

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

VOLUME I OF II

Appeal from Bamberg County

Honorable R. Lawton McIntosh, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HOMER ARTHUR JAMES,

APPELLANT

APPELLATE CASE NO. 2016-002046

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
State’s Exhibit No. 62 (Video) and State’s Exhibit No. 80 (Photograph)**

State of South Carolina
County of Bamberg

Court of General Sessions

State	)	
	)	
	)	Transcript of Record
v.	)	2014-GS-05-209
	)	
Homer Arthur James	)	
	)	
<u>Defendant.</u>	)	

August 8, 2016
Bamberg, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

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

David Miller, Deputy Solicitor
Bill Weeks, Deputy Solicitor
Michael Emer, Assistant Solicitor
Attorney for the State

Wallis Alves, Assistant Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
3	COURT'S EXH. 1	DMH Eval.	12	12
4	COURT'S EXH. 2	E-mail	122	122
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P R O C E E D I N G S

* * *

HOMER JAMES

being first duly sworn, testified as follows:

THE DEFENDANT: Yes, ma'am.

MR. MILLER: Your Honor, before the Court is Homer Arthur James. Mr. James is charged in Indictment 2014-GS-05-209 with armed robbery. Your Honor, the basic facts of the alleged indictment are that on June 5th, 2014, at approximately 1:30 p.m., the Enterprise Bank in Denmark, South Carolina in Bamberg County was robbed by two men. As the bank was being robbed, a third man waited nearby in a Pontiac Grand Am.

Following the robbery, a description of the Grand Am was broadcast to surrounding law enforcement agencies. Shortly thereafter the chief of the Olar Police Department saw the vehicle and began to follow it. The driver of the vehicle failed to stop at a stop sign causing the chief to initiate his blue lights. At that point the vehicle drove away at a high rate of speed with the chief in pursuit. Eventually the vehicle wrecked and the occupants fled on foot. The SLED dog team searched for the defendants throughout the evening but were

1 unable to locate them.

2 Late in the evening of June 6th, 2014, the next
3 night, officers with the Bamberg County Sheriff's
4 Office were dispatched for a report of suspicious
5 activity near the Govan Fire Department in Bamberg
6 County. When Captain Eddie Williams of the Bamberg
7 County Sheriff's Office arrived, he observed a --
8 what they call the Govan fire training trailer. It
9 was a trailer out there beside where the fire
10 department was. He saw some of the firemen there
11 and they told him that they hadn't seen anybody that
12 evening, but that that trailer was probably a place
13 where people would go hide if they were trying to
14 hide.

15 So Captain Williams went around to the trailer,
16 and as he approached it, the defendant walked out of
17 the trailer not wearing a shirt, wearing black
18 pants, and started yelling at him about why are you
19 on my property, what are you doing, get out of here.
20 Captain Williams wanted to identify him, confronted
21 him and, ultimately, the shirtless individual
22 dropped his hands and ran off.

23 Captain Williams started to pursue him. There
24 was another individual who took off out of the
25 trailer -- a second guy who took off out of the

1 trailer. A perimeter was established, the dog team
2 was brought back out from SLED. And that night at
3 about 10:00, Leon James, who was a co-defendant, who
4 apparently -- we don't know of any way that he's
5 related to Homer James. But Leon James, one of the
6 co-defendants, was arrested that night.

7 As that was going on, Bamberg County got a call
8 about another individual that was walking with a
9 cane or a stick down Highway 64 dressed in all black
10 clothing. They went out and made contact with that
11 guy, and Lewis Garvin, who was another co-defendant
12 in the case, was arrested.

13 The next morning, SLED agents, when they got
14 out with the dog team on the night of the 6th, they
15 basically rested down in this field -- this
16 cornfield that Mr. James had just appeared out of,
17 and the next morning they started tracking again and
18 they were able to take Mr. James into custody and
19 take him to the Bamberg County jail where he has
20 remained since that time. So he was actually
21 arrested on June 7th of 2014.

22 Your Honor, bond was denied for all of the
23 defendants. All of the defendants, including
24 Mr. James, have prior histories of armed robbery and
25 served time in the department of corrections for

1 armed robbery. All of the defendants were facing
2 life without parole as repeat most serious
3 offenders. Leon James went to trial in late
4 November, early December of 2015. Lewis Garvin pled
5 guilty on the eve of that trial.

6 We have a number of motions today because now
7 we're prepared to try Mr. Homer James, and he's the
8 last of the three defendants to be tried. At some
9 point prior to Ms. Alves being appointed to
10 represent Mr. James, his counsel at that time felt
11 there was a need to have him evaluated by the South
12 Carolina Department of Mental Health to determine
13 his competency to stand trial.

14 He was in fact evaluated and, according to the
15 report, which I understand Ms. Alves doesn't have
16 any objection to and I will pass a copy up to the
17 Court, this report was issued on February 24th of
18 2015 by Dr. Samantha Horsley. She was with the
19 department of mental health at the time. She is now
20 with the department of juvenile justice. She found,
21 after examining Mr. James, that he was competent to
22 stand trial.

23 Your Honor, for the purposes of this hearing we
24 contacted DMH and we tried to get Ms. Horsley here
25 today, but she was not able to be here because of

1 her job responsibilities with DJJ, so DMH was nice
2 enough to send to us a backup, Dr. Gaskins, who is
3 here from DMH. My understanding is that he has
4 talked to Mr. James this morning. And our first
5 hearing would be a Blair hearing where Dr. Gaskins
6 would be allowed to testify.

7 THE COURT: All right. Call your witness,
8 please, sir.

9 MR. MILLER: Your Honor, the State calls
10 Dr. Matthew Gaskins.

11 MATTHEW GASKINS

12 being first duly sworn, testified as follows:

13 THE WITNESS: I do.

14 DIRECT EXAMINATION

15 BY MR. MILLER:

16 Q. Good morning, Dr. Gaskins.

17 A. Good morning.

18 Q. Would you state your full name for the record,
19 please.

20 A. Matthew English Gaskins.

21 Q. Dr. Gaskins, who are you employed by?

22 A. I'm employed by the department of mental health
23 as the forensic psychiatric service chief.

24 Q. And what do you do there for the department of
25 mental health?

1 A. Primarily what I do is I do evaluations for
2 people who are being evaluated for competency to
3 stand trial or for criminal responsibility.

4 Q. And what kind of education or background do you
5 have to have to do those types of evaluations?

6 A. Well, my educational background is I graduated
7 from the University of South Carolina with a
8 Bachelor of Science and Exercise Science in 2005. I
9 graduated with my Doctorate in medicine from the USC
10 School of Medicine in 2010, after which I went to
11 the general psychiatry residency training program at
12 Palmetto Health and finished that in 2014 serving as
13 their chief resident in general psychiatry.
14 Following that I completed a one-year forensic
15 psychology fellowship that ended in 2015.

16 Q. Have you ever evaluated somebody for competency
17 to stand trial in your capacity with the department
18 of mental health?

19 A. Yes, sir. I've been doing these types of
20 evaluations, averaging two a week, for the last two
21 and a half years.

22 Q. So have you done, would you say, over 100 of
23 these evaluations?

24 A. Yes.

25 Q. Have you ever been qualified as an expert

1 witness before?

2 A. Yes, sir.

3 Q. In South Carolina state court?

4 A. Yes.

5 MR. MILLER: Your Honor, at this time the State
6 would submit Dr. Matthew Gaskins as an expert
7 witness.

8 THE COURT: In the area of capacity evaluations
9 or any other --

10 MR. MILLER: With regard to
11 competency-to-stand-trial evaluations.

12 THE COURT: Any voir dire, Ms. Alves?

13 MS. ALVES: No, Your Honor. Judge, I believe
14 that Dr. Gaskins' expertise is in the area of
15 forensic psychiatry which would encompass the
16 determination of competency, and I don't have any
17 objection to him being designated as an expert in
18 that area.

19 THE COURT: All right. He will be so
20 qualified.

21 BY MR. MILLER:

22 Q. Dr. Gaskins, have you had an opportunity to
23 review the evaluation that was done by Dr. Horsley,
24 Samantha Horsley, and dated February 24th of 2015
25 with regard to the defendant in this case, Homer

1 James?

2 A. Yes.

3 Q. And after reviewing that, have you had an
4 opportunity to speak with Mr. James?

5 A. Yes.

6 Q. And what were your general impressions having
7 reviewed the -- having reviewed the evaluation that
8 was done as well as speaking with Mr. James?

9 A. Well, after speaking with Mr. James this
10 morning, we did about a 30-minute interview, and
11 I -- based on that interview, I agree with the
12 conclusions of Dr. Horsley that Mr. James does have
13 the capacity to stand trial.

14 Q. Is he -- in your questioning or your interview
15 with Mr. James, did you find that he was capable of
16 assisting his defense attorney with his defense?

17 A. Yes.

18 Q. Did you find any kind of concerns or were any
19 concerns raised about his ability to understand what
20 was going on and to cooperate with his defense?

21 A. No concerns.

22 Q. Okay.

23 MR. MILLER: Your Honor, the State would ask
24 that the evaluation of Dr. Horsley that was handed
25 up be made a Court's exhibit for the purposes of

1 this Blair hearing. And that would be all the
2 questions that we have for Dr. Gaskins.

3 THE COURT: All right. Any objection,
4 Ms. Alves?

5 MS. ALVES: No, Your Honor.

6 THE COURT: All right. Admitted as Court
7 Exhibit No. 1. Cross-examination, Ms. Alves?

8 (Court's Exhibit No. 1 marked for
9 identification and admitted into evidence.)

10 CROSS-EXAMINATION

11 BY MS. ALVES:

12 Q. Dr. Gaskins, in your questioning of Mr. James,
13 are you satisfied that he understands the charges
14 against him, the consequences, and the court
15 procedures?

16 A. Yes, ma'am.

17 Q. Okay. I don't have any further questions.

18 MR. MILLER: Your Honor, the State has no more
19 witnesses.

20 THE COURT: All right. Thank you, sir. You
21 may step down.

22 Anything further from the Defense?

23 MS. ALVES: No, Your Honor.

24 THE COURT: All right. I will find that
25 Mr. James is competent to assist his lawyer, has a

1 factual understanding of the proceedings against
2 him, and is competent to stand trial.

3 MR. MILLER: Thank you, Your Honor.

4 Your Honor, the next matter that we would need
5 to take up is a Jackson vs. Denno hearing regarding
6 some statements that were alleged to be made by
7 Mr. James following his arrest. With regard to the
8 Jackson vs. Denno, Your Honor, the State would call
9 Agent Jeff Croft, State Law Enforcement Division.

10 JEFF CROFT

11 being first duly sworn, testified as follows:

12 THE WITNESS: Yes, sir.

13 DIRECT EXAMINATION

14 BY MR. MILLER:

15 Q. Good morning, Agent Croft.

16 A. Good morning, sir.

17 Q. Agent Croft, would you state your name for the
18 record.

19 A. Jeff Croft.

20 Q. And who do you work for?

21 A. South Carolina Law Enforcement Division,
22 commonly known as SLED.

23 Q. How long have you worked for them?

24 A. A little over four years now.

25 Q. And June 5th, 6th, and 7th of 2014, were you

1 working for SLED at that time?

2 A. Yes, sir, I was.

3 Q. And were you involved in the armed robbery of
4 the Denmark Enterprise Bank that occurred on June
5 5th of 2014?

6 A. Yes, sir, I was.

7 Q. And what was your involvement with the
8 investigation in that matter?

9 A. We were requested to come in as an assisting
10 agency. At the time I responded to the location
11 where the suspect vehicle had wrecked, began to set
12 up perimeter, and assisted with the tracking of the
13 individuals.

14 Q. Okay. Did you have any experience prior to
15 that working with the dog teams or working with
16 dogs?

17 A. Yes, sir, I did. I ran with the dog team for
18 approximately eight years.

19 Q. Okay. And where did you run with the dog team
20 prior to working for SLED?

21 A. Barnwell County.

22 Q. Okay. And were you present whenever the
23 defendant, Homer James, was taken into custody on
24 the morning of the June 7th, 2014?

25 A. I was present when they brought him out of the

1 woods, yes, sir.

2 Q. Okay. Can you explain for the Court the
3 circumstances of where you were and what was going
4 on at that time?

5 A. We had ran that night up into the early morning
6 hours. Our tracking team actually took a break to
7 change their clothes, change their shoes, put on
8 some dry clothing. We began to track at daylight
9 because we had some light. They tracked into the
10 wood line. I was contacted by captain -- then
11 Lieutenant Chip Steppe with our dog team and advised
12 that they had taken an individual into custody. He
13 told me where they were at and I went to their
14 location.

15 Q. And were you traveling by car at that time?

16 A. Yes, sir, I was. I was on the perimeter trying
17 to make sure that we maintained the perimeter ahead
18 of the dog team.

19 Q. And you said earlier that you had worked for
20 Barnwell County. You're relatively familiar with
21 this area of the state?

22 A. Yes, sir.

23 Q. Okay. Explain for the Court where it was that
24 you went whenever you got word from Lieutenant
25 Steppe that somebody had been taken into custody.

1 A. The dog team took the break behind the Govan
2 Fire Department. When we restruck, they went down
3 what I know as Govan Road in Barnwell County.
4 It's -- Brubaker Farms is the farm that I know it
5 as. They described the area to me. We were able
6 to -- they were able to talk me in to where they
7 were at. I turned down the driveway, went down to
8 the bottom of a hayfield where they brought him out.

9 Q. And did anybody else from SLED show up?

10 A. There was several people from SLED that were
11 there.

12 Q. Was everybody going to that area because that
13 was where he was?

14 A. That's correct.

15 Q. Were there any other vehicles or types of
16 vehicles that showed up in the hayfield?

17 A. We landed our helicopter in the hayfield. We
18 also brought in one of the county cars to actually
19 do the escort.

20 Q. Okay. Describe to the Court what happened
21 whenever you saw Mr. James come out of the woods.

22 A. When Mr. James came out of the woods, several
23 of the dog team members, to include Lieutenant
24 Steppe at the time, came out into the edge of the
25 hayfield. We landed the helicopter in the corner of

1 the hayfield. Everybody, the dog guys, along with
2 the defendant, sat down on the ground. He was
3 handcuffed. We made sure that he was okay. He was
4 dehydrated, needed something to drink. We gave him
5 some water -- un-handcuffed him and gave him some
6 water.

7 Q. So he was in custody at that point?

8 A. Yes, sir, he was.

9 Q. All right. Did anybody Mirandize him, read him
10 his Miranda rights?

11 A. No, sir. There was no questioning going on.

12 Q. Okay. And at that point in time when he's on
13 the ground, you said he's not wearing handcuffs?

14 A. He was wearing handcuffs when he initially sat
15 on the ground --

16 Q. Okay.

17 A. -- but we did take the handcuffs off of him so
18 he could drink some water.

19 Q. Okay. And you provided him with water?

20 A. Yes, sir, we did.

21 Q. Okay. Did anyone try to talk to him? Did
22 anybody try to question him about the circumstances
23 of his arrest?

24 A. There was no questioning regarding
25 circumstances, no, sir.

1 Q. Was anything said at all by the defendant or to
2 the defendant?

3 A. I think I asked him his age. He told me he was
4 approximately 53 years old, I think is what he said.
5 He began to talk to us about large rattlesnakes,
6 some of the biggest rattlesnakes he'd ever seen. He
7 said -- he said that it wasn't even a real gun. He
8 also told us that -- we did ask, you know, you're
9 53, you're in good shape, how do you stay in shape?
10 At that time he told us that he had boxed in the
11 past. And it was just casual conversation.

12 Q. And when you are testifying, you're not -- it's
13 not like in a conversation. Did you record this
14 interaction at all?

15 A. No.

16 Q. No video?

17 A. No.

18 Q. No audio?

19 A. No.

20 Q. Why not?

21 A. It wasn't an interview. We had been tracking
22 the individuals for several days and we were making
23 sure he was okay. He had water. It was just casual
24 conversation.

25 Q. Were any of his statements that he made in

1 response to any kind of questioning that anyone did
2 of him?

3 A. No, sir.

4 Q. Were you or anybody else threatening him in
5 order to get him to talk?

6 A. No, sir.

7 Q. Did anybody intimidate him into getting him to
8 talk?

9 A. No, sir.

10 Q. Did anyone tell him that they wouldn't give him
11 water until he talked?

12 A. No, sir. That was one of the first things we
13 did was try to get water in there to him.

14 Q. You had indicated that you thought he was
15 dehydrated. Was it pretty apparent that he was
16 dehydrated at the time?

17 A. Yes, it was.

18 Q. Okay. The statement that he made that it
19 wasn't even a real gun, do you recall any kind of
20 questioning that made him say that it wasn't even a
21 real gun?

22 A. There was no questions concerning the incident,
23 period.

24 Q. Was anybody even talking about the robbery at
25 that point in time?

1 A. No, we weren't. We hadn't even told him why he
2 was in custody.

3 Q. Did he ever ask why he was in custody?

4 A. No, he didn't.

5 Q. Do you recall -- you said that you had asked
6 him how old he was and what kind of things that he
7 did to stay in shape. You had mentioned something
8 about rattlesnakes, him seeing a lot of rattlesnakes
9 or saying he'd seen a lot of rattlesnakes, and that
10 it wasn't even a real gun. Do you recall anything
11 else that he said or any other statements he had
12 made?

13 A. He said that it was the stupidest thing he'd
14 ever done in his life.

15 Q. The stupidest thing he'd ever done. Is there
16 anything else that you can recall?

17 A. No, sir.

18 Q. Please answer any questions Ms. Alves might
19 have for you.

20 A. Thank you.

21 CROSS-EXAMINATION

22 BY MS. ALVES:

23 Q. You testified that -- now, this was initially
24 investigated by the Denmark Police Department?

25 A. The initial call came in from the Denmark

1 Police Department.

2 Q. And SLED responded as an assisting agency?

3 A. We were requested at that time to take lead of

4 the investigation.

5 Q. And who was the lead investigator on the case?

6 A. David Williams.

7 Q. And what was your role on the case?

8 A. Support for David Williams.

9 Q. Okay. And now this incident occurred on June

10 5th at around 1:30 in the afternoon?

11 A. I think that's right, yes, ma'am.

12 Q. All right. And -- but your testimony was that

13 you -- that Mr. James was actually arrested on the

14 7th.

15 A. I think it was the 7th. I'm not exactly sure

16 of the exact date.

17 Q. Well, that was based on your testimony earlier.

18 Would you agree that it was the 7th that he was --

19 around 9:00 in the morning?

20 A. Yes.

21 Q. Okay. And so what was going on from June the

22 5th at 1:30 until June the 7th at 9:00 a.m.?

23 A. Okay. We had agents respond to the bank.

24 David Williams and some other agents responded to

25 the bank. I responded to the scene where the

1 vehicle wrecked. Our dog team from SLED was
2 contacted, a perimeter was set, we tracked as long
3 as weather would permit.

4 A bad storm came up and it was unsafe for us to
5 be out there at that time, and we called the search,
6 at that time, off. I was notified that afternoon or
7 the next afternoon regarding individuals that had
8 been seen in the general area, responded back out,
9 and we began to track again.

10 Q. Okay. Now, for the first day, the dog team was
11 called out?

12 A. Yes.

13 Q. And how many people are -- responded on the dog
14 team?

15 A. Ma'am, I don't know. I don't have a number of
16 people. We had people from state patrol, we had
17 people from DNR, we had people from the county
18 units, city units, SLED units. I don't recall how
19 many actual dog team members came.

20 Q. There were several?

21 A. There were a number of members on the dog team.

22 Q. And they were all police officers?

23 A. Yes.

24 Q. And you said they tracked for several hours
25 that day?

- 1 A. They did.
- 2 Q. Do you remember what time they broke off?
- 3 A. I do not.
- 4 Q. And then the dog team was called back out the
- 5 next day. So --
- 6 A. Yes, ma'am.
- 7 Q. -- we're talking about on the 6th then?
- 8 A. That's correct.
- 9 Q. And where did they start tracking from?
- 10 A. From the Govan Fire Department.
- 11 Q. You were called to the scene of the Govan Fire
- 12 Department for suspicious people?
- 13 A. That is correct.
- 14 Q. Do you remember what time that was?
- 15 A. I would say it would probably be somewhere
- 16 around between 6:00 and 7:00 is when I actually got
- 17 the call, maybe a little later. I'm not sure. I
- 18 know where I was at when I got called.
- 19 Q. So it was early evening?
- 20 A. Yes.
- 21 Q. And that's when the dog team reported to the
- 22 Govan Fire Department?
- 23 A. Yes, that's correct.
- 24 Q. And they started tracking from that area?
- 25 A. From that general area, yes, ma'am.

1 Q. And then you tracked onto the -- what you
2 referred to as the Brubaker Farms?

3 A. That's correct.

4 Q. And how many people were present on the dog
5 team at that time?

6 A. Again, it was at least three. I'm not sure of
7 the number of people on the dog team that was
8 actually running the track.

9 Q. There were multiple officers?

10 A. Yes.

11 Q. Okay. Were there any cars with -- did any cars
12 go along with them?

13 A. No. They were in the woods, so no cars could
14 go.

15 Q. And you said you were in your vehicle.

16 A. Yes, ma'am.

17 Q. On the perimeter?

18 A. Yes, ma'am.

19 Q. Do you recall exactly where you were?

20 A. I was between Govan Road, 321. Then I can't
21 recall the name of the road that crosses Govan Road.

22 Q. All right. Were there any other officers out
23 on the perimeter in their vehicles as well?

24 A. Yes, there was.

25 Q. And you were -- were you called when -- I

1 believe the -- when the first two men were
2 apprehended?

3 A. Yes, I was.

4 Q. And were you told how many people you were
5 looking for?

6 A. Ma'am?

7 Q. How many people were you looking for?

8 A. We didn't have a number of people. I didn't
9 have a number of people at that time.

10 Q. Okay. So -- but after the first two people,
11 the dog team continued to search?

12 A. Yes, they did.

13 Q. And then the dog team -- once -- then at some
14 point you were notified that Mr. Homer James was
15 found in the woods?

16 A. That's correct.

17 Q. And how long did it take you to get to that
18 location?

19 A. From the time I was notified?

20 Q. Yes.

21 A. Just a few minutes.

22 Q. And did any other officers in their vehicles
23 accompany you -- or come with you down to that
24 location?

25 A. At that time, no, ma'am.

1 Q. So you were the only officer in a vehicle?

2 A. I was the only officer in a vehicle at that
3 time. Other officers eventually came in when we had
4 Mr. James escorted out.

5 Q. So at the time that you came up to the location
6 that you're telling us about, had Mr. James been
7 walked out of the woods yet?

8 A. He was being walked out as I pulled in.

9 Q. Okay. And you were the only one in a vehicle
10 at that point?

11 A. Yes, I was.

12 Q. Is your vehicle equipped with a camera or
13 audio?

14 A. No, it's not.

15 Q. And then you said that other vehicles arrived
16 on the scene?

17 A. The escort vehicle arrived on scene, we landed
18 our helicopter in the field, and I don't know of any
19 other vehicles that came in at that time.

20 Q. Okay. Who was driving the escort vehicle?

21 A. I don't know who did the escort. It was
22 Bamberg County that did it.

23 Q. Okay. Do you know if -- is that vehicle -- did
24 that vehicle have cameras?

25 A. I don't know.

1 Q. Okay. And you've testified that when you saw
2 Mr. James -- Mr. Homer James being brought from the
3 woods, you said that the dog team members were with
4 him.

5 A. That's correct.

6 Q. Do you remember how many people were
7 surrounding him?

8 A. There was at least three.

9 Q. At least three. Do you remember who they were?

10 A. Chip Steppe, I think Stevie Sly. I'm not sure
11 of who the other one is. It may have been
12 Cukarillo.

13 Q. Okay. And you said that they sat Mr. James on
14 the ground and then uncuffed him and gave him some
15 water?

16 A. They all sat on the ground.

17 Q. Everybody sat on the ground?

18 A. They all sat -- I didn't sit on the ground;
19 they all sat on the ground.

20 Q. With Mr. James?

21 A. Yes.

22 Q. How close were they?

23 A. They were just sitting around in a circle
24 having casual conversation.

25 Q. Okay. Who initiated the casual conversation?

1 A. Mr. James did.

2 Q. Mr. James? Nobody said anything to him at all?

3 A. Asked him is he okay and offered him some
4 water. Other than that, no one said anything.

5 Q. Now, you said he had obvious signs of
6 dehydration.

7 A. He was extremely sweaty, he was cut up, he was
8 scratched up. It appeared that he needed something
9 to drink. I mean, he'd been running for a couple of
10 days.

11 Q. So you're saying that you saw cuts and
12 scratches on Mr. James?

13 A. He was scratched up from running in the woods.

14 Q. Okay. You saw these scratches?

15 A. Ma'am?

16 Q. You saw these scratches?

17 A. He didn't have a shirt on. Yes, ma'am.

18 Q. Okay. And did you take any pictures of him?

19 A. I didn't have a camera.

20 Q. Okay. Do you know if anybody did?

21 A. No one there had a camera. No, ma'am.

22 Q. Do you know if anybody took pictures of them --

23 A. I don't have any idea.

24 Q. -- at the jail?

25 A. Once he was escorted from the scene, I never

- 1 spoke to him again.
- 2 Q. Okay. Were there any other signs of
- 3 dehydration that you noticed?
- 4 A. When we offered water, he gladly accepted the
- 5 water.
- 6 Q. Do you know how many bottles of water he drank?
- 7 A. No, ma'am, I don't know. It was more than one.
- 8 Q. And he never asked y'all any questions?
- 9 A. About?
- 10 Q. You said while he was in custody --
- 11 A. He never asked.
- 12 Q. What questions did he ask?
- 13 A. He just made statements. He made statements
- 14 concerning the big rattlesnakes, he made statements
- 15 concerning not being a real gun, made a statement
- 16 that it was stupidest thing he had ever done.
- 17 Q. Okay. Now, why were y'all making casual
- 18 conversation with Mr. James?
- 19 A. We were waiting on the escort vehicle to come
- 20 in. He started talking, so we just carried on the
- 21 casual conversation.
- 22 Q. All right. And you had no way to record any of
- 23 this?
- 24 A. No, ma'am.
- 25 Q. Now, did you do a report or any kind of

1 statements regarding --

2 A. It wasn't an interview, so we were just sitting
3 there. We didn't think it was -- I mean, we just
4 made casual conversation.

5 Q. Okay. Well, did you do a report regarding your
6 work on this case?

7 A. No, I did not.

8 Q. Did you do any kind of statements regarding
9 your work on this case?

10 A. No.

11 Q. And you never gave any kind of -- and you never
12 did -- you never -- so you never wrote down what
13 you're telling us Mr. James said?

14 A. No, I did not.

15 Q. Tell me exactly what he said.

16 A. I can't tell you exactly what he said. That's
17 just things that stick out during the casual
18 conversation that I remember he said.

19 Q. Okay.

20 A. I wasn't taking notes because it wasn't an
21 interview. I wasn't -- we weren't questioning him.

22 Q. All right. How long have you been an
23 investigator?

24 A. Twelve years.

25 Q. So you would agree that you're an experienced

1 investigator?

2 A. I think I've got some experience. Yes, ma'am.

3 Q. Okay. And you considered -- did you

4 consider the statements that Mr. James -- that

5 you're saying Mr. James made important?

6 A. At the time we didn't think anything about it.

7 Q. Well, over the past two years and two months

8 since this -- the bank robbery occurred, do you

9 consider those statements important?

10 A. I think they are, yes.

11 Q. When did you ever write them down?

12 A. I never did. It wasn't an interview and I'm

13 going off what I can remember the comments being

14 said.

15 Q. But you don't remember exactly what was said?

16 A. I don't remember word for word, no, ma'am.

17 Q. What was -- what did anybody else say?

18 A. Lieutenant Steppe made mention of he was in the

19 top five of the people he ever ran.

20 Q. He said that that night out there sitting on

21 that ground?

22 A. Yes, he did.

23 Q. Okay. And what else did he say?

24 A. I think Lieutenant Steppe -- or Captain Steppe

25 is going to be testifying here in a little bit. I

1 can't --

2 Q. Well, I'm asking you. What do you recall?

3 A. I recall him making mention of that, making
4 mention of the condition he was in, his shape, I
5 remember the conversation concerning his boxing in
6 the past.

7 Q. Okay. Well, did you tell -- you said that
8 Investigator David Williams was the lead
9 investigator on this case?

10 A. That's correct.

11 Q. When did you tell Investigator Williams about
12 these statements?

13 A. When we learned that there was important
14 information concerning what happened at the scene.
15 At the time we didn't have a whole lot of
16 information from the scene.

17 Q. So you're saying you told Investigator Williams
18 about these statements?

19 A. He had been made aware of what comments was
20 made, yes.

21 Q. When was he made aware?

22 A. In the last -- since the arrest.

23 Q. Well, was it in June right after Mr. Homer
24 James was arrested?

25 A. I don't recall the date that he was made aware.

1 Q. All right. Well -- and you didn't do any kind
2 of report or write this down?

3 A. No, ma'am. It was not a formal interview,
4 there was no questioning going on, there were no
5 notes taken. It was casual conversation sitting on
6 the ground while we were waiting on an escort
7 vehicle, giving him some water.

8 Q. With a man that you said had obvious signs of
9 dehydration?

10 A. I'm sorry?

11 Q. With a man that you said had obvious signs of
12 dehydration?

13 A. Yes.

14 Q. And y'all didn't question him to determine his
15 mental state?

16 A. We asked him if he was okay. We did ask if he
17 needed medical attention. We gave him the bottles
18 of water, he said he was fine. But other than that,
19 that was general making sure he's okay.

20 Q. Okay. Well, since these statements weren't
21 written down, how would you think that perhaps the
22 solicitor would know about them?

23 A. I'm sorry?

24 Q. How did you think anybody would know about
25 these statements that you're saying you heard if

1 they're not written down anywhere?

2 A. I was made aware that the statements were of
3 some concern and I was asked directly about them.

4 Q. When were you asked?

5 A.. Again, I don't know the exact date when I was
6 asked.

7 Q. Was this in 2014?

8 A. Ma'am, I don't remember --

9 Q. Okay.

10 A. -- when I was asked.

11 Q. Do you recall that you were asked about these
12 when there was -- when the solicitor was preparing
13 for Leon James' trial last year in September?

14 A. I know it was already brought up.

15 Q. It had been brought up prior to September?

16 A. As far as I know, yes, ma'am.

17 Q. Do you know by who?

18 A. No, ma'am, again, I don't.

19 Q. And you're saying that he said something about
20 rattlesnakes but you don't remember what?

21 A. He said they were the biggest rattlesnakes he'd
22 ever seen in his life.

23 Q. Okay. And you remember that exactly?

24 A. It kind of stands out. You're in the middle of
25 a hayfield and that's the comment that he made.

1 Q. All right. And he said something about it
2 wasn't a real gun?

3 A. Yes.

4 Q. And today you're telling us he said something
5 about the stupidest thing he'd ever done in his
6 life?

7 A. Yes.

8 Q. And do you know -- have you ever told the State
9 about that statement previously, about it being the
10 stupidest thing he'd ever done in his life? The
11 solicitor -- by the State I mean have you ever told
12 the solicitor about that?

13 A. As far as I know, they were aware of everything
14 I've said here today.

15 Q. But you never wrote that down?

16 A. No, ma'am.

17 Q. And you can't say what he said exactly?

18 A. I can't tell you word for word what he said.

19 MS. ALVES: I beg the Court's indulgence one
20 moment.

21 THE COURT: Yes, ma'am.

22 MS. ALVES: I don't have any further questions.

23 THE COURT: Redirect?
24
25

1 REDIRECT EXAMINATION

2 BY MR. MILLER:

3 Q. Agent Croft, you said that the original
4 call-off for the dog team on the 5th of June, that
5 they got called off because of the bad weather, the
6 bad storm that came up; is that correct?

7 A. Yes, sir.

8 Q. And you said that sometime on the 6th you got
9 called back out and you weren't sure exactly what
10 time. But where were you when you got that call?

11 A. I had taken my family to eat supper at Duke's
12 Bar-B-Que over here in Bamberg.

13 Q. Okay. And what happened from there?

14 A. I was in my personal vehicle. I did not have
15 the equipment with me, everything. I was asked to
16 go to Govan. On my way to Govan I got contacted by
17 Ben Hay with the Bamberg County Sheriff's Office and
18 advised that one of the deputies had already went to
19 that address.

20 When I got there, I think it's -- Eddie was
21 there. I asked Eddie to go ahead and begin setting
22 up the perimeter. I took my family home and got my
23 patrol vehicle and all of the equipment and I met
24 back at the Govan Fire Department. The perimeter
25 was set, our dog team arrived, and we began to

1 track.

2 Q. Now, you said that the next morning whenever
3 Mr. James got arrested and got taken out of the
4 woods, your vehicle was there in the hayfield
5 because they had called you to that location and you
6 saw him coming out. But your vehicle is not a
7 transport vehicle, correct, it doesn't have a cage?

8 A. It does not have a cage, no, sir..

9 Q. And y'all were waiting on a Bamberg County
10 vehicle to come and get him?

11 A. Yes, we were.

12 Q. When that Bamberg County vehicle got there,
13 what happened?

14 A. He was -- got up off the ground and was
15 escorted over to the vehicle and got in the vehicle
16 and was gone.

17 Q. Now, you indicated that y'all -- the only
18 questions that anyone asked of him were questions to
19 make sure he was okay. Did anyone ask any questions
20 regarding the incident itself?

21 A. No, they did not.

22 Q. Do you know the road that the vehicle crashed
23 on, what the name of that road was?

24 A. I know it's one road over from Highway 321.
25 I'm not --

1 Q. Let me see if it were to refresh your
2 recollection --

3 A. Weed Road or something like that.

4 Q. Okay. So from Weed Road where the vehicle
5 crashed in Olar, how far was it -- do you know how
6 far it was to the Govan Fire Department?

7 A. I think it's approximately three miles.

8 Q. And from the Govan Fire Department, how close
9 by -- how far away was the training trailer where
10 Mr. Williams first encountered Mr. James?

11 A. It was within a hundred yards.

12 Q. And from that location, which was within a
13 hundred yards from the Govan Fire Department, how
14 far was it to the back of Mr. Brubaker's farm where
15 Mr. James was brought out of the woods?

16 A. Approximately three miles.

17 Q. So this -- starting from the Govan Fire
18 Department, this is a pretty big perimeter, was it
19 not?

20 A. Yes, it was. And it's out in the country.
21 There's not a lot of side roads that you can get to
22 actually close the perimeter down, so it was a large
23 perimeter.

24 Q. That's all the questions I have.

25 THE COURT: Thank you, sir. May this officer

1 be excused?

2 MR. MILLER: For the purposes of this hearing,
3 Your Honor. We'll have him back later on in the
4 week.

5 THE COURT: Okay. Thank you, sir. Let's take
6 about a ten-minute break real quick.

7 MR. MILLER: Yes, sir.

8 (Short break 12:08 PM - 12:26 PM.)

9 MR. WEEKS: The State would call Captain, I'm
10 going to call him, Chip Steppe. His real name is
11 Claude Steppe, IV.

12 MS. ALVES: Your Honor, the defendant is not in
13 here.

14 THE COURT: Oh, I'm sorry. I didn't catch
15 that. Okay. Hold on just a minute so we can get
16 the defendant in here.

17 THE CLERK: I'll go ahead and swear him in,
18 Your Honor.

19 CHIP STEPPE

20 being first duly sworn, testified as follows:

21 THE WITNESS: Yes, sir.

22 (The defendant enters the courtroom.)

23 THE COURT: Mr. Weeks?

24 MR. WEEKS: Your Honor, let the record reflect
25 this is Captain Chip Steppe from SLED.

1 DIRECT EXAMINATION

2 BY MR. WEEKS:

3 Q. You're still employed with SLED?

4 A. Yes, sir, I am.

5 Q. Were you employed there June 5th through the
6 7th of 2014?

7 A. Yes, sir.

8 Q. Tell me a little bit about your background with
9 SLED. What do you do?

10 A. I am the captain over the tactical operations
11 group which consists of SWAT tracking, aviation, and
12 communications.

13 Q. All right. Were you doing the same thing back
14 in June of 2014?

15 A. I was the tracking lieutenant at the time, yes,
16 sir.

17 Q. How long have you been employed with SLED?

18 A. October, 16 years.

19 Q. All right. And tell me just briefly what your
20 different positions have been there. Or have you
21 always been in the same role?

22 A. I've done tracking for probably 90 percent of
23 my time, and then I did, like, nine months in the
24 region, and then a couple months in fugitives.

25 Q. When you say tracking, that's the use of dogs?

- 1 A. Yes, sir.
- 2 Q. And the use of man tracking?
- 3 A. Man tracking, yes, sir, bloodhounds, same
- 4 thing.
- 5 Q. Were you called on in that role in June of this
- 6 year to come to Bamberg County and assist?
- 7 A. Yes, sir, I was.
- 8 Q. Tell me what you did.
- 9 A. The original call was we had information that
- 10 three guys had fled from a bank robbery. We brought
- 11 our dogs down, me and three other guys.
- 12 Q. Tell me those guys' names.
- 13 A. The three guys were Gerard Cukarillo, Stevie
- 14 Sly, and Neal Nelson.
- 15 Q. And they're all SLED agents?
- 16 A. They're currently SLED agents, yes, sir.
- 17 Q. Okay.
- 18 A. We get a call of information that three guys
- 19 fled from the scene -- this was on the original day
- 20 of the call, first day -- came down here, put our
- 21 dogs down, struck a trail. They ran a good trail
- 22 through the woods, identified good tracks, good
- 23 footwear.
- 24 Q. Describe that a little bit for me.
- 25 A. So when we initially receive a call about

1 tracking somebody, we look for some identifiers that
2 tell us exactly who we're tracking and what we're
3 looking -- you know, what we're looking for so we
4 can push from point A to point B.

5 So when we go to the original scene of where we
6 start our trail at, we look for some type of tracks;
7 could be, you know, a Nike track, or could be an
8 Adidas, anything that could be identified of who
9 we're looking for.

10 So we got on a good track, started the dog
11 well. Jessie, that's our dog, struck it well, ran
12 it well. I remember it was a hot, hot day, a hot,
13 hot time. We ran for a period of time. I remember
14 a storm came in, we slowed down and had to take a
15 break. We found good footwear, good tracks.

16 We put Jessie up for a little bit because it
17 got so hot. We put another dog down, Sully, ran him
18 a little bit. You know, we were working through the
19 woods in different areas, crossing ditches and
20 stuff --

21 MS. ALVES: Judge, could I ask Captain Steppe
22 to slow down just a touch?

23 THE COURT: If you don't mind, yes, please.

24 THE WITNESS: Yes, sir. I speak fast. I
25 apologize.

1 So we're working the woods, working the areas
2 from the original scene, still finding tracks that
3 identified the same person we were tracking or the
4 same people we were tracking. We put Sully down,
5 ran Sully for a period of time, rain came in, real
6 hard rain, it slowed us down for a few minutes.

7 We brought Jessie back out because Jessie was
8 doing such a good job. We didn't want to overheat
9 her though because it was so hot. We put her back
10 in. We ended up finding, I think, a belt on a -- in
11 a ditch somewhere, located that belt and went back
12 in.

13 During a period of time as the night went on,
14 we found less and less, we felt like we had lost the
15 trail. We ended up calling the trail during the
16 middle of the night and headed back to Columbia.

17 BY MR. WEEKS:

18 Q. As a result of a call, did you head back to --

19 A. Yes, sir.

20 Q. -- Bamberg County the next day?

21 A. Yes, sir. The OD called me -- operations
22 division called me that night and said, hey, we have
23 information that they had a spotting on the three
24 suspects they were looking for earlier the next day
25 and wanted us to come back.

1 Q. Okay. And did you arrive back to the Govan
2 Fire Department?

3 A. We did, yes, sir.

4 Q. Was that where you staged at?

5 A. Yes, sir, staged over there. There was a
6 mobile home or trailer, something over there in the
7 area that we started off the dogs and got
8 information that the suspects fled behind this
9 mobile home, the fire department, towards a
10 cornfield.

11 Q. Was it a big cornfield?

12 A. Big cornfield, yes.

13 Q. Tall cornfield?

14 A. Tall cornfield. And wet at the time too,
15 matter of fact. I remember that. We put Jessie
16 down again because she'd done such a good job the
17 day before, I had thought, and she struck the trail
18 immediately.

19 And we could see tracks and push and all that
20 going through the corn. And I think our helicopter
21 spotted a hotspot with our FLIR, forward-looking
22 infrared. We were still tracking, I told them to
23 let us keep working because we're doing good, and a
24 few minutes later we had located one of the
25 suspects.

1 Q. Okay. He was apprehended?

2 A. Uh-huh.

3 Q. Go to the next stage. What did you do at that
4 point?

5 A. We apprehended him. We started cutting the
6 area tight because we knew they were together right
7 there -- or cutting it really good, and somebody
8 came to me and says, hey, we caught another one
9 walking down the road.

10 Q. Okay. That's another guy. Let's move to stage
11 three now.

12 A. Stage three. So we're working through the
13 night now. We hadn't found a track in a while. We
14 haven't found the one track that we'd seen earlier
15 because the guy we found earlier had stuff on his
16 foot which wasn't a shoe.

17 So we're working during the night looking for
18 that track, and probably about 7:30 that morning
19 we're cutting the edge of a roadway not far from
20 where we had tracked that last guy -- and when I say
21 not that far, it could be a mile or two miles,
22 whatever, but it wasn't that far for us. And we
23 noticed that track, didn't know how fresh it was,
24 but we figured we'd put the dog in and try it.

25 We put the dog in on that track because it

1 looked just like the track that we had been tracking
2 earlier in the night, and the dog struck it. We
3 wanted to verify that we were on it, so we just kept
4 working the trail, working the trail, and then we
5 came out into a big, open grass field.

6 And as we come out into this big, open, grass
7 field, it's, you know, early in the morning, so the
8 dew is out, and you see a set of tracks going around
9 the field making a circle around the field. So we
10 knew then that we were on it. And when we know
11 we're on it, we pump up our dog, get her real
12 excited, praise her because we know she's doing
13 really good, she's found the man, excite her, and
14 keep working on.

15 Q. Now just to paraphrase, this is kind of in the
16 middle of nowhere, isn't it?

17 A. Yeah, it's in the middle of nowhere.

18 Q. Is it a wooded area?

19 A. It's a wooded area, yes, sir.

20 Q. Timber?

21 A. Timber, some open fields, some cutdowns. I
22 mean, I had no clue where I was, I'll be honest with
23 you.

24 Q. Okay.

25 A. So we're working, working the fields, and we're

1 working -- and this goes on for hours. I didn't
2 have a -- I didn't keep time, I never do. But we
3 ended up working the dog off-lead a lot. When she's
4 that solid on a trail, we can let her go. And it's
5 kind of our thing, we just got to keep up with her,
6 stay with her. She --

7 Q. They wear bells so you can hear her?

8 A. She's got a bell on her so you can hear her.

9 Q. GPS?

10 A. No GPS, not right now. We ain't got that
11 technologically advanced yet. But our guys just
12 keep up with them with the bell. So we run with her
13 with the bell. Well, after we've gone through
14 numerous areas and circled lots of fields and come
15 through some cutdowns and some cutovers, we come
16 down into a bottom and me and -- I had two guys
17 behind me.

18 One of my guys was in front of me and there was
19 a bridge of some type between me and my other guy.
20 And, you know, I'm telling them to look for tracks,
21 find something else to get us out of here because we
22 know we were on him. And, you know, when you get
23 closer to somebody like that with the dog, the dog
24 gets excited and you can tell. Her demeanor
25 changes. So she was excited and I thought he'd be

1 laying right there close to me.

2 Well, in a matter of a minute or so, I looked
3 up and I noticed the suspect between me and one of
4 my agents, which really surprised me because he
5 got -- somehow got between the two of us. We yelled
6 state police, you know, of course we're in full
7 vests, police, we're in multi-cam pants, which is
8 what we wear in the woods to give us a little
9 concealment and protection for us. We contacted
10 him; state police. He gave up. Contacted people on
11 the radio, tried to figure out where we were, we
12 popped out into a big open field.

13 Q. Okay. And who met you at the open fields?

14 A. A couple deputies. Jeff Croft met us over
15 there, some deputies, and then our aviation unit who
16 was up flying for us, they met us over there. We --

17 Q. Tell me what you did when you brought him out
18 of the woods.

19 A. We came out, we were all tired, thirsty,
20 wanting water. We walked him out into the field.
21 To be honest with you, we all just sat on the
22 ground. I -- one of us asked him if he wanted
23 something to drink, he said yeah. Took his
24 handcuffs off of him, give him some water, some
25 Gatorade, we started drinking.

1 I kind of had a conversation with him. I was
2 impressed at the fact that I had run him like I did
3 and the age that he was at because I have
4 18-year-olds who don't last as long as he did and
5 did as well as he did in the woods. And I was
6 actually impressed with him.

7 Q. Did you know anything about the bank robbery or
8 the details of it or anything?

9 A. Not a clue.

10 Q. Did you question him in any way about --

11 A. No.

12 Q. -- the bank robbery or his involvement in it?

13 A. No, sir, not at all.

14 Q. And I'm paraphrasing, you correct me, but were
15 you admiring his endurance?

16 A. I was. You know, a guy his age, to be able to
17 stay in front of us, because I know what we do and I
18 know the people we catch over the years, I was
19 impressed that he could stay in front of us that
20 long.

21 And, I mean, you know, I mentioned to him -- I
22 said, dude, you're probably in the top five of the
23 guys I've ever run like that before. And he
24 mentioned to me that he was a boxer and he'd boxed a
25 good portion of his life.

1 Q. Was anybody asking him questions about the bank
2 robbery?

3 A. No, no. We don't do that.

4 Q. Well, did he make any other comments that stand
5 out in your mind?

6 A. I know he made some comments about how bad the
7 snakes were. He made some comment of how -- offhand
8 comment about how it wasn't a real gun, it was a
9 fake gun, something like that. To tell you exactly
10 what he said, I can't tell you, but I know he made a
11 comment about that.

12 Q. How long were y'all sitting around waiting on
13 transport?

14 A. Just a guess, 20, 30 minutes probably. We were
15 in the middle of nowhere. It took a little while
16 for somebody to get to us. They had to first figure
17 out where we were and then come get to us.

18 Q. How did they find you?

19 A. I think --

20 Q. I'm just curious because I've been out there
21 and it's in the middle of nowhere.

22 A. I think a local person ended up knowing
23 somebody -- a Mennonite person who had a house
24 there, and I think they directed them to where we
25 were.

1 Q. Now, how long had you been running that
2 particular trail when you apprehended him?

3 A. Hours. I mean, I figure if we started at 7:30,
4 we finally left at 12-something. Three or four
5 hours probably.

6 Q. Now tell me about his physical condition. How
7 did he appear to you?

8 A. His hair was disheveled. I think he had a
9 little longer hair. His clothes were muddy, wet, he
10 was scratched up. I mean, he looked like he'd been
11 in the woods for a long period of time. He looked a
12 lot like us; we had been in the woods and we'd been
13 scratched up and soaking wet.

14 Q. Okay. Are y'all trained responders or trained
15 to give medical aid to people that y'all --

16 A. Well, we could give medical aid, yes, sir. You
17 know, he probably was a little bit dehydrated like
18 the rest of us were because we had been on the
19 ground for so long. That's why I offered him the
20 water. So, yeah, he looked a little disheveled like
21 he'd been run through the ringer.

22 Q. Did his speech -- did you notice any affect
23 with his speech or his ability to walk?

24 A. No, not really. No. He seemed fine. He'd
25 been running from us for hours. He seemed to be

1 moving okay.

2 Q. Chip, did you hear anybody threaten him in any
3 way to get him to answer questions?

4 A. No, sir.

5 Q. Anybody talk to him in a derogatory manner?

6 A. No.

7 Q. Coerce him in any way?

8 A. No, sir.

9 Q. After he left in the transport, did you ever
10 see the man any --

11 A. No.

12 Q. -- any longer?

13 A. No, sir.

14 Q. And this information about the comments this
15 guy made, when did you first tell anybody about him
16 or anybody ask you about him?

17 A. A year ago somebody asked about him, if he'd
18 made some comments like that, because one of the
19 other guys had mentioned he made the comments. I
20 said, yeah, he made the comments. I didn't think
21 much about it.

22 Q. Okay. One of the other guys who were out at
23 the scene?

24 A. Yes, sir.

25 Q. Thanks. Answer any questions they may have for

1 you.

2 THE COURT: Cross-examination?

3 CROSS-EXAMINATION

4 BY MS. ALVES:

5 Q. Now, you were initially called out on the 5th
6 of June of 2014?

7 A. The initial call, yes, ma'am.

8 Q. And do you remember around what time that was?

9 A. Middle of the day maybe. I could look at my
10 report and tell you. I just don't have my report --

11 Q. Do you have it with you?

12 A. No, I don't.

13 Q. Is it just the one page -- this page?

14 A. Yep. That's it.

15 Q. Okay. And I've given you two pages of report;
16 one from, I believe, June 5th, and the other one
17 starting on June 6th.

18 A. Yes, ma'am.

19 Q. Were those the reports you were referring to?

20 A. Yes, ma'am.

21 Q. Are those what you need to refresh your
22 recollection?

23 A. Sure.

24 Q. Okay. Now can you tell us what time you were
25 called out, based on your --

1 A. 1:50.

2 Q. In the afternoon on June the 5th?

3 A. Yes, ma'am.

4 Q. And that -- you were called to where?

5 A. Bamberg County. The address is 4668 Carolina
6 Highway.

7 Q. Okay.

8 A. That's the address to the location where the
9 call is.

10 Q. Do you recall what was at that location?

11 A. Three suspects that had fled on foot from a
12 bank robbery.

13 Q. So you were looking for three guys who had fled
14 from a bank robbery?

15 A. Yes, ma'am.

16 Q. And that's all you were told?

17 A. Yeah.

18 Q. Were you told race or anything else?

19 A. I may have been. I don't recall.

20 Q. But your report doesn't reflect that?

21 A. My report does reflect this, yes.

22 Q. I'm sorry?

23 A. The report does reflect this, yes.

24 Q. What does it say?

25 A. It says black male.

1 Q. So you were looking for three black males?

2 A. Right.

3 Q. And on that day -- that's the day that you
4 said -- was this the location of a car? I mean,
5 where did you start at?

6 A. Well, when we first got there, we split groups,
7 so two of the other guys probably went to the
8 vehicle with the dog, I went to the other area
9 outside. Once they got going from the call, I
10 joined up with them and started going with them. My
11 job at the time was supervisor for those guys, so
12 basically what I did was assist them in any way I
13 could. I'd want them to start the track and then
14 they'd work from there.

15 Q. Okay. So you joined them on the trail?

16 A. Yes, ma'am.

17 Q. And you tracked for how long?

18 A. Well, you know, when you say track, we'd track
19 for a period of time, we'd get off, we'd track for a
20 little bit, get off. You know, it depends on what's
21 going on with the trail. So, I mean, from the time
22 we got there until we left, we worked the whole
23 night.

24 Q. Okay. And you left at what time?

25 A. Well, it says we got back here at 2:10 or left

1 there at 2:10.

2 Q. In the morning?

3 A. Yes, ma'am.

4 Q. So you were out there working on this trail off
5 and on. And I believe you testified it rained
6 heavily and you had to switch from Jessie to Sully.

7 A. Yes, ma'am, we did.

8 Q. And so all that was between --

9 A. The 1:50 --

10 Q. -- 1:50, I believe --

11 A. Yep.

12 Q. -- until --

13 A. 2:10. Yes, ma'am.

14 Q. -- 2:10 in the morning?

15 A. Uh-huh.

16 Q. And then -- so that would be 2:10 in the
17 morning of the 6th?

18 A. Yes, ma'am.

19 Q. All right. And then on the 6th you were called
20 back out again at what time?

21 A. 10:30.

22 Q. In the morning?

23 A. In the evening.

24 Q. 10:30 at night?

25 A. Uh-huh.

1 Q. Okay. And you were told to go where?

2 A. Govan Fire Department. We got an address of
3 19923 Ehrhardt Road.

4 Q. All right. And I believe your testimony was
5 you started tracking at a trailer.

6 A. Yeah. Right beside it I found -- right there
7 was some kind of old abandoned trailer right there,
8 if I can remember. It's been a long time ago, but
9 it was something to that extent. We didn't put the
10 dog inside the mobile home or anything like that.
11 It's behind that area back there.

12 Q. Okay. And you were still looking for three
13 people?

14 A. Yes, ma'am.

15 Q. And you were told you were still -- were you
16 told you were still looking for three people?

17 A. Yeah. I was told that the suspects we were
18 looking for the previous night were seen there. I
19 don't recall if I asked him if there were two to
20 three, but I -- they just told me the suspects were
21 there, so I went to go find them.

22 Q. And were you the person -- was your team the
23 one -- were y'all split up at that point or were
24 you --

25 A. No. We were all together at that point.

1 Q. And how many people were with you?

2 A. There were three other guys with me, and that
3 would be Gerard Cukarillo, Neal Nelson, and Stevie
4 Sly.

5 Q. The people who are referred to on that report?

6 A. Yes.

7 Q. And you're looking at the report dated from the
8 6th now?

9 A. Yes, ma'am, I am.

10 Q. Okay. And so did you -- you didn't split up?
11 You and your -- your three men didn't split up?

12 A. No. We don't generally split up like that
13 unless we see a reason to. Just for us, we got more
14 than one suspect, it's safer for us to stay
15 together.

16 Q. Okay. And so you testified that there was one
17 person found.

18 A. Yes, ma'am.

19 Q. Did you find that first person?

20 A. Did I particularly find that person?

21 Q. Your team.

22 A. Yes, ma'am, our team did.

23 Q. So your team came -- your blood -- your
24 tracking team located the first person?

25 A. Yes, ma'am.

1 Q. And then you continued on the track?

2 A. Yes, ma'am. So when we located the first
3 person, we continued to cut the area, cut the area,
4 because we knew they were together. The information
5 we received, they were together, and we started
6 working the area. And while we were working the
7 area, the second suspect was apprehended down the
8 road walking down the road.

9 Q. Okay. Who located that person?

10 A. I'm assuming somebody from the county because
11 it wasn't one of our guys.

12 Q. Not one from your team?

13 A. No, ma'am.

14 Q. And then your team was informed that the second
15 person had been located?

16 A. Yes, ma'am.

17 Q. And were you told to keep searching?

18 A. I didn't have to be told that; that's what I
19 do. If we didn't catch all of them -- they said
20 there was one more out there, we need to catch him.

21 Q. So you were looking for one more person?

22 A. Yes, ma'am.

23 Q. Okay. Now, what time did you -- does your
24 report reflect what time you actually came upon or
25 your team came upon Mr. Homer James in the woods?

1 A. No, it does not. We generally don't look at
2 the time of the apprehension. We generally look at
3 start time and end time.

4 Q. Okay. Well, do you recall how long it was from
5 the time you left the fire department until the time
6 they found the first person?

7 A. If you want me to guess, maybe an hour or two.

8 Q. But you don't remember exactly?

9 A. Ma'am?

10 Q. You don't remember exactly?

11 A. No, I don't.

12 Q. But it was in the range of an hour or two?

13 A. Probably. I'm guessing.

14 Q. Okay. Do you recall how long it was between
15 the first person and the second -- your notification
16 about the second person?

17 A. Maybe an hour or two then too.

18 Q. Okay. And do you recall how long it was
19 between the second person and when you arrested --
20 apprehended Mr. James?

21 A. No. It was a long period of time between the
22 second and third person, because we had a good bit
23 of the night to look for signs and look for tracks.
24 And we worked through the night until we found a
25 track. That's -- you know, that's what we do; we

1 look for human sign that identifies what we were
2 originally tracking.

3 Q. Okay. And you said that when you came upon
4 Mr. James, he wasn't trying to hide or anything.

5 A. He wasn't trying to hide?

6 Q. He wasn't hiding. He wasn't under bushes or --

7 A. He popped out between me and another agent. I
8 don't think he saw us because we didn't see him.
9 And then he saw us, he looked up, and basically put
10 his hands up.

11 Q. Okay. Now -- but y'all weren't quiet? You
12 said the dog was very excited and --

13 A. The dog was excited.

14 Q. She was barking and --

15 A. I don't know if she was barking at that time;
16 she had been earlier during the night.

17 Q. She had been barking?

18 A. During the night.

19 Q. And she had a bell on?

20 A. She did have a bell on.

21 Q. But you can't say whether or not she was
22 barking at that point?

23 A. I couldn't tell you.

24 Q. And he walked in between you and another
25 officer?

1 A. Yeah, he popped up between the two of us.

2 There was a ditch and there was a bridge, and I
3 don't know if he was under the bridge or where he
4 was at, but he kind of just popped up between a
5 couple of us.

6 Q. Okay. And your testimony was that -- you said
7 there were four of you out there together?

8 A. Yes, ma'am.

9 Q. All right. And you said there were two -- you
10 said you and two guys behind him and one person in
11 front?

12 A. Yes. There were two behind me and then there
13 was one of my guys behind me.

14 Q. And he --

15 A. Gerard Cukarillo was the one in front of me.

16 Q. And he was the one who had gone across the
17 bridge?

18 A. Say that again now.

19 Q. You said he was the one who had gone across the
20 bridge?

21 A. Yeah. He -- well, yeah, he had crossed the
22 bridge or crossed the ditch, one. I don't -- he may
23 have crossed the bridge on the right side, I'm not
24 sure, but he had gotten ahead of us somehow.

25 Because what happened, we had come off the trail and

1 we starting to cut it to try to locate the tracks,
2 and the area and the environment we were in, we were
3 seeing good sign, good footwear, and he was looking
4 for the footwear.

5 Q. Okay. Now -- so when you saw Mr. Homer James
6 and you said he put his hands up, what did you do at
7 that point?

8 A. What did we do at that point?

9 Q. Uh-huh.

10 A. We came, contacted him, put handcuffs on him
11 and tried to figure a way out of the woods.

12 Q. Okay. And who did you contact?

13 A. Mr. James.

14 Q. No. I mean, did you contact any other law
15 enforcement?

16 A. Oh, yeah. Once we contacted him, put him in
17 handcuffs, we contacted called law enforcement, told
18 them we were 1067 where he was in custody, and we
19 were trying to find a way out of the woods. And I
20 think I called my helicopter and told him, hey,
21 we've caught him, I don't know where we're at, we're
22 coming out of the woods, and we came out into a
23 field. He identified where we were. I think, like
24 I said, Jeff Croft came over there and then I took a
25 second to figure out where we were, let them know

1 where, and we came out into a field.

2 Q. Okay. You said Jeff Croft came to your
3 location?

4 A. To the field, he did, yes, ma'am.

5 Q. And how long was it after you had put the
6 handcuffs on Mr. Homer James before Jeff Croft --

7 A. I don't know. A few minutes. It wasn't a long
8 period of time.

9 Q. All right.

10 A. But, you know, we took the handcuffs off of him
11 when we gave him water and Gatorade.

12 Q. All right. And what was his condition?

13 A. He looked tired. He was wet, he was dirty. I
14 think he had longer hair at that time and it was
15 kind of frazzled up just like he'd been in the woods
16 for a period of time --

17 Q. Okay.

18 A. -- like 90 percent of the people that we catch
19 look, the same way.

20 Q. Okay. And when did he make these statements
21 that you testified about?

22 A. We -- he -- he was tired, kind of like us. We
23 offered him water, took the handcuffs off him, we're
24 getting water, talking, we're basically, you know,
25 commending him on how long he's lasted in the woods

1 and how well he did. And, you know, we're talking
2 amongst ourselves and stuff and he's sitting there
3 and I think he's kind of curious as to -- you know,
4 to what we got to say or something.

5 But, you know, we generally don't say a lot to
6 them. We basically contact them, arrest them, and
7 detain them for the locals to get them. And he made
8 that statement during that time.

9 Q. So when he made the statements, y'all were
10 already talking about how he had been out in the
11 woods a long time and --

12 A. Yeah. We done -- we had already had a
13 conversation with him about how long he'd lasted in
14 the woods, what kind of fitness level he was at.
15 You know, he made -- we made statement that these
16 woods are nasty, man. And I think he made
17 statements to the extent that there were snakes
18 everywhere, I seen snakes everywhere, and then that
19 the -- the offhand comment about the gun not being
20 real or whatever it was came up.

21 Q. And he made these comments to you?

22 A. I think he made it to the collective group of
23 guys sitting there.

24 Q. The group of guys?

25 A. Yeah; my guys.

1 Q. Do you remember exactly what was said?

2 A. No. I just remember him mentioning the gun
3 wasn't real. That's -- it didn't -- you know, we're
4 not investigators, that's not what we do. We
5 apprehend people and we put them in jail, so...

6 Q. Okay. But do you remember exactly what you-all
7 were talking about when he made those statements?

8 A. I do not recall.

9 Q. But these statements, you're saying, were made
10 in the middle of the conversation that y'all were
11 having?

12 A. Yeah. It was just statements made while we
13 were sitting there. I wasn't -- I wasn't taking
14 notes, I wasn't recording, I wasn't doing anything
15 like that because that's not what I do. We were all
16 just sitting around talking, the guys, drinking
17 water and Gatorade, just kind of relaxing because
18 we'd been on the ground for, you know, a day and the
19 day before that, so we were just tired, just -- we
20 were just talking.

21 Q. And you were talking to Mr. James?

22 A. All of us were talking together, sure. Yeah.

23 Q. Okay. Now, you did a report about your work
24 for those past two days -- for those two days,
25 didn't you?

- 1 A. Yes, ma'am, I did two.
- 2 Q. And you did two separate reports?
- 3 A. Actually, my guys did them. But technically I
- 4 didn't write these, but my guys who work for me did,
- 5 yes, ma'am.
- 6 Q. And you supervised?
- 7 A. I did.
- 8 Q. So you would have reviewed the reports?
- 9 A. Yep.
- 10 Q. And if something needed to be added to the
- 11 report, you would have told them to add this in?
- 12 A. If I thought -- if I thought there was
- 13 something pertinent to what we did as our job, yes,
- 14 I would tell them that.
- 15 Q. Did you -- is there anywhere in either of those
- 16 two reports that discusses these statements that
- 17 were -- that you say were made by Mr. James?
- 18 A. No. We're not -- our job is not for the
- 19 investigation side. Our job is the apprehension
- 20 side, that's all we do.
- 21 Q. Okay.
- 22 A. The report basically reflects what we did on
- 23 the ground.
- 24 Q. But so your answer is, no, there's nothing in
- 25 that report that --

1 A. No, there's nothing in that report. No, ma'am.

2 Q. And you didn't do any additional report?

3 A. No, I did not.

4 Q. And you never -- were you aware of who the lead
5 investigator was on the case?

6 A. Was I aware at the time who it was?

7 Q. Yes.

8 A. Yes, ma'am.

9 Q. Who was it?

10 A. I think it was David Williams and Jeff Croft
11 were working it.

12 Q. And you told them about these statements?

13 A. No.

14 Q. No?

15 A. (Shakes head.)

16 Q. You have to answer out loud.

17 A. No, I did not.

18 Q. Okay. And the first few times you mentioned it
19 to anybody from the solicitor's office was last
20 November?

21 A. Yeah. Some of the guys were talking about it
22 and, yeah, we mentioned it back then. And it was
23 just a -- just something that came up in the
24 conversation that I didn't think much about.

25 Q. Okay.

1 A. Me -- and of course I'm not an investigator.

2 That's not what I do for a living. So...

3 Q. And you can't remember the statements that were
4 made, the exact statements?

5 A. No, I cannot. I'm sorry.

6 Q. And you don't remember what comments may have
7 been made prior to those statements being made?

8 A. No, ma'am.

9 MS. ALVES: I beg the Court's indulgence one
10 moment.

11 I don't have any further questions. I still
12 need those. Thank you.

13 MR. WEEKS: No questions.

14 THE COURT: May this witness be excused for
15 this hearing?

16 MR. MILLER: For this hearing, yes, Your Honor.

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

18 How many more witnesses do you have for the
19 Jackson v. Denno?

20 MR. MILLER: That was the last witness, Your
21 Honor. We did have one private attorney plea we
22 were trying to get before lunch.

23 THE COURT: That's fine.

24 (Pause in the proceedings 12:54 PM - 2:35 PM.)

25 THE COURT: Will I be able to see that video

1 that you proposed right here?

2 MR. MILLER: Your Honor, we had intended to --

3 THE COURT: To send it back with me?

4 MR. MILLER: Yes, sir. We got a copy of it.

5 THE COURT: All right. Did you have any more
6 witnesses in your Jackson Denno or did you tell me
7 that was it?

8 MR. MILLER: None from the State, Your Honor.

9 THE COURT: All right. Ms. Alves, do you
10 intend to call any witnesses, including your client?

11 MS. ALVES: No, Your Honor.

12 THE COURT: Okay. I'll be glad to hear
13 arguments.

14 MS. ALVES: Yes, sir. May it please the Court.

15 THE COURT: Yes, ma'am.

16 MS. ALVES: Are you asking me to go first?

17 THE COURT: Go ahead. The State has got the
18 burden, but that's all right.

19 MS. ALVES: Yes, sir. Judge, I would move to
20 exclude any of the statements allegedly said by my
21 client. I would just note that in the testimony,
22 both from Investigator Croft and from Captain
23 Steppe, my client was never Mirandized, both of them
24 said he had obvious signs of dehydration, nobody
25 really questioned him about his mental status other

1 than to say that he said he was all right, he was
2 okay.

3 But I'd also note that both of them said that
4 these questions were not in response to any
5 questions that they asked him. However, Mr. James
6 was clearly under -- he was clearly in custody.
7 There's no question he was in custody.

8 THE COURT: Say that again. I'm sorry.

9 MS. ALVES: There was no question he was in
10 custody.

11 THE COURT: I agree. They admitted that.

12 MS. ALVES: Yes, sir, even though he was
13 handcuffed and sitting on the ground in a casual
14 situation with the officers he was surrounded by.
15 At one point the four officers from the dog team
16 and, at some point, Investigator Croft came up.

17 Judge, the State has to show that the
18 statements were voluntarily -- that the statements
19 were knowingly, intelligently, and voluntarily made
20 and in compliance with Miranda. And in this
21 situation, we can't say if they were in compliance
22 with Miranda or not because neither one of the
23 officers can remember the exact conversation that
24 they were having with Mr. James when the statements
25 were made.

1 THE COURT: Well, clearly both the officers
2 said no Miranda was given; right?

3 MS. ALVES: That's correct.

4 THE COURT: Didn't I hear that?

5 MS. ALVES: Yes, sir. They both said that.

6 THE COURT: Okay. So any interrogation,
7 regardless of -- without giving Miranda when he's in
8 a custodial position would be a violation.

9 MS. ALVES: Yes, sir. And I would say that any
10 comments made that elicit --

11 THE COURT: I don't agree with you on that. I
12 think that if you voluntarily make comments
13 unsolicited that you don't implicate Miranda --

14 MS. ALVES: Well, Judge --

15 THE COURT: -- at all.

16 MS. ALVES: -- we don't -- I'm sorry.

17 THE COURT: No. Please. I'm just questioning
18 back and forth. Don't -- assuming what those
19 gentlemen said was correct that he, unsolicited,
20 unquestioned, volunteered this information or
21 certain aspects of the information, wouldn't that be
22 on him? There's no Miranda protections or
23 requirements that they -- at that point because he
24 voluntarily -- he wasn't being interrogated.

25 MS. ALVES: Judge, interrogation doesn't just

1 require them sitting down and asking Mr. James
2 questions. It also involves elicit -- I mean,
3 making statements to Mr. James and having
4 conversation with Mr. James that elicit a response.

5 And in this situation, we can't even determine
6 what the conversation was that elicited the
7 responses that the officers say Mr. James gave
8 because neither one of the officers could remember
9 the conversations specifically. In particular, I
10 would note that Captain Steppe's testimony said that
11 they were actually having the conversation with
12 Mr. James prior to him giving the statements.

13 Now, Investigator Croft's testimony was
14 somewhat different from that; he said there wasn't
15 any conversation at all, however Captain Steppe was
16 very clear that they were sitting around, they were
17 just talking in general. He said that they were
18 asking Mr. James questions about his physical health
19 and how he had been out there all night long. And I
20 think that would have elicited the responses, number
21 one, about the snakes and having run all night. I
22 believe there's another statement that he said.

23 Judge, we can't -- but we can't -- the problem
24 here is we can't even determine what comments they
25 made to elicit the statements that they are

1 attributing to Mr. James because neither one of the
2 officers could remember the conversation, they just
3 remember that a conversation was given -- there was
4 a conversation between all of them sitting there and
5 Mr. James supposedly made the statements.

6 THE COURT: At what point do you contend the
7 comments by officers becomes interrogation as
8 opposed to just being conversation?

9 MS. ALVES: Judge, they were asking about
10 conversation regarding the track that they had just
11 been on.

12 THE COURT: Here's -- let me just back up for a
13 second. When they say how old are you, well, that
14 could actually be something that could be a part of
15 the identification of this person. I think that's
16 improper without Mirandizing him. Do you want
17 water, that's -- I don't see how, under any stretch
18 of the imagination, that asking this gentleman if he
19 wanted water could be construed as interrogation.
20 It's a question, but it's not interrogating him
21 about anything except whether he wants water.

22 MS. ALVES: Yes, sir.

23 THE COURT: It doesn't go to any element of the
24 crime, it doesn't go to any defense of the crime, I
25 just don't see it. Now, when the other ones start

1 talking about how -- commenting on him, I know there
2 seems to be some cases -- and I can't cite them off
3 the top of my head, and that's why I'm kind of
4 asking you this: Where they were saying, you know,
5 let's just pray or do something along those lines
6 where it came impermissible of going too far, and
7 the question is, where is that line or are there any
8 cases where you can cite me to that I can go look up
9 to see where it crosses?

10 MS. ALVES: Judge, I don't have any cases that
11 specifically cite the line. But in this situation,
12 these officers -- all I can refer to is this
13 particular situation in this case. These officers'
14 testimony was that they were questioning Mr. James
15 about how his physical -- his physical prowess, his
16 ability -- how he was able to run from the dog team.

17 Captain Steppe even talked about how he said
18 that he was impressed that Mr. James was able to
19 keep up with the dog team and keep ahead of the dog
20 team, and they questioned him about that. And he
21 responded -- and about his history as a boxer. And
22 he gave information to them talking about how he'd
23 been out there all night long, how he had been --
24 seen so many snakes, and then made the alleged
25 statement about the gun.

1 I think that the conversation that they were
2 having, talking about Mr. James being out all night
3 long, talking about how difficult the officers found
4 the track, I think those elicited those responses.
5 And, Judge, perhaps they didn't intend to elicit the
6 responses, but their conversation did because
7 Mr. James was in their custody. I think they should
8 have had Miranda --

9 THE COURT: Oh, that would have certainly been
10 the preferable thing to do. But what particular --
11 you want me to exclude the entire conversation out?

12 MS. ALVES: Yes, sir. And I have additional
13 grounds for other parts of the conversation.

14 THE COURT: Okay. Well, go ahead and over that
15 with me.

16 MS. ALVES: Judge, also I would note that these
17 statements that were attributed to Mr. James were
18 never recorded anywhere. I know the officers said
19 that they didn't have -- they weren't recording --
20 well, the officers -- I mean, Officer Steppe said he
21 wasn't recording because he wasn't an investigator,
22 and Investigator Croft said he had nothing to record
23 with and that his car was not equipped with
24 recording equipment, however, neither officer wrote
25 down this in their report. There were five officers

1 present, from what the testimony was, and not one of
2 the five officers wrote any of this information in
3 their report.

4 The first we heard of this information was on
5 November 17th of last year. Mr. James was intended
6 to go to trial on November -- it was -- his trial
7 was originally scheduled for November 30th. He was
8 going to trial with Leon James, the co-defendant who
9 has been mentioned here in this trial -- in this
10 hearing this morning. Mr. -- the trials were
11 severed and Leon James went to trial in November of
12 last year, however, prior to the -- prior to the
13 trial being severed, we were actually preparing to
14 try Mr. Homer James along with Leon James.

15 The solicitor sent me an e-mail on November
16 17th -- and I'll hand a copy up -- letting me know
17 that during the course of his preparation of the
18 trial of the case, he became aware of statements
19 that were supposedly made by my client.

20 And he specifically mentioned to me that the
21 statements were made by Captain Chip Steppe who said
22 he did not recall the specific statements that my
23 client made, but that he made a statement regarding
24 that it wasn't a real gun, that it was a BB gun, and
25 he made a statement about having been running for

1 two days and having seen big snakes. And I'll hand
2 a copy of that e-mail up.

3 Judge, that is the first indication that I ever
4 had that my client even allegedly made these
5 statements because, as I said, it's not written in
6 any of the police reports, despite there being five
7 officers there who heard the statements. Judge, I
8 would just --

9 THE COURT: Hang on for one second, if I may,
10 please.

11 MS. ALVES: Yes, sir.

12 THE COURT: All right.

13 MS. ALVES: Yes, sir. Judge, as you can see
14 from that e-mail, the solicitor did make -- didn't
15 make me aware that Captain Steppe was going to
16 testify regarding statements regarding it wasn't a
17 real gun and referring to running for two days and
18 seeing the big snakes. There was never any mention
19 of -- of the specific statements that officer --
20 excuse me, that Investigator Croft testified to.

21 In Investigator Croft's testimony he said that
22 my client was talking about seeing large
23 rattlesnakes, he mentioned that my client said it
24 wasn't even a real gun, and he said that my client
25 said that this was the stupidest thing he'd ever

1 done in his life.

2 I think that -- my objection to this, based on
3 failure to provide it to me in the Rule 5, goes
4 specifically to that statement that this is the
5 stupidest thing he'd done in his life. The first
6 time I heard that statement or that Investigator
7 Croft was going to be a witness to any of these
8 statements was when he testified.

9 And I had no knowledge of that statement, my
10 client had no knowledge of that statement, we deny
11 he said it. And I would object to that statement
12 coming in, not only because of previous objection
13 based on the Jackson v. Denno and the failure to
14 provide Miranda, but also because that is a
15 violation of the Rule 5 and the first I heard of it
16 was in the middle of this Denno hearing.

17 Judge, I also object to the statements coming
18 in because they're paraphrased. No one could say
19 exactly what my client said. Judge, if the officers
20 are now saying they didn't realize it was that
21 important, I find it incredible that anybody can say
22 that my client gave a statement saying this is the
23 stupidest thing I've ever done in my entire life and
24 the officers do not believe that that statement had
25 any importance to this case such that they did not

1 write it down.

2 And nobody told the solicitor about these
3 statements until November of 2015. And we don't
4 even know when the statement from Investigator Croft
5 came in because he stated that he could not remember
6 when he talked to the solicitor about this. And, as
7 you can see in the e-mail from November of 2015, it
8 was never mentioned to me.

9 Judge, the statements that are being attributed
10 to Mr. James are -- as I said, are paraphrased. The
11 officers can't say exactly what they said, they
12 can't say exactly what Mr. James said, and for those
13 reasons, I think it would be improper for those
14 statements to be brought before the jury.

15 They have to have some basis and credibility,
16 and at this point I don't think that they have that
17 because the State -- as I said, the officers have
18 not -- they didn't write it down. They testified
19 that they didn't think the statements were
20 important, even though the statements alleged by
21 Investigator Croft claim an admission -- a direct
22 admission that my client allegedly committed the
23 crime.

24 And, once again, I would say that that
25 statement was never provided to us in Rule 5.

1 Judge, for those reasons I would make motion -- I
2 would ask you to exclude any of these statements
3 that are attributed to Mr. James that were made to
4 the dog team on the morning of June 7th, 2014.

5 THE COURT: Let me ask you something,
6 Ms. Alves. Captain Steppe was the second man who
7 testified today. Who was the first gentleman?

8 MR. MILLER: Jeff Croft, Your Honor.

9 THE COURT: Croft?

10 MR. MILLER: C-R-O-F-T.

11 THE COURT: Okay. You certainly agree that you
12 heard -- you were given notice all the way back in
13 November of last year that Captain Steppe was going
14 to testify to these alleged statements; right?

15 MS. ALVES: To the two statements regarding
16 snakes and it wasn't even a real gun.

17 THE COURT: All right. Right. Did you not
18 ever identify Agent Croft prior to today?

19 MR. MILLER: Your Honor, we had -- to be
20 perfectly honest with the Court, we had so many
21 discussions with so many of the attorneys. As
22 Ms. Alves indicated, we were prepared to go forward
23 on a trial of three different co-defendants
24 together, and on the day we were supposed to pick
25 the jury, Judge Young, I think probably safely,

1 severed the trials. And as soon as we said we were
2 going forward against Leon James, everybody kind of
3 split up.

4 I know that we had talked about it; that,
5 frankly, in Leon James' case, Captain Steppe's --
6 what happened with Captain Steppe was
7 inconsequential because he had arrested Homer James.
8 So we never even had the Jackson vs. Denno hearing
9 on the alleged statements at that time because they
10 just weren't material to Leon James' trial. So if
11 she says that I didn't tell her, then I'm not going
12 to say that she's not telling the truth, I just
13 don't recall when Agent Croft came in. But I do have
14 something else on that issue, Your Honor.

15 THE COURT: Well, if it's cumulative to what
16 somebody is going to testify that he said, and it
17 sounds to me that it is, it would seem like that --
18 number one, there is no surprise or prejudice;
19 number two -- and I'm not -- I know that the
20 testimony is prejudicial, but it doesn't seem like
21 it -- it may not be admissible anyway from a
22 cumulative -- but go back for a second --

23 MR. MILLER: Okay.

24 THE COURT: -- to what Croft said. At what
25 point did conversation with law officers turn into

1 interrogations? And I know there's no bright line
2 that you can mark it like a cross line at a stop
3 sign, but I do have some concerns because they
4 questioned him and they, by their own testimony,
5 said, we asked him his age. And I could see how
6 that could be part of identification.

7 MR. MILLER: Yes, Your Honor. I have State vs.
8 Robert Kennedy. And this is a 1996 case of the
9 Court of Appeals of South Carolina, 325 SC 295. And
10 I'm handing a copy to the Defense, I'll hand up a
11 copy to the Court. It doesn't always work this way,
12 but on page 5 of the opinion, Your Honor, there's a
13 headnote that says: Interrogation requirement. The
14 special procedural safeguards outlined in Miranda
15 are not required if a suspect is simply taken into
16 custody, but only if a suspect in custody is
17 subjected to interrogation. Interrogation is either
18 expressed questioning or it's functional equivalent.

19 So they aren't expressly questioning him about
20 the circumstances of the armed robbery. The
21 question is, is it the functional equivalent? It
22 includes words or actions on the part of the police
23 other than those normally attendant to arrest and
24 custody -- and I think Your Honor has already hit on
25 that -- that the police should know or reasonably

1 likely to elicit an incriminating response.

2 So as far as are you okay, do you need
3 something to drink, how old are you, those are all
4 questions that are normally attendant to arrest and
5 custody. Those questions don't count as
6 interrogation because those are questions that are
7 normally attendant to what the police would be
8 asking somebody immediately upon taking them into
9 custody.

10 The discussion of how he managed to stay away
11 for as long as he did while the officer was tracking
12 him had nothing to do with were you the person that
13 went into the bank, were you the person that was the
14 getaway driver, did you scope out the bank
15 beforehand, did you have a gun inside the bank.
16 None of those questions were asked, none of the --
17 there was no even discussion along those lines.

18 Ms. Alves discusses what is sometimes called
19 the invited response or they're -- they're leaving
20 it open. And I think the Court, again, rightfully
21 hit on the example of the officers gathering to pray
22 next to the murder suspect, to pray for the child's
23 body to be found, and the suspect breaks down and
24 says, okay, I'll take you to where the body is.
25 Certainly that will be the type of thing that would

1 be calculated to elicit a response from the suspect.

2 There was another case where the officers were
3 driving in the car and the suspect was in the
4 backseat and they were talking about wanting to give
5 the child a Christian burial because it was coming
6 up on Christmastime. And certainly in that context
7 we can see, and the Supreme Court has held, that,
8 yeah, that's the functional equivalent of
9 questioning.

10 Captain Steppe testified he didn't even know
11 anything about the robbery. He knew that a bank
12 robbery occurred in Denmark and they were looking
13 for three black males. When he goes out there the
14 second night and they take Leon James into custody,
15 he hears somebody else -- he says he's not even sure
16 who, he thinks it was county people -- took in a
17 second guy into custody. And he said, we kept on
18 looking for the third guy.

19 And Ms. Alves even asked him, she said, well,
20 who told you to go look for a third guy? He said,
21 nobody told me to look for the third guy, I knew
22 there were three out there, so that's what I was
23 doing, I'm going after the people until we have all
24 of the people that we need in custody, all of the
25 suspects in the crime. So he didn't have any

1 specific knowledge with which to question the
2 defendant about the circumstances of the crime
3 itself.

4 And by that same token, Agent Croft said the
5 same thing. He said, look, we were called in to
6 assist, David Williams was the lead on it, David
7 Williams was the one that knew all of the
8 circumstances and the details. But all Jeff Croft
9 knew -- what he said that he knew was they were
10 looking for three people that had robbed this bank,
11 they got a call that there had been some suspicious
12 people on the night of the 6th, and at that point in
13 time -- and Jeff said that he -- you know, call them
14 out, get a perimeter set up, let's get the dogs back
15 out here again some 12 hours -- or 16 hours after
16 they just left, bring them all back out because we
17 think we might have these guys hemmed up somewhere.
18 And, as it turned out, they did. So --

19 THE COURT: Well, wouldn't that go to guilt in
20 and of itself if -- the information, if they
21 elicited through their communication that you were
22 so hard to get, that flight is evidence of guilt
23 and, therefor, these are the ones who were fleeing
24 and that goes to --

25 MR. MILLER: Your Honor, I don't -- and I guess

1 this is the question for the Court. But I would
2 note that the burden of proof at this point -- it is
3 a preponderance of the evidence standard, first of
4 all, and second of all, I don't know that it rises
5 to reasonably likely to elicit an incriminating
6 response. They're talking about the fact that they
7 had been chasing after -- or Captain Steppe --

8 THE COURT: Well, reasonably likely when you're
9 talking about -- I'm talking about just the chase
10 and the facts surrounding the chase, the snakes.
11 And the comments about the gun I'm not nearly as
12 concerned about; quite frankly, it's probably the
13 most damning. But the fact that it goes to -- that
14 is reasonably likely to bring up damning information
15 about this guy because he's on the run. And running
16 is evidence of guilt; right?

17 MR. MILLER: Your Honor, yes, yes. I would say
18 that flight would be evidence -- would be something
19 we would argue is evidence of consciousness of
20 guilt. Absolutely. But I just don't feel like it
21 reaches that level. And I would -- Your Honor, when
22 we're talking about this, we're talking about the
23 burden of proof. You know, Ms. Alves says we deny
24 he said it. No, they didn't. She didn't put
25 anybody on the stand to deny --

1 THE COURT: Well, yeah. To the extent she's
2 asking me to weigh evidence, I'm not going to do
3 that.

4 MR. MILLER: Right. And that's what I'm
5 getting at, is that we have the testimony from two
6 officers from SLED that if they were going to make
7 something up, then they could have said we
8 Mirandized him, but we didn't have a form, so it
9 didn't get written down. Now, these officers didn't
10 say that. They were very clear: We didn't
11 Mirandize him because nobody was questioning him.

12 They were sitting there, according to Captain
13 Steppe, probably for 20 or 30 minutes, waiting on
14 this transport vehicle to show up. They've given
15 this guy water and everybody is just kind of sitting
16 around. But nobody is questioning him or directing
17 a conversation to him for the purpose of getting him
18 to admit something. And, in fact, the two things
19 that I agree with the Court are the most damning
20 that he said are that it was the stupidest thing
21 he'd ever done in his life and that it wasn't even a
22 real gun.

23 But to the issue of -- because it has been
24 brought up as a violation of the rule, to the issue
25 of the statement from Agent Croft that it was the

1 stupidest thing that he'd ever done in his life,
2 State vs. Hoffman -- I'll hand up a copy to the
3 Court and I'm handing it to the Defense -- 285 SC
4 130 is a 1985 case of our South Carolina Supreme
5 Court that says, very succinctly, that under the old
6 practice rule, that rule being Rule 103 which has
7 now been made -- is now together in Rule 5 of our
8 rules, it says: The prosecution must disclose the
9 substance of any oral statement which the Prosecution
10 intends to offer in evidence at the trial made by
11 the defendant whether before or after arrest in
12 response to interrogation by any person then known
13 to the defendant to be a prosecution agent.

14 Your Honor, our Rule 5 as it is written now
15 says: Upon request by a defendant, the Prosecution
16 shall permit the defendant to inspect and copy or
17 photograph any relevant written or recorded
18 statements made by the defendant or copies thereof
19 within the possession, custody, or control of the
20 Prosecution, the existence of which is known, or by
21 the exercise of due diligence may become known to
22 the attorney from the prosecution, the substance of
23 any oral statement which the Prosecution intends to
24 offer in evidence at the trial made by the defendant
25 whether before or after arrest in response to

1 interrogation by any person then known to the
2 defendant to be a prosecution agent.

3 Your Honor, in Hoffman the Supreme Court of
4 South Carolina says we don't have to tell her at
5 all. I had sent the e-mail on the 17th. And I'd
6 note that the last sentence of the e-mail was
7 Captain Steppe is going to be there for the Jackson
8 vs. Denno hearing on the 30th, you're welcome to
9 talk to him, you're welcome to talk to anybody else.
10 And, in fact, that's how I found out that Jeff Croft
11 had relevant information, was I talked to Captain
12 Steppe and said, well, Jeff was there, and I went
13 out and talked to Jeff Croft.

14 But the State was under no obligation to
15 disclose the existence of these statements at all to
16 the Defense prior to the trial of the case.
17 Instead, back in November of 2015, as soon as we
18 were aware of what had gone on while they were all
19 out there waiting on him to be picked up and
20 transported, I'm sending this e-mail to Ms. Alves
21 and telling her as soon as I knew, hey, look, you
22 need to talk to Chip Steppe -- you need to talk to
23 this guy because this guy's got some information and
24 acknowledging, yeah, it wasn't written down, and
25 acknowledging the things that Chip Steppe said.

1 Whenever I spoke with Chip Steppe and he said
2 that Jeff Croft was there, I spoke with Jeff and he
3 said, yes, I remember these things and I remember --
4 you know, this is what I remember about the context
5 and the way the statements were made. And,
6 interestingly, the -- I think that the
7 acknowledgment by Captain Steppe that, hey, you were
8 one of the five toughest people that I've ever
9 tracked in my career, honestly, Your Honor, I think
10 that it was intended just to be a matter of, for
11 lack of a better term, giving him props for being
12 one of the five toughest people he'd ever tracked.

13 I don't know what it -- exact response that was
14 supposed to elicit. If the conversation went on and
15 he said something about the rattlesnakes, which both
16 officers heard and both officers acknowledged the
17 amount of time that he had been out there, the
18 condition he was in was something that was
19 observable by the officers without ever talking to
20 him at all; the fact that he was -- he was --
21 appeared to have some signs of dehydration.

22 But none of this comes into effect -- Your
23 Honor, none of this comes into effect unless it was
24 interrogation. And I think you got these two
25 officers who got up on the stand and both of them

1 testified very frankly and very forthrightly. You
2 know, Captain Steppe is up there and he says, look,
3 I'm not the investigator guy, I don't document and
4 question and Mirandize and do that, that's not my
5 job for SLED, that's not what I do --

6 THE COURT: I heard that. I wasn't all that
7 convinced by that testimony or that he didn't think
8 much about it at the time. I thought that was kind
9 of -- I wasn't real convinced about that. However,
10 I'm not convinced there's interrogation in this case
11 that implicates Jackson Denno at all. I think he's
12 under -- he was certainly in custody, but whether
13 this is interrogation, otherwise these are the
14 voluntary statements he made.

15 MR. MILLER: And that's what it comes down to,
16 Your Honor. You hit it on the head in the
17 beginning. If it's an interrogation, we've conceded
18 there was no Miranda and we go on. But if there was
19 not an interrogation -- if there was not
20 interrogation as to those statements, the statements
21 are admissible. And despite my efforts and the
22 efforts of our office to turn everything over to
23 Ms. Alves, there's just not a requirement under the
24 rule or --

25 THE COURT: Yeah. I'm not concerned about

1 that.

2 MR. MILLER: Thank you, Your Honor.

3 THE COURT: All right. Ms. Alves?

4 MS. ALVES: Yes, sir. Your Honor, I would
5 disagree. I think there was interrogation. It may
6 not have been a traditional interrogation where they
7 ask him about the crime, but they did give
8 statements which were intended to elicit a response.
9 When the officer was talking about how long he'd
10 been out -- how long they'd been out tracking him
11 and how it was one of the five hardest cases of his
12 career and they were talking about how they'd been
13 out there all night, those were responses -- those
14 were -- those were statements that were intended to
15 elicit conversation from Mr. James regarding the
16 fact that he was the person that they had been
17 tracking all night.

18 And Your Honor made reference to the fact that
19 their statements and that the responses they elicit
20 would indicate that he was the person that was
21 fleeing from them. But I would also point out that
22 the State has to prove that Mr. James, Mr. Homer
23 James, the person that they found in the woods, was
24 the actual person that they were chasing from that
25 particular building and not somebody that just

1 happened to cross in the woods.

2 In that regard, the questions that they were
3 asking him and the conversation that they were
4 having with him --

5 THE COURT: May I stop you right there?

6 MS. ALVES: Yes, sir.

7 THE COURT: The only question that I heard that
8 was asked to him -- and I may not have had my notes
9 correct -- they asked him his age at the very
10 beginning, which gave me concerns. And I know that
11 may be part of the standard operating procedure of
12 arrest. But I'm -- tell me what other questions
13 that were directed. I know you were saying running
14 commentary designed to elicit response is one thing
15 that constitutes interrogation. But I don't have
16 any other evidence written down -- and it might just
17 be me -- that said it was a direct question pointed
18 at this defendant from law enforcement.

19 MS. ALVES: Yes, sir. Judge, Captain Steppe
20 testified that they were all sitting on the ground
21 and they asked him if he wanted water and he said he
22 started a conversation with the client, that they
23 were all sitting around talking together, they
24 started asking Mr. James about his physical shape
25 and how he stayed in shape so good; that Captain

1 Steppe testified that he made the comment -- he said
2 he couldn't believe he'd been able to stay in front
3 of them for so long; that he told -- he said he told
4 Mr. James that he was one of the five hardest people
5 he'd ever tracked, and they talked about how they'd
6 been out there all night.

7 And in response to those, he said that it was
8 after these -- after they were talking about stuff
9 like this that he couldn't remember exactly what was
10 asked, but that was the gist of the conversation,
11 that Mr. James made the comments about being out
12 there and seeing all those snakes and then he made
13 the comment about it wasn't a real gun. And Captain
14 Steppe never said anything about Mr. James saying
15 this was the stupidest thing --

16 THE COURT: And I know you disagree with me.
17 But just to make sure, for the record, we're clear,
18 I've heard, at least in my mind, nothing that would
19 ask the defendant or anticipate him making comments
20 on the gun or the dumbest thing he ever did. Even
21 if I were to construe those lines to be
22 interrogation, they had to do with his physique, his
23 mental health or his physical health, his ability to
24 get away from them, and it shows running.

25 But those guns and the dumbest thing he's ever

1 done, that's not responsive to anything, I feel. If
2 it is, what part of the conversation is it
3 responsive to?

4 MS. ALVES: Well, Judge, I would just also --
5 Investigator Croft was the only person who mentioned
6 the stupidest thing he'd ever done in his life.
7 Captain Steppe never made -- never -- Captain Steppe
8 said the only two things he said were about the gun
9 and about being out there with the snakes. So that
10 statement is only from Investigator Croft, not from
11 Captain Steppe.

12 THE COURT: The dumbest thing he'd ever done?

13 MS. ALVES: Yes, sir. That was only from
14 Investigator Croft. And, as I said, this is the
15 first I've ever heard of this.

16 THE COURT: So go back to my question to you
17 then: This thing about the gun, let's just look at
18 it from the gun's perspective.

19 MS. ALVES: Judge --

20 THE COURT: What is that in response to, even
21 if you construe the line-taking by the officers as
22 being interrogation?

23 MS. ALVES: Judge, the response to the gun
24 would have been -- I think that -- I think that when
25 they're talking about, oh, we were out here all

1 night and you're one of the five hardest people to
2 track, I think that line may have -- that line could
3 have been elicited such as what's the big deal, it
4 wasn't a real gun.

5 THE COURT: I'm not going to allow -- I'm not
6 going to disallow the testimony about the gun or the
7 stupidest thing I've ever done. I think that
8 clearly is not in response to any interrogation,
9 even if it's -- some parts which very well may be
10 invited to get a response. But those two issues,
11 they can bring up. Okay? So I'm going to allow
12 them and let the jury have to make a call as to
13 whether or not those statements were made.

14 I don't think Jackson Denno's implicated by him
15 at all, I don't think that that's interrogation,
16 although he was in custody, and, therefor, they are
17 going to be admissible. The other ones I am going
18 to -- I want to read a little bit more about these
19 cases. Okay?

20 All right. Anything further, Ms. Alves?

21 MS. ALVES: Not as to this issue, Judge. I've
22 put my objections on the -- I've already put my
23 objections out about the --

24 THE COURT: Please do. I want to make sure
25 you're protected.

1 All right. Mr. Miller, anything, Mr. Weeks, as
2 to the Jackson Denno issue?

3 MR. MILLER: Nothing as to the Jackson v. Denno
4 issue, Your Honor.

5 THE COURT: Okay. I will --

6 MS. ALVES: Judge, if I may. I'm sorry. I
7 have an additional objection to the statements. And
8 the fact is that -- I mean, that goes beyond the
9 Jackson v. Denno. Even if you're allowing the
10 statements and that they're saying it wasn't -- that
11 this wasn't -- even if they're allowed under Jackson
12 v. Denno or if it doesn't apply, I would still
13 object to the statements because they're
14 paraphrased. We don't know exactly what my client
15 said or was alleged to have said to the officers.
16 The officers --

17 THE COURT: Isn't that what goes on in
18 courtrooms across the country every single day of
19 the week any time -- how often do you hear people
20 give testimony about what somebody said that is
21 verbatim? I mean, that goes on in every courtroom
22 across the country everywhere, and especially here
23 in South Carolina.

24 MS. ALVES: Yes, sir. But, Judge, in this
25 situation, these officers can't even remember

1 exactly what was said, all the details about what
2 was said.

3 THE COURT: I'll deny your motion on those
4 grounds.

5 MS. ALVES: Yes, sir.

6 THE COURT: Now, I think it goes to the weight
7 and not its admissibility. Go ahead.

8 MS. ALVES: Judge, I have other pretrial
9 motions that go beyond -- that are in addition to
10 the Jackson v. Denno.

11 THE COURT: Sure. So we're clear on the
12 record, the issue about the snakes, about him being
13 a boxer and able to run -- there's one other
14 statement that I'm going to look at in the --

15 MR. MILLER: It was the snakes, the amount of
16 time he had been running from them, and that he had
17 boxed previously to stay in shape.

18 THE COURT: Okay. Those will be under
19 advisement. The gun and the dumbest thing testimony
20 is not excluded, it doesn't fall under the Jackson
21 Denno, just so we're clear.

22 MS. ALVES: Yes, sir.

23 THE COURT: All right. What's your next one?

24 MS. ALVES: Judge, in this case, when the
25 co-defendants were arrested, one of the

1 co-defendants, Leon James, gave statements that he
2 was -- I believe gave statements that he was -- when
3 he was first arrested at the -- and there was
4 testimony about they found him out in those woods,
5 he was the first person that they found. He gave
6 statements stating that he was with my client.

7 The officer, Officer Steppe, testified that he
8 got information from the other officers that the
9 first guy that they caught was with my client and
10 that's how they knew to keep looking for my client
11 in the area. I would object to any of those
12 statements coming in because they refer specifically
13 to the statements of the co-defendant and that they
14 knew that -- they knew that they were together.

15 And he also -- he went further to say that
16 based on the other investigators telling him about
17 their investigation, that's how he knew that my
18 client would be in the area -- or the third person
19 that he said would be in the area, and that's how he
20 knew to keep looking in that area for that third
21 person. I think that any reference to that would
22 be --

23 THE COURT: Violates the confrontation clause.

24 MS. ALVES: Yes.

25 THE COURT: Let me ask you this: He said, as a

1 result of my investigation, I learned that it was
2 Homer James -- what is it?

3 MS. ALVES: Homer James.

4 THE COURT: Homer James. Is that what your
5 intended testimony is?

6 MR. MILLER: No, sir, Your Honor. I believe
7 that Captain Steppe actually testified that there
8 were three black male suspects, he didn't know who
9 any of them were. And what Ms. Alves is testifying
10 about is -- and this is actually kind of a nonissue.
11 We're not going to try to introduce any
12 co-defendants' statements unless that co-defendant
13 is here to testify. And we do not anticipate
14 calling any co-defendants --

15 THE COURT: Well, I think she's concerned about
16 you trying to backdoor those statements through --

17 MR. MILLER: Right. And there won't be an
18 issue at trial because what happened that night, at
19 least the testimony from the previous trial, was
20 that Captain Eddie Williams went up to this trailer,
21 as I explained, and he encountered Homer James and
22 he saw Homer James take off running and he also saw
23 a second defendant run out of the trailer and run in
24 the opposite direction.

25 And so what Captain Steppe was talking about --

1 and Captain Williams will testify before Captain
2 Steppe. What Captain Steppe is talking about is
3 when we got one guy in custody, we knew that there
4 was another guy that was with him, so that was why
5 we were continuing to push for this other guy. It
6 was not clear, but it will be by the time he
7 testifies. The second individual that got arrested
8 that night -- two of them were arrested --

9 THE COURT: One walking down the street.

10 MR. MILLER: The one walking down the street.
11 Walking down the street is a little bit generous; he
12 was about four miles away walking on the highway.
13 He was a long way away and, very clearly, he was not
14 there at the trailer that night. There were two
15 people that ran; it turned out those two people were
16 Homer James and Leon James.

17 The second guy getting arrested in between
18 those two getting arrested was just happenstance;
19 the guy was four miles away, he was walking down the
20 highway walking towards Barnwell County by himself.
21 But all of that will be more clear as we go through
22 the trial.

23 And to the extent that any of the defendants
24 said -- any of the co-defendants said anything, both
25 of the co-defendants did in fact give statements;

1 one, Lewis Garvin, the one that got caught walking
2 down Highway 64, said, you caught me, I did it, I
3 ain't saying anything about anybody else. And,
4 ultimately, he pled guilty. And he's maintained
5 that all along: You caught me, I ain't saying
6 anything about anybody else.

7 The other defendant, Leon James, said Homer
8 James and Lewis Garvin were with me, they're the
9 ones who went in the bank, I was the getaway driver,
10 but I was only the getaway driver because a guy was
11 holding a gun on me in the car. That was the
12 substance of his statement and he gave it to the
13 investigators that night at the Govan Fire
14 Department after he had been taken into custody and
15 they had taken him to the fire department and sat
16 him down.

17 But we're not going to try to get into any of
18 that statement or the fact that he made a statement
19 or didn't make a statement because he's not here to
20 testify and so he's already had his day in court and
21 we're going to leave it at that.

22 THE COURT: All right.

23 MS. ALVES: Judge, if the solicitor intends to
24 elicit testimony that does not make any reference to
25 the statements of the co-defendant, then I would not

1 have an issue. My only concern is that in knowing
2 this case, the co-defendant, Leon James, when he was
3 caught, according to the investigative report, told
4 the investigators that he was with my client. And
5 Captain Steppe --

6 THE COURT: If we have law enforcement who
7 visually eyewitness this guy taking off running and
8 he knew that independent of any other statement,
9 he's certainly welcome to testify about that.

10 MS. ALVES: Yes, sir, if that's how the
11 testimony comes out. But my only concern is --

12 THE COURT: Well, I mean, I would suggest --
13 you know, I'm not going to try your case for you.
14 If you need to lay more of a foundation as to the
15 basis of his knowledge -- I mean, I do agree, if the
16 identification information is coming from an
17 un-testifying witness' statement to law enforcement,
18 then obviously that's a problem. And I would
19 sustain it on those grounds, but you'll need to
20 renew your objection at trial if you think that's
21 being violated.

22 MS. ALVES: Yes, sir. Your Honor, the other
23 motion that I have regarding the statements of the
24 co-defendants was to exclude any statements unless
25 they were present to testify. I think the solicitor

1 has --

2 THE COURT: Yeah.

3 MS. ALVES: -- addressed that. He will not
4 bring up anything they said at all.

5 THE COURT: Ma'am?

6 MS. ALVES: He said that he was not going to be
7 bringing up anything that those two co-defendants
8 said.

9 THE COURT: That's my understanding. Again,
10 let me just make it clear, I know we're doing these
11 motions now, but I want you, if you feel like that
12 my pretrial rulings are not being honored or
13 violated, you got to make an objection.

14 MS. ALVES: I will.

15 THE COURT: Okay. And if it's something
16 sensitive like that, it might be you come to me and
17 say, look, we need to make this out of the presence
18 of the jury so we don't taint anything. Okay?

19 MS. ALVES: Yes, sir.

20 THE COURT: All right.

21 MS. ALVES: And, Judge, in going to other
22 statements, there was -- we've had -- we've had
23 numerous -- we've had much discussion on the
24 statement of Captain Steppe, that he said that
25 Mr. James was in the top five of people that he'd

1 ever tracked. I would object to that statement
2 being made. I think that's prejudicial, I think
3 that's irrelevant, and I'd object to that statement
4 of Captain Steppe coming in that he was in the top
5 five people that he'd ever tracked.

6 THE COURT: Under 403?

7 MS. ALVES: Yes, sir. I think that goes -- I
8 mean, it goes to a lot of improper evidence. But I
9 don't think that statement is relevant to whether or
10 not Mr. James is the person who they -- either they
11 tracked or the person they arrested that morning or
12 whether or not he was the person who robbed the
13 bank.

14 THE COURT: That will be part of my ruling on
15 the snakes, the amount of time, the boxer, the top
16 five. Okay?

17 MS. ALVES: Yes, sir.

18 Your Honor, my next motion goes to -- I would
19 make a pretrial objection to any reference being
20 brought up to the outcome of the co-defendants'
21 cases.

22 THE COURT: Absolutely.

23 MS. ALVES: You're not allowing that?

24 THE COURT: Right.

25 MS. ALVES: Yes, sir.

1 THE COURT: I mean, I don't see how that's
2 relevant at all. I agree with that.

3 MS. ALVES: Yes, sir. Judge, I would even
4 object further to there being any reference to the
5 fact that their cases are disposed of. The fact
6 that they've been charged, I mean, there's no
7 objection to the jury knowing that, but why does the
8 jury need to know that the co-defendants' cases have
9 been resolved? They're just --

10 THE COURT: Well, I think that the innuendo was
11 they were found guilty or pled guilty.

12 Are you planning on bringing that kind of
13 information out?

14 MR. MILLER: No, sir, Your Honor, only to the
15 extent that this is Homer James' day in court and
16 they're not to be concerned with what happened or
17 didn't happen with the co-defendants, this is his
18 time. But no reference to them being convicted by
19 plea or trial or anything like that.

20 THE COURT: Okay. So that's sustained.

21 MS. ALVES: Yes, sir. Judge, I would also --
22 in this case the State has several pieces of
23 forensic evidence. There were several items tested
24 that were obtained from the car and from the bank,
25 from the car and from the building where -- behind

1 the fire department.

2 In particular, the State had a hat that was
3 located in Leon James' vehicle, the vehicle that was
4 driven from the bank and that crashed in the woods
5 that -- I think the solicitor referenced it in his
6 summary of the case.

7 THE COURT: Say that again. I missed what
8 you --

9 MS. ALVES: I'm sorry. The solicitor was --
10 when he was giving you his summary, he told you
11 about how the car was chased by the police officer
12 and it crashed in Olar, South Carolina. Inside that
13 car there was a hat found. The hat is a
14 blue-and-gray striped hat. That hat was sent for
15 DNA testing and it was determined at SLED that the
16 DNA on the hat belonged to my client.

17 I would object to that hat being brought in.
18 There is a video of the robbery showing what the --
19 what the -- what the two people who went in the bank
20 had on their heads. And neither one of them, and in
21 particular Mr. Homer --

22 THE COURT: I'm not weighing the evidence and
23 I'm overruling your objection on that. I think that
24 if they can bring that in there and they have
25 evidence to show that establishes him to that hat

1 and it was found in the getaway car, that's up to
2 the jury to decide. Your argument is he didn't have
3 it inside, it's not his hat. I know what you're
4 saying, but I'm not going to grant your motion.

5 MS. ALVES: Well, Your Honor, I'm not saying
6 it's not his hat --

7 THE COURT: Don't argue with me on my rulings
8 now, please --

9 MS. ALVES: Yes, sir.

10 THE COURT: -- unless I ask now. Okay?

11 MS. ALVES: Yes, sir.

12 THE COURT: But you're asking me to weigh the
13 evidence. I'm not going to do that. It's up to the
14 jury to do that. And if they can establish a proper
15 foundation for its admissibility, I'll deny your
16 motion. If you want to argue other grounds other
17 than what you've given to me so far, I want you
18 covered on the record. But --

19 MS. ALVES: Yes, sir.

20 THE COURT: Anything else?

21 MS. ALVES: Judge, my argument wasn't that it
22 links him to the car. My argument for the hat is
23 that the hat that was found in the car is not the
24 hat that the person was wearing who robbed the bank.

25 THE COURT: Right. I gathered that.

1 MS. ALVES: Yes, sir.

2 THE COURT: That is denied.

3 MS. ALVES: Yes, sir. Judge, in addition,
4 there was a pair of panties found in the vehicle.
5 And originally these -- originally this item was
6 thought to be something else. They thought it was
7 some kind of rag or something. And the panties were
8 sent to SLED and there was a Y-strand DNA test done
9 on the panties.

10 And based on the Y-strand DNA test, the panties
11 were determined to have my client's DNA to the
12 exclusion of 1 in 3,800 other people who might --
13 who may or may not be related to Mr. --

14 THE COURT: 3,800?

15 MS. ALVES: 3,800 people who may or may not be
16 related to Mr. James through his paternal side. So
17 my issue with the panties is, number one, there's no
18 evidence that anyone in the bank had any panties on
19 their head or anywhere else. I don't know where
20 they're purporting that these panties are supposed
21 to have been worn, but there's no evidence on the
22 video from the bank that anyone had panties on their
23 head to conceal their identity or anything else.

24 Also my concern for those -- so, Your Honor, I
25 would argue that the panties are not relevant. Also

1 my concern is for the -- on the Y-strand DNA test
2 that was done, my concern is because of the wide
3 range of people that could fit into their findings
4 that that DNA could belong to, I would argue that
5 the Y-strand DNA test is not a reliable science upon
6 which we could rely to say that those panties have
7 DNA that could conclusively point to Mr. Homer James
8 on them --

9 THE COURT: Okay. Let me now stop you, please.
10 Mr. Miller, 1 in 3,800?

11 MR. MILLER: Yes, sir, that is correct.

12 THE COURT: I'm going to overrule you on the
13 relevancy issue to begin with because I know -- I
14 know you're trying to place it inside the store -- I
15 mean, the bank instead of the car, but that would be
16 for the jury.

17 I want to hear from your forensic person first
18 in-camera and I'll just make a ruling based on it
19 right here.

20 MR. MILLER: Absolutely.

21 THE COURT: Okay.

22 MR. MILLER: She's going to be our next-to-last
23 witness.

24 THE COURT: That seems mighty, mighty common to
25 me though, I'll be honest with you.

1 MR. MILLER: Yes, sir.

2 THE COURT: That's probably the lowest I've
3 ever heard.

4 MR. MILLER: She'll probably be one of our last
5 witnesses, so we shouldn't have any problems with
6 getting her in and letting you talk to her.

7 THE COURT: Okay. So that one is under
8 advisement.

9 MS. ALVES: Yes, sir.

10 THE COURT: Okay.

11 MS. ALVES: Judge, my last objection is to the
12 drone video that the State intends to attempt to put
13 into evidence. This incident occurred in June of
14 2014. We've heard lots of testimony about the
15 cornfield. I believe there was testimony that the
16 corn -- in response to questioning from Solicitor
17 Weeks, I believe the officer testified that the corn
18 was growing high, that he -- I believe he said it
19 was tall and wet, is how he referred to the corn.
20 Yes, sir, that's exactly how he referred to it.

21 He said it was a big field, it was tall, and it
22 was wet. And this would have been in June of 2014.
23 And I don't think there's any dispute corn would
24 have been growing very tall at that point in the
25 year.

1 This video was taken in -- or done in the fall
2 of 2015 prior to the -- when the last trial -- when
3 the trial was supposed to be scheduled -- or,
4 actually, when Leon James went to trial. The video
5 is a -- it's of a great area which the -- I believe
6 it was taken by -- I don't know who took the video.
7 I believe the solicitor or the investigators took
8 the video attempting to show the area where
9 Mr. Homer James and the other two people were
10 located.

11 The video does not accurately reflect the scene
12 as it would have been in June of 2014 when the
13 officers would have been out there in that field and
14 in that wooded area. And I would object to the
15 video coming in because it does not accurately
16 reflect the scene which it is supposed to reflect.

17 THE COURT: What would be your response to
18 that, Mr. Miller?

19 MR. MILLER: Your Honor, I think the Court is
20 probably aware by now that this is kind of a
21 confusing case as far as where things are happening
22 and where they are located. And the fact there's
23 not corn growing high and wet in the field whenever
24 the video was taken is minor considering the fact
25 that it shows -- one video shows the location where

1 the car was abandoned and the defendants ran away.

2 Then there's a second video that shows where
3 Leon James was arrested in an overhead view and,
4 more importantly, Your Honor, the video tracks
5 back -- and Agent Croft actually, at the last trial,
6 testified as the video played. He was able to point
7 out for the jury you can see a water tower. In
8 every one of the videos you can see that water
9 tower; it gives you an orientation as to space and
10 to distance.

11 Your Honor, none of the roads have changed, all
12 of the buildings are the same buildings that were
13 there with the exception of this abandoned fire
14 trailer which had gotten hauled off and junked. But
15 there's actually -- on the video you can see the
16 chassis -- or the undercarriage from that railer is
17 still in place exactly where it was on the night
18 that Lieutenant Williams -- or Captain Williams went
19 there and first encountered these guys.

20 So you got a video from the wrecked car, a
21 video from the Govan Fire Department where Leon
22 James was taken into custody, a video where Lewis
23 Garvin was taken into custody on Highway 64, and
24 then a fourth video from where Homer James was taken
25 into custody. And that video is very important from

1 the standpoint, again, there's nothing materially
2 changed about the area. But they're able to point
3 out -- the officers are able to point out on the
4 video where in fact they took the person into
5 custody -- took Mr. James into custody.

6 And we've been hearing all this talk about the
7 hayfield. Well, Officer Croft can say here's where
8 we were in the hayfield, here's where the helicopter
9 landed. And it's, we think, extremely important.
10 And we don't get the same kind of perspective and
11 ability to look around by using any kind of
12 satellite imagery or Google Earth.

13 We actually have a map that we want to enter.
14 And it's extremely blurry by the time you try to
15 blow it up to that resolution and try to get it big
16 enough so that the jury can see it. But we've got
17 high-definition video provided by the drone that we
18 were able to make these brief recordings.

19 I think the longest of the recordings is maybe
20 four and a half minutes long. In total, it's about
21 13 minutes worth of video. It gives the jury a
22 perspective on the incident locations and how they
23 tie to each other that we think is significant and
24 important. And there is no -- the roads haven't
25 moved, and that's what's referenced on it.

1 THE COURT: All right. I'm going to overrule
2 the objection. Is that the last of your objections?

3 MS. ALVES: Yes, sir.

4 THE COURT: Any other pretrial matters from the
5 defendant's standpoint?

6 MS. ALVES: No, Your Honor.

7 THE COURT: Any pretrial matters for the State?

8 MR. MILLER: No, Your Honor.

9 THE COURT: If you would, during the course of
10 this trial, if you get to the point where we're
11 having the forensic lady, the one with the 3,800, if
12 you have any other things you think are somewhat
13 questionable or controversial, let me know so we can
14 do an in-camera hearing or argument of that
15 testimony instead of, you know, having a chance of
16 getting that in front of the jury. Okay?

17 MR. MILLER: Your Honor, I believe that -- and,
18 obviously, Ms. Alves is perfectly willing or
19 perfectly able to change her mind, but I believe
20 that we've talked about all of the physical items of
21 evidence we would want Ms. Donna Money to testify
22 about, and it shouldn't take long for her to run
23 through each one of them with the Court just so we
24 can make sure everybody is on the same page with
25 those as far as the strengths of the mixtures.

1 And that's what everything in this case was.
2 It was nothing that they said, okay, this is this
3 person's; it was always a mixture of two or more
4 individuals, major contributors, which is something
5 that we -- unfortunately, as we get more
6 sophisticated DNA testing, it finds more DNA. And
7 that's just something that we're having to deal
8 with.

9 And, certainly, that is our position as it
10 relates to the panties, is that this is something
11 else that was in the car that has his DNA on it but,
12 like everything else, it's a mixture. And this is,
13 admittedly, a very low quantifiable number.

14 Your Honor, there was one final -- but we will
15 make that happen. There was one final thing, and I
16 think this is by consent. I have prepared an order
17 regarding the physical evidence previously entered
18 at the prior trial that essentially -- and I'll hand
19 it up. I've given Ms. Alves a copy and she
20 indicated she didn't have any objection.

21 This order would basically allow the Clerk of
22 Court to make available to us all of the evidence
23 from the previous trial so that it could be used in
24 the trial of this case. The only question that I
25 would have, and I just don't know how the Court

1 wants to handle it, is how do we go about marking
2 that evidence so it's not apparent it's already been
3 entered in somebody's trial? The evidence all has
4 exhibit stickers on it and it's there.

5 We can certainly -- what I had indicated was
6 that we would make a very detailed listing of the
7 evidence that got taken out of the Leon James' clerk
8 of court file and put into this case. And I suppose
9 that we could just utilize that list and put it back
10 in Leon James' file so if they're looking for
11 Defense Exhibit 5 in his case, they know they have
12 to come and look at Defense Exhibit 2 in --
13 administratively, it seems like a nightmare.

14 THE COURT: Well, I hear what you're saying.
15 And I -- first, obtaining the evidence, as a
16 concept, is not a problem; you agree with that?

17 MS. ALVES: Yes, sir.

18 THE COURT: How hard, Madam Court Reporter,
19 would it be if we changed an exhibit to make the
20 list State's No. 1, you know, then put brackets,
21 some Former No. 3 or something, that way we can come
22 back and -- I've never been faced with that before,
23 so I don't know.

24 MR. MILLER: And, you know, Judge, I know it's
25 happened before, but I've never been faced with it

1 either as far as --

2 THE COURT: Mr. Weeks is a lot older than the
3 rest of us over here.

4 MR. WEEKS: For the record, Mr. Epps is. I've
5 never run into a problem where it showed any kind of
6 prejudicial thing because usually it's got a number.
7 And I think the last time I did it, I just made all
8 my exhibits for this trial the same number as the
9 last trial and had a list of them. And the sticker
10 on there, I don't know that they pay a whole lot of
11 attention to that.

12 THE COURT: Do you have the exhibit list from
13 the former trial?

14 MR. MILLER: I do, Your Honor. We'll just
15 manipulate our proposed exhibits so that they're all
16 the same number.

17 THE COURT: Ms. Alves, is that going to throw
18 you --

19 MR. MILLER: It's nothing we can't handle.

20 THE COURT: Is that going to be a problem?

21 MS. ALVES: Judge, that might cause a problem
22 for the defense depending on what the numbers are
23 because right now I do intend to use some of the
24 items that were in evidence in the last trial. I'm
25 not sure what the numbers are, but if their numbers

1 don't start with number 1, it will look slightly off
2 if I don't have a number 1. I don't know what the
3 numbers are for the items that I told the State I
4 was going to use.

5 THE COURT: Have you already started marking
6 yours?

7 MS. ALVES: No, sir; they're in evidence.

8 THE COURT: So why can't you get your exhibit
9 list from the former co-defendant and make yours
10 consistent with that which you intend to use so that
11 they're not -- do you understand what I'm saying,
12 what Mr. Weeks was suggesting?

13 MS. ALVES: Yes, sir. I'll look at theirs. I
14 don't know if I'm even going to be putting in as
15 many as they have.

16 THE COURT: Oh, I see. So you have 1 and then
17 jump up to 30 or something like that?

18 MS. ALVES: I don't think it's -- more like 5
19 or 6 or 7.

20 THE COURT: Right.

21 MS. ALVES: But that was my -- I mean, that
22 would be the only concern that I have is for them to
23 conform the numbers, but I can look and see exactly
24 what the numbers are.

25 MR. MILLER: I'm printing it out right now,

1 Your Honor, from the clerk's exhibit list from the
2 last trial. But we can make it -- we'll figure out
3 how to --

4 THE COURT: Well, that makes sense just to
5 track the others. But if not, we'll just have to
6 make some sort of reference to it so that if we come
7 back later, we'll have the correct exhibits
8 attached.

9 MR. MILLER: And certainly we'd be able to come
10 up with an order that made it clear so that it could
11 go in and say, hey --

12 THE COURT: So, Ms. Alves, as far as his
13 proposed order, have you reviewed it and do you
14 agree to it?

15 MS. ALVES: I did, Your Honor, but I think we
16 might make changes in our discussion as to what's
17 actually written in the order.

18 MR. MILLER: Your Honor, I believe that the
19 order might have required --

20 MS. ALVES: Judge, I can work it out based on
21 the number of exhibits. It's not a problem.

22 THE COURT: But when you get the exhibits, you
23 need to have some -- you said you can work it out?
24 You're okay with the order now or --

25 MS. ALVES: I think we've -- based on our

1 discussion, we might have made some changes to
2 what's actually written in the order from what we've
3 discussed doing.

4 THE COURT: You don't have any problems having
5 these exhibits here tomorrow -- I can't imagine that
6 you are -- or just get them with me today before I
7 get out of here.

8 MS. ALVES: No, sir. I mean, I don't have a
9 problem trying to work these out with the exhibits
10 and I didn't have an objection to the order, it was
11 just -- I'm just not sure if our discussion -- if
12 the order now meets exactly what we just discussed.

13 MR. MILLER: Your Honor, it would. All the
14 order says is that at the end of this trial, all of
15 the evidence that was in Leon James' trial goes back
16 to Leon James' folder in the clerk's office and
17 we're going to enter the subsequent-to-this order
18 that says these exhibits are in Leon James' folder.
19 So it'll work out, Your Honor. We'll get that
20 straight.

21 THE COURT: All right. Anything else?

22 MR. MILLER: Nothing from the State, Your
23 Honor.

24 MS. ALVES: Nothing from the Defense, Your
25 Honor.

1 THE COURT: Okay. So except for the matters we
2 held in abeyance, the only thing I'm taking under
3 advisement are the alleged statements with regard to
4 the snakes, the amount of time he was out there,
5 being a boxer, and the statement to him about him
6 being in the top five to track. We agree?

7 MR. MILLER: That's correct, Your Honor.

8 THE COURT: Do you agree with that, Ms. Alves?

9 MS. ALVES: Yes, sir.

10 THE COURT: All right. Interesting. Thank
11 you.

12 MR. MILLER: Thank you.

13 (Brief pause in the proceedings.)

14 THE COURT: All right. On the prior matter
15 with Mr. James, we're going to make the e-mail Court
16 Exhibit 2.

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

18 (Court's Exhibit No. 2 marked for
19 identification and admitted into evidence.)

20 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Bamberg County, South Carolina, on the 8th of August, 2016.

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

September 19, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

State of South Carolina

Court of General Sessions

County of Bamberg

State	)	
	)	
	)	Transcript of Record
v.	)	2014-GS-05-209
	)	
Homer Arthur James	)	
	)	
<u>Defendant.</u>	)	

August 9-11, 2016
Bamberg, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge; and a jury.

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

David Miller, Deputy Solicitor
Bill Weeks, Deputy Solicitor
Michael Emer, Assist. Solicitor
Attorney for the State

Wallis Alves, Assist. Public Defender
Attorney for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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1 MS. ALVES: That's good.

2 THE COURT: Okay. Let's do 1:30.

3 Ladies and gentlemen, we're going to excuse you
4 for your lunch. We'll ask that you be back at your
5 jury room at 1:25 and we'll begin with the trial of
6 this case and you'll be sworn in and I'll give you a
7 charge further on the law before we get started with
8 opening statements. I'll excuse you now.

9 (The jury exits the courtroom at 12:13 PM.)

10 THE COURT: All right. Any additions from the
11 State on my instructions?

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

14 THE COURT: From the defense?

15 MS. ALVES: Nothing, Your Honor.

16 THE COURT: Okay. We'll be in recess until
17 1:30. Thank you.

18 (Luncheon recess 12:15 PM - 1:35 PM.)

19 THE COURT: Let me do some housekeeping right
20 quick. As to the motion -- various motions, mainly
21 Jackson v. Denno motion, I reserve ruling on the
22 testimony regarding there be a lot of snakes, big
23 ones, the defendant being a boxer, the comment about
24 top five people we've chased and the amount of time
25 we spent running.

1 Looking at the case law, I don't believe that
2 constitutes interrogation. I'm going to find it's
3 admissible. It certainly wasn't expressed
4 questioning. The questioning that I heard in the
5 testimony had to do with those normally attempted to
6 arrest and custody as to age, whether you need
7 medical treatment, whether he wanted water.

8 It wasn't such that would be words or actions
9 or conduct on the part of the police that they knew
10 or should have known it was likely to elicit
11 criminal response. I think it was just comments and
12 they were voluntary statements by the defendant;
13 albeit, he was in custody, clearly. So I'm not
14 going through Jackson-Denno analysis because I'm
15 going to find it's not interrogation, therefore,
16 they're admissible.

17 With that being said, does either side, in
18 their opening, intend to show any exhibits?

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

20 MS. ALVES: No, Your Honor.

21 THE COURT: All right. If you would, I had a
22 case the other day where lawyers were throwing
23 things up on the screen before they're admitted in
24 evidence. Don't publish them in any form or fashion
25 until they're admitted, unless y'all stipulate as to

1 the admissibility.

2 MR. MILLER: Your Honor, and with regard to
3 that, the State has 60 photographs that have been
4 marked State's Exhibits 1 through 60. We've
5 provided those to Ms. Alves out of the probably 300
6 that were taken, and Ms. Alves has indicated she
7 does not have any objection. So we were going to go
8 ahead and enter 1 through 60 in mass, to take care of
9 that beforehand.

10 And 61 and beyond, the exhibits, which we've
11 handed up a list to the clerk, to the court
12 reporter, and to the Court of the other exhibits,
13 those we'll go through individually. But 1 through
14 60, my understanding is those are without objection
15 as to authenticity.

16 THE COURT: Or admissibility.

17 MR. MILLER: Or admissibility. Obviously, she
18 may want to show something else than we do, but...

19 MS. ALVES: That's correct.

20 THE COURT: Okay. So for purposes of the
21 record, State's Exhibits 1 through 60 are
22 admissible?

23 MS. ALVES: Yes, sir. I don't have any
24 objection to 1 through 60.

25 THE COURT: Okay. Thank you. And I note for

1 the record my exception to my ruling on your
2 Jackson-Denno pretrial motions.

3 MS. ALVES: Yes, sir.

4 (State's Exhibit Nos. 1 - 60 admitted into
5 evidence.)

6 THE COURT: All right.

7 MS. ALVES: Judge, there's one other pretrial
8 motion that I don't think you've made a ruling on.
9 I had an objection to Captain Steppe's statements
10 coming in that the -- when he commented that
11 Mr. James was one of the top five people he'd
12 ever -- hardest people --

13 THE COURT: I actually did rule on that. But I
14 said that it was admissible. I felt like all of
15 those comments that were done pretrial was not
16 interrogation. The areas that I ruled on were the
17 comments by the defendant about there being snakes,
18 boxer -- about him being a boxer, him being one of
19 the top five hardest people and the amount of time
20 he spent running.

21 Now, let me clarify my ruling, please. I --
22 that was based on Jackson-Denno or lack of
23 Jackson-Denno. I didn't think it's interrogation.

24 MS. ALVES: Yes, sir.

25 THE COURT: That doesn't mean I'm saying those

1 are admissible. And there are other objections that
2 could be raised if you feel like they need to be
3 raised. But I'm basing my ruling on the
4 Jackson-Denno.

5 MS. ALVES: Yes, sir. Judge, on the comments
6 made --

7 THE COURT: Was that out of the 403?

8 MS. ALVES: I don't know. I made mine for
9 relevance. I'd also argue that statements made by
10 Captain Steppe about Mr. James being one of the five
11 hardest people ever to catch, I think that any
12 probative value to the State of that coming in would
13 be severely outweighed by the prejudice to
14 Mr. James.

15 THE COURT: All right. Well, let me -- right
16 quick then, who wants to address that from the
17 State's perspective? Because I was looking at it in
18 the Jackson-Denno whether it's interrogation or not
19 interrogation. Mr. Weeks?

20 MR. WEEKS: Your Honor, I think that's still
21 the analysis. What we were setting up is a
22 conversational discussion out -- where it was
23 brought out in the woods. And, honestly, I don't
24 care whether we bring that in or not, I just don't
25 think it's a Denno situation. I think it was not

1 interrogation, it was conversation that the officer
2 was having with the man. I don't know how that
3 could be prejudicial to her client under the
4 circumstances it's going to be testified to. But,
5 certainly, I can try to reign that statement in and
6 we don't have any objection to doing that.

7 THE COURT: All right. Very good. Is the
8 State ready to proceed?

9 MR. MILLER: State is ready, Your Honor.

10 THE COURT: Is the defense ready?

11 MS. ALVES: Yes -- Judge, one moment. I just
12 have one other pretrial matter, and this is very
13 brief. I know that the solicitor intends to put in
14 a pair of shoes that Captain Eddie Williams, to my
15 understanding, will testify that he took from the
16 jail from my client -- from the jail as they were
17 booking my client into the jail, and those shoes
18 were turned over to Special SLED Agent David
19 Williams.

20 There's been no chain of custody provided to me
21 regarding those shoes, but I would just object
22 to any reference to those shoes or anything about
23 those shoes coming in --

24 THE COURT: Isn't it the rule that if it's not
25 fungible, you don't have to establish chain of

1 custody?

2 MS. ALVES: Well, in this situation, I think
3 there'd be some question about the shoes, which I'd
4 rather not go into unless the testimony comes out.
5 But --

6 THE COURT: Okay. Do this then: Raise your
7 objection -- we can do it in-camera if you requested
8 it at that time to raise your objection at the
9 relevant time. But right now, my understanding of
10 the law, unless you have some product or evidence
11 that is subject to degrading or is non-fungible or
12 fungible, then you have to have chain of custody
13 because of the chance of tampering and things like
14 that. But if it's not fungible, you don't have to
15 have it. And I may be wrong on it, but that's my
16 understanding. Is that your understanding?

17 MR. WEEKS: That's correct, Your Honor. And
18 this is not chain issue with the shoes.

19 MS. ALVES: My only issue here is that -- I'm
20 not saying they are fungible. They're shoes. But
21 my only issue is, if those are the shoes, in fact,
22 that Captain Williams is going to testify that he
23 took from my client and if those are the shoes my
24 client had that day, my only concern is having that
25 brought up and having the shoes discussed prior to

1 there being a ruling on that.

2 And I know it's kind of difficult when we're
3 not really into the case and discussing the shoes,
4 but --

5 THE COURT: Bring that up, and if I need to
6 send the jury out, we'll do it. But right now, I'm
7 just not putting --

8 MS. ALVES: Yes, sir. Thank you.

9 THE COURT: Otherwise, are you ready to go?

10 MS. ALVES: Yes, sir.

11 THE COURT: Bring the jury in.

12 (The jury enters the courtroom at 1:43 PM.)

13 THE CLERK: Please stand and raise your right
14 hand.

15 (The Clerk administers the oath to the jury.)

16 THE JURY: I do.

17 (Jury sworn.)

18 THE COURT: All right. Ladies and gentlemen,
19 we're about to begin the trial of the case of State
20 of South Carolina vs. Homer Arthur James. As I told
21 you earlier, he has been charged and indicted with
22 the crime of armed robbery.

23 Let me go over a few pretrial matters with you
24 or before we get started with opening statements. I
25 don't know if any or all of you have ever been

1 involved with a trial, whether it be a civil trial
2 or a criminal trial such as this one. I would
3 suspect, however, that each and every one of you has
4 watched on TV or at the movies something that
5 purports to be a trial. Please let me dispel you;
6 trials are not like anything that you see at the
7 movies or on TV. They're not entertainment, but
8 they're a fundamental part of our democracy.
9 They're often very slow, they're often very
10 deliberate, they're often very methodical. They're
11 a search for the truth to try to make sure that
12 justice is done in each particular case.

13 Now, these attorneys you have in this courtroom
14 and any attorney when they're sworn in, they take an
15 oath to be an advocate for their client, and you can
16 expect no less from these attorneys here. At the
17 same time, they're also officers of the court. What
18 that means is that you can reasonably expect them to
19 be professional and courteous to one other, to this
20 Court, and to any witness that comes before you as a
21 witness in the trial of this case.

22 Now, our Clerk just gave you an oath and each
23 of you agreed to it that you'll try to reach a fair
24 and impartial verdict. What that means is in this
25 case, is that this Court, the parties, any witness

1 has a right to expect of you that you will be fair
2 and that you will be impartial and you will be
3 ethical in your dealings in following the
4 instructions of this Court.

5 Now, what I tell you is not the substantive law
6 that you will apply. That will be given to you at
7 the end of this case. I just wanted to give you,
8 basically, a roadmap of what you can generally
9 anticipate so you will know where you are at any
10 given time in this case..

11 I will remind you that the fact that this
12 gentleman was arrested and charged and indicted is
13 not evidence of this guilt. It does not raise an
14 inference of his guilt, it does not raise a
15 presumption of his guilt; it's simply the method by
16 which people are brought before the Court for a
17 trial and a determination of guilt or innocence.
18 I'll tell you more about that in a minute.

19 Have those of you who have asked to take notes,
20 do you have your pad and pencil with you?
21 Everybody's got them? All right. Let me caution
22 each of you who take notes. Madam Forelady, you
23 doubly, remember this: Some people are better
24 note-takers than others. At the end of the day when
25 you're told and instructed to begin your

1 deliberations, just because something may appear in
2 someone's notes doesn't mean it trumps somebody's
3 who doesn't have it in their notes or somebody who
4 has a memory of those facts being something else.
5 That's why they're called deliberations. You'll
6 just have to hash them out.

7 Also, you'll have to decide which testimony you
8 want to believe and which testimony you don't want
9 to believe during the course of this trial when you
10 begin your deliberations. A part of performing that
11 function of what we call the credibility of the
12 witnesses is to watch a witness' demeanor while
13 they're on the witness stand.

14 So if you're so engrossed in taking your notes
15 that you overlook or miss somebody's subtle reaction
16 to a question or to a point, you may miss something
17 that is indicative to you of whether or not that
18 person is believable and credible in their
19 testimony.

20 Now, in this case, the defendant has said, I'm
21 not guilty. What that means is, it's the burden --
22 the State of South Carolina has the burden of
23 proving his guilt by proving each and every element
24 of the charge of armed robbery, which I'll give to
25 you, by proof of his guilt beyond a reasonable

1 doubt. It will be your decision to decide at the
2 end of this case whether or not the State has met
3 that burden.

4 But let me give you a very quick definition of
5 what reasonable doubt is so you can have it in your
6 mind throughout the course of this case. A
7 reasonable doubt is the kind of doubt that would
8 cause a reasonable and sincere and conscientious
9 person to hesitate to act in an important matter in
10 their own affairs.

11 The State, as I told you, has the burden of
12 proving the defendant's guilt beyond a reasonable
13 doubt. Now, if you have ever served in a civil
14 trial, the burden of proof in those cases is what we
15 call the preponderance or simply the greater weight
16 of the evidence. And in those cases, we give an
17 explanation of a set of scales, if they tilt ever so
18 slightly one way or the other, that is simply the
19 greater weight.

20 Now, in criminal cases, the burden is much
21 greater; it's proof beyond a reasonable doubt.
22 Proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the defendant's guilt. With
24 that being said, ladies and gentlemen, there's very
25 few things in this world that we know with absolute

1 certainty, and the law does not require, in criminal
2 cases, that the State present proof that overcomes
3 every possible doubt.

4 If, based on your consideration of the
5 evidence, you are firmly convinced that the
6 defendant is guilty of the crime for which he's been
7 charged, at the end of the day, when you begin your
8 deliberations, it will be your duty to find him
9 guilty. If, on the other hand, you think that
10 there's a real possibility the defendant is not
11 guilty, you must give him the benefit of the doubt
12 and find him not guilty.

13 Now, ladies and gentlemen, your purpose as
14 jurors are to be the finders of fact. In the
15 parlance of lawyers, we call you the sole judges of
16 the facts. That simply means that you'll listen to
17 the testimony, you'll listen to the evidence, you
18 will determine what facts or what verdict you want
19 to reach.

20 If, during the course of this trial, I make any
21 comment or if I do anything that seems to suggest to
22 you the facts that -- how you're supposed to find
23 facts or the verdict you're supposed to reach, I'm
24 going to ask and instruct you to disregard it. Our
25 constitution does not allow any judge to make a

1 comment on the facts, nor to have an opinion on the
2 facts.

3 But you will determine what those facts are
4 based solely and only on the testimony and evidence
5 that you hear right here from the sworn testimony
6 and exhibits admitted in the trial. You're not and
7 shall not be influenced by anything you hear when
8 court is not in session by things you hear outside
9 of the courtroom.

10 Again, I'll remind you, as I told you before,
11 that you're not engage in independent jury research.
12 You're not to listen to, hear, or read anything
13 about this case or engage in deliberations amongst
14 yourselves or with anyone else. And that means face
15 to face or through any other means of communication.

16 Now, ladies and gentlemen, in every case there
17 are five phases. In just a minute, the State is
18 going to give you an opening statement. The
19 attorneys will tell you what they contend their case
20 is about. Let me warn you a little bit about what
21 the attorneys say. And I don't mean to warn you in
22 a bad sense. They're not sworn in, they're not put
23 on this witness stand and cross-examined. What they
24 tell you is helpful to you and is designed to give
25 you a roadmap about what their case is about, but

1 it's not testimony.

2 The only real testimony that you may consider
3 as testimony is what you hear from this witness
4 stand or exhibits in this courtroom. Also, the
5 defendant may, but is not required, to give an
6 opening statement because the burden remains on the
7 State to prove this defendant guilty in all
8 respects. But if they do, the same rules will
9 apply; it's not evidence and it shall not be
10 considered as evidence in your deliberations.

11 Finally, ladies and gentlemen, in every trial
12 there will be objections. There were when I was an
13 attorney, there have been since I'm a judge, and I
14 anticipate no less in this case. Needless to say,
15 ladies and gentlemen, this is a process that goes on
16 in every case.

17 A lawyer has an ethical obligation to object
18 any time he or she feels like there's improper
19 things going on in the courtroom. The fact that an
20 attorney objected or the fact that I've let you stay
21 in here while I ruled on that objection may not and
22 shall not be considered by you in your
23 deliberations. Madam Forelady, I'll remind you
24 about that at the end of the case.

25 Finally, if you need anything throughout the

1 course of this trial, meaning the jury, write it
2 down, send it out to me, and we'll take care of it
3 here. If I ever ask you to come back to the
4 courtroom before you're collectively ready, let me
5 know. This is not an endurance contest. Okay?

6 With that being said, I'm going to send you
7 back to the jury room for one quick second -- you
8 probably won't have a chance to stand down -- just
9 in case I omitted to say something or stated it
10 incorrectly. Y'all go back to the jury room.

11 (The jury exits the courtroom at 1:54 PM.)

12 THE COURT: Okay, sir.

13 MR. MILLER: No objection from the State, Your
14 Honor.

15 THE COURT: From the defense?

16 MS. ALVES: No objections.

17 THE COURT: Okay. You need a quick break or
18 are you ready to go?

19 MR. MILLER: The State is ready to proceed,
20 Your Honor.

21 MS. ALVES: I'm ready.

22 THE COURT: Bring the jury back in.

23 (The jury enters the courtroom at 1:55 PM.)

24 THE COURT: Is the State ready to proceed with
25 opening arguments?

1 MR. MILLER: Yes, sir.

2 THE COURT: All right, sir.

3 MR. MILLER: May it please the Court,
4 Ms. Alves.

5 Ladies and gentlemen of the jury, the trial
6 that you're about to hear, as the judge just told
7 you, is not entertainment, but there are a lot of
8 parallels between a trial in a criminal case and a
9 movie. And one of the things that I hate when I go
10 see a movie is when I realize that all of the funny
11 parts or all of the exciting parts, I've already
12 seen in trailer.

13 And that's what this is as an opening argument;
14 it's kind of a trailer. It's kind of to get you
15 into the mindset and get you to understand what's
16 going to happen. So I'll try to keep it as brief as
17 possible.

18 On June the 3rd -- excuse me. On June the 5th,
19 2014, two men went into the Enterprise Bank in
20 Denmark, South Carolina, and they robbed the bank.
21 And while they were robbing the bank, their getaway
22 driver moved the car from where he had dropped them
23 off, drove around to the back of the bank, he waited
24 for them.

25 When those two men came out of the bank having

1 robbed it, they ran to the car, they knew exactly
2 where to run, they jumped into the car, and the car
3 sped away. Over the course of the next several
4 hours, 36 hours or even more, 40 hours, three people
5 were arrested. They were all arrested in Bamberg
6 County.

7 We're going to present this case to you in
8 three separate phases. It will give you an idea and
9 you'll know when we're moving from phase to phase.
10 The first phase is going to be the bank robbery.
11 And there's going to be a good bit of testimony
12 about the bank robbery. You'll get to watch the
13 bank robbery, because it was recorded on video.

14 The bank robbery itself only lasted about 90
15 seconds. There will be multiple cameras that you'll
16 be able to look at. But that event didn't take an
17 extremely long amount of time. So we're going to
18 talk about the bank robbery itself.

19 The second phase that we're going to present to
20 you is what happened when Chief Walley of the Olar
21 Police Department saw the getaway vehicle and tried
22 to chase the getaway vehicle. You'll find out that
23 it wrecked and that the occupants of the vehicle
24 fled into the woods in the Olar area of Bamberg
25 County.

1 And then the third phase of the trial is going
2 to be how each of the individuals ended up getting
3 arrested and charged with armed robbery. And here's
4 the thing: The person that drove the car, charged
5 with armed robbery, just like the people who went
6 into the bank; the person who jumped over the
7 counter and took the money, you'll hear testimony
8 about, charged with armed robbery; the person who
9 had the gun, charged with armed robbery.

10 The judge is going to tell you at the end of
11 this case when he charges you on the law, that under
12 South Carolina law, the hand of one is the hand of
13 all; everybody who is together, working towards a
14 common scheme or a common goal, in this case,
15 robbing the Denmark Enterprise Bank, is just as
16 guilty, even the guy who did not go in, but was only
17 in the car driving, even the guy who didn't have the
18 gun. Everybody that participated in that armed
19 robbery is guilty of that armed robbery.

20 Ladies and gentlemen, we're going to try to
21 keep things moving along as quickly as possible. It
22 will not be entertaining, I apologize in advance,
23 but we're going to try to keep things moving along.
24 And once all of the evidence is in, once you've
25 heard all of the testimony from the witnesses, once

1 you've seen the physical evidence that was
2 collected, there's not going to be any doubt in your
3 mind, Homer James is one of the three people that
4 robbed the Enterprise Bank in Denmark, South
5 Carolina, Homer James is guilty of armed robbery.
6 Thank you.

7 THE COURT: Does the defense wish to have
8 opening statements?

9 MS. ALVES: Yes, sir. May it please the Court.

10 THE COURT: Yes, ma'am.

11 MS. ALVES: Mr. Miller.

12 MR. MILLER: Thank you.

13 MS. ALVES: Now, the solicitor talked about how
14 his opening statements are like a preview to a
15 movie. And I want to talk about movies and TV shows
16 because that's where we all pretty much have seen
17 court if you're not like us who work in courtroom
18 system and are here every day.

19 And I tell you right now, I love court TV
20 shows. You would think I wouldn't since I'm here
21 every day, but I love Law & Order, all those other
22 shows, Ally McBeal when it came on, Boston Legal,
23 all of them. I love them.

24 But one difference that we have between those
25 TV shows and real life is, of course, you get

1 everything concluded in an hour, sometimes you might
2 have a second hour, and everything is all done and
3 wrapped up nice and neat. But that's not how it is
4 in real life, and you're going to see that.

5 Like on TV they come in and the client of the
6 person -- the lawyer is clearly guilty or innocent
7 and everything is wrapped up nice and neat, it's
8 obvious to the audience what's going on and what's
9 happened and what the conclusion should be. But
10 that's not how it is in real life.

11 In real life we have to look -- we have to look
12 at all of the evidence. You have to pay attention
13 to what the witnesses all say. And at the end of
14 the trial, you have to listen to what the judge is
15 going to tell you about the law. And then you have
16 to go back into the deliberation room and you have
17 to discuss what you've heard and seen in the
18 courtroom, and then you have to make a decision
19 about whether or not Mr. Homer James is guilty or
20 not guilty of the armed robbery that he's accused of
21 having done.

22 Now, it would just be easy to just put it on TV
23 and have everybody throw up and say, oh, you know --
24 listen to what Mr. Miller says and say, oh, they
25 have enough evidence, he's guilty, we're done. But

1 that's just not how it works.

2 Right now, and the judge told you this, my
3 client, Homer James, sits here an innocent man.
4 He's only been accused of a crime. And that's not
5 enough to just say, oh, you've been accused of a
6 crime, you're guilty, we're going to just do
7 whatever with you. He is an innocent man right
8 there because under our system of justice, you are
9 innocent until such a time that the State has proven
10 you guilty beyond a reasonable doubt.

11 Now, the judge talked to you a lot about what
12 reasonable doubt is, and you'll hear a lot more
13 about reasonable doubt before you finally get to go
14 back to your jury room and make a decision. But
15 what that is basically, and the judge told you, is
16 that you must be firmly convinced by the evidence
17 that's been presented to you that Mr. Homer James is
18 guilty of robbing Enterprise Bank on June 5th of
19 2014.

20 Now, it's easy to say, oh, well, they brought
21 him here, they arrested him out there, they arrested
22 him in Bamberg County, he must have done it. Well,
23 that's why I'm asking you to just keep an open mind,
24 look at all of the evidence, listen to all of the
25 testimony, wait until the end of the trial to make

1 your decision, because it's not going to be as easy
2 as it is on TV.

3 The State has to prove to you beyond a
4 reasonable doubt that this crime occurred and that
5 Homer James is the one that committed the crime.
6 And I'm telling you that it's not going to be as
7 easy as Mr. Miller has just told you, because
8 Mr. James has said he's not guilty. The State
9 cannot prove him guilty. He is not guilty, and at
10 the end of the trial, you will see that. Thank you.

11 THE COURT: Call your first witness please.

12 MR. MILLER: Your Honor, the State calls Betty
13 Wilson.

14 BETTY WILSON

15 being first duly sworn, testified as follows:

16 THE WITNESS: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. MILLER:

19 Q. Ms. Wilson, could you please tell the jury your
20 name.

21 A. Betty Wilson.

22 Q. What do you do?

23 A. I'm a student.

24 Q. Where are you a student?

25 A. The University of South Carolina.

1 Q. Okay. If you could, just speak up just a
2 little bit so everybody can hear you.

3 Are you originally from Bamberg County?

4 A. Yes, sir.

5 Q. Were you in Bamberg County on June 5, 2014?

6 A. Yes, sir.

7 Q. Okay. Why do you remember that day?

8 A. I was coming into Denmark and just something
9 odd; I seen some men run into the bank, so it just
10 seemed very odd.

11 Q. And could you see where the individuals had
12 come from that ran into the bank?

13 A. I was coming up Highway 321, so I'm assuming it
14 was 321.

15 Q. Okay. Did you see them in a vehicle or get out
16 of a vehicle?

17 A. It looked like a silver or grayish Grand Am.

18 Q. Okay. Now, as you approached the bank, just so
19 everybody is familiar, you testified that you were
20 going up 321. That highway that intersects 321
21 right there where the bank is, do you know what
22 highway that is?

23 A. Highway 78.

24 Q. Okay. And you were coming from the Columbia
25 end of 321 or the Olar end of 321?

1 A. Columbia.

2 Q. Okay. Had you gotten all the way to Highway 78
3 when you saw the Grand Am?

4 A. No, sir. I was approaching the light.

5 Q. Okay. And when you saw -- do you remember how
6 many people got out of the Grand Am and went into
7 the bank?

8 A. No, sir, not the exact amount.

9 Q. Okay. And when you got to the light, which
10 direction did you go?

11 A. I made a left turn.

12 Q. Okay. So you were on 78. And then where did
13 you go from there?

14 A. Kind of like circled a building to come back to
15 the front of the bank.

16 Q. Why did you do?

17 A. My instincts didn't sit right. It just seemed
18 like an odd situation.

19 Q. And when you got back around to the front of
20 the bank -- or to the -- 321, so you were looking
21 across 321 at the bank, was the silver Grand Am
22 still there?

23 A. No, sir.

24 Q. What did you do then?

25 A. I just kind of waited a while to see if someone

- 1 was going to come outside of the bank.
- 2 Q. And what did you see?
- 3 A. After a few minutes, I did see some individuals
- 4 running outside of the bank pretty quickly.
- 5 Q. Do you remember where they went?
- 6 A. Kind of made a left coming outside of the bank
- 7 and to the back.
- 8 Q. Okay. So if you're looking at the front of the
- 9 bank, they're coming towards you out of the front
- 10 door, correct?
- 11 A. Yes, sir.
- 12 Q. And they made a left?
- 13 A. Yes, sir.
- 14 Q. And then around towards the back of the bank?
- 15 A. Yes, sir.
- 16 Q. Okay. Did you tell the police what you had
- 17 seen that day?
- 18 A. Yes, sir.
- 19 Q. Now, these people that you saw run out of the
- 20 bank, did you know them?
- 21 A. No, sir.
- 22 Q. Could you identify them by name?
- 23 A. No, sir.
- 24 Q. Could you identify them if you saw them again?
- 25 A. No, sir.

1 Q. Did they have masks or something covering their
2 faces whenever you saw them?

3 A. Yes, sir, I believe so.

4 Q. Okay. And you said that they went into the
5 bank, but when you came back around, the car was
6 gone. Did you see the driver of the vehicle?

7 A. No, sir.

8 Q. Okay. So you don't know anybody that was
9 involved as far as this incident, but you saw the
10 car?

11 A. Yes, sir.

12 Q. And you told the police about the car?

13 A. Yes, sir.

14 Q. Thank you. No further questions.

15 THE COURT: Cross-examination?

16 CROSS-EXAMINATION

17 BY MS. ALVES:

18 Q. Now, when you saw the car, you noted that it
19 was a gray Grand Am?

20 A. Yes, ma'am.

21 Q. And how many people did you see get out of the
22 car?

23 A. I can't remember the exact amount of people.

24 Q. Okay. Now, you did give a statement about this
25 case to the police?

- 1 A. Yes, ma'am.
- 2 Q. And you actually wrote a statement?
- 3 A. Uh-huh. Yes, ma'am.
- 4 Q. Okay. And would looking at your statement help
- 5 you refresh your memory about what you told the
- 6 police?
- 7 A. Yes, ma'am.
- 8 Q. Would you like to look at your statement --
- 9 A. Um...
- 10 Q. -- to refresh your memory? You don't need to?
- 11 A. No, ma'am.
- 12 Q. All right. Would you agree that you told the
- 13 police that you saw two people get out of the car?
- 14 A. At that time, it could have been two.
- 15 Q. Do you think it was more now?
- 16 A. No. I just don't know the exact amount. It
- 17 could have been two or three. I'm not for certain,
- 18 so I didn't want to state that.
- 19 Q. But would you agree that in your statement to
- 20 the police, you told the police that it was two
- 21 people?
- 22 A. If that's what I said, then, yes, ma'am.
- 23 MS. ALVES: I'd ask to approach the witness.
- 24 THE COURT: Yes, ma'am.
- 25 BY MS. ALVES:

1 Q. Okay. Ms. Wilson, I'm showing you a paper. Do
2 you recognize it?

3 A. Yes, ma'am.

4 Q. You can hold it.

5 A. Thank you.

6 Q. You're welcome. That is the statement that you
7 gave to the police?

8 A. Yes, ma'am.

9 Q. And you gave that statement on June 5th of
10 2014?

11 A. Uh-huh.

12 Q. At -- I'm looking at the time. That's a --
13 somewhere around 3:40 maybe.

14 A. Uh-huh.

15 Q. In the afternoon. And that was after you told
16 them what you'd seen?

17 A. Yes, ma'am.

18 Q. All right. And you told the police that you
19 saw two people?

20 A. Uh-huh.

21 Q. And you gave a description of the people that
22 you saw?

23 A. At the time, yes, ma'am.

24 Q. Okay. And the description that you gave is
25 that you said that there were two men and they were

1 black males. And you said that they were between
2 five-seven and five-nine with slim build. Is that
3 what you told the police?

4 A. Yes, ma'am.

5 Q. And did you try to be accurate when you told
6 the police?

7 A. I tried to give everything that I could see at
8 that time, so, yes, ma'am.

9 Q. Okay. So you told the police, and at the time
10 you were trying to be accurate?

11 A. Uh-huh.

12 Q. And this was about -- just a couple of hours
13 after this occurred?

14 A. No, ma'am, not a couple of hours. Maybe 30
15 minutes, I would say.

16 Q. Okay. So shortly after this occurred, you gave
17 a statement to the police, and you said that there
18 were two black males between five-seven and
19 five-nine?

20 A. Uh-huh.

21 Q. That's who you saw getting out of the car?

22 A. Yes, ma'am, at the time.

23 Q. All right. But did you give any kind of
24 description of the driver?

25 A. No, ma'am.

1 Q. What about anybody else who might have been in
2 the car?

3 A. No, ma'am.

4 Q. Do you know if anybody else was in car besides
5 the driver?

6 A. No.

7 Q. Do you know how many people were in the car all
8 together?

9 A. No, ma'am.

10 Q. So you can't tell us whether there was two
11 or -- we know three. You said two males and a
12 driver. But you can't tell us if there were four
13 people in the car?

14 A. No, ma'am.

15 Q. And you can't identify anybody?

16 A. No, ma'am.

17 Q. And, in fact, you didn't even see anybody with
18 a gun when you saw these two men go into the bank?

19 A. No, ma'am.

20 Q. You did not see a gun?

21 A. No, ma'am.

22 MS. ALVES: Thank you. No further questions.

23 THE COURT: Redirect?

24 REDIRECT EXAMINATION

25 BY MR. MILLER:

1 Q. Ms. Wilson, whenever you wrote that statement
2 Ms. Alves was talking about, that was a little while
3 after the incident. But you talked to the police
4 before then, didn't you?

5 A. Yes, ma'am -- yes, sir. Excuse me.

6 Q. Okay. Do you recall who it was that you talked
7 to?

8 A. The officer -- I just know who I provided the
9 statement to. I don't know her name.

10 Q. Right. And the officer you provided the
11 statement to was Sergeant Linder from the Denmark
12 PD?

13 A. Yes, sir.

14 Q. Okay. But she came to you to get a written
15 statement after you had told the officers the
16 description of the car earlier; correct?

17 A. Yes, sir.

18 Q. Okay. And when the two people were running
19 beside the bank, did you see any type of dye pack or
20 anything go off in bags?

21 A. Yes, sir. I believe it may have been red. But
22 something did explode.

23 Q. Okay. Thank you. No further questions.

24 MS. ALVES: Nothing further.

25 THE COURT: May this witness be excused?

1 MR. MILLER: The State would ask that she be
2 excused, Your Honor.

3 MS. ALVES: No objection, Judge.

4 THE COURT: Thank you, Ms. Wilson. You may be
5 excused.

6 Call your next witness please.

7 MR. WEEKS: Thank you, Your Honor. The State
8 would call Chris Folk.

9 CHRIS FOLK

10 being first duly sworn, testified as follows:

11 THE WITNESS: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. WEEKS:

14 Q. State your full name?

15 A. Christian Subur Folk.

16 Q. Middle name Suber, S-U-B-E-R?

17 A. -U-R.

18 Q. Where are you employed? I'm going to call you
19 Chris because that's what I've been calling you.

20 A. Yes, sir. At Enterprise Bank.

21 Q. Which one?

22 A. In Denmark.

23 Q. How long have you been working for Enterprise
24 Bank, Chris?

25 A. Probably about 30 years.

1 Q. And how about -- what is your role with the
2 bank now?

3 A. Branch manager at the Denmark office.

4 Q. How long have you been at the Denmark branch?

5 A. About 20 years.

6 Q. Okay. Go to school anywhere, college?

7 A. Newberry, Midlands Tech.

8 Q. You're going to count Newberry as a college?

9 A. It was high school, but Midlands Tech.

10 Q. Okay. Okay. Grown up, lived in this area most
11 of your life?

12 A. Yes, sir, most of my life.

13 Q. On June 5th, 2014, what were you doing as a
14 manager of Enterprise Bank?

15 A. That morning I was working in my office and
16 left to go to lunch at my usual time about 12:00 to
17 1:00, and came back and continued working in the
18 branch.

19 Q. Okay. How many people were working there in
20 the branch that day?

21 A. Normally five. I think it was four that day
22 with the ladies and myself. I think one of them was
23 on vacation.

24 Q. Tell me a little bit, just briefly, about the
25 setup in the bank and who does what.

1 A. When you come in the front door, you've got an
2 office on the left, which is the CSR's office,
3 Ms. Gleaton, who was on vacation that week. You go
4 off to the right, that would be my office, and then
5 right in front of you is the teller line where the
6 ladies are.

7 Q. When you say the teller line, that's where the
8 girls cash the checks and that sort of stuff?

9 A. Yes, sir.

10 Q. And behind that, what is behind the teller
11 line?

12 A. The cash drawers and the operations they use
13 back there.

14 Q. And then behind there, is there a teller
15 window?

16 A. Drive-in, yes, sir.

17 Q. And how about if you go behind the counter
18 there, back to the left, what's back in there?

19 A. There would be a break room and the restrooms
20 back there.

21 Q. Okay. If you go over the counter and go to the
22 right, what's there?

23 A. You're going into the vault.

24 Q. All right. There's only one door in and out of
25 the bank?

1 A. That's it. Yes, sir.

2 Q. Okay. Now, Chris, I'm going to call your
3 attention to after you got back from lunch on June
4 the 5th. What happened?

5 A. I was in my office working. And there is a
6 glass you can see out in lobby out of the Carol
7 Gleaton's office or mine. And I noticed someone
8 bolted across the lobby. And when I looked up, that
9 person had jumped the counter, the teller line.

10 Q. Does your desk face that window?

11 A. Yes, sir, it does.

12 Q. Okay.

13 A. And when I saw that, I jumped up and took about
14 two steps to proceed to go out there. And at that
15 time, another individual ran into my office, and he
16 had a -- what appeared to be a gun with a cloth over
17 it; turquoise color, pink cloth. And he kept
18 pointing it at me and hollering for me to get on the
19 floor, which I did.

20 Q. Right there at your desk?

21 A. Right there at my desk. I didn't make but
22 about two steps.

23 Q. Could you hear anything else going on out in
24 the lobby at that time?

25 A. I was paying attention to him, and he was

1 hollering to the other -- well, excuse me. Before
2 that, he was sitting there pointing what appeared to
3 be the gun at me and was asking me, where's the
4 money? And he might have asked me two or three
5 times, and I said I did not have money. And at that
6 point, I could kind of glance up a little bit and I
7 saw where he would go to the door where he was
8 leaving to go into the lobby, and he'd stand there
9 and he was hollering, shoot him. And he hollered
10 that maybe twice -- two or three times. And at that
11 point, I just started praying for myself and the
12 ladies. And I was still sitting there facedown
13 looking at the floor.

14 Q. Praying because you were scared?

15 A. Absolutely.

16 Q. Tell me about the surveillance equipment, if
17 any, in the bank. What do y'all have there?

18 A. We have probably four or five cameras in the
19 lobby, it did at that time. We now have some
20 outside.

21 Q. And they're all inside and they're all focused
22 at various angles in the --

23 A. In the lobby, yes, sir.

24 Q. Okay. Did you see anything about the other guy
25 that was in the --

- 1 A. No, sir, because I was still looking at my
2 carpet in office.
- 3 Q. Yeah. Did you notice anything about what the
4 guy in your office was wearing?
- 5 A. No, sir.
- 6 Q. Color?
- 7 A. I did notice that it was a black individual.
8 And that's all I could say.
- 9 Q. A black man?
- 10 A. A black man.
- 11 Q. Okay. Anything about had his shoes, anything
12 about his clothing that you could remember?
- 13 A. All I remember is that turquoise cloth over
14 that -- what appeared to be a gun.
- 15 Q. And I believe you told me you could tell me
16 what color your carpet was because --
- 17 A. Absolutely.
- 18 Q. -- you were facedown on the carpet.
- 19 A. It's brown with white spots in it.
- 20 Q. Okay. Chris, in preparation for this, have you
21 reviewed the surveillance videos for your bank on
22 June 5th of 2014?
- 23 A. Yes, sir, I have.
- 24 Q. And I'm going to hand you what's marked State's
25 Exhibit No. 62 and ask you if you can identify that.

1 Yes or no?

2 A. Yes.

3 Q. And how can you identify that?

4 A. It's my initials on that.

5 Q. And what do your initials signify on this DVD?

6 A. It signifies that I did view it.

7 Q. Okay. You've watched it several times, haven't
8 you?

9 A. Yes, sir.

10 Q. Okay. And the videos, can you kind of describe
11 how they are downloaded from the bank. Is it all
12 one continuous long video?

13 A. Twenty-four hours.

14 Q. Okay. But when you actually go to each camera,
15 do you have to download little snippets from each
16 camera?

17 A. It automatically switches continuously --

18 Q. Okay.

19 A. -- from one camera to the other.

20 Q. Are the videos that are portrayed on this DVD
21 true and accurate representations of what they
22 purport to show?

23 A. Yes, sir, they are.

24 Q. And --

25 MR. WEEKS: Your Honor, we'd move to introduce

1 State's No. 62.

2 THE COURT: Any objection?

3 MS. ALVES: Is that all of the videos on one?

4 No objection.

5 THE COURT: Okay. Exhibit 62 admitted.

6 (State's Exhibit No. 62 admitted into
7 evidence.)

8 MR. WEEKS: Your Honor, if I may, I'd like to
9 publish 62. It's not long. It's just --

10 THE COURT: Yes, sir.

11 MR. WEEKS: -- best that I publish it at this
12 point in time.

13 THE COURT: Yes, sir.

14 MR. WEEKS: Chris, watch this, and then I'm
15 going to go back through it and ask you some
16 questions.

17 THE COURT: Do you need to cut your lights down
18 or are you okay?

19 MR. WEEKS: I don't know. Let's see how it
20 looks. I think we're good, Judge.

21 BY MR. WEEKS:

22 Q. Chris, since there's no audio, I can imagine
23 the court reporter can be a little ambidextrous
24 here. What is that a video of or showing in that
25 camera?

1 A. That is a video -- I was at lunch at that time,
2 and that is what Ms. Eleese that just walked into
3 the CSR office told me when I got back that the
4 gentleman had come in there.

5 MS. ALVES: Objection.

6 Q. Your office -- don't tell me what anybody else
7 told you, Chris. Your office is over on this side?

8 A. On the right-hand-side, yes, sir.

9 Q. And Ms. Eleese's office is right here?

10 A. That's the CSR office. Yes, sir.

11 Q. And that's the teller line you've described?

12 A. That is, yes, sir.

13 Q. Okay. What we just watched is video snippet of
14 something that happened before the robbery; is that
15 correct?

16 A. Yes, sir.

17 Q. Okay. And what's that portraying? That
18 individual is going where?

19 A. He's walking out of the bank.

20 Q. What is this video portraying, Chris?

21 A. That's the teller line that the gentleman was
22 standing at.

23 Q. That's still before the robbery, right?

24 A. Yes, sir.

25 Q. Is this the actual robbery, Chris --

1 A. Yes, sir, it is.

2 Q. -- this video?

3 This guy over here on the right side --

4 A. That's where the door goes into my office.

5 Q. Is he saying anything while that's going on,
6 Chris?

7 A. I think that's when he was hollering shoot him.

8 Q. All right.

9 A. That's all I heard.

10 Q. Chris, the individual pictured in this video
11 segment, you said something about the cloth, is that
12 what's depicted in his hand?

13 A. Yes, sir.

14 Q. What else is in that right hand?

15 A. It looks to appear the gun.

16 Q. All right. As he's leaving the bank -- have
17 you watched this video?

18 A. Afterwards, yes, sir.

19 Q. Okay. I'm going to ask to stop it, back it up
20 just a hair. Right there. Is that the way he
21 appeared when he was in your office?

22 A. Yes, sir.

23 Q. What's he doing with his cap or whatever he's
24 got on his head?

25 A. He was in the lobby at that time. I don't

1 know.

2 Q. Okay. And watching this video, have you
3 observed what he's got on the video with his --

4 A. It -- whatever he had apparently over his face,
5 looked to be lifting it so he could see, possibly.

6 I don't know.

7 Q. Okay. And the item depicted right there, is
8 that the item you described as the gun?

9 A. That would be the cloth and the gun, yes, sir.

10 Q. Okay. I believe there's one more short video
11 clip -- three more. I can't count very well. This
12 angle is looking from the front door, Chris?

13 A. It is, from the teller line.

14 Q. The individual's head you see right there, is
15 that the second robber?

16 A. That would be the one that went over the
17 counter, over the teller line.

18 Q. And that individual depicted at 13:27:47 was
19 who?

20 A. That was the gentleman that came out of my
21 office.

22 Q. Okay. That individual there, 13:27:40, is who?

23 A. That was still the gentleman that came out of
24 my office.

25 Q. This is just another camera angle?

1 A. Yes, sir.

2 Q. And several of the pictures or several of the
3 videos that we've just observed and shown to the
4 jury, Chris, you could -- could you see the
5 individual's weapon?

6 A. I could, yes, sir.

7 Q. Now --

8 MR. WEEKS: Your Honor, we have previously
9 admitted State's 1 through 60.

10 THE COURT: Yes, sir.

11 MR. WEEKS: They've been compiled on a DVD so
12 that we could publish them to a jury a little
13 easier, and I think they're in without objection.

14 THE COURT: They are in without objection.

15 MS. ALVES: Yes, sir.

16 MR. WEEKS: Is it okay to publish them off the
17 disc without objection?

18 MS. ALVES: I don't have any objection to that.
19 My only concern is I don't think this witness has
20 personal knowledge of --

21 MR. WEEKS: I'm not -- I'm just going through
22 the first one. I'm only going to ask him about the
23 ones early on.

24 BY MR. WEEKS:

25 Q. Chris, you're going to have to narrate for me a

1 little bit. What angle is this in your bank?

2 A. The front of it.

3 Q. That would be State's No. 1, for the record.

4 State's No. 2?

5 A. That would be the parking lot on the left-hand
6 side when you come out.

7 Q. Directly from that entrance there, is there a
8 road?

9 A. Highway 321.

10 Q. All right, 321. And then right across from
11 321, what's that road there, the little side street?

12 A. Goes right there to the church.

13 Q. But there is a side street --

14 A. Yes, sir.

15 Q. -- directly across --

16 A. Yes, sir, but I can't tell you the name.

17 Q. Can you loop the block on that --

18 A. Yes, sir.

19 Q. Okay. So this would be the right side of your
20 building if you're facing the front?

21 A. Yes, sir.

22 Q. That's State's No. 2.

23 State's No. 3?

24 A. That would be left-hand side if you're facing
25 the front of the bank.

1 Q. That would be the left-hand side if you're
2 facing the front?

3 A. Yes, sir.

4 Q. Okay. And that's a drive-thru or a teller
5 or --

6 A. The ATM machine.

7 Q. Okay. State's 4?

8 A. That would be the back parking lot.

9 Q. Back parking lot in State's 4? What is to the
10 left over here that's not depicted in that picture?

11 A. It is a vacant lot that the bank has.

12 Q. Okay. And what does that lot border on?

13 A. What does it --

14 Q. What does that vacant lot border on?

15 A. The back of the parking lot --

16 Q. And on the --

17 A. -- if you're walking in the front door, on the
18 right-hand side.

19 Q. Are there railroad tracks back there?

20 A. Yes, sir, on the other side of the lot.

21 Q. Okay. Next one?

22 A. That would be the vacant lot.

23 Q. Okay. Now we're back inside the bank now?

24 A. We're inside. That is the teller line when you
25 walk in the front door.

1 Q. Okay.

2 A. That would be the door that is open going into
3 my office.

4 MS. ALVES: Judge, I'd just ask that -- for
5 each picture, say the number.

6 THE COURT: Identify it?

7 MS. ALVES: Yes, sir, identify them.

8 THE COURT: Please call out the number.

9 MR. WEEKS: I'm sorry.

10 BY MR. WEEKS:

11 Q. State's 7 is a picture basically facing your
12 office right there; is that correct?

13 A. Yes, sir.

14 Q. All right. State's 8, similar picture?

15 A. That would be still the same picture.

16 Q. Okay. State's 9, with the glare on it. But
17 what was that depicted on that picture?

18 A. That is a picture of the footprint when the
19 gentleman crossed the teller line on the counter.
20 It's hard to see with that glare in it.

21 Q. All right. That would be State's 9.

22 State's 10?

23 A. That would be the drive-in.

24 Q. All right. State's 11?

25 A. That would be one of the cash drawers.

1 Q. What's significant about this picture of this
2 cash drawer, Chris?

3 A. It still has the dye pack in it, but it's not
4 in the correct slot.

5 Q. You kind of got to assign those things to a
6 particular slot so --

7 A. It should be over to the right-hand side
8 sitting on that pad.

9 Q. All right.

10 A. In the next slot over.

11 Q. Okay. Now, was any money taken in the robbery
12 of your bank?

13 A. Yes, sir.

14 Q. Do you have approximation of how much was
15 taken?

16 A. I think it was around \$6,000.

17 Q. Okay. And the dye packs, do you know how much
18 money is in a dye pack?

19 A. Usually it's either \$60 or \$80.

20 Q. All right. And what -- I mean, we've seen them
21 on TV or whatever. But what's the significance of
22 that dye pack? What does it do?

23 A. When you pick that dye pack up and you walk out
24 of that bank building, it's got a time delay of 30
25 seconds and it throws a dye out over whatever it's

1 in. If it's in a bag, it throws a permanent marking
2 dye.

3 Q. Does it blow up literally?

4 A. Yes, sir, that's what it literally does.

5 Q. Will it burn anything?

6 A. It is very hot, they say.

7 Q. Okay. Did y'all have at least one dye pack
8 taken in this robbery?

9 A. Yes, sir.

10 Q. And there was, obviously, a dye pack that was
11 left?

12 A. Yes, sir.

13 Q. Did each teller have a dye pack?

14 A. Yes, sir.

15 Q. Okay. So what else happens when the dye pack
16 leaves the bank? When it goes through that door, do
17 any alarms trigger?

18 A. It does trigger the alarm -- the sound of the
19 alarm also.

20 Q. Okay. And after this robbery, did the police
21 show up pretty quickly?

22 A. Very quickly.

23 Q. Okay. Y'all didn't -- what did you do after
24 the robbery itself?

25 A. I'm -- I know the first thing I did was to

1 check on the ladies and make sure they were fine.
2 And at that point, we have a procedure that we go
3 through as far as locking the door and taking out a
4 robbery kit and start filling it out as to what we
5 remember.

6 Q. Okay. Answer any questions the defense has for
7 you, Chris.

8 THE COURT: Cross-examination?

9 CROSS-EXAMINATION

10 BY MS. ALVES:

11 Q. Mr. Folks, you first realized the bank was
12 being robbed when you saw the person run across the
13 lobby?

14 A. Could you speak up?

15 Q. I'm sorry. You first realized the bank was
16 being robbed when you saw the person run across the
17 lobby?

18 A. I assumed that's what was happening. But I
19 knew it was happening when that other man came in my
20 office.

21 Q. Okay. And can you describe the man who came in
22 your office?

23 A. No. I just know it was a black male
24 individual.

25 Q. Okay. And can you describe the person who

1 jumped over the counter?

2 A. I just know it was a black male individual.

3 Q. You were able to see him?

4 A. A glare.

5 Q. Excuse me?

6 A. I could not identify him.

7 Q. Okay. And you can't identify the person who
8 came in your office?

9 A. No, ma'am.

10 Q. All right. Now, you said that the person who
11 came in your office made you lay on the ground?

12 A. On the floor.

13 Q. But you were able to at least get a look at him
14 before you laid on the ground?

15 A. A glance. What I was looking at was the gun
16 and that cloth.

17 Q. Okay. Now, you testified here that -- I think
18 at one point you said pink and then you said
19 turquoise.

20 A. Pink, turquoise. It looked more turquoise to
21 me. It was only a second.

22 Q. All right. Now, when you talked to the police,
23 you told them that the towel was green.

24 A. Green, turquoise.

25 Q. In that family?

1 A. Yes, ma'am.

2 Q. Now, you saw the towel on the video. That one
3 looked more yellowish.

4 A. That may be from the glare in the lobby on it,
5 like the glare that was on the counter where you was
6 looking at the footprint.

7 Q. Uh-huh.

8 A. That's the only thing I could guess.

9 Q. Okay. So you were staring at the hand with the
10 gun?

11 A. Yes, ma'am.

12 Q. So you didn't take your eyes -- when you were
13 able to look up, you didn't take your hand -- your
14 eyes off the hand with the gun?

15 A. No, ma'am.

16 Q. Okay. Now, in this pictures that we saw and on
17 the video we saw, the person appeared to have a
18 glove on their left hand. You saw that in the
19 video?

20 A. Yes, ma'am, I saw it in the video.

21 Q. And you looked at this video numerous times?

22 A. Several.

23 Q. Okay. But in their right hand where the person
24 was holding a gun and at one point they had a towel,
25 they didn't -- don't seem to have a glove on their

1 hand. Would you agree that's how it looked on the
2 video?

3 A. No, ma'am, I cannot.

4 Q. Can't say either way?

5 A. No, ma'am, I cannot.

6 Q. All right. But you were staring at this
7 person's hand with the gun the whole time that you
8 saw him?

9 A. For maybe three seconds.

10 Q. Okay.

11 A. The rest of the time I was looking at the
12 floor.

13 Q. Did you see anything unusual about their hands?

14 A. The gun.

15 Q. Okay.

16 A. And the cloth over it.

17 Q. Did you see any marks, tattoos?

18 A. No, ma'am.

19 Q. So you didn't see any of that?

20 A. No, ma'am.

21 Q. And you can't identify anybody?

22 A. No, ma'am.

23 Q. No further questions. Thank you.

24 THE COURT: Redirect?

25 MR. WEEKS: No redirection.

1 THE COURT: May this witness be excused?

2 MR. WEEKS: Yes, Your Honor.

3 MS. ALVES: No objection, Your Honor.

4 THE COURT: Thank you, sir. You may be
5 excused.

6 MR. EMER: State calls Stacey Lee.

7 STACEY LEE

8 being first duly sworn, testified as follows:

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. EMER:

13 Q. Good afternoon. Ms. Lee. If you could, could
14 you please state your full name for the record?

15 A. Stacey Lee.

16 Q. Ms. Lee, where do you work?

17 A. Enterprise Bank in Denmark.

18 Q. Where is that in Denmark? What is the address?

19 A. 4668 Carolina Highway.

20 Q. And that's right beside the Freezy Breezy?

21 A. Yes, sir.

22 Q. About how long have you worked there?

23 A. Almost eleven years.

24 Q. And what do you do there?

25 A. I'm the vault teller.

1 Q. What exactly is a vault teller?

2 A. The head teller. I'm responsible for all of
3 the money that comes in and out of the bank.

4 Q. So you're the head teller?

5 A. Uh-huh.

6 Q. Did you work on June 5th, 2014?

7 A. I did.

8 Q. What time did you come in that day?

9 A. Around 8:30.

10 Q. Do you recall what happened that day?

11 A. I can recall what happened during the robbery.

12 Q. Was it kind of a slow day?

13 A. It was.

14 Q. Do you recall speaking to a young man around
15 noon?

16 A. I do.

17 Q. Can you tell me a little bit about that
18 conversation?

19 A. There was a guy that came in and asked about
20 opening an account. When he came in, there wasn't
21 anyone in to open an account for him, so I told him
22 what he need and told him around what time to come
23 back.

24 Q. Who usually opens the accounts?

25 A. Chris Folk could open accounts, Carol Gleaton,

1 the CSR, can open accounts, and Elease Gilbert who
2 is the backup CSR.

3 Q. What time was the CSR going to be back in?

4 THE COURT: Hang on. Can we do something to
5 get you more comfortable?

6 THE WITNESS: I think I'm too far away.

7 THE COURT: I'm sorry.

8 MR. EMER: You're fine, Judge. Thank you.

9 BY MS. EMER:

10 Q. What time did you tell him the CSR would be in?

11 A. Around 12:00.

12 Q. Around 12:00. What did you tell him he needed
13 to open the account?

14 A. \$100, his driver's license, and social security
15 card.

16 Q. Did you get his name?

17 A. No, sir.

18 Q. What was his demeanor like when you were
19 talking to him?

20 A. Kind of nervous.

21 Q. In what sort of way can? You elaborate a
22 little bit?

23 A. He seemed a little shy, like he didn't know
24 what he was talking about, because he asked about a
25 relationship bank -- a relationship account, and I

1 don't know what that is.

2 Q. Okay. Did he make eye contact with you?

3 A. He wouldn't really give me eye contact.

4 Q. Did you tell anybody else about the
5 conversation you had with this man?

6 A. I told Eleese.

7 Q. Do you recall what he was wearing that day?

8 A. I can't remember. I know he had on shorts. I
9 do know he had on shorts.

10 Q. Shoes?

11 A. He had on shoes.

12 Q. Were they flip-flops or --

13 A. I can't remember.

14 Q. You only spoke with him briefly?

15 A. Yes, sir.

16 Q. What time did you go to lunch that day?

17 A. Might have been around 12:30.

18 Q. How long was your lunch? Do you remember?

19 A. Our lunch is usually an hour. But I can't
20 remember what time I came back.

21 Q. Was it before 1:26?

22 A. It was before 1:26.

23 Q. What was going on when you came back to the
24 bank -- or what did you do when you came back to the
25 bank?

- 1 A. I walked to the back to clock back in and I was
2 walking to my desk when I was pushed back.
- 3 Q. Why were you pushed back?
- 4 A. Well, I heard the door slam and then I looked
5 up and saw a man on the counter, and the other
6 teller pushed me back. I guess that's when we
7 realized we were being robbed, because I saw
8 something in his hand.
- 9 Q. Who pushed you back?
- 10 A. Linda Collins.
- 11 Q. What did you see in his hand?
- 12 A. It was something with a red tip on it. I'm not
13 sure exactly what it was, but it had a little red
14 tip.
- 15 Q. You said you saw a guy on the counter. Was he
16 jumping over the counter?
- 17 A. He had to jump up because he was squatting on
18 top of the counter.
- 19 Q. Okay. What happened when you were pushed back?
- 20 A. I ran.
- 21 Q. Where did you run to?
- 22 A. I ran and I locked the bathroom door. I ran
23 into the bathroom.
- 24 Q. So you didn't see much of the robbery?
- 25 A. I didn't.

1 Q. Could you hear anything from the bathroom?

2 A. The only thing I heard was someone tell someone
3 else to shoot her.

4 Q. How many individuals could you hear?

5 A. I only heard the one. But I could tell that
6 the voice was coming from another direction. It
7 came closer from the lobby versus the back of the
8 teller line.

9 Q. The bathroom you were in, where is that located
10 in the bank?

11 A. It's closer to the CSS -- CSS -- CSR's office
12 in the front of the building.

13 Q. It's kind of on the side of the bank?

14 A. Yeah.

15 Q. The gentleman you spoke with at 12:00, did you
16 see him any other time that day?

17 A. I didn't.

18 Q. You didn't see him around 1:00?

19 A. No, sir. I was on lunch break.

20 Q. Okay. Okay. Nothing further. Please answer
21 any questions the defense may have?

22 THE COURT: Cross-examination?

23 CROSS-EXAMINATION

24 BY MS. ALVES:

25 Q. You saw the person who jumped onto the top of

1 the teller counter?

2 A. No. I saw the person that came into the bank
3 to ask about the account.

4 Q. I'm talking about during the robbery?

5 A. I saw a person on the counter. I didn't see a
6 face. I saw someone on top of the counter.

7 Q. But you can't identify that person?

8 A. I cannot.

9 Q. And you never saw a second person in the bank,
10 the second robber --

11 A. Oh, no, I didn't.

12 Q. So you can't identify anybody?

13 A. No, ma'am.

14 Q. And you can't say whether my client is one of
15 the people who came in the bank, can you?

16 A. I can't.

17 Q. No further questions.

18 THE COURT: Redirect?

19 MR. EMER: Nothing further, Your Honor.

20 THE COURT: May this witness be excused?

21 MR. EMER: Yes, Your Honor.

22 MS. ALVES: No objection.

23 THE COURT: You may be excused. Thank you,
24 ma'am.

25 MR. WEEKS: The State calls --

1 THE COURT: Hang on. How long is your next
2 witness?

3 MR. WEEKS: Probably a little longer than that
4 one.

5 THE COURT: Let's take about a ten-minute
6 break.

7 (The jury exits the courtroom at 2:53 PM.)

8 (Short break.)

9 THE COURT: Is the State ready?

10 MR. WEEKS: State's ready, Your Honor.

11 THE COURT: Defense ready?

12 MS. ALVES: Yes, sir.

13 THE COURT: Bring the jury in, please.

14 (The jury enters the courtroom at 3:04 PM.)

15 MR. WEEKS: Thank you, Your Honor. The State
16 would call Elease Gilbert.

17 ELEASE GILBERT

18 being first duly sworn, testified as follows:

19 THE WITNESS: Yes, ma'am.

20 DIRECT EXAMINATION

21 BY MR. WEEKS:

22 Q. Elease, state your full name, if you would.

23 A. Elease Gilbert.

24 Q. And are you from Bamberg County?

25 A. Yes, sir.

- 1 Q. And do you work here in Bamberg County?
- 2 A. Yes, sir.
- 3 Q. Where do you work?
- 4 A. Enterprise Bank in Denmark.
- 5 Q. How long have you worked for Enterprise?
- 6 A. About nine years.
- 7 Q. Always work at the Denmark branch?
- 8 A. Yes, sir.
- 9 Q. Is that Denmark branch in Bamberg County?
- 10 A. Yes, sir.
- 11 Q. Were you working there -- well, tell me what
- 12 your job is there.
- 13 A. I'm a teller and I do backup head teller and
- 14 backup CSR.
- 15 Q. Backup head teller. And what's a CSR do?
- 16 A. We open accounts, we do deposits, withdrawals,
- 17 we do CDs, IRAs, we do a lot of stuff.
- 18 Q. Bank stuff, huh?
- 19 A. Uh-huh.
- 20 Q. If you walk in the front doors of the
- 21 Enterprise in Denmark, is there a CSR office over on
- 22 the left?
- 23 A. Yes, sir.
- 24 Q. And is that normally where you take people to
- 25 do the stuff you just described?

1 A. Yes, sir.

2 Q. Okay. June the 4th of 2014, do you remember
3 that day -- June the 5th, I'm sorry.

4 A. Yes, sir.

5 Q. Tell me what you were doing that day. Were you
6 working?

7 A. I was. It was a slow day, but we were working.
8 We were just sitting around and talking and reading
9 the Bible.

10 Q. And you say we. Who was there with you?

11 A. Me, Rebecca, and Mindy.

12 Q. Okay. Did Stacey Lee work there at that time
13 too?

14 A. She was.

15 Q. And Chris Folk?

16 A. Uh-huh. He was there too.

17 Q. He was the branch manager?

18 A. Yes, sir.

19 Q. Okay. I'm going to call your attention a
20 little bit before the bank robbery. Did you have an
21 opportunity to talk to somebody about opening an
22 account?

23 A. I did. This guy came in wanting to do an
24 account and Stacey had done told him what all he
25 needed. But it was close to our lunch break, so she

1 told him to come back when he got the information.

2 So when he did come back, he did attempt to open an

3 account, but he still didn't have the information.

4 Q. Okay. And you've watched the videos that we've

5 put into evidence, State's Exhibit 62? Did you

6 watch those videos?

7 A. Yes, sir.

8 Q. One of them, I think it's the very first one,

9 shows a fellow and, I believe, you wearing a pink

10 shirt in the video going in that little CSR room.

11 A. Yes, sir.

12 Q. Have you watched that?

13 A. Yes, sir.

14 Q. Is that when that conversation took place?

15 A. Uh-huh.

16 Q. Now, how long after that -- did he leave, that

17 person leave?

18 A. He did.

19 Q. How long after that did the bank get robbed?

20 A. I'd say maybe 20, 25 minutes.

21 Q. Okay. And where were you at when the bank got

22 robbed?

23 A. I was back on the teller line.

24 Q. All right. And we've seen some pictures

25 looking at the teller line. If that was the teller

1 line right here, where would your spot be that day?

2 A. I was on the second booth to the left. We got
3 the last booth on that side and then we got the
4 window that do to send the work down before going
5 into the break room.

6 Q. How many little windows are there on the teller
7 line?

8 A. Four.

9 Q. And that's how many were there in June of 2014?

10 A. Yes, sir.

11 Q. Tell me in your own words, Elease, what did you
12 observe about the robbery? What happened?

13 A. From the time that when someone came in and
14 jumped across the counter, we were sitting there
15 reading the Bible. And when he jumped cross the
16 counter -- it just happened so fast. The door just
17 popped open. And it was like one, two, three across
18 the counter and he was standing in the middle
19 window, which is actually my window, but I was in
20 the next window because I was training Rebecca.

21 And it was like we just looked at first. It
22 was like, you know, surprised, somebody just over
23 the counter. And he was like -- I heard someone
24 like, get down, just get down. They kept saying get
25 down. So I left from out of my window and went and

1 got on the side and just laid down on the floor
2 because there's no drawer or anything there.

3 And I just, you know, left everything and went
4 and laid down. And that was that till he finished
5 doing what he was doing. I was just lying there,
6 you know, scared and praying and --

7 Q. Who was he dealing with mostly behind the
8 counter?

9 A. Rebecca.

10 Q. Okay. After he left, did -- what did y'all do?

11 A. We got up. And the first thing we did was we
12 have to lock the door, that's procedure. And then
13 we got the robbery kit because we have to put
14 something in the window to let the officers know.

15 Q. Okay. All right. Do y'all call the police or
16 did that dye pack do the job for you?

17 A. It does, because we got a bait. Once you pull
18 it, it automatically alarms the officer. I can't
19 remember whether someone called the police or not
20 because we all started to cry. I mean, we was just
21 shook up. I can't remember whether we called the
22 police ~~or whether the bait thing --~~ which I know it
23 did call the officer, but I don't remember whether
24 any of us did.

25 Q. Did they get there pretty quick?

1 A. They did --

2 Q. Okay.

3 A. -- pretty good.

4 Q. The man that came in right before the robbery,
5 Elease, could you describe his disposition?

6 A. The one that wanted the account?

7 Q. Right.

8 A. He came in and first he talked to Stacey. And,
9 like I said, I was fixing to go to lunch. But when
10 he came in the second time, we went into the office
11 to do the account and he had a license in his hand,
12 which I never saw the license, and asked me -- he
13 said, so do I have to have a social security card?
14 I told him, yes, that's one of the requirements we
15 need to open an account.

16 And, you know, he kept moving jittery and
17 stuff. And I talked to him nicely and calmly, as I
18 would do any customer. And he asked was it another
19 bank that you had to have a social security card
20 for, and I told him I'm sure you probably do. So
21 then he asked where could he go get a social
22 security card from --

23 Q. You told him where to go?

24 A. Yes. I told him to go to Orangeburg.

25 Q. His overall demeanor, that's what I was getting

1 at. What was his demeanor like?

2 A. Like he wanted to -- I don't know. I guess
3 that's what he act like he was interested in, in
4 opening an account. But that's his interest. But
5 if you go and come and still ain't got it, I don't
6 know.

7 Q. Okay. Thank you very much. Answer any
8 questions they have for you.

9 CROSS-EXAMINATION

10 BY MS. ALVES:

11 Q. Now, you saw the first person jump over the
12 counter?

13 A. Yes.

14 Q. Could you describe that person?

15 A. They had, like, on a ski mask -- not a ski
16 mask, but like a ninja suit, is what it looked like
17 to me. So all you could see was, like, the ridge of
18 the eyes. That's about all that I could see.

19 Q. Okay. Could you tell how tall he was or
20 anything else about him?

21 A. I don't really know how tall. I know he was
22 taller than us. But I don't know exactly about how
23 tall he was because it was -- they come in hollering
24 get down, get down, get down, so I wasn't fixing to
25 observe him and see what he was doing. I was doing

1 like he said.

2 Q. All right. You said he was taller than who?

3 A. Than we were.

4 Q. Okay. Did you ever see the second person?

5 A. Go to the room? I could hear him, but I didn't
6 actually see him go in. I could hear the second
7 person yelling get down too.

8 Q. But you didn't see the second person?

9 A. I could actually -- from the time they came
10 in -- they come in so quick, they jump across the
11 counter. And you could see a glance going to -- by
12 my boss's office, but you couldn't see them, not
13 telling you to get down. So that was my focus;
14 getting out of their way, not to see who was who.

15 Q. So you can't identify the second person?

16 A. No.

17 Q. And you can't say whether my client was either
18 one of the men who came in this bank?

19 A. No.

20 Q. Thank you. No further questions.

21 THE COURT: Redirect?

22 MR. WEEKS: No, Your Honor.

23 THE COURT: May this witness be excused?

24 MR. WEEKS: She may be, Your Honor.

25 MS. ALVES: Yes, sir.

1 THE COURT: Thank you, ma'am.

2 MR. EMER: The State calls Rebecca Templeton.

3 REBECCA TEMPLETON

4 being first duly sworn, testified as follows:

5 THE WITNESS: I do.

6 DIRECT EXAMINATION

7 BY MR. EMER:

8 Q. Ms. Templeton, good afternoon. Could you
9 please state for the Court your full name.

10 A. Rebecca Templeton.

11 Q. Ms. Templeton, where do you work?

12 A. In the treasurer's office downstairs.

13 Q. And how long have you been there?

14 A. Since June of '15.

15 Q. 2015. Where did you work on June 5th of 2014?

16 A. Enterprise Bank in Denmark.

17 Q. All right. How long did you work there?

18 A. A little over a year.

19 Q. And what did you do there?

20 A. I was a teller.

21 Q. Were you working on June 5th, 2014?

22 A. Yes.

23 Q. What time did you come in that morning?

24 A. Oh, probably a little after 8:00.

25 Q. What was going on that day, generally speaking?

1 A. Nothing much. It was a pretty slow day. We
2 were just talking, pretty much, and sitting around.

3 Q. Do you recall if you went to lunch?

4 A. I did.

5 Q. What time did you go to lunch?

6 A. My lunch is from -- was from 11:00 to 12:00
7 there. So...

8 Q. Okay. And how long were you gone for that day?

9 A. I'm not exactly sure. It might not have been a
10 full hour. But...

11 Q. Do you recall a seeing a man come in to ask
12 about an account?

13 A. Not -- not really. I wasn't too much paying
14 attention to him, you know. I heard them talking
15 about it afterwards about how he kind of acted
16 funny.

17 MS. ALVES: Objection, Your Honor. Hearsay.

18 THE COURT: Sustained.

19 BY MR. EMER:

20 Q. Around 1:00 or so, that's the time that Eleese
21 came back?

22 A. I'm not exactly sure.

23 Q. Let's fast-forward. What happened around 1:26?

24 A. That's when we were robbed.

25 MR. EMER: Your Honor, the State would like to

1 publish State's Exhibit 6 at this time.

2 THE COURT: Okay.

3 BY MR. EMER:

4 Q. What is this a photo of?

5 A. Our teller line in the bank.

6 MR. EMER: Approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. EMER:

9 Q. Can you point out your -- I'm not sure of the
10 terminology -- your station?

11 A. Then, I was right there in the middle.

12 Q. Right in the middle. Can you tell me a little
13 about the robbery, what you were doing?

14 A. Just sitting there, listening to them -- Elease
15 and Mindy were right there. They were talking about
16 the Bible and stuff, and I was just, you know,
17 sitting there when it happened.

18 Q. What happened?

19 A. Two guys came rushing in and the one guy jumped
20 on top of the counter right there in front of me.
21 And I jumped up and, I guess, flung my chair back.

22 Q. So he jumped right in front of you?

23 A. Uh-huh. Yeah. I mean, he could have probably
24 almost jumped on top of me.

25 Q. Were you in shock when that happened?

1 A. Very much.

2 Q. Did he tell you anything?

3 A. He just kept saying to get down and I stood
4 there. I didn't even listen to him at first, like,
5 I just stood there staring at him in shock at first.
6 And when I went to get down, he told me to get up
7 and to get him all the money. He just kept saying
8 that over and over: Get me money, get me the money,
9 no dye pack, no dye pack.

10 Q. How many individuals did you see come in?

11 A. Two.

12 Q. And where did the second individual go?

13 A. To Chris' office.

14 Q. Did you hear him say anything?

15 A. Not really. I was kind of tuning him out.

16 Q. When he jumped over the counter, what happened
17 exactly?

18 A. Well, I went to get down and he told me to get
19 up and get him all the money, so I started at my
20 station, I gave him all the money, I left my dye
21 pack because he kept saying no dye pack, he snatched
22 it up and said, no, I said all the money. So he
23 actually snatched it up himself.

24 And then I went to Elease's station and got the
25 money out of her drawer and then I went -- well, he

1 wanted to go to the work station which is the fourth
2 one over there you can't really see.

3 Q. Can you try to point that out for the jury?

4 A. Yeah. It's right there (indicating).

5 Q. And which one is Eleese's station?

6 A. Right there. And I said there's no money over
7 there, because that's when we send out all the work
8 that we do. And then I ran to Stacey's station,
9 which is right there, and her drawer was locked
10 because she had just came back from lunch and was in
11 the back clocking in. And I said I can't get it,
12 it's locked. And then I turned around and went to
13 the drive-thru and got the money out of that one.

14 MR. EMER: At this time, the State would like
15 to publish number 10.

16 THE COURT: All right, sir.

17 BY MR. EMER:

18 Q. Ms. Templeton, what is this a photo of?

19 A. The drive-thru.

20 Q. So this is where you went to next?

21 A. Uh-huh. That's the last one I went to.

22 Q. What happened after that?

23 A. Well, when we were there, he noticed something
24 weird about when I pulled -- because there's a bait
25 money where the slip of the money goes up under and

1 it silences the alarm once you pull it out, because
2 we actually have the alarm money and we have the dye
3 packs. So he noticed -- he didn't notice the dye
4 pack, it was the alarm money when I pulled it --

5 Q. Can we publish --

6

7 A. -- and he threw it back.

8 Q. -- number 11 so you can clarify for the jury?

9 Okay. Can you restate that?

10 A. Yes. That's the alarm money that goes in the
11 slit where it alarms the police. And all of them
12 got pulled and all of the dye packs got pulled. But
13 he --

14 Q. Can you --

15 A. -- noticed something weird --

16 Q. -- use the laser pointer for me?

17 A. -- when I got the -- yeah.

18 Q. Sorry. Just start over with about what we're
19 looking at and kind of what happened right there.

20 A. Okay. When I pulled the money out of the slot,
21 he noticed something weird there and threw it back.

22 Q. And the slot being -- with the laser pointer,
23 which slot are you talking about?

24 A. It's back there (indicating).

25 Q. The top right one?

1 A. Uh-huh.

2 Q. Okay. And he threw it back?

3 A. Uh-huh.

4 Q. And what he threw back, what is that?

5 A. That is the alarm money.

6 Q. Okay. The dye pack money?

7 A. No. There's no dye pack in that one. He got
8 all three dye packs.

9 Q. Did he say anything else to you after that?

10 A. No. I mean, the whole time he just repeatedly
11 said, give me all the money, no dye pack. At one
12 time he said, I'm not going to hurt you, just give
13 me all the money.

14 Q. Okay. After he threw the money back in, then
15 what happened?

16 A. I turned around and said, that's it. And he
17 left, he ran out.

18 Q. Okay. Nothing further. Please answer any
19 questions the defense may have.

20 THE COURT: Cross-examination?

21 CROSS-EXAMINATION

22 BY MS. ALVES:

23 Q. Now, the person that you had -- there was two
24 people that came into the bank that you saw?

25 A. Uh-huh. Yes.

1 Q. And you had --

2 THE COURT: One second. Cut the lights back
3 on.

4 Q. And you had contact with the person who -- you
5 had the most contact with the person who jumped over
6 the counter?

7 A. Yes.

8 Q. And could you describe that person?

9 A. Not really. I just knew they were wearing all
10 black and, I mean, all I could really see was their
11 eyes. And I didn't really -- I tried not to pay
12 attention to them. I tried to get the money and get
13 them out of there.

14 Q. Okay. And you saw the second person?

15 A. Briefly. I just seen him run in there. That
16 one -- or whoever was on top of the counter before,
17 you know, I just seen them glimpse run in there and
18 heard them.

19 Q. Okay. But --

20 A. I just didn't hear anything they were saying,
21 really.

22 Q. So you can't describe the second person?

23 A. No.

24 Q. And you don't have any knowledge at all that my
25 client was either one of those people?

1 A. Huh-uh. I can't prove it.

2 Q. Thank you. No further questions.

3 THE COURT: Redirect?

4 MR. EMER: Briefly, Your Honor.

5

6

REDIRECT EXAMINATION

7 BY MR. EMER:

8 Q. How tall are you?

9 A. Like, five-five.

10 Q. Five-five? Okay. Thank you nothing further.

11 THE COURT: May this witness be excused?

12 MR. EMER: Yes, Your Honor.

13 MS. ALVES: No objection.

14 THE COURT: Thank you, ma'am.

15 Call your next witness, please, sir.

16 MR. MILLER: Thank you, Your Honor. State

17 calls Chief James Walley of the Olar Police

18 Department.

19

JAMES WALLEY

20 being first duly sworn, testified as follows:

21 THE WITNESS: I do.

22

DIRECT EXAMINATION

23 BY MR. MILLER:

24 Q. Good afternoon, Chief.

25 A. Good afternoon.

1 Q. Can you please state your name for the jury.

2 A. James Ronald Walley.

3 Q. Chief, where do you work?

4 A. I work for the Olar Police Department.

5 Q. What are your -- what is your title there?

6 A. I'm the chief of police.

7 Q. And what does the chief of the Olar Police
8 Department do?

9 A. Everything. I'm actually the only officer
10 there. So...

11 Q. Fair enough. If it's law enforcement, you're
12 it; right?

13 A. Right.

14 Q. Okay. Chief, how long have you been the chief
15 in Olar?

16 A. Four years.

17 Q. Okay. Were you working on June 5th, 2014?

18 A. Yes.

19 Q. Can you explain that anything of significance
20 happened that day in law-enforcement speaking?

21 A. Yes, sir. That afternoon as I was patrolling,
22 the Bamberg County dispatcher broadcast a call of a
23 robbery of the Enterprise Bank in Denmark, which had
24 just occurred. Denmark is about ten miles from
25 Olar, north of Olar. They also broadcast the

1 description of the vehicle that may have been
2 involved. It was a silver Pontiac Grand Am.

3 Q. Now, if you were in Olar and wanted to get to
4 Denmark in the straightest line possible, how would
5 you go?

6 A. South on Highway 321.

7 Q. And the Enterprise Bank in Denmark, did you
8 know that to be on 321?

9 A. Yes.

10 Q. Okay. So what happened next? You heard the
11 BOLO or the be-on-the-lookout for this
12 silver-in-color Pontiac Grand Am. What happened
13 after that?

14 A. I positioned my car on 321 on the side of the
15 road and just waited at the intersection of Highway
16 64 in case the vehicle came through Olar.

17 Q. And did you see a vehicle that would match the
18 description of a gray or silver Pontiac Grand Am?

19 A. Yes.

20 Q. What did you do?

21 A. Once it came past me, I fell in behind it and
22 began following it.

23 Q. Could you see how many people were in the
24 vehicle?

25 A. No.

1 Q. At that time, when you got behind the vehicle,
2 did you immediately cut on your blue lights and try
3 to pull it over?

4 A. No. As I fell in behind it, the vehicle turned
5 left from 321 onto 5th street. I followed behind
6 it. Once they got to the intersection of 5th and
7 Weed Avenue -- there's a stop sign for traffic
8 coming down 5th -- the vehicle ran the stop sign and
9 turned right on to Weed. At that point I turned my
10 blue lights on.

11 Q. And then what did you do?

12 A. The vehicle accelerated. I stayed behind it
13 with the blue lights on headed south on Weed Avenue.
14 We came to the intersection of Weed and 6th Street.
15 There's also a stop sign for traffic on Weed. The
16 vehicle ran the stop sign, continuing south on Weed
17 heading towards a piece of property that Weed dead
18 ends into.

19 Q. So did you know prior to that day that past 6th
20 Street, Weed Road was a dead end?

21 A. Yes.

22 Q. Okay. When you saw the vehicle head down that
23 road that you knew to be a dead end, what did you
24 do?

25 A. I continued to follow it with the blue lights.

1 The vehicle came to a point in the roadway where
2 there's a cable stretched across the road. At that
3 point, one of the driver's side doors came open
4 slightly. The vehicle continued through the cable,
5 continued down Weed Avenue, and I stayed behind it.

6 Q. Now, you said that you had your blue lights on.
7 Is this a marked vehicle that you're in?

8 A. It's an unmarked black Dodge Charger.

9 Q. Is it one of those vehicles that looks like a
10 police car but just doesn't have the markings on the
11 side?

12 A. Right.

13 Q. And the lights on it are on the inside of it?

14 A. Right. The lights are above the sun visors,
15 there are also lights in the fog lights on the
16 exterior.

17 Q. Okay. So -- and what time of day was all of
18 this going on?

19 A. Approximately, I think, about 1:30 when the
20 call went out, so it was probably about 10 minutes
21 later, about 1:45.

22 Q. Okay. I want to show you what's been entered
23 into evidence as State's Exhibit 27. Is that the
24 vehicle that you were chasing?

25 A. It is.

1 Q. And how do you know that's the vehicle you were
2 chasing?

3 A. Once that vehicle went down Weed Avenue and
4 turned right, the vehicle took out another cable,
5 which caused a fence post to come down with it.
6 When I turned the corner, the vehicle in the picture
7 was positioned against some trees at the dead end.

8 Q. I'm not going to ask you to cut off the lights
9 because I think that it's okay. So this is the
10 vehicle you were chasing; correct?

11 A. Correct.

12 Q. Okay. And there's another vehicle here. Is
13 this -- what is this area here?

14 A. That's Weed Avenue coming from 6th Street.

15 Q. State's 30. I'll show you another picture
16 that's been entered into evidence as State's --
17 well, before we do that. So the vehicle has
18 wrecked. What did you see whenever you got to the
19 wrecked vehicle?

20 A. As I came to a stop near the vehicle, I saw a
21 black male come out of the rear passenger's side
22 door and run north through the wooded area parallel
23 to Weed Avenue.

24 Q. Okay. So you said --

25 MR. MILLER: Kenny, can we go back to 27,

1 please?

2 BY MR. MILLER:

3 Q. Sorry about that. All right. Is this car
4 facing north?

5 A. It is facing mostly north at this point.

6 Q. Okay. So when you say coming south on Weed,
7 this car would be coming south on Weed; correct?

8 A. Correct.

9 Q. So the person gets out of the rear passenger's
10 side door and goes this way?

11 A. Correct.

12 Q. Okay. I just want to make sure we're clear
13 about that.

14 MR. MILLER: Okay. Kenny, State's 30, please.

15 BY MR. MILLER:

16 Q. So when you got out of the car -- saw the
17 person run off, did you chase after them?

18 A. No, I didn't chase them.

19 Q. What did you do?

20 A. I yelled for him to stop. He, obviously,
21 didn't stop. At that point, I just secured the
22 vehicle, made sure there wasn't anyone else in it --

23 Q. Okay.

24 A. -- stood by with the vehicle.

25 Q. Okay. I'll show you what's been marked as --

1 well, what's been entered as State's Exhibit 30.

2 Does this appear to be what you saw when you walked
3 up to the vehicle?

4 A. It does.

5 Q. And I can give you a little bit of a hard copy
6 here so you can look at it, not so washed out.

7 A. Right.

8 Q. And this stuff here, what is that?

9 A. That's money, U.S. currency, with some red
10 coloring on it.

11 Q. Okay. So you're talking about the red-stained
12 money. That's what's in this bag here; correct?

13 A. Correct.

14 Q. Okay. And I don't know if you can -- can you
15 tell what this is right here? It might be easier
16 with the paper.

17 A. It appears to be the paper band that's normally
18 wrapped around a stack of money.

19 Q. Okay. So at that point in time, you've seen
20 the car wreck, you saw the one person run from the
21 back seat of the car -- you've seen the one person
22 run away, and you've gone up and made sure nobody
23 else was in the car, and you secured the car. Who
24 are you waiting on to come to help?

25 A. Just backup to come. Like I said, in Olar, I'm

1 the only one there, so I'm not going to chase
2 someone through the woods by myself; I'll wait for
3 backup to get there.

4 Q. Sure. Who is your backup when you're in Olar,
5 generally?

6 A. Bamberg County Sheriff's Department.

7 Q. And to your knowledge, where was most of the
8 Bamberg County Sheriff's Department at that time?

9 A. Most everybody was headed towards Denmark.

10 Q. Okay. Chief, please answer any questions
11 Ms. Alves might have for you.

12 CROSS-EXAMINATION

13 BY MS. ALVES:

14 Q. Chief Walley, when you were chasing the car,
15 you said, you couldn't tell how many people were in
16 it?

17 A. Correct.

18 Q. And at some point -- at some point you
19 testified that you saw the door -- the driver's side
20 door open. You said you saw the doors, plural -- or
21 you said one of the driver's side doors. Do you
22 know which one?

23 A. I don't know if it was the front or rear.

24 Q. Okay. But you just saw a door open on the
25 driver's side?

1 A. Correct.

2 Q. Did anybody get out?

3 A. No.

4 Q. And this was while the car was still moving?

5 A. Right.

6 Q. And you saw the rear passenger's side door also
7 open?

8 A. After I came to a stop near the vehicle --
9 after the vehicle had come to a stop in the wooded
10 area.

11 Q. So you didn't see the door open before the car
12 came to a stop?

13 A. No. Not the passenger's side door, no.

14 Q. Okay. Well, now, were -- you were not the
15 investigating officer on this case?

16 A. No.

17 Q. So -- you were just -- you were -- because you
18 were in nearby law enforcement, you went to assist
19 if you could?

20 A. Well, I just waited in town in case the vehicle
21 came into town.

22 Q. Okay. Now, you gave a statement in this case,
23 didn't you?

24 A. Yes.

25 Q. And you gave a statement to the lead

- 1 investigator?
- 2 A. Yes.
- 3 Q. Do you know who the lead investigator on the
- 4 case was?
- 5 A. One of the SLED agents. I can't think of his
- 6 name.
- 7 Q. Okay. Well, one of the SLED agents took the
- 8 lead on the case?
- 9 A. I'm sorry.
- 10 Q. One of the SLED agents was the lead
- 11 investigator on the case?
- 12 A. Yes.
- 13 Q. And why did you give a statement?
- 14 A. I was basically a witness for their case.
- 15 Q. Okay.
- 16 A. They asked for a written statement, so I
- 17 provided it.
- 18 Q. All right. So you gave a statement like a
- 19 witness would -- like a witness would give a
- 20 statement?
- 21 A. Correct. Any officer involved in an incident
- 22 like that is technically a witness if they saw some
- 23 part of it happen.
- 24 Q. Okay. And so you were asked to give a
- 25 statement to tell what you saw?

1 A. Correct.

2 Q. And you were asked to detail everything that
3 you saw that day that day might be helpful to the
4 case?

5 A. Right.

6 Q. And how long have you been in law enforcement?

7 A. A total of about 33 years.

8 Q. Okay. And in your 33 years, you've
9 investigated a lot of cases?

10 A. Yes.

11 Q. And you've been -- have you been the lead on
12 some cases that have been worked in your area?

13 A. Right. Yes.

14 Q. And have you given statements before on other
15 cases you've been involved in where you haven't been
16 the lead investigator?

17 A. Yes.

18 Q. Is that standard to ask a police officer who's
19 involved in a case to write a statement about what
20 he's seen?

21 A. Right. Like I said, that officer is
22 technically a witness, so you want to get a
23 statement so they can detail what they saw so that
24 way there's no question later on as to whether they
25 remembered or forgot something. So you've got it in

1 writing, you don't have to worry so much about it.

2 Q. So you'd agree with me that it's important for
3 an investigator to get statements from the officers
4 so that two years down the road, you don't have to
5 try to remember -- rely solely on your memory, you
6 can rely on solely what you wrote down?

7 A. Yes.

8 Q. Okay. Now, I was just asking you that in
9 general. I'm going to go back to your statement.
10 Do you recall what you wrote?

11 A. I don't recall word for word. But, basically,
12 what I wrote is what I would have just testified to.

13 Q. Okay. Well, in your statement you wrote that
14 the rear passenger's side door began to -- you said
15 that -- you said that the -- when the Pontiac was
16 approaching the cable, you saw the driver's side
17 door and the rear passenger's side door began --

18 MR. MILLER: Your Honor, I'm going to object to
19 her reading the statement. If she wants to give it
20 to the witness to refresh his recollection --

21 THE COURT: Hang on a second.

22 Madam Forelady, please take the jury to the
23 jury room.

24 (The jury exits the courtroom at 3:40 PM.)

25 THE COURT: All right. Are you trying to

1 refresh his memory or are you trying to point out
2 prior inconsistencies?

3 MS. ALVES: Judge, I'm just trying to --
4 actually to -- I'm just asking him whether or not
5 he --

6 THE COURT: I know what you're doing, I hear
7 what you're doing. My point to you is, are you
8 trying to point out prior inconsistencies, because
9 it sounds very much like that's what you're trying
10 to do.

11 MS. ALVES: No, sir, I'm actually not.

12 THE COURT: Okay. Then are you trying to
13 refresh his your memory?

14 MS. ALVES: That's what I was trying to do.

15 THE COURT: Okay. Then you got to show him the
16 writing.

17 MS. ALVES: Yes, sir.

18 THE COURT: Bring the jury back in, please.

19 MR. WEEKS: Judge, before you do that --

20 THE COURT: Sure.

21 (Brief pause in the proceedings.)

22 THE COURT: Are you ready to proceed?

23 MS. ALVES: I am.

24 THE COURT: Bring the jury back in, please.

25 (The jury enters the courtroom at 3:42 PM.)

1 THE COURT: Ms. Alves.

2 CROSS-EXAMINATION

3 BY MS. ALVES:

4 Q. Chief Walley, when -- you gave a statement
5 detailing what you saw when you followed the car on
6 that day; correct?

7 A. Correct.

8 Q. Would it refresh your memory about what you
9 wrote in your statement if I showed it to you?

10 A. Yes.

11 Q. Is that the statement that you gave that day?

12 A. It does appear to be a copy of it, yes.

13 Q. Okay. And you gave that statement to -- so
14 that you could include that with the official
15 investigative report?

16 A. Correct.

17 Q. So that would you have something to refresh
18 your memory about --

19 A. Right.

20 Q. -- two years and two months after the incident?

21 A. Right.

22 Q. Okay. Have you had an opportunity to look at
23 it?

24 A. (Witness perusing document.) Okay.

25 Q. All right. Now -- so that day when you were

1 chasing the vehicle, the driver's side door opened
2 before the cable -- before they went over the cable?

3 A. It was about the same time.

4 Q. Okay. And then around that same time you also
5 saw the rear passenger door open?

6 A. According to the statement, yes.

7 Q. Did you see anybody come out of the rear
8 passenger door at that time?

9 A. No.

10 Q. So there was just -- somebody in the car was
11 opening the doors, but they didn't jump out at that
12 point?

13 A. Correct.

14 Q. So it wasn't until after the car crash, as we
15 saw in the picture, that somebody jumped out of the
16 vehicle?

17 A. Right.

18 Q. And you only saw the one person?

19 A. Correct.

20 Q. And they jumped out of the rear passenger door?

21 A. Right.

22 Q. And I believe you described that person. Can
23 you describe him?

24 A. I'd have to look at the statement. I don't
25 recall.

1 Q. Yes, sir. Does that help you refresh your
2 memory about what the description was of the person
3 you saw jump out of the vehicle?

4 A. Yes. I described him as approximately six-two,
5 190 pounds, his head was shaved clean, wearing a
6 black long-sleeve shirt, black pants, and black
7 boots.

8 Q. And that was the person who jumped out of the
9 rear passenger's side after the car crashed?

10 A. Correct.

11 Q. Now, after the car crashed, were you able to
12 see how many people came out of the vehicle?

13 A. No.

14 Q. So the other people in the car were able to get
15 away without you seeing them, unfortunately?

16 A. Correct.

17 Q. And we don't know how many people there were?

18 A. No.

19 Q. Could have been three?

20 A. I don't know.

21 Q. Could have been four?

22 A. It's possible. I don't know.

23 Q. You don't know. And you were not able to
24 identify anybody?

25 A. No.

1 Q. Okay. But the person that you saw, once again,
2 you said was six-two, 190 pounds, clean-shaved head,
3 wearing a black long-sleeve shirt, black pants, and
4 black boots?

5 A. Correct.

6 Q. Thank you. No further questions.

7 THE COURT: Redirect?

8 MR. MILLER: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. MILLER:

11 Q. Chief, just to be clear, after looking at your
12 statement, when you say that you saw a door on the
13 passenger's side of the vehicle briefly open and --
14 I mean, excuse me, the driver's side of the vehicle
15 briefly open and close, do you recall now that that
16 was the driver's door?

17 A. Yes.

18 Q. Okay. And you had previously testified that
19 whenever these guys went on this what you knew to be
20 dead-end road that you started hanging back from
21 them a little bit to make sure they didn't realize
22 it was a dead end and spin around and come back at
23 you; correct?

24 A. Correct.

25 Q. Okay. So you weren't right up on their bumper

1 whenever they went around this right-hand curve and
2 crashed into the tree; correct?

3 A. No.

4 Q. Okay. Now, about the time that the driver's
5 door was opening and closing, the passenger door --
6 a door on the passenger's side was doing that too,
7 was it not?

8 A. Correct.

9 Q. Are you familiar with the term bush bond?

10 A. Yes.

11 Q. Can you explain to the jury what bush bonding
12 is?

13 A. Basically it's when the driver or the occupants
14 of the vehicle jump out while the car is still
15 moving and run out into the woods or the bushes, is
16 where the term bush bond comes from.

17 Q. Now, by the time that you got there, by the
18 time that you had actually pulled up onto the scene,
19 you only saw the one person coming out of the rear
20 passenger's side door; correct?

21 A. That's correct.

22 Q. All right. No further questions. Thank you.

23 THE COURT: May this witness be excused?

24 MR. MILLER: Yes, Your Honor.

25 MS. ALVES: No objection.

1 MR. MILLER: Your Honor, our next witness is
2 the crime scene technician from the State Law
3 Enforcement Division who is, unfortunately,
4 testifying in another county, we think, at the
5 moment. We have asked that he be here tomorrow
6 morning, so I would ask that the jury be given a
7 little bit of a break tonight, and we'll pick up in
8 the morning at the Court's pleasure.

9 THE COURT: Okay. Let me see the attorneys up
10 here right quick, please.

11 MR. MILLER: Sure.

12 (Sidebar conference.)

13 THE COURT: All right. Madam Forelady, ladies
14 and gentlemen of the jury, I'm going to go ahead and
15 excuse you. But you can't speak to anybody about
16 this case, you can't read anything about it, hear
17 anything about it, or listen to anything about it.
18 Also, does anybody have a problem getting to court
19 at 9:30 in the morning? Okay. If you'd all be in
20 your the jury room at 9:25. Leave your pads in the
21 jury room; they'll be secure.

22 (The jury exits the courtroom at 3:50 PM.)

23 THE COURT: Any additions or exceptions from
24 the State?

25 MR. MILLER: None from the State, Your Honor.

1 THE COURT: From the defense?

2 MS. ALVES: No, sir.

3 THE COURT: Any matters we need to deal with?

4 MR. MILLER: Nothing from the State, Your
5 Honor.

6 MS. ALVES: Nothing from the defense.

7 THE COURT: Okay. Thank y'all. See y'all at
8 9:30 in the morning.

9 (Court in recess for the evening at 3:51 PM.)

10 THE COURT: Gentlemen, anything from the State
11 before we get started?

12 MR. WEEKS: No, Your Honor.

13 THE COURT: Anything from the defense?

14 MS. ALVES: No, Your Honor.

15 THE COURT: Very good. Bring the jury in,
16 please.

17 (The jury enters the courtroom at 9:38 AM.)

18 THE COURT: Good morning, ladies and gentlemen.
19 I hope you had a nice evening. Before we get
20 started, let me ask if anyone has read, heard, or
21 seen anything about this case over the break or have
22 spoken with anyone about this case? If so, raise
23 your hand. Very good. Let the record reflect that
24 no one responded.

25 All right. Is the State ready for the next

1 witness?

2 MR. WEEKS: Yes, Your Honor. The State would
3 call Special Agent Patrick Oliphant.

4 PATRICK OLIPHANT

5 being first duly sworn, testified as follows:

6 THE COURT: I do.

7 DIRECT EXAMINATION

8 BY MR. WEEKS:

9 Q. Tell the jury your full name and what you do
10 for a living.

11 A. Patrick Oliphant. I work for -- currently for
12 SLED, South Carolina Law Enforcement Division, in
13 the arson and bomb investigation unit.

14 Q. And how long have you been employed at SLED?

15 A. Approximately three years.

16 Q. Okay. And back in June of 2014, were you
17 employed at SLED?

18 A. Yes, sir.

19 Q. And what was your role then?

20 A. Special agent in the crime scene investigation
21 unit within the forensic laboratory service.

22 Q. Okay. And can you kind of tell me how that
23 worked? At that time, were you partnered with
24 somebody?

25 A. Yes, sir. My partner was Special Agent Dawn

1 Claycomb.

2 Q. Okay. And when you were partnered with
3 somebody, how did y'all respond to crime scenes.

4 A. Once we got a call request for assistance from
5 a local agency, another state agency, two agents
6 would respond to the scene and kind of handle that
7 scene. Pretty much both took actions together, for
8 the most part, made decisions together. Usually one
9 person took the photographs, the other person would
10 take notes or draw a sketch, but worked as a team
11 throughout the entire investigative process.

12 Q. And in what area did y'all do this in?

13 A. Crime scene investigation.

14 Q. Statewide?

15 A. Yes, sir.

16 Q. Calling your attention once again back to June
17 5th, 2014, did you receive a call to assist a local
18 agency on that day?

19 A. Yes, sir.

20 Q. Tell me what you did.

21 A. The Denmark Police Department requested
22 assistance in documentation and crime scene
23 processing of a bank robbery. So myself and Agent
24 Claycomb responded first to the scene of the bank
25 and -- you want me to go further?

1 Q. The scene of the bank where?

2 A. If I could reference my notes, the address of
3 4668 Carolina Highway in Denmark.

4 Q. Was that right on Highway 321?

5 A. Yes, sir.

6 Q. Do you know approximately what time you got to
7 the bank?

8 A. Approximately 3:43 PM.

9 Q. And that was on June the 5th?

10 A. Yes, sir.

11 Q. All right. Tell us what you did then Patrick.

12 A. When we first got on scene, made contact with
13 Denmark chief of police Leroy Grimes and made
14 contact with Special Agent David Williams from SLED,
15 Lowcountry region investigator, got a brief synopsis
16 of had occurred there so we could get started and
17 have an idea of what we needed to do.

18 Agent Claycomb took pictures of the bank and I
19 took pictures of what was believed to be a dye pack
20 and several bills of U.S. currency that were on a
21 small footpath leading behind the bank.

22 Q. All right. At some point in time, was there
23 any weather issues?

24 A. Yes, sir when we first got on scene, there was
25 a thunderstorm rolling in, so that's why the

1 decision was made for her to document the bank and
2 for me to document and collect the dye pack and the
3 bills that were outside behind the bank before they
4 got rained on.

5 Q. All right. Have you reviewed those
6 photographs, Patrick?

7 A. Yes, sir.

8 Q. Patrick, I'll take you through a series of
9 photographs that are already in evidence, and I'll
10 ask you to describe the gist of what the photograph
11 is showing. Patrick, I'll call out the numbers.

12 State's No. 1, what is that?

13 A. This is a photograph of the front of the bank
14 and the -- specifically the front right corner is in
15 the right side of the image there, and the bank sign
16 for the bank in the front, and the grassy area.

17 Q. Okay. The pictures of the bank, are those the
18 pictures that you and Agent Claycomb took?

19 A. Yes, sir.

20 Q. Okay. Well, I'm going to kind of skip through
21 them since we know where the bank is now. If you
22 could go to, like, State's No. 13. Can you describe
23 what is depicted in this photograph, Patrick?

24 A. This is a photograph -- the black surface there
25 is the -- is one of the teller booths within the

1 bank. And that is a -- in the middle of the frame
2 is a picture of a footwear impression that myself
3 and Agent Claycomb observed on top of the teller
4 booth, and the scale is there. We introduced the
5 scale to, basically, capture the size and dimensions
6 of the footwear impression.

7 Q. Okay. State's 14?

8 A. It's a picture in the same teller area of a
9 different footwear impression. And, once again,
10 scale was added by myself and Agent Claycomb for
11 documentation.

12 Q. 15?

13 A. This photograph is of the grassy area that's
14 behind the bank and to the right. And on the left
15 side of the image is a barbwire fence surrounding a
16 storage facility that was immediately behind the
17 bank.

18 Q. Okay. 16?

19 A. This is the -- this is a footpath leading from
20 the right side behind the bank around the storage
21 facility.

22 Q. 17?

23 A. Again, just a different angle moving down the
24 footpath behind the storage facility.

25 Q. 18?

1 A. This is a photograph of -- if you think about
2 where the last picture was, this is basically taking
3 a right turn into this woodsy area right along the
4 same footpath.

5 Q. 19?

6 A. This is a set of railroad tracks that is
7 further behind the area of the bank where the
8 footpath opened up onto this area of the railroad
9 tracks.

10 Q. 20?

11 A. Further behind the railroad tracks on the other
12 side of the trees in the previous image, a dirt path
13 and this -- leading to this residential area with
14 mobile homes.

15 Q. Is that a road there going through the center
16 of State's 20?

17 A. Yes, sir.

18 Q. 21?

19 A. This is a photograph on the same dirt road
20 behind the railroad tracks. And in the ditch there,
21 there's a -- what was a bill of U.S. currency with
22 red stains.

23 Q. Right in there?

24 A. Yes, sir.

25 Q. Okay. 22?

1 A. This is a closer-up view of that same bill in
2 the ditch there of the roadway with red stains and
3 what appears to be burn damage on the right-side
4 part of that bill.

5 Q. Are you familiar with dye packs, Patrick?

6 A. Yes, sir.

7 Q. Can't they burn currency when they go off?

8 A. Yes, sir.

9 Q. All right. The red stain there, is that from a
10 dye pack?

11 A. Um...

12 Q. That's on the bill.

13 A. It wasn't tested to say it's from a dye pack,
14 but it appeared to be. Yes, sir.

15 Q. Okay. 23?

16 A. This is a picture of another bill of U.S.
17 currency in that same area of the dirt roadway.

18 Q. 24?

19 A. This picture is of the area of 727 Weed Avenue
20 in Olar, South Carolina. And it's the area where
21 the suspect vehicle was located and secured, that
22 upon completion of myself and Agent Claycomb
23 handling the bank seen scene, we responded to this
24 area.

25 Q. And a couple more questions about the bank

1 scene: The monies or the items that you have taken
2 pictures of, did you and Agent Claycomb collect?

3 A. Yes, sir.

4 Q. Okay. And how about anything else in the bank?
5 Did y'all collect anything else from the bank or did
6 somebody else get the video?

7 A. We didn't collect the -- any videotape
8 evidence.

9 Q. Okay. Any other things that you collected from
10 the bank itself for analysis later?

11 A. From the two footwear impressions, we collected
12 a gel lift. It's basically a way of preserving the
13 dust left by a footwear impression so that it can be
14 analyzed later with more detail than photographs
15 have. We collected two of those gel lifts, one set
16 of swabs from what appeared to be a hand
17 impression --

18 Q. From where?

19 A. From -- that was also in the same teller booth
20 where the two footwear impressions were.

21 Q. Okay. And the footwear impressions that y'all
22 collected the gel lifts from were on top of the
23 counter?

24 A. Yes, sir.

25 Q. Okay. And tell me, at some point did you leave

1 the bank location and go to this location depicted
2 in State's 24?

3 A. Yes, sir.

4 Q. What did you do when you arrived there?

5 A. When my partner and I arrived on scene, we made
6 contact with Olar chief of police James Walley. And
7 Chief had a search warrant ready for us to begin
8 documentation and search of the suspect vehicle.

9 Q. Okay. And did you do that?

10 A. Yes, sir.

11 Q. Tell me how you go about doing that, Patrick,
12 or how y'all went about it that day.

13 A. That day we -- we received information that the
14 suspect vehicle was located, so we made sure to
15 notify Chief Walley on scene to secure the vehicle
16 until we could get there and keep everything -- try
17 to keep everything in place as much as possible.

18 Q. And when you first arrive there, do you start
19 photographing?

20 A. Yes, sir.

21 Q. And how do you do that?

22 A. Basically you take general photographs moving
23 all the way around the area where the car was. And
24 after general documentation, open the doors of the
25 car, took pictures of the inside, and systematically

1 searched the interior of the vehicle.

2 Q. Okay. State's Exhibit 25, just describe what
3 this is a picture of.

4 A. This is a picture viewed from -- taken from the
5 same area where the barbwire fence and
6 no-trespassing signs were. But it's looking further
7 to the right of where that entrance was. And that's
8 a picture of the gray or silver-in-color Pontiac
9 Grand Am.

10 Q. 26?

11 A. This is the area behind the trunk of the
12 Pontiac Grand Am. And it appears --

13 Q. Is that -- I'm sorry. Does that depict any
14 fence damage or anything like that?

15 A. Yes, sir. There's a fence post that was of the
16 same construction as the fencing in the area.

17 Q. State's 27?

18 A. This is another picture of the rear of the
19 Pontiac Grand Am and in the right side of the frame
20 is the area of the roadway.

21 Q. 28?

22 A. Picture of the paper tag on the rear bumper of
23 the Pontiac Grand Am.

24 Q. 29?

25 A. Picture of the front left corner or front

1 driver's side corner of the same Pontiac Grand Am
2 vehicle.

3 Q. 30?

4 A. This photograph depicts the front passenger's
5 seat and the items located in the front passenger's
6 seat as we found them, to include the black-in-color
7 duffel bag on the floor and various -- various food
8 items and clothing items.

9 Q. Do you know what the items are depicted in this
10 seat here?

11 A. The red item there appears to be a bill band, a
12 money band, and the -- to the left of that bill band
13 appears to be a latex glove, that blue-colored latex
14 glove.

15 Q. State's 31?

16 A. This is a picture of the rear bench seat when
17 viewed from the rear passenger's side door of the
18 same vehicle and various clothing items located in
19 the back seat.

20 Q. 32?

21 A. A picture taken of the front driver's seat from
22 the front driver door, a pair of Nike
23 flip-flop-style sandals in the driver's seat
24 floorboard, and a South Carolina ID card in the
25 driver's seat.

1 Q. And just to be clear, these pictures we're
2 observing now or this series of pictures are before
3 y'all start moving anything around?

4 A. Yes, sir.

5 Q. State's 33?

6 A. It's a closer-up picture of the South Carolina
7 ID card in the driver's seat.

8 Q. Can you read that?

9 A. I can't quite -- I can read the last name is
10 reading James. I can't read what the first name is
11 listed as. If I could reference my notes?

12 Q. Okay.

13 A. Thank you.

14 Q. There's a little better picture in 33. Can you
15 read it better now?

16 A. Yes, sir. It reads as James, comma, Leon Amos
17 Jason.

18 Q. Okay. State's 34?

19 A. This photograph -- a close-up photograph of a
20 Daisy Powerline pellet gun, BB gun, that was located
21 in the passenger -- front passenger floorboard near
22 the front passenger door.

23 Q. Is it under a duffel or was it hidden or was
24 it -- how did you find it?

25 A. Laying on the floorboard close to being under

1 the seat.

2 Q. 35?

3 A. This is another photograph of the same Daisy
4 Powerline BB gun, just of the other side.

5 Q. Are you familiar with handguns, Patrick?

6 A. Yes, sir.

7 Q. Does that look like a real handgun?

8 A. Yes, sir.

9 Q. 36?

10 A. Another photograph of the same BB gun with the
11 magazine removed.

12 Q. When you say the magazine, that's the item on
13 the left?

14 A. Yes, sir.

15 Q. And that fits up into the stalk of the weapon
16 or the handle of the weapon?

17 A. Correct.

18 Q. And y'all removed that --

19 A. Yes, sir.

20 Q. -- to take that photograph?

21 37?

22 A. This is a receipt located within the vehicle, a
23 Burger King receipt from a location on North Main
24 Street in Columbia, South Carolina.

25 Q. 38?

1 A. It's a photograph of a black-colored wallet and
2 a -- inside the see-through sleeve of the wallet is
3 a North Carolina license card.

4 Q. Can you read it?

5 A. Not -- thank you. It reads as a Darryl Lamont
6 Lassiter.

7 Q. Okay. State's 39?

8 A. This is a photograph of the front passenger
9 seat after the duffel bag was taken out, showing
10 various items on the floorboard to include the -- a
11 Fuze tea bottle there in the clear bottle with the
12 purple wrapper. And the spot where the light is
13 illuminating is an additional South Carolina ID
14 card.

15 Q. I believe State's 40 is going to show a little
16 more blown-up picture of that. Can you identify the
17 name of whose ID card that is?

18 A. Name reads as James, comma, Homer Arthur.

19 Q. So Homer Arthur James' ID card?

20 A. Yes, sir.

21 Q. All right. State's 41?

22 A. This is a photograph taken from the area behind
23 the rear bumper of the same Pontiac Grand Am with a
24 yellow-colored ID placard or crime scene placard
25 showing the location of a hat.

1 Q. Okay. A ball cap kind of hat?

2 A. Yes, sir.

3 Q. All right. State's 42?

4 A. Picture taken from the area of the rear
5 passenger side bumper of the same Pontiac Grand Am
6 and an ID placard showing location of a
7 yellow-colored rag or dishrag.

8 Q. State's 42. That was 42.

9 State's 43?

10 A. Picture of a receipt with the address listed at
11 1330 Bush River Road, Columbia, South Carolina,
12 29210. Appears to be a gas receipt, has product
13 listed as unleaded, and a price per gallon and
14 gallons paid for.

15 Q. And a date?

16 A. Date listed as 06/05/14.

17 Q. State's 42?

18 A. Picture showing the top of the black-colored
19 duffel bag that was recovered from the front
20 passenger seat containing multiple denominations of
21 bills of U.S. currency with the red-colored
22 stains -- very heavy red-colored stains on the bills
23 on the left side of the bag when viewed from this
24 perspective.

25 Q. Was that the bag that was in the front seat

1 floorboard of the silver Grand Am?

2 A. Yes, sir.

3 Q. Where were y'all taking this picture at?

4 A. I believe this picture was taken a few days
5 after the initial scene investigation; taken within
6 SLED's forensic laboratory.

7 Q. State's 45?

8 A. Another picture documenting the items removed
9 from the duffel bag where the bills have been
10 separated into their respective denominations.
11 There's a dark-colored plastic trash bag, two money
12 bands on the right side of the image, and at the
13 bottom right corner of the image, a black-colored
14 pry bar.

15 Q. State's 46?

16 A. Another picture documenting the money that was
17 removed from the duffel bag, separated in
18 denominations, and taken to capture all of the
19 serial numbers of the money from inside the duffel
20 bag.

21 Q. State's 47?

22 A. Photograph of money from the duffel bag after
23 it has been photographed and packaged into a sealed
24 evidence pouch.

25 Q. 48?

1 A. Appears to be a still image captured from one
2 of the surveillance cameras from the interior of the
3 bank.

4 Q. 49?

5 A. Again, another still image from the video from
6 the bank.

7 Q. The person in that video right there, do you
8 notice anything about his footwear?

9 A. Footwear appears to be very similar
10 construction and branding as the flip-flop sandals
11 located in the driver's floorboard area of the
12 Pontiac Grand Am.

13 Q. And how about the head wear?

14 A. And the ball cap appears to be very similar
15 style and brand as the ball cap that was located on
16 the ground at -- and marked as Placard No. 1 in the
17 area behind the Pontiac Grand Am.

18 Q. State's 50?

19 A. Another still image of the video.

20 Q. Okay. 51?

21 A. Another still image from the video from a
22 camera with a different angle, a camera with -- in
23 the area of the bank tellers and facing towards the
24 front of the bank -- or where the roadway is in
25 front of the bank.

1 Q. 52?

2 A. Another still image from one of the cameras at
3 the rear of the bank looking towards the front of
4 the bank.

5 Q. 53?

6 A. Another image from that same perspective as the
7 previous.

8 Q. Is the area depicted at the foot of this
9 individual the area where you took the gel lift?

10 A. Yes.

11 Q. 54?

12 A. Another image from same perspective.

13 Q. What appears to be on this individual's hand,
14 on his left hand?

15 A. Appears to be a black-in-color mask or
16 pantyhose.

17 Q. I'm sorry. On his hand?

18 A. Oh, on his hand. I'm sorry. A light-colored
19 or tan-colored glove.

20 Q. And does it appear to be something on his head?

21 A. Yes, sir.

22 Q. 55?

23 A. Another image of same individual.

24 Q. 56?

25 A. Another image from a different perspective, but

1 from the same teller area facing the front door.

2 Q. 57?

3 A. Another image, appears to be of the same
4 individual.

5 Q. 58?

6 A. Another image of the gentleman with the glove
7 and the hat or stocking on his head.

8 Q. 59?

9 A. Another image of what appears to be the same
10 individual.

11 Q. 60?

12 A. This is a photograph of various receipts and
13 items that were located inside of the Pontiac Grand
14 Am.

15 Q. Did y'all collect all those items?

16 A. If I could have a minute to reference my notes.

17 Q. Okay.

18 A. (Witness perusing documents.)

19 Q. Were you able to determine what that photograph
20 is of number 60?

21 A. Yes, sir. It's items in the vehicle. I
22 believe the two money cards were collected. We
23 didn't end up taking every receipt or lottery
24 ticket.

25 Q. Okay. Patrick, I'm going to hand you what's

1 been marked State's Exhibit No. 74 and ask if you
2 can identify what's contained in that box, yes or
3 no.

4 A. Yes.

5 Q. And how can you identify it?

6 A. The description of the item is written in my
7 handwriting as being Daisy Powerline 340 BB gun, and
8 the date of collection is listed as June 5th, 2014,
9 and the time is listed as 1940 hours or 7:40 PM.

10 Q. And is that, assuming door number one, if you
11 would open that and determine if the item that's
12 depicted in that box is the same one we observed the
13 photograph of?

14 A. Yes, sir.

15 MR. WEEKS: Your Honor, the record will reflect
16 the clip is out of it and the gun has safety
17 features.

18 THE COURT: Yes, sir.

19 Ladies and gentlemen of the jury, the gun has
20 been disabled. I'd instruct the witness and the
21 attorneys not to point it at anybody in the
22 courtroom.

23 BY MR. WEEKS:

24 Q. What is contained in the box, Patrick?

25 A. A black-colored Daisy Powerline BB gun.

1 Q. And where did you obtain that item from?

2 A. From the floorboard of the Pontiac Grand Am.

3 Q. And the floorboard on the passenger or the
4 front, back?

5 A. Front passenger seat.

6 Q. And this is the one we've seen the pictures of?

7 A. Yes, sir.

8 Q. Okay.

9 MR. WEEKS: Your Honor, the State moves to
10 introduce State's 74.

11 THE COURT: Any objection?

12 MS. ALVES: No, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 74 admitted into
15 evidence.)

16 BY MR. WEEKS:

17 Q. Patrick, I'm going to hand you State's Exhibit
18 63 and ask if you can identify this item.

19 MS. ALVES: May I see it first?

20 THE COURT: Please show it to Ms. Alves.

21 MR. WEEKS: I'm sorry.

22 MS. ALVES: I'd -- Judge, I'd renew my previous
23 objection.

24 THE COURT: Just one second.

25 Madam forelady, would you take the jury back to

1 the jury room, please.

2 (The jury exits the courtroom at 10:16 AM.)

3 THE COURT: Just so the record is clear, would
4 you renew your objection now.

5 MS. ALVES: Yes, sir. Judge, State's No. 63 is
6 the blue and gray hat that was found on the front
7 passenger seat of the Grand Am. And my objection to
8 that would be that it is not relevant in this case.

9 I believe the State intends to introduce
10 testimony from a later witness that my client's DNA
11 was located on this hat. However, this hat is
12 clearly not the hat that was found in the vehicle.
13 I think there was a picture showing the hat on the
14 front see, but there was no reference made to the
15 hat.

16 The hat is clearly a navy and gray-striped hat.
17 This witness even testified that the hat the suspect
18 in the picture had on was a black hat. This hat
19 doesn't have any -- there's no indication that this
20 hat was worn by anybody who was involved in the
21 robbery; it was just merely found in the vehicle.
22 And I would object to it based on the lack of
23 relevance to this case.

24 THE COURT: All right. I note your objection.

25 MS. ALVES: Your Honor, I'd also make my

1 objection on the basis that the hat, while it does
2 show my client's DNA, I think that the prejudice to
3 my client outweighs any probative value to the State
4 considering there's no connection shown to the
5 robbery.

6 THE COURT: So I understand it, this hat was
7 found in the gray vehicle that was the one that
8 allegedly fled from the scene although it's not
9 shown in any of the pictures of anybody in the bank;
10 is that what you're saying?

11 MS. ALVES: Yes, sir. It wasn't shown in the
12 bank, but it was shown in one of the State's
13 pictures. I don't remember which one. I believe
14 it's in State's No. 30 where the band and the glove
15 were also shown, but those have not been connected
16 to my client. And the hat -- while the hat has
17 the -- the DNA on the hat been connected to my
18 client, it's not been connected to the robbery.

19 So my second objection is on the basis of
20 prejudice outweighing the probative value.

21 THE COURT: All right. I'm going to overrule
22 that objection.

23 MS. ALVES: Yes, sir.

24 (State's Exhibit No. 63 admitted into
25 evidence.)

1 THE COURT: All right. Are you ready to
2 proceed?

3 MR. WEEKS: Yes. I do want to point out one
4 thing, State's 64 --

5 MS. ALVES: The panties.

6 MR. MILLER: Yes.

7 MS. ALVES: Judge, my objection -- I'd also
8 have the same objection --

9 THE COURT: Right. Wait one second. What is
10 that? What exhibit number is the item, please?

11 MS. ALVES: State's No. 64.

12 THE COURT: Yes, ma'am.

13 MS. ALVES: It's listed as one face mask from
14 front passenger floorboard. However, when SLED was
15 examining the item, it was determined to be a pair
16 of black Spandex-type panties.

17 THE COURT: Okay. You brought that up.

18 MS. ALVES: Yes, sir. And, Your Honor, you
19 held that -- you said you were going to take that
20 under advisement, because my concern with this item
21 is that the -- what the intent -- what I anticipate
22 the testimony to be is that the forensic analyst did
23 a Y-strand DNA test on these panties and the testing
24 came back that my client -- that it would be my
25 client's, with a 1-in-3,800 exclusion to the point

1 that it would not be him or another male relative
2 related to him on his father's side.

3 THE COURT: All right. Mr. Weeks, what's your
4 response to that? That is a mighty low number.

5 MR. WEEKS: I don't honestly know whether
6 that's a low number for Y strain. But we'll have
7 that preliminary hearing before we put up the DNA
8 analysis, if Your Honor --

9 THE COURT: So you're not --

10 MR. WEEKS: -- could hold off -- we're not
11 introducing that at this point.

12 THE COURT: Okay.

13 MR. WEEKS: I'm just getting him to identify it
14 since they collected it.

15 THE COURT: Okay. Let's reserve until we get
16 further testimony from DNA people on that.

17 MS. ALVES: Yes, sir.

18 THE COURT: So as to 74 -- or which -- your 63
19 is the hat; right?

20 MR. WEEKS: Yes, Your Honor.

21 THE COURT: Okay. I'll overrule your objection
22 on the hat. I'm taking under advisement still the
23 Exhibit No. 64.

24 MR. WEEKS: I do not know why, Your Honor, that
25 there's a Defendant's exhibit other than, I'm

1 assuming, the obvious, that it might have been
2 introduced in another trial because it was a
3 different exhibit. The hat, it's got a defendant's
4 exhibit sticker on it. The inside does not. So can
5 we get the record to reflect that I'm handing him
6 what's marked as State's Exhibit No. 63, but I won't
7 send bag 63 to the jury if this comes in?

8 THE COURT: If it -- I think the hat I've
9 overruled both her objections on the hat; isn't that
10 right?

11 MS. ALVES: You have.

12 MR. WEEKS: Yeah. This goes back to that
13 numbering thing.

14 THE COURT: So do you want to independently
15 mark that as 63? Do you have any objection to doing
16 it that way.

17 MS. ALVES: No, sir -- wait a minute, 63
18 wasn't -- I believe it was also introduced, wasn't
19 it, in the last case?

20 MR. MILLER: 63 was introduced as Defendant's
21 Exhibit 5 in the last case, and we were informed by
22 the Clerk that we can't take those exhibit stickers
23 off once they're on there --

24 THE COURT: Right.

25 MR. MILLER: -- so we marked it as State's 63.

1 It's also marked as Defense Exhibit 5. 64, I do not
2 believe -- 64 doesn't have that problem. And we
3 actually talked about it the other day. Ms. Alves
4 and I talked about it the other day, kind of thought
5 it's one of those things, does it just draw more
6 attention to it or do we just explain to the jury,
7 have the Court give an instruction, that it was
8 entered in another hearing related to this matter at
9 a previous time, and you can disregard the defense
10 sticker on it, it's State's 63 for the purposes of
11 this hearing. But I don't know how else to do it,
12 Your Honor.

13 THE COURT: What would you think would be the
14 best way?

15 MS. ALVES: Judge, honestly I think that if we
16 say nothing about it, I don't think -- and we talked
17 about this as well. I think the way Mr. Weeks has
18 said is the easiest way to deal with that particular
19 exhibit; just send it back without the bag, because
20 the bag is not really necessary, and it is sealed up
21 in white paper.

22 THE COURT: So the actual item itself would be
23 marked as 63, but the bag or its container would be
24 Prior Hearing Exhibit No. 5?

25 MR. MILLER: And 63 as well because we've

1 already marked it as 63 too.

2 THE COURT: Well, we need to make sure the
3 record is clear. So we're going to mark the
4 individual item as 63 and send it to the jury
5 without the bag; right?

6 MS. ALVES: Yes, sir. That's fair.

7 THE COURT: That makes sense.

8 MR. MILLER: Matter of fact, we already have a
9 63 sticker.

10 THE COURT: Madam court reporter, did you get
11 that down?

12 MR. MILLER: Your Honor, we've marked the 63
13 with no defense marking on it.

14 THE COURT: Is that all right with you,
15 Ms. Alves?

16 MS. ALVES: Yes, sir.

17 THE COURT: Okay.

18 MR. WEEKS: I think we're good now.

19 THE COURT: All right. Let's bring the jury
20 back.

21 (The jury enters the courtroom at 10:24 AM.)

22 CONTINUED DIRECT EXAMINATION

23 BY MR. WEEKS:

24 Q. Patrick, I'm handing you what's marked as
25 State's No. 63 and ask if you can identify what's

1 contained in that white package.

2 A. The brown bag out of packaging is in Agent
3 Claycomb's handwriting described as --

4 Q. Can you just identify what it is that y'all
5 collected?

6 A. Yes, sir. One blue-and-gray-colored hat from
7 front passenger seat of the vehicle.

8 Q. And the vehicle being the Grand Am that we've
9 been talking about?

10 A. Yes, sir.

11 Q. Can you open that up and verify what's
12 contained in the white portion?

13 A. This is the blue-and-gray-colored hat from the
14 front passenger seat of the --

15 Q. All right. There was a photograph introduced
16 earlier showing a money bag in the floorboard and
17 some items on the seat. Is this one of the items
18 that was on the seat?

19 A. Yes, sir.

20 Q. And what did y'all do with this item, Patrick?

21 A. After the item was collected and transported to
22 SLED forensic laboratory and logged into the
23 computer system there within the laboratory, I
24 believe it was sent to the DNA department.

25 Q. Okay. I'll hand you what's marked State's

1 Exhibit No. 75 and ask if you can identify what's
2 contained in that item.

3 A. Described as a black T-shirt from rear
4 passenger seat and it is the black-colored T-shirt
5 from the passenger seat.

6 Q. Okay. And by passenger seat, you mean the
7 passenger seat of the Grand Am that y'all were
8 processing?

9 A. Yes, sir.

10 Q. And what did you do with that item?

11 A. After this item was collected and transported,
12 I believe it was also sent to the DNA department.

13 Q. Okay. Patrick, I'll ask you if you can
14 identify State's 64.

15 A. Described on the packaging as one face mask
16 from front passenger floorboard; again, referring to
17 the floorboard of the Pontiac Grand Am. It's
18 described as a face mask, but it looks like --
19 appears to be some type of underwear.

20 Q. Okay.

21 A. Spandex material.

22 Q. Did you turn that in to the SLED laboratories
23 also?

24 A. Yes, sir.

25 Q. Okay. Now, these items we've introduced or

1 identified here today, you didn't tamper or alter or
2 do anything to those items other than collect them?

3 A. No, sir, I did not.

4 Q. Nor did anyone in your presence?

5 A. No, sir.

6 Q. Okay. Patrick, I'm handing you back State's
7 75. I think you previously identified this as
8 coming from the car.

9 A. Yes, sir.

10 MR. WEEKS: Your Honor, State moves to
11 introduce 75.

12 THE COURT: Any objection?

13 MS. ALVES: No, Your Honor.

14 THE COURT: Admitted.

15 (State's Exhibit No. 75 admitted into
16 evidence.)

17 BY MR. WEEKS:

18 Q. Patrick, I'll hand you what's marked as 70 and
19 ask you to identify what's collected in that
20 envelope.

21 A. Envelope contains a South Carolina
22 identification card bearing the name James, comma,
23 Leon Amos Jason and another South Carolina
24 identification card bearing the name Garvin, comma,
25 Lewis Adam.

1 In addition to two South Carolina ID cards, an
2 AllSouth Credit Union bank card bearing the name
3 Leon A. James; a state of North Carolina driver's
4 license bearing the name Darryl Demont Lassiter; a
5 social security card bearing the number and the name
6 Lewis Garvin; paper receipt with the address 1330
7 Bush River Road and dated 6/5/14, appears to be the
8 same receipt previously identified in one of the
9 State's photographs; another paper receipt for a
10 Burger King, address 3403 North Main Street,
11 Columbia, South Carolina, date is listed as June
12 5th, 2014 and --

13 Q. Was that previously identified in the
14 photographs?

15 A. Yes, sir.

16 An additional South Carolina food card bearing
17 the name Nicole B. James, and an additional South
18 Carolina identification card bearing the name James,
19 comma, Homer Arthur, also a --

20 Q. Is that last piece of paper just one of y'all's
21 property forms?

22 A. Yes, sir.

23 Q. All right. Are all those items, except for
24 that last property receipt from your department,
25 were they retrieved from the automobile in question?

1 A. Yes, sir.

2 MR. WEEKS: Your Honor, the State would move to
3 introduce item 70.

4 THE COURT: Any objection?

5 MS. ALVES: No objection.

6 THE COURT: Admitted.

7 (State's Exhibit No. 70 admitted into
8 evidence.)

9 MR. WEEKS: If I could have just a second, Your
10 Honor.

11 THE COURT: Yes, sir.

12 MR. WEEKS: Thank you, Patrick. Answer any
13 questions the defense has for you.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY MS. ALVES:

17 Q. Now, you said that you were called to the scene
18 to help to assist the investigating agency?

19 A. Yes, ma'am.

20 Q. And who was the investigating agency at the
21 point that you reported?

22 A. The agency that requested was Denmark Police
23 Department. And by the time I arrived on scene, the
24 investigation was turned over to the SLED LowCountry
25 investigative region.

1 Q. Okay. So when you got to the scene, SLED was
2 now the lead investigating agency?

3 A. Yes, ma'am.

4 Q. Okay. And so the investigator for SLED asked
5 you to come out to help to process the crime scenes?

6 A. As I understand it, Denmark Police Department
7 requested it and as to who specifically requested
8 crime scene versus LowCountry investigators, I
9 couldn't say.

10 Q. Okay. You were working with -- you said you
11 have a partner, Dawn Claycomb?

12 A. Yes, ma'am.

13 Q. So you were working together with her?

14 A. Yes, ma'am.

15 Q. So even though one of you did the report, you
16 were both involved in the case with collecting
17 evidence and doing crime scene investigation?

18 A. Correct.

19 Q. Okay. And do you have a copy of the report
20 that was done?

21 A. Yes, ma'am.

22 Q. So you initially met with the Denmark police
23 chief and Investigator David Williams from SLED?

24 A. Yes, ma'am.

25 Q. And Investigator Williams was the one who gave

1 you the information about what had happened?

2 A. Yes, ma'am.

3 Q. And then you started processing the bank --
4 when I say processing the crime scene, you were
5 taking pictures of the bank and looking around for
6 evidence --

7 A. Correct.

8 Q. -- that could be collected or photographed?

9 A. Yes, ma'am.

10 Q. Such that we saw in the pictures that you
11 testified to earlier?

12 A. Yes.

13 Q. And you testified that after you went to the --
14 after you left the bank, you went to the location
15 where the Grand Am was?

16 A. Yes, ma'am.

17 Q. That was in Olar?

18 A. Yes.

19 Q. And there were multiple other agencies
20 assisting, weren't there?

21 A. Yes, ma'am.

22 Q. Bamberg County Sheriff's Department was there
23 helping?

24 A. Yes.

25 Q. And Barnwell Sheriff's Department investigators

1 were helping?

2 A. Yes, ma'am.

3 Q. But, ultimately, you and Ms. Claycomb were
4 responsible for collecting the evidence and taking
5 it into your custody?

6 A. Correct.

7 Q. Okay. And you took pictures of a lot of items;
8 is that correct?

9 A. Yes, ma'am.

10 Q. Even some that weren't shown in those pictures?

11 A. Pardon me?

12 Q. You even collected other items of evidence that
13 were not shown in the pictures that we saw earlier.

14 A. There were other items collected that were
15 photographed; not everything that was collected was
16 in the pictures presented.

17 Q. Okay. That's what I was asking.

18 A. Yes, ma'am.

19 Q. And, in fact, you have -- do you have what you
20 collected? Do you have the paperwork showing what
21 you collected?

22 A. Yes, ma'am.

23 Q. Okay. I'm going to be asking you about that
24 next.

25 A. Okay.

1 Q. All right. Now, at the -- let me ask you this:
2 When you collect the evidence, what do you do with
3 it?

4 A. So if it's collected on scene, it's wrapped up
5 and, you know, getting ready to be transported. We
6 conduct an on-scene review with whoever the --
7 whoever the individual who is going to be doing the
8 follow-up investigation, conduct a review with them,
9 and ask which item of evidence they think needs to
10 be sent for which examination and if it -- and if
11 that's okay with me and okay with my partner, that's
12 the plan of action as to which item is going to be
13 sent to which department for analysis.

14 Q. So that decision is made right then and there
15 at the crime scenes?

16 A. For the most part.

17 Q. But you don't make that decision alone?

18 A. Correct.

19 Q. So who tells you what they think and what
20 should go to what -- what -- for what analysis?

21 A. Well, we always confer with whoever the
22 investigative -- whoever is going to be doing the
23 investigative follow-up as far as conducting
24 interviews and preparing the case for court and
25 handling that side. And if they have any specific

1 requests, we'll honor those; if they leave something
2 out, that's a request I'll make myself just to
3 insure we've done our due diligence, and from
4 working off the information we're provided, that
5 ever item of evidence goes where it needs to go for
6 analysis.

7 Q. Okay. Now, in every case is every item
8 analyzed?

9 A. No.

10 Q. Just the items y'all determine needs to go for
11 analysis?

12 A. Correct.

13 Q. Okay. Now, looking at what you found both --
14 well, we're mostly talking about what's in the car.
15 But looking at what you collected in this case all
16 together, you collected the ball cap? And I'm
17 referring to page 14 of 45 in your report.

18 A. If I could expand on that, the ball cap was
19 collected by an investigator from Barnwell County
20 Sheriff's Office prior to the thunderstorm moving
21 through so that any kind of evidence that may be on
22 the ball cap wouldn't be destroyed. And then that
23 item was later signed over to Agent Claycomb.

24 Q. And that item was put into evidence by Agent
25 Claycomb?

1 A. Yes.

2 Q. And that's your partner?

3 A. Yes, ma'am.

4 Q. Okay. And you collected them. And the same
5 investigator, Investigator Peterson, also collected
6 the money wrapper?

7 A. Yes.

8 Q. And a yellow rag?

9 A. Yes, ma'am.

10 Q. And, in addition, on the next page, you
11 collected -- there were collected three cell phones?

12 A. Yes, ma'am.

13 Q. And you also refer to five cards and two
14 receipts?

15 A. Yes, ma'am.

16 Q. And those are actually the cards and receipts
17 that are located here in State's 70?

18 A. Yes, ma'am.

19 Q. Well, it says three ID cards and two money
20 cards and then two receipts. So there are two
21 receipts in this bag, but there are other items
22 besides the money cards. I'll show you what's in
23 State's 70. There are three ID cards in there --
24 you can take that out. I'm sorry.

25 A. There are three South Carolina ID cars and a

1 North Carolina driver's license and a social
2 security card.

3 Q. Okay. So -- but on that form you said you have
4 three -- on page 15, it says that you have three ID
5 cards, two money cars, two receipts, and three cell
6 phones.

7 A. Correct, that's what it says.

8 Q. That's what the form says?

9 A. Yes, ma'am.

10 Q. Do you know where the fourth ID came from? Or
11 rather -- by the -- I want to be clear. By ID card,
12 you're referring to just these three South Carolina
13 ID cards?

14 A. I'm not sure. It's Agent Claycomb's
15 handwriting. She wrote it up. But it's listed as
16 three ID cards and two money cards.

17 Q. Okay. But these items were found in the car?

18 A. Yes, ma'am.

19 Q. We'll see if we get to the social security
20 cards. Let me ask you this: What did you do with
21 the receipts? What actions did you take regarding
22 these two receipts?

23 A. The receipts and ID cards were signed over to
24 Agent Williams.

25 Q. You didn't go to Walmart to try to get video or

1 anything?

2 A. No, ma'am.

3 Q. What about -- but this was on the same day.

4 I'm not really of the time. I think it says 9:22,
5 maybe, on the same day.

6 A. Yes, ma'am. Appears to show 9:27.

7 Q. But you didn't collect a video from Walmart?

8 A. No, ma'am.

9 Q. Okay. What about video from the Burger King?
10 This receipt shows somebody went there at 8:44 on
11 the same day.

12 A. Yes, ma'am.

13 Q. And the Burger King in Columbia?

14 A. Yes, ma'am.

15 Q. But you didn't collect any video from them to
16 see who might have been --

17 A. No.

18 Q. Okay. And you don't know who put these items
19 that are shown as State's 70 in the vehicle or how
20 they got in the vehicle do you?

21 A. No, ma'am.

22 Q. Okay. Now, the cell phones that are referred
23 to, what did you do with those cell phones?

24 A. The three cell phones were signed over by a
25 chain of custody form to Agent David Williams.

- 1 Q. Signed over to Agent Williams?
- 2 A. Yes, ma'am.
- 3 Q. But did you do any testing of them or any kind
- 4 of further investigation with those cell phones?
- 5 A. Not me personally, no, ma'am.
- 6 Q. Okay. And looking at page 16 of your report,
- 7 Investigator -- you said, once again, Investigator
- 8 Peterson from Barnwell was assisting you, assisting
- 9 collecting evidence?
- 10 A. Yes, ma'am.
- 11 Q. And he turned over what he picked up to you?
- 12 A. Correct.
- 13 Q. And that was a black belt that was found in a
- 14 ditch?
- 15 A. Yes, ma'am.
- 16 Q. Was that near where the car was?
- 17 A. It was in the general area. As to how close, I
- 18 couldn't say. I didn't -- I didn't respond or look
- 19 or observe it in the area where -- before it was
- 20 collected.
- 21 Q. Okay. And you found a light green shirt?
- 22 A. It was signed over to me -- I didn't --
- 23 Q. I'm sorry. It was signed over to you and you
- 24 took in evidence?
- 25 A. Yes, ma'am.

1 Q. And a blue latex glove found in the woods?

2 A. Yes, ma'am.

3 Q. Two gray socks?

4 A. Yes, ma'am.

5 Q. Do you know whether any of those were tested or
6 sent for any kind of analysis?

7 A. If I could reference the submission
8 documentation on page 7 of 25 of that report, the
9 gray socks, purple glove, black belt, and green
10 Columbia brand shirt were all -- they had all
11 examination request of DNA ownership.

12 Q. Okay.

13 A. Excuse me. Except the purple glove had a
14 latent print request.

15 Q. So the purple glove wasn't sent for any kind of
16 DNA, it was sent for fingerprints?

17 A. Yes, ma'am. That's what it says.

18 Q. Okay. And in the pictures that we saw, there
19 were numerous items of clothing -- and I'll -- let
20 me grab the pictures. I'm showing you what's been
21 marked for identification as State's 30 and 31 here.
22 And you previously testified about both of those
23 pictures, that you -- that those accurately reflect
24 how the vehicle looked when you got to where the
25 Grand Am was in Olar?

- 1 A. Yes, ma'am.
- 2 Q. Okay. And let's start with 30. Now, State's
- 3 30, that's a picture of the front passenger seat of
- 4 the vehicle?
- 5 A. Yes, ma'am.
- 6 Q. And it shows the money --
- 7 A. Yes, ma'am.
- 8 Q. -- the bag with the money?
- 9 A. Yes, ma'am.
- 10 Q. And I believe you said it shows -- what did you
- 11 say those were?
- 12 A. Paper money bands.
- 13 Q. And what's the item next to it?
- 14 A. A blue latex glove.
- 15 Q. Okay. What was done with that glove?
- 16 A. If I could consult my submission paperwork
- 17 again. I beg your pardon. I'm having trouble
- 18 locating it in the list of items. On Agent
- 19 Claycomb's submission paperwork, it has a latex
- 20 submitted for latent prints.
- 21 Q. Okay. That's one of the gloves you were
- 22 talking about submitted for latent prints. And the
- 23 other ones were submitted for DNA, you said?
- 24 A. Just quickly reviewing all the gloves under the
- 25 submission, the submission is listed as latent

1 prints for -- it says latent prints for the latex
2 gloves, and a gray glove was listed as under sent to
3 DNA with an ownership request.

4 Q. Okay. And in State's 30, do you know what this
5 item is in the corner that's tucked in by the
6 seatbelt?

7 A. Appears to be a gray cloth.. I believe it's the
8 gray glove.

9 Q. Okay. That's what was sent for some kind of
10 testing?

11 A. Yes, ma'am. The submission is listed as DNA
12 ownership.

13 Q. Okay. What about these cups that are seen in
14 State's 30?

15 A. I don't believe any of the cups were --

16 Q. Cups weren't collected?

17 A. Correct.

18 Q. And there appears to be some clothes under the
19 bag with the money in it. What was done with that?

20 A. Clothes under -- on the passenger floorboard --

21 Q. Yes, sir?

22 A. -- included -- it was collected. Do you want
23 me to read this?

24 Q. What happened to them? I mean, what did you do
25 with them? Were they sent for testing or any kind

1 of analysis?

2 A. Listed as a black hat under the --

3 Q. No. I'm talking about whatever this is, pants,
4 whatever it appears to be, under the black bag with
5 the money in it.

6 A. Okay. The khaki cargo shorts sent for DNA
7 ownership.

8 Q. Okay. Now, looking at State's 31, there
9 appears to be several items of clothing in the back
10 seat of that.

11 A. Yes, ma'am.

12 Q. And I think one of them is the shirt that was
13 entered into evidence as -- one of them is the black
14 shirt that was entered into evidence as State's 75.

15 A. Correct.

16 Q. And you can see that shirt with the design on
17 the front.

18 A. Yes, ma'am.

19 Q. Now, there were other items of clothing shown
20 in State's 31.

21 A. Correct.

22 Q. Some shirts, I'm not sure how many pairs of
23 shoes, at least one pair of shoes. I don't know
24 what else that is. What happened to all those
25 items?

1 A. I believe they were left in the vehicle.

2 Q. They were? Including these shoes? These shoes
3 were left in the vehicle, the shoes shown in State's
4 31?

5 A. The shoes that were in the --

6 Q. The shoes that were in the back seat.

7 A. Back seat. I don't have a record of them being
8 submitted.

9 Q. So if you don't have a record of them being
10 submitted, that means the shoes might have been left
11 in the car?

12 A. Yes. I don't -- I don't particularly remember
13 whether they were collected or not.

14 Q. Okay. Well, if items are left in the car, who
15 decides what to leave and what to take?

16 A. That's part of the consultation process that we
17 make on scene with investigators.

18 Q. Okay. But at the time that you took these
19 pictures and you were collecting evidence, that was
20 immediately after the bank robbery had occurred?

21 A. Yes.

22 Q. And that was -- when you took these pictures or
23 when these pictures were taken that you say
24 accurately reflects how the scene looked when you
25 got there, this was immediately after you had gone

1 to the bank and taken the pictures of the items at
2 the bank?

3 A. Yes.

4 Q. And that would have been immediately after the
5 you took the picture of the item of the person whose
6 footprint was on the counter at the bank?

7 A. Yes.

8 Q. And we didn't -- and at that point you wouldn't
9 have known what kind of shoes or what shoes made
10 that impression?

11 A. I could tell based on the footwear impression
12 it looked like they were work boot style.

13 Q. Okay. But could you tell whether or not you
14 had any evidence linking these shoes to the bank at
15 that point?

16 A. No.

17 Q. You didn't know whether these shoes might be
18 important, the ones shown in State's 31?

19 A. No.

20 Q. Okay. Now -- but they weren't collected?

21 A. I don't have any record of them being
22 collected.

23 Q. Okay. Now, there is a soda bottle in the back
24 seat; is that correct?

25 A. Yes, ma'am.

1 Q. And, actually, there were other soda bottles
2 found in the vehicle, as well; do you recall?

3 A. Yes, ma'am.

4 Q. Okay. Were the soda bottles collected to
5 determine who might have been present in the
6 vehicle?

7 A. The soda bottles in the front passenger
8 floorboard was and not the others.

9 Q. Okay. So the soda bottle in the back, this
10 Orange Crush soda, that wasn't collected?

11 A. Correct.

12 Q. Okay. And, once again, whose decision would it
13 have been to not collect the soda bottle in the back
14 for some type of analysis?

15 A. That's part of the consultation process with
16 crime scene agents and investigators.

17 Q. So that would have been part of the process
18 between you and the investigator handling the
19 investigation?

20 A. Yes, ma'am.

21 Q. Okay. Now, going back to State's 31, looks
22 like there's another pair of shoes there. Is that
23 what that is?

24 A. I can't tell from -- quite from that angle. It
25 appears to be something that's black with a red dot

1 on it.

2 Q. Okay. You said you can't tell whether that's
3 shoes or not?

4 A. Not from that frame.

5 Q. Okay.

6 A. Okay. I couldn't really say what that is.

7 Q. Okay. And this gray -- looks like a sock here.
8 You said that was sent for analysis?

9 A. Sock in the rear that's on the rear passenger
10 bench seat?

11 Q. Yes.

12 A. I don't have a record of collecting a sock from
13 the bench seat. Two gray socks were from the wooded
14 area were signed over and sent for analysis.

15 Q. But not this one sock from the back seat?

16 A. I can't tell what that is there, if it is a
17 sock.

18 Q. Look at it closer if it helps.

19 A. I'm sorry. In the rear passenger side was a
20 panty-hose-type material, possibly a do-rag.

21 Q. Okay. So you said you collected
22 panty-hose-type material, possibly a do-rag, from
23 the back seat?

24 A. No. I have no record it was collected, it's
25 just listed that it was there.

1 Q. Okay. Now, wait a minute. I want to go back
2 to that one. You said you have noted that you found
3 a panty-hose-type material, possible do-rag on the
4 back seat?

5 A. Yes, on passenger's side.

6 Q. Passenger's side of the back seat. Now, is
7 this what's shown in State's 31?

8 A. Yes.

9 Q. Yes?

10 A. Rear of the vehicle.

11 Q. This item sitting here in the middle of the
12 seat?

13 A. I have that listed in the report as a
14 black-in-color glove -- black-in-color glove.

15 Q. Would that be the black glove you're referring
16 to?

17 A. I believe that's the gray -- I'm sorry. The
18 panty-hose-type material.

19 Q. Okay. Was that panty-hose-type material,
20 possible do-rag sent for testing?

21 A. No.

22 Q. Okay. What about the little black glove?

23 A. No.

24 Q. Okay.

25 MS. ALVES: I beg the Court's indulgence one

1 moment.

2 THE COURT: Yes, ma'am.

3 BY MS. ALVES:

4 Q. Now, in State's 70, in the bag with the ID
5 cards, we saw in the pictures where the ID card
6 from -- we saw the ID card from Homer James, we saw
7 an ID card from Leon James in the pictures, we saw a
8 North Carolina driver's license from Darrell
9 Lassiter, we saw where the receipts were found.

10 Where was Lewis Garvin's ID card found?

11 A. I don't recall specifically where that card was
12 found. Agent Claycomb's report does not have --
13 sorry. The last name Garvin?

14 Q. Garvin.

15 A. Does not have the last name Garvin listed in
16 the report.

17 Q. And do you know where Lewis Garvin's social
18 security card was found?

19 A. No, ma'am, not specifically.

20 Q. Are you still looking for it?

21 A. It's not in the report.

22 Q. Okay.

23 MS. ALVES: Thank you. I don't have any
24 further questions.

25 THE COURT: Ladies and gentlemen, we've been

1 going a little bit. We'll take a break right quick
2 and come back in about 10, 15 minutes.

3 (The jury exits the courtroom at 11:12 AM.)

4 THE COURT: Agent Oliphant, you're free to step
5 down, but you can't speak to anybody during the
6 break. Okay, sir?

7 THE WITNESS: Yes, sir.

8 THE COURT: Okay. Let's take about 10 or 15.

9 (Short break.)

10 THE COURT: Mr. Weeks, are you ready for
11 redirect?

12 MR. WEEKS: Yes, Your Honor.

13 THE COURT: Ms. Alves, you ready to proceed?

14 MS. ALVES: Yes, sir.

15 THE COURT: Please bring the jury in.

16 (The jury enters the courtroom at 11:30 AM.)

17 REDIRECT EXAMINATION

18 BY MR. WEEKS:

19 Q. Thank you, Your Honor. Agent Oliphant, when
20 you reported to the bank in Denmark on June 5th in
21 the afternoon, did you know who committed the bank
22 robbery?

23 A. No, sir.

24 Q. What was your role -- yours and Dawn Claycomb's
25 role with SLED at that point?

1 A. To conduct crime scene investigations, to
2 basically handle all the physical evidence side and
3 documentation of the scene.

4 Q. You're collecting stuff whether or not it means
5 anything to anybody at that point in time; correct?

6 A. Yes, sir.

7 Q. Okay. And to some degree, you use your
8 judgment?

9 A. Yes, sir.

10 Q. All right. When you get to the car, would it
11 have been possible just to drag the car out of the
12 woods and take it up to SLED and tear it apart and
13 DNA everything?

14 A. It's possible, yes, sir.

15 Q. Sometimes on crime scenes they do tow the car
16 back to a secure location, don't they?

17 A. Yes, sir.

18 Q. But this night, y'all chose not to do that;
19 correct?

20 A. Correct.

21 Q. The items that were picked up and ultimately
22 taken SLED, were all those items forensically
23 examined at SLED?

24 A. For the most part. I understand there were a
25 few items that were just held for storage. But, for

1 the most part, yes, sir.

2 Q. Okay. If I submit 250 DNA swabs to SLED, what
3 year are those going to be completed?

4 A. Well, I'll tell you DNA for property a crime,
5 normally we'll do three sets.

6 Q. In other words, it takes a long time to do?

7 A. Yes, sir.

8 Q. All right. And I noticed or I think I saw the
9 answer to my question. Do you know how many items,
10 physical items, that you and Dawn collected that
11 night?

12 A. From the car?

13 Q. Or from -- period.

14 A. The whole day?

15 Q. Yeah.

16 A. In the neighborhood of 60 items.

17 Q. Physical items, not just pictures?

18 A. Yes, sir; 59 items of evidence that day.

19 Q. Okay. Did you have any more dealings with this
20 scene --

21 A. No, sir.

22 Q. -- later?

23 A. No, sir.

24 Q. And did you find any cash in the glove box of
25 the car?

1 A. Yes.

2 Q. What kind of cash did you find in the glove
3 box?

4 A. The glove box contained 13 20-dollar bills to
5 total \$260. Also, cash was folded up and had red
6 stains on the bills.

7 Q. Okay. That was in the glove box of the same
8 car we're talking about?

9 A. Yes, sir.

10 Q. Thank you. I don't have any further questions.

11 MS. ALVES: Nothing further.

12 THE COURT: May this witness be dismissed?

13 MR. WEEKS: If he wants to be. He's probably
14 safer here than he is if he's dismissed.

15 THE COURT: Excuse me. I'm sorry.

16 MR. WEEKS: We don't have any objection to him
17 being excused.

18 THE COURT: Any objection, Ms. Alves?

19 MS. ALVES: No, sir.

20 THE COURT: You're excused, sir.

21 MR. EMER: State calls Renee Greathouse.

22 RENEE GREATHOUSE

23 being first duly sworn, testified as follows:

24 THE WITNESS: Yes, I do.

25 DIRECT EXAMINATION

1 BY MR. EMER:

2 Q. Good morning, Ms. Greathouse. If you could,
3 could you please state your full name for the Court.

4 A. Renee Natasha Greenhouse.

5 Q. Do you know Lewis Garvin?

6 A. No, sir.

7 Q. Do you know a Homer James?

8 A. No, sir.

9 Q. Do you know a Darrell Lassiter?

10 A. No, sir.

11 Q. How about Leon James?

12 A. I do.

13 Q. How do you know Mr. James?

14 A. He was a friend.

15 Q. Can you speak up a little bit for me?

16 Ms. Greathouse, I'm going to show you what's
17 been marked as State's 27. Do you recognize the
18 vehicle in that photo?

19 A. Yes. That's my car.

20 Q. That vehicle right there?

21 A. Yes, sir.

22 Q. Is that car registered to you?

23 A. Yes, it is.

24 Q. And where did you purchase that vehicle?

25 A. 321 Auto Sales in Gaston.

1 THE COURT: Speak clear and a little louder,
2 please, ma'am.

3 A. 321 Auto Sales in Gaston.

4 Q. Can we get you some water or anything?

5 A. Huh-uh.

6 Q. What type of vehicle is that?

7 A. Grand Am.

8 Q. And what color is it?

9 A. Silver.

10 Q. I'm going to show you States's 28. Where did
11 you say you purchased the vehicle at?

12 A. 321 Auto Sales.

13 Q. And on June 5th, 2014, who was in possession of
14 that vehicle?

15 A. Leon was.

16 Q. How did you find out your vehicle had been
17 involved in a bank robbery?

18 A. SLED showed up at my house looking for him.

19 Q. And when did they come to your home?

20 A. I believe it was the evening of or either the
21 morning after. It was --

22 Q. When was the last time you had your car?

23 A. I hadn't seen him or my car in about a month
24 before this all happened.

25 Q. So he'd taken your vehicle?

1 A. He had hadn't returned it. I filed a breach of
2 trust to get my vehicle back the month before that.

3 Q. And to the best of your knowledge, he was in
4 possession of the vehicle the entire time?

5 A. Right.

6 Q. Ms. Greathouse, I'm going to show you what's
7 been marked as State's Exhibit 52. Can you identify
8 the individual there?

9 A. It's not real clear.

10 Q. How about now?

11 A. I'm assuming that's Leon.

12 MS. ALVES: Objection, Your Honor; move to
13 strike.

14 THE COURT: Sustained.

15 BY MR. EMER:

16 Q. Here's a close-up of that image.

17 A. That's Leon.

18 Q. Thank you.

19 MS. ALVES: I'd just confirm what number
20 picture you just showed her.

21 MR. EMER: This is State's Exhibit 52.

22 Nothing further. Please answer any questions
23 the defense may have.

24 THE COURT: Cross-examination?

25 CROSS-EXAMINATION

- 1 BY MS. ALVES:
- 2 Q. Ms. Greathouse, you were dating Leon at some
- 3 point?
- 4 A. I wouldn't even call it that.
- 5 Q. You were at some point --
- 6 A. If that's what it was, it was a joke.
- 7 Q. How long were you acquainted with Mr. Leon
- 8 James?
- 9 A. Very short period of time. It wasn't even
- 10 worth mentioning.
- 11 Q. You had lent him your vehicle during that
- 12 period?
- 13 A. Right.
- 14 Q. And then he didn't bring it back like he was
- 15 supposed to?
- 16 A. That's correct.
- 17 Q. And you hadn't seen him for about a month, you
- 18 said?
- 19 A. Yeah. I filed breach of trust charges on him a
- 20 month before the bank was robbed.
- 21 Q. Because he had taken your vehicle --
- 22 A. Because he refused to bring it back.
- 23 Q. And you said you don't know Homer James?
- 24 A. I don't.
- 25 Q. Never seen him?

1 A. Huh-uh.

2 Q. I know he and Leon have the same name, but
3 don't know if they're related or not?

4 A. I don't. I have no clue.

5 Q. Thank you.

6 THE COURT: Redirect?

7 MR. EMER: No, Your Honor.

8 THE COURT: May this witness be excused?

9 MR. EMER: Yes, Your Honor.

10 THE COURT: Any objection?

11 MS. ALVES: No, Your Honor.

12 THE COURT: Thank you.

13 MR. WEEKS: Your Honor, the State would call
14 Captain Eddie Williams.

15 EDDIE WILLIAMS

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION

19 BY MR. WEEKS:

20 Q. Please state your full name and what you do for
21 a living.

22 A. My name is Eddie Williams, Jr. I work for
23 Bamberg County Sheriff's Office.

24 Q. All right. Eddie, you're pretty soft-spoken
25 for a police officer. How about lean into that

1 microphone?

2 A. Okay.

3 Q. Speak up for me so this lady can hear you.

4 How long have you been a police officer?

5 A. Since August 17th, 2002.

6 Q. And what capacity have you worked in as a
7 police officer?

8 A. I was chief in Olar for just under two years.

9 And since that time, May 25th, 2004, I worked for
10 Bamberg County Sheriff's Office.

11 Q. I can tell you either I'm getting deafer as I'm
12 getting older or you're getting more soft-spoken.

13 You're going to have to lean into that microphone
14 because these folks need to hear you. Okay?

15 A. Okay. I'll do my best. I just don't talk
16 loud.

17 Q. All right. Well --

18 A. Except on Sunday mornings.

19 Q. I understand.

20 Back in June of -- what rank -- or what do you
21 do for the Bamberg County Sheriff's Department now?

22 A. Special ops. I'm a captain.

23 Q. And in June of 2014, were you working for Ed
24 Darnell at the sheriff's department?

25 A. I was.

1 Q. All right. And what was your role in regard to
2 the bank robbery in Denmark that day?

3 A. I didn't have a special role with respect to
4 the bank robbery.

5 Q. What were you dispatched to do after the bank
6 robbery or where were you dispatched to go to?

7 A. The day after the bank robbery, which would
8 have been a Friday night, I got a call to return a
9 call to a subject -- to a person that had called in.
10 Called that individual and was advised that there
11 was some people --

12 Q. Don't tell me what they said. As a result of
13 talking to somebody in -- what area?

14 A. I don't understand what you're saying.

15 Q. Friday after the bank robbery, if it happened
16 on a Thursday, the next day, did you receive a call
17 about suspicious people?

18 A. On Friday evening.

19 Q. And did you respond to that call?

20 A. I did.

21 Q. In your patrol car?

22 A. I did.

23 Q. In your uniform?

24 A. I did.

25 Q. And where did you go to?

- 1 A. Govan.
- 2 Q. Govan. And what road in Govan?
- 3 A. Ehrhardt Highway. Ehrhardt Road:
- 4 Q. Now, I come to learn a lot about Bamberg County
- 5 this week particularly. But Ehrhardt Road turns
- 6 into Govan Road or vice versa?
- 7 A. Govan Highway in Barnwell County turns into
- 8 Ehrhardt Road in Bamberg County. Govan Road is in
- 9 Bamberg County; Govan Highway is in Barnwell County.
- 10 Q. That would make sense because Govan Fire
- 11 Department is on Govan Road, isn't it?
- 12 A. Govan Fire Department is on Ehrhardt Road.
- 13 Q. Okay. I'm having a hard time with that.
- 14 You'll just have to knock me in the head.
- 15 But that location and that general area is
- 16 where you responded; is that correct?
- 17 A. Correct.
- 18 Q. As a result of that phone call, did you check
- 19 out a residence --
- 20 A. I did.
- 21 Q. -- to see whether anybody was there?
- 22 A. I did.
- 23 Q. And where was that residence located in
- 24 relation to the Govan Fire Department?
- 25 A. Just west of the Govan Fire Department.

1 Q. And that's another one of those things I'm
2 tough with; east, west, south, and north. Would
3 that have been if you're facing the Govan Fire
4 Department, to the left?

5 A. Facing the Govan Fire Department, it would have
6 been to the left, yes.

7 Q. Did you find anybody as a result of that call
8 at that residence?

9 A. I did not.

10 Q. What was that residence, Eddie?

11 A. Mobile home.

12 Q. Okay. And finding nobody there --
13 approximately what time was it when you were
14 checking this call out?

15 A. Probably around 10:00, I would say; between
16 9:30 and 10:00.

17 Q. It was dark?

18 A. It was.

19 Q. All right. What did you do after you checked
20 that residence out and nobody was there?

21 A. At that point, I proceeded to leave the area.

22 Q. All right. Where did you go?

23 A. I headed towards 321. But there was some
24 people standing in front of the fire station, so I
25 stopped to talk with them.

1 Q. And when you say you headed towards 321, it's
2 probably not 100 yards to 321 from where you were
3 at, was it?

4 A. It's not very far.

5 Q. Did you talk with the people at the fire
6 department?

7 A. I did.

8 Q. And as a result of talking to them at the fire
9 department, what did you do?

10 A. I proceeded to a single-wide mobile home that
11 was behind the waste disposal site, which was just
12 northwest of the fire station.

13 Q. Okay. 100 yards from the fire station?

14 A. Thereabouts.

15 Q. Okay. Describe this mobile home you went to
16 check out.

17 A. It was a single-wide mobile home. That was the
18 only description that I can give you.

19 Q. Was it a nice mobile home or -- describe it in
20 terms of its condition.

21 A. Just an old mobile home with apparently no
22 electricity to it.

23 Q. No electricity?

24 A. Apparently not. There were no lights on in it.

25 Q. And surrounding the mobile home, what was

1 growing up?

2 A. On the west side of the mobile home was a
3 cornfield and behind it and on the side was kudzu.

4 Q. Kudzu, that's that wonderful plant that Jimmy
5 Carter introduced into South Carolina, green and
6 grows over everything?

7 A. I don't know if Carter did it, but since
8 I've --

9 Q. But it grows well in the country, doesn't it?

10 A. It does.

11 Q. Tell me what happened when you checked out this
12 mobile home, Eddie.

13 A. Well, when I pulled -- got there and I pulled
14 up with my light shining on the front door of the
15 house, I proceeded to get out of my car, and then a
16 man exited the house and started walking towards me.

17 Q. What happened then -- or describe him for me.

18 A. Thin, dark complexion, my height, maybe a
19 little bit taller than me, perhaps.

20 Q. Black man? White man?

21 A. Dark complexion, black man.

22 Q. Okay. How was he dressed, roughly?

23 A. No shirt, had on, best as I recollect,
24 dark-colored pants.

25 Q. What happened when he approached you? What did

1 you say to him?

2 A. I think the only thing I said to him was I
3 advised him to stop advancing on me because as he
4 exited the house and started walking towards me, he
5 started flailing his arms and said, this is my
6 house, I don't have anything.

7 Q. What happened then?

8 A. Well, as he continued to advance, I drew my
9 gun. And at that point, he ran away.

10 Q. All right. When you say he ran away, what
11 direction did he run to?

12 A. He ran, basically, away from the mobile home
13 and, I guess, pretty much in the general direction
14 of the fire station and the waste disposal site.

15 Q. And would that have been running towards Govan
16 Road?

17 A. Ehrhardt Road.

18 Q. Okay. And did you see him again?

19 A. Next time I saw him was that Saturday morning
20 after SLED apprehended him..

21 Q. The man you saw come out of the trailer that
22 night, is he in the courtroom today?

23 A. He is.

24 Q. Where is he?

25 A. The defendant.

1 Q. The defendant?

2 A. Yes.

3 Q. Did he look like that that night?

4 A. He did not.

5 Q. Have you observed or looked at a photograph of
6 the defendant that was taken that night --

7 A. Yes.

8 Q. -- or about that time? I'll hand you --

9 MS. ALVES: May I review it, please?

10 Q. I'll hand you what's marked as State's 77 and
11 ask if you can identify that photograph.

12 A. Uh-huh.

13 Q. Is that a yes?

14 A. Yes.

15 Q. And does this picture accurately and truly show
16 what it purports to show; that is, that individual
17 in it?

18 A. Yes, sir.

19 Q. And the individual in it was who?

20 A. The defendant.

21 Q. And was this basically the way he looked the
22 night you --

23 A. It is.

24 Q. -- or the next day when you saw him?

25 A. It is.

1 MR. WEEKS: Move to introduce 77 into evidence.

2 MS. ALVES: Can I see it one more time, please?

3 THE COURT: Any objections?

4 MS. ALVES: No, sir.

5 THE COURT: Admitted.

6 (State's Exhibit No. 77 admitted into
7 evidence.)

8 MR. WEEKS: Thank you, Your Honor.

9 BY MR. WEEKS:

10 Q. Was the defendant's hair longer then than it is
11 today?

12 A. It was.

13 Q. All right. So when he ran away from you --

14 MR. WEEKS: Your Honor, may I publish this?

15 THE COURT: Yes.

16 BY MR. WEEKS:

17 Q. When he ran away from you, you didn't catch
18 him?

19 A. I did not.

20 Q. Okay. Later on the next day, when -- after he
21 was apprehended, did you have the opportunity to go
22 to the Bamberg County Detention Center and obtain
23 any clothing?

24 A. I did.

25 Q. All right. Who did you obtain that clothing

1 from? Whose clothing was it that you obtained?

2 A. The defendant.

3 Q. Okay. And it was -- was it the clothing he was
4 wearing when he was taken into the jail?

5 A. It was.

6 Q. Captain Eddie, I'll hand you what's marked
7 State's Exhibit 73 and ask if you can identify
8 what's in this bag. And there's some gloves if you
9 need to look at anything.

10 A. Well, according to the bag, this says that it
11 came from the person of the defendant.

12 Q. What's in the bag?

13 A. A pair of shoes.

14 Q. Okay. Put it back in, please.

15 And when did you collect these shoes, Eddie?

16 A. That would have been on Saturday after the
17 defendant was brought to the jail.

18 Q. Okay. Is this your handwriting on the front of
19 the bag there?

20 A. It is.

21 Q. Okay. Eddie, I'll hand you what's marked as
22 State's 65 and ask if you collected these items.

23 A. Based on the handwriting, it's black
24 sweatpants. That's my handwriting.

25 Q. Did you collect these?

1 A. I did.

2 Q. Did you turn these items over to SLED?

3 A. I did.

4 Q. And State's 63, the black sweatpants, who was
5 wearing those?

6 A. The defendant.

7 Q. The defendant?

8 A. Uh-huh.

9 MR. WEEKS: Your Honor, the State moves to
10 introduce 65 and 73.

11 THE COURT: Any objection?

12 MS. ALVES: No objection.

13 THE COURT: Admitted.

14 (State's Exhibit Nos. 65 and 73 admitted into
15 evidence.)

16 BY MR. WEEKS:

17 Q. Eddie, did you collect anything from this
18 abandoned trailer -- I'll hand you what's marked as
19 State's 66 and ask if you can identify that.
20 There's some writing up under the little evidence
21 tag there.

22 A. Yes. We did collect the drink bottle from the
23 trailer.

24 Q. I'm sorry. Say that again?

25 A. We did collect the drink bottle from the

1 trailer.

2 Q. Okay. And did you turn that over to SLED?

3 A. I did.

4 MR. WEEKS: Your Honor, State moves to
5 introduce State's No. 66.

6 MS. ALVES: No objection.

7 THE COURT: Admitted.

8 (State's Exhibit No. 66 admitted into
9 evidence.)

10 MR. WEEKS: Answer any questions Ms. Alves has
11 for you, Captain Williams.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MS. ALVES:

15 Q. You didn't have a lot to do with this robbery
16 investigation, did you?

17 A. No, ma'am.

18 Q. You weren't really involved the day before when
19 the robbery occurred?

20 A. Not really. It was late in the afternoon I was
21 put on the perimeter. Other than that, i HAD
22 nothing else to do with it.

23 Q. You were just on the perimeter. What were you
24 doing on the perimeter?

25 A. Just kind of filling in the gap just in case

1 they ran out of the bushes.

2 Q. So y'all were monitoring to see if any of the
3 suspects came out of the area where the robbery
4 occurred --

5 A. Well --

6 Q. Or where the car crashed, rather.

7 A. Well, where I was was approximately two miles
8 from where the car allegedly crashed.

9 Q. Okay. So you were just there to assist?

10 A. Yes.

11 Q. So you weren't really -- and you weren't doing
12 any part of the investigation?

13 A. I was not.

14 Q. Okay. And I believe you were with another
15 officer from your agency, Shawn Hamilton. Were you
16 with him?

17 A. No.

18 Q. No. Okay. Now, were you by yourself?

19 A. On Thursday?

20 Q. On Thursday.

21 A. I was by myself.

22 Q. Was anyone with you on Friday when you went to
23 the trailer?

24 A. Initially I was the only officer that had the
25 response.

1 Q. Okay. And then did other people come after
2 that?

3 A. Yes.

4 Q. Who came after that?

5 A. I believe the second officer was Deputy Stephen
6 Gunnels, if my recollection is accurate.

7 Q. Okay. And other officers from your agency
8 came?

9 A. The next person probably would have been Deputy
10 Hamilton.

11 Q. Deputy Shawn Hamilton?

12 A. Yes.

13 Q. Okay. And you supervise him? Do you supervise
14 him?

15 A. Well, I -- I don't use those terms much. But
16 I'm a captain, he was an investigator, so I don't
17 know how you categorize that.

18 Q. Okay. Now, you said that when you went down
19 there, you were investigating this single-wide
20 trailer that was located behind the recycling
21 center, you said, northwest of the fire department,
22 I believe is what you said.

23 A. My initial response was to a double-wide
24 trailer that was located inside a chain-link fence
25 two doors west of the fire department.

1 Q. I'm sorry. I was skipping to the trailer that
2 you saw the person coming out of.

3 A. That trailer was behind the waste disposal
4 site, just west of the fire station.

5 Q. Okay. Now, you testified that it was an old
6 mobile home, that there were no lights on?

7 A. There were no lights.

8 Q. And you said you pulled up with your lights
9 from your vehicle shining on the front of the house.

10 A. Correct.

11 Q. And the person came out of the front of the
12 house?

13 A. Correct.

14 Q. And you described them as thin, dark
15 complexion, black male?

16 A. Yes.

17 Q. You said he had no hat on, no shirt?

18 A. Correct.

19 Q. And dark-colored pants?

20 A. Yes.

21 Q. Can you tell anything else about the person?

22 A. Just from my initial impression, person seemed
23 slightly disoriented and a little mentally off
24 balance.

25 Q. I'm talking physically.

1 A. I'm sorry.

2 Q. Physically, were you able to tell anything else
3 about the person?

4 A. No. That's it.

5 Q. You didn't see anything else that would be
6 noteworthy?

7 A. No. It was at night, it was dark. I didn't
8 see anything else other than what I said.

9 Q. Okay. Even though your lights were shining on
10 the person?

11 A. It was still dark and he wasn't directly -- at
12 that point when he approached me, he wasn't directly
13 in the light, he was kind of off to the side.

14 Q. Okay. When they turned to run, did you notice
15 anything about them?

16 A. No, nothing specific.

17 Q. Okay. Now, after they ran, you didn't -- did
18 you chase this person?

19 A. My initial impulse was to, but then I opted to
20 get in the car and drive around to the front in the
21 direction -- general direction that he fled.

22 Q. Okay. And at some point you went back to the
23 trailer?

24 A. Later on, yeah, I did.

25 Q. Okay. And you went into the trailer?

1 A. Yes.

2 Q. And for what reason did you go into the
3 trailer?

4 A. I can't tell you specifically. I guess it was
5 part of -- as best I can recollect, it's been over
6 two years. I think I went in there with Deputy
7 Hamilton. I want to say it was at SLED's request.
8 But I -- but I won't say it emphatically. But we
9 went in to double-check that nobody else was in
10 there and we collected a couple items that we found
11 and turned them over to SLED.

12 Q. Okay. So when you went into the trailer, you
13 looked around?

14 A. We did.

15 Q. To make sure nobody else was in there?

16 A. Of course.

17 Q. And you collected evidence; what might be
18 useful evidence in this case?

19 A. Yes.

20 Q. All right. And you collected three items of
21 evidence?

22 A. Best of my recollection, yes.

23 Q. Did you do a report about this?

24 A. The official report was written by Deputy
25 Hamilton.

1 Q. But you reviewed it?

2 A. Not in a supervisory capacity, but I did read
3 it.

4 Q. To make sure what he put down was accurate?

5 A. I looked over it. There were some things that
6 I -- ask the question again.

7 Q. Did you look over it to make sure what he put
8 down about your role in it was accurate?

9 A. There are some inconsistencies, but it has
10 nothing to do with anything, I don't reckon. I
11 don't know how to answer that question.

12 Q. Okay. Well, let me ask you this: Why did
13 Deputy Hamilton do a report?

14 A. There were three deputies there at that point.
15 He said he would do the report. Somebody want to do
16 a report, I'm happy to let them.

17 Q. I'm sorry. I didn't hear you.

18 A. I said, there were three of us there. He said
19 he'd do the report. And I said if someone want to
20 do the report, I'm happy to let them.

21 Q. So between everybody who was there for Bamberg
22 County Sheriff's Department -- you said ther were
23 three deputies?

24 A. Best of my recollection.

25 Q. Okay. And --

- 1 A. And that's Friday night.
- 2 Q. And Shawn Hamilton volunteered to do the
3 report?
- 4 A. Pretty much.
- 5 Q. And that was for all of you who were there from
6 Bamberg County?
- 7 A. Yes. I'm not sure if Deputy Gunnels wrote
8 anything or not.
- 9 Q. Okay. And, well, it wasn't your case --
- 10 A. No.
- 11 Q. -- and you weren't the investigating agency.
12 Why did anything officer from Bamberg County need to
13 do a report?
- 14 A. Well, I -- it was -- it's recorded in the
15 system as assisting other agency. We're just
16 documenting our presence there. It wasn't an
17 official investigation for SLED or anything like
18 that. We were involved in it. It shows we were
19 there and pretty much what we did.
- 20 Q. Okay. Do you think it was important for the
21 officers from your agency to do this report?
- 22 A. Like I said, it documented what we did, and we
23 were there. I mean, we're told at the academy, if
24 it's not documented, it didn't happen, so we did.
- 25 Q. You said if you didn't document it, it didn't

1 happen. Is that what you just said?

2 A. That's what I said.

3 Q. Okay. Because this is two years and two months
4 ago that this incident happened.

5 A. Correct.

6 Q. And in order to have a clear report about what
7 happened, you have to do a report as soon as
8 possible.

9 A. Uh-huh.

10 Q. Is that correct?

11 A. I guess if you got to poor memory, that's
12 correct.

13 Q. Okay. Well, even if you a good memory, don't
14 you have to accurately document what happened just
15 in case your memory starts to fade two years and two
16 months later?

17 A. Well, from my perspective, my only role in it,
18 I responded to a trespass issue. All of the things
19 that's coming to pass now, as far as I'm concerned,
20 I have nothing to do with them. And then two years
21 later, I find out I do have something to do with
22 them, because my only dog in the fight that night
23 was a trespass call.

24 Q. Okay. And so without the police report -- the
25 police report that your agency did detailing what

1 the officers from your agency did, that was turned
2 over to a lead investigator for this case?

3 A. I don't know --

4 MR. WEEKS: Your Honor, I object. I don't know
5 how he could know that.

6 THE COURT: Ask him a foundational question --

7 MS. ALVES: Yes, sir. He testified he doesn't
8 know.

9 THE COURT: Thank you.

10 BY MS. ALVES:

11 Q. Do you know whether any reports done by anyone
12 from your agency would have been available to the
13 lead investigator for this case?

14 A. I'm sure it would have been. I mean, it's in
15 our system. It's still in our system after two
16 years.

17 Q. Okay. And in the report that you said you
18 reviewed, you talked about the bottle that you found
19 that I think was just put in as --

20 MR. MILLER: 66.

21 MS. ALVES: Thank you.

22 BY MS. ALVES:

23 Q. Here it is. You talked about the bottle that
24 you put in from the trailer that's marked State's
25 66?

1 A. Yes, ma'am.

2 Q. And you also found a purple glove in the
3 trailer?

4 A. Best of my recollection, yes.

5 Q. Okay. And you, in fact, found a second bottle
6 in the trailer, didn't you?

7 A. I believe there were two bottles.

8 Q. Okay. I'll show you what's marked as
9 Defendant's No. 1. Can you tell us what that is?

10 A. This is a 20-ounce spring water bottle at Govan
11 Fire Department training trailer.

12 Q. So that's a -- I want to repeat what you just
13 said -- 20-ounce spring water bottle at Govan Fire
14 Department training trailer?

15 A. Yes.

16 Q. And it was recovered by whom?

17 A. E. Williams, Jr.

18 Q. That's you?

19 A. Yes.

20 Q. So when you were at the trailer, you found two
21 water bottles and a purple glove?

22 A. Correct.

23 Q. Do you recall if you found anything else?

24 A. I don't recall finding anything else.

25 Q. You don't recall. Okay. And you turned these

1 items over to the lead investigator in the case?

2 A. Best of my recollection, yes.

3 MS. ALVES: Your Honor, I'd move to admit
4 Defendant's Exhibit 1.

5 MR. WEEKS: No objection.

6 THE COURT: Admitted.

7 (Defendant's Exhibit No. 1 admitted into
8 evidence.)

9 BY MS. ALVES:

10 Q. And you turned that glove over as well?

11 A. Yes, ma'am.

12 Q. No further questions. Thank you.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. WEEKS:

16 Q. Captain Williams, when the fellow ran away from
17 you, did the fire department assist you, some of
18 them -- assist might be a general word. Did they
19 help chase the guy?

20 A. By the time I left the training trailer, I
21 backed to the front of Ehrhardt Road, fire personnel
22 was kind of like middling around in the road on the
23 shoulder of the road with their car lights shining
24 across the field.

25 Q. Okay. Were they trying to help you?

1 A. I hadn't gotten there, so I don't know if they
2 was trying to help me at that point or not. But
3 they had the lights shining across the field.

4 Q. Do you know Jeff Croft?

5 A. I do.

6 Q. Did he show up?

7 A. He did.

8 Q. And how soon after this guy ran away from you
9 did Jeff show up?

10 A. I'm not sure in essence of minutes, but I made
11 it to the Ehrhardt Road. Fire personnel was looking
12 across the field. I tell them somebody ran across
13 the field. And then it got confusing. Somebody
14 said he ran into the grove, which is a bunch of
15 trees in front of the fire station.

16 So I went in the grove searching for the guy.
17 Then somebody say he ran --

18 MS. ALVES: Objection, Your Honor --

19 Q. What time did Jeff get there?

20 A. Well, I'm trying to figure out how long it
21 took. I have no idea. For the sake of argument,
22 we'll say 20 or 30 minutes.

23 Q. Okay. Were you there when the SLED dog people
24 got there?

25 A. I was.

1 Q. Okay.

2 MR. WEEKS: That's all the questions I have,
3 Your Honor.

4 THE COURT: May this witness be excused?

5 MR. WEEKS: Yes, Your Honor.

6 THE COURT: Thank you, sir.

7 MR. EMER: State calls Jeff Jackson.

8 JEFF JACKSON

9 being first duly sworn, testified as follows:

10 THE WITNESS: I do.

11 DIRECT EXAMINATION

12 BY MR. WEEKS:

13 Q. Mr. Jackson, can you please state your full
14 name for the Court.

15 A. Jeffrey Eugene Jackson.

16 Q. What do you do for a living?

17 A. I'm a maintenance supervisor for South Carolina
18 Department of Transportation and also the assistant
19 chief at the Govan Volunteer Fire Department.

20 Q. Can you please speak up, sir.

21 A. Maintenance supervisor for the South Carolina
22 Department of Transportation and I'm also the
23 assistant chief of the Govan Volunteer Fire
24 Department.

25 Q. Okay. Where is the Govan Fire Department?

1 A. Govan Fire Department is located on Ehrhardt
2 Road at the intersection of U.S. 321.

3 Q. Is that on the west side?

4 A. Yes, sir, it's on the west side of 321.

5 Q. Were you volunteering with the department in
6 June of 2014?

7 A. Yes.

8 Q. What were you doing that afternoon?

9 A. That afternoon --

10 Q. June 6th, I'm sorry.

11 A. That afternoon, I was attending a birthday
12 party which was one of your volunteer firefighters.

13 Q. Where was this birthday party at?

14 A. It was located on Honey Ford Road.

15 Q. Do you recall what the weather was like?

16 A. We had some severe weather that afternoon. It
17 was cloudy.

18 Q. Did you continue with the birthday party?

19 A. We were there for a short time, and we received
20 a phone call stating that one of our other
21 firefighters thought he may have saw a funnel cloud
22 at the time. So after he called us, we left the
23 birthday party and we went to our station.

24 Q. While at the fire station, did anything unusual
25 happen?

1 A. Well, we were on the -- if you're facing the
2 station, we were located right next to the station
3 on the left side, which would have been between the
4 station and the LAD site, which is the waste
5 treatment. And we were observing the weather and,
6 also, at the same time, we noticed that Mr. Eddie
7 was walking around the mobile home.

8 Q. That would be Captain Eddie Williams?

9 A. That's correct, yes.

10 Q. Which mobile home are you talking about?

11 A. The double-wide that is on the left side of the
12 LAD site.

13 Q. And how far is that from the fire station?

14 A. Approximately 100 yards or so.

15 Q. Can you lay out the area around the fire
16 station a little better?

17 A. Yes, sir. If you're facing the fire station
18 from Erhardt Road, to the left you'd have the LAD
19 site, just to the left of that you'd have the
20 double-wide mobile home, and then on the other side
21 of the double-wide, which would be to its left,
22 would be an old abandoned wooden house. And it was
23 kind of grew up in a wooded area. And then to the
24 left of that is another block home.

25 Q. This double-wide mobile home beside the LAD

1 station, is that the mobile home you use for
2 training?

3 A. No, sir.

4 Q. Where is the mobile home you use for training?

5 A. Directly behind the waste treatment site.

6 Q. Is there between the waste treatment site, the
7 LAD site, and the mobile home?

8 A. Yes. It's a wooded area and it's also grewed
9 up with kudzu.

10 Q. So is it safe to say the training station
11 mobile home is to the back left of the fire station,
12 if facing it?

13 A. Yes.

14 Q. Is the trailer still there?

15 A. No, sir.

16 Q. Was it there June 2014?

17 A. Yes.

18 Q. Did y'all keep the trailer locked?

19 A. We did not.

20 Q. Why was that?

21 A. We only used it for training purposes. There
22 was nothing in the mobile home to be concerned about
23 for -- as far as being stolen or anything.

24 Q. So when Captain Williams came to the fire
25 station, what did he do?

1 A. He had asked us if we'd seen anybody in the
2 area walking. And we initially told him no at the
3 beginning, and then we realized -- you know, we told
4 him we had the vacate mobile home in the rear for
5 training that he was welcome to check it as well.

6 Q. Did he go do so?

7 A. Yes.

8 Q. How did he proceed down to the trailer?

9 A. He drove his vehicle around behind the station
10 to the front side of the mobile home.

11 Q. Did you go with him?

12 A. No, we did not.

13 Q. What happened after that?

14 A. After he went down, a few minutes later we
15 heard him holler stop, get down. And at that time a
16 couple of us proceeded to kind of walk back towards
17 where he was located just for his safebeing. And at
18 that time, one of the other fire fighters said that
19 there was a --

20 MS. ALVES: Objection, Your Honor; hearsay.

21 THE COURT: Sustained.

22 BY MR. EMER:

23 Q. You can't say what other people said. Can you
24 continue?

25 A. Okay. Yes. There was a gentleman walking in

1 the road. And at that time I had asked him to stop.
2 And when I asked him to stop, he turn and ran across
3 the road into the woods.

4 Q. This would be Ehrhardt Road?

5 A. On Erhardt Road, yes.

6 Q. The road in front of the fire station?

7 A. Yes.

8 Q. He was walking down the road or across the
9 road?

10 A. He was walking down the road.

11 Q. Then what happened?

12 A. I asked him to stop, and he ran across the road
13 into the wooded area.

14 Q. Did you see what he was wearing?

15 A. He had on no shirt.

16 Q. Did you notice anything else about his
17 appearance?

18 A. Light skin.

19 Q. Then what happened?

20 A. At that time Mr. Eddie proceeded to come from
21 the back, back up to the front in his car. And we
22 told him that there was a guy that went into the
23 wood line. And he parked his car on the -- if
24 you're facing the fire station, it would have been
25 to the left, almost directly across from the waste

1 site, in the driveway. And we -- a couple of the
2 firefighters, you know, just stood around the area
3 at the time.

4 Q. Were you setting up a perimeter?

5 A. Somewhat, yes.

6 Q. Did Captain Eddie say he saw one man or two?

7 A. I never spoke to Mr. Eddie.

8 Q. Then what happened once the perimeter was set
9 up?

10 A. Once the perimeter was set up, Mr. Eddie went
11 into the wood line. And a few minutes later, an
12 individual ran out, that's why I gave chase to him.
13 He ran back across the road, Erhardt Road, into the
14 yard of the abandoned wooden home which was between
15 the double-wide and the last block home.

16 Q. You gave chase to this individual?

17 A. I did.

18 Q. What happened after that?

19 A. I was, at the time, a CWP carrier, which is a
20 concealed weapons permit carrier. I drew my weapon
21 and ordered him to stop and to get down, which he
22 did not; he continued to run. I hollered stop, get
23 down one more time. He turned to me and said,
24 please don't shoot. He ran behind the vacate wooden
25 house, he fell, got back up, and ran into the wood

1 line again. And I did not chase any further; I
2 stopped.

3 Q. What did that individual look like?

4 A. Light skin, no shirt.

5 Q. Okay. Was he carrying anything in his hand?

6 A. His shirt.

7 Q. What color was his shirt?

8 A. It appeared to be white in color, but it was
9 kind of hazy, dark.

10 Q. Nothing further. Please answer any questions
11 the defense may have?

12 THE COURT: Cross-examination?

13 MS. ALVES: Yes, sir.

14 CROSS-EXAMINATION

15 BY MS. ALVES:

16 Q. Mr. Jackson, when you and the other firemen
17 were walking from the fire department towards the
18 building where you said you heard Captain Williams,
19 you said that you saw a man walking in the road and
20 he turned and ran across the road to the wooded
21 area.

22 A. That is correct.

23 Q. Did you see a second man -- I mean, when you
24 were describing him when you pulled your gun and you
25 told him to stop and he said please don't shoot, is

1 that a second person or is that the same incident
2 when --

3 A. Same -- same individual that I saw. There was
4 not a second person at that time.

5 Q. So you saw the same person twice?

6 A. Yes.

7 Q. And that was the person you said had no shirt
8 on, light skin, but they had a white shirt in their
9 hand?

10 A. Yes.

11 Q. And you never actually saw anybody come out of
12 the trailer?

13 A. No.

14 Q. So you don't know who Captain Williams actually
15 saw?

16 A. No, I do not.

17 Q. You only saw this one person?

18 A. That is correct.

19 Q. Thank you. No further questions.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY MR. EMER:

23 Q. The person that you were chasing and drew your
24 gun on, did you ever see him again that night?

25 A. Yes, I did.

1 Q. When was that?

2 A. That was after they apprehended him from the
3 wooded area behind the fire station. They brought
4 him to the fire station for questioning.

5 Q. All right. Nothing further.

6 THE COURT: May this witness be excused?

7 MR. EMER: Yes, Your Honor.

8 MS. ALVES: No objection.

9 THE COURT: Thank you, sir.

10 How long is the next one going to be?

11 MR. MILLER: Your Honor, he's probably going to
12 be an hour.

13 THE COURT: All right. Ladies and gentlemen,
14 let's go ahead and have our lunch break. Let me
15 remind you, please, not to speak with yourselves
16 about this case or anyone else. Let's come back
17 about five minutes to 2:00 and we'll try to start as
18 close to 2:00 as we can. Thank you.

19 (The jury exits the courtroom at 12:25 PM.)

20 THE COURT: Anything from the State before we
21 break?

22 MR. MILLER: Your Honor, my understanding is
23 Donna Money is here. And you --

24 THE COURT: Who is that?

25 MR. MILLER: Donna Money is the SLED DNA

1 analyst. And you had indicated you might want to
2 have an in-camera hearing with her. She's here and
3 she's available whenever --

4 THE COURT: This is the 1-6,800 witness; is
5 that correct?

6 MS. ALVES: Yes, sir.

7 THE COURT: Let's go ahead and put her up right
8 now and then stop. Is that okay?

9 MR. MILLER: That's fine, Your Honor. I just
10 wanted to make it available --

11 MR. WEEKS: I'm the one putting her up and I
12 ain't fine with that. I'd like to at least meet
13 her.

14 THE COURT: Okay. All right. You're dismissed
15 and --

16 MR. WEEKS: And I appreciate David doing that.
17 But --

18 THE COURT: No, no. That's fine. That's
19 reasonable. We'll start back at 2:00.

20 MR. WEEKS: Thank you, Your Honor.

21 MR. MILLER: For the record, Your Honor, my
22 boss told me the State is always ready to proceed.
23 That's why I said that. That's what I've always
24 been told.

25 MS. ALVES: Can we talk about a scheduling

1 matter on this case? I had anticipated the State's
2 case ending today but, I mean, I know we can't
3 always predict that.

4 THE COURT: Right.

5 MS. ALVES: I told my witnesses -- I have two
6 who will likely be very short and I told them to be
7 here at 3:00. But it doesn't look like we'll be
8 finished with the case today.

9 THE COURT: Yeah, I don't think so either.

10 MS. ALVES: I didn't want -- I don't want
11 them -- one has to come from Barnwell and one of
12 them is from the detention center. But would I be
13 safe in telling them to be here tomorrow morning? I
14 don't want to delay it --

15 THE COURT: Let me tell you, if you want to
16 just insure that, if they finish up, we'll break and
17 let you start in the morning.

18 MS. ALVES: Okay.

19 THE COURT: Is that fair enough?

20 MS. ALVES: Yes, sir.

21 THE COURT: Anything further from the defense
22 before we break?

23 MS. ALVES: I don't have anything further.

24 THE COURT: All right. Thank you, ma'am.

25 (Luncheon recess 12:27 PM - 2:03 PM.)

1 THE COURT: You want to go ahead and do the
2 in-camera hearing now?

3 MR. WEEKS: Yes, sir, if that's all right with
4 you.

5 THE COURT: Sure.

6 MR. WEEKS: We call Donna Money.

7

8

DONNA MONEY

9 being first duly sworn, testified as follows:

10 THE WITNESS: Yes.

11

IN-CAMERA EXAMINATION

12

BY MR. WEEKS:

13

Q. Donna, where do you work?

14

A. I'm employed at the South Carolina Law
15 Enforcement Division.

16

Q. And what is your job there?

17

A. I'm a forensic scientist in the DNA casework
18 unit.

19

Q. And how long have you been doing that
20 particular job?

21

A. Approximately four years.

22

Q. Back in -- well, have you been doing it ever
23 since you joined SLED?

24

A. Yes.

25

Q. Tell me a little bit about your educational

1 background.

2 A. I received a Bachelor's degree in forensic
3 science from the Pennsylvania State University in
4 2011.

5 Q. Okay. And did you work in anything before
6 going to SLED or did you go right into SLED?

7 A. I went directly to SLED.

8 Q. Tell me what training you've had in DNA
9 analysis since becoming employed by SLED.

10 A. When I started my employment at SLED, I
11 underwent a year-and-a-half training program under a
12 court-qualified analyst which included training
13 samples, competency samples, oral, written exams,
14 and mock courtroom exams as well.

15 Q. And so if you started in 2011, you did that
16 until 2012-plus?

17 A. Yes. 2012 through 2013.

18 Q. Do you have any estimate as to how many samples
19 you've tested in your four years at SLED?

20 A. It would over a thousand.

21 Q. Have you been qualified to testify as an expert
22 in circuit courts?

23 A. Yes.

24 Q. And have you testified as an expert in circuit
25 courts?

1 A. Yes.

2 Q. Specifically for this hearing or at least right
3 now, Donna, if you could, tell me what is Y-strain
4 DNR [sic], Y-STR.

5 THE COURT: Say that again, please.

6 BY MR. WEEKS:

7 Q. What is Y-STR? Is that the way you state it?

8 A. Yes.

9 Q. DNA?

10 A. Y-STR is from the Y chromosome which is found
11 in only male individuals. It is passed from male to
12 male in a paternal lineage, so a father to a son,
13 and it can go back generations. All of the
14 individuals in a paternal lineage will have the same
15 Y profile because it's being passed as a whole from
16 person to person.

17 Q. Okay. And is the sample you analyze, is that
18 DNA?

19 A. Yes.

20 Q. And how long is this type of DNA testing been
21 available?

22 A. Y-STR testing kits were made commercially
23 available starting in 2001. The research and the
24 papers published for this type of testing were done
25 in the late '90s. And SLED brought Y-testing online

1 in 2011.

2 Q. And is it being used worldwide?

3 A. Yes.

4 Q. Obviously, worldwide would include the United
5 States?

6 A. Yes.

7 Q. Have you been conducting Y-STR analysis since
8 you got to SLED?

9 A. Yes.

10 Q. How about prior to that?

11 A. It was covered when I was in school, and we did
12 brief exercises using it.

13 Q. Okay. Tell me some of the fields it's used in
14 besides law enforcement.

15 A. Besides forensic case work, Y-testing is also
16 used in determining a male individual's ancestry.
17 Because it can determine a person's paternal lineage
18 and it can be traced back generations, it's been
19 used, for instance, through, like, Ancestry.com and
20 other companies similar to that.

21 Q. Okay. How about identifying war dead or
22 anything like that? Has it been used in anything
23 like that?

24 THE COURT: Identifying what?

25 MR. WEEKS: War dead.

- 1 A. It could be used in a situation like that.
- 2 Q. And, Donna, have you had the opportunity to
- 3 conduct a number of these Y-STR examinations and
- 4 comparisons?
- 5 A. Yes.
- 6 Q. Any estimate as to how many?
- 7 A. I'd say over a hundred.
- 8 Q. Okay. And do you have an estimate as to how
- 9 many DNA samples or submissions y'all get a year?
- 10 A. On average, I'd say over 4,000.
- 11 Q. And how many Donna Money's are there for SLED?
- 12 How many people are DNA --
- 13 A. We have nine full-time analysts.
- 14 Q. And are there other labs around the state that
- 15 do the same thing?
- 16 A. Richland County, their laboratory does
- 17 Y-testing. The other county labs and private labs
- 18 found in this state, as to now, to our knowledge,
- 19 are not currently online with Y-testing.
- 20 Q. Now, as with regular DNA, PCR DNA type of
- 21 testing or comparison, are y'all able to run a
- 22 statistical sample or a statistical comparison?
- 23 A. We can apply a statistical statement to a Y
- 24 evidence profile.
- 25 Q. What is the absolute grade-out 100-percent best

1 you can give?

2 A. The database that we use, based on the
3 information that it contains, as of today, the
4 highest statistic that we could get is a 1 in 8,600.

5 Q. Okay. And so in 1 in 8,600 --

6 MR. WEEKS: Did you hear that number, Your
7 Honor?

8 THE COURT: Yes.

9 Q. -- that's the absolute highest?

10 A. As of today, yes.

11 Q. Okay. Explain to me exactly once again -- you
12 might have, but I'm pretty thickheaded. How can you
13 identify the parental-on-down lineage from a
14 Y-strain, a Y-STR sample?

15 A. When an individual -- when a male person is
16 born, their Y chromosome was completely passed down
17 from their father. And it just keeps going
18 generation, generation back, because it's not how a
19 female individual gets her DNA, because a female is
20 XX. So she'd get an X from her mom and an X from
21 her dad, and then there's sharing going on between
22 the two.

23 With a male individual, he gets his X from his
24 mother and then his Y from his father. There's no
25 additional person contributing to that Y chromosome,

1 just the father to that person.

2 Q. When you're -- do you use this type of analysis
3 in sexual assault kits?

4 A. Yes.

5 Q. Why?

6 A. Typically we use it in sexual assault kits
7 because in those cases there's an overabundance of
8 female DNA, and since Y is only male specific, it's
9 a good way for us to hone in on the potential male
10 profile that may be essentially masked by the female
11 DNA.

12 Q. And, obviously, we're in-camera here, so the
13 Judge is aware of how tiny and how microscopic DNA
14 is. But do you use Y-STR to -- when you can't get
15 anything else?

16 A. Depending on the type of sample, samples are
17 typically run through STR human first. Depending on
18 what that profile looks like, if we can tell that it
19 is a single -- let me backtrack.

20 If we can tell it's from a male individual, but
21 we're not getting that much information, we can
22 proceed to Y because Y-testing is more sensitive.
23 And since it would -- if we believe it's coming from
24 a male individual, we may have a better shot at
25 getting a better profile for that sample through Y.

1 Q. And when we say profile, for the record, you're
2 talking about specific slices of a DNA strand that
3 are accumulated together to make a profile for
4 somebody?

5 A. Yes. Specific locations on that chromosome
6 compiled together to be called a person's profile.

7 Q. And you do Y-STR the same as you do regular
8 PCR; you're applying reactant, essentially, to a DNA
9 strand?

10 A. It's the same multistep process.

11 Q. Okay. It's the exact same process you do with
12 regular DNA interpretation and profile?

13 A. Yes.

14 Q. Okay. Y'all don't -- or do you, if you
15 determine a statistical number, for lack of a better
16 word, y'all don't rate it as small, medium, or high,
17 do you?

18 A. No.

19 Q. Do you rate it as a match to a particular male
20 individual's DNA?

21 A. Yes. We perform statistical calculations for
22 matches with Y profiles, and we just put the
23 disclaimer in there that paternal male individuals
24 related to the person matching to the profile cannot
25 be excluded because they share the same profile.

1 Q. Or their male children?

2 A. Yes.

3 Q. Okay.

4 MR. WEEKS: Your Honor, I'd move to qualify
5 Donna Money as an expert in DNA analysis. And
6 included in DNA analysis is the expertise of Y-STR
7 analysis.

8 THE COURT: Any voir dire?

9 MS. ALVES: Yes, sir.

10 IN-CAMERA EXAMINATION

11 BY MS. ALVES:

12 Q. I want to go -- I want to ask you again. I
13 know the solicitor asked you about this, but I want
14 to ask you: Why would you do a Y-strand DNA test if
15 you've already attempted to do a regular DNA test?

16 A. The profile of the item that I subsequently
17 went forward with Y-testing was an intimate sample;
18 it was a hair, so that came off of a person's body,
19 so it would be expected that you'd get a
20 single-source profile.

21 The STR profile I had initially developed was
22 low level, so I could not draw a conclusion. So to
23 go one step further, I performed Y-3testing because
24 it was more sensitive to see if I could get a
25 profile I could conduct a comparison to.

1 Q. So you attempted to do the regular, standard
2 DNA testing first?

3 A. Yes.

4 Q. And we're talking specifically about the hair
5 in this case?

6 A. Yes.

7 Q. Then you couldn't get a profile?

8 A. From the initial STR test. The profile wasn't
9 strong enough for comparison, per our protocol.

10 Q. So if you had stopped there, then you would
11 have had to say you were unable to -- what would
12 your findings have been?

13 A. I would have to say that no conclusion could be
14 drawn.

15 Q. Okay. So then you decided to do the Y-strand
16 DNA test?

17 A. Yes.

18 Q. Because it's more sensitive?

19 A. Yes.

20 Q. In what manner?

21 A. Because it's only focusing on male DNA, it's
22 not being overpowered by female DNA.

23 Q. And on the Y test, what, specifically, are you
24 looking at?

25 A. Locations on the Y chromosome.

1 Q. Only on the Y chromosome?

2 A. Yes.

3 Q. So where on a regular DNA report you'd have two
4 numbers, that's looking at locations on the X and Y
5 chromosome? You'd have two numbers on each of
6 these?

7 A. The -- in STR testing we're focusing on the X
8 chromosome, and with STR testing at the locations we
9 look at, you may get one or two alleles. With
10 Y-testing, typically it's only one allele at every
11 location.

12 Q. Okay. And how many of these alleles have to
13 match in order for you to determine that there's a
14 match between the item that you're testing and the
15 person whose DNA -- and the known sample of DNA?

16 A. It depends on what -- if we're referring to
17 Y-STR as opposed to STR. There's different
18 interpretation protocols.

19 Q. We're talking about Y-STR.

20 A. The publications and the protocols that we have
21 right now, there's no minimum number. It is based
22 on analyst's discretion. Typically if you have --
23 there are 16 locations in a person's Y profile. We
24 typically look at if you have at least half, then
25 you can -- you can conduct a statistical calculation

1 for that profile and say that it matches or does not
2 match an individual.

3 Q. So you only have to have -- so based on what
4 you're looking at -- how many locations do you look
5 at?

6 A. In total, there are 16. To determine whether
7 or not an evidence profile is eligible for a
8 statistical calculation, we usually start at 8.

9 Q. So you only have to have 8 out of the 16
10 locations to have a match in order for you to
11 determine a statistical calculation about whether or
12 not this person -- the person whose known DNA
13 matches the sample that you're testing?

14 A. Eight locations that are eligible for
15 statistical calculations.

16 Q. And what happens if these eight locations that
17 don't match?

18 A. Then it doesn't match the individual.

19 Q. But in this case, you had eight -- there were
20 eight locations that have alleles -- I'm sorry.
21 There are eight -- on the chart that you did for
22 this case --

23 A. Uh-huh.

24 Q. -- where you tested the hair that was found on
25 the panties, that's 37.2.1; is that right?

1 A. Yes.

2 THE COURT: What was your question again,
3 please?

4 MS. ALVES: I was asking her about the chart.
5 I haven't started my question yet.

6 THE COURT: Oh, I'm sorry. Okay.

7

8 BY MS. ALVES:

9 Q. On this chart, there are -- you would call
10 those -- on the top part, you would call those
11 locations?

12 A. Yes.

13 Q. Going cross the top of the chart?

14 A. Yes. The ones that are starting with the
15 letter D.

16 Q. And you tested this item, 37.2.1, which is the
17 hair that was found off of the panties?

18 A. Yes.

19 Q. And you compared that to three people; Leon
20 James, Homer James, and Lewis Garvin?

21 A. Yes.

22 Q. And you were able to, on this chart, in the
23 boxes -- I don't want to call them the wrong thing.
24 But in these boxes there are numbers in the boxes.

25 A. Yes.

1 Q. What do those numbers represent?

2 A. The scientific term is allele, but they can be
3 called DNA types.

4 Q. Okay. So you found eight DNA types or eight
5 alleles on the panties?

6 A. Yes. Eight alleles were called.

7 Q. Now, on three of the boxes, under these
8 locations, the numbers are in parentheses, what does
9 that mean?

10 A. In our department interpretation protocol, we
11 have thresholds as to when a peak on a profile is in
12 what we call an interpret-with-caution range because
13 it's considered low to what we have validated our
14 kits to develop.

15 And then if it's above these cutoffs that we
16 have, then it's no longer in an
17 interpret-with-caution area.

18 Q. So if they're above your threshold limit,
19 they're not interpret with caution, the numbers are
20 then put down without parentheses?

21 A. Yes.

22 Q. If they're low, you're to interpret them with
23 caution and then put in the parentheses?

24 A. Yes.

25 Q. What does that interpret with caution mean?

1 A. We interpret with caution because since they
2 are low, there's a possibility of if there was a
3 what we call a sister allele, which is just one that
4 goes with it, it may have dropped out and not have
5 been picked up by our instrumentation. And just to
6 remain conservative, we have this -- this range of
7 interpret with caution just so we know that our
8 interpretations are being conservative.

9 Q. So those numbers for the interpret with
10 caution, it's possible those numbers could be wrong?

11 A. No; not wrong; it's just they're low. They're
12 not wrong.

13 Q. They're low?

14 A. They're low.

15 Q. And they could be -- I mean, is it possible
16 they could be misconstrued? You said they could be
17 combined with another allele.

18 A. That's with the STR testing. As stated
19 earlier, locations could have one or two alleles.
20 With Ys, they typically have one allele at locations
21 except for one. We just have to apply -- per
22 standards that we have to abide by to maintain
23 accreditation, we have to apply
24 interpret-with-caution ranges for all kits that we
25 use.

1 Q. And in this situation, you have -- on the
2 panties, where you were able to obtain an allele --
3 or, rather, a DNA type for eight of your locations
4 that were tested, three of them are to be
5 interpreted with caution?

6 A. Yes.

7 Q. And then the other eight locations, you were
8 not able to obtain a DNA type?

9 A. That's correct.

10 Q. Now, you said that you have to maintain
11 standards in order to keep your accreditation?

12 A. Yes. We -- the FBI has a specific set of
13 standards called quality assurance standards that a
14 laboratory must abide by in order to maintain their
15 accreditation.

16 Q. And do the standards say for when there -- when
17 you have only been able to obtain an allele for half
18 of the locations you test and three of those
19 locations are to be interpreted with caution?

20 A. The standard only specifies that a laboratory
21 must have an interpretation protocol. The
22 laboratory sets its interpretation protocol based on
23 how a kit -- when a kit is validated, what the
24 resulting data is.

25 Q. Once again, what is the quality control

1 procedures for when you've only obtained DNA types
2 for half of the locations and three of them are to
3 be interpreted with caution?

4 A. You look at the -- you look at the profile, see
5 what your data is, and then determine whether or not
6 it is eligible to have a statistic applied to it.
7 And that is before you even compare it to a
8 standard.

9 Q. Okay. But at what point do you determine that
10 these -- only half of the locations found to have
11 DNA profiles on them and three of them that are
12 found to be interpreted with caution, at what point
13 do we say this is insufficient for analysis or
14 comparison?

15 A. There would have to be a significantly less
16 amount of information. If there are only two
17 locations that had an allele call, that would be
18 insufficient.

19 Q. What about in this situation? What's the exact
20 protocol in this situation?

21 A. Our protocol does not have a specific minimum
22 number. When it comes to calling a match inclusion
23 or exclusion for a Y profile, it is left up to
24 analyst discretion. But as a department, we err on
25 the side of caution that as long as we have at least

1 half or more, we can draw a conclusion statement to
2 that evidence profile.

3 Q. So this would have been left strictly up you're
4 your discretion?

5 A. Yes.

6 Q. And what have you done in other cases where you
7 have had only eight -- only eight locations
8 determined to have a DNA profile and three of them
9 being interpreted with caution?

10 A. I would do the same approach as -- see if this
11 profile can have a statistic applied to. It does
12 because it has at least eight locations, and if I
13 have a standard to compare it to, then I would
14 compare it to that standard.

15 Q. Okay. And that is your discretion. The
16 department doesn't have any specific policy about
17 this?

18 A. We have interpretation protocols, but there is
19 no specific minimum number that we need to meet in
20 order to perform a statistical calculation on a Y
21 profile.

22 Q. And on your test, you determined that this hair
23 came from Mr. Homer James?

24 A. Based on the data that was developed from that
25 item, it was determined that Homer James' Y profile

1 matched the profile that was developed. And then
2 there's the disclaimer stating that parental male
3 relatives of that individual cannot be excluded
4 because they would -- it would be expected that they
5 would have the same Y profile as well.

6 Q. So you're saying that this hair would have
7 matched either Mr. James or any one -- any paternal
8 male relative of Mr. James to a statistic of 1 in
9 3,800?

10 A. Yes.

11 Q. And you specifically excluded the other two
12 people who you tested?

13 A. Yes.

14 Q. And that would be Leon James and Lewis Garvin?

15 A. Yes.

16 Q. And you're saying they're not paternal
17 relatives of Mr. James?

18 A. Not that they're not paternal relatives. If
19 you look at their Y profile and look at the evidence
20 profile, for instance, at the first location, their
21 DNA types do not match that location and, therefore,
22 they would be excluded.

23 Q. So they're excluded 100 percent because they
24 don't match the first location?

25 A. You start at the first and you go down the

1 line.

2 Q. So if they don't match the first but they do
3 match the second, you exclude them?

4 A. No, no; overall. You start at the first
5 location and you just check to see if somebody lines
6 up with that location. If they don't match in the
7 first location, then they are excluded because it
8 would only be a 17. If it's 16, it's not them; if
9 they were 15, it's not them. If the person is a 17,
10 then you move to the next location, see if they line
11 up; if they don't, then they would be excluded.

12 Q. So you go down the line until you can exclude
13 somebody?

14 A. You go down the line to verify -- you go down
15 the line until you end at a location that there is a
16 difference.

17 Q. And once you find a difference, then you
18 exclude that person?

19 A. Yes.

20 Q. But even if the sample is low, you still
21 include that person?

22 A. Yes.

23 Q. All right. And how many times have you done
24 this type of testing?

25 A. Over a hundred.

1 Q. Over a hundred. And what is the quality
2 control procedure used to determine whether your
3 findings are correct?

4 A. When we perform any analysis in the department,
5 prior to a report being issued, it has to undergo
6 two rounds of review; first is a technical review,
7 second is an administrative review, which is
8 performed by full-time analysts within our
9 department.

10 Q. And they actually re-do the testing or they
11 just review --

12 A. They review our data and ensure that the
13 controls for that run work, ensure that the types
14 for those controls line up to what they are supposed
15 to be, and verify that the data on the printout of
16 our visualization of a person's profile line up to
17 what is in the report.

18 Q. I just want to clarify. They review your data,
19 they don't do their own testing?

20 A. No, they review my data.

21 Q. Okay. And you said this type of testing has
22 been used in numerous -- for numerous applications.
23 I believe you test -- talked about Ancestry.com.

24 A. Yes. Y-testing can be used in a forensic case
25 work sense and it can also be used in determining a

1 person's ancestral background, as long as that
2 person is male.

3 Q. Okay. Well, Ancestry.com is no longer using
4 Y-strand DNA testing. Were you aware of that?

5 A. We don't -- it was just an example.

6 Q. Okay. But you don't know why they're not using
7 it?

8 A. I do not.

9 Q. Okay. And you said Richland County uses this
10 but the other labs in the state do not?

11 A. As of now we're aware that Richland County uses
12 this testing. The other labs in the county -- not
13 in the county, in the state -- the other labs in the
14 state may either be undergoing the validation to get
15 the kit online or they made the decision not to get
16 the kit.

17 Q. Do you know why?

18 A. I can't make that call.

19 Q. Well, what do you know about -- based on your
20 involvement with your peers regarding this, why are
21 there concerns in the other counties about using the
22 Y strands in the DNA tests?

23 A. You'd have to speak to the people that run
24 those labs.

25 Q. Well, actually, I'm asking you about it because

- 1 I'm asking about what your peers feel about this.
- 2 So what do your peers feel about the Y-strand DNA
- 3 and why they aren't using it in their labs?
- 4 A. It could be from a cost sense. They may not be
- 5 able to afford the kits.
- 6 Q. Or? Any other ideas or any other information
- 7 about that?
- 8 A. They may not have the caseload that the State
- 9 does that would warrant the need for it.
- 10 Q. How many other labs are in the state?
- 11 A. There's one laboratory in Greenville County,
- 12 one in Beaufort, one in Richland, and one in York.
- 13 Q. In York?
- 14 A. Yes.
- 15 Q. Any in Charleston?
- 16 A. No.
- 17 Q. Okay. But as far as you know from those
- 18 labs -- and those labs do testing in criminal cases?
- 19 A. Yes.
- 20 Q. And they do comparable testing to what you do?
- 21 A. I would say so.
- 22 Q. Okay. Except the labs that you've mentioned
- 23 other than York -- excuse me, other than Richland
- 24 are not doing the Y-strand DNA test?
- 25 A. As of my knowledge, I do not.

1 Q. Okay. What peer review has this been subject
2 to -- or what public or peer review has this been
3 subject to?

4 A. Numerous different forensic science journals
5 have published publications on Y-testing.

6 Q. Have there been any discrediting of this that
7 you know of?

8 A. Not to my knowledge.

9 Q. But you don't know?

10 A. I do not.

11 Q. Okay. And you said that you can only go as
12 high as 1 in 8,600?

13 A. Yes.

14 Q. That's the highest statistics you can do. Why
15 is that such a low number?

16 A. The database that we use to calculate the
17 statistic is a separate database than that is used
18 to calculate STR profiles. That database also uses
19 a different statistical approach. Since these
20 profiles are shared amongst individuals, it is
21 expected that there would be other people out there
22 that would have the same profile.

23 Q. Wait a minute. Other people in which testing;
24 the Y strand or --

25 A. The Y.

1 Q. So you're anticipating that there's other
2 people that are going to have the same profile
3 because they're male relatives with male lineage?

4 A. Yes.

5 Q. So that's why the number is 1 in 8,600?

6 A. Yes.

7 Q. So that caps a person's potential male lineage
8 at 8,600 people?

9 A. Not 8,600 people. The 1 in 8,600 is a weight
10 that's applied to the evidence profile. It's not
11 stating that 1 in 8,600 males it would be expected.

12 Q. But then you said the highest profile was 1 in
13 8,600. In this situation, you've done --- the number
14 you've given us, 1 in 3,800, is less than half of
15 that.

16 A. Yes, because since I did not have a full
17 profile, that's based on the information I did have,
18 which is another thing that's taken into account
19 with statistics is when you have less information,
20 you'll have a lower step.

21 Q. Because you didn't have a full profile on the
22 item that was being tested?

23 A. Yes.

24 Q. To compare it against Mr. Homer James?

25 A. Yes.

1 Q. Why couldn't you obtain a full profile?

2 A. There may not have been a sufficient amount of
3 male DNA present to get a full profile.

4 Q. And let me ask you this: Is it possible -- so
5 you're saying -- is it possible that this could
6 match someone else other than a male relative of
7 Mr. James?

8 A. I can't make that call without getting
9 standards and then comparing them.

10 Q. So is it possible?

11 A. It could be possible.

12 Q. This could match somebody totally unrelated to
13 Mr. James?

14 A. Unrelated to him? No.

15 Q. These eight alleles with these three that are
16 interpreted with caution could not match anyone
17 else -- could not match someone else?

18 A. It is possible, but that's why you have to take
19 into account the statistic of it being 1 in 3,800.

20 Q. But that statistic is low like that because you
21 aren't able to get a complete profile?

22 A. That's one component to it.

23 Q. I don't have any further questions.

24 IN-CAMERA EXAMINATION

25 BY THE COURT:

1 Q. Do you mind if I ask a couple questions just so
2 I can educate myself? I'm not familiar with the
3 Y-STR. Is there a range -- I know 1 in 8,600 is the
4 highest you can go. But --

5 A. Yes.

6 Q. -- where does this 1 in 3,800 fall? Is there a
7 range of highly indicative, moderately indicative,
8 or less -- you know, what I'm trying to say -- as it
9 being a match to a particular person with DNA being
10 tested. In other words, you have 1 in 3,800 versus
11 1 in 3,600, does that affect the validity of the
12 test results as it relates to, say, this gentleman
13 right here?

14 A. The statistic -- the purpose of the statistic
15 is to apply a weight to the profile. We don't
16 have --

17 Q. Speak in English, please.

18 A. We don't have a range that states if this
19 number is between this and this, it means this. We
20 don't use -- we don't do that.

21 Q. So why do you have it there at all if it
22 doesn't mean anything?

23 A. It's present to apply the weight of the
24 comparison between the evidence profile and the
25 known standard; meaning that when it's a smaller

1 number, that there is a possibility that someone
2 else could be included as well. It's --

3 Q. Could you not translate that into being also
4 less accurate? If I'm misstating -- I'm just trying
5 to understand it.

6 A. It's not focusing on accuracy. It's not --
7 that's not the purpose of a statistic. When it's --
8 you can't exactly compare it to -- with STR testing
9 when you have a 1 in 1,000 verses a 1 in 10 trillion
10 because it's a different statistical calculation.

11 Q. Okay. Well, let me ask you this can change
12 gears: If I understand your testimony, this testing
13 method has been peer-reviewed and has been subject
14 of scientific articles who validate the testing
15 methodology?

16 A. Yes.

17 Q. Okay.

18 THE COURT: All right. Any questions as a
19 result of mine?

20 MR. WEEKS: Not for the in-camera hearing,
21 Judge. I submitted her as qualified expert
22 and that's --

23 THE COURT: All right. Before I make a
24 decision, anything further?

25 MS. ALVES: I don't have anything, Judge.

1 THE COURT: All right. I'm going to find that
2 Ms. Money is qualified in the field of forensic
3 analysis, specifically including Y-STR DNA analysis.
4 All right. Are y'all ready to proceed?

5 MR. WEEKS: We are, Your Honor.

6 THE COURT: Are you ready to proceed?

7 MS. ALVES: Judge, my objection wasn't to her
8 being qualified as an expert in DNA analysis. I
9 still have the same objection to the --

10 THE COURT: Your objection is to Y-STR
11 methodology.

12 MS. ALVES: Yes, sir, and to her -- and to that
13 actual item coming in. I'd have to check to see
14 which --

15 THE COURT: 1 in 3,800?

16 MS. ALVES: Excuse me? Oh, I'm objecting to
17 the panties coming in --

18 THE COURT: Okay.

19 MS. ALVES: -- and to -- and to her -- and to
20 any testimony regarding the -- I'm sorry, I'm
21 looking to see where they are to see what number I'm
22 talking about. It's State's Exhibit 64.

23 THE COURT: 64, which is the black panties or
24 mask.

25 MS. ALVES: Yes, sir. I'd object to any

1 testimony regarding the DNA -- Ms. Money's findings
2 regarding Mr. Homer James' DNA being found on
3 items -- State's 64.

4 THE COURT: Based on -- not her being qualified
5 as a forensic analyst, but based on what?

6 MS. ALVES: Based on the use of the Y-strand
7 DNA testing.

8 THE COURT: Do you have any reviews or any
9 information that the methodology is not a valid
10 scientific process?

11 MS. ALVES: I do not. The only thing that I
12 have is, based on her testimony, we don't know how
13 it's being used in public review. She mentioned
14 that it was being in examples such as that. All I
15 can do is tell the Court that I saw an article
16 saying Ancestry.com no longer uses it. But, I mean,
17 I can't tell you why they don't, but she couldn't
18 tell you why they don't.

19 But all I can -- and that the -- and as for how
20 it was -- specifically how her Y-strand DNA testing
21 was the quality controlled, it appears that the
22 controls are -- it appears that she is -- it appears
23 that it's largely subjective on her part as to when
24 she determines that an amount is too low.

25 In this situation, specifically to her Y-strand

1 DNA testing, there were only 8 out of 16 locations
2 found. And in this situation, there were -- on
3 three of the locations, there were -- the amounts of
4 DNA profile found was very low, such that she had to
5 interpret those with caution.

6 I think that the quality control procedures
7 used to ensure the reliability of -- specifically of
8 the Y-strand DNA testing are too low. There's no
9 actual -- there's no review of her work other than
10 someone else reviewing what she has done, not
11 actually testing it to determine the accuracy of her
12 work and the reliability of the conclusions that
13 she's come to.

14 And there's no -- also from what Ms. Money
15 testified to, there's no consistency of the methods
16 within recognized scientific laws and procedures.
17 It appears that this is all very subjective to each
18 individual lab. Her conclusions were subjective
19 to -- I mean, she said it was based on the analysis
20 on -- what she's determined, so that does not show
21 that there's any consistency of the methods used
22 nationwide.

23 I don't doubt that this is perhaps used in
24 other areas, but in this situation, she's testified
25 that there's no specific quality control measures

1 that are -- she said the FBI puts out their own
2 protocols, but then they make their own
3 determinations about what's appropriate, and then
4 she, in turn, makes her own determination about
5 what's an appropriate protocol to use and she made
6 her own decisions regarding these eight alleles. So
7 I'd argue that the State has not satisfied all of
8 the requirements under State vs. Jones for proving
9 this to be a reliable science.

10 I'd also note that out of the labs she's
11 mentioned, the five or six labs within the state of
12 South Carolina that do active testing in criminal
13 cases, and out of those labs, only two of them do
14 testing. Ms. Money was unable to tell us why the
15 others don't do the testing, but I do think I have
16 some concern about why the majority of the labs in
17 the state don't to testing.

18 Now, Ms. Money stated that the -- maybe they
19 don't do as many tests that she does. I find it
20 hard to believe that large counties that have their
21 own labs would not be taking advantage of the DNA --
22 of doing DNA testing rather than having to go to
23 SLED which always has a backlog.

24 And in this situation, they're not using the
25 test. I think there's some concern that has been

1 raised to the fact that the majority of the labs in
2 this state are not using the Y-strand DNA test. And
3 for that reason, I would say that this test is not
4 reliable enough to make a conclusion that the hair
5 that was located on the panties in the exhibit match
6 Mr. Homer James.

7 And, Judge, I'd also, in my argument, argue
8 under rule 702. The evidence has to assist the
9 trier of fact. The witness has to be qualified and
10 the science has to be reliable. I don't think
11 there's any question about Ms. Money's
12 qualifications here to do DNA testing. But the
13 evidence has to assist the trier of fact in making a
14 determine about whether or not that item, in fact,
15 came from Mr. Homer James.

16 I think with the -- based on the testimony that
17 she gave, I think there would be some question about
18 whether or not there's -- about the accuracy of the
19 testing. I don't think that -- that these -- that
20 allowing this item into evidence would assist the
21 trier of fact. And I think there's some question on
22 the reliability of the science based on what I
23 previously stated.

24 THE COURT: First, I'm going to note that you
25 do agree that Ms. Money is an expert -- she's a

1 qualified expert in the field of forensic analysis,
2 you just disagree with the testing process of the
3 Y-STR; right?

4 MS. ALVES: Yes, sir.

5 THE COURT: All right. Number one, I think the
6 State has met its burden of proof. I do -- I would
7 say when I first heard the statistical data of the 1
8 in 3,800, I was really concerned because I'm so used
9 to seeing these numbers that I can't even put commas
10 to.

11 And once I heard the explanation, once I heard
12 that this has been peer-reviewed and held to be a
13 valid scientific method, then I have no concern with
14 the process that they go through to make sure that
15 it is a properly valid test. I think some of what
16 you have said is subject to cross-examination.

17 I do note, just know based on prior dealings
18 with SLED testing, the part of the accreditation as
19 well, is they are not to help or hurt law
20 enforcement from the forensic side; they're just to
21 test out what it is and be open for you and open for
22 the State to come talk to and get their results
23 from.

24 So they're not like they have a, based on their
25 certification, one side they're trying to benefit

1 to the detriment of the other. With that being
2 said, I will find she's an expert and can testify
3 with regard to the Y-STR test.

4 With that being said, are we ready to go?

5 MR. WEEKS: We are.

6 MS. ALVES: Well, Judge --

7 THE COURT: Do you need a quick break?

8 MS. ALVES: Not about Ms. Money's potential
9 testimony. There's another matter that we can take
10 up that we may -- if she's -- if Ms. Money is going
11 to be long and we're going to be taking a break, we
12 can --

13 THE COURT: Yeah, let's do that, because the
14 jury has been sitting back there close to an hour.
15 If you don't mind --

16 MS. ALVES: Yes, sir.

17 THE COURT: If you don't mind, just remind me,
18 and we'll do it later.

19 MS. ALVES: Yes, sir.

20 THE COURT: All right. You want to have her
21 step back down so you can call her up or do you want
22 her to be here?

23 MR. WEEKS: Judge, it doesn't really matter.
24 I'll just let her sit there and I'll have her stand
25 up and introduce herself, if that's okay.

1 THE COURT: Okay. Bring the jury in, please.

2 (The jury enters the courtroom at 2:48 PM.)

3 THE COURT: Ladies and gentlemen, I apologize
4 for the lengthy delay. It's my fault; it's not
5 either one of the attorneys' fault. There are
6 certain things we have to get done outside of your
7 presence, and this is just one of them. So don't be
8 mad at anybody involved in the case. It's my fault.

9 With that being said, is the State ready?

10 MR. WEEKS: State is ready, Your Honor.

11 THE COURT: Is the defense ready?

12 MS. ALVES: Yes, sir.

13 THE COURT: All right. Call your next witness,
14 please, sir.

15 MR. WEEKS: The State would call Donna Money.

16 THE COURT: Would you swear her in, please.

17 THE CLERK: Yes, sir.

18 DONNA MONEY

19 being first duly sworn, testified as follows:

20 THE WITNESS: Yes.

21 DIRECT EXAMINATION

22 BY MR. WEEKS:

23 Q. Ms. Moseley [sic], where do you work?

24 A. I work for the South Carolina Law Enforcement
25 Division.

1 Q. Ms. Money. I called you Moseley. I know a
2 Donna Moseley.

3 How long have you worked for SLED?

4 A. Approximately four years.

5 Q. And in what capacity do you work for them?

6 A. I'm a forensic scientist in the DNA casework
7 unit.

8 Q. Have you done that role the entire time you've
9 been at SLED?

10 A. Yes.

11 Q. Can you tell us your educational background?

12 A. I received a Bachelor's degree in forensic
13 science from the Pennsylvania State University in
14 2011.

15 Q. And since that time, have you exclusively
16 worked for SLED?

17 A. Yes.

18 Q. Tell me how you got trained to be a DNA
19 analyst.

20 A. When I started my employment at SLED, I
21 underwent a year-and-a-half-long training program
22 under a court-qualified analyst. It included doing
23 training samples, practice samples, competency
24 samples, multiple written exams, oral exams, and a
25 mock courtroom exercise.

1 Q. Do you attend trainings on a regular basis?

2 A. Yes. We're required to do a minimum of eight
3 hours of continuing education which includes reading
4 journal articles, attending professional
5 organizational conferences and other workshops that
6 are available.

7 Q. Since joining SLED and even counting the
8 training portion, do you have some estimate as to a
9 number of times that you've conducted analyses of
10 DNA samples?

11 A. I've tested over a thousand samples.

12 Q. And how about have you ever been qualified as
13 an expert in the circuit courts of this state to
14 give your opinion regarding your analyses of these
15 samples?

16 A. Yes.

17 Q. Okay. And part of the DNA analyses that you
18 do, tell us the different types of DNA analysis that
19 you performed.

20 A. There are two different types of DNA analysis
21 that we can do at SLED. One is called STR, which
22 just focuses on human DNA, male and female, and then
23 there's Y-STR which focuses on male DNA only.

24 Q. I sit up here a lot of times and don't go into
25 the details. Tell us what DNA is.

1 A. DNA is a chemical found in the human body. It
2 is essentially your genetic blueprint. You get half
3 of it from your mother and half of it from your
4 father.

5 Q. How do you guys go about looking at that and
6 make your comparisons from my DNA to Mr. Miller's
7 DNA?

8 A. When we get a sample in at SLED, it undergoes a
9 multistep process that ultimately results in a DNA
10 profile, which if it's from an evidence item, we can
11 then compare to a known standard which has then
12 undergone the same multistep process.

13 Q. That multistep process produces something that
14 y'all can compare?

15 A. Yes.

16 Q. Okay.

17 MR. WEEKS: Your Honor, I'd move to qualify
18 Ms. Money as an expert in DNA -- forensic analysis
19 of DNA.

20 THE COURT: Subject to prior motions, anything
21 else?

22 MS. ALVES: No, I don't have anything else.

23 THE COURT: All right. Ladies and gentlemen,
24 most of the time witnesses are limited in what they
25 can testify to, to what they saw, they smelled, they

1 felt, they heard, basically their senses. They're
2 not allowed to give their opinion.

3 However, under our rules, if a person because
4 of their education or experience or a combination of
5 the two, becomes an expert in a particular field and
6 it's helpful to you, the jury, they're allowed to
7 give their opinion in the area of their expertise
8 and the basis of it.

9 In this case, I'm finding that Ms. Money is an
10 expert in the field of forensic DNA analysis, which
11 would include STR DNA analysis and Y-STR DNA
12 analysis.

13 I'll further tell you that expert testimony is
14 like any other testimony you'll hear in this trial;
15 you may accept it, you may reject it, or give it
16 whatever weight you think it deserves..

17 All right, sir.

18 MR. WEEKS: Thank you, Your Honor.

19 BY MR. WEEKS:

20 Q. Ms. Money, were you submitted -- well, first,
21 before I get to that, tell me a little bit about
22 y'all's submission process. How do you get samples
23 from Bamberg County?

24 A. When a submitting agency wishes to have
25 something tested at SLED, they will first submit to

1 it our evidence control department. That is where
2 the evidence gets packaged up into a SLED
3 heat-sealed pouch, assigned a case number, and then
4 each item is assigned then an individual SLED item
5 number.

6 Q. All right. Where -- is that stored for a
7 period of time or do you get it right away?

8 A. It all depends on the type of case. It may be
9 a couple weeks, it may be a couple days, couple
10 months before it eventually comes to DNA.

11 Q. All right. And how does it get to you at DNA?

12 A. It depends on the item of evidence. If it's a
13 large item, for instance, a sweatshirt, it would
14 first have to go through evidence processing
15 department, and they will make either a swabbing or
16 cutting of that item. It's usually swabs and
17 cuttings that eventually make it up to DNA.

18 Q. Okay. And then once it makes it to you, you
19 conduct your analysis and comparisons, if any, and
20 where does it go from there?

21 A. The item of evidence, once I have made my
22 cutting of it to start my process, it gets
23 repackaged up and resealed in its original
24 heat-sealed pouch, and then it gets returned to our
25 evidence control department. They would hold it

1 until a representative from the submitting agency
2 comes, picks it up, and takes it back to their
3 agency.

4 Q. And at some point do you do a report?

5 A. Yes.

6 Q. What do you do with that report?

7 A. The report that we generate has the profiles
8 that were developed and it has our comparisons and
9 interpretations listed out.

10 Q. And is there a general estimate amount of time
11 it takes to get one of those, kind of on how much is
12 submitted versus how much isn't submitted, to get
13 the report? I'm just trying to figure out the
14 timeframe.

15 A. From the time a sample has made its way to the
16 DNA department to the time that a report is issued,
17 it could be about a week.

18 Q. But it could sit at storage at SLED for two
19 years --

20 A. Yes.

21 Q. -- waiting to get to your department?

22 A. Yes.

23 Q. All right. Are those items protected while
24 they're there?

25 A. Yes. The evidence control storage area is a

1 climate-controlled and secure area. Only the
2 technicians of evidence control, our major and
3 captains, have access to these items.

4 Q. I've seen a date on the report of November the
5 13th, 2015. Is that the date you performed your
6 analysis in this case or the date you typed up the
7 report?

8 A. That is the date the report was issued.

9 Q. Okay. And that report, does it get issued
10 without any kind of peer review or any kind of
11 person looking over your shoulder?

12 A. Prior to a report being issued to a submitting
13 agency, it undergoes two peer reviews within our
14 department by two different individuals.

15 Q. When you say peer review, what do they do?

16 A. The first review is a technical review; they go
17 over our entire case file, all of our controls, our
18 data, our report, they go through our chain of
19 custody. And an administrative review is the second
20 and final review; they go over the report again, the
21 chain of custody, and they're the ones that sign off
22 and ultimately allow the report to be issued.

23 Q. And when you say sign off, they approve your
24 interpretations or your analysis?

25 A. Yes.

1 Q. Donna, were you submitted a number of items
2 from -- purported to be from a crime scene in
3 Bamberg County?

4 A. Yes.

5 Q. And were you able to conduct some DNA
6 comparisons from those items?

7 A. Yes.

8 Q. Were you submitted known standards from various
9 suspects?

10 A. I received three different known standards.

11 Q. Okay. What's a known standard?

12 A. A known standard is typically a buccal swab
13 collected from the inside of a person's cheek. We
14 know where it came from and it's documented from a
15 chain of custody that, yes, it was taken from this
16 person and then it made its way to SLED.

17 Q. Were you submitted other items? Can you give
18 me an idea of what other kind of items you -- that
19 were submitted?

20 A. I received swabs from various items and
21 locations and debris from the larger items in
22 addition to the swabs.

23 Q. Did you analyze everything you were submitted?

24 A. I did not analyze every item that was submitted
25 overall for this case.

1 Q. Okay. Is that common?

2 A. Yes.

3 Q. And I'll hand you some items and ask if you can
4 identify them. Ms. Money, I'm going to hand you
5 what's marked for the record as State's Exhibit 78
6 and ask if you were submitted the item that is
7 represented by that envelope.

8 A. Yes. I received this item. It has my initials
9 and the date when I made the cuts into the pouch and
10 then the seals.

11 Q. What is that item?

12 A. This item is buccal swabs from Homer Arthur
13 James.

14 Q. All right. And I'm also going to hand you
15 what's marked State's Exhibit 68 and ask if you can
16 identify State's Exhibit 68, yes or no?

17 A. Yes, I received this evidence pouch.

18 Q. Okay. And did you use or create some of the
19 items that are in that pouch in this case?

20 A. The items -- these envelopes in this pouch were
21 created by our evidence processing department. Then
22 these tubes that are present are the extracts that I
23 created from these items.

24 Q. And you performed your analysis that I'm going
25 to ask you about from those items?

1 A. Yes.

2 Q. I'll hand you what's marked State's Exhibit 67,
3 A through C, and ask if you can identify those
4 items.

5 A. Yes. Again, they have my initial and the date
6 of when I made entry into the pouch.

7 Q. Did you use those items to make a comparison
8 and do a DNA analysis in this case?

9 A. Yes.

10 Q. Okay. How about item 71?

11 A. Yes. My initials and date are present on the
12 SLED tape that was used to seal this item.

13 Q. 72?

14 A. Again, yes. The date and initials are present
15 from where I made access into this envelope.

16 Q. And the items that are present in these
17 envelopes are the items that you used to make the
18 analysis that I'm fixing to ask you about?

19 A. Yes.

20 Q. Okay.

21 MS. ALVES: Can I see 68, 67, 72, please?

22 BY MR. WEEKS:

23 Q. Ms. Money, I'll ask you about State's 64 and
24 ask if you can identify the item contained in that
25 exhibit.

1 A. Based on the description that's outside this
2 item, it says one face mask from front passenger
3 floorboard.

4 Q. Did you conduct any analysis on that item?

5 A. I did not receive this item. This item was one
6 that went through our evidence processing. I
7 received any swabs or cuttings from this item.

8 Q. Okay. And without asking you to pull it out,
9 that description that's on the front of that doesn't
10 matter to you, does it, if it's described as a face
11 mask or if it's a pair of panties?

12 A. If it's -- if the item inside the package is
13 different than what's the description outside, it is
14 noted by our evidence processing department. The
15 description our EP department gives is what we move
16 forward with.

17 Q. But you take, basically, a cutting from
18 whatever is in here and do your --

19 A. Yes, cutting or swabbing.

20 Q. Okay. Donna, do you have your records up there
21 with regard to SLED Item No. 37?

22 A. Which records would you like me --

23 Q. Y'all's submissions. You said somebody denotes
24 a change if it's different than what's on this bag.

25 I'm going to ask you to look at your 37 to see

1 whether somebody has already done that for us.

2 A. The evidence worksheet that was created by the
3 evidence processing technician denotes the updated
4 description of item 37, listing it as panties from
5 front passenger floorboard. She also denotes that
6 there was a communication between her and the
7 investigator regarding this.

8 Q. Okay. And the item that's marked as State's
9 Exhibit 64, on the front of it it's got item 37. Is
10 that the same item you're referring to?

11 A. Yes.

12 Q. Okay. Donna, tell me what you do. And you can
13 take your list -- or your report and tell us what
14 you did with these items submitted to you.

15 A. When I receive an item for analysis, for
16 instance, these items in this case, it undergoes a
17 multistep process in order to develop a DNA profile.
18 The first step in the process is we extract the DNA
19 from the swabbing or the cutting. From there, we
20 will quantify it or determine how much DNA is
21 present in our extract.

22 Q. Let me slow you down a little bit as you're
23 going through those steps because I'm really stupid
24 when it comes to this DNA stuff. How do you get DNA
25 from a pair of panties?

1 A. The way our evidence processing department does
2 is they first look at the incident report to see its
3 involvement with a case. If they're looking to see
4 who was wearing the pair of panties, they will swab
5 the areas where it's typically in contact with the
6 human body the most.

7 If they're looking for a specific body fluid,
8 then evidence processing with look at the item and
9 then determine if they can locate said body fluid.
10 From there, depending on what the request from the
11 submitting agency is, they'll swab the item, for
12 instance, for ownership, to determine who was
13 wearing it or they will make a cutting of a specific
14 area if they are looking for a body fluid.

15 Q. How about a body part like hair?

16 A. The way hairs are collected from items is
17 they'll take a Post-it and go over the entire item.
18 That Post-it is then folded, put into an envelope,
19 sealed up, and then submitted with whatever swabs or
20 cuttings are taken and then sent up to DNA.

21 Q. Tell me what all you received for analysis and
22 what you did.

23 A. In this case, I received -- would you like me
24 to go over all of the items?

25 Q. You can just tell us generally what you

1 received, yes.

2 A. Generally, I received swabs from the interior
3 of a vehicle, I received swabs from various items of
4 clothing, and I received swabs from two different
5 water bottles.

6 Q. Okay. And did you perform examinations of all
7 of the items?

8 A. Yes.

9 Q. Were you able to extract some DNA profile?

10 A. Yes.

11 Q. Do me a little better explanation of what DNA
12 profiles are. I understand what DNA is; that's what
13 we're all made of. But what's a profile? Tall,
14 good-looking prosecutor, is that a profile?

15 A. A DNA profile is a numerical representation of
16 a person's genetic blueprint. It's a -- we look at
17 15 different locations on a person's DNA, and each
18 of those locations has a number based on the amount
19 of DNA present there. When you put all those
20 numbers together, that creates a person's DNA
21 profile.

22 Q. And when you say it creates it, it basically
23 prints it out on a bar graph, doesn't it?

24 A. The numbers are represented by peaks.

25 Q. By peaks on one of those fancy things that --

1 describe it for me rather than me describe it.

2 A. The technical term is called an
3 electropherogram. But what it is, is when the final
4 step of our analysis process is done, the DNA
5 process is done, that step is the DNA separated
6 based on size. So when you have a larger piece of
7 DNA present, you will have a bigger peak versus when
8 you have a smaller amount of DNA present, you'll
9 have a smaller peak.

10 Q. And is it true you're submitted a lot of things
11 that you can't develop a DNA profile from?

12 A. Yes.

13 Q. What do you do once you develop the profile?

14 A. Once we develop profiles from evidence items,
15 we will then go through the same process with known
16 standards. Once we have gotten profiles off of
17 those known standards, we will compare the profiles
18 from the evidence to that of the known standards.

19 Q. How do you go about the comparison process?

20 A. You look at each profile individually, you look
21 at each location, starting at the beginning, and
22 just seeing if there is -- if a person's DNA type is
23 present, and you move your way across.

24 Q. When you say look at it, how are you looking at
25 it?

1 A. We have profiles listed out in a chart.

2 Q. And what lists them in the chart? What makes
3 the chart up?

4 A. The chart is generated in our computer when we
5 create a report.

6 Q. Okay. And once you create the profiles and
7 compare the numbers, the alleles -- the different
8 alleles that match; is that accurate?

9 A. Yes.

10 Q. And the alleles are the spots on the DNA that
11 y'all have sought out and captured; is that correct?

12 A. Yes.

13 Q. Once you compare those, do you make any other
14 statistical analysis of it? Do you extrapolate the
15 possibility or do you declare it a match? How do
16 you do that?

17 A. When we look at evidence profiles, we look to
18 see first if they are a single source, meaning from
19 one person, or they could be a mixture. Depending
20 on if it's a single profile versus a mixture, there
21 are two different statistical calculations that can
22 be done.

23 Q. And a mixture from DNA a profile could be
24 gathered from me putting my hand on this legal pad
25 right here and somebody else putting their hand on

1 that legal pad and somebody else putting their hand
2 on the legal pad. How do you get the mixtures that
3 you're describing?

4 A. Mixtures happen the way you described. If
5 somebody touches an item or a surface and then
6 somebody else comes up, the DNA just starts mixing
7 together.

8 Q. But you have the ability to split all that up;
9 is that correct?

10 A. In some instances we can.

11 Q. Okay. All right. Let's talk specifically
12 about what you received to conduct the analysis of
13 item 74.

14 THE COURT: What exhibit number is that?

15 MR. WEEKS: 72 and 71 are the ones I'm going
16 with, Judge.

17 BY MR. WEEKS:

18 Q. What did you receive --

19 A. Item --

20 Q. -- from Item 74.

21 A. From Item 74 I received SLED Item 74.1 which
22 were swabs from the mouth area of the water bottle
23 and then SLED Item 74.2 which were swabs of the
24 exterior of the bottle below the mouth area.

25 Q. Just tell me briefly why you would take swabs

1 from those particular areas on a water bottle.

2 A. In this instance the request on this item was
3 for saliva and touch, you would swab around the
4 mouth area because that is where you would expect a
5 person to drink the water bottle and, thus, their
6 saliva would be deposited.

7 Then with touch, you would expect the area
8 below the mouth area to be where the person would
9 hold the bottle, thus touching the bottle, so we'd
10 swab that area as well.

11 Q. Did you develop a profile from the items
12 submitted as 74.1 and 74.2?

13 A. Yes.

14 Q. And what were you able to determine based on a
15 comparison of the profiles from the known standards
16 you were submitted and these standards from the swab
17 of the bottle?

18 A. The profile developed from 74.1 is a mixture of
19 at least two individuals. In this situation, the
20 mixture was one where we could determine a major
21 contributor, which is an individual contributing
22 much more DNA than the other people, and then there
23 was a minor contributor who was contributing less
24 DNA than everybody else that was in that mixture.

25 The profile of the major contributor to this

1 mixture matched the profile of Leon Amos Jason James
2 and Homer Arthur James could not be excluded as a
3 minor contributor to this mixture.

4 Q. And were you able to develop any statistics
5 based on the findings for that particular item?

6 A. The statistic for the major contributor
7 profile, which was a single-source profile, was if
8 the probability of randomly selecting an unrelated
9 individual having a profile matching this major
10 would be approximately 1 in 660 trillion.

11 The statistic for the minor contributor was a
12 mixture statistic because this DNA was mixing with a
13 major contributor. The probability of randomly
14 selecting an individual who could have contributed
15 to this mixture was approximately 1 in 2.5 million.

16 Q. That was on the analysis of 74.1. How about
17 74.2?

18 A. The profile from Item 74.2 was a mixture of at
19 least two individuals. In this instance, there was
20 no determination of there being a major/minor. All
21 of the contributors were contributing at equal
22 amounts. So in this instance, the overall profile
23 was subjected to a mixture statistic, and Leon Amos
24 Jason and Homer Arthur James could not be excluded
25 as contributors to this mixture.

1 Q. Okay. What were items 36 on your report, 36.1
2 and 36.2?

3 A. So --

4 Q. What were those items?

5 A. SLED Item 36.1 was a swab from a blue-gray hat
6 from a front passenger seat of a vehicle. Item
7 36.2.1, 36.2.2, and 36.2.3 were hairs from that hat.

8 Q. And were you able to conduct an analysis on
9 State's Exhibit 67 A through C?

10 MS. ALVES: Judge, I'd renew my previous
11 objection.

12 THE COURT: Noted for the record.

13 A. Yes.

14 Q. And compare those items to the known standard
15 of people that were submitted to you?

16 A. Yes.

17 Q. Were you able to reach a finding with regard to
18 those?

19 A. I was able to reach conclusions on Item 36.1
20 and 36.2.1. For Items 36.2.2 and 36.2.3, no
21 profiles were developed.

22 Q. Okay. Could you tell me what you found on the
23 first two you mentioned?

24 A. For Item 36.1, it was a mixture of at least two
25 individuals. This was one of those instances with

1 major and minor contributors. The partial profile
2 of the major contributor to the mixture matched the
3 profile of Homer Arthur James. Leon Amos Jason
4 James and Lewis Garvin were excluded as minor
5 contributors to this mixture.

6 Q. And were you able to come up with a numerical
7 statistic as to the likelihood of the person with
8 that DNA?

9 A. Yes. The probability of randomly selecting an
10 unrelated individual whose profile matches the major
11 contributor to the mixture is 1 in 24 quadrillion.

12 Q. Item 36.2.1, were you able to conduct an
13 analysis of that item?

14 A. Yes.

15 Q. And were you able to compare a known standard
16 with that item?

17 A. Yes.

18 Q. Could you tell me what your findings were?

19 A. The DNA profile developed from SLED Item 36.2.1
20 matched the DNA profile of Homer Arthur James.

21 Q. And were you able to reach a numerical
22 statistic about that particular item?

23 A. Yes. The probability of randomly selecting an
24 unrelated individual having a profile matching this
25 item is approximately 1 in 1.2 sextillion.

1 Q. And the item that was 3.1 and 36.2, what were
2 they?

3 A. Item 36.1 was a swab from the blue-gray hat.
4 Item 36.2 was initially debris collected from that
5 hat from which I sub-itemized any hairs located,
6 thus creating Items 36.2.1, and 36.2.2 and 36.2.3.

7 Q. Okay. Donna, were you able to do a comparison
8 what we discussed as State's 64, Item 37, a cutting
9 or swab from that item?

10 A. Yes.

11 Q. And were you able to compare it to the buccal
12 swabs that were submitted of the known standards?

13 A. Yes.

14 Q. Were you able to reach a conclusion? And if
15 you were, tell us how you reached that conclusion.

16 A. The swabbing that was taken from that item was
17 a partial profiles and it was a mixture of at least
18 two individuals; however, since it was a low amount
19 of DNA present, I was unable to draw any conclusions
20 for that item.

21 Q. All right. How about Item 37.2.1?

22 A. Item 37.2.1 was a hair from the pair of
23 panties --

24 MS. ALVES: Judge, I'd renew my previous
25 objection.

1 THE COURT: Noted.

2 A. -- and a partial profile was developed from
3 this item. Due to the low amount of DNA and the
4 inability to calculate its statistic because of
5 that, no conclusive statement could be made
6 regarding the inclusion or exclusion of Homer Arthur
7 James as a contributor to this item.

8 Q. Were you able to do any other type DNA
9 comparison on that item?

10 A. That item was then taken to Y-testing to see if
11 a profile could be developed because it was a male
12 profile initially.

13 Q. Explain a little bit about the Xs and Os, but
14 about the Xs and Ys of chromosomes, if you will.

15 A. Y-testing focuses on the Y chromosome only,
16 which is found in male individuals. This chromosome
17 is passed from paternal male relatives through the
18 entire lineage. So a son gets it from his father
19 who then gets it from his father and so on.

20 Because it's focusing only on male DNA, any
21 female DNA would not be picked up during testing.
22 Because of this, it's also a more sensitive kit
23 which would give us a better chance of getting a
24 stronger profile from an item.

25 Q. And when you obtain a profile under this

1 method, what do you do with it?

2 A. We then compare it to the Y profiles from the
3 known standards that were submitted.

4 Q. Okay. So, basically, you develop two profiles
5 from the known standards; the one you did the
6 regular DNA testing, STR --

7 A. Yes.

8 Q. -- and the one you did the Y-STR?

9 A. Yes.

10 Q. Okay. What does a conclusion you reach on the
11 Y-STR mean?

12 A. It means that that individual and any
13 individual in their paternal lineage would have the
14 same profile.

15 Q. Their father on up; father, grandfather, great
16 grandfather if they were alive?

17 A. Yes.

18 Q. And how about down, children they may have,
19 male children?

20 A. Father has a son, that person has a son, that
21 person's brother, that person's son. It goes back
22 generations.

23 Q. And why is it -- tell me, can you develop
24 mathematical weights to the strength of that
25 particular profile?

1 A. We can calculate a statistic to a single-source
2 Y profile.

3 Q. What do you mean to a single source? Explain
4 that to me in terms that they can understand and me
5 too.

6 A. Currently, Y mixtures are not interpreted.
7 Right now it's just single-source profiles.

8 Q. So you got to have a single source before you
9 could even talk about it in court?

10 A. It would be a single source before I would
11 consider doing a statistic.

12 Q. Okay. Did you find a match to the profile
13 developed under the Y-STR method and Mr. Homer
14 James?

15 A. Yes, a partial Y profile was developed from
16 this item and it matched the Y profile of Homer
17 Arthur James.

18 Q. And just to be 100-percent honest, if it was a
19 sample of Homer's father, it could be the same?

20 A. Yes, that would be expected.

21 Q. If it was a sample of his son, it could be the
22 same?

23 A. Yes.

24 Q. But this at least tells us it was a sample that
25 was obtained from a male?

1 A. Yes.

2 Q. And it was from the Homer James paternal
3 lineage?

4 A. Yes.

5 Q. Either upwards or downward?

6 A. Yes.

7 Q. Okay. And the strength of the numbers that you
8 give to that analysis are based on what, Donna?

9 A. The statistic that's calculated, it's a weight
10 to that evidence profiles.

11 Q. Basically a comment on how strong the evidence
12 profile was?

13 A. How strong the comparison is.

14 Q. Not a question of whether or not it was a
15 match?

16 A. No.

17 Q. Now, honestly, I don't know what's in
18 sextillion, but I assume it's bigger than
19 quadrillion.

20 A. Yes.

21 Q. All right. That's a lot of folks -- or a lot
22 of -- we know there are not samples out there of
23 sextillion people. Tell me how those numbers are
24 calculated?

25 A. When those numbers are calculated, it's done by

1 multiplying the frequency of each of the DNA types
2 as they occur in the human population. Since
3 there's approximately 7 billion people on the
4 planet, once we have a number that exceeds 7
5 billion, it's putting the weight to, yes, indeed
6 it's this person, barring that they have no
7 identical twins.

8 Q. Sure.

9 MR. WEEKS: Bear with me just a minute, Your
10 Honor.

11 THE COURT: Yes, sir.

12 MR. WEEKS: I get confused with all these bags.

13 BY MR. WEEKS:

14 Q. Now, Donna, I want to talk just a little bit
15 more about DNA and where it is, where it's present.
16 For example, in a car, where can you find DNA in a
17 car?

18 A. It could be all over a vehicle. People
19 interact with their cars in all different ways and
20 they leave skin cells behind.

21 Q. Sweat?

22 A. Sweat, hair, skin cells, spit, blood.

23 Q. Okay. And that could be the same of anywhere,
24 there's just countless or it's too numerous to name
25 the potential for getting samples from something

1 like that, isn't it? I mean, if we brought that
2 silver Grand Am up to the SLED lab, how long would
3 it take y'all to do DNA on every carpet fiber?

4 A. It would be weeks, months, to go through
5 everything from that car.

6 Q. Okay. And SLED actually has kind of a
7 limitation on how much I can send up there and get
8 analyzed, don't they?

9 A. We have a submission policy. For violent
10 crimes, we typically limit a submitting agency to
11 five evidence items, typically if there's one
12 suspect involved. When there are multiple suspects
13 involved, there's a bit of a leniency given that
14 more items can be submitted because there's a
15 potential for different profiles being developed.

16 Q. Okay. Do you have a rough number -- and I
17 apologize if I've already asked you this -- but how
18 many submissions you get a year?

19 A. On average, about 4,000.

20 Q. Okay. And the length of time between when
21 something is submitted to you and when you get
22 through with the analysis can vary depending on the
23 item, I think you said earlier?

24 A. Yes.

25 Q. Do you know how many total items were submitted

1 to SLED?

2 A. Overall, there were 76.

3 Q. Okay. And how many were tested?

4 A. By myself, 19.

5 Q. And some of those were actually cut into
6 smaller pieces, weren't they?

7 A. Yes.

8 Q. Okay. Donna, please answer any questions that
9 Ms. Alves has for you.

10 THE COURT: Cross-examination?

11 MS. ALVES: Yes, sir.

12 CROSS-EXAMINATION

13 BY MS. ALVES:

14 Q. You said you tested 19 of the 76 items that
15 were submitted to SLED?

16 A. Yes.

17 Q. Were those actual 19 separate individual items
18 or were some of them like multiple swabs for a
19 single item?

20 A. That total includes multiple hairs from one
21 item or multiple swabs from one item.

22 Q. So like from the -- for example, from the hat
23 that we're talking about that you gave testimony
24 about you tested, you had three hairs from the hat
25 and a swab from the hat. So that would be four --

1 that would be four submissions off of that one item?

2 A. It would be four item -- sub-items off of the
3 parent item?

4 Q. So those four things that you tested, that
5 would be on one hat?

6 A. Yes.

7 Q. And then on the panties you tested -- I believe
8 you testified about two submissions. So you tested
9 two parts of the hair?

10 A. I tested two different hairs and one swab.

11 Q. Off of the panties?

12 A. Yes.

13 Q. So that would be three submissions off of one
14 item. And then the bottle that you testified about,
15 you testified about swabs from the mouth area of the
16 bottle and swabs from the exterior of the bottle; is
17 that correct?

18 A. Yes.

19 Q. So that would be two submissions off of one
20 item?

21 A. It's two sub-items off of one parent item.

22 Q. All right. But those are all counted in your
23 19?

24 A. Yes.

25 Q. Okay. Now let's talk about some other things

1 you tested. You did actually test swabs from the
2 door of the Grand Am?

3 A. Yes.

4 Q. And you tested -- in fact, you tested two swabs
5 from the interior door release -- excuse me. One
6 swab from the release of the front driver's side
7 door of the Grand Am?

8 A. Yes.

9 Q. One swab from the release of the passenger's
10 side door of the Grand Am?

11 A. Yes.

12 Q. You tested a swab from the interior door
13 release of the rear passenger door of the Grand Am?

14 A. Yes.

15 Q. You tested a swab from the gear shift of the
16 silver Grand Am?

17 A. Yes.

18 Q. You tested a swab from the grip of the BB gun?

19 A. Yes, the grip back-strap area.

20 Q. Okay. You tested a -- you tested a swab from
21 some purple rubber gloves from the driver's side
22 dashboard? It says purple rubber gloves from the
23 driver's side dashboard compartment by the steering
24 wheel.

25 A. Yes.

1 Q. You tested a swab from those?

2 A. Yes.

3 Q. You tested swabs from the purple gloves found
4 in the front passenger door pocket?

5 A. Yes.

6 Q. You tested swabs from purple rubber gloves from
7 the front passenger door?

8 A. Yes.

9 Q. You tested a swab from the interior of a yellow
10 glove?

11 A. Yes.

12 Q. Swabs from the interior of a black glove?

13 A. Yes.

14 Q. Swabs from the interior of a brown glove?

15 A. Yes.

16 Q. And you tested swabs from another bottle that
17 was found, the mouth area and the entire exterior of
18 that bottle?

19 A. Yes.

20 Q. So those were two swabs off of the same item?

21 A. Yes.

22 Q. And you tested a swab from a purple glove that
23 was found in a trailer from behind the Govan Fire
24 Department?

25 A. Yes.

1 Q. Counting correctly, counting only the items
2 tested and not the individual swabs from the items,
3 you tested a total of swabs and submissions from 12
4 items -- excuse me, 13 items.

5 Let me ask you this: Did you count the buccal
6 swabs you tested as items as well?

7 A. Yes.

8 Q. So you had a buccal swabs from Leon James?

9 A. Yes.

10 Q. Buccal swab from Homer James?

11 A. Yes.

12 Q. And a buccal swab from Lewis Garvin?

13 A. Yes.

14 Q. So you 12 items and three buccal swabs?

15 A. Yes. But also listed in my report were swabs
16 from a piece of material and swabs from --

17 Q. I'll get to those. I haven't finished asking
18 these questions. You tested 13 items and three
19 buccal swabs?

20 A. You said 13 items and three buccal swabs?

21 Q. Thirteen items and three buccal swabs. Is that
22 correct?

23 A. Yes.

24 Q. Yes?

25 A. Yes.

1 Q. Okay. So that totals up to your 19 items that
2 you tested out of the 76 items that were submitted?

3 A. Yes.

4 Q. Okay. Now, you were also -- you were unable to
5 obtain DNA profiles from a lot of the items that
6 were given to you; is that correct -- rather, it
7 says no DNA profile was developed from these items.

8 A. Yes. From eight of the items.

9 Q. All right. Now, what does it mean if no DNA
10 profiles was developed?

11 A. It could mean either there wasn't enough DNA
12 present to be detected or no there was DNA present
13 there.

14 Q. And so you were unable to determine a DNA
15 profile from the glove -- the purple rubber gloves
16 from the driver side dashboard compartment by the
17 steering wheel?

18 A. Yes.

19 Q. You were unable to obtain a DNA profile from
20 the rubber gloves that were found on the front
21 passenger door?

22 A. Yes.

23 Q. You were unable to determine DNA profile from
24 the rubber gloves that were found on the front
25 passenger floorboard?

1 A. Yes.

2 Q. You were unable to develop a DNA profile from
3 two areas in the hat that you previously testified
4 about?

5 A. I was unable to determine -- not determine --
6 develop DNA profiles from two hairs collected from
7 the hat.

8 Q. Two hairs collected from the hat?

9 A. Yes.

10 Q. Okay. You were unable to determine a DNA
11 profile from a hair collected from the panties?

12 A. Yes.

13 Q. You were unable to determine a DNA profile from
14 the purple gloves that were found in the woods?

15 A. Yes.

16 Q. And you were unable to determine a DNA profile
17 from the gloves found behind the fire department?

18 A. Yes.

19 Q. So those are part of the 19 items that you
20 tested -- that you analyzed?

21 A. Yes.

22 Q. Okay. So from the 19 that -- everything that
23 you tested, and that includes the three buccal swabs
24 of Mr. Homer James, Leon James, and Lewis Garvin,
25 we're down -- you weren't able to determine a DNA

1 profile for eight of the items?

2 A. That's correct.

3 Q. So -- and you were also submitted some other
4 items. You were submitted swabs from the top
5 counter of the teller -- of Teller 3?

6 A. There were swabs submitted to SLED, but those
7 items did not make it up to DNA.

8 Q. Okay. Well, I want to talk about them. You
9 said you were submitted two swabs collected from the
10 top counter of Teller 3; is that right?

11 A. SLED was, not DNA.

12 Q. Excuse me?

13 A. They were submitted to SLED. They were never
14 brought up to DNA.

15 Q. All right. I still want to go through them.
16 These items were submitted to SLED: Two swabs
17 collected from the top counter of Teller 3?

18 A. Yes.

19 Q. A duffel bag containing photographs?

20 A. Yes.

21 Q. Gray socks from the woods?

22 A. Yes.

23 Q. Another gray sock from the woods?

24 A. Yes.

25 Q. A black belt from a ditch?

1 A. Yes.

2 Q. A green shirt from the woods?

3 A. Yes.

4 Q. And those were all returned back to the
5 submitting agency without any analysis being
6 performed?

7 A. Yes.

8 Q. So you never even tested those items?

9 A. No.

10 Q. Who decides what you test?

11 A. There's communication made between our
12 department and the submitting agency to determine
13 which items are most probative to the case. We'll
14 test the probative items first.

15 If we do not get profile from those items, we
16 will then go back and discuss with the submitting
17 agency if there are additional items waiting and
18 determine if those items would be suitable for
19 testing.

20 Q. So you don't make that decision?

21 A. I do not.

22 Q. Somebody -- they tell you -- the discussion is
23 between the agency that submits them, the lab, and
24 people besides yourself what's to be tested, and
25 then they submit them to you?

1 A. Yes.

2 Q. Okay. And your role in this is to test and not
3 to decide what they have in evidence that should be
4 tested? You don't tell them, hey, you need to test
5 this?

6 A. I test what is deemed in need of analysis. I
7 perform my testing, I evaluate what's going on, I
8 relay the information to the submitting agency.
9 They make the determination whether or not they want
10 additional items tested, inform me, and I proceed.

11 Q. Okay. Now, going on to that, there's other
12 items on your list that weren't tested, aren't
13 there? I only mentioned some of them. You also
14 didn't perform analysis on swabs from the exterior
15 front driver's handle door of the silver Grand Am?

16 A. That is correct.

17 Q. You did not perform testing on the exterior
18 front passenger door handle of the silver Grand Am?

19 A. That is correct.

20 Q. You did not perform testing on the steering
21 wheel of the Grand Am?

22 A. Yes.

23 Q. The keys found in the ignition of the Grand Am?

24 A. Yes.

25 Q. You did not perform testing on the rearview

1 mirror of the silver Grand Am and the swabs that
2 were submitted for that?

3 A. Yes.

4 Q. You did not perform testing on the swabs that
5 were for the turn signal lever of the Grand Am?

6 A. That's correct.

7 Q. Or the swabs from the center console?

8 A. That's correct.

9 Q. The swabs from air control knobs?

10 A. That's correct.

11 Q. Swabs from radio control knobs?

12 A. That's correct.

13 Q. And there was some debris from a piece of
14 material. Do you know what piece of material that
15 was? It's the number 38.1 on your report.

16 A. 38.1 was a piece of black material that was
17 submitted to us. And all it really could be
18 described as is a piece of material.

19 Q. You don't know where that came from?

20 A. I do not.

21 Q. Okay. But you didn't do any testing on that
22 material?

23 A. I did testing of the swabbing of the material,
24 not the debris.

25 Q. Okay. Now I want to talk about what you did

1 test and what you previously testified to here. You
2 testified about the swabs that you found from --
3 let's talk about the hat. That would be -- the
4 swabs that you tested on 36.1 and 36.2.1 on your
5 report. And 36.1 is a swab from the blue-gray hat?

6 A. Yes.

7 Q. And 36.2.1 is a hair from the blue-gray hat?

8 A. Yes.

9 Q. And on 36.1, which is the swab from the
10 blue-gray hat, you testified that the DNA profile of
11 the major contributor to this mixture was Mr. Homer
12 James?

13 A. Yes. It matched the DNA profile of Mr. Homer
14 James.

15 Q. But there was a mixture of at least two people?

16 A. Yes.

17 Q. And you testified some about how a mixture
18 could occur. But is it -- so I just want to be
19 clear. So if you find a mixture of two people's
20 DNA, then it's possible that two people -- in a hat,
21 it's possible two people could have worn that hat?

22 A. It's possible.

23 Q. So would you say the major contributor would
24 be, perhaps, the person who has worn the hat more
25 often?

1 A. Yes.

2 Q. And then the minor contributor may be somebody
3 who put the hat on for a shorter period of time or a
4 short period of time or at some point?

5 A. Yes, that's possible.

6 Q. Okay. And you were not able to determine who
7 the other person who could have put this hat on is?

8 A. Not at this time.

9 Q. How long does DNA last on an item?

10 A. It all depend on a handful of factors. It
11 depends on what type of cell is left behind.
12 Typically, DNA and blood may last longer than skin
13 cells. If it's been exposed to extreme heat or
14 moisture, it could degrade DNA. There's no set
15 expiration date on DNA.

16 Q. So somebody could own a hat, leave it, say,
17 somewhere in a car or something, somebody else could
18 wear the hat, and they could still be considered --
19 and their DNA could still show up as a major
20 contributor?

21 A. It's possible. It depends on how long an
22 individual has worn the hat, if they shed a lot of
23 skin cells, if that hat has been kept in a
24 reasonable environment, not exposed to any extremes.

25 Q. Okay. But there's no way to say how long the

1 hat could have been sitting somewhere with
2 Mr. James' DNA on it?

3 A. No.

4 Q. And you tested -- and you did two swabs off of
5 gloves; is that correct? I'm talking about 36 --
6 35.2.1 and 35.3.1.

7 A. Yes. 35.2.1 was the interior black glove, and
8 then 35.3.1 was a brown glove.

9 Q. So you testified a -- 35.2.1 is a black glove
10 that was provided to you for testing, and you don't
11 know where that glove came from?

12 A. It was collected at a crime scene. That is as
13 far as my knowledge of where it's from is.

14 Q. Okay. And the DNA profile on the black glove
15 matched Lewis Garvin?

16 A. The major contributor to the mixture from that
17 profile matched Lewis Garvin.

18 Q. And that was a mixture of more than one person?

19 A. Yes. It was a mixture of at least three.

20 Q. But you can definitely say that none of those
21 three were Homer James?

22 A. That's correct. He was excluded as a
23 contributor to that mixture.

24 Q. And on the brown glove, that's 35.3.1 on your
25 list, the brown glove that was found at one of the

1 crime scenes, that was a -- you found a mixture of
2 at least three individuals on that glove?

3 A. Yes.

4 Q. And you determined that the major contributor
5 to that mixture was Lewis Garvin?

6 A. Yes.

7 Q. And you have excluded Mr. Homer James as anyone
8 who left their DNA on that glove?

9 A. He was excluded as contributing to the profile
10 developed.

11 Q. Okay. That means you didn't find his DNA on
12 that glove?

13 A. That's not necessarily what that means. It's
14 just based on the profile developed, the DNA
15 detected on that item, there could be DNA from other
16 individuals that just aren't detected in our
17 testing.

18 Q. And you have excluded Homer James as a
19 contributor to the mixture of the DNA that you found
20 on the brown glove?

21 A. Yes.

22 Q. Let's talk about the panties. Originally that
23 was listed as a face mask?

24 A. Yes.

25 Q. Who made the notation to change it to panties?

1 A. The evidence processing technician Verona
2 Gibson was the first person to open that container
3 once it was submitted. She had noted that there was
4 a discrepancy between the description of the item
5 when it was submitted and the actual item.

6 She conducted a communication with the
7 investigator and it was determined that, indeed, the
8 item description had to be changed to accurately
9 represent what that item was.

10 Q. Which turned out to be a pair of panties?

11 A. Yes.

12 Q. And on those panties, which is Item 37.1 --
13 37.2.1 on your list, which is a hair off the
14 panties, and 37.1 on your list, which is a swab of
15 the panties, those are the two items that you
16 tested?

17 A. Those were the two items that I was able to
18 develop profiles from.

19 Q. All right. And from the 37.1, which was the
20 swab off of the panties, you said that was a mixture
21 of at least two people?

22 A. Yes.

23 Q. How did two people's DNA get to one pair of
24 panties?

25 A. From people touching them, it could be from the

1 individual at the store that they were sold at, it
2 could be if they came in contact with something else
3 and the skin cells transferred over. There's no
4 certain way to say exactly how DNA gets on an item.

5 Q. So DNA can be transferred from one item to
6 another?

7 A. Yes.

8 Q. And on 37.1, which was the swab off of the
9 panties, you were not able to determine -- you were
10 not able to develop a DNA profile?

11 A. For Item 37.1?

12 Q. For 37.1, the swab.

13 A. A DNA profile was developed, it was just not
14 suitable for comparison.

15 Q. So you can't say if anybody's DNA matched that
16 or not?

17 A. Cannot.

18 Q. And on 37.2.1, which is the hair off of the --
19 one of the hairs off of the panties, you were not
20 able to calculate a -- you were only able to develop
21 a partial DNA profile; is that correct?

22 A. Yes.

23 Q. And you were not able to calculate a statistic
24 or make any statements about whether Mr. Homer James
25 was a contributor to that item?

1 A. That's correct.

2 Q. So you can't say whether it was Homer's hair or
3 not?

4 A. That's correct.

5 Q. Now, you did a test -- a Y-strand DNA test on
6 Item 37.2.1, which is another hair off of those
7 panties?

8 A. It's the same hair as the 37.2.1 that a partial
9 STR profile was developed from.

10 Q. So the same hair that you were not able to get
11 a statistics on the partial DNA profile, you were
12 able to do the Y-strand test?

13 A. Yes.

14 Q. Now, on this -- now, when you do a DNA profile,
15 you said you look at 16 locations on the DNA strand?

16 A. In Y-testing, there are 16 locations on the Y
17 chromosome that we look at.

18 Q. Okay. And so each one of those 16 locations
19 that you look at, you could potentially develop a
20 DNA profile from?

21 A. You can get a DNA type on each of those
22 locations and, collectively, those 16 is a person's
23 profile.

24 Q. Is somebody's profile?

25 A. Yes.

1 Q. So your DNA profile -- so a male's DNA profile
2 would have on his -- on those 16 locations, he would
3 be able to develop a profile from each one of those
4 locations?

5 A. The 16 locations together is a person's
6 profile. At each of those locations, you develop
7 one type or a DNA type, which is a numeric
8 representation. That, together, is a person's
9 profile.

10 Q. So all 16 together make up your profile?

11 A. Yes.

12 Q. And when you have a known sample, normally you
13 have -- like, say, you have Mr. Homer James' buccal
14 swab, which is a swab from his mouth, right?

15 A. Yes.

16 Q. So you would have all 16 of those locations for
17 this -- on the buccal swabs that we know matches
18 Mr. Homer James?

19 A. Yes. We know since it came from him, that
20 profile is associated with him.

21 Q. Okay. But now on those hairs -- that hair that
22 you tested on those panties, you looked at 16
23 locations; correct?

24 A. Yes.

25 Q. But you were only able to get a -- a DNA type

1 off of eight of them?

2 A. Yes.

3 Q. Half?

4 A. Yes.

5 Q. And of those eight, three of the locations that
6 you looked at where you got a DNA type, you have
7 those marked in parentheses. Why?

8 A. The parentheses indicate that those DNA types
9 were at a low level where we have to interpret with
10 caution.

11 Q. So you have to interpret what -- your findings
12 on those three locations with caution?

13 A. Yes.

14 Q. So if we take out the numbers -- the locations
15 that you are interpreting with caution, we have five
16 locations that you've made a definite determination
17 without caution as to DNA type?

18 A. Could you rephrase your question?

19 Q. You only have eight locations when you found
20 DNA types; correct?

21 A. Yes, eight locations where DNA types were
22 detected.

23 Q. And three of those locations, you're proceeding
24 with caution?

25 A. Correct.

1 Q. So that means you have five DNA types that
2 you're not proceeding with caution?

3 A. Yes.

4 Q. So five out of 16 possibles that you're not
5 proceeding with caution on?

6 A. Yes.

7 Q. All right. And you found that sufficient to
8 make a determination about whether or not that
9 included -- whether or not you could develop a --
10 whether or not you develop Mr. -- I'm sorry --
11 whether or not Mr. Homer James' profile matched the
12 hair on those panties?

13 A. Yes. We can take the types that are in
14 parentheses and the ones that are not in parentheses
15 and make our interpretation from that.

16 Q. And the ones we're talking about in parentheses
17 are the ones that you're proceeding with caution on?

18 A. Yes.

19 Q. All right. Now, you tested some other stuff
20 that we talked about. Let's see --

21 THE COURT: Let's -- I don't mean to interrupt
22 you during your cross-examination. Let's take about
23 a ten-minute break for the afternoon and then come
24 back.

25 MS. ALVES: Yes, sir.

1 THE COURT: Let's have about a ten or 15-minute
2 break.

3 Ms. Money, you can't speak to anybody during
4 the break.

5 (The jury exits the courtroom at 3:56 PM.)

6 (Short break.)

7 THE COURT: Ms. Alves, are you ready to proceed
8 with your cross-examination?

9 MS. ALVES: Yes, sir.

10 THE COURT: Is the State ready?

11 MR. WEEKS: Yes, Your Honor.

12 (The jury enters the courtroom at 4:13 PM.)

13 THE COURT: Ms. Alves, are you ready to
14 proceed?

15 MS. ALVES: Yes, sir.

16 CROSS-EXAMINATION

17 BY MS. ALVES:

18 Q. Ms. Money, you also were able to obtain a DNA
19 profile from a yellow glove that was found at one of
20 the areas where evidence was collected; is that
21 correct?

22 A. Yes, Item 35.1.1.

23 Q. And that yellow glove was a mixture of at least
24 three people?

25 A. Yes.

1 Q. And, in fact, you could not exclude Lewis
2 Garvin as a contributor to that mixture?

3 A. That's correct.

4 Q. But you were able to exclude Mr. Homer James as
5 a contributor to that mixture?

6 A. Yes.

7 Q. You also excluded Leon James?

8 A. Yes.

9 Q. Now, when you were -- when you do the DNA
10 analysis, are there occasions when the investigator
11 might come back to you and ask for additional items
12 to be tested?

13 A. Yes.

14 Q. So when you do your analysis, you submit a
15 report, and that report goes to the investigating
16 agency or the prosecutor or who it needs to go to?

17 A. It's submitted onto iLab and law enforcement
18 agencies and solicitor offices have access to this.

19 Q. Okay. So if your -- once you submitted your
20 report, it's possible the investigator could come
21 back and ask you to test an additional item?

22 A. Yes.

23 Q. So if you've already done your report, then you
24 just do another report?

25 A. Yes.

1 Q. And then you highlight in bold the new
2 information?

3 A. Yes.

4 Q. So everyone knows that's the new information?

5 A. Yes.

6 Q. So in this case, you did a couple of different
7 reports because as you got -- as you analyzed
8 different items, you had to submit different
9 reports?

10 A. Yes.

11 Q. Okay. But the ultimate report contains all the
12 old information plus the new information highlighted
13 in bold?

14 A. Yes. The one with the most recent date would
15 have all the information from the previous reports.

16 Q. Okay. And you initially submitted your first
17 report in June of 2015?

18 A. My initial report was issued in July of 2015.

19 Q. July of '15. Okay. And your last report was
20 issued in November of '15?

21 A. Yes.

22 Q. Okay. Now, on your reports when you're doing
23 your reports, you list the people who have been told
24 to you to be suspects?

25 A. Yes.

1 Q. And you list the victim, which in this case was
2 Enterprise Bank?

3 A. Yes. It's listed as a business.

4 Q. Business. And you actually have four suspects
5 listed?

6 A. Yes.

7 Q. And you have Leon James?

8 A. Yes.

9 Q. Somebody named Demont Darin?

10 A. Yes.

11 Q. Homer James?

12 A. Yes.

13 Q. And Lewis Garvin?

14 A. Yes.

15 Q. And you never know what involvement any of
16 these people had with the case, do you?

17 A. We do not.

18 Q. You just know that they're -- buccal swabs may
19 or may not be submitted and you're testing items
20 against the buccal swab that you've been submitted?

21 A. Yes. The -- whether a person is listed as a
22 suspect is based on the information given to us by
23 the submitting agency.

24 Q. So that information would have been provided to
25 you by the SLED investigator in charge of the case?

1 A. Yes.

2 Q. And you never obtained a fourth buccal swabs
3 for anybody?

4 A. No.

5 Q. Now, one of the items that you did test was --
6 on your list it's 73.1 and 73.2. That would be
7 swabs from another bottle that was found; is that
8 correct?

9 A. Yes.

10 Q. I'm showing you what's been marked as Defense
11 Exhibit No. 1. And is this the -- this is the
12 20-ounce spring water bottle at Govan Fire
13 Department training trailer. Is that what that
14 says?

15 A. Yes.

16 Q. And that's 73?

17 A. Yes.

18 Q. SLED Item 73?

19 A. Yes.

20 Q. So when you did the testing on the swabs, 73.1
21 would have been from the mouth of this bottle?

22 A. Yes.

23 Q. And 73.2 would have been from the exterior of
24 the bottle?

25 A. Yes.

1 Q. Okay. I think it's -- and the bottle is what's
2 wrapped up in the white paper in there?

3 A. Yes.

4 Q. Okay. And showing you what's been marked as
5 Defense Exhibit No. 2, do you recognize these?

6 A. Yes. These were the sub-items I received from
7 evidence processing. My initials and date are on
8 the outside packaging and my initials are on the
9 items.

10 Q. All right. So this is -- so these are the
11 swabs that you took from the bottles?

12 A. Yes. These are the swabs that were taken from
13 these bottles -- from this bottle.

14 Q. I'm sorry. I think I marked them 2 and 3.
15 Number 2 is the swab from the mouth area?

16 A. Yes.

17 Q. And number 3 is the swab from the exterior?

18 A. Yes.

19 Q. And --

20 THE COURT: For the record, is that Defense
21 Exhibit No. 1 the swabs from Exhibit No. 1 or from
22 another exhibit?

23 MS. ALVES: These are the swabs from Exhibit
24 No. 1.

25 THE COURT: Okay. Defense Exhibit No. 1?

1 MS. ALVES: Yes.

2 THE COURT: Okay. Thank you.

3 MS. ALVES: Your Honor, I'd move Defense
4 Exhibits 2 and 3 into evidence.

5 THE COURT: Any objection?

6 MR. WEEKS: No objection.

7 THE COURT: Admitted.

8 (Defendant's Exhibit Nos. 2 and 3 admitted into
9 evidence)

10 BY MS. ALVES:

11 Q. And the swabs from this bottle that was found
12 at the training trailer, 73.1, which is -- your
13 73.1, which is the swab from the mouth area of the
14 bottle, that was found from a completely -- that was
15 found -- the DNA profile from that -- from the mouth
16 area of that bottle is an unidentified male person?

17 A. Yes.

18 Q. Not Mr. Homer James?

19 A. No.

20 Q. Not Leon James?

21 A. No.

22 Q. Not Lewis Garvin?

23 A. No.

24 Q. And the DNA profile that was developed from
25 73.2, which is Defense No. 3, the swab from the

1 entire exterior of the bottle, that was a mixture?

2 A. It was a possible mixture, yes.

3 Q. Possible mixture. And Homer James was excluded
4 as a contributor to that mixture?

5 A. Yes.

6 Q. And so was Leon James?

7 A. Yes.

8 Q. And Lewis Garvin?

9 A. Yes.

10 Q. I don't have any further questions. Thank you.

11 THE COURT: Redirect?

12 MR. WEEKS: Your Honor, I wasn't sure, so I
13 want to move to introduce 71 and 72 and move to
14 introduce 67, 64, 68 into evidence. I think I have.
15 But I got all --

16 THE COURT: I don't think so.

17 MR. WEEKS: You don't have them into evidence?
18 I'm moving them into evidence.

19 THE COURT: I don't have them marked. Any
20 objection to Exhibit 64, which is SLED Item 37?

21 MS. ALVES: I've already --

22 THE COURT: Okay. That will be admitted
23 subject to prior objection.

24 How about SLED -- Exhibit 67 and 68 which would
25 be SLED Items 36.1, 36.2.1 and 37.2.1?

1 MS. ALVES: I've already made the objections on
2 those, Judge.

3 THE COURT: Okay. Admitted subject to
4 objection.

5 And 71 and 72 which would be SLED Items 74.2
6 and 71.2, any objections?

7 MS. ALVES: No, Your Honor.

8 THE COURT: Admitted without objection.

9 (State's Exhibit Nos. 64, 67, 68, 71, 72
10 admitted into evidence.)

11 MR. WEEKS: Your Honor, the State would move in
12 State's 79. It's the DNA report she's been reading
13 from.

14 THE COURT: Any objection?

15 MS. ALVES: Judge, there is information on this
16 report that we have not elicited testimony about, so
17 I would object to that.

18 THE COURT: Madam forelady, would you mind
19 going back to your jury room a second?

20 (The jury exits the courtroom at 4:23 PM.)

21 THE COURT: Before I get to your objection, my
22 notes reflect that Exhibit No. 78, which was the
23 buccal swabs from the defendant, that has not been
24 admitted into evidence. Do you have any objection
25 to it being admitted?

1 MS. ALVES: No, sir.

2 THE COURT: Okay. 78 would be admitted without
3 objection.

4 (State's Exhibit No. 78 admitted into
5 evidence.)

6 THE COURT: Okay. Now, you say there's
7 information contained in this report that has not
8 been brought out in testimony. Is that your --

9 MS. ALVES: Yes, sir.

10 THE COURT: What information is in there that
11 you find objectionable?

12 MS. ALVES: Well, Judge, there is -- I know I
13 did a lot of questioning about what's on the report,
14 but I did not question her about all of the items in
15 the report. In particular, I didn't ask her her
16 findings. I did ask her if she tested the items and
17 if there was testing done, but I didn't ask her her
18 findings on every one of the items on the report.

19 One thing I can tell you particularly is that I
20 didn't ask her her findings on the gun. I don't
21 believe I asked her all of her findings on the -- I
22 don't think I asked her her findings from the swabs
23 on the car -- any of the swabs taken from the car --

24 THE COURT: So --

25 MS. ALVES: I don't recall asking for findings

1 on all of the gloves. Some of the gloves I might
2 have --

3 THE COURT: So other than not being subject to
4 oral testimony from the stand, any other basis for
5 your objection on the admission of the report?

6 MS. ALVES: Yes, sir. I think there's been
7 sufficient testimony about the report, including the
8 report. Sending the report to the jury, I think,
9 would tend to confuse the jury. The report is very
10 technical in language, and the chart. That would be
11 my objection.

12 MR. WEEKS: Quite honestly, that's the reason
13 we want to put it in is all the .1s and .2s and what
14 you tested and what you didn't test.

15 THE COURT: You know, both parties have
16 extensively gone through the report. I'm going to
17 find it's admissible. I think it needs to be
18 opposite of being confusing to the jury. And that's
19 79?

20 MR. WEEKS: That's correct.

21 THE COURT: All right. Anything else,
22 Ms. Alves, before we get started?

23 MS. ALVES: Not regarding this, Your Honor.

24 THE COURT: Okay. Are you ready to proceed?

25 MR. WEEKS: I am, Your Honor.

1 (The jury enters the courtroom at 4:26 PM.)

2 THE COURT: Mr. Weeks.

3 MR. WEEKS: Your Honor, the State moved into
4 evidence State's Exhibit 79, the report of
5 Ms. Money.

6 THE COURT: Admitted subject to prior
7 discussion.

8 (State's Exhibit No. 79 admitted into
9 evidence.)

10 REDIRECT EXAMINATION

11 BY MR. WEEKS:

12 Q. Donna, from the items submitted that you were
13 told came from the vehicle, did you find DNA from
14 three different people?

15 A. For the swabs from the vehicle?

16 Q. Items from the vehicle, yes. In other words,
17 did you find DNA from Leon James?

18 A. For two of the items, yes.

19 Q. Did you find DNA from Homer James?

20 A. I did not.

21 Q. Huh?

22 A. I did not.

23 Q. How about the hair in the hat and the panties?

24 A. From those items, yes.

25 Q. Were you told they came from the vehicle?

1 A. Yes. Based on the submission paperwork, it
2 says they were from the vehicle.

3 Q. And Lewis Garvin, were items submitted
4 purported to be from the vehicle of Lewis Garvin,
5 the DNA?

6 A. Yes.

7 Q. And you also submitted bottles -- a bottle that
8 came from what purported to be a trailer with Homer
9 James' and Leon James' DNA on it?

10 A. Yes.

11 MS. ALVES: Objection, Your Honor. That's not
12 an accurate statement of what she found, I do
13 believe.

14 THE COURT: How about y'all come up here real
15 quick?

16 (Sidebar conference.)

17 BY MR. WEEKS:

18 Q. Donna, were you submitted a bottle as 74.1?

19 A. Yes.

20 Q. And 74.2?

21 A. Yes.

22 Q. Where they swabs that were taken from a bottle?

23 A. Yes.

24 Q. And that bottle was purported to be from -- do
25 you know?

1 A. It was, according to the submission paperwork,
2 located at a training trailer.

3 Q. And that training trailer bottle, what were
4 your finding with regard to those two, actually
5 74.1?

6 A. 74.1, the profile developed from that was a
7 mixture of at least two individuals. The major
8 contributor to this mixture matched the profile of
9 Len Amos Jason James. Homer James could not be
10 excluded as a minor contributor to this mixture.

11 Q. Did you determine a possibility of selecting a
12 random person for the minor contribution?

13 A. Yes. I had statistical calculation, and the
14 probability of randomly selecting an unrelated
15 individual who could have contributed to the mixture
16 is approximately 1 in 2.5 million.

17 Q. Thank you. So my question was, did you find
18 DNA for Homer James and Leon James on that bottle, a
19 mixture?

20 A. Yes. It appears it was a mixture of the two.

21 Q. Okay. Thank you.

22 MR. WEEKS: No further questions, Judge.

23 THE COURT: Any further questions?

24 MS. ALVES: No, sir.

25 THE COURT: May this witness be excused?

1 MS. ALVES: No objection.

2 MR. WEEKS: No objection.

3 THE COURT: Thank you, ma'am. You may be
4 excused.

5 Next witness, please.

6 MR. MILLER: Your Honor, the State calls
7 Darrell Lassiter.

8

9 DARRELL LASSITER

10 being first duly sworn, testified as follows:

11 THE WITNESS: Yes, ma'am.

12 DIRECT EXAMINATION

13 BY MR. MILLER:

14 Q. Mr. Lassiter, could you state your full name
15 for the jury.

16 A. Darrell Lassiter.

17 Q. Mr. Lassiter, where are you from?

18 A. Greensboro, North Carolina.

19 Q. And what do you do in Greensboro, North
20 Carolina?

21 A. I operate a towing service. I'm a North
22 Carolina State Bail Agent and Fugitive Recovery
23 Agent.

24 Q. When you say a recovery agent, what does a
25 recovery agent do?

1 A. More so like a bounty hunter; look for running
2 fugitives, return them to the jail so they can be
3 served for court.

4 Q. Okay. And do you have your driver's license
5 with you today?

6 A. Yes, sir.

7 Q. I want to show you what came out of the group
8 of exhibits here, this is State's Exhibit 70, and
9 ask if you recognize this.

10 A. Yes, sir.

11 Q. What is that?

12 A. An old driver's license that was lost.

13 Q. This is a commercial driver's license from
14 North Carolina?

15 A. Yes, sir.

16 Q. Why do you have a commercial driver's license?
17 Is that for your towing company?

18 A. Well, I've been a CDL driver since I was 19
19 years old.

20 Q. Okay. How old are you now?

21 A. Thirty.

22 Q. Mr. Lassiter, do you recall Investigator
23 Kenneth Bamberg with our office coming up and
24 talking to you in Greensboro sometime in 2015?

25 A. Yes, sir.

1 Q. And at that time when he met with you, you were
2 asked about this driver's license that was recovered
3 in this vehicle in North Carolina; is that correct?

4 A. Yes, sir.

5 Q. Excuse me; in Denmark.

6 When was the last time you had seen that
7 driver's license?

8 A. It was Bike Week of 2014 in Myrtle Beach.

9 Q. So you went to Bike Week in 2014?

10 A. Yes, sir.

11 Q. Is that Memorial Day weekend?

12 A. Yes, sir.

13 Q. And who were you there with?

14 A. My fiancée Pamela and a few other friends.

15 Q. Okay. Do you know the defendant Mr. Homer
16 James?

17 A. No, sir.

18 Q. Do you know Leon Amos Jason James?

19 A. No, sir.

20 Q. Do you know Lewis Garvin?

21 A. No, sir.

22 Q. So you were at Bike Week. They weren't -- none
23 of those people were with you at Bike Week in Myrtle
24 Beach?

25 A. No, sir.

1 Q. Okay. So tell us when the last time you saw
2 your wallet was -- or your ID was?

3 A. We went to the Levi's outlet on 6501 -- 6501
4 and I bought a new wallet because my old wallet was
5 real raggedy. And I bought a new wallet and I threw
6 my wallet away and it still had my driver's license
7 in it.

8 Q. Did you realize at the time that it had your
9 driver's license in it?

10 A. No, sir.

11 Q. How did you realize that you had lost your
12 driver's license?

13 A. I couldn't find it, so I had to get another one
14 issued.

15 Q. And you did that in North Carolina?

16 A. Yes, sir.

17 Q. Mr. Lassiter, I'll show you what's been marked
18 for identification as State's Exhibit 76. And
19 there's some financial information on here we're
20 going to redact out, but I wanted you to be able to
21 see it without the information being blacked out to
22 see if you could identify it.

23 Can you tell me what this document is? It's a
24 multipage document. You can take a second to look
25 through it.

1 A. It's a loan I applied for.

2 Q. And what day did you apply for the loan? What
3 day did you sign to apply for that loan? I think
4 it's on the bottom of the second page.

5 A. June 5th, 2014.

6 Q. And where did you apply for that loan?

7 A. State Employees Credit Union in Greensboro,
8 North Carolina.

9 Q. Is your signature on that application notarized
10 by a North Carolina notary public?

11 A. Yes, sir, it is.

12 Q. Mr. Lassiter, where were you on June the 5th of
13 2014?

14 A. State Employees Credit Union in North Carolina.

15 Q. You weren't there the whole day though, were
16 you?

17 A. Most of the afternoon.

18 Q. And why were you at the State Employees Credit
19 Union in Greensboro, North Carolina that day?

20 A. I was applying for a loan.

21 Q. What were you getting a loan for?

22 A. I was getting a title loan on one of my
23 vehicles so I could help build my credit.

24 Q. All right.

25 MR. MILLER: Your Honor, the State would move

1 to introduce State's Exhibit 76.

2 THE COURT: Any objection?

3 MS. ALVES: Yes, sir.

4 THE COURT: You say no objection?

5 MS. ALVES: No. I said yes, I do have an
6 objection.

7 THE COURT: State your objection, please.

8 MS. ALVES: Your Honor, this witness testified
9 regarding his loan application; however, 76 includes
10 more information than that. It appears to be
11 information from somebody other than Mr. Lassiter
12 with information that Mr. Lassiter has not testified
13 about.

14 THE COURT: Do you have that --

15 MS. ALVES: And it appears to be a business
16 record that --

17 THE COURT: How about step up here so we don't
18 have to send the jury out.

19 (Sidebar conference.)

20 THE COURT: I'm going to overrule your
21 objection.

22 MS. ALVES: On the whole item?

23 (Sidebar conference.)

24 THE COURT: All right. I'll sustain the
25 objection. You'll remove the top page by agreement;

1 is that correct?

2 MR. MILLER: That's correct, Your Honor.

3 THE COURT: Okay. Thank you.

4 MR. MILLER: And, Your Honor, we actually
5 provided a redacted copy to Ms. Alves in discovery,
6 and she's been nice to give me the redacted copy so
7 we can go ahead and enter a redacted copy in.

8 THE COURT: Very good. So this means this
9 witness' personal financial information will not be
10 in the public record; right?

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

12 THE COURT: Very good.

13 (State's Exhibit No. 76 admitted into
14 evidence.)

15 BY MR. MILLER:

16 Q. Now, Mr. Lassiter, I want to ask you about --
17 this is a photograph that's been entered into
18 evidence as State's Exhibit 38. Do you recognize
19 that?

20 A. Yes, sir.

21 Q. And what is that?

22 A. My old, raggedy wallet I mentioned earlier.

23 Q. And you indicated that you had thrown away the
24 old, raggedy wallet and it had your driver's license
25 in it. You didn't mean to throw away your driver's

1 license, did you?

2 A. Didn't mean to, no, sir.

3 Q. Do you have any idea how your old, raggedy
4 wallet shown in Exhibit 38 ended up inside of a car
5 that was involved in an armed robbery in Denmark?

6 A. No, sir. When I purchased the new wallet, I
7 threw the old one away at Levi's.

8 Q. And you threw it away in the store?

9 A. Yes.

10 Q. All right. Thank you, sir. Please answer any
11 questions Ms. Alves might have for you.

12 THE COURT: Cross-examination?

13 CROSS-EXAMINATION

14 BY MS. ALVES:

15 Q. Mr. Lassiter, when did you first become aware
16 that your wallet and your license had been found in
17 this car?

18 A. Sometime after I got back from the beach.

19 Q. From the beach?

20 A. Uh-huh.

21 Q. So you knew back in 2014 after your license was
22 found in the car that -- that your license had been
23 found in this car that was at an armed robbery?

24 A. I'm sorry?

25 Q. You knew back in 2014 about the armed robbery?

1 A. No.

2 Q. You said sometime when you got back from the
3 beach is when you found out.

4 A. When I found out that I lost my driver's
5 license.

6 Q. Oh, okay. No. I'm asking you, when did you
7 find out about this armed robbery?

8 A. When Mr. Bamberg came down to Greensboro.

9 Q. You're talking about Mr. Bamberg right here?

10 A. Yes.

11 Q. The solicitor's investigator?

12 A. Yes.

13 Q. And they came down so I think -- would you
14 agree that it was in September of 2015 -- September
15 of last year, sometime then?

16 A. Yes. That sound about right, yes, September.

17 Q. Okay. And that was the first time you had ever
18 heard about your license being found in this
19 vehicle?

20 A. Yes.

21 Q. You were never contacted by law enforcement
22 before this?

23 A. No.

24 Q. Did anybody ask you to provide a buccal swab
25 for testing?

- 1 A. No.
- 2 Q. Okay. And you don't know any of the people
- 3 that were involved in this robbery?
- 4 A. No, ma'am.
- 5 Q. You don't know Mr. Leon James?
- 6 A. No, ma'am.
- 7 Q. You don't know Lewis Garvin?
- 8 A. No, ma'am.
- 9 Q. And you don't know this gentleman here?
- 10 A. No, ma'am.
- 11 Q. Okay. And you don't know how your license and
- 12 your old wallet got in the back of this car?
- 13 A. No, ma'am.
- 14 Q. You didn't see any of these -- do you recall
- 15 seeing any of these people at the store?
- 16 A. No, ma'am.
- 17 Q. Okay. No further questions.
- 18 MR. MILLER: No redirect, Your Honor. May
- 19 Mr. Lassiter return to North Carolina?
- 20 THE COURT: Any objection?
- 21 MS. ALVES: No, Your Honor.
- 22 THE COURT: Thank you, sir. You're excused.
- 23 THE WITNESS: Thank you. Y'all have a blessed
- 24 day.
- 25 MR. MILLER: Your Honor, the remainder of the

1 State's witnesses -- and there's only a couple of
2 them -- are going to be pretty lengthy. So I think
3 it's quarter to five. I don't think we could get
4 one of them today, but we should be able to finish
5 up tomorrow morning.

6 THE COURT: Okay. Any objection, Ms. Alves, to
7 going ahead and breaking for the day?

8 MS. ALVES: No, sir.

9 THE COURT: All right. Madam Forelady, ladies
10 and gentlemen of the jury, we're going to go ahead
11 and break for the day. As I'm going to do
12 throughout the trial, I remind you, please, not to
13 speak amongst yourselves or with anyone about this
14 case. Do not watch, listen, or hear about it if it
15 happens to be on any kind of media. We'll see you
16 in the morning and I'll ask you about it in the
17 morning.

18 THE FOREWOMAN: What time?

19 THE COURT: 9:30.

20 (The jury exits the courtroom at 4:45 PM.)

21 THE COURT: Do y'all think we'll finish up
22 tomorrow, depending on what the jury does?

23 MR. MILLER: Yes, sir.

24 THE COURT: The whole reason is -- ask them to
25 hold on. If that's it, I got to check out. Y'all

1 mind starting at 10:00?

2 MR. MILLER: That's fine, Your Honor.

3 THE COURT: You sure?

4 MR. MILLER: Yes, sir.

5 THE COURT: Okay.

6 Tell them 10:00 in the morning.

7 MR. WEEKS: Your Honor, the jury has already
8 been excused. On Monday we had a Jackson v. Denno
9 hearing with Captain Chip Steppe of SLED. After the
10 Jackson v. Denno hearing, I went back and was
11 talking to him and giving him the valuable
12 experience of my life and was asking him about
13 pictures. And he was suggesting or saying that they
14 typically now will take pictures along a tracking
15 event, and I was saying to him that's what I been
16 preaching for ten years to the tracking officers to
17 take me some pictures.

18 Well, Chip had checked his Google photo thing
19 and didn't find any pictures, but it was tickling in
20 his brain that I think I might have taken pictures
21 or seen pictures from this tracking event. We were
22 made aware around lunch yesterday that he had found
23 some photographs on his cell phone. The cell phone
24 photographs contain pictures of a track that he --
25 or an imprint in the dirt that he took a picture of.

1 I've shown these to defense counsel and I'll hand
2 them up to you to view.

3 The first one I handed you, Judge, indicates,
4 you know, a picture that was taken with his light
5 shining on the print, so it was taken in the dark.
6 Subsequent to finding out at breakfast, lunch, right
7 in there today, about that, we were able to
8 determine that he also had pictures that had been
9 e-mailed to him. Those were e-mailed to him -- or
10 sent to him by one of his agents on June 11th of
11 2014, which was four or five days after the actual
12 robbery, that shows what he described on the stand
13 as them all sitting around out in front of the
14 helicopter in the hayfield with Mr. Homer James in
15 custody, without cuffs on, just like he's testified
16 to.

17 THE COURT: Go back and tell me. I'm looking
18 at three tracks.

19 MR. WEEKS: Those are three tracks --

20 THE COURT: Is there any testing done to match
21 them up with any shoes?

22 MR. WEEKS: No.. The significance of them isn't
23 the match, it's the -- that's the track they were
24 following -- one of the tracks they were following.
25 That's the corroboration he was testifying he gets

1 back from the dogs heading in the right line, we've
2 got a track here and it's heading that way. That's
3 the purpose of taking those.

4 It isn't for matching up. It's not taking the
5 scale, there's nothing in there, it's just to be
6 able to look at it the next morning and say, okay,
7 this is what we're looking at, we found another
8 track like this. That's the purpose of them being
9 taken. I don't know that we've got the hayfield
10 picture capable of being printed out yet. Do we?

11 MR. MILLER: We haven't been able to get it
12 printed yet.

13 MR. WEEKS: It's got SLED, all sorts of
14 protections or whatever, but we've e-mailed it to
15 Ms. Alves. The photographs, the reason we haven't
16 turned them over is we didn't have them, didn't know
17 about them.

18 And it wasn't until -- and would not have known
19 about them now if we hadn't just gone back there and
20 started chatting about things you ought to do when
21 you're on a trail. And he said, well, these are the
22 things we do. But when he came in this morning --
23 or it may have been e-mailed as of breakfast this
24 morning. But we didn't know the times and dates of
25 them. I think we know that now.

1 Your Honor, one photo was taken on June the 5th
2 at 7:19 PM, one of those footprint photos. The
3 others were taken June the 7th at 2:09 a.m. and June
4 7th at 9:34 a.m. There was a photog taken on June
5 the 7th at 9:34 a.m. and 9:42 a.m.

6 MR. MILLER: There's three photos of them in
7 the field.

8 THE COURT: Ms. Alves -- oh, I'm sorry.

9 MR. WEEKS: That's as much as we know about
10 them. They're based on the agent going back and
11 looking and searching. And he said he even found a
12 picture of the lady that testified here today
13 because there was some indication that the car was
14 hers and they wanted to know what she looked like in
15 case she was trying to pick them up.

16 So we ended up finding some investigative stuff
17 that we didn't know about and have it turned over,
18 obviously, the minute we heard about it and told
19 Ms. Alves.

20 THE COURT: All right. Ms. Alves?

21 MS. ALVES: Judge, the solicitor did tell me
22 about those three pictures after lunch. These other
23 pictures, I didn't know I had them until after the
24 solicitor just told the Court that he e-mailed them
25 to me and --

1 THE COURT: You're just getting them now?

2 MS. ALVES: I'm just now this second showing
3 them to my client.

4 THE COURT: Okay. Well, let me just give you
5 opportunity. Quite frankly, the pictures are fairly
6 collateral to the issues in this case, to me. But
7 I'm going to let you show them to your client, talk
8 to your client, think about it, because I'm sure
9 they're going to try to admit them, any -- what your
10 position would be with regard to the admission of
11 these, also whether you need any additional time or
12 anything to look anything up -- I would submit you
13 would -- and I'll let you do that overnight, if you
14 request it.

15 MS. ALVES: Well, Judge, my issue with this is
16 that, you know, Rule 5 in this case was filed on
17 June 25th of 2014 and these pictures were just
18 provided to us today --

19 THE COURT: Right.

20 MS. ALVES: -- some of them just minutes ago.
21 I understand that the solicitor did not have them
22 because the officers did not have them, however, I
23 think that the case law is pretty clear and,
24 unfortunately, the case law goes to exculpatory
25 evidence and not to inculpatory evidence or evidence

1 that could potentially be inculpatory.

2 But in citing Kyles v. Whitely, it says that
3 an individual prosecutor has a duty to learn of any
4 favorable evidence known to others acting on the
5 Government's behalf, including the police.

6 Also from case law there is -- it says that the
7 prosecution is the spokesman for the Government and
8 nondisclosure is the responsibility of the
9 Government. Those are direct quotes from --

10 THE COURT: So you're talking about Brady-type
11 information, right?

12 MS. ALVES: Well, the case law -- unfortunately
13 there is no case law about inculpatory information.
14 I think Rule 5 is supposed to cover that.

15 THE COURT: Rule 5 says you got to give what
16 you present in your case in chief, as I understand
17 the rule. I think that's what it says.

18 MS. ALVES: Yes, sir. And they're intending to
19 present these pictures in their case in chief.

20 THE COURT: Right. Right.

21 MS. ALVES: My question is -- I don't have
22 opportunity -- I have not had opportunity to discuss
23 the pictures with my client. I don't know if they
24 would have made a difference in whether we would be
25 here today or not; probably not, but here we are. I

1 haven't had any opportunity to have any expert look
2 at these pictures, if need be. If they're intending
3 to match these pictures of these shoe prints to my
4 client's shoes, then I think I would have the right
5 to have somebody --

6 THE COURT: I agree with you on that. And I
7 don't think that's the intent as stated by the
8 solicitor.

9 You're not trying to match these prints to the
10 shoes?

11 MR. WEEKS: Not, sir, not technically.

12 THE COURT: I think what they're saying is, we
13 have dogs out here, the dogs took us in the
14 direction, we took the prints in the same direction
15 as the dogs because the dogs were on the right path
16 or something.

17 MS. ALVES: Yes, sir. But if the prints are
18 put into evidence and Mr. James' shoes are already
19 in evidence as one of the exhibits up here, then it
20 would not be a reach then to compare the shoes to
21 the picture. And if they do match, that would be a
22 conclusion that the jury would have to draw without
23 me having --

24 THE COURT: Well, the only similarity would be
25 the tread mark. The size doesn't -- isn't indicated

1 in the photograph. I'm not going to make a ruling
2 on that. I'm going to think about it.

3 I am going to say this: I don't believe for a
4 second and I don't think the defense does that the
5 Solicitor's Office or law enforcement intentionally
6 withheld anything. I don't necessarily believe it's
7 exculpatory. I think it would be a Rule 5 violation
8 and I think it would be unintentional. But I'm
9 going to make a decision as to whether or not I let
10 it in.

11 MS. ALVES: Yes, sir.

12 THE COURT: If I don't, I'll just let y'all
13 proffer it and make it a Court exhibit.

14 MS. ALVES: Yes, sir. Your Honor, if I may say
15 something else about those pictures and about this
16 issue --

17 THE COURT: Yes, ma'am.

18 MS. ALVES: -- in the testimony from Captain
19 Steppe on Monday, he testified that there were
20 numerous footprints that he was following the tracks
21 on. And I don't recall exactly what he said about
22 how they determined one track from the other, but
23 there were numerous prints that they were following
24 on the first day on the -- when -- the track
25 initially started on the 5th and then it went to

1 very late or early morning on the 6th --

2 THE COURT: Right.

3 MS. ALVES: -- and then the second track.

4 started late on the 6th going into the morning of
5 the 7th.

6 Unless the solicitor just put that information
7 in about when the pictures were taken, some of them
8 were taken on June the 5th and then several of them
9 were taken on June the 7th.

10 THE COURT: I think he put that in the record.

11 MS. ALVES: Yes, sir. That information was
12 just e-mailed to me, so I'm just getting this now..
13 But the one on the 5th, which is one of the photos,
14 was taken at 7:19. I've not been told where these
15 pictures were taken, what part of the track these
16 pictures were taken on, also there were --

17 THE COURT: Officer -- he's back here. Come up
18 here just for a second.

19 MS. ALVES: Judge, if I may also --

20 THE COURT: I'm not going to -- yeah, I'm
21 hearing you. I just wanted to get --

22 MS. ALVES: Yes, sir. Also, when Captain
23 Steppe testified there were multiple tracks that he
24 was following for these -- for these people on
25 the -- from the 5th through the 6th. And at this

1 point, I've not been given any pictures other
2 than -- or I haven't been shown any pictures other
3 than those three pictures right there of a shoe
4 print. I'd like to know what other tracks they were
5 following and what --

6 THE COURT: Hold on. I'll let you get that
7 out.

8

9

CHIP STEPPE

10 being first duly sworn, testified as follows:

11 THE WITNESS: Yes, sir.

12

EXAMINATION

13 BY THE COURT:

14 Q. All right. You're the one who took these
15 pictures?

16 A. My guys took them. I didn't take them.

17 Q. Okay. And your guys had these on -- do you
18 know where these were taken?

19 A. Couldn't tell you. No. And that was --

20 Q. Will you have that information first thing in
21 the morning?

22 A. Yes, sir.

23 Q. You're going to have that information first
24 thing in the morning.

25 A. Yes, sir.

1 Q. I'm telling you. Okay?

2 A. Yes, sir.

3 Q. If not, they're out for sure, and they may
4 still.

5 A. Yes, sir.

6 Q. Any other information you need -- are there
7 other photos of other shoes or other prints or are
8 these the only footprint photos?

9 A. Yes, sir. That's all I have.

10 Q. Write this down so we can make sure that --
11 location of foot tracks. Okay?

12 A. Okay.

13 Q. Other photos of footprints out there with
14 different type treads.

15 A. Yes, sir.

16 THE COURT: Ms. Alves, anything else you need
17 to find out?

18 MS. ALVES: Yes, sir.

19 EXAMINATION

20 BY MS. ALVES:

21 Q. Do you know if the person who took these photos
22 has pictures of the other tracks that you were
23 following?

24 A. I do not. I can find out. No.

25 Q. Okay. Who was the person who took the photos?

1 A. One of my agents.

2 Q. Who?

3 A. I don't know. As I told them, I was e-mailed
4 the photos. When I -- when I generally take a photo
5 with my phone, I have a -- like a Google photo thing
6 that holds all my photos. That was not in there.

7 So I didn't even recall even having the photos
8 when he started asking about photos and tracks.
9 And, oftentimes, we do take pictures of tracks just
10 to verify, as we're going along, that we're on the
11 same track. So when I back it, wasn't there. But
12 when I went back to the documents two years old, I
13 found those photos.

14 THE COURT: Let me ask you, Mr. Weeks, other
15 than these three photos, what other photos did you
16 e-mail to her? There's something about a picture of
17 a cornfield.

18 MR. MILLER: Your Honor, over here, when you go
19 into the file information, it says Saturday, June
20 the 7th at 2:09 AM.

21 THE COURT: Right.

22 MR. MILLER: And then this is a picture of
23 everybody sitting in the field, Saturday, June the
24 7th at 9:34. I think they took two right back to
25 back because they're not in focus, but that's also

1 June the 7th at 9:34. And then here's a picture
2 that was taken at 9:42, you can see the helicopter
3 in the background and everybody just kind of sitting
4 around with water bottles, Gatorade bottles, and
5 Mr. James sitting there not handcuffed, as they said
6 before.

7 THE COURT: Okay.

8 MR. MILLER: So those are the -- it's a total
9 of six -- well, I guess these --

10 THE COURT: Those are -- aren't those the same
11 things you just showed me or are those --

12 MR. MILLER: Yes, sir. And I think this might
13 actually be a piece of this one.

14 THE COURT: And we're referencing to blown-up
15 unmarked, unidentified photographs of shoe prints in
16 sand or mud-type substance that are on a white
17 board, three of them. All right. For the record,
18 would you verify that we have all of the pictures?

19 THE WITNESS: Yes, sir.

20 THE COURT: All right. Any further questions
21 of this witness, Ms. Alves?

22 MS. ALVES: No, sir. I just want to clarify,
23 we have all of the pictures that you had?

24 THE WITNESS: Yes, ma'am.

25 MS. ALVES: But you are going to check and see

1 if the other person -- you don't know who took them
2 or sent them to you?

3 THE WITNESS: I will find out.

4 THE COURT: He's going to check it out.

5 Thank you, Officer.

6 All right. Anything further, Ms. Alves, before
7 we break?

8 MS. ALVES: No, sir.

9 THE COURT: Anything further from the State?

10 MR. WEEKS: Nothing further, Your Honor.

11 THE COURT: All right. We'll break for the
12 day.

13 (Trial in recess for the evening at 5:00 PM.)

14 THE COURT: Mr. Miller, have you spoken with
15 your officer to find out more about the photograph
16 that I asked you to look up yesterday afternoon?

17 MR. MILLER: Yes, sir, we have.

18 THE COURT: I understand there was more
19 discovery that was sent to my law clerk this
20 morning, and I think you sent it to Ms. Alves.

21 MR. MILLER: Yes, sir. And those additional
22 photos were taken during the timeframe, but they're
23 not in any way substantive. There's a couple
24 pictures of the dog and --

25 THE COURT: I looked at them this morning.

1 MR. MILLER: We wouldn't be seeking to
2 introduce those photos.

3 THE COURT: All right. I was thinking riding
4 in this morning about those photographs. There's
5 not a whole lot of case law about it, but in looking
6 at Rule 5, it says you got to give your information
7 in your case in chief. And also under Subsection C,
8 it talks about continuing obligation to disclose.

9 From what I heard, it didn't appear that this
10 was any kind of intentional withholding of
11 information; however, the footprints, the picture of
12 the tracks in the mud, are you going to be able to
13 authenticate those?

14 MR. MILLER: Your Honor, I believe that we
15 will.

16 THE COURT: My inclination is to let them in.
17 I don't think there was intentional withholding of
18 it.

19 MS. ALVES: Judge, if I may have argument on
20 that.

21 THE COURT: Yes, ma'am.

22 MS. ALVES: I found a -- normally -- I know
23 yesterday we were talking about cases that talk
24 about when the evidence is exculpatory. But I did
25 find the case State vs. Kennerly.

1 THE COURT: State vs. Kennerly?

2 MS. ALVES: Yes, sir.

3 THE COURT: May I see a copy of that, please,
4 ma'am?

5 MS. ALVES: Yes, sir. And in Kennerly it talks
6 about the Rule 5 -- the ongoing Rule 5 requirement,
7 and it specifically says that Rule 5 applies to not
8 only the prosecutor, but to any persons with --

9 THE COURT: State actors. Yeah, I agree with
10 that.

11 MS. ALVES: Yes, sir. So that's the one piece
12 I could find that actually applied Rule 5 to the
13 actual police officers, not just to the prosecutors.
14 And the other cases that talk about when the police
15 officers have not provided information to the
16 solicitor, they talk about the fact that the
17 solicitor is the representative and spokesperson for
18 the government, the police are the government, and
19 the solicitor does have a duty to seek out evidence.
20 I know that goes to exculpatory evidence, but I
21 think it can be applied to Rule 5 here.

22 Judge, I know one of the pieces I have to show
23 is prejudice. I think that I can establish that we
24 are prejudiced by this. The first we heard of this
25 information, obviously, was yesterday, and then the

1 solicitor sent me some more pictures this morning,
2 which I haven't even had opportunity to show to my
3 client or really to look at them. I only saw them
4 as I was leaving the house and I really didn't have
5 time to really peruse them to see exactly what they
6 were.

7 We still haven't been told where the picture
8 was taken. The first picture was apparently taken
9 is daylight hours; the second pictures appear to
10 have a flashlight shining on them.

11 THE COURT: Right.

12 MS. ALVES: So we don't know where those
13 pictures were taken, how far apart those pictures
14 were taken --

15 THE COURT: Wouldn't that go more to
16 authentication than it would be to prejudice?

17 MS. ALVES: It would go to authentication,
18 Judge. But I think there is prejudice in the fact
19 that I have not had an opportunity to look at the
20 pictures, I haven't had an opportunity to talk
21 investigate these further, talk to anybody about
22 these pictures, and authenticate these pictures
23 further.

24 And also, Judge, if the State puts these
25 pictures in, it's clear that with the shoes that

1 there's going to be obvious comparison between the
2 pictures and the shoes. Also, based on -- I don't
3 know what Captain Steppe will testify to today, but
4 based on his testimony on Monday, he testified that
5 he was following multiple tracks because, obviously,
6 they're alleging there were three people. And we
7 don't have any other pictures of any other tracks
8 that were being followed besides this one pair of
9 shoes.

10 Also, in one of the pictures that was provided
11 to the Court yesterday, it looks like there are
12 actually two footprints, one on top of the other;
13 it's not very clear. I haven't had opportunity to
14 look at these further, I haven't had opportunity to
15 determine whether or not I need an expert. This
16 evidence is clearly evidence which the jury could
17 rely on to come to their verdict, so I think that my
18 client would be prejudiced by --

19 THE COURT: What kind of expert are you
20 referring to with regard to the tracks?

21 MS. ALVES: Somebody to compare the shoes to
22 determine whether or not they actually came from my
23 client.

24 THE COURT: Does the State intend to introduce
25 those to say that these are, in fact, the

1 defendant's tracks?

2 MR. WEEKS: Well, that would be the implication
3 that's the track they were following.

4 THE COURT: Well, certainly.

5 MR. WEEKS: Yes, sir. And the shoes are in
6 that he was wearing when he was apprehended. And
7 they are similar in --

8 THE COURT: Tread design.

9 MR. WEEKS: -- tread design. Yes, sir.

10 MS. ALVES: And, Judge --

11 MR. WEEKS: But as Ms. Alves pointed out -- I'm
12 sorry. I'm addressing this because I'm taking that
13 witness.

14 THE COURT: I'm sorry.

15 MR. WEEKS: The tread design is similar. We do
16 not have a SLED expert comparing the photograph
17 taken in the dark trailer and this particular
18 individual. It was done for their verification,
19 corroboration that they're on the same track. And
20 that's why it was taken. And we literally turned it
21 over as soon as we knew about it.

22 THE COURT: Well, I think that's clear. I
23 don't think there's any intentional withholding.
24 And I don't think you do either, do you, Ms. Alves?

25 MS. ALVES: Not from the Solicitor's Office,

1 Judge. Perhaps the officer did forget. I mean, I
2 know the solicitor told me that he remembered this
3 on Monday.

4 But on Monday there was testimony they didn't
5 have any way to record anything, that's why he
6 didn't think to record because that's not part of
7 his role. And there was no mention when he was --
8 when the officer was testifying on Monday that he
9 had taken pictures or that there were pictures taken
10 by other members of his team.

11 From what the solicitor provided to me this
12 morning, and I'm looking at his chart here, one of
13 the pictures actually may have been taken by the
14 officer who testified. And on Monday he -- there
15 was clear testimony there was no way to record
16 information, they didn't record the statements that
17 they're attributing to Mr. James, and there was no
18 mention of these pictures.

19 This case is mostly hinging on circumstantial
20 evidence here. And my concern is that if the jury
21 looks at these shoes and has a comparison that the
22 State -- or, excuse me, that Captain Steppe and his
23 team were following Mr. James from a location -- I
24 don't know where the first picture was taken. It
25 appears to have been taken on the -- I'm not sure if

1 it was the 5th or the 6th, the first picture.

2 But there's an indication that they were
3 tracking him all the way through the woods from the
4 initial track to the second track. I mean, we don't
5 know -- I don't know where the track started. We
6 don't know exactly where the pictures were taken.

7 THE COURT: Right. And I've heard you say it.
8 I really believe that will be more to the
9 authentication aspect of the photographs than any
10 prejudice there may be to you.

11 All right. Let me skip ahead. How about the
12 pictures of the defendant sitting around the
13 officers?

14 MS. ALVES: Judge, I think those are -- I would
15 object to those as well.

16 THE COURT: I know you do. But, I mean, what
17 would be the prejudice except for the fact that it
18 shows him in that condition?

19 MS. ALVES: Well, the pictures don't actually
20 show him in any condition. They just show --

21 THE COURT: Well, they do. I disagree with you
22 on that. I looked at them myself yesterday
23 afternoon. They show him sitting on the ground
24 without a shirt, without being handcuffed, in at
25 least one of the pictures.

1 MS. ALVES: Yes, sir.

2 THE COURT: So -- and I guess my question to
3 you, Ms. Alves, is this: What prejudice is there to
4 you from those being -- if they're properly
5 authenticated, being admitted into evidence? In
6 other words, what would you have done differently to
7 prepare for this case if you had been given those
8 pictures in the beginning?

9 MS. ALVES: Judge, if I had been given the
10 pictures showing all of those officers surrounding
11 my clients, I would have argued differently and I
12 would have asked additional questions during the
13 Denno hearing, to start with.

14 THE COURT: Such as?

15 MS. ALVES: Such as, when did those officers
16 arrive? At exactly what point in the -- at what
17 point in -- while they were surrounding him did the
18 officers actually hear my client make these
19 statements that they're attributing to him? Who all
20 was around him when the statements were given?

21 The testimony at the Denno hearing was that
22 there were four officers there. At some point Jeff
23 Croft arrived and they were sitting around having a
24 casual conversation. Those pictures actually don't
25 appear as though -- I mean, yes, they were all

1 sitting around looking pretty casual; however, there
2 were a lot more than just four officers sitting
3 around being casual.

4 They were heavily armed officers with their
5 gear on sitting around my client who was sitting in
6 the center of them. I don't know at what point
7 those pictures were taken. So I would have had
8 additional questioning for the officers at the Denno
9 hearing had I had those pictures prior to the Denno
10 hearing and prior to your ruling at the Denno
11 hearing.

12 THE COURT: All right.. I'm going to find that
13 the photographs of them all sitting around are
14 admissible. I don't think there's any intentional
15 withholding of the information and I don't see
16 prejudice, despite the argument made.

17 The shoes cause me a little more concern, quite
18 frankly. And, Mr. Weeks, how do you address the
19 fact that if she had gotten those photographs, she
20 may have gotten an expert? I don't know if that's
21 even possible from the photographs, quite frankly.
22 I've never been involved in that phase.

23 MR. WEEKS: First thing I want to point out for
24 the record is that all of the testimony she's
25 referring to was in-camera earlier this week, so the

1 jury hasn't heard any of that testimony.

2 Secondly, the officer was wrong when he
3 testified on Monday about recording devices and that
4 sort of stuff, because he actually determined that
5 he took the two pictures that we're seeking to
6 introduce of the footwear. He took one on one day,
7 he took one on the second day.

8 THE COURT: It's hard for me to understand how
9 he couldn't remember doing that. I know they've got
10 a lot of stuff and it's been two years. So that
11 very well may be --

12 MR. WEEKS: Yes.

13 THE COURT: -- what happened.

14 MR. WEEKS: And I told you honestly how it came
15 up when I went back and was talking to him more
16 about good practices that I recommend to officers
17 and, ding, a bell went off.

18 First place he looked, he didn't find them.
19 He's been searching all week trying to figure out
20 who sent him the pictures and then he find them on
21 his phone where he had taken them. That's how we
22 know what day and time they were taken and we know
23 what GPS -- where GPS says they were taken.

24 I'm not as concerned about that as I am just
25 the general fact that one was taken on one day and

1 one was taken on the next day, and they were similar
2 tracks. The purpose of that, I feel like he's
3 allowed to testify to that, but it corroborates his
4 testimony about that and it's not some mystery track
5 out there.

6 THE COURT: Well --

7 MR. WEEKS: I understand the concern. We knew
8 that we could, theoretically, just wait until any
9 possible reply. But I felt like, A, we owed her an
10 ethical obligation to tell her about it as soon as
11 we knew about it, and that's what we did.

12 THE COURT: Right. And I don't believe --
13 well, I don't believe there's any intentional
14 withholding of information on the part of law
15 enforcement or certainly not the solicitor's office.
16 But --

17 MR. WEEKS: I do not see, just secondly, how
18 it's prejudicial to her because, honestly, if we
19 could have had an expert saying those are the same
20 two shoes and two tracks, that would have been
21 something we would have liked to have done. But
22 there's no way from those photographs, in my
23 opinion, that we could have do that.

24 The testimony of the officer as an expert that
25 I we get him qualified in is that that's what they

1 do; they try to find tracks, they hand track, they
2 follow the dog, and they just want to make sure the
3 dog is on the right track. The dog can't track --
4 one dog can't track three people at the same time,
5 they're going in different directions, they're on
6 different trails.

7 The officer's testimony is going to be the one
8 he took the pictures of is the trail they were on
9 with this particular dog. I mean, different dogs
10 could follow another trail, but that's -- I'm not
11 arguing --

12 THE COURT: Well, let me just say this:
13 Assuming that the State can authenticate the
14 pictures -- and I would think in this particular
15 case, they'll have to talk about time, place and
16 location and be able to authenticate them, at a
17 minimum. But assuming you can do that, I'll let
18 them come in. But I'm going to give Ms. Alves wide
19 berth to question this officer about this prior
20 inconsistent testimony and failure to give them up
21 until now.

22 MR. WEEKS: Yes, sir.

23 THE COURT: I think that's only fair.

24 MR. WEEKS: Yes, sir. Thank you.

25 THE COURT: And I note your objection.

1 MS. ALVES: Yes, sir. And I would ask that the
2 State proffer the officer's testimony first because
3 I'm not clear on -- I mean, it appears today that
4 the solicitor is saying that the officer took these
5 pictures -- that this officer, Officer Steppe, took
6 these pictures, but yesterday said he didn't take
7 the pictures. So --

8 THE COURT: That's what he said. He said he
9 didn't know which one of his men took them, is what
10 I understand that he said.

11 MS. ALVES: Yes.

12 THE COURT: And that was what I asked him to
13 try to find out yesterday afternoon.

14 All right. Well, I agree with you, Ms. Alves.
15 Let's go ahead and let him proffer what he's got on
16 the footprints. The others are admissible, as long
17 as they're properly authenticated.

18 MS. ALVES: Yes, sir.

19 CHIP STEPPE
20 being first duly sworn, testified as follows:

21 THE WITNESS: Yes, ma'am.

22 EXAMINATION

23 BY MR. WEEKS:

24 Q. Captain Steppe, we're in-camera, which means
25 the jury is out. Could you please state your full

1 name again for the record.

2 A. Claude Harris Steppe, IV.

3 Q. And where are you employed?

4 A. South Carolina Law Enforcement Division.

5 Q. And you were employed there in June of 2014?

6 A. Yes, sir.

7 Q. And were you working on the dog team on June 5,
8 2014?

9 A. Yes, sir.

10 Q. Were you dispatched to Bamberg County to
11 attempt to track one or more individuals that had
12 fled from a car?

13 A. Yes, sir.

14 Q. And did you report to that scene?

15 A. I did, yes, sir.

16 Q. And who came with you?

17 A. I had three other trackers. Gerard Cukarillo,
18 Neal Nelson, Stevie Sly. I had a -- we call him a
19 bloodhound assistant team member which was Al
20 Jarvis, and I had two pilots.

21 Q. And the pilots, obviously, were flying a
22 helicopter?

23 A. Yes, sir.

24 Q. And that helicopter you were using to try to
25 locate the suspects via the helicopter and

1 heat-seeking kind of software?

2 A. Yes, sir. Flare forward-looking radar. It
3 looks for heat sources.

4 Q. Okay. Do you know approximately what time
5 y'all got to the location of the car?

6 A. Yes, sir. Like I mentioned earlier, the guys
7 started on the car. I came in a little bit after
8 them. But the original call came out -- and I have
9 to look at the report, this is two years ago -- at
10 1:50 PM.

11 Q. Was it daylight when y'all got boots on the
12 ground and got the dogs on the ground?

13 A. Yes, sir.

14 Q. Tell me what you did from there with regard to
15 tracking the individuals and taking any photographs.

16 A. So when we get on a call like that, generally
17 the two guys that are on call will go to the scene
18 or the location where the suspect is known to have
19 fled from. They'll bring the dogs out, they'll put
20 the dogs in.

21 That day, I don't recall which two guys
22 initially put the dogs in, but two of the four guys
23 put in. I was not one of the guys who started the
24 vehicle. I don't recall the vehicle at all. They
25 put in and started working. I came a little bit

1 behind them. I don't recall if I was on another
2 call or something else, but I came in behind them.

3 Once I got up with them and got on the track,
4 we started tracking from there where the dog was
5 working using the dog's nose to figure out which
6 direction we needed to travel.

7 And then, of course, what we do is we try to
8 verify our dog by looking at the human sign left
9 behind, which is either push, which when you go
10 through some thick brush, you push the leaves out
11 and the bottom sides of the leaves turn up. We look
12 for a sign which could be visible tracks.

13 And the idea of the pictures that I took were
14 for us to determine or to verify that we're on this
15 track and it's the track that we initially started
16 on, and if later in the trail we need to verify with
17 us or somebody else with us, they can look at that
18 picture and say, yeah, it's the same track we've
19 been on the whole time.

20 Q. Okay. Well, do you recall testifying on
21 Monday?

22 A. Yes, sir.

23 Q. And when we put you up on Monday, you couldn't
24 recall having made any --

25 A. No, I could not.

1 Q. -- pictures or any kind of recordings of
2 initial tracking of the individuals that fled from
3 the car?

4 A. No, sir.

5 Q. Now, just to be clear, that -- y'all called
6 that off at some point, didn't you?

7 A. Yes, sir. The first call, we closed it out at
8 2:10, and then we went back to Columbia.

9 Q. Okay. And in the area you closed it off on
10 or --

11 A. Stopped the call.

12 Q. Where was that in reference --

13 A. In the same general area as we initially
14 started at. I mean, I don't think they ran but a
15 few miles from where they initially put the dog
16 down.

17 Q. Okay. And do you recall now or did you recall
18 after we met and talked the possibility that there
19 might be a photograph out there of the footprint
20 that y'all were using to corroborate your trail?

21 A. Once you came to me and asked me about it --
22 you know, I knew that we generally take photos of
23 calls. But I don't -- you know, I do this so often,
24 I don't think about those photographs as being of
25 any evidentiary value because it's just something

1 that allows us to track with.

2 When you mentioned it to me, I said, okay, I'll
3 look. So when I take photographs -- so that you
4 understand what happens, when I take photographs
5 from my phone, a lot of times they go on my phone
6 and -- I go through phones a lot with SLED. They're
7 SLED phones. So I usually add something called a
8 Google Photo thing on there to track my phone.

9 When you asked me originally about it, I didn't
10 see the photos on that app because the photo that
11 this came from was an iPhone 4, which is four
12 generations back from what I have now, which is a 5,
13 a 5S, to a 5SE, probably by now. So I didn't see
14 it.

15 So when I looked in that first spot, I didn't
16 see it, it didn't populate in my photos; I went to
17 the next spot on my computer and I found those
18 photos that I showed you. When you asked me about
19 who took it, I didn't know, I had no clue who took
20 it, and that's the honest truth. I had no clue.

21 When I went back again and started going
22 through it farther back last night, it populated in
23 my phone and it came up that, evidently, I took it,
24 because it popped up in my Google Photo app. And
25 with that being in my apps, it comes up and tells me

1 the date I took it, the time I took it, and a Google
2 map of where I took it. And that is all recorded
3 and is what I told you this morning is what I have.

4 Q. And we're referring to State's Nos. 81 and 82
5 for purposes of this hearing?

6 A. Yes, sir.

7 Q. Are those the two photographs you're
8 describing?

9 A. Yes, sir.

10 Q. So what your testifying to today here, Captain
11 Steppe, is that you took the photographs that are
12 depicted in State's Exhibits 81 and 82?

13 A. Yes, sir.

14 Q. Are they true and accurate representations of
15 what you took?

16 A. Yes, sir.

17 Q. Okay.

18 MR. WEEKS: And, Your Honor, for purposes of
19 this hearing, we move to introduce these two
20 photographs. I think you saw them yesterday.

21 THE COURT: I saw them.

22 Do you wish to cross-examine Captain Steppe?

23 MS. ALVES: I do.

24 Were you finished?

25 MR. WEEKS: Just a few minutes.

1 (State's Exhibit Nos. 81 and 82 admitted into
2 evidence.)

3 BY MR. WEEKS:

4 Q. Were you able to determine what time you took
5 the photographs?

6 A. Yes, sir. And if I may refer to my phone
7 because I've locked it in here so I don't forget
8 exactly. I did a little chart of the pictures that
9 were taken last night just to verify. Everybody has
10 a copy of that.

11 Q. State's No. 81 is the --

12 A. So that's the first photo I took during the
13 daylight, and that was Thursday, June 5th, at
14 7:19 PM. And looking at the map, it's right off of
15 Highway 64 near Olar.

16 Q. Okay.

17 A. And the second one was taken June 7th, 2014, at
18 2:09 PM [sic]. And by this Google Map photo, it
19 shows it was off of 304.

20 Q. And this is State's No. 82?

21 A. Yes, sir.

22 Q. And I believe you indicated that one was at
23 night because you see where you shine your flash
24 light on it?

25 A. Whenever we want to identify a track in the

1 dark, I'll take my flashlight and lay it down on the
2 base of the track to let it cross-shine over the
3 track so it shows the tread wear and shows exactly
4 what I'm looking at, and then I'll photograph it.

5 Q. Okay.

6 A. I'm sorry; 2:09 AM.

7 Q. For State's No. 82?

8 A. Yes. My bad.

9 THE COURT: Ms. Alves?

10 EXAMINATION

11 BY MS. ALVES:

12 Q. You were initially called out and told you were
13 tracking three people?

14 A. Yes, ma'am -- well, yes, ma'am, I believe so.

15 Q. And your testimony on Monday is that you were
16 following three tracks?

17 A. Well, when I say tracks, I mean people. I
18 don't necessarily mean three footprints. That's not
19 necessarily what I'm saying. When I say a track, it
20 could be three people go off in three different
21 directions and those are three different tracks.
22 It's not necessarily a physical track.

23 Q. Okay. And you said you -- you say you
24 generally take photos of the footprints when you see
25 them so you can determine if you're following the

1 same track?

2 A. Well, a lot of times -- so, for example,
3 it -- if there's something that I think is of
4 evidentiary value, we will take a -- we generally
5 won't take a picture of that. We let crime scene
6 document that because let's say -- to give you an
7 example, let's say you have a robbery and the
8 suspect leaves a track on an item in the bank, and
9 we know beforehand, hey, this person is wearing a
10 Nike Air Force One track. Okay?

11 So when we go on the call and we put our dog
12 down and we're tracking and our dog is doing very
13 well and we look down and we have an Air Force One
14 track, I will generally call on the radio and say,
15 hey, I've got a track over here, you might want to
16 notify crime scene to come over here, cast it, mark
17 it, and everything else like that.

18 On this particular occasion, we didn't have
19 that, so we do on normal cases is, if we're going
20 from point A to point B, if I see a track where the
21 dog's nose is down, I know she's actively working on
22 something, I will document that track for me and the
23 rest of my guys.

24 So if I get from point A to point B and there's
25 somebody in front of me saying, hey, I got a track

1 across the road, can you tell me what it looks like,
2 I'll say, no, I'll text it to you real quick, this
3 is the track we're tracking right now, and they can
4 lok at it and we'd verify. That's the verification
5 process we us. And then we go from point A to point
6 B.

7 So me taking this picture the first night meant
8 that I had this track on the beginning of the trail
9 and taking it on the last night at 2:00 in the
10 morning, I was still on that same track during the
11 night.

12 Now, what I -- maybe I didn't clarify myself, I
13 never really -- I never said that I had three
14 separate tennis shoe tracks or anything. I just
15 meant three tracks for three people that we were
16 working on. Does that help you?

17 Q. Okay. Did you -- but you testified on Monday
18 that you had one of the tracks -- one of the tracks
19 you had difficulty with and you had difficulty
20 getting a clear track from one of the people because
21 he didn't have real shoes on. And then you
22 testified that when they found him, he had something
23 on his feet covering his feet, but you were able to
24 determine that's who -- that's -- that that's who
25 those marks came from but he didn't have -- but they

1 weren't, like, true tracks because he just had -- I
2 believe he had socks on and something stuffed in his
3 socks.

4 A. Yeah, well, I mean, what I meant was -- is one
5 guy -- one of the three guys or whoever we were
6 tracking did not have that particular Nike track on
7 that we were looking at. That's all I mean, meaning
8 there could have been more tracks. But that
9 particular track was very identifiable.

10 If you notice in the photos, I don't generally
11 get that good of pictures when I'm tracking somebody
12 in the woods. But those were pretty good pictures.
13 I mean, the way they became in the pictures was he
14 stepped in sand, mud, and areas that were really
15 conducive to leaving good sign. And the one photo
16 actually has the Nike swoosh in it, which really
17 helps me a lot.

18 Q. How many shoes with Nike swooshes on the bottom
19 are there?

20 A. A lot. But in the particular area I was in,
21 that's the same track I saw from point A to point B.
22 So I'm going by what my dog is telling me and my dog
23 is telling me she's on the trail and the track in
24 front of her is the same track I've been tracking
25 from point A to point B from day to one to three.

1 Q. And you're telling me you recognize this as
2 being the same track -- in the pictures of 81 and 82
3 being the same track based on your expertise in
4 tracking?

5 A. Well, yeah. I do this a lot. I've done this
6 16 years. And I am -- I consider myself pretty good
7 at man-tracking. I can only tell you this: That
8 track is in similar shape and size of the track that
9 I started with and the track that I ended with. So
10 I can't tell you if it's his track, but I can tell
11 you it's very similar shape and size.

12 Q. Did you compare the track that you were
13 following to the shoes when you arrested Mr. James?

14 A. No. He had Nike shoes on. He was ten feet in
15 front of us when we caught him. No. I didn't think
16 it was necessary.

17 Q. All right. And I believe -- I think the shoes
18 are Nike Air Max.

19 A. I'm not sure.

20 Q. I'm showing you State's Exhibit 73. Is that
21 Nike Air Max?

22 A. Yes, ma'am.

23 Q. Okay. How many pairs of Nike Air Max are
24 there?

25 A. A lot, I assume.

1 Q. Multiple millions probably?

2 A. Probably.

3 Q. Pretty common shoe?

4 A. Could be, yes, ma'am.

5 Q. And in State's 81, there appear to be two shoe
6 tracks.

7 A. Yeah. Well, what happens is when people either
8 cross areas, jumping down, they step over tracks.

9 So likely, and this is what I do, he stepped on this
10 other track. So this is his same track. So if you
11 look at the lines of it, he's just stepped on it
12 twice is all he's done.

13 Q. You're assuming that?

14 A. Well, because of my expertise I'm assuming,
15 yes, ma'am.

16 Q. Okay. So based on your expertise in this --

17 A. Well, my expertise of tracking people. It's
18 what I do. Yes, ma'am, I'm assuming that.

19 Q. Okay. And based on your expertise, you're
20 saying that both of these tracks are the same?

21 A. They look similar shape and size.

22 Q. Now, you said you took the pictures.

23 A. Yes, ma'am.

24 Q. But yesterday when you testified, you said you
25 did not.

1 A. I did not know who took the pictures. When he
2 asked me -- when the judge asked me if I could make
3 sure I could figure out who they were, I said I
4 will, because I didn't know. And, honestly, I did
5 not know until I actually went up and found them on
6 that app.

7 But what I want you to understand is, I've gone
8 through four phones since then, and I just didn't
9 see it. I found them on some other source, another
10 computer, and then I found them on there.

11 Q. Okay. Well, you said -- but you normally take
12 pictures. This is a standard procedure for you to
13 take pictures of a --

14 A. When I get a good track, yes, ma'am, I try to
15 take pictures of them.

16 Q. All right. Why didn't you include any of this
17 information in your report?

18 A. I didn't think it was of any evidentiary value.
19 It's just something that helps us to verify the dog.
20 That's all it is.

21 Q. Okay. But you did two reports, in fact, in
22 this case?

23 A. My guys did. Yes, ma'am, they sure did. We
24 always do reports. Yes, ma'am.

25 Q. And you do reports so you can remember all of

1 the important details?

2 A. Yes, ma'am, we do. But that's not something we
3 ever put in the report. If they need -- if we need
4 to identify tracks and stuff, we get crime scene to
5 handle that because that's not something that I do.

6 Q. All right. And you met with the solicitor
7 November of last year?

8 A. Uh-huh.

9 Q. And that's when you first told him about the
10 statement you're saying my client made?

11 A. Yes, ma'am.

12 Q. But you never mentioned these pictures until
13 yesterday to the solicitor?

14 A. Never thought of it. It's something we used to
15 verify the dog. It wasn't anything that I thought
16 that was needed for evidence.

17 Q. Okay. Now, going back to the pictures that you
18 took and the comments that you made to the solicitor
19 on November of 2015, you testified on Monday that
20 there were only -- you testified Monday that there
21 were four of you total on the track.

22 A. True.

23 Q. But today your testimony is that you had three
24 people on the track, a dog assistant --

25 A. Okay. You want me to explain?

1 Q. Yes, sir.

2 A. So -- and the picture will verify this. So
3 whenever we put a dog down -- there was only four of
4 us on the ground physically in the woods. Okay?
5 The other guy who I said is a BAT Team member -- his
6 name is Al Jarvis -- he wasn't in the woods with us.
7 He's in the photo, if you're looking at the photo.
8 He was on perimeter, so he was not in the woods with
9 us. The other guys, for example, Jeff Croft and the
10 pilots, were not in the woods with us. The only
11 people that were in the woods with us were the four
12 trackers, that's it.

13 So when I testified that there was four of us
14 on the ground working, those four of us were around
15 working the trail, but Al Jarvis and the other
16 agents were outside of us.

17 Q. Okay. When did all of these people come to the
18 location where you were?

19 A. When we called 1067 -- when we called that we
20 located the suspect and he was in custody. And they
21 all came in to us, which is normal. Whenever we
22 locate somebody, all law enforcement comes to you
23 make sure everything is okay, make sure you don't
24 need anything, and all that.

25 Q. So when you testified -- so when you -- when

1 you -- after you came upon Mr. James in the woods
2 and y'all went to the clearing to wait and the
3 helicopter came, at what point did the conversation
4 go forward? You testified that you talked about his
5 physical condition and him being a boxer and --

6 A. Right. Right.

7 Q. -- and the comments that -- and the statements
8 that you're attributing to Mr. James. When did
9 those statements happen; before or --

10 THE COURT: Let's not go too far afield from
11 what we're dealing with. I want to deal with the
12 photographs. We've got a jury out there waiting.

13 MS. ALVES: Yes, sir.

14 Judge, my reason for questioning him about this
15 is because on Monday there weren't this many people
16 standing around Mr. James, according to
17 the testimony that --

18 THE COURT: We talked about that. I'm sorry.
19 Go ahead.

20 BY MS. ALVES:

21 Q. In the photographs there with appear to be
22 seven people --

23 A. Okay.

24 Q. -- standing around Mr. James. Do you need to
25 see the photograph?

1 A. I can pull it up right here, if you want me to.
2 I have no problem with that at all. Okay. I got
3 it.

4 So, yes, ma'am. So again, as I said, the
5 one -- Stevie Sly, Neal Nelson, myself, Cukarillo
6 are the four trackers. Al Jarvis is the one in the
7 background with the helicopter facing behind him.
8 He was the one on perimeter. And if you go to the
9 other photo -- was that the one you're talking
10 about?

11 Q. Well, I'm going to show you what's been marked
12 for identification as State's No. 80. In State's
13 80, there's five people in the picture around
14 Mr. James.

15 A. Yes, sir.

16 Q. But you took other pictures where there are
17 actually seven people around Mr. James.

18 A. Again, I didn't take these pictures. The pilot
19 took these pictures, is what I listed on the sheet.
20 So, yes, because I'm in the picture, therefore I
21 couldn't take the picture.

22 So you have me, the two trackers -- the three
23 trackers and then you have a perimeter guy which is
24 the BAT guy.

25 Q. So how many people were there at the scene

1 total when this picture -- this picture, State's 80,
2 was taken, there were six people --

3 A. If you look at that picture and the other
4 picture, there's at least two pilots for the
5 helicopter, there's going to be a perimeter guy,
6 Jeff Croft came up, so you add all those people in
7 there, one, two, three, four, five, six -- at least
8 eight or nine people.

9 Now, are asking me did this conversation occur
10 when all those people there?

11 Q. Yes.

12 A. I can't tell you that. I don't know when the
13 conversation occurred. I know we were in the middle
14 of the field sitting down, catching water, drinking
15 water, but I can't tell you that all those people
16 were there at that time to corroborate my story of
17 what was said because I just don't know. I just
18 don't know. Okay?

19 Q. But on Monday you didn't mention all these
20 people being present.

21 A. I didn't -- didn't think it was necessary.

22 MS. ALVES: I don't have any other further
23 questions.

24 THE COURT: All right. Gentlemen, I'm going to
25 find that there's no intentional withholding of this

1 information. I've listened to Captain Steppe's
2 information, and I think it's both plausible and
3 credible as to why these photographs have not been
4 produced at this point.

5 I suspect that the State, if they had knowledge
6 of these pictures before, would have incorporated
7 them in their case in chief. And I didn't see any
8 prejudice to the defendant such that he would have
9 changed his tactics at trial, questions that have
10 been asked so far, or his decision to proceed to
11 trial. So, therefore, assuming that during
12 testimony there is proper authentication, I'll let
13 them in. And I'll note your objection.

14 MS. ALVES: Judge, if I could put one of my
15 grounds on the record.

16 THE COURT: Yes, ma'am.

17 MS. ALVES: I understand your ruling. It
18 appears that the State intends to offer Captain
19 Steppe as an expert witness. Mr. Weeks did indicate
20 that he does plan to introduce -- or attempt to
21 introduce Captain Steppe as an expert witness. And
22 in his testimony he clearly talks about his
23 expertise in this.

24 So I think that would be an additional ground
25 upon which I could object to those photos having

1 been taken and the fact -- not only is this evidence
2 that should have been turned over, but, in addition,
3 if Captain Steppe continues to testify as an expert,
4 I should have been provided with all of the
5 information that he was to base his opinions on.

6 THE COURT: All right. Thank you, ma'am.

7 All right. Is the State ready to proceed?

8 MR. WEEKS: The State is ready, Your Honor.

9 THE COURT: Ms. Alves, are you ready?

10 MS. ALVES: Judge, I'm ready insofar as I
11 understand your ruling, but I would not be ready to
12 fully cross-examine him and I'm not prepared to
13 fully cross-examine in regards to his testimony
14 because I've just been provided with this.

15 THE COURT: Well, let me clarify something.
16 The pictures that you received apparently -- the law
17 clerk shows that Mr. Miller e-mailed them out at
18 7:30 or sometime this morning. Those are
19 approximately, I think, six pictures. It shows dogs
20 laying around.

21 My understanding from what Mr. Miller said
22 earlier that he does not intend to use those in his
23 case in chief; the other pictures of the defendant
24 sitting around with the officers and the foot tracks
25 were provided yesterday afternoon, and so you have

1 had overnight to look at them, have had time to show
2 them to your client.

3 However, with that being said, after the direct
4 examination of Captain Steppe, if you feel you need
5 to take a break to study those pictures further,
6 I'll give you that opportunity to do so, so you can
7 adequately cross-examine.

8 MS. ALVES: Yes, sir.

9 THE COURT: If you need that, just let me know.

10 MR. MILLER: And for clarification, none of the
11 photos that were e-mailed to Ms. Alves at 7:30 this
12 morning, we're not seeking to introduce any of
13 those.

14 THE COURT: All right. Thank you.

15 Bring the jury in, please.

16 (The jury enters the courtroom at 10:43 AM.)

17 THE COURT: Good morning, ladies and gentlemen.
18 I hope you had a nice evening. Before we get
19 started, let me ask, has anyone read, heard, or seen
20 anything about this case during the break or have
21 you spoken with anyone about this case, including
22 amongst yourselves? If you have, raise your hand.
23 Thank you. Let the record reflect no one raised
24 their hand.

25 Is the State ready to proceed with their next

1 witness?

2 MR. MILLER: We are, Your Honor. The State
3 calls agent Jeff Croft with the State Law
4 Enforcement Division.

5 JEFF CROFT

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes, ma'am.

8 DIRECT EXAMINATION

9 BY MR. MILLER:

10 Q. Agent Croft, please state your full name for
11 the record.

12 A. Jeff Croft.

13 Q. Who do you work for?

14 A. South Carolina Law Enforcement Division,
15 commonly known as SLED.

16 Q. How long have you worked for SLED?

17 A. A little over four years now.

18 Q. What region of SLED do you work in?

19 A. The Low Country region.

20 Q. And does that include Bamberg County?

21 A. Yes, sir, it does.

22 Q. How long have you been involved in law
23 enforcement overall?

24 A. Since 2004.

25 Q. And where did you work before you worked for

1 SLED?

2 A. I worked for the Barnwell County Sheriff's
3 Office.

4 Q. Are you from Barnwell originally?

5 A. Yes, sir, I am.

6 Q. Spent most of your life here in Barnwell?

7 A. Yes, sir. All of my life here.

8 Q. This part of the state?

9 A. Yes, sir.

10 Q. Okay. Were you involved in the investigation
11 and apprehension of the suspects in the Enterprise
12 Bank bank robbery that occurred in Denmark on June
13 5th, 2014?

14 A. Yes, sir, I was.

15 Q. And were you present on the night of the 6th
16 going into the early morning hours of the 7th
17 whenever Lewis Garvin and Leon James were
18 apprehended in this case?

19 A. Yes, sir, I was.

20 Q. And were you present the morning of the 7th
21 whenever the defendant was arrested in this case?

22 A. Yes, sir, I was.

23 Q. And I want to show you -- this is very large,
24 you've already looked at it -- what's been marked
25 for identification as State's Exhibit 69. Have you

1 which had a chance to review that exhibit?

2 A. Yes, sir, I have.

3 Q. Can you explain to the Court what that is.

4 A. It's an aerial map, a Google map, that shows
5 Denmark, Olar and Hilda. It shows the general area
6 which we were tracking.

7 Q. Okay. And is that map to scale?

8 A. It is.

9 Q. And is there scale shown on the map?

10 A. Yes, sir, there is.

11 Q. And does it have the landmark locations marked
12 on it as far as the road names, highway names, town
13 locations on that map?

14 A. Yes, sir, it does.

15 Q. And are all of those the way they would have
16 appeared back on June of 2014. Have any of the town
17 names changed or road names changed?

18 A. No, sir, they haven't.

19 MR. MILLER: Your Honor, at this time we'd move
20 to enter State's 69.

21 THE COURT: Any objection?

22 MS. ALVES: No objection.

23 THE COURT: Admitted.

24 (State's Exhibit No. 69 admitted into
25 evidence.)

1 BY MR. MILLER:

2 Q. I'll set this up where you and all of the
3 jurors can see it. Is that too much for you? Okay.

4 MR. MILLER: Your Honor, if I could ask agent
5 Croft to step down from the stand, please. I'm
6 going to let him identify some places on the
7 overhead.

8 THE COURT: Yes, sir.

9 BY MR. MILLER:

10 Q. Agent Croft, could you -- and it obviously
11 doesn't have to be pinpointed. But could you show
12 the area in Denmark where the Enterprise Bank is
13 located and explain to the jury where that is?

14 A. Okay. This is Highway 321, this will be
15 Highway 70 coming into Denmark from the Barnwell
16 side. This is the intersection of 78 and 321.
17 Enterprise Bank is going to be in this area right
18 here (indicating).

19 Q. Okay. And we've heard testimony from other
20 witnesses about the suspect getting down into Olar
21 and crashing on Weed Road. Can you show me what
22 that direction of travel would have been down
23 Highway 321 and where the vehicle actually crashed?

24 A. Yes, sir. Highway 321 runs north and south.
25 If you travel south down 321, you come through the

1 small town of Govan. Olar is the next town you come
2 to. It's approximately ten miles from Denmark to
3 Olar. Weed Road is a small secondary road just off
4 Highway 321, and the location of the vehicle was
5 going to be about right here (indicating).

6 Q. Okay. Did you actually observe the vehicle
7 there at Weed Road, that location where it was?

8 A. Yes, sir, I did.

9 Q. And SLED -- can you explain what you did --
10 what you did as a SLED agent and other SLED agents
11 in order to try to apprehend the suspects at that
12 time?

13 A. I was called to the Olar location where the
14 vehicle was. Other agents responded to the bank.
15 Once I arrived on scene, made sure that the vehicle,
16 everything there was secured. A perimeter was set.
17 If you come back into Olar just before you get to
18 Highway 64, the first left from where the car is at
19 is a secondary road that cuts through here, comes
20 out by Chris' Auto. Units were placed along Chris'
21 Auto down Highway 64.

22 On the secondary road back here that runs off
23 of -- would be Thunder Road in Bamberg County,
24 Hutto's Chapel Road in Barnwell County. Secondary
25 road here, all the way back up here. There's a

1 railroad track that runs parallel to Highway 321,
2 and we had units down Highway 321.

3 Q. So were they trying to set up a perimeter to
4 keep these guys contained?

5 A. Yes, sir, that's the purpose of the perimeter.
6 Information we had at the time I arrived was the
7 individuals ran across Highway 321, across the river
8 bed, into this area, and we were trying to contain
9 them in this wooded area.

10 Q. What was the weather like that day whenever the
11 guys got out with the tracking?

12 A. It was extremely bad weather. A thunderstorm
13 came up, raining, thundering and lightning pretty
14 bad.

15 Q. Was the SLED tracking team called?

16 A. They were.

17 Q. Did they attempt to start tracking the suspects
18 when they arrived?

19 A. Yes, sir, they did.

20 Q. Do you know if they were able to capture any of
21 the suspects on the night of June 5th?

22 A. No, sir, we were not.

23 Q. Okay. So the next testimony was from Captain
24 Eddie Williams and it involved the Govan Fire
25 Department in that area. Can you point out for the

1 jury where the Govan Fire Department is?

2 A. Yes, sir, I can. From where the vehicle was
3 back to Govan is approximately three miles. If you
4 come up Highway 321 North back towards Denmark,
5 Govan is the little town, you take a left. On the
6 map here, it shows State Road S-522, which is
7 Ehrhardt Road or Govan Road, depending on whether
8 you're in Barnwell or Bamberg County. You take a
9 left on Erhardt Road like you're going into Barnwell
10 County, and it's maybe 100 yards, sits on the
11 right-hand side of the road facing Barnwell.

12 Q. So which one of the three defendants was the
13 first one to be taken into custody in this case?

14 A. The first individual taken into custody would
15 be Mr. Leon James.

16 Q. Where was he taken into custody, if you could
17 point it out on the map?

18 A. From the fire department, there was a small
19 training trailer, sits back just behind the recycle
20 center. All of this field was planted corn. We
21 were able to track Mr. Leon James. There's a
22 hedgerow between the fields and the railroad bed and
23 Highway 321 right here, and he was captured
24 approximately right here (indicating).

25 Q. Now, we're talking about the night of the 6th

1 at this point?

2 A. Yes, sir.

3 Q. Okay. Did y'all call back out the SLED
4 tracking team?

5 A. Yes, sir. They were the ones on the ground.

6 Q. Other law enforcement agencies involved?

7 A. As many as we could get to assist us with
8 perimeter and help us out.

9 Q. So a lot of officers from a lot of different
10 agencies?

11 A. Yes, sir.

12 Q. All right. Did you or did SLED set up a
13 temporary headquarters?

14 A. Yes, sir. The temporary headquarters was set
15 up at the Govan Fire Department.

16 Q. Okay. And who was the next person that was
17 taken into custody?

18 A. While we were tracking here in Govan, we
19 received a call that an individual was seen walking
20 outside of Olar, I mentioned earlier around Chris'
21 Auto. A couple of units left this area and went to
22 patrol Highway 64 to see if they could find the
23 individual walking. They made contact with
24 Mr. Lewis Garvin. It's going to be Juniper Road and
25 Hanky Road just inside of Barnwell County. And he

1 was taken into custody right here. My pen has quit
2 writing. (Indicating)

3 Q. And, finally, going into the morning of June
4 the 7th in the early morning hours, there was a --
5 the defendant Mr. Homer James was taken into
6 custody. Can you point out where he was taken into
7 custody on the map?

8 A. Okay. Again, back at Govan Fire Department --
9 and I'll try to use that to try to help everybody
10 get an idea -- if you travel toward Barnwell down
11 Ehrhardt Road, this farm here is known as -- well, I
12 know it as Brubaker Farm. Mr. Homer James was
13 located in this wooded area here and brought out to
14 this hayfield right here on Brubaker Farm
15 (indicating).

16 Q. All right, sir. You can take a seat back up on
17 the witness stand.

18 Now, that's a lot of locations and places. In
19 preparation for trial, did you have occasion to
20 utilize some law enforcement resources to prepare
21 a -- any videos of these areas that you've been
22 talking about?

23 A. Yes, sir, we did.

24 Q. And how did you go about doing that?

25 A. We used a drone --

1 MS. ALVES: Your Honor, I'm going to object to
2 the testimony about this based on my previous
3 objection and also on the additional ground that
4 this is cumulative to the testimony already -- what
5 the officer has already testified to and shown on
6 the map.

7 THE COURT: Overruled.

8 BY MR. MILLER:

9 Q. Sir, you can answer. How did you go about
10 getting the video?

11 A. We used a drone equipped with a camera to take
12 some aerial video of locations where each individual
13 was taken into custody along with the Govan Fire
14 Department and the location where the vehicle came
15 to rest.

16 Q. Now, as far as the locations of the highways,
17 location of the railroad tracks, location of where
18 these fields are, do all of those things show the
19 same way they appeared on June 5th to June the 7th
20 of 2014?

21 A. Yes, sir.

22 Q. There was some testimony about a cornfield when
23 they were talking about apprehending people. What
24 was the condition of the field at the time that the
25 apprehension was made?

1 A. The field at the time the apprehension was made
2 was planted in corn. It's under center-pivot
3 irrigation. The corn was eight-plus feet tall and
4 extremely thick at the time.

5 Q. And when the video was taken, was the corn in
6 the field in the similar position?

7 A. It was not.

8 Q. And what was the condition whenever the video
9 was taken?

10 A. The corn had been cut.

11 Q. And there was also some talk about the fire
12 trailer, the Govan training trailer. When the video
13 was taken, could you determine where the fire
14 trailer was?

15 A. Yes, sir. The actual shell of the trailer was
16 no longer there, but the framework for the trailer
17 was still there and can be pictured /KHRAO*ERly in
18 the video of the footprint of where the trailer is.

19 Q. And with those two exceptions noted, everything
20 else appeared the way it appeared June 5th to 7th of
21 2014?

22 A. Yes, sir.

23 MR. MILLER: Your Honor, at this time the State
24 would move introduce State's Exhibit No. 61.

25 THE COURT: Subject to objection.