

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable Michael G. Nettles, Circuit Court Judge

KASHAUN BANKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000232

APPENDIX

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STATE OF SOUTH CAROLINA) GENERAL SESSIONS COURT
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) Case No.: 2011-GS-10-08069
KASHAUN CHRISTIAN BANKS,)
Defendant.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME I OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON APRIL 22, 2013

ROLAYNE M. VOLPE, CCR, RPR
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1 State's Exhibits: (PREMARKED) 1, 2, 4, 5, and 11.

2 Defendant's Exhibits: (PREMARKED) 1 and 2

3

4

E X H I B I T S

5 DESCRIPTION

I.D.

ADMITTED

6

State's Exhibits:

7

No. 1 Photo

146

8

No. 2 Photo

149

9

No. 4 Photo

148

10

No. 5 Photo

196

11

No. 11 Rights Form

65

12

13

Defendant's Exhibits:

14

15 No. 1 Photo

102

16

No. 2 Photo

104

17

No. 3 Photo

164

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19 Court's Exhibit:

20

No. 1 DVD

66

21

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25

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1 The above-styled cause came on for hearing on
2 the 22nd day of April, 2013, at 11:11 a.m., before Judge
3 Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Charleston, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY SELECTION

9 (The Defendant is present in the courtroom with
10 his counsel.)

11 THE COURT: Mr. Kidd, call the case.

12 MR. KIDD: Thank you. This is the State versus
13 Kashaun Banks.

14 THE COURT: Mr. Grimes, is your client ready to
15 proceed?

16 MR. GRIMES: Yes, your Honor.

17 THE COURT: I understand he is requesting
18 formal arraignment; is that correct?

19 MR. GRIMES: Yes, your Honor.

20 THE COURT: All right. Madam Clerk?

21 THE DEPUTY CLERK OF COURT: Case Number
22 2011-GS-10-08069, State of South Carolina versus
23 Kashaun Shed Christian Banks, Indictment for armed
24 robbery. If you answer to that name, please raise your
25 right hand.

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1 THE DEFENDANT: (Defendant complies.)

2 THE DEPUTY CLERK OF COURT: You may put it
3 down. You stand indicted by the name Kashaun Shed
4 Christian Banks. A Court of General Sessions convened
5 on December 12th, 2011, Grand Jurors of Charleston
6 County, presented upon their oath: armed robbery. That
7 on or about October 15th, 2011, in Charleston County,
8 South Carolina, at 3700 Rivers Avenue by use of force,
9 threat, or intimidation, and while armed with a deadly
10 weapon or while alleging either by action or words, was
11 armed using a representation of a deadly weapon or any
12 object which a person presents during the commission of
13 the robbery, reasonably believed to be a deadly weapon;
14 to wit, a pistol; the Defendant, Kashaun Shed Christian
15 Banks, did take and carry away goods and/or monies from
16 the person or immediate presence of Tenille Wilson and
17 Keisha Holmes with the intent to permanently deprive her
18 of possession thereof in violation of Section
19 16-11-330(a) of the South Carolina Code of Laws, 1976 as
20 amend.

21 How say you? Are you guilty or not guilty?

22 THE DEFENDANT: Not guilty.

23 THE DEPUTY CLERK OF COURT: How will you be
24 tried?

25 THE DEFENDANT: By God and country?

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1 THE DEPUTY CLERK OF COURT: May they send you a
 2 true deliverance. Are you ready for trial?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Thank you.

5 MR. GRIMES: Thank you, your Honor.

6 THE COURT: Is there any member of the jury
 7 panel that knows anything about this case other than
 8 what was just read to you by the Indictment? If so,
 9 please stand.

10 Thank you. There are none.

11 Ladies and gentlemen, as you have heard the
 12 Indictment, the charge is armed robbery. Mr. Banks has
 13 pled not guilty to that Indictment. The Indictment is
 14 simply the piece of paper that brings us to court here
 15 today. Ladies and gentlemen, I will now introduce you
 16 to the parties that will be involved in this case.

17 Mr. Grimes, if you would please stand and
 18 introduce yourself and any persons who will be assisting
 19 you throughout the trial as well as your client.

20 MR. GRIMES: Thank you, your Honor. May it
 21 please the Court?

22 Good morning.

23 JURY PANEL: Good morning.

24 MR. GRIMES: My name is Andrew Grimes. I'm an
 25 attorney here in Charleston County, and I have the

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1 pleasure of representing Kashaun today. Assisting me is
2 Megan Ehrlich, who is also an attorney here in
3 Charleston County. And you may see from time to time
4 our investigator, Lee Gant (phonetic), who may be coming
5 in and helping us. And this is Kashaun Banks --

6 Who's 19 now?

7 THE DEFENDANT: Yes.

8 MR. GRIMES: -- 19 and is from North
9 Charleston. Thank you.

10 THE COURT: Thank you.

11 Is there any member of the jury panel related
12 by blood or marriage, close personal friend, ever have
13 any business, personal/professional, dealings with
14 Mr. Banks? If so, please stand.

15 Thank you. There are none.

16 Any member of the jury panel related by blood
17 or marriage, close personal friend, ever have any
18 business, personal/professional, dealings, or ever been
19 represented by Mr. Grimes or Ms. Ehrlich? If so, please
20 stand.

21 Thank you. There are none.

22 Any member of the jury panel ever have any
23 dealings of any kind with the Public Defender's Office
24 in Charleston or Berkeley County? If so, please stand.

25 Yes, sir. Your jury number and name?

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1 THE JUROR: I'm Juror 21. I interned for the
2 Public Defender's Office.

3 THE COURT: Do you know Mr. Grimes and
4 Ms. Ehrlich?

5 THE JUROR: No.

6 THE COURT: All right. When did you intern
7 there?

8 THE JUROR: Last year.

9 THE COURT: Last year?

10 THE JUROR: Yes.

11 THE COURT: All right. Is there anything about
12 that experience that would affect your ability to be
13 fair and impartial in this case?

14 THE JUROR: No, ma'am.

15 THE COURT: And your juror number and name?

16 THE JUROR: Jordan Blanton; Juror Number 21.

17 THE COURT: Thank you, Mr. Blanton.

18 Is there anyone else?

19 THE JUROR: Juror Number 28, Andrew Brown. My
20 son was in this same courtroom with that same Public
21 Defender right there. So Mr. -- I don't know if I
22 can --

23 THE COURT: All right. Mr. Brown, I'm going to
24 have you come forward, and we'll talk about that at an
25 appropriate time; all right? And your juror number?

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1 THE JUROR: 28.

2 THE COURT: 28.

3 Ladies and gentlemen, just as I gave you the
4 opportunity to come speak with me in private -- I know
5 y'all have now spent several hours together. -- but
6 there are some things that you do not wish to share with
7 each over, and so I will give you an opportunity, after
8 I ask all of my questions, to come forward and speak
9 with me in private. And as you are well aware now,
10 there is no privacy. It will be me and my court
11 reporter, because everything must be on the record.

12 Is there anyone else?

13 Thank you. There are none.

14 Mr. Kidd, if could please stand, introduce
15 yourself, and anyone that will be assisting you.

16 MR. KIDD: Thank you, your Honor.

17 Good morning. My name is Culver Kidd. I'm an
18 Assistant Solicitor with the Ninth Circuit Solicitor's
19 Office, working under the direction of Scarlett Wilson.
20 And assisting me today is Elizabeth Riddle; she's also
21 an Assistant Solicitor with the Ninth Circuit
22 Solicitor's Office. You also might see from time to
23 time my investigator, short, little female, named
24 Shirley Neblock (phonetic). She will be coming in quite
25 frequently.

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1 THE COURT: Thank you. Is there any member of
2 the jury panel related by blood or marriage, close
3 personal friend, ever have any business, personal/
4 professional, dealings with Mr. Kidd or Ms. Riddle? If
5 so, please stand?

6 Thank you. There are none.

7 Any member of the jury panel ever have any
8 business, personal/professional, dealings with the Ninth
9 Circuit Solicitor's Office, Charleston or Berkeley
10 County? If so, please stand.

11 Thank you. There are none.

12 Ladies and gentlemen, I'm now going to call a
13 list of potential witness who may be called to testify
14 in this case. If you are related by blood, marriage,
15 close personal friend, ever have any business,
16 personal/professional, dealings with any of these
17 individuals, please stand when I call their name:

18 Tenille Wilson; Keisha Holmes; Sherina Frasier;
19 Monique Frasier; Annette Banks; Monica Tudder;
20 Toni Mallette; Captain Deckard, with the North
21 Charleston Police Department; Sergeant James Hill, North
22 Charleston Police Department; Master Patrol Officer
23 McAlhaney, North Charleston Police Department; Sergeant
24 Scott Hille, North Charleston Police Department;
25 Detective Lacher, North Charleston Police Department;

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1 Patrolman Winslette, North Charleston Police Department;
2 Officer Bennett, North Charleston Police Department;
3 Officer Chris Talbott, North Charleston Police
4 Department; Officer Allen Swagel, North Charleston
5 Police Department; Lee Guin (phonetic), Charleston
6 Public Defender's Office.

7 Is there any member of the jury panel that
8 knows any of these individuals in any way? If so,
9 please stand.

10 Thank you. There are none.

11 Any member of the jury panel ever been employed
12 with Dorchester County School District or North
13 Charleston Police Department or the City of North
14 Charleston? If so, please stand.

15 If you have ever been employed or a family
16 member or a very close friend has ever been employed
17 with the City of North Charleston, Dorchester County
18 School District, or North Charleston Police Department?
19 If so, please stand.

20 THE JUROR: Would you tell me which school
21 district it is?

22 THE COURT: Dorchester County School District
23 Four. And I need you to stand and tell me your name.

24 THE JUROR: My name is Thelma Simmons, and I'm
25 retired from Dorchester County District Four.

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1 THE COURT: All right. And do you know
2 Monica Tudder?

3 THE JUROR: The name sounds -- Tudder sounds
4 familiar, but, no, I don't.

5 THE COURT: Is there anything about --
6 Ms. Tudder may be called to testify, and she's an
7 administrator at Dorchester County School District Four,
8 that would affect your ability to be fair and impartial
9 in this case?

10 THE JUROR: Well, I worked there for 33 years.
11 She could have worked at one of the other schools. I
12 worked at the elementary school, but the name Tudder,
13 no.

14 THE COURT: Ma'am, will you be able to listen
15 to the facts as presented, apply the law as the Court
16 gives it, and render a verdict based only upon those
17 things?

18 Mr. Brown, everything okay?

19 THE BAILIFF: Has an emergency issue.

20 THE JUROR: Yes.

21 THE COURT: I apologize. I was just making
22 sure everything was okay.

23 Please remove Mr. Brown from the -- from the
24 trial of this case.

25 THE JUROR: No, I'll be fine, yes.

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1 THE COURT: Thank you. And your juror number,
2 Ms. Simmons?

3 THE JUROR: 237.

4 THE COURT: Thank you.

5 Is there anyone else?

6 Thank you. There are none.

7 Ladies and gentlemen, is there any member of
8 the jury panel that has ever served in the armed forces?
9 If so, please stand. Please just stand.

10 Give me your jury number, your name -- your
11 juror number, your name, and the branch that you were
12 in. We'll just start here.

13 THE JUROR: Charles Crawford, 54, and I was in
14 the United States Army.

15 THE COURT: Thank you.

16 THE JUROR: Thomas Daffron, Juror Number 56,
17 United States Army.

18 THE JUROR: Daniel Coy, Juror Number 53; I'm
19 retired from the Navy.

20 THE JUROR: Patricia Norman, Juror Number 189;
21 I was in the Navy.

22 THE JUROR: Juror 182, John Mutter; I was in
23 the United States Navy.

24 THE JUROR: Juror Number 46, Michael Clawson; I
25 was in the Navy.

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1 THE JUROR: Juror Number 86, Robert Grafing; I
2 retired from the Navy.

3 THE JUROR: Juror Number 260; I was in the
4 Marine Corps.

5 THE JUROR: Andrew Brown, Number 28; retired
6 Navy.

7 THE COURT: Thank you.

8 THE JUROR: Raymond Wood, 296; U.S. Air Force.

9 THE COURT: Thank you. Anyone else?
10 Thank you. There are none.

11 Ladies and gentlemen, I now have a series of
12 questions to ask of you. I have determined -- excuse
13 me. Is there any member of the jury panel that has ever
14 worked at a gas station or a convenience store in any
15 capacity? If so, please stand.

16 THE JUROR: I guess it would have been about 30
17 years ago -- 25 years ago, I worked at a gas station.

18 THE COURT: And what did you do there?

19 THE JUROR: I was a cashier. I was 19 years
20 old.

21 THE COURT: All right. Anything about that
22 experience that would affect your ability to be fair and
23 impartial in this case?

24 THE JUROR: I don't think so.

25 THE COURT: All right. I need a yes or a no.

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1 THE JUROR: Of course, you do. No.

2 THE COURT: All right. And your juror number
3 and name?

4 THE JUROR: 260, Dale Sutcliffe.

5 THE COURT: All right. Thank you.

6 Juror 107 -- I'm sorry, it wasn't Mr. Brown.
7 I'm sorry. Juror 107, I'm going to have to put you back
8 in the pool. You may have a seat, but do not answer any
9 questions regarding this case. Thank you.

10 Yes, sir?

11 THE JUROR: Raymond Wood, 296; I was market
12 manager for Worsher (phonetic) & Company, Scotsman,
13 convenience store chain.

14 THE COURT: Anything about that experience that
15 would affect your ability to be fair and impartial in
16 this case?

17 THE JUROR: No.

18 THE COURT: Your juror number and name?

19 THE JUROR: 296, Raymond Wood.

20 THE COURT: Thank you.

21 Yes, sir?

22 THE JUROR: Jeffery Slaton, Juror Number 239; I
23 did pump gas probably about 35 years ago.

24 THE COURT: Anything about that experience that
25 would affect your ability to be fair and impartial in

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1 this case?

2 THE JUROR: No, your Honor.

3 THE COURT: And your juror number and name,
4 before you sit down?

5 THE JUROR: Number 239, Jeffery Slaton.

6 THE COURT: Thank you.

7 Yes, ma'am?

8 THE JUROR: I'm Jennifer Mixson, Juror 175;
9 I didn't actually -- I used to work with a
10 distributorship, that -- we did a lot of work for
11 convenience stores, so I may have misunderstood you.

12 THE COURT: That's fine. We'd rather have too
13 much information than not enough.

14 THE JUROR: I didn't actually work for the
15 convenience stores.

16 THE COURT: Anything about that experience,
17 Ms. Mixson, that would affect your ability to be fair
18 and impartial in this case?

19 THE JUROR: No, ma'am.

20 THE COURT: Thank you, Juror 175, Ms. Mixson.

21 Yes, sir?

22 THE JUROR: Juror 218, Frank Salewski. About
23 25 years ago, I worked at a convenience store in
24 New York.

25 THE COURT: Anything about that experience that

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1 would affect your ability to be fair and impartial in
2 this case?

3 THE JUROR: No.

4 THE COURT: Okay. Juror 218. Thank you.

5 Is there anyone else?

6 Thank you. There are none.

7 Is there any member of the jury panel that's
8 ever worked with the police dogs or tracking dogs of any
9 kind? If so, please stand.

10 Thank you. There are none.

11 Ladies and gentlemen, I am now going to ask a
12 series of questions. I will need you -- if you need to
13 answer these questions, I need for you to come forward
14 and answer these questions for me in private.

15 Is there any member of the jury panel that's
16 ever been an eyewitness to a crime and you gave a
17 statement to a police officer concerning that crime?

18 If you or a member of your family has ever been
19 the victim of a violent crime, please come forward.

20 And, ladies and gentlemen, if there's any
21 member of the jury panel that, based upon what you have
22 heard so far, that because of your religious, moral,
23 political beliefs that you would be unable to be a fair
24 and impartial jury in this case? I will need to see
25 you, or for whatever reason you need to come forward and

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1 discuss any matter with me whatsoever.

2 So, Mr. Brown, I will need to see you as well.

3 Please come forward.

4 THE BAILIFF: Juror 59.

5 THE COURT: All right. Yes, ma'am?

6 THE JUROR: My sister was robbed working at a
7 convenience store when I was in high school.

8 THE COURT: Was that here in Charleston County?

9 THE JUROR: No. It was in Massachusetts. But
10 I've also been -- had a gun pulled on me and been beaten
11 up in my own home before; so I don't know if that makes
12 me a little bit impartial.

13 THE COURT: All right. Is there anything about
14 those two experiences that you have shared with us that
15 would affect your ability to be fair and impartial in
16 this case?

17 THE JUROR: No, I'm sort of on the fence.

18 THE COURT: All right. Will you be able to
19 listen to the testimony from the witnesses, apply the
20 law as the Court gives it, and render a verdict based
21 only upon those things?

22 THE JUROR: Yes.

23 THE COURT: Your juror number and name?

24 THE JUROR: It's 59, Christine Deer.

25 THE COURT: All right. Juror 59 will remain.

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1 Thank you.

2 (The next juror approaches.)

3 THE COURT: Yes, ma'am?

4 THE BAILIFF: Number 29.

5 THE COURT: Juror 29.

6 THE JUROR: I suffer from an extreme anxiety.

7 I can't handle this.

8 THE COURT: All right. Do you see a doctor for
9 that?

10 THE JUROR: I stopped seeing her two years ago
11 because I couldn't afford her temporarily.

12 THE COURT: Okay. And --

13 THE JUROR: A psychiatrist.

14 THE COURT: I'm sorry?

15 THE JUROR: I'm going to go back.

16 THE COURT: Okay. When are you going to go
17 back?

18 THE JUROR: As soon as I can. I really --

19 THE COURT: Do you think you can make an
20 appointment with her this week?

21 THE JUROR: Yes.

22 THE COURT: All right. I'm going to excuse --

23 THE JUROR: I'll try. I'm sorry.

24 THE COURT: I'm going to excuse you for today.

25 You need to call and attempt to make an appointment with

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1 her and have her office call me and just verify that you
2 made an appointment. All right?

3 THE JUROR: Okay.

4 THE COURT: All right? And if you have an
5 appointment scheduled, then I will excuse you for the
6 week. But if you cannot get an appointment or you
7 cannot get in touch with her, you need to report back in
8 the morning at 9:30. All right?

9 THE JUROR: Okay. Thank you.

10 THE COURT: Thank you.

11 THE JUROR: I'm sorry.

12 THE COURT: Juror 29 is excused from the trial
13 of this case.

14 (Next juror.)

15 THE COURT: Yes, ma'am?

16 THE BAILIFF: Juror 226.

17 THE COURT: What's your name, ma'am?

18 THE JUROR: Connie Schulz.

19 THE COURT: Okay. Please come forward.

20 THE JUROR: My niece was murdered in 2002.

21 THE COURT: Here in Charleston County or
22 somewhere else?

23 THE JUROR: Berkeley.

24 THE COURT: All right. And is there -- and I
25 apologize that I have to ask these questions. Is there

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1 anything about that that would affect your ability to be
2 fair and impartial in this case?

3 THE JUROR: No.

4 THE COURT: Your juror number and name?

5 THE JUROR: 226, Connie Schulz.

6 THE COURT: Thank you, Ms. Schulz.

7 226, will remain.

8 Do you have any additional questions, Mr. Kidd?

9 THE BAILIFF: 189.

10 MR. KIDD: No, ma'am.

11 THE COURT: Any additional questions?

12 (Next juror.)

13 THE JUROR: Hi. Hello. My son was at a
14 grocery store -- not a grocery store, like a gas
15 station, and he was robbed.

16 THE COURT: Here in Charleston County?

17 THE JUROR: In North Charleston. And I don't
18 know if the police officers have been at my house, that
19 you mentioned earlier.

20 THE COURT: Why would they be at your house?

21 THE JUROR: Because I have teenagers. They
22 were teenagers. They're out of the house now.

23 THE COURT: Is there anything about what you
24 have shared with us that would affect your ability to be
25 fair and impartial in this case?

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1 THE JUROR: No.

2 THE COURT: Was the case involving your son
3 prosecuted?

4 THE JUROR: I -- I think they caught him.

5 THE COURT: Did you come to court?

6 THE JUROR: No, I didn't testify. I came hear
7 with my son when we was a teenager.

8 THE COURT: On a different matter?

9 THE JUROR: Yes.

10 THE COURT: All right. Your juror number and
11 name?

12 THE JUROR: 189, Patricia Norman.

13 THE COURT: 180 will remain. Thank you,
14 Ms. Norman.

15 Any additional questions?

16 (The Judge is speaking with the attorneys off
17 the record.)

18 THE JUROR: Good morning.

19 THE COURT: Yes, ma'am?

20 THE JUROR: In 2011, I had two brothers
21 murdered in downtown Charleston.

22 THE COURT: Were those cases prosecuted?

23 THE JUROR: The first, not the second.

24 THE COURT: And is there anything about what
25 you've shared with us that would affect your ability to

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1 be fair and impartial in this case?

2 THE JUROR: No, ma'am.

3 THE COURT: Okay. Your juror number?

4 THE JUROR: Eleven.

5 THE COURT: Juror number 11 will remain. Thank
6 you.

7 THE BAILIFF: 260.

8 THE JUROR: Good morning. Interesting one,
9 probably never heard this one before. I grew up -- I
10 don't know honestly if I can be 100 percent impartial.

11 THE COURT: All right?

12 THE JUROR: The reason is, I grew up in a deaf
13 household, and I've studied body language. So I'm
14 pretty good at interpreting the body language. Looking
15 at your facial expressions right now are interesting.

16 THE COURT: Okay.

17 THE JUROR: So I'm going to just naturally
18 look. Unless I close my eyes, there's going to be a lot
19 of things that are said by body language that may not be
20 the same that's said.

21 THE COURT: All right. Will you be able --
22 same question that I asked you before. Are you going to
23 be able to listen to the facts from the witness stand,
24 apply the law as I give it to you to those facts, and
25 render a verdict based only upon those things free from

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1 any outside influence?

2 THE JUROR: Well, the outside influence would
3 be in my brain. Honestly, it's an imperfect science.
4 It would be very difficult for me to -- for 18 years of
5 my life, that was my life, a deaf household. I don't
6 know, honestly, if I can do it 100 percent of the time
7 to be completely impartial. I'm happy to do it, but
8 there is that question because it is an imperfect
9 science.

10 THE COURT: What would be the questionable?

11 THE JUROR: In -- in -- see, you can see by my
12 body language, I'm not sure.

13 THE COURT: Okay.

14 THE JUROR: That, essentially, reading body
15 language, you look for certain patterns, and what is
16 their normal pattern. So -- and there are going to be
17 times where what the person's body language is saying,
18 leaves a question of doubt in your mind about what's
19 being said. We all do it naturally. But I've studied
20 it.

21 THE COURT: All right. One of the roles of a
22 juror is to determine credibility.

23 THE JUROR: Uh-huh.

24 THE COURT: And so you bring -- each juror
25 brings with him or her their own life skills and their

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1 common sense.

2 THE JUROR: Sure.

3 THE COURT: The question to you: Is there
4 anything about what you have shared with us that would
5 affect your ability to be a fair and impartial juror?

6 THE JUROR: I think I would be more accurate
7 than probably the most common one.

8 THE COURT: All right.

9 All right. Question to you -- I need a yes or
10 a no.

11 THE JUROR: Okay.

12 THE COURT: Anything about what you have shared
13 with us -- you've shared several things with us
14 privately, and -- that would affect your ability to be
15 fair and impartial in this case?

16 THE JUROR: If the person was completely lying,
17 then, well -- and all the evidence said otherwise, then
18 probably not.

19 THE COURT: All right. Would you be able to
20 listen to the facts from the witness stand, apply the
21 laws as the Court --

22 THE JUROR: I'll try my best.

23 THE COURT: All right. Both the Defendant and
24 the State deserve a juror who's able to listen to the
25 facts, listen to the testimony, apply the law that the

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1 Court gives it, to those facts, and render a verdict
2 based upon those things.

3 THE JUROR: That is -- it's really -- honestly,
4 I can say yes. I can try my best. But it's part of who
5 I am.

6 THE COURT: All right. I expect that
7 everyone -- every juror that comes in tries their best.

8 THE JUROR: Certainly.

9 THE COURT: All right.

10 THE JUROR: I can say yes. That I -- you know,
11 certainly that's fair, putting it in that perspective,
12 that, yes, everybody is expected to try their best. The
13 answer would be yes to that.

14 THE COURT: All right. Tell me what it is,
15 sir, that you think would prevent you from not doing
16 your best?

17 THE JUROR: I've already seen a lot in this
18 room already. I've already seen facial expressions.
19 I've already -- there are certain body languages that
20 have made me prejudge before even seeing the evidence.

21 THE COURT: All right. But as you stated to
22 me, that's what we naturally do as people; correct?

23 THE JUROR: Correct. I'm just better than most
24 people.

25 THE COURT: According to you.

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1 THE JUROR: Okay. Fair enough. Fair enough.

2 THE COURT: All right. One more time.

3 THE JUROR: Okay.

4 THE COURT: Is there anything about what you
5 have shared with us that will affect your ability to be
6 fair and impartial in this case?

7 THE JUROR: No.

8 THE COURT: All right. Your juror number?

9 THE JUROR: 260.

10 THE COURT: 260 will remain.

11 (The Judge is speaking with the attorneys off
12 the record.)

13 THE COURT: Mr. Brown.

14 THE BAILIFF: Number 28.

15 THE COURT: How are you?

16 THE JUROR: I'm pretty good.

17 THE COURT: All right.

18 THE JUROR: All right.

19 THE COURT: You look familiar. Tell me why.

20 THE JUROR: He was the prosecutor for my son's
21 case.

22 THE COURT: All right.

23 THE JUROR: So when he stood up, and then I
24 seen the young fellow there, I just --

25 THE COURT: Tell me, what is your son's name?

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1 THE JUROR: Andrew Brown. And Ms. Jefferson
2 was the judge.

3 THE COURT: I'm sorry?

4 THE JUROR: Ms. Jefferson.

5 THE COURT: Ms. Jefferson. All right.

6 THE JUROR: Was the judge.

7 THE COURT: All right. I'm going to excuse you
8 from the trial of this case. So you don't have to
9 answer anymore questions. I'm going to put you back in
10 the pool.

11 What's your number, Mr. Brown?

12 THE JUROR: 28.

13 THE COURT: 28 is excused from the trial of
14 this case.

15 Stay with us for a minute, and then I'll tell
16 you where to go.

17 THE BAILIFF: Juror 236 [sic].

18 THE COURT: Yes?

19 THE JUROR: My name is Michael Sgobbo. I
20 interned with the U.S. Attorney's Office in Philadelphia
21 and did work with the D.A.'s office.

22 THE COURT: Great.

23 THE JUROR: Would that be a concern?

24 THE COURT: Do you know D.A. Ed Marisco?

25 THE JUROR: It was then Abrams (phonetic).

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1 THE COURT: All right.

2 THE JUROR: Way back when I was in law school.

3 THE COURT: All right. And is there anything
4 about that experience that would affect your ability to
5 be fair and impartial in this case?

6 THE JUROR: I think it might be difficult for
7 me to be -- remain fair and impartial, yes, your Honor.

8 THE COURT: I'm going -- your juror number?

9 THE JUROR: 236 [sic].

10 THE COURT: I'm going to excuse you from the
11 trial.

12 MR. GRIMES: 231.

13 THE JUROR: 231. Sorry about that.

14 THE COURT: Thank you.

15 THE BAILIFF: Juror 34.

16 THE COURT: Yes?

17 THE JUROR: You had asked -- 34. You asked,
18 any member of the family been testified or witnessed.

19 THE COURT: Right.

20 THE JUROR: My daughter's a police officer in
21 Easley, South Carolina. She doesn't share the details
22 what she does, but I didn't know if --

23 THE COURT: Is there anything about that that
24 would affect your ability to be fair and impartial in
25 this case?

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1 THE JUROR: No, ma'am.
2 THE COURT: All right. Your juror number?
3 THE JUROR: 34.
4 THE COURT: Juror 34 will remain.
5 Is there anyone else?
6 Thank you. There are none?
7 Any additional questions?
8 MR. KIDD: My additional -- *voir dire*
9 questions.
10 THE COURT: Any additional questions?
11 MR. KIDD: No, ma'am.
12 THE COURT: Any additional questions?
13 MR. GRIMES: No, ma'am.
14 THE COURT: All right. Thank you.
15 All right. You have --
16 MR. KIDD: The first -- I'm trying to find it.
17 Her brother was murdered. Two brothers. Not the two
18 brothers.
19 Niece was murdered. It's 226.
20 THE COURT: In Berkeley County?
21 MR. KIDD: That was in the Ninth. If it was
22 prosecuted.
23 THE COURT: She said she could be fair and
24 impartial.
25 MR. KIDD: That was my only one I wanted a

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1 follow-up question on; 226, Connie Schulz.

2 MR. GRIMES: If we can have a challenge for
3 cause. Challenge Number 59. She said she was, I
4 believe, during the *voir dire*, she was on the fence,
5 that her sister was robbed at the convenience store,
6 which is similar to the facts of this case; that a gun
7 was pulled on her, which is similar to the allegations
8 in this case; the gun being pulled on the cashier. And
9 based upon that, we don't believe she could bring a fair
10 and impartial verdict in this case. We'd like to
11 challenge her under the Sixth Amendment for cause.

12 THE COURT: Your response?

13 MR. KIDD: She said she could be fair and
14 impartial. She takes her life experiences in with her.

15 THE COURT: She indicated she could be fair and
16 impartial.

17 Mr. Kidd, do you want Ms. Schulz to come back
18 up, so I can ask her more details?

19 MR. KIDD: I would appreciate it.

20 THE COURT: Any objection to asking Ms. Schulz
21 questions about the Berkeley County matter?

22 MR. GRIMES: No.

23 THE COURT: Ms. Schulz?

24 (Juror approaches.)

25 THE COURT: I didn't ask you enough questions,

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1 I'm sorry. Tell me, was -- the matter was prosecuted?

2 THE JUROR: Yes.

3 THE COURT: All right. And do you know -- tell
4 me the individual's name that was prosecuted?

5 THE JUROR: Mark Grant.

6 THE COURT: All right. And did you attend the
7 trial?

8 THE JUROR: Yes.

9 THE COURT: Do you know who the prosecutor was?

10 THE JUROR: Blair Jennings, I think.

11 THE COURT: All right. And do you remember who
12 represented him?

13 THE JUROR: He represented himself.

14 THE COURT: All right. What was your niece's
15 name?

16 THE JUROR: Rachel Sintinee (phonetic).

17 THE COURT: And just based upon the questions
18 and bringing you back up here, is there anything about
19 that matter that would affect your ability to be fair
20 and impartial in this case?

21 THE JUROR: No, ma'am.

22 THE COURT: All right. Thank you, Ms. Schulz.
23 Any further challenges?

24 MR. KIDD: (Moves head from side to side.)

25 THE COURT: Ten and five. Five and ten. We'll

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1 select two alternates.

2 All right. The panel is qualified. No
3 additional questions on behalf of the State or the
4 Defendant?

5 Madam Clerk is drawing the jury list. Strikes
6 are five and ten, and we'll be picking two alternates.

7 Madam Clerk?

8 THE DEPUTY CLERK OF COURT: Ladies and
9 gentlemen, when I call your name, please gather your
10 belongings and come forward. Please stand in front of
11 the podium, facing the parties.

12 Juror Number 268, Shawn Thackeray.

13 (White male approaches the podium.)

14 THE DEPUTY CLERK OF COURT: What say you for
15 the State?

16 MR. KIDD: Court's indulgence one moment?

17 THE COURT: Take your time.

18 (Mr. Kidd and Ms. Riddle speak off the record.)

19 MR. KIDD: Please present the juror.

20 THE DEPUTY CLERK OF COURT: What say you for
21 the Defendant?

22 MR. GRIMES: Please seat the juror.

23 THE DEPUTY CLERK OF COURT: Please have a seat
24 in the jury box. You've been selected as a juror in the
25 trial of this case.

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1 Juror Number 46, Michael Clawson.

2 (White male approaches the podium.)

3 THE DEPUTY CLERK OF COURT: What say you for
4 the State?

5 MR. KIDD: Please present the juror.

6 THE DEPUTY CLERK OF COURT: What say you for
7 the Defendant?

8 MR. GRIMES: Please excuse the jury.

9 THE DEPUTY CLERK OF COURT: Please return to
10 your seat. You've been excused from the trial of this
11 case.

12 Juror Number 226, Connie Schulz.

13 (White female approaches the podium.)

14 THE DEPUTY CLERK OF COURT: What say you for
15 the State?

16 MR. KIDD: Court's indulgence?

17 (Mr. Kidd and Ms. Riddle speak off the record.)

18 MR. KIDD: Please present the juror.

19 THE DEPUTY CLERK OF COURT: What say you for
20 the Defendant?

21 MR. GRIMES: Please excuse the juror.

22 THE DEPUTY CLERK OF COURT: Please have a seat.
23 You've been excused from the trial of this case.

24 Juror Number 34, Sylvia Burwell.

25 (White female approaches the podium.)

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1 THE DEPUTY CLERK OF COURT: What say you for
2 the State?

3 MR. KIDD: Court's indulgence?

4 (Mr. Kidd and Ms. Riddle speak off the record.)

5 MR. KIDD: Please present the juror.

6 THE DEPUTY CLERK OF COURT: What say you for
7 the Defendant?

8 MR. GRIMES: May I have one moment, your Honor?

9 THE COURT: Take your time.

10 MR. GRIMES: Thank you.

11 (Respite.)

12 MR. GRIMES: Please seat the juror.

13 THE DEPUTY CLERK OF COURT: Please have a seat
14 in the jury box. You have been selected as a juror in
15 the trial of this case.

16 Juror Number 75, Monica Garvin.

17 (White female approaches the podium.)

18 THE DEPUTY CLERK OF COURT: What say you for
19 the State?

20 MR. KIDD: Court's indulgence please?

21 (Respite.)

22 MR. KIDD: Present the juror.

23 THE DEPUTY CLERK OF COURT: What say you for
24 the Defendant?

25 MR. GRIMES: Please present the juror.

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1 THE DEPUTY CLERK OF COURT: Please have a seat
2 in the jury box. You have been selected as a jury in
3 the trial of this case.

4 Juror Number 246.

5 (White male approaches the podium.)

6 THE DEPUTY CLERK OF COURT: What say you for
7 the State?

8 MR. KIDD: Please present the juror.

9 THE DEPUTY CLERK OF COURT: What say you for
10 the Defendant?

11 MR. GRIMES: Please seat the juror.

12 THE DEPUTY CLERK OF COURT: Please have a seat
13 in the jury box. You've been selected as a juror in the
14 trial of this case.

15 Juror 292, Maria Wiley.

16 (White female approaches the podium.)

17 THE DEPUTY CLERK OF COURT: What say you for
18 the State?

19 MR. KIDD: Please present the juror.

20 THE DEPUTY CLERK OF COURT: What say you for
21 the Defendant?

22 MR. GRIMES: Please seat the juror.

23 THE DEPUTY CLERK OF COURT: Please have a seat
24 in the jury box. You've been selected as a juror in the
25 trial of this case.

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1 Juror Number 21, Jordan Blanton.

2 (White male approaches the podium.)

3 THE DEPUTY CLERK OF COURT: What say you for
4 the State?

5 MR. KIDD: Court's indulgence?

6 (Respite.)

7 MR. KIDD: Please excuse the juror.

8 THE DEPUTY CLERK OF COURT: Please return to
9 your seat. You have been excused from the trial of this
10 case.

11 Juror Number 56, Thomas Daffron.

12 (White male approaches the podium.)

13 THE DEPUTY CLERK OF COURT: What say you for
14 the State?

15 MR. KIDD: Please present the juror.

16 THE DEPUTY CLERK OF COURT: What say you for
17 the Defendant?

18 MR. GRIMES: Please excuse the juror.

19 THE DEPUTY CLERK OF COURT: Please return to
20 your seat. You have been excused from the trial in this
21 case.

22 Juror Number 199, Trina Pearson.

23 (Black female approaches the podium.)

24 THE DEPUTY CLERK OF COURT: What say you for
25 the State?

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1 MR. KIDD: Court's indulgence?

2 (Mr. Kidd and Ms. Riddle speak off the record.)

3 MR. KIDD: Please excuse the juror.

4 THE DEPUTY CLERK OF COURT: Please return to
5 your seat. You've been excused from the trial of this
6 case.

7 Juror Number 193, Mary Palmer.

8 (Black female approaches the podium.)

9 THE DEPUTY CLERK OF COURT: What say you for
10 the State?

11 MR. KIDD: Court's indulgence?

12 (Mr. Kidd and Ms. Riddle speak off the record.)

13 MR. KIDD: Please excuse the juror.

14 THE COURT: Please return to your seat. You
15 have been excused from the trial of this case.

16 Juror 201, Anna Perrineau.

17 (Black female approaches the podium.)

18 THE DEPUTY CLERK OF COURT: What say you for
19 the State?

20 MR. KIDD: Court's indulgence?

21 (Mr. Kidd and Ms. Riddle speak off the record.)

22 MR. KIDD: Please excuse the juror.

23 THE DEPUTY CLERK OF COURT: Please return to
24 your seat. You've been excused from the trial of this
25 case.

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1 Juror Number 148, William Maneri.

2 (White male approaches the podium.)

3 THE DEPUTY CLERK OF COURT: What say you for
4 the State?

5 MR. KIDD: Court's indulgence?

6 (Mr. Kidd and Ms. Riddle speak off the record.)

7 MR. KIDD: Please present the juror.

8 THE DEPUTY CLERK OF COURT: What say you for
9 the Defendant?

10 MR. GRIMES: Please present the juror.

11 THE DEPUTY CLERK OF COURT: Please have a seat
12 in the jury box. You have been selected as a juror in
13 the trial of this case.

14 Juror Number 86, Robert Grafin.

15 (White male approaches the podium.)

16 THE DEPUTY CLERK OF COURT: What say you for
17 the State?

18 MR. KIDD: Please present the juror.

19 THE DEPUTY CLERK OF COURT: What say you for
20 the Defendant?

21 MR. GRIMES: Please excuse the juror.

22 THE DEPUTY CLERK OF COURT: Please return to
23 your seat. You have been excused from the trial of this
24 case.

25 Juror Number 53, Daniel Coy.

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1 (White male approaches the podium.)

2 THE DEPUTY CLERK OF COURT: What say you for
3 the State?

4 MR. KIDD: Please present the juror.

5 THE DEPUTY CLERK OF COURT: What say you for
6 the Defendant?

7 (Mr. Grimes and Ms. Ehrlich speak off the
8 record.)

9 MR. GRIMES: Please excuse the juror.

10 THE DEPUTY CLERK OF COURT: Please return to
11 your seat. You have been excused from the trial of this
12 case.

13 Juror 195, Cathy Parris.

14 (Black female approaches the podium.)

15 THE DEPUTY CLERK OF COURT: What say you for
16 the State?

17 MR. KIDD: Please present the juror.

18 THE DEPUTY CLERK OF COURT: What say you for
19 the Defendant?

20 MR. GRIMES: Please present the juror.

21 THE COURTROOM DEPUTY CLERK: Please have a seat
22 in the jury box. You've been selected as a juror in the
23 trial of this case.

24 Juror Number 54, Charles Crawford.

25 (White male approaches the podium.)

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1 THE DEPUTY CLERK OF COURT: What say you for
2 the State?

3 MR. KIDD: Court's indulgence?
4 (Respite.)

5 MR. KIDD: Please excuse the juror.

6 THE DEPUTY CLERK OF COURT: Please return to
7 your seat. You have been excused from the trial of this
8 case.

9 The State has exhausted its five strikes.
10 Juror Number 157, Kevin McClure.
11 (White male approaches the podium.)

12 THE DEPUTY CLERK OF COURT: What say you for
13 the State?

14 MR. KIDD: No challenge.

15 THE DEPUTY CLERK OF COURT: What say you for
16 the Defendant?

17 MR. GRIMES: Apologize. Can I have one moment?
18 (Mr. Grimes and Ms. Ehrlich speak off the
19 record.)

20 MR. GRIMES: Please seat the juror.

21 THE DEPUTY CLERK OF COURT: Please have a seat
22 in the jury box. You have been selected as a juror in
23 the trial of this case.

24 Juror 239, Jeffrey Slaton.

25 (White male approaches the podium.)

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1 THE DEPUTY CLERK OF COURT: Any challenge from
2 the State?

3 MR. KIDD: No challenge.

4 THE DEPUTY CLERK OF COURT: What say you for
5 the Defendant?

6 (Mr. Grimes speaks with Ms. Ehrlich off the
7 record.)

8 MR. GRIMES: Please excuse the juror.

9 THE DEPUTY CLERK OF COURT: Please return to
10 your seat. You have been excused from the trial of this
11 case.

12 Juror Number 72, Gracie Ferebee.

13 (Black female approaches the podium.)

14 THE DEPUTY CLERK OF COURT: Any challenge from
15 the State?

16 MR. KIDD: Please present the juror.

17 THE DEPUTY CLERK OF COURT: What say you for
18 the Defendant?

19 MR. GRIMES: Please seat the juror.

20 THE DEPUTY CLERK OF COURT: Please have a seat
21 in the jury box. You've been selected as a juror in the
22 trial of this case.

23 Juror Number 207, Michael Platz.

24 (White male approaches the podium.)

25 THE DEPUTY CLERK OF COURT: Any challenge from

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1 the State?

2 MR. KIDD: Please present the juror.

3 THE DEPUTY CLERK OF COURT: What say you for
4 the Defendant?

5 MR. GRIMES: Please excuse the juror.

6 THE DEPUTY CLERK OF COURT: Please return to
7 your seat. You've been excused from the trial of this
8 case.

9 Juror 175, Jennifer Mixson.

10 (White female approaches the podium.)

11 THE DEPUTY CLERK OF COURT: Any challenge from
12 the State?

13 MR. KIDD: No, no challenge from the State.

14 THE DEPUTY CLERK OF COURT: I'm sorry? Any
15 challenge from the State?

16 MR. KIDD: No, ma'am. Please present the
17 juror.

18 THE DEPUTY CLERK OF COURT: What say you for
19 the Defendant?

20 MR. GRIMES: Please excuse the juror.

21 THE DEPUTY CLERK OF COURT: Please return to
22 your seat. You've been excused from the trial of this
23 case.

24 Juror 296, Raymond Wood.

25 (White male approaches the podium.)

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1 THE DEPUTY CLERK OF COURT: Any challenge from
2 the State?

3 MR. KIDD: No, ma'am. Please present the
4 juror.

5 THE DEPUTY CLERK OF COURT: What say you for
6 the Defendant?

7 (Mr. Grimes speaks with Ms. Ehrlich off the
8 record.)

9 MR. GRIMES: Please excuse the juror.

10 THE DEPUTY CLERK OF COURT: Please return to
11 your seat. You've been excused from the trial of this
12 case.

13 Juror Number 218, Frank Salewski.

14 (White male approaches the podium.)

15 THE DEPUTY CLERK OF COURT: Any challenge from
16 the State?

17 MR. KIDD: Please present the juror.

18 THE DEPUTY CLERK OF COURT: What say you for
19 the Defendant?

20 MR. GRIMES: Please present the juror.

21 THE DEPUTY CLERK OF COURT: Please have a seat
22 in the jury box. You've been selected as a juror in the
23 trial of this case.

24 Juror Number 203, Alyson Phillips.

25 (White female approaches the podium.)

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1 THE DEPUTY CLERK OF COURT: Any challenge from
2 the State?

3 MR. KIDD: No challenge. Please present the
4 juror.

5 THE DEPUTY CLERK OF COURT: What say you for
6 the Defendant?

7 (Mr. Grimes speaks with Ms. Ehrlich off the
8 record.)

9 MR. GRIMES: Please present the juror.

10 THE DEPUTY CLERK OF COURT: Please have a seat
11 in the jury box. You have been selected as a juror in
12 the trial of this case.

13 Juror Number 142, Carol Libby.

14 (White female approaches the podium.)

15 THE DEPUTY CLERK OF COURT: Any challenge from
16 the State?

17 MR. KIDD: No challenge.

18 THE DEPUTY CLERK OF COURT: What say you for
19 the Defendant?

20 MR. GRIMES: Please seat the juror.

21 THE DEPUTY CLERK OF COURT: Please have a seat
22 in the jury box. You have been selected as a juror in
23 the trial of this case.

24 Now striking for the first alternate. Juror
25 Number 59, Christine Deer.

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1 (White female approaches the podium.)
2 THE DEPUTY CLERK OF COURT: What say you for
3 the State?
4 MR. KIDD: Please present the juror.
5 THE DEPUTY CLERK OF COURT: What say you for
6 the Defendant?
7 MR. GRIMES: Please excuse the juror.
8 THE DEPUTY CLERK OF COURT: Please have a seat.
9 You have been excused from the trial of this case.
10 Juror Number 259, Vivian Sumpter.
11 (Black female approaches the podium.)
12 THE DEPUTY CLERK OF COURT: What say you for
13 the State?
14 MR. KIDD: Court's indulgence?
15 (Respite.)
16 MR. KIDD: Please present the juror.
17 THE DEPUTY CLERK OF COURT: What say you for
18 the Defendant?
19 (Mr. Grimes and Ms. Ehrlich speak off the
20 record.)
21 MR. GRIMES: Please seat the juror.
22 THE DEPUTY CLERK OF COURT: Please have a seat
23 in the jury box. You have been selected as a juror in
24 the trial of this case.
25 Striking for the second alternate. Juror

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1 Number 113, Ashleigh Howieson.

2 (White female approaches the podium.)

3 THE DEPUTY CLERK OF COURT: What say you for
4 the State?

5 MR. KIDD: Court's indulgence?

6 (Mr. Kidd speaks with Ms. Riddle off the
7 record.)

8 MR. KIDD: Please present the juror.

9 THE DEPUTY CLERK OF COURT: What say you for
10 the Defendant?

11 MR. GRIMES: Please seat the jury.

12 THE DEPUTY CLERK OF COURT: Please have a seat
13 in the jury box. You have been selected as an alternate
14 in the trial of this case.

15 Your Honor, the jury has been selected.

16 THE COURT: Thank you.

17 Any motions or matters pertaining to the jury
18 as selected? From the State?

19 MR. KIDD: None from the State, your Honor.

20 THE COURT: From the Defense?

21 MR. GRIMES: May I have one moment, your Honor?

22 THE COURT: You may.

23 (Mr. Grimes speaks with Ms. Ehrlich off the
24 record.)

25 MR. GRIMES: Yes, ma'am. May we approach

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1 regarding the selection of the jury?

2 THE COURT: All right.

3 Can you take the jury to the jury deliberation
4 room.

5 THE BAILIFF: If y'all will follow me.

6 (The jury is escorted from the courtroom
7 at 12:09 p.m.)

8 THE COURT: Batson?

9 MR. GRIMES: Yes.

10 THE COURT: Which one?

11 MR. GRIMES: 199.

12 THE COURT: Ladies and gentlemen, you are not
13 selected as this -- as the panel for this particular
14 case. Judge Jefferson is picking a case, so I'm going
15 to send you down to the jury qualification room. I may
16 see some of you later on in the week. If not, it has
17 been a pleasure meeting each one of you. Thank you
18 again for your service to Charleston County. You are
19 excused to go downstairs. Thank you.

20 (The rest of jury panel is excused from the
21 courtroom at 12:10 p.m.)

22 THE COURT: Thank you. Y'all can go back to
23 your tables now.

24 All right. Your objection --

25 Can you shut the door?

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1 Your objection was to the strike of 199; is
2 that correct?

3 MR. GRIMES: Yes, your Honor.

4 THE COURT: That was the State's second strike;
5 is that correct, Mr. Kidd?

6 MR. KIDD: Correct, your Honor.

7 THE COURT: All right. Let me -- let me hear
8 from you.

9 MR. KIDD: Yes, your Honor. She has a
10 conviction for a failure to return rental property, on
11 November 18th, 2003, and that was the basis or reason
12 for her strike.

13 THE COURT: All right. Mr. Grimes?

14 MR. GRIMES: I would just like to find out if
15 Mr. Kidd could state for the record if any other jurors
16 had any -- that he sat any that had convictions.

17 MR. KIDD: I did not. Well, I -- I don't say
18 that they don't have any convictions. They don't have
19 any stealing or theft or lying convictions. I believe
20 there might be a DUS or DUI -- I believe those happened
21 after I ran out of strikes. None while I had strikes
22 remaining. Once I ran out of strikes, on a challenge, I
23 believe there was a DUS and a DUI juror that was seated.
24 But I was out of strikes at that point.

25 THE COURT: All right. It's your burden,

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1 Mr. Grimes.

2 MR. GRIMES: I don't have any -- apart from
3 that -- I don't have any -- anything to rebut for any
4 particular reason.

5 THE COURT: All right. Then your challenge to
6 Juror 199 is denied. Do you have another challenge?

7 MR. GRIMES: Juror 193.

8 THE COURT: Juror 193, Mary Palmer, which was
9 your -- your strike Number 3, Mr. Kidd.

10 MR. KIDD: And that was based upon her current
11 lack of employment in combination with her husband's
12 lack of employment. And there were no other unemployed
13 jurors seated. And I struck a white male juror for
14 currently being unemployed as well.

15 THE COURT: Who was that?

16 MR. KIDD: That was -- the retired boxer on
17 disability. -- Number 54.

18 THE COURT: All right. Mr. Grimes, again, it
19 is your burden.

20 MR. GRIMES: I believe she stated that she
21 worked -- used to work at a hospital. And, I believe,
22 on her juror information card, she was employed as a
23 sweetgrass basketmaker, even though she was unemployed.

24 MR. KIDD: In that case, she'd be lying. In
25 her jury qualification, she said she was unemployed.

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1 THE COURT: In the qualification downstairs --
2 in the role call -- she indicated that she was
3 unemployed; is that correct? And that's what you based
4 your decision on, Mr. Kidd?

5 MR. KIDD: It is, your Honor.

6 THE COURT: Mr. Grimes, again, it is your
7 burden.

8 MR. GRIMES: Well, I don't believe -- someone
9 that works part-time or something on the side, I don't
10 -- I don't recall her saying she was unemployed. I
11 recall her saying she was -- used to work at a hospital
12 -- and I think on the juror information card, it has a
13 sweetgrass basketmaker. I don't believe that would be
14 considered a lie, but apart from that, I have no other
15 argument to rebut Mr. Kidd's reasoning.

16 THE COURT: All right. The ultimate burden
17 lies with you, Mr. Grimes. I must find by the totality
18 of the facts and circumstances, including looking
19 at the credibility and the demeanor of Mr. Kidd, that I
20 find -- I do not find that you have met your burden.
21 Mr. Kidd's explanation appears to be race/gender
22 neutral. I deny your motion as to that -- your
23 challenge as to that juror. Do you have another
24 challenge?

25 MR. GRIMES: I think my next would be 201, but

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1 I imagine his reasoning may be the same.

2 THE COURT: And that was your Number 4?

3 MR. KIDD: Yes, your Honor, that was my fourth
4 strike.

5 THE COURT: Fourth strike.

6 MR. GRIMES: And unlike the last juror, I don't
7 have any other information.

8 THE COURT: Tell me about Juror 201, Mr. Kidd.
9 Why did you strike her?

10 MR. KIDD: For the same reason, Judge; she's
11 currently unemployed.

12 THE COURT: All right. And the same question
13 to you, Mr. Kidd, did you seat any unemployed jurors?

14 MR. KIDD: No, ma'am.

15 THE COURT: All right. Mr. Grimes?

16 MR. GRIMES: May be a little bit of a stretch,
17 but I believe Juror 259, the first -- the second
18 alternate that was called, I think she was a retired
19 nurse, so, I guess, actually -- technically, is not
20 employed at this time.

21 THE COURT: You would agree that there's a
22 difference between unemployed and retired?

23 MR. GRIMES: Yes, ma'am.

24 THE COURT: All right. Anything further,
25 Mr. Grimes?

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1 MR. GRIMES: No, ma'am.

2 THE COURT: Once again, it is your burden.

3 Mr. Kidd's explanation need not be specific,
4 legitimate, or persuasive, only race/gender neutral.
5 You have failed to meet your burden in the totality of
6 the facts and circumstances. Your motion as to the
7 challenge -- as to Juror 201 is denied.

8 MR. GRIMES: Thank you, your Honor.

9 THE COURT: Anything else?

10 MR. GRIMES: Not as to the jury selection.

11 THE COURT: All right.

12 All right. Counsel, we're still in the
13 scheduling posture to start in the morning?

14 MR. KIDD: To start calling witnesses in the
15 trial in the morning, and we'll call the pretrial
16 witnesses this afternoon.

17 MR. GRIMES: That sounds perfect, your Honor.

18 THE COURT: All right. Thank you.

19 Let's bring the jury in, 9:30 in the morning,
20 or that's exactly what time your witnesses --

21 MR. KIDD: Yes.

22 (The jury is escorted into the courtroom
23 at 12:21 p.m.)

24 THE COURT: Thank you. Please be seated.

25 Ladies and gentlemen, it is lunchtime, and so

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1 we usually try to break between 12:00 and 12:30 for
2 lunch; so it would be an appropriate time for us to take
3 our lunch break.

4 I have some matters that I must take up outside
5 of your presence; so I have determined that we're --
6 you're going to go ahead and break for the afternoon. I
7 must give you some instructions before we break.

8 Until you have been discharged from service in
9 this case, you may not perform any investigation,
10 research, or experiment of any kind on your own, either
11 individually or as a group, concerning this case. You
12 may not consult any dictionaries for the meanings of
13 words or the encyclopedias for the general information
14 on the subjects of this trial. You may not look up
15 anything on the Internet or anywhere else concerning
16 this case, any of the people involved, any of the
17 witnesses that I have listed for you; that includes, the
18 Defendant, the attorneys involved, all of the witnesses,
19 as well as the Judge.

20 Do not go to the scene where any of the events
21 that are the subject of this trial are alleged to have
22 taken place, or use Internet maps or Google or any other
23 program or device designed to search or view any place
24 discussed during this case. You must not have any
25 discussions regarding this case, until I tell you that

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1 you may do so. That means you may not discuss this case
2 with your fellow jurors, your friends, your family
3 members, or anyone else. That means you may not have
4 face-to-face discussions; you may not text about this
5 case; you may not blog about this case; you may not put
6 any entry on Facebook or anything of that nature,
7 regarding this case, until I tell you that you may do
8 so.

9 Please understand, that I am giving these
10 directions as part of my responsibility to ensure that
11 fairness is done to all of the parties in this case, and
12 that fairness would be compromised and your actions
13 could jeopardize the result of this trial if you violate
14 my instructions.

15 Ladies and gentlemen, I will place you under
16 oath in the morning, and my first question after I place
17 you under oath is whether or not you have violated my
18 instructions. So go home, have a wonderful and restful
19 afternoon, enjoy yourselves; but, for one thing, do not
20 think about this case, do not talk about the case, do
21 not investigate the case, and please be back in your
22 jury room, and we'll begin promptly at 9:30.

23 Please remember that you must attend court in
24 the morning. If you are not here at 9:30, I will send
25 the sheriff for you. All right? I tell you that

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1 because I -- in the not-too-distant past, I had a juror
2 just decide not to show up for court. And so what that
3 does, is we just sit here waiting for everyone. So
4 please be respectful of your fellow jurors' time and the
5 Court's time and the State and the Defendant's time. So
6 if there's anything that comes up, if you have any
7 scheduling concerns, some of you had mentioned to me --
8 so if you had mentioned to me that you had some
9 appointments or something of that nature, I may have
10 forgotten. So please let the bailiff know, and we'll
11 schedule accordingly.

12 Ladies and gentlemen, I will see you back in
13 your jury room. We will begin promptly with all of you
14 here at 9:30. Please have a wonderful afternoon. Thank
15 you.

16 Please rise for the jury.

17 (The jury the escorted from the courtroom
18 at 12:36 p.m.)

19 THE COURT: Mr. Michel.

20 (Mr. Don Michel approaches the bench to speak
21 with the Judge off the record.)

22 THE COURT: Thank you. Be seated. Anything
23 until 1:30?

24 MR. KIDD: No, ma'am.

25 THE COURT: All right. I'll see y'all at

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1 1:30.

2 (A lunch break is taken from 12:26 p.m. until
3 1:54 p.m.; at which time, the proceedings continue as
4 follows:)

5 (The Defendant is present in the courtroom with
6 his counsel.)

7 THE COURT: Mr. Kidd, whenever you're ready.

8 MR. KIDD: Thank you, your Honor. Like to
9 start with the Denno hearing if we may?

10 THE COURT: All right, sir.

11 MR. KIDD: The State calls Lieutenant Hill.

12 (The oath is administered by the Courtroom
13 Deputy Clerk, and the witness answers as follows:)

14 THE WITNESS: I do.

15 THE DEPUTY CLERK OF COURT: State your name and
16 spell your last name.

17 THE WITNESS: James Michael Hill, Jr., H-i-l-l.

18 THE COURT: Mr. Kidd.

19 MR. KIDD: Thank you, your Honor. May it
20 please the Court?

21 JAMES MICHAEL HILL, JR.,

22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

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DIRECT EXAMINATION

1
2 BY MR. KIDD:

3 Q Good afternoon. Lieutenant Hill; correct?

4 A Yes, sir.

5 Q All right. Lieutenant Hill -- and I'll get
6 right to it -- do you recall being involved in an armed
7 robbery investigation on October 15th of 2011?

8 A Yes, sir.

9 THE COURT: I'm going to need you to speak up.

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you.

12 Q (By Mr. Kidd) And the Defendant was
13 Kashaun Banks in that investigation?

14 A Yes.

15 Q And that was for the armed robbery that
16 occurred at 3700 Rivers Avenue, I believe; is that
17 right?

18 A It's the Exxon at Rivers and McMillan. I'm not
19 sure if the address is 3700.

20 Q The Exxon at Rivers and McMillan.

21 In the course of that investigation, did you
22 have the opportunity to interview the Defendant,
23 Kashaun Banks?

24 A Yes, sir.

25 MR. KIDD: And, your Honor, may I approach the

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1 witness?

2 THE COURT: You may.

3 Q (By Mr. Kidd) I'm going show you what has been
4 marked as State's Exhibit Number 11 for identification
5 purposes.

6 (Document is handed to the witness.)

7 Q (By Mr. Kidd) Do you -- do you recognize that
8 document?

9 A Yes.

10 Q Can you tell the Judge what that document is?

11 A Yes, sir. The first document is North
12 Charleston Police Department Advice of Constitutional
13 Rights. I made a mistake on the first one. And the
14 second one is the same form, North Charleston Police
15 Department Advice of Constitutional Rights, where I
16 corrected my error and went through the Rights.

17 Q And you went over -- and would that be
18 common -- what we commonly refer to as the Miranda
19 warnings?

20 A Yes, sir.

21 Q And you went over those rights and those
22 warnings with the Defendant?

23 A Yes, sir.

24 Q And where are you when you are talking to
25 Mr. Banks?

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1 A At the North Charleston Police Department, City
2 Hall, and the Detective Bureau in the interview room.

3 Q And is that just kind of like a small room?

4 A Yes, sir.

5 Q Do you remember if he is handcuffed or not?

6 A I do not.

7 Q Is there a table in the room?

8 A Yes, sir.

9 Q Are you sitting across the table from him?

10 A Yes, sir, I am.

11 Q So you're sitting in the room with Mr. Banks,
12 and you go over that form with him. Do you -- does he
13 just read it, or do you read it to him? How does that
14 work?

15 A I fill out the top portion asking the
16 questions: His name, date of birth, age, grade
17 completed in school, whether he has a GED or diploma.
18 And then I'll ask the individual if they can read and
19 write. If they acknowledge that they can read and
20 write, then I generally turn the form upside down and
21 have them read it so that I know that they're
22 understanding what they are reading. But in his case,
23 he couldn't read.

24 Q Okay. So when you're first -- how old did --
25 was Mr. Banks at the time?

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1 A Seventeen.

2 Q He was 17 years old. And what did he state his
3 education was?

4 A Said he completed the tenth grade and did not
5 have a GED or diploma.

6 Q Okay. So he was a high school student at the
7 time; would that be the -- the assumption?

8 A I would assume. I don't know.

9 Q But he told you he could not read; is that
10 accurate?

11 A Yes, sir.

12 Q So when you went over the form with him,
13 because he said that, you didn't just give it to him to
14 read it; is that right?

15 A Correct.

16 Q So you actually, then, would read each of the
17 warnings from the form to Kashaun?

18 A Yes, sir.

19 Q And did he seem to understand each of those
20 Rights as you read them to him?

21 A Yes, sir.

22 Q And would you have him to initial each one of
23 those after you went over that particular Miranda Right
24 with Mr. Banks?

25 A Yes. He initials at the end of each Right.

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1 Q And based on your conversation with him, did he
2 seem to understand and comprehend that conversation that
3 you were having with him?

4 A Yes, sir.

5 Q And when you were talking with him, was
6 it -- did he seem to have any emotional -- like
7 emotional or mental disorders or anything like that that
8 gave you pause to wonder if he understood the context of
9 your conversation?

10 A No, sir.

11 Q So the conversation you were having with him
12 was an intelligent conversation?

13 A Yes, sir.

14 Q Okay. And after you advised Mr. Banks of his
15 Rights, or throughout that process and throughout his
16 interview, did he eventually confess to committing the
17 armed robbery to you?

18 A Yes.

19 Q Did you threaten him in any way to obtain that
20 confession?

21 A No, sir.

22 Q Did you make any promises to him that, for
23 instance, if you confess to this, I'll do this, or make
24 any promises to him like that?

25 A No, sir.

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1 Q Did you lay a hand on him in any way or get
2 physical with him?

3 A No, sir.

4 Q How long did this whole interview process last?
5 Approximately, if you recall?

6 A I do not.

7 Q Would it be accurate to say the interview can
8 be kind of broken down in a few segments?

9 A His particular interview, yes, sir.

10 Q So there was a first segment in which he denied
11 any involvement with the crime?

12 A Yes, sir. Correct.

13 Q Would that have lasted 20, 30 minutes,
14 something in that range?

15 A I'm not sure.

16 Q And then after that, did you take a break?

17 A Yes, sir.

18 Q And did you reinitiate contact at some point?

19 A I did.

20 Q When you reinitiated contact, did you re-advise
21 him of his Rights?

22 A No, sir. I asked him if he understood the
23 Miranda form, that we'd already went over, if those
24 Rights Still applied to him.

25 Q So you advised him that he was still -- you

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1 reminded him of his Rights?

2 A Yes, sir.

3 Q And then you began talking to him again?

4 A Yes, sir.

5 Q Okay. And then sometime during -- and during
6 that conversation is when he ultimately confessed to the
7 crime?

8 A Yes, sir.

9 MR. KIDD: Your Honor, I would like to play a
10 couple of segments of that interview, if I could, if the
11 Court will --

12 THE COURT: You may. And, just for the record,
13 for purposes of this hearing, I've reviewed the
14 entire -- listened to the entirety of that interview
15 prior to this hearing.

16 MR. KIDD: And I would -- at this point, I'd
17 like to move State's Exhibit Number 11 as -- into
18 evidence as an exhibit for the purposes of this hearing,
19 which is the Advisement of Rights form, which I have
20 handed Lieutenant Hill a moment ago.

21 MR. GRIMES: No objection, your Honor.

22 THE COURT: All right. Thank you.

23 (State's Exhibit Number 11 is admitted into
24 evidence.)

25 MR. KIDD: And I would also like to mark this

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1 audio CD and have it admitted as a State's Exhibit for
2 the purposes of this hearing as well. If I can --

3 THE COURT: Let's mark that -- since I've
4 listened to it, we'll just mark it as Court's 1 for the
5 purposes of this hearing.

6 (Court's Exhibit Number 1 is marked for
7 identification.)

8 MR. KIDD: May I approach?

9 THE COURT: You may.

10 Q (By Mr. Kidd) Lieutenant Hill, I'm going to
11 play you what has been marked as Court's Exhibit
12 Number 1. Have you had an opportunity to listen to the
13 interview with the Defendant at some point since it
14 occurred?

15 A Not recently, no, sir.

16 Q Not recently. But you've heard it before?

17 A Yes, sir.

18 Q And would you recognize it when you hear it?

19 A Yes, sir.

20 Q All right.

21 (Court's Exhibit Number 1 is played.)

22 Q (By Mr. Kidd) I'm going stop that for a
23 minute, for time purposes. But do you recognize that
24 conversation?

25 A Yes, sir.

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1 Q And that was the interview with the Defendant,
2 Kashaun Banks; is that correct?

3 A Yes, sir.

4 Q And shortly after that is when you would have
5 gone through each of his warnings with him from that
6 Advice of Rights form that I showed you, State's Exhibit
7 Number 11?

8 A Yes, sir.

9 Q I'm going to jump ahead to -- Court's
10 indulgence -- to the end -- or towards the end of that
11 first segment of the interview and ask you to listen to
12 this, please.

13 (Court's Exhibit Number 1 is played.)

14 Q (By Mr. Kidd) I'll stop it one moment. Ask
15 you a couple of questions about the segments that we've
16 just heard. The first is going to be -- I'd like to ask
17 you about a little bit of the conversation you had with
18 him about his plans to go into the military. Do you
19 recall that segment, towards the beginning of that audio
20 clip that we just played?

21 A Yes, sir.

22 Q And in that conversation you had with
23 Mr. Banks, did he -- he indicated to you that he had
24 plans of going into the military; is that correct?

25 A Yes.

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1 Q And I believe you told him that was unlikely
2 with a robbery conviction?

3 A Yes, sir.

4 Q Why -- can you tell the Judge why you were
5 encouraging him to -- to come clean at that point?

6 A Because I was trying to get him to tell us what
7 occurred at the -- at the Exxon.

8 Q And do you think telling the truth is the best
9 course of action -- for not only Mr. Banks, but anyone
10 that you are interviewing?

11 A Yes, sir.

12 Q And why is that?

13 A It's just in my values. I believe that telling
14 the truth is always going to help.

15 Q And towards the end of that conversation you
16 were having with Mr. Banks about going in the military,
17 I believe you said: Let's do this real simple. Did you
18 go to the Exxon and point the BB gun at those clerks?

19 I believe he responded: No, sir.

20 And you said: And is that your final word?

21 And he said: That's my final word.

22 What did you interpret Mr. Banks to mean by
23 saying "that's my final word"?

24 A That he was saying that was his final word,
25 that he didn't go into the store with the BB gun.

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1 Q So, like, that's his story, and he's sticking
2 to it sort of --

3 A Yes.

4 Q -- understanding?

5 And then right after that, he said: I can
6 literally take this wherever you want to go. I just
7 want to continue on with my wife life. Can I call my
8 sister and let her know about my whereabouts?

9 And you replied: When you get to the county
10 jail, you can call your sister.

11 And he said: Well, what's holding me up?

12 And you said: I would like you to tell me why
13 you went into that store and why you did that.

14 And he replied: I just told you clear, and you
15 weren't listening, so it's not going anywhere. Can we
16 continue?

17 How did you interpret what he meant by "can we
18 continue"?

19 A Can we continue to talk.

20 Q I mean, move on, continue?

21 A Move past asking me whether I went into the
22 store.

23 Q Okay. I'm going to play another segment
24 towards the very end of that initial interview.

25 (Court's Exhibit Number 1 is played.)

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1 Q (By Mr. Kidd) When you asked him if he had
2 anything else he wanted to say right there at the end,
3 and he said no, how did you -- how did you interpret --
4 what were you looking for out of that question: Did you
5 have anything else that you'd like to say?

6 A I was hoping that he'd come around and confess
7 to the crime.

8 Q So by asking him, Do you have anything else
9 that you'd like to say, you were asking him if he wanted
10 to expand on the story that he was giving you?

11 A Yes.

12 Q And he said no to that; correct?

13 A Correct.

14 Q And so by saying, no, he was saying, Nope,
15 that's my whole story?

16 A That's the way I took it, yes, sir.

17 Q And at that point you concluded the interview?

18 A Yes.

19 Q Or the first part of that interview; is that
20 right?

21 A Yes.

22 Q And then -- and I believe you said it was 12:14
23 when you concluded that first segment of the interview?

24 A Correct.

25 Q And I would like to play. . .

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1 (Court's Exhibit Number 1 is played.)
2 Q (By Mr. Kidd) And so that would have been the
3 beginning of the second segment; is that correct?
4 A Yes, sir.
5 Q So that was 12:25?
6 A Yes, sir.
7 Q So that's approximately ten minutes later?
8 A Yes, sir.
9 Q Is that accurate?
10 So about ten minutes after you walked out of
11 the room, you walked back in to talk to him?
12 A Yes, sir.
13 Q What was occurring with Kashaun during that ten
14 minutes?
15 A I'm sorry?
16 Q What was occurring with the Defendant during
17 that ten minutes? Was he in the room by himself?
18 A Yes, sir.
19 Q So no one was in there threatening him or
20 talking to him or questioning him that wasn't on the
21 audio --
22 A Correct.
23 Q -- is pretty much what I'm getting at?
24 A Correct.
25 Q Thank you.

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1 And I'm just going to play one more segment.

2 (Court's Exhibit Number 1 is played.)

3 Q (By Mr. Kidd) Stop it for one second.

4 And I think this might just evidence your
5 interpretation further. When you first said -- went
6 back in there, you said: Are you sure that's the
7 -- what -- that's the story you want to stick with? Is
8 that kind of what you said right there at the beginning?

9 A Yes, sir.

10 Q And that -- you phrase it like that and you say
11 that, because when he said, That's my final word, and
12 when you asked him if that's your story and you're
13 sticking to it, or is there anything else you want to
14 add, and he said no; when you asked those things, it's
15 because of that question right there, which mirrors what
16 you were saying, that, Are you sure you want to stick
17 with the story you gave me?

18 MR. GRIMES: Objection, your Honor.

19 MR. KIDD: Is that accurate?

20 MR. GRIMES: Mr. Kidd is simply testifying,
21 your Honor, and leading the witness.

22 THE COURT: Overruled.

23 Q (By Mr. Kidd) I mean, is that kind of an
24 accurate example of your understanding of those
25 comments, which is kind of depicted in that opening

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1 question to Kashaun?

2 A You've got to start over.

3 Q I'm sorry. That was a pretty compound and
4 confusing question. That probably -- I'll move on past
5 it. I'm sorry. I don't know how to phrase that in a
6 way that makes a lot of sense.

7 A If I could explain to you, Mr. Kidd?

8 Q Please, please.

9 A At the time of this interview, we're in a new
10 building at the City Hall in North Charleston. They're
11 going through sorting out getting video systems for the
12 interview rooms. And we, at that point, had not been
13 recording audio or video interviews. So there had not
14 been any defined line of how we were going to conduct
15 our interviews, whether we were going to leave a tape
16 running continuously in there, whether we were going to
17 stop the tapes and start the tapes, because we didn't
18 have video. Of course, with the video, it runs
19 continuously so you can see what's going on. So we
20 hadn't had any direction yet as to how they wanted us to
21 do the interviews and whether to start and stop the
22 tapes. So at that time, I would start a tape and stop a
23 tape during my interview if I went back in there. Does
24 that --

25 Q Yeah.

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1 A -- kind of explain?

2 Q No, that's fine. That's not really what I was
3 getting at. It was more -- it was more about the
4 context of that first, kind of, question. When you went
5 back in the room, you reminded him he was under his
6 Miranda, and your first question to him was: Are you
7 sure you want to stick with the story that you just
8 gave?

9 And the question I was asking you was: Trying
10 to parallel that question to some of the statements that
11 Kashaun had made in the original segment of the
12 interview which I had just played you. Specifically,
13 what I was getting at was -- and like I say, it's
14 a -- sort of a compound question and almost a little bit
15 of a leap -- but, mainly, when that first segment that I
16 played you. . .

17 (Mr. Kidd speaks with Ms. Riddle off the
18 record.)

19 MR. KIDD: Beg the Court's indulgence? I'm
20 sorry.

21 Q (By Mr. Kidd) Basically, when you said -- when
22 you asked him: Is that your final word, and when I
23 asked you the first time what that meant to you, you
24 -- and he said: That's my final word; it meant that was
25 the end of my story. That's -- you know, that's

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1 everything that I have to tell you about my story. And
2 what I was doing was trying to understand that that was
3 the same sort of question that you were opening with in
4 that second interview?

5 A I was picking up where we left off in between
6 the break and then going back in there.

7 Q All right. I'm going to finish playing
8 that.

9 (Court's Exhibit Number 1 is played.)

10 Q I'm going to skip ahead to the point where
11 he sort of comes clean a little bit.

12 (Court's Exhibit Number 1 is played.)

13 Q I'm going stop it there. Was that how you
14 recall that -- the confession -- or the conversation
15 going?

16 A Yes, sir.

17 Q At any time throughout your conversations
18 with Kashaun Banks, did he say anything to you that made
19 you think that he wanted an attorney to be present with
20 him?

21 A No, sir.

22 Q Did he ever say anything to you that made you
23 think -- when you were there talking to him, did he ever
24 say anything to you that made you think he was invoking
25 his right to remain silent?

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1 A No, sir.

2 Q In your conversations with him, he seemed to
3 be intelligent and understanding what he was saying and
4 what he was doing there that evening?

5 A Yes, sir.

6 Q And you didn't make any promises to him or
7 threats to get him to confess?

8 A No, sir.

9 MR. KIDD: Court's indulgence?

10 Q (By Mr. Kidd) And I might have already asked
11 you this. Did he appear to be under the influence of
12 any drugs or alcohol that evening?

13 A No, sir.

14 MR. KIDD: And, Judge, I'm assuming that
15 the disc is in as a Court's Exhibit. I do not need to
16 enter it, is that correct, for the purpose of this
17 hearing?

18 THE COURT: Correct. But I need it back. I
19 need it up here marked.

20 MR. KIDD: Yes, ma'am.

21 I have no further questions for Lieutenant Hill
22 at this time.

23 THE COURT: Mr. Grimes.

24 MR. GRIMES: Thank you, your Honor. May it
25 please the Court.

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1 CROSS-EXAMINATION

2 BY MR. GRIMES:

3 Q Good afternoon, Lieutenant Hill.

4 A How are you, sir?

5 Q I'm pretty good. Last time we spoke about this
6 case you were sergeant?

7 A Yes, sir.

8 Q Congratulations on the promotion.

9 A Thank you.

10 Q Couple of things that were said that struck me
11 of interest on the audio tape -- I don't recall exactly
12 where it was at, but I think it was either the first or
13 second interval Mr. Kidd played for you where you said:
14 I run this. Do you recall that?

15 A Yes, sir.

16 Q Isn't it true that the purposes of Miranda is
17 to let the Defendant run how the interrogation goes?

18 A In that particular segment where I was telling
19 him: I run this; I wasn't going to let him overtalk me
20 in this interview. I was going to conduct the
21 interview, and I was letting him know that I'm running
22 this interview, not him.

23 Q And under Miranda, if he wants to communicate
24 with you through counsel, he has to tell that, but
25 that's his decision; correct?

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1 A Yes, sir.

2 Q And he runs that part of it; correct?

3 A If he asks for an attorney, yes, sir.

4 Q And if he wants to remain silent, he runs that
5 part; correct?

6 A Yes, sir.

7 Q And if he wants to give part of the statement
8 and stop, he runs that part?

9 A That's his choice, yes, sir.

10 Q And that's why you -- since you advised him,
11 you read him his Miranda Rights; correct?

12 A Correct.

13 Q That he does have a right to remain silent; is
14 that correct?

15 A Yes, sir.

16 Q That he can assert that right at any time?

17 A Yes, sir.

18 Q Are there any magic words he has to say to
19 assert that right or any certain words that he has to
20 say to assert that right?

21 A Just stop communicating with me, if you're
22 talking about remaining silent. Is that what you're
23 asking me?

24 Q The -- perhaps in a way.

25 Or if he says -- if he's been talking with you

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1 or a suspect in general has been talking with you and
2 they want to stop talking, how do they assert their
3 right to remain silent?

4 A Just to remain silent.

5 Q So if they said: No, I don't want to say
6 anything else, that wouldn't be asserting their right to
7 remain silent?

8 A As long as they're continuing talking to me,
9 then I don't feel that they're asserting their right to
10 remain silent.

11 Q If someone said: That's my final word; I don't
12 want to talk anymore, they can -- that's not an
13 assertion of the right to remain silent, in your
14 opinion?

15 A No, not if they're continuing talking to me
16 after they say that.

17 Q And you can -- we can agree that no means no;
18 correct?

19 A Yes, sir.

20 Q And so when you asked Mr. Banks whether he had
21 anything else to say -- I believe -- 25 of our Exhibit
22 A -- I think you said: Do you have anything else that
23 you want to say?

24 And he said: No.

25 And then you said: Okay. At this time, it's

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1 about 12:14 a.m., and we're concluding this interview of
2 Kashaun Banks.

3 Do you recall that?

4 A Yes, sir.

5 Q And so after that, you understood that he
6 wanted to stop because you stopped the interview?

7 A Stopped the interview for that -- that portion,
8 yes, sir.

9 Q And he wasn't communicating with you anymore,
10 was he?

11 A He just said he wasn't going to tell me anymore
12 about that. He was sticking to that particular story
13 that he was giving me throughout that entire segment
14 that we had talked.

15 Q And you asked him specifically: Do you have
16 anything else that you want to say?

17 And he said: No.

18 A Correct.

19 Q It wasn't about a particular story you asked
20 him about, was it?

21 A He said no.

22 Q You didn't ask him: Do you have anything else
23 that you want to say about this particular robbery; did
24 you?

25 A No, sir, not specifically. We --

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1 Q You didn't -- you weren't specific. You were
2 very broad when you said "anything else"; correct?

3 A Correct.

4 Q And he said: No?

5 A Correct.

6 Q And you stopped the interview?

7 A I did.

8 Q And he did not reinitiate the interview, did
9 he?

10 A No.

11 Q You walked back in there about 11 minutes
12 later; correct?

13 A Yes, sir.

14 Q Advised him that he was -- reminded him of his
15 Miranda Rights?

16 A Yes, sir.

17 Q And started to question him again?

18 A Yes, sir. Asked him if he wanted to change his
19 story.

20 Q Now, I want to ask you a few questions about
21 what Mr. Kidd asked you about, so the -- sort of the
22 final word comment and about continue. Do you recall
23 that -- that tape -- that portion of the tape being
24 played for you?

25 A I'm not sure what you're asking me on that one.

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1 Q Mr. Kidd asked you a series of questions about
2 what Mr. Banks meant by "continue" after he said:
3 That's my final word.

4 A I think he was asking me what I -- I'm
5 misunderstanding. I -- I take that line of questioning
6 Mr. Kidd asked me as different from what you're
7 implying.

8 Q Well, you recall asking him about -- I think it
9 was about 16-and-a-half minutes through the first part
10 of the interview, and you asked if he went in the Exxon
11 with a BB gun.

12 And he said: No, sir.

13 And then you said: That's your final word?

14 And he said: That's my final word.

15 Then you said: And you're ready here to live
16 with that?

17 And he said: I can literally take this
18 wherever you want to go. And then he asked about
19 calling his sister.

20 Do you recall that portion of the tape being
21 played?

22 A I remember what you're talking about now, yes,
23 sir.

24 Q Okay. And several times, sounds like he had --
25 it's my understanding, that if he wanted to call his

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1 sister, he had to make that call from the county jail?

2 A Correct.

3 Q And he wouldn't be allowed to make that call
4 from the North Charleston Police Station?

5 A No, sir.

6 Q So when he said: Can we continue, that could
7 have been continue on to the county jail; correct?

8 A I'm not sure what you're -- you're asking
9 whether he was meaning, Can we continue to the county
10 jail?

11 Q When Mr. Banks said, We can -- for example, he
12 said: I'm not guilty of anything, so I'm going on about
13 my day. Can we please continue?

14 And then you said: Are you sure this is what
15 you want to do?

16 He said: Sir, can we please continue?

17 And then you said: There's nothing to continue
18 if you have nothing to say.

19 You recall that?

20 A I believe I remember where you're talking
21 about, yes, sir.

22 Q And by "continue," you think that Kashaun was
23 meaning, Can you take me to the county jail so I can
24 call my sister?

25 A No, sir, that's not what I took that as.

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1 Q I believe you testified that you took it as he
2 wanted to keep talking?

3 A Yes, sir. Continue on past asking me whether I
4 stepped into the Exxon with a BB gun.

5 If that's the segment you're talking about?
6 Which I believe that's where you are at in the tape.

7 Q Yes, sir. But there is a -- at that portion of
8 the tape, there's a fair conversation about going to the
9 jail so he can call his sister; correct?

10 A He did ask if he could call his sister.

11 Q Several times; correct?

12 A Yes. And Detective Lacher told him that he
13 would afford him the courtesy of calling his sister for
14 him. Our policy is not to allow people to make phone
15 calls at our office. It's for safety reasons.

16 Q And when I asked you some questions about
17 whether you made promises toward Mr. Banks or you gave
18 him any hopes of leniency, can we agree that a hope of
19 leniency is different than a promise?

20 A Yes, sir.

21 Q And you told -- you knew he wanted to go in the
22 military; correct?

23 A I think he was in military school, and then
24 potentially trying to go into the military, yes, sir.

25 Q Tell him that if he had any aspiration of going

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1 into the military that a robbery conviction would keep
2 him out of the military? Correct?

3 A Yes, sir.

4 Q And I think you went on to, basically, tell him
5 that by telling the truth, he could get past this?

6 A I believe I said that at one point, yes, sir.

7 Q Okay. Well, how do you get past -- if he tells
8 the truth, in your opinion, that would be confessing to
9 robbing the Exxon; correct?

10 A Correct.

11 Q And he would be certainly convicted of the
12 robbery; correct?

13 A I can't assume that he would be convicted, no,
14 sir.

15 Q Well, if he told the truth about robbing an
16 Exxon, how would he get into the military?

17 A I can't tell you that he would or he wouldn't.
18 And I never told him that he would or wouldn't. I told
19 him he wouldn't get in the military if he had a robbery
20 conviction.

21 Q And by trying to get a confession from him,
22 you're trying to get a conviction on him; correct?

23 A I'm just trying to get him to confess to the
24 crime. I don't determine the conviction, sir.
25 That's --

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1 Q That's Kidd's job?

2 A That's the judicial system, sir.

3 Q Okay. So by telling him if you have any hope
4 of getting past this by telling the truth, that might
5 give someone who's 17 years old with a learning
6 disability a belief that by telling the truth, he might
7 be able to get into the military; correct?

8 A You're asking me to assume what he's believing,
9 and I didn't ask him. So I can't say that.

10 Q Well, you, I think, testified to Mr. Kidd that
11 he was very -- understood everything; correct?

12 A I believe he understood everything that we were
13 talking about, yes, sir.

14 Q And you gave him the impression of by telling
15 the truth that can help -- help out his situation;
16 correct?

17 A I believed him telling the truth about what he
18 had did is his best course of action, yes, sir.

19 Q And if he told the truth, you might be able to
20 go to the prosecutor and tell him that?

21 A No. If he told me the truth, I would go to a
22 prosecutor and tell the prosecutor what he said that --
23 you know, if I felt that his accounts of the event were
24 accurate. With his incidents, we had evidence to
25 support what I thought occurred. So, then, yes, sir, of

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1 course, I would go to Mr. Kidd and tell him that he told
2 the truth.

3 Q And then he asked you questions: And if I
4 don't tell the truth, it doesn't look good on me, or on
5 my behalf. Do you recall that?

6 A I think -- I think there was some context of
7 that, but you would have to play it for me to say
8 exactly what occurred.

9 MR. GRIMES: Would you pull it up around the
10 23-minute mark?

11 22:15. It's page 23 on Exhibit A, if that
12 helps.

13 (Court's Exhibit Number 1 is played.)

14 Q (By Mr. Grimes) Does that refresh your memory?

15 A Uh-huh.

16 THE COURT: Is that a yes?

17 THE WITNESS: I'm sorry. Yes, ma'am.

18 MR. GRIMES: Sorry, your Honor.

19 Q (By Mr. Grimes) And you said "exactly";
20 correct?

21 A He was talking. I was just going with him,
22 letting him talk.

23 Q And -- well, you agreed with him that didn't
24 look good if he doesn't tell the truth?

25 A I was going with what he was saying. I wanted

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1 him to keep talking.

2 Q You wanted to encourage that belief that it
3 doesn't look -- by not being truthful, it didn't look
4 good. By encouraging that belief, you would hope he
5 would switch stories and tell you what you wanted to
6 hear?

7 A My ultimate job in that interview was to get
8 him to confess. You're asking more of an opinionated
9 question, I think. I mean, I can give you my opinion,
10 if you would like.

11 Q No. I think you said -- your job was to get
12 him to confess. That answers the question.

13 I want to go back to the beginning of the
14 interview. Follow up some questions Mr. Kidd asked you
15 about Mr. Banks' background.

16 You said you kind of observed to see if he was
17 under the influence of drugs or anything.

18 A Visually, yes, sir.

19 Q And you didn't notice him to be under the
20 influence of anything?

21 A He didn't appear to be, no, sir.

22 Q Nothing was affecting his mental ability -- did
23 you look to see if anything -- to observe if anything
24 was affecting his mental ability?

25 A He seemed to comprehend what our discussions

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1 were about. I'm not sure if I can look to see what his
2 mental capabilities are. I mean, he understood the
3 questions I was asking. You know, he told me he
4 couldn't read, you know, so. . .

5 Q And then based on that, you would read the
6 Rights to him rather than, just in this case, give him
7 the form; correct?

8 A Correct.

9 Q And he told you he had a learning disability or
10 reading disability; correct?

11 A I believe it was reading, yes, sir.

12 Q Did you try to inquire how that disability may
13 affect his ability to understand his Rights?

14 A No, sir. I didn't ask him any questions on
15 that.

16 Q Or his ability to knowingly and intelligently
17 waive his Rights?

18 A As we went through the Rights, he was basically
19 right behind me telling me what that meant. So I felt
20 that he knew exactly what his Rights were.

21 Q And he was 17 at the time?

22 A Yes, sir.

23 Q And his mom wasn't there?

24 A No, sir.

25 Q And his -- none of his other family members

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1 were there?

2 A No, sir.

3 MR. GRIMES: May I have one moment, your Honor?

4 THE COURT: Take all the time you need.

5 MR. GRIMES: Thank you.

6 (Mr. Grimes speaks with Ms. Ehrlich off the
7 record.)

8 MR. GRIMES: Thank you, your Honor. I have no
9 further questions.

10 MR. KIDD: Very briefly.

11 REDIRECT EXAMINATION

12 BY MR. KIDD:

13 Q Mr. Grimes indicated that, you know, almost
14 like no matter what he said you would have continued
15 questioning him. But that's not quite accurate, is it?

16 A No, sir.

17 Q If he had asked for a lawyer, what would you
18 have done?

19 A I would have stopped the questioning.

20 Q And you would have left?

21 What if he had said to you, I don't want to
22 talk to you anymore?

23 A I would have continued to talk to him.

24 Q You would have continued talking?

25 What if he said, I want to invoke my Fifth

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1 Amendment Right to remain silent?

2 A I would have stopped talking.

3 Q What if he had said -- I mean, I could go
4 through, I guess, a lot of examples. But if he had
5 articulated his intention to cease giving that statement
6 and to quit talking to you, would you -- would you have
7 not terminated that interview?

8 A If he would have ceased talking to me, I would
9 have terminated the interview, yes, sir.

10 Q If he had said, I don't want to talk to you
11 anymore, and then not responded to you, you would have
12 terminated the interview?

13 A If he would not have responded to any of my
14 follow-up questions from that point on, I would have
15 terminate -- I would have took that as he's not going to
16 speak to me, period.

17 MR. KIDD: No further questions.

18 THE COURT: Mr. Grimes?

19 MR. GRIMES: No further questions of
20 Sergeant Hill.

21 THE COURT: Lieutenant, right?

22 MR. GRIMES: I'm sorry. Lieutenant Hill.

23 THE COURT: You may step down. Thank you.

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Is he released?

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1 MR. KIDD: For today, yes, your Honor.
2 THE COURT: Is he to be back tomorrow?
3 MR. KIDD: He will be back tomorrow, yes,
4 ma'am.
5 THE COURT: And he knows when?
6 MR. KIDD: Oh, I will tell him.
7 THE COURT: Thank you.
8 We're going to take a very short comfort break.
9 We'll be right back.
10 Who's your next witness?
11 MR. KIDD: As to the first -- this Denno
12 hearing, that would be --
13 THE COURT: Do you have any witnesses?
14 MR. GRIMES: Well, we -- we have two prongs in
15 our argument.
16 THE COURT: Okay.
17 MR. GRIMES: I think our witnesses would go to
18 the second prong, the involuntariness of his statements.
19 THE COURT: All right.
20 MR. GRIMES: More so on that, and --
21 THE COURT: All right. I'll hear from you when
22 we get back. About five minutes.
23 (A break is taken from 2:47 p.m. until
24 2:52 p.m.; at which time, the proceedings continue as
25 follows:)

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1 THE COURT: All right. Mr. Grimes.

2 (The Defendant is present in the courtroom.)

3 MR. GRIMES: I was just thinking aloud, maybe a
4 way to save the Court some time, I think on the
5 invocation issue, I think the record is probably fairly
6 well-developed on that issue. The Court may be able to
7 rule on that. If the Court agreed to our position, then
8 we wouldn't need to have the second part of the hearing.

9 THE COURT: All right. And so tell me what
10 your position is just so I'm clear that I understand it.

11 MR. GRIMES: That Mr. Banks invoked his right
12 to remain silent; but at the end of the first part of
13 the interview, Detective Hill said: Is that your --
14 anything else you want to say?

15 Mr. Banks said: No.

16 Mr. Hill -- or excuse me, Lieutenant Hill then
17 said: All right. This interview is concluded.

18 I think --

19 THE COURT: What time is that?

20 MR. GRIMES: I think roughly about -- probably
21 the 25-minute mark.

22 THE COURT: At the 12:14? This time is 12:14,
23 and we're concluding the interview?

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: So you want me to make what

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1 finding?

2 MR. GRIMES: I think at that point, Mr. Banks
3 clearly invoked his right to remain silent in an
4 ambiguous and clear manner, and that right was not
5 scrupulously honored. I mean, Lieutenant Hill came back
6 in 11 minutes later and began the interrogation again.

7 And that the Kennedy case that we cited, I
8 think, provides very strong support for that. I think
9 the Kennedy case, the person said, Well, I think I need
10 a lawyer. And then the solicitor who was doing the
11 interview stopped right then and there, went -- and left
12 the interview room. And the court said that based upon
13 the words and the solicitor's actions, that there was a
14 clear indication of invoke of right to counsel.

15 Here, Mr. Banks' statement's even stronger than
16 to say in the Kennedy. He said: No. There's no
17 equivocation in it at all; that, No, I want to make a
18 phone call or, No, can we continue to the jail or, No, I
19 don't want to talk about this anymore; I want to talk
20 about this. Just, no means no.

21 And then Detective Hill recognized that, and
22 that's why he concluded the interview. And I think
23 that's essentially how Judge McDonald viewed it last
24 year.

25 THE COURT: All right. Mr. Kidd?

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1 MR. KIDD: Thank you, your Honor.

2 A few points to make. First being that, with
3 all due respect to Judge McDonald, I'm fairly confident
4 she made a mistake in that ruling. And all I ask is
5 that you -- and I know you'll do -- is just look at the
6 facts and law and make your own decision.

7 The Kennedy case, completely different; very
8 easy to distinguish. In the Kennedy case, he says, I
9 think I might need a lawyer. The solicitor in the room
10 at that time exits the room because the solicitor
11 understands that he is invoking his right and asking for
12 a lawyer.

13 What's important is what the actors in the
14 room understood. That's the importance of whether
15 something's ambiguous or not ambiguous. It's
16 unambiguous when the solicitor in the room leaves the
17 room and understands that he's asking for a lawyer. And
18 that's the whole point of why the invocation of one's
19 rights must be unambiguous. The detective -- the
20 testimony from Lieutenant Hill indicated that he did not
21 for a second believe that Mr. Banks was invoking his
22 right to remain silent or wished to cease communication
23 for that interview. And when you listen to the
24 transcript and you take everything that's said in
25 context, it mirrors exactly on point with the State v.

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1 Aleksey (phonetic) case. I mean, I couldn't have asked
2 for a case more on point than that where in that case,
3 the appellant's statement says: That's all I've got to
4 say. He says: That's all I've got to say. Meaning,
5 that's my final word, or do you have anything else to
6 say: No. That's all I've got the say, is what he
7 says. And the Court concluded that that was not an
8 unequivocal invocation of his right to discontinue
9 questioning. And it is exactly what we have going on
10 here. He says -- the lieutenant asked him: Is that
11 your final word?

12 That's my final word.

13 Do you have anything else you want to say about
14 that?

15 No. Meaning, he doesn't wish to expand on the
16 context of their conversation. He didn't have anything
17 else to add.

18 That's very different than saying: I don't
19 want to talk to you anymore because I want to invoke my
20 right to remain silent. And I just don't think that
21 there could be anymore case law closer on point than
22 -- than what we have there. And, you know, I could
23 distinguish every case that -- that Mr. Grimes cites in
24 his memo, and none of them are even closely as on point
25 as Aleksey is.

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1 And so, Judge, I just think that when you
2 listen to the interview and you take the words in
3 context with how he said them, and, most importantly,
4 how Lieutenant Hill understood them for what they were
5 and what they meant at the time, it does not rationally
6 appear that it was an invocation of his Rights. And
7 even if it were, it wasn't unambiguously made. And,
8 therefore, it shouldn't be deemed an invocation of his
9 right to remain silent.

10 THE COURT: All right.

11 MR. GRIMES: Brief reply, your Honor.

12 I think Mr. Kidd's Redirect Examination of
13 Lieutenant Hill shows Lieutenant Hill doesn't really
14 understand Miranda. I think Mr. Kidd first asked: So
15 what if Mr. Banks said I don't want to talk anymore?

16 And Lieutenant Hill said: Well, I would keep
17 questioning him.

18 Lieutenant Hill almost poses a requirement
19 that Kashaun give him the silent treatment, just sit
20 there and be mum in order to invoke his right to remain
21 silent or say the magic words, like, under Miranda, I
22 hereby invoke my Fifth Amendment for purposes of
23 self-incrimination before he would honor it -- or he
24 would see it as a request for invocation for the right
25 to remain silent.

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1 And when you look at Miranda and the purposes
2 of it, it's per the suspect's ability to control how
3 they communicate with police. If in any manner,
4 whatsoever, indicate the right to remain silent that it
5 be honored. And here he is very clear in the third
6 attempt, in my opinion, he's clear in the second
7 attempt, and throughout the interview, you -- you see
8 him -- put everything together, you see he's trying to
9 invoke his right to remain silent. He finally does.
10 Lieutenant Hill realizes that; that's why he concludes
11 the interview. His actions show that he believed that
12 Kashaun was invoking his right to remain silent. That's
13 why he stopped the interview. Otherwise, he would have
14 kept doing his job. And, like he said, his job was to
15 get a confession.

16 Thank you.

17 THE COURT: All right. Mr. Grimes, let me hear
18 from you on your next argument.

19 MR. GRIMES: Our next argument would be on the
20 voluntariness of his confession. We would call
21 Mr. Banks at this time. We have several witnesses on
22 that -- that argument, your Honor.

23 THE COURT: All right. Mr. Banks, please come
24 forward.

25 MR. GRIMES: Excuse me.

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1 MS. EHRLICH: Your Honor, I think we're going
2 to call the representative from the school district
3 first, so she can get out of here.

4 THE COURT: Okay. Great.

5 MS. EHRLICH: Her name's Monica Tudder.

6 THE COURT: I'm sorry. I thought I heard
7 Mr. Grimes saying he was calling Mr. Banks.

8 MR. GRIMES: I did.

9 THE COURT: Okay. Thank you.

10 MR. GRIMES: Again, your Honor, I apologize. I
11 was jumping the gun there.

12 THE DEPUTY CLERK OF COURT: Please your left
13 hand here and raise your right hand.

14 (The oath is administered by the Deputy Clerk
15 of Court, and the witness answers as follows:)

16 THE WITNESS: I do.

17 THE DEPUTY CLERK OF COURT: Please have a seat
18 and state your full name, spelling your last name.

19 THE WITNESS: My full name is Monica
20 Cataris (phonetic) tudder, T-u-d-d-e-r.

21 MONICA TUDDER,
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon her oath
25 as follows:

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DIRECT EXAMINATION

1

2 BY MS. EHRLICH:

3 Q Ms. Tudder, where do you work?

4 A Dorchester School District Four.

5 Q And what's your job title there?

6 A I'm the Director of Programs for Exceptional
7 Children.

8 Q And what does that mean in kind of laymen's
9 terms?

10 A I'm the special education director. I oversee
11 the programs for students with disabilities.

12 Q Okay. And how long have you been the director?

13 A Eight years.

14 Q And do you have an education background that --
15 in psychology as well?

16 A I have a background in school psychology.

17 Q Okay. Do you know the Defendant, Mr. Banks?

18 A I do.

19 Q Okay. And as the Director of Special
20 Education, have you had an opportunity to review his
21 records?

22 A I have.

23 Q And was he receiving special education
24 services?

25 A He was.

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1 Q Did he at some point have a psycho-educational
2 evaluation?

3 A He did.

4 Q And what is a psycho-educational evaluation?

5 A It's an evaluation to determine whether or not
6 a student has some sort of disability under South
7 Carolina State law and needs special education services.

8 Q And when was he evaluated?

9 A January 6th of 2006.

10 Q Okay. And as part of that evaluation, was
11 there an IQ testing done?

12 A There was.

13 Q And what was his Full Scale IQ?

14 A A 68.

15 Q And does that put him into the -- what category
16 does that fall under?

17 A The mildly mentally disabled range.

18 Q Okay. And were the ultimate findings of the
19 evaluator that he also had a learning disability?

20 A He was classified as a student with a specific
21 learning disability, yes.

22 Q Okay. And also mildly mentally disabled?

23 A No. His classification was a specific learning
24 disability.

25 Q Okay. But the IQ testing resulted in falling

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1 below, I guess, what you would consider the borderline
2 range?

3 A His Full Scale IQ fell in the mildly mentally
4 disabled range, yes.

5 MS. EHRLICH: Permission to approach the
6 witness, your Honor?

7 THE COURT: You may.

8 (Document is shown to the Solicitors.)

9 Q (By Ms. Ehrlich) Can you identify this
10 document?

11 (Document is handed to the witness.)

12 A That's a psycho-educational evaluation
13 conducted by the school psychologist in our district.

14 Q Is that the one that was done in 2006?

15 A Yes.

16 Q Thank you.

17 MS. EHRLICH: Your Honor, I'd like to admit
18 this in for purposes of this hearing. It's a
19 psycho-educational evaluation.

20 THE COURT: Defendant's 1.

21 (Defendant's Exhibit Number 1 is admitted into
22 evidence.)

23 Q (By Ms. Ehrlich) Mr. Banks also had an IEP?

24 A He does. He did.

25 Q And what is an IEP?

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1 A It's an Individualized Education Program.

2 Q And what is that really -- what does that mean
3 in kind of --

4 A It outlines the type of special education
5 services that a student with disabilities will be
6 receiving.

7 Q Okay. And what's the reason that he was
8 receiving services according to his IEP?

9 A He was classified as a student with a specific
10 learning disability and needed specialized and
11 individualized instruction in the areas of language arts
12 and reading, specifically.

13 Q And does the IEP reflect what his reading level
14 was?

15 A It does. He continued to function on a
16 kindergarten reading level.

17 Q Okay. And was one of the special
18 assistance -- some of the assistance required that he
19 get oral administration of his tests to him?

20 A Correct.

21 MS. EHRLICH: Permission to approach the
22 witness, your Honor?

23 THE COURT: You may.

24 Q (By Ms. Ehrlich) Is this the most recent IEP
25 that the school has?

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1 A It is.

2 MS. EHRLICH: Your Honor, at this time I'd like
3 to move to enter into evidence for the purposes of this
4 hearing.

5 THE COURT: Mr. Kidd?

6 MR. KIDD: This is the IEP?

7 MS. EHRLICH: The IEP.

8 MR. KIDD: That's fine. No objection.

9 THE COURT: Defendant's 2.

10 (Defendant's Exhibit Number 2 is admitted into
11 evidence.)

12 MS. EHRLICH: Court's indulgence?

13 We have no further questions, your Honor.

14 THE COURT: Mr. Kidd?

15 **CROSS-EXAMINATION**

16 **BY MR. KIDD:**

17 Q This was done when he was 12 years old; right?

18 A I beg your pardon?

19 Q This was done when he was 12 years old, all of
20 this; is that right?

21 A Which part are you referring to?

22 Q The Dorchester school -- the psychological
23 evaluation.

24 A The psycho-education evaluation. Yes, he
25 was 12.

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1 Q And was the IEP done at a different time?

2 A The most recent IEP was dated January 19th,
3 2011, where he was, I believe, 16.

4 Q Okay. But all the first things y'all discussed
5 about when -- when he -- his IQ, and his performance
6 those were all when he was 12?

7 A The IQ was related -- came straight from the
8 psycho-educational evaluation. She asked me the reading
9 level based on the IEP.

10 Q Okay. So the IQ came from when he was 12?

11 A Correct.

12 Q And reading level at a kindergarten level was
13 when he was 16?

14 A Correct. That was -- a present level of
15 performance assessment done March 5th, 2010.

16 Q March 5th, 2010. So that would have been 14?

17 A You're asking me to do the math from 2010 to
18 1996?

19 Q 14, 15, in that range, I guess?

20 A Ninth, tenth grade.

21 Q Ninth, tenth grade.

22 MR. KIDD: I have no further questions, Judge.

23 MR. EHRLICH: I don't have any further
24 questions, your Honor.

25 THE COURT: Is this witness excused?

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1 MR. EHRLICH: She is.

2 THE COURT: Any objection?

3 MR. KIDD: No, ma'am.

4 THE COURT: Has she fulfilled her subpoena for
5 tomorrow?

6 MR. EHRLICH: Your Honor, I think that depends
7 on how you rule.

8 THE COURT: Okay. You may step down. I
9 believe you are still under the subpoena so make sure
10 you comply with that subpoena. Just because you came
11 today, does not release you from the subpoena unless --

12 She's under your subpoena?

13 MR. EHRLICH: She is.

14 THE COURT: -- unless the Defense releases you.

15 THE WITNESS: Okay.

16 THE COURT: Thank you. You may step down.

17 Call your next witness.

18 MR. EHRLICH: Your Honor, we would call

19 Mr. Banks now.

20 THE COURT: All right. Mr. Banks.

21 (The oath is administered by the Deputy Clerk
22 of Court, and the Defendant answers as follow:)

23 THE DEFENDANT: Yes.

24 THE DEPUTY CLERK OF COURT: Please have a seat
25 and state your full name.

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1 THE DEFENDANT: Kashaun Christian Banks,
2 B-a-n-k-s.

3 KASHAUN CHRISTIAN BANKS,
4 having been first duly sworn by the Deputy Clerk of
5 Court to tell the truth, the whole truth, and nothing
6 but the truth, was examined and testified upon his oath
7 as follows:

8 DIRECT EXAMINATION

9 BY MS. EHRLICH:

10 Q Okay. How old were you when you got arrested?

11 A I was 17 years old.

12 Q And you need to talk a little bit louder so
13 everybody can hear you.

14 How old are you now?

15 A I am 19.

16 Q And have you been in jail since you got
17 arrested?

18 A Yes, ma'am.

19 Q Were you in school when you got arrested?

20 A No, ma'am, I was not.

21 Q When were you last in school? Do you remember?

22 A I was last in school in my tenth grade year.

23 Q And where did you go to school?

24 A Woodland High.

25 Q Where is that?

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1 A St. George, South Carolina.

2 Q Do you remember what grade you were in?

3 A I was in the tenth grade at the time.

4 Q And did you have some sort of other plan for
5 school at the time that you got arrested?

6 A Yes, ma'am.

7 Q What was that plan?

8 A I was attending -- I was planning to go to the
9 Youth Challenge Academy.

10 Q And I know what Youth Challenge Academy is, but
11 for the Judge, why don't you explain to her a little bit
12 what that program is.

13 A The Youth Challenge Academy is a school program
14 where it helps you get your GED, and it's military-
15 structured, run by the -- I guess it would be the Coast
16 Guard. Not the Coast Guard --

17 Q Is it run by the National Guard?

18 A National Guard. Sorry. It's been a long time.

19 Q And when you did go to the regular school, what
20 type of classes did you receive?

21 A Resources and regular classes.

22 THE COURT: I'm going to need you to speak up,
23 sir.

24 THE WITNESS: Resources and regular classes.

25 THE COURT: Thank you.

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1 Q (By Ms. Ehrlich) And do you know why you took
2 resource classes?

3 A I had a reading disability.

4 Q Okay. And have you always had trouble reading?

5 A Yes, ma'am.

6 Q Have you always gotten extra help in school?

7 A Yes, ma'am.

8 Q And explain to the Court a little bit -- what
9 type of extra help you get in school?

10 A All my classwork and tests had to be read by a
11 teacher.

12 Q I need you talk a little bit louder. If you
13 want to, you can lean into the microphone if it'll help.

14 A I said all my classwork and tests had to be
15 read by my teacher.

16 Q Okay. And when you say read by your teacher,
17 was it always by somebody that you knew?

18 A Yes, ma'am.

19 Q Okay. And so you already kind of trusted them
20 at that point?

21 A Yes, ma'am.

22 Q What was your favorite class in school?

23 A ROTC.

24 Q Why is that?

25 A I love military.

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1 Q All right. And you've heard, and we've
2 listened to your tape. Do you remember the part of the
3 tape where they ask you to spell your name?

4 A Yes, ma'am.

5 Q Did you have trouble at any point?

6 A Yes, ma'am.

7 Q What part do you have trouble spelling?

8 A I cannot spell my middle name, Christian.

9 Q Is that related to your disability?

10 A Yes, ma'am.

11 Q What is it like for you not to read well?

12 A It's a challenge.

13 Q Explain that.

14 A I always have to have assistance when it comes
15 to reading or writing.

16 Q Okay. And when you're in a situation where
17 you're depending on somebody to read to you, how do you
18 react?

19 A Sometimes I become a smart-mouth.

20 Q Okay.

21 A I get upset.

22 Q All right. And is -- why is that?

23 A Because it makes me feel like I'm dumb and I'm
24 stupid.

25 Q Do you feel like people view you different when

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1 they find out?

2 A Yes. They look at you in a particular way.

3 THE COURT: I'm going to need you to speak up.

4 THE WITNESS: I said they look at you in a
5 particular way.

6 Q (By Ms. Ehrlich) And at the time that you were
7 interviewed by the police, do you remember -- do you
8 know what grade level you were reading on?

9 A Probably a second-grade level.

10 Q And because of your disability, do you
11 sometimes pretend to understand things more than you
12 really do?

13 A Yes, ma'am.

14 Q Why is that?

15 A Makes me fit in a little bit.

16 Q Okay. Before you got arrested in this case on
17 the armed robbery charge, had you ever had criminal
18 charges before?

19 A Yes, ma'am.

20 Q When you were arrested previously, did you ever
21 get taken to the police station for an interview?

22 A No, ma'am.

23 Q What would happen when you would get arrested?

24 A They just took me to the jail.

25 Q Okay. So have you ever been interviewed by the

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1 police before this incident?

2 A No, ma'am.

3 Q When you got arrested and stopped at Horizon
4 Village, how were you feeling?

5 A Scared and nervous.

6 Q Okay. Did they handcuff you?

7 A Yes, ma'am.

8 Q Did they tell you you were under arrest?

9 A Yes, ma'am.

10 Q Did they tell you why?

11 A No, ma'am.

12 Q Did you think at that point you could leave the
13 area if you wanted to?

14 A No, ma'am.

15 Q What happened after they first put you in
16 handcuffs? Where did they take you?

17 A Before they put me in handcuffs?

18 Q After they put you in handcuffs.

19 A They put me in the police car.

20 Q Okay. And did you think that you could leave
21 the police car?

22 A No, ma'am.

23 Q And what was going on through your head while
24 you were in the police car?

25 A I was scared, and I wanted to know what was

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1 going on.

2 Q Did you know -- did you think that you could
3 leave the car or just walk away at that point?

4 A No, ma'am.

5 Q Where did the police end up taking you?

6 A To a police station.

7 Q And where did they take you inside the police
8 station?

9 A They took me inside of a room.

10 Q And describe that room for the Court.

11 A Probably 10 by 11. It had a table with four
12 chairs. It had a window in the back, and it had a
13 camera with a bowl covered over it.

14 Q Was there a phone in the room?

15 A No, ma'am.

16 Q A clock?

17 A No, ma'am.

18 Q Were you still handcuffed?

19 A I had one hand -- I had one arm free and the
20 other hand -- the other hand was handcuffed to the
21 chair.

22 Q What was going on through your head at that
23 point?

24 A I was scared.

25 Q Okay. And do you know how long you were in the

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1 room before the police officers came in?

2 A No, ma'am, I do not.

3 Q When the officers came in the room, how many
4 were there?

5 A There were two officers at the time.

6 Q And where were they sitting?

7 A One was sitting right next to me and the other
8 officer was sitting across from me.

9 Q Do you remember who was who, or who was sitting
10 where?

11 A The officer that was just on the stand, he was
12 sitting right beside me.

13 Q Okay. And the other officer was across from
14 you --

15 A Sitting across, yes, ma'am.

16 Q And do you remember them going over the Rights
17 form that we've been talking about today?

18 A Yes, ma'am.

19 Q Were you still handcuffed at that point?

20 A Yes, ma'am.

21 Q And were you able to read that form?

22 A No, ma'am, I could not.

23 Q Is that when they asked you to spell your name?

24 A Yes, ma'am.

25 Q And did you tell them that you had trouble

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1 reading?

2 A Yes, ma'am, I did.

3 Q Did you make any attempt to read the form?

4 A No, ma'am.

5 Q Why?

6 A Because I couldn't understand what was on the
7 form. And I was scared at the time.

8 Q Okay. And when they read you what was on the
9 form, did you just have to take the officer's word for
10 it?

11 A I always have to take peoples' words when they
12 read stuff to me.

13 Q And since you got arrested, you and I have
14 probably gone over that form before?

15 A Yes, ma'am, we did.

16 Q As well as Mr. Grimes?

17 A Yes, ma'am.

18 Q And so you've learned a little bit more about
19 your Rights since then; right?

20 A Yes, ma'am, I did.

21 Q Do you remember them asking you if you wanted
22 to waive your Rights at any point?

23 A I believe so. I'm not too sure.

24 Q Okay. Did you know at the time what "waived"
25 meant?

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

2 Q Okay. When you signed the form, did you think
3 that you had a choice to sign it, or did you just sign
4 it?

5 A I -- no, I did not have a choice. I felt like
6 I had to sign it.

7 Q Did you know that if you didn't sign the form
8 they wouldn't talk to you?

9 A No, ma'am, I did not know that.

10 Q And at that point, did you know how to get a
11 lawyer?

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

13 Q Okay. When you gave the first statement, that
14 entire time, were you handcuffed?

15 A Yes, ma'am.

16 Q Okay. And did you -- why did you answer
17 questions?

18 A I felt like I had to.

19 Q Okay. Did they make any sort of threats to you
20 or anything?

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

22 Q Why did you feel like you had to talk to them?

23 A Because I wanted to -- because -- I -- when he
24 asked me questions, he asked me what was going on, and
25 then I asked him: Can I have a phone call?

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1 And he said: No. And then he said -- before
2 you gives -- he said I couldn't get a phone call. He
3 would ask me some questions.

4 Q Okay. Do you remember them talking to you
5 about the military?

6 A Yes, ma'am, I do.

7 Q And what was the big deal about the military
8 for you?

9 A I've always wanted to go into the military.

10 Q And why did you want to go into the military?

11 A My grandfather was in the military, and it was
12 always something that I wanted to do.

13 Q And what was your relationship like with your
14 grandfather?

15 A He was a father figure in my life.

16 Q When they were talking to you about the
17 military, was it your impression that they might be
18 trying to help you at that point?

19 A Yes, ma'am.

20 Q Okay. Did you feel like if you talked to them
21 further they might help you out with that?

22 A Yes, ma'am.

23 Q When you first got to the police station and
24 they went over your Rights, you asked for a phone call?

25 A Yes, ma'am.

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1 Q Why did you want a phone call?

2 A I was calling for help.

3 Q Okay. Did they give you that phone call?

4 A No, ma'am.

5 Q Why did you want help? What type of help were
6 you trying to get?

7 A To get help because of the situation. I didn't
8 really know what to do, so I was calling for help.

9 Q Okay. And who were you trying to call?

10 A I was trying to call my sister, but --

11 THE COURT REPORTER: I'm sorry. You'll have to
12 repeat.

13 THE WITNESS: I said, I told him to call my
14 sister, but I remembered her phone was off, so I said
15 call my fiancée.

16 Q (By Ms. Ehrlich) Okay. And you at first told
17 the police, that Danielle was your sister, but really
18 she's your fiancée -- or was your fiancée?

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

20 Q And why didn't you tell them at first?

21 A Because she was -- I was 17, and she was 27 at
22 the time.

23 Q Okay. When they didn't let you call anybody,
24 throughout your time at the police station, did you
25 believe that meant that you had to keep talking to them?

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1 A Come again, please?

2 Q When they refused to let you use the phone, did
3 you believe that meant you had to keep talking to them?

4 A Yes, ma'am.

5 Q Did they ever -- when you asked for the phone
6 call, did they stop the interview?

7 A No, ma'am.

8 Q Okay. When you were talking to the officers,
9 do you remember trying to stop the interview?

10 A Yes, ma'am.

11 Q Okay. How did you do that?

12 A I said, No; then I told them that was my final
13 word; and then I said, Let's continue.

14 Q Okay. And did you also ask them what was
15 holding up from taking you to the jail?

16 A Yes, ma'am.

17 Q Why did you ask that?

18 A Because I was ready to go.

19 Q Okay. And when you told them it was your final
20 word, did they stop talking to you?

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

22 Q And when you say, Let's continue, what does
23 that mean to you?

24 A I'm ready to go.

25 Q Go where?

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1 A To the jail.

2 Q Did you want to continue answering questions?

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

4 Q Why did you keep answering questions?

5 A Because I felt like I had to.

6 Q Okay. When you told them that you didn't have
7 anything else to say, were you trying to end the
8 interview?

9 A Yes, ma'am.

10 Q When you told them it was your final word, did
11 you want to keep answering questions?

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

13 MS. EHRLICH: Court's indulgence?

14 THE COURT: Take your time.

15 (Ms. Ehrlich speaks with Mr. Grimes off the
16 record.)

17 MR. EHRLICH: Please answer any questions that
18 the State has for you.

19 THE WITNESS: Yes, ma'am.

20 CROSS-EXAMINATION

21 BY MR. KIDD:

22 Q You understood that you didn't have to say
23 anything without a lawyer present; correct?

24 A Yes, sir.

25 Q And by understanding that, you still continued

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1 to answer questions. Why?

2 A Because I felt like I had to.

3 Q You just said you understood that you didn't
4 have to.

5 A Yes, sir. If he would have let me make the
6 phone call, maybe Danielle could have called me an
7 attorney at the time. I was calling for help. That was
8 the purpose of the phone call.

9 Q But you understood you didn't have to say
10 anything without an attorney present?

11 A Yes. And I felt like I had to because he kept
12 questioning me, and he wouldn't let me go.

13 Q Those things don't match. You can't understand
14 that you don't have to, but also feel like you have to.

15 A He kept questioning me. He wouldn't let me go,
16 so I felt like I had --

17 Q Well, you were under arrest. He wasn't going
18 to let you go.

19 A I was ready to go to the jail, sir.

20 Q I'm sure you were.

21 You understood all of the questions
22 Ms. Ehrlich asked you here today, right, and all of
23 our conversations and everything that's going on here;
24 right?

25 A Yes, sir.

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1 Q And everything that was discussed on that
2 video and all of that, interview and the conversations
3 with Lieutenant Hill, you understood all that was said
4 today?

5 A Yes, sir. Some of the words you used, I didn't
6 understand, but, yes, sir, I understood.

7 Q But you've got the general idea of everything
8 that's gone on today so far; right?

9 A Yes, sir.

10 Q And a lot of what's gone on today is replaying
11 what happened back then; right?

12 A Back when? The first --

13 Q Back on your interview. I mean, all we've
14 talked about here today is the context of your
15 conversation with Lieutenant Hill; right?

16 A Yes, sir.

17 Q And you understood all that; right?

18 A Yes, sir.

19 Q So if you understand it today, you also
20 understood it then; right?

21 A No. Because he kept questioning me, and I felt
22 like I had to. I didn't understand --

23 Q What did him questioning you have to do --

24 THE COURT: Please don't talk over him. Thank
25 you, Mr. Kidd.

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1 MR. KIDD: I apologize, Judge.

2 THE COURT: Did you finish your statement?

3 THE WITNESS: I said I didn't know what waiving
4 my Rights mean. In that conversation, I did not know if
5 I did not sign the paper that I had -- that he wouldn't
6 question me, sir.

7 THE COURT: Thank you, Mr. Kidd.

8 Q (By Mr. Kidd) And what has changed between
9 now and then that has caused you to understand that?
10 Because you understand that now; right?

11 A Mr. Grimes and Ms. Ehrlich explained to me what
12 my Rights were at that time, sir.

13 Q But you also said you knew you had the right
14 to remain silent and to have a lawyer present? You
15 explained that to -- to Lieutenant Hill on that
16 audiotape; didn't you?

17 A Yes, sir. But I still felt like I had to.

18 Q You felt like you had to explain to him what --
19 that you understood what your Rights were?

20 A When he kept questioning me, I felt like I had
21 to talk at the time, sir.

22 Q And your mental disability is with reading; is
23 that right?

24 A Reading and writing, sir.

25 Q Reading and writing?

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1 A Yes.

2 Q But you're pretty good at communicating, like
3 we are now; right?

4 A To a certain extent, sir.

5 Q To a certain extent. But you can understand
6 things we're saying? I mean, you understand the
7 conversation we're having right now?

8 A Yes, sir.

9 Q You understand the importance of it?

10 A Yes, sir.

11 Q And have you had any formal training between
12 now and two years ago? Or a year ago?

13 A As far as?

14 Q My point being, that when -- when you listened
15 to yourself on that audiotape, you had a pretty
16 cognizant conversation with Lieutenant Hill then too;
17 right?

18 A If that's what you would say, sir.

19 Q I'm asking you. I mean, when you hear that
20 conversation, does it sound like you didn't know what
21 was going on?

22 A I didn't. I only knew -- I only knew he
23 was asking and I was scared at the time and I kept
24 answering --

25 Q I understand you were scared. I would have

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1 been scared too. That's natural. But the issue is
2 not whether you were scared. The issue is, did you
3 understand? Do you understand what the words mean: You
4 have a right to remain silent?

5 A Yes, I understand. But I felt like I had to
6 when he kept questioning me, sir.

7 Q I understand that. But you know what those
8 words mean: The right to remain silent?

9 A Yes. And I still felt like I had to when he
10 kept questioning me, sir.

11 Q And you know what it means to have a right to
12 an attorney?

13 A Yes, sir.

14 Q Okay. So you understood your Rights?

15 A How was I supposed to get an attorney if he
16 didn't let me get a phone call?

17 Q You ask for one.

18 A I did. I didn't get one.

19 Q You didn't ask for one.

20 A Yes, I did. I did ask for a phone call. I
21 asked for help, sir.

22 Q And you said when you were arrested you were
23 scared. You wanted to know what was going on.

24 A Yes, sir.

25 Q So you didn't know what was going on?

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1 A I didn't know what I was being arrested for,
2 sir, no.

3 Q You had no idea what you were being arrested
4 for?

5 A No, sir, I did not.

6 Q Well, how come on the second part of the
7 interview, you confessed?

8 A I only told them what they wanted to hear, sir.

9 MS. EHRLICH: Objection, your Honor. I think
10 we're getting beyond the scope of the hearing. He's
11 trying to get into --

12 THE COURT: It gets kind of tricky. I'm going
13 to give him just a little bit of latitude on that one.

14 Thank you.

15 Q (By Mr. Kidd) I understand what you're saying,
16 but you answered questions that you wouldn't have had
17 answers to otherwise?

18 A And I told them how I knew those answers, sir.

19 Q How did you know them?

20 MR. EHRLICH: Objection, your Honor.

21 THE COURT: Rephrase your question, Mr. Kidd.

22 MR. KIDD: I'll withdraw, Judge.

23 Court's indulgence?

24 (Mr. Kidd speaks with Ms. Riddle off the
25 record.)

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1 MR. KIDD: No further questions, Judge.

2 MR. EHRLICH: Court's indulgence?

3 THE COURT: Take your time.

4 (Ms. Ehrlich speaks to Mr. Grimes off the
5 record.)

6 MR. EHRLICH: Your Honor, I don't have any
7 other questions for Mr. Banks.

8 THE COURT: All right. You may step down,
9 Mr. Banks. Thank you.

10 Call your next witness.

11 MR. GRIMES: The Defense has no further
12 witnesses, your Honor.

13 THE COURT: All right.

14 Anything further, Mr. Kidd?

15 MR. KIDD: As to the Denno hearing, I don't
16 have any further witnesses, Judge.

17 THE COURT: All right.

18 MR. KIDD: I would like to be heard at the
19 appropriate time as to the voluntariness.

20 THE COURT: All right. Mr. Grimes, just so I
21 understand your argument, could you articulate your
22 argument again for me?

23 MR. GRIMES: Yes, your Honor.

24 May it please the Court. We are moving to
25 suppress the statement that Kashaun made on October

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1 16th, 2011, where he incriminates himself in the robbery
2 of the Exxon gas station.

3 First, moving for -- first position is that the
4 Court should grant our motion because Lieutenant Hill
5 obtained this statement in violation of Miranda versus
6 Arizona. Lieutenant Hill did advise Kashaun of his
7 Rights. And Kashaun subsequently invoked his Rights,
8 specifically his right to remain silent. I believe he
9 invoked his Rights in two ways. First one was he said,
10 This is the final word -- my final word, and then asking
11 to be brought to the jail so he can make a phone call.
12 And the statements Mr. Kidd made on the continuing
13 comments, making it -- that request ambiguous. When you
14 look at the context of the interview, Detective Hill
15 knows that he's trying to get to the jail, that's why
16 they have this long -- oh, excuse me, Lieutenant Hill
17 knows he's trying to get to the jail, that's why they
18 have a long conversation about making the phone calls.
19 And Lieutenant Hill thought if he just wanted to talk to
20 someone else, he could have asked him, by a different
21 part. For example: Where did he put the cash register
22 at? Where did he put the shirts at? How did he get
23 away? Where is the BB gun at? That kind of stuff.
24 Rather than going into that stuff, he's asking about
25 phone calls, calling his sister, and trying to keep him

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1 at the station house so he could get a confession.

2 And then at the -- at the end of the first part
3 of this interrogation, Lieutenant Hill specifically
4 asked Kashaun: Do you have anything else that you want
5 to say.

6 Kashaun says: No.

7 And Lieutenant Hill testified, no means no.
8 And if you take the State's arguments here to a logical
9 extension, why was CSC case if a girl says no? Or -- or
10 other stuff -- a plea offer, for example, if the Court
11 was to ask someone, Do you accept the plea offer, and he
12 says no? Does that mean no, they don't accept the plea
13 offer, or yes, they do, or is that ambiguous? It just
14 sort of opens a Pandora's box if you take -- accept the
15 State's position here that no does not mean no.

16 And I think we provided plenty of case law that
17 shows that no does mean no. I know, there being a
18 transcript, Judge McDonald did her own research and
19 didn't find anything that contradicted our position and
20 simply did not accept what the State's position in
21 Aleksey. If you carefully read Aleksey, you have a
22 re-initiation after that. So it's part of that opinion
23 probably could be considered *dicta*.

24 Our second part of the argument is that Kashaun
25 did not knowingly and intelligently waive his Rights,

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1 because the statement was obtained by hopes of leniency.
2 We're not saying Detective -- excuse me, Lieutenant Hill
3 promised him anything. For example, if you tell me
4 this, I promise to go to the Judge and talk to the Judge
5 on your behalf. It's not as strong as that. It's the
6 hope of leniency. And Lieutenant Hill on
7 Cross-examination recognized there is a difference
8 between a promise and a hope of leniency. And courts
9 have noted that hopes of leniency can also make a
10 statement involuntary.

11 I think I've cited a lot of cases talking about
12 so how -- telling the truth, don't -- how things make
13 you look good by telling the truth can be considered a
14 hope of leniency and can render a statement involuntary.
15 And you combine that with Kashaun --

16 THE COURT: What was the promise of leniency?

17 MR. GRIMES: Hopes of leniency. Like I said,
18 I'm not saying he made a promise. I'm saying he was
19 giving him hope.

20 THE COURT: And what was that hope?

21 MR. GRIMES: The strongest one that jumps out
22 to me is, if you want to get past the robbery to get
23 past -- if you want to get in the military, you can't
24 get in the military with a robbery conviction. By
25 telling the truth, you can get past this. So by saying,

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1 if you tell the truth, you can get past this, that's
2 giving him hope that maybe he can get into the military,
3 and it wouldn't be a conviction for robbery. And by
4 telling the truth, he might go to Mr. Kidd and put in a
5 good word for him and do whatever the prosecution
6 thinks --

7 THE COURT: Is that -- were those statements
8 made, or is that what you're inferring, Mr. Grimes?

9 MR. GRIMES: I think the parts about -- it's
10 probably a combination, your Honor. There's -- you
11 know, certainly he said -- they do play upon his desire
12 to go into the military. They use words, if you have
13 any aspiration of going into the military, a robbery
14 conviction will keep you out. That's --

15 THE COURT: That's a true statement, though,
16 isn't it?

17 MR. GRIMES: Yes, ma'am.

18 And then he also says: If you any hope of
19 getting past this, you need to tell us the truth. And
20 that's where the hope of leniency comes in, your Honor.
21 And then you have to look at case law, so you look at
22 the suspect's background, and, you know -- and you heard
23 from Ms. Tudder, heard from Kashaun of why he would --
24 wants to go in the military, what his past issue in the
25 military was, is sort of limited --

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1 THE COURT: Mr. Grimes, is he saying to get
2 past this, or -- that's not quite how I recalled what
3 the statement was made. We've got to remember, I don't
4 have an official transcript, so my notes from the video
5 may have been -- from the CD may be different from
6 yours.

7 MR. GRIMES: Thank you, your Honor.

8 I think -- let me 16-30 -- the notes said "we
9 have," and you realize they're not verbatim, and it's
10 not certified as being 100 percent accurate.
11 Detective Hill said: Okay. Well, I'm telling you the
12 military will not going to take you with the robbery
13 convictions.

14 Mr. Banks: Okay.

15 Detective Hill: So, okay, your best hope --
16 Uh-huh.

17 Detective Hill: -- of getting past that --

18 Kashaun says: And --

19 And Detective Hill says: -- is to tell the
20 truth in here.

21 So what we're saying -- I think when you look
22 at that -- that exchange, I think it's reasonable for
23 Kashaun and, as he testified, I believe, that by telling
24 the truth, he could help get himself in the military, or
25 Detective Hill might be able to do something to help him

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1 get into the military.

2 THE COURT: But the transcript -- the line of
3 questioning that I'm referring to, that I just want
4 to -- that you gave me the copy, which is not a
5 certified transcript, but it is the line of questioning
6 where the detective -- you will never get in the
7 military so your best chance of ever recovering from
8 this incident --

9 Banks: Uh-huh.

10 Is that where you are?

11 MR. GRIMES: Let me --

12 May I have one moment, your Honor?

13 THE COURT: Take all the time you need.

14 MR. GRIMES: Thank you, your Honor.

15 I think -- the part that you're reading from
16 is, I think, pages 11 through 12?

17 THE COURT: My pages are not numbered.

18 MR. GRIMES: Does it start around --

19 THE COURT: It's right before --

20 MR. GRIMES: -- the 12-minute mark?

21 THE COURT: 12:26. 11:58 to 12:26.

22 MR. GRIMES: I thought there was a second place
23 where they had a similar exchange. I was trying to find
24 that.

25 MR. KIDD: 16:15.

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1 THE COURT: 16:15, Mr. Kidd?

2 MR. KIDD: Yes, ma'am.

3 MR. GRIMES: Thank you, Mr. Kidd.

4 They have -- the first section that your Honor
5 specified, and then the second section that Mr. Kidd
6 helped me find.

7 (Respite.)

8 MR. GRIMES: I think those are the two big
9 examples of trying to get -- Lieutenant Hill trying to
10 give Kashaun some hope by going -- being able to get
11 into the military if he was to tell the truth in there.

12 Again, I think it's noted, again, on the
13 Cross-examination of Detective Hill. There's also an
14 exchange where he said, you know, he could go and tell
15 the solicitor that Kashaun, being truthful, if he was
16 truthful, and Kashaun's reaction to that was, Well, if
17 I'm not truthful, that makes me look bad. And according
18 to our listening to it, it sounds like Detective Hill
19 agreed with him. And on Cross-examination, he said he
20 was going along with what Kashaun said, that it would
21 look bad upon him. That's sort of where those line of
22 cases we cited about not being truthful could increase
23 someone's punishment, shows that if you're truthful --
24 basically, in a nutshell, if you're truthful, we can
25 help you get in the military; if you're not truthful,

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1 it's going to look bad on you.

2 And that's our, sort of, position in a nutshell
3 in that, your Honor, we believe the cases we've cited to
4 support that, and when you look at Kashaun's background,
5 his education level, his desire to go in the military
6 because of his grandfather being in the military, is
7 making arrangements to go to a military school, I think
8 that just the totality of the circumstances show that
9 his statement was involuntary.

10 Thank you, your Honor.

11 THE COURT: All right. Mr. Kidd?

12 MR. KIDD: Thank you, Judge. And I won't
13 completely rehash the first argument as to the
14 invocation.

15 THE COURT: You will or won't?

16 MR. KIDD: I wasn't planning on it --

17 THE COURT: Thank you.

18 MR. KIDD: -- unless you want me to repeat
19 myself, I can. But I will stay away and argue mainly on
20 the issue of the voluntariness at this point. I think
21 my argument's on the record as to the invocation issue.

22 As to the voluntariness of the statement,
23 Judge, I think anyone who hears that transcript and
24 listens to that audiotape, knows that Kashaun Banks
25 understood exactly what was going on there despite

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1 having some mental troubles, some learning disabilities,
2 his Rights were explained to him. He then was asked by
3 the officer what that meant, and then he gave a logical
4 explanation of what those Rights meant, and he was
5 accurate. He understood his Rights. This was a
6 relatively short -- while it's difficult to listen to
7 from beginning to end, this is about an hour. So this
8 isn't a long period of time. You listen to that tape,
9 Detective Hill was extremely nice to him and only
10 encouraged him to tell the truth.

11 This is not a case like State v. Pete in which
12 a promise was made in return for a confession. In that
13 case, it was, We won't seek the death penalty if you
14 confess. That's not what we have here. All we have
15 here is an officer saying, You need to tell the truth,
16 son. That's what's going to be best for you. And in no
17 way can -- can that -- can an encouragement to tell the
18 truth because the officer believes that's going to be in
19 his long-term best interest be interpreted as a promise.
20 And a promise in this vein of State v. Pete, according
21 to South Carolina case law, must be -- it only -- if
22 it's so connected with the inducement as to be a
23 consequence of the promise, meaning, that it's almost
24 like it has to be a bargained-for exchange. It can't be
25 just an open-ended encouragement to tell the truth.

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1 It has to be, If you tell the truth -- if you confess,
2 we won't seek the death penalty. If you confess, we'll
3 charge you with something less. It is that sort of
4 consequence and inducement that would make -- could make
5 a confession involuntary. And that's just not what we
6 have going on here. So an encouragement to tell the
7 truth and a truthful statement about a robbery
8 conviction potentially being a bar to being allowed to
9 enter the military is not something that's going to make
10 a subsequent confession involuntary.

11 And, Judge, and I know -- I know Mr. Grimes
12 keeps harping on how Judge McDonald ruled, but with all
13 due respect to her, Judge, she made mistakes, and we all
14 know -- Mr. Grimes and myself know it's a very tough job
15 being a Circuit Court Judge, and you have to make a lot
16 of quick rulings, and she just missed one. And I hope
17 we can look at the facts and the law and make a fresh
18 ruling.

19 I'd also like to point out that in the
20 procedural manner that everything took place in the last
21 trial, these all -- all these hearings were done after
22 the jury was sworn, which kind of tied my hands after
23 she made her rulings. So I just would -- I just would
24 like -- would like us to look exactly at the context of
25 that invocation issue, understanding that -- you know,

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1 how Detective Hill interpreted each -- that
2 conversation, because I think that's the most important
3 objective standard to look at, and -- and apply the law
4 in Aleksey and Parker which are really on point to both
5 of these issues.

6 Thank you, Judge.

7 THE COURT: Mr. Grimes?

8 MR. GRIMES: I just want one brief reply about
9 Mr. Kidd's asking -- and procedural posture, and what
10 that's about. Mr. Kidd told Judge McDonald that he
11 wasn't even sure he going to use the confession, and
12 that it was his idea to swear the jury and have opening
13 statements before the Court even ruled. And I just want
14 that to be correct. I mean, it's in the transcript, and
15 I want -- I just felt that needed to be corrected.

16 THE COURT: All right. I didn't consider one
17 way or the other.

18 Anything further, Mr. Grimes?

19 MR. GRIMES: No, ma'am.

20 THE COURT: All right. Anything further,
21 Ms. Ehrlich?

22 MR. EHRLICH: No, your Honor.

23 THE COURT: Your first -- pursuant to your
24 motion that you filed, Mr. Grimes, I understand that
25 you are requesting that the entire -- all of the

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1 statements made to law enforcement from the time he was
2 placed -- or the interview with Lieutenant Hill; is that
3 correct?

4 MR. GRIMES: I think technically it would be
5 only after he invoked his right to remain silent, would
6 be the statements we would suppress. I don't know if we
7 would be able to use the pre-invocation rights or
8 statements at a trial because I think it would get
9 Mr. Kidd to introduce those.

10 THE COURT: All right. So your position is
11 that once -- that Mr. Banks did invoke his right to
12 remain silent; and once he did so, law enforcement did
13 not scrupulously honor that; is that correct? Do I
14 understand your argument correctly?

15 MR. GRIMES: Yes, your Honor.

16 THE COURT: Okay.

17 MR. KIDD: And if it helps to make anything
18 easier, I would concede to the scrupulously part. If
19 you determine that he invoked his Rights, I would think
20 at that point that it -- it would be in violation. My
21 argument is that invocation never occurred.

22 THE COURT: All right.

23 So I have been provided an uncertified copy of
24 the transcript. I don't know who transcribed it, but I
25 have listened to the actual audio of the interview, and

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1 I have observed Mr. Banks. I have listened to the
2 testimony by Mr. Banks, one of the most articulate
3 individuals and appropriate individuals that I've seen
4 in a while in my courtroom.

5 Based upon my review of listening to the
6 testimony -- or the exchange between, then Sergeant, now
7 Lieutenant Hill and Mr. Banks, some things kind of
8 popped to my mind that I focused on. One is, Mr. Banks
9 brought to Lieutenant Hill's attention that they should
10 have given him Miranda warnings when first arrested,
11 which they didn't. So he said -- there was a whole
12 discussion about that. So he understood what Miranda
13 meant and even in today's hearing, he indicated to
14 Mr. Kidd that he knew that he could stop talking at any
15 time and he could have requested an attorney and he
16 indicated that he did not do so.

17 The dialog -- the two different dialogues on
18 two separate occasions concerning the necessity to tell
19 the truth and hope that the Court has mercy on you, the
20 statement where -- that I think is in question is when
21 at the end of the first -- well, just turn to the first
22 interview that Mr. Banks indicates to the -- to
23 Lieutenant Hill's statement: Do you have anything else
24 you want to say, and Mr. Banks says, No, I find that
25 that statement, No, to Lieutenant Hill's, Do you have

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1 anything else you want to say, was not an unequivocal
2 invocation of his Rights to discontinue questioning. I
3 do find that the statement was ambiguous, and it could
4 have been interpreted to mean that the Defendant had
5 nothing further to say concerning that matter, not that
6 he had invoked his Rights under the Miranda to stop
7 talking.

8 Note your exception to that prong of the
9 ruling, Mr. Grimes.

10 So, then, that moves to us to what I understand
11 is the next basis, was that it was obtained -- the
12 statements were then obtained by promises of leniency.
13 So we have had, even in today's hearing, Mr. Grimes, you
14 agree that it is fairly common knowledge to somebody,
15 especially somebody that was in a military school -- and
16 he wanted to go into the military. -- it's very common
17 knowledge that a felony conviction makes it very
18 difficult, if not impossible, to get into the military.
19 The two back-and-forth exchanges about the military, I
20 do not find that they were promises of leniency, but
21 merely the detective indicating to Mr. Banks that his
22 requirement in that interview was to tell the truth.
23 And based upon that, I do not find that the statement
24 was induced by a promise of leniency and that it was so
25 connected with the inducement as to be a consequence of

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1 a promise.

2 I have considered the age of Mr. Banks, his
3 lack of education or his intelligence, but as I
4 indicated, his demeanor here and on the audio were
5 impeccable. He answered and was articulate with the
6 Sergeant and the Detective and corrected him when he
7 needed to be corrected. There seemed to be a lot of
8 back-and-forth banter between the two. He was given his
9 Constitutional Rights. He had indicated that he knew
10 that he was entitled to be given them. It was a
11 relatively short interview, and I do not find
12 that -- that law enforcement obtained the statements
13 through promise of leniency. Your Motion to Suppress
14 the statement is denied.

15 MR. KIDD: To the Biggers hearing?

16 THE COURT: All right.

17 MR. KIDD: State would call Keisha Holmes.

18 THE COURT: Ma'am, please come forward and be
19 sworn. Thank you. Right there.

20 THE DEPUTY CLERK OF COURT: Place your left
21 hand here and raise your right hand.

22 (The oath is administered by the Deputy Clerk
23 of Court, and the witness answers as follows:)

24 THE WITNESS: Yes, ma'am.

25 THE DEPUTY CLERK OF COURT: Please have a seat

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1 and state your full name. Spell your last name for the
2 record.

3 THE WITNESS: Keisha Holmes. Last name
4 H-o-l-m-e-s.

5 KEISHA HOLMES,
6 having been first duly sworn by the Deputy Clerk of
7 Court to tell the truth, the whole truth, and nothing
8 but the truth, was examined and testified upon her oath
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. KIDD:

12 Q Good afternoon, Keisha. I appreciate you being
13 here. I'm sorry it's dragged on so long.

14 Can you tell the Judge where you're currently
15 employed?

16 A Nightingale Nursing Attendants.

17 Q Okay. What about in October of 2011, where
18 were you employed?

19 A Exxon.

20 Q At Exxon.

21 Okay. Is that the one on Rivers and McMillan?

22 A Yes, sir.

23 Q Okay. I'm not sure if you remember this.

24 MR. KIDD: May I approach, Judge?

25 THE COURT: You may.

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1 Q (By Mr. Kidd) I'm going to show you a disc
2 that has been marked as State's Exhibit Number 2. And
3 I'm not sure if you remember, but when we were -- had
4 trial last year, do you remember me showing the contents
5 of that disc?

6 A Yes, sir.

7 Q And did you initial that disc?

8 A Yes, sir.

9 Q Okay. And you dated it as well?

10 A Yes, sir.

11 Q Okay. And what is the disc a copy of?

12 A It was when I got robbed and was held at
13 gunpoint.

14 Q Okay. Thank you. Now, when you got -- when
15 you got robbed and were held at gunpoint, what were you
16 doing at that time of the robbery?

17 A Before he came in, I was on the phone.

18 Q You were on the phone. Were you kind of at the
19 register?

20 A Yes, sir.

21 Q And after he robbed you -- we'll watch the disc
22 in a minute -- but after he robbed you, did you call the
23 police?

24 A Yes, sir.

25 Q And did the police come down to the station and

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1 talk to you?

2 A Yes, sir.

3 Q At some point, did you go with one of the
4 officers to view a suspect that they had detained?

5 A Yes, sir.

6 MR. KIDD: And may I approach the witness, your
7 Honor?

8 THE COURT: You may.

9 Q (By Mr. Kidd) I'm going to show you what has
10 been marked as State's Exhibit Number 1. Do you
11 recognize --

12 (Document is shown to Mr. Grimes.)

13 (Document is handed to the witness.)

14 Q (By Mr. Kidd) Do you recognize this document?

15 A Yes, sir.

16 Q And what is that?

17 A My statement.

18 Q And that's a form that was given to you by the
19 police officer who took you out there?

20 A Yes, sir.

21 MR. KIDD: Okay. And at this time, I'd like to
22 admit State's Exhibit Number 1 for purposes of this
23 hearing.

24 THE COURT: Mr. Grimes, any objection?

25 MR. GRIMES: No, your Honor.

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1 THE COURT: Thank you.

2 (State's Exhibit Number 1 is admitted into
3 evidence.)

4 Q (By Mr. Kidd) And what -- what was your
5 statement that you gave to the police on this form?

6 A I stated that I was a certain percentage sure
7 that that was the right person.

8 Q And what percentage was that?

9 A Eighty.

10 Q You were 80 percent sure that was him?

11 A Yes, sir.

12 Q And that was -- where were you when you -- when
13 you had the opportunity to view the Defendant?

14 A Spruill Avenue.

15 Q Spruill Avenue. Were you inside a police car?

16 A Yes, sir.

17 Q Back seat, or front seat?

18 A Front.

19 Q In the front seat. Where was the Defendant?

20 A Inside the church parking lot.

21 Q Was he standing outside?

22 A Yes, sir.

23 Q Were there police next to him?

24 A Yes, sir.

25 Q Do you remember if he was in handcuffs?

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1 A He was.

2 Q He was. So was he standing next to a police
3 car?

4 A Yes, sir.

5 Q Okay. Were there other police officers around?

6 A No, sir.

7 Q Okay. And did they shine a light on him so you
8 could get a better look at him?

9 A Yes, sir.

10 Q Was he wearing the same clothes when he
11 committed the robbery? Do you recall?

12 A I don't recall.

13 MR. KIDD: Okay. May I approach the witness,
14 Judge?

15 THE COURT: You may.

16 (State's Exhibit Number 4 is marked for
17 identification.)

18 Q (By Mr. Kidd) I'll show what's been marked
19 as State's Exhibit Number 4. Do you recognize that
20 photograph?

21 A Yes, sir.

22 Q Is that how the Defendant looked on the night
23 you were given the opportunity to identify him?

24 A Yes, sir.

25 MR. KIDD: Your Honor, at this time, the State

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1 would offer to move State's Exhibit Number 4 into
2 evidence for purposes of this hearing.

3 THE COURT: Any objection?

4 MR. GRIMES: No, your Honor.

5 THE COURT: All right. Thank you.

6 (State's Exhibit Number 4 is admitted into
7 evidence.)

8 Q (By Mr. Kidd) At this time, Keisha, I want to
9 play the video for you.

10 And this is State's Exhibit -- and I put it
11 back in the machine.

12 What was it? Three?

13 I apologize, Judge.

14 At this time, I'm going to offer to play
15 State's Exhibit Number 2.

16 And, Judge, if you can bear with me. This
17 program moves kind of choppy.

18 Is that you on the right-hand side of that
19 screen there?

20 A Yes, sir.

21 Q Like in a burgundy sweatshirt or jacket?

22 A Yes, sir.

23 MR. KIDD: I'm sorry, Judge. When I take the
24 CD out and back in, it kind of takes a while to get back
25 up to speed.

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1 Q (By Mr. Kidd) And who is that with you inside
2 the gas station?

3 A Tenille Wilson.

4 Q Tenille Wilson.

5 MR. KIDD: At this time, the State would offer
6 State's Exhibit 2 into evidence for purposes of this
7 hearing.

8 MR. GRIMES: No objection, your Honor.

9 THE COURT: All right. Thank you.

10 (State's Exhibit Number 2 is admitted into
11 evidence.)

12 Q (By Mr. Kidd) How was the lighting inside the
13 Exxon? Was it pretty bright and well-lit in there?

14 A Yes, sir.

15 Q And is that how you recall the robbery?

16 A Yes, sir.

17 Q About how far would you say the robber was from
18 you when he came in with the gun?

19 A Probably about two, three feet.

20 Q Two or three feet. So pretty close; right?

21 A Yes, sir.

22 Q And he had something sort of wrapped around his
23 head; is that right?

24 A Yes, sir. A shirt.

25 Q But was part of his face still showing?

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1 A Yes, sir.

2 Q Was there anything particular about his face

3 that you remember or stuck out to you?

4 A His eyebrows.

5 Q His eyebrows? And why is that?

6 A It's a pet peeve.

7 Q Just like a pet peeve of yours about guys?

8 A Yes, sir.

9 Q And was that something you noticed on him when

10 the police officers took you to identify him?

11 A Yes, sir.

12 Q And is -- that's one of the ways you were able

13 to make that 80 percent identification?

14 A Yes, sir.

15 Q How did you feel when this robbery was taking

16 place?

17 A Crazy.

18 Q It was crazy?

19 A (Moves head up and down.)

20 Q Were you frightened?

21 A Very.

22 MR. KIDD: Court's indulgence?

23 (Mr. Kidd speaks with Ms. Riddle off the

24 record.)

25 Q (By Mr. Kidd) And about how long from the time

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1 of this robbery until the officers took you out to I.D.
2 him; do you know about how much time had elapsed?

3 A Probably like 10, 15 minutes.

4 Q So it was pretty quickly?

5 A Uh-huh.

6 MR. KIDD: I have no further questions, your
7 Honor.

8 THE COURT: Mr. Grimes.

9 MR. GRIMES: Thank you, your Honor.

10 CROSS-EXAMINATION

11 BY MR. GRIMES:

12 Q Good afternoon, Ms. Holmes.

13 A Hello.

14 Q Do you remember calling the police after this
15 robbery?

16 A Yes, sir.

17 Q Can you describe the person -- do you remember
18 giving a description of the robber?

19 A Yes, sir.

20 Q What was that?

21 A Yes, sir.

22 Q You described him as being 5-7?

23 A Yes, sir.

24 Q And about weighing 130 pounds?

25 A Yes, sir.

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1 Q And being 23, 24 years old?
2 A Yes, sir.
3 Q And you're about 5-7; correct?
4 A Yes, sir.
5 Q And when you're on 911 tape, you didn't mention
6 anything about the eyebrow, did you?
7 A No, sir.
8 Q And do you remember talking with the responding
9 officers once they got to the Exxon?
10 A Yes, sir.
11 Q And you told them that you didn't get a good
12 look at the robber?
13 A I do not recall that.
14 Q This happened pretty fast?
15 A Yes, sir.
16 Q And then you said, when you got to -- after you
17 were transported to Spruill Avenue -- was this by the
18 Tabernacle Choir Church?
19 A Yes, sir.
20 Q And they had a suspect there?
21 A Yes, sir.
22 Q And that person was in handcuffs?
23 A Yes, sir.
24 Q And there's at least one officer there?
25 A Yes, sir.

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1 Q Was it more than one officer, or just one?
2 A No, just one.
3 Q Okay. Was that officer the K-9 -- or a dog
4 with him?
5 A I don't remember. I didn't see any.
6 Q You described the suspect as wearing a light
7 shirt?
8 A You're saying "white" or "light"?
9 Q Light.
10 A Yes, sir.
11 Q And blue jean pants?
12 A I recall, yeah.
13 Q And had a shirt covering his face?
14 A Yes, sir.
15 Q And you said you were 80 percent sure that the
16 person they showed you was the person that robbed you?
17 A Yes, sir.
18 Q And that occurred about 10, 15 minutes -- the
19 identification when they brought you to Spruill Avenue
20 occurred about 10, 15 minutes after the robbery?
21 A Yes, sir.
22 Q And who brought you there; do you recall?
23 A No, sir.
24 MR. GRIMES: Could I have one moment, your
25 Honor?

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1 THE COURT: (Moves head up and down.)

2 (Mr. Grimes speaks with Ms. Ehrlich off the
3 record.).

4 Q (By Mr. Grimes) Do you remember if the robber
5 had a bag?

6 A At the scene, there was a bag.

7 Q When the person was robbing your store, do you
8 remember if they had a bag there?

9 A No, I didn't see a bag.

10 Q Okay. And can you remember what kind of -- the
11 person who robbed you at the store, if he was wearing
12 sneakers or what kind of the footwear he had on?

13 A No, sir.

14 Q Do you know if that person had a Sprite with
15 him?

16 A If what?

17 Q The person who robbed your store, when they
18 were robbing you, if they had a Sprite with them?

19 A Nope.

20 MR. GRIMES: Thank you.

21 MR. KIDD: I have no further questions of this
22 witness, Judge.

23 THE COURT: All right. You may step down.

24 Thank you.

25 Call your next witness.

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1 MR. KIDD: Thank you, Keisha.

2 Deputy Chief Deckard.

3 THE DEPUTY CLERK OF COURT: Please place your
4 left here and raise your right hand.

5 (The oath is administered by the Deputy Clerk
6 of Court, and the witness answers as follows:)

7 THE WITNESS: Yes, ma'am.

8 THE DEPUTY CLERK OF COURT: Please have a seat
9 and state your full name. Spell your last name for the
10 record.

11 THE WITNESS: Yes. Thomas Deckard,
12 D-e-c-k-a-r-d.

13 MR. KIDD: Thank you, your Honor.

14 THOMAS DECKARD,

15 having been first duly sworn by the Deputy Clerk of
16 Court to tell the truth, the whole truth, and nothing
17 but the truth, was examined and testified upon his oath
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. KIDD:

21 Q Good afternoon, Deputy Chief Deckard. Is that
22 right?

23 A Yes. Good afternoon.

24 Q Do you remember becoming involved in the
25 investigation of the Exxon on Rivers and McMillan back

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1 in 2011?

2 A Yes, I do.

3 Q Do you recall transporting Keisha Holmes to do
4 a -- showup identification of the Defendant?

5 A Yes, I do.

6 MR. KIDD: May I approach the witness, your
7 Honor?

8 THE COURT: You may.

9 Q (By Mr. Kidd) I'm going to show you what's
10 been marked and admitted as State's Exhibit Number 1.
11 Do you recognize that document?

12 A Yes, I do.

13 Q And what is that?

14 A It's our report of showup identification form.

15 Q Are there certain advisements, procedural
16 safeguards in that form that you would have advised
17 Ms. Holmes of?

18 A Yes, there are.

19 Q And are her initials by each one of those
20 advisements?

21 A Yes, they are.

22 Q And did you -- you, personally, went over each
23 of those with her?

24 A Yes, I did.

25 Q Can you read those -- through those to the

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1 Court real quickly?

2 A Other than the top, which has the case number,
3 the date, time, location, investigating officer,
4 identifying witness, which has her name and date of
5 birth, the key points in this document are the, I guess,
6 instructions for her, which, number one, is I'm going to
7 show you the person who may or may not have committed
8 the crime. It is just as important to clear innocent
9 people as it is to identify possible suspects. Whether
10 or not you identify someone, the police will continue to
11 investigate;

12 And, number two, after you are done, I will not
13 be able to provide you with any feedback or comment on
14 the results of the process;

15 Number three, do not discuss this
16 identification procedure or results with other witnesses
17 in this case;

18 Number four, focus on the event, the place,
19 view, lighting, your frame of mind, et cetera. Take as
20 much time as you need;

21 Number five, people may not appear exactly as
22 they did at the time of the event because features such
23 as the clothing style may change, even in a short period
24 of time;

25 And, number six, as you look at this person,

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1 tell me if you recognize him or her. If you do, please
2 tell me how you know the person, and in your own words
3 how sure you are of the identification.

4 Q Okay. So you read each of those to her, and
5 she initialed by each line --

6 A Yes.

7 Q -- is that correct?

8 And you picked her up from the Exxon?

9 A Yes. That's where I responded.

10 Q And were you in a marked cruiser or --

11 A I was in an unmarked cruiser.

12 Q An unmarked cruiser.

13 And where did she sit?

14 A She sat in the passenger seat.

15 Q In the passenger seat.

16 And then where did you -- you took her over to
17 the -- to the parking lot of the Greater Tabernacle
18 Church on Spruill Avenue?

19 A Yes.

20 Q And that's where the suspect was detained?

21 A That's where he was detained, yes.

22 Q Do you recall if he was in handcuffs at the
23 time?

24 A If I recall correctly, he was in handcuffs at
25 the rear of the police cruiser.

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1 Q Okay. And did you shine a light on him or
2 something for her to be able to get a good look at him,
3 or just use the lights on the car?

4 A Just my headlights.

5 Q Just your headlights.

6 So you pointed the car at them so the
7 headlights illuminating them?

8 A That's correct.

9 Q And at that point, Keisha was given the
10 opportunity to view him and make her identification?

11 A Yes.

12 Q And that's the identification which she
13 handwrote in on the form you have in front of you?

14 A Yes.

15 Q And that's her handwriting; is that correct?

16 A Yes.

17 Q Did you tell her anything about the suspect
18 that was detained while you were en route to the Greater
19 Tabernacle Church from the Exxon gas station?

20 A Not that I recall, no.

21 Q So you wouldn't have told her about any of the
22 items that he was found with on his person or the money
23 in his pocket or anything like that?

24 A No.

25 Q And do you recall if your radio was on in

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1 the car? Would she have been able to overhear
2 transmissions?

3 A I don't recall, but typically as -- as a point
4 of business, I turn it off because of that reason. I
5 don't want anything to affect her identification.

6 Q Because that could potentially taint her
7 ability to make a reliable identification?

8 A Well, if there's any radio traffic, even it may
9 not be related to the case at hand, she may be focused
10 on that instead of what we're there for.

11 Q Gotcha. Do you recall how long it took her to
12 make that identification?

13 A No, I don't.

14 Q Do you recall how much time had elapsed from
15 that initial callout until you were on scene with Keisha
16 identifying the suspect -- Ms. Holmes? Excuse me.

17 A I don't recall exactly. I want to say between
18 45 minutes and an hour from the time of the incident
19 until the time I arrived on the scene.

20 Q Okay. And when you arrived on the scene, you
21 picked her up and went straight to the Tabernacle
22 Church. Is that pretty accurate?

23 A I got the phone call from the dispatcher,
24 arrived at the scene, and talked to the officers that
25 were out there investigating it. I got the brief

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1 information on what had occurred and then explained the
2 form to her and took her to the church.

3 Q Okay. And would there have been a problem if
4 she was unable to identify?

5 A Would there have been a problem --

6 Q I mean, were you -- I mean -- sorry. I didn't
7 phrase that question very well.

8 You didn't encourage her in any way to make
9 this identification, did you?

10 A No, sir.

11 Q Okay.

12 A She identified him at 80 percent. I mean,
13 that's not 100 percent identification.

14 Q Right.

15 A It's not 50 percent.

16 Q And I guess what I was saying, if she had said,
17 I'm just not sure if that's him, what would you have
18 done?

19 A Then it would have been indicated on the form.

20 Q Okay.

21 A Just like the 80 percent was.

22 MR. KIDD: Court's indulgence?

23 THE COURT: Take your time.

24 Q (By Mr. Kidd) And the suspect that she
25 identified, that's Defendant Kashaun Banks; is that

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1 correct?

2 A Yes.

3 Q Had you provided her with any information about
4 how the suspect had become detained?

5 A No. And I was not aware of that information
6 until I arrived at the Exxon station.

7 Q And is that something y'all do on purpose?

8 A It -- I did. I did. I wanted to know as
9 little as possible about it. That way there's no
10 question about what I could or could not say to her.

11 Q And is that so you don't accidentally influence
12 her identification?

13 A I don't want anything to influence her
14 identification. I want it to be on what she observed at
15 the time of the incident and have an objective viewpoint
16 of the individual that we have stopped.

17 MR. KIDD: I have no further questions.

18 THE COURT: Mr. Grimes?

19 MR. GRIMES: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. GRIMES:

22 Q Good afternoon, Deputy Chief.

23 A Good afternoon.

24 Q I guess the last time we talked was the first
25 trial of the case; is that fair to say?

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1 A I'm sorry?

2 Q I guess the last time we ran across each other
3 was in the first trial of this case?

4 A Pertaining to this case, yes.

5 Q And I think back then you were a captain?

6 A Yes.

7 Q Lieutenant Hill [sic], congratulations on your
8 promotion.

9 A Thank you.

10 Q You're welcome.

11 Are you familiar with North Charleston's
12 policies on the show of identifications?

13 A Yes, sir.

14 Q And what would your role have been in this
15 case?

16 A My role would have been the -- the showup
17 officer, reporting officer of identification, I believe.
18 I'm not sure how it's worded in our policy.

19 Q If I give you a copy of that policy, would that
20 refresh your memory?

21 A Yes, it would.

22 MR. GRIMES: I may have one that's -- I'm
23 sorry. May I approach the court reporter, your Honor?

24 THE COURT: You may. You have continuing
25 permission.

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1 (Defendant's Exhibit Number 3 is marked for
2 identification.)

3 Q (By Mr. Grimes) Hand you Defendant's Exhibit 3
4 for identification. Is it fair to say that's a copy of
5 the North Charleston policy on identifications?

6 A Yes, it is.

7 Q I guess in Paragraph 4, that's the definition
8 section?

9 A Correct.

10 Q That's kind of what I was asking. Where would
11 you, sort of, fit in there in the definition section?

12 A The administering officer.

13 Q And as an administering officer, you would read
14 the witness sort of the advisements before you take her
15 out to the -- before you take the witness out to make
16 identification?

17 A That's correct.

18 Q And then you would drive the witness out to
19 showup at the location?

20 A That's correct.

21 Q Did you prepare any reports in this case?

22 A No supplement reports. The only written
23 reports I have are the showup identification report.

24 Q Sort of jointly prepared by you and Ms. Holmes?

25 A Correct.

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1 Q And you didn't document any reasons why there
2 was a -- an apparent reason to do a showup versus
3 another form of identification?

4 A No, I didn't.

5 Q And under your policies, if a suspect whose --
6 a showup at the location, they shouldn't be handcuffed;
7 correct?

8 A According to policy, when it's permissible or
9 not permissible, but reasonable to do so, the person
10 being detained, it's recommended that they not be in
11 handcuffs.

12 Q And it's also recommended in the policies, a
13 suspect who's going to be presented should be removed
14 from any police vehicles; correct?

15 A That's correct.

16 Q And it is encouraged that that identification
17 process be recorded, under the policies; correct?

18 A When possible. I would encourage it.

19 Q And you say you were in a -- was it an off-duty
20 car, or a -- I mean, a personal car, or was it --

21 A No. It was --

22 Q What kind of vehicle did you have again?

23 A It was a police car.

24 Q Did it have a camera in it, or --

25 A No, it did not.

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1 Q Any other type of recording device?

2 A No, it did not.

3 Q Did you have any type of audio equipment
4 yourself, such as a tape recorder?

5 A I think I had a cell phone that could have
6 recorded it, but I did not record it.

7 Q Okay. And do you know what the compelling
8 reason in this case was for using the showup
9 identification versus a photographic array?

10 A We wanted to make sure that the person that was
11 detained, it was -- you know, there was probable cause
12 to believe that he was the same person in the store. So
13 we did showup identification based on his close
14 proximity of the crime where he was caught and where the
15 crime occurred.

16 Q Were you aware -- before the showup
17 identification, were you aware that that police officer,
18 I think, Officer McAlhaney had found a BB gun and gloves
19 in the situation and that was used in the robbery and
20 the bag that Mr. Banks had?

21 A During the investigation, I became aware of
22 that. I can't tell you what point in time that I knew
23 that a -- that a gun and gloves and bag had been
24 recovered.

25 Q Well, that would be proximate cause to arrest

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1 him regardless of that identification; correct?

2 A Correct.

3 Q So then you wouldn't need to do a showup
4 identification to establish proximate cause, would you?

5 A Not necessarily.

6 MR. GRIMES: Thank you.

7 Can I have one moment, your Honor?

8 THE COURT: Take all the time you need,

9 Mr. Grimes.

10 (Mr. Grimes speaks with Ms. Ehrlich off the
11 record.)

12 Q (By Mr. Grimes) I want to ask you a couple of
13 final questions.

14 Now, I think under your policies, one that --
15 paragraph B, subparagraph 4, on page 2, one of the
16 factors used in, I guess, the showup identification is
17 the accuracy of the description of the suspect made by
18 the witness prior to the showup. Does that sound
19 accurate?

20 A Under paragraph 4?

21 Q Yes, sir.

22 A Can you repeat the sentence?

23 Q Under subsection 4C?

24 A 4C?

25 Q The accuracy of the descriptions of the suspect

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1 made by the witness prior to the showup?

2 A Okay.

3 Q So I think Ms. Holmes testified she called 911,
4 described the suspect as being 5-7, about 130 pounds,
5 and 23, 24 years old.

6 A If that's what she called our dispatchers and
7 relayed to them, then that's what she relayed to them.
8 I did not have that information. I received my
9 information by telephone calls from the dispatcher and
10 the supervisor that was on scene.

11 Q All right. And Mr. Banks, he's not 23, is he?

12 A I don't know.

13 Q You found out he was 17 at the time?

14 A I may have become aware during the
15 investigation, but I don't know.

16 Q It's fair to say he's not 5-7?

17 A Again, sir, I don't know.

18 MR. GRIMES: Stand up.

19 Q (By Mr. Grimes) How tall do you think
20 Mr. Banks is?

21 A Probably 5-9, 5-10.

22 Q How much do you think he weighs?

23 A I don't know. 160, 170.

24 Q Certainly not 130 pounds?

25 A (No response.)

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1 Q And the clothes are different too; correct?

2 A What clothes, sir?

3 Q The clothes that the robber wore versus the
4 clothes that Mr. Banks was wearing at the time of the
5 showup?

6 A I can't recall what clothes he wore at the time
7 of the showup. Like I said, I wasn't provided the
8 intricate details of the description. I responded and
9 found out that an individual was found in the area where
10 a robbery had occurred. That's about all I knew about
11 the description other than the fact that the
12 individual's -- lower half of his face was covered.

13 Q Quite frankly, there were no intricate details
14 of a description, were there? It was a basic
15 description of a black male; 5-7; 23, 24 years old;
16 weighed about 130 pounds?

17 A I don't believe I can answer that because I did
18 not receive the initial radio transmissions or the
19 telephone call from the clerk.

20 Q I know that. I'm just asking. But, I mean,
21 knowing what you know now, there is no intricate
22 description of the suspect, is there?

23 A In the report, it's -- it's -- it provides the
24 same information that you mentioned. And that's what I
25 have to go by, is what the officers provide in their

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1 reports and what they -- what they say over the radio.
2 In this case, I didn't have any of the radio
3 transmissions. I had information that an individual was
4 caught in the area and was stopped and detained --

5 Q I guess what I'm asking --

6 A -- and was a suspect in this crime.

7 Q I guess what I'm asking, using hindsight, we
8 know the description given at the time Ms. Holmes was
9 robbed, when she called 911, talked to initial
10 responding officers versus what Mr. Banks really is, is
11 much different; correct?

12 A If it's different, it's different. I
13 don't -- I don't think I can still answer that question
14 reliably. I do know that if -- if somebody's running
15 from the area of police activity where a robbery just
16 occurred, that individual has the chance of being
17 retained regardless of the description. And that's
18 just in my experience.

19 Q And what evidence do you have that he was
20 running?

21 A Other than what the report said -- I reviewed
22 the report, and that's the information that was provided
23 to me on the scene: That the individual was caught in
24 the area after the armed robbery had occurred.

25 Q And when that information was provided to you,

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1 where was Ms. Holmes at?

2 A I don't know where she was. I know I got the
3 initial information from the watch commander on the
4 scene and other officers on scene outside of the
5 business. And when I asked where the victim of the
6 robbery was, they were inside the business.

7 Q And also McAlhaney -- it's about -- at the time
8 of the showup, Mister -- Officer McAlhaney's about five
9 feet away from Mr. Banks?

10 A I would say that's fair to say.

11 Q And there was another officer standing either
12 beside or behind Mister -- Officer McAlhaney?

13 A As I recall, there was.

14 Q But you don't recall whether that officer was a
15 k-9 unit officer or someone else?

16 A No, I don't.

17 Q Okay. You and Ms. Holmes made identification
18 when she was about 20 or 30 feet away from Mr. Banks?

19 A Yes.

20 Q And she said she was about 80 percent sure?

21 A Yes.

22 Q And as you're aware, Ms. Wilson, the other
23 witness, could make no identification?

24 A I'm sorry?

25 Q The other clerk could make no identification,

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1 could she?

2 A My only involvement was to take Ms. Holmes to
3 the showup identification and take her statement. I'm
4 not sure what the other witnesses did at the time.

5 Q But you were the highest ranking officer out
6 there at the time; correct?

7 A I was the highest ranking officer, but I was
8 not the investigating officer. What I did, I turned
9 over to another officer.

10 Q Who was that; Sergeant Hill, or someone else?

11 A Most likely it was Sergeant Hill.

12 MR. GRIMES: Thank you, your Honor. May I have
13 just one moment?

14 THE COURT: Yes, sir.

15 MR. GRIMES: Thank you.

16 (Mr. Grimes speaks with Ms. Ehrlich off the
17 record.)

18 MR. GRIMES: Thank you, your Honor. I have no
19 further questions.

20 THE COURT: Thank you.

21 Mr. Kidd?

22 MR. KIDD: I have nothing further.

23 THE COURT: You may step down.

24 Call your next witness.

25 MR. KIDD: Your Honor, that's all the witnesses

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1 we have for the Biggers hearing.

2 THE COURT: All right. Do you have any
3 witnesses, Mr. Grimes?

4 MR. GRIMES: May I have just one moment, your
5 Honor?

6 THE COURT: Take all the time you need.

7 MR. GRIMES: We'd like a brief recall of
8 Mr. Banks.

9 THE COURT: One more time?

10 MR. GRIMES: We'd briefly like to recall
11 Mr. Banks.

12 THE COURT: All right. Mr. Banks.

13 I remind you that you're still under oath.

14 FURTHER RECROSS-EXAMINATION

15 BY MR. GRIMES:

16 Q Mr. Banks, in October of 2011, how tall were
17 you?

18 A I was six foot.

19 Q And how much did you weigh?

20 A 165.

21 MR. GRIMES: All right. Thank you. Please
22 answer any questions Mr. Kidd would have for you.

23 MR. KIDD: I have no questions.

24 THE COURT: All right.

25 All right. You may step down. Thank you.

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1 Anything else, Mr. Grimes?

2 MR. GRIMES: No, your Honor.

3 THE COURT: Anything further, Mr. Kidd?

4 MR. KIDD: Nothing further.

5 I was just preparing to argue, I guess, since
6 the burden is on me.

7 THE COURT: All right. Let me hear from you.

8 MR. KIDD: Thank you, your Honor.

9 As we know, showup identifications are
10 disfavored. They are inherently suggested by their
11 nature, which is why the burden shifts to me to prove by
12 clear and convincing evidence that the identification
13 was reliable. And we look to the five Neil v. Biggers
14 factors, a lot of which I didn't harp on a lot of
15 details, mainly because we have a video which shows the
16 exact opportunity which the witness had to view the
17 Defendant.

18 It was a short period of time, but as she
19 testified, it was only a couple of feet away. She was
20 scared. That heightened her senses and can heighten her
21 attention to detail. She specifically remembers a
22 certain characteristic about his face: His eyebrows.
23 She said: It's a pet peeve of mine; it's something I
24 noticed. And then when I was taken back to the scene, I
25 saw it again. She was very honest. She was about 80

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1 percent sure that that's him.

2 The length of time was short, within an hour.
3 I mean, there was some discrepancies against how long.
4 She said 15, 20 minutes. He said 45 minutes to an hour.
5 It's probably closer to 45 minutes to an hour based on
6 some of the CAD reports. But that's still a short
7 period of time from the execution of the robbery until
8 she had an opportunity to view the suspect. He was
9 close by in the area. Granted he was in handcuffs, but
10 I don't think that issue alone is dispositive or leads
11 to the suppression of the identification.

12 Judge, I think that, you know, with the amount
13 of time that had gone by, her attention to detail, the
14 well-lit opportunity to view the suspect, her honest
15 identification of an 80 percent indicates the
16 reliability of her identification. The fact
17 that Deputy Chief Deckard testified that, you know, he
18 didn't give her any, you know, information that would
19 lead her to identify him or falsely identify him. With
20 all those factors being taken into consideration, I
21 believe that her identification is reliable, and it's
22 sufficient to overcome the suggestive nature of the
23 showup identification.

24 THE COURT: Does 80 percent get us there,
25 Mr. Kidd?

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1 MR. KIDD: Yes, your Honor, it does. And I
2 think at that point, that's for the jury. You know,
3 that is her -- she's 80 percent sure, and that's just
4 her being honest and her being reliable. I don't know
5 if the 80 percent actually goes to her reliability as
6 much as that goes to the weight of her identification.
7 I think her reliability is -- I know it's very, kind of,
8 closely intertwined. But I think her reliability is --
9 all has to do with, you know, her opportunity to view
10 him and any sort of, you know, improper influence that
11 might have been -- could have rubbed off on her. I
12 think as far as her saying that she's 80 percent sure, I
13 mean, I don't think every identification has to be 100
14 percent in order to make it to a jury. And at that
15 point, the 80 percent identification becomes a jury
16 question.

17 THE COURT: All right. Mr. Grimes?

18 MR. GRIMES: Thank you, your Honor. May it
19 please the Court?

20 Ms. Holmes did have an opportunity to view,
21 first, the robber, and it was very poor opportunity.
22 The person came in with a shirt over his face, and she
23 was able to see his eyebrows. She claimed she might be
24 able to give some description of the color of his eyes,
25 which she could not.

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1 And I think we need to look at the video. It's
2 a very short time frame that she had the opportunity to
3 view the person who was obviously obstructed by the
4 shirt. You have what appears to be a real gun being
5 pointed in your face, someone yelling, cursing for the
6 money, and that's simply just not going to be focusing
7 on the person. That shows in her testimony when she
8 describe -- described the person who robbed her as being
9 5-7; 23, 24 years old; and 130 pounds, which is nowhere
10 close to Kashaun's description; and that shows the
11 accuracy of the description of the suspect made prior to
12 the witness to -- for showups is way off.

13 And then you have the 80 percent. I think that
14 speaks for itself.

15 And the time frame, an hour is probably pushing
16 it a little bit. Probably be in the range of when
17 showup can be done. I think what's also more important,
18 when they do bring out the showup, why just have them
19 show up with two officers standing by Kashaun in front
20 of a police car? That's suggests enough. Then they
21 have him in handcuffs. Makes it even more suggestive.
22 Basically saying, Yeah, this is person. He's under
23 arrest. That's why he's in handcuffs.

24 And then they have no compelling reason to do a
25 showup identification. They certainly at that time have

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1 probable cause to arrest Kashaun. I mean, it serves --
2 the trial itself shows from the last time, even though
3 we had the statement suppressed and the I.D. suppressed,
4 it was still a hung jury. There's still a lot of
5 evidence out there against Kashaun regardless of this.
6 So that shows it did have probable -- they didn't need
7 to do a showup for identification to probable cause as
8 Chief Deputy Deckard testified.

9 And he's supposed to do, you know, some type of
10 paperwork basically showing why they do this, what the
11 need is. And all they did was just fill out basically
12 the standard form, even in advisements, and having
13 Ms. Holmes fill out the rest. I don't think they
14 complied with their own policies, which itself is not
15 dispositive. It shows, you know -- there's a reason to
16 have policies, and it's not going -- basically, if the
17 Captain is not going to follow the policies, you can't
18 expect the rank to follow them.

19 So when you look at the totality of the
20 circumstances, I believe it suggests it was -- the
21 showup was unduly suggestive and is unreliable, and it
22 should be suppressed.

23 Thank you.

24 THE COURT: Anything further, Mr. Kidd?

25 MR. KIDD: Just very briefly, Judge.

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1 I think the only instance in which suppression
2 is appropriate is when it creates a substantial
3 likelihood of irreparable misidentification. And I
4 don't think there's anything on the record which
5 indicates that she was influenced that way.
6 Furthermore, I think the case law in State v.
7 Mansfield, you know, shows that, you know, the closer in
8 time and place of the detaining to the -- to the crime
9 scene, the less objectionable a showup lineup is -- I
10 mean, a showup procedure is, and that it can still -- it
11 is still proper even in instances when the defendant is
12 in handcuffs or in the presence of the police, which is
13 what we have here. I just -- I think the case law is on
14 point, and I think that just because the internal
15 policies and procedures of North Charleston Police
16 Department might not have been followed to a "T,"
17 that that doesn't have any bearing on the admissibility
18 of the identification.

19 THE COURT: All right. What other motions do
20 we need to address?

21 MR. KIDD: The final motion, I believe, would
22 be Mr. Grimes' Motion to Suppress based on an illegal
23 arrest. I think that won't last very -- it would be
24 very brief.

25 THE COURT: All right. Let me hear from you,

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1 Mr. Grimes. Just tell me what I'm looking for.

2 MR. GRIMES: Whether Officer McAlhaney had
3 probable cause to detain Kashaun on this night and
4 whether he had a probable cause to search his book bag.

5 THE COURT: All right. Can you get this done
6 in ten minutes?

7 MR. KIDD: We can, your Honor.

8 THE COURT: All right.

9 MR. KIDD: State calls Officer McAlhaney.

10 THE DEPUTY CLERK OF COURT: Please raise your
11 right hand.

12 (The oath is administered by the Courtroom
13 Deputy Clerk, and the witness answers as follows:)

14 THE WITNESS: I do.

15 THE DEPUTY CLERK OF COURT: Please have a seat
16 and state your name, spelling your last name for the
17 record.

18 THE WITNESS: Name is Greg McAlhaney,
19 M-c-A-l-h-a-n-e-y.

20 THE COURT: Mr. Kidd.

21 MR. KIDD: Thank you, your Honor.

22 GREG McALHANEY,
23 having been first duly sworn by the Deputy Clerk of
24 Court to tell the truth, the whole truth, and nothing
25 but the truth, was examined and testified upon his oath

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1 as follows:

2 DIRECT EXAMINATION

3 BY MR. KIDD:

4 Q Good afternoon, Officer McAlhaney.

5 A Good afternoon.

6 Q I appreciate you being here. We'll go through
7 pretty quickly.

8 Do you remember taking custody of Kashaun Banks
9 back in October, 2011?

10 A I do.

11 Q And what were you doing at the time that you
12 took him into custody?

13 A I was actually set up on outer perimeter.

14 Q So this -- I'm sorry. I didn't mean to
15 interrupt. So this is something that -- like you set up
16 a perimeter based on the call that an armed robbery had
17 taken place; is that correct?

18 A Correct.

19 Q Where did you set yourself up?

20 A It was at 3775 Spruill Avenue.

21 Q Is that the Greater Tabernacle Church?

22 A Yes, it was.

23 Q So you parked there?

24 A I was parked next door to that.

25 Q Parking next door?

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1 Were you in your cruiser?

2 A I was.

3 Q Windows up or down?

4 A Down.

5 Q What happened next?

6 A I had the car cut off, had the windows down so
7 I could hear possible dogs barking or just anything that
8 would be of my interest in reference to the fleeing
9 defendant or suspect. And at the time, I heard a gate
10 rattle, which was the fence behind the Greater Joy
11 Tabernacle. It was a metal fence along with a wooden
12 fence. So I started looking that way. I proceeded over
13 there. And as soon as I got over there, I saw the
14 Defendant running from behind the building. I then
15 stopped the car and got out. He ran back the direction
16 that he -- I saw him coming initially. I ran to the
17 front of the building to try to head him off, cut him
18 off; and when I got to that area, I saw him on the
19 sidewalk walking.

20 Q So did he ever notice you?

21 A He did.

22 Q And did he run when he noticed you?

23 A Yeah. As soon as I came pulling up in the
24 driveway in the Greater Joy Tabernacle, he stopped and
25 turned around and fled to behind the building.

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1 Q And did you see him jump the fence?

2 A I did not.

3 Q But you kind of heard him jump the fence?

4 A I heard him. That's the reason I went to that
5 location.

6 Q Okay. And then did you have the description of
7 the suspect at this time?

8 A I did. The description I had, I believe, at
9 the time prior to that was a revised description. There
10 were several descriptions kind of given out initially
11 until the videotape was reviewed by one officer. And
12 the description I was given was a black male, 15 to 20
13 years of age, with a possible light-colored shirt and
14 pants, and at the time, he had a shirt over his face,
15 covering his face.

16 Q And from a timing standpoint, this is, you
17 know, approximately 18 minutes after the robbery; is
18 that right?

19 A I believe so.

20 Q And after you saw him run, did you -- you
21 caught up with him?

22 A I actually -- he turned around as soon as he
23 saw me and ran back. So I figured he's going to not
24 jump the fence again, but -- it's a very high fence --
25 but he was going to run to the other side of the

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1 building. I was going to try to cut him off. By the
2 time I got to that location, he was already on the
3 sidewalk.

4 Q Okay. You made contact with him there?

5 A I did.

6 Q And what did you do?

7 A He was not wearing any shoes, and he was out of
8 breath. I made contact with him, placed my hand on his
9 chest. He was breathing really hard. He had a backpack
10 on -- a black backpack. I had my hand on that
11 because it was an armed robbery supposedly. I felt a --
12 what felt like a pistol inside the backpack.

13 Q So you kind of did a Terry pat?

14 A I did.

15 Q And that's searching -- like patting someone
16 down to make sure they don't have any weapons, for your
17 own safety?

18 A Correct.

19 Q And while you conducted that Terry frisk or
20 Terry pat, did you discover anything?

21 A I did. I felt what felt like a pistol grip
22 inside the backpack along with a -- you know, felt like
23 a barrel. I asked him what was in there, and he said it
24 was a BB gun.

25 Q And at that point, did you detain him?

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1 A I did.

2 Q Did you look inside the backpack?

3 A I did.

4 Q And what was inside the backpack?

5 A It was a -- I believe a Pumpmaster .177 Caliber

6 pellet pistol.

7 Q And you placed him under arrest at that time?

8 A Yes. He was detained.

9 Q And did you also see the -- some gloves inside

10 that backpack?

11 A Yes, there were some gloves inside the

12 backpack.

13 Q Did you end up going into -- looking into

14 Mr. Banks' pockets at that point?

15 A I did.

16 Q And did you find some money in his pockets?

17 A Yes.

18 Q Was there a lot of sort of small denomination

19 bills?

20 A Yes.

21 Q And a lot of change?

22 A Yes.

23 Q And at that point, there was probable cause to

24 search him under your opinion --

25 A Yes.

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1 Q -- once you discovered that, you know, you had
2 someone fleeing from the scene in an area of an armed
3 robbery with a gun and gloves in his backpack?

4 A Correct. And the gun matched the description
5 that was given.

6 MR. KIDD: No further questions for
7 Officer McAlhaney.

8 MR. GRIMES: May it please the Court?

9 THE COURT: Yes, sir.

10 MR. GRIMES: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MR. GRIMES:

13 Q Good afternoon, Officer.

14 A Good afternoon.

15 Q Officer McAlhaney.

16 I wanted -- first, I want to ask you about the
17 revised description. When did that come out?

18 A I don't know the exact times. There was a
19 description given out as I was actually en route to the
20 Exxon. I was not the initial officer on scene. There
21 was, I believe, a few officers that were on scene prior
22 to my arrival in the area.

23 Q How long before you saw Mr. Banks did you
24 receive the revised description?

25 A I would say a few minutes prior to me parking

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1 in that location where I was at possibly. I'm not --
2 don't have the timeline in front of me.

3 Q Understand that.

4 And who did you get that description from?

5 A It was either Officer Gorman or Sergeant Hill
6 at the time. That was after the tape had been reviewed.

7 Q I want to ask you a few questions, kind of, I
8 guess, about the layout of this area. It's my
9 understanding that you have sort of the Exxon and then
10 next to it you have McDonald's; is that correct?

11 A Correct.

12 Q On the other side of Exxon, you have the
13 Stayover Lodge?

14 A Correct.

15 Q And if you go through -- past Stayover Lodge,
16 you get to the main entrance -- what used to be
17 St. Charles Place?

18 A Correct. You have to go past -- there's a mini
19 mall in between Stayover and St. Charles Place.

20 Q A little strip mall?

21 A Yes.

22 Q And if you keep going, there's a -- a credit
23 union, I think, at the intersection?

24 A Correct. There's a bank on the corner.

25 Q And then across the street from there is a

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1 couple of lounges?

2 A There's one, I believe, that was still active
3 at the time.

4 Q \$3 Lounge?

5 A It's a --

6 Q Or was it Bossez (phonetic)?

7 A No. It's changed its name recently. I can't
8 recall what the name of it is.

9 Q Okay.

10 A But they weren't -- I don't believe they were
11 open at the time of this incident.

12 Q Weren't open on a Saturday night?

13 A I don't recall.

14 Q Okay. And St. Charles is sort of a gated
15 community; correct?

16 A It is.

17 Q And they have sort of metal fences in the front
18 part of it and along Rivers Avenue; correct?

19 A Yeah. The metal square pole-type fence.

20 Q The top is kind of like little -- what we call
21 a spear edge to it?

22 A Correct.

23 Q Do you know if there are -- you seen any holes
24 in that part of the area, around the McDonald's area,
25 those gates?

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1 A At the time of the incident, or now?

2 Q At the time of the incident.

3 A I don't recall.

4 Q Would it be -- would it be easy to put a hole
5 in one of those gates?

6 A Not necessarily with the gates that they have
7 up there now. I don't recall what they had at the time.
8 They've done some improvement to that location, and I
9 can't determine the actual timeline with all the
10 construction that's been going on in the past few years.

11 Q All right. But the -- they still have wood
12 fence and then metal?

13 A A chain link fence directly behind a wood
14 fence.

15 Q And then they have the Greater Tabernacle
16 Choir?

17 A That's the church, right? Greater -- Greater
18 Joy Tabernacle?

19 Q And then I think Ronald McNair School?

20 A I believe that's the name of it. I think they
21 call it the new Chicora (phonetic) -- or Cherokee
22 Elementary now.

23 Q Okay. And so is it your testimony that
24 Mr. Banks jumped the fence, or did he come through that
25 Spruill Avenue gate?

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1 A I heard the chain link fence, like somebody was
2 shaking it, that caught my attention. It's quite common
3 when somebody jumps a fence to make that chain link
4 fence rattle. And that's why I proceeded over there.

5 Q But do you know if he maybe tried to jump the
6 fence and couldn't, and then went through that gate that
7 sort of surpasses Spruill Avenue?

8 A I don't believe so. It was directly behind the
9 church, and there was no gate directly behind the
10 church.

11 Q Has that been improved on, or do you know?

12 A I'm sorry?

13 Q Do you know if the new owners put a gate back
14 there or --

15 A I just don't know.

16 Q Would it surprise you if there's a camera in
17 there, right behind the gate?

18 A I don't know. They've done a lot of
19 construction this past year to the whole area, as far as
20 St. Charles Place.

21 Q Now, how far down -- Mr. Banks, assuming he
22 jumped the fence and came behind the church, I guess,
23 how far down did he make it before he gets turned
24 around?

25 A He made it to the back corner -- or the back

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1 right corner of the building, and I was directly where
2 the driveway was where I was coming. So I was coming
3 straight at him as he rounded the building.

4 Q And you were in the driveway of the Tabernacle
5 Choir, or Church?

6 A Yes. Uh-huh.

7 Q He never got past that?

8 A He got to the side of the building. That's
9 when he turned and fled to the back.

10 Q And what -- and how did he -- did he match the
11 description of the robber that you had received?

12 A He did. As a black male, 15 to 20 years of
13 age.

14 Q And behind that school, there's Horizon
15 Apartments?

16 A It's Horizon Village, yes.

17 Q And would any black male, 15 to 20, match the
18 description?

19 A Well, we were in the area looking for
20 anybody that would -- matched the description along with
21 being suspicious enough to flee from us.

22 Q Okay. And people may flee from the police for
23 a variety of reasons?

24 A Correct.

25 Q May be on trespass notice or may have a little

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1 marijuana on them or something?

2 A Correct.

3 Q And so I guess you saw someone come from the
4 church, and then you started to approach them?

5 A I actually was proceeding over there due to
6 hearing someone jumping the fence.

7 Q Okay. And I'm not sure if you sped up when you
8 saw the person or --

9 A I was going quickly to that location to see if
10 someone had jumped the fence. So as soon as I got
11 there, he was rounding the corner, the back of the
12 building.

13 Q And then, I guess, you said he kind of ran away
14 from you and came out around the back --

15 A Correct.

16 Q -- to the sidewalk?

17 A Correct.

18 Q And that's where you stopped him at?

19 A Right.

20 Q And then you said you sort of put your hand on
21 his chest and felt his heart beating?

22 A Yes, correct.

23 Q And then you put, I guess, your hand on the
24 bag?

25 A He was wearing a backpack.

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1 Q Backpack. When you put your hand on the bag,
2 you kind of grabbed to see what was in there?

3 A I did, to see if there was a weapon or anything
4 that I could feel that was a weapon.

5 Q And when you're feeling it, you're kind of
6 moving your hand around to -- making sure it was a
7 weapon as opposed to something else?

8 A It was pretty quick, instantaneous. As soon as
9 I grabbed the bag, I could feel something that felt hard
10 and a pistol-grip style shape.

11 Q I mean, you want to make sure it wasn't a
12 pistol as opposed to a wrench?

13 A I had my hand just kind of on the backpack and
14 the whole shape of the object had the pistol grip-style
15 shape, and then it was long and hard for -- it matched
16 the shape and felt -- feeling of a pistol.

17 Q Okay. Then you asked him --

18 At this point, was he free to go?

19 A I asked him what was in his backpack.

20 Q But when you grabbed him and you touched his
21 heartbeat, touching his heart, feeling his bag, could he
22 have just walked away at that point?

23 A It felt like a weapon, so no.

24 Q So he was under your detention?

25 A He was being detained.

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1 Q Did you read him his Miranda -- advise him of
2 the Miranda Rights?

3 A Not at that time.

4 Q And then you asked him what was in the bag?

5 A I did.

6 Q And he told you the BB gun?

7 A Correct.

8 MR. GRIMES: May I have one moment, your Honor?

9 THE COURT: (Moves head up and down.)

10 (Mr. Grimes speaks with Ms. Ehrlich off the
11 record.)

12 MR. GRIMES: We have no further questions, your
13 Honor.

14 MR. KIDD: Just briefly, Judge. May I approach
15 the witness?

16 THE COURT: You may.

17 **REDIRECT EXAMINATION**

18 **BY MR. KIDD:**

19 Q I'm going to show you what has been marked
20 State's Exhibit 5 for identification. I'm sorry, the
21 lighting is not great on that. Do you recognize that
22 photograph?

23 A I do.

24 Q I really just offer that to you -- well, first,
25 what does that depict?

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1 A It depicts a black backpack and a -- I mean, a
2 red and white glove. It was two gloves.

3 Q And were those the backpack and gloves you're
4 talking about that were recovered from the Defendant?

5 A Correct.

6 Q I offer that to you because I wanted to talk
7 about the backpack a little bit. We're not talking
8 about like a thick backpack, are we? And I wish I had
9 it in the courtroom. I don't have it with me right this
10 second.

11 A This was not a very big thick backpack.

12 Q Kind of one of those backpacks they give away
13 like maybe if you were to run the Bridge Run or
14 something? It's like a thin -- almost like -- not mesh,
15 but almost like nylon material, I guess, with a rope
16 through it?

17 A Correct.

18 Q So it's not like a school backpack? Like a
19 Jansport, it's not one of those; right?

20 A Right. It wasn't a thick material-type of
21 backpack.

22 Q Very thin, almost like nylon mesh material?

23 A Correct.

24 Q It wasn't like you had to feel very much to
25 feel the gun inside that backpack, is all I'm getting

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1 at?

2 A Correct.

3 MR. KIDD: Thank you, Judge. I have no further
4 questions, other than to admit State's Exhibit Number 5
5 into evidence for the purposes of this hearing.

6 THE COURT: Mr. Grimes?

7 MR. GRIMES: No further questions, your Honor.

8 (State's Exhibit Number 5 is admitted into
9 evidence.)

10 THE COURT: You may step down. Call your next
11 witness.

12 MR. KIDD: That's all we have.

13 THE COURT: Mr. Grimes, do you have any
14 witnesses?

15 MR. GRIMES: No, your Honor.

16 THE COURT: Argument.

17 MR. KIDD: Judge, according to
18 Officer McAlhaney's testimony, he was setting up a
19 perimeter for an armed robbery, suspect was heard
20 jumping a fence, when suspect saw Officer McAlhaney, he
21 fled. I think this is the same exact sort of suspicious
22 behavior which led to Terry stop case law. He then
23 conducts a Terry pat for his own safety, discovers the
24 firearm. At that point, has probable cause to search
25 and/or detain the Defendant which led to the -- the

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1 discovery of the money, the gun, the gloves, and all the
2 other evidence in this case.

3 THE COURT: Mr. Grimes?

4 MR. GRIMES: Thank you, your Honor.

5 We don't believe that Officer McAlhaney had
6 probable cause to stop Mr. Banks. He had a description
7 of a black male, 15 to 20 years old, wearing a
8 light-colored shirt and pants. That could fit any
9 number of people in that part of town. And there's
10 nothing distinctive about that description that would
11 give him a reason to stop Mr. Banks. And the courts
12 have found that flight alone is not a reason to stop
13 somebody. So the fact that he sees a police officer
14 coming quickly at him, 17 years old, you have every
15 reason to walk away, run away. And we don't believe
16 Officer McAlhaney had any reason for probable cause to
17 stop him. Based upon the sort of general description
18 and Mr. Banks' right to walk away, run away from the
19 police officers, who, for all he knows, are approaching
20 him for no reason.

21 Thank you, your Honor.

22 MR. KIDD: I have nothing further.

23 THE COURT: Are those all the motions?

24 MR. KIDD: They are, Judge.

25 THE COURT: All right. Are those all your

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1 pretrial motions?

2 MR. GRIMES: Yes, your Honor.

3 THE COURT: All right. I'm going to take the
4 last two matters under advisement; 9:15 for my ruling.

5 Y'all have a great evening.

6 Good luck to you, Mr. Banks. I'll see you in
7 the morning.

8 Thank you.

9 MR. GRIMES: At what time did you say, your
10 Honor?

11 THE COURT: 9:15.

12 (The jury trial recessed at 5:25 p.m. on
13 April 22, 2013, to reconvene tomorrow, April 23, 2013, at
14 9:15 a.m.)

15 (End of Volume I of IV.)

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REPORTER'S CERTIFICATE

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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) GENERAL SESSIONS COURT
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) Case No.: 2011-GS-10-08069
KASHAUN CHRISTIAN BANKS,)
Defendant.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME II OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON APRIL 23, 2013

ROLAYNE M. VOLPE, CCR, RPR
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EXHIBITS

(Some exhibits were premarked for identification.)

DESCRIPTION	I.D.	ADMITTED
<u>State's Exhibits:</u>		
No. 2 Video -- Exxon		231
No. 5 Photo	269	269
No. 6 Photo Form	269	269
No. 7 Photo	269	269
No. 12 Photo	256	256
No. 13 Backpack	263	263
No. 14 BB Gun	264	264
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No. 17 CAD Report	271	
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EXHIBITS

DESCRIPTION	I.D.	ADMITTED
<u>Defendant's Exhibits:</u>		
No. 1 Photo		238
No. 2 Photo		238
No. 3 Photo		238
No. 4 Photo		238
No. 5 Photo		238
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1 The above-styled cause came on for hearing on
2 the 23rd day of April, 2013, at 9:19 a.m., before Judge
3 Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Charleston, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY TRIAL

9 (The Defendant is present in the courtroom with
10 his counsel.)

11 THE COURT: Mr. Kidd, are you ready?

12 MR. KIDD: Yes, ma'am, we're ready.

13 THE COURT: To issue my rulings? And we'll
14 have just a few minutes.

15 Mr. Grimes, are you ready?

16 MR. GRIMES: Yes, ma'am.

17 THE COURT: Just to make sure I rule on
18 everything, we're just ruling on the -- the only thing
19 left is the identification and the Motion to Suppress
20 the evidence as to the product of an illegal arrest; is
21 that correct?

22 MR. GRIMES: Yes, ma'am.

23 THE COURT: Are there any other motions or
24 matters pending?

25 MR. GRIMES: No, ma'am.

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1 THE COURT: Is that your understanding,
2 Mr. Kidd?

3 MR. KIDD: Yes, ma'am.

4 THE COURT: Mr. Banks is arguing that Keisha
5 Holmes' eyewitness identification of the Defendant
6 should be suppressed on the grounds that it violates
7 Mr. Banks' right under the Fourteenth Amendment because
8 it is unduly suggestive and unreliable. An in-court
9 identification of an accused is inadmissible if it's
10 suggestive out-of-court identification procedure created
11 a very substantial likelihood of irreparable
12 misidentification.

13 Our United States Supreme Court has developed
14 the two-prong inquiry, which both of you articulated
15 yesterday, to determine the admissibility of the
16 out-of-court identification. I must ascertain whether
17 the process was unduly suggestive. And then, if so,
18 must decide whether the out-of-court identification was
19 nevertheless so reliable that no substantial likelihood
20 of misidentification existed.

21 If the procedure was suggestive, only then
22 should I consider the second question, whether there is
23 a substantial likelihood of irreparable
24 misidentification.

25 One-on-one show-ups have been sharply

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1 criticized in our case law and are inherently
2 suggestive. However, the identification need not be
3 excluded as long as under all of the circumstances the
4 identification was reliable notwithstanding any
5 suggestive procedure. The inquiry that I must conduct
6 must focus on whether the -- under the totality of the
7 circumstances, there was a substantial likelihood of
8 irreparable misidentification.

9 People -- person show-ups, again, are
10 disfavored because they are suggestive by their very
11 nature. An identification may be reliable under the
12 totality of the circumstances even when a suggestive
13 procedure such as a show-up has been used.

14 Based upon the totality of the circumstances --

15 And I considered that the witness could not
16 recall, when she went to the scene, if he was wearing
17 the same clothes -- the situation that when she was
18 taken to the scene, it was night, the police shone a
19 light in the suspect's face while he was handcuffed
20 outside of the police car, he was the only individual
21 that was not in police uniform.

22 Based upon the totality of those circumstances,
23 I find that the show-up was unduly suggestive.

24 Next, I must find and decide whether the
25 out-of-court identification was nevertheless so reliable

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1 that no substantial likelihood of misidentification
2 existed. I must consider several of the following --
3 must consider the following factors: The opportunity
4 for the witness to view Mr. Banks at the time of the
5 crime. She indicated it was a very short time that she
6 was able to see him. His face was covered.

7 The witness's degree of attention. She
8 indicated that she was very frightened, and she was
9 feeling crazy.

10 The accuracy of the witness' prior description
11 of the criminal at the level of certainty demonstrated
12 by the witness at the time of the confrontation. She
13 indicated she was 80 percent certain that it was the
14 Defendant.

15 The amount of time between the crime and the
16 confrontation. It was, according to her testimony, 15
17 to 20 minutes; according to police testimony, closer to
18 an hour.

19 Based upon the totality of the circumstances,
20 the witness' testimony here in court yesterday, I do not
21 find that the identification was so reliable that there
22 was substantial likelihood of misidentification existed.
23 Again, the suspect's face was partially covered during
24 the robbery; he was handcuffed; he was the only
25 nonpolice officer at the scene.

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1 There were several discrepancies with what the
2 victim told the dispatcher regarding height and the
3 clothing and the suspect with the individual at the
4 show-up.

5 Based upon these findings, I grant the
6 Defendant's Motion to Suppress the witness
7 identification.

8 Note your exception to my ruling, Mr. Kidd.

9 MR. KIDD: Thank you, your Honor.

10 THE COURT: In ruling on the Defendant's Motion
11 to Suppress the evidence as to product of an illegal
12 arrest -- and this is -- Mr. Grimes, you're requesting
13 that I suppress the book bag and all the contents and
14 the items on the Defendant's person; is that correct?

15 MR. GRIMES: Yes, your Honor.

16 THE COURT: The argument was that Officer
17 McAlhaney did not have reasonable suspicion to stop
18 Mr. Banks, and Mr. Banks was detained and then searched
19 without probable cause, in violation of his Rights under
20 the Fourth and Fourteenth Amendment and Article 1,
21 Section 10 of our Constitution.

22 I deny the Defendant's Motion to Suppress. An
23 investigative detention is constitutional if supported
24 by a reasonable and articulable suspicion that if the
25 person seized is engaged in criminal activity. I must

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1 look to the accumulative information available to that
2 officer and not find a stop unjustified based on
3 piecemeal reputation of each individual fact and
4 inference. Just as one corner of the picture may not
5 reveal the picture, subject, or nature, each component
6 of the picture contributes to reasonable suspicion might
7 not alone give rise to reasonable suspicion.
8 In this case, the detention was in close proximity to
9 the armed robbery approximately 15 to 20 minutes. The
10 officer heard the gate, the fence rattle, the chain
11 link, ran to the front of the church building to cut him
12 off, and saw a young, black male with a light-colored
13 shirt on the sidewalk.

14 Officer McAlhaney stated that Mr. Banks ran
15 when he first noticed him. And based on the
16 accumulative information based on Officer McAlhaney, I
17 find that he did have reasonable articulable suspicion
18 that Mr. Banks was engaged in criminal activity. Based
19 upon the information that Officer McAlhaney had at the
20 time, it was a black male between 15 to 20 years of age.

21 The Defendant also argues that the State lacked
22 probable cause to then conduct a search of the
23 Defendant's property. I find that Officer McAlhaney's
24 conduct did not exceed the constitutional and
25 permissible scope of the pat-down search as explained in

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1 . Terry. He felt the outside of the nylon material
2 backpack and felt the heavy object that could be a
3 weapon. When he asked what was in the bag, Mr. Banks
4 said it was a BB gun. At that point, Mr. Banks was
5 detained and then later Mirandized.

6 Again, note your exception to my ruling,
7 Mr. Grimes.

8 With those rulings, is there anything you need
9 before we bring in the jury? From the State?

10 MR. KIDD: Nothing from the State, your Honor.

11 MR. GRIMES: Nothing from the Defendant, your
12 Honor.

13 THE COURT: All right.

14 Ms. Wiley, Juror Number 229, has been selected
15 as the foreperson.

16 Mr. Kidd, or Mr. Grimes, are you requesting the
17 Motion for Sequestration?

18 MR. KIDD: Not -- no, from us, Judge.

19 MR. GRIMES: No, ma'am.

20 THE COURT: All right.

21 Anything before we bring in the jury, Mr. Kidd?

22 MR. KIDD: No, ma'am.

23 MR. GRIMES: No, ma'am.

24 THE COURT: All right. Let's bring in the
25 jury.

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1 (The jury is escorted into the courtroom
2 at 9:34 a.m.)

3 THE COURT: Thank you. Please be seated.

4 Good morning, ladies and gentlemen. You may
5 have noticed when you came in this morning, and may
6 noticed when you left yesterday afternoon, the
7 attorneys, the parties involved in this case, the
8 members of the audience will be standing until all 14 of
9 you are seated. That is out of respect for your new
10 position as judges of the facts. So please come in,
11 have a seat, and we will -- because everybody will
12 remain standing.

13 Ladies and gentlemen, you have been given
14 notepads, which means you may take notes throughout the
15 progress of this trial. One juror's notes are no more
16 correct or accurate than another juror's notes. Ladies
17 and gentlemen, those notes are for your use. You will
18 be allowed to take those notes back with you during your
19 deliberations. We will collect the notes during lunch,
20 and at the end of the day lock those up and then return
21 those back to you after the break.

22 Ladies and gentlemen, I must now administer to
23 you the oath.

24 Madam Clerk.

25 THE DEPUTY CLERK OF COURT: Please have the

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1 Defendant stand.

2 Mrs. Foreman, ladies and gentlemen of the jury,
3 please stand so you can be sworn. Please raise your
4 right hand.

5 (The oath is administered by the Deputy Clerk
6 of Court, and the jurors answer as follows:)

7 THE JURORS (in unison): I do.

8 THE DEPUTY CLERK OF COURT: If you have
9 accepted this oath, please be seated. If not, remain
10 standing.

11 THE COURT: Thank you, Madam Clerk.

12 Please let the record reflect that all 14
13 jurors received the oath.

14 Ladies and gentlemen of the jury, the case that
15 we are about to try is the case of the State versus
16 Kashaun Shed Christian Banks. Before we begin this
17 trial, I want to tell you that this trial probably will
18 be different from what you might expect. Most people
19 don't have the opportunity to come to court as you are
20 doing now. And most people think, from watching
21 television and reading books and watching movies, that
22 the courtroom is a place of high drama, intense action,
23 and riveting circumstances. While all of these things
24 may be true at times, please remember this trial is not
25 for entertainment. It is a fundamental part of our

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1 democracy. It is a search for the truth in an effort to
2 make sure that justice is done between the parties
3 before you here today.

4 Please remember searching for the truth and
5 making sure that justice is done is often slow,
6 deliberate, and repetitive, the opposite of what you may
7 have seen on television or in movies or read in books.
8 This courtroom is a place of honor. It is dedicated to
9 the protection and preservation of citizens' rights
10 through what many have called the greatest justice
11 system ever created.

12 The attorneys appearing before you are
13 advocates for the parties that they represent. But,
14 first and foremost, they are officers of this court.
15 They are sworn to uphold the integrity and the fairness
16 of our judicial system. You should expect them to be
17 professional, competent, and ethical in the
18 representation of their client's interest. Remember
19 that you have just taken an oath to try this case, and
20 you are also expected to be professional, reasonable,
21 and ethical.

22 Thank you again for accepting this most
23 important responsibility of jury service and for your
24 contribution here today to our justice system.

25 What I now say is intended to serve as an

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1 introduction to this trial of this case. These remarks
2 are not a charge of the law in this case. I will
3 instruct you on the law throughout the trial and at the
4 close of the trial before you retire to consider your
5 verdict.

6 Ladies and gentlemen, I just wanted to take an
7 opportunity to explain the procedures so that you will
8 understand what is happening before you here today.

9 The Defendant is charged by an Indictment filed
10 in this court with the crime of armed robbery, the
11 elements of which will be explained to you later. The
12 Indictment is simply the charge by which this case is
13 brought into this court. It is not in any sense
14 evidence in the allegations it contains. The Defendant
15 has pled not guilty to this Indictment. The State has
16 the burden of proving each of the elements of the
17 Indictment beyond a reasonable doubt. It is your duty,
18 ladies and gentlemen, to decide whether the State has
19 met its burden. Your purpose as jurors is to find and
20 determine the facts.

21 You are the sole judges of the facts in this
22 case. If at any time I make any comment regarding the
23 facts in this case, you must disregard my comment. You
24 are to determine the facts from the testimony you hear
25 from the witness stand and any other evidence that is

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1 introduced in court. If the -- if the evidence is
2 admitted into evidence, it will go back with you during
3 your deliberations. It is up to you to properly
4 determine the inferences which you feel may be properly
5 drawn from the evidence. It is important that you
6 determine and perform your -- the -- the duty of
7 determining the facts diligently and conscientiously
8 because ordinarily there is no way to correct an
9 erroneous determination of the facts by a jury.

10 On the other hand, and with equal emphasis, the
11 same law that makes you judges of the facts makes me the
12 judge of the law. The law as given by this Court is the
13 only law that you may consider. You must accept it and
14 follow it even though you may disagree with it. I
15 cannot tell you what I think the facts are, and you
16 cannot disagree with me about what the law is or what
17 the law ought to be. Your job is to take the law as I
18 give it to you, apply it to the facts as you find it,
19 from the testimony of the witnesses, as well as any
20 other exhibits that may be introduced throughout this
21 trial. After doing that, you will render your verdict,
22 a true and just verdict, under the solemn oath that you
23 just took as jurors.

24 Until I advise you to begin your deliberations,
25 please remember you may not discuss this case with

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1 anyone. That includes your fellow jurors, your friends,
2 your family members, or anyone else. Please remember,
3 as I indicated to you, discussions include face-to-face
4 discussions, but they also include any electronic
5 discussions.

6 Does everyone remember the admonishment and
7 instructions I gave yesterday?

8 THE JURORS (in unison): Yes.

9 THE COURT: Was there any juror who was unable
10 to comply with my instructions? If so, please stand.

11 Thank you. There were none.

12 Please remember during the trial, you may not
13 read, watch, listen to any news accounts in any form
14 regarding this case, should there be any. You may not
15 do any independent investigation regarding this matter.
16 It is important that you keep an open mind in this case
17 and not decide any issue until all of the evidence has
18 been presented, the parties have made their closing
19 arguments, and I have instructed you on the law
20 applicable to this case.

21 It is your solemn responsibility to determine
22 the guilt or innocence of the Defendant, and your
23 verdict must be based solely on the evidence as it is
24 presented to you in this trial and on the law I instruct
25 you throughout the trial and at close of the trial.

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1 In just a moment, the solicitor will make what
2 is called an opening statement. In that opening
3 statement, the solicitor will explain to you the issues
4 in this case or at least what the solicitor thinks the
5 issues are. The attorney for the Defendant may also
6 make an opening statement, although, he is not required
7 to do so.

8 Please remember that what the attorneys tell
9 you during their opening statements and in their closing
10 argument is not evidence in this case; it is only their
11 contention as to what the issues are. The evidence in
12 this case will be presented to you from the testimony of
13 sworn witnesses from the witness stand, as well as any
14 exhibits that may be introduced into evidence. From
15 time to time, you may hear one of the attorneys say:
16 Your Honor, we have a matter of law. May we approach
17 the bench? Or I might find it necessary to excuse you
18 from the courtroom for a short while.

19 If I have the attorneys come to the bench,
20 please do not try to read our lips or overhear us. It's
21 not that we're trying to hide anything from you. It's
22 simply, sometimes it is necessary for me to make a
23 comment on the facts in order for me to rule on the law.
24 And as I indicated to you, the law does not allow me to
25 have an opinion about the facts of this case. So I may

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1 excuse you for a short while in order for me to issue my
2 ruling.

3 Ladies and gentlemen, in determining what the
4 true facts are, you must decide whether or not the
5 testimony you hear is believable. It is my
6 responsibility to rule as a matter of law whether
7 certain testimony is admitted, but once the testimony is
8 admitted, whether or not you believe it is solely for
9 you to determine. In deciding whether to believe a
10 witness, you have the right to consider the interest of
11 the witness, the bias of the witness, the prejudice of a
12 witness, the opportunity for that witness to have seen
13 the matters and things about which the witness may
14 testify, as well as the way the witness acts on the
15 witness stand. That means it's your duty to pay close
16 attention, to observe the witnesses, to listen to the
17 witnesses, to listen to the attorneys, and to listen to
18 the Court.

19 Please do not let your thoughts wander. Give
20 strict attention so at the end of all the testimony,
21 after closing arguments, and I have instructed you on
22 the law, you will be able to determine what the true
23 facts are, apply the law to those facts, and render a
24 true and just verdict.

25 Ms. Wiley, you have been selected as the

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1 foreperson in this case, and as such, you are the jury's
2 spokesperson. So if at any time, any of the other
3 members of the jury have any concerns or questions, if
4 you will please alert the bailiff, and they -- we will
5 take care of it promptly. You will also be responsible
6 for writing the verdict, but I will give you further
7 instructions regarding that matter during my charge on
8 the law.

9 Ladies and gentlemen, please give your strict
10 attention.

11 Ms. Riddle. Thank you.

12 MS. RIDDLE: Thank you, your Honor. May it
13 please the Court? Good morning.

14 JURY IN UNISON: Good morning.

15 OPENING STATEMENTS

16 MS. RIDDLE: Ladies and gentlemen, once again,
17 my name is Elizabeth Riddle. Culver Kidd and I are two
18 Assistant Solicitors for the Ninth Judicial Circuit, and
19 we serve Charleston County. I want to thank you for
20 serving as jurors today in this case. You've taken an
21 oath to render a true verdict, and all we ask is that
22 you be fair and unbiased and base your verdict on the
23 evidence.

24 Now, let me tell you a little bit about the
25 case. On October 15th, 2011, Ms. Keisha Holmes and

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1 Ms. Tenille Wilson left their homes to go to work. Just
2 like any other day, they said goodbye to their family,
3 and they went to work at the Exxon gas station and
4 convenient store. And that store is located at the
5 corner of Rivers Avenue and McMillan Avenue in North
6 Charleston, in Charleston County. Their shift was going
7 along as usual, when that man, Kashaun Banks, charged
8 into the store, pointing a gun at Keisha, yelling,
9 screaming at her, to give her [sic] the cash.

10 She did as she was told. She opened the
11 register, she handed the money and the cash tray, all
12 while staring down the barrel of a gun. And once the
13 Defendant had the money, he fled the store. Keisha did
14 what she should have done next, and she called the
15 police. And within minutes, North Charleston police
16 were on the scene. And from there, their investigation
17 began.

18 They set up a perimeter in the area, and they
19 called out a K-9 dog unit. You're going to hear
20 testimony from the officers on the scene, and you'll
21 hear testimony from the K-9 dog police officer. You'll
22 hear how he tracked the Defendant, and along that path
23 he found a pair of shoes and the hidden cash tray.

24 You're also going to hear testimony from the
25 officer who heard the Defendant jump a nearby fence and

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1 later took the Defendant into custody. Just 18 minutes
2 after Keisha called the police, the Defendant was in
3 custody. And when he was found, he had a backpack
4 containing gloves and a gun. You will see the gloves
5 and the gun on the Defendant, on the surveillance video
6 from the gas station.

7 I ask that you please use common sense, and
8 listen carefully to what the witnesses have to say
9 because the details in this case matter. We're focusing
10 on Kashaun Banks today. He is charged with armed
11 robbery. At the end of the trial, the Judge is going to
12 instruct you on the law of armed robbery, and you must
13 follow the law as she tells it to you, but let me just
14 give you an introduction.

15 The crime of armed robbery has several elements
16 the State must prove:

17 Number one, the Defendant took property from
18 the person in the presence of another person;

19 Number two, the Defendant carried the property
20 away intending to permanently deprive the owner and keep
21 it for his own use;

22 Number three, the taking and carrying away of
23 the property was done with force, threat, or
24 intimidation;

25 And, number four, the Defendant was armed with

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1 a deadly weapon, or the victim reasonably believed the
2 Defendant was armed with a deadly weapon.

3 Ladies and gentlemen, you know what armed
4 robbery is. When someone goes into a store or
5 restaurant with a gun and demands cash, that is armed
6 robbery. It is also armed robbery if the Defendant uses
7 a gun that you find has the appearance of a deadly
8 weapon, or it's believed to be a deadly weapon. And
9 that's important in this case. It's still armed robbery
10 even if it was unlikely that the gun could actually
11 kill. It's not a complicated crime, but the State must
12 prove these elements to you beyond a reasonable doubt.

13 And, again, the Judge is going to instruct you
14 on the law of reasonable doubt, but it -- beyond a
15 reasonable doubt does not mean beyond all doubt. If you
16 were able to know that Kashaun Banks committed this
17 crime beyond all doubt, you would not be a juror in this
18 case. You would be an eyewitness; you would be
19 testifying. Beyond a reasonable doubt means that you
20 must be firmly convinced that the Defendant,
21 Kashaun Banks, committed this crime. And the State is
22 going to prove that Kashaun Banks committed this crime
23 by presenting evidence.

24 And let me just explain the different types of
25 evidence. There's direct evidence and circumstantial

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1 evidence. Direct evidence is based on actual knowledge
2 and personal observation. A witness testifying about
3 something that she observed is direct evidence. There's
4 also circumstantial evidence. That's based on inference
5 or deduction. For example, if you go to bed at night
6 and the ground on your driveway is dry, but when you
7 wake up in the morning your driveway is all wet, then
8 you can infer that it rained overnight. The wet
9 driveway is circumstantial evidence that it rained.

10 The State is allowed to use both types of
11 evidence. And the law is, in this way, each crime of
12 evidence is the same and neither type is better than the
13 other.

14 Ladies and gentlemen, the evidence in this case
15 is clear-cut. You will see the robbery occur on the
16 surveillance video, you will hear from witnesses who
17 were there when the robbery occurred, and you will hear
18 from the officers who participated in the investigation.
19 You will see the gun and the gloves that were found on
20 Kashaun Banks when he was arrested.

21 Again, please pay attention to what the
22 witnesses say. You've been selected as jurors in this
23 case because you have a special role. You must carry
24 out justice, and you must not fail. You have no one to
25 reward in this case. You're here to determine the

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1 truth. And the truth is that Kashaun Banks is guilty of
2 armed robbery.

3 THE COURT: Mr. Grimes.

4 MR. GRIMES: Thank you, your Honor. May it
5 please the Court?

6 THE COURT: Yes, sir.

7 MR. GRIMES: Good morning, ladies and gentlemen
8 of the jury.

9 THE JURORS (in unison): Good morning.

10 MR. GRIMES: How is everyone doing today?

11 THE JURORS (in unison): Good.

12 OPENING STATEMENTS

13 MR. GRIMES: This is a case of how the State
14 will try to railroad a 17 year old into a conviction of
15 armed robbery. You'll hear the evidence that in October
16 of 2011, Kashaun was only 17 years old. And it's just
17 not railroading any 17 year old, but it's one who has a
18 learning disability. And you will hear evidence that
19 Kashaun, because of his learning disability, struggles
20 to read. His reading level -- he reads on a
21 kindergarten or second-grade level. And the way they're
22 going to try to railroad Kashaun is by his interaction
23 with the police after his arrest. Something Ms. Riddle
24 did not really talk about so much.

25 After Officer McAlhaney, in the blue uniform

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1 back here, arrested Kashaun, he was taken down to the
2 North Charleston police station, and he was interviewed
3 by Lieutenant Hill. And they were in the interview
4 room, along with Detective Wapner (phonetic), for over
5 an hour, and there were various statements made about
6 what happened, about what Kashaun was doing that night.
7 And I imagine the State is going to use that evidence in
8 the trial, but they didn't mention it in their opening
9 statement; so I may just wait until closing to address
10 that in more detail.

11 But the one detail, if you do hear that, is
12 what does no mean? Does no mean no? If someone asked
13 police officers to interrogate somebody, and he says, Do
14 you have anything else you want to say? The person
15 says, No. Is that the way you invoke your right to
16 remain silent? Should the questioning be stopped at
17 that time, or does it continue?

18 The State may take the position that no doesn't
19 mean no. It's kind of ironic, because I think if you
20 had a criminal sexual conduct case, or a consent issue,
21 and the woman says, no, well, there, no is very clear.
22 No means no. But when you are trying to railroad
23 somebody and get a conviction, no can mean anything they
24 want.

25 And the other way someone can be railroaded is

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1 by confusion. That may just be unintentional. There's
2 no doubt someone went into the Exxon and robbed it. And
3 the victim to that robbery, in the front row here, saw
4 someone come in, shirt over their head, pointing what
5 appears to be a real gun, but they found to be a BB gun.
6 But if you're in that situation, you're thinking it's a
7 real gun, you're not trying to stop and ask and try to
8 check it out if it's a BB gun. If there was a real gun,
9 a person might shoot you for doing that. And it's very
10 scary, and it raised confusion.

11 And you have a bunch of officers who are
12 responding. At least 10, 12 officers, and they are
13 searching different parts of the area. You have Exxon,
14 and then you have McDonald's. And kind of go out that
15 area, you have the Home and Loans (phonetic), and you
16 keep going down Rivers Avenue, and you eventually come
17 to Horizon Apartments, or Horizon Village. If you go
18 down the other way, I believe it's McMillan, it's the
19 Naval Hospital, there's a -- there's Stayover Lodge,
20 which I think most officers would agree that's probably
21 not the best place to be. Probably a lot of drug crimes
22 there, along with other crimes. The strip mall. You
23 have a bank. That intersection, there's been a number
24 of shootings there. You have a couple of lounges across
25 the street from the bank. If you walk -- go down

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1 Spruill Avenue, you pass Great Tabernacle Choir, along
2 with Harris (phonetic) School, and then you get to
3 Horizon Villages.

4 So you have a bunch of officers out there
5 trying to secure a perimeter, trying to find a robber,
6 and you get various descriptions going out on the radio.
7 And Officer McAlhaney hears someone -- somebody jumping
8 the fence or coming through a hole in the fence or
9 perhaps going through a gate, and he goes and checks it
10 out, like any good officer would, and he sees Kashaun.
11 And he goes to him quickly. Well, if you're 17 years
12 old and you've got a police officer coming in quickly
13 for -- you don't know why -- you might run. That's what
14 Kashaun did, according to Officer McAlhaney.

15 And Officer McAlhaney caught him, and as
16 Ms. Riddle noted, found him with a book bag -- or sort
17 of carry a bag, I guess, and it had BB gun in there, and
18 it had the gloves. Obviously, very incriminating
19 evidence. But where -- that's where the assumptions
20 come in. Let's assume he has a bag, with a gun, with
21 the gloves. He fits the general description: a black
22 male, I guess the term will be 15 to 24, that is the
23 range is given; runs from police; he must be our man.

24 And you won't hear any evidence in a true
25 follow-up investigation. No DNA testing on the gloves.

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1 See the actual order. And my old boss used to say
2 something about: trust, but verify. Well, they got
3 these clues, trust your instincts, trust your judgment,
4 but go ahead and verify, investigate, and follow up on
5 this stuff. Make sure that you are -- you have the
6 right person, and that you're not sending an innocent,
7 17 year old, only son to his mother, to jail. We're
8 asking you today to stop the railroad, to find Kashaun
9 innocent. Thank you.

10 THE COURT: Call your first witness.

11 MR. KIDD: State calls Tenille Wilson.

12 DEPUTY CLERK OF COURT: Please place your left
13 hand here and raise your right hand.

14 (The oath is administered by the Deputy Clerk
15 of Court, and the witness answers as follows:)

16 THE WITNESS: Yes, I do.

17 DEPUTY CLERK OF COURT: Please have a seat.
18 State your full name, spelling your last name for the
19 record.

20 MR. KIDD: Court's indulgence for one moment,
21 please?

22 THE COURT: Please state your full name for the
23 record and spell your last name for me.

24 THE WITNESS: My name is Tenille Wilson.
25 Wilson, W-i-l-s-o-n.

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1 THE COURT: Thank you.

2 TENILLE WILSON,

3 having been first duly sworn by the Deputy Clerk of
4 Court to tell the truth, the whole truth, and nothing
5 but the truth, was examined and testified upon her oath
6 as follows:

7 DIRECT EXAMINATION

8 BY MR. KIDD:

9 Q Good morning, Ms. Wilson.

10 A Good morning.

11 Q Can you tell the jury where you were employed
12 on October 15th, 2011.

13 A The Exxon on McMillan and Rivers.

14 Q Do you still work there?

15 A Yes.

16 Q Can you tell the jury how -- what happened that
17 day?

18 A Well, it was going good to, like, around
19 -- around 9:55, I went to the bathroom. And on my way
20 coming back from the bathroom, the young man came in
21 with a gun, talking about, give him the money out of the
22 register. And I just told Keisha to give him the money,
23 because I didn't want nothing to happen.

24 Q When he came in, was he using a low voice or
25 was he --

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1 A No. He was yelling with a high voice.

2 Q Was he loud?

3 A Yes.

4 Q How did it make you feel?

5 A Scared.

6 Q Did you feel like you had any choice but to
7 give him the money?

8 A I didn't have no choice but to give it to him.

9 Q Have you had an opportunity to see the video of
10 that robbery?

11 A Yes.

12 MR. KIDD: May I approach, Judge?

13 THE COURT: You may.

14 Q (By Mr. Kidd) Now -- and I didn't have you
15 initial this one, but I'm going to show you State's
16 Exhibit Number 2. If I played that for you, would you
17 remember the robbery and how it took place?

18 A Uh-huh.

19 MR. KIDD: Your Honor, at this time, we'd like
20 to enter State's Exhibit Number 2 into evidence.

21 THE COURT: Any objection?

22 MR. GRIMES: No, your Honor.

23 THE COURT: State's 2 into evidence without
24 objection.

25 (State's Exhibit Number 2 is admitted into

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1 evidence.)

2 Q (By Mr. Kidd) Okay. Ms. Wilson -- Ms. Wilson,
3 do you recognize who that is on the screen right there?

4 A Uh-huh.

5 Q Who is that?

6 A That's Keisha.

7 MR. KIDD: I apologize.

8 (Mr. Kidd is trying to get the video to play.)

9 (The video is played.)

10 MR. KIDD: I'm sorry, your Honor. For some
11 reason, the screen is freezing.

12 Let me try it one more time.

13 (The video is played.)

14 Q (By Mr. Kidd) Unfortunately, that might be
15 about as good as we can get it to play right now. Is
16 that how you recall the robbery taking place?

17 A Uh-huh.

18 THE COURT: Is that a yes?

19 THE WITNESS: Yes.

20 THE COURT: Thank you.

21 Q (By Mr. Kidd) And that's you in the screen
22 there; is that correct?

23 A Yes.

24 Q What did you pick up off the floor as the
25 robber fled?

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1 A It was a \$50 bill that I give back to Keisha to
2 add to her drawer count.

3 Q So that had fallen out of the register as he
4 was fleeing?

5 A Uh-huh.

6 THE COURT: Is that a yes?

7 THE WITNESS: Yes.

8 THE COURT: Thank you.

9 Q (By Mr. Kidd) Now, I want to ask you a couple
10 of questions about how Exxon keeps money in the cash
11 register drawer.

12 A Okay.

13 Q How much money do you normally keep in the
14 drawer?

15 A How much money I normally keep in my drawer?

16 Q Uh-huh.

17 A I probably keep, like, maybe -- maybe \$50 in
18 there.

19 Q Do you have -- does Exxon have a policy about
20 when you dump the drawer, or when you take -- like, as
21 people buy things, you take in more money; right?

22 A Uh-huh.

23 Q And so, eventually, as the dollar amount in the
24 drawer increases, is there some policy that tells you to
25 take the cash out of the drawer?

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1 A Uh-huh. We have to drop it.

2 Q You have to drop it?

3 A Uh-huh.

4 Q And when do you have to drop the money from the
5 drawer?

6 A We have to drop every drop at \$200, or less.

7 Q Okay. So every time you have at least \$200 --
8 or \$200 or more in the drawer, you've got to drop it in
9 the safe?

10 A Uh-huh.

11 Q So at any given time, you're going to have less
12 than \$200 in your drawer?

13 A Uh-huh.

14 Q Is that fair to say?

15 A Uh-huh.

16 THE COURT: Is that a yes?

17 THE WITNESS: Yes.

18 THE COURT: Thank you.

19 Q (By Mr. Kidd) And \$50 fell out of the register
20 as he was --

21 A Uh-huh.

22 Q -- fleeing; is that correct?

23 A Uh-huh.

24 Q And were you able to get a good look at his
25 face when he came into the store that night?

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1 A Well, he had his face covered. I couldn't see
2 the top of it.

3 Q So he had --

4 A The bottom part covered.

5 Q Okay. And you were kind of behind him when he
6 came in; is that right?

7 A Yes.

8 Q And after this robbery took place, what did
9 y'all do?

10 A I told Keisha to call the police.

11 Q And did she do that?

12 A Yes.

13 Q And did the police respond?

14 A Yes.

15 Q And did you tell them exactly what happened?

16 A Uh-huh. Yes.

17 Q And you still work in that same Exxon; is that
18 right?

19 A Yes.

20 Q Have you been robbed since then?

21 A No.

22 Q And this was about two years ago, roughly?

23 A Yes.

24 Q Year and a half?

25 A (Moves head up and down.)

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1 MR. KIDD: Thank you so much, Ms. Tenille. I
2 have no further questions.

3 THE COURT: Mr. Grimes.

4 MR. GRIMES: Thank you, your Honor. May it
5 please the Court?

6 CROSS-EXAMINATION

7 BY MR. GRIMES:

8 Q Good morning, Ms. Wilson.

9 A Good morning.

10 Q How are you doing today?

11 A I'm fine.

12 Q I just want to ask you a few questions about
13 the Exxon. How it's kind of laid out.

14 A Okay.

15 Q In the general area.

16 First, I want to show you a -- about seven
17 photographs to see if you recognize those; okay?

18 A Uh-huh.

19 MR. GRIMES: May I approach the witness, your
20 Honor?

21 THE COURT: You may.

22 (Documents are handed to the witness.)

23 MR. GRIMES: And I've shown these previously to
24 Mr. Kidd.

25 (Respite.)

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1 (Documents are handed back to Mr. Grimes.)
2 Q (By Mr. Grimes) And do you recognize these
3 photographs?
4 A Uh-huh.
5 Q Now, I'm sorry. Can you say yes or no --
6 A Yes. I'm sorry. Yes.
7 Q -- so the court reporter can pick you up?
8 A Yes.
9 Q All right. Thank you.
10 And what are these photographs of?
11 A It's of the store.
12 Q And is it sort of the parking lot and the
13 outside of the store too?
14 A Yes, sir.
15 Q All right. And in these photographs, are they
16 a fair and accurate representation of how the store
17 looked in October of 2011?
18 A Yes.
19 MR. GRIMES: Your Honor, I would like to mark
20 these as Defendant's Exhibits 1 through 7.
21 MR. KIDD: Can I take a look at them briefly?
22 MR. GRIMES: I apologize.
23 (The photographs are shown to Mr. Kidd.)
24 MR. KIDD: Your Honor, I would like to get a
25 little bit more specific about how accurately those were

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1 from two years ago or a year and a half ago, as to how
2 those photographs were --

3 THE COURT: She testified that it was a fair
4 and accurate representation of how the store looked on
5 that day.

6 MR. KIDD: I'll clear it up on Cross. Thank
7 you, your Honor.

8 THE COURT: Are you objecting at this point?

9 MR. KIDD: Yes, your Honor.

10 THE COURT: Defendant's 1 through 7 into
11 evidence over State's objection.

12 MR. KIDD: Thank you.

13 (Defendant's Exhibit Numbers 1 through 7 are
14 admitted into evidence.)

15 Q (By Mr. Grimes) Ms. Wilson, I'm going to show
16 you what has been marked as Defendant's Exhibit 7. Is
17 that the Exxon where you work at?

18 A Yes.

19 Q It's essentially on the intersection of Rivers
20 and McMillan Avenue?

21 A Yes.

22 Q Is this a closer up view of that?

23 A Yes.

24 Q This, for the record, is Exhibit 5. Show you
25 what has been marked as Exhibit 6. And the Exxon has a

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1 surveillance system; correct?

2 A Uh-huh.

3 Q One inside the store?

4 A Uh-huh.

5 Q One outside the store?

6 THE COURT: Is that a yes?

7 THE WITNESS: Yes.

8 Q (By Mr. Grimes) And one outside the store?

9 A Yes.

10 Q And right up here, are those cameras?

11 A Yes.

12 Q I'm going to show you a couple other pictures.

13 Are these close-ups of some of the cameras that were at
14 the Exxon station?

15 A Yes.

16 Q And that, for the record, is Exhibit 3.

17 Showing you Exhibit 4. Is this another close-up of a
18 camera?

19 A Yes.

20 Q And Exhibit 2, is that also another camera?

21 A It looks like it.

22 Q Okay. I wasn't sure, on Exhibit 1, if this was
23 a camera or maybe a night light or automatic light. Do
24 you know what that is?

25 A I'm not sure.

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1 Q Okay. And with that -- that Exhibit 1, I just
2 showed you, you said you weren't sure. Is that a little
3 bit different than this picture here?

4 A It looks like the same thing.

5 Q Before you said it looked like a camera, but
6 now you're not sure after seeing it close up?

7 A I'm not sure.

8 Q Okay. At the time, did the store have a high
9 definition surveillance system inside the store?

10 A Yes.

11 Q I had a picture on my phone, but it was going
12 off, so. . .

13 And I want to ask you a couple of questions
14 about sort of the surrounding area of the Exxon. I'm
15 going to show you four pictures here; okay?

16 A All right.

17 MR. GRIMES: May I approach the witness, your
18 Honor?

19 THE COURT: You may.

20 (Documents are handed to the witness.)

21 THE WITNESS: That's around the store.

22 Q (By Mr. Grimes) Ma'am?

23 A That's around the store.

24 Q And do these pictures give a fair and accurate
25 representation of what -- what was around the store, how

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1 around the store looked in October of 2011?

2 A Yeah. I mean, it ain't changed.

3 MR. GRIMES: Okay. Your Honor, I would move
4 to -- excuse me.

5 (The photographs are shown to Mr. Kidd.)

6 MR. GRIMES: I move to introduce these as
7 Exhibits 8 through 12.

8 MR. KIDD: No objection.

9 THE COURT: Exhibits 8 through 12 admitted into
10 evidence without objection.

11 THE COURT REPORTER: 11.

12 (Defense Exhibit Numbers 8 through 11 are
13 admitted into evidence.)

14 Q (By Mr. Grimes) Show you what has been marked
15 as Defense Exhibit 8. If you, I guess, walk away, the
16 picture is facing, would that be the Stayover Lodge
17 there?

18 A Uh-huh.

19 THE COURT: Is that a yes?

20 THE WITNESS: Yes.

21 THE COURT: Thank you.

22 Q (By Mr. Grimes) That's a hotel? Ma'am?

23 A Yes.

24 Q And if you go past the Stayover Lodge, you come
25 to a strip mall?

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1 A Yes.

2 Q And then the bank?

3 A The bank is all the way at the end of the
4 street.

5 Q Okay. I'll show you what's been marked as
6 Defense Exhibit 9. If you're sort of -- go directly
7 across from the Exxon, that would be the old Naval
8 Hospital?

9 A Yes.

10 (Document is shown to Mr. Kidd.)

11 Q (By Mr. Grimes) I'll show you another picture
12 of the McDonald's, a little bit different picture.

13 MR. GRIMES: May I approach the witness, your
14 Honor?

15 THE COURT: Yes.

16 MR. GRIMES: Thank you.

17 (Document is handed to the witness.)

18 Q (By Mr. Grimes) Do you recognize this picture?

19 A It's a picture of McDonald's.

20 Q And is that picture also a fair and accurate
21 representation of how McDonald's was in October of 2011?

22 A I'm not sure.

23 Q Okay. Are you familiar with the -- I guess
24 what used to be St. Charles Place?

25 A No, I have never been over there.

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1 Q Okay. Never drove by there on your way to work
2 or anything?

3 A No, I don't know anybody over there.

4 Q Are you familiar with sort of behind your
5 store?

6 A Behind the store?

7 Q The alley behind your -- sort of an alley
8 behind your store?

9 A You talking about by the Stayover Lodge and the
10 strip mall? I go over there sometimes.

11 Q I guess, Stayover Lodge, you know, and you keep
12 going down, you come to St. Charles Place?

13 A I never been to St. Charles, sir.

14 Q I understand that. But that little roadway?

15 A Yeah, it's over there.

16 (Photographs are shown to Mr. Kidd.)

17 Q (By Mr. Grimes) I want to show you four
18 pictures. See if you recognize these pictures.

19 (Documents are handed to the witness.)

20 THE WITNESS: I only recognize these two.

21 Q (By Mr. Grimes) Okay. And that's sort of
22 behind your store?

23 A Uh-huh.

24 Q Okay.

25 (Documents are shown to Mr. Kidd.)

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1 MR. GRIMES: I'll move to introduce these next
2 two pictures as 12 and 13.

3 THE COURT: Any objection?

4 MR. KIDD: No objection.

5 THE COURT: Twelve and 13 into evidence without
6 objection.

7 (Defendant's Exhibit Numbers 12 and 13 are
8 admitted into evidence.)

9 Q (By Mr. Grimes) I'll show you what has been
10 marked Defense Exhibit 12. That's sort of the -- I
11 guess the road right behind Exxon?

12 A Uh-huh. You can get to McDonald's from there.

13 Q And if you jump -- that fence just kind of
14 divides you and the Stayover -- or that -- if you go
15 over the fence, that would be the Stayover Lodge?

16 A Yeah, across the fence is Stayover Lodge.

17 Q Okay. And if you sort of come out of your
18 store and about to take a left, this would be where the
19 McDonald's is?

20 A Uh-huh.

21 Q And if you go past sort of where that truck
22 is going, that would take you over to St. Charles
23 Apartments?

24 A Yes.

25 Q And, again, that fence is the Stayover Lodge?

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1 A The brown fence, yes.

2 Q I believe -- I'm going to ask you a couple of
3 questions about your testimony. I believe that you told
4 Mr. Kidd you were scared during the robbery?

5 A Uh-huh.

6 Q And after the police got there, did you make
7 any phone calls?

8 A Huh?

9 Q After the police arrived and responded to the
10 robbery, did you make any phone calls?

11 A How do you mean, did I make any phone calls?
12 To my family members?

13 Q Used the phone to call your family?

14 A Yes, I did.

15 (Document is shown to Mr. Kidd.)

16 Q (By Mr. Grimes) I'm going to show you one more
17 picture from this -- looks like the scene the night of
18 the robbery. Do you recognize this picture?

19 (Document is handed to the witness.)

20 A Yes. I told you I was on the phone.

21 Q Okay. I just have to ask certain questions for
22 procedure.

23 A Uh-huh.

24 MR. GRIMES: I'd move to introduce this as
25 Defendant's Exhibit 14.

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1 MR. KIDD: No objection.

2 THE COURT: Defendant's 14 into evidence
3 without objection.

4 (Defendant's Exhibit Number 14 is admitted into
5 evidence.)

6 Q (By Mr. Grimes) Now, was this phone call -- do
7 you know if this phone call was made before they
8 arrested anybody?

9 A I'm not sure. I don't remember the time of the
10 phone call.

11 Q All right. Just for the jury, I --

12 A But I do know that it was after the robbery.

13 Q And it would be you, after the robbery, on the
14 phone?

15 A Yes.

16 MR. GRIMES: Can I have one moment, your Honor?

17 THE COURT: You may.

18 MR. GRIMES: Thank you.

19 (Mr. Grimes speaks with Ms. Ehrlich off the
20 record.)

21 MR. GRIMES: Thank you, your Honor. I have no
22 further questions.

23 Thank you, Ms. Wilson.

24 MR. KIDD: Just very briefly. May I approach,
25 Judge?

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1 THE COURT: You may.

2 REDIRECT EXAMINATION

3 BY MR. KIDD:

4 Q Mr. Grimes showed you a series of photographs
5 of the Exxon, which all kind of depicted various video
6 cameras on the exterior. Do you recall that?

7 A Uh-huh.

8 Q Do you know if those cameras were installed
9 after the robbery, the exterior cameras?

10 A I'm not sure.

11 Q Is it possible that they were installed after
12 the robbery?

13 A I know they did put some cameras up, but I'm
14 not sure what kind of cameras they put up.

15 Q Okay. But we haven't seen any video of any
16 -- or you've never seen any video of any footage from
17 the outside of the store from the night of the robbery,
18 have you?

19 A No.

20 Q And as far as you know, none exists, does it?

21 A Not -- no, sir.

22 MR. KIDD: I have no further questions, Judge.

23 MR. GRIMES: No questions, your Honor.

24 THE COURT: You may step down. Thank you.

25 Call your next witness.

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1 MR. KIDD: State calls Keisha Holmes.

2 THE DEPUTY CLERK OF COURT: Place your left
3 hand here and raise your right hand.

4 (The oath is administered by the Deputy Clerk
5 of Court, and the witness answers as follows:)

6 THE WITNESS: Yes, ma'am.

7 THE DEPUTY CLERK OF COURT: Please have a seat,
8 and state your full name, spelling your last name for
9 the record.

10 THE WITNESS: Keisha Holmes. Last name is
11 H-o-l-m-e-s.

12 KEISHA HOLMES,
13 having been first duly sworn by the Deputy Clerk of
14 Court to tell the truth, the whole truth, and nothing
15 but the truth, was examined and testified upon her oath
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. KIDD:

19 Q Good morning, Keisha.

20 A Good morning.

21 Q Thank you for being here. Can you tell the
22 jury where you're currently employed?

23 A Nightingale Nursing Attendants.

24 Q And where were you employed back in October of
25 2011?

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1 A Exxon.

2 Q At the Exxon. Is that the Exxon on Rivers
3 Avenue?

4 A Yes, sir.

5 Q Okay. And do you recall being robbed on
6 October 15th of 2011?

7 A Yes, sir.

8 Q I'm going to show you now -- which hopefully it
9 will play a little bit -- State's Exhibit Number 2. And
10 I ask if you could please watch this video.

11 And before I can play it, do you see yourself
12 on the screen there?

13 A Yes, sir.

14 Q Is that you in the burgundy sweatshirt?

15 A Yes, sir.

16 (The video is played.)

17 Q (By Mr. Kidd) And who are you calling there?

18 A 911.

19 Q But you didn't actually dial 911. You dialed
20 the number of the police station; is that right?

21 A Actually, I dialed 911.

22 Q You dialed 911. How did -- how did you feel
23 during that robbery?

24 A Scared.

25 Q Did you feel like you had a choice but to hand

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1 over the register?

2 A Yes, sir.

3 Q You felt like you had a choice?

4 A Oh, no, sir. I'm sorry.

5 Q Did -- did you believe the gun was real?

6 A Yes, sir.

7 MR. KIDD: Court's indulgence?

8 (Mr. Kidd speaks with Ms. Riddle off the
9 record.)

10 MR. KIDD: I don't have any more questions for
11 Ms. Holmes.

12 THE COURT: Mr. Grimes?

13 MR. GRIMES: Thank you, your Honor.

14 **CROSS-EXAMINATION**

15 **BY MR. GRIMES:**

16 Q Good morning, Ms. Holmes.

17 A Good morning.

18 Q I'm going to ask you a few questions about your
19 call to 911.

20 A Okay.

21 Q Do you remember making that call?

22 A Yes, sir.

23 Q And during that call, did you give a
24 description of the person that robbed you?

25 A Yes, sir.

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1 Q And you said he had brown skin?
 2 A Yes, sir.
 3 Q And that he was about 5-7 or 5-8?
 4 A Yes, sir.
 5 Q Weighed about 135 pounds?
 6 A Yes, sir.
 7 Q He had soft brown eyes?
 8 A I don't recall the soft part.
 9 Q But he had brown eyes?
 10 A Yes, sir.
 11 Q And you think he had a pair of blue jeans on?
 12 A Don't remember.
 13 Q You don't remember telling them that?
 14 A No, sir.
 15 Q And do you recall telling them that he had a
 16 black shirt?
 17 A No, sir.
 18 Q You don't recall, or you didn't tell them that?
 19 A I didn't.
 20 Q This may address this issue a little bit later.
 21 And the robber took the cash register drawer?
 22 A Yeah, he took the till.
 23 Q And then ran out through the back?
 24 A I don't know where he ran out. All I know is
 25 he ran out the door.

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1 Q And there's two doors at the Exxon; correct?

2 A Yes, sir, but he ran out the right door.

3 Q Okay. And that would be the one --

4 A Where I was standing.

5 Q Stayover Lodge side?

6 A Yes, sir.

7 Q And you don't recall the direction he ran after
8 he left the store?

9 A No, sir.

10 Q And you didn't see what kind of shoes he was
11 wearing, did you?

12 A No, sir.

13 MR. GRIMES: May I have one moment, your Honor?

14 THE COURT: You may.

15 (Mr. Grimes speaks with Ms. Ehrlich off the
16 record.)

17 MR. GRIMES: Thank you, your Honor. I have no
18 further questions.

19 Thank you, Ms. Holmes.

20 THE WITNESS: You're welcome.

21 MR. KIDD: Just one follow-up.

22 REDIRECT EXAMINATION

23 BY MR. KIDD:

24 Q Ms. Holmes, when you called 911, did you give
25 the best description you could to the dispatcher?

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1 A Yes, sir.
2 THE COURT: Mr. Grimes?
3 MR. GRIMES: No questions.
4 THE COURT: You may step down. Thank you.
5 Madam foreperson, it's an appropriate time to
6 take a break. Do you need a break? Do you need a
7 break? If you will check with your --
8 Do you need a break?
9 THE FOREPERSON: No. No.
10 THE COURT: Call your next witness.
11 MR. KIDD: The State calls Officer McAlhaney.
12 THE COURT: Thank you.
13 (The oath is administered by the Deputy Clerk
14 of Court, and the witness answers as follows:)
15 THE WITNESS: I do.
16 THE DEPUTY CLERK OF COURT: Have a seat. State
17 your full name, spelling your last name for the record.
18 THE WITNESS: My name is Craig McAlhaney,
19 M-c-A-l-h-a-n-e-y.
20 MR. KIDD: Your Honor, may I approach the
21 table?
22 THE COURT: You may.
23 CRAIG MCALHANEY,
24 having been first duly sworn by the Deputy Clerk of
25 Court to tell the truth, the whole truth, and nothing

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1 but the truth, was examined and testified upon his oath
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. KIDD:

5 Q Good morning, Officer McAlhaney.

6 A Good morning.

7 Q Can you tell the jury where you're employed?

8 A North Charleston Police Department.

9 Q And how long have you been an officer with
10 North Charleston Police Department?

11 A Twenty-two years.

12 Q And during the course of those 22 years --
13 well, what is your current rank?

14 A Master patrol officer.

15 Q Does that mean you are on the streets?

16 A At this time, I am.

17 Q And have you been on the streets most of
18 that 22 years with North Charleston?

19 A Most of the time.

20 Q And so that means -- generally speaking, what
21 does that mean, master patrol officer? What do your
22 daily duties entail?

23 A My daily duties are just to answer calls,
24 conduct patrols, basically do anything needed that
25 dispatch calls me to do.

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1 Q Okay. And do you recall becoming involved in
2 an investigation of an armed robbery of the Exxon gas
3 station on October 15th, 2011?

4 A I do.

5 Q And can you tell the jury how you first became
6 involved in that investigation?

7 A Dispatch called units to that location in
8 reference to an armed robbery. And as I was proceeding
9 to that location, other officers arrived on scene prior
10 to my arrival. So at that time I began to search the
11 perimeter.

12 Q Do you remember about how long after the
13 robbery occurred that you arrived on scene, setting up
14 that perimeter?

15 A I believe it was approximately two minutes or
16 so.

17 Q How long? Excuse me?

18 A Two minutes.

19 Q About two minutes. So you were there almost
20 immediately?

21 A Correct.

22 Q And I'm going to show you --

23 MR. KIDD: If I may approach, your Honor?

24 THE COURT: You may.

25 MR. KIDD: I apologize.

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1 (Photograph is marked as State's Exhibit
2 Number 12 for identification.)

3 Q (By Mr. Kidd) -- what's been marked for
4 identification as State's Exhibit Number 12.

5 (Photograph is shown to Mr. Grimes.)

6 Q (By Mr. Kidd) See if you can recognize this
7 photograph.

8 (Photograph is handed to the witness.)

9 A I do.

10 Q (By Mr. Kidd) And what does that photograph
11 depict?

12 A It depicts part of the city where McMillan and,
13 I believe, Rivers Avenue are located.

14 Q Is that a fair and accurate representation of
15 how that area looks and looked on October 15th, 2011?

16 A Yes, it is.

17 MR. KIDD: Your Honor, at this time, the State
18 would offer to introduce Exhibit Number 12 into
19 evidence.

20 MR. GRIMES: No objection.

21 THE COURT: State's 12 into evidence without
22 objection.

23 (State's Exhibit Number 12 is admitted into
24 evidence.)

25 Q (By Mr. Kidd) I'm going to show you -- I'm

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1 going to make an attempt to use the technology, which
2 y'all saw how awful I was. I believe -- can you see the
3 photograph on the screen in front of you?

4 A No, sir. It's not on.

5 MR. KIDD: Can we get his --

6 THE COURT: You can see that one behind you;
7 correct?

8 THE WITNESS: Correct. Yes.

9 MR. KIDD: But he can write on it if --
10 Is there a power button on this?

11 THE DEPUTY CLERK OF COURT: Yes.

12 Q (By Mr. Kidd) So is the image on your screen
13 now the same image that's on the --

14 A Yes.

15 Q -- monitor? Okay. Can you identify the Exxon
16 gas station on that image? And if you just -- it's like
17 a touch screen; so if you just use your finger, you can
18 kind of circle it.

19 A I believe the Exxon is right here.

20 Q And can you identify where you positioned
21 yourself when you set up the perimeter when you
22 responded to this armed robbery call?

23 A Certainly.

24 Q And what's that building -- that long building
25 right next to where you circled?

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1 A It's the new Cherokee Elementary -- I'm sorry
2 -- new Chicora (phonetic) Elementary School.

3 Q Okay. And is there a church right by there?

4 A There is.

5 Q What church is that?

6 A It's the New Greater Joy.

7 Q And which building is the church? Maybe you
8 can put a dot on the church.

9 A Okay.

10 Q So the long building is the elementary school,
11 and the smaller building is the church. What road is
12 that that runs along the church and the school?

13 A Spruill Avenue.

14 Q That's Spruill Avenue. Okay. And just so we
15 can get our bearings straight, by the Exxon, what two
16 streets are that that come into that intersection?

17 A It's McMillan. Right here by the Exxon is
18 McMillan and Rivers.

19 Q McMillan and Rivers?

20 A Right.

21 Q And can you tell the jury what happened when
22 you set up that perimeter?

23 A I originally drove through Horizon Village.
24 And the roadway ends at Spruill Avenue; so I park on the
25 driveway next to the school, which is the outer

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1 perimeter, and I cut my car off and rolled down my
2 windows just to see if I could hear anything. A lot of
3 times we have dogs barking in the neighborhood when
4 people are jumping through their yards, things like
5 that. So that's one of the common things that we try to
6 listen out for.

7 Q So you're searching for a fleeing suspect?

8 A Correct.

9 Q And just so the jury knows, what's Horizon
10 Village?

11 A It's there in between -- it's all the buildings
12 in between the Exxon and where I was located at.

13 Q All right. So between those two circles, that
14 residential community right there, that's Horizon
15 Village?

16 A Actually, I misspoke. That's actually
17 St. Charles Place.

18 Q Okay.

19 A Horizon Village is to the north of St. Charles
20 Place.

21 Q All right. And when you were -- so you just
22 testified you went to that perimeter area, turned off
23 your car, rolled down the windows by that elementary
24 school. And what happened next?

25 A As I was sitting there, I heard a chain-link

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1 fence shake, and that's common when somebody is jumping
2 a chain-link fence. It was to my right, and it was
3 coming from the direction behind the church. I then
4 proceeded to drive my vehicle to the driveway of the
5 church. And at the time I was turning into the driveway
6 I saw a black male matching the general description of
7 the -- one of the descriptions that was given. He came
8 around the back corner of the church, and as he saw me,
9 stopped, turned around, and fled the other way.

10 Q Okay. Just so I'm clear on your testimony
11 here. So you're in that top circle, windows down, and
12 you hear what seems like --

13 MR. GRIMES: Objection, your Honor. Leading.

14 THE COURT: Overruled. You may continue.

15 Q (By Mr. Kidd) So as you just testified, you
16 were parked up there with your windows down, and you
17 heard a fence rattle?

18 A Correct.

19 Q And in which direction was that --

20 That fence rattled behind the church? Is that
21 what you said?

22 A Right.

23 Q Can you describe that fence to the jury?

24 A The fence behind the church is a chain-link
25 fence on the St. Charles side, and a wooden fence

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1 directly next to it on the church side.

2 Q So is the wooden fence like a privacy-type
3 fence?

4 A Correct.

5 Q So that would like be a six-foot privacy-type
6 fence?

7 MR. GRIMES: Objection, your Honor. Assuming
8 facts not in evidence and leading.

9 THE COURT: Rephrase your question.

10 Q (By Mr. Kidd) Can you describe in a little
11 more detail that wooden fence?

12 A Sure. It's a privacy fence common to that
13 area, and the chain-link fence is also common.

14 Q Okay. And how close are the chain-link and the
15 wooden fence to one another?

16 A About as close as they can get to them.

17 Q Are they running parallel?

18 A Yes.

19 Q And so when you heard that noise, what did you
20 do?

21 A I proceeded to drive over to it and investigate
22 it.

23 Q Okay. And so you -- you're in a patrol
24 vehicle?

25 A Yes.

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1 Q Is it marked?

2 A It is.

3 Q Okay. So you move your vehicle from the
4 position next to the school, and where do you position
5 it?

6 MR. GRIMES: Objection. Leading.

7 THE COURT: Let him finish his question. Thank
8 you.

9 Q (By Mr. Kidd) Where did you move your vehicle
10 to?

11 A I drove my vehicle into the church driveway,
12 which is pointing towards the church.

13 Q Okay. And what do you see at that point again?

14 A I see the Defendant. He's coming around the
15 back of the -- if you're looking at the front of the
16 church, the right -- right rear and his -- looking
17 directly at each other. He stops and turns and flees
18 back behind the church.

19 Q And then what do you do?

20 A I proceed to get out of my vehicle and run to
21 the front of the left side of the church and try to cut
22 him off.

23 Q And are you able to do that?

24 A By the time I get to that side of the church,
25 he's made it to the sidewalk.

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1 Q And do you confront him at that point?

2 A Yes.

3 Q And what happens as you make contact with him?

4 A I observe that he has no shoes on, and he's
 5 breathing heavily. He is wearing a black, nylon
 6 backpack. Due to the armed robbery weapon involved, I
 7 began to pat him down for a weapon.

8 Q Okay.

9 (Shown to Mr. Grimes.)

10 (State's Exhibit Number 13 is marked for
 11 identification.)

12 Q (By Mr. Kidd) I'm going to show you what has
 13 been marked for identification purposes as State's
 14 Exhibit Number 13. Do you recognize that object?

15 A I do.

16 Q What is that?

17 A It's the black backpack that he was wearing.

18 MR. KIDD: Your Honor, at this time, we'd offer
 19 State's Exhibit 13 into evidence.

20 THE COURT: Any objection?

21 MR. GRIMES: Renew our previous motion -- or
 22 objection, based on those rulings.

23 THE COURT: State's 13 into evidence pursuant
 24 to previous rulings.

25 (State's Exhibit Number 13 is admitted into

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1 evidence.)

2 Q (By Mr. Kidd) So when you encountered the
3 Defendant, where was the backpack?

4 A It was on his back.

5 Q So kind of like those ropes, were they over his
6 shoulders?

7 A Correct.

8 Q And you testified that you patted him down for
9 weapons?

10 A Correct.

11 Q And what were the results of that pat-down?

12 A As I grabbed and felt the nylon backpack, I
13 could feel a -- what felt like a pistol, that had the
14 pistol grip and like a hard barrel.

15 Q And after that, did you end up looking in that
16 backpack?

17 A I did.

18 (State's Exhibit Number 14 is marked for
19 identification.)

20 (Shown to Mr. Grimes.)

21 Q (By Mr. Kidd) I'm going to show you what's
22 been marked for identification as State's Exhibit Number
23 14. Take a look at that for me. Do you recognize that
24 object?

25 A I do.

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1 Q What is that?

2 A Looks like the -- the Pumpmaster pistol that
3 -- that the Defendant had on his -- the backpack.

4 MR. KIDD: At this time, we'd offer State's
5 Exhibit 14 into evidence.

6 THE COURT: Mr. Grimes?

7 MR. GRIMES: One moment. Let me check
8 something.

9 Renew our objection on previous motions.

10 THE COURT: Exhibit 14 into evidence pursuant
11 to previous rulings.

12 MR. KIDD: Thank you, your Honor.

13 (State's Exhibit Number 14 is admitted into
14 evidence.)

15 Q (By Mr. Kidd) So this was the -- or the pellet
16 gun that you found in Mr. Banks' backpack?

17 A Correct.

18 Q And that you felt when you were patting him
19 down?

20 A Correct.

21 (State's Exhibit Number 15 is marked for
22 identification.)

23 Q What else did you find in the backpack after
24 you found that?

25 A There were a set of gloves.

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1 (Shown to Mr. Grimes.)

2 Q (By Mr. Kidd) Anything else?

3 A I don't recall.

4 Q I'm going to show you what's been marked for
5 identification as State's Exhibit Number 15. Do you
6 recognize that object?

7 A I do.

8 Q And what is that?

9 A Those are the Rawlings gloves that were inside
10 his backpack?

11 MR. KIDD: At this time, we'd offer State's
12 Exhibit 15 into evidence.

13 MR. GRIMES: Again, subject to our previous
14 motions.

15 THE COURT: State's 15 into evidence over your
16 objection. You may continue.

17 MR. KIDD: Thank you, your Honor.

18 (State's Exhibit Number 15 is admitted into
19 evidence.)

20 Q (By Mr. Kidd) And so these gloves also were
21 found in the backpack on Mr. Banks' back?

22 A Correct.

23 Q Did you find any money on Mr. Banks?

24 A I did.

25 Q Where was the money located on Mr. Banks'

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1 person?

2 A He had bills in one of his pants' pockets and
 3 change in the other.

4 Q Do you have -- or recall the denominations of
 5 the money that was on him?

6 A I don't recall exact amount. I'd have to look
 7 at the report.

8 Q Do you have a copy of your report in front of
 9 you?

10 A I do not.

11 Q When you normally take evidence, do you fill
 12 out a chain of custody sheet, just generally?

13 A I do.

14 Q If I showed you your chain of custody sheet in
 15 regards to this case, would that help refresh your
 16 recollection?

17 A It would.

18 MR. KIDD: May I approach, Judge?

19 THE COURT: You may.

20 (Document is shown to Mr. Grimes.)

21 (Document is handed to the witness.)

22 Q (By Mr. Kidd) Do you recognize that document?

23 A I do.

24 Q Does that help you recall what the
 25 denominations of the currency found on Mr. Banks were?

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1 A I do.

2 Q Can you tell the jury those denominations?

3 A It was 16 one-dollar bills, 9 five-dollar
4 bills, 13 quarters, and 5 pennies.

5 Q So 16 ones, 9 fives, 13 quarters, and 5
6 pennies?

7 A Correct.

8 Q And those were in his -- where was that
9 located, again?

10 A The bills were in his pants -- I believe his
11 right pants' pocket, and the quarters -- or the change
12 was in his left.

13 Q And if we add all that up, how much money is
14 that?

15 A I believe that's around \$64.

16 Q Approximately \$64?

17 A I believe so.

18 Q And this might be a little bit of a
19 technicality, but -- excuse me -- is this location --
20 this is in Charleston County?

21 A It is.

22 MR. KIDD: May I approach one more time,
23 Judge?

24 THE COURT: You may. You have permission.

25 MR. KIDD: Thank you.

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1 (Photographs are shown to Mr. Grimes.)

2 (State's Exhibit Number 5, 6, and 7 are marked
3 for identification.)

4 Q (By Mr. Kidd) I'm going to show you what has
5 been marked for I.D. as State's Exhibits 5, 6, and 7; so
6 if you can take a look at these photographs for me.

7 (Photographs are handed to the witness.)

8 A Sure.

9 Q Do you recognize those photographs?

10 A I do.

11 Q Are they an accurate representation of how
12 those items looked that night?

13 A They are.

14 MR. KIDD: At this time, the State would offer
15 5, 6, and 7 into evidence.

16 MR. GRIMES: Subject to our continuous
17 objection.

18 MR. KIDD: Do you need to see them, Judge?

19 THE COURT: I do.

20 MR. KIDD: I apologize. They're just
21 photographs of the. . .

22 THE COURT: 5, 6, and 7 admitted over
23 Defendant's objection.

24 (State's Exhibit Numbers 5, 6, and 7 are
25 admitted into evidence.)

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1 Q (By Mr. Kidd) And it might be a little bit
2 repetitive, since we've already gone over the actual
3 items, but do you recognize those?

4 A I do.

5 Q Is that those same gloves that we just talked
6 about?

7 A They are.

8 Q And where are they located in this photograph?

9 A On top of my car.

10 Q On the top of your car?

11 A Yes.

12 Q And where are you when this photograph --
13 where is your car and yourself when this photograph was
14 taken?

15 A In front of the church.

16 Q In front of the church? Which we were just
17 talking about on the map?

18 A Correct.

19 Q And State's Exhibit Number 6, is that -- what's
20 that?

21 A That's the Pumpmaster pistol.

22 Q And can you see in the background there -- it's
23 kind of a glare and dark, but do you see that -- this
24 item here?

25 A Correct. That's the backpack.

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1 Q That's the backpack?

2 That's State's Exhibit Number 5. Is that just
3 another photograph of those same items?

4 A Correct.

5 Q I want to talk a little bit about the timing of
6 which all this took place. Once again, how long before
7 you were able to set up that perimeter?

8 A Between the time the call went out?

9 Q Are you familiar with CAD reports?

10 A Yes.

11 Q If you were able to see the CAD -- what is a
12 CAD report?

13 A It's the report that dispatch puts into the
14 computer system of everything said or -- and time frame
15 for when officers arrive, they depart, and everything
16 that goes on in between.

17 Q So would that help refresh your recollection of
18 what time different events occurred?

19 A It would.

20 Q Do you recall what time you -- what time you
21 would have arrived on scene?

22 A I don't recall exact time. I believe it was
23 around 2152 hours.

24 (State's Exhibit Number 17 is marked for
25 identification.)

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1 Q I'm going to show you what has been marked
2 State's 17 for identification. Do you recognize that
3 document?

4 (Document is handed to the witness.)

5 A I haven't seen this document before.

6 Q Do you recognize generally what that document
7 is, though?

8 A It looks like a -- like a CAD description.
9 It's a newer style than what I'm used to.

10 Q Are you able to determine what time you arrived
11 on scene, from that document?

12 A I'm sorry. It's just going to take me a second
13 to look at this backup document.

14 Q Take your time.

15 A We have a new dispatch office, and they've got,
16 obviously, new software.

17 Q I've got a different question, different than
18 what time you got on scene.

19 Can you tell what time you detained Mr. Banks,
20 from that document?

21 A It should be on here. I just haven't located
22 it yet. I do have the time I was at the location.

23 Q And what time was that?

24 A It's 2212, which is 10:12 p.m.

25 I'm sorry. That was the detained time.

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1 Q Okay. So -- so what time did you detain
2 Mr. Banks?

3 A It was 2212 hours, which is 10:12 p.m.

4 Q So at 10:12 p.m., that's when the scenario
5 which you just advised -- or just told the jury about --
6 when you heard the rattle of the fence and everything,
7 that's when all that took place?

8 A That was the actual detain time. That was at
9 the very end of that, yes.

10 Q So that would have happened moments before
11 then?

12 A Right.

13 Q So in the minute or two leading up to that
14 10:12 p.m.?

15 A Correct.

16 Q From that report, are you able to determine
17 what time the first call went out that a robbery had
18 taken place?

19 A It was at 2154 hours, which is 9:54 p.m.

20 Q So 9:54 p.m., North Charleston dispatch
21 received a call of an armed robbery?

22 A Correct.

23 Q And 10:12 p.m., you have the Defendant in
24 custody?

25 A Correct.

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1 Q And, in fact, it would have happened a little
2 bit sooner than that, because you weren't able to make
3 the call into dispatch until after you had detained him,
4 patted him down, and things like that?

5 A Correct.

6 Q And so -- approximately 18 minutes?

7 A I believe so, yes.

8 Q Now, you have been an officer 22 years,
9 approximately?

10 A Yes.

11 Q And you've had the opportunity to investigate a
12 number of robberies similar to this one?

13 A Yes.

14 Q Is it common and you -- based on your
15 experience, for people to attempt to change their
16 appearance --

17 MR. GRIMES: Objection. He's calling for --

18 THE COURT: What's the basis?

19 MR. GRIMES: Section 702, 703, and, I believe,
20 704 on an expert opinion.

21 THE COURT: Overruled.

22 Q (By Mr. Kidd) Based on your experience, is it
23 common for people to attempt to change their appearance
24 to avoid capture?

25 A Certainly.

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1 Q And what sort of things might someone do in a
2 robbery to change their appearance?

3 A Change their clothing. Sometimes they wear two
4 shirts, two pair of pants.

5 Q Can you tell the jury a little bit about how
6 the Defendant's demeanor was when you took him into
7 custody?

8 MR. GRIMES: Objection. Burden shift.

9 THE COURT: Overruled.

10 THE WITNESS: Initially, he was out of breath,
11 like he had been running; and I placed my hand on his
12 heart, which is kind of common, just in case he's not
13 -- any other signs are showing, and he had a fast heart
14 rate.

15 MR. KIDD: Court's indulgence?

16 Q (By Mr. Kidd) Do you recall taking the
17 Defendant's cell phone into custody and logging it into
18 evidence?

19 A I remember he had one, and it was logged into
20 evidence.

21 Q Do you remember if that was in his pocket or in
22 that backpack?

23 A I don't recall.

24 (Mr. Kidd speaks with Ms. Riddle off the
25 record.)

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1 Q (By Mr. Kidd) Do you remember taking a belt
2 -- or a belt being inside that backpack?

3 A I believe there was a belt there that was
4 placed into evidence.

5 (Item is shown to Mr. Grimes.)

6 (State's Exhibit Number 18 is marked for
7 identification.)

8 Q (By Mr. Kidd) I'm going to show you what has
9 been marked as State's Exhibit 18 and see if you can
10 recognize that. And if you can't, that's fine too.

11 A That appears to be the belt that was placed
12 into evidence.

13 Q And that would be the belt from inside that
14 backpack?

15 A I believe so, yes.

16 MR. KIDD: State would offer State's Exhibit 18
17 into evidence.

18 MR. GRIMES: First, we object based upon the
19 chain of custody, and also renew our objection based
20 upon our previous motion.

21 THE COURT: Overruled. State's 18 into
22 evidence subject to previous rulings.

23 MR. KIDD: Thank you, your Honor.

24 (State's Exhibit Number 18 is admitted into
25 evidence.)

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1 MR. KIDD: Court's indulgence for one moment.

2 (Mr. Kidd speaks with Ms. Riddle off the
3 record.)

4 MR. KIDD: No further questions, Judge.

5 THE COURT: This is an appropriate time for us
6 to take our mid-morning break. Do not begin your
7 deliberations. Do not discuss this case amongst
8 yourselves. You may leave your notepads right in your
9 chairs.

10 Please rise for the jury.

11 Officer, please stay seated.

12 (The jury is escorted from the courtroom
13 at 11:13 a.m.)

14 THE COURT: Thank you. Be seated. Anything
15 before we take our break?

16 MR. KIDD: None from the State, Judge.

17 MR. GRIMES: No, your Honor.

18 THE COURT: We'll take about 15 minutes.

19 Officer, you cannot discuss your testimony. Do
20 you understand that?

21 THE WITNESS: Yes, I do.

22 THE COURT: Thank you. You may step down.

23 (A recess is taken from 11:20 a.m. until
24 11:30 a.m.; at which time, the proceedings continue as
25 follows:)

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1 (The Defendant is present in the courtroom with
2 his counsel.)

3 MR. GRIMES: Your Honor, may we approach?

4 THE COURT: You may.

5 (Mr. Grimes, Ms. Ehrlich, Mr. Kidd, and
6 Ms. Riddle all approach the bench for a discussion off
7 the record.)

8 (The jury is escorted into the courtroom at
9 11:34 a.m.)

10 THE COURT: Thank you. Be seated.

11 Mr. Kidd?

12 MR. KIDD: I have no further questions.

13 THE COURT: And all of your -- just want to
14 make sure before we -- all of your evidence exhibits
15 have been admitted with this witness?

16 MR. KIDD: All the ones --

17 THE COURT: There was some issues about
18 numbering.

19 MR. KIDD: There were some number issues, but
20 all the exhibits that I had intended to enter have been
21 admitted into evidence.

22 THE COURT: All right. Just wanted to make
23 sure.

24 Mr. Grimes, your witness.

25 MR. GRIMES: Thank you, your Honor.

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1 CROSS-EXAMINATION

2 BY MR. GRIMES:

3 Q Good morning, Officer McAlhaney.

4 A Good morning.

5 Q I wanted to ask you a quick question just to
6 clarify your role in this case. I guess you'd be
7 labeled as the arresting officer?

8 A Yes.

9 Q And will you be considered as -- is that sort
10 of the chief investigating officer or case officer?

11 A The initial case officer, yes.

12 Q And then after that, you would sort of pass the
13 responsibility on to someone else to do the follow-up
14 investigations?

15 A If need to be, yes.

16 Q Okay. Now, I want to ask you a few questions
17 about the distances. That Google Maps --

18 I'll show you what has been marked as State's
19 Exhibit 12. I guess, if you could sort of circle the
20 Exxon, where you initially parked at in the church, for
21 the jury.

22 A Sure.

23 (Witness complies.)

24 Q Where is the third one?

25 A The church is the dot, and where I parked is

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1 the circle.

2 Q I guess my eyes are really bad. I just don't
3 see it on there.

4 A I'm sorry?

5 Q I guess my eyes are bad. I just don't see the
6 dot.

7 I believe the distance from the Exxon and
8 sort of that circle -- neighborhood here -- this is
9 St. Charles Place?

10 A Correct.

11 Q And now it's known as Pine Crest?

12 A It is.

13 Q And this is the school right here?

14 A Right.

15 Q Okay. And the distance from that Exxon to the
16 school, if you -- about two blocks?

17 A It's one very large block from Rivers Avenue to
18 Spruill. It's sort of unusually large.

19 Q And it's a little more than a block; correct?

20 A It's more than a smaller city block, yes.

21 Q And this area is known as basically a moderate
22 crime area?

23 A It is.

24 Q And it's quite possible to walk farther than a
25 block in 18 minutes; correct?

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1 A Certainly.

2 Q And it would certainly be, if someone is
3 running and running farther than someone walking, in 18
4 minutes; correct?

5 A It all depends, of course, on terrain and that
6 person.

7 Q I want to show you a series of pictures of the
8 school. See if you recognize those.

9 (Document is handed to the witness.)

10 A I do.

11 Q And that's the Ronald E. McNair school?

12 A It is now, I believe, the new Chicora
13 Elementary.

14 Q Okay.

15 A It's changed names a few times in the past few
16 years.

17 Q And the name still on the school, though, it
18 still has Ronald McNair, I believe?

19 A I believe it does.

20 Q Okay. And that's a pretty fair and accurate
21 description of how the school was in October of 2011?

22 A They've done a lot of, I guess, updating that
23 particular school due to the new Chicora Elementary
24 going there.

25 Q Do you know what updates they've made?

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1 A I really don't. Just aesthetic, as far as I
2 could tell from these pictures.

3 Q Sir?

4 A Aesthetic. Just maybe some landscaping, things
5 like that.

6 Q But overall, the location is the same?

7 A Correct.

8 Q They haven't added on any wings to the school,
9 have they?

10 A I don't believe so.

11 Q Do you know if they had added on cameras or
12 taken cameras off?

13 A I don't know.

14 Q Okay.

15 (Mr. Grimes shows Mr. Kidd photographs.)

16 MR. KIDD: Object to foundation.

17 MR. GRIMES: At this time, I was going to offer
18 these into evidence as Defendant's exhibits.

19 THE COURT: I'm sorry?

20 MR. GRIMES: I was going to offer these as
21 Defense exhibits in evidence at this time.

22 THE COURT: He's objecting?

23 MR. GRIMES: Yes, ma'am.

24 THE COURT: Lay the foundation..

25 Q (By Mr. Grimes) I'm going to show you one

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1 picture right now. Horizon in there. I think you said
2 you sort of pulled up to the street or parked, and you
3 rolled your windows down and were kind of listening?

4 A Correct.

5 Q Is that the front of the school?

6 A That is the front.

7 Q And is that the same condition as it was when
8 you pulled up to park there?

9 A Generally, yes.

10 MR. GRIMES: Your Honor, at this time we'd move
11 to introduce these pictures as Defense Exhibit 22.

12 MR. KIDD: Same objection, Judge.

13 THE COURT: Sustained.

14 MR. GRIMES: Can we mark it for identification
15 purposes only?

16 Q (By Mr. Grimes) Let me just ask one more
17 follow-up question on picture 22. What has changed in
18 this picture since October 2011?

19 A Just like I said, landscaping appears newer. I
20 know they've updated that. But just to clarify, this is
21 not the location I parked.

22 Q I understand that. It's near the area where
23 you parked, though; correct?

24 A This is the right side of the front school, and
25 I parked on the far left side of the front of the

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1 school.

2 Q Okay.

3 MR. GRIMES: Again, we would offer 22 into
4 evidence at this time, your Honor.

5 MR. KIDD: Same objection.

6 THE COURT: Your objection is sustained.
7 Defendant's 22 not in evidence.

8 (Defendant's Exhibit Number 22 is marked for
9 identification.)

10 Q (By Mr. Grimes) I'm going to show you another
11 picture of the school. What does that picture show?

12 A Still the front of the school.

13 Q And is that -- is that picture a fair and
14 accurate condition of how the school looked on October
15 2011?

16 A To the best of my knowledge. I'm not sure if
17 that chain-link fence that appears to be in front was
18 there then. I think they did a lot of landscaping work
19 to the front.

20 Q Apart from the landscaping and the chain-link
21 fence, is anything else different?

22 A School appears to be the same.

23 MR. GRIMES: We'd offer this as State's
24 -- excuse me -- Defendant's Exhibit 23.

25 MR. KIDD: Same objection.

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1 THE COURT: Defendant's 23 not in evidence at
2 this time.

3 (Defendant's Exhibit Number 23 is marked for
4 identification.)

5 Q (By Mr. Grimes) I want to show you another
6 picture of the school, and this one has the church in
7 it. What does that picture show?

8 A It shows Spruill Avenue and the front of the
9 school and a distant shot of the church.

10 Q And how much has changed in that picture since
11 October of 2011?

12 A I can't really recognize any changes that I
13 know of.

14 Q All right.

15 MR. KIDD: No objection.

16 THE COURT: Defendant's 24 into evidence
17 without objection.

18 (Defendant's Exhibit Number 24 is admitted into
19 evidence.)

20 Q (By Mr. Grimes) And you said -- did you pull
21 into this sort of area right here to park?

22 A No, I did not.

23 Q Where did you -- if you can tell from this
24 picture, where did you park at?

25 A There's another driveway to the left of the

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1 front of the school right next to that church, and it
2 would be right where that second dot is.

3 Q Okay. And this -- so Horizon is -- is this dot
4 right here?

5 A I'm sorry? Repeat the question.

6 Q This picture here, is it sort of a fair
7 reflection of the area about right here where you
8 circled?

9 A Correct. The circle is actually the tree, and
10 I parked right next to it, which is the left driveway of
11 the school.

12 Q Uh-huh. And you parked in that left driveway.
13 I'm going to show you two pictures.

14 (Photographs are handed to the witness.)

15 Q (By Mr. Grimes) See if that would refresh your
16 memory.

17 A That appears to be the left side of the school.
18 I'm not sure if that's the front or the back, though,
19 from these pictures.

20 Q Okay. Do you recall there being any cameras in
21 the area where you parked at?

22 A I don't recall. It was nighttime when I
23 parked.

24 Q And you have been in -- I think a master -- or
25 a patrol officer about 20 years or 22 years?

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1 A I've been an officer for 22 years, yes.
 2 Q Is this one of the areas you routinely patrol?
 3 A It's my latest duty assignment, yes.
 4 Q And they do have cameras in there in the school
 5 now; don't they?
 6 A I believe they do now, yes.
 7 Q And do you know when they were put up?
 8 A I do not know.
 9 Q Is it possible they were up in October of 2011?
 10 A It's possible.
 11 Q Okay. Now, I want to show you pictures of the
 12 church. Okay?
 13 A Sure.
 14 Q Take a look at these.
 15 (Photographs are handed to the witness.)
 16 Q (By Mr. Grimes) I imagine the landscaping and
 17 the grass is different.
 18 And this picture is to help you explain kind of
 19 where you parked at and show where you think you first
 20 saw Mr. Banks and where he went to as you chased him?
 21 A It will depict where I parked in front of the
 22 church, and, yes, the front and the back of the church.
 23 Q And could you take -- separate those pictures
 24 to the ones that would help?
 25 A (Witness complies.)

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1 Q And these, I believe, four pictures will be
2 helpful in explaining to the jury where you parked at
3 and the events leading up to Mr. Banks' arrest?

4 A Yes.

5 Q And for the most part, is this area a fair and
6 accurate -- pictures, fair and accurate reflection of
7 how the church was in October of 2011?

8 A It is.

9 MR. KIDD: No objection to those four.

10 THE COURT: All right.

11 (Defendant's Exhibit Numbers 25 through 28 are
12 marked for identification.)

13 THE COURT: Defendant's 25 through 28 into
14 evidence without objection.

15 (Defendant's Exhibit Numbers 25 through 28 are
16 admitted into evidence.)

17 MR. GRIMES: Thank you, your Honor.

18 Q (By Mr. Grimes) This has been marked as
19 Defendant's Exhibit 25. And what does this picture
20 show?

21 A This is the side of the Greater Joy Tabernacle
22 church.

23 Q And were you parked here, or did you pull up in
24 this area?

25 A Yes. The driveway -- do you want me to touch

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1 the screen?

2 Q Sure, if you want to.

3 A The driveway is here, and that's approximately
 4 where I pulled in at from Spruill Avenue.

5 Q Okay. And where do you first see Mr. Banks at?

6 A Mr. Banks was observed coming right around the
 7 back of the building.

8 Q Okay.

9 A Right there.

10 Q And then after you said you made sort of eye
 11 contact with him, you started -- you got out of the car
 12 and started chasing him, and he ran from you?

13 A Correct.

14 Q Okay. And then you ran back behind that
 15 church?

16 A He ran behind -- in the direction that he
 17 originally came from behind the church, and I ran in the
 18 front of the church.

19 Q I'll show you this one. It's marked as
 20 Exhibit 27. Is that sort of a close-up view of what
 21 -- where he was at?

22 A It is.

23 Q Is that the wood fence back there?

24 A Yes.

25 Q And that -- behind that fence was St. Charles

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1 Place?

2 A Correct.

3 THE COURT: Officer, if you will hit clear, it
4 will erase the circles?

5 THE WITNESS: I'm sorry. How do you do it?

6 THE COURT: If you hit clear on the screen.

7 THE WITNESS: (Witness complies.)

8 THE COURT: Thank you.

9 Q (By Mr. Grimes) And Defendant's Exhibit 28,
10 this is another close-up view of it, from, I guess, the
11 angle from St. Charles?

12 A This appears to be the back of the church.

13 Q This is the front angle of the church?

14 A Yes, it is.

15 Q Is that -- the little driveway there, is that
16 where you pulled in at?

17 A I believe there's actually two driveways. It's
18 like a horseshoe. And that's Spruill Avenue that it
19 goes into.

20 Q Okay. Let me ask you a few questions about
21 St. Charles and Pine Crest. Is it fair to say that's
22 kind of sort of a large apartment -- or duplex
23 community?

24 A It is.

25 Q And behind that -- in this area up here, is

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1 that sort of Horizon Villages?

2 A Yes, it is.

3 Q And the intersection of this road here, that's
 4 Burr (phonetic) neighborhood; that sort of takes you
 5 between Rivers Avenue and Spruill?

6 A Correct.

7 Q And Horizon Villages is a pretty large area
 8 too; correct?

9 A It is.

10 Q And then over here, we have a couple clubs in
 11 this area?

12 A There are.

13 Q And one's -- I see there Three Dollar Lounge or
 14 Pete & Rita's?

15 A I believe one of the names are the Bossez
 16 Lounge now.

17 Q Okay. I want to show you three pictures.

18 (Photos are shown to Mr. Kidd.)

19 (Photos are handed to the witness.)

20 Q (By Mr. Grimes) What do these pictures show?

21 A One picture depicts Spruill Avenue, away from
 22 the church; and one picture depicts Bossez Lounge; and
 23 the other picture is of Pete & Rita's Lounge.

24 Q Are those a fair -- are those pictures a fair
 25 and accurate reflection of how that area was in October

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1 of 2011?

2 A They are.

3 Q Thank you.

4 (Documents are handed back to Mr. Grimes.)

5 MR. GRIMES: I move to introduce these
6 exhibits, your Honor. Not sure of the numbers.

7 MR. KIDD: No objection.

8 THE COURT: Defendant's 29 through 31 into
9 evidence without objection.

10 (Defendant's Exhibit Numbers 29 through 31 are
11 admitted into evidence.)

12 MR. GRIMES: May I publish these to the jury,
13 your Honor?

14 THE COURT: You may.

15 MR. GRIMES: Thank you.

16 Q (By Mr. Grimes) Defense Exhibit 29, you say
17 that street there is Spruill Avenue?

18 A It appears to be so, yes.

19 Q And then right up here, is that one of the
20 clubs?

21 A It is.

22 Q Of Pete & Rita's?

23 A I believe so.

24 Q Showing you State's Exhibit -- I mean,
25 Defendant's Exhibit 31. Is that just a close-up view of

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1 it?

2 A It is.

3 Q And showing you State's -- I apologize --
 4 Defendant's Exhibit 30. Is that a close-up view of
 5 Bossez Lounge?

6 A It is.

7 Q All that is in fairly close proximity to where
 8 you saw Mr. Banks at?

9 A It's not far from the church.

10 Q I want to ask you a few questions about your
 11 testimony. I believe you testified that Mr. Banks
 12 matched the initial description that you had?

13 A He does -- he did.

14 Q And the initial description, according to your
 15 report that you prepared, was black male, wearing a
 16 black shirt over his face, with a gray shirt, and gray
 17 shorts?

18 A Correct.

19 Q And it's undisputed that the robber was not --
 20 at the time of the robbery was not wearing shorts;
 21 correct?

22 A It's believed that he was wearing pants.

23 Q And you didn't get a description about his age,
 24 did you?

25 A I did.

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1 Q You didn't document that in your report, did
2 you?

3 A I believe I did; 15 to 20 years of age.

4 Q I may be a little confused. You prepared two
5 reports or one report?

6 A I did a supplement to the initial.

7 Q Show me -- maybe -- perhaps I misread it --
8 (Document is handed witness.)

9 Q -- where in your supplemental report he's 15 --
10 you say he might have been 15 years old.

11 A Right. I did not write it down in my
12 supplement. It's written down in the initial one.

13 Q And did you prepare the initial report?

14 A I did not.

15 Q But your name is on it; correct?

16 A It is.

17 THE COURT REPORTER: I'm sorry? I didn't hear
18 you.

19 Q (By Mr. Grimes) But your name is on it;
20 correct?

21 A It is.

22 THE COURT: Mr. Grimes, your previous question
23 did not make the record. Could you restate your
24 question?

25 MR. GRIMES: Thank you, your Honor.

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1 Q (By Mr. Grimes) I believe the following
2 question I asked you: But your name is on the initial
3 incident report; correct?

4 A It is.

5 Q And that report you prepared after the arrest;
6 correct?

7 A It is.

8 Q Now, at the time of the robbery, any time you
9 were out there, is it fair to say that the only report
10 was Ms. Holmes' call to 911?

11 A I'm sorry. I don't understand.

12 Q I apologize. It's probably a bad question. At
13 the time that -- when you were parking out there and saw
14 Mr. Banks, Ms. Holmes had called 911; correct?

15 A Ms. Holmes called the initial call to police,
16 yes.

17 Q And were you aware of the description that she
18 gave?

19 A I don't know exact description that she gave.
20 I did not talk to Ms. Holmes.

21 Q The 911 operator or dispatch relayed what her
22 description was to you?

23 A It dispatched several descriptions as the
24 investigation proceeded, depending on when the --
25 Ms. Holmes' description that was given and when officers

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1 arrived on the scene and they gathered more information.

2 Q And that was, I believe, Officer Hill?

3 A I believe so. I'm not absolutely sure who was
4 the first officer on the scene.

5 Q I guess there's two Hills that were -- maybe
6 I'm mispronouncing one officer's name. H-i-l-l-e, and
7 then Sergeant Hill, in the back -- excuse me --
8 Lieutenant Hill, in the back?

9 A Correct.

10 Q Do you know which Hill gave you the -- looked
11 at the video and gave a revised description?

12 A I believe it was Scott Hille.

13 Q Okay. And he's not -- is he in the courtroom
14 today?

15 A No, he's not.

16 Q What was that revised description?

17 A As the investigation proceeded, and as I
18 proceeded to check the perimeter, the initial -- I
19 believe the initial description was black male, 15 to 20
20 years of age, about 5-7, 135 pounds, wearing a
21 light-colored shirt and had a shirt over his face,
22 possibly wearing pants.

23 Q And how did that get revised?

24 A At one time it did go to possibly shorts, but
25 it did change after that.

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1 Q And who said it was shorts?

2 A There were several officers on scene at Exxon,
 3 and I don't recall which officer gave that description.

4 Q You testified before that you made a mistake in
 5 the report; correct?

6 A I made a mistake in the writing that the
 7 initial description was shorts, added to my supplement,
 8 yes.

9 Q Okay. I'm going to ask you a little bit about,
 10 sort of, time frame in this case. I believe you said it
 11 took you -- once you got dispatched -- dispatch called,
 12 it took you two minutes to get to the scene?

13 A I believe the initial officers were one minute,
 14 and I believe I was around two minutes, in that area.

15 Q Are you sure about the two minutes?

16 A I'm sorry?

17 Q Are you sure about the two minutes?

18 A I am sure I was in the general area in two
 19 minutes' time.

20 Q What time did you get to the church? Was that
 21 two minutes or five minutes?

22 A I don't recall exact time I got to the church.

23 Q Do you recall testifying before that you were
 24 in the area in about five minutes?

25 A I believe I might have said approximately five

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1 minutes.

2 Q If I showed you a transcript, would that
3 refresh your memory?

4 A Sure.

5 MR. GRIMES: May I approach the witness, your
6 Honor?

7 THE COURT: You may.

8 MR. GRIMES: Thank you.

9 Q (By Mr. Grimes) I think I have highlighted the
10 area, but if you need additional pages, I can bring them
11 up for you.

12 A This states: I believe I was in the area
13 within about five --

14 THE COURT REPORTER: I'm sorry. Can you slow
15 down?

16 THE WITNESS: Sure.

17 THE COURT REPORTER: Say again.

18 THE WITNESS: This says that: I believe I was
19 in the area within about five minutes.

20 That was my answer.

21 Q (By Mr. Grimes) I'm not trying to nitpick
22 every little thing you say, but a lot can happen in
23 three minutes; correct?

24 A Sure.

25 Q Especially if someone is running, they could

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1 run a fair distance in three minutes?

2 A Yes.

3 Q And someone who was coming from Horizon Village
 4 could walk up to that area in three minutes?

5 MR. KIDD: Objection, your Honor. Speculation.

6 THE COURT: What's the basis?

7 MR. KIDD: Speculation.

8 THE COURT: Sustained.

9 MR. GRIMES: Let me see if I can lay a better
 10 foundation.

11 Q (By Mr. Grimes) I think Mr. Kidd asked you
 12 before, based on all your experience about investigating
 13 crimes, is it common for people to change clothes?
 14 Based on that same experience that you have as master
 15 patrol officer being on the force for 22 years, can
 16 someone run a fair distance in three minutes?

17 A Certainly.

18 Q And based upon your experience in patrolling
 19 this area in North Charleston and around this area, can
 20 someone walk from Horizon Village to St. Charles within
 21 three minutes?

22 A It depends on where they're located at at
 23 Horizon Village to begin with.

24 Q If they were located on the Spruill Avenue
 25 side, would they be able to go from there to that church

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1 within three minutes?

2 A From Horizon Village?

3 Q Yes, sir.

4 MR. KIDD: Objection, your Honor. It's
5 speculation.

6 THE COURT: Sustained.

7 Q (By Mr. Grimes) Now, I'm going to ask you
8 about dispatch times. I was a little confused on that.
9 I thought you said you arrived on scene at 2152 hours?

10 A I'd have to look at it again. I'm sorry. I
11 believe I -- I believe the dispatch call went out at
12 2152, meaning the 911 call.

13 Q Well, when you testified within about an hour
14 ago, did you tell Mr. Kidd you were on scene at 2152?

15 A I believe I said I was either on scene or that
16 was the dispatch time.

17 Q Would you be surprised to learn the dispatch
18 time was 2157?

19 A Certainly.

20 Q That would be a surprise to you?

21 A I would have to look at the CAD report again.

22 Q What if I showed you the incident report, would
23 that refresh your memory?

24 A Certainly.

25 MR. GRIMES: May I approach the witness, your

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1 Honor?

2 THE COURT: You may.

3 (Document is handed to the witness.)

4 THE WITNESS: It has dispatch date and time as
 5 2157 and time arrived at 2158. Generally, that would be
 6 the time of the dispatch and the arrival time of the
 7 initiating officer, which was not me.

8 Q (By Mr. Grimes) And the body of the report
 9 talks about the officers responding; correct?

10 A I'm sorry?

11 Q The body of the report, the narrative, talks
 12 about officers responding; correct?

13 A Right.

14 Q And helping set up a perimeter?

15 A Correct.

16 Q It makes no distinction on which officer did
 17 what and arrived at what time?

18 A It did not, but I did not arrive -- I did not
 19 respond to the Exxon.

20 Q Did you -- you went out to help set up the
 21 outer perimeter; correct?

22 A Correct. As soon as I got this -- or heard
 23 dispatch call about the armed robbery, I proceeded, but
 24 other officers arrived on scene prior to my arrival, and
 25 that's when I went ahead and began the perimeter.

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1 MR. GRIMES: May I have one moment, your Honor?

2 THE COURT: You may.

3 (Mr. Grimes speaks with Ms. Ehrlich off the
4 record.)

5 Q (By Mr. Grimes) You have a copy of your
6 supplemental report?

7 A I do not. Not in front of me.

8 Q Hand you a copy again.

9 (Document is handed to the witness.)

10 Q Is it fair to say that the only time listed on
11 there is in the, sort of, box about report date and
12 time?

13 A Yes.

14 Q It has 9:50?

15 A Correct.

16 Q And you weren't dispatched until 9:57?

17 A I believe so.

18 Q All right.

19 A Well, I'm sorry. Can you clarify exactly the
20 question you're asking? The dispatch time? You're
21 asking me if I was dispatched at 9:57?

22 Q Yes, sir.

23 A I believe so, yes.

24 Q Okay. Now, I want to ask you a few questions
25 now about what you found out there on Mr. Banks?

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1 THE COURT: Mr. Grimes, as previously
2 indicated, this is an appropriate time for us to break
3 for our lunch.

4 Do not begin your deliberations; do not discuss
5 this case amongst yourselves. Please be back in your
6 jury room and ready to begin at 1:45.

7 Please rise for the jury.

8 (The jury is escorted from the courtroom at
9 12:12 p.m.)

10 THE COURT: Thank you. Be seated.

11 Officer, we're going to break for lunch. So,
12 again, you cannot discuss your testimony with anyone,
13 and that includes the State or the Defense. Do you
14 understand?

15 THE WITNESS: I do.

16 THE COURT: Thank you. You may step down.
17 Have a nice lunch.

18 Anything before we break for lunch? Mr. Kidd?

19 MR. KIDD: No, ma'am.

20 THE COURT: Mr. Grimes?

21 MR. GRIMES: No, ma'am.

22 THE COURT: All right. Keep me posted.

23 MS. EHRLICH: Actually, we do have one thing.
24 The school district witness.

25 THE COURT: Yes.

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1 MS. EHRLICH: I'm just trying to get some idea
2 on if I should try to get her here this afternoon or if
3 I can have her just come in first thing tomorrow
4 morning.

5 THE COURT: You know what's going on better,
6 so --

7 MR. KIDD: Depends on Andrew. I can be done
8 quick. It's you that makes that decision.

9 THE COURT: Whatever happens, Ms. Ehrlich.

10 MS. EHRLICH: Tomorrow morning may be the
11 best.

12 THE COURT: All right. Thank you. Considering
13 -- thank you. Y'all have a great lunch.

14 MR. GRIMES: What time do you want us back?

15 THE COURT: 1:45.

16 (A lunch break is taken from 12:14 p.m. until
17 1:48 p.m.; at which time, the proceedings continue as
18 follows:)

19 (The Defendant is present in the courtroom with
20 his counsel.)

21 (The jury is escorted into the courtroom
22 at 1:54 p.m.)

23 THE COURT: Thank you. Be seated. Mr. Grimes,
24 your witness.

25 MR. GRIMES: Thank you, your Honor.

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1 CROSS-EXAMINATION

2 (continued)

3 BY MR. GRIMES:

4 Q Good afternoon.

5 A Afternoon.

6 Q Did you have a good lunch?

7 A I did.

8 Q I think where we left off, to ask you some
 9 questions about pictures of items that you recovered
 10 from Mr. Banks after you arrested him. Do you recall
 11 -- does that sound right to you?

12 A That's about right.

13 MR. GRIMES: Okay. Thank you.

14 May I approach the witness?

15 THE COURT: You may. You have continuing
 16 permission.

17 MR. GRIMES: Thank you.

18 Q (By Mr. Grimes) I believe the State showed you
 19 pictures of State's Exhibit 5, 6, and 7; is that
 20 correct?

21 (Document is handed to the witness.)

22 A That's correct.

23 Q And there were other pictures of stuff you
 24 recovered too; correct?

25 A I'm sorry?

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1 Q And there were other pictures of stuff that you
2 recovered too; correct?

3 A I believe there were other pictures of items
4 placed into evidence.

5 Q All right. And as an officer, you're sworn to
6 tell the truth?

7 A Of course.

8 Q The whole truth?

9 A Yes.

10 Q Nothing but the truth?

11 A Yes.

12 Q I'm going to show you --

13 (Document is shown to Mr. Kidd.)

14 MR. KIDD: (Moves head up and down.)

15 (Document is handed to the witness.)

16 Q (By Mr. Grimes) -- another picture. You
17 recognize that?

18 A I do.

19 Q What is that?

20 A Appears to be a Sprite bottle.

21 Q All right. You happen to recover a hoodie
22 while you were out there?

23 A I'm sorry?

24 Q Did you happen to recover a hoodie while you
25 were out there?

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1 A I don't recall if there was a hoodie involved.

2 Q Okay. And is that a fair and accurate
 3 representation of the Sprite?

4 A Yes.

5 Q And you did recover that from Mr. Banks?

6 A Yes.

7 MR. GRIMES: Move to introduce this picture
 8 as Defense Exhibit 32.

9 MR. KIDD: No objection.

10 THE COURT: Defendant's 15 into evidence
 11 without objection.

12 THE COURT REPORTER: It was previously marked
 13 as 15.

14 THE COURT: Defendant's 15 into evidence
 15 without objection.

16 (Defendant's Exhibit Number 15 is admitted into
 17 evidence.)

18 Q (By Mr. Grimes) That's the bottle that you
 19 recovered?

20 A Yes.

21 Q And it's in the change of custody sheets too;
 22 correct?

23 A I don't believe it was placed in evidence.

24 Q If it was on your chain of custody, then it
 25 would have been placed in evidence; correct?

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1 A Correct.

2 Q Do you have the chain of custody sheets up
3 there?

4 A I do not.

5 Q I believe they were pre-marked by the State.

6 (Mr. Grimes shows Mr. Kidd a document.)

7 Q Let me show you a form here and see if you
8 recognize that.

9 (Document is handed to the witness.)

10 A I do.

11 Q Is that the change of custody sheet?

12 A It is.

13 Q And your signature on the bottom?

14 A It is.

15 Q Is there a listing for a Sprite bottle on
16 there?

17 A There is.

18 MR. GRIMES: Your Honor, at this time I move to
19 introduce this as Defendant's 32.

20 MR. KIDD: Which is the chain of custody form?

21 MR. GRIMES: Yes, sir.

22 MR. KIDD: No objection.

23 THE COURT: Defendant's 32 into evidence
24 without objection.

25 (Defendant's Exhibit Number 32 is admitted into

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1 evidence.)

2 Q (By Mr. Grimes) And this is the bag of stuff
3 that was -- this is the items that you found in the book
4 bag?

5 A Yes.

6 Q And there were a couple of other items too;
7 correct?

8 A There were items that were placed in evidence.

9 Q Okay. I'm going to show you another picture
10 and see if you can identify that.

11 (Document is handed to the witness.)

12 A That's the picture of the Pumpmaster pistol and
13 backpack on top of my car.

14 Q All right. Do you know what that third item
15 is?

16 A I believe it's some sort of paper. I don't
17 recall what exactly it was.

18 Q Is it possibly maybe a condom?

19 A It's possible. The picture itself is pretty
20 -- not very detailed.

21 MR. GRIMES: All right. Your Honor, at this
22 time I'd move to introduce Defendant's Exhibit 17 into
23 evidence.

24 THE COURT: Any objection?

25 MR. KIDD: No, ma'am.

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1 THE COURT: Defendant's Exhibit 17 admitted
2 into evidence without objection.

3 (Defendant's Exhibit Number 17 is admitted into
4 evidence.)

5 MR. GRIMES: May I publish it to the jury?

6 THE COURT: You may.

7 Q (By Mr. Grimes) And that item wasn't taken
8 into evidence, was it?

9 A I don't believe so.

10 Q We don't really know what it was?

11 A It didn't have any relevance, or it would have
12 been placed in evidence.

13 Q That's an interesting word you use: Relevance.
14 This was a Saturday night; correct?

15 A Yes, it was.

16 Q You have a young man who is 17 -- he's 17;
17 correct?

18 A Yes, he was.

19 Q Seventeen year olds sometimes go meet young
20 ladies; correct?

21 A Sure.

22 Q If they're practicing safe sex, they may have a
23 condom; correct?

24 MR. KIDD: Objection.

25 THE COURT: Sustained.

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1 Q (By Mr. Grimes) One more question from the
2 chain of custody form.

3 (Document is handed to the witness.)

4 Q Is that belt listed on here -- on there?

5 A No, it's not.

6 Q All right. It may have been another officer
7 who had taken the belt; is that fair to say?

8 A It's possible. There was a crime scene officer
9 on the scene.

10 Q Now, was that Angela Bunker (phonetic)?

11 A Yes.

12 Q She's no longer with North Charleston; correct?

13 A She does -- she is still with North Charleston.

14 Q She is?

15 A Yes.

16 Q Okay. When you were interacting with
17 Mr. Banks, did you notice any cameras at the St. Charles
18 Place?

19 A The back of St. Charles Place?

20 Q Yes, sir.

21 A Like along the fence?

22 Q Yes, sir.

23 A No. Not that I'm aware of.

24 Q I'm going to show you four pictures and see if
25 that might refresh your memory; okay?

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1 (Documents are shown to Mr. Kidd.)

2 (Documents are handed to the witness.)

3 Q (By Mr. Grimes) What do these pictures show?

4 MR. KIDD: Objection, your Honor.

5 THE COURT: What's the basis?

6 MR. KIDD: I think he has --

7 Foundation of the pictures, before he describes
8 them.

9 THE COURT: Rephrase your question, Mr. Grimes.

10 Q (By Mr. Grimes) Is that -- do you recognize
11 the area those pictures came from?

12 A It appears to be St. Charles Place just due
13 to the background of the -- the buildings in the
14 background.

15 Q Do you notice anything unusual -- and you can
16 just answer yes or no -- about the pictures?

17 Excuse me. Let me rephrase that question. Do
18 you notice anything that might aid the investigation in
19 those pictures?

20 A There's pictures of a camera on a pole, but I
21 do not know where this location is.

22 MR. KIDD: Same objection, Judge.

23 THE COURT: Sustained.

24 Q (By Mr. Grimes) Do you recall checking the
25 area there for cameras?

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1 A I do not. I did not check the area for
 2 cameras.

3 Q Okay. Thank you.

4 (Potos are handed back to Mr. Grimes.)

5 Q Now, I'll ask you again a couple of questions
 6 about the initial description and your stopping of
 7 Mr. Banks. If you saw a white male jump over the fence,
 8 or come through that area and run when he saw you, would
 9 you have stopped him?

10 MR. KIDD: Objection, Judge.

11 THE COURT: Sustained.

12 Q (By Mr. Grimes) Would race be an important
 13 factor in determining who to stop and who to --

14 MR. KIDD: Objection.

15 THE COURT: Rephrase that question, Mr. Grimes.

16 Q (By Mr. Grimes) You were in receipt of a
 17 description that a black male had robbed the store?

18 A Yes.

19 Q And if someone didn't fit the description,
 20 would you have stopped them if they had run from the
 21 police?

22 A I would have stopped someone if they had
 23 committed a crime in front of me, even though I was
 24 investigating something else, yes.

25 Q And running from the police, what crime is

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1 that?

2 A You were asking me if I would stop someone of a
3 different color. In that instance, I was there, on a
4 perimeter for an armed robbery, and I was looking for a
5 black male. But if a white male would have did a crime
6 in front of me or would have caused me to make contact
7 with him and detain him for some other reason, then,
8 yes, I would have.

9 Q That's what I'm trying to find out. What would
10 the other reason be? Would it be running? walking away?
11 Is that a lone reason to stop somebody?

12 A I would stop somebody who's a different color
13 or different person than what I was looking for, if a
14 crime would be committed in front of my presence, yes.

15 Q All right, sir. I'm just going to ask you a
16 couple of last questions in conclusion. Do you
17 recognize this picture?

18 (Document is handed to the witness.)

19 A It appears to be the Defendant in the back seat
20 of a car.

21 Q Is that the back seat of your car?

22 A Yes.

23 Q Do you remember if the windows were down at the
24 time?

25 A The door was open. I do not recall if the door

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1 window was down at the time.

2 MR. GRIMES: Okay. I believe this is -- move
3 to introduce this as Defense Exhibit 33.

4 (Shown to Mr. Kidd.)

5 THE COURT: Any objection?

6 Defendant's 33 into evidence without objection.
7 You may publish.

8 (Defendant's Exhibit Number 33 is admitted into
9 evidence.)

10 MR. GRIMES: Thank you, your Honor.

11 May I hand it to the jury rather than use the
12 Elmo?

13 THE COURT: You may.

14 (The photo is handed to the jury members for
15 publishing.)

16 THE COURT: You may continue.

17 MR. GRIMES: Thank you, your Honor.

18 Q (By Mr. Grimes) Three or five more questions.
19 When you filled out the incident report, you stated
20 Mr. Banks was six foot?

21 A I didn't fill out the -- I only filled out the
22 supplement. I didn't state six feet in the supplement.

23 Q And the incident report states six feet;
24 correct?

25 A I'm sorry?

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1 Q The incident report states six feet; correct?

2 A I'm unaware of that.

3 Q If I showed you the incident report, would that
4 refresh your memory?

5 A Sure.

6 MR. KIDD: Objection.

7 THE COURT: What's the basis?

8 MR. KIDD: Lack of foundation.

9 THE COURT: Sustained.

10 MR. GRIMES: May I approach briefly?

11 THE COURT: You may.

12 (All four attorneys are at the bench for a
13 bench conference off the record; and then the
14 proceedings continue as follows:)

15 Q (By Mr. Grimes) We can agree that your name is
16 on the incident report; correct?

17 A Right. But I wrote the supplement, not the
18 initial.

19 Q Your name is also on the arrest warrant, isn't
20 it?

21 A It's on the booking report, yeah.

22 Q It's on the arrest warrant too; isn't it?

23 A I -- I should be, but I haven't seen an arrest
24 warrant.

25 Q If I showed you the arrest warrant, would that

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1 refresh your memory?

2 A Sure. I should be a witness on the arrest
 3 warrant.

4 (Document is handed to the witness.)

5 A Yes, it has me listed as a witness.

6 Q All right. And on the incident report, that
 7 -- excuse me -- on the arrest warrant, that would be
 8 sworn information to the judge; correct?

9 A Yes.

10 Q Under oath?

11 A Yes.

12 Q And you stated on there that Mr. Banks is six
 13 feet?

14 MR. KIDD: Objection, Judge.

15 THE COURT: Basis?

16 MR. KIDD: Foundation.

17 THE COURT: All right. Counsel, approach.

18 (The four attorneys approach the bench for a
 19 bench conference off the record, and then the
 20 proceedings continue as follows:)

21 Q (By Mr. Grimes) Did you read the arrest
 22 warrant?

23 A I just looked for my name on there. I'd have
 24 to read the whole thing again to refresh my memory.

25 (Document is handed to the witness.)

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1 A I'm done.

2 Q Have you read the arrest warrant before today?

3 A Yes, I'm pretty sure I read it at the time of
4 the investigation.

5 Q And you're familiar with the facts in there, or
6 allegations?

7 A Of the affidavit, yes.

8 Q And you were the arresting officer; correct?

9 A Correct.

10 Q And in there it states how tall Mr. Banks is;
11 correct?

12 A I didn't write the front copy of the arrest
13 warrant.

14 Q Officer McAlhaney, does it state how tall
15 Mr. Banks is?

16 A It does.

17 Q And how tall is he?

18 MR. KIDD: Objection, your Honor.

19 THE COURT: Sustained.

20 Q (By Mr. Grimes) Did you fill out the booking
21 report?

22 A Correct. But the person that wrote this is the
23 Clerk of Court. So I'm not sure where that person got
24 that information from.

25 Q So -- can -- this case is almost two years old,

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1 and you don't know what is going on with this warrant?

2 A We do not fill out this portion of the arrest
3 warrant; the Clerk of Court does. So where they
4 ascertain that information, you would have to ask them.

5 Q Did you fill out the booking report?

6 A I did.

7 Q And -- that has his height and weight; doesn't
8 it?

9 A The booking should, yes.

10 (Document is handed to the witness.)

11 Q How tall is Mr. Banks in that?

12 A Says he's six feet.

13 Q How much does he weigh?

14 A 175, on this.

15 Q Thank you.

16 (Document is handed back to Mr. Grimes.)

17 MR. GRIMES: Your Honor, I would move to
18 introduce the booking report as Defendant's Exhibit 34.

19 THE COURT: Mr. Kidd.

20 MR. KIDD: Objection.

21 THE COURT: What's the basis?

22 MR. KIDD: Hearsay.

23 THE COURT: All right. We'll take that
24 matter up outside the presence of the jury. You may
25 continue.

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1 Q (By Mr. Grimes) I thought I was going to be
2 finished after that line of questioning. I guess I
3 lied.

4 Now, in your reports, you don't talk anything
5 about putting your hand on his heart and his heartbeat
6 beating?

7 A I -- myself, I believe I put he had heavy
8 breathing.

9 Q Okay. Well, I asked you about heartbeat.

10 A Right. That's not included in my supplement.

11 Q But yet you're able to vividly remember that,
12 almost two years later, but you can't remember how tall
13 Mr. Banks is?

14 A There's a possibility that when we write
15 the booking report, we handwrite it. Once it gets
16 back to our bureau, we generate a computer copy. There
17 are times when the name that pops up has information
18 that's not quite right, as far as height and weight
19 goes. It all depends on what officers had contact with
20 that person. And that person is placed in the database,
21 and sometimes the height and weight aren't always
22 correct.

23 MR. GRIMES: Thank you, your Honor. I have no
24 further questions, your Honor.

25 MR. KIDD: Briefly.

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1 REDIRECT EXAMINATION

2 BY MR. KIDD:

3 Q Just while we're talking about the height and
4 weight. You never measured Mr. Banks; did you?

5 A I did not.

6 Q You never weighed him; did you?

7 A I did not.

8 MR. KIDD: May I approach, your Honor?

9 THE COURT: You may.

10 (State's Exhibit Number 19 is marked for
11 identification.)

12 Q (By Mr. Kidd) I'm going to show you what's
13 been admitted as Defendant's Exhibit 17. I'm also going
14 to show you what's been marked for I.D. as State's
15 Exhibit Number 19. Do you recognize that item?

16 A It appears to be a -- it appears to be the item
17 that was placed on top of my car, along with the pistol,
18 but it's folded on top of the car when the picture was
19 taken.

20 MR. KIDD: State would offer State's Exhibit
21 Number 19 into evidence.

22 MR. GRIMES: I'll object to chain of custody.

23 THE COURT: Let me see it.

24 (Document is handed to the Judge.)

25 THE COURT: Mr. Grimes, do you wish to

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1 approach?

2 (Mr. Grimes and Mr. Kidd are at a side-bar with
3 the Judge for an off-the-record discussion; and then the
4 proceedings continue as follows:)

5 THE COURT: I'll address State's 19 outside the
6 presence of the jury.

7 MR. KIDD: Thank you, Judge.

8 Q (By MR. KIDD) Officer McAlhaney, I'm going to
9 go through a couple of those timing questions one more
10 time just so we can be absolutely certain about -- I'm
11 going to show you again what's been marked for I.D. as
12 State's Exhibit 17. Do you recognize that document?

13 A I do.

14 Q Okay. What is that again?

15 A This is the CAD report.

16 Q And, just to remind the jury, what a CAD report
17 is, please?

18 A It just has all the times and officers involved
19 and the locations and the activity that they're doing
20 and the time that they're doing it.

21 Q And how is a CAD report generated?

22 A By the dispatch.

23 Q So if you make a dispatch over your radio, what
24 then happens to generate a CAD report?

25 A The dispatcher actually puts the activity of

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1 what you're saying on the CAD report and the time that
2 it was done.

3 Q So it -- if you dispatched that you have
4 someone in custody, would that then be notated on the
5 CAD report?

6 A It would.

7 Q And if someone calls 911 and says, I've been
8 robbed, would that be generated on the CAD report?

9 A It would.

10 Q And would that be at the same time that those
11 activities occur?

12 A Correct.

13 Q Okay. Based on that CAD report, can you tell
14 the jury what time the first call was made indicating
15 that there was a robbery?

16 MR. GRIMES: Objection. Calls for hearsay and
17 confrontation clause.

18 THE COURT: Overruled.

19 Q (By Mr. Kidd) She said overruled. You can
20 answer.

21 A Oh, I'm sorry. It was at 2154, was the
22 dispatch time.

23 Q 2154. So that would be 9:54 p.m.?

24 A Correct.

25 Q So that would have been the time when the call

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1 came in?

2 A That's right.

3 Q And can you tell the jury what time you
4 detained the Defendant, Kashaun Banks?

5 A At 2212, which is 10:12 p.m.

6 Q At 10:12 p.m., you had Kashaun Banks in
7 custody?

8 A Correct.

9 (Mr. Kidd speaks with Ms. Riddle off the
10 record.)

11 Q (By Mr. Kidd) At -- I don't want to beat a
12 dead horse, but as for why you detained Mr. Banks,
13 you're in the --

14 MR. KIDD: Court's indulgence?

15 (Mr. Kidd speaks with Ms. Riddle off the
16 record.)

17 MR. KIDD: Judge, I'll withdraw that. I have
18 no further questions pending your ruling on that issue.

19 THE COURT: All right. Recross.

20 MR. GRIMES: Thank you, your Honor.

21 **RECROSS-EXAMINATION**

22 **BY MR. GRIMES:**

23 Q You have a copy of that CAD report?

24 A I do.

25 Q And that record is prepared at and near the

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1 time of the incident; correct?

2 A I'm sorry?

3 Q That record is prepared at or near the time of
 4 the incident; correct?

5 A Correct.

6 Q It's prepared by people who have knowledge of
 7 what's going on, officers on the scene, yourself, what
 8 you transmit that --

9 A It's conducted by the dispatcher. It is
 10 whatever we advise and the time that we advise it.

11 Q And you prepare that, and that's prepared in
 12 the regular course of business?

13 A Yes.

14 Q And you're qualified to identify that record?

15 A I -- I -- I understand the CAD report and what
 16 it does and what it says.

17 Q You just testified on it; correct?

18 A Yes.

19 MR. GRIMES: Your Honor, at this time we'd move
 20 the CAD report into evidence. I believe it is
 21 Defendant's Exhibit 35.

22 MR. KIDD: No objection.

23 THE COURT: Defendant's 35 into evidence
 24 without objection.

25 (Defendant's Exhibit Number 35 is admitted into

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1 evidence.)

2 MR. GRIMES: Thank you, your Honor. Your
3 Honor, I think I misspoke. I think it's Number 34.

4 (Defendant's Exhibit Number 34 is marked for
5 identification.)

6 MR. GRIMES: Thank you. I have no further
7 questions.

8 THE COURT: All right. Ladies and gentlemen of
9 the jury, there's a few matters of law that I must take
10 up outside of your presence. Do not begin your
11 deliberations; do not discuss this case amongst
12 yourselves. We will receive you back in momentarily.
13 Please rise for the jury. Feel free to leave your
14 notepads in your chairs.

15 (The jury is escorted from the courtroom at
16 2:26 p.m.)

17 THE COURT: Thank you. Be seated. We have the
18 issue -- my numbers are all messed up. What was the
19 last number that is in question, Mr. Grimes?

20 (Respite.)

21 THE COURT: Mr. Grimes, I had 34 as something
22 we needed to address. What is it that we need to
23 address?

24 MR. GRIMES: I think that was the --

25 THE COURT: Booking report.

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1 (Respite.)

2 THE COURT: All right. Mr. Kidd.

3 MR. KIDD: Yes, ma'am. The booking report is
4 Defendant's Exhibit 34.

5 MR. KIDD: Yes, ma'am.

6 THE COURT: That is the issue that we are
7 taking outside of the presence of the jury. The CAD
8 report has been admitted. It's been marked as State's
9 17 for I.D. only, and now it's been admitted without
10 objection as Defendant's 35, just so the record is
11 clear.

12 So let me hear from you as to 34 as to your
13 objection, which is the booking report.

14 MR. KIDD: It's just a hearsay objection,
15 Judge. The witness has no independent basis for the
16 information in that report.

17 MR. GRIMES: He said he wrote it. Mr. Kidd
18 already -- it goes to the weight.

19 THE COURT: Mr. Grimes, does -- did he testify
20 that he completed every -- everything of this, there's
21 no signatures?

22 MR. GRIMES: He testified he put in height and
23 weight. That's all I asked about.

24 MR. KIDD: It can be -- I withdraw that
25 objection. I don't think it matters. I withdraw my

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1 objection.

2 THE COURT: All right. He's withdrawing his
3 objection. Defendant's Exhibit 34 into evidence with no
4 objection. Thank you.

5 (Defendant's Exhibit Number 34 is admitted into
6 evidence.)

7 THE COURT: Then the State's 19, which is
8 the -- we need to address the belt. There's some issue
9 with the belt, which is 18. So the issue is 19, which
10 is the -- appears to be some sort of flier.

11 MR. KIDD: That's correct.

12 MR. GRIMES: We did have an issue with the
13 belt. It was chain of custody.

14 THE COURT: I admitted it over your objection.

15 MR. GRIMES: I apologize.

16 THE COURT: That's all right. Nineteen, I just
17 need to hear, because I think it needed a little more
18 explanation.

19 MR. KIDD: Well, your Honor, all it is is that
20 in Defendant's Exhibit Number 17, which is the
21 photograph of the hood on Officer McAlhaney's car, you
22 can see a folded piece of paper next to the gun. During
23 Cross of Officer McAlhaney, Mr. Grimes alleged that that
24 was a condom. Since then, I've had Officer McAlhaney
25 identify State's Exhibit Number 19 as the folded piece

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1 of paper on the car, which Mr. Grimes was alleging was a
2 condom. And I think it's a nonfungible object. It's
3 been I.D.'d. It was photographed at the scene. I don't
4 think any specific chain of custody is required when
5 something can be I.D.'d specifically that way.
6 Moreover, I believe Mr. Grimes opened the door to it,
7 anyway, in talking about it.

8 THE COURT: All right. Mr. Grimes, I'll be
9 happy to hear from you as to State's 19.

10 MR. GRIMES: Thank you, your Honor. I mean,
11 the officer's own testimony undercuts Mr. Kidd's
12 argument. He said it wasn't taken into evidence; he
13 didn't know what it was. I asked him if it could be a
14 condom. He said it could be. And there's no -- look at
15 the chain of custody sheet, there's nothing in there
16 about it. He testified that he didn't take it into
17 evidence. And on Redirect, he told us that was his
18 testimony. I just don't think the State established
19 chain of custody, and, therefore, should be suppressed,
20 unless they can lay their foundation. Thank you, your
21 Honor.

22 THE COURT: Anything further, Mr. Kidd?

23 MR. KIDD: No, ma'am.

24 THE COURT: Okay.

25 State's 19 into evidence over your objection.

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1 It's a nonfungible. I do not believe that they need to
2 show a chain of custody. Based upon the officer's
3 testimony, it was found at the scene. Based upon the
4 review of the picture of Defendant's Exhibit 17, note
5 your exception, of course, for the record.

6 (State's Exhibit Number 19 is admitted into
7 evidence.)

8 THE COURT: All right. You may step down. I
9 believe that addresses all of the issues. Thank you
10 very much.

11 MR. KIDD: Judge, I'm sorry. I don't mean to
12 interrupt. But can we clear that up in front of the
13 jury with Officer McAlhaney?

14 THE COURT: With what? I'm sorry?

15 MR. KIDD: With State's Exhibit 19.

16 THE COURT: What do we need to do?

17 MR. KIDD: Just admit it into evidence and have
18 them explain it in the presence of the jury. Because I
19 was not allowed to go into that line of questioning,
20 based on you wanting to take up the ruling outside the
21 presence of the jury. I wasn't allowed to identify the
22 exhibit in front of the jury.

23 THE COURT: All right. Counsel, approach.

24 Do you need a comfort break, Officer?

25 THE WITNESS: I do not.

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1 (Mr. Grimes and Mr. Kidd approach the bench
2 for a side-bar, and then the proceedings continue as
3 follows:)

4 (The jury is escorted into the courtroom
5 at 2:39 p.m.)

6 THE COURT: Thank you. You may be seated.
7 Ladies and gentlemen, just some housekeeping matters,
8 State's -- excuse me -- Defendant's 34 and 35 have been
9 admitted into evidence without objection, and State's 19
10 has been admitted over Defendant's objection. There's
11 just -- with reference to State's 19, I'm going to allow
12 the State and the Defendant to inquire as to that issue
13 only.

14 Mr. Kidd.

15 MR. KIDD: Thank you, your Honor. I'll be
16 extremely brief.

17 **FURTHER REDIRECT EXAMINATION**

18 **BY MR. KIDD:**

19 Q Officer McAlhaney, I just wanted to again just
20 talk very quickly about -- first, I'm going to show you
21 Defense Exhibit 17.

22 All right. That's State's -- I mean,
23 Defendant's Exhibit 17 you're looking at there. If I
24 can show you what has been marked and admitted into
25 evidence as State's Exhibit Number 19 and see if you

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1 recognize that compared to the picture on the screen
2 behind you?

3 A I do.

4 Q And is that what earlier during your
5 Cross-examination Defense Counsel referred to as a
6 condom?

7 A It was.

8 Q And is that, in fact, the case?

9 A It is not. It's a flier.

10 Q It's just a piece of paper, flier, that
11 happened to be at -- where was it located? Do you
12 recall?

13 A From the picture, or where it was?

14 Q Where was it -- where did you find it?

15 A I don't recall.

16 Q Okay. It was on the Defendant?

17 A Yes.

18 MR. GRIMES: Objection. Leading.

19 THE COURT: Overruled.

20 MR. KIDD: I have no further questions,
21 Judge.

22 MR. GRIMES: May I have one moment, your
23 Honor?

24 THE COURT: You may. Take all the time you
25 need.

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1 MR. GRIMES: Thank you, your Honor.

2 (Respite.)

3 FURTHER RECROSS-EXAMINATION

4 BY MR. GRIMES:

5 Q Do you recall the previous testimony about
 6 State's Exhibit 19? You testified previously about
 7 this?

8 A Yes.

9 Q That was in July, I believe, of last year?

10 A No, I do not recall testimony I gave then in
 11 reference to that.

12 MR. KIDD: Objection, Judge. May we approach?

13 THE COURT: You may.

14 (Mr. Kidd and Mr. Grimes approach the bench
 15 for a side-bar, and then the proceedings continue as
 16 follows:)

17 THE COURT: Sustained.

18 Q (By Mr. Grimes) Do you recall me asking you
 19 questions about Exhibit 19, if you could identify that?

20 A Today or the last?

21 Q Last time you testified.

22 A No, I don't recall.

23 Q And I'm going to show you a couple of pages
 24 from the transcript. May be a little bit unclear, but I
 25 think it starts at line 23, page 140, through line 3,

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1 page 141, is the pertinent part.

2 (Document is handed to the witness.)

3 Q If you can refresh your memory or see if that
4 does refresh your memory.

5 A Starts at 23?

6 Q I believe so.

7 (The witness is reviewing documents.)

8 (Mr. Grimes and Mr. Kidd speak off the record.)

9 Q (By Mr. Grimes) I apologize. I think I
10 misspoke.

11 (Document is handed back to Mr. Grimes.)

12 MR. GRIMES: Thank you, your Honor. I have no
13 further questions.

14 THE COURT: Anything further, Mr. Kidd?

15 MR. KIDD: No further questions for
16 Officer McAlhaney.

17 THE COURT: All right. Ladies and gentlemen,
18 there's some matters that I must take up outside of your
19 presence that is unrelated to this case, and so we're
20 going to have an early afternoon today. Please do not
21 begin your deliberations; do not discuss this case
22 amongst yourselves. Please be back in your jury room --
23 we will begin tomorrow morning at 9:45.

24 Please rise for the jury. Please remember all
25 of my admonitions. You may take your notepads so we can

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1 lock them up. And you have a wonderful afternoon.

2 (The jury is escorted from the courtroom at
3 2:46 p.m.)

4 THE COURT: Thank you. Be seated.

5 Officer, you may step down.

6 Is he released from his subpoena?

7 MR. KIDD: He is.

8 THE COURT: Any objection?

9 MR. GRIMES: No, ma'am.

10 THE COURT: You're free to remain with us, but
11 you're also free to leave, it appears. Thank you.

12 THE WITNESS: Thank you, your Honor.

13 THE COURT: Anything before we break for the
14 evening?

15 MR. KIDD: None from the State, Judge.

16 MR. GRIMES: No, your Honor.

17 THE COURT: How many witnesses do you
18 anticipate are left?

19 MR. KIDD: Three.

20 THE COURT: Three. Okay. Keep me posted.

21 Mr. Kidd, on scheduling, please come
22 forward.

23 (We are off the record at 2:47 p.m.)

24 (The jury trial recessed at 2:47 p.m. on
25 April 23, 2013, to reconvene tomorrow, April 24, 2013,

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1 at 9:45 a.m.)

2 (End of Volume II of IV.)

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REPORTER'S CERTIFICATE

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY) ss.

I, **ROLAYNE M. VOLPE**, Certified Court Reporter, CCR, and Registered Professional Reporter, RPR, do hereby certify that the transcript of the foregoing proceedings, **Volume II of IV**, accurately reflects the events that occurred before me to the best of my ability at the time and place set out on the caption hereto, the witnesses having been duly cautioned and sworn, or affirmed, to tell the truth, the whole truth, and nothing but the truth.

I FURTHER CERTIFY that I am neither counsel for, related to, nor employed by any of the parties to the action in which these proceedings were taken or to any attorney or counsel employed by the parties hereto, nor financially interested, directly or indirectly, in the outcome of this action.

CERTIFIED AND SIGNED on this 22nd day of August,
2013.

ORIGINAL

ROLAYNE M. VOLPE/NOTAR, RPT.
Certified Court Reporter and
Registered Professional Reporter
Commission Expires: 8/30/2021

Reported By:
Rolayne M. Volpe, CCR, RPR
Official Court Reporter for the State of South Carolina

STATE OF SOUTH CAROLINA,)
COUNTY OF CHARLESTON) GENERAL SESSIONS COURT
NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,)
vs.) Case No.: 2011-GS-10-08069
KASHAUN CHRISTIAN BANKS,)
Defendant.)

ORIGINAL

TRANSCRIPT OF PROCEEDINGS
JURY TRIAL, VOLUME III OF IV
HEARD BEFORE JUDGE KRISTI LEA HARRINGTON
ON APRIL 24, 2013

ROLAYNE M. VOLPE, CCR, RPR
Court Reporter for the State of South Carolina at Large
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EXHIBITS

(Some exhibits were premarked for identification.)

DESCRIPTION	I.D.	ADMITTED
<u>State's Exhibits:</u>		
No. 3 Photo		403
No. 10 Photo		431
No. 20 Cell Phone	393	394
No. 21 Shorts -- Clothing		406
No. 22 Shirt -- Clothing		406

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DESCRIPTION	I.D.	ADMITTED
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No. 36 Photo	376	
No. 37 Photo	376	
No. 38 Incident Details Report	378	
No. 39 Arrest Warrant	412	
No. 40 Photo	414	
No. 41 Photo	414	
No. 42 Photo	414	
No. 43 Photo	414	
No. 44 Photo	414	
No. 45 Latent Print	415	
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1			
2	DESCRIPTION	<u>EXHIBITS</u>	I.D. ADMITTED
3	Defendant's Exhibits:		
4	No. 48 Photo	434	435
5	No. 49 Photo	434	435
6	No. 50 Photo	436	
7	No. 51 Photo	436	
8	No. 52 Photo	436	
9	No. 53 Photo	440	442
10	No. 54 Photo	440	442
11	No. 55 911 Call	464	464

12			
13	DESCRIPTION	<u>EXHIBITS</u>	I.D. ADMITTED
14	Court's Exhibits:		
15	No. 2 Defendant's Req to Charge Circumstantial		
16	Evidence		457
17	No. 10 Jury Note Number 1		515
18	No. 10 Jury Note Number 2		519

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1 The above-styled cause came on for hearing on
2 the 24th day of April, 2013, at 9:46 a.m., before Judge
3 Kristi Lea Harrington, Circuit Judge for the Ninth
4 Judicial Circuit, presiding over the General Sessions
5 Court for the County of Charleston, when the following
6 proceedings were had and entered of record, to wit:

7 PROCEEDINGS

8 JURY TRIAL

9 (The Defendant is present in the courtroom with
10 his counsel.)

11 THE COURT: All right. Mr. Grimes, are you
12 ready to proceed?

13 MR. GRIMES: Yes, ma'am. May we approach
14 briefly?

15 THE COURT: You may.

16 (Mr. Grimes and Mr. Kidd approach the bench for
17 an off-the-record discussion, and then the proceedings
18 continue as follows:)

19 THE COURT: All right. We're still waiting on
20 one juror. Just as housekeeping, because there were
21 -- there were exhibits marked for pretrial and from the
22 last trial, if you will -- before you hand an exhibit to
23 a witness, if you will make sure that my court reporter
24 marks it, because it's -- we're -- our -- it's important
25 for us to keep our records straight. So if we just have

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1 one consistent numbering system from this point on, it's
2 going to make it a lot easier. So if you'll just get
3 into the habit, if you have an exhibit that's not
4 already marked, or even if it is marked from the
5 previous trial, if you'll hand it to the court reporter
6 so that she can put the appropriate mark for this trial.

7 MR. GRIMES: Thank you, your Honor.

8 THE COURT: Thank you.

9 MR. KIDD: Let me double-check mine to make
10 sure it's marked.

11 THE COURT: I think all the exhibits that are
12 up here now are correct.

13 THE COURT REPORTER: Correct.

14 (Respite.)

15 THE COURT: Anything before we bring in the
16 jury?

17 MR. KIDD: Nothing from the State, Judge.

18 THE COURT: All the jurors are here. Anything
19 before we bring in the jury?

20 MR. GRIMES: We may have a scheduling matter.
21 We had asked Ms. Tudder from St. George to be here at
22 11:30.

23 THE COURT: You want to take her out of order?
24 Is that what you are asking?

25 MR. GRIMES: If the State would rest --

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1 THE COURT: They're not going to rest
2 before 11:30. We're not going to get to your case
3 before 11:30.

4 MR. GRIMES: All right. Thank you, your Honor.

5 THE COURT: Thank you.

6 THE BAILIFF: Bring them in?

7 THE COURT: (Moves head up and down.)

8 MR. GRIMES: May we approach again briefly,
9 your Honor?

10 THE COURT: You may.

11 MR. GRIMES: I apologize.

12 (Mr. Grimes and Mr. Kidd approach the bench for
13 an off-the-record discussion, and then the proceedings
14 continue as follows:)

15 THE COURT: Just let me know if you need any
16 additional breaks or anything.

17 MR. GRIMES: Thank you, your Honor.

18 (The jury is escorted into the courtroom
19 at 9:54 a.m.)

20 THE COURT: Thank you. Please be seated. Did
21 every member of the jury panel comply with the Court's
22 instructions and admonitions? If you did, please raise
23 your right hand.

24 Thank you. All 14 jurors have complied with
25 the Court's instructions.

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1 Call your next witness, Mr. Kidd.

2 MS. RIDDLE: The State calls Officer Swagel.

3 THE DEPUTY CLERK OF COURT: Please your left
4 hand here and raise your right hand.

5 (The oath is administered by the Deputy Clerk
6 of Court, and the witness answers as follows:)

7 THE WITNESS: I do.

8 THE DEPUTY CLERK OF COURT: Please have a seat
9 and state your full name, spelling your last name for
10 the record.

11 THE WITNESS: James Allen Swagel. My last name
12 is S-w-a-g-e-l.

13 JAMES ALLEN SWAGEL,
14 having been first duly sworn by the Deputy Clerk of
15 Court to tell the truth, the whole truth, and nothing
16 but the truth, was examined and testified upon his oath
17 as follows:

18 DIRECT EXAMINATION

19 BY MS. RIDDLE:

20 Q Good morning, Officer Swagel.

21 A Good morning.

22 Q Can you tell the jury where you work?

23 A North Charleston Police Department.

24 Q How long have you worked there?

25 A A little over four years.

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1 Q Okay. What's your position there?

2 A Currently I'm a K-9 handler for the department.

3 Q Do you hold any other positions?

4 A I was patrol officer before that.

5 Q Okay. And how long have you been a K-9?

6 A I believe two and a half years now.

7 Q And what are your duties as a K-9 officer?

8 A We do a lot of different things. Primarily, we
9 will find drugs on the street. We use the K-9's nose to
10 find drugs. We track people wanted for heinous crimes:
11 Armed robbery or murder, stabbings, shootings, that kind
12 of thing. We clear residences and businesses if
13 somebody has broken in. Basically, our role is to keep
14 other officers safe by using our dogs to locate the
15 person inside. Tracking down. We'll do felony car
16 extractions, call-outs from buildings. Pretty much any
17 time there's a major crime in the city, it's our job to
18 respond and use our -- K-9s, our partners, to keep the
19 other police officers safe, because a human life is
20 pretty important to us.

21 Q What kind of training have you had to help you
22 with those?

23 A Lots of training. Other than the police
24 academy training that we all have to go through, I
25 initially went through 30 days of specific K-9 handler

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1 training, where I learned my dog, I learned my dog's
2 functions. We do a lot with case law and that kind of
3 stuff, how to track, read the dog, how to find drugs,
4 the different commands. My dog doesn't speak English;
5 he speaks Dutch; so I had to learn a lot of that just to
6 be able to communicate with him.

7 After that, we had continual training once a
8 week, on Tuesdays. Every week we have training in all
9 five aspects, where we'll clear a building, we'll run
10 tracks, we'll find drugs. You name it; we do it. This
11 week is actually pretty important for us. Once a year
12 we have a certification with the state. It's a state
13 board that not every department complies with. We all
14 have our different certifications. This week we'll be
15 training all week so that we can certify on Saturday.
16 That way everybody knows, okay, this is what our dogs
17 are trained to do. They're doing what they've been
18 trained to do.

19 Q Okay. You work with one specific dog?

20 A Yes. I've had Vento since I came to the unit.

21 Q His name is Vento?

22 A Yes, he is.

23 Q Where does he live?

24 A With me.

25 Q With you?

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1 A He lives at home with me. He's been in the
2 kennel once, and that was so I could take a vacation and
3 go out of town. But other than that, 24 hours a day,
4 he's by my side.

5 Q He's with you 24 hours a day?

6 A Yes, ma'am.

7 Q So when you go out and perform your duties,
8 he's coming with you?

9 A Yes.

10 Q Okay. When did you first get paired up with
11 Vento?

12 A My first day in K-9. Actually, it was a week
13 before I joined the unit. My supervisor, Sergeant
14 Sharp, brought him to my house. He said, This is your
15 new dog. Get to know him. We start training on Monday.
16 I've had him ever since then.

17 Q And when was that?

18 A I believe it was November of -- two years ago.

19 Q Two years ago?

20 A Yeah.

21 Q Okay. And what kind of dog is he?

22 A He's a Belgian Malinois.

23 Q Do they have any special skills or abilities?

24 A Different police departments use different K-9s
25 for the work. They're selected based on drives and

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1 their ability to smell. Everybody knows a Bloodhound is
2 a tracking dog. Their body is built for it. Every fold
3 in their face funnels that scent right into their nose.
4 The Belgian Malinois, German Shepherd, and Dutch
5 Shepherds have a body structure that we need. We need a
6 fast dog, because if we have somebody running from us,
7 we need something faster than them. Their noses are
8 superb. They -- my dog is -- we don't train with less
9 than three grams of any drug. And I've seen my dog
10 alert on a quarter of a gram of marijuana. It's just
11 amazing what they can do. But that's why they are
12 selected, is body structure and designation of purpose.

13 Q And you said he's from Belgium?

14 A He's from Holland.

15 Q Oh, Holland.

16 A Yes.

17 Q Was he born there?

18 A Yes.

19 Q Did he receive any training there?

20 A I'm not exactly sure. I'm his third handler.
21 I know when I received him, he was fully trained as a
22 police dog. I have since then talked with a trainer in
23 Georgia, who trains all the Army's dogs, who told me
24 that he trained him and put him on 14 different drug
25 odors, prescription drug odors, because he was going to

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1 sell him to a different department, but North Charleston
2 ended up getting him. I'm pretty glad.

3 Q And North Charleston purchased him?

4 A Yes.

5 Q Are they pretty expensive?

6 A The initial cost, right now, what we're running
7 into, in the few dogs we've had to replace since I came
8 to the unit, \$6,500 for an untrained dog. If they have
9 basic obedience, it goes up to 12- and \$15,000. They're
10 very expensive.

11 Q And what kind of training has Vento been
12 through with North Charleston Police Department?

13 A Everything that I've done. He is trained to
14 track down people. He's trained to clear buildings.
15 He's trained to find drugs. He's trained in
16 apprehensions, both bite and nonbite apprehensions.
17 He's trained on call-outs, vehicle extractions. He is a
18 pretty good dog. He's well-versed.

19 Q Is he trained to follow a trail by scent?

20 A That's tracking, yes.

21 Q How is that training done?

22 A When we're in training, we'll have a person --
23 normally another K-9 handler besides myself -- lay a
24 track. At the end of the track will be his toy. It's
25 that person's job to make sure they know exactly where

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1 they go step for step. If they make a turn, there's
2 usually a landmark where that turn is, whether it's a
3 tree or a rock or a car, you know, if we're walking
4 through parking lots, so that we know exactly where that
5 track is. Once the track is laid, we'll let it sit
6 usually between five and 45 minutes, just to let the
7 odor disseminate a little bit to -- you don't want to do
8 training of any sort the same every time. You need to
9 expose your dog to different experiences.

10 Once the track is set for whatever our
11 determined amount of time is, I'll bring him to where it
12 starts, I'll give -- I'll harness him and give him the
13 command to track. Once he gets the command to track,
14 his nose goes to the ground, and he follows that track
15 until he gets to the end. His reward is his toy,
16 usually during training.

17 Q Okay. You mentioned annual certifications.
18 And I apologize if you've already said this. But what
19 are your certifications in?

20 A We are -- the first thing we'll do is tracking
21 in the morning. Once we certify in tracking, we'll move
22 over and do obedience work. Then we'll do bite work.
23 Then we'll do drug searches, and then we'll do a
24 building clear. So it's five different processes.

25 Q Okay. And you have to stay current with those?

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1 A Yes, ma'am. It's annual every year.

2 Q Okay. Do you keep records on Vento's training?

3 A I do. Every time I use him, every time he
4 comes out of the car, I have to do a -- either a use
5 report, if I've used him in the line of duty, or a
6 training report. Every day I'm required to do 15
7 minutes of training with Vento, through the department;
8 so that has to be documented as well.

9 Q Okay. Tell the jury about how many times you
10 and Vento have practiced tracking.

11 A Oh, I don't have an exact number. But in two
12 and a half years, probably 500 times.

13 Q And have you successfully tracked?

14 A Oh, yes. I think there's only one where he
15 just didn't want to track at all. But that was -- he's
16 -- has some medical problems that were diagnosed right
17 after I first got him; so he was going through some
18 issues.

19 Q So that was right after you first got him?

20 A Yes, ma'am.

21 Q Okay. Have you and Vento responded to crime
22 scenes as a team?

23 A Almost every day.

24 Q So, roughly, how many times would that have
25 been?

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1 A 500 or so.

2 Q Hundreds?

3 A It's a lot.

4 MS. RIDDLE: Okay. Your Honor, at this time,
5 I move to admit Officer Swagel as an expert in K-9
6 tracking.

7 THE COURT: Any objection?

8 MR. GRIMES: No, your Honor.

9 THE COURT: Okay. Ladies and gentlemen,
10 normally a person cannot give opinion testimony. They
11 must testify as to either what they heard or saw or
12 sensed by smell or something of that nature. There is
13 an exception in our law when someone is qualified
14 because of their education and experience. This witness
15 will be qualified in the area of K-9 handling to give
16 opinion testimony in that area. That does not mean that
17 you must accept the opinion; it's simply evidence for
18 you to use in any way that you see fit.

19 Ms. Riddle.

20 MS. RIDDLE: Thank you, your Honor.

21 Q (By Ms. Riddle) Officer Swagel, tell the jury
22 what you do when you get to a scene with Vento.

23 A Depending on what type of scene I'm going to,
24 usually the first thing I do is try to find the
25 supervisor that's on scene. If he's not there, I look

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1 for the initially responding officer. We do a lot of
2 different things. So if I'm going to track for
3 somebody, I need know who I'm looking for, what they
4 look like, where they went, where they were last seen.
5 If it's a drug search, then I need to know, okay, what
6 is the guy's behavior? Why do you think there might be
7 drugs in his car or his house? It just depends. But
8 usually what I'm looking for is the supervisor on scene,
9 especially in a major crime.

10 Q If you're on scene to track someone, how do you
11 decide whether you're going to track someone?

12 A Whether I'm -- it's ability, opportunity, and
13 jeopardy. If that crime was so heinous, that that
14 person needs to be caught right then; if they don't know
15 who this person is, obviously, if we find an I.D. card
16 and a crime is not that bad, that person is probably not
17 going to do it again in the next couple of days, we'll
18 draw warrants. But if that person needs be found, then
19 we're going to track for him and try to find him.

20 Q And if you do decide to try to track someone,
21 how do you begin a track?

22 A We'll find a witness, whoever was there, if
23 they were robbed, if they were stabbed or shot, you
24 know, where was the last place you saw that person?
25 Whether it was right there where the crime happened, or

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1 whether they saw them run into the woods or down the
2 road, you know, it's all in, where was this person last
3 seen.

4 Q And when you track someone, what is it that the
5 dog is following?

6 A He's following the odor of that person's shoes
7 meeting the ground. So every time you take a step,
8 you're breaking grass blades, you're stirring up dust,
9 you're leaving rubber on the road every time you take a
10 step, and that's what the dog is following. He's
11 following the, basically, freshest scent that he smells.
12 But if he gets on a line of odor, he can follow that
13 line and discriminate against others.

14 Q Okay. So if somebody throws something off the
15 track, is he going to track whatever they've thrown?

16 A If they've thrown it, no.

17 Q Okay. And, again, that's because he's
18 following disturbance in the ground?

19 A Exactly. If they've thrown it, there's a break
20 in that disturbance where the track will be left and
21 they threw something to the right, he's going to follow
22 the track left because there's no break in the
23 disturbance.

24 Q Okay. Do you have him on a leash when you're
25 tracking?

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1 A He's on a 30-foot tracking lead.

2 Q And how can you tell when he is tracking?

3 A His body behavior changes. A normal dog --
4 Vento is a -- pretty much a normal dog. So if he's
5 bouncing around all happy or sitting by my side or
6 laying down, his body behavior is relaxed. When he's
7 tracking, his nose is to the ground, his shoulders are
8 hunched forward, his tail is straight up in the air, he
9 pulls very strongly on the lead. Sometimes I have to
10 jog to keep up with him. But when he's tracking, you
11 can definitely tell.

12 Q Okay. And what are you doing while Vento is
13 tracking?

14 A Watching him. I have to monitor every time he
15 lifts his head. I have to monitor where he's going. I
16 have to monitor people that might be walking, milling
17 about, to keep them safe, as well as, I have to see
18 where they're going, where they're coming from so that
19 Vento doesn't turn down their path. I have to monitor
20 traffic if he's crossing a road. There's a lot of
21 things that go into tracking. Because, primarily, I'm
22 trying to find a bad guy, but I have to keep my dog safe
23 so that he can, and I have to keep the community safe
24 while we're doing it.

25 Q Did you have the opportunity to assist in an

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1 investigation that occurred on October 15th, 2011?

2 A I did.

3 Q And tell the jury what you did with that
4 investigation.

5 A I basically tracked for a guy who committed an
6 armed robbery at the Exxon gas station at the corner of
7 Rivers and McMillan.

8 Q So what did you do when you arrived on scene?

9 A First thing I did was found the supervisor on
10 scene -- it was Sergeant Hille, Scott Hille -- asked him
11 what happened, and he told me -- he goes, The guy came
12 in here; robbed the place; took the cash drawer. He
13 told me -- the basic description that I got of the guy
14 was a young, black male. He had a shirt over his face.
15 And from what I remember, he told me he was wearing a
16 gray shirt and gray pants. But I'm not 100 percent
17 positive on that.

18 Q Did you start Vento on the track?

19 A Yes, I did. He told me that the guy ran out of
20 the side door facing the side where St. Charles Place
21 is. On the ground, there was a line of change that
22 looked like it had freshly been placed. I knew the guy
23 took the cash drawer. It seemed logical that the change
24 had spilled while he was running. So I took Vento to
25 the line of change after he was harnessed, and I

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1 presented him with the ground, and he picked up the odor
2 and followed it.

3 Q And how long after the incident did you begin
4 to track?

5 A I think I was there within ten minutes.

6 Q And did Vento track?

7 A He did.

8 Q And how could you tell?

9 A His nose was to the ground, shoulders hunched,
10 pulling strongly on the lead, tail was straight up in
11 the air. Classic behavior.

12 Q And could you tell he was on the right track?

13 A He was on the track I presented him with. That
14 was the last known location I was given for the suspect
15 who robbed the Exxon.

16 Q Okay. Did you find anything along the track?

17 A I found a pair of shoes, actually. Vento
18 tracked directly over a pair of shoes. Along the track,
19 we came to a swimming pool. Once we got into
20 St. Charles Place, Vento went to the left. There are
21 other officers that follow behind me. When I'm
22 tracking, I always have one person to watch me, because
23 my job is to watch the dog, and I need somebody to look
24 out for me. You never know where the bad guy is going
25 to hide. And K-9 handlers get shot and stabbed and all

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1 kinds of stuff; so we have somebody to protect us while
2 we're during our job. There were two other officers
3 following behind that guy who radioed over and said they
4 had located the change drawer just -- or cash drawer
5 right off the track. Now, that's kind of cool. But we
6 tracked right over a pair of shoes over behind the
7 church on Spruill Avenue.

8 Q Okay. Did you run into other people in the
9 track?

10 A There was one person. I actually commented to
11 the guy who was with me, that I couldn't believe nobody
12 was walking around at St. Charles Place. There's
13 normally a lot of foot traffic there. There was one
14 guy, he came out of an apartment, approached a pay
15 phone, started to get on the pay phone. We told him:
16 Look, we're tracking. You need to get out of the way.
17 I don't want you to get bit. You're not who we're
18 looking for. And he walked right back to where he came
19 from. But that was it; no other people.

20 Q So there was not heavy foot traffic?

21 A There was no other people; just that one.

22 MS. RIDDLE: Okay. Your Honor, may I approach?

23 THE COURT: You may.

24 MS. RIDDLE: Your Honor, may I approach the
25 witness?

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1 THE COURT: You have continuing permission.

2 MS. RIDDLE: Thank you, your Honor.

3 Q (By Ms. Riddle) I'm going to show you what's
4 been marked as State's Exhibit 12. Do you recognize
5 that?

6 A I do.

7 Q Okay. Thank you.

8 (Ms. Riddle is putting State's Exhibit 12 on
9 the Elmo.)

10 Q (By Ms. Riddle) Do you see that image on your
11 screen in front of you?

12 A I do.

13 Q Okay. Tell the jury what's before you.

14 A It's an image of St. Charles Place.

15 Q Okay. And that screen is like a touch screen.
16 If you touch it, it will mark on there.

17 A Okay.

18 Q Can you show the jury the track that Vento hit
19 upon?

20 A Sure can. We started at the back right corner
21 of the gas station, where the line of change was coming
22 out of the side door. We tracked to the road. And back
23 then there was a downed fence right here. But we
24 tracked behind the first building and came around --

25 Oh, it's not drawing with me. There we go.

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1 We came to the swimming pool; he went to the
2 left. We tracked straight across; we went between these
3 buildings. In this corner, there's another hole in the
4 fence. He came out the hole of the fence. He walked
5 down the sidewalk on Spruill Avenue. There's a gravel
6 parking lot beside the church --

7 Wow, this thing is going crazy.

8 He went behind the church, he went to the
9 corner where the chain-link fence was, and then he
10 walked directly to the police car, where, I believe, the
11 Defendant was in the back. But that was his track.

12 Other than that huge line.

13 Q And what happened at the end of the track?

14 A Vento walked up to the side of the police car.
15 I can't remember if he jumped up on the side or not, but
16 he sat down beside the police car. I made him come back
17 to the front and lay down until we concluded our
18 investigation; and then because it was such a long walk,
19 I took him back to the car to get some water.

20 Q Okay. And was there anyone in the police car?

21 A The Defendant was in the back.

22 Q He was in the back seat?

23 A Uh-huh.

24 Q So did you consider this a successful track?

25 A Most definitely. It was one of the best tracks

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1 I've ever had.

2 MS. RIDDLE: Beg the Court's indulgence?

3 THE COURT: Take your time.

4 (Ms. Riddle speaks with Mr. Kidd off the
5 record.)

6 Q (By Ms. Riddle) Officer Swagel, can you point
7 out for the jury on that map where you saw the other
8 person.

9 A It was between the swimming pool and this -- I
10 believe the first set of buildings right here. I don't
11 go into St. Charles very often, and so I'm not sure that
12 is exact. But it was in the middle of a group of four
13 buildings. There's a long grass stretch with a sidewalk
14 that cuts it right in half. The pay phone is right on
15 that sidewalk.

16 Q And you mentioned finding a cash drawer?

17 A That was beside the swimming pool, over here.

18 Q Okay. Where that dot to the left is?

19 A Yes.

20 Q Okay.

21 A Approximately.

22 (Ms. Riddle speaks to Mr. Kidd off the record.)

23 Q (By Ms. Riddle) Okay. And you mentioned also
24 a pair of shoes?

25 A They were right behind the church, about right

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1 -- right behind the church.

2 Q Okay.

3 A I tried to mark it, but it didn't really show
4 up.

5 MS. RIDDLE: Okay. Please answer any questions
6 Mr. Grimes may have.

7 THE WITNESS: Yes, ma'am.

8 MR. GRIMES: Thank you, your Honor.

9 CROSS-EXAMINATION

10 BY MR. GRIMES:

11 Q Good morning, Officer Swagel.

12 A Good morning.

13 Q How are you doing today?

14 A Good. How are you?

15 Q Not too bad. Feeling better than yesterday.

16 A That's good.

17 Q Bear with me just a moment.

18 All right. I believe you told Ms. Riddle, when
19 you testified, that this is one of the best tracks
20 you've ever had with Vento?

21 A It was. It's always good to get the bad guy at
22 the end, and that's, I think, what we did.

23 MR. GRIMES: Objection, your Honor. Whole
24 matter is to determine whether Mr. Banks is the bad guy.

25 MR. KIDD: He asked the question.

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1 THE COURT: Sustained. Rephrase your question,
2 Mr. Grimes.

3 Q (By Mr. Grimes) You testified this is one of
4 the best tracks ever; correct?

5 A Yes, sir.

6 Q And Vento didn't -- did not find the cash
7 register?

8 A No, he didn't.

9 Q And someone dropped the case register -- well,
10 you testified -- well, excuse me.

11 Did the suspect drop the cash register?

12 A I don't know that. I wasn't there when he
13 placed it.

14 Q So it is your testimony today that you don't
15 know whether the suspect dropped the cash drawer?

16 A He could have dropped it or -- excuse me. He
17 could have dropped it or thrown it. I don't know. He
18 may have walked over there and placed it himself. I
19 just wasn't there to see it; so I'm not sure.

20 Q Do you recall testifying before that the person
21 that you were following dropped the cash drawer and then
22 went to the left?

23 A It's possible. The last time I testified was a
24 year ago. I wasn't there to see it.

25 Q If I showed you a transcript of the -- your

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1 prior testimony, would that refresh your memory?

2 A Probably, yes.

3 Q I'll direct your attention to pages 256 and
4 257.

5 A Thank you.

6 Q Specifically, on 257, line 6 through line -- if
7 you want to read it to yourself and see if that
8 refreshes your memory.

9 (Document is handed to the witness.)

10 A That's what I said, then. If that's what I
11 said, then that's what I said. Again, I wasn't there to
12 see it, so I can't be 100 percent sure what he did.
13 It's possible that he went over there and placed the
14 drawer and then crossed back over his own path and
15 continued on to the left or to the right. I wasn't
16 there to see it. I have to follow my dog.

17 Q I understand that, that you weren't there to
18 see it. But in your -- I mean, when you testified, as
19 today, you testified under oath; correct?

20 A Oh, yes.

21 Q And a year ago is closer in time to the
22 incident?

23 A Yes.

24 Q Memory is better; correct?

25 A Could be.

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1 Q Okay. In your prior testimony, you didn't
2 equivocate in any way. You didn't say it's possible,
3 did you?

4 A Not according to that, no.

5 Q And if the suspect did drop the cash drawer and
6 then cross over his path, Vento would have did the same
7 thing: Followed the track, got to the cash drawer, and
8 then doubled back too; right?

9 A Not necessarily. He will follow the closest
10 most current scent. So if that guy that we were looking
11 for went to the right and then came back directly over
12 his own path, Vento may not have gone to the right at
13 all, because that scent is just a little bit over than
14 what he was following, even if it was only a couple of
15 seconds.

16 Q Okay. You didn't find any -- apart from the
17 sandals, you didn't find any clothes, did you?

18 A No, sir.

19 Q And if the suspect had went into someone's
20 house to change clothes -- Vento didn't go into anyone's
21 house, did he?

22 A No, he didn't.

23 Q And I believe today you testified the wall was
24 knocked down?

25 A There just was no fence there. The fence in

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1 the photographs, I believe, we looked at yesterday, just
2 wasn't completed, or maybe it just didn't extend that
3 far. There just was no fence on the McDonald's side of
4 St. Charles Place. There's a pretty good hole in the
5 corner on the Spruill Avenue side.

6 Q Okay. Do you know if crime scene took any
7 pictures of the fence, to --

8 A I heard -- I heard that they were called out,
9 but I was tracking. I really don't know what they did
10 while they were out there at the Exxon.

11 Q And let me see if I can understand this a
12 little bit better. Some of these pictures may help. Is
13 this the Exxon right here? This first dot?

14 A Yes, sir.

15 Q And it looks like you ran down that little
16 alleyway?

17 A (Moves head up and down.)

18 Q And went sort of -- you see through a hole -- I
19 mean, a fence being down and went through there, and, I
20 guess, behind the Stayover Lodge and to St. Charles
21 Place?

22 A Yes, sir.

23 Q Where is -- is the swimming pool kind of right
24 -- or is that the telephone person, this line right --

25 A That was the telephone person. I think the

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1 swimming pool is the blue dot that's just before it,
2 closer to the start of the track.

3 Q Okay. I'm going to show you what's been marked
4 as Defendant's Exhibit 12, 13. Is that sort of like the
5 fence line you were describing?

6 A That looks like pretty much like it did.

7 Q And on Exhibit 13, a little bit farther
8 -- thought I could make a clearer picture of it?

9 A I don't believe the brick pilings were there.
10 That's where the fence was down, was over there in that
11 corner, at the extension of the privacy fence.

12 Q Right here?

13 A Yes, sir.

14 Q Is that -- right here, is that part of
15 St. Charles Place, or is that still part of Stayover
16 Lodge?

17 A We never went into the Stayover Lodge parking
18 lot. The fence connects at the rear parking lot of
19 Stayover and goes all the way behind the hotel to
20 St. Charles Place, and all the way to the entrance of
21 St. Charles Place, actually. We never went into their
22 parking lot; so it would have to be into St. Charles
23 Place.

24 Q And let me show you again 13. If you go a
25 little bit past that truck, there's sort of an iron

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1 gate. Is that fair to say?

2 A I really don't know. I don't go down that road
3 very often.

4 THE COURT: Officer, you can hit clear on the
5 screen.

6 MR. GRIMES: Your Honor, may he keep it up
7 there?

8 THE COURT: Too late.

9 MR. GRIMES: We'll be going back.

10 THE COURT: He can redraw it.

11 MR. GRIMES: Thank you, your Honor.

12 THE WITNESS: I'll try to redraw it.

13 Q (By Mr. Grimes) That's fine for right now.
14 Did he go to -- little confused. But you consider where
15 you -- the hole or the place in the fence line behind
16 McDonald's?

17 A It's behind the McDonald's, but it's on the
18 other side of the road, and it's -- yeah, it would be
19 behind McDonald's but really close to the Exxon. It's
20 where their properties would join if they were on that
21 side of the road.

22 Q Now, who told you the suspect ran that way?

23 A Sergeant Hille told me that that's where the
24 victim in our crime told me the suspect ran out of that
25 building, out of that door, in that general direction.

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1 Q Okay. Is there a difference between a hole in
2 the fence and the fence just being knocked down?

3 A Not from a tracking standpoint.

4 Q So if you used "hole" before, it would be the
5 same as the fence being knocked down?

6 A Yes, sir.

7 Q All right. Now, I think the question I do have
8 about the track -- just a couple more questions. I
9 guess you may need to redraw the track line now.

10 A I can try. We started right here, we went
11 through, went around these buildings, straight up the
12 middle, across the road, through this cut in the fence,
13 up to here, and then right back down. That's
14 approximate. It's kind of hard to draw with my finger.

15 Q All right. Thank you.

16 And this intersection right here is -- is this
17 the hole in the wall -- or this hole in the fence, I
18 believe you said, was Spruill Avenue?

19 A Yes, sir.

20 Q And so Vento tracked the suspect on Spruill
21 Avenue at this point up here?

22 A Well, he was on the sidewalk, on the left-hand
23 side as we were going towards the school on Spruill
24 Avenue, yes, sir.

25 Q And then came down the sidewalk, I guess,

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1 toward the Tabernacle Choir?

2 A He -- he went down the sidewalk, and then
3 there's a gravel parking lot or something -- there's a
4 gravel parking lot before you get to the church. He
5 veered through that parking lot to behind the church and
6 then continued on.

7 Q That would be this little turn right here?

8 A Yes, sir.

9 Q Okay. And then he kept going past the church?

10 A Yes.

11 Q How far past the church did he go?

12 A Not very far. Maybe 50 yards or so.

13 Q And you say past the church -- 50 yards past
14 the church? Would it be, like, talking about the church
15 itself, the front of the church, or the back of the
16 church?

17 A He went past the church building as -- the end
18 of the church building, he went past it. I'm not sure
19 what you're asking me.

20 Q Okay. I guess -- so I want to make sure we're
21 on the same page on measurements, sort of. Are you
22 talking, going down the sidewalk, turns onto the gravel
23 parking lot, sounds like, and then goes 50 yards from
24 there and towards the school?

25 A He tracked all the way across the back of the

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1 church. Once he got past the church, he veered to the
2 left, approached the fence that runs behind the church
3 and the school. The -- behind the church is a wooden
4 privacy fence. Directly behind that is a chain-link
5 fence. Once you get to the side where the school is,
6 there's huge concertina wires, razor wires, on top of
7 the fence. Vento -- anytime there's a turn, it's very
8 abrupt and very dramatic. He's going to extend past
9 that, and then he'll circle back around, pick up the
10 track he was on through the turn and follow it back that
11 way. He extended past the church, followed it up to the
12 fence, he turned, and then walked right directly to the
13 police car.

14 Q When you said follow it to the fence, which
15 fence are you talking about?

16 A The wooden, chain-link fence combo.

17 Q By the church?

18 A Behind the church and the school, yes, sir.
19 It's all one fence.

20 Q I'm a little confused. I'm going to show you
21 what has been marked Defendant's Exhibit 27. You see
22 that okay?

23 A Yes, sir.

24 Q And when you talk about, sort of, the fence,
25 you're talking about this fence right here?

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1 A Yes, sir. But it was off the edge of the
2 picture, other side, past this side of the church.

3 Q Which side? I'm sorry?

4 A The closer side, I believe. If I'm looking
5 -- if I'm standing at the school looking at the church,
6 I would be looking at the flat side to where the awning
7 is, would be the back.

8 Q Okay. Do you know -- but Vento, I mean,
9 tracked someone from the sidewalk, and then he came
10 behind the church? Is that your testimony?

11 A Yes, sir.

12 Q And then Vento -- I think you said he went
13 -- this picture may show it a little bit better,
14 Defendant's Exhibit 25. And the person may have -- then
15 Vento tracked down this fence line?

16 A He tracked from right here on your picture,
17 came right behind, but then he veered and went about
18 over here behind these trees before he turned and came
19 back.

20 Q You said he went 50 yards. Is this the 50
21 yards you're talking about right here?

22 A Yes, sir, past the church.

23 Q And the shoes were found behind the church;
24 correct?

25 A Yes, sir.

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1 Q And those are, sort of, Nike flip-flops?

2 A Like sandals, yes, sir.

3 Q And I thought you said something about the
4 school fence and the church fence line being one.

5 A The privacy fence -- the wooden privacy fence
6 stops and it becomes just chain-link fence, once you get
7 into the church parking lot; the driveway that takes you
8 back to the cafeteria, or the old cafeteria. I haven't
9 been over there since they've updated it.

10 Q Let me show you Defendant's Exhibit 23. Is
11 that the school you're talking about?

12 A Yes, sir, I believe so.

13 Q And there's a fence line here. Is that the
14 fence line you're talking about too?

15 A That fence wasn't there.

16 Q Okay. Is there a fence behind --

17 A There's a fence that runs behind the school
18 that separates the school property from St. Charles
19 Place, yes, sir.

20 Q It's just a wire fence, I believe?

21 A Chain-link.

22 (Document is shown to Mr. Kidd.)

23 MR. GRIMES: Your Honor, may I approach the
24 court reporter and the witness after that?

25 THE COURT: You may.

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1 MR. GRIMES: I'd like these marked for
2 identification.

3 (Defendant's Exhibit Numbers 36 and 37 are
4 marked for identification.)

5 Q (By Mr. Grimes) Let me show you what has been
6 marked Defendant's Exhibit -- for identification only at
7 this time, Exhibits 36 and 37.

8 (Documents are handed to the witness.)

9 Q (By Mr. Grimes) And are those pictures of --
10 show a fair and accurate representation of that area as
11 it was in October of 2011?

12 A No, sir. There was rolled concertina wire on
13 the top of that fence.

14 Q And apart from that, was there any other
15 differences?

16 A I couldn't tell you. It was night. I don't go
17 over there very often, to be honest with you. I spend a
18 lot of my time in the north part of the city.

19 MR. GRIMES: All right. Your Honor, at this
20 time, I'd move to introduce Defendant's Exhibit 36 and
21 37.

22 MS. RIDDLE: Your Honor, we object.

23 THE COURT: All right.

24 Counsel approach.

25 (Mr. Kidd, Ms. Riddle, Mr. Grimes, and

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1 Ms. Ehrlich all approach the bench for an off-the-record
2 discussion, and then the proceedings continue as
3 follows:)

4 THE COURT: Objection is sustained.

5 (Documents are handed to the witness.)

6 Q (By Mr. Grimes) Show you again the pictures.

7 Do you see St. Charles Place in the pictures?

8 A That could be it, in the last building on the
9 left, behind that fence. I mean, this is the back of
10 the school. I've never been behind that school.

11 Q Okay. Is that sort of the -- the fence you
12 were talking about when you said separates the
13 St. Charles Place and the school?

14 A I believe so.

15 MR. GRIMES: Your Honor, at this time, I would
16 re-move to introduce pictures 36 and 37.

17 THE COURT: All right. Thank you.

18 MS. RIDDLE: Your Honor, same objection.

19 THE COURT: He said -- I understand that you
20 said remove.

21 MR. GRIMES: Renew.

22 THE COURT: Renew. I'm sorry.

23 MR. GRIMES: I apologize.

24 MS. RIDDLE: Same objection, your Honor.

25 THE COURT: I sustain your objection.

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1 MR. GRIMES: Thank you, your Honor.

2 Q (By Mr. Grimes) I want to ask you, did you
3 prepare a report in this case?

4 A A K-9 use report, yes, sir.

5 Q And you prepare a lot of reports to document
6 all your dog's training; correct?

7 A Yes, sir, I do.

8 Q Because of re-certification, you know what the
9 case law is, keep everything up-to-date on your dog?

10 A Yes, sir.

11 Q I think you testified that from the car ride,
12 you went behind the church and came back, I guess
13 -- came and then ended up at the car?

14 A Around about, yes, sir. We went to the fence,
15 and then he turned and went to the car.

16 Q After he got in the car, he didn't track any
17 farther?

18 A No, sir.

19 Q Now, do you have a copy of your report?

20 A Not with me, no, sir.

21 MR. GRIMES: Your Honor, I move to mark this as
22 Defendant's Exhibit for identification only, 38.

23 (Defendant's Exhibit Number 38 is marked for
24 identification.)

25 Q (By Mr. Grimes) So is your testimony today

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1 that Vento didn't track any farther past the car?

2 A No, sir. When he sat down at the end, he was
3 done.

4 Q Okay.

5 (Document is handed to the witness.)

6 Q I want to show you what has been marked as
7 Defendant's Exhibit 38 for identification. I want to
8 see if that refreshes your memory as to what Vento did
9 after he got to the car.

10 A He tracked to the fence and turned and tracked
11 to the car, is what my report says.

12 Q Is that -- maybe I'm wrong on this. But says,
13 like, he -- and your report states: Vento tracked along
14 to the building to the other side, and to the parking
15 lot, where the officer had the suspect detained.
16 Correct?

17 A Yes, sir.

18 Q And the suspect was detained in the car;
19 correct?

20 A Yes, sir. But Vento didn't go immediately to
21 the car. He went to the fence and then turned and went
22 to the car.

23 Q It said: Vento continued to track through the
24 parking lot and veered left, behind the school on
25 Spruill Avenue.

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1 A Yes, sir. He turned left, as if to go behind
2 the school, and tracked to the fence and --

3 Q That's the large fence behind the school?

4 A Well, it's more beside it. He turned as if he
5 was going towards the back of the school, yes, sir. But
6 he went to the fence, and he turned and went to the car.

7 Q And is that -- from the pictures you showed,
8 you said you went 50 yards past the church; correct?

9 A Yes, sir, approximately. I didn't have a tape
10 measure.

11 Q I understand that. But about half a football
12 field?

13 A Approximately.

14 Q And correct me if I'm wrong, but I don't see a
15 school in here or a chain-link fence near the school.

16 A That's because you are standing beside the
17 school taking the picture, facing away from the school.
18 It's right behind you.

19 Q I don't believe that's correct.

20 MS. RIDDLE: Objection, your Honor. Mr. Grimes
21 is testifying.

22 THE COURT: Rephrase your question, if
23 -- because that was not a question. Thank you.

24 MR. GRIMES: I can call the person.

25 THE COURT: I'm sorry?

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1 MR. GRIMES: I can address this later on in our
2 case, your Honor.

3 THE COURT: All right. Thank you.

4 Q (By Mr. Grimes) So you are saying you know for
5 sure where I was at -- where my investigator was at when
6 he took that picture?

7 A It appears their back was to the school, yes,
8 sir.

9 Q Yeah, back to the school. Right by the school?

10 A Appears their back was to the school.

11 Q You said right by the school. Is that your
12 testimony?

13 A You're mixing words. He -- their back was to
14 the school. They were close to the school, yes.

15 Q We can both agree the school is pretty near the
16 church?

17 A Fair, yes, sir.

18 Q And I want to ask you a few questions about the
19 training you've had or how you and Vento work together.
20 Is it fair you two are basically partners?

21 A Yes, sir.

22 Q And you have to interpret how Vento reacts out
23 there?

24 A Yes, sir, I interpret his behaviors daily.

25 Q And I want to ask you a few questions about

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1 when you first got to the scene. You said you got there
2 about -- responded about ten minutes after --

3 A It was -- I'm not exactly sure. I got there as
4 quickly as I possibly could after hearing of an armed
5 robbery.

6 Q Were you at home, kind of off duty, and they
7 called you out, or were you on regular patrol?

8 A No, sir. I was working. I was on regular
9 patrol.

10 Q And you heard there was an armed robbery?

11 A (Moves head up and down.)

12 Q Would it be fair to say that whatever the
13 dispatch time was, you would have been dispatched and
14 responded right after that?

15 A I started going to it immediately upon hearing
16 it on the radio, yes, sir.

17 Q And how long did it take you to get to the
18 scene?

19 A Maybe ten minutes. Approximately ten minutes.

20 Q Okay. And you talked to Sergeant -- Officer
21 Hille?

22 A It was Sergeant Hille. He had just been
23 promoted, yes, sir.

24 Q I know we have two Hills. Sort of confusing.
25 And we have Lieutenant Hill. Is it Lieutenant Hill now?

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1 A No, sir. No, sir.

2 Q And you talked to him for a little bit and kind
3 of get a background of how to start the track and
4 everything?

5 A Yes, sir, a basic description of the suspect
6 from the robbery and direction of travel.

7 Q And he said the description was a black male.
8 I mean, are you sure you --

9 A Yes. It was a black male -- young, black male,
10 late teens, early 20s. He had a dark, maybe, black or
11 brown shirt over his face during the robbery, and was
12 wearing, I think, a gray shirt and gray pants.

13 Q Get any description on height and weight?

14 A Five-eight, medium build.

15 Q And how long did it take you to talk to
16 Sergeant Hille to get that information?

17 A Just a few minutes. Two minutes. Not very
18 long.

19 Q Okay. And after that, you start to track?

20 A Yes, sir.

21 Q And then the regular crime -- next questions
22 are about this crime scene work in general. Is it
23 important to keep the crime scene preserved?

24 A Yes, sir.

25 Q And, for example, maybe in your case, you

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1 wouldn't want people walking back and forth through that
2 area; correct?

3 A Not generally. Not if I'm going to track, no,
4 sir.

5 Q Because -- sort of heavy foot traffic could
6 cause disturb -- cause problems with the track?

7 A Initially, yes, it can.

8 Q And you've had problems before going to track
9 someone and there was a lot of heavy foot traffic
10 before?

11 A Yes, sir.

12 Q And I believe you told Ms. Riddle that Vento,
13 essentially, follows the newest disturbance on the
14 ground?

15 A Pretty much, yes, sir.

16 Q And I think you testified that Vento is really
17 good at discriminating between smells?

18 A He's just as good as any other dog we have,
19 yes, sir.

20 Q Now, back in 2011, were you still working with
21 him on discriminating between smells?

22 A It's an off-and-on process for us during
23 training as we come across other things. We mix it up.
24 The last time I've done scent discrimination work with
25 him could have been 2011, specifically.

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1 Q You -- at that time, you had done some mild
2 work with Vento on discriminating smell between the
3 scents?

4 A We had trained a few times.

5 Q Let me double-check a couple of things.

6 I'm not sure if you testified to this. My
7 notes may not be perfect here. I'm going to ask you a
8 few questions about the actual track again.

9 A Yes, sir.

10 Q When you came up to the swimming pool, Vento
11 lifted his head?

12 A I honestly don't remember.

13 Q Circled back and forth?

14 A I don't remember. He tracked to the swimming
15 pool. He may have lifted his head and walked back and
16 forth. I just -- I don't remember.

17 Q If I showed you some of your prior testimony,
18 would that refresh your memory?

19 A Probably, yes, sir.

20 Q I believe it's on page 242, starting on line 8.
21 (Document is handed to the witness.)

22 A Thank you.

23 (Respite.)

24 A If that's what I said, then that's what he did,
25 yes, sir. Lifted his head and circled back and forth

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1 and then continued left.

2 Q And the cash drawer was on the right-hand side?

3 A Yes, sir.

4 Q And so that's the pool area right here?

5 A I think so, from this picture.

6 Q And you surround this area, you kind of
7 circled -- lifted his head, circled and went left, you
8 said?

9 A Yes, sir. The swimming pool over there has got
10 a sidewalk beside it, and he went back and forth and
11 then went left.

12 Q I guess you're obviously talking about -- not
13 this left right here, but going that way?

14 A Left along the track. He turned left. From
15 the direction he was going, he turned left.

16 Q Get that coordinated. And this area is back
17 behind the Stayover Lodge?

18 A I'm not sure if that's the Stayover or if
19 that's the strip mall. I believe --

20 Q I think --

21 A I think the Stayover is the L-shaped building.

22 Q Right here?

23 A Yes, sir.

24 Q And the strip mall?

25 A Yes, sir.

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1 Q And then, you know, the credit union right
2 here?

3 A It's on the corner, yes.

4 Q And a couple of bars over here?

5 A There are now, yes, sir.

6 Q Horizon is out here?

7 A Yes, sir.

8 MR. GRIMES: Can I have a moment, your Honor?

9 THE COURT: Take your time.

10 MR. GRIMES: Thank you.

11 (Mr. Grimes speaks with Ms. Ehrlich off the
12 record, and then the proceedings continue as follows:)

13 MR. GRIMES: Your Honor, I have no further
14 questions.

15 MS. RIDDLE: Briefly, your Honor.

16 **REDIRECT EXAMINATION**

17 **BY MS. RIDDLE:**

18 Q Officer Swagel, Mr. Grimes asked you questions
19 about the pool area?

20 A Yes, ma'am.

21 Q Is that where the cash drawer was found?

22 A I think they found it just on the side of the
23 pool outside the little fence that surrounded it.

24 Q And you mentioned there was a sidewalk around
25 the pool?

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1 A Yes, ma'am. It's paved.

2 Q So when Vento came to the pool, on the
3 sidewalk, you said he circled back and forth and
4 eventually went to the left?

5 A Yes, ma'am.

6 Q Okay. And why would he have gone to the left?

7 A That's the track he was following. He was
8 following the track to the left. That was the newest
9 disturbance in the continuous trail that he was
10 following.

11 Q Okay. And then -- if I can show you the map
12 one more time. If you will just clear it off --

13 A Yes, ma'am.

14 Q -- so you can see. Where you came out on
15 Spruill Avenue, you mentioned there was a fence.

16 A Yes, ma'am.

17 Q What does Vento do when he comes to something
18 like a fence?

19 A It depends. That fence, there's a hole, so he
20 walked straight through it. If there's a standard
21 four-foot fence that somebody has around their house,
22 he'll generally jump over it. If it's a six-foot fence,
23 he used to jump over it. He's a little bit older now.
24 He can't quite do it. If it's eight or more, then he'll
25 go back and forth and back and forth and back and forth

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1 and back and forth and back and forth, wanting to get
2 through. His eyes' stay where he's trying to get to,
3 and it's my job to get him around to it. So, generally,
4 I have to backtrack a little bit and take him around the
5 other side, he picks it right back up, and we keep
6 going.

7 Q Is it fair to say the hole was the easiest way
8 for him to get through?

9 A Yes, ma'am.

10 Q And then you mentioned whenever he comes to an
11 abrupt turn, he will sometimes walk fast?

12 A Yes, ma'am. Generally all our dogs will.
13 Vento is just like all the rest. He goes and goes and
14 goes and goes, and it takes him a second for his brain
15 to catch up to his nose. And he says, okay, wait a
16 minute. I don't smell it anymore. So he'll lift his
17 head up, circle around. What he's doing is air
18 scenting. He's gathering the odor into his nose, and
19 when he comes across concentration, he'll put his nose
20 back down and continuing following.

21 Q Okay. So he is able to -- even if he goes past
22 it and gets off track, he's able to get back on it?

23 A Yes, ma'am.

24 Q Do you recall approximately how far this track
25 was?

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1 A No. Maybe a mile or so. I -- I'm not real
2 sure. And this map, the scale just doesn't justify how
3 big this area is.

4 Q And you testified there was not heavy foot
5 traffic that night?

6 A I ran across one person.

7 Q So that would not cause any problems?

8 A No, ma'am, not at all.

9 MS. RIDDLE: No further questions, your Honor.

10 THE COURT: Mr. Grimes?

11 MR. GRIMES: May I have just one moment, your
12 Honor?

13 THE COURT: Take your time.

14 MR. GRIMES: Thank you.

15 RECROSS-EXAMINATION

16 BY MR. GRIMES:

17 Q I just want to ask you a couple of questions.
18 Ms. Riddle asked you about -- you told her that if Vento
19 gets to a fence that he can't jump, he kind of goes back
20 and forth?

21 A Yes.

22 Q Did he do that at all on this night?

23 A Other than what I testified to about the
24 swimming pool, walking back and forth, no, not that I
25 remember, because there was no fence for him to jump

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1 over. Where he needed to cross was just open.

2 Q All right. No fence for him to jump
3 over?

4 A Not that I remember, no, sir.

5 MR. GRIMES: All right. Thank you.

6 THE COURT: You may step down. Thank
7 you.

8 THE WITNESS: Thank you.

9 THE COURT: Call your next witness.

10 MR. KIDD: State calls Officer Lacher.

11 THE DEPUTY CLERK OF COURT: Place your left
12 hand here and raise your right hand.

13 (The oath is administered by the Deputy Clerk
14 of Court, and the witness answers as follows:)

15 THE WITNESS: Yes, ma'am.

16 THE DEPUTY CLERK OF COURT: Please have a seat
17 and state your full name, spelling your last name for
18 the record.

19 THE WITNESS: Officer Ronald Lacher,
20 L-a-c-h-e-r.

21 RONALD LACHER,
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

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DIRECT EXAMINATION

2 BY MR. KIDD:

3 Q Good morning, Officer Lacher.

4 A How are you?

5 Q I'm doing well. Thank you. Can you tell the
6 jury where you are employed, please.

7 A With the North Charleston Police Department.

8 Q And how long have you been with North
9 Charleston?

10 A Been a police officer for 12 years, eight of
11 which -- the last eight being with North Charleston.

12 Q And what -- what's your current title in North
13 Charleston?

14 A Currently I'm a neighborhood resource officer.
15 Prior to that, I did road patrol. I was in the
16 detective division for almost three years. Since last
17 August of 2012, I took on a position as neighborhood
18 resource officer, honing in on one specific
19 neighborhood, building a relationship with the citizens
20 in any -- addressing any problems or issues they may
21 have in the community.

22 Q In October of 2011, what were you doing for
23 North Charleston back then?

24 A I was in the detective bureau.

25 Q Okay. In your duties with the detective bureau

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1 back then, did you have the chance to become involved in
2 the investigation of the armed robbery at the Exxon?

3 A I did.

4 Q And did you come into contact with the
5 Defendant on that night?

6 A Yes, sir.

7 Q And where were you when you came into contact
8 with the Defendant?

9 A I was actually one of the on-call detectives.
10 I was called out that night in reference to the armed
11 robbery.

12 Q And when you came into contact with the
13 Defendant himself, where were you then?

14 A In the detective bay. I responded to the
15 central bureau.

16 Q So this is back in North Charleston City Hall?

17 A Correct.

18 MR. KIDD: May I approach, your Honor?

19 THE COURT: You may.

20 MR. KIDD: Mark this.

21 THE COURT REPORTER: State's 20.

22 (State's Exhibit Number 20 is marked for
23 identification.)

24 Q (By Mr. Kidd) I'll show you what's been marked
25 as State's Exhibit Number 20 and see if you can

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1 recognize that item.

2 A That was the Defendant's cell phone, which was
3 found in his possession.

4 MR. KIDD: Your Honor, at this time, we'd offer
5 State's Exhibit Number 20 into evidence.

6 MR. GRIMES: No objection, your Honor.

7 THE COURT: State's 20 into evidence without
8 objection.

9 (State's Exhibit Number 20 is admitted into
10 evidence.)

11 Q (By Mr. Kidd) At some point, did you look on
12 to that cell phone?

13 A I did.

14 Q And why did you do that?

15 A The Defendant had asked me to call his sister.
16 I asked him where the number was, and it struck me odd
17 because his sister's number was under the name wifey.
18 So I retrieved the number in order to call her and let
19 her know about his status.

20 Q Okay. So the -- the cell phone that was
21 recovered on scene, he asked you to go into it, to get a
22 number to call a family member and advise her what was
23 going on?

24 A Correct.

25 MR. KIDD: Thank you. I have no further

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1 questions for Officer Lacher.

2 THE COURT: Mr. Grimes.

3 MR. GRIMES: Brief question.

4 CROSS-EXAMINATION

5 BY MR. GRIMES:

6 Q Good morning, Officer Lacher.

7 A How are you doing, Mr. Grimes?

8 Q Pretty good. How are you doing today?

9 A Very good.

10 Q When you came in contact with Kashaun, you said
11 that was in the detective bay?

12 A Correct.

13 Q And that's sort of a 10 by 12 room?

14 A I don't know the exact measurements, but it's
15 a --

16 Q Not as big as a courtroom?

17 A No. 10 by 12, I guess that would be a fair
18 estimate.

19 Q And it had a camera in there?

20 A To be honest with you, at the time, I don't
21 believe we had video and audio, but I'm not sure. I
22 know at the time we were using a hand-held recording
23 device. Sometime around that time frame we were getting
24 the station wired up for audio and video.

25 Q Do you remember there to be a bowl over a

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1 camera?

2 A Yes.

3 Q The cameras weren't working?

4 A I'm sorry?

5 Q Because the cameras, I guess, weren't working?

6 MR. KIDD: Objection.

7 THE COURT: Basis?

8 MR. KIDD: Relevance.

9 THE COURT: Sustained.

10 Q (By Mr. Grimes) And you came in contact with
11 Kashaun about a little bit before midnight?

12 A I don't have a copy of my notes, but somewhere
13 around that time frame. I believe it was about 12:05.
14 I'm not 100 percent positive.

15 Q And when you were making the phone call, it was
16 kind of at the end of your meeting?

17 A I'm sorry? When I was making the phone call --

18 Q At what time did you make -- talk to him about
19 making the phone call?

20 A He actually asked me to. I told him I would
21 retrieve the number. I do that often with people, just
22 so that they're -- you know, given the unfortunate
23 situation, that their family members would know at some
24 point what happened to them so if he doesn't come home.
25 I don't exactly recall what time I called. I know he

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1 had asked, and he had actually asked again later on that
2 night, and I told him that I would. I did make the
3 phone call, but I believe it was towards the end when we
4 were wrapping things up.

5 Q Maybe at least an hour had passed?

6 A Probably more than that. Given the status
7 of the investigation, I would not have called right
8 away, in fear that, you know, I don't know who I'm
9 calling.

10 Q Safety reasons; correct?

11 A Correct.

12 Q And --

13 MR. GRIMES: One moment, your Honor.

14 THE COURT: Take your time.

15 (Mr. Grimes speaks with Ms. Ehrlich off the
16 record.)

17 MR. GRIMES: I have no further questions, your
18 Honor.

19 MR. KIDD: No Redirect.

20 THE COURT: You may step down. Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: Do y'all need a break? Madam
23 Foreperson?

24 JURY FOREPERSON: Sure.

25 THE COURT: Please remember all my admonitions.

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1 You may leave your notepads right in the chair.

2 Please rise for the jury.

3 (The jury is escorted from the courtroom
4 at 11:05 a.m.)

5 THE COURT: Thank you. Be seated. Anything
6 before we take a short break?

7 MR. KIDD: Nothing from the State.

8 MR. GRIMES: If I can consult with Mr. Banks in
9 the back room during the break?

10 THE COURT: All right. You have one more
11 witness, Mr. Kidd?

12 MR. KIDD: Two.

13 THE COURT: Two. I'm sorry. I miscounted.

14 MR. KIDD: No. When I told you yesterday,
15 Judge, I said three, and I should have said four.

16 THE COURT: So I was not incorrect.

17 MR. KIDD: You were correct. I was incorrect.

18 THE COURT: All right. About ten minutes.

19 (A break is taken from 11:06 a.m. until
20 11:20 a.m.; at which time, the proceedings continue as
21 follows:)

22 THE COURT: Anything before we bring in the
23 jury, Mr. Kidd?

24 MR. KIDD: No, ma'am.

25 THE COURT: Mr. Grimes?

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1 MR. KIDD: No, ma'am.

2 THE COURT: Thank you. Let's bring in the
3 jury.

4 Are we to a point, Mr. Kidd, that we can
5 continue with your remaining two witnesses?

6 MR. KIDD: I think both of them will be very
7 short.

8 THE COURT: All right.

9 (The jury is escorted into the courtroom at
10 11:22 a.m.)

11 THE COURT: Thank you. Be seated.

12 Mr. Kidd, call your next witness.

13 MR. KIDD: The State calls Lieutenant Hill.

14 (The oath is administered by the Deputy Clerk
15 of Court, and the witness answers as follows:)

16 THE WITNESS: I do.

17 THE DEPUTY COURT CLERK: Please state your full
18 name, spelling your last name for the record.

19 THE WITNESS: James Michael Hill, Jr., H-i-l-l.

20 MR. KIDD: Thank you, your Honor.

21 JAMES MICHAEL HILL, JR.,

22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

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1 **DIRECT EXAMINATION**

2 **BY MR. KIDD:**

3 Q Good morning, Lieutenant Hill.

4 A Good morning.

5 Q Can you tell the jury where you are employed?
6 Where you're currently employed?

7 A Yes, sir. I'm a Lieutenant with North
8 Charleston Police Department.

9 Q And how long have you been with North
10 Charleston?

11 A I believe about 12, 13 years.

12 Q And were you a Lieutenant back in October of
13 2011?

14 A No, sir. I was a sergeant.

15 Q You were sergeant. Okay. And as a sergeant
16 with North Charleston, what were your duties?

17 A In 2011, I was the sergeant over the violent
18 crime unit in investigations.

19 Q And what does that entail?

20 A I would assign cases of robbery, homicide, home
21 invasion, any crime of violence that occurred within the
22 city.

23 Q On October 15th, 2011, were you on duty that
24 evening?

25 A No, sir. I was called out.

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1 Q You were called out. So you were at home with
2 your family or -- how does that work? How do you get
3 called out?

4 A Actually, sir, I was working at a security job.
5 We do off-duty security. And then I got called from
6 that.

7 Q Okay. So do they designate who is -- who can
8 be called out on any given night?

9 A Yes, sir. Each sergeant, the -- everybody has
10 a week of rotation throughout the month.

11 Q So this week you would have been kind of like
12 the on-call sergeant?

13 A I was the duty sergeant.

14 Q Duty sergeant?

15 A Yes, sir.

16 Q So as part of your duties as the duty sergeant
17 that week, did you get called out to the investigation
18 of the armed robbery at that Exxon gas station?

19 A Yes, sir, I did.

20 Q And did you respond to the Exxon gas station
21 that night?

22 A Yes, sir, I did.

23 Q Have you had the opportunity to view the video
24 of that robbery that evening?

25 A Yes, sir, I did.

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1 Q And through the course of your investigation,
2 did you have the opportunity to speak with the
3 Defendant, Mr. Banks?

4 A Yes, sir, I did.

5 MR. KIDD: May I approach, Judge?

6 THE COURT: You may.

7 Q (By Mr. Kidd) I'm going to show you what
8 has been marked for identification as State's Exhibit
9 Number 3.

10 (Photograph is shown to the Defense.)

11 (Document is handed to the witness.)

12 Q (By Mr. Kidd) See if you can recognize this
13 photograph -- or these two photographs.

14 Do you recognize those photographs?

15 A Yes, sir, I do.

16 Q I believe the one -- let me get my left and
17 right straight. The one on your left, what is that a
18 photograph of?

19 A It's a picture of the Defendant, Mr. Banks.

20 Q Is that how he appeared to you on the night of
21 on October 15, 2011?

22 A Yes, sir, it is.

23 Q And then on the right, what is that photograph?

24 A It's a still photo from inside the Exxon during
25 the robbery.

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1 Q Is that from the video?

2 A Yes, sir.

3 Q And does that fairly and accurately depict that
4 frame of the video that you saw?

5 A Yes, sir, it does.

6 MR. KIDD: Your Honor, at this time, the State
7 would offer State's Exhibit 3 into evidence.

8 THE COURT: Any objection?

9 MR. GRIMES: No, your Honor.

10 THE COURT: State's 3 into evidence without
11 objection.

12 (State's Exhibit Number 3 is admitted into
13 evidence.)

14 (Publishing to the jury.)

15 Q (By MR. KIDD) And State's Exhibit 3, I believe
16 that should be in front of you there.

17 A Yes, sir.

18 Q The first -- I first want to draw your
19 attention to the firearm and the Defendant's hand and
20 the -- in the video --

21 MR. GRIMES: Objection. Assuming the Defendant
22 is the robber.

23 MR. KIDD: In the suspect's hand. I'm sorry.

24 THE COURT: There was a lot of overtalk.

25 Mr. Kidd, rephrase your question so that I can

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1 -- Mr. Grimes, I didn't hear the entire question.

2 MR. KIDD: It was my mistake, Judge.

3 Q (By Mr. Kidd) I want to draw your attention to
4 the firearm in the robber's hand in the right frame. Is
5 there anything in particular that draws your attention
6 to that firearm?

7 A Yes, sir. It's the -- the length that's overly
8 long.

9 Q Overly long barrel?

10 A It's not the normal length. What we're used
11 to seeing is a -- as we call a revolver. A wheel gun,
12 for those that have a revolver.

13 Q And I'll show you what's been marked and
14 admitted as State's Exhibit Number 14. Does that
15 firearm resemble the firearm there?

16 A Yes, sir.

17 Q Is that similar in length?

18 A Yes, sir.

19 Q And if I could draw you to the robber's hands
20 in that right-hand image, can you recognize those --
21 what's on those?

22 A Yes, sir. This is a still photo; so it's
23 probably a little hard for the jurors to see. But in
24 that video, if you're watching it in motion, he had on a
25 distinct pair of gloves.

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1 Q And if I show you what has been marked as
2 State's Exhibit Number 15, does that appear to be those
3 same gloves?

4 A Yes, sir, it does.

5 Q Okay. And, once again, it is kind of difficult
6 in these still photos, but can you draw a resemblance in
7 the appearance of those two individuals?

8 A If you look here at his nose area and then
9 right here, in the video -- which I just covered up with
10 a red dot, of course -- but he has a flatter nose. The
11 picture's not very clear, but when you're watching the
12 live footage of the video, you can tell he was a
13 lighter-skinned gentleman; whereas, the Defendant is a
14 little lighter skinned. And, also, I look at the -- to
15 the right of that -- my right, the eye -- how his eyes
16 are narrow.

17 Q And that was similar to you?

18 A Yes.

19 Q Well, first, I'm going to show you -- take that
20 back.

21 (Item is shown to Mr. Grimes.)

22 Q (By Mr. Kidd) I'm going to show you what has
23 been marked for I.D. as State's Exhibit -- and you don't
24 have to touch it if you don't want -- 21. Do you
25 recognize those?

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1 A Yes, sir. Those are the shorts that Mr. Banks
2 was wearing during the interview.

3 Q And you saw him wearing those shorts that
4 evening?

5 A Yes, sir.

6 Q And --

7 (Item is shown to Mr. Grimes.)

8 Q (By Mr. Kidd) State's Exhibit Number 22. Do
9 you recognize this -- this object -- or this item?

10 A Yes, sir. It's the gray T-shirt that he was
11 wearing during the interview also.

12 MR. KIDD: Your Honor, at this time, the State
13 would offer State's Exhibit 21 and 22 into evidence.

14 MR. GRIMES: No objection, your Honor.

15 THE COURT: State's 21 and 22 into evidence
16 without objection.

17 (State's Exhibit Numbers 21 and 22 are admitted
18 into evidence.)

19 Q (By Mr. Kidd) I'm just going to hold this one
20 up. It's kind of funky over a year.

21 Now, this gray T-shirt, State's Exhibit 22, I
22 believe --

23 Make sure that sticker doesn't come off.

24 -- does this appear to be present in the
25 right-hand image of that video?

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1 A Yes, sir. You can see the gray T-shirt here
2 and the sleeves here. That it is a short-sleeved
3 T-shirt.

4 Q And then he has something else dark wrapped
5 around over the top of him?

6 A Yes, sir. We were never able to determine
7 whether it was another shirt or hoodie, but it was some
8 sort of clothing over his -- partially over his face.

9 MR. KIDD: Court's indulgence for just one
10 moment?

11 THE COURT: Take your time.

12 MR. KIDD: I have no further questions for the
13 Lieutenant.

14 THE COURT: Mr. Grimes?

15 MR. GRIMES: Thank you, your Honor.

16 CROSS-EXAMINATION

17 BY MR. GRIMES:

18 Q Good morning, Lieutenant Hill.

19 A Good morning, Mr. Grimes. How are you, sir?

20 Q I'm pretty good. How are you doing today?

21 A Good.

22 Q Kashaun is about six feet tall; correct?

23 A I'm not sure what his height is, sir.

24 Q And he weighs about 200 pounds?

25 A I'm not sure, sir.

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1 Q If I showed you a transcript of your prior
2 testimony, would that refresh your memory?

3 A Sure.

4 (Document is handed to the witness.)

5 Q (By Mr. Grimes) Let me show you page 286.

6 It's on, I guess, about line 9 --

7 A Yes, sir.

8 Q -- if you want to refresh your memory.

9 A Yes, sir.

10 (Document is handed to the witness.)

11 A You said line 9, sir?

12 Q Yes, sir. Starting there and through part of
13 the highlighted portions. If you need extra or more
14 transcripts, let me know.

15 (Respite.)

16 MR. KIDD: Judge, I object. May I approach?

17 THE COURT: You may.

18 (Mr. Kidd and Mr. Grimes approach the bench for
19 a side-bar.)

20 THE COURT: Sustained.

21 MR. GRIMES: Judge, I'll rephrase the question.

22 Q (By Mr. Grimes) Will it be fair to say that
23 I'm about 6-2?

24 A 6-2, 6-3, I'm guessing, sir. I'm not very good
25 with guessing height, to be quite honest with you.

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1 Q I wish I was 6-3.
2 A Yes, sir.
3 (The Defendant stands.)
4 Q (By Mr. Grimes) And if I'm 6-2, I guess, with
5 shoes on, how tall do you think Mr. Banks is?
6 A You said if you were 6-2?
7 Q Yes, sir.
8 A Maybe 6-1.
9 Q How much do you think Mr. Banks weighs?
10 A It's kind of hard for me to tell how loose
11 his --
12 MR. KIDD: Objection, Judge. Speculation.
13 A -- his vest is.
14 THE COURT: Sustained.
15 (The Defendant sits down.)
16 Q (By MR. KIDD) If he's 6-1 -- or your estimate
17 is 6-1, that's consistent with the booking report;
18 correct?
19 A Sir, I'd have to look at the booking report
20 because I don't remember what it -- I didn't do the
21 booking report so I never saw it. You would have to
22 show it to me.
23 THE COURT: Defendant's 34.
24 Q (By Mr. Grimes) Show you what has been marked
25 as Defendant's Exhibit 34.

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1 A Yes, sir.

2 (Document is handed to the witness.)

3 A Okay, sir.

4 Q And in there, it says he's six foot?

5 A Yes, sir. This is a booking report, and when
6 officers enter this information, it is entered based on
7 what the Defendant or the subject, whoever this booking
8 report is filled out on. They don't measure them; they
9 don't weigh them. They would go, Mr. Grimes, how tall
10 are you? And if you told them you are 6-1 and you
11 reasonably look within that range, they are going to put
12 it. I mean, if it's a gross discrepancy, where somebody
13 is saying they weighed 200 pounds, and it's obvious they
14 are 90 pounds, they are not going to do that.

15 Q If I was arrested -- you arrest me and you
16 asked me how tall I was and I said 5-7, would that be a
17 gross discrepancy?

18 A Yes, because I'm 5-9, and you are taller than
19 me.

20 Q And I'm going to ask you a few questions about
21 where Mr. Banks was living at back in October of 2011.

22 You received information that he was living at
23 ■ Meeting Street?

24 A No, sir, I don't remember seeing any
25 information on that.

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1 Q If I showed you a copy of the arrest warrant,
2 would that refresh your memory?

3 A Sure.

4 Q Why don't we skip that question real fast.
5 Go back to the booking report.

6 A Yes, sir.

7 Q Is that -- it's been admitted into evidence.
8 Does that say [REDACTED] Meeting Street as his address?

9 A Yes, sir. On the booking report, it says it is
10 [REDACTED] Meeting Street.

11 Q The arrest warrant has another address; is that
12 correct?

13 A I don't know. I didn't prepare the arrest
14 warrant. I never have actually seen the arrest warrant,
15 to be honest with you, sir.

16 Q And you're the case officer in this case?

17 A I was just an interviewing detective and the
18 responding duty sergeant.

19 Q Who was the case officer?

20 A I'm not sure. I would imagine it would have
21 been Officer McAlhaney or Luke Cummins. I believe those
22 were the two that were listed on the incident report.

23 Q It's my understanding, North Charleston
24 procedures, if you have a serious felony, like armed
25 robbery, there would be an investigating officer, a

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1 detective, assigned to it?

2 A That's not always the case, no, sir.

3 MR. GRIMES: Going to mark at least the front
4 page of the arrest warrant as Defendant's Exhibit 39,
5 for identification.

6 (Defendant's Exhibit Number 39 is marked for
7 identification.)

8 Q (By Mr. Grimes) Now I want to show you
9 what's been marked as Defendant's Exhibit 39, for
10 identification only.

11 (Document is handed to the witness.)

12 MR. KIDD: Judge, I'm going to object. This
13 witness has no knowledge of this document.

14 THE COURT: Let's see what his question is.

15 Q (By Mr. Grimes) Does that have a second
16 address on there?

17 MR. KIDD: Objection.

18 THE COURT: Sustained.

19 MR. GRIMES: May we approach, your Honor?

20 THE COURT: Yes.

21 (All four attorneys approach the bench for a
22 side-bar.)

23 THE COURT: Sustained.

24 MR. GRIMES: Thank you.

25 Q (By Mr. Grimes) I'm going to ask you a few

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1 questions about your investigation in this case.

2 A Yes, sir.

3 Q And you said you were not, sort of, the case
4 officer on this case?

5 A No, sir.

6 Q If someone wanted to get DNA testing done, who
7 would that go through? The case officer, the person who
8 found the gloves, Officer McAlhaney, solicitor's office?

9 A It could come from the patrol officer; it could
10 from crime scene; we could get a request from the
11 solicitor's office. All of those could be request it.

12 Q Do you know if any request was ever made to
13 have the gloves tested for DNA?

14 A I do not know.

15 Q Do you recall the door being tested for
16 fingerprints?

17 A Sir, you'd have to ask the crime scene officer
18 that responded. I mean, it's a common practice, they
19 -- you know, they gather whatever evidence they can.
20 Now, what they physically did, I do not know, no, sir.

21 (Photographs are shown to Mr. Kidd.)

22 MR. GRIMES: Your Honor, may I approach?

23 THE COURT: You may.

24 MR. GRIMES: Get five pictures marked for
25 identification.

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1 (Defendant's Exhibit Number 40 through 44 are
2 marked for identification.)

3 Q (By Mr. Grimes) I want to show you what has
4 been marked as Defendant's Exhibits, for identification,
5 40 through 44.

6 A Yes, sir.

7 Q See if that would refresh your memory about
8 whether the door was fingerprinted.

9 (Documents are handed to the witness.)

10 A Okay. I've reviewed the pictures.

11 Q Does that refresh your memory?

12 A Again, sir, this is somebody else's work. This
13 is not work that I did. So you're asking me to -- I can
14 give you my opinion of what I'm looking at, but I didn't
15 do these.

16 Q Is what you are looking at, is that consistent
17 with taking fingerprints?

18 A This is, again, Bunker's work, and I can't tell
19 you whether she did a fingerprint here, or whether she
20 did a DNA swab. I really don't know, sir. I mean,
21 you're asking me to testify to somebody else's work.

22 Q All right, Lieutenant Hill. Thank you.

23 A Yes, sir.

24 (Documents are handed back to Mr. Grimes.)

25 MR. GRIMES: May I have one moment, your Honor?

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1 THE COURT: Yes.

2 (Mr. Grimes speaks with Ms. Ehrlich off the
3 record.)

4 (Document is shown to Mr. Kidd.)

5 MR. GRIMES: Mark this for identification.

6 (Defendant's Exhibit Number 45 is marked for
7 identification.)

8 Q (By Mr. Grimes) I want to show you what's been
9 marked as Defendant's Exhibit 45, for identification.

10 (Document is handed to the witness.)

11 A Yes, sir.

12 Q Does that refresh your memory as to whether or
13 not there were any fingerprints done?

14 A This is showing me that four white backer cards
15 bearing latent lifts were lifted, yes, sir. And it also
16 shows that all of those lifts were insufficient for
17 AFIS.

18 Q All right. Thank you.

19 (Document is handed back to Mr. Grimes.)

20 Q Do you know where those lifts came from?

21 A I do not, no, sir.

22 Q Briefly, for the jury, AFIS is essentially a
23 computerized database of fingerprints. Is that fair to
24 say?

25 A It's a database with fingerprints, yes, sir.

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1 Q And so if someone picked up some fingerprints
2 from a podium, they could run it through, and if
3 someone's fingerprints are in the system, either from a
4 criminal record, security job, or taking your bar
5 license, that can come up; correct?

6 A Can you ask me exactly what you are asking?
7 Are you asking me what prints are inputted into that
8 system?

9 Q No. I'll withdraw the question.

10 Essentially, AFIS is -- if someone's
11 fingerprints are in the system, for whatever reason,
12 when you come up with a match -- or some fingerprints,
13 they try to run it through to see if they can get a
14 match; correct?

15 A I'm not a latent print examiner, but it's my
16 understanding that if that person that's trained in that
17 field feels that there is sufficient detail for AFIS,
18 they will enter it; AFIS does what it does; and if
19 somebody's prints are in that system, then it will give
20 them a suspected match; and then you have to go and
21 retrieve that individual's prints and manually compare
22 them. You know, that latent print examiner has to
23 physically look at both prints taken.

24 Q And that's a -- little bit of a subjective art
25 to it; correct? Some people might say, Well, if you

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1 have six points matching versus eight points versus 12
 2 points, that's sufficient?

3 A Sir, I'm not a latent print examiner, so I
 4 don't know how many points and -- you'd have to ask
 5 somebody that does that.

6 Q Now, looking at this picture, you didn't
 7 find this shirt right here, did you? Or during the
 8 investigation of the robbery, the shirt was not located,
 9 was it?

10 A The darkened-colored shirt?

11 Q Yes, sir.

12 A I don't believe so, no, sir.

13 Q And these pants were not located either, were
 14 they?

15 A No, sir, I don't think so.

16 Q And you watched the video, all in out, it shows
 17 there's a pair of sneakers?

18 A I honestly can't remember on that one, sir.
 19 I'd have to look at the video again to refresh my
 20 memory.

21 Q Fair enough. Can we agree that it wasn't a
 22 pair of Nike flip-flops?

23 A I still would prefer to look at the video
 24 before I answer that question.

25 Q All right. And the person doesn't have a bag

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1 here, does he?

2 A Again, in that picture there, it's hard to say
3 yes or no. I mean, it very well could have a backpack
4 behind that shirt that you just can't see in the
5 picture.

6 Q Okay. Where would the Sprite be at?

7 A I'm sorry?

8 Q The person doesn't have a Sprite bottle either,
9 does he?

10 A Well, if he has a backpack on his back, it very
11 well could be inside the backpack. I mean, you're
12 speculating here.

13 Q Just asking if you can see --

14 A Yes, sir.

15 Q -- the Sprite there.

16 I think we can agree that everybody is
17 speculating in this case.

18 MR. KIDD: Objection, Judge.

19 THE COURT: Sustained.

20 Q (By Mr. Grimes) Now, I'm going to ask you a
21 few questions about checking the surveillance cameras.
22 You received information that --

23 I guess, one of the clerks, the victims.

24 -- the person ran behind McDonald's?

25 A When I arrived on scene, I spoke to one clerk,

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1 and they [sic] ran in the general direction -- there's a
2 -- if you're standing at the Exxon, the McDonald's -- if
3 you're standing on Rivers looking at the Exxon, Spruill
4 is to your -- or McMillan is to your right. The end of
5 McMillan is Spruill. To your left is McDonald's. And
6 there's a roadway that goes between the Exxon and the
7 Stayover Lodge, that you were referring to earlier, that
8 runs to the back of McDonald's, yes, sir. And that's
9 the general direction that they all said that the
10 suspect had ran.

11 MR. GRIMES: Mark this as Defendant's Exhibit
12 46, for identification.

13 (Defendant's Exhibit Number 46 is marked for
14 identification.)

15 Q (By Mr. Grimes) And according to
16 Officer Swagel, the suspect ran through a part of a
17 downed fence, I guess, behind Stayover Lodge and into
18 St. Charles Place?

19 A I believe that's what he said.

20 Q And that McDonald's has cameras; correct?

21 A To be quite honest with you, I don't think so.
22 They may have some inside, but I don't think they have
23 any exterior.

24 Q If I showed you Exhibit 46 for identification,
25 would that refresh your memory as to whether they have

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1 exterior cameras?

2 A I believe this picture that you are showing me
3 is the new McDonald's that they completely renovated
4 since this incident in 2011 occurred, and it very well
5 may have them on there now. But I know as a normal
6 course of investigation like this, you'll have patrol
7 officers, they will canvass the area looking for cameras
8 to see if there's any potential extra footage that we
9 could obtain of the incident. And at that time, we were
10 told of none.

11 Q All right.

12 (Document is handed back to Mr. Grimes.)

13 Q And there's a title loan place down the road
14 from that; correct? If you keep going down Rivers
15 Avenue?

16 A Sir, I'm not -- I don't want to say, because
17 I'm not sure.

18 Q Okay. Did you check -- so you didn't check any
19 outdoor cameras, like, from the Exxon, McDonald's, any
20 other stores?

21 A The only footage that I'm aware of that we got
22 was from the Exxon.

23 Q Inside footage?

24 A Correct. There was, to my knowledge, no
25 footage from McDonald's, there was no footage from

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1 St. Charles Place, and no footage from the bank, South
2 Carolina Federal Credit Union. There was no other
3 footage obtained of the incident.

4 Q Which officer went to St. Charles Place and
5 asked for footage?

6 A I have no idea, sir.

7 Q Which officer went to McDonald's and asked for
8 footage?

9 A I don't know, sir.

10 Q And talk about video footage. Are you familiar
11 with this school behind the church, Ronald McNair, I
12 think, is the new name of the school?

13 A Are you referring to the school on Spruill?

14 Q Yes, sir.

15 A I know of the school being there, yes, sir.

16 Q And that school has cameras; correct?

17 A I really don't know.

18 Q So after various tragedies of schools, are you
19 saying that school didn't have cameras?

20 A I don't know, sir. I can tell you that I've
21 worked investigations in that general area before, and
22 the only locations that we've ever been able to get
23 footage from were the bank, as far as exterior footage.

24 Q Do you know of anyone that went to the bank and
25 asked for their footage?

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1 A I don't know if anybody specifically went to
2 the bank. I can tell you who normally checks our bank
3 footage to see if we have it, but I don't --

4 Q Who is that?

5 A It's usually Detective Reedle (phonetic) or one
6 of the fraud investigators who constantly have contact
7 with the banks.

8 Q And in all the reports that you have read and
9 seen in this case, has Officer Reedle's name ever come
10 up?

11 A No, sir.

12 Q And during the investigation when you searched
13 in trash cans for shirts or clothing been disregarded,
14 thrown away?

15 A Are you asking if I physically would have done
16 it?

17 Q Well, generally. Basically, I know this
18 scenario, you have someone who comes in, shirt, pants,
19 you arrest somebody in shorts, gray shirt, no pants --
20 no shirt, no shoes, would the investigators or, you
21 know, other officers out there be going through -- sort
22 of when they're following the dog track, be looking in
23 trash cans, roofs of houses, you know, other places for
24 any of those clothes?

25 A Of course. Officers would be canvassing,

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1 looking for any potential evidence, yes, sir.

2 Q And they didn't find any, did they?

3 A If my memory serves me right, the cash drawer
4 was recovered.

5 Q I'm talking about the clothes itself.

6 A I don't believe so. I'd have to review the
7 entire report to say yes or no for 100 percent. But off
8 the top of my head, I don't remember any other clothing
9 items being recovered, no, sir.

10 Q Let's talk about the clothing items that
11 have been presented. You haven't seen the shirt, have
12 you?

13 A Which shirt?

14 Q Sir?

15 A You said have I seen -- which shirt are you
16 referring to?

17 Q You have been watching most of this trial;
18 correct?

19 A I've been sitting in, yes, sir.

20 Q You haven't seen a shirt introduced, have you?

21 A The gray shirt that Mr. Kidd just introduced,
22 yes, sir.

23 Q I apologize. You're correct. The dark-colored
24 shirt?

25 A No, sir, I have not seen that.

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1 Q No sneakers or anything?

2 A No, sir.

3 Q Other than Nike sandals having been introduced,
4 we can agree there was Nike sandals out there?

5 A I believe so, yes, sir.

6 Q No pants?

7 A No, sir.

8 Q Dog didn't, apparently, track to anyone's house
9 where someone could have changed clothes; correct?

10 A In the testimony I heard of Mr. Swagel, it
11 doesn't sound like he tracked to a house, no, sir.

12 MR. GRIMES: Okay. May I have one moment, your
13 Honor?

14 THE COURT: (Moves head up and down.)

15 MR. GRIMES: Thank you.

16 (Mr. Grimes speaks with Ms. Ehrlich off the
17 record.)

18 MR. GRIMES: Thank you, your Honor. I have no
19 further questions.

20 MR. KIDD: Briefly, Judge.

21 **REDIRECT EXAMINATION**

22 **BY MR. KIDD:**

23 Q Lieutenant Hill, now, as -- you've been a lead
24 detective or lead officer on a case before; right?

25 A Yes, sir.

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1 Q And, typically, when you are a lead, is it not
2 true that often your duties are to delegate?

3 A Yes, sir.

4 Q And so as a lead, you then tell other officers
5 what to do?

6 A Correct.

7 Q So you're not necessarily doing -- collecting
8 evidence and stuff yourself, as much as you are telling
9 other officers to perform different tasks; is that
10 correct?

11 A Yes, sir.

12 Q Now, in your experience as a law enforcement
13 officer, does it make sense to take fingerprints from a
14 crime scene when the suspect is wearing gloves?

15 A No, sir, it does not.

16 Q And if you fingerprinted a door that a suspect
17 wearing gloves went through, would you expect there to
18 be any results?

19 A No, sir.

20 Q And if that were the case, would insufficient
21 ridge detail be common?

22 A Of course.

23 Q And when there's insufficient ridge detail,
24 that means you can't get any results from those prints;
25 is that right?

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1 A From AFIS. That makes -- the report would say
2 insufficient for AFIS.

3 Q Correct. And this might sound ridiculous, but
4 between the ages of 17 and 19, did you grow?

5 A Of course.

6 Q And you would expect anyone to grow and gain
7 weight during those years?

8 A Yes, sir.

9 Q And the suspect in the video right there, on
10 the right-hand side, is he standing right up tall?

11 A No, sir, he's not.

12 Q He's got -- bending his knees? A little bend
13 in his back? Crouched down a little bit?

14 A Yes, sir.

15 MR. KIDD: No further questions.

16 MR. GRIMES: One question, or maybe two.

17 RECROSS-EXAMINATION

18 BY MR. GRIMES:

19 Q Are you aware that Ms. Keisha Holmes is 5-7?

20 MR. KIDD: Objection, Judge. Scope.

21 THE COURT: Mr. Grimes?

22 MR. GRIMES: He's bringing out the height,
23 someone bending, and if the cashier is 5-7, she should
24 be able to testify if someone is taller or shorter than
25 her.

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1 THE COURT: I'll allow it. You may answer if
2 you know.

3 THE WITNESS: You said go ahead and answer,
4 Judge?

5 THE COURT: You may.

6 THE WITNESS: First of all, who is
7 Keisha Holmes?

8 MR. GRIMES: Thank you. I have no further
9 questions.

10 THE COURT: You may step down. Thank you.
11 Call your next witness.

12 MS. RIDDLE: The State calls Officer Bennett.
13 (The oath is administered by the Deputy Clerk
14 of Court, and the witness answers as follows:)

15 THE WITNESS: I do.

16 THE DEPUTY CLERK OF COURT: Please have a seat
17 and state your full name, spelling your last name for
18 the record.

19 THE WITNESS: Yes, ma'am. Thomas Eugene
20 Bennett, Jr., B-e-n-n-e-t-t.

21 THOMAS EUGENE BENNETT, JR.,
22 having been first duly sworn by the Deputy Clerk of
23 Court to tell the truth, the whole truth, and nothing
24 but the truth, was examined and testified upon his oath
25 as follows:

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1 certifications, advance DUI certifications, narcotic
2 classes, some detective classes, data master, which is a
3 breathalyzer machine. I have several certifications.

4 Q Did you have an opportunity to assist with an
5 investigation on October 15th, 2011?

6 A I did, ma'am.

7 Q And tell the jury what you did to help with
8 that investigation.

9 A When I heard the call go out, I was either on
10 duty or getting off duty. I was around the corner. I
11 was one of the last units to arrive on the scene. The
12 dog was already started the track. Detectives were
13 already on the scene. I was advised by Sergeant Scott
14 Hille to go with Officer Winslett to follow the dog
15 track to see if we could recover any items that may have
16 been dropped or discarded.

17 During that track, we started at the back door,
18 or the side door, where the suspect was last seen
19 leaving; and on the ground, I observed several loose
20 change: nickels, dimes, pennies -- a lot of pennies --
21 leading near the track towards where the dog was seen
22 tracking, and the suspect was last seen running. We
23 followed that track all the way to the sidewalk, where
24 the fence, the Stayover Lodge and St. Charles Place,
25 that little fence, was either knocked down or not there.

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1 The coins kind of stopped right there on the sidewalk.

2 We continued walking, and we were advised while
3 we were walking that the K-9 was very -- had a very good
4 scent near the pool area, was really interested in that
5 area. So Officer Winslett and I really focused on the
6 pool area next to a building. During that time, we
7 recovered a black cash drawer that was leaned up against
8 a large oak tree stump and the building, which was next
9 to the pool. At that time, we advised the sergeant and
10 the crime scene that we recovered a cash drawer, and we
11 stayed on scene until they came to take pictures and
12 recovered the cash drawer so it wouldn't be touched and
13 moved.

14 MS. RIDDLE: Your Honor, may I approach?

15 THE COURT: (Moves head up and down.)

16 (Document is shown to Mr. Grimes.)

17 (Document is handed to the witness.)

18 Q (By Ms. Riddle) I'm going to show you what has
19 been marked as State's Exhibit 10, for identification
20 purposes. Do you recognize what's in that photo?

21 A I do, ma'am.

22 Q Okay.

23 A That's the black cash drawer that we observed
24 next to the stump and the building.

25 MS. RIDDLE: Your Honor, I move to admit

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1 State's Exhibit 10 into evidence.

2 THE COURT: Any objections?

3 MR. GRIMES: No, ma'am.

4 THE COURT: State's 10 into evidence without
5 objection.

6 (State's Exhibit Number 10 is admitted into
7 evidence.)

8 Q (By Ms. Riddle) There's kind of a glare on
9 there. But is that the cash drawer that you located?

10 A It is, ma'am.

11 Q And you said that was the area by the pool?

12 A It was. The building is here -- the building
13 is here, and the pool is here. And we started walking
14 that area and observed the cash drawer between the stump
15 and the building. It was like the back of the building
16 behind -- near the sidewalk. And the Stayover Lodge is
17 here, the building is here, and we located it right
18 there.

19 Q Did it appear as if someone had hidden the
20 drawer there?

21 A It looked like somebody quickly placed it there
22 to be out of eyesight of anybody that could be walking
23 in the area. We actually had to go around a couple of
24 sawhorses and some -- it looked like they were
25 renovating on the building; so there were buckets and

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1 things like that.

2 Q I'm going show you what has been marked as
3 State's Exhibit 12. Do you see that image in front of
4 you?

5 A I do, ma'am.

6 Q Can you just circle the area where you found
7 the cash drawer?

8 A The pool area is here. We -- we located it
9 right about here.

10 Q Okay.

11 A That's -- I mean, it's kind of a big view, but
12 that -- right around that area, there. There was trees
13 and. . .

14 Q All right. If you will clear that dot off.

15 A (Witness complies.)

16 Q Is it easier now for you to --

17 A Yes, ma'am.

18 Q -- mark where you found the cash drawer?

19 A Yeah. It's going to be right about here.

20 Q Okay.

21 A There's a building, underneath that tree.

22 Q Okay. Did you -- and I apologize if you've
23 already said this. But did you stay with the evidence
24 that you found?

25 A I did, ma'am, until crime scene responded and

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1 collected it.

2 Q And did that conclude your involvement with the
3 investigation?

4 A No, ma'am. At that time, we went back to the
5 incident location, the Exxon, and began picking up with
6 our hands all the loose change, which took probably
7 about five, ten minutes.

8 Q To your knowledge, did crime scene collect that
9 cash drawer?

10 A I'm not sure what they did with the cash
11 drawer. At that point -- once we relieved them, we went
12 back and started picking up the change.

13 Q At that time, were you working off duty
14 anywhere?

15 A I do work off duty at the McDonald's, which is
16 right next to the Exxon.

17 Q And are you aware of any cameras?

18 A At the time of the incident, the only cameras
19 I'm aware of that they had working are the ones inside
20 the store that watched the cash drawers, the registers.
21 And there's one camera that's focused on the drive-thru,
22 where the screen is, where you order your food, which is
23 off to the side of the building, facing away from the
24 Exxon and the area where the dog was tracking.

25 Q So would that camera have shown anything, based

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1 on your knowledge of where the suspect ran?

2 A No, ma'am. I've seen that camera several times
3 and know for a fact that it doesn't show that certain
4 location.

5 MS. RIDDLE: I have no further questions at
6 this time.

7 THE WITNESS: Thank you, ma'am.

8 THE COURT: Mr. Grimes.

9 MR. GRIMES: Thank you, your Honor.

10 (Document is shown to Mr. Kidd.)

11 MR. GRIMES: Mark these for identification only
12 at this point, three pictures.

13 (Defendant's Exhibit Numbers 47, 48, and 49 are
14 marked for identification.)

15 **CROSS-EXAMINATION**

16 **BY MR. GRIMES:**

17 Q I apologize for the delay there.

18 But this may be a bit repetitious. I want to
19 show you three pictures.

20 A Yes, sir. Sir, these pictures are from the
21 back of the pump house, we called it, where the cash
22 drawer was located, and the items that were behind that
23 building.

24 Q Are those, essentially, a fair and accurate
25 reflection of the pictures of how the crime scene was

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1 or --

2 A Yes, sir, it is.

3 Q -- not the crime scene, but the -- where you
4 found the cash register?

5 A In that area -- location, yes, sir.

6 Q And it shows the stumps and, sort of, I guess,
7 the -- not the stump, but the sawhorses?

8 A The construction -- pretty much like small
9 construction equipment, yes, sir.

10 MR. GRIMES: I move to introduce these as
11 Defendant's Exhibits 47, 48, and 49.

12 THE COURT: Any objection?

13 MS. RIDDLE: No objection, your Honor.

14 THE COURT: Defendant's 47, 48, and 49 into
15 evidence without objection.

16 (Defendant's Exhibit Numbers 47, 48 and 49 are
17 admitted into evidence.)

18 MR. GRIMES: May I publish them to the jury,
19 your Honor?

20 THE COURT: You may.

21 Q (By Mr. Grimes) This is marked as Defense
22 Exhibit 47. Does it also show the construction that was
23 going on?

24 A Yes, sir.

25 Q I show you Defendant's Exhibit 48. Is this

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1 where you said the cash register was placed at by the
2 suspect?

3 A Yes, sir.

4 Q And Defense Exhibit 49, this is a little bit
5 more close-up view of that. Does that show where the
6 cash drawer was?

7 A Yes, sir, the way we found it.

8 Q Do you know if crime scene fingerprinted the
9 cash drawer?

10 A That I do not know, sir. I know they arrived
11 -- Officer Bunker took pictures of it and retrieved it
12 from us, and I don't know what she did after that.

13 Q All right. And during -- when you were
14 following the dog, did you come across any shell
15 casings?

16 A No, sir. Not that I recall.

17 Q All right. If i showed you some pictures,
18 would that refresh your memory?

19 A It may. Like I said, I don't recall at the
20 time.

21 MR. GRIMES: Okay. Let's mark these for
22 identification, 50 through 52.

23 (Defendant's Exhibit Numbers 50, 51, and 52 are
24 marked for identification.)

25 (Documents are shown to Mr. Kidd.)

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1 Q (By Mr. Grimes) I'm going to show you what has
2 been marked as Defendant's Exhibits, for identification,
3 50 through 52.

4 A Yes, sir.

5 Q Three pictures. See if that refreshes your
6 memory as to whether any shell casings were located
7 during -- that night.

8 MS. RIDDLE: Objection, your Honor.

9 THE COURT: What's the basis?

10 MS. RIDDLE: Relevance.

11 THE COURT: All right. Counsel approach.

12 (All four attorneys approach the bench for a
13 side-bar.)

14 (The photographs are handed to the Judge.)

15 THE COURT: The objection of 50, 51 and 52 is
16 sustained.

17 Q (By MR. GRIMES) Did you prepare a report in
18 this case?

19 A Myself and Officer Winslett were both doing the
20 same exact incident at the same time. I was with him
21 when he typed up the supplement report.

22 Q Did anything --

23 A But I didn't actually type it myself, but I was
24 sitting next to him when he did it.

25 Q Would it be fair to say that it would be a

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1 joint report, then?

2 A Yes, sir. Usually we do supplement reports if
3 both officers are not doing the same thing; if one
4 officer got assigned to do one thing and another officer
5 got assigned to another. But since myself and Officer
6 Winslett were on the same track, located the same cash
7 drawer in the same area, he typed up the supplement log,
8 actually.

9 Q There are no allegations that it was a real gun
10 in this case, is there?

11 A When I -- when I arrived on scene, they advised
12 me that there was a gun used. At the time, they never
13 said if it was a fake gun, real gun, BB gun. All they
14 said, it was an armed robbery with a pistol -- or a gun.

15 Q There is no allegation that a gun was fired
16 during this case, is there?

17 A We never heard shots fired. They never advised
18 us shots fire, just that it was used in the robbery.

19 Q So there would be no need for you to collect
20 shell casings if you did find any?

21 A I did not see --

22 MS. RIDDLE: Objection, your Honor.

23 THE COURT: What's the basis?

24 MS. RIDDLE: Relevance.

25 THE COURT: Overruled.

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1 Q (By Mr. Grimes) And would there be any reason
2 for you to collect shell casings as evidence, given
3 there were no allegations of a gun being fired?

4 A Since it was an armed robbery case, if there
5 was a shell casing, we would collect it, and the
6 -- happen that we may locate the gun, and see if that
7 shell casing did come from that particular gun. Or if
8 it didn't, we still have the shell casing collected from
9 the scene.

10 Q And you don't recall collecting and even seeing
11 any shell casings?

12 A Officer Winslett may have found one. Like I
13 said, we were both in the same area, but if he saw it, I
14 don't recall seeing one myself.

15 MR. GRIMES: May I have one moment, your Honor?

16 THE COURT: You may.

17 (Mr. Grimes and Ms. Ehrlich speak off the
18 record.)

19 Q (By Mr. Grimes) And you didn't take any items
20 of evidence yourself, did you?

21 A No, sir.

22 Q So no need for you to prepare a chain of
23 custody report?

24 A If I did, I might have been signing it over to
25 a supervisor or crime scene technician.

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1 Q You did collect --

2 A Coins.

3 Q -- coins?

4 A (Moves head up and down.)

5 Q I want to show you --

6 A Yes, sir.

7 Q -- two pictures about that.

8 (Photographs are shown to Mr. Kidd.)

9 (Defendant's Exhibit Numbers 53 and 54 are
10 marked for identification.)

11 Q (By Mr. Grimes) I want to show you what has
12 been marked as Defendant's Exhibits, for identification,
13 53 and 54.

14 A Yes, sir.

15 Q Do you recognize what those pictures are?

16 A I do, sir.

17 Q And what are they?

18 A They're the pavement. I don't know if it's the
19 pavement from the Exxon or the back alleyway pavement.
20 But they're pictures of coins that were laid out on the
21 ground.

22 Q If I showed you a picture of the back alleyway
23 pavement, would that show you if that is a different
24 surface?

25 A If you have a picture of the back alleyway, I

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1 might be able to tell you the difference.

2 Q Give me one moment, please.

3 A Yes, sir.

4 Q Thank you.

5 Show what has been marked Defendant's

6 Exhibit 13.

7 (Document is handed to the witness.)

8 A Thank you, sir.

9 Q You're welcome.

10 A Be honest, it's hard to say. This area here is
11 dark, as well as this area. It could be the same, or
12 this could be the Exxon parking lot. I know that when I
13 was checking the area, I did observe coins going from
14 the Exxon down the grass hill embankment into the back
15 alleyway here.

16 Q All right.

17 A So to tell you where those actually were, I
18 cannot tell.

19 Q So with the oil drops, you think it may be more
20 likely to be the Exxon parking lot?

21 A Yes, sir. That would be my opinion, I guess
22 you would say, as the oil drops.

23 MR. GRIMES: Okay. Your Honor, I would move to
24 introduce these at this time as Defendant's Exhibit 53
25 and 54.

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1 MS. RIDDLE: No objection, your Honor.

2 THE COURT: Defendant's 53 and 54 into evidence
3 without objection.

4 (Defendant's Exhibit Numbers 53 and 54 are
5 admitted into evidence.)

6 MR. GRIMES: May I briefly publish it to the
7 jury?

8 THE COURT: You may.

9 Q (By Mr. Grimes) Defense 53 is some of the
10 coins and the oil marks there. Is that fair to say?

11 A Yes, sir.

12 Q I'll show you a close-up view, a quarter and a
13 penny?

14 A Yes, sir.

15 Q And you're not 100 percent sure if that's in
16 the parking lot or the little alleyway behind there?

17 A Because a lot of cars drive through that
18 alleyway as well.

19 Q And you weren't responsible for taking the
20 pictures, were you?

21 A No, sir.

22 Q That's totally up to crime scene?

23 A Yes, sir. My main purpose on that scene was to,
24 collect the change and follow the track to see if we can
25 recover any items. When we located the cash drawer, our

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1 -- pretty much, we stopped there until somebody came and
2 got the cash drawer.

3 Q And then, subsequently -- I want to ask you a
4 few questions about following the track.

5 A Yes, sir.

6 Q After you recovered the cash drawer, did you
7 get back on the track?

8 A No, sir, we stopped at that time.

9 Q I think you said you waited for Officer Bunker
10 to get there?

11 A Yes, sir.

12 Q And then -- did you go back to the store then
13 to canvass the area for coins, or did you go out --

14 A Yes, sir. We were advised to come back and
15 begin picking up the loose change that was on the
16 ground.

17 Q So you didn't go out to Spruill Avenue or
18 anything?

19 A No, I never went out that far, no, sir.

20 Q Did Officer Windslett go out that far?

21 A No, sir. Him and I stopped at the cash drawer,
22 and then we were told to come back and pick up the
23 change.

24 Q At that point, did Officer Swagel have any
25 backup?

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1 A Officer Cummins was with him the whole entire
2 time.

3 Q And Officer Cummins would have went out to
4 Spruill Avenue?

5 A He would have followed him the whole entire
6 way, yes, sir.

7 Q All right. And you're not responsible for
8 getting DNA tested, are you?

9 A I am not, no, sir.

10 Q You are not the case agent on the case?

11 A I am not, no, sir. Just an assisting officer.

12 Q But by chance, do you happen to know who the
13 case agent is?

14 A I know on the main report it is
15 Officer McAlhaney and Officer Cummins, but for the case,
16 case agent, I could not tell you.

17 MR. GRIMES: Could I have one moment, your
18 Honor?

19 THE COURT: Take your time.

20 (Mr. Grimes speaks with Ms. Ehrlich off the
21 record.)

22 MR. GRIMES: Thank you, Officer. I have no
23 further questions.

24 THE COURT: Thank you, sir.

25 MR. GRIMES: You're welcome. Have a good day.

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1 THE WITNESS: You do the same, sir.

2 MS. RIDDLE: Briefly, your Honor.

3 THE COURT: Take your time.

4 **REDIRECT EXAMINATION**

5 **BY MS. RIDDLE:**

6 Q Officer Bennett, you were shown pictures of
7 some coins?

8 A Yes, ma'am.

9 Q Were there more coins found than what was
10 depicted in the pictures?

11 A Yes, ma'am, several more. I can't give you an
12 exact count, because, like I said, they were scattered
13 along the path.

14 Q Okay. And were there also nickels and dimes?

15 A There was nickels, dimes, and pennies. The
16 pennies were standing out the most because of the copper
17 color.

18 MS. RIDDLE: Thank you, Officer Bennett.

19 THE WITNESS: Yes, ma'am.

20 THE COURT: Mr. Grimes.

21 MR. GRIMES: I have no questions.

22 THE COURT: You may step down. Thank you.

23 THE WITNESS: Thank you, ma'am.

24 THE COURT: Call your next witness.

25 MR. KIDD: State rests.

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1 THE COURT: Ladies and gentlemen, that
2 indicates to the Court that there's a matter of law that
3 I must take up outside of your presence. Do not begin
4 your deliberations. Do not discuss this case amongst
5 yourselves. It's also a great time for us to take our
6 lunch break. Please be back in the jury room at 2:00
7 p.m. Please remember all of my admonitions. Have a
8 wonderful lunch. Please rise for the jury.

9 (The jury is escorted from the courtroom
10 at 12:30 p.m.)

11 THE COURT: Thank you. Please be seated.
12 Any motions or matters, any housekeeping issues
13 that you need to attend to with the evidence?

14 MR. KIDD: Nothing from the State.

15 THE COURT: Any motions or matters, Mr. Grimes?

16 MR. GRIMES: May I have one moment, your Honor?

17 THE COURT: Take your time.

18 (Mr. Grimes speaks with his client off the
19 record.)

20 MR. GRIMES: Thank you, your Honor. At this
21 time, for purposes of the record, request the Court to
22 issue a directed verdict on behalf of Mr. Banks.
23 Potentially, when you view the evidence in the light
24 most favorable to the State, all you have is
25 circumstantial evidence. It doesn't rise to the level,

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1 I think, discussed in Bostick and, I believe, Owens,
2 there's -- you have a young man who is stopped. I don't
3 know if it's a mile away, as Officer Swagel testified,
4 or a block and a half, as Officer McAlhaney testified,
5 with a gun and gloves in the backpack, or book bag.
6 Apart from that, there's really no real evidence that
7 Mr. Banks did anything wrong here. At most, he acted
8 suspiciously when he ran into Officer McAlhaney, by, I
9 guess, running away, according to Officer McAlhaney's
10 testimony.

11 I think what is significant is, you have
12 Officer McAlhaney stating that Mr. Banks sort of came
13 around that fence area that was right behind the church
14 and didn't get -- didn't really get past the church
15 grounds, or, at least, as soon as he saw him, he started
16 to run.

17 And then you have Officer Swagel tracks him out
18 in a totally different area, on the side of Spruill
19 Avenue, going through a hole in the fence and come out
20 on the sidewalk, walking down, and then tracking out
21 toward the school.

22 So the -- for whatever way the K-9's work, when
23 he's tracking, seems like a totally different person. I
24 think, any way, to the K-9. And while it might have
25 been based upon the Court's pretrial rulings and some

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1 other evidence, the State choose not to introduce that.
2 And based upon the record before the Court, I think the
3 Court should be bound to grant the verdict for a
4 directed verdict. There's grounds for a directed
5 verdict. Thank you, your Honor.

6 MR. KIDD: Thank you, your Honor. May it
7 please the Court? I don't think Bostick is the current
8 law in South Carolina. I think it's Cherry, Dubon
9 (phonetic), which are the current circumstantial
10 evidence law that we're bound by, which treats
11 circumstantial evidence the same as direct evidence.

12 I think the gun and the gloves are very unique.
13 They were clearly used in the robbery. I think the
14 images from the video can be compared to the Defendant's
15 appearance and are very similar. I think the
16 denominations and the amount of money caught in the
17 Defendant's pocket line up identically, or at least very
18 closely to the amount of money, the amount of change,
19 stuff spilled from the register. Evidence in the
20 record, the K-9 tracked directly over where the register
21 was and took him right to the Defendant. Viewing the
22 evidence in the light most favorable to the State,
23 that's quite sufficient to submit the case to the jury.

24 THE COURT: Anything further?

25 MR. GRIMES: No, ma'am.

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1 THE COURT: As you know, in ruling on a motion
2 for directed verdict, I look to Rule 19 in the Rules of
3 Criminal Procedure. I must view the evidence and all
4 reasonable inferences in the light most favorable to the
5 non-moving party, which is the State, and concerned only
6 with the existence or nonexistence of the evidence.

7 Mr. Banks is charged with armed robbery. The
8 State must prove beyond a reasonable doubt that the
9 Defendant took personal property from the person or
10 presence of another person, that the Defendant carried
11 the property away intending to permanently deprive the
12 owner, and to keep the property for the Defendant's own
13 use, and that he was armed with a deadly weapon during
14 the robbery, what appeared to be a deadly weapon.

15 Ms. Wilson testified that she was working at
16 the Exxon in Charleston County at approximately 9:55 on
17 the night of the incident and a young, black man came in
18 asking for money. He was yelling, and she felt scared.
19 \$50 bill had fallen out of the cash drawer, and the
20 suspect exited the Exxon.

21 Ms. Holmes testified that she was also working
22 on the same night in question, and she handed the money
23 over, and the suspect took the money from her and ran
24 out of the right door of the Exxon.

25 Officer McAlhaney testified that he headed

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1 toward the scene almost immediately after the incident
2 and was in the general area of the robbery within
3 approximately five minutes and set up a perimeter, heard
4 the fence shake, drove to the driveway of the church,
5 and saw a black male matching one of the descriptions
6 given. That suspect was wearing a black nylon backpack
7 that contained a weapon; recovered gloves and a pistol.
8 Dollar bills and change were found in his left and right
9 pockets.

10 Officer Swagel testified that he was part of
11 the investigation. He arrived, he found a supervisor
12 who showed him where the suspect came in and took the
13 cash drawer. The K-9 began on the track. He further
14 testified that it was one of the best tracks he had ever
15 been on.

16 Viewed in the light most favorable to the
17 non-moving party, the State -- the State in this case, I
18 deny the motion for a directed verdict.

19 Note your exception to the record -- to my
20 ruling.

21 Mr. Grimes?

22 MR. GRIMES: Ma'am?

23 THE COURT: Mr. Grimes, anything further?

24 MR. GRIMES: I think for scheduling purposes,
25 we're probably going to have two witnesses. It should

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1 last, I don't think, no more than an hour. Could be
2 less than half an hour.

3 THE COURT: Do you want to argue your charges
4 today?

5 MR. GRIMES: Probably prefer to argue tomorrow
6 morning, just to gather everything together. But I know
7 that generally the Court likes to charge -- we can argue
8 the charge by 3:00, if the Court wants to do that. I
9 don't think we would be able to keep people out until
10 three o'clock.

11 THE COURT: We'll see.

12 Mr. Banks, I need to place you under oath and
13 advise you of your rights. Please swear the Defendant.

14 THE DEPUTY CLERK OF COURT: Please raise your
15 right hand.

16 (The oath is administered by the Deputy Clerk
17 of Court, and the Defendant answers as follows:)

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Mr. Banks, at this time, I'm going
20 to explain to you certain rights. If you do not
21 understand anything that I say, please let me know. If
22 you need me to explain anything in more detail, please
23 let me know. Do you understand?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: We have reached the stage of the

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1 trial where you may now present your defense. You have
2 the right to claim the protections given to you by the
3 Fifth Amendment to the Constitution of this United
4 States, which states, in part: No person shall be
5 compelled in any criminal case to be a witness against
6 himself. This means that you cannot be required to
7 testify in this case. You have the right to testify on
8 your own behalf. No one can make you testify. This is
9 a personal right, and no one can waive this right except
10 for you. If you decide to testify, you will be subject
11 to the same rules as governed by the witnesses, and you
12 may be examined and cross-examined on any relevant
13 issues in this case.

14 If you have any convictions involving
15 dishonesty or false statement or for crimes punishable
16 by imprisonment for more than one year, and I determine
17 that the probative value of admitting this evidence
18 outweighs the prejudicial effect to you, the Solicitor
19 will be able to introduce your record to attack your
20 credibility.

21 Any convictions that you plan to use, Mr. Kidd?

22 MR. KIDD: No, ma'am.

23 THE COURT: If you decide to testify, this
24 decision on your part must be freely, voluntarily, and
25 intelligently made, with the knowledge of the

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1 protections given to you by the Fifth Amendment and the
2 consequences of your decision to testify. If you decide
3 not to testify, I will instruct the jurors that they are
4 to give no consideration whatsoever, and there is to be
5 absolutely no prejudice to you because you did not
6 testify. It is left entirely up to you whether or not
7 you testify. You may talk with your attorney, both of
8 your attorneys, or one of them at a time, your family,
9 your friends, or anyone else, but the final decision is
10 left up to you. Do you understand what I have explained
11 to you?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Do you have any questions about
14 what I've explained to you?

15 THE DEFENDANT: No, ma'am.

16 THE COURT: Have you discussed with your lawyer
17 whether or not you should testify?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Do you need any additional time to
20 meet with your lawyer before you make this decision?

21 THE DEFENDANT: No, ma'am.

22 THE COURT: Have you decided whether or not you
23 wish to testify?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: And what is your decision?

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1 THE DEFENDANT: I'm not going to testify.

2 THE COURT: All right. And, Mr. Grimes, you
3 concur with that decision?

4 MR. GRIMES: Yes, your Honor.

5 THE COURT: Do you need any additional time?
6 We're going to break for lunch now. Did you know that
7 that was his decision?

8 MR. GRIMES: Yes, ma'am. And, for the record,
9 Ms. Ehrlich is -- if he had testified, would have been
10 handling it. And she's been talking to him -- Mr. Banks
11 more than I have on that. I think we've both discussed
12 it together.

13 THE COURT: Ms. Ehrlich, anything you wish to
14 place on the record concerning his decision to not
15 testify?

16 MR. EHRLICH: No, your Honor. I believe that's
17 my understanding that that is the decision he has
18 reached.

19 THE COURT: Thank you, Mr. Banks. You may have
20 a seat.

21 All right. With that, if we have two
22 witnesses, we may be able to argue the charge this
23 afternoon. The Defendant is requesting a strong-armed
24 lesser included. State's position?

25 MR. KIDD: There is absolutely zero evidence of

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1 a strong arm.

2 THE COURT: Mr. Grimes, indicate to me why I
3 should include strong-armed robbery.

4 MR. GRIMES: May I have one moment, your Honor?

5 THE COURT: You may.

6 MR. EHRLICH: Your Honor, did you want me to
7 pass up the hard copy of our proposed circumstantial
8 evidence charge?

9 THE COURT: I have received a copy of it via
10 E-mail. Have you given a copy to the State?

11 MR. EHRLICH: We sent an E-mail..

12 (Ms. Ehrlich passes a document to Mr. Kidd.)

13 THE COURT: All right. Mr. Grimes, I'm going
14 to give you over the lunch hour and -- to indicate to
15 the Court why I should include strong-armed robbery.
16 You're also requesting mere presence.

17 Any objection, Mr. Kidd?

18 MR. KIDD: I think the last sentence of that
19 mere presence charge may be inappropriate; although, I
20 would object to the general.

21 THE COURT: You are not objecting -- I'm going
22 to use my mere presence.

23 MR. KIDD: That would be great.

24 THE COURT: All right. Thank you. I will be
25 including mere presence, but the standard mere presence

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1 charge, not this mere presence. My standard. My
2 standard. Not the standard. My standard charge.

3 Anything else?

4 MR. GRIMES: As to the -- I think we also
5 asked for corroboration charge. With the State not
6 introducing Mr. Banks' statements, we will withdraw that
7 charge.

8 THE COURT: All right. Thank you.

9 Are you requesting I.D.?

10 MR. GRIMES: No, ma'am. There's been no I.D.
11 in the case.

12 MR. KIDD: (Moves head from side to side.)

13 THE COURT: All right. Thank you.

14 All right. Let me know about strong-armed
15 robbery. That's the only issue remaining.

16 MR. GRIMES: I think Ms. Ehrlich is going to
17 handle the circumstantial evidence charge argument on
18 that.

19 MR. EHRLICH: Your Honor, I think that the
20 memorandum that we submitted kind of takes care of what
21 our argument would be. But the reason that we're asking
22 for that is that our friends in appellate defense have
23 instructed us that in oral arguments, the Courts have
24 been a little bit uncomfortable with the other jury
25 charge for circumstantial evidence. And so because that

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1 issue has come up, we felt it would be appropriate to
2 present the older circumstantial evidence charge in the
3 one that we presented to the Court. If the Court does
4 not agree with us, I just ask that it be marked as an
5 exhibit.

6 THE COURT: Let's mark it already. So just
7 mark it. That will be Court's 2. Mark that as
8 Court's 2.

9 Can you give me that copy?

10 MR. EHRLICH: I can.

11 THE COURT: That will be marked as Court's 2.
12 Thank you.

13 (Court's Exhibit Number 2 is marked for
14 identification.)

15 THE COURT: Anything further?

16 MS. EHRLICH: No, your Honor.

17 MR. KIDD: We would just object to their
18 circumstantial evidence charge. I mean, the law in
19 South Carolina treats direct and circumstantial evidence
20 the same. That's the current law in South Carolina.

21 THE COURT: All right. Anything further?

22 MR. EHRLICH: Only, your Honor, that I think
23 that there is a difference in direct and circumstantial
24 evidence, and that the State has to be able to connect
25 the dots with the circumstantial evidence, and that's

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1 why we're asking for this other charge.

2 THE COURT: Thank you. Anything further before
3 we break?

4 MR. KIDD: Maybe just for the record, Judge, on
5 that point, it's just that I don't believe this is
6 purely a circumstantial evidence case. You have direct
7 evidence from the video --

8 THE COURT: I've heard enough on this.

9 MR. KIDD: Thank you.

10 THE COURT: Ms. Ehrlich did a great job on the
11 memo. I understand the current case law.

12 MR. EHRLICH: Your Honor, the only other thing
13 that I would add is that perhaps the Court can charge
14 both circumstantial evidence charges, the one that
15 Mr. Kidd would want, and the one we proposed.

16 THE COURT: Anything further?

17 MR. EHRLICH: No, your Honor.

18 THE COURT: Okay. So you're going to work on
19 strong-arm, and that's the only issue?

20 MR. GRIMES: Yes, ma'am.

21 THE COURT: Mr. Kidd?

22 MR. KIDD: No issues.

23 THE COURT: All right. Do you anticipate -- do
24 you know who his witnesses are? And if you do, do you
25 anticipate any rebuttal?

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1 MR. KIDD: I do not know who he is calling,
2 and, therefore, I do not know whether I will be calling
3 rebuttal.

4 THE COURT: Just for scheduling, Mr. Grimes, do
5 you -- how long do you anticipate the testimony?

6 MR. GRIMES: I think we would plan to call --
7 Ms. Ehrlich is handling Ms. Monica Tudder, and then the
8 911 or -- as far as the 911, play the 911 tape.

9 MS. EHRLICH: The testimony from Ms. Tudder should
10 be almost exactly the same as the pretrial testimony. I
11 don't think it will take longer than five minutes on our
12 part.

13 THE COURT: The strong likelihood is that we're
14 going to argue a charge today. So I would be preparing
15 for that over the lunch break. Thank you.

16 MR. KIDD: Judge, it might help to speed things
17 along, if Ms. Tudder's testimony is the same, we would
18 object to her entire line of testimony.

19 THE COURT: On what basis?

20 MR. KIDD: The relevance.

21 THE COURT: What is the relevance?

22 MS. EHRLICH: Your Honor, we spent an entire
23 day dealing with the pretrial motion regarding the
24 statement. So going into the trial, we have to be
25 prepared to address the statement. During Mr. Grimes'

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1 opening, he mentioned to the jury that he had an IQ, I
2 believe, of 68; and so I think the pressure is on us
3 then to answer that, somehow, and not just leave it
4 unaddressed. If the State had told us whether or not
5 they were going to use the statement, it wouldn't -- we
6 never would have said that.

7 MR. KIDD: Two responses to that. In
8 Mr. Grimes' opening, he didn't mention the IQ, but he
9 said, I'm not sure whether the State is going to use the
10 statement or not. He said that in his opening. I've
11 always told him, very frankly, that I'm not sure whether
12 I'm going to use it or not. A lot of me wanting to get
13 it in was in case of impeachment, should I need it.

14 Secondly, I think her argument is that she
15 opened the door for herself to get in irrelevant
16 testimony, by saying, we opened the door in our opening,
17 so we get to walk through it. That doesn't make any
18 sense. It's irrelevant testimony about an issue that is
19 not at -- is not in this case whatsoever.

20 THE COURT: All right. I agree. I find
21 absolutely no relevance as to her testimony.
22 Ms. Ehrlich, I'll give you a final word to convince me
23 otherwise, but based upon what I heard, and especially
24 now that the statement and the issues are not in, I --

25 MR. EHRLICH: Can I have one moment, your

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1 Honor?

2 THE COURT: You may.

3 (Ms. Ehrlich and Mr. Grimes speak off the
4 record.)

5 MR. EHRLICH: Your Honor, I think there was
6 testimony over him labeling his sister as his wife in
7 the phone. And so -- Mr. Grimes' position would be that
8 that in some way is relevant to show how he was
9 functioning and why he might mention something like
10 that.

11 THE COURT: On that basis, again, I do not find
12 that that is relevant. She testified she hadn't seen
13 him; so her testimony is not relevant, unless there's
14 something that I didn't hear that -- on Monday, that she
15 can testify to.

16 MR. EHRLICH: Thank you, your Honor.

17 THE COURT: So then that leaves us with one
18 witness?

19 MR. GRIMES: Just trying to think about -- a
20 witness from the State may want to be called in,
21 Detective Solomon (phonetic) for the interrogation.
22 Just for clarification, will we need to proffer her
23 testimony in the afternoon session?

24 THE COURT: I don't know what else -- I mean,
25 Ms. Ehrlich just said her testimony is going to be

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1 substantially the same as Monday; so that will be part
2 of the record.

3 MR. GRIMES: Just for appellate purposes, I
4 wanted to know --

5 THE COURT: For appellate purposes, you're
6 indicating to me that her testimony would be the same as
7 what she testified to on Monday; correct?

8 MR. GRIMES: Yes, ma'am.

9 MS. EHRLICH: It is, your Honor.

10 THE COURT: I cannot envision why we would need
11 to proffer, if it's -- if it is the same testimony that
12 she gave under oath, in this same courtroom, in front of
13 me, in front of your client, in front of everybody
14 that's the same.

15 MR. GRIMES: Just because they have very strict
16 preservation rules, and I want to follow them. I think
17 I've missed them in the past.

18 THE COURT: You've asked. I've denied your
19 request to proffer. I feel that the testimony has been
20 preserved as to what you would recall.

21 MR. GRIMES: Thank you, your Honor.

22 THE COURT: Thank you.

23 All right. Two o'clock.

24 Mr. Kidd, just as out of an abundance of
25 caution, if -- procedurally, if Mr. Grimes decides not

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1 to call anyone, I want you to know that he may not call
2 you and tell you he has no additional witnesses; so you
3 need to be ready to go.

4 MR. KIDD: I'm ready to go.

5 MR. GRIMES: I'll let him know. He's been very
6 courteous.

7 THE COURT: Ms. Ehrlich, you're requesting not
8 to call your next case?

9 MR. EHRLICH: I am.

10 THE COURT: All right.

11 (A lunch break is taken from 12:51 p.m. until
12 2:00 p.m.; at which time, the proceedings continue as
13 follows:)

14 (The Defendant is present in the courtroom with
15 his counsel.)

16 THE COURT: All right. Anything before we
17 bring in the jury? From the State?

18 MR. KIDD: No, ma'am.

19 THE COURT: Mr. Grimes?

20 MR. GRIMES: No, ma'am.

21 THE COURT: You have reached a stipulation
22 concerning the next witness; is that correct?

23 MR. KIDD: Yes, ma'am. We -- just that -- the
24 authenticity of the 911 call.

25 THE COURT: Do we need -- you mean, he's just

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1 going to play it?

2 MR. KIDD: Right. So we won't have a witness.
3 We're just going to stipulate that it can be entered as
4 an exhibit and play it. And that should be the end of
5 it.

6 THE COURT: All right. Do you want me to say
7 anything in front of the jury? Do y'all have a written
8 stipulation for the jury?

9 MR. GRIMES: We don't have a written
10 stipulation. If -- if the Court would like to instruct
11 the jury on what a stipulation is, that's fine with us.

12 MR. KIDD: I mean, just a stipulation that an
13 agreement between the Defense and the State that this is
14 a true and accurate copy of the 911 call placed by
15 Keisha Holmes.

16 THE COURT: All right. Thank you.

17 Let's bring in the jury.

18 You need to mark it. Let's go.

19 (Defendant's Exhibit Number 55 is marked for
20 identification.)

21 THE COURT: You're admitting Defendant's 55.
22 And there's no objection, Mr. Kidd?

23 MR. KIDD: That's correct.

24 THE COURT: Okay. Thank you.

25 (Defendant's Exhibit Number 55 is admitted into

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1 evidence.)

2 (The jury is escorted into the courtroom
3 at 2:01 p.m.)

4 THE COURT: Okay. Please be seated.

5 Ladies and gentlemen, the State and the
6 Defendant have entered into a stipulation. That's
7 simply an agreement that Defendant's 55, which has been
8 admitted without objection, is a true and accurate copy
9 of the 911 call made by Keisha Holmes.

10 And at this time, Mr. Grimes, you may publish
11 Defendant's 55.

12 MR. GRIMES: Thank you, your Honor.

13 The State's helping us out with their computer,
14 since it's already set up. I'm asking that they play
15 the CD now.

16 THE COURT: Thank you.

17 (The 911 call is played.)

18 THE COURT: Call your next witness.

19 MR. GRIMES: Your Honor, at this time the
20 Defense would rest.

21 THE COURT: Reserving all motions and matters.
22 Any rebuttal, Mr. Kidd?

23 MR. KIDD: No, ma'am.

24 THE COURT: Thank you.

25 Ladies and gentlemen, this indicates to the

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1 Court that you have heard all of the testimony you will
2 hear in this case and received into evidence all of the
3 exhibits that will be made part of the record of this
4 case.

5 There is a matter of the law that I must
6 take up outside of your presence. Do not begin your
7 deliberations; do not discuss this case amongst
8 yourselves.

9 When you return back from the jury room, you
10 will hear closing arguments on behalf of counsel, and I
11 will instruct you on the law applicable to this case.
12 At that time, you will then retire to consider your
13 verdict.

14 You may leave your notepads in the chair, if
15 you wish. We'll receive you back in the courtroom in
16 just a few minutes. Thank you.

17 Please rise for the jury.

18 (The jury is escorted from the courtroom
19 at 2:08 p.m.)

20 THE COURT: Thank you. Be seated.

21 Anything further, Mr. Grimes?

22 MR. GRIMES: We, again, based upon the tape, we
23 are bound to renew our motion for directed verdict. And
24 given the discrepancy in the description given by
25 Ms. Holmes of Mr. Banks as exhibited in the booking

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1 report, they just simply have the wrong man. This is --
2 the only evidence there is, is circumstantial evidence,
3 and that circumstantial evidence does not rise to the
4 level necessary -- as necessary in this case. And,
5 therefore, we ask for the Court to grant a motion for
6 directed verdict. Thank you.

7 THE COURT: Is there anything additional?

8 MR. KIDD: No, ma'am.

9 THE COURT: All right. I have heard nothing
10 that would change me -- that would change my ruling at
11 the close of the State's case. I deny your motion for
12 directed verdict at this time.

13 You may approach with the --

14 MR. KIDD: Thank you, Judge. And --

15 THE COURT: -- Defendant's 55.

16 MR. KIDD: -- if I could go ahead and put
17 State's 2 in the computer because of the way that
18 program -- it takes a long time to load. Remember, in
19 the trial, it was choppy. That way -- I plan on using
20 it in my closing; so we can load it and run smoother
21 during the closing.

22 THE COURT: All right.

23 Anything additional, Mr. Grimes?

24 MR. GRIMES: On the strong-armed robbery
25 charge, if the Court would like to hear arguments on

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1 that?

2 THE COURT: Mr. Kidd, you are objecting to
3 the strong-armed -- the lesser included strong-armed
4 robbery?

5 MR. KIDD: That's correct, your Honor.

6 MR. GRIMES: I have a copy of the Simmons case.

7 THE COURT: All right. You have E-mailed it --
8 did you E-mail to Mr. Kidd that same --

9 MR. GRIMES: Yes, a copy of it.

10 THE COURT: All right. Thank you. You can
11 hold on to it. I reviewed it over the lunch hour,
12 Mr. Grimes.

13 MR. GRIMES: I guess I, briefly -- seemed like
14 the way I read the case notes, the general rule is the
15 question of fact for a jury verdict whether an item is a
16 deadly weapon. The courts have found that BB guns can
17 be considered a deadly weapon and have upheld armed
18 robbery convictions. But that -- we don't argue as --
19 under the statute, that he can be found guilty of armed
20 robbery, BB gun would be sufficient.

21 But this case, what you have is just a
22 representation of a weapon. There's been no evidence at
23 all introduced as to how this BB gun works, if it is
24 capable of firing a projectile that can hurt somebody.
25 And we need to take that combined with the store clerks'

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1 reactions. The Simmons case, where he has -- he goes in
2 there with a stick and, essentially, beats someone to
3 death, and the Court there said that is a question of
4 fact whether a stick that was used to beat someone to
5 death would be considered a deadly weapon. I think that
6 precedence would apply here. You have a BB gun with no
7 testimony at all about details of how it worked,
8 combined with the clerks' reactions, are -- it's a very
9 dramatic scene when a person comes in there, their
10 reactions just seem like it's -- they're fairly calm.

11 THE COURT: Thank you, Mr. Grimes.

12 Mr. Kidd, you would agree that whether or not
13 the BB gun is a deadly weapon would be a factual
14 question for the jury to determine?

15 MR. KIDD: If that were the only issue, I would
16 agree with that, Judge. But the statute for armed
17 robbery is use of a deadly weapon or using something
18 that a person believed is a deadly weapon. The
19 testimony from both of the victims indicated that they
20 believed it was a real firearm and they were terrified
21 and they had no choice because he came in there with a
22 firearm. So all the evidence in the record suggests
23 that they believed it was a real firearm, there's zero
24 evidence to the contrary, and, as such, there is zero
25 evidence in the record to support the lesser included

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1 offense. It's an any evidence standard, and there is no
2 evidence to support it, so it shouldn't be charged.

3 THE COURT: All right. Your response to that,
4 Mr. Grimes?

5 MR. GRIMES: I think it just goes to the weight
6 of the case. Whether they believed it was a deadly
7 weapon supports them going forward on an armed robbery
8 charge. If they didn't believe it was a deadly weapon,
9 it would be a directed verdict of armed robbery.

10 THE COURT: Say that one more time, Mr. Grimes.
11 I'm sorry.

12 MR. GRIMES: I apologize.

13 If the clerks did not believe it was a deadly
14 weapon, the Court would have no choice but to grant a
15 directed verdict on an armed robbery charge and just go
16 with robbery by itself. They had to have that belief,
17 and it -- the rule is, is that belief reasonable? And
18 Mr. Kidd tries to make very compelling arguments that it
19 was a reasonable belief. But the fact is, you have a
20 BB gun, that's not a real weapon, with no evidence of
21 how it fires or operates, and their reaction afterward.
22 They may say they believed it, but they looked quite
23 calm after it -- in the 911 tapes that we watched, the
24 other person's in immediate danger when she obviously
25 wasn't in immediate danger. The fact they may say they

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1 were scared and that -- I can't -- should not be
2 accepted just on its face.

3 Thank you, your Honor.

4 THE COURT: All right. Anything further,
5 Mr. Kidd, on that issue?

6 MR. KIDD: Nothing further other than there's
7 just no evidence to support the lesser included.

8 THE COURT: All right. I will not be charging
9 strong-armed robbery based upon the facts as presented
10 and my reading of the statute. There has been
11 absolutely no evidence that the individual that came
12 into the store and robbed the store was armed with
13 anything other than a weapon, and I will instruct the
14 jury that whether a BB gun is a deadly weapon is a
15 factual question for them to determine.

16 Note your exception to my ruling.

17 MR. GRIMES: I'm sorry. I'm not trying to
18 argue with the Court's ruling. If you say it's a
19 factual question for them to decide whether it's a
20 deadly weapon, isn't that necessarily required in the
21 charge of strong-armed robbery?

22 THE COURT: No.

23 All right. Note your -- note your questioning.
24 It will be on the record.

25 Anything further?

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1 MR. GRIMES: No, ma'am.

2 THE COURT: All right. The last issue was
3 direct and circumstantial evidence. Was that the -- was
4 that the last issue?

5 Mr. Kidd, anything further? Was that your
6 understanding; that was the only issue?

7 MR. KIDD: I have nothing further to add to it.

8 THE COURT: All right. There are two types of
9 evidence that are generally presented during a trial:
10 direct and circumstantial. Direct evidence is the
11 testimony of a person who claims to have actual
12 knowledge of the facts, such as an eyewitness. It is
13 evidence which immediately establishes the main fact to
14 be proved. Circumstantial evidence is proof of a chain
15 of facts and circumstances indicating the existence of a
16 fact. It is evidence which immediately establishes the
17 collateral facts from which the main fact can be
18 inferred. Circumstantial evidence is based on inference
19 and not on personal knowledge or observation.

20 You should weigh all of the evidence in this
21 case, and after weighing all of the evidence in this
22 case, if you are not convinced of the guilt of Mr. Banks
23 beyond a reasonable doubt, you must find him not guilty.
24 That is the direct and circumstantial charge that I will
25 be giving. Note --

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1 And it's Court's 2; your memo.
2 All right. Anything further? From the State?
3 MR. KIDD: No, ma'am.
4 MR. GRIMES: No, ma'am.
5 THE COURT: All right. We're at ease.
6 You requested 15 minutes; is that correct?
7 MR. KIDD: Yes, ma'am.
8 THE COURT: All right. We're at ease for 15
9 minutes.
10 MR. GRIMES: Thank you, your Honor.
11 MR. KIDD: Thank you.
12 (A break is taken from 2:17 p.m. until
13 2:33 p.m; at which time, the proceedings continue as
14 follows:)
15 (The Defendant is present in the courtroom with
16 his counsel.)
17 THE COURT: Counsel, I just wanted -- because I
18 think what I was trying to articulate my ruling on -- I
19 was inarticulate on my ruling on the strong-armed
20 robbery; so I just want to make sure that the record is
21 clear. As to thinking back to your statement,
22 Mr. Grimes, I just want to make sure that you understand
23 why I ruled the way that I ruled.
24 For me to include strong-armed robbery, there
25 has to be some evidence of it. And there has been no

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1 testimony presented that indicates that the individual
2 that came into the Exxon had anything other than what
3 was a weapon or believed to have been a weapon. So
4 there -- for me to charge strong-armed robbery, it has
5 to meet all of the elements of armed robbery except that
6 he -- that the Defendant was not armed with a deadly
7 weapon. There has been no testimony -- all the
8 testimony that has been given by the two victims, who
9 were the eyewitnesses, was that the individual that came
10 into the Exxon had a -- what they believed to be a
11 weapon. And that's the issue. That is why I do not
12 believe that he's entitled to a strong-armed robbery
13 charge. I will not -- I will not -- I will just give
14 the standard recitation about what may be considered to
15 be a deadly weapon. I will not indicate -- I had
16 indicated to you whether or not a BB gun is a deadly
17 weapon. It's a factual question for you to determine.
18 I'm not going to give that -- I'm not going to single
19 that out. I'm just going to generally talk about what
20 this -- what can be considered a deadly weapon. And,
21 again, I don't mean -- I'm just -- just wanted the
22 record to be clear because I think that I was not. All
23 right?

24 Anything further?

25 MR. KIDD: And I might be beating a dead horse.

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1 I just want to ensure that the armed robbery charge also
2 included the language about whether the -- the
3 representation of a deadly weapon language.

4 THE COURT: Finally, the State must prove
5 beyond a reasonable doubt that Mr. Banks was armed with
6 a deadly weapon during the robbery or while alleging,
7 either by actions or words, he was armed while using a
8 representation of a deadly weapon or any object which a
9 person present during the commission of a robbery
10 reasonably believed to be a deadly weapon.

11 MR. KIDD: Perfect. That's exactly --

12 THE COURT: It's straight from the statute.

13 MR. KIDD: Yes, ma'am. I'm sorry. I just
14 wanted to make sure.

15 THE COURT: No. I'm glad that you did. We all
16 make mistakes.

17 MR. GRIMES: And, again, like Mr. Kidd said,
18 not to beat a dead horse, it's -- our position in a
19 nutshell is, if there was a real gun, no doubt, it's
20 armed robbery only. And don't -- we don't disagree with
21 the Court's findings that, you know, a person came in
22 there with what appears to be a real gun, that the
23 clerks believed it to be a real gun. But the question
24 is, is that -- when you have -- when you have a
25 representation of a weapon, I think the question -- the

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1 next form of analysis is, is that representation
2 reasonable? Is their belief that it's a deadly weapon
3 reasonable? And that's what we believe is the question
4 that they need to solve, and that will support the
5 strong-armed robbery charge. If it wasn't reasonable
6 for them to believe that the gun was -- the BB gun was a
7 real gun or a deadly weapon, then he would be entitled
8 to a strong-armed robbery charge.

9 Thank you, your Honor.

10 THE COURT: Thank you. We're going to take
11 just a short comfort break, and we're going to get it
12 together; so that my court reporter and I can take a
13 break. I'm printing off the verdict form.

14 All right. Who's doing closing?

15 MR. KIDD: I am.

16 THE COURT: Are you waiving first?

17 MR. KIDD: I will -- excuse me, yes. Yes,
18 ma'am, I will waive opening.

19 THE COURT: All right. Thank you.

20 Just a few moments. Thank you.

21 (A break is taken from 2:38 p.m until
22 2:43 p.m; at which time, the proceedings continue as
23 follows:)

24 (The Defendant is present in the courtroom with
25 his counsel.)

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1 THE COURT: All right. Anything before we
2 bring in the jury? Mr. Kidd?

3 MR. KIDD: No, ma'am.

4 THE COURT: Mr. Grimes?

5 MR. GRIMES: No, ma'am.

6 THE COURT: All right.

7 (The jury is escorted into the courtroom at
8 2:44 p.m.)

9 THE COURT: Thank you. Please be seated.

10 Ladies and gentlemen, we have reached the stage
11 of the trial that you will hear closing arguments on
12 behalf of counsel. After that, I will instruct you on
13 the law applicable to this case. Ladies and gentlemen,
14 just as I told you, what was contained in opening
15 statements is not to be considered evidence, neither is
16 what is contained in closing arguments. It's simply the
17 attorney's contention is as to what the evidence has
18 shown you throughout the progress of this trial. Please
19 give your strict attention.

20 Mr. Grimes?

21 CLOSING ARGUMENTS

22 MR. GRIMES: Thank you, your Honor. May it
23 please the Court.

24 Good afternoon, ladies and gentlemen of the
25 jury. In opening, we talked a little about how do you

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1 railroad somebody? Well, one example -- one way to try
2 to railroad somebody is take somebody who's 5-7, 5-8,
3 and try to make them six feet; or take someone who's six
4 foot making him 5-7 and 5-8; or someone who weighs 135
5 pounds, saying they weighed 175 pounds. Maybe they had
6 that growth spurt or weight gain in 18 minutes from the
7 time of the robbery to the time Officer McAlhaney
8 arrested Kashaun and filled out his booking report; or
9 taking the robber who's wearing blue jeans and arrest
10 somebody who's wearing shorts; and, at last, what's
11 possible, based upon just the blue jeans, where are the
12 blue jeans at? We've had officers out here picking up
13 pennies. No one finding any blue jeans. We've had
14 K-9 Unit, given the best track ever, or one of his best
15 tracks ever, not finding any blue jeans, not finding
16 someone going to someone's house where he could change
17 clothes, not finding any of those. They have a blue
18 shirt that's -- covered the robber's face and gun.
19 Again, where's the blue shirt? All you've got was a
20 gray shirt. I think that's a little suspicious:
21 Kashaun wearing a gray shirt; the robber wearing a gray
22 shirt. Where are the sneakers at? We see Nike
23 flip-flops been picked up. But is someone going to go
24 do an armed robbery, is he going to be running -- going
25 around running in flip-flops. And if someone did go

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1 back and change, why didn't the K-9 find sneakers?

2 And then take a 17 year old, try to say
3 or -- or turn him into a 23 year old, or vice versa,
4 saying the person robbing you is 23, 24, but the person
5 you arrested is 17. Obviously, sometimes people look
6 older or younger than their actual age; that's a pretty
7 big difference.

8 In my opening, talked a little bit about one
9 way to railroad somebody is ignoring their rights. Now,
10 like I said, the State can talk about certain things --

11 MR. KIDD: Objection, Judge.

12 THE COURT: Please remember, ladies and
13 gentlemen, what is contained in closing arguments is not
14 to be considered evidence in this case. I will instruct
15 you on the law applicable to this case at the close of
16 closing arguments. Thank you.

17 MR. GRIMES: Like I said in my opening
18 statement, we talked about certain things. And we were
19 going to wait and see how that happened, and nothing
20 happened on it. Another way we can talk about
21 railroading somebody is by confusion. Now, I'll be the
22 first to admit, police did a good job. But they're
23 probably overworked and underpaid like a lot of our
24 folks in service. In North Charleston -- so if you read
25 the paper, it seems to be a high crime area. I heard on

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1 the news about the finding of the body on Halston
2 (phonetic) Street. And for a while there, it seemed
3 like every other night there's a shooting on I-26. And
4 you heard Officer McAlhaney testify as to the -- this
5 area is a moderate crime area. He's probably out there
6 doing a lot of work, not getting paid a lot of money,
7 putting his life on the line for all of us. Never know
8 what will happen when you're out on duty.

9 But you do need -- when somebody's liberty's at
10 stake, you do need to present a good case; because if
11 you send the wrong person to jail, an innocent person,
12 well, you ruin that person's life, you ruin his mother's
13 life, and, more important, ruins other people's lives
14 because the real robber is still out there robbing,
15 causing mayhem. Who knows what else he may be doing?
16 He may be having -- shooting somebody. That's why it's
17 important to document everything so -- you work a lot of
18 cases. A lot of time goes by between an arrest date and
19 trial. And you want to remember everything; so they can
20 make a good case to you.

21 And, you know, they didn't try, you know,
22 question him a whole long time, but when I asked simple
23 questions like: How tall Kashaun was; he just took
24 forever to get there. But when the State asked him
25 simple questions, got there just like that. Even though

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1 he filled out a booking report that said Kashaun was six
2 feet and 175 pounds. I'm not sure why they did that.

3 And we have sort of time discrepancies on
4 dispatch times in that. And one reason that is so
5 important is a lot can happen in five minutes or three
6 minutes. I mean, I know when I was younger, in my 20s,
7 I was better shape, I'd run -- probably run a 6-minute
8 mile -- probably run a 4-minute mile. So if someone is
9 very excited on adrenaline and really running, they can
10 get up pretty far in five or six minutes. And the
11 officer doesn't respond and get out -- he didn't even
12 get the call five, seven minutes after the robbery, that
13 person could be long gone. And it takes them a few more
14 minutes to get to the perimeter; person could easily be
15 somewhere else. Horizon Village, for example. Maybe
16 one of those clubs.

17 And I think Officer McAlhaney's testimony just
18 shows a lot of confusion going on here. And one thing
19 that puzzled me was, he was pretty sure that Kashaun
20 came over that fence. He heard the fence rattle. A
21 wooden -- excuse me, a wire fence against the wood
22 fence. He didn't see him actually jump over a fence.
23 He cut behind the church. Before he got to the end of
24 the church parking lot, or the church building itself,
25 Kashaun saw him, looked each other in the eyes, Kashaun

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1 ran back.

2 Now, we have Officer Swagel's testimony. The
3 dog kind of tracked at least 50 yards out past that.
4 Well, Kashaun never made it past the church. How do you
5 get 150 feet past? Now, he did say something about
6 Vento being over-tried. What's important on that is,
7 how far does he over-try it: 10 feet, 20 feet, 50 feet?
8 I think the dog's -- Vento's training expertise probably
9 be -- went beyond 50 feet not picking up a scent, he
10 would have stopped. It goes three times past 50 feet.
11 If -- if trying to do 50 yards.

12 And what's more curious is Officer Swagel
13 testifies that traveling out Spruill Avenue and around
14 to the church, rather than coming to the fence and over
15 the fence or through a gate. And that's why I asked him
16 the questions like: At any point during the search, did
17 Vento kind of go back and forth like he couldn't get
18 over the fence. He said, Nope. There's no fence to
19 jump over. That's very important because Officer
20 McAlhaney, he's out there keeping the perimeter; and if
21 someone's walking down Spruill Street, in a totally
22 different angle, he would have told you that.

23 So you have Vento tracking it seems like one
24 person, and Officer McAlhaney seeing someone else. I
25 think that is strong objective evidence that this leads

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1 to two people kind of on the same tracking pattern for
2 whatever reason, but the question is for you is, is
3 Kashaun one -- are they tracking him from the store,
4 from the pool, or is maybe he hanging out by the pool,
5 talking to his friends, calling a girl, trying to meet a
6 girl? Maybe she couldn't get out. And then sees
7 someone run by, throws down the bag, throws down the
8 cash register. Just being curious and being 17, goes
9 and looks in the bag. There's a BB gun. Kids like --
10 you know, young kids certainly like playing cowboys and
11 Indians. Older guys like to play Call of Duty,
12 something about gunpowder and guys, they just like to
13 play those games. Is -- the BB gun's there, picks it
14 up, goes on his way to Horizon Villages. He's going to
15 to see his sister, his mother. Don't know if it's -- we
16 all know what addresses are on the arrest warrants. The
17 only address on the incident report is [REDACTED] Meeting
18 Street, downtown.

19 And he runs into Officer McAlhaney, and he
20 makes a bad decision and runs, thinking, he's going to
21 arrest him. Seeing the gun, the gloves; obviously looks
22 very suspicious. And no one will blame Officer
23 McAlhaney for arresting him under those circumstances.
24 It's close in proximity to the armed robbery, same
25 general location, not super far away, and evidence from

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1 the robbery. I mean, that -- you know, I certainly
2 would have arrested him if I was a police officer.

3 And that's where the next step comes in of how
4 you railroad somebody by assumptions. That's what
5 happened in this case. The police apparently thought
6 they had an open-and-shut case, and that's why they did
7 no real follow-up investigation.

8 Now, we've heard some talk about fingerprints;
9 that was on the door, maybe it was the glove, cash
10 register. I'm not very sure why you fingerprinted a
11 door when the robber's using gloves. He's not going to
12 leave any. You might leave DNA material, touch DNA.
13 That's why officers always wearing gloves in the labs.
14 Or you might actually leave DNA inside the gloves. But
15 they didn't go test for fingerprints. Why don't you
16 test for DNA? If Kashaun's DNA was on the gloves,
17 open-and-shut case. You could probably -- wouldn't have
18 went to trial with something like that. You'd probably
19 be back in the jury room for five minutes and come back
20 out. And that's probably how long it'd take me to
21 decide it.

22 And they don't want to test for DNA. Why is
23 that? Why don't they assign a case officer or some type
24 of lead officer to the case and try and coordinate
25 everything? I think the ranking officer would be here

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1 to testify, Lieutenant Hill, was asking him how tall
2 Keisha Holmes was, he says, Who's Keisha Holmes? I
3 think I saw a couple of people on the jury laugh. Well,
4 I mean, she was the victim. She was the one that got
5 robbed. Why doesn't the lead detective -- not even here
6 anymore -- know who this victim is? Unless he's -- he's
7 not the lead detective, probably doesn't care about the
8 case that much. Just wants to close the case and move
9 on and send someone to jail. That's why he didn't do
10 any follow-up.

11 I mean, how thorough was a search was there
12 done for clothes out there? He had the CAD report back
13 there, and you see they found a backpack, did some
14 searching. That was after they already had Kashaun; so
15 they probably didn't do too much of a search.

16 Now, I know I introduced a lot of pictures.
17 Let's talk a little bit about that. One of the reasons
18 is that a Google Map is a way to bring it home to
19 people. I mean, you can see stuff on there, get a
20 general idea. But if you want to see the fence line,
21 that map isn't going to show you anything about the
22 fence line or how the fence is. Now, probably thinking
23 to yourself that I didn't get the pictures done soon
24 enough to show everything as it was back then before
25 they did the landscaping to the school, maybe made

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1 repairs to the holes or some of it was gone down. But,
2 you know, they didn't take pictures either, for whatever
3 reason. But we tried to bring something just so you can
4 see the church, see the fence line, see, like, where the
5 officers may have been, see what's around that Exxon or
6 how many people could be around there, where people
7 could go to, where people come back and forth from; try
8 to show you what buildings around there may have
9 cameras, what cameras were there. Very possible that
10 there's a camera by a gate near the church. Well, was
11 there a camera, or was there not a camera? If there was
12 a camera, why wasn't it checked? Was it because they
13 just assumed Kashaun was guilty since they found him
14 with the bag?

15 Now, it does sound a little odd for someone to
16 run from the police. I know when I was a kid, we had a
17 big snowball fight one time, and my friend threw a
18 snowball, and it hit this car. Well, everybody took off
19 running, because it was a pretty big guy that came up
20 chasing us. Now, I could have stayed there and said,
21 Well, I was just merely present. He -- someone else
22 threw it. Well, where I grew up, I -- you know, if I
23 did that, he'd probably beat the crap out of me, or my
24 dad would have.

25 Now, the Judge is going to charge you what mere

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1 presence is, and that's sort of -- just because you're
2 around the area doesn't make you guilty. Maybe a
3 suspicion, but suspicion by itself is not guilt. Have
4 to find someone guilty. But when you're 17, you make a
5 lot of dumb mistakes. And I can't really say I blame
6 Kashaun for running in this case. I think if you listen
7 carefully to Officer McAlhaney's testimony, you will
8 see, you know, he set up a perimeter, has his windows
9 down, he's listening, hears the fence rattle, sees
10 someone walking, pulls up, looks at him, and he gets out
11 chasing him or coming at him quickly -- I think that may
12 be what he said. Well, unless you know what quickly
13 means in police lingo, it means he was chasing him.
14 When you have a police officer chasing you for odd
15 -- well, you know, no reason. Maybe because he thinks
16 you're trespassing, you may run. And if you don't, you
17 know, at nighttime, about, you know, little after ten
18 o'clock, officer chasing you, you're 17, you have a
19 BB gun in your pocket, who knows where it came from, you
20 know it's going to look suspicious. It's natural for
21 someone to run in those circumstances. It doesn't make
22 him guilty of armed robbery. Maybe fleeing from police
23 or maybe he was trespassing at the church property or
24 St. Charles Place.

25 I want to talk a little bit about the dog

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1 tracking. I think you heard Officer Swagel testify
2 that's one of the best tracks that he's done with Vento.
3 And I think one of the reasons was, he said it was
4 really light foot traffic out there, and it doesn't
5 interfere with it. When you get back in your jury room,
6 I just want you to look at the CAD report, or law agency
7 incident report, on page 6 at about 10:01, 10:02, and
8 you will see entries for heavy foot traffic in
9 St. Charles housing already and were advised heavy foot
10 -- looks like heavy foot traffic in the area of the
11 business.

12 That's why I was asking how long it took for
13 him to respond to get out there, because it could
14 create -- heavy foot traffic would create contamination
15 of the scene. And that's why I asked him about what
16 kind of training Vento had on distinguishing scents.
17 Now, it sounds like they were on the right track. He's
18 talking about finding the coins, leads them to the cash
19 register, or the area of the cash register. And Officer
20 testified -- Officer Swagel testified, first, he didn't
21 know if he dropped it or threw it down. And had to go
22 back to refresh his memory on that. And this one
23 introduced picture, said it looks like, it's not just
24 thrown, laying a little bit too good to be at the angle
25 to have been thrown. That's why he testified it was

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1 placed there. And I think Officer Bennett testified it
2 was placed there. Well, if it was placed there, the dog
3 should track right up to the register at least and maybe
4 went -- so backtrack, maybe done a circle. He never
5 tracked right up to the cash register.

6 And then around that area, he was -- he looked
7 at his head, sort of around. If you noticed, Ms. Riddle
8 didn't ask any questions about that on his Direct
9 portion. He didn't volunteer that information. And
10 when I asked him about it, he said, first, he couldn't
11 remember it. And then we had to go back and show him
12 his prior testimony, and then he remembered. Well, you
13 know, if he didn't remember all the answers to her
14 questions, stuff he's already answered her before,
15 almost a year ago, but he couldn't remember today to
16 tell you until his memory was refreshed. When you
17 evaluate the demeanor and credibility of witnesses,
18 just, you know, keep that in mind.

19 I want to talk a little bit about using your
20 common sense in this case. If somebody is going to do a
21 robbery -- Kashaun did a robbery -- and he changes his
22 clothes -- goes off and changes his clothes and changes
23 his appearance, and -- to go drop off the cash register
24 and try to get rid of the evidence, why would he carry
25 some of the most incriminating evidence on him? Why

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1 would he keep that bag with the gun and gloves? Why
2 not throw it in some bushes? Especially when Officer
3 McAlhaney sees him? If he went to someone's house and
4 changed his pants, why not leave that stuff there?

5 And the Solicitor may make a big deal about the
6 amount of money he had. Well, when you look at the
7 chain of custody reports, add up the money, compared to
8 what Officer McAlhaney testified to. You're going to
9 find there's a discrepancy in that. It's not a huge
10 discrepancy. I think five, ten dollars' worth,
11 but there's a discrepancy.

12 And then talk to you a little bit about
13 the change and some of the bills and all those
14 denominations. Well, how do you know he wasn't at --
15 Kashaun wasn't at McDonald's? Or maybe at the Stayover
16 Lodge? Maybe he went there and got some weed. Maybe
17 that's why he ran from the officers. Maybe he threw the
18 weed in the bushes. Maybe that's why he's got it in
19 those denominations. Maybe he went to the store and
20 bought a Sprite.

21 You know, why would the officer testify to all
22 this stuff that's in the bag and not say anything about
23 the Sprite to the prosecutor? And why would the officer
24 testify that one object that I said might be a condom.
25 He said, Yeah, it could be. That wasn't taken into

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1 evidence. Not on my chain of custody reports. But then
2 on Redirect, all the sudden it comes out, it's a -- be
3 like a ticket for a club or something. And where is the
4 chain of custody report for that? Where'd that evidence
5 come from?

6 And, quite frankly, that reminds me of a case I
7 had about two years ago, a burglary case. My client
8 told the police officer he had a key to the house.
9 About four months after the arrest, they wanted to try
10 him, going over the evidence, go through the guy's
11 pocket, and guess what I find? A key. Guess who got to
12 put in the chain of custody report? And guess what
13 happened to that burglary charge? Sometimes people just
14 miss stuff even though it's important, even though
15 you're told this stuff.

16 And -- but this case is two years old, and
17 he's -- still nothing in any supplemental report,
18 supplemental chain of custody about that ticket.
19 Where'd that come from? And then the belt. I went --
20 no chain of custody report on the belt.

21 You know, there's reasons for that, want to get
22 a chain of custody. You want to document all the
23 evidence: Where it came from; who it came from; where
24 it came from.

25 Now, in conclusion, you know, I realize that at

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1 first glance the case does look pretty strong against
2 Kashaun because of what's come in. That does raise a
3 suspicion. But the State's burden here is to prove the
4 case beyond a reasonable doubt. And there's probably,
5 like, three big standards of proof in court cases. One
6 is to lay out a preponderance of the evidence.
7 Basically, if you're suing someone for money, you've got
8 to show on the -- to get the scales of justice, kind of
9 tip them a little bit; and if the person tips it in
10 their favor, even by one percentage, then they win the
11 case.

12 This next one is sort of clear and convincing
13 evidence. For example, to terminate one's parental
14 rights, to take away their child. You have to show by
15 clear and convincing evidence that that person is just
16 an unfit parent, for whatever reason. If you do that,
17 you can take away someone's child.

18 And in a criminal case, the standard's even
19 higher. To show beyond a reasonable doubt that that
20 person committed the crime. Now, there was a crime.
21 The question is, who committed it? Was it Kashaun? Or
22 was it someone who went behind St. Charles Place, or
23 through St. Charles Place, behind Stayover Lodge, behind
24 the strip mall, behind the bank, coming out on Spruill
25 Avenue, going down past the church, towards the school,

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1 toward Horizon Villages? Who's made more reliable; the
2 dog, or Officer McAlhaney? And Officer -- and, excuse
3 me, Officer Swagel said part of his job is to interpret
4 what the dog is doing. Well, if he knows that dog is --
5 keep tracking, but they've got a suspect right there,
6 maybe he didn't -- did something -- some subconscious
7 interpretation or something that brings him back around.
8 He doesn't want his dog to be wrong. Dog's wrong on
9 something big like that, might lose his certification.
10 He would lose his pet. And I know how my dad would feel
11 if he lost his German Shepherd; he'd be pretty torn up.

12 So, at the end, when you go back there
13 deliberating, I ask you to be patient, go through all
14 the evidence, look at the pictures, see if everything
15 fits up to what the officers describe, see if there's an
16 explanation why a, you know, 17 year old might be out
17 there, might be curious enough to pick up a bag, keep
18 it, maybe go sell a gun or something. You notice he's
19 represented by the Public Defender's office, so he
20 doesn't have a lot of resources. He can make 5-, 10-,
21 \$25 selling a BB gun. He'd probably get a little break
22 with that. I mean, be good for him.

23 There's lots of reasons why he may have that
24 bag. What's the reasonable reasons? One, obviously, is
25 that the State will argue is that he committed the

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1 robbery. And I can probably come up with ten more
2 reasons. And I'm sure each of you can probably come up
3 with ten, 15 more reasons. That's why you go back and
4 deliberate, go back and talk about it, see what fits,
5 and then come back, you make a unanimous decision
6 whether the State has proved it's case beyond --
7 Mr. Banks beyond a reasonable doubt. And we submit they
8 haven't. They just found a 17-year-old black boy
9 walking down a church parking area, stopped him, he fit
10 the description. They could have been doing so many
11 other things. And when you have objective evidence,
12 it's not even him. Officer -- Vento showing you --
13 tracking somebody else.

14 So, ladies and gentlemen, I ask you to stop
15 this railroading and set Kashaun free and let him go
16 home with his mother. Thank you.

17 THE COURT: Mr. Kidd.

18 MR. KIDD: Thank you, your Honor. May it
19 please the Court. Mr. Grimes; Ms. Ehrlich.

20 **CLOSING ARGUMENTS**

21 MR. KIDD: Ladies and gentlemen, it's a common
22 saying I've heard that some men are the victims of
23 circumstance; but most men are the architect of their
24 circumstances. Kashaun Banks is the architect of the
25 circumstances he's in today. Concepts like truth and

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1 justice, respect, morality, honor, that's the fight
2 we're in. Lies, half truths --

3 MR. GRIMES: Objection, your Honor.

4 THE COURT: Sustained. Move on, Mr. Kidd.

5 MR. KIDD: The manipulation of the evidence is
6 what you have received from this table right here.

7 MR. GRIMES: Objection, your Honor. It's
8 burden shifting too.

9 THE COURT: Move on, Mr. Kidd. Thank you.

10 MR. KIDD: Let's talk about the things that
11 Mr. Grimes has told you: Asking you questions about
12 videos that don't exist; trying to convince you that
13 this is a condom; trying to make a story up that doesn't
14 exist.

15 MR. GRIMES: Objection, your Honor.

16 THE COURT: What's the basis, Mr. Grimes?

17 MR. GRIMES: Burden shifting and inaccurate
18 statement of the Defense position and undermining his
19 right to his Sixth Amendment Right to defense.

20 THE COURT: Overruled.

21 Ladies and gentlemen, please remember as I've
22 indicated to you, what's contained in closing arguments
23 is the attorney's contention as to what the evidence has
24 shown.

25 You may continue, Mr. Kidd.

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1 MR. KIDD: Thank you, your Honor.

2 Think about how he told you poor Kashaun Banks
3 is going to be railroaded today. And he's put in
4 evidence. You've seen photographs and documents that
5 he's put into evidence. There's not a single shred of
6 evidence that shows how he's been railroaded. And you
7 know if there was, he would be standing right here in
8 front of you waiving it around and jumping up and down.

9 MR. GRIMES: Objection, your Honor; burden
10 shifting.

11 MR. KIDD: Judge, may we approach?

12 THE COURT: You may.

13 (All four attorneys approach the bench for a
14 discussion off the record.)

15 THE COURT: You may continue.

16 MR. KIDD: The bottom line is that no such
17 evidence like that exists. And instead of concentrating
18 on the evidence that we don't have, that isn't here,
19 because nothing that I say and nothing that Mr. Grimes
20 says is evidence. It's not evidence. Evidence is what
21 you hear from the witness stand; evidence is these
22 exhibits that you'll have back there in your
23 deliberations. My word and Mr. Grimes' words, those --
24 that's not evidence. What about the evidence that we do
25 have?

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1 I mean, it's the gun and gloves. It's not
2 questionable. That's it. The gun and gloves. That's
3 evidence. Found in the backpack on Kashaun Banks' back
4 with Kashaun Banks' cell phone, which he asked Officer
5 Lacher to call his sister on. The money. What do those
6 denominations sound like? Thirteen quarters, nine
7 pennies -- sound like somebody making change? Maybe for
8 somebody buying a pack of cigarettes or a coke or
9 something from a convenience store?

10 Then it kind of struck me the other day, or
11 today, for that matter, when Officer Bennett was
12 testifying about all the change he found. He said a lot
13 of nickels and dimes and pennies. Do you know what's
14 not in Kashaun's pockets? Nickels and dimes.

15 (Publishing State's Exhibit Number 12.)

16 MR. KIDD: The K-9 track. Officer Swagel says
17 one of the best tracks he's seen. And that --

18 I'm sorry, that might be upside down from the
19 way we've been looking at it.

20 But what's he saying? From the Exxon to the
21 pool, doubles back, and continues around the fence over
22 to the church; up to the fence where the fence rattled,
23 back to the Defendant where he was in the car. Didn't
24 take his nose off the ground except for that pool where
25 he doubled back on himself, which is where the drawer

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1 was found.

2 The shirt. The same shirt that he's wearing in
3 the robbery is right here on his back. The belt. Why
4 is the belt important? Because he ditched his pants and
5 wanted to hang on to his belt. This case isn't about
6 what's not there; it's about what is.

7 Now, I'm not going to spend a lot of time
8 arguing the law with you, because the law in this case
9 is very simple: It's an armed robbery. You see the
10 armed robbery on the video, and I'll play it for you
11 again in a moment. There's no question that an armed
12 robbery occurred. All you must determine is if I proved
13 to you beyond a reasonable doubt that Kashaun Banks
14 committed it. And in 18 minutes, from the time of that
15 phone call -- actually, correct myself, under 18 minutes
16 from the time that phone call was made, Kashaun Banks
17 was arrested with -- around a mile away with the gun,
18 the gloves, and the money. Within 18 minutes.

19 Officer McAlhaney testified that when he made
20 that dispatch, they would have marked that 18-minute
21 mark, that was after he had had the confrontation with
22 Mr. Banks; so that would have lasted a minute or so for
23 him to chase after him, put him in handcuffs, pat him
24 down, secure him in his car, and then make the dispatch.
25 So you're looking at under 18 minutes to travel a mile,

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1 to change clothes, to ditch the register. It lines up
2 perfectly; makes perfect sense.

3 And when you're back in the deliberation room,
4 you're going to have all the exhibits, all the photos,
5 so I'm not going to show them all to you now. You'll
6 have the opportunity to look at them all. And you'll
7 have this back there, too, and you can play it and stop
8 it and pause it if you want. But I'm going to play it
9 one more time while I have you here.

10 (State's Exhibit Number 2 is played.)

11 MR. KIDD: There's two Kashaun Bankses.
12 There's this one, and there's this one. There's the
13 17-year-old kid that's being railroaded, and there's a
14 kid that will stick a gun in someone's face, yell at
15 them, terrify them -- terrify them and steal from them.

16 The one part that Mr. Grimes asked you to do
17 that I agree with is to use your common sense, because
18 that's all it is is common sense. And common sense
19 tells you, the evidence tells you, that Kashaun Banks on
20 October 15th of 2011 entered the Exxon gas station, put
21 a gun in their face, stole the money, fled, was tracked,
22 and was caught.

23 And it's natural for you to feel sorry for him
24 to some extent, because he is a young man. But you've
25 taken an oath to uphold the law, to apply the facts, to

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1 find the evidence, the witness testimony, the exhibits,
2 and to apply that evidence to the facts and to reach
3 that verdict. And the only verdict the evidence can
4 lead you to is that Kashaun Banks is guilty of armed
5 robbery.

6 And that's all I ask you to do, to deliver a
7 true verdict that the evidence demands, and that common
8 sense dictates. If you do that, you'll return a verdict
9 of guilty.

10 Thank you.

11 THE COURT: Ladies and gentlemen, I remind you
12 that during this trial, you and I have had certain
13 duties to perform. As the trial judge, it is my
14 responsibility to preside over the trial of this case,
15 and I also have the duty to rule on the admissibility of
16 the evidence offered during this trial.

17 You are to consider only the competent evidence
18 before you. If there was any testimony ordered stricken
19 from the record, you must disregard that testimony. You
20 are to consider only the testimony that has been
21 presented from the witness stand, the exhibits that have
22 been made part of the record in this case, as well as
23 the stipulations of counsel.

24 I have the additional duty to charge you the
25 law applicable to this case. As the presiding judge, I

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