

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

VOLUME II OF II

Appeal from Bamberg County

Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HOMER ARTHUR JAMES,

APPELLANT

APPELLATE CASE NO. 2016-002046

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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)

1 (State's Exhibit No. 61 admitted into
2 evidence.)

3 BY MR. MILLER:

4 Q. And just to be clear, have you looked at that
5 and do you know what that is?

6 A. Yes, sir.

7 Q. And what is that?

8 A. That's the drone video which we took of the
9 area.

10 Q. And how do you know this is the same on this
11 disc?

12 A. It appears with my initials on it.

13 Q. Okay.

14 MR. MILLER: Your Honor, at this time we'd like
15 to publish State's Exhibit 61 to the jury. And
16 Agent Croft has a laser point, and we'd ask that he
17 be allowed to explain to the jury what they're
18 looking at on the video. The video does not have
19 any sound.

20 THE COURT: Do you need to step down?

21 MR. MILLER: I believe he can do it from where
22 he's at.

23 THE WITNESS: Okay. This video is from Weed
24 Road. The location where the vehicle came to rest
25 is going to be down this small drive here. We're

1 going to fly the drone down this drive. This is
2 Highway 321, this is south. Denmark would be back
3 behind us. This is the railroad bed which I spoke
4 of. This is the roadway where the vehicle went
5 down. It's not a preserved roadway; it's grown up.

6 Right in this area, once we get closer, you'll
7 see that the two roads kind of come together, and
8 there was a fence or a gate right in this area. The
9 car continued down here and made a turn and came to
10 rest right in here.

11 Olar would be kind of to our right from where
12 this video is now, 321 is out in front. Here's your
13 railroad bed and, again, right in here is where the
14 vehicle came to rest.

15 We had information that the individuals had ran
16 across this way. And if you notice, you got a water
17 tower here. And in Olar, I'll be referencing that
18 water tower on later videos. Here you got the cell
19 phone tower which sits off of, I think it's Thunder
20 Road.

21 This is the town of Olar. Here is Highway 64,
22 here's 321, Denmark is up here. This -- the road I
23 discussed setting up the perimeter on was 321 down
24 the secondary road which comes back out to 64.
25 Govan would be right up here. Now we're facing --

1 64 runs on out, Barnwell would be down here.

2 (Indicating)

3 MR. MILLER: Kenny, we can skip to the next
4 view, please.

5 THE WITNESS: Okay. This is the Govan Fire
6 Department. We're on the back side taking off here.
7 Highway 321 is just on the other side of this
8 hedgerow along with the railroad bed. Denmark is
9 this way, Olar would be back behind us from this
10 view. I spoke of the hedgerow where Mr. Leon James
11 was taken into custody.. It was this hedgerow right
12 in this general area where Mr. Leon James was taken
13 into custody. Again, Denmark is this way. It's
14 approximately three miles behind us to where the car
15 was at.

16 All of this that night was planted in corn.
17 Everything that you see green here is corn. Here is
18 the recycle center which we spoke about the training
19 facility being right behind. This is actually one
20 of our cars from flying the drone.

21 There's the Govan Fire Department. Again, Olar
22 would be in that direction, would be south. This is
23 Ehrhardt Road. We're going to go up high enough
24 that we can point out the water tower back in Olar.
25 And you see 321 curves around and you got your two

1 towers that were sitting in Olar there.

2 That particular night we had perimeters set
3 along 321, down Ehrhardt Road, down Thunder Road,
4 and there's a secondary dirt road back behind us
5 from this view that we had perimeters set. I think
6 the video is going to come scroll down and we're
7 going to see -- (Indicating)

8 MS. ALVES: I object to the narrative. I ask
9 that if the solicitor wants testimony, that he ask
10 questions.

11 THE COURT: Overruled.

12 THE WITNESS: The fire trailer sits right
13 behind the recycle center.

14 BY MR. MILLER:

15 Q. I believe you get a view of that. If you could
16 point that out when it comes to view.

17 A. Yes, sir, I will. This is Ehrhardt Road out
18 here and this is the direction in which the dog team
19 tracked.

20 Q. Now, that little house there with the shed
21 beside it at the bottom, is that the house that
22 Captain Williams first went to when he thought there
23 was a call of a suspicious person?

24 A. The initial call was for that trailer, yes,
25 sir.

1 Q. Okay.

2 A. And we're flying the drone now. We'll be going
3 toward Barnwell on Ehrhardt Road. Again, all of
4 this, this whole area here was planted in corn and,
5 like I said, approximately eight foot tall. But we
6 had perimeter down Ehrhardt Road and there's a --
7 Thunder Road runs on the other side of that
8 hedgerow. We had perimeters set there also.

9 Q. Now, as this comes back around --

10 A. The footprint of the trailer.

11 Q. Right. That's what I was asking.

12 All right. Now, the next location is which
13 one?

14 A. I'm sorry?

15 Q. The next location that we're going to see the
16 video from...

17 A. That's where Lewis Garvin was apprehended.

18 All right. We're in Barnwell County in this
19 one. We're already in the air here. I'm going to
20 let it turn so I can get my own bearings. We're
21 flying directly above the location where Mr. Lewis
22 Garvin was taken into custody. This is Highway 64.
23 Olar is ahead of us. This is Hanky Road, this is
24 Juniper Creek -- or Juniper Road, and he was taken
25 into custody right in this area.

1 Again, that's our cars that we were flying
2 over. Olar is this way. You see the road curves
3 around here. Really small white is going to be the
4 water tower back in Olar.

5 MR. MILLER: We can skip to the next one,
6 please.

7
8 BY MR. MILLER:

9 Q. And the final location that we have in the
10 video here is what you refer to is Brubaker Farm why
11 do you call it that?

12 A. It's Brubaker Farm. That's all I've ever known
13 it by.

14 Q. Does Mr. Brubaker live there?

15 A. Yes, sir. It's on the mailbox.

16 All right. We're in the air and actually
17 flying over where Mr. Homer James was taken into
18 custody. This is the wooded area, the cutdowns, the
19 green there was a field. This is Ehrhardt Road out
20 here. We had to come to this dirt road to get to
21 where he was taken into custody. The Govan Fire
22 Department would be to our right going back into
23 Barnwell there. The drive is right here, comes all
24 the way in here.

25 The George's Creek Church sits right in this

1 area. Pan around and the Govan Fire Department
2 would be right in here. Again, all of this is cut
3 over wooded area, all of this is really. Olar would
4 be over to our right. Again the Govan Fire
5 Department would be up this way.

6 That small line there is the tower off of
7 Thunder Road which I spoke of. And due to the
8 lighting, you can't really make out over in this
9 any -- the tower from Olar due to the lighting
10 hitting the camera.

11 Q. Now, panning back to the field --

12 A. And right here is where the tracking team
13 brought Mr. Homer James out of the woods.

14 Q. And where those vehicles are parked there, is
15 that approximately where your vehicle was parked
16 that day?

17 A. Yes, sir.

18 Q. Okay.

19 A. And we actually land our helicopter over in the
20 corner.

21 Q. Agent Croft, you were physically present
22 whenever the tracking team brought Mr. James out of
23 the wood line and into the field, the last field
24 that we saw?

25 A. Yes, sir, I was there.

1 Q. Or shortly thereafter, you were there with
2 them?

3 A. Yes, sir, I was.

4 Q. When they brought him out of the wood line,
5 describe what kind of condition he was in. What did
6 he look like?

7 A. He was extremely wet, had on no shirt, had on
8 dark-colored pants, he was tired, he needed water.

9 Q. Was he in handcuffs at that time?

10 A. He was in handcuffs when he was walked out of
11 the woods.

12 Q. When he got out of the woods, describe what
13 happened next as far as who was there.

14 A. I know myself, I was there, Chip Steppe was
15 there, Stevie Sly was there, Cukarillo was there, I
16 recall Neal Nelson being there. They were the
17 tracking -- or that was the guys that came in from
18 the tracking.

19 I was the first officer to get to the tracking
20 team. I was the first agent outside of the tracking
21 team to get there.

22 Q. Okay. So there were four people on the
23 tracking team, Mr. James, and you were the first
24 agent to get there who really wasn't part of the
25 tracking team, just a SLED agent?

1 A. Yes.

2 Q. Was the helicopter there whenever you got
3 there?

4 A. No, it was not.

5 Q. Was it coming in already?

6 A. Yes, it was.

7 Q. And what was Mr. James' demeanor? What was his
8 attitude whenever he came out of the wood line?

9 A. He had a good attitude. He was talking. We
10 were just -- casual conversation.

11 Q. What happened -- you said that he was thirsty.

12 A. Yes.

13 Q. Did anyone provide him with water or Gatorade?

14 A. We did. We sat him on the ground un-handcuffed
15 Mr. James, we provided him with water to drink and
16 had casual conversation.

17 Q. Do you recall the substance of the conversation
18 that was had with Mr. James?

19 MS. ALVES: I'm going to renew my previous
20 objection.

21 THE COURT: Noted.

22 A. Yes, sir, I do recall some things that were
23 said. Yes, sir.

24 Q. And -- well, let me go back a little bit. Was
25 Mr. James in custody at that point?

1 A. He was in custody at that point.

2 Q. Okay. And before he is questioned, he needs to
3 be read his Miranda rights; correct?

4 A. That is correct.

5 Q. Did anybody read him his Miranda rights?

6 A. No, sir, we did not.

7 Q. Why did you not read him his Miranda rights?

8 A. He wasn't being questioned.

9 Q. Okay. You provided him with water?

10 A. We did.

11 Q. Un-handcuffed him?

12 A. Yes, sir.

13 Q. Did anyone make any comments about Mr. James'
14 appearance?

15 A. Someone made a comment concerning his physical
16 condition. He was in good shape.

17 Q. And did you or someone else ask him how old he
18 was?

19 A. I think I was the one who asked him how old he
20 was and he told me he was 53 years old.

21 Q. Did that surprise you?

22 A. It did.

23 Q. Why did it surprise you?

24 A. Because of his ability to run like he ran ahead
25 of the tracking team.

1 Q. And were any other comments made relative to
2 Mr. James' time whenever he was running from the
3 tracking team?

4 A. Mr. James made mention that we had some of the
5 biggest rattlesnakes he'd ever seen. And back to
6 his condition, he said that he'd boxed in his past
7 is the way he stayed in shape.

8 Q. Did -- at any time did anybody start
9 questioning him about what had gone on at the bank,
10 the robbery of the Enterprise Bank in Denmark?

11 A. No, sir. No time was it discussed, no time was
12 it asked while he was in custody.

13 Q. Well, why was -- why were y'all in that field?
14 What was the point of being in that field?

15 A. That was the closest location of where the dog
16 team tracked --

17 Q. Okay.

18 A. -- and taken him into custody.

19 Q. And once he was in custody, what were y'all
20 doing sitting there waiting around? What are you
21 waiting for?

22 A. We were waiting on a transport vehicle to come
23 and make the transport.

24 Q. And where were they going to transport him to?

25 A. To Bamberg County.

1 Q. Okay. You mean --

2 A. Detention center. Sorry.

3 Q. Okay. I want to show you what's been marked
4 for identification as State's Exhibit 80 and ask you
5 if you can identify what that is.

6 A. Yes, sir. This is going to be a picture of the
7 area where we brought him out and the guys sitting
8 on the ground drinking water.

9 Q. And does that picture fairly and accurately
10 depict how it was that day when you were out there
11 with Mr. James?

12 A. Yes, sir, it does.

13 MR. MILLER: Your Honor, at this time the State
14 would move to introduce State's Exhibit 80.

15 MS. ALVES: I'd renew my previous objection.

16 THE COURT: Noted. It's admitted.

17 (State's Exhibit No. 80 admitted into
18 evidence.)

19 BY MR. MILLER:

20 Q. So these people in this picture, do you know
21 who those SLED agents are?

22 A. One is Chip Steppe, one is Cukarillo, one is
23 Stevie Sly, and one, I think, is Neal Nelson.

24 Q. So it appears pretty casual with everybody
25 sitting around. Is that unusual?

1 A. That's kind of what we did that day. You know,
2 we let him get some rest, let him drink some water,
3 made sure he was okay. We had already landed our
4 helicopter in that picture.

5 Q. That's in the background. There's the
6 helicopter there?

7 A. Yes, sir.

8 Q. Did Mr. James make any other comments aside
9 from the comments about the rattlesnakes and being
10 tired and wanting water?

11 A. Again, during casual conversation --

12 MS. ALVES: I'd object to this based on my
13 previus objections.

14 THE COURT: Noted.

15 A. -- sitting there talking, he made the comment
16 "this is the stupidest thing I've ever done." He
17 also made the comment "it wasn't even a real gun."

18 Q. Agent Croft, we had heard some testimony -- who
19 was the lead agent on this case for SLED?

20 A. David Williams.

21 Q. And how would you describe your role with
22 regard to this investigation?

23 A. I was called in to support or help David
24 Williams.

25 Q. And the fact that you grew up in this area,

1 knew all these places, knew all these roads, was
2 that -- was that something that David Williams was
3 relying on, you knowing where everything was?

4 A. I'd say he probably was.

5 Q. And would you characterize your involvement as
6 being kind of the assistant to David Williams for
7 the purposes of this investigation?

8 A. Yes, sir.

9 Q. And when an agent is the, quote, lead agent on
10 a case with SLED, does that agent ask other agents
11 to do things for him?

12 A. Yes, sir, they do.

13 Q. And after those things are done, you report
14 back to him, don't you?

15 A. Correct.

16 Q. And he puts it all together and here it is?

17 A. He does the final report, yes, sir.

18 MR. MILLER: No further questions.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MS. ALVES:

22 Q. Investigator Croft, you testified that you've
23 been working at SLED for four years; is that right?

24 A. A little over four years, yes, ma'am.

25 Q. And how long have you actually been in law

1 enforcement?

2 A. Since 2004.

3 Q. Since 2004?

4 A. Yes, ma'am.

5 Q. So you would have gone to the South Carolina
6 Criminal Justice Academy?

7 A. Yes, ma'am.

8 Q. And you would have had classes in
9 investigation?

10 A. Yes, ma'am.

11 Q. Classes in report-taking?

12 A. Yes, ma'am.

13 Q. Or report-writing?

14 A. Yes, ma'am.

15 Q. And the importance of writing a report?

16 A. Yes, ma'am.

17 Q. You would have had classes in taking statements
18 from witnesses?

19 A. Yes, ma'am.

20 Q. And they -- they discuss that a good bit at the
21 academy, don't they; how to write reports and take
22 statements and investigate cases?

23 A. They discuss report-writing.

24 Q. And you have a class on how to do a report,
25 don't you, how to write reports?

1 A. They have classes concerning report-writing,
2 yes, ma'am.

3 Q. And it's -- they -- doing a report is actually
4 pretty important when you're investigating a case,
5 isn't that right?

6 A. Yes, ma'am.

7 Q. And how many cases would you say you've
8 investigated?

9 A. I don't have any idea.

10 Q. A lot?

11 A. A lot.

12 Q. And in the four years that you've been at SLED,
13 how many cases have you investigated?

14 A. A lot.

15 Q. A lot. In 2014, how many cases did you
16 investigate?

17 A. I don't have any idea. I don't have a number.

18 Q. Several? More than one?

19 A. Yes, ma'am.

20 Q. In 2015, how many cases did you investigate?

21 A. Again, I don't know a number. It was more than
22 ten probably.

23 Q. More than ten?

24 A. Yeah.

25 Q. In 2015?

1 A. Uh-huh.

2 Q. All right. Now, in these -- I don't know how
3 many days we've had in 2016, but up until right now
4 in 2016, how many cases have you investigated?

5 A. I think I'm on my eighth case so far this year.

6 Q. And in all of those cases, you've had to do
7 reports?

8 A. I was the lead agent, yes, ma'am. I would be
9 doing the report.

10 Q. Okay. So you just told us about the cases that
11 you were the agent on. How many other cases have
12 you assisted on since June of 2014?

13 A. Again, I have no idea the number of cases. We
14 assist each other often.

15 Q. So you'd agree it's a pretty good number?

16 A. Yes, ma'am.

17 Q. And because of that, because you have, you
18 know, high numbers of cases that not only are you
19 the lead investigator on but that you also assist
20 on, it's important to take notes on these things,
21 isn't it -- to take notes about your work on cases,
22 isn't it?

23 A. When we're doing an official interview, we're
24 doing the actual investigative part, yes, ma'am, we
25 do make note and make a report of that.

1 Q. All right. And when you're doing work on a
2 case, you don't make notes, make reports about it?

3 A. I'm sorry?

4 Q. If you're taking -- if you're assisting on a
5 case, you don't take notes and make a report of what
6 you've done?

7 A. I may not take written notes of what -- the
8 steps I took to get where I'm at. I will -- if it's
9 part of the official investigation, yes, ma'am, we
10 do document by doing reports.

11 Q. Okay. So you would document what work you've
12 done?

13 A. I would document -- if I make an official
14 interview or I'm sent to interview to assist another
15 agency, we either take a written statement from the
16 person we're interviewing or we do what is known as
17 an MLI, if it's an official interview.

18 Q. Okay. And you said you were assisting agent
19 David Williams with this case?

20 A. I did assist David Williams, yes, ma'am.

21 Q. Okay. And, in fact, you coordinated with and
22 talked to the other officers who were involved?

23 A. At the time -- the situation was fluid. David
24 had things going on that he was dealing with at the
25 bank, dealing with with crime scene, and I took the

1 load off him in order to try to help with the
2 tracking team and the tracking of the individuals
3 that fled from the car.

4 Q. In your testimony when you were talking about
5 the -- going through the video, you talked about
6 locations where Captain Williams went, that you
7 talked to Captain Williams.

8 A. Yes, ma'am. The night of the 6th or the
9 afternoon of the 6th when I got involved on the
10 second day of the tracking, I did speak with Captain
11 Williams right out in front of the Govan Fire
12 Department.

13 Q. And he gave you the information that he had up
14 to that point?

15 A. Yes, he did.

16 Q. And you said you were actually out working on
17 the perimeter and came and met with the dog team
18 when they had Mr. Homer James and they brought him
19 out of the woods?

20 A. Yes, I did.

21 Q. Okay. And have you done any other work in this
22 case?

23 A. Not since that, no.

24 Q. Not since then?

25 A. No.

1 Q. Okay. And you were present when Leon James --
2 you said you were present when Leon James was
3 arrested?

4 A. I was on the perimeter when he was taken into
5 custody.

6 Q. So you saw him?

7 A. I did not see Mr. Leon James.

8 Q. You didn't see him. Okay. What about
9 Mr. Lewis Garvin? Were you present when he was
10 arrested?

11 A. I was not present when he was taken into
12 custody but at -- where he was taken into custody.
13 But, again, I was there and I was on perimeter.

14 Q. So you never saw Mr. Lewis Garvin?

15 A. No.

16 Q. Okay. Then you came in when Mr. Homer James
17 was arrested?

18 A. Yes.

19 Q. Okay. And it's your testimony that Mr. James,
20 when you were sitting around waiting for the
21 transport officer to come, that he made these
22 comments that you've just testified about?

23 A. Yes, ma'am.

24 Q. Well, when exactly were these comments made;
25 before the helicopter came or after the helicopter

1 came?

2 A. Again, we were sitting around, giving him
3 water. Everybody was drinking water. We'd ran
4 for -- well, they had ran, I hadn't. They ran for
5 several hours. The dog team was dehydrated or
6 needing water. The conversation was -- it was just
7 casual conversation. He was un-handcuffed and the
8 comments were made.

9 Q. All right. Well, what I was asking you was
10 when. Was it before the helicopter came or was it
11 after the helicopter came? Do you not remember?

12 A. I don't recall exactly when during the sitting
13 in the field the comments were made. I just
14 remember the comments being made. They stuck out to
15 me.

16 Q. Okay. Was it made before or after the picture
17 in State's 80? Were the comments made before or
18 after this picture?

19 A. Again, I don't know.

20 Q. Okay. And these comments were not recorded,
21 were they?

22 A. No, they were not.

23 Q. And, in fact, you're saying that Mr. James told
24 you this was the stupidest thing he'd ever done in
25 his life or something like that?

1 A. Mr. James didn't tell directly me anything. It
2 was comments that were made in casual conversation
3 talking about the snakes, talking about his
4 condition, his boxing, and it was comments that was
5 made. We were not questioning him in any manner.

6 Q. You're saying that he said that it wasn't a
7 real gun and this was the stupidest thing he'd ever
8 done?

9 A. That's correct.

10 Q. All right. Where did you document that?

11 A. Again, we were not interviewing him, we were
12 not trying to get any information from him, we had
13 not even discussed why he was in custody. We were
14 sitting around drinking water, making sure Mr. James
15 was okay, and these are some of the things that I
16 can recall that he did say.

17 Q. So you're recalling this after two and a half
18 years?

19 A. Yes, ma'am, it stuck out to me.

20 Q. It didn't stick out important enough for you to
21 write it down and do a statement about it?

22 A. It stuck out to me because I know we've got big
23 snakes in this area. It stuck out now that I do
24 know that it was a BB gun.

25 Q. Sir, yes or no, did you write a report?

1 A. No, I did not.

2 Q. And you didn't, in fact, tell Investigator
3 Williams about the statements, did you?

4 A. Yes, I did.

5 Q. You did?

6 A. I did.

7 Q. Do you know if he wrote them --

8 A. I don't know.

9 Q. Okay. And, in fact, you never -- you didn't do
10 a witness statement at all writing down this is what
11 I heard this man say?

12 A. I did not. It was not a formal interview. No,
13 ma'am, I did not do a report.

14 Q. Even though it was not a formal interview, it
15 was something that you heard. And you didn't write
16 any type of statement at all saying --

17 A. No, ma'am, I did not.

18 Q. Okay. And, in fact, do you even recall when
19 you told the solicitor about these statements?

20 A. Do I recall when I told the solicitor?

21 Q. When you told the prosecutor that my client had
22 made these statements you're saying he made?

23 A. It was probably during trial prep. I don't
24 know -- I don't know exactly when I told him.

25 Q. Okay. During trial prep?

1 A. I don't know when it was. It was the previous
2 case.

3 Q. Okay. Now let's talk about that. This case
4 was actually supposed to be tried last November. Do
5 you recall that?

6 A. I recall going to trial last year.

7 Q. Okay. And -- well, I'm talking about Mr. Homer
8 James; he was supposed to go last time.

9 A. I don't know what's on the trial docket, so I
10 don't know whether Mr. Homer was supposed to be
11 tried or not.

12 Q. All right. But you tried this case -- you
13 talked to the solicitor about these comments while
14 you were preparing for trial?

15 A. That's correct.

16 Q. Okay. And prior to that, you had never
17 discussed this with the prosecutor?

18 A. I told the lead investigator what was said down
19 in the bottom of the field, and that was the end of
20 it.

21 Q. And you had the opportunity to -- could you
22 have recorded the statements that were being made
23 when he was talking about those?

24 A. My car is not equipped with camera equipment
25 and I didn't have a recording device on me. And it

1 was casual conversation, I had no reason to record
2 it.

3 Q. Okay. And if David Williams did not put this
4 in his report, have you ever discussed it with him
5 why he didn't?

6 A. No, I did not. I don't know what's in David
7 Williams' report.

8 Q. You've never reviewed the report?

9 A. David Williams' written report?

10 Q. Yes.

11 A. No, ma'am, I have not.

12 Q. Okay. And you didn't do a report of your own?

13 A. I did not.

14 Q. And you've testified about these statements
15 previously haven't you?

16 A. I have.

17 Q. In fact, you testified about this in a hearing
18 on Monday, didn't you?

19 A. Yes, ma'am, I did.

20 Q. And, in fact, you said at that hearing that you
21 didn't do a report about this or mention it to David
22 Williams because you didn't think it was that
23 important; didn't you say that?

24 A. I don't think I testified to those words, no,
25 ma'am.

1 Q. Do you recall what you said?

2 A. You asked did I tell David Williams -- did I
3 tell the lead investigator, and I said yes.

4 Q. Did -- well, didn't you, in fact, say that you
5 didn't feel it was that big of a deal?

6 A. I did because it wasn't a formal interview. We
7 were sitting around casually, drinking water,
8 waiting on transport vehicle.

9 Q. And you didn't think what he said was that big
10 of a deal?

11 A. At that time, no, I did not.

12 Q. No further questions.

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. MILLER:

16 Q. Agent Croft, when -- on the 6th of June, that
17 night when Leon James was taken into custody, you
18 were on the perimeter; correct?

19 A. That is correct. Yes, sir.

20 Q. And how many people did you think y'all were
21 trying to take into custody?

22 A. My understanding, it was approximately three
23 people.

24 Q. Okay. So when he was taken into custody, Leon
25 James, you didn't come off the perimeter?

1 A. No one broke perimeter to go to where Mr. Leon
2 was at.

3 Q. And when Lewis Garvin was taken into custody,
4 you didn't break perimeter at that time either, did
5 you?

6 A. No, we did not.

7 Q. But when the defendant was taken into custody
8 and all three people were in custody, isn't that
9 when you broke perimeter?

10 A. That is correct. Yes, sir.

11 Q. And that's when you went to the --

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

13 Q. And you talked about this being a casual
14 conversation with Mr. James and not being the
15 subject of any questioning. Was anybody
16 threatening -- you or anyone else threatening
17 Mr. James?

18 A. No, they weren't.

19 Q. Was anyone trying to intimidate him in any way?

20 A. No, they weren't.

21 Q. Did anyone promise him anything in order to get
22 him to make some statement?

23 A. No, sir.

24 Q. Did anybody withhold anything from him in order
25 to get him to make some statement?

1 A. No, sir, we did not.

2 Q. No further questions.

3 THE COURT: May this witness be excused?

4 MS. ALVES: Judge, one moment. May I ask a few
5 questions?

6 THE COURT: Yes, ma'am.

7

8

9

RE CROSS-EXAMINATION

10 BY MS. ALVES:

11 Q. Okay. You had information about this
12 robbery -- you got information, at least initial
13 bear bones information, about what happened in the
14 robbery when you got out to the scene and when you
15 went out to the perimeter?

16 A. When I got to the scene, I knew there had been
17 a bank robbery at Denmark Enterprise Bank.

18 Q. And you were told two people went into the
19 bank?

20 A. I wasn't given any information from that point
21 at the bank.

22 Q. Okay. Why were you only looking for three
23 people?

24 A. Through the -- what crime scene was doing while
25 the tracking team was there, it was determined that

1 we were looking for at least three people.

2 Q. At least three?

3 A. That was my understanding at that particular
4 time. Yes, ma'am.

5 Q. Well, that makes sense, one driver and two
6 people in the bank. But why only three? What if
7 there was somebody else? Why did you stop -- why
8 did the investigation stop at three?

9 A. We had no evidence that there was a fourth
10 person to continue to look for a fourth person.

11 Q. Okay. Thank you. No further questions.

12 THE COURT: Thank you, sir. You may be
13 excused.

14 MR. MILLER: The State would ask that, Your
15 Honor.

16 THE COURT: Madam forelady, let's take about a
17 ten-minute break and then resume the testimony.

18 (The jury exits the courtroom at 11:36 AM.)

19 (Short break.)

20 THE COURT: Mr. Weeks, are you ready?

21 MR. WEEKS: Yes, we are, Your Honor.

22 THE COURT: Ms. Alves, are you ready?

23 MS. ALVES: Yes.

24 THE COURT: Bring the jury in, please.

25 (The jury enters the courtroom at 11:54 AM.)

1 MR. WEEKS: Thank you, Your Honor. The State
2 would call Captain Chip Steppe.

3 CHIP STEPPE
4 being first duly sworn, testified as follows:

5 THE WITNESS: Yes, ma'am.

6 DIRECT EXAMINATION

7 BY MR. WEEKS:

8 Q. Chip, if you would, give your full name for the
9 Court.

10 A. Claude Harris Steppe, IV.

11 Q. And you go by Chip?

12 A. Chip.

13 Q. That's what I'm going to call you.

14 A. Okay.

15 Q. Where are you employed, Chip?

16 A. South Carolina Law Enforcement Division.

17 Q. And how long have you been employed with what
18 we call SLED?

19 A. October, 16 years.

20 Q. I'm sorry?

21 A. October, 16 years.

22 Q. Okay. And prior to being employed with SLED,
23 did you have any law enforcement experience?

24 A. Yes, sir. I started my law enforcement at
25 Cayce Department of Public Safety. I left there,

1 worked a few months at the Governor's mansion, and
2 then worked for DNR -- SC DNAR, Department of
3 Natural Resources, for five and a half years.

4 Q. During your career, what kind of work have you
5 done for law enforcement, predominantly?

6 A. Predominantly, tracking.

7 Q. When you say tracking, be more specific. I'll
8 give you a chance to humble back a little bit about
9 what you do, but --

10 A. Sure.

11 Q. -- I want you to tell this jury what you've
12 done in your career.

13 A. Majority of my career, started at DNR running a
14 tracking dog, which could be -- which started off
15 with a Labrador Retriever tracking people. And when
16 I got to SLED, I went to a bloodhound red-bone
17 cross-bred dog. So tracking to me is using a dog to
18 physically track somebody on the ground by tracking
19 the human scent.

20 Q. Do you have any idea how long this type of
21 skill has been around?

22 A. Forever. I mean, as long as I could ever --
23 anything you've ever read has been around.

24 Q. Well, I'll be a little more specific. Do you
25 know when SLED first started a tracking team?

1 A. Chief Strom bought the first bloodhound for
2 SLED back in the early '70s, I believe.

3 Q. And has SLED continuously provided dog tracking
4 assistance to agencies seeking assistance?

5 A. Yes, sir, since he started the program, it
6 implemented then. SLED has maintained the program,
7 we do our own breeding of dogs, we cross-breed to
8 get the traits we look for, more endurance, better
9 noses, and we've done that ever since Chief Strom
10 started the program.

11 Q. And how about you, Chip? What have you done
12 for the 16 years you've been at SLED?

13 A. I came to the tracking team, which is the
14 bloodhound tracking team, back in 2000. I ran dogs
15 for five and a half years doing that. I came to the
16 region, did a little bit of regional investigation
17 for about nine months, and then I went to fugitives.
18 Fugitives is basically apprehension of people that
19 are wanted on various charges around the state. I
20 did that two years and then I got transferred back
21 to the tracking team.

22 From 2008 on, I've been at the tracking team
23 working as either a handler or eventually becoming a
24 lieutenant over the tracking team.

25 Q. And now you're captain over the tracking team?

1 A. Yes, sir. Now I'm the captain over tracking,
2 aviation, SWAT, and communications.

3 Q. During the course of the 16 years and then five
4 years with DNR, do you have any estimate as to the
5 number of tracking events or calls that you've been
6 out on?

7 A. And it's a guess. Probably well over 500
8 probably, just a guess.

9 Q. And when you say -- well, do y'all train on a
10 regular basis?

11 A. Yes, sir. As a tracking agent, they have to
12 train weekly, which usually encompasses at least two
13 or three days a week for tracking, which means
14 they're going out and they're running out, laying
15 trails, which are people who actually walk through
16 the woods, lay down trails.

17 And they're doing that two or three times in
18 the morning, and then that's done two or three times
19 a week. So you're getting multiple dogs done during
20 the day, because we have a pretty large kennel.
21 We're probably sitting on about 12 dogs right now;
22 six dogs are dogs that are online, meaning that
23 if -- I'm capable right now if I got three calls at
24 one time, I can send two trackers per vehicle with
25 two dogs per vehicle. And I'm prepared for that.

1 So it takes a lot of time to maintain these dogs.

2 Q. How about agents themselves? How many agents
3 do you have working under you in dog tracking right
4 now?

5 A. So I have six actual tracking agents, they're
6 special agents. They range anywhere from agent 1 to
7 agent 3, and then I have one supervisory agent
8 lieutenant running tracking.

9 Q. Back in 2014, June, was it a similar setup
10 then?

11 A. Yes, sir, same setup.

12 Q. Tell me about your training that you personally
13 have done. Have you trained other agencies or given
14 speeches or...

15 A. Yes, sir. So at SLED we kind of -- we are
16 allowed to be trained ourselves and we're asked to
17 be trained to assist in training other local law
18 enforcement agencies.

19 So over the years, I've become an instructor, a
20 basic skills instructor, which means I can instruct
21 anything that is certified through the academy and
22 beyond. So I instruct -- I'm firearm instructor,
23 rifle instructor, pistol instructor, but I also
24 teach some tracking classes throughout the state.

25 I've taught stuff in Georgetown County, Horry

1 County, Chesterfield County, I've helped Orangeburg,
2 numerous agencies I've been to help out.

3 Q. And SLED, as a general rule, go on a call
4 anywhere in the state, will they not?

5 A. I've been in South Carolina, North Carolina,
6 and Georgia on dog calls.

7 Q. Okay. Part of the dog tracking that you do,
8 are your agents taught and you taught how to hand
9 track, is what I would call it?

10 A. Yeah, or man track is what we call it too. So
11 when we track a person, you can totally rely on a
12 dog 100 percent. And a lot of agencies do, but the
13 way we're taught, and it comes back to the lineage
14 of back in the '70s, is we man track.

15 And when we man track, we look for human sign
16 that tells us that not only do we feel confident our
17 dog is doing good, but there's also human signs
18 showing us that the dog is actually on the trail,
19 which could mean it could be pushed, so when you go
20 through bushes or weeds and you push them to the
21 side as you walk through them and the bottom leaves
22 are turned up, that's push.

23 So we look for push and then we also look for
24 human sign, which could be visible tracks, tracks in
25 area s that shouldn't be in areas. If I find a

1 track crossing a ditch, the bottom of the ditch and
2 the middle of sand and it's not washed out and it
3 looks like it's fresh, which means it's soft and
4 easy to the touch, it tells me a human has been
5 through there recently. So we use that to verify
6 our dogs. It's just two parts of the way of
7 tracking for us.

8 Q. There are times when your dog can't follow
9 trails?

10 A. Absolutely. They're dogs, they have issues
11 sometimes.

12 Q. Okay. Tell me about how weather conditions
13 affect dog tracking?

14 A. So when it rains, it -- a lot of times on the
15 man tracking side it will wash tracks away. And
16 then once those tracks are washed away and it dries
17 back out where it's not physically raining, if
18 somebody leaves a track in a sand, dirt environment
19 like that, it's real visible, it shines up really
20 good, because the softer the ground is from the
21 moisture, the better the track shows up. So we
22 really like working in clay, sand, good nice dirt
23 areas because whoever we're tracking is going to
24 leave a good sign for us.

25 Q. Chip, have you been qualified as an expert in

1 dog tracking before?

2 A. Yes, sir, I have.

3 Q. In the circuit courts of this state?

4 A. Yes, sir.

5 Q. Have you testified as such before?

6 A. Yes, sir.

7 MR. WEEKS: Your Honor, I'd move, at this time,
8 to qualify Captain Chip Steppe as an expert in dog
9 tracking with emphasis on dogs and humans as part of
10 the umbrella of his dog tracking expertise.

11 THE COURT: Any voir dire?

12 MS. ALVES: No, sir.

13 THE COURT: Do you stipulate that he's an
14 expert in dog tracking?

15 MS. ALVES: I don't have any objection to it.

16 THE COURT: Thank you, ma'am.

17 All right. Ladies and gentlemen, if you recall
18 earlier in this case I told you about experts. In
19 this case, Captain Steppe will be deemed to be an
20 expert in the area of dog tracking. As I told you
21 earlier, expert testimony is like any other
22 testimony you'll hear in this case; you may accept
23 it, you may reject it, or give it as much as weight
24 you think it deserves.

25 All right, Mr. Weeks.

1 MR. WEEKS: Thank you, Your Honor.

2 BY MR. WEEKS:

3 Q. Chip, I call your attention back to -- well,
4 let me ask you a little more about dogs in general.
5 Tell me how a dog or how y'all train dogs to acquire
6 sent, follow scent.

7 A. So we're different, like I said, than a lot of
8 agencies. We build our own program from a puppy up.
9 So we take a breed of a bloodhound, a red bone,
10 sometimes a blue tick and we get the nose of a
11 bloodhound, the endurance of a red bone, and the
12 stamina of the other dog.

13 But what we do is we breed them together and
14 once we get a breed that we like, we stay with it.
15 So once we breed our dogs -- and we do it once a
16 year, once every two years -- we get a litter of
17 puppies. And with those litter of puppies, at about
18 six weeks what we do is we take them out and we play
19 with them, and it's a game.

20 We get them to chase us around, you know, run
21 around areas, let the dog follow behind us and just,
22 you know, give them affection. And at six weeks
23 old, we let them catch us a lot. We lay on the
24 ground, we let them lick us and play with us and do
25 what puppies do.

1 But from that, we build from that. And each
2 time we put a little more distance between the
3 catch, which allows the dogs to build up that desire
4 to want to catch you. So that builds and continues
5 to build.

6 And when they get about six to eight months
7 old, we start separating out time on them, which
8 means we'll put them in the back of a Suburban,
9 we'll walk out to the back of the Suburban, open the
10 back door of the Suburban and talk to them at the
11 back of the gate, you know, kiddy talk, loving them,
12 you know, hey, puppy, you know, being sweet. And
13 then we'll run off from them and let them sit there
14 for a few minutes and let them think, well, he's
15 left me, he's left me, he's left me.

16 Then one of the guys who is not running the
17 track, not running trail, will come up and open the
18 pin and let the dog out and the puppies will go and
19 try to find me. The ones that make it are the ones
20 that actually put their noses down. The ones that
21 don't make it don't figure out that they got that
22 sense to track me.

23 So once they get out and they start working,
24 we'll let them do -- and the initial starts are
25 where we do a straight line. The dogs will get

1 behind you and you'll do a straight line and then
2 once they find you, you praise them and love them.

3 Next time you put a turn in it where they go
4 past where you were and they got to circle to figure
5 out where you left from and then using their nose,
6 pick you back up. So this process goes on for a
7 year. And then once they get a year old, we
8 generally determine whether or not they're going to
9 make the team or not make the team, because they're
10 an agent to us, they're one of our guys.

11 So what happens is, we start cutting them. And
12 when I say cutting them, we have people that are on
13 a list who want dogs who, you know, want them, we
14 have other agencies that want them who think if they
15 spend a little more time than we do, they can have
16 them.

17 So, generally, if I have a litter of ten
18 puppies, I might get two out of it. That's usually
19 all I get. And then the other dogs go out and
20 they're given to other agencies. And we have dogs
21 right now that are bread through our program that
22 are in Marlboro, Horry County, I mean, counties
23 throughout the state.

24 Q. Well, getting back to the nose-to-the-ground
25 trailing, tell the difference. How do these dogs

1 process a trail? Are they looking up ahead to see
2 who's running ahead of them?

3 A. No. Once they learn the process of using their
4 nose -- you know, and this is -- maybe most people
5 don't know this: But as you're sitting here, you're
6 losing dead skill cells and dead skin cells are
7 decaying and they become raft. And that's what a
8 dog --

9

10

11 Q. They become -- you got to slow down a little
12 bit for me.

13 A. Okay.

14 Q. I know you get excited when we talk about this.

15 A. Yeah. So --

16 Q. They become what?

17 A. They become raft.

18 Q. Raft?

19 A. Raft.

20 Q. Raft on a river?

21 A. Like raft of dead skill cells.

22 Q. Okay.

23 A. So -- and for me it's real easy. I got dark
24 skin, so when I scratch my hand, you'll see white on
25 my hand which means I just scratched dead skill

1 cells off, right, so your decaying dead skin cells.
2 Everyone has their own unique smell to them, meaning
3 that, you know, either you use a type of perfume,
4 you bathe with stuff, your house smells a certain
5 way or your car smells a certain way. Everybody
6 gets their own unique smell.

7 So our dogs are trained to smell that
8 individual person we put them on. So wherever they
9 start -- so if they start on a vehicle and they
10 start on the passenger's side, more than likely
11 they're going to stay on that person throughout the
12 trail. So they're smelling the dead skin cells that
13 are decaying on the ground as you're leaving that
14 scent as you go. So that's what they're smelling.

15 And the bloodhounds are different in the fact
16 that they got really long ears. And as they're
17 tracking, their head goes down, and their ears are
18 basically cupping that scent. And as their ears
19 flop and they're pulling that scent up in their
20 nose, it comes up in their nose and that's basically
21 how they're using it.

22 Q. So they're not looking at the ground following
23 footprints; they're following scent?

24 A. They're following scent. And the stronger the
25 scent is, the more excited they get. So if they

1 start a track that's two hours old, they'll start it
2 like normal, work it, but the closer you get to that
3 stronger scent, because not only the raft -- the
4 skin cells are there, but the raft is there, the
5 person is probably there. You can tell a difference
6 in the demeanor of the dog; they get real excited,
7 they start wagging their tail.

8 Just like when you come home, your dogs are
9 smelling you and you get to the door, that dog is
10 wagging their tail, they know you're home because
11 they smelled you before you came in the door. It's
12 the same thing.

13 Q. Comparatively speaking, the dog's sense of
14 smell is how much more powerful than a human?

15 A. I Googled it one time and they said it's like a
16 million times more powerful. And that's not what
17 Chip says, that's what Google says.

18 Q. Well, describe how you put a dog on a trail.
19 Just be more specific and tell me how you put them
20 on the trail in this case.

21 A. So on this case, so what these guys would have
22 done is, if they had a vehicle that the guys had
23 fled from, they would likely either try to start on
24 the best side of the vehicle where they had the most
25 advantageous way of getting from the vehicle.

1 Now if they actually had a location and they
2 said this guy ran through this door right here and I
3 saw him cross this threshold, what I we would do is
4 we'd take the dog and work him from point A to point
5 B across the threshold, and the freshest human scent
6 that was going across this threshold is what our dog
7 would start on.

8 Now, of course, if we had a jacket, a hat, a
9 pair of shoes, something that the suspect or person
10 left behind, that's what we'd start them on. And
11 they would start off of that and then work from
12 there.

13 Q. If you got three people running in a cluster,
14 how does a dog track those three people?

15 A. So what happens is, more than likely -- and,
16 you know, I can't tell you 100 percent how the dog
17 does it. But more than likely what happens is,
18 wherever that dog or that initial person that that
19 dog puts its nose on, meaning if I started that dog
20 on the passenger's side of that car or the back seat
21 or wherever, the dog could have gone throughout the
22 car and the person that he decided to pick up on is
23 the person that he's going to track. They will lock
24 into that one person.

25 So if all three of those people went in one

1 direction and then split, he's going to stay with
2 the person that he's been scenting on initially.
3 And that's the point of scent discrimination is
4 being able to determine, you know, if one of my guys
5 walks in front of this trailer, he's going to ignore
6 my guy and stay on the original scent he was on.

7 Q. So if you've got one guy or five guys running,
8 the dog is really locked in on one scent?

9 A. Yes, sir.

10 Q. Unless y'all pull him off that one and take him
11 and put him on another that scent?

12 A. Yes, sir. The only way we'd try to do it is,
13 let's say we ran and caught one person, and after we
14 caught that one person, we could come back and if we
15 had another track or another area, we could come
16 back and put the dog back down on that track and
17 start another track and work that way.

18 Q. When you're saying track, you're talking about
19 a scent trail, aren't you?

20 A. Yes, a scent track, not necessarily a print.
21 Yeah. I'm talking about a track. A track, to me,
22 is something where a person goes off and I'm using a
23 dog to find them, not necessarily a human sign.

24 Q. Chip, tell us about the tracking call on June
25 5th, 2014 that y'all received. Describe your team

1 and the dogs and tell us what y'all did.

2 A. Well, generally when we get a call like this,
3 we send at least the number of guys that are on the
4 ground or more. So that particular day, we sent
5 four guys, including myself, and a BAT Team member.
6 A BAT Team member is a Bloodhound Assistance Team
7 member that come help us on the track. We sent five
8 that day.

9 I think I was kind of behind the team when they
10 came down. My team of two or three guys at the
11 time, when they came down, they started, I believe,
12 on the vehicle and near the vehicle of the original
13 incident, they put the dog down and they began to
14 track.

15 When I got up with the guys, they had already
16 started the trail, working in the direction they
17 were working. Well, when I got with them, they told
18 me what they had, they advised me that they had
19 three suspects on the ground, you know, they were
20 working in various terrains, and they had had a
21 couple little signs. And when I say signs, like
22 signs of tracks in the areas, stuff like that,
23 nothing real dominant or pertinent. But they were
24 running good, the dog was doing very well.

25 This went on for a number of hours and through

1 the evening. We ended up getting a big storm during
2 that night and it kind of washed and slowed a lot of
3 things down that night. So we all kind of held up a
4 little bit. The weather was not good. I remember
5 we had to rotate a dog out. Judy -- or Jessie, our
6 number one dog, had to be rotated out one time.

7 Q. Why?

8 A. She was getting too hot. She'd been on the
9 ground working a period of time. Because a lot of
10 times when you're running people, they don't just
11 run a straight line; they run down, they run back,
12 they make a circle, they come back, they go down,
13 they come back. A lot of times they're disoriented.
14 So it just -- you know, it's something that as a
15 handler you have to work through.

16 And you'll work through one spot where the
17 scent is real heavy where the person may have either
18 stopped and laid up or they made a couple circles
19 and you have to work through that and pick up the
20 scent going out of there. That's common, that's
21 what we do every day. So that day and that night is
22 no different. And we did that throughout the night
23 in various terrains.

24 Q. Okay. At some point did you say -- or the dogs
25 say no mas?

1 A. Yes. So during the night we -- we worked it
2 until about 2:00 in the morning. And we ended up
3 calling the stop a little after 2:00 that morning
4 because we didn't have any more -- there was nothing
5 that got us out of this area, we didn't catch them,
6 which is -- you know, it happens sometimes like
7 that. We didn't locate the suspects that night.

8 Q. In the area which you dead-ended in, so to
9 speak, can you describe that terrain or the areas
10 that you'd been through before you got there?

11 A. Well, the terrain varied; I mean, you had
12 cut-down, you had thick woods, you had ditches,
13 there was a house, a trailer close to the area, I
14 mean, it just varied. I mean, you'd go from one
15 minute you'd be in an open field to the next minute
16 you'll be into a cut-down. When I say cut-down, I
17 mean an area that's fresh cut from timber. So the
18 areas varied; ditches, you name it.

19 Q. So on June 5th early morning hours of June the
20 6th, y'all called it off?

21 A. Yes, sir.

22 Q. Before you call it off, do you mark anything,
23 you do anything?

24 A. Well, during that initial call, you know, if --
25 you know, if we need to, if we have a chance, we

1 document areas that we're working in and move on to
2 the next spot, if we got somewhere to go from.

3 But that night, we didn't have anything that
4 night that we thought would be a good starting point
5 and we had no information that they were still on
6 the ground, so we ended up leaving.

7 Q. So you went back to your homes?

8 A. Yes, sir, went home.

9 Q. Did you receive another call to come assist
10 Bamberg County?

11 A. Yes, sir. The next night about 10:30, I
12 believe, the call came out regarding the spotting
13 that they had -- the fire department, three suspects
14 that fled the scene. I was actually kind of
15 surprised that they were still in the area. That's
16 a whole nother day. And we responded to that call.

17 Q. When you responded to that call, who went?

18 A. Myself, Stevie Sly, Neal Nelson, Gerard
19 Cukarillo, Al Jarvis, Jeff Croft, and my aviation
20 unit which would be Lieutenant Maddox and Special
21 Agent Snow.

22 Q. Did you arrive at the Govan Fire Department?

23 A. We did.

24 Q. You got any idea what time you arrived there?

25 A. The call sheet says we went out at 10:30, so, I

1 mean, it generally takes us about an hour in an area
2 like to get there, so I'm just guessing 11:30 maybe.

3 Q. At night?

4 A. Yes, sir, at night.

5 Q. Tell me what you did when you got there on this
6 call.

7 A. We got there, we got information that there
8 were suspects seen fleeing behind this old trailer
9 toward a cornfield. We came in and we brought our
10 dogs in.

11 And what we do is if they don't have a
12 definitive location of where the suspects are last
13 seen running from, we'll cut the area. We'll call
14 it -- we'll box it, is what we call it. So we began
15 boxing the area. And this is with bloodhound
16 Jessie. She's our number one dog. She's a
17 third-generation dog from this group. So we cut the
18 area and boxed it, and she struck a trail leading
19 out of there.

20 And as we're going out of there, it moved into
21 a cornfield, and then we worked from the cornfield.
22 And when we do that, we're working from point A to
23 point B, advising people on the perimeter what we're
24 doing, we're advising our dog's locked into a trail
25 and we're advising the helicopter to get in front of

1 us because if they're out in front of us, they might
2 can pick them up before we do because they're out
3 there using the helicopter's FLIR, Forward Looking
4 Infrared, to --

5 Q. Explain that.

6 A. So on our helicopters we have something called
7 a FLIR; it's a Forward Looking Infrared. And what
8 it does is it looks for heat sources. And it does
9 really good at finding deer, I'll tell you that. We
10 see them a lot. But what it does is it looks for
11 heat sources, when they're out flying this
12 helicopter, they're looking for any heat source out
13 in front of us.

14 And if we are working a trail and they find a
15 heat source and it's directly in front of us, it's
16 likely a person, because if it's a deer, the deer is
17 taking off and running. You eliminate those really
18 quick and they can see the definition of a deer
19 versus a person. So they use that a lot of times to
20 locate a person.

21 A lot of people, when they flee, they'll bed
22 down. And when they bed down, they'll leave that
23 heat source. And even at times when they move and
24 they've been there for a period of time, that heat
25 source will remain right there in that spot. So

1 that's what the FLIR does for us.

2 Q. All right. So your dog is on the trail through
3 the cornfield. Describe the cornfield for us.

4 A. So the cornfield is like a normal cornfield;
5 it's wet, it's taller than I am. You know, I like
6 to say I'm five-ten, but I'm really not. I'm like
7 five-nine. But anyway, it's pretty tall.

8 So we're working through the cornfield. You
9 really can't see anything but the ground in front of
10 you and what your dog is doing. So we're paying
11 attention to the dog, she's working good. But you
12 know your dog is working good because her nose is
13 down, she's dragging you through the cornfield.
14 You're trying not to tear the man's corn up because
15 you're really pushing through it.

16 You're working through that and we, as we're
17 going through the cornfield, we're seeing sign; you
18 know, it could pushed down vegetation, it could be a
19 human sign or whatever, and she works out to the
20 right.

21 And I don't recall exactly if the helicopter
22 spotted a heat source first or one of our guys did,
23 but working through the trail and working out to
24 a -- we call it a hedgerow or wood line. We ended
25 up locating one of the suspects.

1 Q. Okay. And what kind of footwear did he have
2 on; do you recall?

3 A. It wasn't a pair of shoes. It was some kind of
4 material used with duct tape around his feet. So it
5 was like a slick-bottom material.

6 Q. Wasn't leaving an imprint like a normal shoe?

7 A. No, not leaving a track like a tennis shoe
8 track.

9 Q. So after he was apprehended, what did y'all do
10 next?

11 A. Well, I told the guys that, likely, if all
12 three of them were together, that the other ones are
13 here close, that we need to keep working, so we did,
14 we kept working. And not long after that we
15 received a call that the second suspect was
16 apprehended walking down 64, I believe.

17 Q. All right. What did you do then?

18 A. After that then we began to cut the area. And
19 when I say cut, we take the dog, we work the edges
20 of the field, trying to take the suspect of the
21 field, trying to find a track, trying to find the
22 dog to lock into the scent or whatever.

23 We did that through most of the night. We were
24 looking for sign, any tracks. You know, we had an
25 idea of one of the tracks we were looking for. We

1 were looking for that track and --

2 Q. Where did you get that idea?

3 A. Well, during the first night, you know, we at
4 times --

5 Q. Had you seen tracks the first night?

6 A. Yes.

7 Q. Okay. And then the second night you were
8 looking for --

9 A. The same tracks.

10 Q. -- any kind of fresh track?

11 A. Yes, sir. So the first night --

12 Q. Did you find some?

13 A. Yes, sir. The first night we saw a track, I
14 documented it with my phone, just so I could tell
15 everybody this is the track that we'd seen
16 previously. And then the second night we were doing
17 the same thing, looking for another track. And
18 found another track that night. Actually, I believe
19 we found it, I believe, on two occasions that night.

20 Q. And what type of terrain did you find it?

21 A. The first time during the early morning around
22 2:00 in the morning we found it in like a muddy,
23 sandy area, we found a track.

24 Q. All right.

25 A. And then after that, about early dawn that

1 morning -- when I say dawn, I'd say it was early
2 7:00-something in the morning -- we found the same
3 track that we originally saw, an initial track. We
4 found it on the side of the road and it was down
5 near a church. We found it coming off of a fire
6 break in an abnormal area, an area where a track
7 shouldn't have been. And it had just rained, so it
8 was fresh, it was fairly soft to the touch, so --
9 which means it was a pretty fresh track. And it was
10 very similar in shape and size as the original track
11 we saw previously.

12 Q. Did dogs strike on that track?

13 A. Yeah. We put her on that track, she struck it.
14 We went from that track across the road into a
15 wooded area. When our dogs strike the trail, we
16 praise them up because you can tell when they strike
17 it because their demeanor changes. Our dogs often
18 bark, they bay.

19 She bayed, she barked, we praised her up. We
20 generally praise her up and tell her good job. But
21 when we verify it, meaning that I see it with my own
22 eyes on the move, I really praise her up and really
23 love her up, tell her what a great job she's doing,
24 I mean, I'll rub on her, kiss on her head, tell her
25 what a great job she's doing.

1 So we did that and went through the woods. And
2 we came out to an open grass field. And, of course,
3 it was early in the morning, the dew was out. And
4 as we come into the open grass field, you can see a
5 set of tracks circling the field and the dew, which,
6 basically, you got, you know, open wet spot, open
7 wet spot, open spot all the way around the field.

8 And immediately, you know, I went to praising
9 her up, loving her up, getting her exciting, you
10 know, telling her what a great job she's doing. I
11 called some guys on the perimeter, told the guys on
12 the perimeter we were on it. We wanted to verify we
13 were right.

14 I called the helicopter, told the helicopter we
15 were on it. The helicopter was having trouble
16 getting up because of the fog. It was taking them a
17 few minutes. We praised her up and then we
18 continued on with the track.

19 Q. Tell me what happened next.

20 A. So then we worked that field and then we worked
21 another field. And this went on for hours. We went
22 through multiple fields, went through cut-downs,
23 circled the edges of cut-downs, did a few circles in
24 there.

25 We got to the point where we just went ahead

1 and let the dog off lead. And when I say off lead,
2 I mean we let go of the lead on the dog and we just
3 ran with the dog, because we all felt confident she
4 was on it, we were see sign the entire way.

5 Q. How many people were in this particular group?

6 A. In this particular group, there were four of
7 us, and they were all trackers. Some people come in
8 the woods with us sometimes, but when we let the dog
9 off lead, a lot of times a lot of people just don't
10 keep up with the guys just because they're going at
11 a faster pace than normal. So at that time, there
12 was only four of us.

13 Q. Y'all literally running with the dog?

14 A. Yeah, we're literally running with the dog.

15 Q. Okay. And what happened then?

16 A. So we're working through the woods, working
17 through the fields. We finished coming out of a
18 cut-over and working down into the bottom of a
19 wooded area.

20 As we're coming down to the bottom, and I
21 remember it pretty distinctly, one of my guys was
22 ahead of me and there was, like, a little bridge
23 crossing a creek. And he was ahead of me and I
24 think the other guys were around me, behind me,
25 somewhere near me..

1 I remember looking up and seeing him. And when
2 I did that, I looked up and I saw Mr. James in
3 between me and him, which kind of surprised me
4 because he just popped up between us. I don't know
5 if he was near the bridge, under the bridge or
6 where, but he kind of popped up between us.

7 Q. Okay. These were in thick woods?

8 A. Oh, yeah, very think.

9 Q. Did you know where you were?

10 A. I had no clue where I was.

11 Q. Did you know the Brubaker Farm?

12 A. No clue.

13 Q. How did y'all get out of the woods?

14 A. I had to call somebody to find out where I was.
15 I had no clue where I was. I mean, that's common
16 when you go to areas you don't know. So when we
17 contacted Mr. James, we told him we had him, we had
18 located him, and that we needed a way out.

19 The helicopter happened to come over us. I
20 could hear it. I tell them, hey, this is what we
21 got. We popped out, and I think Jeff Croft or
22 somebody knew exactly where we were. Helicopter
23 led -- helped lead other people to us and we came
24 out into this open grass field.

25 Q. Okay. How was Mr. James dressed when you

1 apprehended him?

2 A. He had no shirt on. He was in, like, some long
3 black pants, maybe sweatpants or something like
4 that; and a pair of tennis shoes on. And he was
5 very dirty just like we were, covered in dirt and
6 mud. And his hair was longer at the time and it was
7 all messed up. But just like us, he was soaking
8 wet.

9 Q. How were y'all dressed?

10 A. We were wearing multi-cam, which is what our
11 uniform is; a vest, state police, badges, and clear
12 markers on the front and back. And we were just
13 like him; pants were wet -- most of our pants were
14 wet up to our -- above our waist to our thighs from
15 crossing creeks and working him.

16 Q. Chip, I'll hand you what's in evidence as
17 State's Exhibit 80 and ask you if you can identify
18 what's contained in that photograph.

19 A. Yeah. So, of course, that's me laying down.
20 I'm probably one of the oldest ones there, so I'm
21 kind of a little tired. But these are the rest of
22 the guys. That's Gerard Cukarillo, Stevie Sly, Neal
23 Nelson. That's Al Jarvis, he's a bloodhound
24 assistance team leader -- or team guy. And then, of
25 course, there's me and Mr. James. And then my

1 helicopter is in the background. That's where they
2 ended up landing.

3 Q. Okay. What's that on the ground around y'all?

4 A. Those are water bottles. When we came out, you
5 know, it was very calm, very relaxed, you know. We
6 talked to Mr. James, asked him if he needed
7 anything. He said he needed some water. I said,
8 well, so do we. We took the handcuffs off of him,
9 we sat down with him, we talked to him, you know.
10 There was conversation about how impressed we were
11 that he stayed ahead of us that long of a period of
12 time. You know, I have 18-year-old kids who don't
13 do that. And I was impressed with the ability that
14 he had to stay ahead of us. You know, we gave him
15 water, he just sat there and just had --

16 Q. Was anybody mistreating him?

17 A. No.

18 Q. Threatening him?

19 A. No.

20 Q. Fussing at him? Yelling at him?

21 A. No. No.

22 Q. Did you hear him make any statements about the
23 event, the bank robbery?

24 A. I remember him making comments about the
25 snakes --

1 MS. ALVES: Judge, I'm objecting based on my
2 previous stated objections.

3 THE COURT: Noted for the record.

4 A. I know he made a comment, and it was a general
5 comment, not necessarily to me, but I remember him
6 saying something talking about snakes, how big the
7 snakes was. And then I remember him saying
8 something about the gun wasn't real. And that's all
9 I really remember him saying.

10 Q. Okay. After you apprehended him, what's been
11 your role in this case since then?

12 A. You know, my role was just to testify that --
13 the tracking side of the call, just to tell you how
14 we got from point A to point B and basically what
15 I've told you.

16 Q. And in your opinion, the dog was on the track
17 of Mr. James when y'all --

18 A. One hundred percent --

19 Q. -- got on it that day?

20 A. One hundred percent she was on it. She was
21 dead on it.

22 Q. Now, these dogs, they don't bite, do they?

23 A. No. Our dogs, when they catch a person, all
24 they want to do is love on them, lick on them, play
25 with them. That's their reward is affection, that's

1 all they look for.

2 Q. And do they wear bells?

3 A. Yes, sir, they wear a harness and a bell. I
4 call that kind of a rudimentary GPS so if our dog
5 gets away from us, we can hear the bell. So if we
6 have bells on them so when we're running off lead
7 with the dogs, we can hear the bell in front of us.
8 That just allows us to keep up with the dog and
9 listen for the bell.

10 Q. Do you have any idea how much ground y'all
11 covered in this track?

12 A. No, sir. Over hours, I would say miles. I
13 don't know how many miles, but it was a lot.

14 Q. Thank you. Answer any questions Ms. Alves may
15 have for you.

16 THE COURT: Cross-examination?

17 MS. ALVES: Yes, sir.

18 CROSS-EXAMINATION

19 BY MS. ALVES:

20 Q. So you testified that when you came upon
21 Mr. James in that wooded area, you said you were
22 walking and one of your men was in front of you, two
23 of them were somewhere behind you.

24 A. Yes.

25 Q. Where was the dog?

1 A. The dog was right there with us.

2 Q. With who?

3 A. With me and the other guys.

4 Q. I mean, which one of you specifically was the
5 dog with?

6 A. I don't know. But I said previously that we
7 let the dog off lead, so the dog was just working
8 right there. So did I physically have the dog in my
9 hand? I don't recall that. But the dog was right
10 there with us, close to the proximity.

11 Q. Okay. So when you said you were -- one of your
12 men was on one side of the -- you said there was a
13 creek with a bridge.

14 A. Yeah. There was, like, a ditch and a little
15 small, like, rickety-looking bridge somewhere right
16 there.

17 Q. Okay. And then the man -- one of your men, was
18 he on the other side of the bridge?

19 A. Yes, ma'am. So what were doing was -- when we
20 get in areas like that and she's working and she
21 pops off the trail, our guys will kind of look ahead
22 and see if they got the track ahead. And if they
23 got the track ahead, they'll walk up there and just
24 see it and verify it. And if the dog comes up, they
25 let the dog take off.

1 Q. Okay. And so you just happened to -- you were
2 walking behind the man who was walking in front and
3 you just happened -- Mr. James came from somewhere
4 and came in between the two of you?

5 A. He did. He popped up between us.

6 Q. Okay. And where was the dog at this point?

7 A. The dog was right there with us in the general
8 proximity of us.

9 Q. Okay. But Mr. James was by himself walking in
10 between you?

11 A. When you say by himself, I --

12 Q. I mean, he was just -- he was just there in the
13 woods by himself and he was -- and you saw him when
14 he came in between --

15 A. He was in the woods with us. I mean, by
16 himself -- he wasn't really by himself because all
17 of us was in the woods with him.

18 Q. You all were there. That's all I'm asking.

19 A. Yep.

20 Q. And he just happened -- you just happened to
21 see him when he walked between you and another
22 officer?

23 A. I saw him pop up between me and another
24 officer. Yes, ma'am.

25 Q. Okay. And you testified that you've done this

1 for 16 years for SLED as of right now?

2 A. Uh-huh.

3 Q. And you've been promoted to captain?

4 A. I have.

5 Q. And prior to that, you said, you were at DNR?

6 A. Yes, ma'am.

7 Q. For how many years?

8 A. Five and a half years.

9 Q. Is that considered law enforcement?

10 A. It is.

11 Q. And then prior to that, you said, you were at
12 the Governor's mansion?

13 A. I did -- it's called Bureau of Protective
14 Services now, but I was -- I did that for a few
15 months.

16 Q. And was that considered a law enforcement
17 position?

18 A. Yes, ma'am.

19 Q. And before that you were at the Cayce
20 Department of Public Safety?

21 A. Yes, ma'am.

22 Q. And, obviously, that's law enforcement.

23 A. Yes, ma'am.

24 Q. What was your role in Cayce? Were you an
25 investigator or --

1 A. I was a patrol officer.

2 Q. Patrol officer?

3 A. Yes, ma'am.

4 Q. And as a patrol officer, you -- we know what
5 policing patrol officers do, you don't have to
6 explain that. But part of your duties, you work
7 with reports?

8 A. Yes, ma'am.

9 Q. And you understand, after all these years in
10 law enforcement, the importance of a report and the
11 importance of accuracy?

12 A. Yes, ma'am.

13 Q. And you in fact -- you didn't personally write
14 a report for your work in this case, did you?

15 A. I did not, no, ma'am.

16 Q. But you had one of the men that you supervise
17 write the report?

18 A. Yes, ma'am.

19 Q. And you reviewed the reports before -- after he
20 wrote them?

21 A. Yes, ma'am.

22 Q. And that's -- is that part of your job, to
23 review the reports?

24 A. Yes, ma'am.

25 Q. Okay. And you talked about that you document

1 what you had done. When you were talking about what
2 you had done and you said when y'all had the time to
3 do it, you document where the dog went and what work
4 you did with the dog and what dogs you use; is that
5 correct?

6 A. Yeah. I mean, when I say document, if there's
7 something that we need to, like, take a picture of,
8 I might document it, or if there's some way in my
9 mind to document the last location we were in, like
10 to say, okay, I came by this big tree stump, in my
11 mind I'm documenting --

12 Q. I'm not asking you do you make a -- do you
13 write a report. I wasn't going to ask you about
14 specifics. I mean, do you take notes about what
15 you've done, where the dog went, so you can keep
16 track and say later where you went?

17 A. No.

18 Q. You didn't? I mean, is that what you normally
19 do or...

20 A. Yeah. I mean, I go by -- we go by memory where
21 we went and how we went. We don't have, like, a GPS
22 on our dogs to say that we went from point A to
23 point B. We just go my memory.

24 Q. In general. Okay. Well, in this case you said
25 that the track started on June 5th and it ended

1 around -- you said around 2:00 a.m. on June 6th.

2 A. Yes, ma'am. 2:10, I think, is when we called
3 it.

4 Q. Okay.

5 A. By the report now, I'm going by what the report
6 says.

7 Q. Would it help you to refresh your memory to
8 look at the report while I ask the questions?

9 A. No. I'm looking at it right here.

10 Q. Okay. And in that report you documented
11 what -- you detail -- the report details, you know,
12 what happened and where you took the dogs that day?

13 A. Yeah. Well, of course my agent did, yes,
14 ma'am, he documented. But I read it, yes, ma'am.

15 Q. Okay. And then you did a second report -- or
16 rather a second report was done by your agent --

17 A. Right.

18 Q. -- regarding the track that you started on June
19 6th at about 10:30?

20 A. Yes, ma'am.

21 Q. And that you finished when you arrested
22 Mr. James?

23 A. Yes, ma'am.

24 Q. And that report details what time you started?

25 A. Yes, ma'am. There's a start time and there's

1 an end time.

2 Q. So it details what time you started and ended?

3 A. Uh-huh.

4 Q. It details where you were in general?

5 A. Yes, ma'am. There's an address on here.

6 Q. And it tells where you started -- the location
7 of where you started from?

8 A. I assume the location or address of the call is
9 where we started from. Yes, ma'am.

10 Q. That would be the location of the call?

11 A. Right, yes, ma'am.

12 Q. And then it tells what you and your men did?

13 A. Right.

14 Q. And you concluded your report by talking about
15 the fact that Mr. James was given water and turned
16 over to the local sheriff's department?

17 A. Yes, ma'am.

18 Q. And then taken to the jail?

19 A. Yes, ma'am.

20 Q. No place in this report does it mention any
21 statements that you're saying Mr. James said about
22 snakes or a gun, does it? No?

23 A. No, it does not.

24 Q. Okay. That wasn't mentioned at all.

25 A. No, ma'am. I'm not an investigator; that's not

1 what I do.

2 Q. I'm not asking you if you're an investigator
3 and if that's what you do. I'm asking you was it
4 documented in the official report from your
5 bloodhound tracking team that Mr. James said these
6 statements that you're telling us he said?

7 A. No, ma'am. I do not put statements that
8 suspects made in the tracking report. That's not
9 what I do.

10 Q. Okay. Well, I'm not asking you what you do.
11 I'm asking you is it in there?

12 A. No, ma'am, it's not in it. No, ma'am, it is
13 not.

14 Q. Okay. And, in fact, you didn't do any type of
15 statement yourself?

16 A. No, ma'am, I did not.

17 Q. And, in fact, you never even mentioned that
18 Mr. James made these statements to anybody until the
19 solicitor was preparing for this trial last
20 November; isn't that correct?

21 A. Yes, ma'am. I didn't bring it up.

22 Q. And you didn't record this?

23 A. No, ma'am, I didn't.

24 Q. So there would have been no way for anybody to
25 know what you said that Mr. James -- what you're

1 telling us Mr. James said, because you didn't
2 document this anyplace?

3 A. No, ma'am.

4 Q. No?

5 A. No, ma'am.

6 Q. No further questions. Thank you.

7 THE COURT: Redirect?

8 MR. WEEKS: Nothing further, Your Honor.

9 THE COURT: May this witness be excused?

10 MR. WEEKS: He may, Your Honor.

11 MS. ALVES: Yes, sir.

12 THE COURT: Thank you, sir. You may be
13 excused.

14 MR. WEEKS: The State rests, Your Honor.

15 THE COURT: All right. Madam forelady, the
16 State says they rests, which means they have
17 presented all the evidence in their case in chief.
18 What I have to do now is take up some administrative
19 matters. It's probably a good idea to go ahead and
20 have a lunch break. If you would --

21 MS. ALVES: Judge, can we approach first?

22 THE COURT: Yes, ma'am. Excuse me. Maybe
23 we're changing our minds.

24 (Sidebar conference.)

25 THE COURT: All right. Madam forelady, I stand

1 corrected. What I'm going to do is send you back to
2 your jury room. I understand that the remaining
3 matters will probably be fairly short, so we'll
4 probably try to finish through the testimony today.
5 If you will go back to your jury room, please, we'll
6 get you back out here as soon as we can.

7 (The jury exits the courtroom at 12:39 PM.)

8 THE COURT: All right. Motions?

9 MS. ALVES: Yes, sir. Your Honor, taking the
10 evidence in the light most favorable to the State, I
11 move for directed verdict on the charge of armed
12 robbery against my client.

13 Judge, I know that the evidence in this case
14 seems to be fairly circumstantial, but not all of
15 the circumstances point conclusively to the guilt of
16 my client in this matter. I don't believe that it's
17 a jury question. I think that there's not been
18 sufficient evidence presented that my client acted
19 along with the people who robbed the bank.

20 The State has proven some things in this case;
21 they've proven that my client was present in the
22 woods, they've proven that he may or may not have
23 been somebody who ran from a building that was in
24 the woods, they've proven that a hat with his DNA
25 was in a car, some panties with his DNA were in a

1 car.

2 But I would also point out that neither that
3 hat nor those panties are shown in the video of the
4 armed robbery indicating that they were worn by
5 anybody during the armed robbery. The State has not
6 put my client at the scene of this robbery. There's
7 been no connection shown between him and any of the
8 other people involved in the robbery, and I'd make a
9 motion for directed verdict on that basis.

10 THE COURT: All right. Thank you, ma'am.

11 I do believe that there is substantial
12 circumstantial evidence in the record to submit this
13 to the jury for their determination as to whether
14 the State has met its burden of proof, so I'm going
15 to deny your motion.

16 Mr. James, would you please stand and raise
17 your right hand.

18 HOMER JAMES

19 being first duly sworn, testified as follows:

20 THE DEFENDANT: Yes, sir.

21 THE COURT: I'll need you to speak up, please,
22 sir.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You can put your hand down.

25 Has your attorney explained to you your rights

1 under the Fifth Amendment to the United States
2 Constitution?

3 THE DEFENDANT: Yes, sir...

4 THE COURT: I want to make sure that you
5 understand those rights. Okay?

6 THE DEFENDANT: I sure do. Yes, sir.

7 THE COURT: We've reached the stage in the
8 trial, Mr. James, where you have the right to claim
9 the protections that are afforded for each and every
10 citizen of the United States by the Fifth Amendment
11 to the United States Constitution. And I'm going to
12 read just a small part of it to you.

13 It says: No person shall be compelled in any
14 criminal case to be a witness against himself. What
15 that simply means is no one can make you testify in
16 this case. You have a right to testify, if that's
17 what you want to do, however, no one can make you do
18 so; your lawyer can't, the State can't, neither can
19 I. This is a personal right that no one can
20 exercise except for just you.

21 Now, if you decide to testify, you'll be
22 subject to the same rules as any other witness. You
23 may be cross-examined by the State on any relevant
24 issue in this case. If your record is such that
25 they are allowed to cross-examine you for any prior

1 pleas or convictions and I find that the probative
2 value outweighs the prejudicial impact, the State
3 may be allowed to cross-examine you about any
4 records you may have. I don't know what your record
5 is. Obviously if they want to do that, the purpose
6 would be to impeach your credibility when you're on
7 the stand.

8 On the other hand, if you decide you do not
9 want to testify, when I instruct the jury on the
10 law, I will tell them that they may not and shall
11 not consider your failure to testify because that's
12 the protection that is afforded to you by the Fifth
13 Amendment and the State bears the burden of proving
14 you guilty by proof beyond a reasonable doubt.

15 If you decide to testify or not to -- excuse
16 me. Let me say this: The decision to testify or
17 not to testify must be made by you freely,
18 voluntarily, intelligently and knowingly, knowing
19 your rights to testify and your rights not to
20 testify, and the ramifications of each one.

21 If you need to speak with your attorney
22 further, I'll give you reasonable time to do that.
23 You can talk to her about whether or not you wish to
24 testify. But at this juncture, the decision needs
25 to be made within a reasonably short time. Okay,

1 sir?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you understood everything I've
4 gone over with you?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. And have -- okay. Have a
7 seat, please, sir.

8 Ms. Alves, have you and your client made a
9 decision as to whether or not he wishes to testify?

10 MS. ALVES: We have made a decision, Judge.

11 THE COURT: And he wishes not to?

12 MS. ALVES: Yes, sir.

13 THE COURT: And, Mr. James, are you making that
14 decision freely and voluntarily?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has anybody threatened or forced
17 you not to testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: Okay, sir. Very well. I'm going
20 to find that Mr. James has exercised his rights
21 under the Fifth Amendment and has chosen not to
22 testify. You want to go ahead and get started, I
23 think, at the bench conference we had --

24 MS. ALVES: Yes, sir. Judge, I have two
25 witnesses who are both very short and then I'd ask

1 to be allowed to display Mr. James' hands or at
2 least his right hand and his back and his chest to
3 the jury to show the tattoos that he has.

4 THE COURT: All right. And that was brought up
5 at the bench conference. And I think, Mr. Miller,
6 you said you had no objection to him showing
7 these --

8 MR. MILLER: Your Honor, I don't know what the
9 relevance of his back and his chest is --

10 THE COURT: She was questioning people whether
11 they saw anything on him when they allege that he
12 was running with no shirt on. So that would be --

13 MR. MILLER: Well, I -- okay. That's fine. I
14 was thinking in the context of the video of the
15 robbery where he's wearing a shirt the whole time.
16 But that's fine.

17 THE COURT: Okay. I think that's probably
18 what's going on.

19 MS. ALVES: Yes, sir.

20 THE COURT: All right. Let's go ahead and
21 knock that out right now then, please.

22 MR. MILLER: Yes, sir.

23 THE COURT: Are your witnesses here?

24 MS. ALVES: Out in the hallway.

25 THE COURT: All right. Are you ready?

1 MS. ALVES: Yes, sir, we're ready.

2 THE COURT: Would you bring the jury in,
3 please.

4 (The jury enters the courtroom at 12:47 PM.)

5 THE COURT: Ms. Alves, is the defense ready to
6 proceed?

7 MS. ALVES: Yes, sir.

8 THE COURT: Call your first witness, please.

9 MS. ALVES: Defense calls Lieutenant Ashley
10 Woods.

11 ASHLEY WOODS

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes, ma'am.

14 DIRECT EXAMINATION

15 BY MS. ALVES:

16 Q. Lieutenant Woods, where do you work?

17 A. Bamberg County Detention Center.

18 Q. And you're a lieutenant?

19 A. Yes, ma'am.

20 Q. And how long have you worked there?

21 A. Six years.

22 Q. And were you working at the detention center on
23 June 7th of 2014?

24 A. Yes, ma'am.

25 Q. And what do you do at the detention center?

1 A. I book and release inmates, we do paperwork as
2 far as their bonding, just daily routine
3 safekeeping, security checks, end-of-the-month
4 reports, and so forth.

5 Q. Okay. And on June 7th, 2014, do you recall
6 booking in Mr. Homer James into the detention
7 center?

8 A. Yes, ma'am.

9 Q. And what is the procedure that you follow when
10 you are booking someone into the jail?

11 A. Typically we'll have a male officer up front.
12 The male officer will come in and pat him down,
13 we'll take any paperwork that we have from the
14 arresting officer, gather their information as far
15 as their birth date, social, height and weight,
16 we'll log down their property as far as their
17 clothes, any money or jewelry or hats they may have.

18 Q. Okay. And you said you take their information.
19 So do you take -- you said you take height and
20 weight. But you also take information regarding
21 tattoos and marks?

22 A. Yes. We'll ask if they have any tattoos and
23 they'll let us know where their tattoos are and
24 we'll list them accordingly.

25 Q. And you actually look -- if somebody says they

1 have two tattoos on their hand, do you take a look,
2 a general look?

3 A. Typically, no. Sometimes we do. If they
4 aren't covered, we'll look at them, but we don't
5 write down a description as to what it is.

6 Q. Okay. You just note the location that they
7 have tattoos?

8 A. Yes, ma'am.

9 Q. And when you booked in Mr. James, was there any
10 indication that he had any marks or tattoos?

11 A. He stated that he had a tattoo on his chest and
12 his back and his hand.

13 Q. Okay. And you noted that down, the tattoos on
14 his back, chest, and hand?

15 A. Yes, ma'am.

16 Q. But you didn't note down what they looked like,
17 just that he had those?

18 A. No, ma'am.

19 Q. Just that he had them?

20 A. Uh-huh.

21 Q. And you noted his height and weight as what?

22 A. Height, five-eleven; weight, 165.

23 Q. Okay. Thank you. I don't have any further
24 questions. Please answer any the solicitor may
25 have.

1 CROSS-EXAMINATION

2 BY MR. MILLER:

3 Q. Good afternoon, Lieutenant Woods.

4 A. Good afternoon.

5 Q. Do you have the booking form there that you
6 filled out whenever you --

7 A. Yes, sir.

8 Q. Okay. On that booking form where it says the
9 tattoos are on the hands and chest and back, he
10 didn't have a shirt on when he came in, did he?

11 A. No. I don't believe he did.

12 Q. But you don't recall anything outstanding or
13 remarkable about the tattoos on his chest and his
14 back?

15 A. No, sir.

16 Q. Okay. And on that form it's got places for an
17 inventory of personal property. Did he have a
18 driver's license or a South Carolina identification
19 card in his property when he came in?

20 A. He had nothing when he came in.

21 Q. So he had on black pants and shoes -- Nike
22 shoes, and that's it?

23 A. That's it that I recall.

24 Q. Thank you. No further questions.

25 MS. ALVES: Nothing further.

1 THE COURT: May this witness be excused?

2 MS. ALVES: Yes, sir.

3 MR. MILLER: Yes, sir.

4 THE COURT: Thank you, ma'am.

5 Call your next witness, please.

6 MS. ALVES: Your Honor, at this time I'd ask
7 that Mr. James be allowed to display the tattoos on
8 his hands, chest, and back to the jury.

9 THE COURT: Okay. Come around, sir.

10 MS. ALVES: I'd ask that he show his hands
11 first to the jury.

12 (The defendant shows his hands to the jury.)

13 MS. ALVES: All right. Judge, I'd call
14 Ms. Elizabeth Padgett.

15 ELIZABETH PADGETT

16 being first duly sworn, testified as follows:

17 THE WITNESS: Yes.

18 DIRECT EXAMINATION

19 BY MS. ALVES:

20 Q. Ms. Padgett, state your name, please.

21 A. Elizabeth Padgett.

22 Q. And spell your last name.

23 A. P-A-D-G-E-T-T.

24 Q. Thank you. Ms. Padgett, can you tell us where
25 you're employed.

1 A. At South Carolina Department of Motor Vehicles.

2 Q. And what is your position?

3 A. I'm a manager.

4 Q. Okay. And we all know what the South Carolina
5 Department of Motor Vehicles is, so we don't need
6 details about that. But at the South Carolina
7 Department of Motor Vehicles, obviously you issue
8 driver's licenses and you issue -- and the South
9 Carolina Department of Motor Vehicles issues ID
10 cards?

11 A. Yes, ma'am.

12 Q. And can you tell me, what records does the
13 South Carolina Department of Motor Vehicles keep
14 when somebody applies for an identification card?

15 A. Each person that comes in and applies for any
16 credential in this state is required to fill out
17 applications.

18 Q. And is that application kept on record?

19 A. It is. There is a paper trail in the
20 beginning, and each one of those papers are sent to
21 scanning at that time -- sent to scanning and
22 there's a scanned document in our system of any
23 record that -- any application that's made in the
24 State.

25 Q. So any time somebody makes an application for

1 either a driver's license or an ID card, a copy of
2 the application is kept in your records?

3 A. Yes, ma'am.

4 Q. Okay. And is that a standard procedure of
5 department of motor vehicles to keep these records?

6 A. Yes, ma'am.

7 Q. And you are able, as a manager, to access these
8 records?

9 A. Yes, ma'am.

10 Q. And in this case, did you access the records
11 regarding the identification card of Homer James?

12 A. Yes, ma'am.

13 Q. And Mr. James did actually have an ID card
14 issued through the South Carolina Department of
15 Motor Vehicles?

16 A. Yes, ma'am.

17 Q. And I'm going to show you an ID card that is
18 contained in State's Exhibit No. 70.

19 A. Yes, ma'am.

20 Q. This is already in evidence. Can you tell us
21 what this is?

22 A. This is an identification card that was issued
23 by the South Carolina Department of Motor Vehicles.

24 Q. And when was that identification card issued?

25 A. This identification card was issued -- it's got

1 an issue date of February 26th of 2014.

2 Q. Okay. And based on the records that are
3 contained in the department's records, were you able
4 to determine whether Mr. James actually did have a
5 valid card issued on that day?

6 A. Yes, ma'am.

7 Q. And were you able to determine whether or not
8 Mr. James had any other identification cards issued
9 to him?

10 A. He did. Some months prior to that, February,
11 was a previous card that was issued to him in this
12 state.

13 Q. Wait a minute. Now, this was the card that was
14 issued in February.

15 A. Oh, I'm sorry. Prior to this, it would have
16 been back in '95, I believe.

17 Q. Okay. So he had a driver's license in 1995?

18 A. Yes, ma'am.

19 Q. And that license had been turned in at some
20 point to the department?

21 A. To someone.

22 Q. To somebody?

23 A. Yes.

24 Q. Now, in talking about these ID cards, in 2014
25 he was issued this ID card that we're talking about

1 here in February of 2014?

2 A. Yes, ma'am.

3 Q. And do your records reflect whether he had
4 another ID card after February of 2014?

5 A. Yes, ma'am. In May he came in and made
6 application again for another identification card.

7 Q. And I'm going to show you what's been marked
8 for identification as Defendant's Exhibit No. 4.

9 A. Yes, ma'am.

10 Q. Do you recognize that paperwork?

11 A. Yes, ma'am.

12 Q. Tell us what that paperwork is.

13 A. This is an application for an identification,
14 driver's license, either one, whatever you're asking
15 for. It's a 447 NC. Each individual that comes in
16 and applies for a credential in this state has to
17 fill out one of these forms.

18 Q. Okay. And that is the paperwork that would
19 have been filled out by Mr. Homer James?

20 A. Yes, ma'am.

21 Q. And that's a copy of the record that was
22 kept -- that's kept in the DMV records?

23 A. Yes, ma'am.

24 MS. ALVES: Your Honor, at this time I move to
25 admit Defense No. 4.

1 MR. MILLER: Without objection.

2 THE COURT: Admitted.

3 (Defendant's Exhibit No. 4 admitted into
4 evidence.)

5 BY MS. ALVES:

6 Q. I'm going to ask you some questions about those
7 documents. Can you tell -- so I want to be clear.

8 Mr. Homer James came in in May and applied for a new
9 identification card?

10 A. Yes, ma'am.

11 Q. And can you tell why he made that application?

12 A. By the third page of this, it's an affidavit of
13 lost or stolen or surrendered identification,
14 driver's license or ID card. So whenever a person
15 comes in and asks for another identification or
16 driver's license and they don't have one to present
17 to us, then we make them fill this out.

18 Q. So that's how you can tell he would have said
19 his card was lost or stolen?

20 A. Yes, ma'am.

21 Q. All right. Now looking at the ID card that's
22 in State's Exhibit -- I'm -- in State's Exhibit 70,
23 can you tell that's the ID card that he would have
24 been given in May or is that the ID card that he
25 would have been issued in February?

1 A. This is the February card.

2 Q. Okay. And the May card would have had a
3 different picture on it?

4 A. Absolutely. Yes, ma'am.

5 Q. And we don't know what happened or how this
6 card came to be anyplace, do you?

7 A. No, ma'am.

8 Q. The only thing you can tell us is that
9 Mr. James reported this card that I'm showing you're
10 here as lost and applied for a new card on what day?

11 A. He applied for the new card on May 8th, 2014.

12 Q. Thank you. I have no further questions.

13 THE COURT: Cross-examination?

14 CROSS-EXAMINATION.

15 BY MR. MILLER:

16 Q. Ms. Padgett, this paperwork is filled out by
17 Mr. James?

18 A. Yes, sir.

19 Q. How did Mr. James prove who he was if he
20 didn't --

21 A. Normally what the department does is --
22 procedure is that we look -- if he does not have
23 identification on him, picture ID, then we have to
24 go into our document system and look at our SC View,
25 DL View, and we verify the picture of the person

1 that's on the record with the person that's standing
2 in front of us.

3 Q. Okay. So this -- down here where it says "DL
4 View image on file," is that what that means?

5 A. Yes, sir.

6 Q. Okay. And then there's a -- this is an
7 application for an identification card; correct?

8 A. It's for both driver's license and
9 identification, multiuse.

10 Q. Okay. I'm sorry. Specifically this one, he's
11 asking for an identification card?

12 A. Yes, sir.

13 Q. And this says Affidavit of Lost or Surrendered
14 Driver's License, Homer James, gives an address of

15 29203. Do you know where 29203
16 is?

17 A. I would imagine that's a Columbia address,
18 maybe. I'm not real sure.

19 Q. Okay. Actually, I think it's on the front.
20 Let me show you this while I'm asking you.

21 A. Yes, sir.

22 Q. Can you tell us from this paperwork what DMV
23 office this was issued at?

24 A. Right here on the bottom it says Office 62,
25 which is our O'Neil Court address.

1 Q. What is O'Neil Court?

2 A. That's the O'Neil Court DMV office. It's over
3 by Columbia Mall.

4 Q. So it's in Columbia?

5 A. It is, yes, ma'am.

6 Q. And he was getting an ID card that said his
7 address was in Columbia?

8 A. Yes, sir.

9 Q. And he filled out an affidavit that said his --
10 and I guess I don't understand this. He's saying he
11 lost his previous ID; correct?

12 A. That's what he says, yes, sir.

13 Q. But he checked the box saying it was
14 surrendered.

15 A. And from what I understand with this paperwork,
16 what he is -- now, I can only --

17 Q. Well, I don't want you to guess.

18 A. Yeah.

19 Q. Okay. But this says it was surrendered in
20 1995; correct?

21 A. Yes, sir.

22 Q. Well, we'll let it say what it says then. I
23 don't have any other questions. Thank you.

24 THE COURT: Redirect?

25 MS. ALVES: Yes, sir.

1 REDIRECT EXAMINATION

2 BY MS. ALVES:

3 Q. Ms. Padgett, I just want to clarify, when
4 Mr. James -- when someone has a -- if someone has a
5 license number already in the system and they come
6 back years later and want an ID card, do they get
7 issued the same number?

8 A. They do, yes, ma'am.

9 Q. So Mr. James would have had the same number on
10 his ID that was originally on the license that had
11 been surrendered?

12 A. Yes, ma'am.

13 Q. And on this paperwork that I'm showing you in
14 Defense No. 4, it just says an affidavit for lost or
15 surrendered driver's license; is that correct?

16 A. Yes, ma'am.

17 Q. And according to your paperwork -- so if -- so
18 let me ask you this: So if somebody wants to come
19 in and just wants to apply for a card, do they --
20 nobody -- they don't always fill out that form, do
21 they?

22 A. They are supposed to fill it out any time they
23 come in and ask for a replacement.

24 Q. Okay. So you don't -- so if I was just to walk
25 into the DMV and say I would like an ID card or a

1 license or whatever I'm asking for, I don't fill
2 that form out unless I'm asking for a replacement?

3 A. That's correct. If you do not have one to give
4 us, then we're supposed to have this form filled out
5 by the person requesting it.

6 Q. All right. And that 1995 refers to when his
7 license was surrendered?

8 A. That is what he's putting there, I would
9 imagine.

10 Q. But there's no place to put specifically where
11 an ID card is surrendered, is there?

12 A. No.

13 Q. But if he came in and asked for a replacement
14 ID card, they would have said, you need to fill this
15 form out?

16 A. Still, yes.

17 Q. Okay. So that's how we know he would have said
18 it was lost or stolen?

19 A. That would be, yes.

20 Q. Thank you. No further questions.

21 THE COURT: All right. Ma'am, thank you.
22 You're excused.

23 MS. ALVES: Yes, thank you.

24 THE COURT: Call your next witness.

25 MS. ALVES: The defense rests.

1 THE COURT: All right. Let me see the
2 attorneys up here.

3 (Sidebar conference.)

4 THE COURT: All right. Mr. Miller, does the
5 State have any reply?

6 MR. MILLER: No, Your Honor. The State rests.

7 THE COURT: Very good.

8 Ladies and gentlemen, the defense has rested,
9 the State is not going to reply to what the defense
10 put up, that means all of the testimony that's going
11 to be presented in this case has been presented.
12 I'm going to take up some further administrative
13 matters with the attorneys now. I'm going to send
14 you on your lunch break. I'm going to ask that you
15 be back in your jury room 2:15.

16 Does that give everyone enough time to be
17 prepared for closing arguments?

18 MR. MILLER: The State is ready, Your Honor.

19 MS. ALVES: Yes, sir.

20 THE COURT: Okay. 2:15. And I remind you,
21 don't talk to anybody about the case.

22 (The jury exits the courtroom at 1:08 PM.)

23 THE COURT: For the record, I jumped ahead just
24 to get that done. But any motions -- any further
25 motions, renewal of motions?

1 MS. ALVES: Yes, sir. I renew my motion for
2 directed verdict. Taking the evidence in the light
3 most favorable to the State, I don't believe that
4 the State has established any evidence that would
5 tend to prove Mr. James guilty of armed robbery.
6 And I just base my motion on the motions stated
7 during my previous motion for directed verdict.

8 THE COURT: Okay. Very good. That is denied.

9 Let me -- couple things I want to take up with
10 you guys. Sometimes, especially with young lawyers,
11 they want me to go ahead and charge first so they
12 argue second. Neither one of y'all fit that bill
13 necessarily. But if you want me to charge first and
14 let y'all argue after, I'm more than happy to do so.
15 I'm also happy to do it after you argue.

16 What would be your pleasure, Mr. Miller?

17 MR. MILLER: Your Honor, my preference would be
18 that you charge first. But if Ms. Alves doesn't
19 agree, then we can default.

20 THE COURT: If everybody's not in total
21 agreement with it, we'll go the old fashioned way.

22 What would you rather? Do you want to think
23 about it?

24 MS. ALVES: I've never seen that happen before.

25 THE COURT: That's because I'm from Anderson.

1 We're on the cutting age up there.

2 MS. ALVES: Judge, if you do charge first, do
3 you make any closing remarks to the jury after we --

4 THE COURT: Normally what I do is reserve going
5 over the verdict form until after the closing
6 arguments are done and then I just go over it with
7 the forelady and then I stop. But if you're not
8 comfortable with it, then let's just do it the
9 traditional way.

10 MS. ALVES: Well, I'm not opposed to being on
11 the cutting edge, but I've just never seen that done
12 and I've never thought about it. I would prefer to
13 just do it the traditional way.

14 THE COURT: That's fine. That's certainly
15 fine. I'll tell you what I was going to do was just
16 get my clerk to give you -- I'm going to go over the
17 skeleton part of my charge with you. Have y'all
18 ever had a case with Judge Gary Hill out of
19 Greenville?

20 MS. ALVES: I have, but it's been a while.

21 THE COURT: I shamelessly plagiarized his
22 charge, the body of it. My charge is three parts;
23 the first part of it is just the general rules that
24 tell the jury what they have to do and make their
25 findings based on the evidence presented, tell them

1 that if I've done anything to indicate how they're
2 supposed to find facts for the verdict they would
3 reach to disregard that. I tell them what is
4 evidence and what is not evidence.

5 We don't have any stipulations in this case
6 except for experts, so there's no stipulated facts,
7 is there?

8 MR. MILLER: No, sir.

9 THE COURT: Okay. Then I tell them what's not
10 evidence. I give them the direct and circumstantial
11 evidence out of The State vs. Clarence Logan, point
12 conclusively to the guilt of the defendant. I go
13 over credibility of witnesses, I tell them about
14 expert testimony, I remind them that the indictment
15 is not evidence and may not be considered by it. I
16 tell them it's not going to be sent back with them.

17 I charge them on the presumption of innocence,
18 reasonable doubt, intent failure of the defendant to
19 testify; in this case, identification because it's
20 an issue. Then I have the substantive law on armed
21 robbery. I've included a lesser included of
22 robbery.

23 What's the State's position on that?

24 MR. MILLER: Your Honor, I don't believe that
25 the lesser included should be charged, simply

1 because there isn't any --

2 THE COURT: Facts in evidence.

3 MR. MILLER: -- facts in evidence. We got the
4 gun in and we got Mr. Folks' testimony he thought it
5 was a gun. So, I mean, it's armed robbery.

6 THE COURT: I kind of tend to agree.

7 What's your feeling about that, Ms. Alves?

8 MS. ALVES: Well, Judge, the law is pretty
9 clear that it has to be a representation of a gun.
10 But in this situation, it was a BB gun. So --

11 THE COURT: Even a gun that doesn't work can be
12 used as a -- can be considered a deadly weapon.

13 MS. ALVES: Yes, sir.

14 THE COURT: I think that's right. There's
15 really no evidence of it being a common law robbery.
16 So I won't include the lesser included. We'll amend
17 the charge to delete that, and the sentencing sheet.

18 I also have the hand-of-one-hand-of-all charge.
19 I also have a statement-of-the-defendant charge, and
20 that would be my substantive charge that she's going
21 to give you and let you look at at lunchtime. So if
22 anybody has any problem with it, you can let me know
23 when you come back.

24 I then, after I get through with substantive
25 aspect of the charge, I go into comments about their

1 deliberations and then go over the verdict form and
2 also tell the forelady if they have any questions,
3 what to do. You're more than welcome to come look
4 at the body of my charge. It's right up here if you
5 want to come look at it.

6 Any proposed charges from the State?

7 MR. MILLER: You got it covered, Your Honor.

8 THE COURT: From the defense?

9 MS. ALVES: Judge, the only thing I was going
10 to ask is for a charge on circumstantial evidence.
11 I used the language from State vs. Jenkins, which I
12 think encompasses the language from State vs. Logan,
13 which --

14 THE COURT: Is it different?

15 MS. ALVES: I don't think so. It just -- I can
16 e-mail it to you.

17 THE COURT: Come here and let me show it to
18 you. This is the one that most defense lawyers
19 want, so I think you'd be okay with it.

20 All right. We're in recess. Thank you.

21 (Luncheon recess 1:16 PM - 2:19 PM.)

22 THE COURT: Let me go over something on the
23 record, if I may. I know I asked before we went to
24 lunch for the attorneys to consider whether or not
25 the statement of the defendant would be a proper

1 charge.

2 I've looked at it and I don't think it's an
3 appropriate charge based on my rulings in this
4 matter that the conversation was just that; it
5 wasn't interrogation. And if I give the
6 statement-of-the-defendant charge, it looks to me
7 like it's going to be confusing to the jury and it
8 also would be inconsistent with my prior rulings in
9 this matter. So my thoughts are do not charge it at
10 all.

11 Mr. Miller, what's your idea on it?

12 MR. MILLER: We agree, Your Honor.

13 THE COURT: Ms. Alves?

14 MS. ALVES: I would agree.

15 THE COURT: Okay. Very good. Not that you
16 agree with my ruling, but you agree with my charge.

17 MS. ALVES: Yes, sir. I still don't agree with
18 the ruling. And I'd note my objection for the
19 record that my position was that the statement was
20 made subject to interrogation.

21 THE COURT: Right. On page one of the armed
22 robbery charge, second paragraph, the end of that
23 paragraph, I tell them: I charge you the term
24 person also includes corporations. Okay? That's no
25 big deal.

1 Also, there was a part of the charge that
2 was -- of the armed robbery charge that was left
3 out, and that is: The following are examples of
4 instruments which may be a deadly weapon, and
5 there's a laundry list. At the end it says: A gun
6 may be a deadly weapon, even if it's not operating.
7 So that will be added to my proposed charge.

8 Have you had a chance to review the substantive
9 aspect of my charge?

10 MS. ALVES: Yes, sir.

11 THE COURT: Do you have any objections to it?

12 MS. ALVES: No, sir. The only thing I'd ask is
13 that -- I don't have any issues with what's provided
14 to us. When we were talking about the charge
15 previously, there wasn't any mention of -- or if
16 there was, I apologize. But I don't recall it
17 mentioning the charge on if the defendant fails to
18 testify.

19 THE COURT: Yes. I will definitely give that.
20 It's in my standard charge.

21 MS. ALVES: Yes, sir.

22 MR. MILLER: Your Honor, our objection to the
23 armed robbery charge would be that the statute
24 provides that an armed robbery is a robbery that is
25 accompanied by the possession of a deadly weapon or

1 an object which a person reasonably believes to be a
2 deadly weapon. And I don't see that reflected in
3 the charge.

4 We're not alleging that the BB gun is a deadly
5 weapon in this case, we're alleging that it was an
6 item that the -- specifically Mr. Folk and the
7 people in the bank reasonably believed to be a
8 deadly weapon. They believed it was a gun. And,
9 Your Honor --

10 THE COURT: So on the second page, second
11 paragraph, you'd asked me, after the first sentence,
12 to include the phrase "finally, the State must prove
13 beyond a reasonable doubt that the defendant was
14 armed with a deadly weapon during the robbery or
15 what was reasonably believed to be a deadly weapon"?

16 MR. MILLER: I would say, Your Honor, "finally,
17 the State must prove beyond a reasonable doubt that
18 the defendant was armed with a deadly weapon or an
19 object which a person present during the robbery
20 reasonably believed to be a deadly weapon during the
21 robbery."

22 THE COURT: What's your position on that,
23 Ms. Alves?

24 MS. ALVES: I'm trying to remember what the law
25 says. I don't believe the law says if they

1 reasonably believed. I think it says --

2 THE COURT: Do you have that language in the
3 statute?

4 MR. MILLER: I can get it right now, Judge.
5 Your Honor, could I reference the indictment,
6 please?

7 MS. ALVES: Judge, the statute says: A person
8 who commits robbery while armed with a -- with a --
9 while armed using a representation of a deadly
10 weapon...

11 So --

12 THE COURT: What's it say? Say that again.

13 MS. ALVES: A person while armed with a deadly
14 weapon or armed while using a representation of a
15 deadly weapon or any object which a person during
16 the commission of the robbery reasonably believed to
17 be a deadly weapon. So that's --

18 THE COURT: Okay. I'm going to include that
19 language. I'll add that. So we agree it should be:
20 Finally, the State must prove beyond a reasonable
21 doubt that the defendant was armed with a deadly
22 weapon or what a person who was present during the
23 robbery reasonably believed to be a deadly weapon.

24 MR. MILLER: Thank you, Your Honor.

25 THE COURT: All right. Any other objections?

1 MS. ALVES: Judge, I believe the State is
2 alleging that my client was actually a principal in
3 committing this crime.

4 THE COURT: Ma'am?

5 MS. ALVES: I said I believe the State is
6 alleging -- it's my understanding that they're
7 alleging that my client was a principal in this
8 crime, not just someone who was acting as the hand
9 of one is the hand of all.

10 THE COURT: Yeah. The hand of one hand of all
11 includes principal liability.

12 MS. ALVES: Yes, sir.

13 MR. MILLER: Yes, sir. And just so we're
14 clear, we're not alleging that Homer James took
15 anything out of the bank. The other --

16 THE COURT: I've been sitting here the same
17 week y'all have. I've listened to the testimony. I
18 know.

19 MR. MILLER: Okay.

20 THE COURT: All right. Any other objections to
21 the proposed charge or anything that I left out or
22 should take out?

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

25 THE COURT: All right. And as I stated, I'm

1 not going to charge statement of the defendant.

2 Is the State ready to proceed?

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

4 THE COURT: Ms. Alves, are you ready?

5 MS. ALVES: Yes, Your Honor.

6 THE COURT: Very good.

7 Would you bring the jury out, please.

8 (The jury enters the courtroom at 2:26 PM.)

9 THE COURT: All right. Madam forelady, ladies
10 and gentlemen of the jury, we've concluded the
11 presentation of the evidence. The attorneys now
12 will give you their closing arguments. I think
13 everybody is in agreement that the State will go
14 first, you'll go second, and then you'll have a
15 right to finish up. Is that correct?

16 MR. MILLER: Your Honor the State would waive
17 first close.

18 THE COURT: Is that agreeable to the defense?

19 MS. ALVES: Yes, sir.

20 THE COURT: Okay. So the defense will go first
21 and the State will go last, since they have the
22 burden of proof in this matter.

23 After that, I'm going to ask you, Madam
24 forelady, to pole your jurors to determine whether
25 anybody wants to take a short break or whether you

1 want to continue with my charge on the law, which I
2 anticipate being roughly 30 or 35 minutes. Okay?

3 Ms. Alves, are you ready?

4 MS. ALVES: Yes, sir.

5 THE COURT: Is the State ready?

6 MR. MILLER: Yes, sir.

7 THE COURT: Okay. Go ahead.

8 MS. ALVES: May it please the Court.

9 THE COURT: Yes, ma'am.

10 MS. ALVES: This case is going to be one of
11 circumstantial evidence. And the Judge is going to
12 explain to you that there are two types of evidence;
13 direct and circumstantial. Direct is when you see
14 somebody do something and you can identify that
15 person and you can say, yeah, I saw that person do
16 something. That would be direct evidence.

17 Circumstantial is when you have to look at all
18 of the circumstances. And in circumstantial
19 evidence, the circumstances have to point
20 conclusively to the guilt of the defendant. And in
21 this case, they have to point conclusively to the
22 guilt of my client, Mr. Homer James.

23 Now, I was trying to think how could I explain
24 it to you, and I was trying to think of things in my
25 life that I could explain circumstantial evidence,

1 and something popped into my head. I remember a
2 long time -- you might be able to tell by my accent
3 I'm from New York originally. I've been down here a
4 lodge time, but that's where I'm from originally.

5 And I was thinking of a time when I was at home
6 and I came down and went in the kitchen and poured
7 myself a glass of Pepsi. Y'all are probably
8 thinking yuck, because in the New York, people drink
9 more Pepsi than Coke, and that's not really the case
10 here.

11 And I remember I poured myself a glass of
12 Pepsi, I sat on the couch, I got all comfortable,
13 and I was watching TV. Now, my dad's favorite drink
14 is Pepsi. Whenever we got in trouble, he liked to
15 lecture. He'd go get himself a glass of Pepsi, you
16 know it's going to be a long lecture.

17 But I remember he came and I'm sitting there
18 and apparently what he had -- the seat he had been
19 sitting in, drinking a glass of Pepsi. And he's
20 like, hey, you took my drink. I'm like, no, I
21 didn't. He's like, yes, I left my glass here, I was
22 watching TV, it's gone now.

23 I'm like, well, I didn't take it because this
24 is the one I just poured. And then he's like, you
25 took my soda, you know, just admit it. And I'm

1 like, I didn't take it. So now I'm going to get,
2 you know, in trouble for lying to my dad.

3 So he's like -- I'm like, maybe somebody put it
4 in the sink or something. So we go in the kitchen,
5 there's nothing in the sink. I'm like, wow, I'm
6 about to get in trouble and I didn't take anybody's
7 soda.

8 So then my sister comes by and she's like, hey,
9 Dad, what are y'all talking about that Pepsi for? I
10 saw your glass, I thought you were done, and I
11 washed it. And we were like, what? Because, you
12 know, that girl is not really one for killing
13 herself doing housework. But in this instance, she
14 had done it.

15 So I was like, wow, the circumstances pointed
16 to me; I'm sitting there in the seat he'd been
17 sitting in, I'm drinking out of the same glass --
18 same type of glass, rather, I'm drinking the drink
19 he was drinking, and I'm the only person around.
20 And who else is he going to say took his soda? Who
21 knew my sister was going to come and wash the glass
22 and put it away?

23 That's circumstantial evidence that would have
24 pointed conclusively to me, but that evidence was
25 wrong. And that's how I can tell you, well, maybe

1 it does point, but you have to look at all of the
2 circumstances, questions all of the witnesses. And
3 in this situation, my sister was the witness that
4 actually saved me because she was able to explain
5 what happened.

6 Now, in this case, we have to look at all of
7 the evidence. And the first piece of evidence I
8 want to talk to you about -- the first thing I want
9 to talk to you about is the actual evidence. What
10 do we have? Now, I told you what the law is and I'm
11 going to tell you about circumstantial evidence a
12 lot more. You're going to hear about it a lot more
13 from me. And the Judge is going to explain what the
14 law on circumstantial evidence is.

15 But I'll tell you exactly what it says.
16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a
18 fact. Now, plain and simple it says that -- the law
19 says that State can use direct evidence or they can
20 use circumstantial evidence, and there's no
21 distinction made about, you know, which one is
22 better.

23 However, when there's circumstantial evidence
24 and when the State relies on circumstantial
25 evidence, the circumstances, all of them, must be

1 consistent with each other and they must point
2 conclusively to the guilt of the defendant -- in
3 this case, my client, Homer James -- beyond a
4 reasonable doubt.

5 So that just means they can't say well, wow,
6 isn't it awfully suspicious that he was in the
7 woods? Isn't it awfully suspicious that his hat was
8 there? Suspicious is not enough. It has to point
9 conclusively to his guilt. And you must be firmly
10 convinced of his guilt before you can find Mr. James
11 guilty of this armed robbery.

12 Now, one of the things I want to talk about is
13 the evidence that was collected. Now, we heard a
14 lot about the evidence that was collected. And
15 Mr. Oliphant testified yesterday about all of the
16 items. I think there were 60, 70, a lot of things
17 collected from the car. And we can see a lot of the
18 items in these two exhibits, State's 30 and 31.

19 Some of the items that they found, they found
20 the bag with the money, of course, and they found
21 all these items in the car, some pants underneath
22 here. They found all these clothes in the back,
23 these shoes in the back here that we can't really
24 get a good view of because they're blocked, looks
25 like what might we another shoe down here on the

1 bottom of 31. So we have all of these items that
2 were in the car, some of them weren't even
3 collected, like these pair of shoes.

4 Now, Mr. Oliphant testified they don't always
5 collect every single thing. And I understand that.
6 You can't collect every piece of junk out of this
7 car, because there was a lot. But we don't know
8 what's important.

9 At this point when Mr. Oliphant and his partner
10 were out there collecting the evidence out of the
11 car, from the bank, from wherever they were
12 collecting the evidence from, they don't know what
13 was important. We don't even know how many people
14 were involved. We know there were at least three,
15 but we don't know how many total. So it would have
16 been important to collect some of these items, maybe
17 the shoes. We don't know and we will never know.

18 Now, they collected this shirt -- and this
19 shirt is in evidence -- but we don't know who was
20 wearing the shirt because when they collected it,
21 they didn't do any testing on it, not even the DNA
22 to say, hey, is that Homer's shirt, is that Leon's
23 shirt, is that Lewis' shirt, or is that a shirt even
24 worn by anybody in the bank?

25 I didn't see anybody with this shirt on with

1 that design. I can't tell you why that shirt is
2 there. But they didn't collect all of the evidence,
3 they didn't even test what they collected. Even the
4 items they sent for testing weren't all testing. So
5 we don't know what happened here with all of the
6 evidence. It would be great if I could go back and
7 test it, but SLED had the opportunity to test it,
8 and they didn't.

9 Now let's talk about what they did test. They
10 tested a lot of these items. And you have the
11 report, it's in evidence, you'll be able to look at
12 it and see. Now, yesterday when Ms. -- when the
13 SLED analyst Ms. Money was testifying, she talked
14 about, oh, they tested 19 items. Well, no, they
15 didn't test 19 items; they tested 13 total and they
16 had three buccal swabs.

17 And some of the items, they had multiple swabs
18 from one item. Like they had three -- they had a
19 swab and two hairs from the hat and they had
20 multiple swabs from other items. So they didn't
21 test -- they had 70-some-odd items and they didn't
22 test them.

23 And, in fact, she told you about things that
24 weren't tested. Several items including some socks,
25 a shirt, a belt. Somebody took their belt off and

1 dropped their belt and the belt was there and it
2 wasn't tested. Photographs, swabs from the top of
3 the teller. No analysis performed on any parts of
4 the car, some material that was found in the car.
5 There's a lot of items that weren't tested that
6 could give us a whole story here.

7 And in particular, I want to show you, again,
8 State's 31. State's 31 shows two items on the seat
9 here; a gray sock and a piece of material which the
10 officer referred to as maybe some type of do-rag.
11 Sure would be nice to know who was wearing that, if
12 anybody, during this robbery. But we'll never know
13 because it wasn't tested.

14 Now, from the items they did test, what did we
15 find out? Well, we found out that there were two
16 bottles collected from the trailer behind the fire
17 department. One of the bottles had nobody's DNA on
18 it that was involved in this case. They found a DNA
19 profile, but it doesn't belong to anybody who's been
20 accused of any crime in this case.

21 They found a second bottle. The second bottle
22 had Leon James' DNA on it, and it said Homer was not
23 excluded. Well, what does Homer not excluded mean?
24 That's plain English for we can't prove it was
25 Homer's; we can't say it was, we can't say it

1 wasn't. So that means they're trying to say, oh,
2 well, it's Homer's DNA because they didn't exclude
3 him. But if you didn't exclude him, what's plain
4 English? That means you didn't include him, it's
5 out, it's not Homer, you didn't say it was.

6 They tested the gun. And remember, there was
7 testimony they sent some of the items for
8 fingerprints and they sent some of the items for
9 DNA. Well, I can assure you if my client's
10 fingerprints were on this gun, you would have heard
11 all about it. And if -- they said there's no DNA
12 profile, so they can't say whose DNA is on the gun.

13 What else did they test? They tested several
14 gloved. My client's DNA was not on any of the
15 gloves that were found in the car, out in the woods,
16 anywhere else. They tested -- let's see. They
17 tested parts of the car. My client's DNA wasn't
18 found on the car. They tested a hat. Yes, they did
19 find my client's DNA on the hat. But we'll talk
20 more about that hat.

21 They also found -- in that hat they found
22 somebody else's DNA. Now, they can say my client
23 was the major contributor and she explained, well,
24 maybe he's the person who had the hat more often,
25 but that somebody wore the hat -- somebody else

1 could have worn the hat and that's how the DNA could
2 have gotten in. But we don't know if he wore the
3 hat.

4 And they tested a pair of panties. They
5 originally thought the panties were a mask, but it
6 turned out to be a pair of panties. And that was
7 tested. Now, she couldn't get a good DNA sample
8 originally, so she did the Y-strand DNA. And I find
9 that particularly interesting because they said that
10 you -- she only -- Y-strand DNA is only -- you can
11 only test it against men and you can only test it
12 down the male line going from your father down his
13 line.

14 And under that Y-strand DNA, she concluded that
15 the hairs that she found -- or the hair that was
16 found on the panty belonged to my client. Now, how
17 did she do this? She talked about DNA, and most of
18 the time, I'll be honest, I heard blah, blah, blah.
19 I don't really understand all of it, the in and
20 outs. But I did understand enough of it to talk
21 about it right now.

22 And I'm looking at the chart. And you have
23 this in evidence, so you can look at it too. Under
24 the Y-strand DNA, she talked about there's 16
25 locations where you can get a DNA -- where you can

1 find the make-up of the DNA. The entire 16 make up
2 the DNA profile.

3 Now, on the chart on the last page at the very
4 bottom where the hairs from the panties, you'll
5 see -- and she talked about this. There's 16
6 locations, and you go down the step to each location
7 to the side. Is -- okay, the first location is you,
8 then you go to -- I mean not -- you keep going down
9 until there's no match, and then you say it doesn't
10 match; the DNA is not the person because it doesn't
11 match.

12 But out of 16 locations where you look for the
13 DNA to make up the DNA profile, she only got a DNA
14 make-up in eight of them. And of those eight, three
15 of those, she said, were to interpret with caution
16 because there was such a low amount of DNA. They
17 can't definitely, 100 percent say, yeah, that's the
18 correct number to put there; they have to interpret
19 it with caution.

20 So now, out of 16, we only have five we can be
21 sure of, five locations. Are we going to say that
22 five out of 16 is enough to conclusively say that
23 that is his DNA on those panties? Are you prepared
24 to say that Mr. James is guilty based on five out of
25 16 locations saying those panties belong to him? I

1 would hope not, especially since there's no
2 indication those panties have anything to do with
3 this case.

4 If you look at the videos and you look at the
5 pictures, there's no evidence that anybody had any
6 panties on their head or anywhere else or a blue and
7 gray hat. Now, if you look at the videos of the
8 robbery, the person or people who did the robberies
9 had on black hats. You can clearly see they're
10 dark. If you look at the hat contained in, and here
11 it is, State's Exhibit 63, this hat is blue and
12 gray. This is not the hat that was seen in the
13 video. And it's important enough for me to take it
14 out and show you. This hat is clearly striped.
15 There was no striped hat in the video. So then the
16 question is, why is this hat so important? Well,
17 because it was in the car. How did it get there? I
18 don't know.

19 And let's ask -- and about the panties -- and
20 I'm not going to take them out, but here they are --
21 was it a head hair or was it a pubic hair? If these
22 panties and that hair can be attributed to
23 Mr. James, was he connected to somebody who had the
24 pant ies on? I don't know. Was this a head hair?
25 We don't know. Would be a little more important if

1 it was a head hair versus, say, a pubic hair. But
2 that was never discussed, that was never explained
3 my Ms. Money, and we don't know. You know, we don't
4 even know why those panties were even in the car.

5 Now, it's important to start at the beginning,
6 and that's what I want to do in this case. I want
7 to start at the beginning. What do we know? What
8 has been proven that we don't have any question
9 about? The bank was robbed.

10 Let's be clear, the bank was robbed and there
11 were at least three people who did the robbery. We
12 know this because one person drove the car, like
13 Ms. Wilson said, they drove it around the bank, and
14 two people went in. There's no question at least
15 three people. But we don't know if there's any more
16 than three.

17 The police didn't know how many people. We
18 don't even know -- you know what? There was no
19 testimony even that -- there was testimony about
20 somebody came in the bank to get an account.
21 There's not even -- nobody even testified that Leon
22 James, who was identified by his ex-girlfriend --
23 there's no testimony that he was the person who came
24 into the bank to get the account.

25 Now, he was the person who was in possession of

1 the car that the money was found in, so I don't know
2 what's going on with Mr. Leon James, but, I mean,
3 we're not here about him, we're here about Homer
4 James. And that's another thing I want to point
5 out: There's been no testimony about any connection
6 between Homer, Leon, or Lewis.

7 Now, I know it's crazy that Leon James and
8 Homer James have the same name. But if you look at
9 their IDs, they're not the same address. We don't
10 know if they're related. If you believe that -- if
11 you look at the DNA report and you believe that lady
12 on the DNA, they're clearly not -- on the Y-strand
13 DNA, they're clearly not related because none of
14 their DNA matches.

15 And, frankly, James is a common name. Are they
16 related? I don't know. None of that was brought
17 out. I can't say whether they're related or not.
18 Based on the evidence, it doesn't appear that they
19 are. But even if they are, isn't that a reason why
20 Homer's items would be in Leon's car?

21 Now, going back to what we know, the police did
22 not know how many people were involved in this at
23 the time they started their search. They just knew
24 at least three. And we had a few descriptions.
25 Ms. Wilson, the first lady, she said that the people

1 were, I think she said, between five-six and
2 five-nine. She didn't differentiate who was what,
3 but there was two people five-six to five-nine.

4 One of the bank tellers testified that the
5 person who came over the counter was taller than
6 her; she didn't specify how much taller. And Chief
7 Walley from the Olar Police Department, he gave
8 testimony, and remember he gave a statement talking
9 about the person who he saw jump out of the car:
10 Light-skinned, six-two, he gave a weight, he said
11 they were wearing long black pants, boots. Now, who
12 was that?

13 The State -- they've made a big to-do of
14 telling you about what Homer he had on. At least on
15 the 7th in the morning when he was arrested, he had
16 on the black pants and sneakers. The other guy,
17 Leon James, everybody made a big point about --
18 talking about what he was wearing, that he had on --
19 in the bank, remember in the picture, he had on
20 those slides that were found in the driver's side of
21 the vehicle. Nobody testified about what Leon had
22 on -- I mean, what Lewis had on. Maybe that was
23 Lewis he saw. I don't know.

24 The only way we can really tell what these
25 people look like is look at their ID cards. See who

1 fits the description of somebody who was six-two, I
2 believe he said 195 pounds who could have been
3 wearing the boots and the long black pants.

4 And you know what the weird thing is? That
5 description kind of fits Darrell Lassiter. I'm not
6 Darrell was involved, but that description kind of
7 fits him. Now, we have -- and you know how I know
8 that? Not only because we saw him, but I knew this
9 before I ever saw Darrell because I saw his license.
10 He fits the description of the person who Captain
11 Walley says he saw.

12 Now, I'm not trying to say Darrell did the
13 armed robbery, I don't know who did this armed
14 robbery, but the reason I bring up Darrell is this:
15 Nobody investigated Darrell. His -- Homer's license
16 is found in the car. And, frankly, that's the
17 weirdest thing; they found all these licenses and
18 all this identification in the vehicle. How did all
19 these licenses get in the vehicle? We don't know.

20 Darrell Lassiter testified that he was in
21 Myrtle Beach on Memorial Day weekend in 2014, bought
22 a new wallet, mistakenly threw his license away at
23 the Levi's Outlet on, I think he said, 501 in Myrtle
24 Beach, and all of a sudden, a couple of weeks later,
25 his license is in a car that has fled from an armed

1 robbery in Bamberg County. How did it get there?

2 We don't know. Nobody can explain that.

3 How did Homer's ID card get there? We don't
4 know. Maybe the same way Darrell's license got
5 there. Maybe somebody stole them. Maybe Leon left
6 them in the car. We don't know. And since we're
7 not saying Darrell did anything, how can you say
8 Homer did anything solely based on his license being
9 there?

10 But going back to Darrell, I understand this
11 was a crazy time. There was a lot of police
12 officers, there was a lot of moving parts here,
13 there was a lot going on in the investigation. I'm
14 not trying to fault the police officers for what
15 they didn't do, but we need to point -- we need to
16 look at what they didn't do.

17 Nobody went to try to find Darrell. Nobody
18 went to North Carolina until September of 2015 to
19 question this man about was he involved, how did his
20 license get there. Nobody went to try -- nobody
21 asked him for a sample of his DNA to make sure he
22 was telling the truth about being involved.

23 Nobody questioned him and they're asking us to
24 take his word regarding the bank. Now, yes, we have
25 the paperwork from the bank saying he was there on

1 the 5th of June 2014. What time was he there?

2 There's been no testimony about that. We don't know
3 all of the ins and outs surrounding Mr. Lassiter.

4 And, like I said, I'm not trying to say he --

5 I'm not trying to point the finger at him and say he
6 did it, but I think he should have been investigated
7 a little bit more than he was, and perhaps sooner,
8 because the police totally discounted the
9 possibility that there could have been another
10 person involved. They just went with three of the
11 four people whose information they found in the car.

12 And if look and -- and if you say, oh, Homer's
13 ID was found in the car, he must be guilty, not so
14 fast because remember what Ms. Padgett testified to
15 from the department of motor vehicles. She
16 testified that, yes, Homer did have a -- he had a
17 license back before '95, but that license was turned
18 in in 1995.

19 Homer went to the department of motor vehicles
20 and applied for this ID card that's shown here in
21 this envelope in February of 2014. In May of 2014,
22 he went to the DMV and he filled out an application
23 for a new card. Why? Because he either lost or --
24 his card was either lost or stolen. And we know
25 that because he filled out this application and this

1 affidavit for lost or surrendered driver's license.

2 Now, I know this says driver's license and he
3 says -- and it refers to the driver's license he had
4 in 1995, but that's because that's what it asks for.
5 And Ms. Padgett told you any time anybody walks in,
6 even if they are saying that they lost their ID
7 card, they fill out this same affidavit for lost or
8 surrendered driver's license. And that's what Homer
9 did. And he got a new card in May of 2014.

10 Now, did he have this card on him when he was
11 arrested? No. And he doesn't have to this card on
12 him when he's arrested. It's not a driver's license
13 and he wasn't driving down the road. He didn't have
14 it, we don't know where it is right now, but we know
15 which one was not in the car. We know that the one
16 he said was lost or stolen was the one he found in
17 the vehicle, not the new one. And there's no
18 question, based on Ms. Padgett's testimony, this
19 card here is the old ID card.

20 Now, ladies and gentlemen, the Judge is going
21 to tell you and he told you at the beginning of this
22 trial and he's going to tell you again when he gives
23 you your charge, the State has the burden of proof
24 here. They have to prove to you beyond a reasonable
25 doubt that Mr. Homer James is guilty of the crime of

1 armed robbery.

2 Now, there's no question somebody did an armed
3 robbery. Three people were involved in an armed
4 robbery here, at least. But they haven't proven to
5 you that one of those people was Mr. Homer James.
6 I've already talked to you about the law of
7 circumstantial evidence, and they haven't proved to
8 you that all of the circumstances fit together
9 consistently and that they point to the guilt of
10 Mr. James.

11 Now, I know there was some testimony about some
12 statements. And the police officers testified that
13 while they -- after they -- after the dog team
14 caught my client and they arrested him, that -- they
15 said that while they were sitting down, having some
16 drinks, he made some statements.

17 Now, there was some difference in the
18 statements. Nobody was able to say exactly what was
19 said, how it was said, when it was said. We don't
20 know because nobody did a police report on it. And
21 what they said is this: Captain Steppe testified
22 that he said something about a gun and something
23 about seeing snakes.

24 Investigator -- the investigator testified --
25 Jeff Croft testified that he said something about it

1 wasn't a real gun, something about seeing snakes,
2 and something about this was the -- something about
3 this was the worst thing I'd ever done in my entire
4 life or whatever he said. He didn't remember
5 exactly what he said -- or he said it was the
6 stupidest thing that I'd ever done in my life.
7 That's what he said Homer said.

8 But you know what I keep thinking? Everybody
9 went to the academy. Remember, everybody got
10 questioned. They're all police officers, they're
11 all unbelievably experienced. We had lots of many
12 years of police officer experience testifying from
13 that stand. And this was a -- like I said, this was
14 a hard day and they were all out there pulling
15 together, helping each other.

16 Now, I'm the first one to say the police have a
17 really hard job. But they have an obligation too.
18 When they're out there working a case, they have to
19 take notes, they have to be detailed and accurate
20 about what was said, they have to do reports. And
21 if you don't do a report, be a witness, do a witness
22 statement like Chief Walley said.

23 Remember Chief Walley testified he's had 33
24 years in law enforcement. And I said, well, why did
25 you do a witness statement? Why didn't you just do

1 a police report? He said, well, it wasn't my case,
2 I wasn't the police officer on this case, I was a
3 witness; I saw something important, so I put it down
4 in a witness statement. And I said, why? And he's
5 like, so he could give it to the investigators so
6 they would know what important facts he had about
7 the case.

8 Do you remember I talked to the captain,
9 Captain Eddie Williams? He said the same thing.
10 And he said something else. I wrote it down because
11 I wanted to make sure I quoted it exactly what he
12 said. He said when he went to the academy, the
13 first thing he told him was "if you didn't document
14 it, it didn't happen."

15 Now, I know he was joking about it, but let's
16 pick that apart for a minute. How are you supposed
17 to remember a case that you worked on two years and
18 two months ago if you don't do a report, if you
19 don't do some type of statement, if you don't take
20 some kind of notes? If it's important, you document
21 it; if you don't document, you can't prove it
22 happened.

23 Yeah, you can get on the witness stand and say
24 it happened. But these are all experienced law
25 enforcement officers who write reports every day,

1 who took classes and got trained how to write a
2 report, who had the importance of it drilled into
3 them at the academy, and yet we have -- and, most
4 importantly, Captain Steppe's dog team did two
5 reports.

6 And remember he said, well, he didn't write the
7 report, but he read the report, he reviewed it. And
8 Captain Steppe said he is -- not only was he working
9 on the dog team, he is somebody who is very
10 experienced working on the dog team, he trains
11 people in other states and other jurisdictions about
12 working on the dog team, he raises the dogs from
13 pups, he goes out on these calls, he understands the
14 importance of writing a report, and he did -- or he
15 didn't, but one of the people who worked with him
16 did.

17 If you lok at State's 80 while they're all
18 there sitting around smiling for the camera, he even
19 pointed out -- I don't remember which one of them he
20 pointed out, but one of these gentlemen who are
21 sitting here with my client wrote the report that he
22 reviewed, and it doesn't have anything about any
23 statements that my client made in that report. And
24 he can't explain why.

25 And, in fact, he testified this case was

1 scheduled to come up for trial last year, and that
2 was the last time, last November, right before this
3 case was originally scheduled, that he even
4 mentioned it to anybody.

5 Now, I don't know when Investigator Croft
6 found -- was told about this -- or was told about
7 it. He said it was sometime last year. So over a
8 year after this case comes up -- after this case is
9 happening, you then come up with, oh, wait, yeah --
10 right before the first trial is scheduled, you come
11 up with, oh, wait, yeah, he said something, he said
12 this.

13 And Investigator Croft testified that he didn't
14 write a report or say anything to anybody about it
15 because it wasn't a big deal. Not a big deal? If
16 it wasn't a big deal, what are you testifying for it
17 for? Sounds like they're trying to say my client
18 confessed saying that it was the stupidest thing he
19 had ever done and that he knew it wasn't a real gun.

20 Well, if it was a confession, guess what?
21 You're an experienced police officer, you've been a
22 police officer since 2004. Sounds like that's
23 something important write in a report to me. If it
24 didn't document -- if you didn't document it, it
25 didn't happen.

1 And I don't want to call anybody a liar, but
2 maybe their memory is getting confused. Maybe one
3 heard the other one say it and that's why they're
4 saying it. It's plain and simple: Is it credible
5 enough for you to convict Homer James of armed
6 robbery solely based on that?

7 Now we have to look at, what did the State
8 prove? Because I'm discounting that statement.
9 That's ridiculous. What did they prove? Well, they
10 proved some stuff. And, remember, the burden of
11 proof is on them, they have to prove some stuff.
12 What did they prove? They proved that Homer's hat
13 was in a car that ran from an armed robbery. Can't
14 deny that, if you believe it was Homer's hat. They
15 proved that three people robbed a bank. Of those
16 three people, nobody testified that anybody had a
17 tattoo on their hand. You can look at the pictures
18 and the video, you're not going to see tattoos on
19 the hand.

20 And the gentleman, the bank manager who
21 testified, he said that all he could look at was the
22 hand. He didn't get a very long look because the
23 person told him to put their hand -- their face
24 down. But he testified he didn't see anything
25 unusual, he didn't notice any tattoos or anything

1 else. So somebody robbed a bank. We don't know
2 who.

3 They proved that some panties were in a car.
4 If you believe that Homer had something to do with
5 those panties, well, how did those panties get in
6 the get in the car? They didn't explain that. They
7 proved that Homer's DNA may or may not have been on
8 the panties.

9 They proved that Homer may or may not have been
10 in the trailer. Now, Captain Williams testified
11 that he saw somebody run from the trailer, but -- he
12 said it was dark, but he saw the person. He was
13 able to clearly describe the person. He was able to
14 say, oh, yeah, it was my client. But he didn't
15 mention the tattoos on his back or on his chest.

16 Now, you saw them. The one on his back is very
17 pronounced, it's very big, you could see it. You
18 could see the two that were on the top of his chest.
19 No mention of tattoos. So is he really the person
20 that the captain saw running from the trailer? We
21 don't know. And if you believe that it was Homer
22 who ran from that trailer, well, the State has
23 proven that Homer was in the woods the day after the
24 robbery.

25 Now we got to look at what was not proven. We

1 don't have any idea who had this gun in their hand.
2 We don't have any idea what Homer's connection to
3 Lewis or Leon would have been. I think we can agree
4 they're not related, just happen to have the same
5 last name, a fairly common name. We haven't proven
6 that any of Homer's DNA was on any item of evidence
7 collected from the bank or from the car except for
8 possibly the hat and the panties, if you accept that
9 that's Homer's DNA.

10 There's no evidence been submitted to you or
11 proven that Homer was in the car in Olar. There is
12 no evidence been submitted to you that Homer was in
13 the bank. There is no evidence been submitted that
14 Homer committed a bank robbery.

15 And they didn't even prove that Homer was the
16 one they were tracking, because if you remember, we
17 had a lot of discussion about the dog and the dog
18 coming up and the dog and the sense of scent and the
19 dog was off the leash and they were just chasing --
20 they were just running behind the dog.

21 But where did they find Homer? The dog didn't
22 track to Homer. Homer walked in between the two
23 police officers and that's when they were like, oh,
24 hey, we got you. So they didn't even prove that
25 Homer was the one that they were tracking that

1 night.

2 He gave testimony about how they followed the
3 track and they looked at the footprints and they
4 looked at the -- I think he said the human marks
5 with the footprints and the dew and the moving of
6 the bushes. But there's no evidence that any of
7 that came back to Homer.

8 Now, ladies and gentlemen, you can decide the
9 credibility. And it's going to be up to you to
10 decide whether or not the State has proven their
11 case beyond a reasonable doubt. And all I ask is
12 are you willing to convict Homer based on some
13 statements that weren't documented that just popped
14 up right before trial? Are you willing to convict
15 Mr. James of armed robbery based on circumstances
16 that are not all consistent with each other and do
17 not point to his guilt conclusively?

18 And I'm going to tell you about that too. And
19 the Judge is going to talk to you about reasonable
20 doubt. And that doesn't mean every doubt. But a
21 reasonable doubt is a doubt that causes a reasonable
22 person to hesitate to act. And in plain English
23 it's been defined as a doubt that -- any -- that you
24 must be firmly convinced of the defendant's guilt
25 prior to making a decision of guilt -- you know,

1 that he's guilty.

2 Ladies and gentlemen, the Judge is also going
3 to tell you and I'm going to tell you one last time,
4 the State has to meet their burden to prove
5 Mr. James guilty beyond a reasonable doubt. They
6 have not met this burden, and I ask you to find
7 Mr. Homer James not guilty of the charge of armed
8 robbery. Thank you.

9 MR. MILLER: Your Honor, if Mr. Bamberg can set
10 up the screen very quickly.

11 THE COURT: Yes, sir.

12 MR. MILLER: Thank you. While Kenny finishes
13 setting that up, I don't want to keep y'all sitting
14 any longer.

15 I want to start off with something that might
16 surprise you. I'm going to agree with Ms. Alves
17 about one thing that she said: The police could
18 have investigated Darrell Lassiter earlier. They
19 could have gone to Greensboro, North Carolina, they
20 could have talked to him. It probably wouldn't have
21 been as hard for him to get the loan document that
22 he had filled out at the bank if they had been there
23 a week after he had done it as opposed to a year
24 after he had done it. But he didn't.

25 He came down here from North Carolina and he

1 got on the stand and he presented -- we presented in
2 evidence a notarized document; a document that he
3 signed and was notarized in Gilford County, North
4 Carolina, Greensboro, on June the 5th.

5 From here on out is where I disagree with
6 Ms. Alves about everything because she said you
7 didn't hear any testimony about what time it was.
8 He said, I spent most of the afternoon at the bank
9 that day getting this loan six hours away in
10 Greensboro, six hours from Denmark. Darrell
11 Lassiter had nothing to do with this. But she
12 doesn't want to say he had something to do with it.

13 She doesn't want to call somebody a liar.
14 She's telling you that those two SLED agents are
15 lying. She's telling you that you have to discount
16 what they testified to because her client didn't say
17 it, because it wasn't written down. That's what
18 she's telling you. She's saying they're lying.

19 Direct evidence: Yeah, I saw that person do
20 that. Those are gray and red Air Max Nike shoes.
21 They're the same shoes Homer James was wearing when
22 he got arrested. That is Homer James' face. When
23 you watch that video, he's got this gun in his hand.
24 Yeah, you saw that person do that. You saw it on
25 the video. Watch the video.

1 Yeah, what's up with this hat? What's up with
2 this hat? Guess what, this hat -- how many zeros
3 are there in a quadrillion? One in 24 quadrillion
4 people before you get to somebody randomly besides
5 Homer James with that DNA profile. What's a
6 quintillion? How many zeros is that? One in 30
7 quintillion.

8 This hat doesn't cover his face. You know what
9 this hat does? The hat covers up all the hair. He
10 had that hat on when he went into the bank. But
11 it's not blue and gray striped. Well, if he had the
12 hat on, then it ought to be covered up. You ought
13 to be able to see the stripes on the hat. He had
14 this over his head, he had it over the hat. This is
15 what's going to cover up his face.

16 Here's the problem: He's got on sunglasses and
17 when it's June in Bamberg County and you're outside,
18 you can see it's bright, but when you walk into a
19 building and you got sunglasses covered up by
20 panties, you can't see anymore.

21 So what does he do? He goes up, can't see, and
22 he's pulling up the sunglasses because he's trying
23 to see what's going on. What's taking so long?
24 Ladies and gentlemen, that is direct evidence.
25 That's not circumstantial evidence. You can see it.

1 You can see those shoes.

2 So instead of follow the money, let's follow
3 the shoes. They run out, they get in the car, dye
4 packs have exploded. Not a very good bank robbery,
5 they don't get any money, not that they can use, and
6 Chief Walley gets on them.

7 Good police work is hard police work; good
8 police work is aggressive police work; good police
9 work is fair police work. But, ladies and
10 gentlemen, sometimes good police work is the result
11 of luck. Our first witness happened to see two guys
12 get out of that Grand Am.

13 If she doesn't see them get out of the Grand
14 Am, the dye packs still explode, they don't get
15 money, everybody in the bank is terrified because
16 they think they just got robbed at gunpoint, which
17 they did, but at the end of the day, probably nobody
18 caught because they wouldn't have known what to look
19 for. None of the police would have known what to
20 look for.

21 But Ms. Betty Wilson was there. She saw
22 something and she said, man, that's odd, so she
23 circles the block real quick. And she's across the
24 street looking at the bank when the two guys run
25 out. And she says maybe five-seven when she's asked

1 how tall they are from 40, 50 yards away. She gave
2 the best answer she could. But she said something
3 to the police and then the word gets to Chief Walley
4 over the radio.

5 Chief Walley sees the car. He doesn't stop the
6 car, he just turns around on it. He's going to say,
7 hey, anybody got a better description of the car?
8 Can somebody send some backup my way? I mean, Chief
9 Walley did a fantastic job, as Ms. Alves said. He
10 documented everything he did very well, very nice
11 guy. He's not going to run anybody down, not on
12 foot, so he gets behind this car. And as soon as he
13 does, what do the people in the car do? Immediately
14 turn. And then as he turns behind them, they run a
15 stop sign.

16 Now he's going to turn on his blue lights.
17 They run another stop sign. They crash the car and
18 run. But he's not right behind them. You heard him
19 say, I knew that was a dead-end road, I slowed down.
20 They were either going to be at the dead-end road or
21 they were going to be coming back, so I slow ed
22 down, I was a little bit behind them, by the time I
23 got there, there was only one guy left getting out
24 of the car.

25 The guy he described matches the description of

1 Lewis Garvin. Lewis Garvin, based on what Chief
2 Walley said, it was like he thought about stopping.
3 The other two guys were gone. Lewis Garvin thought
4 about stopping. Then he thought better of it, and
5 he took off too. Lewis Garvin never saw Homer James
6 and Leon James after that. They're off over there,
7 he's off over here. They're down here in Olar.

8 The next time anybody comes out, anybody sees
9 them, is Captain Eddie Williams. Captain Eddie
10 testified that he went to the trailer that was
11 beside the recycling center -- and you saw that on
12 the drone video today, the trailer over there is a
13 double-wide trailer beside the recycling center --
14 because there was a call for suspicious activity.
15 So he went and checked it out and everything was
16 good to go, locked up, everything is fine.

17 And here's where luck comes into it again: A
18 volunteer fireman in Govan, South Carolina thought
19 he saw a funnel cloud, so he went to the fire
20 station and he called the other fireman or the
21 chief. And they all happened to be together and
22 they said, let's go to the fire station. If that
23 doesn't happen, all those guy s aren't at the fire
24 station. And you heard Captain Eddie. He thought
25 it was probably just a trespasser or a squatter.

1 If those guys weren't standing outside the fire
2 station, Captain Williams doesn't stop and he
3 doesn't say, hey, have you seen anything? And if he
4 doesn't say, hey, have you guys seen anything, then
5 nobody tells him, hey, you should probably check out
6 the trailer behind the recycling center.

7 What's that trailer? That is the Govan fire
8 training trailer. Training. They store stuff in
9 there, they train in there, you heard the chief talk
10 about it. There's a water bottle in there that
11 doesn't have any DNA connected to anybody in the
12 case. That's not really shocking.

13 Captain Williams lays eyes on Homer. He said,
14 he came out, he wasn't wearing a shirt, he was
15 wearing black pants, he was acting kind of crazy, he
16 was hollering and screaming about get out of here, I
17 didn't do nothing, and then he ran away. And I
18 said, did you see that man again later on? Yes, I
19 saw him at the jail, he was Homer James. He didn't
20 say, I seen him sitting over there for the first
21 time since then. He saw him the next morning. He
22 knew who it was. He knew who he was chasing. He
23 didn't catch him, but the dogs did the next day.

24 And when Homer gets caught, you've heard the
25 testimony, he made statements. He didn't say, I

1 robbed the bank. He didn't say, I shouldn't have
2 robbed the bank. He made statements that were, if
3 you don't know everything about what's going on, if
4 you hadn't sat here on this jury for the last two
5 days, wouldn't really mean anything to somebody.

6 "It wasn't even a real gun." I don't know if
7 Agent Croft even knew that it was a BB gun at that
8 time. "It was the stupidest thing I'd ever done."
9 Well, that could mean a lot of things. "Big
10 rattlesnakes." Y'all have been chasing me a while.
11 That's what I would think if somebody had talked
12 about the rattlesnakes; it's acknowledgement he's
13 been chased for a while. Why? Why?

14 The reason why is simple: He's being chased
15 because he's running; he's running because he's
16 guilty and he knows it. He isn't running out there
17 in the woods so he can see if he can sneak in
18 between the first guy in the chase team and the
19 second guy in the chase team and miss the dog. He
20 just pops up at 9:00 in the morning in the woods
21 with no shirt on wearing the same clothes that
22 Captain Williams described and, oh, by the way, the
23 same shoes that you see in the video. He's running
24 because he's trying to get away.

25 Ladies and gentlemen, Homer James, Lewis

1 Garvin, and Leon James came here from Columbia to
2 rob the bank in Denmark. That's it. They came here
3 to rob the bank. They almost got caught by Chief
4 Walley. And in their haste to get away, Leon didn't
5 even have shoes; he left his shoes in the floorboard
6 of the car.

7 They ran away. They left their IDs, they left
8 the money, they left everything in the car except
9 for whatever it was they had in their hands, and
10 they started running. They had no phone, they had
11 no family, they had no friends, because they were in
12 Bamberg County. They didn't know anybody here.
13 What else were they going to do? Try to keep
14 running. And that's what they did. And one at a
15 time, they got arrested.

16 Now, Ms. Alves has said this fourth person,
17 what if there were more than three people involved,
18 what if there was another person involved? Ladies
19 and gentlemen, it doesn't matter. The fact of the
20 matter is, this is Homer James' day in court.

21 It isn't about Lewis Garvin, it isn't about
22 Leon James, it isn't about the mystery fourth
23 person, because the mystery fourth person didn't do
24 anything. If there is a mystery fourth person, they
25 were in the car. This is about Homer James.

1 All of this circumstantial evidence, all of
2 this circumstantial evidence that Ms. Alves talks
3 about, it's all consistent. If you take one piece
4 of circumstantial evidence -- his ID. Well, his ID
5 was in the car, that doesn't prove anything. Right.
6 It's the nature of circumstantial evidence.

7 One piece of circumstantial evidence without
8 any more doesn't prove anything, which is why
9 Darrell Lassiter wasn't a serious suspect for SLED.
10 What did they have on Darrell Lassiter? Nothing.
11 His ID was in the car, that's it. But when you have
12 three identifications and you know that you have at
13 least three people involved in the robbery, and you
14 know that all of those people are from Columbia and,
15 lo and behold, in the next 36 hours you arrest all
16 three of those people within ten miles of the place
17 where the crime occurred, beat up, dehydrated,
18 scratched up, eaten up, wet, muddy, you know.

19 Ms. Alves said that Captain Steppe can't
20 explain why there's no mention of the defendant's
21 statement in the dog team report. I heard him
22 answer the question three different times all three
23 times she asked it: That's not what we put in the
24 dog team report. In the dog team report, we talk
25 about what the dogs did, that's what we do, we're

1 dog trackers, we put that information in there.

2 There was no interrogation going on, there was no
3 formal interview going on, they weren't taking a
4 statement from anybody.

5 Nick Saban, as bad as I don't like Alabama, has
6 a great quote, and SLED practices it to a T a lot of
7 times: Do your job. You do your job and everything
8 else will work out. Captain Steppe, he's the dog
9 tracker guy. The report that this officer, his
10 tracker produces, talks about what the dog team did;
11 it doesn't talk about what the defendant did once he
12 was in custody.

13 If you look at all of the circumstantial
14 evidence, what's inconsistent with Homer's guilt?
15 Nothing. There's nothing inconsistent about the
16 circumstantial evidence. All of this circumstantial
17 evidence makes sense when you consider it. The
18 things that there was DNA on, SLED tested items
19 until SLED had established that all three suspects'
20 DNA was on something that was in that car. It's in
21 the DNA report.

22 They could have taken the car to SLED, they
23 could have taken it to Columbia, they still could be
24 processing items from the car. Well, why didn't
25 they do this glove? Why didn't they do those gray

1 socks that were found in the woods? What are they
2 going to get from it? They already know that his
3 DNA is on items that are in the car. They know
4 that. So what are they going to get from it?

5 Ladies and gentlemen, the ID, State's Exhibit
6 70, I'm not sure where it got put. I think
7 Ms. Alves and I both get a little excited when we're
8 doing this and start moving stuff around. Here we
9 go. I want you to note something: You've got Lewis
10 Garvin's identification card, you've got Leon James'
11 identification card, you've got Homer James'
12 identification card, you've got Darrell Lassiter's
13 North Carolina commercial driver's license.

14 Homer James, Monetta, South Carolina, but
15 that's not right. And we know that's not right
16 because Homer went to the DMV in Columbia and got a
17 new ID that said, nope, I don't live in Monetta
18 anymore, I live in Columbia, a month before the
19 robbery. Leon James, , Irmo,
20 South Carolina. For those of you that don't know,
21 that's Columbia, right outside of Columbia, over by
22 Harbison. Lewis Garvin,
23 Columbia, South Carolina.

24 Car runs, at least three people involved, car
25 wrecks, three of them are arrested. You got video

1 of him doing it. You can watch the videos over
2 again if you'd like. Ladies and gentlemen, that's
3 not a circumstantial case. That is direct evidence
4 that Homer James is, in fact, guilty.

5 And when you challenge the credibility of the
6 SLED agents who testified, we all sat around, he
7 didn't have handcuffs on, he was in custody, doesn't
8 mean that he wasn't in custody, we gave him water,
9 gave him Gatorade, he was tired, we were tired,
10 there's the picture of it. These guys had been
11 running. Agent Croft had been on a perimeter since
12 10:00 the night before that. It was a Friday night
13 into a Saturday. The night before that they'd been
14 out till 2:00 in the morning chasing after these
15 three guys. They were tired.

16 You know, there's absolutely no indication that
17 this, State's Exhibit 75, the black T-shirt, has got
18 anything to do with this case, none. Because like I
19 told you before, the case is what happened in the
20 bank; the case is what happened in that 90 seconds.
21 But this is just another example -- because at the
22 time we weren't sure how it was all going to play
23 out with Ms. Money.

24 This is just another example; you can collect
25 stuff out of a car all day long, and if you send it

1 up to SLED, SLED's going to say you got to pick five
2 things that can get tested. And if you say, well,
3 five is not enough, they say, well, we might let you
4 get five more; oh, you got three defendants, we
5 might let you get five more. They tried.

6 But they knew that nobody was wearing the black
7 shirt that was inside the bank, and that includes
8 Leon who had been in the bank earlier. They knew
9 nobody was wearing the black shirt. That's the kind
10 of decisions that they have to make; well, we're not
11 going to test the black shirt. That item never got
12 tested by SLED. I mean, it is what it is.

13 I'll let y'all do this in the back if you'd
14 like, but one, two, three buccal swabs were tested.
15 What's a buccal swab? It's like a toothpick that
16 they stick inside your mouth and rub it on your
17 cheek. It's what they use to get DNA, it's what
18 they use to get your profile so they can compare it
19 to other stuff.

20 If you go down this list and you count these
21 up, there's an item, there's an item, there's an
22 item, there's an item, there's an item, that's 19
23 items. Some of them subparts, you only count those
24 once. But this is the SLED item number over here.
25 That's 19 items, 19 things that got tested. They

1 did what they could as far as the testing went -- or
2 they did what was practical as far as the testing,
3 because at the end of the day, you got it on video.

4 Ladies and gentlemen, the State has proven this
5 case beyond any reasonable doubt. Ms. Alves said,
6 I'm not sure who committed this robbery. But,
7 ladies and gentlemen, you should be, you should
8 know. You should be firmly convinced that Homer
9 James is guilty of robbing this bank.

10 The Judge is going to charge you on something
11 called the hand of one -- the hand of one is the
12 hand of all. If you're doing it together, everybody
13 is responsible for it. Homer didn't take the money
14 out of the bank, his co-defendant did. But Homer is
15 the one who had the gun -- or had the gun -- what
16 Chris Folk thought was the gun.

17 And the Judge will tell you, to commit an armed
18 robbery, somebody has to take goods or money -- in
19 this case, money -- by force from a person which
20 includes a corporation; a bank, a business. They
21 have to take goods or money from them and they have
22 to be armed either with a deadly weapon or with
23 something that a person who was present during the
24 commission of the crime reasonably thought was a
25 deadly weapon.

1 It looks real. Nobody would think that that
2 wasn't real if somebody came in and pointed that at
3 them, except for the guy that was doing the
4 pointing. He might even claim later on it wasn't
5 even a real gun.

6 What was going on while he was in the bank
7 during that 90 seconds? What else makes Chris Folk
8 think that thi is a deadly weapon? You heard him
9 testify he's yelling shoot him, shoot him. And you
10 heard Ms. Templeton say, the guy that I was handing
11 the money to was leaning over going, I'm really not
12 going to hurt you. But Chris Folk didn't know that.
13 Those are his employees out there and this guy is
14 standing over him with what he thinks is a gun, and
15 he's yelling shoot him. The shoes, the pants, the
16 face, it's Homer James. Homer James is guilty of
17 armed robbery.

18 The word verdict comes from a Latin word
19 veredicto which means to speak the truth. Ladies
20 and gentlemen, that's all we ask. That's what this
21 courtroom is for; this courtroom is for the truth.
22 Your verdict speaks the truth.

23 When you go back into that room to deliberate,
24 consider the evidence, look at it all. It's not,
25 well, what does it mean that Homer's ID was in the

1 car? Well, that doesn't really mean anything.
2 Okay, we're going to disregard that. No, look at
3 all of the evidence, look at it in context, and
4 render a verdict that speaks the truth. Homer James
5 is guilty of robbing the Enterprise Bank in Denmark
6 on June 5, 2014. Thank you.

7 THE COURT: All right. Madam forelady, would
8 you poll your jury and see if y'all would like to
9 take a quick break or do you want me to go ahead and
10 give you the charge on the law at this point?

11 THE FOREWOMAN: We're going to take a short
12 break, Your Honor.

13 THE COURT: Okay.

14 (The jury exits the courtroom at 3:34 PM.)

15 (Short break.)

16 THE COURT: All right. Bring the jury in,
17 please.

18 (The jury enters the courtroom at 3:46 PM.)

19 THE COURT: All right. Ladies and gentlemen,
20 now that you've heard all the evidence and the
21 arguments of the attorneys, it is my duty to
22 instruct you on the law that provides in this case.

23 Let me point out two things before I get
24 started: I go all over South Carolina and try cases
25 in all the counties. Almost every county in every

1 trial I have a jury, after all of the evidence has
2 bee presented, sends out a request for additional
3 evidence. At this juncture, there will be no more
4 testimony, there will be no more evidence. That
5 doesn't mean that's what is in evidence can't be
6 reviewed, but there will be no more additional
7 evidence.

8 Also, I think some of the evidence will have to
9 be viewed here in the courtroom, if you need. So,
10 Madam forelady, I'll give you further instruction,
11 but if you need to do that, just write it on a note,
12 send it with the bailiff, and we'll review it as
13 often and as many times as you'd like. Okay?

14 Now, my instructions will be in three parts.
15 The first part will be the general rules that define
16 and control your duties as jurors. The second will
17 be the substantive law that applies in this case; in
18 other words, what the State must prove in order to
19 make this case against the defendant in this matter.
20 And then I will give you some ideas or some pointers
21 for your deliberations.

22 Madam forelady, I'll go over the verdict form
23 with you, then we'll break. The attorneys will have
24 a chance to tell me I've made a mistake, and I'll
25 correct it, or they'll say that I didn't and we'll

1 send back the evidence before you, the verdict form
2 with word that you can begin your deliberations. So
3 don't start until you get that word. Okay?

4 Now, if you recall, I told you at the beginning
5 of the case it's your duty to find the facts from
6 the evidence that you heard here in this courtroom,
7 whether it be from sworn testimony or exhibits that
8 have been admitted in this case. To those facts you
9 must apply the law as I give it to you. You must
10 not and shall not be concerned with what you think
11 the law should be, but only what it is. I assure
12 you that if I make a mistake, there are several
13 groups in Columbia that will correct by legal
14 errors. On the other hand, there's no weight, as a
15 general rule, to correct incorrect findings of fact.

16 In this case, you shall not be influenced by
17 any personal dislikes or opinions or prejudice or
18 undue sympathy that you have for one side of this
19 case or the other; in other words, you have no one
20 to punish, no one to reward. You must decide this
21 case based on the testimony and the evidence that
22 you heard here in this courtroom and the according
23 to the law as I give it to you now. And, if you
24 recall, when you took your oath, you agreed to do
25 just that.

1 Also, ladies and gentlemen, in following these
2 instructions, you must apply all of them because
3 they're all equally important. You can't single out
4 some parts of my instructions and say, okay, we'll
5 apply that and disregard others.

6 Also, if I've done anything either throughout
7 the course of this trial either through my rulings
8 to objections, to my comments, my facial gestures,
9 anything that seems to suggest to you that I have a
10 feeling which way you should find the facts, in
11 other words, which verdict you should reach, you are
12 and you shall disregard that. I assure you that I
13 don't. I didn't know anything more about this case
14 than you did until I got here Monday, and I'm not
15 allowed to under the constitution of South Carolina.
16 You and you alone are the judges of the facts in
17 this case.,

18 And you'll determine what those facts are by
19 evaluating and weighing the evidence. And we say
20 weigh the evidence. You can't weigh evidence in the
21 literal sense; it's entirely a mental process and
22 you are to use your good common sense and your sound
23 judgment when you discuss the evidence and you
24 ultimately reach your verdict in this matter.

25 Now, what is evidence? I told you before but

1 I'm going to remind you. The sworn testimony,
2 whether it be on direct examination,
3 cross-examination, or redirect examination,
4 regardless of who called, is evidence. The exhibits
5 that will be back there with you is evidence. There
6 is no other legal evidence in this case. There's
7 none.

8 So that leads me to what is not evidence.
9 Number one, the arguments by these attorneys,
10 whether it be in their opening statements, their
11 closing statements, is not evidence. They haven't
12 been sworn, they're not witnesses, they haven't been
13 put on the stand and cross-examined by the other
14 side. It's not to minimize the importance of they
15 tell you, but it's there to help you interpret what
16 the evidence is.

17 However, at the end of the day if your
18 collective memory of a fact or facts is different
19 than what you're told by either or both of these
20 attorneys or any of these attorneys, then your
21 collective memory will control. And that leads me
22 to a point: Madam forelady, remember, just because
23 something appears in somebody's note doesn't mean it
24 trumps somebody's memory or lack of it in their
25 notes. That's why they're deliberations; you'll

1 have to hash that out. Okay?

2 Also, ladies and gentlemen, questions and
3 objections by attorneys is not evidence; only the
4 testimony. I remind you that the lawyers have an
5 ethical duty to object any time that they feel the
6 courtroom procedure is not properly being followed.
7 The fact, ladies and gentlemen, that an objection
8 was made shall not be discussed by you or considered
9 by you. It will be your job, madam forelady, to
10 make sure that no one tries to engage in
11 conversations such as, oh, did you hear that
12 objection or my ruling on that objection. Okay?

13 Also, anything that you may have seen or heard
14 when court was not in session is not evidence. So
15 that leads me to the types of evidence that we
16 recognize. In South Carolina we recognize two types
17 of evidence; number one is direct evidence and the
18 other is circumstantial evidence. And, typically,
19 you have both in a single trial.

20 Direct evidence directly proves the existence
21 of a fact and does not require deduction. For
22 example, if a question in a case was whether or not
23 I ran a stop sign and my law clerk were to testify,
24 I was standing on the corner and I saw him run the
25 stop sign, that's direct evidence because it

1 immediately establishes the issue of running the
2 stop sign. It's pretty straightforward.

3 Circumstantial evidence is a proof of a chain
4 of facts and circumstances indicating the existence
5 of a fact. Let me give you an example of that. If
6 all of y'all were to go to bed, especially in the
7 part of the state where I'm from, and you were to
8 have a fresh sheet of snow in your front yard, if
9 you were to wake up in the morning and see tracks in
10 that snow, you can reasonably infer that someone or
11 something walked through your yard during the night
12 even though you didn't directly see it. It's by
13 inference, deduction. Only prohibition is that the
14 conclusion you reach cannot be mere speculation or
15 conjecture.

16 And, ladies and gentlemen, I charge you that
17 crimes may be proven by circumstantial evidence and
18 the law makes no distinction between the weight or
19 value to be given to either direct or to
20 circumstantial evidence. However, to the extent the
21 State relies on circumstantial evidence, all of the
22 circumstances must be consistent with each other and
23 when taken together point conclusively to the guilt
24 of the accused beyond a reasonable doubt. If these
25 circumstances merely portray the defendant's

1 behavior as suspicious, the proof has failed..

2 The State has the burden of proving the
3 defendant guilty beyond a reasonable doubt. This
4 burden rests with the State regardless of whether
5 the State relies on direct evidence, circumstantial
6 evidence, or some combination of the two. After
7 weighing all of the evidence, if you're not
8 convinced of the guilt of the defendant beyond a
9 reasonable doubt, you must find him not guilty.

10 Now, in deciding what the facts of this case
11 are -- and I keep saying facts; ultimately that is
12 to reach a verdict -- you must consider all of the
13 evidence. In doing that, you have to decide which
14 testimony you want to believe and which testimony
15 you wish not to believe. You as the jury have the
16 right to disbelieve all or part of any witness'
17 testimony you had come before you. You may believe
18 all of any witness' testimony you had come before
19 you.

20 In making this decision of what we call in the
21 legal field the credibility of witness or the
22 evidence, you may take into account a number of
23 factors. And let me give those factors to you. You
24 can ask yourself how well was the witness able to
25 see or hear or know the things about which they

1 testify? How well were they able to recall and
2 describe the subject matter of their testimony?
3 What was their manner while they were on the witness
4 stand? In other words, what was their demeanor
5 right before your eyes?

6 You can ask yourself, is there some reason that
7 the witness would want to give testimony that would
8 help or hurt one side or the other? Did they have
9 an interest in the outcome of the case or any bias
10 concerning any party or matter involved in this
11 case? You can determine how reasonable the witness'
12 testimony was light of all the other testimony and
13 evidence and whether that witness' testimony had
14 been contradicted by what that witness had said at
15 another point in time by the other witnesses in this
16 case or the other evidence in this case.

17 And, ladies and gentlemen, those certainly are
18 not the only factors you can consider when you go
19 through this exercise of determining the credibility
20 of the testimony of the evidence. When you're sworn
21 in as a juror, you don't lose your common sense, you
22 don't check it at the door, you should use those
23 things in your day-to-day lives that you find
24 indicative of truthfulness and indicative of lack of
25 truthfulness when you're making this determination

1 of which testimony that you want to believe and
2 which testimony you do not want to believe.

3 In deciding the believability or credibility,
4 one thing that you may not do is add up the number
5 of witnesses who appeared on behalf or on behalf of
6 the defendant in making this determination. You
7 have the right to believe one witness over the rest
8 of the witnesses or all of the witnesses against one
9 of the witnesses or any combination of that that's
10 absolutely possible.

11 Your sole objective is to try to find the truth
12 from the testimony and evidence you heard in this
13 courtroom, and it doesn't matter if that truth comes
14 from a witness for the State or from a witness for
15 the defense or some combination of the two.

16 Also, I remind you, ladies and gentlemen, that
17 you heard testimony by people who were determined to
18 be experts. Expert testimony should be judged just
19 like any other testimony that you have heard in this
20 trial; you may accept it, you may reject it, or give
21 it as much weight as you think it deserves
22 considering the witness' education, their
23 experience, the reasons for their opinion, and the
24 other evidence in the case.

25 Ladies and gentlemen, I'll remind you that the

1 fact that this defendant was arrested, indicted, and
2 charged is not evidence of guilt, it doesn't raise
3 an inference or a presumption of guilt. The
4 indictment is a mechanism for trial such as we're
5 having and the determination for you, the jury, of
6 guilt or innocence.

7 Now, in this case, the defendant has pled not
8 guilty to the indictment. That plea puts the burden
9 on the State of South Carolina to prove him guilty.
10 A person charged with committing a criminal offense
11 in South Carolina is never required to prove himself
12 innocent, and I charge you that it is an important
13 rule of law that the defendant in a criminal trial,
14 no matter what the seriousness of the charge may be,
15 will always be presumed to be innocent of the crime
16 for which the indictment has been issued unless
17 guilt has been proven by evidence satisfying you of
18 that guilt beyond a reasonable doubt.

19 This presumption of innocence does not end when
20 you begin your deliberations, but it accompanies the
21 defendant throughout the trial until you reach a
22 verdict of guilt based on evidence satisfying you of
23 guilt beyond a reasonable doubt. It is said in the
24 vernacular of the law that the presumption of
25 innocence is like a robe of righteousness that is

1 placed around the defendant's shoulders where it
2 remains until it has been stripped by evidence
3 produced by the State satisfying you of his guilt
4 beyond a reasonable doubt.

5 Now, this presumption of innocence is not a
6 mere legal theory, it's not just a phrase; it is a
7 substantial right to which every defendant is
8 entitled unless you, the jury, are satisfied from
9 the evidence of the defendant's guilt beyond a
10 reasonable doubt.

11 So what is a reasonable doubt? A reasonable
12 doubt is the kind of doubt that would cause a
13 reasonable, sincere, honest, and conscientious
14 person to hesitate to act in an important matter in
15 their own affairs. Proof beyond a reasonable doubt
16 is proof that leaves you firmly convinced of the
17 defendant's guilt.

18 Now, ladies and gentlemen, there are very few
19 things in this world that we know with absolute
20 certainty. And in criminal cases, the law does not
21 require proof that overcomes every possible doubt.
22 If, based on your consideration of the evidence, you
23 are firmly convinced that the defendant is guilty of
24 the crime for which he's been charged, it would be
25 your duty to find him guilty.

1 If, on the other hand, you think that there's a
2 real probability that the defendant is not guilty,
3 you must give the defendant the benefit of the doubt
4 and find him not guilty. A reasonable doubt may
5 arise from the evidence or from the lack of
6 evidence. And I further instruct you that the
7 defendant is entitled to every reasonable doubt that
8 may arise in a case.

9 And what that simply means is this, ladies and
10 gentlemen: If upon any issue of fact essential to a
11 conviction and a verdict of guilty of an offense, if
12 you have any reasonable doubt as to how that issue
13 is to be resolved, it is your duty to resolve it in
14 favor of the defendant.

15 Now, in order to establish criminal liability,
16 criminal intent is required. For example, the
17 mental state required to be proven by the State for
18 a particular crime might be purpose, intent,
19 knowledge, recklessness, or criminal negligence.
20 Criminal intent must be proven by the State beyond a
21 reasonable doubt. Criminal intent is always a
22 matter that must be determined by the jury from the
23 circumstances surrounding the situation.

24 Now, ladies and gentlemen, there's no way to
25 prove intent to a mathematical certainty, there's no

1 way that science can dissect the defendant's brain
2 and determine what he had in mind at that point in
3 time, so the law says that the criminal intent may
4 be inferred from the circumstances shown to have
5 existed. That is how you make the determination of
6 whether or not the element requiring intent was
7 present.

8 It is not necessary to establish intent by
9 direct and positive evidence, but intent may be
10 established by inference in the same way as any
11 other fact by taking into consider the acts of the
12 parties and all of the facts and circumstances of
13 the case. Criminal intent is a mental state, it is
14 a conscious wrongdoing, and it's up to you to
15 determine what the defendant intended to do based on
16 the circumstances shown to have existed.

17 Criminal intent can arise from action or a
18 failure to act. It may arise from negligence,
19 recklessness or an indifference to duty or to the
20 consequences that is considered by the law to be the
21 equivalent of criminal intent.

22 All right. Ladies and gentlemen and Madam
23 forelady, I instruct you and I emphasize that the
24 fact that the defendant did not testify shall not
25 and may not be considered by you in your

1 deliberations. The burden remains on the State of
2 South Carolina to prove his guilt at all times by
3 proof beyond a reasonable doubt. If anybody tries
4 to bring that up, it will be up to you to shut it
5 down. Okay?

6 Now, an issue in this case was the
7 identification of the defendant as a person who
8 committed the crime charged. The State has the
9 burden of proving identity beyond a reasonable
10 doubt. You must be satisfied beyond a reasonable
11 doubt of the accuracy of the identification of the
12 defendant before you may convict the defendant.
13 Identification testimony is an expression of belief
14 or impression from a witness.

15 You must determine the accuracy of the
16 identification of the defendant. You must consider
17 the believability of each identification witness in
18 the same way as any other witness. You may consider
19 whether the witness had an adequate opportunity to
20 observe the offender at the time of the offense.
21 This would be affected by things like how long or
22 short a time was available, how far or close the
23 witness was, the lighting conditions, and whether
24 the witness had the chance to see or know the person
25 in the past. It is not essential that the witness

1 himself be free from doubt as to the correctness of
2 his statement.

3 Once again, I charge and instruct you that the
4 burden of proof of the State extends to every
5 element of the crime charged, and this specifically
6 includes the burden of proving beyond a reasonable
7 doubt the identity of the defendant as the person
8 who committed the crime. If, after examining the
9 testimony, you have a reasonable doubt as to the
10 accuracy of the identification, you must find the
11 defendant not guilty.

12 Those are the general rules, ladies and
13 gentlemen, that apply to your duties as jurors.
14 Usually by this time I've about got people's eyes
15 glazed over, so I'm going to stop for a minute, let
16 you move around. If anybody wants to go in and take
17 a quick break, we'll do that. I'll charge you on
18 the law of armed robbery and then go ahead and let
19 you go on with your deliberations. This is the
20 longest part. You want to go forward or take a
21 quick moment?

22 THE FOREWOMAN: We'll go forward, Your Honor.

23 THE COURT: All right. Very good.

24 Ladies and gentlemen, this is the law of armed
25 robbery: The defendant is charged with armed

1 robbery. In order to prove this offense, the State
2 must first prove beyond a reasonable doubt that the
3 defendant took personal property from the person or
4 presence of another person.

5 Property is in the presence of a person if it
6 is within the person's reach, inspection,
7 observation or control, such that the person could,
8 if not overcome with violence or prevented by fear,
9 keep possession of the property. I charge you,
10 ladies and gentlemen, that the term person also
11 includes corporations. The State must also prove
12 beyond a reasonable doubt that the defendant carried
13 the property away intending to permanently deprive
14 the owner of the property and to keep the property
15 for the defendant's own use.

16 The slightest removal of the property or the
17 complete possession of the property, even for an
18 instant by the defendant, is sufficient to show a
19 taking and carrying away of the property. The
20 taking and carrying away of the property must have
21 been done with violence or putting the owner of the
22 property in fear of violence.

23 Finally, the State must prove beyond a
24 reasonable doubt that the defendant was armed with a
25 deadly weapon or what a person who is present during

1 the robbery reasonably believed to be a deadly
2 weapon during the robbery. A deadly weapon is any
3 article, instrument, or substance which is likely to
4 cause death or great bodily harm.

5 Whether an instrument had been used as a deadly
6 weapon depends on the facts and circumstances of
7 each case. Ordinary objects may become deadly
8 weapons when the facts show that they've been used
9 to inflict serious bodily harm or death. Whether an
10 object has been used as a deadly weapon is a factual
11 question for you, ladies and gentlemen, to
12 determine. But I'm going to give you examples of
13 instruments which may be considered deadly weapons:
14 A pistol, shotgun, a rifle, dirk, dagger, a knife,
15 slingshot, metal knuckles, raisers, gasoline, fire
16 bomb or Molotov cocktail, lighter fluid. Those are
17 just some examples of what can be considered deadly
18 weapons. I'll further charge you that a gun may be
19 a deadly weapon even if it is not operating.

20 Ladies and gentlemen, in South Carolina we
21 recognize a doctrine that's called the hand of one
22 is the hand of all. If a crime is committed by two
23 or more people who are acting together and
24 committing the crime, the act of one is the act of
25 all.

1 A person who joins with another to commit an
2 unlawful act is criminally responsible for
3 everything done by the other person which happens as
4 a probable or a natural consequence of the acts done
5 in carrying out the common plan or purpose. For
6 example, two people can be guilty of killing another
7 person when only one of the two had a gun, there was
8 only one bullet, and only one of the two fired the
9 shot that caused the death.

10 If two or more people are acting together or
11 are together acting together assisting each other
12 with the offense, the act of one is act of all, or
13 as it's sometimes said in law, the hand of one is
14 the hand of all.

15 Prior knowledge that a crime is going to be
16 committed without more is not sufficient to make
17 that person guilty of that crime. Mere knowledge
18 that another person is going to commit a crime, even
19 if the defendant is present when the crime is
20 committed, is not sufficient to convict the
21 defendant as a principal.

22 Guilt by a principal is shown by actual or
23 constructive presence at the scene as a result of a
24 prior arrangement; therefore, a finding of a prior
25 arranged plan or common scheme is necessary for a

1 finding of guilt as a principal.

2 The State must prove beyond a reasonable doubt
3 by competent evidence the theory of the hand of one
4 is the hand of all. A principal in a crime is
5 either the one who actually commits the crime or the
6 one present aiding, abetting or assisting in
7 committing the crime.

8 When a person does an act in the presence of
9 and with the assistance of another, the act is done
10 by both. Where two or more acting with a common
11 plan or intent or present at the commission of a
12 crime, it does not matter who actually commits the
13 crime, all are guilty; the hand of one is the hand
14 of all.

15 Present at the commission of the crime means to
16 be sufficiently near to aid and abet and assist in
17 the commission of the crime. However, mere presence
18 at the scene is not sufficient to convict one as a
19 principal on the theory of aiding and abetting.

20 Intent is also a necessary element for there
21 must have been a common design or intent to commit
22 the crime and the crime must have been committed
23 pursuant thereto with the person aiding and abetting
24 by some overt act. Intent means intending the
25 result which actually occurs, not accidentally or

1 involuntarily.

2 Intent may be shown by acts and conduct of the
3 defendant and other circumstances from which you may
4 naturally and reasonably infer intent. The State
5 must prove these elements beyond a reasonable doubt.

6 So, ladies and gentlemen, that is the
7 substantive law which you must apply. I will tell
8 you now, Madam forelady, I do not send my charge
9 back with you, but if at any time you need me to
10 refresh your memory as to a particular point of law
11 or all the points of law, I will be glad to do that
12 as many times as you'd like.

13 Now, finally, ladies and gentlemen, when you
14 went through the qualification process, you
15 represented to these lawyers, to the parties, and to
16 this Court that you could be fair and impartial.
17 When you're a juror, you don't serve as a juror to
18 be a partisan or an advocate for one side or the
19 other.

20 Your job is to use your common sense, your
21 sense of logic, you experiences in life to try to
22 search for the truth to see that justice is done in
23 the case for both parties. You have no one to
24 reward, you have no one to punish. You want the
25 facts to guide you in your determination.

1 Let me tell you what deliberation means. This
2 is the definition: It is a careful consideration
3 weighing up with a view to a decision. Now,
4 regardless of what you may feel about our judicial
5 system, I would submit to you that the genius of the
6 system is that it allows 12 men and women such as
7 yourselves who comes from different walks of life,
8 who different experiences and perspectives, to
9 listen to the trial, listen to the evidence, to go
10 back and consider that evidence, to talk about it,
11 and to ultimately reach a verdict in this matter.

12 You are to consider all of the evidence
13 carefully and courteously and discuss it with each
14 other in a calm, thorough, and courteous manner.
15 You are the judges of the facts. You're not
16 partisans and advocates. Your sole interest is to
17 find the truth.

18 I'm going to ask you but I'm going to charge
19 you to listen to everyone's points of view, discuss
20 with them why they have these points of view, and if
21 you're doing deliberately, you should not be in a
22 hurry and you shouldn't be in one today.

23 I will tell you that this is the only time that
24 either party has a right to have this matter heard.
25 They don't get a second bite at the apple. And this

1 is an important case for both the State of South
2 Carolina and this defendant.

3 In order for your verdict to stand, it will
4 have to be unanimous. But with that being said,
5 each of you must decide this case on your own. Do
6 not be afraid to change your mind as to the weight
7 of the evidence if your deliberations convinces you
8 it's the thing to do; but, on the other hand, don't
9 change your mind simply to appease your fellow
10 jurors to reach a verdict in this matter.

11 Now, madam forelady, at any time if you have a
12 question, what I'm going to ask you to do is write
13 down that information or the question that you have,
14 knock on the door. The bailiff will send it out and
15 we'll address it here in the courtroom and respond
16 accordingly.

17 One thing I do not ever want you to do is to
18 tell us where the jury stands numerically, if you're
19 six-six, eight-four, or eleven-one. If you're 12
20 and 0, we want to hear it. Okay? And then we will
21 respond in kind with what you need. Okay?

22 With that being said, let me go over this
23 verdict form with you real quick. I have to put it
24 in some order, so the order that they appear is of
25 no consequence. But your options are, as to the

1 charge of armed robbery, Indictment No.
2 2014-GS-05-209, we the jury unanimously find the
3 defendant not guilty. If that's what everybody
4 agrees to, you'll check that option, you'll sign
5 your name, and then you'll knock on the door and
6 we'll receive it.

7 The other option: As to the charge of armed
8 robbery, Indictment No. 2014-GS-0-209, we the jury
9 unanimously find the defendant guilty. If you find
10 that he is guilty, you, again, check that option,
11 sign your name, knock on the door and we'll receive
12 it.

13 Now, if you would, I'm going to ask you to go
14 back to your jury room for a brief period so these
15 lawyers can tell me I need to change something
16 correct something. If not, we'll send word back for
17 you to begin your deliberations, but do not do so
18 until we do that. Okay?

19 (The jury exits the courtroom at 4:16 PM.)

20 THE COURT: Any additions or exceptions by the
21 State?

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

23 THE COURT: From the defense?

24 MS. ALVES: None, Your Honor.

25 THE COURT: Well, let me thank the lawyers.

1 Regardless of what happens, somebody is going to win
2 and somebody is going to lose. But both of you
3 tried the case and prepared the case very well and
4 did a good job for your respective sides of the
5 case, so I want to thank you for that. It's been a
6 pleasure to have been down here with you this week.
7 If y'all will remain fairly close by or give us your
8 number after you go through the exhibits --

9 MR. MILLER: We've gone through them already,
10 Your Honor, and they're boxed up. The box and this
11 board here need to go back. Other than that,
12 everything is -- we're good to go.

13 THE COURT: Mr. Bailiff, if you could take this
14 verdict form and that box and board, and then ask
15 the alternate to come out. Thank you so much.

16 (The alternate enters the courtroom.)

17 THE COURT: You had the worst job of everybody
18 all week; you had to sit there and you don't even
19 get to vote on anything, do you?

20 THE ALTERNATE: No, sir.

21 THE COURT: I want to thank you for serving.
22 I'm telling you, I know it's no fun. But without
23 people like you willing to do their civic duty, we
24 can't ever get anything taken care of. Thank you so
25 much.

1 THE ALTERNATE: You're welcome.

2 THE COURT: All right. You're excused. And
3 remember, they can't make you do it again for three
4 years.

5 THE ALTERNATE: Okay.

6 (The jury begins deliberations at 4:19 PM.)

7 THE COURT: We have a question already: May we
8 have a magnifying glass if one is available? Does
9 anyone have a problem saying we'll look and try to
10 find one?

11 MR. MILLER: No problem, Your Honor.

12 MS. ALVES: No, sir.

13 THE COURT: Tell them we're going to try to
14 find one.

15 (Court's Exhibit No. 1 marked for
16 identification.)

17 (Trial in recess 4:22 PM - 4:49 PM.)

18 THE COURT: Bring the jury back in, please.

19 (The jury enters the courtroom at 4:49 PM.)

20 THE COURT: All right. Madam forelady, the
21 first question that you sent out -- and I apologize
22 for making you wait, we had another thing we're
23 trying to get done -- was: Can the jury please see
24 the last still image presented during closing
25 arguments by the State?

1 Which last still image was that?

2 THE FOREWOMAN: I believe it was the last one
3 projected. We're not sure what exhibit number that
4 was.

5 THE COURT: The one of the shoe?

6 THE FOREWOMAN: Yes, sir.

7 THE COURT: Okay. And also: The jury would
8 like to view State's 40 through 60 in the courtroom
9 on the projector.

10 THE FOREWOMAN: Yes, sir.

11 THE COURT: Okay. Which one do you want to do
12 first?

13 MR. MILLER: We have the still image cued up,
14 Your Honor.

15 THE COURT: Okay. We'll do the still image and
16 then we'll go from 40 to 60.

17 THE FOREWOMAN: Yes, sir.

18 (State's Exhibit displayed to the jury.)

19 THE FOREWOMAN: Is there a way to zoom in on
20 that? Is that allowed?

21 THE COURT: I know they did some during the
22 trial.

23 Can you zoom in on that?

24 MR. MILLER: Judge, I don't know. It's a
25 video, so I don't know if we --

1 THE COURT: Oh, that's right.

2 MR. MILLER: Judge, I'm told with the video
3 that's as close as we can get.

4 THE COURT: If it would help to walk up and
5 look at it right there, you're more than welcome to
6 do that.

7 THE FOREWOMAN: Okay. Thank you, Your Honor.
8 If anybody wants to do that.

9 THE COURT: Be careful with the equipment up
10 there. Any of your other jurors want to go take a
11 closer look?

12 THE FOREWOMAN: I think that's all of us, Your
13 Honor.

14 THE COURT: All right. So that answers that
15 question; correct?

16 THE FOREWOMAN: Yes, sir.

17 THE COURT: All right. Now we'll show Exhibits
18 40 through 60.

19 (State's Exhibit Nos. 40 - 60 displayed to the
20 jury.)

21 THE FOREWOMAN: Can you zoom in on that one?

22 THE COURT: That would be number 50.

23 MR. MILLER: Your Honor, they're looking to
24 zoom in on the shoes?

25 THE FOREWOMAN: We'd like to see the whole

1 person. If he could just zoom in on that upper
2 right quadrant.

3 THE COURT: It's one of the videos as well,
4 isn't it?

5 MR. MILLER: That's the closer image.

6 THE FOREWOMAN: Okay. Thank you.

7 All right. We're ready to return to the jury
8 room.

9 THE COURT: Okay. Good. Go back and resume
10 deliberations.

11 (The jury returns to the jury room to resume
12 deliberations at 4:59 PM.)

13 THE COURT: All right. Ladies and gentlemen,
14 we have a verdict. Would you bring the jury in,
15 please.

16 (The jury enters the courtroom at 5:10 PM.)

17 THE COURT: Madam forelady, the jury does have
18 a verdict?

19 THE FOREWOMAN: Yes, sir.

20 THE COURT: Is it unanimous amongst all of the
21 jurors?

22 THE FOREWOMAN: Yes, sir.

23 THE CLERK: State of South Carolina vs. Homer
24 Arthur James, Indictment 2014-GS-05-209, armed
25 robbery. As to the charge of armed robbery in

1 Indictment No. 2014-GS-05-209, we the jury
2 unanimously find the defendant guilty.

3 Madam forelady, is that your verdict and is it
4 still your verdict?

5 THE FOREWOMAN: Yes, sir.

6 THE CLERK: Members of the jury, is that your
7 verdict and is it still your verdict?

8 THE JURY (collectively): Yes, sir.

9 THE CLERK: You want me to poll the jury?

10 MS. ALVES: Yes, sir.

11 THE COURT: Okay. Juror No. 87, if that was
12 your verdict in the jury room and is it your verdict
13 now, would you raise your right hand? Thank you,
14 ma'am.

15 Juror No. 70, if that was your verdict in the
16 jury room and if that's your verdict now, would you
17 raise your right hand? Thank you.

18 Juror No. 94, if that was your verdict in the
19 jury room and if that is your verdict now, would you
20 raise your hand? Very good.

21 Juror No. 10. If you don't know, that would be
22 Bowers. Okay. If that was your verdict in the jury
23 room and if that's your verdict now, would you raise
24 your right hand? Very good.

25 Juror No. 37, that would be Folk, if that was

1 your verdict in the jury room and if that's your
2 verdict, now, ma'am, would you raise your right
3 hand? Thank you.

4 Juror No. 65, sir, if that was your verdict in
5 the jury room and that's your verdict now, raise
6 your right hand. Very good.

7 Juror 113, which is Sandifer. Madam
8 foreperson, if that was your verdict in the jury
9 room and if that's your verdict now, raise your
10 right hand. Very good.

11 Juror No. 131, sir, if that was your verdict in
12 the jury room and if that's your verdict now, would
13 you raise your right hand? Very good.

14 Juror No. 122, ma'am, if that was your verdict
15 in the jury room and if that's your verdict now,
16 would raise your right hand? Thank you.

17 Juror No. 23, ma'am, if that was your verdict
18 in the jury room and if that's your verdict now,
19 raise your right hand. Thank you.

20 Juror No. 143, if that was your verdict in the
21 jury room and if that's your verdict now, would you
22 raise your right hand? Very good.

23 And, finally, Juror No. 66, Jolly, if that was
24 your verdict in the jury room and if that's your
25 verdict now, would you raise your right hand? Okay.

1 Let the record reflect that all jurors answered
2 in the affirmative to the questions that I asked in
3 the poll.

4 Ladies and gentlemen, the Court is never
5 concerned with your verdict, but only that you pay
6 attention and you engage yourself in the course of
7 this trial and that you carry out your duties in a
8 fair and impartial way. I've watched you throughout
9 this case and you stayed engaged, you watched all
10 the testimony, you listened to my long, boring
11 charge and you continued throughout this case to be
12 engaged, and for that, we appreciate it your
13 service. I'm not thanking you for your verdict, but
14 I'm thanking you for your service.

15 The good thing is you can't be required to come
16 back and do this for another three years. But I
17 would say again to you that without people like
18 yourselves who are willing to face the unpleasant
19 task of sitting and judging somebody else, then we
20 don't have a system to resolve our differences. And
21 the people who don't have such a system that we have
22 now, you can see the people who don't and what kind
23 of problems they have.

24 With that being said, I'm going to ask you to
25 go back to your jury room for one second and then I

1 have some paperwork for you to sign, I'll ask you
2 some questions, and then you can go if you'd like
3 to. For the members of the jury who need statements
4 for work, the clerk says you can go downstairs.

5 (The jury exits the courtroom at 5:15 PM.)

6 (The remaining jurors enter the courtroom at
7 5:19 PM.)

8 THE COURT: All right. Mr. James, come around,
9 please, sir.

10 My understanding is this is an LWOP. Is that
11 correct?

12 MS. ALVES: Yes, sir.

13 THE COURT: Mr. James, you understand there's
14 nothing I can do? You understand that, don't you?

15 THE DEFENDANT: It's not the end, Judge.

16 THE COURT: Sir?

17 THE DEFENDANT: It's not the end.

18 THE COURT: I understand.

19 THE DEFENDANT: It's not the end. This is just
20 the beginning.

21 THE COURT: Okay. Well, you'll have ten days
22 to appeal. I just want to make sure that's on the
23 record. I sentence you to life without the
24 possibility of parole. Good luck to you, sir.

25 THE DEFENDANT: Thank you, sir.

1 MR. MILLER: Your Honor, there's one more brief
2 matter, technical.

3 PROBATION AGENT: Just a little housekeeping
4 matter, Your Honor.

5 THE COURT: Okay.

6 PROBATION AGENT: I'm from probation. South
7 Carolina is currently supervising Mr. James.

8 THE COURT: I'm terminating that.

9 POTENTIAL JUROR: It's a parole case from
10 Virginia for armed robbery. We will have to notify
11 them of this and it will be a violation of that case
12 as well.

13 THE COURT: Okay. Well, then there will
14 probably be a hold on him.

15 POTENTIAL JUROR: Yes, sir. I just have to put
16 it on the record.

17 THE COURT: Okay. Thank you.

18 MS. ALVES: Judge, at this point I'd make a
19 motion for a new trial. Taking the evidence in the
20 light --

21 THE COURT: Let me ask you this: Do you want
22 to have ten days so you can do written motions so
23 you can gather your thoughts? Or you can make them
24 now, however you want to do it.

25 MS. ALVES: I'll just make it now.

1 THE COURT: Okay.

2 MS. ALVES: Well, I'm trying to think what my
3 other issue would be. I'll take the ten days to
4 make the motions. Thank you.

5 THE COURT: Okay. You can e-mail that to me
6 and we'll do it that way.

7 MS. ALVES: Yes, sir.

8 THE COURT: Thank you, ma'am.

9 Was that the first or second strike for this
10 gentleman?

11 MR. MILLER: Your Honor, he had four armed
12 robberies in 1996 in South Carolina, the armed
13 robbery from Virginia. This would be --
14 technically, because he pled to all of the other
15 armed robberies, it's an ongoing course of conduct,
16 and I think it would be his third. But it wasn't a
17 real close --

18 THE COURT: Well, ladies and gentlemen of the
19 jury, I just asked him to put that on the record.
20 Sometimes jurors feel bad but, unfortunately, under
21 our strike system, I don't have any discretion.
22 Anybody have any questions before we go? All right.
23 Thank you for your service and you're excused.

24 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

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STATE OF SOUTH CAROLINA

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COUNTY OF LEXINGTON

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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 trial of the captioned cause, relative to appeal in the Criminal Court for Bamberg County, South Carolina, on the 8th - 11th of August, 2016.

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

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December 16, 2016

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s/Bethanie K. Creppon

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Bethanie K. Creppon
Circuit Court Reporter

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1 State of South Carolina) In the Court
2 County of Bamberg) Of General Sessions

3 Indictment No.: 2014-GS-05-00209
4

5
6 State of South Carolina,)
Plaintiff.)
7)
8 vs.) Transcript of Record
9)
10 Homer Arthur James,)
Defendant.)

11
12
13 September 9, 2016
14 Aiken, South Carolina
15

16 B E F O R E:

17 The Honorable R. Lawton McIntosh, Judge.
18

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

20 David Miller, Deputy Solicitor
Attorney for the State

21 Wallis Alvez, Esquire
22 Attorney for the Defendant
23

24 Brenda J. Sigwald, Circuit Court Reporter
To The Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

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1 THE COURT: Good afternoon, how you doing?

2 MS. ALVES: Good, Judge, how are you doing?

3 THE COURT: Good. You need a minute to get all
4 your stuff together.

5 MS. ALVES: No, sir, I'm ready.

6 THE COURT: While we're waiting Ms. Alvez, this
7 matter was a Bamberg case. Does your client agree to have
8 venue now of your motion for a new trial set in Aiken
9 County today?

10 (Ms. Alvez was talking to her client.)

11 MS. ALVEZ: Mr. James is agreeable to that, Judge.

12 THE COURT: Thank you, sir.

13 Thank you, Ms. Alvez.

14 All right. This is the matter of State of South
15 Carolina versus Homer Arthur James. I don't have the exact
16 date that we -- approximately three weeks ago we had a
17 trial in this matter in Aiken County -- excuse me, in
18 Bamberg County, the charge of armed robbery. The jury
19 found Mr. James guilty.

20 He had been given notice that the State would seek
21 life without possibility of parole. Nobody challenges the
22 fact that the notice was given and based on his record,
23 that was the sentence I gave.

24 Multiple grounds for a new trial are being asserted
25 by Mr. James.

1 And Ms. Alvez, since this is your motion, I'm going
2 to let you go ahead and take the floor.

3 MS. ALVEZ: Yes, sir, may it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. ALVES: Judge, taking the evidence in the light
6 most favorable to the State, we'd move for a directed --
7 excuse me, for a -- we'd move for a new trial for Mr. James
8 on the charge of armed robbery.

9 Judge my specific ground is that there was
10 insufficient evidence for which the jury could conclude
11 that Mr. James was present at the armed robbery and was a
12 participant in the armed robbery that occurred at the bank
13 in June of 2014. Judge, even if you find that there was
14 sufficient evidence from which the jury could make their
15 decision, I'd argue that that evidence, taking it --
16 taking -- I mean looking at all of the circumstances
17 that -- and I know that Your Honor did make rulings on that
18 evidence, but I think looking at all of the circumstances
19 together, that some of the evidence should have been
20 suppressed and we'd argue that the inclusion of the
21 evidence that we argued for suppression at trial was
22 prejudicial to Mr. James and caused him to have an unfair
23 trial. We would move for a new trial on those grounds.

24 Also, Judge, I feel that, and I believe that based
25 on some of the evidence that was allowed into trial, had

1 that evidence been excluded, there would have been a
2 different verdict from the jury.

3 THE COURT: Well, let's do this, if you don't mind.
4 You kind of provided me a memorandum and I've looked
5 through it. We'll get back to the jury selection process,
6 but the first error that you claim was the -- on page 3,
7 denial of defense motion to suppress alleged statements of
8 the defendant in violation of his Fifth Amendment rights.

9 MS. ALVES: Yes, sir.

10 THE COURT: You want to address that, please, so
11 the record's clear on that.

12 MS. ALVES: Yes, sir. Judge, I would just note
13 that I did file a motion and I stand on the grounds that I
14 asserted in the motion, in the memorandum, but --

15 THE COURT: Have you made -- let's make that a
16 Court Exhibit if we haven't done it so the memorandum is
17 part of the Court record.

18 MS. ALVES: Yes, sir, it was filed.

19 THE COURT: Okay.

20 MS. ALVES: It was filed on August 22nd, but I'll
21 provide a copy.

22 THE COURT: Okay, thank you.

23 MS. ALVES: Judge, during the -- during the Jackson
24 v. Denno hearing, the officers testified about statements
25 made to Mr. James, or excuse me the statements made by

1 Mr. James said that he'd been running all night and he said
2 something about it wasn't a real gun. And the investigator
3 testified that --

4 THE COURT: It wasn't a real gun, and did he also
5 at this point say, Stupidest thing I've ever done in my
6 life, if I recall something along those lines.

7 MS. ALVEZ: No, sir, that was in the Jackson
8 investigator's report.

9 THE COURT: Investigator's report.

10 MS. ALVES: Yes, sir.

11 THE COURT: Okay.

12 MS. ALVES: Investigator Croft said that he made
13 that statement; Investigator Croft also stated that he said
14 the statements that Captain Stepp asserted. Judge, I would
15 argue that this violates the Fifth Amendment and I know
16 that this was ruled on at trial, but in looking at the
17 totality of the circumstances, as well as looking at the
18 testimony that the officers gave after the Jackson v Denno
19 hearing, I think there were some -- there were some
20 discrepancies in what was testified before and after,
21 specifically the amount of officers who were there and
22 exactly was what going on. Specifically, Mr. James -- he
23 was seen in the woods by Captain Stepp and his team and
24 they -- at that point they apprehended him.

25 The testimony was very clear, the dog did not

1 approach Mr. James, Mr. James was just seen by them and he
2 just happened -- at some point, and it was unclear -- but
3 he apparently walked in between Captain Stepp and the
4 officer who was in front of him across what he talked about
5 was a small body of water.

6 THE COURT: Wasn't there some testimony that the
7 dogs were taking the officers -- I agree that the testimony
8 was as you just stated, that he happened up between the dog
9 and one of the officers, or something along those lines,
10 but the dogs, they testified that the dogs had been on the
11 trail. They were following the trail and they were showing
12 the footprints that they were -- that was consistent with
13 where the dog had taken them and also to an area where the
14 defendant ultimately was captured.

15 MS. ALVEZ: Yes, sir, the dogs did take them in the
16 area of where Mr. James was ultimately found, but, however,
17 the footprints never came into testimony. I objected to
18 them and the State declined to put in the pictures of that
19 evidence.

20 THE COURT: Oh, I know I said admissible. They
21 never admitted them? I don't remember that.

22 MS. ALVES: No, sir, they didn't admit the
23 footprints.

24 THE COURT: Okay.

25 MS. ALVES: They said that they were following the

1 track but they never -- the footprints were not admitted.

2 Those were the ones that were provided to me that --

3 THE COURT: Okay.

4 MS. ALVES: -- were very late.

5 THE COURT: Right.

6 MS. ALVEZ: Judge, specifically, the only
7 evidence -- the only information that the officers were
8 given was that they were not giving each other information.
9 They were told they were tracking three black males.
10 That's the only thing that Captain Stepp said he knew.
11 There was no description given. There was no description
12 of the tattoos that Mr. James had and that he displayed to
13 the jury, even though the Captain Ed Williams testified
14 that Mr. James was the person who came out and didn't have
15 a shirt on.

16 There was no description of any clothing given to
17 the officers. There was no information other than three
18 black males. And then when they saw Mr. James and they put
19 him under arrest, that's when they alleged that he made
20 these statements. However, he made -- according to Captain
21 Stepp, Mr. James made the statements in response to
22 questions about his physical -- his physical condition and
23 how he was able to stay ahead of the dog team because they
24 were so impressed that he was able to delude them for the
25 period of time which they had been tracking him.

1 My concern is that when the statements were made to
2 Mr. James, there's no question he was under -- he was in
3 custody.

4 THE COURT: All right. I agree with you on the
5 summary.

6 MS. ALVEZ: Yes, sir, and I believe the State even
7 conceded that he was in custody. However, Captain Stepp --
8 his testimony was that he is not part of the investigation,
9 he's only the dog team. He does not investigate cases. He
10 doesn't interrogate suspects. However, in this situation,
11 he was actually interrogating or -- or if not a formal
12 interrogation, informally questioning Mr. James about the
13 fact that Mr. James had been the person that they had been
14 tracking all that evening.

15 Captain Stepp, during his testimony in the actual
16 trial testified about his law enforcement experience. He
17 testified to over 15 years of experience as both a road
18 officer for the Cayce Police Department. He testified
19 about being an officer with the Capital police, as -- and
20 then being -- and then going onto SLED. So he is an
21 officer with experience. He is a certified law enforcement
22 officer and also I would note that Investigator Jeff Croft
23 was also present during these questions that were posed to
24 Mr. James.

25 Judge, the questions that -- and there was more

1 details came out in the testimony than originally came out
2 in the -- in the Jackson v Denno Hearing. In particular,
3 there was a lot more information provided when Your Honor
4 was questioning Captain Stepp at the in-camera hearing
5 regarding the pictures that were provided late to the
6 defense.

7 Judge, he -- the questions that the officers posed
8 to Mr. James, even though they were not asking him about
9 the robbery, I think they were -- they were intended to
10 elicit a response, specifically confirming that Mr. James
11 was the person that they had been tracking all that
12 evening. I think that based on the questions they asked
13 and the responses that Mr. James gave about seeing the
14 snakes out there, being out there all night, I think those
15 were in response to the questions by the officers.

16 There is case law talking about when -- it's not
17 improper for the officers to be friendly and chatty to
18 the -- to a defendant and that if a defendant takes that as
19 an opportunity to talk, well, that's his bad luck and his
20 misfortune that he's done that. However, in this
21 situation, there was no Miranda given even though Mr. James
22 was in custody and he was being specifically questioned
23 about -- whether about -- about information that would lead
24 the jury to believe that he was the person the police had
25 been tracking all that night.

1 And so, Your Honor, my position is that the
2 questioning by the officers violated Mr. James's Fifth
3 Amendment rights. I think that because there was a lot
4 more information that came out during the trial than just
5 what was provided in the Denno hearing, I think that
6 allowing that testimony in is error and it can't be
7 harmless because the State did not have an overwhelming
8 case against Mr. James here.

9 They only had -- the only evidence they had was his
10 DNA found in a hat that was found in the vehicle being
11 driven by Mr. Leon Jennings to get away from the armed
12 robbery and only DNA found on a bottle that could not --
13 that couldn't be conclusively determined to be Mr. James's,
14 however, he couldn't be excluded. And some pictures of
15 some generic Nike sneakers.

16 So in this situation, the State did not have an
17 overwhelming case and I think that those statements that
18 were allowed into evidence were prejudicial and
19 detrimentally harmed Mr. James.

20 Now, I know he gave over --

21 THE COURT: May I stop you there one second,
22 please?

23 MS. ALVEZ: Yes, sir.

24 THE COURT: During the -- okay, you said that it
25 wasn't a real gun was made to Captain Stepp in response to

1 what you consider custodial interrogation?

2 MS. ALVEZ: Yes, sir.

3 THE COURT: He also said that there's some big
4 rattlesnakes out there, something along those lines, right?

5 MS. ALVEZ: Yes, sir.

6 THE COURT: What else was stated during this part
7 of the conversation?

8 MS. ALVEZ: He talked about that he was a boxer.
9 He talked about his physical training. And both of the two
10 statements that he made to Captain Stepp.

11 THE COURT: And it wasn't a real gun.

12 MS. ALVEZ: It wasn't a real gun.

13 THE COURT: And if I recall correctly, he had not
14 been long captured and brought out to a clearing; offered
15 water, do you need any water, do you need medical
16 assistance, something along those lines and they got into
17 conversation about how, you know, impressed they were
18 because he had been so elusive for such a long period of
19 time with his -- I guess what they were trying to say my
20 age is same as yours, advanced age compared to some younger
21 people, something along those lines; is that about right?

22 MS. ALVEZ: Yes, sir.

23 THE COURT: All right. Go ahead.

24 MS. ALVEZ: Judge, also I'd ask that the additional
25 statements that were purported to be made by Mr. James

1 about it wasn't a real gun, as I said, I think the
2 statements talking about the snakes and the statements that
3 he gave reference to Mr. James being out in the area for a
4 long time. I think those were prejudicial. I know the
5 statements about the gun and the statements that he made to
6 the officer, excuse me, Investigator Croft testified to
7 that he said this was the stupidest thing he'd ever done.
8 I know -- they said those were not elicited, however,
9 neither one of the two officers could testify about what
10 they were discussing when those statements were made and
11 they couldn't testify about -- or neither of them did
12 testify about exactly when in the conversation those
13 statements were made.

14 So we can't say whether or not they were in
15 response to anything because we don't know. All we know is
16 that they're alleging these statements were made, however,
17 nobody seems to remember when they were made or exactly at
18 what point in the conversation, who was there when the
19 statements were made. The only thing we have is the
20 pictures showing that there were about seven officers
21 total. During the Jackson v. Denno and Captain Stepp
22 testified that there were about four, possibly five
23 officers, but in the picture, we can clearly see that there
24 were seven officers.

25 That does not include the photographer who were

1 around Mr. James when the statements were made. So I think
2 that even gives stronger evidence to the fact that
3 Mr. James was in custody. We don't know what anybody else
4 was asking him. The statements were clearly, in my
5 opinion, based on the testimony in violation of Miranda and
6 our position is they should have been suppressed.

7 THE COURT: Didn't the State stipulate that when
8 the statements were made that Mr. James was in custody and
9 that he had not been given his Fifth Amendment rights.

10 MS. ALVEZ: They did stipulate to that, yes.

11 THE COURT: That's what I thought. At least that
12 was conceded by the State, I should -- I should note that.

13 MS. ALVEZ: That was actually testified to.

14 THE COURT: Oh, was it?

15 MS. ALVEZ: Yes, sir.

16 THE COURT: All right. So tell me about Dana
17 Money. I think that's the paternal bloodline DNA evidence.

18 MS. ALVEZ: Yes, sir, Judge. As to the statements
19 I had another issue.

20 THE COURT: Oh, I'm sorry, go ahead.

21 MS. ALVEZ: As to the statements, specifically made
22 a denial on the statement that was testified to by
23 Investigator Croft because that statement -- because the
24 defense believes that that statement, if it was even made,
25 arose out of interrogation even though it wasn't a formal

1 interrogation. That statement, the first that the defense
2 heard about that statement was when Investigator Croft
3 testified to it during the Jackson v Denno hearing.
4 Previously this case had been -- to refresh your memory,
5 Judge, this case was originally set for trial for November
6 of 2015 and in November of 2015 during preparation for the
7 case, the solicitor advised me that he talked to Captain
8 Stepp and Captain Stepp advised him of the statements that
9 he testified about at the trial.

10 The solicitor sent me an e-mail, which was made a
11 part of the record, stating what Captain Stepp told him
12 about the statements. He didn't have any further details
13 about with statements. Obviously, we didn't have those
14 pictures that were only provided to the State during the
15 trial and then provided to me shortly after the State
16 received them. But we were never given any notice about
17 the statement that Investigator Croft made, which was
18 substantially different and I think more inflammatory to
19 the defense than the statements that Captain Stepp
20 testified about.

21 The solicitor's position at trial was that these --
22 they were not obligated to turn those statements over
23 because they were not made during interrogation and the
24 defense would disagree with that. I don't know what the
25 State's going to argue, Your Honor, and I have put in my

1 memo what I would anticipate their argument would be that
2 they would argue that even if this were an error for Your
3 Honor to have allowed the statements in that they would say
4 that it is not prejudicial, it would be just merely
5 cumulative to statements already given by Captain Stepp.

6 However, the defense's position is that all of the
7 statements came in from interrogation even though it wasn't
8 a formal sit down interrogation. They were given without
9 the benefit of Miranda and that the statements should have
10 all been suppressed.

11 And, Judge, moving onto Ms. Money. Judge,
12 Ms. Money testified about -- she testified about a number
13 of items. However, my motion deals with three
14 specifically, the hat, the panties and the water bottle
15 that was found in the fire department trailer.

16 Ms. Money testified regarding the DNA in the hat.
17 Now, the DNA in the hat there's -- taking her testimony,
18 the majority contributor to the DNA that was found in the
19 blue and gray striped hat belonged to Mr. James. There was
20 no indication -- there was no evidence found that the other
21 codefendant, Leon James and Lewis Garvin were contributors
22 to the DNA found in the hat, although there were multiple
23 contributors to that.

24 She testified that she -- there was no evidence --
25 Judge, in fact, we don't know when the hat got in the

1 vehicle. There was no evidence about anybody wearing that
2 particular hat in the bank. In particular, the people in
3 the bank had on solid colored hats. That's very clear from
4 the video. There's no evidence that this hat was linked at
5 all to this bank robbery and our position would be that
6 evidence would -- it was irrelevant. I mean, it was just a
7 hat found in the car with Mr. James's DNA.

8 THE COURT: Wasn't that car linked to the robbery?

9 MS. ALVEZ: Yes, sir. But there was also other
10 evidence found in the car that was -- that was suspicious
11 that wasn't linked to the robbery. In particular, the ID
12 card of Gara Lassiter.

13 Now, I know Mr. Lassiter ultimately came and
14 testified that he was some place else at the time of the
15 robbery, however, that wasn't known to the police until
16 September of 2015. So from June of 2014 until September of
17 2015, Mr. Lassiter's identification was in the car and
18 there was nothing apparently suspicious about that because
19 no one ever investigated Mr. Lassiter until the solicitor
20 and their investigator decided to go and try to find him to
21 see if they could find a reason why his identification was
22 in the car.

23 And in fact, Mr. Lassiter was never even considered
24 a suspect because as Captain Stepp testified, he was only
25 looking for three black males, they were never looking for

1 four black males, even though they found the identification
2 of four black males in the car. So Judge, the hat, we'd
3 argue was irrelevant. And I think the inclusion of the
4 hat, the blue and gray hat being allowed into evidence was
5 prejudicial to Mr. James. It can't be just found to be
6 harmless because that was a substantial portion of the
7 State's case here.

8 Judge, also as to the water bottle, the water
9 bottle was located in the training building. The major
10 contributor, the DNA on the water bottle was Leon James.
11 The testimony from Ms. Money was that she could not exclude
12 Mr. Homer James as the minor contributor. And because the
13 testimony does not establish Mr. James as an actual
14 contributor to the DNA on the bottle, the testimony was, at
15 best, misleading to the jury.

16 I think it clearly confused the jury and as such,
17 it should have been excluded. In particular when the State
18 did not have that overwhelming a case against Mr. James and
19 those two pieces of evidence clearly influenced the jury's
20 decision here. Obviously they were prejudicial to
21 Mr. James.

22 Judge, I have a slightly different argument
23 regarding the panties, the DNA on the panties, although my
24 position is that same, that the DNA on the panties and the
25 admission of that evidence did serve to mislead the jury

1 and to confuse the jury.

2 Ms. Money testified that she was unable to get a
3 DNA profile from the DNA found on the panties so she
4 decided to use Y strand DNA test. When she was questioned
5 about what the procedures and the policies were, it was
6 pretty apparent that Ms. Money's decisions are made based
7 on her impressions of the evidence, not based on any
8 policies by SLED or any procedures that are set in place by
9 any other agencies. She testified that she was only able
10 to get -- she testified that there were 16 possible
11 locations where she looked for DNA and she was only able to
12 get a DNA profile for eight out of the sixteen locations.
13 Of those eight locations, five of them she determined
14 were -- excuse me, two of them, she marked to proceed with
15 caution because of the low amounts of DNA present.

16 When she was questioned about specific guidelines
17 that govern how many locations are sufficient to go
18 forward, Ms. Money was never able to give a specific answer
19 regarding any procedures and policies. She merely said
20 that based on the department protocols, which she could
21 never say what those protocols were, those protocols are
22 not set by any other federal agencies and she -- Ms. Money
23 wouldn't specify any point at which -- when half -- when
24 you only can get a location out of -- when you can only get
25 a DNA profile out of half of the locations that you search

1 and three out of the eight are insufficient to get a strong
2 positive determination of the DNA, she was unable to
3 specify at any point when SLED's guidelines would say
4 that's insufficient to make a DNA -- to determine DNA. I
5 specifically asked her, Well, what -- what if you only get
6 three or four or five? What if you couldn't get a
7 sufficient amount? She couldn't say what is the cut off.
8 So there clearly is no cut off. I don't think that
9 Ms. Money's -- in order for -- judge, in order for them --
10 in order for her testing to be -- in order for it to be
11 recognized as the science, she has to have the YNA testing
12 has to be widely accepted and it has -- in Ms. Money's
13 testimony, four of the six labs in South Carolina do not
14 use the testing and she could not explain why.

15 The testing has to be -- it has to be based on
16 procedures, quality and control procedures, that are
17 subjective and not based on -- well, excuse me, they have
18 to be objective following control procedures. In this
19 case, Ms. Money's testimony was that they're based on what
20 she thinks, her decisions were subjective. They were not
21 based on independent guidelines. They were not even based
22 on any guidelines specified by SLED because she couldn't
23 specify any guidelines. And there was no testimony
24 regarding publications and peer reviews of the testings
25 other than she mentioned a commercial use and she could not

1 even discuss that commercial use in detail.

2 Judge, the Y strand DNA test did find that -- it
3 only found that there was a one in 3800 chance that the DNA
4 belonged to someone other than Mr. James or someone --- or
5 another male in his parental line. I think that's a very
6 low statistic. She testified about higher statistics in
7 other cases, but she was not able to -- I don't believe she
8 was able to specifically explain why the -- why the number
9 was so low for determining whether or not this was
10 Mr. James or a person other than somebody in his parental
11 line.

12 So, Your Honor, my position is that the testimony
13 of doctor -- excuse me, Ms. Money, did not sufficiently
14 explain this Y strand DNA to be a reliable science and I
15 would move to exclude it on that basis. Also, even if you
16 find that the testing is a reliable science, the testimony
17 was that there was a single hair found on a pair of
18 panties. We don't know, was it a head hair, was it a pubic
19 hair? Was it a hair from any other part of someone's body?
20 There was no testimony about that. And there's no evidence
21 that the panties were used in the robbery.

22 Now, during the solicitor's closing, he talked
23 about the fact that the panties could have been on his head
24 to conceal his face and that that's what he was lifting up.
25 However, during the actual testimony, there was nothing

1 indicating that anybody had panties on their head. There
2 were numerous witnesses who were present who were in close
3 proximity to both of the people who went into the bank.
4 There's a video and there's no indication -- there's no
5 panties showing in the bank.

6 So, Judge, the testimony that -- the admission of
7 the panties, I think, only served to confuse the jury
8 because there could be numerous explanations about why some
9 panties, the hair that may or may not match Mr. James's DNA
10 could have been found in the car.

11 And, Judge, of course, we'd argue the admission of
12 the panties --- looking at -- in looking at the entire
13 case -- I know Your Honor did allow the testimony of
14 Ms. Money in over my objection, as well as the testimony
15 regarding the DNA found in the panties, but in looking at
16 the case and all of the evidence presented, I think that
17 the panties were clearly prejudicial -- the admission of
18 this testimony was prejudicial to Mr. James, warranting a
19 new trial.

20 Your Honor, my next issue regarding the evidence is
21 the picture of Mr. James surrounded by police officers and
22 I would stand on the -- on the argument that is made in my
23 written memorandum, however, it was State's Exhibit 80,
24 which was a picture of Mr. James surrounded by law
25 enforcement officers. I believe there were seven officers

1 in the picture and it was obviously one taking the picture
2 and that would be a total of eight. The helicopter was in
3 the background and you could see, I believe it was a car or
4 an SUV, it might have been Investigator Croft's vehicle was
5 in front of them.

6 Judge, there's no relevance to the picture. The
7 only benefit the State received from the picture was to
8 show the shoes that Mr. James was wearing, at least that's
9 my perception of it. I would just note that there was
10 numerous testimony from the State -- from both State's
11 witnesses and, in fact, a defense witness that captain
12 Williams went to the jail and picked up Mr. James's
13 clothing and his shoes from the correction -- from the
14 correction officer.

15 Now, I did object originally to there being any
16 testimony about it until there was some definite chain or,
17 you know, authentication for the shoes, which I think that
18 the evidence clearly showed that -- from the testimony of
19 both Captain Williams and the detention officer. So
20 there's no question that the shoes were -- the views that
21 were in evidence were the shoes that investigator -- that
22 Captain Williams picked up from the jail. So the -- judge,
23 if that is the State's only reason for having put that
24 picture in, I would say it would have been cumulative to
25 the testimony. It was unnecessary except it showed to

1 depict Mr. James as somebody who needed to be surrounded by
2 law enforcement.

3 Now, I know that the solicitor may -- I can't say
4 what he will argue because I don't know, but he may argue
5 that Mr. James was clearly uncuffed in the pictures and I
6 acknowledge that he was uncuffed and the testimony shows
7 that he -- the testimony was that the officers simply had a
8 long way and let him sit there uncuffed and drink water.
9 However, there were several officers, who, I don't know
10 what they had on them, but they were clearly dressed in
11 field clothing and they were all surrounding Mr. James.

12 I think that the picture itself was irrelevant to
13 any of the -- any of what the State attempted to prove and
14 did prove in this case and that the picture was overly
15 prejudicial to Mr. James.

16 Judge, my final argument would be regarding the
17 jury.

18 THE COURT: Regarding the what?

19 MS. ALVEZ: Regarding the jury selection.

20 THE COURT: Okay.

21 MS. ALVEZ: Judge, during jury selection -- during
22 the jury qualification, obviously, I did submit questions
23 and voir dire, which I did attach a copy to my motion and
24 Your Honor did ask, I believe you asked all of the
25 questions.

1 THE COURT: I can't remember quite frankly,
2 Ms. Alvez, if I did not ask any. The only thing I didn't
3 ask for the defense or the State was included in my
4 standard questions or had previously been asked in other
5 voir dire submitted to me. But otherwise I read all the
6 questions.

7 MS. ALVEZ: Yes, sir, that -- I agree with that.
8 Some of the questions weren't, as you said, weren't read
9 specifically from mine, but they were incorporated into
10 your original questions. So I -- so all of the questions
11 they asked for were asked and of course, in making my
12 strikes -- I mean there was a lot of information given from
13 the jurors regarding the -- in answer to the responses to
14 the question and on page two of my memorandum, I did list
15 out the peremptory challenges used by the defense in the
16 order that I exercised them.

17 I would note that one juror, Justin Bamberg was
18 excused. I think he was Juror Number 4, maybe; Juror
19 Number 4, he was excused early on because he stood up and
20 said that his father was actually on the prosecution team
21 and I would just note that when the solicitor introduced
22 the prosecution team -- and I don't remember -- I think
23 Solicitor Miller stood up and introduced himself, Solicitor
24 Weeks, Solicitor Emmer and Investigator Bamberg as the four
25 people who would be working to prosecute the case. So

1 Justin Bamberg stood up and said that that was his father.
2 And, Your Honor, on the Court's own motion did ask us if we
3 agreed to excuse Justin Bamberg; which we both did.

4 Judge, specifically, two jurors stood up, Juror 142
5 and Juror 147 stood up and stated that they were cousins of
6 Stacy Lee. I would just note that Ms. Lee was on the
7 State's witness list. She was expected to testify she was
8 working on the day of the alleged robbery and that a gun
9 was pointed at her and that she was forced to give the
10 bank's money. And that, in fact, was her testimony.

11 I believe that Ms. Lee, based on her testimony was
12 the person who was actually, if you can say anyone was in
13 peril, would have been the one in the most peril because
14 she is the person that was actually forced -- she was
15 actually the one who had the gun pointed at her and was
16 forced to take the money out of the drawer.

17 So, Judge, based on that, Ms. Lee, the defense's
18 position that Ms. Lee's two cousins should have been
19 excluded -- they should have been excluded for cause.
20 Specifically Juror 142 said that she was a cousin of
21 Ms. Lee and that they had a very close relationship. She
22 said that they were raised together, they socialized often,
23 and she knew about what happened.

24 Juror 107 said that although they were -- I believe
25 she said they were first cousins, but -- and she was aware

1 of the details of the robbery, but she said that even
2 though they were family, they didn't socialize as often and
3 she only saw her -- and she didn't see her as often as
4 juror 142 did. However, the first juror who came up was
5 juror 142 and I made a motion to strike that juror for
6 cause and that was denied, and the defense did ultimately
7 use a peremptory strike on her.

8 Juror Number 107 was actually my ninth strike and
9 she was stricken. I moved for cause -- I made a motion to
10 exclude Juror 107 for cause and that was denied and I had
11 the use my ninth strike on Ms. Lee -- excuse me on Juror
12 107.

13 Judge, my concern is that although I did have
14 enough strikes to strike Ms. -- Juror 107, whose names -- I
15 didn't write the names down in the motion, but even though
16 I had enough strikes to strike 107, in -- you can see that
17 the people that were struck -- these were not arbitrary
18 strikes that I just -- that I allowed Mr. James to say he
19 didn't like somebody or that we just struck somebody
20 because they were looking funny or made frowny faces or any
21 other reasons why I might or -- or that anyone might get
22 stricken as a juror. The jurors that were struck prior to
23 107 and 26 were struck for specific things that they said
24 during the voir dire.

25 Now, I know we can't go back and say that's what I

1 had in my mind because I didn't actually put my strikes on
2 the record as I was making them, but you can see that --
3 like for example, Juror 68, during voir dire said that she
4 was a close friend of Mr. Kenny Bamberg and she helped
5 raise his children. Juror 24 said that Rebecca Templeton,
6 one of the State's witnesses, who did testify, dated her
7 cousin. 150 said that his mother worked in a bank. 116
8 said that his brother was a victim of armed robbery.

9 120 said that -- 120 had a lot of issues and that
10 was a juror that Mr. James said that he did know from his
11 time at Allendale correctional. She also testified that
12 she was a customer at the bank. She testified that she
13 knew some of the State's witnesses; and, Judge, Juror
14 Number 83 stated that his daughter worked in the bank.
15 Juror Number 6 Stated that his wife worked in a bank for 35
16 years.

17 Judge, I bring those out to show you that those
18 people gave specific statements during voir dire that were
19 in response to questions that the defense posed to the
20 Court to ask. Clearly that is because the defense, in
21 trying to determine what potential jurors they wanted to
22 have sit on the jury had some concerns about these issues
23 about whether or not anybody had had relatives or
24 themselves been a victim of armed robbery or if anybody had
25 a connection to that particular bank.

1 Now, we did strike -- I did strike -- as I said, I
2 did strike number 20 -- 120 for numerous reasons, but she
3 also said that she was a customer of that specific
4 Enterprise Bank.

5 Judge, the reason I bring all the reasons for --
6 the reasons I bring up what the jurors said in voir dire is
7 because there were two jurors who the defense did
8 ultimately seat because at the point when -- at the point
9 when we -- at the point when we had used up eight strikes,
10 I knew that -- and Your Honor had already made your
11 decision to deny my motion for cause on Juror 142; I knew
12 that 107 was still in the pool.

13 We only had 30 jurors, if I remember correctly, to
14 choose from and one of them, Justin Bamberg, Number 4 was
15 excused, so that left about 25 jurors to choose from, if
16 I'm remembering the numbers correctly. I knew that 107 was
17 still in the pool and I knew that 26 was still in the pool.

18 Number 107 was the one, of course, was the close
19 cousin with a close relationship with Stacy Lee. Now 26
20 during voir dire said that he was the former fire chief of
21 the Govan Fire Department. He said he knew at least one of
22 the State's potential witnesses and that he received
23 information about what happened that night from the State's
24 potential witnesses and other people prior to the trial.

25 Now, I would just note that, of course, all of

1 these people, including the two cousins said they could be
2 fair and impartial, I find that to be a reach when this
3 cousin who you're brought up with had a gun pointed to her
4 head, and Mr. James is being accused of being the person
5 who did it, that she could be fair and impartial in that
6 situation no matter what she said.

7 And Number 26, had information outside of the
8 Court's case. I think that the fire department's
9 information, although it wasn't -- it wasn't really related
10 100 percent to Mr. James, I think that the testimony from
11 Assistant Fire Chief who did say that he helped apprehend
12 Lee on James and who assisted Captain Williams, I think his
13 testimony was important enough to be concerned about what
14 other information Number 26 might have gotten.

15 So at the point that the two jurors who we did have
16 concerns with, Juror number 65 and Juror 113 came up, the
17 defense had to make a decision, do we use two strikes for
18 those two people or do we save strikes for the two jurors
19 that we know are going to be coming up, 107 and 26 who I
20 think would have been very detrimental to the defense to
21 put onto the jury.

22 And, Your Honor, based on the previous ruling, my
23 concern was that I could not let 107 come up as a potential
24 juror because if she was allowed to be on the jury and I
25 did not have any strikes left, that would have definitely

1 prejudiced Mr. James. Perhaps I should have let it
2 prejudice Mr. James, but I couldn't take that chance at
3 trying to look down the line to see whether or not this
4 would ultimately be determined to be error and the fact
5 that I didn't save a peremptory strike would have been an
6 issue. So I did save two peremptory strikes to use for
7 those two jurors, but then at that point, I had to make a
8 decision.

9 Juror Number 65, who was seated on the panel said
10 that his brother had been a victim of armed robbery. He is
11 similarly situated to Juror Number 116, who was my fifth
12 strike. Judge, Juror Number 116 said that his brother was
13 a victim of armed robbery, so did Juror Number 65.

14 However, at the point where we had to save the
15 strikes and make decisions about what was the lesser --
16 which would have been less harm to -- which jurors would
17 have been less harm to put on the jury, we decided to put
18 Juror 65 on. I think it's clear based on the questions
19 that the defense posed to the Court and the fact that we
20 did strike a similarly situated juror indicated that I
21 would have struck 65, had I had a strike available.

22 Also, Judge, Juror 113 was seated on the jury.
23 During voir dire, she stated that her husband is a police
24 officer in Orangeburg, South Carolina. Judge, during the
25 voir dire in my defense's requested voir dire, I

1 specifically asked if anybody had family members or close
2 personal friends who worked for any law enforcement agency
3 or for the Second Circuit Solicitor's Office and that was
4 when she made her response to that question. Our concern
5 in this, is that it was obviously -- I don't think we can
6 speculate, it was very clear that part of my defense was to
7 attack the credibility and the integrity of the police
8 officers who testified regarding the statements made by
9 Mr. James.

10 That was part of the defense strategy and as such,
11 there was some concern about putting a juror who may have
12 been offended by that strategy on the jury. The fact that
13 I did specifically did ask the question about whether
14 anybody had friends or family in law enforcement, I think
15 indicated that that was an important issue to the defense
16 and I would have struck Juror Number 113, had I had
17 additional strikes available.

18 I did use -- I would note that I did use all of my
19 peremptory strikes and if I remember correctly, I think
20 that even after striking the alternate that maybe one or
21 two jurors left, at most, in the panel.

22 Judge, I anticipate that the State would argue that
23 I could have saved strikes sooner and chosen to use my
24 strikes in a different manner, however, in -- we didn't --
25 until the third strike is when I -- the Juror 142 is when I

1 made my first motion for cause and that was denied. That
2 was the third strike. The other jurors who came up were,
3 as I said juror 116 who's brother was the victim; other
4 people's whose family members work in the banks, in banks;
5 and that's when -- and, juror 120 would have a lot of
6 concern. That was the juror that Mr. James knew from
7 actually when he was an inmate at Allendale.

8 So, Judge --

9 THE COURT: And I believe I asked that juror
10 multiple times whether or not she had any independent
11 recollection in this case and she said no.

12 MS. ALVEZ: Yes, sir.

13 THE COURT: She even came back, if I'm not
14 mistaken, and I can't remember the substance of that, but
15 ultimately she did not remember Mr. James and she said that
16 I can be fair and impartial. She volunteered this
17 information, what some people would choose to conceal.

18 MS. ALVEZ: That's right. Judge, I would just note
19 for the record that she did when she came back, she said
20 that it bothered her that he knew her and she didn't know
21 him and she specifically said that there were over 1100
22 inmates at any given time that she supervised at Allendale
23 and she couldn't remember one specific person.

24 However, during the trial when Mr. James is facing
25 the sole punishment of life in prison, he can't take the

1 chance that Juror Number 120 would at some point be like, I
2 do remember him, and that just because she might remember
3 him. In addition to that issue, she also knew some of the
4 State's witnesses and she was a customer of the Enterprise
5 Bank in Denmark.

6 Two people stood up saying they were customers of
7 that bank and she was one of the two. The other person
8 stood up and said that he was a customer of that bank was
9 Number 26, was the fire chief. So there were numerous
10 reasons why the defense struck her, but -- and I know that
11 the Court can't say what was in my mind, but that's why I
12 listed the information that they provided at voir dire on
13 my chart that I included on page two.

14 Judge, I tell you all this to tell you that had
15 there been strikes available, we would have struck Juror 65
16 and Juror 113. And there would have been strikes available
17 had Juror 142 and 107 been allowed to be stricken for
18 cause.

19 THE COURT: All right. Thank you.

20 MS. ALVEZ: And, Judge, all of this information
21 together -- one particular thing might be harmless, but I
22 think all of it, looking at the whole entry here shows that
23 each individual -- each individual issue tended to
24 prejudice Mr. James and for those reasons, we ask for a new
25 trial.

1 THE COURT: Thank you, ma'am.

2 MR. MILLER: Your Honor, with regard to the jury
3 issue, I do need to point out a couple of things and first,
4 I need to correct the record. Stacy Lee never had a gun
5 pointed at her. Stacy Lee never saw a gun. Stacy Lee
6 testified that she interacted with Leon James earlier in
7 the day. She said that when she came back from lunch she
8 saw a guy jump up on the teller and another teller push her
9 into the bathroom and this is from her first testimony in
10 the Leon James trial, but she said in that trial, and it
11 was consistent in Homer James's trial, Well, another teller
12 pushed me, so I ran and I locked myself in the bathroom.
13 Question, Okay. So as far as the robbery you didn't see
14 much of it, correct? No.

15 She didn't even see the robbery. She wasn't
16 handing over the money, she never had a gun pointed at her.
17 The only reason Stacy Lee's testimony made any sense would
18 be if the defense was the robbery didn't occur because she
19 didn't see it. So Stacy Lee is not this all important
20 witness that Ms. Alvez makes her out to be.

21 Second of all, Your Honor, and we mentioned this at
22 the time, once the clerk had the final list of potential
23 jurors that were qualified jurors and before they started
24 calling off the numbers for them to be struck, the clerk
25 gave the State and the defense and the Court the list of

1 the jurors.

2 THE COURT: They gave -- excuse me, are you kidding
3 me?

4 MR. MILLER: That --

5 THE COURT: I didn't see that or I would have
6 gotten them back from you. I didn't know that that
7 occurred. I know they do that in civil cases because the
8 statute requires it. I didn't know they did it --

9 MR. MILLER: That's correct, Your Honor. And at
10 that time, I was like, what is this and Ms. Alvez goes what
11 is this and we were like, this is the juror list.

12 MS. ALVEZ: Judge, if I could answer that, I didn't
13 know that we had the jury list. It never occurred to me
14 that I've never had it before --

15 THE COURT: Quite frankly I didn't know you had it
16 or I would have gotten it back from you.

17 MS. ALVEZ: I didn't know I had it because when I
18 got to the eighth strike and I was trying to figure out
19 what to do, that's when I realized and that's when I
20 started looking at it and I realized that the numbers
21 were -- I can't even explain how I looked at them, but I
22 looked at it and realized I had the jury list and that's
23 when I realized that those two jurors were going to come up
24 later and that I had to use the strikes on these jurors.
25 But I didn't know I even had the list. It never occurred

1 to me until very late in the game.

2 THE COURT: Well, certainly that would not be
3 prejudicial to your client by having the list.

4 MS. ALVEZ: No, sir, it would have been helpful if
5 I had known I had it.

6 MR. MILLER: Your Honor, the fact of the matter is,
7 both of the jurors understanding what Stacy Lee's testimony
8 actually was as Ms. Alvez certainly did, Stacy Lee's
9 importance was she's the person who talked to Leon James
10 earlier in the day. It was setting the stage for what was
11 going to happen later on in the day. Her testimony was
12 brief. She said she didn't see anybody in the robbery.
13 She said she didn't identify anybody in the robbery. She
14 said she didn't -- she never said that she saw a gun. She
15 said she saw a person on the counter.

16 And, Your Honor, the video would indicate that the
17 person on the counter never had a gun. That would be Lewis
18 Garvin who was going over the counter to get the actual
19 money while Mr. James was standing in the lobby pointing
20 the gun at the manager and pointing the gun at other
21 people.

22 But at that point, Ms. Lee's in the bathroom.
23 She's locked herself in the bathroom. So this, this,
24 somehow that Ms. Lee was this all important witness that
25 the fact that these two cousins of hers said they would put

1 their -- any kind of prejudice aside, they wouldn't believe
2 Stacy Lee or any of the State's witnesses over another,
3 Your Honor, I think that's what the statute, and the law
4 requires and I think that the jurors answered the questions
5 truthfully and honestly. How the defense reacted to that
6 is up to the defense.

7 Second of all, Your Honor, I want to kind of jump
8 to this issue of the photo of the officers sitting around
9 Mr. James. And Ms. Alvez said when she was talking about
10 which jurors she wanted to strike, she said the defense --
11 part of the defense strategy was to question the
12 credibility of law enforcement. She was saying that these
13 law enforcement officers were not telling the truth. That
14 photo was put in to corroborate what Captain Stepp and
15 Agent Croft said. He was in custody, we brought him out,
16 when we brought him out he was uncuffed. Everybody was
17 sitting around drinking water, drinking Gatorade, it was
18 very casual. That's exactly what that photo shows.

19 It is corroboration of both of those officers'
20 testimony and in a case where Ms. Alvez is admittedly
21 calling into question their credibility, it becomes that
22 much more relevant and that much more probative, so the
23 photo was offered for that reason. It was to corroborate
24 the testimony of Captain Stepp and Agent Croft.

25 Now, Ms. Alvez points out there never -- we never

1 said those weren't the shoes that he was wearing when he
2 was arrested. Well, they didn't, but we never said that
3 those weren't the shoes that he was wearing when he was
4 arrested either. That argument was never made to the jury,
5 that the shoes that are in this bag that are entered into
6 evidence as a State's Exhibit are not the shoes that
7 Mr. James had on whenever he was arrested.

8 And I heard Ms. Alvez on multiple occasions say the
9 only evidence is that hat and the bottle and the panties,
10 there's nothing else to connect Mr. James to this crime.
11 That's only true if you ignore the fact that there's a
12 video of him committing the crime. And that's what the
13 jury focused on. I think it's clear that what the jury was
14 focused on was that video because those jurors, whenever
15 they asked their second question, we kind of got a glimpse
16 into the thinking of the jury. They wanted to see the
17 blown up still photographs that were taken from the video.
18 They actually went up to the screen and they were looking
19 at the shoes that the defendant was wearing, the same shoes
20 he was wearing whenever he was arrested. The same shoes
21 that were in evidence. They wanted to look at the picture
22 of his face when he lifted up that mask and was staring
23 into the camera through the sunglasses.

24 The jury determined it was him because of the best
25 evidence that it was him, was that video. And Ms. Alvez

1 says that she acts like it doesn't exist. She says the
2 only evidence that connects her client to this crime is the
3 hat and the bottle and the panties that are in the car.

4 She also goes on to say there can be numerous
5 explanations for this evidence. She gave that jury
6 everyone of them. The jury rejected them. The jury relied
7 on the video. Everything else, the circumstances of his
8 capture; his ultimate capture, what he said when he was
9 captured. What he did after that, how the shoes were taken
10 from him at the jail: It's all cumulative to the video.
11 The video's what the jury looked at. The video's what the
12 jury relied on.

13 They were looking for three people because they
14 knew there were three people involved in the bank robbery.
15 They found three people, those three people were arrested.
16 One of them has pled guilty, one of them has been tried and
17 found guilty, the driver, Leon James who was not in the
18 bank by her own admission at the time of the robbery, and
19 Mr. James.

20 And, now, that jury reached the decision that it
21 was Mr. James because they looked at the video of the
22 robbery. They saw him standing there with a gun with those
23 same shoes on that he was arrested wearing a day-and-a-half
24 later and with the same face that he has today, whenever he
25 lifted up the mask. That's what the jury was focused on

1 and all of this -- all of the, well, you don't know what
2 time the DNA got put on these items in the car and there
3 could have been someone else in the car and everything
4 else -- every single bit of that, Ms. Alvez had a full and
5 fair opportunity and did do a good job of arguing to the
6 jury that there were all these other explanations. And at
7 the end of the day, it came down to the video.

8 Your Honor, the State would submit that the Court
9 did not make any error in any of its evidentiary or other
10 rulings with regard to any of these matters and if, in
11 fact, Your Honor, there is some error to be perceived that
12 that error would be harmless in light of the fact that
13 there was overwhelming evidence n from day one in this case
14 that it was -- once Mr. James was captured and you had a
15 person to actually compare to the video, he's on the video
16 committing the crime and all of the other circumstances
17 attendant thereto, to his arrest and capture are really
18 just telling the rest of the story about how did it go down
19 and how did it end.

20 And we would submit that a new trial is not
21 warranted in this case. Thank you, Your Honor.

22 THE COURT: All right. Thank you. I'm going to
23 take these in the order that's been presented in the
24 defendant's for a motion for a new trial. Certainly I'll
25 standby my rulings in court.

1 However, as to the jurors that should have been
2 excused for cause, 142 and 107, I would point out several
3 things. One that the jurors in the entire venire, and
4 especially the ones that are being complained of, as well
5 as others, voluntarily, voluntarily disclosed their
6 answers, their relationships to witnesses who, maybe
7 participants, investigators in the case, there was no
8 intentional concealment by any juror that would happen to
9 be stumbled across which you may infer some type of bias
10 because of their intention not relaying that information
11 being correctly asked of them. Each juror was asked by me
12 in light of their revelation to the Court whether or not
13 they could be fair and impartial and without hesitation,
14 all of the jurors said they could be fair and impartial
15 they could make a decision based on the testimony and
16 according to the law as I gave to them at the end of this
17 case and that was not questioned by the State, nor the
18 defense in this case after those questions were asked.

19 In fact, during voir dire, the State and the
20 defense were given an opportunity to ask additional voir
21 dire if desired of any juror who stood up and answered. No
22 one did. During voir dire, before the jury was found to be
23 qualified, there was no request, if I recall, and I'm not
24 100 percent on this for the State or the defense, but my
25 memory was there was not a request to strike any jurors for

1 cause until after the jury was found to be qualified after
2 certain jurors had been excused, continued or moved around
3 and until the process of jury selection was actually in
4 place after the jury found them qualified.

5 As to the Jurors 65 and 113, by their own
6 admission, the defense acknowledges that they didn't use
7 peremptory strikes on those jurors although they could
8 have.. I understand this rationale and it's been explained
9 to me, but I don't think that arises to the level of
10 warranting a new trial.

11 I will point out that after the defense had used
12 all their peremptory strikes there was no request to strike
13 any other jurors for cause during the jury selection
14 process. All of that took place before the running or use
15 of all other peremptory strikes. There was no testimony by
16 any juror who indicated that they couldn't carry out their
17 assigned tasks or that they would be prevented from their
18 beliefs or from their contact with any witnesses or other
19 parties or there was anything that would substantially
20 impair their performance of their duties as jurors.

21 Again there was no intentional concealment. People
22 voluntarily stood up. I would point out that there are
23 cases that just because you're related -- just because a
24 juror is related to an attorney in the case that that would
25 have more -- that doesn't warrant necessarily

1 disqualification for cause if you're involved -- if you're
2 related to law enforcement, not involved in the case that
3 doesn't automatically cause disqualification. That case is
4 State versus Ivy, 331 South Carolina 118. In fact, it was
5 a case where a juror stood up and said that they knew a
6 witness or individual who allegedly loaned a murder weapon
7 to the defendant's accomplice. He was allowed, or she was
8 allowed to stay on the jury because they acknowledged that
9 that would not have any impact on their ability to be fair
10 and impartial and unequivocally said that. And that's
11 essentially what we have here in this case.

12 So as to your grounds for jury selection, I am
13 denying your motion. The motion to suppress the statements
14 of the defendant, again, although I spend probably more
15 time on that than the other during this trial, the State
16 admitted that the defendant was in custody. It was clear
17 he was in custody. It was clear to me and the State
18 admitted there's no Miranda given to him, but the
19 statements -- and that's why I didn't give the charge to
20 the jury as to statement by the defendant because it would
21 have been inconsistent to my ruling. I found that there
22 was no custodial interrogation took place. I felt like
23 those were essentially spontaneous comments made by the
24 defendant in response to general communication from law
25 enforcement to him at the time.

1 I will note about the picture of him surrounded by
2 law enforcement did show that he was out and didn't have
3 shackles on, he'd been given water. It was clear he was in
4 custody, but he wasn't being coerced at the time. The same
5 basis for the testimony that -- Captain Stepp's testimony
6 and the next thing Captain Croft.

7 Donna Money testified that all the procedures and
8 processes she used had been peer reviewed and it was deemed
9 to be scientific and while there is some amount of
10 subjective analysis to part of what she did, it does not
11 mean that it was not admissible, that would be subject to
12 cross-examination and then there's no alternative -- there
13 was no other studies presented, no other scientific
14 evidence presented, expert witness testimony presented to
15 refute her testimony that this had been peer reviewed, that
16 this had been accepted as scientific and to show that the
17 process was being followed by SLED and this particular case
18 was not scientifically peer reviewed.

19 So each one of those grounds for a new trial will
20 be denied. That would be the motion to suppress, the Fifth
21 Amendment statements to Stepp, Captain Croft and Donna
22 Money.

23 Also I note there was some question as to the DNA
24 on a hat. Clearly, we had an eyewitness who was
25 sufficiently suspicious enough of the vehicle and

1 suspicious activity of the three gentleman in that vehicle
2 that they called law enforcement. The chief of the nearby
3 community, I can't remember exactly where that was --

4 MR. MILLER: Denmark, Your Honor.

5 THE COURT: -- Denmark, saw a car that answered to
6 the description of the vehicle and the, I believe and I'm
7 not positive, occupants of the vehicle as to general basis.
8 I may not be right in that regard, but I seem to recall
9 that initiated him to turn around. If I'm wrong with
10 that --

11 MR. MILLER: And, no, sir, I don't believe that
12 you're wrong with that. I do -- I would point out that I
13 misunderstood the Court's question. It was the chief of
14 Olar --

15 THE COURT: Olar.

16 MR. MILLER: -- was the one that saw the vehicle.

17 THE COURT: Okay.

18 MR. MILLER: And initially made contact with it.

19 THE COURT: Anyway, he initiated pursuit. The
20 defendant fled, the cars fled, which in and of itself can
21 be evidence of guilt and then the DNA that would tie the
22 defendant, who was a citizen and resident of Richland
23 County or Columbia, South Carolina, to the vehicle that did
24 rob the vehicle or supposedly was involved in a bank
25 robbery in Bamberg, South Carolina. So although the DNA

1 did not, as far as the Y, the DNA did not directly relate
2 to this specific defendant, it related his paternal
3 bloodline and put him in the vehicle and the place.

4 Thereafter he was found by the tracking dogs and
5 law enforcement in a general area of where that car had
6 been wrecked.

7 And, again, I believe if I'm not mistaken there
8 were ID's or photos of the defendant -- not photos, but
9 driver's license or ID's of his inside the vehicle at the
10 scene of the vehicle that fled from the chief of Olar
11 Police.

12 So going back down, although I felt like Ms. Alvez
13 did a wonderful job with a tough case, the evidence was all
14 in all overwhelming against this defendant. I would agree
15 with the State that the video evidence showed the defendant
16 in the bank. We have eyewitnesss of the getaway car that
17 had the defendant's DNA inside. Again he was from
18 Columbia; as well as the owner of the vehicle and the
19 passenger of the vehicle were from. We have an eyewitness
20 of suspicious conduct. The suspicious contact of the three
21 people involve involved and the fact that they -- they ran
22 from the chief of Olar Police being found in the area. The
23 tracking dogs had been tracking them to the general area
24 where he was found.

25 The photograph of the defendant surrounded by the

1 police officers may go to add credibility to the fact that
2 he was not being coerced, he was not handcuffed and that he
3 was in a generally uncoerced setting. It also goes to the
4 fact that his physical appearance after being on the run
5 for over a day or day and a half showed his hair being
6 disarrayed. He was dirty, he was dishevelled and he looked
7 like somebody who had been on the run for a long period of
8 time, which was consistent with the other evidence in this
9 case.

10 So again, although this evidence is prejudicial
11 because that's what it's supposed to be, it doesn't
12 warrant -- its submission doesn't warrant a new trial. I
13 think I've touched now on everything.

14 Is there any other areas or issues, Ms. Alvez, that
15 I've not touched on that I need to make a ruling on the
16 record for. I certainly will stand by my rulings at trial.

17 MS. ALVEZ: No, sir, the only other issue that I
18 presented that you didn't mention if you're ruling just now
19 was the water bottle.

20 THE COURT: Was what?

21 MS. ALVEZ: The water bottle. I made --

22 THE COURT: Right.

23 MS. ALVEZ: -- specific objections to --

24 THE COURT: That -- that water bottle, I think I
25 pointed out that seemed mighty low to me and I had concerns

1 with it too, but, Ms. Money sufficiently answered my
2 questions. I had a list of questions that I asked her and
3 again, she said it was scientific method and the number's
4 low. She said she just couldn't discount him as a
5 contributor.

6 MS. ALVEZ: Yes, sir. Well, Judge that was about
7 the panties.

8 THE COURT: Okay.

9 MS. ALVEZ: When you questioned her that was about
10 the one in 3800 on the panties.

11 THE COURT: Right the one in 3800, I thought that's
12 what she said as well.

13 MS. ALVEZ: That was on the Y strand DNA result on
14 the panties. The water bottle found DNA to have multiple
15 contributors and the major contributor to the DNA found on
16 the water bottle was Codefendant Leon James.

17 THE COURT: Right.

18 MS. ALVEZ: And the testimony from Ms. Money was
19 that Mr. Homer James could not be excluded as a minor
20 contributor, so she couldn't say it was or wasn't him and
21 so that was her testimony.

22 THE COURT: You're right. And again, she said that
23 the processes you use to peer review were deemed to be
24 scientific method. And you're 100 percent method that did
25 have to do with the panties and the one in 3800 because she

1 explained that number as not being like the other numbers
2 used in the regular DNA analysis when we see these
3 multimillion, multibillion numbers and that was -- she
4 explained that away sufficiently for me.

5 All said and done I am denying your motion for a
6 new trial to the extent they've not ruled on, I will rely
7 on my rulings in the courtroom. I deny your motions. I
8 wish you the best of luck.

9 Now one thing, Mr. James, I told you when you were
10 sentenced, you had 10 days to appeal. I was wrong because
11 of this new trial motion being made. You have 10 days from
12 the entry of judgment on this ruling to file your appeal,
13 okay?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Good luck to you.

16 MS. ALVEZ: Thank you Your Honor.

17 MR. MILLER: Thank you, Your Honor.

18 THE COURT: Thank you.

19 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)

2 County of Aiken)

Certificate of Reporter

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4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Eleventh Judicial Circuit of the
8 State of South Carolina, do hereby certify that I reported
9 the proceedings in the captioned case in the Court of
10 General Sessions in and for the State of South Carolina on
11 the 9th day of September, 2016.

12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 19th day of December, 2016.

19
20
21 *Brenda J. Sigwald*

22 _____
23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF ~~AIKEN~~ ^{BAMBERG})

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)

2014-GS-05-209

MOTION FOR NEW TRIAL

vs.)

Homer Arthur James,
Defendant.)

JAMES D. HERS
CLERK OF COURT
BAMBERG, SC

2016 AUG 22 PM 1:30

FILED
ENTERPRISE COURT

The Defendant was tried and convicted for Armed Robbery and received a sentence of Life without Parole pursuant to section 17-25-45 of the Code of Laws of South Carolina. The Defendant moves for a new trial on the following grounds.

THE COURT'S FAILURE TO EXCUSE JURORS 142 AND 107 FOR CAUSE WARRANTS A NEW TRIAL

A defendant has a constitutional right to be tried by competent jurors, which implies a tribunal both impartial and mentally competent. If a court has any reason to believe that a potential juror is not indifferent to the case being tried, the juror must be set aside for cause and a new juror must be called. Section 14-7-1020 of the Code of Laws of South Carolina.

During the voir dire of the jury panel, 2 jurors advised the court that they were cousins of Stacy Lee, an employee of the victim, Enterprise Bank and both knew details of the robbery. Juror 142 said that she was a cousin of Ms. Lee and had a close relationship. They were raised together and socialized often. Juror 107 said that she was a cousin of Ms. Lee and was aware of the details of the robbery. Although they were family, they did not see each other or socialize often.

Stacy Lee was on the state's witness list and was expected to testify that she was working on the day of the alleged robbery and a gun was pointed at her and she was forced to give money belonging to the bank to the robbers. Ms. Lee did testify as expected. Both Jurors number 107 and 142 testified that they could be fair and impartial and base their verdict on the information provided in the courtroom.

Defense counsel found the juror's assertions to be incredulous based on their familial relationship with Ms. Lee and moved to strike both jurors for cause when they were called as prospective jurors for the trial of the case. The judge denied the motion forcing defense counsel to use peremptory strikes to remove both jurors from the trial of the case. As a result of the court's decision in regards to Juror 142, the defense used caution in declining to exercise strikes against 2 potential jurors- and saving peremptory strikes to use against the second cousin and another juror whom the defense knew would be called to serve as jurors.

At the start of the court day, there were 43 people present in the jury panel. After the initial disqualifications, granting of exemptions, excuses and transfers, there were 30 jurors available in the panel. One juror, number 4, was excused because his father, Kenny Bamberg, is the investigator for the solicitor's office. This investigator was introduced to the jury as part of the prosecution team along with the three solicitors trying the case for the State.

The defense did exhaust all ten of their peremptory strikes and neither of the cousins were seated on the jury. However, the defense is informed and believes that prejudice can be shown because the defense was forced to use peremptory strikes on these two jurors rather than having them available to strike jurors that the defense would otherwise have stricken from the trial. This can be shown by reviewing the requested voir dire submitted to the court (attached) and a review of the strikes used by the defense.

Peremptory Challenges Exercised by the Defense (in the order exercised)

Juror #	Information Given During Voir Dire
68	During voir dire, she stated that she was a close friend of the solicitor's investigator, Kenny Bamberg's family and helped raise his children
24	During voir dire, she stated that Rebecca Templeton, a state's witness and employee of Enterprise Bank dates her cousin and they socialize
142	During voir dire, she stated she is a cousin of Stacy Lee; also works in a bank; strike for cause was denied
150	During voir dire, he stated his mother presently works in a bank
116	During voir dire, he stated his brother was a victim of Armed Robbery
120	During the initial roll call and voir dire, she stated she is a guard at Allendale Correctional, is a customer of the Enterprise Bank which was the location of the robbery and knew potential state witnesses; it was also brought to the court's attention that the defendant knew her from a time when he was incarcerated at Allendale although she stated she did not know him at all
83	During voir dire, he stated his daughter works in a bank
6	During voir dire, he stated his wife worked in a bank for 35 years
107	During voir dire, she stated that she is a cousin of Stacy Lee
26	During voir dire, he stated he is the former fire chief of the Govan Fire Dept.; knew at least one of the state's potential witnesses and had received information about the case from the state's potential witnesses and others prior to the trial ¹

One of the jurors ultimately seated on the panel was Juror 65 whose brother was a victim of Armed Robbery. He is similarly situated to Juror 116 who also stated that his brother was a victim of an Armed Robbery. Juror 116 was struck by the defense. The question of whether any juror or their family or friends had been impacted in any way by robbery or theft was requested by the defense in their *Defense's Requested Voir Dire* (attached), thus indicating that this was an important concern of the defense. The defense would have struck this juror if there had been

¹ The Govan Fire Department members assisted law enforcement in apprehending the suspects of the bank robbery

additional strikes available.

Juror 113 was also seated on the panel. During voir dire, this juror stated that her husband was a police officer in Orangeburg, South Carolina. In the requested voir dire, the defense specifically requests that the court question the jurors about whether they had family or close friends who worked for any law enforcement agency or the 2nd Circuit Solicitor's office. It was in response to this question that Juror 4 was excused by the Court. Another juror who responded to the question was Juror 68. Although Juror 113 did not mention that she knew any of the people involved with his case, the veracity and integrity of some police officers was expected to become relevant in the case- and did become relevant. The defense was aware that the integrity of the officers would be in question and that concern prompted their request that the Court question the potential jurors about relationships with law enforcement. The defense would have struck Juror 113 had there been additional strikes available.

Although the defense did use all of the peremptory strikes and the jurors complained of here were seated prior to the use of the last 2 strikes, it is clear that based on the numbers of jurors and the responses to the voir dire, the defense was prejudiced in having to choose whether to keep Jurors 65 and 113 or to strike them and risk having Jurors 107 and 26 on the jury. The defense strategy in making their strikes was consistent throughout and consistent with their requested voir dire. None of the seated jurors were similarly situated to those who were struck or Jurors 65 and 113.

The defense is informed and believes that the denial of the motion to strike the jurors for cause was an error in jury selection, this error was not harmless, and the error warrants a new trial.

THE DENIAL OF THE DEFENSE'S MOTION TO SUPPRESS THE ALLEGED STATEMENTS OF THE DEFENDANT VIOLATES THE 5TH AMENDMENT AND WARRANTS A NEW TRIAL

In this case, it was undisputed that the officers placed the Defendant in custody when they came upon him in the wooded area. It was also undisputed that the Defendant was never given the Miranda warnings.

The officers made comments to the Defendant concerning his physical condition and abilities and his ability to stay ahead of the dog team. According to the testimony, at the time of the questioning, the dog team members had not received any detailed description of the people they were tracking other than "3 black males". There was no other description given and specifically no description mentioned of the tattoos which were prominent on the Defendant's back and chest and displayed to the court and jury. Therefore, at the time when the Defendant was put into custody, there was an issue of whether the person arrested was the person being followed during the night and whether he was in fact one of the perpetrators.

Captain Steppe testified that his team is responsible solely for tracking and not investigation. However, he is a trained and experienced law enforcement officer with over 15 years of experience. Regardless of the officers' intent, the questioning of the Defendant was designed to elicit information proving that the Defendant was the person they had tracked during the night.

Thus, with flight being an indication of guilt and the law enforcement belief that the Defendant was the person who initially ran from Captain Eddie Williams and was tracked by them, the questioning of the Defendant by law enforcement rose to the level of interrogation and required that the Miranda warnings be given and waived prior to questioning.

It should further be noted that during the Jackson v. Denno hearing, the testimony from Captain Steppe was that when the Defendant made the alleged statements, there were 4 —possibly 5 officers- present. During the trial-after the court's ruling on the Denno matters- the State presented a picture (State's Exhibit 80) which had only been turned over to the defense one day prior, which showed 7 officers- not including the photographer- posing around the Defendant. Captain Steppe was unable to definitively say when the statements were made and what specifically was said to the Defendant before the statements were made. In addition, the statements were not disclosed to the lead investigator on the case by Captain Steppe or included in the official reports of the dog team members.

The defense is informed and believes that due to the testimony presented at the Denno hearing and that testimony which came out at trial, both *in camera* and in front of the jury, the admission of the statements of the Defendant was error, this error was not harmless, and the error warrants a new trial.

**DENIAL OF THE DEFENSE'S MOTION TO SUPPRESS THE TESTIMONY OF INV. CROFT
REGARDING THE ALLEGED STATEMENT OF THE DEFENDANT WARRANTS A NEW TRIAL**

The defense is informed and believes that the alleged statements testified to by Investigator Jeff Croft should have been turned over to the Defense pursuant to Rule 5 of the Code of Laws of South Carolina. For reasons previously stated, the Defense is informed and believes that the statements did arise out of interrogation, although not formal interrogation. Thus, the statements should have been turned over to the Defense prior to trial.

The defense anticipates that the State would argue even if this were an error to rule against the suppression of this statement, the statement would be cumulative to those testified to by Captain Steppe and this harmless error. If this is in fact the state's argument, the defense would disagree. The statement, as testified to by Investigator Croft, was more specific regarding the guilt of the Defendant. The Defense still argues that the admission of the statements as testified by Captain Steppe was in error.

Therefore, the defense is informed and believes that the admission of the statements testified to by Inv. Croft was error, this error was not harmless, and this warrants a new trial.

THE TESTIMONY FROM DONNA MONEY SHOULD HAVE BEEN EXCLUDED

In this case, there were three items put into evidence that purported to have the Defendant's DNA- a hat, a pair of panties and a water bottle. Donna Money testified regarding the DNA

testing and her findings.

Hat

According to the testimony, the majority contributor to the DNA on the hat belonged to the Defendant with the other contributors being unknown. However, the hat found in the vehicle, and put into evidence, was not the hat that the suspect was wearing in the video of the bank robbery.

Evidence is relevant if it has a direct bearing on and tends to establish or make the matter in controversy more or less probable. Rule 401, South Carolina Rules of Evidence (SCRE). But, even if evidence is relevant, it can be inadmissible if the prejudice to the Defendant substantially outweighs the probative value to the State. Rule 403, SCRE. In this case, the hat was merely present in the vehicle. It did not tend to establish the Defendant's presence at the bank during the robbery.

Water Bottle

The water bottle was located in the training building of the Govan Fire Department. The major contributor to the DNA found on the water bottle was Leon James. This Defendant could not be excluded as the minor contributor. Because the testimony regarding the DNA did not establish the Defendant as a contributor to the DNA on the bottle, this testimony was designed to confuse and/or mislead the jury and as such should have been excluded.

Panties

The evidence of the DNA findings on the panties should also have been excluded. Ms. Money testified that she was unable to obtain a result from the standard recognized DNA testing so he chose to use a Y Strand DNA test. During the testing, she was only able to obtain a DNA profile for 8 out of 16 locations and 3 of these were marked to proceed with caution. When questioned about specific guidelines that govern when to go forward with this limited information, Ms. Money testified that she uses her own judgment based on the department protocols but she could not specify a point when the protocols would find the information insufficient and she could not say whether the protocols were consistent with those used in other labs.

In order for the Y Strand DNA results to be admissible as scientific evidence, we must consider the reliability factors which include publications and peer reviews of the technique, the quality control measures used to ensure reliability, the consistency of the method in comparison to recognized scientific laws and procedures. State v. Jones 383 S.C. 535 (2009). The Y Strand testing is not widely accepted in South Carolina, based on Ms. Money's testimony that 4 of the 6 criminal labs in the state do not use the testing. In addition, the results and quality control procedures are subjective and not based on independent, outside guidelines. Third, there was no testimony regarding publications and peer reviews of the testing other than to mention a commercial use which the witness could not discuss in detail. The Defense is informed and believes that the State failed to establish this science as reliable.

The introduction of the Y Strand DNA testing in this case was designed to confuse and/or mislead the jury. In addition, there was no evidence- testimony or video- that any perpetrator of

the crime used a pair of panties to conceal his identity. And even if the test results of Ms. Money are accepted as accurate and reliable, there is no evidence that the Defendant was at the scene of the crime or wearing the panties in any attempt to conceal his identity.

Thus the defense is informed and believes that the introduction of the testimony of Ms. Money regarding these three items was error, the error was not harmless and prejudicial to the defense and the granting of a new trial is warranted.

THE PICTURE OF THE DEFENDANT SURROUNDED BY THE POLICE OFFICERS SHOULD HAVE BEEN SUPPRESSED

A photograph should be excluded if it is calculated to arouse the sympathy or prejudice of the jury or if it is irrelevant and unnecessary to prove the facts at question in the case.

The State introduced Exhibit 80, a picture of the Defendant surrounded by law enforcement. The fact that the Defendant had been arrested and was surrounded by law enforcement was never in dispute. The defense is informed and believes that the picture was irrelevant and unnecessary to establish any fact at issue in this case.

The defense anticipates that the State will argue that the picture was relevant to show the condition of the Defendant and the shoes that the Defendant was wearing. The defense would counter this argument by pointing out that there was testimony regarding the condition of the Defendant and the picture was cumulative. Also, pre-trial, the defense made a motion to limit any discussion of the Defendant's shoes until such time that it has been established where the shoes came from. There was testimony from state's witness, Eddie Williams, that he received the shoes from the detention center staff. In addition, the detention center officer who gave Captain Williams the shoes testified and confirmed that she gave him the shoes. Thus, the information shown in the picture was cumulative to the testimony and unnecessary except to depict the Defendant as a person who needed to be surrounded by law enforcement, regardless of whether he was handcuffed.

In addition, the picture was never turned over to the defense prior to the 3rd day of the trial. Rule 5 of the South Carolina Rules of Criminal Procedure requires that the State permit the defense to view any photographs which are in the custody or control of the prosecution. The fact that the officer never turned the photographs over to the solicitor is irrelevant. As the prosecutor, the solicitor is the spokesperson for the entire prosecution team which includes law enforcement. The solicitor also has a duty to communicate with law enforcement to ensure that evidence is turned over timely. Therefore, the picture should have been excluded as a violation of Rule 5, SCRCrimP.

Thus, the defense is informed and believes the admission of the picture was error, the admission of the picture taken in totality with the others issues in dispute was not harmless error and a new trial should be granted.

In conclusion, based on the foregoing reasons combined with any other matters contested during the trial, the defense is informed and believes that the Defendant should be granted a new trial. Without the admission of the contested evidence and testimony, the jury could likely have reached a different verdict. Thus the Defendant was prejudiced by those issues which the defense challenges as error and a new trial should be granted.

Respectfully Submitted



Wallis Alves

Post Office 267

Barnwell, SC 29812

(803) 541-1129

Fax: (803) 541-7046

Attorney for the Defendant

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
STATE OF SOUTH CAROLINA)
vs.)
Homer Arthur James,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

Warrant 2014A0510100224 through 227

DEFENSE'S REQUESTED VOIR DIRE

The Defendant, by and through his attorney, Wallis Alves, requests the following Voir Dire Questions be asked of the Jury Panel:

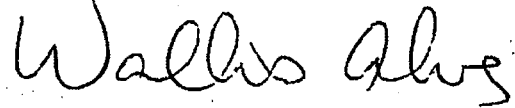
1. Have you or any member of your family or your close friends ever been the victim of an armed robbery or any other violent crime? If so, would this create a bias or prejudice in favor of or against either the State or Defendant?
2. Have you or any member of your family ever been accused of armed robbery?
3. Have you, any member of your family, or friends been impacted in anyway by a robbery or theft?
4. Have you or any of your family members or close personal friends worked for a bank or financial institution? Would this create a bias or prejudice in favor of or against either the State or Defendant?
5. Are you or have you been a customer of Enterprise Bank in Denmark, SC? Would this create a bias or prejudice in favor of or against either the State or Defendant?
6. Have you or any of your family members or close personal friends worked for any law enforcement agency or for the Second Circuit Solicitor's Office?
7. Are you or a member of your family a member of any group that is affiliated with or support law enforcement? Have you or any member of your family contributed financially or in any other way to any group that

supports law enforcement? Examples of such groups include Mothers Against Drunk Driving (MADD) and Students Against Drunk Driving (SADD).

8. Does anyone have such strong feelings about the allegation of Armed Robbery that it would be difficult for you to give Mr. James or the State a fair and impartial trial?

9. Has anyone read anything about this case in the newspaper or heard anything about this case on television, radio, in the community or from any other source?

Respectfully submitted,



Wallis Alves
Attorney for the Defendant

August 9, 2016
Aiken, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ~~AIKEN~~ **BAMBERG**)

STATE OF SOUTH CAROLINA)

vs.)

Homer Arthur James,
Defendant.)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT

2014-GS-05-209

CERTIFICATE OF SERVICE

I, Wallis Alves, attorney for the Defendant, did serve a copy of this motion on the Deputy Solicitor, David W. Miller, by hand delivery to his office, sending a copy via e-mail and mailing a copy via First Class Mail on August 22, 2016. In addition, I did provide a copy of this motion to Judge R. Lawton McIntosh by email and mailing a copy of this motion via First Class Mail to his office on August 22, 2016.


Wallis Alves

JAMES B. MILLER
CLERK OF COURT
BAMBERG, SC

2016 AUG 22 PM 1:31

FILED
BAMBERG COUNTY

WITNESSES

State Law Enforcement Division

D Williams

Law Enforcement Case #: 31140045

JWH

ARREST WARRANT NUMBER

2014A0510100227

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: October 16, 2014

VERDICT

Guilty

Guilty

X Brittany A Sandberg

Foreperson of Petit Jury
Date: 8-11-16

DOCKET NO. 2014GS0500209

The State of South Carolina

County of Bamberg

COURT OF GENERAL SESSIONS

OCTOBER TERM 2014

**THE STATE
vs.**

HOMER ARTHUR JAMES

CDR #: 0139

Indictment for

ARMED ROBBERY

§ 16-11-0330(A)

J. STROM THURMOND, SOLICITOR

FILED
BAMBERG COUNTY
CLERK OF COURT
BAMBERG, SC
2015 DEC -3 PM 3:40

STATE OF SOUTH CAROLINA)
COUNTY OF BAMBERG)

INDICTMENT FOR
ARMED ROBBERY

§ 16-11-0330(A)

At a Court of General Sessions, convened on October 20, 2014, the Grand Jurors of Bamberg County present upon their oath:

That HOMER ARTHUR JAMES did in Bamberg County on or about June 5, 2014, while armed with a deadly weapon or while alleging either by action or words that he was armed while using a representation of a deadly weapon or an object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: firearm, feloniously take from the person or presence of Rebecca Templeton by means of force or intimidation goods or monies of Enterprise Bank of South Carolina, such goods or monies being described as follows: United States currency, all in violation of §16-11-330, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Bamberg
 STATE VS.
Homer Arthur James

AKA: _____
 Race: Black Sex: M Age: 56
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was
 TO: Robbery/Armed Robbery

INDICTMENT/CASE#: 2014GS0500209A/W#: 2014A0510100227Date of Offense: 6/5/2014S.C. Code § 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

LIFE SC Court of Appeals

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☒ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: David W. Miller 69553
 Miller, David Warren SC Bar# _____ Defendant Attorney for Defendant SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life without pass b.t. of parole days/months/years or ☐ Under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
3% to County (if paid in installments)		\$ 3.90

TOTAL \$ 128.90

Clerk of Court/ Deputy Clerk Patricia K. Thomas

Court Reporter: Bethanie Cheppan

SCCA/217 (07/2016)

PTUP _____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge _____

Judge Code: 2155

Sentence Date: 8-11-16

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line.

David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 2nd day of March, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 2nd day of March, 2018.

RECEIVED
MAR 02 2018
SC Court of Appeals