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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRIAN WILLIE BENSON LEWIS,

APPELLANT

APPELLATE CASE NO 2017-000482

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT'S ARE ON FILE WITH THIS COURT:

STATE'S EXHIBIT NO. 53 (DVD, Redacted Interview of Defendant)
COURT'S EXHIBIT NO. 1 (DVD, Full Interview of Defendant)

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 BRIAN LEWIS,)
)
 DEFENDANT.)
 _____)

2016-GS-23-01737 & 01738
2016-GS-23-01740

TRANSCRIPT OF RECORD

FEBRUARY 7 - 8, 2017
GREENVILLE, SOUTH CAROLINA

BEFORE:

THE HONORABLE BRIAN M. GIBBONS

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

JENNIFER TESSITORE
ASSISTANT SOLICITOR

ATTORNEYS FOR DEFENDANT:

WILLIAM GROVE, ESQ.
MICHAEL MARTINEZ, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER
FEBRUARY 7TH & 8TH, 2017 OF TRIAL

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DEBORAH GARRISON, COURT REPORTER

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1 (Whereupon State's exhibits 1 - 43 were marked for
2 identification)

3 **THE COURT:** All right. It looks like everybody's
4 handed up any voir dire. Anything I need to know about
5 before we bring a jury panel up here, Madame Solicitor?

6 **MS. TESSITORE:** May it please the Court, Your Honor?
7 Just with respect to the jurors that the State would have
8 strikes for cause would be 187 and 93.

9 **THE COURT:** 187?

10 **MS. TESSITORE:** Yes. 187, prior drug conviction,
11 felony drug conviction. And 93 is pending felony DUI in our
12 office. I don't know if they're even in the panel, but ...

13 **THE COURT:** But, of course, at this time we don't know
14 if they're going to be on a panel or not. I hear they're
15 going to auto-generate a panel downstairs. Anything from
16 the Defense as far as potential jurors?

17 **MR. GROVE:** Without anymore information about what the
18 State has addressed, Your Honor, we don't have any objection
19 to any of the jurors on the panel at this time.

20 **THE COURT:** Okay. Well, in the event those jurors are
21 in line to be possibly selected for the trial jury in this
22 case, then, of course, you know, the State can move to
23 strike for cause, and we'll deal with that at the
24 appropriate time just up here. All right.

25 So there's four -- well, there's three indictments, one

1 with two counts, correct?

2 **MS. TESSITORE:** Correct, Your Honor.

3 **THE COURT:** All right. Anything before we bring the
4 jury panel up here?

5 **MS. TESSITORE:** Nothing from the State, Your Honor.

6 **MR. GROVE:** No, Your Honor. Thank you.

7 **THE COURT:** All right. And based on pretrial
8 discussions in the -- back in chambers, my understanding
9 from a time-line, we're going to go ahead and bring a jury
10 panel up here. And, of course, bailiffs, y'all make room
11 for everybody -- for the jury panel to sit in.

12 We'll pick a jury. After we pick a jury -- I plan on
13 picking fourteen, jury of twelve plus two alternates.
14 That'll be five and ten strikes, one and two for the
15 alternates. After we pick a jury I will release the trial
16 jury while we do some pretrial hearings on other legal
17 issues and we'll go from there. Okay?

18 **MS. TESSITORE:** Okay. Thank you, Your Honor.

19 **THE COURT:** Y'all bring me a panel.

20 **MR. GROVE:** Thanks, Judge.

21 (Pause)

22 (Whereupon the jury panel entered the courtroom at
23 10:37 am)

24 **THE COURT:** All right. Everybody here? All right.
25 Good morning, ladies and gentlemen. My name is Brian

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

33

1 We'll start whatever we need to start at 11:30. We're going
2 to take a ten minute recess and start at 11:30, okay?

3 **MS. TESSITORE:** Thank you, Judge.

4 **MR. GROVE:** Thank you, Your Honor.

5 **THE COURT:** All right.

6 (Whereupon court was in recess at 11:18 am)

7 (Whereupon court reconvened at 11:31 am)

8 **THE COURT:** Madame Solicitor.

9 **MS. TESSITORE:** Thank you, Your Honor. May counsel
10 approach, Your Honor?

11 **THE COURT:** Yes.

12 (Whereupon a bench conference was held off the record)

13 (Whereupon the bench conference was ended)

14 **THE COURT:** All right. The first issue is what, Madame
15 Solicitor?

16 **MS. TESSITORE:** Your Honor, the first issue is the
17 matter of the photo identification that was made by the
18 victim in this case as to the Defendant, Brian Lewis, as
19 well as the defendant, Robert Jackson.

20 **THE COURT:** All right.

21 **MS. TESSITORE:** And the State would call Investigator
22 Jay Kicklighter.

23 **THE COURT:** All right, sir.

24 **Jay Kicklighter, being**
25 duly sworn testified as follows;

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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

3 **MR. KICKLIGHTER:** My name is Jay Kicklighter.

4 **Direct Examination by Ms. Tessitore:**

5 Q. Officer Kicklighter, what's your position with the
6 sheriff's office?

7 A. I'm an investigator in the Violent Crime's Unit.

8 Q. Okay. And how long have you been in that position?

9 A. In this position since January.

10 Q. Of this year?

11 A. Yes, ma'am.

12 Q. Okay. And just prior to that?

13 A. I had some prior investigative experience back in 2015.

14 Q. How long have you been with the sheriff's office
15 altogether?

16 A. Eleven years.

17 Q. And in your duties as an investigator did you have the
18 occasion to become involved in this case?

19 A. Yes, ma'am.

20 Q. Okay. And, in fact, were you the lead investigator for
21 the armed robbery?

22 A. Yes, ma'am.

23 Q. Okay. And did you have -- did you have the occasion to
24 conduct a photographic lineup in this case?

25 A. I did.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

35

1 Q. Okay. Just so we're clear, how many lineups did you
2 have to show the victim?

3 A. There were four total lineups.

4 Q. Okay. And who created the lineups?

5 A. Myself with the assistance of Investigator Matt Owens.

6 Q. Okay. Also with the sheriff's office?

7 A. Yes, ma'am.

8 Q. And how many photographs were in each photo array?

9 A. Six total.

10 Q. And was this Defendant, Brian Lewis, one of the -- in
11 the lineup?

12 A. Yes, ma'am.

13 Q. And as to the other -- we're going to just talk about
14 the two lineups, the one with Robert Jackson. Was he in the
15 other array?

16 A. That is correct.

17 Q. And were the -- the other five individuals that were in
18 the array with this Defendant, in what way did you create
19 the array in order to get a fair array to show the victim?

20 A. We would try to pick individuals with the same physical
21 features, obviously, the same race, the same gender, the
22 best we can do with similar hairstyle, the background. The
23 clothing that they're wearing, we try to keep it similar.

24 Q. Okay. And when you -- when did you meet -- let me back
25 up. What was the date of the armed robbery?

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. The date of the armed robbery was July 22nd, 2015.

2 Q. Okay. And when was the Defendant arrested?

3 A. July the 23rd -- well, early morning hours of July
4 23rd, yes, ma'am.

5 Q. Okay. And the picture that was used in the photo array
6 on the 24th, is that when you met the victim?

7 A. Correct.

8 Q. When was that picture taken?

9 A. That was the booking photo of the Defendant when he was
10 arrested ---

11 Q. Okay. So ---

12 A. --- on the 23rd.

13 Q. --- a day later?

14 A. Correct.

15 Q. Okay. So as far as his appearance in the photo array
16 was most closely resembling what he appeared -- how he
17 appeared when you first saw him?

18 A. That's correct.

19 Q. Okay. So can you describe when you met with the victim
20 to show him the arrays in this case, where did this take
21 place?

22 A. It took place at the Domino's Pizza place on Anderson
23 Road.

24 Q. Okay. Just explain to the Court why you would go to
25 the Domino's Pizza place for a photo array.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

37

1 A. Yes, ma'am. The victim was an employee at that
2 location.

3 Q. Okay. And did anyone else go with you?

4 A. Investigator Matt Owens.

5 Q. And when the victim was shown the arrays was there
6 anybody else present other than you and Matt Owens?

7 A. No, ma'am.

8 Q. All right. Let's -- let me just make sure I have the
9 right one. Okay. I'm going to show you what's been marked
10 as State's exhibit 1 through 6. And I'd just ask you to
11 take a look at that and identify 1 through 6.

12 A. Yes, ma'am. This is the photo array that contained
13 Brian Lewis.

14 Q. Okay. And is that in substantially the same condition
15 as when you showed it to him that day?

16 A. That is correct.

17 Q. And how did you put that array together to show the
18 victim?

19 A. It was ---

20 Q. Physically?

21 A. Physically it was a three-ring binder that had plastic
22 sleeves. We would place one picture in one sleeve so on and
23 so forth til all the sleeves were full of pictures. And we
24 would present it to the victim and give him some
25 instructions.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. Tell the Court what your instructions were.

2 A. Take as much time as you need. Look at each photograph
3 individually. If you see the -- the suspect involved in
4 your crime may or may not be in the photo lineup. If you
5 see the guy that committed the crime, just please tell us.

6 Q. Okay. And did you lead the victim to believe that he
7 had to pick somebody out?

8 A. No.

9 Q. Did you put any pressure on him to pick anybody in
10 particular?

11 A. None whatsoever.

12 Q. Did you suggest to Mr. Haefner which photo to select?

13 A. No, ma'am.

14 Q. Did you in any way influence Mr. Haefner as to which
15 photograph to select?

16 A. No.

17 Q. And did Mr. Haefner select a photograph out of that
18 array in State's exhibit 1 through 6?

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

20 Q. Okay. Which photograph did he select?

21 A. He selected number 3, which was Brian Lewis as the
22 individual who held a gun to his face.

23 Q. Okay. And how did he indicate this selection to you?

24 A. Once he made a positive identification I told him to
25 sign that particular photo and date it.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 Q. And how quickly did it take him to do that?
- 2 A. Within a matter of seconds of seeing his photograph he
- 3 said that's the guy that held the gun to my face.
- 4 Q. Okay. Now ---
- 5 A. And we told him to look through all the pictures in the
- 6 photo array.
- 7 Q. Okay. And did he look through each -- each picture?
- 8 A. Yes, ma'am.
- 9 Q. And how did you indicate -- how do you know that he
- 10 looked through each picture?
- 11 A. He flipped the pages individually.
- 12 Q. And did he put any writing on the ---
- 13 A. Correct. He initialed each photograph that he -- he
- 14 reviewed.
- 15 Q. All right. Did you -- okay. So those were the marks
- 16 that you asked him to make when he was looking at each
- 17 picture?
- 18 A. Correct.
- 19 Q. Okay. Now after you had him indicate his selection
- 20 what did you do with this array?
- 21 A. We took this complete array out and put the other set
- 22 of photo lineup in these sleeves.
- 23 Q. Okay. And had there been any changes since you -- did
- 24 you put it into property and evidence?
- 25 A. I did. Once each individual photo array was done with

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

40

1 the victim, it was placed into property and evidence along
2 with the affidavit of photograph identification.

3 Q. Okay. And, in fact, I'm going to show you State's
4 exhibit number 7. Can you identify that?

5 A. Yes, ma'am. That's an affidavit of photograph
6 identification.

7 Q. All right. And when did you -- did the victim fill
8 that out?

9 A. Correct. I filled out all the information at the top
10 and in the middle right here, the victim's name, the date.
11 And I asked him to briefly summarize what happened with the
12 positive identification of Brian Lewis. And the victim
13 wrote ---

14 **MR. GROVE:** Objection, Your Honor. It's hearsay --
15 it's out-of-court statement. He's reading the words that
16 Mr. Haefner wrote.

17 **THE COURT:** Overruled.

18 **MR. GROVE:** And it -- and it hasn't been entered into
19 evidence.

20 **THE COURT:** I'm going to overrule it. This is just for
21 the identification hearing. Go ahead.

22 Q. Investigator Kicklighter, did you see the victim write
23 on that piece of paper?

24 A. Yes, ma'am.

25 Q. Did you see him put his signature there?

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

41

1 A. Yes, ma'am.

2 Q. Did it all happen at the same time you presented the
3 array to him and he chose Brian Lewis?

4 A. That's correct.

5 Q. Okay. One second. Looking at -- actually looking at
6 State's exhibit number 3, the picture of Brian Lewis, you
7 indicated that that was the picture that was taken the day
8 before?

9 A. That was his recent booking photo, that's correct.

10 Q. Okay. And do you see him in the courtroom today?

11 A. Yes. Yes, ma'am.

12 Q. Okay. Where is he?

13 A. He's sitting right there.

14 (Whereupon the witness pointed to the Defendant)

15 Q. Can you describe what he's wearing?

16 A. It's like a blue shirt, dark tie, chewing on his
17 finger.

18 Q. Has his appearance changed at all from -- or I should
19 ask has his appearance changed?

20 A. His hair is longer.

21 Q. Okay. And anything else that you notice?

22 A. No.

23 Q. Okay. Did you show Mr. Haefner any other photo arrays
24 with Brian Lewis in it prior to this identification?

25 A. No, ma'am.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

42

1 Q. Did the witness ever select any other person as being
2 the one who held the gun at him at the armed robbery?

3 A. No, ma'am.

4 Q. One second.

5 (Pause)

6 Q. And when you met with the victim how many -- how many
7 suspects did he state there were involved in the armed
8 robbery?

9 A. Four.

10 Q. Okay. Please answer any questions that Mr. Grove may
11 have -- well, actually, -- sorry. Let me -- let me just,
12 for the record, I also wanted to just talk to you briefly
13 about the other array that you showed in which the victim
14 made an identification. Okay.

15 So I'm showing you what's been marked as State's
16 exhibit 8 through 13. And if you could, take a look at that
17 and confirm that that's the array that you showed to Mr.
18 Haefner the same time that you showed the other array.

19 A. Yes, ma'am. This is another one of the arrays I
20 presented to the victim.

21 Q. Okay. And I'm also going to show you State's exhibit
22 14 and ask you to identify that.

23 A. This is an affidavit of photograph identification
24 similar to what was completed with his identification of
25 Brian Lewis.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

43

1 Q. Okay. And are both -- are all of those exhibits in
2 substantially the same condition as when you placed them
3 into property and evidence?

4 A. Yes, ma'am.

5 Q. And when you showed this array to the victim did you
6 follow the same format that you did with respect to the
7 Defendant?

8 A. Similar procedure.

9 Q. Okay. So the notebook with the sleeves?

10 A. Correct.

11 Q. Okay. And was the victim able to make a selection?

12 A. He did.

13 Q. Okay. Which one did he select?

14 A. He picked photograph number 4, which was identified as
15 Robert Jackson. And he signed and dated that particular
16 photograph.

17 Q. Okay. And did he also initial each photo that he
18 viewed in that array?

19 A. He did.

20 Q. And how quickly was that selection made?

21 A. Pretty quickly, a matter of seconds.

22 Q. And did you ask him to complete an affidavit of
23 identification?

24 A. Yes, ma'am, affidavit of photograph identification.

25 Q. Okay. And what time was that identification?

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

44

1 A. This was time stamped at 12:54 pm on July 24th, 2015.

2 Q. Okay. And just so that we're clear, on State's exhibit
3 7, what time was that identification made?

4 A. 12:48.

5 Q. So six minutes approximately in between ---

6 A. That's correct.

7 Q. Okay. How confident was the victim in choosing Mr.
8 Jackson?

9 A. Extremely confident.

10 Q. And did he indicate to you whether -- what Mr.
11 Jackson's involvement was?

12 **MR. GROVE:** Objection, Your Honor. Hearsay.

13 **THE COURT:** Overruled.

14 Q. Did he just indicate to you generally what the role
15 that that particular defendant played?

16 A. Yes, ma'am.

17 Q. Okay. And did he fill out the affidavit in your
18 presence?

19 A. He did.

20 Q. And you witnessed that?

21 A. Correct.

22 Q. Okay. And -- okay. So was there any change in his
23 appearance as far as you know?

24 A. Not to my knowledge.

25 Q. And was Investigator Owens present for that array as

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

45

1 well?

2 A. That's correct.

3 Q. Okay. Were the circumstances, I mean, it was six
4 minutes apart. So had anything changed about where you were
5 and what you were doing in how you presented the array?

6 A. No, ma'am.

7 Q. Okay. Did you provide the same instructions as to that
8 array?

9 A. Correct.

10 Q. Did you suggest as to the second array with Mr. Jackson
11 who he should select?

12 A. No, ma'am.

13 Q. Had he ever seen any picture of Mr. Jackson prior to
14 this array?

15 A. No, ma'am.

16 Q. Did he ever select anybody else in that array?

17 A. No, ma'am.

18 Q. Okay. And there were no other witnesses as far as to
19 the event -- were there any witnesses other than the victim
20 and the co-conspirators to the incident?

21 A. No, ma'am.

22 Q. Okay. So were any other witnesses shown any photo
23 arrays?

24 A. No, ma'am.

25 **MS. TESSITORE:** Your Honor, at this time I would ask --

JAY KICKLIGHTER - CROSS EXAMINATION BY MR. GROVE

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1 I would move these in as exhibits for purposes of this
2 hearing.

3 **THE COURT:** Any objection?

4 **MR. GROVE:** None that haven't already been made, Your
5 Honor.

6 **THE COURT:** All right. They're in.

7 (Whereupon State's exhibits 1 - 14 were admitted into
8 evidence for this hearing)

9 Q. All right. Answer any questions that Mr. Grove may
10 have.

11 **THE COURT:** Mr. Grove, your witness.

12 **MR. GROVE:** Thank you, Your Honor.

13 **Cross Examination by Mr. Grove:**

14 Q. Investigator Kicklighter, did you record your
15 interaction with Mr. Haefner that day?

16 A. No, sir.

17 Q. And tell me again -- this was the 24th?

18 A. That's correct.

19 Q. Did you -- did you read for him from a pre-prepared
20 form?

21 A. No, sir.

22 Q. You said that you gave him several different
23 instructions, right?

24 A. That's correct.

25 Q. And you just told him those instructions. You didn't

JAY KICKLIGHTER - CROSS EXAMINATION BY MR. GROVE

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1 read them from a card or anything?

2 A. No, sir.

3 **MR. GROVE:** May I approach the witness, Your Honor?

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

5 Q. I'm going to show you again what has been marked as
6 State's 1 through 6. These are the photos that you chose,
7 right?

8 A. I can't recall exactly who did what particular photo
9 arrays, but myself and Investigator Owens did those.

10 Q. How about this, it was done by your office, right?

11 A. Correct.

12 Q. You didn't seek out the help of SLED or anybody else
13 like that?

14 A. No, sir.

15 Q. And you may have answered this on direct, and if you
16 did, I apologize, where did you get the other photos?

17 A. The same database.

18 Q. Okay. And when were those photos taken?

19 A. For the other individual?

20 Q. Yes, sir.

21 A. Their most recent booking photos.

22 Q. But you don't have a time or date or ---

23 A. No, sir.

24 Q. --- anything of that nature? You said that Brian's
25 photo was his booking photo from the day before, is that

JAY KICKLIGHTER - CROSS EXAMINATION BY MR. GROVE

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1 correct?

2 A. Yes, sir, when he was arrested.

3 Q. Okay. And you listed off a handful of factors, I
4 guess, that you -- that you go into, similar features,
5 hairstyle. I think you said hairstyle as best you can.

6 A. Yes, sir.

7 Q. Similar background and clothing and that sort of thing
8 when you're going through and picking out companion photos
9 for a lineup, is that right?

10 A. That's correct.

11 Q. And how long does that process take?

12 A. It takes a while. You view several photographs. I
13 mean, it could take twenty to thirty minutes.

14 Q. Do you have a database that allows you to filter?

15 A. Correct.

16 Q. That you can -- you can search only for black males?

17 A. Correct.

18 Q. You can search only for black males between a certain
19 age?

20 A. Correct.

21 Q. That kind of thing?

22 A. (Affirmative nod).

23 Q. So that certainly probably takes a lot of the grunt-
24 work out of it, right?

25 A. Correct.

JAY KICKLIGHTER - REDIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Did you keep a list of the photos that you decided not
2 to use?

3 A. No.

4 Q. Okay. And you finally ultimately settled on six
5 photographs, is that correct?

6 A. That's correct.

7 Q. Do you have with you the identifying information of the
8 other five photographs? Names, date of birth?

9 A. It's with the case file. I don't have it up here with
10 me, no, sir.

11 Q. Okay. But you don't have when the photos were taken or
12 anything of that nature?

13 A. No, sir.

14 Q. Is it safe to say from looking at those photographs
15 that they are all booking photos from the Greenville County
16 Detention Center?

17 A. That's correct.

18 Q. And that's the database that you used, right?

19 A. That's correct.

20 **MR. GROVE:** I don't have any further questions at this
21 time. Thank you, Your Honor,

22 **THE COURT:** Any redirect?

23 **MS. TESSITORE:** Just very briefly, Your Honor.

24 **Redirect Examination by Ms. Tessitore:**

25 Q. Investigator Kicklighter, how many arrays have you

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 presented over the years in your capacity with the sheriff's
2 office? Just approximate.

3 A. Hundred.

4 Q. Okay. And when you present those arrays do you change
5 the way you do it or do you typically have the same kind of
6 set of instructions that you use?

7 A. Same set of instructions. No suggestive behavior,
8 nothing like that.

9 Q. Okay. And as far as the instructions that you gave to
10 the victim?

11 A. That's correct.

12 Q. Okay. And did you give those same instructions to this
13 victim?

14 A. I did.

15 **MS. TESSITORE:** No further questions of this witness,
16 Your Honor.

17 **THE COURT:** Thank you, sir. You can step down. And
18 call your next witness.

19 **MS. TESSITORE:** Your Honor, the State calls Steve
20 Haefner.

21 **THE COURT:** Sir.

22 **Steven Haefner, being**
23 duly sworn testified as follows;

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

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 **MR. HAEFNER:** Steven M. Haefner.

2 **MADAME CLERK:** Thank you.

3 **Direct Examination by Ms. Tessitore:**

4 Q. I can still say good morning. It's not quite noon
5 here. Good morning, Mr. Haefner.

6 A. Good morning.

7 Q. And are you the victim in this crime?

8 A. Yes, ma'am.

9 Q. And when you -- after this incident did you meet with
10 Investigator Kicklighter, who just testified?

11 A. Yes, ma'am.

12 Q. And as well as Investigator Owens?

13 A. Yes.

14 Q. Okay. Do you recall where you met?

15 A. In the parking lot of Domino's Pizza on Anderson Road.

16 Q. That's where you were working?

17 A. Yes.

18 Q. All right. And I'm going to just kind of go through
19 the same kind of -- get you right to the part when the
20 officers were coming to you. What did they tell you that
21 they were there to do?

22 A. They asked me to step outside and look at some
23 photographs.

24 Q. Okay. And this was two days after the armed robbery?

25 A. Yes.

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. And when you -- when you met with these investigators
2 and you stepped outside, describe to the Court how you
3 recall them talking with you specifically about what -- what
4 they were showing you.

5 A. They just asked me to look at some photographs to see
6 if I could identify the people who robbed me.

7 Q. Okay. You're going to have to speak up just a little
8 bit.

9 A. All right.

10 Q. Just so the court reporter can get everything down.
11 Okay. So they wanted to speak to you about the person who
12 robbed you. And do you recall if there was anybody else out
13 there other than the two investigators?

14 A. No, ma'am, there wasn't anybody there.

15 Q. Okay. What instructions, as you recall, the officer
16 gave you before you looked at the photo array?

17 A. I don't recall.

18 Q. Okay. How did you go about looking at the photo array?

19 A. He handed me a notebook and said flip through the
20 pictures and see if you can identify anybody.

21 Q. Okay. And I'm going to refer to first the -- so first
22 in time and ask you if -- I'll show you State's exhibit 1
23 through 6 and ask you just to look at those. If you want to
24 just turn them over it might be easier. Is that similar to
25 the way that you viewed the lineup when you were out with

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 the officers?

2 A. Yes, ma'am.

3 Q. Okay. And how -- is this a fair and accurate copy of
4 the photos that were shown to you?

5 A. Yes.

6 Q. Do you see any of your writing or anything on those
7 pages?

8 A. My initials are on all of them except for one where I
9 signed it.

10 Q. Okay. So your initials are on all but number 3,
11 State's exhibit number 3. And what did you place on State's
12 exhibit number 3?

13 A. My signature and a date.

14 Q. And when you put your signature and your date on there
15 what was -- why did you put your signature and date on that
16 particular one?

17 A. That's the photograph that I identified as the man who
18 stuck the gun in my face.

19 Q. Okay. And did Investigator Owens or Kicklighter while
20 they were out there with you suggest in any way to you that
21 you had to pick somebody out of this particular lineup?

22 A. No, they did not.

23 Q. Did they put any pressure on you?

24 A. No, they did not.

25 Q. Had they shown you any pictures of this Defendant or

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 any other defendants before -- or this Defendant prior to
2 this array?

3 A. No, they did not.

4 Q. Okay. Did -- how quickly were you able to make the
5 identification of Mr. Lewis?

6 A. Pretty quickly.

7 Q. Let's just talk about the -- also the affidavit,
8 State's exhibit number 7, I'm showing you that. Do you
9 recognize your handwriting on that?

10 A. Yes, I do.

11 Q. Okay. And did Investigator Kicklighter have you write
12 on that piece of paper?

13 A. Yes, he did.

14 Q. Okay. And what writing did you put on there?

15 A. You want me to read it?

16 Q. Yes.

17 A. Put gun in my face and told me to get on the ground.

18 Q. Okay. And does your signature appear on there?

19 A. Yes, it does.

20 Q. All right. That's State's exhibit number 7. Let's
21 back up a little bit as far as your opportunity to view this
22 Defendant on the scene of the crime, okay?

23 A. Okay.

24 Q. I want you to tell the Judge what happened on July 22nd
25 as far as when you got to the apartment complex to deliver

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 the pizzas.

2 A. I pulled up into the complex, parked my car relatively
3 close to where the apartment was, went upstairs, knocked on
4 the door, received no answer, probably knocked a second
5 time, didn't get an answer, carried the pizzas and the drink
6 back downstairs, set the pizzas and the drink on the hood of
7 my car and reached into my car to get my cell phone to call
8 the number on the order.

9 And at that point in time when I was on my cell phone
10 the four defendants walked out of the -- an adjoining
11 breeze-way. Two of them went behind me, two of them went in
12 front of me. The one defendant pretended -- well, indicated
13 that the pizzas were for him as he was walking by me. And I
14 think at that time I was still on my cell phone.

15 Eventually I put the cell phone in my pocket. And I
16 asked him to go upstairs and knock on the door just to make
17 sure that I was actually giving the pizzas to the right
18 person. And before he went up he indicated that he could
19 pay for them with a credit card. And I told him it was a
20 cash order.

21 He went upstairs, briefly tapped on the door. I told
22 him that I had knocked louder than that and they probably
23 wouldn't hear him. And he walked back downstairs, again
24 tried me to, I guess, get a little bit closer to him so that
25 he could give me the credit card. And at some point in time

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1 the gentleman who walked out of the breeze-way that we had
2 both walked up to and put the gun in my face and told me to
3 get on the ground.

4 Q. Okay. Let's back up just a second. Approximately what
5 time of day was this?

6 A. The middle of the afternoon.

7 Q. Okay. So lighting? How was the lighting out there?

8 A. It was a sunny day.

9 Q. And just tell the Court as far as what type of -- this
10 was an apartment complex?

11 A. Yes.

12 Q. Okay. And so the first individual that you saw, how
13 long would you say you saw him for prior to the robbery?
14 Approximately?

15 A. When all four walked out, the two that walked back
16 behind me and disappeared, I would say, I don't know, a
17 matter of seconds or so. The two that walked in front of me
18 -- the one individual who I was talking to, you know,
19 probably -- I'm guessing I had a couple minute conversation
20 with him before we went upstairs. And the other individual,
21 you know, he just walked in front of me and basically
22 disappeared.

23 Q. Okay. So were you able to get a good look at the first
24 guy that you talked to about going up -- going up to the
25 doorway about buying the pizza?

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes.

2 Q. Okay. Was there anything concealing his face?

3 A. No.

4 Q. And what was the closest you got to him during that
5 whole encounter?

6 A. About as close as you are to me right now.

7 Q. Okay. Then you went up to the door together?

8 A. No.

9 Q. No. Okay.

10 A. He went up by himself. I was standing down in the
11 parking lot.

12 Q. All right. And so we'll come back to him. But when
13 was the first time you saw the individual that you
14 identified as holding the gun at you?

15 A. When he walked out of the breeze-way and racked the gun
16 and put it in my face.

17 Q. Okay. And how close was he to where you were?

18 A. An arm length.

19 Q. So just the length of his arm ---

20 A. Correct.

21 Q. Okay. Did -- was there anything concealing his face?

22 A. No.

23 Q. Anything on his head?

24 A. No.

25 Q. So did you -- how good of a view did you get of his

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 face?

2 A. I got a very good view.

3 Q. And as far as the other individuals -- well, strike
4 that. Back to him, what kind of description were you able
5 to give to the officers when they arrived?

6 A. Young black gentleman.

7 Q. Was there anything distinctive as to facial
8 characteristics?

9 A. No.

10 Q. Okay. As to any of them?

11 A. No, ma'am.

12 Q. Okay. Were you able to remember or recall what they
13 may have been wearing?

14 A. One of them had on a Superman t-shirt.

15 Q. Okay. And then as to anything specific or
16 distinguishing ---

17 A. No.

18 Q. --- other than that? Okay. And that was on -- that
19 was about 3:00 on the 22nd of July, correct?

20 A. Yes, ma'am.

21 Q. And then you looked at these arrays two days later?

22 A. Correct.

23 Q. All right. Had you ever seen this Defendant before?

24 A. No.

25 Q. Had you ever seen any of these individuals before?

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 A. No.
- 2 Q. Okay. Any problem with your vision?
- 3 A. No.
- 4 Q. Okay. So you got a good look at the guy that was
- 5 holding the gun in your face, ---
- 6 A. Yes.
- 7 Q. --- is that correct? And do you see him in the
- 8 courtroom today?
- 9 A. Yes, I do.
- 10 Q. Can you identify him for the Court, please.
- 11 A. Sitting at the table over there.
- 12 (Whereupon the witness pointed to the Defendant)
- 13 Q. And what is he wearing?
- 14 A. A blue shirt and a tie.
- 15 Q. Okay. And has his -- has his appearance changed in any
- 16 way since the day that you saw him when he put the gun in
- 17 your face?
- 18 A. Yes.
- 19 Q. How has it changed?
- 20 A. He's got the dreads.
- 21 Q. So that's the main difference?
- 22 A. Main difference.
- 23 Q. Okay. What about facial hair? Do you recall?
- 24 A. Not that I can recall.
- 25 Q. Okay. So is there any question in your mind that he is

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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1 the man who pointed the gun in your face?

2 A. No.

3 Q. All right. I'm just going to talk to you briefly about
4 the other array that you were shown, State's exhibit 8
5 through 13, and just ask you to identify what that is.

6 A. It's the second photo array that I was shown.

7 Q. All right. And does your initials appear on each one
8 of those as well?

9 A. All except the one, yes, ma'am.

10 Q. Okay. And the one that does not contain just your
11 initials, is that State's exhibit 11?

12 A. Yes.

13 Q. I'm sorry. This one that I'm showing you here?

14 A. Yes.

15 Q. Okay. And what did you put on this ---

16 A. My signature and the date.

17 Q. All right. And was that what you were instructed to do
18 by the investigator as far as which one you identified?

19 A. Correct.

20 Q. All right. And did you also fill out a photo
21 identification affidavit for that as well?

22 A. I did.

23 Q. I'm showing you State's exhibit 14. Is that the
24 affidavit that you ---

25 A. Yes, it is.

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1 Q. --- filled out? Okay. And did you indicate to the
2 officer specifically what that individual did with respect
3 to the robbery?

4 A. I did.

5 Q. Okay. And can you read that, please.

6 A. Walked up in front of the car and said the pizzas were
7 for his people upstairs, then offered to pay with a credit
8 card. I told him to go upstairs and then get the door to
9 the apartment opened. He went upstairs and lightly knocked.
10 No one answered, and he came back downstairs.

11 Q. Okay. So is this the individual that you were
12 referring to as the first one that you had contact with?

13 A. Correct.

14 Q. Okay. All right. And do you recall the officers
15 showing you two additional arrays with -- when they showed
16 you these arrays?

17 A. Yes.

18 Q. Okay. Were you able to make any selection out of those
19 two arrays of the other two individuals involved in the
20 robbery?

21 A. No.

22 Q. Okay. Just one second.

23 (Pause)

24 Q. And Mr. Jackson didn't have anything concealing his
25 face either?

STEVEN HAEFNER - CROSS EXAMINATION BY MR. GROVE

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1 A. No.

2 Q. Okay. So please answer any questions that Mr. Grove
3 may have. Thank you.

4 **THE COURT:** Mr. Grove.

5 **MR. GROVE:** Thank you, Your Honor.

6 **Cross Examination by Mr. Grove:**

7 Q. Investigator Kicklighter came to you on July 24th, is
8 that right?

9 A. Yes, sir.

10 Q. And you were at work, correct?

11 A. Yes.

12 Q. At the Domino's over on Anderson Road?

13 A. Yes.

14 Q. You actually own that franchise, right?

15 A. Yes, sir.

16 Q. And these affidavits that you've identified are marked
17 with the date and the time, is that correct?

18 A. The date definitely. I don't know about the time.

19 **MR. GROVE:** May I approach the witness, Your Honor?

20 **THE COURT:** Yeah.

21 Q. I'm going to show you, Mr. Haefner, what's marked 7 and

22 14. You noted ---

23 A. Okay.

24 Q. --- up at the top the date and the time as well?

25 A. Yes.

STEVEN HAEFNER - CROSS EXAMINATION BY MR. GROVE

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1 Q. Isn't that right?

2 A. Yes, I see that.

3 Q. And it was a little before 1:00 in the afternoon, is
4 that right?

5 A. Correct.

6 Q. And I believe you said that they asked you to step out
7 into the parking lot, right?

8 A. No. I was in the parking lot.

9 Q. Oh, you were -- when they approached you you were
10 already in the parking lot?

11 A. Correct.

12 Q. Okay. Did you -- did you go inside to view these
13 photographs?

14 A. We're talking -- I'm sorry. I got -- I got ---

15 Q. That's perfectly all right. I'm talking about on the
16 24th ---

17 A. Okay.

18 Q. --- when Investigator Kicklighter brought you these
19 photographs to look at.

20 A. Yes.

21 Q. You were at work?

22 A. Yes.

23 Q. And were you inside when he approached you or outside?

24 A. I was inside.

25 Q. And did he ask you to come outside?

STEVEN HAEFNER - CROSS EXAMINATION BY MR. GROVE

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- 1 A. Yes, sir.
- 2 Q. And did you stand in the parking lot?
- 3 A. Yes, sir.
- 4 Q. You didn't sit in his car or anything like that?
- 5 A. No, sir.
- 6 Q. Did he lay the book out on the hood of his car, maybe?
- 7 A. Yes, sir.
- 8 Q. And you picked it up and had a chance to ---
- 9 A. Yes.
- 10 Q. --- look at it with your own two hands, right?
- 11 A. Yes.
- 12 Q. On direct you said that the person with the gun walked
- 13 out of the breeze-way, racked the gun and pointed it at you,
- 14 and told you to get on the ground, right?
- 15 A. Correct.
- 16 Q. And you did that, is that correct?
- 17 A. Correct.
- 18 Q. You got on your stomach?
- 19 A. Correct.
- 20 Q. Okay. You were also told to relinquish your keys and
- 21 wallet, is that right?
- 22 A. Correct.
- 23 Q. And you did that as well?
- 24 A. Yes.
- 25 Q. Did you hand your -- you didn't hand your wallet or

STEVEN HAEFNER - CROSS EXAMINATION BY MR. GROVE

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1 keys to anybody in particular, right?

2 A. No. I was on the ground ---

3 Q. And you just laid it on the ground next to you, is that
4 right?

5 A. I reached in my pocket and threw them out on the ...

6 Q. You have owned that Anderson Road Domino's for a long
7 time, haven't you?

8 A. Since 2002.

9 Q. Right. And you do deliveries a fair amount, probably,
10 right? If you're shorthanded?

11 A. Yes, sir.

12 Q. And you know the area of the Grove Station Apartments
13 pretty well, right?

14 A. Yes, sir.

15 Q. Is that a common delivery area?

16 A. Yes, sir.

17 Q. When you -- and you've delivered out there before.

18 A. Yes, sir.

19 Q. And you said the gentleman who has been identified as
20 Robert Jackson, he was in the second array that you talked
21 about with Ms. Tessitore?

22 A. Yes, sir.

23 Q. You spoke with him for minutes, is that correct?

24 A. Yes.

25 Q. And had a conversation with him. And then he went

STEVEN HAEFNER - CROSS EXAMINATION BY MR. GROVE

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1 upstairs and came back downstairs and y'all talked some
2 more, right?

3 A. Correct.

4 Q. Okay.

5 **MR. GROVE:** Beg the Court's indulgence.

6 **THE COURT:** Okay.

7 (Pause)

8 Q. You -- you met with investigators at the hospital,
9 isn't that right? On the 23rd?

10 A. Correct.

11 Q. Or maybe the 22nd, I suppose. And you described four
12 black males, is that right?

13 A. Yes.

14 Q. And your description of the person with the gun was a
15 black male in his twenties about six feet, about one eighty,
16 is that right?

17 A. That might have been my description of all of them.

18 **MR. GROVE:** Nothing further, Your Honor. Thank you.

19 **THE COURT:** Any redirect?

20 **MS. TESSITORE:** No, Your Honor.

21 **THE COURT:** Thank you, sir. You can step down.

22 Anything further from the State?

23 **MS. TESSITORE:** Your Honor, we would just briefly call

24 Investigator Owens who was also ---

25 **THE COURT:** Okay.

1 MS. TESSITORE: --- present.

Matthew Owens, being duly
sworn testified as follows;

4 **MADAME CLERK:** Have a seat. Will you please state your
5 full name for the record.

6 MR. OWENS: Matthew Owens.

7 Direct Examination by Ms. Tessitore:

8 Q. Officer Owens, what's your position with the sheriff's
9 office?

10 A. I am currently a school resource officer.

11 Q. Okay. Back at the time in July of 2015 what was your
12 position then?

13 A. I was in the Robbery Unit, investigator.

14 Q. And are you the investigator that was also assisting in
15 this investigation along with Investigator Kicklighter?

16 A. I was.

17 Q. Did you have the occasion to assist in creating the
18 arrays that were shown to this victim of this case?

19 A. Yes, ma'am.

20 Q. Okay. I'm going to show you State's exhibit 1 through
21 6 and 8 through 13.

22 (Pause)

23 Q. Okay. After having reviewed those are those
24 substantially in the same condition as when they were
25 presented to the victim that day?

MATTHEW OWENS - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am.

2 Q. Okay. And were you present during the whole meeting
3 with the victim ---

4 A. Yes, ma'am.

5 Q. --- at the Domino's?

6 A. Yes, ma'am.

7 Q. And did you witness him make the selections in both
8 arrays?

9 A. Yes, ma'am.

10 Q. And how confident was he when he made those selections?

11 A. Very confident.

12 Q. Okay. And just describe as far as the other -- well,
13 let me -- as to those two arrays did you influence or
14 suggest to the victim as to which photo he should select?

15 A. No, ma'am.

16 Q. All right. Did -- so with respect to the other arrays,
17 did you show him two other arrays?

18 A. We did.

19 Q. All right. And did those -- who did those arrays
20 contain as far as the suspects?

21 A. The other two -- mind if I take a look at my notes?

22 Q. Was it -- yeah, sure. The other two co-defendants?

23 A. Yes. Yes, ma'am.

24 Q. Okay. So Cordell Lewis and Donny Campbell?

25 A. Yes, ma'am.

MATTHEW OWENS - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. And did you also create those arrays as well?

2 A. Yes, ma'am.

3 Q. And how did you -- I know Investigator Kicklighter
4 described, you know, that he put them in a notebook.

5 A. Yes, ma'am.

6 Q. So after making the selection how -- just physically
7 explain to the Court what you did to present the second
8 array.

9 A. So once the first array is shown and whatever, the
10 positive identification, we basically open the notebook,
11 individually take each picture out, hand it to the victim,
12 he initials it, signs it, so on and so forth. So we do that
13 six times.

14 Q. Um-hum (affirmative).

15 A. And then while the victim is completing the affidavit
16 of photograph identification, ---

17 Q. Um-hum (affirmative).

18 A. --- then I would start on the second lineup and put the
19 six new pictures into the ...

20 Q. The sleeves?

21 A. The notebook, the sleeves, yes, ma'am.

22 Q. Okay. So this sounds like it was fairly systematic.

23 A. Yes, ma'am

24 Q. Did you -- in those other two arrays with the other two
25 co-defendants, was he able to make a selection?

MATTHEW OWENS - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. No.

2 Q. And was -- was he told that he had to make a selection?

3 A. No, ma'am.

4 Q. And if he was going to make a selection what was the
5 instruction regarding, I mean, as far as did he express a
6 certainty, I guess, is the best way to ask it?

7 A. Yes, ma'am. So what we -- when we show the lineups we
8 iterate that it's very important to -- that the Defendant
9 may or may not be in the lineup. He should not feel
10 obligated or pressured to pick somebody out. If he is not
11 comfortable, then he should not pick anybody out.

12 Q. Okay. So on two occasions he didn't pick anyone out
13 ---

14 A. Yes, ma'am.

15 Q. --- because he wasn't sure?

16 A. Yes, ma'am.

17 Q. Okay. And when -- you were actually out on the scene
18 as well on the day of the robbery, correct?

19 A. Yes, ma'am.

20 Q. All right. And did you go to the area where the armed
21 robbery took place?

22 A. Yes, ma'am.

23 Q. And as far as just the area and the lighting there at
24 the time, how would you describe that?

25 A. Daylight.

MATTHEW OWENS - CROSS EXAMINATION BY MR. GROVE

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1 Q. Okay. All right.

2 MS. TESSITORE: No further questions.

3 THE COURT: Mr. Grove.

4 MR. GROVE: Thank you, Your Honor.

5 **Cross Examination by Mr. Grove:**

6 Q. Master Deputy Owens, you -- you responded out there to
7 the Domino's for the purposes of showing photo arrays, isn't
8 that right?

9 A. Yes, sir.

10 Q. And Mr. Haefner knew that?

11 A. Yes, sir.

12 Q. I mean, you weren't there to order a pizza, right?

13 A. No, sir.

14 Q. And you told him you were going to show him lineups
15 that may or may not contain suspects?

16 A. I don't know if myself or Investigator Kicklighter,
17 but, yes, we were there to show him photos.

18 Q. And he was well aware of the purpose?

19 A. Yes.

20 Q. And you showed him four photo arrays, is that right?

21 A. Yes, sir.

22 Q. And he had previously indicated that there were four
23 suspects?

24 A. Yes, sir.

25 Q. You didn't show him five photo arrays?

MATTHEW OWENS - CROSS EXAMINATION BY MR. GROVE

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1 A. No, sir.

2 Q. Or six?

3 A. No, sir.

4 Q. And you and Investigator Kicklighter created these
5 photo arrays together or individually or ---

6 A. Yes, sir.

7 Q. But they weren't farmed out to another agency to
8 create?

9 A. No, sir.

10 Q. And do you have any information as to -- aside from Mr.
11 Lewis, and, of course, I'm talking just briefly about
12 exhibits 1 through 6, the photos -- array containing Mr.
13 Lewis. Do you have any information regarding the other
14 people in that photo array with you today?

15 A. No, sir.

16 Q. You don't have their age with you?

17 A. No, sir.

18 Q. You don't have their height or weight?

19 A. No, sir.

20 Q. You don't have when the picture was taken?

21 A. No, sir.

22 Q. Only that they were taken at some point when they were
23 booked into the detention center here in Greenville?

24 A. Yes, sir.

25 MR. GROVE: I don't have anything further, Your Honor.

1 Thank you.

2 **THE COURT:** All right. Thank you, sir. You can step
3 down. Anything further from the State?

4 **MS. TESSITORE:** No, Your Honor.

5 **THE COURT:** All right. Any factual presentation from
6 the Defense?

7 **MR. GROVE:** No, Your Honor. Thank you.

8 **THE COURT:** All right. Let me hear argument, then,
9 first from the Defense. Mr. Grove.

10 **MR. GROVE:** Thank you, Your Honor. If it please the
11 Court. You heard the facts that have been presented to you.
12 And, obviously, the factors in determining the appropriate
13 and reliable nature of the identification under Neil v.
14 Biggers include a lot of different factors. One of the most
15 important is opportunity to view the suspect who is
16 identified.

17 I am -- I'm not at this point, Your Honor, making a
18 challenge in regards to Mr. Jackson. Based on the testimony
19 I don't have any objection to his being identified.
20 However, the identification of Mr. Lewis, I do not believe
21 that Mr. Haefner has established an ample opportunity to
22 view him.

23 He did talk about proximity, but it does sound, based
24 on his testimony, that it was a matter of mere seconds. He
25 did not give what I would call an accurate prior description

1 to law enforcement. His description, based on his own
2 testimony, was about six feet, about a hundred and eighty.
3 And he said just a few moments ago, that could have been my
4 description for all of them.

5 He didn't provide any identifying remarks regarding Mr.
6 Lewis. He did not talk about haircut. He did not talk
7 about anything in particular to assist in coming up with a
8 truly neutral photo array.

9 This -- the robbery is alleged to have occurred in the
10 afternoon on the 22nd. And about 48 hours later is when Mr.
11 Haefner's presented with this photo array. I'd argue that
12 the lapse in timing certainly placed a factor in the
13 reliability of the ID as well.

14 **THE COURT:** All right. Thank you, Mr. Grove. Madame
15 Solicitor.

16 **MS. TESSITORE:** Yes, Your Honor. It is our position,
17 Your Honor, that this was not an impermissibly suggestive ID
18 and that it is reliable. First of all, the opportunity to
19 view, the victim explained that there was no mask, nothing
20 concealing the identity of this Defendant or the other
21 individual, Robert Jackson.

22 He stated that this individual, the Defendant, was at
23 an arm's length, which was, obviously, very close. He had,
24 you know, it was broad daylight, in the afternoon, Your
25 Honor. Lighting was good.

1 He said that with respect to the gun being in his face
2 and the statement that was made by the Defendant as he held
3 the gun to his face, obviously, that would indicate that he
4 has a heightened degree of attention.

5 His accuracy of description, although very generic,
6 nothing identifying, distinguishing as to the Defendant's
7 face and that's also visible in the pictures, the picture
8 that was used in the photo array. There was also the fact
9 that it was taken the day before the array that the picture
10 was going to most closely resemble how the Defendant
11 appeared at the time of the robbery.

12 And as far as the victim's level of certainty, he said
13 as soon as he saw the picture he said that's the guy that
14 held the gun in my face. Had no question about it then. He
15 had no question today when he pointed him out in the
16 courtroom. And this was just merely two days after
17 confrontation with the Defendant.

18 So based on all of that, Your Honor, I believe that the
19 State has met the standard as far as establishing the
20 reliability of this identification.

21 **THE COURT:** All right. Based upon the testimony and
22 the evidence presented and considering the arguments of both
23 the State and the Defense, I find as follows; Number one, I
24 find the out-of-court identification process was not unduly
25 suggestive.

1 And, number two, in regards to the reliability factors,
2 insomuch as the Court has to consider those, I do find that
3 the identification testimony is reliable based upon what
4 I've heard. I, therefore, find that the identification and
5 the subsequent in-court identification is admissible.

6 Certainly, Mr. Grove, you have good credibility
7 arguments when it comes to the jury as to the identification
8 process, but as far as admissibility, it passes muster,
9 okay?

10 **MR. GROVE:** Thank you, Your Honor.

11 **THE COURT:** All right. What other issues to deal with
12 before our lunch break? Were there any matters of law
13 regarding jury selection?

14 **MS. TESSITORE:** None from the State, Your Honor.

15 **MR. GROVE:** No, Your Honor.

16 **THE COURT:** Okay. I tell you what, I have the jury
17 coming back at three. It's now a little after 12:30. Now,
18 y'all tell me if an hour's going to be long enough to do the
19 Jackson versus Denno stuff.

20 **MS. TESSITORE:** I think that should be sufficient.

21 **THE COURT:** 'Cause y'all told me the Neil versus
22 Biggers was going to be short, and that took an hour.

23 **MS. TESSITORE:** Yes, sir. And that was because I was
24 adding in ---

25 **THE COURT:** Right.

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1 **MS. TESSITORE:** --- but just to cover the record. So I
2 think an hour, give or take, you know, a few minutes, I
3 think, should be safe.

4 **THE COURT:** Okay. Well, let's be ready to roll at
5 2:00, okay?

6 MS. TESSITORE: Okay.

7 **MR. GROVE:** Thank you, Your Honor.

8 **THE COURT:** Until then, we're down for lunch.

9 (Whereupon court was in recess at 12:31 pm)

10 (Whereupon court reconvened at 2:04 pm)

11 **THE COURT:** It's my understanding we have a statement
12 issue or a Jackson versus Denno issue. Madame Solicitor,
13 ---

14 MS. TESSITORE: Yes, sir.

15 THE COURT: --- you may proceed.

16 MS. TESSITORE: Thank you, Your Honor. Your Honor, the
17 State would call Investigator Stanton.

18 Michael Stanton, being
19 duly sworn testified as follows;

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

22 MR. STANTON: Michael D. Stanton.

23 Direct Examination by Ms. Tessitore:

24 Q. Officer Stanton, can you tell the Court just briefly
25 where you work and what you do there?

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1 A. I work for the Greenville County Sheriff's Office. And
2 I'm an investigator in the Violent Crime's Unit.

3 Q. Okay. And in that capacity did you have the occasion
4 to speak with the Defendant in this case?

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

6 Q. Okay. I'm going to take you to July 22nd, 2015 and
7 jump to the point at which this Defendant was apprehended
8 outside of apartment at Grove Station Apartments in
9 Greenville County and ask you to explain on just generally,
10 you know, how you came to the scene to find the Defendant
11 and the -- and where that was, and then I'll ask you some
12 more questions.

13 A. Yes, ma'am. At approximately 11:40 pm the suspect,
14 Brian Lewis, was taken into custody by members of the
15 Directed Patrol Unit in the K-9 Services Unit. I proceeded
16 from my location, which was on Staunton Bridge Road, down to
17 the apartments at Lakeside Road. It was actually a little
18 kind of grassy area between the two apartment buildings.
19 And at that point I observed, now the Defendant, Brian
20 Lewis, was sitting on the ground in handcuffs.

21 Q. Okay. And that was -- about what time did that take
22 place?

23 A. This was roughly 11:40 pm still on the date of July
24 22nd, 2015.

25 Q. Okay. And when you approached him what was the first

MICHAEL STANTON - DIRECT EXAMINATION BY MS. TESSITORE

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1 thing you did?

2 A. I spoke to him briefly about the severity of the
3 situation that he had found himself in. And then I
4 proceeded to advise him of his Miranda rights. I did this
5 from a card.

6 Q. Okay. And who -- you read those?

7 A. I'm sorry?

8 Q. You read those from the card?

9 A. Yes, ma'am.

10 Q. To him? And where -- well, do you have the card with
11 you?

12 A. So there's a couple of different cards we use. We have
13 a sheriff's office issued one. There's also another card
14 that's issued by PBA. But there are a couple other
15 variations. And I don't know which one specifically I used.
16 I brought two of the most common ones today.

17 Q. Okay. Is that one of them that you had used, one of
18 those two?

19 A. I don't know specifically which one was used because it
20 was handed to me by another officer, but it was read from a
21 card.

22 Q. Okay. Can you read from that card what you would have
23 read to the Defendant?

24 A. Yes, ma'am. I'll read from the sheriff's office card
25 first.

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1 **MR. GROVE:** Your Honor, I'd object at this point. The
2 witness has testified he's not sure which card he read. And
3 we're reading into the record a -- I guess he's speculating
4 as to what it is that he may have said to the Defendant.

5 **THE COURT:** Well, just clean that up the best you can,
6 solicitor.

7 **MS. TESSITORE:** Okay. Yes, sir.

8 Q. Investigator Stanton, did you advise him of his rights
9 under Miranda?

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

11 Q. Okay. Tell the Court what you remember advising him.

12 A. The Defendant would have been advised of his right to
13 remain silent. He would have been advised that any
14 statements would be used against him in court.

15 He would have been advised of his right to have an
16 attorney present during being questioned. He would have
17 been advised that should he not be able to afford an
18 attorney, an attorney would be appointed to him.

19 He would decide -- he would have been advised that he
20 could exercise those rights at any point. And then he would
21 have been asked whether he -- whether he would be willing to
22 give a statement.

23 Q. Okay. And ---

24 A. With his rights in mind.

25 Q. With those rights in mind. And did he indicate that he

MICHAEL STANTON - DIRECT EXAMINATION BY MS. TESSITORE

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1 wanted to speak with you?

2 A. He did, yes, ma'am.

3 Q. And how did that -- how did that occur?

4 A. How he ---

5 Q. Did you ask him questions ---

6 A. I asked him questions, yes, ma'am.

7 Q. Okay. And tell the Court what you did.

8 A. After the Defendant waived his rights, the first line
9 of questioning was basically about his understanding of the
10 presence of law enforcement. And he did indicate that he
11 was aware.

12 When we asked him specifically about the robbery, he
13 made a statement he was around the people. He made a
14 statement he was trying to make some easy money, that it was
15 a little job. He describes that it was about getting a car
16 and that he needed to drive.

17 Q. Okay. Let's go back to when he -- before he started
18 making that statement did he appear to you to have any
19 difficulty in understanding the rights that you explained to
20 him?

21 A. No, ma'am, he did not.

22 Q. Did he indicate that -- did he appear to be under the
23 influence of any kind of drug, or alcohol, or anything that
24 would affect his understanding as to what you were saying?

25 A. No, ma'am, not to my knowledge.

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1 Q. Did you -- did you observe his physical condition at
2 that time?

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

4 Q. Okay. Describe for the Court what his physical
5 condition was in relation to the apprehension that had just
6 occurred.

7 A. He had just been apprehended by a K-9, a police service
8 dog. And I didn't -- he'd just been apprehended by a police
9 dog. And I believe the bite was to his -- I believe it was
10 to his left arm.

11 Q. Okay. So as far as any injuries that you were able to
12 observe, was that limited to his arm?

13 A. At the time, yes, ma'am, I believe so.

14 Q. Okay. And did he appear to -- despite the bite that
15 occurred to his arm in the apprehension did that -- did he
16 indicate any serious distress or pain or anything that you
17 could tell from when you were talking to him?

18 A. No, ma'am, he did not.

19 Q. Did he ever ask for an attorney?

20 A. No, ma'am, he did not.

21 Q. Did -- was medical care provided to him on the scene?

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

23 Q. And who provided that?

24 A. An ambulance was called, Greenville County EMS.

25 Q. Was that treatment by EMS delayed in any way whatsoever

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1 by the questioning that you engaged in with the Defendant?

2 A. No, ma'am. He was not denied medical treatment.

3 Q. Okay. Was his treatment contingent upon him answering
4 questions?

5 A. Absolutely not.

6 Q. Was he then transported to the hospital?

7 A. He was subsequently transported, yes, ma'am.

8 Q. At the time that you were speaking with him and
9 Mirandized him, where was the K-9 that had apprehended him?

10 A. That I do not know.

11 Q. Okay. Was the K-9 anywhere near where you were as you
12 spoke to him?

13 A. I don't recall the K-9 being in that immediate area, at
14 least in the immediate area of the Defendant.

15 Q. Okay. And was -- who -- was he in handcuffs?

16 A. He was, yes, ma'am. Had his hands behind his back.

17 Q. And this was right after he fled out a window and had
18 to be apprehended by the dog?

19 A. Yes, ma'am. There was a little bit intermittent time,
20 but, yes, ma'am.

21 Q. Okay. Did you or any other officer that was on the
22 scene there threaten or coerce the Defendant, Brian Lewis,
23 in any way?

24 A. No, ma'am.

25 Q. Did you offer any promises?

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1 A. No, ma'am.

2 Q. Did you ask him -- well, when you asked him questions
3 did he indicate or did his answers indicate that he was
4 rational and responding to the question that you asked?

5 A. Yes, ma'am.

6 Q. And you've already stated on the record what he told
7 you in response to your question, correct?

8 A. Yes, ma'am.

9 Q. All right. Moving on to -- you went to the hospital.
10 Did you go to the hospital when he was taken there?

11 A. Yes, ma'am. He was taken there. There were a couple
12 of things that I did still on-scene, and then I went to the
13 hospital. There was a little bit of delay of time, but,
14 yes, I did go to the hospital while he was there.

15 Q. Okay. And do you recall approximately how long it was
16 between the time that he was on the scene and making the
17 statement to you to the point that he got the -- the medical
18 treatment?

19 A. To the -- I'm sorry, can you state the question ---

20 Q. Well, approximately what time did you have this
21 interaction with him when he made the statement to you?

22 A. This would have been -- if I -- I would say roughly in
23 the 11:50-ish time-frame..

24 Q. Okay. And then do you recall when he arrived at the --
25 when he was released from the hospital, approximately?

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1 A. It would have been roughly -- roughly 2:30 to 2:40 in
2 the morning.

3 Q. Okay. And where was he brought after his medical
4 treatment?

5 A. After he was treated and released from Greenville
6 Memorial he was taken to the Law Enforcement Center,
7 specifically the Armed Robbery Office.

8 Q. Okay. And were you present during that interview?

9 A. I was, yes, ma'am.

10 Q. Did you notice any difference as far as his ability to
11 understand, or function, or anything from when you first saw
12 him on the scene to when you saw him at the Law Enforcement
13 Center?

14 A. No, ma'am.

15 Q. Okay. So he was -- so was his speech and demeanor
16 pretty much the same?

17 A. (No response).

18 Q. Well, let me rephrase that. Was -- were you at the
19 hospital when he was there?

20 A. Yes, ma'am.

21 Q. Okay. And did -- was there any, again, signs of
22 distress from him or any kind of indication that he was
23 having difficulty understanding or knowing what was going
24 on?

25 A. No, ma'am.

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1 **MR. GROVE:** Objection, Your Honor. Calls for
2 speculation.

3 **THE COURT:** Sustained.

4 **Q.** Okay. So when you got to the Law Enforcement Center
5 who else was present during that interview?

6 **A.** At the Law Enforcement Center was Investigator
7 Kicklighter, Investigator Owens, I believe Deputy -- K-9
8 Deputy Matthew Henderson was there for part of the
9 interview, and I also believe Investigator Whitlock was
10 there for part of the interview.

11 **Q.** Okay. And describe the physical, just generally,
12 physical area where this happened, where the interview took
13 place.

14 **A.** At the Law Enforcement Center?

15 **Q.** Yes..

16 **A.** The armed robbery office is -- it's an open-air office.
17 There's some desks in there. And in this specific area
18 there's four desks and then there's a supervisor's desk
19 around the corner. The room's roughly, I don't know, 20 x
20 20.

21 **Q.** Okay.

22 **A.** It's an office-style room.

23 **Q.** All right. And was -- were you present when -- well,
24 let me -- were you present at the entire interview?

25 **A.** Yes, ma'am.

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1 Q. Okay. So were you present when Investigator
2 Kicklighter explained his rights to him?

3 A. Yes, ma'am, I was.

4 Q. And during that interview did you have any -- any
5 concerns about him understanding what was going on?

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

7 Q. All right. Did he indicate that he understood his
8 rights after they were provided to him again?

9 A. Yes, ma'am.

10 Q. And at that point -- you said there were three officers
11 in the room or four?

12 A. Definitely three main ones, myself, Investigator
13 Kicklighter and Investigator Owens. I believe K-9 Deputy
14 Anderson and Investigator Whitlock were there for the
15 interview as well.

16 Q. Okay. Was K-9 Officer Anderson at the hospital with
17 the Defendant?

18 A. He was, yes, ma'am.

19 Q. And when he came to the interview at the LEC did he
20 bring anything with him from the hospital, if you recall?

21 A. I don't recall.

22 Q. Okay. Did you or any of the other officers that were
23 in that room ever threaten or coerce him while he was there
24 at the Law Enforcement Center?

25 A. No, ma'am, we did not.

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1 Q. Did you offer any promises in exchange for his answers?

2 A. No, ma'am, we did not.

3 Q. Did you -- were the questions in that interview asked
4 or did he volunteer information?

5 A. The best I recall, most of them were asked.

6 Q. Okay. And did he ever at any time during that
7 interview ever ask to speak to an attorney?

8 A. No, ma'am, he did not.

9 Q. Did he ever ask to stop the questioning?

10 A. No, ma'am, he did not.

11 Q. Did he ever ask to -- for food, or drink, or to use the
12 bathroom?

13 A. Not that I recall.

14 Q. Did he ever indicate while he was in that interview
15 that he was in any kind of physical distress?

16 A. No, ma'am.

17 Q. Have you had an opportunity to review the video
18 interview of the Defendant?

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

20 Q. Okay. And was it a fair and accurate representation of
21 ---

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

23 Q. Okay.

24 A. Or it is.

25 Q. All right. And so Officer Kicklighter was the one that

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1 prepared the waiver of rights form?

2 A. Yes, ma'am, Investigator Kicklighter did that.

3 Q. Okay. Answer any questions that Mr. Grove may have,
4 please.

5 A. Yes, ma'am.

6 **THE COURT:** Mr. Grove.

7 **MR. GROVE:** Thank you, Your Honor.

8 **Cross Examination by Mr. Grove:**

9 Q. Investigator Stanton, you don't know exactly what
10 Miranda card you read from, is that correct?

11 A. That is correct.

12 Q. And these different cards use different language, isn't
13 that right?

14 A. Different syntax, yes, sir.

15 Q. And some of them may include -- I think the most
16 complete one says if at any time you want to stop
17 questioning, let me know, right? That's typically the last
18 thing that a defendant's notified of, correct?

19 A. No, sir.

20 Q. What's the last thing?

21 A. Typically the last thing is a statement that has
22 something to do with the effect of having your rights in
23 mind do you wish to speak with me?

24 Q. I apologize. Before that -- before the ultimate
25 question of do you want to talk to me there -- isn't there

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1 -- there's some -- typically some language about at any time
2 you can request a lawyer during questioning and we would
3 stop questioning at that point, isn't that right?

4 A. Some do, some -- some do not.

5 Q. Some don't. And so you're not sure if the one you used
6 included that language, right?

7 A. Correct.

8 Q. When you approached Mr. Lewis y'all were in the woods?
9 Where exactly were you? I mean, I know it's near Grove
10 Station, but specifically.

11 A. Specifically within Grove Station?

12 Q. Go ahead.

13 A. Okay. It's -- within Grove Station there's kind of
14 just like a little grassy area in between a couple of
15 buildings there.

16 Q. Okay.

17 (Pause)

18 Q. I apologize, investigator. And he had been -- he had
19 been chased by a K-9, isn't that right?

20 A. Yes, sir.

21 Q. And tackled by a K-9, isn't that right?

22 A. No, sir.

23 Q. Did a K-9 bite his arm?

24 A. Yes, sir.

25 Q. And that's what he was taken to the hospital and

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1 treated for, right?

2 A. Yes, sir.

3 Q. And prior to you questioning he had not received any
4 treatment for it, isn't that right?

5 A. That is correct.

6 Q. And he hadn't received any medication for it prior to
7 your talking with him, isn't that right?

8 A. That is correct.

9 Q. And just for clarity's sake, I'm talking at this point
10 about prior to him going to the hospital, obviously. There
11 was some testimony about he did go to the hospital and
12 received treatment, but your initial conversation with him
13 was prior to any medical treatment or medication or
14 anything, right?

15 A. Yes, sir, that is correct.

16 Q. And he was handcuffed with his hands behind his back,
17 is that correct?

18 A. Yes, sir. I believe that's the way he was handcuffed.

19 Q. And you testified on direct that you weren't sure where
20 the K-9 was. You don't remember the K-9 being nearby.

21 A. Correct.

22 Q. But you're not for sure where the K-9 was?

23 A. That's correct.

24 Q. And just so I -- I want to make sure that I understood
25 you correctly. This -- in this first statement that we're

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1 talking about you said Brian told you he knew the police
2 were outside and he ran because he was afraid.

3 A. It was something to that effect.

4 Q. Paraphrasing, right?

5 A. True.

6 Q. And that he had been around the people that committed
7 the robbery, correct?

8 A. Yes, sir.

9 Q. And paraphrasing again, that they were going to get a
10 car and he was going to drive it.

11 A. Well, before that he stated he was trying to make some
12 easy money and it was a little job. And then he stated they
13 were going to get a car and that he needed to drive.

14 Q. So he said they were going to get a car and he was
15 going to drive, right?

16 A. Yes, sir.

17 Q. Okay. And that's the extent of the statement that you
18 took from him on the scene?

19 A. Yes, sir.

20 Q. What was he under arrest for out at Grove Station?

21 A. At that point he was under arrest for the armed
22 robbery, among other charges.

23 Q. Did you talk with him about that he was out there at
24 the scene -- did you inform him that he was going to be
25 charged with armed robbery at that point?

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 A. I don't recall specifically telling him he was going to
2 be charged with armed robbery, but that's ---

3 Q. Did you ---

4 A. --- not saying I didn't.

5 Q. Right. Did you tell him that you worked in the Armed
6 Robbery Division?

7 A. I don't recall.

8 Q. Were you wearing a body-cam that night?

9 A. No, sir.

10 Q. Do you know if anybody standing around when the
11 statement was taken was wearing a body camera that night?

12 A. No, sir. I don't believe anybody was.

13 Q. So it wasn't memorialized on an audio or video, right?

14 A. Memorialized?

15 Q. It wasn't recorded?

16 A. No, sir.

17 Q. How many officers do you think were standing around
18 while you talked with Brian at Grove Station?

19 A. In the immediate area of him I only recall one or two.
20 I mean, there were, obviously, others around, you know,
21 doing security type work.

22 Q. But you were the only one who asked questions, right?

23 A. That I recall.

24 Q. Okay. Let's move past that and to the Armed Robbery
25 Division for an interview. You talked about that as well

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 with ---

2 A. Yes, sir.

3 Q. --- the prosecutor. You say at least two other people
4 and maybe four other people were there so far as you
5 remember, right?

6 A. Yes, sir.

7 Q. In addition to yourself?

8 A. Yes. So ...

9 Q. You, ---

10 A. Yes, sir.

11 Q. --- Investigator Kicklighter, Owens, Whitlock and
12 Anderson -- and maybe Anderson.

13 A. Maybe Anderson and maybe Whitlock.

14 Q. Okay. But three to five officers?

15 A. Yes, sir.

16 Q. And Brian's handcuffed at this time?

17 A. I believe so.

18 Q. And you were present for the entire interview?

19 A. Yes, sir.

20 Q. And you asked some questions?

21 A. Yes, sir.

22 Q. And you -- you had taken a preliminary interview or
23 maybe even a complete interview of Donny Campbell prior to
24 this, hadn't you?

25 A. Not a complete interview, but, yes, I did speak to him.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 Q. You spoke to him earlier that night, right?

2 A. Earlier that night or as a part of this incident?

3 Q. Donny Campbell was arrested first, correct?

4 A. Yes, sir.

5 Q. And you spoke to Donny Campbell when he was arrested,
6 correct?

7 A. Yes, sir.

8 Q. And that is prior to you speaking with Mr. Lewis?

9 A. Yes, sir, that's accurate.

10 Q. When you're interviewing Brian you had already talked
11 with Donny Campbell?

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

13 Q. In the interview with Brian at the Armed Robbery
14 Division he's already been treated at the hospital, right?

15 A. Yes, sir.

16 Q. And there was some question at the beginning whether or
17 not he had been medicated, is that right?

18 A. Yes, sir.

19 Q. And because at the beginning it was either you or one
20 of the other investigators asks him if he is -- if he's been
21 like drugged at the hospital, right?

22 A. I believe Investigator Kicklighter asked him.

23 Q. Whether he had received any sort of medicine for pain?

24 A. Anything that would alter his ability to comprehend.

25 Q. And after a review of his medical records y'all

MICHAEL STANTON - REDIRECT EXAMINATION BY MS. TESSITORE

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1 determined that he had not received anything for pain?

2 A. That's -- no. No, that's not accurate.

3 Q. Let me -- let me -- he had received a local anesthesia,
4 isn't that right?

5 A. That is accurate.

6 Q. Okay. But he had not received just a general
7 anesthesia? It had been isolated to his arm, right?

8 A. That was the consensus.

9 Q. Okay. The statement that he took was -- or that he
10 gave, I suppose I should say, at the Armed Robbery Division
11 was probably longer than the statement that you took on-
12 scene, isn't that right?

13 A. Significantly.

14 Q. It lasted minutes and minutes, right?

15 A. Yes, sir.

16 Q. And based on your testimony it sounds like the
17 preliminary statement was just a handful of questions,
18 right?

19 A. That's correct.

20 Q. I don't have any further questions. Thank you,
21 Investigator.

22 A. Yes, sir.

23 **THE COURT:** Solicitor, anything further?

24 **MS. TESSITORE:** Yes, Your Honor, just briefly.

25 **Redirect Examination by Ms. Tessitore:**

MICHAEL STANTON - REDIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Is it necessary to secure the scene at an arrest, going
2 back to the arrest that night, prior to any kind of EMS
3 personnel coming to the -- to the Defendant?

4 A. Absolutely. And I believe to my recollection is that
5 my questioning was in the intermittent time between when the
6 ambulance had been called and to when it arrived.

7 Q. Okay. So the other officers out there were involved in
8 that?

9 A. Doing scene security, yes, ma'am, predominantly.

10 Q. Okay. And there were other suspects that were -- or
11 other people in the apartment from which he jumped out that
12 were also being questioned by other officers in another area
13 or ...

14 A. Yes, ma'am. In that immediate area there were also --
15 there was an additional investigation into that apartment
16 going on.

17 Q. Okay. And you said that you did advise him of the
18 charges that he was looking at before you spoke to him,
19 correct?

20 A. I don't know that I necessarily advised him of the
21 charges, but I advised him of something to the effect it was
22 important, you need to -- this is serious, you need to be
23 honest or something to that effect.

24 Q. Okay. All right.

25 **MS. TESSITORE:** That's all I have, Your Honor.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 **THE COURT:** All right. Thank you, sir. You can step
2 down.

3 A. Thank you, sir.

4 **THE COURT:** You can call your next witness.

5 **MS. TESSITORE:** The State calls Investigator
6 Kicklighter.

7 Jay Kicklighter, being
8 duly sworn testified as follows;

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

11 **MR. KICKLIGHTER:** Jay Kicklighter.

12 Direct Examination by Ms. Tessitore:

13 Q. Investigator Kicklighter, are you also part of the
14 Armed Robbery Division?

15 A. Yes, ma'am.

16 Q. And how long have you been there?

17 A. I worked for several months back in 2015. And I've
18 been currently assigned to that unit since January of this
19 year.

20 Q. Okay. And in that capacity, as you heard the testimony
21 prior to you taking the stand, that there was this
22 interview, first one being out on the scene at the arrest of
23 the Defendant?

24 A. Yes, ma'am.

25 Q. And were you present?

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am. I'd gotten there when Mr. Lewis was in
2 handcuffs on the ground in the grass area.

3 Q. Okay. And who -- so what did you hear when you -- when
4 you arrived and where did you go?

5 A. I heard Investigator Stanton advising Brian Lewis of
6 his Miranda rights.

7 Q. Okay. You indicated that you were the lead
8 investigator in the armed robbery?

9 A. Correct.

10 Q. Okay. So it's not uncommon for there to be more than
11 one investigator involved in an ongoing investigation of an
12 armed robbery?

13 A. It's not uncommon.

14 Q. Okay. And when you were out there was there anything
15 about the Miranda rights as you heard them that you felt
16 like you needed to correct?

17 A. No.

18 Q. Okay. So he fully apprized him of his rights?

19 A. Correct.

20 Q. And when he was there did the -- how did the Defendant
21 respond to -- after he was Mirandized?

22 A. Like Investigator Stanton testified, several questions,
23 his responses, and then EMS arrived and he was transported
24 to the hospital.

25 Q. Okay.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. And then I began working on a search warrant for the
2 apartment that he ---

3 Q. Okay. But going back to while he was seated there on
4 the grass, did you ask him any questions?

5 A. No.

6 Q. Okay. And what did you -- what do you recall hearing
7 the Defendant say in response to Investigator Owens'
8 questions?

9 A. I recall him saying I was trying to hit a jug.

10 Q. Okay. Jug as in j-u-g?

11 A. J-u-g-g is the way I interpreted it.

12 Q. Okay. And did you -- were you present for the other
13 statements that he made?

14 A. Yes, ma'am.

15 Q. To the best of your recollection did he appear to
16 understand what was going on when he was out there?

17 **MR. GROVE:** Objection, Your Honor. Speculation.

18 **THE COURT:** Sustained.

19 Q. Would you say that he appeared to be -- did he
20 understand -- did he understand the rights as they were
21 explained to him?

22 **MR. GROVE:** Same objection.

23 **THE COURT:** Sustained.

24 **MS. TESSITORE:** Okay.

25 Q. In your observation of the Defendant while you were out

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 there did he seem to be under the influence of any kind of
2 medications or impaired in any way?

3 A. No, ma'am.

4 Q. Okay. Did he ever indicate that he wanted to talk to
5 an attorney?

6 A. No, ma'am.

7 Q. And at that time did you have -- you said you had no
8 other involvement, you went on to do a search warrant?

9 A. Yes, ma'am.

10 Q. Okay. At some point did you come back to the Law
11 Enforcement Center?

12 A. Yes, ma'am.

13 Q. All right. Do you recall approximately when -- when
14 that was?

15 A. It was around 2:30 in the morning.

16 Q. Okay. Bear with me one second.

17 (Pause)

18 Q. Okay. I'm showing you State's exhibit number 44. Do
19 you recognize that?

20 A. Yes, ma'am.

21 Q. Okay. What is that?

22 A. This is a waiver of rights form that's presented to --
23 was presented to Brian Lewis.

24 Q. And who presented it?

25 A. Me.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. You did? Okay. And does it indicate what time you
2 began talking with him?

3 A. 2:51 am on July the 23rd, 2015.

4 Q. Okay. And how long did the interview last?

5 A. About thirty minutes.

6 Q. Okay. Was there any time before the video began where
7 there was contact with the Defendant that you had?

8 A. No, ma'am, not by me.

9 Q. Okay. So exhibit 44 is appearing as when you -- when
10 you filled this out. And did you -- you read him his
11 rights?

12 A. Correct. I asked him what his highest level of
13 education was. And he said he completed the tenth grade. I
14 asked him if he could read and write. And he said he could.
15 I asked him to read each individual line and initial beside
16 each line.

17 Q. Okay. And all of this ---

18 A. And then sign it.

19 Q. And all of this is on this video?

20 A. Correct.

21 Q. Okay. And have you had a chance to review that?

22 A. I have.

23 Q. Okay. Is it a fair and accurate depiction of the
24 interview that was conducted?

25 A. Yes, ma'am.

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. With some redactions that the Court is aware of?

2 A. That's correct.

3 Q. Okay.

4 **MS. TESSITORE:** At this time, Your Honor, if we could
5 publish this.

6 **THE COURT:** Permission granted.

7 (Whereupon State's exhibit 45, DVD, was played for the
8 Court and paused at various times for comments)

9 **THE COURT:** Does he mumble like that the whole way
10 through?

11 **MS. TESSITORE:** No, sir.

12 **THE COURT:** Okay. 'Cause I can't hear him. I know the
13 jury ain't going to be able to hear him if I can't hear him.

14 **MS. TESSITORE:** Judge, I'm just going to stop it right
15 there for a second. I do have the rough transcript if that
16 would help the Court. I mean, ---

17 **THE COURT:** Well, I mean, the jury's not going to have
18 a transcript. So just let me ...

19 **MS. TESSITORE:** Okay.

20 (DVD resumed)

21 **MS. TESSITORE:** Your Honor, I think there was a
22 reference to I was the driver or was supposed to be
23 something else was supposed to be set up or something could
24 have did something else, but things happened. I'd just -- I
25 think we ...

JAY KICKLIGHTER - DIRECT EXAMINATION BY MS. TESSITORE

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1 **MR. GROVE:** I'd have the same objection to that that I
2 have at the ---

3 **THE COURT:** We'll deal with it all at the end.

4 **MS. TESSITORE:** Okay.

5 (DVD resumed)

6 **MS. TESSITORE:** Your Honor, this is the other section
7 that I would just highlight for purposes of review.

8 (DVD resumed)

9 Q. Okay. Investigator Kicklighter, just very briefly, the
10 waiver form that's seen on that video, is that State's
11 exhibit 44?

12 A. That's correct.

13 Q. Okay.

14 **MS. TESSITORE:** And at this time the State would offer
15 it for purposes of this hearing, Your Honor.

16 **MR. GROVE:** No objection.

17 **THE COURT:** Without objection, introduced.

18 (Whereupon State's exhibit 44 was admitted into
19 evidence for this hearing)

20 **MS. TESSITORE:** And as well as the video.

21 Q. Now, Investigator Kicklighter, when you're on the video
22 looking at papers, what were those papers that you were
23 looking at?

24 A. I was reviewing the discharge papers from the hospital.

25 Q. Okay. And who, if you remember, provided those to you?

JAY KICKLIGHTER - CROSS EXAMINATION BY MR. GROVE

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1 A. I believe it was K-9 Deputy Anderson.

2 Q. K-9 deputy?

3 A. Yes, ma'am.

4 Q. Okay. And based on your review of those documents do
5 you have any concerns that the Defendant was under the
6 influence of any kind of medications or pain killers?

7 A. No, ma'am. If he was under the influence of any
8 controlled substance, I would not have interviewed him.

9 Q. Okay. And the word jugg, was that the word that you
10 used in the interview? Is that the -- what did you
11 understand that to be?

12 A. I interpret it as an easy way to make money.

13 Q. Okay. Please answer any questions that Mr. Grove may
14 have.

15 A. Yes, ma'am.

16 **THE COURT:** Mr. Grove.

17 **MR. GROVE:** Thank you, Your Honor.

18 **Cross Examination by Mr. Grove:**

19 Q. Investigator, around the late six minute, early seven
20 minute mark of the video that we just watched, and I'm
21 paraphrasing here, I'm not going to quote it, ---

22 A. Yes, sir.

23 Q. --- but essentially you indicated to Brian that he
24 wasn't being cooperative and if he wasn't going to start
25 telling you the truth you weren't going to deal with him

JAY KICKLIGHTER - CROSS EXAMINATION BY MR. GROVE

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1 anymore, right?

2 A. Right.

3 Q. And that they'd end -- y'all would end the interview,
4 go serve him with his warrants and put him in jail, right?

5 A. I had information about the previous interview of
6 Investigator Owens and a co-defendant prior to interviewing
7 Mr. Lewis.

8 Q. Yes, sir. But ---

9 A. Right.

10 Q. --- to him, ---

11 A. Right.

12 Q. --- in this interview you said, we'll be done, right?

13 A. Correct.

14 Q. And I'll serve you with your warrants, right?

15 A. Correct.

16 Q. And you'll go to jail, right?

17 A. Right.

18 Q. And I'm not going to want to talk with you anymore,
19 right?

20 A. Right.

21 Q. And that you weren't going to talk with me anymore,
22 right?

23 A. Yes, sir.

24 Q. I hadn't been appointed to the case yet, but you
25 weren't going to talk with whoever his attorney ended up

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1 being, ---

2 A. Correct.

3 Q. --- right? And that the next time he saw you was going
4 to be at trial, right?

5 A. In a courtroom, yes, sir.

6 Q. And you were going to be talking to the solicitor
7 trying to get him the max sentence, right?

8 A. Yes, sir.

9 Q. And there were -- obviously, you were -- you were the
10 individual sort of semi on camera, correct?

11 A. Correct.

12 Q. And you were the one doing a lot of the question
13 asking, right?

14 A. Yes, sir.

15 Q. There were at least one or two other people who asked
16 questions. Can you identify them by their voice?

17 A. Investigator Stanton and Investigator Owens.

18 Q. Okay. So there were at least three of you in the room,
19 right?

20 A. I remember three.

21 Q. And he was in custody, right?

22 A. Yes, sir.

23 Q. You saw the video and you probably remember, he's in
24 handcuffs?

25 A. Yes, sir.

JAY KICKLIGHTER - CROSS EXAMINATION BY MR. GROVE

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1 Q. And he was at the Law Enforcement Center, right?

2 A. Yes, sir.

3 MR. GROVE: I don't have anything further, Your Honor.

4 Thank you.

5 THE COURT: Anything on redirect?

6 MS. TESSITORE: Nothing further, Your Honor.

7 THE COURT: Thank you, sir. You can step down.

8 Anything further from the State?

9 MS. TESSITORE: No, Your Honor. At this time we would
10 ask that the Court rule they were knowing and voluntary
11 statements. With respect to the statement that was made
12 outside on the grass as he was arrested, after he was
13 arrested and apprehended by the K-9 he was Mirandized by
14 Investigator Stanton.

15 He answered the questions rationally in respect to
16 asking about the robbery and made various specific
17 statements about, you know, being there and his role in the
18 robbery. He never asked for an attorney while he was there.

19 And there was, as far as his totality of the
20 circumstances, he never expressed that he was in pain and
21 was being held beyond the period of being able to get
22 medical treatment. He was -- it was a very brief interview
23 there on the -- on the lawn there. There were no threats,
24 no promises.

25 It's the State's position that he was rational, he knew

1 what he was doing, and he agreed to give a statement and
2 waiving his Miranda rights, although not explicitly, by
3 answering the questions of the officer.

4 With respect to the interview that was at the LEC, you
5 can see for yourself, he does not appear to be in any kind
6 of physical distress. It's a pretty relaxed office
7 environment. They took the handcuffs off, as far as they
8 weren't locked behind his back.

9 He never asked to leave, to use the bathroom, for an
10 attorney. In fact, he says in his statement that he's there
11 to talk about him and only him and is very clear. And his
12 responses are related to the questions, which shows that
13 he's understanding what's going on, his age, and his
14 education, tenth grade, which is indicated on the waiver and
15 the interview.

16 I think the totality of the circumstances with respect
17 to that is that he at no time during that interview seemed
18 to feel coerced, looked like he was in distress, and based
19 on the voluntariness and his waiver, which was signed, and
20 that's also captured on the video, this was a continuation
21 of the previous advisement of Miranda and just further
22 evidence that they, again, advised him of his rights. And
23 based on all of that, Your Honor, we would ask to be able to
24 admit those to the jury in this case.

25 **THE COURT:** Mr. Grove.

1 **MR. GROVE:** Thank you, Your Honor. If it please the
2 Court. I'd ask ---

3 **THE COURT:** Well, first of all, did you have any
4 factual presentation to make on the issue of the statements?

5 **MR. GROVE:** No, Your Honor.

6 **THE COURT:** All right. Go ahead.

7 **MR. GROVE:** I'd ask that you suppress both of these
8 statements, not only the one made at Grove Station
9 Apartments, but also the one made on video here for a lot of
10 the same reasons.

11 One, we're dealing with a situation here where Mr.
12 Lewis has been chased around, by his own words, says that he
13 slipped, and then there was a K-9 chasing him, and that dog
14 bit his arm requiring medical attention. Obviously, you
15 could see from the video that his arm -- left arm is wrapped
16 and the injury is bad enough to where his arm is bleeding
17 through the bandage.

18 He did receive some medical treatment for that, but,
19 obviously, none of that had happened prior to the initial
20 statement that he made. He was certainly in a bad and poor
21 physical condition. I don't think that that's really up for
22 dispute that it required medical attention of a pretty
23 serious nature, I would imagine.

24 And it sounds like from the officer's testimony and the
25 video that it also required at the very least a local

1 anesthesia to treat the wounds that he received prior to
2 making that original statement. He was certainly in custody
3 -- I don't think that that is a fact that is debated. For
4 those reasons and the stress that he's under at the time of
5 making that first statement, I would say that it's not
6 voluntary.

7 The officer also couldn't -- Investigator Stanton could
8 not remember which version of Miranda he read. And I
9 certainly think that that's very important. He wasn't sure
10 which card he read. He's not sure exactly what the verbiage
11 was that was used and the order in which they were
12 delivered.

13 As far as the statement made at the Law Enforcement
14 Center, Brian is -- you can see on camera, he's sort of
15 hunched over, he's got a bandage on his arm that's turning
16 red. He has received some medical attention, and it sounds
17 like from the video being played, medicine as well.

18 He is in a room surrounded by three or more officers.
19 He is -- he is still handcuffed, albeit, in the front of his
20 waist, but he's still handcuffed and certainly in custody.

21 I would draw Your Honor's attention to a particular
22 point between the late six minute and early seven minute
23 mark when Investigator Kicklighter says if you don't start
24 talking to me I'm going to throw the book at you, for lack
25 of a better term.

1 He says, we're not going to talk anymore, you're going
2 to get arrested, I'm not going to help you out at all, and
3 I'm going to see to it that you get the max. I'm
4 paraphrasing, obviously. You saw the video earlier.

5 But I would say certainly, Your Honor, that that is a
6 threat, that Investigator Kicklighter has in no uncertain
7 terms said I'm going to do everything that I can do to make
8 sure that you get the max. And that to me erodes any sort
9 of voluntariness involved in at least from that point in the
10 statement forward.

11 Certainly I also think that given the necessity of
12 medical attention, his demeanor on camera and the presence
13 of all of those officers in the Law Enforcement Center would
14 also remove any voluntary nature prior to that -- I think
15 it's about at six minutes and fifty seconds is when that
16 particular part that I just referred to begins. For those
17 reasons, Your Honor, I do think that both of these
18 statements should be suppressed.

19 **THE COURT:** Thank you. Madame Solicitor, coming back
20 to you. Anything in reply to Mr. Grove's argument?

21 **MS. TESSITORE:** Your Honor, I mean, I think the fact
22 that he spoke with the officers for, let's see, at least six
23 minutes and provided critical information as far as how many
24 were involved and the indication that he wanted to talk
25 about it.

1 The fact that Investigator Kicklighter said that if you
2 don't cooperate, you don't tell the truth, I'm going to be
3 seeking the maximum sentence, I mean, I think that's pretty
4 standard for, you know, if you cooperate it will help you,
5 you know?

6 And he -- there was no specific promise, but just the
7 general idea that, you know, if you tell the truth and you
8 want to cooperate, you know, there might be something I
9 could say to the judge at your sentencing, in essence. So I
10 don't think that that would be construed to be coercion.

11 And, in fact, he says in his own statement, it doesn't
12 matter, you telling me you're going to ask for the max makes
13 me no difference. I live every day just trying to go day
14 from day, got nobody to help me. So he even says in the
15 interview that it makes no difference to him. So by his own
16 admission that clearly is not construed to be a threat to
17 him.

18 And then he continues to talk after that. And at no
19 point does he indicate that he's in distress or wants an
20 attorney or wants to stop talking. In fact, Investigator
21 Owens says I'll just shut up. If you tell me to shut up,
22 it'll just, you know, it'll be over. And that's not what
23 happened.

24 So I think that there's clear evidence in the video,
25 the best evidence that we have that would indicate that

1 these should be admitted as knowing and voluntary
2 statements.

3 **THE COURT:** All right. Mr. Grove, you brought up
4 something about 14:38 to 15:05. What was that?

5 **MR. GROVE:** Yes, sir, Your Honor. That -- Ms.
6 Tessitore brought your attention to it while the video was
7 going. In that portion of the statement it is -- I believe
8 that's exactly right. 14:14 to 14:55-ish there is a
9 statement -- as a part of this statement Brian discusses
10 some idea that this -- some mystery conversation with
11 unidentified people about a future crime that's going to be
12 taking place later that never happens, obviously.

13 He hasn't been charged with any of that. No one else
14 has so far as I know. I would argue that that is certainly
15 unduly prejudicial to him, not at all probative of this
16 particular case. It certainly is not going to help the jury
17 decide the facts of what occurred around 2:30 in the
18 afternoon the day before. I ---

19 **THE COURT:** All right. Madame Solicitor, what's your
20 position on that?

21 **MS. TESSITORE:** Your Honor, my position is that he
22 references in response to all you got was a car to try to
23 understand what his motive was, what the Defendant's motive
24 was. And that's when -- in his response he says, well,
25 that's why we said why people stand back to figure out

1 another -- another little jugg or whatever. We was gonna
2 just use the same car, the victim's car, to go hit another
3 jugg, but it wasn't gonna -- I don't know what the jugg was
4 yet. I was told I was gonna be hit when it was time. And,
5 you know, he said, but that's all I needed to hear.

6 So he's indicating that there is -- the plan was to use
7 that vehicle for criminal purposes beyond, not just for a
8 ride or anything like that. But that goes to his --
9 basically his motive, his intent in what he was doing.

10 And it was conspiracy as well as, you know, the armed
11 robbery itself. It indicates his knowledge as to what the
12 plan was and his role as the driver.

13 He also uses the term jugg, which ties back to what
14 Investigator Kicklighter had testified that he heard him say
15 jugg. Investigator Stanton said he thought he said job.
16 But that ties back to the statement on the initial scene as
17 well as context to understand what a jugg is and why they
18 were doing this one to, you know, to get the vehicle. It
19 wasn't about the pizza, et cetera.

20 So I think it's relevant to explain his knowledge, his
21 motive, his intent all of which is relevant to prove intent
22 and to proving his role in the conspiracy as well. And
23 there's no indication that there was any other subsequent
24 act.

25 I think I would just add that, that there's no -- there

1 will be no other evidence that there was going to be another
2 armed robbery specifically or that anything occurred. So
3 it's just a general reference to this is what we were going
4 to do with it.

5 **MR. GROVE:** Thank you, Your Honor. Two things. One, I
6 believe the statement that she's referring to, at least from
7 my perspective, sounds more like something that happened on
8 the fly. The indication is -- I believe what Deputy --
9 Investigator Kicklighter says is y'all did all this and you
10 didn't even get any money. All you got was a car.

11 And the response is that that didn't -- that it sounds
12 like from his co-defendants things didn't go as planned and
13 so they decided at that point, okay, well, then we can use
14 this car some other time and we will call you at that point.
15 I don't think there was any indication that there was a
16 conspiracy prior to 2:30 in the afternoon, the day before,
17 to steal a car and commit a laundry list of crime.

18 And he's not charged with a conspiracy to commit some
19 other crime. He's charged with a conspiracy to commit this
20 particular armed robbery involving Mr. Haefner. And he's
21 charged with a weapons charge involving this particular
22 armed robbery. He's charged with this particular armed
23 robbery. He's not charged with anything else.

24 He's not -- if he were charged with a conspiracy to
25 commit some other crime, I could see how that might be

1 relevant. But the idea that there is some future jugg that
2 may or may not take place at some unknown time involving
3 some unknown people to me is wildly speculative, unduly
4 prejudicial and absolutely not at all probative of the facts
5 surrounding 2:30 to 3:00 in the afternoon on the 22nd.

6 **THE COURT:** All right. Here's what we're going to do.
7 Having heard everything I'm going to allow in both
8 statements. Okay. I find they were knowingly, voluntarily,
9 intelligently made with advice and notice of -- or notice of
10 his Miranda warnings and rights.

11 I am going to redact, however, the video and audio
12 statement based upon Mr. Grove's argument. I agree with him
13 there about it being unduly prejudicial. So we'll redact,
14 y'all figure out how to do it, 14:14 through, I think it
15 was, 15:05. Redact that to the extent you want to get that
16 end portion in. Okay?

17 **MR. GROVE:** And, Your Honor, ---

18 **MS. TESSITORE:** Yes, sir.

19 **MR. GROVE:** --- along that same line, Ms. Tessitore
20 brought it out just a moment ago while the video was
21 playing, there was also a section in the nine minute mark
22 with similar language about there was -- it was supposed to
23 be something else. And then I think it said something
24 later. She's got a -- sort of a handmade transcript. She
25 can tell you exactly what the language was.

1 **MS. TESSITORE:** Your Honor, the language was, I think,
2 to the best of what I could hear, I was the driver or was
3 supposed to be. Something else was supposed to be said or
4 something. We could have did something else, but things
5 happened.

6 So I think that that one is certainly ---

7 **THE COURT:** I'm going to leave that one in. I ain't
8 worried about that one.

9 **MR. GROVE:** Okay.

10 **THE COURT:** The other one -- with the other one, I'll
11 take that one out. But that one, I ain't worried about.

12 **MR. GROVE:** Okay.

13 **THE COURT:** You're protected in the record. Okay.

14 Now, I want to ask, is there any way y'all going to be
15 able to turn up that statement? Because, I mean, I couldn't
16 hear, you know. I mean, I could hear okay enough to make a
17 decision, but if I'm sitting over there, there's no way I'm
18 going to be able to hear it.

19 And so I, you know, it's your case. Y'all can
20 introduce it if you want.

21 **MS. TESSITORE:** Yes, sir.

22 **THE COURT:** I just said you can, but, you know, ---

23 **MS. TESSITORE:** We'll work on the sound -- the sound
24 quality ---

25 **THE COURT:** Okay.

1 **MS. TESSITORE:** --- as best we can.

2 **THE COURT:** I mean, I could hear -- I could hear the
3 chair squeaking ---

4 **MS. TESSITORE:** Yes.

5 **THE COURT:** --- better than I could hear him.

6 **MS. TESSITORE:** Yes, sir.

7 **THE COURT:** Okay. So y'all can just do what you want.
8 Okay.

9 Jury's back, they're ready to roll. We've been in here
10 now for an hour and twenty minutes. Y'all told me it'd take
11 an hour. So we're going to take a quick five minute comfort
12 recess, get things rolling, and we'll bring the jury in for
13 the initial charge as well as opening statements. All
14 right. We're down for five minutes.

15 **MR. GROVE:** Thank you, Your Honor.

16 (Whereupon court was in recess at 3:19 pm)

17 (Whereupon court reconvened at 3:28 pm)

18 **THE COURT:** Everybody ready? All right.

19 (Whereupon the jury entered the courtroom at 3:32 pm)

20 **THE COURT:** All right. All members of the jury are
21 present. Ladies and gentlemen, sorry to make you wait a
22 little bit. That's my bad. Don't get mad at the lawyers.
23 It was a scheduling issue on my part. Thank you for your
24 patience.

25 And we're going to get started here. And in just a

1 moment I'm going to tell you things to expect and then we're
2 going to have opening statements. But before we do that we
3 need to swear you in as the trial jury. Madame Clerk, if
4 you'll please swear in the trial jury.

5 **MADAME CLERK:** Please rise and raise your right hand.
6 And the correct response to the oath is I will. You shall
7 well and truly try the case 2016-GS-23-1737, State versus
8 Brian Willie Lewis, indicted for armed robbery and
9 possession of a weapon during the commission of a violent
10 crime, 1738 for conspiracy and 1740 for resisting arrest and
11 a true verdict rendered according to the law and the
12 evidence so help you God. I will?

13 **THE JURY:** I will.

14 **MADAME CLERK:** Thank you. You can have a seat.

15 **THE COURT:** All right. Thank you, Madame Clerk.
16 Everybody hear me okay?

17 **THE JURY:** (Affirmative responses).

18 **THE COURT:** All right. Let me talk to you for just a
19 brief moment before we actually start with the lawyers to
20 kind of give you an idea of what to expect.

21 The trial -- this trial's probably going to be
22 different from what you might expect because most people
23 don't have the chance to attend actual court sessions, much
24 less participate in them as you are doing now. And those
25 people tend to think that what they read in -- what they

1 read in books or see on TV or especially at the movies is
2 the way trials always are.

3 Now, sometimes trials can be full of high drama,
4 intense action and riveting circumstances, but that's not
5 always the case. This trial, ladies and gentlemen, is not
6 for entertainment. It's a fundamental part of our democracy
7 in an effort to make sure that justice is done between the
8 parties before the court. You know, making sure that
9 justice is done can oftentimes be a slow, repetitive and
10 possibly deliberate process, the opposite of what you may
11 expect from what you've seen in the media.

12 Now, this courtroom is a place of honor dedicated to
13 the protection or preservation of citizens' rights through
14 what many have called the greatest justice system ever
15 created.

16 Now the attorneys who are appearing before you are
17 advocates for the parties they represent. The State of
18 South Carolina is represented by the solicitor's office.
19 And the Defendant is represented by his attorneys. But
20 first and foremost, they are officers of this court, sworn
21 to uphold the integrity and fairness of our judicial system
22 and to help you reach a verdict. You should expect them to
23 be professional, reasonable and ethical in their advocacy
24 and in their representation of their client's interest.

25 And remember, you've just taken an oath as a trial jury

1 in this case to reach a verdict. So you are also expected
2 to act that way. Again, thank you on behalf of the State of
3 South Carolina and Greenville County for accepting this
4 important responsibility and for your contribution today to
5 our democracy.

6 Now, I thought it might be helpful to explain to you
7 briefly how a trial proceeds. First, the State's going to
8 make an opening statement to you. An opening statement is
9 not evidence. It's simply an outline that the lawyer of the
10 solicitor's office will present to you to help you
11 understand what the State expects the evidence that they
12 introduce to you will show, okay? It's just an outline of
13 what they think the evidence shows.

14 The Defense can make an opening statement if they want
15 to, but they don't have to. And I'll tell you about all
16 that later on, okay?

17 Now, following the opening statements you'll then hear
18 testimony and receive evidence in the case. This will
19 consist of testimony from that witness stand. And it'll
20 come from various State's witnesses as well as any physical
21 exhibits which may be introduced.

22 Following the completion of the testimony, after
23 everybody's testified who's going to testify, the attorneys
24 will get -- again have an opportunity to talk directly to
25 you by what's called closing arguments. And this is an

1 opportunity, again, for the attorneys to summarize from
2 their case their respective points of view that they want to
3 hit upon to try to persuade you as to what the evidence has
4 shown, okay? Again, these closing arguments are not
5 evidence.

6 And following the closing statements, that's when I'll
7 talk directly to you and give you the law of South Carolina
8 as it pertains to the issues which have arisen in this case.
9 And once I've completed my legal instructions to you, that's
10 when you'll go back to your jury room to finally being able
11 to talk -- to begin to be able to talk about this case to
12 deliberate and reach a verdict.

13 As you know, this is a criminal case that's been
14 brought by the State of South Carolina, who has charged the
15 Defendant with various crimes. The charges against the
16 Defendant are contained in these indictments. Like I told
17 you during jury selection, these indictments aren't evidence
18 of anything. They're simply the legal description of the
19 charges which have been made by the State against the
20 Defendant.

21 Now the Defendant has pled not guilty to these charges
22 and is presumed innocent unless and until proven guilty
23 beyond a reasonable doubt. I will describe to you in legal
24 terms what a reasonable doubt is in more detail at the end,
25 but I'm instructing you -- but I will go ahead and tell you

1 very briefly a reasonable doubt is the kind of doubt that
2 would cause a reasonable person to hesitate to act.

3 Now a defendant has the right not to testify and never
4 has to prove innocence or present any evidence. The burden
5 of proof is always upon the State of South Carolina.

6 Now it's going to be your duty, ladies and gentlemen,
7 as the jurors to decide from the evidence what the facts
8 are. You and you alone are the judges of the facts. I'm
9 the judge of the law, you're the judge of the facts. That's
10 why we didn't get you in here til 3:30 this afternoon
11 because I was judging law stuff, okay? Y'all get to start
12 hearing the facts here shortly so that y'all can be the
13 judges of that, okay?

14 You will hear the evidence, decide what the facts are
15 and then apply those facts to the law which I will give to
16 you. That's how you reach a verdict. And in doing so you
17 must follow the law whether you agree with it or not.
18 Please don't take anything that I may say or do during the
19 trial as indicating what you think I think of the evidence.
20 That's solely for you to determine.

21 Now just like the rules which govern sports and other
22 activities, there are rules of evidence which control what
23 can come into evidence in court. When a lawyer asks a
24 question or offers something into evidence and the lawyer on
25 the other side thinks that it's not permitted by the rules,

1 that lawyer may object. Y'all've seen that, heard about it,
2 they'll say objection. And then I will rule on the
3 objection as a matter of law.

4 Now if I sustain the objection, that means the question
5 cannot be answered or the thing cannot come into evidence.
6 If I overrule an objection, that means the thing -- the
7 question can be answered or the thing can come into
8 evidence.

9 Now whenever I sustain something you can't sit there
10 and speculate about what the answer would have been or what
11 the thing would have shown had it come in because, again,
12 the reason we have these rules is 'cause we want you, the
13 jury, to have the best evidence possible to make your very
14 important decision, okay? That's why we have those rules.

15 And whenever I get the lawyers up here to talk to me at
16 the sidebar or whenever I send you back to your jury room to
17 deal with matters of law involving these lawyers, don't
18 speculate about what we're talking about. We're dealing
19 with matters of law. And, again, the reason -- and we're
20 not trying to hide anything from you, we just want to make
21 sure that we get you the best evidence possible, okay?

22 Now in deciding the facts of this case, ladies and
23 gentlemen, you may have to decide which witnesses to believe
24 and which witnesses not to believe. Now you have the power
25 to believe everything a witness says, some of it, part of it

1 or none of it, okay? You're the judges of the facts.

2 You're not going to be allowed to take notes during the
3 trial, okay? So listen very carefully to the witnesses as
4 they testify. Pay close attention to them, look at them,
5 listen to them, okay? That way you can accurately discuss
6 the facts later on when you get the case.

7 You know, South Carolina, it's not like California
8 where cases go on for three and four weeks and sometimes
9 months and months. But we'll be finished this week, maybe
10 before the end of the week, okay? So you should be able to
11 accurately discuss everything you hear, okay?

12 Now, also at the end of the trial you're going to have
13 to make your decision based on the evidence presented in
14 this courtroom, not outside stuff. That's why I told you
15 you can't go and do any independent research, look up things
16 on your own, that kind of stuff.

17 You're not going to have a written transcript of the
18 trial to consult back there. You're not going to have like
19 a video or a piece of paper from my court reporter you're
20 seeing down right in front of me because it's very timely
21 and time consuming and costly for her to try to go back and
22 find a certain witness' testimony, print it out for you and
23 hand it to you. You've got to go by your memory. So please
24 pay close attention as the case goes forward, okay?

25 Now, until I begin you -- excuse me. Until I advise

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1 you to begin your deliberations you must not and cannot
2 discuss this case with anybody including yourselves,
3 friends, family members and anybody else involved in this
4 case.

5 I've already told you not to do any independent
6 research. Don't go on Twitter, on Facebook or Instagram and
7 talk about how you're serving on a trial jury and blah,
8 blah, blah, those kind -- you don't need to do that, okay?
9 You're compromising the process if you do that and we don't
10 need you to do that, okay? If anybody tries to speak to you
11 about this case in violation of what I'm telling you, please
12 let me know and I assure you I'll deal with that, okay?

13 Now, it's important, ladies and gentlemen, that you
14 keep an open mind and not decide any issue in this case
15 until everything's been presented to you, the parties have
16 made their closing arguments and I've instructed you on the
17 law. It is your solemn responsibility to determine the
18 guilt or innocence of the Defendant. And your verdict must
19 be based solely on the evidence presented in this courtroom
20 and on the law as I instruct you during and at the close of
21 the trial.

22 Again, thank you very much for your anticipated
23 cooperation. At this time we'll move right into opening
24 statements. Madame Solicitor.

25 **MS. TESSITORE:** Thank you, Your Honor. May it please

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1 the Court, Mr. Grove?

2 Good afternoon, ladies and gentlemen. As I told you at
3 the beginning of this case, my name is Jennifer Tessitore,
4 and I represent the State of South Carolina in this case.
5 And as part of my duties I -- my job is to carry the burden
6 of proof in this case to prove that the Defendant, Brian
7 Lewis, who's seated over there, committed the charges, the
8 crimes that we are alleging and that we bring before you
9 today.

10 So I'm going to give you a little bit of a roadmap
11 before I jump into what the State intends to show just so
12 that you can have an idea, and I know the Judge mentioned
13 the charges, but I'm going to give you -- there's elements
14 and he's going to talk about those at the end of the case.
15 But it would be good to have those in your mind as like a
16 checklist of sorts to just kind of be in tune with what --
17 what is the law that's going to be charged to you so that
18 you can kind of keep up as you hear the facts, and the
19 evidence, and stay on track, and be attentive to those
20 things that are most important.

21 The first thing is conspiracy. The Defendant is
22 charged with conspiracy to commit armed robbery along with
23 three other individuals. And that is basically -- the
24 elements for that that the State has to prove is that there
25 was an agreement between two to more people to achieve an

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1 unlawful object, in this case, an armed robbery.

2 So you'll hear more about what that agreement would

3 entail, but sometimes it's as simple as something that can

4 happen in seconds or minutes and an agreement is formed.

5 It's not going to be the type of agreement that you would

6 see when you buy a house or make a purchase of an expensive

7 item such as that. So as you can imagine, it's a little bit

8 more subtle, but that is the basis of conspiracy.

9 The second thing is the armed robbery. The armed

10 robbery is the taking of property from another by force or

11 intimidation with either a deadly weapon or what appears to

12 be a deadly weapon. So as long as there is either the

13 actual deadly weapon or what appears to be. And so you will

14 hear more about that again at the end of the case.

15 Possession of a weapon during the commission of a

16 violent crime, there is -- that's a companion charge to the

17 armed robbery. If what was displayed to the victim appears

18 to be a firearm or a knife, in this case we're talking about

19 a firearm, then that is the basis for that charge.

20 The resisting arrest, the final charge that we're going

21 to talk about, is simply what it sounds like, that the

22 Defendant did resist an arrest being made by who was clearly

23 identified as a law enforcement officer making that arrest.

24 And you'll hear, again, more about that.

25 The tools that you will need in this case to -- it's a

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1 very simple case, is just really your common sense and your
2 life experience. That's what you bring as your tool. So
3 there's no app that you can use.

4 Of course, you can't use your cell phone. But there's
5 no app that says common sense, what do I do? You -- that's
6 why you've been chosen. That's why you've been sworn in as
7 jurors because you have that to bring to the deliberations
8 at the end of this case.

9 Ladies and gentlemen, in this case the State intends to
10 show that this Defendant, Brian Lewis, and his younger
11 brother, sixteen year old Cordell Lewis, and two seventeen
12 year olds, they all got together, those four to plan to
13 commit an armed robbery of the pizza man. This was back on
14 July 22nd of 2015. And they all pretty much had a role to
15 play. The evidence will show what those roles were that
16 they did, in fact, play.

17 You'll hear that they set it up at a vacant apartment
18 for the pizza to be delivered there, that they had one of
19 the co-defendants would stall the victim, another one would
20 appear with a pistol and point it to the victim, at the
21 victim with orders and then another two of them would stomp
22 on his head on their way out as they took his vehicle and
23 left him there with only his cell phone. Those -- that is
24 what the evidence will show in this case.

25 The State intends to have the -- you'll hear from the

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1 victim. You'll hear from the officers that were the
2 investigators. There were several working diligently. And,
3 ladies and gentlemen, the State will -- the evidence will
4 show that this happened in broad daylight in the afternoon
5 hours and none of the four individuals, including this
6 Defendant, had any type of mask or anything concealing their
7 faces.

8 You will hear from the officers who then later
9 apprehended one of the co-defendants. And you will hear
10 about how they also apprehended this Defendant that same
11 night. You will also hear about the arrest of the other two
12 co-defendants that occurred the next day based on the
13 information that was provided to them by the cooperating co-
14 defendants.

15 So based on all of that at the end of this case I will
16 ask you to return a verdict of guilty after you are firmly
17 convinced of the Defendant's guilt as to each of the charges
18 that we talked about at the beginning of the case. Thank
19 you.

20 **THE COURT:** Thank you, Madame Solicitor. Mr. Grove.

21 **MR. GROVE:** Thank you, Your Honor.

22 Ms. Tessitore is right, you are going to hear a lot of
23 that stuff. And one thing you're never going to hear from
24 me is that Steve Haefner wasn't robbed. Never going to say
25 that because he absolutely was. Donny Campbell, Cordell

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1 Lewis, Robert Jackson, they robbed Steve Haefner.

2 What you're also going to hear is Brian Lewis drove the
3 car afterwards. That's what he did. Not that he robbed
4 him, but that he drove the car afterwards. Didn't know
5 about a robbery, knew he needed to drive a car. And maybe
6 something was up, but he certainly didn't know what. Didn't
7 have an agreement.

8 You might hear, I don't know if the State intends to
9 call them or not, you might hear from the three co-
10 defendants. All of them have already been to court.

11 When you hear from them, ladies and gentlemen, I want
12 you to consider the thing the Judge mentioned earlier he'll
13 tell you about a little bit later of credibility, and bias,
14 a reason that somebody might have for saying something was
15 one way when it was really another.

16 When those three co-defendants get up there I want you
17 to be thinking about -- and I want you to hear the questions
18 and hear the answers. Do they have a reason for saying
19 things happened one way when they -- maybe they really
20 happened another way? Do they have a reason for deflecting
21 their own responsibility and trying to throw the
22 responsibility on somebody else?

23 But you're never going to hear me suggest that Mr.
24 Haefner on July the 22nd of 2015, you're never going to hear
25 me suggest he wasn't robbed because he absolutely was.

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1 There's no doubt about that. That's not what this trial's
2 about, ladies and gentlemen. This trial is about Brian
3 Lewis' role.

4 I hope you pay attention with me while we go through
5 this and hear what the evidence the State has. Thank you.

6 **THE COURT:** Thank you, Mr. Grove. The State ready to
7 call its first witness?

8 **MS. TESSITORE:** Yes, Your Honor.

9 **THE COURT:** All right.

10 **MS. TESSITORE:** The State calls Steve Haefner.

11 **THE COURT:** All right.

12 **Steven Haefner, being**
13 duly sworn testified as follows;

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

16 **MR. HAEFNER:** Steven M. Haefner.

17 **Direct Examination by Ms. Tessitore:**

18 Q. Good afternoon, Mr. Haefner. Could you tell the jury
19 what you do for a living.

20 A. I own two Domino's Pizza stores.

21 Q. Okay. And I'm just going to ask you to speak up nice
22 and loud so that I can hear you all the way over here. And
23 where are those pizza stores that you own?

24 A. Where are they?

25 Q. Where are they?

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1 A. One is in Easley on Williams Avenue. The other one is
2 in Greenville on Anderson Road.

3 Q. Okay. And they're both Domino's?

4 A. Yes.

5 Q. Okay. And how long have you been in that business?

6 A. I've been a franchisee here in Easley and Greenville
7 since 1993.

8 Q. All right. And in that role as the franchisee, the
9 owner, what do you -- what is your typical kind of day like
10 when you're at the -- at work?

11 A. A little bit of everything. I answer the phones, I
12 make the pizzas, I deliver the pizzas when needed, I pull
13 the food out of the walk-in, I serve, janitorial duties.
14 You name it, I've done it.

15 Q. So you wear many hats?

16 A. Yes, ma'am.

17 Q. So you said you -- also you make deliveries?

18 A. Correct.

19 Q. All right. I'm going to ask you when you make the
20 deliveries do you typically drive your own car or a company
21 car?

22 A. My own car.

23 Q. All right. And I'm going to take you back to July 22nd
24 of 2015. Were you working that day?

25 A. Yes.

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1 Q. And did you receive an order to be delivered out to
2 Grove Station Apartments?

3 A. Yes, I did.

4 Q. Approximately what time of day was this?

5 A. Early in the afternoon.

6 Q. Okay. And do you recall what they ordered or what the
7 order was?

8 A. Not without going back and looking. I know it was
9 multiple items and a two liter.

10 Q. Okay. And did it include pizza?

11 A. Yes.

12 Q. And where was it that you were -- you were bringing
13 this order to?

14 A. The actual address?

15 Q. Yes.

16 A. Lakeside Road, apartment

17 Q. Okay. Is that a fairly large apartment complex or ---

18 A. Yes, it is.

19 Q. And were you familiar with it?

20 A. Yes, I am.

21 Q. Did you know who you were delivering to that day?

22 A. No.

23 Q. Specifically?

24 A. No.

25 Q. Okay. So did you have a name?

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1 A. It would have been on the delivery slip, yes.

2 Q. Okay. And is this location that you're talking about,
3 is that in Greenville County?

4 A. Yes, it is.

5 Q. About what -- how long did it take to fill that order
6 and get it over there approximately?

7 A. You mean once I left the store?

8 Q. Well, once the order was placed approximately how long
9 to bring it -- to leave with the delivery?

10 A. I couldn't actually tell you because they called me
11 when I was in Easley and said we're busy, and I need you
12 over there. And when I walked in the door that delivery was
13 sitting there waiting to be delivered. So I basically just
14 took it and went out the door.

15 Q. Okay. And which apartment were you heading towards?

16 A.

17 Q. Okay. And how did you get there? Did you go by
18 yourself or ...

19 A. I went by myself.

20 Q. And what were you driving?

21 A. My blue Toyota Highlander.

22 Q. Okay. And did -- so when you -- when you got there did
23 you know where to go?

24 A. Yes.

25 Q. And explain what happened as you drove up to that

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1 apartment building.

2 A. I knew where was because we have a map of the
3 apartments as well as I was familiar with that particular
4 apartment number. So I pulled into the complex, parked
5 relatively near the breeze-way, got out of my car, took the
6 pizzas and the two liter, went upstairs to the apartment,
7 knocked on the door, got no answer.

8 So I knocked again, waited a bit of time. Still nobody
9 answered the door. I walked back down the stairs, set the
10 pizzas and the two liter on the hood of my car and reached
11 into my car and grabbed my cell phone.

12 And on the delivery slip there's a phone number where
13 the order was placed from. So I called that number to see
14 if I could get an answer. I don't believe I got an answer.
15 So I hung up and then called the store and asked them.

16 And about that time four young black gentlemen walked
17 out of the other breeze-way. Two went off to my left and
18 behind me, two walked in front of me. And as the two were
19 walking in front of me one of them mentioned something
20 about, you know, I think that's ---

21 **MR. GROVE:** Objection, Your Honor. Hearsay.

22 **THE COURT:** Overruled.

23 **MS. TESSITORE:** You can answer the question.

24 A. One of them said, that's for my people, indicating.

25 And I said, the apartment upstairs? And he said, yes. And

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1 then he walked over to the breeze-way, stood there and
2 pretended like he could pay for the order with a credit
3 card. And I said, it's supposed to be a cash order. And he
4 still indicated that he could pay with a credit card.

5 And I asked him, you know, could you please go upstairs
6 and knock on the door so that I know that's actually your
7 apartment and you actually live there because we've had
8 incidences before where we've handed an order to somebody
9 who comes out in the parking lot and says it's mine and then
10 it turns out, you know, thirty minutes later we get a phone
11 call back to the store asking where my -- where's their
12 food. And so I wanted to make sure that he was telling me
13 that, yes, it really was his apartment.

14 And he went up and lightly knocked on the door, nobody
15 came. He walked back down the stairs and again indicated
16 for me to come on over there and, you know, finish the
17 transaction with a credit card. And, you know, about that
18 time another gentleman walked out of the breeze-way, stuck a
19 gun in my face and told me to get on the ground.

20 Q. Okay. Let's -- let's just back up for one second. So
21 the individual that you were speaking to first, ---

22 A. Yes.

23 Q. --- do you recall what he was wearing?

24 A. No.

25 Q. Okay. And how long approximately did the conversation

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1 take as you were -- before the gun in your face?

2 A. Before the gun in my face? Probably two to three
3 minutes.

4 Q. Okay. So just dealing with that first individual?

5 A. Yes.

6 Q. All right. And so let me -- approximately what time
7 was this?

8 A. Early in the afternoon.

9 Q. Okay. So did you get -- were you able to see the guy
10 that you were talking to clearly?

11 A. Yes.

12 Q. All right. And did -- would it help if I showed you a
13 picture of the area where this happened?

14 A. Sure.

15 Q. Okay. Mr. Haefner, I'm showing you what's been marked
16 as State's exhibit number 16. Can you identify that?

17 A. Looks like the entryway where I would have gone up and
18 knocked on the apartment door.

19 Q. Okay. And is that a fair and accurate depiction of the
20 scene where this occurred?

21 A. Yes.

22 Q. Okay. And State's exhibit 17, what is that?

23 A. The end of the unit.

24 Q. Okay. And then what do we see in State's exhibit 18?

25 A. The rest of the apartments going back towards the

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1 street.

2 Q. Okay. And is that the area -- is that fairly depicted
3 where you were when you drove up?

4 A. Yes.

5 Q. Okay.

6 A. Without all the cars.

7 Q. Okay.

8 **MS. TESSITORE:** The State would move State's exhibit
9 16, 17 and 18 into evidence.

10 **MR. GROVE:** No objection.

11 **THE COURT:** Without objection, introduced into
12 evidence.

13 (Whereupon State's exhibits 16 - 18 were admitted into
14 evidence)

15 Q. All right. While Ms. Kelly is getting the presenter
16 did -- was it the same breeze-way that is shown in the photo
17 as where the man with the gun came from?

18 A. I couldn't tell you if it was the same breeze-way.

19 Q. Okay. Let me show you State's exhibit 16.

20 A. I mean, they all look the same.

21 Q. Okay. So that's State's exhibit 16.

22 **MS. TESSITORE:** Can you keep the light on, actually?
23 Thank you.

24 Q. Do you know where the -- can you direct the jury as to
25 where the apartment was that you were going to, the

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1 A. If you're looking at the upstairs where the plant is,
2 the door would have been to the left of the plant.

3 Q. Let me give you a laser pointer. Is that going to be
4 okay? And it's the top button right there. Okay. Let me
5 ask you this. Okay. So this -- is this the breeze-way
6 you're talking about?

7 A. Yes.

8 Q. Okay.

9 A. That's the stairs going up.

10 Q. Right here?

11 A. Yes.

12 Q. Okay. And are there apartments up here?

13 A. Yes. There's a door on the right and there's a door on
14 the left.

15 Q. Okay. And which one was

16 A. The one on the left.

17 Q. The one on the left over here?

18 A. Yes.

19 Q. Okay. And just looking at State's exhibit 18, what
20 does that show?

21 A. The rest of the apartments going back towards the
22 street.

23 Q. Okay. And approximately where did you park from
24 beginning to end there? If you recall.

25 A. The better picture is the other one that we showed.

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1 Q. Okay. Let me show you State's exhibit 17.

2 A. Not that one.

3 Q. No?

4 A. I would -- would've parked my car maybe a spot or two
5 to the left.

6 Q. Okay. And this unit was at the -- was it at the end of
7 the building?

8 A. Correct.

9 Q. All right. So 17 -- State's exhibit 17 shows -- is
10 that the end?

11 A. Yes.

12 Q. Okay. So on the end unit there. And tell the jury
13 when you saw the second person with the gun, describe what
14 you saw.

15 A. About that time I had walked behind my car and was, you
16 know, waiting to get some confirmation as to whether the
17 order was really going to be his and he was going to pay for
18 it. Gentleman walked out of that breeze-way, racked a gun
19 in my face, put it in my face and told me to get down on the
20 ground. At that point I indicated or I said something to
21 the effect of are you kidding? Are you joking? And he
22 said, no, ---

23 **MR. GROVE:** Objection, Your Honor. Hearsay.

24 **THE COURT:** Overruled.

25 A. He said, no, get on the ground. So I got on the

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1 ground. He then told me to throw my keys and my wallet out

2 ---

3 Q. Before ---

4 A. --- into the parking lot.

5 Q. Okay. Before you got on the ground, specifically, the
6 guy who's holding the gun, describe him.

7 A. Black gentleman, ...

8 Q. As far as height, I mean, in relation to you.

9 A. He was shorter than I was.

10 Q. Okay. Was there anything distinctive about his face?

11 A. Not that I can remember at that time.

12 Q. Okay. Can you -- do you remember if he was -- what he
13 was wearing?

14 A. No.

15 Q. Do you remember if it was, I mean, ---

16 **MR. GROVE:** Objection, Your Honor.

17 Q. --- did he have clothes on?

18 **MR. GROVE:** Asked and answered.

19 **THE COURT:** Overruled.

20 Q. Did he have clothes on?

21 A. Yes.

22 Q. Okay. Do you recall, this was back in July, whether he
23 was wearing long ---

24 **MR. GROVE:** Objection, Your Honor.

25 Q. --- sleeves, short sleeves?

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1 **MR. GROVE:** Leading.

2 **THE COURT:** I'll sustain that.

3 Q. Okay. Do you recall what type of ---

4 A. He was wearing a t-shirt.

5 Q. Okay.

6 A. They were all wearing t-shirts.

7 Q. All right. Going to -- you said he put a gun in your
8 face. Can you describe for the jury what that looked like?

9 A. Black gun. And when he racked it back you could see
10 its silver barrel.

11 Q. Okay.

12 A. Handgun.

13 Q. A silver barrel what?

14 A. It was a handgun.

15 Q. Okay. And when -- so he racked it back. And at that
16 point what are you doing?

17 A. Staring at him.

18 Q. Okay. And you said you asked him a question.

19 A. I asked him a question.

20 Q. And what did you do in response -- well, let me -- let
21 me back up. Is there anything concealing his face at all?

22 A. No.

23 Q. Any hat on, anything on his head?

24 A. No.

25 Q. Okay. And what did you do in response to the gun in

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1 your face?

2 A. I asked him the question as to whether, you know, he
3 was kidding or was joking. And when he said, no, I got down
4 on the ground.

5 Q. Okay. And what did -- what happened then?

6 A. I threw my keys and my wallet out. And I was laying
7 face-down on the ground. The gun got put to the back of my
8 head. And I was told not to move or I'd have a really bad
9 day.

10 Q. Is that -- who said that?

11 A. I don't know.

12 Q. Okay.

13 A. I'm assuming the gentleman who put the gun in my face.

14 Q. Okay. And ---

15 A. Because I was staring at the parking lot.

16 Q. Okay. Could you tell who retrieved your keys, or
17 wallet or ---

18 A. No.

19 Q. Okay. Were you on the pavement, the sidewalk, the
20 grass? Where were you?

21 A. The pavement.

22 Q. Okay.

23 A. Out in the middle of the parking lot.

24 Q. Okay. And as you were laying there were you trying to
25 -- did you try at all to see if you could look at the other

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1 people that were involved, the other defendants ---

2 A. No.

3 Q. --- or anything?

4 A. No, I did not.

5 Q. No? Okay. So what happened at that point?

6 A. They, obviously, got my keys. They, obviously, picked
7 up my wallet. At some ---

8 Q. You say obviously. Were they there when you got up?

9 A. No, they weren't there when I got up.

10 Q. Okay.

11 A. At some point they opened the car door because I heard
12 the beep beep. And then the car started. At one point one
13 of them kicked me in the back of the head. And then, you
14 know, a few seconds later I think somebody else kicked me in
15 the back of the head and then they -- they left. I heard
16 the car drive away.

17 Q. Okay. So how many people total did you see that were
18 involved in this?

19 A. Four.

20 Q. All right. And going back to the first guy that you
21 saw with the credit card, where did -- where was he while
22 this other guy was holding the gun at your face?

23 A. He was still standing in the breeze-way.

24 Q. Okay. Did you see where he went to during -- when you
25 got -- as you were getting down on the ground?

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1 A. No. My focus was on the gentleman with the gun.

2 Q. Okay. How close did he get to you with that gun?

3 A. Close enough so that it was basically right in my face.

4 Q. Okay. So approximate distance?

5 A. Two feet.

6 Q. Okay.

7 A. One foot.

8 Q. Okay. So when you say he pointed it right at your
9 head, I mean, was the gun touching your head?

10 A. No.

11 Q. Okay.

12 A. Only when I was lying down on the ground.

13 Q. All right. And when -- describe -- so you talked about
14 the first one with the credit card and the second one with
15 the gun. And then the other two, tell the jury a little bit
16 about what you observed about them.

17 A. Just young black gentlemen.

18 Q. Did you have any idea as far as age range or ...

19 A. (Negative nod).

20 Q. No?

21 A. No.

22 Q. Okay.

23 A. Just young.

24 Q. Okay. And did you see what they did while you were --
25 while this was taking place?

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1 A. No.

2 Q. All right. So the next -- you said you were laying on
3 the ground faced up or down?

4 A. Face-down.

5 Q. Okay. So did you -- what did you see after you heard
6 the car leaving? Did you -- what did you do at that point?

7 A. I just stayed looking at the ground for a little while.
8 And then eventually I got up and reached into my pocket and
9 got my cell phone and started walking and called 911.

10 Q. Okay. Were any of the items that you brought to
11 deliver -- where were those items?

12 A. I'm assuming they got put into the car. They weren't
13 in the parking lot.

14 Q. Okay. Where were they while you were talking and out
15 of the -- out of the car?

16 A. I had set them on the hood of my car.

17 Q. Okay. And with respect to the -- okay. So you called
18 911 at that point, right?

19 A. Yes.

20 Q. All right. And were you able to -- how quickly did
21 they respond?

22 A. Ten minutes, maybe. Ten to fifteen minutes.

23 Q. Okay. And what -- well, let me ask you this. Of those
24 four individuals that you saw out there, did you recognize
25 any of them? When you were -- when you saw them that day

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1 had you ever seen them before?

2 A. No.

3 Q. Okay. And from there did the -- did the police respond
4 to the scene where this happened?

5 A. Yes.

6 Q. All right. Did you stay in that area or ---

7 A. I walked -- I walked to the manager's office.

8 Q. Okay. And when you got to the manager's office is that
9 where -- where you met with the officers? Or EMS?

10 A. Yeah, EMS and a patrol car came. But it was outside.

11 Q. Okay. Just one minute.

12 (Pause)

13 Q. All right. I'm going to show you State's exhibit 19,
14 20 and 21. Do you recognize those?

15 A. Yes.

16 Q. Okay. And what are those?

17 A. Pictures of me when I was in the emergency room.

18 Q. Are those fair and accurate depictions of how you
19 appeared shortly after the incident?

20 A. Yes.

21 Q. Okay.

22 **MS. TESSITORE:** Your Honor, at this time the State
23 would admit -- seek to admit 19, 20 and 21.

24 **MR. GROVE:** No objection.

25 **THE COURT:** Without objection, introduced into

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1 evidence.

2 (Whereupon State's exhibits 19 - 21 were admitted into
3 evidence)

4 Q. Okay. So, Mr. Haefner, what -- I'm showing you State's
5 exhibit 20. What injuries did you have from this incident,
6 if any?

7 A. The scrape on my forehead.

8 Q. Okay. And do you recall what made contact with your
9 forehead?

10 A. The -- when the gentleman kicked me in the back of the
11 head, I was face-down in the parking lot.

12 Q. All right. And State's exhibit 21, what does that
13 show?

14 A. Scrape on my elbow.

15 Q. Okay. And when did that occur?

16 A. Probably when the second gentleman kicked me in the
17 back of my head because I had to cover my head after the
18 first one did it.

19 Q. Okay. And so did you have any injuries that required
20 any treatment at the hospital there?

21 A. They did an MRI to make sure I didn't have a
22 concussion.

23 Q. Okay. Did you?

24 A. No.

25 Q. All right. So as far as the items that were in your

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1 SUV -- you said that when you got up the SUV was gone?

2 A. Yes.

3 Q. All right. Tell the jury what items you had in your

4 SUV at the time.

5 A. Miscellaneous tools, laptop computer, there was a

6 hundred and fifty dollars in ones under one of my floor

7 mats. That's about it.

8 Q. Okay. And ---

9 A. Oh, there was another order -- another pizza order in

10 the car because I was going to go on a second delivery after

11 that first one.

12 Q. Okay. And I guess that didn't happen?

13 A. No, that did not happen.

14 Q. Okay. All right. When you -- when you were at the

15 hospital do you remember if an investigator came to talk

16 with you there?

17 A. Yes, he did.

18 Q. Okay. And were you able to talk to him while you were

19 there at the hospital?

20 A. Yes, I did.

21 Q. Do you recall what you talked about?

22 A. What just happened.

23 Q. Okay. And were you able -- how were you -- how were

24 you feeling at that point?

25 A. Nervous.

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1 Q. Okay. Do you laugh sometimes when you get nervous?

2 A. I do.

3 Q. Okay.

4 A. A little out of sorts for obvious reasons.

5 Q. Did -- so when that investigator met with you were you
6 able to provide with him -- provide him with any description
7 of the young men?

8 A. Not other than what I stated.

9 Q. Okay. And do you recall -- do you recall the
10 conversation you had with him specifically?

11 A. No.

12 Q. Okay. I'm going to -- just one minute here.

13 (Pause)

14 Q. Do you recall -- well, let me ask you this. When you
15 -- after you went -- when you went to the hospital did you
16 have to stay there very long?

17 A. I think it took about four hours or so. I recall
18 getting there maybe about 3:30, leaving roughly around 7:30.

19 Q. Okay. And did you -- did you have any other contact
20 with the investigators that evening?

21 A. No.

22 Q. Did you have other employees that worked with you at
23 that location nearby the Grove Station Apartments that were,
24 I guess, how many employees did you have working for you
25 there?

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1 A. On that ---

2 Q. At that time?

3 A. --- particular day?

4 Q. Yeah.

5 A. There were probably two others. There was -- I know

6 there was somebody who was obviously on the inside making

7 the pizzas and then there was another driver as well.

8 Q. Okay. And do you recall any of the employees that were

9 working that night -- did they get in contact with you

10 regarding what happened to you earlier in the day?

11 A. I don't know if -- somebody called me late at night and

12 said that ---

13 **MR. GROVE:** Objection, Your Honor. Hearsay.

14 Q. So ---

15 **THE COURT:** Sustained.

16 **MS. TESSITORE:** Yeah.

17 Q. Without saying what they said did you learn at some

18 point that evening that your vehicle had been recovered?

19 A. Yes.

20 Q. All right. And did you -- do you recall when -- that

21 was on the 22nd. The next time you saw officers do you

22 recall what that was about?

23 A. (No response).

24 Q. Do you remember meeting with -- did any officers come

25 out to the Domino's to speak with you?

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1 **MR. GROVE:** Objection, Your Honor. Leading.

2 **THE COURT:** Overruled.

3 A. The two officers came and showed me some photos.

4 Q. Okay. Let's talk about that. Do you recall who those
5 investigators were?

6 A. Their names?

7 Q. Yes. If not, that's fine.

8 A. Owens and Kicklighter.

9 Q. Okay. When the officers came out to talk with you did
10 -- what did they tell you they were there to do?

11 A. They wanted to show me some photographs.

12 Q. Okay. And did -- when they said they wanted to show
13 you some photographs did they give you any instructions?

14 A. Just to carefully look at them.

15 Q. Okay. And let's talk about -- where were you when you
16 viewed the photographs?

17 A. Out in the parking lot of Domino's Pizza store.

18 Q. And out in the parking -- and where -- this was when
19 you were at work?

20 A. Correct.

21 Q. All right. Was anyone else present other than the two
22 investigators?

23 A. No.

24 Q. And how did they -- how did they explain to you what to
25 do? Like, what did they present to you, I guess, is the

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1 best ---

2 A. They presented a binder with six pictures in it and
3 asked me to go through it.

4 Q. Okay. And did they give you specific instructions
5 about anything about whether, you know, did they -- let me
6 ask you this. Did you look through the notebook?

7 A. Yes.

8 Q. Okay. And when you looked through the notebook
9 describe for the jury, you know, as far as what happened
10 when you looked through -- let me show you what's been
11 marked as State's exhibit 1, 2, 3, 4, 5 and 6.

12 **MR. GROVE:** Your Honor, at this time I'd renew my
13 previous objection.

14 **THE COURT:** All right. Noted for the record.
15 Overruled.

16 Q. Okay. If you could just review those pages one at a
17 time. And if you need me to move them, I can.

18 (Pause)

19 Q. Okay. Have you looked at each one, State's 1 through
20 6?

21 A. Yes.

22 Q. Okay. And is this a fair or in substantially the same
23 condition as when it was shown to you by the investigator?

24 A. Yes, it is.

25 Q. Okay. And how do you know it's the one that you looked

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1 at?

2 A. All of them have my initials except for one which has
3 my signature and date.

4 Q. Okay. And who placed those initials there?

5 A. I did.

6 Q. And what the -- when it was shown to you in the binder
7 how did you -- were they -- how were they arranged in the
8 binder?

9 A. Just single photographs behind a clear plastic sheet.
10 And you had to flip them to get to the next one.

11 Q. All right. And you fully reviewed all of those?

12 A. Yes, I did.

13 Q. Okay. And did you -- were you able to identify anyone
14 in this particular array of photos as being involved in the
15 robbery?

16 A. Yes, I did.

17 Q. Okay. And which one did you identify?

18 A. This one.

19 Q. And which one is that?

20 **MR. GROVE:** Same objection, Your Honor.

21 **THE COURT:** Noted ---

22 Q. You're pointing to State's ---

23 **MS. TESSITORE:** Sorry.

24 **THE COURT:** Noted. Overruled.

25 Q. Pointing to State's exhibit number 3. That's the photo

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1 that you selected?

2 A. Yes, it is.

3 Q. Okay. And what -- who is that person as far as in the
4 roles that were played that -- in that robbery?

5 A. The man who stuck the gun in my face.

6 Q. Okay. Did you have any question in your mind that that
7 was the individual?

8 A. No.

9 Q. And how quickly were you able to make that selection
10 when you looked at all six pictures?

11 A. Very quickly.

12 Q. Okay. And did the investigator suggest to you at any
13 point in time as -- that you needed to select anybody?

14 A. No, he did not.

15 Q. Did he pressure you to select somebody?

16 A. No, he did not.

17 Q. Did they tell you that if you weren't sure that you
18 shouldn't pick anybody?

19 A. Yes, they did.

20 Q. Okay. I'm showing you State's exhibit number 7. And
21 do you recognize that?

22 A. I do.

23 Q. What is that?

24 A. That's the affidavit that I had to sign once I looked
25 at all the pictures.

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1 Q. Okay. And by signing it did you indicate -- what did
2 you indicate on this affidavit as to your selection?

3 A. The picture I chose was the gentleman who put the gun
4 in my face and told me to get on the ground.

5 Q. Okay. And does your signature appear on here?

6 A. Yes, it does.

7 Q. Okay. As well as your writing?

8 A. Yes.

9 Q. And what did you write on there?

10 A. Put a gun in my face and told me to get on the ground.

11 Q. Okay. So pretty basic. All right. And with respect
12 to the individual that put the gun in your face and told you
13 to get on the ground, do you see him in the courtroom today?

14 A. I do.

15 Q. Can you identify him?

16 A. He's sitting over there to the right.

17 (Whereupon the witness pointed to the Defendant)

18 **MR. GROVE:** Renew my previous objection, Your Honor.

19 **THE COURT:** Noted. Overruled.

20 Q. Okay. Can you describe what he's wearing?

21 A. The blue shirt with a tie.

22 Q. Okay. And have you had an opportunity to observe him
23 here today?

24 A. Earlier today.

25 Q. Okay. Is there any question in your mind that that's

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1 the individual that put the gun in your face?

2 A. No, it's not.

3 **MS. TESSITORE:** Your Honor, at this time the State
4 would move State's exhibit 1 through 6 into evidence.

5 **THE COURT:** Over objection.

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

7 **THE COURT:** All right. Admitted into evidence.

8 (Whereupon State's exhibits 1 - 6 were admitted into
9 evidence)

10 Q. All right. Now you described the other individual, the
11 first individual that you saw with the credit card. Did the
12 officers also show you an array including that individual?

13 A. Yes.

14 Q. All right. I'm showing you what's been marked as
15 State's exhibit 8, 9, 10, 11, 12 and 13. Take a look at
16 those.

17 (Pause)

18 Q. And what are those?

19 A. Second set of photographs that I was shown.

20 Q. Okay. Were you able to make a selection in that group
21 of pictures?

22 A. Yes, I did.

23 Q. All right. And which one -- how do you know which one
24 you chose in this array?

25 A. Again, it has my signature and date on it.

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1 Q. Okay. So that's on State's exhibit number 11? And
2 what role did that individual play?

3 A. He's the gentleman who pretended to pay for the pizzas
4 with the credit card.

5 Q. Okay. And looking at State's exhibit number 14, what
6 is that?

7 A. That's the affidavit I signed indicating he was the
8 gentleman who tried to get me to pay ---

9 Q. Okay.

10 A. --- or tried to pay.

11 Q. So after those two arrays you were able to identify
12 those two individuals?

13 A. Yes.

14 **MS. TESSITORE:** The State would move exhibits 8 through
15 13 into evidence.

16 **MR. GROVE:** No objection to 8 through 13.

17 **THE COURT:** Without objection, they're submitted.

18 (Whereupon State's exhibits 8 - 13 were admitted into
19 evidence)

20 Q. Okay. And do you recall looking at two other photo
21 arrays?

22 A. Yes.

23 Q. And were you able to make selections in those arrays?

24 A. No, I was not.

25 Q. Is that because you couldn't be a hundred percent

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1 positive?

2 A. Correct.

3 Q. Okay. One minute.

4 (Pause)

5 Q. Okay. Mr. Haefner, let's talk about the pistol. You
6 described it as black with a silver barrel, is that correct?

7 A. When it -- when it got pulled back there was a silver
8 barrel.

9 Q. Okay. Mr. Haefner, I'm showing you what's been marked
10 as State's exhibit 15 and ask you to just look at that. Do
11 you recognize that?

12 A. It looks familiar.

13 Q. And how does it look familiar?

14 A. The black and the silver.

15 Q. And does that appear to be the gun that was used in the
16 robbery?

17 A. Yes.

18 Q. And -- so all four individuals -- any of them wearing
19 any kind of a mask or anything concealing their faces?

20 A. No.

21 Q. Did you at some point come to find the SUV that was
22 taken from you?

23 A. Yes.

24 Q. Okay. And what were the circumstances surrounding --
25 how did you find the SUV?

STEVEN HAEFNER - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 A. Forensics Unit said I could come and look at my car.
- 2 Q. Okay. And did you have items in there for work?
- 3 A. There were items in there.
- 4 Q. Okay. So were you there -- did you retrieve any items?
- 5 A. I took a couple of things.
- 6 Q. Okay. Do you recall what they were?
- 7 A. Nothing of significance.
- 8 Q. Okay. Did you -- were there any items that were taken
- 9 that were not in the vehicle -- well, let me ask you this.
- 10 Did you ever get your laptop back?
- 11 A. No.
- 12 Q. Okay. And what about the cash that was under the floor
- 13 mats?
- 14 A. The hundred and fifty in ones? No.
- 15 Q. Okay. I'm showing you State's exhibit 32. Do you
- 16 recognize that?
- 17 A. Yes, I do.
- 18 Q. What is that?
- 19 A. My car.
- 20 Q. Okay. And I'm showing you State's exhibit 23 and 24.
- 21 Looking at 23, what does that show? Can you identify what
- 22 that is?
- 23 A. I can't identify it. It's not mine.
- 24 Q. Okay. Well, can you identify what the background is?
- 25 A. It's a floor mat in my car.

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1 Q. Okay.

2 A. On the driver's side.

3 Q. On the driver's side? Is the item that's laying there
4 -- that belong to you?

5 A. No, it does not.

6 Q. And State's exhibit number 24, is that -- do you
7 recognize where that picture's from?

8 A. The console of my car.

9 Q. Okay. And are there items there that does not belong
10 to you?

11 A. The cell phone does not belong to me or the purple
12 glove.

13 Q. Purple glove and cell phone?

14 A. Yes.

15 Q. Okay.

16 **MS. TESSITORE:** Beg the Court's indulgence.

17 **THE COURT:** Okay.

18 (Pause)

19 Q. Okay. Mr. Haefner, if you would answer any questions
20 that Mr. Grove may have. Thank you.

21 **THE COURT:** Before we do that, Mr. Grove, let me have
22 everybody stand up real quick and let's stretch out a little
23 bit. We got a situation going on with the air conditioning,
24 okay? I don't know if y'all are kind of hot. I'm burning
25 up because I'm wearing this robe. But we're going to try to

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1 get that fixed hopefully by tomorrow morning, okay?

2 So just bear with us a little bit more. Does anybody
3 need to take a restroom break or anything real quick or
4 y'all good to go?

5 **THE JURY:** (Negative nods).

6 **THE COURT:** Okay. Mr. Grove.

7 **MR. GROVE:** Thank you, Your Honor.

8 **THE COURT:** Thank y'all.

9 **MR. GROVE:** I beg the Court's indulgence.

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

11 (Pause)

12 **Cross Examination by Mr. Grove:**

13 Q. Mr. Haefner, you were just talking with Ms. Tessitore
14 about July the 24th. Do you remember that particular day?
15 That was the day that Investigators Kicklighter and Owens
16 came out to the Anderson Road Domino's.

17 A. Yes.

18 Q. Do you remember that? And that's when, as you were
19 just testifying, that they showed you those photographs,
20 right?

21 A. Yes.

22 Q. Do you remember them bringing a pistol and showing you
23 that as well?

24 A. They did not.

25 Q. They did not bring you a pistol?

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1 A. No.

2 Q. So you don't remember telling them that the pistol they
3 showed you looked -- it looked like ---

4 **MS. TESSITORE:** Objection, Your Honor.

5 **THE COURT:** Hang on. Go ahead and finish the question
6 and then I'll rule on the objection.

7 Q. You do not remember telling Investigator Kicklighter
8 that it didn't look like the pistol from two days before?

9 **THE COURT:** Objection overruled.

10 Q. You don't remember that?

11 A. No.

12 Q. Okay. Do you know a woman named Priscilla?

13 A. Yes.

14 Q. She's a friend of yours?

15 A. She used to work for me.

16 Q. Do you remember getting her in contact with
17 Investigator Stanton?

18 A. No.

19 Q. Investigator Stanton is here. I think you met him at
20 the hospital, right?

21 A. Correct.

22 Q. And y'all had an interaction there at the hospital.

23 A. Yes.

24 Q. And you may have even given him a statement at the
25 hospital, is that right?

STEVEN HAEFNER - CROSS EXAMINATION BY MR. GROVE

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1 A. Yes.

2 Q. Okay. But Priscilla who worked for you, you would have
3 had her phone number, right?

4 A. Yes.

5 Q. And you would have been able to provide that to law
6 enforcement if they'd asked you, correct?

7 A. Yes.

8 Q. Lakeside Road -- the Grove Street Apartments, I guess
9 they're called, Grove Station Apartments, rather, that's in
10 the delivery area of Anderson Road, right?

11 A. Yes.

12 Q. And you have probably been there dozens of times?

13 A. Yes.

14 Q. In fact, in the statement that you gave to Investigator
15 Stanton at the hospital you were -- I think you mentioned
16 that you went to Lakeside first because it made more sense
17 to go there first rather than the next delivery, right?

18 A. Correct.

19 Q. And you even described the way that you would go. Do
20 you remember that?

21 A. Yes.

22 Q. Because you, like I said, routinely delivered out
23 there, right?

24 A. Yes.

25 Q. And you said earlier that you had a fairly lengthy

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1 interaction with the first gentleman who tried to purchase
2 the pizzas, right?

3 A. Yes.

4 Q. Talked to him for several minutes and then he went
5 upstairs and came back down, right?

6 A. Yes.

7 Q. And ultimately I suppose he didn't have any cash and he
8 couldn't get the door open to the apartment, right?

9 A. Correct.

10 Q. And it's at that point that another person came and
11 pointed a gun at you and told you to get on the ground,
12 correct?

13 A. Yes.

14 Q. And you got on the ground, right?

15 A. Yes.

16 Q. And your testimony just earlier, I want to make sure I
17 heard you correctly, you were on your stomach?

18 A. Yes.

19 Q. And facing the parking lot?

20 A. (No response).

21 Q. Sorry. So your head was in the direction of the
22 parking lot and that your feet would have been in the
23 direction of the apartments?

24 A. I was face-down in the parking lot.

25 Q. Yes, sir. But that your -- you were -- your head was

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1 pointed towards the parking lot and your feet back towards
2 the apartments, is that -- do I have that right?

3 A. No.

4 Q. No?

5 A. No.

6 Q. Okay. But you were face-down?

7 A. Yes.

8 Q. Okay. And you said that you had gone back into your
9 car to get your phone out.

10 A. Yes.

11 Q. And this was in the front seat of your car?

12 A. Yes.

13 Q. And when you were face-down on the ground you were told
14 to give up your keys and your wallet, right?

15 A. Yes.

16 Q. And so you did, right?

17 A. Yes.

18 Q. But you put those out on the sidewalk or on the
19 pavement. You didn't hand them to anybody?

20 A. I did not hand them to anybody.

21 Q. And then you were told if you move you're going to have
22 a bad day, right?

23 A. Yes.

24 Q. That sort of stuck out to you, right?

25 A. Yes.

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1 Q. And when you talked with Investigator Stanton he no
2 doubt asked you for a description of the suspects, right?

3 A. Correct.

4 Q. And the description that you gave him was much the same
5 as today, just black -- young black males, right?

6 A. Yes, sir.

7 Q. T-shirts, short sleeve t-shirts, right?

8 A. Yes, sir.

9 Q. And nothing particularly identifiable about anybody,
10 right?

11 A. One of them had a Superman shirt on.

12 Q. I'm sorry. As far as clothing, one of them had a
13 Superman short sleeve t-shirt on, correct?

14 A. Right.

15 Q. Okay. But aside from that, nobody stuck out in
16 particular in any one way or another, right?

17 A. No.

18 Q. Everybody was fairly generic, right?

19 A. Yes.

20 Q. The items -- you listed several items that were
21 originally in your car. And the items that you actually
22 retrieved -- there was some money under a floorboard, right,
23 or under a floor mat?

24 A. That I retrieved?

25 Q. Yes, sir.

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1 A. Yes.

2 Q. And I may have missed it -- was that about it?

3 A. (No response).

4 Q. You mentioned that there were tools that had originally
5 been there and a laptop and maybe some credit cards. Those
6 things were gone?

7 A. I didn't say anything about credit cards.

8 Q. I -- I must have misheard you. Tools?

9 A. Tools.

10 Q. Were they -- did you -- were you able to recover those
11 or were they gone?

12 A. They were gone.

13 Q. And the laptop was gone as well?

14 A. Yes.

15 Q. But you had your phone on you. So -- obviously. You
16 had your phone on you the whole time, right?

17 A. Yes, I did.

18 Q. But there were several items of value that were
19 originally in the car that weren't there when you
20 reconnected with the car, right?

21 A. Correct.

22 Q. When you originally made your statement at the hospital
23 do you remember saying that you sort of -- you didn't chase
24 after the car, obviously, right?

25 A. No. They did drive back in front of me again.

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1 Q. And that's exactly my point because you saw which way
2 it went, right?

3 A. Correct.

4 Q. And then it came -- it sort of doubled back?

5 A. Correct.

6 Q. And from there you don't know where it went, right?

7 A. It made a right hand turn and went up Staunton Bridge
8 Road.

9 Q. Absolutely. But after it turned on Staunton Bridge it
10 ---

11 A. No.

12 Q. You didn't -- you didn't see it any farther than that,
13 right?

14 A. Correct.

15 **MR. GROVE:** No further questions.

16 **THE COURT:** Redirect?

17 **MS. TESSITORE:** No, Your Honor.

18 **THE COURT:** All right. Thank you, sir. You can step
19 down. And, ladies and gentlemen, now is a good time to go
20 ahead and break for the day. Just in time for 5:00 traffic.
21 Sorry about that.

22 Remember what I told you about the way you need to act
23 when you're away from the courthouse, okay? Don't do any
24 independent research, don't talk to anybody else about
25 what's going on in the trial. You're sworn to do it that

1 way, okay?

2 I want you back in your jury room tomorrow morning at
3 9:15. I'm looking to start right at 9:30. Hopefully we'll
4 have the air conditioner or whatever it is fixed in here
5 tomorrow so it won't be so stuffy, okay? Y'all have a
6 wonderful evening. See you tomorrow.

7 (Whereupon the jury exited the courtroom at 4:49 pm)

8 **THE COURT:** All right. Anything while the jury's out
9 from the State?

10 **MS. TESSITORE:** No, Your Honor.

11 **THE COURT:** From the Defense?

12 **MR. GROVE:** Not at this time, Your Honor.

13 **THE COURT:** All right. Scheduling-wise, what we got
14 tomorrow?

15 **MS. TESSITORE:** Your Honor, we have the investigators,
16 probably a pretty full day.

17 **THE COURT:** Do you think you can finish tomorrow or
18 not?

19 **MS. TESSITORE:** I think it's going to be close.

20 **THE COURT:** Okay. We'll probably finish about the same
21 time tomorrow then 'cause heading back, out of town
22 tomorrow. All right. So, I mean, you're sure we're going
23 to finish this case by Thursday?

24 **MS. TESSITORE:** That would be my hope, Your Honor.

25 **THE COURT:** Okay.

1 **MS. TESSITORE:** Probably seven witnesses.

2 **THE COURT:** Okay.

3 **MS. TESSITORE:** And then I'm just not sure about all of
4 the defendants yet, but ---

5 **THE COURT:** Okay. Sounds good. Mr. Grove, anything
6 else for the purpose -- for any purpose?

7 **MR. GROVE:** Not at this time, Your Honor.

8 **THE COURT:** All right. We are down until tomorrow
9 morning. Y'all be ready to roll at 9:15.

10 **MS. TESSITORE:** Yes, sir.

11 **THE COURT:** All right. Y'all have a good evening.

12 (Whereupon court was in recess at 4:51 pm)

1 Wednesday, February 8, 2017:

2 (Whereupon Court's exhibit 1 was marked)

3 (Whereupon State's exhibit 46 was marked for
4 identification)

5 (Whereupon court reconvened at 9:31 am)

6 **THE COURT:** Thank you very much. Y'all may be seated.

7 All right. Anything before we bring the jury in?

8 **MS. TESSITORE:** Good morning, Judge. Well, just to let
9 you know that I think that we did get some -- we got an
10 additional cable to try to ---

11 **THE COURT:** Amplify the sound?

12 **MS. TESSITORE:** Amplify the sound as much ---

13 **THE COURT:** Okay.

14 **MS. TESSITORE:** --- as we possibly can. And the video
15 of the Defendant's admissions have been redacted in
16 accordance with the discussions yesterday on the record ---

17 **THE COURT:** Okay.

18 **MS. TESSITORE:** --- with concerns that Mr. Grove had.
19 And he's had a chance to review it here this morning before
20 -- before we begin. And I would just ask him to state on
21 the record if he has any objections to that ---

22 **THE COURT:** All right. Other than your original
23 objection, which is in the record, do you have any objection
24 to the newly redacted audio and video?

25 **MR. GROVE:** I have no new objections, Your Honor.

4 (Whereupon the jury entered the courtroom at 9:34 am)

9 **MS. TESSITORE:** Thank you, Your Honor. The State calls
10 Monica Moran.

11 Monica Moran, being duly
12 sworn testified as follows;

13 **MADAME CLERK:** And please have a seat. And will you
14 state your full name for the record.

15 MS. MORAN: Monica Marie Moran.

16 Direct Examination by Ms. Tessitore:

17 Q. Good morning, Ms. Moran.

18 A. Good morning.

19 Q. Ms. Moran, where do you work?

20 A. Grove Station Apartments.

21 Q. All right. And what do you do there?

22 A. I'm the property manager.

23 Q. How long have you worked there?

24 A. Seven and a half years.

25 Q. And what is your -- what are your duties as manager?

MONICA MORAN - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. My duties are screen residents, approve applications,
2 prepare lease agreements, prepare moving packages, collect
3 rent, make deposits, ensure that all policies and procedures
4 are being followed in the community and making sure that the
5 community is safe.

6 Q. Okay. And when -- you've mentioned lease agreements.
7 Do those lease agreements include occupants as well as the
8 person paying the rent?

9 A. Yes, ma'am, they do.

10 Q. Okay. Taking you back to July 22nd of 2015, did you
11 hold that same position then?

12 A. No. At that time I was actually the assistant
13 community manager.

14 Q. Okay. So you've been promoted since then?

15 A. Yes, ma'am.

16 Q. In your role as the assistant up there were your duties
17 much different than what you do now?

18 A. No, they're the same.

19 Q. Okay. And would you say that you are familiar with the
20 residents up there?

21 A. Very familiar with my residents, yes, ma'am.

22 Q. And do you -- is part of your duties to respond to
23 complaints of people who live there?

24 A. Absolutely. Yes.

25 Q. And did you respond to a complaint before 3:00 pm on

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1 July 22nd of 2015?

2 A. Yes, I did.

3 Q. All right. And from what apartment did that complaint
4 come?

5 A. It came from apartment number 117.

6 Q. All right. And what did you do in response to that
7 complaint?

8 A. I immediately got on my golf cart and I drove down to
9 the area and approached the gentleman who the complaint was
10 in reference to.

11 Q. Okay. So you work in a separate building?

12 A. Yes. I work in the leasing office.

13 Q. Okay. Is that on the same property?

14 A. Yes, it is.

15 Q. All right. And when you got down to the -- do you
16 recall which building it was?

17 A. Yes, ma'am. It was building 117 through 120. I'm
18 sorry, 117 through -- yes, 117 through 120.

19 Q. Okay. And when you got there what did you find?

20 A. When I got there there were four gentlemen in the
21 breeze-way area. Some of -- a couple of them had
22 cigarettes, but they were in a discussion when I pulled up.

23 Q. Okay. And did you recognize those individuals?

24 A. Yes, I did.

25 Q. And who were they?

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1 A. It was Donny, who was living in apartment number
2 it was Robert Jackson, who was living in apartment number
3 120, and it was Brian Lewis and Cordell Lewis, who were
4 residing in apartment number

5 Q. Okay. And did you -- did you have any discussion with
6 them?

7 A. Yes, I did. I asked them what were they doing. They
8 stated that they ---

9 MR. GROVE: Objection, Your Honor. Hearsay.

10 THE COURT: Sustained.

11 Q. Okay. Without saying what they said to you what did
12 you tell them?

13 A. Okay. I told them that they knew that they were not
14 supposed to be loitering in common areas and that they all
15 needed to vacate and go back to their respective units.

16 Q. Okay. And how did they respond to that?

17 A. They said, okay, they would do so.

18 MR. GROVE: Objection, Your Honor. Hearsay.

19 Q. Without saying what they said ---

20 THE COURT: Sustained.

21 Q. --- what did they do in response to your instructions?

22 A. They all began to disperse and walk towards the -- walk
23 up the hill ---

24 Q. Okay.

25 A. --- of the community.

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1 Q. Okay. Do you recall about what time this was that you
2 had this interaction?

3 A. This was approximately 2:30 pm.

4 Q. Okay. And I'm going to show you State's exhibit number
5 25 and I'll ask you to identify that. What is that?

6 A. This is a map of the property, Grove Station
7 Apartments.

8 Q. Okay. And is that one that you provided to me?

9 A. Yes, it is.

10 Q. Okay. Is that a fair and accurate depiction of the
11 Grove Station Apartments as far as apartment numbers and
12 location and all that?

13 A. Yes, it is.

14 Q. Okay. I would ask you to go ahead and ---

15 **MS. TESSITORE:** Well, at this time the State would move
16 this into evidence.

17 **THE COURT:** Any objection?

18 **MR. GROVE:** No objection, Your Honor.

19 **THE COURT:** Without objection, moved into evidence.

20 (Whereupon State's exhibit 25 was admitted into
21 evidence)

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

23 Q. I would ask you to go ahead and highlight the buildings
24 that you mentioned when you were testifying before,
25 apartment 117 and 120. Was that one of them?

MONICA MORAN - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am.

2 Q. Okay. And the other -- when you mentioned that --
3 where Donny Campbell presided.

4 A. Yes, ma'am.

5 Q. Okay. And if you could -- let's see. All right. And
6 when we spoke before I had also showed you a larger map that
7 might be more helpful than looking at this little map, is
8 that correct?

9 A. Yes, you did.

10 Q. All right. I'm showing you what's been marked as
11 State's exhibit 46. Is that the larger picture that I
12 showed you?

13 A. Yes, it is.

14 Q. Okay. And would that be more helpful to use in
15 explaining your testimony?

16 A. Yes, it would be.

17 Q. Okay. At this time -- is this a fair and accurate
18 depiction of the area?

19 A. Yes, it is.

20 Q. And you're familiar with it?

21 A. Yes, ma'am.

22 Q. Okay.

23 **MS. TESSITORE:** At this time the State would move
24 State's exhibit 46 into evidence.

25 **MR. GROVE:** No objection.

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1 **THE COURT:** All right. It's in evidence.

2 (Whereupon State's exhibit 46 was admitted into
3 evidence)

4 Q. Okay. And, Ms. Moran, what I'm going to have you do is
5 just step down. And speak nice and loud so the court
6 reporter can hear you and the jurors. And we're going to
7 try to position this so that everybody can see it. Does
8 that give you enough space?

9 A. Yes, it does.

10 Q. Okay. Using your map there why don't you go ahead and
11 circle the apartments and just show the jury which ones
12 according to -- 'cause this one doesn't have numbers on it,
13 right?

14 A. Right.

15 Q. Okay.

16 A. So apartment -- this is the building that I responded
17 to.

18 Q. Okay.

19 A. Apartment to Apartment ---

20 Q. If you could just step back just a little ---

21 A. I'm sorry.

22 Q. Okay.

23 A. Apartment would have been right here.

24 Q. Okay.

25 A. And apartment would have been right here in the

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- 1 front.
- 2 Q. Okay. And you mentioned a breeze-way. Can you point
- 3 out where the breeze-way was?
- 4 A. It was right there.
- 5 Q. Is it in the front of the building?
- 6 A. Yes, it is.
- 7 Q. Okay. And can you also identify apartment you
- 8 mentioned?
- 9 A. Yes. would be this front apartment on the bottom
- 10 right here.
- 11 Q. Let's ---
- 12 A. No, I'm sorry.
- 13 Q. Yeah, if you'd refer to ---
- 14 A. It would be this front apartment right here.
- 15 Q. Okay. So this one in this third building up ---
- 16 A. Yes.
- 17 Q. --- from the bottom here?
- 18 A. The third building up, the front bottom left apartment
- 19 was
- 20 Q. That's
- 21 A. Yes.
- 22 Q. Okay. And can you also mark apartment
- 23 A. would be here. It's in the very last building of
- 24 that section. And it's upstairs in the left hand side.
- 25 Q. Okay. So in this area right here?

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1 A. Yes.

2 Q. Okay. All right. Describe -- when you said they
3 dispersed, which way did they go?

4 A. They began to walk in this direction as if up the hill.
5 Because there's a hill here that comes by the pool.

6 Q. Okay. And they headed in that direction?

7 A. Yes, ma'am.

8 Q. All right. And at some point did you lose sight of
9 them?

10 A. Yes. Absolutely.

11 Q. Okay. If you could just kind of put an X where you
12 think the last place where you saw them.

13 A. It would have been at my window here at the leasing
14 office.

15 Q. Okay. Why don't you go ahead and circle your office
16 and just ...

17 A. Okay.

18 Q. Okay. All right. And as far as this third building
19 here where you said Donny Campbell lived in where would
20 -- is this parking in between these two buildings?

21 A. No, ma'am. That is open grassy area between those two
22 buildings there.

23 Q. Can you access that grassy area through the breeze-way?

24 A. Yes. There's a walk-way right there.

25 Q. Okay. So if someone lived in this apartment here where

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1 would they typically park?

2 A. They would park here in the front.

3 Q. Okay. In this area right here?

4 A. Yes, ma'am.

5 Q. Okay. Why don't you go ahead and just circle that
6 parking lot right there just so it's clear.

7 A. (Witness complied).

8 Q. Okay. All right. I'm going to ask you to retake your
9 seat back there.

10 A. Okay.

11 Q. Now after they dispersed and moved on at that point
12 were you later contacted by investigators that day?

13 A. Yes, ma'am.

14 Q. Okay. Do you remember approximately when they
15 contacted you?

16 A. It was probably around 3:30.

17 Q. Okay. And were you able to provide any information to
18 the investigators?

19 A. Yes. They gave me a description provided by the pizza
20 driver. And I told them that it sounded like the
21 individuals that I had just approached in the breeze-way,
22 117 through 120.

23 Q. Okay. Do you see -- you mentioned the names of the
24 people that you saw there. Do you see Brian Lewis in the
25 courtroom today?

MONICA MORAN - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 A. Yes, I do.
- 2 Q. Can you identify him?
- 3 A. That is Brian Lewis right there.
- 4 (Whereupon the witness pointed to the Defendant)
- 5 Q. What is he wearing?
- 6 A. He is wearing a white button up collared shirt and a
- 7 tie.
- 8 Q. Okay. Thank you. And so were you able to -- you've
- 9 mentioned that you have rental applications and all that.
- 10 Did you provide those to law enforcement?
- 11 A. Yes, I did.
- 12 Q. And did you -- do you recall which investigator you
- 13 spoke to?
- 14 A. I spoke with -- I don't remember their name, but I
- 15 spoke with the gentleman there in the blue shirt.
- 16 Q. Detective Owens?
- 17 A. Yes.
- 18 Q. Okay. And you provided him all the information that
- 19 you could?
- 20 A. Yes, I did.
- 21 Q. Do you recall looking up the phone number that he gave
- 22 you that was used to place the order for the pizza?
- 23 A. Yes, I did.
- 24 Q. All right. And were you able to find anything?
- 25 A. No, I was unable to.

MONICA MORAN - CROSS EXAMINATION BY MR. GROVE

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1 Q. Did you also -- did you indicate whether someone was
2 living in

3 A. I did.

4 Q. Where the pizza was being delivered, was that occupied
5 by a renter?

6 A. No, it was not.

7 Q. Okay. So that was vacant?

8 A. Yes, it was.

9 Q. All right.

10 **MS. TESSITORE:** Beg the Court's indulgence.

11 **THE COURT:** All right.

12 (Pause)

13 Q. All right. Did you have any other involvement in this
14 case, ma'am?

15 A. No, I did not.

16 Q. All right. Thank you. Please answer any questions
17 that Mr. Grove may have for you.

18 A. Yes, ma'am.

19 **MR. GROVE:** Beg the Court's indulgence.

20 **THE COURT:** Uh-huh (affirmative).

21 (Pause)

22 **Cross Examination by Mr. Grove:**

23 Q. Ms. Moran, you said the last time you saw these four
24 individuals was at the window of your office?

25 A. Yes, Your Honor. I'm sorry, yes, sir.

MONICA MORAN - CROSS EXAMINATION BY MR. GROVE

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1 Q. I'll take it.

2 A. Yes, sir.

3 (Laughter)

4 Q. And you do remember speaking with Detective Owens,
5 right?

6 A. Yes, I do.

7 Q. And he was -- he was the law enforcement contact you
8 had that day, right?

9 A. Yes.

10 Q. And today you said you remembered these four
11 individuals and you even knew the apartments, right?

12 A. Yes, that is correct.

13 Q. Do you remember talking with Detective Owens on the
14 22nd and telling him that you asked the males where they
15 lived?

16 A. Yes, that is correct.

17 Q. So you didn't know at the time, you had to ask them,
18 right?

19 A. No, I did know. I always -- when I approach people I
20 always get them to confirm so when I have to write my lease
21 violations there is no miscommunication.

22 Q. But you didn't tell Detective Owens that you knew where
23 they lived. You told him that you asked him, right?

24 A. No -- and I also told him that I knew where they lived.

25 Q. Okay. You also said -- do you remember saying that you

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1 didn't know their names except for one, and it was Donny?

2 A. No.

3 Q. You don't remember that?

4 A. No.

5 Q. Okay. But you do remember talking to Detective Owens?

6 A. Yes.

7 Q. About what we're here testifying about today, right?

8 A. Yes, I do.

9 Q. And apartment was vacant at the time?

10 A. Yes, it was vacant.

11 Q. And it had been vacant for a while?

12 A. It's been vacant the entire time that I've been working
13 there.

14 Q. And you've been there almost eight years, right?

15 A. Yes, sir.

16 Q. Okay. You said the call regarding a complaint of
17 loitering was around 2:30?

18 A. Yes. Around that time, yes.

19 Q. But you're not exactly sure when, right?

20 A. Correct. It was around that time.

21 **MR. GROVE:** No further questions. Thank you.

22 **THE COURT:** All right. Thank you, ma'am. You can step
23 down.

24 A. Thank you.

25 **THE COURT:** You're free to leave if you want to. You

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 can call your next witness.

2 **MS. TESSITORE:** Thank you, Your Honor. The State would
3 call Robert Jackson.

4 **THE COURT:** Let me see the lawyers up here real quick.

5 (Whereupon a bench conference was held off the record
6 in the presence of the jury, but out of their hearing)

7 (Whereupon the bench conference was ended)

8 **Robert Jackson, being**
9 duly sworn testified as follows;

10 **MADAME CLERK:** Please have a seat. Will you state your
11 full name for the record.

12 **MR. JACKSON:** Robert Lee Jackson.

13 **Direct Examination by Ms. Tessitore:**

14 Q. Good morning, Mr. Jackson.

15 A. Good morning.

16 Q. Mr. Jackson, how old are you?

17 A. Nineteen.

18 Q. I'm going to have to ask you to speak up. I know
19 you're a soft spoken guy, but if you could just speak up and
20 make sure that -- I'm going to stand right back here so the
21 jury can hear you nice and clear, okay?

22 A. All right.

23 Q. All right. Tell me how old you are.

24 A. Nineteen.

25 Q. All right. And how old were you back in July of 2015?

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 A. Seventeen.
- 2 Q. Are you working?
- 3 A. Yes, ma'am.
- 4 Q. What do you do for work?
- 5 A. BMW final pack on the assembly line.
- 6 Q. Okay. And how long have you worked there?
- 7 A. Two weeks.
- 8 Q. So new job?
- 9 A. Yes, ma'am.
- 10 Q. And where did you work before that?
- 11 A. Olive Garden.
- 12 Q. And are you here today because you want to be?
- 13 A. No, ma'am.
- 14 Q. All right. You're here because you're under a
- 15 subpoena, is that correct?
- 16 A. Yes, ma'am.
- 17 Q. All right. And so we're going to get right into this,
- 18 Mr. Jackson. I'm going to ask you -- you were charged for
- 19 the same armed robbery and conspiracy, correct?
- 20 A. Yes, ma'am.
- 21 Q. And that was based on the incident that happened on
- 22 July 22nd in 2015?
- 23 A. Yes, ma'am.
- 24 Q. Were you arrested the next day?
- 25 A. Yes, ma'am.

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. And when you were arrested did you agree to talk to
2 investigators?

3 A. Yes, ma'am.

4 Q. Do you recall the investigators that you talked to?

5 A. No, ma'am.

6 Q. All right. Did you provide a statement at that time?

7 A. Yes, ma'am.

8 Q. And that was the day after ---

9 A. Yes, ma'am.

10 Q. --- this incident, correct?

11 A. Yes, ma'am.

12 Q. All right. Now do you remember coming to court and
13 pleading guilty on December 12th, 2016?

14 A. Yes, ma'am.

15 Q. And did you plead guilty because you were guilty?

16 A. Yes, ma'am.

17 Q. And what did you plead to?

18 A. Conspiracy.

19 Q. Conspiracy. All right. And did you have an attorney
20 with you?

21 A. Yes, ma'am.

22 Q. Who was your attorney?

23 A. Susannah Ross.

24 Q. Okay. And she represented you at that -- at that
25 hearing?

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am.

2 Q. All right. Was your guilty plea to the conspiracy part
3 of a plea agreement with the State?

4 A. Yes, ma'am.

5 Q. All right. And did the State agree to dismiss one of
6 your charges?

7 A. Yes, ma'am.

8 Q. And which one was that?

9 A. The armed robbery.

10 Q. Okay. And did the State also agree to recommend a
11 youthful offender sentence?

12 A. Yes, ma'am.

13 Q. All right. And are you currently under that sentence
14 right now?

15 A. Yes, ma'am.

16 Q. All right. And what did you promise to do as part of
17 that plea agreement?

18 A. To testify.

19 Q. Okay. And to just testify or what ---

20 A. And tell the whole truth.

21 Q. Okay. So you're here to tell the truth. Taking you
22 back to July 22nd of 2015 where did you live then?

23 A. Grove Station Apartments.

24 Q. Okay. Which apartment?

25 A. 120.

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. And did you know the tenants in

2 A. No, ma'am.

3 Q. All right. Did you know -- do you know this Defendant,
4 Brian Lewis?

5 A. Yes, ma'am.

6 Q. All right. Was he with you that day?

7 A. Yes, ma'am.

8 Q. Who else was with you?

9 A. I'm sorry, I don't really know them by name.

10 Q. Okay. The -- do you know them by nicknames?

11 A. No, ma'am.

12 Q. Okay. So the other two involved you didn't -- you
13 didn't know by name?

14 A. No, ma'am.

15 Q. All right. So with respect to the one that you did
16 know, Brian Lewis, by name did he have a nickname?

17 A. Yes, ma'am.

18 Q. What was his nickname?

19 A. Rida.

20 Q. Rida, R-i-d-a?

21 A. I guess so.

22 Q. Okay. And was he a friend of yours? How'd you know
23 him?

24 A. Just because he lived across the alleyway, the breeze-
25 way.

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. From where?

2 A. I've seen him before in Grove Station.

3 Q. Okay. Across the breeze-way from your apartment?

4 A. Yes, ma'am.

5 Q. All right. And how long had you known him before this
6 incident took place?

7 A. A couple of weeks.

8 Q. Okay. Did -- let's talk about when -- did you see --
9 at what point did you get together with Mr. Lewis or what --
10 let me back up. You -- do you recall the rent lady or the
11 manager coming out to talk to you that day?

12 A. Yes, ma'am.

13 Q. All right. When she came to talk to you, Ms. Moran,

14 ---

15 A. Yes, ma'am.

16 Q. --- where were you?

17 A. I was in the -- in the breeze-way.

18 Q. Breeze-way outside of which apartment?

19 A. My apartment.

20 Q. Okay. So that's between where Brian Lewis stayed and
21 where you stayed?

22 A. Yes, ma'am.

23 Q. All right. And who else was out there?

24 A. The other two that was in the crime.

25 Q. Okay. So there were four of you?

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am.

2 Q. All right. And what were you doing while you were
3 standing there?

4 A. I was just smoking a cigarette.

5 Q. All right. What were the other guys doing?

6 A. They were huddled up talking, conversating.

7 Q. Okay. Were you able to hear anything that they were
8 saying?

9 MR. GROVE: Objection, Your Honor. Calls for hearsay.

10 MS. TESSITORE: Your Honor, ---

11 THE COURT: No, that's overruled.

12 Q. Were you able to hear what they said?

13 A. No, ma'am. I just heard an individual ordering pizza.

14 Q. Okay. Was that individual this Defendant?

15 A. No, ma'am.

16 Q. All right. So it was one of the other two?

17 A. Yes, ma'am.

18 Q. All right. And when you say he was ordering a pizza,
19 how did he place that order?

20 A. On the phone.

21 Q. Okay. Did you see him actually place the call or did
22 you just hear him?

23 A. I just heard him.

24 Q. And do you know where they were going to deliver the
25 pizza to?

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1 A. No, ma'am.

2 Q. So when the rent lady came down did she interrupt what
3 was happening there?

4 A. Yes, ma'am.

5 Q. All right. And did you at that point have any
6 knowledge that there was going to be a robbery?

7 A. No, ma'am.

8 Q. All right. Tell the jury where you went when you
9 dispersed from that location.

10 A. I went to the Corner Store.

11 Q. Okay. And where is the Corner Store?

12 A. It's located -- it's near Grove Station, within walking
13 distance.

14 Q. Okay. Is -- on State's exhibit 46, which has been
15 placed into evidence, let me have you just look at that and
16 tell me if you can see the area or the store itself on
17 there. If you're walking from your apartment up to Lakeside
18 Road, ---

19 A. Yes, ma'am.

20 Q. --- can you see the store? Is it on this aerial photo?

21 A. No, ma'am.

22 Q. No?

23 A. No, ma'am.

24 Q. Okay. So it's a little bit -- ways out?

25 A. Yes, ma'am.

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1 Q. Okay. Let me -- let me just have you step down real
2 quick here. And, Mr. Jackson, if you could stand right here
3 so the jury can hear you. And if looking at -- this is the
4 area where you saw the rent lady?

5 A. Yes, ma'am.

6 Q. Okay. And describe where you went at the top of the
7 map. Just give me -- give the jury ---

8 **MR. GROVE:** Your Honor, I object at this point. She's
9 leading the witness by directing him on the map where he
10 went.

11 **THE COURT:** All right. Just refrain from leading
12 questions the best you can.

13 Q. Okay. If you could, just use this pen and point the
14 path that roughly that you took to go to the store.

15 A. I came up through here.

16 **MADAME COURT REPORTER:** Speak up.

17 **THE COURT:** Yeah, you got to speak up. I can't hear
18 you over here.

19 Q. Speak up real loud.

20 A. I came up through here and I went to the store located
21 -- it's not located on the map, but it's ---

22 Q. Okay. What road is this right here?

23 A. Staunton Bridge.

24 Q. Staunton Bridge Road? Okay. And up here, does it
25 become Lakeside?

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 **MR. GROVE:** Objection, ---

2 A. Yes, ma'am.

3 **MR. GROVE:** --- Your Honor. Leading.

4 **THE COURT:** I'll overrule that.

5 Q. So did you cross over Lakeside Road?

6 A. Yes, ma'am.

7 Q. All right. And around where would you have crossed
8 over to head up the road, if you remember?

9 A. At this area.

10 Q. Okay. And so is the store this way, south ---

11 A. Yes, ma'am.

12 Q. --- or -- okay.

13 A. South.

14 Q. So it's south on the map. Okay. All right. And when
15 you went to the store what did you go to the store for?

16 A. Cigarettes and soda.

17 Q. Okay. And where -- did you go back to the apartment
18 complex?

19 A. Yes, ma'am, roughly -- because I was at the store about
20 twenty minutes.

21 Q. Well, did you go by yourself or were you with ---

22 A. Yes, ma'am.

23 Q. Okay. And so you got back after about twenty minutes.

24 And ---

25 A. Yes, ma'am.

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1 Q. --- just using this pen, if you recall, which direction
2 did you come back in?

3 A. I came back in this direction.

4 Q. Okay. Would you have been coming from down here?

5 A. Yes, ma'am.

6 Q. Were you driving or were you on foot?

7 A. I was on foot.

8 Q. When you came back here did you go by this building
9 right here where apartment is?

10 **MR. GROVE:** Objection, Your Honor. Leading.

11 **THE COURT:** I agree with you, but we're moving the
12 trial along, all right. And under the rules of evidence I
13 -- I conduct the interrogation of witnesses. I'm going to
14 let you lead some too if you want to. Go ahead.

15 **MS. TESSITORE:** Thank you, Your Honor.

16 Q. All right. Did you go by this building right here?

17 A. Yes, ma'am.

18 Q. All right. And I'm going to ask you to go ahead and
19 take your seat so that we can use that microphone and the
20 jury can hear you nice and loud. When you went by that
21 building where apartment was tell the jury what you saw.

22 A. I saw two individuals like in the -- like in the back
23 of the stairs. And one approached me and told me what was
24 going on and what was about to happen.

25 Q. Do you recall which one told you?

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. No, ma'am. He was light skinned.

2 Q. Was it this Defendant?

3 A. No, ma'am.

4 Q. Okay. So it was one of the other two?

5 A. Yes, ma'am.

6 Q. Okay. And so what happened?

7 A. Basically we intercepted with each other. He told me
8 what was about to happen ---

9 MR. GROVE: Objection, Your Honor. Hearsay.

10 MS. TESSITORE: Your Honor, it's ---

11 THE COURT: Sustained. It's ---

12 MS. TESSITORE: --- co-conspirator.

13 THE COURT: --- sustained. Move on.

14 MS. TESSITORE: Thank you.

15 Q. So what did that guy tell you was about to happen?

16 A. That they were about to rob the pizza guy and ---

17 MR. GROVE: Your Honor, just for clarification, did you
18 sustain -- sustain ---

19 THE COURT: Yeah, ---

20 MR. GROVE: --- my objection?

21 THE COURT: --- I just sustained the objection.

22 MS. TESSITORE: I'm sorry, Your Honor.

23 THE COURT: That's all right.

24 MR. GROVE: I move ---

25 THE COURT: Jury, ---

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 **MR. GROVE:** --- to strike.

2 **THE COURT:** --- disregard that last statement, okay?

3 **MS. TESSITORE:** Your Honor, may we approach?

4 **THE COURT:** Yeah.

5 (Whereupon a bench conference was held off the record
6 in the presence of the jury, but out of their hearing)

7 (Whereupon the bench conference was ended)

8 **THE COURT:** Okay.

9 Q. Okay, Mr. Jackson, let's back up just a little bit. So
10 you spoke with one of the four individuals that was out
11 there, correct?

12 A. Yes, ma'am.

13 Q. All right. And what did -- after you talked to him
14 what did you do -- what was your part in this robbery?

15 A. To -- to basically stall the pizza man.

16 Q. Okay. And how did you stall the pizza man?

17 A. By like going up and knocking on the door and offering
18 to buy the pizza.

19 Q. So did you talk with him?

20 A. The pizza man? The pizza guy?

21 Q. Yes. Did you talk to the pizza guy?

22 A. Yes, ma'am.

23 Q. All right. And did -- when you said you offered to
24 pay, how did you offer to pay?

25 A. By a card.

ROBERT JACKSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. By a card?

2 A. Yes, ma'am.

3 Q. Like a debit or credit kind of card?

4 A. Yes, ma'am.

5 Q. Okay. And did he take you up on that?

6 A. No, ma'am.

7 Q. All right. Did the conversation ensue? Did it
8 continue on?

9 A. No, ma'am.

10 Q. All right. And so what happened? I mean, did you --
11 did you fulfill your role? Did you stall him?

12 A. Yes, ma'am.

13 Q. All right. And at what point -- when was your role
14 complete?

15 A. I can't say I completed it because at that -- at that
16 time I realized it was wrong, and I decided to exit the
17 crime scene.

18 Q. Okay. So before you exited, ---

19 A. Yes, ma'am.

20 Q. --- what did you see? You mentioned that Brian Lewis
21 was out there.

22 **MR. GROVE:** Objection, Your Honor. She's leading the
23 witness.

24 **THE COURT:** I agree with you. However, I'm allowing
25 her to develop the testimony under Rule 611(c). Go ahead.

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1 Q. All right. Was the Defendant out there with you?

2 A. Not with me.

3 Q. Okay. Where was he?

4 A. I seen him come around the building from nowhere.

5 Q. And what did you see?

6 A. He had the weapon in his hand.

7 Q. And what kind of weapon was it?

8 A. I just seen a gun.

9 Q. Okay. And what did he do with the gun?

10 A. Pointed it at the pizza man.

11 Q. All right. And what did the pizza man do?

12 A. By that time I was exiting facing another direction.

13 Q. Okay. So up to that point you became -- would you say
14 that you were part of a conspiracy?

15 **MR. GROVE:** Objection. Calls for a legal conclusion.

16 **THE COURT:** Repeat the question.

17 Q. You pled guilty to conspiracy, correct?

18 A. Yes, ma'am.

19 **THE COURT:** Okay.

20 Q. All right. So when -- when he pointed the gun at the
21 pizza man did he say anything?

22 A. I didn't hear anything.

23 Q. Okay. Did he issue any orders to the pizza man that
24 you recall?

25 **MR. GROVE:** Objection. Asked and answered.

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1 **THE COURT:** Sustained.

2 Q. Okay. All right. What did the pizza man do?

3 A. I don't know.

4 Q. And why don't you know?

5 A. Because I was exiting facing another direction.

6 Q. You were?

7 A. Exiting the crime scene facing another direction.

8 Q. All right. So does that -- what does that mean?

9 A. I didn't see what the pizza guy was doing.

10 Q. Where did you go?

11 A. I was going home.

12 Q. So you just left and went home?

13 A. Yes, ma'am.

14 Q. Did you happen to see the other two guys whose names
15 you don't recall?

16 A. No, ma'am.

17 Q. All right. Did you ever get in the vehicle that
18 belonged to the pizza man?

19 A. No, ma'am.

20 Q. Did you get anything for your role in stalling the
21 pizza man?

22 A. No, ma'am.

23 Q. Did you expect anything?

24 A. No, ma'am.

25 Q. Mr. Jackson, why did you agree to help?

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1 A. It was just a dumb decision, wrong place, wrong time
2 for me.

3 Q. All right. And you've taken responsibility for that?

4 A. Yes, ma'am.

5 Q. All right. Just one moment.

6 (Pause)

7 Q. As far as those other two individuals, did they have
8 any weapons that you know of?

9 A. Not that I know of.

10 Q. And until you saw the gun presented had you seen that
11 gun before?

12 A. No, ma'am.

13 Q. All right. Please answer any questions that Mr. Grove
14 may have.

15 **THE COURT:** Mr. Grove, your witness.

16 **MR. GROVE:** Thank you, Your Honor.

17 **Cross Examination by Mr. Grove:**

18 Q. You got a probationary sentence?

19 A. Yes, sir.

20 Q. And they dismissed an armed robbery, right, 'cause you
21 agreed to cooperate against your co-defendants?

22 A. Yes, sir.

23 Q. You agreed to come here and testify today, right?

24 A. Yes, sir.

25 Q. And that armed robbery, it's a pretty serious charge,

ROBERT JACKSON - CROSS EXAMINATION BY MR. GROVE

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1 isn't it?

2 A. Yes, sir.

3 Q. It carries a mandatory minimum of ten years, doesn't
4 it?

5 A. Yes, sir.

6 Q. Up to thirty years as a possible punishment, right?

7 A. Yes, sir.

8 Q. And it's -- it's a most serious offense. Did they tell
9 you that?

10 A. Yes, sir.

11 Q. That means it's strikes under the three strikes rule,
12 right?

13 A. Yes, sir.

14 Q. And they dismissed that charge, didn't they?

15 A. (Affirmative nod).

16 Q. And you got probation?

17 A. Yes, sir.

18 Q. And you got probation under a Youthful Offender Act,
19 didn't you?

20 A. Yes, sir.

21 Q. And that means that if things go well for you you could
22 get your record clean, can't you?

23 A. Yes, sir.

24 Q. And I didn't offer you that deal, did I?

25 A. No, sir.

ROBERT JACKSON - CROSS EXAMINATION BY MR. GROVE

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1 Q. The jury didn't offer you that deal?

2 A. No, sir.

3 Q. This Judge, he didn't offer you that deal, did he?

4 A. No, sir.

5 Q. This lady right here, she offered you that deal?

6 A. Yes, sir.

7 Q. She told you if you testify I'll give you probation,
8 right?

9 A. No, sir.

10 Q. She didn't -- she didn't tell you if you'll testify
11 I'll give you probation?

12 A. No, sir.

13 Q. But you're here testifying anyway?

14 A. Yes, sir.

15 Q. Okay.

16 A. It was an agreement.

17 Q. It was an agreement?

18 A. Yes, sir. She ---

19 Q. Right.

20 A. She didn't tell me to testify, it was an agreement.

21 Q. Oh, this is an -- you agreed to testify?

22 A. Yes, sir.

23 Q. Okay. And you agreed to let her dismiss the armed
24 robbery charge, didn't you?

25 A. Yes, sir.

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1 Q. Okay. And you lived at apartment 120. Do you still
2 live there?

3 A. No, sir.

4 Q. Okay. But you were there at the time. And you said
5 Brian lived across the hallway, isn't that right?

6 A. Yes, sir.

7 Q. In right?

8 A. Yes, sir.

9 Q. And that's -- it's in the same building, isn't it?

10 A. Um-hum (affirmative).

11 Q. Were y'all ground floor, second floor?

12 A. Ground floor.

13 Q. Okay. And you said you'd known him for a couple of
14 weeks?

15 A. Yes, sir.

16 Q. Is that right?

17 A. (Affirmative nod).

18 Q. And you don't know the other two fellows?

19 A. No, sir.

20 Q. And you remember giving a statement to a couple of
21 investigators?

22 A. Yes, sir.

23 Q. They arrested you on the following day, didn't they?

24 A. Yes, sir.

25 Q. And they took you to the Law Enforcement Center, right?

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1 A. (Affirmative nod).

2 Q. Sat you down in a room?

3 A. Yes, sir.

4 Q. And told you something along the lines that you're in a
5 lot of trouble, weren't you?

6 A. Yes, sir.

7 Q. They were going to charge you with armed robbery,
8 right?

9 A. (Affirmative nod).

10 Q. And they wanted to get a statement from you?

11 A. Yes, sir.

12 Q. And today you're testifying that when you came back
13 from the store somebody came up and told you what was going
14 on, right?

15 A. Yes, sir.

16 Q. You didn't tell them that that day, though, did you?

17 A. No, sir.

18 Q. You left that part out, didn't you?

19 A. Yes, sir.

20 Q. You told them that you didn't know what was going on,
21 right?

22 A. I didn't want to incriminate myself.

23 Q. That's right. You told them you saw those guys and you
24 must have gotten wrapped up in this because they saw you
25 with the rent lady, right?

ROBERT JACKSON - CROSS EXAMINATION BY MR. GROVE

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1 A. Yes, sir.

2 Q. You also -- do you remember telling them that you knew
3 the fellow who lived in

4 A. Yes, sir.

5 Q. His name is Tookie, right?

6 A. Yes, sir.

7 Q. And he had just graduated from Greenville High?

8 A. Yes, sir.

9 Q. He didn't live there, did he?

10 A. No, sir.

11 Q. That apartment was empty, isn't it?

12 A. Yes, sir.

13 Q. So that was a lie?

14 A. Yes, sir. I didn't know that the apartment was
15 abandoned at the time, but I also didn't know who lived
16 there.

17 Q. Right. You didn't know whether somebody lived there or
18 not, right?

19 A. No.

20 Q. The officers also asked you to describe the gun. You
21 remember that?

22 A. Yes, sir.

23 Q. And you described it as a black handgun, right?

24 A. Yes, sir.

25 Q. You said -- you remember saying, I know my guns?

ROBERT JACKSON - CROSS EXAMINATION BY MR. GROVE

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1 A. Yes, sir.

2 Q. You remember saying that?

3 A. (Affirmative nod).

4 Q. You also told them -- you remember this? You said, I
5 froze, I turned and I walked down the breeze-way. I didn't
6 run because I didn't want to look suspicious.

7 A. No, sir. I said ---

8 Q. You don't ---

9 A. --- because I wasn't scared.

10 Q. Do what now?

11 A. I said because I wasn't scared.

12 Q. I got you. At the time do you remember saying -- you
13 couldn't describe facial hair. Do you remember that?

14 A. Yes.

15 Q. You said, all I remember seeing is the gun, right?

16 A. (Affirmative nod).

17 Q. And it was in his hand, but you couldn't remember which
18 hand. Do you remember that?

19 A. Yes, sir.

20 Q. And you couldn't remember what he was wearing. You
21 remember that?

22 A. Yes, sir.

23 Q. So your original statement was just you saw them
24 earlier, then you went to the store and you just happened to
25 come back at the wrong place, wrong time, right?

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1 A. Yes.

2 Q. Just bad luck, right?

3 A. (Affirmative nod).

4 **MR. GROVE:** Beg the Court's indulgence.

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

6 (Pause)

7 Q. And today you say you spoke to one of the four, but you
8 don't remember who, right?

9 A. I said he was light skinned. I don't know his name.

10 Q. That's right. But you don't know his name, but it was
11 somebody you were hanging out with earlier, right?

12 A. (Affirmative nod).

13 Q. Do you remember naming Cordell Lewis in the statement
14 you made to law enforcement?

15 A. I remember that name.

16 Q. You remember telling them that Cordell lived across the
17 hall from you?

18 A. Yes.

19 Q. Thank you.

20 **MR. GROVE:** No further questions.

21 **THE COURT:** Any redirect?

22 **MS. TESSITORE:** No, Your Honor.

23 **THE COURT:** All right. Thank you, sir. You can step
24 down. The State can call its next witness.

25 **MS. TESSITORE:** Your Honor, the State calls

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1 Investigator Stanton. Your Honor, I'd just ask that this
2 witness be excused.

3 **THE COURT:** Any objection, Mr. Grove?

4 **MR. GROVE:** No objection, Your Honor.

5 **THE COURT:** All right. Thank you, sir. You're free to
6 leave.

7 **Michael Stanton, being**
8 duly sworn testified as follows;

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

11 **MR. STANTON:** Michael David Stanton.

12 **Direct Examination by Ms. Tessitore:**

13 Q. Investigator Stanton, where do you work?

14 A. The Greenville County Sheriff's Office.

15 Q. And what do you do for the sheriff's office?

16 A. I'm a violent crimes investigator.

17 Q. Okay. What are your duties as a violent crime
18 investigator?

19 A. Predominantly it's the investigation of violent crimes
20 within the County of Greenville, armed robberies, attempted
21 murders, things of that nature.

22 Q. And how long have you been in that position?

23 A. Just a little under two years.

24 Q. And in this armed robbery case that we're here to talk
25 about did you meet with the victim in this case?

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1 A. I did.

2 Q. And where did you meet the victim?

3 A. Greenville Memorial Hospital, specifically in the
4 emergency room.

5 Q. And approximately when was that in relation to when the
6 armed robbery occurred?

7 A. So the armed robbery occurred on the 22nd, roughly 2:50
8 pm. And I began interviewing him roughly around 4:39 pm.
9 So right about two hours after the original incident.

10 Q. Okay. And describe the victim's emotional condition at
11 that time.

12 **MR. GROVE:** Objection, Your Honor. Calls for
13 speculation.

14 **THE COURT:** Overruled.

15 Q. You can answer.

16 A. I think it'd be fair to say he was still under the
17 stress of the incident.

18 Q. Okay. And you notice anything about his mannerisms or
19 anything that gave you that indication?

20 A. One thing that specifically stuck out is his hands were
21 shaking, trembling.

22 Q. Okay. Was he able to describe the -- what happened
23 during the robbery?

24 A. He was, yes, ma'am.

25 Q. Was he able to provide you any detailed description

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1 regarding the four individuals involved?

2 A. He provided descriptions, yes, ma'am.

3 Q. Okay. Did you say they were detailed descriptions?

4 A. I would not say detailed, no, ma'am.

5 Q. Okay. What was he able to give you as far as

6 descriptions of the four individuals?

7 A. Sure. He described them initially as four black males.

8 He described one of them, the individual who presented this

9 card to him, as approximately six feet, a hundred and eighty

10 pounds in his twenties. And he was -- specifically

11 described as wearing a Superman t-shirt.

12 The next individual was wearing a white t-shirt. He

13 was about six-two, a hundred and eighty pounds with a box

14 haircut. The other two individuals were both black males.

15 And the one who had the handgun was wearing all black.

16 Q. Okay. And did you -- did you make notes at the time

17 that he gave you these descriptions?

18 A. I did, yes, ma'am.

19 Q. And were these descriptions that he gave you, were they

20 helpful in your investigation as far as narrowing down any

21 suspects?

22 A. They were helpful in the investigation, yes, ma'am.

23 Q. Okay. So as far as the clothing he described, was that

24 something that you were able to use to identify suspects?

25 A. Yes. One in particular, the clothing was extremely

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1 beneficial to the investigation.

2 Q. Okay. And which one was that?

3 A. The individual who was described wearing all black.

4 Q. Okay. And was the victim able to describe the weapon
5 that was used?

6 A. Yes, ma'am, he did.

7 Q. How did he describe that weapon?

8 A. He was specific about it. He said it was black. He
9 describes it as a semi-auto and -- but it had a silver
10 barrel. And he observed this silver barrel because it was
11 -- it was essentially racked or cocked in front of him.

12 Q. Okay. And would the silver barrel -- have you seen
13 this -- the gun, the weapon ---

14 A. Yes, ma'am, ---

15 Q. --- in this case?

16 A. --- I have.

17 Q. Okay. And would that silver barrel be evident if it
18 was not racked?

19 A. I don't believe you'd be able to see the silver barrel
20 unless the slider was racked in the back position.

21 Q. Okay. So after speaking with the victim and getting
22 the information that you could at that time how did the
23 investigation continue at that point?

24 A. Due to the description provided by the victim and what
25 he testified to yesterday, this violent offense, I initially

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1 went back to the office, which is at the Law Enforcement
2 Center, our armed robbery office, and I met with
3 Investigator Owens and Investigator Kicklighter, who
4 actually responded to the scene, and they provided me some
5 information that they'd obtained from the property manager.
6 At the office they were able to give me the names of three
7 individuals who may possibly have some involvement.

8 Q. Okay. And who were those individuals?

9 A. The names provided to me were Robert Lee Jackson,
10 Cordell Lewis and Denzel Owens.

11 Q. Okay. And what did you do with that information at
12 that point?

13 A. I wrote it down.

14 Q. All right. Were you able to determine based on the
15 apartment manager's information if any of those individuals
16 lived at Grove Station?

17 A. I wrote specifically next to Robert Jackson 120, which
18 I believe references apartment 120.

19 Q. Okay. And what about the other two individuals?

20 A. I don't have anything in my notes, but I believe it'd
21 be fair to say that based upon our communication and then
22 the communication with other deputies that -- apartment
23 , number was also known.

24 Q. Okay. And this Denzel Owens, did you follow up on that
25 possible suspect?

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1 A. That was the only time I had heard that name in terms
2 of the investigation.

3 Q. Okay. So did you determine that he was involved or
4 wasn't involved?

5 A. I have no evidence that indicates he's involved.

6 Q. Okay. And so where did your investigation go from
7 there?

8 A. So based upon the fact that the victim's vehicle was
9 stolen in this case, that provides us a pretty good -- well,
10 very good lead in terms of the armed robbery investigation.
11 At the time when I interviewed the victim, he was able to
12 provide all of his information for the vehicle. So I
13 decided, based upon the nature of this incident, the
14 brutality of it, it would be in our best interest to stay
15 out, work late and try to locate this vehicle and then
16 locate leads, apprehend any individuals if possible.

17 So what I did at that point, roughly -- it was roughly
18 7:00, 6:30-ish, I made several phone calls. I notified
19 Sergeant Swift with Directed Patrol. It's about roughly
20 like a ten-man unit who was working that evening to let him
21 know vehicle description, incident, what had occurred, where
22 it occurred at, where I believed that we would likely be
23 able to locate the suspects.

24 I notified Captain Whatley, who is the sheriff's office
25 night watch commander. So he was over the entire Uniform

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1 Patrol that evening. I also notified the Echo shift
2 supervisor who works that area of town. Echo works within
3 that time period, a two to two time period.

4 And then I also went to the oncoming shift, which would
5 have been Delta Platoon. And I went to their roll call and
6 I let them know the information we had. So basically my
7 goal was to get as many people as possible with the
8 sheriff's office out looking for this vehicle and attempting
9 to apprehend these violent individuals.

10 Like I said, that roll call happened right about 6:45,
11 7:00. At 7:00 ---

12 **MR. GROVE:** Objection, Your Honor. Narrative
13 testimony.

14 **THE COURT:** Overruled.

15 Q. Investigator Stanton, if you could, just for sake of
16 moving along here, so when you say they were out canvassing
17 looking for this stolen SUV was -- what was the area that
18 they were looking -- in which they were looking?

19 A. Looking specifically what we would call area 6 and area
20 7, which is the southwest side of Greenville County in the
21 immediate area of Lakeside Apartments, that kind of general
22 area.

23 Q. All right. And these Lakeside Grove Station
24 Apartments, are these in Greenville County?

25 A. They are, yes, ma'am.

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1 Q. Okay. And taking your attention to later that evening
2 around 9:30 -- between like 9:30 and 10:00 were you in the
3 area of the robbery, where the robbery occurred?

4 A. Yes, ma'am.

5 Q. All right. And what were you doing out there?

6 A. So I met with other deputies and we decided to go to
7 the area where the robbery actually occurred, which is 1
8 Lakeside Road, Grove Statement -- Grove Station Apartments.
9 We were going to attempt to just try to generate any leads
10 we could to help identify these suspects or locate the
11 vehicle.

12 Q. All right. And while you were out there did you speak
13 with other individuals in the neighborhoods?

14 A. We did, yes.

15 Q. All right. And while you were doing that what
16 happened?

17 A. We went specifically to apartment and didn't
18 get a whole lot there, but in canvassing the general area of
19 apartment we talked to several individuals. And kind of
20 the general consensus was that ---

21 **MR. GROVE:** Objection, Your Honor. Hearsay.

22 **THE COURT:** Overruled.

23 Q. You said you went out to

24 A. Yeah. We went to specifically and we spoke to two
25 individuals there. And they advised us that Cordell Lewis

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1 had not been home and he had not been contacted by him.

2 And, again, Cordell Lewis was one of the names I was

3 initially advised at the onset of this. And, again,

4 speaking to several people in the area it was kind of

5 believed that he was -- that Cordell was involved in this

6 armed robbery.

7 Q. Okay. And did you also go out into the other areas

8 outside of the apartment complex to talk with possible

9 witness ---

10 A. We did, yes, ma'am.

11 Q. Anyone that, like you said, would give you information

12 to help you ---

13 A. Correct. Just a general canvass.

14 Q. Okay.

15 A. Yes, ma'am.

16 Q. And at some point were you approached by anyone that

17 had specific information as to the location of the SUV?

18 A. Yes, ma'am.

19 Q. All right.

20 A. As a matter of fact, we went -- we left the apartment

21 and we drove just up the street on Staunton Bridge Road and

22 we were approached by a white car. And as I walked up to

23 the white car to see what was going on I noticed there was a

24 Domino's sticker on the side of it. And this individual who

25 works at Domino's said, hey, I just saw my boss' car that

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1 got stolen, and I followed it to a dead-end road right up
2 the street.

3 Q. Okay. So this was a pretty huge break?

4 A. Yes, significant.

5 Q. Approximately what time was that?

6 A. I believe it was -- it was roughly -- it was right
7 about 9:49-ish, give or take a couple of minutes pm. Same
8 day of the robbery, the 22nd.

9 Q. All right. I'm going to ask you to step down and just
10 use the aerial photo, State's exhibit 46. And if you could,
11 just to let the jury get a picture here. And if you could
12 stand just to make sure that all of the jurors can see this.

13 **THE COURT:** Y'all just talk loud.

14 **MS. TESSITORE:** Yes, sir.

15 Q. And could you indicate -- just kind of give them a
16 point of orientation here and describe when you're talking
17 about these streets.

18 A. Sure.

19 Q. Okay.

20 A. What you're looking at here is the greater Grove
21 Station Apartment complex, okay? So right here we have
22 Lakeside Road. Lakeside Road, I think it changes to
23 Staunton Bridge like right over I-85 here. It crosses over.
24 It might be like right here at this -- but basically
25 Lakeside Road and Staunton Bridge -- Lakeside turns into

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1 Staunton Bridge.

2 Q. Investigator Stanton, ---

3 A. Yes, ma'am.

4 Q. Sorry. I'm standing right here and I can't see ---

5 A. Sorry. Apologize.

6 Q. Okay. Thank you.

7 A. Lakeside Road and Staunton Bridge Roads are in

8 Greenville, okay? This is I-85 right here. When we talk

9 about apartment we're talking about this apartment

10 right here in this area, okay?

11 We go into this area. When we talk to people we,

12 obviously, go to apartment and we're talking to people

13 in this area. When we left there we came out of the complex

14 and went right up here to Staunton Bridge Road. So we're

15 just right over 85 on Staunton Bridge.

16 Q. Okay. And so is where you went just prior to being
17 contacted by this Domino's employee?

18 A. Yes, ma'am.

19 Q. Okay. And when you were contacted by that employee,
20 describe what happened. What did -- how did you respond?

21 A. Okay. So there's several deputies who were out here
22 with me assisting me. And like I said, we're just up here
23 off Staunton Bridge Road. And he says he follows him to a
24 dead-end road. And I think he says on Lakeside Road.

25 Well, I have knowledge of this area ---

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1 **MR. GROVE:** Objection, Your Honor. Hearsay.

2 **THE COURT:** Overruled.

3 A. I have knowledge of this area. So I know this road
4 right here and this road right here are both dead-ends. And
5 that's what I interpreted him to mean.

6 We got back in our patrol cars and then we drove back
7 -- one of the -- one of the patrol cars was actually
8 following the delivery driver. And we go back to this road,
9 Lakeside Grove Lane, which is a dead-end road.

10 Q. Okay. Who was the first officer following the
11 employee?

12 A. Deputy Jeremy Jones.

13 Q. All right. And how many cars were following behind
14 him?

15 A. Six total.

16 Q. All right.

17 A. Six total patrol cars.

18 Q. Okay. Where were you in that order of patrol cars?

19 A. I was number three.

20 Q. All right. And of those six, were they marked cars?

21 A. The first two were marked, fully marked, meaning that
22 the sheriff's star's on the side, the blue and gold, blue
23 lights on top. My car was unmarked. The car behind me was
24 unmarked. And then the following two cars were, again,
25 marked, meaning sheriff's star, gold and yellow, big blue

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1 lights on top.

2 Q. All right. And describe what happened as you turned
3 down that road, what you observed.

4 A. We turned down this road and we started making our way.
5 And when I -- when I look up I see an SUV driving at my
6 patrol car with no headlights on.

7 Q. Okay. And did that SUV -- describe that SUV.

8 A. The SUV was later found to be the blue SUV -- the
9 victim's SUV.

10 Q. All right.

11 A. The stolen vehicle.

12 Q. Were you able -- as it went by your car did he make
13 contact with you?

14 A. He did not make contact with me.

15 Q. Okay. And were you able to see the driver as he went
16 by?

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

18 Q. And why not?

19 A. I was trying not to get hit.

20 Q. Okay. Was it -- so this was nighttime?

21 A. Yes, ma'am.

22 Q. And did he -- after he passed by or the driver passed
23 by you, then what happened?

24 A. After the driver passed by me there was a collision
25 that occurred.

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1 Q. All right. Can you show the jury where that collision
2 occurred?

3 A. Sure. So we're right in this area, okay? A collision
4 occurs right here. And that collision occurs with the
5 guardrail right here, actually. The collision occurs there.
6 And then another collision occurs there with the deputy's
7 patrol car. And then a final collision where it rests -- I
8 believe it rests against the guardrail, the victim's
9 vehicle.

10 Q. The victim's SUV?

11 A. Yes.

12 Q. Okay. So I'm just going to have you mark where the SUV
13 ended up approximately.

14 A. The final resting position of the victim's SUV was
15 approximately right here, maybe up a little further. Maybe
16 like right there. Right there-ish.

17 Q. All right. If you could just write SUV there ---

18 A. Sure.

19 Q. --- so we could know what that refers to. All right.
20 And where did you go after the SUV passed you by? What did
21 you do?

22 A. I immediately spin around and I activate my blue
23 lights. And I come right here and I notice that the SUV has
24 come to a stop. Obviously, it takes a minute to turn
25 around. So I'd lost sight of him.

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1 So I don't know if this individual's still inside.

2 Obviously, I know a collision's occurred. So I don't know
3 the state of what's going on. So I have to assume an armed
4 individual's in that car based upon the nature of this
5 incident and my knowledge. We were able to clear it and we
6 find that the vehicle was empty, it's unoccupied.

7 Q. And did you have -- will you be able to see anybody get
8 in or out of the vehicle?

9 A. No, ma'am.

10 Q. Okay. Where -- okay. So you didn't see who exited the
11 vehicle?

12 A. No, ma'am.

13 Q. All right. Did any of the other officers that the
14 driver went by, were any of them able to give any
15 information as to who the driver was or any description?

16 A. No, ma'am.

17 Q. All right. How would you describe as far as just the
18 speed of that vehicle as it went by you and came up that
19 road?

20 **MR. GROVE:** Objection. Calls for speculation.

21 **THE COURT:** Overruled.

22 A. I don't know that I could estimate a speed. It was
23 evident to me he was trying to get away, the way I would
24 interpret it.

25 **MR. GROVE:** Your Honor, I'd move to strike.

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1 **THE COURT:** Overruled.

2 Q. What made you think that?

3 A. Well, driving, it's night, driving down a dead-end
4 road, no headlights and obviously passing marked cars and
5 then some other indicators.

6 Q. Okay. Did -- were any suspects located near where the
7 vehicle was first spotted?

8 A. Not initially, no, ma'am. Oh, I'm sorry. Yes, ma'am.
9 Yes, a suspect was initially located.

10 Q. Okay. Can you -- did you have contact with the officer
11 who was able to locate that suspect?

12 A. I did, yes, ma'am.

13 Q. All right. And did you go to that area where that
14 suspect was?

15 A. I did, yes, ma'am.

16 Q. Who was that suspect?

17 A. That suspect was Donny Campbell.

18 Q. Okay. And can you indicate on there with his initials
19 DC where -- approximately where he was located.

20 A. (Witness complied).

21 Q. I don't know if a blue marker would help to make it a
22 little clearer.

23 A. It's kind of -- it's kind of dark in this ---

24 Q. Okay.

25 A. --- in this ---

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1 Q. In that area?

2 A. In that area.

3 Q. Okay. And describe what you observed when you got down
4 there and met with him.

5 A. When I got there and met with him he was in custody in
6 the back of a patrol car.

7 Q. Okay. And whose patrol car was that?

8 A. Deputy Jeremy Jones.

9 Q. And did you speak with Mr. Campbell?

10 A. I did, yes, ma'am.

11 Q. What information, if any, was he able to provide you as
12 to who was driving the vehicle?

13 **MR. GROVE:** Objection, Your Honor. Hearsay.

14 **THE COURT:** Repeat the question.

15 Q. What information, if any, was Donny Campbell able to
16 give you regarding the identity of the driver?

17 **THE COURT:** Overruled.

18 A. May I obtain my notes?

19 Q. Yes.

20 A. When I spoke to Donny Campbell he stated the driver of
21 the vehicle was Isaiah Jefferson or Ike, that he was wearing
22 purple and white Nike shoes, he was six foot, oh, I'm sorry,
23 purple and white Nike shoes, black shorts and no shirt.
24 Suspect was supposedly to live in the Piedmont area and was
25 six feet, two hundred and twenty-five pounds.

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1 Q. Okay. And so that was the information you were given
2 at that time?

3 A. Yes, ma'am.

4 Q. Was Donny Campbell -- where was he taken from there?

5 A. Given the nature of what I was dealing with out here on
6 the scene, I needed a complete interview to be done. So he
7 was transported to the Law Enforcement Center where he met
8 with Investigator Owens.

9 Q. Okay. And did Investigator Owens interview him?

10 A. He did, yes, ma'am.

11 Q. Based on the information that he got from Mr. Campbell
12 did -- did you determine whether Isaiah Jefferson was
13 involved or who this person was?

14 **MR. GROVE:** Objection, Your Honor. Double hearsay.

15 **THE COURT:** Overruled.

16 A. Isaiah Jefferson was a false name.

17 Q. Okay. And based on the interview that was conducted
18 did that lead to any other information that pointed to a
19 suspect as far as who the driver was?

20 A. Yes, ---

21 **MR. GROVE:** Same objection, ---

22 A. --- ma'am.

23 **MR. GROVE:** --- Your Honor.

24 **THE COURT:** Objection noted. Overruled.

25 A. Yes, ma'am, it did.

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1 Q. Okay. And who did that lead to?

2 A. May I grab my other notes?

3 Q. Sure.

4 A. Based upon Investigator Owens' interview with Donny

5 Campbell the other individuals were Brian -- possibly a

6 Brian Willie Benson Lewis along with a birth date of

7 , apartment who was Cordell's brother at Grove

8 Station. And then we got a full identification of an

9 individual that Investigator Owens was speaking with, which

10 was Donny Odell Campbell, II. And I was also provided his

11 birth date.

12 Q. Okay. And did you eventually locate the Defendant,

13 Brian Lewis, ---

14 A. Yes, ma'am.

15 Q. --- in this case? All right. If you could, just use

16 this aerial photo to describe where you found him.

17 A. I personally did not find him.

18 Q. No, as far as when you -- when you saw him that

19 evening.

20 A. Okay. When I saw him next he was ---

21 Q. You're going to have to stand -- you can mark it and

22 then if you could just stand back so they can see over here.

23 A. He was in that general area.

24 Q. Can you point to that?

25 A. Right here. Where the X is, just to the right -- my

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1 right of apartment

2 Q. Okay.

3 A. In that little grassy area.

4 Q. All right. And how was it that you found him there?

5 A. Based upon the nature of this incident I sent members

6 of the Directed Patrol Unit and K-9 Services Unit to

7 apartment My thought was it's possible that if the SUV

8 is here, it's possible somebody could have doubled back and

9 made it to that apartment.

10 And since that was the suspect that I was advised of by

11 Investigator Owens along with his apartment number, in my

12 mind it's feasible. He was taken into custody by the K-9

13 Services and Directed Patrol. And when I came up upon him

14 he was in custody seated on the grass.

15 Q. Okay. And which K-9 officer was it that -- was he

16 seized by a K-9?

17 A. Yes, ma'am, he was.

18 Q. All right. And which officer was that?

19 A. K-9 Deputy Matthew Anderson.

20 Q. All right. And when you found him there describe what

21 you did when you got there.

22 A. What I did was I spoke to him. I gave him a little

23 here's the situation you're in. It's a serious situation.

24 You need to be honest. And then I read him his Miranda

25 rights.

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1 Q. Okay. What I'm going to do is have you take the stand
2 back there so that we can get this out of the way and we
3 have the microphone as well. Okay. You said you ---

4 MR. GROVE: I renew my previous objection, Your Honor,
5 based on ---

6 THE COURT: Noted. You're protected in the record.

7 MR. GROVE: Thank you.

8 THE COURT: Overruled.

9 Q. Okay. So you said you advised him of his Miranda
10 rights?

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

12 Q. All right. And what are those rights?

13 A. Those rights are essentially that you have the right to
14 remain silent. Any statement you make can be used against
15 you in court. You have the right to talk to an attorney.
16 If you cannot afford an attorney, one will be appointed to
17 you.

18 Q. Okay. And did you advise him of all those rights?

19 A. I did. And I specifically advised him of his rights
20 from a Miranda card to ensure that it was clear and no parts
21 of the rights were left out.

22 Q. Okay. Is there -- are there -- did you have a card
23 that you used to -- when you mentioned that there's a card,
24 is that ---

25 A. Yes, ma'am.

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1 Q. --- what you used?

2 A. I didn't have a card with me. So I asked another
3 deputy for their card. There's a couple different
4 variations. There's -- the sheriff's office issues one. A
5 couple of other third party entities issue one.

6 The basic fundamental rights that are prescribed are
7 the same on all the cards. Some of the syntax is slightly
8 changed, meaning there's -- on every card there's a basic of
9 what your rights are and then some cards go a little bit
10 further. So his -- the card that I read would certainly
11 have had his basic fundamental rights listed on that card.

12 Q. Okay. And knowing those rights did he appear to, I
13 guess, did he appear to understand what you were saying to
14 him?

15 A. Yes, ma'am, he did.

16 Q. All right. And did he speak to you?

17 A. Yes, ma'am, he did.

18 Q. Do you recall with respect to -- did you ask him
19 questions about the robbery?

20 A. I did ask him questions about the robbery.

21 Q. All right. What did you ask him?

22 A. I don't remember the specific question, but it was
23 about -- it was about the nature of the incident in general.

24 Q. Okay. And how did he respond?

25 A. He ---

MICHAEL STANTON - DIRECT EXAMINATION BY MS. TESSITORE

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1 **MR. GROVE:** Same objection, Your Honor.

2 **THE COURT:** Noted.

3 A. --- responded with making statements.

4 Q. Okay. What did he say?

5 A. He stated he was around the people. He was trying to
6 make some easy money. He said it was a little job. He
7 talked about something about getting a car and that he
8 needed to drive.

9 Q. Okay. And this isn't, I mean, approximately how long
10 did you actually speak to him in which the time that he made
11 all those statements?

12 A. It was brief. It was a brief period of time.

13 Q. All right. And what -- when you spoke to him did he
14 have some -- any injuries?

15 A. He did, yes, ma'am.

16 Q. Okay. Describe what kind of injuries.

17 A. He had -- he had some injury to his left arm from being
18 apprehended by a police service dog, a K-9.

19 Q. Okay. And was there medical -- any medical treatment
20 rendered?

21 A. Yes, ma'am.

22 Q. On the scene?

23 A. Yes, ma'am. Our Greenville County EMS responded.

24 Q. Did you -- when you were talking to the Defendant,
25 Brian Lewis, did you delay in any way the rendering of that

MICHAEL STANTON - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 medical treatment while you were speaking to him?
- 2 A. Absolutely not.
- 3 Q. Okay. And did he seem to understand what was going on?
- 4 A. Yes, ma'am.
- 5 Q. All right. Did he appear to be in any kind of physical
- 6 distress while you were talking to him?
- 7 A. No, ma'am.
- 8 Q. So at some point did EMS arrive?
- 9 A. They did.
- 10 Q. Take him to the hospital?
- 11 A. They did. He was transported.
- 12 Q. All right. And did you go to the hospital?
- 13 A. I did, yes, ma'am.
- 14 Q. And were you there the whole time?
- 15 A. Not the whole time, no, ma'am.
- 16 Q. Okay. When was the next time that you saw Mr. Lewis?
- 17 A. In terms of?
- 18 Q. After leaving the hospital?
- 19 A. Okay. After leaving the hospital he was transported to
- 20 the Law Enforcement Center, specifically the armed robbery
- 21 office.
- 22 Q. Okay. Was -- at the armed robbery office, that's at
- 23 the Law Enforcement Center?
- 24 A. Yes, ma'am, 4 McGee Street.
- 25 Q. Okay. And when he -- when you -- you saw him there?

MICHAEL STANTON - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am.

2 Q. Okay. And is that when you -- what was the purpose for
3 him being there?

4 A. A formal full interview.

5 Q. Okay. When you say formal full interview what does
6 that mean?

7 A. A recorded, a audio/visual -- a audio/video recorded
8 interview.

9 Q. Okay. When you -- were you present for that interview?

10 A. I was, yes, ma'am.

11 Q. When you were there during that interview did the
12 Defendant appear to be in any way affected by any kind of
13 medication that he might have received at the hospital?

14 **MR. GROVE:** Objection. Speculation.

15 **THE COURT:** Overruled.

16 A. No, ma'am.

17 Q. Okay. So was he able to communicate clearly?

18 A. He was able to communicate, yes, ma'am.

19 Q. All right. Investigator Stanton, I'm showing you
20 what's been marked as State's exhibit 26, 27, 32 and 33. If
21 you could just look at those.

22 A. Yes, ma'am.

23 (Pause)

24 **MR. GROVE:** I apologize, Judge. 26, 27, 32 and 33?

25 **MS. TESSITORE:** Correct.

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1 **MR. GROVE:** Okay. Thank you.

2 Q. Okay. Do you recognize those?

3 A. I do, yes, ma'am.

4 Q. All right. And are those fair and accurate depictions
5 of the scene of where the collision occurred that night that
6 you described before?

7 A. Yes, ma'am, they are.

8 Q. All right. Specifically looking at 26, what does that
9 show?

10 A. That shows a wrecked Greenville County patrol car..

11 Q. Okay. And is that how it appeared when you saw it?

12 A. Yes, ma'am.

13 Q. Just after the accident?

14 A. Yes, ma'am.

15 Q. All right.

16 **MS. TESSITORE:** Your Honor, at this time the State
17 would move State's exhibit 26 into evidence.

18 **MR. GROVE:** (Negative nod).

19 **THE COURT:** All right. Without objection, introduced
20 into evidence.

21 (Whereupon State's exhibit 26 was admitted into
22 evidence)

23 Q. Okay. And 27, what does that show?

24 A. That shows a guardrail that is mangled.

25 Q. Okay. And was that -- where was that in relation to

MICHAEL STANTON - DIRECT EXAMINATION BY MS. TESSITORE

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1 the SUV?

2 A. The mangled guardrail is closer to the Staunton Bridge
3 side of the SUV.

4 Q. Okay. And on ---

5 A. On the Lakeside Apartment side, rather.

6 Q. Okay. And was that guardrail like that when you first
7 passed by to go down that dead-end road?

8 A. I don't recall it being that way, no, ma'am.

9 Q. Okay. Is that a fair and accurate depiction of the way
10 you saw it after the accident?

11 A. Yes, ma'am.

12 Q. Okay.

13 **MS. TESSITORE:** The State would move State's exhibit 27
14 into evidence.

15 **MR. GROVE:** No objection.

16 **THE COURT:** Without objection, admitted.

17 (Whereupon State's exhibit 27 was admitted into
18 evidence)

19 Q. And 32, can you identify that? What does that show?

20 A. Yes, ma'am. That's the final resting position of the
21 stolen SUV.

22 **MS. TESSITORE:** And the State would move State's
23 exhibit 32 into evidence.

24 **MR. GROVE:** No, objection.

25 **THE COURT:** Without objection, admitted.

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1 (Whereupon State's exhibit 32 was admitted into
2 evidence)

3 Q. And 33, if you could identify that.

4 A. 33 is just a front-facing showing the front -- the
5 front of the vehicle, the stolen SUV in the final resting
6 position and then the damage.

7 Q. Okay. Thank you. And the State would move State's
8 exhibit 33 into evidence.

9 **MR. GROVE:** (Negative nod).

10 **THE COURT:** All right. Without objection, admitted
11 into evidence.

12 (Whereupon State's exhibit 33 was admitted into
13 evidence)

14 **MS. TESSITORE:** May I publish them to the jury, Your
15 Honor?

16 **THE COURT:** Yes. Y'all can just pass those around as
17 you see fit.

18 **MS. TESSITORE:** Okay. And just one moment.

19 (Pause)

20 Q. Okay. Officer Stanton, Investigator Stanton, excuse
21 me, when you spoke with the Defendant out on the scene just
22 after he was apprehended by the K-9 did you make any threats
23 to him?

24 A. No, ma'am.

25 Q. Did you coerce him to speak to you?

MICHAEL STANTON - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. No, ma'am.

2 Q. Was he in handcuffs at that point?

3 A. Yes, ma'am.

4 Q. And do you recall what he was wearing?

5 A. He was not wearing a shirt and black basketball shorts.

6 Q. And do you recall the shoes?

7 A. I don't recall his shoes.

8 Q. Okay. Please answer any questions that Mr. Grove might
9 have. Thank you.

10 **THE COURT:** Let's go ahead and take a midmorning
11 recess, ladies and gentlemen. About a fifteen minute
12 recess. Take this time to recharge yourselves. Don't talk
13 about the case, again. And, of course, if you haven't
14 looked at the photographs that are being passed around, just
15 put them on the table. You can pass them around when you
16 come back in, okay? Let's take a break.

17 (Whereupon the jury exited the courtroom at 10:56 am)

18 **THE COURT:** And you can step down. Just don't talk to
19 anybody about your testimony, okay?

20 A. Yes, sir.

21 **THE COURT:** All right. We're in recess.

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

23 (Whereupon court was in recess at 10:57 am)

24 (Whereupon court reconvened at 11:13 am)

25 **THE COURT:** All right. Thank you. Anything before we

1 bring the jury in?

2 **MS. TESSITORE:** No, Your Honor.

3 **MR. GROVE:** No, Your Honor.

4 **THE COURT:** Mr. Grove, you know, on the objections, do
5 what you're doing, you know, you're protecting your record,

6 ---

7 **MR. GROVE:** Yes, sir.

8 **THE COURT:** --- and I don't have a problem with it. On
9 the leading thing, you understand what I mean by 611(c)?

10 **MR. GROVE:** Yes, sir.

11 **THE COURT:** I mean, I'm trying to move the thing, I'm
12 trying to facilitate testimony.

13 **MR. GROVE:** Yes, sir.

14 **THE COURT:** It is leading, okay, but, again, we're just
15 trying to facilitate testimony. And on the hearsay stuff,
16 most of the -- I just want the record to reflect my rulings
17 on that. I'm overruling you on that. While it may
18 technically be hearsay in my opinion, it's an exception to
19 hearsay under the res gestae exception, general investigator
20 stuff.

21 **MR. GROVE:** Thank you, Your Honor.

22 **THE COURT:** Yep. Not offered for the truth of the
23 matter asserted, just to assist in the general
24 investigation. Okay. Bring them in.

25 **MS. TESSITORE:** Thank you, Your Honor.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 (Whereupon the jury entered the courtroom at 11:16 am)

2 **THE COURT:** All right. Everybody's present. And the
3 State has tendered the witness. Mr. Grove, your witness.

4 **MR. GROVE:** Thank you, Your Honor.

5 **Cross Examination by Mr. Grove:**

6 Q. Investigator Stanton, earlier you testified about
7 going out to -- back out to the Grove Station Apartments
8 during the day, right?

9 A. Evening.

10 Q. Yes, sir. Because the call was originally made a
11 little before three, is that correct?

12 A. Yes, sir.

13 Q. Or close to 3:00 in the afternoon, right?

14 A. Yes, sir.

15 Q. And this auto accident was 9:30 -- between nine and
16 ten, maybe at night?

17 A. Yes, sir, that's accurate.

18 Q. After sundown?

19 A. Yes, sir.

20 Q. And it's in July?

21 A. Yes, sir.

22 Q. So late?

23 A. Yes, sir.

24 Q. And then I believe earlier you testified that Brian was
25 transported to the hospital around 11:50 or so?

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 A. Just after midnight.

2 Q. Okay. So we're talking about the robbery happens
3 around three, right?

4 A. Um-hum (affirmative).

5 Q. And then this wreck happens nine or ten. And then
6 Brian ---

7 A. 9:50.

8 Q. And Brian is arrested a little before midnight. And
9 then a few minutes later he's transported to the hospital,
10 right?

11 A. Correct.

12 Q. But prior, around 10:30 you were back out at Lakeside
13 Apartments, right?

14 A. What time?

15 Q. 10:30, 20:30 hours.

16 A. No. I was still up on Lakeside Road at that point.

17 Q. Have you had an opportunity to review your report?

18 A. Yes, sir.

19 Q. Okay.

20 **MR. GROVE:** May I approach the witness, Your Honor?

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

22 Q. I'm going to hand you ---

23 A. Sure.

24 Q. --- a couple of pages. Tell me if they look familiar.

25 Don't read anything yet, just tell me if they look familiar.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 A. Yes, sir.

2 Q. And is this part of your report that you submitted?

3 A. Yes, sir.

4 Q. And these are notes that you made not long after this
5 event, right?

6 A. Yes, sir.

7 Q. So they would have been as fresh in your mind as they
8 could have possibly been, right?

9 A. Mostly, yes, sir.

10 Q. Do you see the highlighted portion there?

11 A. I do, yes, sir.

12 Q. Do you see where it says at 20:30 hours I drove up to
13 the apartment complex at Lakeside Road in my unmarked car,
14 right?

15 A. Yes, sir.

16 Q. It's right above the highlighted portion?

17 A. Yes, sir.

18 Q. Okay. As a part of your investigation were you
19 contacted by a woman named Priscilla Austin?

20 A. No, sir, I was not contacted by her.

21 Q. Did you receive information regarding a Priscilla
22 Austin?

23 A. I did, yes, sir.

24 MR. GROVE: May I approach the witness, Your Honor?

25 THE COURT: Yes.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 Q. I'm going to hand you -- does that look like your
2 handwriting?

3 A. Yes. These are my notes.

4 Q. And those were your notes from the night of the 22nd,
5 is that right?

6 A. Yes, sir.

7 Q. In the highlighted portion does it include the name of
8 Priscilla Austin?

9 A. It does, yes, sir.

10 Q. Does it include a phone number?

11 A. Yes, sir, it does.

12 Q. Does it also include curly hat [sic], young, eighteen,
13 LSBM?

14 A. Yes, sir, it does.

15 Q. And LSBM means light skinned black male, doesn't it?

16 A. Yes, sir, it does.

17 Q. Does it also include white female?

18 A. Yes, sir, it does.

19 Q. Okay. I direct your attention back to your report.

20 Did you receive information that around seven pm -- and
21 there's a highlighted portion there and a highlighted
22 portion on the next page. Did you receive information
23 around seven pm that the vehicle was being driven by a light
24 skinned black male?

25 A. Yes, sir.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

- 1 Q. With curly hair?
- 2 A. Yes, sir.
- 3 Q. Wearing a hat?
- 4 A. Yes, sir.
- 5 Q. And a white female was in the car as well?
- 6 A. Yes, sir.
- 7 Q. Okay. Did you receive that information from a third
- 8 party?
- 9 A. I received that information from Priscilla.
- 10 Q. Okay. And Priscilla Austin has no stake, so to speak,
- 11 in this case, isn't that right?
- 12 A. Can you be more specific?
- 13 Q. She isn't a victim or a suspect in this case?
- 14 A. Correct. That is correct.
- 15 Q. You also testified on direct about receiving some
- 16 information regarding a Denzel Owens?
- 17 A. Yes, sir.
- 18 Q. And you decided -- that name, I guess, didn't come up
- 19 again. And so you didn't feel the need to follow up, is
- 20 that correct?
- 21 A. The name did not come up again, that's correct.
- 22 **MR. GROVE:** May I approach the witness, Your Honor?
- 23 **THE COURT:** Yes.
- 24 Q. I'm just going to retrieve my ---
- 25 A. Okay.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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- 1 Q. --- paperwork. Sorry. And so Denzel Owens was
2 originally mentioned to you -- you wrote him down, right?
- 3 A. Yes, sir. He was one of the three names I was provided
4 by Investigator Owens and Kicklighter.
- 5 Q. Okay. But then you never heard anything more about Mr.
6 Owens, and so that sort of died on the vine, so to speak?
- 7 A. Yes, sir.
- 8 Q. You took a statement from Cordell Lewis, didn't you?
- 9 A. I did, yes, sir.
- 10 Q. You along with Investigator Fortner?
- 11 A. Yes, sir, we did.
- 12 Q. Y'all took Cordell Lewis into custody the following
13 day, isn't that right?
- 14 A. The sheriff's office took them into custody.
- 15 Q. I apologize. He was arrested the following day?
- 16 A. Yes, sir.
- 17 Q. And at some point you brought him to an interrogation
18 room to talk with him?
- 19 A. He was brought to an interview room, yes, sir.
- 20 Q. And you sat him down and you recorded an interview with
21 Cordell Lewis, right?
- 22 A. Audio/visual, yes, sir.
- 23 Q. And in that interview you and Investigator Fortner
24 asked him questions, didn't you?
- 25 A. Yes, sir, we did.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 Q. You also made some statements to him just through
2 conversation, right?

3 A. Yes, sir.

4 Q. At one point you told him if he'd ever come in contact
5 with the pizza guy he must have been there when it happened,
6 right?

7 A. Yes, sir.

8 MS. TESSITORE: Objection. Your Honor, he's getting
9 into the substance of an interview of another suspect. If
10 he wants to introduce evidence as to -- from that interview,
11 I mean, ---

12 THE COURT: I'll overrule the objection. I understand
13 where you're going with that. I'll overrule the objection,
14 though.

15 MS. TESSITORE: Okay. Thank you, Your Honor.

16 THE COURT: All right.

17 Q. Do you also remember making a statement that when
18 people cooperate it's better for them?

19 A. I don't recall that specific statement, but it's
20 possible.

21 Q. It wouldn't surprise you that you ---

22 A. No, ---

23 Q. --- had said ---

24 A. --- it would not.

25 Q. --- something like that?

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 A. No, sir.

2 Q. Do you also remember asking Cordell whose idea this
3 was?

4 A. That sounds familiar.

5 Q. Do you -- do you remember telling him that you thought
6 it was Brian's idea?

7 A. I did, yes, sir.

8 Q. The notes that you made regarding the suspect's
9 descriptions, you took those around the same time that you
10 took the notes regarding Ms. Austin, right?

11 A. Which notes are we referring to?

12 Q. One Superman t-shirt, one white t-shirt, two black
13 males, all black handgun, all black with a handgun?

14 A. Yes, sir. No, sir to your question.

15 Q. I apologize. You did not make those at the same time?

16 A. As ...

17 Q. All of those notes were made around the same time?

18 A. No, sir.

19 Q. They were not?

20 A. No, sir.

21 Q. When did you make the notes regarding the suspects'
22 descriptions?

23 A. Regarding the four suspects, I made those notes at the
24 hospital with the victim.

25 Q. Okay. And the note regarding Ms. Austin, that was

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 information you received from the victim as well, right?

2 A. No, sir. No, sir. Ms. Austin was later that evening.

3 Q. But that was information that you received from the
4 victim?

5 A. May I ---

6 Q. Look ---

7 A. --- refer to my notes?

8 Q. You may. And I apologize. It's a very poorly worded
9 question. The contact information for Ms. Austin and her
10 name was given to you by Mr. Haefner, isn't that right?

11 A. Just let me refer to my notes real quick, if you don't
12 mind.

13 Q. Take your time.

14 (Pause)

15 A. Yes, sir. Priscilla Austin -- I'm sorry. Priscilla
16 and her phone number was provided to me by the victim.

17 Q. You also testified about being around the Staunton
18 Bridge, Lakeside Grove area when this accident -- when the
19 motor vehicle accident occurred, right?

20 A. Yes, sir.

21 Q. You also talked about Donny Campbell was taken into
22 custody, right?

23 A. Yes, sir.

24 Q. And he was taken into custody near where the vehicle
25 was, right?

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 A. Yes, sir.

2 Q. He was taken into custody by Jeremy Jones, I believe
3 you said?

4 A. Deputy Jones, yes, sir.

5 Q. And you were one of the lead investigators on this,
6 right?

7 A. Yes, sir.

8 Q. And so you, as a part of this investigation, made sure
9 that Deputy Jones secured the scene, right?

10 A. Yes, sir.

11 Q. And you found out a gun had been located, isn't that
12 right?

13 A. Yes, sir, that is correct.

14 Q. And you had Deputy Jones stand by the gun so that it
15 could be preserved, right?

16 A. Yes, sir.

17 Q. That's, obviously, a standard law enforcement protocol,
18 right?

19 A. Yes, sir.

20 Q. You make sure that no one contaminates the scene so
21 that you can preserve the evidence, right?

22 A. Yes, sir.

23 Q. And potentially have it tested later, right?

24 A. Yes, sir.

25 Q. And, in fact, you indicated that, that you wanted to

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 maintain the integrity of the evidence in order to get
2 forensics and DNA samples, right?

3 A. Yes, sir.

4 Q. Did you take statements -- you've talked about a
5 statement from Brian and you've talked about a statement
6 from Cordell. Did you participate in the statements with
7 either of the other people who were charged?

8 A. I was in the ---

9 Q. I'll rephrase it.

10 A. Sure.

11 Q. You did not participate in those other two statements,
12 right? I believe Investigator Fortner and Wayne Campbell
13 took those statements, didn't they?

14 **MS. TESSITORE:** Objection, Your Honor. If he could
15 just specify as to which particular interview it might
16 assist the investigator in knowing which one he's talking
17 about.

18 **THE COURT:** All right.

19 Q. Investigator Matt Owens took Donny Campbell's
20 statement, isn't that right?

21 A. His full audio/visual -- audio/visual statement, yes,
22 sir.

23 Q. Thank you. And Investigator Fortner and Wayne Campbell
24 took Robert Jackson's statement?

25 A. Yes, sir, that's accurate.

MICHAEL STANTON - CROSS EXAMINATION BY MR. GROVE

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1 Q. So the two statements that you participated in were
2 Brian Lewis and Cordell Lewis?

3 A. In terms of the recorded statement, yes, but I also
4 obtained a statement from -- at the -- at the scene, you
5 know, a short statement.

6 Q. Yes, sir. I -- yeah, that's exactly what I mean. And
7 the statements -- you took an on-scene statement from Brian,
8 and then you took a statement an hour or two later from
9 Brian?

10 A. I was present during his second statement, yes, sir.

11 Q. And the statements from Cordell occurred the following
12 day?

13 A. Yes, sir.

14 Q. Do you remember what time?

15 A. I don't know if I have that, the time in my notes.

16 Q. Could it have been 2:00 in the afternoon?

17 A. It could have been.

18 Q. Do you remember near the introduction of that statement
19 telling Cordell Lewis that you thought that this robbery
20 was, I believe your words were, your brother's brain child?

21 A. I may have stated that.

22 Q. In fact, you had to define for him what brain child
23 was. Do you remember that?

24 A. I don't have the transcription of the interview. So I
25 don't want to say specifically I said that, but ...

MICHAEL STANTON - REDIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Would it surprise you if that's what you said?

2 A. No, it would not.

3 MR. GROVE: No further questions at this time, Your
4 Honor.

5 THE COURT: Any redirect?

6 MS. TESSITORE: Just very briefly, Your Honor.

7 **Redirect Examination by Ms. Tessitore:**

8 Q. Just to clarify, Mr. Grove talked about the information
9 that you received from this Priscilla individual, the
10 employee of Mr. Haefner, correct?

11 A. I believe she was an employee.

12 Q. Okay. Did you receive information that she may have
13 seen the vehicle?

14 A. Yes, ma'am.

15 Q. Okay. And did you speak directly with her about what
16 she saw?

17 A. I did.

18 Q. Okay. Were you able to confirm in talking with her
19 about what time she thought she saw the vehicle?

20 A. Yes, ma'am.

21 Q. And about what time was that?

22 A. It was roughly 7:00.

23 Q. 7:00 in the evening?

24 A. Yes, ma'am, seven pm.

25 Q. Okay. So a good three hours before the SUV was

MICHAEL STANTON - REDIRECT EXAMINATION BY MS. TESSITORE

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1 located?

2 A. Correct.

3 Q. And were you able to verify that what she thought was
4 the victim's SUV was, in fact, the SUV that she saw at seven
5 pm?

6 A. No, ma'am, there -- I don't think there's a way to
7 verify that.

8 Q. Okay. And with regard to the notes that Mr. Grove was
9 talking about that you had taken, and he was showing you
10 those notes and highlighting and all that, just so the jury
11 understands, these notes that you were taking, where did you
12 actually take these notes?

13 A. The notes of the suspect?

14 Q. The notes that Mr. Grove was talking about, the
15 suspects' description, the information from the victim at
16 the hospital.

17 A. The notes I took about the four suspects were taken at
18 the hospital.

19 Q. Right. And where did you place those notes?

20 A. I have them with me.

21 Q. Okay. And where -- where are they?

22 A. Right here on ---

23 Q. Okay.

24 A. --- on the stand.

25 Q. All right. And where do you put those notes? Are they

DONNY CAMPBELL, JR. - DIRECT EXAMINATION BY MS. TESSITORE

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1 on a piece of paper?

2 A. They're actually on a manilla folder.

3 Q. Okay. And is that -- why do you take the notes on a
4 manilla folder?

5 A. That's what I had at the time. Usually I take out a
6 notepad, but I started writing on that, so I kept writing on
7 it.

8 Q. Okay. All right. No further questions. Thank you.

9 **THE COURT:** Anything else?

10 **MR. GROVE:** No, Your Honor.

11 **THE COURT:** Thank you, sir. You can step down. And
12 you can call your next witness.

13 **MS. TESSITORE:** Your Honor, the State calls Donny
14 Campbell.

15 **THE COURT:** Okay.

16 **Donny Campbell, Jr.,**
17 being duly sworn testified as follows;

18 **MADAME CLERK:** You can have a seat. Please state your
19 full name for the record.

20 **MR. CAMPBELL:** Donny Odell Campbell, Jr.

21 **Direct Examination by Ms. Tessitore:**

22 Q. Good morning, Mr. Campbell.

23 A. Good morning.

24 Q. I'm going to need you to speak nice and loud so that
25 the jury can hear you. Mr. Campbell, how old are you?

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- 1 A. Nineteen.
- 2 Q. And how old were you back in July of 2015?
- 3 A. Seventeen.
- 4 Q. All right. Have you pled guilty to charges of armed
- 5 robbery -- excuse me. Were you charged with armed robbery
- 6 out of this incident?
- 7 A. Attempted armed robbery.
- 8 Q. You were charged originally with armed robbery?
- 9 A. Yes, ma'am.
- 10 Q. Okay. Were you charged with conspiracy?
- 11 A. Yes, ma'am.
- 12 Q. All right. And with respect to those charges did you
- 13 enter a plea of guilty to some charges on June 9th of 2016?
- 14 A. When?
- 15 Q. Did you -- do you remember pleading guilty?
- 16 A. Yes, ma'am.
- 17 Q. Okay. And that was back in June of last year?
- 18 A. Yes, ma'am.
- 19 Q. Did you have a lawyer?
- 20 A. Yes, ma'am.
- 21 Q. Who's your lawyer?
- 22 A. Cassandra Gorton.
- 23 Q. Ms. Gorton. Okay. And she represented you during --
- 24 after you were charged with these -- the crimes?
- 25 A. Yes, ma'am.

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1 Q. All right. Did -- so did you plead guilty to attempted
2 armed robbery?

3 A. Yes, ma'am.

4 Q. And that was a reduced charge, correct?

5 A. Yes, ma'am.

6 Q. All right. And did you plead guilty to conspiracy?

7 A. Yes, ma'am.

8 Q. Did you plead guilty because you are guilty?

9 A. No, ma'am.

10 Q. Why did you plead guilty?

11 A. Yes, ma'am.

12 Q. Okay. Confused?

13 A. Yes, ma'am.

14 Q. All right. When you stood up in front of the judge and
15 pled guilty did you do that because you were, in fact,
16 guilty of those charges?

17 A. Yes, ma'am.

18 Q. All right. And did -- when you pled guilty to the
19 attempted armed robbery do you recall the judge saying that
20 you could get up to twenty years?

21 A. Yes, ma'am.

22 Q. Okay. And you still pled guilty?

23 A. Yes, ma'am.

24 Q. With respect to the conspiracy you knew you could get
25 up to five?

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1 A. Yes, ma'am.

2 Q. And when you entered that plea was that part of a plea
3 agreement that you reached with the State? Like a plea
4 deal?

5 A. Yes, ma'am.

6 Q. And what was -- well, have you been sentenced on your
7 charges yet?

8 A. No, ma'am.

9 Q. So what was the requirement for you as part of that
10 deal? What did the State say that you had to do?

11 A. Stay out of trouble.

12 Q. Okay. And have you done that?

13 A. Yes, ma'am.

14 Q. Okay. That's good. And why are you here today?

15 A. Testify.

16 Q. Okay. And are you here to testify truthfully?

17 A. Yes, ma'am.

18 Q. Has there been any promise to you about what kind of
19 sentence you're going to get?

20 A. No, ma'am.

21 Q. So you could get up to twenty years?

22 A. Yes, ma'am.

23 Q. All right. So there's no recommendation as far as what
24 you're going to get?

25 A. No, ma'am.

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1 Q. And you are here to talk about your role in this armed
2 robbery, correct?

3 A. Yes, ma'am.

4 Q. All right. So let's talk about that. Back on July
5 22nd of 2015, do you remember that day?

6 A. Yes, ma'am.

7 Q. I want you to tell the jury if you recall when you
8 first -- well, let me -- let me back up. Who else was
9 involved in the robbery and the conspiracy?

10 A. Me, Cordell Lewis, Brian Lewis, Robert Jackson.

11 Q. Okay. So those three individuals. And do you see
12 Brian Lewis in the courtroom today?

13 A. Yes, ma'am.

14 Q. Okay. And where is he?

15 A. To my right.

16 Q. What's he wearing?

17 A. A white shirt and tie.

18 Q. Okay.

19 **MS. TESSITORE:** Let the record reflect that the witness
20 has identified the Defendant.

21 **THE COURT:** Noted.

22 Q. All right. So those were the three other people that
23 were involved in this robbery, correct?

24 A. Yes, ma'am.

25 Q. All right. So tell the jury, what was the plan?

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- 1 A. The plan was to rob the delivery man and take his car.
2 And that was it.
3 Q. Okay. And what -- did y'all discuss who was going to
4 do what?
5 A. Yes, ma'am.
6 Q. Okay. Was -- if you recall, was -- who was part of
7 that discussion?
8 A. Everyone.
9 Q. Okay. And where did that take place, if you recall?
10 A. In the Grove Station Apartments ---
11 Q. Okay.
12 A. --- in the breeze-way on the steps.
13 Q. In the breeze-way outside of which apartment?
14 A. Outside of Brian Lewis apartment.
15 Q. Okay. And do you remember the rent lady coming out and
16 talking to you?
17 A. Yes, ma'am.
18 Q. All right. And she was -- after the -- when the rent
19 lady came out how many -- how many were out there?
20 A. Three.
21 Q. Okay. So who was there?
22 A. Me, Cordell and Brian.
23 Q. Okay. Where was Robert Jackson?
24 A. He was in -- he was around the apartments ---
25 Q. Okay.

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1 A. --- somewhere.

2 Q. All right. And at some point, though, he was -- you
3 indicated that he was out there when y'all were discussing
4 this?

5 A. He wasn't.

6 Q. Oh, he wasn't out there? Okay. Do you remember if he
7 came out when the rent lady was there?

8 A. No, ma'am.

9 Q. Okay. So when you talked with Brian and Cordell about
10 this robbery did you talk about what role each of you were
11 going to play?

12 A. No, ma'am.

13 Q. All right. So how did it happen?

14 A. We were sitting outside. Brian was like I need to get
15 some money to help take care of my child. So he was going
16 on about ideas on how to get him money. So he finally came
17 up and said, bam, I got it. We're going to rob the -- we're
18 going to rob the pizza man.

19 Q. Okay. So who placed the order for the pizza?

20 A. Brian.

21 Q. And how did he place the order?

22 A. He downloaded a calling app and called Domino's.

23 Q. Okay. And whose phone did he use?

24 A. Mines.

25 Q. So you gave him your phone?

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- 1 A. Yes, ma'am. He asked for it.
- 2 Q. Okay. And whose gun was going to be used?
- 3 A. Mines.
- 4 Q. Okay. And were there any other guns involved?
- 5 A. No, ma'am.
- 6 Q. I'm showing you what's been marked as State's exhibit
- 7 15 and ask you to take a look at that. Do you recognize
- 8 that?
- 9 A. Yes, ma'am.
- 10 Q. What is that?
- 11 A. It's a Colt Commander airsoft pistol.
- 12 Q. Okay. And does that appear to be the gun you were
- 13 talking about?
- 14 A. Yes, ma'am.
- 15 Q. Okay. And was that gun eventually found -- do you
- 16 recall when they found that gun?
- 17 A. Yes, ma'am.
- 18 Q. Where did they find it?
- 19 A. In the woods.
- 20 Q. The officers?
- 21 A. Yes, ma'am.
- 22 Q. All right. And where were you in relation to the gun
- 23 when they found it?
- 24 A. I was about -- I was in the squad car.
- 25 Q. Okay. But as far as before you got into the squad car,

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1 before they caught you?

2 A. I was right beside the gun.

3 Q. Okay. And how did the gun get in the woods there?

4 A. I brought it with me.

5 Q. You brought it with you?

6 A. Yes, ma'am.

7 Q. Okay.

8 **MS. TESSITORE:** Your Honor, at this time the State
9 would move State's exhibit 15 into evidence.

10 **MR. GROVE:** I don't think they've satisfied the chain,
11 Your Honor.

12 **THE COURT:** Madame Solicitor.

13 **MS. TESSITORE:** Okay. Well, Your Honor, I've got
14 another witness that will testify a little bit further about
15 ---

16 **THE COURT:** Okay.

17 **MS. TESSITORE:** --- this. So, okay.

18 **THE COURT:** So request withdrawn at this time.

19 **MS. TESSITORE:** Yes. Request withdrawn, Your Honor.

20 Q. Okay. So where were you when the pizza order was
21 placed?

22 A. In the breeze-way.

23 Q. The same breeze-way?

24 A. Yes, ma'am.

25 Q. Okay. And where was the pizza going to be delivered

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- 1 to?
- 2 A. A fake apartment number.
- 3 Q. Okay.
- 4 A. But it was real, but didn't no one stay there.
- 5 Q. No one stayed there?
- 6 A. Yes, ma'am.
- 7 Q. All right. And do you remember the number?
- 8 A.
- 9 Q. Okay. And is that in the same building where you
- 10 were ...
- 11 A. Same building, but different breeze-way.
- 12 Q. Okay. Which apartment did you live in?
- 13 A. Apartment
- 14 Q. Okay. So that's in the same building as
- 15 A. Yes, ma'am.
- 16 Q. All right. And -- but is in that building or is
- 17 that somewhere else?
- 18 A. It's in another apartment building.
- 19 Q. Okay. So you began in the breeze-way of You were
- 20 having the pizza delivered to So at what point and
- 21 describe if you went up to and who you were with.
- 22 A. Could you repeat that?
- 23 Q. Okay. I'm going to break it down. Sorry. Where did
- 24 you go after the pizza was ordered?
- 25 A. Up to my apartment.

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- 1 Q. Okay. When -- so that was
- 2 A. Yes, ma'am.
- 3 Q. All right. Did you go up there alone?
- 4 A. Yes, ma'am.
- 5 Q. All right. And when did -- did you meet up with the
- 6 other guys?
- 7 A. They came and knocked on the door when the pizza
- 8 delivery man arrived.
- 9 Q. Okay. When you say they, who is they?
- 10 A. Brian and Cordell.
- 11 Q. All right. So Robert Jackson wasn't there at that
- 12 point?
- 13 A. Yes, ma'am.
- 14 Q. He was there?
- 15 A. Yes, ma'am.
- 16 Q. Okay. So describe when you got the knock on the door
- 17 and the pizza man was there, what happened at that point?
- 18 A. I went around back. Cordell and Brian had went around
- 19 front. Robert had went and knocked on the door and was
- 20 acting like somebody stayed there. And ---
- 21 Q. Wait. So can you back up? Who was there at the -- and
- 22 greeted the pizza man?
- 23 A. Robert Jackson.
- 24 Q. Okay. Robert Jackson greets the pizza man.
- 25 A. Yes, ma'am.

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1 Q. What was his role? Why was he greeting the pizza man?

2 A. I'm not sure.

3 Q. Okay. Well, did he -- did he know at that point that
4 the robbery was going to happen, if you know?

5 A. Yes, ma'am.

6 **MR. GROVE:** Objection, Your Honor. Speculation.

7 Q. Well, you talked about it prior?

8 **THE COURT:** Sustained.

9 A. Yes, ma'am.

10 Q. All right. So describe what happened.

11 A. When the pizza man was there Robert walked up to him.

12 He greeted him, knocked on the door trying to see if

13 somebody was there. Didn't nobody answer. So the pizza man

14 finally turned around, he started walking to his car. Brian

15 Lewis then walked up to him, put the gun on him, told him to

16 get -- demanded him to get down on the ground.

17 He searched his pockets. He grabbed the car keys, told

18 -- told his brother to grab the gun and hold the gun on him.

19 I was just standing there. He went to the car, crunk up the

20 car and he told me to kick him. I kicked him and we left.

21 Q. Okay. When you say ---

22 A. But Cordell -- after I -- after I kicked him and walked
23 to the car, Cordell stomped on his head a couple of times.

24 Q. Okay. When you say he cranked up the car, who cranked
25 up the car?

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- 1 A. Brian.
- 2 Q. And did you ever hold the gun during the robbery?
- 3 A. No, ma'am.
- 4 Q. Who held the gun during the robbery?
- 5 A. Brian and Cordell.
- 6 Q. Okay. Well, where were you when Brian was walking
- 7 towards him with the gun?
- 8 A. I was behind the staircase.
- 9 Q. All right. And what were you doing back there?
- 10 A. I was debating whether I wanted to stay or whether I
- 11 wanted to run.
- 12 Q. So you chose to stay?
- 13 A. Yes, ma'am.
- 14 Q. All right. And when you say -- you testified earlier
- 15 that he told you to kick him, kick the victim in the head,
- 16 ---
- 17 A. Yes, ma'am.
- 18 Q. --- who told you that?
- 19 A. Brian.
- 20 Q. So you took his orders?
- 21 A. Yes, ma'am.
- 22 Q. And you did that?
- 23 A. Yes, ma'am.
- 24 Q. And how was the victim laying on the ground when you
- 25 kicked him?

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1 A. On his stomach, face-down.

2 Q. And when you say Cordell held the gun, how did he hold
3 the gun in relation to where the victim was on the ground?

4 A. He was ---

5 MR. GROVE: Objection, Your Honor. Leading.

6 A. He was pointed -- he was pointing ---

7 THE COURT: Overruled.

8 MR. GROVE: Your Honor.

9 A. --- it at his back.

10 THE COURT: Hang on. Hang on. Hang on, sir.

11 Objection, go ahead. Anything else?

12 MR. GROVE: Objection to leading.

13 THE COURT: Objection overruled. Rephrase your
14 question and then you rephrase your answer.

15 MS. TESSITORE: Yes, sir.

16 Q. All right. Just describe how the victim was positioned
17 on the ground.

18 A. He was laying down on his stomach, face-down.

19 Q. Okay. And when Cordell had the gun where was he in
20 relation to the victim on the ground? What did he do with
21 the gun?

22 A. He -- you want me to answer your first question first?

23 Q. Sure.

24 A. He was a little bit behind him to the right. He was
25 pointing the gun like that.

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1 (Witness indicating)

2 Q. Okay. He being Cordell?

3 A. Cordell.

4 Q. All right. And where was Robert Jackson when this was
5 happening?

6 A. He ran off.

7 Q. Okay. Did you see which way he went? Or do you
8 remember?

9 A. He went somewhere towards -- back towards the office.

10 Q. Okay. And after Brian cranked up the car what happened
11 at that point?

12 A. I was walking to the car, Cordell kicked him, then he
13 stomped on his head. Brian told him to get in the car. We
14 got in the car, we drove off to Judson.

15 Q. Okay. And who was in the car when you drove off to
16 Judson?

17 A. Brian, Cordell and me.

18 Q. Where were you sitting in the car?

19 A. In the passenger's side.

20 Q. In the front or the back?

21 A. The front.

22 Q. Okay. And where was Cordell?

23 A. Backseat.

24 Q. And was there anyone else in the car other than Brian
25 driving it?

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1 A. No, ma'am.

2 Q. All right. So the three of you were in the SUV. Tell
3 me where you went from there. Or, actually, let me back up
4 one step. When Brian drove away did he go anywhere else in
5 the apartment complex before you went to Judson?

6 A. Yes, ma'am. He drove around.

7 Q. Okay. And do you know why you were driving around?

8 A. He was looking for the other -- he was looking for ---

9 **MR. GROVE:** Objection, Your Honor.

10 A. --- Robert Jackson.

11 **THE COURT:** Overruled.

12 Q. So he was looking for Robert Jackson?

13 A. Yes, ma'am.

14 Q. Did he find him?

15 A. No, ma'am.

16 Q. And so then that's when you went to Judson?

17 A. Yes, ma'am.

18 Q. Okay. What did you do in Judson?

19 A. We waited at one of -- at one of Brian's family members
20 house.

21 Q. All right. And how -- how far a drive is it from the
22 Grove Station Apartments?

23 A. Maybe ten, fifteen minutes ---

24 Q. Okay.

25 A. --- at the most.

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1 Q. Ten or fifteen minutes away. What happened to the
2 pizza that the pizza man brought?

3 A. We ate it.

4 Q. Okay. What else did you do before you were arrested
5 that night at the -- near the apartments?

6 A. What did I do?

7 Q. Yeah. I mean, ...

8 A. I didn't do nothing else.

9 Q. All right. So were you -- who did you hang with until
10 you got arrested?

11 A. Brian Lewis and Cordell Lewis.

12 Q. Okay. Do you -- do you recall -- let me ask you this.
13 Did you ever drive the vehicle?

14 A. No, ma'am.

15 Q. Did Cordell ever drive it?

16 A. No, ma'am.

17 Q. Did -- at any point in time did Brian leave without you
18 guys in the car?

19 A. Yes, ma'am.

20 Q. Do you remember when?

21 A. It was a little after we had gotten to his people's
22 house.

23 Q. Okay. And did he return?

24 A. Yes, ma'am.

25 Q. And did he still have the SUV?

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1 A. Yes, ma'am.

2 Q. And, obviously, -- so you were back in this area. When
3 did you go back to the area at the apartments there?

4 A. Later that night.

5 Q. Why did you go back?

6 A. Brian wanted to grab some clothes to go over at his
7 baby mama's house.

8 Q. Okay. And you and Brian, are you pretty tight?

9 A. No, ma'am. I met him through my sister.

10 Q. Okay. Y'all correspond on social media, texting and
11 stuff like that around that time period?

12 A. Yes, ma'am.

13 Q. Okay. And so when you went back he needed to get some
14 stuff. What -- where did you go specifically in that SUV
15 that night when you came back to that area?

16 A. Could you repeat that?

17 Q. Okay. Just before you were arrested -- where was the
18 SUV just before you were arrested?

19 A. Off in the cut.

20 Q. Off in the cut? Okay.

21 A. Off in a cut.

22 Q. All right.

23 A. Like a dirt road, closed road.

24 Q. Okay. And why were you down there?

25 A. Brian was parking the car so it wouldn't -- no one

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1 noticed it. And we was going back to the apartments.

2 Q. Okay. So are there any houses or anything around that?

3 A. Nothing but woods.

4 Q. Just woods. Okay. So y'all were down there. And did
5 you make it out of the car?

6 A. Yes, ma'am.

7 Q. Who drove to that spot?

8 A. Brian.

9 Q. All right. And did he ever get out of the vehicle when
10 you were at that spot ---

11 A. No, ma'am.

12 Q. --- where he was going to park it?

13 A. No, ma'am.

14 Q. Did you?

15 A. Yes, ma'am.

16 Q. All right. And when you got out describe what
17 happened.

18 A. I was getting out, a squad car had stopped at the stop
19 sign and another car was behind it. One of them pulled in.
20 Brian mashed the gas, hit one of them. The first one that I
21 had seen, he came my way, started shining the light in the
22 woods where I had took off at. And he finally found me,
23 arrested me.

24 Q. Okay. So where were you when you first saw the police
25 car?

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- 1 A. Inside the car.
- 2 Q. Inside which car?
- 3 A. The SUV.
- 4 Q. Okay. And at that point where was Brian?
- 5 A. Inside the car.
- 6 Q. All right. And what happened as soon as you saw that
- 7 police car? What did you do?
- 8 A. I backed away from the car and jumped in the woods.
- 9 Q. All right. And did you -- what did Brian do?
- 10 A. He put the car in drive and went head-on with one of
- 11 the officers.
- 12 Q. Okay. Did you see him after that?
- 13 A. No, ma'am.
- 14 Q. Okay.
- 15 **MS. TESSITORE:** One second.
- 16 (Pause)
- 17 Q. Do you know where -- well, strike that. When you were
- 18 found in the woods there by the officer, it must have been
- 19 pretty scary, huh?
- 20 A. Yes, ma'am.
- 21 Q. Were you cooperative?
- 22 A. Yes, ma'am.
- 23 Q. Did you offer to -- well, did you speak to the officer
- 24 when you were in the patrol car?
- 25 A. Yes, ma'am.

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1 Q. Did the officer Mirandize you? Tell ---

2 A. Yes, ma'am.

3 Q. --- you about your Miranda rights?

4 A. Yes, ma'am.

5 Q. All right. And you wanted to talk?

6 A. Yes, ma'am.

7 Q. Now do you recall if the officer asked you about who
8 was driving the vehicle?

9 A. No, ma'am.

10 Q. Do you recall if you provided any information about the
11 person driving the vehicle?

12 A. Yes, ma'am.

13 Q. Okay. What information did you provide at that time?

14 A. His appearance.

15 Q. His what?

16 A. Appearance.

17 Q. His appearance.

18 A. What he have on.

19 Q. All right. And as far as you recall what -- when you
20 got out of the car what was he wearing?

21 A. Purple Nike's, gym shorts and a Chicago Bulls shirt.

22 Q. Okay. And do you recall -- well, strike that. Okay.

23 So you gave that description of the driver as far as what he
24 was wearing.

25 A. Yes, ma'am.

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- 1 Q. Did you provide them a name?
- 2 A. Yes, ma'am.
- 3 Q. What name did you give them?
- 4 A. Isaiah Jefferson.
- 5 Q. Where did you come up with that name?
- 6 A. That was the name Brian told his sister whenever she
- 7 had called him asking him about what was going on.
- 8 Q. Okay. Which sister called him? Do you know?
- 9 A. Step.
- 10 Q. Step?
- 11 A. That's all I know. I don't know her real name.
- 12 Q. Do you know where she lived?
- 13 A. With him in the apartment they were staying in.
- 14 Q. Okay. So that's where this name came from?
- 15 A. Yes, ma'am.
- 16 Q. All right. And was that the true name of the driver?
- 17 A. No, ma'am.
- 18 Q. All right. So you lied to the police and told them it
- 19 was somebody else ---
- 20 A. Yes, ma'am.
- 21 Q. --- at that time?
- 22 A. (Affirmative nod).
- 23 Q. Did you later talk with the police that night?
- 24 A. Yes, ma'am.
- 25 Q. Did you go to the Law Enforcement Center where you were

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1 interviewed by an investigator?

2 A. Yes, ma'am.

3 Q. And when you got there did you have time to think about
4 what all had happened?

5 A. Yes, ma'am.

6 Q. And do you remember they read you your rights again
7 there?

8 A. Yes, ma'am.

9 Q. And you signed a piece of paper you understood your
10 rights?

11 A. Yes, ma'am.

12 **MR. GROVE:** Your Honor, I'd object to leading again,
13 just to renew that motion.

14 **THE COURT:** All right. Overruled.

15 **MS. TESSITORE:** Thank you, Your Honor.

16 Q. When you were interviewed in that time period at the
17 Law Enforcement Center did you later at that point tell the
18 officers any other information about the driver?

19 A. Yes, ma'am.

20 Q. What did you tell them?

21 A. I told them his name, where he lives, who stayed with
22 him. That's it.

23 Q. And who is that?

24 A. Brian Lewis.

25 Q. All right. Did you also identify the other two that

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1 were in the vehicle?

2 A. Yes, ma'am.

3 Q. So you came clean at that point?

4 A. Yes, ma'am.

5 Q. Did anyone threaten you or force you to give the

6 statement that you gave to the police?

7 A. No, ma'am.

8 Q. Did anyone force you or threaten you to come here today

9 to tell the truth?

10 A. No, ma'am.

11 Q. Do you know what the term jugg means?

12 A. Yes, ma'am.

13 Q. What does that mean to you?

14 A. It means to -- it's a way to get quick money.

15 Q. Okay. Is that something that -- is that what happened

16 here?

17 A. Yes, ma'am.

18 Q. All right. Please answer any questions that Mr. Grove

19 may have for you, okay?

20 A. Yes, ma'am.

21 **THE COURT:** Mr. Grove, your witness.

22 **MR. GROVE:** Thank you, Your Honor.

23 **Cross Examination by Mr. Grove:**

24 Q. You've pled guilty to attempted armed robbery, right?

25 A. Yes, sir.

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1 Q. Did you also plead guilty to conspiracy?

2 A. Yes, sir.

3 Q. Did you also plead guilty to assault and battery,
4 first?

5 A. Yes, sir.

6 Q. Okay. And attempted armed robbery carries up to twenty
7 years, right?

8 A. Yes, sir.

9 Q. And that -- do you know what it means to be an eighty-
10 five percent crime?

11 A. No, sir.

12 Q. Do you know what it means to be a violent crime?

13 A. No, sir.

14 Q. But you know that that charge carries up to twenty?

15 A. Yes, sir.

16 Q. And assault and battery, first, carries up to ten.

17 A. Yes, sir.

18 Q. And conspiracy carries up to five.

19 A. Yes, sir.

20 Q. And they agreed to reduce your armed robbery charge,
21 right?

22 A. Yes, sir.

23 Q. That carries a mandatory minimum ten up to thirty,
24 doesn't it?

25 A. Yes, sir.

DONNY CAMPBELL, JR. - CROSS EXAMINATION BY MR. GROVE

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- 1 Q. But you're not facing that anymore, are you?
- 2 A. No, sir.
- 3 Q. Because you're here today to testify, right?
- 4 A. Yes, sir.
- 5 Q. And I didn't make you that deal?
- 6 A. No, sir.
- 7 Q. And this Judge right here, he didn't make you that
- 8 deal, did he?
- 9 A. No, sir.
- 10 Q. That jury over there, they didn't make you that deal?
- 11 A. No, sir.
- 12 Q. This lady, she made you that deal, didn't she?
- 13 A. Yes, ma'am. I mean, yes, sir.
- 14 Q. And you hadn't been sentenced yet?
- 15 A. No, sir.
- 16 Q. So you're looking at a twenty year charge, right?
- 17 A. Yes, sir.
- 18 Q. And a ten year charge, right?
- 19 A. Yes, sir.
- 20 Q. And a five year charge, right?
- 21 A. Yes, sir.
- 22 Q. And that's -- if they run all those separately, that's
- 23 thirty-five years, isn't it?
- 24 A. Yes, sir.
- 25 Q. And so you're here today to testify knowing that one

DONNY CAMPBELL, JR. - CROSS EXAMINATION BY MR. GROVE

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1 day you're going to have to get sentenced on this?

2 A. Yes, sir.

3 Q. And your lawyer's here, isn't she?

4 A. Yes, sir.

5 Q. And your statement today is that Brian came out with
6 the gun, right?

7 A. Yes, sir.

8 Q. And then he, I think the term is, ran the victim's
9 pockets, right?

10 A. Yes, sir.

11 Q. He reached in and got all the stuff out, right?

12 A. Yes, sir.

13 Q. That the victim got down on his stomach, right?

14 A. Yes, sir.

15 Q. That then Cordell had the gun?

16 A. Yes, sir.

17 Q. But you never -- you never had the gun?

18 A. No, sir.

19 Q. But it's your gun?

20 A. Yes, sir.

21 Q. And officers reminded you of that when you were giving
22 your statement, didn't they?

23 A. Yes, sir.

24 Q. And they told you you were being charged with armed
25 robbery, right?

DONNY CAMPBELL, JR. - CROSS EXAMINATION BY MR. GROVE

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1 A. Yes, sir.

2 Q. And at the time you may not have known how much time
3 you were facing, but you certainly knew that was big
4 trouble, didn't you?

5 A. Yes, sir.

6 Q. So Robert Jackson, he -- you kind of bounced around a
7 little bit. Was he there when y'all came up with this
8 original plan or not?

9 A. No, sir.

10 Q. But he was around afterwards?

11 A. Yes, sir.

12 Q. Y'all -- you said that Brian and Cordell came and got
13 you when the pizza man got there, right?

14 A. Yes, sir.

15 Q. Okay. And that's when you came -- is it downstairs --
16 your apartment's upstairs?

17 A. Downstairs.

18 Q. So yours is downstairs?

19 A. Yes, sir.

20 Q. So you just came right on out, right?

21 A. Yes, sir.

22 Q. And your apartment is 2 ...

23 A. 77.

24 Q. 77, that's right. And you said that Brian placed the
25 order, right?

DONNY CAMPBELL, JR. - CROSS EXAMINATION BY MR. GROVE

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1 A. Yes, sir.

2 Q. But he placed it on your phone, right?

3 A. Yes, sir.

4 Q. And the order's going to right?

5 A. Yes, sir.

6 Q. And that's in your building, isn't it?

7 A. Yes, sir.

8 Q. And it's upstairs, right?

9 A. Yes, sir.

10 Q. And you knew nobody lived there, didn't you?

11 A. No, sir.

12 Q. You didn't know anybody lived there?

13 A. I wasn't staying out there that long.

14 Q. How long had you been out there?

15 A. I was in Grove Station for a month, month and a half at
16 the most.

17 Q. A month and a half, you didn't know that nobody lived
18 in

19 A. No, sir.

20 Q. But it's in your building, right?

21 A. Yes, sir.

22 Q. Earlier you said that it was a -- I think you called it
23 a fake apartment?

24 A. Yes, sir.

25 Q. That just means that it wasn't ---

DONNY CAMPBELL, JR. - CROSS EXAMINATION BY MR. GROVE

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1 A. Well, ---

2 Q. --- to your address?

3 A. It's a real apartment, but no one stayed there at the
4 time.

5 Q. So nobody stayed there?

6 A. Yes, sir.

7 Q. Okay. And originally, you were just talking with Ms.
8 Tessitore about that, originally you said Isaiah Jefferson,
9 right?

10 A. Yes, sir.

11 Q. And originally you said you weren't really out there,
12 were you?

13 A. No, sir.

14 Q. In the first statement you made to law enforcement you
15 told them you weren't involved, didn't you?

16 A. Yes, sir.

17 Q. And you told them I don't know what happened, I heard
18 this and I heard that, right?

19 A. Yes, sir.

20 Q. And that you didn't have anything to do with it at all?

21 A. Yes, sir.

22 Q. And they charged you anyway, right?

23 A. Yes, sir.

24 Q. And now you're here testifying today that you were
25 involved, right?

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1 A. Yes, sir.

2 Q. They arrested you kind of in the woods, didn't they?

3 A. Yes, sir.

4 Q. Or at least that's where they found you, right?

5 A. Yes, sir.

6 Q. Because one of the -- one of the officers saw you run
7 into the woods, didn't he?

8 A. Yes, sir.

9 Q. And he -- you said he shone the flashlight on you and
10 called you out there, right?

11 A. Yes, sir.

12 Q. And originally do you remember him asking if anybody
13 else was out there in the woods?

14 A. Yes, sir.

15 Q. And you said nobody?

16 A. Yes, sir.

17 Q. Right?

18 A. Yes, sir.

19 Q. You said you were by yourself out there, right?

20 A. Yes, sir.

21 Q. And originally you denied that there was a gun out
22 there, didn't you?

23 A. Yes, sir.

24 Q. And he said he was going to bring the K-9s, right?

25 A. Yes, sir.

DONNY CAMPBELL, JR. - CROSS EXAMINATION BY MR. GROVE

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1 Q. And then you said, well, there's a black gun. It was
2 right over there where I was laying, right?

3 A. Yes, sir.

4 Q. And they went over there right where you told them and
5 there was a black gun, right?

6 A. Yes, sir.

7 Q. And you said that was my gun, right?

8 A. Yes, sir.

9 Q. And you said that was the gun that was used in the
10 robbery, right?

11 A. Yes, sir.

12 Q. Do you remember getting -- in your interview in your
13 original statement do you remember saying that 'cause you
14 weren't really involved, you ought to get a second chance,
15 right?

16 A. Could you repeat that?

17 Q. Do you remember saying you think you ought to get a
18 second chance, right?

19 A. Yes, sir.

20 Q. And one day you're going to come back to court and
21 you're going to stand in front of the judge and you're going
22 to get sentenced, right?

23 A. Yes, sir.

24 Q. And you're going to ask that judge for a second chance,
25 won't you?

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, sir.

2 Q. You don't want to go to jail, do you?

3 A. No, sir.

4 Q. And you're looking at a heck of a lot of jail time,
5 aren't you?

6 A. Yes, sir.

7 MR. GROVE: No further questions.

8 MS. TESSITORE: No further questions..

9 THE COURT: Thank you, sir. You can step down. You're
10 free to leave if you want to. Call your next witness.

11 MS. TESSITORE: Your Honor, we'd ask that this witness
12 be released.

13 THE COURT: He can leave if he wants to.

14 MS. TESSITORE: Okay. Thank you, Your Honor.

15 THE COURT: You got about a forty-five minute witness?

16 MS. TESSITORE: Yes, sir. The State would call Jeremy
17 Jones.

18 **Jeremy Jones**, being duly
19 sworn testified as follows;

20 MADAME CLERK: Please have a seat. And will you state
21 your full name for the record.

22 MR. JONES: Jeremy B. Jones.

23 **Direct Examination by Ms. Tessitore:**

24 Q. Deputy Jones, where do you work?

25 A. Greenville County Sheriff's Office.

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. How long have you worked there?

2 A. Just under eleven years.

3 Q. And what is your role with them or your duties?

4 A. I'm a community deputy, Community Patrol Unit.

5 Q. Okay. Community Patrol Unit.

6 A. Yes, ma'am.

7 Q. And what does, just generally, what does that mean?

8 A. Respond to calls for service. We're usually used if
9 we're needed for special assignments like in this case where
10 we were needed to saturate an area looking for a certain
11 suspect vehicle, things like that.

12 Q. Okay. And with respect to those duties were you called
13 in to assist in this case?

14 A. Yes, ma'am, I was.

15 Q. Okay. And drawing your attention to later in the
16 evening just prior to Mr. Campbell being arrested, ---

17 A. Yes, ma'am.

18 Q. --- can you describe or just tell the jury what you
19 were out doing and what brought your attention to the -- to
20 the SUV?

21 A. Yes, ma'am. On that evening we were out with
22 Investigator Stanton looking for the suspect vehicle that
23 was stolen. We responded to the area of Lakeside Road --
24 actual -- one of the addresses we had stopped at was on
25 Staunton Bridge Road, Staunton Bridge Road, which is

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 right at the corner of Staunton Bridge and a little side
2 street there. I'm not sure of -- we were stopped there
3 talking to some individuals. And then a white car pulled
4 up.

5 As myself and Investigator Stanton approached that car,
6 we realized it was a employee of Domino's Pizza. He stated
7 that he had seen his boss' car right down the road on a
8 dead-end street. I had him lead us to that area. I was the
9 lead car behind him.

10 We drove down towards Lakeside, down towards the Grove
11 Station Apartments. He indicated with his right turn signal
12 at Lakeside Grove Road that was the road that the vehicle
13 was on.

14 I took a right and told everyone over the radio which
15 road the vehicle was on. As I approached I saw an
16 individual in a light blue shirt run into the tree line and
17 a car -- the SUV came speeding at me with his headlights
18 off. I came -- I swerved to the right, came to a stop as
19 the vehicle passed me and then heard a loud crash behind me
20 while I was looking in the tree line for the subject who had
21 ran into the woods.

22 Q. Okay. Were you able in that -- when the SUV came by
23 you were you able to see who was driving it?

24 A. No, ma'am, I wasn't.

25 Q. Okay. And ---

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. I was trying to avoid getting hit.

2 Q. Okay. Would you -- you said you were looking in the
3 wood line?

4 A. Yes, ma'am.

5 Q. Okay. And what happened as you were looking in the
6 wood line?

7 A. I turned around to get a better view. And as I came
8 back down the road towards Lakeside I shined my spotlight
9 off to the left of my vehicle and I could see a slight
10 discoloration in the trees. I was looking for that light
11 blue shirt I had seen. I could see it just there on the
12 edge of the tree line.

13 Got out of my vehicle, approached the area, gave loud
14 commands for the subject to come out with his hands up.
15 First command, he didn't come out. I believe the second or
16 third command he finally came out of the wood line with his
17 tree up -- with his hands up. I took him into custody, put
18 him in my patrol car.

19 I was asking him about any type of handgun or firearm
20 being used because we'd been told one was used in the
21 commission of the crime. At first he said there wasn't one.
22 I advised him I was going to call a K-9 up there, and that's
23 when he said he left one laying in the woods.

24 Q. Okay. And did you locate the weapon in the woods?

25 A. I didn't go into the woods looking for it. I called

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 for a K-9. Deputy Fuller, I believe, was the K-9 that
2 responded. And he found the firearm laying right in the
3 same area that Donny Campbell was laying.

4 Q. I'm showing you what's been marked as State's exhibit
5 28. If you could look at that and identify that.

6 A. That's the same area -- pretty much the same area that
7 he was laying in inside that tree line there.

8 Q. Okay. Is that a fair and accurate depiction of how it
9 appeared that night?

10 A. Yes, ma'am, it is.

11 Q. And ...

12 **MS. TESSITORE:** The State would move State's exhibit 28
13 into evidence.

14 **MR. MARTINEZ:** No objection.

15 **THE COURT:** All right. Admitted.

16 (Whereupon State's exhibit 28 was admitted into
17 evidence)

18 Q. I'm showing you State's exhibit 29 and 30. Take a look
19 at those.

20 A. Yes, ma'am.

21 Q. Do you recognize those?

22 A. Yes, ma'am, I do. This is the ---

23 Q. Well, let's -- let's -- just so, ---

24 A. Okay.

25 Q. --- for the record, exhibit number 29, what is that?

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. 29 is a photograph of where the firearm was laying in
2 the tree line. That is the same firearm.

3 Q. Okay.

4 A. And then 30 is just another picture of the firearm with
5 the Colt Commander written on the side of it.

6 Q. Okay. Are those fair and accurate depictions of how
7 you saw it that night ---

8 A. Yes, ma'am.

9 Q. --- where it was located? Okay.

10 **MS. TESSITORE:** The State moves 29 and 30 into
11 evidence.

12 **MR. MARTINEZ:** No objection.

13 **THE COURT:** Without objection, admitted.

14 (Whereupon State's exhibits 29 and 30 were admitted
15 into evidence)

16 Q. What -- can you describe what kind of gun that was?

17 A. Just a black handgun. It said Colt on the side of it.

18 Q. Do you know if it was a real firearm?

19 A. At that time I did not. I didn't touch it. Once the
20 K-9 officer said he found it, I walked down and looked at it
21 just to confirm it was there. And then I left it there for
22 forensics to recover.

23 Q. Okay. I'm showing you what's been marked as State's
24 exhibit 15 and ask you to look at that.

25 A. Yes, ma'am. The same gun.

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1 Q. That's the same gun?

2 A. Yes, ma'am.

3 Q. Okay. Thank you. Substantially the same condition as
4 when you saw it?

5 A. Yes, ma'am.

6 Q. All right. Deputy Jones, ...

7 **MS. TESSITORE:** Your Honor, can I publish these to the
8 jury?

9 **THE COURT:** Yeah, that's fine.

10 Q. All right. Deputy Jones, when you were out that
11 evening did you have a body cam on your uniform?

12 A. Yes, ma'am, I did. I had a Taser Axon camera mounted
13 on my glasses.

14 Q. Okay. Just one moment.

15 (Pause)

16 Q. All right. Deputy Jones, I'm showing you what's been
17 marked as State's exhibit 42. Do you recognize that?

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

19 Q. Have you had a chance to review that?

20 A. Yes, ma'am, I have. And these are my initials and the
21 date that I ---

22 Q. Okay.

23 A. --- reviewed it.

24 Q. And is that a fair and accurate depiction of what your
25 body cam picked up during the relevant times?

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am, it is.

2 Q. Okay.

3 MS. TESSITORE: Your Honor, the State moves State's
4 exhibit 42 into evidence.

5 MR. MARTINEZ: No objection.

6 THE COURT: Without objection, admitted into evidence.
7 Permission to publish.

8 MS. TESSITORE: Thank you, Your Honor.

9 (Whereupon State's exhibit 42 was admitted into
10 evidence)

11 Q. And, Deputy Jones, there's no sound on this video,
12 correct?

13 A. That's correct.

14 Q. Okay. So while it's playing, if there's anything that
15 you -- if you want to stop it and explain or if you want to
16 explain while it's playing, I'd ask you to go ahead and do
17 that for ---

18 A. Yes, ma'am.

19 Q. --- the sake of time.

20 MS. TESSITORE: Sorry, Your Honor, technical
21 difficulties.

22 THE COURT: All right.

23 (Whereupon State's exhibit 42, DVD, was played for the
24 jury)

25 A. So the white car that was just shown there, that is the

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 pizza delivery driver that came and told us that he had seen
2 his boss' vehicle down a dead-end road.

3 Q. Okay.

4 A. Just past the bridge here, he will indicate with his
5 right turn signal that that's the road that the vehicle is
6 parked. That's where the vehicle came at me with his
7 headlights off.

8 Q. Okay.

9 A. It's a little choppy.

10 Q. Does this appear to be in realtime?

11 A. All right. This is where I turned around. Now it's
12 running a little bit more smoothly. This is realtime here.
13 This is where I'm shining my spotlight into the tree line
14 here looking for the subject.

15 Right at this point here is where I see just to the
16 left of my light a slight discoloration, a change in the
17 color there. That's the blue shirt of Donny Campbell.

18 This is when I'm giving the orders to come out with his
19 hands where I could see them. I asked him at that point if
20 anybody else was in the woods. He said there wasn't anyone
21 else there.

22 Q. Did you see anyone else get out of the vehicle?

23 A. I did not. He was the only one I saw fleeing from the
24 vehicle.

25 Q. Okay. And what are the vehicles that are up there ---

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. That is where the collision happened.

2 Q. All right.

3 A. At this point in time I'm trying to get my blue lights
4 working so everyone knows where I am. There was a little
5 bit of confusion on who I had in custody, if another subject
6 had jumped out of the car up there.

7 Q. Did you have your blue lights activated when you went
8 down that road?

9 A. No, I did not. I believe with this video right around
10 the fifteen minute mark is where the K-9 arrived.

11 Q. Did Mr. Campbell have any other weapons on him?

12 A. No, ma'am, he did not. I believe he had a black cell
13 phone in his pocket.

14 Q. Okay. So at this point you're just waiting for the K-
15 9?

16 A. Yes, ma'am.

17 Q. While Mr. Campbell was out there talking with you did
18 he give a description of the driver?

19 A. He did not give that to me. Later during the
20 conversation here he gave a name.

21 **MR. MARTINEZ:** Objection. Hearsay.

22 **THE COURT:** Overruled.

23 A. The name he provided me then was Isaiah Jefferson.

24 Q. Okay.

25 A. And while I was waiting on the K-9 to arrive I

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 researched that name in our AS/400 computer system and also,
2 I believe, South Carolina DMV online to see if I could
3 locate anybody with that name.

4 Q. Were you able to locate anybody with that name?

5 A. No, ma'am, I was unsuccessful.

6 Q. Okay. Is there anything in the next couple of minutes
7 other than looking in your trunk?

8 A. No, ma'am. That was just trying to find just a package
9 to put his personal belongings into just to hold on to them.

10 Q. All the lights that were up the road there, do you know
11 what those officers were doing? Were you in communication
12 with them?

13 A. I was, yes, ma'am. I was advised that there was a
14 wreck. Actually when I first was coming down to look for
15 this subject I heard a loud crash and heard a deputy come
16 over the radio and say he just hit me.

17 **MR. MARTINEZ:** Objection. Hearsay.

18 **THE COURT:** Overruled.

19 A. And then after that I had advised them that I had
20 caught one of the subjects who had ran into the woods.
21 There was a bit of confusion at that point between us if it
22 was the subject who had jumped out after the wreck or the
23 one originally. After we settled that, they advised that
24 they were still looking for the other subject that was
25 driving the vehicle.

JEREMY JONES - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. Okay. Were there K-9 units out there?

2 A. Yes, ma'am.

3 Q. So did you move from this location at any point in time
4 while you were waiting for the K-9 officer to arrive?

5 A. No, ma'am. We remained in this area the whole time
6 keeping an eye on that area in the woods to make sure nobody
7 walked in there and messed with anything until a K-9 could
8 get there.

9 Q. Okay. Do you recall at what point in the video the K-9
10 arrives?

11 A. Right about the fifteen minute mark.

12 Q. Okay. Let me see if I can get to that.

13 A. This was the point where I was trying to locate a
14 subject by the name of Isaiah Jefferson.

15 Q. All right.

16 A. The headlights coming there is the K-9. And at this
17 point all I'm doing is letting the K-9 officer know the
18 general area that I found Mr. Campbell so that he could do
19 an article search of that area. And before he arrived, like
20 I said, Mr. Campbell had already admitted that he had left a
21 gun laying in the woods.

22 Q. Who is that officer?

23 A. That's Deputy Parris.

24 Q. Okay.

25 A. He was advising me on which way they were tracking the

JEREMY JONES - CROSS EXAMINATION BY MR. MARTINEZ

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1 other subject.

2 Q. Now there's an animal I see.

3 A. That's the K-9. It's Deputy Fuller's K-9 partner.

4 Q. Okay.

5 A. Right here is where Deputy Fuller's advising me that
6 they did locate a firearm in there. He's explaining to me
7 where it's laying.

8 Q. Okay.

9 A. Right there is the firearm laying on the ground. It
10 was left in that location until forensics could respond and
11 photograph it and take it into evidence.

12 Q. Okay. Is there anything else that occurs after with
13 respect to the gun or Mr. Campbell?

14 A. No, ma'am.

15 Q. Okay. All right. Just one moment.

16 (Pause)

17 Q. Okay. Please answer any questions that Mr. Grove may
18 have for you.

19 **THE COURT:** Mr. Grove or ---

20 **MR. GROVE:** Mr. Martinez will take ---

21 **THE COURT:** --- Mr. Martinez, your witness.

22 **Cross Examination by Mr. Martinez:**

23 Q. Officer Jones, so you're the one that obviously
24 encountered the vehicle on Lakeside Grove, right?

25 A. Yes, sir.

JEREMY JONES - CROSS EXAMINATION BY MR. MARTINEZ

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- 1 Q. And it's late at night, dark?
- 2 A. Yes, sir.
- 3 Q. No lights on that -- on that street?
- 4 A. No.
- 5 Q. And your blue lights were off, right?
- 6 A. Yes, sir.
- 7 Q. Okay. As you approached you saw -- you saw an
- 8 individual exit the car?
- 9 A. I saw one running from the area of the car, not exit
- 10 it.
- 11 Q. You didn't see anyone exit the car?
- 12 A. No, sir.
- 13 Q. Okay. And he was wearing a light blue shirt?
- 14 A. Yes, sir.
- 15 Q. And dark pants?
- 16 A. Yes, sir.
- 17 Q. And you saw him run toward the tree line?
- 18 A. Yes, sir.
- 19 Q. So you went to search for that individual?
- 20 A. Yes, sir.
- 21 Q. And you were shining your light in the -- into the
- 22 trees looking for him?
- 23 A. Yes, sir.
- 24 Q. Ultimately see him, right?
- 25 A. Just laying there on the bank, yes, sir.

JEREMY JONES - CROSS EXAMINATION BY MR. MARTINEZ

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1 Q. And you ordered him to come out?

2 A. Yes, sir.

3 Q. And you only saw that one individual go into the woods?

4 A. Yes, sir.

5 Q. And you learned later that it was Donny Campbell?

6 A. Yes.

7 Q. And you arrested him?

8 A. Yes, sir.

9 Q. And you asked him who else got out of the car?

10 A. Yes, sir.

11 Q. And -- or who else ran into the woods?

12 A. Yes, sir. And he indicated no one else did.

13 Q. Okay. And you, at that point, you called for the K-9

14 article search to see if a handgun ---

15 A. Yes, sir.

16 Q. --- was in the woods? But you didn't call for a K-9

17 track for an individual, right?

18 A. No, sir.

19 Q. And at that point Donny told you that he -- that he

20 brought a gun into the woods?

21 A. Yes.

22 Q. And he left it out there?

23 A. Yes, sir.

24 Q. And so you -- you waited for the K-9 to come and

25 confirm that it was there?

JEREMY JONES - CROSS EXAMINATION BY MR. MARTINEZ

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1 A. Yes, sir.

2 Q. And then you went and personally confirmed that it was
3 -- that it was there, right?

4 A. Yes, sir.

5 Q. And later you sat in on Donny's interview, right?

6 A. Briefly, yes, sir.

7 Q. And you reminded him that he brought the gun into the
8 woods?

9 A. Yes, sir.

10 Q. I think you said, don't forget about the gun you had
11 with you, right?

12 A. Sounds like something I would have said. I don't have
13 the ---

14 Q. It wouldn't ---

15 A. --- transcript with me.

16 Q. --- surprise you?

17 A. Yes, sir.

18 Q. And you said, remember, you're the one that had that
19 gun. Again, wouldn't surprise you?

20 A. Wouldn't surprise me, no.

21 Q. And so you confirmed that it was out there, right?

22 A. Yes, sir.

23 Q. But you didn't -- you're not part of forensics?

24 A. No, sir.

25 Q. You waited for forensics to come?

JEREMY JONES - CROSS EXAMINATION BY MR. MARTINEZ

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1 A. Yes, sir.

2 Q. And so you wouldn't be the one to collect it, right?

3 A. No.

4 Q. So since you're not part of forensics you wouldn't --
5 you didn't -- you wouldn't be the one to swab it for DNA?

6 A. No, sir.

7 Q. Or test it for fingerprints?

8 A. No, sir.

9 Q. Or do any other kind of test?

10 A. No, sir.

11 Q. But Donny Campbell's -- he told you that he took that
12 gun into the woods, ---

13 A. Yes, sir.

14 Q. --- right? And he -- and that he -- you found it where
15 he was laying, right?

16 A. Yes, sir.

17 Q. Okay.

18 **MR. MARTINEZ:** Nothing further.

19 **THE COURT:** All right. Thank you, sir. You can step
20 down.

21 A. Thank you, sir.

22 **THE COURT:** Ladies and gentlemen of the jury, now is a
23 good time to go ahead and break for lunch. Since it's ten
24 past 12:30, I'll give you til ten after two to be back,
25 okay?

1 Remember what I told you, cautionary instruction, while
2 you're away don't talk about the case with anybody. If
3 anybody tries to talk about the case with you in violation
4 of my instructions, please let me know and I'll deal with
5 it. Don't do any independent research. Your decision must
6 be made solely from the evidence received in this courtroom,
7 okay?

8 Also, let me go ahead and appoint a foreperson of the
9 jury before I leave, before y'all leave. That's going to be
10 Mr. Jackson. Matthew Jackson, where are you? Thank you for
11 volunteering. I appreciate that.

12 (Laughter)

13 It's going to be your added duty, Mr. Foreman, you'll
14 be -- you'll be presiding over the deliberations in the jury
15 room whenever y'all get to start deliberating your verdict.
16 You'll also be the jury's spokesperson here in court.

17 It'll also be your sole duty to write on the verdict
18 form whatever the verdict is. The verdict has to be
19 unanimous. I'll tell you more about that at the end. And
20 nobody else is authorized to write on the verdict form, only
21 you. And you can't write on it until y'all have reached a
22 unanimous verdict, okay? So thank you again for
23 volunteering for that. We'll see you back at 2:10, okay?

24 (Whereupon the jury exited the courtroom at 12:39 pm)

25 **THE COURT:** Scheduling-wise, Madame Solicitor, who's

1 your next witness?

2 **MS. TESSITORE:** Your Honor, the next witness should be
3 a very brief witness, Deputy Whitlock. And then I intend to
4 call the K-9 officer, who should be very brief, and then the
5 co-defendant.

6 **THE COURT:** All right. So the co-defendant, who's
7 coming out of lock-up, is going to be the third one in this
8 afternoon?

9 **MS. TESSITORE:** Oh, well, let's see.

10 **THE COURT:** That's why I'm asking is I need ---

11 **MS. TESSITORE:** Oh, I'm sorry.

12 **THE COURT:** I'm trying to, you know, I hate to have the
13 jury in here for a thirty minute witness, send them back out
14 while we bring somebody in.

15 **MS. TESSITORE:** Yes, sir.

16 **THE COURT:** It just looks bad.

17 **MS. TESSITORE:** He'll either be the fourth or the
18 fifth.

19 **THE COURT:** Okay. So we can take a break around then.
20 We'll try to coordinate that with that afternoon recess.
21 All right. Anything else before we take a break for lunch?

22 **MS. TESSITORE:** Your Honor, just very briefly. I just
23 wanted to follow up on the record regarding what you had
24 placed on the record with respect to the co-conspirator
25 statements.

1 **THE COURT:** Yes.

2 **MS. TESSITORE:** And I just wanted to make sure -- I
3 couldn't put my finger on it before, but it's 801(d)(2),
4 which is any statement by a co-conspirator or a party during
5 the course of any furtherance of a conspiracy. And the
6 State would submit that that would also support the -- on
7 the hearsay.

8 **THE COURT:** Okay. Well, you know, you may be right on
9 that, but, Mr. Grove, I've ruled against him on every other
10 objection. I had to throw him one bone, you know?

11 **MS. TESSITORE:** Yes, sir.

12 **THE COURT:** So I threw him that one. All right. Thank
13 you. We're down for lunch.

14 **MS. TESSITORE:** Thank you, Your Honor.

15 **MR. GROVE:** Thank you, Judge.

16 (Whereupon court was in recess at 12:41 pm)

17 (Whereupon court reconvened at 2:22 pm)

18 **THE COURT:** Thank you. All right. Anything before we
19 bring the jury in?

20 **MS. TESSITORE:** Your Honor, I think there is one quick
21 matter that we -- discussing now.

22 **THE COURT:** Okay. Yeah.

23 **MS. TESSITORE:** Your Honor, I have presented Mr. Grove
24 and Mr. Martinez with a transcript of Brian Lewis', the
25 Defendant's statement, that was made at the LEC that we were

1 having so much trouble hearing ---

2 THE COURT: Yeah.

3 MS. TESSITORE: --- in addition to the microphones this
4 transcription would essentially be offered by the State as a
5 demonstrative aid to assist the jury to read along if they
6 choose to while he's speaking.

7 And then I would collect the -- if the Court,
8 obviously, allowed it to be published to the jury, they
9 would each have a copy. And then at the end of that video
10 these would be collected back. They would, you know,
11 obviously, if the Court feels like there should be a special
12 instruction that this not be considered evidence, but what
13 they hear as actual evidence, that might -- I don't know if
14 that satisfies Mr. Grove's concerns.

15 THE COURT: Okay.

16 MS. TESSITORE: But I can hand that up to you and your
17 law clerk if you'd like to review it. I won't be probably
18 -- he may be the last witness today. So ...

19 THE COURT: Okay. Well, I tell you what, why don't we
20 do this. Well, go ahead, Mr. Grove. What you want to tell
21 me?

22 MR. GROVE: If you're going to wait to hear more from
23 her, I'll wait ---

24 THE COURT: Well, ---

25 MR. GROVE: --- and raise my objections later, but I

1 also have ---

2 **THE COURT:** As a preliminary ruling, okay, I'm probably
3 not going to allow that.

4 **MS. TESSITORE:** Okay.

5 **THE COURT:** Okay? Unless you have the person who
6 transcribed it to come here to testify that, you know, to
7 certify it, that kind of thing. I mean, the statement is
8 what the statement is.

9 **MS. TESSITORE:** Right. The officer has reviewed it and
10 he would testify that he's reviewed it and that it is ---

11 **THE COURT:** If you want to proffer it, you can do that.
12 If you want to make your record, I'll let you do that, but
13 probably nine times out of ten I'd say, no, I'm not going to
14 let a transcript in of a recorded statement. We'll let them
15 hear the recorded statement.

16 **MS. TESSITORE:** Yes, sir.

17 **THE COURT:** Okay?

18 **MS. TESSITORE:** Do you want to review this at all or

19 ...

20 **THE COURT:** No.

21 **MS. TESSITORE:** No? Thank you, Your Honor.

22 **THE COURT:** All right. Anything else?

23 **MR. GROVE:** Oh, Your Honor, I did -- I meant to say
24 this before lunch, just a housekeeping matter. The body cam
25 video that was entered into evidence without objection from

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 the Defense, the sound was redacted. And just for the
2 purposes of the record, that was by agreement between ---

3 **THE COURT:** Okay.

4 **MR. GROVE:** --- the State and the Defense, that the
5 sound was removed and it was just ---

6 **THE COURT:** You want me to tell the jury that?

7 **MR. GROVE:** Sir?...

8 **THE COURT:** You want me to tell the jury that?

9 **MR. GROVE:** No. I just wanted the record to be clear
10 that ---

11 **THE COURT:** Okay.

12 **MR. GROVE:** --- there's not supposed to be any sound on
13 that.

14 **THE COURT:** Okay. Sounds good. All right. Let's
15 bring the jury in.

16 (Whereupon the jury entered the courtroom at 2:25 pm)

17 **THE COURT:** All members of the jury are present. The
18 State may call your next witness.

19 **MS. TESSITORE:** Thank you, Your Honor. The State would
20 call Investigator Whitlock.

21 **William Whitlock, being**
22 duly sworn testified as follows;

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

25 **MR. WHITLOCK:** William David Whitlock.

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 **MADAME CLERK:** Thank you.

2 **Direct Examination by Ms. Tessitore:**

3 Q. Investigator Whitlock, tell the jury where you work.

4 A. The Greenville County Sheriff's Office.

5 Q. And how long have you worked there?

6 A. Since 2009.

7 Q. In what capacity?

8 A. I serve dual roles, the gang investigator for
9 Greenville County as well as being a task force officer for
10 the Bureau of Alcohol, Tobacco and Firearms.

11 Q. Okay. And were you in that same position back in July
12 of 2015?

13 A. I was a gang investigator, yes, ma'am.

14 Q. Okay. And as an investigator, in your role as an
15 investigator were you called out to the scene on the evening
16 of July 22nd, 2015?

17 A. Yes.

18 Q. And who called you out there?

19 A. Investigator Mike Stanton.

20 Q. Okay. And when you got out there what was the first
21 thing you did?

22 A. Well, initially we went to the Grove Station
23 Apartments, basically canvassing the area for lack of a
24 better term, just talking with the people out there to see
25 if anybody may have saw anything to a robbery that occurred

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 previously. That took approximately an hour or so.

2 We then decided to start leaving that area to go to
3 other parts. The majority of everyone that was there with
4 us took a right out of the apartment complex and started
5 going towards the Staunton Bridge Road area. I decided to
6 take a left because there's some other dead-end roads that
7 we had found abandoned stolen vehicles and that sort of
8 thing previously.

9 Q. Okay. And did -- at some point were you called to the
10 collision scene?

11 A. I heard a large crash. And then I heard over the radio
12 that someone said they'd been hit. And they -- all the
13 radio traffic said they were out near the Staunton Bridge
14 Road. I responded to that area.

15 When I arrived I saw a patrol car with heavy front-end
16 damage. The left front tire was completely turned left.
17 Saw one of the deputies still sitting in that car. And then
18 I saw a SUV that matched the description of the earlier BOLO
19 of the victim's stolen Toyota Highlander.

20 Q. Okay. I'm going to show you -- well, when you got out
21 there and you saw the SUV what did you do?

22 A. Initially I went towards the SUV just to verify there
23 was no one still inside that car that could possibly be a
24 threat to myself and the public. I then returned back to
25 Deputy Hayden, who was in that original patrol car. I made

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 sure that he was okay and was being attended to.

2 At that point in time there were, obviously, a lot of
3 things going on. I then chose the option of beginning to
4 secure the collision scene and began preserving the evidence
5 through photograph.

6 Q. All right. Speaking of photographs, I'm showing you
7 what has been marked as exhibits 34, 35 -- well, let's just
8 look at those two first. And take a look at those and tell
9 me if you can identify those.

10 A. Yes. That was the victim's Toyota Highlander.

11 Q. Okay. And did you take those pictures?

12 A. I did.

13 Q. Is that -- are those fair and accurate representations
14 of how it appeared when you got on the scene there
15 immediately?

16 A. We opened those doors to that extent. Obviously, like
17 I said, we looked at it, but that was how all the items
18 inside of the car was.

19 Q. Okay.

20 A. Other than the doors being opened.

21 Q. So when you arrived do you recall if any of the doors
22 were open?

23 A. I believe the passenger door was sort of cracked open.
24 Again, I wasn't the first person there, but that's how I
25 found it initially.

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. All right. And so are these fair and accurate
2 depictions of how you found it after opening the doors?

3 A. Yes.

4 Q. Okay. And what was the purpose of taking those
5 pictures?

6 A. To be able to photograph everything as it was before
7 anyone else came. There again, there's a vehicle collision,
8 which meant that highway patrol amongst other outside
9 agencies were going to come to that area to have independent
10 investigations aside from the robbery investigation that I
11 was assisting with initially.

12 Q. Okay. And, let's see, I'm going to have you look at
13 exhibit 22, 23 and 24 and have you identify those.

14 A. It's the inside of the same SUV. That's the driver's
15 floor of the same SUV. And that is the center console of
16 the same Toyota Highlander, SUV.

17 Q. Okay. And, again, are they fair and accurate
18 depictions of how you saw the inside of that vehicle?

19 A. That's exactly how it was when I got there.

20 Q. Okay. And you said you heard the crash?

21 A. Yes.

22 Q. And how quickly did you respond to the vehicle?

23 A. I was maybe less than a mile away. As fast as I could
24 get there.

25 Q. Okay.

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 **MS. TESSITORE:** The State would move exhibit 23, excuse
2 me, 22, 23, 24, 34 and 35 into evidence.

3 **MR. GROVE:** No objection.

4 **THE COURT:** Without objection, they're entered into
5 evidence.

6 **MS. TESSITORE:** Thank you, Your Honor.

7 (Whereupon State's exhibits 22, 23, 24, 34 and 35 were
8 admitted into evidence)

9 Q. All right. Did you -- did you collect anything from
10 the floorboard of the vehicle?

11 A. Yes, ma'am.

12 Q. I'm showing you what's been marked as State's exhibit
13 43. And if you could look inside that bag and tell me if
14 you recognize that.

15 A. That's the t-shirt that was in the driver's floorboard
16 of the Toyota Highlander.

17 Q. Okay. And can you take a look at it and tell me if
18 it's in substantially the same condition as when you
19 collected it that evening.

20 A. Yes, ma'am, it is.

21 Q. Okay. And where did that come from today or yesterday
22 when the trial began?

23 A. Greenville County property and evidence.

24 Q. Okay. Tell the jury how you go about putting evidence
25 in or that particular piece of evidence.

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Specifically anything where there is even the remote
2 possibility of any type of forensics, that's fingerprints,
3 DNA, anything that someone in a lab may have to come at some
4 point in time and do more of a scientific, for lack of a
5 better term, look at these things, we would seal it with red
6 evidence tape.

7 Look at the top of the bag, you'll see the top half of
8 my initials here, the top half of the case number, my
9 initials there again. And then the bottom is the bottom
10 part of the date that I put it in there. And that piece of
11 tape just went right through there to seal it to make sure
12 that the next person that opens this up is the actual
13 forensic technician.

14 Q. Okay. And was that opened for court today?

15 A. Yes, it was.

16 Q. And when did you place it into property and evidence?

17 A. The night of the 22nd.

18 Q. And where did you put it physically in property and
19 evidence? How did that work?

20 A. Property and evidence, we have clerks that are there
21 normally -- normal business hours, eight to five. Anytime
22 it's after five there's lockers that are just outside of the
23 property and evidence room.

24 Those lockers are just a push button lock. There's no
25 keys. No one that's inside the sheriff's office or the city

WILLIAM WHITLOCK - DIRECT EXAMINATION BY MS. TESSITORE

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1 police department can get into those lockers.

2 So whatever you put in there you're putting in the
3 actual evidence sealed however you're going to do it as well
4 as evidence forms telling those evidence clerks this is
5 what's in this bag, this is who I am, this is what I'm
6 claiming to keep and here's any type of request I have for
7 it. You put it in those lockers and then you press the
8 button and it'll be secured til the next morning when that
9 evidence technician comes in.

10 Q. Okay.

11 **MS. TESSITORE:** At this time the State would move
12 exhibit number 43 into evidence.

13 **MR. GROVE:** No objection.

14 **THE COURT:** Entered into evidence.

15 (Whereupon State's exhibit 43 was admitted into
16 evidence)

17 **MS. TESSITORE:** May we publish it, Your Honor?

18 **THE COURT:** Sure.

19 Q. Okay. If you could just take it out of the bag and
20 hold it up and tell the jury what that item is.

21 A. It is a black Chicago Bulls t-shirt.

22 Q. And when you found it in the vehicle where did you find
23 it?

24 A. The passenger floorboard just like it would -- if you
25 would take it off and just to -- to throw it down there.

WILLIAM WHITLOCK - CROSS EXAMINATION BY MR. GROVE

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1 Excuse me, the driver's floor.

2 Q. All right. So the driver's floorboard?

3 A. Yes.

4 Q. Okay.

5 A. Right there.

6 Q. Right there. Okay. Thank you. If you'd just place it
7 back in the bag.

8 **MS. TESSITORE:** Your Honor, may I publish the
9 photographs to the jury at this time?

10 **THE COURT:** Yes.

11 Q. All right. Please answer any questions that Mr. Grove
12 or Mr. Martinez may have, please.

13 **THE COURT:** All right.

14 **Cross Examination by Mr. Grove:**

15 Q. Investigator Whitlock, evidence preservation, that was
16 -- that was a big part of your job that night, right?

17 A. Yes, sir.

18 Q. Photographs that you've shown, yeah?

19 A. Yes, sir.

20 Q. And then securing tangible evidence?

21 A. Correct.

22 Q. In fact, you secured a phone, and a t-shirt, and
23 gloves, right?

24 A. That's correct.

25 Q. And when you went to property and evidence you

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 submitted a request for DNA latent prints, didn't you?

2 A. Yes, sir.

3 Q. And then you -- and that was on some of the items.

4 Then you submitted another request on some of the other
5 ones. And that's standard procedure, right?

6 A. Yes, sir.

7 Q. And you didn't do any of those tests, right?

8 A. That's correct.

9 Q. Your job is to make sure that the evidence is collected
10 and preserved, right?

11 A. Correct.

12 Q. And then turn it over to somebody else so that they can
13 do the testing?

14 A. That's right.

15 Q. And that was your role that night?

16 A. That's it.

17 **MR. GROVE:** No further questions.

18 **THE COURT:** All right. Thank you, sir. You can step
19 down. Call your next witness.

20 **MS. TESSITORE:** Thank you, Your Honor. The State calls
21 Matt Anderson. May this witness be excused, Your Honor.

22 **THE COURT:** Yes.

23 **MS. TESSITORE:** Thank you.

24 **Matthew Anderson, being**

25 duly sworn testified as follows;

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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

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

4 **Direct Examination by Ms. Tessitore:**

5 Q. Deputy Anderson, where do you work?

6 A. Greenville County Sheriff's Office.

7 Q. How long have you worked there?

8 A. Since 2009. About eight years.

9 Q. And what is your title there?

10 A. Right now I'm a K-9 handler.

11 Q. And what does that mean?

12 A. It means I work a dog, basically. I have a K-9,

13 Striker. I support the Road Support Investigative

14 Divisions, anytime they need a dog to sniff or find

15 somebody. My dog's trained in multiple things, tracking,

16 narcotics, handler protection, articles and apprehensions.

17 So if they need one of those things, I'll go help them out.

18 Q. Okay. And did you have the opportunity to help out on
19 the evening of July 22nd of 2015?

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

21 Q. All right. Can you tell the jury how you became
22 involved to assist there.

23 A. On the evening -- well, actually I train. It was a
24 Wednesday. We train every Wednesday. I want to say

25 Investigator Stanton got on the radio and said, hey, could

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 we get some K-9 units over here. We're trying to find a
2 suspect in a robbery and a few other things.

3 And most of the units responded. I responded a little
4 bit after the fact. Like I said, we were training.

5 Responded to Lakeside Drive, met with our Directed Patrol
6 Unit at which time they gave me a description of a subject,
7 told me what charges we might have on him and where he might
8 be.

9 We then went to apartment But again, I had a
10 pretty detailed description. Went to apartment As
11 they're making contact at the front door, I took a position
12 around back. Reason being, in the apartment, they could
13 only get out one way. It was either the door or back
14 windows. I ---

15 Q. Do you ---

16 A. I'm sorry.

17 Q. I'm sorry.

18 A. Absolutely.

19 Q. Let me just -- if you could slow down just a little
20 bit. You said they were at the front door. Who was at the
21 front door?

22 A. A Directed Patrol Unit. I don't know which officers
23 were there exactly. A Street Crimes Unit or people who --
24 they kind of go out and help investigate, basically.

25 Q. Okay. So other officers?

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. Yes, ma'am.

2 Q. All right. And were you able to view a picture ---

3 A. Yes, ma'am, I was.

4 Q. --- of the possible suspect?

5 A. The good thing about this unit is this is what they do
6 all day every day, they help investigate. So when I get
7 there typically they'll give me a picture, a very detailed
8 description.

9 Q. All right. And what was the description you were given
10 regarding the suspect as far as any clothing or anything?

11 A. It was dark pants. Again, we couldn't tell if it was
12 jeans or -- they kind of said shorts, it was long shorts, no
13 shirt. Specifically one thing would identify would be
14 purple or white shoes. They said they remembered that.
15 That was one of the big things they clarified.

16 Q. Okay.

17 A. And that it was a black man with short hair and no
18 shirt.

19 Q. Okay. And so did you -- where did you position
20 yourself with respect to apartment

21 A. It's kind of difficult to explain, but there's a
22 breeze-way that comes through the apartment.

23 Q. Would it be easier if I show you the ---

24 A. That would be great. Thank you.

25 Q. --- aerial photo? Okay. If you could just step down

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 briefly. Okay. I'm showing you State's exhibit 46. And if
2 you could without -- get it a little bit closer to the jury.

3 A. May I first step to the other side?

4 Q. That would be perfect. Okay. Can you explain where
5 you were and where the apartment was?

6 A. Yes. This is Grove Station Apartments and this is
7 Lakeside Drive. There's an accident up here I had to pass.

8 Q. If you can make sure that all the jurors can ---

9 **THE COURT:** Yeah, y'all need to speak up, please.

10 A. As I came down Lakeside Drive I took the first entrance
11 in here, came around and parked and came up to this building
12 up here, which, I believe, is There's an apartment
13 right between the breeze-way. And I positioned myself right
14 back here. There's two windows back here. I positioned
15 myself where I could see down the breeze-way and the windows
16 themselves.

17 Q. Okay. And what did you observe?

18 A. While I was there, again, I just observed two windows.
19 There was also another deputy there with me. As I was
20 watching them make contact, I had movement at the window, at
21 which time I saw the window fly open.

22 I saw a black male with no shirt, dark pants. And then
23 the last thing out of the window was purple shoes. And
24 which I identified, as he looked back over his shoulder, it
25 was a deputy illuminating with a flashlight, and I

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 identified the face through the picture which he showed me.

2 And he took off running out towards the courtyard.

3 Q. Okay. And which direction, if you recall?

4 A. He came right around this way back towards the initial
5 parking lot. So kind of in this area right here.

6 Q. Okay. And what happened after you illuminated him and
7 could see him clearly?

8 A. Once I identified him as the subject we were looking
9 for, the other officer that was back there told him to stop.
10 I told the officer to get out of the way because I had a K-
11 9. Followed him for a short while. I was able to tell him,
12 stop or you're going to get bitten by a dog. I think my
13 words were stop or I'm going to send the dog.

14 This did not work. I sent the dog. As the dog was
15 running the subject fell down. As he was trying to get up,
16 my dog apprehended him.

17 Q. Okay. I'm going to take this down and have you take --
18 retake your seat.

19 A. Thank you.

20 Q. And when you say your dog apprehended him how did he do
21 that?

22 A. He bit him on the left arm.

23 Q. Okay. And can you explain a little bit about how
24 they're trained to ---

25 A. Absolutely. The way our dogs work is the bite command

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 is really nothing more than a sit command. It is not
2 aggression. It is not angry. It's just this is what they
3 do. They can't grab with hands because they don't have
4 thumbs. So they use their mouth.

5 Once I tell my dog the command, whatever he sees he's
6 going to go to and he's going to hold onto it. He's not
7 going to bite in multiple spots. He's not going to tear.
8 He's just going to grab with the very back of his mouth that
9 he can get and hold on. It's simple pain compliance. Just
10 do -- it's like putting your hand in a small vice grip,
11 basically.

12 He's going to hold that until I deem that it's safe for
13 other officers and myself to tell him to let go. When I
14 tell him to let go, typically I'll grab him by the collar
15 and just tell him to let go.

16 And that's just something I do. I don't have to grab
17 him. I just say -- tell him to let go. It's called the
18 outing sequence. At which time he lets go and he'll come
19 back to my side. And then other officers can do what they
20 need to do.

21 Q. So when the suspect was -- his arm was in the jaw of
22 the dog, ---

23 A. Yes, ma'am.

24 Q. --- did he comply ---

25 A. He did not.

MATTHEW ANDERSON - DIRECT EXAMINATION BY MS. TESSITORE

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1 Q. --- at that point?

2 A. Even with my K-9 attached he continued to roll,
3 continued to try to get up, continued to resist commands,
4 which were given. I was giving them.

5 Other -- at that point the deputies that were at the
6 front, I call it the front of the breeze-way at that -- they
7 came around to assist in the arrest. They were also giving
8 commands, you know, give us your hands, stop resisting, you
9 know.

10 Q. Okay. Did you ever announce that you were the police?

11 A. Yes, ma'am.

12 Q. Did you -- what was your uniform? Were you ---

13 A. It was ---

14 Q. --- wearing a uniform or plain clothes?

15 A. Pretty much exactly what I'm in now, but I have an
16 outer vest cover. And it says sheriff's office K-9 on it
17 with a badge and the name in the same spots. It's just
18 black and it has basically my leashes and stuff like that on
19 it.

20 Q. Okay.

21 A. But it's exactly the outfit I'm in now.

22 Q. And was there -- as far as just the lighting out there,
23 you said that one of your ---

24 A. I had a cover officer. Deputy Hodges was with me. And
25 he illuminated the window and the subject as he came out of

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1 the window and also illuminated as he fled. So I was able
2 to identify him and see the clothing and match the picture
3 with what I saw running.

4 Q. Okay. And about how far did he get?

5 A. Probably no more than thirty to forty yards..

6 Q. And why do you use the dog instead of just ---

7 A. It ---

8 Q. --- going after him?

9 A. It's safer. I can give my dog a command from across
10 the room. If I send my dog across the room and he
11 apprehends a subject, especially if they've been something
12 violent committed or if they're believed to be dangerous, I
13 don't have to go put hands-on.

14 Because they're not searched, there's no telling what
15 the intention of that subject is, especially if they're
16 fleeing and they recently committed or believed to have
17 committed a violent crime, my dog can go over there, make
18 the apprehension, hopefully get the subject to comply, at
19 which time I can tell him to let go and then give him
20 commands to where it's safe for myself and safe for other
21 deputies.

22 Also it allows us, if he's running, he may be faster
23 than the deputies. He's not going to be faster than my
24 partner. So it also allows safety to the public knowing
25 that, hey, I can apprehend him and there's less of a chance

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1 of him escaping and doing harm to the general public.

2 Q. And that worked in this case?

3 A. Yes, ma'am, it did.

4 Q. Now after -- you said that he was not complying with
5 the commands. Were you able to finally subdue him and get
6 him into custody?

7 A. Yes, ma'am. Like I said, there were other deputies on
8 the scene. After several got there, even though he was not
9 compliant, there was no need for my dog at that point
10 because there were already officers within that close
11 proximity.

12 I told Striker to let go, he let go, I backed up. And
13 there were several officers that were able to just pull his
14 arms behind him. Even though he was still pulling away,
15 they were able to get handcuffs on him.

16 Q. Okay. And who was that suspect that you had under
17 arrest at that time?

18 A. It was the Defendant, ma'am.

19 Q. And do you see him in the courtroom?

20 A. Yes, ma'am.

21 Q. And where is he?

22 A. He's right over there.

23 (Whereupon the witness pointed to the Defendant)

24 Q. What is he wearing?

25 A. In the white.

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1 Q. White?

2 MS. TESSITORE: Let the record reflect that he's
3 pointing to the Defendant:

4 THE COURT: All right.

5 MS. TESSITORE: Thank you, Your Honor.

6 Q. Now as to -- moving along to the point where he's
7 apprehended.

8 A. Yes, ma'am.

9 Q. Did -- what do you do at that point since he's ---

10 A. As soon as the scene is safe to do so -- pretty much as
11 soon as they're in handcuffs and we determine that there's
12 not, you know, another subject on-scene or that he doesn't
13 have a weapon or anything that would endanger ourselves or
14 an ambulance, we request EMS.

15 A lot of times we have them staging close. At this
16 point we got on the radio saying -- asked our dispatch, hey,
17 can you send us an ambulance in reference to a K-9
18 apprehension or a dog bite. At which time they said, yes,
19 and he was on the way.

20 Q. Okay. And before EMS arrived do you recall
21 Investigator Stanton? Was he out there?

22 A. I do. Again, an ambulance had already been requested.
23 In the time while we were waiting for it to get there
24 Investigator Stanton showed up. I was there while he
25 Mirandized the subject. I heard him read him the warnings.

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1 And then at that point I went and put, you know, I went
2 and took care of other things. That wasn't really my point.
3 At that point I let him investigate and do his thing.

4 Q. Okay. Tell the jury what you do with the K-9 after the
5 ---

6 A. Pretty much immediately after the apprehension he gets
7 excited. I hate to say it, but it's his job. He likes to
8 work. Due to his excitement after he gets an apprehension,
9 he's no longer needed, I just put him back in the car.

10 Q. Okay. So was the dog out there at all when
11 Investigator Stanton and Kicklighter were out there talking
12 to him?

13 A. Not while they were talking to the Defendant, no,
14 ma'am.

15 Q. Okay. And how quickly did EMS arrive?

16 A. I'd probably have to look -- I can't say. Probably no
17 more than five or seven minutes at the absolute most. It
18 couldn't have been -- I'd have to look at the report, but I
19 ---

20 Q. Okay. When they got there did they render any
21 treatment to the Defendant?

22 A. They did. They just -- they just put a wrap on it.
23 They just wrapped it in gauze. It wasn't -- it wasn't
24 bleeding that significantly to the point where they had to
25 do anything other than wrap it ---

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1 **MR. GROVE:** Objection, Your Honor. Speculation.

2 **THE COURT:** Sustained.

3 Q. Okay. One moment.

4 (Pause)

5 Q. I want to show you State's exhibit 38 and 39. Let's
6 look at 38 first. You recognize that?

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

8 Q. What is that?

9 A. That's a picture of the Defendant in the hospital.

10 Q. Okay. Who took that picture?

11 A. I did.

12 Q. Can you just ---

13 A. Yes, ma'am.

14 Q. Thank you. And is that a fair and accurate depiction
15 of how he appeared when he got to the hospital?

16 A. Yes, ma'am.

17 Q. All right.

18 **MS. TESSITORE:** At this time the State would move
19 State's exhibit 38 into evidence.

20 **MR. GROVE:** No objection.

21 **THE COURT:** Without objection.

22 (Whereupon State's exhibit 38 was admitted into
23 evidence)

24 Q. And State's exhibit 39, can you identify that?

25 A. Yes, ma'am. It's the Defendant's leg.

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1 Q. Okay. And does anything else appear in there?

2 A. It has numerous scratches on it at which time I asked
3 him if those were caused from the K-9, and he told me, no,
4 they were not.

5 Q. Okay. And is it a fair and accurate depiction ---

6 A. Yes, ma'am.

7 Q. --- of his leg and the shoe?

8 A. That's correct.

9 Q. Okay.

10 **MS. TESSITORE:** The State would move exhibit number 39
11 into evidence.

12 **MR. GROVE:** No objection.

13 **THE COURT:** All right. Admitted.

14 (Whereupon State's exhibit 39 was admitted into
15 evidence)

16 **MS. TESSITORE:** Your Honor, may I publish it ---

17 **THE COURT:** Yes.

18 **MS. TESSITORE:** --- to the jury? Thank you.

19 Q. Okay. Investigator Anderson, did you remain or did you
20 go to the hospital?

21 A. Yes, ma'am, I did. I responded to the hospital pretty
22 much directly behind the ambulance. Once I was at the
23 hospital -- I try to stay there until the nurses and the
24 doctors come in. And I speak with them about the extent of
25 the injuries.

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1 I also photograph the injuries. At which case I did
2 all of those. I photographed the injuries and spoke to the
3 doctor and the nurse just to ensure there's nothing, you
4 know, life threatening or major that I needed to document.

5 Q. Okay. And is there -- are there other reasons for you
6 making documents or, you know, keeping track of what's
7 happening at the emergency room?

8 A. Part of it, especially in something like this, we like
9 to make sure -- we try to see what's administered and just
10 to make sure somebody's with the Defendant at all times.

11 Q. Okay. And when you say something administered, what do
12 you mean?

13 A. We try to see what the treatment is. In this case I
14 recall specifically he was required a tetanus shot, they
15 gave him a local anesthetic in the arm and then to watch the
16 injury be cleaned.

17 Q. Okay. Did his ability to understand what was happening
18 at that point seem affected at all by the treatment that he
19 received?

20 **MR. GROVE:** Objection, Your Honor. Speculation.

21 **THE COURT:** Overruled.

22 A. His behavior did not seem any different than it did on-
23 scene. And his ability to understand what was going on did
24 not seem impaired or diminished from my training or
25 experience in dealing with people.

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1 Q. All right. How long did you stay at the emergency
2 room?

3 A. I don't think we were there anymore than two, two and a
4 half hours at most.

5 Q. Okay. And where did you go from there?

6 A. I went down to the Law Enforcement Center with
7 Investigator Stanton.

8 Q. And where did you -- where was the Defendant?

9 A. He was in custody. I just -- I can't transport because
10 I have a K-9 in the back.

11 Q. Okay. Good point. When you got to the Law Enforcement
12 Center where did you go?

13 A. Down to the investigator room, the room that you
14 observed on the -- or you will observe. The room they use
15 for investigations.

16 Q. Okay. Within the Armed Robbery Division ---

17 A. Yes, ma'am.

18 Q. --- office? So when you got there did you stay there
19 while they ---

20 A. I stayed there for some of ---

21 Q. --- interviewed the Defendant?

22 A. --- some of the -- some of the amount of time while
23 they questioned him. I wasn't there for the entirety.

24 Q. Okay.

25 A. But I stayed there for a short while.

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1 Q. Did you relay any of the information from the hospital
2 to Investigator Kicklighter there?

3 A. Yes, ma'am. I get a -- basically his discharge
4 paperwork. It comes in a packet, kind of shows what was
5 done at the hospital and follow-up instructions. I gave
6 that to Investigator Whitlock so he could kind of know what
7 to do, excuse me, Kicklighter, Investigator Kicklighter.
8 I'm sorry.

9 Q. Okay. And did you have any other involvement after
10 that?

11 A. No, ma'am, not to my recollection.

12 Q. Okay. Please answer any questions that Mr. Grove or
13 Mr. Martinez ---

14 **THE COURT:** All right.

15 Q. --- may have, please.

16 **THE COURT:** Cross examination.

17 **MR. GROVE:** No questions, Your Honor. Thank you.

18 **THE COURT:** Thank you, sir. You can step down. You're
19 free to leave if you want to.

20 A. Thank you, Your Honor.

21 **THE COURT:** Call your next witness.

22 **MS. TESSITORE:** Your Honor, may we approach?

23 **THE COURT:** Yes.

24 (Whereupon a bench conference was held off the record
25 in the presence of the jury, but out of their hearing)

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1 (Whereupon the bench conference was ended)

2 **THE COURT:** Ladies and gentlemen, we're having a little
3 scheduling issue we need to work out outside your presence.
4 We're going to do that right now. Go ahead and take a
5 little recess. We'll get you back in here no more than
6 seven minutes. I'll try to make it seven. Thank you.

7 **MS. TESSITORE:** Thank you, Your Honor.

8 **THE COURT:** Don't talk about the case.

9 (Whereupon the jury exited the courtroom at 2:55 pm)

10 **THE COURT:** All right. We're down.

11 (Whereupon court was in recess at 2:56 pm)

12 (Whereupon court reconvened at 3:04 pm)

13 **THE COURT:** All right.

14 (Whereupon the witness, Cordell Lewis, entered the
15 courtroom)

16 **THE COURT:** Just have a seat right there, young man.

17 Right there. All right. Bring the jury in.

18 (Whereupon the jury entered the courtroom at 3:05 pm)

19 **THE COURT:** All right. All members of the jury are
20 present. The State can call its next witness.

21 **MS. TESSITORE:** Your Honor, the State calls Cordell
22 Lewis.

23 **THE COURT:** All right.

24 **Cordell Lewis, being duly**
25 sworn testified as follows;

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1 **THE COURT:** All right. Thank you. Sir, just lean up
2 and that way you can talk into the microphone and answer the
3 questions asked you by the lawyers. Madame Solicitor.

4 **MS. TESSITORE:** Thank you, Your Honor.

5 **Direct Examination by Ms. Tessitore:**

6 Q. Good afternoon, Mr. Lewis.

7 A. Good afternoon.

8 Q. Okay. Mr. Lewis, you're going to have to speak as
9 clearly as you can and as loudly as you can so that all the
10 jurors can hear you, okay? So if you could, just speak loud
11 enough so that you can hit the back of that wall and then we
12 might be good, okay?

13 A. Yes, ma'am.

14 Q. Are you nervous?

15 A. Yeah.

16 Q. Do you know the Defendant in this case, Brian Lewis?

17 A. Yes, ma'am. That's my brother, my older brother.

18 Q. Okay. How old are you?

19 A. Eighteen.

20 Q. How old is he?

21 A. He just turned twenty-three.

22 Q. So back in July of 2015 you were sixteen?

23 A. Yes, ma'am.

24 Q. Cordell, obviously you're not here because you want to
25 be here, is that true?

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1 A. Yes. I don't know what ...

2 Q. Okay. Well, I'm going to ask you some very specific
3 questions. I'm just going to talk to you about the first --
4 do you recall what you were charged with in this incident?

5 A. Yes, ma'am.

6 Q. What were you charged with?

7 A. I was charged with armed robbery, criminal conspiracy,
8 assault and battery, first degree, and possession of a
9 weapon during a violent crime.

10 Q. Okay. And do you remember pleading guilty on February
11 1st of this year?

12 A. Yes, ma'am. Well, basically it was January 3rd when I
13 -- when I caught the plea.

14 Q. Okay. So you remember pleading guilty?

15 A. Yes, ma'am.

16 Q. Okay. Sorry, I got the date wrong. When you pled
17 guilty were you represented by counsel, by an attorney?

18 A. I think it was with the first -- well, that's when --
19 well, that's when I found out who my lawyer was.

20 Q. Okay. Did you have a chance to talk to your lawyer?

21 A. When? Today or ...

22 Q. Well, where have you been since you got charged for
23 these crimes?

24 A. Like in a dorm, or jail or ...

25 Q. Where have you been? Have you been living back out at

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2 A. Yes, ma'am.

3 Q. Where did you come from today?

4 A. Red Pod.

5 Q. Were you -- how were you brought here today?

6 A. I don't know what you mean.

7 Q. Okay. You are at the courthouse, correct?

8 A. Today?

9 Q. Right here, right now.

10 A. Well, I was here earlier, yeah.

11 Q. Okay. So how did you get from wherever you were before
12 to the courthouse?

13 A. By a van.

14 Q. By a van? Okay. And were you in anyone's custody?

15 A. Do you mean a officer?

16 Q. Yes.

17 A. I think his name was Pruitt, but I'm not sure. I don't
18 -- I don't know the officer's name.19 Q. Okay. So he was an officer. And where did he bring
20 you from to get you here today?

21 A. He brought me from the detention center.

22 Q. Okay. So you've been in the detention center, correct?

23 A. Before I came here?

24 Q. Yeah.

25 A. Yeah.

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1 Q. Okay. Is that where you've been since this incident
2 occurred?

3 A. Yes, ma'am, since -- since July 23rd, 2015.

4 Q. Okay. So the day after this incident?

5 A. Yes, ma'am.

6 Q. Okay. Now while you were -- we talked about the fact
7 that you came to court and you pled guilty. Do you remember
8 what you pled guilty to?

9 A. Yes, ma'am.

10 Q. What did you plead guilty to?

11 A. Attempted armed robbery, conspiracy, and assault and
12 battery, first degree.

13 Q. Okay. Attempted armed robbery, conspiracy and ---

14 A. And assault and battery.

15 Q. --- assault and battery?

16 A. First degree to a preferred [sic] sentence, yes, ma'am.

17 Q. Okay. And were you made aware as far as how much those
18 charges carry?

19 A. Yes, ma'am.

20 Q. Okay. And so you know that you're -- you're facing up
21 to twenty years on the attempted armed robbery?

22 A. Yes, ma'am.

23 Q. Up to five on the conspiracy?

24 A. Yes, ma'am.

25 Q. And up to ten on the assault and battery?

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- 1 A. Yes, ma'am.
- 2 Q. All right. Have you been sentenced yet?
- 3 A. No, ma'am.
- 4 Q. And did you enter your plea before the judge as part of
- 5 a plea agreement?
- 6 A. Can you explain what that means?
- 7 Q. Yeah. Let me back up. Did -- did your attorney talk
- 8 with you about a reduction in the charge from armed robbery
- 9 to attempted armed robbery? Did you talk about that?
- 10 A. I guess so. I guess so.
- 11 Q. Okay. So you didn't plead guilty to armed robbery?
- 12 A. No, ma'am.
- 13 Q. You pled guilty to attempted armed robbery?
- 14 A. Yes, ma'am.
- 15 Q. Okay. So there was a reduction in the charge. And
- 16 what was -- what did the State require for you to do as part
- 17 of that agreement to reduce the charge and let you plead
- 18 guilty under that charge?
- 19 A. To testify on my brother.
- 20 Q. Okay. And did the State make any -- is there any
- 21 promise regarding your sentencing?
- 22 A. I'm not sure. I'm not sure.
- 23 Q. Well, do you know what sentence you're going to get?
- 24 A. I don't know.
- 25 Q. Okay. So you potentially could get up to twenty years

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1 on just that one charge, correct?

2 A. Yes, ma'am.

3 Q. All right. And so let's talk about -- let's talk about
4 what happened, okay? You said you were arrested on the 23rd
5 of July, correct, the day after?

6 A. Yes, ma'am.

7 Q. And when you were arrested did you cooperate with the
8 police?

9 A. Yes, ma'am. Well, at first I didn't and then I did.

10 Q. Okay. And what do you mean by that?

11 A. Well, at first I didn't want to tell, but as soon as I
12 heard something -- when they told me something that was --
13 that made me -- that made me cooperate [sic].

14 Q. That made you corroborate? Well, did you -- what do
15 you mean corroborate?

16 A. Like -- like tell what happened.

17 Q. Okay. And when you told them what happened did you
18 tell the officers the truth at that point?

19 A. When I was in the interview, yes.

20 Q. What was that?

21 A. In the interview.

22 Q. In the interview. Okay. So let's talk about what --
23 what happened out there and -- on the day of the robbery.
24 Were you living with your brother at the time?

25 A. Yes, ma'am.

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1 Q. Okay. And who else was involved in the robbery?

2 A. Donny Campbell and Robert Jackson.

3 Q. Donny Campbell and Robert Jackson. How did you know
4 Donny Campbell and Robert Jackson? Or let's start with
5 Donny Campbell. How did you know Donny Campbell?

6 A. Well, -- well, I had met him a few minutes before the
7 robbery occurred.

8 Q. Okay. And what about Mr. Jackson?

9 A. Well, I don't know too much of him. He just lived
10 across -- across the hall from me.

11 Q. Lives across the hall?

12 A. (Affirmative nod).

13 Q. Okay. So what was the -- what was the plan, Cordell?

14 A. I guess -- I guess the plan was to -- to get some
15 money.

16 Q. The plan was to get some money. All right. And did
17 y'all talk about who was going to do what?

18 A. No, ma'am.

19 Q. Okay. So -- well, did you meet together with the other
20 guys prior to the robbery?

21 A. Me, Brian, and Donny, we was already -- we was already
22 together.

23 Q. Okay. So the three of you were together? And where
24 were you together?

25 A. At my house at

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1 Q. All right. And did someone order pizza?

2 A. Yeah, we did.

3 Q. Okay. Who ordered the pizza?

4 A. Well, Donny had or Donny called to -- well, Donny
5 called and placed the order.

6 Q. Okay. And what was the plan after the order was
7 placed? Where did you go from there?

8 A. We went up to the 200 apartments across the street from
9 the -- from the store.

10 Q. Okay. Why did you go up there?

11 A. To meet with -- to meet with the pizza man.

12 Q. And what happened when you met up with the pizza man?

13 A. Well, Robert, he tried to -- he tried to pay with a
14 credit card. And then -- and then all of a sudden my
15 brother, he pulled -- my brother pulled out the gun. And
16 then ---

17 Q. Okay. I'm just going to slow you down just a little
18 bit, okay? And if you can just try to talk slowly.

19 Sometimes it's hard to understand all the words you're
20 jumbling together, okay? So just -- I know you're nervous.
21 Take your time. When -- let me go back to Robert Jackson.
22 You said he tried to pay with a credit card?

23 A. Yes, ma'am.

24 Q. Okay. Was he trying to pay because he just wanted some
25 pizza?

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- 1 A. I'm not sure.
- 2 Q. Did he know that a robbery was about to take place?
- 3 A. No, ma'am. I don't believe.
- 4 Q. You don't -- you don't believe so.
- 5 A. (Negative nod).
- 6 Q. Okay. So you didn't talk to him about ...
- 7 A. No, ma'am.
- 8 Q. Okay. So when he tried to pay with a credit card you
- 9 -- what was the next thing that happened?
- 10 A. My brother had pulled out the gun.
- 11 Q. Your brother pulled out the gun?
- 12 A. (Affirmative nod).
- 13 Q. Okay. And what did he -- how did he pull out the gun
- 14 and who did he -- who was there? Give me a little bit more
- 15 information about that.
- 16 A. Well, basically, all four of us was there. Robert, he
- 17 tried to pay with a credit card. And then my brother, he
- 18 pulled -- he pulled out the gun from his hip. And then he
- 19 -- then he told the pizza man to get on the ground and drop
- 20 his keys and wallet.
- 21 Q. Okay. And where were you when that was happening?
- 22 A. I was there -- I was just in the background.
- 23 Q. Okay. Well, were -- when you say the background, you
- 24 were able to see what was happening?
- 25 A. I was -- I was kind of up close.

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1 Q. Okay. So close up. Did you -- did you see what Donny
2 was doing at that point?

3 A. Well, Donny was -- Donny was standing there too, but
4 ...

5 Q. Where was he standing in relation to you?

6 A. He was -- like I say he was a few inches away from me.

7 Q. Okay. And where did the gun come from?

8 A. Like what do you mean?

9 Q. Whose gun was it? If you know.

10 A. I don't know whose -- whose gun it was.

11 Q. It's okay. Just take your time.

12 A. Well, I don't know whose -- whose the gun belonged to.

13 Q. Okay. Did you see the gun prior to the robbery?

14 A. No, ma'am.

15 Q. Okay. But -- so Brian pulled it out. And what did the
16 victim do after he got down on the ground?

17 A. He was just laying there.

18 Q. All right. What did Brian do?

19 A. He picked up -- he picked up the keys and the wallet
20 off the ground. And then -- and then he -- and then he gave
21 me the gun -- well, he told me -- well, he gave me the gun
22 and he told -- and then he told me to -- to hold it to him
23 while he cranks up on the car.

24 Q. And did you do that?

25 A. Yes, ma'am.

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- 1 Q. Okay. So you took the gun from him?
- 2 A. Well, basically -- well, basically he gave it to me.
- 3 Q. Okay. But you accepted it?
- 4 A. Yes, ma'am.
- 5 Q. All right. And what did you do with the gun?
- 6 A. Well, I held -- well, I held the gun, but I didn't --
- 7 but I didn't directly point it at the -- at the pizza man.
- 8 Q. You didn't point it at the pizza man?
- 9 A. No, ma'am.
- 10 Q. Okay. So what -- what did you do -- where did Brian go
- 11 at that point?
- 12 A. He was -- he was at the driver's side door to crank up
- 13 the car.
- 14 Q. Okay. And as he's cranking up the car where is Donny?
- 15 A. He was also beside me with the pizza man.
- 16 Q. Okay. And how long did you hold the gun on him?
- 17 A. I'll say about two, three minutes.
- 18 Q. And at what point did you stop holding the gun on him?
- 19 What did you do?
- 20 A. I'm not sure what you mean.
- 21 Q. Okay. At some point did you move from where you were
- 22 when you were holding the gun on him?
- 23 A. I was standing in the same spot.
- 24 Q. You were in the same spot?
- 25 A. Yes, ma'am.

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- 1 Q. Did you ever move from that spot?
- 2 A. Until -- until it was time to go.
- 3 Q. Okay. And how did you know it was time to go?
- 4 A. When I heard the car crank up.
- 5 Q. Okay. So the car cranks up, you know it's time to go
- 6 and what did you do at that point?
- 7 A. Well, ---
- 8 Q. Did you still have the gun?
- 9 A. Yeah, I still had it, but I -- but I -- Brian had done
- 10 took it off the pizza man.
- 11 Q. You took it off the pizza man?
- 12 A. (Affirmative nod).
- 13 Q. Okay. And what did you do with the gun?
- 14 A. We just -- we just kept it.
- 15 Q. Well, you had it. What did you do with it?
- 16 A. I placed it in the car.
- 17 Q. Okay. So you brought it into the car. So you got into
- 18 the car?
- 19 A. Yes, ma'am.
- 20 Q. And who was in the driver's seat?
- 21 A. Brian.
- 22 Q. And before you got in the car did you do anything to
- 23 the victim?
- 24 A. I kicked him.
- 25 Q. You kicked him? Where did you kick him?

CORDELL LEWIS - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. In the head.

2 Q. Why did you kick him in the head?

3 A. I'm not sure why.

4 Q. After you kicked him in the head did anybody else do
5 anything to him?

6 A. Well, Donny had kicked him first.

7 Q. Okay. And where did Donny go after he kicked him in
8 the head?

9 A. He was in -- he got into the passenger's seat of the
10 car.

11 Q. Where did you sit in the car?

12 A. In the back.

13 Q. All right. And was Donny in the front or the back?

14 A. The front, passenger's side.

15 Q. All right. And where was Robert Jackson at that point?

16 A. He walked off.

17 Q. So he didn't get in the car?

18 A. No, ma'am.

19 Q. Okay. Was there any discussion about meeting back up
20 with Mr. Jackson?

21 A. No, ma'am.

22 Q. All right. So you played your part. There was only
23 one gun, is that correct?

24 A. Yes, ma'am.

25 Q. Now when you drove away where did you go?

CORDELL LEWIS - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 A. To Judson.
- 2 Q. Judson?
- 3 A. Yes, ma'am.
- 4 Q. How long does it take to get to Judson?
- 5 A. Probably five minutes from Grove Station.
- 6 Q. All right. So when you got to Judson what did you do
- 7 there? Why were you going there?
- 8 A. Well, I was to go to my friend, Ryan's house.
- 9 Q. Your friend who?
- 10 A. Ryan.
- 11 Q. All right. And did you go there?
- 12 A. Yes, ma'am.
- 13 Q. Where were Donny and Brian at that point?
- 14 A. We was -- we was shooting -- well, we was shooting --
- 15 well, we was playing basketball at his house at first.
- 16 Q. You played basketball?
- 17 A. Yes, ma'am.
- 18 Q. All right. What happened to the pizzas?
- 19 A. We -- well, we -- Brian and Donny ate it.
- 20 Q. They ate it? Were you -- how long -- let me ask you
- 21 this. Did you ever -- once you got to Judson did you get
- 22 back into the SUV at any point?
- 23 A. To get dropped off at -- at House Academy basketball
- 24 court.
- 25 Q. To get dropped off at which ...

CORDELL LEWIS - DIRECT EXAMINATION BY MS. TESSITORE

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- 1 A. Well, House Academy Elementary School to play
2 basketball there.
- 3 Q. To play basketball, okay. Do you remember about what
4 time that was?
- 5 A. I'd say -- I'd say around six or seven.
- 6 Q. Okay. And who dropped you off there?
- 7 A. Brian.
- 8 Q. Who was driving the car when you got dropped off?
- 9 A. Brian.
- 10 Q. Where was Donny when you got dropped off?
- 11 A. In the passenger's seat.
- 12 Q. And was there anybody else in the car?
- 13 A. No, ma'am.
- 14 Q. Did you or Donny ever drive that vehicle?
- 15 A. No, ma'am.
- 16 Q. Did you get anything in exchange for the part that you
17 played, other than the pizza, in this armed robbery?
- 18 A. No, ma'am.
- 19 Q. Were you hoping to get something?
- 20 A. I guess.
- 21 Q. What were you hoping to get?
- 22 A. I guess -- I guess a couple of bucks, I guess.
- 23 Q. Do you know where Donny and Brian went after they
24 dropped you off to play more basketball?
- 25 A. No, ma'am.

CORDELL LEWIS - CROSS EXAMINATION BY MR. GROVE

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1 Q. Did you have anymore contact with your brother that
2 night?

3 A. No, ma'am.

4 Q. Okay. Please answer any questions that Mr. Grove may
5 have.

6 **THE COURT:** All right.

7 **MR. GROVE:** Thank you, Your Honor.

8 **Cross Examination by Mr. Grove:**

9 Q. Cordell, you were originally charged with armed
10 robbery, right?

11 A. Yes, sir.

12 Q. And that's mandatory minimum of ten up to thirty, isn't
13 it?

14 A. Yes, sir.

15 Q. And now you don't have to worry about that, right?

16 A. Yes, sir.

17 Q. And you've already answered some questions about this
18 with Ms. Tessitore, but you haven't been sentenced yet. You
19 said that earlier, right?

20 A. Yes, sir.

21 Q. And you pled to one charge that carries up to twenty.

22 A. Yes, sir.

23 Q. And one charge carries up to ten.

24 A. Yes, sir.

25 Q. And another charge carries up to five.

CORDELL LEWIS - CROSS EXAMINATION BY MR. GROVE

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- 1 A. Yes, sir.
- 2 Q. And it's too late for you to go back now, right?
- 3 A. What you mean it's too late?
- 4 Q. You got to -- you got to wait and hope for a good
- 5 sentence, right?
- 6 A. Yes, sir.
- 7 Q. And I didn't make you that deal, did I?
- 8 A. No, sir.
- 9 Q. That Judge didn't make you that deal, did he?
- 10 A. No, sir.
- 11 Q. This lady right here, she's the one who made you that
- 12 deal?
- 13 A. Yes, sir.
- 14 Q. Do you know when you're going to be sentenced?
- 15 A. No, sir.
- 16 Q. You just knew it was going to be after you came and
- 17 testified, right?
- 18 A. Yes, sir.
- 19 Q. Earlier when you were talking you said that you didn't
- 20 cooperate at first but then you did later because something
- 21 made you cooperate. You said that earlier, right?
- 22 A. Yes, sir.
- 23 Q. Officers told you that your brother had made a
- 24 statement on you, didn't they?
- 25 A. Yes, sir.

CORDELL LEWIS - CROSS EXAMINATION BY MR. GROVE

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1 Q. And you said, well, if he rolled on me, I'm going to
2 roll on him back, didn't you?

3 A. Yes, sir.

4 Q. Do you remember giving your statement?

5 A. Yes, sir.

6 Q. This fellow right over here in the blue suit, was he
7 taking the statement from you?

8 A. Which one?

9 Q. Right over here. Does he look familiar?

10 A. Yes, sir.

11 Q. He's the one who -- he's one of the people who took
12 your statement, right?

13 A. Yes, sir.

14 Q. And he told you he thought this was your brother's
15 brain child. Do you remember him saying that?

16 A. No, sir.

17 Q. Do you know what a brain child is?

18 A. No, sir.

19 Q. Do you remember asking him whose idea he thought it
20 was?

21 A. Yes, sir.

22 Q. And he told you, I think it's your brother's idea,
23 didn't he?

24 A. Yes, sir.

25 Q. And Brian had been arrested the night before, hadn't

CORDELL LEWIS - CROSS EXAMINATION BY MR. GROVE

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1 he?

2 A. Yes, sir.

3 Q. And you knew that.

4 A. Yes, sir.

5 Q. And you hadn't talked to Brian since then, right?

6 A. No, sir.

7 Q. And so they tell you that Brian's made a statement on
8 you, you got scared, didn't you?

9 A. Yes, sir.

10 Q. 'Cause you -- they told you you were under arrest for
11 armed robbery.

12 A. Yes, sir.

13 Q. Donny Campbell, you said you met him right before this
14 incident occurred?

15 A. A couple minutes before.

16 Q. Okay. And Robert Jackson, you don't really know him?

17 A. No, sir.

18 Q. Originally y'all were at your place, right?

19 A. Yes, sir.

20 Q. And Donny called the pizza man, right?

21 A. Yes, sir.

22 Q. And he called in the order to right?

23 A. Yes, sir.

24 Q. And then you went from to right?

25 A. Yes, sir.

CORDELL LEWIS - CROSS EXAMINATION BY MR. GROVE

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1 Q. In the statement you gave to law enforcement you -- do
2 you remember telling Investigator Stanton you told the
3 victim if you move you're going to have a bad day?

4 A. Yes, sir.

5 Q. You remember saying that?

6 A. Yes, sir.

7 Q. You also said that you -- you never pointed the gun at
8 the pizza man.

9 A. Yes, sir.

10 Q. Is that right?

11 A. Yes, sir.

12 Q. And you say that you had the gun when he was laying on
13 his stomach, is that right?

14 A. Yes, sir.

15 Q. But then you got in the car, didn't you?

16 A. Yes, sir.

17 Q. Do you remember in your statement being asked about
18 what you think should happen to you?

19 A. Yes, sir.

20 Q. Do you remember what you said?

21 A. I said -- I said that I should -- I said that I should
22 -- I should be able to go free.

23 Q. You said, I think I should go free, didn't you?

24 A. Yes, sir.

25 **MR. GROVE:** No further questions.

CORDELL LEWIS - REDIRECT EXAMINATION BY MS. TESSITORE

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1 **THE COURT:** Any redirect?

2 **MS. TESSITORE:** Your Honor, just very briefly.

3 **Redirect Examination by Ms. Tessitore:**

4 Q. Just to finish that -- that thought. When you said you
5 think you should be free, why did you think you should be
6 free at that point?

7 A. Because I was honest.

8 Q. Okay. And that's exactly what you said, right?

9 A. Yes, ma'am.

10 Q. And did the officer also ask you if you felt bad about
11 what you did?

12 A. Yes, ma'am.

13 Q. And you understood that what you did was wrong?

14 A. Yes, ma'am.

15 Q. And when you first talked to the investigator before
16 you finally told him everything that had happened you were
17 basically trying to protect your brother, weren't you?

18 A. Yes, ma'am, at first.

19 Q. Okay. So when you believed that he may have ratted you
20 out or said that you were involved, ---

21 A. Yes, ma'am.

22 Q. --- is that -- is that when you realized that you
23 needed to tell the truth?

24 A. Yes, ma'am.

25 **MS. TESSITORE:** No further questions.

DARWIN SHAW - DIRECT EXAMINATION BY MS. TESSITORE

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1 THE COURT: Anything?

2 **MR. GROVE:** No, Your Honor.

3 **THE COURT:** All right. Thank you, sir. Ladies and --
4 ladies and gentlemen, let's take a brief recess. I've got a
5 matter I need to attend to real quick. I'll get you back --
6 I hate to keep making you go up and down. I apologize for
7 that, but give me five minutes so I can return a phone call.
8 Then I'll get you back in here, okay? Don't talk about the
9 case.

10 (Whereupon the jury exited the courtroom at 3:31 pm)

11 **THE COURT:** All right. You can step down.

12 (Whereupon the witness, Cordell Lewis, exited the
13 courtroom)

14 **THE COURT:** All right. We'll take a couple of minutes.

15 **MS. TESSITORE:** Thank you, Your Honor.

16 (Whereupon court was in recess at 3:32 pm)

17 (Whereupon State's exhibits 47 - 50 were marked for
18 identification)

19 (Whereupon court reconvened at 3:39 pm)

20 **THE COURT:** All right. Bring them in.

21 (Whereupon the jury entered the courtroom at 3:39 pm)

22 **THE COURT:** All right. All members of the jury are
23 present. The State can call its next witness.

24 **MS. TESSITORE:** The State calls Sergeant Shaw.

25 Darwin Shaw, being duly

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1 sworn testified as follows;

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

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

5 **Direct Examination by Ms. Tessitore:**

6 Q. Sergeant Shaw, where do you work?

7 A. I work for the crime scene section for the Department
8 of Public Safety, Forensic Division, in Greenville County.

9 Q. And how long have you worked there?

10 A. A little over eighteen years.

11 Q. And in what capacity have you been in that -- in that
12 office?

13 A. For ten months was a technician and have been a
14 sergeant for over seventeen years.

15 Q. So what are your duties in that capacity?

16 A. I have supervisory duties, which deals with reports
17 that other technicians put in. I also answer calls for
18 service for agencies within Greenville County, which can
19 include processing for fingerprints, photographic
20 documentation, collection of evidence and preparing reports
21 for court.

22 Q. Okay. And what kind of specialized training have you
23 had over the course of the years?

24 A. I've had classes in homicide investigations,
25 fingerprint processing, photographic documentation. I was a

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1 detective for fourteen years before I came here. And so I
2 have -- actually, July will be forty years of law
3 enforcement experience.

4 Q. So how many scenes have you processed over all those
5 years?

6 A. I know with Greenville County it's been over -- over
7 seven thousand cases. With the prior twenty-one, I couldn't
8 guess.

9 Q. And you train other officers?

10 A. As they are being hired I do FTO training. And most
11 everything we do is on-the-job training for the technicians
12 that come to work with us.

13 Q. Okay. Did you have the occasion to respond to Lakeside
14 Road on July 22nd in the evening hours for the recovered
15 stolen vehicle in this case?

16 A. Yes, I did.

17 Q. All right. When you got there did you take
18 photographs?

19 A. I did.

20 Q. And did you -- were you the first forensics officer to
21 arrive on that scene?

22 A. Yes, I was.

23 Q. Did anyone else work that scene?

24 A. No, they didn't.

25 Q. And just generally describe, what did you photograph

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1 there?

2 A. I photographed the Greenville County Sheriff's Office
3 vehicles that had damage. It was pointed out to me where
4 the damage was at. I also photographed debris from the
5 vehicles on the roadway, fluids that came out of the
6 vehicles showing the direction of which the vehicles
7 traveled. And I also photographed the victim's vehicle.

8 Q. Okay. So I'm going to show you State's exhibit 26
9 through 28 and ask you to -- if you recognize those?

10 A. Yes, I do.

11 Q. Okay. Who took those pictures?

12 A. I did.

13 Q. All right. And looking at State's exhibit 32, did you
14 take that picture as well?

15 A. Yes, I did.

16 Q. Okay. Did you also take pictures -- oh, I'm sorry.
17 I'm showing you -- one second, please.

18 (Pause)

19 Q. I'm showing you State's exhibits 36 and 37. Can you
20 identify those?

21 A. Yes, I can.

22 Q. What are those?

23 A. They are photographs of the victim's vehicle after I
24 had put evidence tape on the doors securing the doors at the
25 scene before it was transported.

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1 Q. Okay. And why do you do that?

2 A. To preserve any possible evidence and to, I guess, show
3 that there's no contamination or somebody had not been in
4 the vehicle from the time it's towed until we get to process
5 the vehicle.

6 Q. Okay. And where would it be towed or where was it
7 towed?

8 A. It was actually towed to the crime scene office, to our
9 office.

10 Q. All right. And is that where -- did you process the
11 vehicle there?

12 A. I did.

13 Q. Did you do any processing when you were out on the
14 scene?

15 A. No, I did not.

16 Q. Okay. So are these fair and accurate depictions of the
17 vehicle when you last saw it before it got to the crime
18 scene office?

19 A. Yes. In fact, I followed the vehicle with the wrecker
20 to our office. So I kept contact with it from the time it
21 left the scene until it got to our office.

22 Q. Okay. And when it gets to your office where do they
23 put it?

24 A. We have a garage, a work-bay. And the wreckers put in,
25 I mean, the vehicles are put in there.

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1 Q. And who has access to the vehicle?

2 A. We do as far as the crime scene people.

3 Q. Okay. So just crime scene people?

4 A. That's correct.

5 Q. All right.

6 **MS. TESSITORE:** Your Honor, the State moves 36 and 37
7 into evidence.

8 **MR. GROVE:** No objection.

9 **THE COURT:** Without objection, introduced into
10 evidence.

11 (Whereupon State's exhibits 36 and 37 were admitted
12 into evidence)

13 Q. All right. Did you also take photographs of the weapon
14 in this case?

15 A. I took photographs of a weapon, yes.

16 Q. Okay. I'm going to show you in just a moment -- I'm
17 going to show you State's exhibit 29 and 30 and ask if you
18 recognize those pictures?

19 A. Yes, I do.

20 Q. Okay. And what are those?

21 A. They are photographs. One photograph is of a firearm
22 that is up in the weeds or up in the trees where it had been
23 found. And a second one is a close-up of the weapon after I
24 had moved it from that location down onto the asphalt where
25 it could be photographed better.

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1 Q. Okay. And what kind of pistol is that?

2 A. It's a -- actually, it's a Colt Commander CO2 pellet
3 pistol that -- it shows it's a Colt, but actually it's a
4 CO2. So it doesn't -- it's not an actual firearm per se,
5 but it does look like a semiautomatic, like a .45 caliber.

6 Q. Okay. And I'm going to show you State's exhibit 31.
7 Do you recognize that?

8 A. I do.

9 Q. And what is that?

10 A. That's a photograph of the weapon. We use a placard
11 next to the item when it's collected just showing that that
12 is -- for as far as the sequence of evidence that gets
13 collected. That was the first piece of evidence that I had
14 collected.

15 Q. Okay. And did you collect any other evidence out of
16 the woods there?

17 A. No, I didn't.

18 Q. Okay. So is this a fair and accurate depiction of how
19 you saw the weapon when you arrived?

20 A. It is.

21 Q. Okay.

22 **MS. TESSITORE:** The State would move State's exhibit 31
23 into evidence.

24 **MR. GROVE:** No objection.

25 **THE COURT:** All right. Admitted.

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1 (Whereupon State's exhibit 31 was admitted into
2 evidence)

3 Q. Okay. I'm going to show you what's been marked as
4 State's exhibit 15. If you'd take a look at that. What is
5 that?

6 A. That is a -- it's showing it as a Colt. It's a CO2
7 semiautomatic. And it's -- there is a serial number on the
8 side. It looks like 14D11015, which is the same weapon that
9 I collected from the scene.

10 Q. Okay. So this is the weapon that you collected that's
11 in those pictures?

12 A. It is.

13 Q. All right.

14 **MS. TESSITORE:** At this time the State would move
15 State's exhibit 15 into evidence.

16 **MR. GROVE:** No objection.

17 **THE COURT:** Introduced into evidence.

18 **MS. TESSITORE:** Thank you, Your Honor.

19 (Whereupon State's exhibit 15 was admitted into
20 evidence)

21 Q. Now, Sergeant Shaw, as it sits in this box, which for
22 security purposes, can you explain why it's in this box?

23 A. Actually, the -- our property and evidence people
24 requests that all weapons be put into -- into a firearms box
25 because of their storage. Because of the way they have

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1 their storage system, they have to go into particular bins.

2 So when we have a firearm, we put them in a box that's
3 consistent with what our property and evidence requests.

4 Q. Okay. And did you place that weapon into property and
5 evidence?

6 A. I did.

7 Q. All right. Now, as it appears here there's a silver --
8 well, what would you describe the silver piece as?

9 A. That'd be the barrel.

10 Q. Okay. And the barrel was -- was that visible in the
11 picture?

12 A. No. When the -- when you pull a slide back on a
13 semiautomatic the barrel is exposed. And because the slide
14 is locked back, it just shows that the -- for one, you can
15 look in the ejection port and see that there's nothing
16 inside. And then it just exposes the barrel with the slide
17 pulled back and locked in place.

18 Q. Okay. So there's -- is there any ammunition in this at
19 all?

20 A. No.

21 Q. Okay. Next you mentioned that the SUV was brought and
22 put into a secure location at the forensic office?

23 A. That's correct.

24 Q. Okay. And at what point did you -- was it towed that
25 night?

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1 A. It was.

2 Q. Okay. At what point did you process that vehicle?

3 A. On the 23rd is when I processed it.

4 Q. Okay. And we're using this word processed. Can you
5 explain to the jury what that means?

6 A. When we process a vehicle there are very -- a variation
7 of things that we do depending upon the type of car that's
8 involved. We may do swabs for DNA. We may do tape lifts
9 for hair and fibers on the seat. We photograph and process
10 for fingerprints for all of those are possibilities.

11 Q. Okay. And is that something that you can do down the
12 line after the investigation continues or is that something
13 that you do right away?

14 A. Well, we typically try to do it right away. There are
15 cases where if the vehicle's not available, when we do get
16 access we can do it at that time.

17 Q. Okay. And is that when the -- when, I guess, the
18 evidence would be the most fresh, for lack of a better term?

19 A. That'd be correct.

20 Q. Okay. And did you -- in this particular case what did
21 you do with respect to just generally as far as -- did you
22 take any swabs of any suspected DNA?

23 A. I did.

24 **MR. GROVE:** Objection, Your Honor. Leading.

25 **THE COURT:** Overruled.

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1 Q. You did? Okay. And what did you do with respect to --
2 well, just tell the jury what the -- when you say the swabs,
3 what does that mean?

4 A. We have a plastic container that contains a Q-tip,
5 which is considered a swab. We'll use a drop of distilled
6 water and then process areas like the door handles, on the
7 outside of the door handles, maybe underneath. We may do
8 the steering wheel. But it's all to -- in an attempt to get
9 DNA, skin cells, when items are touched, if they're just
10 glancing, it may not, but if it's handled, you may leave
11 skin cells and DNA may be present. So typically we would do
12 the -- door handles would be the main thing as far as to try
13 to identify if anybody had touched the vehicle including the
14 victim.

15 Q. Okay.

16 A. And I would also do the interior unless I felt that
17 there was a need not to. In this case they were chrome
18 interior door handles, which I've had better success
19 processing with fingerprint powder rather than doing swabs.

20 Q. Okay. And did you -- you mentioned fingerprint powder.
21 Did you process it for any type of -- well, did you use
22 fingerprint powder on this one?

23 A. I did.

24 Q. All right. Describe for the jury how you go about
25 putting this or lifting any prints.

DARWIN SHAW - DIRECT EXAMINATION BY MS. TESSITORE

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1 A. We have -- we have black fingerprint powder. We use a
2 brush and we apply light amounts of fingerprint powder on
3 the exterior, which includes the roof, the windows, inside
4 and out, the doors, the hood, the trunk. And the powder
5 will adhere to the oils that are deposited when it's been
6 touched. Once that is done and I find what looks like an
7 identifiable print, I use a piece of fingerprint tape, apply
8 it on top of that fingerprint, lift it off and then I put
9 that piece of tape onto a fingerprint card.

10 Q. Okay. And in this particular case I'm going to show
11 you what's been marked as -- just one moment. Do you recall
12 how many lifts you were able to or how many cards you
13 created in this case?

14 A. I would have to look at the cards to -- I don't keep a
15 record of that. Our Latent Division would.

16 Q. All right. Let me show you State's exhibit 47, 48, 49
17 and 50 and ask you if you recognize those?

18 A. Yes, I do.

19 Q. Okay. And what are those?

20 A. These are fingerprint cards. As I explained when --
21 when I find a fingerprint on an item it gets put on the back
22 side, which is a clear part of the fingerprint card. The
23 tape gets applied to the card.

24 On the front side then I describe -- I put the case
25 number, the vehicle information, the date which it's

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1 processed, where it's processed at, which would be our
2 office, the vehicle information, the tag number. And then I
3 put my name on the card showing that it's -- it was my card
4 and I'm the one that lifted the print.

5 Q. Okay. Are those in substantially the same condition as
6 when you submitted those?

7 A. Yes, they are.

8 Q. Okay. As to State's exhibit number 47, can you
9 describe where you lifted that print?

10 A. This was lifted from the interior side of the front
11 passenger door glass.

12 Q. Interior side of ...

13 A. Front passenger door glass or the front -- front window
14 or side window.

15 Q. Okay. And looking at State's exhibit 48, where was
16 that lifted from?

17 A. It was lifted from the interior side of the front
18 passenger door glass as well, just a different location.

19 Q. Okay. And State's exhibit 49, where was that one
20 lifted from?

21 A. It was lifted from the exterior side of the rear
22 passenger door.

23 Q. Okay. And State's exhibit 50, where was that -- where
24 was that one located?

25 A. On the back side of the rear driver's interior door

DARWIN SHAW - DIRECT EXAMINATION BY MS. TESSITORE

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1 handle.

2 Q. Okay. And what did you do with these cards after you
3 filled them out and do what you're supposed to do?

4 A. We have a latent envelope or a fingerprint envelope
5 where all of the latents get put inside of that envelope and
6 it's sealed with a piece of evidence tape. The same
7 information on the card gets put on the envelope. And then
8 that envelope is dropped into a secured lock-box in our
9 office, which only our Latent Division people have access to
10 get into.

11 Q. Okay. And once they're in the box where do they go
12 from there?

13 A. Every morning somebody from the Latent Division comes
14 over, gets into the box. They take possession of the
15 envelopes and they're transported to the Latent Division.

16 Q. All right. And what do they do -- what does the Latent
17 Division do?

18 A. They compare those to known prints or unknown ---

19 Q. Okay.

20 A. --- subjects.

21 Q. All right. So at that point did you have any further
22 involvement with the fingerprints?

23 A. No, I didn't.

24 Q. Or the prints? No? Okay. Are these, 47 through 50,
25 are all of these cards in substantially the same condition

DARWIN SHAW - DIRECT EXAMINATION BY MS. TESSITORE

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1 as when you placed them into the secure box?

2 A. There's some writing on the -- on the side where the
3 latent or the print tape is at, which I did not do.

4 Q. Okay.

5 A. Which ---

6 Q. Do you know who did?

7 A. No.

8 Q. Okay. All right. One moment, please.

9 (Pause)

10 Q. Sergeant Shaw, do you submit the items for further
11 testing?

12 A. No, I don't.

13 Q. So you just collect the evidence?

14 A. Collect the evidence, package it and put it into
15 property and evidence.

16 Q. And why is it that you're not making decisions about
17 testing?

18 A. For one thing, we don't work for the sheriff's office.

19 It's not our case. We're there to actually collect the
20 evidence for them. Any additional testing has to be done by
21 the agency that's requesting us because they know more about
22 the case than we do. So we collect it and let them make the
23 decision.

24 Q. All right. Please answer any questions that Mr. Grove
25 may have.

25 A. In 2009 I began with the Department of Public Safety in

TYLER BUCHOLTZ - DIRECT EXAMINATION BY MS. TESSITORE

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1 the Crime Scene Unit of the Forensic Division.

2 Q. And how long have you been a crime scene technician?

3 A. I was a crime scene technician for two years. And I'm
4 still considered a crime scene technician.

5 Q. And are you -- what other official title do you have?

6 A. I'm also a latent print examiner. And I've been in the
7 latent print section for six years.

8 Q. Okay. And in that capacity what are -- what are your
9 official duties, shall we say?

10 A. In the latent print office we accept impression
11 evidence such as fingerprints, footwear, tire track
12 impressions. And we examine them, conduct analysis and
13 comparisons and then issue reports based on our findings.

14 Q. What specialized training and education do you have as
15 it relates to print analysis?

16 A. I've had over two hundred and eighty classroom hours of
17 training sponsored by and taught by members of the FBI, the
18 National Institute of Justice, the National Forensic Science
19 Training Center in Largo, Florida, Ron Smith and Associates
20 and various other entities in the criminal justice and
21 forensic fields. I've also been to factories where they
22 make footwear and observed how that's done and participated
23 in webinars where latent print examination is discussed.

24 And my first year in the latent print section was a
25 apprentice style training where everything I did was

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1 alongside another trained examiner. And after a year of
2 that training I was then released full-time to my own
3 casework.

4 Q. All right. And do you hold certifications?

5 A. I do. I'm certified by the International Association
6 for Identification in latent print examination.

7 Q. Do you have -- do you receive ongoing training or
8 proficiency testing in the area of latent print analysis?

9 A. Yes. Each -- just about every year I attend at least a
10 forty hour class. And I also participate in proficiency
11 tests in footwear and in fingerprint identification.

12 Q. Approximately how many fingerprint comparisons would
13 you -- do you or do you normally conduct in a year?

14 A. It's around sixty thousand comparisons. I've -- as of
15 the end of last month I've had over four hundred and eighty
16 thousand comparisons over the six years that I've been doing
17 it.

18 Q. And have you ever been qualified as an expert witness
19 in latent print analysis?

20 A. Yes.

21 Q. How many times?

22 A. Four times.

23 **MS. TESSITORE:** Your Honor, at this time the State
24 moves that Mr. Bucholtz be declared as an expert in the
25 field of fingerprint examination and identification under

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1 Rule 702.

2 **THE COURT:** Any voir dire on that?

3 **MR. GROVE:** No, Your Honor. This will be time number
4 five.

5 **THE COURT:** All right. So qualified. Ladies and
6 gentlemen of the jury, when someone's -- normally when a
7 witness testifies, they only can testify about what they
8 saw, heard, or smelled or something like that. There is an
9 exception for witnesses we call expert witnesses. Because
10 of their training, experience, academic criteria, whatever,
11 those people are qualified as expert witnesses in a
12 particular field and they're allowed to give opinions, okay?

13 Now, just because an expert gives an opinion doesn't
14 mean you have to accept the opinion, okay? You can take
15 that into consideration of all the evidence and give it the
16 weight and credibility you believe it deserves, okay?

17 **MS. TESSITORE:** Thank you, Your Honor.

18 **THE COURT:** Yep.

19 Q. Okay, Mr. Bucholtz, what type of equipment do you use
20 when you're comparing fingerprints? And tell the jury how
21 it's used.

22 A. We simply use a magnifier and it's called a loupe.
23 It's a magnifying glass that's on a stand. And we place it
24 over the latent print that we're looking at and look through
25 it manually, and place one under the known print and look at

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1 that. So it's a side-by-side comparison manually with our
2 eyes and a magnifier.

3 Q. Okay. Can you explain to the jury what is a latent
4 print and how is that developed?

5 A. A latent print is a hidden print. It's not visible to
6 the naked eye. So as you've already heard, it's something
7 at the crime scene we have to develop with a fingerprint
8 powder or via chemical processing in order to make it
9 visible. And then that latent fingerprint is lifted from
10 the surface.

11 And if you look at your hands, you have lines on your
12 hands. We refer to those as friction ridges. And those are
13 kind of like a rubber stamp. The ink for that stamp is
14 perspiration that comes from the pores on your hands as well
15 as oils and fats from other parts of your body where you
16 touch. It could be makeup, it could be blood. It just
17 depends on what's on the hand.

18 But when you touch a surface, it's like a rubber stamp.
19 You place that impression of those ridges on that surface.
20 If it's just made of sweat, like I said, it's not visible to
21 the naked eye and has to be processed. And this is also
22 referred to as an unknown print because we do not know the
23 source of that fingerprint.

24 Q. Okay. And what is an ideal surface for such a print?

25 A. Ideal surfaces are smooth, hard, non-porous surfaces

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1 where it's -- you don't leave a fingerprint on a textured
2 surface that can be seen, or made visible, or lifted,
3 processed and lifted. So surfaces that are smooth or non-
4 porous such as glass and metal.

5 Q. Okay. What is a known or an inked print?

6 A. A known print is a set of -- or a known set of prints
7 are fingerprints that are taken in a controlled environment
8 where the name, date of birth, social security number, other
9 identifiers are taken and written on the card at the same
10 time that the fingerprints are rolled so that we know the
11 source of those impressions.

12 Q. And how, I mean, how do you compare and identify
13 fingerprints?

14 A. When we -- when we have someone to compare we'll take
15 the latent prints first, look at that, and determine whether
16 it's from a finger, a palm, possibly even the sole of a
17 foot. We try to determine where that came from.

18 If it's a finger, then we determine the pattern type,
19 and then look at the features of that print, where those
20 ridges end and divide. And then we go and look at the known
21 fingerprints and see if those features are present in the
22 known prints.

23 Q. And then how are those prints used to identify
24 individuals?

25 A. The two basic principles are that fingerprints are

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1 unique to every individual. No two people have the same
2 fingerprints or ever have been found to have the same
3 fingerprints. No person has the same fingerprints on their
4 own ten fingers.

5 So they're unique and then they're also persistent or
6 permanent. So throughout life your fingerprints regenerate.
7 Every thirty days those cells are pushed to the top and in
8 the same pattern throughout life.

9 You can get a scar. If it's deep enough, it'll damage
10 the blueprint. And -- but then that scar would become
11 permanent too and it would regenerate throughout the rest of
12 your life until death.

13 Q. So can two people have the same fingerprint?

14 A. No, not even identical twins.

15 Q. Okay. Did you have an occasion to examine any latent
16 prints in this particular case, ---

17 A. Yes.

18 Q. --- this armed robbery? Okay. And who submitted the
19 latent prints to you?

20 A. Sergeant Dar Shaw.

21 Q. Okay. And did you bring those prints to the court
22 today?

23 A. I did.

24 Q. All right. And how are they contained?

25 A. They are in this envelope.

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1 Q. Okay. State's 47, 48, 49 and 50 marked for
2 identification, where did those come from?

3 A. Those came from this envelope.

4 Q. All right. And -- just one second. All right. And
5 where did those -- who submitted those latent prints to you?

6 A. Our Principal Criminalist, Bill Cromer, brought them
7 from the latent or from the crime scene office that day to
8 the latent print section.

9 Q. And how -- how were they provided to you at your
10 office?

11 A. He picks them up at the -- one of the four of us latent
12 print examiners goes to the crime scene office each morning
13 and picks up the latent prints from the lock-box. Every one
14 of them has a barcode on it. We scan that barcode and say
15 we're transporting it from the crime scene office to the
16 Latent Print Division. And then when I receive it, I work
17 the case. And when I'm done with the case, I then scan the
18 barcode to latent print storage where it's kept in our
19 office, securely.

20 Q. Okay. And when you receive the envelope with the lifts
21 from Sergeant Shaw is there -- well, how do you -- well, is
22 it opened, sealed? What is the ---

23 A. There's a seal on the back that's placed there and
24 initialed by the technician and dated. And it was sealed
25 when I received it.

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1 Q. Okay. And did you have an opportunity to compare the
2 known fingerprints of the four co-defendants in this case to
3 the latent prints that were submitted by Sergeant Shaw?

4 A. Yes, I did.

5 Q. And did you have any prints from the victim?

6 A. Yes.

7 Q. And why would you have taken a fingerprint from the
8 victim?

9 A. Sergeant Shaw submitted what we call elimination
10 prints. Those are the first ones that we look at when
11 someone processes a vehicle or a house. We look at the
12 victim's prints to try to eliminate those from the stack
13 first so that we're left with non-victim prints to look at.

14 Q. Okay. And as a result of your examination of those
15 lifts that were provided to you what conclusion were you
16 able to reach as a result of your examination as far as
17 latent lift number 1?

18 A. Latent lift number 1 was from the interior side of the
19 front passenger door glass. And it was identified as being
20 made by the left palm of Donny Odell Campbell, II.

21 Q. Okay. And on that card is there any of your writing on
22 this card?

23 A. Yes. On the reverse side where the latent print is I
24 wrote left palm, the name of the individual, and the date
25 that I matched it, which was July 24th, 2015.

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1 Q. Okay.

2 A. And then initialed it also.

3 Q. Okay. What about latent lift number 2?

4 A. Latent lift number 2 was from the same area. It was
5 the interior side of the front passenger door glass. And it
6 was identified as the right palm of Donny Odell Campbell,
7 II.

8 Q. And is there writing on that card that you -- your
9 writing on that card?

10 A. Yes. I wrote on the back side that it was the right
11 palm, and his name, and my initials and the date.

12 Q. Okay. What about latent lift number 9?

13 A. Latent lift number 9 was from the back side of the rear
14 driver's interior door handle. So the interior side of the
15 rear driver's side door handle. And that was identified as
16 being made by the number 9, the left ring finger, of Cordell
17 Lewis.

18 Q. Okay. And did you say that was the rear passenger?

19 A. The rear driver's side door handle, interior.

20 Q. Okay. All right. And when you make these comparisons
21 and identification do you make a record of your findings at
22 or around the time that you are doing this analysis?

23 A. Yes. Anytime we match someone other than the victim
24 whose name is written on the envelope, we issue a report.

25 Q. And is this a routine record that you keep as part of

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1 your regularly conducted course of business in the office
2 that you're in?

3 A. Yes, it is.

4 Q. Okay. And do you have your reports with you as to
5 those two identifications?

6 A. Yes, I do.

7 Q. Okay. Can I see those?

8 (Whereupon State's exhibits 51 and 52 were marked for
9 identification)

10 Q. I'm showing you State's exhibit 51 and 52. And you
11 said those are the reports?

12 A. Yes.

13 Q. All right. Do they have your signature?

14 A. Yes, they do. My initials.

15 Q. Does anybody review the work that you do?

16 A. Yes. These reports were -- in this case, was reviewed
17 by our Principal Criminalist, Bill Cromer.

18 Q. Okay.

19 **MS. TESSITORE:** And at this time the State would move
20 that those reports, 51 and 52, be moved into evidence at
21 this time.

22 **MR. GROVE:** No objection.

23 **THE COURT:** Without objection, introduced.

24 **MS. TESSITORE:** Thank you, Your Honor.

25 (Whereupon State's exhibits 51 and 52 were admitted

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1 into evidence)

2 Q. All right. I think I forgot to ask you about State's
3 exhibit 49.

4 A. Yes.

5 Q. Tell the jury what that -- what that lift was.

6 A. This is latent lift number 4. And it was from the
7 exterior side of the rear passenger door. And it was
8 identified as being made by the number 2, the right index
9 finger, of Steven Haefner. And I used the elimination
10 prints in this case to make that identification.

11 Q. Okay.

12 A. And I wrote my initials and the date on the reverse
13 side of the card too.

14 Q. And from all the cards that were submitted to you, are
15 those the only identifications you were able to make?

16 A. Yes.

17 Q. Okay.. Thank you. Please answer any questions that Mr.
18 Grove may have.

19 **MR. GROVE:** No questions, Your Honor. Thank you.

20 **THE COURT:** All right. Thank you, sir. You can step
21 down. Let me see the lawyers up here. And, sir, you can go
22 ahead and leave if you want to.

23 **MS. TESSITORE:** Thank you, Your Honor.

24 (Whereupon a bench conference was held off the record
25 in the presence of the jury, but out of their hearing)

1 (Whereupon the bench conference was ended)

2 **THE COURT:** All right. Ladies and gentlemen, we're
3 going to go ahead and call it a day. The next witness will
4 probably be a lengthy witness, and it's almost 4:30 now
5 anyway. I'm going home because I got a meeting at 6:00. So
6 I've got a drive in front of me. So we're going to go ahead
7 and call it a day.

8 But I fully anticipate finishing the case. The good
9 news is we should finish the case by lunchtime tomorrow,
10 okay? So you should be able to deliberate and everything
11 tomorrow afternoon.

12 I'm feeding lunch to you tomorrow as well. They
13 haven't told me what it is yet. I hope it's good because
14 I'm eating the same thing. So y'all come prepared for that,
15 all right?

16 We'll see you in the morning. I want you here again at
17 9:15 so I can deal with some pretrial issues and we should
18 be ready to roll right at 9:30, okay? Thank you so much.
19 Don't talk about the case. Have a great evening.

20 (Whereupon the jury exited the courtroom at 4:20 pm)

21 **THE COURT:** All right. Anything else substantive for
22 the record?

23 **MS. TESSITORE:** Nothing from the State, Your Honor.

24 **THE COURT:** Okay.

25 **MR. GROVE:** Nothing from Defense. Thank you.

1 **THE COURT:** All right. Thank you. We are down til
2 tomorrow morning. See y'all between 9:15 and 9:30.

3 **MS. TESSITORE:** Yes, sir.

4 (Whereupon court was in recess at 4:20 pm)

5 (End of Requested Transcript of Record)

6 (Thursday, February 9, 2017 court proceedings were taken by

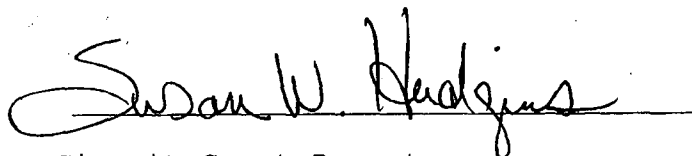
7 Deborah Garrison, Court Reporter).

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 7th & 8th day of February 2017.

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

April 25, 2017


Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE	)	
State of South Carolina,	)	
	)	
	)	
v.	)	Case No. 16-GS-23-01737
	)	
Brian Willie Benson Lewis,	)	
	)	
Defendant	)	

FEBUARY 9, 2017
TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on February 7 through 9, 2017, before The Honorable Brian Gibbons in Courtroom 4 of the Greenville County Courthouse, 325 East North Street, Greenville, South Carolina; attended by counsel as follows:

APPEARANCES:

Jennifer Tessitore, Assistant Solicitor
13TH CIRCUIT SOLICITORS OFFICE
305 East North Street, #325
Greenville, South Carolina 29601
.... Appearing for State of South Carolina

Will Grove, Public Defender
Michael Martinez, Public Defender
GREENVILLE COUNTY PUBLIC DEFENDER
305 East North Street, #123
Greenville, South Carolina 29601
... Appearing for Defendant

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Case No. 16-GS-23-01737

Jury Trial - February 9th, 2017

Before The Honorable Brian Gibbons

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Susan Hudgens, Circuit Court Reporter)

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1 | FEBRUARY 9, 2017 | 9:30 A.M.

2 (DEFENDANT PRESENT)

3

4 THE COURT: Anything before we bring
5 the jury in?

6 SOLICITOR TESSITORE: Yes, Your Honor.

7 We mentioned this yesterday but I don't
8 recall -- I may have already said this but
9 we'd request an instruction regarding the
10 witnesses' in-court identification, the
11 factors that they should consider. Also if
12 they could consider -- and I didn't know if
13 you were going to give that charge or not.

14 THE COURT: Well, I can. What do you
15 think about that, Mr. Grove?

16 MR. GROVE: I don't have a problem with
17 that, Your Honor. I've got a request to
18 charge on the way. Mr. Martinez is
19 downstairs right now following up on that,
20 actually.

21 THE COURT: Okay. Identification
22 charge. And I believe the State is
23 requesting a 'hand of one, hand of all'
24 charge?

25 SOLICITOR TESSITORE: Yes, sir.

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Before The Honorable Brian Gibbons

1 THE COURT: Anything on that, Mr.
2 Grove?

3 MR. GROVE: If you could give me a few
4 moments, Your Honor. Maybe we can address
5 that after Deputy Kicklighter testifies?

6 THE COURT: All right, we will do it
7 then.

8 MR. GROVE: Thank you.

9 THE COURT: We will have a formal
10 charge conference then on the record prior to
11 closing and all that kind of stuff.

12 SOLICITOR TESSITORE: Yes, sir.

13 THE COURT: Okay, let's bring the jury
14 in.

15 (JURY IN @ 9:40 A.M.)

16 THE COURT: Good morning, ladies and
17 gentlemen. I hope you had a nice evening
18 last night. Solicitor, you may call your
19 next witness.

20 SOLICITOR TESSITORE: Thank you, Your
21 Honor. The State would call Investigator
22 Kicklighter.

23 (WITNESS TAKES STAND)

24 DARRELL KICKLIGHTER, having been sworn
25 to tell the truth, and nothing but the truth,

1 testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR TESSITORE:

4 Q. Good morning, Investigator Kicklighter.

5 A. Good morning.

6 Q. What do you do for the Sheriff's office?

7 A. I am an investigator in the Violent
8 Crimes Unit.

9 Q. How long have you been an investigator in
10 the Violent Crimes Unit?

11 A. I had a brief stint in 2015 and recently
12 transferred back at the beginning of this
13 year, since January of this year.

14 Q. Okay. How long have you been with law
15 enforcement?

16 A. Eleven years.

17 Q. In what capacities?

18 A. I've worked in uniform patrol, worked in
19 the direct patrol unit, went to violent theft
20 investigations, was promoted to Master
21 Deputy, came back to our investigators
22 division as a Master Deputy.

23 Q. What kind of training do you have in the
24 area of violent crime investigations?

25 A. Most of it is just on-the-job training.

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Testimony of Darrell Kicklighter - Direct Examination

1 We've had some training with interviewing and
2 interrogation, numerous cases involving
3 violent crimes.

4 Q. Have you been to special schools?

5 A. Not yet.

6 Q. As far as the Academy?

7 A. Yes, ma'am. I've been to the Academy for
8 law enforcement; yes, ma'am.

9 Q. All right. Directing your attention to
10 July 22nd, 2015, in your capacity as an
11 investigator did you respond to the armed
12 robbery that we are all here for today?

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

14 Q. Tell the jury what you did when you go to
15 the Grove Station Apartments there at or
16 around the time of the robbery.

17 A. Yes, ma'am.

18 Q. And when you went there, did you meet the
19 manager there? Ms. Moran?

20 A. That's correct.

21 Q. And what, if anything, were you able to
22 learn from Ms. Moran?

23 A. Speaking with the apartment manager, she
24 had told us that before she went to lunch
25 she'd seen a group of individuals

1 congregating in the breezeway down around
2 Apartment

3 I told her that we were responding to a
4 report of an armed robbery involving a
5 Domino's Pizza delivery guy. We have here
6 the description that we had at the time and
7 she told us 'it matches these guys'
8 description I ran off from the breezeway
9 prior to me going to lunch' that day.

10 Q. Okay. How many individuals did she say
11 was there?

12 A. Four.

13 Q. So did that information lead you to a
14 particular apartment?

15 A. Correct, (affirmative nod). Apartment

16
17 Q. And did you go to

18 A. Me and Investigator Owens did go to

19 Q. Okay, and what happened there?

20 A. We spoke with Cordell Lewis' and Brian
21 Lewis' sister, Stephanie. She confirmed that
22 they both were there, that they were gone at
23 the time. We did this about 3:30 in the
24 afternoon.

25 Q. When she said that they were both gone,

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Jury Trial - February 9th, 2017

Testimony of Darrell Kicklighter - Direct Examination

1 did you know who she was talking about?

2 A. Cordell and Brian.

3 Q. Where did you go from there?

4 A. From there I went to Domino's Pizza to
5 try to get some information on the order
6 which would have provided the telephone
7 number that the order was placed from.

8 Q. Okay.

9 SOLICITOR TESSITORE: (Tenders document
10 to be marked as exhibit).

11 COURT REPORTER: State's Exhibit 54 for
12 identification.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR TESSITORE:

15 Q. Investigator Kicklighter, I am showing
16 you what has been premarked for identifica-
17 tion as State's Exhibit 54. Can you take a
18 look at that?

19 A. (Upon review), this is the purchase order
20 or ticket for the delivery on that particular
21 day, Apartment.

22 Q. Okay, and did you collect that item?

23 A. I did.

24 Q. Did that ticket provide you any
25 information regarding the name of who placed

1 the order?

2 A. It did not.

3 Q. So what information, if any, did you
4 have?

5 A. The telephone number.

6 Q. All right, and is that the telephone
7 number that Ms. Moran had testified about
8 earlier?

9 A. We tried to see if she had that telephone
10 number in her records, and she did not.

11 Q. Was there any other investigation as to
12 that number?

13 A. Yes. We discovered -- we contacted
14 several cell phone providers and determined
15 that this telephone number was generated
16 through an app.

17 Q. An application?

18 A. Yes, a phone application.

19 Q. Phone app?

20 A. (Affirmative nod).

21 Q. Oh, okay. All right. Is this (State's
22 Exhibit 54) in substantially the same
23 condition that it was in that day of the
24 robbery?

25 A. Yes, ma'am.

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Testimony of Darrell Kicklighter - Direct Examination

1 Q. Okay. Has it been changed or altered in
2 any way?

3 A. No, ma'am.

4 SOLICITOR TESSITORE: The State moves
5 State's Exhibit 54 into evidence at this
6 time, Your Honor.

7 MR. GROVE: No objection.

8 THE COURT: Without objection, it is in
9 evidence.

10 (SO ENTERED AS STATE'S EXHIBIT 54)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR TESSITORE:

13 Q. Deputy Kicklighter, moving along, did you
14 respond to the collision later that night
15 involving the victim's stolen SUV?

16 A. I did. Around 10:00 o'clock that evening
17 I received a telephone call from Investigator
18 Stanton stating that we'd located the
19 victim's vehicle. It was involved in a
20 collision with a deputy and they were
21 tracking one of the suspects that had fled
22 on foot. We believed that it was one of the
23 individuals involved in the armed robbery.
24 He told me that they had another suspect
25 apprehended, Donny Campbell.

1 Q. Okay, and did you do anything to confirm
2 that the SUV that was there was the victim's?

3 A. When I arrived on scene, I observed the
4 collision that the other officers testified
5 to. I verified the VIN, tag number, license
6 plate number and confirmed that it was the
7 victim's vehicle.

8 Q. Now taking you to the apartments at the
9 time that the defendant was arrested, which
10 we have already heard about, were you there
11 shortly after the arrest?

12 A. I was.

13 Q. Okay, and when you went out there, how
14 did you -- how was -- what did you see as far
15 as -- let me make it a little clearer. When
16 you got there, what did you do?

17 A. When I got there the defendant was in
18 handcuffs in the grass area to the side of
19 the apartment building. He had been bitten
20 by the canine deputy. I heard Investigator
21 Stanton advising him of his *Miranda* rights.

22 Q. Do you also Mirandize suspects as part of
23 your duties?

24 A. Yes, ma'am.

25 Q. When you heard Deputy Stanton -- excuse

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Testimony of Darrell Kicklighter - Direct Examination

1 me, Investigator Station. When you heard
2 Investigator Stanton Mirandizing the
3 defendant, was there anything that he missed?

4 A. No, ma'am.

5 Q. If he had, what would you have done?

6 A. I would have re-Mirandized him if he had.

7 Q. Did he defendant seem alert when
8 Investigator Stanton was speaking to him?

9 MR. GROVE: Objection, Your Honor.
10 Speculation.

11 THE COURT: Overruled.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR TESSITORE:

14 Q. Could you see the defendant while
15 Investigator Stanton was talking to him and
16 advising him?

17 A. (Affirmative nod), I was right beside
18 Investigator Stanton.

19 Q. Did the defendant seem alert?

20 A. Yes, he did.

21 Q. Did he seem to understand what was
22 happening?

23 A. Yes.

24 MR. GROVE: Same objection, Your Honor.

25 THE COURT: Overruled.

1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR TESSITORE:

3 Q. Did Investigator Stanton or did you make
4 any threats or promises before he spoke to
5 you?

6 A. No.

7 Q. And did he agree to speak to the two of
8 you?

9 A. He did.

10 Q. Who asked him questions?

11 A. Investigator Stanton.

12 Q. Where was the canine at this point?

13 A. I have no idea.

14 Q. Was he there anywhere near where you were
15 talking to the defendant?

16 A. I don't recall seeing him. He was not in
17 our immediate area at the time.

18 Q. What did you hear the defendant state at
19 that time?

20 A. I heard him say that they were trying to
21 hit a jug.

22 Q. What does that term mean to you?

23 A. I ---

24 MR. GROVE: Objection, Your Honor.
25 Speculations.

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1 THE COURT: Overruled.

2 INVESTIGATOR KICKLIGHTER: I interpreted
3 it to mean that they were looking for an easy
4 way to make money.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR TESSITORE:

7 Q. So kind of a street word?

8 A. Correct.

9 Q. Did he say anything about who was driving
10 the SUV?

11 A. At that particular time?

12 Q. Yes. If you need to refer to your notes
13 to refresh your recollection, please do that.

14 A. (Upon review), Yes, ma'am. We asked him
15 if he was driving the stolen vehicle and at
16 that particular time he admitted that he was
17 the driver.

18 Q. So he admitted that he was the driver?

19 A. (Affirmative nod).

20 Q. And that they were going to "hit a jug."

21 A. (No verbal response).

22 Q. After that point, where did it go from
23 there?

24 A. He was transported to the hospital to
25 receive medical treatment for the dog bite.

1 I began working on a search warrant for
2 Apartment the window where he'd jumped
3 out of.

4 Q. Okay. Was there anything of evidentiary
5 value in the apartment that related to this
6 case?

7 A. No, ma'am.

8 Q. Okay. So I am going to take to -- let's
9 see. Did you meet with the victim, Steve
10 Haefner, at the crime scene office at some
11 point in time? Where the vehicle had been
12 brought.

13 A. I did.

14 Q. Okay, and when you met with him there
15 what did you -- what did you go while you
16 were there?

17 A. We wanted to allow the victim to look in
18 the vehicle to see if any of the items that
19 may have been left in the vehicle were still
20 there.

21 Q. As far identifying anything that was his
22 or not his, tell the jury what the outcome of
23 that was.

24 A. The outcome of it was that he found some
25 money that was hidden underneath the floor

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1 mat. He located that, that the suspects did
2 not find. His tools were missing, his laptop
3 was missing. The forensics investigator,
4 Sergeant Shaw, still had the evidence from
5 the night that we located the vehicle, at
6 their office, and I showed him the firearm
7 that we seized.

8 Q. Okay. Just for clarification, when the
9 victim was looking at his SUV was that after
10 it was processed by Sergeant Shaw?

11 A. That's correct. We were at the point
12 where we were to release the vehicle back to
13 the victim.

14 Q. All right. When you showed the gun to
15 the victim, is this the condition in which it
16 was when you showed it to him?

17 A. No, ma'am.

18 Q. How did it appear when you showed it to
19 him?

20 A. The slide was forward.

21 Q. So ---

22 A. None of the barrel was exposed.

23 Q. Was it in this box?

24 A. I can't recall if it was in the box. It
25 was probably in a paper bag, a brown paper

1 bag; in the bottom of a brown paper bag.

2 Q. That is State's Exhibit 15 that we are
3 talking about?

4 A. Correct.

5 Q. So when that weapon is not racked how
6 does it appear?

7 A. The slide is forward.

8 Q. I am showing you State's Exhibit 30.
9 What does that show?

10 A. That is how it would have appeared when I
11 presented it to him. I can't recall if it
12 was on the other side but it would have been
13 in that position.

14 Q. Okay. But -- as far as closed, like
15 that?

16 A. Yes, ma'am.

17 Q. So did you rack the gun to show it to the
18 victim?

19 A. Absolutely not.

20 Q. Now, Investigator Kicklighter, I am going
21 to talk to you just a little bit about --
22 we've heard some testimony about photo arrays
23 and identification of this defendant. I just
24 want to get back to that because I think it's
25 -- we need to talk about that. When you

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1 showed the -- well, let me ask you, did you
2 show an array to the victim?

3 A. I did, (affirmative nod).

4 Q. Let me just -- I am going to show you
5 State's Exhibits 1 through six -- take a look
6 at one through six and tell me if you
7 recognize them.

8 A. (Upon review), this is the photo lineup
9 presented to the victim that contained the
10 defendant, Brian Lewis.

11 Q. Is that in substantially the same
12 condition as when you showed it to the
13 victim?

14 A. Yes, ma'am.

15 Q. When did you show it to the victim?

16 A. On July 24th.

17 Q. So two days after?

18 A. Yes, ma'am.

19 Q. Where were you when you showed it to him?

20 A. Domino's Pizza on Anderson Road.

21 Q. Where he worked?

22 A. Correct.

23 Q. How were those photographs -- generally
24 how do you go about selecting other
25 photographs when you're putting a suspect in

1 an array?

2 A. We have a database that we pick the
3 photographs from.

4 Q. What kind of factors do you use in ---

5 A. Oh, we try to use the same race, gender,
6 same hairstyle, same clothing, background.
7 We try to keep all of that similar in nature.

8 Q. So that no one stands out?

9 A. Correct.

10 Q. So when you gave the array to him, how
11 were they arranged?

12 A. It's in a three-ring binder. Each
13 picture was placed in a sleeve. They'd look
14 at the first one, flip it over. Second one,
15 so on and so forth until they've reviewed all
16 six photographs.

17 Q. Okay. If you could, just show the jury
18 kinda -- were you there when he looked at
19 those?

20 A. Yes, ma'am.

21 Q. Show the jury kind of how you recall him
22 going through it and if he made a selection
23 how he made that selection.

24 MR. GROVE: Your Honor, I'd object to
25 mirroring another person's actions. I'd

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1 argue that it is hearsay.

2 THE COURT: Overruled.

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR TESSITORE:

5 Q. If you would.

6 A. Prior to reviewing the photo lineup, we
7 give instructions.

8 Q. What are those instructions?

9 A. We tell the victim or the witness that,
10 'We are going to present you with a group of
11 photographs. The suspect involved in your
12 crime may or may not be in this lineup. Take
13 as much time as you need. Look at each
14 picture and flip to the next all the way to
15 the end. Do not look at one and go right
16 back to the one that you previously looked
17 at. If you make an identification, tell me.
18 You will sign and date it.'

19 Q. Did he follow your instructions?

20 A. He did.

21 Q. Show the jury how you recall him looking
22 at it.

23 A. So it is in a three-ring binder. The
24 first sleeve is number one. He looks at it
25 and turns it over. He looks at number two

1 and turns it over. Comes to number three,
2 'that is the guy that pointed the gun.'
3 Looks at the rest, goes back to number three
4 and says "that's the guy who pointed the
5 gun."

6 Q. How confident was he?

7 MR. GROVE: Objection, Your Honor.
8 Speculation.

9 THE COURT: Overruled.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR TESSITORE:

12 Q. As you recall ---

13 A. He was very confident.

14 Q. Did you -- how do you indicate whether he
15 -- let me ask you this, are his initials on
16 those documents?

17 A. Correct, his initials are on every one
18 that he reviewed, at the top, and the
19 positive identification is where he gave his
20 signature and the date.

21 Q. Okay. Thank you. Investigator
22 Kicklighter, did you show him any other photo
23 arrays, groups of six photos, that contained
24 this defendant's picture?

25 A. No.

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1 Q. Had you shown him any pictures of this
2 defendant prior to the array?

3 A. No.

4 Q. When -- you said you and Investigator
5 Owens prepared the photo array.

6 A. (Affirmative nod).

7 Q. State's Exhibit 3, just to go back to
8 that, the picture of the defendant, do you
9 recall when that photo was taken?

10 A. Mr. Lewis was booked into the detention
11 center on the 23rd for the charges and the
12 other charges incident to arrest. This was
13 his most recent booking photo.

14 Q. So this is the photo that you used, which
15 was taken the day before?

16 A. Correct.

17 Q. Has his appearance changed in any way?

18 A. It has.

19 Q. How has it changed?

20 A. His hair is longer.

21 Q. Anything else?

22 A. He may have lost some weight. I'm not
23 sure.

24 Q. Okay. Okay, I am going to take you to
25 the law enforcement center. Did you

1 interview this defendant at the law
2 enforcement center?

3 A. I did.

4 Q. Okay. Describe the -- describe where you
5 met with him and who was there.

6 A. When he was released from the hospital he
7 was transported to our office at the time.
8 Investigator Owens was in the office and
9 Investigator Stanton, and Canine Deputy
10 Anderson was there for a brief period of
11 time.

12 Q. Did you receive any information from
13 Deputy Anderson when he brought him to you?

14 A. He'd brought with him his discharge
15 papers from the hospital.

16 Q. Did you review those?

17 A. Yes, ma'am.

18 Q. For what purpose?

19 A. I wanted to make sure that the defendant
20 was not under the influence of any controlled
21 substances. If he was, I would not have
22 interviewed him.

23 Q. So once you clarified that, did you again
24 -- did you advise him of his *Miranda* rights
25 again?

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1 A. I did.

2 Q. When you did that, did you -- I'm showing
3 you State's Exhibit 44. Do you recognize
4 that?

5 A. (Upon review), I do.

6 Q. What is that?

7 A. This is a waiver of rights form. Each
8 line starts 'you have the right' and then
9 there is a paragraph at the bottom.

10 Q. Are they labeled?

11 A. They are labeled.

12 Q. How are they -- how -- what are the
13 labels that you are looking at there?

14 A. Well, I asked the individual 'What is
15 your highest level of education? Can you
16 read and write?' He said that he could. I
17 said to read each line and initial beside it.
18 He read each line and initialed. I read this
19 paragraph to him and he initialed and signed
20 it indicating his willingness to speak with
21 me.

22 Q. Does your signature appear on there?

23 A. It does.

24 Q. Does his signature appear on there?

25 A. Yes, ma'am.

1 Q. Is this a fair and accurate copy of --
2 actually is this the document that he signed
3 and that you signed?

4 A. (Affirmative nod), that would be the
5 original.

6 Q. Okay, and -- I guess it is a copy of the
7 original.

8 A. Yes, ma'am.

9 SOLICITOR TESSITORE: At this time I
10 would move State's Exhibit 44 into evidence.

11 MR. GROVE: No objection.

12 THE COURT: So entered.

13 (SO ENTERED AS STATE'S EXHIBIT 44)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR TESSITORE:

16 Q. Did you determine while you were speaking
17 with him what the highest level of education
18 that he had?

19 A. He indicated to me that he'd completed
20 the tenth grade.

21 Q. Did you have any concerns with that as to
22 whether he could read or write?

23 A. No, ma'am.

24 Q. During the time that you spoke with him
25 there, did he ever ask for an attorney?

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1 A. He did not.

2 Q. Did he ever ask to stop the interview?

3 A No, ma'am.

4 Q. So after Mirandizing him and going
5 through this rights form as well as the
6 waiver of his rights, did he agree to speak
7 with you?

8 A. He did.

9 Q. Showing you State's Exhibit 53, would you
10 take a look at that and tell me if you
11 recognize it.

12 A. (Upon review), yes.

13 Q. What is that?

14 A. It is a DVD of our interview with Mr.
15 Lewis.

16 Q. Did you have an opportunity to review it
17 before today?

18 A. I have reviewed it, (affirmative nod).

19 Q. Okay, and how do you know this is the one
20 that you reviewed?

21 A. I initialed it.

22 Q. Is this a fair and accurate recording of
23 what occurred that day?

24 A. It is fair and accurate.

25 Q. Okay.

1 SOLICITOR TESSITORE: Your Honor, at
2 this time the State would move State's
3 Exhibit 53 into evidence.

4 MR. GROVE: Subject to my previous
5 objection, Judge.

6 THE COURT: Noted. Overruled.

7 (SO ENTERED AS STATE'S EXHIBIT 53)

8 DIRECT EXAMINATION CONTINUED

9 SOLICITOR TESSITORE:

10 Q. Okay. Just a couple of questions while
11 Ms. Kelly is getting the computer cued up.
12 When he spoke to you there at the law
13 enforcement center, did he speak clearly
14 throughout the whole interview?

15 A. He did not.

16 Q. Are there -- were you able to -- I guess
17 I should ask it this way, have you reviewed
18 the video through the system that we have
19 here today?

20 A. Correct, (affirmative nod).

21 Q. Could you hear it any better or worse
22 when you were there -- was there any sound
23 quality difference as far as any volume, uh,
24 issues between when you ---

25 A. I could understand him more clearly at

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1 the time I was sitting right beside him
2 moreso than I could watching this interview.

3 MR. GROVE: Your Honor, may we take up
4 a matter of law at this point?

5 THE COURT: Come up here first.

6 (OFF-RECORD BENCH CONFERENCE)

7 THE COURT: All right.

8 SOLICITOR TESSITORE: Thank you, Your
9 Honor. Your Honor, at this time the State
10 would request to publish the video.

11 THE COURT: You may do that.

12 (WHEREUPON STATE'S EXHIBIT 53, A VIDEO
13 RECORDING OF IN-CUSTODY INTERVIEW WITH THE
14 DEFENDANT, WAS PUBLISHED BEFORE THE JURY)

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR TESSITORE:

17 Q. Investigator Kicklighter, do you
18 typically provided input to the State in your
19 cases?

20 A. Yes, ma'am.

21 Q. What type of input do you provide?

22 A. We get a form from the Solicitor's Office
23 asking for our input on the defendant,
24 whether they should get probation, whether
25 they should go to jail, but we don't mind the

1 Solicitor using their own discretion.

2 Q. Do you have an opportunity to provide
3 specific input if you want to?

4 MR. GROVE: Objection, Your Honor.
5 Relevance.

6 SOLICITOR TESSITORE: I will move along.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR TESSITORE:

9 Q. For what purpose do you give that input?

10 MR. GROVE: Same objection.

11 THE COURT: Sustained.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR TESSITORE:

14 Q. Is the input that you give to the State
15 affected by the defendant's truthfulness?

16 MR. GROVE: Same objection, and it
17 calls for speculation.

18 THE COURT: Sustained.

19 SOLICITOR TESSITORE: Just one moment.

20 THE COURT: Yes, ma'am.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR TESSITORE:

23 Q. Regarding the part of the video where you
24 said "the truth can set you free" -- let me
25 just get to that part there.

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1 He said, "It won't."

2 Then you said, "It won't, but it can help."

3 What did you mean?

4 A. I mean that he was being ---

5 MR. GROVE: Your Honor, I object again
6 on the same grounds.

7 THE COURT: I am going to allow that.
8 I will allow the answer to this question.

9 INVESTIGATOR KICKLIGHTER: I meant that
10 if he was being truthful about his
11 involvement in the robbery that it would be
12 beneficial to him on the mercy of the court.

13 SOLICITOR TESSITORE: Answer any
14 questions that Mr. Grove may have, please.

15 THE COURT: Mr. Grove?

16 CROSS EXAMINATION

17 BY MR. GROVE:

18 Q. Do you have a copy of your report with
19 you?

20 A. Yes, sir.

21 Q. Earlier you testified that you responded
22 to Apartment isn't that right?

23 A. When I got on scene, Investigator Owens
24 was at the apartment manager's office and
25 then we went to Apartment after that.

1 Q. That's right. You spoke with Ms. Moran,
2 the apartment manager. Right?

3 A. Correct.

4 Q. Then you went to Apartment

5 A. Correct.

6 Q. Earlier you testified that you spoke with
7 Stephanie, right?

8 A. Correct.

9 Q. And Stephanie is a resident of Apartment
10

11 A. (Affirmative nod).

12 Q. And she is the sister of Cordell and
13 Brian?

14 A. Right.

15 Q. Earlier you testified that she told you
16 that Cordell and Brian had been at the
17 apartment earlier that day; isn't that right?

18 A. One moment ---

19 Q. My question is ---

20 SOLICITOR TESSITORE: Your Honor, I
21 object. He should have an opportunity to
22 review what he is talking about.

23 MR. GROVE: I am asking him what his
24 statement was earlier on the record, Your
25 Honor, not what is in his report.

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1 THE COURT: Fine. Give him an
2 opportunity to look at his report. Repeat
3 your question so that he will have time to
4 answer it verbally.

5 CROSS EXAMINATION CONTINUED

6 BY MR. GROVE:

7 Q. Earlier, on direct, you said that you
8 spoke with Stephanie and she told you that
9 Cordell and Brian had been in the apartment
10 earlier that day; didn't you?

11 A. I did say that earlier; yes, sir.

12 Q. Have you had opportunity to look at your
13 report?

14 A. I have.

15 Q. In your report it says that, (reading):
16 "Stephanie stated that her younger brother,
17 Cordell, was at the apartment earlier but had
18 left about forty-five minutes to an hour
19 before we came to the apartment." Isn't that
20 what it says?

21 A. Correct.

22 Q. It doesn't say anything about Brian, does
23 it?

24 A. Correct. It also talked a little bit on
25 the record about this gun, the gun that is in

1 evidence; right?

2 A. Correct.

3 Q. You talked about Mr. Haefner wasn't able
4 to identify it when you showed it to him on
5 the 24th. Right?

6 A. Correct.

7 Q. But you showed it to him on the 24th,
8 didn't you?

9 A. Correct.

10 MR. GROVE: Beg the Court's indulgence.

11 CROSS EXAMINATION CONTINUED

12 BY MR. GROVE:

13 Q. A little bit earlier when you were
14 answering questions from Mrs. Tessitore about
15 that you encourage suspects to cooperate so
16 that it can be helpful to them later on.
17 Isn't that right?

18 A. We try to encourage them.

19 Q. You let them know if they cooperate that
20 it can be helpful to them. That's a standard
21 technique, isn't that right?

22 A. I agree.

23 Q. It's a standard question that you could
24 probably say to anybody who is a suspect that
25 you are taking information from. Right?

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1 A. Yeah.

2 Q. And at least one codefendant in this case
3 had already given a statement, isn't that
4 right?

5 A. That's right.

6 MR. GROVE: No further questions.

7 THE COURT: Redirect?

8 SOLICITOR TESSITORE: No questions.

9 THE COURT: Thank you, sir. You may
10 step down.

11 (WITNESS STEPS DOWN)

12 THE COURT: The State may call its next
13 witness.

14 SOLICITOR TESSITORE: Your Honor, at
15 this time the State rests.

16 THE COURT: The State rests. Ladies
17 and gentlemen of the jury, there are some
18 matters that we need to take up with the
19 attorneys. So we are going to go ahead and
20 take our midmorning brief recess. We will
21 get you back out here in about fifteen
22 minutes. Okay? Y'all don't talk about the
23 case.

24 (JURY OUT @ 10:35 A.M.)

25 THE COURT: Mr. Grove?

1 MR. GROVE: Your Honor, at this time
2 the Defense moves for a directed verdict.
3 The State has rested their case. I don't
4 believe that the evidence that has been
5 presented rises to the level to satisfy -- we
6 ask for a directed verdict, that you dismiss
7 the case.

8 THE COURT: Anything from the State?

9 SOLICITOR TESSITORE: Your Honor, we
10 oppose that Motion.

11 THE COURT: Really?

12 SOLICITOR TESSITORE: Absolutely. Yes,
13 sir.

14 THE COURT: I agree with the State. In
15 view of the light of the evidence, viewed in
16 light most favorable to the nonmoving party,
17 the State, there is enough evidence to go to
18 the jury on the issue of the alleged crimes
19 committed by this defendant. Anything else
20 before I speak with your client about his
21 right to testify, Mr. Grove?

22 MR. GROVE: Sir?

23 THE COURT: Do you want some more time
24 to speak with him before I question him?

25 MR. GROVE: No, Your Honor, I'm happy

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Examination of Defendant's Right to Testify

1 for you to do that now. Would you like for
2 us to approach?

3 THE COURT: No, I will do it from here.
4 Just speak up for me. Mr. Lewis, raise your
5 right hand.

6 DEFENDANT: (Complies)

7 THE COURT: Do you swear to tell the
8 Court the truth, the whole truth and nothing
9 but the truth, so help you God?

10 DEFENDANT: Yes, sir.

11 THE COURT: You are going to have to
12 speak louder than that.

13 DEFENDANT: I do.

14 THE COURT: All right. Be seated.
15 That's good and loud. Keep speaking loud
16 like that and you'll be good to go. Okay?

17 DEFENDANT: Yes, sir.

18 THE COURT: Our court reporter has got
19 to pick up everything that is said. At this
20 time I'm going to explain certain rights that
21 you have. If you don't understand anything
22 that I say, please ask me to repeat it and
23 I'll be glad to do so. I'll give you an
24 opportunity to confer with your attorneys
25 again. Do you understand that?

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Examination of Defendant's Right to Testify

1 DEFENDANT: Yes, sir.

2 THE COURT: We have now reached the
3 stage of the trial where you get to present
4 your defense. Now, you have the right to
5 claim the protections given to you by the
6 Fifth Amendment of our United States
7 Constitution, which says that no person shall
8 be compelled in any criminal case to be a
9 witness against themselves. This means that
10 you cannot be required to testify in this
11 case. Nobody can make you testify. That's a
12 personal choice that you get to make.

13 Now, you can testify if you want to but
14 nobody can make you do that.

15 Do you understand that?

16 DEFENDANT: I do.

17 THE COURT: Now, if you do decide to
18 testify, you will be subject to the same
19 rules that have governed other witnesses in
20 this trial and you can be cross-examined on
21 any relevant issue in this case.

22 I don't believe that there is any prior
23 record on which to try to cross-examine him
24 or impeach his testimony. Is there?

25 SOLICITOR TESSITORE: No, Your Honor.

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Examination of Defendant's Right to Testify

1 THE COURT: So you have no prior crimes
2 on which the State can try to impeach your
3 testimony or make you look bad.

4 The State's lawyers can cross-examine
5 and try to make you look not very believable
6 in front of the jury, just like your lawyer
7 tried to do with the State's witnesses. Do
8 you understand that?

9 DEFENDANT: I do.

10 THE COURT: Okay. Now, if you decide
11 to testify, you must make that decision
12 freely, voluntarily and intelligently
13 understanding your Fifth Amendment rights.

14 If you decide not to testify, I will
15 instruct the jury that they cannot bring that
16 up in the jury room because you have an
17 absolute right to remain silent and that
18 cannot be used against you.

19 It is left entirely up to you whether or
20 not to testify. Do you understand everything
21 that I have gone over with you?

22 DEFENDANT: I do.

23 THE COURT: Do you have any questions
24 about what I have explained to you?

25 DEFENDANT: No, sir.

1 THE COURT: And have you discussed with
2 your lawyers about whether you should or
3 should not testify?

4 DEFENDANT: I have, but I'd like to
5 speak to them one more time.

6 THE COURT: Absolutely. Keep talking
7 to them.

8 DEFENDANT: (Sidebar with counsel).

9 THE COURT: Do you need any more time
10 to talk to your lawyers, Mr. Lewis?

11 DEFENDANT: No, sir.

12 THE COURT: Do you wish to testify?

13 DEFENDANT: No, sir.

14 THE COURT: Do you agree with that, Mr.
15 Grove? That strategy or that decision of
16 your client?

17 MR. GROVE: I do, Your Honor.

18 THE COURT: Anything else you want me
19 to question him about?

20 MR. GROVE: No, sir.

21 THE COURT: Anything else you want me
22 to bring up or that you need to bring up now?

23 MR. GROVE: Procedurally, how do you
24 want to proceed? Obviously we're not going
25 to put up any sort of defense. So if I need

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Examination of Defendant's Right to Testify

1 to rest on the record -- I'm happy to renew
2 all my previous objections now so that we can
3 go straight into arguments. I don't know
4 what ---

5 THE COURT: You can go ahead and renew
6 them.

7 MR. GROVE: At this time we renew our
8 directed verdict Motions and all of the other
9 objections that we made throughout the trial.

10 THE COURT: And those are respectfully
11 denied. All right.

12 Having said that, what we will do -- we
13 are going to briefly do a charge conference
14 now while we are on the record, and then we
15 will take a break. When we come back, you'll
16 rest on the record. Okay?

17 MR. GROVE: Yes, sir.

18 THE COURT: And I'll let the jury know
19 about closing statements, closing arguments.
20 The State will proceed first, since you
21 didn't put up anything. You'll go last.

22 I am familiar with *State v. Beattie*.
23 I've read it. I still think that that case isn't a
24 final decision yet because there's been a
25 petition for rehearing. But there's a

1 discrepancy between the party with the right
2 to the second argument versus the party with
3 a right to the middle argument. I don't know
4 what the second argument and the middle
5 argument is.

6 MR. GROVE: I am satisfied to take
7 last.

8 THE COURT: All right, thank you.
9 Thank you for saying that on the record.
10 That way you get to go last.

11 All right, charge conference. Any
12 particular thing that you wish for me to
13 charge, Mr. Grove, that you didn't go over
14 yesterday?

15 MR. GROVE: I will let Mr. Martinez
16 handle this, Judge.

17 THE COURT: Mr. Martinez.

18 MR. MARTINEZ: Your Honor, we have
19 two different charges that we can pass up,
20 and we have copies for the prosecutor as
21 well. The first one deals with -- may I
22 approach?

23 THE COURT: Yes.

24 MR. MARTINEZ: The first one deals
25 with identification of the defendant and the

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1 second one is believability/credibility.
2 charge.

3 In terms of identification, we believe
4 that it would assist the jury in evaluating
5 the identification of the defendant in this
6 case, whether that was -- was sufficient.

7 The -- as Your Honor can read from the
8 charge, it generally has to do with whether
9 he had an adequate time to view the
10 defendant, had an adequate opportunity, uh,
11 to see the defendant during the commission of
12 the crime. Specifically the stress or fright
13 at the time of observation and whether he was
14 focusing on anything else. We believe that
15 is proper for the jury to evaluate.

16 THE COURT: What is the State's
17 position on the identification charge?

18 SOLICITOR TESSITORE: Your Honor, I
19 think it's important to have on the record
20 and that the jury should be so instructed; so
21 no objection.

22 THE COURT: I have my -- let me give
23 you mine, okay? Y'all tell me which one that
24 you want to use. Mine is shorter, sweeter,
25 easier to understand, which I find -- of

1 course y'all may not want that. This is what
2 mine says, (reading):

3 "An issue in this case is the identifi-
4 cation of the defendant as to the person who
5 committed the crime charged. The State has
6 the burden of proving identity beyond a
7 reasonable doubt. You must be satisfied
8 beyond a reasonable doubt of the accuracy of
9 the identification of the defendant before
10 you may convict the defendant.

11 Identification testimony is an expression
12 of belief or impression by a witness. You
13 must determine the accuracy of the
14 identification of the defendant. You must
15 consider the believability of each
16 identification witness in the same way as any
17 other witness.

18 You may consider whether the witness had
19 an adequate opportunity to observe the
20 offender at the time of the offense. This
21 will be affected by things like how long or
22 how short a time was available, how far or
23 close the witness was, the lighting
24 conditions, and whether or not the witness
25 had the chance to see or know the person in

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1 the past.

2 Once again I instruct you that the burden
3 of proof on the State extends to every
4 element of the crimes charged and this
5 specifically includes the burden of proving
6 beyond a reasonable doubt the identity of the
7 Defendant as the person that committed the
8 crime.

9 If after examining the testimony you have
10 a reasonable doubt as to the accuracy of the
11 identification, you must find the Defendant
12 not guilty."

13 Do you want to use mine or yours?

14 MR. MARTINEZ: We would prefer to
15 submit ours to the jury.

16 THE COURT: Okay.

17 SOLICITOR TESSITORE: Your Honor,
18 after hearing what the Court's charge is, I
19 think, as your said, that it is shorter,
20 sweeter. I think in reviewing it, in
21 reviewing the requested charge, my concern is
22 that it gets into reasonable doubt about the
23 crime being committed as well as -- you know,
24 it just adds, uh, charges that will already
25 be covered by Your Honor with respect to

1 reasonable doubt. I think the State would
2 ask that the Court charge the one that you
3 just read.

4 THE COURT: Any further argument on
5 that, Mr. Martinez?

6 MR. MARTINEZ: Just that if you're
7 inclined to give your charge, we'd just ask
8 that our charge be made a Court's exhibit.

9 THE COURT: I have already written
10 that. Court's Exhibit 1. I'm going to
11 charge my charge and not the Defendant's
12 request to charge. Looking at the
13 Defendant's request to charge, I believe that
14 it impermissibly comments on the facts, so I
15 am not going to charge that one.

16 I will hand it to you, Madam Court
17 Reporter. I've already written on there that
18 it is Court's Exhibit 1.

19 COURT REPORTER: Court's Exhibit 2,
20 Your Honor.

21 THE COURT: What was Court's Exhibit 1?

22 COURT REPORTER: The DVD of the full
23 interview.

24 THE COURT: That's right. So this is
25 actually Court's Exhibit 2. Okay.

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1 (SO ENTERED AS COURT'S EXHIBIT 2)

2 THE COURT: Okay. The second request
3 to charge deals with what?

4 MR. MARTINEZ: Credibility.

5 THE COURT: Okay.

6 MR. MARTINEZ: We understand that the
7 Court has a credibility charge and we'd just
8 assert that this provides additional
9 grounds/factors for the jury to evaluate a
10 witness' testimony and whether they'd have a
11 reason to lie or had various issues in
12 viewing what happened, remembering what
13 happened correctly. We'd just ask that the
14 Court give our submitted charge.

15 THE COURT: I will give the credibility
16 charge, my own charge because it's easier to
17 understand and it's not as long.

18 I will make this Court's Exhibit 3.

19 MR. MARTINEZ: Thank you, Your Honor.

20 (SO ENTERED AS COURT'S EXHIBIT 3)

21 THE COURT: Anything from the State?

22 SOLICITOR TESSITORE: As to that, Your
23 Honor, no.

24 THE COURT: Here's what I am charging
25 -- and I want you all to look at the verdict

1 form too, but hang on, I want you to hear
2 what I am charging...

3 General stuff, what their function is and
4 what my function is.

5 Credibility.

6 The long circumstantial evidence charge.

7 Charge that arrest and indictment is not
8 evidence.

9 Presumption of innocence.

10 Reasonable doubt. That is the firmly
11 convinced charge.

12 Statement of defendant.

13 Intent -- I give the long intent charge.

14 Identification.

15 Failure of a defendant to testify.

16 Hand of one, hand of all.

17 On the armed robbery, at the end when I
18 am defining what a deadly weapon is, here is
19 my definition, (reading): "A deadly weapon
20 is any article, instrument or substance which
21 is likely to cause death or great bodily
22 harm. Whether an instrument has been used as
23 a deadly weapon depends on the facts and
24 circumstances of each case. A pistol is a
25 deadly weapon."

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1 I deleted the dirk and dagger stuff
2 because there's no evidence or a dirk or a
3 dagger.

4 (Reading): "A pistol is a deadly
5 weapon. A gun may be a deadly weapon even if
6 it is not operative. A toy gun which has the
7 appearance and/or is believed to be a real
8 gun is a deadly weapon is a factual question
9 for you to determine. Whether or not a BB
10 gun is deadly weapon is a factual question
11 for you to determine."

12 Any problem with that proposed charge?

13 SOLICITOR TESSITORE: Not from the
14 State, Your Honor.

15 MR. GROVE: No, Your Honor.

16 THE COURT: Okay. On the possession of
17 a weapon during the commission of a violent
18 crime, all I do is simply define a firearm as
19 a weapon. That's the only change from what
20 you're used to on that.

21 I do charge possession, either actual or
22 constructive possession -- since there
23 appears to be an issue in this case about who
24 actually possessed the gun.

25 SOLICITOR TESSITORE: Your Honor, just

1 one issue on that. On the possession of a
2 weapon during the commission of a violent
3 crime, the statute specifically says "or what
4 appears to be a firearm." I would just ask
5 that that language from the statute be
6 included.

7 THE COURT: It's in there, (reading):
8 "The State must prove beyond a reasonable
9 doubt that the defendant was in possession of
10 a weapon or visibly displayed what appeared
11 to be a weapon during the commission of a
12 violent crime."

13 A firearm is a weapon. Then I say, "a
14 firearm means a pistol which is designed to
15 expel a projectile."

16 SOLICITOR TESSITORE: Yes, sir.

17 THE COURT: I am not going to keep on
18 saying that an air-soft pellet is a
19 projectile. I am not going to do that, I
20 consider that a comment on the facts.

21 SOLICITOR TESSITORE: Thank you.

22 THE COURT: I talk about actual and
23 constructive.

24 Conspiracy is straightforward.

25 Resisting arrest is straightforward.

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1 Then the duty to deliberate, we talk
2 about that.

3 I am staying away from saying "true
4 verdict." I am aware of *State v. Beattie*
5 says about commenting on "a verdict that
6 speaks the truth." I don't say that.

7 MR. MARTINEZ: Thank you, Your Honor.

8 THE COURT: Y'all come look at the
9 verdict form and see if you have any issues
10 with it. It is straightforward but you all
11 come look at it.

12 (COUNSEL REVIEW OF VERDICT FORM)

13 MR. GROVE: No objection from defense,
14 Your Honor.

15 SOLICITOR TESSITORE: None from the
16 State, Your Honor.

17 THE COURT: We will take just a few
18 minutes. Everybody go refresh, get ready and
19 we will start with closing arguments. We
20 will take about fifteen minutes.

21 (BRIEF RECESS)

22 (COUNSEL REVIEW OF EXHIBITS)

23 THE COURT: Anything before we bring
24 the jury in?

25 SOLICITOR TESSITORE: No, sir.

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Closing Argument by the State

1 THE COURT: All right, bring the jury
2 in.

3 (JURY IN @ 11:05 A.M.)

4 THE COURT: All right, all members of
5 the jury are present. We are ready now to
6 resume. The State has rested. Mr. Grove?

7 MR. GROVE: At this time the Defense
8 will rest.

9 THE COURT: The Defense has rested.
10 We have now completed the evidentiary and
11 testimony phase of the trial.

12 The way that we will proceed in this
13 trial is that the State will present its
14 closing argument to you first, followed by
15 the defense. Please listen carefully and
16 closely to what the attorneys have to tell
17 you. Then I will instruct you on the law
18 regarding all the issues that have arisen in
19 this case. Then we will get the case to you
20 to start deliberating. Solicitor.

21 SOLICITOR TESSITORE: Thank you, Your
22 Honor, may it please the Court, Mr. Grove,
23 Mr. Martinez.

24 Ladies and gentlemen of the jury, at the
25 beginning of this case I stood up and talked

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1 to you, I explained that the reason you were
2 chosen here today, by both parties, is
3 because you bring common sense with every
4 chair that is in here. That's why you were
5 chosen, because you obviously have jobs and
6 life -- you have that common sense, you have
7 that life experience that will inform you in
8 this case.

9 Ladies and gentlemen, this is not -- as I
10 said, this is not a complicated case. It's a
11 simple case. It is not anything that -- it's
12 not like *Greenville C.S.I.*, you know.
13 Obviously you didn't hear a lot about
14 forensic evidence and swabs and dangling DNA
15 and a smoking gun from which certain evidence
16 was extracted. That's not what we are
17 talking about here.

18 This is a case of good old-fashioned
19 police work. Not just the police work of one
20 investigator or two investigators or three
21 investigators but of the directed patrol
22 unit, community patrol. All these officers
23 working diligently to respond to Mr. Haefner
24 who was out there laying on the ground,
25 kicked in the head, with nothing left but his

1 cell phone to call for help. That's it,
2 that's all that he had.

3 So it's not like the movies, it's not
4 like TV shows that you might see with all the
5 fancy equipment and things like that. If it
6 were, I'd probably be more good-looking. But
7 basically it's what you get.

8 So I would suggest to you that instead of
9 thinking of this in terms of *C.S.I.* that you
10 think of this as more like a crime novel, a
11 book, a book that has chapters.

12 I was going to stand up and talk to you
13 about, you know, the law of armed robbery,
14 which is essentially the main crime that he
15 is charged with. The Judge is going to go
16 through all those details with you, so I
17 don't want to duplicate all that with you.
18 You will take the law from the Judge as he
19 gives it to you.

20 But, as I began at the beginning, the one
21 thing that I would just point to an important
22 is that it doesn't have to be an actual
23 deadly weapon; although it looks like one and
24 it acts like one, as far as being racked back
25 and silver-barreled. Any object that appears

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Closing Argument by the State

1 to be a deadly weapon -- I am not going to
2 insult your intelligence. You can look at
3 the evidence and you can make that
4 determination.

5 Rather than just talking about the law,
6 let's talk about what you know in this case.

7 The first chapter in this case is about
8 the victim. You heard from Mr. Haefner. He
9 sat up here, trembling. He told you that he
10 owns pizza companies. That he not only sits
11 back and enjoys the profits from his
12 companies but he is actually out there
13 delivering the pizza, working hard for his
14 money. That is not easy money, and it
15 certainly wasn't easy money on July 22nd when
16 this robbery occurred. You heard him
17 describe what happened. So chapter one is
18 just getting to know the victim, what the
19 situation was, what he was doing that day and
20 how he works hard for his money.

21 Now, chapter two is -- I'm going to take
22 you to Mr. Jackson. Mr. Jackson, as you
23 heard, he just told you part of the story
24 because he was only there for part of the
25 story. He tells you that he knew that they

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Closing Argument by the State

1 were up to something. He was with those
2 four, the manager sees them there. It is
3 very clear all the testimony lines up and
4 corroborates what he told you. He was here
5 to tell the truth. You could look at him,
6 Mr. Jackson, and as he told you what happened
7 you could assess his credibility, his
8 demeanor. Did he come in here with an
9 attitude? Did he come in here that he
10 doesn't care? Or did he sit up there and
11 tell you, 'I am working now. I am on
12 probation, I got a Youthful Offender
13 sentence. I regretted what I did.' And,
14 'What was the deal that you got to come here
15 and testify?' He said he was here to tell
16 the truth. So that is chapter one (sic). He
17 was the guy with the credit card, he's there
18 at the beginning. When he sees that gun
19 being pulled out by this defendant and
20 pointed at the victim's head, just inches
21 away from his head, he says 'I'm outta here.'
22 He did the right thing at that point. He
23 should have called the police. He didn't.
24 But he came here and he spilled his guts and
25 told you what he remembered from that

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Closing Argument by the State

1 incident and what responsibility that he
2 took.

3 Chapter three. Cordell Lewis, the
4 younger brother, who was sixteen years old at
5 the time that this defendant was twenty-one,
6 telling these guys what to do. Do you think
7 that the Defendant had any influence over his
8 younger brother? I think you can answer that
9 question.

10 What was his role? He told you that he
11 was the one that stood there -- that after
12 they ordered the pizza, that they walked up
13 there and while they were out there that,
14 after he held the gun on the victim, he
15 handed it to his little brother. Do you know
16 why he did that? Because he trusts his
17 brother. He doesn't know Donny as well as he
18 knows his brother. He doesn't know Robert
19 Jackson as well as he knows his brother
20 barely at all. But he trusts his brother, so
21 he gave him this gun. It didn't look like
22 this, it looked like this because he racked
23 it. Why did he rack it? Because he wanted
24 the victim to be in fear, in such fear that
25 he would be laying down on the ground, face

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Closing Argument by the State

1 on the ground, not looking; because if he
2 tries to look he might get shot. He doesn't
3 know if there is a Beckwith, a gun or a
4 bullet in there but from what you heard he
5 probably thought that there was a bullet in
6 there.

7 So Cordell takes this gun, racked, ready
8 to go, and what does he do? He holds it on
9 the victim so that this Defendant, Brian
10 Lewis, can get the keys to the car, he can
11 get the money -- easy money that he told you
12 about -- and he can get everything else that
13 he can grab: pizzas, the order that he had
14 for another person. So Cordell held that,
15 did what he was supposed to do. Then just to
16 add a little insult to injury he decides that
17 he is going to kick the victim in the head
18 while he is laying down there. So he
19 actually, in the words of Donny, stomped the
20 victim on the head. You see the abrasion he
21 had on his forehead. Makes sense. Then what
22 he do? He got in the car. He took the gun
23 in there with him; he wasn't going to leave
24 that behind. And they leave. So Cordell.

25 Jackson. Did he come in here with an

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Closing Argument by the State

1 attitude? Or did he come in here and speak
2 to you about what happened? Can you imagine
3 how difficult that was, as a sixteen-year-old
4 at the time, now eighteen, had to sit here
5 and look at his brother right over here, have
6 to look at him and identify him in the
7 courtroom, knowing what he is exposed to?
8 Why would he do that if it wasn't true?

9 Did he cooperate with the police? He
10 didn't run from the police like he
11 (indicating Defendant) did. He didn't fight
12 with the police. There was no problem. He
13 was compliant. He told the truth to the
14 officer, he spelled it all out, got it off
15 his chest. He even said, 'What should
16 happen? I should go to prison.' We will
17 come back to that.

18 So did he get a deal? Sure, he got a
19 benefit. He had more exposure than Mr.
20 Jackson in chapter one and he had more
21 involvement in the actual crime and harm with
22 the gun, the stomping of the victim. But he
23 cooperate, he came here and told the truth.
24 Does he get a benefit for that? Absolutely.
25 Even with the benefit, he's still looking at

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Closing Argument by the State

1 up to twenty years. He just came here to
2 tell the truth.

3 Chapter four, Donny Campbell. You heard
4 from Donny Campbell. Again, assess his
5 demeanor, his credibility. This case is
6 about common sense and credibility. Was he
7 credible when he sat up there? Did he look
8 like he wanted to be here? Did he look like
9 he was just ready to put the nails in this
10 guy's coffin? He is eighteen years old. He
11 got up there and told you, 'Yep, we ordered
12 the pizza, we used my phone.' He says he
13 gave it to Brian -- it doesn't matter, he
14 knew that day that they were planning a set-
15 up. And that set-up was at Apartment --
16 you will have the map so that you can look at
17 that. Outside Apartment they were
18 waiting, they were ready for Mr. Heafner.
19 They were just waiting, sitting out there
20 waiting. Hiding, so that when he came and
21 Mr. Jackson distracted him that they could
22 jump out and do what they were there to do.

23 The agreement, the conspiracy to rob. I
24 told you at the beginning of this case that
25 there wouldn't be a written agreement that

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1 they all signed like when you go to get a
2 mortgage, buy a car or anything like that.
3 The conspiracy is as simple as look at their
4 conduct, look at their words that you've
5 heard talked about. Common sense. I submit
6 that you can be firmly convinced that there
7 was a conspiracy between these four
8 individuals.

9 Now, Donny told you that's what they did.
10 He told you what his role was. He never
11 actually held the gun on the victim. The
12 only thing he did, according to him, which
13 was also supported by the other witnesses, is
14 that he also kicked Mr. Heafner in the head.

15 He then left in the SUV, they all left
16 together. You saw the video of when he was
17 ultimately arrested about seven hours later,
18 and his demeanor when he was in the woods.
19 Did he run? Did he fight? Did they have to
20 put a dog on him to control and apprehend
21 him? You saw he came out of the woods like
22 uh-oh, and he looked like he was scared.
23 That's good, because that makes him more
24 credible, more real because he cares. He
25 came here and he testified because he does

1 care about his future. He's eighteen. So,
2 again, did he get a benefit? Yes. But is he
3 still facing up to twenty years? Yes. It is
4 up to whoever the judge is that sentences
5 him, that's in the future. But that's not
6 relevant. This Defendant right here, he's
7 the reason we are here today.

8 Now, Mr. Campbell cooperated with the
9 police too. In fact, he was the first one
10 too break the whole thing. You know, he
11 said, you know, the description of the
12 driver, he said, 'Well, Isaiah Jefferson' --
13 he just kinda throwed out his name, because
14 it's hard to point a finger at that point.
15 He's scared. Of course he's scared. So he
16 said Isaiah Jefferson, because that's what he
17 told his sister to say if the police came.
18 'Say some guy named Isaiah Jefferson.' Well,
19 Isaiah Jefferson is not on trial. Brian
20 Lewis is.

21 And what did Donny say about him? He
22 said that he had dark shorts, wearing a black
23 shirt when he ran into the woods -- and the
24 defendant revved up the Highlander and buzzed
25 by about five or six deputies, crashing into

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Closing Argument by the State

1 the last one. Donny didn't know what
2 happened after that point but he had -- the
3 officer who came testified about what he
4 found on the driver's side where this
5 defendant fled, in a flash, into the woods.
6 What did they find? Well, Donny described a
7 black shirt. This looks like a black shirt
8 to me. And where was it? It was crumpled up
9 in the floor, because he was in a hurry. He
10 had to get out of there. He's got to run
11 from the police, and that's what he did. Did
12 he cooperate? No.

13 There are some pictures of what else that
14 they found in there. Some rubber gloves on
15 the front seat, driver's side. This shirt.
16 That was after he'd took off into the woods,
17 just before they started trying to track him.
18 You'll have all these exhibits back there,
19 the evidence in this case.

20 And what else? He had purple Nike shoes
21 or the purple sneakers that he had on there
22 at the hospital, when he was arrested. And
23 he had dark shorts on. Two plus two equals
24 four, it's that simple.

25 So based on the information that they got

1 from Donny Campbell it opened the case
2 clearly, so that they could then go back to
3 Mr. Heafner. So chapter five, go back to the
4 victim's account, brutal account of what
5 happened that day. You know that he was
6 there working hard for his money. He
7 describes his opportunity to observe this
8 defendant when he held that gun to his face.
9 He told you how close it was. He told you
10 that it was 3:00 p.m., middle of the day,
11 broad daylight, nothing -- ladies and
12 gentlemen, nothing concealing his face,
13 nothing concealing the codefendants' faces.
14 Wow.

15 Mr. Heafner told you that two days later,
16 when he was shown a photo array, that he
17 looked at all the pictures and when he got to
18 number three he said, "That's the guy." He
19 didn't have any kind of description. There
20 was really nothing specific about his face,
21 you know, as far as clear markings or, you
22 know, scars or really anything that could
23 stand out. You can make that decision. But
24 when he looked at him, the mental snapshot
25 that he took when he stood there with that

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1 gun to his face -- and his face was directly
2 behind the gun, he knew. And he said,
3 "that's the guy." That's what he told
4 police. You have that. You have the fact
5 that just two days after that the officer
6 provided the photo array, no pressure, no
7 coercion, and he picked him out. He was
8 certain. In fact, he was so certain that he
9 came back here to testify in front of you and
10 he looked over there and he said "that's the
11 guy." He didn't just say that. He said, you
12 know what? Huh. His hair is different. He
13 was very observant. He said 'his hair is
14 different.' You decide if his hair looks any
15 different than it did that day, the day after
16 he was, uh, committing the robbery and the
17 day that he was arrested -- the night that he
18 was arrested.

19 Moving right along. Before we get to
20 chapter six -- chapter six is actually the
21 chapter about the defendant. I think that is
22 a good place to end, because that's how we
23 ended this case, with his statement. His
24 statement that he gave to the police, the
25 judge will instruct you that you are to

1 determine if that statement was voluntary.
2 Did he understand what was going on? Was it
3 voluntary? Was he coerced? Was his will
4 overcome overborne with the fear of the
5 consequences that he was facing? Thirty
6 years? Did you see that fear when you
7 watched the video? I submit that you can be
8 firmly convinced that there was no fear.
9 There was no will being overborne. There was
10 no gun being held to his head. They were
11 sitting around in an office. They didn't
12 have him cuffed to the chair or anything like
13 that. No threats. No promises.

14 He was given his rights a second time.
15 The first time was out on the scene, a lot
16 going on but he makes his statement there and
17 then they memorialized it. This piece of
18 paper that has his initials, his signature.
19 Even better, you saw it happen on the video.
20 So there's no doubt about that.

21 You know, the interesting thing is that
22 -- I'm going to go back, and I told you that
23 I was going to go back to this. Cordell
24 Lewis, when he was asked 'what do you think
25 should happen to you' said 'I think I should

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1 go to prison.' They said, 'why is that?'

2 'Because I was honest, told the truth.' It's

3 interesting because when the Defendant was

4 being interviewed, he said -- when

5 Investigator Kicklighter said, you know,

6 'tell the truth, the truth can set you free.'

7 Isn't that interesting? And you know what he

8 said? He said, 'no, it won't, it won't set

9 me free.' And I am going to refer -- well, I

10 will go back to that. He said, 'it won't set

11 me free.' That is probably the most truthful

12 thing that he said in that whole interview.

13 He said that there were four people and some

14 other details that would line up with what

15 was laid out by the other witnesses, but that

16 was really the only truthful thing that seems

17 important to point out to you.

18 Now, chapter five, we were just about to

19 finish chapter five, the statements that he

20 made on the scene. We were going to go back

21 to the arrest when he was arrested,

22 Mirandized, not threatened, the dog was put

23 away. What did he say? He admitted taking

24 part in the robbery, he admitted driving, and

25 he said that they were just "going to hit a

1 jug." That's street slang for easy money.

2 You can consider the totality of the
3 circumstances. That's what the Judge will
4 talk about. Was that statement voluntarily
5 made? Was he coerced there? Again, short
6 encounter. You will decide that.

7 But the recorded interview, he didn't
8 even appear to really care. So if he doesn't
9 really care and he said 'doesn't matter to
10 me', a lot of stuff didn't matter to him. A
11 maximum sentence didn't matter to him. If he
12 doesn't care, how can he be in fear of the
13 consequences? That doesn't make sense. So I
14 would submit to you that you can determine
15 that the Defendant was not in fear when he
16 made the statement and he didn't appear to be
17 in pain or distress. So I'd just ask you to
18 consider his demeanor. It's evidence that we
19 could have, the actual video of that.

20 The Judge is going to talk to you about
21 that the hand of one is the hand of all. You
22 may have heard that expression. It's also
23 that the act of one is the act of all. In
24 his admissions on the video, he makes some
25 statement about 'I was just the driver. I

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1 was the driver.' Well, behind that statement
2 alone and to know that it's to get easy
3 money, knowing that things were going to
4 happen, under that theory of accomplice
5 liability, the act of whatever Cordell did,
6 whatever Donny did, whatever Robert did,
7 they're attributed to each and every
8 defendant in that group in that conspiracy.
9 So when he said 'I was just the driver',
10 apparently he doesn't understand that the
11 hand of one is the hand of all. But under
12 the law, which he didn't care about that day,
13 it means that he is guilty. So you could
14 stop right there.

15 But just to give you a few more
16 highlights in chapter six, he said 'I just
17 wanted to make some money. Everybody else
18 played their part, they did their own thing
19 and everybody went separate ways.' How many
20 people? Four. So he admits that there are
21 four.

22 When the officer/investigator talks about
23 the maximum sentence he says, 'It makes no
24 difference, it really makes no difference to
25 me. I'm just going to do my time.'

1 He only wants to speak about what he did.
2 He said that he was the driver, he didn't
3 call the pizza man, he didn't hold the gun
4 according to him. He just wants to speak
5 about him. He says, 'I'm going to go to
6 court for my actions and take this one.'
7 Talk about 'my actions.' And he says in that
8 same part where the investigator said the
9 truth can set you free, he said "it won't."
10 "It won't." I think we can figure out that.
11 Even when he says, 'well, you know, it will
12 help', he says, 'Well, there will be
13 consequences for my actions. You think by
14 telling me, you know, that two or three years
15 will make any difference -- I might as well
16 do the whole thing. Two or three years won't
17 make any difference. I can just do my time
18 and get out.' Does that sound like someone
19 who cares?

20 Then he says, 'just knew that it was
21 going to be an easy way to get some money for
22 a car.' Said, 'were trying to do a jug?'
23 Defendant said, 'my job was to do my job.'
24 Later somebody came to me and they said, 'I
25 got a way to make some quick money, they

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1 gonna do all the work, all I got to do is
2 drive, I could care less.' Those are his
3 words, "I could care less." 'I will get a
4 quick buck just for driving. I don't care
5 what you do. I'm just going to do my part.'

6 So Mr. Brian Lewis wrote the last chapter
7 in this book -- almost. Almost.

8 In fact, there's actually probably one
9 sentence missing in that chapter. Let's
10 think about what that is. It was his words
11 when he said that it makes no difference to
12 him, that it was easy money. Just think
13 about that. It makes a huge, a huge
14 difference to Mr. Heafner who had to endure
15 those seconds as his life passed before him.
16 It makes a huge difference to law enforcement
17 officers who work diligently and effectively,
18 and who had four suspects in custody within
19 two days. It makes a huge difference to the
20 community. That's what good old fashioned
21 police work is. Isn't that what you want?
22 So does it matter to them? Yes, it matters a
23 lot.

24 Ladies and gentlemen, the only words --
25 last words of this chapter written by this

1 Defendant that make any sense with all
2 the evidence that the State has given you
3 would be Guilty, Guilty, Guilty, Guilty.
4 Thank you.

5 THE COURT: Thank you, Madam Solicitor.
6 Mr. Grove?

7 MR. GROVE: Ms. Tessitore left out a
8 few things, especially in Brian's statement.
9 Since she finished with that, I will start
10 with it.

11 He also said he didn't know that there
12 was going to be a robbery. You can't
13 conspire to a robbery if you don't know that
14 there is going to be a robbery, ladies and
15 gentlemen.

16 Brian absolutely said, and I told you, on
17 Tuesday afternoon, what he did was wrong. He
18 was driving a stolen car, he ran from the
19 officers; he resisted arrest. If you go back
20 in the jury room and you start debating about
21 whether or not Brian Lewis resisted arrest,
22 stop. He did. He absolutely resisted
23 arrest. There's no need for you to debate
24 about that.

25 There is plenty of need for you to debate

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1 about whether or not he committed a robbery
2 or conspired to commit a robbery. It seems
3 to me from the investigation that you heard
4 from the officers, and there were plenty of
5 them, as soon as Donny Campbell said Brian
6 Lewis did it, it was Brian Lewis's idea, the
7 investigation was over.

8 Then it became -- rather than 'let's look
9 at the evidence and see what it says', it
10 became 'All right, Brian Lewis did it. Now
11 let's get the evidence that helps support
12 that theory.'

13 It's also important to remember how Brian
14 Lewis' name ever come up. You heard it from
15 Donny Campbell and you heard it from the
16 investigators that once 'I think it was
17 Brian's idea' -- was it Brian's idea?

18 You know, 'if you cooperate with us, if
19 you tell the truth, it's going to be better
20 for you.'

21 'I think Brian had a gun.'

22 'Did Brian have a gun?'

23 'Yeah.'

24 'If you cooperate, if you tell the truth,
25 it's going to be better for you.'

1 'That's right, Brian did a gun. Yeah.
2 I was there, I saw him with the gun. It's my
3 gun. Sure it's my gun but Brian had it.'
4 'Yes, we did order the pizza to the
5 building where I live' -- not where Brian and
6 his brother lived, but Brian is the one who
7 did that too.
8 'We ordered the pizza on my phone but
9 Brian did that.' Brian did that too.
10 'Yeah, you found the gun on me, you found
11 the gun right next to me but Brian had the
12 gun.'
13 Same thing happened with Cordell.
14 Same thing happened with Robert..
15 'Brian was in charge. Brian did it.'
16 'If you cooperate with us, it'll be
17 better for you.'
18 That's right! BAM!
19 'Yeah, it was my brother, he was
20 responsible.'
21 'Yeah, it was the guy who lives across
22 the breezeway. He was the one who did it.
23 Y'all are right, he did it. Now I'm coming
24 clean. Give me my probation. Let me get my
25 record cleared. Set me free.'

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1 That's what the three codefendants -- one
2 of them already out and two of them are still
3 looking.

4 'Tell us it was Brian.'

5 Now, you no doubt have some issues about
6 Mr. Heafner's identification. I know, that's
7 upsetting. It is unsettling for me too. I
8 don't like the idea that Mr. Heafner picked
9 my client out of a lineup. And if you think
10 -- you go back there and you start
11 deliberating about whether this picture is
12 Brian Lewis -- this is Brian Lewis
13 (indicating Defendant) and this is the
14 picture that Mr. Heafner picked out of the
15 lineup, no question.

16 Now, two things that I want to point out
17 about what Ms. Tessitore said. She said Mr.
18 Heafner said that -- that he looked at him
19 and said, 'yeah, he looks a little different,
20 his hair is a little longer.' She thought
21 that meant that he had a good memory. If you
22 remember, ladies and gentlemen, he had
23 already seen this picture during the trial.
24 This was already in evidence. He'd seen the
25 shorthaired version. Anybody in the world

1 can look over there and tell you that, yeah,
2 his hair is longer.

3 He also said, and I want y'all to debate
4 this on your own, he also said 'otherwise he
5 looks the same as he did on July 22nd, 2015.'

6 'Anything distinguishable about his face?
7 Nothing in particular.'

8 When I look at his face, I see tattoos.
9 When I look at his arms, I see tattoos,
10 ladies and gentlemen. I didn't see any of
11 them on the other three codefendants. If I
12 am describing for you four black males and
13 all I can come up with is a generic
14 description, all about the same height, all
15 about the same weight, and I was trying to
16 figure out how I could distinguish the one
17 that had the gun -- well, he's got tattoos on
18 his face and he's got tattoos on his arms
19 that are exposed by short sleeves, because
20 it's summertime, that ought to be one of the
21 first things that I remember.

22 I could remember the gun with the silver
23 slide. Let me be clear, ladies and
24 gentlemen. If you get back there and you
25 think that I'm trying to tell you that this

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1 isn't the gun that he saw, you've missed the
2 point of this trial. This is the gun. This
3 is the one. They wrapped it. You can see
4 the silver barrel. This is the gun that was
5 displayed to Mr. Heafner when he absolutely
6 got robbed, no question in my mind. The
7 question is who held the gun. The question
8 is, was it Brian?

9 Now, what you heard from Mr. Heafner is
10 -- describe that gun, and he described that
11 gun pretty dadgum well. It's a black
12 handgun, semiautomatic, 'it had a slide that
13 was racked and I could see the silver
14 barrel.' That distinguishes that gun from a
15 lot of other guns.

16 Then two days later he was shown this
17 exact same gun, the gun that was used, and he
18 couldn't identify it at the time. Now, my
19 point is not that he couldn't identify it at
20 the time. My point is that on the stand he
21 couldn't remember that. He didn't -- you
22 remember, he didn't remember that interaction
23 two days later when they showed him the
24 lineup, 'do you remember seeing a gun that
25 you couldn't identify?' 'No, that didn't

1 happen.'

2 And in that moment, ladies and gentlemen,
3 he's not lying. But he doesn't remember the
4 truth either. In his mind, I have every
5 reason to believe that he doesn't remember
6 being shown that gun. That doesn't mean that
7 he is lying.

8 When he says that he saw Brian, I believe
9 in his heart of hearts that he thinks that it
10 was Brain. That doesn't make him right.

11 There's a way for the State to prove that
12 he is right. This gun, Cordell Lewis says 'I
13 had my hands on it.' Donny Campbell says,
14 'I had my hands on it.' Brian Lewis says, 'I
15 never had my hands on it.' Tested it, ladies
16 and gentlemen. Ms. Tessitore said that you
17 didn't hear a whole lot about forensics and
18 she's absolutely right. You know why?
19 Because the State didn't test the evidence.
20 There's a dispute about who had the gun. You
21 want to prove that Brian had the gun? Test
22 it. Swab it for touch DNA, like you heard
23 about it. Dust it for prints, tape it, use
24 some chemicals. An expert sat up here and
25 talked about all of that that they could have

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1 done. They didn't.

2 No doubt in my mind that Mr. Heafner was
3 robbed. No doubt in my mind that he thinks
4 it was Brian. Plenty of doubts in my mind
5 about whether or not he's right.

6 What did you hear -- one of the things
7 that Cordell talked about -- he said that
8 they said something about made me cooperate.

9 'What made you cooperate?'

10 'They said that my brother said that I
11 did it.' (Laughing), 'Uh-uh, I'm not taking
12 this one, I'm giving it to Brian.'

13 I also remember Cordell saying, 'I told
14 the victim, when I was pointing the gun, I
15 told the victim "if you move, you're going to
16 have a bad day".'

17 You'll remember that Mr. Heafner
18 remembers being told, by the guy with the
19 gun, "if you move, you're going to have a bad
20 day."

21 Mr. Heafner also did not remember giving
22 Priscilla Austin's contact information to law
23 enforcement a couple hours after the
24 incident. Gave them her phone number. She
25 is the lady that talked with Investigator

1 Stanton over the phone, she's the lady who
2 said, 'I saw my boss' car riding down the
3 road about 7:30 at night, black skin, curly
4 hair, wearing a hat, with white lady.' Both
5 of those in the car. Black male about
6 eighteen.

7 'Did you follow up with Ms. Austin?'

8 'We had our guy.'

9 'Did you call her back to try and get
10 some more information? Show her some
11 pictures?'

12 'We got our guy.'

13 One of the last things that Mr. Heafner
14 said on the stand was he looked up as the car
15 was driving away, that it went back into the
16 apartment complex before it doubled back and
17 went down Stanton Bridge Road. One of the
18 things that Brian said in his statement --
19 remember, Brian hadn't seen this statement
20 from Mr. Heafner, doesn't know that he's
21 given any sort of statement to law
22 enforcement. Brian says -- they said, 'when
23 did you get in the car?'

24 'I don't have a time. I wasn't looking
25 at my phone, I don't know what time it was.'

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1 'Where did you get in the car?'

2 In the courtyard of the next place, right
3 up the hill.

4 So we get in the car, we go get Brian and
5 then we take off. Maybe that's how it
6 happened, ladies and gentlemen. Maybe if
7 they look at that evidence.

8 Ms. Tessitore says that the only truthful
9 thing that he said is that the truth will set
10 you free, "No, it won't." He's absolutely
11 right, because the truth is that he resisted
12 arrest, he's driving a stolen car. The truth
13 is that he committed crimes, ladies and
14 gentlemen. Not armed robbery. He didn't
15 conspire to commit an armed robbery. The
16 truth is, 'I broke the law. Absolutely.'

17 Investigator Stanton says that Mr.
18 Heafner told him that the gunman was wearing
19 all black. Mr. Heafner talked about a
20 Superman shirt. I don't know. He also said
21 that a lot of people wore a lot of different
22 clothing but that everybody looked pretty
23 generic. Think on that, ladies and
24 gentlemen.

25 You know, Ms. Tessitore said that Donny

1 Campbell must be telling you the truth
2 because he was scared. And I -- we just see
3 the world differently because to me, Donny
4 Campbell must be lying because he was scared.
5 Donny Campbell must be coming up with a way
6 that 'I am not as responsible as somebody
7 else.'

8 She also said that Brian seemed pretty
9 cool and not intimidated. Maybe that's why.
10 But if you remember, one of these
11 investigators talked about -- I don't think
12 he had even been charged with armed robbery
13 yet. He'd been arrested for resisting arrest
14 is what I think Deputy -- Master Deputy
15 Kicklighter said. They charged him with
16 resisting arrest and the offenses involved
17 with the car. They didn't said one word on
18 that video about thirty years, they didn't
19 say one word on that video about armed
20 robbery. And as soon as they said something
21 about a robbery, Brian said 'I didn't know
22 there was going to be a robbery. I didn't
23 know about that. I wasn't there when it
24 happened, I never touched the gun.'

25 I got married a year and ten days ago.

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1 Two Saturdays ago was my first anniversary.
2 If I gave one critique of my wife, and I'd
3 never say it to her face obviously, but if I
4 gave one critique it is that she makes me go
5 to the dentist -- and I hate it. I do not
6 like going to the dentist. One of the main
7 reasons that I don't like going to the
8 dentist is because I also don't like to
9 floss. It's inconvenient for me, it's
10 uncomfortable and, as you can imagine, that
11 makes my trips to the dentist a little more
12 uncomfortable than they might be otherwise.
13 But I go anyway because my wife knows what's
14 best. And when I go, my dentist and I have
15 this same little rigmarole that we go
16 through. She puts me in the chair and she
17 and her assistant talk about ---

18 SOLICITOR TESSITORE: Your Honor, the
19 State would object at this point. Personal
20 testimony is not evidence.

21 THE COURT: Overruled.

22 MR. GROVE: We have the same back-and-
23 forth. She says, 'you haven't been
24 flossing.' 'What'd you say, Doc? I've been
25 flossing, a little bit.' And I do, every

1 once in a while. But when I go to the
2 dentist, she takes that metal thing and she
3 digs between my tooth and the gum line and
4 she presses on the top of my teeth and on the
5 sides. She goes on the inside of my gum
6 line, on the outside of my gum line, then she
7 will actually take dental floss and she will
8 floss my teeth herself. Then she will do the
9 polishing. Then she will took to me
10 afterwards and she will said, 'William, it is
11 important that you floss. It is important
12 that you floss because when you come to me
13 and you sit in this chair, I'm not
14 necessarily looking for big cavities right
15 there, big open sores, or missing teeth.
16 That's not what I am looking for. What I am
17 looking for is whether or not your gums are
18 clean. Because I take this hook and I dig
19 around, you're going to start to bleed a
20 little bit. They are a little bit tender.
21 When I floss in between your teeth, your gums
22 will start to bleed right there. I can tell
23 that you haven't been flossing. I know it's
24 not comfortable and I know it is not
25 convenient but, William, you've got to

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1 floss.'

2 Ladies and gentlemen, when you sit here
3 in the jury box inside this courtroom, you're
4 the dentist. The State is the patient. Ms.
5 Tessitore says that you are to use your
6 common sense, and I agree. You're to take
7 that metal hook of common sense and you're
8 going to dig along the gum line. You're
9 going to take some floss and you're going to
10 floss between the State's teeth. You're not
11 going to find giant cavities, you're not
12 going to find missing teeth but their gums
13 will bleed, ladies and gentlemen. When the
14 gums start bleeding, that's when you know
15 you've found reasonable doubt. The State has
16 not flossed in this case. So when you get
17 back there and you start deliberating and you
18 see those gums bleeding, you don't need to
19 look anymore because you've found your
20 reasonable doubt. That's how I know you'll
21 find my client Not Guilty of armed robbery,
22 Not Guilty of conspiracy and Not Guilty of
23 possession of a weapon during the commission
24 of a violent crime.

25 He is one hundred percent guilty of

1 resisting arrest. He is not guilty of
2 anything else.

3 THE COURT: Thank you, Mr. Grove. All
4 right, ladies and gentlemen of the jury,
5 y'all stand up and let's stretch out a little
6 bit. I'm going to be about twenty minutes or
7 so, and I want to make sure that you listen
8 carefully to me.

9 When you get back to your jury room, you
10 should have your lunch waiting on you. You
11 can deliberate while you are eating lunch.
12 Okay.

13 (Jury standing and stretching) -- all
14 right, everybody ready to roll? (Affirmative
15 nods from various jurors). Okay, have a
16 seat.

17 Mr. Foreman and members of the jury,
18 you've heard the testimony and the evidence
19 and the arguments of both the State and the
20 Defense. I will now explain to you the law
21 that applies in this case.

22 Under the Constitution and laws of South
23 Carolina, you are the finders of fact in this
24 case. I don't have the right to pass upon
25 the facts or to even express any opinion that

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Charge by The Honorable Brian Gibbons

1 I may have as to them because that is solely
2 a matter for you, the jury, to determine. It
3 is your duty as jurors to analyze, to
4 determine the effect, the value and weight
5 and the truth of the evidence presented
6 during this trial.

7 Now, as the trial judge it's been my
8 responsibility to preside over the trial of
9 the case and to rule upon admissibility of
10 certain evidence offered during the trial.

11 You are to consider only the testimony
12 that has been presented from that witness
13 stand together with any exhibits that have
14 been made a part of the record of this case.

15 I have the additional duty to charge you
16 the law, as I am doing now. You'll note that
17 I am reading these instructions and I will do
18 my best to make eye contact with you, but I'm
19 reading them -- I have them written down
20 because I want to make sure that I give you
21 the law as accurately as possible, because
22 what I tell you is very important.

23 You determine the facts and then you use
24 the law as I now give it to you to determine
25 your verdict.

1 Now, ladies and gentlemen, the fact that
2 I may instruct you on various subjects in
3 this case must not be taken by you as
4 indicating what you think my opinion is of
5 the evidence.

6 Finally I charge you that you should not
7 consider what you think the law ought to be
8 but rather what I charge you the law is.

9 You are the judges, the sole judges of
10 the credibility, also called the
11 believability of the witnesses who have
12 testified and of the evidence which has been
13 presented during this trial.

14 In determining credibility or passing
15 upon that issue, you can take into
16 consideration many things. Such as:

17 The demeanor or the manner in which a
18 witness testified.

19 Whether or not a witness had reason to be
20 biased or prejudiced.

21 Whether or not a witness' testimony was
22 contradicted on the one hand or supported or
23 corroborated on the other hand.

24 All of these things you consider bearing
25 in mind that you should give the Defendant

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Charge by The Honorable Brian Gibbons

1 the benefit of any reasonable doubt.

2 It becomes your duty as jurors to analyze
3 and to evaluate the evidence and determine
4 what evidence convinces you of its truth.

5 Talking about evidence, there's two types
6 of evidence presented during a trial, direct
7 evidence and circumstantial evidence. Now, I
8 am going to give you some law school
9 definitions. Don't glaze over too much.
10 I'll explain it to you. Okay?

11 Direct evidence directly proves the
12 existence of a fact and does not require
13 deduction.

14 Circumstantial evidence is proof of a
15 chain of facts and circumstances which
16 indicates the existence of a fact. For
17 example, if on a winter night you look
18 outside before you go to bed and you see
19 brown grass on your lawn, you go to bed. You
20 wake up the next morning and you see snow on
21 your front lawn with footprints through it.
22 Well, first you can infer that it snowed even
23 though you didn't see it snow. Secondly,
24 you can infer that somebody was walking on
25 your lawn. These are things that you can

1 infer even though you didn't actually see it
2 happen. Okay? That's a good way to
3 understand what circumstantial evidence is
4 versus direct evidence.

5 Now, crimes may be proven by
6 circumstantial evidence and the law makes no
7 distinction between the weight or value being
8 given to either direct or circumstantial
9 evidence. However, to the extent the State
10 relies on circumstantial evidence, all the
11 circumstances must be consistent with each
12 other and, when taken together, point
13 conclusively to the guilt of the accused
14 beyond a reasonable doubt.

15 If these circumstances merely portray
16 the defendant's behavior as suspicious, the
17 proof has failed.

18 The State has the burden of proving the
19 defendant guilty beyond a reasonable doubt
20 and this burden rests with the State
21 regardless of whether the State relies on
22 direct evidence, circumstantial evidence or
23 some combination of the two.

24 Now, the fact that the defendant was
25 arrested, charged and indicted is not

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1 evidence in this case and cannot be
2 considered by you as an inference of guilt.
3 Okay? There is no presumption or inference
4 of guilt. Quite the opposite, a defendant is
5 presumed not guilty. The indictments, as I
6 have told, are simply the formal written
7 instruments which contain the description of
8 the charges made against the defendant. That
9 is the formal document by which a case comes
10 into court.

11 Now, the Defendant, as you know, as pled
12 Not Guilty to these charges. That has placed
13 the burden on the State to prove the
14 Defendant guilty.

15 A person charged with a criminal offense
16 is never required to prove innocence. I
17 charge you, ladies and gentlemen, that it is
18 an important rule of law that a defendant in
19 a criminal trial, no matter what the
20 seriousness of the charge may be, will always
21 be presumed to be not guilty of the crime for
22 which the indictment was issued unless guilt
23 has been proven by evidence satisfying you of
24 that guilty beyond a reasonable doubt.

25 This presumption of innocence does not

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1 end when you begin your deliberations but it
2 accompanies the defendant throughout the
3 trial until you reach a verdict of guilt
4 based upon evidence satisfying you of that
5 guilt beyond a reasonable doubt.

6 A good way to describe this presumption
7 of innocence is just like a robe of
8 righteous, just like I am wearing a robe,
9 placed about the shoulders of the Defendant;
10 which remains with him until it has been
11 stripped from him by evidence satisfying you
12 of his guilt beyond a reasonable doubt. This
13 is not just mere legal theory, ladies and
14 gentlemen. It is not just a legal phrase.
15 Presumption of innocence is a substantial
16 right to which every defendant is entitled
17 unless you, the jury, are satisfied from the
18 evidence of the Defendant's guilt beyond a
19 reasonable doubt.

20 So what is a reasonable doubt? I've said
21 that word seventeen times. What does that
22 mean? A reasonable doubt is that doubt which
23 would make an honest, conscientious juror
24 searching for the truth in a case to hesitate
25 to act. Proof beyond a reasonable doubt must

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1 therefore be proof of such a convincing
2 character that a reasonable person would not
3 hesitate to rely and act upon it in the most
4 important of his or her own affairs.

5 Proof beyond a reasonable doubt can also
6 be described as proof that leaves you firmly
7 convinced of the Defendant's guilt.

8 Now, there are very few things that we
9 know in this world with absolute certainty
10 and in criminal cases the law does not
11 require proof that overcomes every possible
12 doubt.

13 If based on your consideration of the
14 evidence you're firmly convinced that the
15 Defendant is guilty, then you must find him
16 guilty.

17 On the other hand, if there is a real
18 possibility that he is not guilty, you must
19 then give him the benefit of the doubt and
20 find him not guilty.

21 Let's talk about a statement of a
22 defendant. A statement alleged to have made
23 by the Defendant has been admitted into
24 evidence in this case for your consideration.
25 While I have determined that this statement

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1 is admissible, I instruct you that you must
2 determine whether the statement was made
3 voluntarily and of the Defendant's own free
4 will. This means that the statement was not
5 caused by pressure, force, fear, threats,
6 coercion or intimidation or by hope, promise
7 of leniency or reward of any kind.

8 In determining whether the statement was
9 voluntarily, you should consider both the
10 characteristics of the defendant and the
11 details of the questions. Now, some of these
12 factors that you can consider are the age of
13 the defendant, the defendant's education or
14 lack thereof, the defendant's mental ability
15 or capacity, the defendant's intelligence or
16 IQ, the defendant's background, his
17 environment, the place and length of
18 detention prior to a statement being made,
19 the nature of how the questions were made to
20 him and the advice, or lack thereof, to the
21 defendant of his Constitutional rights,
22 including but not limited to the right to
23 remain silent, the right to know that any
24 statement could be used against him in a
25 court of law, the right to have a lawyer

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1 present and that if he could not afford a
2 lawyer that a lawyer would be appointed to
3 represent him without any cost, and that he
4 could stop making a statement at any time.
5 You must carefully consider all the
6 surrounding circumstances before you give any
7 weight to an alleged statement.

8 Now, the State has the burden of proving
9 beyond a reasonable doubt that the alleged
10 statement was voluntary. If you determine
11 that it was, you can give that statement any
12 further consideration that you deem proper.
13 You must decide what weight, if any, should
14 be given to the alleged statement. If you
15 determine the alleged statement was not made
16 freely and voluntarily by the defendant, you
17 should not consider the statement at all.

18 Let's talk about intent. In order to
19 establish criminal liability, criminal intent
20 is required. For example, the mental
21 statement to be proven by the State for a
22 particular crime might be purpose, intent,
23 knowledge, recklessness or criminal
24 negligence. Criminal intent must be proven
25 by the State beyond a reasonable doubt.

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1 Criminal intent is always a matter that
2 must be determined by a jury from the
3 circumstances surrounding the situation.
4 There is no way that anybody can prove intent
5 to a mathematical certainty. There is no way
6 that medical science can dissect a person's
7 brain and determine what that person had in
8 mind. So the law says that criminal intent
9 can be inferred from the circumstances which
10 have been shown to have existed. That's how
11 you make a determination as to whether or not
12 the element required of intent is present.

13 It is not necessary to establish intent
14 by direct and positive evidence. But intent
15 may be established by inference in the same
16 way as any other fact, by taking into
17 consideration the actions of the parties and
18 all the totalities of the circumstances.

19 Now, criminal intent is a mental state, a
20 conscious wrongdoing. It is up to you to
21 determine what the Defendant intended to do
22 based on the circumstances which have been
23 shown to have existed.

24 Criminal intent can arise from actions or
25 failure to act. It may arise from

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1 negligence, recklessness or an indifference
2 to duty or to consequence that is considered
3 by law to be the equivalent of criminal
4 intent.

5 Let's talk about identification briefly.
6 An issue in this case is the identification
7 of the defendant as the person who committed
8 the crime charged -- the crimes charged.
9 Now, the State has the burden of proving
10 identify beyond a reasonable doubt. You must
11 be satisfied beyond a reasonable doubt of the
12 accuracy of the identification of the
13 Defendant before you may convict him.

14 Identification testimony is an expression
15 or belief or impression by a witness. You
16 must determine the accuracy of the
17 identification of the Defendant. You must
18 consider the believability of each
19 identification witness in the same way as any
20 other witness. You may consider whether the
21 witness had an adequate opportunity to
22 observe the offender at the time of the
23 alleged offenses. This will be affected by
24 things like how long or short a time was
25 available; how far or close the witness may

1 have been from the offender, alleged
2 offender; the lighting conditions; whether or
3 not the witness had the chance to see or know
4 the person in the past. Once again I
5 instruct that the burden on the State extends
6 to every element of the crimes charged and
7 this specifically includes the burden proving
8 beyond a reasonable doubt the identity of the
9 Defendant.

10 If after examining the testimony you have
11 a reasonable doubt as to the accuracy of the
12 identification you must find the Defendant
13 not guilty.

14 Let's talk about the failure of the
15 Defendant to testify. Listen carefully. I
16 instruct and emphasize to you, ladies and
17 gentlemen, that the fact that the Defendant
18 did not testify is not a factor to be
19 considered by you in any way in your
20 deliberation and in your consideration on the
21 question of guilt or innocence. It must not
22 be considered by you in any manner
23 whatsoever.

24 A defendant has a Constitutional right to
25 remain silent and the assertion of this right

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1 must not be considered by you in your
2 deliberation. I repeat, under your oath you
3 are to draw no conclusion whatsoever from the
4 fact that the defendant in this case did not
5 testify. The fact that he did not testify,
6 Mr. Foreman, should not even be brought up or
7 discussed in the jury room. The burden of
8 proof, as I have stated to you, is always on
9 the State. The Defendant is not required to
10 prove innocence. The burden of proof remains
11 on the State to prove guilt beyond a
12 reasonable doubt.

13 Let's talk about the hand of one is the
14 hand of all before I get into the specific
15 crimes alleged. We're almost done, okay?

16 If a crime is committed by two or more
17 people who are acting together in committing
18 a crime, the act of one is the act of all. A
19 person who joins with another to commit an
20 unlawful act is criminally responsible for
21 everything done by the other person which
22 happens as a probable or natural consequence
23 of the acts done in carrying out the common
24 plan and purpose.

25 For example, two people can be guilty of

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1 killing another person when only one of the
2 two had a gun, there was only one bullet and
3 only one of the two fired the shot that
4 caused the death.

5 If two or more people are together,
6 acting together, assisting each other in
7 committing an offense, the act of one is the
8 act of all; or, as it is sometimes said, the
9 hand of one is the hand of all.

10 Prior knowledge that a crime is going to
11 be committed, without more, is not sufficient
12 to make a person guilty of that crime. Mere
13 knowledge that another person is going to
14 commit a crime, even if the defendant is
15 present when the crime is committed is not
16 sufficient to convict the defendant as a
17 principal.

18 Guilt as a principal in a crime is shown
19 by actual or constructive presence at the
20 scene as the result of a prior arrangement.
21 Therefore, a finding of a prior arranged plan
22 or common scheme is necessary for a finding
23 of guilt as a principal. The State must
24 prove beyond a reasonable doubt, by competent
25 evidence, the theory or hand of one is the

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1 hand of all.

2 Now a "principal" in a crime is one who
3 actually commits a crime or who is present,
4 aiding and abetting or assisting in
5 committing a crime. When a person does an
6 act in the presence of or with the assistance
7 of another, the act is done by both. Where
8 two or more act with a common plan or intent
9 are present at the commission of a crime, it
10 does not matter who actually commits the
11 crime, all are guilty. The hand of one is
12 the hand of all.

13 "Present at the commission of a crime"
14 means to be sufficiently near to aid, abet
15 and assist in the commission of that crime.
16 However, mere presence at the scene of a
17 crime is not sufficient to convict one as a
18 principal on the theory of aiding and
19 abetting. Intent is also a necessary
20 element. There has to have been a common
21 design or intent to commit a crime and the
22 crime must have been committed with the
23 person aiding and abetting by some overt act.

24 "Intent", I've already gone over that,
25 with what intent means. But intent means the

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1 result which actually occurs, not
2 accidentally or involuntarily.

3 Okay, let's talk about the specific
4 crimes which have been charged against this
5 defendant. First I am going to give you the
6 definition of armed robbery.

7 The Defendant has been charged with armed
8 robbery. In order to prove this offense, the
9 State must prove beyond a reasonable doubt
10 that the Defendant took personal property
11 from the person or presence of another
12 person.

13 Property is in the presence of a person
14 if it is within that person's reach,
15 inspection, observation or control so that
16 the person could, if not overcome with
17 violence or prevented by fear, keep
18 possession of the property.

19 The State must also prove beyond a
20 reasonable doubt that the Defendant carried
21 away the property, intending to permanently
22 deprive the owner of the property and to keep
23 the property for the Defendant's own use.
24 Now, the slightest removal of property or the
25 complete possession of property, even for an

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1 instant, by the Defendant is sufficient to
2 show the taking and carrying away of
3 property.

4 Now, the taking and carrying away of
5 property must have been done by violence or
6 by putting the owner of the property in fear
7 or violence.

8 Finally the State must prove beyond a
9 reasonable doubt that the Defendant was armed
10 with a deadly weapon or what appeared to be a
11 deadly weapon during the robbery.

12 A "deadly weapon" is defined as any
13 article, instrument or substance which is
14 likely to cause death or great bodily injury.
15 Whether an instrument has been used as a
16 deadly weapon depends on the facts and
17 circumstances of each case. A pistol is a
18 deadly weapon. A gun may be a deadly weapon
19 even if it is not operating. Whether or not
20 a toy gun which has the appearance of and/or
21 is believed to be a real gun is a deadly
22 weapon, that's a factual question for you to
23 determine. Whether or not a BB gun is deadly
24 weapon is a factual question for you to
25 determine.

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1 Possession of a weapon during the
2 commission of a violent crime. The Defendant
3 has been charged with possession of a weapon
4 during the commission of or the attempt to
5 commit a violent crime. The State must prove
6 beyond a reasonable doubt that the defendant
7 was in possession of a weapon or visibly
8 displayed what appeared to be a weapon during
9 the commission of a violent crime.

10 A firearm is a weapon. A "firearm" is
11 defined as a revolver, pistol, or any weapon
12 which is designed to or may be readily
13 converted to expel a projectile.

14 In order to find the Defendant guilty of
15 the possession of a weapon during the
16 commission of a violent crime, you must first
17 find the Defendant guilty of either
18 committing a violent crime or attempting to
19 violent crime. Armed robbery is a violent
20 crime.

21 Possession. Let's talk about possession.
22 To prove possession the State must prove
23 beyond a reasonable doubt that the Defendant
24 had both the power and the intent to control
25 both the disposition or use of the gun.

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1 Possession can either be actual or
2 constructive.

3 Actual possession means that the gun was
4 in the actual physical custody of the
5 Defendant.

6 Constructive possession means the
7 Defendant had the dominion and control or the
8 right to exercise dominion or control over
9 either the gun itself or the property itself
10 or the property in which the gun was found.

11 Let's talk about conspiracy. The
12 Defendant is charged with conspiracy. The
13 State must prove beyond a reasonable doubt
14 that the Defendant combined with one or more
15 persons for the purpose of committing an
16 unlawful act or of committing a lawful act by
17 unlawful means. There must be a mutual
18 understanding, agreement or common intention
19 or plan. Mere passive knowledge of or
20 consent to the criminal conduct of another is
21 not enough to make a person a conspirator.
22 There must be guilty knowledge or
23 participation.

24 Similarly, the mere fact that the
25 Defendant may have associated with another

1 person or met with another person and
2 discussed common aims and interests does not
3 necessarily establish proof of the existence
4 of a conspiracy or that the Defendant was
5 involved in a conspiracy. On the other hand,
6 it is not necessary that the agreement be a
7 formal one or that it in writing, that the
8 person hold a meeting and expressly the terms
9 of a common plan, or that the agreement be
10 stated in words between them.

11 The agreement of a criminal conspiracy
12 may come into being by an implied mutual
13 understanding. The willful, intentional and
14 knowing adoption by two or more person of a
15 common plan is sufficient under the law. No
16 overt acts need to be shown to establish a
17 conspiracy.

18 A conspiracy may be shown by
19 circumstantial evidence and the conduct of
20 the parties.

21 In order to convict the Defendant of a
22 conspiracy, the State must prove beyond a
23 reasonable doubt not only that the Defendant
24 knew of the unlawful conduct but that the
25 Defendant agreed to combine with other

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1 persons for the purpose of accomplishing that
2 unlawful conduct.

3 Resisting arrest. The Defendant is
4 charged with resisting arrest. The State
5 must prove beyond a reasonable doubt that the
6 Defendant knowingly and willfully opposed or
7 resisted a law enforcement officer in
8 serving, executing or attempting to serve or
9 execute a legal write of process.

10 "Knowingly" means with knowledge,
11 consciously done.

12 "Willfully" means done intentionally and
13 not done by accident.

14 "Resist" means to oppose, drive against
15 or obstruct. "Obstruct" means to impede,
16 hinder or interfere with.

17 Even peaceful, nonviolent indirect
18 obstruction of an arrest or the service or
19 execution of process is considered resisting
20 arrest. If the means used are sufficient to
21 prevent the officer from making an arrest,
22 the Defendant may be guilty of resisting
23 arrest.

24 All right. Let me talk to you briefly
25 about your deliberations, ladies and

1 gentlemen. The word "deliberation" is a
2 careful consideration, weighing up with a
3 view to a decision.

4 See, the genius of our jury system is
5 that it allows twelve good people, men and
6 women, from different backgrounds, life
7 experiences and perspectives to consider the
8 evidence, to talk about it and ultimately
9 reach a verdict. The task of a jury is
10 called "deliberations" for a reason, because
11 you, the jurors, are to consider the evidence
12 in this case carefully and deliberately, to
13 discuss it in a calm, courteous and thorough
14 manner.

15 Remember you are not partisans or
16 advocates for one side or the other. You are
17 judges of the facts.

18 Your sole duty is to sort through the
19 information that you've received in this
20 trial and to reach a verdict from the
21 evidence received in this courtroom.

22 Now, the supreme law of our land, the
23 United States Constitution, affords everyone
24 a day in court and a fair trial. This case
25 is very important to both sides, both the

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1 State and the Defense, because it is their
2 day in court. I charge you therefore, ladies
3 and gentlemen, to listen carefully to the
4 views of your fellow jurors. Carefully
5 consider their viewpoints and courteously
6 discuss the evidence. Remember, you're doing
7 something deliberately. You're not in a big
8 hurry and you are tasked with a duty of
9 utmost importance.

10 Further, your verdict cannot be based on
11 sympathy, passion, prejudice, emotion or any
12 other consideration that is not in evidence
13 in this case.

14 Now, in conclusion, ladies and gentlemen,
15 you've been selected by both the State and
16 the Defense to be fair and impartial jurors.
17 It is your duty in your deliberations to
18 determine the evidence in this case, giving
19 the Defendant the benefit of every reasonable
20 doubt. From the facts which you determine to
21 be important and true, you take and apply the
22 law which I have just now given you and,
23 thus, arrive at your verdict.

24 Now, I've told you the standards that you
25 have to apply to the charges contained in

1 these indictments. You've heard the evidence
2 and now you've heard the law. Whatever your
3 verdict as to the indictments, Guilty or Not
4 Guilty, Mr. Foreman, you will indicate it by
5 marking the jury's decision in the respective
6 blank in the verdict form. At the end, you
7 will then sign the verdict form. The date of
8 February 9th is already on there.

9 Let me go over the verdict form with you.
10 It is really simple. The first page, "We,
11 the jury, unanimously find as follows..." --
12 and you can't sign or fill it out until you
13 all reach a unanimous verdict. That means
14 all twelve of you have to agree. Okay. So
15 if you come to that and reach a unanimous
16 verdict, then you can fill it out.

17 Number one, as to the charge of armed
18 robbery, then it gives the indictment number,
19 Count 1, it says that the defendant is guilty
20 or not guilty and you check the whichever one
21 your unanimous verdict is.

22 Similarly as to the charge of possession
23 of a weapon during the commission of a
24 violent crime, Count 2 of the indictment, the
25 Defendant is either guilty or not guilty and

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1 you check whatever your unanimous verdict is.

2 Count 3, conspiracy. Guilty or not

3 guilty.

4 Count 4, resisting arrest. Guilty or not

5 guilty.

6 Then, "I certify this decision was the
7 unanimous decision of the jury" and you sign
8 it. Okay?

9 FOREMAN: (Affirmative nod).

10 THE COURT: Okay. I am going to send
11 you to your jury room at this time, ladies
12 and gentlemen, but do not begin to discuss
13 this case until you've received all the
14 exhibits and the verdict form. Okay? Once
15 you receive these things, that is your signal
16 to begin your deliberations.

17 Once you start, you're going to keep
18 going until you've reached a verdict. Once
19 you've reached that verdict, knock on the
20 door and tell the bailiff. We will bring you
21 out here to receive your verdict. Okay?

22 So at this time, I need all of my first
23 twelve jurors to go back. I need my
24 Alternates to remain with me. Mr. Seibert
25 and Ms. Moss, you will stay here with me.

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1 (JURY OUT @ 12:25 P.M.)

2 THE COURT: Any exceptions to the
3 charge from the State?

4 SOLICITOR TESSITORE: No, Your Honor.

5 THE COURT: Any exception to the charge
6 from the Defense?

7 MR. MARTINEZ: Yes, Your Honor. Two
8 things, briefly.

9 THE COURT: All right.

10 MR. MARTINEZ: I object to the extent
11 that your charge on credibility and
12 identification ---

13 THE COURT: You're already in the
14 record on that. Those were overruled.
15 Anything else?

16 MR. MARTINEZ: Regarding the Court's
17 reasonable doubt charge. You directed a
18 "search for the truth" language. I believe
19 -- something along the lines of an honest and
20 sincere, conscientious juror in search of the
21 truth, we would object to that language.

22 THE COURT: Objection overruled.
23 Anything else?

24 MR. MARTINEZ: No, Your Honor.

25 THE COURT: All right, y'all come check

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1 out the exhibits. Mister and Miss Alternate,
2 thank you all so much for your service to
3 Greenville County, State of South Carolina.
4 You are free to leave for the rest of the
5 week. You don't have to. If you want to
6 stick around and see what happens, you're
7 welcome to. We do have lunch for you. The
8 bailiff will retrieve your lunch for you from
9 the jury room. If you have any personal
10 effects in the jury room, they will retrieve
11 those for you. You can't go back in the jury
12 room but they will get those for you. Y'all
13 are free to take your lunch with you or if
14 y'all want to see what happens, you can hang
15 out -- go eat downstairs, come back here and
16 sit in the courtroom. But you don't have to
17 stick around if you don't want to. Thank you
18 very much. You are free to leave.

19 (ALTERNATES DISMISSED)

20 (COUNSEL APPROVAL OF EXHIBITS)

21 (JURY IN DELIBERATIONS @ 11:11 A.M.)

22 (NOTIFIED OF JURY QUESTION @ 2:00 P.M.)

23 (DEFENDANT PRESENT)

24 THE COURT: All right, we have received
25 a question from the jury. It reads, "How

1 long did it take the victim's car to double
2 back and drive by the victim again?"

3 My proposed response is that 'you need to
4 go by the testimony and evidence offered
5 during the trial and use that to consider
6 whatever verdict you are going to come up
7 with.' Or I can bring them back out here and
8 say 'consider the testimony.' I can just
9 write my response on here or -- however you
10 want me to handle it.

11 SOLICITOR TESSITORE: The State doesn't
12 have any preference, Your Honor.

13 THE COURT: Mr. Grove?

14 MR. GROVE: Beg the Court's indulgence,
15 (sidebar with Mr. Martinez).

16 THE COURT: Or I could write a big
17 "Irrelevant" on -- I'm not going to do that.

18 SOLICITOR TESSITORE: We absolutely
19 support that, Your Honor, (laughter).

20 MR. GROVE: Whatever you prefer, Your
21 Honor -- aside from the last thing,
22 (laughter).

23 THE COURT: Of course. Let the record
24 reflect laughter in the courtroom.

25 What I will write then rather than -- I

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1 hate to disrupt deliberations when they are
2 not going to get anything out of my answer,
3 'see, I told you to listen.' I'm just going
4 to write on here, "You must consider all of
5 the testimony and evidence offered in this
6 courtroom." Are you all okay with that?

7 SOLICITOR TESSITORE: That's fine.

8 MR. GROVE: The Defense is fine with
9 that.

10 THE COURT: Okay.

11 COURT REPORTER: Court's Exhibit 4,
12 Your Honor.

13 THE COURT: Thank you very much. We
14 are still in recess.

15 (SO ENTERED AS COURT'S EXHIBIT 4)

16 (JURY IN DELIBERATIONS)

17 (NOTIFIED OF VERDICT REACHED @ 2:35 P.M.)

18 (DEFENDANT PRESENT)

19 THE COURT: I understand that the jury
20 has reached a verdict. Is the Defense ready
21 to receive the verdict?

22 MR. GROVE: Yes, Your Honor.

23 THE COURT: State ready to receive the
24 verdict?

25 SOLICITOR TESSITORE: The State is

State of South Carolina v Brian Willie Benson Lewis

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1 ready, Your Honor.

2 THE COURT: Bring in the jury.

3 (JURY IN @ 2:35 P.M.)

4 THE COURT: Mr. Foreman, I understand
5 that the jury has reached a verdict. Is that
6 correct?

7 FOREMAN: Yes, Your Honor.

8 THE COURT: Is the verdict unanimous?

9 FOREMAN: Yes, sir.

10 THE COURT: Did you fill out the
11 verdict form as instructed?

12 FOREMAN: Yes, Your Honor.

13 THE COURT: Please pass the verdict
14 form to the bailiff.

15 (VERDICT FORM TENDERED)

16 THE COURT: (Upon review), all right.
17 Madam Clerk, you may publish the verdict.

18 CLERK: In the matter of the State
19 versus Brian Willie Lewis, "We, the jury,
20 unanimously find as follows:

21 As to the charge of armed robbery,
22 Indictment 16-GS-23-1737, Count 1, the
23 Defendant is Guilty.

24 As to the charge of possession of a
25 weapon during the commission of a violent

State of South Carolina v Brian Willie Benson Lewis

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1 crime, Indictment 16-GS-23-1737, Count 2, the
2 Defendant is Guilty.

3 As to the charge of conspiracy,
4 Indictment 16-GS-23-1718, the Defendant is
5 Guilty.

6 As to the charge of resisting arrest, 16-
7 GS-23-1740, the Defendant is Guilty."

8 Ladies and gentlemen, if this is your
9 verdict in the jury room and if it is your
10 verdict now, please signify by raising your
11 right hand -- (unanimous affirmative response
12 by jurors).

13 THE COURT: All right. Ladies and
14 gentlemen of the jury, again thank you so
15 much for your service to the State of South
16 Carolina and to Greenville County. Please go
17 back to your jury room for further
18 instruction. Thank you so much.

19 (JURY OUT)

20 THE COURT: Anything further, Mr.
21 Grove?

22 MR. GROVE: Not at this time.

23 THE COURT: All right. You've already
24 renewed all your Motions. You are protected
25 in the record. Those Motions are denied. Do

State of South Carolina v Brian Willie Benson Lewis

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1 you have the sentencing sheets ready?

2 SOLICITOR TESSITORE: Yes, sir.

3 THE COURT: Let's take about five
4 minutes prior to sentencing. Y'all get your
5 thoughts together and we will go from there.

6 (BRIEF RECESS)

7 (JURY DISMISSED FROM JURY ROOM)

8 (DEFENDANT PRESENT)

9 THE COURT: Anything from the State?

10 SOLICITOR TESSITORE: No, Your Honor.
11 Obviously the jury has spoken. The
12 Defendant, as you know, had several
13 opportunities so that we wouldn't be standing
14 here today before you, given the exposure
15 that he now faces. Given all that is
16 required as far as bringing each of the
17 codefendants in here to testify and the
18 complete lack of remorse exhibited by this
19 defendant, all that he has put the victim
20 through, we are asking for consecutive
21 sentences.

22 I believe Investigator Stanton would like
23 to make a brief remark.

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

State of South Carolina v Brian Willie Benson Lewis

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Verdict & Sentencing

1 INVESTIGATOR STANTON: Your Honor, as an
2 advocate for the State and the community,
3 given the significant violent nature of the
4 act, we would ask that you take the violent
5 nature of the acts into account when you hand
6 down your sentence.

7 THE COURT: Thank you. Anything else,
8 Solicitor?

9 SOLICITOR TESSITORE: No, Your Honor.

10 MR. GROVE: Mr. Grove?

11 MR. GROVE: Your Honor, we are asking
12 that you do not consider consecutive
13 sentences. I have already shown this to Ms.
14 Tessitore, 16-23-49(b) that mandatory
15 sentences may be run consecutive, but may be
16 imposed as concurrent sentences. And I don't
17 know what else there is to say. I could go
18 on about Brian's family life or the lack
19 therefore as consecutive sentences being more
20 reasonable, but I will leave that to Your
21 Honor's discretion. Thank you.

22 THE COURT: Mr. Lewis, is there
23 anything that you would like to tell me
24 before I impose sentence?

25 DEFENDANT: No, sir.

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Verdict & Sentencing

1 THE COURT: All right. If you'll
2 please stand for sentencing.

3 DEFENDANT: (Complies)

4 THE COURT: As to Indictment 16-GS-23-
5 1737, the sentence of the Court is that you
6 be confined to the South Carolina Department
7 of Corrections for a term of twenty-seven
8 (27) years.

9 As to Indictment 16-GS-23-1737, Count 2,
10 possession of a weapon during a violent
11 crime, the sentence of the Court is five (5)
12 years in the South Carolina Department of
13 Corrections, consecutive to Count 1.

14 As to Indictment 16-GS-23-1738, the
15 sentence of the Court is five (5) years
16 concurrent.

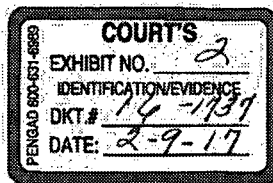
17 As to Indictment 16-GS-23-1740 for
18 resisting arrest, the sentence is one year
19 concurrent.

20 Good luck to you, Mr. Lewis. That
21 concludes the trial of this case.

22 (TRANSCRIPT CONCLUDED)

23

24



Def.
REQUEST TO CHARGE NUMBER ONE

An important question in this case is the identification of the defendant as the person who committed the crime. The prosecution has the burden of proving beyond a reasonable doubt that the crime was committed AND that the defendant was the person who committed the crime. If you are not convinced beyond a reasonable doubt that the defendant is the person who committed the crime, you must find the defendant not guilty.

The testimony you have heard concerning identification represents the witness's expression of (his) (her) belief or impression. You don't have to believe that the identification witness was lying or not sincere to find the defendant not guilty. It is enough that you conclude that the witness was mistaken in (his) (her) belief or impression.

Many factors affect the accuracy of identification. In considering whether the prosecution has proven beyond a reasonable doubt that the defendant is the person who committed the crime, you should consider the following:

1. Did the witness have an adequate opportunity to observe the person who committed the crime? In answering this question, you should consider:
 - a. The length of time the witness observed that person;
 - b. The distance between the witness and that person;
 - c. The extent to which that person's features were visible and undisguised;
 - d. The lighting conditions at the time of observation;
 - e. Whether there were any distractions occurring during the observation;

- f. Any other circumstance that affected the witness's opportunity to observe the person committing the crime.
- 2. Did the witness have the capacity to observe the person committed the crime? In answering this question, you should consider whether the capacity of the witness was impaired by:
 - a. Stress or fright at the time of the observation;
 - b. Personal motivations, biases, or prejudices;
- 3. A witness's level of confidence in (his) (her) identification of the perpetrator is one of many factors you may consider in evaluating whether the witness correctly identified the perpetrator. However, a witness who is confident that (he) (she) correctly identified the perpetrator may be mistaken.

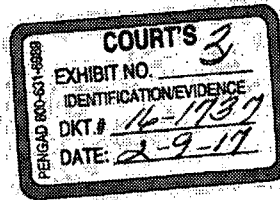
Again, I emphasize that it is the prosecution's burden to prove beyond a reasonable doubt that the defendant is the person who committed the crime.

Authority

State v. Guzman, 2006 UT 12, ¶¶ 15-23, 133 P.3d 363.

State v. Long, 721 P.2d 483, 487-95 (Utah 1986).

R. Sanders, *Helping the Jury Evaluate Eyewitness Testimony: The Need for Additional Safeguards*, 12 Am. J. Crim. L. 189, 222-24 (1984).



REQUEST TO CHARGE NUMBER TWO

In deciding this case you will need to decide how believable each witness was. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

1. How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?
2. Does the witness have something to gain or lose from this case?
3. Does the witness have any connection to people involved in this case?
4. Does the witness have any reason to lie or slant the testimony?
5. Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?
6. How believable was the witness's testimony in light of other evidence presented at trial?
7. How believable was the witness's testimony in light of human experience?
8. Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness lied, you may disbelieve anything the witness said. In other words, you may believe all, part, or none of a witness's testimony. You may believe many witnesses against one or one against many.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect.

Anyone can make an honest mistake. Honest people may remember the same event differently.

Authority

Utah Code Ann. § 78B-1-128.

United States v. McKissick, 204 F.3d 1282, 1289 (10th Cir. 2000).

Toma v. Utah Power & Light Co., 365 P.2d 788, 792-793 (Utah 1961).

State v. Shockley, 80 P. 865, 879 (1905).

75 Am. Jur.2d Trial § 819.

WITNESSES

Darrell S Kicklighter

RP

Greenville County Sheriffs Office

7/23/2015

ARREST WARRANT NUMBER

2015A2330206386

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Proctor

Foreperson of GRAND JURY

VERDICT

Guilty

Foreperson of Petit Jury

Date:

2/9/17

DOCKET NO. 2016-GS-23-

JRT

001738

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

VS.

BRIAN WILLIE LEWIS

Indictment for

0049

CONSPIRACY

VIOLATION § 16-17-0410

ENTERED
ACCT.

FILED

MAR - 8 2016

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

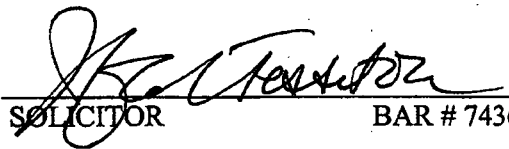
INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on **JUN 28 2016** the Grand Jurors of Greenville

County present upon their oath:

That BRIAN WILLIE LEWIS did in Greenville County, on or about the 22nd day of July 2015, willfully and unlawfully combine with Donny Campbell and/or Robert Jackson and/or Cordell Lewis for the purpose of accomplishing an unlawful object or a lawful object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-410 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

BAR # 7436

WITNESSES

Darrell S Kicklighter

Greenville County Sheriffs Office

7/23/2015

ARREST WARRANT NUMBER

2015A2330206385 and 2015A2330206387

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pridemore

Foreperson of Grand Jury

VERDICT

Guilty

Am. Jm. 2/9/17

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-

JRT

001737

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

vs.

BRIAN WILLIE LEWIS

Indictment for

0139/0549

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

VIOLATION § 16-11-0330 and §16-23-0490

FILED

MAR - 8 2016

Clerk of Court
Greenville County

ENTERED
ACCT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)

INDICTMENT FOR
 ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on

JUN 28 2016

the Grand Jurors of Greenville

County present upon their oath:

COUNT I - ARMED ROBBERY

That BRIAN WILLIE LEWIS did in Greenville County, on or about the 22nd day of July, 2015, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: a 2004 Toyota Highlander from the person or presence of Steve Haefner, an employee of Domino's Pizza. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

COUNT II - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That BRIAN WILLIE LEWIS did in Greenville County on or about the 22nd day of July, 2015, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-490 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SOLICITOR

BAR # 7436

WITNESSES

Michael D Stanton

Greenville County Sheriffs Office

7/23/2015

ARREST WARRANT NUMBER

2015A2330206399

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pugh

FOREMAN GRAND JURY

VERDICT

Guilty

Mr. Pugh 2/9/17

Foreperson of Petit Jury

Date:

DOCKET NO. 2016-GS-23-
JRT

001740

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June

TERM 2016

THE STATE

vs.

BRIAN WILLIE LEWIS

Indictment for

0326

RESISTING ARREST

VIOLATION §16-09-0320(A)

FILED

MAR - 8 2016

Clerk of Court
Greenville County

ENTERED
ACCT

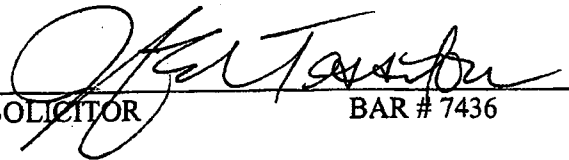
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
RESISTING ARREST

At a Court of General Sessions, convened on **JUN 28 2016** the Grand Jurors of Greenville
County present upon their oath:

That BRIAN WILLIE LEWIS did in Greenville County, on or about the 22nd day of July, 2015, knowingly,
willfully and unlawfully oppose or resist an arrest being made by Deputy Matthew Anderson and/or Deputy
Robert Hodges with the Greenville County Sheriff's Office, whom he knew or reasonably should have known
was a law enforcement officer. This is in violation of §16-9-320(A) of the South Carolina Code of Laws (1976)
as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

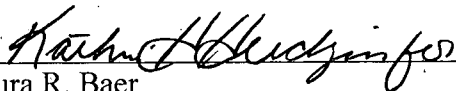

SOLICITOR

BAR # 7436

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,



Laura R. Baer
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 25th day of April, 2018.

RECEIVED
APR 25 2018
SC Court of Appeals