

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

APR 05 2017

SC Court of Appeals

Appellate Case No: 2015-000517

THE STATE

RESPONDENT,

v.

COURTNEY RAY MITCHELL

APPELLANT.

AMENDED RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS
2013-A-23-20602021

STATE OF SOUTH CAROLINA)

PLAINTIFF))

vs.)

TRANSCRIPT OF RECORD

COURTNEY RAY MITCHELL)

DEFENDANT)

ORIGINAL

January 16, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, Judge.

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

JAMES A. PRICE, ESQ.
Attorney for the State

DONALD L. SMITH, ESQ.
Attorney for the Defendant

APRIL HERRON
Official Court Reporter

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There were no witnesses.

There were no exhibits.

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Certificate of Reporter 8

1 THE COURT: All right, I'll be happy to hear
2 from you.

3 MR. SMITH: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. SMITH: Your Honor, I'm here on behalf of
6 Courtney Mitchell who is the Defendant in an
7 intimidation of a witness case. The case that he's
8 alleged to have intimidate the witness on is a breach
9 of peace case that was brought in Municipal Court in
10 Greenville.

11 THE COURT: Yes, sir.

12 MR. SMITH: That was a year and a half ago. I
13 requested a speedy trial but every time I talked to
14 Municipal Court, it had disappeared from their
15 records. I don't know why or how.

16 THE COURT: Yes, sir.

17 MR. SMITH: But I will say that I feel very
18 confident in that case. And I don't believe there
19 was probable cause for that case. And I don't
20 believe there's probable cause for this case based on
21 the fact, the breach of peace, no one ever told him
22 that they were offended by what he was talking about
23 or anything of this sort. In this case, no one --
24 the lady that's alleged to have been intimidated
25 never told her coworker, friend, that she didn't want

1 him texting or her calling her. So, if that's not
2 the case, I don't know how my client is to know that
3 he's not allowed to text her, not allowed to call
4 her. And when I say friend, I mean that's a term
5 that's used loosely. However, he had had a company
6 kind of picnic in which she was at his house two
7 weeks before. He had no reason to believe that he
8 was not allowed to call.

9 The whole purpose of this hearing, however, is
10 to simply stay the intimidation case until after the
11 breach of peace case. Because inherently the
12 witness -- the intimidation case says that there's
13 another case involved. And I believe it's highly
14 prejudicial. Second of all, there is no prejudice to
15 the State whatsoever in allowing the chronological
16 events to take place. I.E. either breach of peace
17 first and then the second being the intimidation
18 case. I don't see any reason why that can't be
19 accomplished.

20 THE COURT: Okay.

21 What's the position of the State?

22 MR. PRICE: Judge, Your Honor, first I can clear
23 up the breach of peace charge. It was originally
24 charged as breach of peace high and aggravated and it
25 was up in general sessions. You know, depending on

1 who you ask, breach of peace high and aggravated
2 either doesn't exist or it does but it's only a 30
3 day offense.

4 THE COURT: Yes, sir.

5 MR. PRICE: Anyway, that is still pending in the
6 solicitor's office. It's not in Municipal Court.
7 The State does not intend to go forward on the breach
8 of peace charge because it's only a 30 day offense
9 when we have the intimidation charge which is 10
10 years. Obviously, we're going to go after the bigger
11 fish.

12 THE COURT: Yes, sir.

13 MR. PRICE: On the breach of peace, just want to
14 let you know that we will dismiss it as part of a
15 plea agreement and try to kill two birds with one
16 stone so to speak. And in terms of the Defendant's
17 guilt or innocence in the breach of peace charge,
18 Judge, it doesn't matter. The fact that there was a
19 witness in a pending criminal charge against the
20 Defendant, he sent some threatening text and also
21 packet that -- with some items that the victim
22 determined to be threatening with him saying I have
23 guns and I know where you live and I know where your
24 family lives.

25 THE COURT: Okay. So, the solicitor's office is

1 prosecuting both the breach of peace and the
2 intimidating of a witness?

3 MR. PRICE: We have both cases up in general
4 sessions, Your Honor.

5 THE COURT: All right.

6 MR. PRICE: The solicitor's office has both but
7 we only intend to go forward on the --

8 THE COURT: I know --

9 MR. PRICE: Intimidation charge.

10 THE COURT: I understand.

11 MR. PRICE: I just want to clarify.

12 THE COURT: I understand exactly what you're
13 saying. But y'all are handling both cases?

14 MR. PRICE: Yes, sir.

15 THE COURT: Okay. All right. And I recognize
16 they can exercise that prosecutorial discretion and
17 what to proceed with and when to proceed with it.

18 Mr. Smith, I'm going to respectfully deny the
19 motion. You know, I do think that it's a matter of
20 prosecutorial discretion as to which case and what
21 order they bring it. Particularly, when they have
22 them both in general sessions court. I'm not
23 necessarily -- I don't necessarily disagree with the
24 way you would like to proceed. But I think
25 ultimately it's a matter of discretion by the

1 prosecution and what order they wish to proceed on
2 the outstanding charges.

3 MR. SMITH: I was under the impression from what
4 he just said that they're not pursuing the breach of
5 peace.

6 THE COURT: That's what I heard. That's what I
7 heard. And, you know, that may give you some
8 indication of which case you need to prepare on.

9 MR. SMITH: Yes, sir.

10 THE COURT: Okay. All right. Good luck to you,
11 sir.

12 MR. PRICE: Thank you, Your Honor.

13 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

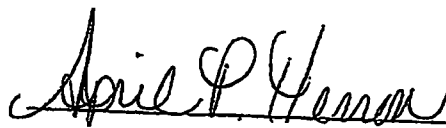
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 16th day of January, 2015.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 16, 2015



APRIL P. HERRON, Court Reporter

COURT OF GENERAL SESSIONS
2013-GS-23-08607

TRANSCRIPT OF RECORD

COURTNEY RAY MITCHELL,
DEFENDANT.

February 9, 2015
Greenville, South Carolina

THE HONORABLE KEITH R. KELLY, JUDGE;

DONALD L. SMITH, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

P R O C E E D I N G S

THE COURT: Mr. Smith, your motion.

MR. SMITH: May it please the Court.

THE COURT: Yes, sir.

MR. SMITH: The defendant has made ---

MR. MATHIAS: Your Honor, actually, I think it's my motion.

THE COURT: Oh, I'm sorry.

MR. MATHIAS: I don't believe he has anything pending.

THE COURT: Okay. All right. Your motion then.

MR. MATHIAS: I'll hand up a motion to quash filed by UPS on August 12, 2014. My name is Andrew Mathias from Nexsen Pruet on behalf of UPS.

THE COURT: Thank you.

MR. MATHIAS: I don't know what, if anything, you know about this matter.

THE COURT: I don't know anything about it.

MR. MATHIAS: Then I'll start at the beginning but be quick. Mr. Smith represents Courtney Ray Mitchell.

Mr. Mitchell used to be employed by UPS. He went out on disability. At a lunch in the summer of 2013, he ate with four employees of UPS, and the allegations are that he threatened to kill the superiors and actually made threats against the people at the lunch and was disrupting the restaurant. He was arrested for breach of peace. I think

1 there was a mental evaluation done. He was released
2 sometime thereafter.

3 He sent a package -- the allegations are, again, he
4 sent a package to UPS directed to one of the individuals
5 that was at the lunch. That was part of the reason he was
6 arrested. It contained things such as a concealed weapons
7 permit, receipts from locations that were nearby the
8 individual's homes and some of the family members' homes.
9 He is going to be tried on Thursday this week February 12th
10 for intimidation of a state's witness. He was arrested for
11 that subsequent to sending the package to UPS.

12 If I can, I've had about three hours' notice for this
13 and I'm glad to be here, but there's quite a bit of history
14 to this issue of the subpoenas so I figured I'd distill it
15 down as much as possible. Right there you've got the trial
16 of this matter is on February 12th of this week, the
17 statute regarding the intimidation of a witness elements,
18 and then if you flip to the next page, this is sort of a
19 timeline.

20 On August 28th, that's just after I was retained to
21 represent the victims in this case, we petitioned for eight
22 restraining orders for the victims. Those were issued by
23 Judge Fisher on September 23rd. Two days later, Don Smith,
24 Mr. Smith, serves eight subpoenas directed to UPS,
25 purporting to serve them. I just received it in the mail.

1 I don't know if it went anywhere else.

2 And he asks for -- there's a description right there.
3 I don't need to go into it, but back on the first page
4 there's a description of all the information he is seeking.
5 And then he also filed a motion to vacate the orders of
6 protection. UPS filed a motion to quash. It seemed to me
7 that that was just harassment for having received the
8 restraining orders. I don't know what his motivations
9 were.

10 But then Mr. Smith filed a motion to compel, UPS filed
11 an amended motion to quash, that should say, and then the
12 defendant filed a second amended motion to compel. And
13 then there was a hearing held before Judge Miller on
14 July 11th. I'd be happy to hand up that entire transcript,
15 if you like, but I don't think I need to. Page 4 has the
16 pertinent excerpts from the transcript. That was where
17 Judge Miller took up Mr. Smith's motion to compel.

18 And if you'll just look at the bottom after Mr. Smith
19 explained why he wanted what he wanted, Mr. Galyean, who's
20 my co-counsel, said, "I think the defendants need to show
21 some sort of reasonable showing of why all these people's
22 401(k) information and things of that sort would have some
23 bearing on this case."

24 And the Court, Judge Miller, just said, "Yes. I would
25 agree with them. This is way overbroad, so I'm going to

1 deny your motion." That's the end of the transcript. I've
2 got the original if you want to see it.

3 Then 11 days later I got a letter with the same
4 subpoenas. The language has changed a little bit. Page 1
5 shows you the differences. And Mr. Smith represented to
6 me, I wasn't at the hearing, that pursuant to Judge Miller,
7 he is paring down his materials requested. I went back and
8 read the transcript. That's not in there anywhere. So I
9 filed the motion to quash on August 12, 2014, which is the
10 only pending motion. So that's why we're here on my
11 motion.

12 Then fast-forward to January 27th. I guess that was
13 two weeks ago. I know this case is set for trial this
14 coming Thursday. Again, I received just in the mail, not
15 will you accept service, nothing, just in the mail two
16 subpoenas, one which is the exact same subpoena he had
17 filed -- or not filed, he had sent to me for Gina Jones.
18 She's one of eight victims. And he's seeking the exact
19 same stuff in that subpoena that Judge Miller had before
20 him and he denied.

21 So I said, "That's off limits." And I e-mailed him
22 the day I received them, said, "That's off limits. I'm
23 confused. Tell me what's going on." And, again, if you
24 want to see the correspondence, you can flip to page 5 and
25 6. This is cut and pasted for your ease of reading.

1 But the day I received the subpoenas, knowing that the
2 trial was coming up fast, I said, "I got your subpoenas.
3 You -- still you have to serve them. Please let me know if
4 I'm missing something."

5 He e-mails back and says, "You do that, you're a joke.
6 I can't ask for the accuser's personnel file?" some more
7 uncivil stuff. He says that I'm a marionette.

8 I say in response to him 12 minutes later, "I remain
9 willing to discuss the issues."

10 He replies back, "There's no excuses this time."

11 I reply back, "Let's talk about Mitchell's file when
12 you've -- Mitchell's file, which you never asked for until
13 today." I then later said, "Please call me tomorrow to
14 discuss."

15 He says, "There's no negotiation with regards to these
16 two items. I care about one person and one person only.
17 Good night, sir." That was the 27th.

18 The subpoena purported to have a due date of
19 February 2nd, so I reached out to him again, said, "I'm
20 touching base," and lists, you know, UPS's position, the
21 third one being, "I'm ready, willing and able to discuss
22 the subpoena regarding Mitchell's personnel file but
23 haven't heard from you on that topic." And then there's
24 some more fairly uncivil banter. And he hasn't reached out
25 to me.

1 UPS is not standing in anybody's way. We're ready,
2 willing and able to discuss responding to validly issued
3 subpoenas seeking relevant information. The one, Gina
4 Jones, has already been ruled on. The Mitchell isn't --
5 well, his client, I just haven't gotten a call back.

6 THE COURT: All right.

7 MR. SMITH: May it please the Court. I appreciate
8 opposing counsel going through out interaction.

9 I'll begin by saying first there were nine motions
10 filed that Judge Miller ruled on, I believe, and his order
11 says "it." That's not plural. That's one. In addition,
12 when he said it was overbroad, I had subpoenaed Aetna, UPS
13 and all -- a lot of things that I believe are pertinent to
14 this, because I believe that this is backed by UPS and UPS
15 is the driving force behind it. I mean, the idea that this
16 particular arrest was performed by, oh, a Greenville
17 officer but who was working for UPS at that time, so
18 they're one and the same, the government and UPS, and I
19 want to see that.

20 So the breach of peace case that he spoke of earlier,
21 they never brought that to trial because there's no breach
22 of peace. And I've asked for speedy trials and everything
23 all along, never given the opportunity to do that. Now I
24 understand they're not going to bring that. So the case
25 that he's allegedly intimidating a witness they're not even

1 pursuing.

2 The victim, intimidation of a witness, is so --
3 there's nothing there. And, Your Honor, I've prepared some
4 excerpts from the preliminary hearing wherein the officer
5 says, "I don't know what the things meant," and then
6 there's ten pages of transcript. Reading this, this lady
7 goes off. I think she's been watching too much TV.
8 There's assertions that there may be a bomb in a leaf
9 blower, and on and on and on. There's a -- there was a
10 nursery card -- a business card that she alleged that she
11 lived in Anderson County ten years ago near that place, so
12 that means that he's coming to get me. It's so attenuated,
13 it's mind-boggling.

14 So with that in mind, no evidence, the officer says, I
15 don't know. It's all about what she says. The idea of not
16 being able to see what her personnel file is like, the idea
17 of maybe she's been passed over several times, never been
18 promoted, and now she's helping out the team getting rid of
19 a guy on disability.

20 Now, I've done research and research in cases. UPS is
21 not very pleased with ADA and things of that nature and
22 have a lot of suits going on with those. So that plays
23 into my idea that UPS is -- excuse me, please -- just put
24 -- backing this sham of a case. I mean, that's the way I
25 see it. Why would you need to intimidate a witness of a

1 breach of peace, meaning it's a ticket, first of all? I
2 mean, that's the logical question. But then when there's
3 other people that were involved and he specifically tells
4 them by letter and by no trespass, he says, "You're not my
5 friend anymore because you were part of that -- part of
6 those people that allegedly said I was breaching the
7 peace," and he doesn't send it to this person who he refers
8 to as his sister, where is the intimidation? There's no
9 one who can say anything. They don't know, so we'll just
10 charge him with intimidation of a witness. I'm ready to
11 try that case.

12 However, the idea that I can't see what's behind her
13 makes it impossible for me to defend. I mean, there's no
14 information, you know. And I believe that it's certainly
15 related to her position because my client was getting
16 commendations. She wasn't, you know. And so at the very
17 least, it's touching and concerning, and my client has a
18 right, I believe, of due process.

19 And I don't understand how anybody's going be
20 prejudiced by him having his own file -- his own file. And
21 I did request -- I subpoenaed his file when I subpoenaed
22 everybody else's file, so I don't know where that's coming
23 from. But ---

24 MR. MATHIAS: I don't believe that's true. I'm happy
25 to be corrected.

1 THE COURT: He's indicated -- and I'm not ruling, but
2 he's indicated that he's willing to discuss your client's
3 file, but he hasn't heard back from you. Is there a
4 problem with him getting his own personnel file?

5 MR. MATHIAS: I think UPS's hesitation -- and this is
6 a conversation I would have liked to have had -- is not
7 giving him his own personnel file. I think it's we don't
8 want to create a precedent of turning things over without
9 validly served subpoenas and things of that nature. It's
10 certainly the same scope that he was seeking for the other
11 employees, but I do recognize the distinction between his
12 own client's file and the witness's file.

13 I just want this put to bed so the trial can go
14 forward on Thursday. I wanted to talk. I have no idea
15 what to do.

16 THE COURT: Go ahead, Mr. Smith. I didn't mean to cut
17 you off.

18 MR. SMITH: First of all, I guess, the not serving
19 right, obviously, I'm ignorant. I've served them -- served
20 the subpoenas certified mail to the attorney for the people
21 he represents, so I guess I don't understand.

22 MR. MATHIAS: I never got anything certified. Do you
23 have a receipt?

24 MR. SMITH: I don't have it, but I did the last time.
25 I'll bring it to trial.

1 THE COURT: I'll tell you what to do. Anybody who
2 wants to give me anything, get it to me this afternoon or
3 tomorrow. We've already started the trial, and the jury's
4 back there behind the doors waiting on us right now. So if
5 anybody wants us to have anything, send it to Adrienne, my
6 law clerk, on the e-mail and I'll consider it and we'll get
7 you a decision one way or the other up or down. I guess if
8 you can get it by tomorrow -- you can hand up anything you
9 like, Mr. Smith, but make sure you give a copy to opposing
10 counsel.

11 MR. SMITH: I gave Mr. Price one earlier.

12 THE COURT: All right.

13 MR. MATHIAS: I think he meant me, Your Honor. What
14 is that?

15 THE COURT: It's called a motion to compel.

16 MR. MATHIAS: Is that a new one?

17 THE COURT: It looks like a subpoena. Looks like
18 several subpoenas and maybe a piece of a transcript.

19 MR. MATHIAS: Are these new subpoenas or are these ---

20 MR. SMITH: No. These are two that I just -- Mr. --
21 Ms. Jones.

22 That was part of my thing. I issue a subpoena, and he
23 wants to talk about it. Well, a subpoena is very clear. I
24 don't understand what we've got to talk about.

25 MR. MATHIAS: Mr. Smith, I can't just turn over UPS

1 documents without a validly served subpoena, and I was open
2 to talk about it.

3 MR. SMITH: Sure. Understood.

4 THE COURT: Well, more than that, Mr. Smith, I'm going
5 to go look, and as you well know, I was a criminal defense
6 lawyer for 25 years before coming to this job. But we
7 don't have discovery in state court. We have it in Federal
8 court for criminal defense, but you don't have discovery in
9 state court. Do you understand that? I mean, you don't
10 have subpoena power so that you -- I know I'm on the record
11 so I'm going to go out here, but I've got some good defense
12 lawyers in the back back here. You can subpoena something
13 through the courtroom, but you don't have -- you can't
14 subpoena documents in discovery as I'm aware of.
15 Gentlemen, you have to be careful with that.

16 Jake?

17 MR. ERWIN: Judge, I think we have clocked -- I don't
18 know. We take our subpoenas and get them clocked at the
19 clerk's office. I think they're valid once the clerk signs
20 off on them or if you sign off on them at that time.
21 That's all I got.

22 THE COURT: But not a signed by a lawyer. That's in
23 civil court, not in criminal court.

24 MR. SMITH: Those are clocked.

25 MR. MATHIAS: These were signed by the clerk.

1 THE COURT: The clerk? Okay. But even still, you
2 can't go out like -- anyway. I'll be quiet till I do some
3 research. Send it to me. But it's limited. It's very
4 limited in state court. It's not in Federal court. I
5 never understood why three streets down I can do a lot of
6 things I couldn't do in state court. I see the solicitor's
7 office smiling back there.

8 Can you get it to me by tomorrow?

9 MR. SMITH: Yes, sir.

10 THE COURT: No later than the end of the day. How
11 about that? I'll give you a little time here. And make
12 sure you swap back and forth anything. Whatever I get,
13 I'll look at tomorrow.

14 MR. SMITH: Yes, sir.

15 THE COURT: Anything else?

16 MR. SMITH: Thank you, sir.

17 *****END OF TRANSCRIPT OF RECORD*****
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1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)4 COUNTY OF GREENVILLE)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South Carolina,
9 do hereby certify that the foregoing is a true, accurate
10 and complete Transcript of Record of the proceedings had
11 and evidence introduced in the trial of the captioned case,
12 relative to appeal, in the Court of General Sessions for
13 Greenville County, South Carolina, on the 9th day of
14 February, 2015.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18 May 6, 2015

19

20 

21

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2013-GS-23-08607

STATE OF SOUTH CAROLINA,

vs.

COURTNEY RAY MITCHELL,
DEFENDANT.

TRANSCRIPT OF RECORD

February 12, 2015
Greenville, South Carolina

B E F O R E:

THE HONORABLE KEITH R. KELLY, JUDGE; and a jury.

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

JAMES HARDY PRICE, IV, ESQ.
Assistant Solicitor

DONALD L. SMITH, ESQ.
Attorney for the Defendant

CHERYL A. SMITH, CVR-M
Circuit Court Reporter

STATE OF SOUTH CAROLINA VS COURTNEY RAY MITCHELL

<u>E X H I B I T S</u>				
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
		(State's Exhibits)		
1	S-1	CD	4	38
2	S-2	Manila Envelope	4	48
3	S-3	Alcatel Cell Phone	4	61
4	S-4	Casio Cell Phone	4	61
5	S-5	Samsung Cell Phone	4	61
6	S-6	Check	4	62
7	S-7	6/22/13 Letter To Ken Baca	4	62
8	S-8	6/22/13 Letter to Dwight Inman	4	62
9	S-9	Handwritten Address	4	62
10	S-10	Handwritten Note	4	63
11	S-11	7-Eleven Receipt	4	63
12	S-12	Whitten's Business Card	4	63
13	S-13	Concealed Weapon's Permit	4	63
14		(Defendant's Exhibits)		
15	D-1	6/22/13 Letter to Dwight Inman	74	124
16	D-2	Penetration and Conversion Territory Bid Growth Report	78	124
17	D-3	July Top Performer Certificate	79	124
18	D-4	June Top Performer Certificate	79	124
19	D-5	August Top Performer Certificate	79	124
20	D-6	Incident Report	99	99
21	D-7	Intimidation of Witness Testimony	112	124

STATE OF SOUTH CAROLINA VS COURTNEY RAY MITCHELL

1 jury. Mr. Smith knows that.

2 MR. PRICE: I just want to make it clear. I don't
3 think Mr. Smith would do that. It's just an issue that
4 we've seen in the 13th circuit.

5 THE COURT: Mr. Smith, you've talked to your client
6 about that, I'm sure, and you've talked to police officers
7 and everybody on your side, but I'm not going to have that
8 in my trial, okay?

9 MR. PRICE: They all know.

10 THE COURT: Anything else?

11 MR. PRICE: Nothing further from the State.

12 THE COURT: Okay. From the defendant?

13 MR. SMITH: Your Honor, with regard to the breach of
14 peace, I don't think it is connecting to the victim in this
15 case. I'd like to hear the voir dire or something where
16 she can tie it in, because there's nothing that ties the
17 two together. There's nothing ever pointed at her, no
18 previous statements against her, no negativity. So I don't
19 -- there's nothing there. So based on that, I don't think
20 it should be part of the intimidation charge.

21 THE COURT: Mr. Price?

22 MR. PRICE: Your Honor, the breach of peace is part of
23 the res gestae of the intimidation case. Just to give you
24 a little bit of background on this, the defendant and my
25 victim, along with two or three other co-workers, were out

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1 at lunch. This defendant started making racial remarks,
2 talked about how he's -- talked about hammering genitalia
3 and how he's going to go into the repo business of repoing
4 people. He also talked about how, if he were running
5 things, he'd have his boss carried out in a box, how we
6 first saw these military grade assault weapons, sniper
7 rifles and armor-piercing bullets. Roughly 30 days later,
8 my victim gets a packet that contains this defendant's
9 concealed weapons permit, a business card from a plant
10 nursery that was right up the road from where she used to
11 live, and a receipt from a 7-Eleven in Greenville County
12 that was right down the road from the victim's mother's
13 house. And the last contact she had with him was, you
14 know, I'm going to take the boss out, I've got all these
15 weapons.

16 When she saw it, she will testify that she thought
17 that the defendant was sending her a message saying, "I
18 have guns. I know where you live. I know where your
19 family lives." That's intimidation. There's no logical
20 reason to send someone your concealed weapons permit.

21 THE COURT: Assume that he offers that, Mr. Smith,
22 what's not admissible about that?

23 MR. SMITH: May it please the Court, first of all, it
24 was an expired permit. There were three phones. It was
25 simply the wrong thing that went to her. But she is the

1 one that created this fantasy of some sort.

2 The nursery card that he's talking about was in
3 Anderson County, and she used to live by there 2001 to
4 2003, I believe she testified to. That's not even close.
5 Then the grandmother, she said one time it was next door
6 and then it's a quarter-mile. Well, Greenwood is five
7 times the size of Abbeville. So he was going to Columbia.
8 That's the way to get to Columbia.

9 So these things are just creations. There's no --
10 there's nothing in the breach of peace. He never said
11 anything negative to her, so I don't know where that's
12 coming from.

13 THE COURT: Well, let me say this. You guys help me.
14 You all are smarter than I am here, but I'm only ruling on
15 the admissibility. I'm not weighing the evidence. That's
16 for these 12 folks over here, right? Am I missing
17 something here? I'm sitting as the judge of the law, not
18 as the judge of the facts. I've got a jury for that.

19 MR. SMITH: Yes, sir. I understand that.

20 THE COURT: So it's admissible. I mean, I haven't
21 heard anything that makes it inadmissible. If you have a
22 rule on that, Mr. Smith, I'm happy to -- please, give me
23 that rule.

24 MR. PRICE: Your Honor, if I may, I have a case here,
25 State v. Pressler, that kind of touches on this issue.

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1 THE COURT: Okay. Please hand that up. I told you
2 you fellows are smarter than I am.

3 MR. PRICE: Your Honor, in this case, the defendant
4 was charged with criminal sexual conduct. He sent a letter
5 to the witness, and the Court found that the fact that he
6 was charged with criminal sexual conduct could come up. It
7 goes to the res gestae of the case of intimidation of a
8 witness and allows the witness to explain why she felt
9 intimidated, which is similar to this case. Ms. Jones
10 should be able to testify as to why she felt intimidated by
11 this concealed weapons permit and the business card and the
12 receipt.

13 THE COURT: Mr. Smith?

14 MR. SMITH: In this case, it was a criminal sexual
15 conduct, he said. It was against the same person that the
16 alleged intimidation was for. And in our case, we have a
17 very ambiguous breach of peace. There's nothing directed
18 to her at all, so it's not the same. All it is is a prior
19 bad act. And they have not brought that case, so that way
20 they could bring it in the back door. Well, they didn't
21 bring it, so I don't think it should come in. The only
22 reason it's being brought in is for the bad act part.

23 THE COURT: Well, let me ask this. Are you seeking to
24 bring in a prior charge or are you just seeking to bring in
25 the facts?

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1 MR. PRICE: Your Honor, we'll leave that to your
2 discretion to rule on. I mean, the fact that there was a
3 pending case against the defendant that the victim was a
4 witness to is relevant to the case. It's one of the
5 elements needed proven. Whether or not the State will
6 mention that it's a breach of peace or that will come out
7 is up to the Court to decide. But the State is not
8 planning to try that breach of peace here today in this
9 courtroom. It has to be referenced to as far as the res
10 gestae. That's about it. It will likely be touched,
11 just . . .

12 THE COURT: Okay. I agree with Judge John Hayes over
13 in York County, and it looks like Judge Anderson wrote this
14 opinion. Am I reading that correctly, Mr. Price?

15 MR. PRICE: I believe you are, Your Honor.

16 THE COURT: Along with Judge -- now Justice Beatty,
17 then Judge Beatty on the Court of Appeals and Judge Short
18 is still there, Paul Short.

19 All right. I'm going to allow the State to touch on
20 it lightly, okay, the same as Judge John Hayes did
21 articulate that the defendant was charged without
22 mentioning any really of the details. Now, the facts are
23 the facts, okay? But let's don't belabor the point that
24 there was a charge.

25 MR. PRICE: All right. So is the State allowed to

1 mention that the defendant was charged with breach of peace
2 or just leave it as he was charged with ---

3 THE COURT: I think you can say breach of peace, but
4 don't go past that. Just move right along.

5 MR. PRICE: Yes, sir.

6 THE COURT: Okay. Anything else, Mr. Smith?

7 MR. PRICE: Your Honor, also, a little more
8 clarification. How far is my witness going to be able to
9 go into the events of what occurred that day?

10 THE COURT: Well, now, your witness can testify to all
11 the events and all the facts that your witness chooses to
12 testify, but I think I agree with Judge Hayes and the Court
13 of Appeals in this 2005 opinion. You have to establish
14 that there was some charge, and in that case, it was a CSC.
15 This is a breach of peace. But I think, also, it may well
16 be limited there to just go off this very touching on it
17 light. There was a charge. Now, the facts, whatever
18 happened, I'm not limiting anybody to testify about what
19 happened. Those are facts.

20 MR. PRICE: Thank you, Your Honor.

21 THE COURT: Yes, sir. Mr. Smith?

22 MR. SMITH: I don't have anything further.

23 THE COURT: Nothing further? Here's what we're going
24 to do. We're going to take 15 minutes. We've been an hour
25 and a half now, so let's take 15 minutes, give everybody a

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1 chance to use the facilities, get that last phone call in,
2 whatever you need to do. We're going to come back in 15
3 minutes, and I'm going to speak to the jury for a few
4 minutes, and we're going to call the first witness, okay?
5 Thank you, gentleman.

6 MR. SMITH: Your Honor?

7 THE COURT: Yes, sir.

8 MR. SMITH: I filed a motion late in the game here, a
9 motion for dismissal.

10 THE COURT: I did see it. You want to argue that,
11 Mr. Smith?

12 MR. SMITH: I do, sir.

13 THE COURT: I'll tell you what. We'll argue when we
14 get back. Let's take 15 minutes.

15 (WHEREUPON, a recess is taken at 10:28 a.m.)

16 MR. SMITH: Yes, sir. This motion is based on
17 difficulties getting the discovery from the State. And to
18 point out specific instances where I was given a video,
19 let's see, on January 15th for something that occurred
20 July 26, 2013, and when I was provided it, there's gaps in
21 the video, and they didn't offer me the entire video. They
22 just gave me the gapped segments. Also, with regard to the
23 video surveillance, it was my understanding that because it
24 was UPS -- and it wasn't the State, but, of course, I did
25 get it, so why can't I get all of it?

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1 The other thing is, UPS is essentially an agent of the
2 State in this instance. The officer that got the warrant
3 for my client was working for UPS and was being paid by UPS
4 and did their bidding by offering or dealing with the
5 warrant on my client. So he also said in his deposition or
6 in the preliminary hearing that he, in fact, used that
7 video as a part of his investigation. So with that in
8 mind, it's clearly discoverable.

9 THE COURT: Mr. Price?

10 MR. PRICE: Yes, sir, Your Honor. The State had
11 actually requested that video long ago. It was not until I
12 was preparing for trial that I realized that I had not
13 received it since asking for it. I called up UPS. I asked
14 them for a copy of the video, and they gave it to me. And
15 as soon as I received a written copy of it, I turned it
16 over to Mr. Smith. It was not in the State's possession.
17 It was not in the solicitor's office possession. It was
18 not in the possession of law enforcement. It was in the
19 possession of UPS.

20 THE COURT: But he does have it now?

21 MR. PRICE: He does, Your Honor. He has the same
22 exact copy I have. He sees the same things I see. To my
23 knowledge, there is no other video out there and no other
24 information.

25 THE COURT: Okay. And he was given that on

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1 January 15, is that right, of 2015?

2 MR. SMITH: Your Honor, as I said, there's two gaps in
3 this four-minute video, and they are 48 and 49 seconds
4 apiece. Why do we have to take that out?

5 THE COURT: I don't know. Let me ask Mr. Price.

6 Mr. Price, is there some reason it has a gap in it?
7 Do you know that?

8 MR. PRICE: I don't know, Your Honor. I'm not
9 familiar with this system. I plan to put up a witness who
10 is familiar with it, and he can testify on cross to that.

11 THE COURT: Okay. But that's all you have. You're
12 not withholding anything?

13 MR. PRICE: No, sir, Your Honor.

14 THE COURT: I wouldn't think you would, Mr. Price. I
15 just have to ask you. You have given the defendant
16 everything that you have.

17 MR. PRICE: Yes, sir, Your Honor.

18 MR. SMITH: And staying with that, the officer who
19 testified at the preliminary hearing stated that he saw the
20 leaf blower and the package or whatever being exchanged.
21 That's not on that video.

22 THE COURT: Oftentimes testimony differs from the
23 video, but we'll get to the facts on that. That's a
24 factual issue. At this point, the motion is denied as to
25 the video. I mean, it certainly goes to the credibility of

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1 it and to the weight of it, and I'm going to allow you to
2 argue that, Mr. Smith, certainly.

3 MR. SMITH: Yes, sir.

4 THE COURT: All right.

5 MR. SMITH: I received a supplemental incident report
6 on February 10th for the incident that happened -- or that
7 was released, signed off on August 1, 2013.

8 THE COURT: Okay.

9 MR. SMITH: So 18 months it took him to give me the
10 rest of the incident report.

11 THE COURT: But tell me you do have it, though, right?

12 MR. SMITH: Sure. We got it 48 hours ago.

13 THE COURT: Got it how much?

14 MR. SMITH: 48 hours ago.

15 THE COURT: Okay. You've reviewed it?

16 MR. SMITH: Yes, I have.

17 THE COURT: Okay. Mr. Price?

18 MR. PRICE: Your Honor, just for clarification, the
19 exhibit that I have in my motion for Mr. Smith is the
20 original incident report, not the one we turned over. The
21 one that we turned over was actually the extraction report
22 that literally just says on July 29, 2013, two officers
23 picked up the listed subject from Abbeville County, and has
24 the starting and ending mileage. This was not in my
25 investigating officer's file. The Greenville City Warrant

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1 Division didn't even have a physical copy in their file.
2 It was in the computer system. Just I try to be very
3 diligent. As soon as I got a copy of that, I faxed it and
4 mailed it to Mr. Smith.

5 THE COURT: And that's the February 10th?

6 MR. PRICE: Yes, sir. And I can pass up a copy of
7 that to you if you'd like to see it just to review.

8 THE COURT: Well, he says he's had it and he's
9 reviewed it.

10 MR. PRICE: All right.

11 MR. SMITH: And it also says that my client was on
12 drugs.

13 THE COURT: Again, I don't know the testimony --
14 whatever the testimony is, you certainly can use it to
15 cross-examine.

16 MR. SMITH: I understand that, sir, but the idea of
17 having that discovery so I can do my own discovery, that
18 was just nonexistent. They keep it for a year and a half.
19 I don't care who has it. The State had it, and I don't.

20 THE COURT: Who says in the report that he was on
21 drugs?

22 MR. SMITH: The little check where it says "drugs."

23 THE COURT: Okay. And the check person on that report
24 is some kind of law-enforcement person, I'm assuming?

25 MR. SMITH: Yes, sir.

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6

1 THE COURT: And that person is going to testify,
2 Mr. Price?

3 MR. PRICE: No, sir, Your Honor. Not to the
4 extraction. This was the Warrant Division, so when the
5 Greenville City went up to Abbeville where this defendant
6 resides to get him and bring him down to Greenville, that's
7 all this report is.

8 THE COURT: Okay. But if that person is not going to
9 testify, then they're not going to be testifying about any
10 drugs, right?

11 MR. PRICE: That's correct, Your Honor.

12 THE COURT: Okay. So, Mr. Smith?

13 MR. SMITH: I understand, sir.

14 THE COURT: The jury is not going to hear that.

15 MR. SMITH: I understand. But once again, who says
16 it? I don't find anything discoverable if I don't receive
17 this stuff like I should have.

18 THE COURT: Okay. Well, I'm going to caution the
19 solicitor's office in the future to be a little more
20 diligent about getting things to the defense. But it's
21 still admissible. Now, it's not admissible if you don't
22 have a witness to that, Mr. Price.

23 MR. PRICE: I don't plan to introduce this, Your
24 Honor.

25 THE COURT: He's not going to introduce it, Mr. Smith.

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1 MR. SMITH: Yes, sir.

2 The idea that my client has spent like 246 days, I
3 believe, now, to me, that -- in jail, they wouldn't consent
4 to a bond until the Simpsonville mayor apparently tried to
5 intimidate someone, that he got a bond, so they felt like
6 they had to give my guy a bond. The reason I bring this up
7 is because these things that are just accidental or -- they
8 happen, and they're happening to my guy. To me, it goes a
9 long way in showing the purpose. That's probably too
10 strong a word. But the bottom line is, on all these
11 incidents, there's an excuse for every time. Why don't I
12 have this? Why don't I have this in discovery a year and a
13 half into the game?

14 THE COURT: I don't know anything about him not having
15 a bond or --

16 MR. SMITH: Yes, sir.

17 THE COURT: That's certainly not before me. He's on
18 bond now or no? I don't know.

19 MR. SMITH: No.

20 THE COURT: He's not on bond?

21 MR. SMITH: No, sir.

22 THE COURT: But one was set?

23 MR. SMITH: Yes, sir.

24 THE COURT: Okay. I don't have a thing to do with
25 that, but I'm sure a magistrate or a circuit court judge

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1 set that.

2 MR. PRICE: I can kind of fill in the blanks, if you'd
3 like, Your Honor.

4 THE COURT: Okay.

5 MR. PRICE: All right. This defendant was -- I
6 believe originally came before Judge Verdin asking for a
7 bond. That's when we had the -- it was held, a mental
8 health evaluation, competency evaluation. We got that and
9 we were in front of, I believe it was, Judge Gibbons. I
10 can't really remember. This was so long ago. I just know
11 it was a visiting judge. That judge denied bond. He was
12 held without bond until, I believe, April of 2014 when we
13 reached an agreement where he would be out on GPS
14 monitoring, agreed to take his medication follow-up. Well,
15 in, I believe, September of 2014, he was arrested for
16 discharging a firearm right outside a convenience store in
17 Anderson, after seeing this, made a motion to revoke his
18 bond and placed him on the trial docket as soon as
19 possible.

20 THE COURT: Okay. And obviously, that was granted.

21 MR. PRICE: That's correct, Your Honor.

22 THE COURT: Okay. All right. Mr. Smith, he was
23 before the Court on various times when he was not held
24 without being brought before the Court, right?

25 MR. SMITH: Certainly.

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1 THE COURT: Okay. So different judges along the way
2 have made rulings on that, and I'm in no position
3 whatsoever, nor would I ever second-guess one of my
4 brothers or sisters on the bench. That's totally
5 inappropriate.

6 MR. SMITH: I'm not questioning that a bit, sir. What
7 I'm saying is they consented, they could have consented all
8 along, and these accidental holes with regard to discovery,
9 I mean, at what point is it not an accident?

10 THE COURT: I understand some of your frustration
11 about discovery, Mr. Smith. As you well know, for 25 years
12 I was a criminal defense lawyer and tried many cases in
13 this very courthouse. But discovery in criminal court and
14 discovery in civil court are two different animals, as we
15 both know.

16 MR. SMITH: Yes, sir.

17 THE COURT: And I can't help you there. I call your
18 attention to State vs. Miller, State vs. Matthews, State
19 vs. Flood and a TCI case that Judge Mike Nettles heard
20 here. It was upheld. A very good discussion about that in
21 that case. I'm sorry. I can't remember the part of that
22 case. It doesn't matter. I reviewed that early one
23 morning. I was an early riser, and I did some research
24 about 5 a.m., 5:15 a.m. while I was drinking my coffee.
25 But I thought I was right on that, and I submit that I am.

1 But if I'm not, somebody at some point can tell me that I'm
2 wrong. But I feel comfortable that I am.

3 That TCI case, Judge Mike Nettles was upheld after
4 somebody was indicted in Federal Court in Ohio and then
5 came here and filed a civil case for the purpose of using
6 the civil discovery rules to obtain information in e-mails,
7 as a matter fact, to be used in a criminal case. And our
8 court has said that was absolutely prohibited and
9 inappropriate.

10 So I understand your frustration to some level, but I
11 understand you have everything that Mr. Price has.

12 MR. SMITH: I guess.

13 THE COURT: Well, he certified that, and he's an
14 officer of the Court.

15 MR. SMITH: Yes, sir.

16 THE COURT: So if he withheld something and it comes
17 in, then Mr. Price will have to deal with that with Gervais
18 Street. But he's an officer of the Court, and I have no
19 reason to believe he's not telling me straight.

20 MR. SMITH: Yes, sir.

21 THE COURT: All right.

22 MR. SMITH: There's also -- there was communication
23 between the sheriff's office -- or the city police and the
24 psychiatrist. There were things submitted to the
25 psychiatrist that I wasn't privy to as well as a written

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1 statement -- a written note that referenced a
2 psychiatrist's evaluation. I didn't get that stuff.

3 MR. PRICE: As far as I know, Judge, I don't have it.

4 THE COURT: Well, what is it supposed to say?

5 MR. SMITH: It just says that it came from officer
6 so-and-so, a written note from him, and then there was
7 another one, as well. So both of these were taken into
8 account and are discussed in the doctor's evaluation, yet I
9 don't have them.

10 THE COURT: You don't have the note? You don't have
11 the note either, Mr. Price?

12 MR. PRICE: No, sir, Your Honor. Not that I know of.

13 THE COURT: Is the doctor going to testify?

14 MR. PRICE: The doctor is not going to testify. And
15 like I said, we're not even going to go into the
16 defendant's mental health.

17 THE COURT: Okay. The jury won't know anything about
18 that, Mr. Smith.

19 MR. SMITH: Yes, sir.

20 THE COURT: Are you challenging his competency?
21 Because if you are ---

22 MR. SMITH: I'm not challenging his competency, Your
23 Honor. I'm just challenging the fact that I didn't get
24 discovery.

25 THE COURT: Okay. Anything further?

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1 MR. PRICE: Nothing from the State.

2 THE COURT: Anything from defense?

3 MR. SMITH: No, sir.

4 THE COURT: Okay. We'll have our jury, please.

5 (WHEREUPON, the jury entered the courtroom at 11:00 a.m.)

6 THE COURT: Madam Forelady, any matters from the jury?

7 FORELADY: No, sir.

8 THE COURT: Everything's good?

9 FORELADY: Yes, sir.

10 INTRODUCTORY REMARKS

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, we are about to begin the case of the State of South
13 Carolina vs. Courtney Ray Mitchell. As I told you earlier,
14 Mr. Mitchell is charged with the offense of intimidation of
15 a witness and that this did occur in Greenville County,
16 South Carolina on or about the 26th day of July of 2013. I
17 will explain more about the elements of that offense later
18 in this trial.

19 I also remind you that the charging instrument is the
20 indictment, and that's all it is is a charging instrument.
21 It is of no evidence whatsoever against Mr. Mitchell. None
22 whatsoever. He has entered a plea of not guilty and he is
23 presumed not guilty as he sits here today and will be
24 presumed not guilty until the end of this trial and should
25 you find him guilty beyond a reasonable doubt.

1 sworn in. Place your left hand on the bible and raise
2 your right hand.

3 WHEREUPON,

4 KEITH ERNEST McNEEL

5 after first having been duly sworn, testified as follows:

6 THE CLERK: Thank you. You may be seated.

7 Would you please state your name for the record.

8 THE WITNESS: My name is Keith Ernest McNeel.

9 THE COURT: Solicitor?

10 MR. PRICE: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. PRICE:

13 Q Good morning, Mr. McNeel. How are you?

14 A I'm doing well, thank you.

15 Q Where are you currently employed?

16 A I'm employed with UPS.

17 Q And in what capacity are you employed with UPS?

18 A I'm the supervisor responsible for facilities, safety
19 and security.

20 Q All right. Can you elaborate on your duties and
21 responsibilities, please.

22 A As far as facility maintenance, making sure that the
23 facility is safe, as I also coordinate any security issues
24 or concerns. In addition, I'm also responsible for the IT
25 department.

1 Q All right. And where are UPS's offices currently
2 located?

3 A Currently we're located at 700 Executive Center Drive
4 in Greenville, 29615.

5 Q All right. And how long have they been there?

6 A We've been there since March 28th of 2014.

7 Q All right. And where were they located prior to that
8 date?

9 A Prior to that, we were in the Fluor Daniels Complex at
10 204 Halton Road.

11 Q Okay. And the location on Halton Road, does that
12 place have security cameras?

13 A It does.

14 Q All right. And were they working on July 26th of
15 2013?

16 A They were.

17 Q All right. And do you know who keeps that
18 information?

19 A That information is kept by the Fluor Daniel security
20 group.

21 Q All right. Were you able to obtain any information
22 from them regarding the security footage?

23 A I was. They -- in question I was asked to get video,
24 whatever video that was available for that morning, and I
25 did obtain that.

1 Q All right. And did you watch that video?

2 A I did.

3 Q All right. And what was on that video?

4 A The video showed on the day in question we actually
5 had a 9-1-1 call where we had to have EMS come in to pull
6 an employee who was having some difficulty. So you'll see
7 EMS coming in. It also contains an individual walking into
8 the building carrying a leaf blower and an envelope.

9 Q All right. And did you view this while it was on a
10 server or was it already burned to a CD? How did you see
11 it?

12 A No. This was sent to me, and it was put on a jump
13 drive.

14 Q All right. And was there a time stamp on there?

15 A There was on the video that I saw, yes.

16 Q All right. And were you physically in the office on
17 the morning of July 26, 2013?

18 A Yes, I was.

19 Q All right. And the video that you saw, was there a
20 time stamp that coincided with the events of that morning?

21 A Yes.

22 Q All right. Mr. McNeel, I'd like to show you what has
23 been premarked as State's Exhibit No. 1. Can you tell the
24 Court what that is?

25 A This is a video, and I have signed it, that shows the

1 images -- the video images that I received from the Fluor
2 security.

3 Q Does that contain the entire images you received from
4 Fluor security?

5 A Yes.

6 MR. PRICE: Your Honor, at this time I'd like to move
7 the CD into evidence as State's Exhibit 1 and publish it to
8 the jury.

9 MR. SMITH: Without objection.

10 THE COURT: It is admitted without objection. You may
11 post.

12 (WHEREUPON, State's Exhibit No. 1 was admitted into
13 evidence.)

14 MR. PRICE: Thank you, Your Honor.

15 (Pause in proceedings.)

16 MR. PRICE: I apologize for the delay, Your Honor.
17 This needs a little more time to warm up.

18 THE COURT: That's okay.

19 (WHEREUPON, a portion of State's Exhibit No. 1 was played
20 in open court.)

21 BY MR. PRICE:

22 Q Mr. McNeel, where is this in the office?

23 A This is the entry reception area in the lobby.

24 Q And you recognize the individual sitting down?

25 A I don't recognize the individual other than from the

1 this case?

2 A No.

3 MR. PRICE: All right. Thank you. Please answer any
4 questions defense counsel may have for you.

5 MR. SMITH: May it please the Court.

6 THE COURT: Yes, sir.

7 CROSS EXAMINATION

8 BY MR. SMITH:

9 Q Did you write any statements regarding your
10 understanding of this incident?

11 A I did not.

12 Q With regard to this video, how long is it?

13 A You watched what I watched. I would say it's roughly
14 three or four minutes.

15 Q So if I said it was four minutes, you would agree with
16 that, roughly?

17 A Sure.

18 Q There are two gaps in it. Are you aware of that?

19 A That video is how I received it from the security
20 group.

21 Q Who is the security group?

22 A This is the building management.

23 Q Who is the building management?

24 A Fluor Daniels security.

25 Q Were you concerned about the fact there was a

1 48-second gap and a 49-second gap when there's only four
2 minutes of video?

3 A I was not. I didn't consider that a concern.

4 Q So what exactly did we see there?

5 A You saw a man walking into the facility, our building,
6 holding a leaf blower and an envelope in his hands, sitting
7 down. And then in another video, you see EMS coming
8 through, a woman walking out of an elevator, walking back
9 into an elevator.

10 Q The purpose of the ambulance personnel, that has
11 nothing to do with this case, right?

12 A No. It's just part of the video.

13 Q So you could have taken that out if you wanted to,
14 right?

15 A No. I didn't have any control on the video. The
16 video is the way I received it from the security group.

17 Q Or you could have cut that out?

18 A I don't have video editing equipment to do that. This
19 is exactly how I received it from the security group.

20 Q So that was just a -- I withdraw that.

21 When did you acquire the video?

22 A The -- it was probably within a day -- that day or
23 within a day. It's been a while. I was aware of the
24 incident, and I asked the security group, "We had a
25 situation this morning. Could you please get me video,

1 THE COURT: It was asked and answered. Yes, sir.

2 BY MR. SMITH:

3 Q Did you ask for the entire video or a certain segment?
4 Four hours of video that day? Or what did you ask for?

5 A No. I asked for video during -- we had an incident
6 that I needed some video from, and this is what I received.

7 Q And you had no further conversations with them asking
8 for more?

9 A I did not.

10 MR. SMITH: I have nothing further.

11 THE COURT: All right. Anything?

12 MR. PRICE: Nothing further from the State, Your
13 Honor.

14 THE COURT: Thank you, sir. You may step down.
15 Please be careful.

16 MR. PRICE: Your Honor, at this time, the State calls
17 Derrill Bailey.

18 THE CLERK: Mr. Bailey, if you'd come forward to be
19 sworn in.

20 WHEREUPON,

21 WILEY DERRILL BAILEY,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Please state your name for the record.

24 THE WITNESS: My name is Wiley Derrill Bailey.

25 THE CLERK: Thank you.

DIRECT EXAMINATION

1

BY MR. PRICE:

2

3

Q Hi, Mr. Bailey, how are you?

4

A Great.

5

Q Would you please tell the Court where you're employed.

6

A I work for UPS.

7

Q And how long have you worked there?

8

A Nine years.

9

Q All right. And what is your current position at UPS?

10

A I am an inside sales representative, and our job is to work with clients in different territories. My territory happens to be Pittsburgh, Pennsylvania.

11

12

13

Q Did you start there or did you have to work your way up?

14

15

A I started there.

16

Q All right. And as an inside salesman, what's your job exactly?

17

18

A My job is to maintain our customer base and then also add to the customer base, so provide them with more products and also service.

19

20

21

Q Okay. And were you working on the morning of July 26, 2013?

22

23

A I was.

24

Q All right. And where were you?

25

A I was at my desk at UPS on the sixth floor of the

1 Fluor Daniel building.

2 Q All right. And can you tell me about the events that
3 occurred that morning?

4 A Well, that morning, one of our HR representatives,
5 Judy, came to my desk and said --

6 MR. SMITH: Objection. Hearsay.

7 MR. PRICE: Your Honor, it's not being offered for the
8 truth of the matter asserted.

9 THE COURT: Not if it's hearsay. I sustain it.

10 BY MR. PRICE:

11 Q As a result of your conversation, what did you do?

12 A I went down to the lobby.

13 Q All right. And what did you see when you got down to
14 the lobby?

15 A There was a gentleman over in the area where the
16 chairs -- the reception area, sitting, and then he stood as
17 I came in.

18 Q Have you ever seen this person before?

19 A I have not.

20 Q All right. Did he have anything with him?

21 A The first thing I saw was a leaf blower.

22 Q And do you recognize that leaf blower?

23 A I did. It was my leaf blower.

24 Q Do you know how he came into possession of your leaf
25 blower?

1 A I was very surprised, but he had to have gotten it
2 from Ray Mitchell. He had taken it -- the leaf blower
3 earlier, and a friend of his was fixing it for me.

4 Q Why did Mr. Mitchell have your leaf blower originally?

5 A He helped me with a project quite a few weeks prior to
6 that. We cut some trees down in my backyard. And in
7 conversation, I was talking -- he mentioned that a friend
8 of his was very good at small engine repair. I said, "I
9 have a leaf blower I got from my father."

10 And he said, "Well, I'll take it to him and he can
11 probably fix it."

12 Q All right. And did this person have anything else
13 with him?

14 A As he left, he also handed me a manila envelope.

15 Q And as a result -- or did you speak to this guy?

16 A I did. You know, he told me had brought --

17 MR. SMITH: Objection, Your Honor. Hearsay.

18 THE COURT: Yes, sir.

19 BY MR. PRICE:

20 Q As a result of your conversation with him, what did
21 you learn?

22 A I learned that he had been sent by Ray with the leaf
23 blower, and then he handed me a manila envelope and said,
24 "You need to give" --

25 MR. SMITH: Objection, Your Honor. Hearsay.

1 THE COURT: Yes, sir.

2 BY MR. PRICE:

3 Q After speaking with this individual, what did you do
4 with the envelope?

5 A I took the envelope back upstairs, and I met with my
6 coach, Gina Jones. And I told her, I said, "We need to go
7 somewhere private." And we went to another office, and I
8 gave her the envelope.

9 Q All right. Before this incident, did you have any
10 prior contact with Mr. Mitchell?

11 A I talked to him on the phone approximately the day
12 prior.

13 Q All right. And what did he say to you?

14 A He said that he had my leaf blower. It was fixed, and
15 he wanted to bring it to me.

16 Q Did he say anything else to you?

17 A He did say, "Some of your friends will be surprised
18 from some papers I have for them. They won't be bothering
19 me on my property."

20 Q All right. And did you look through that envelope?

21 A I did.

22 Q And what did you see?

23 A I saw three cell phones; I saw a concealed weapons
24 card that had his -- Ray's picture on it; there was a
25 check, cash for \$50. I'm trying to think what else. Those

1 things for sure.

2 Q All right. I'm going to show you what is --
3 Mr. McNeel [sic], I'm going to show you what has been
4 premarked as State's Exhibit No. 2.

5 A Okay.

6 Q Can you identify this?

7 A Yeah. Definitely. It's the envelope. I'm sure it
8 is, yes.

9 Q All right. And where do you know that envelope from?

10 A From that -- that morning.

11 Q All right. And is it in the same condition that it
12 was in when you received it thereabouts?

13 A Yes, yes. It was open when it was received. It was
14 not sealed.

15 MR. PRICE: Your Honor, at this time, I would like to
16 move the envelope into evidence as State's Exhibit No. 2.

17 THE COURT: Any objection?

18 MR. SMITH: Oh, no sir.

19 THE COURT: Okay. It's in without objection.

20 (WHEREUPON, State's Exhibit No. 2 was admitted into
21 evidence.)

22 MR. PRICE: Your Honor, in the interest of time, would
23 it be all right if I just pass this around?

24 THE COURT: Certainly.

25 MR. PRICE: Thank you.

1 Q Did you ever find a reason to?

2 A Well, after I got the leaf blower and the envelope, I
3 did talk to the police officer.

4 Q You talked to the police officer?

5 A Yes.

6 Q Did you talk to Gina Jones about it?

7 A I don't remember his name. It's the gentleman that's
8 sitting at the defense table, Mr. Hop [phonetic].

9 Q Yes, sir. I'm speaking of your co-employee, your
10 co-worker, Gina Jones.

11 A Yes.

12 Q What did she tell you about that leaf blower?

13 A She knew nothing of the leaf blower.

14 MR. PRICE: Objection, Your Honor. Hearsay.

15 MR. SMITH: She's testifying.

16 MR. PRICE: She hasn't testified yet.

17 THE COURT: She's here to testify. Okay.

18 Yes, sir. Go ahead.

19 THE WITNESS: She knew nothing of the leaf blower.

20 BY MR. SMITH:

21 Q When do you believe you approached her?

22 MR. PRICE: Objection, Your Honor. That's
23 speculation.

24 THE COURT: Can you lay a foundation for that,
25 Mr. Smith?

1 MR. SMITH: I don't know when he approached her.
2 That's why I asked.

3 THE COURT: All right. Answer the question.

4 THE WITNESS: Clarify your question, please.

5 BY MR. SMITH:

6 Q What time did you go to Ms. Jones and ask her to go to
7 another room?

8 A After I came back inside. I put the leaf blower in my
9 car, and then I came back inside with the envelope.

10 Q So you had an opportunity to leave the envelope in
11 your car?

12 A No, I did not.

13 Q You did not have the opportunity to do that?

14 A I had the opportunity, but I did not.

15 Q Yes, sir. And so you took it back upstairs to
16 Ms. Jones?

17 A I did.

18 Q And how did that proceed with regard to opening up the
19 envelope and taking inventory?

20 A We went into a private office, and we opened the
21 envelope and looked at what was inside. And at that point,
22 Gina said she was going to take it downstairs to HR. And
23 she left to go down, and I went back to my desk.

24 Q And what was the necessity of taking it down to HR?

25 A Because this has information that was given to her

1 that was in direct relation to incidents that happened
2 earlier.

3 Q Is there anything wrong with the cell phones?

4 A I have no idea. We didn't open the cell phones.

5 Q Did you ever learn anything about them?

6 A No.

7 Q What about that leaf blower? How was that?

8 A The leaf blower was never worked on.

9 Q Not worked on at all, right?

10 A No.

11 Q No additives or anything special?

12 A Nothing. Got it back exactly as I gave it.

13 MR. SMITH: I don't have anything further, Your Honor.

14 THE COURT: Anything?

15 MR. PRICE: Nothing further from the State, Your
16 Honor.

17 THE COURT: Thank you, sir. You may step down.
18 Please be careful.

19 MR. PRICE: Your Honor, at this time the State calls
20 Gina Jones.

21 THE COURT: All right.

22 THE CLERK: Ms. Jones, please come forward to be sworn
23 in.

24 ///

25 ///

1 WHEREUPON,

2 VELMA REGINA CHAPEL JONES

3 after first having been duly sworn, testified as follows:

4 THE CLERK: Please state your name for the record.

5 THE WITNESS: Velma Regina Chapel Jones.

6 THE CLERK: Thank you.

7 DIRECT EXAMINATION

8 BY MR. PRICE:

9 Q Hi, Ms. Jones. How are you?

10 A I'm okay.

11 Q You said your full name was Velma Regina Chapel Jones.
12 What name do you go by?

13 A Gina.

14 Q All right. And where are you currently employed?

15 A UPS.

16 Q All right. And what is your position at UPS?

17 A I'm an account manager in Florida.

18 Q All right. And how long have you been working as an
19 account manager in Florida?

20 A Since May of last year.

21 Q And where were you working on July 26th of 2013?

22 A At UPS inside sales in Greenville.

23 Q And what was your job title on that date?

24 A I was team coach.

25 Q As a team coach, what are your duties and

1 responsibilities?

2 A Just lead. I on-board new inside sales reps, train
3 them, kind of show them the ropes, walk them through
4 instructional navigation of the softwares, because there's
5 various softwares and things, listen to phone calls, help
6 instruct them to improve the call qualities and things that
7 UPS expects of them in the job function.

8 Q And do you know the defendant, Mr. Mitchell?

9 A I do.

10 Q All right. How do you know him?

11 A He came to my team as a new inside sales rep.

12 Q And what was his position? I'm not quite clear on
13 that. What is he responsible for?

14 A He had a territory, and he was responsible in calling
15 -- seeking new business, taking care of business, working
16 the phone system, exactly what Mr. Bailey does.

17 Q And work-wise, what was your relationship with
18 Mr. Mitchell?

19 A I was his coach, so it was my duty to get him up to
20 speed, to train him, to work with him side by side, come up
21 with strategies and things to help improve to the standards
22 that UPS sets for on-boarding reps and things like that,
23 help grow the business, take care of the business when we
24 retain UPS customers.

25 Q And did you and the defendant, Mr. Mitchell, ever

1 spend any time together outside of work?

2 A We actually had a couple of team lunches.

3 Mr. Mitchell was part of those team lunches. There was a
4 couple, two or three, just over the course of a year.

5 Q And were you working on July 26th of 2013?

6 A Yes.

7 Q All right. Were you at the office that morning?

8 A Yes.

9 Q All right. Will you please tell me about the events
10 that occurred.

11 A Early -- early that morning before work was -- I
12 received a text message from Ray.

13 Q And let me stop you. When you say "Ray," who do you
14 mean?

15 A Mr. Mitchell. I apologize.

16 Q That's all right.

17 A I received a text message. It was approximately
18 12:30, 1:00 in the morning on the 26th, statement [sic],
19 you know, Please accept \$80,000 offer from my attorney. If
20 any sister of mine had the balls to do -- I mean, it was
21 love the shark. Please send my belongings to Pecan Drive
22 in Abbeville. It's not word for word. I apologize.

23 Q And how do you know that text message came from the
24 defendant?

25 A I had his number stored on my phone. All of my inside

1 sales reps have my cell phone number as a backup to the
2 supervisor so if they were unable to contact the
3 supervisor, they all could contact me if there was -- you
4 know, they were going to be late or had something going on
5 and they couldn't reach them, so they would notify me as
6 kind of a backup. Ray had done that, so when he had done
7 that, I keyed in his information. So when he sent the
8 message, it popped Ray Mitchell.

9 Q And when was the last time you had any contact with
10 Mr. Mitchell before that text message?

11 A There was a lunch, a group lunch, about a month before
12 that we went to. He wasn't with us at work at the time,
13 but he had reached out to have lunch, and the group agreed,
14 you know, let's check on him. And so he met us for lunch.
15 And he was very erratic at the lunch, said some things to
16 the extent of owning a new gun, discussion of his ---

17 Q Did he say what kind of gun he owned?

18 A He did. A military-grade sniper rifle with
19 armor-piercing bullets.

20 He made statements that his fixation was to carry --
21 for the director of inside sales to be -- to leave that
22 place in a box and corrected himself and said, "I mean with
23 a box and me beside him," and other derogatory statements.
24 I can go into the statements, if you like. Just very -- he
25 called people specific names. One of the managers was

1 called names. He referred to his -- her as Sister Madea.
2 He referred to another ISR as ---

3 Q And, sorry, what is an ISR?

4 A Sorry. An inside sales rep. Another one of the reps
5 on the team that was at the lunch. He referred to him as
6 an Arabic -- he was referring to the way he was driving,
7 and what he drove, and it was a slur.

8 He was very loud and very boisterous in the
9 restaurant. People at other tables actually moved away
10 from us. It was embarrassing. Tried to maintain through
11 the lunch, but Ray just left. I didn't hear him say
12 anything. But it was scary. It was -- what he did during
13 the lunch was very irrational behavior, and some of the
14 things that he said I was obligated to alert my management
15 team because he threatened the life of one of my
16 management. So I had to. I'm sorry.

17 Q That's okay. Do you need a few seconds?

18 A I'm okay.

19 Q All right. And what did you do after that lunch?

20 A Well, we went back to work and went to HR, human
21 resources, and notified them of what happened during that
22 lunch.

23 Q All right. And what happened after that?

24 A To my knowledge, Mr. Mitchell was arrested, and I
25 don't know the specifics of what happened to Ray after he

1 was arrested. There was a lot of police presence on-site,
2 and they dismissed us early.

3 MR. SMITH: Objection, Your Honor. Can I approach?

4 THE COURT: Yes.

5 (WHEREUPON, a bench conference was held off the record.)

6 THE COURT: That's overruled. Go ahead.

7 BY MR. PRICE:

8 Q Ms. Jones, were you expected to testify against the
9 defendant regarding that lunch incident?

10 A Yes.

11 Q All right. And do you remember when this lunch
12 incident occurred?

13 A It was June -- I believe it was the 22nd, a month
14 prior to the package.

15 Q All right. Now let's jump forward to the package.
16 Can you tell me the events, what happened when you received
17 that package?

18 A Yes. Well, from the text message earlier that
19 morning, I had came in and notified that I had received --
20 I had contact from -- from Mr. Mitchell, was instructed to
21 just go back to the floor, business as usual. We had a
22 recognition meeting going on, and it was some cite, you
23 know, good-job stuff happening.

24 After the meeting, Mr. Bailey approached me and said,
25 "Gina, a gentleman just brought back my leaf blower from

1 Ray and told me to give you this package, specifically,
2 give this to Gina Jones."

3 And I looked at Mr. Bailey and said, "Let's take this
4 off the floor, not around other people. Let's go into a
5 locked room. Let's see what this is."

6 And it was the manila envelope. It was rolled down on
7 the top. It wasn't sealed. I didn't dump it out on the
8 table or anything like that. I pulled it out piece by
9 piece.

10 Q And was that the same envelope that was admitted in
11 evidence as State's Exhibit 2?

12 A Yeah. It has -- it has her name on it. I didn't
13 recognize the name on the outside of the envelope. There's
14 a name.

15 Q Did you see the contents of that envelope?

16 A Yes, sir.

17 Q Do you recall what was in there?

18 A Yes, sir. There were three cell phones: two were
19 powered down, one was powered up; there were two trespass
20 notices to Dwight Inman, which is another inside sales rep
21 on my team, and to Ken Baca, which is the director, in
22 which he made the comments about him leaving in a box as to
23 that gentleman; a concealed weapons permit; Whitten's
24 Nursery business card; a note that referenced the text
25 message, the \$80,000 in the text message that came in that

1 morning, and it was on the letterhead of a hunting club;
2 and the receipt, the 7-Eleven down from my mother's house.

3 MR. SMITH: I object, Your Honor, as to relevancy.

4 THE COURT: It hasn't been offered at this time.

5 What do you got, Mr. Price?

6 MR. PRICE: Your Honor, I was going to show Ms. Jones
7 the three cell phones, have her identify them.

8 THE COURT: Yes, sir.

9 BY MR. PRICE:

10 Q Ms. Jones, I'm going to show you what has been
11 premarked as Exhibit 3, 4 and 5. Do you mind telling the
12 Court what these are?

13 A They are the cell phones that was in the package.

14 Q All right. And did you look through any of those cell
15 phones?

16 A I did later. I wouldn't power up these two, but the
17 one that was powered up I tried to -- I looked through for
18 any kind of message, tried to listen to a voicemail but it
19 said I had to buy minutes, see if there was a message
20 there.

21 MR. PRICE: Okay. Your Honor, at this time, I would
22 like to move these three cell phones into evidence.

23 THE COURT: Mr. Smith?

24 MR. SMITH: Without objection.

25 THE COURT: No objection. Without objection, they're

1 admitted.

2 (WHEREUPON, State's Exhibit Nos. 3, 4 and 5 were admitted
3 into evidence.)

4 MR. PRICE: Thank you Your Honor.

5 BY MR. PRICE:

6 Q Ms. Jones, I'd like to show you a few more items that
7 have been marked State's Exhibit -- for identification
8 purposes State's Exhibit 6, 7, 8 and 9. Would you mind
9 telling us what these are starting with this item, State's
10 Exhibit No. 6?

11 A Yes. So this is a -- this is the check. This was in
12 the envelope as well. I didn't mention it earlier, but it
13 was a check for \$50 written to cash.

14 Q All right. And do you recognize this?

15 A Yes, sir. This is the trespass notice to Ken Baca
16 that was in the envelope.

17 Q For the court reporter, that is, for identification
18 purposes, State's Exhibit No. 7.

19 I'll show you what's identified as State's Exhibit
20 No. 8.

21 A This is a -- this is a trespass notice, also in the
22 envelope, written to Dwight Inman, one of the ISRs on my
23 team. Inside sales reps. Sorry.

24 Q And one last item right now that's been premarked as
25 State's Exhibit No. 9, what is that?

1 A That is Derrill Bailey's address. It was also in the
2 envelope.

3 Q All right. And where did all those items come from?

4 A The -- the envelope that was delivered to me that
5 morning.

6 MR. PRICE: Your Honor, at this time, I'd like to move
7 these exhibits into evidence.

8 THE COURT: Any objection?

9 MR. SMITH: No, sir.

10 THE COURT: Without objection, they are admitted.

11 (WHEREUPON, State's Exhibit Nos. 6, 7, 8 and 9 were
12 admitted into evidence.)

13 BY MR. PRICE:

14 Q Ms. Jones, just a few more. I'm going to show you
15 what's been premarked for identification purposes as
16 State's Exhibit No. 10: Do you recognize that?

17 A Yes. This is the -- this is the note that referenced
18 the text message that came to me early that morning around
19 12:30, 1:00 with the hunt club at the top.

20 Q All right. And I'll show you what's -- recognize --
21 what's identified as State's Exhibit No. 11. Do you
22 recognize that?

23 A Yes, sir. I do. This is the receipt from the gas
24 station, the 7-Eleven that is down from my mother's home.
25 This was also in the package.

1 Q I'll show you one more that's been premarked as
2 Exhibit No. 12. What is that?

3 A This is the business card to the little small nursery
4 that was down on the same street, on the street from my old
5 apartment years ago.

6 Q And I'll show you one more item that's been premarked
7 for ID purposes as State's Exhibit No. 13. Can you tell us
8 what that is?

9 A That is the concealed weapons permit that was in the
10 package.

11 Q All right. And did all this come from the package?

12 A Yes.

13 MR. PRICE: All right. Your Honor, at this time I'd
14 like to move these items into evidence.

15 THE COURT: Any objection?

16 MR. SMITH: Absolutely not.

17 THE COURT: Without objection.

18 (WHEREUPON, State's Exhibit Nos. 10, 11, 12 and 13 were
19 admitted into evidence.)

20 MR. PRICE: Thank you, Your Honor.

21 BY MR. PRICE:

22 Q Ms. Jones, what went through your mind when you saw
23 these items?

24 A He's sending me a message.

25 Q And what is that message?

1 A That he has a gun, and he knows where I live, he knows
2 where my family lives.

3 Q All right. I've already said this before, and I
4 apologize. How did you arrive at that message?

5 A Because of the history with Mr. Mitchell, the
6 environment that we worked in was very close, so we talked
7 a lot. As a team, we talked a lot. And he knew things of
8 me. We talked about our family, we talked about things
9 that we did. And it's not just specifically with Ray, but
10 just as a team, just group camaraderie. And Ray was aware
11 of my favorite beer, which is on that receipt, Stella beer.

12 Q Ms. Jones, are you okay?

13 A I'm all right. I'm sorry. I'm just . . .

14 Q Let me know if you need to take a few minutes.

15 A No. I want to get this over with.

16 So he was aware of different things about me, that on
17 the receipt, you know, there's my favorite beer. I was
18 very upset that he took this method of trying to let me
19 know that he knew these things and it all was in relation
20 to the events that happened in June. He scared me. He
21 scared my family.

22 Q Ms. Jones, after receiving these items, were you
23 afraid to testify against the defendant?

24 A Yes.

25 Q All right.

- 1 your answer?
- 2 A I do not remember, sir.
- 3 Q Do you recall saying, "I know where -- I know where he
- 4 lives"?
- 5 A Yes. I knew where he lived.
- 6 Q That didn't answer my question.
- 7 A I visited his house.
- 8 Q That didn't answer my question, though, did it?
- 9 A I guess not. This question that you're asking me now?
- 10 Q Yes, ma'am. The nursery card, where is that from?
- 11 A Whitten's in Anderson.
- 12 Q Where do you live, county?
- 13 A Currently?
- 14 Q Yes.
- 15 A Brooksville, Florida.
- 16 Q Where did you live at the time of this incident?
- 17 A Anderson County.
- 18 Q How far away from that nursery did you live?
- 19 A At the time of the incident?
- 20 Q Yes.
- 21 A 15, 30 -- 20, 30 miles.
- 22 Q So you're not trying to tell us that because you lived
- 23 next to it, what, ten years prior to that?
- 24 A Yes.
- 25 Q And that's part of the message?

- 1 A Absolutely.
- 2 Q I know where you lived ten years ago?
- 3 A Absolutely.
- 4 Q So is there anyplace he could have gone and not been
5 close to you?
- 6 A Sure.
- 7 Q You did an incident report, right?
- 8 A Yes.
- 9 Q What did you say on that incident report about what
10 happened?
- 11 A For the incident of the package?
- 12 Q Yes.
- 13 A Do you want me to go into specific detail of the day?
- 14 Q Sure.
- 15 A Okay. So I received a text message, 12:30, 1:00 in
16 the morning from Mr. Mitchell on my cell phone in reference
17 to accepting an \$80,000 offer from his attorney. "I hope
18 you have the balls to give us a call, that any sister of
19 mine would have loved the shark. By the way, please send
20 my f'ing belongings to Pecan Drive in Abbeville."
- 21 Q Can I stop you right there, ma'am?
- 22 A Sure.
- 23 Q At this point, you're not scared, right?
- 24 A Actually, yes, I am. I had a long discussion with my
25 mother in the middle of the night as to why I've been

1 contacted by a gentleman 30 days after the incident.

2 Q I thought you were friends for over a year.

3 A I did not say we were friends. He was a co-worker of

4 mine, sir.

5 Q So you talked about personal things with a co-worker?

6 A Absolutely.

7 Q So what did you talk to your mother about? You built

8 your mother up with this story, didn't you? Is your mother

9 scared now?

10 A I built --

11 Q Is your mother scared now?

12 A Currently?

13 Q Yeah.

14 A No. She's in Florida.

15 Q Did she become scared?

16 A She'd become extra vigilant, and she was scared for my

17 safety.

18 Q Did you ever see him around your house ever?

19 A No.

20 Q You found two trespass notices, right, in the

21 envelope?

22 A Yes.

23 Q What did those trespass notices say?

24 A I don't know. To be honest, it wasn't given to me.

25 They weren't written to me.

1 A No. Because ---

2 MR. PRICE: Objection, Your Honor. I really don't see
3 a point in this.

4 THE COURT: He's on cross. He can make it relevant.
5 Go ahead.

6 THE WITNESS: No, it doesn't. Because I was making a
7 statement of what happened to me.

8 BY MR. SMITH:

9 Q Okay. So in this, do you talk about how people were
10 coming up to you and were concerned about you? Do you want
11 to refresh your memory?

12 A Absolutely. Please ask the question again, sir.

13 Q Were people coming up to you and asking how you were
14 doing? Were they concerned for you?

15 A In regards to this?

16 Q Yeah.

17 A That day? No.

18 Q No.

19 A Because no one was aware of what was going on except
20 for Mr. Bailey and my supervisor.

21 Q What color was that leaf blower?

22 A I have no idea.

23 Q Didn't you see it?

24 A I saw it on the video.

25 Q So you never saw it?

- 1 A Physically, no.
- 2 Q I thought it was a bomb. Was it a bomb?
- 3 A To my knowledge, it wasn't a bomb.
- 4 Q Did you think it was a bomb?
- 5 A Yes. I said there was the potential of it. That is
- 6 why I wouldn't power up the other two cell phones. I had
- 7 no idea what the purpose of the cell phones were.
- 8 Q Did you know about any of these things, what their
- 9 purpose was?
- 10 A Absolutely.
- 11 Q Based on what?
- 12 A Based on what I felt.
- 13 Q But what did Mr. Mitchell do to give you that feeling?
- 14 A He sent me the package.
- 15 Q What does this Whitten's card mean?
- 16 A That is a location near the home I used to live at.
- 17 Q When did you live there?
- 18 A Ten years ago.
- 19 Q Plaintiff's Exhibit 10, \$80,000 plus Blue Cross, Blue
- 20 Shield, what's that for?
- 21 A That's in reference to the text messages that he sent
- 22 to my cell phone at 12:30, 1:00 in the morning on the 26th.
- 23 Q Is this a threat?
- 24 A The text message was a threat. That is in relation to
- 25 it, not to mention the hunting club reference.

- 1 Q So did you create this or did he send that?
- 2 A I didn't create that.
- 3 Q 7-Eleven?
- 4 A Uh-huh.
- 5 Q And what's the importance of this?
- 6 A It's located near my mother's home.
- 7 Q What county does your mother live in?
- 8 A Greenwood.
- 9 Q Are you aware that Greenwood is five times the size of
- 10 Abbeville?
- 11 A Sure.
- 12 Q So you go to a bigger city, don't you?
- 13 A Sure.
- 14 Q How do you get to Columbia from Abbeville?
- 15 A There's multiple ways you can get to Columbia from
- 16 Abbeville.
- 17 Q Could you go through Greenwood?
- 18 A Certainly.
- 19 Q When did this come again? What date?
- 20 A The 26th of July.
- 21 Q This concealed weapons permit, when did it expire?
- 22 A I have no idea. Whatever is on the card, sir.
- 23 Q February 15, 2003?
- 24 A Okay.
- 25 Q So it was ten years old.

1 Cash for \$50, what's that mean?

2 A I have no idea what that was for.

3 Q So you weren't scared of that?

4 A No.

5 Q 401 Woolridge Way or something. Do you know what that
6 is?

7 A That's Mr. Bailey's address.

8 Q So Mr. Mitchell went out of his way or he made sure
9 that the leaf blower went back to Mr. Bailey, right?

10 A I assume so. I had nothing to do with the leaf
11 blower, sir.

12 Q Did the trespass notices scare you?

13 A No.

14 Q Were they a threat in any way?

15 A No.

16 Q So once again, what did Mr. Mitchell do to threaten
17 you?

18 A He sent me a package with a message.

19 Q Where's the message? I don't understand.

20 A The message is, is I have a gun, I know where you
21 live, I know where your family lives.

22 Q But he didn't know where you lived, did he?

23 A Yes.

24 Q You're sure?

25 A Yes.

1 Q The 7-Eleven was by your mother's house?

2 A It's down the road from my mother's house, yes.

3 Q Did you say before it was next door to your mother's
4 house?

5 A No. It's not next door to her house.

6 Q I didn't ask you that. Did you say that before?

7 A Not to my knowledge, sir. No.

8 Q Did he know where your mother lives?

9 A Yes. I know where my mother lives.

10 Q No. Did he?

11 A No. He's never -- I've never talked about my mother,
12 where she lives to Ray, so I do not know what Mr. Mitchell
13 knows as far as my mother's.

14 Q So he went to 7-Eleven and got beer. What's the
15 relevance of your mother if he doesn't know where she
16 lives?

17 A Because it's down the street from my house -- my
18 mother's house.

19 Q Did you turn on any of the cell phones?

20 A No. There was only one powered on. The other two
21 were powered down.

22 Q Do you remember the hearing we had for your order of
23 protection?

24 A I remember it. Not specific details of the hearing,
25 but I do remember the hearing, yes.

1 Q Do you remember saying that you went and powered up
2 the phones?

3 A I did not power up phones. One phone was powered up,
4 sir. Two were powered down.

5 MR. SMITH: Yes, ma'am. One moment, please.

6 May I approach the witness, Your Honor?

7 THE COURT: Yes, sir.

8 BY MR. SMITH:

9 Q You said you didn't power up the phones?

10 A I did not power up the phone.

11 Q Would you read line 11, please.

12 A Which line 11, sir? There's four.

13 Q Page 22.

14 A Here? "I went and powered up the phones because being
15 that it was a leaf blower I was like, you know, this thing
16 could be a bomb." Do you want me to keep reading?

17 Q No. That's fine. Thank you.

18 Are you sure you didn't say you didn't turn on the
19 phones?

20 A I did not turn on the phones. And the reason I did
21 not turn on the phones, because I was worried that the leaf
22 blower could have been a bomb and the phone could have been
23 a trigger. So why would I do that?

24 Q Mr. Mitchell never said anything negative to you, did
25 he?

1 A To me or about me, sir?

2 Q To you, ma'am.

3 A Yes. He said plenty of negative things to me.

4 Q Like what?

5 A Like repoing people, and carrying people out in a box,
6 and sniper rifles, and military grade, and how extensive my
7 sniper training is.

8 Q Did he talk about that at lunch?

9 A That's part of the negative things that he said to me,
10 yes.

11 Q But when you went to HR, went to the police, did you
12 tell them about your 9 millimeter?

13 A No.

14 Q But that was part of the discussion that day, wasn't
15 it?

16 A I don't recall.

17 Q You painted a pretty nice picture of Mr. Mitchell,
18 didn't you?

19 A Pardon?

20 Q You painted a nice picture of Mr. Mitchell, didn't
21 you?

22 A In regards to what, sir?

23 Q In regards to his tendencies, if you will.

24 A I spoke the truth, sir. So whatever that is is what
25 it is.

1 Q You spoke the truth about what?

2 A Whatever picture you're asking to paint, I spoke the
3 truth. So whatever I'm trying to do is tell the truth,
4 sir.

5 Q Was Derrill concerned about the envelope or the
6 contents of the envelope before he talked to you?

7 A I have no idea what Mr. Bailey did before he talked to
8 me.

9 Q Where did Mr. Bailey first see you with the envelope?

10 A He came to my desk.

11 Q Where is that located?

12 A On -- in inside sales on the team.

13 Q What floor?

14 A Sixth. Well, it was sixth.

15 Q So he was so concerned, he came up to the sixth floor
16 with this envelope?

17 A He came up with the envelope and said, "I was told to
18 give this to Ms. Gina Jones."

19 Q Did he take it to the police or the bomb squad?

20 A Not to my knowledge. I don't know what he did.

21 Q He referred to you as his sister. What does that mean
22 to you?

23 A I have no idea, sir, what that means to me. He --
24 Mr. Mitchell started to reference me as a little sister
25 months before this incident happened, which made me very

1 uncomfortable because I'm in a professional setting. So I
2 have no idea why he started calling me his little sister.

3 Q Did you believe that was negative?

4 A It made me uncomfortable. So yes, that would be
5 negative for me. Did I mean -- did I think that Ray was
6 being negative referring to me as a sister? No.

7 Q The lunch, how was his conduct? What was his conduct
8 like?

9 A He was very erratic. He was there when I arrived. he
10 was very loud. Multiple conversations going on at one time
11 between the group. It was embarrassing and unsettling.

12 Q And what did you tell him so he would relax?

13 A I don't recall.

14 Q You didn't tell him anything, did you?

15 A Not to my knowledge.

16 Q Nobody at that table said a word to him, did they?

17 A Not to my knowledge.

18 Q So tell me, how are they supposed to know that he's
19 not acting right?

20 A Because other tables moved away from us.

21 Q Where are they?

22 A I mean, he's an adult, sir. He's responsible for his
23 own actions.

24 Q Yes, ma'am.

25 Where are the people that moved away?

1 A Where are they?

2 Q Yeah.

3 A I have no idea. They were at the restaurant.

4 Q You recall doing the incident report?

5 A Yes.

6 Q There was no mention of families moving away from your
7 table, was there?

8 A In -- not in my recollection. Not in my incident
9 report, no. Not that I remember. I would have to read it
10 again.

11 Q Did anybody talk to anybody other than UPS people? Do
12 you know if there's any witnesses other than UPS people?

13 A Not to my knowledge.

14 Q And your position got elevated in May?

15 A May of this past year, yes, 2014.

16 Q How long -- prior to this incident, how long had you
17 been in your position?

18 A Three -- three years. Two and a half, three years, to
19 the best of my knowledge.

20 Q When you got back from the lunch, you felt it was your
21 duty to go to HR?

22 A Yes.

23 Q Why is that?

24 A Because that's the way we were trained.

25 Q Trained about what?

1 A About incidents in the workplace, incidents with
2 people, that basically we were trained if things were not
3 right or things that were said, that we were to report it
4 to HR and they handle it as they see fit.

5 Q So he got three months in a row employee of the month.
6 And you weren't going anywhere, right, in your job track or
7 whatever? It's been three years.

8 A Actually, I had transferred different -- different
9 jobs from different teams.

10 Q But now you're at a higher position?

11 A Yes.

12 Q And once again, at that lunch, no one felt a need to
13 say anything to him, but then you went back to HR and told
14 on him?

15 A We did not say anything to him. He was already
16 erratically -- he was acting erratic and agitated --
17 extraordinarily agitated enough. Why would any -- I mean,
18 personally, I think you're responsible for your own
19 actions. I'm not a babysitter. I'm not going to -- you
20 know, you're embarrassing yourself when you're doing these
21 things in public. That's your choice. But it was my
22 responsibility as a worker at UPS to report what
23 Mr. Mitchell said at that lunch.

24 Q And then you couched it as him threatening Ken Baca;
25 is that right?

1 A He directly threatened Ken Baca.

2 Q What was the direct threat again?

3 A "My soul fixation is for that man to leave there in a
4 box -- I mean, with the stuff beside me carrying a box."

5 Q He said "my soul fixation"?

6 A To the best of my recollection. I can read my
7 statement through, if you want.

8 Q And the text message was threatening, and it talked
9 about \$80,000 or what?

10 A No. The text message was out of the blue after I
11 hadn't heard anything, and -- at 12:30, 1:00 in the
12 morning, and he referenced himself as the shark, which is
13 not necessarily a friendly animal. It was menacing.

14 Q Did you know what he meant at all?

15 A Pardon?

16 Q Did you know what he meant at all?

17 A I mean, I knew -- I had no idea what the
18 attorney/\$80,000 thing is. I had nothing to do with any of
19 that. I knew what he meant by sending his belongings
20 because his stuff was at work from when he went out on
21 disability.

22 Q How do you know what his intent was?

23 A I only know the perception of what the package that
24 was given to me stated by Mr. Bailey that he was instructed
25 to give to me said to me. I have no idea what his

1 intention was. I know what the result of it was.

2 Q Did Courtney hand you that?

3 A No.

4 Q Do you know if that was the right package you were to
5 get?

6 A I do not know what transpired other than what was on
7 the video between Mr. Bailey and Mr. Mitchell.

8 Q Is Courtney a giving sort, give away three phones?

9 A Not to my knowledge.

10 Q What did you and your co-workers call Courtney?

11 A Ray.

12 Q Is that all?

13 A I did not refer to Ray other than anything but Ray. I
14 didn't call him Courtney. I called him Ray.

15 Q Was the leaf blower a bomb?

16 A Not to my knowledge.

17 Q Were the phones in any way mechanisms of bombs?

18 A Not to my knowledge.

19 Q So did anybody else think these things but you?

20 A I have no idea. When Mr. -- when Mr. Bailey -- when
21 we went in the room and the concealed weapons permit, I
22 laid it on the table, Mr. Bailey looked at me and said,
23 "Should I be afraid?" So he obviously was unsettled. When
24 I took the package downstairs to HR and -- which is
25 Mr. Owens, when he emptied out the package on his desk,

1 Honor.

2 THE COURT: Thank you.

3 Ma'am, you may step down. Please be careful.

4 MR. PRICE: Your Honor, at this time, would it be all
5 right if we take about a ten-minute break?

6 THE COURT: Well, let's see the lawyers. We haven't
7 been going 50 minutes here.

8 (WHEREUPON, a bench conference was held off the record.)

9 THE COURT: Okay. Call your next witness, Solicitor.

10 MR. PRICE: Your Honor, at this time the State calls
11 Detective Greg Wood.

12 THE CLERK: Detective Wood, if you would please take
13 the stand.

14 WHEREUPON,

15 GREGORY SCOTT WOOD

16 after first having been duly sworn, testified as follows:

17 THE CLERK: Would you please state your name for the
18 record.

19 THE WITNESS: My name is Gregory Scott Wood.

20 DIRECT EXAMINATION

21 BY MR. PRICE:

22 Q Good afternoon, Detective. How are you?

23 A Doing well.

24 Q Where are you currently employed?

25 A Greenville Police Department.

1 Q And how long have you been employed there?

2 A I was hired in May of 2009.

3 Q All right. And what's your current rank?

4 A I'm currently a detective. I investigate auto theft
5 related incidents.

6 Q All right. And what kind of training did you receive?

7 A From the beginning, I attended nine weeks of the
8 Criminal Justice Academy in South Carolina. On a yearly
9 basis, we receive what we call legal updates to maintain
10 our certification through law enforcement. I've had basic
11 investigation classes, interviewing techniques, things like
12 that.

13 Q All right. And were you working on July 26, 2013?

14 A I was.

15 Q All right. And what time were you working?

16 A I don't remember the exact start time. It was either
17 6:00 in the morning or 7:00 in the morning. I think I was
18 scheduled until about 2 p.m. for this location.

19 Q All right. And what was your rank at that time?

20 A I was a patrol officer, just what they consider a
21 Police Officer I.

22 Q All right. And where were you working on the morning
23 of July 26, 2013?

24 A Yes. I was working special assignment at 204 Halton
25 Road in Greenville.

1 Q And what was the special assignment?

2 A My understanding was is when there are special
3 assignments available for us to work, sometimes there's
4 information about it, sometimes there's not. For this
5 assignment, there was some information that went along with
6 it basically stating that an employee had made a threat to
7 another employee, and that it was -- appeared to be a
8 credible threat. That was pretty much all I knew going in
9 to work in the special assignment.

10 Q Okay. And can you please tell me about the events
11 that occurred on July 26, 2013.

12 A That morning arriving, we, as special assignment
13 officers, were to arrive before most employees did. They
14 wanted us on the scene first to maintain a secure
15 environment for the employees to arrive. Again, not
16 remembering what time I was supposed to start that morning,
17 I do remember a little bit before 9:00 I overheard on my
18 radio that they were sending an officer to my location in
19 reference to an EMS assist. There was an individual on
20 the, I think, fifth floor that was having some
21 complications.

22 I notified dispatch at that time that I was already on
23 the scene, that I would handle the situation. And I then
24 went up to the fifth floor to check on that individual.

25 And from what I recall, mostly, I guess, it was about

1 30 to 40 minutes between getting the call, EMS getting
2 there, taking the subject away before going back
3 downstairs.

4 Q Okay. And so what happens after you went downstairs?

5 A I don't remember the time frame. I was downstairs for
6 a bit, but then I was notified by Keith McNeel about the
7 phone call that ---

8 MR. SMITH: Objection. Hearsay.

9 THE COURT: Well, I don't know where -- Solicitor?

10 MR. PRICE: Your Honor, I think there's actually a
11 case law that says an officer can testify as to why he did
12 something.

13 THE COURT: Okay.

14 MR. PRICE: I have that case law, if you'd like to see
15 it.

16 THE COURT: No, sir. I'm familiar with that. Just
17 don't get into what somebody said.

18 MR. PRICE: We won't.

19 THE COURT: Go ahead.

20 THE WITNESS: Keith McNeel advised that Mr. Mitchell
21 had contacted Mr. Bailey by phone the previous day and also
22 advised that Ms. Jones and Mr. Batista had received text
23 messages, I guess, the morning of this incident in the
24 early morning hours. He approached with that just to say,
25 "Hey, we need to discuss this further." It was at that

1 time I made a couple of phone calls, I guess, to outside
2 security for UPS that wanted to talk to me.

3 At that time, I really wasn't sure what the text
4 messages said or what the phone call was about. They were
5 just concerned that he intended to make contact with
6 current employees after the original incident from the
7 luncheon.

8 Some more time had passed, and then I don't remember
9 who notified me about the package had been delivered. At
10 that time, I was taken upstairs to Mr. Baca's office where
11 the package was laying on the table. And at that time, I
12 was informed of what was in the package and began to
13 discuss what -- at that time, I really had no idea about
14 the previous incident. That's where I began to learn more
15 about the whole situation.

16 Q All right. Did you examine that package?

17 A I did.

18 Q All right. And what did you see in it?

19 A I saw three cell phones, two being the flip style that
20 I believe were turned off. The one, either a slider phone
21 or just one that's not flip style, was turned on. I saw
22 the concealed weapons permit, the check for \$50, 7-Eleven
23 receipt, the nursery business card, and the letters
24 addressed to Mr. Inman and Mr. Baca for the trespass
25 notice.

1 MR. SMITH: May it please the Court.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION

4 BY MR. SMITH:

5 Q So what did you base this case on?

6 A Could you please clarify.

7 Q Did you talk to Ms. Jones?

8 A I did, yes, sir.

9 Q Did she tell you what happened?

10 A Briefly, yes.

11 Q What is your understanding what happened based on that
12 conversation?

13 A Like I said, I had many people in this office talking
14 to me and kind of fill me in as to what originally
15 occurred. I was made aware of the conversation at the
16 luncheon and the reason for the officer's presence at the
17 location to begin with.

18 Ms. Jones did get upset talking to me as she began to
19 realize what she felt it meant to her about the package. I
20 did sense some fear in her. At that time, I wasn't sure if
21 she would be the sole victim. I also felt like UPS, as a
22 whole, was a victim just because of what it was doing to
23 their work process. Many people throughout this incident
24 day were interrupted in their normal work, you know, to
25 deal with this situation.

1 BY MR. SMITH:

2 Q Are you aware that after he's arrested, they stopped
3 that disability?

4 A Outside of my scope, sir.

5 Q So you're a detective?

6 A Since November 2014. I'm sorry. November 2013.

7 Q Do you know if anyone went to the restaurant to talk
8 to try to find the people that moved away based on
9 Mr. Mitchell's actions?

10 A I do not know. That was a separate case I was not
11 part of.

12 Q Did you comment on it?

13 A I don't recall making any comments on it.

14 Q You were working for UPS on that day, right, on the
15 day of the 26th of July?

16 A Yes, sir.

17 Q So basically, they paid you and you arrested
18 Mr. Mitchell, right?

19 A I did not arrest Mr. Mitchell.

20 Q Did you get a warrant on him?

21 A I did.

22 Q Did that cause his arrest?

23 A Yes. That would be no different than any other
24 special assignment, whether it's a bar downtown or anything
25 like that.

1 Q How did Mr. Mitchell threaten Ms. Jones?

2 A When I look at the culmination of everything, when I
3 look at -- take the jury, for example. If I make a
4 statement to them, each one can take it -- the statement
5 differently. When I have to look at making charges, things
6 like no stalking harassment charges, there's a sense of
7 fear from the victim. Her sense of fear may be different
8 than her neighbor sitting beside her. I have to take
9 everything that I was trying to learn that day that
10 occurred at the luncheon, the -- trying to understand why
11 that package, along with the leaf blower, was delivered
12 when I believe Mr. Bailey stated that he asked Mr. Mitchell
13 to do it another time.

14 Q You were in here. He didn't testify to that, did he?

15 A I think he did.

16 Q Did he?

17 A Seeing everything as a whole picture and after
18 speaking to Ms. Jones, I do feel there was some fear in
19 her. I knew that UPS had a definite fear, or else we
20 wouldn't be working there.

21 Q And you believe that fear was reasonable?

22 A Absolutely.

23 Q Right. How was that leaf blower once you inspected
24 it?

25 A When I inspected the leaf blower, I didn't see that

1 any of the screws had appeared to have been tampered with
2 even to fix anything. I did have the sergeant who came out
3 on scene with me to look at it as well. He concurred. And
4 then I did give it back to Mr. Bailey.

5 Q Do you think it's possible that Ms. Jones inflamed the
6 situation?

7 A I don't believe so.

8 Q There is no evidence whatsoever of Mr. Jones [sic]
9 attempting to intimidate her through words or anything
10 else. Can you tell me what his reasoning for trying to
11 intimidate her would be?

12 MR. PRICE: Your Honor, speculation.

13 THE COURT: Yes, sir.

14 MR. PRICE: Thank you.

15 BY MR. SMITH:

16 Q Do you know of anything that Ms. Jones had said or
17 done to Mr. Mitchell that would make him want to intimidate
18 her?

19 A The only thing I was aware of on that day was the
20 lunch. I knew that she was part of the reason that he had
21 been charged to begin with.

22 Q But she didn't get a trespass notice, right?

23 A Not that I'm aware of.

24 Q So I guess she could still come on his property?

25 A You'd have to ask him that.

1 Q What force did he use to try to intimidate her?

2 A Psychological force.

3 Q Could you explain that to me?

4 A The intimidation of the package that was received with
5 the contents. There was no rhyme or reason for any of
6 those things to be delivered that day.

7 Q Do you think that the belief that the nursery business
8 card is somehow related to this action?

9 A I had no thought of the matter until Ms. Jones made it
10 aware that it was near a family member's house or her
11 house.

12 Q Ten years ago?

13 A I had no idea at that time.

14 Q Oh, she didn't show you that?

15 A No, sir.

16 MR. SMITH: I have nothing further, Your Honor.

17 THE COURT: Anything from the State?

18 MR. PRICE: Nothing further from the State, Your
19 Honor.

20 THE COURT: Thank you. Sir, you may step down.
21 Please be careful.

22 MR. PRICE: Your Honor, at this time, the State rests.

23 THE COURT: Okay. Madam Forelady and ladies and
24 gentlemen, the State has now rested a case meaning it has
25 put forth its evidence in what's called a case in chief.

1 There are a couple of things that I have to take up before
2 we go any farther in this trial, and it would be improper
3 for you to be here. This would be one of those moments
4 where I have to deal with the lawyers outside of your
5 presence. But it is a good time to take our 15-minute
6 break. I was going to shoot for about 15 minutes till the
7 hour, and we're about 17 or 18 till, so we're right on the
8 money, so to speak.

9 Madam Forelady, when you take the jurors out, please,
10 everyone note this case is not at an end; therefore
11 beginning deliberations, even among yourselves or within
12 your own mind, would be improper, so please do not do that.
13 Enjoy your break. Expect to be back here no later than the
14 top of the hour. But if we can get back at five till, we
15 will so we can continue with this case. But I don't want
16 to rush you. But take your 15-minute break.

17 Madam Forelady.

18 (WHEREUPON, the jury exits the courtroom at 2:41 p.m.)

19 THE COURT: Anything from the State?

20 MR. PRICE: Nothing from the State, Your Honor.

21 THE COURT: Okay. From the defense?

22 MR. SMITH: The defense moves for a directed verdict
23 at this time based on the fact there's been no offering of
24 threat. I mean, the bag -- there is no showing of intent.
25 There's no intent whatsoever. They get a bag, and she

1 believes that's for her, and the ten years. I mean, that's
2 just part of the -- I don't even -- I don't even know how
3 one arrives at that. But if Mr. Mitchell would have sent a
4 postcard, that would have meant something, too, or if he
5 would breathe the air in South Carolina. It's not -- it's
6 too attenuated. There's no threat there. He had no reason
7 to threaten her. That was her -- his friend. And two
8 other people he sent trespass notices, don't come to my
9 house again. She didn't get anything. He called her his
10 sister in a -- I think a friendly manner.

11 Of course, she says he's not her friend, but they were
12 talking about their kids and difficulties they were having
13 having children and what have you. It just doesn't -- and
14 I understand about the weight and so forth, but I don't
15 think there's any weight other than the creation because
16 she wasn't singled out according to herself at the
17 restaurant. So there's nothing to form a basis for a
18 threat. There's no reason for her to do that -- for him to
19 do that, because he hadn't done it before.

20 THE COURT: Solicitor?

21 MR. PRICE: Your Honor, the State believes that
22 there's enough here. I mean, just sending your concealed
23 weapons permit to someone randomly alone sends a pretty
24 strong message, coupled with the fact that the receipt and
25 business card, plus adding into the fact that the last time

1 Ms. Jones had contact with the defendant, he was talking
2 about killing co-workers. He had a whole bunch of
3 firearms, armor-piercing bullets.

4 THE COURT: Thank you, sir.

5 MR. PRICE: Thank you, Your Honor.

6 THE COURT: Mr. Smith, motion is denied. As we all
7 know, this court does not weigh the evidence and does not
8 give credibility one way or the other. That is the job of
9 the jury. They are the finders of fact. This court is
10 only concerned with whether or not there is any evidence
11 known as a scintilla of evidence, and the record is replete
12 with a scintilla of evidence, more than enough to go to the
13 jury. So we'll let the finders of fact decide that.

14 Any other motions, Mr. Smith?

15 MR. SMITH: Not from defense.

16 THE COURT: Okay. We're going to start promptly at
17 about two minutes till if our jury is ready, but I want
18 everybody else to be ready, if we can.

19 All right. Mr. Smith, let me ask you this if you
20 know. You indicated in opening statement that your client
21 did not intend to testify.

22 MR. SMITH: No.

23 THE COURT: He is not?

24 MR. SMITH: No.

25 THE COURT: Okay. We've got to put that in our jury

1 charge. That's why I'm asking. Let me ask you this. When
2 we come back, before I bring the jury in, do you want me to
3 have a colloquy with him about that on the record or is
4 your statement sufficient?

5 MR. SMITH: My statement is sufficient.

6 THE COURT: Your statement is sufficient. Okay.

7 Sir, when we come back, I will ask you to rise and I
8 will have you sworn. Madam Clerk, don't let me forget
9 that. And then I will simply ask you if your lawyer is
10 answering for you, and if that's correct, then maybe if
11 he's asked you -- he's informed you of all your rights.
12 And that's as far as I will go because you have a right to
13 remain silent under state and Federal constitution, and
14 this court will protect that.

15 Mr. Smith, also, this is nuts and bolts now, you've
16 got nine potential witnesses listed. Are they here ready
17 to go?

18 MR. SMITH: Your Honor, there won't be any witnesses.

19 THE COURT: You will not have any witnesses?

20 MR. SMITH: No.

21 THE COURT: So you intend to rest when we come back?

22 MR. SMITH: Yes, sir.

23 THE COURT: Well, I'll tell you what we'll do. Let's
24 turn this break into a little bit longer here. I always
25 have a charge conference with the lawyers. Adrienne's been

1 putting my jury charge together. That way, when they come
2 back, you will know what we're going to charge the jury.
3 Once you rest, we will go straight into jury closings and
4 charge. Okay?

5 MR. SMITH: Yes, sir.

6 THE COURT: Adrienne, are you working on that?

7 MS. BERRY: I have it finished.

8 THE COURT: You have it finished. Okay. You've got
9 the statute, you've got him not testifying. Okay. Can we
10 get somebody to help us print that?

11 THE CLERK: Yes, sir.

12 THE COURT: Would it be you?

13 THE CLERK: If you send it to me, I'll send it to ---

14 MS. BERRY: Okay. I'll do that.

15 THE COURT: Okay. We don't have a way to print. We
16 have to rely on the clerk here. We don't have printers.

17 Okay. All right. Well, let's take about -- it might
18 turn into about 20, 25 minutes, but I want to see the
19 lawyers. Once we get a copy of that, Adrienne, let the
20 lawyers have it so we can take a look at it.

21 (WHEREUPON, a recess was taken at 2:45 p.m.)

22 THE COURT: Mr. Mitchell, I'm going to ask you to
23 stand, please, be sworn, please.

24 THE CLERK: Do you swear or affirm to tell the truth,
25 the whole truth and nothing but the truth, so help you God?

1 DEFENDANT MITCHELL: So help me God.

2 THE COURT: Mr. Mitchell, remain standing, please.

3 I'm just going to ask you a couple of questions here on the
4 record. Your lawyer has indicated that he's discussed with
5 you your right to testify, your right not to testify. I'm
6 not going to ask you the questions I usually ask because he
7 says he has answered for you. He's your representative, an
8 officer of the Court, so I'm just going to inquire. He's
9 explained all of your rights as to testify or not testify;
10 is that true?

11 DEFENDANT MITCHELL: Yes, Your Honor.

12 THE COURT: All right. And you understand those
13 rights?

14 DEFENDANT MITCHELL: Yes, Your Honor.

15 THE COURT: And you are not under the influence of any
16 medication or any substance that affects your reasoning and
17 thinking ability?

18 DEFENDANT MITCHELL: No, Your Honor.

19 THE COURT: All right. And is it your decision and
20 not your parents' decision, not a friend's decision or your
21 lawyer's, but yours alone not to testify?

22 DEFENDANT MITCHELL: My decision, Your Honor.

23 THE COURT: Your decision. Thank you, sir. Have a
24 seat.

25 Now, Mr. Price and Mr. Smith, I understand that you

1 have seen the proposed jury charge, and I generally -- I
2 always, not generally. I always share that with the
3 lawyers ahead of time. Have you seen that?

4 MR. PRICE: Yes, sir, Your Honor.

5 THE COURT: Is there any objection?

6 MR. PRICE: No objection.

7 MR. SMITH: No, sir.

8 THE COURT: Any additions or deletions?

9 MR. SMITH: No, sir.

10 MR. PRICE: No, sir.

11 THE COURT: Okay. And have you seen the -- I don't
12 send the indictment back. I send the jury -- we've got to
13 change that. It says "jury charge," but it's the verdict
14 form, which is up or down one way or the other. We're
15 going to change that one word right there.

16 Any objection to the jury form?

17 MR. SMITH: No, sir.

18 MR. PRICE: No, Your Honor.

19 THE COURT: All right. Mr. Smith, I understand that
20 you've got to rest. I want you to do that in front of the
21 jury. You probably want to do that in front of the jury, I
22 would think.

23 MR. SMITH: Yes, sir.

24 THE COURT: And your exhibits, they're in evidence.
25 You want them in evidence? You put them up here. Is there

1 a question about that?

2 MR. SMITH: No, sir.

3 THE COURT: No, sir, there's no question or you don't
4 want them in evidence?

5 MR. SMITH: I've already spoken with the court
6 reporter. I think we addressed it.

7 THE COURT: She's unclear. That's why I'm asking.
8 That's how I know about this. She's unclear. Did you mark
9 them for ID purposes or you marked them as exhibits?

10 MR. SMITH: Well, I marked them as exhibits, but I
11 believe there was one or two I didn't necessarily care if
12 they went in or not. I know that doesn't help you one bit.

13 THE COURT: Well, let's do this before my jury comes
14 in. Let's be clear on the record. Which exhibits are you
15 proposing to be in and which are you proposing to be out?
16 I want to have a clean record.

17 MR. PRICE: Your Honor, if the State may be heard on
18 this.

19 THE COURT: Yes, sir.

20 MR. PRICE: I believe the copy of the incident report
21 is in evidence.

22 THE COURT: That incident report is in evidence. It
23 certainly is.

24 MR. PRICE: I don't know about the other ones.

25 THE COURT: So Defendant's 1 about the letter to

1 Mr. Inman, No. 2 about the guide for a coach, Mr. Smith,
2 are those in?

3 MR. SMITH: Your Honor, I was under the impression
4 they were in. As the court reporter knows, I didn't follow
5 up with that. I thought I had.

6 THE COURT: I'm giving you a chance.

7 MR. SMITH: I want them in.

8 THE COURT: Okay. That's what I'm saying. I'm giving
9 you a chance before the jury gets here. I don't want to be
10 unclear about that. So you want them all in.

11 MR. SMITH: Yes, sir.

12 THE COURT: He is moving for all of them to be in,
13 Mr. Solicitor?

14 MR. PRICE: Your Honor, the State is all right with
15 that. No objection.

16 THE COURT: No objection. Okay. Madam Court
17 Reporter, they are all in.

18 (WHEREUPON, Defendant's Exhibit Nos. 1, 2, 3, 4, 5 and 7
19 were admitted into evidence.)

20 THE COURT: Any other housekeeping matter at this
21 time?

22 MR. SMITH: Not from the defense.

23 THE COURT: Okay. All right. We're going to go
24 straight to Mr. Smith who will then rest, then we will
25 begin with our closing. Now, Mr. Smith, you'll be first,

1 followed by Mr. Price, and then I will charge.
2 Okay. Any questions?
3 MR. SMITH: No, sir.
4 THE COURT: All right. Let's have our jury.
5 On charge -- I mean on Jury closing, about 20, 25
6 minutes each side?
7 MR. PRICE: That's fine with the State, Your Honor.
8 THE COURT: If my minister can say it in 20 minutes,
9 you can say it in 20 minutes.
10 (WHEREUPON, the jury entered the courtroom at 3:10 p.m.)
11 THE COURT: Madam Forelady, any matters from the jury?
12 FORELADY: No, sir.
13 THE COURT: All right. Mr. Smith?
14 MR. SMITH: May it please the Court.
15 THE COURT: Yes, sir.
16 MR. SMITH: Your Honor, at this time, the defense
17 rests.
18 THE COURT: Defense rests.
19 MR. SMITH: Yes, sir.
20 THE COURT: All right, sir.
21 Madam Forelady, the defense has now rested its case in
22 this matter. The State rested previously. The defense has
23 now rested at this point in time. So at this point, we
24 will move to closing statements by the lawyers. All right.
25 ///

1 why he singled her out.

2 Ladies and gentlemen, the defendant was trying to
3 bully Ms. Jones into not testifying against him in his
4 breach of peace trial. By being here today and testifying,
5 Ms. Jones has said, "I am not going to be a victim. I'm
6 going to stand up. I'm not going to let you bully me
7 anymore."

8 This defendant sent a message to Ms. Jones that said,
9 "I have a gun. I know where you live. I know where your
10 family lives," because she was going to testify against
11 him. I ask that you send a message back to him saying that
12 this type of behavior is not allowed. We'll not let you
13 get away with this. I ask that you send that message by
14 way of a verdict of guilty. Thank you.

15 THE COURT: Thank you, Solicitor.

16 CHARGE ON THE LAW

17 THE COURT: Madame Forelady and ladies and gentlemen
18 of the jury, you have seen and heard the evidence presented
19 as well as the arguments of the lawyers, and it is now my
20 duty and obligation to instruct you on the law in this
21 case. It will then be your duty and obligation to begin
22 your deliberations through which process you will decide
23 the facts, apply the law as I instruct it, and render a
24 fair and impartial decision.

25 It is your exclusive duty to determine what the facts

1 are in this case. You do that based on your own common
2 sense examination and evaluation of the testimony and other
3 evidence received during the trial of this case. You 12
4 jurors and you 12 jurors alone will decide the value and
5 the weight to be given to any particular testimony or other
6 evidence received. Quite simply, ladies and gentlemen,
7 your ultimate goal is to find the truth in this case, and
8 by doing so, you will have fulfilled your obligations as
9 jurors in giving both the State and the defendant a fair
10 and impartial trial based on the evidence presented and the
11 law as I gave it to you.

12 The indictment charges the defendant with the offense
13 of intimidation of a witness. I remind you that the fact
14 the defendant was arrested, charged and indicted in this
15 case is not evidence and cannot be considered by you as
16 evidence of guilt, nor does it create any presumption or
17 inference of guilt. The document is simply a formal
18 written instrument which contains the charges made against
19 the defendant. It is the formal document which brings the
20 case before this court.

21 The defendant has pled not guilty to the indictment,
22 and that plea puts the burden on the State of South
23 Carolina to prove him guilty. A person charged with
24 committing a criminal offense in South Carolina is never
25 required to prove himself innocent. I charge you that it

1 is a cardinal, important and vital rule of law in a
2 criminal trial. No matter what the seriousness of the
3 charge may be for which he stands charged, the defendant is
4 always presumed to be innocent of the crime for which the
5 indictment was issued unless guilt has been proven by
6 evidence satisfying you of that guilt beyond a reasonable
7 doubt.

8 The presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt. The presumption of innocence is like a
13 robe of innocence placed about the shoulders of the
14 defendant which remains with him from the moment of his
15 arrest and continues until it has been stripped from his
16 shoulders by evidence satisfying you of his guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not mere legal theory
19 or a legal phrase. It is a substantial right to which
20 every defendant is entitled unless you 12 jurors are
21 satisfied from the evidence of his guilt beyond a
22 reasonable doubt.

23 I remind you that during this trial, you and I have
24 certain duties to perform. As the trial judge, it is my
25 responsibility to preside over this trial, and I also have

1 the duty to rule on the admissibility of evidence offered
2 during the trial.

3 You are to consider only the competent evidence before
4 you. You are to consider only the testimony which has been
5 presented from the witness stand, any exhibits which may
6 have been made a part of the record, and any stipulations
7 of counsel.

8 I have the additional duty to charge you the law in
9 this case. As the presiding judge, I am the sole judge of
10 the law, and it is your duty as jurors to accept it and
11 apply it as I now state it to you. If you have any idea as
12 to what the law is or what the law ought to be or what the
13 law should be and it does not agree with what I now tell
14 you the law is, you must abandon your idea because you are
15 sworn to accept the law and apply it exactly as I state it
16 to you.

17 In every case tried in this court before a jury, you
18 the jury become the sole judge of the facts in this case.
19 A trial judge cannot intimate, state, comment on or make
20 any statement to a trial jury about the facts in a case.
21 You the jury are the sole judge of the facts in this case,
22 and you are not to infer from what I have said during the
23 progress of this trial in ruling upon the admissibility of
24 evidence or otherwise or anything that I say now during the
25 course of my instructions to you that I have an opinion

1 about the facts in this case. The law of the State of
2 South Carolina does not allow me to have an opinion about
3 the facts in this case. This is a matter solely for you,
4 Madame Forelady, ladies and gentlemen, to determine. As
5 jurors, it is your duty to determine the effect, value,
6 weight and truth of the evidence presented.

7 The State has the burden of proving the defendant
8 guilty beyond a reasonable doubt. Ladies and gentlemen,
9 proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt. There are very
11 few things in this world that we know with absolute
12 certainty, and in criminal cases, the law does not require
13 proof that overcomes every possible doubt.

14 A reasonable doubt may also be described as the kind
15 of doubt that would cause a reasonable person to hesitate
16 to act. If you have such a doubt as to the guilt of the
17 defendant, he would be entitled to a verdict of not guilty.
18 Reasonable doubt may arise from evidence which is in the
19 case or from the absence or lack of evidence in a case.

20 Based on your consideration of the evidence, if you
21 are firmly convinced that the defendant is guilty of the
22 crime charged, you must find him guilty. If, on the other
23 hand, you think there is a real possibility he is not
24 guilty, you must give him the benefit of the doubt and find
25 him not guilty. You alone, you 12 alone, must make the

1 determination of whether or not reasonable doubt exists as
2 to the guilt of the defendant.

3 There are two types of evidence which are generally
4 presented during a trial: direct evidence and
5 circumstantial evidence. Direct evidence is the testimony
6 of a person who claims to have actual knowledge of a fact
7 such as an eyewitness. It is evidence which immediately
8 establishes the main fact to be proved.

9 Circumstantial evidence is proof of a chain of facts
10 and circumstances indicating the existence of a fact. It
11 is evidence which immediately establishes collateral facts
12 from which the main fact may be inferred. Circumstantial
13 evidence is based on inference and not on personal
14 knowledge or observation.

15 The law makes absolutely no distinction between the
16 weight or value to be given either direct or circumstantial
17 evidence, nor is a greater degree of certainty required of
18 circumstantial evidence than on direct evidence.

19 You should weigh all of the evidence in this case, and
20 after doing so, if you are not convinced of the guilt of
21 the defendant beyond a reasonable doubt, you must find him
22 not guilty.

23 Under the constitution of South Carolina, you are the
24 finders of the facts. Necessarily, you must determine the
25 credibility of witnesses who have testified. Credibility

1 simply means believability. It becomes your duty as jurors
2 to analyze and to evaluate the evidence and determine which
3 evidence convinces you of its truth.

4 In determining the believability of witnesses who have
5 testified, you may believe one witness over several, or
6 several witness over one. You may believe a part of the
7 testimony of a witness and reject the remaining part of
8 that same 'witness' testimony. You may believe the
9 testimony of a witness in its entirety or reject the
10 testimony of a witness in its entirety. You may consider
11 whether a witness has exhibited to you any interest, bias,
12 prejudice or other motive in this case. You may also
13 consider the appearance and manner of a witness while on
14 the witness stand. Simply put, ladies and gentlemen do you
15 believe the witness was telling the truth?

16 You may consider how the witness came to know the
17 facts to which he or she testified and whether or not the
18 witness had an opportunity to hear, observe or perceive a
19 fact by means of their senses. Whatever your good judgment
20 and common sense tells you is the most believable testimony
21 is the testimony that you should accept and reject the
22 testimony which you find not to be credible or believable.

23 I instruct you and emphasize the fact the defendant
24 did not testify is not a factor to be considered by you in
25 any way in your deliberation and in your consideration of

1 the question of guilt or innocence of the defendant. It
2 must not be considered by you in any manner whatsoever. A
3 defendant has the constitutional right to remain silent,
4 and the assertion of this right must not be considered by
5 you in your deliberations. I repeat, under your oath, you
6 are to draw no conclusion whatsoever from the fact the
7 defendant in this case did not testify. The fact that this
8 defendant did not testify should not be discussed in the
9 jury room, as the burden of proof, as I have told you, is
10 on the State of South Carolina. The defendant is not
11 required to prove his innocence. The burden of proof
12 remains on the State to prove guilt beyond a reasonable
13 doubt.

14 Criminal intent is a necessary element of each crime
15 that must be proved by the State beyond a reasonable doubt.
16 Criminal intent is always a matter that must be determined
17 by the jury from the circumstances surrounding the
18 situation. There is no way to prove intent to a
19 mathematical certainty. There is no way medical science
20 can dissect a person's brain and determine what he or she
21 had in mind. The law says that criminal intent may be
22 inferred from the circumstances shown to have existed.
23 This is how a jury makes a determination whether or not the
24 element requiring intent was present.

25 Criminal intent is a state of mind which operated

1 jointly with an act is the commission of a crime. Criminal
2 intent is a state of mind and conscious wrongdoing, so it
3 is up to you the jury to determine what the defendant
4 intended to do based on the circumstances shown to have
5 existed. I tell you that the State must prove criminal
6 intent beyond a reasonable doubt, just as they must prove
7 every element beyond a reasonable doubt as I previously
8 explained.

9 It is not necessary to establish intent by direct and
10 positive evidence, but intent may be established by
11 inference in the same way as any other fact by taking into
12 consideration the acts of the parties and all the facts and
13 circumstances of the case. While the State may prove
14 motive, it is unnecessary that the State do so. However,
15 the State must prove criminal intent.

16 I have instructed you that the defendant is charged
17 with the offense of intimidation of a witness, specifically
18 that Courtney Ray Mitchell did, in Greenville County, South
19 Carolina, on or about July 26, 2013, by threat or force
20 intimidate or impede or attempt to intimidate or impede
21 Thelma Jones, a witness or a potential witness in a
22 criminal case in the discharge of her duty and/or did
23 destroy, impede or attempt to obstruct or impede the
24 administration of justice in a court, all in violation of
25 the code of laws of this state.

1 I will now read to you in part Section 16-9-340 of the
2 South Carolina Code of Laws which says, "It is unlawful for
3 a person by threat or force to intimidate or impede a
4 judge, magistrate, juror, witness, or potential juror or
5 witness, arbiter, commissioner, or a member of any
6 commission of this State or any other official of any
7 court, in the discharge of his or her duty as such; or
8 destroy, impede, or attempt to instruct or impede the
9 administration of justice in any court."

10 In order to convict the defendant of this offense, the
11 State must prove beyond a reasonable doubt that he, by
12 threat or force, intimidated or impeded a witness or
13 attempted to intimidate or impede a witness.

14 Ladies and gentlemen, you have been selected as fair
15 and impartial jurors sworn to impartially try and determine
16 the facts of this case, and when you comply with your oath
17 to do so, you will have fully discharged your duty as
18 jurors. You are to decide this case according to the
19 testimony that you have heard from this witness stand along
20 with the other evidence that has been introduced.

21 During your deliberations, you may only discuss the
22 case in the jury room with your fellow jurors because they
23 have seen and heard the same evidence you have seen and
24 heard. However, you must not discuss this case with anyone
25 else until you have returned a verdict and the case is at

1 an end.

2 Ladies and gentlemen, I further tell you that in the
3 event a juror takes a break for whatever reason, get a
4 drink of water, go to the restroom, you must stop your
5 deliberations until all 12 are present and discuss the
6 matter together.

7 Ladies and gentlemen, your verdict must be a unanimous
8 verdict. Madam Forelady, when the jury agrees on the
9 verdict, you will indicate your verdict in the space
10 provided on the verdict form and sign your name as the
11 forelady of the jury, then knock on the jury room door and
12 inform the bailiff that you have reached a verdict. At
13 that time, we will return you to the courtroom and receive
14 your verdict.

15 Madam Forelady, this is the verdict form of which I
16 speak. It's a sheet of paper. It has the caption of the
17 case and the case number, and it reads, "We, the jury,
18 unanimously find the defendant, Courtney Ray Mitchell, on
19 the charge of intimidation of a witness, not guilty or
20 guilty. I certify this decision was the unanimous decision
21 of the jury." It has a line for the foreperson to sign,
22 today's date in Greenville, South Carolina on it.

23 I tell you, there is no significance to the term "not
24 guilty" being placed above "guilty" or "guilty" being
25 placed above "not guilty." This is simply a form that's on

1 the computer we use at every case. So it is simply a form.
2 There's no significance to that. You choose whichever.
3 You sign this, put the mark by the correct verdict of the
4 jury once all 12 agree. Again, it has to be unanimous.
5 Madame Forelady, you're the only person who has to sign
6 this form.

7 Now, Madam Forelady and ladies and gentlemen, I'm
8 going to send the exhibits back to you. You notice that
9 the exhibits were marked as they were handed up with
10 stickers, and Madam Court Reporter has recorded them, and
11 we have to account for them. They're laying on that table,
12 but I see some here. And I also tell you that lawyers are
13 famous for walking back to a table with one. Over the
14 years, I did it myself.

15 So when we send you back to the jury room, do not
16 begin your deliberations. All 14 of you are going back to
17 the jury room at this time. I'm going to ask the lawyers
18 to come up to Madam Court Reporter and go over those
19 exhibits by number, one by one, to determine they're all
20 there. They belong to you. You can do anything you want
21 with them, review them as much as you like. If you want to
22 see a video or something, we will bring you back here. I
23 will not send a computer back there. I will bring you back
24 to the courtroom, I'll return it here and we'll watch it
25 from here.

1 Once the lawyers are satisfied all the exhibits are
2 there, nothing is missing, I will then send all of the
3 exhibits back to the jury room with this sheet, Madam
4 Forelady. When he or she comes to the jury room with the
5 exhibits and this form, the two alternate jurors will leave
6 at that time, and, Mr. Bailiff, if you'll segregate those
7 two. They have to be segregated during this process. He
8 will then leave only the 12. Once they leave the room and
9 you have the exhibits, that is your cue to begin your
10 deliberations.

11 Anything at this point before I send them out?

12 MR. PRICE: Nothing from the State, Your Honor.

13 MR. SMITH: Nothing from defense, Your Honor.

14 THE COURT: Madam Forelady, at this time, I'm going to
15 let you go back there, all 14 at this point in time. Be
16 right with you.

17 (WHEREUPON, the jury exits the courtroom at 3:45 p.m.)

18 THE COURT: Exceptions or deletions from the State?

19 MR. PRICE: None from the State, Your Honor.

20 THE COURT: From the defense?

21 MR. SMITH: None from the defense, Your Honor.

22 THE COURT: Okay. Gentlemen, if you will kindly come
23 up and ensure we have everything.

24 (Pause in proceedings.)

25 THE COURT: Let's put on the record that the lawyers

VERDICT

THE CLERK: Yes, sir, Your Honor. Your Honor, this is Case No. 2013-GS-23-8607, the State vs. Courtney Ray Mitchell. We, the jury, unanimously find the defendant, Courtney Ray Mitchell, on the charge of intimidation of a witness, guilty. I certify this decision was a unanimous decision of the jury. Signed Tracy Holmesley, foreperson.

If this is your verdict, please raise your right hand.

(WHEREUPON, the jury raised their hands.)

THE CLERK: Thank you.

THE COURT: Polling of the jury from the State?

MR. PRICE: The State does not request that, Your Honor.

THE COURT: From the defense?

MR. SMITH: I'll request it, please.

THE COURT: Okay. Madam Clerk.

THE CLERK: Ladies and gentlemen, the verdict that has just been published was the verdict you reached in the jury room. I ask you, was it your verdict then and is it your verdict now? As I call your names, please answer "yes" or "no," starting with foreperson Tracy Holmesley.

FORELADY: Yes.

THE CLERK: Thank you. Patrick Spadafora.

JUROR: Yes.

THE CLERK: Thank you. Mametta Bainter.

1 class or prior sergeant first class educated with PTSD and
2 a story to tell. I don't know if you're prior military or
3 not. I am. I'm an old Army captain. Got a couple of set
4 of jump wings and three berets to go with all of that, and
5 you know what color they are, too, don't you?

6 DEFENDANT MITCHELL: Yes.

7 THE COURT: What color are they?

8 DEFENDANT MITCHELL: Black.

9 THE COURT: That's one of them. What's the next one?

10 DEFENDANT MITCHELL: Red.

11 THE COURT: And what -- well, maroon. What's the
12 next one?

13 DEFENDANT MITCHELL: Green.

14 THE COURT: Yes, sir. It sure is.

15 SENTENCING

16 THE COURT: So this court makes a finding of the fact
17 that you are a dangerous individual with a present and
18 clear ability to carry that out.

19 2013-8607, you are confined to the State Department of
20 Corrections for a period of ten years. Good luck to you.
21 Give you credit for time you have served.

22 MR. PRICE: Thank you, Your Honor.

23 THE COURT: Thank you. That concludes this hearing.
24 We're at recess till 9:00 tomorrow morning.

25 (WHEREUPON, court is recessed at 5:17 p.m.)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE IN THE COURT OF GENERAL SESSIONS
PAUL B. WICKENSIMMER

2014 AUG 12 PM 3:34
SEVENTEENTH JUDICIAL CIRCUIT

State of South Carolina,

Plaintiff,

vs.

Courtney Ray Mitchell,

Defendant.

Case No. 2013-A2320602021

**UNITED PARCEL SERVICE'S
MOTION TO QUASH DEFENDANT'S
SUBPOENAS**

United Parcel Service (hereinafter "UPS"), by and through their undersigned counsel, respectfully move this Court to quash ten (10) subpoenas recently directed to UPS by Courtney Ray Mitchell (hereinafter "Mitchell" or "Defendant") and his attorney, Donald L. Smith. (See subpoenas attached hereto as Exhibit A). This is the third round of subpoenas directed to UPS by Defendant's counsel. This Court declined to enforce the previous subpoenas, and should likewise quash these subpoenas for the same reasons: because they seek irrelevant documents, are intended to harass and intimidate the victims and witnesses in this case, and were not served properly¹.

Furthermore, in Defendant's counsel's cover letter transmitting the subpoenas to undersigned counsel he states: "Pursuant to Judge Miller, I have pared down the materials requested to include the complete contents of each personnel file." (See letter attached hereto as Exhibit B.) Undersigned counsel does not recall this Court requesting that counsel "pare[] down the materials requested," but rather thinks that the Court simply denied Mitchell's motion to

¹ Without asking whether service would be accepted, the subpoenas were simply mailed to undersigned counsel. This is not effective service of process under Rule 13(a), South Carolina Rules of Criminal Procedure.

compel compliance with the subpoenas. Undersigned counsel has ordered a copy of the hearing transcript to clarify what this Court did—or did not—order.

Accordingly, UPS respectfully requests that this Court quash the subpoenas and grant any other relief this Court believes is necessary and appropriate under the circumstances. This motion is based upon the statutory and case law of the State of South Carolina, the South Carolina Rules of Criminal Procedure and any affidavits or other evidence which may be submitted by UPS prior to a hearing on the instant motion as well as any argument advanced by counsel.

Respectfully submitted,

Andrew Mathias

James D. Galyean (S.C. Bar No. 15955)

Andrew A. Mathias (S.C. Bar No. 76220)

NEXSEN PRUET, LLC

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864.370.2211

Attorneys for United Parcel Service

August 12, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

State of South Carolina,
Plaintiff,

vs.

Courtney Ray Mitchell,
Defendant.

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

Warrant No.: 2013A2320602021

MOTION FOR A STAY

FILED
PAUL E. THOMPSON
CLERK
GREENVILLE CO. S.S.
2015 APR 14 AM 9:09
(67)

TO: JAMES A. PRICE, ASSISTANT SOLICITOR, THIRTEENTH JUDICIAL CIRCUIT
YOU WILL PLEASE TAKE NOTICE THAT the undersigned will move before the
Presiding Judge of the Thirteenth Judicial Circuit for an order of the Court granting the following
relief:

1. For an Order granting the defendant a stay in this case, which is the alleged intimidation of a witness in a Breach of Peace case that is being prosecuted in Municipal Court against the same defendant. Forcing the defendant to try a case in which he is alleged to have intentionally intimidated, or attempted to intimidate, a witness in another crime is highly prejudicial. The charge itself relates to the defendant being a defendant in another case. The prejudicial effect far outweighs the need to try this case first.
2. The State is bringing this case first so as to taint the jury with the charge of breach of peace. The undersigned requested a speedy trial in the municipal case well over a year ago. Court administration said that the case had been removed from that venue. The defendant deserves the right to have the cases tried in chronological order. If there is no crime, there is no witness. Thus, whether the defendant is guilty of the initial charge is a necessary prerequisite to trying this case.

WHEREFORE, the undersigned counsel respectfully requests that a trial date be stayed until such time as the municipal court charge can be resolved.

Respectfully Submitted,



Donald L. Smith
Attorney for the Defendant
122 N. Main Street
Anderson SC 29621
Telephone: (864) 642-9284
Facsimile: (864) 642-9285
attorneydonaldsmith@email.com

Anderson, South Carolina
January 14, 2015.

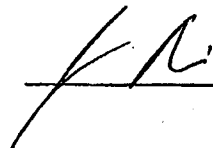
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
INTIMIDATION OF A WITNESS

At a Court of General Sessions, convened on **OCT 21 2014** the Grand Jurors of Greenville
County present upon their oath:

That COURTNEY RAY MITCHELL did in Greenville County, on or about the 26th day of July 2013, by threat or force, intimidate or impede, or attempt to intimidate or impede, VELMA JONES, a witness or potential witness in a criminal case, in the discharge of her duty, and/or did destroy, impede or attempt to obstruct or impede the administration of justice in a court. This is in violation of §16-9-0340 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

WITNESSES

G S Wood

Greenville Police Department

7/29/2013

ARREST WARRANT NUMBER

2013A2320602021

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Gerty

Foreperson of Petit Jury

Date:

2-12-15

DOCKET NO. 2013-GS-23-

JHF

008607

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2013

THE STATE

vs.

COURTNEY RAY MITCHELL

Indictment for

2451

INTIMIDATION OF A WITNESS

VIOLATION § 16-09-0340

ENTERED
ACCT. *mx*

FILED

CCT 03 2013

Clerk of Court
Greenville County

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of General Sessions
R. Keith Kelly, Circuit Court Judge

Appellate Case No: 2015-000517

RECEIVED

APR 05 2017

SC Court of Appeals

THE STATE

RESPONDENT,

v.

COURTNEY RAY MITCHELL

APPELLANT.

CERTIFICATE OF COUNSEL

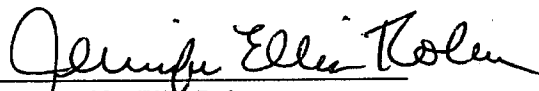
Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

ALAN WILSON
Attorney General

JENNIFER ELLIS ROBERTS
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Judicial Circuit

BY:


Jennifer Ellis Roberts
Bar # 79818

Office of the Attorney General
Post Office Box 11549
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(803) 734-3727

ATTORNEYS FOR RESPONDENT

April 5, 2017