

ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Bamberg County

FEB 03 2017

Roger M. Young, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LEON AMOS JASON JAMES,

APPELLANT

APPELLATE CASE NO 2016-001155

RECORD ON APPEAL

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State of South Carolina

Court of General Sessions

County of Bamberg

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Homer Arthur James,	)	2014-GS-05-00202 - 205
Leon Amos Jason James,	)	2014-GS-05-00192 - 195
and Lewis Garvin	)	
	)	
<u>Defendants.)</u>		

October 27, 2015
Aiken, South Carolina

B E F O R E:

The Honorable Roger Young, Judge.

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

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Attorney for the State

Grant Gibbons, Circuit Public Defender
Attorney for the Defendant, Homer James

Jason Price, Esquire
Attorney for the Defendant, Lewis Garvin

Janek Kazmierski, Esquire
Attorney for the Defendant, Leon James

Bethanie K. Creppon
Circuit Court Reporter

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1 (The following proceedings were held October
2 27, 2015.)

3 MR. MILLER: Good morning, Your Honor. This
4 morning we have a number of motions in a
5 three-defendant case. I'll summarize the case for
6 the Court. But we need to have Homer James, Leon
7 James, and Lewis Garvin enter the courtroom, please.

8 (Homer James, Leon James, and Lewis Garvin
9 enter the courtroom.)

10 THE COURT: Who is who and who is representing
11 them?

12 MR. MILLER: I'll go through all of them, Your
13 Honor.

14 Your Honor, to the Court's left is Leon James.

15 THE COURT: Okay. Who is his lawyer?

16 MR. MILLER: His lawyer is --

17 MR. KAZMIERSKI: Janek Kazmierski, Your Honor.

18 MR. MILLER: I was going to butcher that last
19 name, Your Honor.

20 Next in order is Lewis Garvin represented by
21 Mr. Jason Price.

22 THE COURT: Okay.

23 MR. MILLER: And finally, Your Honor, to the
24 Court's right is Homer James represented today by
25 Mr. Grant Gibbons. He's standing in for Ms. Wallis

1 Alves.

2 THE COURT: Okay. And who is his lawyer?

3 MR. MILLER: And his lawyer is Grant Gibbons
4 standing in for Wallis Alves.

5 THE COURT: Are Leon and Homer related?

6 MR. MILLER: Not to our knowledge, Your Honor.

7 THE COURT: Okay.

8 MR. MILLER: Your Honor, Mr. Gibbons is
9 standing in for Homer James' attorney at this point.
10 None of these motions involve him specifically.
11 There are no motions relative to him. However, when
12 we last had a hearing in this matter back in August
13 in Barnwell County, Ms. Alves made a motion that
14 Mr. James be present for anything that went on in
15 the case, whether it involved him or not. And for
16 that reason, he's present in the courtroom today.
17 We do not have any substantive motions relative to
18 Mr. Homer James.

19 As to Mr. Leon James, I've been informed this
20 morning, we're prepared to go forward with a Jackson
21 v. Denno hearing, as well as a motion to relieve
22 counsel. Your Honor, Mr. Leon James' attorney told
23 me prior to this hearing that his client had
24 instructed him that he wanted to waive his Jackson
25 v. Denno hearing. We were going to put that on the

1 record, and I had one witness that I wanted to call
2 for the record relative to the Jackson v. Denno
3 regarding Mr. Leon James. And do want to have the
4 motion to relieve counsel heard this morning.

5 MR. KAZMIERSKI: Your Honor, one correction: I
6 believe the waiving the Jackson v. Denno applies to
7 Lewis Garvin.

8 MR. MILLER: I apologize, Your Honor. I got
9 them confused. It is Lewis Garvin that's waiving
10 the Jackson v. Denno.

11 THE COURT: Does Leon still have a Jackson --

12 MR. MILLER: Leon James does still have a
13 Jackson v. Denno hearing this morning, as well as a
14 motion to relieve counsel.

15 MR. KAZMIERSKI: That's correct.

16 THE COURT: Well, let me ask you this: You're
17 planning on trying all three of these guys at once?

18 MR. MILLER: Your Honor, depending a lot on
19 what happens over the course of the next couple of
20 days. A plea offer has been extended to all of the
21 defendants, and it expires tomorrow at the close of
22 business for the Court in Barnwell County. So
23 depending on who decides to take the plea offer,
24 we'll either try all three of them or try a couple
25 of them at a time.

1 THE COURT: Well, I was wondering because in
2 this summary my law clerk prepared for me, I'm
3 thinking there's a Bruton issue.

4 MR. MILLER: There is a Bruton issue unless
5 Mr. Lewis Garvin -- excuse me; unless Mr. Leon James
6 elects not to plea. If he elects to plea, then
7 we'll be fine. If he says that he's not going to
8 plea, I don't think that there will be any issues as
9 far as redacting, and we can go ahead and go forward
10 with his trial because there were not any videotaped
11 or recorded statements that were made in the case.
12 So we could go forward without having to worry about
13 redactions and that type of stuff.

14 THE COURT: So these would be oral statements
15 that the -- an officer would be testifying about?

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

17 THE COURT: All right. Well, we probably need
18 to revisit that before the trial.

19 MR. MILLER: Absolutely.

20 THE COURT: Okay. So Lewis Garvin wants to
21 waive his right to have a Jackson v. Denno
22 suppression hearing?

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

24 THE COURT: All right. Mr. Garvin, is that
25 you?

1 DEFENDANT GARVIN: Yes, sir.

2 THE COURT: Okay. Basically there was a -- you
3 made a motion to ask to have the Court determine
4 whether or not your -- a statement that you made was
5 freely, voluntarily, and intelligently made. And
6 I'm told here that you wish to waive your right to
7 have the Court suppress that confession or
8 statement. Is that right?

9 DEFENDANT GARVIN: Yes.

10 THE COURT: Okay. You've done this after
11 talking with your lawyer?

12 DEFENDANT GARVIN: Yes, sir.

13 THE COURT: Okay. I find that you've waived
14 your right to have that hearing. So let's go
15 forward then. Mr. -- you can be seated.

16 Mr. James wants to still have Jackson v. Denno,
17 but you need to have a motion to -- he wants to fire
18 the lawyer or the lawyer wants out of the case?

19 MR. MILLER: He wants to fire the lawyer, Your
20 Honor.

21 THE COURT: Okay.

22 MR. MILLER: And, Your Honor, we also have that
23 same motion for Mr. Garvin. And we'd like to
24 proceed first with --

25 THE COURT: Mr. Garvin wants to fire his lawyer

1 too?

2 MR. MILLER: That is correct, Your Honor.

3 THE COURT: All right. Well, let's talk about
4 it. Mr. Leon James, let's go with you first.
5 What's your problem with your lawyer?

6 DEFENDANT L. JAMES: Well, I have some things
7 that --

8 THE COURT: Stand up and speak loud.

9 DEFENDANT L. JAMES: I said I have a list of
10 things written down. If you give me a second, I'll
11 find them.

12 THE COURT: Go ahead. I'm listening.

13 DEFENDANT L. JAMES: Well, I find that his
14 performance, it actually has failed to uphold the
15 objective standard for reasonable -- he -- it's
16 fundamentally unreliable, you know.

17 THE COURT: In what way?

18 DEFENDANT L. JAMES: In the way of if you are
19 in -- his duties, the most basic -- the most basic
20 thing is loyalty. You know what I mean? More like
21 if I tell you something or we discuss something or
22 you find something inside the case or you meet with
23 someone in the opposition, the prosecutors,
24 investigators, anything, you have no right or
25 anything to assist in the investigation.

1 And Mr. Kazmierski here, he assisted in the
2 investigation by making them aware that they had
3 made mistakes inside of the investigations as far as
4 the person -- it was a person that they had -- they
5 had the man's ID and everything. But they -- they
6 were -- they had the wrong name, first name and the
7 last name, on the paper as far as him being listed
8 as a suspect.

9 But I don't think that that -- I think that
10 they said they never investigated the man anyway, so
11 they felt like it didn't matter. But everything
12 should be -- all elements should be investigated of
13 the crime, to my understanding. And I just felt
14 like that was like a violation, you know.

15 And on top of that, there's numerous things
16 of -- I feel like if -- if you -- if you ask me
17 to -- if I'm asked to testify and I feel -- if you
18 tell me it's to my best benefit and I testify, I
19 can't testify to something that I have no knowledge
20 of. So I feel like if you want me to -- do you want
21 me to commit perjury because it's -- I have nothing
22 to say about the issue.

23 I mean, what am I supposed to do; make some
24 things up and conform to the things the investigator
25 has said that he investigated the crime that was

1 committed? Because that's what's going on as far
2 as when -- I mean, talking about the memorandum
3 interview and everything, you know.

4 But I also have -- there's numerous things
5 like -- such as issue as far as due process
6 violations, protocol violations, procedural
7 violations that has not been challenged whatsoever.
8 And I'm like, okay, well, you know, if I brought
9 this to your attention, why has these things not
10 been addressed, you know?

11 THE COURT: Like what?

12 DEFENDANT L. JAMES: Like -- in -- like the --
13 the -- the -- we have a lot of contradictions inside
14 and tampering with the evidence and things like
15 that. But I'm -- I -- it's -- let me see. I have
16 it right here. Okay. The issues that -- the issue
17 I had was if you wait a whole -- if I was
18 ineffectively counseled by the second judicial --
19 the public defender's office for maybe like a
20 year -- I just got Mr. Kazmierski. I been -- it was
21 a conflict of interest from the beginning. And I've
22 written the Public Disciplinary Council about the
23 issue, and they had just -- they just took the
24 public defender off my case and gave Mr. Kazmierski
25 the case maybe two months ago, you know.

1 But I've been -- it's been different things,
2 motions, and everything we've been going through
3 with preliminary hearings and everything. And I'm
4 asking for motions to filed such as fast and speedy
5 trial, things like that, and meanwhile I'm being
6 told they're not able to file these motions. And
7 I'm trying to figure out myself, like, how could you
8 not be able to file these motions for me?

9 And I know that -- I'm pretty sure that my
10 public defender had already known that it was a
11 conflict of interest, therefore he tell me he can't
12 because it would automatically violate the due
13 process. So the conflict of interest was really --
14 I couldn't get anything done that way for more than
15 a year, you know.

16 THE COURT: But that's got nothing to do with
17 Mr. Kazmierski.

18 DEFENDANT L. JAMES: No, that's got nothing to
19 do with Mr. Kazmierski. But I asked Mr. Kazmierski
20 could he challenge the things such as the
21 preliminary hearing, the things that I was -- the
22 process that I -- that came up to this point when I
23 was ineffectively counseled by the public defender's
24 office. And it's still -- there's nothing, nothing
25 whatsoever.

1 THE COURT: All right. Anything else?

2 DEFENDANT L. JAMES: No, sir.

3 THE COURT: All right.

4 Mr. Kazmierski, what would you like to say?

5 MR. KAZMIERSKI: As soon as I was appointed in
6 this case, Your Honor, I met with Mr. James a number
7 of times. I think it was five or six times we met.
8 And based on those conversations, there was
9 information that I needed to investigate, that I
10 needed to corroborate or confirm what certain
11 statements and conversations that Mr. James and I
12 had. And through that process, Mr. James alluded to
13 it early on that he felt I was aiding the
14 solicitor's investigation.

15 Contrary to that, it was an attempt to confirm
16 information, corroborate stories, and prepare a
17 defense for Mr. James. Mr. James brought up a
18 number of issues, he sent me a letter which I
19 included in the motion to be relieved, I think 11
20 points that he wanted me to address. Primarily I
21 told him that those were things that would happen
22 either as evidence was presented at trial or during
23 pretrial motions like we're having today.

24 Based on my conversations with Mr. James, I
25 find him to be competent, he's an intelligent

1 person, has a good grasp of the facts. And if the
2 Court decides that he's capable of representing
3 himself, I'd be available to assist him at trial.

4 THE COURT: All right.

5 Anything else you want to say, Mr. James?

6 DEFENDANT L. JAMES: If I'm able to represent
7 myself, I would -- I would -- I need -- I would like
8 some assistance. But I wouldn't -- just wouldn't
9 want to represent myself, you know.

10 THE COURT: Well, I haven't heard anything that
11 suggests to me that Mr. Kazmierski isn't doing a
12 good job for you. It sounds like there was a
13 problem in that maybe he could have gotten
14 represented or appointed prior to two months ago.
15 But that's not his fault.

16 And so he has to investigate -- I know when
17 y'all talk about things and you bring issues up, a
18 lot of times those are issues that can only be
19 brought up during the course of a trial. And you
20 kind of have to weigh your probability of success on
21 motions versus things like, well, if we take the
22 plea offer, for instance, you don't ever get to
23 resolve those things that only can be resolved at a
24 trial. But if you don't take the plea offer and you
25 get convicted, well, then there's the downside of a

1 potentially longer sentence.

2 So, you know, understanding that the way these
3 trial things work, he can't do everything that
4 you're asking him to do prior to trial. Some things
5 have to wait until trial. And he's got to do
6 investigations. And, you know, there's a trial
7 strategy, there's a lot of different factors that go
8 in. But, you know, it doesn't sound to me that he's
9 done anything other than represent you diligently
10 since the time he's been appointed.

11 So I'm going to leave him on as your lawyer. I
12 think you'd be making a huge mistake to represent
13 yourself at this point. So if you're asking to
14 represent yourself, that's one thing; if you're
15 asking for another lawyer, I'm not going to give you
16 another lawyer. If you want to represent yourself,
17 which I strongly advise you against, then that's a
18 different discussion. If you just want to -- if you
19 want another lawyer, I'm not going to give you
20 another lawyer. If you want to represent yourself,
21 then we'll have that discussion. So tell me what
22 you want -- you want to represent yourself or you
23 want to stay with Mr. Kazmierski as your lawyer?

24 DEFENDANT L. JAMES: No, sir. I would not like
25 to represent myself.

1 THE COURT: All right. So you want to keep
2 Mr. Kazmierski on?

3 DEFENDANT L. JAMES: Yes, sir.

4 THE COURT: All right. Well, I think that's
5 probably the better decision as well, so we'll go
6 with that. All right. So we'll deal with your
7 Jackson v. Denno motion in a minute.

8 All right. Mr. Garvin wants to discharge his
9 lawyer as well?

10 DEFENDANT GARVIN: Yes, sir.

11 THE COURT: All right. What's the problem with
12 your lawyer?

13 DEFENDANT GARVIN: I want to file a motion for
14 inefficient counsel based on the fact that I didn't
15 get all of my available paperwork, reports upon
16 availability about the time -- the fact that things
17 got pushed back, and basically because of trust.
18 It's a trust issue with me. And I would like to
19 file --

20 THE COURT: What kind of paperwork are you
21 talking about?

22 DEFENDANT GARVIN: As far as everything
23 provided by the State.

24 THE COURT: When did you get it?

25 DEFENDANT GARVIN: I got, like, my -- I got my

1 forensics work, but I didn't get everything as far
2 as -- I couldn't understand -- you know what I'm
3 saying, I couldn't understand in layman terms --

4 THE COURT: Well, that's why you get a lawyer.

5 DEFENDANT GARVIN: Yeah. But I needed -- I
6 needed time to -- I needed time to --

7 THE COURT: When did you get it? Last couple
8 months?

9 DEFENDANT GARVIN: I got it like -- like
10 September.

11 THE COURT: Is this the same problem that
12 Mr. James had is that you were all represented by
13 the public defender and he just got appointed to
14 represent you a couple months ago? What's the deal?

15 DEFENDANT GARVIN: We went through a conflict
16 of interest. But basically it's about
17 availability -- time of availability, you know, as
18 far as having time to set up a defense and digest
19 everything.

20 THE COURT: So your big beef is that you just
21 got some paperwork that you don't understand?

22 DEFENDANT GARVIN: Yeah, I don't understand it.

23 THE COURT: Okay. So you need a lawyer to
24 explain it to you; correct?

25 DEFENDANT GARVIN: Right.

1 THE COURT: All right.

2 So, Mr. Price, what's going on?

3 MR. PRICE: Your Honor, other than the
4 paperwork that I received from the Solicitor's
5 Office today, Mr. Garvin has everything that I've
6 received from the State. I share everything with
7 him. Whenever I meet with him, I go over it in
8 detail, I make additional reports just so he can
9 have a better understanding of what's in the
10 discovery.

11 There have been some issues between me and
12 Mr. Garvin. But since then, we've gotten over them.
13 I think it would be a disservice to the bar and to
14 the Court if he were to represent himself, and I
15 think it would just create more chaos. So I ask to
16 stay on the case.

17 THE COURT: Well, Mr. Garvin, I'll ask you the
18 same thing I asked Mr. James: Do you want to
19 represent yourself or do you want a new lawyer?

20 DEFENDANT GARVIN: I would really want a new
21 lawyer.

22 THE COURT: Well --

23 DEFENDANT GARVIN: But I don't know, based on
24 the availability of the time, but I'd like to have a
25 new lawyer.

1 THE COURT: Well, it doesn't sound to me that
2 you're entitled to a new lawyer. Mr. Price is
3 giving you everything that he's got, from what he
4 says. You're -- by your own admission, you don't
5 understand it. And I don't blame you. Heck,
6 sometimes the stuff that they send, the lawyers have
7 to consult with other people to understand what it
8 says, some of this medical stuff.

9 But, you know, I'm not going to give you a new
10 lawyer. I will have the discussion with you the
11 same I had with Mr. James; do you want to represent
12 yourself or do you want to go forward in the trial
13 with Mr. Price?

14 DEFENDANT GARVIN: Respect due, Your Honor, I'm
15 just saying, I would like to have another lawyer
16 based on the fact of his -- I don't understand,
17 like, with certain things like perimeters, the
18 analysis for the SLED report, I don't understand
19 that. I --

20 THE COURT: Well, Mr. Price can sit down and
21 explain that to you. But I'm denying your request
22 to have another lawyer. The other lawyer would have
23 to sit down and explain it to you the best he can
24 just like Mr. Price will have to sit down and
25 explain it to you. But you haven't given me any

1 reason to fire Mr. Price as your lawyer.

2 It's a difficult case, there are things that
3 come up and, you know, he can only give you what he
4 gets when he gets it. And from what he tells me in
5 open court, he's given you everything that he's
6 gotten from the solicitor. Maybe y'all can take the
7 opportunity while you're here today to go over
8 anything you don't understand as far as SLED reports
9 and things like that.

10 But you have a trial coming up here in a few
11 weeks. So I'll leave him on as your lawyer. My
12 suggestion is after we're done here, you take the
13 opportunity to review the plea offer that's been
14 made. And if you decide you don't want to take it,
15 then you have a couple weeks to get ready for trial.
16 Okay?

17 DEFENDANT GARVIN: Okay. Thank you.

18 THE COURT: Good luck.

19 All right. And Mr. Homer James is okay with
20 his lawyer and he doesn't have any motions. Is that
21 correct?

22 MR. GIBBONS: That's correct, Your Honor.

23 THE COURT: All right. Then let's go forward
24 with Leon James' motion to suppress.

25 MR. MILLER: Your Honor, by way of background,

1 the Enterprise Bank in Denmark, South Carolina was
2 robbed June 5th of 2014 at approximately 1:30 in the
3 morning. Two masked individuals entered the bank,
4 at least one of which was visibly armed on the
5 surveillance video, and committed the robbery. A
6 third individual was driving a vehicle that was
7 observed by an eyewitness, the getaway vehicle,
8 which was a Pontiac Grand Am.

9 Following the robbery, the two people that had
10 committed the robbery went and got into the Grand Am
11 where the third individual drove away from the
12 scene. Ultimately, that vehicle was chased by law
13 enforcement, wrecked, and the three defendants
14 bailed out of the car and disappeared into the
15 woods.

16 The next night, late the next night and going
17 into the following day, two of these suspects were
18 arrested, one of whom was Mr. James, Mr. Leon James,
19 and the other was Mr. Lewis Garvin. Mr. Lewis
20 Garvin has waived his hearing. We're not going to
21 put anything on the record about it today, though
22 we're fully prepared to.

23 Mr. Lewis Garvin confessed to the SLED agent
24 who was interrogating him following being Mirandized
25 that he was involved in the robbery, he participated

1 in the robbery. He was -- in fact, the thing that
2 made him own up to it was they had a still photo
3 from the surveillance video of the person climbing
4 over the teller counter. And, in fact, it's been
5 handed up to me on an iPad, and I'll show it to
6 counsel.

7 This photo depicts a logo sewn onto the back of
8 a pair of dark-colored pants. And when Mr. Garvin
9 was shown that photo, SLED agents noticed he was
10 still wearing the same pants. And faced with that,
11 he admitted his involvement in the crime. He didn't
12 name any codefendants, he just said, I did it, you
13 got me.

14 So inasmuch as there are complaints about the
15 forensic evidence and everything else that's being
16 raised here today, it's really not much of an issue
17 in Mr. Garvin's case, which would predominantly
18 hinge upon his own confession and the fact that he
19 was wearing the pants that were on the person seen
20 robbing the bank whenever he was, in fact, arrested.

21 Mr. Leon James was also arrested in the late
22 hours of June the 6th into June the 7th. And
23 Mr. James told an elaborate story after being
24 Mirandized about the fact that Homer James and Lewis
25 Garvin had gone into the bank to rob the bank and

1 that he was the getaway driver, but there was a
2 fourth person who nobody saw that was holding a gun
3 to his head and making him be -- operate as that
4 getaway driver.

5 And in the course of making that statement, he
6 identified a person named Darrell Lassiter. Darrell
7 Lassiter is a resident of Greensboro, North
8 Carolina. The reason that he was named is because
9 his driver's license was found in the car that these
10 guys were in before it wrecked.

11 And we were able to track down Mr. Lassiter, we
12 were able to speak with Mr. Lassiter who was
13 represented by counsel in North Carolina.
14 Mr. Lassiter was not only able to provide a
15 statement that explained why his driver's license
16 was inside that vehicle when he wasn't, but he was
17 also able to give us documentation of where he was
18 on the day of the robbery at the time of the
19 robbery -- or at the approximate time of the robbery
20 in Greensboro, North Carolina.

21 And, Your Honor, it's for that reason that we
22 have not made an offer in this case of anything less
23 than 30 years for these defendants to plead to. All
24 three of the defendants have prior armed robbery
25 convictions, all three of the defendants have been

1 noticed for the State's intent to seek life without
2 parole if we go to trial on these separate charges.

3 Your Honor, having set the background of the
4 information, the State would call Shawn Hamilton of
5 the Bamberg County Sheriff's Office who was the
6 arresting officer for Mr. Leon James.

7 THE COURT: All right.

8 SHAWN HAMILTON

9 being first duly sworn, testified as follows:

10 THE WITNESS: Yes, ma'am.

11 THE CLERK: Have a seat in the witness box.
12 State your full name for the Court and spell your
13 last.

14 THE WITNESS: Shawn Hamilton, H-A-M-I-L-T-O-N.
15 I work for Bamberg County Sheriff's Office.

16 DIRECT EXAMINATION

17 BY MR. MILLER:

18 Q. Officer Hamilton, please explain how you became
19 involved with the defendant in this case or in this
20 hearing, Leon James. What was your first
21 involvement with him?

22 A. I'm at night. I was on night shift duty, and a
23 call had came out from our Captain Williams that
24 there were some people sleeping in a trailer behind
25 the fire department in Govan. I called him, asked

1 him if he needed any help. He said he was just
2 going to check it out.

3 When he arrived, he said he knocked on the
4 door, a black gentlemen opened up the door, started
5 talking to him, started flailing his arms. He know
6 said he knew something was up, and the guys took off
7 running. Myself and another deputy arrived on
8 scene. I asked Captain Williams which way they ran.
9 He showed me which way one of them ran.

10 At that time, the fire department was having a
11 meeting. So I put the fire department individuals
12 that were out there in the fire trucks' perimeter to
13 set up a perimeter around the area. One of the fire
14 men came up and said there was another individual
15 that just ran also. So there were two people in the
16 trailer.

17 I asked Captain Williams if he recognized them,
18 was it potentially the people robbed the bank in
19 Denmark. He said he wasn't sure.

20 Q. Now, the bank in Denmark had been robbed the
21 day before that?

22 A. Yes, sir.

23 Q. Okay.

24 A. And the people that robbed the bank had
25 actually made it to Olar, which is right down the

1 road. So within the proximity of a couple miles,
2 you know, it was a potential that the people that
3 were in the trailer were the people that robbed the
4 bank.

5 At that time, SLED agent arrived, actually
6 showed us a picture of the bank robbers. Captain
7 Williams confirmed that one of the people that he
8 was dealing with -- he never seen the second person
9 that was out there by the road. He seen the person
10 that was inside the trailer came out. He confirmed
11 that was one of the bank robbers.

12 At that time, more units were brought in. We
13 contacted the SLED dog team and also the SLED
14 helicopter. When the dog team arrived, I had
15 already had the perimeter set up, an inside
16 perimeter and an outside perimeter around the area.
17 When the dog team arrived, I showed him the
18 approximate entry point to the cornfield where the
19 first individual went in that you could find the
20 footprints.

21 At that time, the dog team went in, the
22 helicopter flew above the cornfield. Three hundred
23 yards down away from where the fire department is in
24 the direction of going back into Denmark in the
25 cornfield they located the individual in water,

1 laying down in water. They were taking him into
2 custody.

3 Myself and Officer Breeland, who was also
4 present who rode in my vehicle, went down to where
5 the dog team was on the opposite side of the
6 railroad tracks. They brought Mr. Leon to me at
7 that time. I placed him in my patrol vehicle and
8 then I took him up there to the fire department.

9 Q. Okay. So when you got Mr. Leon James or took
10 custody of him, was he in handcuffs at that time?

11 A. Yes, sir, he was.

12 Q. Was he free to go?

13 A. No, sir, he wasn't.

14 Q. Did you ask him any question or interrogate him
15 in any way?

16 A. No, sir, I didn't.

17 Q. Did he ask you for anything?

18 A. Yes, sir. He was complaining he was thirsty.
19 You know, he said he was in the woods for a couple
20 days, seen some rattlesnakes, he was thirsty and
21 hungry.

22 Q. What did you do when he asked you about water?

23 A. I told him once we got back to the fire
24 department I'd get him some water.

25 Q. And did you take him back to the fire

1 department?

2 A. Yes, sir, I did.

3 Q. And did you get him water?

4 A. Yes, sir. I also got him some MREs, meals
5 ready to eat, which is prevalent to our military.
6 They're meals ready to go in a small brown bag. And
7 I got him something to eat out of those.

8 Q. Who did you turn him over to whenever you got
9 him to the Govan Fire Department?

10 A. SLED agents that were there at that time.

11 Q. When those SLED agents were dealing with
12 Mr. James, were you present in the room?

13 A. Yes, sir, I was.

14 Q. Was anybody else present in room?

15 A. Officer Sanford behind you, and several other
16 people. The way the fire department was set up, it
17 was more like a conference room and then a kitchen
18 beside with a bathroom behind it. So that was the
19 main entrance point coming in and out of that
20 section of the fire department. So there was fire
21 department personnel coming and going out of that
22 area, as well as law enforcement officers.

23 Q. Did you see any of the SLED agents provide
24 Miranda warnings to the defendant?

25 A. Yes, sir, I did.

1 Q. Did anyone make any threats or any promises to
2 get the defendant to make a statement?

3 A. No, sir.

4 Q. Do you recall how the rights advisement warning
5 was given to the defendant? Was it on a form or was
6 it read from a card? Do you recall?

7 A. It was on a form. I believe it was a statement
8 form.

9 Q. Okay. Did the defendant appear at any time to
10 be under the influence of alcohol or drugs to the
11 extent that he didn't understand what was going on?

12 A. No, sir.

13 Q. Did you observe anyone making any threats or
14 promises to the defendant while he was in your
15 presence?

16 A. No, sir.

17 MR. MILLER: Thank you, Your Honor. No further
18 questions.

19 CROSS-EXAMINATION

20 BY MR. KAZMIERSKI:

21 Q. Good morning, Mr. Hamilton.

22 A. Good morning, sir.

23 Q. What time did you get dispatched out to the
24 trailer next to the Govan Fire Department?

25 A. I'm not sure. I was actually on another call,

1 a domestic, and heard the call come over the radio.
2 I just heard my captain say he was in foot pursuit
3 with individuals. I didn't look at my watch, I just
4 went.

5 Q. Did you write a report?

6 A. Yes, sir, I did.

7 Q. Any reason you can think of that the times on
8 the report would be inaccurate?

9 A. As far as the --

10 Q. When you were dispatched.

11 A. It's a good possibility. Our dispatchers, if
12 they put a time in and if we -- we're still out
13 there and if we don't answer, if they change shifts
14 or leave shifts, they'll close out the case, and
15 sometimes it's not corrected. Our dispatchers are
16 actually the ones that puts the time into the
17 report.

18 Q. Well, what day did you get dispatched out to
19 the trailer?

20 A. It was late at night. So it could have been on
21 the 6th or it could have been on the 7th, depending
22 on what time. You know, if it's 12:00, then it
23 would be on the 7th; if it's 11:59, it would be on
24 the 6th. I don't know. I just know it was that
25 night.

1 Q. Your report says 2130, which is 9:30 on the
2 6th.

3 A. Could have been.

4 Q. Does that sound accurate?

5 A. No, sir.

6 Q. Was it earlier or later than that?

7 A. I was probably at the domestic at that time.

8 And then when I changed it over to assisting another
9 agency, they just duplicated the time as far as the
10 9:36 to the assisting another agency report.

11 Q. So if you had to approximate what time you
12 arrived at the Govan Fire Department, can you
13 provide that this morning?

14 A. It was late. Approximate time, no, sir. It
15 was late.

16 Q. But you think it was on the 6th of June?

17 A. Might have been. Yes, sir.

18 Q. Okay. And you mentioned helicopters showed up,
19 the dog teams showed up; is that correct?

20 A. Yes, sir.

21 Q. How long after you arrived did they show up?

22 A. Approximately 45 minutes, maybe an hour.

23 Q. And how long after you arrived on the scene did
24 you apprehend Mr. Leon James?

25 A. It was within, I would say, 30 to 45 minutes.

1 Q. So 30 minutes after you arrived on the scene,
2 Mr. --

3 A. After I arrived on the scene? No, sir. After
4 SLED arrived on the scene. After I arrived on the
5 scene, I placed out the fire department, I got them
6 coordinated as far as setting up a perimeter,
7 contacted DNR, contacted SLED, contacted my
8 supervisors, and trying to get other deputies out to
9 set up an inside perimeter and an outside perimeter.

10 Q. So if we put a timeline together, let's just
11 assume that you were there at 9:30. SLED arrived 45
12 minutes later, that's 10:15; correct?

13 A. Yes, sir.

14 Q. Maybe a little bit later?

15 A. It was later than that.

16 Q. So maybe 11:00?

17 A. Yes, sir. Closer to 11:00 or 12:00.

18 Q. So by latest, you think around 12:30 on the 7th
19 Mr. James was apprehended?

20 A. Yes, sir.

21 Q. And once he was apprehended, he was in
22 handcuffs, he was under arrest; correct?

23 A. Yes, sir.

24 Q. And he was in custody?

25 A. Yes, sir.

1 Q. And did you immediately transport him back to
2 the Govan Fire Department?

3 A. Yes, sir.

4 Q. And you said earlier that there was a -- it was
5 like a conference room and there were a number of
6 people in that conference room; correct?

7 A. There wasn't a number of people in it, there
8 were a number of people coming and going from it.
9 The fire department was coming in to get water
10 because that's where the refrigerators were and
11 where the meals were. They were coming and getting
12 food and water for firefighters that were still on
13 perimeter and getting food and water for the SLED
14 officers and the law enforcement officers that were
15 still out there at that time. Yes, sir.

16 Q. Did you stay with Mr. James?

17 A. Yes, sir. I sat across the table from him.

18 Q. And I believe you said that you saw Mr. James
19 and heard Mr. James advised of his Miranda rights on
20 a form. Is that correct?

21 A. Yes, sir.

22 Q. Do you know approximately when that was done?

23 A. No, sir, I don't.

24 Q. As soon as -- when you brought Mr. James into
25 custody at the fire department, was he interrogated?

1 A. By me?

2 Q. By anybody.

3 A. No, sir. When he was brought into the fire
4 department, one of the officers sat with him and I
5 got him water. Also I asked the female who was
6 there that worked for the fire department if I could
7 get some of the MREs because he stated he was
8 hungry.

9 Q. Did you ever see anybody interrogate Mr. James?

10 A. Yes, sir, I did, but not at that time. It was
11 later.

12 Q. How much later?

13 A. 30 or 40 minutes.

14 Q. So maybe interrogation started about maybe
15 1:00?

16 A. Possibility. Yes, sir.

17 Q. Sound about right?

18 A. Possibility. Yes, sir.

19 Q. Do you know if you saw that Miranda form
20 completed before or after Mr. James was
21 interrogated?

22 A. No, sir, I don't.

23 Q. Do you know if the Miranda form was completed
24 and he was advised of his Miranda rights before or
25 after he wrote his initial statement?

1 A. No, sir, I'm not. I know I signed the Miranda
2 form. I was present when it was read to him.

3 Q. Let me just show you this: Does this look like
4 the Miranda form that you signed?

5 A. Yes, sir, it is.

6 Q. Okay. What does the -- what is the time
7 written on the top right there?

8 A. 3:15 a.m.

9 Q. Okay. So 3:15 a.m. would put it about two
10 hours past when you said Mr. James' interrogation
11 started; right?

12 A. Yes, sir.

13 Q. Do you know if Mr. James -- and you mentioned
14 earlier that this was the lone form in advisement of
15 his Miranda rights.

16 A. Yes, sir. I never advised him of his Miranda
17 rights. I didn't question him.

18 Q. And you sat with him the entire time and you
19 didn't see anybody else advise him of his Miranda
20 rights; correct?

21 A. No, sir, I didn't, other than what's on that
22 form.

23 Q. Did Mr. James ask for medical attention when
24 you --

25 A. No. I asked him if he needed medical attention

1 when I first took him into custody from the dog
2 team. He had severe scratches on his legs and he
3 also had duct tape wrapped around plastic bags and
4 part of a boat seat that he had reconfigured into
5 making shoes out of. And I asked him, and he said
6 no. He was complaining of his lip at that time that
7 was busted but wasn't bleeding.

8 Q. Do you know how long he had been in woods for?

9 A. He told me he had been in the woods for around
10 two days.

11 Q. At some point did you become aware that another
12 suspect had been caught?

13 A. Yes, sir.

14 Q. And that was after Mr. Leon James was caught?

15 A. Yes, sir.

16 Q. Do you know approximately what time that was?

17 A. No, sir.

18 Q. Do you know if the second suspect was
19 interrogated?

20 A. He was on the opposite side of us. I never
21 even seen him.

22 Q. So you had no contact with him?

23 A. No, sir.

24 Q. But you are aware that you were with

25 Mr. James -- Mr. Leon James from the time you

1 apprehended him until you took him to Bamberg County
2 Detention Center?

3 A. Yes, sir, I was.

4 Q. And he was advised of his Miranda rights at
5 approximately 3:15 on the form you signed?

6 A. Yes, sir.

7 Q. And that was the only time you observed Miranda
8 rights being read or advised to Mr. James?

9 A. Yes, sir.

10 Q. And you also testified that his interrogation
11 started approximately two hours before he was
12 advised of his Miranda rights?

13 A. It's a possibility, yes, sir. I didn't know
14 the approximate times. I wasn't looking at my
15 watch, I was just being present.

16 Q. Okay. I don't have any other questions. Thank
17 you.

18 REDIRECT EXAMINATION

19 BY MR. MILLER:

20 Q. Officer Hamilton, you just said that you were
21 with the defendant for the entire time. But prior
22 to that, you said you went and got him some water.

23 A. Yes, sir.

24 Q. And you went and got him some food.

25 A. Yes, sir.

1 Q. When you walked out of the room any other times
2 during this entire three hours, four hours, that he
3 was there --

4 A. It was still within sight and sound of
5 Mr. James. It was an open-style kitchen, so when I
6 walked into the kitchen, I could still Mr. James him
7 sitting at the table. I think during that time
8 Officer Sanders or Officer Breeland was sitting with
9 him. And, like I said, then I went back and got him
10 an MRE from out of the box that was in the corner.

11 Q. Do you recall who it was that advised the
12 defendant of his rights under Miranda?

13 A. It was one of the SLED agents. Might have been
14 agent Keith. I think it was.

15 MR. MILLER: Okay. No further questions, Your
16 Honor.

17 THE COURT: Any recross?

18 MR. KAZMIERSKI: No, Your Honor. Nothing
19 further.

20 THE COURT: You may step down.

21 MR. MILLER: Your Honor, the State calls
22 Lieutenant Keith Johnson, State Law Enforcement
23 Division.

24 KEITH JOHNSON

25 being first duly sworn, testified as follows:

1 THE WITNESS: I do, ma'am.

2 THE CLERK: Have a seat in the witness box.

3 State your full name for the Court and spell your
4 last.

5 THE WITNESS: Donald K. Johnson, J-O-H-N-S-O-N.

6 DIRECT EXAMINATION

7 BY MR. MILLER:

8 Q. Lieutenant Johnson, were you involved in the
9 interrogation of Mr. Lewis Garvin and Mr. Leon
10 James?

11 A. I was, sir.

12 Q. What were you doing in that -- were you at the
13 Govan Fire Department that night?

14 A. I was, sir.

15 Q. And were you acting in your official capacity?

16 A. I was, sir.

17 Q. What is that official capacity? What do you do
18 for SLED?

19 A. Fugitive unit.

20 Q. And as part of being in the fugitive unit, do
21 you have occasions where you need to interrogate
22 people?

23 A. I do.

24 Q. What was your function as far as working for
25 SLED on the night -- this is -- and we're talking

1 about June the 6th going into June the 7th, the
2 early morning hours of June the 7th of 2014. What
3 was your function there that night?

4 A. Our unit was assisting the original agents to
5 try to get everybody that was involved in the bank
6 robbery in custody.

7 Q. Can you describe how the Govan Fire Department
8 was set up that night and what was going on that
9 night as people were coming in and out?

10 A. Yes, sir. There was a crowd of law enforcement
11 there. It was basically set up as an ad hoc command
12 post. There was water and some food there. There's
13 a large garage -- looking at the front of the fire
14 department, there's a large garage to the left of it
15 that holds the equipment, fire trucks.

16 And then to the right is the common area, a
17 kitchen, bathroom, there's a shower, I think there's
18 a couple bedrooms back there.

19 Q. Where, if you know, was the defendant Lewis
20 Garvin -- not Mr. James, but where was Lewis Garvin
21 that night?

22 A. When I first spoke to Mr. Garvin, he was in the
23 equipment side where the fire trucks are parked in
24 the garage area.

25 Q. Did you also speak to Mr. Leon James that

1 night?

2 A. I did.

3 Q. And where was he located?

4 A. He was in the common area at a large long
5 table.

6 Q. At the time that you talked to Mr. James, was
7 he free to go?

8 A. He was not. He was under arrest.

9 Q. Okay. Did you advise him of his Miranda
10 rights?

11 A. I did.

12 (State's Exhibit No. 1 marked for
13 identification.)

14 Q. I'm going to show you what's been marked for
15 the purposes of this hearing as State's Exhibit 1
16 and ask if you can identify this, please.

17 A. Yes, sir. That's the standard form that we
18 use, and that's my signature and my initials.

19 Q. When you say that it's your signature and
20 initials, let's go through this. At the top of the
21 form it says Miranda rights, has the SLED logo. It
22 has: Place, Govan, South Carolina; date, 6/7/14,
23 time, 3:15 a.m. And then there's a scribble above
24 the 3:15 a.m. Is that your initials?

25 A. It is. Those are my initials. I had

1 duplicated -- clearly, I was going to put the date
2 there where the time went. And I just scratched
3 through it and initialed it.

4 Q. All right. Could you read the form starting
5 below the place where you initialed the change in
6 the time there?

7 A. Sure. Before we ask your questions, you must
8 understand your rights.

9 Q. And below that, there's a -- can you explain
10 that next notation that's right below that?

11 A. Where it indicates yes?

12 Q. Yes, sir.

13 A. Yes, sir. The gentlemen didn't sign it, but as
14 I went down, I checked it as I went down each
15 question. You have the right to remain silent,
16 anything you say can be used in court as evidence
17 against you. You're entitled to talk to a lawyer
18 now and have him present now or at any time you're
19 being questioned. If you cannot forward an
20 attorney, one will be appointed for you without
21 cost. If you decide to answer questions now without
22 a lawyer present, you will still have the right to
23 stop answering at any time. You also have the right
24 to stop answering at any time until you talk to a
25 lawyer. Do you understand these rights? And below

1 that, do you wish to talk with us at this time?

2 As I advised on each of those, I checked it.
3 It went all the way down. And then I put a notation
4 at the top that the check indicates yes, and then
5 put my initials behind that. And then his initials
6 are next to where I checked.

7 Q. Okay. So we haven't gotten to the part where
8 it says waiver of rights. But I want to make sure
9 I'm clear on what you're saying. You actually went
10 through and read the form to him, and as each time
11 that you read off one of these lines, you put a
12 checkmark there?

13 A. Correct.

14 Q. Okay. Did you have him immediately initial
15 next to each one of your checkmarks?

16 A. I did.

17 Q. Okay. And when we get down to the waiver of
18 rights, which has got a signature on it, can you
19 read the waive of rights section?

20 A. I've read the statement of my rights and I
21 understand what my rights are. I'm willing to talk
22 now without a lawyer present. I understand and know
23 what I am doing. No promises or threats have been
24 made to me and no pressure or coercion of any kind
25 has been used against me.

1 Q. And it's signed?

2 A. It is.

3 Q. And who signed that?

4 A. The defendant, the gentleman.

5 Q. And as far as the witness, we heard Officer
6 Hamilton say he's the witness that says BCSO beside
7 his name. Who is the witness on top of that?

8 A. That's my signature on top of it.

9 Q. Okay.

10 MR. MILLER: Your Honor, at this time we'd move
11 to introduce State's Exhibit 1 for the purposes of
12 this hearing.

13 THE COURT: Admitted.

14 (State's Exhibit No. 1 admitted in to
15 evidence.)

16 BY MR. MILLER:

17 Q. Lieutenant Johnson, would you explain to the
18 Court the process of what was going on that night
19 and when y'all were doing -- I say y'all because --
20 actually, it's bad grammar.

21 But when you and the other agents were
22 conducting your interrogation of Mr. James and
23 Mr. Garvin that night, can you explain to the Court
24 why the time that is actually noted on the rights
25 advisement form is 3:15 a.m. when, by defense

1 counsel's estimation, Mr. James would have been in
2 custody approximately 1:00 a.m.?

3 A. Right. Yes, sir. When I advised Mr. James is
4 when we put the notation on it, and then Mr. James,
5 later when he gave his statement, is the time that
6 was noted on there.

7 Q. Okay. So how long was Mr. James being
8 questioned from the start to the finish time when he
9 was advised of his rights until he was completely
10 done?

11 A. To be absolutely clear, my understanding is he
12 was advised of his rights before I advised him.
13 From the time that I advised him to the time when he
14 concluded his statement was several hours.

15 Q. And how did it work? I'm guess I'm trying to
16 think of a way to ask this question. You've got a
17 defendant sitting there, you've talked to him about
18 what his rights are, you've told him what his rights
19 are.

20 A. Yes, sir.

21 Q. You start the interview process. Were you the
22 person who was interviewing him or was someone else
23 interviewing him?

24 A. I spoke to him, several of us spoke to him;
25 Agent David Williams spoke to him, Lieutenant Shaun

1 Harley spoke to him, we all spoke to him. It was
2 a -- casual is not the correct word. But it was not
3 a formal occasion.

4 Q. Did you stay with him the entire time that you
5 were questioning?

6 A. No, sir.

7 Q. What else were you doing?

8 A. I'd step into the other room and speak to
9 Mr. Garvin also. I'd go back and forth trying to
10 put the pieces together in the statements that they
11 were making.

12 Q. Okay. Was anybody else doing the
13 back-and-forth thing or were you pretty much the
14 back-and-forth guy?

15 A. No, sir. Myself and Lieutenant Harley both
16 spoke to both of these individuals.

17 Q. Okay. At the conclusion of Mr. James' verbal
18 statement, was he asked to write a written
19 statement?

20 A. He was.

21 (State's Exhibit No. 2 marked for
22 identification.)

23 Q. And I want to show you what's been marked for
24 the purposes of this hearing as State's Exhibit 2.
25 Did you ever see this statement or did you leave

1 before it was done?

2 A. This is Mr. James' statement. Sir, I've seen
3 it, but I can't give you any details on it.

4 Q. Were you present when he wrote this statement
5 out?

6 A. I was.

7 Q. Did you actually read the statement at that
8 time?

9 A. I would have, but it would have been in
10 passing.

11 Q. All right. Did you ever have occasion to
12 interview or interrogate Mr. James after this, the
13 night of -- or the early morning hours of June 7th?

14 A. No, sir.

15 Q. Did you make any threats or promises to
16 Mr. James in exchange for him giving the statement?

17 A. No, sir, I did not.

18 Q. Did you threaten or coerce him in any way?

19 A. No, sir.

20 Q. Did you observe anybody else threaten or coerce
21 Mr. James during this?

22 A. No, sir, I did not.

23 Q. How would you describe Mr. James' attitude
24 while he was talking to law enforcement?

25 A. He was cooperative, he was amiable, he was easy

1 to talk to. I wouldn't characterize him as
2 particularly truthful. But having said that, he was
3 certainly not hard to talk to. We showed him every
4 courtesy, and he was polite and respectful in
5 return.

6 Q. Thank you. That's all I have for you.

7 CROSS-EXAMINATION

8 BY MR. KAZMIERSKI:

9 Q. You said, Agent Johnson, that there was -- the
10 interview was casual.

11 A. Yes, sir. It was.

12 Q. Mr. Leon James was in custody; right?

13 A. He was.

14 Q. He was being interrogated?

15 A. Interviewed.

16 Q. Was he under arrest?

17 A. He was.

18 Q. Okay. And you mentioned that you were going
19 back and forth between Lewis Garvin and Leon James'
20 interviews; right?

21 A. Yes, sir.

22 Q. Do you know what time Leon James, his
23 interrogation started?

24 A. When I first spoke to him, I'd say it was
25 probably around 12:30 or 1:00.

1 Q. And at that time you mentioned that you had
2 assumed or you thought somebody had already advised
3 him of his Miranda rights.

4 A. When he was brought in, I asked whoever the
5 transporting officer was had he been advised. He
6 answered that he was. But to be on the safe side, I
7 advised him again.

8 THE COURT: What was the last part you said?
9 You said you advised him again?

10 THE WITNESS: Yes, sir. I understood he was
11 advised, but I advised him again.

12 BY MR. KAZMIERSKI:

13 Q. And you advised him again, if I understand
14 correctly, at 3:15; is that correct?

15 A. No, sir. When we first started speaking, I
16 advised him of his lights then. And then when he
17 signed is when -- that's what represents the 3:15
18 time.

19 Q. Explain to me how you went about doing this
20 Miranda form with the time of 3:15 but that's not
21 the time that he was advised.

22 A. No, sir. That was the time he began his
23 statement, as I understand it.

24 Q. Okay. Explain to me how you did that process
25 of advising Mr. James of his Miranda rights.

1 A. We sat at the table. When he came in, we asked
2 if he needed anything. He was scratched up, skinned
3 up, he was hungry, he was thirsty. We fed him, gave
4 him water. We spoke casually, talked, asked if he
5 wanted to talk to us. He advised that he would. At
6 that point is when I advised him again.

7 Q. Do you know what time Mr. Lewis Garvin was
8 apprehended?

9 A. No, sir, I don't.

10 Q. Do you have any idea what time his interview
11 started?

12 A. No, sir, I don't.

13 Q. Do you know that there was some memorandums of
14 interviews prepared that include times for each
15 Mr. Garvin and Mr. Leon James when the interviews
16 started?

17 A. Are they in the case file?

18 Q. Yes, they should be. And I have copies here
19 for you.

20 A. No, sir. I hadn't seen them.

21 Q. Tell me when -- that's Leon James' memorandum
22 of interview; correct?

23 A. Okay. Give me one second. (Witness peruses
24 document). Yes, sir.

25 Q. What time does that memorandum of interview

1 indicate that the interview started?

2 A. 3:15.

3 Q. And that's the same time that you put on the
4 advisement form; correct?

5 A. That's correct. Would you like me to read it?

6 Q. Sure. Go ahead and read that first sentence.

7 A. On June 7th, 2014, SA David Williams,
8 Lieutenant D.K. Johnson, SLED Fugitive Team,
9 conducted an interview with Leon James beginning at
10 approximately 3:15 a.m. at the Govan Fire
11 Department.

12 Q. Okay. Thank you. And the advisement form
13 indicates that you advised him -- the time on the
14 advisement form corresponds with that memorandum of
15 interview --

16 A. That's correct.

17 Q. -- that he was advised at 3:15?

18 A. It does.

19 Q. But you started interrogating him, you
20 mentioned earlier, between 12:30 and 1:00.

21 A. Speaking to him, yes.

22 Q. He was in custody, he was under arrest, and he
23 was being questioned; correct?

24 A. He was.

25 Q. Concerning the bank robbery at the Enterprise

1 Bank?

2 A. I'm not sure if it was that poignant, but we
3 certainly spoke.

4 Q. If you recall, Leon James was the first one to
5 be apprehended; correct?

6 A. As I recall, that's correct.

7 Q. And Lewis Garvin was the second person
8 apprehended later on that evening or in the morning?

9 A. Early morning hours of the 7th.

10 Q. Okay. And this is a memorandum of interview
11 for Lewis Garvin. Take a look at that.

12 A. Yes, sir.

13 Q. And why don't you read the first sentence from
14 the memorandum of interview of Lewis Garvin?

15 A. On June 7th, 2014, Lieutenant Shaun Harley at
16 SLED and C. Breeland at Ehrhardt Police Department
17 conducted an interview with Lewis Garvin beginning
18 at approximately 1:40 a.m. at the Govan Fire
19 Department in Govan, South Carolina.

20 Q. So Lewis Garvin's interview started
21 approximately an hour and a half before Leon James
22 was advised?

23 A. It appears to be.

24 Q. Is it possible you conducted an interrogation
25 of Leon James without advising him of his Miranda

1 rights?

2 A. No, sir. I wouldn't have.

3 MR. KAZMIERSKI: I don't have any further
4 questions, Your Honor.

5 THE COURT: Redirect?

6 MR. MILLER: Nothing further, Your Honor.

7 THE COURT: All right. You got another
8 witness?

9 MR. MILLER: The State calls senior agent David
10 Williams.

11 DAVID WILLIAMS

12 being first duly sworn, testified as follows:

13 THE WITNESS: I do.

14 THE CLERK: Please have a seat in the witness
15 box. State your full name for the Court and spell
16 your last.

17 THE WITNESS: David Williams, W-I-L-L-I-A-M-S.

18 DIRECT EXAMINATION

19 BY MR. MILLER:

20 Q. Senior Agent Williams, were you present when
21 Lewis Garvin was interviewed at the Govan Fire
22 Department in the early morning hours of June 7th,
23 2014?

24 A. Yes, sir, I was.

25 Q. Were you present whenever he gave his written

1 statement?

2 A. Yes, sir, I was.

3 Q. And that was following him going through the
4 whole verbal statement?

5 A. That's correct.

6 Q. All right. After he went through all of the
7 verbal statement and indicated he was willing to
8 write out a statement, is this the statement he
9 wrote out, State's Exhibit 2?

10 A. Yes, sir.

11 Q. And in that statement, State's Exhibit 2, what
12 time does it indicate that that statement was
13 completed and signed?

14 A. At 4:48 a.m.

15 Q. Okay.

16 A. On the 7th of June, 2014.

17 Q. Did you then prepare a memorandum of interview?

18 A. Yes, sir, I did.

19 Q. To cover that statement?

20 A. The reason I did a memorandum of interview is
21 that oftentimes when an interview is conducted and a
22 written statement is taken, the person giving the
23 written statement does not always include everything
24 that was spoken about in the interview. So I do the
25 memorandum of interview to cover any areas that were

1 not covered in his written statements.

2 Q. Okay. Is this a true and accurate copy of the
3 statement that Mr. James gave, State's Exhibit 2?

4 A. Yes, sir.

5 MR. MILLER: Your Honor, at this time the State
6 would move to introduce State's Exhibit 2 for the
7 purposes of this hearing.

8 THE COURT: Admitted.

9 (State's Exhibit No. 2 admitted in to
10 evidence.)

11 (State's Exhibit No. 3 marked for
12 identification.)

13 BY MR. MILLER:

14 Q. Now, you said you prepare a memorandum of
15 interview because the written statement doesn't have
16 everything in it that was said during the course of
17 the interview. I want to show you what's been
18 marked for identification as State's Exhibit 3 for
19 the purposes of this hearing. Can you identify
20 that?

21 A. Yes, sir. That's a copy of my memorandum of
22 interview.

23 Q. And looking at the back page of that memorandum
24 of interview, when did you prepare that memorandum
25 of interview?

1 A. On July the 3rd.

2 Q. So almost a month after the actual interview
3 was done?

4 A. That's correct.

5 Q. And when you put down times and dates on these
6 memorandums of interview, how do you know what time
7 and what date the rights advisement form was done?

8 A. I look at the rights advisement form, and then
9 that's what I write down as times and date.

10 MR. MILLER: Your Honor, the State would move
11 to enter State's Exhibit 3.

12 THE COURT: Admitted.

13 (State's Exhibit No. 3 admitted in to
14 evidence.)

15 BY MR. MILLER:

16 Q. So State's Exhibit 1 is the Miranda rights form
17 that has the notation of 3:15 a.m. on it, but it's
18 possible he was actually verbally advised of his
19 rights long before then, isn't it?

20 A. Correct.

21 Q. And when -- in the course of rights advisement,
22 interview, interrogation, whatever you want to call
23 it, back and forth, written statement from the
24 defendant, when in the course of that would you
25 have, as a SLED agent, asked him to actually sign

1 the written advisement form?

2 A. At the end of -- whenever he was preparing to
3 write a written statement.

4 Q. And can you explain to the Court why you would
5 wait -- even though you had advised him or even
6 though he had been advised, why you would wait until
7 after the verbal part of the interview before you
8 said will you sign the rights advisement form?

9 A. It's just -- I have done it both ways. I have
10 done it, signed the time at the time that I have I
11 advised him. At other times I've done it at the
12 time that I've asked for a written statement.

13 Q. Is there a chilling effect on the defendant
14 whenever you ask them to sign it up front?

15 A. Yes, sir.

16 Q. Is that why you don't generally ask for people
17 do it ahead of time?

18 A. Yes, sir.

19 Q. Is that why you wait until they indicate that
20 they're ready to write a statement of their own
21 before you ask them to sign it?

22 A. That's correct.

23 Q. Now, following -- this whole thing happened on
24 June 5th, late at night on June the 6th, or early
25 morning hours of June the 7th, Mr. James is taken

1 into custody. Did you ever talk to him again during
2 the course of the interview?

3 A. Yes, sir.

4 Q. Or, excuse me; did you ever talk to him again,
5 like interview him?

6 A. Yes, sir. In the course of the investigation,
7 I received a request from the Bamberg County
8 Detention Center. One of the detention officers
9 contacted me to say that Mr. James had requested
10 that I come back and re-interview him.

11 Q. And did you in fact go back and re-interview
12 Mr. James?

13 A. Yes, sir, I did.

14 Q. And during the course of that interview, did
15 you advise him of his rights on a SLED form?

16 A. Yes, sir, I did.

17 (State's Exhibit No. 4 marked for
18 identification.)

19 Q. I want to show you what's been marked for
20 identification for the purposes of this hearing
21 State's Exhibit 4. Can you take a look at that
22 please, sir?

23 A. Yes, sir.

24 Q. And to save the time of going through each
25 individual line of it, is that substantially the --

1 or is that the same form that was State's Exhibit 1,
2 the SLED Miranda rights advisement form?

3 A. Yes, sir. That's what we use always when we
4 give our Miranda warnings.

5 Q. Okay. And there are a series of initials
6 beside the rights advisements as they've been read
7 out before. And whose initials are those beside
8 that?

9 A. Those are Leon James' initials.

10 Q. And who signed underneath the waiver of rights
11 statement?

12 A. Leon James.

13 Q. And who is the first witness there?

14 A. That's me, David Williams.

15 Q. And do you know who the second witness is?

16 A. Yes. That's agent Natasha Merrell.

17 Q. At any point after going to the jail -- well,
18 let me back that up. When you went to the jail on
19 June 19th, why were you there?

20 A. At the request of Mr. James.

21 Q. So did you hand him this Miranda rights
22 advisement form immediately and tell him -- and
23 start filling it out so he could sign it?

24 A. Yes, sir.

25 Q. Why would you do that up front if you didn't

1 know if he was going to sign it or not?

2 A. Because he had requested it.

3 Q. At the time that he was interrogated by you and
4 Lieutenant Harley, I believe you said, in the
5 memorandum of interview and agent Natasha Merrell,
6 where were y'all located?

7 A. At the Bamberg County Detention Center.

8 Q. Were you in a room or in a cell?

9 A. In a room.

10 Q. Was Mr. James free to go?

11 A. No, sir.

12 Q. What was his bond status at that time?

13 A. He was held with no bond, I believe.

14 Q. Okay. He asked you to come to the jail. And
15 you came to the jail, had him fill out the form, and
16 then what happened next?

17 A. We conducted an interview with him.

18 Q. Okay. And following that interview, did he
19 give you a written statement?

20 A. No, sir.

21 Q. Following that interview, did you, in fact,
22 fill out a memorandum of interview?

23 A. Yes, sir, I did.

24 Q. Going back a little bit, during the course of
25 the interview on June 19th at the jail, 2014, at the

1 Bamberg County Jail, did you make any promises or
2 threats or attempt to coerce Mr. James in any way
3 into making a statement?

4 A. No, sir.

5 Q. Did he ever ask for a lawyer to be present?

6 A. No, sir.

7 Q. Did he ask for anything, food, water, anything
8 like, that y'all denied him?

9 A. No, sir.

10 Q. Did you observe any other person that was
11 present do any of those things as far as coercion or
12 intimidation?

13 A. No, sir.

14 (State's Exhibit No, 5 marked for
15 identification.)

16 Q. I'm going to show you what's marked for the
17 purposes of this hearing as State's Exhibit 5. I'll
18 ask you to take a look at that and tell me what that
19 is.

20 A. This is a memorandum of interview summarizing
21 the interview with Leon James on June 19th, 2014.

22 Q. What is the date -- if you look can look on the
23 back at the top, what is the date that you completed
24 this memorandum of interview?

25 A. July 3rd.

1 Q. So it was the same day that you completed the
2 other memorandum?

3 A. That's correct.

4 Q. All right. And as you look at that memorandum
5 of interview, does it fairly and accurately
6 summarize the content of Mr. James' statement that
7 was given to law enforcement back on June the 7th?

8 A. That's correct. It does.

9 Q. What was the difference in between the two
10 statements?

11 A. On this one, Mr. James said that he was -- he
12 gave a different version of the events that
13 transpired that day, that the reason he was in
14 Denmark, he said he was on his way to Estill to open
15 up a bank account in that area, but that he had
16 picked up some other gentlemen that asked him to --
17 especially Mr. Homer James that wanted a ride to
18 Denmark to visit his in-laws. And there was two
19 other guys there also, Mr. Garvin and the guy he
20 calls D. He said when they got there, Homer James
21 suggested that he open up an account at the
22 Enterprise Bank in Denmark.

23 And he said he went in, but he didn't have the
24 correct information, social security card, so he
25 left. He said that's -- I think Mr. Homer James and

1 Mr. Garvin asked him to drive back by the front of
2 the bank, they jumped out with masks on. He said
3 that was the first time he realized they were going
4 to rob the bank, and that D pulled a gun on him and
5 forced him to be the getaway driver, in essence, and
6 that when the police got after him, he said the dye
7 pack exploded and burned their eyes when they got to
8 the car, and that they drive away.

9 He said he was scared and that when the police
10 got after him, he ran because he was afraid. He
11 also said all three of the men had handguns.

12 Q. He was the only one that didn't have a gun?

13 A. Yes, sir, in that version.

14 MR. MILLER: I beg the Court's indulgence a
15 second, Your Honor.

16 Your Honor, that's all of the questions I have.
17 Agent Williams, please answer any questions
18 Mr. Kazmierski has for you.

19 THE COURT: Cross?

20 MR. KAZMIERSKI: I don't have any questions,
21 Your Honor. Thank you.

22 THE COURT: All right you can step down.

23 MR. MILLER: No more witnesses from the State,
24 Your Honor.

25 THE COURT: All right. Well, Mr. Kazmierski,

1 this is your motion. You got an argument you want
2 to make?

3 MR. KAZMIERSKI: Your Honor, I think, based on
4 the testimony of the deputy, Deputy Hamilton, who
5 was with Mr. James from the time he was apprehended
6 and throughout the course of the interrogation, the
7 interrogation started, based on the testimony of
8 both Mr. Hamilton and the SLED agents, agent
9 Johnson, before Mr. James was advised of his Miranda
10 rights.

11 The Miranda rights form coincides with the
12 times on the memorandum of interview that states
13 that the interview began, the interrogation began,
14 at 3:15 a.m., and Mr. James was questioned prior to
15 that without having been advised of his Miranda
16 rights, and then subsequently advised and asked to
17 write a statement.

18 I'd ask that the Court, in order to cure the
19 problem of not having been advised and being
20 questioned and explaining the situation to the SLED
21 agents without being advised of his Miranda rights
22 and then being advised and asked to write a
23 statement, that the Court exclude anything
24 Mr. James -- any conversations Mr. James had prior
25 to being advised, and his first statement that was

1 the result of the conversations that he had without
2 being advised of his Miranda rights.

3 THE COURT: Mr. Solicitor?

4 MR. MILLER: Your Honor, I do believe that
5 there is some ambiguity as far as the testimony
6 goes. Obviously there is some question raised under
7 State v. Navy as to the timeliness of the
8 advisement. But Lieutenant Johnson from SLED, in
9 his testimony, talked about the fact that he
10 wouldn't go all the way through with the signing and
11 the formality of the advisement form as a matter of
12 course until such time as the person was going to
13 write their written statement. And, in fact, agent
14 Williams testified that that was a pretty common
15 practice for SLED.

16 Obviously, as it relates to the second
17 statement, there is no question at all that the
18 defendant was the one who initiated the contact, the
19 defendant was the one who requested that the agents
20 come to him, and the defendant was the one who
21 wanted to talk to them. And at the time that the
22 agents arrived, it was some ten days after the bond
23 hearing had been held for them, and these
24 defendants, particularly Mr. Leon James, had plenty
25 of opportunity to change his mind or decide that he

1 didn't want to talk.

2 What he did instead was he came in and he
3 signed the rights advisement that was presented to
4 him immediately by agent Williams, as he said,
5 because the whole reason he came to Bamberg was to
6 talk to this guy who said he wanted to talk.
7 There's no reason not to hand him the form straight
8 away, get the form signed, and go on from there.
9 And, in fact, that's what was done in the -- as it
10 relates to the June 19th, 2014 statement.

11 Your Honor, I would, for the sake of the
12 record, like to conform that State's 1 through 5 are
13 in evidence for the purposes of this hearing. Your
14 Honor, at this time we'd move to admit State's 4 and
15 5 for the purposes of this hearing.

16 MR. KAZMIERSKI: No objection.

17 THE COURT: Admitted.

18 (State's Exhibit Nos. 4 and 5 admitted in to
19 evidence.)

20 DEFENDANT JAMES: Your Honor, may I address the
21 Court?

22 THE COURT: No. Why don't you talk to your
23 lawyer.

24 MR. MILLER: Your Honor, the State would
25 contend that there is, based upon the testimony of

1 the agents, particularly agent Johnson and agent
2 Williams, adequate foundation for the belief that
3 the statements were knowingly, intelligently, and
4 voluntarily given, they are without the compulsion
5 or intimidation.

6 There is a question -- certainly there was a
7 question, and I think the agents testified credibly,
8 about why there's the discrepancy between the 3:15
9 and the 1:00 time period that Mr. James was
10 initially advised of his rights and they started to
11 question him. And I'd note for the Court that that
12 discrepancy is created because there's not any
13 question that there were two people who were there
14 being interrogated at the same time, and but for the
15 fact that there was the credible testimony of
16 Lieutenant Johnson that those interrogations were
17 going on at the same time, chronologically,
18 everything would work out.

19 They were talking to Mr. Garvin; after they got
20 done talking to Mr. Garvin, they picked up and
21 started talking to Mr. James. But the fact is that
22 they had already talked to both of these people,
23 they were talking to them at the same time, and
24 Mr. James -- I believe Mr. James had been advised of
25 his rights prior to him giving his initial

1 statement.

2 Even if the Court finds differently as to that
3 issue, Your Honor, it would not in any way affect
4 the subsequent statement given June 19th at the
5 Bamberg County Jail, 12 days after the initial
6 statement was given and made at the request of the
7 defendant.

8 THE COURT: Anything in response?

9 MR. KAZMIERSKI: Briefly, Your Honor. This
10 motion doesn't pertain to the second statement.
11 They're really limited to the first statement, the
12 memorandum of interview that's based on the
13 statement and the conversation that happened prior
14 to being Mirandized.

15 I believe the testimony from agent Johnson was
16 that he assumed that someone had advised Mr. James
17 of his rights before he started questioning. I
18 don't think there was any testimony that said that
19 Mr. James was advised and then re-advised -- at
20 1:00 a.m. and then re-advised at 3:15.

21 THE COURT: That is what Johnson said though.
22 That really is what he said was that upon your cross
23 and my asking the question is that he not only asked
24 if Mr. James had been advised, he gave him his
25 Miranda rights again verbally before he began the

1 verbal interrogation. That was his -- that was
2 Johnson's testimony.

3 MR. KAZMIERSKI: And, Your Honor, again, the
4 only thing I'd bring out is that is in direct
5 contradiction with Deputy Hamilton's testimony that
6 he saw Mr. James, he was with Mr. James from the
7 time he was apprehended through the entire
8 interrogation, and again through his transport to
9 the Bamberg County Sheriff's Department and that he
10 was advised of his rights one time on a form.
11 That's what he recalled, Your Honor.

12 THE COURT: Well, on a Jackson vs. Denno
13 hearing, the standard of proof by the Court is the
14 preponderance of evidence. Ultimately it's for the
15 jury to decide whether or not the statements were
16 freely, voluntarily, and intelligently made.

17 Their burden is a higher one. They have to
18 find beyond a reasonable doubt that the statements
19 were not coerced. But at this point, I think
20 there's a preponderance of the evidence that he was
21 given -- defendant James was given a verbal Miranda
22 warning prior to the verbal interrogation that took
23 place that evening. And the preponderance of the
24 evidence seems to suggest that after that verbal
25 interrogation took place, they were -- before they

1 began the process of him memorializing his statement
2 to the written record, they then again gave him a
3 Miranda warning, which was signed prior to the
4 giving of the written statement. But I believe that
5 while there's ambiguous testimony, the preponderance
6 of the evidence suggests that he was given a Miranda
7 warning at the beginning of the verbal
8 interrogation.

9 As far as the other elements about coercion, it
10 doesn't really seem to suggest there was any
11 coercion. He was in custody, there's no question
12 about that. He was handcuffed, under arrest, he was
13 given water, food, and there's no suggestion that he
14 was in any way coerced into giving the statement.

15 So the real question is, was he given his
16 Miranda rights? And I find that there's a
17 preponderance of the evidence that he was given
18 Miranda twice that night; once verbally at the
19 beginning of the verbal statement and then at the
20 beginning of his written statement. So the motion
21 is denied.

22 Anything else?

23 MR. MILLER: Your Honor, we have, for lack of a
24 better term, litigated the second statement as well
25 if the Court would rule on the Jackson v. Denno as

1 to --

2 THE COURT: Well, he just said they're not
3 contesting the second statement.

4 MR. MILLER: We have an adequate record. Thank
5 you, Your Honor. That's all we have with regard to
6 this case today. We do have, as I stated before,
7 plea offers out to the defendants that will expire
8 tomorrow. We'll be in court in Barnwell.

9 THE COURT: All right. Well, let me address
10 the defendants while everyone is with their lawyers.

11 Gentlemen, you have been given, as I
12 understand, offers that if you plea, they'll ask the
13 Court to give you 30 years. Thirty years is a long
14 time. It's a no-parole offense. However, they are
15 strike offenses, and you have prior convictions, as
16 I understand, of -- that would make these -- a
17 conviction of this charge that you stand trial for,
18 you're eligible for life without parole. And they
19 have given you notice that they will seek to have
20 the Court impose a sentence of life without parole
21 if you are convicted of these charges.

22 Life without parole in this state means exactly
23 what it sounds; you never go before a parole board,
24 the only way you get out of prison is when you die
25 and they carry you out in a box. So however long

1 your natural life is, if convicted, you'd be
2 incarcerated in the department of corrections until
3 you die a natural death.

4 On the other hand, the offer that they've made
5 to you is 30 years no parole. There is a -- a
6 possibility that you could earn some -- about 15
7 percent off of that. So that's something. You're
8 young men, if you live a good life and you are
9 lucky, you easily make that 30 years, and then you'd
10 have the opportunity to go back out into society.
11 That's something for you to consider.

12 And you have about 24 hours to make a decision,
13 a little bit more, perhaps, than that, but not long.
14 At end of the business day tomorrow, that offer
15 expires. If you don't take the plea offer, get
16 ready for trial.

17 My strong suggestion is, you're each with your
18 lawyers today, you take this opportunity to discuss
19 that with them. That is a -- it is your decision
20 and your decision alone, but you should talk it over
21 with your lawyers and anyone else whose advise that
22 you consider worth taking. However, ultimately,
23 it's your decision and your decision alone. But
24 there is a time limit, and it is tomorrow afternoon.
25 So take advantage of that opportunity today to

1 discuss that with your lawyers while you are here.

2 MR. MILLER: Your Honor, one last thing for the
3 purposes of clarity: Any defendant who accepts the
4 plea offer and subsequently testifies at any trial
5 would be given credit for his cooperation in an
6 amount to be determined by the Court. Absolutely no
7 promises or offers have been made by the State other
8 than if you plead and you ultimately cooperate,
9 we'll leave it up to the Court to decide how much
10 that is worth.

11 THE COURT: Well, there's that too. You might
12 get a little bit of a break if you plead and testify
13 against whoever goes to trial. That, again, is your
14 decision and your decision alone. But I would
15 discuss because, again, that offer expires tomorrow
16 at the end of the business day. Good luck to each
17 of you.

18 MR. MILLER: Thank you, Your Honor.

19 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Criminal Court for Bamberg County, South Carolina, on the 27th of October, 2015.

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

March 29, 2016

s/Bethanie K. CrepponBethanie K. Creppon
Circuit Court Reporter

1 State of South Carolina

Court of General Sessions

2 County of Bamberg

3
4
5 State)

6 v.)

Transcript of Record

2014-GS-02-00202

2014-GS-02-00204

7 Leon Amos Jason James)

8)
9 Defendant.)

10 November 30, 2015

11 December 1-3, 2015

12 Bamberg, South Carolina

13
14 B E F O R E:

15 The Honorable Roger M. Young, Judge; and a
16 jury.

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1 (The following proceedings were held November
2 30, December 1 - 3, 2015.)

3 THE COURT: All right. Welcome, folks, to the
4 Bamberg courthouse. My name is Roger Young. I'm
5 the presiding judge this week. I'm from Charleston,
6 and this is my first opportunity to hold court in
7 Bamberg. I'm trying, before I either retire or die,
8 not that I'm hoping to do either one of them soon,
9 to hold court in all 46 counties. After this week,
10 I'll have 30 out of the 46 done. So maybe in the
11 next 10 or 15 years I can get all of them done. I'm
12 delighted to be here this week. It's my first time
13 holding court in Bamberg, and it's a lovely town,
14 and it's good to be here.

15 So what we're going to do this week, we've got
16 a term of general sessions court. And general
17 sessions court is just our big fancy term for
18 criminal court. We have a big fancy word for civil
19 court, that's called common pleas. We got big fancy
20 words for everything. So every time we come across
21 a big fancy word, I'll try to stop and explain it to
22 you.

23 I'm mindful of the fact that this may be the
24 first time you've ever done jury service or it might
25 be that you're a frequent flier, but hopefully,

1 whatever it is, whether it's your first time or
2 your, you know, fourth or fifth time, I hope that
3 you'll enjoy it and find it a good experience.
4 That's what we want. Nobody wants it to be a bad
5 experience for jurors.

6 I personally find in talking to jurors after
7 the case is over with -- I have people come up to me
8 on the street all the time and they want to talk
9 about their experience. And, invariably, you know,
10 everybody says almost the same thing: I didn't want
11 to do it when I first got the notice, but I'm glad I
12 did because I enjoyed it and learned something about
13 how the process works. And so I'm hoping that
14 that's the way you'll feel after this week is over
15 with; you will enjoy it, you will have gotten
16 something out of it.

17 My general rule of thumb is people watch TV,
18 they see how trials go on TV. It's something like
19 that, but it's mostly not in that it takes a little
20 bit longer. We don't wind up everything in an hour
21 with 12 minutes worth of commercials in that hour.
22 We've got a process that we go through. It's been
23 the same process with little variations for hundreds
24 of years, and it works pretty well. It's the
25 adversarial process where people put up evidence,

1 the other side gets to cross-examine the evidence.
2 And in that process hopefully you'll figure out, in
3 a case like this, whether or not the State has met
4 their burden of proof.

5 In a criminal case the defendant never has to
6 prove they're innocent. The State always has to
7 prove that somebody is guilty. So in the case that
8 we have for you this week, the gentleman that is on
9 trial does not have to prove his innocence. The
10 State has to prove he's guilty. And so hopefully
11 you will, you know, find that through this process
12 of going back and forth with witnesses and people
13 getting the opportunity to present various types of
14 evidence to you, you'll learn something from it,
15 appreciate the fact that it does move a little
16 slower than it does on TV.

17 But everything that I understand is that we'll
18 get this case tried this week. It won't go on into
19 next week. Due to some scheduling issues, what
20 we're going to do today is qualify you so that we
21 can determine if you're qualified to be a juror,
22 then we'll draw the jury for the case that we'll
23 start. And we'll start that case tomorrow after
24 lunch, about 1:30. We've had to shift things around
25 a little bit for getting witnesses scheduled and

1 that sort of thing.

2 But everything that I'm aware of at this point
3 says that we'll get the case finished by Friday, so
4 I don't think there's any chance that anybody will
5 be back here for this same case next week. So if
6 that's a concern, put that behind you.

7 So there's a couple of things that we need to
8 do. First of all, we qualify you and make sure that
9 you're qualified to be jurors. After we get those
10 folks that are qualified to be jurors selected, then
11 we'll actually pick a jury for that first case. So
12 we ask some questions. All of the questions have to
13 be answered under oath.

14 Did you put them under oath?

15 THE CLERK: Yes, sir.

16 THE COURT: Okay. So that part is already
17 done.

18 All the questions I'm going to ask you, both
19 for qualification purposes and for purposes of
20 selecting the jury, the answers have to be under
21 oath, and they are not designed in any way, shape,
22 or form to embarrass you or try to pry personal
23 information out of you. There are some questions
24 that I could understand if somebody said, you know
25 what, that's a little bit private and I'm not sure I,

1 want to stand up in front of a group of people and
2 say what I want to say or that I feel like I need to
3 say in order to respond to the question. Please
4 don't just sit there. You are -- just stand up and
5 say, can we come forward? And you can come down
6 here and talk in front of me and the court reporter.
7 Sometimes I have the lawyers depending on what phase
8 we're on. But don't just stand there or don't just
9 sit there; please come forward and let me know of
10 any concerns that you have that you think it might
11 be pertinent to the question that I've asked. Okay?

12 Now, when I talk about things being on the
13 record, I mean that we have a court reporter present
14 and she's taking down every single thing that's
15 being said. She's got this little machine down
16 here. You see her working away? My position on
17 court reporters is this: I have no idea how they
18 can do what they do. They have to listen more
19 intently than anybody else in the courtroom. If
20 their mind fades, well, it's a mess. But they have
21 powers of concentration unlike anybody I've ever
22 seen. And they use a little machine there that's
23 not like a typewriter; it's got about 12 little keys
24 on it, none of them have any markings on it, and
25 they take down everything phonetically. It's a

1 mystery to me how they do what they do, and I think
2 most of them are super human in whatever they do.

3 So I say that for the purpose of this: This is
4 a court of record. And in a little bit I'm going to
5 ask you a question about if you've ever been a juror
6 in a court of record. By that, I mean a court
7 reporter was present.

8 That doesn't include municipal court or
9 magistrate court where, even though sometimes they
10 may play a tape recorder or something like that,
11 they're not considered courts of record for the
12 purposes of the questions that I'm asking you. But
13 all of the questions have to be under oath. We put
14 you under oath and all of the questions and answers
15 have to be on the record.

16 So the very first question that I'm going to
17 ask you is, is there anybody here who is not yet 18
18 years old? You have to be 18 to serve on the jury
19 in this state. If that applies to anyone, would you
20 please stand? Okay. I find none.

21 Is there anybody here who is not a citizen of
22 the United States? If so, would you please stand.
23 Okay. I find none.

24 Is there anybody here who is not a resident of
25 Bamberg County? If so, would you please stand.

1 Okay. I find none.

2 Is there anybody here that cannot read, write,
3 or understand the English language? If so, would
4 you please stand. Now, somebody out there I know is
5 thinking, well, if you can't understand the English
6 language, how could you understand that question?
7 That's a good question. And what I would ask is
8 that if you've been sitting here or maybe when you
9 were waiting in the hallway, if you gather that
10 somebody is not able to understand the English
11 language, you can pass that information along to me
12 in court. But right now I'm going to go with nobody
13 responded to that answer. But if you feel like
14 somebody may not be able to understand the English
15 language and they're sitting beside you or you've
16 had some contact with them, would you please
17 volunteer that? Okay. I find none.

18 Is there anybody here who does not have at
19 least a 6th grade education or its equivalent? If
20 so, would you please stand. Okay. I find none.

21 Is there anybody here who has any sort of
22 physical condition or mental condition or any kind
23 of reason that they don't feel like they could serve
24 as a juror this week? We often get people that have
25 a doctor's excuse or maybe they feel like, well,

1 I've got a back condition or something like that.
2 We make accommodations for people. There's a lot of
3 things that we can do if you have a physical
4 condition. For instance, some people are hard of
5 hearing like me. I wear hearing aids. And when we
6 can -- I'm very sensitive to that, so if somebody
7 needs to sit closer to the witness, we can
8 accommodate you in that way.

9 But sometimes people have doctor appointments
10 and things like that and can't make other
11 arrangements. But if you have any physical or
12 mental condition that you think might keep you from
13 serving as a juror this week, would you please
14 stand.

15 And again, this is one that I understand
16 completely if you don't want to talk about it in
17 front of a group of people, you can come down and
18 talk about it privately.

19 Yes, sir. Your name and number?

20 POTENTIAL JUROR: I have a doctor appointment
21 today at 3:50.

22 THE COURT: At 3:50?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: I don't think you'll have any
25 problem with that. If we get a little bit closer,

1 you let me know. What was your name and number?

2 POTENTIAL JUROR: Jervey Mingo, 148.

3 THE COURT: Thank you.

4 Yes, sir. Your name and number?

5 POTENTIAL JUROR: What was the question again?

6 THE COURT: Any kind of physical or mental
7 condition which might keep you from serving as a
8 juror.

9 POTENTIAL JUROR: Well, I'm diagnosed with
10 depression and anxiety.

11 THE COURT: Are you taking medication for that?

12 POTENTIAL JUROR: Yes.

13 THE COURT: Okay. Does that keep you from
14 understanding what's happening or you --

15 POTENTIAL JUROR: Oh, no, no. I'm good. I can
16 understand what's going on.

17 THE COURT: Okay. Tell me what your name and
18 number is.

19 POTENTIAL JUROR: George Smith, 204.

20 THE COURT: Okay. Thank you. Anyone else?

21 All right. Is there anybody who has been
22 convicted of a crime in either federal or state
23 court of a crime that was punishable by more than a
24 year in prison and you have not received a pardon or
25 amnesty by either the governor or the president?

1 So let me break that down for you. By
2 conviction I mean you went to court and you either
3 pled guilty or you went to trial and were found
4 guilty, or maybe you entered a plea of no contest,
5 or we even have this thing called an Alford plea
6 where you, you know, maintain your innocence, but
7 want to enter a plea anyway. All of those count as
8 convictions.

9 The crime for which you were convicted could be
10 either in federal court or state court. And it
11 would be any state, not just South Carolina. And if
12 that crime was punishable by more than a year in
13 prison, that's what counts. It doesn't matter if
14 you got probation or a fine, or maybe you got time
15 served or less than a year in prison. If you could
16 have gotten more than a year in prison, that's what
17 we're talking about. So if that applies to anyone,
18 would you please stand.

19 Mr. Solicitor, do you have anything that we
20 need to look at?

21 Sometimes we have people that have names that
22 are similar to people that have prior convictions,
23 and we just need to clear this up whether or not
24 this applies to you or not. So I'm going to call
25 the name out and ask that you come forward.

1 Juror No. 184, Tony Ross, could you come up here,
2 please.

3 (Mr. Ross comes forward.)

4 THE COURT: Mr. Ross, what is your social
5 security number?

6 POTENTIAL JUROR: [REDACTED].

7 THE COURT: Okay. This is not the same social
8 security number. There is somebody named Tony Ross
9 that has an also-known-as Jerome Love that has a
10 number of arrests going back to the '70s, it looks
11 like. And again, I'm not saying this is you, I just
12 need to clarify that it's not you. But have you had
13 charges for burglary and stolen vehicle and things
14 like that back in the '70s?

15 POTENTIAL JUROR: No.

16 THE COURT: Okay. It doesn't even really
17 say -- looks like there was an Illinois credit card
18 thing. But that's not you?

19 POTENTIAL JUROR: No.

20 THE COURT: Okay. Just needed to clear that
21 up. Thank you.

22 How about number 71, Denise Ford? Ms. Ford,
23 can you come up here for a second.

24 (Ms. Ford comes forward.)

25 THE COURT: Tell me your social security

1 number, please.

2 POTENTIAL JUROR: [REDACTED].

3 THE COURT: All right. I'm showing somebody
4 with your name, that social security number, had
5 some -- looks like some charges out of Kings
6 County -- where is that at? New York?

7 POTENTIAL JUROR: Yeah.

8 THE COURT: Is that you?

9 POTENTIAL JUROR: Yeah.

10 THE COURT: Okay. And it looks like things you
11 could have gotten more than a year for even though
12 they were back in the '90. So that's you?

13 POTENTIAL JUROR: That's me.

14 THE COURT: Okay. We'll have to disqualify
15 you, so you're free to go.

16 POTENTIAL JUROR: Thank you.

17 THE COURT: How about Juror No. 182, Leon
18 Michael Riley?

19 (Mr. Riley comes forward.)

20 THE COURT: What's your date of birth?

21 POTENTIAL JUROR: [REDACTED].

22 THE COURT: [REDACTED]

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: Okay. And your social security
25 number?

1 POTENTIAL JUROR: [REDACTED].

2 THE COURT: [REDACTED]? All right. I'm showing a --
3 something showing a carrying a pistol charge out
4 of --

5 POTENTIAL JUROR: Okay. After going to --
6 speaking with an attorney and the timeframe, I
7 requested an expungement. So --

8 THE COURT: Okay. So it hasn't been expunged
9 yet.

10 POTENTIAL JUROR: The lawyer, he told me any
11 time someone asks me questions for employment or
12 something of this manner, to just ignore it because
13 of the timeframe was well over 20-something years
14 ago.

15 THE COURT: Well, until that gets cleared up
16 entirely, it disqualifies you for today. So you're
17 free to go.

18 POTENTIAL JUROR: Thank you.

19 THE COURT: All right. Number 30, Joseph
20 Broxton.

21 (Mr. Broxton comes forward.)

22 THE COURT: What's your date of birth?

23 POTENTIAL JUROR: [REDACTED].

24 THE COURT: Okay. I don't see a social
25 security number on here. But I'm showing somebody

1 with that date of birth has -- and I don't know what
2 this is on here exactly. It must be some kind of
3 federal charge, obstruction of mail back in 1977.
4 Is that you?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Okay. You got two years of
7 probation. Do you have any idea what you could have
8 gotten? Was that a federal charge?

9 POTENTIAL JUROR: No, I don't think so.

10 THE COURT: Where was that?

11 POTENTIAL JUROR: That was --

12 THE COURT: Was it South Carolina?

13 POTENTIAL JUROR: South Carolina.

14 THE COURT: Well, because you got two years of
15 probation, I'm going to just go with -- '77, I don't
16 have any way of verifying what that is at this
17 point. So I'll go ahead and excuse you from jury
18 service this week. So you're free to go.

19 POTENTIAL JUROR: Thank you, sir.

20 THE COURT: All right. Do you have anything
21 else?

22 All right. I'm just going to stay here because
23 somebody may need to pop up and it beats coming back
24 and forth. Can everybody hear me in the back okay?
25 Yes, you have a question you need to ask?

1 POTENTIAL JUROR: When you asked me that
2 question a while ago, yes, I should had said yes to
3 you.

4 THE COURT: Why don't you come on up and we'll
5 talk about it? You're number 204?

6 POTENTIAL JUROR: 204, yeah.

7 THE COURT: Okay. Come on up.

8 (Mr. Smith comes forward.)

9 POTENTIAL JUROR: You said if I'm capable of
10 staying here in the court, right?

11 THE COURT: Uh-huh. And I asked about physical
12 and mental disorders.

13 POTENTIAL JUROR: Yes. I have anxiety and
14 depression.

15 THE COURT: All right. And you're taking
16 medication?

17 POTENTIAL JUROR: Yes.

18 THE COURT: Do you think that will keep you
19 from serving this week.

20 POTENTIAL JUROR: It probably will. It
21 probably will.

22 THE COURT: How often do you take medication?

23 POTENTIAL JUROR: I take it every day.

24 THE COURT: All right. Anybody have any
25 problem with him being excused?

1 MR. MILLER: No, sir.

2 MR. KAZMIERSKI: No.

3 THE COURT: Okay. 204 is excused.

4 All right. Is there anybody here who is a
5 clerk or deputy clerk of court, constable, sheriff,
6 commissioned law enforcement officer -- in other
7 words, you took an oath when you began your service
8 as a law enforcement officer -- a probate judge, a
9 county commissioner or county councilman, a
10 magistrate, or a county officer, or you work inside
11 the walls of a courthouse? If that applies to
12 anyone, would you please stand.

13 And I'll read that again. It's a clerk or
14 deputy clerk of court, a constable, a sheriff or
15 commissioned law enforcement officer, a probate
16 judge, a county councilman, a magistrate, or a
17 county officer, or anyone employed within the walls
18 of any courthouse. If that applies, would you
19 please stand. All right. I find none.

20 Is there anybody that has already served as a
21 juror in a court of record this calendar year?
22 Again, a court of record is a court where we had a
23 court reporter present. So it would really either
24 be here or in a federal courthouse. And a court of
25 record again means here; not a magistrate court, not

1 a municipal court, and it was already this calendar
2 year. So January 1 of this year up until last week,
3 you already served as a juror. If that applies to
4 anyone, would you please stand. Okay. I find none.

5 Is there anyone who has served on the Bamberg
6 County Grand Jury in the last five years?

7 Yes, sir?

8 POTENTIAL JUROR: Chris Platt.

9 THE COURT: All right. And what is --

10 POTENTIAL JUROR: 2011, I believe.

11 THE COURT: Okay. And what's your number?

12 POTENTIAL JUROR: 165.

13 THE COURT: All right. These are 2014
14 indictments; right?

15 MR. WILSON: Right.

16 THE COURT: All right.

17 Sir, you can sit down. Thank you. You
18 wouldn't have been on the grand jury that was on
19 this case.

20 Anyone else? All right. Well,
21 congratulations, you're all qualified now to serve
22 as jurors. So now that you're all qualified, I'll
23 go into some exemptions. And exemptions are simply
24 these things where you are qualified, but you may
25 ask to be transferred to another term, or in some

1 cases we'll excuse you all together from jury
2 service. But most of them are just transferring you
3 to another time.

4 So here's where I kind of make my pitch for
5 jury service: All right. To me, the magic of a
6 jury trial, if you will, the mystery, the thing that
7 makes juries work is we have a wide, diverse group
8 of people that show up. If everybody was like me,
9 you know, my sex, my race, my educational
10 background, it wouldn't work, it would just be 12
11 mes up here. Same thing, clerk of court, attorneys,
12 you; if everyone was the same, it wouldn't work as
13 well as if we had a wide, diverse group of people,
14 different education background, income levels, race,
15 sex, married or not married.

16 It's amazing to me -- and I've been doing this
17 now -- this is my 13th year on the circuit court.
18 It's amazing to me that we get 12 people, we put
19 them in the box, we ask them to listen to the
20 evidence; they listen to the evidence for several
21 days, maybe a week; I tell them what the law is, and
22 then they go into a room and they come out with a
23 verdict.

24 And it's amazing that it happens as often as it
25 does; that we can get that wide, diverse group of

1 people to come together and come up with a decision.
2 Do you know how hard it is to get 12 people to agree
3 with anything? But they come up with a verdict in a
4 case, and that's a remarkable thing.

5 And I have people come up to me, as I said, all
6 the time asking me -- you know, telling me about
7 their jury service. But one of the things
8 invariably that they want to know is, did we do the
9 right thing? And what I tell them is -- because
10 first of all, I probably don't remember the case. I
11 mean, this is what I do for a living and we do it
12 every week and we move around from state. And if
13 they had a case a year or two before, I wouldn't
14 probably really remember it. Sometimes when they
15 tell me about it, I might remember it.

16 But here's what I always tell folks: You know,
17 you had 12 people that came to the same decision.
18 Chances are you did the right thing. It's been my
19 experience that in 95 percent of the cases that I've
20 presided over, when it's over with, I think to
21 myself, that's probably what I would have done if I
22 was on that jury. In 4.999 percent of the cases, I
23 go, you know, that's maybe not what I would have
24 done, but I can certainly see how that jury came to
25 that decision. I've only had one case in the 13

1 years I've been doing this where I've gone
2 afterwards and said, well, I really have no idea
3 what those people were thinking.

4 My position is, we ask people to do something,
5 it's not an easy job, but you do it. And the reason
6 that it works, in my opinion, that we're able to
7 come to these decisions about some pretty serious
8 things is because people have confidence in the
9 outcome of these cases. And the reason that they
10 have confidence in jurors is because y'all are not
11 working for the government. You work wherever you
12 work. You might work for the government, but you're
13 not paid jurors.

14 You're citizens of this community and you come
15 in here and we say, look, folks, we have a case,
16 it's a serious case, otherwise we wouldn't have
17 brought you in here. And a case like you're going
18 to hear this week, if you get picked for the jury,
19 it's a criminal case. And the State has to prove
20 that this person is guilty of the crime. He doesn't
21 have a prove that he didn't do it. And jurors take
22 that very, very seriously.

23 So when they come together and they do it, they
24 are participating in their government. And there's
25 just something about that that gives people the

1 confidence in the outcome. Maybe not everybody
2 likes it, but it's a confidence factor that people
3 have in the outcome because it's people from the
4 community who have come together and judged this.
5 It's something that we do every week throughout the
6 state, throughout the county, or throughout the
7 United States. This scene is being played out; it's
8 being done in a bunch of different counties today,
9 it's being done throughout counties all over the
10 United States. So we do it every week, which means
11 we take it for granted.

12 But people that live in other countries would
13 love to have a jury trial if they got accused of a
14 crime. And people that serve on juries would love
15 to serve on a jury if they were in another country.
16 They don't have that right. There is less than a
17 dozen countries in the entire world that if the
18 State accuses somebody of committing a crime that
19 they're entitled to a jury of peers like you folks.
20 All right?

21 And it's really a rare thing when you stop and
22 think about we have over 200 countries in the world
23 and less than a dozen of them give this right. Most
24 of the time if the government targets somebody with
25 a crime, they have -- a judge handles the case or

1 maybe a panel of judges.

2 But our founding fathers thought it was so
3 important that the outcome of cases be decided by
4 fellow citizens that they put that right to a jury
5 trial three times in the United States Constitution.
6 The founders of South Carolina thought it was so
7 important that they put it in the South Carolina
8 Constitution as well.

9 So we take it for granted, but it's really a
10 big deal. It really is a big deal to serve on a
11 jury. But, again, because we do it, we take it for
12 granted. And when you got that notice, I bet the
13 vast majority of you said, oh, I'd like to do this
14 some other time, it just doesn't work for me right
15 now. I get that. I totally get that. We are
16 inconveniencing you from your normal world. But
17 it's a responsibility of being a citizen, it's a
18 duty of being a citizen, but it's also a privilege
19 to serve on a jury.

20 In my opinion, that's the proper way to think
21 about this: It's a privilege to serve on a jury.
22 And a lot of people around the world wish that they
23 had the right to have a jury decide their outcome,
24 and a lot of people wish they had the right to serve
25 on a jury. So I hope that you'll think of it in

1 those terms. That's my pitch for jury service,
2 because those of you that are here now are
3 qualified, so we'll go into the exemptions now.

4 And again, by exemptions, I'll tell you about
5 some things that you say -- look, if you don't want
6 to serve on a jury, in some cases you're exempt
7 entirely, in some cases we move you to a time where
8 it's less of a hardship. But you don't have to ask
9 to be excused if one of these exemptions apply to
10 you. And I would ask that you consider not because,
11 again, we need you to make the system work properly,
12 we need as wide a diverse group of people as we
13 possibly can.

14 Having said that, if you have a hardship or
15 some reason that you want to ask to be transferred
16 to another time or be excused, if it's that kind of
17 exemption, then you're entitled to that, and I'm not
18 going to make you feel bad. I just want you to
19 consider the fact that we need you because it's the
20 way to make the system work properly. Okay?

21 So let's go over these exemptions. First of
22 all, if you're 65 years or older, you're entitled to
23 be excused from jury service entirely. So if there
24 is anybody who is 65 or older and you don't want to
25 serve, would you please stand.

1 Yes, ma'am. Your name and number?

2 POTENTIAL JUROR: Bronell Thompson. I don't
3 know the number.

4 THE COURT: Okay. And you're 65 or older?

5 POTENTIAL JUROR: 70.

6 THE COURT: And you wish to be excused?

7 POTENTIAL JUROR: Yes.

8 THE COURT: Okay. Thank you so much for
9 coming. You're excused.

10 All right. Now, we don't like to overburden
11 people, so if you've served on a jury in the three
12 previous calendar years you can ask to be excused as
13 well. Remember I told you earlier if you served
14 from January 1 to last week, you are actually
15 disqualified. But in this case I'm saying if you've
16 served on a jury like this in a court of record for
17 the last three years, you're entitled to be excused
18 as well. But, again, you can serve if you want.
19 But if anyone has served as a juror in a court of
20 record in either 2014, '14 or '12 and you wish to be
21 excused, would you please stand. Okay. I find
22 none.

23 Is there anybody that has the care and custody
24 of children that are under the age of seven and you
25 can't find anybody else to take care of them this

1 week? You're also entitled to be excused. So if
2 the children are under the age of seven, you're
3 their custodian and their caregiver and you can't
4 find anybody else to take care of them this week and
5 you wish to be excused, would you please stand.

6 Okay. I find none.

7 We also have people that are at the opposite
8 age of -- opposite end of the age spectrum. So if
9 you're the caregiver of someone 65 or older and they
10 can't take care of themselves and you can't find
11 anybody to take care of them this week, you're also
12 excused. So if that applies to anyone, would you
13 please stand.

14 Yes, ma'am. Your name and number?

15 POTENTIAL JUROR: Irishtene Conelly. I don't
16 know my number. But I'm the sole driver for my
17 mother, and this week she has to go back to the
18 doctor.

19 THE COURT: Okay. She can't be by herself?

20 POTENTIAL JUROR: She's not able to drive the
21 distance to her doctor. And I like to go with her
22 when she goes to her doctor's appointments.

23 THE COURT: All right. I'll excuse you from
24 service this week.

25 All right. Anyone else?

1 All right. Is there anybody else who is a
2 full-time student, a school teacher, a school
3 crossing guard, school bus driver, or you serve a
4 school in any kind of school-related function, and
5 because of that, you can't serve this week? This is
6 one that we typically transfer you to another time.
7 This isn't a complete excusal from service, it's
8 just a transfer to another time. But if that
9 applies to anyone and you wish to transfer to
10 another time, would you please stand.

11 Yes. Your name and number?

12 POTENTIAL JUROR: Garrett Wolfe, 244. I'm only
13 part-time, but one of my exams is tomorrow.

14 THE COURT: What time?

15 POTENTIAL JUROR: 2:00.

16 THE COURT: Okay. Well, that wouldn't work, so
17 we'll go ahead and transfer you to another time.
18 All right. You're excused. They'll just put your
19 name back in and you may get called again in the
20 future.

21 POTENTIAL JUROR: All right.

22 THE COURT: Yes. Your name and number?

23 POTENTIAL JUROR: 184, Curtis Ross. I'm a
24 full-time student down at OC Tech and we're in the
25 middle of our exams.

1 THE COURT: Can you come up here a little bit?

2 I can't hear you.

3 (Mr. Ross comes forward.)

4 POTENTIAL JUROR: I'm a full-time student at OC
5 Tech and we're in the middle of our exams.

6 THE COURT: All right. We'll transfer you to
7 another time as well.

8 Your name and number?

9 POTENTIAL JUROR: K'Torez Whetstone. I don't
10 know my number. I'm in school at Denmark Tech.

11 THE COURT: All right. And you're in school
12 now?

13 POTENTIAL JUROR: Yes, sir. Just not --

14 THE COURT: Okay. We'll transfer you to
15 another time.

16 Yes, ma'am?

17 POTENTIAL JUROR: 222, Ashley Thurman. I'm a
18 school teacher and a full-time student.

19 THE COURT: Okay. We'll excuse you as well
20 until another time.

21 POTENTIAL JUROR: Thank you.

22 THE COURT: Yes, sir?

23 POTENTIAL JUROR: I have to pick up my kids
24 from school.

25 THE COURT: All right. Is there nobody else

1 who can do that for you this week?

2 POTENTIAL JUROR: Nobody else who drives.

3 THE COURT: How old are your children?

4 POTENTIAL JUROR: About 12 and one is 10.

5 THE COURT: All right. We'll transfer you to
6 another time.

7 Your name and number?

8 POTENTIAL JUROR: 49, Brandon Cornelius. I go
9 to OC Tech, full-time student.

10 THE COURT: Okay. And y'all are in session?

11 POTENTIAL JUROR: Uh-huh. Just went back this
12 week.

13 THE COURT: Okay. We'll transfer you to
14 another time.

15 Your name and number?

16 POTENTIAL JUROR: Jeffery Sanders. I don't
17 know the number. But I'm a full-time student at
18 Vorhees College.

19 THE COURT: You're in session now?

20 POTENTIAL JUROR: Yes, sir.

21 THE COURT: Okay. We'll transfer you.

22 Your name and number?

23 POTENTIAL JUROR: I go to a college for online
24 students --

25 THE COURT: Online students?

1 (Unintelligible crosstalk.)

2 (Brief interruption.)

3 THE COURT: Ma'am, can you give us your name
4 and number again, please.

5 POTENTIAL JUROR: 211, Vickie Staley.

6 THE COURT: She's the one who is taking online
7 classes.

8 You can take the class at any time of the day
9 or night, and since the excuse is for people that
10 are in school during the day, we'll keep you.

11 Okay. Sir, name and number?

12 POTENTIAL JUROR: Michael Lee. I don't know my
13 number. I'm at USC Salkehatchie.

14 THE CLERK: 138.

15 THE COURT: You're free to go. We'll transfer
16 you to another time.

17 All right. Yes, ma'am?

18 POTENTIAL JUROR: I'm a full-time graduate
19 student at the University of South Carolina.

20 THE COURT: All right. And what's your name
21 and number?

22 POTENTIAL JUROR: 82, Sharon Goodwin.

23 THE COURT: All right. We'll transfer you.
24 Your name and number?

25 POTENTIAL JUROR: Shanice Salley. I work with

1 CSP and be at the school with my client.

2 THE COURT: I couldn't hear what you said.

3 POTENTIAL JUROR: I work with Jamison

4 Consulting CSP and I be with my client in school.

5 THE COURT: You're a consultant?

6 POTENTIAL JUROR: Jamison Consulting, that's

7 who I work for.

8 THE COURT: What is that?

9 POTENTIAL JUROR: CSP, client service

10 professional. I'll be with my client in school this

11 week.

12 THE COURT: All right. We'll excuse you for

13 this week.

14 Next is for people who is have a job that is a

15 conflict, an economic hardship. The law says

16 basically if you perform services for a business or

17 agricultural enterprise and whatever you do for them

18 is likely to have to cause the business to close

19 down this week if you're not there -- this is not

20 one that I excuse you on entirely, it's one where we

21 would transfer you to another time. If you've been

22 transferred to another time today, you'll find

23 that -- they'll let me know. And probably the judge

24 told you back then when you got transferred we can

25 only transfer you one time. And so I wouldn't be

1 able to transfer you again if you have been
2 transferred.

3 But if there's some kind of an economic
4 hardship because of a job or work or something along
5 those lines, then you can come up and talk to me
6 about that now. Again, I don't know what the
7 schedule is going to be like this week as far as
8 exactly when we'll finish, but we won't start until
9 after lunch tomorrow. And I'm certain we'll finish
10 by Friday. So if you get picked, you have to, of
11 course, be here when court is in session; if you
12 don't get picked, well then you don't have to stay
13 around or wait on the jury for the next case or
14 anything like that.

15 So you can take your chances. If you haven't
16 been picked or if you're thinking, well, I'm not
17 sure whether or not I need to ask for a transfer,
18 all I can tell you is if you get transferred and
19 it's to another time, you probably won't be able to
20 transfer again. So I don't know if it'll be a worse
21 week or a better week; there's no way for me to know
22 that. But if you want to come up and talk to me
23 about an economic transfer or some kind of a
24 hardship transfer, now would be the time. So if
25 that applies to anyone, would you please stand.

1 Yes, sir. Come on up.

2 (Mr. Black comes forward.)

3 THE COURT: Mr. Black?

4 POTENTIAL JUROR: Yes, sir.

5 THE COURT: Okay. Let me see what your letter
6 says here. All right. Have you been transferred
7 before?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: All right. And you understand that
10 if I transfer you to another time you'll have to
11 serve that week?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Okay. Well, he's got an economic
14 hardship that has to do with a lot of farm issues
15 with the recent floods, so we'll transfer him to
16 another time. Okay. Thank you.

17 Anyone else? All right.

18 Is there anybody who has served as a guard at
19 the department of corrections in a penitentiary?
20 Currently?

21 POTENTIAL JUROR: I'm retired.

22 THE COURT: Pardon me?

23 POTENTIAL JUROR: I'm retired this year.

24 THE COURT: Okay. What is your name and
25 number?

1 POTENTIAL JUROR: I don't know my number. But
2 my name is Darrell Tyler.

3 THE COURT: All right. Well, if you were still
4 currently employed, there's actually -- and it falls
5 under the exemptions. I don't know why because it
6 says you shall be excused. But since you're
7 retired, you get to stay with us. All right?

8 Has anybody got any kind of a hardship or any
9 kind of extreme compelling circumstances that wasn't
10 covered and they feel they want to come up and talk
11 to me about it to perhaps transfer and didn't fall
12 under any other category?

13 You want to come on up?

14 POTENTIAL JUROR: Yes, sir.

15 (Mr. Brown comes forward.)

16 THE COURT: Name and number?

17 POTENTIAL JUROR: Richard Brown, 29. My son is
18 on the -- being charged with a criminal act, and
19 Mr. Miller is prosecuting the case.

20 THE COURT: Okay.

21 POTENTIAL JUROR: And I think it would be a
22 conflict for me being a part of this.

23 THE COURT: Well, I would agree with you.
24 That's technically not a disqualification, but it
25 would certainly get you out of the next trial. So

1 I'll excuse you from service this week.

2 THE BAILIFF: Judge, this man has a doctor's
3 appointment at 3:15. He just wanted to remind you.

4 THE COURT: At 3:15?

5 POTENTIAL JUROR: 3:50.

6 THE COURT: Oh, 3:50. How far you got to go?

7 POTENTIAL JUROR: Dr. Padgett's office.

8 THE COURT: I don't know where that's at.

9 POTENTIAL JUROR: About four blocks.

10 THE COURT: Okay. We're moving pretty quick.

11 It's going to be tight. Do they usually run on
12 time?

13 THE CLERK: No.

14 THE COURT: You know what? You got to go to
15 the doctor, and that would be cutting it kind of
16 close. I'm going to excuse you from service this
17 week. What is your name and number?

18 POTENTIAL JUROR: Jervey Mingo, 148.

19 THE COURT: All right.

20 Yes, ma'am. Your name and number?

21 POTENTIAL JUROR: Vanessa Broughton, Juror 24.

22 I have cervical spine disease and they scheduled me
23 for an EMG that has to be done Thursday morning in
24 Columbia.

25 THE COURT: Okay. What time?

1 POTENTIAL JUROR: About 9:30.

2 THE COURT: We'll be rolling along pretty good,
3 so I'll excuse you for this week.

4 POTENTIAL JUROR: Thank you, sir.

5 THE COURT: All right. Name and number?

6 POTENTIAL JUROR: Carla Jackson, 111. I have a
7 paid vacation already.

8 THE COURT: When is it?

9 POTENTIAL JUROR: I leave Friday morning.

10 THE COURT: Okay. I don't know. I can't
11 promise you that we'll be finished by Friday
12 morning. I'll go ahead and excuse you from service
13 this week.

14 POTENTIAL JUROR: Thank you.

15 THE COURT: All right. Anyone else?

16 The man wearing a Clemson shirt in front of a
17 Carolina judge. What do you think his chances of
18 getting out of this one are? Yes, sir. Your name
19 and number?

20 POTENTIAL JUROR: James Long, 139. I'm
21 actually retired commission, DPS constable.

22 THE COURT: So you're currently still a
23 commissioned law enforcement --

24 POTENTIAL JUROR: Well, DPS constable is what
25 it is.

1 THE COURT: Department of public service?

2 POTENTIAL JUROR: Yes, sir. Retired state
3 trooper. And I wasn't sure earlier when you asked
4 about the constable.

5 THE COURT: So you're retired?

6 POTENTIAL JUROR: I have to go back and serve
7 when they need me.

8 THE COURT: So you're kind of, like, in
9 reserve?

10 POTENTIAL JUROR: I'm a class 3 law enforcement
11 officer.

12 THE COURT: I don't know what that means.
13 You're not active, but you go back and you get
14 certified and they call you back if they need you?

15 POTENTIAL JUROR: Go back to the department to
16 stay if needed be.

17 THE COURT: Well, sounds to me you're still on
18 some kind of reserve status, so I'll say that's a
19 disqualification. Okay. You're free to go.

20 THE CLERK: 139.

21 THE COURT: Yes, sir?

22 POTENTIAL JUROR: I have to pick up my
23 four-year-old and my newborn from my cousin at 5:00.
24 She has to go to work, so when I get off work, I go
25 to pick them up.

1 THE COURT: Okay. At 5:00?

2 POTENTIAL JUROR: About 4:30. She leaves at
3 4:30.

4 THE COURT: We'll be done.

5 Yes, ma'am?

6 POTENTIAL JUROR: 93, Shirley Heart. I'm the
7 only one in my household working and my job won't
8 pay for jury duty.

9 THE COURT: Have you been transferred before?

10 POTENTIAL JUROR: No. This is my first time.

11 THE COURT: Well, if I transfer you to another
12 time, you're going to run into that same problem.

13 POTENTIAL JUROR: I'd rather pick another time
14 anyway.

15 THE COURT: What do you do?

16 POTENTIAL JUROR: I work in fiberglass.

17 THE COURT: When's the next term of court?

18 THE CLERK: January.

19 POTENTIAL JUROR: At least it's after
20 Christmas.

21 THE COURT: Okay. For economic reasons, I'll
22 transfer you to the next term of court. They'll
23 send you a notice.

24 POTENTIAL JUROR: Okay. Okay.

25 THE COURT: Anyone else?

1 All right. Well, you look like our jury panel.

2 Good.

3 MR. MILLER: Your Honor, can we bring up
4 something quickly?

5 THE COURT: Sure.

6 All right. Let's bring in Mr. James.

7 (The defendant enters the courtroom.)

8 THE COURT: Okay. We've now qualified the jury
9 and we've got our panel. We'll go into the next
10 phase of picking the jury before we begin the trial.
11 Now, this part has some questions that we're going
12 to ask you and, again, all your answers are under
13 oath. We're, again, not trying to pry into your
14 personal affairs or anything like that. If you have
15 a response and you don't want to stand up in front
16 of a group of people, just raise your hand and say,
17 I want to come up, and I'll come down there and
18 we'll talk privately.

19 The purpose of this part is now to find 12
20 jurors and two alternates. And we'll -- we need to
21 find, basically, 12 jurors who do not know anything
22 about the case or any of the witnesses or the
23 parties or the lawyers, to the extent that it would
24 affect your ability to be fair and impartial about
25 the case and you can serve as a juror. It might be

1 that you know somebody. That's not a
2 disqualification in and of itself. It's just do you
3 know anybody well enough that it would affect your
4 ability to be fair and impartial?

5 We're looking for 12 people who can listen to
6 this case, make a judgment based on what you hear in
7 this courtroom, not what you know about the case or
8 what you think about the people that are involved or
9 anything like that, but that you will promise that
10 you can make your decision based on the evidence
11 that you hear in this courtroom, as well as the law
12 that I tell you applies to this type of case.

13 So what we'll do is I'm going to tell you just
14 a little bit about the case for the purpose of
15 finding out anything about it.

16 Yes, sir?

17 POTENTIAL JUROR: I can't hardly hear you.

18 THE COURT: Okay. I'll move up. You and I
19 share the same problem, and I don't think that
20 microphone is picking me up very well. Is that
21 better?

22 POTENTIAL JUROR: Yes, sir.

23 THE COURT: Okay. Good. So we got the case
24 here with two indictments. Now, an indictment is
25 simply a charging instrument. It is not to be

1 considered as evidence in this case. Indictments --
2 remember I asked you earlier if anyone had served on
3 the grand jury in the case before? Well, there's
4 two ways that you bring somebody to trial for a
5 felony in this state; one is by a direct arrest
6 where somebody goes before a judge and swears out a
7 warrant, or you can also have the solicitor take the
8 case in front of the grand jury, and if the grand
9 jury true-bills the indictment, then the person is
10 brought to stand trial.

11 Now, the grand jury is different from the type
12 of jury that you are. You're called the petit jury
13 or the little jury. So you got the grand jury and
14 the little jury. And these things go back really
15 800 years to their beginning of why we have these
16 types of cases. In fact, this year is the 800th
17 anniversary of the signing of the Magna Carta.

18 If you go back, you might remember that in
19 jolly old England, you know, where you had
20 originally the Norman Conquest, the kings come in
21 and the kings make the rules. And if you're getting
22 to be the king and if you think you're the king
23 because God made you the king, well, then your head
24 gets filled up a little bit and you think you can do
25 whatever you want.

1 Well, the kings had to have these guys that
2 owned the land, the barons, the earls, the dukes,
3 that do the fighting for him. And these guys kind
4 of got tired of the kings being able to do whatever
5 they wanted to do. And the kings would just go and
6 arrest people and throw them on trial. The king was
7 also the judge a lot of times. So they were just
8 bringing people in for trial, picking them up off
9 the street, not telling them what they're charged
10 with, and putting them on trial in front of the
11 trial -- basically the king is the judge or it was
12 somebody that he had appointed.

13 A lot of people were disgruntled by that, so
14 they started this process as a result of that. And
15 the signing of the Magna Carta guaranteed people's
16 rights, namely the right to what we now call due
17 process. In other words, you can't just go out,
18 snatch somebody off the street and put them on trial
19 without letting them know what they're on trial for.
20 So that process of going before a grand jury came
21 around as a result of that:

22 The grand jury is simply 18 people that meet
23 once a month, somebody from the government goes
24 before them and tells them a little bit about the
25 case, and they decide if there's enough evidence to

1 decide if somebody should stand trial. It doesn't
2 mean that they're guilty of the case, it simply
3 means there's enough evidence to say that a crime
4 took place and it's possible that this person did
5 it. So we will issue -- we will true-bill an
6 indictment or we will indict them, and then they
7 will stand trial.

8 It is not evidence, the fact that they got
9 indicted or arrested for the case, and that should
10 never, ever be considered by you as evidence, the
11 fact that somebody got charged with a crime. The
12 indictment simply let this individual know what he
13 is on trial for so he can prepare a defense and know
14 why he's in court. Okay?

15 So these indictments make allegations, and I'm
16 going to read you what the allegations are for the
17 purpose of letting you know when and where and what
18 this crime is that took place or allegedly took
19 place, and then you can -- it might draw a -- or
20 ring bell. So you can tell us, well, wait a minute,
21 I know something about that case, and then we ask
22 some followup questions.

23 But there's two indictments. And the defendant
24 is Mr. Leon Amos Jason James. He's sitting over
25 there in the blue suit and the blue shirt, and he's

1 pled not guilty to both of these indictments.
2 Therefore, it's incumbent upon the State of South
3 Carolina, after they indict somebody, to give him a
4 trial and try to attempt to persuade 12 of you that
5 he's guilty of these indictments. He is not
6 required to prove his innocence.

7 In the eyes of the law, he sits there not
8 guilty of these crimes, and that burden of proof is
9 on the State to prove to you 12 people that get
10 picked to serve on this jury that he's guilty of
11 these crimes beyond a reasonable doubt. And I'll
12 get into that when we begin the trial. But he
13 doesn't have to prove he's innocent; the State has
14 to prove he's guilty.

15 And these indictments are simply the charging
16 instruments that put him on notice of what he is to
17 stand trial for, and it also gives this Court
18 jurisdiction to then hear the case. Okay?

19 So there's two indictments. And the first
20 indictment is 2014-GS-05-202, that's for armed
21 robbery. And it alleges that Leon Amos Jason James
22 did in Bamberg County on or about June 5th, 2014,
23 while armed with a deadly weapon, alleging either by
24 action or words that he was armed, while using the
25 representation of a deadly weapon or object which is

1 person present during the commission of the robbery
2 reasonably believed to be a deadly weapon, to wit, a
3 firearm, feloniously taken from the person or
4 presence of Rebecca Templeton by use of force or
5 intimidation, goods or monies of Enterprise Bank of
6 South Carolina, such goods or monies defined as
7 United States currency, all in violation of section
8 16-11-330 of the South Carolina Code of Laws 1976,
9 as amended.

10 The second indictment is indictment
11 2014-GS-05-204. It is an indictment for entering a
12 bank with intent to steal. It alleges that Leon
13 Amos Jason James did in Bamberg County, South
14 Carolina, on or about June 5th, 2014, unlawfully did
15 enter Enterprise Bank of South Carolina located at
16 4668 Carolina Highway in Denmark, South Carolina, a
17 building or part of a building occupied as a bank,
18 depository, or building, and loan association with
19 the intent to steal money or security for money
20 either by force, intimidation, or threats, all in
21 violation of section 16-11-380 of the South Carolina
22 Code of Laws 1976, as amended.

23 Again, Mr. James pled not guilty to both of
24 those charges. Is there any member of the jury
25 panel who knows anything at all about this case? If

1 so, would you please stand.

2 Okay. We'll start with you, ma'am. What is
3 your name and number?

4 POTENTIAL JUROR: Shekeyia Middleton, 215.

5 THE COURT: Okay. And what do you know?

6 POTENTIAL JUROR: I'm an employee of Enterprise
7 Bank.

8 THE COURT: Okay. And you've heard about this
9 case?

10 POTENTIAL JUROR: Yes.

11 THE COURT: All right. Thank you. You may be
12 seated.

13 And your name and number?

14 POTENTIAL JUROR: Ashten Johnson, 118.

15 THE COURT: Okay. And what do you know?

16 POTENTIAL JUROR: I know Rebecca Templeton
17 pretty well. She's a good friend of mine. So I've
18 been told about this case.

19 THE COURT: All right. And do you think that
20 would affect your ability to be fair and impartial
21 in this case either for or against the State or for
22 or against the Defense?

23 POTENTIAL JUROR: I'd be on her side
24 regardless.

25 THE COURT: Come up here a second.

1 (Ms. Johnson comes forward.)

2 THE COURT: All right. You think that would
3 cause you to be --

4 POTENTIAL JUROR: No -- I guess. She's my
5 cousin's girlfriend. And I have --

6 THE COURT: She's talked to you about the case?

7 POTENTIAL JUROR: Yes.

8 THE COURT: All right you can have a seat.

9 POTENTIAL JUROR: All right.

10 THE COURT: Thank you. Anyone else?

11 All right. Now, in South Carolina, when the
12 State charges somebody with a crime, we have -- the
13 Attorney General is the chief law enforcement
14 officer of the state. The prosecutors in this state
15 are known as solicitors. And we have 16 judicial
16 circuits, and in this circuit, the Solicitor is
17 Strom Thurmond, Jr. Mr. Thurmond has delegated some
18 members of his office to prosecute this case. I'm
19 going to allow the gentlemen to now stand and
20 introduce themselves. They work for Mr. Thurmond at
21 the Solicitor's Office. Will you please stand and
22 introduce yourself.

23 MR. MILLER: My name is David Miller. I'm a
24 deputy solicitor for the Second Judicial Circuit for
25 the counties of Bamberg, Aiken, and Barnwell.

1 MR. HAMMACK: My name is Jack Hammack. I'm the
2 assistant solicitor with Deputy Assistant Miller.

3 MR. HARTE: Good afternoon. My name is Wilder
4 Harte. I'm an assistant solicitor in Aiken,
5 Bamberg, and Barnwell counties.

6 THE COURT: All right. Is there any member of
7 the jury panel who is related by blood or marriage
8 or acquainted with Mr. Thurmond or with either of
9 these three gentlemen? If so, would you please
10 stand.

11 All right. Is there any member of the jury
12 panel who either you or one of your immediate family
13 members or close personal friends employed by
14 the Second Circuit Solicitor's Office? If so, would
15 you please stand.

16 Is there any member of the jury panel, either
17 you or one of your immediate family members or close
18 personal friends, being prosecuted by the Second
19 Circuit Solicitor's Office? If so, would you please
20 stand.

21 Okay. Y'all want to come up here real quick?

22 POTENTIAL JUROR: Dena Hartzog, 91. My nephew
23 is being prosecuted by Solicitor Miller.

24 THE COURT: All right. Thank you.

25 POTENTIAL JUROR: I'm number 158, Ross Nettles.

1 And my cousin is the one that's being -- she's my
2 aunt. My cousin will be prosecuted by Mr. Miller.

3 THE COURT: Okay. Thank you.

4 The defendant in this case is Mr. Leon Amos
5 Jason James. Would you stand and face the jury
6 panel. Is there any member of the jury panel who is
7 related by blood or marriage or acquainted in any
8 way with Mr. Leon Amos Jason James who is the
9 defendant in this case? If so, would you please
10 stand.

11 Okay. He's represented by these two fellows
12 who are on either side of him. Would you guys
13 please stand and introduce yourselves.

14 MR. WILSON: I'm Chris Wilson. I practice law
15 here in Bamberg at Wilson & Luginbill law firm with
16 Janek Kazmierski. I'm going to be helping him with
17 this trial, and Dan Luginbill and Lauren Bailey who
18 is now Lauren Dangerfield.

19 MR. KAZMIERSKI: Janek Kazmierski. And, as
20 Chris stated, I practice with him at Wilson &
21 Luginbill.

22 THE COURT: All right. Thank you.

23 Is there any member of the jury panel related
24 by blood or marriage acquainted in any way with
25 those two gentlemen, or perhaps you've been

1 represented by them or a member of their law firm,
2 perhaps, in the past? All right. I find none.

3 Now I'm going to call the names of some
4 witnesses who might be called. There's a lot of
5 names here. Not everybody is going to be called,
6 but it's bet to err on the side of caution because
7 invariably if we leave somebody out, they'll get
8 called later on and then somebody goes, oh, I know
9 them, and then we've got a problem. So we've had
10 everybody list everybody who they might potentially
11 call, but it doesn't necessarily mean all of them
12 are going to be called.

13 But when I call the name out, if you're related
14 by blood or marriage or acquainted in any way with
15 the people, as I call their name out, would you
16 please stand.

17 So we have Betty Wilson. I find none.

18 Chief Leroy Grimes of Denmark Police. I find
19 none.

20 James Walley, Olar police. I find none.

21 Stacey Lee. I find none.

22 Elease Gilbert --

23 Yes, ma'am. Your name and number?

24 POTENTIAL JUROR: Vickie Staley, 211.

25 THE COURT: Okay. And who do you know?

1 POTENTIAL JUROR: Stacey Lee.

2 THE COURT: How do you know her?

3 POTENTIAL JUROR: Niece by marriage.

4 THE COURT: If she's called as a witness, do
5 you think that would affect your ability to be fair
6 and impartial in this case either for or against the
7 State or for or against the Defense?

8 POTENTIAL JUROR: Not at all, sir.

9 THE COURT: Okay. Thank you.
10 What is your name and number?

11 POTENTIAL JUROR: Shekeyia Middleton, 215. All
12 of us are co-workers and best of friends.

13 THE COURT: Okay. And you work at the bank;
14 right?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: Thank you. Anyone else?

17 Elease Gilbert.

18 Rebecca Templeton.

19 You already stood for her; right?

20 POTENTIAL JUROR: Yes.

21 THE COURT: Melinda Collins.

22 Your name and number?

23 POTENTIAL JUROR: Justin Crosby, 55. I know
24 Melinda Collins.

25 THE COURT: How do you know her?

1 POTENTIAL JUROR: I work with her husband.

2 THE COURT: And if she's called as a witness in
3 this case, would that affect your ability to be fair
4 and impartial in this case either for or against the
5 State or for or against the Defense?

6 POTENTIAL JUROR: Yes.

7 THE COURT: You think it would?

8 POTENTIAL JUROR: Yes.

9 THE COURT: All right. You want to come up
10 here a second?

11 (Mr. Crosby comes forward.)

12 POTENTIAL JUROR: He's already told me about
13 what happened.

14 THE COURT: Okay. She's the one you're going
15 to call for sure?

16 MR. HARTE: We don't intend to call her.

17 THE COURT: Well, he just said she's told him
18 about the case --

19 POTENTIAL JUROR: Well, he did, her husband.

20 THE COURT: Her husband. Okay. What was your
21 number again?

22 POTENTIAL JUROR: 55, Crosby.

23 THE COURT: All right. You can be seated.

24 All right. Chris Folk.

25 Captain Eddie Williams with Bamberg Sheriff's

1 Office. I find none.

2 Investigator Shawn Hamilton with the Bamberg
3 Sheriff's Office. I find none.

4 Steven Gunnells with the Bamberg Sheriff's
5 Office. I find none.

6 Renee Greathouse. I find none.

7 Darrell Lassiter. I find none.

8 Tamela Henard. I find none.

9 Jeff Jackson with the Govan Fire Department. I
10 find none.

11 Lieutenant Keith Johnson with SLED, South
12 Carolina Law Enforcement. I find none.

13 Lieutenant Shaun Harley with SLED. I find
14 none.

15 Captain Chip Stepp with SLED. I find none.

16 Special Agent Jeff Croft with SLED. I find
17 none.

18 Special Agent David Williams with SLED. I find
19 none.

20 Special Agent Natasha Merrell with SLED. I
21 find none.

22 Sergeant Chris Sandifer with SLED.

23 POTENTIAL JUROR: Cassandra Garcia, 76.

24 THE COURT: Okay. And you know Chris Sandifer?

25 POTENTIAL JUROR: My husband does. He's a

1 friend.

2 THE COURT: Okay. If he's called as a witness
3 in this case, would that affect your ability to be
4 fair and impartial in this case either for or
5 against the State or for or against the Defense?

6 POTENTIAL JUROR: No. No.

7 THE COURT: All right. Thank you.

8 Investigator Scott Peterson with Barnwell
9 Sheriff's Department. I find none.

10 Investigator Shawn Hamilton with Bamberg
11 Sheriff's Department. We've already asked about him
12 before.

13 Dawn Claycomb. I find none.

14 Jennifer Aycock. I find none.

15 Doris Yarbrough. I find none.

16 Amy Stephens. I find none.

17 Verona Herrera Gibson. I find none.

18 Jackie Davis. I find none.

19 Donna Money. I find none.

20 Sheree Brown. I find none.

21 Shana Sorrells. I find none.

22 Brittany Burke. I find none.

23 Ben Varnadore. I find none.

24 Thomas Darnell. I find none.

25 Lisa Chapman. I find none.

1 Kimberly Mears. I find none.

2 Kimberly Spainhour. I find none.

3 Chief James Walley with Olar Police. Already
4 called him.

5 Lewis Garvin. I find none.

6 Homer James. I find none.

7 I think I've got all of the names. Did I miss
8 anybody?

9 All right. Is there any member of the jury
10 panel, either you or our immediate family members or
11 close personal friends, either law enforcement
12 officers or work for a law enforcement agency? If
13 so, would you please stand.

14 All right. Your name and number?

15 POTENTIAL JUROR: 215. That's my cousin.
16 Agent Captain Eddie Williams, that's my cousin.

17 THE COURT: All right.

18 Yes. Your name and number?

19 POTENTIAL JUROR: Teresa Hannibal, number 89.
20 My brother works for Forest Acres Police Department.

21 THE COURT: In Columbia?

22 POTENTIAL JUROR: In Columbia.

23 THE COURT: All right. Would that affect your
24 ability to be fair and impartial in this case either
25 for or against the State or for or against the

1 Defense?

2 POTENTIAL JUROR: In no way.

3 THE COURT: All right.

4 Yes. In the red shirt?

5 POTENTIAL JUROR: 158. My brother is DNR,
6 Department of Natural Resources.

7 THE COURT: All right. Would that affect your
8 ability to be fair and impartial in this case either
9 for or against the State or for or against the
10 Defense?

11 POTENTIAL JUROR: No, sir.

12 THE COURT: All right.

13 Your name and number?

14 POTENTIAL JUROR: Loretta Simpson, 199. My
15 brother Anthony is an investigator and my
16 sister-in-law Michelle works for Denmark.

17 THE COURT: Okay. Have any of them talked to
18 you about this case?

19 POTENTIAL JUROR: No.

20 THE COURT: All right. Would that affect your
21 ability to be fair and impartial in this case either
22 for or against the State or for or against the
23 Defense?

24 POTENTIAL JUROR: No.

25 THE COURT: Okay.

1 Yes, sir. Your name and number?

2 POTENTIAL JUROR: Jonathan Goodman, 81. Shawn
3 Middleton, police department in Denmark.

4 THE COURT: All right. Would that affect your
5 ability to be fair and impartial in this case either
6 for or against the State or for or against the
7 Defense?

8 POTENTIAL JUROR: No, sir.

9 THE COURT: Thank you.
10 Your name and number?

11 POTENTIAL JUROR: James Hill, 97. I have a
12 daughter-in-law who works for the police department.

13 THE COURT: All right. Would that in any way
14 affect your ability to be fair and impartial in this
15 case either for or against the State or for or
16 against the Defense?

17 POTENTIAL JUROR: No, sir.

18 THE COURT: Thank you.

19 Yes, sir?

20 POTENTIAL JUROR: You said any relative?

21 THE COURT: Any relative.

22 POTENTIAL JUROR: My cousin, Dean Johnson,
23 highway patrol officer working out at the governor's
24 office, and my former brother-in-law works at the
25 Orangeburg County Sheriff's Office, and my brother

1 used to work at Lexington County and Orangeburg
2 County Sheriff's Office.

3 THE COURT: Give me your name and number again.

4 POTENTIAL JUROR: Chris Platt.

5 THE COURT: And your number?

6 POTENTIAL JUROR: 165.

7 THE COURT: Would that affect your ability to
8 be fair and impartial in this case either for or
9 against the State or for or against the Defense?

10 POTENTIAL JUROR: No, sir.

11 THE COURT: All right. Anyone else?

12 Yes, sir.

13 POTENTIAL JUROR: What about the State
14 constable?

15 THE COURT: The State constable? Yes, that
16 would count. What is your name and number?

17 POTENTIAL JUROR: Phillip Schurr, 193.

18 THE COURT: Who works for the constable?

19 POTENTIAL JUROR: My step-father does.

20 THE COURT: Would that affect your ability to
21 be fair and impartial in this case either for or
22 against the State or for or against the Defense?

23 POTENTIAL JUROR: No, sir.

24 THE COURT: All right. Thank you.

25 Any member of the jury panel have any kind of

1 relationship, social, business, or otherwise, with
2 any of the attorneys, parties, or witnesses in this
3 case? I find none.

4 THE CLERK: We've got one hand up.

5 THE COURT: Your name and number?

6 POTENTIAL JUROR: Kevin Carter, 37. My
7 business does a lot of banking with Enterprise Bank,
8 so I know most of the people.

9 THE COURT: Do you know anything about this
10 case?

11 POTENTIAL JUROR: Just what I read in the
12 papers.

13 THE COURT: All right. Would that affect your
14 ability to be fair and impartial in this case either
15 for or against the State or for or against the
16 Defense?

17 POTENTIAL JUROR: No, sir.

18 THE COURT: Thank you. Anyone else?

19 Any member of the jury panel participated in or
20 had a family member participate in the pretrial
21 intervention program? I find none.

22 Any member of the jury panel, either you or an
23 immediate family member or a close personal friend,
24 ever been the victim of a crime?

25 Yes. Your name and number?

1 POTENTIAL JUROR: Twenty-seven years ago I was
2 a teller -- a branch manager in a bank robbery.

3 THE COURT: Your name and number again, please.

4 POTENTIAL JUROR: 151, Anne Mock -- 152, excuse
5 me.

6 THE COURT: And you said you were --

7 POTENTIAL JUROR: Branch manager.

8 THE COURT: And how long ago was that?

9 POTENTIAL JUROR: Twenty-seven years ago in
10 August.

11 THE COURT: Do you think that would affect your
12 ability to be fair and impartial in this case either
13 for or against the State or for or against the
14 Defense?

15 POTENTIAL JUROR: Yes, sir.

16 THE COURT: All right. Thank you. Anyone
17 else?

18 Any member of the jury panel belong to any kind
19 of crime prevention groups, neighborhood watch
20 programs, victim advocates groups, law enforcement
21 associations like Troopers Association, Mothers
22 Against Drunk Driving, Students Against Drunk
23 Driving, any kind of groups like that, or you
24 financially a give to any of those groups, anything
25 along those lines; you either are a member or you

1 financially support groups or victims rights groups?

2 Yes, sir. Your name and number again?

3 POTENTIAL JUROR: Christy Platt, 165. I gave
4 to the Sheriffs Association.

5 THE COURT: Okay. Anyone else?

6 Your name and number?

7 POTENTIAL JUROR: 232, Mark West. I
8 financially donate to South Carolina Sheriffs
9 Association, South Carolina Troopers.

10 THE COURT: Okay. Let me ask this question
11 this way: Does anybody have any reason why they
12 feel they can't be a fair and impartial juror in
13 this case? And I'll preface this question this way,
14 and this isn't an inclusive list, but it's just an
15 example of things that we've -- I've had people say
16 over the years: Sometimes people feel like they
17 can't be a juror for a variety of different reasons.
18 It might be religious beliefs, it might be political
19 beliefs, it might be groups that they belong to
20 that, you know, for social reasons or things like
21 that.

22 Sometimes you get people that say, well,
23 there's versus in the Bible that say you shouldn't
24 sit in judgment of other people, and I don't know
25 that I can be a juror because of that. Sometimes

1 you have people that they firmly believe that there
2 are problems with our society and with our
3 government and that they -- there are groups out
4 there that say, you know what, if you ever get on a
5 jury, then you should automatically vote one way or
6 another. Depending on the case, it might be
7 automatically convict people, it might be
8 automatically let everybody go that's charged with a
9 crime.

10 On civil cases you might say never find for a
11 plaintiff, and some people might say never find for
12 a defendant. I'm not saying you're right or wrong
13 or anything on your beliefs. They are your beliefs,
14 and I'm not going to try to talk you out of them.

15 Here's what we have: We have a gentleman
16 that's on trial. He's been charged with these two
17 crimes that I've told you about. He's entitled to a
18 fair trial. The State of South Carolina is also a
19 party to this case and the State of South Carolina
20 is entitled to a fair trial. And so if you have
21 some belief fairly -- you know, a belief that you
22 strongly hold, I'm not going to try to talk you out
23 of that belief.

24 What I want you to do though is you can come up
25 here and talk to me about it and say, look, this is

1 something that I feel strongly about, and I think it
2 might affect my ability to be a fair and impartial
3 juror either to the State or to the defendant in
4 this case. Both parties are entitled to a fair
5 trial of 12 people who, at the end of the day, can
6 take an oath and say, in essence, I promise I will
7 make my decision based on what I hear in this
8 courtroom, not from what I know about the case from
9 out, not from what I believe about society, and it's
10 good things or bad things. I'm not going to try to
11 convince you of anything.

12 You can believe -- this is the great thing
13 about America: In my opinion, you can believe
14 whatever you want to believe. And as long as you
15 aren't trying to advocate the violent overthrow of
16 United States government or you're not trying to
17 hurt somebody with your beliefs, I don't really care
18 what you believe. I really don't. That's the great
19 thing about this country.

20 But if you have some kind of belief that's
21 going to affect either of these two parties' right
22 to a fair trial, then all I ask is that you come up
23 here and bring it to our attention so that we can
24 make a decisions as to whether or not that might
25 impact your ability to be a fair and impartial

1 juror. It may or may not, but in fairness to these
2 folks, all we ask is that you bring it to our
3 attention. You can come up here and talk to me
4 about it privately. I'm not going to try to convert
5 you from your beliefs, I just need to know what they
6 are. And if you think you have some belief that
7 might affect these folks' ability to have a fair and
8 impartial trial for whatever reason, whether it's
9 one of those things I discussed as an example or
10 not, would you please come forward.

11 All right. Come on up.

12 (Ms. Reed comes forward.)

13 POTENTIAL JUROR: Ella Reed, 174. It's not a
14 religious belief or anything, it's just that -- it's
15 not a religious belief or anything, it's just that I
16 feel like having worked in law enforcement for all
17 those years, and I still kind of work with the
18 police department, not as a paid person, but
19 whenever I know something or can present evidence on
20 a case that they're working on, looking for someone,
21 I readily come forward.

22 THE COURT: So do you think you would sort of
23 favor the State over the Defense or favor the
24 Defense over the State?

25 POTENTIAL JUROR: I would favor the State.

1 THE COURT: Over the Defense?

2 POTENTIAL JUROR: Yes.

3 THE COURT: And you think that would affect
4 your ability to be fair and impartial in this case?

5 POTENTIAL JUROR: I think it would be fair for
6 me to be honest in how I feel about it based on the
7 evidence.

8 THE COURT: Thank you. That's all I ask. You
9 can be seated.

10 All right. Yes. Your name and number?

11 POTENTIAL JUROR: Gbadeyemi Agboti, number 2.

12 THE COURT: Okay. What would you like to tell
13 me?

14 POTENTIAL JUROR: I don't feel like I'm going
15 to be a good juror on this case.

16 THE COURT: Why is that?

17 POTENTIAL JUROR: I just have some issues about
18 what's going on in the country right now, and I feel
19 that a lot of us is having -- not being treated
20 fairly. And I just -- I just got that feeling I'm
21 not going to be good.

22 THE COURT: So you think that that would cause
23 you to favor the Defense over the State in a case
24 like this or would it cause you to favor the State
25 over the Defense?

1 POTENTIAL JUROR: It would just cause me not to
2 favor either side.

3 THE COURT: Well, that's really all we can ask
4 is that you not favor either side. But I'm
5 sensing that you feel like -- well, maybe you can
6 tell me. You feel like a black man can't get a fair
7 trial, is that what you're saying, or did I read
8 that wrong?

9 POTENTIAL JUROR: I don't think so.

10 THE COURT: All right. Well, that's all I can
11 ask is that you be honest with us. All right.
12 Thank you.

13 Yes, sir. Your name and number?

14 POTENTIAL JUROR: Dallas Hibbler. I don't know
15 my number.

16 THE CLERK: 95.

17 THE COURT: Okay. What would you like to tell
18 me?

19 POTENTIAL JUROR: I was with South Carolina
20 DHEC Law Enforcement 2008. And I worked Bamberg
21 County 911 center for three months here about six,
22 seven months ago. And I just felt that I should
23 bring it out.

24 THE COURT: Okay. It wouldn't cause you to
25 favor one side over the other?

1 POTENTIAL JUROR: No, it wouldn't.

2 THE COURT: Okay. And it wouldn't affect your
3 ability to be fair and impartial to either side?

4 POTENTIAL JUROR: No, it would not.

5 THE COURT: You just wanted to bring it --

6 POTENTIAL JUROR: I just wanted to bring it
7 out.

8 THE COURT: Okay. Thank you. Anyone else?

9 Any other questions anybody wants me to ask? I
10 think I've covered everything.

11 MR. WILSON: Your Honor --

12 (Sidebar conference.)

13 MR. HARTE: Nothing else from the State.

14 THE COURT: Okay.

15 Is there any member of the jury panel, either
16 you or an immediate family member or a close
17 personal friend, work for Enterprise Bank and you
18 haven't already disclosed that to us?

19 Okay. Your name and number?

20 POTENTIAL JUROR: 240, Kathryn Williams. Close
21 personal friend.

22 THE COURT: Okay. And who works for Enterprise
23 Bank?

24 POTENTIAL JUROR: Dorothy and Richard Creech,
25 friends of ours.

1 THE COURT: Did they talk to you about this
2 case?

3 POTENTIAL JUROR: No.

4 THE COURT: Okay. Y'all want to come over?

5 Well, the ones I was going to strike for cause,
6 of course, is number 215, the lady that works at the
7 bank, coworkers; number 118, she knows Rebecca
8 Templeton and has talked about the case; number 91,
9 the lady whose nephew is being prosecuted by
10 Mr. Miller; number 158, same thing; number 55, I
11 have that knows Melinda Collins and her husband told
12 him about the case -- I guess Melinda Collins'
13 husband told him about the case --

14 MR. MILLER: He said he couldn't be fair.

15 THE COURT: Well, he said the husband talked
16 about the case. Yeah. And then, let's see, I got
17 number 152, the lady that says she was the victim of
18 a bank robbery; number 174, he's the gentlemen that
19 says he favors the State; number 2 says he didn't
20 feel like, you know, an African-American could get a
21 fair trial. I think those are the ones that I have.
22 Anybody have any ones that they want to request for
23 cause? Did I get everybody that was involved
24 with --

25 MR. MILLER: Yes, sir.

1 THE COURT: All right.

2 MR. MILLER: No additional ones, Your Honor.

3 THE COURT: Did you have any additional ones?

4 MR. WILSON: Can I have just one second, Your
5 Honor? I want to make sure I'm not missing anybody.

6 Judge, the only one that I would ask you to
7 reconsider and note our objection is to number 2.
8 The gentleman that said he had concerns about the
9 country is going and African-Americans. He said it
10 wouldn't cause him to favor one side or the other.
11 And I know you questioned him a little further, but
12 he clearly said that it wouldn't cause him to favor
13 one side or the other. We'd ask he not be stricken
14 for cause.

15 THE COURT: Well, my general impression was
16 what he said at first, and that was that he was not
17 going to -- he did not think that a black man could
18 get a fair trial, which I feel that to be to hold
19 that against the State. And he did back off that a
20 little bit, but he came in pretty strong.

21 MR. WILSON: It's actually last thing he said.
22 But if you'll just note our objection.

23 THE COURT: I will. Anything else?

24 MR. WILSON: No, sir, not for cause.

25 THE COURT: All right.

1 All right. Folks, we just got a minute while
2 they input some information into the computer
3 system. In the old days, we used to have either a
4 blind man or a small child that would stick their
5 hand in that drum after he rolled it and got the
6 little pegs out with all the numbers. Well, these
7 days we do it by computer, so they have to put a
8 couple things in as a result of our conversations,
9 and then a computer will spit out some names and
10 we'll start with the process.

11 The process in general sessions court is a
12 little different than it is in civil court. In
13 civil court I'd give them about 20 minutes to go
14 off, study the list, and then come back in. In a
15 civil case, each side gets four strikes. And we'd
16 have a list with 20 names on, each side would get
17 four strikes; four plus four is eight and 20 minus
18 eight is 12, and that's how we'd end up with 12
19 jurors.

20 In state court in South Carolina and in general
21 sessions we do it a little bit different. In a case
22 like this, the Defense gets 10 strikes, the State
23 gets five strikes, but we just go right into it. So
24 as soon as they get these names done up, the clerk
25 will call out a name, you'll come forward through

1 that little door here, and turn around and face the
2 back.

3 The State either gets to say present the juror
4 or seat the juror or excuse the juror. And if they
5 say present the juror or seat the juror, then it
6 moves over to the Defense and then they get to do
7 the same thing, either present the juror or excuse
8 the juror. If both sides agree on you, you go to
9 the jury box. If either side strikes, then you go
10 back and you have a seat and maybe get picked
11 another day.

12 But that's just the little bit of the many odd
13 ways that we do things in South Carolina. We do
14 them a little bit different. Sometimes I haven't
15 been able to figure out why we do things the way we
16 do them other than we've been doing it that way for
17 300 years and nobody can figure out a reason to
18 change it, so we don't change it. It's South
19 Carolina.

20 You know, one of the great things about going
21 around -- and I'm just stalling for time, in case
22 you were wondering. We go around the state and
23 there's 46 different counties and there's 46
24 different ways of doing things, is the way I always
25 say it. So when I come in on a Monday, I learn how

1 they do it, because there's no reason to say, well,
2 this is the way we do it back in Charleston, so
3 y'all need to change your way of doing it this week.
4 No. I try to learn the way y'all are doing it
5 because I'm going to be somewhere else next week,
6 and y'all are going to go right back to doing it the
7 way you did it before I showed up anyway. So that's
8 my philosophy.

9 But sometimes in these little counties -- there
10 was one -- oh, I know, the old courthouse in
11 Dorchester. When you sit up on the bench here,
12 there was a drawer. And you pull the drawer open
13 and you'll see, for however long that courthouse has
14 been there, probably about 100 years, every judge
15 that held court in that courthouse, the first time
16 they held court, would sign their name and date it.
17 It was amazing to see the dozens of names you've
18 seen and heard about that have died before I was
19 even born that held court. And that was a pretty
20 neat thing.

21 Now, over in Walterboro in Colleton County,
22 they'd bring out these cigarette boxes and they
23 started out the same process; you signed your name
24 and date the first time you held court there. And
25 then after they started doing it, they would need

1 more and more cigarette boxes or cigar boxes. So by
2 the time I got around to doing it, the first time I
3 held court in Walterboro, probably about 10 or 12
4 years ago, they were up to about six boxes. But
5 they would bring them all out and you would sign it.
6 That was a pretty cool thing too. But, you know,
7 you go different places and you see to a lot of
8 different things.

9 If you've ever been to Edgefield County, that's
10 an interesting place because they actually kind of
11 treat their violent history as a tourism thing. I
12 mean, it's a funny thing. Every time you go to a
13 corner -- they have a main square where the
14 courthouse is, and on every corner they have a
15 little sign that talks about who got killed in that
16 particular spot. And they had some crazy things
17 that were -- had happened there over the couple of
18 hundred years they've had a courthouse in Edgefield.

19 And, in fact, they had one, I'll never forget,
20 telling the story about this woman who was on trial
21 for killing her husband. And she was so beautiful
22 that she charmed the jury. Back in those days, it
23 was all men, all white men who were on the jury.
24 This was 150 years ago. And all of the jurors were
25 so charmed by her that they not only acquitted her

1 of the charges, one guy even proposed marriage to
2 her afterwards. You can't make this stuff up. We
3 have a very interesting state we live in.

4 All right. When they call your name and
5 number, if you have any belongings with you, bring
6 them with you because if you get picked, you'll go
7 over and sit in the jury box, you won't go back to
8 that seat.

9 THE CLERK: Number 1 [sic], Holly S. Burley.

10 (Ms. Burley comes forward.)

11 THE CLERK: What say you for the State?

12 MR. MILLER: Please present the juror.

13 THE CLERK: What say you for the Defendant?

14 MR. WILSON: Please seat the juror.

15 THE CLERK: Have a seat in the jury box,
16 please, ma'am.

17 228, Sarah Walker.

18 (Ms. Walker comes forward.)

19 THE CLERK: What say you for the State?

20 MR. MILLER: Please present Ms. Walker.

21 THE CLERK: What say you for the Defendant?

22 MR. WILSON: Please excuse the juror.

23 THE CLERK: Have a seat back in the jury pool,
24 please, ma'am.

25 59, Lajuan Davis.

1 (Ms. Davis comes forward.)

2 THE CLERK: What say you for the State?

3 MR. MILLER: Please present Ms. Davis.

4 THE CLERK: What say you for the Defendant?

5 MR. WILSON: Please seat Ms. Davis.

6 THE CLERK: Have a seat in the jury box,
7 please, ma'am.

8 208, James L. Sniffin.

9 (Mr. Sniffin comes forward.)

10 THE CLERK: What say you for the State?

11 MR. MILLER: Please present the juror.

12 THE CLERK: What say you for the Defendant?

13 MR. WILSON: Please excuse Mr. Sniffin.

14 THE CLERK: 15, Donald W. Bessinger.

15 (Mr. Bessinger comes forward.)

16 THE CLERK: What say you for the State?

17 MR. MILLER: Please present the juror.

18 THE CLERK: What say you for the Defendant?

19 MR. WILSON: Please excuse the juror.

20 THE CLERK: Number 192, Stephen Saxton.

21 (Mr. Saxton comes forward.)

22 THE CLERK: What say you for the State?

23 MR. MILLER: Please excuse Juror 192 from the
24 trial of this case.

25 THE CLERK: Number 28, Paul Brown III.

1 (Mr. Brown comes forward.)

2 THE CLERK: What say you for the State?

3 MR. MILLER: Please present Juror No. 28.

4 THE CLERK: What say you for the Defense?

5 MR. WILSON: Please seat the juror.

6 THE CLERK: Have a seat in the jury box.

7 Number 209, James Sojourner.

8 (Mr. Sojourner comes forward.)

9 THE CLERK: What say you for the State?

10 MR. MILLER: Please present Mr. Sojourner.

11 THE CLERK: What say you for the Defense?

12 MR. WILSON: Please seat Mr. Sojourner.

13 THE CLERK: Number 37, Kevin Carter.

14 (Mr. Carter comes forward.)

15 THE CLERK: What say you for the State?

16 MR. MILLER: Please present the juror.

17 THE CLERK: What say you for the Defendant?

18 MR. WILSON: Please excuse Mr. Carter.

19 THE CLERK: 225, Darrell Tyler.

20 (Mr. Tyler comes forward.)

21 THE CLERK: What say you for the State?

22 MR. MILLER: Please present Mr. Tyler.

23 THE CLERK: What say you for the Defense?

24 MR. WILSON: Please seat Mr. Tyler.

25 THE CLERK: Have a seat in the jury box.

1 240, Kathryn Williams.

2 (Ms. Williams comes forward.)

3 THE CLERK: What say you for the State?

4 MR. MILLER: Please present the juror.

5 THE CLERK: What say you for the Defendant?

6 MR. WILSON: Please excuse Ms. Williams from
7 the trial.

8 THE CLERK: 81, Jonathan Goodman.

9 (Mr. Goodman comes forward.)

10 THE CLERK: What say you for the State?

11 MR. MILLER: Please present Mr. Goodman.

12 THE CLERK: What say you for the Defendant?

13 MR. WILSON: Please seat Mr. Goodman.

14 THE CLERK: Have a seat in the jury box.

15 128, Terri Joyner.

16 (Ms. Joyner comes forward.)

17 THE CLERK: What say you for the State?

18 MR. MILLER: Please present Ms. Joyner.

19 THE CLERK: What say you for the Defendant?

20 MR. WILSON: Please excuse Ms. Joyner.

21 THE CLERK: 231, James R. Washington.

22 (Mr. Washington comes forward.)

23 THE CLERK: What say you for the State?

24 MR. MILLER: Please present Mr. Washington.

25 THE CLERK: What say you for the Defendant?

1 MR. WILSON: Please seat Mr. Washington.
2 THE CLERK: Have a seat in the jury box.
3 52, Debbie Crider.
4 (Ms. Crider comes forward.)
5 THE CLERK: What say you for the State?
6 MR. MILLER: Please present Ms. Crider.
7 THE CLERK: What say you for the Defendant?
8 MR. WILSON: Please excuse Ms. Crider from this
9 case.
10 THE CLERK: Number 61, Madelyn Dempsey.
11 (Ms. Dempsey comes forward.)
12 THE CLERK: What say you for the State?
13 MR. MILLER: Please present Ms. Dempsey.
14 THE CLERK: What say you for the Defense?
15 MR. WILSON: Please seat Ms. Dempsey.
16 THE CLERK: Have a seat in the jury box.
17 67, William G. Dunn.
18 (Mr. Dunn comes forward.)
19 THE CLERK: What say you for the State?
20 MR. MILLER: Please present Mr. Dunn.
21 THE CLERK: What say you for the Defendant?
22 MR. WILSON: Please excuse Mr. Dunn.
23 THE CLERK: Number 4, Johnny Archie.
24 (Mr. Archie comes forward.)
25 THE CLERK: What say you for the State?

1 MR. MILLER: Please present Mr. Archie.
2 THE CLERK: What say you for the Defendant?
3 MR. WILSON: Please seat Mr. Archie.
4 THE CLERK: Have a seat in the witness box.
5 Number 89, Teresa Hannibal.
6 (Ms. Hannibal comes forward.)
7 THE CLERK: What say you for the State?
8 MR. MILLER: Please present Ms. Hannibal.
9 THE CLERK: What say you for the Defendant?
10 MR. WILSON: Please seat Ms. Hannibal.
11 THE CLERK: Have a seat in the jury box.
12 45, Larry Conrad.
13 (Mr. Conrad comes forward.)
14 THE CLERK: What say you for the State?
15 MR. MILLER: Please present Mr. Conrad.
16 THE CLERK: What say you for the Defense?
17 MR. WILSON: Please excuse the juror.
18 THE COURT: Number 18, Irene Black.
19 (Ms. Black comes forward.)
20 THE CLERK: What say you for the State?
21 MR. MILLER: Please present Ms. Black.
22 THE CLERK: What say you for the Defense?
23 MR. WILSON: Please seat Ms. Black.
24 THE CLERK: Have a seat in the jury box.
25 97, James Hill.

1 (Mr. Hill comes forward.)
2 THE CLERK: What say you for the State?
3 MR. MILLER: Please present Mr. Hill.
4 THE CLERK: What say you for the Defendant?
5 MR. WILSON: Please seat Mr. Hill.
6 THE CLERK: Have a seat in the jury box.
7 THE COURT: All right. Two alternates; two and
8 one.
9 THE CLERK: 199, Loretta Simpson.
10 (Ms. Simpson comes forward.)
11 THE CLERK: What say you for the State?
12 MR. MILLER: Please present Ms. Simpson.
13 THE CLERK: What say you for the Defendant?
14 MR. WILSON: Please seat the juror.
15 THE CLERK: Have a seat in the jury box.
16 36, Windi Carson.
17 (Ms. Carson comes forward.)
18 THE CLERK: What say you for the State?
19 MR. MILLER: Please present the juror.
20 THE CLERK: What say you for the Defense?
21 MR. WILSON: Please seat the juror.
22 THE COURT: All right. Anything from the
23 State?
24 MR. MILLER: No, Your Honor.
25 THE COURT: From the Defense?

1 MR. WILSON: Just one moment, please.

2 Nothing from the Defense, Your Honor.

3 THE COURT: All right. Folks, you're our jury
4 now for this case. We'll begin this case tomorrow
5 at 1:30. Now, what I want you to do today is when
6 you leave here in just a minute, follow the bailiffs
7 out and they'll take you to the jury room where
8 you'll report tomorrow. You don't come back into
9 the courtroom, you'll go to the room that he's going
10 to take you to.

11 Now, when you go home tonight, I don't want you
12 to talk to anybody about the case, including other
13 members of the jury panel. Obviously the very first
14 thing that's going to happen when you walk in the
15 house, if you live with somebody, is they're going
16 to say, hey, did you get picked for a jury? And
17 you're going to say, yes, I did. And they'll say,
18 well, tell me about it. And you'll go, I can't tell
19 you a thing about it. I'll allow to tell -- you can
20 say it's an armed robbery case and that's the only
21 thing the judge told me I can talk about. You can
22 talk about it to your heart's content when the case
23 is over with.

24 But the reason for this is a very simple
25 reason: You're going to take an oath tomorrow

1 before we start the trial that says I promise I'll
2 make my decision based on what I hear in this
3 courtroom and what the judge tells you the law is,
4 that and nothing else. So if you go home and start
5 talking with somebody about the case, they're
6 naturally going to influence you, they're going to
7 have an opinion, because everybody's got an opinion,
8 and the worst thing you can do is talk with someone
9 who has an uninformed opinion. So we try to keep it
10 as clean as we possibly can.

11 And it's a hard thing to do, I understand that.
12 But to be fair to these folks, both sides, we need
13 you to not talk to people about the case during the
14 case. When you go home at night, don't -- just say
15 you have to respect the fact that I can't talk about
16 the case. Don't look up stuff on the internet.
17 People want to do that these days. And I understand
18 they get invested in the case, you know, they want
19 to see if they can find something out about the
20 case. I don't know if there's anything on the
21 internet about this case, but people want to start
22 looking it up to see if there's old newspaper
23 article, see if there's anything about -- you know,
24 sometimes you get stuff where you start looking up
25 Google Maps and all that.

1 If we need you to know anything about this
2 case, we'll tell you about it, we'll present it to
3 you. If you don't need to know about it, we won't
4 put it in evidence. But anything that you need to
5 know to help you make a decision at the end of this
6 trial you'll hear in this courtroom. Anything else
7 is an improper influence on your decision. So don't
8 try to find out anything about the case. Don't
9 go -- you know, this involves Enterprise Bank in
10 Denmark. Don't go by there. There's no reason for
11 you to.

12 In this day and age we also have to talk to
13 people about social media like Facebook and those
14 things where people go home and say, hey, I got
15 picked on a jury, and then they'll comment on their
16 case as it's going. That's the -- in the eyes of
17 the law, that's the same as if you went out and
18 talked to somebody on the street or you talked to
19 each other during breaks and stuff like that.
20 That's totally improper to do. Don't use Twitter
21 where you start, you know, putting things about the
22 case.

23 You can say whatever you want to after the case
24 is over with. I'm not going to prohibit you from
25 saying whatever you want; just during the trial is

1 when I put a lid on what you can say. But after the
2 case is over, you can say whatever you want about
3 the process or the verdict or whatever you want
4 after the case is over. But during the trial, it's
5 just not fair to the parties and to the process if
6 you go and start saying things to other people
7 either directly or through social media or computer
8 and stuff like that.

9 So all I want you to do tonight is go home and
10 enjoy the evening and relax. Tomorrow we'll start
11 at 1:30, so if y'all could be back in the jury room
12 about 1:15, that would be good. When you get in
13 there, you can introduce yourselves to each other.
14 I always like to let the jury pick their own
15 foreperson. If anyone wants to be the foreman of
16 the jury, I'll let you decide. If you can't come up
17 with a person, I'll pick somebody. Anybody can be
18 the foreperson of the jury except the alternates.
19 There's no extra pay involved, so don't do it
20 thinking you might get a little extra pay. But if
21 the jury wants to, you know, talk tomorrow before we
22 start, y'all can talk to each other, you just can't
23 talk about the case.

24 This is something we'll talk about every night
25 and before breaks, between trials [sic], when we go

1 to lunch, things like that. So just go home this
2 evening, enjoy the evening, come back tomorrow, and,
3 if you would, be back in this room about 1:15 and
4 then hopefully we'll get started right at 1:30. So
5 thank you for your patience today, and we'll see you
6 tomorrow at 1:30.

7 (The jury panel exits the courtroom at 5:20
8 PM.)

9 THE COURT: All right. Well, now, the rest of
10 you folks, thank you for your patience. This is the
11 only case that we're scheduled to try this week, so
12 you're finished with your jury service for the week.
13 You don't have to call back after 6:00, you don't
14 have to report back. You can come watch the trial
15 if you'd like, we'll start it at 1:30. But you
16 don't have to come back, you don't have to call.

17 If you need an excuse for work, the clerk's
18 office can get you that for you today. But you're
19 finished for the week for your jury service. I want
20 to thank you so much for coming. The only way we
21 can make this work is if you people show up and do
22 your public service, your public duty.

23 And, again, I'm sorry you didn't get a chance
24 to serve on the jury. I've never had a juror tell
25 me they didn't enjoy it. They may say, again, I

1 wish I didn't have to do it, but once I got into it,
2 I'm really glad I learned something about the
3 system. So that's all we can ask is that people
4 feel positive about it and go back and tell
5 everybody else that they had a good experience as a
6 juror. Again, that's the way the system works, and
7 we need people to feel positive about it. So it's
8 late, I don't want to keep you any longer. But
9 thank you for your patience today and you're free to
10 go for the rest of the week.

11 (The balance of the jury pool excused.)

12 THE COURT: Mr. Wilson, you have a motion?

13 MR. WILSON: I do. Mr. James, our client, has
14 asked me to make a motion, Your Honor, to -- the way
15 I interpret what he's asking is to continue the
16 case. He tells me that his family has made
17 arrangements or is making arrangements to hire
18 private counsel. Mr. Kazmierski is appointed and
19 I'm just assisting him with the case.

20 Your Honor, his mother was in this courtroom a
21 little earlier today. I tried to find her right
22 back there as we broke just to see if that was
23 accurate because she didn't say anything about that
24 to us earlier when we spoke to her.

25 He did make a motion, Your Honor -- or he made

1 a motion based on Mr. James' request back in Aiken
2 however many weeks ago we were over there arguing.
3 He wanted to have us removed or have Mr. Kazmierski
4 removed as his attorney, but did not want to proceed
5 pro se. I'll be glad for Mr. James to answer any
6 questions the Court might have for him about his
7 representation. I've told him that I don't believe
8 that's something the Court will allow or will act
9 upon, but that I would make the motion at his
10 request.

11 THE COURT: All right. Mr. James, what would
12 like to say?

13 THE DEFENDANT: Yes, sir. What I'd like to say
14 is I wasn't aware of my mother retaining a lawyer.
15 And when we first came here, I had told my attorneys
16 that my mother has and she's -- she -- I -- if I
17 would have knew before then, I would have written it
18 in the letter that I had written him when I asked
19 him to file certain pretrial motions or what have
20 you. I was just wanting to know if you will grant
21 that so I can have a continuance so that I can have
22 paid counsel.

23 THE COURT: Well, who is this lawyer?

24 THE DEFENDANT: I have to discuss that with my
25 mother. She didn't tell me.

1 THE COURT: Have you heard from anyone saying
2 that they're potentially representing Mr. James?

3 MR. MILLER: No, Your Honor.

4 THE COURT: Mr. --

5 MR. WILSON: Judge --

6 THE COURT: Yes.

7 MR. WILSON: I'm sorry. I didn't mean to
8 interrupt. I was going to say we'll make contact
9 with his mother by phone when we walk out of here,
10 and if we find out from her that she has retained
11 someone, I'll e-mail the Court and e-mail David and
12 maybe the Court can consider this in the morning or
13 tomorrow or however it needs to. We're ready to
14 proceed, Your Honor, just --

15 THE COURT: Well, it's highly unlikely,
16 Mr. James, that I will entertain a motion to
17 continue and allow substitution at this late hour.
18 We've drawn a jury --

19 THE DEFENDANT: Yes, sir.

20 THE COURT: -- and the State is ready to
21 proceed. I'm certainly not going to continue it on
22 the grounds that you might hire a lawyer.

23 THE DEFENDANT: No, sir. It's --

24 THE COURT: If you show up tomorrow with a
25 lawyer who says he's representing you, I will think

1 about it. But that is -- I want a lawyer who says
2 they are representing you, have been retained, there
3 are no conditions, and then I will, even then,
4 probably still not allow it because it's so late and
5 the State has gone through the expense and have
6 gotten people subpoenaed, and we're ready to go.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: But if you come tomorrow with a
9 lawyer who says they'll take the case, I'll allow
10 you to renew the motion tomorrow.

11 THE DEFENDANT: Yes, sir. I told my attorney
12 before you even began to speak to the jury. That's
13 why I -- I've been asking him throughout --

14 THE COURT: He brought it to my attention
15 before we drew the jury. But I'm talking about
16 waiting until the day of the trial to say, I've got
17 a new lawyer. Well, you don't you have a new
18 lawyers, you have your mother who says she might get
19 you a new lawyer. So that's not good enough. It's
20 real late.

21 And, as I said, I'm probably -- I'm going to
22 turn it down now. But I'll allow you to renew your
23 motion tomorrow, if you show up with somebody who
24 says they are willing to take the case on and how
25 long they'd be ready to try the case, those sort of

1 things.

2 THE DEFENDANT: All right. Thank you.

3 THE COURT: All right. Anything else?

4 MR. MILLER: Nothing from the State, Your
5 Honor.

6 THE COURT: All right. I'll see y'all around
7 1:00 tomorrow.

8 (Court in recess for the evening at 5:29 PM.)

9 (The following proceedings were held December
10 1, 2015.)

11 THE COURT: All right. Mr. Goodman?

12 JUROR GOODMAN: Yes, sir.

13 THE COURT: All right. We ran into a problem
14 where it looks like you were represented by
15 Mr. Wilson, and that case has not officially been
16 dismissed. And since it's been in the last year,
17 it's one of those things that we -- the State
18 needed -- should have been able to know that
19 yesterday. And they might have -- they might have
20 wanted to strike you. And since he's your lawyer on
21 an open case, I'm going to dismiss you from the
22 jury, so you don't have to come back and you're free
23 to go.

24 JUROR GOODMAN: Thank you, sir.

25 THE COURT: All right. So we got the two

1 alternates names and numbers in that box.

2 Mr. Clerk, do you want to open that up and draw one
3 of those out and see which alternate juror will be
4 his replacement?

5 THE CLERK: It looks like number 199, Loretta
6 Simpson.

7 THE COURT: All right. Ms. Simpson will be
8 seated as a regular juror..

9 THE CLERK: Yes, sir.

10 THE COURT: All right. Anything else we need
11 to put on the record before we get started?

12 MR. WILSON: Your Honor, just briefly. We've
13 agreed to sequester the witnesses. And, Your Honor,
14 as to the other juror issue we discussed in
15 chambers, the second alternate, Ms. Windi Carson,
16 who has now, I guess become the first alternate, as
17 I had indicated to the Court and to the solicitor,
18 her mother had texted me last night. I know her
19 mother personally and maybe have done some work for
20 her mother in the past and go to church with them.

21 Her mother texted me, and I'll just read it:
22 You must be going to help Windi with her car
23 payment. She doesn't get paid. Laughing out loud.
24 Can't believe she got picked. The child was so
25 scared, I had to go with her, I guess, to hold her

1 hand.

2 And I took that as a joke about her not getting
3 paid and having to make her car payment. And I
4 think the solicitor kind of viewed it the same way.
5 And I texted her back and just said: K. Because
6 Windi is on the jury as an alternate, I cannot
7 communicate with her or you. I hope you understand.
8 I didn't want to seem rude by not responding to your
9 text at all. Take care. Chris.

10 And I just wanted to put it on the record I had
11 already brought it to your attention and to
12 Mr. Miller's attention last night. And it didn't
13 cause me any concern. I think it was a joking text.
14 It's a small community where people pretty much kind
15 of know everybody. And I took it as just kind of a
16 comment by her. And I don't think it causes the
17 solicitor any problem.

18 THE COURT: State consents to her remaining in
19 the jury?

20 MR. MILLER: Absolutely, Your Honor. We don't
21 have any concerns with it. I think it was certainly
22 innocuous enough.

23 THE COURT: Okay. All right. That leaves then
24 the one open issue when we left yesterday with
25 Mr. James and a new lawyer. It comes to my

1 attention that there's no new lawyer that's here to
2 represent him today. Is that correct?

3 MR. WILSON: Your Honor, yes, sir, that's
4 correct. And I'll let Mr. James or his mother, who
5 is seated in the front of the courtroom here who
6 indicated there may be another attorney, if you want
7 to address them on it. They seem to have more
8 information about it than Mr. Kazmierski and I do.

9 THE COURT: Mr. James, what would you like to
10 say about that?

11 THE DEFENDANT: What I'd like to say about it
12 is I -- I was under the impression and it was
13 conveyed to me that that's what the intentions were.
14 I wasn't sure whether he was already retained or
15 not. But my main concern was -- I didn't -- we
16 haven't had any time to -- we haven't done any
17 preparing for this trial whatsoever.

18 I didn't -- I haven't spoken to either one of
19 these gentlemen since you told me that I was going
20 to be here in the courtroom today about the trial.
21 I have no idea what the defense or what the -- the
22 gist -- I mean, I know the gist. I mean, I know
23 exactly why I'm here, because I'm charged with a
24 crime. But I have -- I'm just stating that I had no
25 preparation [sic] whatsoever for this. And that's

1 the reason why I had told you that my parents
2 have -- had a lawyer, because I was under the
3 impression that they were looking forward to
4 retaining someone. And I didn't have a chance to
5 tell you that there was no preperance whatsoever.

6 THE COURT: Do y'all want to respond to that?

7 MR. KAZMIERSKI: Your Honor, after the last
8 hearing where Mr. James asked me to be relieved,
9 I've met with him a number of times in the Bamberg
10 jail.

11 THE DEFENDANT: No. He only came one time.

12 MR. KAZMIERSKI: We've discussed trial strategy
13 at length, he's authorized me to talk to his mother.
14 I've talked to his mother, I've received several
15 letters from her. It's a trial I'm prepared to move
16 forward on. And I'm not sure the extent of
17 Mr. James' concerns at this point.

18 THE DEFENDANT: The extent is they keep a
19 logbook in the county jail to where you can -- they
20 record how much someone comes there. And I can
21 clearly tell you that the man has come one day since
22 you said that a month ago about me having trial, and
23 that was for less than an hour. That's
24 something that -- that's honest. Honestly, it's
25 been no preperance. You can get the logbook that

1 they have. It will show that he hasn't come to see
2 me whatsoever. I have no reason to lie.

3 THE COURT: Ma'am, what is your name?

4 MS. JAMES: My name is Nicole James. I'm the
5 defendant's mother. I spoke with Mr. Janek when he
6 first got assigned to Leon and he said he couldn't
7 speak with me and get Leon's permission. Okay.
8 Well, yesterday -- actually, this morning was the
9 first time I spoke with him and discussed the case
10 since he was assigned to him, because for 14 months
11 Leon had a public defender that was talking with him
12 and communicating with him, which that was unethical
13 because his co-defendants had public defenders.

14 And, you know, I guess what I'm saying is,
15 every motion that Leon asked to get filed, including
16 a speedy trial, the public defender never filed it
17 because he couldn't file it because the Public
18 Defender's Office was representing someone else.

19 Now, I haven't spoken with Janek other than
20 this morning to talk about a strategy for Leon.
21 And, you know, he talked to me this morning, and I
22 appreciate it and everything, but other than that,
23 when I went to visit Leon this week, he told me, he
24 said, I don't know what the strategy is, I don't
25 know -- my attorney hasn't been talking to me.

1 And when he tried to ask for another counsel,
2 he was denied because he had a bond hearing one day
3 when I went to, what, Batesburg, and the next day he
4 had a plea hearing. I mean, I don't know even know
5 where they do that at. But that was the case. And
6 he made a motion then to have an attorney. You
7 know, I'm not saying that Janek is not capable of
8 representing him, but I'm saying, to me, it's
9 looking -- I don't know. It just doesn't seem
10 right.

11 THE DEFENDANT: Excuse me. She is correct,
12 Your Honor. I have written since I was there. I've
13 been there now 18 months. She's right. For the
14 first 14 months, I did have a public defender. I
15 wrote the disciplinary counsel upon the conflict of
16 interest matter because the public defender that was
17 appointed to me, when I asked him to file the
18 motion, he would specifically tell me that he can't.
19 I didn't understand why he can't.

20 But he never told me that it was a conflict of
21 interest. I just asked him to. When I wrote the
22 disciplinary counsel, they wrote back and said they
23 didn't find a conflict of interest. And I also
24 wrote Judge Three [phonetic] who appoints the public
25 defenders or whoever to represent defendants in

1 cases. He also said that there wasn't a conflict of
2 interest. I have these letters to prove.

3 And next thing you know, I get a letter saying
4 that there's a conflict of interest from Judge Three
5 or from -- I believe it was the second judicial
6 paralegal saying that it's been a conflict of
7 interest the entire time. And it all made sense,
8 you know, I had already knew that. And that's the
9 reason whey I couldn't get any of these motions
10 filed, because it was evidently already -- they were
11 already aware -- they, as in the Second Judicial
12 Solicitor's Office, was already aware it was a
13 conflict of interest in the first place.

14 How could that have been mistaken for a total
15 of 14 months? I don't understand. But now I'm here
16 with you today with my life -- you know what I mean,
17 here in life and limb of the courts, and I don't
18 feel like I've been properly represented because
19 there's been no preparence once again -- I mean,
20 stating once again.

21 THE COURT: All right. Well, that -- I found
22 out I was going to be trying this case some months
23 ago now when it was -- court dates were set, Judge
24 Early's office contacted me about trying the case.
25 So whatever problems occurred, I'm assuming he knew

1 about those with prior representation. And he set
2 the trial date a month ago when I was in Aiken or
3 maybe it was Barnwell or both, I think. I seem to
4 recall we were doing matters on these cases and you
5 brought to my attention that you weren't happy with
6 your lawyer, but at the time, I didn't think your
7 arguments merited assignment of a new lawyer. And I
8 told you you could represent yourself or you could
9 go along with your current lawyer. You didn't want
10 to represent yourself and I said, okay, get ready
11 for trial with this lawyer.

12 I'm -- I'm new to the area, but in the short
13 time that I've been here, I hear very good things
14 about both your lawyers and they're supposedly some
15 of the best lawyers in the area. So they tell me
16 they're ready to go to trial, and so we're going to
17 go to trial today. I told you yesterday if you had
18 another lawyer who was willing to come to court and
19 state that he or she was going to represent you and
20 that they had undertaken that and without
21 reservation agreed to represent you and be ready for
22 trial in a short period of time, I'd consider that,
23 changing my mind about letting you have a new
24 lawyer.

25 But there's nobody here today that's willing to

1 stand up and say they'll be your new lawyer and
2 you've retained them. So I'm again denying your
3 motion for a continuance to get a new lawyer.

4 THE DEFENDANT: All right. I respect that.
5 I -- I'm not saying that these men aren't capable,
6 because I'm pretty sure they're capable of all of
7 it. All I'm saying is the preperence wasn't there.
8 I never said that they're not capable of it. It's
9 just the duties -- the duties, if you ask me, they
10 haven't been fulfilled.

11 I know we're going to go on with this
12 regardless, but if someone violates the most basic
13 duty of your counsel, which is loyalty, which is if
14 you go somewhere and you tell someone something that
15 I've told you or something that's going on in my
16 case and help with the assistance of the
17 prosecution, I mean, I -- of course I would feel
18 this way. But on top of that, there's no preperence
19 as well. That's why I'm presenting this to you
20 today.

21 THE COURT: And I understand. I've heard your
22 side, I've heard your lawyers'. Again, I don't see
23 that it rises to -- at this point, nothing rises to
24 the level of actionable offenses that would make me
25 say your lawyers have violated any duty to you. If

1 you go to trial, you get convicted, you have a right
2 to appeal. If your appeal is not successful, you
3 file postconviction relief in which you'd be able to
4 claim that they were ineffective in assisting you.

5 But at this point, there's no merit to that,
6 not that I've heard anyway. So they're prepared,
7 and that's the conditions under which we're going to
8 trial today, was either with them or if you had a
9 new lawyer who's willing to come to court and say
10 that they were representing you.

11 Otherwise, from my perspective, it's a fairly
12 common delay tactic that you get from defendants who
13 come in at the last moment and say, I want a new
14 lawyers, I get a new lawyer, I got one, he's just
15 out there. And then if we -- you know, you let
16 people just say that, we'd never get anything tried.
17 You have to have proof, and the proof would be show
18 up today with a lawyer who was willing to say that
19 they were willing to undertake, without reservation,
20 your representation in this matter.

21 You have not had anybody show up today, without
22 reservation, saying they'd represent you in this
23 matter. So your lawyers tell me they're prepared.
24 They're doing a fine job on everything we've heard
25 so far in this case, so we're getting ready to bring

1 the jury in and try it. Okay? Good luck to you.

2 Anything else?

3 MR. WILSON: Just briefly if I could, Your
4 Honor. I have -- just so the Court knows, I have a
5 prior appointment today that I'm going to have to
6 leave about 3:30 or 3:45 to get to, and my law
7 partner Dan Luginbill is going to come over and be
8 assisting Mr. Kazmierski.

9 THE CLERK: All right.

10 MR. WILSON: I didn't want you to look up and
11 wonder where I was and see a new face in here.

12 THE CLERK: I think she wants you. She was
13 standing up back there.

14 THE COURT: Well, unless she had something new
15 to add.

16 MS. JAMES: No. I just wanted to say he
17 doesn't have any proof that he has effective
18 counsel, which we're not saying that. But I feel
19 like I have proof that he's had -- you know, that
20 his civil rights have been violated. But we're
21 going to go on, and I understand that.

22 THE COURT: Okay. All right.

23 Now, for schedulewise, we're going to bring the
24 jury in, swear the jury in, have opening statements,
25 and then go through a number of short witnesses

1 today, knock off around 5:00, and resume tomorrow
2 morning around 9:30. And that's pretty much the
3 schedule we'll be keeping is 9:30 to 5:00 until we
4 finish. Does that work for everybody?

5 MR. MILLER: Yes, sir.

6 MR. KAZMIERSKI: Yes, sir.

7 THE COURT: Okay. Let's bring the jury in.

8 (The jury enters the courtroom at 1:51 p.m.)

9 THE COURT: All right. Did you folks get a
10 chance to pick a jury foreperson? No? Okay. I'll
11 pick someone then.

12 Just as a preliminary matter, I had to release
13 Mr. Goodman from jury service. He had a -- there
14 was a conflict with him that we didn't know about
15 yesterday, so he's been removed from the jury. And
16 Ms. Simpson, Juror No. 199, is selected to replace
17 him as a regular juror. So, Ms. Simpson, is that
18 you on the back? Okay. You're now a regular juror.
19 Okay? So when we have deliberations, you'll get to
20 participate.

21 All right. Now, the second seat there, what's
22 your name?

23 JUROR: Teresa Hannibal.

24 THE COURT: Okay. Well, congratulations. You
25 just got appointed to foreperson of the jury. All

1 right? So you make sure that everybody follows
2 instructions. And the big thing is that at the end
3 of the trial, you write down the verdict down. All
4 right? But, other than that, if anything comes up
5 and the jury needs to, for some reason, communicate
6 to me, I'd ask that they write it down, give it to
7 you, and then you give it to the bailiffs and
8 they'll give it to me.

9 All right. Now, before we begin, I need to
10 have the clerk administer the oath to you. So if
11 you would, please stand and raise your right hand,
12 and the clerk will administer the oath.

13 THE JURY: I do.

14 (Jury sworn at 1:55 PM.)

15 THE COURT: Okay. Folks, I'm going to make a
16 couple of preliminary statements to you just to give
17 you an idea of how a trial works, what our schedule
18 will be like, that sort of thing, and then we'll
19 turn it over to the lawyers to begin the
20 presentation of the case. Just to give you an idea
21 of -- well, we're starting up now around 2:00. I
22 usually like to go til about 5:00 every day and then
23 break and then come back tomorrow morning at 9:30
24 and start and then go til lunchtime.

25 When we finish up, I'd imagine we might get it

1 to you for deliberation Thursday afternoon. But it
2 all depends on the flow. It might be Friday morning
3 before we get it to you. But as I said yesterday, I
4 don't think there's anybody who thinks we'll be any
5 later than Friday on the case. But trials are what
6 they may, so we're moving it along as quick as we
7 can. And one of the reason we're starting it a
8 little bit later instead of this morning was to get
9 all of the witnesses lined up. So the lawyers are
10 doing a great job getting this thing as organized as
11 we can.

12 So let me tell you a little bit about criminal
13 trials. I told you this is a criminal case. Our
14 big fancy word for criminal cases in this state is
15 general sessions. So this is the court of general
16 sessions. And in criminal cases, the State accuses
17 somebody of committing a crime, that person is
18 either arrested or indicted, gives them notice of
19 what they're on trial for, and the person is brought
20 to court to stand trial.

21 That is the only thing that a defendant has to
22 do is show up. And that's what Mr. James has done.
23 He's sitting over there at that table. And he
24 doesn't have to do another thing throughout this
25 trial. He doesn't have to prove that he's innocent,

1 he doesn't have to testify, he doesn't have to call
2 witnesses. He doesn't -- you're not to hold that
3 against him. That is the law, and it's your sworn
4 duty to follow that. A lot of times people will
5 think, well, if you got arrested, you must be guilty
6 of something. That is wrong. That is not the law.
7 And you have taken an oath that you will follow that
8 law.

9 And I'm telling you that the law in not only
10 South Carolina, but every state in this great
11 country of ours is, a person who stands trial in a
12 criminal court does not have to prove that he or she
13 is innocent, the State has to prove that he or she
14 is guilty, and they have to prove that to you beyond
15 a reasonable doubt.

16 So we got this process where the State, as I
17 told you yesterday, indicted Mr. James, Leon Amos
18 James, for entering a bank with intent to steal and
19 armed robbery. And I read you what those
20 indictments allege. Mr. James pled not guilty, so
21 the State is providing him with a trial. Now, these
22 indictments, and I think I mentioned this yesterday,
23 are not evidence. They're not to be considered by
24 you as evidence. Remember, I said the fact that he
25 got arrested is not to be considered by you as

1 evidence of guilt.

2 These two documents are simply the formal
3 charging instruments that let him know what he's to
4 stand trial for and gives this Court jurisdiction to
5 hear the case. They are the only two pieces of
6 paper that will go back in the jury room with you
7 that are not evidence. And the only reason that
8 they go back in the jury room with you when you
9 deliberate is so that you, Madam Foreman, can write
10 the verdict down. It will either be not guilty or
11 guilty. That's the only reason why these things go
12 back to you. They are not evidence. All right?

13 The fact that he got arrested and indicted,
14 again, raises no presumptions of guilt, and you're
15 not to consider the fact that he was arrested as
16 evidence of guilt. All right?

17 Now, so the State has accused him of these
18 crimes. We have a trial. The way trials work is
19 the State, because they have the burden of proof,
20 get to call witnesses first. The -- then they get
21 to ask the questions of the witnesses first. That's
22 because they have what we call the burden of proof.
23 Because, remember, he doesn't have to prove he's
24 innocent, they have to prove that he is guilty. So
25 they have the burden of proof.

1 The burden of proof in a criminal case like
2 this is a standard called beyond a reasonable doubt.
3 You have probably heard that phrase either from
4 reading a book or watching a TV show or maybe you
5 have seen it in a movie or something like that.
6 We've all heard it. But you've probably never
7 really stopped and thought, what exactly does beyond
8 a reasonable doubt mean?

9 Well, the law says that after you've heard all
10 of the evidence in a trial, in order for you to
11 convict somebody beyond a reasonable doubt, you have
12 to be firmly convinced of his guilt. And if you're
13 not firmly convinced of his guilt beyond a
14 reasonable doubt, then you have to acquit him of
15 these charges. That is your duty. Again, he
16 doesn't have to prove he's innocent, the State has
17 to prove that he is guilty beyond a reasonable
18 doubt. So you have to be firmly convinced of his
19 guilt. And if the State hasn't met that burden of
20 proof, then you are required to acquit him or find
21 him not guilty. All right?

22 So the State has this burden of proof. And let
23 me step back just a second, because sometimes it's
24 easier to get your head around a concept if you
25 compare it to something else. So I told you, this

1 is a criminal trial. We have civil trials that we
2 do. And in civil trials, the burden of proof is
3 called a preponderance of the evidence or the
4 greater weight of the evidence, it's sometimes
5 called, or another way of stating is even whenever
6 somebody is trying to prove more likely true than
7 not true. Well, that's a civil case, and it's not
8 as high a burden of proof as it is in a criminal
9 case like this.

10 And, you know, if you're like me, you're
11 probably more of a visual learner. Most people are
12 more visual learners than they are anything else.
13 So it helps if you see something. And you know that
14 scales of justice that you see where the lady is
15 holding the scales out and they got two balancing
16 trays with the chain hanging on there? Well,
17 imagine that as the scales of justice, and on the
18 one hand you have the State, on the other hand you
19 have the defendant. At the beginning of the trial,
20 the scales are even. In order for the State --
21 let's go back.

22 On a civil case, the person who is suing
23 somebody for doing something wrong, they just have
24 to tip those scales just a little bit. That's
25 called a preponderance of the evidence or the

1 greater weight of the evidence. They have to tip it
2 much, just tip them a little bit. Think in terms of
3 51 percent maybe. They just have to tip it a little
4 bit, and then they're entitled to a verdict.

5 But in a case like this, the State has a much
6 higher burden of proof. And that burden of proof,
7 again, beyond a reasonable doubt or are you firmly
8 convinced of the guilt of the defendant, those
9 scales have to be tipped quite a bit in favor of the
10 State in order to meet that burden of proof.

11 So maybe that helps you a little bit. It's a
12 higher standard of proof for the State to meet in a
13 criminal case than it is for two people to sue each
14 other in a civil case. It's much higher burden.

15 So the State has taken that upon themselves.
16 And because they have the burden of proof, they get
17 to go first; they get to put the evidence in first,
18 they get to call witnesses first, and they get to
19 ask those witnesses questions first.

20 Now, one of the great things about our system
21 is called the adversarial process. Each side gets
22 to ask witnesses questions, each side gets to ask
23 you to consider things like photographs and
24 documents and things like that. But you're going to
25 hear things one at a time. So, in other words,

1 you're going to hear the first witness, and the
2 State will get to ask a question of that witness.
3 Well, then the Defense, if they want to, get to
4 cross-examine or ask questions of that witness as
5 well. That's the adversarial process. That's how
6 we try to bring out the truth is by getting you to
7 look at both sides of something.

8 The hardest part of a trial and in your duty as
9 jurors is this: Don't make up your mind until
10 you've heard all of the evidence. I've been doing
11 this for 13 years, and every time I have to remind
12 myself, don't make up your mind until you've heard
13 all the evidence. Because it's only natural when
14 you hear something first and it's uncontradicted,
15 you're going to start to make up your mind. Well,
16 then you're going to hear the other side ask
17 questions and you'll go, oh, I hadn't thought about
18 it in that way.

19 So you start hearing both sides of the story
20 that way, because there's always two sides to every
21 story. So you start hearing the evidence from one
22 side and then the other side gets to ask questions,
23 and then you get to the next witness and you hear
24 the first set of questions and then there's
25 cross-examination. Now, your mind may very well end

1 up where you made your first impression with the
2 first witness. I don't know. It may change 180
3 degrees in the opposite direction. But the
4 important thing for you to remember out of this is
5 don't make up your mind until you've heard all of
6 the evidence presented in the trial. That's why
7 whenever I send you out for a break, either to go to
8 the restroom or for lunch or at the end of the day,
9 I say, don't begin deliberations with each other,
10 don't talk to anybody about the case, because until
11 you've heard all of the evidence, it's really not
12 proper for you to start making up your mind. You
13 know, that sounds simple, but it's kind of hard to
14 do unless you consciously think about it.

15 So just as you go along in this case, you're
16 going to hear about two and a half days' worth of
17 witnesses. Just remember you need to hear all of
18 the witnesses before you can make up your mind.
19 Once you've heard from all of the witnesses and
20 you've seen all of the documents and you've seen all
21 of the photographs, we send you back to the jury
22 room and say, you can begin your deliberations now
23 because you've heard all of the evidence. And then
24 I'll tell you what the law is so you can take it
25 back there in the jury room with you. That's when

1 it's proper for you to begin your deliberations. So
2 that's a -- it sounds simple; it can be hard. But
3 if you just keep it in mind and go, you know what,
4 I'm going to keep an open mind until I've heard all
5 of the evidence, that's all we ask.

6 So the State is going to get to call their
7 witnesses first; the Defense will get to ask
8 questions, if they want to. They're not required to
9 ask questions of anybody because, remember,
10 Mr. James doesn't have to do anything. All right?
11 He doesn't have to testify, he doesn't have to put
12 up witnesses, he doesn't have to cross-examine
13 witnesses if he doesn't want to.

14 And I'll tell you again, if he does not
15 testify, call witnesses or in any way put up any
16 evidence whatsoever, you are not to hold that
17 against him in any way when you begin your
18 deliberations about whether or not you feel like the
19 State met its burden of proof. It's an important
20 constitutional right that not only he has, but you
21 have it and I have it and everybody in this country
22 has. We don't have to testify if we don't want to.

23 And I'll instruct you now and at the end of the
24 trial, if he doesn't testify and he doesn't put up
25 any evidence, you're not to hold that against him.

1 He doesn't even have to tell me at this point if he
2 plans to testify or if he plans to put up any
3 evidence. I haven't asked him, because that's the
4 way our rules are. And if he doesn't, you can't
5 hold that against him. Okay? That's part of the
6 oath that you took. So you'll hear from me about
7 that at the end of the trial.

8 Now, I keep going back. The State is going to
9 put up evidence and they'll ask questions, and then
10 if the Defendant wants to, he can put up evidence.
11 But if he doesn't, then we'll go into where I
12 instruct you on the law, and then you'll begin your
13 deliberations as to guilt or innocence. All right?

14 Now, everybody in this room has a job. All
15 right? Your job is, you are the judges of the
16 facts. My job is the judge of the law. Now, your
17 job as judges of the facts are, you're going to hear
18 the evidence. And some of it will be
19 uncontradicted, but some of it will be contradicted,
20 it will be disputed. Well, it's up to you to
21 resolve it. All right? That's part of the job of
22 the jury is to resolve it when there's dispute of
23 fact. That's not my job. All right? That's your
24 job. And whatever you decide on when there's a
25 dispute of fact, that's up to you, and we live with

1 it.

2 By the same token, my job is kind of twofold.
3 I have two functions; one is to preside over the
4 trial and make sure that both sides get a fair
5 trial. Both the State of South Carolina and
6 Mr. James are entitled to a fair trial, so it's my
7 job, number one, to conduct that trial, make sure we
8 follow our rules of procedure, and make sure that we
9 follow our rules of evidence.

10 So procedure simply means like now; we're
11 starting off, then we'll have opening statements,
12 then we'll call the witnesses, then the closing
13 arguments, and then I'll charge you on the law.
14 That is kind of the procedural kind of thing. The
15 evidence part is also my part of the job. And so
16 sometimes evidence comes in and there's no dispute;
17 sometimes it comes in and you'll hear one of the
18 lawyers say objection. All right. Objection is
19 kind of our code word for, Judge, time for you to
20 pay attention and make a ruling on whether or not
21 these folks can hear this evidence.

22 We've developed rules over several hundred
23 years now of doing trials as to what is proper and
24 improper evidence. And what we're trying to do is
25 follow those rules and make sure that you hear the

1 evidence in its best form. In other words, legally
2 competent evidence is kind of the phrase that we
3 use.

4 So when a lawyer says objection, they're really
5 saying, Judge, you're going to have to make a
6 ruling, is it proper for these folks to hear this or
7 is it improper? And I have to make that decision.
8 They're not trying to hide anything from you. We're
9 all just trying to do this just one time. All
10 right? So the reason I bring this to your attention
11 is because at the -- the other function that I have
12 is to instruct you on the law at the end of the
13 trial, so I'll instruct you what the law is on armed
14 robbery and what the law is on entering a bank with
15 intent to steal, what the burden of proof is, stuff
16 like that. That's my job to tell you what the law
17 is.

18 At the end of the trial, if somebody needs to
19 appeal the outcome of the case, they don't get to
20 appeal on the basis of your factual findings.
21 Almost never can an appellate court overrule a jury
22 on saying there's absolutely no evidence in the
23 record to support what those people found. That's
24 not what they -- that's not what cases get
25 overturned on. They get overturned on two things,

1 and it all boils down to one thing really: The
2 judge made a mistake. All right? And there's two
3 ways a judge can make a mistake in a trial, and one
4 is not following the rules of the evidence and the
5 rules of procedure, and the other is charging you on
6 the law incorrectly at the end of the trial.

7 So that's why when they say objection, I might
8 be able to just rule on it in the context of it
9 being said, you know, because I've been doing this
10 for a while and I can anticipate when an objection
11 might come in. So if a lawyer says objection, I
12 might say sustained or I might say overruled.
13 Sometimes I may need them to come around to the side
14 and just make a little argument to me outside of
15 your earshot so that I can, you know, get a feel of
16 what's getting ready to happen.

17 Sometimes I might need to send you outside of
18 the room so I can hear what a witness is going to
19 say before they say it, because it's hard to retract
20 from your memory when you hear something and I say,
21 oh, just disregard it. Legally I can say you can
22 disregard it and we'll all pretend you didn't hear
23 it, but nobody likes to do that any more than
24 absolutely possible because it's hard to un-hear
25 something. So it might be necessary for me to hear

1 a witness so that I can make a decision as to
2 whether or not it's proper for you to hear it or
3 not. So we're not trying to hide anything from you,
4 we're just really trying to do this trial one time.
5 Okay?

6 So having said that, we don't make a lot of
7 progress if I stand here and talk all day long. So
8 the next part of the trial is to have the opening
9 statements in which the lawyers get up and they give
10 you just a brief outline of the case from their
11 point of view. I call it the Reader's Digest
12 condensed version of the case.

13 What's important to remember about these
14 opening statements is, what these lawyers are going
15 to say is not to be considered by you as evidence.
16 All right? Evidence is when a witness comes up on
17 the witness stand, they're put under oath and they
18 tell you what they heard, they felt, they touched,
19 they smelled. That's evidence. A photograph that
20 comes in, that's evidence; a document that comes in,
21 that's evidence. But the lawyers just talking is
22 not to be considered by you as evidence. They
23 weren't there, they didn't see anything, and what
24 they say is not to be considered by you as evidence.

25 When they ask a question of the witness, that

1 question isn't evidence, the answer to the question
2 is evidence. So that might help you remember that,
3 because a lot of times you'll get up and you'll go,
4 oh, but that lawyer sounded so convincing. But
5 remember, you make your decision based on the
6 evidence and the law. The lawyers are just simply
7 trying to do their best to represent their side,
8 present the evidence to you, and hopefully they want
9 to persuade you to render a verdict in their
10 client's behalf. But they weren't there. What they
11 say isn't evidence. Okay?

12 So you'll hear them talk about the case for a
13 few minutes, and then we'll go into the trial,
14 you'll hear witnesses. And from what I understand,
15 we'll probably run through a fair number of them
16 this afternoon that don't take long, and then
17 tomorrow morning when we start back fresh, we'll
18 have some of the longer witnesses. But today we're
19 going to try to get started and, again, we'll knock
20 off about 5:00. So we'll just have a number of
21 short witnesses this afternoon.

22 Once we've heard, again, all of the evidence,
23 the lawyers come back, they make closing arguments,
24 which basically then goes over the evidence that
25 you've heard, they'll know what the law is at that

1 point that I intend to charge you, so they'll take
2 that and try to make an argument and try to persuade
3 you to render a verdict on their client's behalf.
4 When they're finished with those closing statements,
5 I then charge you on the law, and then you go back
6 to the jury room and deliberate until you've reached
7 a verdict.

8 So that's the process. That's kind of where
9 we're going with this. And I will then allow the
10 opening statements to begin with the solicitor going
11 first, again because the State has the burden of
12 proof. So, Mr. Solicitor, if you're ready, you may
13 begin.

14 MR. MILLER: Thank you, Your Honor. May it
15 please the Court. Mr. Kazmierski.

16 Ladies and gentlemen of the jury, I'm always
17 reminded whenever the Judge makes the opening
18 remarks and repeatedly says what I say isn't
19 evidence that's there's really not a whole lot of
20 point in me being up here to talk to you right now
21 since what I say is not evidence. And the point of
22 us being here is for you to consider the evidence
23 that the State puts forward and how that evidence
24 establishes, beyond a reasonable doubt, as the Judge
25 said, that the defendant is guilty of the crimes

1 that's he's charged with. So what I'm going to do
2 is very briefly try to give you guys a little bit of
3 a roadmap; what to listen for, what to look for.

4 On June 5th of 2014, the Enterprise Bank in
5 Denmark, South Carolina was robbed. Two men went
6 into the bank and they robbed that bank. And about
7 40 hours later, three people were arrested for it.
8 Leon James was arrested for robbing the bank, he's
9 charged with robbing the bank, but he wasn't in the
10 bank when it got robbed; he was the getaway driver.
11 He was driving the vehicle that the two people who
12 went into the bank and robbed the bank ran out,
13 jumped into the car with him, and he drove away.

14 The Judge is going to talk to you about a
15 concept of our law called the hand of one is the
16 hand of all. If you actively participate before,
17 during, and after a crime, you're just as guilty of
18 it as the man who walked into the bank with the gun.

19 We're going to break this up into three
20 separate parts. The first part, what we're going to
21 talk to you about this afternoon, you're going to
22 hear the witnesses testify about and you're going to
23 see some videos, is the robbery of the bank. The
24 second part is going to be testimony relating to the
25 getaway vehicle driven by the defendant, occupied by

1 the two people who actually went inside the bank and
2 committed the robbery, getting chased by Chief
3 Walley in Olar.

4 They wrecked the vehicle. Those of you from
5 the area may know Weed Road is a dead-end road that
6 runs parallel to 321. He didn't know that. He
7 ended up at the end of Weed Road, and wrecked the
8 car. They all ran.

9 And then the third part of the trial -- or the
10 third part of our presentation of the case is going
11 to be what happened when these three guys got
12 arrested. And the Judge is absolutely right, the
13 fact the defendant was arrested and indicted is not
14 evidence, but the circumstances of his arrest is
15 evidence. And why is that important?

16 Go back to June the 5th of 2014 before the bank
17 got robbed; in fact, an hour and a half or so before
18 the bank got robbed. You're going to see the
19 defendant walk into that bank on video. And he's
20 wearing a ball cap that was brown, he's wearing
21 light-colored shorts, he's got on black flip-flops,
22 and he's got on a green shirt. He goes in and he
23 says, I want to open a checking account. And they
24 say, okay, here's what you need to open a checking
25 account, but you got to come back in an hour because

1 the lady who does it isn't here. And he says okay
2 and he leaves.

3 And then 30 minutes before the robbery,
4 approximately, he comes back in the bank, says, I
5 want to open a checking account. And he goes to the
6 customer service manager who was there at the time
7 and says, I want to open this checking account. And
8 she says, okay, here's the things you need. And he
9 goes, oh, I don't have those things. But he's still
10 wearing a green shirt, he's wearing that hat, he's
11 still got on those flip-flops.

12 Late on the night of the 6th going into the
13 morning of the 7th, the next day, when he's
14 arrested, he doesn't have on his flip-flops, he
15 doesn't have on his green shirt, he doesn't have on
16 his brown hat, all he's wearing are those
17 light-colored brown shorts. All of those items, the
18 flip-flops, the hat, the shirt, they're all in and
19 around the car that was wrecked and left at the end
20 of Weed Road. Those items were all collected. He
21 left his flip-flops in the driver 's side floorboard
22 of the car. The hat came off right behind the car.
23 A short distance away, off comes the shirt.

24 He gets arrested and he has got what were
25 described as boat cushions that he has taken and

1 wrapped his feet in and taped to his feet because
2 he's been running in the woods from the police for
3 over a day. So he's wrapped his feet in boat
4 cushions because he's trying to get away, he's
5 trying not to be found. The circumstances of how he
6 was arrested and what he was doing when he was
7 arrested absolutely are evidence of his guilt. Not
8 the fact that he was arrested, not the fact that he
9 was charged, but those circumstances.

10 The Judge has informed you, as most of the
11 judges do in their opening remarks, that at the
12 conclusion of this case, after you've heard all of
13 the evidence and you've been charged on the law, if
14 you find that we as the State have failed to meet
15 our burden of proof, you should go back there and
16 you should find the defendant not guilty. And I
17 absolutely agree with that 100 percent.

18 But I always like to say the other side of it
19 though, and the other side of it is this: At the
20 conclusion of the presentation of the evidence in
21 this case and after you've been charged on the law
22 by the Judge, if you go back into that jury room and
23 you are firmly convinced that the State has met its
24 burden of proof, you took an oath to follow the law,
25 apply the facts as you find them to the law, and to

1 find the defendant guilty.

2 I'll be asking you to do that at the end of
3 this trial, and I don't think that any of you will
4 have any problem being firmly convinced that he was
5 the getaway driver and when he walk into that bank
6 to tell that teller, I want to open up that checking
7 account, he didn't have any intention of opening a
8 checking account, he was checking out the Enterprise
9 Bank in Denmark, South Carolina because he and his
10 friends were going to rob it later on that day.

11 Those are the two charges: He entered the bank
12 with the intent to steal when he was checking it
13 out. Let's see who all is in here. Goes out,
14 reports to the guys in the car. Hey, guys, not a
15 lot of traffic in there, should be pretty easy, I'll
16 drop you off in the front, y'all meet me in the
17 back. Entering a bank with intent to steal.

18 And the armed robbery, all the way through.
19 Come up with the plan, execute the plan, try to get
20 out of there afterwards. He was a willing
21 participant before, during, and afterwards, and
22 that's why he's guilty of the armed robbery.

23 Ladies and gentlemen, I thank you for your
24 time. We're going to try to keep it moving along
25 quickly. Thank you.

1 THE COURT: All right. Does the Defense wish
2 to make an opening at this time?

3 MR. KAZMIERSKI: Yes. May it please the Court.

4 My name is Janek Kazmierski and I'm a lawyer
5 here in Bamberg, and I practice with Chris Wilson
6 and Dan Luginbill. I represent Leon James. It's an
7 important day for Leon. He's been accused of some
8 serious crimes. You've heard the State allegations
9 and their accusations against them. I want to
10 briefly mention two concepts before I talk a little
11 bit about the facts of this case.

12 First, you heard what the Judge charged on
13 reasonable doubt. He gave you a representation of
14 what reasonable doubt means: You must be firmly
15 convinced. I want you to keep that at the forefront
16 of your thoughts as you listen to the testimony, see
17 the evidence in this case.

18 The second concept I want to talk to you about
19 is mere presence. It's not enough to convict Leon
20 of a crime if the State can only prove that he was
21 there. You're going to hear testimony, you're going
22 to see evidence, and I'm going to tell you right
23 now, on June 5th, 2014, Leon James went into
24 Enterprise Bank. He has never denied that and he
25 has made no attempt to conceal it. In fact, he went

1 into the bank twice.

2 Leon James is from Columbia, but he has
3 relatives in Estill. And had plans to find a job
4 down here and ultimately move down here, so he
5 needed a local bank. So on June 5th, 2014, he
6 picked up a friend, a man he knew as Black, who we
7 now know as Homer James. Homer James had a
8 girlfriend down in Denmark that he wanted to go
9 visit. When Leon showed up at Black's apartment,
10 there were two other people with him. Leon agreed
11 to let them come along for the ride, they were going
12 to pay for his gas.

13 Leon drove from Columbia down to Denmark and
14 stopped at Enterprise Bank. At noon, Leon entered
15 Enterprise Bank for the first time and he asked to
16 open an account. He wasn't wearing a mask, he
17 wasn't wearing any disguises. You heard what the
18 solicitor said, he was wearing a pair of shorts, a
19 bright green shirt, and flip-flops.

20 And he asked to open an account, but Chris
21 Folk, the branch manager, and Elease Gilbert, the
22 teller that opens new accounts, they were going to
23 lunch. There weren't enough people in the bank to
24 help Mr. James open an account. So Stacey Lee, one
25 of the tellers, told him, come back in an hour,

1 someone will be here to help you. And he came back
2 an hour later. He came back wearing the same
3 shirts, same bright green shirt, and flip-flops. He
4 made no attempt to conceal or hide his identity. He
5 went back in the bank when there were more people in
6 the bank.

7 So he had a discussion Elease Gilbert, the head
8 teller. Leon James had his driver's license with
9 him, he had \$100 for an initial deposit, and he had
10 all of the personal information in his head that he
11 needed to open an account. But what he didn't have
12 was a social security card. So he went back into
13 the office with Ms. Gilbert, and he left the bank a
14 second time unable to open an account. And that's
15 important. Remember all that.

16 Twenty-five minutes later, Homer James
17 instructed Leon to go back to the bank. As Leon
18 pulled up into the bank, Homer James and Lewis
19 Garvin got out of the car, they put on masks, and
20 went into the bank. At that point, Leon James knew
21 what was happening, they were going to rob the bank.
22 And the fourth person in the car, a man that was
23 only introduced to Leon as Darrell, pulled a gun out
24 and told Leon, you're driving, go to the other side
25 of the bank. So he followed the instructions. What

1 could he do? He was scared.

2 When Leon got to the other side of the bank, he
3 saw Homer James and Lewis Garvin, the two people
4 that entered the bank, running out of the bank.
5 They had a bag with them. The tellers had managed
6 to slip dye packs into the bag with the stolen
7 money. The dye packs went off, smoke started coming
8 out, red smoke. Lewis Garvin and Homer James come
9 running towards the car, they jump in, and they tell
10 him to drive. Leon James does that, he drives.

11 And when the police are on his tail in Olar, he
12 takes a wrong turn, and he crashes and he ends up in
13 some pine trees. And he sees a police officer
14 behind him and bank robbers in his company, and he's
15 scared and he runs away. That's what he did.

16 Just as important as what the evidence will
17 show is what the evidence won't show. You won't
18 hear any evidence that Leon James entered a bank
19 with a firearm, you won't hear any evidence that he
20 threatened anybody, you won't hear any evidence that
21 he met with, planned, or worked on a plan to
22 participate in this robbery. What you will hear is
23 that he went into the bank, not once, but twice,
24 wearing the same clothes, wearing no disguise, no
25 attempt to conceal his identity; that when he had a

1 gun to him, he drove, and when he crashed the car,
2 he ran.

3 Now, you may ask, where is this fourth person,
4 the fourth person known only to Leon as Darrell, the
5 fourth person -- the fourth person who pulled a gun
6 and forced Leon to drive? The same day the bank was
7 robbed, the police recovered the vehicle.

8 Inside the vehicle they found a North Carolina
9 driver's license belonging to a man named Darrell
10 Lassiter. Darrell Lassiter was interviewed about
11 two months ago, shortly after I got involved in this
12 case, 15 months after his ID was found in the car.
13 The investigative report will say we couldn't find
14 him, we couldn't locate him. My office did a Google
15 search and found an address for him and a telephone
16 number.

17 The State is going to tell you that Darrell
18 Lassiter could not have been in Denmark, South
19 Carolina on June 5th, 2014, because he was in North
20 Carolina applying for a loan. But that doesn't mean
21 there wasn't a fourth person in the car, a fourth
22 person who introduced himself to Leon James as
23 Darrell that pulled a gun and held Leon at gunpoint
24 and forced him to drive.

25 Maybe it wasn't Darrell Lassiter in the car.

1 Maybe it wasn't, but his ID was found in the car the
2 same day the bank was robbed. And Leon James gave a
3 statement shortly after he was apprehended, before
4 the he knew what the police had found in the car.
5 And he said, yeah, I had three people. And you're
6 going to hear testimony that the police recovered
7 items in the car and there's unknown DNA that
8 doesn't match Leon, it doesn't match Homer James,
9 and doesn't match Lewis Garvin.

10 You're also going to hear evidence that the
11 police found -- they recovered those items, those
12 items that were found out in the woods. Not only
13 was it unknown DNA, it was unknown male DNA.

14 Today you have an important duty. I want you
15 to listen all of the evidence, listen to the
16 questions and consider the answers, and consider
17 what's missing from this case. And I want you to
18 think about that, what the Judge indicated: Has the
19 State met their burden? Have they proven Leon
20 James guilty beyond a reasonable doubt? Leon
21 doesn't have to prove his innocence, he doesn't.

22 After listening to all of the evidence, I think
23 you'll agree that the State can't prove their case.
24 All they can prove is that he was there, mere
25 presence, and that's not enough to convict him. So

1 it will be your duty to return a verdict of not
2 guilty. Thank you for being here. Thank you for
3 serving on this jury. I appreciate y'all's
4 attention.

5 THE COURT: All right. Solicitor, call your
6 first witness.

7 MR. MILLER: Your Honor, the State calls Betty
8 Wilson.

9 (State's Exhibit Nos. 1-69 marked for
10 identification.)

11 BETTY WILSON

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes, sir.

14 DIRECT EXAMINATION

15 BY MR. MILLER:

16 Q. Ms. Wilson, what do you do?

17 A. I'm a student.

18 Q. Okay. If you could, just speak up a little so
19 everybody can hear you. What college or university
20 do you attend?

21 A. The University of South Carolina.

22 Q. Are you originally from Bamberg County?

23 A. Yes, sir.

24 Q. Were you in Bamberg County on June 5th, 2014?

25 A. Yes, sir.

1 Q. Why do you remember that day?

2 A. That day, just coming into town, I noticed
3 something odd; individuals running into the bank,
4 just a very odd situation.

5 Q. Could you see where the individuals had come
6 from that were run into the bank?

7 A. I was coming up 321, so the car was on the side
8 of the bank. So they were coming up 321, I assume.

9 Q. Okay. Now, as you approached the bank, just so
10 everybody is familiar, you're coming up 321, there's
11 a highway that crosses right there beside the little
12 Freezie ice cream stand; right?

13 A. Yes.

14 Q. Okay. What highway is that?

15 A. I believe that's Highway 78.

16 Q. Okay. So you were on 321?

17 A. Yes, sir.

18 Q. Okay. Were you coming from Columbia or from
19 Olar?

20 A. From Columbia.

21 Q. Okay. You were coming from that direction?

22 A. Uh-huh.

23 Q. Okay. Had you gotten to Highway 78 yet?

24 A. No, sir. I was approaching the light.

25 Q. All right. Did you stop at the stop light?

1 A. Yes.

2 Q. Was there construction going on at that time?

3 A. No, sir.

4 Q. Okay. So you testified that you saw people
5 running into the bank and that caught your
6 attention?

7 A. Uh-huh. Yes, sir.

8 Q. Did you see the vehicle that the people had
9 gotten out of?

10 A. At the time, it was a gray-looking Grand Am.

11 Q. Okay. Where did you go when you crossed 78 or
12 when you got to 78?

13 A. When I was approaching the light, I made a left
14 to go around -- there was a building, and then come
15 back around to the front of the bank. So I made a
16 left at the light first.

17 Q. Okay. You circled the block --

18 A. Yes.

19 Q. -- basically?

20 A. Yes.

21 Q. Why did you do that?

22 A. It just didn't feel right at the time. My
23 instincts just said something wasn't right.

24 Q. And when you got around the block and you were
25 there facing the bank now, what did you see?

1 A. I saw some individuals running into the bank
2 very quick, rapidly. So...

3 Q. And when -- did you see them run out of the
4 bank?

5 A. At the time, yes, they did come out. After a
6 few minutes, yes, they did come outside.

7 Q. Which direction did they run when they came out
8 of the bank?

9 A. Coming outside the bank, they made a left to go
10 behind the side of the bank.

11 Q. Okay. Do you know what's back there?

12 A. Just a wooded area.

13 Q. Okay. When you saw the -- where was the car
14 the second time? The first time they're coming from
15 the car and you circled the block. Where was the
16 car the second time? Was it there?

17 A. No, sir.

18 Q. Do you know where it was?

19 A. No, sir.

20 Q. Okay. And when you saw the people running out
21 of the bank and to the left and towards the back,
22 did you tell the police about that?

23 A. Yes, sir.

24 Q. Did you tell the police the car or give them
25 the description of the car?

1 A. Yes, sir.

2 Q. And you said that was a silver Grand Am or a
3 gray Grand Am?

4 A. Yes.

5 Q. All right. Now, were you able to identify
6 anybody in that car or running into that bank or
7 coming out of that bank?

8 A. No, sir.

9 Q. Okay. Couldn't identify them by name?

10 A. No, sir.

11 Q. You couldn't identify them by sight?

12 A. No.

13 Q. Okay. So you've never identified any
14 individuals involved in this case, have you?

15 A. No, sir.

16 Q. Just that car?

17 A. Just the car.

18 Q. Did you tell the police everything you saw?

19 A. Yes, sir.

20 Q. Thank you. No further questions.

21 THE COURT: Cross?

22 MR. KAZMIERSKI: No questions, Your Honor.

23 THE COURT: You may step down.

24 MR. HAMMACK: The State calls Chris Folk.

25 MR. MILLER: Your Honor, may Ms. Wilson be

1 excused and released from her subpoena?

2 THE COURT: Any objection?

3 MR. KAZMIERSKI: No objection, Your Honor.

4 THE COURT: You may be excused.

5 CHRIS FOLK

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. HARTE:

10 Q. Good afternoon. Please state your full name
11 for the record.

12 A. Christian Sumer Folk.

13 Q. Mr. Folk, by whom are you employed?

14 A. Enterprise Bank.

15 Q. How long have you worked there?

16 A. Almost 30 years.

17 Q. All right. What do you do for Enterprise Bank?

18 A. I'm the branch manager of the Denmark branch.

19 Q. The Denmark branch, where is that?

20 A. The next town over.

21 Q. What -- is it is two roads that meet up there?

22 What are the name of the roads where it meets up?

23 A. 321 and 78.

24 Q. All right. So it's the bank right behind the

25 Freezie Breezie?

1 A. Yes, sir.

2 Q. Okay. And that is in Bamberg County?

3 A. It is.

4 Q. How long have you worked at that particular
5 branch?

6 A. Probably 20 years.

7 Q. Okay. Were you working back on June 5th of
8 2014?

9 A. Yes, sir, I was.

10 Q. What was going on that day?

11 A. That would be the day the bank got robbed.

12 Q. All right. Well, let's start a little before
13 that. About what time did you come in?

14 A. 9:00.

15 Q. Okay. What were you doing that morning?

16 A. In my office working.

17 Q. Okay. Do you recall about what time the
18 robbery occurred?

19 A. Somewhere after 1:00. It was that afternoon
20 when we came back from lunch.

21 Q. All right. Well, where were you when all of
22 this was going on?

23 A. In my office.

24 Q. All right. What did you see?

25 A. I was sitting in my office, and there's a

1 window where you can see the lobby, and I saw
2 somebody run across the lobby. And the next thing I
3 knew, they were jumping the counter. And at that
4 point I got up to go out in the lobby, and when I
5 got up, somebody came in my office and met with me
6 with what looked to me like a gun and forced me to
7 the floor.

8 Q. All right. What did you do at that point?

9 A. I stayed on the floor.

10 Q. Yes, sir. Do you recall if he said anything to
11 you?

12 A. He asked me a couple times where the money was,
13 and I told him I did not have any, and he went to
14 the hollering. It happened so fast. Next thing I
15 know, he went to hollering, shoot him, shoot him.
16 And at that point I went to praying for the ladies
17 and myself because I was still on the floor.

18 Q. That brings me to my next question. Thank you.
19 Did you ever see a firearm?

20 A. All I saw was when he came in my office, he had
21 something in his hand and it was a greenish towel,
22 kind of turquoise color, over it, which appeared to
23 me to be a gun. But I didn't actually see a gun, I
24 saw the towel.

25 Q. Okay. Mr. Folk, you mentioned before you're

1 the branch manager; is that correct?

2 A. Yes, sir.

3 Q. So you're familiar with security systems and
4 stuff around the bank?

5 A. Yes, sir.

6 Q. I know y'all have upgraded a little bit since
7 then, but back on July 5th, 2014, did you have
8 cameras inside the bank?

9 A. Inside, yes, sir.

10 Q. About how many did you have?

11 A. Three or four.

12 Q. Now, these cameras, were they recording? What
13 did they do?

14 A. All day long.

15 Q. And I guess you record them to some sort of
16 hard drive? Where are they stored? Are they stored
17 on a hard drive or --

18 A. Yes, they are.

19 Q. Okay. Back on June 5th, 2014, were the cameras
20 running?

21 A. Yes, sir.

22 Q. Okay. I'll show you what's been marked State's
23 Exhibit 62. Do you recognize that?

24 A. Let me put my eyes on.

25 Q. Yes, sir.

1 A. Yes, sir, I do.

2 Q. What is that?

3 A. That is the disc that we recorded for law
4 enforcement of what happened that day.

5 Q. All right. How do you know that's what that
6 disc is?

7 A. It has my initials on it where it's dated that
8 it was shown to me and I verified that it was what
9 happened on the cameras that day.

10 Q. So you've had a chance to look at it?

11 A. Yes, sir.

12 Q. And it's a fair and accurate representation of
13 what went on that day?

14 A. That is.

15 Q. And that's the disc y'all provided to SLED?

16 A. That is.

17 MR. HAMMACK: Your Honor, the State would move
18 to enter State's Exhibit 62 in to evidence.

19 THE COURT: Any objection?

20 MR. KAZMIERSKI: No objection, Your Honor.

21 THE COURT: Admitted.

22 (State's Exhibit No. 62 admitted in to
23 evidence.)

24 BY MR. HAMMACK:

25 Q. Mr. Folk, also as the branch manager I assume

1 you're familiar with the bank and the area around
2 it; correct?

3 A. Yes, sir.

4 Q. I've got a series of photographs from the area
5 around the bank. I want to ask you about them right
6 fast, and if you could identify them for me and tell
7 me what they are, I'd appreciate it.

8 MR. HAMMACK: Your Honor, if it pleases the
9 Court, may I have my investigator raise the screen
10 while we're getting prepared to show these to
11 Mr. Folk?

12 THE COURT: All right.

13 MR. HAMMACK: Thank you. That way it's easier
14 for the jury to see it on there than on these little
15 pictures. So...

16 BY MR. HAMMACK:

17 Q. While we're getting this up and running, I'll
18 have you take a look at what's been marked as
19 State's Exhibit 1.

20 A. Yes, sir.

21 Q. All right. Take a look at what's been marked
22 as State's Exhibit 2.

23 A. Yes, sir.

24 Q. Take a look at what's been marked as State's
25 Exhibit 3.

1 A. Yes, sir.

2 Q. Take a look at what's been marked as State's
3 Exhibit 4.

4 A. Yes, sir.

5 Q. Take a look at State's Exhibit 5.

6 A. Yes, sir.

7 Q. State's Exhibit 6.

8 A. Yes, sir.

9 Q. State's Exhibit 7.

10 A. Yes, sir.

11 Q. State's Exhibit 8.

12 A. Yes, sir.

13 Q. State's Exhibit 10.

14 A. Yes, sir.

15 Q. And State's Exhibit 11.

16 A. Yes, sir.

17 Q. Do you recognize those?

18 A. I do.

19 Q. What is that?

20 A. That is pictures of the outside and the inside
21 of the bank in Denmark and a picture of one of the
22 cash drawers at the Denmark branch.

23 Q. Okay. Now, are these a fair and accurate
24 representation of the bank that day?

25 A. Yes, sir, they are.

1 MR. HAMMACK: Your Honor, State would move to
2 enter State's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 10,
3 and 11.

4 MR. KAZMIERSKI: No objection.

5 THE COURT: They're admitted. You may publish.

6 MR. HAMMACK: Thank you, Your Honor. We'll
7 start with State's 1, please.

8 (State's Exhibit Nos. 1, 2, 3, 4, 5, 6, 7, 8,
9 10, 11 admitted in to evidence.)

10 BY MR. HAMMACK:

11 Q. Mr. Folk, what is this a photograph of?

12 A. It's a picture of the front of the bank in
13 Denmark, the Enterprise Bank.

14 Q. You recognize that as an employee there;
15 correct?

16 A. Yes, sir, I do.

17 Q. All right. State's 2, Mr. Folk, do you
18 recognize that?

19 A. That is a picture of the right-hand side of the
20 bank going down into the parking lot.

21 Q. All right. State's 3, what is that, Mr. Folk?

22 A. That's a picture of the right-hand side --
23 excuse me, the ATM machine out there.

24 Q. I assume that's the rear of the bank.

25 A. That's still the front of the bank.

1 Q. Okay. Because the sign is right there. All
2 right. Take a look at State's Exhibit 4. What does
3 that appear to be?

4 A. That's the parking lot coming up to the
5 drive-thru.

6 Q. And what appears to be a roadway right there,
7 what roadway is that?

8 A. 321.

9 Q. That's 321 right there?

10 A. Yes, sir.

11 Q. Okay. Take a look at State's 5. What is that?

12 A. That is the vacant lot behind the bank and the
13 parking lot also.

14 Q. Okay. So it's back towards the parking lot we
15 just looked at, back behind it?

16 A. Yes, sir.

17 Q. Okay. State's 6, do you recognize that?

18 A. That's the teller line in the lobby at
19 Enterprise in Denmark.

20 Q. And the counter is there?

21 A. Yes, sir.

22 Q. All right. Mr. Folk, 7 and 8 are a little bit
23 different but they're pretty similar. I'm going to
24 show you both because it gives you a little bit of
25 an idea of where everything is. What is that

1 showing?

2 A. That's the lobby when you come in, it would be
3 on the right-hand side going into my office.

4 Q. So the doorway there --

5 A. The doorway that's open goes into my office.
6 And the glass on the wall is where I can see out of
7 my office.

8 Q. What about the glass doorway there? What is
9 that on the far right-hand side of --

10 A. That's the front door coming in.

11 Q. Okay. So that's the front door. So you're
12 just right there to the right?

13 A. Yes, sir.

14 Q. Okay. A little different view showing the
15 proximity of your office to the counter as we just
16 looked at, is that still the same area?

17 A. Yes, sir.

18 Q. That room right there, where is that again?

19 A. The room with the door shut?

20 Q. That's open.

21 A. That is my office.

22 Q. Okay. And that's where you were when all of
23 this was going on?

24 A. Yes, sir.

25 Q. And the second gentleman came in there with

1 you?

2 A. Yes, sir.

3 Q. Okay. State's 10, what is that, Mr. Folk?

4 A. That is a picture of the teller line on the
5 inside at the drive-in.

6 Q. So that's the drive-thru area?

7 A. Drive-thru.

8 Q. Okay. And, lastly, number 11. Mr. Folk, do
9 you recognize that?

10 A. That is one of the cash drawers from the
11 tellers. And, yes, I do recognize it from the
12 initials on the band on the money there.

13 Q. Okay. So you recognize that as being from your
14 bank?

15 A. Yes, sir, I do.

16 Q. Okay. That's all I have for you. Thank you.

17 THE COURT: Any cross?

18 MR. KAZMIERSKI: Briefly, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. KAZMIERSKI:

21 Q. Good afternoon, Mr. Folk.

22 A. Afternoon.

23 Q. I believe you testified earlier that the video
24 system at the bank runs all day long; is that right?

25 A. Yes, sir.

1 Q. And the DVD that you provided to the State --

2 A. Yes, sir.

3 Q. -- you provided them everything that they asked
4 for; is that correct?

5 A. Yes, sir.

6 Q. Okay. Every night the bank accounts for how
7 much money is in the bank; is that true?

8 A. Yes, sir.

9 Q. I don't have any other questions for you;
10 Mr. Folk. I appreciate it.

11 MR. HAMMACK: Nothing further, Your Honor.

12 THE COURT: You may step down.

13 MR. HAMMACK: Your Honor, if Mr. Folk may be
14 released, I think the bank may be short right now
15 with him being over here and several of the other
16 tellers being over here.

17 THE COURT: All right. Let's take a ten-minute
18 break so everybody can use the restroom and that way
19 we can finish up about 5:00. Don't have any
20 discussions or deliberations about the case.

21 (The jury exits the courtroom at 2:56 PM.)

22 THE COURT: Mr. James, I wanted to discuss
23 something with you before we got too much further in
24 the trial. You heard me tell the jury that you
25 don't have to testify if you don't want, you don't

1 have to call witnesses and, most importantly, you
2 don't have to tell me now if you do or do not want
3 to call witnesses or if you do or do not intend to
4 testify; however, at some point in the trial, after
5 the State rests, you will have to make a decision as
6 to whether or not you plan to present a defense and
7 whether or not you plan to testify.

8 As I told the jury, if you don't testify, I
9 will instruct them to not hold that against you
10 during their deliberations. If you want to testify,
11 you'll be placed under oath and you will be subject
12 to not only questions by your lawyer, but you'll be
13 subject to cross-examination by the State; you
14 will -- I have no idea what your prior record, if
15 any, is, even though I think you have a strike
16 offense in your past --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So whether or not that will come in
19 against you, or any other crimes that you may have,
20 for impeachment purposes I have yet to determine,
21 however it's possible that prior convictions that
22 you have may come in against you. But we'll find
23 out what those are from the State and I'll make a
24 determination, if you decide that you want to
25 testify, whether or not those will come in against

1 you.

2 However, I want you to be thinking about this
3 because this is a constitutional right for you. You
4 and you alone make a decision as to whether or not
5 you'll testify. Your lawyers will probably have an
6 opinion as to whether or not you should and will
7 advise you as to whether or not you should, but,
8 ultimately, it's your decision and your decision
9 alone. I advise you to consult with them about
10 that. If you have family members you consider as
11 advisors, you may want to talk to them about it,
12 however, ultimately, this is your decision.

13 Before the trial is over with, after the State
14 presents their case, you and I will have this
15 discussion again, and you'll have to tell me at that
16 point whether or not you intend to testify or
17 present evidence. But I wanted to talk to you about
18 it before we got too much further in this trial
19 so -- because by sometime probably Thursday morning,
20 you're going to have to make up your mind for
21 certain. All right?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions you want
24 to ask me about that right now?

25 THE DEFENDANT: No, not concerning that right

1 now.

2 THE COURT: All right. Very well. We'll see
3 y'all in ten minutes.

4 (Short break.)

5 THE COURT: All right. Let's bring the jury
6 back in.

7 (The jury enters the courtroom at 3:12 PM.)

8 THE COURT: Okay. We'll resume with the State
9 calling their next witness.

10 MR. HAMMACK: Yes, sir, Your Honor. The State
11 would call Ms. Stacey Lee.

12 STACEY LEE

13 being first duly sworn, testified as follows:

14 THE WITNESS: I swear.

15 DIRECT EXAMINATION

16 BY MR. HAMMACK:

17 Q. Good afternoon, Ms. Lee.

18 A. Hello.

19 Q. Can you please state your full name for the
20 record.

21 A. Middle name too?

22 Q. Uh-huh.

23 A. Stacey Renee Lee.

24 Q. If you need to, you can pull that microphone
25 closer.

- 1 A. Okay.
- 2 Q. Ms. Lee, where do you work?
- 3 A. Enterprise Bank in Denmark.
- 4 Q. Where is it in Denmark?
- 5 A. 4668 Carolina Highway.
- 6 Q. Right beside the Freezie Breezie?
- 7 A. Yes.
- 8 Q. Okay. And how long have you worked over there?
- 9 A. Ten years.
- 10 Q. Were you working there back on June 5th, 2014?
- 11 A. I was.
- 12 Q. About what time did you come to work that
- 13 morning?
- 14 A. 8:30.
- 15 Q. Okay. And what do you do at Enterprise Bank?
- 16 A. I'm the vault teller.
- 17 Q. What does that mean?
- 18 A. The head teller.
- 19 Q. Okay. Do you recall what went on that day at
- 20 the Enterprise Bank?
- 21 A. As far as...
- 22 Q. Did anything different or extraordinary happen
- 23 on June 5th, 2014?
- 24 A. Oh, yes. We got robbed.
- 25 Q. Okay. Let me ask you this: Do you recall

1 speaking with a young man around noon that day?

2 A. I do.

3 Q. Okay. Tell me a little bit about that.

4 A. A guy came in and asked about opening up an
5 account. He asked about a relationship bank, which
6 I didn't know anything about. But I told him that
7 if he needed to open an account, when the supervisor
8 and the backup CSR would be in and told him exactly
9 what he needed and told him which time to come back,
10 around 1:00.

11 Q. All right. What did you tell him he needed to
12 bring back?

13 A. Social security card, driver's license, and
14 \$100.

15 Q. Okay. Did you get a name or anything?

16 A. No.

17 Q. Did you see what he was wearing?

18 A. I think he had on some shorts.

19 Q. Okay. Do you recall if he had shoes or what
20 type of shoes?

21 A. No.

22 Q. Okay. Just spoke to him briefly?

23 A. Uh-huh. Yes.

24 Q. Little bit later on, what time did you go to
25 lunch?

- 1 A. Around 1:00.
- 2 Q. About how long did you stay at lunch?
- 3 A. I'm not sure.
- 4 Q. Did you go back over to the bank after lunch?
- 5 A. I did.
- 6 Q. Any idea about what time that was?
- 7 A. I'm not sure.
- 8 Q. All right. What was going on when you got back
- 9 to the bank?
- 10 A. The girls were in there talking and I walked
- 11 in, clocked in, and as I was walking to my desk, I
- 12 saw a guy on the counter.
- 13 Q. All right. What happened then?
- 14 A. I ran.
- 15 Q. Okay. So you saw the guy and you went --
- 16 A. Well, another teller pushed me, so I ran,
- 17 locked myself in the bathroom.
- 18 Q. Okay. So as far as the robbery, you didn't see
- 19 much of it; correct?
- 20 A. I didn't.
- 21 Q. You just spoke to the gentleman at 12:00 when
- 22 he came in?
- 23 A. Yes, sir.
- 24 Q. Did you see him again that day at all?
- 25 A. Well, I saw him twice; I saw him when he came

1 in and spoke to me and then I saw him when he came

2 in and tried to open an account.

3 Q. Do you remember when that was?

4 A. It was -- I think it was right before I went to
5 lunch.

6 Q. So around 1:00 when you went to lunch?

7 A. Uh-huh.

8 Q. So you saw him twice that day?

9 A. Yes, sir.

10 Q. Didn't talk to him the second time?

11 A. No, sir.

12 Q. Okay. No further questions.

13 THE COURT: Cross?

14 CROSS-EXAMINATION

15 BY MR. KAZMIERSKI:

16 Q. Good afternoon, Ms. Lee.

17 A. Hello.

18 Q. The gentleman that came in at about noon, was
19 he wearing a disguise, to the best of your
20 knowledge?

21 A. He wasn't.

22 Q. He wasn't wearing a mask?

23 A. No.

24 Q. He wasn't wearing sunglasses?

25 A. No.

1 Q. Would you be able to identify him today?

2 A. I would.

3 Q. Is he in the courtroom today?

4 A. He is.

5 Q. Can you point him out for the jury.

6 A. (Indicating).

7 Q. And you're indicating Mr. Leon James?

8 A. Yes, sir.

9 Q. Is it your understanding that he came back to
10 the bank at 1:00, as you instructed him to?

11 A. Yes.

12 Q. I don't have any further questions. Thank you.

13 MR. HAMMACK: Nothing from the State, Your
14 Honor.

15 THE COURT: You may step down.

16 MR. HAMMACK: Your Honor, may this witness be
17 excused to get back to work?

18 MR. KAZMIERSKI: No objection.

19 THE COURT: All right. You're free to go.
20 Thank you.

21 Next witness.

22 MR. HAMMACK: Yes, sir Your Honor. Ms. Eleese
23 Gilbert.

24 ELEASE GILBERT

25 being first duly sworn, testified as follows:

1 THE WITNESS: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. HAMMACK:

4 Q. Ms. Gilbert, please state your full name for
5 the record.

6 A. Elease Michelle Gilbert.

7 Q. Talk loud. It's hard to hear in here, so I
8 want to make sure they can hear you. Okay?

9 A. Elease Michelle Gilbert.

10 Q. Okay. Ms. Gilbert, where do you work?

11 A. Enterprise Bank, Denmark.

12 Q. How long have you been there?

13 A. About eight years.

14 Q. Okay. What do you do there?

15 A. The bank teller and the assistant head teller
16 and assistant CSR.

17 Q. Okay. What does that mean, CSR?

18 A. When the CSR -- the customer service
19 representative, when she's not there, I do her job.

20 Q. Okay. So what does that include?

21 A. Opening accounts, helping customers with -- you
22 know, about their accounts, and just doing whatever
23 I need to do to help them with anything about their
24 account or helping them with online banking or doing
25 withdrawals and deposits and stuff like that.

1 Q. Were you working back on June 5th, 2014?

2 A. Yes, sir.

3 Q. What was going on that day? What were you
4 doing at work?

5 A. It was sort of a slow day. But, you know, I
6 was on the teller line too, and if someone come in
7 and want to open an account, then I would leave my
8 station and go in the CSR and open an account there.
9 But we were basically just -- you know, just
10 lingering around.

11 Q. Okay. What time did you come to work that
12 morning?

13 A. About 8:30. About 8:30.

14 Q. Do you recall what time you went to lunch?

15 A. Probably about 11:30 or 12:00. Probably about
16 12:00.

17 Q. Okay. What time did you come back in from
18 lunch?

19 A. About 1:00, a little before 1:00.

20 Q. Do you recall speaking to a young gentleman
21 that day?

22 A. Yes, sir.

23 Q. About 1:00, I guess, about when you got back
24 from lunch?

25 A. Yes, sir.

1 Q. Tell me a little bit about that.

2 A. It was a guy that came in and he wanted to do
3 an account first. And I heard someone say that you
4 have to wait till I come back from lunch. So when I
5 did come back from lunch, a guy answered the door
6 and said that he wanted to open an account. So I
7 shut my computer down and locked the door and went
8 and locked my cash drawer and went in the CSR office
9 to open an account.

10 And I went in there to open an account and
11 asked did they have the information of how much it
12 was to open it, and it just went from there.

13 Q. All right. Did he have all the stuff he
14 needed?

15 A. No, he didn't. He had his ID that he had that
16 I didn't see. It was given sort of slanted where I
17 didn't see the picture, but the -- and I told him I
18 needed the social security card, and he didn't have
19 it. So he asked how could he get it. And I said
20 the closest place that I know of is the social
21 security office in Orangeburg. And I told him that
22 I was sorry that I couldn't help him, that he didn't
23 have all the stuff. He then got up and left out the
24 door.

25 Q. You're familiar with the cameras in the bank?

1 A. Yes, sir.

2 Q. You know the stuff in there is recorded?

3 A. Yes, sir.

4 Q. Let me show you what's been marked State's
5 Exhibit 62. And I want you -- I'll show it to you
6 first, and then I'll ask you a couple questions
7 about it. Okay?

8 A. Okay.

9 Q. All right. Ms. Elease, you've had a chance to
10 look at that. What does that video show?

11 A. It shows the guy that came in and said that he
12 wanted to open an account and me leaving my station,
13 going to the CSR office to try to open an account
14 for him, and then him leaving without the documents
15 that was required, so he left out the bank.

16 Q. Okay. So the lady in the pink shirt walking on
17 the edge there, that was you?

18 A. That's me.

19 Q. Okay. And you had a pretty good opportunity to
20 speak with the person, recognize him?

21 A. Yes, sir.

22 Q. What was he wearing that day; do you -- do you
23 recall?

24 A. I don't. Except for what's seen on there, I
25 don't.

1 Q. Okay. Let me show you one more video, a little
2 different angle, not quite as long as that one.

3 This one is pretty fast. All right. Now, Ms.
4 Elease, is that the same gentleman?

5 A. Yes, sir.

6 Q. Little bit better view?

7 A. Yes, sir.

8 Q. Would you recognize him if you saw him again?

9 A. Yes, sir.

10 Q. Is he in the courtroom today?

11 A. Yes, sir.

12 Q. Who do you recognize as the gentleman you
13 talked to?

14 A. The guy right there (indicating).

15 Q. In the blue shirt and the tie?

16 A. Uh-huh.

17 Q. Been identified as Mr. Leon James?

18 A. (Nods head).

19 Q. All right. Let's move ahead just a little bit,
20 okay, to about 1:30 -- or 1:26 to be exact. What
21 was going on at 1:26?

22 A. We was sitting up front back in my window and
23 we were -- I was actually reading the Bible. I was
24 talking to one of the other tellers about names in
25 the Bible and we were, you know, discussing the

1 Bible. And all of a sudden the door just popped
2 open. And when it popped open, about three steps
3 someone jumped across the counter, and I just froze.
4 I didn't know what to do. I mean -- and someone
5 said, get down. And I went and -- I left my station
6 because we got a window next door where we run the
7 work when we have to send it.

8 So I just left my station and I went and laid
9 there on the floor and just stayed there until the
10 time I can hear, you know, one person yelling, get
11 down, get down. And right at the end, which seemed
12 forever, someone said, like, shoot her. And I just
13 went to praying more. I was scared. I was
14 terrified.

15 Q. So you were laying in the area where the window
16 was. Where is that?

17 A. Over by the sorter. It was the window where I
18 was at, but I got out of my station and went to the
19 other side -- right on the side, the actual side --

20 Q. Okay.

21 A. -- and laid on the floor.

22 Q. Okay. Nothing further.

23 THE COURT: Cross?

24 CROSS-EXAMINATION

25 BY MR. KAZMIERSKI:

1 Q. Ms. Gilbert, you identified Leon James as the
2 person that you had a conversation with about
3 opening an account --

4 A. Yes, sir.

5 Q. -- at about 1:00 on June 5th, 2014; right?

6 A. Yes, sir.

7 Q. Okay. And it's your understanding that that's
8 the same person that came in at noon and talked with
9 another teller, Stacey Lee; correct?

10 A. That's correct.

11 Q. Okay. And he offered to show you his ID?

12 A. He handed it out as if he was going to give it
13 to me, but it was like -- I didn't see the face of
14 it because he didn't have the social. So I never
15 did get the ID from him. But he had one out to be
16 an ID, but I didn't see a face on it because he kept
17 it turned over like he was going to give it to me if
18 I asked for it. But I didn't get it because he
19 didn't have the social, so I couldn't do anything
20 with it.

21 Q. So in the process of handing his ID to you, you
22 said, do you have your social security too, and he
23 said no --

24 A. That's correct.

25 Q. -- so he pulled his license back?

1 A. Yes.

2 Q. But he was prepared to give you his license;
3 right?

4 A. Yes, he was.

5 Q. And he couldn't open an account because he
6 didn't have his social security card; right?

7 A. Yes.

8 Q. And he asked where he could get a social
9 security card; isn't that right?

10 A. Yes.

11 Q. And he asked you are there any other banks in
12 Denmark that might not require a social security
13 card; is that right?

14 A. I don't remember that.

15 Q. He didn't ask you about the bank operations,
16 who controls what in the bank, did he?

17 A. No.

18 Q. He didn't ask the use the restroom?

19 A. No.

20 Q. So that entire time, that two minutes and five
21 seconds of that video, he was discussing opening an
22 account with you?

23 A. Correct.

24 Q. And after 1:00, you never saw him come into the
25 bank again?

1 A. No, sir.

2 Q. Okay. I don't have any other questions for
3 you. Thank you.

4 MR. HAMMACK: Nothing further.

5 THE COURT: You may step down.

6 MR. HAMMACK: Your Honor, may this witness also
7 be excused to get back to work?

8 MR. KAZMIERSKI: No objection.

9 THE COURT: Okay. You're free to go. Thank
10 you.

11 Next witness.

12 MR. HAMMACK: Your Honor, the State calls
13 Rebecca Templeton.

14 REBECCA TEMPLETON

15 being first duly sworn, testified as follows:

16 THE WITNESS: I do.

17 DIRECT EXAMINATION

18 BY MR. HAMMACK:

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

21 A. Rebecca Templeton.

22 Q. Ms. Templeton, you're kind of soft-spoken like
23 Ms. Gilbert, so if you need to, slide up and pull
24 that microphone closer so everyone can hear you.

25 Okay?

- 1 A. Okay.
- 2 Q. Ms. Templeton, where do you work now?
- 3 A. In the Treasurer's Office downstairs.
- 4 Q. How long have you worked down there?
- 5 A. Since June.
- 6 Q. All right. Where did you work back on June
- 7 5th, 2014?
- 8 A. Enterprise Bank in Denmark.
- 9 Q. All right: Is that the one right beside the
- 10 Freezie Breezie?
- 11 A. It is. You're right.
- 12 Q. How long did you work there?
- 13 A. A little over a year.
- 14 Q. What did you do there?
- 15 A. I was a teller.
- 16 Q. Were you working back on June 5th, 2014?
- 17 A. I was, yes.
- 18 Q. And what was going on that day?
- 19 A. That is the day we were robbed.
- 20 Q. Let's start out a little bit earlier. What
- 21 time did you come in that morning?
- 22 A. I'm not exactly sure. I mean, we didn't open
- 23 till 9:00, so probably -- I usually got there pretty
- 24 early after I dropped my daughter off at school. So
- 25 a little after 8:00.

1 Q. Okay. Just generally, what were y'all up to at
2 the bank that day? What was going on?

3 A. Just normal stuff. When it happened, I mean,
4 we were kind of just sitting around talking.

5 Q. So it wasn't busy that day?

6 A. It wasn't busy, no.

7 Q. Do you recall what time you went to lunch that
8 day?

9 A. 11:00.

10 Q. Okay. About how long were you gone?

11 A. I'm not sure that day.

12 Q. Okay.

13 A. Maybe -- somewhere between 30 minutes and an
14 hour.

15 Q. Okay. Were you there at noontime?

16 A. Yes. Yes.

17 Q. Do you recall seeing a young man come in asking
18 about opening an account?

19 A. The first time he came in, I didn't really pay
20 him no -- I don't remember him. But the second
21 time, I did. I remember him when he came in there.

22 Q. So about 1:00 or so?

23 A. That's the time Eleese came in there. But I
24 didn't really pay him no attention.

25 Q. You just kind of recall seeing him in there a

1 couple times?

2 A. Yeah.

3 Q. Okay. Well, let's move forward just a little
4 bit more. What happened around 1:26?

5 A. That's when we were -- that's when they came in
6 and robbed us.

7 Q. All right. Tell me a little bit about the
8 robbery. What were you doing?

9 A. I was sitting in the middle, and basically they
10 just came running in there really, really fast. And
11 he -- the guy jumped on the table in front of me, I
12 backed up, flung the chair back, and I think I was
13 in, like, shock.

14 So I just -- I stood there for a minute. He
15 kept telling us to get down. And then I went to get
16 down, and that's when he told me to give him all the
17 money.

18 Q. All right. I want you to take a look at a
19 picture that's been entered as State's Exhibit 6,
20 just so I can kind of put it together with what
21 you're telling us. All right. What does that
22 appear to be?

23 A. That's our counter at the bank.

24 Q. Okay. You were saying -- all right. You were
25 saying that you were in the middle. Where -- I got

1 a laser pointer. Show me where you were that day.

2 Which --

3 A. How do I do it?

4 Q. Oh. This little button right there
5 (indicating).

6 A. Right there (indicating).

7 Q. Okay.

8 A. Keep it?

9 Q. Yes, for just a minute. Okay. So you're
10 working right there. You said a guy jumped up on
11 the counter. Where did he jump on the counter?

12 A. Right there (indicating).

13 Q. So right in front of you?

14 A. Uh-huh.

15 Q. Okay. What happened then?

16 A. He -- that's when he kept telling us to get
17 down. And I was -- I was in shock at first. And
18 then I went to get down on one knee and then he told
19 me to give him all the money. And he basically said
20 that over and over, give me the money, no dye pack,
21 no dye pack.

22 Q. Okay. What did you do?

23 A. I started giving him the money out of my
24 drawer. And I left -- I actually left a dye pack
25 and he snatched it up and he said, I said all the

1 money. And then I went on to Elise's drawer and
2 then I went to Stacey's. She had just gotten back
3 from lunch so her drawer was still locked, so I was
4 like, I can't get that. So then I -- he wanted me
5 to go to the work station. I said, there's no money
6 in there. And then I turned around and went to the
7 drive-thru and gave him all of the money from that
8 one.

9 Q. Okay. I'll show you a picture right quick just
10 so I can -- since I've shown you the counters, I
11 want to show you this one to make sure I -- all
12 right. You just mentioned the drive-thru. What is
13 this showing?

14 A. The drive-thru at the bank.

15 Q. Okay. So the counters you saw a minute ago and
16 then you finished up in the drive-thru; right?

17 A. Uh-huh.

18 Q. Okay. Well, what went on in there?

19 A. Basically that's when I turned around, went
20 back there, opened up the top drawer, and threw all
21 the money in the bag. And he noticed something
22 weird when I pulled the money that alarms the
23 police, and he threw it back in there and said, I
24 don't want that one.

25 Q. All right. Take a look at one more picture for

1 me, number 11. Do you recognize that?

2 A. Yes. That's the strapped money that we keep.
3 You stick a piece of the money up under the thing
4 and when you pull that money out, it alarms the
5 cops. And he noticed something weird when I pulled
6 that one and he threw it back in there and said, I
7 don't want that one. I threw my hands up and I
8 said, that's it. He turned around and ran out.

9 Q. Okay. So that's the one from the drive-thru
10 teller area and that's the money that he gave back
11 to you?

12 A. Uh-huh.

13 Q. Okay.

14 A. He just flung it back in there.

15 Q. Okay. Nothing further. Thank you. Answer any
16 questions from the Defense.

17 THE COURT: Cross?

18 MR. KAZMIERSKI: No questions for

19 Ms. Templeton. Thank you.

20 MR. HAMMACK: Your Honor, if Ms. Templeton may
21 be released also.

22 MR. KAZMIERSKI: No objection.

23 THE COURT: All right. You're free to go.

24 Next witness.

25 MR. HARTE: State calls Renee Greathouse.

1 RENEE GREATHOUSE

2 being first duly sworn, testified as follows:

3 THE WITNESS: Yes, I do.

4 DIRECT EXAMINATION

5 BY MR. MILLER:

6 Q. Ms. Greathouse, can you state your full name
7 for the record, please.

8 A. Renee Natasha Greathouse.

9 Q. I want to show you a photograph which has been
10 marked for identification and ask if you can
11 identify -- marked for identification as State's
12 Exhibit 27. Do you recognize the vehicle in that
13 photograph?

14 A. Yes. That car is registered to me.

15 Q. I'm sorry. Can you speak up?

16 A. Yes. That car is registered to me.

17 Q. Okay. And this is a silver Pontiac Grand Am?

18 A. Yes, sir.

19 Q. And on June 5th, 2014, who was in possession of
20 that car?

21 A. Leon James.

22 Q. And how did you know Leon James?

23 A. We were friends, slash, whatever. But it just
24 didn't work out. So...

25 Q. All right. And how did you find out that this

1 vehicle had been involved in this bank robbery?

2 A. SLED come to my house.

3 Q. And when did you find out that information?

4 A. I believe it was the next following day or
5 either later that afternoon. I'm not exactly sure.

6 Q. Okay. And had you -- when was the last time --
7 before this date, when was the last time that you
8 had the car?

9 A. I hadn't been around that car in over a month
10 before this happened.

11 Q. Okay.

12 A. Hadn't seen Leon James at all.

13 Q. And to the best of your knowledge, was the car
14 in Mr. James' possession that entire time?

15 A. As far as I knew.

16 Q. Okay. Do you know Homer James?

17 A. No, I don't, never heard of him.

18 Q. Do you know Lewis Garvin?

19 A. No, sir.

20 MR. MILLER: No further questions, Your Honor.

21 THE COURT: Cross?

22 CROSS-EXAMINATION

23 BY MR. KAZMIERSKI:

24 Q. Ms. Greathouse, did you know anything about the
25 bank robbery prior to it happening?

1 A. No, sir, I did not. As I stated before, I
2 hadn't seen him in over a month before that took
3 place. So I didn't have no idea about any of that.

4 Q. Okay. I have no -- Mr. James made payments on
5 the car; is that true?

6 A. No, sir. I put the down payment down. His
7 mother give \$100 toward it, and that was all. So,
8 no, he didn't make payments on it; he was supposed
9 to, but he did not.

10 Q. I have no further questions.

11 MR. MILLER: Your Honor, may Ms. Greathouse be
12 excused from her subpoena?

13 MR. KAZMIERSKI: No objection.

14 THE COURT: You're free to go. Thank you.

15 MR. MILLER: Thank you, Your Honor.

16 THE COURT: Next witness.

17 MR. MILLER: The State will be calling Chief
18 Walley of the Olar Police Department.

19 JAMES WALLEY

20 being first duly sworn, testified as follows:

21 THE WITNESS: I do.

22 DIRECT EXAMINATION

23 BY MR. HARTE:

24 Q. Good afternoon, Chief.

25 A. Good afternoon.

1 Q. Please state your full name for the record.

2 A. James Ronald Walley.

3 Q. Where are you employed, sir?

4 A. The town of Olar police department.

5 Q. What position do you hold there?

6 A. The chief of police.

7 Q. How long have you been in law enforcement?

8 A. Thirty-two years.

9 Q. How long have you been with the Olar Police
10 Department?

11 A. Three and a half years.

12 Q. How long have you been their chief of police?

13 A. Three and a half years.

14 Q. Were you the chief of police on June 5th, 2014?

15 A. Yes, sir.

16 Q. Were you working that day?

17 A. Yes, I was.

18 Q. What happened around 1:30?

19 A. As I was patrolling, the Bamberg County
20 dispatcher broadcast a robbery that had occurred in
21 Denmark and broadcast the description of a vehicle
22 that was possibly the suspect vehicle.

23 Q. What was the description of that vehicle?

24 A. It was a silver Pontiac Grand Am.

25 Q. Was the broadcast specific as to what sort of

1 robbery had occurred?

2 A. It was a robbery at the bank, the Enterprise
3 Bank in Denmark.

4 Q. What did you do in response to that broadcast?

5 A. I parked on the side of Highway 321 to wait to
6 see if the vehicle might come through Olar.

7 Q. Did you see a vehicle matching the description
8 that you had received?

9 A. Yes, approximately 10 or 15 minutes later.

10 Q. What did you do when you saw it?

11 A. I pulled out behind the vehicle to follow it.
12 As I pulled out behind it, they made a left turn on
13 the first street that they came to, which was 5th
14 Street. Once they turned onto 5th Street, as I
15 followed behind them, they turned right onto Weed
16 Avenue, running the stop sign.

17 At that point, I activated my blue lights, they
18 accelerated, travelling down Weed Avenue to the
19 intersection of 6th Street. At the intersection of
20 6th Street, they ran that stop sign and continued on
21 Weed. At the dead end of Weed Avenue, there's a
22 property that's closed off by cables across the
23 road. As they approached those cables, they
24 continued travelling, broke through that cable, came
25 to a second cable, broke through that as they turned

1 right. They also struck a fence -- or the cable was
2 connected to a fence post. When they hit that
3 cable, it tore the fence post loose, and the vehicle
4 came to a stop sideways against some trees.

5 Q. At that time, did you approach the vehicle?

6 A. I did approach the vehicle, yes.

7 Q. What did you see inside of it?

8 A. I opened the door to make sure there were no
9 occupants still in the vehicle, and I could see a
10 quantity of U.S. currency with red stains on it.

11 Q. What did you do at that point?

12 A. Closed the door and waited for backup to
13 respond.

14 Q. Thank you. I have no further questions at this
15 time.

16 CROSS-EXAMINATION

17 BY MR. KAZMIERSKI:

18 Q. Good afternoon, Chief?

19 A. Good afternoon.

20 Q. When the vehicle crashed into the cables, you
21 couldn't see what was going on inside the vehicle,
22 could you?

23 A. No.

24 Q. You saw a door open and you saw one person exit
25 the vehicle, didn't you?

1 A. Right.

2 Q. You didn't know how many people were in the
3 vehicle?

4 A. Right.

5 Q. It's a fairly high-risk situation.

6 A. Yes.

7 Q. You're following a vehicle of armed robbery
8 suspects?

9 A. Right.

10 Q. Did you have your gun drawn?

11 A. No. I was driving at the time.

12 Q. Okay. At any point, did you draw your weapon?

13 A. Well, at one point after I saw the one person
14 run, before I approached the vehicle, I drew my
15 weapon.

16 Q. So you had your gun out?

17 A. Right.

18 Q. I don't have any further questions for you.

19 MR. HARTE: Nothing on redirect.

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

22 Any objection to him being released?

23 MR. KAZMIERSKI: No, sir.

24 THE COURT: You're free to go. Thank you.

25 Next witness.

1 MR. MILLER: Your Honor, the State calls
2 Investigator Scott Peterson of the Barnwell County
3 Sheriff's Office.

4 SCOTT PETERSON

5 being first duly sworn, testified as follows:

6 THE WITNESS: I do.

7 DIRECT EXAMINATION

8 BY MR. MILLER:

9 Q. Investigator Peterson, could you state your
10 full name for the record, please.

11 A. Kenneth Scott Peterson.

12 Q. And who do you work for?

13 A. I work for the Barnwell County Sheriff's
14 Office.

15 Q. Okay. Were you involved in any part of the
16 investigation into the armed robbery of the
17 Enterprise Bank on June 5th, 2014?

18 A. Yes, sir, I was.

19 Q. And that occurred in Bamberg County; correct?

20 A. Yes, sir.

21 Q. And how did you become involved as a Barnwell
22 County sheriff's investigator?

23 A. Bamberg County called and asked for our
24 assistance for units for perimeter, they contacted
25 the SLED dog team. Myself and several other

1 Barnwell deputies responded.

2 Q. So where did you respond to, what location?

3 A. I ended up on Weed Street in Olar.

4 Q. And is that still in Bamberg County?

5 A. Yes, sir, it is.

6 Q. Okay. When you arrived there, what were --
7 what did you see? What was the first thing you
8 noticed?

9 A. Initially I met with the chief deputy of
10 Bamberg County. And I was near where the vehicle
11 was wrecked.

12 Q. What kind of vehicle was it?

13 A. Silverish gray Grand Am.

14 Q. Okay. What were the weather conditions like at
15 that time?

16 A. There was a severe storm alert. It was getting
17 really dark clouds, looked like it was fixing to
18 rain.

19 Q. What, if anything, did you do in anticipation
20 of that storm coming?

21 A. I was requested by one of the SLED agents to
22 assist the SLED crime scene by collecting some of
23 the evidence outside the car before it got rained on
24 and destroyed.

25 Q. Okay. I want to show you a photograph that's

1 been marked for identification as State's Exhibit 41
2 and ask if you recognize this photograph.

3 A. Yes, sir.

4 Q. And does this photograph fairly and accurately
5 represent what you saw behind the car that day when
6 you -- or did you take this picture?

7 A. Yes, sir.

8 Q. Does it fairly and accurately represent what
9 you saw behind that car that day?

10 A. Yes, it does.

11 MR. MILLER: Your Honor, the State would move
12 to enter State's Exhibit 41.

13 MR. KAZMIERSKI: No objection.

14 THE COURT: Admitted.

15 (State's Exhibit No. 41 admitted in to
16 evidence.)

17 BY MR. MILLER:

18 Q. What's in this picture?

19 A. It's a picture of a hat, a ball cap.

20 Q. Okay. Why did you collect this?

21 A. I collect everything that was outside the
22 vehicle.

23 Q. Okay. So after you photograph it, how do you
24 collect evidence? Just kind of go through the
25 process of how you pick up evidence.

1 A. Put on gloves and collect it, put it in a bag,
2 and seal it.

3 Q. Do you mark it so that everybody knows what's
4 in that bag?

5 A. Yes, sir.

6 Q. Do you put a case number on it?

7 A. I did not at the time. I didn't have a case
8 number with it being a Bamberg case.

9 Q. Okay.

10 A. I used a -- just a card that said Bamberg
11 County and the date on it for my picture to identify
12 it.

13 Q. Okay. I want to show you what's marked for
14 identification as State's Exhibit 63. But before I
15 do that, I'm going to show it to the Defense over
16 here. I'm going to go ahead and hand you some
17 gloves too. Ask you if you can take a look inside
18 this bag and identify what's inside.

19 A. It's a ball cap.

20 Q. Is that the ball cap you collected at the scene
21 that day outside of the Grand Am?

22 A. Yes, sir, it is.

23 MR. MILLER: Your Honor, at this time the State
24 would move to enter State's Exhibit 63.

25 MR. KAZMIERSKI: No objection.

1 THE COURT: Admitted.

2 (State's Exhibit No. 63 admitted in to
3 evidence.)

4 BY MR. MILLER:

5 Q. I'm going to show you what's been marked for
6 identification as State's Exhibit 42 and ask you if
7 you recognize this photograph.

8 A. Yes, sir, I do.

9 Q. And what is that a photograph of?

10 A. That's of a rag that was outside the car.

11 Q. Okay. And did you put that marker down?

12 A. Yes, sir, I did.

13 Q. Did you take that photograph?

14 A. Yes, I did.

15 Q. Does this photograph fairly and accurately
16 represent the positioning and the way that rag
17 appeared outside that car on the date in question?

18 A. Yes, sir.

19 MR. MILLER: Your Honor, at this time the State
20 wishes to introduce State's Exhibit 42.

21 MR. KAZMIERSKI: No objection.

22 THE COURT: Without objection, it's admitted.

23 (State's Exhibit No. 42 admitted in to
24 evidence.)

25 BY MR. MILLER:

1 Q. And did you collect that rag that was outside
2 the car?

3 A. Yes, sir, I did.

4 Q. Okay. Did you collect any other evidence at
5 the -- in the immediate area outside of the Grand Am
6 that day?

7 A. Yes, sir; a piece of a money wrapper.

8 Q. All right. Let me ask you -- I want to show
9 you what's been previously marked for identification
10 purposes as State's Exhibit 64 and ask you if you
11 can identify that item.

12 A. Yes, sir. That was the shirt that was
13 collected.

14 Q. Where was that shirt collected from?

15 A. This was collected by the -- it was found in
16 the woods by the SLED dog team. This wasn't at the
17 vehicle, it was further away.

18 Q. It was further away from the vehicle? About
19 how far away from the vehicle was it?

20 A. I don't recall exactly.

21 Q. Can you refresh your recollection from your
22 report or will that help?

23 A. I believe I put in here the GPS coordinates, so
24 I couldn't tell you.

25 Q. Explain to the jury how you do that.

1 A. Simply by using our smart phones.

2 Q. Okay.

3 A. It has a compass and gives you your latitude
4 and longitude where you're located. And that's what
5 we use where we're standing physically.

6 Q. So you go to actual item itself --

7 A. Where you are -- this thing, you calibrate it,
8 and it tells you your location.

9 Q. Okay. So you go to where the item is located
10 and you record the latitude and longitude?

11 A. Yes, sir.

12 Q. Okay.

13 MR. MILLER: Your Honor, at this time the State
14 would move to introduce State's Exhibit 64.

15 MR. KAZMIERSKI: No objection.

16 THE COURT: Admitted.

17 (State's Exhibit No. 64 admitted in to
18 evidence.)

19 BY MR. MILLER:

20 Q. Now, these items, State's 63 and 64, who did
21 you turn these items over to after you had collected
22 them?

23 A. The ball cap, money wrapper, and yellow rag
24 were turned over to Dawn Claycomb with SLED crime
25 scene; the green shirt was turned over to Patrick

1 Oliphant.

2 Q. And who is Patrick Oliphant?

3 A. Another SLED crime scene technician.

4 Q. That's all the questions I have. Please answer
5 any questions the Defense may have.

6 MR. KAZMIERSKI: No questions. Thank you.

7 THE COURT: All right. You can step down.

8 Thank you.

9 MR. MILLER: Your Honor, may we approach?

10 THE COURT: Sure.

11 (Sidebar conference.)

12 THE COURT: Okay. Folks, this looks like a
13 good place to break for today, so we'll get out a
14 little early today, and report back tomorrow morning
15 just a little before 9:30 in the jury room there.

16 Now, let me leave you with the same
17 instructions: Don't talk to anybody about the case,
18 including family members or neighbors, bartenders,
19 acquaintances, or anything like that. And like I
20 told you, it's just not fair to have outside
21 influences on your decision. You've seen how it
22 works. Everything that you need to know, it's going
23 to be presented here to you, and that's all you can
24 base your decision on. So how somebody else thinks
25 about something isn't proper to influence your

1 outcome.

2 You can talk about this case all you want when
3 it's over. But during the course of the trial,
4 please don't talk to anybody about it during breaks.
5 Again, don't post anything on social media, don't
6 look up anything on the internet to see if you can
7 find out about the case. And if anyone tries to
8 approach you to talk to you about the case, please
9 report that back to me first thing tomorrow.

10 So go enjoy your evening. If you would, be
11 back in your jury room a little before 9:30 and we
12 hope to get started by 9:30 in the morning. Thank
13 you for your patience. We'll see you in the
14 morning.

15 (The jury exits the courtroom at 3:59 PM.)

16 THE COURT: Okay. Anything else we need to
17 take up before we break for the day?

18 MR. HARTE: Nothing from the State, Judge.

19 MR. KAZMIERSKI: Nothing from the Defense.

20 THE COURT: All right. See y'all at 9:30 in
21 the morning.

22 (Trial in recess at 4:00 PM.)

23 (The following proceedings were held December
24 2, 2015.)

25 THE COURT: Good morning, everyone. Are we

1 ready to proceed?

2 MR. MILLER: The State is ready to proceed,
3 Your Honor.

4 THE COURT: All right. Is the Defense ready?

5 MR. KAZMIERSKI: The Defense is ready.

6 THE COURT: All right. Anything we need to
7 take up before we bring the jury in?

8 MR. MILLER: Not that I'm aware of, Your Honor.

9 THE COURT: All right. Let's bring the jury
10 in.

11 (The jury enters the courtroom at 9:33 AM.)

12 THE COURT: Okay. Folks, welcome back. We're
13 going to resume now where we left off, and that's
14 with the State calling their next witness.

15 Mr. Solicitor, whenever you are ready, you may
16 proceed.

17 MR. MILLER: Your Honor, the State calls Dawn
18 Claycomb.

19 DAWN CLAYCOMB

20 being first duly sworn, testified as follows:

21 THE WITNESS: I do.

22 DIRECT EXAMINATION

23 BY MR. MILLER:

24 Q. Please state your full name for the record.

25 A. Dawn Marie Claycomb.

1 Q. Ms. Claycomb, where do you work?

2 A. SLED, South Carolina Law Enforcement Division.

3 Q. And what do you do for SLED?

4 A. I'm a special agent in the crime scene unit.

5 Q. And how long have you been working in the crime
6 scene unit?

7 A. A little over three years.

8 Q. Okay. Did you process the crime scene at the
9 Enterprise Bank and a crime scene -- specifically a
10 silver Pontiac Grand Am in the Weed Road area of
11 Olar on June 5th, 2014?

12 A. Yes, sir, I did.

13 Q. And in connection with processing that scene,
14 did you take photographs at both locations?

15 A. Yes, sir.

16 Q. I have previously handed to you for review a
17 number of photographs. I'm handing you what's been
18 previously marked for identification as State's
19 Exhibit 9, State's Exhibit 12 to 40, 43 to 47, and
20 State's Exhibit 60. Did you review those this
21 morning?

22 A. Yes, sir.

23 Q. And do each of those photographs fairly and
24 accurately depict the way that they -- the locations
25 appeared on June 5th, 2014 when you were taking

1 those photographs?

2 A. Yes, sir.

3 MR. MILLER: Your Honor, I understand -- we've
4 provided all of these to the Defense prior to trial
5 and understand they don't have any objections to
6 these exhibits being introduced in bulk.

7 MR. KAZMIERSKI: No objection, Your Honor.

8 THE COURT: They're admitted.

9 MR. MILLER: Thank you, Your Honor.

10 Your Honor, at this time we'd like to publish
11 the exhibits to the jury on the board there.

12 THE COURT: Go right ahead.

13 MR. MILLER: Thank you.

14 (State's Exhibit Nos. 9, 12-40, 43-47, and 60
15 admitted in to evidence.)

16 BY MR. MILLER:

17 Q. Agent Claycomb, as we go through these
18 pictures, please tell the jury what these depict.
19 This is State's Exhibit 1.

20 A. This is a side view of the bank from the
21 roadway, Enterprise Bank. You see the front of it
22 there and the sign.

23 Q. State's Exhibit 2?

24 A. This is a view from the roadway, the parking
25 lot to the right of the bank and the area to the

1 back of the bank.

2 Q. State's 3?

3 A. This is the opposite side of the bank. The ATM
4 you see there and towards the bank as well from the
5 street.

6 Q. State's 4?

7 A. This is a photo of the parking lot. If you're
8 looking at the bank from the front, it would be the
9 right side of the bank, the parking lot area.

10 Q. State's 5?

11 A. This is directly behind the bank, a view of a
12 storage facility that was located behind the bank.

13 Q. State's 6?

14 A. This is inside the bank, just a view of the
15 teller counter.

16 Q. State's 7?

17 A. Again, this is inside the bank. To the right
18 you see the front door of the bank, and straight
19 ahead is the manager's office of the bank.

20 Q. State's 8?

21 A. Again, the same photo. You see the teller
22 counter to the left, the manager's office straight
23 ahead.

24 Q. And to be clear about these, these photos were
25 all taken by you after the crime occurred; correct?

1 A. Yes, sir.

2 Q. Okay. State's 9?

3 A. This is a photo of the actual teller counter;
4 one of the teller areas where there were footwear
5 impressions found on the counter.

6 Q. State's 10?

7 A. This is from behind the teller counter, and
8 this is a view of the drive-thru window within the
9 bank.

10 Q. State's 11?

11 A. This is one of the drawers within the
12 drive-thru area near the window. That's just a view
13 of the drawer that was within that area.

14 Q. State's 12?

15 A. Again, that's another photo of the footwear
16 impressions located on the teller counter.

17 Q. State's 13?

18 A. Another view with a scale of one of the
19 impressions on the counter.

20 Q. And why do you put the scale on there when you
21 take the photo?

22 A. Usually we do a photo of the impression with
23 the scale and without the scale just to show a
24 general size of the footwear impression.

25 Q. State's 14?

1 A. This is another footwear impression located on
2 the counter near the teller area.

3 Q. State's 15?

4 A. This is a view outside of the bank just behind
5 the bank. You can see -- earlier when you saw the
6 storage facility, this is the side fence around that
7 storage facility.

8 Q. State's 16?

9 A. And just another view. You see the storage
10 facility on the left there, just storage units.
11 This is the area behind the bank.

12 Q. State's 17?

13 A. Again, just a closer-up photo of that area.

14 Q. State's 18?

15 A. This is a small path that led from that storage
16 facility area over to the railroad tracks. You see
17 a small plastic bag laying there. It appeared to be
18 a path.

19 Q. State's 19?

20 A. This is a view of the railroad tracks, and in
21 the background you can see a dirt road behind the
22 bank.

23 Q. State's 20?

24 A. That's a closer photo of the dirt road behind
25 the bank there.

1 Q. State's 21?

2 A. This is a photo of that dirt road from a
3 different angle actually on the dirt road. In a
4 closer-up photo, you'll see a bill laying there to
5 the left near the weeds.

6 Q. State's 22?

7 A. That's a closer-up photo. You see a bill with
8 red stains on it.

9 Q. State's 23?

10 A. And just a different angle of another bill with
11 red stains.

12 Q. State's 24?

13 A. This is actually the location at 727 Weed
14 Avenue in Olar where a vehicle was located where we
15 processed the vehicle.

16 Q. State's 25?

17 A. In the background there you see a silver in
18 color Pontiac Grand Am, the vehicle that we had
19 processed at that location.

20 Q. State's 26?

21 A. This is a photo of -- you see a fence. There
22 was a barbed wire fence. It appeared it had been
23 damaged in the process where the vehicle was, and
24 part of the vehicle just behind it, an actual part
25 of the vehicle..

1 Q. State's 27?

2 A. Again, you can see the damaged fence there at
3 the bottom left, a car part from an actual car, and
4 then the vehicle itself within the trees there.

5 Q. State's 28?

6 A. This is a rear view of the vehicle, the rear
7 bumper, and the temporary tag on the car.

8 Q. State's 29?

9 A. That's a view of the vehicle from the driver's
10 side -- the front driver's side of the vehicle.

11 Q. State's 30?

12 A. This is a photo within the vehicle, the front
13 passenger side of the vehicle, the seat and the
14 floorboard.

15 Q. State's 31?

16 A. This is a photo from the rear passenger seat of
17 the vehicle.

18 Q. State's 32?

19 A. That is a photo of the driver's seat and the
20 driver's floorboard of the vehicle.

21 Q. And in this photo -- for all of these photos,
22 particularly of the vehicle, did you disturb
23 anything or move anything prior to taking the
24 photos?

25 A. No. Basically, we found the vehicle as it was

1 in the photos with the doors closed. We simply
2 opened the doors and then documented the interior of
3 the vehicle before touching anything else.

4 Q. I'm going to show you what's been marked for
5 identification as State's Exhibit 65 and ask you if
6 you can identify what's in this bag marked State's
7 Exhibit 65.

8 A. Yes, sir. It's a pair of black in color
9 sandals that are located in that photo there on the
10 driver's floorboard.

11 MR. MILLER: Your Honor, at this time the State
12 would move to enter State's Exhibit 65.

13 MR. KAZMIERSKI: No objection.

14 THE COURT: Admitted.

15 (State's Exhibit No. 65 admitted in to
16 evidence.)

17 BY MR. MILLER:

18 Q. State's Exhibit 33, please?

19 A. This is a photo of the driver's seat. It was a
20 South Carolina identification card that was located
21 on the driver's seat.

22 Q. State's 34?

23 A. This is a -- it was a Daisy Powerline BB gun.
24 It was located in the front passenger's side of the
25 vehicle between the seat and the door of the

1 passenger area.

2 Q. State's 35?

3 A. That's just another -- the opposite side of the
4 gun.

5 Q. State's 36?

6 A. That is a photo of -- once the magazine was
7 removed from the magazine well of the gun.

8 Q. State's 37?

9 A. This is a receipt from Burger King that was
10 located on the front passenger's seat of the
11 vehicle.

12 Q. State's 38?

13 A. This is a black in color wallet located near
14 the driver's area of the vehicle just near the
15 center console with a North Carolina identification
16 card in it.

17 Q. And where was that wallet located in the
18 vehicle?

19 A. Near the driver's area, the driver's side of
20 the vehicle, near the cup holder/center console
21 area.

22 Q. So that would be to the driver's right if he
23 was behind the wheel?

24 A. Correct.

25 Q. State's 39?

1 A. This is a photo of the front passenger's
2 floorboard of the vehicle once the duffle bag was
3 removed. And there you can see a South Carolina
4 identification card, another one, located on the
5 floorboard.

6 Q. State's 40?

7 A. That's just a close-up photo of that South
8 Carolina identification card on the floorboard.

9 Q. State's 43?

10 A. That is another receipt from a gas station
11 located -- that was located within the vehicle.

12 Q. State's 44?

13 A. This is a photo of the duffle bag that was
14 located in the front passenger floorboard of the
15 vehicle with several bills with red stains.

16 Q. Now, when you took these photos, this
17 particular photo and the next couple of photos, was
18 that at the scene where the car was?

19 A. No. This photo was actually taken back at the
20 lab so that the money could be laid out, serial
21 numbers documented, and all of the money documented
22 within the duffle bag.

23 Q. State's 45?

24 A. That is a photo of a plastic bag that was
25 located in the duffle bag, a pry bar, and several

1 one-dollar bills that were in the bag.

2 Q. State's 46?

3 A. This is the money just simply laid out with an
4 overall photograph of all the money.

5 Q. State's 47?

6 A. This is after it was counted and photographed
7 and packaged separately by denomination and sealed
8 within an evidence bag.

9 Q. State's 48 -- excuse me. State's 60?

10 A. This is a photograph on the front passenger's
11 seat of the vehicle, just several items that were
12 located within the center console of the vehicle.

13 MR. MILLER: I beg the Court's indulgence.

14 Your Honor, begging the Court's indulgence, we need
15 to get this open, and I don't think I can tear it.

16 (State's Exhibit No. 70 marked for
17 identification.)

18 BY MR. MILLER:

19 Q. We just marked this item as State's Exhibit 70
20 for the purposes of this trial. Can you explain
21 what these items are?

22 A. This appears to be the South Carolina
23 identification card belonging to Homer James, the
24 one that was in the photograph in the front
25 passenger floorboard.

1 This one appears to be South Carolina
2 identification card belonging to Lewis Garvin.
3 Another state of North Carolina driver's license,
4 this was the one located in the black wallet in the
5 photo. This is a South Carolina identification card
6 belonging to Leon James that was located in the
7 driver's seat of the vehicle that was seen in the
8 photograph.

9 This is the receipt from a gas station on Bush
10 River Road that was located within the vehicle that
11 was seen in the photo. Another receipt from Burger
12 King on North Main Street that was located on the
13 front passenger's seat of the vehicle. There's an
14 Allsouth Federal Credit Union ATM card belonging to
15 Leon James that was located in the center console, a
16 social security card belonging to Lewis Garvin, and
17 a South Carolina food card with the name Nicole
18 James.

19 Q. Did all of those items come from the vehicle at
20 the Weed Avenue location?

21 A. Yes, sir.

22 MR. MILLER: Your Honor, at this time, the
23 State would move to introduce State's Exhibit 70.

24 MR. KAZMIERSKI: No objection, Your Honor.

25 THE COURT: Admitted.

1 (State's Exhibit No. 70 admitted in to
2 evidence.)

3 BY MR. MILLER:

4 Q. Special Agent Claycomb, please answer any
5 questions that defense counsel may have for you.

6 CROSS-EXAMINATION

7 BY MR. KAZMIERSKI:

8 Q. Good morning, Ms. Claycomb.

9 A. Good morning.

10 Q. You investigated the crime scenes associated
11 with the Enterprise Bank robbery that took place on
12 June 5th, 2014; correct?

13 A. Yes, sir.

14 Q. The first scene you investigated was the
15 Enterprise Bank scene; is that right?

16 A. Yes, sir.

17 Q. And then you went out to 727 Weed Avenue in
18 Olar, and you learned that there were three suspects
19 that had fled to the west; is that correct?

20 A. To our knowledge, yes, sir.

21 Q. Okay. How did you learn that information?

22 A. That was passed on from responding officers.

23 Q. Do you recall which responding officer?

24 A. I believe it was police chief from the Olar
25 Police Department, James Walley.

- 1 Q. James Walley?
- 2 A. Yes, sir.
- 3 Q. And he specifically told you --
- 4 A. Yes, sir.
- 5 Q. -- three suspects --
- 6 A. He was on scene when we arrived at Weed Avenue.
- 7 Yes, sir.
- 8 Q. And they all fled to the west?
- 9 A. That's what we were told, yes, sir.
- 10 Q. Okay. And you included that in your report,
- 11 didn't you?
- 12 A. Yes, sir.
- 13 Q. Okay. And you recovered evidence from the
- 14 suspect vehicle when it was in Olar; correct?
- 15 A. Yes.
- 16 Q. Three cell phones were recovered from the
- 17 vehicle?
- 18 A. Yes, sir.
- 19 Q. And you've already testified that you found two
- 20 South Carolina ID cards?
- 21 A. Yes.
- 22 Q. And a North Carolina ID card?
- 23 A. Correct.
- 24 Q. And all of those were listed on a chain of
- 25 custody form and turned over to Agent Williams;

1 correct?

2 A. Yes, sir.

3 Q. Okay. Now, a chain of custody form identifies
4 the evidence?

5 A. Yes, sir.

6 Q. And it tells who handled the evidence; right?

7 A. Correct.

8 Q. It's an important document?

9 A. Yes.

10 Q. Okay. Is that the chain of custody form for
11 the three cell phones, the ID cards, and the two
12 receipts?

13 A. Yes, sir.

14 Q. Okay. Thank you.

15 And you also recovered \$5,781 from the duffle
16 bag; is that right?

17 A. Yes, sir.

18 Q. Okay. And another \$260 from the glove box?

19 A. Yes, sir.

20 Q. And \$140 from the passenger area?

21 A. Yes, sir.

22 Q. All of that money recovered from the scene
23 would have been included on a chain of custody?

24 A. Yes, sir.

25 Q. Okay. And all of that money was turned over to

1 Agent Williams --

2 A. After it was --

3 Q. -- and returned to the bank?

4 A. Yes, sir. After it was photographed and
5 documented and packaged, it was returned to Special
6 Agent Williams.

7 Q. Okay. And that's the chain of custody form
8 showing all the money; right?

9 A. Yes, sir.

10 Q. Okay. So the total amount recovered was
11 \$6,181; right?

12 A. Yes, sir.

13 Q. Okay. Wasn't there some money found near the
14 bank?

15 A. That's correct. But that was a dye pack, and
16 within my notes I included that was not included in
17 the total amount of money.

18 Q. Okay. So in addition to the dye pack -- and
19 let me just ask you this: Your notes say that it
20 appeared to be a dye pack; correct?

21 A. Yes, sir.

22 Q. Did you ever determine if it was a dye pack or
23 if it wasn't?

24 A. It appeared to be part of one of the dye packs
25 because the money was actually partially burned.

1 And when a dye pack explodes, it actually -- there's
2 a chemical reaction that happens that it burns at,
3 like, 400 degrees Fahrenheit. So it appeared to be
4 burned within the money, so that was obviously a
5 bill from the dye pack.

6 Q. Okay. Could you determine, based on the
7 denominations of the bills, how much was in the dye
8 pack?

9 A. Just by looking at one bill?

10 Q. All of the bills. All of -- the bundle that
11 was found.

12 A. I can't determine -- just by seeing the stains
13 with burn marks on the money, I can determine that
14 that's most likely from a dye pack.

15 Q. But you never tried to figure out how much
16 money was actually in the dye pack when the dye pack
17 went off?

18 A. No, I don't know that. I don't know how --
19 depending how the money is bundled, I don't know how
20 many bills are in each bundle.

21 Q. Okay. Well, wasn't an additional \$40 found on
22 a dirt road behind the bank?

23 A. Yes, two \$20 bills.

24 Q. Was that included in the 6,181?

25 A. No, it was not. That would be what I said

1 appeared to be from the dye pack with the red stains
2 and the partial burn marks within the money.

3 Q. So the 6,181 that was recovered and turned over
4 and returned to the bank, that represents all of the
5 money that was not included in the dye pack?

6 A. Correct.

7 Q. And you don't know how much money was in the
8 dye pack?

9 A. I don't know how much money is in each pack
10 when it's bundled.

11 Q. Okay. So you don't know how much money was
12 ultimately taken -- was stolen from the bank; is
13 that true?

14 A. That's true. I don't know a total amount, I
15 just know the amount we recovered.

16 Q. Okay. Can you look at this letter dated June
17 23rd, 2014 that's from the SLED DNA department. Can
18 you name the names of the suspects on there.

19 A. Leon James, Demont Darren, Homer James, and
20 Lewis Garvin.

21 Q. Okay. Thank you. Who is Demont Darren?

22 A. That, I don't know. I believe an ID card was
23 located with that name. But I don't know who he is.

24 Q. Was that presented to the Defense? Do you know
25 if Demont Darren's ID card was turned over to us?

1 A. I don't know if that was turned over to you.

2 Q. Did you see any photographs of Demont Darren's
3 ID?

4 A. Was that the --

5 THE WITNESS: Your Honor, can I refer to my
6 notes?

7 THE COURT: Sure.

8 A. There was not an ID belonging to Demont Darren.
9 There was a North Carolina driver's license in the
10 photo that we saw that belonged to Darrell Demont
11 Lassiter.

12 Q. And what is his name again on the ID there?

13 A. North Carolina driver's license, Darrell Demont
14 Lassiter.

15 Q. Okay. Do you have any idea how Demont Darren
16 became a suspect?

17 A. That, I don't know. Within our case, as the
18 investigation continues, names can be added to our
19 system as far as suspects. But that --

20 Q. So it's your opinion today that Demont Darren
21 was developed as a suspect at a later date?

22 MR. MILLER: Objection.

23 THE COURT: She's not offered as an expert, so
24 her opinion doesn't matter.

25 BY MR. KAZMIERSKI:

1 Q. Ms. Claycomb, let me show you what is titled
2 crime scene attachments. And it looks like it has
3 your initials on here; right?

4 A. Yes, sir.

5 Q. Can you tell the jury the names of the suspects
6 that you identified in your initial report?

7 A. Yes, sir. Demont Lassiter Darren, Homer Arthur
8 James, and Leon Amos Jason James.

9 Q. Okay. And is the name on the North Carolina
10 driver's license accurately portrayed in your crime
11 scene attachment?

12 A. Darrell Demont Lassiter.

13 Q. And on your report you have his name as Demont
14 Lassiter Darren; right?

15 A. Yes, sir.

16 MR. KAZMIERSKI: That's all the questions I
17 have, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. MILLER:

21 Q. Ms. Claycomb, I want to show you the ID -- THE
22 North Carolina driver's license that was recovered,
23 previously entered as State's Exhibit 70 or as part
24 of State's Exhibit 70. Is that where you got the
25 name Darren Demont Lassiter?

1 A. Yes, sir. It says Darrell Demont Lassiter, no
2 commas or separations or anything like that. It's
3 just Darrell Demont Lassiter.

4 Q. Is it possible that the name got entered wrong
5 whenever it was being typed in as a potential
6 suspect?

7 A. Yes, that's possible.

8 Q. Who is the person at SLED that would enter the
9 names of the suspects for that DNA report, if you
10 know?

11 A. Typically, the DNA report -- any report that's
12 generated, it will automatically pull from what's
13 entered in the system. When I logged in those
14 names, that's how it was entered in the system, so
15 that report will pull from what's entered, unless
16 it's changed or any names are added.

17 Q. And so when you send evidence in your capacity
18 as the person who collects evidence, do you take
19 that evidence up to the SLED lab if it's to be
20 tested?

21 A. Yes, sir.

22 Q. And whenever you take that evidence to the SLED
23 lab to be tested, do you submit a request to the
24 appropriate department to tell them, hey, here's the
25 evidence, I need you to test it?

1 A. Yes, sir.

2 Q. And whenever you submit that evidence to the
3 department to tell them that it needs to be tested,
4 whether it's firearms identification if you were
5 dealing with a gun, or it's DNA or it's serology or
6 it's fingerprints, you fill out a forensics request
7 form; correct?

8 A. Yes, sir. I log the evidence in and place the
9 request at that time.

10 Q. And that information of potential suspects,
11 potential victims, propagates from the system where
12 it's been entered?

13 A. Correct.

14 Q. Do you know how this Darren Demont ended up as
15 a suspect name?

16 A. I don't. I did not add that name, so it must
17 have been added at a later time.

18 Q. Did you at any time, during the collection of
19 any evidence in this case, find anything that says
20 Darren Demont on it?

21 A. No, sir.

22 MR. MILLER: No further questions, Your Honor.

23 THE COURT: Recross?

24 RE CROSS-EXAMINATION

25 BY MR. KAZMIERSKI:

1 Q. Ms. Claycomb, if the name of Darrell Lassiter
2 was incorrectly entered, is that a possible reason
3 why he was never investigated until 15 months after
4 this incident?

5 A. No, sir. The entry of the name has nothing to
6 do with how the investigation continues. Basically,
7 that's just how it's seen within the lab when
8 anything is processed, the first name and last name.
9 But the name is just entered into the system and
10 it's a way to keep track of names.

11 Q. And it was a way of determining who was a
12 suspect in this case; right?

13 A. Just a list of names of possible suspects, yes,
14 sir.

15 Q. Possible suspects. Okay. Thank you. That's
16 all I have for you.

17 THE COURT: All right. You can step down.

18 MR. MILLER: Your Honor, the State calls
19 Captain Eddie Williams of the Bamberg County
20 Sheriff's Office.

21 EDDIE WILLIAMS

22 being first duly sworn, testified as follows:

23 THE WITNESS: I affirm.

24 DIRECT EXAMINATION

25 BY MR. MILLER:

1 Q. Captain Williams, can you please state your
2 full name for the record.

3 A. Eddie Williams, Jr.

4 Q. Where do you work?

5 A. Bamberg County Sheriff's Office.

6 Q. How long have you been with the sheriff's
7 office?

8 A. Since 2004.

9 Q. And how long have you been in law enforcement
10 overall?

11 A. Since August 17th, 2002.

12 Q. Okay. Were you working on the night of June
13 6th, 2014, in Bamberg County?

14 A. I was.

15 Q. What was going on that night? What was the
16 weather like?

17 A. It was raining very heavy with thunder and
18 lightening at one point.

19 Q. At any point during the night, did you have
20 occasion to approach the Govan Road or Ehrhardt
21 highways -- it's been called different things -- but
22 the area of Govan inside the county?

23 A. I did.

24 Q. And why were you going over there? What were
25 you looking for?

1 A. I had gotten a call from central dispatch,
2 someone -- basically to return a phone call to a
3 complainant.

4 Q. Okay. And I don't want you to tell me what the
5 complainant said, I just want you to tell us, what
6 did you do after you talked to that complainant?

7 A. After I talked to the complainant, I went to
8 the Govan area. But I don't recall the address, but
9 it's two doors down from 21,000, talked with the
10 subjects, and once I talked with -- actually, two
11 subjects, a man and a woman. I talked to them, I
12 went back to 21,000, which was the object of the
13 complaint. It was a residence. I checked it out,
14 found nothing.

15 Q. Okay. So you went and talked to a man and a
16 woman. You call them subjects. Sometimes we get
17 into the police talk. When you say subjects, you
18 just mean you went and talked to two people;
19 correct?

20 A. I did.

21 Q. Okay. And then you went and checked on this
22 property at 2100; correct?

23 A. 21,000.

24 Q. Okay. Was that property secured?

25 A. It was.

1 Q. Was there any sign of anybody around that
2 property?

3 A. It wasn't.

4 Q. What did you do next?

5 A. I proceeded to leave the area, and I passed the
6 Denmark Fire Station. There was a number of people
7 there, so I stopped and asked them if they'd seen
8 any suspicious persons in the area.

9 Q. Okay. I believe you said the Denmark Fire
10 Station --

11 A. Oh, Govan. I'm sorry.

12 Q. Okay. And that fire station is located where?
13 What intersection is it close to, for reference?

14 A. Ehrhardt Road and U.S. 321.

15 Q. Okay. So you stopped at the fire station. Did
16 you talk to the people there?

17 A. I did.

18 Q. What did you do after that?

19 A. I asked if they'd seen anyone and, basically,
20 they said no. And then someone in the crowd, I
21 don't recall who it was, said that there was an old
22 mobile home behind the county landfill dumpsite, and
23 said, you know, that was a place that somebody might
24 be at. So I went to check that out.

25 Q. And just for reference, you got the fire

1 department closest to 321 --

2 A. Right.

3 Q. -- on this Ehrhardt Road. And then next to the
4 fire department is a recycling center, trash
5 drop-off place?

6 A. Right.

7 Q. So this trailer was actually behind the
8 recycling center?

9 A. It was.

10 Q. Okay. What happened when you got back to the
11 trailer to drop it off? Did you drive there or did
12 you walk there?

13 A. I drove there.

14 Q. Okay. What happened next?

15 A. I drove in front of it and got out of the
16 vehicle, started to walk to the house, and a
17 gentleman exited the house and approached me.

18 Q. What did he say to you -- or what was his
19 general attitude?

20 A. Basically, he was acting strange and waving his
21 hands and said, this is my house, I don't have
22 nothing. And that's pretty much it. I asked him to
23 stop. He proceeded to advance, and I drew my
24 weapon.

25 Q. Okay. When you drew your weapon on this

1 person, did he stop coming towards you?

2 A. Yes, he stopped. And I didn't see anything,
3 just that he wasn't obeying my commands, he was
4 approaching me, and I re-holstered my gun.

5 Q. Was he wearing a shirt?

6 A. He didn't have a shirt on.

7 Q. Did he have anything in his hands?

8 A. He didn't have anything in his hands..

9 Q. Okay. So understanding that you didn't believe
10 at that time that he had a weapon, you re-holster.

11 What did you do after that?

12 A. He ran through some kudzu --

13 Q. Right.

14 A. -- and I started then I changed my mind and got
15 back to the car and drove back to the front where
16 the fire personnel was.

17 Q. And when you got back to where the fire
18 personnel was -- well, first of all, the kudzu, is
19 it in front of the trailer? Beside the trailer?
20 Behind the trailer?

21 A. Basically behind the trailer.

22 Q. Okay. So to make sure I understand, the kudzu
23 area is between the recycling center and the
24 trailer?

25 A. Right.

1 Q. Okay. When you got back around in your vehicle
2 over to the front of the fire station, what did you
3 find when you got there?

4 A. Fire personnel, they were milling around in the
5 highway looking across the field.

6 Q. And did you determine why they were looking
7 across the field?

8 A. They said something about some guy had ran that
9 way.

10 Q. Okay. Did you attempt to locate that person?

11 A. I did. I looked, but I didn't see anything.

12 And --

13 MR. KAZMIERSKI: Your Honor, I have a matter
14 that needs to be taken up outside the presence of
15 the jury.

16 THE COURT: Okay. Folks, let me send you out
17 while we take up a matter of law. Don't begin
18 deliberations or have any discussions about the
19 case. Please return to your jury room.

20 (The jury exits the courtroom at 10:13 AM.)

21 THE COURT: Okay. What do we need to take up?

22 MR. WILSON: Your Honor, at this point we would
23 have an objection to the solicitor going into
24 matters of flight as evidence of Mr. Leon James'
25 guilt. And I think that's where he's going with the

1 testimony that he's already somewhat elicited and
2 where he's going to go into in much greater detail.

3 I'm not going to belabor the law because I'm
4 sure Your Honor is well aware of the law that
5 involves flight as being evidence of guilt. In this
6 case, Your Honor, you have to show a knowledge of
7 guilt and an attempt to avoid arrest because of that
8 knowledge of guilt.

9 Your Honor, in this case, Mr. James -- I guess
10 where they're going to go is that he avoided
11 Mr. Williams when he approached him there and then
12 he fled into the woods and avoided arrest, Your
13 Honor. It's going to allow the jury to form an
14 improper conclusion that just because he avoided
15 contact with law enforcement, he was guilty of
16 participating in this armed robbery, Your Honor.
17 And that would be prejudicial to allow them to draw
18 that conclusion simply based on that.

19 Your Honor, he doesn't have -- as Your Honor
20 has already heard from the statements made by
21 counsel and where the evidence in this case is going
22 to go, Mr. James was forced at gunpoint to be
23 involved in this. He doesn't have an obligation at
24 that point to cooperate with law enforcement. He
25 doesn't have to come forward to testify, he doesn't

1 have to come forward and make contact with them, he
2 doesn't even have to respond to them when they
3 approach him.

4 So his lack of contact or his avoidance of law
5 enforcement is not evidence of guilt, Your Honor, or
6 it's not conclusive evidence of guilt enough to be
7 able to present to this jury and allow them to draw
8 that conclusion and jump from his avoidance of law
9 enforcement to he must be guilty of being involved
10 in robbing this bank. We just think it would be
11 improper for them to go into that.

12 THE COURT: Well, what's the State's position?

13 MR. MILLER: Your Honor, first of all, we're
14 already four witnesses too late for that. He's
15 already shown evidence of flight whenever he ran
16 from the car when it wrecked. This is some 30 hours
17 after the fact.

18 Second of all, the State understands that
19 there's not a charge on flight anymore being
20 evidence of guilt, but certainly it's something the
21 State can argue in its closing argument. And we do
22 intend to argue it in our closing argument.

23 The Defense has already, in its opening and I'm
24 sure will in its closing, advanced the position
25 that, well, he ran away because he was scared. And

1 certainly they can advance that position, but it's
2 going to be for the jury to determine whether he was
3 running away because he was scared or he was running
4 away because he was trying to get away.

5 And in point of fact, Your Honor, it's
6 impossible for the Defense to argue that somehow he
7 did not realize, which used to be the standard when
8 there was a jury charge on flight that could be
9 charged, he had to be aware of the fact that the
10 police were looking for him.

11 He was driving the car when the car wrecked up
12 against the tree. And that's going -- by his own
13 statement, he was driving the car whenever the car
14 wrecked up against the tree. He fled from that
15 scene, he fled from Captain Williams and the Govan
16 fire officers later on in the night. And while I
17 would concede that we don't get to charge on flight
18 as evidence of guilt, certainly it is a circumstance
19 that can be argued by the State under the
20 circumstances given.

21 THE COURT: You want to reply?

22 MR. WILSON: Just very briefly, if I could,
23 Your Honor.

24 Your Honor, the circumstances of the wreck, as
25 far as the vehicle and him fleeing from the vehicle,

1 there are three other gentlemen, or two, depending
2 on the State's evidence, or three, depending on how
3 the jury, I guess, finds that fact, which had him at
4 gunpoint. And, I mean, he's escaping from the scene
5 because he's escaping from the guys who have already
6 robbed a bank at gunpoint and have him at gunpoint.

7 That's a much different scenario than
8 Mr. Williams approaching him in this trailer and
9 identifying himself as a law enforcement officer;
10 much, much different situation. So the evidence of
11 flight from the car is much different from any
12 evidence of flight from contact after that.

13 THE COURT: Well, I think the solicitor is
14 correct, we don't charge evidence of flight as
15 inference of guilt. But in circumstances like this,
16 it is part of almost res gestae, part of what
17 happened. And it's an inference that the State can
18 argue, and so I'll allow it.

19 Anything else we need to deal with before we
20 bring the jury back in?

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

23 THE COURT: Do y'all have anything?

24 MR. WILSON: If I could have just one moment,
25 Your Honor.

1 THE COURT: Sure.

2 MR. WILSON: Nothing else, Your Honor.

3 THE COURT: Okay. Bring the jury back in.

4 (The jury enters the courtroom at 10:18 AM.)

5 THE COURT: All right. We'll resume where we
6 left off.

7 DIRECT EXAMINATION

8 (Continued)

9 BY MR. MILLER:

10 Q. Captain Williams, I believe where we left off
11 was you were in front of the fire department and
12 said that you'd seen the Govan Fire Department
13 personnel out in the road going towards the field.

14 Let's be clear about -- when you say they were
15 looking towards the field, was that the field on the
16 same side of the road that the fire department was
17 on or the field on the other side of the road from
18 where the fire department --

19 A. On the other side of the road.

20 Q. Okay. Did you attempt to enter that area and
21 see if you could find the person who you thought had
22 run?

23 A. Well, that was a bit confusing, simply because
24 they had car lights pointing down the field, which
25 is south of Govan Road. And then somebody said he

1 ran into the grove, which is a wooded area right
2 across from the fire station. That's the area that
3 I went in searching for the gentleman that I thought
4 had fled from me.

5 Q. Okay. And did you catch somebody in there?

6 A. No. Actually, I went in from the east end of
7 the grove and worked my way toward the west. And I
8 was just about to the end and I heard them yelling
9 on the outside saying that he had ran from the
10 drove.

11 Q. Okay. So now he's running from the grove. Did
12 he go further into the field or did he cross back
13 over Ehrhardt Road?

14 A. Based on what witnesses were telling me, he
15 crossed the road and ran between 21,000 and an old
16 dilapidated house over there that no one has lived
17 in for years.

18 Q. What did you do next?

19 A. At that point, I started to proceed behind the
20 house and search for him. Then I changed my mind
21 and decided that it was a trespass issue. You know,
22 based on some other experiences I've had with people
23 running, I figured -- it's what I call the old
24 rabbit complex. I figured that, like a rabbit, he'd
25 go back to his hole and later on we'd get him.

1 Well, about that time, I looked down the road
2 and there was a truck coming behind me. It was a
3 SLED agent in his vehicle, so I stopped and talked
4 to him about it.

5 Q. Okay. So at this point, in your mind, you were
6 dealing with trespassers?

7 A. Absolutely. That's all I had in mind at that
8 time.

9 Q. And the original call that you got that sent
10 you out there was talking about trespassers,
11 basically?

12 A. Trespassers, right.

13 Q. And so do you recall which SLED agent it was
14 that pulled up in his truck?

15 A. Yes. It was special agent Jeff Croft.

16 Q. Okay. And when Agent Croft pulled up, did you
17 brief him on what was going on?

18 A. Yeah. He inquired, you know, about what was
19 going on, and I advised him about the trespass
20 issues. And I gave him a description, and he
21 recognized the description as being one of the bank
22 robbers.

23 Q. So what happened at that point in time?

24 A. At that point in time, he asked if I wanted him
25 to get other SLED personnel involved. And I

1 basically left that decision to him. And he went
2 home, got rid of his personal vehicle, got his
3 State-issued vehicle, and got other SLED personnel
4 involved.

5 Q. Okay. Did the SLED personnel show up that
6 night?

7 A. They did.

8 Q. And while all this is going on, once the -- I
9 guess, the call had been made and the SLED personnel
10 were coming, did you and other officers with the
11 Bamberg County Sheriff's Office attempt to try to
12 get a perimeter set up?

13 A. Yes, pretty much, along with the lighting from
14 the fire station. That's pretty much what we did,
15 the immediate area until we got, you know, enough
16 staff to handle the situation.

17 Q. So initially you have yourself, one Bamberg
18 County Sheriff's Officer. And do you have any idea
19 how many Govan Fire Department personnel were there?

20 A. I wouldn't -- I'd have to guess. It was a
21 number of people.

22 Q. Less than 25?

23 A. I would venture to suppose that.

24 Q. Okay. And now everybody -- I guess the calvary
25 is coming, so to speak?

1 A. Right.

2 Q. So were the fire department personnel placed on
3 the perimeter kind of as volunteers?

4 A. Initially they were because initially, you
5 know, we were dealing with the misdemeanor-type
6 situation. But then once SLED got involved and we
7 realized what we were dealing with, then police
8 officers were placed near the fire department
9 personnel because we're dealing with a different
10 level of situation.

11 Q. So basically every able-bodied person you had
12 access to, law enforcement or volunteer firemen, was
13 brought in to help; correct?

14 A. Law enforcement was brought in; fire personnel
15 was already there.

16 Q. Right. Okay. And you said that they set up
17 the fire truck with the big lights so that it could
18 light up the field?

19 A. Yes, the area.

20 Q. Now, we're talking about a field that -- what
21 type of field was it? What was in that field? What
22 was growing?

23 A. The field south of Ehrhardt Road, don't really
24 recall, but the one where our primary emphasis was,
25 was a cornfield, which would have been north of

1 Ehrhardt Road.

2 Q. And this is first week in June. That corn has
3 grown up pretty tall, hadn't it?

4 A. It had.

5 Q. Okay. At some point later in the evening, did
6 the SLED dog tracking team arrive?

7 A. They did.

8 Q. And did the SLED dog tracking team, based upon
9 the information that they were able to gather from
10 the firemen, yourself, other officers on the scene,
11 did they then attempt to go into that cornfield and
12 locate that person who had run?

13 A. They did.

14 Q. And did they find him -- or did they find a
15 person?

16 A. The person that fled from me is not the same
17 person that came out of the cornfield.

18 Q. Okay. The person that fled from you that
19 didn't have a shirt on was not the same person that
20 SLED caught later on that night; correct?

21 A. No.

22 Q. All right. The person that SLED caught later
23 on that night adjacent to that cornfield, who was
24 that person?

25 A. The subject that came out of the cornfield at

1 Govan Road and 321 was the defendant.

2 Q. Okay. But that wasn't the person you were
3 originally chasing?

4 A. No.

5 Q. Okay. Now, at some point a little after 11:30,
6 did you receive a call about yet another person that
7 was suspicious and walking on the road?

8 A. I did.

9 Q. And road was that -- what location was that
10 person at?

11 A. That -- initially it was someplace in the area
12 of 4th Street and South Carolina 64 in Olar, and the
13 second call, the guy was further up 64 in the
14 Barnwell County area.

15 Q. Heading towards Barnwell?

16 A. Yes.

17 Q. Okay. What did you do in response to receiving
18 that call?

19 A. I got officers to go with me, DNR, Bamberg City
20 officer, and we went and located the subject.

21 Q. Okay. So now you just mentioned DNR. You got
22 Bamberg City there by this time --

23 A. Uh-huh.

24 Q. -- you got Bamberg County there by this time --

25 A. Right.

1 Q. -- you got DNR, volunteer firemen, and SLED all
2 in this area of Ehrhardt Road and 321; correct?

3 A. Correct.

4 Q. So when you get a call over to Highway 64, you
5 just grab a couple of guys to go with you and you
6 head in that direction; correct?

7 A. Correct.

8 Q. And who did you make contact with on Highway
9 64?

10 A. That was Mr. Garvin, I believe his name is,
11 that was in court on Monday.

12 Q. Okay. So you made contact with Mr. Garvin and
13 he was placed under arrest. Did he try to run from
14 anybody?

15 A. He did not.

16 Q. Okay. So he was taken into custody without
17 incident; correct?

18 A. Correct.

19 Q. And where was he taken after he was taken into
20 custody?

21 A. Back to the Govan fire station.

22 Q. Okay. So you got Mr. Garvin in custody at the
23 Govan fire station. Where was Leon James taken
24 after he was taken into custody?

25 A. Best of my recollection, the Govan fire

1 station.

2 Q. Okay. So at that point in time -- well, if you
3 know, did Leon James know Lewis Garvin had been
4 arrested?

5 A. Not to my knowledge.

6 Q. Did Lewis Garvin know that Leon James had been
7 arrested?

8 A. Not to my knowledge.

9 Q. Were they kept in the same room at the Govan
10 Fire Department, if you know?

11 A. I do know that both were taken there. Whether
12 they were there simultaneously, I really don't
13 recall.

14 Q. Okay. We're now talking about into the morning
15 of June the 7th. Are you aware of whether or not
16 Homer James got arrested?

17 A. I am.

18 Q. Okay. And when Homer James was arrested, where
19 was he taken?

20 A. I really don't recall whether he was taken to
21 Govan or if he was brought directly to Bamberg. I
22 really don't recall.

23 Q. Okay. Once he got to the Bamberg jail, at that
24 point in time did you collect any clothing from him,
25 the clothing he was arrested in?

1 A. Yeah. At some point in time, I -- those
2 clothes came into my possession.

3 Q. Okay. When you collected the clothing that
4 Homer was wearing at the Govan jail, you collected
5 shoes and you collected sweatpants and you
6 collected, in fact, his underwear?

7 A. Uh-huh.

8 Q. And you turned that over to -- or did you turn
9 that over to Agent Williams with SLED?

10 A. I did. I turned it over to SLED.

11 Q. Okay. But he didn't have a shirt; correct?

12 A. Not to my recollection.

13 Q. You didn't collect a shirt at the jail from
14 Homer James?

15 A. I don't recall.

16 Q. Thank you. No further questions.

17 THE COURT: Cross?

18 MR. KAZMIERSKI: No questions, Your Honor.

19 THE COURT: You may step down. Thank you.

20 MR. MILLER: Your Honor, may Captain Williams
21 be excused?

22 MR. KAZMIERSKI: No objection, Your Honor.

23 THE COURT: You're excused. Thank you.

24 Next witness.

25 MR. HARTE: The State calls Jeff Jackson.

1 JEFF JACKSON

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 DIRECT EXAMINATION

5 BY MR. HARTE:

6 Q. Good morning, Mr. Jackson.

7 A. Good morning.

8 Q. Please state your full name for the record.

9 A. Jeffrey Eugene Jackson.

10 Q. Mr. Jackson, what do you do for a living?

11 A. I'm a maintenance supervisor with the South
12 Carolina Department of Transportation. I'm also the
13 assistant chief for the Govan Volunteer Fire
14 Department.

15 Q. Where is that fire station located?

16 A. It is on the west side of U.S. 321 on Ehrhardt
17 Road.

18 Q. Were you volunteering with the Govan Fire
19 Department in June of 2014?

20 A. Yes, sir.

21 Q. Do you recall the afternoon of June 6th, 2014?

22 A. Yes, sir.

23 Q. What were you doing that afternoon?

24 A. That afternoon we were attending a birthday
25 party.

1 Q. Where was that birthday party?

2 A. It was on Honey Ford at that time.

3 Q. I'm sorry?

4 A. It was on Honey Ford Road.

5 Q. Okay. Who all was there?

6 A. There were several of our firefighter members
7 and some other individuals at the party that
8 afternoon.

9 Q. What was the weather like that day?

10 A. It had some pop-up clouds. We were under some
11 severe weather that evening. And at the time of the
12 party, there was one that was pretty severe that
13 popped up.

14 Q. As a result of the bad weather, what did y'all
15 do?

16 A. One of our firefighters that was not at the
17 party called us and told us that he had seen --
18 thought he had saw a funnel cloud that evening. And
19 we all decided to leave the party and go to the
20 station so that we could observe the weather better
21 in an open area.

22 Q. While you were at the fire station, did
23 anything unusual happen?

24 A. Yes.

25 Q. What was that?

1 A. During the time that we were watching the
2 weather, I observed Mr. Eddie. He was doing a
3 perimeter check on a doublewide mobile home that was
4 on the other side of the LAD site.

5 Q. Do you know Mr. Eddie?

6 A. I do know Mr. Eddie.

7 Q. Is Mr. Eddie Captain Eddie Williams of the
8 Bamberg Sheriff's Office?

9 A. Yes, sir.

10 Q. Okay. Now, when you say you were at the Govan
11 fire station, can you describe that area for us.

12 A. Yes. Like I said, the station sits off of
13 Ehrhardt Road on the west side of the railroad
14 tracks. And to the west of the station there's the
15 LAD site and then --

16 Q. What's a LAD site?

17 A. The recycle center, trash dump.

18 Q. Okay. Is there a training facility or a
19 training trailer behind that site?

20 A. Yes.

21 Q. What do y'all use it for?

22 A. We use it for search and rescue training and
23 other firefighter activities.

24 Q. Is it still there?

25 A. It is not there at this time.

1 Q. It's not there?

2 A. Not at this time.

3 Q. Was it there in June of 2014?

4 A. Yes.

5 Q. Was it locked in 2014?

6 A. It was not locked at that time.

7 Q. Did it stay unlocked?

8 A. Yes.

9 Q. And why is that?

10 A. Just -- it was no -- nothing to be concerned
11 about as far as anything being stolen or anything
12 like that. So it's -- just wasn't --

13 Q. And about how far away from the fire station is
14 the training trailer?

15 A. About 100 yards from the station.

16 Q. So when Captain Williams came to the fire
17 station, what did he do?

18 A. He asked us if we'd seen anybody dressed in
19 black walking in the area, and we'd told him no at
20 the beginning and -- but we offered him to check our
21 training facility in the back at that time.

22 Q. So he walked down to the training trailer?

23 A. He actually carried his car to the back. You
24 can drive up to it. And he went to the rear back
25 where the training facility was.

1 Q. And what happened when he went down there?

2 A. When he went around to the training facility,
3 just a few seconds after he went back there, we
4 heard him hollering, get down, get down, get down.
5 And at that time we proceeded to go back so that we
6 could see him just to make sure that nothing, you
7 know, went wrong.

8 And one of our other firefighters said that
9 there was a guy walking up Ehrhardt Road at that
10 time, and I turned, asked him to stop, and when I
11 asked him to stop, he turned and ran from me.

12 Q. What happened next?

13 A. I gave chase, he ran into the wood lines. And
14 at that time we did not go into the wood line with
15 him. And Mr. Eddie came up front of the station
16 with us at that time and we told him that the guy
17 was in the wood lines. So we set up a perimeter
18 around the woods.

19 Q. Then what happened?

20 A. Mr. Eddie went into the wood line to try to
21 flush him out or to apprehend him. And he came out
22 on the west end of the wood line, ran back across
23 Ehrhardt Road, I gave chase again. And at that time
24 when I was chasing him, that was when I -- I was a
25 CWP carrier at that time --

1 Q. What does CWP stand for?

2 A. Concealed weapon permit carrier.

3 Q. Okay.

4 A. And I ordered him to get down. I was going to
5 shoot, which I didn't --

6 Q. So you saw him come out of the wood line?

7 A. Yes.

8 Q. What did you do when you saw him?

9 A. I gave chase, asked him to get down several
10 times. He kept running. Told him to stop or I was
11 going to shoot. He turned and looked at me and
12 said, please don't shoot. And I knew I couldn't
13 because he didn't have anything in his hands other
14 than his shirt.

15 Q. Was he wearing a shirt?

16 A. No.

17 Q. But he had a shirt in his hand?

18 A. Yes.

19 Q. Where did he go after that?

20 A. He ran -- on the west end of the doublewide
21 mobile, there's an old wooden house, it's growed up
22 in the woods and stuff. He ran behind it and back
23 into the wood line.

24 Q. But you didn't chase him any further?

25 A. I did not. I stopped chasing him at the wood

1 line.

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

3 Please answer any questions the Defense has for you.

4 THE COURT: Cross?

5 MR. KAZMIERSKI: Just one moment, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. KAZMIERSKI:

8 Q. The person you were pursuing, was that the same
9 person that Captain Williams was pursuing?

10 A. I'm not positive on that.

11 Q. He didn't have a shirt on?

12 A. No, he did not.

13 Q. But he had a shirt in his hand?

14 A. Yes.

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

16 THE COURT: Redirect?

17 MR. HARTE: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. HARTE:

20 Q. Mr. Jackson, did you see the person that you
21 were chasing later that evening?

22 A. Yes, I did.

23 Q. Where was that?

24 A. At the station when they were bringing him in
25 for questions.

1 Q. Thank you. No further questions.

2 MR. KAZMIERSKI: Nothing further, Your Honor.

3 THE COURT: You may step down. Thank you.

4 MR. HARTE: We'd ask that he be excused.

5 THE COURT: Any objection to him being excused?

6 MR. KAZMIERSKI: No, sir.

7 THE COURT: You're free to go.

8 Next witness.

9 MR. MILLER: Your Honor, the State calls
10 Special Agent Jeff Croft.

11 JEFF CROFT

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes, I do.

14

15 DIRECT EXAMINATION

16 BY MR. HARTE:

17 Q. Mr. Croft, please state your full name for the
18 record.

19 A. Jeff Croft.

20 Q. Mr. Croft, who do you work for?

21 A. I work for the South Carolina Law Enforcement
22 Division, commonly known as SLED.

23 Q. How long have you worked for SLED?

24 A. Three and a half years now.

25 Q. Where do you -- what region of the State --

1 what SLED region do you work in?

2 A. I work in the Lowcountry region.

3 Q. Okay. How long have you been involved in law
4 enforcement overall?

5 A. Since 2004.

6 Q. Were you involved in the investigation and the
7 apprehension of the suspects in the Enterprise Bank
8 robbery that occurred in Denmark, South Carolina on
9 June 6th, 2014?

10 A. Yes, I was.

11 Q. Were you present and out -- and I guess out is
12 the way to say this. Were you present the night of
13 June the 6th going into the morning of June 7th,
14 2014, at the time when all of the suspects were
15 taken into custody?

16 A. Yes, I was.

17 (State's Exhibit No. 69 marked for
18 identification.)

19 Q. Okay. I want to show you what's been
20 previously marked for identification as State's 69
21 and ask if you can identify this.

22 A. Yes, sir. That's a Google map of -- which
23 shows of Olar, Govan, Denmark, Bamberg, and also
24 Hilda.

25 Q. And is this map to scale?

1 A. Yes, it is.

2 Q. And does it have a scale on it?

3 A. Yes, it does.

4 Q. All right. Is this the way -- with the
5 locations that are marked on the map, including road
6 names, highway names, town locations, is this the
7 way that all of this would have appeared back in
8 June of 2014?

9 A. Yes, sir, it is.

10 MR. MILLER: Your Honor, at this time we'd move
11 to enter State's Exhibit 69.

12 MR. KAZMIERSKI: No objection, Your Honor.

13 THE COURT: Admitted.

14 (State's Exhibit No. 69 admitted in to
15 evidence.)

16 MR. MILLER: Your Honor, if I could ask the
17 witness to step down please. I'm going to hand him
18 a Sharpie to identify some locations on this paper
19 map.

20 BY MR. MILLER:

21 Q. Could you identify the location -- and,
22 obviously, it doesn't have to be pinpointed -- but
23 the approximate location of the Enterprise Bank in
24 Denmark and explain what the crossroads are nearby.

25 A. Yes, sir. The town of Denmark is right here.

1 This is Highway 321, this is Highway 78. Enterprise
2 Bank would sit approximately right here.

3 (Indicating)

4 Q. And so, to your knowledge, that's where all of
5 this started on June 5th; correct?

6 A. That is correct.

7 Q. All right. Later on June 5th, we've heard
8 testimony that the suspect vehicle wrecked in the
9 town of Olar on Weed Avenue. Can you explain to the
10 jury where that is on the map?

11 A. If you travel south down Highway 321 and come
12 into the town of Olar, you got 321 and Highway 64.
13 It's right in this area right here, just on the
14 outskirts of town was where the vehicle came to
15 rest. (Indicating)

16 Q. Okay. Now, when SLED responded to this scene
17 where the vehicle was, did they attempt to set up a
18 perimeter?

19 A. Yes, sir, they did.

20 Q. And why did they set up the perimeter where
21 they did?

22 A. The individuals occupying the car had fled in
23 this direction, and an attempt was made to set up a
24 perimeter down 64, Highway 321, and along a
25 secondary road, which is not very visible, back here

1 to contain the individuals. (Indicating)

2 Q. What was the weather like that day?

3 A. It was extremely bad weather; thundering and
4 lightning and pouring down rain.

5 Q. Did the SLED dog tracking team come to the
6 area?

7 A. Yes, they did.

8 Q. And did they attempt to start tracking the
9 suspects?

10 A. Yes, they did.

11 Q. Okay. Next testimony that we have is in
12 relevance to the Govan Fire Department. Where on
13 the map is the Govan Fire Department?

14 A. If you travel from Olar north on 321, the town
15 of Govan is here, and the Govan Fire Department sits
16 right here. (Indicating)

17 Q. That road that the fire department is on, you
18 got 321 to the east and to the south, I guess it is,
19 of the fire department, it says on the map State
20 Road S-5-22. What do you know that road as?

21 A. It's Ehrhardt Road in Bamberg County that turns
22 to Govan Road in Barnwell.

23 Q. Okay. So Govan Road and Ehrhardt Road are the
24 same road?

25 A. Correct.

1 Q. Just depending on where you're at whenever
2 you're talking about it?

3 A. Yes.

4 Q. Okay. Now explain to the jury where the
5 defendant was located whenever he was taken into
6 custody by the agents on the night of June 6th of
7 2014.

8 A. The SLED dog team tracked from the Govan Fire
9 Department. Just behind here was an abandoned
10 trailer. All of this was planted in corn at the
11 time. Mr. -- Mr. Leon, the defendant, was taken
12 into custody about right here on this hedge.
13 Between Highway 321 and the railroad tracks that run
14 parallel to 321, there's a hedge over here, the fire
15 department is over here, and Mr. Leon was taken into
16 custody right here. (Indicating)

17 Q. Okay. At that point when he was taken into
18 custody, who brought a vehicle -- was he transported
19 by vehicle from where he was taken into custody?

20 A. He was transported by vehicle.

21 Q. And whose vehicle was it he was transported in;
22 do you recall?

23 A. I don't recall.

24 Q. Okay. Where was he taken?

25 A. He was taken to the fire department --

1 Q. Okay.

2 A. -- which is where we'd staged our -- out of our
3 headquarters.

4 Q. Okay. And when you're talking about we had
5 staged, you're talking about SLED had a whole bunch
6 of people --

7 A. Yes. That's correct.

8 Q. Describe the scene as far as what kind of law
9 enforcement was there.

10 A. We had law enforcement from Columbia, we had
11 law enforcement from South Carolina Highway Patrol,
12 we had DNR officers there. We had, I mean, pretty
13 much anybody we could gather to try to maintain a
14 good perimeter in order to track the suspects down.

15 Q. Bamberg City?

16 A. Bamberg City, Bamberg County.

17 Q. SLED?

18 A. Pretty much anybody that was within the general
19 area, we tried to utilize.

20 Q. Called them all in. Okay. So you set up kind
21 of a temporary command post at the fire station?

22 A. That's where everybody was staged at.

23 Q. Okay. And Mr. Leon James was taken to the fire
24 station?

25 A. Yes.

1 Q. Okay. When Lewis Garvin was taken into
2 custody, where was he?

3 A. Right after Mr. Leon was taken into custody, we
4 received a call that a subject was walking on
5 Highway 64. It would have been right here near
6 Chris' Auto in Olar, South Carolina. Several units
7 left this area, responded over to Highway 64. They
8 began to patrol Highway 64 into Barnwell County
9 right here, which is Hankie Road and Juniper Road.

10 They confronted a black gentleman walking down
11 the roadway, they asked him his name, he said his
12 name was Lewis Garvin. They immediately took him
13 into custody and transported him back to the fire
14 department. (Indicating)

15 Q. No resistance from him?

16 A. No.

17 Q. Okay. So they take him back to the fire
18 department. Now, at that point were they tracking
19 anybody else? Was the dog team looking for anybody
20 else?

21 A. Yes, they were. They were still tracking a
22 known track.

23 Q. Okay. When you say a known track, what does
24 that mean?

25 A. It was a track which they had began on, similar

1 in shape, size, and pattern. They had a similar
2 track and they were -- that dog was actually
3 tracking on the same track.

4 Q. Okay. Where did they see that track the first
5 time?

6 A. At the scene with the car.

7 Q. Okay. So just so we're clear, we're not
8 talking about they're sniffing, this is a -- a human
9 being looks with their eyes and sees a footprint?

10 A. That's correct.

11 Q. And then, subsequently, there's another
12 footprint that they see that, in their mind, matches
13 up, so they're going after that one?

14 A. Yes, sir.

15 Q. So they're continuing to track on into the
16 early morning hours of the 7th of June at this
17 point; correct?

18 A. That is correct.

19 Q. And in that field, tell the jury what happened
20 next.

21 A. The dog team continued to track across this
22 field. Again, it was planted corn, it was extremely
23 high and thick. They reached -- I'm trying to
24 remember the name of this road -- Thunder Road.
25 They reached Thunder Road, it was determined, and

1 due to weather conditions, that the suspect
2 potentially had broken through the perimeter, which
3 is beyond where we had our perimeter set up.

4 The dog team, they took a break for an hour or
5 so in order to get some rest, hydrate. And the next
6 morning at daylight hours, they began to, what we
7 call, hand track where you physically walk and look
8 yourself.

9 Right in this area is a dirt road, it's like a
10 hunting road. In this area, it's real sandy. They
11 observed what appeared to be a track similar in
12 shape, size, and pattern to what they were initially
13 on. They brought the dog back out at that point,
14 restruck the dog, which they put him on the ground
15 and let him begin to smell. He tracked across
16 Ehrhardt Road over into this area right in here, in
17 this small wooded area, where homer James was taken
18 into custody -- one of the suspects in the case was
19 taken into custody.

20 They radioed their coordinates in, they gave a
21 description of where they were at, a helicopter flew
22 over. And I responded here where they brought
23 Mr. Homer James out of the woods. (Indicating)
24 Q. When you say you responded to that filed, were
25 you driving your car?

1 A. I was.

2 Q. This is a map that's got a scale on it -- or
3 it's an overhead satellite image that's got a scale
4 on it. When you say it was a field, I mean, these
5 are pretty good size fields, aren't they?

6 A. Yes, sir, they are.

7 Q. Okay. What is that area, that farm there where
8 Homer James was taken into custody, what do you know
9 that area as?

10 A. I know the area as Brubaker or Brubaker Farms.

11 Q. Okay. Let's talk from the -- from up here
12 where the bank is to the spot down here on Weed Road
13 where the car crashed, how -- what distance is that,
14 approximately?

15 A. It's approximately ten miles, just a little
16 over ten miles.

17 Q. Okay. And from where the car crashed to the
18 Govan fire station, how far is that distance?

19 A. It's approximately three miles.

20 Q. And how about from where the car crashed to
21 where Lewis Garvin was taken into custody? How far
22 is that?

23 A. Again, it's approximately three miles.

24 Q. Okay. And from the fire station to the area
25 where Homer James was taken into custody, how far is

1 that?

2 A. Approximately three miles.

3 (State's Exhibit No. 61 marked for
4 identification.)

5 Q. Okay. I'm going to leave you with the red dot
6 here to see if it works on the screen over there.

7 Okay. Now I'll show you what's been previously
8 marked for identification as State's Exhibit 61. Do
9 you know what this is?

10 A. Yes, sir. This is a drone video of the area
11 which we just discussed on the map.

12 Q. Okay. And were you present when these videos
13 were made?

14 A. Yes, sir, I was.

15 Q. And were you assisting the person who was
16 filming these videos from the drone and explaining
17 to them what was going on so that they could make
18 sure they captured on video the areas you were
19 talking about?

20 A. Yes, sir, I was.

21 Q. Okay. And two things: First of all, when
22 these videos were made, was the field still high in
23 corn?

24 A. No, it wasn't.

25 Q. Okay. But other than that, is the field still

1 in the same shape and general dimensions as the one
2 that you were dealing with that night?

3 A. Yes, sir. It appeared to be.

4 Q. Okay. And the trailer -- we've heard some
5 testimony about the training trailer. Is the
6 training trailer that was there on June 6th, is it
7 still there?

8 A. The framework for the training trailer is
9 there, but the trailer is no longer there.

10 Q. Okay. And we're talking about a single-wide
11 trailer?

12 A. I think it would be a single-wide, yes, sir.

13 Q. But you can tell exactly in that video exactly
14 where the footprint of that trailer was; right?

15 A. Yes, sir. You can still see the framework of
16 the trailer.

17 MR. MILLER: Your Honor, at this time the State
18 would move to introduce State's Exhibit 61.

19 MR. KAZMIERSKI: No objection.

20 THE COURT: Admitted.

21 (State's Exhibit No. 61 admitted in to
22 evidence.)

23 MR. MILLER: Your Honor, at this time the State
24 would request that the videos be published to the
25 jury.

1 THE COURT: Go ahead.

2 MR. MILLER: And for clarification, all of
3 these videos were created on the same day and were
4 given to the Defense as a continuous -- it's about
5 15 minutes, 18 minutes worth of video. They've been
6 broken into the different sections so that Mr. Croft
7 can describe the locations, but it's the same
8 content, same video.

9 THE COURT: All right. And these were taken
10 subsequent to the days in question though; is that
11 right?

12 MR. MILLER: Yes, Your Honor. These were
13 actually taken November, about a week before
14 Thanksgiving.

15 THE COURT: Except for those two conditions,
16 the trailer being missing and -- what was the other?

17 MR. MILLER: The trailer is no longer there --
18 you can see the footprint -- and the corn -- the
19 field is cut down in corn.

20 THE COURT: Okay. Other than that, they fairly
21 and accurately represent what the conditions were
22 that day?

23 THE WITNESS: Yes, sir, they do.

24 THE COURT: Okay. You can publish them.

25 MR. MILLER: Thank you. And, Your Honor, while

1 these videos are playing -- there's no sound with
2 them, obviously, since they're drone videos. But
3 while these videos are playing, I've asked Special
4 Agent Croft to point out features to the jury by the
5 use of the laser pointer so that the jury can
6 understand the orientation.

7 THE COURT: Okay.

8 (Video played for the Court and the jury.)

9 THE WITNESS: Okay. This is first video is
10 video -- we're taking off at the edge of Weed Road.
11 Weed Road is right here. We're going to fly the
12 video in this direction. Down in this area is where
13 the car came to rest.

14 This is Highway 321, which this is south,
15 north. This is the railroad which I spoke of.
16 Right up here where the road turns in is where the
17 car comes to rest. (Indicating)

18 BY MR. MILLER:

19 Q. Now what -- right where the trees in the middle
20 of the road stop, what's that right there?

21 A. Right here? (Indicating)

22 Q. Yes, sir.

23 A. The road comes together right here. There's a
24 little piece of fence here, there's a piece of fence
25 right here, and there's a power line, which you see

1 there. Right here is where the car came to rest.
2 There's a cedar tree right there. The car was on
3 this side of the cedar tree.

4 This area, again, is Highway 321 and the
5 railroad tracks. This area here is where our dog
6 team ran. This is the water towers in Olar. This
7 is the telephone tower just off of -- I think it's
8 Thunder Road.

9 Govan would sit right in this area. We're
10 trying to get approximately 400 feet to where you
11 can see it, but Govan -- this field right here is
12 where the Govan Fire Department and Ehrhardt Road is
13 going to be.

14 Denmark would sit this -- in this direction.
15 This is going to be in the general direction of
16 where Mr. Homer James was taken into custody. And
17 towards Barnwell, which is in this direction -- not
18 exactly in that location where I'm pointing, but in
19 this general direction is where Mr. Lewis Garvin was
20 taken into custody. This is actually our cars here
21 where we're flying the drone from. (Indicating)

22 Q. Now, on Weed Road where the trees aren't
23 running down the middle of the road, that's all Weed
24 Road there running parallel to 321, is it not?

25 A. I think it is, yes, sir.

1 Q. Okay.

2 A. All right. This is Govan Fire Department which
3 we spoke of. We're taking off right behind where
4 the trailer would have sat. This is the hedgerow.
5 Just on the other side of this hedgerow is the
6 railroad tracks and 321 on the other side of that.
7 There's an older house here.

8 In this area of the hedgerow -- not going to be
9 able to pinpoint exact, but in this hedgerow is
10 where the defendant Mr. Leon James was taken into
11 custody. Once he was taken into custody, he was
12 walked across these tracks and placed in a vehicle
13 which was waiting on Highway 321 and escorted him
14 back to the Govan Fire Department.

15 All of this was planted corn the night of the
16 incident. Here's the recycle center, which sits on
17 Ehrhardt Road. This framework right here is the
18 trailer which used to be there. You can see the
19 framework there. Here's the Govan Fire Department.
20 Again, these are our cars where we're flying the
21 drone.

22 We're going to try to get up high enough that
23 Olar would be sitting back here. Denmark is just
24 the opposite direction of where you're facing now.
25 Coming into sight there, that white is the tower --

1 the water tower for the city of Olar. This is
2 Ehrhardt Road, Highway 321 and, again, the railroad
3 bed. And you can see the water tower. (Indicating)
4 Q. This area directly across from the fire
5 department, the fenced-in area, do you know what
6 that is?

7 A. I do not, no, sir.

8 Q. Okay. Does that fence go all the way around
9 that place?

10 A. Yes, sir.

11 Q. Okay.

12 A. This is just a picture across Highway 321.
13 There's the church on Highway 321. This area here
14 is where Mr. Leon was taken into custody. This is
15 overlooking what I know as Brubaker Farm. All of
16 this was planted corn at the time of the incident.
17 This is Ehrhardt Road toward Barnwell County.

18 We're going to fly the drone this direction.
19 If you continued down Ehrhardt Road, right in this
20 area is where the dog team, due to weather
21 conditions, trying to get rehydrated, they took a
22 break. We parked their vehicle right in this area
23 where they rested approximately for an hour waiting
24 on daylight. After daylight, they crossed Thunder
25 Road which sits just on the other side of this wood

1 line. We're not able to see it, but it's right
2 here, is where they located the track, similar
3 shape, size, and pattern to what they began to track
4 on.

5 And right up here, we're not high enough,
6 you're not able to see it over the treeline, but
7 right up here is where Mr. Homer James was taken
8 into custody. (Indicating)

9 Q. You can go ahead and stop that one there.
10 Let's go to number three, please.

11 A. All right. This is on Highway 64 in Barnwell
12 County. Olar -- let me get my -- this is Highway
13 64, this is Hankie Road, and this is Juniper Road.
14 These are our cars. We're flying straight above us
15 there in this one. Right in this area is where
16 Mr. Lewis Garvin was taken into custody.
17 (Indicating)

18 Q. So back down Highway 64 --

19 A. Down here. You can't see it because of the
20 lighting that well, but you see the road curves
21 around? This is going to be the water towers in
22 Olar. And that distance is approximately three
23 miles there. (Indicating)

24 Q. All right. And the final one.

25 A. All right. This is -- we're flying off of

1 Brubaker Farm where Mr. Homer James was taken into
2 custody. This would be Thunder Road out here. This
3 is the driveway which we came -- which I came in on
4 when he was taken into custody. Denmark is going to
5 be in this general direction.

6 We're trying to get around now where we can see
7 back toward the Govan Fire Department. And you
8 would be -- let's see if we can -- (Indicating)

9 Q. Mr. James was arrested the morning of the 7th;
10 correct?

11 A. That's correct, yes, sir.

12 From this location, Olar would be to your right
13 corner. The fire department -- you can see this
14 actual field on the aerial map. The fire department
15 would be in this general area here. (Indicating)

16 Q. Okay. Thank you. Please answer any questions
17 defense counsel may have for you.

18 A. Okay. Thank you, sir.

19

20

21 CROSS-EXAMINATION

22 BY MR. KAZMIERSKI:

23 Q. Ultimately when the three suspects were caught,
24 all of them were at least three miles apart; is that
25 correct?

1 A. When they were taken into custody?

2 Q. Correct.

3 A. That is correct.

4 Q. Okay. Thank you.

5 THE COURT: Redirect?

6 MR. MILLER: None, Your Honor.

7 THE COURT: Okay. Let's go ahead and take a
8 break to use the restroom. When you go back to your
9 jury room -- we'll be gone about ten minutes --
10 don't begin deliberations or discussions about the
11 case in any way. We'll see you back in about ten
12 minutes.

13 MR. MILLER: Your Honor, may Agent Croft be
14 excused?

15 MR. KAZMIERSKI: No objection.

16 THE COURT: All right. You're excused. Thank
17 you.

18 (The jury exits the courtroom at 11:12 AM.)

19 MR. MILLER: Judge, for scheduling purposes, we
20 have four more witnesses that we intend to call
21 today, at least two of which, I believe, will be
22 very brief, 15 minutes or so.

23 THE COURT: You want to get those in before
24 lunch?

25 MR. MILLER: Certainly we can get in the next

1 witness, Deputy Hamilton, who actually took the
2 defendant's shorts from him after he was arrested
3 and was brought to the jail. That's all he's
4 testifying about, I believe, so we can certainly
5 knock him out. And I'd say within 90 minutes after
6 that we'll be done with the State's presentation.

7 THE COURT: Okay. You want to do one more
8 before lunch, break for lunch, and then do your
9 other three?

10 MR. MILLER: That will work out, Judge. And
11 we -- we're going to be flexible about it, Judge,
12 whatever you need.

13 THE COURT: All right. So you guys got some
14 idea that if you're going to put up anything, you
15 can be ready by this afternoon?

16 MR. KAZMIERSKI: Yes, sir, Your Honor.

17 THE COURT: Okay. Well, let's take ten, and
18 we'll come back and get that one witness done, and
19 then we'll take an early lunch.

20 MR. MILLER: Judge, we can probably get both of
21 them done before lunch.

22 THE COURT: All right. That's even better.
23 Let's take ten minutes.

24 (Short break.)

25 THE COURT: All right. Are we ready?

1 MR. MILLER: The State is ready to proceed,
2 Your Honor.

3 THE COURT: Okay. Bring the jury back in.

4 (The jury enters the courtroom at 11:33 AM.)

5 THE COURT: Okay. One more witness before we
6 take a lunch break.

7 MR. HAMMACK: Your Honor, the State calls
8 Deputy Shawn Hamilton.

9 SHAWN HAMILTON

10 being first duly sworn, testified as follows:

11 THE WITNESS: Yes, I do.

12 DIRECT EXAMINATION

13 BY MR. HAMMACK:

14 Q. Deputy Hamilton, can you please state your full
15 name for the record.

16 A. Shawn Ronald Hamilton.

17 Q. By whom are you employed?

18 A. The Bamberg County Sheriff's Office.

19 Q. About how long have you worked over there?

20 A. About three years.

21 Q. Were you working back on or about June 6th of
22 2014?

23 A. Yes, sir, I was.

24 Q. What were you doing that night?

25 A. I was actually covering for another officer

1 that was out that night. So I was working in his
2 position taking calls that came in to the sheriff's
3 office.

4 Q. All right. Did you have an opportunity to get
5 involved in the apprehension and transport of
6 Mr. Leon James?

7 A. Yes, sir, I did.

8 Q. All right. Tell me kind of what you did there.

9 A. After SLED dog teams arrived, I was contacted
10 by SLED officers that they apprehended an individual
11 that was laying in water next to the railroad
12 tracks. So I drove my county vehicle because I had
13 a cage in it and put him in the backseat of my
14 patrol vehicle and transported him to the fire
15 station in Govan.

16 Q. All right. What did you do -- after you left
17 the fire station, where did you take him?

18 A. I took him back up here to the Bamberg County
19 Detention Center and placed him in the detention
20 center.

21 Q. All right. And what occurred at the detention
22 center while you were there?

23 A. I advised the detention center officers that
24 were there to take his clothing from him and bag it
25 up for me. I gave them a bag, at which time they

1 bagged it up, I sealed it up as evidence, and waited
2 for SLED so I could turn the evidence over to SLED.

3 Q. Do you remember who you gave it to?

4 A. I gave it to one of the SLED agents; either him
5 or Mr. Croft.

6 (State's Exhibit No. 67 marked for
7 identification.)

8 Q. Okay. If I may approach, do you recognize what
9 that is?

10 A. Yes, sir. That's my signature saying what time
11 and date it was collected. It was sealed by me on
12 6/7/2014. Chain of custody was from myself to SLED.

13 Q. Okay. Can you tell what's in that bag just
14 from what's written on there?

15 A. Yes, sir. A pair of shorts, brownish in color.

16 Q. Does it identify where they came from?

17 A. Yes, sir. Leon A. James.

18 Q. All right. If you will, take a look in that
19 bag and take a look at those shorts for me.

20 A. A pair of brown in color Beverly Hills Polo
21 Club shorts.

22 Q. Does that appear to be the shorts that you got
23 from Mr. Leon James that night?

24 A. Yes, sir.

25 MR. HAMMACK: Your Honor, the State would move

1 to introduce 67 into evidence.

2 MR. KAZMIERSKI: No objection.

3 THE COURT: Admitted.

4 (State's Exhibit No. 67 admitted in to
5 evidence.)

6 MR. HAMMACK: No further questions for this
7 witness.

8 MR. KAZMIERSKI: No questions.

9 THE COURT: All right. Thank you. You may
10 step down.

11 Okay. We're going to break for lunch. It's
12 only 11:40. How about y'all be back in the jury
13 room at 1:00 and we'll resume at that time. Again,
14 while you're at lunch, don't talk to anybody about
15 the case, including other members of the jury.
16 Don't discuss witness demeanor, any of the evidence,
17 and if anybody does attempt to talk to you about the
18 case, please report that when you come back.

19 So if you would, go on ahead and we'll take a
20 little early lunch and see you back at 1:00. Enjoy
21 your lunch.

22 (The jury exits the courtroom at 11:38 AM.)

23 THE COURT: All right. Let's meet back in an
24 hour and we can take up that evidence and you can
25 have that witness ready to tell us what parts of the

1 statement he wants in and take arguments on that.

2 (Luncheon recess 11:40 AM - 12:50 PM.)

3 THE COURT: Okay. Whose statement are we
4 proffering?

5 MR. HARTE: Your Honor, that would be Senior
6 Special Agent David Williams with SLED.

7 THE COURT: Okay. Is he available now?

8 MR. HAMMACK: He is.

9 THE COURT: Let's go ahead and bring him on up.

10 DAVID WILLIAMS

11 being first duly sworn, testified as follows:

12 THE WITNESS: I do.

13 IN-CAMERA EXAMINATION

14 BY MR. HARTE:

15 Q. Agent Williams, where are you employed?

16 A. The State Law Enforcement Division, commonly
17 known as SLED.

18 Q. What's your position there?

19 A. Special agent.

20 Q. What was your involvement in this case?

21 A. I was the case agent.

22 Q. In your role as case agent, did you have
23 occasion to interview the defendant on June 19th,
24 2014?

25 A. Yes, sir, I did.

1 Q. Did the defendant provide you with a written
2 statement at that time?

3 A. No, sir.

4 Q. Was that interview audio-recorded?

5 A. No, sir.

6 Q. Was it videotaped?

7 A. No, sir.

8 Q. Why not?

9 A. The -- the equipment was not available.

10 Q. Where was he interviewed?

11 A. At the Bamberg County Detention Center.

12 Q. What did the defendant tell you about his
13 involvement in the armed robbery?

14 A. He told me that he went into the bank twice.
15 He told me that he then drove Lewis Garvin and Homer
16 James to the front of the bank where they got out,
17 went in and robbed the bank; he drove around to a
18 little dirt road behind the bank where he waited on
19 them; they came out, got into the car, and he drove
20 them away.

21 Q. Did the defendant tell you if he was the
22 individual driving the car when the vehicle wrecked?

23 A. Yes, sir.

24 Q. What did he say?

25 A. He said that he was -- he got out and ran

1 because he was afraid.

2 MR. HARTE: Thank you. No further questions.

3 THE COURT: You want to ask him anything?

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

5 IN-CAMERA EXAMINATION

6 BY MR. WILSON:

7 Q. Agent Williams, I think you said this interview
8 was not audio or video recorded.

9 A. No, sir.

10 Q. And you didn't take any kind of written
11 statement from Mr. Leon James?

12 A. No, sir.

13 Q. You didn't handwrite a statement or type a
14 statement for him to sign and you didn't ask him to
15 handwrite a statement?

16 A. No, sir.

17 Q. You think you would have taken notes of your
18 interview of Mr. James?

19 A. Yes, sir.

20 Q. But those notes have been destroyed or are not
21 available now; correct?

22 A. That is correct.

23 Q. You testified to that at the Jackson v. Denno
24 hearing.

25 A. That is correct.

1 Q. So your exact notes of exactly what he told
2 you -- or a more accurate representation of what he
3 told you would have been in your notes; correct?

4 A. No, sir. My Memorandum of Interview accurately
5 reflects what he told me in the interview. My notes
6 would have reflected the same thing.

7 Q. And that's taken from your notes?

8 A. Correct.

9 Q. But we don't have your notes to compare them to
10 your Memorandum of Interview.

11 A. That's correct.

12 Q. Okay. Now, your Memorandum of Interview is not
13 an exact quotation, word for word, of what Mr. James
14 told you?

15 A. No, sir.

16 Q. It's your recollection and your summary from
17 your recollection and your notes of what Mr. James
18 told you?

19 A. That's correct.

20 Q. It's not word for word and sentence by sentence
21 exactly how he told you things happened; correct?

22 A. No, sir.

23 Q. And this interview took place on June 19th of
24 2014?

25 A. Yes, sir.

1 Q. And you did not draft your Memorandum of
2 Interview until July 3rd of 2014?

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

4 Q. Okay. So the statements that you just
5 attributed to Mr. -- to the defendant when you
6 testified, the statements that you said that he told
7 you he entered the bank twice, drove Lewis and Homer
8 to the bank, they went inside, he drove around to
9 the back, they came out, got in the car, he drove
10 away, and he ran because he was afraid, those aren't
11 exact quotations of what he told you?

12 A. No, sir.

13 Q. And they're not exactly in the same sequence
14 and order maybe of how he told you?

15 A. They're pretty close to the same order.

16 Q. But not --

17 A. Not an exact quote, no, sir.

18 Q. All right. And the context in which they're
19 told may vary somewhat from what's in your
20 Memorandum of Interview from exactly the way
21 Mr. Jones would have said it during the interview.

22 A. Possibly.

23 Q. Mr. James, I'm sorry. Leon, sorry.

24 Now, during your interview of the defendant, he
25 also told you that during this incident a gun had

1 been pulled on him by another person in the vehicle.

2 MR. HARTE: Your Honor, this is obviously the
3 portion of the testimony that we'd be objecting to.

4 THE COURT: I understand.

5 A. That's correct.

6 Q. And that was told in the same context of the
7 complete story that he was telling you about what
8 happened on this day?

9 A. Yes, sir.

10 Q. Okay. Now --

11 MR. WILSON: One moment, please, Your Honor. I
12 think that might be all I have --

13 BY MR. WILSON:

14 Q. So all of these -- and let me just rephrase
15 that. All of these statements that you say the
16 defendant told you about entering the bank, driving
17 the vehicle, and a gun being pointed at him, those
18 were all the same story, the same context, the same
19 narrative; correct?

20 A. Yes, sir.

21 Q. Okay. And in your evaluation, all of that went
22 together, didn't it, that's why you put it all in
23 your Memorandum of Interview?

24 A. That's correct.

25 MR. WILSON: That's it. Thank you, Your Honor.

1 THE COURT: Redirect?

2 MR. HARTE: Briefly, Judge.

3 IN-CAMERA EXAMINATION

4 BY MR. HARTE:

5 Q. Agent Williams, did the defendant identify the
6 person who pulled the gun on him after the
7 commission -- after the bank robbery had commenced?

8 A. Yes, sir.

9 Q. Were you -- was it your understanding that was
10 the same -- how did he identify him?

11 A. As D.

12 Q. Was it your understanding that D was the same
13 person whose driver's license was later found in the
14 vehicle?

15 A. Yes, sir.

16 MR. HARTE: No further questions.

17 THE COURT: You want to ask him anything else?

18 MR. WILSON: Judge, I don't have any more
19 questions from the testimony I just heard.

20 THE COURT: So D is this person in North
21 Carolina who is coming down?

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

23 THE COURT: Okay. Anybody want to ask him
24 anything else before we have arguments?

25 Okay. Well, why don't we excuse you to go back

1 out while we have these arguments. Thank you.

2 (David Williams exits the courtroom.)

3 THE COURT: All right. What's the State's
4 position on this witness?

5 MR. HARTE: Your Honor, the State's position
6 would be that the entire statement that the State
7 would seek to introduce through Agent Williams would
8 be hearsay, but the inculpatory portions of that
9 statement would be admissible under Rule 804(b) (3).

10 THE COURT: How so?

11 MR. HARTE: They would be statements against
12 the defendant's the penal interest. They would be
13 inculpatory statements.

14 THE COURT: Yeah, but 804 is when the witness
15 is unavailable. And it's pretty clear that you
16 can't declare that a witness is unavailable because
17 he's taken the Fifth.

18 MR. HARTE: At this point the defendant hasn't
19 exercised his Fifth Amendment right to remain
20 silent.

21 THE COURT: Well, then you can bring him in
22 afterwards to impeach him if he testifies as saying
23 something different. Why don't you look at
24 801(d) (2)?

25 MR. HARTE: Yes, sir.

1 THE COURT: All right. What's the very first
2 thing it says? Well, 801(d) says: A statement is
3 not hearsay if, you go down to 2, the statement is
4 offered against a party. And then it goes on to
5 say: And it's his own statement that he either made
6 or somebody made it in a representative capacity of
7 him. So that would be really what we're applying.

8 So I think that's what I was trying to bring
9 out just before we talked about this at lunch off
10 the record was, 804 is not going to apply because
11 the -- at this point, I'm going to go with the fact
12 that he's not testifying and he's not available or
13 he -- you can't use him as unavailable because he's
14 taken the Fifth. He can't use it, you can't use it
15 under that.

16 But you could argue that this is a statement
17 against his interest under 801(d)(2) and, therefore,
18 it is not hearsay insofar as the inculpatory
19 material is concerned. The exculpatory material
20 would be hearsay because that is not against his
21 interest. So just by the definition of hearsay
22 under 801(d), inculpatory material is, by
23 definition, not hearsay; exculpatory material
24 remains hearsay.

25 So you couldn't bring in exculpatory material

1 through somebody, which is what their problem is.
2 But your theory would be this is inculpatory
3 material, it's a statement against the party's
4 interest and, therefore, that portion which
5 inculcates him is not hearsay. Would that perhaps
6 be a more accurate -- what you're trying to argue?

7 MR. HARTE: Yes, Your Honor. Thank you for
8 fleshing out the State's position.

9 THE COURT: Okay. How about the Defense?

10 MR. WILSON: Your Honor, I agree wholeheartedly
11 with the Court that 804 doesn't apply. State v.
12 Cheeseborough, which went all the way up to the
13 Supreme Court, clearly says: You're not unavailable
14 just because you assert your Fifth Amendment right.
15 So the manner in which they wanted to proffer and
16 put the evidence in is -- you're exactly correct, it
17 would have been totally unallowable. Looking to --

18 THE COURT: It still does the same analysis
19 though.

20 MR. WILSON: Somewhat.

21 THE COURT: I think the cases that argue why
22 something is inculpatory and exculpatory, the theory
23 applies, it's just under a different rule.

24 MR. WILSON: Exactly. And, Your Honor, when
25 you look at 801(a)(2) -- sorry, 801(d)(2), talking

1 about the statement being offered if it's the
2 party's own statement and made in an individual or
3 representative capacity, Your Honor --

4 THE COURT: All of those exclusions are ors.
5 They don't all have to apply --

6 MR. WILSON: Sure.

7 THE COURT: -- any one of them. So the real
8 focus needs to be --

9 MR. WILSON: Is the statement --

10 THE COURT: -- if the statement is offered
11 against the party.

12 MR. WILSON: Yes, sir. And, Your Honor, I
13 think, as you just stated a moment ago, the analysis
14 has to be looked at, at least somewhat similar and
15 maybe in the same vein as the Courts that have
16 looked at that issue under 804, whether it was an
17 inculpatory statement or whether it was an
18 exculpatory statement.

19 And in those cases, Your Honor, the Courts
20 looked at the statement as a whole in the context,
21 the entirety of the statement that's looking to be
22 provided, and looked to see if the statement -- and,
23 Your Honor, let me find this language real quick, if
24 I could. If the statements were clearly given to
25 implicate the defendant against himself and were

1 against his penal interests in such a manner that it
2 was unequivocal.

3 Judge, we just heard testimony from the officer
4 that throughout this whole interview and throughout
5 the whole context of this story and his narrative
6 and this statement that he took, for which we have
7 no reliability from the standpoint of his notes, a
8 video, an audio, or a handwritten statement.

9 THE COURT: That goes to the weight and the
10 jury has to decide whether to believe it or not
11 believe it.

12 MR. WILSON: I agree with that, Your Honor,
13 when it goes to the weight of the jury. But I also
14 think it goes to the weight of how you should look
15 at the statement and consider the testimony that
16 came from the officer that testified, because
17 there's nothing to indicate the reliability of the
18 statement that he attributes to the defendant, other
19 than his memorandum of understanding [sic].

20 And what he just testified to is that the
21 complete and entire context and story and relation
22 of this included the defendant being held at
23 gunpoint throughout this whole process. Now, a
24 statement from the defendant saying, I drove to the
25 bank, two guys got out, went in and robbed the bank,

1 came out the back and told me to drive and I drove
2 off because I was at gunpoint is not inculpatory,
3 Your Honor. There's no portion of that that's
4 inculpatory.

5 THE COURT: Well, actually, it is. I mean,
6 under the hand-of-one-hand-of-all principle, he
7 doesn't have to go into the bank, he only has to
8 participate and not be merely present. Now, your
9 argument, because you've asked for a jury charge on
10 mere presence, I understand, will be coming.
11 But, I drove these guys to the bank. Now, if he
12 wants to say, I had no idea that they were going to
13 rob the bank, but he's got to get on the witness
14 stand and say that.

15 But if somebody is charged with participating
16 in a bank robbery and they admit that they drove the
17 getaway car, under the State's theory, that's
18 inculpatory. Whether or not he went inside the
19 bank, he dropped off two guys and they came back.
20 The real -- I think the real thing -- those are, in
21 and of themselves -- while they're not statements
22 that say I knew they were going to do it, you can
23 argue that he admitted that he participated and
24 under the hand-of-one-hand-of-all theory that the
25 State propounds, they are inculpatory.

1 I think the thing -- and I'll let you finish.
2 I'm just trying to think out loud a little bit
3 myself, which makes your job difficult. But I want
4 to let you know what I'm thinking so you can address
5 it.

6 MR. WILSON: Sure.

7 THE COURT: The real problem that you got is
8 this other statement that they don't want to come in
9 to say these -- somebody held a gun to me and that's
10 why I participated in it. And so there's this
11 element of fairness that almost goes in to say,
12 well, you got to put that in. Well, that's -- under
13 the way I read the thinking on Williamson vs. United
14 States, you can clearly delineate exculpatory from
15 inculpatory parts of the statements, and you can do
16 that.

17 The problem that I see in your argument, which
18 I didn't really know was coming until he just said
19 it, was the guy that held the gun was not one of the
20 guys that got arrested. It's apparently going to be
21 this guy who was in North Carolina the whole time
22 and will come in and testify, I wasn't there, I was
23 North Carolina and can prove it. So it would be one
24 thing to say it was one of these other two guys who
25 got arrested and aren't on trial today that held a

1 gun to my head, but it's a problem to let that come
2 in -- to make that come in when it's demonstrably,
3 at least from the State's perspective, not true; it
4 couldn't have been the guy in North Carolina that
5 held the gun to him, and that's why he drove the
6 car.

7 So how are you going to get around that?
8 Because I understand your theory would be, well, we
9 need to make the jury understand this whole picture
10 and that he was driving under coercion. Well, if
11 we're going to let him say that he only participated
12 because somebody held a gun to his head, then you're
13 going to have to get in there that he said it was a
14 guy that wasn't there, at least was, arguably, in
15 North Carolina the whole time. Isn't that as much
16 of a problem that -- you're kind of like attacking
17 your own credibility.

18 MR. WILSON: Sure. Can I go back and talk
19 about the statement first, Judge?

20 THE COURT: Of course. You can start from
21 wherever you'd like.

22 MR. WILSON: Judge, I agree with your analysis.
23 If the statement that my client made was, I drove to
24 the bank, two guys got out of the vehicle, they went
25 in the bank, I drove to the back, they got in the

1 car, and I took off, all of that would be admissions
2 admissible. But every one of those statements
3 pursuant to the officer's testimony was coupled with
4 the, I drove to the bank because I had a gun to my
5 head. I -- two guys got out, I drove to the back
6 because I had a gun to my head. So --

7 THE COURT: But that's not really what he
8 testified to. I mean, he didn't preface every
9 statement with, but I did it because I had a gun to
10 my head. At least as the testimony came out, and it
11 wasn't made any clearer in cross-examination, was he
12 said the defendant -- or he said, I drove to the
13 bank, I dropped these guys off, I drove around, I
14 got back in, and I ran because I was afraid. Then
15 on cross you asked him, well, isn't it true that he
16 said somebody pulled a gun on him? He didn't say, I
17 dropped these guys off because they had a gun on me.
18 It didn't come out that way.

19 MR. WILSON: Judge, I understand his testimony
20 and recall his testimony being throughout the entire
21 context and the entire narrative, the fact that
22 there was a gun pulled was part of the story, and it
23 was throughout the entire narrative and context of
24 his --

25 THE COURT: You could argue that, I suppose.

1 And we can play it back. But it didn't -- it seemed
2 a little more segregated to me, the way it was
3 asked. And I understand you guys have a little
4 different familiarity with the facts than I do, so
5 we're trying to flesh it out. But aren't you still
6 stuck with the problem of trying to put in a
7 statement that is --

8 MR. WILSON: The fourth guy.

9 THE COURT: A guy that's not there.

10 MR. WILSON: Judge, no, sir. I don't --

11 THE COURT: And there's no evidence that he was
12 there other than his picture ID.

13 MR. WILSON: Well, I don't believe that we are.
14 For one thing, we don't -- it could have been
15 Darrell Lassiter whose ID was found in the vehicle
16 or someone else. It didn't have to be Darrell
17 Lassiter.

18 The only evidence they're going to have that
19 Darrell Lassiter was not in Denmark is some loan
20 documentation or some paperwork that he had signed
21 in North Carolina. They didn't swab him, they
22 didn't test him, they didn't do anything else to
23 investigate him to prove he wasn't there other than
24 he told him he wasn't there and he signed some loan
25 documentation.

1 THE COURT: Well, there's no evidence there was
2 three guys that went into the bank --

3 MR. WILSON: Sir?

4 THE COURT: There's no evidence that there was
5 anybody participating in this other than those three
6 guys, two of whom went in to the bank.

7 MR. WILSON: No, sir, there's not yet. But
8 they want to introduce evidence that our client gave
9 a statement admitting to driving and doing all of
10 those things when totally encompassed in that
11 statement in the bounds of fairness, in the bounds
12 of completeness, in the bounds of prejudice versus
13 probative value is the fact that two guys went into
14 the bank while he was held at gunpoint driving the
15 vehicle and told to drive the get-away.

16 Your Honor, whether that fourth person is
17 actually Darrell Lassiter, or anyone else for that
18 matter, I don't know that we have to prove that to
19 be able to deal with this issue. That fourth person
20 could have been somebody who stole Darrell
21 Lassiter's wallet or somebody who had Darrell
22 Lassiter's ID, or it could have been Darrell
23 Lassiter himself.

24 I don't think that -- I understand the Court's
25 concern that that may be relative to some

1 trustworthiness or some issues in that regard, but I
2 don't know that that's the linchpin decision that
3 would direct the Court how to resolve this issue
4 about whether that fourth person ultimately comes
5 out to be Darrell Lassiter or somebody else or
6 somebody that the State can't even address, Your
7 Honor.

8 THE COURT: But don't we keep circling back to
9 the original problem of is that part of the
10 statement, somebody held a gun to my head, that's an
11 exculpatory statement, and for an exculpatory
12 statement to come in, there's got to be an exception
13 to the hearsay rule or it's got to not be hearsay.
14 And it's not hearsay if it's inculpatory, it's
15 hearsay if it's exculpatory. It keeps circling back
16 to that same thing.

17 And the reason why we have that rule is, as the
18 cases say, you want to get up and say something, you
19 got to say it on the stand. So that if your client
20 wants to say, the only reason I did this is because
21 somebody put a gun to my head and I told that to the
22 officer, then he's got to get up on the witness
23 stand and say it.

24 MR. WILSON: Judge, with all respect, I drove
25 to the bank because someone had a gun to my head is

1 exculpatory. And what the solicitor wants to do is
2 to break that down, break that statement out into
3 two parts and only use the part of, I drove to the
4 bank.

5 Your Honor, that statement in its entire
6 context is, I drove to the bank because someone had
7 a gun to my head. There's nothing inculpatory about
8 that independent of the I had a gun to my head. And
9 the testimony is that each -- that the entire
10 context of this narrative and the entire context of
11 what the officer says the defendant related to him
12 was in I have a gun to my head or I'm held at
13 gunpoint. That's what's in his Memorandum of
14 Interview and that's what he testified to on the
15 stand.

16 THE COURT: Well, it might be that we need to
17 bring the witness back in and flesh that out a
18 little bit more. I see the fairness part of your
19 argument and I have a real concern about
20 cherry-picking the statement. And it's -- it's one
21 thing to say, well, this is what he said; it might
22 not be everything he said, but it's what he said.
23 But if you -- if it's like you're saying, he goes,
24 yeah, I drove the car to the bank, but it was
25 because somebody had a gun to my head, then that

1 whole statement either comes in or doesn't come in.
2 But you don't get to put a period in it and break it
3 off and make it seem to be something other than what
4 it said.

5 And I have a real concern about that. That's
6 not exactly the way it came out with the proffer,
7 but perhaps you can flesh that out a little bit more
8 if we bring the statement -- bring him back in and
9 redo the proffer.

10 MR. HARTE: Yes, Your Honor, we'll get him
11 back.

12 THE COURT: Because the solution is -- I
13 mean --

14 MR. MILLER: Your Honor --

15 THE COURT: -- the statement would not come in
16 at all if that were the case.

17 MR. MILLER: Your Honor, would it assist the
18 Court to have -- in making its ruling to have an
19 actual copy of the Memorandum of Interview that was
20 prepared by the agent?

21 THE COURT: Only if you use it for
22 cross-examination and impeachment or if he does for
23 impeachment. I mean, I'm not allowed to consider it
24 any more than anyone else if it's inadmissible. The
25 only way it would be allowed to come in would be for

1 impeachment.

2 MR. WILSON: So Officer Williams --

3 THE COURT: You're under oath. I'm allowing
4 him to reopen the testimony to flesh out a few
5 points.

6 IN-CAMERA EXAMINATION

7 (Continued)

8 BY MR. WILSON:

9 Q. Earlier in the questioning that was asked of
10 you, you related the statements that the defendant
11 made to you when you interviewed him; correct?

12 A. Yes, sir.

13 Q. Okay. And you related a number of statements
14 to the solicitor that he had made about driving the
15 vehicle to the bank, two men getting out of the
16 vehicle, going into the bank, him driving the
17 vehicle around to the back of the bank, the two men
18 coming out, getting into the vehicle, him driving
19 off, and then running because he was scared. You
20 recall all of that?

21 A. Yes, sir.

22 Q. And then in response to my questions, you
23 related that he had given a statement that during
24 all of this event, he was held at gunpoint and
25 forced to do this at gunpoint; correct?

1 A. Not the whole entire event.

2 Q. Okay.

3 A. Only from the point where he drove back up in
4 front of the bank. He was direct to do that by
5 Homer James.

6 Q. Okay.

7 A. They got out of the car. At that point he told
8 me he realized then that they intended to rob the
9 bank. That's when D pulled the gun on him and told
10 him to drive around to the rear of the -- that
11 little road behind the bank.

12 Q. Okay. So throughout that whole process, D had
13 a gun and told him to drive to the back of the bank,
14 and then they fled from there, I guess. Is that
15 what I'm understanding your testimony to be?

16 A. He also said that when Homer and Lewis Garvin
17 came back to the vehicle, that they had the money,
18 that the dye pack exploded. I don't think he called
19 it a dye pack, but that's what happened. The dye
20 pack exploded as they got into the vehicle. He said
21 that D then got out of the car and ran.

22 Q. Okay. I get all that. But my question is
23 this: Throughout your entire interview, the
24 defendant maintained that he had been at gunpoint
25 from somebody named D. Somebody named D had a --

1 A. No, sir, not for the entire thing. Only from
2 the point when he was asked -- when he drove the car
3 back in front of the bank and Lewis Garvin and Homer
4 James got out of the vehicle and put masks on and
5 ran inside, he said that's when he realized that it
6 was a bank robbery. At that point, D pulled a gun
7 on him and told him to drive to that road behind the
8 bank.

9 Q. Okay.

10 MR. WILSON: Can I have just one moment,
11 please, Your Honor?

12 THE COURT: Sure.

13 BY MR. WILSON:

14 Q. All right. Officer, your testimony today, I
15 think we established, that's your recollection of
16 the sequence of your interview with the defendant;
17 correct?

18 A. Yes, sir.

19 Q. And that's what you put in your Memorandum of
20 Interview?

21 A. Yes, sir.

22 Q. That's not an exact wording or an exact recount
23 of what the defendant told you when he was
24 interviewed?

25 A. Not a word for word, but a synopsis of what he

1 said.

2 Q. And that's not an exact sequence of what was
3 told to you during the interview. Is that the exact
4 sequence of the facts that were given to you by the
5 defendant during the interview? Is that the exact
6 order of sequence?

7 A. Pretty close, I think.

8 Q. But you can't testify that that's the exact
9 order of sequence that was given to you by the
10 defendant when you interviewed him?

11 A. I believe that's the exact order that he gave
12 it to me in.

13 Q. Okay. But you can't testify that it was exact
14 order?

15 A. It's pretty close. If it's not exactly, it's
16 pretty close to what he told me.

17 Q. Okay.

18 THE COURT: So you're saying -- you said when
19 they rode back around, this was -- he rode back
20 around and two fellows went out. And at that point,
21 when they went into the bank, that's when D put the
22 gun to him?

23 THE WITNESS: That's what he told me, yes, sir.

24 THE COURT: Okay. So that happened while they
25 were in the bank?

1 THE WITNESS: Correct.

2 THE COURT: Okay.

3 MR. WILSON: Judge, I think his testimony was
4 as they got out of the vehicle, they put masks on
5 and the guy pulled the gun on him.

6 THE COURT: Okay.

7 MR. WILSON: I don't think it was after they
8 were in the bank. I think it's --

9 THE WITNESS: It was sometime during that time
10 period. That's when he told me he realized then
11 that it was a bank robbery, and that's when D pulled
12 a gun on him and told him to drive around to the
13 road behind the bank.

14 THE COURT: All right. Do you want to ask him
15 anything?

16 MR. HARTE: No, Your Honor.

17 THE COURT: All right. You can step back down.

18 MR. WILSON: Could he be excused, please, also
19 outside of --

20 THE COURT: Yeah. That's what I meant.

21 MR. WILSON: Thank you. May I be heard just
22 one more moment?

23 THE COURT: Yes, sir.

24 MR. WILSON: Your Honor, I think a fair
25 interpretation of his testimony about a statement

1 that's going to be attributed to the defendant who,
2 at this point, still has the right to and, you know,
3 at this point we would tell you we intend to assert
4 the Fifth Amendment right against
5 self-incrimination, a statement that he's going to
6 give that is as unreliable as what is documented in
7 a memorandum of understanding for which he cannot
8 recollect the sequence of the events exactly, nor
9 can he produce the wording that was used exactly by
10 the defendant in giving the statement, but a fair
11 interpretation of his statement is from the moment
12 this robbery started, there was a gun to his head.

13 From the moment anyone entered the bank --
14 prior to anyone entering the bank and from the
15 moment that this robbery started, there was a gun to
16 his head. In looking at the analysis that we've
17 kind of been back and forth on, I don't know -- I
18 don't want to say I don't know how the Court could.
19 But I don't believe it would be proper for the Court
20 to allow testimony about any of those statements of
21 driving the vehicle without the corresponding
22 portion of because there was a gun to my head.

23 MR. HARTE: Your Honor, everything besides --
24 everything including the sequence of events that
25 came out during the recross that we just did goes to

1 the weight and not the admissibility of the
2 testimony. We don't --

3 MR. WILSON: I disagree, Your Honor.

4 THE COURT: Well, there's always the inherent
5 question of the weight if I allow it. The real
6 thing you have to do is step back -- I keep going
7 back to the definition of hearsay, and it's a
8 statement offered against a party.

9 And the Williamson vs. U.S. case harkens back
10 and says: The trial court has a duty to make an
11 analysis of the entire picture to determine if, in
12 fact, that is an inculpatory statement. And in
13 listening to this witness, he says, as I understand
14 his testimony, that the defendant admits he was in
15 the car with all of these people, including somebody
16 named D, and was unaware that there was a robbery
17 going up until these guys got out of the car, put on
18 their masks, and this dude -- the other dude put a
19 gun to his head, and that was his first realization
20 that there was a robbery taking place.

21 As such, that is not an inculpatory statement;
22 that's an exculpatory statement and, therefore, it
23 would be hearsay. So I can't let him testify to
24 that.

25 MR. HARTE: Your Honor, if I can briefly be

1 heard on that point.

2 THE COURT: I gave you that opportunity. But,
3 yeah, I'll hear what you've got to say.

4 MR. HARTE: The second portion of the officer's
5 testimony was that as soon as the two individuals
6 who had gone into the bank came out and got in the
7 car, that the dye packs went off and D, as he was
8 known, later known to be Darrell Lassiter, got out
9 of the car.

10 THE COURT: Yeah. But you got to go back
11 though to the first part of that statement where he
12 said the -- I drove up to let them out and then they
13 put on masks and this guy held a gun to me. That
14 is, from that standpoint, the first time he knew
15 that there was an armed robbery going on. That is
16 not an inculpatory statement; that exculpates him.

17 So it decimates your hand-of-one-hand-of-all
18 theory. He is, by that story, merely present. And
19 whether or not it's to be believed, I don't know. But
20 I can't let that in through a third party because
21 under the definition of hearsay, I can only allow in
22 inculpatory statements or statements against him.

23 The appellate courts, including the United
24 States Supreme Court, say, look, I got to look at
25 this picture and I can't let you pick -- I can do

1 some cherry picking as far as statement goes, but to
2 pick it apart in such a way to make a clearly
3 exculpatory statement into an inculpatory statement,
4 that would be wrong.

5 If I could cherry-pick it to say, well, this
6 part is exculpatory and this part is inculpatory,
7 that would be one thing. But this would be to
8 cherry-pick it to take a statement apart as opposed
9 to saying, well, he said this at one point and then
10 said something else a little bit later. When we
11 brought him back up here, it seems to me he's pretty
12 clear about that the defendant maintaining he didn't
13 know that these other two guys were going to rob
14 that bank until he pulled up to let him out, they
15 put on masks, and the other guy pulled a gun to him.
16 So that's an exculpatory statement. And you can't
17 put in an exculpatory statement through hearsay.

18 MR. HARTE: Yes, Your Honor.

19 THE COURT: Okay. So I will grant your motion
20 to suppress that statement.

21 Now, where we go from here, I don't know what
22 you have for the rest of your case and we'll deal
23 with that. But I guess I would say, having said
24 that, if the defendant then takes the stand and
25 brings up this whole thing, if it differs with what

1 he said, he'll be allowed to come in and testify to
2 impeach him for extrinsic impeachment by extrinsic
3 evidence.

4 MR. MILLER: Just to be clear with the Court's
5 ruling, the statement doesn't come in?

6 THE COURT: Right. Unless it's being offered
7 later for impeachment --

8 MR. MILLER: To be brought in for reply.

9 THE COURT: -- purposes if the defendant
10 testifies.

11 MR. MILLER: Certainly. It can be brought in
12 for reply, but the statement --

13 THE COURT: Can't come in your case in chief.
14 Okay?

15 MR. MILLER: Thank you, Your Honor.

16 MR. WILSON: Judge, that leaves us needing to
17 talk to the solicitor for a couple minutes if we
18 could.

19 THE COURT: Okay.

20 (Brief pause in the proceedings.)

21 THE COURT: Okay. You had something you wanted
22 to put on the record before we brought the jury back
23 in?

24 MR. WILSON: Briefly, Your Honor. A moment ago
25 before we broke I think you had indicated you'd

1 grant the suppression. We're not moving to
2 suppress. Your Honor, at this point any statement
3 that Officer Williams would attribute to the
4 defendant, other than under the rules of
5 completeness and fairness, that if he gives the
6 statements attributable to Mr. James that he
7 intended to give or indicated he intended to give
8 through the proffer, that it be along in the rules
9 that require completeness of the statement that --
10 the statement portion about the gun, about there
11 being a person in the vehicle that held a gun to his
12 head.

13 It's my understanding the solicitor doesn't
14 intend to offer those statements. And that's their
15 choice, Your Honor, what evidence they're going to
16 put forth in their case in chief or not. But we --

17 THE COURT: All right. Well, I'm not
18 suppressing it, but I've let them know that if they
19 want to put some of it, they have to put all of it
20 in. And from what I understand, they're electing at
21 this point not to put it in.

22 MR. HARTE: That's correct.

23 MR. WILSON: And that's my understanding, Your
24 Honor. If they put it in, I'll stand up and move to
25 put the rest of it in, and I ask for the Court's

1 consideration on that. Thank you.

2 THE COURT: All right. Anything else?

3 MR. HARTE: Nothing from the State.

4 THE COURT: All right. Bring the jury in.

5 (The jury enters the courtroom at 1:54 PM.)

6 THE COURT: All right. Folks, I apologize for
7 the delay. I don't like you sitting back there.
8 But sometimes, as I said, we have to take up legal
9 matters and I just have to make some rulings on some
10 things that very often help streamline and clarify
11 things. But we've got that out of the way and we're
12 ready for the State's next witness.

13 MR. HARTE: Thank you, Your Honor. The State
14 calls Agent David Williams.

15 DAVID WILLIAMS

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 DIRECT EXAMINATION

19 BY MR. HARTE:

20 Q. Agent Williams, could you please state your
21 full name for the record.

22 A. David Edgar Williams.

23 Q. And where are you employed?

24 A. At the South Carolina Law Enforcement Division,
25 commonly known as SLED.

1 Q. How long have you been with SLED?

2 A. Almost ten years.

3 Q. And how long have you been law enforcement?

4 A. A little over 36 years.

5 Q. What is your position with the State Law
6 Enforcement Division?

7 A. I'm a senior special agent.

8 Q. What was your involvement with this case?

9 A. I was a case agent on this investigation.

10 Q. What does it mean to be the case agent?

11 A. I was called out initially when the Denmark
12 Police Department requested assistance on this case.
13 So we came and handled the investigation, basically.

14 Q. In your role as a case agent, did you collect
15 surveillance video from the Enterprise Bank in
16 Denmark?

17 A. Yes, sir, I did.

18 Q. Agent Williams, I'm showing you what's already
19 been entered in evidence as State's Exhibit 62. Do
20 you recognize it?

21 A. Yes, sir, I do.

22 MR. HARTE: Your Honor, this has already been
23 entered in to evidence. At this time we'd like to
24 publish it to the jury.

25 THE COURT: You may.

1 BY MR. HARTE:

2 Q. Agent Williams, can you describe this video?

3 A. This is the video of the actual robbery that
4 happened on the 5th of June, 2014..

5 Q. What camera angle is this?

6 A. This would be the camera angle of the -- from
7 the lobby covering the front counter.

8 Q. And what does this video depict?

9 A. This is also the robbery that occurred that
10 day. This is from a camera from over the tellers in
11 the corner showing the front door with the
12 defendants coming in.

13 MR. MILLER: We're having a bit of a computer
14 issue, Your Honor.

15 A. This is the same armed robbery of the bank, but
16 this is from the tellers' point of view.

17 Q. Agent Williams, I believe there's one more.

18 A. This is showing another angle, basically behind
19 the tellers, of the front door of the same armed
20 robbery.

21 Q. Agent Williams, I'm handing you what's marked
22 for identification only as a series of photographs.
23 Can you tell me if you recognize each of those and
24 what it depicts.

25 A. Yes, sir. State's Exhibit 50 shows the lobby

1 of the Enterprise Bank from the camera angle of just
2 to the left of the door showing the teller counter
3 and one -- and both robbers.

4 Q. What about this one?

5 A. State's Exhibit 51 shows -- is from the angle
6 from behind the counter showing the front door with
7 one of the robbers.

8 Q. This one?

9 A. State's Exhibit 53 is from the tellers' angle
10 from the camera behind the teller showing one of the
11 robbers as he's walking across counter fixing to
12 leave.

13 Q. This one?

14 A. State's Exhibit No. 54 is from the same --
15 behind the counter, the front counter, showing the
16 front lobby to the front door with a picture of one
17 of the robbers.

18 State's Exhibit 55 is from the same camera
19 angle from behind the tellers showing the front door
20 with one of the robbers.

21 Q. 58?

22 A. 58 is from an angle behind the counter showing
23 the front door, the lobby, and one of the robbers.

24 Q. And 59?

25 A. 59 is from that same camera angle showing the

1 front door to the lobby with one of the robbers.

2 Q. And looking at those photographs, Agent
3 Williams, are you able to determine where they came
4 from?

5 A. Yes, sir.

6 Q. Where is that?

7 A. These are just still shots taken from the
8 surveillance video that we obtained from the bank.

9 Q. Are they fair and accurate representations of
10 the videos?

11 A. Yes, sir.

12 MR. HARTE: Your Honor, at this time the State
13 would move those into evidence.

14 MR. KAZMIERSKI: No objection.

15 THE COURT: Admitted. You can publish.

16 (State's Exhibit Nos. 50, 51, 53, 54, 55, 58,
17 59 admitted in to evidence.)

18 MR. HARTE: Your Honor, we're going to publish
19 at a later time.

20 BY MR. HARTE:

21 Q. Agent Williams, in looking at those
22 photographs, are you able to identify the person
23 with a gun visible?

24 A. Yes, sir.

25 Q. What is his name?

1 A. Homer James.

2 Q. Is his case currently resolved?

3 A. No, sir.

4 Q. Okay. I'm handing you another series of
5 photographs marked for identification purposes only.
6 Can you tell me what they are?

7 A. Yes, sir. 57 is a camera angle from behind the
8 tellers, shows the front door and the lobby, and
9 there's a man standing at the counter.

10 Q. What's the next one?

11 A. State's Exhibit No. 56 is a camera angle from
12 the similar camera angle or same camera from behind
13 the tellers showing the front lobby and front door,
14 showing a man standing at the counter in a green
15 shirt and a ball cap.

16 Q. And the next one?

17 A. State's Exhibit No. 52 is from a different
18 camera angle, but from behind the counter showing
19 the front door, the front lobby, with a man in a
20 green shirt and a ball cap standing at the counter.

21 49 is from the lobby of the Enterprise Bank
22 from one of the cameras beside the front door. It
23 shows the front counter of the bank with a man in a
24 green shirt and a ball cap in the Enterprise Bank.

25 Q. And I believe there's one more.

1 A. Number 48. State's Exhibit 48 is from that
2 same camera angle from the side of the front door
3 showing the bank lobby and the tellers' counter,
4 showing the same individual with the green shirt and
5 ball cap on.

6 Q. And looking at those photographs, are you able
7 to determine where they came from?

8 A. Yes, sir. These are from surveillance video
9 that we obtained from the Enterprise Bank.

10 Q. Are they fair and accurate representations of
11 that video?

12 A. Yes, sir, they are.

13 MR. HARTE: Your Honor, at this time the State
14 would move those into evidence.

15 MR. WILSON: No objection.

16 THE COURT: Admitted.

17 (State's Exhibit Nos. 48, 49, 52, 56, 57
18 admitted in to evidence.)

19 BY MR. HARTE:

20 Q. In looking at those photographs, are you able
21 to identify who that individual is?

22 A. Yes, sir, I am.

23 Q. Who is that?

24 A. That's the defendant, Mr. James.

25 MR. HARTE: Your Honor, please let the record

1 reflect the witness has identified the defendant.

2 BY MR. HARTE:

3 Q. And, finally, if you could go back to the first
4 stack, State's Exhibit No. 53.

5 A. Yes, sir.

6 Q. Do you recognize the individual in that
7 photograph?

8 A. Yes, sir.

9 Q. Who is that?

10 A. That's Lewis Garvin.

11 Q. Was he arrested over the course of your
12 investigation?

13 A. Yes, sir.

14 Q. And is his case resolved?

15 A. Yes, sir.

16 MR. HARTE: No further questions.

17 Your Honor, we'd like to publish those to the
18 jury at this time.

19 THE COURT: You may.

20 MR. HARTE: Thank you.

21 Agent Williams, please answer any questions the
22 Defense may have for you.

23 THE COURT: Any cross?

24 CROSS-EXAMINATION

25 BY MR. KAZMIERSKI:

1 Q. Agent Williams, you were the lead investigator
2 on this case; correct?

3 A. Yes, sir.

4 Q. And you're familiar with the case file and all
5 of the evidence; correct?

6 A. Yes, sir.

7 Q. Did you review the video of Leon James entering
8 the bank at noon?

9 A. Yes, sir.

10 Q. Did you get any still photographs of Leon James
11 when he entered the bank at noon?

12 A. I believe some of those are the photographs of
13 him coming in at noon..

14 Q. Some of the ones that we just viewed?

15 A. I believe.

16 Q. So there's still photos of Leon James at noon
17 and there's a video of him entering the bank at
18 noon?

19 A. I would have to check to see to make sure that
20 we had that.

21 Q. What would you need to check? Because I want
22 to make sure you give the jury accurate information.
23 Because if there's not a video, that would be
24 important, wouldn't it?

25 A. I believe -- I thought we got all of the video

1 of him coming in both times.

2 Q. Okay. Well, why don't you take the time to
3 check what you need to check to see if you got the
4 video or not?

5 A. If you don't have it, we don't have it.

6 Q. Okay. So there is no video?

7 A. If you don't have it, there is not.

8 Q. And there's no still shots?

9 A. No, sir.

10 Q. Is there a reason you didn't collect the video?

11 A. No, sir.

12 Q. Were you here yesterday when Chris Folk, the
13 branch manager, said all of that was available and
14 he provided everything that you asked for?

15 A. Yes, sir.

16 Q. You didn't want that video, did you?

17 A. I thought we had it.

18 Q. So we're here at trial and the man sitting over
19 here went in the bank twice, and the jury gets to
20 see 50 percent of that; right?

21 A. Yes, sir.

22 Q. Makes more sense to show them the one that
23 happened at 1:00, right, closer to the time of the
24 robbery, isn't that true; not the one that he went
25 in there at noon and was asked to come back?

1 A. There's no dispute he went in at noon,
2 Counselor.

3 Q. But you didn't get the video. The jury doesn't
4 get to see how he acted or how he behaved during
5 that video, do they?

6 A. No, sir, because we don't have it.

7 Q. A North Carolina driver's license belonging to
8 Darrell Lassiter was found in the vehicle; correct?

9 A. Yes, sir.

10 Q. And even though that license was found in the
11 vehicle, you never interviewed him, did you?

12 A. No, sir.

13 Q. In fact, you wrote in your investigative report
14 that you couldn't locate, find, or identify him;
15 isn't that correct?

16 A. I don't know if I wrote that exactly in my
17 report.

18 Q. This is your investigative report; right?

19 (Tenders document to the witness).

20 A. Yes, sir.

21 Q. Dated August 7th, 2014?

22 A. That's correct.

23 Q. This is page 7. The bold sentence there on the
24 top, why don't you read that for the jury?

25 A. It says: Agent's note: During this

1 investigation, agents were unable to identify,
2 locate, or confirm that Lassiter was involved in
3 this crime.

4 Q. Okay. Why don't you tell the jury what you did
5 to locate Darrell Lassiter?

6 A. I didn't look for him.

7 Q. So why would you have written: Agent note:
8 During this investigation, agents didn't look for
9 the fourth ID that was found in the vehicle?

10 A. Because I did not believe that there was a
11 fourth person involved in this incident, sir.

12 Q. Okay. But at some point somebody went and
13 interviewed him; right?

14 A. That's correct, yes, sir.

15 Q. Is it possible that you couldn't locate or
16 identify him or take any other steps to confirm or
17 deny whether he was involved because you were
18 operating under the name of Demont Darren?

19 A. No, sir. I don't know where they name came
20 from. We always knew it was Darrell Lassiter.

21 Q. And you reviewed all of the documents that came
22 back from SLED on the DNA analysis; is that true?

23 A. Yes, sir.

24 Q. And you never bothered to look and see that the
25 fourth suspect was misnamed on every single one?

1 A. Didn't catch it. No, sir.

2 Q. Okay. And three cell phones were recovered
3 from the vehicle; correct?

4 A. Yes, sir.

5 Q. Did you test any of those phones for
6 fingerprints or DNA?

7 A. No, sir.

8 Q. You didn't unlock those phones, did you?

9 A. No, sir.

10 Q. You didn't determine who owned those phones?

11 A. No, sir.

12 Q. You didn't call the provider -- the cell phone
13 provider and say, hey, I've got this telephone, who
14 owns it?

15 A. No, sir.

16 Q. Who's paying the bill?

17 A. No, sir.

18 Q. You didn't determine if there were any text
19 messages between Leon James and anybody else that
20 the State alleges was involved in this armed
21 robbery?

22 A. No, sir.

23 Q. You found two receipts in the vehicle?

24 A. That's correct.

25 Q. And one of the receipts was from Walmart for

1 gasoline; is that correct?

2 A. I believe so.

3 Q. Is it your understanding that Walmart has video
4 surveillance at the gas pumps?

5 A. Yes, sir.

6 Q. Are we -- is the jury going to get to see the
7 video from Walmart?

8 A. No, sir. I didn't get it. It wasn't relative
9 to the crime.

10 Q. It would be relevant if it showed four people
11 in the car, wouldn't it? That's a question. It
12 would be relevant if the video showed four people in
13 the car, wouldn't it?

14 A. No, sir.

15 Q. No, it wouldn't?

16 A. No, sir.

17 Q. Because you didn't believe it; right?

18 A. There was no evidence there was a fourth person
19 in the car.

20 Q. You got unknown DNA in the car, don't you?

21 A. No, sir, I don't think so in the car.

22 Q. We'll get into that later. But I think --
23 strike that.

24 So it's your understanding as the lead
25 investigator that all of the items tested from the

1 car, the DNA matched to one of the three suspects;
2 is that true?

3 MR. HARTE: Your Honor, we'd have to object to
4 that question. He can't testify as to what DNA was
5 in the car.

6 THE COURT: The results haven't come in yet.
7 BY MR. KAZMIERSKI:

8 Q. Ultimately, one gun -- one pistol was recovered
9 from the crime scene; is that true?

10 A. From the vehicle, yes, sir.

11 Q. From the vehicle.. And no other firearms were
12 recovered; right?

13 A. No, sir.

14 Q. And there was testimony earlier that both men
15 that entered the bank were armed; is that true?

16 A. Yes, sir.

17 Q. And the one firearm that was recovered, was it
18 ever attributed, either through any form of physical
19 evidence to either one of the men accused of going
20 into the bank?

21 A. I don't remember that. I would have to look at
22 the DNA stuff to see if anybody's DNA came back on
23 that.

24 Q. Okay. Did you take any steps to search for the
25 second firearm that was used in the robbery?

1 A. This -- it was -- when we were looking for the
2 individuals, we looked at the same time for any
3 firearms. But they were over a three-mile period --
4 stretch of property that was heavily wooded, that if
5 there had been other firearms, they could have been
6 tossed aside easily and we wouldn't have found them.

7 Q. Okay. The firearm that was recovered, there's
8 nothing linking that to Homer James, is there?

9 A. I'd have to look to see. I'd have to read the
10 actual DNA report to see what the report stated.

11 MR. HARTE: Your Honor, we'd have the same
12 objection as earlier. It's not in evidence, so he
13 can't testify from it.

14 THE COURT: Sustained.

15 BY MR. KAZMIERSKI:

16 Q. You were never able to determine if one of the
17 three cell phones that was recovered belonged to
18 Homer James; is that true?

19 A. Yes, sir.

20 Q. You were never able to determine if one of the
21 three cell phones that was recovered belonged to
22 Lewis Garvin?

23 A. Not that I recall.

24 Q. And you were never able to determine if any of
25 the three cell phones that were recovered belonged

1 to Leon James?

2 A. Not that I recall, no, sir.

3 Q. Or anybody else for that matter?

4 A. No, sir.

5 MR. WILSON: No further questions, Your Honor.

6 THE COURT: Redirect?

7 MR. HARTE: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. HARTE:

10 Q. Agent Williams, all of the photographs that you
11 looked at a few moments ago depict events from June
12 5th, 2014; correct?

13 A. That's correct.

14 MR. HARTE: Nothing further, Your Honor.

15 THE COURT: Recross?

16 MR. WILSON: No, Your Honor.

17 THE COURT: Thank you. You may step down.

18 Next witness.

19 MR. MILLER: Your Honor, the State calls Donna
20 Money.

21 (State's Exhibit Nos. 71, 72 marked for
22 identification.)

23 DONNA MONEY

24 being first duly sworn, testified as follows:

25 THE WITNESS: Yes.

1 DIRECT EXAMINATION

2 BY MR. MILLER:

3 Q. Good afternoon, Ms. Money.

4 A. Good afternoon.

5 Q. Could you please state your full name for the
6 record.

7 A. Donna Money.

8 Q. Ms. Money, who do you work for?

9 A. I work for the South Carolina Law Enforcement
10 Division, also known as SLED.

11 Q. And what do you do for SLED?

12 A. I'm a forensic scientist in the DNA casework
13 department.

14 Q. And forensic scientist. So that's not an
15 agent, like a special agent; you don't go out and
16 investigate crime scenes?

17 A. No, I do not.

18 Q. Okay. What do you do?

19 A. I perform DNA analysis on submitted evidence
20 items and known standards.

21 Q. Okay. When a group of evidence, for lack of a
22 better term, is brought in to SLED that all relates
23 to a case, how do y'all make sure that evidence all
24 stays together?

25 A. When evidence is submitted to SLED, it's

1 assigned a case number in our evidence control
2 department. From there, it's separated and placed
3 in heat-sealed pouches that are initialed and dated
4 by the submitter.

5 Q. Okay. So based on the lab number is how y'all
6 know what you're working on?

7 A. Yes.

8 Q. All right. And I only ask that because I want
9 to call your attention to SLED Lab No. L14-07189.
10 That is the case that we've been talking about here
11 for the past couple of days. Did you do any
12 analysis in that case?

13 A. Yes, I did.

14 Q. Okay. In the process of doing the analysis for
15 that case, kind of explain to the jury how a piece
16 of evidence goes from the SLED lab where it gets
17 taken in -- where does it get taken in?

18 A. When an item of evidence is brought to our
19 laboratory, it first goes through evidence control.
20 From there, when it is logged in, it is placed on
21 intake shelf for whatever department has been dubbed
22 the one that they'd like the analysis performed.

23 For instance, in the case of DNA analysis,
24 depending on the size of an item, it may have to go
25 through evidence processing before it comes to me or

1 it may come straight to the DNA department.

2 Q. Okay. So if someone takes that item of
3 evidence in at the lab, you said they put it on the
4 shelf, how does it get from the shelf to you?

5 A. We have a tracking system in our lab which
6 allows us to know where the items are located. A
7 forensic scientist, such as myself, will have to
8 contact evidence control to let them know we would
9 like to pick up the item.

10 Q. And when you go to pick up the item, do you
11 walk downstairs to go get it or does somebody in
12 your department walk downstairs to get the item?

13 A. I personally go down to evidence control.
14 However, I'm not the person that takes the item off
15 the shelf. A technician in evidence control has to
16 be the one to remove the item from the shelf.

17 Q. Okay. So that person in evidence control --
18 for lack of a better term, is it kind of like a
19 drive-thru window?

20 A. Yes.

21 Q. You tell the person in evidence control you
22 need it, they go get it off the shelf, and they
23 bring it to you, then you go do your thing; correct?

24 A. Yes. And it's tracked using our tracking
25 software that we have barcodes to indicate who takes

1 what when and where.

2 Q. Okay. Now, you use SLED item numbers to keep
3 track of things. So there might be a SLED Item
4 No. 1 down to a SLED Item whatever number it is;
5 correct?

6 A. Yes.

7 Q. In our case, it's a little confusing because
8 we're also using numbers for our exhibit numbers.
9 But I want to show you what's been marked for
10 identification as State's Exhibit 66 and ask if you
11 can identify that item.

12 A. According to the packaging this is SLED Case
13 No. L14-07189, Item 74.

14 Q. All right. I'm also going to hand you a copy
15 of the chain of evidence, the SLED chain. Did you
16 say what SLED item number it was?

17 A. Yes; 74.

18 Q. Okay. Turning to Item 74 in the SLED chain,
19 what is the description of that?

20 A. One sealed box containing bottle described as
21 one bottle collected by Captain Williams.

22 Q. Okay. Did you receive this item for testing?

23 A. I didn't receive that actual item.

24 Q. Okay. Tell the jury what happened to that
25 item.

1 A. When this item entered our laboratory, it was
2 first taken down to evidence control. Since this is
3 a larger item, it was placed in its own individual
4 packaging. Forensic technician Amy Stephens took
5 possession of this item in order to place it onto an
6 evidence shelf.

7 From there, since it is a larger item and they
8 determined they wanted DNA performed on it, it went
9 through our evidence processing department.

10 Q. What did they do with it at the evidence
11 processing department?

12 A. Our forensic technician, Verona Herrera went to
13 evidence log-in to pick up this item. When she
14 received this item, she proceeded to swab the area
15 she felt would provide the most probative
16 information concerning this case.

17 From there, those swabs were then taken back to
18 evidence control and were placed on DNA intake
19 shelf, which is where I went to go get the items
20 that I received for testing.

21 Q. Okay. And when they made these swabs, did they
22 assign them a SLED item number?

23 A. Yes.

24 Q. And what was the SLED item number for the swabs
25 that was related to Item 74?

1 A. Two sets of swabs were taken; one set was
2 labeled as Item 74.1 and the other set was labeled
3 as Item 74.2.

4 Q. Okay. Now, I don't know if you saw me, but I
5 was cutting open this SLED bag here, this evidence
6 bag, to get to the items which we're marking for
7 identification as State's 71 and 72. And, of
8 course, I did it in the wrong order. But can you
9 identify State's 71?

10 A. Yes. This is SLED Item 74.2. I see my
11 initials and the date when I sealed the item.

12 Q. Okay. And what is that item?

13 A. This is a swab from the exterior below mouth
14 area of this bottle.

15 Q. And what does the request indicate -- or the
16 envelope indicate was requested?

17 A. Any DNA.

18 Q. Okay. So you're looking for DNA in this swab
19 that would have been on the exterior of the bottle,
20 not the mouth area?

21 A. Yes.

22 Q. All right. Now, State's Exhibit 72, can you
23 describe that for us.

24 A. State's Exhibit 72 is SLED Item No. 74.1. I
25 recognize it, my initials and date are on the

1 envelope, and it's from the mouth area of this
2 bottle.

3 Q. Okay. Same thing, DNA requested?

4 A. Yes.

5 MR. MILLER: All right. Your Honor, at this
6 time, the State would move to introduce State's
7 Exhibit 66, 71, and 72. And we do have a
8 stipulation that the Court is aware of regarding the
9 internal chain.

10 THE COURT: All right. Any objection?

11 MR. WILSON: None, Your Honor. We've
12 stipulated to it.

13 THE COURT: The evidence is admitted.

14 There's a stipulation, which I'll have the
15 solicitor read to you. Normally we have a
16 requirement of a chain of custody so you could say,
17 well, this person handed it to this person who
18 handed it to this person and they took it there and
19 dropped it off at SLED and all that. The parties
20 have stipulated that there's no problems with the
21 chain of custody in this case. And so a stipulation
22 is simply an undisputed fact, and I'll allow the
23 solicitor to now read it to you.

24 MR. MILLER: Your Honor, this is the
25 stipulation of counsel with regard to the case of

1 State of South Carolina vs. Leon Amos Jason James:
2 Counsel for the defendant and State hereby stipulate
3 to the admissibility of the following items without
4 the necessity of calling each witness in the
5 internal SLED chain custody. For the purposes of
6 this stipulation, the parties agree that the
7 forensic examiner, Donna Money, who examined and
8 tested the samples produced will testify as the
9 complete chain of custody for the items once they
10 were received at the SLED laboratory.

11 And the various numbers are listed below, Your
12 Honor.

13 THE COURT: All right. The evidence is
14 admitted.

15 (State's Exhibit Nos. 66, 71, 72 admitted in to
16 evidence.)

17 (Court's Exhibit No. 1 marked for
18 identification.)

19 BY MR. MILLER:

20 Q. Now, you've tested these swabs, 71, 72;
21 correct?

22 A. Yes.

23 Q. And explain to the jury how you develop a
24 profile -- a DNA profile off of those, if you can.

25 A. Well, when a swab or cutting comes into the DNA

1 lab, we have to go through a multistep process in
2 order to determine whether or not a DNA profile can
3 be developed. So the first step is we take the
4 sample and we make a cutting from it to extract DNA
5 from that. The next step is we determine how much
6 DNA, if any, is present on this item so we don't go
7 essentially blind through the rest of the process.

8 Once we determine how much we have, we then
9 amplify or make copies of it to have more to work
10 with, if in some instance we may have to go back and
11 reanalyze a sample. After that, our extract will be
12 run through a machine that separates DNA based on
13 size, and that data is visualized as a profile with
14 peaks on it.

15 Q. Okay. So once you've analyzed the swabs that
16 were taken from the item of evidence, you have to
17 have something to compare it to; correct?

18 A. Right.

19 Q. Okay. And how do you get comparison DNA?

20 A. We request, if it is possible, to have
21 standards submitted from individuals that have been
22 deemed related to that case.

23 Q. And do you know whether or not subject
24 standards were submitted in this case?

25 A. There were.

1 Q. I'll show you what's been marked for
2 identification as State's Exhibit 68. And I'm not
3 going to cut it open and take it out. Can you tell
4 me what this is that's inside there?

5 A. State's Exhibit 68 is SLED Item No. 77, which
6 is a buccal swab from Leon James.

7 Q. And so Leon James is the defendant in this
8 case; correct?

9 A. Yes.

10 Q. All right. And this buccal swab, would you
11 handle it just like any other swab that comes into
12 your office as far as trying to develop a profile
13 from this swab?

14 A. Yes. The same analysis steps are performed on
15 known standards.

16 Q. And then once you have a known standard that
17 has been analyzed and a profile developed and you've
18 got these questioned standards where the profile has
19 been developed, are you able to then make some
20 conclusions about whether this person's DNA is on
21 that bottle?

22 A. Yes. We compare the known standards to the
23 evidence profiles.

24 MR. MILLER: Your Honor, at this time the State
25 would move to introduce State's Exhibit 68 in to

1 evidence.

2 MR. WILSON: No objection, Your Honor.

3 THE COURT: Admitted.

4 (State's Exhibit No. 68 admitted in to
5 evidence.)

6 BY MR. MILLER:

7 Q. Ms. Money, could you explain for the jury the
8 results of your analysis of the SLED -- or the swabs
9 from SLED Item 74, which is the bottle, and the
10 comparison to the defendant Leon James' DNA?

11 A. May I consult my report?

12 Q. Yes, ma'am. Well, let me ask you, is that a
13 report that you prepared?

14 A. Yes. The DNA developed from Item 74.1 is a
15 mixture of at least two individuals. The DNA
16 profile of the major contributor to this mixture
17 matches Leon Amos Jason James. The probability of
18 randomly selecting an unrelated individual having a
19 DNA profile matching this major contributor is
20 approximately 1 in 660 trillion.

21 Q. And as to 74.2?

22 A. The DNA profile developed from Item 74.2 is a
23 mixture of at least two individuals. Leon Amos
24 Jason James and Homer Arthur James cannot be
25 excluded as contributors to this mixture. The

1 probability of randomly selecting an unrelated
2 individual who could have contributed to this
3 mixture is approximately 1 in 3,900.

4 Q. So a lot different numbers. Can you explain to
5 us why you get such different numbers from the same
6 bottle?

7 A. When we encounter mixtures, in our
8 interpretation, we have to look at the profile as a
9 whole, and then from that point look at each
10 individual location -- there are 15 in total -- and
11 see which ones fall within our protocol standards as
12 ones that can be used for statistics. When there's
13 low levels of DNA, to err on the side of caution to
14 remain conservative, that location may not be used
15 in a statistic, which can cause, in instances, there
16 being a very large difference in a statistical
17 calculation and an end result.

18 Q. Were you able to -- from Item 74.1, were you
19 able to eliminate or say certain people,
20 co-defendants, were absolutely not contributors to
21 the mixture?

22 A. Lewis Garvin was excluded as a contributor to
23 the 74.1 mixture.

24 Q. And what about Homer Arthur James?

25 A. Homer Arthur James could not be excluded as a

1 minor contributor to the mixture.

2 Q. All right. And as to 74.2, you said that it
3 was a mixture of at least two individuals, could be
4 Leon James, could be Homer -- or Homer James and
5 Leon James cannot be excluded as contributors to the
6 mixture. What about Lewis Garvin? Could he have
7 been a contributor to that mixture?

8 A. He was excluded from that mixture.

9 Q. Okay. Please answer any questions defense
10 counsel might have for you.

11 CROSS-EXAMINATION

12 BY MR. WILSON:

13 Q. Ms. Money, how are you doing today?

14 A. I'm good. How are you?

15 Q. Good. Thank you. So you are provided a number
16 of items to take -- or to test within your lab there
17 at SLED?

18 A. Yes.

19 Q. Test by DNA analysis?

20 A. Yes.

21 Q. Those items come to you through the
22 investigating officers through the investigating
23 agencies?

24 A. Yes.

25 Q. You don't necessarily know where those items

1 are recovered from or how they're recovered, you

2 just know that they're brought to you to test?

3 A. In some instances there may be a description
4 with the item, who and where the item came from, but
5 we don't get a complete full background on exactly
6 what happened.

7 Q. Okay. And you have to have something to test
8 those against; correct?

9 A. In most cases, yes.

10 Q. So you have a subject sample or a suspect
11 sample usually to test the item of evidence that's
12 recovered against a suspect sample; correct?

13 A. Yes.

14 Q. Okay. And I'm going to come back to the items
15 you tested in just a moment, but I want to talk
16 about the suspect samples.

17 Let's talk about how those samples are
18 obtained. It's generally just a -- looks like a
19 small toothbrush that's scratched inside somebody's
20 cheek to obtain the DNA sample; correct?

21 A. Yes.

22 Q. So pretty simple process?

23 A. Yes.

24 Q. Pretty non-invasive?

25 A. No.

1 Q. It's not non-invasive.

2 A. It is non-invasive.

3 Q. Okay. It's not anything that's too awful hard
4 for somebody to go through; they just take a little
5 Q-Tip-type-looking thing and swab it in the mouth;
6 correct?

7 A. That's correct.

8 Q. Okay. And that can be done very easily at the
9 request of law enforcement, if they feel that's
10 necessary?

11 A. Correct.

12 Q. If they feel that's relevant in investigating a
13 crime; correct?

14 A. Yes.

15 Q. Okay. And you've been involved in that process
16 before?

17 A. I've not personally collected any person's
18 standard.

19 Q. But you've seen -- you know how the process
20 works?

21 A. Yes.

22 Q. Okay. So if there's a person that they want to
23 obtain those type of samples from, they can either
24 ask the person to voluntarily consent; correct?

25 A. Yes.

1 Q. Or they can seek a court order to get those
2 type of samples; correct?

3 A. Yes.

4 Q. Okay. Now, in this case, you were provided DNA
5 samples or DNA swabs from subjects Leon James, who
6 is on trial today; correct?

7 A. Yes.

8 Q. Homer James; correct?

9 A. Yes.

10 Q. And Lewis Garvin?

11 A. Yes.

12 Q. Okay. You were not provided any type of
13 sample -- or DNA subject sample from anybody named
14 Darrell Lassiter?

15 A. No, I was not.

16 Q. Or Demont Darren Lassiter?

17 A. No, I was not.

18 Q. Or anybody else for that matter, other than
19 these three people?

20 A. Yes. Just those three.

21 Q. So all that you were asked by the investigating
22 agency was to take these items and test the DNA on
23 these items brought to you against these three
24 individuals?

25 A. Yes.

1 Q. And nobody else?

2 A. No.

3 Q. Okay. Now, let's talk about some of what you
4 found in your testing. Do you have your report
5 there?

6 A. Yes.

7 Q. I'm going to refer to the numbers on your
8 report because they're just easier for me in
9 figuring out which piece of evidence it is. So
10 we'll refer to what it is.

11 MR. MILLER: Your Honor, I'm going to object to
12 her testifying about any DNA analysis of any items
13 that have not been entered in to evidence in the
14 case.

15 THE COURT: Sustained.

16 MR. WILSON: I'm not going into anything that's
17 not in yet, Your Honor. If I do, I'll let you know.

18 THE COURT: Okay.

19 MR. WILSON: Thank you, Your Honor.

20 BY MR. WILSON:

21 Q. The bottle, State's Exhibit 66, that was sent
22 to you or to your lab for testing purposes?

23 A. Yes.

24 Q. Okay. And in doing that testing, are you aware
25 that that was a bottle that was recovered from close

1 to an arrest scene of one of the suspects, of one of
2 the individuals?

3 A. I was informed it was a bottle collected at a
4 fire department training trailer. I don't know
5 exactly where that trailer was located in regards to
6 a crime scene.

7 Q. Okay. And your testing indicates that that is
8 object 74, 1 and 2, I believe, on your report?

9 A. Yes.

10 Q. Okay. And so your testing indicates that on
11 that at bottle, there were swabs found that had DNA
12 that you attribute to Leon James as a major
13 contributor; correct?

14 A. Yes.

15 Q. And Homer James couldn't be excluded as a minor
16 contributor?

17 A. Correct.

18 Q. Do you know whether Leon James or Homer James
19 had any kind of relationship? Do you know if they
20 were friends? Do you know if they were
21 acquaintances?

22 A. I don't know that information.

23 Q. Do you know if they had ever spent time around
24 each other?

25 A. I do not know that.

1 Q. Do you know if they'd been together at any
2 point in time earlier in the day?

3 A. I don't know that.

4 Q. Okay. And you also tested -- I believe there
5 were some rubber gloves brought to you for analysis.

6 MR. MILLER: Your Honor, again, I'm going to
7 object. Those gloves aren't in evidence.

8 MR. WILSON: I'm just asking her about the
9 results of the test, Your Honor. I'm looking to
10 introduce the evidence.

11 THE COURT: Well, if you want to talk about it,
12 it need to be introduced. You can introduce it, but
13 we can't talk about evidence that's not in evidence.

14 MR. WILSON: Okay. Your Honor, if I could have
15 just one moment, please.

16 THE COURT: Sure.

17 MR. WILSON: Judge, there are a couple pieces
18 of evidence that the solicitor's office has in their
19 office. They said it will take them a few minutes
20 to get them. Can we take a break while they gather
21 that and then we can start back?

22 THE COURT: Sure. Let's take a break. Don't
23 discuss the case or start any deliberations. We'll
24 have you back in just a few minutes.

25 (The jury exits the courtroom at 2:48 PM.)

1 (Short break.)

2 (Defendant's Exhibit Nos. 1 - 6 marked for
3 identification and admitted in to evidence.)

4 MR. WILSON: Judge, this is Defendant's 1
5 through 6.

6 THE COURT: Okay. And you've agreed it's
7 admitted?

8 MR. MILLER: Yes, Your Honor.

9 THE COURT: Okay. Bring the jury back in,
10 please.

11 (The jury enters the courtroom at 2:59 PM.)

12 THE COURT: All right. Folks, we're going to
13 resume. The evidence we were talking about before
14 we sent you out, both parties have agreed to admit
15 that in to evidence, so it is now admitted. And
16 I'll allow the Defense lawyer to tell you what it
17 is, and then he can question the witness about it.

18 You may proceed.

19 MR. WILSON: Thank you, Your Honor.

20 BY MR. WILSON:

21 Q. Ms. Money, I want to show you what's been
22 entered by stipulation in as Defendant's Exhibits 3
23 and 4. You can open them if you need to, but I
24 think they're referenced in your report as Item 35,
25 and the swabs 1, 2, and 3 that were taken from Item

1 35. Does that look correct?

2 A. Yes. Defendant's Exhibit 3 is Item 35 and
3 Defendant's Exhibit 4 contains the swabs of Item
4 35.1.1, Item 35.2.1 and 35.3.1.

5 Q. Okay. And Item 35 are some gloves that were
6 recovered from the robbery?

7 A. Yes; three gloves.

8 Q. Okay. And the three swabs are the swabs that
9 were taken from the three gloves?

10 A. Yes.

11 Q. And you tested those swabs taken from those
12 three gloves against the three individuals you had,
13 Mr. Homer James, Mr. Leon James, and Mr. Lewis
14 Garvin?

15 A. Yes.

16 Q. Okay. And I'll read your test results. Your
17 DNA profile revealed that the profile from the
18 gloves was a DNA profile that was a mixture of at
19 least three individuals; correct?

20 A. Which item are you referring to?

21 Q. 35.1.1?

22 A. Yes, a mixture of three individuals.

23 Q. Of at least three individuals, that's what your
24 report says; correct?

25 A. Yes.

1 Q. Okay. And in that DNA profile, you could find
2 a match for Lewis Garvin; correct?

3 A. Lewis Garvin could not be excluded. That does
4 not mean match.

5 Q. Okay. And you couldn't find anything that had
6 Leon James as a contributor to the DNA materials on
7 the gloves?

8 A. Based on the profile developed, Leon James was
9 excluded as a contributor.

10 Q. So of the at least three individuals that
11 contributed to the DNA on the gloves, Lewis Garvin
12 is the only person who you could match to the
13 gloves?

14 A. The only person we could say couldn't be
15 excluded.

16 Q. Okay. And the others couldn't be excluded;
17 correct?

18 A. Yes.

19 Q. Okay. Same thing for -- well, let me -- 35.2.1
20 swab, the second swab, I don't think that could
21 actually be tested, could it? You weren't able
22 to -- no. I take that back. I'm sorry. You were
23 able to test that swab; correct?

24 A. Yes.

25 Q. Basically the same result; correct? You were

1 able to link Lewis Garvin, but not anybody else to
2 the DNA that was found on swab 35.2.1?

3 A. Lewis Garvin was -- he did match the major
4 contributor profile to that mixture. And Leon Amos
5 Jason James, no conclusive statement could be given,
6 regarding his profile when comparing to the mixture
7 profile, but Homer James was excluded.

8 Q. Okay. Isn't that a fancy way of saying you
9 couldn't link Leon James to the swab that was taken
10 from the glove 35.2.1?

11 A. I couldn't draw a conclusion, so I can't say
12 anything regarding an inclusion or an exclusion.

13 Q. So you can't link him to that glove; isn't that
14 correct?

15 A. No conclusion can be made.

16 Q. Okay. All right. 35.3.1 is another swab that
17 was taken from the glove?

18 A. Yes.

19 Q. Or one of the gloves?

20 A. Yes.

21 Q. And you could find a link between that glove
22 and Lewis Garvin?

23 A. Yes.

24 Q. But you couldn't find any conclusive link
25 between that glove and Leon James?

- 1 A. Leon James was excluded.
- 2 Q. So he was excluded from any link to that glove?
- 3 A. Yes.
- 4 Q. Okay. Now I want to also show you what's been
5 entered in to -- let me back up. But all your
6 testing of those three swabs of the gloves, you were
7 able to determine that the DNA profile on the swabs
8 from each one of those gloves was a mixture of at
9 least three individuals; correct?
- 10 A. Yes.
- 11 Q. Now I want to show you what's been entered in
12 to evidence as Defendant's Exhibit No. 5 and 6.
13 This is by stipulation of the parties. You can open
14 them if you need to, but I will submit to you that
15 that is a hat that was recovered from the
16 passenger's side of the vehicle that was alleged to
17 have been involved in this crime, and swabs that you
18 took or that you tested from that hat. How many
19 swabs is that? Is it three swabs?
- 20 A. It's only one swab.
- 21 Q. Okay. So there was a hat that was submitted to
22 you that was recovered from the front passenger's
23 seat of the vehicle, Item No. 36?
- 24 A. Yes.
- 25 Q. And it was submitted for testing. And you took

1 one swab from that hat and you tested it?

2 A. Yes. One swab was collected and sent up to
3 DNA.

4 Q. Okay. And you tested that swab against the
5 same three individuals that you had -- the only
6 three individuals that you'd been provided DNA to
7 test against; correct?

8 A. Yes.

9 Q. And the results of your testing on Item 36.1 is
10 that the profile of the DNA was a mixture of at
11 least two individuals?

12 A. Yes.

13 Q. Okay. And the major contributor -- you found a
14 match between that hat and Homer James; correct?

15 A. That is correct.

16 Q. But you were able to exclude Leon James and
17 James Garvin [sic] as contributing to the DNA on
18 that; right?

19 A. Yes.

20 Q. So you had at least two individuals
21 contributing to the DNA on that hat, and you were
22 able to exclude Leon James and Lewis Garvin from
23 contributing to the DNA on that hat?

24 A. Yes.

25 Q. Okay. I want to show you what's been entered

1 in to evidence as Defendant's Exhibits No. 1 and 2.
2 This is by stipulation of the parties also. You can
3 open it if you need to, but I'll submit to you
4 Exhibit 1 is another water bottle that was recovered
5 from the Govan Fire Department training trailer. Is
6 that your understanding?

7 A. Yes. Defendant's Exhibit 1 is SLED Item 73.

8 Q. That corresponds with 73 on your report;
9 correct?

10 A. Yes.

11 Q. So that's another water bottle that was
12 recovered; correct?

13 A. Yes.

14 Q. Okay. And you would have tested that same --
15 that water bottle against the same three samples --
16 DNA subject samples that you'd been provided;
17 correct?

18 A. Yes.

19 Q. The only three subject samples that you had
20 been provided?

21 A. Yes.

22 Q. Okay. And that would have been Leon James,
23 Lewis Garvin, and Homer James?

24 A. That is correct.

25 Q. Okay. The results of your testing on that

1 water bottle is swab 73.1; correct?

2 A. Yes. That is one set of swabs that was
3 collected.

4 Q. Okay. So they just took one swab off that
5 bottle?

6 A. Two sets of swabs were taken.

7 Q. Okay. But 73.1 is the only one that could be
8 tested?

9 A. Testing was also performed on 73.2.

10 Q. Okay. So let's go back to 73.2. That was a
11 possible mixture and not suitable for inclusions; is
12 that correct?

13 A. Yes.

14 Q. And so on that water bottle, Leon James, Homer
15 Arthur James, and Lewis Garvin were excluded as
16 contributors to any DNA mixture on that water
17 bottle?

18 A. Yes.

19 Q. That water bottle that was recovered at the
20 same place that the water bottle that the State
21 introduced, Item 74. They introduced bottle 74, and
22 that bottle was recovered at the same place;
23 correct? That's your understanding?

24 A. That is my understanding, yes.

25 Q. Okay. So the bottle that we're introducing

1 that was found at the same place they did excludes
2 Homer, Leon, and Lewis as contributors to the DNA;
3 correct?

4 A. Yes.

5 Q. Okay. And swab 73.1 actually resulted in your
6 finding a DNA sample from an unidentified male
7 individual, didn't it?

8 A. That's correct.

9 Q. And that's what you found through your DNA
10 testing of that bottle that was recovered at the
11 same location as the bottle that the State
12 introduced earlier in your direct testimony?

13 A. Yes.

14 MR. WILSON: Just one moment, please, Your
15 Honor.

16 That's all the questions I have, Ms. Money.
17 Thank you for your time.

18 THE COURT: Redirect?

19 MR. MILLER: Nothing further, Your Honor.

20 THE COURT: You may step down. Thank you.
21 You're free to go.

22 Next witness.

23 MR. MILLER: Your Honor, the State calls
24 Darrell Lassiter.

25 DARRELL LASSITER

1 being first duly sworn, testified as follows:

2 THE WITNESS: Yes, ma'am.

3 DIRECT EXAMINATION

4 BY MR. MILLER:

5 Q. Good afternoon, Mr. Lassiter.

6 A. Good afternoon. How are you doing?

7 Q. Doing well. Mr. Lassiter, where are you from?

8 A. Greensboro, North Carolina.

9 Q. And what do you do in Greensboro?

10 A. I operate a towing service, I'm a licensed bail
11 agent for the State of North Carolina and a licensed
12 security officer for the State of North Carolina.

13 Q. What is your full name?

14 A. Darrell Lassiter.

15 Q. What about the name that's on your ID, your
16 driver's license? What name is on your driver's
17 license?

18 A. Darrell Demont Lassiter.

19 Q. Okay. Do you have your driver's license with
20 you?

21 A. Yes, sir.

22 Q. Okay. Mr. Lassiter, did you have an
23 opportunity earlier this year to speak with
24 Investigator Kenny Bamberg from the solicitor's
25 office?

1 A. Yes, sir.

2 Q. Okay. And at that time where did that
3 interview take place or where -- where did you first
4 meet Investigator Bamberg?

5 A. A lawyer's office in Greensboro.

6 Q. Okay. And when you went to the office in
7 Greensboro, why did you go there?

8 A. Because the guys wanted to talk to me about a
9 case involving a crime that happened here in South
10 Carolina.

11 Q. Okay. Let me ask you this: Why do you have a
12 lawyer?

13 A. I mean, I'm operating a business, so I always
14 keep -- I have my own personal lawyer for business
15 and other reasons.

16 Q. So for your towing service?

17 A. Yes, sir.

18 Q. And what is that lawyer's name?

19 A. Dwayne Bryant.

20 Q. Okay. So you met with us at Mr. Bryant's
21 office after we told you we wanted to talk to you?

22 A. Yes, sir.

23 Q. And at that time you were asked a series of
24 questions about, specifically, your driver's license
25 from the state of North Carolina that ended up

1 involved in this case in South Carolina; is that
2 correct?

3 A. Yes, sir.

4 Q. This has previously been entered as a group
5 exhibit, State's Exhibit 70. But I'm going to hand
6 you something and ask you if you can identify this.

7 A. Yes, sir.

8 Q. What is that?

9 A. My old driver's license, sir.

10 Q. Okay. Mr. Lassiter, how did you -- how did
11 this license end up in a vehicle in Olar, South
12 Carolina after an armed robbery?

13 A. May --

14 MR. WILSON: Your Honor, I have a matter that
15 we need to take up. May we approach?

16 THE COURT: Yes, sir.

17 (Sidebar conference.)

18 BY MR. MILLER:

19 Q. Mr. Lassiter, let me rephrase that question.

20 A. All right.

21 Q. When did you lose this driver's license?

22 A. Memorial Day weekend of 2014.

23 Q. And where were you when you lost the driver's
24 license?

25 A. I was at the bike rally in Myrtle Beach.

1 Q. Okay. Memorial Day weekend. So Memorial Day
2 is May 31st?

3 A. Around the 24th.

4 Q. Okay. That timeframe?

5 A. Yes, sir.

6 Q. All right. So tell me about the circumstances
7 of you losing your license. How did it happen?

8 A. A purchased a new wallet from the Levi outlet
9 on Highway 501. And before I left the store, I
10 threw my old wallet away and must have overlooked my
11 driver's license in the back compartment of my
12 wallet. I transferred my other cards, but I
13 overlooked that license.

14 Q. So you took all your other stuff from the old
15 wallet to the new wallet?

16 A. Yes, sir.

17 Q. What did you do with the old wallet after you
18 transferred everything over to the new wallet?

19 A. I threw it in the trash can at the store.

20 (State's Exhibit No. 75 marked for
21 identification.)

22 Q. Okay. So when you talked to Mr. Bamberg
23 before, you provided some paperwork. I'll show you
24 what's marked for identification as State's Exhibit
25 75 and ask you if you recognize these documents.

1 A. Yes, sir.

2 Q. What are these documents?

3 A. It was a loan I took out with my bank.

4 Q. Okay. And referring -- well, before we do
5 that. Are these documents a true and accurate copy
6 of the loan documents that you took out with the
7 bank?

8 A. Yes, sir.

9 MR. MILLER: Your Honor, at this time we'd seek
10 to introduce State's Exhibit 75.

11 MR. WILSON: No objection.

12 THE COURT: Admitted.

13 (State's Exhibit No. 75 admitted in to
14 evidence.)

15 BY MR. MILLER:

16 Q. On page two of these documents, there's a
17 signature and there's a notary statement. When was
18 this document signed by you?

19 A. June 5th of 2014.

20 Q. Okay. And where it says owner's signature,
21 there's actually a signature and then a different
22 signature behind that. Who is the first signature?

23 A. That's mine, sir.

24 Q. And who is the second signature?

25 A. My fiancée's.

1 Q. Okay. And what is her name?

2 A. Pamela Michelle Hendon [phonetic].

3 Q. Okay. And it's notarized by a North Carolina
4 notary. You know that person, don't you?

5 A. Yes, sir.

6 Q. Who is she?

7 A. She's my loan manager for the bank.

8 Q. Okay. And how did you get to South Carolina
9 last night or today, whenever you came? How did you
10 get here?

11 A. I drove a personal vehicle.

12 Q. Okay. How long did take to get from
13 Greensboro, North Carolina to -- where -- you didn't
14 come all the way to Bamberg, did you?

15 A. No. No, sir.

16 Q. Okay. Where are you staying; what city?

17 A. I stay -- here in South Carolina?

18 Q. Yes, sir.

19 A. The Orangeburg area, sir.

20 Q. Okay. How long did it take to get from
21 Greensboro, North Carolina driving to Orangeburg,
22 South Carolina?

23 A. Three and a half hours.

24 Q. Okay. When you were in the bank in North
25 Carolina, was that appointment in the afternoon or

1 was it in the morning?

2 A. It was in the afternoon, sir.

3 Q. Okay. And you testified these are loan
4 documents. You got the loan; correct?

5 A. Yes, sir.

6 Q. And when you found out that you needed to
7 establish where you were on June 5th of 2014, did
8 you have to go back and ask the bank for a copy of
9 this?

10 A. Yes, sir.

11 Q. And this indicates up here that the current
12 time when this was printed out was September 16th of
13 2015 at approximately noon; is that correct?

14 A. Yes, sir.

15 Q. All right. So sometime in September of 2015,
16 you were asked to prove where you were on June 5,
17 2014?

18 A. Yes, sir.

19 Q. How did you realize, I know where I was, I was
20 at the bank?

21 A. I had to backtrack from last year from, you
22 know, social media postings and bank statements and
23 receipts. And I ran across the -- my bank
24 transaction for June 5th.

25 Q. Okay. And that was the day that you got your

1 money, the day you asked for the loan, the day you
2 applied for it?

3 A. Yes, sir.

4 Q. And that was at what bank?

5 A. State Employees' Credit Unit.

6 Q. And where is that located?

7 A. Greensboro, North Carolina.

8 Q. Which branch did you go into?

9 A. West Market.

10 Q. Okay. Mr. Lassiter, do you know the defendant,
11 Leon James?

12 A. No, sir.

13 Q. You ever seen him before?

14 A. No, sir.

15 Q. How about Homer James?

16 A. No, sir.

17 Q. Lewis Garvin?

18 A. No, sir.

19 Q. There's a -- State's Exhibit 27, there's a
20 silver Pontiac Grand Am crashed up on that tree. Do
21 you recognize that vehicle?

22 A. No, sir.

23 Q. Have you ever gone out, hung out, been
24 associated with the defendant or any of the people I
25 mentioned?

1 A. No, sir.

2 Q. Mr. Lassiter, were you a participant in any way
3 in the robbery that occurred on June 5th in Denmark,
4 South Carolina?

5 A. No, sir.

6 Q. Mr. Lassiter, to the best of your recollection,
7 the best of your personal knowledge, have you ever
8 been in Denmark, South Carolina in your life?

9 A. Never heard of it, sir.

10 Q. Thank you. No further questions.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. WILSON:

14 Q. Mr. Lassiter, my name is Chris Wilson, and I
15 represent the defendant. We haven't had a chance to
16 meet. I've got a few questions for you. Okay?

17 A. Yes, sir.

18 Q. So when your wallet got lost or when you
19 thought you cleaned it out and you left your
20 license, did you leave any other items in your
21 wallet?

22 A. Not that I can recall.

23 Q. Was there a charge card or a Walmart card or a
24 Lowe's card or any kind of bank card or anything in
25 there?

1 A. Not that I can recall, sir.

2 Q. So best of your recollection, the only thing
3 you lost was your driver's license?

4 A. Right.

5 Q. Okay. And you're clear that you weren't
6 anywhere close to Denmark, South Carolina on June 5,
7 2014?

8 A. Positive, sir.

9 Q. Nowhere close you were?

10 A. Nowhere close.

11 Q. But there's been testimony that your driver's
12 license, which is included in State's Exhibit
13 No. 70 was found in the vehicle that was involved in
14 a robbery at Enterprise Bank of South Carolina in
15 Denmark, South Carolina on June 5, 2014. So you
16 weren't there, but your driver's license was there?

17 A. Apparently, sir.

18 Q. Okay. All right. And when you misplaced your
19 driver's license in Myrtle Beach, that was Memorial
20 Day. So that would have been May of 2014?

21 A. Yes, sir.

22 Q. So you don't know where your driver's license
23 ended up going or who had possession from May of
24 2014 to June 5, 2014?

25 A. No, sir.

1 Q. You obviously don't have any idea how it ended
2 up in a vehicle in Denmark, South Carolina?

3 A. No, sir.

4 Q. Okay. And you weren't actually even told or
5 advised or put on notice that your driver's license
6 was found in that vehicle until September of 2015?

7 A. Yes, sir.

8 Q. Almost a year and three months later?

9 A. Yes, sir.

10 Q. Nobody ever came to you and said, hey, man,
11 what's your driver's license doing in this vehicle,
12 do you know anything about it?

13 A. No, sir.

14 Q. Nobody came and asked you any questions?

15 A. No, sir.

16 Q. Nobody asked you if you had any evidence that
17 might help them find how your driver's license got
18 there?

19 A. Repeat the question.

20 Q. From May of 2014 to September of 2015, nobody
21 came to you and said, hey, your driver's license was
22 found in a vehicle that was involved in a robbery?

23 A. No, sir.

24 Q. Nobody came to you and said, hey, can you help
25 us figure out how your driver's license got in this

1 vehicle?

2 A. No, sir.

3 Q. Do you have any kind of evidence that might
4 help us pursue, investigate, and see how that might
5 have happened?

6 A. No, sir.

7 Q. Or who might have been involved?

8 A. No, sir.

9 Q. Okay. Now, you don't know Leon James, the
10 defendant?

11 A. No, sir.

12 Q. And you don't know anything about that gray
13 Pontiac Grand Am?

14 A. No, sir.

15 Q. And that is actually owned by his friend Renee
16 Greathouse. You don't know anybody named Renee
17 Greathouse, do you?

18 A. No, sir.

19 Q. Okay. Now, have you ever heard of DNA testing?

20 A. Yes, sir.

21 Q. Okay. And it's just a pretty simple process;
22 they stick a little Q-Tip swab in your mouth, swab
23 your mouth, and pull some DNA out; correct?

24 A. Yes, sir.

25 Q. Did anybody ever ask you to provide a DNA

1 sample?

2 A. No, sir.

3 Q. If somebody were to ask you to provide a DNA
4 sample to exclude yourself from this robbery, you'd
5 have done so, wouldn't you?

6 A. Yes, sir.

7 Q. Okay. I mean, that wouldn't have bothered you
8 or offended you, would it?

9 A. No, sir.

10 Q. Mr. Lassiter, I appreciate your time and
11 appreciate your travels down. Have a safe trip
12 back.

13 A. Thank you, sir.

14 THE COURT: Redirect?

15 MR. MILLER: Your Honor, I'd like to ask that
16 Mr. Lassiter and his fiancée, who is also under
17 subpoena from the State, be released from their
18 subpoenas at this time.

19 THE COURT: Any objection?

20 MR. WILSON: No objection.

21 THE COURT: You're free to go. Thank you.

22 THE WITNESS: Thank you. Happy Holidays.

23 THE COURT: All right. Do you have another
24 witness?

25 MR. MILLER: Your Honor, at this time, the

1 State rests.

2 THE COURT: All right. Folks, we've reached
3 the part in the trial now where the State has
4 rested. In other words, they've put their case in
5 chief in. So I need to send you to the jury room so
6 we can take up some legal matters and find out what
7 we're going to do for the rest of the day. So,
8 again, it's still improper for you to begin your
9 deliberations, so don't talk about the case, discuss
10 witness demeanor or anything like that, and we'll
11 have you back in just a few minutes. Thank you.

12 (The jury exits the courtroom at 3:26 PM.)

13 THE COURT: All right. Any motions?

14 MR. WILSON: Your Honor, at this point we'd
15 move for directed verdict. The Court is well aware
16 of the law and the standard.

17 If you take the evidence in the light most
18 reasonable to the State, exclude arguments and
19 insinuations been made -- or the statements and
20 insinuations been made by the attorneys and you take
21 the evidence in the light most favorable to the
22 State, the only thing that they've proven to this
23 jury is that a robbery did occur at Enterprise Bank
24 on June 5, 2014; that the defendant went into the
25 bank at 12:00 and 1:00, and that a bottle with his

1 DNA was found in a trailer in Govan, and that he was
2 seen by Eddie Williams -- I think it was exiting
3 that trailer, but around that trailer. I don't
4 remember the exact statement of the testimony. And
5 that's it. That's it.

6 They have no evidence beyond that of his
7 involvement or his presence or his participation in
8 anything to do with this armed robbery. And I can
9 get into the nuances of all of that evidence, Your
10 Honor. You know, we're going to argue that when he
11 went into the bank, he wasn't trying to case the
12 joint; they're going to argue that he was trying to
13 case the joint and all those things, Your Honor.

14 But at the end of the day when you boil it
15 down, he went into the bank twice, the bank was
16 robbed, he was seen by Deputy Williams, and they got
17 a bottle with some DNA on it. And that's it. We'd
18 move for directed -- that and reasonable attempt to
19 prove the guilt of the accused, and it's not
20 something to be submitted to the jury for their to
21 determination, Your Honor.

22 THE COURT: Mr. Solicitor, who is going to
23 argue this?

24 MR. MILLER: I will, Your Honor. Mr. Wilson's
25 characterizations aside, there's actually

1 substantially more evidence in the case than he
2 indicated.

3 First of all, Your Honor, the defendant did
4 come from Columbia down to Denmark for -- on this
5 morning. He did go into a bank, not once, where he
6 was told when he went into the bank that he
7 needed -- if he wanted to open a checking account,
8 which was the testimony of Stacey Lee -- if he
9 wanted to open a checking account, he needed to come
10 back with certain items, and among those items were
11 identification and a social security card.

12 He did come back an hour later and he still
13 didn't have the items to open up that bank account
14 because he didn't have a social security card which
15 she had told him already that he needed to have.
16 And lo and behold, 30 minutes later, the bank is
17 getting robbed by two people.

18 Two people go into the bank. Nobody's ever
19 seen a fourth person on video. Not one person in
20 this trial has testified that they saw a fourth
21 person ever connected with this defendant. But
22 Ms. Betty Wilson did testify she saw two men get out
23 of the silver Grand Am, which is, by the testimony
24 of Ms. Greathouse, in the possession of the
25 defendant, she saw two men run towards the bank with

1 masks covering their faces and go in the bank, and
2 as she circled the block, the car is gone.

3 There has to be a third person. There has to
4 be a third participant in this crime. And lo and
5 behold, they didn't just get out of the bank before
6 she could get back around there, she sees those
7 same -- the two men run back out of the bank and run
8 off to a spot where, presumably, they were meeting
9 the get-away driver. We have evidence to show
10 where, in fact, that trail led.

11 We have the chief of the Olar Police Department
12 who ended up chasing that same vehicle, the vehicle
13 Ms. Greathouse testified about, we have that vehicle
14 wrecking, we all of the occupants of that vehicle
15 fleeing, and importantly, Your Honor, the exact same
16 clothing he was wearing on the video when he was in
17 the bank before is located in the floorboard of that
18 car, behind that car, and down the trail further.

19 He was still in that car after the car wrecked
20 or -- or somebody took all of his clothes off of him
21 that he was wearing and spread it as they ran away.
22 Your Honor, he was found in the company of another
23 one of the suspects in this case at the Govan fire
24 trailer. He ran from the Govan fire trailer. He
25 got arrested in that hedgerow. He didn't have his

1 shoes, he didn't have his shirt, he didn't have his
2 hat. He ran from the police who were chasing him in
3 an attempt to hide. He didn't have any of his
4 codefendants with him at that time. He's trying to
5 hide himself. He ran, he got arrested.

6 And after he got arrested, Lewis Garvin gets
7 arrested over here. But the SLED agents track from
8 the exact same area that he was in, they track Homer
9 James all the way from the trailer area -- the Govan
10 fire trailer, track down, they get to Homer James.
11 It takes them til the next morning, but they're
12 following a trail. And there was testimony about
13 that.

14 Your Honor, he has gone into the bank. There
15 is a person who is the driver of the vehicle, there
16 isn't any question about that, and he flees from the
17 vehicle. Whenever considering the evidence in the
18 light most favorable to the State, he's the person
19 that flees from that vehicle whenever it wrecks on
20 Weed Road. And he remains in flight until they're
21 finally able to put their hands on him 30 hours
22 later.

23 Your Honor, based on that substantial
24 circumstantial evidence, the State would allege that
25 the directed verdict motion should be denied.

1 MR. WILSON: May I respond briefly, Your Honor?

2 Thank you.

3 Judge, I disagree with Mr. Miller's statement
4 that Leon came down from anywhere from Denmark,
5 South Carolina with Homer James and any other guy.
6 I don't believe there's any evidence that's been put
7 forth other than it was his girlfriend's vehicle,
8 Your Honor, and she said he was in possession of the
9 vehicle. They haven't even established through
10 Betty Wilson, the first witness that they called,
11 that that was the vehicle that was involved in the
12 robbery. They never asked a single witness if that
13 was the vehicle that was involved in the robbery.
14 That was my recollection of the testimony. She said
15 she saw a vehicle, but they did not have her
16 identify the vehicle and they did not show her a
17 photograph of that vehicle for her to identify that
18 that vehicle that Ms. Greathouse has linked to the
19 defendant was the actual vehicle that was involved
20 in the robbery.

21 THE COURT: I thought I heard her say it was a
22 silver, gray Grand Am.

23 MR. WILSON: Yes, sir. But they don't link
24 that vehicle, Your Honor.

25 The -- you know, Your Honor, the fact that

1 there's not a fourth person on the video, I don't --
2 I mean, that doesn't go towards anything other than
3 a defense, Your Honor, or a position that the
4 defendant would have to take. And we're not here to
5 argue about our positions, Your Honor, we're here to
6 argue about whether they have put any evidence
7 forward that tends to prove what they have to prove.
8 And, Your Honor, as I stated earlier, if you boil it
9 down to what they've proven, they don't meet that
10 standard.

11 MR. MILLER: Your Honor, just to respond to the
12 issue he brought up, the Grand Am that wasn't ever
13 linked to the robbery was found with dye-stained
14 money inside of it, a BB gun believed to be the
15 weapon that was used in the robbery, and DNA linked
16 back -- that is in evidence now that implicates
17 Lewis Garvin as well as Homer James inside the
18 vehicle as well, which all goes back to the point
19 that this vehicle was, in fact, used in the robbery.

20 THE COURT: All right. Well, it's a
21 circumstantial evidence case. As far as his
22 participation goes, the question is, is there
23 substantial circumstantial evidence? You know, what
24 we have is, he had gone into the bank twice.
25 There's two sides to the story; one is that he was

1 just simply going in to open a bank account, and the
2 other is he had gone in to case the joint. But
3 that's a piece of evidence.

4 The other was that he was in possession of the
5 car -- or a silver gray Grand Am and that -- and the
6 witness was able to say that a silver Grand Am drove
7 up to the bank, two guys ran out; shortly
8 thereafter, two guys ran into the bank, shortly
9 thereafter two guys ran out. There's evidence that
10 while those two guys were in the bank, a bank
11 robbery took place, and when they got out, they ran
12 in to the car, the car took off.

13 That same car -- or a silver Grand Am car
14 shortly thereafter spotted by the police officer
15 flashed his lights, chased the car, car got in the
16 wreck. His clothing was found in the car, money
17 with dye staining pack explosion was found in the
18 car, and he was found later running -- or he had
19 run, was hiding. I think that is substantial
20 evidence to -- substantial circumstantial evidence
21 to link, him under a theory of hand of one, hand of
22 all, to that bank robbery. So the motion is denied.

23 MR. WILSON: Thank you, Your Honor.

24 THE COURT: Okay. So where are we going from
25 there?

1 MR. WILSON: Your Honor, with the development
2 this morning on -- or a little earlier on the issue
3 involving Investigator Williams and that statement
4 issue, we've talked to our client about his right to
5 testify and his decision. We need to be able to
6 talk with him in a little bit more detail and then
7 decide whether or not he's going to testify. It may
8 be him and one other witness or it may be none, Your
9 Honor.

10 THE COURT: Well, it's 20 to 4:00. You're
11 asking to break for the day?

12 MR. WILSON: Yes, sir.

13 THE COURT: All right.

14 MR. WILSON: In a very roundabout way, I'm
15 asking to stop for the day and start back in the
16 morning.

17 THE COURT: All right.

18 Well, Mr. James, yesterday you and I talked
19 about your right to testify and present a defense
20 and your right to not testify and offer no defense
21 if you do not want to. I explained to you then the
22 State has to prove your guilt beyond a reasonable
23 doubt to those 12 jurors; you don't have to prove
24 your innocence. And I told you that at a point in
25 trial, you' would have to make such a decision.

1 Well, it's that time.

2 The State has rested, they've put their case in
3 chief, and I have ruled that they have submitted
4 enough evidence to the jury that if it went to the
5 jury right now, that a jury could convict you of
6 that crime. So that doesn't mean that they would,
7 but simply that there's enough to go forward.

8 So it's now your time to decide whether or not
9 you want to testify and put up any other witnesses,
10 any other evidence. You're on trial for your life,
11 in essence. While you get up to 30 years for the
12 particular crimes, you've got a prior two-strike
13 offense, and if you get convicted, you'll be
14 sentenced to life without parole.

15 So I'll give you over night to think about it.
16 I want you to talk to your lawyers about it. Again,
17 I told you if you want to talk to family members or
18 friends, if you take their advice, then you can talk
19 to them. But, ultimately, this is your decision,
20 your decision alone; only you can waive the right,
21 only you can invoke the right. So tomorrow morning
22 we're going to reconvene at 9:30, and you have to
23 make a decision by then. So I'd urge you to talk to
24 your lawyers about it, sleep on it, and we'll see
25 you tomorrow morning to see what your decision is.

1 Okay?

2 So I've got a set of proposed jury
3 instructions. Y'all look at them. Some of them
4 won't apply. If he doesn't testify -- nobody ever
5 got offered as an expert, did they?

6 MR. MILLER: No, sir.

7 THE COURT: So we'll take that ine out. And,
8 again, it's there for y'all to think about tonight.
9 So if you've got anything you want to add to them,
10 we'll have that charge for tomorrow. But if you've
11 got anything you want to add, e-mail it to Dan
12 tonight so we can have it ready to go.

13 MR. MILLER: Your Honor, my understanding --
14 and just being a former law clerk, I have a little
15 sympathy for him. We have no statements of the
16 defendant in, so we don't need anything on that.

17 THE COURT: At this point.

18 MR. MILLER: Right.

19 THE COURT: He may testify. But as far as the
20 confession statement goes, yeah, that would go out.

21 MR. MILLER: Also, the Defense has presented
22 absolutely no evidence whatsoever to justify a
23 charge on mere presence. There's been this
24 600-pound gorilla in the room that they keep wanting
25 to dance with, that somebody must have coerced the

1 defendant or maybe it was a fourth guy who was the
2 driver, which is fine if that's what they want to go
3 with.

4 But certainly there's no evidence that's been
5 presented of any kind of duress or coercion. And if
6 what they -- I won't object to the mere presence
7 charge if that's what they want to go with.

8 THE COURT: We'll get to that tomorrow when we
9 have the charge conference. You also -- at some
10 point there was some indication, presumably, if
11 Agent Williams' testimony would have come in or he
12 may testify about a duress charge, but right now,
13 there's no evidence to support it at all.

14 MR. MILLER: Right. Okay.

15 THE COURT: But if he testifies and the
16 evidence supports it, that may -- but the argument
17 on mere presence, we'll deal with that in the
18 morning. Anything else?

19 MR. WILSON: Nothing from the defendant, Your
20 Honor.

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

23 THE COURT: All right. We'll then see you guys
24 at 9:30 in the morning. Oh, hold on. I've got to
25 dismiss the jury.

1 (The jury enters the courtroom at 3:45 PM.)

2 THE COURT: Okay. Folks, we're going to break
3 for the day. The State has put in all their
4 evidence. We'll wait until tomorrow morning to hear
5 any evidence from the Defense. Since it's already
6 4:00, we'll just start back tomorrow morning at
7 9:30.

8 Let me send you again with the same
9 instructions I've been leaving you with: Don't
10 begin deliberations or discussions, don't talk to
11 anybody about the case including other jurors, any
12 family members, friends, neighbors; don't do any
13 kind of social media, don't do any kind
14 investigations on your own, you know, trying to find
15 out things on the internet.

16 You know, I'm going to instruct you on the law
17 tomorrow, so there's absolutely no reason in the
18 world for you to try to research the law in this
19 area, so don't do that. As I told you, everything
20 that you need to know about this case in order to
21 make a decision will be presented to you in this
22 courtroom. And that's all you make your decision on
23 is what you hear in this courtroom.

24 So go home and enjoy your evening and we'll see
25 you back -- if you would, please be back in your

1 jury room around 9:30. Okay? Thank you for your
2 patience today. See y'all in the morning.

3 (The jury exits the courtroom at 3:47 PM.)

4 (Court in recess at 3:48 PM.)

5 (The following proceedings were held December
6 3, 2015.)

7 THE COURT: All right. We're back on the
8 record. The defendant is in the courtroom. We left
9 yesterday with the State has rested, and the Defense
10 is now getting ready to tell me what their plan of
11 action is for the day.

12 MR. WILSON: Yes, sir. We intend that our
13 client's instruction and direction to call Lewis
14 Garvin to testify. He pled guilty Monday before
15 Your Honor as part of this armed robbery.

16 THE COURT: All right.

17 MR. WILSON: So we intend to call him to
18 testify. His lawyer Jason Price is present in the
19 courtroom. And then after that, Your Honor, we may
20 or may not call Mr. Leon James to testify.

21 THE COURT: Okay.

22 MR. WILSON: I know you've already gone over
23 his Fifth Amendment right with him and we have
24 discussed his rights with him in greater detail. I
25 would expect that after Mr. Garvin -- what I was

1 thinking is after Mr. Garvin testifies, we'll
2 probably need to let the jury out for a moment for
3 us to talk with him real briefly about whether he's
4 going to testify or not -- a lot of it will hinge on
5 Mr. Garvin, frankly -- and then we could inform the
6 Court. It shouldn't take but a few minutes. But
7 I'd like to not be doing that right here at the
8 table with the jury sitting right here.

9 THE COURT: All right. Well, Mr. James, as I
10 understand, your lawyer has indicated now that this
11 is your request to call Mr. Garvin as a witness.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. You understand he's
14 pled guilty, he's not been sentenced. I gather
15 y'all are kind of up in the air about what he may or
16 may not say at this point.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That's a risky proposition. It may
19 benefit you, it may blow up in your face; you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: It's your case ultimately, like I
23 said. You have to instruct your lawyer what you
24 want him to do. And I gather you have told him you
25 want him to call Mr. Garvin, despite whatever risk

1 he has explained to you are inherent in such a
2 decision. Is that correct?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Anything from the State?

5 MR. MILLER: Nothing, Your Honor.

6 THE COURT: And I note Mr. Garvin's lawyer is
7 present. Is your client going to assert his Fifth
8 Amendment right if he gets called?

9 MR. PRICE: He may. I have no idea what he'll
10 do.

11 THE COURT: Okay. Well, I suppose we'll find
12 out. I would not allow him to testify if he was
13 only going to attempt to do that. Now, he pled
14 guilty to bank robbery -- or bank robbery and armed
15 robbery just like this defendant; right?

16 MR. MILLER: That is correct, Your Honor.

17 THE COURT: Have y'all nol-prossed the criminal
18 conspiracy and weapons charge?

19 MR. MILLER: The weapons charge has been
20 nol-prossed. The criminal conspiracy is still
21 pending.

22 THE COURT: Well, he could still take the Fifth
23 then. Why don't we go ahead and bring him in here
24 and let's get an idea of what he intends to do,
25 because if he's going to plead the Fifth, I'm not

1 going to have him come in and testify --

2 MR. MILLER: Well, Your Honor, Mr. Hires has
3 the indictment. I'll go ahead and dismiss the
4 conspiracy charge.

5 THE COURT: All right. Well, if that's what
6 you want to do.

7 MR. MILLER: I think it probably would be good
8 just to see what he's going to say, Judge.

9 THE COURT: All right. Let's bring Mr. Garvin
10 in.

11 LEWIS GARVIN

12 being first duly sworn, testified as follows:

13 MR. GARVIN: Yes.

14 THE COURT: All right. Have a seat.

15 MR. WILSON: Judge --

16 THE COURT: I'm actually going to have you
17 testify right this moment without the jury present
18 because I want to find out what it is that you're
19 intending to testify to at the trial for the
20 purposes of whether or not -- to see if you intend
21 to testify or invoke your Fifth Amendment rights.

22 So you want to ask him a question?

23 MR. WILSON: I do, Your Honor. And I
24 apologize, I don't mean to waste time. I had gotten
25 a transcript of his plea and I was trying to confirm

1 that the conspiracy charge was not part of the plea
2 deal, Your Honor, and now it's not pulling up on my
3 computer.

4 THE COURT: Well, I've got the -- let's see --
5 I've got the sentencing sheets here. He plead
6 guilty to criminal conspiracy. So he's pleading
7 guilty to armed robbery, criminal conspiracy, and
8 entering a bank with the intent to steal. So the
9 weapons charge has been nol-prossed, so he has no
10 charges pending against him.

11 MR. GARVIN: Let me ask you a question. You
12 said that's a part of it?

13 THE COURT: You pled guilty on Monday to
14 criminal conspiracy, which carries up to five years,
15 as well as entering the bank with intent to steal,
16 and armed robbery, which is ten to 30 years. So you
17 have no pending charges against you. And because
18 you pled guilty, you actually don't have the right
19 to invoke the Fifth Amendment on anything arising
20 out of this case.

21 There's nothing that I'm aware of that would
22 be -- you could possibly say that would incriminate
23 yourself, because you already pled guilty to the
24 charges.

25 MR. WILSON: And, Judge, that's what I was

1 looking for. I got the court reporter to send me
2 the transcript Tuesday of the plea, and it just
3 wouldn't load. I was trying to pull it up because I
4 thought criminal conspiracy was part of it. I don't
5 know if there's any reason for us to question him
6 in-camera now; he doesn't have any Fifth Amendment
7 rights. I'd like to just put him right up in front
8 of the jury.

9 THE COURT: Okay.

10 MR. MILLER: That's fine, Your Honor.

11 THE COURT: Okay. Let's go ahead and bring the
12 jury in.

13 (The jury enters the courtroom at 10:12 AM.)

14 THE COURT: Welcome back, folks. We're going
15 to start this morning with -- you heard yesterday
16 that the State has rested, so they put up all their
17 evidence in their case in chief. It's now up to the
18 Defense to decide whether they want to --

19 THE BAILIFF: Excuse me, Judge. There's one
20 more.

21 THE COURT: All right. I was just saying that
22 the State presented all of their evidence yesterday
23 in their case in chief. And so that then brings us
24 to the point in the trial where the Defense is
25 entitled to, if they desire, call any witnesses or

1 put up a defense. And the State [sic] has called
2 this gentleman right here who is Mr. Lewis Garvin as
3 their first witness.

4 If you would, Mr. Clerk, place him under oath.

5 THE CLERK: I already have.

6 THE COURT: I know, but not in front of the
7 jury.

8 LEWIS GARVIN

9 being previously sworn, testified as follows:

10 THE WITNESS: Yes.

11 DIRECT EXAMINATION

12 BY MR. WILSON:

13 Q. Mr. Garvin, my name is Chris Wilson. I'm one
14 of the lawyers that represents Mr. Leon James. I'm
15 going to ask you some questions today, and I'm going
16 to stand back here. I need you to speak up loud
17 enough so everybody on the jury can hear you. Okay?

18 A. (Nods head).

19 THE COURT: Lean toward that microphone. The
20 acoustics in here are not that good.

21 Q. Okay. You got to speak up in words. Okay?

22 A. (Nods head).

23 Q. You got to answer verbally.

24 A. I understand.

25 Q. You understand that I'm going to ask you some

1 questions?

2 A. Yes.

3 Q. Okay. And your name is?

4 A. Lewis Garvin.

5 Q. Okay. And I think you were represented in this
6 case by Mr. Jason Price, your attorney?

7 A. Yes.

8 Q. And he's present in the courtroom today?

9 A. That's him.

10 Q. Okay. And on Monday you pled guilty before
11 this Court to armed robbery, entering a bank with
12 intent to steal, and criminal conspiracy in
13 connection with the June 2014 bank robbery at
14 Enterprise Bank, didn't you?

15 A. I wasn't aware of the criminal conspiracy, per
16 se. I didn't understand about that one. I thought
17 it was two.

18 Q. Okay. But you pled guilty to being involved in
19 the bank robbery at Enterprise Bank in June of 2014?

20 A. Yes.

21 Q. All right. And you haven't been sentenced yet,
22 have you?

23 A. No.

24 Q. Okay. You're awaiting sentencing sometime
25 later this week on the sentence; is that correct?

1 A. (Nods head).

2 THE COURT: I need you to say it. Instead of
3 shaking or nodding your head, you need to say it out
4 loud.

5 THE WITNESS: Yes.

6 BY MR. WILSON:

7 Q. And the reason why you have to say it in words
8 is because this lady is taking down what you say or
9 what everybody says in here. Okay?

10 A. I understand. I understand.

11 Q. That's just how it's done.

12 A. Yeah.

13 Q. So you're awaiting sentencing; correct?

14 A. Yes.

15 Q. Now, you know Mr. Leon James, don't you?

16 A. Yes.

17 Q. Okay. And you knew Homer James?

18 A. Not per se.

19 Q. Okay. Did you know of Homer James?

20 A. I mean, not per se. I mean, I didn't know him,
21 like, personally.

22 Q. Okay. But you'd been around him or you had
23 seen him before?

24 A. Yeah.

25 Q. Okay. Is that correct?

1 A. Yes.

2 Q. Okay. And in June of 2014, you and Leon James
3 and Homer James and another person left Columbia and
4 drove to Denmark, South Carolina; correct?

5 A. I really can't recall.

6 Q. You can't recall ever going to Denmark, South
7 Carolina?

8 A. I can recall going there. I can't recall the
9 people that were in the car. I can't recall. I was
10 under -- I was drinking and I was under prescribed
11 medication.

12 Q. Isn't it true that there were four people in
13 the vehicle when y'all left Columbia, South
14 Carolina?

15 A. I can't recall.

16 Q. And Mr. Leon James was driving?

17 A. I can't recall, sir.

18 Q. And he was driving because somebody called him
19 and asked him for a ride for Homer James?

20 A. I can't recall.

21 Q. And isn't it true that you were in the vehicle?

22 A. I was in the vehicle, yes.

23 Q. And isn't it true that Mr. Leon James was
24 driving?

25 A. He was the driver.

1 Q. And there was Homer James and another person in
2 the vehicle?

3 A. I can't recall.

4 Q. And isn't it true that y'all drove from
5 Columbia to Denmark, South Carolina?

6 A. Yeah. I had family there. But I can't recall,
7 sir.

8 Q. Okay. Mr. Garvin, isn't it true that -- when
9 you got to Denmark, South Carolina, isn't it true
10 that you participated in the robbery of the
11 Enterprise Bank of South Carolina?

12 A. How?

13 Q. You already pled guilty to it. Isn't it true
14 that you participated in the robbery at the
15 Enterprise Bank of South Carolina?

16 A. How about the participation you're talking
17 about? How?

18 Q. You plead guilty to being involved in the
19 robbery of Enterprise Bank of South Carolina?

20 A. You're saying I was a part of it?

21 Q. Yes.

22 A. You're saying I was a part of it or I was
23 forced? What are you saying?

24 Q. I'm saying you pled guilty to robbing -- armed
25 robbery involving the Enterprise Bank of South

1 Carolina?

2 A. Being forced, yes.

3 Q. Okay. Mr. Leon James didn't know anything
4 about the robbery going to occur at Enterprise Bank
5 South Carolina, did he?

6 A. I mean, you represent him. You tell me.

7 Q. I'm asking you. Mr. James didn't know anything
8 about Enterprise Bank of South Carolina going to be
9 robbed that day, did he?

10 A. Neither did I.

11 Q. Okay. He didn't and you didn't, did you?

12 A. No.

13 Q. Okay. Y'all didn't talk about robbing
14 Enterprise Bank -- nobody talked about robbing the
15 Enterprise Bank of South Carolina on the ride from
16 Columbia to Denmark, did they?

17 A. No.

18 Q. There wasn't any mention by anybody of, hey,
19 we're going to go to this bank?

20 A. It wasn't my intention, sir.

21 Q. And there's no discussion in that vehicle about
22 robbing Enterprise Bank all the way from Columbia to
23 Denmark, was there?

24 A. Not by me. I can only speak for me.

25 Q. You didn't overhear anybody discuss robbing

1 that bank all the way from Columbia to Denmark, did
2 you?

3 A. Like I said, I can't recall because of my state
4 of condition. I'd been drinking and I take
5 prescribed medicine.

6 Q. But my question is, you sitting there on that
7 witness stand today, you can't testify that you
8 overheard anybody say --

9 A. I can't recall.

10 Q. -- anything about --

11 A. I can't recall, sir.

12 Q. So you can't testify today about overhearing
13 anybody --

14 MR. MILLER: Objection, Your Honor.

15 Q. -- mention robbing the Enterprise Bank?

16 MR. MILLER: Objection, Your Honor.

17 THE COURT: What's your objection?

18 MR. MILLER: He's answered the question three
19 times.

20 THE COURT: You've gotten your answer. Why
21 don't you try to move on?

22 MR. WILSON: Thank you, Your Honor. Just one
23 moment, please, Your Honor.

24 BY MR. WILSON:

25 Q. Mr. Garvin?

1 A. Yes.

2 Q. Do you know anybody named Darrell Lassiter?

3 A. No.

4 Q. You ever met anybody named Darrell Lassiter?

5 A. Not per se, no.

6 Q. Do you know anybody that goes by the nickname

7 D?

8 A. I know a lot of Ds, sir.

9 Q. So you know a lot of people that go by the
10 nickname D?

11 A. My father went by the nickname D.

12 Q. Other people also?

13 A. Yes, sir. But, I mean, I don't know of a --
14 what's his name -- Mr. Lassiter.

15 Q. Okay. All right. To your knowledge, Leon
16 James had absolutely no idea that the Enterprise
17 Bank in South Carolina was going to be robbed in
18 June of 2014, isn't that correct, as far as you
19 know?

20 A. As far as I know.

21 Q. Okay.

22 A. Okay.

23 Q. And as far as you know, Leon James didn't have
24 anything to do with plotting or planning or
25 participating in the bank robbery at Enterprise Bank

1 in South Carolina in June of 2014; isn't that
2 correct?

3 A. Yeah. But I didn't have any -- I didn't know
4 anything either.

5 Q. Okay.

6 A. I didn't have any intentions on anything
7 either.

8 Q. What do you mean by that?

9 A. I was in the car.

10 Q. Okay. And what happened?

11 A. Like I said, I was in the car and things
12 happened. I came down there with him. He was the
13 driver. Everything else in the motion of discovery;
14 right? Correct?

15 Q. I don't know anything about your motion on
16 discovery.

17 A. My bad. My bad.

18 Q. To your knowledge, Mr. Leon James had
19 absolutely nothing to do with plotting or planning
20 to participate in an armed robbery at Enterprise
21 Bank of South Carolina, did he, as far as you know?
22 Isn't that correct, he didn't have anything to do
23 with it?

24 A. He was the driver. I was -- I was riding
25 along.

1 Q. But as far as you know, he didn't have anything
2 to do with actually planning to rob Enterprise Bank
3 of South Carolina? Just like you, he didn't have
4 anything to do with planning the Enterprise Bank of
5 South Carolina. He didn't have anything to do with
6 that either, did he?

7 A. I guess not. I guess not. No.

8 Q. Nothing that you heard or saw on the ride from
9 Columbia?

10 A. Huh-uh.

11 Q. You got to answer.

12 A. No.

13 Q. Okay. Now, you pled guilty on Monday to armed
14 robbery, conspiracy, and entering the bank with
15 intent to steal. You pled guilty on Monday;
16 correct?

17 A. Yeah. But I wasn't aware of conspiracy until
18 now.

19 Q. Okay. And you understood that your sentencing
20 was going to be withheld until the end of the week;
21 right?

22 A. I thought it was the end of the trial.

23 Q. Okay. The end of the trial.

24 THE WITNESS: Was it the trial or the week?

25 THE COURT: When we're finished today, the week

1 is over.

2 BY MR. WILSON:

3 Q. So you understood you'd be sentenced when this
4 trial is over?

5 A. Yes.

6 Q. And the State had made a recommendation that
7 your sentence be 40 years; correct?

8 A. They made some recommendation.

9 Q. And that recommendation was for a 40-year
10 sentence, you remember that?

11 A. 40 or 30, something like that.

12 Q. And you don't want to do anything today that
13 would cause you to get more time out of that, would
14 you? I mean, you don't want to do anything in this
15 courtroom today that would cause you to get a higher
16 sentence, do you?

17 A. You mean more than life?

18 Q. More than the 30 or 40 years that's been
19 recommended?

20 A. I don't think anybody in this courtroom would
21 if they were in my situation. No.

22 Q. Wouldn't do anything to get more time, would --
23 a reasonable person, you don't think, would do
24 anything to get more time, would they?

25 A. (Nods head).

1 Q. Correct?

2 A. (Nods head).

3 Q. You got to say yes in words.

4 A. (Nods head).

5 Q. If you're shaking your head yes, you got to say
6 yes in words.

7 A. Yes, yes. So you say, yes.

8 Q. And you wouldn't either, would you?

9 A. Nobody would --

10 Q. Okay.

11 A. -- or anyone.

12 MR. WILSON: Okay. Just one moment, please,

13 Your Honor.

14 Your Honor, that's all the questions I have for
15 Mr. Garvin.

16 THE COURT: Cross?

17 CROSS-EXAMINATION

18 BY MR. MILLER:

19 Q. Good morning, Mr. Garvin.

20 A. Good morning.

21 Q. You said that you knew Leon James, and you were
22 riding with him from Columbia to Denmark that day on
23 June 5th, the day the robbery occurred?

24 A. Yeah.

25 Q. How long had you known Leon James?

1 A. I've known him --

2 MR. WILSON: Your Honor, I got a -- I hate to
3 cut him off. I need to approach one moment, please.

4 (Sidebar conference.)

5 BY MR. MILLER:

6 Q. Mr. Garvin, my question was, how long have you
7 known the defendant Leon James? I'm talking about a
8 period of time. Have you known him -- before June
9 5th, 2014, had you known him for weeks before that,
10 had you known months before that, or had you known
11 him for years before that?

12 A. I've known him for a time before that.

13 Q. Okay. Can we qualify the time?

14 A. Two or less years.

15 Q. Okay. More than a year, but less than two?

16 A. (Nods head).

17 Q. All right. Same question with Homer James.
18 How long had you known Homer James prior to the day
19 of this incident?

20 A. I might have met him -- might have met him a
21 couple of times.

22 Q. Did you know him by name?

23 A. Not -- no, not -- not by Homer James, no.

24 Q. Okay. You testified that you were riding with
25 the defendant and that you were coming here from

1 Columbia. But you don't remember who else was in
2 the car?

3 A. I can't really -- I can't really recall. Like
4 I said, I was drinking and taking prescribed
5 medicines.

6 Q. Okay. Once you got to Denmark, according to
7 your testimony, you had no idea, nobody said
8 anything about any kind of bank robbery; is that
9 correct?

10 A. Not to my intention. That's correct.

11 Q. Okay. But you testified that you were forced
12 to participate in a bank robbery. Who forced you to
13 participate in a bank robbery?

14 A. Whoever the guy was in the car that I can't
15 recall.

16 Q. Whoever was the guy in the car that you can't
17 recall.

18 Okay. Was it the guy with the gun that you
19 went into the bank with? There's surveillance
20 video. You've seen the surveillance video inside
21 the bank. You're the person who jumped up on the
22 counter and went over the teller counter. And
23 there's a person standing there that's got a gun.
24 Was that the person that forced you to commit the
25 robbery?

1 A. The guy told me to get out the car.

2 Q. He told you to get out the car?

3 A. I can't really recall, sir. Like I said, I
4 was -- like I said, my intentions was just not on
5 robbing a bank. I didn't have any intentions -- I
6 didn't go out of Columbia to rob a bank.

7 Q. Okay. You didn't leave Columbia with the
8 intention of robbing a bank in Denmark, South
9 Carolina?

10 A. No.

11 Q. Okay. After the bank robbery, when you got
12 back to the car, do you recall the car wrecking in
13 Olar? Do you recall the wrecking? It doesn't
14 matter where it wrecked. Do you recall the car
15 wrecking?

16 A. (Nods head).

17 Q. Is that a yes?

18 A. Yes.

19 Q. Okay. Do you recall seeing the police chief
20 coming behind the vehicle after it wrecked?

21 A. Yeah. I was in the car. Yeah. I was in the
22 car. Policeman and the car.

23 Q. Okay. Where were you sitting in the vehicle?

24 A. I was in the back seat.

25 Q. You were in the back seat?

1 A. I believe so, yes. I'm in the back seat. I
2 believe so.

3 Q. Okay. After you ran from the vehicle -- did
4 you run from the vehicle?

5 A. Yeah.

6 Q. Okay. After you ran from the vehicle, did you
7 see Homer James or Leon James after that?

8 A. I just ran from the vehicle.

9 Q. Okay.

10 A. Really, I just ran from the vehicle.

11 Q. I understand that. And did you see Homer James
12 or Leon James after that time?

13 A. After I ran from the vehicle, no.

14 Q. Okay. On the way from Columbia to Denmark, did
15 y'all stop anywhere?

16 A. I mean, like, what are you saying? I mean for,
17 like, gas or something.

18 Q. Did you stop and somebody get out of the car?
19 Somebody get in the car?

20 A. Yeah. I mean, yeah.

21 Q. Where?

22 A. I don't know. Gas. I mean, we got gas.

23 Q. Where did you get gas?

24 A. At a gas station. The convenience store gas
25 station. I mean, I can't, like --

1 Q. You can't what?

2 A. I mean, we was at a gas station.

3 Q. Okay. Where was the gas station?

4 A. Somewhere in Columbia.

5 Q. Okay. Was it a Walmart, like one of the ones
6 that's out in front of the Walmart? Do you
7 remember?

8 A. I believe so. Yeah.

9 Q. Okay. There's been testimony that around noon
10 the defendant went into the Enterprise Bank and then
11 he came back out, and an hour later, the defendant,
12 Leon James, went back into the Enterprise Bank and
13 he came back out. What were y'all doing for that
14 hour between the time he went in the bank the first
15 time and he went in the bank the second time?

16 A. Like, riding.

17 Q. Riding?

18 A. Riding around trying to, like -- like, trying
19 to find, like, a -- trying to find, like, a relative
20 of mine. That's all I know. That's all I can
21 recall.

22 Q. What relative? Who is it that lives in this
23 county that you know?

24 A. I have cousins.

25 Q. You have cousins?

1 A. Yeah.

2 Q. What are their names?

3 A. Randy and Rudy.

4 Q. Randy and Rudy?

5 A. Yeah. Garvin. Randy and Rudy Garvin. But I
6 was trying to get in contact with one of my other
7 cousins.

8 Q. Okay. So at 1:00 the defendant is back in the
9 bank. Did y'all -- well, let me ask you this:
10 Between 12:00 and 1:00, did y'all go to Orangeburg
11 so he could get a social security card?

12 A. I don't -- I don't remember. I mean, my
13 intentions were just to go down there, see my
14 cousins and all that. I don't -- I don't --

15 Q. Whose idea was it to go to Denmark in the first
16 place?

17 A. I don't know. I don't know. I wanted to go to
18 Denmark. I wanted to go to Denmark.

19 Q. So you wanted to go to Denmark?

20 A. I wanted to go to Denmark -- that was the
21 reason why I got in the car -- to go to Denmark to
22 see about my cousins. That was --

23 Q. So you wanted to go to Denmark, but you were in
24 Columbia. But there just happened to be,
25 fortunately for you, two people, one of whom had a

1 car, who were on their way to Denmark that day so
2 that you could ride to Denmark where you wanted to
3 go; is that your testimony?

4 A. I paid gas money to go to Denmark. I paid gas
5 money to go to Denmark to try to see my cousin that
6 was down here.

7 Q. Okay. From 1:00 until you ran in that bank and
8 jumped up on that teller counter and started telling
9 them to put all the money in the bag, in that
10 30-minute period, from 1:00 to 1:30 -- approximately
11 1:30, what did y'all do then? Did you go ride
12 around looking for some more relatives?

13 A. No. I guess that's --

14 Q. Okay. So what did y'all do in that half hour
15 between the second time that he went in the bank --
16 the defendant went in the bank, and you jumped over
17 that teller counter and told that teller to start
18 giving you money?

19 A. I don't know. Being forced, basically.

20 Q. You were being forced for that half hour before
21 the bank actually got robbed?

22 MR. WILSON: Object to the form of the
23 question, Your Honor. I don't know that's his
24 testimony.

25 THE COURT: Overruled.

1 BY MR. MILLER:

2 Q. You can answer the question. Is that what was
3 going on? Is that your testimony; that you were
4 being forced for the half hour between the second
5 time that Leon James went into the bank until you
6 actually committed the robbery, you were being
7 forced during that half hour to participate in the
8 bank robbery?

9 A. Yeah. Because when I initially went for my
10 cousins, I couldn't -- I couldn't find my cousins.

11 Q. Okay.

12 A. And, like I said, I didn't have any intentions
13 and I was forced.

14 Q. Okay.

15 A. That's what I'm saying.

16 Q. Okay. You said that you wanted to come to
17 Denmark to look for your cousins. Why did Leon want
18 to come to Denmark?

19 A. I don't know. I needed a ride. I needed a
20 ride, you know what I'm saying, because I didn't
21 have a car. And I have cousins that stay in
22 Denmark, and one in Orangeburg. The only reason I
23 could be -- I could meet them closer in Denmark than
24 in Orangeburg. And that was it. Business purposes,
25 that's about it.

1 Q. Why did Homer want to come to Denmark?

2 A. I don't know, sir.

3 Q. Okay.

4 MR. MILLER: No further questions, Your Honor.

5 THE COURT: Redirect?

6 MR. WILSON: Very briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. WILSON:

9 Q. Mr. Garvin, just a couple other questions. You
10 had family in Denmark you were coming to see?

11 A. Yes.

12 Q. And you don't know whether Leon James had
13 family in the area or not, do you?

14 A. Not in Denmark, no.

15 Q. Do you know if he had any family in Estill?

16 A. Not per se. That's what he said in the motion
17 to discovery, so I would guess so.

18 Q. You understood he may have had some family in
19 Estill, but you don't know that for sure of your own
20 knowledge?

21 A. I don't know that for sure. But there had to
22 be a reason why he drove down here.

23 Q. Okay. And the solicitor was asking you about
24 that half-hour period between 1:00 and 1:30. You
25 said y'all rode around looking -- Mr. James went in

1 the bank, came back out, and then y'all were looking
2 for some of your family members; correct?

3 A. That I remember, yes.

4 Q. Okay. And then he went back in the bank and
5 came back out. And then it was about a half hour,
6 later that the bank was robbed, so there was about a
7 30-minute period in there. Okay? Does that make
8 sense?

9 A. Okay.

10 Q. You weren't forced to rob the bank during that
11 full 30-minute period, were you? I mean, nobody
12 held a gun to your head for a 30 full minutes. When
13 the guys jumped out of the car -- or when the one
14 guy jumped out of the car, that's when the other guy
15 said, get out, correct, was right there when the
16 robbery started taking place is when you were forced
17 to participate; isn't that correct?

18 A. There was a gun involved, yes. I was forced,
19 yes.

20 RECROSS-EXAMINATION

21 BY MR. MILLER:

22 Q. Okay. This -- the question that he just asked,
23 he said, you got out of the car and the other guy
24 with the gun told you to get out. But you said you
25 don't remember how many people were in the car. Who

1 had the gun?

2 A. One of the dudes had the gun that was in the
3 car.

4 Q. One of the dudes in the car had the gun, but
5 you don't remember which one?

6 A. No, I don't. I didn't really know them, I just
7 know the driver.

8 Q. You just know the driver?

9 A. Yes, sir.

10 Q. But you know Homer?

11 A. I've seen his face.

12 Q. Was Homer the person that forced you to
13 participate in the robbery? That's the question:
14 Was Homer James the person that forced you to
15 participate in the robbery that you didn't want to
16 participate in or do you recall?

17 A. Like I said, I can't recall. I can't recall.

18 Q. After the bank robbery, you went back to the
19 car, isn't that correct; ran to the car after the
20 bank robbery?

21 A. Yes.

22 Q. Who was driving the car?

23 A. Leon James.

24 MR. WILSON: No further questions.

25 THE COURT: Okay. Folks, let me send you out

1 for a little bit while we get ready for the next
2 phase of the trial. Again, don't begin
3 deliberations or discussions about the case. And
4 we'll have you out in just a few minutes.

5 (The jury exits the courtroom at 10:44 AM.)

6 THE COURT: All right. Take him out.

7 THE WITNESS: Can I ask you a question before
8 we leave? The invoking of the Fifth Amendment, how
9 is it that once I got up here and plead guilty, it's
10 revoked?

11 THE COURT: You can't invoke it after you plead
12 guilty. You don't face criminal exposure, so it's
13 too late. Get him out.

14 All right. You need a few minutes with your
15 client?

16 MR. WILSON: Five, Judge.

17 THE COURT: All right. Let's take ten.

18 (Short break.)

19 THE COURT: All right. Mr. Wilson has
20 indicated that the defendant does not wish to
21 testify. Is that correct?

22 MR. WILSON: That's what he tells me after
23 we've discussed again in detail, Your Honor.

24 THE COURT: Okay. And you have no other
25 witnesses you intend to call?

1 MR. WILSON: No, sir. I'd ask that you
2 question him on the record about that decision.

3 THE COURT: I will.

4 Do you have any witnesses you're going to call
5 in reply?

6 MR. MILLER: No, Your Honor.

7 THE COURT: Okay. Mr. James, we're at the
8 point in the trial where you have to make a decision
9 as to whether or not you want to testify. As I told
10 you, you have the right to testify, tell the jury
11 your side of the story; you also have the right not
12 to testify. And if you do not wish to testify, I
13 will instruct the jury that they are not to hold
14 that against you while they're deliberating their
15 verdict. Do you recall that?

16 THE DEFENDANT: Yes, sir, I do.

17 THE COURT: Do you understand that?

18 THE DEFENDANT: Yes, sir, I do.

19 THE COURT: All right. Well, you have,
20 according to your lawyer, called the only witness
21 that you intend to call in your defense, so you now
22 have to make a decision as to whether or not you
23 want to testify. What is your decision?

24 THE DEFENDANT: My decision is I'm choosing not
25 to.

1 THE COURT: Okay. Understanding again that if
2 you wanted to testify, you would have to testify
3 truthfully under oath. I've told the State when we
4 were having discussions yesterday that I would not
5 allow them to bring up your previous conviction of
6 armed robbery. I don't know that I've told you that
7 on the record, but your lawyer probably told you
8 that. So you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Your decision still the same?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay.

13 Do you agree with his decision?

14 MR. KAZMIERSKI: Yes, Your Honor.

15 MR. WILSON: Yes, sir, Your Honor.

16 THE COURT: In your opinion, does he understand
17 that decision?

18 MR. KAZMIERSKI: Yes, Your Honor.

19 THE COURT: All right. Well, I find that he
20 has freely, voluntarily, and intelligently waived
21 his right to testify. I'll instruct the jury not to
22 hold that against him while they're deliberating.

23 Before we go to have closing arguments and all
24 of that, we'll have a jury charge conference. I
25 gave y'all copies of that to take home and study.

1 Since he is not testifying, we'll leave in defendant
2 not testifying instruction. I asked in chambers
3 earlier if the Defense wished to -- or intended to
4 ask for a lesser-included of strong arm robbery, and
5 you've indicated that you're not going to ask for a
6 strong arm robbery charge; correct?

7 MR. WILSON: That's correct. We don't believe
8 the facts, as they've come out, would even support a
9 request for that.

10 THE COURT: Okay.

11 MR. WILSON: And it doesn't meet with the
12 defense, Your Honor.

13 THE COURT: Okay. Is there anything that the
14 State wishes to discuss about the proposed charges?

15 MR. MILLER: Your Honor, based upon the defense
16 that has been raised through the testimony, the
17 State does not believe that the mere presence charge
18 is appropriate; instead, it is a case of coercion or
19 distress, the affirmative defense. We have received
20 a copy of the coercion or duress charge used by the
21 Court and do not have any objection to that charge.
22 The State would object to a mere presence charge.

23 THE COURT: Okay. Y'all want duress added?

24 MR. WILSON: Just one moment, Your Honor.

25 Your Honor, we're not requesting duress charge.

1 Don't believe it would be appropriate. Just the
2 mere presence charge, Your Honor.

3 THE COURT: Okay. You're not allowed to argue
4 it then.

5 MR. WILSON: Can I have just one more moment?

6 THE COURT: Sure.

7 MR. WILSON: Thank you. Judge, my
8 understanding of the Court's intention and the law
9 as we -- it's either you get the mere presence or
10 you get the coercion or duress, but the Court is not
11 inclined to charge both.

12 THE COURT: Well, under the facts that are
13 presented at trial, if you're not going to ask for
14 duress, you won't get it, obviously. If the -- the
15 State's position, as I understand it, is if you ask
16 for duress, then you're not entitled to mere
17 presence. I guess the State's position is they're
18 mutually exclusive and you're not entitled to them.
19 I don't --

20 MR. WILSON: Your Honor, here's my thoughts
21 on -- and I was saying we don't want the duress
22 charge based on my understanding of maybe what I
23 understood our was, was one or the other.

24 But here are my thoughts: Their argument is
25 going to be that he -- that he -- I mean, he was

1 merely present because he was driving the vehicle.
2 And then their argument is going to be that he drove
3 the vehicle off and did all this flight and all this
4 other stuff.

5 You know, Your Honor, the elements of both of
6 these -- there are elements of both situations in
7 the evidence that's been presented to the Court
8 before the jury. I don't know of any law that says
9 they're mutually exclusive, but I won't contend to
10 know everything that's out there and that there
11 might be something out there.

12 I believe there are elements that will support
13 both charges. If we're going to be required to
14 choose between the two, then I'll need to talk to my
15 client for a moment again. But I --

16 THE COURT: Well, let me think about it. I
17 didn't necessarily say I agreed with the State, I'm
18 just saying that's what their position is.

19 MR. WILSON: Well, then I'm sorry. I
20 misunderstood our discussions, and that's my fault.

21 THE COURT: You know, as I understand the law
22 under your theory of hand of one, hand of all,
23 Mr. Solicitor, you've got to prove beyond a
24 reasonable doubt that he was, in essence, aiding and
25 abetting as a principal. And, therefore, as part of

1 the standard charge of that, we have the law of mere
2 presence in the definition. You might see on page
3 7: Present at the commission of a crime means to be
4 sufficiently near, to aid and abet and assist in the
5 commission of the crime; however, mere presence at
6 the scene is not sufficient to convict one as a
7 principal on the theory of aiding and abetting.
8 Intent must also be a necessary element.

9 And then down below, I have a -- just a
10 reiteration of that. But I think you have to -- I
11 don't see that a mere presence charge is mutually
12 exclusive to a defense of coercion. You have to
13 prove that he wasn't merely present as part of your
14 proof of aiding and abetting as a principal.

15 MR. MILLER: Your Honor --

16 THE COURT: Sometimes we get confused with mere
17 presence in the type of case such as this where
18 somebody is there during the commission of a crime
19 as opposed to being somewhere else, and then there's
20 almost a separate body of law of mere presence in
21 drug cases where there's a charge of possession.
22 And sometimes those overlap. But in this case, you
23 have to prove that he was there. And --

24 MR. MILLER: And presence is defined in the
25 Court's charge.

1 THE COURT: And presence -- mere presence is
2 not enough being there. A principal who is one --
3 who's actually commits the crime or who is present,
4 aiding, abetting, and assisting in the crime; when a
5 person acts in the presence or with the assistance
6 of another, the act is done; when two or more people
7 acting with a common plan or intent are present at
8 the commission of the crime, it does not matter who
9 actually commits, all are guilty, hand of one, hand
10 of all.

11 You know, I would do this, because the second
12 bulleted point on my page 7 in talking about it's
13 not sufficient to prove -- it's not sufficient that
14 somebody merely be present to prove aiding and
15 abetting, it talks about mere presence. Down below
16 under a thing called mere presence, it basically
17 reiterates that in the first bullet point. But the
18 second bullet point doesn't add or detract other
19 than to say, you have to prove it, along with every
20 other element, beyond a reasonable doubt.

21 So rather than to put it in there twice, I'll
22 take out that first bulleted point under mere
23 presence. And so it would read -- you know, you got
24 that first bulleted point, that second bulleted
25 point, and then again reiterating the burden of

1 proof, which is on the State, and then put in the
2 charge for the defense of coercion.

3 MR. MILLER: Your Honor, the argument is not
4 that you can't just be merely present or that
5 somehow the State doesn't have to prove something if
6 you are merely present. The argument is, by
7 definition, to claim coercion, you have to claim, I
8 did something illegal, but I did it because I was
9 coerced. And if you, by the assertion of the
10 defense, are claiming, I did something illegal, then
11 you're claiming you weren't merely present.

12 If his claim is, I was the get-away driver, but
13 I only did it because somebody forced me to do it,
14 then there's no place for a mere presence charge,
15 because mere presence says you weren't participating
16 in the crime. So by the facts of the case as it has
17 come out, his --

18 THE COURT: I still think you have to prove
19 that he wasn't merely present as part of aiding and
20 abetting in your case.

21 MR. MILLER: But that's why they're mutually
22 exclusive. Because not only is there an element --
23 not only are we talking about what the State has to
24 establish to avoid the mere presence, the Defense
25 has the burden of proof in the coercion defense.

1 THE COURT: Yeah. But that doesn't mean --
2 that doesn't mean that you still don't have to prove
3 in your case that he wasn't merely present. If the
4 jury finds that you've met every element, then they
5 only have to consider coercion. They may find that
6 you still haven't proved your case and not get to
7 his defense of coercion. They may simply find that,
8 you know what, there's just not enough evidence to
9 convict him as opposed to saying, you know what, he
10 met his burden of proving that he was coerced.

11 So I don't think they are mutually exclusive in
12 this case under these facts. So I will do what I
13 said, and that is drop out that paragraph which, in
14 essence, repeats what was already in the paragraph
15 before where it says: Mere presence at the scene is
16 not sufficient to convict one as a principal on the
17 theory of aiding and abetting. And then I'll just
18 leave in that next statement that says the burden is
19 on the State to prove every element of the crime
20 charged, with the remainder of that paragraph coming
21 in there as well.

22 Anything else from the State?

23 MR. MILLER: So the second bullet point in mere
24 presence is coming out?

25 THE COURT: No. On page 7 --

1 MR. MILLER: Yes, sir.

2 THE COURT: -- where it's a separate bulleted
3 point that starts out mere presence, the first
4 bulleted point is going to come out, the second one
5 will stay in. We'll just do away with the word mere
6 presence and the charge -- that first bulleted point
7 and just pull that second bulleted point under mere
8 presence up, make it part of the previous one.

9 MR. MILLER: Yes, sir.

10 THE COURT: Which leads me to the next
11 question: Does anyone have an objection to me
12 sending the jury charges back with the jury? Any
13 objection by the State to sending the jury charges
14 back?

15 MR. WILSON: We're trying to disagree with the
16 Court together if we're going to disagree, Judge, so
17 that we both take the hit. Judge, we would jointly
18 prefer not to send the jury charges back. We'd
19 prefer to just charge the jury.

20 THE COURT: All right.

21 MR. WILSON: Thank you.

22 THE COURT: How long do you think you'll need?

23 MR. MILLER: I'd say out of the box, 30
24 minutes. But it depends on how long Mr. Wilson is.

25 THE COURT: You don't want to open on the law,

1 you just want to --

2 MR. MILLER: I'll waive opening on the law.
3 And I guess Janek is going to be the one who does
4 the close. So however long he is might influence
5 that, but --

6 THE COURT: Any idea how long you think you'll
7 be?

8 MR. WILSON: Maybe 15 minutes, Your Honor.

9 THE COURT: All right. Sounds good. Y'all
10 take five and get your thoughts together.

11 (Short break.)

12 THE COURT: Take a moment to look over those
13 charges and make sure we're all on the same page
14 there.

15 MR. MILLER: Your Honor, have you got a verdict
16 form?

17 THE COURT: I'm just going to have them write
18 it on the back of the indictment, guilty or not
19 guilty. The only thing that is slightly different
20 is because the burden of proof on your defense of
21 coercion or duress is preponderance of the evidence,
22 I just added the definition of preponderance of the
23 evidence.

24 All right. Anything from the State?

25 MR. MILLER: The State is ready to proceed,

1 Your Honor.

2 THE COURT: From the Defense?

3 MR. KAZMIERSKI: Defense is ready, Your Honor.

4 THE COURT: All right. You want to see if the
5 jury is ready with those orders and ready to go?
6 We're taking their lunch order.

7 All right. Let's bring the jury in and we'll
8 get started.

9 (The jury enters the courtroom at 11:36 AM.)

10 THE COURT: All right. Folks, welcome back.
11 We're now going to enter into the final phase of the
12 trial. The Defense has rested and called all of the
13 witnesses that the Defense intends to call, so we'll
14 move to the final phase where we have closing
15 arguments and then I'll instruct you on the law that
16 you are to apply to the facts as you find them in
17 this case and deliberate and consider what your
18 verdict will be.

19 Now, the way this goes is, our rules of
20 procedure allow the State to close since they have
21 the burden of proof. And so you'll hear from the
22 Defense first and then you'll hear from the State,
23 and then I will charge you on the law.

24 Let me remind you that the closing arguments
25 are not to be considered by you as evidence. As I

1 said at the beginning of the trial, the lawyers
2 weren't witnesses; they weren't there, they can't
3 testify, and they didn't testify. What they're
4 going to do is review the evidence that you heard.
5 And they know the law that I will charge you, so
6 their intention is to, of course, persuade you to
7 render a verdict on their client's behalf.

8 After, again, we have the closing arguments,
9 I'll charge you on the law. So because the State,
10 again, has the burden of proof, you'll hear from the
11 Defense first. So, Mr. Kazmierski, if you're going
12 to make the closing, you may begin.

13 MR. KAZMIERSKI: Thank you, Your Honor. May it
14 please the Court.

15 It's been a long week, ladies and gentlemen. I
16 know y'all are tired, because I'm tired. At the
17 start of this trial, the Judge talked to you about
18 reasonable doubt and he told you that you must be
19 firmly convinced of Leon James' guilt in order to
20 convict him. And he used the scales of justice in
21 order to explain reasonable doubt and the level of
22 proof that you needed in order to convict him.

23 You've heard all of the evidence in this case,
24 and now Leon's liberty is in your hands. I'm going
25 to go over some of the important evidence that I

1 want you to consider during your deliberations.

2 You just heard Lewis Garvin testify. As the
3 jury, you get to determine a witness' credibility.
4 You decide that. When you consider Lewis Garvin's
5 credibility, think about this: He pled guilty on
6 Monday to armed robbery, entering a bank with intent
7 to steal, and criminal conspiracy. He wasn't
8 exactly clear if he got a 30- or 40-year sentence,
9 but it doesn't matter, because it was a
10 recommendation.

11 By testifying the way he did, he put his own
12 neck on the line, he put himself in a worse
13 position. He had every reason to lie today and
14 testify favorably for the State. You heard him say
15 that he had no knowledge that Leon James was
16 involved in the robbery of Enterprise Bank on June
17 5th, 2014. You also heard him say a man with a gun
18 in the car forced the robbery.

19 The State has told you that Leon James was part
20 of this robbery. Ask yourself, when Leon James
21 entered the bank on June 5th, 2014, did he act like
22 somebody that was involved in a robbery? You only
23 get to see half the time he was in the bank because
24 Agent Williams decided that that wasn't important
25 for you. He's the only person that got to see the

1 video at noon of Leon entering the bank.

2 But Chris Folk, the branch manager for
3 Enterprise, said that the bank had that video, had
4 video from the entire day, and if the police had
5 asked for it, he would have given it to them. If
6 that video showed Leon James acting suspiciously or
7 doing anything out of the ordinary, don't you think
8 we would have shut the lights off and it would have
9 been displayed on the screen for y'all right there?

10 At about noon, Leon James went into the bank
11 for the first time, asked to open an account. And
12 the teller told him, the people that can do that for
13 you, they're not here, come back in an hour.

14 Instead of walking out of the bank, going back to
15 the car and saying, Homer, Lewis, come on, the bank
16 is short-staffed, it's time to rob the bank now,
17 what did he do? He waited an hour and came back to
18 the bank at 1:00. Does that make sense? Is that
19 like -- sound like somebody that's involved or
20 preparing or planning a bank robbery?

21 Let's talk about the video that you did get to
22 see of Leon going in at 1:00. Both tellers that he
23 interacted with, the one at noon and the one at
24 1:00, they sat right there in that witness box and
25 pointed him out. And I asked them to because he

1 didn't try to hide his identity. No mask, no
2 sunglasses.

3 And he had a two-minute conversation -- you
4 watched it -- two minutes and five seconds, on that
5 screen right there, with Eleese Gilbert. And she
6 told you they talked about opening an account, he
7 asked where he could get a social security card.
8 And you watched a video where he took his wallet out
9 and put his ID forward. Now, she said she couldn't
10 see it because it was slightly slanted. That's a
11 big risk for a bank robber to take, put your ID out.

12 Let's talk a little bit about the
13 investigation. From the start of this case, the
14 State has focused solely on finding three people.
15 But they found a fourth ID in the car, a North
16 Carolina driver's license. The ID didn't match any
17 of the three people that were caught or that are
18 suspects in this crime, but what did Agent Williams
19 tell you he did with that ID? Nothing. Why? He
20 didn't believe it.

21 He didn't call Darrell Lassiter, he didn't
22 attempt to find him, he didn't attempt to contact
23 him, nothing. He didn't ask him -- couldn't ask
24 Darrell Lassiter how or why his ID would have been
25 in the car that was involved in a bank robbery in

1 Denmark, South Carolina, because he didn't believe
2 it. But he wrote in his report that he couldn't
3 find, locate, or identify a Darrell Lassiter.

4 And then 15 months later, someone goes and
5 talks to Darrell Lassiter. And thank goodness
6 Darrell Lassiter had loan documents that proved on
7 June 5th, 2014, he was in Greensboro, North
8 Carolina. Thank goodness. That worked out for
9 Darrell Lassiter. Agent Williams' beliefs, what he
10 decided was important, that worked for Darrell
11 Lassiter, but had worked out for Leon James.

12 If Agent Williams would have contacted Darrell
13 Lassiter a week or two weeks after he had found his
14 ID, Darrell Lassiter wouldn't have had to go back
15 and search through his Facebook, social media, pull
16 receipts, try to find out where he was. He'd know,
17 I was at Bike Week. Maybe that would have led the
18 investigation to a fourth person. But the State
19 waited 15 months.

20 You heard Chief James Walley, the one who
21 pursued the vehicle and observed it crash in Olar.
22 The only officer that was out there, and testified
23 right there, he said the car came in, went through
24 the cables, and turned slightly. What did he say?
25 I saw one person. I saw one person flee.

1 But then Dawn Claycomb came out here, Agent
2 Claycomb, and she told y'all that Chief Walley told
3 me he saw three people and they all fled west. From
4 the start the State has looked for three people,
5 found three people, and the investigation was done.
6 Does the evidence in this case support that
7 decision?

8 The State's first witness, Betty Wilson, young
9 lady who attends USC, what does she testify about?
10 She told you all about the two people that went into
11 the bank; got out of the car, mask, walked in the
12 bank, car drove around, came out of the bank, jumped
13 back in the car. What does she tell you about what
14 was inside the car? What did she tell you about the
15 man that's on trial today? Nothing. The State
16 didn't even ask her if she saw one person or two
17 people inside the car. They didn't even ask the
18 question.

19 Three cell phones were recovered. Three cell
20 phones recovered from the car. I know that every
21 day I touch my cell phone. And most every single
22 day, I'm the only person that touches my cell phone.
23 Agent Williams told you he didn't test the cell
24 phones for fingerprints or DNA. He didn't unlock
25 the phones, he didn't call the providers and say,

1 hey, who are the owners of these phones? He didn't
2 determine it.

3 You heard evidence about a receipt found, a
4 Walmart receipt for gasoline purchases. Agent
5 Williams told you, I know they have video
6 surveillance over the gas pumps, never requested the
7 video. I don't know what that video shows, but you
8 don't either.

9 And only one gun was ever recovered in the
10 armed robbery. And you heard testimony that both
11 people that went into the bank were armed. And you
12 watched a video, one of the men wasn't wearing a
13 glove, he had the pistol in his hand. And I asked
14 Agent Williams, what did y'all find; fingerprints?
15 DNA? I don't remember. That's what he answered, I
16 don't know. So you recovered one firearm in an
17 armed robbery and you don't know if there's any DNA
18 or fingerprints on that firearm? I'll tell you, if
19 the DNA or fingerprints, if they were there and they
20 matched Leon James, Homer James, or Lewis Garvin, he
21 would have recalled that.

22 Agent Williams told you that he didn't think
23 there was any unknown DNA in the car. And then
24 yesterday you heard from Agent Money from SLED that
25 she tested three gloves and she found a mixture of

1 at least three people on each of those gloves, three
2 people. Lewis Garvin, one of those people, but
3 Homer James and Leon James were excluded. Their DNA
4 was not on those gloves. So that means that
5 somebody that the State hasn't accused of this
6 crime, their DNA was on those gloves.

7 How about the hat? Mixture of two; Homer
8 James, and again, Leon James and Lewis Garvin
9 excluded. Somebody the State hasn't charged that's
10 not on trial that wasn't looked for, their DNA is on
11 the hat. Then you got the water bottle. Unknown
12 male DNA. How do you account for that? How do you
13 account for unknown DNA on gloves found in the
14 vehicle? How do you account for unknown DNA found
15 on the hat found in the vehicle? How do you account
16 for the water bottle -- the DNA on the water bottle?

17 You saw pictures of the inside of this car.
18 There's a hat, there's some rags, cups, a lot of
19 clothing back there, IDs. You can look at these
20 back in the jury room. I'm not going to spend a lot
21 of time. The car wasn't clean. A lot of stuff in
22 the car, a lot of stuff that I imagine would have
23 fingerprints on it.

24 You didn't hear any evidence about
25 fingerprints. But there's an entire department at

1 SLED called forensics, an entire department
2 dedicated to it. If Leon could have tested all of
3 that stuff, he would have, but he didn't have the
4 resources for that. But, more importantly, he
5 doesn't have to prove his innocence. That's the
6 State's burden. They have the burden to prove his
7 guilt beyond a reasonable doubt.

8 Leon James never denied that he went into
9 Enterprise Bank on June 5th, 2014. He did, twice.
10 A man with a gun in the car forced the robbery, and
11 he ran. He ran when the car wrecked. He had two
12 options, and neither of which is good for a suspect
13 in an armed robbery. You had the car wreck and here
14 comes Chief Walley, weapon drawn. And he told you,
15 a high risk pursuit. He's ready, weapon's out. So
16 he ran. He could run back to Chief Walley or he
17 could try to run away.

18 When people are scared, they make rash poor
19 decisions. And I'm not going to tell you Leon's
20 decision to run was a smart one or wise or right.
21 But once he made that initial decision to run, he
22 was stuck with it because he knew that at some point
23 after that, he came out and said, hey, y'all got me,
24 he'd be right there, same position he's in today.

25 The State has failed to prove Leon's guilt