

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Thomas A. Russo, Circuit Court Judge

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S.C. SUPREME COURT

BENJAMIN J. JACKSON

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000881

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (Dated March 8, 2012).....	1
FINAL BRIEF OF APPELLANT	410
FINAL BRIEF OF RESPONDENT	423
OPINION NO. 2015-UP-389 (S.C. Ct. App. filed July 29, 2015)	441
APPLICATION FOR POST-CONVICTION RELIEF	443
RETURN.....	451
POST-CONVICTION RELIEF HEARING TRANSCRIPT (Dated February 26, 2018).....	459
ORDER OF DISMISSAL.....	509
INDICTMENTS	520
SENTENCE SHEETS	532

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF BERKELEY	)	Case No(s) .: 2010GS0801692,
	)	2010GS0801693,
State of South Carolina,	)	2010GS0801694,
	)	2010GS0801695,
Plaintiff,	)	2010GS0801696,
	)	2010GS0801697
-VS-	)	
	)	
Benjamin J. Jackson, III,	)	TRANSCRIPT OF RECORD
	)	
Defendant.	)	
	)	

March 08, 2012
Berkeley, South Carolina

B E F O R E:

HONORABLE J. C. BUDDY NICHOLSON, Judge.

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

BRIAN ALFARO, Esquire
Solicitor

ARIEL PITTMAN, Esquire
Deputy Solicitor

PATRICIA A. KENNEDY, Esquire
Chief Public Defender

Recorded by: Sharon Vizer-Hanks
Circuit Court Reporter

Transcribed by: Teresa B. Johnson
Circuit Court Reporter

I N D E XDIRECT CROSS REDIRECT RECROSS

March 5, 2012

Jury Qualification 9

Jury Selection 25

Jackson v. Deno Hearing 35

State witnesses:

Mark Mason

by Mr. Alfaro 38

by Ms. Kennedy 49

Michael Cortte

by Mr. Alfaro 60

by Ms. Kennedy 79

by Mr. Alfaro 93

by Ms. Kennedy 97

Defense witnesses:

Benjamin Jackson

by Ms. Kennedy 98

by Mr. Alfaro 108

by Ms. Kennedy 110

Motions 111

Ruling of the Court 113

I N D E XDIRECT CROSS REDIRECT RECROSS

March 6, 2012

Court Remarks	122		
Opening Statements			
by Mr. Pittman	124		
by Ms. Kennedy	126		
State witnesses:			
Harold Wadford			
by Mr. Alfaro	130		
by Ms. Kennedy		135	
Hazel Dunning			
by Mr. Pittman	137		
by Ms. Kennedy		161	
by Mr. Pittman			167
Phillip Balentine			
by Mr. Pittman	168		
by Ms. Kennedy		174	
Harold Marvin			
by Mr. Pittman	176		
by Ms. Kennedy		180	
Rick Ollic			
by Mr. Alfaro	183		
by Ms. Kennedy		200	

I N D E XDIRECT CROSS REDIRECT RECROSS

March 6, 2012 (con't)

State's witnesses (con't):

Steve Cline

by Mr. Alfaro	211		
by Ms. Kennedy		226	
by Mr. Alfaro			228

Thomas Buckhannon

by Mr. Alfaro	231		
by Ms. Kennedy		237	

Jason Potteiger

by Mr. Alfaro	239		
by Ms. Kennedy		250	

Michael Cortte

by Mr. Alfaro	253		
by Ms. Kennedy		279	
by Mr. Alfaro			318
by Ms. Kennedy			319

Dean Kokinda

by Mr. Pittman	320		
by Ms. Kennedy		336	

Remarks to Defendant 341

I N D E XDIRECT CROSS REDIRECT RECROSS

March 8, 2012

State Rests	348
Defense Rests	348
Motions	340
Closing Arguments	
by Mr. Alfaro	350
by Ms. Kennedy	366
Jury Charge	377
Verdict	396
Motions	399
Sentencing of the Court	401
Certificate of Reporter	409

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
STATE EXHIBITS			
S-1	Advisement of Rights	40	41
S-2	Statement of Benjamin Jackson	60	72
S-3	Photo of Church	116	130
S-4	Photo of Church	116	130
S-5	Photo of Church	116	130
S-6	Photo of Church	116	130
S-7	Photo of Church	116	130
S-8	Photo of Car	116	130
S-9	Photo of Car	116	130
S-10	Photo of Car	116	130
S-11	Photo of Car	116	130
S-12	Photo of Car	116	130
S-13	Photo of Car	116	130
S-14	Photo of Car	116	130
S-15	Photo of House	116	130
S-16	Photo of House	116	130
S-17	Photo of House	116	130
S-18	Photo of House	116	130
S-19	Photo of House	116	130
S-20	Photo of House	116	130
S-21	Photo of House	116	130
S-22	Photo of House	116	130

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
	STATE EXHIBITS (con't)		
S-23	Photo of House	116	130
S-24	Photo of House	116	130
S-25	Photo of House	116	130
S-26	Photo of House	116	130
S-27	Photo of House	116	130
S-28	Photo of House	116	130
S-29	Photo of House	116	130
S-30	Photo of House	116	130
S-31	Photo of House	116	130
S-32	Photo of House	116	130
S-33	Photo of Shells	116	-
S-34	Photo of Shells	116	-
S-35	Shells	116	-
S-36	Shells	116	-
S-37	Palmetto tree emblem from car	116	130
S-38	Misc Papers in bag	116	130
S-39	Pill bottle and pills	116	130
S-40	Check number 8293	116	130
S-41	Wallet and contents	116	130
S-42	911 call - CD	116	130
S-43	Pursuit report	229	-

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 5th day of March, 2012 at approximately 1:45 p.m.)

THE COURT: All right. Ladies and Gentlemen of the jury, I'm Judge Nicholson. I'm going to be holding Generals Sessions criminal court here in Berkeley county. The Solicitor has a case for trial which we're now going to call here in just a second, as soon as I can find the right page I'm looking for.

All right. Ladies and Gentlemen of the jury -- Solicitor, you want to call your case? I believe it's Benjamin Jackson, III. Is that correct?

MR. ALFARO: Yes, Your Honor. The State calls State v. Benjamin Jackson, III. Indictments 2010-GS-08-1692, Possession of a Firearm during a Crime of Violence; 2010-GS-08-1693, Burglary second degree; 2010-GS-08-1694, Grand Larceny; 2010-GS-08-1695, Kidnaping; 2010-GS-08-1696, Armed Robbery; 2010-GS-08-1697, Failure to Stop For a Blue Light.

THE COURT: Thank you, sir. Is the State ready to proceed?

MR. ALFARO: We are, Your Honor.

THE COURT: Is the defense ready?

1 **MS. KENNEDY:** Yes, Your Honor. We are.

2 **THE COURT:** Thank you, ma'am.

3 All right. Ladies and Gentlemen of the jury
4 panel, I'm going to ask you certain questions.

5 These questions aren't designed to embarrass
6 anyone. If you feel like you need to discuss the
7 answer to the questions in private, I'll be glad to
8 receive you up here at the bench and discuss your
9 answer in private.

10 The first thing I'm going to do is call out a
11 list of names. I'm going to ask you the same
12 question about each name. I'm going to ask you, do
13 you know the individual, are you related by blood
14 or marriage or have you had any kind of contact
15 with the individual? When I say marriage, I'm
16 talking about past marriages as well as present
17 marriages. If you've divorced an individual, I'd
18 like to know it. Or if you're planning on marrying
19 an individual in the near future or far future, I'd
20 like to know that also.

21 The first name is Hazel Dunning from St.
22 Stephens, South Carolina. Anybody related by blood
23 or marriage or does anybody know Hazel Dunning?

24 If any of these people are in the courtroom,
25 please stand when I call your names out.

1 If so, please stand from the jury panel if you
2 know the person.

3 Yes, ma'am. Your name?

4 **MR. ALFARO:** Your Honor, that is Ms.
5 Dunning.

6 **THE COURT:** That's Ms. Dunning?

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

8 **THE COURT:** All right. Ms. Dunning, please
9 stand.

10 Ms. Dunning is standing in the back of the
11 courtroom in the red dress.

12 Thank you, Ms. Dunning. You may have a seat.

13 Anybody related by blood or marriage or does
14 anybody know Ms. Hazel Dunning? If so, please
15 stand. (No response.)

16 All right. The next name is Captain Rick
17 Ollic of the Berkeley County Sheriff's Office.
18 Anybody related by blood or marriage to Rick Ollic?
19 Does anybody know Rick Ollic? If so, please stand.
20 (No response.)

21 The next name is Detective Michael Cortte of
22 the Berkeley County Sheriff's Office. Anybody know
23 Michael Cortte? He's standing to my right, to your
24 left. (No response.)

25 Thank you, sir.

1 The next name is Detective John Riley. Is
2 anybody related by blood or marriage? Does anybody
3 know Detective John Riley? If so, please stand.
4 (No response.)

5 The next name is Detective Jason Potteiger.
6 How does he pronounce that?

7 **MR. ALFARO:** Potteiger.

8 **THE COURT:** Potteiger. Detective Jason
9 Potteiger. Anybody related by blood or marriage?
10 Does anybody know Detective Jason Potteiger? If
11 so, please stand. (No response.)

12 The next name is Lieutenant Mark Mason. He's
13 standing in the back of the courtroom if you want
14 to turn around and look.

15 Thank you, Mr. Mason.

16 Anybody related by blood or marriage to Mark
17 Mason? Does anybody know Mark Mason? If so,
18 please stand. (No response.)

19 The next name is Detective John Peters,
20 Berkeley County Sheriff's Office. Anybody related
21 by blood or marriage? Anybody know John Peters?
22 If so, please stand.

23 Yes, sir. Your name?

24 **THE JUROR:** Mark Williams.

25 **THE COURT:** You know your jury number?

1 **THE JUROR:** 195.

2 **THE COURT:** Mr. Williams, how do you know
3 Mr. Peters?

4 **THE JUROR:** We went to high school together.

5 **THE COURT:** Have you seen him frequently
6 after -- since high school?

7 **THE JUROR:** No, sir.

8 **THE COURT:** How often do you see him or do
9 you?

10 **THE JUROR:** I probably haven't seen him in
11 10 years.

12 **THE COURT:** 10 years?

13 **THE JUROR:** Yes, sir.

14 **THE COURT:** Okay. Would it cause you any
15 difficulty assuming he's going to testify in this
16 case to sitting on the jury?

17 **THE JUROR:** No, sir.

18 **THE COURT:** Can you be fair to both the
19 State and the defendant?

20 **THE JUROR:** Yes, sir.

21 **THE COURT:** Can you base the decision on the
22 testimony you hear in the courtroom?

23 **THE JUROR:** Yes, sir.

24 **THE COURT:** All right. Thank you very much,
25 Mr. Williams.

1 The next name is Lieutenant Dean Kokinda,
2 Berkeley County Sheriff's Office. Anybody know
3 Lieutenant Dean Kokinda? If so, please stand.
4 (No response.)
5 Anybody related to Detective Dean Kokinda?
6 Please stand. (No response.)
7 The next name is Detective James Riser,
8 Berkeley County Sheriff's Office. Anybody know
9 Detective James Riser? Anybody related by blood or
10 marriage? If so, please stand. (No response.)
11 The next name is Deputy Steve Cline with
12 Berkeley County Sheriff's Office. Anybody related
13 by blood or marriage or anybody know Steve Cline?
14 If so, please stand. (No response.)
15 The next name is Detective Brian Fenton,
16 Berkeley County Sheriff's Office. Anybody know
17 Brian Fenton? Anybody related by blood or
18 marriage? If so, please stand. (No response.)
19 The next name --
20 **THE JUROR:** I believe I know --
21 **THE COURT:** What's your, uh, --
22 **THE JUROR:** 84, Horsley, Charlene.
23 **THE COURT:** What's your number?
24 **THE JUROR:** 84.
25 **THE COURT:** Okay. Let me find you on this

1 list. Yes, ma'am, Ms. Horsley.

2 THE JUROR: Uh, I just know him. I knew his
3 dad growing up.

4 THE COURT: How often do you see him?

5 THE JUROR: I don't.

6 THE COURT: You don't ever see him?

7 THE JUROR: No, not for years.

8 THE COURT: Not for years?

9 THE JUROR: No.

10 THE COURT: Okay. Would that cause you any
11 difficulty sitting on this jury assuming he
12 testified?

13 THE JUROR: No.

14 THE COURT: Can you be fair to both the
15 State and the defendant?

16 THE JUROR: Yes.

17 THE COURT: Can you base your decision on
18 the testimony here in the courtroom?

19 THE JUROR: Yes.

20 THE COURT: Thank you very much.

21 The next name is Detective Sergeant Geno
22 Alteri. Geno Alteri. Anybody related by blood or
23 marriage or does anybody know Geno Alteri? If so,
24 please stand. (No response.)

25 The next name is Deputy Brian Mosier.

1 Anybody, uh, -- Berkeley County Sheriff's Office.
2 Anybody related to Brian Mosier? If so, please
3 stand. (No response.)

4 The next name is detective -- excuse me --
5 Deputy Thomas Buckhannon. Anybody related by blood
6 or marriage to Thomas Buckhannon? He's presently
7 employed with the Charleston Sheriff's Office,
8 formerly with Berkeley county. Anybody related by
9 blood or marriage or anybody know Thomas
10 Buckhannon? If so, please stand. (No response.)

11 The next name is Phillip Balentine from St.
12 Stephens, South Carolina. Anybody know Phillip
13 Balentine or anybody related by blood or marriage?
14 If so, please stand. (No response.)

15 The next name is Harold Marvin from St.
16 Stephen, South Carolina. Anybody know Harold
17 Marvin? Anybody related by blood or marriage? If
18 so, please stand. (No response.)

19 The next name is Josh Myzell from Ridgeland.
20 Anybody related by blood or marriage or anybody
21 know Josh Myzell? If so, please stand.
22 (No response.)

23 The next name is Eddie Myzell from Ridgeland.
24 Anybody related by blood or marriage or anybody
25 know Eddie Myzell? If so, please stand.

1 (No response.)

2 Excuse me. The next name is Sergeant Harold
3 Wadford, St. Stephen Police Department. Anybody
4 related by blood or marriage or anybody know Harold
5 Wadford? If so, please stand. (No response.)

6 Is any member of the jury panel a former
7 member of law enforcement in any type of capacity?
8 If so, please stand. Anybody worked for law
9 enforcement in the past? If so, please stand.
10 (No response.)

11 Is any member of the jury panel -- Yes, sir.
12 You know your number?

13 THE JUROR: 20, Daniel Boone.

14 THE COURT: I'm sorry. What?

15 THE JUROR: 20.

16 THE COURT: 20? Daniel Boone, Juror Number
17 20. Yes, sir.

18 THE JUROR: I worked for the City of Hanahan
19 from '89 to '83.

20 THE COURT: '89 to --

21 THE JUROR: '79 to '83.

22 THE COURT: '89 to '83?

23 THE JUROR: Yes, sir.

24 THE COURT: So what, 27, 28 years ago.

25 THE JUROR: Long time ago.

1 THE COURT: Pardon?

2 THE JUROR: Long time ago.

3 THE COURT: Uh, would that cause you any

4 difficulty or would that establish any prejudice on

5 your part as a result of your experience with law

6 enforcement?

7 THE JUROR: No, sir.

8 THE COURT: Pardon?

9 THE JUROR: No.

10 THE COURT: Can you be fair to both parties?

11 THE JUROR: Yes, sir.

12 THE COURT: Can you base your decision on

13 the testimony here in the courtroom?

14 THE JUROR: Yes, sir.

15 THE COURT: You have any bias or prejudice

16 towards the police as your experiences in law

17 enforcement?

18 THE JUROR: No, sir.

19 THE COURT: All right. Thank you very much.

20 Is there any members of the jury panel who

21 have personal -- close personal friends or anyone

22 in your family employed by law enforcement? If so,

23 please stand.

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

25 THE JUROR: Debra Vesser, 172.

1 **THE COURT:** Yes, ma'am, Ms. Vesser.

2 **THE JUROR:** My father, deceased, was with
3 law enforcement. I have a brother, deceased, with
4 law enforcement. I have a brother that works in a
5 correctional facility currently. A sister that's
6 been in law enforcement and a brother-in-law that's
7 also law enforcement.

8 **THE COURT:** Well, how'd you miss law
9 enforcement?

10 **THE JUROR:** I don't know.

11 **THE COURT:** Your father and your brother,
12 where were they employed?

13 **THE JUROR:** Missouri.

14 **THE COURT:** Where?

15 **THE JUROR:** Missouri.

16 **THE COURT:** Okay. How about the rest of
17 your family?

18 **THE JUROR:** Missouri and Virginia.

19 **THE COURT:** Okay. Nobody here locally?

20 **THE JUROR:** No, sir.

21 **THE COURT:** Would that cause you any bias or
22 prejudice as a result of your experience with
23 knowledge of law enforcement?

24 **THE JUROR:** No.

25 **THE COURT:** Can you be fair to both the

1 State and the defendant?

2 THE JUROR: Yes.

3 THE COURT: Can you base your decision on

4 testimony here in the courtroom?

5 THE JUROR: Yes, sir.

6 THE COURT: Thank you, Ms. Vesser.

7 Is any member --

8 Yes, ma'am.

9 THE JUROR: Juror 109.

10 THE COURT: 109?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. Let me find you here

13 on this list. Yes, ma'am.

14 THE JUROR: I have a cousin in Correctional.

15 THE COURT: How long?

16 THE JUROR: He's still there. He's been

17 there a couple of years.

18 THE COURT: How often do you see him?

19 THE JUROR: On a regular basis.

20 THE COURT: I'm sorry?

21 THE JUROR: A regular basis.

22 THE COURT: Everyday or weekly?

23 THE JUROR: Maybe once a week.

24 THE COURT: Once a week. You want to come

25 around up here please, ma'am. I'll talk to you

1 very briefly.

2 (WHEREUPON, bench conferences are held with
3 responding jurors.)

4 THE COURT: Is any member of the jury panel
5 or members of your immediate family affiliated with
6 a victim's rights organization or organizations
7 which promote law enforcement, such as Citizens
8 Against Violence crimes, CAV, People against Rape,
9 PAR, or any other like organization? If so, please
10 stand. (No response.)

11 Any member of the jury panel donated any money
12 to any crime prevention organization such as the
13 ones mentioned above? If so, please stand.
14 (No response.)

15 Any member of the jury panel been a victim of
16 a violent crime? If so, please stand.

17 Yes, ma'am. Your name?

18 THE JUROR: Rhonda Galvin, Juror number 66.

19 THE COURT: What number?

20 THE JUROR: 66.

21 THE COURT: You want to come around please,
22 ma'am.

23 (WHEREUPON, bench conferences are held with the
24 responding jurors.)

25 THE COURT: An indictment is not evidence in

1 a case. It's merely the administrative means by
2 which the defendant is brought before the Court for
3 trial. It's not evidence. It's not an indication
4 of the defendant's innocence or guilt. These
5 alleged crimes occurred in May of 2010. Has
6 anybody read anything in the paper, heard anything
7 on television or heard anyone talking about these
8 cases other than what you have heard here in the
9 courtroom this afternoon? If so, please stand.

10 (No response.)

11 THE JUROR: I didn't actually hear what was
12 said earlier.

13 THE COURT: I'm sorry. What?

14 THE JUROR: I don't know what the
15 indictments were. I don't know what they are.

16 THE COURT: The indictments that the
17 Solicitor read out.

18 THE JUROR: Okay.

19 THE COURT: Is that the only thing you heard
20 about the case?

21 THE JUROR: No, I didn't hear it.

22 THE COURT: You didn't hear it. Okay. If
23 you didn't hear it, you haven't heard anything.
24 Okay. Thank you very much.

25 THE JUROR: I don't think you understand

1 what I'm saying.

2 **THE COURT:** Has any of the jury panel formed
3 an opinion concerning the innocence and guilt of
4 this defendant based upon the indictments and the
5 information you received here today in the
6 courtroom? If so, please stand. (No response.)

7 Anyone on the jury panel who does not
8 understand that the State has the burden of proof
9 and must prove the defendant guilty of the crime
10 for which he is charged beyond a reasonable doubt.
11 A defendant never has to prove his innocence. If
12 you do not understand that or believe that, please
13 stand. (No response.)

14 Solicitor, you want to stand and introduce
15 yourself please.

16 **MR. ALFARO:** Thank you, Your Honor.

17 My name is Brian Alfaro. I'm one of the
18 Deputy Solicitors for the Berkeley county office.
19 I work for Solicitor Scarlett Wilson who is the
20 Solicitor for, the elected Solicitor for Berkeley
21 as well as Charleston county. Assisting me in this
22 case will be Assistant Solicitor Ariel Pittman.

23 **THE COURT:** Is there any member of the jury
24 panel who has any close friends in the Berkeley
25 County Solicitor's office or know anyone personally

1 in the Berkeley county Solicitor's office or the
2 Charleston Solicitor's office? If so, please
3 stand. (No response.)

4 Ms. Kennedy, if you would, stand and introduce
5 yourself please, ma'am.

6 **MS. KENNEDY:** My name is Patricia Kennedy.
7 I work with the Berkeley County Public Defender's
8 Office.

9 **THE COURT:** Is anybody on the jury panel
10 been represented by anyone in the Public Defender's
11 Office, have any close personal friends in the
12 Public Defender's Office either here in Berkeley
13 County or Charleston county? If so, please stand.
14 (No response.)

15 Does any member of the jury panel have any
16 particular or special interest in the outcome of
17 this particular case? If so, please stand. (No
18 response.)

19 Is there any member of the jury panel aware of
20 any bias or prejudice towards either the State or
21 the defendant in this case? If so, please stand.
22 (No response.)

23 Does any member of the jury panel know of any
24 reason whatsoever why he or she can not serve as a
25 juror in this case with particular emphasis being

1 placed upon your ability to be fair and impartial
2 to both the State and the defendant? If so, please
3 stand. (No response.)

4 Anyone have any reason, personal or otherwise,
5 as to why they can not serve on this jury? If so,
6 please stand. (No response.)

7 Does the State have any additional questions?

8 **MR. ALFARO:** No, Your Honor.

9 **THE COURT:** Does the defense have any
10 additional questions?

11 **MS. KENNEDY:** No, Your Honor.

12 **(WHEREUPON, a bench conference is held off the**
13 **record.)**

14 **THE COURT:** The clerk is going to run a list
15 -- a potential juror list off the computer. It's
16 going to take a few minutes. Then I'm going to
17 give the attorneys a short opportunity to look at
18 that list. We will strike the jury. It is now 25
19 minutes after 2:00. Be back in your seats in 15
20 minutes. You're welcome to stay in the courtroom
21 while we wait on the list. Otherwise, if you
22 leave, be back in 15 minutes.

23 **(WHEREUPON, a recess is taken.)**

24 **THE CLERK:** Ladies and Gentlemen of the
25 jury, as I call your name, please come forward and

1 bring your personal belongings with you. If I say
2 "seat the jury", have a seat in the jury box. If I
3 say "excuse the jury", please return to your
4 original seat.

5 Juror 135, Marian Richardson.

6 What says the State?

7 **MR. ALFARO:** Please excuse the juror.

8 **THE CLERK:** Excuse the juror.

9 Juror 40, Jillian Cooper.

10 What says the State?

11 **MR. ALFARO:** Please seat Ms. Cooper.

12 **THE CLERK:** What says the Defendant?

13 **MS. KENNEDY:** Please seat Ms. Cooper.

14 **THE CLERK:** Seat the juror.

15 Juror 157, H. Bryon Thomas.

16 What says the State?

17 **MR. ALFARO:** Please seat Mr. Thomas.

18 **THE CLERK:** What says the Defendant?

19 **MS. KENNEDY:** Please seat Mr. Thomas.

20 **THE CLERK:** Seat the juror.

21 Juror 185, Jordan White.

22 What says the State?

23 **MR. ALFARO:** Please seat Ms. White.

24 **THE CLERK:** What says the Defendant?

25 **MS. KENNEDY:** Please seat Ms. White.

1 **THE CLERK:** Seat the juror.
2 Juror 84, Charlene Horsley.
3 What says the State?
4 **MR. ALFARO:** Please excuse the juror.
5 **THE CLERK:** Excuse the juror.
6 Juror 150, Ameerh Spellman.
7 What says the State?
8 **MR. ALFARO:** Please excuse the juror.
9 **THE CLERK:** Excuse the juror.
10 Juror 127, Mark Poyner.
11 What says the State?
12 **MR. ALFARO:** Please seat Mr. Poyner.
13 **THE CLERK:** What says the Defendant?
14 **MS. KENNEDY:** Please seat Mr. Poyner.
15 **THE CLERK:** Seat the juror.
16 Juror 68, Dolly Gay.
17 What says the State?
18 **MR. ALFARO:** Please seat Ms. Gay.
19 **THE CLERK:** What says the Defendant?
20 **MS. KENNEDY:** Court's indulgence.
21 Please seat Ms. Gay.
22 **THE CLERK:** Seat the juror.
23 Juror 192, Dan Williams.
24 What says the State?
25 **MR. ALFARO:** Please seat Mr. Williams.

1 **THE CLERK:** What says the Defendant?
2 **MS. KENNEDY:** Please seat Mr. Williams.
3 **THE CLERK:** Seat the juror.
4 Juror 170, David Valles.
5 What says the State?
6 **MR. ALFARO:** Please seat the juror.
7 **THE CLERK:** What says the Defendant?
8 **MS. KENNEDY:** Please seat Mr. Valles.
9 **THE CLERK:** Seat the juror.
10 Juror number 3, Kelly Alfreds.
11 What says the State?
12 **MR. ALFARO:** Please excuse the juror.
13 **THE CLERK:** Excuse the juror.
14 Juror 85, Donald Huffman.
15 What says the State?
16 **MR. ALFARO:** Please excuse the juror.
17 **THE CLERK:** Excuse the juror.
18 Juror 14, Dallas Bihlear.
19 Any cause for challenge from the State?
20 **MR. ALFARO:** None from the State.
21 **THE CLERK:** What says the Defendant?
22 **MS. KENNEDY:** Please excuse Ms. Bihlear from
23 the trial of this case.
24 **THE CLERK:** Excuse the juror.
25 Juror 74, Jonathan Hammond.

1 Any cause for challenge from the State?

2 **MR. ALFARO:** None from the State.

3 **THE COURT:** What says the Defendant?

4 **MS. KENNEDY:** Please seat Mr. Hammond.

5 **THE CLERK:** Seat the juror.

6 Juror 140, Maxine Rosen.

7 Any cause for challenge from the State?

8 **MR. ALFARO:** None from the State?

9 **THE CLERK:** What says the defense?

10 **MS. KENNEDY:** Please excuse Ms. Rosen.

11 **THE CLERK:** Excuse the juror.

12 Juror 50, Sam Delia.

13 Any cause for challenge from the State?

14 **MR. ALFARO:** None from the State.

15 **THE CLERK:** What says the Defendant?

16 **MS. KENNEDY:** Please seat Mr. Delia.

17 **THE CLERK:** Seat the juror.

18 Juror 78, Lisa Heithus.

19 Any cause for challenge from the State?

20 **MR. ALFARO:** None from the State.

21 **THE CLERK:** What says the Defendant?

22 **MS. KENNEDY:** Please seat Ms. Heithus.

23 **THE CLERK:** Seat the juror.

24 Juror 115, Myrna Nance.

25 Any cause for challenge from the State?

1 **MR. ALFARO:** None from the State.

2 **THE CLERK:** What says the Defendant?

3 **MS. KENNEDY:** Court's indulgence.

4 Please seat Ms. Nance.

5 **THE CLERK:** Seat the juror.

6 Juror 195, Ronald Williams, Jr.

7 Any cause for challenge from the State?

8 **MR. ALFARO:** None from the State.

9 **THE CLERK:** What says the defense?

10 **MS. KENNEDY:** Please excuse Mr. Williams

11 from the trial of this case.

12 **THE CLERK:** Excuse the juror.

13 Juror 42, Dartagnan Cortes.

14 Any cause for challenge from the State?

15 **MR. ALFARO:** None from the State.

16 **THE CLERK:** What says the defense?

17 **MS. KENNEDY:** Please excuse Mr. Cortes from

18 the trial of this matter.

19 **THE CLERK:** Excuse the juror.

20 Juror 35, Marianne Childers.

21 Any cause for challenge from the State?

22 **MR. ALFARO:** None from the State.

23 **THE CLERK:** What says the defense?

24 **MS. KENNEDY:** Please seat Ms. Childers.

25 **THE CLERK:** Seat the juror.

1 Alternate?

2 **THE COURT:** All right. Two alternates. Two
3 and two. Two and one. Excuse me.

4 **THE CLERK:** Alternate 1, Juror 130, Clyde
5 Ravenell.

6 What says the State?

7 **MR. ALFARO:** Please seat the juror.

8 **THE CLERK:** What says the Defendant?

9 **MS. KENNEDY:** Please seat the juror.

10 **THE CLERK:** Seat the juror.

11 Second alternate, Juror 131, Shirell Ravenell.

12 What says the State?

13 **MR. ALFARO:** Please seat the juror.

14 **THE CLERK:** What says the defense?

15 **MS. KENNEDY:** Please seat the juror.

16 **THE CLERK:** Seat the juror.

17 **THE COURT:** All right. The jury selection,
18 if y'all will follow the, uh, bailiffs to the jury
19 room, I'll get you back very shortly. I need to
20 take up some matters with the attorneys before I
21 can bring you back in the courtroom. Please don't
22 discuss the case among yourselves. Follow the
23 bailiff.

24 **(WHEREUPON, the jury exits at approximately**
25 **2:52 p.m.)**

1 **THE COURT:** Any motions from the State
2 regarding the jury?

3 **MR. ALFARO:** No, Your Honor.

4 **THE COURT:** Any motion from the defense?

5 **MS. KENNEDY:** No, Your Honor.

6 **THE COURT:** All right. Remaining members of
7 the jury panel, anybody that does not have the
8 number to call in to the message after six o'clock?
9 If you don't have the number, please raise your
10 hand. (No response.)

11 All right. Everybody call -- yes, ma'am?
12 Anyone else doesn't have the number? All right.
13 The jury panel or the jury pool will call in after
14 six o'clock tomorrow. There will be a message.
15 All right. Call in tonight after six o'clock.
16 There will be a message for the jury pool. Follow
17 those instructions. The message may be call in
18 Tuesday night after 6:00. It may be report
19 tomorrow. I don't know. But call in tonight after
20 six o'clock. There will be a message on the
21 recorder for the jury pool. Can they all call at
22 once or --

23 **THE CLERK:** When they call, they'll get the
24 message.

25 **THE COURT:** They'll get a message? Cause in

1 some places, they'll get busy numbers and it takes
2 a while.

3 **THE CLERK:** I haven't had any.

4 **THE COURT:** All right. Call in after six
5 o'clock. There will be a message. Follow those
6 instructions. You are welcome to stay, otherwise
7 you are excused. Thank you so much for being here.

8 (WHEREUPON, the jury exits at approximately
9 2:54 p.m.)

10 **THE COURT:** Can I see the attorneys up here
11 just a second?

12 (WHEREUPON, a bench conference is held off the
13 record.)

14 (WHEREUPON, the jury enters at approximately
15 2:55 p.m.)

16 **THE COURT:** Mr. Sam Delia, we'll appoint you
17 as foreman. You'll sit in that chair all the time.
18 Where the rest of you sit, it doesn't matter. The
19 two alternates are on this end. Y'all sit in those
20 two chairs. The rest of you can sit where you
21 choose. They'll have you lined up in the hall when
22 you come in.

23 We're not going to start testimony until in
24 the morning. I've got to listen to some motions
25 this afternoon. So, it's now three o'clock. I

1 don't know how long these motions will take. So,
2 instead of keeping you sitting in the jury room
3 waiting for me to finish this motion, we're just
4 going to start in the morning at 9:30. When you
5 come to the courthouse, come straight to the jury
6 room. We'll try to get started at 9:30 or shortly
7 thereafter that we can.

8 Please don't discuss the case with anyone.
9 Please don't read anything in the paper about the
10 case or listen to anything on TV about the case. I
11 want you to make a decision on what you hear in the
12 courtroom, not what someone else tells you about
13 the case. You're going to hear the testimony.
14 It's your obligation to make a decision on what you
15 hear in this courtroom, not outside the courtroom.

16 I'll see you -- second thing I will tell you,
17 don't get onto your computers and the internet and
18 do any research about this case. Don't go back to
19 the date of the crimes and start looking on the
20 internet to try to do any type of research. Stay
21 off the computer as far as this case is concerned
22 and your cell phones. See you in the morning at
23 9:30. Have a good evening.

24 (WHEREUPON, the jury exits at approximately
25 2:58 p.m.)

1 THE COURT: All right. I understand we have
2 a Jackson v. Deno hearing, is that correct?

3 MR. ALFARO: Yes, sir.

4 THE COURT: Y'all need a break or you ready
5 to start?

6 MS. KENNEDY: Uh, Your Honor, if we can have
7 a short break so I can talk to my client for just a
8 second and also make a motion to sequester
9 witnesses as to -- I understand the lead
10 investigator needs to be here for the duration.

11 THE COURT: Okay. How much time do you
12 need?

13 MS. KENNEDY: Five minutes.

14 THE COURT: Okay. We'll take about a five-
15 minute break and we'll get started.

16 MS. KENNEDY: Thank you.

17 (WHEREUPON, a short recess is taken.)

18 THE COURT: All right. We're back. Ms.
19 Kennedy, I understand that we're going to have a
20 Jackson v. Deno hearing. There was an oral
21 statement given and a written statement given. Is
22 the defendant alleging that the Miranda rights were
23 not given or that he didn't understand the rights
24 or what is he alleging in the Jackson v. Deno
25 hearing?

1 **MS. KENNEDY:** Your Honor, he is alleging as
2 to the statement, the oral statement that was given
3 on June the 2nd that he, uh, -- that that was --
4 that he didn't understand what those rights were
5 and that he, uh, provided that information based on
6 certain representations made by the officers. His
7 wife was arrested on the same day that he was
8 arrested. He alleges that there's certain
9 information that they gave him that made him
10 provide -- certain information, not all of it, to
11 the officers.

12 **THE COURT:** All right. A written statement.
13 Does he disagree he signed the written statement?

14 **MS. KENNEDY:** No, Your Honor. He does not.

15 **THE COURT:** He's just saying he didn't
16 understand it was not voluntarily given?

17 **MS. KENNEDY:** Yes, sir. That's his
18 allegation.

19 **THE COURT:** Okay. I just wanted to know
20 what he was alleging.

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

22 **THE COURT:** Thank you so very much.
23 Solicitor, you ready to proceed?

24 **MR. ALFARO:** Yes, Your Honor. Your Honor,
25 the State calls Lieutenant Mark Mason.

1 **MS. KENNEDY:** Your Honor, if I may, I would
2 request that the investigating officer not be
3 present during Lieutenant Mason's testimony.

4 **THE COURT:** You don't want who present?

5 **MS. KENNEDY:** Detective Cortte, the Chief
6 Investigator. It's -- part of what we're alleging
7 occurred, Detective Cortte was present for both of
8 the statements, the oral and the written one.

9 **THE COURT:** Right.

10 **MS. KENNEDY:** I just request that he be
11 sequestered.

12 **THE COURT:** What's the State's position?

13 **MR. ALFARO:** The State's position --

14 **THE COURT:** You talking about this hearing.
15 I'm not talking about at the trial.

16 **MS. KENNEDY:** No, sir. As to this hearing.

17 **MR. ALFARO:** As long as we're allowed to
18 have the case agent and the victim in the courtroom
19 throughout the trial, we don't have an objection to
20 this hearing.

21 **THE COURT:** She's talking about the hearing,
22 not the trial.

23 **MR. ALFARO:** We have no objection to the
24 hearing.

25 **THE COURT:** Not to be here for the hearing.

1 MR. ALFARO: That's fine.

2 THE COURT: Excuse me, the trial. Excuse
3 me.

4 MR. ALFARO: That's fine, Your Honor.

5 THE COURT: All right. Would you step out
6 in the hall please. Is that the only person you
7 want to sequester for this Jackson v. Deno hearing?

8 MS. KENNEDY: Uh, yes, sir. That's the only
9 one.

10 MR. ALFARO: Mark Mason.

11 THE CLERK: Please raise your right hand.
12 Place your left hand on the Bible.

13 **MARK MASON**

14 having first been sworn, testifies as follows:

15 THE CLERK: Please be seated. State your
16 full name. Spell your last name for the record.

17 THE WITNESS: Mark Allen Mason. M-A-S-O-N.

18 **DIRECT EXAMINATION**

19 **BY MR. ALFARO:**

20 Q Lieutenant Mason, would you tell the Court
21 where you currently work?

22 A Berkeley County Sheriff's Office.

23 Q And how long have you been with the Sheriff's
24 Office?

25 A Right at 18 years.

1 Q And what is your current rank and duty
2 assigned?

3 A Uh, Lieutenant in the Criminal Investigations
4 Division.

5 Q And can you briefly describe what your duties
6 are in that capacity?

7 A Reviewing patrol reports, signing patrol
8 reports, uh, looking for suspects, data that will help
9 the detective that gets assigned the case. Help them
10 clear that case.

11 Q And were you working in that capacity in June
12 of 2010?

13 A Yes, sir.

14 Q And does part of your duties involve you, uh,
15 mirandizing and interviewing suspects and witnesses?

16 A Yes, sir.

17 Q And did you have the opportunity to assist in
18 the investigation of an armed robbery that took place May
19 18th, 2010 at the St. Stephen Evangelical Church?

20 A Yes, sir.

21 Q And your role in that investigation, did you
22 have the opportunity to come into contact with the
23 defendant in this case, Benjamin Jackson?

24 A Yes, sir.

25 Q And when did you first come into contact with

1 him?

2 A June the 2nd, 2010.

3 Q And where did that meeting take place?

4 A That was in my office at the Sheriff's Office.

5 Q And do you recall what time of day that was?

6 A It was in the morning around 10:00, 10:30ish.

7 Q And where was your office located?

8 A In the Sheriff's Office over at 223 North Live
9 Oak Drive.

10 Q And was the defendant detained into custody at
11 that time?

12 A He was.

13 Q And prior to asking him any questions, was he
14 provided with his Miranda rights?

15 A He was.

16 Q Do you recall how you went about doing that?

17 A From a printed form.

18 (WHEREUPON, State's Exhibit 1 is marked for
19 identification purposes.)

20 BY MR. ALFARO:

21 Q I want to show you what's been marked as
22 State's Exhibit 1 for identification for purposes of this
23 hearing. Can you look at that form? I'll ask you some
24 questions about it.

25 A Yes, sir.

1 Q You recognize that?

2 A Yes, sir.

3 Q What do you recognize that as?

4 A That was the form that was used to advise Mr.
5 Jackson of his Miranda rights.

6 Q And are there any signatures present on that
7 form?

8 A Yes, sir.

9 Q And do you recognize the signatures on there?

10 A One is Benjamin Jackson, one is my signature
11 and one is Detective Cortte's signature.

12 MR. ALFARO: Your Honor, at this time, the
13 State would ask that State's Exhibit 1 be entered
14 into evidence for purposes of this hearing.

15 THE COURT: Any objection?

16 MS. KENNEDY: None, Your Honor.

17 THE COURT: All right, sir.

18 (WHEREUPON, State's Exhibit 1 is admitted into the
19 record.)

20 BY MR. ALFARO:

21 Q Lieutenant Mason, if you could, could you just
22 review for the court what is contained on that form?

23 A It says Advice of Rights up top. Place, date,
24 time to the upper right. Has your rights. You want me
25 to read all the rights that are on there?

1 Q Well, let's start at the top where you said
2 place, date and time. Can you tell us if there's
3 anything --

4 A Next to place are the initials BCSO for
5 Berkeley County Sheriff's Office.

6 Q Okay. And who put that there?

7 A I did.

8 Q And what is the date of that Advice of Rights?

9 A The date is 6/2 of 2010.

10 Q Okay. And is there a time included on that?

11 A No, sir.

12 Q And why is that?

13 A At the time, I don't know why I didn't put it
14 on there, but it's not on there.

15 Q And could you tell the Court what rights are
16 included on that form that you provided to the defendant?

17 A It has your rights. It has, before we ask you
18 any questions, you must understand your rights. It has,
19 you have the right to remain silent. After that is,
20 anything you say can be used against you in court. You
21 have the right to talk to a lawyer for advice before we
22 ask you any questions and to have a lawyer with you
23 during questions. If you can not afford a lawyer, one
24 will be appointed for you before any questioning if you
25 wish. The next one is, if you decide to answer questions

1 now without a lawyer present, you still have the right to
2 stop answering at any time. You also have the right to
3 stop answering at any time until you talk to a lawyer.

4 Q And was the defendant provided each of those
5 rights on that day during that interview?

6 A Yes, sir.

7 Q And were those done, uh, orally as well as
8 allowing him to read the form?

9 A Yes, sir.

10 Q Did the defendant acknowledge that he
11 understood each of those rights?

12 A He did.

13 Q And how did he acknowledge that?

14 A He put his initials by each one.

15 Q And did he write those himself?

16 A He did.

17 Q And did you go through those one at a time and
18 have him put his initials on there or did you do them all
19 at once?

20 A The first one, I did. I read, you have the
21 right to remain silent. I asked him, what does that mean
22 to you. He said that he didn't have to say anything. I
23 said that's correct. Then I would go through each one of
24 them individually. After we went through all five of
25 those, I asked again you understand what all those are.

1 He indicated yes. Went over the Waiver of Rights. Read
2 over that. Asked him if he understood that. He
3 indicated he did. After that, I said, now, I want you to
4 look back over this. If you have any questions, ask. If
5 not, I need you to put your initials on each line and
6 sign your name down there to indicate that you understand
7 what your rights are. And he did.

8 Q And was anyone else in the room when you
9 provided these rights to the defendant?

10 A Detective Cortte.

11 Q And did he sign that as a witness to that
12 effect?

13 A Yes, sir.

14 Q And in addition to providing him his rights,
15 did you go over what his Waiver of Rights were?

16 A Yes, sir.

17 Q And can you tell us how you informed him of
18 that?

19 A I read what is under the Waiver of Rights to
20 him.

21 Q Can you tell us what you told him?

22 A I read the statement of my rights and I
23 understand what my rights are. I'm willing to make a
24 statement and answer questions. I do not want a lawyer
25 at this time. I understand and know what I'm doing. No

1 promises or threats have been made to me. No pressure or
2 coercion of any kind has been used against me.

3 Q And did the defendant acknowledge understanding
4 those rights and the waiver of rights?

5 A Yes, sir.

6 Q And how did he indicate that?

7 A By signing his name and orally saying that he
8 understood what that meant.

9 Q And prior to, uh, -- strike that question. Did
10 you indicate on that form that you witnessed him
11 understand these rights, initial these rights and also
12 sign the waiver of rights?

13 A Yes, sir.

14 Q And did you have Detective Cortte sign that as
15 well?

16 A Yes, sir.

17 Q Now, during your interview with the defendant,
18 did you inform him as to what you were wanting to speak
19 with him about?

20 A Yes, sir.

21 Q And what was he informed was the reason for
22 your interview?

23 A Robbery and larceny of a vehicle that had
24 occurred at a church at St. Stephens.

25 Q And was he provided with a date of that

1 incident as well, when it happened?

2 A I believe he -- we did tell him it was on --
3 back in May.

4 Q And did the defendant, in fact, after signing
5 his waiver of rights, did he agree to give you a
6 statement?

7 A He agreed to talk to us.

8 Q And do you recall what that conversation was?

9 A Basically told us that, yes, he did do it, but
10 he wanted us to know right away that -- he wanted us to
11 let the victim know that she was not the target. He was
12 not after her. He just wanted the victim. They gave us
13 information that somebody else had actually provided the
14 gun to him before this incident. He also provided us
15 information that someone helped him get rid of some of
16 the articles, a purse and a driver's license tag from the
17 vehicle in Orangeburg in a dumpster.

18 Q So he provided you details of what was done
19 after the robbery?

20 A Yes, sir.

21 Q Did he provide you details as to the type
22 weapon that was used?

23 A It was a long gun. I don't remember him saying
24 specific make or model or anything like that.

25 Q And was this conversation or interview reduced

1 to put it down in writing?

2 **A** No, he did not want to provide a written
3 statement at that time.

4 **Q** And during the course of your interaction with
5 the defendant when providing his rights as well as taking
6 his statement, did he appear to be under the influence of
7 any drugs or alcohol?

8 **A** No, sir.

9 **Q** Did he appear to clearly understand the rights
10 that you were providing to him?

11 **A** Yes, sir.

12 **Q** And did he appear to you to understand that he
13 was, in fact, waiving his rights and agreeing to speak
14 with you?

15 **A** Yes, sir.

16 **Q** And was any -- throughout the time of those
17 Miranda rights being provided or the statement being
18 given, were any threats or force or coercion used against
19 him to compel him to give a statement?

20 **A** No, sir.

21 **Q** Was he ever denied any restroom breaks or food
22 or water?

23 **A** No, sir.

24 **Q** And was he ever promised anything by you or
25 Detective Cortte in exchange for his cooperation?

1 A No, sir.

2 Q Did he ever ask to speak to a lawyer?

3 A No, he did not.

4 Q And did he ever ask to stop the interview?

5 A No, sir.

6 Q In your office, did you have any recording
7 equipment set up?

8 A No, sir.

9 Q This interview was not -- was this interview
10 recorded either by audio or video in any way?

11 A No, sir.

12 Q And why did you say a written statement was not
13 done that day?

14 A He did not want to give one at that time.

15 Q And though he didn't want to give a written
16 statement, did he indicate that he didn't want to speak
17 with you at any time?

18 A No, sir.

19 Q And whose decision was it to end the interview
20 that day?

21 A Mine.

22 Q The defendant at any point ask to end the
23 interview?

24 A No, sir.

25 Q At the conclusion of that interview with the

1 defendant, did you have any other conversations or
2 interviews with him?

3 A No, sir.

4 Q Thank you. Please answer any questions that
5 Ms. Kennedy has for you.

6 CROSS-EXAMINATION

7 BY MS. KENNEDY:

8 Q Good afternoon, Lieutenant Mason. How are you?

9 A Good. Thank you.

10 Q Uh, I'm just curious. You said this interview
11 took place, uh, in your office.

12 A Yes, ma'am.

13 Q Why is that? Y'all don't have interview
14 rooms ---

15 A We do.

16 Q --- in the Sheriff's Office?

17 A We do.

18 Q Okay. Why your office instead of an interview
19 room?

20 A Well, initially, I did not know that I was
21 going to be doing the interview. This was actually my
22 own, only real participation in this case. He was
23 brought up by uniform. Mr. Jackson was. I was watching
24 him in my office. At the time, I didn't know if people
25 were coming back setting something up to interview him.

1 But a while later, Cortte shows up and says we need to
2 interview him. He's right there. So I just decided to
3 interview him right there.

4 Q So what's a while later? You said you think
5 this happened between 10:00 and 10:30 on June the 2nd.
6 How do you remember that so well?

7 A I know he was brought in. They did the search
8 warrant that morning. He was brought in a little while
9 after that. I know that he was taken over to the jail
10 before lunchtime.

11 Q So the sequence is he was taken into custody
12 from his house. They brought him to your office. Then
13 he was booked into the jail after that?

14 A Yes, ma'am.

15 Q And on the booking report of the jail, they
16 would put the day or the time that he was actually taken
17 into custody?

18 A Some people put the time that he was actually
19 taken into custody. Some people put the time that he was
20 actually taken into the detention center. I don't know
21 which was done.

22 Q Okay. Okay. And so you -- if I
23 mischaracterize it, people were milling about. You
24 didn't know whether or not you were going to be involved
25 in the interview, right?

1 A I wasn't milling about.

2 Q Well, I mean, working. I apologize. And how
3 did it come about that you were asked to interview Mr.
4 Jackson?

5 A He was in my office. Detective Cortte arrived.
6 He had been out on the search warrant. There were people
7 still out doing other things. I don't know if anybody
8 else that had actually been involved more actively in the
9 case were back yet. But he came to my office and asked
10 if I would interview him with him, so I agreed.

11 Q And when you interviewed him, what was your
12 understanding of the offenses that he was being charged
13 with?

14 A Armed Robbery, I believe. I don't know if it
15 was Car Jacking and Armed Robbery. But the vehicle was
16 stolen, so I know it was something along those lines.

17 Q Right.

18 A That's what I was speaking to him about at that
19 time.

20 Q So it would be armed robbery of the vehicle and
21 failure to stop for a blue light? Would that have been
22 the extent of your knowledge?

23 A I don't remember speaking to him about the
24 later incident involving the failure to stop for blue
25 light.

1 Q Okay. So it was just the armed robbery and the
2 taking of the car?

3 A Yes, ma'am.

4 Q Okay. Were you aware at the time that you had
5 this conversation with Mr. Jackson that his wife was also
6 in custody?

7 A I believe I did hear on the radio that there
8 was a female in custody.

9 Q Okay. Uh, and if you could, just explain to
10 me, sir, why the decision was made not to take him to an
11 interview room where the interview could have been
12 recorded, either by audio or video or both?

13 A He was already there in my office. Detective
14 Cortte was in my office. Just decided to do it right
15 there.

16 Q But how far away is your office from the
17 interview rooms where the equipment would be?

18 A Right around the corner.

19 Q Okay. How long did this interview with Mr.
20 Jackson take?

21 A No more than 30 minutes. I would say that's
22 probably being a little bit generous. I would say
23 between 15 and 30 minutes.

24 Q Tell me how it started out. What did you tell
25 Mr. Jackson?

1 A When he first got to my office or after
2 Detective Cortte --

3 Q Just start with when he got to your office.

4 A He was handcuffed. Patrol brought him in. I
5 had two chairs in front of my desk. I unhandcuffed him.
6 I can't remember if he was right or left-handed. I asked
7 which was the dominant hand. I handcuffed him to the
8 chair that was there. I was going through morning
9 reports from patrol at that time. So I didn't ask him
10 any questions, didn't get anything about the case. I
11 think I may have got a drink of water, a bottle of water
12 from Captain Ollic's office. I was just waiting for
13 someone to show up to say okay, we're going to interview
14 him or see what was going to go on from there.

15 Q Okay. So when he was brought in, you were the
16 only person in the office?

17 A And the person that brought him in.

18 Q And then Detective Cortte arrived shortly
19 thereafter?

20 A Yes, ma'am.

21 Q Did y'all discuss the circumstances or the
22 facts surrounding the case prior to -- separately prior
23 to your interview with Mr. Jackson?

24 A I think I stepped out in the hallway with him.
25 He went over real briefly, uh, what had happened at the

1 search warrant. They had found some certain items.

2 Briefly spoke to him about that.

3 Q How was it that he just came to -- what was the
4 method of interrogation that you used to elicit this
5 information from Mr. Jackson?

6 A That's the thing in an interrogation. I didn't
7 have to present. I mean, I knew when the car was stopped
8 from the failure to stop for blue lights that there was
9 identification and stuff. I had heard about that. Then,
10 when Detective Cortte was telling me about stuff found in
11 the residence, I knew there was stuff linked back to
12 that. It was running through my mind different things to
13 use in an interrogation, interview. And I never had to.
14 This is what we're in here about. There was a woman in a
15 church last month robbed of her vehicle. It just went
16 from there. I didn't have to throw any of that evidence
17 at him at all.

18 Q So he just volunteered the information that Ms.
19 Dunning was never the target?

20 A Yes, ma'am.

21 Q And he just volunteered the information that
22 someone had left the gun for him?

23 A Yes, ma'am.

24 Q And he just volunteered the information that
25 the items -- that some of the items, uh, belonging to Ms.

1 Dunning were -- that were disposed of at a car wash?

2 A Yes, ma'am.

3 Q Explain to me how that happened.

4 A I don't --

5 Q Did he just start talking? You said there was
6 no method of interrogation.

7 A There wasn't. After I explained to him what we
8 were there to discuss with him about, he just admitted
9 that he did it. What I just said his participation, that
10 he did it, he wanted the victim to know he was very sorry
11 about it, he wanted to apologize to her, she wasn't a
12 target, he just wanted the vehicle.

13 Q Did you take notes during this interview?

14 A I did not.

15 Q Why not?

16 A I was the one that was actually speaking to
17 him. Detective Cortte may, in case there was stuff
18 brought up that I missed. But when I'm interviewing
19 someone one-on-one, it's not really an interview, take
20 notes kind of thing.

21 Q Okay. So you -- it's your belief that
22 Detective Cortte was taking the notes?

23 A I don't know that he was. If roles were
24 reversed, that's what I would be doing as the second
25 person in the room.

1 Q And, uh, you indicated that he, uh, -- I guess
2 at some point you asked him or Detective Cortte asked him
3 do you want to give a written statement?

4 A Yes.

5 Q And what was his response?

6 A He didn't want to put anything down in writing
7 at that time.

8 Q Did he explain to you why?

9 A No.

10 Q He just, after making the spontaneous
11 confession said he didn't want to put it in writing.

12 A We asked him at the very end. What led up to
13 that was he had given us some information on somebody
14 that provided him with gun, somebody helping him dispose
15 of the stuff in the dumpster in Orangeburg county. So we
16 started asking him questions trying to get information on
17 who this second person was. He didn't become belligerent
18 or mean or that kind of person, but those questions sort
19 of bothered him. He didn't really want to talk about
20 that other person.

21 So I made the decision at that point to sort of
22 back up. We had his admission that he had been involved,
23 what he had done. Instead of possibly freezing him up
24 and making him not want to talk later on, I just decided
25 to ask him if he wanted to give a statement at that time.

1 He did not want to give a written statement at that time.

2 The interview was over.

3 Q Okay. Let me -- explain to me, if you will,
4 sir, what -- my understanding is that there is -- you all
5 used an Advice of Rights form for Miranda and then you
6 also used another form for a defendant's statement, which
7 contained the Miranda warnings. Is that correct?

8 A Correct.

9 Q Okay. What made you use this particular form
10 that day instead of --

11 A It was the one that was there in my -- I've got
12 a desk drawer with some forms in it. It was the one that
13 was in there. I pulled it out. If he had decided to
14 give the written statement, then there's a written
15 defendant statement form that we would have used. We
16 would have went over the Miranda forms again, then we
17 would have taken his written statement.

18 Q And once he gave all this information to you,
19 it's your understanding that he was taken over to the
20 Hill Finklea Detention Center?

21 A Yes, ma'am.

22 Q And you were not involved in this case after
23 that?

24 A No, ma'am.

25 MS. KENNEDY: Court's indulgence. (Pause.)

1 BY MS. KENNEDY:

2 Q You indicated that Mr. Jackson told you what he
3 had done. Uh, what exactly did he tell you?

4 A That, yes, he's the one that had taken the car.
5 He wanted us -- like I said, he wanted us to let the
6 victim know that he was not targeting her. He wanted to
7 apologize to her. He was just after the car.

8 Q Okay. And just so I understand the procedure,
9 if you are involved in the initial interview and you
10 don't take notes -- how is it that -- what happens the
11 next day when you are not involved in it and some other
12 detective comes in? How is that detective informed?
13 What are they told about the interviews that you
14 conducted on the second?

15 A If it was just the next day, it would have been
16 fresh in my memory. Detective Cortte ended up doing a
17 supplemental report that covered my participation in that
18 particular interview, so I have that to let me go back
19 and refresh my memory on that.

20 Q And you all do computerized incident reports?

21 A Yes, sir.

22 Q Did you do an incident report or make any kind
23 of transcription of your interview or anything that you
24 did with Mr. Jackson that day?

25 A No, ma'am.

1 Q And as far as he knew, based on the interview
2 with you, he was -- it was an armed robbery and the car?

3 A Yes, ma'am.

4 Q Okay. And as to the gun, did he give you any
5 indication what kind of gun it was?

6 A I just remember it being a long gun. I don't
7 remember saying whether it was a particular make, brand
8 or anything like that.

9 Q And Mr. Jackson told you it was a long gun?

10 A Yes.

11 Q Okay.

12 **MS. KENNEDY:** Court's indulgence.

13 Thank you, Lieutenant Mason. That's all I
14 have.

15 **THE COURT:** Any redirect?

16 **MR. ALFARO:** No, Your Honor.

17 **THE COURT:** Lieutenant Mason, you may step
18 down. Thank you very much.

19 **THE WITNESS:** Thank you, Your Honor.

20 **MR. ALFARO:** The State calls Detective
21 Cortte.

22 **THE CLERK:** Please raise your right hand and
23 place your left hand on the Bible.

24 **MICHAEL CORTTE**

25 having first been sworn, testifies as follows:

1 **THE CLERK:** Please be seated. State your
2 full name. Spell your last name for the record.

3 **THE WITNESS:** Michael Richard Cortte, II.
4 The last name is spelled C-O-R-T-T-E.

5 **(WHEREUPON, State's Exhibit 2 is marked for**
6 **identification purposes.)**

7 **DIRECT EXAMINATION**

8 **BY MR. ALFARO:**

9 **Q** Detective Cortte, could you please tell the
10 Court where you currently work?

11 **A** Yes, sir. Berkeley County Sheriff's Office.

12 **Q** And how long have you been with the Berkeley
13 County Sheriff's Office?

14 **A** I apologize. My sinuses is causing a little
15 strain on my voice, so I apologize. Since March of 2007.

16 **Q** And what's your current rank and duty assigned?

17 **A** Detective Corporal. I'm assigned to the
18 Criminal Investigations Division.

19 **Q** And how long have you been in the investigative
20 division?

21 **A** Approximately two years.

22 **Q** And were you working in that capacity in May
23 and June of 2010?

24 **A** Yes, sir.

25 **Q** And in that capacity, did you have the

1 opportunity to assist the St. Stephen Police Department
2 with an armed robbery and kidnaping, vehicle theft
3 investigation that took place May 18th, 2010 at the St.
4 Stephen Evangelical Church?

5 A Yes, sir.

6 Q And what role did you play in that
7 investigation?

8 A As a lead detective or the case agent.

9 Q And as the lead detective or case agent, did
10 you have the opportunity to interview witnesses and
11 suspects in this case?

12 A Yes, sir. I did.

13 Q And did you have the opportunity to come into
14 contact with the defendant in this case, Benjamin
15 Jackson?

16 A Yes, sir.

17 Q And when did you first come into contact with
18 him?

19 A June the 2nd, 2010.

20 Q And where did that meeting first take place?

21 A Took place at Upton Road, located in the
22 St. Stephen area of Berkeley county, South Carolina,
23 which was the defendant's residence.

24 Q And when you came into contact with the
25 defendant at this house, was he taken into custody at

1 that time?

2 A He was.

3 Q And did you interview him in any way or ask him
4 any questions at his residence?

5 A No, sir.

6 Q And at some point in time, did you actually get
7 to participate in an interview with him?

8 A Yes, sir. I did.

9 Q And where did that interview take place?

10 A It took place at the Sheriff's Office in
11 Berkeley county.

12 Q And was that done on the same day, June 2nd,
13 2010?

14 A Yes, sir. It was.

15 Q How did he come to be -- get to the Berkeley
16 County Sheriff's Office?

17 A He was transported from his residence to the
18 Sheriff's Office.

19 Q And did you meet with him at the Sheriff's
20 Office?

21 A Yes, sir. I did.

22 Q Where was that?

23 A That would have been in Lieutenant Mason's
24 office.

25 Q And do you recall approximately what time that

1 meeting took place?

2 A Uh, before lunch. I remember around 10:00 a.m.
3 or so.

4 Q At this time, the defendant is still in
5 custody, is that correct?

6 A Yes, sir. That's correct.

7 Q And was he informed as to why he was being
8 detained and what you wanted to talk with him about?

9 A Yes, sir. He was.

10 Q And what was he told the purpose of the meeting
11 was or the interview was?

12 A With reference to the armed robbery that
13 occurred at the St. Stephen Evangelical Church, uh, 150
14 Church Road in St. Stephen, also Berkeley county.

15 Q And at some point during that time, did you ask
16 him any -- was he asked any questions?

17 A Yes, sir.

18 Q And prior to asking him any questions, was he
19 provided with his Miranda rights?

20 A He was.

21 Q You recall how that was done?

22 A Yes, sir. Verbally.

23 Q Who provided him those rights?

24 A Lieutenant Mason.

25 Q And did you witness Lieutenant Mason giving the

1 defendant these rights?

2 A Yes, sir. I did.

3 Q I'm going to show you what has been entered
4 into evidence as State's Exhibit 1. Can you take a look
5 at that and then I'll ask you some questions about it.

6 A Yes, sir.

7 Q Do you recognize that exhibit?

8 A Yes, sir. I do.

9 Q And what do you recognize that as?

10 A This would be the Advice of Rights form that
11 the defendant, Lieutenant -- Mr. Jackson that is seated
12 here today was advised by Lieutenant Mason that I was
13 witness to.

14 Q And he was provided those rights in Lieutenant
15 Mason's office, is that correct?

16 A Yes, sir. That's correct.

17 Q And in your presence, did Lieutenant Mason go
18 over each of those individual rights with the defendant?

19 A Yes, sir.

20 Q And in your presence, did the defendant
21 acknowledge each of those -- understanding each of those
22 rights?

23 A He did.

24 Q And how did he acknowledge understanding each
25 of those rights on that form?

1 A Both verbally and by initialing his initials
2 next to each individual right.

3 Q The defendant placed his initials by each
4 right?

5 A Yes, sir.

6 Q And was he also advised -- in addition to his
7 rights, was he also advised what his waiver of rights
8 was?

9 A Yes, sir. He was.

10 Q Did Lieutenant Mason cover what is contained on
11 that form with the defendant?

12 A Yes, sir. He did.

13 Q And after Lieutenant Mason went over that
14 Waiver of Rights, did the defendant acknowledge
15 understanding them?

16 A Yes, sir. He did.

17 Q Did the defendant agree to freely and
18 voluntarily waive his rights?

19 A He did.

20 Q And how did he acknowledge that?

21 A Again, both verbally and written by signing his
22 full name on the paper.

23 Q And at that time, was a written statement done
24 or was it a verbal statement?

25 A No, sir. Not at that time, it was verbal.

1 Q And at that time, while he was being advised of
2 rights and as he waived his rights, did he appear to you
3 to be under the influence of drugs or alcohol?

4 A No, sir.

5 Q Did he appear to understand each of the rights
6 that had been read to him by Lieutenant Mason?

7 A Yes, sir. He did.

8 Q And in your presence, did he acknowledge
9 understanding each of those rights?

10 A Yes, sir.

11 Q And after -- at any time in the course of him
12 being given his Miranda rights, was he threatened in any
13 way?

14 A No, sir.

15 Q Was any physical force or coercion used against
16 him?

17 A No, sir.

18 Q Was he promised anything in exchange for his
19 cooperation?

20 A No, sir.

21 Q And at any point in time in your meeting with
22 him in Lieutenant Mason's office, was he ever denied any
23 bathroom breaks?

24 A No, sir.

25 Q Was he ever denied any food or water?

1 A No, sir.

2 Q At any point in time, did he ask to speak to a
3 lawyer?

4 A No, sir.

5 Q Did he ever ask to stop the interview?

6 A No, sir.

7 Q To your knowledge, was there any videotaping or
8 audio equipment set up in Lieutenant Mason's office that
9 day?

10 A No, sir. Not to my knowledge.

11 Q And do you recall what the defendant told you
12 and Lieutenant Mason that day?

13 A I do, sir.

14 Q And what is your recollection of his statement?

15 A He said he was sorry for what he put the victim
16 through. She was never a target. He wanted the vehicle.
17 He wanted to apologize to the victim. He went on to say
18 that he and another person -- he refused to tell us the
19 name of that person, but he said that another person
20 helped him to dispose of some of the victim's personal
21 items, her purse and the license plate from the vehicle,
22 from her vehicle. He said that took place at a car wash
23 in Orangeburg. He was unable to recall or provide us the
24 name of that or the location other than it was
25 Orangeburg. He said he was sorry for what he put her

1 through and wanted to apologize but he said that he did
2 it.

3 Q And was there any mention by the defendant of a
4 weapon?

5 A Yes. There was. Along with the unnamed
6 person, uh, he mentioned there was an unnamed person that
7 actually left the gun for him there to use. Left the gun
8 for him to use. Again, he did not want to provide a name
9 or description of who that person or individual was.

10 Q So the conversation you had regarding someone
11 giving him the gun as well as the property that was taken
12 and disposed of, he had been informed of what incident
13 you were asking him about prior to that, is that correct?

14 A Yes, sir.

15 Q And whose decision was it not to take a written
16 statement from the defendant on that day?

17 A It was ours, mine and Lieutenant Mason's. the
18 defendant seemed very reluctant. It was very -- kind of
19 a touchy issue with him when we tried to probe who that
20 person that he was referring to. We decided to let it
21 rest as far as taking a written from him that day.

22 Q You said it became a touchy situation. Did the
23 defendant ask to stop the interview?

24 A No.

25 Q Did he ask to have a lawyer provided to him?

1 A No, sir.

2 Q And when it became a touchy situation, you
3 decided to stop the interview. At that time, did you use
4 any threats or coercion against him?

5 A No, sir.

6 Q At that time, did you make any promises toward,
7 to him to try to compel further cooperation.

8 A No, sir.

9 Q And after the conclusion of that meeting in
10 Lieutenant Mason's office, did you have the opportunity
11 to speak with the defendant again?

12 A Yes, sir. I did.

13 Q And when did that take place?

14 A That took place on June the 3rd, 2010.

15 Q And do you recall when that meeting took place?

16 A Not -- I don't recall offhand. No, sir.

17 Q Do you recall where that meeting took place?

18 A I recall it took place at the detention center.

19 Q And who was present for that interview?

20 A I was present, Mr. Jackson and Detective --
21 Corporal Riser.

22 Q And can you describe what type of room the
23 interview took place at the detention center?

24 A It was one of the interview rooms that they
25 have located at kind of the front main hallway, one of

1 the main hallways. It's just a small room. Just the
2 three of us in there.

3 Q And since this took place at the jail, is it
4 fair to assume that he was still in custody at this time?

5 A Yes, sir. Absolutely.

6 Q And was he again informed as to why you wanted
7 to talk with him?

8 A He was.

9 Q What was he told that day was the purpose of
10 the meeting?

11 A What I met with him about the day -- the
12 previous day, again, the armed robbery that took place at
13 the church there at the St. Stephen Evangelical Church,
14 150 Church Road, St. Stephen, Berkeley, South Carolina.

15 Q And prior to that interview, was the defendant
16 again provided his Miranda rights?

17 A Yes, sir. He was.

18 Q And how was that done?

19 A That was done again verbally and written, this
20 time on a defendant written statement form.

21 Q And who provided the defendant his rights on
22 that day?

23 A I did.

24 Q And how did you go about providing him those
25 rights?

1 **A** Verbally from that written form.

2 **Q** I'm showing you what's been marked as State's
3 Exhibit 2 for identification for purposes of this
4 hearing. If you can, take a look at that and I'll ask
5 you some questions about it.

6 **A** Yes, sir.

7 **Q** Do you recognize that?

8 **A** I do, yes, sir.

9 **Q** And what do you recognize that as?

10 **A** I recognize this as the written defendant form
11 that I advised the defendant of his Miranda rights.

12 **Q** And are there any signatures present on that
13 form?

14 **A** Yes, sir. There are.

15 **Q** Is one of those signatures yours?

16 **A** Yes, sir. It is.

17 **Q** And who else signatures are present on that
18 form?

19 **A** Detective Riser and the defendant, Mr. Benjamin
20 Jackson.

21 **MR. ALFARO:** Your Honor, at this time, the
22 State would ask that State's Exhibit 2 be entered
23 into evidence for purposes of this hearing.

24 **THE COURT:** Any objection?

25 **MS. KENNEDY:** No objection.

1 **THE COURT:** Admitted without objection.

2 **(WHEREUPON,** State's Exhibit 2 is admitted into the
3 record.)

4 **BY MR. ALFARO:**

5 **Q** Detective Cortte, at the top of State's Exhibit
6 2, uh, there appears to be some handwritten information.
7 Do you see that on that form?

8 **A** Yes, sir.

9 **Q** Do you know who placed that -- who wrote that
10 information on that form?

11 **A** I did.

12 **Q** And could you tell the court what the top of
13 that -- what information is contained on the top of that
14 report or the top of that form. I'm sorry.

15 **A** It indicates its defendant statement form,
16 Berkeley County Sheriff's Office. It has the case number
17 written on it for this particular armed robbery. It has
18 the defendant's name who was taken -- the statement was
19 taken before, my name and Detective Riser, the date,
20 which is June 3rd, 2010 and the time, 12:15 p.m. It's
21 got the defendant's date of birth, Social Security
22 number, his address, his age and then the highest level
23 of school, grade level of school that he advised us he
24 completed.

25 **Q** What was the level of school that he advised

1 you he had completed?

2 A He advised 12th grade.

3 Q And are the rights that were provided to him,
4 Miranda rights, contained on that form?

5 A Yes, sir. They are.

6 Q Could you tell the court what rights you gave
7 him that day?

8 A Yes, sir. One, that he had an absolute right
9 to remain silent and that he did not have to answer any
10 questions or give a statement and this can not be used
11 against him. Number two, if he did answer questions or
12 give a statement, anything he said could and would be
13 used against him in a court of law. Number three, he had
14 the absolute right to consult with a lawyer of his choice
15 before answering any questions or giving a statement and
16 also to have him present while being questioned. Number
17 four, if he wished to talk to a lawyer or to have him
18 present, but were unable to afford a lawyer, to hire a
19 lawyer, one could be appointed to represent him free of
20 charge. Number five, if he decided to answer questions
21 and give a statement without a lawyer present
22 representing him, he'd have the absolute right during
23 this interview to stop answering questions and to remain
24 silent.

25 Q And on June 3rd, 2010, were each of those

1 rights provided to the defendant?

2 A Yes, sir. They were.

3 Q Did the defendant acknowledge understanding
4 each of those rights?

5 A Yes, sir. He did.

6 Q And did he appear to you to understand the
7 rights that you had provided to him?

8 A Yes, sir.

9 Q And you stated he acknowledged each of those
10 rights, how did he go about acknowledging those rights?

11 A Both verbally and then by placing his initials
12 beside to the left side of each individual right.

13 Q And in addition to providing him those rights,
14 did you also discuss with him what the waiver of rights
15 portion of that form was?

16 A Yes, sir.

17 Q And what was told to him that day?

18 A Uh, that he fully asked that -- he fully
19 understands each of these rights which have been
20 explained to him. And having these rights in mind, did
21 he wish to waive these rights and answer any questions
22 concerning the charge of -- and I had written armed
23 robbery in the blank space, which he had been accused of
24 committing. No threats, force or promise of any kind had
25 been made to him by anyone to induce him to waive these

1 rights and to answer questions.

2 Q Did he acknowledge understanding that Waiver of
3 Rights?

4 A Yes, sir. He did.

5 Q And how did he acknowledge that?

6 A Again, verbally and this time by signing below.

7 Q And at the time that he waived those rights,
8 had you already written in there that he was being
9 questioned concerning an armed robbery?

10 A Yes, sir.

11 Q And you stated already that your signature was
12 on there. Who else's signature is contained on that
13 form?

14 A Yes, sir. The defendant's, of course, and
15 Detective Riser.

16 Q And at that time, uh, did the defendant agree
17 to give you a written statement?

18 A He did.

19 Q Can you tell the court -- read for the Court
20 what his written statement was that day?

21 A Yes, sir. Reading as it is written, I just
22 want to apologize for what happened that day. I wasn't
23 trying to hurt you. I was after the vehicle. You was
24 never a target and I'm sorry for -- that it happened.
25 And please forgive me for what happened that day. God

1 bless you and I hope that you can truly forgive me. I'm
2 truly not a bad people. It's just something that
3 happened that wasn't supposed to happen. I hope that you
4 can see through that and forgive me.

5 Q Was that statement written by the defendant or
6 was that written by either you or Detective Riser?

7 A It was written by the defendant.

8 Q And in addition to what was written on that
9 form, did you and the defendant have any conversation as
10 to, uh, facts surrounding the armed robbery of the facts?

11 A Yes, sir.

12 Q What did y'all discuss that day?

13 A Essentially what I had discussed the day prior.
14 He again said that he did it and he was sorry for what he
15 put the victim through and again that she wasn't a
16 target. He just wanted the vehicle. And that he --
17 another person did leave the gun for him to use. Another
18 person had helped him to dispose of the license plate
19 from her vehicle and the victim's purse, again, at a car
20 wash in Orangeburg.

21 Q You said that -- the date -- the interview
22 prior, the day before, that it had become a touchy
23 situation when discussing where he got the gun. Did you
24 press him for any further details about the gun on the --
25 during the June 3rd meeting?

1 A No, sir. I tried to ask him. But he again was
2 reluctant to provide a name or description.

3 Q Was he asked again about the gun during that
4 interview?

5 A He was.

6 Q And did he provide the same answer that he
7 provided the day before?

8 A Yes, sir.

9 Q And during the time that he was provided his
10 Miranda rights and during the time that he was giving his
11 written statement and the other oral statements, was any
12 force or coercion used against him to compel his
13 cooperation?

14 A No, sir.

15 Q Were any, uh, -- no physical force?

16 A No, sir.

17 Q And were any promises made to him to elicit his
18 cooperation?

19 A No, sir.

20 Q And during the course of that interview with
21 him, did he appear to be under the influence of any drugs
22 or alcohol?

23 A No, sir. He did not.

24 Q And did he appear to you to understand what was
25 going on and the rights that he had been provided?

1 A Yes, sir. He did.

2 Q At any time during your interview with him, did
3 he ask to speak to a lawyer?

4 A No, sir.

5 Q Did he ever ask to stop the interview in any
6 way?

7 A No, sir.

8 Q And was he ever denied any food or water or
9 bathroom breaks?

10 A No, sir.

11 Q And was he given an opportunity to review the
12 statement as he wrote it?

13 A Yes, sir. He was.

14 Q And did he -- was he given the opportunity to
15 make any changes or corrections or additions?

16 A Yes, sir. He was.

17 Q Did he make any such changes?

18 A No, sir.

19 Q And how long would you say that the interview
20 process took on June the 3rd?

21 A Roughly 20 minutes.

22 Q And how about the one on June the 2nd?

23 A The one on the 2nd, maybe a little bit less.

24 Maybe closer to 15. Both under a half hour I would say.

25 Q And at the conclusion of that interview, did

1 you have any further conversations or interviews with the
2 defendant?

3 A No, sir.

4 Q Thank you. Please answer any questions the
5 defense has for you.

6 A Yes, sir.

7 THE COURT: Cross-examination.

8 CROSS-EXAMINATION

9 BY MS. KENNEDY:

10 Q Good afternoon, Detective Cortte.

11 A Good afternoon.

12 Q Uh, when you arrived at the Criminal
13 Investigation Division, Mr. Jackson was already in
14 Lieutenant Mason's office?

15 A As I recall, when I went to interview him, he
16 was already in there.

17 Q Who made -- you're the lead detective, right?

18 A Yes, ma'am.

19 Q Who made the decision to put him in Lieutenant
20 Mason's office?

21 A I don't know.

22 Q Okay. Do you know how long he was in there
23 before you -- Mr. Jackson was in there before you arrived
24 at Lieutenant Mason's office?

25 A No, ma'am.

1 Q Okay. When you arrived there and you, uh, you
2 saw that he was in Lieutenant Mason's office, what
3 conversation did you have with Lieutenant Mason about the
4 case?

5 A Can you be more specific?

6 Q Did you tell him anything about why Mr. Jackson
7 had been brought in there? Did you ask him to assist you
8 with the interview? Did you do anything -- what did you
9 do?

10 A Yes, ma'am. The entire division, for the most
11 part, knew what was kind of going on with the case.

12 Q Specifically, since Lieutenant Mason assisted
13 you or you assisted him in interviewing Mr. Jackson on
14 June 2nd, what conversation did you all have about the
15 case?

16 A I don't recall specifics.

17 Q Uh, when Mr. Jackson was sitting Lieutenant
18 Mason's office, were you taking notes? Who was asking
19 the questions?

20 A Lieutenant Mason.

21 Q So he was asking questions about something he
22 really hadn't been briefed on?

23 A I'm sure he briefed on it.

24 Q But not by you?

25 A I just don't recall specifics on it.

1 Q All right. And you go into Lieutenant Mason's
2 office. You are there. Mr. Jackson's there. Tell me
3 what happens.

4 A When we went to interview Mr. Jackson,
5 Lieutenant Mason had advised him of his Miranda rights
6 from the form I mentioned earlier. Made sure that he
7 understood. I witnessed that he understood his rights
8 and he wanted to talk to us.

9 Q He indicated he wanted to talk to you?

10 A Yes, ma'am, to the both of us.

11 Q After the Miranda warnings were given and he
12 did the waiver, he said I'll tell you what you want to
13 know?

14 A Yes, ma'am. He signed the waiver on the form.

15 Q I understand that. He signed the waiver.
16 That's what you all needed to get him to talk to you.
17 Okay. Tell me how that conversation went.

18 A Essentially, Lieutenant Mason read to him the
19 rights and asked him if he understood his rights and had
20 them initialed beside each one to confirm that he did and
21 also to verbally state that he understood. Then, for the
22 waiver section, went over the waiver with him and asked
23 him if he understood and waive that he did want to speak
24 with us regarding the armed robbery at the church. He
25 said yes and had him sign it.

1 Q So you asked him do you want to talk to us
2 about this robbery?

3 A From what I recall, Lieutenant Mason did.

4 Q Lieutenant Mason did. And he said yeah, I want
5 to talk to you?

6 A Yes, ma'am.

7 Q Okay. And who asked the questions? You asked
8 the questions or Lieutenant Mason asked the questions?

9 A If I recall, Lieutenant Mason took the lead for
10 the most part on the interview.

11 Q And he was asking Mr. Jackson what?

12 A Essentially what happened. But for the most
13 part, Mr. Jackson came out and said that he did it, I
14 mentioned previously already.

15 Q Clarify this for me. What do you mean for the
16 most part? Because he made, according to the information
17 in the incident report, that you did, that he sort of
18 voluntarily made admissions about a gun and he sort of
19 voluntarily made admissions about putting the purse in
20 the trash can. Uh, some of that information you couldn't
21 possibly have known. So how did you get him to talk
22 about all that?

23 A That's part of what he told us after he had
24 been mirandized.

25 Q And this only took -- as you recall, it only

1 took place over the course of maybe 15 or 20 minutes.

2 A Roughly that.

3 Q Was he aware that his wife was in custody at
4 that point in time?

5 A I think so.

6 Q Did y'all discuss that with him and what she
7 was being charged with?

8 A I don't recall that specifically.

9 Q Uh, did you take any notes during the course of
10 this interview?

11 A Not that I can recall.

12 Q Okay. You are the lead detective, right?

13 A Yes, ma'am.

14 Q You are the one responsible for getting
15 everything the way it should be, right?

16 A Yes, ma'am.

17 Q And you didn't think it was important to take
18 notes?

19 A They were detailed in my supplemental.

20 Q Well, I have a supplement that's dated June the
21 24th, which is a good three weeks or so after these
22 interviews. What did you base that on?

23 A A lot of times, my practice is where we
24 actually load those supplements into, sometimes it will
25 -- I'm not sure of the technical term -- but it times out

1 on you if you don't save it. My habit and customary
2 practice would be to type them up in a Word document,
3 then cut and paste it over there.

4 Q But aren't you supposed to record every time
5 you change something, right, in the computer?

6 A Right. You can go in and do that.

7 Q But there was no report generated on that day
8 concerning -- for June 2nd or June 3rd on that day,
9 correct, or those two days, right?

10 A Should be a supplement.

11 Q Yeah. The supplement's dated June 24th. My
12 question to you is you didn't take any notes that day,
13 correct?

14 A I don't recall any specific.

15 Q And the information that you put in the
16 supplemental some two weeks later or three weeks later is
17 based on what? Your memory?

18 A Based on what I recall and what was in the
19 statement on the third.

20 Q Right, but he gave an oral statement, according
21 to you, on June the 2nd where he gave you certain
22 information and you don't have any notes of that,
23 correct?

24 A From what I recall, yes, ma'am.

25 Q And then, uh, it's your testimony that

1 Lieutenant Mason was the one who was sort of the lead --
2 took the lead in the interrogation?

3 A In the interview, yes, ma'am.

4 Q The interview. You don't call them an
5 interrogation if you've got somebody's Miranda warnings,
6 Advice of Rights?

7 A I typically refer to it as an interview.

8 Q All right. And then the next day, you and --
9 do you know who took Mr. Jackson over to the jail on June
10 the 2nd?

11 A No, ma'am.

12 Q But it wasn't you?

13 A No, ma'am.

14 Q Did you fill out the booking report?

15 A It would be in my case file.

16 Q All right. So the next day, you and Detective
17 Riser go over to see Mr. Jackson?

18 A Yes, ma'am.

19 Q Let me back up. You and Lieutenant Mason
20 quote, it was our decision not to take a written
21 statement and that it became a touchy situation. Tell me
22 about that.

23 A He mentioned -- Mr. Jackson mentioned that
24 someone left the gun for him to use. Someone helped him
25 to dispose of the victim's purse and the license plate

1 from her vehicle. When we asked him who that person was,
2 he kind of shut down a little bit. You know, he didn't
3 want to tell us who that was. He was a little bit touchy
4 with it.

5 Q You weren't curious, when he said someone left
6 a gun, where they left gun?

7 A Absolutely, we were curious.

8 Q Okay. Did you ask him that question?

9 A Yes, ma'am.

10 Q Okay. But that's no where in anything that's
11 written down, right?

12 A I don't recall.

13 Q All right. And the touchy situation came, as I
14 understand it, when he sort of withdrew and didn't want
15 to answer any of your questions anymore, right?

16 A I would have to respectfully disagree.

17 Q Please explain it. Correct me.

18 A Just as far as that particular question, he
19 didn't want to tell us -- he didn't want to give up the
20 name of who that person was.

21 Q Okay. So he didn't want to give up the name of
22 the person who gave him the gun, correct?

23 A Correct, or who helped him to dispose of --

24 Q And that's -- when you say touchy situation,
25 those are the two things that you are talking about?

1 A Yes, ma'am.

2 Q Okay. And then the next day, you and Detective
3 Riser go over to the jail to interview him?

4 A Yes, ma'am.

5 Q What happened between your interview with him
6 at 10:00 or 10:30 on June 2nd and I believe that
7 statement says 12:15 the next day for you -- that made
8 you think you could get a written statement from him?

9 A Really just trying to do the most thorough job
10 in the investigation that I could. Tried to follow up
11 with him. As you mentioned, I was certainly curious
12 about who the other person might have been. It helps to
13 be polite to try to find out who that was.

14 Q Were you aware that his wife was in custody?

15 A Yes, ma'am.

16 Q Okay. Were you aware that she had also been
17 charged?

18 A Yes, ma'am.

19 Q Did you discuss with him the fact that his wife
20 was in custody and she too had been charged?

21 A I don't recall any specifics.

22 Q Okay. Tell me what happened when you went into
23 the interview room at the jail, you and Detective Riser.
24 You had Mr. Jackson brought out?

25 A Yes, ma'am.

1 Q And you said what to him?

2 A Just introduced myself again to him and asked
3 him if he wanted to speak with us some more about the
4 armed robbery and let him know I had to advise him of his
5 rights again.

6 Q And he agreed to talk to you?

7 A Yes, ma'am.

8 Q Okay. Did you tell him that he had a whole
9 bunch of other charges in addition to the Armed Robbery
10 when you were doing this interview on that June 3rd?

11 A I don't specifically recall that. The Armed
12 Robbery is the one I wrote down.

13 Q I know that. I mean, you know, when people are
14 giving statements, it's kind of important for them to
15 know what they're talking about in terms of what charges
16 they are facing, correct?

17 A Yes, ma'am.

18 Q Did you tell him he was charged with Grand
19 Larceny of a Motor Vehicle?

20 A It was mostly the Armed Robbery.

21 Q Tell him he was going to be charged with
22 Kidnaping?

23 A I didn't put that on the form.

24 Q Tell him he was going to be charged with
25 Possession of a Weapon During the Commission of a Violent

1 Crime?

2 A If it's not on the form, I didn't.

3 Q Okay. Uh, tell him he was going to be charged
4 with Failure to Stop For a Blue Light?

5 A No, ma'am.

6 Q Tell him he was going to be charged with
7 Burglary?

8 A No, ma'am.

9 Q You just told him he was going to be charged
10 with Armed Robbery?

11 A I told him he was going to answer questions and
12 asked him if he wanted to waive his rights and answer
13 questions regarding the charge of the Armed Robbery,
14 referring to the armed robbery that occurred at the
15 church.

16 Q But your focus in each of these interviews --
17 whether you were doing the questioning on June the 2nd or
18 whether Lieutenant Mason was doing the questioning on
19 June the 2nd and you were doing the questioning on June
20 3rd, the focus was the armed robbery?

21 A For the most part, that's what I wrote on
22 paper.

23 Q And so it's safe to assume that that's all Mr.
24 Jackson thought he was being charged with, correct?

25 A I don't feel that --

1 Q The statement that he signed as you indicated
2 earlier in the direct examination shows that he was being
3 questioned with regard to a charge of Armed Robbery.

4 A Correct.

5 Q All right. How long were you and Detective
6 Riser with Mr. Jackson that day?

7 A My recollection, it would be no more than 30
8 minutes.

9 Q You came in prepared with your defendant's
10 statement Berkeley County Sheriff's Office form?

11 A Yes, ma'am.

12 Q How was it that he decided at that point in
13 time, since he didn't want to do it the day before, to
14 give you a written statement on that day?

15 A He was a little more calm now. I tried to ask
16 him again about who that person was. He indicated he
17 just wasn't going to give that up. We just let it go.
18 He said he really wanted to apologize to the victim for
19 what he put her through and wanted to write it down.

20 Q I understand that. But how was it that he
21 agreed on June the 3rd to give you a written statement
22 when he didn't want to give you a written statement the
23 day before?

24 A I asked him if he wanted to talk to us and
25 write a statement on the 3rd.

1 Q And he indicated to you that he would write a
2 statement, right?

3 A Yes, ma'am.

4 Q And he gave you only -- the interview on June
5 2nd had three parts. He apologized to the victim, makes
6 reference to the gun, makes reference to the items that
7 were put in the trash can at the car wash in Orangeburg.
8 How was it that he decided on June the 3rd in his written
9 statement to isolate the one thing about his apology to
10 the victim and make that his only written statement?

11 A It was his statement. That's what he wanted to
12 write down.

13 Q Did you question him about the other things?

14 A I did a little bit.

15 Q And what happened with that?

16 A Again, he didn't want to give up the name of
17 the person who left the gun for him.

18 Q Okay. And you indicated on --

19 **MS. KENNEDY:** Your Honor may I approach the
20 witness?

21 **THE COURT:** That's fine.

22 **BY MS. KENNEDY:**

23 Q On State's Exhibit 2, which is the signed
24 statement that Mr. Jackson wrote, the information that
25 was spelled out at the top, who did that?

1 A I did that.

2 Q You did that?

3 A Yes, ma'am.

4 Q And would you be kind enough to read to me what
5 information you put down as to Mr. Jackson's name?

6 A Yes, ma'am. I put the statement of -- up top,
7 it says Brandon Jesse Jackson, III.

8 Q Brandon Jesse Jackson. And what is Mr.
9 Jackson's name?

10 A It's Benjamin Jesse Jackson, III.

11 MS. KENNEDY: Court's indulgence. (Pause.)

12 BY MS. KENNEDY:

13 Q Now, uh, as to the booking process, uh, you
14 indicated that you didn't know who or how Mr. Jackson got
15 over to the jail. You didn't take him?

16 A I don't recall that I did, no, ma'am.

17 Q If I had a booking report that shows your name
18 on it, would that refresh your recollection?

19 A Yeah.

20 MS. KENNEDY: Your Honor, may I approach?

21 THE COURT: Sure.

22 THE WITNESS: I recall filling that out.

23 BY MS. KENNEDY:

24 Q You recall filling that out. I just have one
25 quick question in regard to that. It says that Mr.

1 Jackson was arrested on June the 2nd at 7:07. He was
2 arrested at his house at that point in time, right?

3 A That's when we took him into custody, yes.

4 Q At his house. How long did he stay at his
5 house before he was taken to the Sheriff's Office for his
6 interview?

7 A I don't recall. I wasn't present with him. I
8 had different responsibilities at the time.

9 Q Well, what time did you arrive to participate
10 in the interview with Lieutenant Mason on June 2nd.

11 A My best recollection of that was somewhere -- I
12 remember it was before lunch. I think it was somewhere
13 around 10:00 a.m. or so.

14 MS. KENNEDY: Court's indulgence. (Pause.)

15 Your Honor, that would be all that we have for
16 Detective Cortte. Thank you.

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Redirect?

19 MR. ALFARO: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. ALFARO:

22 Q Detective Cortte, when you met with him, the
23 defendant at Lieutenant Mason's office, did you testify
24 that you informed him of the facts of the incident you
25 were investigating?

1 A Correct.

2 Q And do you recall if he specifically listed out
3 each charge?

4 A I don't recall that, no, sir.

5 Q Do you recall if he described for him facts
6 that took place that would substantiate those charges?

7 A Yes, sir. You asking for an example?

8 Q Just tell me what he told you.

9 A The exact verbiage, I don't specifically
10 recall, but he was made aware it was in reference to the
11 armed robbery that occurred at the church, the St.
12 Stephen Evangelical Church, 150 Church Road in St.
13 Stephen when the victim's motor vehicle was being taken.

14 Q So you -- all the charges that he's been
15 charged with, except for the Failure to Stop for Blue
16 Light comes for the incident at the St. Stephens
17 Evangelical Church?

18 A There might have been another incident about
19 assault on an officer.

20 Q Let's -- the Armed Robbery, does that arise out
21 of the St. Stephens Evangelical Church?

22 A Yes, sir.

23 Q With the victim, Hazel Dunning?

24 A Yes, sir.

25 Q Does the kidnaping arise out of the same

1 incident?

2 **A** Yes, it does.

3 **Q** Does the Grand Larceny of a Motor Vehicle arise
4 out of the same incident?

5 **A** Yes, sir.

6 **Q** And the weapons charge arises out of that same
7 incident, is that correct?

8 **A** Yes, sir.

9 **Q** And does the burglary arise out of that
10 incident as well?

11 **A** Yes, sir.

12 **Q** And he was informed that that was the incident
13 you were discussing with him on June 2nd, 2010?

14 **A** Correct.

15 **Q** Was he advised that it was the same incident
16 that you were discussing with him on June 3rd, 2010?

17 **A** Yes, sir. That's correct.

18 **Q** You recall when he was served with copies of
19 his arrest warrants?

20 **A** I don't recall.

21 **Q** You recall if that was prior to your interview
22 on June 3rd or after?

23 **A** I don't specifically recall. It might be in my
24 report.

25 **MR. ALFARO:** Thank you. No further

1 questions.

2 THE COURT: Recross?

3 MS. KENNEDY: No, Your Honor. Thank you.

4 THE COURT: What warrants were issued on June
5 the 2nd when he was arrested at 7:07 a.m.? Or had
6 any warrants been issued?

7 THE WITNESS: No, sir. Not at that time.
8 That was the execution of the search warrant.

9 THE COURT: The search warrant?

10 THE WITNESS: Yes, Your Honor.

11 THE COURT: Was he arrested when you did the
12 search warrant?

13 THE WITNESS: He was taken into custody.

14 THE COURT: When were arrest warrants issued
15 and what were issued?

16 THE WITNESS: May I?

17 THE COURT: Yes, sir. Whatever you want to
18 look at.

19 THE WITNESS: Essentially the charges that
20 Mr. Alfaro mentioned to the Court, the Armed
21 Robbery, the Grand Larceny. At the time, it was
22 over \$5000 amount. The Burglary second degree,
23 Kidnaping and Possession of a Firearm During
24 Commission of a Violent Crime.

25 THE COURT: And when were those warrants

1 issued?

2 **THE WITNESS:** On June the 3rd, 2010.

3 **THE COURT:** Thank you very much. Anybody
4 have any questions pursuant to the Court's
5 questions?

6 **MR. ALFARO:** None from the State.

7 **THE COURT:** Ms. Kennedy.

8 **RECROSS-EXAMINATION**

9 **BY MS. KENNEDY:**

10 **Q** Detective Cortte, those warrants were issued
11 and provided to Mr. Jackson after he had given you the
12 witness statement, correct?

13 **A** Correct.

14 **MS. KENNEDY:** That's all I have, Your Honor.

15 **THE COURT:** Okay. Thank you very much.
16 Detective Cortte, you may step down.

17 **THE WITNESS:** Thank you.

18 **THE COURT:** Any more witnesses?

19 **MR. ALFARO:** No more witnesses.

20 **THE COURT:** Ms. Kennedy, you going to offer
21 any testimony?

22 **MS. KENNEDY:** Yes, Your Honor.

23 **THE COURT:** Or motions to suppress the
24 statement?

25 **MS. KENNEDY:** Uh, Your Honor, I think I would

1 like to preserve my motions until after Mr. Jackson
2 testifies.

3 **THE COURT:** Okay.

4 **MS. KENNEDY:** Okay.

5 **THE COURT:** All right. Mr. Jackson, you want
6 to testify from there or you want to get on the
7 witness stand? You're welcome to testify from there
8 if you feel more comfortable there.

9 **MS. KENNEDY:** I don't know if the Court
10 Reporter will be able to hear, Your Honor. He's
11 very soft-spoken.

12 **THE COURT:** Okay. Well, he better come on up
13 here.

14 **THE CLERK:** Please raise your right hand and
15 place your left hand on the Bible.

16 **BENJAMIN JACKSON**
17 having first been sworn, testifies as follows:

18 **THE CLERK:** Please be seated. State your
19 full name and spell your last name for the record.

20 **THE WITNESS:** Benjamin Jesse Jackson.
21 J-A-C-K-S-O-N.

22 **DIRECT EXAMINATION**

23 **BY MS. KENNEDY:**

24 **Q** Mr. Jackson, how old are you?

25 **A** 26 now.

1 Q How old were you at the time you got locked up
2 on these charges?

3 A 23.

4 Q Uh, how far did you go in school?

5 A 12th grade.

6 Q Uh, when you were taken into -- first of all,
7 tell the Court how it is you came to be taken into
8 custody on June the 2nd, 2010.

9 A Berkeley County came and kicked in my door.

10 Q They kicked in your door. You got arrested?

11 A Yes, ma'am.

12 Q And what happened to you?

13 A They put me in handcuffs and put me in the back
14 of the police car.

15 Q How long did you stay in the police car?

16 A Two or three hours.

17 Q You stayed in the police car in custody while
18 they searched your house?

19 A Yes, ma'am.

20 Q What happened after that?

21 A The officer took me to the Berkeley County
22 Sheriff's Office.

23 Q Was your wife arrested the same day?

24 A Yes, ma'am.

25 Q Was she put in a separate patrol car?

1 A Yes, ma'am.

2 Q Did you see her be put in a patrol car?

3 A No, ma'am. I was just told that.

4 Q You were just told that. All right. And they
5 took you to the Berkeley County Sheriff's Office?

6 A Yes, ma'am.

7 Q And what happened when you got there?

8 A Uh, they put me in the office. They said
9 somebody would be with me.

10 Q They put you in the office and said somebody
11 would be with you?

12 A Uh-huh.

13 Q Anybody in that office when they first put you
14 in there?

15 A Uh, there was a guy sitting at a desk just as
16 you walk in.

17 Q Okay. And did you -- the guy sitting at the
18 desk, was that Lieutenant Mason?

19 A Yes, ma'am.

20 Q Okay. And Lieutenant Mason came in and he was
21 talking to you. What did he say to you?

22 A Uh, he just introduced himself and him and
23 another officer just started talking.

24 Q The other officer just started talking?

25 A Uh-huh.

1 Q Would the other officer be Detective Cortte?

2 A It was the officer that brought me in.

3 Q The officer that brought you in. All right.

4 When did Detective Cortte come?

5 A Probably like five or ten minutes later.

6 Q Okay. What happened when Detective Cortte got
7 there?

8 A Uh, he was asking a bunch of questions.

9 Q A bunch of questions like what?

10 A Dealing with the reason why they had me down
11 there.

12 Q Dealing with what?

13 A The reason why they had me down there.

14 Q Okay. What did they tell you the reason was
15 that they had you down there?

16 A Armed robbery.

17 Q Okay. They wanted to talk to you about an
18 armed robbery?

19 A Uh-huh.

20 Q Okay. You have to say yes or no.

21 A Yes.

22 Q And when they told you that they wanted to talk
23 to you about an armed robbery, had they given you your
24 Miranda warnings? Had they told you you had a right to
25 have a lawyer?

1 A Yes, they told me that.

2 Q And you, uh, when they were giving you those
3 warnings and they said you had a right to have a lawyer,
4 you don't have to talk to anybody, did they explain that
5 to you?

6 A Not really, ma'am.

7 Q All right. Tell me what you mean by that, not
8 really?

9 A I asked him -- I had wanted a lawyer to be
10 present to explain it to me. They was like if I had a
11 lawyer, they wouldn't be able to help me.

12 Q Okay. They told you that if you wanted a
13 lawyer and you wanted to talk to them with a lawyer, they
14 wouldn't be able to help you out?

15 A Yes, ma'am.

16 Q What did they mean when they told you they
17 wouldn't be able to help you out?

18 A I don't really know.

19 Q You don't really know? Okay. Uh, they told
20 you you didn't have to speak to anybody, right?

21 A Yes, ma'am.

22 Q What did you understand that to mean?

23 A Say that again?

24 Q If they told you you didn't have to talk to
25 them, what did you understand that to mean?

1 A I had a right to remain silent.

2 Q You had the right to remain silent. You didn't
3 have to say anything else at all. Did you talk any about
4 your wife being in custody?

5 A Yes. I questioned them and asked where she at,
6 if she was locked up.

7 Q And what did they say?

8 A They said they was, uh, -- they was
9 interviewing her too.

10 Q They were -- okay. And what were they
11 interviewing you about? Did they tell you?

12 A They said about the armed robbery.

13 Q Well, an armed robbery where? Armed robbery
14 when?

15 A They said it happened at a church.

16 Q It happened at a church. Did they tell you
17 when it happened?

18 A Uh, not at that time.

19 Q Okay. And how long were you in this interview
20 with Detective Mason and -- I mean, Lieutenant Mason and
21 Detective Cortte?

22 A Probably like 15, 20 minutes.

23 Q Okay. And during the course of this interview,
24 did you volunteer information about the robbery?

25 A No, ma'am.

1 Q Tell me what you told them.

2 A They was asking me questions like how I got the
3 vehicle. And I was telling them about how I got the
4 vehicle. They was telling me that the vehicle was
5 stolen. I told them I didn't know it was stolen. They
6 was asking about stuff that was in the vehicle. I told
7 them there was probably a bunch of stuff that was in a
8 black bag that I threwed away.

9 Q So you acknowledged -- you told them that you
10 had possession of the car?

11 A Uh-huh.

12 Q And you told them that there was some stuff in
13 the car that you had thrown away?

14 A Right.

15 Q Did you volunteer any information about a gun?

16 A No.

17 Q Okay. Did you volunteer any information --
18 strike that. How did you come to give them this
19 information about you were sorry for what happened to the
20 victim?

21 A They was telling me that it was a woman vehicle
22 and she wanted to know where her belongings was at and if
23 somebody knew where her credit cards and checkbook. I
24 told them I didn't know anything about that stuff. I
25 said if there was any of that stuff, I throwed it away.

1 Q Okay. How is it that you came to say to them
2 that she was never a target and that you were sorry? Did
3 you say that?

4 A Yes, ma'am.

5 Q Why did you say that?

6 A They asked me who gave me the vehicle, how did
7 I got the vehicle. And they told me that she got arm
8 robbed for a vehicle. I was telling them that I wanted
9 to apologize because all I did was ask somebody to get me
10 a vehicle. I didn't know that the person went to that
11 extent to get a vehicle just to sell it to me. I just
12 had apologized for what had happened to her.

13 Q Okay. So if I understand what you're telling
14 is that when you gave them that statement, you were
15 telling them that you knew the car was stolen?

16 A No.

17 Q Okay. Help me.

18 A I didn't know it was stolen at that point in
19 time.

20 Q Okay. You had just gotten the vehicle from
21 somebody else?

22 A Correct.

23 Q And you were apologizing for that?

24 A No, I was apologizing cause they told me that
25 somebody took the car from her.

1 Q Uh-huh.

2 A I told them I had purchased the car from
3 somebody else. I didn't know that somebody robbed her
4 for her vehicle. I was telling them I apologize for what
5 happened to her. I didn't mean for her to be a target
6 for somebody that did the crime that happened to her just
7 to get a vehicle.

8 Q And this was all in the oral statement that you
9 gave to Lieutenant Mason and Detective Cortte on June the
10 2nd?

11 A Yes, ma'am.

12 Q Okay. Going to June 3rd, when Detective Cortte
13 and Detective Riser came to the jail to interview you
14 again, tell me about that. How did you come to give this
15 written statement?

16 A They came in there to talk to me about the same
17 thing as the previous day. I told them -- I told them it
18 would be the basic thing I told them the first time. I
19 was asking them about my wife and asking them what
20 charges they charged her with.

21 Q Were they still talking to you about trying to
22 be able to be helpful to you?

23 A I can't really recall.

24 Q Okay. How did you come to write your statement
25 out? Did they ask you to write it? Did you volunteer to

1 write it?

2 A They told me to write a statement for what I
3 told them the day before.

4 Q Okay. But you only wrote one little portion of
5 the statement.

6 A Right.

7 Q The part concerning the victim.

8 A Yeah, cause I told them I was going to
9 apologize on my behalf of what happened to the victim.

10 Q At the time you were writing -- at the time you
11 were giving the oral statement, did you understand all
12 the charges that were being brought against you?

13 A No, ma'am.

14 Q What did you think you were being charged with?

15 A Stop for a blue light.

16 Q Anything else?

17 A And the questions about the armed robbery.

18 Q All right. And the next day when you gave your
19 written statement, what did you understand you were being
20 charged with?

21 A Uh, still the same thing.

22 Q Still the same thing. Failure to Stop For a
23 Blue Light and Armed Robbery?

24 A And questioned for armed robbery.

25 Q And questioned for an armed robbery. When were

1 you served your warrants for, uh, all these other
2 charges? Was it before or after you gave your written
3 statement?

4 A After.

5 MS. KENNEDY: Okay. Court's indulgence.

6 (Pause.)

7 That would be all I have, Your Honor.

8 Please answer any questions ---

9 THE COURT: Cross-examination.

10 MS. KENNEDY: --- Mr. Alfaro has.

11 CROSS-EXAMINATION

12 BY MR. ALFARO:

13 Q Mr. Jackson, I want to show you what has been
14 entered as State's Exhibit 1 for identification or
15 actually in evidence, State's Exhibit 1. Do you see --
16 is the form that was given to you or shown to you on June
17 2nd?

18 A I believe so, sir.

19 Q You recognize the initials by each of those
20 rights?

21 A Yes, sir.

22 Q Whose initials are those?

23 A Mine, sir.

24 Q You put them there?

25 A Yes, sir.

1 Q By each of the rights that they read to you?

2 A Yes, sir.

3 Q And the Waiver of Rights, that was shown to you
4 or read to you that day?

5 A Yes, sir.

6 Q And you signed it?

7 A Yes, sir.

8 Q And you agreed to talk to them?

9 A Yes, sir.

10 Q And that was in front of Lieutenant Mason and
11 Detective Cortte?

12 A Yes, sir.

13 Q State's Exhibit 2. You recognize that?

14 A Yes, sir.

15 Q Do you recognize the initials besides each of
16 the rights on that form?

17 A Yes, sir.

18 Q Whose initials are those?

19 A Mine, sir.

20 Q You put them there, didn't you?

21 A Yes, sir.

22 Q And the signature -- or there it says that you
23 were being questioned about an armed robbery. Is that
24 right?

25 A Yes, sir.

1 Q And you knew that when they were talking to
2 you?

3 A Yes, sir.

4 Q And that signature, is that your signature?

5 A Yes, sir.

6 Q You put that there?

7 A Yes, sir.

8 Q The statement down at the bottom, all the
9 handwriting, who wrote that? You wrote that, didn't you?

10 A Yes, sir.

11 Q Did they ask you about more than one incident,
12 more than one armed robbery or did they just ask you
13 about one?

14 A Just the one.

15 MR. ALFARO: No further questions, Your
16 Honor.

17 THE COURT: Any redirect?

18 MS. KENNEDY: Just one, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. KENNEDY:

21 Q Mr. Jackson, Mr. Alfaro asked you about your
22 signature on this, uh, defendant's statement. Please
23 tell me which of these two lines reflects your signature.

24 A The bottom one.

25 Q The bottom one. Do you know who signed the top

1 one?

2 **A** No, ma'am.

3 **Q** Okay.

4 **MS. KENNEDY:** That would be all we have, Your
5 Honor.

6 **THE COURT:** Any recross on that issue?

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

8 **THE COURT:** Okay. Mr. Jackson -- I'm sorry.
9 Excuse me. Mr. Jackson, you may step down.

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** You have any further witnesses?

12 **MS. KENNEDY:** No, Your Honor.

13 **THE COURT:** Okay. Your motions?

14 **MS. KENNEDY:** Your Honor, based on the
15 evidence provided during this hearing, we would
16 respectfully move that the statements made by
17 Benjamin Jackson, oral statements made by Benjamin
18 Jackson and the second written statement that was
19 given on, uh, June 3rd be suppressed. The basis for
20 our request is that the interrogation on both of
21 those days came before the charges were made.

22 We don't dispute that Mr. Jackson understood
23 his Miranda warnings. What we are -- what we are
24 disputing, Your Honor, is the interrogation and the
25 information that was obtained as a result of the

1 interviews without Mr. Jackson being fully aware of
2 what he was being charged with.

3 **THE COURT:** Okay. I'll be glad to hear you.

4 **MR. ALFARO:** Your Honor, I believe the
5 testimony from Detective Cortte as well as
6 Lieutenant Mason as well as from the defendant
7 himself, uh, indicate that he was clearly in
8 custody. Miranda rights were required to be given.
9 I don't believe there's been any controverted
10 testimony that Miranda were provided to him. Each
11 of the rights were delineated on the two forms.
12 They've been entered into evidence.

13 It's clear from the testimony of the officers
14 that they went over each of those rights with him.
15 They also went over the waiver of his rights. He
16 was informed as to what incident they were
17 investigating. They discussed that it was an armed
18 robbery that took place at the church. The charges
19 arose -- all the charges, the Kidnaping, the
20 Burglary second, Grand Larceny and the weapons
21 charge all arose from that same incident.

22 The defendant's testimony was on cross that he
23 was only questioned about one incident. He wasn't
24 questioned about multiple incidents. He
25 acknowledged himself that he was read those rights.

1 He initialed beside each right. He signed the
2 waiver or rights on both forms and freely and
3 voluntarily agreed to give them an oral statement on
4 June 2nd as well as an oral and written statement on
5 June the 3rd. There's been no -- the testimony from
6 the officers was that no force was used, no coercion
7 or physical or mental threats were invoked against
8 him to compel his cooperation.

9 All the testimony was shown that his statement
10 was freely and voluntarily given. His rights were
11 freely and voluntarily waived. He agreed to give
12 them statements on both of those dates. We would
13 ask that both statements be ruled admissible at the
14 trial, Your Honor.

15 **THE COURT:** Anything in rebuttal? Anything
16 you want to say in rebuttal?

17 **MS. KENNEDY:** No, Your Honor. Thank you.

18 **THE COURT:** All right. I find that, uh, the
19 motion to suppress is denied. I find that factually
20 the alleged crimes that occurred on May the 18th,
21 2010, the officers gave the defendant sufficient
22 knowledge of what they were investigating during the
23 -- taking the oral statements as well as the written
24 statement. The Burglary, the Armed Robbery, the
25 Kidnaping, the Grand Larceny and Possession of a

1 Firearm during the Commission of a Violent Crime, he
2 was well aware what the officers were discussing
3 with him and the particular crime.

4 Now, let me clarify. You are saying you are
5 not -- are you waiving the issue of Miranda was not
6 freely and voluntarily given without his knowledge?

7 **MS. KENNEDY:** No, Your Honor. No, Your
8 Honor.

9 **THE COURT:** Okay. The only thing you are
10 saying is the voluntariness of -- the statement was
11 involuntary because he wasn't fully aware ---

12 **MS. KENNEDY:** Of the charges.

13 **THE COURT:** --- of the charges.

14 **MS. KENNEDY:** Yes, Your Honor.

15 **THE COURT:** Okay. The Court finds that the
16 alleged statement obtained from the defendant was
17 freely and voluntarily given without duress, without
18 coercion, without undue influence, without reward,
19 without promise or hope of reward, without promise
20 of leniency, without threat of injury, without
21 compulsion and inducement of any kind, that the
22 statements were voluntary and free and
23 unconstrained, at will of the defendant. The Court
24 makes those findings by the preponderance of the
25 evidence. As I said earlier, the Court was fully --

1 the defendant was fully advised his rights and fully
2 advised as to the criminal charges which the police
3 were investigating at the time the oral statements
4 were given as well as the written statement were
5 given on June the 3rd of admission of crimes
6 committed on May the 18th. Thank y'all very much.

7 MR. ALFARO: Thank you, Your Honor.

8 THE COURT: 9:30?

9 MR. ALFARO: Yes, sir.

10 MS. KENNEDY: Yes.

11 THE COURT: See you at 9:30.

12 MS. KENNEDY: Yes, sir.

13 (WHEREUPON, the Court recesses for the day.)

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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 6th day of March, 2012 at approximately 9:39 a.m.)

(WHEREUPON, State's Exhibits 3 through 42 are marked for identification purposes.)

THE COURT: We're still waiting on one juror. Did y'all get the exhibits marked?

MS. KENNEDY: Yes.

MR. ALFARO: We did, Your Honor.

THE COURT: Have y'all agreed on them?

MR. ALFARO: Your Honor, we have agreed on almost all of the exhibits we had marked. State's Exhibit 1 and 2 from the hearing yesterday, those will be carried over as to State's Exhibits 1 and 2 for the actual trial, that being the Miranda form on June 2nd and the statement form from June 3d. We have agreed to the admissibility of photographs 3 through 32. There are two photographs that --

THE COURT: You don't have to tell me what they all are. Do we have -- did you give the Court Reporter the list?

MR. ALFARO: Uh, yes, Your Honor.

THE COURT: Do you have an extra copy of the list?

MR. ALFARO: She actually formulated the

1 list.

2 COURT REPORTER: I'll make you a copy.

3 THE COURT: You'll make me a copy?

4 COURT REPORTER: Sure.

5 MR. ALFARO: There are four -- there are four
6 items that we have not agreed to, two photographs
7 and two which we've premarked as Exhibits 34 and 35
8 -- 33 and 34 for identification. Those are
9 photographs of shotgun shells.

10 THE COURT: What's your objection?

11 MS. KENNEDY: Your Honor, it's -- there's --
12 obviously, Mr. Jackson is charged with Possession of
13 a Weapon during the Commission of a Violent Crime.
14 No weapon has ever been recovered. When they
15 executed the search warrant at his house, they
16 recovered two different or three different
17 containers that had bullets in them. There's
18 obviously no --

19 THE COURT: We'll just have to deal with that
20 when it comes up.

21 MS. KENNEDY: All right.

22 THE COURT: I thought it was something to do
23 with the photograph that --

24 MS. KENNEDY: Uh, no, sir. It's just the
25 bullets.

1 **THE COURT:** All right. On whether it's
2 relevant or not.

3 **MR. ALFARO:** Yes, sir. The things that she's
4 challenging the relevancy of are two photographs of
5 the shell casings found inside the house and the
6 actual casings themselves or shells themselves.

7 **THE COURT:** Shotgun shells?

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

9 **MS. KENNEDY:** Yes, sir.

10 **THE COURT:** Have they been fired or not been
11 fired?

12 **MR. ALFARO:** Uh, they are unfired.

13 **THE COURT:** Unfired shotgun shells.

14 **MR. ALFARO:** Yes, sir.

15 **THE COURT:** Okay. Well, we'll just deal with
16 that whenever you get to the point of offering them.
17 How are you going to make a connection between
18 finding -- lot of people have shotgun shells in
19 their house.

20 **MR. ALFARO:** Well, Your Honor, the -- the --

21 **THE COURT:** I know he testified yesterday he
22 had a long gun.

23 **MR. ALFARO:** Yes, sir.

24 **THE COURT:** That could be a rifle, a shotgun
25 or anything?

1 **MR. ALFARO:** Yes, sir. And the State's
2 position as far as the relevancy would be that no
3 weapon is recovered in this incident. The testimony
4 from the victim is going to be that it was a long
5 gun or a rifle or shotgun.

6 **THE COURT:** It was the victim who
7 distinguished whether it was a rifle or a shotgun?

8 **MR. ALFARO:** She's not going to be able to
9 say which one it would be, Your Honor.

10 **THE COURT:** Okay.

11 **MR. ALFARO:** The position -- the State's
12 position would be that there's no weapon found and
13 the fact that the defendant has shells in his
14 resident that is consistent with that type of weapon
15 to make it relevant to the issue of whether he
16 actually had possession of the weapon in the crime
17 that he's charged with.

18 **THE COURT:** What's your position?

19 **MS. KENNEDY:** Thank you, Your Honor. Our
20 position would be that it's far more prejudicial
21 than probative. That's simply our objection. No
22 weapon was --

23 **THE COURT:** I'll make a decision after I hear
24 some of the testimony. Okay.

25 **MR. ALFARO:** I think --

1 **THE COURT:** Somebody could say the man had a
2 shotgun at the crime scene and that's different.
3 But he said a long gun. And a long gun could mean
4 anything. A shotgun, rifle or --
5 **MR. ALFARO:** Yes, sir. I believe the
6 testimony --
7 **THE COURT:** Any type of -- I assume a long
8 gun means anything with a long barrel.
9 **MR. ALFARO:** Yes, sir.
10 **THE COURT:** I don't know. You doubt that.
11 You think it has to have a long barrel?
12 **MR. ALFARO:** I think there has a difference
13 between a pistol and a long barrel.
14 **THE COURT:** Okay. I will agree with that.
15 Not being able to distinguish shotgun shells versus
16 308s or whatever. As defense counsel says, it may
17 be relevant. I'm not sure that the probative value
18 outweighs the, uh, prejudicial effect.
19 **MR. ALFARO:** Yes, sir.
20 **THE COURT:** But we'll make that -- I'll make
21 that decision after I hear some testimony. Anything
22 else we can take up while we're waiting on this
23 juror?
24 **MS. KENNEDY:** I don't think so, Your Honor.
25 **THE COURT:** Okay.

1 (WHEREUPON, there is a pause.)

2 THE COURT: Is he here?

3 THE BAILIFF: Yes, sir.

4 THE COURT: We got him?

5 THE BAILIFF: Yes, sir.

6 THE COURT: All right. Is the State ready to
7 proceed?

8 MR. ALFARO: Yes, Your Honor.

9 THE COURT: Is the defense ready to proceed?

10 MS. KENNEDY: Yes, Your Honor.

11 THE COURT: All right. Bring us a jury if
12 you would please.

13 (WHEREUPON, the jury enters at approximately
14 9:46 a.m.)

15 THE COURT: Ladies and Gentlemen of the jury
16 panel, --

17 Swear the jury please, ma'am.

18 THE CLERK: Ladies and Gentlemen of the jury,
19 please stand and raise your right hands to be sworn.
20 You shall well and truly try and true deliverance
21 make between the State of South Carolina and the
22 defendant at the bar whom you shall have and charge
23 and a true verdict render according to the evidence
24 so help you God? Say I do.

25 (WHEREUPON, each juror responds.)

1 **THE CLERK:** Thank you. Be seated.

2 **THE COURT:** All right. Ladies and -- I'm
3 sorry. All right. I understand one of the jurors
4 would like to take notepads -- take notes. How many
5 jurors would like to take notes? We've got three.
6 All right.

7 Pass out the notepads and pens or pencils to
8 the three jurors that would like to take notes.

9 While they are doing that, can I see the
10 attorneys up here for just a second please?

11 (WHEREUPON, a bench conference is held off the
12 record.)

13 **THE COURT:** All right. Is there anybody else
14 that would like to have a notepad and pens?
15 (No response.)

16 All right. Put your names on the -- inside the
17 notepads. When you leave the courtroom, leave them
18 in your chairs. And the bailiff will collect them
19 and we'll give them to you every time you come back
20 in the courtroom. We're going to keep control of
21 the notepads until the trial is over. When the --
22 excuse me -- testimony is over and you go to your
23 jury room to begin your deliberations, you'll be
24 able to take them with you at that time.

25 All right. Basically, the format of the trial

1 or process of the trial is that the attorneys will
2 make an opening statement. In the opening
3 statements, they will tell you what they plan on
4 proving from testimony and evidence during the
5 trial. After the opening statements, the state will
6 start calling witnesses and have each witness on
7 direct. The defense counsel will have those
8 witnesses on cross. The difference between direct
9 and cross is, on cross, you can ask a leading
10 question. A leading question is a question which
11 suggests the answer. Whereas, on direct, you can
12 not ask leading questions.

13 After the state has finished all their
14 testimony, their witnesses, the defense can put up
15 witnesses if they so choose. They are not obligated
16 to, but they may if they so choose. And the roles
17 reverse. The defense counsel will have the
18 witnesses on direct and the State would have the
19 witnesses on cross.

20 After that testimony is taken, if it is taken,
21 the State will have the opportunity to put up reply
22 testimony if they so choose. They will have
23 witnesses on direct and the defense counsel will
24 have witnesses on cross.

25 After all the testimony has been taken, then

1 the attorneys will make closing arguments. They
2 will argue their case to you, their prospective of
3 the evidence and their interpretation of the
4 evidence. And then after the closing arguments, I
5 will charge you on the law. And then after I finish
6 charging you on the law that is applicable in this
7 particular case, you will begin your deliberations.
8 I sort of want to explain to you the process.

9 We will generally run from 9:30 to 5:00 or
10 5:30. It depends on when we have an opportunity to
11 stop. We will stop somewhere close to one o'clock
12 for lunch. I'll give you an hour and a half for
13 lunch. We may quit at 12:30. We may quit at a
14 quarter til 1:00. But at some convenient stopping
15 point close to one o'clock, we will stop everyday.
16 The case will probably take -- I don't know exactly
17 -- maybe a day and a half, two days, maybe two and a
18 half days. I don't know. It depends on how fast
19 the testimony moves along.

20 Solicitor.

21 **MS. PITTMAN:** To most of us, church is
22 considered a haven, safe place, sanctuary. For the
23 victim in this case, Hazel Dunning, on May 18th,
24 2010, church turned into a place of terror at the
25 hands of the defendant, Benjamin Jackson.

1 Ladies and Gentlemen of the jury, my name is
2 Ariel Pittman. I represent the State. The
3 defendant is charged with Armed Robbery, Burglary
4 second degree, Possession of a Firearm during a
5 Violent Offense, Grand Larceny, Burglary second
6 degree and Failure to Stop For a Blue Light.

7 You will hear from the victim in this case,
8 Hazel Dunning, who will tell you how she went to
9 church that day to do some cleaning. She will
10 describe how she entered the kitchen area and, out
11 of nowhere, felt the barrel of the gun against her
12 head and then pointed in her face. She will
13 describe how someone said to her to give her [sic]
14 her f----- keys and her cell phone or they were
15 going to blow her f----- head off. His choice of
16 words. Not mine. She will tell you how he told her
17 to lay down and not get up or he would blow her head
18 off.

19 You will hear from other witnesses who will
20 describe how they knew that wasn't Ms. Dunning
21 driving away that day because the car was driving
22 off in such a wild manner, speeding away. The
23 defendant's crime doesn't stop there though. You
24 will hear how a few days later, a police officer
25 spotted the defendant driving the vehicle and

1 attempted to pull him over. Initially, the
2 defendant stopped. When he was approached by
3 another officer, he sped off leading the police on a
4 lengthy chase which didn't end until he crashed the
5 vehicle and sped off into the woods.

6 He made a mistake though when he ran off so
7 quickly. He left behind enough evidence for police
8 to go straight to his residence and execute a search
9 warrant. They found the items belonging to the
10 victim that were on her car and in her car at the
11 time of the robbery.

12 Ladies and Gentlemen, at the close of this case
13 and after the presentation of all the evidence, we
14 ask that you end the victim's nightmare that started
15 that day at church and find the defendant guilty on
16 all counts.

17 **THE COURT:** Ms. Kennedy.

18 **MS. KENNEDY:** Thank you, Your Honor.

19 Deputy Solicitor.

20 Solicitor.

21 Ladies and Gentlemen, how are you? My name is
22 Patty Kennedy as you heard when we were doing jury
23 selection yesterday. Seated with me at counsel
24 table is Keisha White. We represent Benjamin
25 Jackson in the case that the State is about to put

1 before you concerning all the charges the Assistant
2 Solicitor just related to you.

3 As we come before you today, we know that you
4 will do your duty as jurors. You will act according
5 to your oath. The oath just says that you have to
6 be fair, objective and impartial as you judge all
7 the facts in this case.

8 Now, again, as you have heard, Mr. Jackson is
9 charged with a series of offenses, some of which are
10 more serious than others. But that having been
11 said, each of them is critical to Mr. Jackson. The
12 reason is that each of them carries a penalty. And
13 it's your job to decide whether or not he's guilty
14 or not guilty of the charges. You control his
15 liberty.

16 A trial is supposed to be about seeking the
17 truth. The way it works -- and you see a lot of it
18 on television. But the way it works is the State
19 will put up its case, put its evidence up. We can
20 put up evidence or we can just simply challenge what
21 the State says in terms of what their version of the
22 facts would be. And that's important for you to pay
23 attention to all of that.

24 They have to prove to you beyond a reasonable
25 doubt that Mr. Jackson is guilty of all the things

1 that he's been charged with. They have to do that
2 fact by fact, element by element, which is what
3 Judge Nicholson would explain to you by the end of
4 trial. They must convince you beyond a reasonable
5 doubt that he is guilty.

6 There are certain facts that we won't
7 challenge. I'll just tell you in the very
8 beginning. We're not going to challenge the fact
9 that Mr. Jackson was driving Ms. Dunning's SUV on
10 June -- excuse me -- May 26th. We're not. Okay.
11 He was driving. We're not going to challenge the
12 fact that he was driving that car when Berkeley
13 County Sheriff's Department officers approached him
14 and activated their blue lights.

15 We're not going to challenge the fact that
16 there were certain items in that car when it was
17 recovered that belonged to Mr. Jackson. Nor are we
18 going to challenge the fact that there were certain
19 items that were recovered from Mr. Jackson's house
20 that belonged to Ms. Dunning.

21 We will concede at the outset that Mr. Jackson
22 was driving the car that he knew or should have
23 known had been stolen. As the Assistant Solicitor
24 indicated to you, all of this happened on May the
25 18th at the St. Stephens Evangelical Church. Mr.

1 Jackson was not driving the car until some eight
2 days later. Eight days after the fact is when the
3 officers noticed him driving the car. Eight days
4 after all of these other things occurred. Now, it's
5 up to the State to connect all the dots. They have
6 to make the transition from May 18th to May the
7 24th. They have to show you in an absolute and
8 irrefutable way that Mr. Jackson was the one that
9 entered that church that day and committed all the
10 other offenses that he's been charged with. And I
11 submit to you, Ladies and Gentlemen, that they can't
12 do that. And if they can't do that, then it's your
13 obligation under the law and pursuant to your oath to
14 find him not guilty.

15 Uh, at the end of this process, I will have the
16 opportunity to come back and talk with you again.
17 We will review all the evidence that you have heard.
18 The case will be turned over to you for your
19 deliberations. Until that time, I ask you again to
20 be fair, objective and impartial as you sit in
21 judgement on this case. Thank you.

22 **THE COURT:** All right. Before we get started
23 with the testimony, I want to put on the record I
24 understand the parties have agreed to admissibility
25 of the State's exhibits 1 through 32 and 37 through

1 42. Is that correct from the State?

2 MR. ALFARO: Uh, yes, Your Honor.

3 THE COURT: Is that correct from the defense?

4 MS. KENNEDY: Yes, Your Honor.

5 THE COURT: All right. The Court admits
6 exhibits -- State's Exhibits 1 through 32, 37
7 through 42 without objection. You may call your
8 first witness.

9 (WHEREUPON, State's Exhibits 1 through 32 and 37
10 through 42 are admitted into the record.)

11 MR. ALFARO: Thank you, Your Honor. The
12 State calls Harold Wadford.

13 THE CLERK: Please raise your right hand.
14 Place your left hand on the Bible.

15 HAROLD WADFORD

16 having first been sworn, testifies as follows:

17 THE CLERK: Please be seated. State your full
18 name. Spell your last name for the record.

19 THE WITNESS: Harold Lee Wadford. W-A-D-F-O-
20 R-D.

21 DIRECT EXAMINATION

22 BY MR. ALFARO:

23 Q Good morning, Mr. Wadford. Would you please
24 tell the jury where you work?

25 A St. Stephens Police Department.

1 Q And how long have you been with the St. Stephen
2 Police Department?

3 A Approximately nine years now.

4 Q And what is your current rank and current duty
5 assignment over at St. Stephen Police Department?

6 A Uh, current rank is Sergeant. I do the
7 warrants and work on patrol.

8 Q And were you working in that capacity on May
9 the 18th of 2010?

10 A I was on patrol that day.

11 Q And did you have the opportunity to respond to
12 an incident at the St. Stephen Evangelical Church?

13 A Yes, sir.

14 Q And are you aware of where that church is
15 located?

16 A Yes, sir. It's at 150 Church Road.

17 Q Is that located within the city limits of St.
18 Stephen?

19 A Yes, sir.

20 Q And which county is that in?

21 A Berkeley county.

22 Q And do you recall what type of incident you
23 responded to at that location?

24 A I responded for a, uh, armed robbery to a
25 person and a vehicle being stolen.

1 Q All right. And approximately what time was
2 that call dispatched to you?

3 A 9:48 approximately.

4 Q And how long did it take you to get there?

5 A Four minutes, approximately four minutes.

6 Q And when you arrived at the scene, was the
7 suspect still there?

8 A No, sir.

9 Q Was the victim still there?

10 A Yes, sir.

11 Q Did you have an opportunity to speak with the
12 victim?

13 A Yes, sir. I spoke with Ms. Dunning. We got a
14 statement and got the description of the suspect.

15 Q Is that Hazel Dunning?

16 A Yes, ma'am. Yes, sir.

17 Q And can you describe for the jury what her
18 mental state, mental condition was at the time that you
19 spoke with her.

20 A She was a little shaken up, but her mental
21 status was like normal. Talking. Just a little shaken
22 up from the incident that just occurred.

23 Q And did she provide you with a statement as to
24 what had taken place?

25 A Yes, sir.

1 Q And when you arrived at the scene, in addition
2 to speaking with Ms. Dunning, were there any other
3 witnesses at the scene?

4 A Uh, the only other one that I spoke to that was
5 there was her son. But I did not get a statement from
6 him due to the situation.

7 Q What situation was that?

8 A He was more hysterical than what she was. I
9 didn't want to make him any worse.

10 Q Were you able to determine if he was inside the
11 church when the robbery took place?

12 A Not 100 percent positive on that part.

13 Q And were you able to determine what had taken
14 place?

15 A Only by what Ms. Dunning stated to me is the
16 only information I have.

17 Q And when you determined what was happening --
18 what had happened at the scene, was any information about
19 that incident broadcasted out or BOLO'd out to any other
20 agencies or other officers?

21 A Yes, sir. It was BOLO'd out that it was a Ford
22 Expedition, white with tan in color, had a sandals
23 situation sticker on the back with a Palmetto tree and a
24 Clemson sticker. And the tag number was notified to our
25 dispatch for surrounding agencies with Berkeley county.

1 Q You recall what color that vehicle was?

2 A It was white with a tan bottom edge.

3 Q And as part of that BOLO, was it information
4 included as to, uh, why that vehicle was important or --

5 A Yes, I advised that it was involved in an armed
6 robbery to a person. It was taken from the church in
7 reference to the incident.

8 Q And while you were at the scene, were you able
9 to locate any, uh, -- the weapon that had been used?

10 A No, sir.

11 Q Were you able to determine a general
12 description of the suspect?

13 A From what was stated to me by Ms. Dunning, it
14 was a black male, approximately 5'11 to 6'2, 150 to 180
15 pounds, wearing a white t-shirt, with a rifle.

16 Q And did you attempt to patrol the area to try
17 to locate the suspect?

18 A The other officer that was on duty patrolled
19 the area and went towards Jamestown, which was the
20 direction that the vehicle was stated to have gone. I
21 stayed on scene with the victim getting information and
22 stuff.

23 Q To your knowledge, did anyone have any contact
24 with the suspect?

25 A Not that date.

1 Q Any contact with the vehicle?

2 A No, sir.

3 Q Did you personally participate in the followup
4 investigation of this case?

5 A Uh, no, sir. Everything was turned over pretty
6 much to Berkeley county after that.

7 Q That being the Sheriff's Office?

8 A Yes, sir.

9 Q Thank you.

10 CROSS-EXAMINATION

11 BY MS. KENNEDY:

12 Q Good morning, Sergeant Wadford. How are you?

13 A I'm doing good.

14 Q Uh, the information that you were given and
15 even when you responded to the church, there was no
16 identification, correct?

17 A Identification on --

18 Q On the person who might have --

19 A Just a description.

20 Q Just a description.

21 A Yes.

22 Q No name.

23 A No name.

24 Q And the description, as you indicated, black
25 male, 5'11 to 6'2, 150 to 180 pounds.

1 A Yes, ma'am.

2 Q That's all.

3 A Wearing a white t-shirt.

4 Q There's no -- there was no outstanding physical
5 characteristic?

6 A That was the only thing that was stated to me
7 on that date..

8 Q Okay. And no indication as to what his name or
9 identity might be?

10 A No, ma'am.

11 Q And at what point in time or when did you all
12 turn this investigation over to the Berkeley County
13 Sheriff's Office?

14 A I don't know the exact date that they took it
15 over. I know they started -- they were there on the
16 scene that same day. I don't know exactly what date they
17 actually got the full investigation.

18 Q Just out of curiosity, what is the protocol for
19 that?

20 A For?

21 Q Turning it over.

22 A Just requested for assistance cause we're a
23 small agency.

24 Q Okay. Okay. All right. And y'all initiated
25 that?

1 **A** Yes.

2 **Q** Okay. That's all I have. Thank you very much,
3 sir.

4 **THE COURT:** Any redirect?

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

6 **THE COURT:** Mr. Wadford, you may step down.
7 Thank you very much.

8 Any objection to having him excused?

9 **MR. ALFARO:** None from the State.

10 **MS. KENNEDY:** None from the defense, Your
11 Honor.

12 **THE COURT:** You may be excused if you so
13 choose. Call your next witness please.

14 **MS. PITTMAN:** The State calls Hazel Dunning.

15 **THE CLERK:** Please raise your right hand and
16 place your left hand on the Bible.

17 **HAZEL DUNNING**

18 having first been sworn, testifies as follows:

19 **THE CLERK:** Please be seated. State your
20 full name. Spell your last name for the record.

21 **THE WITNESS:** Hazel T. Dunning, D-U-N-N-I-N-G.

22 **DIRECT EXAMINATION**

23 **BY MS. PITTMAN:**

24 **Q** Ms. Dunning, how old are you?

25 **A** I am 62.

1 Q Are you from St. Stephen?

2 A Uh, yes.

3 Q How long have you been in St. Stephen?

4 A Uh, basically all my life. I would say maybe
5 around 35, 40. About 40 years. No. 40 years. I'm
6 sorry. My older son is 40.

7 Q And do you have any children?

8 A Uh, yes. Two sons.

9 Q Two sons. How old are they?

10 A 40 and 36.

11 Q And what are their names?

12 A Charles Dunning, II and Robert Stephen Dunning.

13 Q Are you employed?

14 A Yes. I'm self-employed.

15 Q Where are you employed?

16 A I'm self-employed. I clean houses and I clean
17 the church. From St. Stephen all the way to Moncks
18 Corner, I do jobs.

19 Q So you say you clean at St. Stephen
20 Evangelical?

21 A Yes.

22 Q And how long have you been going to that
23 church?

24 A Around 35 years.

25 Q You are a member there?

1 A Yes.

2 Q And were you at that church cleaning on May
3 19th, 2010?

4 A Yes.

5 Q Is that a normal day for you to be at the
6 church cleaning?

7 A Uh, yes. Well, I normally go either on Mondays
8 or Tuesdays. And, uh, it happened that we went on
9 Tuesday that day because that Monday, we didn't do much
10 work.

11 Q Do you volunteer there or is that a paid --

12 A Paid.

13 Q How long ago did you take that job there?

14 A Uh, I can't say how far back. I know it was an
15 older lady that was doing it before me and something
16 happened to her and they asked me to do it. And I want
17 to say that I been doing it for about five or six years.

18 Q And when you are at the church cleaning, about
19 how long does it usually take you to get the job done?

20 A Sometimes it's three to four hours. Depends on
21 what I have to do. It may be a little bit longer.

22 Q Uh, are you usually by yourself or is someone
23 with you?

24 A Uh, my son is normally with me. Some days I
25 have went by myself. But that day, he was with me.

1 Q Which son is that?

2 A Robert.

3 Q Does he help you clean?

4 A Yes.

5 Q What does he usually do?

6 A Uh, I have him to do the vacuuming and take out
7 some of the trash sometimes, but he normally runs the
8 vacuum.

9 Q Okay. When you are there cleaning, is it just
10 you and Stephen [sic] there usually?

11 A Normally, it is. But, uh, that day, uh, it
12 happened to be, uh, -- we was having construction -- new
13 construction done to the church.

14 Q So there were other people present?

15 A Yes.

16 Q Were they workers?

17 A Yes.

18 Q About how many workers were present?

19 A I have no idea. Uh, I don't know how many was
20 there that day. Normally, it was maybe about a dozen
21 people or more.

22 Q And when you are there working, are the doors
23 locked or unlocked?

24 A Normally, they are locked. But that day, they
25 were unlocked because of all the workers and stuff.

1 Normally -- in the back cleaning, in the cleaning
2 section. They are, normally, in and out.

3 Q So normally the church doors are locked so that
4 not anyone can just come in?

5 A Oh, yeah. The church stays locked.

6 Q That day, they were unlocked because the
7 construction workers were present?

8 A Yeah, all the workers and all, they were in and
9 out the bathrooms and stuff when I was back in the
10 building there to -- it was a kitchen area back there.

11 Q And why was the construction workers present
12 there again? There was renovations going on?

13 A Yes. We were having -- we were having a new
14 sanctuary built.

15 Q No one else was supposed to be there that day
16 at the church except for you, your son and some of those
17 construction workers?

18 A Correct.

19 Q So a person would have to be working at the
20 church at that time to have permission to go in?

21 A Uh, yeah.

22 Q And on that day, what time did you get there?

23 A Anywhere from 9:00 to 9:30. But I think that
24 day, we were running somewhere around 9:30 or so. We
25 don't have a set time. We can go at any time of day.

1 Q And when you got there around 9:00, or 9:30,
2 were the workers present?

3 A Yes.

4 Q Can you describe where you parked your car when
5 you got there?

6 A Uh, the -- we were having service in the back
7 building where I was at at the time because we were, you
8 know -- anyway, the other section was being built. I
9 pulled up. I always back in by that door out the way
10 because of being out of the way of the construction
11 workers coming in and out. So I backed my vehicle up in
12 there next to a door.

13 Q And can you describe what your car looked like?

14 A It was a white Expedition, Eddie Bauer with tan
15 on the bottom.

16 Q Were there any identifying markings on the
17 vehicle specific to you?

18 A Uh, yes, I had the Sandals in the right hand
19 corner of the back window, the Palmetto tree in the left
20 hand corner of the back window. And I'm pretty sure the
21 Clemson one was right in the center of the back. Also I
22 had another little, uh, Palmetto tree that was silver
23 colored down by the license tag stuck on the back of the
24 vehicle. My, uh, trailer hitch was not in there at the
25 time because I had a cover, a Ford emblem cover that was

1 on the bottom.

2 Q Was there any damage to your vehicle at the
3 time?

4 A No, ma'am.

5 Q Did you leave anything in your car when you
6 entered the church to go clean?

7 A Uh, yes. I left my purse and a lot of other
8 personal belongings and papers and pictures and stuff
9 that I had. Uh, I had a trailer hitch, I had a cooler.
10 I had a Palmetto throw that was in the back seat, a GPS
11 and a radar detector, and I think -- oh, my roadside
12 assistance kit that I carry and my book that belongs to
13 the vehicle was in there with my different identification
14 and everything in it.

15 Q Okay. And when you got to the church, did you
16 have to unload anything from the car, any cleaning
17 supplies?

18 A Normally, they have all the cleaning stuff. At
19 that time, I didn't unload. I wasn't really there that
20 long to really get out to go out and get my stuff out. I
21 mean, I was, you know, doing some other stuff before I
22 would have did that.

23 Q Can you describe for the jury a little more
24 about where the building was and where you parked in
25 relation to the building and the door?

1 A The building sits behind where the new
2 construction was being done. It's a metal, big metal
3 building. And it has a breezeway in between the church
4 and that. On the side, it's got a side door. It's got
5 some air conditioner units and stuff, big old units
6 sitting out there on that site. I went in the side door
7 that morning.

8 Q What did you do after you parked your car?

9 A Uh, I think I had gotten a phone call from one
10 of my friends. I was on the phone with her because her
11 aunt was up in the hospital. But anyway, I talked to her
12 for a while, a few minutes. On the inside of the church,
13 you have no signal with the phone. So I talked to her
14 and then I went on in and I got the trash and I had taken
15 some trash out from the kitchen area. And that's
16 whenever I went back in and that's when my day went to
17 crap.

18 Q Uh, you said your day went to crap. Did
19 anything usual happen to you that day?

20 A Uh, that's whenever someone came in behind me
21 and asked me for my keys. I thought it was one of the
22 workers. I thought they wanted to move my vehicle. I
23 turned around. I think I hit the barrel of the gun. And
24 that's when the gun was in my face. They wanted my f'ing
25 keys or I'll blow your head off.

1 Q How are you able to tell it wasn't someone that
2 you knew?

3 A I knew the voice. I knew right then that it
4 was not anybody there at the church.

5 Q And you had a rifle pointed at you?

6 A It was a long barrel gun. To me, I was looking
7 up the barrel of it. The barrel of it was small to me.
8 It wasn't huge. It was a small barrel.

9 Q Uh, and he had that gun pointed right at you?

10 A Yes, he had it at my head the whole time.

11 Q How close was it to your face?

12 A Oh, it was there in my face. Basically, all I
13 could see was the barrel of the gun.

14 Q Did you think he might shoot you?

15 A I had no idea, but yes, I feared for my life.

16 Q So you were in fear of your life?

17 A Uh, yes, ma'am.

18 Q Did he say anything else to you?

19 A Uh, no. His only words is -- I think the only
20 words he knew were f'ing and blowing your head off.

21 Q Did you comply with his demands?

22 A Uh, yes.

23 Q What did you do?

24 A Uh, I handed him my keys.

25 Q Did you give him anything else?

1 A He wanted my cell phone, f'ing cell phone and
2 blow your f'ing head off.

3 Q So he got those things from you. And then what
4 did he make you do?

5 A He made me lay down on the floor.

6 Q Do you remember what he was wearing?

7 A White t-shirt, dark colored pants. By looking
8 up the gun and stuff, I didn't want to look him directly
9 in the face. But I could tell by the eyes. I could see
10 his eyes. I thought he may have had a cap on his head,
11 but I can't be for sure. It was something dark.

12 Q And all this happened to you in the kitchen
13 area?

14 A Yes.

15 Q And is it loud in the kitchen area?

16 A Yes, it is.

17 Q Why is it loud in there?

18 A Uh, we have a lot of freezers, refrigerators,
19 an ice machine. And then, of course, the air conditioner
20 is going and it's loud.

21 Q Okay. How did you feel at the time? What were
22 you thinking?

23 A I was fearing for my life and I didn't know
24 what was going to happen.

25 Q Where was your son during the robbery?

1 **A** He was up the stairs. He went up there to get
2 the vacuum cleaner out. He heard the commotion and the
3 guy cussing and hollering at me. And he stood still. He
4 just stood there.

5 **Q** What did you do after the defendant left?

6 **A** My son heard the vehicle spin off. He run down
7 the stairs to alert the workers. He was scared that --
8 he thought that the guy had took me with him. He just
9 scared him. And he -- anyway, by the time I got up and I
10 walked out the door, he was just thankful to see me.

11 **Q** Did you call the police?

12 **A** Yeah. Well, I think another guy -- I think
13 Phillip Balentine called the police because he had my
14 phone. Of course, my son, he was punching in with his.

15 **Q** Okay. And do you know how long it took the
16 police to arrive?

17 **A** Uh, it wasn't too long. It may have been about
18 five or ten minutes afterwards.

19 **Q** What information did you give to the police?

20 **A** They asked us what had happened and about the,
21 you know, the gun and what color my vehicle was and what
22 all was on it.

23 **Q** Did you give a written statement?

24 **A** Uh, yes, I did.

25 **Q** Was your car returned to you?

1 A Uh, yes, they recovered it.

2 Q Do you know when that car was returned to you?

3 A About two weeks afterwards.

4 Q When you bought that car, how much did you pay
5 for it?

6 A It was 40 to 42.

7 Q How long did you own the car before it was
8 stolen?

9 A I bought it brand new in '06 or last of '05.

10 Q In what condition was the car in when it was
11 stolen?

12 A It was in good condition. Clean.

13 Q And what kind of condition was it in when it
14 was returned to you?

15 A It was heartbreaking. It was messed up. It
16 was dirty on the inside and the outside was wrecked.

17 Q Was there anything missing from the car? Had
18 it been changed in any way?

19 A Uh, yes. They had taken the stickers and stuff
20 off the back of it. They had taken the luggage rack off
21 the top of it. And, of course, all my stuff was gone
22 from out the inside of it. Well, basically, all my
23 stuff. I had a couple of umbrellas and all in the door
24 that he left. And the radar detector was still in it.

25 Q What kind of damage was there to the vehicle?

1 **A** It was wrecked over on the, uh, -- had a -- it
2 was wrecked on the right bumper, front bumper. The
3 driver's side was all wrecked. It had a tire that was
4 warped.

5 **MS. PITTMAN:** Court's indulgence. (Pause.)

6 **BY MS. PITTMAN:**

7 **Q** When he had the gun he pointed at you, where
8 were your hands?

9 **A** Where was my hands?

10 **Q** Yes. Did you have your hands up?

11 **A** I had them up.

12 **Q** And ---

13 **A** Yes.

14 **Q** --- what did he have you do with your hands up?
15 How long were you that way?

16 **A** I was that way the whole time until I laid down
17 on the floor. My keys was in my back pocket. Whenever I
18 had to hand those to him and then my phone. Then my
19 hands were up.

20 **Q** And then when he had you lay down on the
21 ground, how long did he have you lay there?

22 **A** I don't know how long I laid there. He just
23 told me to lay there and if I didn't lay there, he'd blow
24 my f'ing head off. And I laid there for -- and prayed
25 that my son would stay put where he was at, that he would

1 not come out, that he would see him.

2 Q I'm going to show you some photographs now.

3 (Pause.)

4 I'm going to show you what's been marked
5 State's Exhibit 8. It's going to come up on the screen
6 behind you.

7 A So turn around?

8 Q Uh-huh. Do you recognize that photo?

9 A Uh, yes.

10 Q What is that?

11 A It's my Expedition.

12 Q Uh, what do we see here? Can you point out
13 what's different about your car?

14 A Yes, the top luggage rack thing's gone. The
15 emblem that was right here next to my license tag or
16 where my tag used to be was a silver-colored Palmetto
17 tree.

18 Q Okay.

19 A That's where my Palmetto tree was at. It was
20 silver colored. And my sandals -- blue sandals was in
21 that corner. . My blue Palmetto tree was in that corner.
22 Of course, my tag's gone. That's still there. And they
23 kept my -- I forgot about that. They kept that, the
24 cover that went around my tag.

25 Q So they changed the tag out and it looks like

1 your emblem is missing and the stickers are gone?

2 A Yes.

3 Q Okay.

4 A The back of it, I think it said, uh, no
5 trespassing written on the back of it. And I took it
6 off.

7 Q I'm going to show you now what's been marked as
8 State's Exhibit 13. And do you recognize that?

9 A Yes. That's my same -- that's my vehicle.
10 That's damage done to the corner of it.

11 Q Is that the only damage you see is the corner
12 right there?

13 A Uh, as of right now, yes.

14 Q I'm going to show you now what's marked as
15 State's Exhibit 11. Do you recognize that?

16 A Uh, yes. That's the good side of it.

17 Q That's the good side?

18 A Yes, ma'am.

19 Q So there was no damage on this side that you
20 could see?

21 A Uh, none that I was aware of. I don't know
22 what the guy at the body shop found after he got it. To
23 me, it looked good.

24 Q I'm going to show you what's been marked
25 State's Exhibit 9.

1 A This is still my vehicle and this is the
2 driver's side. That's tore off. Dents in it. All
3 that's tore open. Dents in there. The light, the mirror
4 thing and all is all broke up on it.

5 Q And this damage was not on your vehicle prior
6 to the robbery?

7 A No, ma'am.

8 Q This is what it looked like once you got it
9 back?

10 A Yes.

11 Q Also let me show you what's been marked State's
12 Exhibit 10. And can you tell us what this is?

13 A That's the back of my vehicle. Again, that's
14 where my Palmetto tree is at. And again, my tag is gone.

15 Q I'm going to show you now what's been marked
16 State's Exhibit 14.

17 A Uh, that's my glove box console. That was one
18 of my appointment cards right back there. But other than
19 that, I don't recognize anything else that's in the
20 thing. All my stuff is gone.

21 Q So those things in the console aren't yours?

22 A No.

23 Q Okay. I'm also going to show you what's been
24 marked State's Exhibit 12. Do you recognize what's in
25 this photograph?

1 A Uh, I don't know if that's my book that was in
2 the glove box with my papers and stuff in it. It seems
3 like it may be, uh, --

4 Q Is that --

5 A Do what now?

6 Q Is that Wal-Mart bag yours?

7 A No. Nothing else in there -- my floor mats are
8 in there, but the bags aren't mine.

9 Q And the Sprite bottle?

10 A Oh, no. None of that stuff's mine. I don't
11 know what that book is right there.

12 Q Let me show you one more picture again. What's
13 been marked State's Exhibit 8. The, uh, back sensors on
14 the automobile --

15 A Oh, yes. Right there. That's the sensors that
16 was on the --

17 Q And the Ford emblem?

18 A That was on the trailer hitch, the trailer
19 hitch thing with the ball that was in. I had that in the
20 back. I didn't --

21 Q After you initially talked to police officers
22 the day of the incident, did you have a chance to talk to
23 the police anymore?

24 A Uh, yes, I did. I spoke with them off and on.
25 Okay. I spoke with them off and on and also the

1 Sheriff's Department.

2 Q Were you able to provide them with anymore
3 information?

4 A Yes, I did. I provided the Sheriff's
5 Department more information.

6 Q And what was that information?

7 A The information was about the trailer hitch
8 cover.

9 Q The Ford emblem one?

10 A Yes, the Ford emblem one. I did not tell them
11 about that to begin with.

12 Q Okay.

13 A And of course the tag thing, I didn't realize
14 they were going to keep that.

15 Q And did you also --

16 A And about the sensors that was on the -- how
17 many sensors that that year model had. I told them that
18 that year had that many sensors on the back of it and
19 also about the Ford emblem thing being on it.

20 Q Okay. I'm going to show you some more photos.
21 I'm going to show you what's been marked as State's
22 Exhibit 17. Is there anything that you identify in this
23 picture?

24 A Yes, ma'am. That's my roadside assistance kit
25 that I had in the back. And I think the way that it

1 looked, that's my, uh, -- it was in my vehicle or either
2 -- I don't know what that is. I just know that that is
3 mine.

4 Q All right. I'm going to show you what's been
5 marked State's Exhibit 19.

6 A My cooler is the only thing I recognize in that
7 picture.

8 Q So you can identify that that's your cooler?

9 A Yes, ma'am.

10 Q What I forgot to mention is that these are
11 photos that were taken from the defendant's residence at
12 the time of the search warrant. So these are items that
13 were found in his home.

14 A My tires are -- my tires are regular full-sized
15 tires. I don't know whose that is.

16 Q So it's just the cooler that you recognize as
17 being yours?

18 A Yes.

19 Q Okay. I'm going to show you what's being
20 marked as State's Exhibit 22 now.

21 A This bottle of medicine here, I'm pretty sure
22 that's my bottle of Motrin that I had in my console at
23 the time of the robbery. I always carry Motrin or
24 Aspirin.

25 Q Uh, I'm going to show you now State's Exhibit

1 23. That's a closer shot for you to identify.

2 A Uh, yes, that's it. That's mine.

3 Q Okay. I'm now going to show you what is marked
4 as State's Exhibit 27. Do you recognize what that is?

5 A Yes, ma'am. That's a check that I had written
6 out and had it over my sun visor.

7 Q So that was in your car at the time?

8 A Yes. It was in my car at the time.

9 Q I'm going to show you now what's been marked as
10 State's Exhibit 29. Do you recognize anything in this
11 photo belonging to you?

12 A The Palmetto throw that was in the back seat of
13 my vehicle.

14 Q And how --

15 A And I don't recall -- I don't recognize
16 anything else.

17 Q How can you tell that's your throw?

18 A Well, my son gave me that throw for Christmas
19 or birthday. I know it was a gift. I always carried it
20 in the backseat -- it was a nice heavy one -- for my two
21 puppy dogs to lay on because that's where they normally
22 ride with me.

23 Q I'm going to show you what has now been marked
24 State's Exhibit 32. Are you able to recognize what that
25 is?

1 A Yes, ma'am. That is the Palmetto tree emblem
2 that was next to my license tag on my vehicle -- that I
3 had stuck on the back of my vehicle.

4 Q And it was the one that had been removed when
5 you got your vehicle back?

6 A Yes.

7 Q Also show you what has been marked as State's
8 Exhibit 37. Can you tell me what that is?

9 A That's one of the back.

10 Q So it's a photo --

11 A Yes, where something had been removed right
12 next to my tag.

13 Q Okay. And I'm also going to show you State's
14 Exhibit 39. Do you recognize those?

15 A Yes, ma'am. That's my bottle of Motrin.

16 Q And I'm going to show you State's Exhibit 40.
17 Can you tell us what that is?

18 A And that's my check. That's my handwriting.
19 That's it that belongs to me.

20 Q Okay. I'm going to show you what's been marked
21 State's Exhibit 30 now. Do you recognize what that is?

22 A Yes, ma'am. That's my trailer hitch that I had
23 in the back with the ball on it.

24 Q How are you --

25 A And it was the long -- my vehicle sat up so

1 high. The trailer that I had to pull the motorcycle or
2 the golf cart on was -- I had to get the long hitch.

3 Q Where was that in your vehicle?

4 A It was in the back, uh, -- in the back storage
5 area right there where I set my cooler and everything.

6 Q Okay. I'm going to show you now what's been
7 marked as State's Exhibit 31. Are you able to --

8 A That's my luggage rack that was on the top of
9 my vehicle at the time that it was stolen.

10 Q So it was on your car at the time it was
11 stolen?

12 A Yes, it was permanently connected. It came on
13 it.

14 Q Okay. But you're able to recognize that that's
15 yours?

16 A It's one like it. It looks like it -- the same
17 thing.

18 Q Okay.

19 A I know it was missing when, uh, I had to
20 replace it when I had the vehicle repaired.

21 Q I'm going to show you now what's been marked as
22 State's Exhibit 25. I believe this was recovered from
23 the defendant's trash can. Are you able to recognize any
24 of the items that you see here?

25 A Yes. This right here was my insurance papers

1 from the insurance company. This right here looks like
2 where I had the vehicle in for repairs at one point.
3 That's my --

4 Q You say that's mine. What is that?

5 A With my signature on it. It was a bank
6 withdrawal or either deposit or something that I had made
7 out. It was back in -- of course, that was back in '08,
8 but it was in there.

9 Q Now, I'm going to show you State's Exhibit 26.
10 This is just a closer version of that picture so you can
11 see easily.

12 A Okay. All right.

13 Q You can point out your signature.

14 A Yes. My name is there. Everything is on
15 there. My signature is right here.

16 Q And those were in the car at the time it was
17 stolen?

18 A Oh, yes.

19 Q And they were not in the car the time you got
20 it back.

21 A Right.

22 MS. KENNEDY: Your Honor, if I may, I loathe
23 objections, but there's been a constant series of
24 leading questions and also, uh, injection of
25 testimony by the Assistant Prosecutor. I just would

1 make that objection.

2 **THE COURT:** Don't lead the witness. Just ask
3 the questions. Don't, uh, edit. Okay?

4 **MS. PITTMAN:** Okay.

5 **BY MS. PITTMAN:**

6 **Q** I'm now going to show you what's been marked
7 State's Exhibit 24.

8 **A** That is my GPS with my home address on it ---

9 **Q** So that's your GPS?

10 **A** --- that I put in there.

11 **Q** And that was in the car at the time it was
12 stolen?

13 **A** Yes, it was. It was in my console at the time.

14 **Q** And it was missing at the time?

15 **A** Yes.

16 **Q** Okay. You can turn back around now. Did you
17 keep the car once it was returned to you?

18 **A** No, I did not.

19 **Q** Why did you sell it?

20 **MS. KENNEDY:** Your Honor, I object on the
21 basis of relevance. Whether she kept it or she sold
22 it doesn't really relate in this case.

23 **THE COURT:** Unless you want to come up here
24 and talk to me, I'm going to sustain the objection.
25 I'll be glad to hear you up here at the bench.

1 (WHEREUPON, a bench conference is held off the
2 record.)

3 BY MS. PITTMAN:

4 Q How much were you able to sell the vehicle for?

5 A 15.

6 Q Just to clarify, would that be 15,000?

7 A 15,000. I'm sorry.

8 Q Okay.

9 A I thought about that afterwards when you turned
10 around. I was still paying for it at the time.

11 Q Okay.

12 A So I had to get what I could out of it.

13 Q I think that's all. Please answer any
14 questions that the defense attorney has for you.

15 THE COURT: All right. Cross-examination.

16 MS. KENNEDY: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. KENNEDY:

19 Q Good morning, Ms. Dunning, how are you?

20 A I'm fine.

21 Q Uh, I'd like to turn your attention back to
22 what happened at the church that morning. You indicated,
23 I believe, that the person who came into the church came
24 in through a side door or a back door?

25 A I have no idea which door he came in through.

1 Q Okay. How many doors were there?

2 A It's 1, 2, 3. It's three side doors and a set
3 of double doors under the breezeway.

4 Q And he came in behind you?

5 A He came into the kitchen area behind me, yes,
6 he did.

7 Q Okay. And did he grab you in any way?

8 A No, he did not.

9 Q Okay. But you also indicated that the gun was
10 at your face?

11 A Yes, I had my back turned.

12 Q So you didn't see him?

13 A I didn't see him. I didn't hear him until --

14 Q You didn't really see him when he came to you
15 and said give me your keys or give me your phone?

16 A Uh, no, when I turned around, I didn't.

17 Q But --

18 A I had my back to him.

19 Q So you didn't see him?

20 A I didn't see him at that time.

21 Q When did you see him?

22 A Whenever I turned around.

23 Q And how much of him did you see?

24 A I was looking up the barrel of the gun. He had
25 it in the middle of my eyes.

1 Q So you were looking at the gun and not the
2 person?

3 A I was looking up the barrel of the gun and I
4 could see his arms and all.

5 Q And he in a polite way asked you for your keys
6 and your cell phone?

7 A Oh, yes. He had no problems with announcing
8 what he said with the f'ing.

9 Q I understand. At what point did you go down on
10 the floor?

11 A I guess whenever he got ready to leave and go
12 out and get my vehicle. He had me lay down on the floor.

13 Q Okay.

14 A He asked for all the other stuff. He had me
15 lay down face down on the floor and do not move or he was
16 going to blow my f'ing head off.

17 Q Okay. And how -- I know it was a very
18 frightening experience, but how long did you guess that
19 this whole episode took in terms of seconds or minutes
20 or --

21 A It was -- I would imagine a matter of a couple
22 of minutes.

23 Q A couple of minutes?

24 A It wasn't long there.

25 Q Okay. And, uh, all you know about the gun is

1 just it was a long barrel.

2 A It was a long barrel because the person was
3 taller than I was.

4 Q Okay.

5 A I was looking up the barrel of that gun.

6 Q Okay. How tall are you?

7 A I'm about 5'3, 5'4 somewheres along in that
8 area. I'm short.

9 Q So the description that you gave in terms of
10 the person --

11 A The person was taller than me.

12 Q All right. So where do we get the, uh, -- I
13 believe it was the 5'11 to 6'2 range of height.

14 A Uh, the person was taller than me. That was
15 what we were -- I just know that they were --

16 Q Okay. So that's just an estimate. That's
17 not --

18 A That's just an estimate.

19 Q How about the weight?

20 A The weight? He was tall and skinny.

21 Q So at best, it was a guess?

22 A Basically, yes.

23 Q Okay.

24 A Cause I had no idea how much he weighed.

25 Q All right. That's fine. I understand. And

1 you gave, uh, a statement, uh, to -- I don't know. You
2 gave a written statement --

3 A To Lee Wadford.

4 Q To Lee?

5 A I'm sorry. Whatever he is.

6 Q Sergeant Wadford?

7 A Right.

8 Q He took a statement from you?

9 A Yes, he did.

10 Q Okay. Uh, did anybody else come to take a
11 statement from you that day?

12 A Uh, I spoke with John Waters.

13 Q Okay. And for the benefit of the jury, who is
14 John Waters?

15 A He's the Chief of Police.

16 Q For St. Stephen?

17 A Yes.

18 Q Uh, anybody from the Berkeley County Sheriff's
19 Office come to you that day?

20 A Uh, talked to them on the phone and I seen them
21 a little bit later on after the St. Stephen police, you
22 know, put it over into their hands. Then I talked to
23 them. They were assisting. The Sheriff's Department
24 were assisting St. Stephen in the case.

25 Q Explain if you will. What do you mean a little

1 bit later on? Was it later on that day?

2 A It was a few days afterwards before I -- before
3 I spoke with --

4 Q You were contacted by them?

5 A Yes.

6 Q Okay. It was at that point in time you were
7 able to give the information concerning all the other
8 things that were in your vehicle?

9 A Yes. That was whenever I thought about it.
10 That's whenever I told them what else to look for on my
11 vehicle in case the person had removed that stuff.

12 Q Okay. Anybody ever ask you, uh, --

13 A I never told nobody else about that other than
14 him.

15 Q Okay. Anybody ever ask you from the Sheriff's
16 Department if you had, upon reflection, you had any
17 additional information to give in terms of the
18 description of the person who took your car or went into
19 the church that day?

20 A Uh, yeah. They also asked from the Sheriff's
21 Department the same description as the St. Stephen Police
22 Department.

23 Q So basically with the information you gave
24 them, it was just an affirmation of the information you
25 gave to Sergeant Wadford?

1 **A** Correct.

2 **Q** And at no point did anybody ever come and ask
3 you to identify anybody -- present you with a photo
4 lineup or any of those things?

5 **A** No.

6 **MS. KENNEDY:** All right. Court's indulgence.

7 (Pause.)

8 That's all we have, Ms. Dunning. Thank you
9 very much.

10 **THE COURT:** Redirect?

11 **MS. PITTMAN:** Brief.

12 **REDIRECT EXAMINATION**

13 **BY MS. PITTMAN:**

14 **Q** Ms. Kennedy asked you if you were in the same
15 part of the church where he first confronted you, where
16 you laid down. Where did he have you to lay down?

17 **A** He had me lay down on the floor in front of
18 the, uh, refrigerator and the freezer that was in the
19 back in the kitchen area where I was at. That's where I
20 was at.

21 **Q** That was the same -- is that the same room that
22 he confronted you?

23 **A** Correct. In the same area that he had come in
24 with the gun.

25 **Q** How far did he have you move?

1 **A** Basically, like two steps and then lay down on
2 the floor.

3 **Q** Did he force you to lay down anywhere else?

4 **A** No.

5 **THE COURT:** Any recross?

6 **MS. KENNEDY:** No, Your Honor. Thank you.

7 **THE COURT:** You may step down. Thank you
8 very much.

9 Call your next witness.

10 **MS. PITTMAN:** The State calls Phillip
11 Balentine.

12 **THE CLERK:** Place your left hand on the
13 Bible.

14 **PHILLIP BALENTINE**

15 having first been sworn, testifies as follows:

16 **THE CLERK:** Please be seated. State your
17 full name. Spell your last name for the record.

18 **THE WITNESS:** Okay. My name is Phillip
19 Benjamin Balentine. B-A-L-E-N-T-I-N-E.

20 **DIRECT EXAMINATION**

21 **BY MS. PITTMAN:**

22 **Q** Where do you live, Mr. Balentine?

23 **A** St. Stephen, South Carolina.

24 **Q** Are you employed?

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

1 Q Who do you work for?

2 A My brother and myself run a contracting
3 company.

4 Q How long have you worked for them?

5 A Uh, 2009.

6 Q Okay. Directing your attention to May 18th,
7 2010, were you working at the St. Stephen Evangelical
8 Church that day?

9 A Yes, ma'am.

10 Q And where is that church located?

11 A On Highway 45 going out of St. Stephen.

12 Q Is that in Berkeley county?

13 A Yes, ma'am.

14 Q Do you know who else was working there that
15 day?

16 A Yes, ma'am.

17 Q Who would that have been?

18 A Electricians and Berkeley HVAC, Consolidated
19 Electric.

20 Q Do you know about how many people that was?

21 A Uh, 9, 10.

22 Q And about how long had you been working there
23 at that point?

24 A That day?

25 Q Yeah.

1 A I think I got there around 8:00.

2 Q What kind of work were you doing there that
3 day?

4 A Mostly like HVAC. We were trying to wrap the
5 job up. HVAC electrical work.

6 Q Did anything unusual happen that day?

7 A Yes, ma'am. I was in the office trying to get
8 some emails generated. I saw Ms. Hazel's car taken of
9 out of the parking lot. It was kind of odd, you know.
10 She wouldn't have been going that fast.

11 Q Do you know about how fast the car was going?

12 A No, ma'am. But fast enough to squeal tires.

13 Q How was it driving?

14 A Like erratic. I don't know. Just taking off.

15 Q Did you have a chance to see the victim, Hazel
16 Dunning?

17 A Yes, ma'am.

18 Q When did you see her?

19 A About 30 seconds or a minute after it happened
20 probably.

21 Q How did she appear?

22 A Very distraught. Pretty upset.

23 Q What direction did you see the car take off in?

24 A I was sitting in the office. It went out of
25 the parking lot to Highway 45.

1 Q And what did you do?

2 A Uh, I got in my car. Some of the other guys on
3 the construction site said it went out of town. I
4 followed it and called 911.

5 Q I'm going to show you what's been marked
6 State's Exhibit 42. Do you recognize this item?

7 A Yes, ma'am.

8 Q Are these your initials?

9 A Yes, ma'am.

10 Q Have you listened to this tape today -- before
11 today?

12 A Before today, yes, ma'am.

13 Q What is this tape of?

14 A It's a 911 call.

15 Q Is it an accurate recording of the 911 call you
16 made?

17 A Yes, ma'am.

18 Q Has it been altered or tampered or is it a true
19 and accurate reproduction of that call as you remember
20 it?

21 A Yes, ma'am.

22 **MS. PITTMAN:** At this time, I'd like to play
23 the 911 tape.

24 **MR. ALFARO:** Your Honor, can we approach?

25 **THE COURT:** Sir?

1 **MR. ALFARO:** Can we approach?

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

3 (WHEREUPON, a bench conference is held off the
4 record.)

5 **THE COURT:** All right. Mr. Foreman, Ladies
6 and Gentlemen of the jury, we're going to take a
7 break at this time. If you have any smokers, let
8 the bailiff know and they'll take you to the
9 appropriate place to smoke. If you need anything,
10 let the bailiffs know. Please don't discuss the
11 case among yourselves. People taking notes, leave
12 the notepads in your chairs. I'll get you back in
13 about 15 or 20 minutes.

14 (WHEREUPON, the jury exits at approximately
15 11:02 a.m.)

16 **THE COURT:** All right. Go to the break.
17 Please don't discuss your case with anybody, Mr.
18 Balentine, okay?

19 **THE WITNESS:** Yes, sir.

20 **THE COURT:** All right. We'll take about a 15
21 to 20 minute break.

22 **MR. ALFARO:** Thank you, Your Honor.

23 (WHEREUPON, a short recess is taken.)

24 **THE COURT:** The State ready to proceed?

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

1 **THE COURT:** The defense ready?

2 **MS. KENNEDY:** Yes, Your Honor, please.

3 **THE COURT:** Mr. Balentine, if you'll come
4 have a seat.

5 Get the jury, please, ma'am.

6 **(WHEREUPON, the jury enters at approximately**
7 11:30 a.m.)

8 **THE COURT:** Are you ready to play the 911
9 tape?

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

11 **THE COURT:** Okay.

12 **BY MS. PITTMAN:**

13 **Q** Mr. Balentine, before we broke, we were about
14 to listen to that 911 call. I'm going to have you listen
15 and then I'll ask you a few questions afterwards.

16 **A** Okay.

17 **(WHEREUPON, State's Exhibit 42 is played.)**

18 **BY MS. PITTMAN:**

19 **Q** Okay. Mr. Balentine, that was your voice on
20 the tape?

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

22 **Q** And that was the call that you made?

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

24 **Q** How long did you follow in the direction of Ms.
25 Dunning's car?

1 **A** Uh, I came back through Jamestown. Drove
2 around like the back roads and rock roads back to St.
3 Stephen.

4 **Q** And what did you do then?

5 **A** I came back to work.

6 **Q** Did you have an opportunity to speak with a
7 police officer regarding the incident?

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

9 **Q** And did you give a statement?

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

11 **MS. PITTMAN:** Nothing further, Your Honor.

12 Please answer any questions that the defense
13 attorney have for you.

14 **THE COURT:** Cross-examination.

15 **CROSS-EXAMINATION**

16 **BY MS. KENNEDY:**

17 **Q** I just have a few questions for you. Related
18 in that tape, you didn't know whether the person who had
19 taken Ms. Dunning's car was black or white?

20 **A** No, ma'am.

21 **Q** You didn't see him at all?

22 **A** No.

23 **Q** And you indicated earlier that you own a
24 contracting company and y'all were at the church doing
25 some work?

1 **A** Additions. About 6000-square-foot additions.

2 **Q** Okay. And you said that they were like 9 or 10
3 people working around the church that day?

4 **A** Mostly like inside the addition.

5 **Q** Okay. All those people working for you?

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

7 **Q** But there were some who were working outside?

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

9 **Q** Could you tell me whether Mr. Myzell was
10 working for you that day? Eddie Myzell?

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

12 **COURT REPORTER:** I'm sorry?

13 **MS. KENNEDY:** Eddie Myzell. I'm sorry. I
14 didn't mean to walk away.

15 **BY MS. KENNEDY:**

16 **Q** Josh Myzell and Harold Marvin, Jr.?

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

18 **Q** And the information that you got from Ms.
19 Dunning was that she had -- somebody pointed a gun at
20 her, took her car and her keys and her cell phone?

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

22 **Q** That will be all I have. Thank you, sir, very
23 much.

24 **THE COURT:** Any redirect?

25 **MS. PITTMAN:** No, Your Honor.

1 **THE COURT:** Mr. Balentine, you may step down.
2 Thank you very much.

3 **THE WITNESS:** Yes, sir.

4 **THE COURT:** Call your next witness please.

5 **MS. PITTMAN:** The State calls Harold Marvin.

6 **THE CLERK:** Please raise your right hand.
7 Place your left hand on the Bible.

8 **HAROLD MARVIN**

9 having first been sworn, testifies as follows:

10 **THE CLERK:** Please be seated. State your
11 full name and spell your last name for the record.

12 **THE WITNESS:** My name is Harold Arthur
13 Marvin, Jr. Last name, M-A-R-V-I-N.

14 **DIRECT EXAMINATION**

15 **BY MS. PITTMAN:**

16 **Q** Where do you live, Mr. Marvin?

17 **A** Uh, Summerville.

18 **Q** Are you employed?

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

20 **Q** Who do you work for?

21 **A** (Inaudible) Heating and Air.

22 **Q** How long have you worked for them?

23 **A** Four plus years.

24 **Q** Okay. I'm going to direct your attention to
25 May 18th, 2010. Were you working at the church that day?

1 A Yes, ma'am.

2 Q And where is that church located?

3 A Uh, St. Stephen. I don't know the road. I'm
4 not familiar with that area.

5 Q Is it in Berkeley county?

6 A Yes, ma'am.

7 Q What work were you doing on that day?

8 A Rough-in on a new addition they had built.

9 Q Do you know who else was working there that
10 day?

11 A Uh, some electricians, yes, ma'am. Some
12 plumbers were there, the contractor and my help at that
13 time.

14 Q About how long had you been working there at
15 that point?

16 A A month, I believe. A month or two.

17 Q And what kind of work were you doing again?

18 A The heating and air.

19 Q Where exactly were you working in the church?

20 A Uh, the new addition part near the vestibule.
21 There's a mechanical room right next to the vestibule.
22 It's the new addition part.

23 Q Okay. Did you have an opportunity to see when
24 the victim, Ms. Dunning, arrived at the church?

25 A Excuse me?

1 Q Did you have an opportunity to see when Ms.
2 Dunning got there that morning?

3 A Oh, yes, ma'am.

4 Q Okay. Did anything unusual happen that day at
5 the church?

6 A Yes, ma'am.

7 Q What happened?

8 A A rather large loud noise coming from, I guess
9 it's their banquet room or whatever the building is in
10 the back.

11 Q Uh-huh.

12 A There's an overhang right there. That, of
13 course, would catch your attention because evidently
14 everybody knows it makes a lot of noise if you slam the
15 door.

16 Q Okay.

17 A Uh, and then I saw the vehicle leaving rather
18 quickly through some gravel. Everyone that's been there
19 many of times knows to slow down through the gravel. It
20 just catches your attention.

21 Q Uh, did you recognize that car?

22 A Yes, ma'am.

23 Q And whose car was it?

24 A That was Ms. Dunning's Expedition.

25 Q How were you able to recognize that was her car

1 driving off?

2 A Cause there wasn't too many outsider's vehicles
3 there at that property. It was the same one I saw and
4 had her little stickers on the back. It's very clean.
5 There were no other Expeditions there.

6 Q Okay. Did you happen to see who was driving?

7 A A silhouette. That was about it.

8 Q And after that, where did you see the vehicle
9 go?

10 A It came out of the parking lot and went right.
11 I'm sorry. I don't know the road.

12 Q What did you do or see after that?

13 A Ms. Dunning come around the corner crying her
14 eyes out.

15 Q Did she tell you what happened?

16 A Yes.

17 Q What happened then?

18 A One of the guys that was with us ended up
19 calling 911 at that point.

20 Q And who was that?

21 A Phillip Balentine.

22 Q Was anyone with him that you know of?

23 A When he made the phone call or --

24 Q When he made the phone call and drove off?

25 A No, he was leaving by himself.

1 Q Did you call 911?

2 A No, ma'am. The phone call had already been
3 made.

4 Q Did you ever see the car again?

5 A The Expedition? No, ma'am.

6 Q Going back to her vehicle, you said you were
7 able to tell it was hers because of some stickers that
8 was on the back. Do you recall what those stickers
9 looked like? What they were?

10 A I believe it was the sticker of the Palmetto
11 moon on it. I never really studied her vehicle. It was
12 just the placement of some stickers on there.

13 MS. PITTMAN: Nothing further.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MS. KENNEDY:

17 Q Uh, you, uh, gave a statement to Berkeley
18 County Sheriff's Office, is that correct?

19 A Yes, ma'am.

20 Q What time of day was it that you gave the
21 statement?

22 A I believe it was around lunchtime.

23 Q Around lunchtime which would have been --

24 A I'm thinking -- it's been a while. Probably
25 right after we ate lunch. Probably -- I don't know.

1 Q I know y'all start work real early.

2 A Yeah. And sometimes we eat lunch, sometimes we
3 don't. If we eat lunch late --

4 Q What would be late for you?

5 A Two o'clock.

6 Q Okay. And the regular time would be what time?

7 A Sometimes 11:30.

8 Q So any time between 11:00 and 2:00 o'clock.

9 A Okay. And did the people of the Sheriff's Office come to
10 the church to interview you?

11 A Yes, ma'am.

12 Q And basically, all that you know is that you
13 saw the car speed away?

14 A Yes, ma'am.

15 Q And you couldn't tell who was driving?

16 A I knew who wasn't driving. That was about it.

17 A Ms. Dunning. The way she sits in a vehicle --

18 Q You knew that it wasn't Ms. Dunning driving the
19 car?

20 A Oh, yeah.

21 Q All right. And then the thing about the loud
22 noise, that's the slamming of what door?

23 A Of the door. There's a overhang at the
24 property that joins the old church to, uh, -- I don't
25 know if it's a conference facility, a fellowship hall or

1 whatnot.

2 Q All right.

3 A We didn't do any work over there.

4 Q You indicate you had been working there for
5 about a month?

6 A I think about a month or two.

7 Q And on average, how many workers would have
8 been there during the work days that you were there?

9 A At the beginning, maybe six to eight.

10 Q And where were we in the -- were we still at
11 the beginning?

12 A Yes, ma'am. We were at the sheetrock stage,
13 the final.

14 Q And you said you were doing rough end?

15 A Yes, ma'am. It's a rough end of putting
16 ductwork up.

17 Q I was going to ask you. I had no idea.

18 A I'm sorry.

19 Q No, no, no. What is rough-in?

20 A It's still, uh, -- no drywall on the wall. The
21 roof is going on. No windows. Pretty much bare bones.

22 Q And you said you were there with your, I think
23 the words were my help at that time.

24 A Yes, ma'am.

25 Q Who would that have been?

1 **A** Uh, I had a guy named Allen Huggins with me.
2 And I think that was it at that time.

3 **Q** Okay. Court's indulgence.
4 That's all I have, Mr. Marvin. Thank you very
5 much.

6 **A** You're welcome.

7 **THE COURT:** Any redirect?

8 **MS. PITTMAN:** No, Your Honor.

9 **THE COURT:** Okay. Mr. Marvin, you may step
10 down. Thank you very much.

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Call your next witness.

13 **MR. ALFARO:** The State calls Rick Ollic.

14 **THE CLERK:** Please raise your right hand.
15 Place your left hand on the Bible.

16 **RICK OLLIC**

17 having first been sworn, testifies as follows:

18 **THE CLERK:** Please be seated. State your
19 full name. Spell your last name for the record.

20 **THE WITNESS:** First name is Rick. Last name
21 is Ollic. That's O-L-L-I-C.

22 **DIRECT EXAMINATION**

23 **BY MR. ALFARO:**

24 **Q** Good morning.

25 **A** Good morning.

1 Q Could you tell the jury where you currently
2 work.

3 A Currently employed at the Berkeley County
4 Sheriff's Office.

5 Q How long have you been at the Sheriff's Office?

6 A 26 years.

7 Q What's your current rank and your current
8 duties and responsibilities?

9 A I'm currently the Investigator Captain over the
10 Detective Division Forensics Crime Scene. I also handle
11 victim advocacy and crime prevention.

12 Q And even though you are captain, do you still
13 participate in the investigations that go on?

14 A I do.

15 Q And were you serving in that capacity in May --
16 late May or May and June of 2010?

17 A I was.

18 Q And were you part of an investigation, uh, into
19 an armed robbery that took place on May 18th, 2010 at the
20 St. Stephen Evangelical Church?

21 A I was.

22 Q And how did you become involved in that?

23 A Uh, we had -- we received a request from the
24 St. Stephen Police Department, an agency assist to come
25 to help them investigate a case that occurred at the St.

1 Stephen Evangelical Church.

2 Q Is it normal for your agency to come in to
3 assist St. Stephen in those types of cases?

4 A Yes, we assist them in most all their request.
5 We have a larger department and we have more access. We
6 try to access the local agencies the best we can.

7 Q And had they requested your assistance in this
8 case?

9 A They did.

10 Q And did you have the opportunity to go to the
11 scene of a crime?

12 A I did.

13 Q And how long after the incident would you say
14 you got there?

15 A We received the request. It was several hours
16 after the incident occurred. We went out to the location
17 to see if there was any potential witnesses or anybody we
18 could talk to about the crime.

19 Q And your involvement in the case, did you, uh,
20 -- were you made aware of what the, uh, description of
21 the stolen vehicle was?

22 A Yes. I knew that a white Ford Expedition had
23 been stolen from the victim.

24 Q And had you made -- the day that you went to
25 the scene, were there any attempts to try to locate that

1 vehicle?

2 A We did. We have information it had left the
3 scene and went down Highway 45. So we decided to go out
4 and check that area -- it was a late vehicle -- to see if
5 it was abandoned. We checked and we did not locate it.

6 Q So the vehicle was not located that day?

7 A It was not located that day.

8 Q At that point, did your agency take over the
9 investigation?

10 A Pretty much. We worked hand in hand. There
11 was an officer with St. Stephen. We pretty much started
12 the investigation and ran it as an investigation through
13 our agency.

14 Q And in taking over the investigation or
15 becoming involved in the investigation, was a detective
16 designed to be the lead detective in that case?

17 A Detective Cortte was assigned to the
18 investigator over the entire investigation.

19 Q And would it be fair to say -- not fair to say.
20 Did other detectives, including yourself, continue to
21 assist him in that investigation?

22 A Yes. Myself, other detectives and other
23 supervisors assisted in the investigation.

24 Q And at some point, did you obtain any
25 additional information regarding the description of the

1 vehicle?

2 **A** Yes, I learned that the vehicle had a specific
3 hitch that was called a plug-in. It as a Ford hitch. It
4 was plugged in. It had some back-up -- four back-up
5 sensors, which was, you know -- an Expedition may come
6 with it, but I remember those two things. It did have
7 some other markings on the vehicle, some stickers of palm
8 trees, those type of things were on the vehicle that we
9 had actually put out to look for that vehicle.

10 **Q** At some point, did you come into contact with
11 that stolen vehicle?

12 **A** Yes, I had been on a call out and was coming
13 back on the night of May the 28th around midnight. I
14 came in contact with a vehicle fitting that description
15 on Highway 17. I was at the red light at Walgreens.
16 Right at the red light here in the city of Moncks Corner.

17 **Q** And when you saw the vehicle, did you -- was
18 there something about it that caught your eye?

19 **A** Uh, I noticed -- when I saw the vehicle, I
20 noticed that it had a Ford hitch plug-in to it. It had
21 four back-up sensors. I noticed that it had a paper tag
22 on it and there was tape -- on these paper tags, there's
23 normally a place where they write the date. There was a
24 piece of tape with a date written on it. It just alerted
25 me that this possibly could be that vehicle.

1 Q And when you first saw it, you said you were
2 near the Walgreens?

3 A That's correct.

4 Q Were you driving or had you -- were you
5 stopped?

6 A We initially were -- we were initially stopped
7 at the light. As I was coming up, I noticed that -- I
8 didn't notice all these particulars until we started
9 moving again once the light turned green.

10 Q And when the light turned green and you started
11 moving, which direction did you go?

12 A When we left from the Walgreens, we started
13 heading down Highway 52 toward northern Berkeley county
14 is when I could see the back of the vehicle more clearly.
15 I noticed what I testified to, the tape on the paper tag.
16 I noticed the plug-in to the hitch and the sensors. Also
17 noticed that it was being driven by a black male.

18 I eased up to the vehicle about where Pizza Hut
19 was. Geographically, that's not very far from the red
20 light. I looked over and the driver looked at me and I
21 looked at him. Then I proceeded to get back behind him
22 again.

23 Q And when you said that you looked at the driver
24 and the driver looked at you, did y'all make eye contact?

25 A We both looked at each other. He looked over

1 at me and I was looking at him.

2 Q Were you able to see his face?

3 A I was.

4 Q Did you recognize him at the time?

5 A I did not recognize him at the time.

6 Q And you said that -- did you see him when you
7 -- did you see his face when you were stopped at the
8 Walgreens?

9 A I was a little bit behind him. I didn't
10 actually get a good look at him there until we drove up
11 and I pulled up beside him.

12 Q And so what happened next?

13 A I followed him on. At that point, I realized
14 this might be the vehicle in question that was involved
15 in that St. Stephen Evangelical case. I called over the
16 radio. I asked for some backup from any patrol units
17 that were in the area.

18 Q At the point that you called for backup, how
19 many occasions did you have to actually see his face?

20 A I saw him once that time. I was right beside
21 him. I saw him then. Of course, when I made the stop, I
22 actually saw him looking in the rear view mirror.

23 Q So you requested backup if there were any
24 patrol officers in the area.

25 A Correct.

1 Q What type of vehicle were you in?

2 A I drive a Ford Explorer, which is an unmarked
3 vehicle.

4 Q Okay. Is your vehicle equipped with blue
5 lights?

6 A It is. It's equipped with blue lights. It's a
7 typical emergency vehicle except it's unmarked. It does
8 not look like a police vehicle.

9 Q At some point, did you stop the vehicle?

10 A I did. We drove on. I was listening to find
11 out how close the backup unit was. We -- I followed him
12 on across out to northern Berkeley county. I crossed
13 over the bridge. Then, he proceeded to go on Highway 17A
14 where 52 and 17A will fork. He made the right-hand fork,
15 which is 17A heading towards Jamestown. I initiated my
16 blue lights at that time. He initially stopped at that
17 point.

18 Q And at the point that you activated your blue
19 lights and he stopped, did you have any backup officers?

20 A I waited for just a brief moment. Sergeant
21 Cline was pretty close in the area. I could see him in
22 my distance. So I waited until I had backup there to
23 approach the vehicle. It was late at night. For officer
24 safety purposes, I decided to wait on a backup unit to
25 approach the vehicle.

1 Q Where did you actually stop him at?

2 A I stopped him as you -- when you -- right where
3 there's a -- there's a fuel depot. There's a little pull
4 off part, a paved part. Pulled right off there and I
5 pulled in right behind him there.

6 Q I'm going to show you what's in evidence as
7 State's Exhibit 8. It's going to come up on the screen
8 behind you there once I figure out how to work this
9 pointer. I'm going to give you that. If you can, tell
10 the jury what it -- do you recognize that vehicle?

11 A Yes, I do. That's the vehicle I stopped that
12 night. There's the four plug-in hitch I noticed.
13 There's the four back-up sensors I noticed. You can see
14 the tape right there. Normally, that's a space where
15 they write in. It was taped over.

16 Q Show you State's Exhibit -- what's in evidence
17 as State's Exhibit 10. Could you -- it's a little closer
18 up view of the back of the car. Could you describe what
19 you were starting to say about the tape and the tag?

20 A This was the tag. Like I said, there's a piece
21 of tape with a date written on the tape. Normally, like
22 I said, that's just a spot that's normally on your paper
23 tag where the dealer writes the date on there.

24 Q Okay. So at this point, you have the vehicle
25 stopped, is that correct?

1 A That's correct.

2 Q Had Sergeant Cline made it to your location
3 yet?

4 A Yes, he had made it to my location. We made it
5 our decision on our approach on the vehicle to go up to
6 the vehicle.

7 Q And earlier when I asked about when you saw his
8 face, you said you saw his face when you got at the stop.
9 At this point, when Sergeant Cline showed up, had you
10 seen his face again in the mirror?

11 A Yeah, I was observing -- waiting for the backup
12 unit to get here. I was observing what the driver was
13 doing. I could see him keep peeking into the rear view
14 mirror to see what I was doing.

15 Q And from the time you started seeing his face
16 in the rear view mirror, how long before Sergeant Cline
17 got there?

18 A It was pretty momentary. I would say a few,
19 maybe 30 to 45 seconds. He had pulled up. He had exited
20 his vehicle. We were planning to make our approach on
21 the call.

22 Q And, uh, what happened when Sergeant Cline got
23 there?

24 A Uh, as soon as we decided to make our approach,
25 we saw the brake lights bump one time and then it took

1 off.

2 Q And what happened after he took off?

3 A Uh, as timing would have it, other backup units
4 were in the area coming to this location. I had called
5 it in as a potential vehicle that was in the St. Stephen
6 Evangelical case. And a chase began.

7 Q Were you involved in that chase?

8 A I was not involved in the chase due to the fact
9 is our policy, we normally let the primary marked unit
10 chase the secondary unit, which calls in where they are
11 going and what's going on during the time of the chase.
12 I just basically went in the general direction, but did
13 not participate in the chase.

14 Q And did Sergeant Cline participate in the
15 chase?

16 A He was participating to what degree as a
17 supervisor in that chase, yes.

18 Q And was he the first person to take off after
19 the car, after the SUV?

20 A As I recall, he was the first unit, then there
21 were other units that came along.

22 Q And when he took off after the SUV, were his
23 blue lights and siren on?

24 A Yes, they were.

25 Q And did other officers join the chase?

1 A There were other officers that joined in the
2 chase, yes.

3 Q How many cars would you say you saw initially
4 get involved in the chase?

5 A I know that Sergeant Cline, Cannon and there
6 was another deputy, I believe it was Brian Mosier, was in
7 the chase. Also heard on the radio where Dan Wilson,
8 another deputy, was in the chase also.

9 Q So the portion of the chase that you saw, how
10 many patrol vehicles were behind that SUV?

11 A There would have been two that I'm sure of.
12 I'm not sure how many others. But I know two for sure.

13 Q And did both of them have their blue lights on?

14 A They did.

15 Q And after those officers took off after the
16 SUV, where did you go?

17 A I basically went down 78 towards Jamestown. I
18 began to think after being at the Sheriff's Office, there
19 are a lot of side roads. You know, you can turn and make
20 your way back, double back. I was just kind of in the
21 general area, checking out the side roads to see if he
22 made that turn and I could kind of have a lay of the land
23 on where he may go.

24 Q Did you come in contact with him?

25 A I never did.

1 Q And did you continue to monitor the pursuit on
2 your radio?

3 A I did. I monitored up until they ended.

4 Q And do you know how the chased ended?

5 A Yes, he ended up -- the vehicle ended up
6 wrecking off of Orvin Street which is in St. Stephen
7 right off Highway 45.

8 Q And I'm going to show you State's Exhibit
9 number 9. That's going to come up on the screen behind
10 you as well. Is that the condition of the SUV when you
11 initially saw it, initially pulled it over?

12 A No, this -- this damage was not there when I
13 first stopped it. This would have been after the chase
14 ended.

15 Q Okay. And you said that the chase ended when
16 there was a wreck?

17 A There was, with hitting a parked car in a yard
18 and also struck a tree and stump with the vehicle.

19 Q Okay. And I'm going to let you turn back
20 around. Did you get the opportunity to go to the scene
21 where the chase ended?

22 A I did.

23 Q And what did you do at the scene?

24 A Basically was calling for a K-9 unit. The
25 person driving the vehicle was no longer in the vehicle.

1 He ran into the wood line. I was waiting on K-9 and
2 other people to come and see if we could run a trap to
3 see if we could apprehend him.

4 Q And did you assist in that track?

5 A I did not.

6 Q And while they were tracking for the driver,
7 did you participate in the search or the inventory of the
8 stolen SUV?

9 A Sergeant Cline was inventorying the vehicle and
10 found a wallet with credit cards and a student ID,
11 picture ID. And he showed this to me.

12 Q And I'm going to show you what's in evidence as
13 State's Exhibit 41 and ask you to take a look at that.
14 I'm going to ask you a couple of questions about it.

15 A Yes, this would have been the wallet that was
16 found in the SUV.

17 Q Can you tell the jury what items are contained
18 in that wallet?

19 A Uh, it's a Gucci wallet. It has a MasterCard
20 with the name Benjamin Jackson; has a Visa card, Benjamin
21 Jackson; another Visa card with Benjamin Jackson; a
22 Legion Visa card with Benjamin Jackson; Charleston County
23 Public Library card, no name attached; Account Now, a
24 Visa debit account with Benjamin Jackson; another Account
25 Now Visa debit card with Benjamin Jackson and a Lids -- a

1 Lids card for a cap store.

2 Q Were there any other items contained inside the
3 wallet?

4 A Nothing else that I see.

5 Q I'm going to ask you to check again on the
6 other side.

7 A I apologize. Just some paper documents. A
8 receipt for something with some numbers with the name
9 Benjamin Jackson, a mobile detailing specialist card,
10 James Island receipt, a check made out to Benjamin
11 Jackson for -- signed by Benjamin Jackson for \$2500 for
12 school and books, and a piece of paper with some numbers
13 on it and some names.

14 Q And you also mentioned an ID card. Is that ID
15 card contained in that wallet?

16 A I do not see it.

17 Q Is it your testimony that you recalled seeing
18 an ID card the night of the incident?

19 A I did. Sergeant Cline showed me an ID card.

20 Q And do you recall what that ID card was?

21 A Strayer University and a photograph was on it
22 of Benjamin Jackson.

23 Q And that night when you had the opportunity to
24 review that ID card, did it resemble the person or was it
25 the person you had seen drive the SUV that night?

1 A It was the same person that was driving the
2 vehicle that I saw that night when I saw him at the Pizza
3 Hut.

4 Q And that wallet and the ID card were found
5 inside the stolen SUV?

6 A They were.

7 Q And were y'all able to determine if that was,
8 in fact, Hazel Dunning's SUV?

9 A Patrol officer ran the VIN number on the
10 vehicle. It came back stolen. It was the stolen SUV.

11 Q And was the K-9 unit or anyone else successful
12 in locating the driver or the defendant that night?

13 A We did not apprehend him that night.

14 Q And at this point, uh, based on what you found
15 at the scene inside the vehicle, were you able to
16 eventually locate the defendant?

17 A Through our investigation, we learned that he
18 lived on Upton Road in the St. Stephen area. We went
19 over and did a search warrant at that location.

20 Q Were you present at the scene when the search
21 warrant was executed?

22 A Initially, I was not. I came up shortly after
23 as a supervisor.

24 Q And while you were at the scene, were you aware
25 of what items, if any, were recovered belonging to the

1 victim, Hazel Dunning?

2 **A** I remember there was, uh, -- the luggage rack
3 from the vehicle was down in the yard. The sticker that
4 the victim has described was in the yard. One of the
5 detectives go through the trash and found some of the
6 personal papers and documents that belonged to the
7 victim, Ms. Dunning. They found a medicine bottle with
8 the victim's name on it. Found a check on the counter
9 that had the victim's name on it. Found the registration
10 and we found a roadside hazard kit that was actually
11 belonging to that vehicle also. I believe there was a
12 cell phone also that we found that belonged to the
13 victim.

14 **Q** Do you recall if the victim's GPS was recovered
15 that same location?

16 **A** I believe it was. I don't remember that item,
17 but I believe it was recovered.

18 **Q** And you said that you saw the luggage rack in
19 the yard?

20 **A** I did.

21 **Q** Did you actually see it were it was lying?

22 **A** Yes, I -- we normally mark the items that we're
23 going to recover or Crime Scene is going to recover.

24 **Q** And you said you instructed one of the
25 detectives to go through the defendant's trash can?

1 **A** Yes, I asked Detective Potteiger, who is an
2 investigator at our office, to go through the trash to
3 see if there was any items that could be related to this
4 case.

5 **Q** I'm going to show you State's Exhibit 31 in
6 evidence. It will be up on the screen behind you. I
7 want to show you the picture there.

8 **A** Okay.

9 **Q** You recognize what's in that picture?

10 **A** Yes, as we stated earlier, we mark our items
11 before we recover them. Item number 3, we recovered
12 that. In the darkness there is a luggage rack that
13 belonged to that vehicle.

14 **Q** And was the defendant in his residence when
15 that search warrant was executed?

16 **A** When I arrived -- he had been in the residence,
17 but he was in the patrol vehicle when I arrived.

18 **Q** Okay. Did you have any conversation with him
19 that night?

20 **A** I did not speak to him.

21 **Q** Thank you. Please answer any questions Ms.
22 Kennedy has for you.

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

24 **CROSS-EXAMINATION**

25 **BY MS. KENNEDY:**

1 Q Good afternoon.

2 A Good afternoon. Good afternoon.

3 Q Uh, let's just start, if we could, at the
4 church. Just so I understand, you are Captain of
5 Investigation?

6 A That's correct.

7 Q How long have you had that position?

8 A 12 to 15 years, I guess. Time flies.

9 Q All right. And so you, uh, -- you all -- I
10 guess it was Captain Waters from St. Stephen called you
11 all about this incident?

12 A Yes, ma'am. Chief Waters, who is the Chief of
13 St. Stephen, we have agreements that we assist other
14 agencies in investigations. He had asked us to assist
15 them in this investigation.

16 Q At what point would an agency assist, meaning
17 that, in this case, you all became the lead agency?

18 A We -- they make a request. We go up. We
19 assist them in whichever manner is necessary. And at the
20 point that we -- I guess when the chased happened,
21 everything -- we ended up taking the case over. Like I
22 said, we have more resources. They are limited on
23 manpower. They asked us to take the case over. It is in
24 Berkeley county.

25 Q Okay.

1 A So we just basically work hand-in-hand with
2 them.

3 Q But if the incident occurred some time, 9:20,
4 9:30, 9:45?

5 A Yes, ma'am.

6 Q Do you know exactly when it was that Berkeley
7 County Sheriff's Office was contacted?

8 A Yeah. That would have been that afternoon
9 between 2:00 -- between 2:00 and 3:00, Chief Waters
10 called and said he had an incident that occurred at the
11 church. He explained the incident. We went out as soon
12 as they notified us, myself, Sergeant and Detective
13 Cortte to that location.

14 Q Okay. So you didn't go to the Police
15 Department at St. Stephen? Y'all just met Chief Waters?

16 A We met and began to be told what kind of case
17 they had and what we can do from our agency to assist
18 them in the investigation.

19 Q Okay. But when this conversation and
20 discussion took place, were you at the St. Stephen Police
21 Department or were you at the --

22 A I spoke to him on the phone.

23 Q Okay. And then everybody went to the church?

24 A We went to the church.

25 Q And it was you and Sergeant Geno Alteri and --

1 **A** Detective Cortte and Lee Harris, Lieutenant
2 Harris from St. Stephen came over and met with us. We
3 just basically began to talk to any potential witnesses
4 there. It was a construction site.

5 **Q** Right.

6 **A** So the church was under construction. So we
7 went out to kind of get a look at what we were looking at
8 and see if there was any potential witnesses.

9 **Q** And I take it Ms. Dunning wasn't there when you
10 all went to the church?

11 **A** She was not.

12 **Q** And how many people -- there were a number of
13 workmen there. How many people did you all interview
14 that day?

15 **A** I know Detective Cortte interviewed.
16 Basically, we let the detectives interview them. I know
17 Detective Cortte interviewed one there. Mr. Balentine
18 was there. He was the project manager or assistant
19 project manager. We spoke to him. I don't remember any
20 other workers. Detective Cortte interviewed some
21 individuals that day.

22 **Q** How is it that you being the Captain of
23 Investigations make the determination as to who -- which
24 officer is going to be the lead detective in the case?

25 **A** Basically what we do is make a decision based

1 on the area. We decided that Detective Cortte would be
2 one. And we would assist -- we would use other
3 investigators to assist him in the investigation. I just
4 make that decision when assigning the cases.

5 Q Okay. And that's your decision to make?

6 A That's correct.

7 Q Okay. Now, I'm curious about a couple of
8 things about this because, uh, -- I fully recognize your
9 position of authority, but all the things that you just
10 testified to, you didn't generate any incident report to
11 that, did you?

12 A Basically, no. The supplements, reports that
13 were written like with the chase, I'm included in the
14 report done by the officer that was there at the time.

15 Q Right. But you don't -- there's no report
16 saying I went to St. Stephen church and I did this or I
17 did that and this is what I did that day?

18 A No, ma'am.

19 Q And there's no report that says that you were
20 the one that night on May 24th, uh, where you were the
21 one that saw the vehicle -- or May 26th. I apologize.

22 A In the initial incident report, it describes
23 what was done. My name is in the initial report.

24 Q Right. But those reports -- stop me please at
25 any time if I'm wrong. Those -- this incident occurred

1 on May the 18th, right? You indicated you went to the
2 church on May the 18th. Then we have an initial incident
3 report that was completed by Sergeant Wadford of the St.
4 Stephen Police Department. But all the rest of it that
5 was signed off on, those reports reflect dates of June
6 2nd and June 4th and June 24th. So could you tell me how
7 that happens?

8 A Basically, what I do is I assign a case to an
9 investigator. The investigator does all the supplemental
10 reports. Basically, anything like the chase, I was
11 included in that. And all that was documented in those
12 reports.

13 Q Okay. Let me ask the question another way.
14 Are there any contemporaneous entries in these reports
15 that are made the day of the incident, the day this
16 happened or the day a particular thing happens? Was
17 there a report generated, not by you, but by Detective
18 Cortte or anybody that went to St. John's [sic]
19 Evangelical Church that day that I did this that day?

20 A No, we just went out and got a request for
21 assistance. We went out and began investigation.

22 Q Okay. But as the Captain of the detectives, do
23 you think it would be a good idea to have your officers
24 record these things at or around the time that they are
25 actually happening?

1 A I think they recorded in their supplements when
2 they do the statements. Their statements will show that
3 we met individuals that day. We interviewed individuals
4 that day. And we supplemented those reports by what we
5 did in the investigation. I think they do document it.

6 Q I understand but the supplements are prepared
7 after the fact, correct? And they go into -- it's a
8 computerized system. Yes?

9 A They prepare their cases as the investigation
10 ongoing. I mean, there will be times that some
11 supplements are later than others, yes.

12 Q Okay.

13 A They base it on -- like you have a notebook,
14 they take notes. They take those notes and they put it
15 in a report.

16 Q So there are notes that are recorded
17 contemporaneously?

18 A Based on the investigation, the investigator
19 takes all the information and turns it into a report.

20 Q Okay. When you say take notes, just so we
21 understand -- we're at the same place. They go to the
22 scene. They write down whatever it is.

23 A Yes.

24 Q It doesn't go into a computer yet.

25 A Not initially. Initially, it's transcribed

1 into a report.

2 Q Right. So they do take notes?

3 A They take statements. They take information.

4 I mean, yes.

5 Q Okay. So statements, I understand.

6 Statements, we get. But the notes -- their individual
7 notes, they take -- correct, and that's what they use to
8 put the information into the incident report?

9 A And they finalize a supplemental report of
10 their investigation of what they did from the beginning
11 to the end.

12 Q And do you, as the Captain of Investigation,
13 review those reports?

14 A Normally, it's done by the lieutenant in that
15 division.

16 Q Okay. And who is the lieutenant?

17 A Detective Mason normally, uh, prepares all
18 General Sessions files for court.

19 Q Okay.

20 A That's who handles that for my division.

21 Q And so throughout the process of this in terms
22 of -- we'll just call it the investigation, uh, from the
23 incident that occurred on -- I'm having trouble with that
24 date -- May 18th, then all you knew -- until you were
25 involved with this incident on May the 26th when you

1 spotted the car, all you knew was that there was an armed
2 robbery at the church?

3 **A** I knew there was an armed robbery at the church
4 and I was aware of particular things, like the type of
5 vehicle stolen. I had spoke to the victim. Uh, Sergeant
6 Alteri spoke to the victim. And basically, we got the
7 information describing the vehicle and everything about
8 that vehicle. I did know about that and I did know an
9 armed robbery occurred at St. Stephen church.

10 **Q** When you say you spoke to the victim and
11 Sergeant Alteri spoke to the victim, which of you took a
12 written statement?

13 **A** Speak to Sergeant Alteri. I didn't take any
14 statements.

15 **Q** And if her written statement isn't signed, you
16 don't know who took it?

17 **A** Ma'am, you have to show me the statement. If
18 there's a statement, I have to look at it. And I would
19 have to --

20 **MS. KENNEDY:** Your Honor, may I approach?

21 **THE WITNESS:** That's not ours.

22 **BY MS. KENNEDY:**

23 **Q** St. Stephen?

24 **A** That's St. Stephen Police Department.

25 **Q** Okay. So you didn't take a written statement?

1 **A** The only statement would be the St. Stephen
2 one.

3 **Q** But she interviewed -- you interviewed her?

4 **A** We had spoke about the case. She had called
5 and updated with the case. We gave her information.
6 Cortte was handling the case. Just like a general
7 investigation. We're learning about what's going on.

8 **Q** But the updates, as I understand it, were
9 mostly about a car, not about any identification of the
10 perpetrator?

11 **A** Initially, we had information that -- no, we
12 didn't know who the perpetrator was at first.

13 **Q** Right. Right.

14 **A** I mean, we didn't know who the perpetrator was
15 until the chase, until we ended up serving the search
16 warrant at his house.

17 **Q** At that point in time, what you knew is he had
18 possession of the car?

19 **A** We knew that Ms. Dunning was cleaning at the
20 church, she was robbed at the church at gunpoint and her
21 white Ford Expedition was stolen in the commission of
22 that robbery. We knew that information. We did not
23 know, at that point, who the suspect was.

24 **Q** Right. But at the time that you, that the
25 vehicle caught your eye, what you knew was that after the

1 chase and after all the other things that you just went
2 through on direct examination that the person who had the
3 car and was driving the car was Mr. Jackson?

4 **A** That's correct.

5 **Q** You didn't know whether or not he was involved
6 in the armed robbery or anything at the church?

7 **A** We did not know ---

8 **Q** Okay.

9 **A** --- who the perpetrator was.

10 **Q** Court's indulgence. (Pause.)

11 That's all I have, Captain Ollic. Thank you so
12 much for your time.

13 **A** Thank you.

14 **THE COURT:** Redirect?

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

16 **THE COURT:** You may step down. Thank you
17 very much.

18 Call your next witness.

19 **MR. ALFARO:** The State calls Steve Cline.

20 Your Honor, we'd ask permission for Captain
21 Ollic to be excused.

22 **THE COURT:** Any objection?

23 **MS. KENNEDY:** No, Your Honor.

24 **THE COURT:** You're welcome to stay.

25 Otherwise, you can be excused.

1 **THE WITNESS:** Thank you, Your Honor.

2 **THE CLERK:** Please raise your right hand.

3 Place your left hand on the Bible.

4 **STEVE CLINE**

5 having first been sworn, testifies as follows:

6 **THE CLERK:** Please be seated. State your
7 full name. Spell your last name.

8 **THE WITNESS:** My name is Steven Leroy Cline,
9 C-L-I-N-E.

10 **DIRECT EXAMINATION**

11 **BY MR. ALFARO:**

12 **Q** Sergeant Cline, can you tell the jury where you
13 are currently employed?

14 **A** Uh, Berkeley County Sheriff's Office.

15 **Q** How long have you been with the Sheriff's
16 Office?

17 **A** 16 years, sir.

18 **Q** And how long have you been a sergeant?

19 **A** Uh, approximately 10 years.

20 **Q** And where you working in that capacity on May
21 the 28th, 2010?

22 **A** I was, sir.

23 **Q** And were you a patrol sergeant at that time?

24 **A** Yes, sir.

25 **Q** And were you on duty at approximately midnight

1 that night?

2 A Yes, sir. I was.

3 Q And did you have the opportunity to assist
4 Captain Ollic with a traffic stop?

5 A I did, sir.

6 Q Was that an approximate midnight or left of
7 midnight?

8 A Yes, sir. I believe it was around 20 minutes
9 after 12:00.

10 Q And can you tell the jury the circumstances on
11 how you became involved in that traffic stop with Captain
12 Ollic?

13 A I can, sir. Uh, on the night of May 28th, like
14 I said, at approximately 20 minutes after midnight, I
15 heard Captain Ollic make a call to dispatch requesting a
16 backup officer in reference to making a traffic stop on a
17 vehicle that he believed was possibly involved in a
18 robbery that had taken place approximately a week before
19 in the city limits of St. Stephen. I was in Moncks
20 Corner town limits. I responded to Captain Ollic who,
21 when I arrived, already had the vehicle pulled over right
22 past the intersection of Highway 52 and north Highway
23 17A.

24 I activated my blue lights. Pulled over to
25 the side of the road behind Captain Ollic's vehicle.

1 Walked up by the front of Captain Ollic's vehicle where
2 he was waiting at. He explained to me that this vehicle
3 matched the description of the one from the St. Stephen's
4 incident. I told him I would go up on the passenger's
5 side while he made contact on the driver's side.

6 As we started walking towards the vehicle, I
7 saw the taillights pump on and off real quick. I told
8 Captain Ollic he's going to leave. About that time, the
9 vehicle took off at a high rate of speed. I ran back to
10 my patrol vehicle and got in my car. Uh, took off in
11 pursuit after the vehicle and notified central dispatch
12 that I was in pursuit of the vehicle.

13 It was some time shortly, not very long after,
14 that Deputy Mosier, who was also a respondent in the
15 area, came up behind me and he started calling the
16 dispatch where we were. We proceeded up Highway 17A
17 towards Jamestown, uh, at a high rate of speed. The
18 vehicle attempted to make a left-hand turn onto Highway
19 45 when it -- because of the speed that it was going,
20 when it tried to stop, he was going too fast to make the
21 turn. The vehicle sped back up after it missed the turn
22 continuing on towards Jamestown.

23 Q Let me interrupt you for a second and ask you
24 some questions about what you already testified to. Uh,
25 when you got to the scene, Captain Ollic already had the

1 car stopped?

2 A Correct.

3 Q Do you recall what type of vehicle it was?

4 A It was a white over tan, uh, Eddie Bauer Ford
5 Expedition with a paper tag license plate on it.

6 Q When you got to where Captain Ollic was, were
7 there any other officers at the scene?

8 A Not that I remember at that particular moment,
9 no, sir.

10 Q Was the driver still sitting inside ---

11 A Yes, sir.

12 Q --- the car? Did you get a chance to see the
13 driver?

14 A No, sir.

15 Q And how long would you say you were at the
16 scene talking to Captain Ollic before the taillights
17 bumped on and off and the driver took off?

18 A It was probably 30 to 45 seconds, maybe if that
19 long. It wasn't long at all.

20 Q And when the SUV took off, did you give chase?

21 A Yes, sir. I did.

22 Q And when you chased after it, did you have your
23 blue lights and your siren on?

24 A Yes, sir.

25 Q And what type of car were you in that night?

1 A I was in a 2006 Ford Crown Victoria marked
2 patrol unit.

3 Q So you are in a marked vehicle?

4 A Yes, sir.

5 Q Do you have blue lights, a light bar on top of
6 your car?

7 A No, sir. My lights are inside the vehicle in
8 the top of the windshield on the inside. I don't have a
9 light bar on my car.

10 Q Do you have any blue lights anywhere other than
11 the two on the front?

12 A There are lights that flash in the grill of the
13 vehicle, yes, sir.

14 Q So if you are behind the car and you put your
15 blue lights on, your blue lights will be in the grill of
16 the car, of your car?

17 A Yes, sir.

18 Q And then in your window, the windshield?

19 A Yes, sir. In the top of the windshield, yes,
20 sir, right over where the rear view mirror is.

21 Q Do your headlights --

22 A Yes, sir. They do.

23 Q Do you have a siren inside of your car?

24 A Yes, sir.

25 Q And was that activated when you were chasing

1 after?

2 A Yes, sir.

3 Q Did you have your siren on when you were
4 chasing after the SUV?

5 A Yes, sir.

6 Q And, uh, how long did you chase after the SUV?

7 A It was quite -- timewise, I'm not sure exactly
8 how long the entire chase lasted from the time it began
9 until it ended, but it was approximately 27 miles from
10 the time it began to where it ended at.

11 Q And that started in Moncks Corner?

12 A Yes, sir. Right at the intersection of 17A and
13 Highway 52.

14 Q And can you tell us again what route you took?

15 A We went all the way up Highway 17A towards
16 Jamestown. Like I said, attempted to make the turn on
17 Highway 45 to go towards St. Stephen. Overshot that
18 because the speed was too high to make the curve.
19 Continued on up Highway 17A. After we passed that, he
20 started speeding up and slowing down like he was trying
21 to get me to ram -- you know, to run into the back of the
22 vehicle. So I had to kind of back off a little bit.

23 He then made a left-hand turn into a driveway.
24 That's a real rural area out there. The houses set a
25 good ways off of the road. They are not like the city

1 where you have a walkway and stuff. He turned into the
2 driveway of the residence. Went around behind the
3 residence. I followed him around behind the residence.
4 Between the residence that he went behind and the next
5 residence, there was a ditch, a little ditch between the
6 houses. I guess for runoff or something in between the
7 houses.

8 When I saw him go across the ditch and saw, you
9 know, the actions that the vehicle made him being in that
10 SUV jumping across the ditch, I didn't want to take a
11 chance on trying to take my patrol car through that
12 ditch. I didn't think I would have made it across the
13 ditch.

14 Q Okay. You said that you -- earlier in the
15 chase, he overshot a turn he was trying to make?

16 A Yes, sir. Highway 45.

17 Q And you said that was because of the high rate
18 of speed?

19 A Yes, sir.

20 Q Do you recall how fast he was going or how fast
21 y'all were going?

22 A Most -- most of the time through the whole
23 thing, the speeds were -- while the chase, except lights
24 there when you start slowing down and stuff, I wasn't
25 paying attention. But the majority of the chase all the

1 way was in speeds in excess of 100 miles per hour.

2 Q You said at some point, he drove behind the
3 house?

4 A Yes, sir.

5 Q Was there a road behind the house or was he
6 driving through a yard?

7 A Yes, sir. It was the yard.

8 Q And you said he went through a ditch?

9 A Yes, sir.

10 Q Now, can you describe for the jury how he went
11 through the ditch? Did he go straight or did he have to
12 jump or what was --

13 A The vehicle went down in the ditch and came out
14 the ditch on the other side.

15 Q Okay. So kind of like a lamp?

16 A Yeah. It wasn't a real, real deep ditch. But
17 it definitely went down, bottomed out and came up. When
18 we went through it, went down and came out on the other
19 side, it was erratic when it came out of the ditch and I
20 was afraid my patrol car wouldn't make it through.

21 Q At that point, were you still the lead car in
22 the pursuit?

23 A Yes, sir. I was.

24 Q And were there any other officers as backup
25 officers or any other officers involved?

1 **A** There were other officers, by that time, that
2 had caught up to us. I know Deputy Mosier was behind me.
3 I know Deputy Buckhannon was behind me. And I believe
4 Deputy Wilson was also involved.

5 **Q** Okay. And you maintained -- did you maintain
6 your blue lights the whole time?

7 **A** Yes, sir.

8 **Q** And do you recall if the other officers
9 involved in the pursuit also had their lights on?

10 **A** Yes, sir. They did.

11 **Q** And after he went through the ditch, what
12 happened then?

13 **A** At that time, I turned around in the back yard
14 and swung around to go back out the direction that I had
15 gone in. As I was coming back around to the side of that
16 house, the vehicle was coming around from the opposite
17 end of the next residence over on the other side of the
18 ditch and was heading back out towards the same driveway
19 where we come off of Highway 17A to go back out onto
20 Highway 17A. And, uh, Deputy Wilson's vehicle was coming
21 in as that vehicle was trying to get out. And it almost
22 hit Deputy Wilson's vehicle.

23 Then the vehicle continued out onto Highway
24 17A, made a right-hand turn back -- coming back towards
25 Moncks Corner until we got to the intersection of Highway

1 45 again. And this time, made the turn onto Highway 45.
2 And the pursuit continued all the way into St. Stephen..
3 When the vehicle made a right-hand turn, I believe, it's
4 Wadford Lane where the vehicle turned and then turned off
5 of Wadford Lane onto, I think, it's Upton and then onto
6 Orvin and at the end of Orvin Road, it struck a parked
7 vehicle that was in a resident's yard. A red in color
8 Mustang. It hit the Mustang and then struck a sawed-off
9 tree stump that was in the yard and the vehicle came to
10 rest against the stump and into some bushes in that
11 backyard.

12 Q And throughout the chase up until the time that
13 the SUV wrecked, were you the lead pursuit car the whole
14 time?

15 A No, sir. I lost the lead vehicle. Deputy
16 Mosier took over the lead vehicle. When I got hung up
17 behind that house and couldn't follow him across the
18 ditch, ---

19 Q Okay.

20 A --- when he made it back out to Highway 17A, I
21 was no longer in the lead.

22 Q And who took over as the lead vehicle?

23 A Deputy Mosier did.

24 Q Did you stay involved in the pursuit?

25 A Yes, sir. I did.

1 Q And when Deputy Mosier took over as the lead
2 vehicle, did he have his blue lights and siren?

3 A Yes, sir.

4 Q And were you at the scene where the SUV were
5 at?

6 A No, sir. I was not.

7 Q You got there after the wreck had already taken
8 place?

9 A Yes, sir. When the pursuit turned onto Upton
10 Road and then on Orvin, they are both dirt roads. And
11 when I got on the road, there was so much dust and stuff
12 that was stirred up by the vehicles that were in front of
13 me, I had to slow way down to make sure. I couldn't
14 really see what was in front me. By the time I got up to
15 where the other patrol vehicles were and got out of my
16 vehicle, the SUV was already at its resting point. And
17 that was when I got there. The vehicle was already there
18 and whoever was driving the vehicle had already exited it
19 and run into the woods.

20 Q So you didn't see the driver run from the
21 scene?

22 A No, sir.

23 Q And did you assist in a search of the area to
24 try to locate the driver?

25 A I was in the -- K-9 was called for assistance.

1 I did not want to go in -- I did not want to go in the
2 woods.

3 Q And what did you do at the scene after that?

4 A Being the vehicle had a paper plate on it, then
5 we were unable to run it to find out any information
6 about the vehicle. I went to the front of the vehicle up
7 where the VIN plate is located on the front of the dash
8 of the vehicle to try and get the VIN off of it so that I
9 could run it through NCIC to find an owner for it. When
10 I walked around the front of the vehicle and tried to do
11 that, there was a piece of paper that had been jammed
12 down in the little small wedge area where the windshield
13 and the dash come together that was blocking the VIN
14 plate to where I couldn't see the -- I couldn't get the
15 VIN off of it.

16 Q Were you eventually able to have that VIN
17 number run through NCIC?

18 A Yes, sir. I know from experience that most
19 vehicles have also a sticker VIN tag with all the vehicle
20 information, when it was made, where it was made and all
21 that stuff in the door jam of the vehicle. I looked
22 there and was able to obtain the VIN decal information
23 off of it and run it through NCIC.

24 Q So the paper that was over the VIN on the front
25 windshield was actually wedged in where you couldn't move

1 it?

2 **A** Yes, sir. It was just a small piece of paper.
3 And where the dash and the windshield come together, it's
4 so small of a wedge area there was no way for me to try
5 and get in there and get it out.

6 **Q** And when you were eventually able to run a VIN
7 through NCIC, do you recall what the results of that
8 search was?

9 **A** Yes, sir. It did return as the vehicle that we
10 were looking for. It came back, uh, -- I don't remember
11 the owner's name at this time.

12 **Q** And when you say it was the vehicle you were
13 looking for, why were you looking for it?

14 **A** Because that was the vehicle that Captain Ollic
15 stated had been involved in the armed robbery in St.
16 Stephen city.

17 **Q** And did you participate in any inventory or any
18 search of that SUV at the scene?

19 **A** I -- when I was looking inside the door jam of
20 the vehicle for the VIN information, I saw a wallet
21 laying on the driver's side floorboard area kind of
22 between the seat and the door ---

23 **Q** Uh-huh.

24 **A** --- and picked up the wallet to look inside to
25 see if there was some type of information as to who the

1 wallet belonged to. When I opened the wallet, I found a
2 school identification card with a photograph on it and
3 some credit cards and just some other miscellaneous
4 paperwork inside the wallet.

5 Q I'm going to show you State's Exhibit 41 in
6 evidence. Do you recognize that exhibit?

7 A Yes, sir. This is the wallet that I located on
8 the floorboard of the vehicle.

9 Q And based on looking in that wallet, were you
10 able to determine who that wallet belonged to?

11 A I assumed by the picture ID that was inside the
12 vehicle that it belonged to the gentleman whose name was
13 on it. And I also showed it to Captain Ollic who was on
14 the scene also. And he looked at the picture on the
15 school identification card and said that that was the
16 person that he observed driving the vehicle.

17 Q And was there a name on that student ID card?

18 A Yes, sir.

19 Q And when you looked through the wallet, you
20 testified that you found some credit cards?

21 A Yes, sir.

22 Q You recall the name that was on the credit
23 cards?

24 A The same individual that the ID card or the
25 school ID belonged to.

1 Q What individual was that?

2 A Uh, Benjamin Jackson.

3 Q If you could, look through that wallet for a
4 second and tell us if that ID that you saw is in there.

5 (Pause.)

6 Do you see it in there?

7 A I do not see it, no, sir.

8 Q Do you know what happened to the ID card?

9 A No, sir. I do not.

10 Q Do you recall showing it to Captain Ollic that
11 night?

12 A Yes, sir. I did.

13 Q What was done with the SUV?

14 A Uh, to the best of my recollection, Lieutenant
15 Kokinda from the Forensics Department of the Sheriff's
16 Department responded out to the scene. And the vehicle,
17 I believe, was later towed back to the Sheriff's Office.

18 Q Were you present for any processing of that
19 vehicle by forensics?

20 A Not that I recall, no, sir.

21 Q Other than running the VIN and finding the
22 wallet, did you have any other role in searching or
23 processing that vehicle?

24 A Not to my recollection.

25 Q And can you tell us where in the vehicle you

1 found this wallet?

2 A It was on the driver's side floorboard, kind of
3 down by like the main frame part of the seat is that
4 holds the seat to the floor.

5 Q Is that -- so it was found inside the vehicle?

6 A Yes, sir.

7 Q Can you tell us again what the top speed was
8 that you, your vehicle reached during the pursuit?

9 A Actually speed, I don't know. As I stated, the
10 majority of the chase, the speeds were in excess of 100
11 miles per hour.

12 Q You said it. How many miles did you say the
13 pursuit was?

14 A Approximately 27.

15 Q Thank you. Please answer any questions Ms.
16 Kennedy has for you.

17 THE COURT: Cross-examination.

18 MS. KENNEDY: Thank you.

19 CROSS-EXAMINATION

20 BY MS. KENNEDY:

21 Q Sergeant Cline?

22 A Yes, ma'am.

23 Q Hey. How are you?

24 A Fine.

25 Q Uh, you repaired a report, an incident report,

1 with regard to, uh, the vehicle pursuit, did you not?

2 A Yes, ma'am. I did.

3 Q Do you have a copy of that with you, sir?

4 A Uh, no, ma'am.

5 MS. KENNEDY: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes, ma'am.

8 BY MS. KENNEDY:

9 Q Do you recognize this report? Can you identify
10 it?

11 A Yes, ma'am. That looks like the report that I
12 completed.

13 Q And would you be kind enough to tell the Ladies
14 and Gentlemen of the jury what charges you put on that
15 report?

16 A Uh, Failure to Stop For a Blue Light and
17 Possession of a Stolen Motor Vehicle.

18 Q Thank you. And in your report that reflects
19 the failure to stop for blue light and possession of a
20 stolen motor vehicle -- I'm sorry. I should have let you
21 read it. Is there anywhere in there where you mention
22 that the speed exceeded 100 miles an hour?

23 A (Reviewing.) No, ma'am. It just states at a
24 high rate of speed.

25 Q High rate of speed?

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

2 **Q** Thank you, sir.

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

4 **MS. KENNEDY:** That's all the questions I
5 have, Your Honor. Thank you.

6 **THE COURT:** Redirect?

7 **MR. ALFARO:** Briefly, Your Honor.

8 **REDIRECT EXAMINATION**

9 **BY MR. ALFARO:**

10 **Q** Now, as a part of your -- Ms. Kennedy showed
11 you a copy of the incident report. Is that correct?

12 **A** Yes, sir.

13 **Q** You were asked if your report contained the
14 speed?

15 **A** Yes, sir.

16 **Q** In addition to your incident report, did you
17 also complete a police pursuit incident report?

18 **A** Uh, yes, sir.

19 **Q** I'm going to show you -- mark this for
20 identification.

21 **(WHEREUPON, incident report is marked for**
22 **identification as State's Exhibit 42.)**

23 **BY MR. ALFARO:**

24 **Q** I'm going to show you what has been shown to
25 defense counsel and marked as State's Exhibit 42 for

1 identification. If you could, take a look at that and
2 I'll ask you a question -- couple of questions.

3 COURT REPORTER: I'm sorry. It should be 43.

4 (WHEREUPON, incident report is remarked as State's
5 Exhibit 43 for identification.)

6 BY MR. ALFARO:

7 Q We're having to remark that as State's Exhibit
8 43 for identification. You had an opportunity to review
9 that report?

10 A Yes, sir. I did.

11 Q And you recall when that report was completed?

12 A Uh, at the same time the incident report was
13 completed.

14 Q Okay. And does that report contain any
15 information as to the highest speed that was reached?

16 A Uh, yes, sir. It does.

17 Q And what does your report indicate the highest
18 speed reached was?

19 A 120 miles and hour.

20 Q You prepared this report?

21 A Yes, sir, I did.

22 MR. ALFARO: No further questions.

23 THE COURT: Any recross?

24 MS. KENNEDY: No, Your Honor. Thank you.

25 THE COURT: You may step down. Thank you

1 very much.

2 **THE WITNESS:** Thank you, Your Honor.

3 **THE COURT:** All right. Ladies and Gentlemen,
4 it's about a quarter til 1:00. At this time, we'll
5 take a lunch break. At this time, leave your note
6 pads in your chair. Please don't discuss the case
7 with anyone. Be back in your, uh, jury room at
8 2:15. We'll get started at that time.

9 (WHEREUPON, the jury exits at approximately
10 12:55 p.m.)

11 **THE COURT:** All right. We'll adjourn until
12 2:15?

13 **MR. ALFARO:** Thank you.

14 **MS. KENNEDY:** Thank you.

15 (WHEREUPON, a lunch recess is taken.)

16 **THE COURT:** Anything from the State before we
17 bring the jury?

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

19 **THE COURT:** Anything from the defense?

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

21 **THE COURT:** Bring us the jury please. We've
22 got everybody?

23 **THE BAILIFF:** Yes, sir.

24 **THE COURT:** Bring us the jury please.

25 (WHEREUPON, the jury enters at approximately

1 2:28 p.m.)

2 THE COURT: State call the next witness
3 please.

4 MR. ALFARO: Thank you, Your Honor. The
5 State calls Thomas Buckhannon.

6 THE CLERK: Please raise your right hand.
7 Place your left hand on the Bible.

8 THOMAS BUCKHANNON
9 having first been sworn, testifies as follows:

10 THE CLERK: Please be seated. State your
11 full name. Spell your last name for the record.

12 THE WITNESS: It's Thomas Buckhannon, IV.
13 B-U-C-K-H-A-N-N-O-N.

14 DIRECT EXAMINATION

15 BY MR. ALFARO:

16 Q You can pull that microphone down a little bit
17 if you need to.

18 A Okay.

19 Q Uh, could you tell the jury where you currently
20 work?

21 A I work for the Charleston County Sheriff's
22 Office.

23 Q And how long you been with the Charleston
24 County Sheriff's Office?

25 A Uh, a little over a year and a half.

1 Q And prior to joining with the Charleston County
2 Sheriff's Office, do you have any prior law enforcement
3 experience?

4 A I was employed with the Berkeley County
5 Sheriff's Office as a deputy.

6 Q And when were you employed with the Berkeley
7 County Sheriff's Office?

8 A August of '08 until October of 2010.

9 Q Now, in May of 2010, what was your duty
10 assignment?

11 A I was a patrol deputy in the north district.

12 Q What part of Berkeley county is the north
13 district?

14 A It encompasses Moncks Corner, St. Stephen,
15 Jamestown, Summerville, Cross area.

16 Q What was your rank at the time?

17 A Uh, patrolman first class.

18 Q And were you working on the evening of May
19 28th, 2010?

20 A I was.

21 Q And that night, did you have the opportunity to
22 assist with a traffic stop in pursuit involving the
23 defendant Benjamin Jackson and Captain Rick Ollic?

24 A I did.

25 Q And could you tell us how you became involved

1 in that?

2 **A** Captain Ollic had advised he was going to be
3 stopping a vehicle that was related to an armed robbery
4 that he positively identified the subject in the vehicle.
5 And I began my, uh, way down there to assist him with
6 that.

7 **Q** And when you got to the scene, had Captain
8 Ollic pulled the car over?

9 **A** The car was already fleeing from the scene as I
10 came over the bridge. I saw Sergeant Cline and Corporal
11 Mosier begin pursuit of the vehicle. I followed behind
12 them.

13 **Q** So you didn't see the initial traffic stop?

14 **A** I did not.

15 **Q** And were you advised when you got to the scene
16 that the vehicle had fled?

17 **A** I was advised the vehicle was fleeing.

18 **Q** And you said you saw Sergeant Cline and Mosier
19 involved in the pursuit already?

20 **A** Yes.

21 **Q** Do you recall if they had their blue lights and
22 sirens activated?

23 **A** Yes, they were.

24 **Q** And did you join in the pursuit?

25 **A** I did.

1 Q And what role did you play in the pursuit?

2 A I was -- followed a safe distance. And then
3 when the vehicle went into Jamestown and went through a
4 yard and got back onto 17A and turned right on Highway
5 45, I became the secondary unit.

6 Q And can you tell the jury what a call car is?

7 A There are two -- you have a primary unit who
8 pursues. That's the first unit. Your secondary unit is
9 the call car. And that responsibility entails the
10 speeds, location, traffic conditions, road conditions.

11 Q And when you took over the role of the
12 secondary unit or the call car, did you have your blue
13 lights activated?

14 A They were.

15 Q Did you have your siren activated?

16 A Yes.

17 Q Do you recall, uh, how -- what speeds you
18 reached or what speeds the suspect reached during the
19 pursuit?

20 A The speeds were in excess of 100. And at
21 times, approaching 120 miles per hour.

22 Q And do you recall how long you were involved --
23 how long the pursuit lasted?

24 A A good 20 to 30 minutes.

25 Q And what brought the pursuit to an end?

1 A The vehicle turned down a dirt road. The
2 vehicle struck a parked red Ford Mustang.

3 Q And did you go to the scene where the wreck --
4 you continued to the scene where the wreck had taken
5 place?

6 A Yes, sir.

7 Q When you got to the scene, was the driver still
8 -- the driver of the SUV still present?

9 A The driver had fled.

10 Q Did you attempt to apprehend the driver?

11 A I, along with Corporal Mosier, gave chase to
12 the suspect to a wood line about 75 or 100 yards away
13 from the vehicle off to the left.

14 Q And were you able to catch up to him?

15 A No.

16 Q And you said he ran into the wood line. Did
17 you or any of the other officers follow him into the
18 woods?

19 A The K-9 units were on scene. We assisted the
20 K-9 units with the search.

21 Q To your knowledge, was the driver ever located?
22 Was the driver located that night?

23 A No.

24 Q In addition to what you testified to, did you
25 have any other role in searching the area where the

1 vehicle was involved?

2 A I completed an accident report where the
3 vehicle struck the parked vehicle. I also assisted in an
4 article search after the pursuit.

5 Q What is an article search?

6 A There was -- I observed some sparks in the
7 roadway on Highway 17A going towards Jamestown. There's
8 a possibility there might have been a weapon or
9 something. I told them to look for anything out of the
10 ordinary.

11 Q And when you say you saw sparks during the
12 pursuit, where did you see the sparks?

13 A I saw them on Highway 17A right before Highway
14 45.

15 Q Okay. Were they coming from the SUV?

16 A Something either thrown out the window or run
17 over, but there were sparks on the opposite lane of
18 traffic.

19 Q So along the route of the pursuit?

20 A Right. Exactly.

21 Q And did you find anything of any evidentiary
22 value during that article search?

23 A No, we did not.

24 Q And other than what you testified to, did you
25 have any other role in this investigation?

1 **A** No.

2 **THE COURT:** Let me interrupt you a second.

3 Do you need something to drink?

4 **COURT REPORTER:** I'm sorry.

5 **THE COURT:** Do you need something to drink?

6 **COURT REPORTER:** Could I have some water?

7 **THE COURT:** Please. Could the bailiff give
8 her some water?

9 You need to get up and move around?

10 **COURT REPORTER:** I'm good. Thank you.

11 **THE COURT:** We could take a short break if
12 you need to.

13 **COURT REPORTER:** I'm good. Thank you.

14 **THE COURT:** Let me know when you are ready to
15 proceed. Take your time. Drink the water until you
16 feel comfortable. Okay?

17 **COURT REPORTER:** I'm okay.

18 **THE COURT:** You're okay?

19 **COURT REPORTER:** Yes.

20 **THE COURT:** Okay. Please proceed.

21 **MR. ALFARO:** Thank you. Please answer any
22 questions Ms. Kennedy has for you.

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

24 **CROSS-EXAMINATION**

25 **BY MS. KENNEDY:**

1 Q Good afternoon. How are you? You're with
2 Charleston County now?

3 A Yes, ma'am.

4 Q Okay. You, uh, -- the only thing you know
5 about this case is your participation in the chase on May
6 the 28th, correct?

7 A Correct.

8 Q And you didn't do anything else with it?

9 A No.

10 Q And the article search was something -- I think
11 you used the phrase anything out of the ordinary, right?

12 A Right.

13 Q Didn't find anything, did you?

14 A No.

15 MS. KENNEDY: That's all I have, Your Honor.
16 Thank you.

17 THE COURT: Any redirect?

18 MR. ALFARO: No, Your Honor.

19 THE COURT: You may step down. Thank you
20 very much.

21 MR. ALFARO: The State calls Jason Potteiger.

22 THE CLERK: Please raise your right hand.
23 Place your left hand on the Bible.

24 **JASON POTTEIGER**

25 having first been sworn, testifies as follows:

1 **THE CLERK:** Please be seated. State your
2 full name. Spell your last name for the record.

3 **THE WITNESS:** My name is Jason Potteiger.
4 P-O-T-T-E-I-G-E-R.

5 **DIRECT EXAMINATION**

6 **BY MR. ALFARO:**

7 **Q** Good afternoon.

8 **A** Good afternoon.

9 **Q** Could you tell the jury where you currently
10 work?

11 **A** I work at the Berkeley County Sheriff's Office.

12 **Q** And how long have you been with the Sheriff's
13 Office?

14 **A** Approximately three and a half years.

15 **Q** And prior to that, did you have any other prior
16 law enforcement experience?

17 **A** Yes, sir. I started in South Carolina law
18 enforcement with the City of Sumter Police Department. I
19 started there in January of 2001.

20 **Q** When did you come to the Sheriff's Office?

21 **A** August of 2008.

22 **Q** Were you working for the Sheriff's Office in
23 May and June of 2010?

24 **A** Yes, sir. I was.

25 **Q** And what unit or what were your duties at the

1 time?

2 **A** I was assigned to the CID division, which is
3 Criminal Investigation Division. I'm a detective there
4 and assigned to primarily property crimes.

5 **Q** And in that capacity, did you have the
6 opportunity to assist in an armed robbery, kidnaping,
7 vehicle theft investigation that took place at St.
8 Stephen Evangelical Church on May 18th, 2010?

9 **A** Yes, sir. I did.

10 **Q** And in your role in that investigation, what
11 did you do?

12 **A** I was part of a team that was assigned to
13 execute a search warrant. My primary assignment was to
14 make entry into the residence whether it was secured or
15 not secured.

16 **Q** And do you recall what the address was where
17 that search warrant was executed?

18 **A** It was Upton Road.

19 **Q** And do you recall who lived at that residence?

20 **A** Uh, Mr. Jackson and, I believe, his wife, Mrs.
21 Jackson.

22 **Q** And when did you go there to serve the search
23 warrant?

24 **A** I don't remember the date off the top of my
25 head. It was in the early morning hours.

1 Q And did you prepare a report detailing your
2 involvement?

3 A Yes, sir. I did.

4 Q And, uh, in that report, did you put details
5 such as the date that you were involved?

6 A In that report, I should have, yes, sir.

7 Q And would it refresh your recollection to -- if
8 I showed you a copy of that report as to the date that
9 you executed that search warrant?

10 A Yes, it would.

11 Q If you could, take a look at that and read over
12 it and refresh your recollection and I'll ask you some
13 questions about it.

14 A (Reading.)

15 Q Have you had an opportunity to review that?

16 A Yes, sir.

17 Q Is that the report that you prepared?

18 A Yes, it is.

19 Q And having reviewed that report, does it
20 refresh your recollection as to what date you assisted
21 with the search warrant execution?

22 A Yes, sir. That is June the 2nd.

23 Q Of what year?

24 A 2010.

25 Q And you said you were part of the entry team.

1 What was your role in the execution of that search
2 warrant?

3 A To -- my entry -- assignment on that day was to
4 make entry into the house. If it was unsecured, I was to
5 open the door. If it was secured, I had a ram or any
6 other means that we could get into the house. That was
7 my job that day.

8 Q Were you able to get into the house?

9 A Not at -- not initially. When we arrived, our
10 entry team got in line at the front door. Knocked on the
11 door. Waited a couple of minutes. Couldn't hear any
12 sound like they were coming to the front door. At that
13 point, we decided not to go into the front door. I
14 believe there was a screen door and there was no problems
15 at the front door where the ram wouldn't be as effective.
16 We found a side door. Knocked on that door as well.
17 Waited a couple of minutes. Still nobody came to the
18 door. I used the ram and broke the door open.

19 Q And when you entered the residence, was there
20 any -- was the defendant inside the residence?

21 A Uh, yes, he was.

22 Q And do you recall where he was located?

23 A It was what we call the master bedroom. When
24 you go in, you go into what I call a Florida room. There
25 was a black female we encountered there immediately.

1 Then you go into a little hallway. Off to the right was
2 the master bedroom which is where he was located.

3 Q And where was he at in that bedroom?

4 A The best I could recall, when I looked down the
5 hallway, you could see part of his body. The other part
6 was in a -- there was a little closet there. It was like
7 half and half. Out in the open and into the closet.

8 Q Was he taken into custody at that time?

9 A Yes, he was.

10 Q And were you the one that took him into
11 custody?

12 A I don't believe I was.

13 Q And you mentioned a female was in the house.
14 Was she detained as well?

15 A Yes, he was. Yes, she was. I'm sorry.

16 Q And after those two were detained, was there
17 anyone else inside the house?

18 A No, sir.

19 Q At that point, what became the focus of your
20 role in that investigation?

21 A Once we declared the house secured and cleared
22 of all other people, my objective was to begin a search
23 once the search warrant was read. I serviced primarily
24 outside of the residence.

25 Q You said you searched outside. Do you recall

1 what areas of the residence outside you searched?

2 A Uh, everything on the outside. I searched the
3 trash cans. There was a back door. I believe there
4 might have been a shed on the property as well or an out
5 building.

6 Q And during the search, did you locate, did you
7 personally locate any evidence?

8 A Yes, I did.

9 Q And do you recall what you personally located?

10 A Yes. Initially, there's a checkbook in plain
11 view located on a kitchen countertop. Other people
12 observed that at the same time. I know on the outside, I
13 observed what looked like a car rack, uh, the big racks
14 that are on the top of the SUVs. It was either a sticker
15 or emblem of the South Carolina quarter moon. And, uh,
16 I had the opportunity to go through the trash. I located
17 miscellaneous or some sort of paperwork that had the
18 victim's name on it.

19 Q I'm going to show you some photographs that are
20 already admitted into evidence. They will pop up on the
21 screen behind you so the jury can see them. State's
22 Exhibit 15. There is a laser pointer here in case you
23 need it. If you want to turn around. Do you recognize
24 what's in that photograph?

25 A Yes, sir. That's the, uh, -- what I called the

1 front door earlier. That's the door we initially went
2 through to gain entry. That's the one we knocked on.

3 Q Is that the residence -- is that the residence
4 where the search warrant was executed?

5 A Yes, sir.

6 Q And, uh, State's Exhibit 31. Do you recognize
7 what's contained in that photograph?

8 A Yes, sir. That's the roof rack that I
9 described earlier located right outside the fence on the
10 property.

11 Q That is on the defendant's property?

12 A Yes, sir. It's a little dark. But it's the
13 one side. The other side.

14 Q All right. And State's Exhibit 32. Do you
15 recognize what's in that photograph?

16 A Yes, sir. That's the South Carolina quarter
17 moon emblem that I located right near the rack.

18 Q Okay. And State's Exhibit 37. Is that the
19 same item?

20 A Yes, sir.

21 Q And I believe you mentioned that you had the
22 opportunity to search the trash of the residence?

23 A Yes.

24 Q I'm going to show you State's Exhibit 16. Can
25 you tell the jury what's depicted in that photograph?

1 **A** Right here is the carport area. The residence
2 would be to your right as you are looking at it. That is
3 the trash can that I searched.

4 **Q** And do you recall what, if any, items you
5 recovered from that trash can?

6 **A** I don't remember the specifics, but I do know
7 that there are, uh, -- I remember that there was
8 paperwork in there that had the victim's name on it.

9 **Q** And when you got the paperwork from the trash
10 can, what did you do with it?

11 **A** I left it where it was dumped out. We took
12 pictures of it. And then it was collected on the search
13 warrant like all the other items.

14 **Q** I'm going to show you State's Exhibit 25. Is
15 that -- does that picture depict where you -- what you
16 did with the items that you took from the trash can?

17 **A** Yes, sir. I was searching through the trash
18 can. It was relatively full. So we were just pulling
19 papers out. When we pulled out and discovered Ms.
20 Dunning's name on it, we just let it out and that picture
21 was taken.

22 **Q** That picture is actually State's Exhibit 26. I
23 want to show you State's Exhibit 25. Does that depict
24 the items that you removed from the trash can?

25 **A** Yes, sir.

1 Q And that 7 there, what is that?

2 A Typically on a crime scene when we are
3 collecting evidence and there is more than one piece, uh,
4 whoever is taking photographs or collecting them will
5 assign or put those little placards there to assign it a
6 number for the photos and for identification.

7 Q Okay.

8 A So it was placed there by law enforcement.

9 Q And I'm going to show you what is marked as
10 State's Exhibit 38 in evidence. Do you recognize what is
11 contained in State's Exhibit 37?

12 A Yes, sir.

13 Q And could you tell the jury what that is?

14 A Uh, it's the same items that you saw in the
15 photographs here. Uh, the blue envelope that has Hazel
16 T. Dunning. It has an address. It's insurance papers.
17 There's piece of a magazine. The other stuff, I can't
18 make out. I'll take it out.

19 Q I'm going to give you some gloves since it came
20 out of the trash can. If you can take a look at those
21 items and just describe for the jury what's contained in
22 that exhibit.

23 A (Reviewing.) As I described, it's the envelope
24 with Hazel T. Dunning on it. On the inside of it, there
25 is a, uh, registration to a -- a South Carolina

1 registration to a -- it appears to be a Harley-Davidson
2 motorcycle, 2006. It -- I believe it says make HD, which
3 I believe is a Harley Davidson. It's a number and the
4 name at the bottom is Hazel T. Dunning.

5 Q Okay.

6 A It's a Progressive Insurance Company card for a
7 vehicle, 2006 Harley Davidson. Has the VIN number. It's
8 a Berkeley county -- it's stamped Berkeley county, paid.
9 It looks like a Treasurer's receipt for a 2006 Harley
10 Davidson. It's another South Carolina Department of
11 Registration for a 2006 Harley Davidson. The name on
12 this is Hazel T. Dunning as well. It looks like a
13 Berkeley county tax information that they send you for
14 your vehicle, a property tax. It also has Hazel T.
15 Dunning. It's a 2006 Harley Davidson as well.
16 Progressive Insurance is written on this one. It looks
17 like a receipt. It also has Hazel Dunning. It's dated,
18 uh, 7/18/2007.

19 Q As far as the rest of the items in that bag, if
20 you could, go through that and let us know, let the jury
21 know if there's any other items that have Ms. Dunning's
22 name and information on there.

23 A Yes, sir. This is a deposit ticket that is
24 from Farmers and Merchant Bank. It has the account
25 owner's information typically. It states Hazel Dunning.

1 It has the deposit amount, routing number and account
2 number. It looks like a piece of a torn off savings
3 withdrawal slip. The top looks just like a check. It
4 would be -- has Hazel Dunning's name on it. That's also
5 from Farmers and Merchants Bank. Farmers and Merchants
6 Bank customer receipt. Uh, it's dated 3/14/2008. This
7 is a receipt of some sort. It states at the top a phone
8 number. It's dated March 24, 2008. The phone number is
9 . It is for the, I would take, the Expedition.
10 It's some other stuff I can not read. A BiLo
11 receipt. There's a writing on it too. I can't make it
12 out at this point other than it says \$19.90. And on it,
13 it looks like there is -- first, you got a five percent
14 off discount. It's another Farmers and Merchants customer
15 receipt. This appears to be the second half of that
16 withdrawal slip. It looks to be -- has a date of
17 3/20/08. It has Hazel Dunning at the signature bar.
18 There's some more receipts. They don't have names on
19 them. One's for a car wash receipt. The other one's for
20 Murphy USA gas. Dollar General receipt.
21 It's a deposit receipt for South Carolina Bank
22 and Trust. It has the last four of the account number
23 but no name on it. Another Farmers Merchant Bank
24 customer receipt. Looks like it went into a checking
25 account. This look like some sort of pay stub dated

1 April 7, 2008. This is a magazine cover to Southern
2 something or other. And it's dated February 2010
3 edition. On the bottom, the address has Hazel Dunning.

4 Q You can put those items back in the bag for me.
5 I'd appreciate it.

6 A (Witness complies.)

7 Q Thank you. Other than the items that you
8 described already, did you participate in locating any
9 other evidence in this case?

10 A Uh, I observed other evidence. I was primarily
11 the recovery for the outside items.

12 Q And did you have any other role in this
13 investigation outside of your involvement at the search
14 warrant?

15 A No, sir.

16 Q Thank you. Please answer any questions Ms.
17 Kennedy has for you.

18 **CROSS-EXAMINATION**

19 **BY MS. KENNEDY:**

20 Q How are you this afternoon?

21 A Just fine. How are you?

22 Q Uh, I just have a few questions. And one of
23 them is just initially a curiosity question. How many
24 people were on the entry team?

25 A I can't say for certain. Like I said,

1 normally, we would do about four or five people for a
2 house this size.

3 Q And they gave you the assignment?

4 A Yes, ma'am. I was the first one at the door.

5 Q And you testified that you went through -- you
6 primarily picked up things from the outside?

7 A Yes, ma'am.

8 Q Okay. Uh, when you all were, uh, -- when the
9 search warrant was obtained from Mr. Jackson's house and
10 you were assigned to be a part of the entry team and
11 execute the warrant, what did you know about this
12 particular case?

13 A The information I had was very limited. I
14 might have known -- I'm pretty sure I knew the victim's
15 name.

16 Q Uh-huh.

17 A And the large vehicle, the Expedition that was
18 stolen.

19 Q And were you given information in term -- you
20 heard a lot of talk about the Palmetto and the quarter
21 moon. Were you given specific information about the
22 items that were supposedly on the car?

23 A Uh, I believe in a briefing when the incident
24 occurred, there were some things that were unique to that
25 vehicle. That sticker or the emblem would have been

1 unique to the vehicle. So I would say yes, during the
2 briefing or the BOLO put out for the vehicle.

3 Q So when you were walking around in the yard and
4 you saw this Palmetto quarter moon, whatever, tree, you
5 immediately thought that it was connected to the case?

6 A Uh, I wouldn't put it that way. I saw the
7 larger more obvious item first. The car rack. That drew
8 my attention to that area. Nearby there was the emblem.

9 Q And as to those items that were recovered, as I
10 understand your testimony, you sort of went through the
11 trash?

12 A Yes, ma'am.

13 Q And you were specifically looking for things
14 that might be related to this case?

15 A Yes, ma'am. It was located near the rack and
16 the emblem. So I drew my attention to the trash can. I
17 opened the trash can up and was looking for items that
18 might have been located in the vehicle and removed.

19 Q So the items that you retrieved were those that
20 obviously you just testified to?

21 A Uh, the items we recovered are the ones that we
22 could, uh, -- suspected belonged in the vehicle.

23 Q Okay. But -- so you don't know how long those
24 items had been in the trash can?

25 A No, not exactly.

1 **Q** Okay. Don't know whether they were put there
2 on May the 18th or May the 26th or May the 28th or any of
3 those times?

4 **A** There's no way I can tell what date they were
5 put in there exactly.

6 **Q** That's all I have, sir. Thank you.

7 **THE COURT:** Any redirect?

8 **MR. ALFARO:** No, Your Honor.

9 **THE COURT:** You may step down. Thank you
10 very much.

11 **THE WITNESS:** Thank you.

12 **MR. ALFARO:** The State calls Michael Cortte.

13 **THE CLERK:** Please raise your right hand.
14 Place your left hand on the Bible.

15 **MICHAEL CORTTE**

16 having first been sworn, testifies as follows:

17 **THE CLERK:** Please be seated. State your
18 full name. Spell your last name for the record.

19 **THE WITNESS:** Michael Richard Cortte, II.
20 Last name is spelled C-O-R-T-T-E.

21 **DIRECT EXAMINATION**

22 **BY MR. ALFARO:**

23 **Q** Detective, could you tell the jury where you
24 work?

25 **A** Yes, sir. Berkeley County Sheriff's Office.

1 Q And how long have you been with the Sheriff's
2 Office?

3 A Since about March of 2007.

4 Q And what is your current rank and current duty
5 assignment?

6 A Current rank is Detective Corporal assigned to
7 the Criminal Investigations Division.

8 Q And how long have you been in the Detective
9 division?

10 A Approximately two years now.

11 Q And were you working in that department in May
12 of 2010?

13 A Yes, I was.

14 Q Did you have the opportunity to assist in the
15 investigation of an armed robbery that took place at St.
16 Stephen Evangelical Church on May 18, 2010?

17 A Yes, I did.

18 Q And how did you become involved in that
19 investigation?

20 A Responded to a call for assistance from St.
21 Stephen Police Department in reference to that armed
22 robbery that occurred.

23 Q And did you respond to the scene?

24 A I did.

25 Q And do you recall what time you got there?

1 **A** I recall somewhere around 3 p.m., as memory
2 serves, I responded to the St. Stephen Police Department
3 first for a briefing from St. Stephen Chief of Police,
4 Chief Waters.

5 **Q** And when you arrived at the scene, were you
6 able to determine how much time had passed since the
7 robbery had taken place?

8 **A** It had been several hours by that point. The
9 information that we were getting was the incident
10 occurred right around 10 a.m. The witness statements
11 indicated about 9:45 a.m.

12 **Q** And when you got to the scene, was the victim
13 still at the scene?

14 **A** No, she wasn't.

15 **Q** Were you able to determine the victim's
16 identity?

17 **A** Yes.

18 **Q** What was her --

19 **A** Hazel Dunning.

20 **Q** And when you got to the scene, were there any
21 witnesses at the scene still?

22 **A** I apologize. My allergies are acting up again.
23 Could you repeat that?

24 **Q** When you got to the scene, were there any
25 witnesses still at the scene?

1 A Yes, they were.

2 Q And did you speak with any of them?

3 A I did.

4 Q Do you recall who you spoke with?

5 A Yes, sir. I spoke with Mr. Phillip Balentine.

6 Q And at this point in the investigation, had you
7 been assigned a specific role in the investigation?

8 A Yes, sir. I was given the task of being the
9 lead detective in the case or the case agent, if you
10 will.

11 Q And can you briefly describe for the jury what
12 being the lead agent or the case agent in the case
13 involved?

14 A Essentially it's my case. In charge of
15 investigating it, ensuring that everyone involved, all
16 the additional detectives or deputies get their
17 supplements in, uh, helping debrief everyone such as
18 office briefing and things of that nature.

19 Q And were you able to determine, based on what
20 you learned at the scene, what had taken place, what type
21 of case you were investigating?

22 A Yes, sir. There was an armed robbery that had
23 occurred to the victim, Ms. Hazel Dunning that occurred
24 the morning of, uh, the 18th of May 2010 at the St.
25 Stephen Evangelical Church which is located at 150 Church

1 Road in the St. Stephen area of Berkeley county, South
2 Carolina.

3 Q And you say it was an armed robbery. Do you
4 have any information or did you obtain any information as
5 to the type of weapon that was used?

6 A Yes, according to the information that was
7 given, it was some sort of long gun or rifle.

8 Q And was the area around the church searched?

9 A We -- I didn't respond initially to the church
10 when the incident occurred, so I don't have firsthand
11 knowledge of it.

12 Q When you got to the scene several hours later,
13 did you search the area around the church?

14 A I looked around a little bit. I wouldn't say
15 an extensive search.

16 Q And did you have any information at that time
17 as to how the suspect had left the scene?

18 A Yes, I did.

19 Q And what kind of information -- what
20 information had you obtained?

21 A The information was that the suspect left the
22 scene in the victim, Ms. Dunning's, vehicle at a high
23 rate of speed from the church.

24 Q And were you able to obtain any information
25 regarding the description of the vehicle?

1 A Yes, I was.

2 Q And what information did you obtain regarding
3 that?

4 A 2006 Ford Expedition. It was the special
5 edition, Eddie Bauer model. It was white in color with a
6 tan strip down on the bottom half of the vehicle, bottom
7 portion of the vehicle. There's also some special
8 individual things she had on it. Palmetto emblem. Most
9 everybody in South Carolina is familiar with the Palmetto
10 tree and moon. And then, uh, the Sandals or flipflop
11 decal.

12 Q Did you also have information as to what
13 property had been taken from the victim?

14 A Yes.

15 Q And what property had been taken from the
16 victim?

17 A Her keys and, uh, cell phone. The keys to that
18 vehicle and her cell phone.

19 Q And was that information you obtained on -- let
20 me back up a second. Did you also have any information
21 as to possible suspects?

22 A I had a suspect description that we were given.
23 It was, uh, described as a black male roughly 5'11 to
24 about 6'2, maybe about 150 to 180 pounds described as
25 being armed with a long gun or rifle and wearing a white

1 t-shirt and possibly a ball cap.

2 Q And was the information you obtained regarding
3 the suspect, the stolen vehicle, as well as the items
4 that were taken, was that shared with other officers in
5 the Sheriff's Office and other agencies?

6 A Yes, sir. It was.

7 Q And how was that done?

8 A Through various briefings and then, of course,
9 through the BOLOs that were put out for everyone to be on
10 the lookout.

11 Q And after May the 18th, did you participate in
12 any searches of the area to try to locate the SUV?

13 A Yes, sir. I did.

14 Q And could you tell us what areas were patrolled
15 or searched?

16 A Essentially, the northern portion of Berkeley
17 county in the St. Stephen area. Essentially, kind of
18 started around where the church, where the armed robbery
19 took place and the theft of the vehicle. Drove down.
20 Had an office briefing and let everybody know what we
21 were looking for. And just kind of scoured the area. I
22 did a diligent search of different roads that might have
23 been there around the vicinity looking for it.

24 Q Do you recall when this was done?

25 A It would be in my report. I want to say, if

1 memory serves correctly, on the 24th of May, 2010.

2 Q And did you have any luck on that day locating
3 the vehicle?

4 A No, I did not.

5 Q At any point during your investigation, was the
6 victim's vehicle located?

7 A Yes, it was.

8 Q And do you recall when that took place?

9 A Yes, sir. That was, uh, about midnight on May
10 the 28th, 2010.

11 Q And are you aware of the circumstances under
12 which the vehicle was recovered?

13 A I am.

14 Q And did you respond to the scene that night
15 when the vehicle was recovered?

16 A No, sir. Not that night.

17 Q Were you present when the vehicle was processed
18 forensically for any evidence?

19 A No, sir.

20 Q So you had no role in that?

21 A No, sir.

22 Q And based off the information that was retained
23 when the vehicle was recovered, were you able to identify
24 a potential suspect in the armed robbery?

25 A Yes, sir.

1 Q And who did you identify as the suspect?

2 A The defendant seated here today, Mr. Benjamin
3 Jesse Jackson, III.

4 Q And how did he come to be identified as the
5 suspect?

6 A During the pursuit of the victim's vehicle, it
7 was located in an accident and the driver of the vehicle
8 leaving the scene wallet was left in the vehicle which
9 had a photo ID and credit cards in there with the
10 defendant's name on it, Benjamin Jackson.

11 Q And are you aware of if the SUV was returned to
12 the vehicle [sic] after it was recovered?

13 A Could you repeat that? I'm sorry.

14 Q Do you know if the stolen vehicle was returned
15 to the victim after it was recovered?

16 A Yes, it was.

17 Q And at that point, what was the next step in
18 your investigation?

19 A My next step in the investigation, we wanted to
20 take a proactive approach of attempting to locate and
21 recover and return the other items belonging to the
22 victim that was stolen during the armed robbery. So we
23 attempted a search warrant to have signed by the duty
24 magistrate the evening of the first of June 2010 so we
25 could execute a search warrant of the defendant's

1 residence at Upton Road also in the St. Stephen area,
2 Berkeley county, South Carolina.

3 Q That was the defendant's residence, you said?

4 A Yes, sir.

5 Q You might want to pull that microphone down a
6 little bit. I'm having a hard time.

7 A Is that better?

8 Q And you said the search warrant was obtained on
9 June the 1st. When was the search warrant served?

10 A It was served on the 2nd.

11 Q That would be June the 2nd?

12 A Yes, sir. June the 2nd, 2010.

13 Q And were you present when the search warrant
14 was executed?

15 A Yes, I was.

16 Q What was your role during the execution of the
17 search warrant?

18 A During the execution of the search warrant,
19 again as lead detective or case agent, uh, primary duties
20 -- while the entry team made entry into the residence,
21 again, officer safety is always important, paramount
22 issue in everything we do. I was actually assigned to
23 the outer parameter in case anyone was to leave the
24 residence or anything of that nature. Any vehicles that
25 may have pulled up. Once entry was effected into the

1 residence, I was advised once it was secured doing a
2 protective sweep, that there were two people located in
3 the house. It happened to be the defendant here, Mr.
4 Jackson, and his wife, Mrs. Jackson. They were both
5 detained and taken into custody while the search warrant
6 was executed.

7 Primarily, while the search was under way, my
8 area of responsibility at the time was to stay with Mrs.
9 Jackson. They had a big space, a living room area, if
10 you will. Once the search was completed, I was taken to
11 show -- around to show what items had been recovered that
12 were pertinent to the case.

13 Q Other than the defendant and his wife, was
14 anyone else located inside the residence?

15 A No, sir.

16 Q And did you say you assisted in the search of
17 the residence?

18 A Again, my role primarily was to stay with Mrs.
19 Jackson, just to secure her and make sure she didn't try
20 to leave or if she required any sort of medical attention
21 or restroom break, if you will. But then I was taken
22 around and shown what the other deputies located.

23 Q So would it be fair to say that you were shown
24 the evidence that was collected before it was collected?

25 A Yes, sir.

1 Q And do you recall what items were recovered
2 that were related to your investigation?

3 A I do. I recall several pieces.

4 Q Can you tell the jury what those were?

5 A Yes, sir. For starters, on the outside of the
6 residence, there was a -- we recovered a luggage rack,
7 uh, which, uh, the victim, Ms. Hazel Dunning, reported
8 her vehicle did have a luggage rack. That was recovered.
9 Along with a, uh, -- different people may call them
10 different things, but it's a tow hitch, kind of a plug-in
11 style, uh, that was recovered, also the Palmetto moon,
12 Palmetto tree I mentioned previously.

13 The inside of the residence, there's a room
14 adjacent to the carport. In that room, there were, uh, I
15 want to say 14 screws that were recovered and located.
16 In a room, kind of a hallway kind of off that room coming
17 out of the carport up in the house, you may call it a
18 laundry room. It had a washer and dryer. On the washer
19 and dryer, there was a roadside kit, if you will, black
20 box, that was recovered. Next to that, there was a Ford
21 owner's manual. Inside of that, the actual victim, Ms.
22 Hazel Dunning's registration to that vehicle, her vehicle
23 was located in there.

24 Q I'm going to interrupt you for one second to
25 show you a couple of photographs that are admitted into

1 evidence.

2 **A** Yes, sir.

3 **Q** First, I'm going to show you State's Exhibit
4 17. Turn around. He's going to put them up on the
5 screen. You can describe for the jury what's in that
6 photograph.

7 **A** May I use the --

8 **Q** Yeah, the red button up on the top.

9 **A** This is actually the cabinet I had mentioned
10 that's above the washer and dryer. This is actually
11 going to be that roadside kit box that I had mentioned.
12 Next to it here -- you can kind of see it. It's a little
13 dark in the photograph -- but that's the Ford owner's
14 manual. Inside of that is where the registration for Ms.
15 Dunning's vehicle is located.

16 **Q** Okay. And I'm going to show you State's
17 Exhibit 18. That comes up on the screen. If you can,
18 tell the jury if that's the item you were just
19 discussing.

20 **A** Yes. That's -- you can kind of see the zipper
21 here. This is that registration, the Ford owner's
22 booklet opened up. The registration here has Ms.
23 Dunning's name, Hazel Dunning, and her address.

24 **Q** I'm going to show you State's 39. Do you
25 recall where that item was located?

1 **A** Yes, sir.

2 **Q** And where was that located?

3 **A** It was located in the defendant's residence at
4 Upton Road, St. Stephen, Berkeley county, uh,
5 actually in the master's bathroom.

6 **Q** And if you could, just tell the jury what name
7 is on the prescription label.

8 **A** Yes, sir. It would be the victim's name, Ms.
9 Hazel Dunning.

10 **Q** And Exhibit 21, does that picture describe or
11 show where this pill bottle, State's Exhibit 39 was
12 located?

13 **A** Yes, sir. It does.

14 **Q** He's going to put the picture up on the screen.

15 **A** This, again, is the defendant's residence, the
16 master bathroom. You can kind of see in there the top
17 portion of the emerald-colored prescription medicine
18 bottle. It was a prescription for 600 milligrams of
19 Ibuprofen, a substitute for Motrin according the label,
20 with Ms. Hazel Dunning's name on it.

21 **Q** And just for purposes of the record, we
22 initially put State's Exhibit 22 on the screen as opposed
23 to, uh, State's 21.

24 **MR. ALFARO:** Can we approach, Your Honor?

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

1 (WHEREUPON, a bench conference is held off the
2 record.)

3 BY MR. ALFARO:

4 Q During the course of the search of the
5 residence, uh, were you able to locate any firearms
6 inside the residence?

7 A No firearms, no, sir.

8 Q Were you able to locate any ammunition
9 consistent with the description of the weapon as
10 described by the victim?

11 A Yes, sir.

12 Q Do you recall where those items were found?

13 A Yes, sir.

14 Q And where was that?

15 A Uh, there were three individual, uh, .410
16 shotgun shells that were recovered from inside the
17 defendant, Mr. Jackson's, front right pocket. There were
18 an additional nine of the same .410 shells that were
19 located in a purple Crown Royal bag located inside the
20 master bedroom.

21 Q Those were found in the bedroom, you said?

22 A I'm sorry, actually the master bathroom.

23 Q Okay. And --

24 A There were a box of .410 shells that were found
25 inside the bedroom.

1 Q After the, uh, -- at some point, was the
2 defendant -- what was done with the defendant?

3 A He was taken into custody and transported to
4 the Berkeley County Sheriff's Office.

5 Q And did you transport him into the Sheriff's
6 Office?

7 A No, I did not.

8 Q And did you eventually meet with the defendant?

9 A I did.

10 Q And where was that?

11 A That would be at the Sheriff's Office in
12 Lieutenant Mason's office.

13 Q And approximately how long after the search
14 warrant was executed did you meet with the defendant in
15 Lieutenant Mason's office?

16 A Maybe a couple of hours. We made entrance into
17 the house right around 7:00 a.m. or so. It was still
18 fairly early in the morning. And then, uh, as I recall,
19 it was before lunchtime that I met with him. I would say
20 probably around 10 a.m. or so.

21 Q So it was around 10 o'clock that you met with
22 the defendant?

23 A Correct.

24 Q And what was the purpose of taking him to the
25 Sheriff's Office?

1 **A** So he could, uh, be interviewed. I advised him
2 of his Miranda rights and see if we could obtain a
3 statement from him.

4 **Q** And you said -- I apologize. You said you
5 wanted to speak him about the incident?

6 **A** Correct.

7 **Q** And what incident were you going to speak with
8 him about specifically?

9 **A** Specifically, the armed robbery that I
10 mentioned occurred at the St. Stephen Evangelical Church
11 at 150 Church Road in St. Stephen, Berkeley county, South
12 Carolina. That occurred on May 18th, 2010.

13 **Q** Okay. And is that the incident with Hazel
14 Dunning as the victim?

15 **A** Yes, sir.

16 **Q** And was the defendant informed as to what
17 incident you wanted to speak with him about?

18 **A** He was.

19 **Q** And if you could, tell the jury what you told
20 him you wanted to talk with him about.

21 **A** Uh, essentially, I just mentioned that I
22 wanted to speak with him about the armed robbery that
23 occurred on May the 18th, 2010 at the St. Stephen church
24 there at 150 Church Road in St. Stephen, Berkeley county.

25 **Q** And was anybody else in the room with you and

1 the defendant when you had the conversation with him?

2 A Yes.

3 Q And who was in the room?

4 A Uh, Lieutenant Mason.

5 Q And prior to asking the defendant any questions
6 about that specific incident did you read him his Miranda
7 rights?

8 A I did not.

9 Q Who did?

10 A Lieutenant Mason did.

11 Q Do you recall how those rights were provided to
12 him?

13 A I do.

14 Q I'm going to show you what's in evidence as
15 State's Exhibit 1. You recognize that?

16 A Yes, I did.

17 Q Can you tell the jury what that is?

18 A Certainly. This is the advise of rights form.
19 It's got the Miranda rights, which were read from --
20 verbally from the written paper. It also has a waiver of
21 rights which he has read. He acknowledged both sections
22 that he understood his rights and that he wanted to waive
23 his rights and speak with us.

24 Q And if you could, for the jury, just advise
25 them what rights -- did you provide the defendant those

1 rights or did Lieutenant Mason?

2 A I believe Lieutenant Mason did.

3 Q And was that done in your presence?

4 A It was, yes.

5 Q And could you tell the jury what rights the
6 defendant was advised he had?

7 A Sure. He was advised he had the right to
8 remain silent. Anything he said could and would be used
9 against him in court. He had the right to talk to a
10 lawyer for advice before we asked him any questions and
11 also to have a lawyer present with him during any
12 questioning. Also that if he could not afford a lawyer,
13 one would be appointed to represent him if he wished.
14 And then if he decided to answer any questions now or at
15 the time without his lawyer present, then he would still
16 have the right to stop answering questions at any time.
17 That he had the right to stop answering questions at any
18 time. And if he wished to speak to a lawyer, he could do
19 that.

20 Q And did he appear to you to understand the
21 rights that had been provided to him?

22 A Yes, he did.

23 Q And did he acknowledge understanding those
24 rights?

25 A He did.

1 Q How did he do that?

2 A Both verbally and by initialing to the left
3 line beside each specific right individually.

4 Q And after being read his rights, did he agree
5 to waive those rights and speak with you?

6 A He did.

7 Q And how did he acknowledge that he was
8 voluntarily waiving his rights and agreed to speak with
9 you?

10 A Uh, below the rights advisement section,
11 there's a waiver of rights, there's advice of waiver and
12 he agreed that he was to waive his rights and speak with
13 us and to verbally acknowledge that he wanted to waive
14 and also his signature for that.

15 Q Can you tell us what the actual waiver of
16 rights says above where his signature is?

17 A Sure. If I may, I'll read the front page. It
18 says waiver of rights. I have read this statement of my
19 rights and I understand what my rights are. I'm willing
20 to make a statement and answer questions. I do not want
21 a lawyer at this time. I understand and know what I am
22 doing. No promises or threats have been made to me and
23 no pressure or coercion of any kind has been made -- used
24 against me. Then it's signed and it's got a line with
25 his signature on it.

1 Q And you were in the room when he signed that?

2 A Yes, sir. I was.

3 Q And at that point, after signing it, did he
4 agree to tell you or give you a statement about the
5 incident you were investigating?

6 A Yes, sir. He did.

7 Q And can you tell the jury what he told you?

8 A He said he did it. He said that he was sorry
9 for what he put the victim through. He said that she was
10 never a target. He wanted the vehicle. He said he
11 wanted to apologize to her. He said that someone had
12 left the gun for him to use. He said that someone helped
13 him to dispose of some of the victim's property,
14 including her purse and the license plate from her
15 vehicle. He told us that those items were disposed of at
16 a car wash in Orangeburg county. He declined to tell us
17 who the name of the person was or who the victim was
18 leaving the gun for him to use or helping him dispose of
19 those items. Nor did he tell us the name of the car wash
20 other than that it was Orangeburg.

21 Q And was a written statement taken from him that
22 day?

23 A Not on that day, no, sir.

24 Q And did you ask him for any more details about
25 the weapon?

1 **A** Not about what specifically -- I tried to ask
2 who the person was leaving the gun for him.

3 **Q** And that statement took place on June the 2nd,
4 is that correct?

5 **A** Yes, sir. June the 2nd.

6 **Q** Did you have another opportunity to speak with
7 the defendant after that?

8 **A** Yes, sir. I did.

9 **Q** When was that?

10 **A** That was the following day on June the 3rd,
11 2010.

12 **Q** Okay. And, uh, on June the 3rd -- I'm going to
13 show you State's Exhibit 2 that's in evidence. When you
14 went to talk with him, who else -- was there anyone else
15 in the room with you?

16 **A** There was.

17 **Q** Who was in the room?

18 **A** I was in the room, the defendant, Mr. Jackson,
19 and detective -- Corporal Riser.

20 **Q** And prior to speaking with the defendant that
21 day, did you again tell him what you wanted to talk to
22 him about?

23 **A** Yes.

24 **Q** And what did you tell him you wanted to talk to
25 him about?

1 A It was about the same thing that I spoke with
2 him about previously the day before, again, the armed
3 robbery that occurred at the church of -- St. Stephen
4 Evangelical Church on May the 18th, 2010, uh, at 150
5 Church Road in St. Stephen, Berkeley county, South
6 Carolina.

7 Q Uh, now, at the top of that statement, did you
8 put any -- did you write any information on there?

9 A I did.

10 Q And can you tell the court what is on there as
11 far as the name that you wrote on the top of that
12 statement?

13 A Uh, the name I wrote on the statement --
14 Brandon Jesse Jackson, III.

15 Q Is that a typo or is there a different person
16 you spoke with on June the 3rd other than the defendant?

17 A The best I can tell, it was a mistake.

18 Q So on June the 3rd, you spoke with the
19 defendant, Benjamin Jackson?

20 A Yes, I did.

21 Q And was he, again, provided his Miranda rights?

22 A Yes, he was.

23 Q And was he provided the same rights that he was
24 provided the day before?

25 A Correct. Yes.

1 Q And when he was provided those rights, was he
2 provided those rights in the same method as you described
3 earlier?

4 A Exactly, both verbally from the written form.

5 Q And I'm not going to ask you to read those
6 again. Are those the same rights that you read to him on
7 June the 2nd?

8 A They are, yes.

9 Q Did he again acknowledge that he understood
10 each of those rights?

11 A He did.

12 Q And how did he acknowledge it on June the 3rd?

13 A The same way, both verbally and then by
14 initialing -- actually, we had to draw a line beside each
15 right on this particular form, but he initialed next to
16 each one.

17 Q On that State's Exhibit 2, is there a space on
18 there where you can write in what you are investigating,
19 what you want to talk to him about -- what you are
20 talking to him about?

21 A Yes, there is.

22 Q Did you fill anything in on that spot?

23 A I did.

24 Q And what was shown to the defendant on that
25 form that you were investigating?

1 A Armed robbery.

2 Q And was he shown that before he agreed to give
3 you a written statement?

4 A Absolutely.

5 Q And did he, uh, again agree to waive the rights
6 that you provided and agree to speak with you?

7 A Yes, he did.

8 Q And how did he indicate that he was waiving his
9 rights and agreed to speak with you?

10 A The same way as the day prior, both verbally
11 acknowledging and then he signed this particular form.

12 Q And did he, in fact, give you a written
13 statement regarding the armed robbery that you told him
14 you were investigating?

15 A He did.

16 Q And if you could, just read for the jury what
17 is contained on his written statement?

18 A Certainly. As it's written, I just want to
19 apologize for what happened that day. I wasn't trying to
20 hurt you. I was after the vehicle. You was never a
21 target. I'm sorry that it happened. Please forgive me
22 for what happened that day. God bless you and I hope
23 that you can truly forgive me. I'm truly not a bad
24 people, just something that happened that wasn't supposed
25 to happen. I hope that you can see through that and

1 forgive me. Then he initialed and signed it. End of
2 statement.

3 Q And that was June the 2nd, 2010? June the 3rd,
4 I'm sorry.

5 A June the 3rd on this one.

6 Q And after he wrote his statement, was he given
7 a copy of the statement?

8 A Yes.

9 Q And was he given the opportunity to make any
10 changes or additions or deletions or anything?

11 A Yes.

12 Q Did he make any changes?

13 A No, sir.

14 Q And that statement as it's written, was that
15 written by you or Detective Riser or was it written by
16 the defendant?

17 A Written by the defendant, Mr. Jackson, seated
18 here today.

19 Q And at any time during either the June 2nd
20 interview or the June 3rd interview, did he ever ask for
21 a lawyer?

22 A No, he did not.

23 Q And did he ever indicate to you that he wanted
24 to stop talking or not talk to you?

25 A No, he did not.

1 Q On both of those dates, did he freely and
2 voluntarily agree to speak with you about the incident
3 you told him you were investigating?

4 A Yes, he did.

5 Q And you mentioned that in his initial -- on his
6 June 2nd statement, that he said that he had gotten --
7 someone helped him dispose of the victim's purse?

8 A Correct.

9 Q And where was that supposedly disposed of?

10 A Supposedly, from what he told us, at a car wash
11 in Orangeburg.

12 Q And were you ever able to recover the victim's
13 purse?

14 A No, sir.

15 Q At any point in your investigation, have you
16 ever recovered the weapon that was used?

17 A No, I did not.

18 Q Thank you. Please answer any questions that
19 Ms. Kennedy has for you.

20 A Yes, sir.

21 **CROSS-EXAMINATION**

22 **BY MS. KENNEDY:**

23 Q You need some water?

24 A I think it might be a good idea to have some.

25 Q I think you might have some. (Pause.)

1 How are you?

2 **A** Doing well.

3 **Q** Uh, Detective Cortte, you indicated that you
4 were what is known as the lead detective or the case
5 agent in this case, correct?

6 **A** Correct.

7 **Q** And what day did you receive this assignment?

8 **A** It was on May the 18th of --

9 **Q** And that's when you went to St. Stephen
10 Evangelical Church to what you all would commonly refer
11 to as the crime scene?

12 **A** Correct.

13 **Q** And you indicated that you interviewed some
14 witnesses when you were there?

15 **A** I interviewed a witness, yes.

16 **Q** A witness. Mr. Balentine?

17 **A** Correct.

18 **Q** Were there other people there?

19 **A** There were.

20 **Q** Did anybody make any effort to interview any of
21 them?

22 **A** As I recall, yes. I don't know the specifics
23 of who interviewed whom.

24 **Q** Okay. Who was with you?

25 **A** As I recall, uh, Captain Ollic and Sergeant

1 Alteri.

2 Q So when you went to St. Stephen church, did you
3 -- strike. Let me -- tell me what happened when you
4 first arrived. What did you do?

5 A I'm sorry.

6 Q When you first got to the church, what did you
7 and Captain Ollic and Sergeant Alteri do?

8 A Kind of approached the building. Kind of
9 looked around the outside a little bit. Made contact
10 with, uh, -- I observed that it was currently under
11 construction renovations. Made contact with some of
12 those construction workers that were still inside.

13 Q At that point in time, did you have any
14 information of where Ms. Dunning was at the time this
15 incident occurred?

16 A Not specifically.

17 Q You didn't? You didn't know what building she
18 was in?

19 A I knew she was in -- I'm sorry. You're asking
20 where she was at that time?

21 Q Where was she physically when this incident
22 occurred?

23 A I didn't exactly know at that time other than
24 in the church.

25 Q In the church?

1 A Yes.

2 Q And were you given information that the suspect
3 had come through a door?

4 A I was given information that the armed robbery
5 took place inside the church.

6 Q All right. And whoever the person was that
7 committed the armed robbery had to come through a door,
8 did they not?

9 A I don't know which door that was.

10 Q You don't know which door it was?

11 A No, ma'am.

12 Q So it didn't occur to you or anybody that was
13 with you to take fingerprints from the door?

14 A Not at that time, it did not.

15 Q Any time?

16 A No, ma'am.

17 Q Okay. And then, uh, -- and then I believe you
18 indicated that you all, you and the people that were
19 assigned to help you in the investigation of this case,
20 uh, spent a lot of time looking for the car.

21 A We did spend some time trying to locate the
22 vehicle, yes.

23 Q Okay. And so the focus of the investigation --
24 and please correct me if I'm wrong -- from your
25 perspective was what you were going to do or what you

1 intended to do and needed to do was to find the car.

2 A That wasn't the -- I wouldn't say that was the
3 only objective in the investigation, but certainly.

4 Q Well, did you -- as the lead detective, did you
5 interview Ms. Dunning?

6 A I did not.

7 Q Did anybody from your department or who was
8 under your -- I don't know if command is the right word
9 -- your supervision interview Ms. Dunning specifically
10 about the incidents in the church?

11 A From what I had knowledge of, my captain, going
12 under his supervision, he had contact with the victim.
13 Initially, the contact I made was at the St. Stephen
14 Police Department with Chief Waters there. Uh,
15 responding to a request to assist them. And clearly,
16 based on what they told us, Ms. Dunning, the victim had
17 been through quite an ordeal already.

18 Q No, I understand that. And I understand that
19 part of your job is to be empathic and treat your victims
20 with --

21 A Yes, ma'am.

22 Q But during the course of this investigation,
23 did you or anybody else under your supervision go back
24 and take another statement from Ms. Dunning other than
25 the one that she had given to Sergeant Wadford at the St.

1 Stephen Police Department?

2 A Not that I'm aware of.

3 Q So you never -- you never interviewed her about
4 any kind of description of the suspect or got any
5 information from her directly?

6 A No, not directly.

7 Q Okay. Now, uh, as I understand it from your
8 direct testimony, along the way, there were a number of
9 briefings and conversations and, excuse me, discussions
10 with other officers about the case?

11 A Correct.

12 Q Okay. Could you tell me what the substance of
13 those discussions was?

14 A Essentially that, uh, -- could you be -- which
15 briefing are you speaking of?

16 Q Well, I mean, any briefing that you had.

17 A Okay.

18 Q There was an initial briefing as I understand
19 it with, uh, the St. Stephen Police Department officers
20 on May the 18th.

21 A Yes, ma'am.

22 Q According to your report, there was a followup,
23 I think it was referred to as special ops or ops briefing
24 on May the 24th. What was the discussion on May the
25 24th?

1 **A** On May the 24th, that also took place at the
2 St. Stephen Police Department. That's where we made the
3 effort to try and locate Ms. Dunning's vehicle.
4 Essentially, we met with other detectives, members of the
5 St. Stephen Police Department. We had some, uh, Berkeley
6 County Sheriff's narcotics detectives. There were a lot
7 of plain clothes assignments that were familiar with the
8 area, some of the dirt roads that are up there were
9 potentially taken in an armed robbery such as might
10 possibly be located. Provided a description of the
11 vehicle and what had occurred while we were looking for
12 it.

13 **Q** So just so I understand it, from May the 18th
14 to May the 24th, there really wasn't very much
15 investigation going on. When you got to May the 24th,
16 we're talking still mostly about the vehicle.

17 **A** I would respectfully disagree. There was other
18 investigation that was going on.

19 **Q** Tell me what that was.

20 **A** For example, the date would be in the report.
21 My memory wants to say it was around the 20th or so. I
22 received information of actually a burned sport utility
23 vehicle in an adjacent county. I made contact with the
24 fire chief regarding that particular vehicle. Naturally,
25 I thought that could be a possible -- possibly be my

1 victim's vehicle. I was quickly able to rule out that it
2 was not Ms. Dunning's vehicle. That burnt vehicle, I was
3 advised by the fire chief was actually a Volkswagen sport
4 utility. Clearly, I was looking for a Ford. So that was
5 not going to be it.

6 Q But again, the focus even of that was the car
7 or SUV, right?

8 A Uh, yes.

9 Q All right. Now, uh, and then there was the,
10 uh, -- the, uh, chase and the recovery of the car on the
11 28th of May. Tell about the, uh, -- how did you come to
12 find out about that?

13 A My captain, Captain Ollic, who was directly
14 involved in that incident made me aware of it.

15 Q When you came to work the next morning or what?

16 A Exactly.

17 Q Okay. And what did you do with that
18 information?

19 A Based on that information, we ended up typing
20 up a search warrant to be issued. Based on documents
21 that were left in the vehicle, we were able to identify a
22 possible suspect. Again, we were trying to be proactive
23 in locating and recovering additional items of property
24 belonging to Ms. Dunning that were stolen from her during
25 the armed robbery. So I typed up a search warrant to be

1 signed by the duty magistrate that evening so we could
2 execute that warrant that following morning, which was
3 the morning of June the 2nd.

4 Q But at that point in time, the identification
5 of a possible suspect is the person who, based on
6 documents in the car, was driving the car on May the
7 28th, correct?

8 A That would be correct.

9 Q At that point in time, other than knowing that
10 Mr. Jackson, by information left in the car, all you knew
11 was that he had the car, correct?

12 A Correct.

13 Q Okay. Cause there had been no identification,
14 no further description, nothing relating to Mr. Jackson
15 except the fact that he was driving the car. Okay. So
16 then you got the search warrant?

17 A I did not. I typed it up.

18 Q You typed it up and?

19 A Yes, ma'am. We work different shifts
20 sometimes. There was -- the next judge wouldn't have
21 been there until the evening shift. So the evening
22 detective that day was able to take the one I typed up to
23 get it signed so that we could execute it that morning.

24 Q Okay. I'm sorry. Go ahead and say it. I
25 apologize.

1 A Oh, we wanted to execute the search warrant
2 early enough in the morning.

3 Q And for the Ladies and Gentlemen of the jury,
4 what that process is is you go to the magistrate and you
5 tell the magistrate that we have probable cause, correct?

6 A Correct.

7 Q And based on this probable cause, we want you
8 to sign this search warrant so that we can go to this
9 particular place and look for particular things and
10 execute the search warrant, right?

11 A That's correct.

12 Q That's pretty much what you did. Okay. And
13 then, uh, how was it decided that you all would have what
14 Detective Potteiger referred to as an entry team? And
15 how was it decided that you would go really early in the
16 morning?

17 A Again, officer safety is always paramount
18 issue. And we certainly wanted to, you know, if you get
19 there early enough, that ensures that the residents are
20 going to be there. So you make contact with them. And
21 also what this incident with the stolen vehicle stemmed
22 out of was from the armed robbery which involved a
23 weapon. Again, due to officer safety, that had a good
24 deal to play in that.

25 Q So I gather it was your decision to execute the

1 warrant the way it was done?

2 **A** Yes.

3 **Q** It was your decision to pick however many
4 people it was to be on the entry team?

5 **A** Not specifically how many were assigned on the
6 entry team.

7 **Q** Okay. It was your decision to go, I believe
8 you said around 7 o'clock in the morning?

9 **A** That was the agreed upon time.

10 **Q** That was what? The agreed upon time?

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

12 **Q** You and who agreed upon it?

13 **A** Everyone involved that was going to meet. We
14 met at the Sheriff's Office that morning to have the
15 safety briefing and then to go execute the search
16 warrant.

17 **Q** So y'all were at the Sheriff's Office at six
18 o'clock in the morning?

19 **A** That sounds about right from what I can recall.

20 **Q** All right. And then you go -- I believe you
21 said that when entry was gained, that it was your job to,
22 uh, -- you stayed with Mr. Jackson's wife?

23 **A** Correct. Once entry had been made and the
24 protective sweep was completed.

25 **Q** And you stayed with her where?

1 A In the living room area.

2 Q And did you talk to her about her being
3 charged?

4 A No, not at that time.

5 Q Not at that time. But she was taken into
6 custody, right?

7 A She was.

8 Q Were you the one that took her into custody?

9 A Not initially. I don't know who made contact
10 with her when the entry team made entry.

11 Q All right. So when you stayed with her in the
12 living room area, she was already in custody?

13 A Correct.

14 Q Was she in cuffs?

15 A Yes.

16 Q So you weren't just kind of sitting there. You
17 were watching your prisoner?

18 A Essentially, as I mentioned earlier to make
19 sure there's no escape attempt or any needs that she
20 needed, a drink or water, restroom, medical attention or
21 anything of that nature.

22 Q I assume Mr. Jackson was already in custody at
23 that point?

24 A Correct.

25 Q He was already in the patrol car?

1 **A** I didn't specifically know where he was. My
2 area of responsibility at that time was with Mrs.
3 Jackson.

4 **Q** Okay. But you are the lead detective. So why
5 was that not your area of responsibility?

6 **A** That is where I understood him to be. I just
7 don't want to testify to something that I don't know and
8 I didn't have firsthand knowledge of.

9 **Q** All right. But as far as you knew, he was
10 already in the patrol car?

11 **A** It would be a safe -- I hate to use the word
12 assumption, but --

13 **Q** Okay. He was already in the patrol car in
14 cuffs. You were sitting with her in the livingroom. She
15 was in cuffs.

16 **A** Correct.

17 **Q** And you and your entry team, they were going
18 through the house gathering stuff up?

19 **A** Correct.

20 **Q** How long were y'all there?

21 **A** I don't know the specific time.

22 **Q** An hour, two hours?

23 **A** Maybe close to two hours. Again, I don't
24 specifically know.

25 **Q** And at some point, I gather, but you're not

1 sure when, somebody drove Mr. Jackson to the Sheriff's
2 Office?

3 A Correct.

4 Q So you don't know whose decision it was to take
5 him to the Sheriff's Office?

6 A Not specifically.

7 Q Okay. But even though you are the lead
8 detective, somebody else that's in this group can make
9 the decision to do certain things without your knowledge?

10 A That can occur.

11 Q Okay. And it did occur in this instance, from
12 your testimony, correct?

13 A That is something I would have wanted to do
14 regardless of who made that decision or made that call.

15 Q And I understand that because that's your job.
16 But somebody made that decision for you, did they not?

17 A It would be safe to say that.

18 Q All right. So how did you know to go to the
19 Sheriff's Office to -- how did you know Mr. Jackson was
20 at the Sheriff's Office?

21 A Once I had been told that he was being
22 transported there.

23 Q Somebody told you that they were going to take
24 him there?

25 A Correct.

1 Q Did you know for what purpose he was being
2 taken there?

3 A It would be so I could interview him.

4 Q All right. So somebody made the decision to
5 take him because they were anticipating what you were
6 going to do or what you thought you might were going to
7 do?

8 A I'm not quite following your question. I'm
9 sorry.

10 Q I'm glad you're telling me. You indicated that
11 somebody took him to the Sheriff's Office, right?

12 A Yes.

13 Q You also indicated that it would be something
14 you would do to interview him, correct?

15 A Correct.

16 Q But somebody took him and you didn't know but
17 somebody then told you he was there, right?

18 A I didn't specifically know who was taking him
19 or who transported him.

20 Q All right. But at some point, somebody said,
21 Detective Cortte, he's at the Sheriff's Office. He's in
22 the Criminal Investigation office. Somebody told you
23 that?

24 A Yes, as I can recall, uh, Mrs. Jackson was
25 taken there as well. And I was aware of that.

1 Q Okay. So -- but you weren't -- just I'm clear.
2 I don't want to confuse you. I certainly don't want to
3 confuse the jury. You -- how did you know to go to the
4 Sheriff's Office and talk to him?

5 A I was made aware that he had been transported
6 or was being transported. He may have been en route.
7 I'm not sure exactly where. The same with Mrs. Jackson.
8 Naturally, I wanted to go there and interview the two of
9 them. Separately, of course.

10 Q Okay. So at some point, you know that he's
11 there. Do you know -- I mean, I've only been back there
12 twice. There's -- the part where you all have offices
13 and it's just -- it's sort of a big -- then there are
14 separate interview rooms, right?

15 A Correct.

16 Q And those interview rooms have -- are equipped
17 -- how many of them, like four of them? Three or four?

18 A There's a small one in the back of the
19 detective bay. There's a conference room in the front.

20 Q But there are at least two or three of them
21 that are equipped with video equipment and cameras and
22 audio where you all can take statements, right?

23 A In the very back, there are.

24 Q So you would have had the ability to take Mr.
25 Jackson back to one of those rooms to, you know, do the

1 interview, get whatever information that you wanted from
2 him and that didn't happen, did it?

3 **A** Could you be more specific, I'm sorry.

4 **Q** Okay. You just said that there's a conference
5 room and there was a small room and those rooms are
6 equipped with cameras and video equipment and audio
7 equipment, right?

8 **A** I would respectfully disagree. To my
9 knowledge, there's no video or audio equipment.

10 **Q** It's your testimony that the Sheriff's
11 Department doesn't have the ability to videotape
12 confessions or interviews?

13 **A** No, ma'am. In the very back room. But if I
14 understood, you were asking me about the conference room
15 and the interview room in the detective office.

16 **Q** Let me rephrase the question. There are
17 interview rooms in the Sheriff's Office that had cameras
18 and audio equipment for the specific purpose of taking
19 and recording interviews with suspects or witnesses or
20 whoever agrees to it, right?

21 **A** That's right.

22 **Q** Okay. And Mr. Jackson ended up in Lieutenant
23 Mason's office.

24 **A** That is correct.

25 **Q** And Lieutenant Mason's office does not have any

1 audio or video equipment, does it?

2 A Not to my knowledge.

3 Q So how did he end up there if the purpose was
4 to talk to him about the incident that occurred on May
5 the 18th, the interview? Why wasn't it taped?

6 A I don't recall if there was a specific reason
7 on that day.

8 Q Well, let me ask the question this way. How do
9 y'all decide which ones you're going to take and which
10 one's you are not going to take? Is it based on the
11 seriousness of the charge?

12 A Not sure that there's any specific set way. I
13 know sometimes those other rooms would be in use and we'd
14 have to resort to using an available room ---

15 Q Okay.

16 A --- if there's multiple suspects or things of
17 that nature.

18 Q Were those rooms in use on May -- excuse me.
19 I'm having a terrible time with these dates. Were those
20 rooms in use on June the 2nd when Mr. Jackson was taken
21 to the Sheriff's Office?

22 A I don't recall.

23 Q Did you check?

24 A I don't recall.

25 Q But you went to the Sheriff's Office with the

1 intention to interview him about these serious charges of
2 Armed Robbery and Kidnaping and possession of a weapon
3 and burglary and Grand Larceny of a motor vehicle. That
4 was your job?

5 A Could you be more specific? I'm sorry.

6 Q Okay. As I understand your testimony, on June
7 the 2nd, when Mr. Jackson was transported to the
8 Sheriff's Office, you went there, knowing that he was
9 there, with the intention of talking to him about this
10 incident that occurred on May 18th, yes or no?

11 A That's correct. Yes.

12 Q Okay. And somebody put him in Lieutenant
13 Mason's office, but you don't know who. And you then
14 went to Lieutenant Mason's office to conduct this
15 interview?

16 A Correct.

17 Q Okay. And you didn't check to see -- just so
18 we are straight -- whether or not there was a room
19 available for this information and this confession to be
20 videotaped?

21 A I don't recall if I did or did not.

22 Q Is it safe to say that you didn't do that
23 because this confession wasn't taped, was it?

24 A It would be safe to say. I don't recall if I
25 did or did not.

1 Q Okay. So you think it was around 10 o'clock in
2 the morning?

3 A I would say roughly, yes.

4 Q Okay. And, uh, was Lieutenant Mason already in
5 the room when you went in?

6 A As I recall, yes.

7 Q As you recall. Uh, who started the interview?

8 A As I recall, Lieutenant Mason advised him of
9 his rights first.

10 Q Lieutenant Mason? You not saying -- and I
11 don't know how this works so just help me. You don't
12 say, Mr. Jackson, my name is Detective Cortte, I'm the
13 lead investigator on this case. And I need to talk to
14 you about something that happened on May the 18th at St.
15 Stephen Evangelical Church. Did you do that? Did
16 Lieutenant Mason do that?

17 A Sometimes it will go like that during that
18 icebreaker, if you will, where we introduce ourselves.
19 We advise them of their rights.

20 Q No, no, no. How did you -- if you recall, how
21 did you start this interview?

22 A Best as I can recall, Lieutenant Mason kind of
23 took the lead on that one, if you will, and advised him
24 of his rights.

25 Q Well, I know you said advise him of his rights.

1 The exhibit concerning advising him of his rights are
2 already in evidence. I'm just talking to you about the
3 process. Somebody comes to my office and they have --
4 it's a new client for me. I say hello, my name is Patty
5 Kennedy and I'm going to be representing you on this
6 charge. Let's sit down and talk. Do you go through that
7 process?

8 A Sometimes. I mean, we'll introduce ourselves.

9 Q Did you do it in this case?

10 A I was introduced to him, yes.

11 Q You were introduced to him, but you didn't tell
12 him why you wanted to talk to him?

13 A We did.

14 Q Who did?

15 A Lieutenant Mason.

16 Q All right. And you said he more or less took
17 the lead, I think is the phrase you used?

18 A That's correct.

19 Q Okay. Tell me how that works.

20 A Lieutenant Mason advised him of his rights as I
21 described earlier. Once Mr. Jackson agreed that he
22 understood his rights and wished to waive them and speak
23 with us, Lieutenant Mason taking the lead essentially
24 means that -- he did more of the leading of the
25 questions. I might have asked a couple of followup

1 questions.

2 Q What questions were asked?

3 A After he had already told us that he did it and
4 was sorry for what he had done, when he told us about
5 that someone had left a gun for him to use and someone
6 had helped him to dispose of the victim, Ms. Dunning's
7 property, I asked him, you know, who that person was.

8 Q Let me stop you right there for just a minute
9 if I could.

10 MS. KENNEDY: Approach the witness, Your
11 Honor?

12 THE COURT: Yes, ma'am.

13 BY MS. KENNEDY:

14 Q Uh, tell me -- let me back up a minute. When
15 you say he said he did it, how -- did you say you know
16 why I'm here, I know y'all think I committed this armed
17 robbery and I'm going to tell you I did it. I'm going to
18 save you a lot of time. I'm going to tell you right now
19 I did it. Is that what he said?

20 A That was after we told him we wanted to talk to
21 him.

22 Q That was my question, sir, how did you approach
23 it before he volunteered this information?

24 A I would say it was at the same time he was
25 being advised of his rights and told why we wished to

1 speak to him, why we were advising him of his rights.

2 Q Did you, uh, take notes during this interview?

3 A I don't recall that I did.

4 Q Were you here when your Captain Ollic testified
5 this morning?

6 A I was.

7 Q And were you here when he testified that what
8 you all are supposed to do is take notes cause that's how
9 you get all the information in the supplemental reports?

10 A Correct.

11 Q It's your testimony today that you don't have
12 any notes?

13 A Anything would be detailed in my supplemental
14 report.

15 Q Okay. Let me back up. I got the issue with
16 the supplemental report. But when Captain Ollic
17 testified this morning, his -- he's your supervisor,
18 right?

19 A Correct.

20 Q He said his officers take notes, get the
21 information and then it's all transcribed into a report.
22 Did you do that?

23 A I don't recall that I wrote any specific notes.

24 Q Okay. And this is -- armed robbery is pretty
25 serious, is it not?

1 A Yes.

2 Q Okay. Kidnaping is pretty serious, is it not?

3 A Yes, ma'am.

4 Q So you don't recall whether -- let me -- strike
5 that -- let me -- how many other investigations have you
6 been the lead detective on?

7 A Several since. I don't know the exact number.

8 Q Anything this serious?

9 A There have been, yes.

10 Q And it's your testimony that the several
11 investigations, including this one, that you -- serious
12 ones, that you don't take notes?

13 A No, my testimony is that any notes are
14 transcribed into the supplemental. It's in the
15 supplement what was notated or what --

16 Q But you have physical notes before you
17 transcribe them into your supplemental or at least you
18 are supposed to according to Captain Ollic?

19 A I don't recall if I had any physical note paper
20 if that's what you're asking.

21 Q Okay. So when Mr. Jackson says I apologize,
22 you were never the target, that wasn't important to you
23 for you to take down notes?

24 A It -- I would say it was important enough.
25 That's why it's detailed in my supplemental report.

1 Q But there are no underlying -- just so we're
2 clear, there are no underlying notes to support what's in
3 your supplemental reports, correct?

4 A Again, if you are referring to specific note
5 papers, --

6 Q Right. The notes that your captain said you
7 are supposed to do, you don't have those?

8 A I don't recall that I do.

9 Q Okay. And there are no notes that reflect that
10 you -- this utterance about, you know, that somebody --
11 that Mr. Jackson said somebody gave him a gun, right?

12 A Again, I don't recall having a specific.

13 Q And when he said somebody gave him a gun, you
14 indicated that you questioned him further about that,
15 right?

16 A Yes.

17 Q And he refused to give you any more information
18 or didn't want to.

19 A I wouldn't say he refused to give any more
20 information. It appeared to be a touchy subject. He
21 didn't want to -- appeared to not really want to tell me
22 who that person was.

23 Q Right. But you didn't take any notes about
24 that either?

25 A It's detailed again in my supplemental report.

1 Q Supplemental report is supposed to have
2 underlying notes to support it. How about when he, I
3 guess at some point, spontaneously -- these two -- at
4 least as to those two things, the gun and the information
5 that the victim's personal belongings were put in a trash
6 can, you didn't have any information about that, did you,
7 that somebody had given him a gun?

8 A I'm not sure of your question.

9 Q Okay. You didn't have -- at the time you
10 interviewed him in Lieutenant Mason's office, you had
11 zero information about anybody else giving him a gun,
12 correct?

13 A Correct. At the time, we had information that
14 Ms. Dunning was the victim of an armed robbery in a
15 church and that the suspect held her at gunpoint against
16 her will.

17 Q Right. But as to the specifics, and we will
18 concede for purposes of this examination that Mr. Jackson
19 -- as to the specifics, you didn't know anything about
20 another person being involved that may have been involved
21 where this gun was concerned, correct?

22 A Correct.

23 Q Okay. And you didn't have any information,
24 whatsoever, about Ms. Dunning's personal items being put
25 in a trash can in a car wash in Orangeburg, correct?

1 A Correct.

2 Q And those are the things that you incorporated
3 into your supplemental, but there are no notes to support
4 it, right?

5 A If you're asking again if there's any specific
6 note paper, I don't recall that there are.

7 Q Let's say -- when you say your supplemental,
8 what happens is you all take notes. You're supposed to
9 put it in an incident report, right? Yes or no.

10 A It depends on the situation. If you're talking
11 about if there's an -- it's an initial incident that
12 we're responding to or if it's a supplemental.

13 Q No, the process of this investigation. Okay.
14 You did an incident report on May the 18th.

15 A Correct. Initially, that was done as an agency
16 -- what we call an agency assist report.

17 Q Right. And then when was the next time you
18 completed a report on this case? Do you have your file
19 with you?

20 A I do.

21 Q When was the next time that you completed a
22 supplemental report in relation to this incident?

23 A The next time? The next time was on the 24th
24 of June, 2010 is when it was actually uploaded into the
25 system.

1 Q All right. May 24th. This incident took place
2 on -- June 24th. This incident took place on May the
3 18th. You interviewed Mr. Jackson on June the 2nd. We
4 don't get any kind of report that you actually did the
5 supplemental until June 24th, right? And by that time,
6 the investigation was over, correct?

7 A On June 24th, the one that was uploaded at that
8 point has a list of all the other days that it took
9 place, including the 20th, when I contacted the fire
10 chief.

11 Q I understand that. I understand and maybe I'm
12 just confused about the process, but you did an initial
13 report on May the 18th.

14 A Correct.

15 Q You didn't do a supplemental until June the
16 24th. There was a whole lot of investigation in between
17 those two dates, correct?

18 A Correct.

19 Q And none of that was recorded contemporaneously
20 with what you did in that investigation, right?

21 A Again, if you're asking for specific note
22 paper --

23 Q Did you go back to the computer on -- after you
24 interviewed Mr. Jackson on June the 2nd and you put that
25 in your report that I interviewed him on that day and

1 this was what he told me that day?

2 **A** Sometimes what I'll do is I'll put it in a Word
3 document as I go so that I can essentially transcribe --

4 **Q** But every time you do that, aren't you supposed
5 to record why you're doing that?

6 **A** That's kind of what it is, as I go. And then
7 again, the 24th is when all of that was uploaded into
8 the --

9 **Q** So you didn't go on June the 2nd, that
10 afternoon, and put notes in and record notes, right?

11 **A** Not until the final --

12 **Q** Okay.

13 **A** The 24th is when it was all uploaded.

14 **Q** Mr. Jackson all volunteered this -- I mean,
15 volunteered all this information to you on June the 2nd.
16 You didn't take notes. You didn't think it was important
17 enough to transcribe immediately after the interview was
18 done or pretty close in time, right? Did you do that?

19 **A** What is your specific question? I'm sorry.

20 **Q** Did you on the afternoon of June the 2nd or
21 midday on June the 2nd or before you went home on June
22 the 2nd, put all this information in a report.

23 **A** No, ma'am.

24 **Q** Okay. And on June 3rd, I'm a little confused
25 too. On June 3rd, if you already had a confession, which

1 is what you are testifying to and that Mr. Jackson
2 voluntarily gave you all this information, why do you go
3 to the jail? Why do you go after another one?

4 **A** Essentially, there were two reasons. I wanted
5 to make a proactive effort to try to find out who that
6 other person was since the defendant had mentioned that
7 someone left the gun for him. I felt that if I could
8 obtain that information, that was certainly pertinent to
9 the investigation. He mentioned, you know, also that a
10 person helped him to dispose of some of the property that
11 belonged to the victim at the car wash. I wanted to try
12 to see if I could determine who that was, if maybe that
13 was the same person that left the gun for him or if that
14 story would change at all and to provide him the
15 opportunity to see if he would write us a statement.

16 **Q** So you went back the next day to sort of rehash
17 everything you had heard the day before?

18 **A** I wouldn't necessarily say rehash, but --

19 **Q** What did you expect to hear differently on June
20 the 3rd than what you had heard June 2nd? He had already
21 indicated to you, at least based on your testimony, that
22 things were getting kind of touchy.

23 **A** He didn't say they were getting touchy. His
24 posturing and, you know, tone of voice. You could tell
25 it was kind of a touchy subject. Again, my hope was to,

1 you know, diligent effort to try to get that information,
2 if there was indeed another person involved. Without
3 making that effort, I couldn't ascertain who that was.

4 Q He said -- you said he was getting kind of
5 touchy or he said it was a touchy subject?

6 A No, ma'am. I said that. He did not say he was
7 getting touchy. But you could tell in his posturing that
8 it was kind of a touchy subject with him. Any time we
9 would go to ask him what is the name of that person, his
10 mannerisms changed a little bit. His posturing got a
11 little more defensive.

12 Q So you ended the interview?

13 A Correct.

14 Q Okay. But at that point in time, he had
15 already given you, according to you an oral confession.

16 A Correct.

17 Q So my question to you is what did you think was
18 going to happen differently on June the 3rd? What
19 information were you going to get on June the 3rd that
20 you didn't already have?

21 A I was hoping to get the name and description of
22 the person that left him the weapon to use, the gun to
23 use, the person that helped him dispose of the victim's
24 property at the car wash and determine if that was the
25 same two people or if there were just one other person

1 involved or possibly two other people or more that were
2 involved.

3 Q So you were the one who asked the questions
4 this time? You took the lead?

5 A I took the lead as far as advising him of his
6 Miranda rights at that time on the 3rd.

7 Q Okay. And so Detective Riser went with you on
8 that day, right?

9 A Correct.

10 Q So how did Detective Riser know what questions
11 to ask him? Was he involved in the interview on June
12 2nd?

13 A No.

14 Q So how did -- how did -- how did Detective
15 Riser know what to ask him if he wasn't involved in that
16 on June the 2nd?

17 A He was a much more experienced detective at the
18 time of the incident.

19 Q So you told him the information you had gotten
20 the day before?

21 A I did.

22 Q And so you went over to the Hill Finklea
23 Detention Center?

24 A Correct.

25 Q You were in the small interview rooms in the

1 hall and you go down the hall?

2 A Yes, ma'am.

3 Q Okay. No videotaping equipment there and no
4 audio, correct?

5 A Not that I'm aware of.

6 Q Okay. And, uh, how long were you and Detective
7 Riser with Mr. Jackson on June the 3rd?

8 A I would say roughly 20 minutes or so.

9 Q So you went in. And at this point in time, you
10 had the defendant's statements to use rather than the
11 advise of rights statement that was used the day before,
12 correct?

13 A Correct.

14 Q And the significance to you for both of those
15 things is that each of them contain the Miranda warnings,
16 right?

17 A Yes.

18 Q Okay. And you filled out the -- you are the
19 lead detective, right?

20 A Yes, ma'am.

21 Q And you filled out the paperwork and you put
22 Mr. Jackson's name as Brandon and not Benjamin, right?

23 A I did.

24 Q And by this time, we are -- let's see. He's
25 been in custody or you've known his name at least four or

1 five days, right?

2 A That sounds about right.

3 Q Okay. And Detective Riser is the one who's
4 asking all the questions. How is it then that the only
5 thing that came -- that was actually put in this
6 statement is the portion where he says I'm really sorry,
7 you were never the target?

8 A It was his written statement written in his
9 words by him.

10 Q I understand that. But according to you, there
11 were three separate parts to this confession, the part
12 where he apologizes, the part where he makes reference to
13 the gun. The part where he makes reference to having
14 thrown Ms. Dunning's personal items in the trash can.
15 None of that comes into the written statement. Can you
16 tell me why?

17 A That's what he wrote down.

18 Q Okay. But he never wrote down he did it?

19 A He didn't write it down.

20 Q No.

21 A He told us that verbally.

22 Q He told you that verbally, but it's not in his
23 statement?

24 A I don't recall it being in his written
25 statement.

1 Q Sir?

2 A I don't recall it being in the written
3 statement.

4 Q You just read it to the jury. Is it in there?

5 A Not that I recall.

6 Q Okay. And again, how long were you with him?

7 A On the 3rd of June, 2010, roughly about 20
8 minutes or so.

9 Q 20 minutes and the 15 or 20 minutes the day
10 before?

11 A That sounds about right.

12 Q And he just sort of volunteered all of this
13 information?

14 A That's correct.

15 Q Okay. Now, when you were getting this
16 information from him, what is your understanding of what
17 he knew about what was happening to his wife since you
18 were the lead investigator, you would know that, right?

19 A I don't know what his understanding would have
20 been.

21 Q Well, did you tell him that she was taken into
22 custody?

23 A I don't recall.

24 Q Did you tell him she was going to be charged?

25 A I really don't recall specifically.

1 Q So that's not important information for you to
2 put in any kind of notes that you would -- that's not in
3 your supplemental either.

4 A I'm sorry. Her being charged is in my
5 supplemental.

6 Q But the information as to how she came to be
7 charged isn't in your supplemental except to say that she
8 was arrested on June the 3rd.

9 A I thought there was more to it than that in my
10 supplemental.

11 Q Okay. Did you -- when you were sitting with
12 her and she was in custody and sitting, I guess, on the
13 sofa in her living room, did you tell her she was going
14 to be charged?

15 A Not at that time.

16 Q Okay. When did you tell her she was going to
17 be charged?

18 A It was later that same day at the Sheriff's
19 Office.

20 Q Okay. Do you have your reports with you,
21 Detective Cortte?

22 A I do.

23 Q I would direct your attention to the
24 supplemental that you completed on June the 24th. It
25 would be referencing page 5 of that report. At the

1 bottom of the page where it starts at the next to the
2 last line additionally.

3 A Yes, ma'am.

4 Q Would you read that for me, please.

5 MR. ALFARO: Objection, Your Honor. May we
6 approach?

7 (WHEREUPON, a bench conference is held off the
8 record.)

9 THE COURT: All right. The objection is
10 sustained.

11 BY MS. KENNEDY:

12 Q And Detective Cortte, you didn't -- even though
13 you -- you never found a weapon in this case?

14 A No, that's correct.

15 Q And nobody who was working under your
16 supervision found a weapon in this case?

17 A Not to my knowledge.

18 Q And as to the, uh, the bullets that were --
19 that you testified to that were consistent with what you
20 would use with a rifle or long barrel gun, that could be
21 any rifle or long barrel gun, correct? Those bullets?

22 A We had no evidence to suggest --

23 MS. KENNEDY: Thank you, sir. I appreciate
24 it.

25 THE WITNESS: Yes, ma'am.

1 **THE COURT:** All right. Mr. Foreman, Ladies
2 and Gentlemen of the jury, we're going to take a
3 break at this time. If you need a smoke break, let
4 the bailiffs know. Anything else you need, let the
5 bailiffs know. We'll take about a 20 to 20-minute
6 break. Please don't discuss the case. Leave your
7 pads in your chair.

8 **(WHEREUPON, the jury exits at approximately**
9 **4:25 p.m.)**

10 **THE COURT:** All right. Before -- before we
11 break, I want to put on the record and y'all are
12 going to have to help me. The last objection was
13 concerning the relevancy of the co-defendant
14 testimony from this witness. I sustained that
15 objection. The confession, you objected to in the
16 Jackson v. Deno.

17 **MS. KENNEDY:** Yes, sir.

18 **THE COURT:** I'll make that part of the
19 record, the oral and the written. Okay.

20 **MS. KENNEDY:** Okay.

21 **THE COURT:** There was something else that we
22 did up here at the bench. I'm trying to remember
23 what it was so that I could put it on the record.

24 **MS. KENNEDY:** It concerned the --

25 **THE COURT:** Oh, it was about the, uh, shotgun

1 shells.

2 MR. ALFARO: Yes, Your Honor.

3 THE COURT: Ms. Kennedy had an objection to
4 the pictures and the shells themselves, which I
5 sustained. I said I would allow you to ask did they
6 find any weapons or find any ammunition and what
7 ammunition they found. I allowed those questions.

8 MR. ALFARO: Yes, sir.

9 THE COURT: Over her objection. Okay.
10 Anything else that was done up here that we needed
11 to put on the record?

12 MR. ALFARO: No, sir.

13 MS. KENNEDY: No, sir.

14 THE COURT: Okay. We'll take a break. Thank
15 you.

16 MS. KENNEDY: Thank you.

17 (WHEREUPON, a short recess is taken.)

18 THE COURT: Please be seated.

19 Anything from the State before we bring the
20 jury?

21 MR. ALFARO: No, Your Honor.

22 THE COURT: How many more witnesses you think
23 you may have?

24 MR. ALFARO: One witness, Your Honor.

25 THE COURT: One more after this?

1 **MR. ALFARO:** Yes, sir.

2 **THE COURT:** Okay. I'm sorry. Anything from
3 the defense?

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

5 **THE COURT:** Bring the jury please.

6 **(WHEREUPON, the jury enters at approximately**
7 **4:48 p.m.)**

8 **THE COURT:** Everybody have their pads? We
9 ready?

10 Redirect?

11 **MR. ALFARO:** Thank you, Your Honor.

12 **REDIRECT EXAMINATION**

13 **BY MR. ALFARO:**

14 **Q** Detective Cortte, before we broke, you were
15 asked a couple of questions regarding the, uh, statement,
16 the oral statement that the defendant gave on June the
17 2nd. I just want to clarify. Was he -- was the
18 defendant informed of what you were -- what incident you
19 were investigating before he gave you the statement that
20 started with he did it?

21 **A** Yes, he was.

22 **Q** And you were asked about the date that you
23 completed your supplemental report. I believe you said
24 it was June the 24th?

25 **A** Yes, sir.

1 Q Did you have an opportunity to, uh, -- strike
2 that question. You were also asked about whether you
3 took any notes at the time of the interview on June 2nd.
4 Do you have any doubt as to the accuracy of the
5 defendant's statement as you recanted -- as you told it
6 to the jury?

7 A No, sir. I have no doubts to the accuracy of
8 it.

9 Q And again, on the June 3rd interview, were you
10 also -- was the defendant also informed as to what you
11 were investigating before he gave you his written
12 statement?

13 A Yes. He was.

14 Q No further questions.

15 THE COURT: Recross?

16 **RECROSS-EXAMINATION**

17 **BY MS. KENNEDY:**

18 Q But if the interviewed had been taped,
19 Detective Cortte, there would be no doubt about what was
20 said and who said what, correct?

21 A Correct.

22 Q And that's the purpose of having the interview,
23 the cameras and audio and video equipment, correct?

24 A Correct.

25 Q That's all.

1 **THE COURT:** You may step down. Thank you
2 very much.

3 **THE WITNESS:** Thank you, Your Honor.

4 **THE COURT:** Call your next witness please.

5 **MS. PITTMAN:** The State calls Lieutenant Dean
6 Kokinda.

7 **THE CLERK:** Please raise your right hand.
8 Place your left hand on the Bible.

9 **DEAN KOKINDA**

10 having first been sworn, testifies as follows:

11 **THE CLERK:** Please be seated. State your
12 full name. Spell your last name for the record.

13 **THE WITNESS:** Dean Robert Kokinda. Spelling
14 of the last name, K-O-K-I-N-D-A.

15 **DIRECT EXAMINATION**

16 **BY MS. PITTMAN:**

17 **Q** Where do you work?

18 **A** I work with the Berkeley County Sheriff's
19 Office.

20 **Q** And how long have you been with the Berkeley
21 County Sheriff's Office?

22 **A** Since 1989.

23 **Q** What are your current rank and duties?

24 **A** Currently, I hold the rank of Lieutenant and
25 I'm over the Forensic Services Division.

1 Q How long have you been working in Forensics?

2 A Since 1990.

3 Q What are your duties in criminal cases?

4 A Uh, the Forensic Services Division processes
5 crime scenes as we are directed. We process evidence
6 that may be submitted by deputies. And we also store any
7 evidence that may be turned in until it's needed in
8 court.

9 Q So you have the task of processing evidence for
10 fingerprints?

11 A Yes, ma'am.

12 Q Could you tell the jury what training and
13 education you had in the field of fingerprints,
14 specifically lifting and analyzing fingerprints?
15 Fingerprints specifically. I completed the Federal
16 Bureau of Investigations basic fingerprint course in 1993
17 and then a forensic ridgeology course in 2003.

18 Q Have you had the opportunity to testify in the
19 courts of record as an expert in the field of forensics
20 including fingerprint and fingerprint analysis?

21 A Yes, numerous times in General Sessions court.

22 Q You said numerous times. Do you know about how
23 many times that would be?

24 A Uh, like over 10.

25 Q Okay.

1 **MS. PITTMAN:** Your Honor, the State requests
2 that Lieutenant Dean Kokinda be qualified as an
3 expert in the field of forensics, specifically
4 fingerprint and fingerprint analysis..

5 **THE COURT:** Ms. Kennedy, you have any
6 objection?

7 **MS. KENNEDY:** No objection, Your Honor.

8 **THE COURT:** All right. The Court so finds.
9 Thank you.

10 **BY MS. PITTMAN:**

11 **Q** Can you tell the jury how different types of
12 evidence are processed through fingerprints?

13 **A** When I process, what we're looking for is, one,
14 what type of surface we have to deal with and the
15 contrast of that surface trying to locate fingerprints.
16 Basically, what you're looking at with a latent
17 fingerprint, one you can't see, is you are dealing with
18 the image of ridges on your hand being transferred to an
19 object. Now, some objects are very conducive, such as
20 smooth, nonporous surfaces to leave residue behind on
21 those ridges. Some aren't.

22 **Q** Can you tell the jury would it be normal not to
23 take fingerprint evidence from a public place as a
24 church?

25 **MS. KENNEDY:** Your Honor, I'd object to this

1 line of questions. There's no basis for that.

2 **THE COURT:** Overruled. Go ahead.

3 **THE WITNESS:** I work on them as we're
4 directed. If we're directed to go to a specific
5 area for a crime scene, depending on what type of
6 crime, depending on what happened there, we may or
7 may not fingerprint an area.

8 **BY MS. PITTMAN:**

9 **Q** What do you use in your decision-making whether
10 to fingerprint something or not fingerprint something?

11 **A** Basically what occurred in that area, did this
12 person have an opportunity to transfer their
13 fingerprints. I always use an example of I'm sitting in
14 this witness chair and I've sat in this witness chair
15 before for a couple of hours at a time. I can come back
16 and I can process this area. I may or may not get my
17 fingerprints. Just because of the fact of what I'm doing
18 here at the witness stand. So when we look at a crime
19 scene, we look at what type of crime happened, what had
20 to transpire to do this crime and what did they touch,
21 you know, what did they use, things they might have
22 handled, how long they were there.

23 **Q** In this case involving the defendant, were you
24 asked to process any evidence?

25 **A** Uh, I was asked to process a vehicle.

1 Q And do you recall where you came into contact
2 with that vehicle?

3 A I was notified by our dispatch to respond out
4 to St. Stephen.

5 Q Do you recall what time that was?

6 A It was after midnight, May the 28th.

7 Q And when you got to the scene, what did you do?

8 A When I got to the scene, the vehicle was kind
9 of partially in some trees. I processed the exterior of
10 the vehicle before they towed it just so I couldn't
11 possibly lose any latent fingerprint evidence on the
12 outside of the vehicle. The vehicle was towed back to
13 the Sheriff's Office. I processed the interior of the
14 vehicle a couple of hours later.

15 Q Uh, you said you processed on the scene. What
16 did you do exactly?

17 A When I said processed on the scene, I processed
18 the exterior, specifically, the left side of the vehicle
19 where the door was opened, where the driver of the
20 vehicle had fled with powder because it's a smooth,
21 nonporous surface.

22 Q I'm going to show you State's Exhibit 9.

23 (Pause.)

24 Well, you've got that photo in front of you.
25 Can you -- tell me do you recognize what's in that photo?

1 **A** Yes. That's a photograph of the vehicle I
2 processed that day.

3 **Q** And can you tell us what you processed?

4 **A** Specifically, the left door area for latent
5 fingerprints. That was done before we took it from the
6 scene. The next morning, this photograph was taken. We
7 also searched the interior and processed areas inside for
8 latent fingerprints.

9 **Q** Okay. Uh, you said the left door. Was there
10 any other place that you got fingerprints from on the
11 outside?

12 **A** On the outside? Just the left door area.

13 **Q** Okay. And you said you did that at the scene?

14 **A** That's correct.

15 **Q** And the photograph that you see, was there
16 anything in that photo that you got lifts from?

17 **A** In this photo here, you can see the dust from
18 the fingerprint powder in the areas where I recovered
19 some of the fingerprints. Particularly, you are looking
20 at around where the door opens at towards the rear.

21 **Q** Now, can you show for the jury what we were
22 just talking about as far as where you got the prints
23 from? There's a pointer.

24 **A** The left door area from the handle area right
25 here on the rear of the window.

1 Q Okay. I'm going to show you now State's
2 Exhibit 12. Do you recognize what's in this photo?

3 A Yes, this is a photograph of the right front
4 floor of that vehicle that's showing a Wal-Mart bag. And
5 inside that Wal-Mart bag, there were several items.
6 Those were processed. Some latent fingerprints were
7 recovered off of some of those items.

8 Q What were some of those items?

9 A Uh, a jalapeno dip can, a soap box. I have to
10 look at my report to see if there was anything else.

11 Q And where did that take place when you took the
12 prints off of those items?

13 A Off of these items was behind the Sheriff's
14 Office.

15 Q And you were able to discover latent prints off
16 those items?

17 A That's correct.

18 Q After lifting those prints, did you make a
19 comparison against any known fingerprints of the
20 defendant, Benjamin Jackson?

21 A Yes, I did.

22 Q And what did you compare his fingerprints to?

23 A I compared his known fingerprints to the latent
24 fingerprints that were recovered from the vehicle.

25 Q And the latent prints you recovered and

1 compared to the defendant's prints, were you able to make
2 any conclusions with what you analyzed and compared?

3 A Uh, yes, I did. I wrote a report on it.

4 Q What was the results of that?

5 A I have to look at a copy of my report.

6 (Pause.)

7 Q Did you bring a copy of that report?

8 A No, I did not bring one with me.

9 Q Would seeing a report help refresh your memory?

10 A Yes, it would. Could you repeat the question
11 you just asked?

12 Q The latent prints that you recovered and
13 compared to the defendant's prints, were you able to make
14 any conclusions?

15 A Yes.

16 Q And what were those conclusions?

17 A That there were 12 latent fingerprint lifts.
18 The first latent lift was from the left front door. On
19 that particular latent lift, there were two individual
20 latent lifts or latents. The first one was identified
21 with the defendant, Benjamin Jackson, his right ring,
22 number 4 finger. Item 1.2, which is the second latent on
23 that first card, does not have enough ridge detail for
24 identification.

25 Q Okay. Let me just stop you right there. Can

1 you explain to the jury what no identifiable ridge detail
2 means?

3 A Sure. When we do a fingerprint comparison, we
4 are looking at three different levels of detail. You
5 look at your hands, on the bottom of your feet, it's
6 different skin. It's called friction skin. And when you
7 see those ridges or those lines, if you looked closely or
8 through a magnifying glass, you will see those lines,
9 they don't flow from just one side to another. They'll
10 stop. They'll split. They'll come back together.

11 So when we're looking to do an analysis or a
12 comparison, the first level of detail to look at is the
13 ridge flow. That's basically the pattern, how all these
14 ridges go generally. Then you start looking at the ridge
15 pattern. That's when you start looking at each individual
16 ridge and what does that individual ridge do. That's
17 when we start actually identifying to an individual.

18 And if the quality is good enough, we look at
19 the ridge shape. It's because these ridges, when they
20 develop, these aren't just ridges coming up. They are
21 actually the pores coming out of the skin and those pores
22 fusing together. So it -- they are not just even and
23 straight. They get narrow and they get wider. Of
24 course, you have to have extremely good, clear clarity to
25 do that type of comparison with that detail.

1 Q Uh, when there's no identifiable ridge detail,
2 do those findings mean the defendant never touched those
3 items?

4 A No, it just means that there's not enough, uh,
5 either level 2 or level 3 detail to individualize to a
6 person.

7 Q Are prints always recovered from items dusted
8 for prints?

9 A Uh, no. I always say that finding an
10 identifiable latent fingerprint is really accidental.
11 Again, I always use the example that I can sit here for a
12 couple of hours, I can come back here. I may or may not
13 find my fingerprints here. Probably not, just looking at
14 the substance.

15 Q And why would an item that someone held not
16 have any identifiable prints on there?

17 A A number of reasons. I grabbed this. I sat it
18 down. My fingers are twisted. Again, if you look at
19 your hands and you look at those ridges, those lines,
20 they are very fine. So just the mere fact of grabbing
21 something, twisting my wrist, turning a doorknob, it will
22 smudge those lines together. Also, you've got an
23 environmental factor. I touch an item and it rains, you
24 know, it's 100 degrees and the sun comes out, I've got
25 humidity, I've got heat, sunlight. All those things take

1 effect to the residue that's left behind from my
2 fingerprint.

3 Q Now, going back to your report, you were able
4 to make -- were able to lift latent prints?

5 A That's correct.

6 Q And they matched to the defendant?

7 A That's correct.

8 Q How many of those prints were you able to
9 analyze and compare and match?

10 A There were nine fingerprints that were
11 identified with the defendant.

12 Q And I know you told me and the jury that you
13 were able to get some off the door and you mentioned the
14 jalapeno can. Was there anywhere else that you were able
15 to get those latent lifts from?

16 A That were identified?

17 Q Uh-huh.

18 A There were latents identified on the left door.

19 A latent identified with the defendant on a Sunsations
20 dish soap box. A latent identified on the jalapeno dip
21 can. Two more latents identified with the Sunsations
22 dish soap box.

23 Q And were those items that were found in the
24 vehicle?

25 A The items that were listed here were found in

1 the right front floor of the vehicle.

2 Q And again, you were able to confirm that the
3 latent print matches to the defendant?

4 A Yes.

5 Q In addition to processing the fingerprint
6 evidence in this case, as part of the investigation, did
7 you have an opportunity to respond to the defendant's
8 residence?

9 A Uh, yes, on, uh, I believe it was June the 2nd.

10 Q Why did you go out there?

11 A To assist the detectives by taking photographs
12 for a search warrant.

13 Q And what did you take photos of?

14 A Overall photos of the residence and items that
15 were collected.

16 Q Did you take custody of those items?

17 A Yes, I did.

18 Q I'm going to show you State's Exhibit 15. Is
19 that the residence that you responded to?

20 A Uh, yes, it is.

21 Q And outside of the residence, did you recover
22 any of the victim's items?

23 A There were several items that were recovered
24 outside.

25 Q I'm going to now show you State's Exhibit 31.

1 Who placed that number there?

2 A I did.

3 Q And what is that number for?

4 A It's just an identifying number for the
5 photograph.

6 Q Is that where that was found at the residence?

7 A Yes.

8 Q And it was in that condition?

9 A Yes.

10 Q And you were able to tell that's a luggage
11 rack?

12 A Correct. That's a roof luggage rack off the
13 vehicle.

14 Q I'm now going to show you State's Exhibit 30.
15 Who placed that number there?

16 A I did.

17 Q You already told me what the numbers are for.
18 So is that where that was found at that residence?

19 A Correct. That was found at the rear of the
20 residence.

21 Q And in that condition?

22 A Yes.

23 Q I'm now going to show you State's Exhibit 32.
24 Who placed that number there?

25 A I did.

1 Q And that was recovered from the same property?

2 A Correct. That's a metal decal that was on the
3 window.

4 Q I'm going to show you State's Exhibit 37. Is
5 that the same item from the photo?

6 A Yes, it is.

7 Q I'm now going to show you State's Exhibit 18.
8 Do you know what that is?

9 A That's a vehicle registration document.

10 Q And can you tell what vehicle that goes to?

11 A It goes to the victim's vehicle.

12 Q I'm now going to show you State's Exhibit 17.
13 Do you recognize that item?

14 A That's a photograph of the cabinet that's over
15 the washer, dryer area. That shows, in this particular
16 photograph, this item.

17 Q Do you recall where that was found in the
18 residence?

19 A It was in the laundry area.

20 Q And do you know if it belonged to the victim?
21 I believe you said it did.

22 A The small black case was an owner's manual for
23 the Ford Expedition.

24 Q Is that where the registration was found that
25 belonged to her?

1 A I believe so.

2 Q I'm now going to show you State's Exhibit 19.
3 Do you know where in the house that was located?

4 A That was in a rear room. It was an addition.
5 It was a single-wide trailer. There was an addition on
6 the back of that. It was in that addition part.

7 Q Was any of those items moved or removed?

8 A Uh, the spare tire.

9 Q Did the spare tire go to anything that belonged
10 to the victim?

11 A That's what I was told.

12 Q It's behind you now. That spare tire you see
13 right there?

14 A Correct.

15 Q I'm going to show you State's Exhibit 28. Do
16 you recall what part of the residence this photo was
17 taken in?

18 A This was the kitchen counter area. In this
19 particular photograph, it's showing a check that belongs
20 to the victim.

21 Q Now, I'm going to show you State's Exhibit 27.
22 Strike that. I'm going to show you State's Exhibit 40.
23 Would that be the check?

24 A Yes, that's the check.

25 Q I'm going to show you State's Exhibit 29. Was

1 that the condition of that part of the resi -- the
2 defendant's home when you took the photo?

3 A Uh, yes.

4 Q And --

5 A That particular photograph shows, uh, I believe
6 a child's room to the right of the house coming in the
7 front door.

8 Q And were any of the victim's things found in
9 that room?

10 A No.

11 Q I'm going to show you State's Exhibit 25. That
12 number 7 there, did you place that number there also?

13 A Yes, I did.

14 Q Okay. And were these items already on the
15 ground or did someone put them on the ground for you to
16 photograph?

17 A I don't recall. I know that there were several
18 detectives out there. I can't recall if they were
19 already on the ground or if they were taken out of the
20 trash.

21 Q Did you collect those for evidence?

22 A Yes, I did.

23 Q I'm now going to show you State's Exhibit 24.
24 Do you recall what that item is?

25 A That's a vehicle GPS.

1 Q Do you recall where in the residence it was
2 located?

3 A I don't specifically recall. I believe
4 somebody else found it. I photographed the home screen
5 showing the victim's address.

6 Q Now, I'm going to show you State's Exhibit 29.
7 Do you recall what part of the house this photo was taken
8 in?

9 A This is the, uh, master bedroom bathroom.

10 Q And do you recall if any items belonging to the
11 victim are recovered?

12 A On the counter, there's a prescription pill
13 bottle that had the victim's name on it.

14 Q I'm going to show you State's Exhibit 39.
15 Would this be that pill bottle?

16 A Yes.

17 Q Did you process or examine any other items of
18 evidence in this case?

19 A Uh, for fingerprints?

20 Q I think we've gone over that. Anything else?

21 A Just the items that were recovered from the
22 house.

23 MS. PITTMAN: No further questions.

24 THE COURT: You have any cross?

25 CROSS-EXAMINATION

1 BY MS. KENNEDY:

2 Q Lieutenant Kokinda, were you working on May the
3 18th of 2010?

4 A May the 18th?

5 Q Yes.

6 A Yes.

7 Q Anybody call you -- if not you, anybody in your
8 unit?

9 A Yeah, we're on call 24 hours.

10 Q Anybody -- to your knowledge, anybody call any
11 of you out to the scene at St. Stephen Evangelical
12 Church?

13 A Uh, --

14 Q Take any fingerprints, do any crime scene?

15 A Not anyone called to respond there.

16 Q Okay. And you were giving us the example of it
17 if you touch something, you know, fingerprints may or may
18 not be there, correct?

19 A Correct.

20 Q But you don't know until you test them, right?

21 A Correct.

22 Q And as to the items, if I understood your
23 testimony correctly, there were other fingerprints or
24 latent prints that you lifted from the car, correct?

25 A Uh, --

1 Q There were other prints in the car?

2 A As far as?

3 Q Anybody else's fingerprints.

4 A The only ones that were -- there was one that
5 was not identified with the defendant.

6 Q All right.

7 A The rest of them were either identified with
8 the defendant or they didn't have enough ridge detail to
9 make an identification.

10 Q But you were specifically looking for the
11 defendant?

12 A Those were the known standards that I --

13 Q Those were the matches you were making.

14 MS. KENNEDY: Court's indulgence. (Pause.)

15 That would be all I have. Thank you very much.

16 THE COURT: Any redirect?

17 MS. PITTMAN: None, Your Honor.

18 THE COURT: You may step down. Thank you
19 very much.

20 Can I see the attorneys up here for just a
21 second.

22 (WHEREUPON, a bench conference is held off the
23 record.)

24 THE COURT: All right. Mr. Foreman, Ladies
25 and Gentlemen of the jury, we're going to -- it's

1 almost 5:30. We're going to stop at this time.
2 Leave your notepads. Please don't discuss the case
3 with anybody or read anything about in the paper or
4 hear anything on the radio. I just want you to make
5 your decision on what you hear in the courtroom.

6 Tomorrow, one of the parties involved in the
7 case has to attend a funeral in Gaffney, South
8 Carolina. That funeral is at two o'clock tomorrow
9 afternoon. So we're going to convene Thursday
10 morning at 9:30 to finish the trial. We're not
11 going to have part of the trial tomorrow. The court
12 will be in session, but we'll be dealing with some
13 other issues tomorrow, not this trial. So I want
14 you to be back in your jury room at 9:30 Thursday
15 morning, not tomorrow, Thursday. Have a good
16 evening. Enjoy tomorrow. I'll see you Thursday
17 morning.

18 (WHEREUPON, the jury exits at approximately
19 5:25 p.m.)

20 THE COURT: All right. Ms. Kennedy, does Mr.
21 Jackson have a prior criminal history?

22 MS. KENNEDY: Yes, sir. He does.

23 THE COURT: Pardon?

24 MS. KENNEDY: Yes, he does.

25 THE COURT: Any of it qualify for impeachment

1 purposes?

2 MS. KENNEDY: Your Honor, he, uh, he has a
3 drug conviction for which he is on probation. As we
4 just advised the court that he had at the time of
5 this incident --

6 THE COURT: Has a drug violation. What else?

7 MS. KENNEDY: At the time of this incident,
8 he had a pending Possession of a Stolen Motor
9 Vehicle and Burglary third charge. As far as
10 criminal history, I've been advised that while he
11 was in Berkeley county jail, those charges were in
12 Charleston. They took him to Charleston and he
13 entered guilty pleas for time-served sentences on
14 those charges.

15 THE COURT: Solicitor, do you know of any
16 others?

17 MR. ALFARO: Your Honor, his only convictions
18 that I'm showing at this time are the drug charge
19 that Ms. Kennedy referenced in 2007, there's a
20 Criminal Domestic Violence in 2008.

21 THE COURT: First?

22 MR. ALFARO: Yes, sir.

23 THE COURT: 30 days?

24 MR. ALFARO: Those are the only crimes, uh,
25 things I'm showing on his RAP sheet now, Your Honor.

1 **THE COURT:** All right. Mr., uh, Jackson,
2 raise your right hand.

3 **(WHEREUPON, the defendant is first duly sworn.)**

4 **THE COURT:** All right. I want to talk to you
5 about your 5th Amendment rights. Okay?

6 **MR. JACKSON:** Yes, sir.

7 **THE COURT:** Under the 5th Amendment of the US
8 Constitution and the South Carolina Constitution,
9 you have the right to remain silent. You
10 understand?

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

12 **THE COURT:** Now, no one can make you testify
13 against yourself, do you understand?

14 **MR. JACKSON:** Yes, sir.

15 **THE COURT:** No one can compel you to testify.
16 You understand?

17 **MR. JACKSON:** Yes, sir.

18 **THE COURT:** This is a personal privilege that
19 you have. No one but you can make the decision on
20 whether you want to testify or whether you do not
21 want to testify. You understand?

22 **MR. JACKSON:** Yes, sir.

23 **THE COURT:** Have you talked to your attorney
24 about your right to testify prior to today?

25 **MR. JACKSON:** Some.

1 **THE COURT:** Pardon?

2 **MR. JACKSON:** Some, sir.

3 **THE COURT:** You have?

4 **MR. JACKSON:** Yes, sir.

5 **THE COURT:** Did you understand your

6 conversations you had with your attorney about your

7 right to testify?

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

9 **THE COURT:** You understand that if you elect

10 not to testify, I will tell the jury that they can

11 not use that as any inference of guilt against you

12 and can not be considered by the jury in their

13 deliberations, do you understand, if you decide not

14 to testify?

15 **MR. JACKSON:** Yes, sir.

16 **THE COURT:** Understand?

17 **MR. JACKSON:** Yes, sir.

18 **THE COURT:** However, if you decide not to

19 testify, then you will have to answer questions.

20 You understand?

21 **MR. JACKSON:** Yes, sir.

22 **THE COURT:** You can't pick and choose what

23 questions you want to answer. It's not like on

24 television when you get on the stand and take the

25 5th Amendment. You either take the 5th Amendment

1 and not testify or you take the witness stand and
2 become a witness. You understand?

3 MR. JACKSON: Yes, sir.

4 THE COURT: Provided it's a proper question,
5 provided it's relevant and it meets the rules of
6 evidence, you will be required to answer. You
7 understand?

8 MR. JACKSON: Yes, sir.

9 THE COURT: As I said earlier, your decision
10 to testify or not testify must be freely,
11 voluntarily and intelligently made. You understand?

12 MR. JACKSON: Yes, sir.

13 THE COURT: Has anybody forced you or
14 threatened you or made you testify?

15 MR. JACKSON: No, sir.

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

18 MR. JACKSON: No, sir.

19 THE COURT: Now, I'm not going to ask you
20 your decision tonight. I just want to talk to you
21 about your 5th Amendment rights and whether you want
22 to testify or not testify, you understand?

23 MR. JACKSON: Yes, sir.

24 THE COURT: I'm going to give you until
25 Thursday morning to inform the court of whether you

1 want to testify or not testify. That will give you
2 an opportunity to discuss it with your attorneys
3 further. You understand?

4 **MR. JACKSON:** Yes, sir.

5 **THE COURT:** Do you want to test -- do you
6 want to discuss with your attorney some?

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

8 **THE COURT:** Before you make a decision?

9 **MR. JACKSON:** Yes, sir.

10 **THE COURT:** All right. You have any
11 questions about what I have told you today?

12 **MR. JACKSON:** No, sir.

13 **THE COURT:** You understand I believe the drug
14 charge will be the only one that will qualify for
15 over a year?

16 **MR. ALFARO:** Other than the burglary he just
17 pled to, that would be the only one.

18 **THE COURT:** Those criminal charges, the
19 burglary and the drug charges will come out if you
20 choose to testify, you understand? I assume they
21 will come out. I assume the Solicitor will ask that
22 question. Do you understand?

23 **MR. JACKSON:** Yes, sir.

24 **THE COURT:** You have any questions about
25 anything I've said to you?

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

2 **THE COURT:** All right. I will see you
3 Thursday morning, you understand?

4 **MR. JACKSON:** Yes, sir.

5 **THE COURT:** All right. Thank you very much.
6 Anything from the State before we adjourn?

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

8 **THE COURT:** Anything from the defendant?

9 **MS. KENNEDY:** No, Your Honor.

10 **(WHEREUPON, the Court adjourns for the day at**
11 **approximately 5:31 p.m.)**

12

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 8th day of March, 2012 at approximately 9:46 a.m.)

THE COURT: All right. Mr. Jackson, I believe, uh, Tuesday, I talked to you about your 5th Amendment rights and your right to testify and not to testify. I said I would I wait until this morning to determine whether you decided to testify or not testify. Have you made that decision?

MR. JACKSON: Yes, sir.

THE COURT: What is your decision?

MR. JACKSON: Do not want to testify, sir.

THE COURT: Pardon?

MR. JACKSON: Do not want to testify.

THE COURT: Do not want to testify. All right. That's fine. You may have a seat.

Y'all, here's the verdict form if you want to take a look at it. I showed you the charge. We went over the charge. Here's the verdict form. I prepared a separate verdict form for each particular indictment. So it's five verdict forms.

(WHEREUPON, there is a pause.)

MS. KENNEDY: Do you have them in any particular order?

THE COURT: No, I did not have them in any

Remarks

1 particular order.

2 MS. KENNEDY: Okay.

3 THE COURT: These are just copies. Some
4 judges send the indictment back. I normally don't.
5 You got any preference to the order?

6 MS. KENNEDY: No, sir.

7 THE COURT: Huh?

8 MS. KENNEDY: No, sir. I just thought you
9 may have had them in an order and I messed them up.

10 THE COURT: No, I didn't have them in any
11 particular order. That's just the way they were
12 handed to me.

13 (WHEREUPON, there is a pause.)

14 THE COURT: Anything from the State before we
15 bring the jury?

16 MR. ALFARO: No, Your Honor.

17 THE COURT: Is the state ready for closing
18 arguments?

19 MR. ALFARO: Yes, Your Honor.

20 THE COURT: Anything from the defendant
21 before we bring the jury?

22 MS. KENNEDY: No, Your Honor.

23 THE COURT: You ready for closing arguments?

24 MS. KENNEDY: Yes, sir.

25 THE COURT: Okay. Bring us the jury please.

1 (WHEREUPON, the jury enters at approximately
2 9:53 a.m.)

3 **THE COURT:** Does the State have any further
4 testimony?

5 **MR. ALFARO:** Your Honor, at this time, the
6 State rests.

7 **THE COURT:** All right. Uh, at this point in
8 time, I understand I need to hear some motions on --
9 at the end of the State's case, but while the jury
10 is here, is the defendant planning on offering any
11 testimony?

12 **MS. KENNEDY:** No, Your Honor. We do not.

13 **THE COURT:** All right. Ladies and Gentlemen
14 of the jury, the State has rested their case. The
15 defendant is not going to offer any testimony. The
16 only thing left would be the closing arguments and
17 the charge. I want to instruct you at this time,
18 it's the State's burden to prove the defendant
19 guilty beyond a reasonable doubt.

20 The defendant does not have to prove his
21 innocence. The fact that he does not testify can
22 not be used against you in any manner -- against him
23 in any manner whatsoever. You do not even consider
24 the fact that he does not even testify. He's not
25 obligated to testify under the 5th Amendment of the

1 Constitution as well as the State Constitution. You
2 can not use that in any manner against him
3 whatsoever.

4 So I'm going to ask you to go to the jury room
5 because I need to hear motions at this time. Please
6 don't discuss the case amongst yourselves. And
7 after the motions, I'll get you back for closing
8 arguments and charge. Please leave your notepads in
9 your chair.

10 (WHEREUPON, the jury exits at approximately
11 9:58 a.m.)

12 THE COURT: Any motions from the State?

13 MR. ALFARO: None, Your Honor.

14 THE COURT: Any from the defendant?

15 MS. KENNEDY: Yes, Your Honor. We would
16 renew all motions that took place during the course
17 of your trial. We specifically request a motion for
18 a directed verdict of not guilty on the basis that
19 all the evidence in the light most favorable to the
20 State has failed to meet this burden of proof.

21 THE COURT: All right. Any response from the
22 State?

23 MR. ALFARO: Your Honor, using the burden of
24 that light most -- the evidence in the light most
25 favorable to the State and the Court's concern with

1 the existence or nonexistence of evidence, I believe
2 the State has presented testimony as well as
3 physical evidence that will satisfy that burden.
4 Your Honor, we believe that the State, the case
5 should proceed to the jury and ask that the directed
6 verdict motion be denied.

7 **THE COURT:** Okay. Thank you very much. Uh,
8 motion's denied.

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

10 **THE COURT:** Y'all ready -- I've already asked
11 this earlier, but y'all ready for closing arguments?

12 **MR. ALFARO:** Yes, Your Honor.

13 **MS. KENNEDY:** Yes, Your Honor.

14 **THE COURT:** All right. Bring us the jury
15 please.

16 **(WHEREUPON, the jury enters at approximately**
17 10:00 a.m.)

18 **THE COURT:** Solicitor?

19 **MR. ALFARO:** Thank you, Your Honor.

20 Ms. Kennedy.

21 Good morning, Ladies and Gentlemen. "Give me
22 your keys or I'll blow your f-ing head off. Give me
23 your phone or I'll blow your head off. Get on the
24 ground and stay there or I'll blow your head off."
25 That is what the defendant, Benjamin Jackson, told

1 Hazel Dunning on May 18th, 2010 after he had come in
2 behind her at the St. Stephen Evangelical Church in
3 Berkeley county armed with a gun. Pointed that gun
4 in the back of her head and when she turned around,
5 he was so close to her that the barrel hit her on
6 the side of the face. Give me your keys, give me
7 your phone, get on the ground or I'll blow your head
8 off. That's what he said to her that day before he
9 took those keys, before he took that phone and
10 before he took her 2006 Ford Expedition and fled.
11 Ladies and Gentlemen, that's what he said on May
12 18th to Ms. Dunning.

13 You heard the testimony. Ten days later, he's
14 seen driving in that car that he stole on May 18th.
15 They tried to pull him over. He stopped, then he
16 flees again. High speed chase. He eventually
17 wrecks. Makes the mistake of leaving his wallet
18 behind and his credit cards and identification. Go
19 to his house. They serve a search warrant on June
20 the 2nd and they find evidence, things that were
21 stolen from her from her car by the defendant on May
22 18th, 2010.

23 Now, I told you at the beginning of this what
24 he said to her on May 18th. What's equally
25 important is what he said to her through the police

1 on June the 2nd, 2010. They talk to him. They tell
2 him why they want to talk to him. They tell him
3 they are investigating the armed robbery that
4 happened at the St. Stephen Evangelical Church.
5 They want to ask him about his involvement in it.
6 What does he say on June 2nd? I did it. I'm sorry.
7 She was never a target. I didn't want to hurt her.
8 I just wanted a vehicle. Somebody gave me the gun.
9 Somebody helped me get rid of the license plate and
10 the purse. Sorry. The same person who said that on
11 June 2nd, 2010 is the same person who said, May
12 18th, 2010, give me your keys or I'll blow your head
13 off. Get on the ground and stay there or I'll blow
14 your head off.

15 He doesn't want to give them any more
16 information about the gun or who this other person
17 is. So they leave and they go back the next day.
18 They read him his rights again, just as they had
19 done on June 2nd. They tell him again they want to
20 talk to him about the robbery that took place at St.
21 Stephen Evangelical Church on May 18th. They show
22 him the forms with his rights on it. They write on
23 the form Armed Robbery. He knows what he's talking
24 -- he knows what they are talking about. He knows
25 what they are asking about. What does he say that

1 day? Again, to the victim, through the police, he's
2 sorry.

3 And you'll have his statement back there in
4 evidence. The statement, I just want to apologize
5 for what happened that day. I wasn't trying to hurt
6 you. I was after the vehicle. You were never a
7 target. I'm sorry that it happened. Please forgive
8 me for what happened that day. God bless you and I
9 hope that you can truly forgive me. Something
10 happened that just wasn't supposed to happen. I
11 hope you can see through that and forgive me. His
12 words to Hazel Dunning June 3rd, 2010. Completely
13 different than give me your keys, give me your
14 phone, get on the ground.

15 What's important is the same person that said
16 those words to Hazel, May 18th, is the same person
17 that said those things on June 2nd and June 3rd is
18 the same person that committed the Armed Robbery,
19 Kidnaping, Grand Larceny, Burglary second,
20 Possession of a Weapon During a Crime of Violence
21 and Failure to Stop for blue lights. That, Ladies
22 and Gentlemen, is a summary of the case against
23 Benjamin Jackson.

24 I'm going to tell you a little bit about the
25 law that applies. Then I'm going to tell you a

1 little bit more about the facts that we just
2 summarized. He's charged with Armed Robbery. Armed
3 robbery is the taking -- unlawful taking and
4 carrying away of the property of another with the
5 intent to permanently deprive the owner through
6 violence, intimidation or putting the owner in fear
7 of violence while armed with a deadly weapon or
8 while alleging either by words or actions that he
9 was armed with a deadly weapon or any object which a
10 person present during the commission of the robbery
11 reasonably believed to be a deadly weapon.

12 You heard from Hazel. She told you from the
13 witness stand that when she turned around, she was
14 looking down the barrel of a gun. She thought he
15 might shoot her. She was worried about getting
16 shot. She was worried about her son who was
17 upstairs getting shot. She obviously believed he
18 had a weapon. His statement, somebody helped him
19 get rid of the gun, he obviously had that weapon.
20 He's guilty of Armed Robbery because he walked into
21 that church with that gun and he stole her keys, her
22 phone, her Expedition and everything that was in it.
23 He took that from her while he was armed with a
24 deadly weapon.

25 Now, one thing I forgot to tell you that I

1 should have is that all of these crimes, except for
2 the failure to stop for blue lights all come out of
3 the same incident. Everything that we're going to
4 go over, except for the failure to stop, happened
5 May 18th, 2010 at the St. Stephen Evangelical
6 Church, the same incident.

7 Burglary second is unlawful entry into a
8 building without consent and with the intent to
9 commit a crime therein. While in there, he was
10 either armed -- either while entering or while in
11 the building or while leaving the building, he's
12 armed with a deadly weapon, displays what appears to
13 be a rifle, shotgun or other firearm. He walked
14 into that church with that gun to get that vehicle
15 that he wanted. He followed through with that gun
16 and made those threats and took the keys and took
17 the car. He committed a crime inside that he
18 intended to commit. He committed Burglary second.

19 Kidnaping, fancy legal words. Unlawfully
20 seize, confine, inveigle, decoy, kidnap, abduct or
21 carry away any person by any means whatsoever
22 without authority of law. You see these movies and
23 you may think that you actually have to tie somebody
24 up, throw them in the back of a truck and drive them
25 across state lines. That's not what kidnaping is.

1 Kidnaping is when you seize or confine or detain
2 someone against their will.

3 What did Hazel tell you? She turned around and
4 saw that gun right in her face. She put her hands
5 up. She couldn't move. She was scared to move.
6 She did what she was told. When he moved her, just
7 one or two feet over, he told her to get down on the
8 ground and stay there. He kidnaped her. She wasn't
9 free to leave.

10 Of course, the Grand Larceny of motor vehicle,
11 taking and carrying away the property of another --
12 This case is valued over \$10,000 -- without the
13 consent or against the will of the owner with the
14 intent to steal. Clearly, when he stole the
15 Expedition on 2000 -- on May 18th, 2010, drove it
16 around for ten days until he got in a chase with the
17 cops and wrecked it, he had taken the luggage rack
18 off, he had taken the stickers off, he had taken her
19 stuff out and his stuff in. He wasn't giving that
20 back. He intended to keep that. He intended to
21 permanently deprive her of it.

22 The fact that she gave him his keys in no way
23 means that it's not a grand larceny. She gave him
24 her keys because she was staring down the barrel of
25 a gun. That's not consent. That's not her will.

1 She did it because she was scared she was going to
2 get shot. She was scared that her son was going to
3 get shot.

4 Again, Possession of a firearm during a crime
5 of violence, if he walked into that church with that
6 gun, he committed the crimes of Armed Robbery which
7 we discussed, Burglary second which we discussed and
8 Kidnaping which we discussed, he also committed this
9 crime. In South Carolina, Armed Robbery, Kidnaping
10 and Burglary second are all violent offenses. If he
11 committed any one of those, he is guilty of this
12 crime.

13 Failure to stop for blue lights. Simply
14 driving a vehicle in the State of South Carolina on
15 a road or highway, signaled to stop by law
16 enforcement and doesn't stop. You've heard
17 testimony from Captain Ollic, Sergeant Cline, Deputy
18 Buckhannon that when Captain Ollic tried to stop him
19 on May 28th, 2010, he stopped for a little bit. As
20 Ollic and Cline were walking up to the car, he took
21 off. 27 mile chase. Speeds up to 120 miles an
22 hour. Driving so fast he's missing turns, he's
23 driving through yards, he's driving through ditches,
24 he's wrecking cars. All while being chased by
25 police officers with their blue lights and their

1 sirens going. That's failure to stop for blue
2 light. That's the other crime he's guilty of.

3 You've heard it a few times. You're going to
4 hear it a few more times. The burden of proof that
5 the State has is we have to prove that he is guilty
6 of each of these offenses beyond a reasonable doubt.
7 I submit to you we've met that burden. It's a
8 burden that we've took on and we have met.

9 Reasonable doubt is doubt that would cause a
10 reasonable person to hesitate doubt. It leaves you
11 firmly convinced of something. That's what
12 reasonable doubt is. What's equally important is
13 what reasonable doubt is not. Reasonable doubt does
14 not require us -- our burden is not that we have to
15 prove to you beyond any doubt or beyond all doubt.
16 It's beyond a reasonable doubt. Because as it says,
17 there are very few things in this world that we know
18 with absolute certainty. Our burden is to prove to
19 you that he is guilty of Armed Robbery, Kidnaping,
20 Grand Larceny, Burglary second, Possession of a
21 Weapon During a Crime of Violence and failure to
22 stop for blue lights beyond a reasonable doubt. The
23 evidence that you've heard, the testimony that
24 you've seen, the evidence that you've been presented
25 with, all those things are what we use to meet that

1 burden. Ladies and Gentlemen, based on that, the
2 defendant is guilty of all charges. We've met our
3 burden of proof. That's the law.

4 These are the facts. It happened in Berkeley
5 county 9:30 in the morning. Hazel comes in with her
6 son. She walks in. She's the only one that's
7 supposed to be there cleaning the church, her and
8 her son. Some construction workers are there. She
9 pulls up in that Eddie Bauer Expedition. The
10 stickers are on the back window, the emblem by the
11 license plate in the back. The next thing she hears
12 as she goes back to take the trash out and comes
13 back in, the next thing that she's encountered with,
14 give me your keys or I'll blow your head off. Rifle
15 in her face. Throws her hands up. Gives her the --
16 gives him the keys and the cell phone and made her
17 lie face down. He steals the SUV and leaves. Kept
18 that car for about 10 days before he was caught by
19 Captain Ollic.

20 That brings us to May 28th. He sees the car,
21 the SUV near Walgreens here in Moncks Corner. It
22 catches his eye. You heard him testify to it. The
23 backup sensors, paper tag, tape on it. The four
24 trailer hitch cover. The high speed pursuit we
25 already talked about ends in a wreck. The defendant

1 runs away. He leaves behind his wallet. This
2 wallet with all these credit cards with his name on
3 it. Captain Ollic went through all those.

4 Equally important, he leaves a check made out
5 to himself for \$2500. Not going to leave this with
6 someone else. You going to have your wallet with
7 your credit cards with your \$2500 check on you. The
8 only reason he left it behind is because he had to
9 get out of there because the cops had caught him.

10 He managed to ride around in the car that he
11 stole for 10 days. He made some changes to it. He
12 took the stickers off. He took the luggage rack off.
13 He took the license plate off. But he didn't get
14 away with it. He got seen. He got chased. And he
15 was going to get caught. He bailed out of that car
16 and he ran. He ran. He stole the car, not someone
17 else.

18 June 2nd, they get a search warrant. They go
19 to his house and they find the pill bottle with
20 Hazel Dunning's name on it on his bathroom counter.
21 Took it out of her car when he stole it. Put it in
22 his house. He found a check made out to her that
23 she had over her visor that he took after he stole
24 the car and put it in his house.

25 The backyard, they found a luggage rack, they

1 found the trailer hitch, and they found this. When
2 you have the pictures back there in the jury room,
3 there are some pictures to the back of that car.
4 You can see the outline of this where he had pulled
5 it off on the back of that car after he stole it.

6 They found the insurance papers, some other
7 papers. They even found a magazine cover that he
8 had taken out of her car and run away at his house.
9 All part of his plan after he stole it to keep it,
10 make it his. Take her stuff out. Take her stuff
11 off and put his stuff in. After that, we just went
12 through some of those. There's a GPS, a picture of
13 the GPS is in evidence. You've seen it. Hazel
14 Dunning's own address. He had her keys. He knew
15 where she lived. He had her GPS out of her car that
16 he stole from May 18th, 2010. The owners manual and
17 the registration and the roadside emergency kit.

18 Not just thrown into the house. He took it in
19 his laundry room and put them up in a cabinet to
20 keep. To hide the registration, keep the emergency
21 kit. The cooler, the blanket, the papers we've
22 already discussed, all of those things that belonged
23 to the victim were found in Benjamin Jackson's home.

24 We went through the wallet. This is the stuff
25 that's found inside of her car after the chase.

1 Credit cards, tags, the papers, CDs, jalapeno can
2 and the dishwashing detergent that they got his
3 fingerprints off of inside the car.

4 After that, we get to June 2nd, the confession.
5 They talked to him on June 2nd. Detective Cortte
6 and Lieutenant Mason, as I said, they told him what
7 they were talking to him about. He knew they wanted
8 to talk to him about the armed robbery, the
9 kidnaping, the burglary that happened May 18th, 2010
10 at the St. Stephen Evangelical Church. He was under
11 no misconception that he was just talking about
12 driving a stolen car. He was told that they were
13 talking to him about him stealing that car while
14 armed with a weapon. They read him his Miranda
15 rights.

16 You'll have that form back there in evidence
17 with you. You will be able to see how they covered
18 each of his rights. He initialed beside each of his
19 rights that he understood what his rights were. He
20 signed it. He agreed to talk to them. What did he
21 tell them? He did it. He was sorry. She was never
22 the target. Just wanted the vehicle. Said someone
23 left the gun for him and someone helped him get rid
24 of the purse and the license plate.

25 He knew what they were talking about and for

1 whatever reason he decided to tell them. Maybe he
2 felt bad or whatever. Maybe he just realized they
3 found the luggage rack, the trailer hitch,
4 registration, paperwork, emblem, pill bottle, GPS,
5 check, car with my wallet in it, my check in it.
6 They got me. He doesn't want to give them any more
7 information about the guns. So they go back the
8 next day, June 3rd. Detective Cortte goes back with
9 Detective Riser this time. Again, they tell him we
10 want to talk to you about armed robbery/kidnaping
11 that happened at State's Exhibit Church May 18th,
12 2010. The same thing they told him they were
13 talking to him about the day before when he said
14 that he was sorry that he did it.

15 This time, another statement and Miranda form,
16 this one a written statement. Again, went through
17 each of his rights. He initialed that he
18 understood. He signed that he was willing to talk
19 to them. It says on there Armed Robbery. Fully
20 understand each of these rights that have been
21 explained to me. I wish to waive these rights and
22 answer questions concerning the charge of armed
23 robbery which I have been accused of committing.

24 No question he knew what he was being
25 questioned about or being asked about. After that,

1 what does he say? What does he confess to? I just
2 want to apologize for what happened that day. I
3 wasn't trying to hurt you. I was after the vehicle.
4 You were never a target. I'm sorry that it
5 happened. Please forgive me for what happened that
6 day. God bless you. I hope you can truly forgive
7 me. Truly not a bad person or bad people. Just
8 something that happened that wasn't supposed to
9 happen. I hope you can see through that and forgive
10 me.

11 That's a personal apology. It's clearly about
12 the armed robbery. It's not about driving a stolen
13 car. It's not an apology that he was driving her
14 car and he wrecked her car. It's an apology for
15 what happened that day. I want to apologize for
16 what happened that day, which means I want to
17 apologize for what happened that day when I stuck
18 that gun in your face and I told you to give me your
19 keys, give me your phone, get down on the ground or
20 I will blow your head off. I was after the vehicle.
21 You were never a target.

22 One person in that church with the defendant.
23 One person was picked out to have a gun shoved in
24 her face and to have her car and her keys and her
25 phone stolen from her. I'm sorry for what happened.

1 Please forgive me for what happened that day, May
2 18th, 2010. Not that I wrecked your car. Not that
3 I took your luggage rack off your car. I'm sorry I
4 stuck that gun in your face. I'm sorry that I told
5 you to get down on the ground and threatened to blow
6 your head off, made you worry about being shot and
7 worry about your son being shot.

8 Something happened that wasn't supposed to
9 happen. That's the one thing you got. It was not
10 supposed to happen. You are not supposed to walk
11 into a church where someone is cleaning and shove a
12 rifle or a gun in their face and threaten them and
13 take their property. It's not supposed to happen,
14 but it did and he did it.

15 Ladies and Gentlemen, all of what I have told
16 you and what we have gone through shows that we have
17 met our burden. Benjamin Jackson is guilty beyond a
18 reasonable doubt. We have the evidence that's found
19 in the stolen car that he stole on May 18th, the
20 wallet, the credit cards, the paperwork. We have
21 his fingerprints inside that SUV. We have his
22 fingerprints on the outside of that stolen SUV. We
23 have all the evidence that's found in his home. The
24 stuff they talked about, they never find a weapon
25 but they find ammunition that's consistent with the

1 gun as the victim described it. They find all those
2 other things that we've already covered.

3 We have the confessions. He talks about the
4 gun. He talks about what he did with the purse,
5 what he did with the license plate. He apologizes.
6 He's sorry again. What's important? That day.
7 It's not about the stolen car. He's not apologizing
8 about that. He's apologizing for what he did to her
9 May 18th, 2010 when he put the gun in her face and
10 said give me your keys, give me your phone, get on
11 the ground or I will blow your head off.

12 Ladies and Gentlemen, all of that proves to you
13 that the defendant is guilty beyond a reasonable
14 doubt of Armed Robbery, Kidnaping, Burglary second
15 degree, Grand Larceny of a motor vehicle over
16 \$10,000, -- I'll just say this briefly. She
17 testified she bought the car for about 40-42,000.
18 After it was wrecked and damaged, she sold it for
19 14. Both of those are over 10 -- Possession of a
20 Firearm During a Crime of Violence, Failure to Stop
21 for Blue Lights.

22 Ladies and Gentlemen, I know you've been
23 attentive through this. It's very important that
24 you remember the same person that said those things
25 to Hazel before he stole her car, before he stole

1 her keys and her phone is the same person that on
2 June 2nd, 2010 -- June 2nd and June 3rd, 2010,
3 apologized for being the person who shoved the gun
4 in her face, took her property. Same person. This
5 person. Benjamin Jackson is the person that's
6 guilty of each of those offenses.

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

8 **MS. KENNEDY:** Thank you.

9 Ladies and Gentlemen of the jury, before I
10 start my summation, I want to tell you how much we
11 appreciate your attending this trial. I want to
12 apologize for any inconvenience to you that occurred
13 yesterday because you had to come back today. I
14 know, as I told you on Tuesday, that you take
15 seriously your oath of being fair, objective and
16 impartial jurors.

17 Now, there's only one issue in this case. It's
18 not the issue of whether or not Ms. Dunning was the
19 victim of an armed robbery. The issue is whether or
20 not Benjamin Jackson committed that armed robbery.
21 The Solicitor had ten witnesses come forward, one by
22 one, and testify to everything they knew about the
23 case. But not a single one of those people could
24 tell you that Benjamin Jackson committed that crime.
25 And that alone, that fact alone should give you

1 reasonable doubt.

2 Now, what I'd like to do is go through a brief
3 summary of what you heard so that you can think
4 about what you didn't hear. The first witness that
5 testified was Sergeant Wadford of the St. Stephen
6 Police Department. He said he responds to St.
7 Stephen Evangelical Church around 10 o'clock on May
8 the 18th in response to an armed robbery. He speaks
9 to Ms. Dunning. Ms. Dunning gives him a description
10 of a black male, 5'8 to 6'2 tall, 150 pounds to 180
11 pounds. Says that suspect came into the church,
12 held a gun to her head, told her to lie down on the
13 floor. He left, the suspect, with her keys, with
14 her cell phone and obviously her car.

15 Later that afternoon, on an agency assist,
16 Berkeley county sheriff's deputies go to that church
17 and they essentially get the same information. They
18 had a briefing. The briefing told them exactly what
19 Sergeant Wadford told you. Pay attention. Think
20 about this. What in Sergeant Wadford's testimony
21 told you that Benjamin Jackson committed that crime?
22 Zero. Nothing.

23 The next witness that comes forward was Ms.
24 Dunning. Again, there's no dispute that she was the
25 victim of an armed robbery. She tells you she was

1 in the church. Sometimes she works on Mondays.
2 Sometimes she works on Tuesdays. That day, she
3 happened to be working on a Tuesday, cleaning.
4 Someone came through a door, put a gun to her head
5 and said give me your keys, give me your cell phone.
6 I'm going to blow your head off. Lay down on the
7 floor. Don't call anybody.

8 Then there was a lot of testimony about her
9 car. The way it looked, the decals, the blue sandal
10 foot sticker, what was in it, the registration. And
11 each of these things -- you will have all of these
12 pictures that the Solicitor put up on this projector
13 here to show you all the stuff about the car. You
14 can see what it looked like from the outside. You
15 can see what it looked like from the inside. No
16 question. All about the car. I ask you again, what
17 in that evidence tells you that Benjamin Jackson
18 committed this crime? Zero.

19 We then go to Phillip Balentine. He was part
20 of the construction crew that was working at the
21 church that day. Uh, when he learns what happens to
22 Ms. Dunning, he goes -- he says, uh, I chased after
23 him in my car. He was the one on the 911 call. He
24 was the one that told the dispatcher I don't know if
25 it was a black person or a white person. I'm just

1 chasing after the car.

2 One thing I forgot to mention in terms of Ms.
3 Dunning's description, remember when I asked her
4 where did you get the weight, where did you get the
5 height, how do you know if he was 5'8 to 6 feet
6 tall? And she said, I'm 5'3, So I know he was
7 taller than me. All right. I ask you to consider
8 that that statement alone makes the description
9 given to Sergeant Wadford even more vague.

10 Then we have Mr. Marvin. Now, I'm not real
11 sure why he was called. All he could tell you is
12 that he saw a silhouette. He didn't even see a
13 person. I guess if you can have something less than
14 zero, that's the evidence that he could offer you.
15 We'll just say zero for that.

16 Then we have Captain Ollic. Captain Ollic
17 tells you about how he was on a, I think he said it
18 was a call out. He was on that road around midnight
19 on May the 28th and this car caught his eye. He
20 pulled up beside it. He saw that a black male was
21 driving. Then he got behind the car. He felt it's
22 got a paper tag. You could see where these decals
23 were. You could see the back-up sensors.

24 He thinks, well, that must be Ms. Dunning's
25 car. Calls for backup. Chase ensues. K-9 unit

1 comes. Car is wrecked. Car is recovered. Now,
2 again, what evidence in his testimony tells you that
3 Benjamin Jackson committed this crime? We're back
4 to zero. Zero.

5 Then, we have Sergeant Cline and Deputy
6 Buckhannon, who again come to tell you about this
7 high speed chase which we never disputed. Never
8 disputed. Never said Benjamin Jackson wasn't the
9 man that was driving the car. We told you that up
10 front.

11 So all they can tell you is about the car and
12 the recovery of the car and the wallet and the items
13 that were in the car that Sergeant Cline inventoried
14 to get information about Mr. Jackson which leads to
15 the execution of the search warrant. But neither
16 Sergeant Cline, nor Deputy Buckhannon can say, with
17 that evidence he's the one who committed the crime.
18 Again, another zero.

19 Then we get to -- I'm sort of taking it out of
20 order. Lieutenant -- excuse me -- Jason Potteiger
21 who executed -- one of the deputies who executed the
22 search, he was at Mr. Jackson's home when they found
23 all of this stuff. He tells you he retrieved stuff
24 from the Herbie Kirby, went around the yard, picked
25 all this other stuff up. Luggage rack, all of it.

1 All of it. Now, he can tell you and did tell you
2 that that was the stuff that they found at the house
3 when they executed the search warrant on June the
4 2nd. Ms. Dunning's personal items were in the
5 house. No question about it. But again, what about
6 that tells you that Benjamin Jackson committed an
7 armed robbery? Zero. Zero.

8 Then we get to Lieutenant Kokinda. He tells
9 you he's the head of the forensics unit. He tells
10 you all of this stuff about all the latent prints
11 that were found in Ms. Dunning's car. Outside,
12 inside, Sprite bottle, uh, jalapeno bottle, all of
13 it. But ask yourself, what in that testimony tells
14 you that Benjamin Jackson committed this crime?
15 Zero. Zero.

16 Now, I hope you remember when the Assistant
17 Solicitor says -- asked the question, well,
18 Lieutenant Kokinda, why is it that you don't take
19 fingerprints from the church door and he goes into a
20 long involved explanation and he puts his fingers
21 here and he starts telling you all about latent
22 print processing and how if he puts his fingers
23 there, he can come back at a later part of the day
24 and he can process it and his prints may not be on
25 there. Great. But the problem is he was never

1 asked to go to the church that day. So the one thing
2 that he could have done that may have been helpful
3 to produce evidence in this case, he wasn't even
4 asked to do. Didn't go to the church to take
5 fingerprints of the door. Zero.

6 Which then brings us to Detective Cortte, the
7 lead detective, the case agent in charge of the
8 case. He goes to St. Stephen Evangelical Church
9 within a couple of hours after this incident on an
10 agency assist. He tells you that he walked around,
11 interviewed a couple of people, but he never went
12 inside the building where Ms. Dunning was. He never
13 went to see where she was on the floor. Never
14 looked for any other clues. Never even figured out
15 which door the suspect came through. Tells you he
16 went to the house. He was there for the execution
17 of the search warrant, found all this stuff from Ms.
18 Dunning's car. No question about it. But I ask you
19 again, what in any of that tells you that Benjamin
20 Jackson committed this armed robbery? Another huge
21 zero.

22 Which then brings us to these confessions.
23 Now, Detective Cortte tells you he doesn't know who
24 took Mr. Jason to the Sheriff's Office. He doesn't
25 know who put Mr. Jackson in Lieutenant Mason's

1 office. He can't tell you how this interrogation
2 began. What he can say is, oh, it lasted 15 or 20
3 minutes. I know Lieutenant Mason did the Miranda
4 warnings. I, -- Lieutenant Mason took the lead.

5 He tells you that there are interview rooms in
6 the Sheriff's Office which have audio equipment and
7 video equipment. And those are the rooms that the
8 Sheriff's Office uses to take confessions, to take
9 interviews. He says I didn't even think to go down
10 and look to see if one of those rooms were
11 available. Didn't occur to me.

12 So in the space of 15 to 20 minutes, Mr.
13 Jackson supposedly said all the things the deputy
14 Solicitor just went through with you. He had a
15 confession. A confession, an oral confession.
16 Three parts. One, I'm sorry. I didn't mean you any
17 harm. All I wanted was your car. Part two, someone
18 left the gun for me. No information about where it
19 was left. But there was someone who left a gun.
20 Three, someone was with me when I put Ms. Dunning's
21 purse and her license tag and all those things in a
22 garage can at a car wash in Orangeburg. And I guess
23 there's a fourth part to it because it kept being
24 repeated, but it's not anywhere in an oral statement
25 and it's not anywhere in a written statement. But

1 it's something that Detective Cortte kept saying.
2 He said, quote, I did it. Mr. Jackson said I did
3 it. So he has a confession.

4 And then for some reason, don't know what it
5 was, he thinks he has to go back the next day. So
6 he goes to the jail and he gets another statement.
7 Now, there -- the confession that he gave that day
8 was supposedly taken by Detective Riser. Detective
9 Riser took the lead on that questioning. But the
10 odd thing is the only thing that shows up is part
11 one. I'm sorry. Took your car. That's the thing
12 that the State relies on to make you believe that
13 Benjamin Jackson is the person who committed the
14 armed robbery.

15 Now, Captain Ollic told you, who is Detective
16 Cortte's supervisor, that he expects his officers to
17 take notes. I think they were called field notes.
18 The notes are supposed to be transcribed to a report
19 and then finalized in a supplemental. The
20 supplemental that Detective Cortte told you he did,
21 he completed on June the 24th, five weeks after this
22 incident occurred. Five weeks.

23 Now, this would all be real easy, there would
24 be no doubt if there was an audio recording or a
25 video recording or even the notes that Detective

1 Cortte should have taken. It would have been a real
2 easy thing to do. Just do one of them. But better
3 yet, do all three. Cause if you do all three, there
4 is no doubt. Absolutely none. That didn't happen.
5 Didn't happen.

6 So where we are now is here. If you add up all
7 the zeros and you weed out all the irrelevant
8 evidence and all of the irrelevant witnesses, all
9 you have is a confession that can't be validated.
10 No audio recording, no video recording, no notes.
11 Just Detective Cortte putting all this information
12 in a report. It would have been so simple, so easy
13 just to follow policy and procedure and do it the
14 right way. Do it the right way.

15 Now, you are going to be asked in just a few
16 minutes to consider everything that you heard. You
17 are going to be sitting in judgement on your fellow
18 citizen. That is an awesome responsibility. Mr.
19 Jackson is charged with serious crimes. Those
20 crimes have serious consequences if you find him
21 guilty.

22 So I want you, in your deliberation, to think
23 about all the zeros. And I want you in your
24 deliberation to weed out all the irrelevant things
25 that you've heard. I'm confident that you are going

1 to follow your oath as jurors. You are going to be
2 fair. You are going to be impartial. You are going
3 to give Mr. Jackson his true day in court. And when
4 you do that and when you honor your oath and you do
5 right by the system which we couldn't operate
6 without you, I'm confident that you'll find him not
7 guilty. Thank you.

8 **THE COURT:** All right. Mr. Foreman, Ladies
9 and Gentlemen of the jury, I'll give you a copy of
10 the instructions in written form. During your
11 deliberations, you may refer to those instructions
12 to guide your decision making. You must consider
13 the instructions as a whole and not follow some and
14 ignore others. But Mr. Foreman, please return the
15 instructions to the court after you have reached a
16 verdict.

17 The Court has permitted some of you to take
18 notes during the course of this trial. You have not
19 been obligated to take notes. But if you have taken
20 notes, it should be used only as memory aids. You
21 should not give your notes precedent over your
22 independent recollection of the evidence. If you
23 have chosen not to take notes, you should rely on
24 your own independent recollection of the proceedings
25 and you should not be influenced by the notes of

1 other jurors. I emphasize that notes are not
2 entitled to any greater weight or recollection or
3 impression of each juror as to what the testimony
4 may have been. These notes are your notes. After
5 the trial, you may destroy them or the clerk will
6 destroy them for you.

7 I instruct you and emphasize that the fact that
8 the defendant did not testify is not a factor to be
9 considered by you in any way in your deliberations.
10 In your consideration on the question of the guilt
11 or innocence of the defendant, it must not be
12 considered by you in any manner whatsoever. A
13 defendant has the constitutional right to remain
14 silent. The assertion of this right must not be
15 considered by you in your deliberations.

16 I repeat. Under your oath, you are to draw no
17 conclusion whatsoever from the fact that the
18 defendant in this case did not testify. The fact
19 that this defendant did not testify should not even
20 be discussed in the jury room. The burden of proof,
21 as I have stated to you, is on the State. The
22 defendant is not required to prove his innocence.
23 The burden of proof remains on the State to prove
24 the guilt beyond a reasonable doubt.

25 Now, as to these indictments, the defendant's

1 entered a plea of not guilty which places upon the
2 State the burden of proving the defendant guilty. A
3 person charged with committing a criminal offense in
4 South Carolina is never required to prove himself
5 innocent. I charge you that it's a vital and
6 important rule of law of evidence that a defendant
7 in a criminal trial, no matter how great or serious
8 maybe the offense with which he is charged, is
9 always to be presumed innocent until the guilt has
10 been proven beyond a reasonable doubt.

11 The presumption of innocence remains with the
12 defendant at all times from the moment of his
13 appearance here in court, throughout the trial and
14 until you, the jury, have upon the testimony and
15 evidence presented reached a verdict of guilty
16 beyond a reasonable doubt. It's a solid duty of the
17 jury, if not firmly convinced of his guilt beyond a
18 reasonable doubt, to acquit the defendant. The
19 burden of proof is upon the State to establish by
20 evidence to your satisfaction the guilt beyond a
21 reasonable doubt of the defendant.

22 Now, what is reasonable doubt? A reasonable
23 doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to act. If you have
25 such a doubt as to the guilt of the defendant, then

1 he would be entitled to a verdict of not guilty.
2 Reasonable doubt may arise from the evidence which
3 is in the case or from the absence of lack of
4 evidence in the case. You, alone, must make a
5 determination as to whether or not reasonable doubt
6 exists as to the guilt of the defendant.

7 The term reasonable doubt should be given its
8 every day, plain and ordinary meaning. Proof beyond
9 a reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt. There are very
11 few things in this world that we know with absolute
12 certainty. In criminal cases, the law does not
13 require proof that overcomes every possible doubt.
14 Based upon your consideration of the evidence, if
15 you are firmly convinced the defendant is guilty of
16 the crime charged, you must find him guilty. On the
17 other hand, if you think there's a real possibility
18 he's not guilty, you must given him the benefit of
19 the doubt and find him not guilty.

20 The evidence from which you decide the facts of
21 the case consists of sworn testimony, both on direct
22 and cross-examination, regardless of who called the
23 witness, the exhibits that have been received in
24 evidence and any facts that the lawyers have agreed
25 and stipulated. What is not evidence? Certain

1 things are not evidence. You may not consider them
2 in deciding what the facts are. I will list them
3 for you: arguments and statements by lawyers are not
4 evidence. The lawyers are not witnesses. What they
5 said in opening statement, closing arguments and
6 other times was intended to help you interpret the
7 evidence, but it's not evidence. If the facts as
8 you remember them differ from the way the lawyers
9 have stated them, your memory controls.

10 Questions and objections by the lawyers are not
11 evidence. Attorneys have a duty to their clients to
12 object when they believe a question is improper
13 under the rules of evidence. You should not be
14 influenced by their objection or by the Court's
15 ruling on their objection. Testimony that's been
16 excluded or stricken which you have been instructed
17 to disregard is not evidence must not be considered.
18 Anything you may have seen on television, read in
19 the paper or heard from others when the court was
20 not in session is not evidence. You decide the case
21 solely on the evidence received at trial.

22 Under our Constitution and Code of Laws, only
23 you, the jury, can make the findings of fact in this
24 case. I'm not permitted to indicate to you how I
25 may feel about the testimony or the evidence that's

1 been presented. Throughout this trial, it's been my
2 intention to be fair and impartial towards each of
3 the parties involved.

4 To determine the facts in this case, you have
5 to evaluate the credibility, which means the
6 believability of each witness. Some of the things
7 you may consider as you decide whether or not to
8 believe the witness' testimony about a particular
9 matter include what was the manner or appearance of
10 the witness who testified? Was he or she
11 straightforward or hesitant in answering? Was the
12 testimony of a witness consistent? How did the
13 witness come to know the facts that he or she
14 testified to? Was the person present during the
15 incident or happened on the scene after it occurred?
16 Is there some reason that a witness would want to
17 give testimony that would help or hurt one side or
18 the other? In other words, is the witness biased or
19 prejudiced? Was the testimony of a witness
20 strengthened or weakened by other testimony and
21 evidence? The duration or length of time between
22 the alleged acts and when they were reported. You
23 may also consider whether they weakened or
24 strengthen the memory. All prior statements and
25 whether they were consistent or inconsistent.

1 You can believe as much or as little of each
2 witnesses testimony as you think proper. You may
3 believe the testimony of a single witness against
4 that of many, or just the opposite. Do not determine
5 the truth by merely counting the numbers of
6 witnesses on each side. Throughout the process, you
7 have one objective, to seek the truth, regardless of
8 its source.

9 The same Constitution and laws which designate
10 and make you the finders of facts, as I just
11 explained, also make me the sole instructor of the
12 law. You should accept statements of the law as I
13 give them to you. You must base your decision
14 making on what the law is and not what you think the
15 law should be.

16 There are two types of evidence which are
17 generally presented during a trial, direct evidence
18 and circumstantial evidence. Direct evidence is the
19 testimony of a person who asserts or claims to have
20 actual knowledge of a fact such as an eyewitness.
21 Circumstantial evidence is proof of a chain of facts
22 or circumstances indicating the existence of a fact.

23 The law makes absolutely no distinction between
24 the weight or value to be given to either direct or
25 circumstantial evidence. Nor is a greater degree of

1 certainty required of circumstantial evidence than
2 of direct evidence. You should weigh all the
3 evidence in the case on a contested factual issue.
4 You may have some direct and some circumstantial.
5 To determine the facts in the case, you have to
6 evaluate the credibility, which means the
7 believability of the witnesses.

8 The rules of evidence ordinarily do not permit
9 witnesses to testify to opinions or conclusions. An
10 exception to this rule exists with witnesses we call
11 expert witnesses. A witness who by education or
12 experience has become an expert in some art, science
13 or profession may give an opinion as to the subject
14 the witness claims to be an expert in and may also
15 give the reason for the opinion.

16 You should consider any expert opinion given by
17 a witness like any other evidence. Give it the
18 weight you think it deserves. If you think that the
19 expert witness' opinion is not based on sufficient
20 education and experience and if you decide that the
21 reason given in support of the opinion is not sound
22 or that the opinion is outweighed by other evidence,
23 you may disregard the opinion entirely. In this
24 case, it was an expert on fingerprints.

25 What is Armed Robbery? A crime of Armed

1 Robbery includes all the elements to larceny
2 robbery. First, I would like to explain to you what
3 is meant by larceny and what is meant by robbery.
4 What then is larceny? I charge you that there are
5 four elements which must be satisfied beyond a
6 reasonable doubt to make the crime of larceny. The
7 four elements are that there was a taking, that the
8 taking was a personal property, that after being
9 taken, the property was carried away, that the
10 taking and carrying away of the property was done
11 with the intent to steal. Robbery includes each of
12 the four elements I have just explained.

13 In addition to these four elements, two other
14 elements are necessary to make out the crime of
15 robbery. Those elements are that the property must
16 be taken from the person of another or in his
17 presence and the taking and carrying away of the
18 property must have been accomplished by placing the
19 other person in fear of violence or threats of
20 violence so as to make that person surrender the
21 property without their consent and against their
22 will.

23 Therefore, the crime of Armed Robbery includes
24 all the elements of larceny and robbery in order to
25 make out the crime of Armed Robbery. However, that

1 additional element must be proved. The robbery must
2 have been committed while armed with a deadly
3 weapon. The person committing the robbery must have
4 had or used a deadly weapon with which he obtained
5 possession of property placed the one in possession
6 of the property in fear in order to obtain the
7 property.

8 Section 16-11-33(a) of the Code of Laws of
9 South Carolina provides that a person convicted of
10 the crime of Armed Robbery while armed with a
11 pistol, dirk, slingshot, metal knuckles, razor or
12 other deadly weapon commits armed robbery.

13 Kidnaping. The defendant is charged with
14 kidnaping. The State must prove beyond a reasonable
15 doubt that the defendant knowingly and unlawfully
16 seized, confined, inveigled, decoyed, kidnaped,
17 abducted, or carried away another person without the
18 authority of law. "Knowingly" means with knowledge
19 or consciously, not accidentally. "Seized" means to
20 take suddenly or forcibly. "Confined" means to
21 limit, restrict or enclose within bounds, imprison
22 or shut or keep in. "Inveigle" means to lure,
23 entice or lead astray by false representation,
24 promises or other deceitful means. "Decoy" means to
25 lure by. Decoy or entice some person to a trap.

1 "Kidnap" is to remove a person against his will
2 by unlawful force or by fraud. "Abduct" means to
3 carry off secretly or by force or illegal purpose.
4 "Carry away" means to remove.

5 The State does not have to prove the defendant
6 did all of these things. Instead, if you find
7 beyond a reasonable doubt that the defendant did any
8 of these things, you may find the defendant guilty
9 of Kidnaping. Something done without authority of
10 law or something the law does not sanction, permit,
11 allow, condone or provide justification for.
12 Kidnaping does not have to be any person for
13 monetary gain, for any illegal purpose but may be
14 for any reason whatsoever.

15 Second degree burglary. The State must prove
16 beyond a reasonable doubt that the defendant entered
17 a building without consent with the intent to commit
18 a crime in the building. A building is any
19 structure, vehicle, water craft or aircraft or where
20 any person lodges or lives or where the person
21 assembles for the purpose of business, education,
22 religion, entertainment, public transportation,
23 public use or where goods are stored.

24 The State must prove beyond a reasonable doubt,
25 when entering a dwelling or while fleeing, the

1 defendant was armed with a deadly weapon or exposed.
2 A deadly weapon is any article, instrument or
3 substance which is likely to cause death or great
4 bodily harm. Whether an instrument has been used as
5 a deadly weapon depends on the facts and
6 circumstances of each case. The following are
7 examples which may be deadly weapons: a pistol, a
8 shotgun, a rifle, a dirk, a dagger, a knife, a
9 slingshot, metal knuckles, a razor, gasoline, fire
10 bomb, Molotov cocktail and lighter fluid. A gun may
11 be a deadly weapon even if it's not operating.

12 When entering, while in the dwelling or when
13 fleeing, the defendant or an accomplice cause
14 physical injuries to anyone not participating in the
15 crime. When entering, while in a dwelling or when
16 fleeing, the defendant or an accomplice used or
17 threatened to use a dangerous object. When entering,
18 while in a dwelling or when fleeing, the defendant
19 or an accomplice display what was or appeared to be
20 a knife, pistol, revolver, rifle, shotgun, machine
21 gun or other.

22 Possession of a weapon during the commission of
23 a violent crime. The defendant is charged with
24 possession of a weapon during the commission of or
25 an attempt to commit a violent crime. The State

Jury Charge

1 must prove beyond a reasonable doubt that the
2 defendant was in possession of a firearm or visibly
3 displayed what appeared to be a firearm during the
4 commission of a violent crime. A firearm means any
5 machine gun, automatic rifle, revolver, pistol or
6 any weapon that's designed to and may be readily
7 converted to expel a projectile.

8 In order to find a defendant guilty of
9 possession of a weapon during the commission of a
10 violent crime, you must first find the defendant
11 guilty of either committing a violent crime or
12 attempted to commit a violent crime. Armed robbery,
13 Burglary second degree and Kidnaping are violent
14 crimes.

15 It is unlawful for any motor vehicle driver,
16 while driving on any road, street or highway in the
17 state to fail to stop when signaled by any law
18 enforcement vehicle by means of a siren or flashing
19 light. Failure to see the flashing light or hear
20 the sirens should not excuse a failure to stop when
21 the condition between the vehicle and the other road
22 conditions are such that it would be reasonable for
23 a driver to hear or see the signals on a law
24 enforcement vehicle.

25 According to the plain meaning of the statute,

1 the State must show that the defendant was driving a
2 motor vehicle, that he was driving it on the road,
3 street, or highway of this state and was signaled to
4 stop by a law enforcement vehicle by means of a
5 siren or flashing light and he did not stop. An
6 official signal requiring motorist to stop may be
7 given by way of siren or flashing light. Both are
8 not required.

9 Grand Larceny of a Motor Vehicle. The
10 defendant is charged with Grand Larceny of a Motor
11 Vehicle. The State must prove beyond a reasonable
12 doubt that the defendant took a motor vehicle
13 belonging to someone else against the will and
14 without the consent of the other person. The
15 slightest removal of the motor vehicle, possession
16 of motor vehicle even for an instant by the
17 defendant is enough to show a taking and a carrying
18 away of a motor vehicle. The State must prove
19 beyond a reasonable doubt that the defendant
20 intended to permanently deprive the owner of the
21 motor vehicle. Finally, the State must prove that
22 the value of the motor vehicle in this case was
23 \$10,000 or more.

24 A statement alleged to have been made by the
25 defendant has been admitted in the evidence in this

1 case. While the court has determined that the
2 statement is admissible, I instruct you you must
3 make the ultimate decision of whether or not the
4 defendant made the statement. If the defendant
5 didn't make the statement, you must determine
6 whether the statement was made by the defendant
7 voluntarily and of his own freewill which means that
8 the statement was not caused by pressure, force,
9 fear, threats, coercion or intimidation by hope or a
10 promise of leniency or reward of any kind.

11 In determining whether the statement was
12 voluntary, you are to consider both the
13 characteristics of the defendant and the details of
14 the questions. Some of the facts that you may
15 consider are the age of the defendant, the
16 defendant's education, the lack of education, the
17 defendant's mental ability and capacity, the
18 defendant's IQ or intelligence, the defendant's
19 background, the environment, the place and length of
20 detention and the nature of the questions, advice or
21 lack thereof of the defendant of his constitutional
22 rights including, but not limited to, the right to
23 remain silent and any statement can be used against
24 him in a court of law, the right to have a lawyer
25 present. If he or she could not afford a lawyer, a

1 lawyer will be appointed to represent him without
2 any costs and he could stop making a statement at
3 any time. You must carefully consider all the
4 surrounding circumstances before you give any weight
5 to an alleged statement.

6 The State has the burden of proving beyond a
7 reasonable doubt that the alleged statement is
8 voluntary. If you determine that it was, you may
9 give the statement any further consideration that
10 you deem proper. You must decide what weight, if
11 any, should be given to the alleged statement. If
12 you determine the alleged statement is not the free
13 and voluntarily statement of the defendant, you
14 should not consider the statement at all.

15 You've been selected to be fair and impartial
16 jurors sworn to impartiality to try and determine
17 the facts of this case. When you complete your oath
18 to do so, no one will have the right to criticize
19 your verdict. You have fully discharged your duty
20 as jurors. Decide this case according to the
21 testimony you've heard from the lips of sworn
22 witnesses and other evidence introduced. I charge
23 you as jurors you must decide the issue in this
24 proceeding without bias and without prejudice to any
25 party. You do not allow yourself to be governed by

1 sympathy, by prejudice, by passion, by public
2 opinion or by any other arbitrary factor. The State
3 and the defendant have the right to expect that each
4 of you will fairly and impartially consider all the
5 evidence in the case and that you will follow the
6 law as I have explained it to you.

7 Nothing I may have said or done during the
8 course of this trial has in any way intended to
9 express or suggest a view of the case or an opinion
10 as to the facts, to weigh the evidence or the
11 credibility of witnesses. If any of my actions or
12 words seemed to so indicate, disregard such and form
13 your own opinion as to these matters.

14 Mr. Foreman, Ladies and Gentlemen of the jury,
15 I have prepared some verdict forms. I have prepared
16 a verdict form for each crime with which the
17 defendant is charged. On each verdict form, it has
18 the State of South Carolina versus Benjamin Jesse
19 Jackson, III, the defendant, and the case number.
20 As to verdict, it says as to indictment number -- it
21 gives the indictment number -- for this charge,
22 Burglary second, we, the jury, by unanimous consent
23 find the defendant guilty of Burglary second or not
24 guilty. A place for the foreperson to sign and
25 date.

1 I prepared the same verdict form for each
2 charge, Burglary second, Kidnaping, Armed Robbery
3 and Possession of a Weapon During the Commission of
4 a Crime. I said this to you early -- earlier. You
5 can not find him guilty of the Possession of Firearm
6 During the Commission of a Crime unless you find him
7 guilty of Burglary second, Kidnaping or Armed
8 Robbery. You have to find him guilty of at least
9 one of those charges or all those charges to find
10 him guilty of Possession a Firearm During the
11 Commission of a Crime. I have one as to Grand
12 Larceny and Failure to Stop for Blue Light.

13 As I said earlier, the verdict has to be
14 unanimous. All 12 of you have to agree. I will
15 tell you that it is a collective reasoning process.
16 I would ask you to listen to each other's opinions,
17 respect each other's opinions, give and take when
18 necessary and reach a fair and just verdict in your
19 deliberations.

20 Now, Mr. Foreman, I'm going to ask you to go
21 to the jury room. I have to take up my charge with
22 the attorneys. I may have to bring you back and
23 change something or add something to it. I don't
24 want you to begin your deliberations until the
25 bailiff brings you all the exhibits that had been

1 admitted into evidence, the verdict form and the
2 charge that I just read to you. You may take your
3 notepads with you to the jury room.

4 And the two alternatives, Mr. Clyde Ravenell
5 and Mr. Shirell Ravenell, if y'all will just keep
6 your seats when the jury goes to the jury room.

7 If you will, follow the bailiffs to the jury
8 room please.

9 (WHEREUPON, the jury exits at approximately
10 11:05 a.m.)

11 THE COURT: Thank you, ma'am.

12 Any, uh, exceptions to the charge from the
13 State?

14 MR. ALFARO: No, Your Honor.

15 THE COURT: And from the defendant?

16 MS. KENNEDY: No, Your Honor.

17 THE COURT: Pardon?

18 MS. KENNEDY: No. Thank you.

19 THE COURT: You going to ask for the lesser
20 included?

21 MS. KENNEDY: No, I withdraw that.

22 THE COURT: Pardon?

23 MS. KENNEDY: I withdraw that. There are no
24 exceptions.

25 THE COURT: Okay. Thank you very much.

1 Can both parties come forward and make sure all
2 the exhibits are present so the Court Reporter can
3 put on the record all the exhibits are present.
4 We'll take them back to the jury and tell them they
5 can begin their deliberations after that's been
6 accomplished.

7 (WHEREUPON, deliberation of the jury begins at
8 approximately 11:08 a.m.)

9 (WHEREUPON, the Court resumes at approximately
10 12:33 p.m.)

11 THE COURT: Anything from the State before
12 we bring the jury in?

13 MR. ALFARO: No, Your Honor.

14 THE COURT: Anything from the defendant?

15 MS. KENNEDY: No, Your Honor.

16 THE COURT: All right. Bring us a jury
17 please.

18 (WHEREUPON, the jury enters at approximately
19 12:35 p.m.)

20 THE COURT: Mr. Foreman, I understand you've
21 reached a verdict. Is that correct?

22 THE JUROR: Yes, sir.

23 THE COURT: Would you mind giving the verdict
24 form to the bailiff please?

25 (WHEREUPON, the verdict forms are passed to the

1 Court.).

2 **THE COURT:** Mr. Foreman, I have written on
3 the indictment forms your verdict that was on the
4 verdict form. I'm going to ask the bailiff to give
5 it to you. I've dated it today. If you will, sign
6 your name right by the date please, sir.

7 **(WHEREUPON, the indictment forms are passed to the**
8 Foreperson.)

9 **THE COURT:** See down at the very bottom.

10 **(WHEREUPON, there is a pause.)**

11 **(WHEREUPON, the indictment forms are passed to**
12 the Court.

13 **THE COURT:** Thank you, sir.

14 Madam Clerk, if you will, publish the verdicts
15 please.

16 **THE CLERK:** County of Berkeley, State of
17 South Carolina versus Benjamin Jesse Jackson, III,
18 indictment number 2010-GS-08-1693, for the charge of
19 Burglary second degree, we, the jury, by unanimous
20 consent find the defendant guilty of Burglary second
21 degree. Signed by the foreperson.

22 County of Berkeley, State of South Carolina
23 versus Benjamin Jesse Jackson, III, indictment
24 number 2010-GS-08-1695, for the charge of Kidnaping,
25 we, the jury, by unanimous consent find the

1 defendant guilty of Kidnaping. Signed by the
2 foreperson.

3 County of Berkeley, State of South Carolina
4 versus Benjamin Jesse Jackson, III, indictment
5 number 2010-GS-08-1696, as for the charge of Armed
6 Robbery, we, the jury, by unanimous consent find the
7 defendant guilty of Armed Robbery. Signed by the
8 foreperson.

9 Indictment number 2010-GS-08-1693 for the
10 charge of Possession of Firearm during the
11 Commission of a Violent Crime, we, the jury, by
12 unanimous consent find the defendant guilty of
13 Possession of a Firearm during the possession --
14 during the commission of a violent crime.

15 2010-GS-08-1693, for the charge of Grand
16 Larceny, we, the jury, by unanimous consent find the
17 defendant guilty of Grand Larceny. Signed by the
18 foreperson.

19 2010-GS-08-1697, for the charge of Failure to
20 Stop For a Blue Light, we, the jury, by unanimous
21 consent find the defendant guilty of Failure to Stop
22 for Blue Light. Signed by the foreperson.

23 Ladies and Gentlemen of the jury, if this is
24 your verdict, please signify by raising your right
25 hand at this time.

1 (WHEREUPON, each juror responds.)

2 THE COURT: All right. Let the record
3 reflect all 12 jurors raised your right hand to the
4 question posed to the jury by the clerk.

5 Any, uh, motions from the State?

6 MR. ALFARO: No, Your Honor.

7 THE COURT: Any motions from the, uh,
8 defendant?

9 MS. KENNEDY: Your Honor, we would just renew
10 all motions previously made during the course of the
11 trial ---

12 THE COURT: Okay. Those --

13 MS. KENNEDY: --- and any motions for
14 directed verdict.

15 THE COURT: All right. Those motions are
16 denied.

17 MS. KENNEDY: Yes, sir.

18 THE COURT: Any other motions as to the jury?

19 MS. KENNEDY: No, Your Honor.

20 THE COURT: All right. Thank you very much.
21 You have any sentencing sheets?

22 MR. ALFARO: No, Your Honor. I'll go down
23 and get those.

24 THE COURT: Pardon?

25 MR. ALFARO: I'll go down and get those now,

1 Your Honor.

2 THE COURT: Okay.

3 MR. ALFARO: I need to talk to my victim
4 anyway.

5 THE COURT: I'm sorry. What?

6 MR. ALFARO: I need to talk to the victim
7 briefly before we proceed.

8 THE COURT: Okay. All right. Uh, Mr.
9 Foreman, Ladies and Gentlemen of the jury, you are
10 welcome to stay if you want to. I've got to get the
11 sentence sheets to sentence him. You are welcome to
12 stay if you show choose.

13 How long you think it's going to take to get
14 the sentencing sheets?

15 MR. ALFARO: Less than five minutes.

16 THE COURT: Go do it.

17 Otherwise you are free to go. That's your
18 choice. You are welcome to stay if you so choose.
19 If not, you are free to go. Thank you for your
20 services. I enjoyed working with you this week.

21 MR. ALFARO: They are going to print them,
22 Your Honor.

23 THE COURT: Pardon?

24 MR. ALFARO: They are going to print them
25 now, Your Honor.

1 **THE COURT:** Okay. Go ahead and talk to your
2 victim and we'll proceed with the sentencing just as
3 soon as I can get the sentencing sheets.

4 (WHEREUPON, there is a short recess.)

5 **THE COURT:** Ms. Kennedy, you want to come
6 around with the defendant or you can stand where you
7 are. Your choice.

8 **MS. KENNEDY:** I think we'll just stand here.

9 **THE COURT:** That's fine.

10 **MR. ALFARO:** Your Honor, you heard during the
11 course of the trial the facts of the case, the
12 nature of the offense, the location of the offense.
13 The victim is still in the courtroom, she does not
14 wish to address Your Honor during the sentencing.
15 The State is asking for the maximum sentence on all
16 charges.

17 The defendant's prior record is a 2005 Assault
18 and Battery; 2007, Fraudulent Check, Possession of
19 Crack, Resisting Arrest and Possession of Marijuana;
20 2008, Criminal Domestic Violence; 2009, Reckless
21 Driving as well as a Burglary third which he was
22 convicted of in October of last year as well as, I
23 believe, a Possession of Crack charge.

24 Your Honor, given the fact that a weapon was
25 used during the commission of this crime, the

1 conduct during the actual commission of the armed
2 robbery, the kidnaping and, in addition, the high
3 speed chase that he led the officers on, we believe
4 that that shows the defendant clearly presents a
5 dangerous risk to the community. Based on that and
6 his prior record and the nature of the offense, the
7 State would ask for the maximum sentence at this
8 time.

9 **THE COURT:** I'll hear you.

10 **MS. KENNEDY:** Thank you, Your Honor. Your
11 Honor, uh, Mr. Jackson will be 27 years of age in
12 June of this year. He's been in our jail since June
13 2nd of 2010. As Your Honor has heard also, he was
14 in school at the time of this incident. And with
15 reference to the conviction in October of 2011, that
16 charge was pending at the time he was arrested on
17 these charges.

18 **THE COURT:** You mean the burglary third?

19 **MS. KENNEDY:** Yes, sir. He was -- I couldn't
20 remember the date. He just advised me he was taken
21 to Charleston in October of last year to resolve
22 that case. It resulted in a conviction with a
23 sentence and time served.

24 Your Honor, Mr. Jackson and I have met any
25 number of times over the course of the past almost

1 two years. Ms. White and I met with him together
2 over the course of that time. We did discuss over
3 and over the seriousness of the charges, the
4 seriousness of the penalties were he to be
5 convicted. We would simply ask -- and I understand
6 the Solicitor's position, Deputy Solicitor's
7 position with regard to the sentence that he is
8 seeking. We would just simply ask that you impose
9 something less than the maximum and run everything
10 concurrent.

11 As you know, we now have the ability to go to
12 the computer program through the Department of
13 Corrections and do a rough calculation of how much
14 time an inmate would have to spend. Obviously, all
15 of these offenses are 85 percent nonparolable. We
16 ask the Court to take that into consideration given
17 his age. However you calculate it, he would be 45
18 or 50 years of age before he finishes his sentence.

19 **THE COURT:** How old is he now?

20 **MS. KENNEDY:** He'll be 27.

21 **THE COURT:** Okay. I didn't mean to interrupt
22 you.

23 **MS. KENNEDY:** That's okay, Your Honor.

24 **THE COURT:** 55.

25 **MS. KENNEDY:** Yes, sir. So in essence, it's

1 almost a life sentence. We just ask that you take
2 that into consideration.

3 **THE COURT:** If it was run consecutive, it
4 would be.

5 **MS. KENNEDY:** Yes, sir. Absolutely. That's
6 why we're asking for concurrent time. We would ask,
7 Your Honor, that you consider it and have mercy and
8 show leniency.

9 **THE COURT:** Where was he in school?

10 **MS. KENNEDY:** Uh, Strayer, Your Honor.

11 **THE COURT:** How far had he progressed?

12 **MS. KENNEDY:** I'm not real sure. (Pause.)
13 He was a year into it, Your Honor.

14 **THE COURT:** Anything else you'd like to add,
15 counsel?

16 **MS. KENNEDY:** No, Your Honor. (Pause.)
17 He just reminded me of one additional thing,
18 Your Honor. You know with the Kidnaping statute,
19 that's an automatic Sex Offender Registry conviction
20 unless you state otherwise. We would ask that you
21 not require him to be put on that registry.

22 **THE COURT:** Okay. All right. Mr. Jackson,
23 is there anything you would like to say?

24 **MR. JACKSON:** No, sir.

25 **THE COURT:** The only thing I want to tell you

1 is this would be your last opportunity to address it
2 before I sentence you. I'll be glad to hear
3 anything you would like to tell me.

4 MR. JACKSON: I'd just like to apologize to
5 the Court for having everybody here.

6 THE COURT: You don't need to apologize to
7 me. You haven't done anything to me.

8 MR. JACKSON: I understand that, sir.

9 THE COURT: Anything else you would like to
10 tell?

11 MR. JACKSON: No, sir.

12 THE COURT: Nothing at all?

13 MR. JACKSON: No, sir.

14 THE COURT: Well, then I'll ask you a couple
15 of questions. Why did you do this?

16 MR. JACKSON: I don't know what to say, Your
17 Honor.

18 THE COURT: Pardon?

19 MR. JACKSON: I said I don't know what to
20 say, Your Honor.

21 THE COURT: Know what?

22 MS. KENNEDY: He doesn't know what to say,
23 Your Honor.

24 THE COURT: Okay. What type of gun was it
25 you had? Was it a shotgun or rifle or what?

1 **MR. JACKSON:** (Shakes head.)

2 **THE COURT:** You are shaking your head. Which
3 was it?

4 **MR. JACKSON:** I don't know, sir.

5 **THE COURT:** You don't know whether it was a
6 shotgun or a rifle?

7 **MR. JACKSON:** No, sir.

8 **THE COURT:** Why did you tell the lady "I'm
9 going to blow your f----- head off?" Stick a gun
10 in her face and said I'm going to blow your f-----
11 head off. Why did you do that? Would you like
12 someone to do that to you?

13 **MR. JACKSON:** No, sir.

14 **THE COURT:** Well, then why did you do it?

15 **MR. JACKSON:** I didn't tell her that, sir.

16 **THE COURT:** You didn't tell her that.

17 **MR. JACKSON:** No, sir.

18 **THE COURT:** Okay. What did you tell her?

19 **MR. JACKSON:** I didn't tell her anything.

20 **THE COURT:** You didn't tell her anything?

21 **MR. JACKSON:** No.

22 **THE COURT:** Okay. All right. You got the
23 sentence sheets? (Pause.)

24 Okay. Mr., uh, Jackson, indictment number
25 1695, that's the Kidnaping, the sentence is State

1 Department of Corrections for a period of 30.
2 That's concurrent with the other indictments, which
3 means it runs together. Sexual registry is not
4 required. Indictment number 1696, that's the Armed
5 Robbery, the sentence is State Department of
6 Corrections for a period of 30 years. That's
7 concurrent.

8 Indictment number 1692, Possession of a Firearm
9 during the Commission of a Violent Crime, the
10 sentence is State Department of Corrections for a
11 period of five years. That's concurrent.

12 Indictment number 1697, that's the Failure to Stop,
13 the sentence is State Department of Corrections for
14 a period of three years. That's concurrent.

15 Indictment number 1693, that's the Burglary second,
16 the sentence is State Department of Corrections for
17 a period of 15 years. That's concurrent. As to the
18 Indictment number 1694, that's the Grand Larceny,
19 the sentence is State Department of Corrections for
20 a period of ten years. That's suspended upon
21 probation for five years. Probation will be held in
22 abeyance while you are in jail. When you get out of
23 jail, you will be on probation for five years and
24 have 10 years hanging over your head. The condition
25 of probation is to attend Voc Rehab. You

1 understand?

2 MR. JACKSON: Yes, sir.

3 THE COURT: Thank you very much.

4 MS. KENNEDY: Thank you, Your Honor.

5 THE COURT: Thank you.

6 MR. ALFARO: Thank you, Your Honor.

7 (WHEREUPON, the trial concludes at approximately
8 12:56 p.m.)

CERTIFICATE

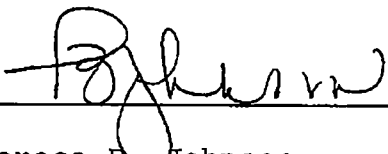
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STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Berkeley, South Carolina, on this 30th day of August, 2012.

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



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BENJAMIN J. JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-210107

FINAL BRIEF OF APPELLANT

LANELLE CANTEY DURANT

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TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT.....	5
CONCLUSION.....	10

TABLE OF AUTHORITIES**Cases**

State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986)..... 8

State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006) 8

State v. Salley, 398 S.C. 160, 727 S.E.2d 740 (2012)..... 8

Rules

Rule 401, SCRE..... 8

Rule 403, SCRE..... 8

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting testimony of the gun shells found in Appellant's home when a gun was never recovered, and the make and caliber of gun never discovered which made the shells irrelevant but prejudicial?

STATEMENT OF THE CASE

On October 20, 2010, the Berkeley County Grand Jury indicted Benjamin J. Jackson, III, on the charges of possession of a firearm during a crime of violence, burglary second degree, grand larceny, kidnapping, armed robbery (AR), failure to stop for a blue light (FTSBL). On March 8, 2012, Jackson proceeded to trial before the Honorable J.C. Buddy Nicholson and a jury. Jackson was represented by Patricia A. Kennedy, and the state was represented by Brian Alfaro and Ariel Pittman. R. 1.

The jury returned verdicts of guilty on all charges as indicted. Judge Nicholson sentenced Jackson to thirty years on the kidnapping; thirty years on the AR; five years on the possession of a weapon during a crime of violence; three years on the FTSBL; fifteen years on the burglary second degree; and ten years on the grand larceny suspended to five years probation. All sentences were to run concurrently except the probation. R. 125, ll. 22 – R. 127, ll. 6. Jackson's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in admitting testimony of the gun shells found in Appellant's home when a gun was never recovered, and the make and caliber of gun never discovered which made the shells irrelevant but prejudicial.

One of Hazel Dunning's regular cleaning jobs was to clean St. Stephen Evangelical Church every week. On May 19, 2010 she was cleaning the church. R. 26, ll. 14 – R. 28, ll. 25. At that time, construction work was being done at the church, so several construction workers were there also. R. 29, ll. 9 – 25. Her Eddie Bauer Expedition vehicle was parked at the back. R. 31, ll. 1 – 25.

As she was cleaning the kitchen area, someone approached her from behind and asked for her keys. When she turned, she was facing the barrel of a gun in her face. The person said he wanted her "f'ing keys or I'll blow your head off." R. 33, ll. 8 – 25. She knew the voice and said it was not anyone at the church. It was a long barrel gun, but the barrel was small. She handed the person her keys and cell phone as she feared for her life. The he made her lay down on the floor. R. 34, ll. 1 – R. 35, ll. 5.

The only description she could give was that the man wore a white T-shirt, dark pants, and maybe a cap. She did not want to look him directly in the face due to the gun being in her face. R. 35, ll. 6 – 24.

Her son, who was upstairs during the incident, heard her car spin off. One of the workers called the police who arrived shortly. R. 36, ll. 1 – 24. Her car was returned to her about two weeks later but had been wrecked, and her personal items were missing from the car. R. 36, ll. 25 – R. 38, ll. 4.

On May 28, 2010, Investigator Rick Ollic of the Berkeley County Sheriff's Department, was involved in the initial investigation of the incident at St. Stephens Church. He knew that a white Ford Expedition had been stolen. They were not able to locate the vehicle at the time of the incident. R. 39, ll. 16 – R. 42, ll. 23.

On May 28, 2010, around midnight, he saw a vehicle fitting that description at the red light in Moncks Corner. He followed the car and called for back up. R. 43, ll. 2 – R. 45, ll. 25. Investigator Ollic initiated his blue lights and the vehicle initially stopped. R. 46, ll. 1 – 25. As he approached the vehicle, it sped off. The officers chased the vehicle which eventually wrecked. The driver ran into the woods and was not apprehended then. However, a wallet with credit cards and identifying information was found in the vehicle. The vehicle was determined to belong to Ms. Dunning by the Vin number. R. 47, ll. 22 – R. 48, ll. 24; R. 49, ll. 1 – R. 52, ll. 13.

The name on the cards and ID was Benjamin Jackson with an address. The officers obtained a search warrant and went to Jackson's address. Various items belonging to Ms. Dunning were found. R. 52, ll. 14 – R. 54, ll. 20.

Detective Michael Cortte of the Berkeley county Sheriff's Department was the lead detective on the case so he was present at the execution of the search warrant at Jackson's home. R. 55, ll. 16 – R. 56, ll. 25. No firearms were located. Ammunition was located that would "be consistent with the description of the weapon by the victim." Three .410 shotgun shells were found in Jackson's pocket, nine were found in a Crown Royal bag in the master bedroom, and a box of .410 shells were found in the bedroom. Jackson was taken into custody. R. 57, ll. 1 – R. 58, ll. 4.

Investigator Cortte met with Jackson who gave an oral statement on June 2, 2010 admitting that he did it and he was sorry. R. 58, ll. 8 – R. 63, ll. 20; R. 64, ll. 1 – 5. The following day, Investigator Cortte met with Jackson at the detention center where Jackson gave a written statement apologizing to the victim and declaring he was just after the vehicle. R. 64, ll. 6 – R. 68, ll. 25.

Officer Harold Wadford with the St Stephens Police Department responded to the scene. R. 19, ll. 15 – R. 20, ll. 25. He reported that no weapon was located. R. 23, ll. 1 – 10.

In a pretrial motion, defense counsel moved for the shells that were found at Jackson's home and the two photographs of the shells not be admitted because they were not relevant. The state explained that no weapon was recovered but the victim identified the gun as a long gun or a rifle or a shotgun but she was not able to say which. The state argued that the shells would be consistent with that type of weapon. Defense counsel argued that the shells would be more prejudicial than probative. The judge said he would make the decision after he heard some of the testimony. R. 9, ll. 5 – R. 12, ll. 23.

During the testimony of Detective Cortte, the state asked to approach the bench whereupon a bench conference was held. Suppl. R. 99, ll. 15 – R. 57, ll. 2. Detective Cortte then testified that the .410 shells were found in Jackson's home. There was no objection by defense counsel. R. 57, ll. 4 – R. 58, ll. 4. On cross examination, Detective Cortte admitted that no weapon was found in this case. He also admitted that the shells that were found could be consistent with any rifle or long barrel gun. R. 69, ll. 12 – 25.

Immediately after this, the judge put some information on the record that was discussed at the bench. He said:

The Court: Ms. Kennedy had an objection to the pictures and the shells themselves, which I sustained. I said I would allow you (the

solicitor)to ask did they find any weapons or find any ammunition and what ammunition they found. I allowed those questions.

Mr. Alfarao: Yes, sir.

The Court: Over her objection. Okay. Anything else we need to put on the record?

R. 70, ll. 10 – R. 71, ll. 13.

Consequently, from the judge's comment about what needed to be put on the record from the bench conference, it is clear that the judge believed defense counsel objected during the bench conference to the testimony of the gun shells coming in.

The admission of evidence is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 631 S.E.2d 262 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id.

Rule 403, SCRE, provides that although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Evidence is relevant if it has a direct bearing upon and tends to establish or make more or less probable the matter in controversy. State v. Salley, 398 S.C. 160, 727 S.E.2d 740 (2012), citing Rule 401, SCRE.

In State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986), the Supreme Court ruled that .22 caliber bullets recovered from defendant's apartment, a .22 caliber pistol, .25 caliber bullets, and a photograph showing a hole in the window near the front door should not have been admitted because they were not properly connected with the incident, were

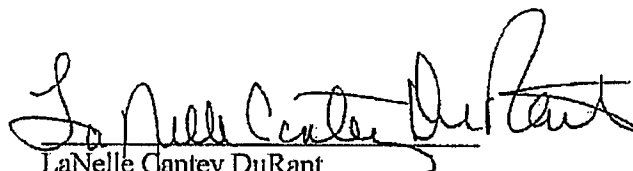
irrelevant, incompetent, and raised inferences of prior bad acts. The Court wrote that there was insufficient connection between the evidence and the crime, and the cumulative prejudicial effect of the enumerated evidence far outweighed its probative value.

The trial court erred in admitting the testimony of the gun shells because they were not relevant as they were not shown to match the weapon used in the crime. The weapon was not recovered so there was no evidence as to the kind of gun it was other than it had a long barrel. The shells were prejudicial because it was highly probable that the shells led the jury to believe that Jackson owned a gun which could have been used during the crime.

CONCLUSION

Based on the above, the convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

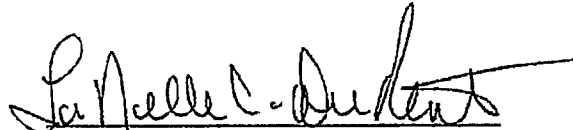
ATTORNEY FOR APPELLANT

This 18th day of October, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 18th, 2013



LaNelle C. DuRant
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
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Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
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Appeal from Berkeley County

J. C. Buddy Nicholson, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

v.

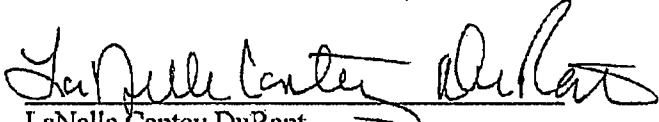
BENJAMIN J. JACKSON,

APPELLANT

APPELLATE CASE NO. 2012-210107

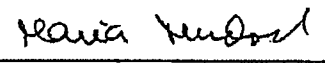
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of October 2013.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of October, 2013.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-210107

THE STATE,

Respondent,

vs.

BENJAMIN JACKSON,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUE ON APPEAL.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	5
I. The issue Appellant asserts on appeal is not preserved because Appellant failed to place an objection based on a specific ground on the record. Regardless of preservation, the investigator's testimony regarding the shell casings he found in Appellant's home was relevant under Rules 401 and 402, SCRE because the shell casings were consistent with the victim's description of the type of gun used during the armed robbery. Further, the probative value of admitting the testimony was not substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE. Finally, even if the trial judge erred in admitting the testimony, any error was harmless in light of the overwhelming evidence of Appellant's guilt. 5	
CONCLUSION	13

TABLE OF AUTHORITIES

Cases

<u>Campbell v. Bi-Lo, Inc.</u> , 301 S.C. 448, 392 S.E.2d 477 (Ct. App. 1990)	7
<u>Clark v. Cantrell</u> , 339 S.C. 369, 529 S.E.2d 528 (2000)	6
<u>McKissick v. J.F. Cleckley & Co.</u> , 325 S.C. 327, 479 S.E.2d 67 (Ct. App. 1996)	6-7
<u>State v. Baccus</u> , 367 S.C. 41, 625 S.E.2d 216 (2006)	6
<u>State v. Bailey</u> , 298 S.C. 1, 377 S.E.2d 581 (1989).....	11
<u>State v. Dunbar</u> , 356 S.C. 138, 587 S.E.2d 691 (2003).....	6
<u>State v. Fletcher</u> , 379 S.C. 17, 664 S.E.2d 480 (2008).....	11
<u>State v. Freiburger</u> , 366 S.C. 125, 620 S.E.2d 737 (2005)	6
<u>State v. Gaster</u> , 349 S.C. 545, 564 S.E.2d 87 (2002).....	6
<u>State v. Haselden</u> , 353 S.C. 190, 577 S.E.2d 445 (2003)	11
<u>State v. Kelly</u> , 319 S.C. 173, 460 S.E.2d 368 (1995).....	6
<u>State v. McConnell</u> , 290 S.C. 278, 350 S.E.2d 179 (1986).....	9
<u>State v. McDonald</u> , 343 S.C. 319, 540 S.E.2d 464 (2000).....	6
<u>State v. Patterson</u> , 324 S.C. 5, 482 S.E.2d 760 (1997)	7, 8
<u>State v. Sherard</u> , 303 S.C. 172, 399 S.E.2d 595 (1991).....	11
<u>State v. Sweat</u> , 362 S.C. 117, 606 S.E.2d 508 (Ct. App. 2004).....	9
<u>State v. Wiley</u> , 387 S.C. 490, 692 S.E.2d 560 (Ct. App. 2010).....	11

Rules

Rule 401, SCRE	5, 9
Rule 402, SCRE	5, 9
Rule 403, SCRE	5, 10

STATEMENT OF ISSUE ON APPEAL**I.**

The issue Appellant asserts on appeal is not preserved because Appellant failed to place an objection based on a specific ground on the record. Regardless of preservation, the investigator's testimony regarding the shell casings he found in Appellant's home was relevant under Rules 401 and 402, SCRE because the shell casings were consistent with the victim's description of the type of gun used during the armed robbery. Further, the probative value of admitting the testimony was not substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE. Finally, even if the trial judge erred in admitting the testimony, any error was harmless in light of the overwhelming evidence of Appellant's guilt.

STATEMENT OF THE CASE

On October 20, 2010, a Berkeley County Grand Jury indicted Appellant on the following charges: 1) possession of a firearm during the commission of a violent crime; 2) burglary in the second degree; 3) grand larceny; 4) kidnapping; 5) armed robbery; and 6) failure to stop for a blue light.

On March 8, 2012, Appellant proceeded to trial. Patricia A. Kennedy represented Appellant, and Assistant Solicitors Brian Alfaro and Ariel Pittman represented the State. The jury found Appellant guilty as charged. The Honorable J.C. Buddy Nicholson sentenced Appellant to the following: 1) five years for the possession of a firearm during the commission of a violent crime conviction; 2) fifteen years for the burglary in the second degree conviction; 3) ten years suspended to five years of probation for the grand larceny conviction; 4) thirty years for the kidnapping conviction; 5) thirty years for the armed robbery conviction; and 6) three years for the failure to stop for a blue light conviction. Judge Nicholson ran all of the sentences concurrently except for the probation.

On March 12, 2012, Appellant filed a timely notice of appeal. On May 13, 2013, Appellant served the Initial Brief of Appellant. However, on June 27, 2013, Appellant served the Amended Initial Brief of Appellant. This brief follows.

STATEMENT OF FACTS

On May 19, 2010, Appellant entered a church and held Hazel Dunning ("Victim") at gun point. (R. p. 28; R. p. 33.) Appellant told Victim that he "wanted [her] f'ing keys or [he will] blow [her] head off." (R. p. 33.) Appellant took Victim's keys and stole her vehicle. (R. pp. 33-34; R. p. 36.) According to Victim, her vehicle was a White Eddie Bauer Expedition with tan on the bottom. (R. p. 31.) Victim described the assailant as a black male, who was approximately 5'11 to 6'2 and 150 to 180 pounds. (R. p. 23.)

On May 28, 2010, Investigator Rick Ollic saw a vehicle fitting the description of Victim's stolen vehicle. (R. p. 43.) Investigator Ollic was able to see the driver's face. (R. p. 45.) Initially, the vehicle stopped when Investigator Ollic activated his blue lights in order to pull over the vehicle. (R. p. 46.) But when Investigator Ollic approached the vehicle, the vehicle took off. (R. pp. 47-48.) At that point, the backup officers began chasing the vehicle. (R. p. 48.) Eventually, the vehicle crashed and the driver fled the vehicle. (R. pp. 49-50.) The officers found a wallet with multiple credit cards that listed Appellant's name as the owner and Appellant's student identification. (R. pp. 50-51.) According to Investigator Ollic, the person on the student identification card resembled the person he saw driving the vehicle that night. (R. pp. 51-52.) The officers determined that the vehicle was in fact Victim's stolen vehicle. (R. p. 52.)

On June 2, 2010, the officers executed a search warrant of Appellant's house. (Supp. R. p. 76.) The officers found Victim's luggage rack and a palmetto tree sticker from her vehicle in Appellant's yard. (R. p. 53.) Further, the officers found a prescription medicine bottle belonging to Victim in Appellant's home and a check with Victim's name on it in Appellant's home. (R. p. 53.) In addition, the officers found Victim's

vehicle registration, roadside hazard kit, cell phone, and other miscellaneous documents belonging to Victim in Appellant's home. (R. p. 53; Supp. R. pp. 79-80; Supp.R. pp. 97-98)

At trial, Investigator Michael Cortte testified Victim reported that the assailant used some sort of long gun or rifle during the commission of the armed robbery. (Supp. R. p. 92.) When the officers executed the search warrant of Appellant's home, they found numerous .410 shotgun shells. (R. p. 57.) However, the officers never found a firearm. (R. p. 57.) According to Officer Cortte, the shotgun shells the officers found in Appellant's home were consistent with Victim's description of the type of weapon used during the commission of the armed robbery. (R. p. 57.)

Later on the day of the execution of the search warrant, Investigator Cortte asked Appellant specifically about the armed robbery that occurred on May 18, 2010. (R. p. 59.) According to Investigator Cortte, Appellant "said he did it. He said that he was sorry for what he put the victim through. He said that she was never a target. He wanted the vehicle. He said he wanted to apologize to her. He said that someone had left the gun for him to use. He said that someone helped him dispose of some of the victim's property, including her purse and the license plate from her vehicle. He told [the officers] that those items were disposed of at a car wash in Orangeburg County." (R. p. 63.) Appellant refused to tell the officers the name of the person who provided him the gun. (R. p. 63.) On June 3, 2010, Appellant confessed once again to the armed robbery. He wrote a note apologizing to Victim and asking for her forgiveness. (R. pp. 67-68; State's Exh. 2.) According to Dean Kokinda, an expert in the field of forensics and fingerprint analysis, Appellant's fingerprints matched certain items found in Victim's stolen vehicle. (Supp R. pp. 148-149.)

ARGUMENT

I.

The issue Appellant asserts on appeal is not preserved because Appellant failed to place an objection based on a specific ground on the record. Regardless of preservation, the investigator's testimony regarding the shell casings he found in Appellant's home was relevant under Rules 401 and 402, SCRE because the shell casings were consistent with the victim's description of the type of gun used during the armed robbery. Further, the probative value of admitting the testimony was not substantially outweighed by the danger of unfair prejudice under Rule 403, SCRE. Finally, even if the trial judge erred in admitting the testimony, any error was harmless in light of the overwhelming evidence of Appellant's guilt.

Appellant's argument on appeal fails for four primary reasons: First, Appellant's argument is not preserved because Appellant failed to place a specific objection on the record to the admission of the testimony regarding the shell casings found in Appellant's home. Second, even if the issue was preserved, the testimony was relevant because the shell casings found in Appellant's home were consistent with Victim's description of the type of gun used during the armed robbery. Third, the probative value of admitting the testimony was not substantially outweighed by the danger of unfair prejudice. Finally, even if the trial judge erred in admitting the testimony, any error was harmless due to the overwhelming evidence of Appellant's guilt, which included the following: 1) Appellant left his wallet containing his credit cards in Victim's vehicle; 2) Appellant left his student identification in Victim's vehicle; 3) Investigator Ollic testified that the driver of the vehicle was the same person in the student identification card, which was Appellant; 4) the police found Victim's luggage rack in Appellant's yard; 5) the police found Victim's palmetto tree sticker on Appellant's property; 6) the police found Victim's prescription medication in Appellant's bathroom; 7) the police found a check belonging to Victim at Appellant's home; 8) the police found Victim's vehicle registration at Appellant's home; 9) the police found Victim's roadside hazard kit on Appellant's property; 10) the police

found various documents belonging to Victim on Appellant's property; 11) Appellant's fingerprint was on a jalapeno can in Victim's vehicle; and 12) Appellant confessed twice to the armed robbery and wanted to apologize to Victim.

Accordingly, this Court should affirm Appellant's convictions and sentences.

Standard of Review

In criminal cases, appellate courts only review errors of law. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The decision to admit or exclude evidence rests in the sound discretion of the trial judge and will not be reversed on appeal absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). If the trial court's decision lacks evidentiary support or is controlled by an error of law, the trial court has abused its discretion. State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). Further, it is well settled that in ruling on the admissibility of evidence, the trial court has considerable latitude and its ruling will not be disturbed absent a showing of probable prejudice. State v. Kelly, 319 S.C. 173, 177, 460 S.E.2d 368, 370 (1995).

Analysis

A. Preservation

First, Appellant's argument on appeal fails because it is not preserved for review.

In South Carolina, an issue must be raised and ruled upon in order for an appellate court to consider the issue on appeal. State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691, 693-94 (2003); State v. Freiburger, 366 S.C. 125, 135, 620 S.E.2d 737, 742 (2005). Further, in order to preserve an issue for appeal, the objecting party must make a specific objection to the admission of evidence. McKissick v. J.F. Cleckley & Co., 325 S.C. 327,

344, 479 S.E.2d 67, 75 (Ct. App. 1996). A general objection that fails to specify the ground on which the party is objecting does not preserve the issue for appellate review. State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997). In other words, appellate courts do not review issues when the ground for the objection is not stated in the record. See Campbell v. Bi-Lo, Inc., 301 S.C. 448, 392 S.E.2d 477 (Ct. App. 1990).

On appeal, Appellant claims that the trial judge erred in refusing to suppress the investigator's testimony regarding the shell casings he found in Appellant's home. Before trial, defense counsel argued that admitting the actual shell casings and the photographs of the shell casings would be more prejudicial than probative. (R. p. 11.) In fact, defense counsel's exact words were the following: "Our position would be that it's far more prejudicial than probative. **That's simply our objection.**" (R. p. 11) (emphasis added). Although the trial judge made it clear that he would not make a decision until after he heard some testimony, he stated, "As defense counsel says, it may be relevant. I'm not sure that the probative value outweighs the . . . prejudicial effect." (R. p. 12.) Thus, the record clearly reflects that defense counsel was not objecting to the fact that the shell casings and photographs of the shell casings were relevant. Instead, defense counsel's only ground for objection was based on Rule 403, SCRE. Further, at that point, defense counsel did not raise any objection to the investigator testifying that he found shotgun shells in Appellant's home.

During the middle of Investigator Cortte's testimony, the trial judge held an off-the-record bench conference. (Supp. R. p. 99.) Right after the bench conference, Investigator Cortte testified that he found shotgun shells that were consistent with the Victim's description of the gun used during the armed robbery. (R. p. 57.) At that point, defense counsel did not place an objection on the record. (R. p. 57.) At the conclusion of

the investigator's testimony, the trial court stated that defense counsel objected to the admission of the actual shotgun shells and the photographs of the shotgun shells during the bench conference, and the trial judge sustained defense counsel's objection. (R. pp. 70-71.) However, the trial judge allowed the solicitor to ask whether any weapons or ammunition were found in Appellant's home over defense counsel's objection. (R. p. 71.) Despite the trial court's attempt to place the objections on the record, defense counsel never specified the grounds for her objection to the testimony regarding the shotgun shells. See Patterson, 324 S.C. at 17, 482 S.E.2d at 766 (noting that a general objection that fails to specify the ground for the objection does not preserve an issue for appellate review). Because defense counsel failed to place the grounds for her objection to the testimony on the record, the issue Appellant asserts on appeal is not preserved. Further, because defense counsel failed to place her grounds for her objection on the record, it is unclear why the trial judge admitted the testimony but excluded the actual shell casings and photographs of the shell casings.

Even if this Court was to assume defense counsel's objection to the testimony regarding the shell casings was based on the same grounds as her pre-trial objection regarding the actual shell casings and photographs of the shell casings, her only objection was based on Rule 403, SCRE. Thus, Appellant cannot now claim on appeal that the admission of the testimony was irrelevant under Rules 401 and 402, SCRE.

In summary, this Court should affirm Appellant's sentences and convictions because the issue Appellant asserts on appeal was not properly preserved.

B. Rules 401 and 402, SCRE

Second, Appellant's argument on appeal fails because the testimony was relevant under Rules 401 and 402, SCRE.

Generally, all relevant evidence is admissible under Rule 402, SCRE. "Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE. But evidence does not have to be "necessary' to the State's case in order to be admitted." State v. Sweat, 362 S.C. 117, 127, 606 S.E.2d 508, 513 (Ct. App. 2004).

Appellant's reliance on State v. McConnell, 290 S.C. 278, 350 S.E.2d 179 (1986), is misplaced. In McConnell, our Supreme Court held that the following items found in the defendant's apartment were irrelevant and inadmissible: 1) two .22 caliber bullets; 2) a .22 caliber pistol; 3) two .25 caliber bullets; and 5) a photograph showing a hole in the window near the front. Id. at 279-280, 350 S.E.2d at 180. *The victim was shot and killed with a .357 caliber bullet.* Id. at 279, 350 S.E.2d at 180. The gun used to kill the victim was a .357 Magnum pistol. Id. The defendant did not have the .22 caliber pistol at the time of the shooting. Id. at 280, 350 S.E.2d at 180. Simply put, there was no connection between the bullets and gun found in the defendant's apartment to the .357 caliber bullet that killed the victim. Id.

Unlike the shell casings in McConnell, the shell casings in this case were consistent with the time of gun used during the commission of the armed robbery. The State charged Appellant with possession of a firearm during the commission of a violent crime. The fact Appellant had shell casings in his home that were consistent with the gun

used in the robbery made it more likely Appellant owned or had recently been in possession of a firearm like the one used in the robbery. Thus, the investigator's testimony was circumstantial evidence that Appellant possessed a firearm during the commission of the armed robbery.

C. Rule 403, SCRE

Third, Appellant's argument on appeal fails because the probative value of admitting the testimony was not substantially outweighed by the danger of unfair prejudice.

Under South Carolina's Rules of Evidence, evidence that is relevant "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE.

Because Appellant failed to place a specific objection to the admission of the testimony on the record, it is unclear whether the trial judge made a ruling based on Rule 403, SCRE. However, despite not knowing the basis of the objection and the basis of the trial court's ruling, the testimony was admissible under Rule 403, SCRE. The testimony was very probative because the shotgun shells were consistent with the type of gun used during the armed robbery. Appellant claims that the shotgun shells were prejudicial because "it was highly probable that the shells led the jury to believe that [Appellant] owned a gun which could have been used during the crime." (App. Br. p. 9.) However, Appellant admitted someone gave him a gun to use to commit the robbery and admitted he and the gun supplier disposed of some of the evidence of the crime. Because Appellant

admitted to using a borrowed gun during the commission of the violent crime, the prejudicial effect of admitting the testimony regarding the shotgun shells was minimal.

D. Harmless Error

Finally, Appellant's argument on appeal fails because even if the trial judge erred in admitting the testimony, any error was harmless in light of the overwhelming evidence of Appellant's guilt.

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). An error is considered harmless beyond a reasonable doubt if it did not contribute to the verdict. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). The harmlessness of an error generally depends on the materiality of the error in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). Further, "[w]hen guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989).

Here, assuming the trial judge erred in admitting the testimony, any error was harmless in light of the overwhelming evidence of Appellant's guilt, which included the following: 1) Appellant left his wallet containing his credit cards in Victim's vehicle; 2) Appellant left his student identification in Victim's vehicle; 3) Investigator Ollic testified

that the driver of the vehicle was the same person in the student identification card, which was Appellant; 4) the police found Victim's luggage rack in Appellant's yard; 5) the police found Victim's palmetto tree sticker on Appellant's property; 6) the police found Victim's prescription medication in Appellant's bathroom; 7) the police found a check belonging to Victim at Appellant's home; 8) the police found Victim's vehicle registration at Appellant's home; 9) the police found Victim's roadside hazard kit on Appellant's property; 10) the police found various documents belonging to Victim on Appellant's property; 11) Appellant's fingerprint was on a jalapeno can in Victim's vehicle; and 12) Appellant confessed twice to the armed robbery and wanted to apologize to Victim.

In summary, this Court should affirm even if it finds the trial court erred in admitting the testimony because the evidence against Appellant was overwhelming.

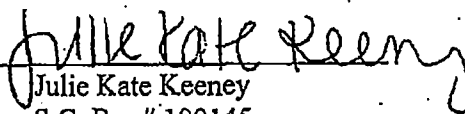
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: 
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October 16, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-210107

THE STATE,

Respondent,

vs.

BENJAMIN JACKSON,

Appellant.

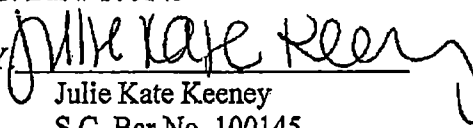
CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

JULIE KATE KEENEY
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S.C. Bar # 100145

BY


Julie Kate Keeney
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ATTORNEYS FOR RESPONDENT

October 16, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Berkeley County
Honorable J.C. Buddy Nicholson, Jr., Circuit Court Judge
Appellate Case No. 2012-210107

THE STATE,

Respondent,

vs.

BENJAMIN JACKSON,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey Durant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 16th day of October, 2013.

Ellen R. DuBois
ELLEN R. DuBOIS
Legal Assistant

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Benjamin J. Jackson, III, Appellant.

Appellate Case No. 2012-210107

Appeal From Berkeley County
J. C. Nicholson, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-389
Submitted June 1, 2015 – Filed July 29, 2015

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mary Williams Leddon, both of
Columbia, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. McConnell*, 290 S.C. 278, 280, 350 S.E.2d 179, 180 (1986)
("The admission or exclusion of evidence is largely within the sound discretion of

the trial court."); Rule 401, SCRE ("Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."); Rule 402, SCRE ("Evidence which is not relevant is not admissible."); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice").

AFFIRMED.¹

SHORT, LOCKEMY, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF BerkeleyBenjamin J. Jackson, III #33 2036
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2016-CP-08-1738APPLICATION FOR
POST-CONVICTION RELIEF
CLERK OF COURT
BERKELEY COUNTY, S.C.INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Hill-Finkler / Berkeley County Detention Center
2. Name and location of Court which imposed sentence County of Berkeley
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2010GS0801692 - Poss. of Firearm, 2010GS0801695 Kidnapping
 - (b) 2010GS0801693 - Burglary 2nd, 2010GS0801696 - Arson Robbery
 - (c) 2010GS0801694 - Grand Larceny, 2010GS0801697 - False Imprisonment
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 08, 2012
 - (b) 30 YEARS

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of South Carolina, Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Sentence Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. July 29, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Pursuant to Rule 220(b), SCACR State v. McConnell
- ii. 290.S.C. 278, 280, 350 S.E.2d 179 180 (1986)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) DEFENSE COUNSEL failed to place the Grounds for her
 (b) objection to the testimony on the record, the issue
 (c) assertion on appeal is not preserved. →

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) DEFENSE COUNSEL didn't properly represent me, OR
 (b) RAISE THE CORRECT ISSUES IN MY CASE,
 (c) NEVER CONSULT WITH ME ON MY CASE ON TRIAL →

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. N/A
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. N/A
 ii. _____
 iii. _____

3) TAAG Counsel was ineffective for failing to plea the grounds for her objection to the more prejudicial the probative testimony of INV. CORTE, where counsel should of specify that the testimony was more prejudicial than probative.

2) Ineffective assistance of Appellate Defense

1) Lawyer's fail to object to the Relevancy, Learning on Relevancy obscure the merit of what your lawyer did object to prejudicial effect. Appellate Lawyer should of left Relevancy out and go for Prejudicial effect or should of argued that the objection was specific enough where "the trial judge admitted the testimony but excluded the actual shell casing & photographs. Testimony of mere speculation, where prejudice of Appellant being convicted of mere speculation instead of beyond Reasonable doubt outweighs any probative value.

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
N/A
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) This is my first PCR
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. PATRICIA KENNEDY Public Defender Office
 - ii. MONCKS CORNER SE 29465
 - iii. LANETTE DUWANT 1330 Lady St. Ste. 401 Coln. SC 29-211
- (b) the proceedings at which each such attorney represented you:
- i. Trial Lawyer
 - ii. Appellate Lawyer
 - iii. _____

19. State clearly the relief you seek in filing this application:

SENTENCE OVERTURN & VACATED, RE-SENTENCE

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Berkeley)

VERIFICATION

I, BENJAMIN JACKSON, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Benjamin Jackson

SWORN to and subscribed before me this 28th
day of July, 2016.

Luchian Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

FILED
2016 AUG -1 PM 12:19
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC
KDC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

2016-CP-081738

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Benjamin Jackson
Applicant

SWORN or affirmed to and subscribed before me this
29th day of July, 2016.

Luduan Bryant
Notary Public

My Commission Expires: May 24, 2020

FILED
2016 AUG -1 PM 12:19
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

Benjamin J. Jackson, #338036,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2016-CP-08-1738

RETURN

Respondent (the "State"), making its Return to the Application for post-conviction relief filed on August 1, 2016, would respectfully show this Court:¹

I.

Benjamin Jackson ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Berkeley County Clerk of Court. In October 2010, the Berkeley County Grand Jury indicted Applicant for possession of a weapon during the commission of a violent crime (2010-GS-08-1692), burglary, second degree (2010-GS-08-1693), grand larceny (2010-GS-08-1694), kidnaping (2010-GS-08-1695), armed robbery (2010-GS-08-1696), and failure to stop for a blue light (2010-GS-08-1697). Patricia Kennedy, Esquire, represented Applicant. On March 5-8, 2012, Applicant proceeded to trial before the Honorable J.C. Nicholson, Jr. The jury found Applicant guilty as indicted on all charges. Pursuant to the State's recommendation, Judge Nicholson sentenced Applicant to imprisonment for concurrent terms of five years of imprisonment for possession of a weapon during the commission of a violent crime, fifteen years for burglary, second degree, ten years for grand larceny, thirty years for kidnapping, thirty years for armed robbery, and three years for failure to stop for a blue light.

Applicant filed a timely notice of appeal. Lanelle Durant, Esquire, of the South Carolina Commission of Indigent Defense—Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on July 29, 2015. State v. Jackson, Op. No. 2015-UP-389 (S.C. Ct. App. filed July 29, 2015). The remittitur was returned to the circuit court on September 28, 2015.

II.

On May 19, 2010, Appellant entered a church and held Hazel Dunning ("Victim") at gun point. (Tr. p. 139; Tr. p. 144.) Appellant told Victim that he "wanted [her] f'ing key or [he will] blow [her] head off." (Tr. p. 144.) Appellant took Victim's keys and stole her vehicle. (Tr. pp. 144-145; Tr. p. 147.) According to Victim, her vehicle was a White Eddie Bauer Expedition with tan on the bottom. (Tr. p. 142.) Victim described the assailant as a black male, who was approximately 5'11 to 6'2 and 150 to 180 pounds. (Tr. p. 134.)

On May 28, 2010, Investigator Rick Ollic saw a vehicle fitting the description of Victim's stolen vehicle. (Tr. p. 187.) Investigator Ollic was able to see the driver's face. (Tr. p. 189.) Initially, the vehicle stopped when Investigator Ollic activated his blue lights in order to pull over the vehicle. (Tr. p. 190). But when Investigator Ollic approached the vehicle, the vehicle took off. (Tr. pp. 192-193.) At that point, the backup officers began chasing the vehicle. (Tr. p. 193.) Eventually, the vehicle crashed and the driver fled the vehicle. (Tr. pp. 195-196.) The officers found a wallet with multiple credit cards that listed Appellant's name as the owner and Appellant's student identification. (Tr. pp. 196-197.) According to Investigator Ollic, the person on the student identification card resembled the person he saw driving the vehicle that night. (Tr. pp. 197-198.) The officers determined that the vehicle was in fact Victim's stolen vehicle. (Tr. p. 198.)

¹ Respondent received the application on January 18, 2017.
2 of 7

On June 2, 2010, the officers executed a search warrant of Appellant's house. (Tr. p. 241.) The officers found Victim's luggage rack and a palmetto tree sticker from her vehicle in Appellant's yard. (Tr. p. 199.) Further, the officers found a prescription medicine bottle belonging to Victim in Appellant's home and a check with Victim's name on it in Appellant's home. (Tr. p. 199.) In addition, the officers found Victim's vehicle registration, roadside hazard kit, cell phone, and other miscellaneous documents belonging to Victim in Appellant's home. (Tr. p. 199; Tr. pp. 244-250; Tr. pp. 264-266.)

At trial, Investigator Michael Cortte testified that Victim reported that the assailant used some sort of long gun or rifle during the commission of the armed robbery. (Tr. p. 257.) When the officers executed the search warrant of Appellant's home, they found numerous .410 shotgun shells. (Tr. p. 267.) However, the officers never found a firearm. (Tr. p. 267.) According to Officer Cortte, the shotgun shells the officers found in Appellant's home were consistent with Victim's description of the type of weapon used during the commission of the armed robbery. (Tr. p. 267.)

Later on the day of the execution of the search warrant, Investigator Cortte asked Appellant specifically about the armed robbery that occurred on May 18, 2010. (Tr. p. 269.) According to Investigator Cortte, Appellant "said he did it. He said that he was sorry for what he put the victim through. He said that she was never a target. He wanted the vehicle. He said he wanted to apologize to her. He said that someone had left the gun for him to use. He said that someone helped him dispose of some of the victim's property, including her purse and the license plate from her vehicle. He told [the officers] that those items were disposed of at a car wash in Orangeburg County." (Tr. p. 273.) Appellant refused to tell the officers the name of the person who provided him the gun. (Tr. p. 273.) On June 3, 2010, Appellant confessed once again to the armed robbery. He wrote a note apologizing to Victim and asking for her forgiveness. (Tr. pp. 277-278; State's Exh. 2.) According to

Dean Kokinda, an expert in the field of forensics and fingerprint analysis, Appellant's fingerprints matched certain items found in Victim's stolen vehicle. (Tr. pp. 330-331.)

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Defense counsel failed to place the grounds for her objection to the testimony on the record, the issue assert on appeal is not preserved."
 - a. "Defense counsel didn't properly represent me, or raise the correct issues in my case"
 - b. "Never consult with me on my case on trail"
2. "Trial counsel was ineffective for failing to place the grounds for her objection to the more prejudicial the probative testimony of Inv. Cortte, where counsel should of specify that the testimony was more prejudicial than probabtive."
3. "Ineffective assistance of Appellate Defense"
 - a. "Lawyers fail to object to the relevancy, leaning on relevancy obscure the merit of what your lawyer did object to prejudicial effect. Appellate lawyer should of left relevancy out and go for prejudicial effect or should of argued that the objection was specific enough where 'the trial judge admitted the testimony but excluded the actual shell casing and photographs. Testimony of mere speculation, where prejudice of appellant being convicted of mere speculation instead of beyond reasonable doubt outweighs any probative value."

Attached to this Return and incorporated by reference are the records of the Berkeley County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the post-conviction relief application. The State reserves the right to amend this Return upon receipt of any relevant materials.

IV.

The State submits Applicant's allegations of ineffective assistance of trial counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his

application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The State submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact the record does not conclusively refute. Accordingly, the State requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

Applicant also alleges ineffective assistance of appellate counsel. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show appellate counsel's performance was deficient and he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The State contends the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The State requests an evidentiary hearing on this allegation.

VI.

Additionally, Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. Any claims not specifically laid out in this post-conviction relief application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§

17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the post-conviction relief hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRCP.

VII.

Each and every allegation contained within the post-conviction relief application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, the State requests that an evidentiary hearing be held on the claims of ineffective assistance of trial and appellate counsels.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: Megan Harrigan Jameson
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
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Columbia, SC 29211
Telephone: (803) 734-3737

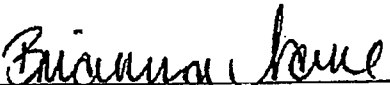
July 6, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2016-CP-08-1738
BENJAMIN J. JACKSON,	)	
S.C.D.C. No. 338036,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Rodney Davis, Esquire
 Lowcountry Law Office
 4000 Faber Place Drive, Suite 300
 Charleston, SC 29405

DATED this 6th day of July, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF BERKELEY NINTH JUDICIAL CIRCUIT
2016-CP-08-01738

BENJAMIN J. JACKSON,) TRANSCRIPT OF
III,) RECORD
APPLICANT,)
VS.) FEBRUARY 26, 2018
THE STATE OF SOUTH) MONCKS CORNER, SC
CAROLINA,)
RESPONDENT.)

B E F O R E:

HONORABLE THOMAS A. RUSSO

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

RASHEEDA CLEVELAND, ESQUIRE
Attorney for the Respondent

RODNEY DAVIS, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

	Page
POST-CONVICTION RELIEF HEARING	3

<u>WITNESS</u>	<u>DX</u>	<u>CX</u>
Benjamin Jackson	6	25
Patty Kennedy	27	35

SUMMATION

Mr. Davis	38
Ms. Cleveland	44

CERTIFICATE OF REPORTER	50

NO EXHIBITS INTRODUCED

1 (The following proceedings were held
2 February 26, 2018, Berkeley County, South Carolina,
3 @ 9:55 a.m.)

4 MS. CLEVELAND: May it please the
5 Court, Your Honor, our next matter is Benjamin
6 Jackson versus the State of South Carolina, docket
7 number 2016-CP-08-1738. Mr. Jackson was indicted
8 at the October 2010 term of the Berkeley County
9 grand jury for possession of a weapon during the
10 commission of a violent crime, burglary second
11 degree, grand larceny, kidnapping, armed robbery,
12 and failure to stop for a blue light.

13 He was represented on those charges by
14 Ms. Patricia Kennedy. On March 5th through the 8th
15 of 2012 Mr. Jackson proceeded to trial before the
16 Honorable J.C. Nicholson, Jr.

17 The jury found him guilty as indicted
18 on all charges. Judge Nicholson sentenced Mr.
19 Jackson to prison for concurrent terms of five
20 years for the possession of a weapons charge,
21 15 years for burglary second degree, ten years for
22 grand larceny, 30 years for kidnapping, 30 years
23 for armed robbery and three years for failure to
24 stop for a blue light.

25 He appealed those convictions and

1 sentences on July 29th, 2015. The South Carolina
2 Court of Appeals affirmed Mr. Jackson's convictions
3 and sentences and the remittitur was issued on
4 September 28th, 2015. He filed this
5 post-conviction relief action on August 1st, 2016,
6 alleging ineffective assistance of counsel. He is
7 present in the courtroom today and represented by
8 Mr. Rodney Davis.

9 THE COURT: All right. Mr. Davis, are
10 you ready to proceed?

11 MR. DAVIS: We are, Your Honor. I will
12 -- just for the record I would normally ask, and I
13 don't believe I have handled a PCR in front of you,
14 what I would normally do is ask the judge to go
15 over the risks and benefits, but it is very simple.
16 He was maxed out. The only risk would be a
17 potential consecutive sentence if he were to start
18 over. We have talked about that. If you feel you
19 need to for the record, but we have talked
20 thoroughly about it, that he was convicted of each
21 charge, sentenced to the maximum on each charge,
22 they were run currently rather than consecutive.

23 I believe he understands. I believe he
24 wants to take the risk for the potential benefit of
25 going forward.

1 THE COURT: Okay. Is that correct, Mr.
2 Jackson? You understand that? Let me just --
3 worst case scenario would be that I agreed with
4 everything here in your application and I granted
5 your application and I sent you back. If you were
6 to have another trial, the only difference is that
7 it's possibly getting consecutive sentences rather
8 than concurrent. Is that pretty much the case?

9 THE APPLICANT: I understand, sir.

10 THE COURT: All right. And so you
11 understand that that's a possibility, that your
12 decision is that you wish to proceed with your
13 application and take that risk?

14 THE APPLICANT: Yes, sir.

15 THE COURT: All right. I certainly
16 will honor that, sir, and we will proceed with your
17 application.

18 MR. DAVIS: We would call Mr. Jackson
19 as our first witness.

20 THE COURT: All right. Mr. Jackson, if
21 you would come forward to be sworn, sir.

22 (Thereupon, the Defendant was sworn.)

23 THE CLERK: State your full name and
24 spell your last name.

25 THE APPLICANT: Benjamin Jackson,

1 J-A-C-K-S-O-N.

2 DIRECT EXAMINATION

3 BY MR. DAVIS:

4 Q. Mr. Jackson, I am going to ask you to
5 make sure you keep your voice up so everybody can
6 hear you, big courtroom, okay? Let's just get a
7 little background for the judge for you to start
8 out. Where were you born?

9 A. Charleston, South Carolina.

10 Q. And when?

11 A. of

12 Q. So you are how old today?

13 A. Thirty-two.

14 Q. Now, you still have your family in the
15 area?

16 A. Yes.

17 Q. Are you married or single?

18 A. Married.

19 Q. Got any kids?

20 A. Yes, sir.

21 Q. How many?

22 A. Four.

23 Q. And now how far did you go in school?

24 A. Completed high school.

25 Q. Which high school?

1 A. Fort Dorchester.

2 Q. Graduated?

3 A. Yes, sir.

4 Q. What year was that?

5 A. '03.

6 Q. Okay. And then did you do a little bit
7 of schooling after that?

8 A. Yes, I went to Strayer University.

9 Q. Couple semesters there?

10 A. Yes, sir.

11 Q. And just for the record, are you
12 dealing with any health issues or dealing with any
13 medications today?

14 A. No, sir.

15 Q. You heard the attorney general talk
16 about the charges that you were convicted of and
17 the ones you are complaining about in your
18 application, right?

19 A. Yes, sir.

20 Q. Can you tell Judge Russo who your
21 attorney was for your trial on those charges?

22 A. Patricia Kennedy.

23 Q. You see her in the courtroom here
24 today?

25 A. Yes, sir.

1 Q. Now, can you tell the judge
2 approximately what you recall the number of
3 meetings you had with Ms. Kennedy?

4 A. I would say about probably ten.

5 Q. Okay. Now, so the judge will -- first
6 of all, how long on average would those meetings
7 last? I know they were different, but how long
8 would they normally last?

9 A. I'd say about 20 or 30 minutes.

10 Q. Okay. Now, so the judge will
11 understand, did you make bond on these charges or
12 did you remain incarcerated until you went to
13 trial?

14 A. Remained incarcerated until I went to
15 trial.

16 Q. Did you ever get transported to Ms.
17 Kennedy's office to speak with her?

18 A. No, sir.

19 Q. Would she have met with you across the
20 street here at the county jail?

21 A. Yes, sir.

22 Q. I am sorry?

23 A. Yes, sir.

24 Q. Okay. And did she ever have meetings
25 with you here in the courthouse somewhere?

1 A. Yeah.

2 Q. Okay. Now, will you tell Judge Russo
3 in any of these meetings, approximately ten of
4 them, did she ever discuss with you the elements or
5 what the State had to prove if you went to trial to
6 find you guilty of burglary? Did she talk to you
7 about the elements of burglary?

8 A. I don't recall.

9 Q. Okay. Do you recall her talking to you
10 about what the State would have to prove for the
11 elements for the charge of grand larceny?

12 A. No, sir.

13 Q. I am sorry?

14 A. No, sir.

15 Q. Okay. What about for kidnapping?

16 A. I believe we did a little bit.

17 Q. Okay. What about armed robbery?

18 A. No, sir.

19 Q. What about the charge of failure to
20 stop for a blue light?

21 A. No, sir.

22 Q. And then finally what about the charge
23 of possession of a weapon during the commission of
24 a violent crime?

25 A. No, sir.

1 Q. Okay. Did she talk with you about the
2 evidence or the discovery, the Rule 5 that you
3 received in this case?

4 A. Yeah.

5 Q. Did she share that with you or did she
6 actually give you a copy of that stuff?

7 A. I had a copy.

8 Q. Now, let me go back a second again. On
9 each of these charges do you recall during any of
10 these meetings with Ms. Kennedy that she talked to
11 you about what the possible punishment for burglary
12 second degree was?

13 A. I don't recall.

14 Q. Do you recall her telling you what the
15 possible punishment for grand larceny was?

16 A. No, sir.

17 Q. What about for kidnapping?

18 A. Just the maximum penalty.

19 Q. Okay. We will get to that. What about
20 armed robbery?

21 A. No, sir.

22 Q. What about failure to stop for a blue
23 light?

24 A. No, sir.

25 Q. What about possession of a weapon

1 during the commission of a violent crime?

2 A. No, sir.

3 Q. So what did she tell you about overall?

4 A. Just charges I am being charged with.

5 Q. What did she tell you overall about
6 possible punishment?

7 A. The max punishment I could get.

8 Q. What was that?

9 A. Depending on what the charge is.

10 Q. Okay. So as to each charge she told
11 you what the maximum was; is that what you are
12 telling the judge?

13 A. Yes, sir.

14 Q. So she didn't talk -- forgive me on
15 that question. She didn't talk to you about a
16 range of punishment, but she told you what the
17 maximum was on each one of those?

18 A. Yes, sir.

19 Q. Okay. Now, during any of these ten
20 meetings with Ms. Kennedy, did she ever talk to you
21 about how a trial is conducted, probably in this
22 courtroom? Did she talk to you about that process?

23 A. No, sir.

24 Q. Had you ever been to trial on a
25 criminal charge before?

1 A. No, sir.

2 Q. She ever talk to you about how the jury
3 was chosen or how witnesses were called or anything
4 like that about the trial process?

5 A. I don't recall.

6 Q. Okay. Now, Judge Russo has a copy of a
7 lot of paperwork in this case, but let's remind
8 him. There was an officer testified about a
9 statement you gave, right?

10 A. Yes, sir.

11 Q. Okay. And now, Ms. Kennedy did try to
12 block that at the beginning of the trial, right?

13 A. Yes, sir.

14 Q. But prior to the trial did she talk to
15 you about how she would do that, about how she
16 would try to block that? Did she have any
17 discussions with you about that?

18 A. No, sir.

19 Q. Did she ever use the term Denno or
20 Jackson v. Denno case to you in discussions?

21 A. Yes, sir.

22 Q. And was that something that was talked
23 about a lot, that Denno case, or kind of briefly?

24 A. Briefly.

25 Q. Now, preparing for the trial did she

1 come to you with a strategy for the case or did you
2 go to her with your defense of the case?

3 A. Basically my defense.

4 Q. Okay. Now, when you were talking about
5 your defense to these charges, was there a
6 discussion in any of these ten meetings before
7 trial about whether you would testify or not?

8 A. No, sir.

9 Q. Didn't talk to you at all before trial
10 about you testifying?

11 A. No, sir.

12 Q. Did she do any preparation with you to
13 go over the types of questions that she might ask
14 you if you did testify?

15 A. No, sir.

16 Q. Did she go over any preparation with
17 you on types of questions the solicitor's office
18 might ask you if you testified?

19 A. No, sir.

20 Q. Now, before the trial started did she
21 talk to you at all about your prior record and what
22 might come up at trial?

23 A. No, sir.

24 Q. So when is the first time you had
25 discussions with Ms. Kennedy about whether you were

1 going to testify or not?

2 A. Like the day before they wanted me to
3 testify.

4 Q. I am sorry?

5 A. The day before they wanted me to
6 testify, like the third day of the trial.

7 Q. Okay. Let's cut straight to it. What
8 was her advice to you about testifying or not?

9 A. Wouldn't be a good idea to testify.

10 Q. To not testify, right? And did she
11 give you a reason for that?

12 A. Said something about my background
13 record or something.

14 Q. Okay. Now, we have talked about this,
15 but for Judge Russo do you recall when you were in
16 court and the judge talked to you about that
17 decision; do you remember that?

18 A. Yes, sir.

19 Q. A little bit. Do you recall that that
20 happened toward the end of one of the days of
21 trial?

22 A. I believe so, yes, sir.

23 Q. And so you didn't have to give a
24 definite answer until the next morning; is that
25 right?

1 A. Yes, sir.

2 Q. Okay. And so you went back over here
3 to the county jail overnight, right?

4 A. Yes, sir.

5 Q. Did Ms. Kennedy come speak with you
6 that night?

7 A. No, sir.

8 Q. So when you came back the next day and
9 talked to Judge Nicholson what was your decision to
10 testify or not?

11 A. I just said it was based off on my
12 lawyer.

13 Q. So --

14 A. She told me it wouldn't be a good idea
15 to testify.

16 Q. So what was your answers to Judge
17 Nicholson about doing that or not?

18 A. Say that again.

19 Q. What was your answer to Judge Nicholson
20 about testifying or not?

21 A. That I didn't want to testify.

22 Q. And now prior to that night to think
23 about it after your attorney told you you probably
24 shouldn't because of your prior record, had you
25 wanted to testify?

1 A. Yeah, yes, sir.

2 Q. One last thing on discussions about
3 that. At any point in the ten meetings prior to
4 trial or at trial, because you say you talked about
5 this issue at trial with Ms. Kennedy, did she ever
6 talk to you about the fact that if you did not
7 testify that she would be the last attorney that
8 the jury got to hear from? Did she talk to you
9 about that?

10 A. No, sir.

11 Q. So did that affect your decision in any
12 way?

13 A. I don't believe.

14 Q. So the real issue about not testifying
15 was based on Ms. Kennedy's advice, right?

16 A. Yes, sir.

17 Q. And what was the reasoning again why
18 did she think you should not?

19 A. Because they bring up my background.

20 Q. Did she talk to you at any point about
21 if you testified and if your background was brought
22 up how y'all would try to deal with that?

23 A. No, sir.

24 Q. Mr. Jackson, can you tell Judge Russo
25 -- by filing this application you have given up the

1 attorney/client privilege. So can you tell Judge
2 Russo what you told Ms. Kennedy about these charges
3 and what you were guilty of, what you are not
4 guilty of? Can you tell the judge about that?

5 A. I was guilty for the possession of the
6 stolen vehicle and not the charges of the armed
7 robbery and kidnapping.

8 Q. Speak up just a little bit, okay.

9 THE COURT: You told me you were guilty
10 of the possession of a stolen vehicle.

11 THE WITNESS: Yes, sir, and I didn't
12 know anything about the armed robbery and
13 kidnapping charges.

14 THE COURT: Okay.

15 BY MR. DAVIS:

16 Q. Now, just to clear things up, was there
17 another charge that you admitted that you did when
18 the police were trying to stop you?

19 A. Yes, that's the failure to stop for
20 blue light.

21 Q. Did you commit that as well?

22 A. Yes, sir.

23 Q. So if you had the chance to testify
24 back at your trial in front of Judge Nicholson or
25 if you had testified, let me put it that way, if

1 you had testified, can you tell Judge Russo what
2 happened about this vehicle?

3 A. Yeah. I paid somebody to get a hot
4 vehicle for me and I didn't understand that they
5 went to get it and I just had a possession of a
6 stolen car. I had paid somebody to get a vehicle
7 for me.

8 Q. Do you recall what you paid?

9 A. Twenty-five hundred.

10 Q. Do you recall how you got it or who you
11 got it from?

12 A. Yes.

13 Q. Who was that?

14 A. Guy named Johnny.

15 Q. You said a hot vehicle. What does that
16 mean to you?

17 A. Like it was pop up car like gone in
18 60 seconds.

19 Q. Okay. So just so we are clear, does
20 that suggest that you knew it was stolen or didn't
21 know it was stolen?

22 A. Yeah. I knew it was stolen.

23 Q. And when did you obtain that vehicle?

24 A. I can't even -- probably like -- you
25 want the date?

1 Q. Just the day you were arrested on the
2 failure to stop for blue light, did you get it that
3 day or the day before or week before?

4 A. Was like two days before that before
5 they pulled me over.

6 Q. So on the burglary and the kidnapping
7 and the possession of a weapon during a violent
8 crime and the armed robbery, all those deal with
9 going into a church and confronting the owner of
10 the vehicle. Did you do any of that?

11 A. No, sir.

12 Q. Did you go in that church?

13 A. No, sir.

14 Q. Did you confront the lady who owned the
15 vehicle?

16 A. No, sir.

17 Q. Did you have a gun when you did that?

18 A. No, sir.

19 Q. Can you remind the judge when you were
20 arrested was there a gun on you or in the vehicle?

21 A. No, sir.

22 Q. Gun ever found that you know of?

23 A. No, sir.

24 Q. Now, on your prior record just to deal
25 with that as though you were testifying back when,

1 Your Honor, if I could have the Court's indulgence
2 for just a moment?

3 (Brief pause.)

4 THE COURT: Yes, sir.

5 BY MR. DAVIS:

6 Q. Is it true you at the time of your
7 trial you did have a prior conviction for a drug
8 offense?

9 A. Yes, sir.

10 Q. And is it true you had a prior felony
11 conviction in addition to that drug offense of
12 burglary?

13 A. Yes, sir.

14 Q. Let's go back to some discussions that
15 you had or didn't have with Ms. Kennedy, okay? In
16 any of the meetings you had with her did she ever
17 talk to you or use the term most serious offense?

18 A. No, sir.

19 Q. Did she ever talk to you about strike
20 offenses?

21 A. No, sir.

22 Q. What about no parole offenses?

23 A. No, sir.

24 Q. Final one on that. What about
25 85 percent offenses?

1 A. No, sir.

2 Q. All that's leading up to this: Can you
3 tell Judge Russo if there were ever discussions
4 with Ms. Kennedy about an offer from the State to
5 plead guilty?

6 A. What you mean?

7 Q. Can you tell Judge Russo if there were
8 any discussions with Ms. Kennedy about an offer
9 from the State to plead guilty?

10 A. Like a plea or something?

11 Q. Yes.

12 A. Yes.

13 Q. What were those discussions?

14 A. The thing with the plea was for the 10
15 to 20.

16 Q. And how many times would you say that
17 you and Ms. Kennedy discussed that plea offer?

18 A. Probably once or twice.

19 Q. And, in fact, you came to the courtroom
20 and went before Judge Dennis and rejected that
21 offer; is that right?

22 A. Yes, sir.

23 Q. Now, for the record, on the kidnapping,
24 the armed robbery that you are serving right now,
25 do you know whether you are serving that at

1 33 percent or 65 percent or 85 percent? Do you
2 know what your percentage is on the kidnapping and
3 the armed robbery?

4 A. I believe it is 85.

5 Q. Do you recall what advice, if any, that
6 Ms. Kennedy gave you on that offer of 10 to 20 for
7 everything?

8 A. Told me to take it or it was a good
9 deal.

10 Q. I am sorry?

11 A. They were trying to tell me to take it.

12 Q. Who is they?

13 A. Her, the solicitor, the judge.

14 Q. At the time that you rejected that
15 offer did you understand what a plea to 10 to 20
16 for all these charges would have meant?

17 A. No, sir.

18 Q. Did you understand what that would have
19 done as far as when you might be parole eligible or
20 anything like that?

21 A. Say that again.

22 Q. Did you understand when you might be
23 parole eligible if you accepted that plea?

24 A. No, sir.

25 Q. Based on your meetings with Ms. Kennedy

1 and the discussions you had do you think at the
2 time before the trial you fully understood what the
3 risks of going to trial were?

4 A. No, sir.

5 Q. Before going to trial was it your
6 thought that you would testify and tell your story
7 or not testify before you went to trial?

8 A. Say that again.

9 Q. Before you went to trial was it your
10 thought that you would testify and tell your story
11 or not testify?

12 A. To testify and tell my story.

13 Q. Now, let me ask you this: If you had
14 known that in the middle of the trial you would
15 have been advised not to testify because of your
16 prior record, and so that your story, had you known
17 ahead of time a jury wouldn't get to hear your
18 story, would you have gone to trial or would you
19 have thought more about that offer?

20 A. I would have wanted to go to trial
21 because I wasn't guilty of all the charges they
22 were charging me with.

23 Q. Okay. If Ms. Kennedy had talked to you
24 about 85 percent and no parole offenses and most
25 serious offenses, prior to going to trial would you

1 have considered the offer or would you have gone to
2 trial?

3 A. Back to what I said. I pled guilty to
4 what I was guilty of, but the armed robbery and
5 kidnapping, I couldn't see myself pleading guilty
6 to that.

7 Q. And so the testimony that you gave
8 Judge Russo earlier, that's something that you
9 would have been interested in pleading to, but if
10 the State hadn't offered just those two charges,
11 would you have considered taking the 10 to 20 offer
12 for everything or not?

13 A. Say that again.

14 Q. You told Judge Russo and explained what
15 happened, that you would have been fine to plead
16 guilty or been convicted of the failure to stop for
17 blue light and possession of a stolen vehicle. But
18 if the State hadn't offered that, is the 10 to 20
19 for everything something you would have considered
20 or not?

21 A. That's how I plead, for everything.

22 Q. For all your charges?

23 A. No.

24 Q. Okay. Your Honor, if I could have just
25 one moment.

1 THE COURT: Yes.

2 (Brief pause.)

3 MR. DAVIS: Thank you so much. That's
4 all the questions. The attorney general will have
5 some questions for you now.

6 CROSS-EXAMINATION

7 BY MS. CLEVELAND:

8 Q. Just briefly. Mr. Jackson, you
9 testified that you did not commit the armed
10 robbery, correct?

11 A. Yes, ma'am.

12 Q. And you testified that you recall
13 giving a statement to the police, correct?

14 A. Yes, ma'am.

15 Q. Do you recall what you said in that
16 statement?

17 A. They tell me what the situation was and
18 I told them what I did on my behalf and I told them
19 I apologize on what happened with the situation and
20 whoever did what they did to get the vehicle. I
21 told them I apologize to the person because I
22 didn't know they went to that extent to get me a
23 vehicle for the money.

24 Q. And if I showed you your statement that
25 you said in court, would that help you to better

1 recall what you actually stated?

2 A. I know -- you can show to me. I know
3 what I said.

4 Q. Your Honor, I am referring to page 277
5 of the transcript. If I may approach?

6 THE COURT: Yes, ma'am.

7 Q. Just read it to yourself.

8 A. (Witness complies with request.)

9 Q. Mr. Jackson, in the statement that you
10 just read did you see where you said anything about
11 that you paid someone to steal the vehicle?

12 A. No, ma'am. When I wrote that they
13 didn't ask me that.

14 Q. And one final question. You testified
15 that they never found a gun, that you never had a
16 gun, correct?

17 A. Yes, ma'am.

18 Q. Do you recall that they found bullets
19 that were consistent with the gun that was used for
20 the crime?

21 A. I know that they found three or four of
22 that type of bullet at my residence.

23 MS. CLEVELAND: Nothing further, Your
24 Honor.

25 THE COURT: Redirect?

1 MR. DAVIS: Judge, I believe as part
2 of the record I can argue in close so no thank you.

3 THE COURT: All right. Thank you very
4 much, Mr. Jackson. You may step down, sir.

5 MR. DAVIS: Just a moment with Mr.
6 Jackson.

7 THE COURT: Yes.

8 (Attorney confers with client.)

9 MR. DAVIS: Your Honor, that would be
10 the applicant's presentation.

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

12 MS. CLEVELAND: Your Honor, the State
13 would call Ms. Patty Kennedy.

14 THE COURT: Ms. Kennedy, if you will
15 please come around to be sworn.

16 PATTY KENNEDY

17 having been duly sworn, testifies as follows:

18 DIRECT EXAMINATION

19 BY MS. CLEVELAND:

20 Q. Good morning, Ms. Kennedy.

21 A. Good morning.

22 Q. How long have you been practicing law?

23 A. Thirty-two years in November.

24 Q. And about how much of that have you
25 spent practicing criminal law?

1 A. I'd say probably 80 percent, maybe 85.

2 Q. Were you appointed or retained?

3 A. Appointed.

4 Q. Do you recall about when you became
5 involved in the case?

6 A. Let's see, I believe Mr. Jackson was
7 arrested on May 28th. He was interviewed on the
8 June 20th, 21st by our screener and probably within
9 two weeks or so after that because there was a
10 process for people in jail. At that point in time
11 we had to -- there was a \$40 application fee and at
12 that point in time we had to send a letter to the
13 clerk's office asking that the fee be suspended so
14 that they can start to open their file and when we
15 got the letter back from them lawyers were
16 appointed to jailed clients.

17 Q. Do you recall how these charges arose?

18 A. There was -- the incident occurred in
19 St. Stephens. There was a woman who was working in
20 the church. She cleaned the church on I guess a
21 part-time basis. She was a victim of an armed
22 robbery at that church. Somebody went in and which
23 Mr. Jackson was arrested for. A medium build black
24 man was her description, came in, put a gun to her
25 face, said give me your fucking car keys and her

1 car was stolen.

2 Q. Did you meet with Mr. Jackson to
3 discuss these charges?

4 A. Numerous times.

5 Q. Do you recall how many?

6 A. My file -- he says ten or so. I have
7 paperwork that documented at least 15. I'm sure
8 there were other instances in between that didn't
9 require documentation. It was just like we got
10 another piece of discovery, do you understand it,
11 do you have any questions, that sort of thing. I
12 also met with him other times because his wife was
13 very involved in this case. She was charged with a
14 felony and she came into my office two or three
15 times and we discussed the case and what was going
16 on with it.

17 Q. Did you discuss the indictments and the
18 elements of each offense?

19 A. My file reflects that my first meeting
20 -- because we started getting the discovery in like
21 toward the end of August. I had met with him to
22 review the charges and my first discussion with him
23 about the elements of the crime occurred according
24 to my notes October the 14th. The notes say review
25 the charges, review the elements, discuss the

1 discovery.

2 Q. Did you review the possible punishments
3 with Mr. Jackson?

4 A. I am sorry?

5 Q. Did you review the possible punishment
6 that he could face?

7 A. Yes.

8 Q. On each charge?

9 A. Several times. And I after -- he went
10 before Judge Dennis sometime in December. The plea
11 offer was put on the record. There was a certain
12 amount of time, I don't remember, I think it
13 probably was around 30 days, that's generally his
14 practice. I then wrote him a letter documenting
15 what had happened in court listing all of his
16 charges, the potential penalty, the
17 classifications, as well as reminding him how the
18 classification would impact the time that he had to
19 serve upon conviction.

20 Q. Ms. Kennedy, could you briefly describe
21 what the State's evidence was against Mr. Jackson?

22 A. I guess we sort of have to go backwards
23 from the possession of the stolen motor vehicle.
24 Detective Ohlich -- after the car was stolen they
25 were looking for a good while. The car had some.

1 unique markings. Emblem with flip flops that was
2 on the back, had a particular kind of trailer
3 hitch. Anyway Major Ohlich was -- Detective Ohlich
4 was in traffic, I don't remember where, he pulled
5 up behind this SUV that he thought belonged to Ms.
6 Dunning. He tried to flag Mr. Jackson down. There
7 was a high speed chase. Hence the failure to stop
8 for a blue light.

9 The car was taken into custody. In the
10 car they found identification cards, miscellaneous
11 pieces of property belonging to Mr. Jackson which
12 then led to a search warrant which then led to the
13 bullets that you mentioned, that were mentioned
14 earlier. Also parts of the car, not the luggage --
15 may have been part of the luggage rack, anyway
16 there was a part of the car that was still in the
17 yard. And then they based on that took Mr. Jackson
18 into custody. And all of this evolved over a
19 ten-day period. Once they got him into custody, he
20 gave three different statements, the last of which
21 was on, I don't know the date, gave a written
22 statement acknowledging an incriminating statement
23 on June the 3rd after having been arrested on
24 June 2nd.

25 Q. Ms. Kennedy, you heard Mr. Jackson

1 testify about a plea offer that was given to him of
2 a range of 10 to 20 years?

3 A. Right.

4 Q. Did you enter into plea negotiations
5 with the State to get that offer?

6 A. Yes.

7 Q. And what were the terms?

8 A. It was a 20-year cap. There was never
9 any mention of a 10 to 20. When I first discussed
10 the cap with Mr. Jackson he indicated that he would
11 take ten. But it was always a 20-year cap.

12 Q. Okay.

13 A. And the letter that I mentioned before
14 also addresses that issue in terms of the
15 consequences of or how much more jeopardy he would
16 be in in terms of trial versus plea in my opinion.

17 Q. And whose decision was it for Mr.
18 Jackson to reject that offer?

19 A. His. It was put on the record at a
20 subsequent hearing in front of Judge Dennis.

21 Q. Ms. Kennedy, did you have an overall
22 theory or strategy in Mr. Jackson's case?

23 A. I thought -- well, they had -- there
24 was the possession of the stolen motor vehicle that
25 speaks for itself. I conceded that in my closing

1 argument. I thought that the way to attack the
2 armed robbery and the burglary was to attack the
3 quality of the investigation that was done by
4 Berkeley County detectives. The initial response
5 to this incident came from the St. Stephens Police
6 Department. The St. Stephens Police Department
7 probably was not accustomed to handling this kind
8 of crime so they called Berkeley County Sheriff's
9 Office in to do what they call an assist, but it
10 became Berkeley County's investigation. The lead
11 detective in the case, I had some experience with
12 him before, he sometimes didn't follow through the
13 way -- if I were a prosecutor I would have wanted
14 him to in terms of being thorough and in terms of
15 documenting his file and just procedurally, so
16 there was never an eyewitness obviously. The
17 description was very vague.

18 So my strategy was to attack all the
19 investigation quote unquote that was done prior to
20 Mr. Jackson being arrested on possession of a
21 stolen motor vehicle charge.

22 Q. Did you discuss the strategy with
23 Mr. Jackson?

24 A. Not in terms here is my strategy. In
25 terms of here's the weakest part of your case. The

1 possession of stolen motor vehicle, it doesn't
2 involve a whole lot of discussion. The identity
3 issues was the biggest thing. And all with that
4 because Berkeley did not send -- whoever entered
5 the church had to enter in some fashion, through a
6 door, whatever. And they never went back to do any
7 fingerprints, any forensic things. The lead
8 detective never even had a subsequent interview
9 with the victim in the case. The sole statement
10 given by the victim was the one taken by the St.
11 Stephens Police Department.

12 Q. Fast forward to trial, did you discuss
13 with Mr. Jackson his right to testify?

14 A. Yes.

15 Q. And whose decision was it for
16 Mr. Jackson to not testify?

17 A. It was his. I can't force people to
18 testify.

19 Q. Did you discuss with Mr. Jackson any
20 potential problems that could arise by virtue of
21 him testifying or not?

22 A. The issue for Mr. Jackson was in terms
23 of him testifying was the statement that he gave.
24 His criminal history certainly wasn't -- I mean he
25 didn't have much of a criminal history. The thing

1 that hurt him was a prior conviction for burglary.
2 But I knew in terms of him testifying given the
3 statement, the written statement he had given, the
4 deputy solicitor would really have a field day with
5 that.

6 Q. And one last question. Did you make
7 any motions at the conclusion of the State's case?

8 A. I made a motion to renew all motions,
9 but --

10 MS. CLEVELAND: I have no further
11 questions.

12 CROSS-EXAMINATION

13 BY MR. DAVIS:

14 Q. Thank you, Your Honor. Ms. Kennedy?

15 A. Mr. Davis.

16 Q. The Denno hearing focused on a couple
17 of things, the credibility of the officers on
18 taking the statement and the contents of the
19 statement; is that fair enough?

20 A. Fair enough.

21 Q. So to kind of dovetail into one of the
22 last things you and the attorney general talked
23 about, while his alleged statements into evidence
24 would have been at issue, that is something that
25 you're experienced in dealing with, Defendants that

1 testify even when there is a disputed statement?

2 A. Fair enough.

3 Q. And specifically to the one prior that
4 you mentioned, the burglary, you had experience at
5 trial in rephrasing that in front of the jury so
6 that they hear the person was convicted of a
7 felony, not specifically a prior burglary?

8 A. Yes.

9 Q. In the lead up to this trial, did you
10 or anyone on your behalf actually go through with
11 Mr. Jackson questions and answers, a mock
12 testimony, run through that with him?

13 A. No, because he always maintained he
14 didn't want to testify and at one point he wrote a
15 letter saying I don't want a fast and speedy trial.

16 Q. Your recollection of the offer that was
17 rejected was a 20-year cap, right?

18 A. Yes.

19 Q. The armed robbery, that would have
20 required a mandatory minimum of ten, right?

21 A. Yes.

22 Q. If I could have just a moment.

23 (Attorney confers with client.)

24 BY MR. DAVIS:

25 Q. One final issue. I think you touched

1 on it, but so that Judge Russo fully understands,
2 Mr. Jackson's wife was also charged in relation to
3 this entire event?

4 A. Yes.

5 Q. Do you recall -- as part of your attack
6 on the State's evidence about his statements do you
7 recall knowing and using the fact that they
8 pressured him about her arrest?

9 A. I don't remember that, no.

10 Q. Were they arrested about the same time?

11 A. They were arrested on the same day in
12 their house.

13 Q. And based on your experience certainly
14 when a family member or wife is -- she was charged
15 with misprision, a felony?

16 A. Represented by another lawyer in my
17 office.

18 Q. While serious, significantly smaller
19 than the range of charges and the range of
20 punishment that Mr. Jackson was facing, correct?

21 A. Right.

22 Q. And --

23 A. Part of the -- just for further
24 clarification, part of the negotiations that I was
25 having with the solicitor in terms of the plea

1 offer that was made to Mr. Jackson was that his
2 wife's charges would be dismissed.

3 Q. So that was certainly an influence on
4 him in trying to resolve the case?

5 A. I would hope so.

6 (Attorney confers with client.)

7 MR. DAVIS: Thank you, Ms. Kennedy.
8 Thank you, Your Honor. No other questions.

9 THE COURT: Anything on redirect?

10 MS. CLEVELAND: Nothing further, Your
11 Honor.

12 THE COURT: Thank you very much. You
13 may step down. Do you have any further witnesses?

14 MS. CLEVELAND: Not from the State,
15 Your Honor.

16 MR. DAVIS: Could I have just one
17 moment, Your Honor?

18 THE COURT: Sure.

19 (Attorney confers with client.)

20 MR. DAVIS: If we can make a brief
21 summation, Your Honor.

22 THE COURT: Sure, absolutely.

23 MR. DAVIS: Thank you very much, Your
24 Honor. Judge, the major thrust obviously of our
25 presentation is ineffective assistance of counsel.

1 Specifically this was a jury trial, three-day jury
2 trial, and the jurors did ultimately convict Mr.
3 Jackson, but the major difference that we've shown
4 today, we believe we have met our burden is that
5 they were not able to hear his testimony directly
6 from his mouth as to his innocence on charges and
7 even his admission which we would argue would
8 enhance his credibility. It's sponsorship theory
9 in debate that when you offer up something against
10 your interest you actually gain credibility on
11 other issues. And so we would argue that the
12 nature of that presentation was not given to this
13 jury. Had it been given to the jury then our
14 second obligation is to show that a different
15 outcome would follow.

16 Just for the record, Judge, you
17 certainly know this, but if the jury had heard that
18 testimony, we think it is quite possible that as to
19 the major charges which are causing the significant
20 time they could have found him not guilty of those
21 charges. It's also possible that they could have
22 found him guilty of potential lesser included. Or
23 finally while no one angles for this, it is
24 certainly possible that with that added testimony
25 the jury might have deadlocked, split down the

1 middle, nine to three, even eleven to one. If even
2 one of the jurors had a reasonable doubt based on
3 that testimony the jury could have hung which would
4 have been a different outcome than what we have.

5 So we believe we have shown our burden
6 the outcome could have and would have been
7 different with that testimony. And then, Judge,
8 certainly while it is an individual right --

9 THE COURT: I want to clarify. What
10 you are referring to is that had Mr. Jackson
11 testified and admitted his involvement in the
12 possession of a stolen vehicle, in other words,
13 admitted to the crimes he did, maintained his
14 innocence on the other, that that would have been
15 the give and take the jury may have received in a
16 positive way.

17 MR. DAVIS: Yes. Certainly I think
18 that the -- everyone has a right to remain silent,
19 you instruct every week at trial not to hold that
20 against the Defendant.

21 I certainly think it's human nature
22 when you can hear someone deny it as to the more
23 serious charges, that has an improved effect for
24 the Defendant. In addition what you just said,
25 yes, Your Honor, the credibility of a witness I

1 think is boosted when you make admissions also.
2 Honey, I did forget our anniversary, but, and then
3 here's some more information that by admitting
4 against your own interests, conceding a point the
5 other side has, that credibility is increased.

6 And certainly on that issue I would
7 argue that would be leverage to allow us to make
8 our ultimate conclusion argument that that outcome
9 could have and would have been different. I'm
10 doing it in reverse order. Obviously the first
11 prong of Strickland would require blame to be with
12 his attorney. And rather than reciting the
13 entirety, I will just recall that he indicated
14 there was no discussions leading up to it. Ms.
15 Kennedy indicated for a different reason, but
16 indicated there was no testimony preparation. So
17 that's undisputed there was no preparation for him
18 to testify leading to trial.

19 It will be for Your Honor to decide
20 obviously the cause of that. We have heard
21 testimony from both sides on that.

22 He did remind the Court and there was a
23 colloquy about it, about his prior record and yet
24 on cross-examination Ms. Kennedy certainly
25 indicated that she had has cases where rather than

1 a jury hearing about a prior burglary, call it a
2 felony, she had cases where she has had an
3 individual testify with a prior record used for
4 impeachment. So she's not unfamiliar with dealing
5 with that, nor she is unfamiliar dealing with
6 witnesses testifying with prior impeaching
7 statements, the very statements that she spent a
8 Denno hearing at the beginning of the trial
9 attacking and trying to block for a variety of
10 reasons. And my client certainly wants the Court
11 to understand for a variety of reasons, including
12 the alleged and arguable undue influence of
13 charging his wife at the exact same time, that
14 would have been an emotional effect on him at the
15 time that the police are talking to him. That was
16 borne out in the record Ms. Kennedy did use to try
17 to suppress it at the Denno hearing.

18 For all of those reasons, he listened
19 to his attorney's advice which was to not testify.
20 There had been no preparation prior to trial to
21 testify even though he had a story clearly to give.
22 There's a colloquy at the end of the day and,
23 Judge, I can cite the exact page if you need, I'm
24 sure you will find it, colloquy at the end of the
25 court day. It is recessed overnight and Judge