** None other than you put my request on

VERDICT OF THE JURY

968
809

1 exhibit, and I crossed out number 4.

2 **THE COURT:** All right. If y'all would like to get with
3 our trusty court reporter and clerk of court and make sure
4 we have all the exhibits. I understood one was missing at
5 some point in time. And I assume we found it?

6 **MADAME COURT REPORTER:** Yes, sir.

7 **THE COURT:** All right. We will stand in recess and see
8 what happens.

9 (Whereupon court was in recess at 1:28 pm)

10 (Whereupon the jury received the evidence and verdict
11 forms and began deliberating at 1:35 pm)

12 (Whereupon court reconvened at 2:59 pm)

13 **THE COURT:** All right. Are we ready to bring the jury
14 in? State ready to proceed with the verdict?

15 **MR. FRETWELL:** Yes, Your Honor.

16 **THE COURT:** Mr. Yarborough, you ready?

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

18 **THE COURT:** Ms. ---

19 **MS. ROSS:** Yes, Your Honor.

20 **THE COURT:** --- Ross? I don't want any outbursts. I
21 don't know what this verdict is, but let's behave ourselves.
22 All right. If you could, Mr. Bailiff.

23 (Whereupon the jury entered the courtroom at 3:01 pm)

24 **THE COURT:** All right. Mr. Foreman, it's been reported
25 that the jury's reached a verdict on these two cases.

VERDICT OF THE JURY

1 **MR. FOREMAN:** Yes, sir.

2 **THE COURT:** And this is -- you've reached a verdict on
3 both Defendants?

4 **MR. FOREMAN:** Yes, sir.

5 **THE COURT:** And it's a unanimous verdict of all twelve
6 jurors?

7 **MR. FOREMAN:** Yes, sir.

8 **THE COURT:** All right. If you would hand the verdict
9 forms to the bailiff, please, sir.

10 (Pause)

11 **MADAME CLERK:** In the case 2014-GS-23-10507, State
12 versus Gerald Akeem Gadsden, as to the charge, armed
13 robbery, we, the jury, find the Defendant guilty.

14 As to the charge of kidnapping Aaron Kretzschmar, we,
15 the jury, find the Defendant guilty.

16 As to the charge of kidnapping Gerald [sic] Terrell
17 Pugh, we, the jury, find the Defendant guilty.

18 As to the charge of conspiracy, we find the -- we, the
19 jury, find the Defendant guilty.

20 In 2014-GS-23-3815, the State versus James Damon Lanar
21 White, as to the charge of armed robbery, we, the jury, find
22 the Defendant guilty.

23 As to the charge of Aaron Kretzschmar of kidnapping,
24 we, the jury, find the Defendant guilty.

25 As to the charge of kidnapping Gerald [sic] Terrell

VERDICT OF THE JURY

811

1 Pugh, we, the jury, find the Defendant guilty.

2 As to the charge of conspiracy, we, the jury, find the
3 Defendant guilty.

4 **THE COURT:** All right. Anything from the State with
5 respect to the verdicts?

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

7 **THE COURT:** Anything from the ---

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

9 **THE COURT:** Anything from you?

10 **MS. ROSS:** Judge, I'd just ask to poll the jury and
11 poll on the issue of looking up Mr. Gadsden on the computer.

12 **THE COURT:** I'm sorry?

13 **MS. ROSS:** I would just ask to poll the jury on the
14 verdict and poll the jury on looking up anything about the
15 Defendant on the computer. Googling his name on the
16 computer or phone. I think this is something ---

17 **THE COURT:** All right.

18 **MS. ROSS:** --- we've asked before, but I ---

19 **THE COURT:** Well, I've inquired that every day they've
20 been here. They haven't left the courtroom -- courthouse
21 today, but ---

22 **MS. ROSS:** I understand, Judge.

23 **THE COURT:** All right. Can we poll the jury with
24 respect to Mr. Gadsden?

25 **MADAME CLERK:** The verdict I have published was the

VERDICT OF THE JURY

1 verdict you reached in the jury room. I ask you was it your
2 verdict then and is it your verdict now? When I call your
3 name, answer yes or no. And this is for Gerald Akeem
4 Gadsden. Juror number 59, Debra Dasilva.

5 MS. DASILVA: Yes.

6 MADAME CLERK: Juror number 30, Jody Boyle.

7 MR. BOYLE: It is.

8 MADAME CLERK: Juror number 83, Todd Gillespie.

9 MR. GILLESPIE: Yes, ma'am.

10 MADAME CLERK: Juror number 179, Greg Owens.

11 MR. OWENS: Yes.

12 MADAME CLERK: Juror number 81, Joann Garrett.

13 MS. GARRETT: Yes.

14 MADAME CLERK: Juror number 241, Jason Wise.

15 MR. WISE: Yes.

16 MADAME CLERK: Juror number 163, Ashley Moore.

17 MS. MOORE: Yes, ma'am.

18 MADAME CLERK: Juror number 232, Stewart White.

19 MR. WHITE: Yes.

20 MADAME CLERK: Juror number 193, Alan Redmon.

21 MR. REDMON: Yes.

22 MADAME CLERK: Juror number 109, Robert Hogan.

23 MR. HOGAN: Yes, ma'am.

24 MADAME CLERK: Juror number 121, Beverly James.

25 MS. JAMES: Yes, ma'am.

VERDICT OF THE JURY

1 **MADAME CLERK:** Juror number 102, James Harris.

2 **MR. HARRIS:** Yes.

3 **THE COURT:** All right. Anything else with respect to
4 the jury?

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

6 **THE COURT:** All right. Ladies and gentlemen of the
7 jury, I thank you very much for your service in these cases.
8 As you see, you are absolutely critical to the whole
9 process. We could not do it without you.

10 And I know these are tough cases, which, I think, one
11 of the lawyers remarked about how attentive you were. And I
12 think you were very attentive in this case. And I thank you
13 for that.

14 And we are going to turn you loose. You will be
15 getting a small token of appreciation from the County of
16 Greenville in the form of money at some point in time for
17 your service, but don't plan on a big night with it.

18 And I hope if you have the opportunity to come back and
19 serve again you will certainly avail yourself to do so now
20 that you realize how serious this process is and how
21 important it is that we get good people who are willing to
22 serve.

23 So if you will go with the bailiff, he will take you
24 back to the jury room, and we'll turn you loose. And y'all
25 have a nice weekend.

SENTENCE OF THE COURT

1 (Whereupon the jury exited the courtroom at 3:07 pm)

2 **THE COURT:** All right. We got the sentencing sheets?

3 **MR. FRETWELL:** We do, Your Honor.

4 **THE COURT:** Mr. Yarborough, if I can get you and your
5 client and Ms. Ross. All right. Mr. Solicitor, anything
6 you want to tell me?

7 **MR. FRETWELL:** Yes, sir. Your Honor, at this time I
8 would like to make as a Court's exhibit -- Mr. White, I have
9 his prior record. 2007, habitual traffic offender, assault
10 with a high and aggravated nature and criminal conspiracy.

11 **THE COURT:** Wait a minute. 2007 what?

12 **MR. FRETWELL:** 2007, ---

13 **THE COURT:** HTO?

14 **MR. FRETWELL:** --- and AHAN and criminal conspiracy.
15 2009, also from South Carolina, ABHAN with misdemeanor,
16 unclassified. In Georgia, 2010, robbery and possession of a
17 firearm by a convicted felon.

18 **THE COURT:** All right. Anything else you want to tell
19 me?

20 **MR. FRETWELL:** No, Your Honor, unless Sergeant Weiner
21 wants to speak on behalf of law enforcement.

22 **THE COURT:** Well, I'm not concerned about -- any of the
23 victims here ---

24 **MR. FRETWELL:** No, I was not able to get them back in
25 time, Judge.

SENTENCE OF THE COURT

815

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

2 **MR. YARBOROUGH:** Your Honor, if the Court please. I've
3 spent a lot of time with James over the course of the last
4 three or four months getting ready for trial. He's --
5 always found him to be a pleasant -- he shows up when he's
6 supposed to show up. He's helped me throughout this trial.
7 He's a good guy. All my experience has been with him, him
8 being a good guy.

9 His mother and father are here with him. They have
10 been supportive throughout this process. He was working,
11 obviously, as a dishwasher. And he was trying to make it as
12 a rap artist.

13 He's always maintained his innocence in this. But I
14 will tell you this, that the testimony at trial was that he
15 was a good employee. And so I think at some point that
16 speaks highly for him. I'd ask the Court to be as lenient
17 on him as possible.

18 **THE COURT:** Anything your client wants to say?

19 **MR. WHITE:** I'm just going to maintain my ---

20 **THE COURT:** I need you to speak up a little bit.

21 **MR. WHITE:** I'm going to maintain my innocence and
22 that's about it.

23 **THE COURT:** I could not understand what you said.

24 **MR. WHITE:** I'm going to maintain my innocence ---

25 **THE COURT:** Oh, you maintain your innocence. Okay.

1 **MR. WHITE:** And the State hasn't proven any physical
2 evidence or whatnot. You know, I'm going to leave it at
3 that.

4 **THE COURT:** All right.

5 (Pause)

6 **THE COURT:** All right. On the armed robbery the
7 sentence of this Court, you be committed to the Department
8 of Corrections to a term of twelve years plus costs and
9 assessments.

10 On kidnapping, the sentence of this Court, you be
11 committed to the Department of Corrections for term of
12 twelve years plus costs and assessments as applicable. The
13 other kidnapping, the sentence of this Court, you be
14 committed to the Department of Corrections for a term of
15 twelve years plus costs and assessments as applicable.

16 And on the conspiracy, you be committed to the
17 Department of Corrections for a term of five years. These
18 sentences are run concurrent. And you will get whatever
19 credit for time served you have. You pay any costs within
20 ninety days from the release from the Department of
21 Corrections.

22 **MR. YARBOROUGH:** Thank you, Your Honor.

23 **MR. WHITE:** Thank you, Your Honor.

24 **THE COURT:** All right, Mr. Solicitor.

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

SENTENCE OF THE COURT

976
817

1 conformance with the statutory code 17-25-45 the State would
2 like to have marked as Court's exhibit the notice of intent
3 to seek life without parole on Mr. Gadsden, which is
4 combined with an affidavit of service that was served on
5 Attorney Susannah Ross at her office on the 27th day of
6 April. And we also have an affidavit of service where the
7 notice was served on Mr. Gadsden in the Anderson County
8 Detention Center on May 2nd, 2016.

9 As a final Court's exhibit, the underlying certified
10 copy of the conviction for assault and battery with intent
11 to kill from 2008, which does qualify under the statute. It
12 is connected with several other items of certified
13 convictions from the Clerk of Court in Berkeley County. We
14 just ask that we make it one exhibit for the purpose of the
15 Court.

16 In addition to the ABWIK charge from 2008, Mr. Gadsden
17 has a 2014 conviction for giving or offering bribes to
18 officer and receiving stolen goods.

19 (Whereupon Court's exhibits 9, 10 and 11 were marked)

20 **THE COURT:** All right. Now, you noticed him on the two
21 kidnapping and the armed robbery charge or just the armed
22 robbery?

23 **MR. FRETWELL:** No, sir. I noticed him on all three.

24 **THE COURT:** All right, Ms. Ross.

25 **MS. ROSS:** Thank you, Your Honor. May it please the

SENTENCE OF THE COURT

1 Court. I understand your hands are tied. I'd again object
2 to the LWOP being presented today. I believe it's arbitrary
3 and cruel and unusual punishment. And it was issued after
4 Mr. Gadsden failed to appear in court in April due to
5 seeking mental health assistance.

6 Mental health issues certainly have pervaded through my
7 representation of Mr. Gadsden, certainly during the latter
8 part. So I would object to that. But, otherwise, I
9 understand that as it is, your hands are tied.

10 **THE COURT:** Your client want to say anything?

11 **MR. GADSDEN:** Me, Your Honor?

12 **MS. ROSS:** Yes.

13 **MR. GADSDEN:** All I'd like to say is that I understand
14 that you are a judge and what you are here for. And I would
15 like to ask you to not tread on me.

16 **THE COURT:** I'm sorry, ask me what?

17 **MS. ROSS:** Not tread on him, like the snake on the New
18 Hampshire flag. Don't tread on me. We talked about that.

19 **THE COURT:** Well, ...

20 (Pause)

21 **THE COURT:** Mr. Gadsden, I don't know about treading on
22 you as your lawyer has said. I don't have any discretion on
23 this case. I'm not a big fan of -- in many instances of
24 this life without parole.

25 If the State hadn't have sought it, I would not have on

SENTENCE OF THE COURT

1 my own sentenced you to a sentence such as this based on
2 what I heard in this case. But when you made that decision
3 -- I think you and your lawyer made that decision or you
4 made it and you took any control over that out of my hands.

5 So with respect to the armed robbery, 2014-GS-23-10507,
6 the sentence of this Court, you be committed to the
7 Department of Corrections for a term of life without parole
8 pursuant to 17-25-45, code of laws of South Carolina plus
9 costs and assessments.

10 On indictment 2014-GS-23-10507, kidnapping, sentence of
11 this Court, you be committed to a sentence of life without
12 parole plus costs and assessments pursuant to the 17-25-45,
13 the code of laws of South Carolina.

14 As to indictment 2014-GS-23-10507, kidnapping, the
15 sentence of this Court, you be committed to Department of
16 Corrections for a term of life without parole pursuant to
17 17-25-45 code of laws of South Carolina.

18 And with respect to the conspiracy charge, 2014-GS-21-
19 [sic] 10507, sentence of this Court, you be committed to the
20 Department of Corrections for a term of five years plus
21 costs and assessments. I'm going to run them all
22 concurrent. And on the ones that -- credit now matters, I
23 will give you credit for the time that you have served.

24 **MR. FRETWELL:** Thank you, Your Honor.

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

1 **THE COURT:** Good luck to you.

2 (Hearing Ended at 3:20 pm)

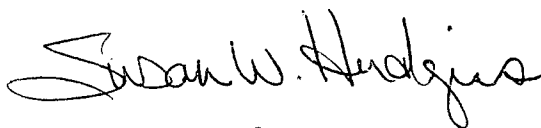
3 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 6th - 9th day of June 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 8, 2016



S/ Susan W. Hudgins

Circuit Court Reporter

981
STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

INDICTMENT FOR
**ARMED ROBBERY, KIDNAPPING, BURGLARY IN THE
SECOND DEGREE and CONSPIRACY**

JUN 24 2014

At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

COUNT 1 — ARMED ROBBERY

That JAMES DAMON LANAR WHITE did in Greenville County, on or about the 20th day of January, 2014, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: U.S. CURRENCY belonging to OLIVE GARDEN from the person or presence of AARON KRETZSHMAR. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT 2 — KIDNAPPING

That JAMES DAMON LANAR WHITE did in Greenville County, on or about the 20th day of January, 2014, unlawfully seize, abduct, confine, inveigle, decoy or carry away AARON KRETZSHMAR, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

COUNT 3 — KIDNAPPING

That JAMES DAMON LANAR WHITE did in Greenville County, on or about the 20th day of January, 2014, unlawfully seize, abduct, confine, inveigle, decoy or carry away GRADY TERRELL PUGH, without the authority of law. This is in violation of §16-3-910 of the South Carolina Code of Laws (1976) as amended.

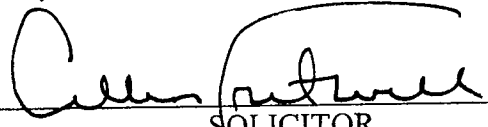
COUNT 4 — BURGLARY IN THE SECOND DEGREE

That JAMES DAMON LANAR WHITE did in Greenville County, on or about the 20th day of January 2014, willfully and unlawfully enter the restaurant belonging to OLIVE GARDEN, located at 3290 North Pleasantburg Drive, Greenville, South Carolina, without consent and with the intent to commit a crime therein, accompanied by circumstances of aggravation, to wit: Armed With a Deadly Weapon, and/or Did Cause Injury to Any Person Who is not a Participant in the Crime, and/or Use or Threaten the Use of a Dangerous Instrument, and/or Displays What Appears to be a Knife, Pistol, Revolver, Rifle, Shotgun, Machine Gun or Other Firearm, and/or the Entering and/or Remaining Did Occur During Hours of Darkness. This is in violation of §16-11-312 of the South Carolina Code of Laws (1976) as amended.

COUNT 5 — CONSPIRACY

That JAMES DAMON LANAR WHITE did in Greenville County, on or about the 20th day of January 2014, willfully and unlawfully combine with GERALD GADSDEN for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: ARMED ROBBERY and/or KIDNAPPING and/or BURGLARY IN THE SECOND DEGREE.. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

983
COUNTY OF: Greenville
STATE VS.
James Damon Lanar White
AKA:
Race: BLACK Sex: M Age: 34
DOB: SS#:
Address:
City, State, Zip: Greenville, SC 29609
DL#: SID#:

INDICTMENT/CASE#: 2014GS2303815
A/W#: 2014A2330200739
Date of Offense: 1/20/2014
S.C. Code §: 16-11-0330(A)
CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC § 17-25-45 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted. ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Allen Fretwell 17016
Fretwell, Allen SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

PTUP _____
_____ days/hours Public Service Employment

Recipient: _____

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforc. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 1339.00

Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: PAID ALL COSTS WITHIN 90
DAYS OF RELEASE

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Williams
Court Reporter: Hickman
SCCA/217 (03/2011)

Presiding Judge Sam Z. Burt
Judge Code: 2112
Sentence Date: 6/9/14

COUNTY OF Greenville
STATE VS.
James Damon Lanar White
AKA: _____
Race: BLACK Sex: M Age: 35
DOB: SS
Address: _____
City, State, Zip: Greenville, SC 29609
DL#: _____ SID#: _____

INDICTMENT/CASE#: 2014GS2303815
A/W#: 2014A2330200741
Date of Offense: 1/20/2014
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] 17016
Fretwell, Allen SC Bar# _____ Defendant _____ Attorney for Defendant _____ SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____
*Fine: _____ \$
§ 14-1-206 (Assessments 107.5%) _____ \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Williams
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 217
Sentence Date: 6/9/14

985
COUNTY OF Greenville
STATE VS.
James Damon Lanar White
AKA:
Race: BLACK Sex: M Age: 35
DOB: SS#
Address:
City, State, Zip: Greenville, SC 29609
DL#: SID#:

INDICTMENT/CASE#: 2014GS2303815
A/W#: 2014A2330200742
Date of Offense: 1/20/2014
S.C. Code §: 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ § 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
A TEST: 17016
Fretwell, Allen SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS

PTUP: _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk Paul B. Wallerstein
Court Reporter: Hudgens
SCCA/217 (03/2011)

Presiding Judge Jan F. Bault
Judge Code: 2112
Sentence Date: 6/9/14

COUNTY OF Greenville VS. James Damon Lanar White
STATE
AKA:
Race: BLACK Sex: M Age: 35
DOB: SS
Address:
City, State, Zip: Greenville, SC 29609
DL#: SS SID#: SS
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy

986
INDICTMENT/CASE#: 2014GS2303815
A/W#: 2014A2330200744
Date of Offense: 1/20/2014
S.C. Code §: 16-17-0410
CDR Code #: 0049

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: 17016
Fretwell, Allen SC Bar# SS Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of SS days/months/years or ☐ under the Youthful Offender Act not to exceed SS years
and/or to pay a fine of \$ SS; provided that upon the service of SS days/months/years and/or payment
of \$ SS; plus costs and assessments as applicable*; the balance is suspended with probation for SS

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ SS plus 20% fee: \$ SS
Payment Terms: SS
☐ Set by SCDPPPS SS

Recipient: SS

*Fine:
§ 14-1-206 (Assessments 107.5%) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$ 3.90
TOTAL \$ 133.90

SS days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. SS
May serve W/E beginning SS
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ SS beginning SS
\$ SS paid to Public Defender Fund
Other: SS

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Paul B. Wickman
Court Reporter: Hudgens
SCCA/217 (03/2011)

Presiding Judge Jan T. Burt
Judge Code: 2110
Sentence Date: 6/9/16





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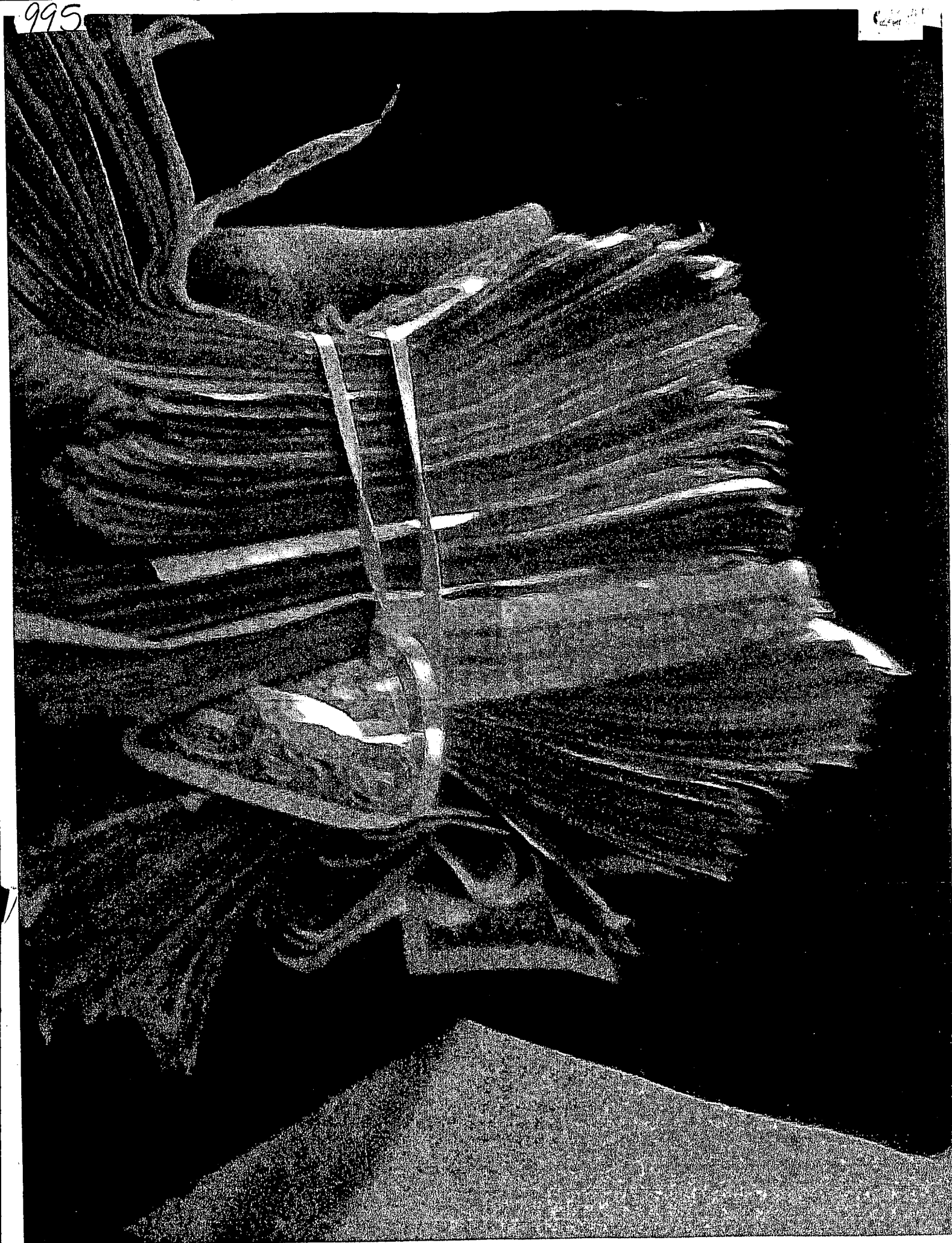


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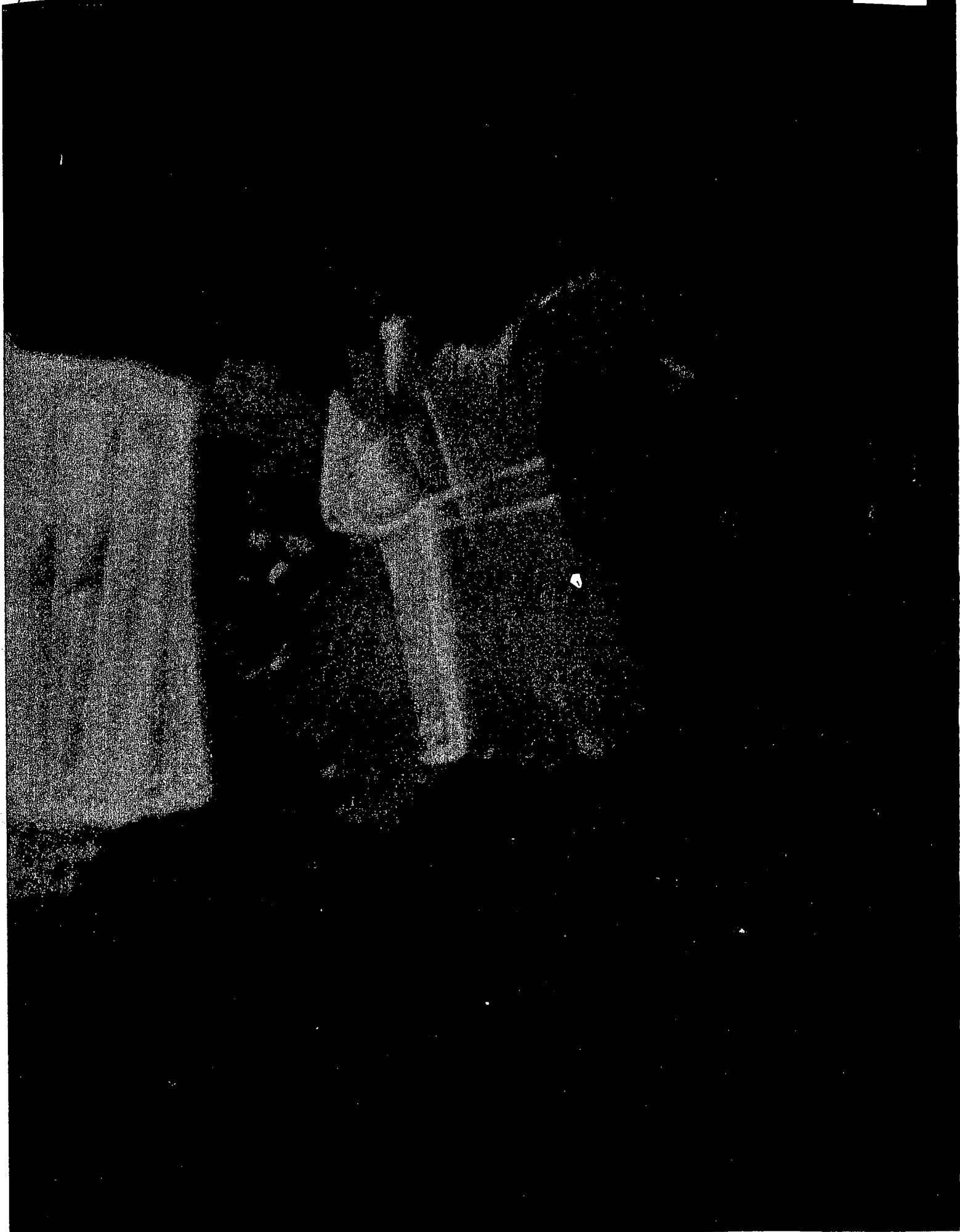
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by the Appellant and not any other material.

This 17th day of November, 2017



William G. Yarborough, III
522 N. Church Street
Greenville, South Carolina 29601
(84) 331-1612
Attorney for Appellant

Sworn to before me this 17th
day of November, 2017



Notary Public for South Carolina

My commission expires: 3/20/24

Counsel for Respondent:

Honorable Alan Wilson
J. Benjamin Aplin
PO Box 11549
Columbia, SC 29211

Allen Fretwell, Assistant Solicitor
Thirteenth Judicial Circuit
305 E. North Street
Greenville, SC 29601

Paul Wickensimer, Clerk of Court
305 E. North Street
Greenville, SC 29601

Counsel for Appellant:

William G. Yarborough, III
522 N. Church Street
Greenville, SC 29601