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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Lexington County

Honorable G. Thomas Cooper, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JAMES BUBBA PATTERSON,

APPELLANT

APPELLATE CASE NO 2016-000863

RECORD ON APPEAL

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

**STATE’S EXHIBIT #54
(DNA RESULTS)**

1 A. I have to take the swabs, not the report. The report
2 can generate later on down the line --

3 Q. I got you.

4 A. -- but I have the worksheet.

5 Q. But the swabs have got to be done?

6 A. Yes.

7 Q. And there was a listing on the report of the incident
8 date. What date is that?

9 A. April 24, 2015.

10 Q. April 24th?

11 A. I'm sorry. May 21, 2015.

12 Q. 2015? Are you sure?

13 A. 21 -- 2012. I'm sorry.

14 Q. So the incident date on -- that's associated with this
15 evidence is May 21st of 2012, correct?

16 A. Yes, it is.

17 **MR. MADSEN:** That's all the questions I have.

18 **THE COURT:** Anything further?

19 **MS. MAYES:** Yes, sir.

20 REDIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. Do you actually enter that information yourself
23 concerning incident date?

24 A. No, I do not.

25 Q. All right. So that's not something you're responsible

1 for?

2 A. No, I'm not.

3 Q. And just to -- just to clarify, because he was asking
4 you about an incident date that's reflected on a form or on
5 a report that's -- that you don't enter, but what exactly
6 does -- does the State Law Enforcement Division label
7 indicate concerning the date that hat was recovered and the
8 location it was recovered?

9 A. I don't know whether this is a SLED label or not, but
10 it says evidence room location, SLED, box. It has the
11 description of the evidence, which is black in color hat.
12 It has offense, armed robbery, offense location, which is
13 507 Meeting Street. Date recovered was May 9, 2012, and
14 they have the suspect unknown. Victim, K & M Jewelry.

15 Q. All right. So it indicates K & M Jewelry, May 9,
16 2012, on Meeting Street, correct?

17 A. That's correct.

18 Q. And at that time the suspect was unknown. And
19 Mr. Madsen was asking you about why you swab the inside of
20 the hat and, again, if you're looking for ownership or as
21 you put it, who wore the hat, why are you looking near the
22 band?

23 A. When you wear a hat, you have your hair, which is --
24 sometimes maybe you won't get anything, but around here you
25 sweat, your forehead, you sweat a lot, and you transfer

1 sweat and skin cells more from your forehead than anyplace
2 else.

3 Q. All right. And is it possible to transfer skin cells
4 even without sweating?

5 A. Yes.

6 Q. All right. And that's what's known as touch DNA,
7 things of that nature, correct?

8 A. Yes. Skin cells, yes.

9 Q. And in addition to looking for who wore the hat and in
10 trying to collect samples to determine that, can you tell
11 us whether or not you would have noted if any errors were
12 made by yourself during the processing of that evidence?

13 A. Yes, on the worksheet if any errors was made it would
14 be noted on the worksheet and there is nothing noted on the
15 worksheet and so there was no errors made.

16 **MS. MAYES:** Thank you. Nothing further.

17 **MR. MADSEN:** Nothing further.

18 **THE COURT:** All right. You may come down. Thank you
19 very much. May the witness be excused?

20 **MS. MAYES:** Yes, Your Honor.

21 **MR. MADSEN:** Yes, Your Honor.

22 **THE COURT:** Without objection.

23 (Witness excused.)

24 **MS. MAYES:** The State calls Maryann Boehm.

25 MARYANN E. BOEHM,

1 Harrisonburg, Virginia.

2 Q. And what training do you have specifically in the
3 field of forensic DNA analysis?

4 A. Upon my employment at SLED, I was trained for
5 approximately a year in the proper procedures and
6 techniques used in our laboratory. I also attended outside
7 training on specific instrumentation and procedures used
8 in our laboratory.

9 Q. Are you required to complete any type of continuing
10 education in the field of DNA analysis?

11 A. Yes, ma'am. We are required to do at least eight
12 hours of continuing education each year.

13 Q. Are you also subject to what's known as peer review
14 within the State crime lab by other DNA analysts and
15 forensic supervisors?

16 A. Yes, ma'am. Each report that we issue goes through
17 two peer reviews. It goes through a technical review and
18 then an administrative review.

19 Q. Is it possible for you to estimate how many times you
20 have conducted forensic DNA analysis during your ten years
21 at the State crime lab?

22 A. That's -- that would be hard to estimate. I do
23 hundreds of cases each year.

24 Q. So hundreds a year?

25 A. Yes, ma'am.

1 Q. At this point have you done over a thousand in your
2 estimation?

3 A. I would believe so.

4 Q. Can you tell us, Agent Boehm, whether or not you have
5 testified previously as an expert in the field of DNA
6 analysis and identification?

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

8 Q. Does that include statistical calculations associated
9 with DNA analysis?

10 A. Yes, ma'am.

11 Q. How many such times have you testified?

12 A. Approximately fifty times.

13 Q. As an expert in this field?

14 A. Yes, approximately fifty times.

15 **MS. MAYES:** Your Honor, at this time the State would
16 offer Agent Boehm as an expert in the field of DNA analysis
17 and statistical calculation.

18 **THE COURT:** Any voir or objection?

19 **MR. MADSEN:** No, Your Honor. No objection.

20 **THE COURT:** You may proceed.

21 BY MS. MAYES:

22 Q. I want to start by asking you, Agent Boehm, what is
23 meant by the term deoxyribonucleic acid, DNA?

24 A. Deoxyribonucleic acid, the abbreviation is DNA.

25 That's what we commonly use. It is information in every

1 cell of our body with the exception of red blood cells. We
2 get our physical features, like our hair color or height
3 from DNA. It's also responsible for passing along traits
4 from generation to generation. We get half of our DNA from
5 our mother and half from our father. With the exception of
6 identical twins, no two individuals have the same DNA. In
7 forensic science we're interested in the portions that vary
8 between individuals. We test fifteen different locations
9 and the combination of those test results make up a DNA
10 profile.

11 Q. I need you to slow down a little bit so the court
12 reporter can get all of your testimony.

13 A. I'm sorry.

14 Q. Are, or is, a DNA profile unique as to each individual
15 with the exception of identical twins?

16 A. Yes, with the exception of identical twins no two
17 people have the same DNA profile.

18 Q. Now looking at any particular case where you're doing
19 an analysis, can you tell us what type of body fluid have
20 that DNA? What about blood?

21 A. Blood will contain DNA. Any body fluid from a human
22 individual will contain DNA; blood, semen, saliva.

23 Q. All right. What about skin cells?

24 A. Yes, skin cells also developed from your skin will
25 have DNA present.

1 Q. And in that I'm including skin cells that can come off
2 when you wear an item, for example, when you wear an item
3 of clothing.

4 A. Yes, that is correct.

5 Q. And sometimes you're able to determine DNA that way?

6 A. That's correct.

7 Q. Now if you want to compare DNA from a clothing item
8 to a known individual, how do you go about -- how does
9 the State Law Enforcement Division recommend going about
10 getting a DNA sample from that individual they want to
11 compare something to?

12 A. We need a known sample with an established chain of
13 custody; meaning they -- someone is present when they
14 collect that DNA standard, and any time it's transferred
15 from an individual or to a different storage container it
16 is noted and the proper chain of custody.

17 Q. All right. But specifically how do you get a sample?
18 How do you recommend getting a sample from a suspect in a
19 case?

20 A. Oh, with a buccal swab or a blood standard is what we
21 prefer. Buccal swabs are typically the easier of the two
22 to collect. It's just a swab from the inside of the cheek
23 versus drawing blood.

24 Q. All right. When you request a buccal swab from the
25 inside of the cheek, why are you requesting it from there?

1 A. Because it's an easy source of DNA. It's a lot less
2 invasive than having to collect blood from an individual.
3 The DNA throughout an individual is the same, so even if I
4 have a blood sample from evidence, it will be the same DNA
5 profile as the saliva or skin cells of that same person.

6 Q. All right. So to clarify, you can take a buccal swab
7 and put it inside someone's cheek and collect DNA that way?

8 A. Yes, ma'am.

9 Q. Now I want to draw your attention specifically to this
10 case and ask you how you became involved in the case that
11 has been identified as SLED Lab Number L12-06246, the armed
12 robbery at the K & M Jewelry Store.

13 A. I was assigned this case to do the DNA on the evidence
14 that was submitted for this case.

15 Q. All right. And I want to go back to the original
16 evidence that you received in this case for analysis. What
17 is the original evidence that you received? I'm going to
18 ask you specifically regarding Item 1.1. What was that
19 item?

20 A. Item 1.1 was a swab from a black hat.

21 Q. All right. Swab from black hat. And I want to ask
22 you to take a look at this item and ask you whether or not
23 you recognize it?

24 A. Yes, I do. It has our lab number on this yellow
25 sticker. It has the initials of the individual who created

1 the swabs and the date and then it has my initials and date
2 of where I opened up the heat-sealed pouch.

3 Q. All right. And this is State's Exhibit 49 for -- I
4 beg the Court's indulgence.

5 BY MS. MAYES:

6 Q. So looking here at State's Exhibit 49, now you
7 mentioned that it was sealed. Who was the person that
8 collected that Item 1.1 and submitted it to you?

9 A. Forensic technician Betty Butler.

10 Q. All right. Betty Butler. Now does she seal it up
11 after she takes the swab from that hat?

12 A. Yes, ma'am. She'll take the swab, put it in this
13 coin envelope and then put the coin envelope into the
14 heat-sealed pouch.

15 Q. All right. How do you ensure that it remains sealed
16 an un-tampered with prior to coming to you for DNA
17 analysis?

18 A. It's maintained by the chain of custody, so any time
19 it moves location it is -- that information is stored
20 within our computer system. Also, once I do receive the
21 heat-sealed pouch, I will look it over to make sure there
22 is no signs of tampering.

23 Q. All right. And in this particular case, when you
24 receive that swab from the black hat and it came to you for
25 DNA analysis, was there any evidence of tampering?

1 A. No, ma'am.

2 Q. In fact, who was the first person to unseal it after
3 it had been sealed by Betty Butler?

4 A. That would be me.

5 Q. All right. So you're the only person who unsealed
6 that evidence?

7 A. That's correct.

8 Q. And for what purpose did you unseal that evidence?

9 A. To perform DNA analysis on that item.

10 Q. All right. And at this point, was the suspect known
11 or unknown in terms of identity?

12 A. There was no -- no listed suspect in the case
13 information I had.

14 Q. All right. So let's have you address the date. What
15 date was it that you received it to start DNA analysis?

16 A. Could I have a copy of the chain of custody?

17 Q. (Handing.) And was that bag dated in terms of when
18 Betty had collected that swab and sealed it?

19 A. Yes, Betty initialed and put the date that she sealed
20 it at the top on top of the seal. That would be June 19,
21 2012.

22 Q. All right. June 19, 2012.

23 A. I took it into my custody on September 12th of 2012.

24 Q. All right. So you got it September 12th of 2012?

25 A. Yes, ma'am.

1 Q. And I believe you indicated at this point suspect is
2 unknown and you're conducting DNA analysis to potentially
3 determine the identity associated with that swab from the
4 hat, correct?

5 A. That is correct.

6 Q. So you started the analysis in September. How long
7 of a process is that for you?

8 A. It appears -- it can vary. That's why I referred to
9 my case file to see how long this one actually took. From
10 the time I started with the evidence on September 12th by
11 the time I completed it, it would have been four days. I
12 completed it on September 16, 2012.

13 Q. Okay. So September 16, 2012, you complete a DNA
14 analysis on that swab from the hat?

15 A. That's correct.

16 Q. And were you able to develop what's known as a DNA
17 profile?

18 A. I did.

19 Q. All right. And was that enough of a DNA profile for
20 you ultimately to compare to someone else?

21 A. That's correct, it was.

22 Q. All right. Now at this point a suspect is unknown and
23 you have developed a DNA profile on that swab from the hat,
24 so how do you go about trying to see if there's anybody out
25 there that it could potentially be a match to, that could

1 match that DNA profile?

2 A. All right. At SLED we have a database. This database
3 consists of profiles from known individuals as well as
4 profiles developed from evidence at crime scenes. If the
5 item of evidence that I am testing is eligible to enter
6 into this database, I will put it in, which this item was,
7 to see if there is any match to either a known individual
8 or to another crime scene.

9 Q. All right. And were you able to submit that DNA
10 profile into your DNA database?

11 A. I was.

12 Q. All right. And were you able to determine a match --
13 a DNA profile match from the database?

14 **MR. MADSEN:** Judge, can we approach?

15 (Proceedings held at the bench; not reported.)

16 BY MS. MAYES:

17 Q. All right. And, Agent Boehm, back in September of
18 2012 when you were able to develop a profile, can you tell
19 us -- this is a yes or no question -- was that DNA profile
20 entered into the DNA database?

21 A. Yes, ma'am.

22 Q. Okay. And is that a database that the State Law
23 Enforcement Division has access to?

24 A. That is correct.

25 Q. All right. Following that event, did you receive

1 ultimately some samples of DNA from James Bubba Patterson,
2 the Defendant in this case?

3 A. I did.

4 Q. All right. And those samples that you received were
5 collected in what format?

6 A. They were buccal swabs.

7 Q. All right. And you use a term like "buccal swabs",
8 but if you can break that down for us, what exactly are you
9 talking about with buccal swabs?

10 A. Again, that's a known standard. A sterile swab is
11 used to rub the inside of the cheek, which this transfers
12 the skin cells from the inside of the cheek, they're called
13 buccal cells, onto that swab and we use those to extract
14 and we create a profile for that known standard.

15 Q. All right. So that's the example you were giving us
16 earlier where you can collect DNA from the inside of
17 someone's cheek?

18 A. That is correct.

19 Q. All right. I'm gonna show you an item, which is
20 State's Exhibit 50, and ask you whether or not you
21 recognize this item and what it is?

22 A. Yes, ma'am. This is the buccal swabs that were
23 submitted to SLED.

24 Q. From who?

25 A. From James Peterson.

1 Q. Could you give us that name again, please?

2 A. James Peterson.

3 Q. Let me see your report. All right. The suspect name?

4 A. Oh, Patterson. I'm sorry. James Patterson.

5 Q. All right. And what officer collected those buccal
6 swabs from the inside of James Patterson's cheek?

7 A. I can't tell you who collected them, but Paige McCraw
8 was the individual who submitted them to SLED.

9 Q. All right. I'm gonna stop you right there. Now how
10 many swabs are taken? Is it one or more than one?

11 A. It was two swabs that were taken.

12 Q. All right. And generally what does that reflect when
13 you have two swabs?

14 A. They swab the individual twice at the same time.

15 Q. Okay. Do you know whether the left cheek is being
16 swabbed and the right cheek is being swabbed?

17 A. Some agencies will do that. It doesn't matter. Like
18 I said before, your DNA's the same, so we just combine them
19 into one item if there are two different, a left cheek and
20 a right cheek. It's all the same to us. It's all the same
21 DNA.

22 Q. Can you tell us whether or not that item remained
23 sealed as it was delivered to the State Law Enforcement
24 Division from Paige McCraw up until the time that you would
25 have conducted your DNA profile or attempted to develop a

1 DNA profile from those cheek swabs from the Defendant?

2 A. Yes, ma'am, it was sealed.

3 Q. How do you know that?

4 A. There was no sign of tampering. Also, the pouch, the
5 evidence bag was sealed up at the top, I was the one to
6 break that seal, and the seal up here was intact and there
7 was no other signs of tampering. I was the one who created
8 this seal right here.

9 Q. All right. So the officer, Paige McCraw, delivers
10 them to the State Law Enforcement Division and no one else
11 then seals them prior to you?

12 A. That's correct.

13 Q. Were you able to develop the DNA profile from the
14 cheek swabs that had been taken from James Patterson?

15 A. Yes, ma'am.

16 **MS. MAYES:** I beg the Court's indulgence.

17 BY MS. MAYES:

18 Q. All right. Agent Boehm, you have identified this as
19 being the cheek swab samples submitted to you regarding
20 James Patterson and that they were unsealed prior to you
21 breaking that seal and that you were able to develop a DNA
22 profile; is that correct?

23 A. That's correct.

24 **MS. MAYES:** Your Honor, at this time we would offer
25 State's Exhibit 50 as evidence and also State's Exhibit 49

1 as evidence. These are the items she has identified as the
2 swabs from the hat that she unsealed and the swabs -- the
3 buccal swabs that she unsealed.

4 **MR. MADSEN:** Judge, I would just renew my pretrial
5 objections.

6 **THE COURT:** All right. Overruled.

7 (State's Exhibit Number 49, DNA swab from hat, and 50,
8 DNA buccal swabs, were admitted into evidence.)

9 BY MS. MAYES:

10 Q. If you could, please, cut this seal and I want to get
11 into the envelope that holds the buccal swabs from the
12 suspect's cheek.

13 A. You instructed me to cut here, but I would prefer to
14 do it here where there is no seal.

15 Q. All right.

16 A. (Witness complies.)

17 Q. All right. Now if you could go ahead and open that
18 envelope that contains the buccal swabs.

19 A. (Witness complies.)

20 Q. And, again, does this item contain any notes or
21 notations by you that you recognize?

22 A. Yes, ma'am. It has the case number and item number
23 that I handwrote at the bottom and then I have my initials
24 and date of the seal.

25 Q. All right. And, again, the name on the envelope?

1 A. Buccal swab of left cheek area of James Patterson and
2 then buccal -- or DNA -- buccal DNA swab number two of
3 right cheek area of James Patterson.

4 Q. All right. So left and right cheek. Now if you could
5 go ahead and open that up so we can see the envelopes that
6 the suspect's standards are in.

7 A. There are two swab boxes.

8 Q. Okay. All right. Now these are the two swab boxes
9 also in evidence. And just to clarify, the swabs
10 themselves, what type of sticks are they on?

11 A. I believe they're wooden. Some swabs have plastic
12 sticks, but the majority of them have wooden sticks and
13 then a sterile white cotton swab.

14 Q. All right. So both of these swabs are located in
15 there. And can you tell us, again, the name of the person
16 each swab is from and does it note who collected that swab?

17 A. Yes. The name of the individual the swab was from is
18 James Patterson and it says it collected by P. McCraw.

19 Q. All right. P. McCraw collected both of these swabs
20 from the left cheek and the right cheek of the Defendant,
21 James Patterson, correct?

22 A. Yes, ma'am.

23 Q. So we now have known standards from the cheek of James
24 Patterson and you've got the known DNA profile from the hat
25 swabs?

1 A. That's correct.

2 Q. Can you tell us whether or not you were able to
3 develop a full DNA profile from the cheek swabs of James
4 Patterson?

5 A. I was.

6 Q. Were you able to then compare the DNA profile from the
7 hat swabs to the DNA profile of James Patterson?

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

9 Q. What did you determine upon comparing those two DNA
10 profiles?

11 A. I determined that the DNA profile developed from the
12 hat swabs matches the DNA profile of James Patterson.

13 Q. All right. And you say matches. It's a DNA match?

14 A. That's correct.

15 Q. All right. So this is a DNA match and you mentioned
16 before in your testimony that DNA is unique as to each
17 individual, but specifically how unique is this DNA
18 profile? How unique is the DNA profile of James Bubba
19 Patterson?

20 A. The probability of randomly selecting an unrelated
21 individual having a DNA profile matching the DNA profile
22 developed from the hat is approximately 1 in 730
23 quintillion.

24 Q. All right. I need you to slow down. One in 730
25 quintillion?

- 1 A. Yes, ma'am.
- 2 Q. Quintillion. What is the world population currently?
- 3 A. Approximately seven billion.
- 4 Q. Seven billion?
- 5 A. (Nods head.)
- 6 Q. What is one quintillion as opposed to seven billion?
- 7 A. Approximately --
- 8 Q. Is quintillion more than seven billion?
- 9 A. Yes, a quintillion is more than a billion.
- 10 Q. What does that large number mean?
- 11 A. It means that if I test 730 quintillion individuals, I
- 12 expect one person to have a DNA profile that matches the
- 13 DNA profile developed from the evidence.
- 14 Q. And specifically in terms of the world population,
- 15 what is that ratio of 730 quintillion as opposed to the
- 16 world's population?
- 17 A. Approximately a hundred billion times.
- 18 Q. What do you mean?
- 19 A. It's a hundred billion times more than the world's
- 20 population.
- 21 Q. Okay. So that number is a hundred billion times more
- 22 than the current world population?
- 23 A. That's correct.
- 24 Q. When we talk about DNA and developing a profile, how
- 25 do you chart it out to actually recognize the unique points

1 along a DNA profile?

2 A. We report it in a table form. We have the evidence as
3 well as the known standard listed in our report, it's in a
4 table, and each location that we test and each value result
5 is put on this table.

6 Q. All right. Did you develop a table, a DNA chart, for
7 the profile developed from the hat swabs?

8 A. Yes, I did.

9 Q. Did you develop a DNA chart for the profile developed
10 from James Patterson's cheek swabs?

11 A. Yes, I did.

12 **MS. MAYES:** I beg the Court's indulgence.

13 BY MS. MAYES:

14 Q. I'm gonna show you an item and ask you whether or not
15 you recognize it?

16 A. These are the results of the DNA profile from the
17 black hat and the profile developed from James Patterson.

18 Q. All right. And who actually developed this chart or
19 laid out this sequence in this manner? Was this part of
20 your original report?

21 A. It is from it. It is not the exact replication of my
22 report, but it is from that.

23 Q. Okay. The DNA charts in other words?

24 A. Yes.

25 Q. Okay. These are the DNA charts that you developed?

1 A. It's similar to the one I developed.

2 Q. All right. Well, let me ask you this way. All right.
3 But as to these items, the cheek swabs submitted by Paige
4 McCraw and the DNA samples from the hat?

5 A. Yes, these are -- it's the same -- all the
6 information's on that chart as in my chart.

7 **MS. MAYES:** Your Honor, at this time the State would
8 offer this item as evidence. I believe this would be --

9 **MR. MADSEN:** My only objection is subject to my
10 pretrial objections, Your Honor.

11 **THE COURT:** Overruled. The item's admitted.

12 **MS. MAYES:** I believe this will be 53.

13 **THE COURT REPORTER:** Well, we better use 54 since 53
14 was marked wrong.

15 **MS. MAYES:** Okay.

16 (State's Exhibit Number 54, DNA results, was marked
17 and admitted into evidence.)

18 BY MS. MAYES:

19 Q. All right. Agent Boehm, I'm gonna ask you to step
20 down, if you could.

21 (Whereupon, the witness steps down from the witness
22 stand.)

23 BY MS. MAYES:

24 Q. I'm gonna try and position this so every juror can see
25 and if you'd come around to this side over here.

1 Now you mentioned a DNA chart that shows the unique
2 characteristics of the DNA profile. What are we looking at
3 here?

4 A. So this is the DNA profile developed from the hat.
5 You can see this is the item number and the description of
6 the evidence and then the same thing down here is the item
7 number submitted to SLED and then the description of the
8 standard. Same DNA profile.

9 Q. Okay. And I'm gonna get out of your way and ask you,
10 if you could, to start here as we go through Table 1 for
11 the black hat, noted here to be the black hat, and Table 2
12 here to be the DNA profile of James Patterson. And, again,
13 this DNA profile is developed from what?

14 A. The buccal swabs collected from James Patterson.

15 Q. All right. These cheek swabs?

16 A. Yes, ma'am.

17 Q. All right. If you could, take us through now what
18 we're looking at here at the top, what that number
19 represents and what these numbers here along the way
20 represent as well.

21 A. Okay. So if you look at this first square up here,
22 the DAS 1179, that is the actual location on the DNA strand
23 that we're testing that varies between individuals. This
24 12, 15 is the test results from the hat and then it's the
25 same thing throughout the profile. So then the next

1 location. I said there were fifteen different locations we
2 tested. The same thing. Up here is gonna be the actual
3 location on the DNA and then the results. All the way
4 through. Amelogenin is not unique to everyone, it is
5 determining what sex it is, so it's gonna be either X for
6 a female or XY for a male. And then I developed the same
7 profile. I developed a profile from the known standard,
8 too. So the same information. DAS 1179 is the location
9 and then these are the results from that item.

10 Q. All right. So let me -- let me go back here where you
11 mentioned that this indicates whether this is going to be
12 the DNA of a female subject or a male subject. What does
13 that XY tell you? Is that a chromosome?

14 A. Yes, they're both -- and a female has two X
15 chromosomes, a male has an XY. In this case, XY would be
16 a male.

17 Q. Okay. So we know these are DNA samples from a male.
18 Now moving over here as you go down the chart, if you could
19 start here with the 12 and the 15 and then you see a 12 and
20 a 15 here. What does that tell you?

21 A. Well, first I look at the evidence and determine if
22 it's a single source profile or if it's a profile that's
23 multiple people or a mixture of DNA. I deemed this as a
24 single source profile. A single source profile will have
25 either one or two numbers at each location. Mixtures are

1 gonna have more than two at more than two locations to deem
2 them a mixture. So first I decide that and then once I
3 develop a known standard for comparison, I do the -- I
4 compare it. So location by location I will compare the
5 evidence to the standard. So the evidence has a 12, 15 and
6 my standard has a 12, 15. Yes, it does.

7 Q. All right. The 12 means what and the 15 means what?

8 A. Those are the number of repeats that vary between
9 individuals on the DNA strand. So this person -- or the
10 evidence had a 12 repeat and a 15 repeat.

11 Q. Okay. So, again, these are strands of DNA along the
12 sequence that you're examining?

13 A. Yes, this is a portion of DNA that we're testing.

14 Q. All right. And the 12 and the 15 match and, as we see
15 each location along the way the numbers match up all the
16 way through here to the end where you've got a 27 and 30
17 and a 27 and a 30 and, ultimately, to reasonable degree of
18 scientific certainty, what does that tell you about these
19 two DNA profiles?

20 A. That it is a match; that the DNA from this person is
21 the same DNA from this item.

22 Q. DNA from this person is the same DNA as in the hat?

23 A. Right, bearing there's no identical twins.

24 Q. Okay. And as you mentioned earlier, that DNA is
25 present -- that DNA is unique to be one in 730 quintillion

1 people would have that type of DNA, correct?

2 A. That's correct.

3 Q. Now you may return to your seat.

4 (Whereupon, the witness returns to the witness stand.)

5 BY MS. MAYES:

6 Q. Now you also mentioned that this is a single
7 contributor and, just to clarify, what you're referring to
8 is the fact that you only found the DNA of one person in
9 that hat, correct?

10 A. That is correct.

11 **MS. MAYES:** I beg the Court's indulgence. Nothing
12 further.

13 **THE COURT:** Cross-examination?

14 CROSS-EXAMINATION

15 BY MR. MADSEN:

16 Q. How many strands of DNA do we have?

17 A. It's one strand of DNA and multiple chromosomes.

18 Q. We have pairs of them though, don't we?

19 A. We have pairs of chromosomes.

20 Q. And how many chromosomes?

21 A. Twenty-three.

22 Q. And these numbers that are on top of this chart, the
23 DAS 1179, is that a loci?

24 A. Yes, in technical scientific terms it's a loci or a
25 location on the DNA.

1 Q. And then we get the number below, like that 12 and 15,
2 you get one from your father and one from your mother and
3 those are called alleles?

4 A. Yes, sir.

5 Q. And you test at, what, fifteen different loci?

6 A. Yes, sir.

7 Q. Don't we have billions of loci in our body?

8 A. I don't know the exact number.

9 Q. More than fifteen?

10 A. Yes.

11 Q. More than a hundred?

12 A. Probably, yes.

13 Q. More than a thousand?

14 A. I would think so.

15 Q. More than a million?

16 A. I don't know.

17 Q. Isn't that kind of your job to know?

18 A. No. I know that there's more, but these are the
19 fifteen that we test at SLED. There are more that are in
20 our DNA strand, but the kit we use to do our testing has
21 these fifteen locations.

22 Q. So there's other places that you can test, SLED just
23 decides not to do that, correct?

24 A. Yes.

25 Q. Because it's not in the kit that y'all use?

1 A. That would be correct.

2 Q. And so when you're testing DNA and you get something
3 like this hat, if I swab on the brim of this that's not
4 gonna give you DNA from me touching on the top?

5 A. That would be correct.

6 Q. And that's not necessarily -- even if I touch in here,
7 I'm not necessarily gonna leave DNA?

8 A. Yes, that's correct.

9 Q. So if you put on my shoes for a few minutes, I might
10 have DNA in there, but if you're out of them pretty quick
11 you're not gonna potentially leave DNA in them, are you?

12 A. That's correct.

13 Q. And you generated -- she showed a big chart, but you
14 generated a report, an actual report, correct?

15 A. Yes, sir.

16 Q. And your last one was January 28th of 2016; is that
17 correct?

18 A. That's correct.

19 Q. Do you have a copy of that?

20 A. I have the one I'm testifying off of.

21 Q. Can I take a look at it?

22 A. Yes, sir.

23 Q. And that's -- and there's an incident date that's
24 listed on your report?

25 A. Yes, sir.

1 Q. And that incident date is 5-21 of 2012?

2 A. That's correct.

3 Q. In other words, when the crime is supposed to have
4 been committed?

5 A. According to our documentation, yes.

6 Q. And DNA can be sensitive; can it not? Little problems
7 or little things can add up to large problems?

8 A. Can you rephrase that question? I don't --

9 Q. Well, you try to make sure that you cross your T's and
10 dot your I's when you do your DNA testing, don't you?

11 A. Yes, there's several controls that we use to ensure
12 that the kit and the whole process is working correctly.

13 Q. And if you don't use those controls or there's
14 mistakes, that can affect the test or the outcome; can it
15 not?

16 A. That would be correct.

17 **MR. MADSEN:** That's all the questions I have.

18 **THE COURT:** Anything further?

19 **MS. MAYES:** Yes, sir, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. MAYES:

22 Q. The kit that you referred to -- or the testing method
23 that you referred to, can you tell us whether or not that
24 has been approved not only by the State Law Enforcement
25 Division, but by other agencies such as the FBI?

1 A. Yes, ma'am. Before we do any kind of testing with a
2 kit, bring it online, we have to do an internal validation.
3 We test certain things to make sure the kit is performing
4 as it's supposed to, you know, as the manufacturer says
5 that it's going to, like sensitivity, we do mixture
6 studies, contamination, make sure nothing's contaminated or
7 anything like that before we bring it online. This is also
8 a kit that is commonly used within other state agencies or
9 DNA labs. It also was approved by the Federal Bureau of
10 Investigation, the FBI, to use.

11 Q. All right. And so can you tell us whether or not that
12 testing method of DNA analysis is accepted by peers in the
13 scientific field of DNA analysis?

14 A. Yes, ma'am, it is.

15 Q. And has there been any evidence of errors committed on
16 your part during the DNA analysis of this case?

17 A. No, ma'am. All the controls I ran performed
18 correctly. We have negative controls that are supposed to
19 be free of DNA. If there was a DNA profile in it or hint
20 of DNA, then it would lead to, you know, a source of DNA
21 within our reagents. We also run a positive control to
22 make sure that the kit is typing correctly and accurately
23 and that was also correct.

24 **MS. MAYES:** I beg the Court's indulgence. Nothing
25 further, Your Honor.

1 **THE COURT:** Anything further?

2 **MR. MADSEN:** No, Your Honor.

3 **THE COURT:** You may come down. Thank you very much,
4 ma'am.

5 (Witness excused.)

6 **MS. MAYES:** The State calls Rhonda Fields.

7 **THE COURT:** Hold on. Approach the bench, please.

8 (Proceedings held at the bench; not reported.)

9 **THE COURT:** All right, ladies and gentlemen. Again,
10 the next witness may be somewhat lengthy and it's time for
11 our lunch break, so let's take a lunch break at this time.
12 I'll ask you to be back in the jury room at 2:00 at which
13 time we'll continue with the trial. Again, don't discuss
14 the case among yourselves when you return to the jury room
15 and anyone else over the lunch hour. Have a pleasant lunch
16 hour and we'll see you at 2:00.

17 (Whereupon, the jury was excused for lunch at
18 12:51 PM.)

19 **THE COURT:** All right. We'll stand at ease until
20 2:00.

21 (Whereupon, a luncheon recess was taken.)

22 **BAILIFF:** Please keep your seats. Court's now in
23 session.

24 **THE COURT:** Is the State ready to proceed?

25 **MS. MAYES:** Yes, sir, Your Honor. We can go ahead and

1 proffer this witness to the Court.

2 **THE COURT:** Go ahead.

3 **MS. MAYES:** The State calls Rhonda Fields.

4 RHONDA FIELDS,

5 having been duly sworn, testified as follows:

6 **THE CLERK:** Please state your name on the record,
7 please, ma'am.

8 **THE WITNESS:** Rhonda Fields.

9 **MS. MAYES:** Your Honor, I'm also gonna pass up the
10 case of State versus Anderson. We have supplied a copy
11 to Mr. Madsen. This is a case that deals with the
12 admissibility of information related to an AFIS hit and
13 an AFIS notification once a suspect has been identified
14 and the State maintains that the use of AFIS is similar
15 -- very similar and analogous to the DNA database.

16 **THE COURT:** Go ahead.

17 DIRECT EXAMINATION (In-camera)

18 BY MS. MAYES:

19 Q. Now, Agent Field, where are you employed?

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

22 Q. In what division?

23 A. The DNA database unit.

24 Q. Can you tell us whether or not SLED has access to a
25 DNA database?

1 A. We do.

2 Q. Can you tell us in this case, particularly this SLED
3 lab number, was a DNA profile developed from the swabs from
4 the black hat?

5 A. There was a profile developed, yes.

6 Q. Was it entered into the database?

7 A. It was.

8 Q. By whom?

9 A. Maryann Boehm, who would be a DNA casework analyst.

10 Q. And were you involved in reviewing information from
11 that database search?

12 A. I was.

13 Q. And you testified yesterday and since that time have
14 you had the opportunity to review your role in this?

15 A. I have.

16 Q. Were you actually involved in reviewing the database
17 search?

18 A. I was.

19 Q. All right. Is that an actual analysis or what's
20 involved in that?

21 A. There's a confirmation process that happens once a
22 match is identified. There's a reanalysis of the -- the
23 database profile to ensure that the original analysis was
24 performed properly and that the same results are generated
25 upon reanalysis and fingerprints are also verified to

1 confirm identity.

2 Q. All right. So, in other words, you're using
3 fingerprints to confirm the identity of the person who's
4 entered into the database?

5 A. That's correct, yes.

6 Q. Now going back to where we were, were you involved in
7 the review of the DNA database search?

8 A. I was.

9 Q. And was a suspect developed?

10 A. There was.

11 Q. Was notification sent to law enforcement?

12 A. Yes.

13 Q. To who?

14 A. Investigator Bruce Wade of the West Columbia Police
15 Department.

16 Q. On what date?

17 A. The letter was drafted on October 31, 2012. It was
18 actually released to Investigator Bruce Wade on November 6,
19 2012.

20 Q. And who was the suspect?

21 A. James Patterson.

22 **MS. MAYES:** All right. And, Your Honor, in terms of
23 the proffer, we would only be offering testimony that she
24 was involved in the -- reviewing the DNA database search,
25 that a suspect was developed, that notification was sent

1 to law enforcement, the date of that notification and that
2 the suspect was James Patterson.

3 BY MS. MAYES:

4 Q. But for the Court's benefit and for the purposes of
5 this hearing, let me ask you, Agent Field, in terms of the
6 actual DNA database, how do y'all go about verifying the
7 information that's in that database and the reliability of
8 it?

9 A. Again, we go through the confirmation process and
10 that's what I reviewed. I reviewed that there was
11 confirmation that the -- that the DNA profile developed
12 as a result of the reanalysis of the sample matched the
13 original profile and that the fingerprints were confirmed
14 and then I just do -- and then the letter's reviewed before
15 the letter is submitted to the investigating agency.

16 Q. All right. Do you have with you the document that
17 actually shows the match, the ID number for the match?

18 A. I do.

19 Q. All right. On that particular document, what is the
20 ID number for the DNA profile in the database for James
21 Patterson?

22 A. It's SC00499452.

23 Q. And what is the match ID?

24 A. The match ID is SA0000077927.

25 Q. All right. And you mentioned that in addition to the

1 DNA profile being entered into the database with that
2 person's name that there's also a fingerprint card?

3 A. Well, whenever samples are collected for the purpose
4 of going into the DNA database, thumbprints are collected
5 in the process and those thumbprints that are collected are
6 the ones that are used to verify it in the database, so it
7 wasn't an actually ten print card.

8 Q. All right. So that's a second form of verification
9 for the name entered into the system along with that DNA
10 profile?

11 A. That's correct.

12 Q. All right. And then do you also have with you the
13 match ID number attributed with this search?

14 A. I do.

15 Q. What is that?

16 A. It's SA0000077927.

17 Q. And do you see your initials anywhere on this
18 document for having reviewed it and reviewed this search
19 process?

20 A. I do.

21 Q. Where is it located?

22 A. On the bottom there's a row of tabs. Above those
23 row of tabs are fields that indicate who the letter was
24 drafted by, the date drafted and the individuals that were
25 responsible for reviewing the letter along with the date

1 that review was performed.

2 Q. All right. And does it also contain what's called a
3 match confirmation date?

4 A. It does.

5 Q. And what was the match confirmation date in this
6 case?

7 A. 11-6-2012.

8 Q. All right. And is that also noted beside your
9 initials?

10 A. It is to the right of the initials, but my actual
11 review was performed on 11-5-2012. There was a second
12 reviewer. She was the one that reviewed it on 11-6-2012
13 and the date of the final review is consistent with the
14 match confirmation date.

15 Q. Okay. So your review was on 11-5 and then it's also
16 still reviewed by yet another person as well?

17 A. That's correct.

18 Q. All right. And following these reviews, ultimately
19 did the State Law Enforcement Division send a notice of a
20 DNA match to the West Columbia Police Department?

21 A. We did.

22 **MS. MAYES:** Nothing further, Your Honor.

23 **THE COURT:** Cross-examination?

24 CROSS-EXAMINATION (In-camera)

25 BY MR. MADSEN:

1 Q. The DNA in the database, there's no chain of custody
2 associated with that, correct?

3 A. That's correct.

4 Q. And that is a database that for the most part are
5 individuals that when they get arrested their DNA is placed
6 in that database?

7 A. And actually let me go back to the previous question.
8 Some of the profiles in the database do have a chain of
9 custody, mostly the evidence items, but the ones that are
10 attached -- or assigned to individuals wouldn't have chain
11 of custody.

12 Q. So the people -- there's no way to track back who
13 took that, when they took that. There's no chain of
14 custody whatsoever on the people, there could be on the
15 items?

16 A. Exactly.

17 Q. Especially if SLED has generated that?

18 A. Exactly, yes.

19 Q. But on the individuals there's not?

20 A. That is correct.

21 Q. And -- I'm trying to think what my second question
22 was.

23 A. I'm sorry. Usually collected at the time of arrest,
24 and that is true. Some of them are collected at the time
25 of arrest, others upon --

1 Q. Conviction?

2 A. -- conviction, right.

(3 Q. And there's nothing within your system that shows
4 when the individuals are collected?

5 A. Actually we do have a tracking system that shows
6 when the item was -- the sample was collected and it also
7 -- and it also -- like I said, we get in cards along with
8 the biological samples from these individuals and the
9 individual collecting the item sometimes will sign and
10 date the cards. It doesn't always happen. And, again,
11 there's no chain of custody once it's collected though.

12 Q. And you didn't actually perform this initial analysis,
13 a Lieutenant McClure did that, correct?

14 A. He would have performed the re --

15 Q. The comparison?

16 A. Right. Right.

17 Q. Not the collection, but the comparison?

18 A. Right, he would have -- he would have done the initial
19 evaluation of the match and proceeded with the confirmation
20 process.

21 Q. And when he's doing that comparison, you're not
22 looking over his shoulder or anything. He generates the
23 report and then that's later sent to you and you take a
24 look and see whether or not you agree with what he's
25 done?

1 A. Absolutely, yes.

2 Q. But you don't do any of that?

3 A. No, sir.

4 Q. So you would agree then as far as the authentication
5 of the individual DNA there's no way to do that?

6 A. Right. Actually there's no chain of custody
7 associated with that sample, individual sample.

8 **MR. MADSEN:** That's all the questions I have.

9 **THE COURT:** All right.

10 REDIRECT EXAMINATION (In-camera)

11 BY MS. MAYES:

12 Q. And just to clarify, there are thumbprints associated
13 as well, correct?

14 A. That's correct.

15 Q. And those thumbprints are used as an additional form
16 of confirmation for that individual?

17 A. That's right.

18 **MS. MAYES:** Nothing further.

19 RECROSS EXAMINATION (In-camera)

20 BY MR. MADSEN:

21 Q. And when we say thumbprints, we're talking about like
22 McClure and you, not the individuals who submit the DNA?

23 A. I'm sorry. The thumbprints are on the collection
24 card that are associated with the biological sample and
25 those thumbprints are submitted to our latent print

1 department and a latent print examiner verifies that the
2 thumbprints on the card do belong to this individual.

3 **MR. MADSEN:** No more questions.

4 **THE COURT:** You can step down.

5 (Witness excused.)

6 **THE COURT:** All right. Any objection to this line
7 of testimony?

8 **MR. MADSEN:** Yes, Your Honor. We've got objections
9 under 401, 402 and 403. We do not believe that it is
10 relevant. Even if it is relevant, it is more prejudicial
11 than probative. We've got argument under due process,
12 Your Honor, that they can't authenticate or give any type
13 of chain of custody as to this sample. We believe that
14 it's an attempt basically by the State under 404(b) to
15 show a bad act. This is a law enforcement agency, SLED,
16 and their database that's collected DNA samples.

17 Additionally, kind of in conjunction with 404(b), it
18 kind of goes along with 609, evidence of prior crime, so
19 we don't believe it should come in there. And then
20 obviously it is cumulative to the DNA that they've already
21 submitted and for those reasons we do not believe that it
22 is appropriate on top of the fact that you've got someone
23 who's done a review -- or reviews what someone else has
24 done, but if the State wanted to they could certainly have
25 had Lieutenant McClure here. Even if he's retired, they

1 have subpoena power and so they're even kind of -- after
2 all that they're kind of one person removed.

3 **THE COURT:** All right. What's the State's position?

4 **MS. MAYES:** Your Honor, we do believe that we have
5 met the criteria for admissibility pursuant to State
6 versus Anderson using the AFIS analogy. It is probative
7 to the State's case to establish how he was initially
8 developed as a suspect because that's what led Captain
9 Wade to actually putting him in the photo lineup and then
10 ultimately taking the secondary DNA sample from him that
11 was used for comparison analysis and the jury has heard
12 that that DNA is a match, but what's missing is the link
13 between the robbery and how he was developed as a suspect
14 initially. We are not offering any evidence as to who was
15 in that database, how people are entered into the database
16 or the fact that it contains convicted offenders.

17 **THE COURT:** All right. Objection's overruled. I'll
18 allow it.

19 Are you ready for the jury?

20 **MS. MAYES:** Yes, sir, Your Honor.

21 **THE COURT:** And the testimony will be limited as you
22 indicated.

23 **MS. MAYES:** Yes, sir, Your Honor.

24 **THE COURT:** Ready for the jury?

25 **MR. MADSEN:** Yes, Your Honor.

1 Q. And I want to take you back to 2012 and ask you
2 whether or not a DNA profile was developed from swabs from
3 a black hat?

4 A. Yes.

5 **MR. MADSEN:** Judge, I'd like to just renew my
6 objection at this point.

7 **THE COURT:** All right. It's on the record.
8 Overruled.

9 BY MS. MAYES:

10 Q. And can you tell us whether or not that DNA profile
11 from the swabs from the black hat was entered into the DNA
12 database?

13 A. There was a profile from that item entered into the
14 DNA database.

15 Q. All right. And by who?

16 A. Maryann Boehm.

17 Q. Okay. Maryann Boehm, the DNA analyst in this case?

18 A. That's correct.

19 Q. As a result, was a suspect developed?

20 A. Yes.

21 Q. Was notification sent to law enforcement?

22 A. Yes, it was.

23 Q. To what agency?

24 A. The West Columbia Police Department.

25 Q. And specifically who?

1 A. Investigator Bruce Wade.

2 Q. All right. And what was the date that SLED sent that
3 notification to Investigator Bruce Wade?

4 A. It would have been November 6, 2012.

5 Q. All right. November 6, 2012. And who was that
6 suspect?

7 A. It was James Patterson.

8 **MS. MAYES:** Thank you. Nothing further.

9 **THE COURT:** Cross-examination?

10 CROSS-EXAMINATION

11 BY MR. MADSEN:

12 Q. You didn't do that comparison, did you?

13 A. No, I did not initiate it.

14 Q. Lieutenant David McClure did that?

15 A. That's correct.

16 Q. And, in fact, you found an error in that on April 12,
17 2016, correct?

18 A. That's correct, yes.

19 Q. So today?

20 A. Yesterday.

21 Q. Yesterday?

22 A. That's correct.

23 Q. Okay. This is the 13th.

24 A. Right.

25 **MR. MADSEN:** That's all the questions I have.

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REDIRECT EXAMINATION

BY MS. MAYES:

Q. Just to clarify, did the error have anything to do with the actual process in conducting that DNA database hit?

A. It did not. It did not.

Q. Okay. What did it have to do with?

A. It was the date of the letter. The -- there was a computer glitch in which our system assigned a draft date to the letter that was issued to the investigating agency instead of the actual approval date and unfortunately there's no way a new letter can be generated because it would attach today's date. So it was discovered yesterday and a letter was prepared.

Q. All right. Well, just to clarify, so that had to do with the date on the letter, correct?

A. That's correct.

Q. Did it have anything to do with the identity of the suspect?

A. No.

MS. MAYES: Nothing further.

RE CROSS EXAMINATION

BY MR. MADSEN:

Q. So that's computer-generated and not discovered -- it was computer-generated, right?

1 A. Right, the letter is.

2 Q. And y'all don't realize that until four years later?

3 A. Right. Right.

4 **MR. MADSEN:** That's all the questions I have.

5 **THE COURT:** All right. You may come down. Thank you
6 very much. Can this witness be excused?

7 **MS. MAYES:** Yes, sir, Your Honor.

8 **THE COURT:** Without objection?

9 **MR. MADSEN:** Without objection.

10 (Witness excused.)

11 **MS. MAYES:** Your Honor, at this time the State will
12 rest.

13 **THE COURT:** All right. Ladies and gentlemen, that
14 completes all the evidence that the State's going to
15 present. Now, as I told you earlier, the State -- I mean,
16 the Defendant has the opportunity to present a defense if
17 he wishes to do so, but is not required to do so under any
18 circumstances. There are a number of legal matters that
19 I must take up with the attorneys at this stage in the
20 proceeding and that process is going to probably run close
21 to an hour. So I'm not gonna have you sit in that jury
22 room for an hour. I'm gonna dismiss you for the day and
23 ask you to be back tomorrow morning at 9:30 at which time
24 we will continue with the trial. You're dismissed. Please
25 don't discuss the case among yourselves when you return to

1 the jury room or with anyone else over the evening hours.

2 Thank you very much. 9:30.

3 (Whereupon, the jury was excused for the day at
4 2:28 PM.)

5 **THE COURT:** All right. Any motions?

6 **MR. MADSEN:** Your Honor, we would have a motion for a
7 directed verdict. Given the evidence even in light most
8 favorable to the State, we do not believe that they have
9 satisfied their burden of proof and, therefore, we ask for
10 the Court to direct not guilty or to dismiss the armed
11 robbery, the possession of a weapon and also the grand
12 larceny charge. Additionally, Your Honor, we would renew
13 all of our objections and our motions at this point in
14 time.

15 **THE COURT:** All right. Thank you very much. What's
16 the State's position?

17 **MS. MAYES:** Your Honor, the State has met the required
18 elements as to each of these offenses. The armed robbery,
19 that a weapon or what appeared to be a deadly weapon was
20 presented. As to possession of a weapon during a violent
21 crime, that the suspect was in possession of the firearm.
22 And, finally, as to the grand larceny, Your Honor, there
23 has been sufficient testimony that the value of those goods
24 exceeded \$10,000, that they were removed from the store.

25 **THE COURT:** All right. As to the motion for directed

1 verdict, I feel the evidence goes beyond that of mere
2 conjecture or suspicion and that there is evidence, either
3 direct or circumstantial or some combination of both --
4 from both which reasonably tends to prove the guilt of the
5 Defendant or from which that guilt might be logically and
6 reasonably deduced if that evidence is taken in the light
7 most favorable to the State, so I must respectfully deny
8 the motion for directed verdict.

9 Now, Mr. Madsen, let me advise your client of his
10 constitutional rights, please.

11 **MR. MADSEN:** Yes, sir.

12 **THE COURT:** If you'll please stand, Mr. Patterson.
13 Mr. Patterson, at this time I'm going to explain certain
14 of your rights to you. If you do not understand anything
15 I say, please let me know. If you want me to explain
16 anything in more detail, please let me know. Do you
17 understand?

18 **THE DEFENDANT:** Yes.

19 **THE COURT:** We've now reached the stage of the trial
20 where you may present your defense. You have the right to
21 claim the protections given to you by the Fifth Amendment
22 of the Constitution of the United States. This amendment
23 states in part, "No person shall be compelled in any
24 criminal case to be a witness against himself or herself".
25 This means that you cannot be required to testify in this

1 case. You have the right to testify on your own behalf;
2 however, no one can make you testify. This is a personal
3 right and no one can waive this right except you. If you
4 decide to testify, you will be subject to the same rules
5 that govern other witnesses and you may be examined and
6 cross-examined on any relevant issue in this case.

7 In addition, if you have any convictions involving
8 dishonesty or a false statement or for crimes punishable
9 by imprisonment for more than one year and this Court
10 determines that the probative value of admitting this
11 evidence outweighs its prejudicial effect to you, the
12 solicitor will be able to introduce your record to attack
13 your credibility. If you decide to testify, this decision
14 on your part must be freely, voluntarily and intelligently
15 made and with knowledge of the protections given to you by
16 the Fifth Amendment and the consequences of your decision
17 to testify.

18 If you decide not to testify, I will instruct the jury
19 that they cannot give the fact that you did not testify any
20 consideration whatsoever and that there is to be absolutely
21 no prejudice to you because you did not testify. It's left
22 entirely up to you whether or not you testify. You may
23 talk with your attorney, your family and friends or anyone
24 else, but the final decision will be left entirely up to
25 you. Do you understand what I've explained to you?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Do you have any questions about what I've
3 explained to you?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** Have you discussed with your lawyer
6 whether or not you should testify?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you wish to talk to your lawyer any
9 more about it at this time?

10 **THE DEFENDANT:** No, sir.

11 **THE COURT:** Sir?

12 **THE DEFENDANT:** No, sir.

13 **THE COURT:** Do you wish to testify?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** All right. Thank you very much, sir.
16 That's it.

17 All right, counsel. We just over the lunch hour
18 drafted a set of charges and I haven't had a chance to
19 review them, so why don't we take about a ten or fifteen
20 minute break and I'll review these. If I find that they
21 are sufficient, then I'll run copies and give copies to
22 each you, all right?

23 **MS. MAYES:** Yes, sir, Your Honor.

24 **MR. MADSEN:** Yes, Your Honor.

25 **THE COURT:** All right. Let's stand at ease for about

1 fifteen minutes.

2 (Recess taken.)

3 **THE COURT:** Counsel, any objection to using the
4 indictments as the verdict form?

5 **MS. MAYES:** No objection from the State, Your Honor.

6 **MR. MADSEN:** I mean, I prefer verdict forms, but -- I
7 mean, I know we used to always use the indictments and then
8 there's kind of been a trend over the last five to ten
9 years to go to a verdict form, but I'll leave it in the
10 Court's discretion.

11 **THE COURT:** I know some defense counsel would just as
12 soon they not be reading it again and again.

13 **MR. MADSEN:** And that would be me.

14 (Pause in the proceedings.)

15 **MR. MADSEN:** Judge, everything looks fine on the
16 charge. I do have a circumstantial evidence charge.

17 **THE COURT:** That's different?

18 **MR. MADSEN:** That is different. It's a little bit
19 more specific in regards to circumstantial evidence.
20 Basically indicating that to rely upon circumstantial
21 evidence that they have to prove conclusively the guilt to
22 the exclusion of other reasonable hypothesis and it's not
23 appropriate just to have a probability, and that is State
24 versus Edwards.

25 **MS. MAYES:** The State would object, Your Honor. We

1 do believe that the Court's bench charge is sufficient and
2 appropriately encompasses the law.

3 **THE COURT:** Hasn't there been -- I'm gonna look it up
4 and let you know, but I thought there had been a fairly
5 recent case about to the exclusion of every other
6 reasonable hypothesis. I think that there has been.

7 **MR. MADSEN:** And I'm not aware if it is.

8 **THE COURT:** I'll find it. If I find it, I'll -- if I
9 don't find it, I'll consider this, but something sticks in
10 my mind. I'm not one of those people who can call cases
11 and citations out of my head.

12 **MR. MADSEN:** Other than that, everything looks fine.

13 **THE COURT:** Other than that, can you give me an
14 estimate of your closing time? We're just trying to -- for
15 scheduling purposes.

16 **MS. MAYES:** Twenty to twenty-five minutes, Your Honor.

17 **THE COURT:** Will you do it?

18 **MS. MAYES:** Yes, sir, Your Honor. We're still
19 operating under the current law where the State -- well,
20 you're not gonna put up any evidence?

21 **MR. MADSEN:** (Shakes head.)

22 **MS. MAYES:** Okay. So we're going to open first?

23 **THE COURT:** Close.

24 **MR. MADSEN:** No.

25 **MS. MAYES:** That's what I meant. Okay.

1 **THE COURT:** Right.

2 **MS. MAYES:** About twenty, twenty-five minutes, Your
3 Honor.

4 **THE COURT:** On the law and -- the law and the facts?

5 **MS. MAYES:** I beg the Court's indulgence. Yes, Your
6 Honor, I would include everything in the original opening
7 argument.

8 **THE COURT:** I assume you'll want a little flexibility
9 in that time -- in that time frame?

10 **MS. MAYES:** Yes, sir.

11 **THE COURT:** You've never run over?

12 **MS. MAYES:** I have.

13 **THE COURT:** I'm getting some inside information.

14 **MS. MAYES:** Okay.

15 **THE COURT:** Mr. Madsen?

16 **MR. MADSEN:** I would think about the same. I'll be
17 shorter than Ms. Mayes.

18 **THE COURT:** All right. We'll stand at ease until
19 9:30.

20 **MS. MAYES:** Thank you, Your Honor.

21 (Whereupon, the proceedings for April 13, 2016, were
22 concluded at 3:14 PM.)

23 (The following proceedings were held on April 14,
24 2016, beginning at 9:34 AM.)

25 **BAILIFF:** All rise. The Honorable G. Thomas Cooper

1 presiding.

2 **THE COURT:** Be seated. Thank you.

3 Good morning, Counsel.

4 **MR. MADSEN:** Good morning.

5 **THE COURT:** Is the State ready to proceed?

6 **MS. MAYES:** Yes, sir, Your Honor.

7 **THE COURT:** Is the defense ready to proceed?

8 **MR. MADSEN:** Yes, sir.

9 **THE COURT:** Last night I reviewed the defense Request
10 to Charge Number 1 citing State v. Edwards and I think I
11 told you as we were leaving I remembered something
12 recently. State v. Edwards was overruled in 2005 by
13 State v. Cherry and as recently as 2013 the Supreme Court
14 issued another revised circumstantial evidence charge. And
15 although I believe that my Grippon charge that you already
16 had seen is satisfactory under the Logan case, nevertheless
17 I modified the circumstantial evidence charge to comport
18 with the instructions in State v. Logan. I haven't handed
19 everybody out a new copy because we were running out of
20 paper, but -- so the circumstantial evidence charge will be
21 as noted. Anyway, it's on the top right of Page 6.

22 **MS. MAYES:** The top right of Page 6?

23 **THE COURT:** Yes. I don't get in too much trouble when
24 I do what the Supreme Court tells me to do.

25 All right. Anything further?

1 **MR. MADSEN:** No, sir.

2 **MS. MAYES:** Nothing from the State, Your Honor.

3 **THE COURT:** Ready for the jury?

4 **MS. MAYES:** Yes, sir. I'm just reviewing this charge
5 briefly.

6 **THE COURT:** All right. Take a minute. I'm not gonna
7 rush you. We're in no hurry.

8 **MS. MAYES:** We're ready, Your Honor.

9 **THE COURT:** Mr. Madsen?

10 **MR. MADSEN:** Yes, sir. I'm sorry.

11 **THE COURT:** All right. Bring in the jury. Hold on.
12 Hold the jury. Mr. Madsen, do you want to announce --

13 **MR. MADSEN:** However the Court wants to do it. I can
14 do it, Your Honor can do it.

15 **THE COURT:** Either way.

16 **MR. MADSEN:** It doesn't matter to me.

17 **THE COURT:** Will you want to make any motion after you
18 do that? I don't want to bring the jury in and send them
19 right back out. Do you want to do it for the record now?

20 **MR. MADSEN:** I would, Your Honor.

21 **THE COURT:** You can rest now for the record, make your
22 motion for the record.

23 **MR. MADSEN:** And then just let the Court announce.

24 Your Honor, at this point in time the defense rests.
25 We would like to renew all of our motions for directed

1 verdict. We would like to renew all of our objections, all
2 of our pre-trial motions. Your Honor, we do not believe
3 that the State has provided sufficient evidence to go to
4 the jury and we would also move for a new trial.

5 **THE COURT:** All right. Thank you very much. Well,
6 I've considered all the evidence in this case. I find the
7 State has made a sufficient showing to send this case to
8 the jury and I must respectfully deny your motions.

9 Now bring the jury in.

10 (Whereupon, the jury enters the courtroom at 9:41 AM.)

11 **THE COURT:** Good morning, ladies and gentlemen. As I
12 told you at the beginning of the trial, the Defendant does
13 not have any obligation to present a defense and this
14 morning the Defendant has announced that they do not wish
15 to call any witnesses or present any defense. They have
16 rested their case also. So that means that this morning
17 we will conclude this trial with the final arguments of
18 counsel and my charge on the law to you at which time you
19 will be given the case for deliberation.

20 Have they seen the menus?

21 **THE CLERK:** Yes, sir.

22 **THE COURT:** Have you seen the menus? Okay. Good. I
23 was -- I was trying to get you some Lizard's Thicket, but
24 the Clerk insisted on Roly Poly. This will be a new
25 experience for me. I've never eaten at a Roly Poly, so

1 we'll all get to experience it together.

2 All right. Solicitor, you may begin with your final
3 remarks.

4 **MS. MAYES:** May it please the Court?

5 **THE COURT:** Yes, ma'am.

6 **MS. MAYES:** He thought he had it all planned out.
7 He had with him a dry-cleaning bag and he laid that
8 dry-cleaning bag over the glass counter as he committed
9 this robbery with the expectation that any time he touched
10 down on that dry-cleaning bag he wouldn't leave any
11 fingerprints behind. Pretty clever. He also had a getaway
12 car just a block away. Again, he thought he had it all
13 planned out. But the one thing that he wasn't banking on
14 was that the store owner, Frank Mancine, would respond when
15 that weapon was pulled in his face and in the face of his
16 customers, and Frank Mancine responded in self-defense
17 because he fired a shot as James Patterson fled that store,
18 and when he fired that shot, the Defendant took off running
19 at full speed and that's what he wasn't banking on. And as
20 he ran down that sidewalk as fast as he could, knowing that
21 Frank Mancine was just a few seconds away on his trail, he
22 drops that hat right there on the sidewalk. Just yards
23 away from the entrance to that store.

24 Now this is downtown West Columbia, two blocks from
25 The Riverwalk, broad daylight, 2:30 in the afternoon. You

1 don't just go to a shopping center and see a fedora laying
2 on the sidewalk. The same fedora he was wearing in both of
3 those videos on May 7th and May 9th. It's the same fedora
4 he dropped right there on that sidewalk as he was running
5 as fast as he could to get away from Frank Mancine and get
6 to that getaway car. He's not even gonna take the time to
7 stop and pick up that fedora. Anybody else who lost a
8 fedora walking down the sidewalk would stop and pick it up;
9 unless you're running away from a crime of this nature and
10 you can't risk getting caught.

11 So he makes it up the block, gets in that van, the
12 light gray van that Jennifer Hubbard saw him in, and then
13 what happens? The back window gets shot out and the glass
14 goes all the way into the roadway. So now we've got a van
15 with no back window and a damaged back hatch and that,
16 ladies and gentlemen, brings us to exactly where we are.
17 No matter how carefully one may plan a crime, no matter
18 how clever they may think they are, ultimately with any
19 crime of this nature you're gonna leave clues behind,
20 you're gonna leave substantial evidence that eventually
21 will catch up with you, and that's exactly where we are.

22 Because he got out of there so fast Jennifer Hubbard
23 couldn't get a license plate, Frank Mancine couldn't get a
24 license plate. Nobody had a name, but they had that
25 fedora, and so that brings us to what we call a combination

1 of direct evidence and circumstantial evidence. And at the
2 close of my argument and the argument of Mr. Madsen, the
3 Judge will charge you on exactly what is meant by direct
4 evidence and circumstantial evidence, but the most
5 important thing to remember is that both are good and valid
6 forms of evidence. Both are valued equally under the law.

7 So direct evidence is evidence that someone actually
8 sees or hears or experiences firsthand. And the direct
9 evidence in this case is that Frank Mancine saw James Bubba
10 Patterson not once, but twice, in his store. A well-lit
11 store, the lighting on the ceiling, storefront windows
12 where natural light comes in all day long. Twice he meets
13 with him. And you heard the testimony about the length of
14 that counter. Twenty inches. So Frank Mancine is closer
15 to him, far closer than I am to each of you right now.

16 So he's wearing the hat, he's got on sunglasses. Keep
17 in mind he's actually seeing him, conversing with him. He
18 thinks he's a customer. And so, again, this goes on two
19 separate days where he's having this interaction with James
20 Bubba Patterson before ultimately he pulls out that weapon
21 and puts it in his face and commits the robbery. Now I
22 submit to each of you, you see me here standing in front
23 of you, talking with you. If I put on sunglasses, is that
24 really gonna hide my identity? Of course not. You know
25 what I look like. You know what I look like as I speak,

1 you know what I look like as I turn my head. If somebody
2 shows you a photo lineup, are you going to be able to pick
3 me out? Of course you are.

4 So that, ladies and gentlemen, is what we call direct
5 evidence and here the direct evidence was Frank Mancine saw
6 him, identified him, conversed with him, interacted with
7 him and then ultimately when he was developed as a suspect
8 he immediately picked him out of that photo lineup. You
9 heard the testimony of Detective Wade as well as Frank
10 Mancine himself. When he looked at that lineup, he knew
11 who had robbed him and had no difficulty picking him out.
12 And then, on top of that, you heard his testimony from the
13 witness stand. Again, direct evidence from an eyewitness
14 who saw it and experienced it firsthand. On that witness
15 stand he's able to say with no doubt whatsoever that is the
16 man who robbed me. Again, direct evidence.

17 Now in addition to direct evidence, let's talk about
18 forensic evidence, scientific evidence. We have advanced
19 so much in the field of CSI, not just crime scene
20 investigation, but also forensic technology. Things like
21 DNA weren't even available in the field of criminal law
22 forty or fifty years ago. And here we are where DNA is a
23 unique science, it's an understanding of a unique genetic
24 pattern that each of us have and is never duplicated. No
25 one else has our DNA. No one else has James Bubba

1 Patterson's DNA. The DNA that was found on that hat.

2 .So let's talk about the sequence of events that led
3 us through this investigation. So that fedora is laying
4 there on the sidewalk. You heard the testimony that an
5 officer, a Scott -- Captain Scott Morrison actually stood
6 by the sidewalk and guarded that hat to make sure that it
7 was not interfered with or tampered with in any way until
8 Investigator Sullivan was able to arrive on the scene and
9 carefully and securely place that hat into evidence in that
10 sealed bag, and once the hat is taken into evidence and
11 sealed, he delivers it to the State crime lab.

12 And you heard the testimony of Betty Butler, the
13 forensic technician. She knows that the hat has not been
14 tampered with in any way because she's the one that breaks
15 the seal to actually do the swabbing on the hat. And you
16 heard the testimony of Ms. Butler as she spoke about how
17 she goes about determining whose DNA is on this hat. Well,
18 the first thing she does is swab all around the band on the
19 inside because anybody wearing this hat has to put it on
20 and then take it off and the friction of doing so results
21 in skin cells and DNA being left behind. And, again, we
22 know that James Bubba Patterson was wearing this hat not
23 just on the day of the robbery, but two days before on the
24 other surveillance video, May 7th, he's wearing the same
25 identical hat. Putting it on, taking it off. Putting it

1 on, taking it off. This is May 9th, 2:30 in the afternoon.
2 We know what May is like here in South Carolina. Any
3 degree of sweat also leaves DNA behind. And ultimately
4 what they determined is there's not multiple wearers of
5 this hat, there's not multiple contributors of DNA on this
6 hat. There's only one contributor. One. One finding of
7 DNA. She swabbed all around this band. There's no mixture
8 of DNA, just one contributor. Right there, James Bubba
9 Patterson. And to a degree, a reasonable degree of
10 scientific certainty, how sure are they that it is his
11 DNA and not the DNA of any other person? One in 730
12 quintillion. That's the ratio of anyone else potentially
13 having such DNA. A hundred billion times the current world
14 population. There's no doubt whatsoever who was wearing
15 that hat and who left it on that sidewalk.

16 But let's talk about what happened in the very
17 beginning when they first found that hat even before he was
18 developed as a suspect because they had no suspect. Once
19 Betty Butler does that swab on the DNA, she sends it to the
20 DNA analyst, Maryann Boehm. And, again, it's sealed. We
21 know it wasn't tampered with. Maryann Boehm was able to
22 establish that. She's the next one in line to get that
23 sealed package from Betty Butler. She develops the DNA
24 profile on that hat in 2012. 2012. Just a few months
25 after it's happened. And as they explained, DNA is not a

1 science where you get an answer the next day or even the
2 next week. DNA is a very thorough, scientific procedure of
3 testing. It is exact and it requires time and patience.
4 So a few months after this has happened, now we're in
5 November of 2012, and Maryann Boehm finally has that full
6 DNA profile. The swabs on that hat has given her a full
7 DNA profile, so she enters it into the DNA database and
8 there you go. They've got a suspect now. James Bubba
9 Patterson.

10 So SLED notifies Detective Wade at the West Columbia
11 Police Department here's your name, here's your suspect.
12 It's James Bubba Patterson. And that's when Detective
13 Wade locates a photograph -- requests that the State Law
14 Enforcement Division generate a photo lineup. That's how
15 he ended up in the photo lineup, after that DNA database
16 search. There he goes in a photo lineup that was generated
17 by the State Law Enforcement Division. That's when he's
18 identified by Frank Mancine.

19 And then, in addition to that, Detective Wade says
20 well, let's see what else we can find out about James Bubba
21 Patterson. So he does a search that he leads him to a
22 vehicle and he finds out that on May 24, 2012, fifteen days
23 after the armed robbery in West Columbia, he finds out
24 there is a vehicle registered to James Bubba Patterson
25 which fits the description of the vehicle at the crime

1 scene because it's a van. It's on the Eagle One Towing lot
2 and it ends up on the Eagle One Towing lot the same day
3 that Deputy Brendan Pennington with the Richland County
4 Sheriff's Department found him driving that vehicle. So
5 now we know not only is he the owner, but he's the driver
6 of that van.

7 So he heads down to Eagle One. He observes the van
8 himself, but now all of a sudden it's not light gray like
9 Jennifer Hubbard remembers it being, it's white. It's been
10 painted white. A quick paint job that doesn't even match
11 up that new door on the back that's no longer a Plymouth
12 Voyager door, now all of a sudden it's a Dodge Caravan
13 door. A Dodge Caravan door on the back of a Plymouth
14 Voyager because as he fled that scene and his window's been
15 shot out, the first thing he's got to do is switch up that
16 van. He's got to get a new door, he's got to get a door
17 with a window. So you go to Pull-A-Part, a scrap yard,
18 junkyard, anywhere you can to locate a new door that will
19 fit even if it's a Dodge Caravan and it's white and you've
20 got to paint the van white. But as we know he painted that
21 van white, but right here in State's Exhibit 47, right
22 here on the interior, he didn't have time for all of
23 that, he don't have time to paint the light gray on the
24 interior, so right there it stays the same color it's
25 been from the beginning, the same color it was back when

1 Anthony Kennedy owned that van and sold it to James Bubba
2 Patterson. There's the light gray paint right there.

3 (Whereupon, State's Exhibit Number 6 was played.)

4 And here you see the pregnant customer that he had no
5 regard for when he comes in and pulls that weapon. There
6 you see the dry-cleaning bag and the fedora. And here you
7 see Mr. Mancine conversing with him, looking directly at
8 him. Now he's reaching for that weapon in the back of his
9 jacket, he's looking at other customers, getting ready to
10 pull out that weapon. And here you see him using his left
11 hand, his right hand, folding the bag with his right hand,
12 putting that right hand on that dry-cleaning bag, careful
13 not to touch that counter. Yelling at customers, using his
14 right hand to grab that jewelry, using his right hand to
15 grab that bag, and now he's taking off running at full
16 speed as he leaves that door.

17 (Video concludes.)

18 Now the law in this case is actually very simple.
19 And, again, when I'm done the Judge will address you on
20 exactly what the law is and what the elements are, but I
21 ask you to keep in mind, again, that under the law the
22 crime of armed robbery is actually one that's quite simple.

23 Okay. So we look here at armed robbery. It's as
24 simple as the act of committing a robbery, while armed
25 with a pistol or other deadly weapon or any object which

1 a person present during the commission of a robbery
2 reasonably believed to be a deadly weapon. So it's never
3 a defense to say something like well, I didn't have any
4 bullets in my gun or my gun didn't work or anything like
5 that. Someone presents a firearm or what the person being
6 robbed believes to be a firearm, that is sufficient proof
7 of armed robbery. And in this case we know he committed a
8 robbery and we know he pulled out that weapon, not only on
9 Mr. Mancine and Mr. Mancine's mother, but also on the other
10 customers in the store, and we know that he was armed with
11 a firearm. That charge has been proven beyond a reasonable
12 doubt.

13 Now the next charge before you is the charge of
14 possession of a firearm during the commission of a violent
15 crime. Well, again, very simple. We know that he
16 possessed a firearm. We saw him with it, we saw him leave
17 with it. Next, during the commission of a violent crime.
18 What is a violent crime? Violent crimes are defined by
19 statute. Under South Carolina law, armed robbery is a
20 violent crime. Again, that charge has been proven beyond
21 a reasonable doubt.

22 So finally that leaves us with the charge of grand
23 larceny. What is grand larceny? Well, this is an
24 old-fashioned jewelry heist. Because jewelry when it's
25 gold or contains gold or rhodium or any other precious

1 metal can immediately be sold whether on the street, as a
2 commodity, to a buyer. You immediately have collateral.
3 It's the same as cash. In 2012 with the price of gold
4 being well-over a thousand dollars an ounce, he's got
5 thousands of dollars right there in that bag. How easy is
6 it to turn around gold? Very simple. How many times do
7 you drive around -- you don't even have to go to Columbia.
8 You can drive around 378, you can drive down Number 1.
9 Gold buyers. Everybody wants to buy gold so then they can
10 turn around and sell it for a higher price. How many of us
11 sell our gold as soon as that price went up like it did a
12 few years ago? So selling that gold was about the easiest
13 thing there is to do. He had fifteen days to sell all that
14 gold. Very easily done. There's no paper trail, no way to
15 trace it. You go in, you sell it and leave with cash. We
16 know that he had a bag full of gold jewelry. You saw him
17 dumping those trays into that bag and we know that the
18 value of that jewelry, even for the sake of insurance, was
19 over \$20,000. Under the law this charge of grand larceny
20 requires proof of \$10,000 or more. We know that has been
21 doubled at least, if not tripled, in this act of grand
22 larceny. Again, this charge proven beyond a reasonable
23 doubt.

24 Finally, that leaves us to where we are with a summary
25 of the evidence in this case. This is what it comes down

1 to; a combination of direct evidence, circumstantial
2 evidence, forensic evidence and scientific evidence that
3 leads to only one conclusion and that is that James Bubba
4 Patterson committed that robbery at K & M Jewelry right
5 here in Lexington County. We know his DNA is on the hat.
6 How well do we know that? One in 730 quintillion. The
7 odds of it being anybody else? One in 730 quintillion.
8 We know that he was identified in the photo lineup by
9 Mr. Mancine. We know that Mr. Mancine identified him
10 right here in this courtroom. No doubt whatsoever. And,
11 finally, that van. Circumstantial evidence, but, again,
12 under the law circumstantial evidence is just as good as
13 direct evidence that we have here, direct evidence that we
14 have here, and the forensic and scientific evidence that we
15 have here. It's far more than speculation, it's far more
16 than assumption or all of those things that Mr. Madsen had
17 mentioned in his opening address to you. This, ladies and
18 gentlemen, is proof beyond a reasonable doubt.

19 We know that in that van that used to be light gray
20 there's also evidence of an abrasion in that van, State's
21 Exhibit 48. And take a look at that abrasion which is in
22 evidence. It's a high impact, high velocity abrasion.
23 What causes that? A projectile coming through that back
24 window. The same projectile that shattered that glass
25 window all over the street and made him replace that back

1 door with a Dodge Caravan door.

2 What it comes down to in this state and in this county
3 a crime of this nature cannot be tolerated. The middle of
4 the day, customers in that store. He's pulling a weapon on
5 a pregnant female telling her to load that bag for him.
6 Absolutely cannot be tolerated. You have before you the
7 most noble of opportunities. The chance to strike back
8 against injustice and deliver a verdict that speaks the
9 truth. In this case, that verdict is guilty of armed
10 robbery, guilty of grand larceny and guilty of possession
11 of a weapon during a violent crime. Thank you.

12 **THE COURT:** Mr. Madsen?

13 **MR. MADSEN:** I told you in the beginning of this
14 case that this case was about speculation, conjecture and
15 assumption. Speculation, conjecture and assumption that
16 comes from an investigation that was incomplete, inept
17 and inaccurate. An incomplete, inept and inaccurate
18 investigation. Do you have any faith in what the State did
19 after listening to the testimony? Do you have any faith
20 whatsoever? Their interviewing or lack of interviewing of
21 individuals? Yeah, I'm gonna get to it a little bit later,
22 but I thought it was kind of interesting we got a blow by
23 blow of the video except when Mrs. Mancine was that close.
24 Ms. Mayes was silent on that. Remember, she's standing
25 right here. She puts on a hat and a sunglasses, y'all can

1 ID her. That close. We're silent on that. We don't want
2 to talk about that in the video. We don't want to call
3 that person to the stand. We don't want to talk about the
4 fact that they see a sixpack that has James in it, but not
5 that robber.

6 How about the collection or storing of evidence? Do
7 you have any doubt about that? You certainly have a
8 reasonable doubt about that. Now I'm not gonna cast any
9 aspersions, but y'all saw this hat earlier. It's kind of
10 been put back. It was awful crumpled up during the trial.
11 It looked like it had been beaten around a little bit. Do
12 you have any questions about this careful handling of
13 evidence that was in a bag within a box? It's been put
14 back together now. It certainly doesn't look like earlier
15 when the witnesses had it and it was all crumpled up. They
16 don't want to make you think that -- you know, how that
17 evidence was handled. The collection, the storing and the
18 handling of evidence.

19 The chain of custody. How many errors did you hear
20 about? How many problems did you hear about? The State
21 wants you to trust the testimony of people when they read
22 off the chain of custody and other things. They talk about
23 James Peterson, they talk about a 5-21 incident date, that
24 lose evidence. Detective Wade, swabs taken by that man on
25 29th, taken by Investigator Sullivan that no one knows

1 where they're at. That's what you're supposed to trust?

2 How about the losing of reports? We got a new system.

3 Sorry, we got a new system and we've lost stuff. Hey,

4 guess what? SLED's had a new system, too, and they've

5 messed up stuff also. That is what you are supposed to

6 believe in. That is their case. And I found it

7 interesting their last witness gets up there and says oh,

8 by the way, I found an error four years later. Those are

9 the people that you're supposed to trust. This case isn't

10 just tainted with reasonable doubt, it is drenched with

11 reasonable doubt, it is soaked with reasonable doubt.

12 Now let me talk about some of the witnesses. Let's

13 start with Mr. Mancine. He seems like a nice guy. He's

14 running an honorable business for the last twenty years.

15 I'm not saying that he got up there and perjured himself

16 on that stand, but he is wrong. About ten minutes in the

17 store. That video is three minutes. I start asking him

18 questions about what goes on in there and I don't think --

19 most of you aren't as old as I am, but it reminded me of

20 when I was about ten years old watching Oliver North

21 sitting in front of Congress answering questions on the

22 Iran Contra Affair. I do not remember, I do not recall.

23 Some of the jurors that are as old as me will remember that

24 and that's why you're a collection of twelve because you

25 have that experience and you can share that because he was

1 a big deal back in the early eighties and that hearing was
2 a big deal. But he can't remember. And when I started
3 asking those questions, he couldn't remember. Because it's
4 three minutes in that store, folks. Three minutes in that
5 store, folks. As I said, he has trouble remembering the
6 details. Has trouble remembering those details.

7 He gives off two generic descriptions. The first
8 officer out there, he gives a description, then he speaks
9 to Detective Wade an hour or two later on audio and all of
10 a sudden the fellow has grown a couple of inches, he's now
11 120 pounds, but that's it. A black male, early forties.
12 Two different descriptions. Nothing else. We know from
13 watching the video that the fellow's got a hat on. He's
14 got large sunglasses that obscure the face. We don't get
15 any other description. Of course, now four years later,
16 the fellow has unusually large lips. You're gonna get that
17 photo lineup and do you see any unusually large lips that
18 stand out? I'll submit to you he doesn't have unusually
19 large lips. That's what he gives four years later, his
20 most generic description? Four years later and he has
21 unusually large lips.

22 You know, you've got photographs of the interior of
23 the store. It's not a big store. Everyone's in there for
24 the same three minutes. Mrs. Mancine is just as close as
25 Mr. Mancine. Mr. Mancine really wants to believe, but he's

1 wrong. So you've got no ID by Kim Mancine. We've got
2 fingerprints, so we know she's within arm's reach. Tommy
3 Warner, the other fellow in that small store. You don't
4 think that if he picks out James he's not here. No, we
5 don't need that. How about Ashley Knight? The testimony
6 is that the bag was thrown to her, which means she's nice
7 and tight. It's not that far from one side over there to
8 the other. No ID. You can never put a quantitative
9 numerical value on reasonable doubt. Twenty-five percent
10 of the people ID'd my client. Like I said, you can't put a
11 numerical value on reasonable doubt, but I would assume
12 that you, if there was a number, that twenty-five percent
13 would be that number. That would be the gold standard of
14 that number.

15 We're gonna jump ahead a little bit, but I found it
16 interesting that Jennifer Hubbard said hey, it was hard to
17 focus on anything but the gun. That makes sense. You
18 never get used to something like that. It's scary. I'm
19 sorry he had to go through that, but it's hard to focus on
20 anything but the gun. He even told you that he had an
21 adrenaline rush, anxiety. You're upset, you're worried
22 when you're staring down the barrel of a gun.

23 Now do you remember about six months later
24 Investigator Wade said he went back to the store and he
25 showed ID's to Mr. Mancine and Mrs. Mancine? And his

1 testimony, just under a minute. Just under a minute.
2 Let's stand here for just a second. Let's stand here for
3 just under a minute. Still looking at that piece of paper,
4 still not picked someone out, still going. Let's stop
5 there at fifty seconds. That's just under a minute. When
6 you say it, it doesn't sound that long. When you sit there
7 and think about looking at it, how long does it seem? It
8 takes almost a minute to ID him.

9 Now let's talk about Jennifer Hubbard, the lady that
10 was out there waiting for her child on the bus, and sees a
11 van pull up. It doesn't have any ladders on top. You can
12 see the video. The fellow looks like he has a black jacket
13 on, but this man has a gray suit. At one point she said
14 it was a light gray suit, then I think she said it was a
15 darker gray suit and then I think she said it was kind of
16 the same suit color that Mr. Bell had on at that point in
17 time, but he had on a gray suit. He didn't have a hat on.
18 It's not the kind of hat that you fold up and throw in your
19 pocket, it's not a ball cap that you crumple up and put in
20 your back pocket. He had nothing in the bag. It was a
21 clear bag and there was nothing in it. You can see in
22 that video there's clothes in the bag. And that man was
23 one 180 to 200 pounds. She told Detective McCraw, who's
24 the evidence lady now but was a detective, that she could
25 ID, but law enforcement doesn't want her to ID the wrong

1 guy. We've already got one person who says he's not in
2 this lineup, let's not have another one. That's reasonable
3 doubt, that stinks. That's reasonable doubt and they know
4 it, so they never follow through with it. She says that
5 when Mr. Mancine shot he was ninety feet away. I thought
6 about bringing a tape measurer to see how far ninety feet
7 is. It's a long way. It's a long way. She talks about
8 the blue Monte Carlo, says that about a minute later it
9 takes off. No, let's not worry about that. Let's not
10 investigate that, let's not work it, let's not do anything
11 about that. There's no reason to. There's no reason to
12 whatsoever. Let's just let it go.

13 Now you heard about Investigator Sullivan, who works
14 at the solicitor's office, how he was the CSI guy back
15 then, and what's he tell you? That when he goes out there
16 to work on a crime scene he's got to use an abundance of
17 caution, which is what you should do. Hey, I might as well
18 take it just in case. He talks about that's what he did
19 with those cigarette butts, but, you know, Jennifer Hubbard
20 didn't see him smoking, no one did, the ground was wet,
21 they were not wet, so why not collect them just in case.
22 It's an abundance of caution. That sounds perfectly smart.
23 But we know from the video that the fellow comes in through
24 the front door. We don't fingerprint that, we don't get
25 touch DNA from that. Let's not do that. That's not an

1 abundance of caution. And we know the fellow comes through
2 the front door and we know that when Mr. Mancine goes out
3 that he pushes, so out of an abundance of caution let's
4 just not collect that.

5 How about his lost report? He gave that to Detective
6 Wade. We have no idea where it is. There's a -- there's
7 a new system and it's gone. Well, if he gave it to Wade,
8 it's not in the system. It's on a piece of paper and it's
9 gone. So what else has been lost? What else is gone? I
10 guess, you know, changing computer systems is kind of the
11 new "my dog ate my homework". It's just gone.

12 How about as an abundance of caution those jewelry
13 trays, which were the subject of that report, how about
14 touch DNA on those? We know the fellow touched those.
15 You can see it on the video. Do we submit those to SLED
16 for touch DNA out of an abundance of caution? It would
17 be a real easy way to figure out who that perpetrator was.
18 A real, real easy way, but we don't do that out of an
19 abundance of caution.

20 I talked about this a little bit earlier, but
21 Investigator Sullivan took swabs of the hat and took
22 them to SLED on 5-29, but no one knows where those are.
23 Whatever happened to that lost evidence? That's reasonable
24 doubt in and of itself. Lost evidence.

25 Now we've also got some jewelry that's left behind.

1 Did we fingerprint or touch DNA any of that out of an
2 abundance of caution? They just showed it to you on the
3 video. He's grabbing at stuff, he's pawing at stuff. The
4 fellow's trying to get out of there as soon as possible.
5 Out of an abundance of caution do we check any of that?
6 No, we don't need to.

7 Now Investigator Sullivan did pull prints, but they
8 don't even do elimination prints until I think it was
9 March of 2016, so almost four years later. Then we get the
10 elimination prints and find out that one of the prints is
11 not good and the other one comes back to Kim Mancine, the
12 mother and the owner of the store. We wait four years for
13 that. We see a hat out there just lying there about ninety
14 feet from the store. I think that was Sergeant Fair who
15 talked about how far that hat was. Just kind of lying
16 there.

17 After all that, after the losing of things, the
18 losing of evidence, the losing of reports, do you have
19 any confidence whatsoever in the evidence that they
20 collected, how they stored it, what they did with it?
21 None. Absolutely none. Never tested, not out of an
22 abundance of caution, sitting on the floor. We see the
23 video. We know where it's at, jewelry's all messed up,
24 messed around. Why don't we do that? No reason to do
25 that even though we're trying to make sure that we do

1 everything out of an abundance of caution.

2 You heard from the DMV lady. James buys the car for
3 \$500. It takes him a year to get it titled to get it on
4 the road. I will submit to you that buying a \$500 van,
5 you're not buying the Cadillac of vans. And like
6 Mr. Kennedy told you, and you're gonna have pictures of
7 the van, rust, a motor problem, he had to put a motor in.
8 One year to work on that van to get it on the road. One
9 year. Do you think a \$500 van might need some work? When
10 we see the van out at Eagle One, there's ladders on top.
11 It's a work van. Captain Odom testified to that, that
12 you could tell it was a work van, that it was a painter's
13 van, and I think he said residential and commercial
14 painter. The State kind of tried to allude to hey, he's
15 a painter so he's gonna know how to paint. My dentist is
16 Dr. Robinson right down the street. When I walk in, I say
17 "Hi, Dr. Robinson". He is a doctor, but I'm not gonna
18 allow him to do heart surgery on me. He's a dentist.
19 Residential painting, commercial painting, using paint
20 brushes in situations like that would be entirely
21 different.

22 One of the more important things I think that came out
23 from their witness is that that van hadn't been cleaned.
24 It was dirty, there was stuff all over the place. It was
25 a work van that was used. You'll have pictures that the

1 State put in of this used van. Did it look like it had
2 been cleaned up? Does it look like anybody's tried to hide
3 anything?

4 What did Captain Odom tell you his job was? His job
5 was to oversee patrol and it sounds like a pretty large
6 patrol that's pretty busy that deals with a lot of breaking
7 in of motor vehicles, breaking of glass, and how hard it is
8 to get out that glass. Anyone that's ever had the glass
9 broken in your car, you can clean as long and as hard as
10 you want and two years later you're still gonna find glass.
11 But they didn't find any in the van. You don't think that
12 there would be photographs of that? Hey, we found the
13 broken glass. In that dirty, used van on the inside and
14 there's no glass. We know the glass was shattered and we
15 know which way the bullet's going, but there's no glass.
16 And, of course, there's no bullet. This \$500 van that had
17 a rip in the headliner. Hey, that will be our bullet
18 place. That will be it. The work van, stuff going in and
19 out, that will be our -- but there's no projectile.

20 I never quite understood this. So I think that SLED
21 -- or the State's theory is that there's two different
22 paintings. You paint all of it and then you repaint the --
23 the trunk a different color? That doesn't make a lot of
24 sense, but -- and it's not the original color because you
25 can kind of see whenever you buy a car and the person you

1 buy it from always like to put their little stickers on the
2 back so you're kind of a rolling advertisement for them,
3 that's been painted, and the idea was oh, maybe he just
4 went out and got a white door.

5 Now we've kind of alluded, but let's talk a little bit
6 about the chief investigator, Wade. We know from Jennifer
7 Hubbard that the bag's empty when the fellow gets out and
8 walks up the street. I think he says maybe he tried to
9 call one cleaner and that's it. Okay, fine. Hey, do you
10 have anyone that came into your store today with a bag that
11 maybe did an armed robbery later? No, we didn't see anyone
12 like that. Okay, thanks. Click. Done. Let's not worry
13 about anything else. They've got a way to check stores,
14 tickets, go around. You know, oh, gold is a commodity.
15 You're not gonna get a receipt? You're not gonna get
16 something from the stores? It's just traded, you know.
17 And even -- I can't remember, it might have been
18 Investigator Sullivan, it might have been Captain Odom,
19 y'all are twelve and you've got a lot better memory, but
20 someone says hey, I asked the question, it's different
21 than selling one necklace on the street as compared with
22 \$30,000 worth of jewelry. Don't you think that would be a
23 little harder to fence \$30,000 worth of jewelry as compared
24 to one? But according to them it just disappeared, it's
25 gone. They have the ability to check pawn tickets. Pawn

1 shops buy a lot of jewelry. They've got to get tickets.
2 You can track those back. Detective Wade talked about that
3 that's something that they do. Let's just not do it in
4 this case. Let's just not do it in this case. So they
5 don't.

6 They arrest James at his home. We could go get a
7 search warrant. Captain Odom would help them. He helped
8 them once. Let's not go and try to find the jewelry, find
9 anything there. Let's not do that. No reason to. You
10 know, how about -- the place is a strip mall, big windows
11 all the way down. No one sees anything. No one's
12 interviewed. Stores to the left, stores to the right. All
13 of them set up the same way with those big windows that let
14 that light in. No one's interviewed. They don't check the
15 pull-a-parts. James Patterson buys a new door and puts it
16 on the back of his van. You don't think they would love to
17 have that, to have someone say hey, two days after the
18 robbery he replaced the back door and here's the receipt
19 for the back door. They don't check.

20 Now you heard Detective McCraw talking about the chain
21 of custody. Do you have any faith in that? I think the
22 solicitor had to go find and give her her report. Do you
23 have any faith in that whatsoever?

24 Let's talk for a little bit about SLED. So SLED does
25 these reports, these reports that the State wants you to

1 have faith in, for an incident that occurred on 5-21. An
2 incident that occurred on 5-21 of 2012. There's a problem
3 with that. The robbery occurred on 5-9 of 2012. No, just
4 ignore that. We make sure to cross our T's and dot our
5 I's. No big deal. We only swabbed the inside of the hat,
6 not the brim, not the top. The place where it's already
7 been swabbed by Investigator Sullivan.

8 **MS. MAYES:** Objection to evidence not in the record
9 and mischaracterization of testimony.

10 **THE COURT:** All right. Overruled.

11 **MR. MADSEN:** The SLED DNA person even says I take the
12 hat, I put the hat on for a few minutes, I take it off,
13 it's not necessarily gonna have my DNA in it. That's their
14 witness.

15 Now you heard a little bit when I started to
16 cross-examine the DNA expert who when we started talking
17 about the loci and how many a person has had no idea, I
18 just use what I get in the box. Just what's in the box.
19 But we did hear from -- that this is a loci and that the
20 number down here you get one from your father and one from
21 your mother and that there's more than a hundred of these,
22 more than a thousand, we're just not really sure. So here
23 we've got mother, father, and I don't know what the third
24 number is. It doesn't match James Patterson. Maybe it's
25 mother, father, stepfather? You get one from your mother,

1 you get one from your father, yet we've got a third number.
2 Who's that come from? Of course, when the DNA person is
3 testifying we're talking about stuff from James Peterson.
4 This is a person who crosses their T's, dots their I's.
5 Little problems can turn into big problems. The solicitor
6 asked her again, "Who are we talking about?". James
7 Peterson. Then the solicitor comes over because she knows
8 it's a problem. James Patterson. Oh, okay. These are
9 the people that the State wants you to trust. They want
10 you to trust a name.

11 We talked about it earlier. How about finding errors
12 in the SLED report on the 12th? Which I'm not real sure
13 what's today's date, I think it's the 15th, so three days
14 ago. Three days ago? Four years later? Hey, everyone's
15 changing computer systems. Everyone's changing computer
16 systems. Oh, well. You know what my father-in-law would
17 say? That's just kind of good enough for government work.
18 That's not the standard here. That is not the standard,
19 ladies and gentlemen. That is not the standard.

20 Now I'll be done talking here in just a minute. The
21 Judge is going to charge you on the law and he's going to
22 tell you that the State has the entire burden of proof in
23 this case. That the State has the entire burden of proof
24 and they must prove their case beyond a reasonable doubt.
25 Sitting there in your chairs did you hear reasonable doubt?

1 Did you hear it again and again and again? Each one of
2 those pieces of paper is a piece of reasonable doubt.
3 Each one of those things that you heard is a piece of
4 reasonable doubt. And in this case not only did you hear
5 about reasonable doubt, but you can look at reasonable
6 doubt. It's on the floor sitting in front of you. There's
7 reasonable doubt all over the place in this case and that's
8 why James Patterson's not guilty. He's not guilty of armed
9 robbery, he's not guilty of grand larceny, he's not guilty
10 of possession of a weapon during the commission of a
11 violent crime. He is not guilty. Thank you.

12 **THE COURT:** Anybody need a break? All right. We'll
13 proceed.

14 **MS. MAYES:** Your Honor, may we approach?

15 (Proceedings held at the bench; not reported.)

16 **THE COURT:** Clean up.

17 All right. Ladies and gentlemen, you've now heard all
18 of the testimony in this case, you've heard the arguments
19 of both the State and the Defendant and you will take to
20 the jury room all the evidence in this case that's been
21 introduced. And I'll mention the video in a minute, but
22 now I must explain the law of the state of South Carolina
23 to you as it applies to this case.

24 I'll remind you, again, that during this trial you
25 and I had certain duties to perform. As the trial judge,

1 it's my responsibility to preside over the trial of the
2 case. I also have the duty to rule on the admissibility
3 of the evidence offered during the trial. You are to
4 consider only the competent evidence that's been submitted
5 to you. If there was any testimony ordered stricken from
6 the record, and I don't believe there was, you would have
7 to disregard that testimony. You are to consider only the
8 testimony which has been presented from this witness stand
9 and any exhibits which may have been made a part of the
10 record and any stipulations of counsel.

11 I have the additional duty to charge you the law
12 applicable to this case and as the presiding judge I am the
13 sole judge of the law in this case and it's your duty as
14 jurors to accept and apply the law as I now state it to
15 you. If you already have any ideas as to what the law is
16 or what the law ought to be that does not agree with what
17 I now tell you the law is, you must abandon this idea
18 because you're sworn to accept the law and apply the law
19 exactly as I state it to you.

20 In every case tried in this court before a jury the
21 jury becomes the sole and exclusive judge of the facts.
22 The trial judge cannot intimate, state or comment on or
23 make any statements to a trial jury about the facts in the
24 case and since you, the jury, are the sole judges of the
25 facts in the case you're not to infer from anything that I

1 might have said or done during the progress of this trial
2 in ruling upon the admissibility of evidence or otherwise
3 or anything that I say now during the course of these
4 instructions that I have any opinion about the facts in
5 this case. The law does not allow me to have an opinion
6 about the facts in the case. This is a matter solely for
7 you, the jury, to determine and as jurors it's your duty
8 to determine the effect, value and weight of the evidence
9 presented during this trial.

10 I remind you that the facts -- that the fact that
11 the warrants were issued and that Mr. Patterson was
12 arrested, charged and indicted in this case are not
13 evidence in this case and cannot be considered by you as
14 evidence of guilt in this case. Nor does it present any
15 -- create any presumption or inference of guilt. The
16 documents that I showed you earlier are simply the formal
17 written instruments which contain the charges against
18 Mr. Patterson. It's the formal documents by which this
19 case was brought into court.

20 The indictments in this case allege several offenses
21 against Mr. Patterson. They are armed robbery, possession
22 of a weapon during a violent crime, grand larceny of a
23 value of \$10,000 or more. Now each indictment charges a
24 separate and distinct offense. You must decide each
25 indictment separately on the evidence and the law

1 applicable to it uninfluenced by your decision as to any
2 other indictment. Mr. Patterson may be convicted or
3 acquitted on any or all of the offenses charged. You will
4 be asked to write a separate verdict of guilty or not
5 guilty for each indictment.

6 Now Mr. Patterson, as I told you earlier, has pled
7 guilty to this indictment and that plea puts the burden
8 on the State to prove him guilty. A person charged with
9 committing a criminal offense in South Carolina is never
10 required to prove himself or herself innocent. I charge
11 you, again, this is an important rule of law that a
12 defendant in a criminal case, no matter what the
13 seriousness of the charge may be, will always be presumed
14 innocent of the crime for which the indictment was issued
15 unless guilt has been proven by evidence satisfying you
16 of that guilt beyond a reasonable doubt. And this
17 presumption of innocence does not even end when you begin
18 your deliberations, but it accompanies Mr. Patterson
19 throughout the trial until or unless you reach a verdict
20 of guilt based on evidence satisfying each one of you of
21 that guilt beyond a reasonable doubt.

22 It's been said the presumption of innocence is like
23 a robe of righteousness placed about the shoulders of
24 Mr. Patterson which remains with him until and unless it
25 has been stripped from him by evidence satisfying you of

1 his guilt beyond a reasonable doubt. The presumption of
2 innocence is not a mere legal theory, it's not a legal
3 phrase. It is a substantial right to which every defendant
4 is entitled unless you, the jury, are satisfied from the
5 evidence of the Defendant's guilt beyond a reasonable
6 doubt.

7 Well, what is reasonable doubt in the law? Reasonable
8 doubt is the kind of doubt that would cause a reasonable
9 person to hesitate to do something. I'll repeat that.
10 A reasonable doubt in the law is the kind of doubt that
11 would cause a reasonable person to hesitate to act. The
12 State has the burden of proving Mr. Patterson guilty
13 beyond a reasonable doubt. Some of you may have served
14 as jurors in civil cases where you were told it's only
15 necessary to prove that a fact is more likely true than not
16 true, such as by the greater weight of the evidence or the
17 preponderance of the evidence, but in criminal cases the
18 State's proof must be more powerful than that. It must
19 be beyond a reasonable doubt. Proof beyond a reasonable
20 doubt is proof that leaves you firmly convinced of the
21 Defendant's guilt. Now there are very few things in this
22 world we know with absolute certainty. In criminal cases,
23 the law does not require proof that overcomes every
24 possible doubt. If based on your consideration of the
25 evidence, you are firmly convinced that Mr. Patterson is

1 guilty of the crime charged, you must find him guilty. On
2 the other hand, if you think there's a real possibility
3 that Mr. Patterson is not guilty, you must give him the
4 benefit of the doubt and find him not guilty.

5 Now as counsel may have mentioned, there are two
6 types of evidence which are generally presented during a
7 trial; direct evidence and circumstantial evidence.
8 Direct evidence directly proves the existence of a fact
9 and does not require any kind of deduction. Circumstantial
10 evidence, on the other hand, is proof of a series or chain
11 of facts and circumstances indicating the existence of some
12 fact. Crimes may be proven by circumstantial evidence.
13 The law makes no distinction between the weight or value
14 to be given to either direct or circumstantial evidence.
15 However, to the extent the State relies on circumstantial
16 evidence, all of the circumstances must be consistent with
17 each other and when taken together point conclusively to
18 the guilt of the accused beyond a reasonable doubt. If
19 these circumstances merely portray Mr. Patterson's behavior
20 as suspicious, the proof has failed. The State has the
21 burden of proving Mr. Patterson guilty beyond a reasonable
22 doubt and this burden rests with the State regardless of
23 whether the State relies on direct evidence, circumstantial
24 evidence or a some combination of the two.

25 Now, necessarily, you must determine the credibility

1 of the witnesses who testified in this case. Credibility
2 simply means believability. It becomes your duty as jurors
3 to analyze and evaluate the evidence and determine which
4 evidence convinces you of its truth. In determining the
5 believability of witnesses who have testified in this case,
6 you may believe one witness over several witnesses or
7 several witness over one witness. You may believe a part
8 of the testimony of a witness and reject the remaining part
9 of the testimony of that same witness. You may believe
10 the testimony of a witness in its entirety or reject the
11 testimony of a witness in its entirety. You may consider
12 also whether any witness has exhibited to you any interest
13 in this case or bias or prejudice or other motive in this
14 case. You also may consider the appearance and manner of
15 a witness while on the witness stand.

16 Now our rules of court, our rules of evidence,
17 ordinarily do not permit witnesses -- I guess what we
18 call lay witnesses to testify about their opinions or
19 conclusions. An exception to this rule exists for
20 witnesses we call expert witnesses and you might have seen
21 the process of determining expert witnesses during the
22 course of the trial. A witness who by education and
23 experience has become expert in some science or profession
24 or calling may state an opinion as to relevant and material
25 matter in which the witness claims to be an expert and may

1 also state the reasons for that opinion. You should
2 consider any expert opinions received in evidence in this
3 case like any other evidence and give it the weight you
4 think it deserves. If you decide that the opinion of an
5 expert is not based on sufficient education or experience
6 or if you conclude that the reasons given in support of
7 the opinion are not sound or that the opinion is outweighed
8 by other evidence, you may disregard the testimony of a
9 witness in its entirety. An expert witness's testimony is
10 to be given no greater weight than that of other witnesses
11 simply because the witness is an expert.

12 Now an issue in this case is the identification of
13 Mr. Patterson as the person who committed the crime
14 charged. The State has the burden of proving identity
15 beyond a reasonable doubt. You must be satisfied beyond a
16 reasonable doubt of the accuracy of the identification of
17 Mr. Patterson before you may convict him. Identification
18 testimony is an expression of belief or impression by a
19 witness. You must determine the accuracy of the
20 identification of Mr. Patterson. You must consider the
21 believability of the identification witness the same way
22 as any other witness. You may consider whether the witness
23 had an adequate opportunity to observe the offender at the
24 time of the offense and this will be affected by things
25 like how long or short a time was available, how close

1 the witness was, the lighting conditions, and whether the
2 witness had the chance to see or know the person from the
3 past. Once again, I instruct you that the burden is on
4 the State and extends to every element of the crime charged
5 and this specifically includes the burden of proving beyond
6 a reasonable doubt the identity of Mr. Patterson as the
7 person who committed the crime. If, after examining the
8 testimony, you have a reasonable doubt as to the accuracy
9 of the identification, you must find Mr. Patterson not
10 guilty.

11 Now in order to establish criminal liability, criminal
12 intent is required. For example, the mental state required
13 to be proven by the State for some particular crime might
14 be some purpose or recklessness or criminal negligence.
15 Criminal intent must be proven by the State beyond a
16 reasonable doubt. Criminal intent is always a matter that
17 must be determined by the jury from the circumstances
18 surrounding the situation. There's no way to prove intent
19 to a mathematical certainty. There's no way medical
20 science can dissect a person's brain and determine what
21 the person had in mind, so the law says that criminal
22 intent may be inferred from the circumstances shown to
23 have existed. This is how you make a determination
24 whether or not the element requiring intent was present.
25 It's not necessary to establish intent by direct and

1 positive evidence, but intent may be established by
2 inference in the same way as any other fact by taking into
3 consideration the acts of the party and all of the facts
4 and circumstances of the case. In other words, criminal
5 intent is a mental state, a conscious wrongdoing. It's
6 up to you to determine what Mr. Patterson intended to do
7 based on the circumstances shown to have existed.

8 As you know, Mr. Patterson is charged with armed
9 robbery. In order to prove this offense, the State must
10 first prove beyond a reasonable doubt that Mr. Patterson
11 took property from the person or presence of another
12 person. Property is in the presence of a person if it is
13 within the person's reach, inspection, observation or
14 control so that the person could, if not overcome with
15 violence or prevented by fear, keep the possession of
16 his own property. The State must also prove beyond a
17 reasonable doubt that Mr. Patterson carried away the
18 property intending to permanently deprive the owner of the
19 property and to keep the property for his own use. The
20 slightest removal of the property or complete possession
21 of the property, even for an instant, by Mr. Patterson is
22 sufficient to show a taking and carrying away of the
23 property. The taking and carrying away of the property
24 must have been done by violence or by putting the owner of
25 the property in fear of violence.

1 And, finally, the State must prove beyond a reasonable
2 doubt that Mr. Patterson was armed during the robbery with
3 a deadly weapon or what appeared to be a deadly weapon or
4 an object which a person present during the commission of
5 the robbery reasonably believed to be a deadly weapon.

6 And a deadly weapon is any article, instrument or substance
7 which is likely to cause death or great bodily harm.

8 Whether an instrument has been used as a deadly weapon
9 depends on the facts and circumstances of each case. And
10 the following are examples of instruments which may be a
11 deadly weapon; a pistol or a shotgun or a rifle. And a
12 gun may be a deadly weapon even if it's not operating.

13 Second, Mr. Patterson is charged with possession of a
14 weapon during the commission of or attempt to commit a
15 violent crime. The State must prove beyond a reasonable
16 doubt that Mr. Patterson was, in fact, in possession of a
17 firearm or visibly displayed what appeared to be a firearm
18 during the commission of a violent crime. A firearm means
19 any machine gun, automatic rifle, revolver, pistol or any
20 weapon which could -- well, is designed to or may be
21 readily converted to expel a projectile.

22 In order to find Mr. Patterson guilty of possession
23 of a weapon during the commission of a violent crime, you
24 must first find the Defendant guilty of either committing
25 a violent crime or attempting to commit a violent crime,

1 and an armed robbery is a violent crime. The State must
2 prove beyond a reasonable doubt that the weapon furthered
3 or advanced or helped in the commission of the crime.

4 Third, Mr. Patterson is charged with grand larceny.
5 The State must prove beyond a reasonable doubt that
6 Mr. Patterson took and carried away the property of another
7 against the will or without the consent of the other
8 person. The slightest removal of the property or the
9 complete possession of the property, even for an instant,
10 by Mr. Patterson is enough to show a taking and carrying
11 away of the property. The State must also prove beyond a
12 reasonable doubt that Mr. Patterson intended to permanently
13 deprive the owner of the property. And, finally, the State
14 must prove that the value being taken -- or the property
15 taken was \$10,000 or more.

16 Now, ladies and gentlemen, I conclude with this
17 instruction to you, and I emphasize it. I instruct you
18 and emphasize the fact that Mr. Patterson did not testify
19 in this case is not a factor to be considered by you in
20 any way in your deliberations and in your consideration on
21 the question of the guilt or innocence of Mr. Patterson.
22 It must not be considered by you in any manner whatsoever.
23 Mr. Patterson has a constitutional right to remain silent
24 and the assertion of this right must not to be considered
25 by you in your deliberations. I repeat. Under your oath

1 you are to draw no conclusion whatsoever from the fact
2 that Mr. Patterson did not testify. The fact that
3 Mr. Patterson did not testify should not even be discussed
4 in the jury room. The burden of proof, as I've stated to
5 you frequently, is on the State. Mr. Patterson is not
6 required to prove himself innocent. The burden of proof
7 remains on the State to prove guilt beyond a reasonable
8 doubt.

9 Now, Madam Forelady, when you go to the jury room,
10 you will have this verdict form with you. The possible
11 verdicts are, with respect to the charge of armed robbery,
12 we find the Defendant guilty or not guilty. The second
13 would be with respect to the possession of a weapon during
14 the commission of a violent crime, we find the Defendant
15 guilty or not guilty. And the same is true of grand
16 larceny, we find the Defendant guilty or not guilty. And
17 there's no significance whatsoever in the manner and order
18 in which I stated these possible verdicts. Your verdict
19 must not be based on sympathy or prejudice or any other
20 factor that's not in evidence in this case.

21 Now, ladies and gentlemen, all twelve jurors must
22 agree on a verdict. In other words, your verdict must be
23 a unanimous one. At any time all jurors are not present
24 in the jury room the jury must stop deliberating until all
25 twelve jurors are present. Madam Forelady, when the jury

1 agrees on a verdict, you will write the verdict on the
2 verdict form, sign your name as foreperson, date it and
3 knock on the jury room door and inform the bailiff that
4 you've reached a verdict and at that time we will receive
5 you back into the courtroom.

6 Now I'll ask you to return to your jury room, but do
7 not begin your deliberations until you're told to do so by
8 the clerk or a bailiff. All of the evidence has to be
9 collected and brought to you.

10 Now if you wish to play the video, I'm sure we can do
11 it on a laptop or some other manner or way to do it. I
12 probably couldn't do it, but we'll find a way for it to be
13 played to you if you'd like to see it.

14 All right. Your lunch has been ordered. It was
15 ordered to be here about 12:00. So go to the jury room,
16 just relax for a few minutes until we're able to collect
17 all of the evidence and we'll deliver it to you with
18 the verdict form at which time you may begin your
19 deliberations. Thank you very much.

20 (Whereupon, the jury retires to the jury room at
21 11:12 AM.)

22 **THE COURT:** Any exceptions to the charge from the
23 State?

24 **MS. MAYES:** None from the State, Your Honor.

25 **THE COURT:** From the defense?

1 **MR. MADSEN:** Yes, sir, Your Honor.

2 **THE COURT:** Go ahead.

3 **MR. MADSEN:** I hate to say it, but Your Honor when
4 you did your presumption of innocence indicated to the jury
5 that Mr. Patterson had pled guilty to the indictments.

6 **THE COURT:** I did?

7 **MR. MADSEN:** Yes, sir.

8 **THE COURT:** I'm sorry.

9 **MR. MADSEN:** We've got to move -- I don't think it
10 was intentional by the Court, but that's a bell that cannot
11 be un-rung and obviously we're gonna have to move for a
12 mistrial.

13 **THE COURT:** Okay.

14 **MR. MADSEN:** I hate to do it at this point, but, I
15 mean --

16 **THE COURT:** I've already told them one time he pled
17 not guilty. I'll tell them again. The motion for mistrial
18 is overruled.

19 **MR. MADSEN:** I understand that, Your Honor, but, like
20 I said, that's pretty important language right at the
21 beginning.

22 **THE COURT:** My law clerk said I mumbled "not". I'll
23 correct it. 99.9 percent of the charge emphasizes
24 innocence on the presumption. How about checking on the
25 evidence? Are you ready for it to go to the jury?

1 **MS. MAYES:** Yes, sir.

2 **THE COURT:** I'll bring them in in just a minute.

3 (Pause in the proceedings.)

4 **THE COURT:** All right. Counsel, let me have your
5 attention. Any objection to dismissing the alternates now?

6 **MS. MAYES:** None from the State.

7 **MR. MADSEN:** No, Your Honor.

8 **THE COURT:** All right. Bring in the jury.

9 (Whereupon, the jury returns to the courtroom at
10 11:23 AM.)

11 **THE COURT:** Madam Forelady and members of the jury,
12 it's come to my attention that I misspoke during the course
13 of my jury charge to you. Early in the -- when I was
14 talking about the presumption of innocence, I've been told
15 that I said Mr. Patterson has pled guilty. I don't know
16 if anybody -- well, if I did say so, that is clearly wrong.
17 Mr. Patterson has pled not guilty to this indictment,
18 that's why we're here, and the State has the burden to
19 prove him guilty. If I said that, it was in error. It
20 was just an oversight on my part, so I just wanted to make
21 that amply clear that he has pled not guilty. And, again,
22 the State has the burden to prove him guilty beyond a
23 reasonable doubt. So I needed to correct that in front of
24 you and on the record.

25 The evidence has been collected, so we're just about

1 ready for you to begin your deliberations. So if you'll
2 retire to the jury room again and the evidence is on the
3 way.

4 (Whereupon, the jury retires to the jury room at
5 11:24 AM.)

6 **THE COURT:** All right. Any further exceptions?

7 **MR. MADSEN:** Judge, I think that the preservation
8 rules just require me to re-object and object to that and
9 to re-move for a mistrial.

10 **THE COURT:** All right. Denied.

11 Let's get the evidence, please.

12 (Whereupon, the evidence and the verdict form was
13 given to the jury and deliberations were commenced at
14 11:25 AM.)

15 **THE COURT:** Have a seat, counsel, please.

16 (Whereupon, the alternates enter the courtroom.)

17 **THE COURT:** Gentlemen -- well, this week you are 217
18 and 26. I hope you don't feel like you've been prisoners.
19 I have to dismiss you now at this time, but I do want to
20 thank you for your service. I will tell you that it is
21 not infrequent that we need alternates. You'd be surprised
22 how many people can't get their car started or babies get
23 sick or grand-momma fell down or any number of reasons
24 why alternates are necessary. For a trial to last a week
25 and not replace an alternate is pretty unusual, so your

1 presence, even though you're not going to participate in
2 deliberations, is still vital to this system.

3 Now I will tell you that you can stay if you wish.
4 Some jurors feel they'd like to see what happens, but
5 you're free to go. And I think the checks have already
6 been mailed, haven't they, Ms. Frick?

7 **THE CLERK:** They'll probably go out tomorrow, Your
8 Honor. Hopefully, they'll go out tomorrow.

9 **THE COURT:** Also I want to tell you that you can
10 talk to anybody if you want to, if they want to get your
11 ideas or thoughts, but you don't have to talk to anyone.
12 If one of the attorneys or somebody in the audience says
13 they'd like to talk to you about the case, just say I
14 don't care to talk to you. If you have any problem about
15 that, the bailiff will let me know and I'll take care of
16 it.

17 Anyway good luck to both you. Thank you for staying
18 with us and maybe we'll see you down the road somewhere.

19 (Whereupon, the alternate jurors were dismissed at
20 11:29 AM.)

21 **THE COURT:** All right. We'll stand at ease until we
22 hear from the jury.

23 (Whereupon, a luncheon recess taken.)

24 **THE COURT:** They want the video. Mark that as a
25 Court's Exhibit. Court's Number 1.

1 (Court's Exhibit Number 1 was marked for
2 identification.)

3 **MS. MAYES:** We have two options, Judge. We have the
4 ability to play it here. We have a laptop that has been
5 cleaned, although I know sometimes there may be an
6 objection to sending a State-owned laptop back there, but
7 that's where we are.

8 **THE COURT:** Well, there's one up here, too, but it's
9 owned by the State.

10 **MR. MADSEN:** However Your Honor wants to handle it.

11 **THE COURT:** Okay. Well, let's take the one that you
12 say has been cleaned.

13 **MS. MAYES:** And it has no Internet access from what
14 we understand. It's been disabled.

15 **THE COURT:** Okay. Good. Where's the -- is the disk
16 back there?

17 **MS. MAYES:** Your Honor, 6 and 7 are the exhibits
18 which are the two video surveillances. We will just --
19 if counsel will step over, we'd like to have everyone
20 verify --

21 **THE COURT:** Are they loaded on there?

22 **MS. MAYES:** Yes, sir.

23 **THE COURT:** Oh.

24 **MR. SULLIVAN:** Not yet.

25 **MS. MAYES:** Okay. The CD would be inserted.

1 **THE COURT:** Wait. Say what?

2 **MR. MADSEN:** They should have them.

3 **MR. BELL:** Your Honor, they do have the CDs that
4 contain the videos. They are not on the laptop currently.

5 **THE COURT:** I thought that's what he said.

6 (Whereupon, a laptop was sent back to the jury room
7 11:33 AM.)

8 (Recess taken.)

9 **BAILIFF:** All rise. Court's in session. The
10 Honorable G. Thomas Cooper presiding.

11 **THE COURT:** All right. Be seated.

12 The bailiff informs the Court that the jury has
13 reached a verdict. Before I call for the jury, we got a
14 note during lunch, and I'll read it to you. Number 91
15 would like to call my business before payroll is sent in.

16 I didn't think it was necessary to reconvene the
17 court or to advise counsel that he needed to make a phone
18 call, but in an abundance of caution I sent Mr. Haiger
19 with him to make his phone call. The jury was instructed
20 not to deliberate while Mr. 91 was out of the room and
21 Mr. Haiger accompanied the juror to his car, got his
22 phone and basically overheard his conversation to his
23 boss about -- that had nothing to do with this case, but
24 -- so I advise you of that. If it's of any concern to
25 anybody, now's your chance to say something. Just mark

1 that.

2 (Court's Exhibit Number 2 was marked for
3 identification.)

4 **MS. MAYES:** No objection from the State, Your Honor.

5 **MR. MADSEN:** Nothing from the defense, Your Honor.

6 **THE COURT:** All right. Madam Clerk, if counsel
7 requests to poll the jury, they'll be polled by number?

8 **THE CLERK:** Yes, sir.

9 **THE COURT:** All right. Is the State ready to receive
10 the verdict?

11 **MS. MAYES:** Yes, sir, Your Honor.

12 **THE COURT:** Is the defense ready to receive the
13 verdict?

14 **MR. MADSEN:** Yes, Your Honor.

15 **THE COURT:** Bring in the jury, please.

16 (Whereupon, the jury return to the courtroom at
17 12:54 PM to deliver its verdict.)

18 **THE COURT:** Madam Forelady, the bailiff informs the
19 Court that the jury has reached a verdict. Has the jury
20 reached a verdict?

21 **THE FOREPERSON:** We have, Your Honor.

22 **THE COURT:** All right. Would you please hand it to
23 the bailiff who will hand it to the Court.

24 **THE FOREPERSON:** (Handing.)

25 **THE COURT:** Madam Clerk, would you publish the

1 verdict, please.

2 **THE CLERK:** Indictment 2013-GS-32-00891, indictment
3 2013-GS-32-01132, and indictment 2013-GS-32-00890, the
4 State versus James Bubba Patterson. With respect to the
5 charge of armed robbery, we, the jury, unanimously find
6 the Defendant guilty. With respect -- excuse me. With
7 respect to the charge of possession of a weapon during the
8 commission of a violent crime, we, the jury, unanimously
9 find the Defendant guilty. With respect to the charge of
10 grand larceny, value of \$10,000 or more, we, the jury,
11 unanimously find the Defendant guilty. And it's so signed
12 by the Forelady, April 14, 2016.

13 Madam Forelady, ladies and gentlemen of the jury, if
14 these are your verdicts, please indicate, each of you, by
15 raising your right hand.

16 All hands were raised, Your Honor.

17 **THE COURT:** All right. Any desire to poll the jury?

18 **MR. MADSEN:** No, Your Honor.

19 **MS. MAYES:** Not from the State, Your Honor.

20 **THE COURT:** All right. Thank you very much.

21 All right. Ladies and gentlemen, that will conclude
22 the case. Well, not quite. Because of our workload, and
23 I'm speaking of myself now and the fact that we are what
24 are call circuit judges, we travel around the State, we
25 do not have the luxury as they do on the television of

1 waiting to sentence a defendant. In other words, the
2 sentencing procedure will take place -- based on your
3 verdict the sentencing procedure will take place now,
4 although it's gonna take a few minutes to do the paperwork.

5 So what I'm gonna tell you now is that you may stay,
6 if you wish, to watch the sentencing procedure or you are
7 free to leave. You have completed what we asked you to do,
8 and that was consider the facts and make a determination
9 of guilt or innocence. It's gonna take about five or
10 ten minutes to do the paperwork and, as I say, I see a
11 couple of your former jurors sitting in the audience, and
12 you're welcome to do the same thing. The bailiff's gonna
13 take you to your jury room in just a second and let you
14 know if we have work excuses and things like that if you
15 need it after which time you --

16 **BAILIFF:** They've already got them, Your Honor.

17 **THE COURT:** They've already got them? Oh. Boy,
18 that's efficiency.

19 **BAILIFF:** Ms. Hope's good.

20 **THE COURT:** All right. Well, if you do choose to
21 leave at this point, I want to thank you for your service.
22 I tell jurors all the time this system can do without me,
23 it can do without these attorneys, but it can't do without
24 you. You're such an important part of the judicial system
25 of this county and this state and this nation that your

1 role was written into the Constitution some two hundred
2 and fifty years ago. It's an important thing that you do.
3 We could not solve these disputes in our community if it
4 weren't for citizens who are willing to come, sit and
5 listen to the evidence, and you've been very attentive I've
6 noticed, you've listened to the evidence, you've made a
7 decision based on that evidence, and for that I want to
8 thank you. And I'm sure counsel for the parties joins me
9 in that, as well as the court staff here.

10 So you may retire to your jury room for just a
11 minute. If you wish to stay, notify the bailiff, they'll
12 make arrangements for you. I'm going to go back to my
13 chambers for a minute during which time I assume counsel
14 will -- will you take care of this?

15 **THE CLERK:** Yes, sir.

16 **THE COURT:** Just some paperwork.

17 All right. Thank you very much, ladies and gentlemen.
18 (Whereupon, the jury was dismissed at 12:59 PM.)

19 **THE COURT:** Any motions?

20 **MR. MADSEN:** Your Honor, we would renew our motion
21 for a directed verdict. We would renew all of our
22 objections, all of our motions, including our motion for
23 mistrial based on the -- the jury instructions. We would
24 also -- Your Honor, we do not believe that under the
25 thirteenth juror doctrine that there was sufficient

1 evidence for a jury to conclude guilt beyond a reasonable
2 doubt and so we renew all of those motions.

3 **THE COURT:** Thank you very much. The jury, in the
4 Court's opinion, had sufficient evidence to base their
5 verdict on and I must respectfully deny your motions.

6 Solicitor, will you let me know when you get your
7 paperwork done?

8 **MS. MAYES:** Your Honor, I believe we're almost ready.
9 There is just one thing I need Mr. Madsen to confirm.

10 **THE COURT:** All right. Well, y'all work that out.
11 I'm just going to go to my chambers for a minute.

12 (Recess taken.)

13 **BAILIFF:** Court is now in session. All rise.

14 **THE COURT:** All right. Be seated.

15 All right, Mr. Madsen. Bring in your client.

16 **THE COURT:** Solicitor, are the victims here?

17 **MS. MAYES:** Your Honor, he's gone back to the store,
18 but Ms. Frazier will be speaking on his behalf.

19 **THE COURT:** All right. You may proceed.

20 **MS. MAYES:** Your Honor, I have his prior record for
21 when you are ready.

22 **THE COURT:** I'm ready.

23 **MS. MAYES:** Your Honor, Mr. Patterson has a lengthy
24 prior record. It begins in 1986 with multiple convictions
25 for burglary. In 1986, there's a conviction for burg --

1 one count of burglary third degree. Confinement was two
2 years. There's an additional count of burglary third
3 degree; confinement for five years with two years
4 probation. Then it shows burglary third degree, multiple
5 charges, one disposition, two years.

6 **THE COURT:** When was that?

7 **MS. MAYES:** That is also 1986, Your Honor. It looks
8 like it was a multiple disposition on those charges.

9 **THE COURT:** All right.

10 **MS. MAYES:** It looks like there are two to three
11 burglary charges encompassed in that arrest. Then in 1987,
12 unlawful weapon, convicted. 1987, shoplifting, convicted.
13 Trespassing, convicted in 1990. 1988, also an unlawful
14 weapon conviction. Then in 1992, burglary third degree,
15 convicted. He got thirty days. Also, an additional count
16 of burglary third degree. He was convicted and got three
17 years suspended to one year.

18 **THE COURT:** That's '92?

19 **MS. MAYES:** Yes, Your Honor.

20 **THE COURT:** Okay.

21 **MS. MAYES:** In 1995, a conviction for assault on a
22 police officer. He was sentenced to a straight nine
23 years.

24 **THE COURT:** Nine years?

25 **MS. MAYES:** Nine years, yes, sir. He has a conviction

1 for escape, which was two years concurrent. In 2002, Your
2 Honor, he has multiple convictions for burglary second
3 degree. These were classified as nonviolent. It appears
4 to be more than one conviction. This is a burglary second
5 degree in 2002, ten years straight sentence concurrent,
6 with a petit larceny. Burglary second degree, ten years,
7 concurrent sentence. And then he has an assault of a high
8 and aggravated nature, three years, probation revoked. He
9 has --

10 **THE COURT:** So that was in 2002?

11 **MS. MAYES:** Yes, sir. And then he has an attempted
12 burglary second degree, three years concurrent with the
13 probation revocation. And, again, it's showing burglary
14 second degree, convicted, ten years. So I'm not sure
15 exactly how many he has there, but they are multiple
16 convictions for burglary. It appears to be concurrent
17 with one another. Then it shows that his probation was
18 actually revoked and he served a full ten-year sentence
19 that would have started in 2001. So it looks like maybe
20 those court charges weren't resolved until 2002, but in
21 that time frame of 2001, 2002 it looks like he began a
22 full ten-year sentence in SCDC and would have completed
23 that sentence and then gotten out wherein this crime was
24 committed subsequently.

25 **THE COURT:** All right. I'll hear from the victim.

1 **MS. FRAZIER:** Thank you, Your Honor. My name is Wendy
2 Frazier. I'm a victim advocate here at the solicitor's
3 office. I have been communicating with Frank Mancine via
4 text this afternoon in regards to letting him know that
5 there was a guilty verdict and he would like the Court to
6 know that he's glad that this fellow was found guilty and
7 that he's glad for him to be off the street. He would
8 like for him to get the maximum sentence, if possible.
9 Mr. Mancine had to go back to his work because business
10 has been closed down all week as a result of the trial,
11 so that's why they had to leave. They would have loved
12 to have been here, but they had to get back to work. And
13 they wanted to thank the Court, Your Honor.

14 **THE COURT:** All right. Anything further from the
15 State?

16 **MS. MAYES:** No, sir, Your Honor.

17 **THE COURT:** Mr. Madsen?

18 **MR. MADSEN:** Judge, just in regards to the record, it
19 sounded like a few of those things were for probation
20 violations from the same charge. Additionally, I think
21 there was a burglary. That thirty days sounds more like
22 a trespassing sentence than a burglary, although he does
23 acknowledge that he has that record, Your Honor.

24 As you heard, James is fifty-three years of age. He
25 graduated high school and he went to Eau Claire. He has a

1 common law wife that he lives with and he's been with her
2 for five years. He does construction and painting, Your
3 Honor, and had steady work. You might have seen sitting
4 kind of behind us during the course he's had his sister and
5 both of his brothers have been here, Your Honor. I have
6 found James to be a very soft-spoken individual. He has
7 been incarcerated since his arrest, which I believe was on
8 11-15 of 2012, which by my calculation is 1,245 days that
9 he has been incarcerated, Your Honor.

10 **THE COURT:** Any problem with that?

11 **MS. MAYES:** No, sir, Your Honor. And, just briefly,
12 concerning the delay, there was the initial delay due to
13 the Blair and incompetency issues. Those were resolved in
14 2014 and 2015. After the passing of Detective Bramlet, we
15 re-did the DNA. We had a completely new Schmerber hearing
16 and a completely new draw and re-did the DNA for a second
17 time to eliminate any chain of custody issues regarding
18 Detective Bramlet and, of course, the second DNA draw was
19 confirmed to be a match as well.

20 **THE COURT:** But he was in custody that whole time?

21 **MS. MAYES:** Yes, sir, Your Honor.

22 **MR. MADSEN:** Yes, sir. And I hope they don't think
23 that we're casting aspersions on that because obviously
24 if it had just -- if there weren't other issues out there
25 Your Honor would have obviously heard a Langford-type of

1 motion, but we do believe he is entitled to the 1,245 days.
2 I don't know if his brother or sister want to say anything
3 on his behalf. They have been up here most of the time.

4 As I said, I found him to be a very soft-spoken
5 individual. We would ask Your Honor to consider the
6 minimum sentence of ten years. As Your Honor is aware,
7 that is an 85 percent and it is a most serious, so he would
8 have to serve 85 percent of anything that Your Honor gives
9 him. He is a fifty-three-year-old individual and we would
10 ask Your Honor to consider the minimum ten-year sentence.

11 **THE COURT:** All right. Mr. Patterson, do you have
12 anything you want to say?

13 **THE DEFENDANT:** No, sir.

14 **MR. MADSEN:** That's not the mike. That's a light.

15 **THE DEFENDANT:** No, sir.

16 **THE COURT:** Mr. Patterson, your record doesn't help
17 you out any. The fact that you've already served a
18 ten-year sentence and still continued to commit crimes,
19 that's not -- I don't have a lot of sympathy. You
20 understand that, don't you?

21 **THE DEFENDANT:** (Nods head.)

22 **THE COURT:** All right, sir. Mr. James Bubba
23 Patterson, on your charge of possession of a weapon during
24 a violent crime, the sentence of the Court is you be
25 committed to the State Department of Corrections for a

1 period of five years. On your grand larceny, the sentence
2 of the Court is you be committed to the State Department
3 of Corrections for a period of ten years. On your armed
4 robbery, the sentence of the Court is you be committed to
5 the State Department of Corrections for a period of twenty
6 years. I'm gonna run all sentences concurrent and give you
7 credit for 1,245 days of pre-trial service.

8 Good luck to you, sir.

9 **MS. MAYES:** Thank you, Your Honor.

10 (Whereupon, the proceedings were concluded for
11 April 14, 2016, at 1:17 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh 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 case in Circuit Court on the 11th-14th days of April, 2016.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

July 7, 2016

s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 1211568

LSM

ARREST WARRANT NUMBER

2012A3221100337

ACTION OF GRAND JURY

TRUE BILL

Ron Braeington
Foreperson of Grand Jury
Date: 4-8-13

VERDICT

Guilty

Kelly L. Natron
Foreperson of Petit Jury
Date: 4/14/16

DOCKET NO. 2013GS3200890

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

James Bubba Patterson

CDR #: 3421

Indictment for

Grand Larceny (value greater than
\$10,000)

§ 16-13-0030(B)(2)

DONALD V. MYERS, SOLICITOR

A TRUE COPY

R. S. C.
Lex. Co. C.C.R., G.S. & F.C.

STATE OF SOUTH CAROLINA)
 COUNTY OF LEXINGTON)

APR 11 2013)
)
)

INDICTMENT FOR
 Grand Larceny (value greater than \$10,000)

§ 16-13-0030(B)(2)

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That **James Bubba Patterson** did in Lexington County, South Carolina on or about May 9, 2012 knowingly, willfully and unlawfully take, steal or carry away goods, chattels, instruments or other property with the intent to permanently deprive the owner thereof, being the property of and described as: Jewelry of K & M Jewelers, such property having a value of ten thousand (\$10,000) dollars or more, in violation of §16-13-30 (B)(2) of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

(0-10)

619

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

James Bubba Patterson

AKA:

Race: Black Sex: M Age: 53

DOB: SS#

Address:

City, State, Zip: Columbia, SC 29203

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Larceny / Grand Larceny, value \$0000 or more

INDICTMENT/CASE#: 2013GS3200890

A/W#: 2012A3221100337

Date of Offense: 5/9/2012

S.C. Code § : 16-13-0030(B)(2)

CDR Code #: 0479

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-13-0030(B)(2) of the S.C. Code of Laws, bearing CDR Code # 0479
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST:

Solicitor

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1,245 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED

Set by SCDPPS: Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: Substance Abuse Counseling

§ 14-1-206 (Assessments 107.5%) \$ Random Drug/Alcohol testing

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ beginning

§ 56-5-2995 (DUI Assessment) \$12 \$ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ Other: Lex. Ct. P.D., C.D., § 10.

Proviso 47-9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90-5 (SCJA Surcharge) \$5 \$5

3% to County (if paid in installments) \$

TOTAL \$130.00

Clerk of Court/ Deputy Clerk Beth Carrigan

Court Reporter: S. Johnson

SCCA/217 (03/2011)

Presiding Judge G. R. ...

Judge Code: 2126

Sentence Date: 4-14-16

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 1211568

LSM

ARREST WARRANT NUMBER

2012A3221100330

ACTION OF GRAND JURY

TRUE BILL

Ron Brasington

Foreperson of Grand Jury

Date: 4-8-13

VERDICT

Guilty

Kelly L. Nation

Foreperson of Petit Jury

Date: 4/14/16

DOCKET NO. 2013GS3200891

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE

vs.

James Bubba Patterson

CDR #: 0139

Indictment for

Armed Robbery

§ 16-11-0330(A)

DONALD V. MYERS, SOLICITOR

A TRUE COPY
RAC
Lex. Co. C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

APRIL 2013

INDICTMENT FOR
 Armed Robbery

§ 16-11-0330(A)

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That **James Bubba Patterson** did in Lexington County, South Carolina on or about May 9, 2012 knowingly and willfully while armed with a pistol, or other deadly weapon deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, to wit: did while armed with a pistol or other representation of a deadly weapon, feloniously take from the person or presence of staff /employee(s) at K & M Jewelry, by means of force, threats, or intimidation, goods or monies being described as follows: jewelry, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (A) of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 ASSISTANT SOLICITOR

622

(10-30)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

James Bubba Patterson

AKA:

Race: Black Sex: M Age: 53

DOB: SS#

Address:

City, State, Zip: Columbia, SC 29203

DL#: SID#

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon.

in violation of 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

NON-VIOLENT VIOLENT SERIOUS MOST-SERIOUS

The charge is: As.Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

INDICTMENT/CASE#: 2013GS3200891

A/W#: 2012A3221100330

Date of Offense: 5/9/2012

S.C. Code 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied

by the State Department of Corrections. 1,245 DAYS

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Conv. Surcharge, DUI Surcharge, etc.

Clerk of Court/Deputy Clerk Beth Carrigy

Court Reporter: S. Johnson

SCCA/217 (03/2011)

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ Paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel,

47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge G. M. ...

Judge Code: 2126

Sentence Date: 4-14-16

WITNESSES

West Columbia Police Department

Bruce Wade

Law Enforcement Case #: 1211568

LSM

ARREST WARRANT NUMBER

2012A3221100331

ACTION OF GRAND JURY

TRUE BILL

Ren Brasington
Foreperson of Grand Jury
Date: 4-8-13

VERDICT

Guilty

Kelly L. Newton
Foreperson of Petit Jury
Date: 4/14/16

DOCKET NO. 2013GS3201132

The State of South Carolina
County of Lexington

COURT OF GENERAL SESSIONS

APRIL TERM 2013

THE STATE
vs.

James Bubba Patterson

CDR #: 0549

Indictment for

Possession of a weapon during a violent
crime

§ 16-23-0490

DONALD V. MYERS, SOLICITOR

ATRUE COPY

SC

Lex. Co. C.C.P., G.S. § 10-10

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

INDICTMENT FOR

Possession of a weapon during a violent crime

§ 16-23-0490

At a Court of General Sessions, convened on APRIL 2013, the Grand Jurors of Lexington County present upon their oath:

That **James Bubba Patterson** did in Lexington County, South Carolina on or about May 9, 2012 knowingly and willfully, and unlawfully, possess a firearm, or visibly display what appeared to be a firearm during the commission of a violent crime or attempt to commit a violent crime, to wit: armed robbery, such weapon described as a pistol, in violation of § 16-23-490 of the Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

James Bubba Patterson

AKA:

Race: Black Sex: M Age: 53

DOB: SS#

Address:

City, State, Zip: Columbia, SC 29203

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3201132

A/W#: 2012A3221100331

Date of Offense: 5/9/2012

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC) §17-25-45 w/minor 1st or Lewd Act

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 1,245 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Conv. Surcharge, DUI Surcharge, etc. Total: \$130.

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2126

Sentence Date: 4-14-16


Clerk of Court/Deputy Clerk: Beth Carrigan
Court Reporter: S. Johnson
SCCA/217 (03/2011)

TRUE COPY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

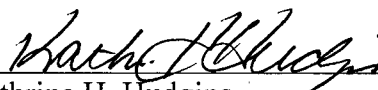
ATTORNEY FOR APPELLANT

This 14th day of June, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of June, 2017.

RECEIVED
JUN 14 2017
SC Court of Appeals