

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Charleston County

Michael G. Nettles, Circuit Court Judge

GERALD EDWARDS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000439

APPENDIX

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STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
 -VS-)
) February 6, 2015
GERALD EDWARDS,)
) Charleston, South Carolina
 Defendant.)

B E F O R E:

The Honorable Kristi Harrington, Judge.

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

Benjamin C. Simpson, Assistant Solicitor
Attorney for the State

Shirene Carole Hansotia, Deputy Public Defender

Reported By:

Amanda Kelly Haffenden, RPR, CRR
Circuit Court Reporter for the
Ninth Judicial Circuit

1 (February 6, 2015.)

2 THE COURT: Are you Gerald Edwards?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And, Ms. Hansotia, you represent
5 Mr. Edwards?

6 MS. HANSOTIA: Yes, Your Honor.

7 THE COURT: And we are set for a jury trial
8 only today; is that correct?

9 MS. HANSOTIA: Yes, Your Honor. We had
10 discussed the possibility of doing that Monday.

11 THE COURT: All right.

12 MR. SIMPSON: Judge, if I could clarify my
13 point, we received a consent and permission from the
14 defense to reschedule it in one day before Judge Dennis.
15 It will be our first up trial on Monday, and, again, with
16 consent of all the parties, but I understand Mr. Edwards
17 may raise some issues with that.

18 THE COURT: So Mr. Edwards is first up in
19 front of Judge Dennis, is that correct, on Monday now?

20 MR. SIMPSON: Yes.

21 THE COURT: And so what is the purpose of
22 today's hearing, Ms. Hansotia?

23 MS. HANSOTIA: Your Honor, we requested this
24 hearing on Mr. Edward's behalf. We meet with him
25 yesterday to prepare for the retrial. At that time, he

1 indicated he would like to represent himself and go pro
2 se, so we immediately contacted your office as well as
3 the solicitor to prepare -- to have this motion. We are
4 prepared to try this case, but we don't want to argue
5 with him about his right to go pro se, so this is his
6 motion, Your Honor.

7 THE COURT: All right. Please swear in
8 Mr. Edwards.

9 (Whereupon, the defendant was duly sworn.)

10 THE COURT: Mr. Edwards, Ms. Hansotia, your
11 attorney, has indicated -- stand next to him; you're
12 still his attorney -- has indicated that you wish to
13 represent yourself in this matter; is that correct?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And, Mr. Simpson, it's armed
16 robbery; is that correct?

17 MR. SIMPSON: Armed robbery, possession of
18 weapon during a violent crime, yes, ma'am.

19 THE COURT: So is it ten to thirty?

20 MR. SIMPSON: Ten to thirty, yes, ma'am.

21 THE COURT: Mr. Edwards, tell me a little bit
22 about yourself. How far did you go in school?

23 THE DEFENDANT: I graduated high school.

24 THE COURT: What type of work do you do?

25 THE DEFENDANT: I'm a barber.

1 THE COURT: All right. Have you ever taken
2 any law classes or anything like that?

3 THE DEFENDANT: No. I've been studying since
4 I've been incarcerated. I've obtained a Georgetown Law
5 Journal, so I've been reading from that.

6 THE COURT: You've obtained what?

7 THE DEFENDANT: A Georgetown Law Journal.

8 THE COURT: All right. One law journal?

9 THE DEFENDANT: Yes.

10 THE COURT: Sir, how old are you?

11 THE DEFENDANT: Forty-six.

12 THE COURT: And you understand that if you're
13 found guilty of an armed robbery you could face up to 30
14 years in the Department of Corrections?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: And so that would make you 76?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: And so you seem very intelligent,
19 all right? I would never even attempt to cut my own
20 hair, all right? You have very specialized knowledge,
21 wouldn't you agree?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And wouldn't you agree that Ms.
24 Hansotia has gone to school for several, several years
25 and learned how to practice law and she does this every

1 day?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Do you remember when you went to
4 barber school? Do you remember your first day?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And how much more do you know
7 today than you did that first day?

8 THE DEFENDANT: A lot.

9 THE COURT: How much more do you think Ms.
10 Hansotia knows more than you do, even though you've been
11 able to read that law journal?

12 THE DEFENDANT: I'm quite sure she knows a
13 lot.

14 THE COURT: Wouldn't it be better to have her
15 represent you, Mr. Edwards?

16 THE DEFENDANT: Not at this time.

17 THE COURT: Not at this time? Here's the
18 thing: If that's what you want to do, that's fine. I
19 just want to make sure you understand what you're doing.
20 This is a very serious allegation. Do you understand?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you're facing a lot of
23 potential time if you're found guilty, and it would seem
24 to me that someone as educated and intelligent as you are
25 would want the very best counsel you could have.

1 THE DEFENDANT: Exactly.

2 THE COURT: And you've got Ms. Hansotia who
3 is standing right next to you.

4 THE DEFENDANT: We've been bickering from the
5 time me and her have been attorney-client. It's gotten
6 of to the point -- I've tried to dismiss her as my
7 counsel on three different occasions, all of which were
8 denied. On January the 30th, we had a video conference.
9 She contacted me by video, so I expressed my concerns and
10 told her that I wanted to apologize for our previous
11 attempts, you know what I mean, but she became very
12 agitated. She cursed at me during this --

13 MS. HANSOTIA: That's not true.

14 THE COURT: Ms. Hansotia --

15 THE DEFENDANT: So if you can subpoena the
16 video from January 30th --

17 THE COURT: All right. Mr. Edwards, are you
18 telling me you don't want Ms. Hansotia to represent you
19 or are you telling me --

20 THE DEFENDANT: I'm scared to death to have
21 her represent me.

22 THE COURT: All right. And this is a really
23 good example. I'm so glad you interrupted me because
24 this is a really good example of why I do not advise
25 defendants to represent themselves.

1 THE DEFENDANT: I've been trying to obtain
2 new counsel because, I mean --

3 THE COURT: Well, Mr. Edwards, I thought
4 without yelling at you I've made it fairly clear that you
5 should not interrupt me.

6 THE DEFENDANT: Oh, I apologize.

7 THE COURT: Mr. Edwards, you have every right
8 to hire whomever you wish to represent you. You have the
9 right to proceed representing yourself.

10 If that's what you wish to do, I will grant
11 your motion, but you are up for trial on Monday. Do you
12 understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Do you want me to dismiss and
15 grant your motion to proceed pro se?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And dismiss Ms. Hansotia?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: You understand that you are first
20 up Monday morning?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And you will be representing
23 yourself.

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. Your motion is

1 granted. Good luck to you, Mr. Edwards.

2 MR. SIMPSON: Your Honor, may I make a
3 request? And I believe Ms. Hansotia discussed it and
4 she's in agreement with this --

5 THE COURT: To just sit there with
6 Mr. Edwards?

7 MR. SIMPSON: Have her available if
8 Mr. Edwards --

9 THE COURT: He does not want her there. He
10 does not want her there. He was just gesturing he does
11 not want her at the table with him, all right?

12 So we'll see what happens Monday. Good luck
13 to you, sir. Thank you. I wish you the best.

14 - - -

15 (Whereupon, the proceedings were concluded.)

16 - - -

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I, the undersigned Amanda Kelly Haffenden, RPR, CRR, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the February 6, 2015.

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

July 13, 2017

Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
State of South Carolina,	)	
	)	
v.	)	Case No. 14-GS-10-1779 & 1780
	)	
Gerald Demetrius Edwards,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within Jury Trial in the above-captioned matter was held on February 9th and 10th, 2015, before The Honorable R. Markley Dennis in Courtroom 4C of the Charleston County Courthouse, 100 Meeting Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Chad Simpson, Assistant Solicitor
 Nick Lewis, Assistant Solicitor
 9TH CIRCUIT SOLICITORS OFFICE
 100 Broad Street, 4th Floor
 Charleston, South Carolina 29402
 Appearing for the State of South Carolina

Gerald E. Edwards
 Defendant
 Appearing *Pro Se*

Deborah Garrison.
Circuit Court Reporter – 13th Judicial Circuit
 P O Box 27145
 Greenville, South Carolina 29615
dgarrison@secourts.org

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Examination of Defendant's Right to Proceed Pro Se

6

1

(DEFENDANT PRESENT)

2

(STATUTORY JURY QUALIFICATION)

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THE COURT: I've been advised and
-- obviously I see you're here. You had a
hearing, I think, before Judge Harrington
last week; is that correct, sir?

7

DEFENDANT EDWARDS: Yes, sir.

8

9

10

THE COURT: And at that point you
had an attorney or attorneys representing
you, sir?

11

DEFENDANT EDWARDS: Yes, sir.

12

13

14

THE COURT: And you had requested
that those -- that attorney be dismissed and
you will be permitted to proceed pro se?

15

DEFENDANT EDWARDS: Yes, sir.

16

17

THE COURT: And that's what you
chose to do?

18

DEFENDANT EDWARDS: Yes, sir.

19

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THE COURT: I wasn't present at
the hearing and I'm not trying to set aside
what Judge Harrington said because you
obviously -- I'm sure she explained to you
that you have the Constitutional right to --
and I'm sure it was spoken very clearly on
that -- to represent yourself. But I need to

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1 make sure that she discussed with you in
2 depth the possible problems about
3 representing yourself and the dangers of
4 representing yourself.

5 DEFENDANT EDWARDS: Yes, sir.

6 THE COURT: And you've had time to
7 reflect on that and consider that, and it is
8 still your decision to represent yourself in
9 this matter, sir?

10 DEFENDANT EDWARDS: Your Honor,
11 honestly, I feel that I need counsel. But
12 the counsel that I had appointed to me is, uh
13 -- we've been having problems for almost
14 about a year.

15 THE COURT: Yes, sir. Mr. Green
16 [sic] as you just heard me tell the jurors, I
17 practiced law for twenty-one years before I
18 became a Judge.

19 DEFENDANT EDWARDS: Uh-huh.

20 THE COURT: And I represented
21 persons who were accused of committing
22 criminal offenses just as you are today. I
23 can assure you I had numbers of times, many,
24 many times -- and unfortunately a lot of it
25 dealt with criminal disputes where they

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Examination of Defendant's Right to Proceed Pro Se

1 didn't particularly like what I was telling
2 them and they didn't like the manner in which
3 I was telling them. I respect their right to
4 do that. But I used to tell them, 'You don't
5 need me to reinforce the good things about
6 your case. You need me to be honest and
7 objective about what's not good about your
8 case and to share that with you.'

9 And as I used to tell people, it
10 wasn't that I was trying to be flippant, it
11 wasn't trying to be calloused, but my final
12 statement would be, 'look, this is your
13 decision.' I'd give them my recommendation a
14 number of times, and they didn't take it
15 sometimes. But as I'd tell them, that didn't
16 change anything of what I'm going to do in
17 the courtroom. 'This is a conversation we're
18 having in privacy and protected by the
19 attorney/client privilege.'

20 So, frankly, I think it's a mistake
21 if a lawyer doesn't tell you the things that
22 you don't want to hear. But be that as it
23 may -- and I'm not asking you to share what
24 disagreement you had, what the causes of them
25 were. I just want you to understand I'm well

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1 aware of that.

2 But you had an appointed counsel and
3 Judge Harrington apparently decided that that
4 was -- that if you want to proceed *pro se* you
5 could or you could proceed without an
6 attorney, I guess. Is that what was offered?

7 SOLICITOR SIMPSON: Yes, Your
8 Honor. It was a fairly lengthy ---

9 THE COURT: Yeah, I'm sure. I
10 mean, she went into that. She has to.

11 And you made a decision to go
12 forward and represent yourself; is that
13 correct?

14 DEFENDANT EDWARDS: Yes, sir.

15 THE COURT: Okay. And that's what
16 you still want to do?

17 DEFENDANT EDWARDS: I have no
18 choice.

19 THE COURT: Well, you had a
20 choice. You could have gone with the
21 attorney but you didn't want that attorney.

22 DEFENDANT EDWARDS: It became
23 personal for her. She stated that to me
24 because she claims I lied on her, accused
25 her.

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Examination of Defendant's Right to Proceed Pro Se

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1 THE COURT: "She", being who?

2 DEFENDANT EDWARDS: Ms. Hansotia
3 (phonetic). She admitted that on her video
4 conference. She said, "it's personal for
5 me." She cursed me, and I found that very
6 unprofessional. And she made me feel like,
7 'okay, well, now you're trying to do this to
8 me so I'm okay -- it's personal now.' That's
9 what she told me.

10 I was trying to apologize for our
11 previous altercation. But when she told me
12 that, I was like -- I didn't feel comfortable
13 with her representing me after she told me it
14 was personal.

15 THE COURT: Was that disclosed to
16 Judge Harrington as well as Mr. Simpson?

17 DEFENDANT EDWARDS: No, she
18 wouldn't let me tell her. She wouldn't ---

19 THE COURT: Mr. Simpson, was the
20 problem with the attorney disclosed to Judge
21 Harrington?

22 SOLICITOR SIMPSON: It was. It
23 was discussed at some length.

24 THE COURT: Okay.

25 SOLICITOR SIMPSON: There was

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1 also, I should note for the record, more than
2 one. I believe two or three motions to
3 relieve her, which were all denied by the
4 court. I believe possibly one before then.

5 THE COURT: Okay. All right.
6 I would reiterate that it's not wise to do
7 that, but you made a decision not to go
8 forward with that attorney and that you would
9 be proceeding *pro se*; correct?

10 DEFENDANT EDWARDS: Yes, sir.

11 THE COURT: Okay. Well, let me
12 talk about -- I find that he's -- of course,
13 that's been explored by Judge Harrington's
14 ruling and the record will fully support my
15 relying on that. But I have made a deter-
16 mination that as he sits today he certainly
17 has indicated a desire to proceed, that he
18 didn't want that attorney. He wants to
19 proceed and represent himself.

20 He's advised me that he understands
21 the potential problems associated with that.
22 And he appears to be certainly intelligent
23 and articulate. And he's been involved in
24 the jury process, which I qualified and asked
25 questions, very pertinent questions during

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1 that process. So I note that he is
2 apparently prepared to go forward.

3 Let's talk about -- before I ask
4 about Motions, let's talk about some things
5 that -- uh, Mr. Green [sic], I was thinking
6 about it over the weekend. I know -- I can
7 think of at least three *pro se* cases that
8 I've had in my career. Two -- one of them in
9 Charleston, one of them in Berkeley; one was
10 for murder and the other was for criminal
11 sexual conduct. So I'm aware of that and
12 I've had several in civil proceedings as
13 well. As I tell them, I understand -- and I
14 assume Judge Harrington has explored with you
15 your educational background. You're not a
16 lawyer by trade, I assume?

17 DEFENDANT EDWARDS: No, sir.

18 THE COURT: Have you ever been to
19 law school?

20 DEFENDANT EDWARDS: No, sir.

21 THE COURT: Okay, and I understand
22 that. And certainly you have access to
23 Rules. You can read them. But notwithstand-
24 ing the fact that you haven't had any
25 specific training, I'm going to hold you to

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1 the standard that I hold a lawyer. And that
2 is how you proceed. If you have an objection
3 to any questions I want you to stand and
4 state "Objection" and state just what is the
5 basis of that objection. I don't allow
6 speaking objections. Some attorneys try to
7 do this. And I think pro se litigants start
8 to argue their position. I'll do that
9 outside the presence of the jury, if
10 necessary. But I just need you to state
11 'hearsay' or 'not relevant', something that
12 succinctly states the basis for -- and Mr.
13 Simpson's tried cases. He understands that
14 that's just my -- that's the way I try to
15 handle things.

16 If we need to excuse the jury -- and
17 I'll certainly be happy to excuse the jury
18 and allow you to state your position fully on
19 the record if that becomes necessary or you
20 need to give -- say, 'Your Honor, there's a
21 matter I need to take up out of the jury's
22 presence.' And I'll be happy to excuse them
23 and we'll accommodate. Okay?

24 DEFENDANT EDWARDS: Okay.

25 THE COURT: Also, when you ask

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1 questions, one of the things that differs in
2 each state. In this state, we stand to
3 question witnesses and to speak to, to argue
4 to the Court. That's just a formality. It
5 doesn't offend me, I will assure you of that.
6 One of the things over the years, people that
7 I have had the privilege of working with --
8 If I could sneak in here without everybody
9 saying "please rise", it would be great. But
10 I understand it's not for me. It's for the
11 position that I'm holding. But we do require
12 that. And certainly, I would expect that you
13 would do the same thing. Okay.

14 Are there any matters from the State
15 before we ask the jury to come up?

16 SOLICITOR SIMPSON: Judge, I do
17 have a few matters regarding pretrial Motions
18 and a couple of things. Of if you'd like to
19 do that after we pick the jury.

20 THE COURT: We can. We can do
21 that. Because we obviously will be taking a
22 lunch break and maybe we can do that before
23 the jury comes back in. Okay.

24 Do you have any *voir dire* or
25 questions that you -- I have the State's

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15

1 questions. Do you have any *voir dire*
2 questions that you want me to ask the
3 prospective jurors?

4 DEFENDANT EDWARDS: No.

5 THE COURT: Okay. I have some
6 standard ones that I ask generally, telling
7 them what the crime is, who's involved. But
8 do you have any specific ones that you want
9 me to ask?

10 DEFENDANT EDWARDS: No, sir.

11 THE COURT: Okay.

12 SOLICITOR SIMPSON: May I have a
13 moment?

14 THE COURT: Yes, sir.

15 (COURT AT-EASE)

16 SOLICITOR SIMPSON: Your Honor,
17 may I approach the court reporter?

18 THE COURT: Yes.

19 (COURT AT-EASE)

20 THE COURT: All right. Are y'all
21 ready for the jury to come? We'll do any
22 pretrial Motions after we get the jury
23 selected, okay? Are you ready?

24 SOLICITOR SIMPSON: We are, Your
25 Honor.

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1 THE COURT: Mr. Green [sic], are
2 you ready?

3 DEFENDANT EDWARDS: It's Edwards.

4 SOLICITOR SIMPSON: Mr. Edwards,
5 yeah.

6 THE COURT: Excuse me, Mr.
7 Edwards. I'm sorry. I apologize to you.
8 Are you ready to go forward?

9 DEFENDANT EDWARDS: Yes, sir.

10 THE COURT: Very good. Thank you,
11 sir. Forgive me, Mr. Edwards. I apologize.

12 CLERK: Shall I bring in the jury?

13 THE COURT: That would be good.

14 SOLICITOR SIMPSON: Judge, may I
15 approach?

16 THE COURT: Sure.

17 SOLICITOR SIMPSON: These are
18 some Motions Mr. Edwards had shared with me.

19 THE COURT: Thank you, sir.

20 SOLICITOR SIMPSON: I think he
21 has brought extra copies.

22 THE COURT: All right. Thank you,
23 Mr. Edwards. I appreciate it.

24 (JURY PANEL IN @ 11:45 A.M.)

25 BAILIFF: All jurors are in.

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Examination of Defendant's Right to Proceed Pro Se

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THE COURT: Thank you very much.

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Thank you, ladies and gentlemen. And, again, thank you for your patience. I promise you you'll be able to go to lunch today. This process won't keep you from that. It may be a little later than noon, but we'll get you to lunch. And I would assume -- over the years it's been my observation and I hope I'm not being presumptuous, but jurors would rather go forward instead of break for lunch and then having to come back. And I think it's better for all of you that we keep going while we're here. It may be a little bit longer. Bet you didn't know you were going to start a diet today. We'll get you out of here as quick as we can.

As I mentioned to you, the questions that you're going to hear now involve the dispute that has been brought here today. And this dispute is framed by these two documents that I'm holding. They are what they appear to you to be, they're pieces of paper. They're not evidence and they won't be -- will not accompany you to your jury

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1 room. But it frames what this dispute
2 involves.

3 This dispute involves a charge
4 against an individual, Mr. Gerald Edwards.
5 He is accused of committing the crime of
6 armed robbery and possession of a knife
7 during the commission of a violent crime, by
8 these indictments. The State of South
9 Carolina has made these accusations.

10 First, I'd like to introduce to you
11 the parties:

12 Mr. Edwards is seated at the table
13 to my right. Mr. Edwards, if you'd please
14 stand and face the jury panel for me.

15 DEFENDANT EDWARDS: (Complies)

16 THE COURT: This is Mr. Gerald
17 Edwards. Thank you, sir. You may be seated.

18 DEFENDANT EDWARDS: (Complies)

19 THE COURT: Are there any members
20 of the jury panel related by blood or
21 marriage, have any business dealings with,
22 socially or casually acquainted with, or have
23 any connection with Mr. Edwards? If so,
24 please stand.

25 (NO RESPONSE)

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1 THE COURT: Thank you. There
2 appear to be none.

3 Mr. Edwards, as any individual in
4 this state who is accused of committing a
5 criminal offense, has the right to represent
6 him or herself. Mr. Edwards has made that
7 decision and has elected to do that. And
8 that, as I stated, is his constitutional
9 right and privilege. Are there any members
10 of the jury panel that would have some
11 problem that would influence them one way or
12 the other, the fact that an individual has
13 exercised his right to represent himself or
14 herself? If so, please stand.

15 (NO RESPONSE)

16 THE COURT: Thank you. There are
17 none.

18 The State of South Carolina in
19 making these charges is represented by the
20 Solicitor. The Solicitor for the Ninth
21 Circuit is Scarlett Wilson. Are there any
22 members of the jury panel related by blood or
23 marriage, have any business dealings with,
24 socially or casually acquainted with, ever
25 been represented by Ms. Wilson? If so,

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1 please stand.

2 (NO RESPONSE)

3 THE COURT: Thank you. There
4 appear to be none.

5 Are there any members of the jury
6 panel related by blood or marriage, have any
7 business dealings with, socially or casually
8 acquainted with anyone employed with the
9 Solicitor's Office? She has offices in
10 Berkeley and Charleston County. If so,
11 please stand.

12 (NO RESPONSE)

13 THE COURT: Thank you. There
14 appear to be none.

15 She has a number of assistants and
16 deputy solicitors and one of those is here
17 today, Mr. Simpson, representing the State.
18 If you would, identify yourself and anyone
19 who will be assisting you, please.

20 SOLICITOR SIMPSON: Thank you,
21 Your Honor. Good morning. My name is Chad
22 Simpson, I work for Solicitor Scarlett
23 Wilson. I am an Assistant Solicitor to her.
24 Assisting me this week is Solicitor Nick
25 Lewis.

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1 THE COURT: Thank you, sir.

2 Are there any members of the jury panel
3 related by blood or marriage, have any
4 business dealings with, socially or casually
5 acquainted with, ever been represented by Mr.
6 Simpson or Mr. Lewis? If so, please stand.

7 (NO RESPONSE)

8 THE COURT: Thank you. There
9 appear to be none.

10 I'm going to identify a number of
11 persons, ladies and gentlemen, and if you are
12 related by blood or marriage, have any
13 business dealings with, socially or casually
14 acquainted with any of these individuals, you
15 need to stand and please share that
16 information with the court.

17 The following person who are
18 employed with Home Depot:

19 Michael Smith

20 Brian Hoffman

21 Keith C. Heyward

22 Also, with the Charleston Police
23 Department, the following:

24 Christopher Wycoff

25 Detective Richard Burckhardt

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1 Detective Paul Krasowski

2 Detective Mark Mellett

3 J. C. Miller

4 Mary Phillips

5 With the North Charleston Police

6 Department:

7 James Roberts

8 And with the Charleston County

9 Sheriff's Office:

10 Mark Lipsey

11 Deputy Shurbine.

12 Any of those persons?

13 (NO RESPONSE)

14 THE COURT: Thank you. There
15 appear to be none.

16 The dispute, as I mentioned, is
17 framed in this document and this is what it
18 alleges. Again, this is not evidence. I
19 just need to ask you some questions about it.
20 But it's alleged that Mr. Edwards on or about
21 January 3rd, 2014 in Charleston County by use
22 of force, threats, intimidation and while
23 armed with a deadly weapon or while alleging
24 either by actions or words that he was armed
25 with, or while using a representation of a

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1 deadly weapon or any object which a person
2 presents during the commission of a robbery
3 reasonably believed to be a deadly weapon,
4 did take and carry away goods and/or monies
5 from the person or immediate presence of
6 Michael Smith, with the intent to permanent
7 deprive Mr. Smith of the possession of that
8 in violation of our code of laws; which
9 describes the conduct designated or named as
10 Armed Robbery.

11 It further alleges that on that day
12 in Charleston County that Mr. Edwards did
13 possess a knife or visibly displayed what
14 appeared to be a knife during the commission
15 of or attempted commission of an armed
16 robbery, which is alleged to be a violent
17 crime in accordance with our law.

18 I share that with you to find out
19 if any member of the jury panel has heard
20 anything, read anything about this dispute.
21 If you have any prior knowledge of this
22 dispute, please stand.

23 (NO RESPONSE)

24 THE COURT: Thank you. There
25 appear to be none.

1 Is there anything about the nature
2 of this dispute that you, because of
3 something that's happened to you in your
4 lifetime, to a close person friend or family
5 member, that would affect your ability to
6 fairly and impartially apply your sense of
7 logic and reason in analyzing the evidence
8 and decide what you believe to be the true
9 facts. And then once deciding that, would
10 affect your ability to fairly and impartially
11 apply the law? And/or fairly and impartially
12 apply the law so that your decision -- such
13 that it would influence your decision. If
14 you feel that it would, please stand.

15 (NO RESPONSE)

16 THE COURT: Thank you. There
17 appear to be none.

18 Is any member of the jury panel have
19 any strong beliefs, any personal philosophies
20 that would influence or affect your ability
21 to serve as a judge in a criminal dispute
22 such as this, and decide the true facts from
23 the evidence. And then once deciding that,
24 take the law as I give it to you, not-
25 withstanding your opinion on what the law may

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1 be or should be, but to accept it as I state
2 it during the charge in this matter. And if
3 you feel you would have trouble doing that
4 because of strong beliefs or personal
5 philosophies, please stand.

6 (NO RESPONSE)

7 THE COURT: Thank you. There
8 appear to be none.

9 Are there any members of the jury
10 panel or member(s) of your immediate family
11 that have ever been involved in a criminal
12 dispute? (No response).

13 Either you were accused, you were a
14 witness for, or you were the person who was
15 an alleged victim of a crime? (No response).

16 Have you had any involvement whatso-
17 ever in a criminal dispute? If so, please
18 stand.

19 (NO RESPONSE)

20 THE COURT: Thank you. There
21 appear to be none.

22 Are there any members of the jury
23 panel that have ever had a dispute with law
24 enforcement or law enforcement agencies? If
25 so, please stand.

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1 (NO RESPONSE)

2 THE COURT: Thank you. There
3 appear to be none.

4 Are there any members of the jury
5 panel that have ever had any dealings with or
6 against the solicitor's office? If so,
7 please stand?

8 (NO RESPONSE)

9 THE COURT: Thank you. There
10 appear to be none.

11 Any other specific questions from
12 the State, Mr. Simpson?

13 SOLICITOR SIMPSON: No, Your
14 Honor.

15 THE COURT: Mr. Green -- Mr.
16 Edwards, any other specific questions?

17 DEFENDANT EDWARDS: No, Your
18 Honor.

19 THE COURT: Thank you.
20 Ladies and gentlemen, the last question I
21 have for you is, is there anything about what
22 you've heard about this dispute that would
23 give you any concern about your ability to
24 make a commitment to the State and to Mr.
25 Edwards that you would, at the appropriate

1 time, apply your common sense, your sense of
2 logic and reason fairly and impartially and
3 decide the true facts. And then once deciding
4 that, you would take the law and apply that
5 law fairly and impartially to those facts so
6 that you could make a decision that would be
7 fair to the State and would be fair to Mr.
8 Edwards? If you would have difficulty in
9 making that commitment for any reason, please
10 stand.

11	(NO RESPONSE)

12 THE COURT: Thank you, ladies and
13 gentlemen. Now that you're qualified what's
14 going to happen now is I'm turning it over to
15 the clerk. She's going to call you up one at
16 a time. There needs to be a list generated
17 and I will let the attorneys have the list,
18 so you can give it to them.

19 CLERK: Yes, sir.

20 THE COURT: And once that list is
21 generated your names will be called. If you
22 will come and stand and position yourself
23 facing back to the rest of your jurors with
24 this podium here. First the State will have
25 an opportunity to say excuse the juror, seat

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1 the juror, swear the juror, or something
2 similar. And once that's been done, Mr.
3 Edwards will have the opportunity to say the
4 same thing. Each side can excuse jurors.
5 And the State can excuse five and Mr. Edwards
6 can excuse ten. And we'll go through that
7 process until we've selected our twelve
8 jurors and one alternate. So bear with us.

9 If someone excuses you, don't get
10 upset by that. That's a part of the process
11 and that's the way that works. Just go take
12 your seat and we'll call the next one. So
13 thank you very much.

14 And I'll turn it over to you now.

15 You'll have a list that you'll look.
16 The list, of course, you know, we'll call in
17 order of the list and they will be called
18 numerically. So we'll deal with each one
19 separately.

20 (COURT AT-EASE)

21 THE COURT: Are you ready?

22 CLERK: Yes, sir. Ladies and
23 gentlemen, I'm going to call your juror
24 number and your name. And at the time I call
25 your name, if you would gather your

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1 belongings and just as Judge Dennis had
2 mentioned you will come forward and stand in
3 front of the podium and face the back of the
4 room. If you are selected for a jury, you
5 will take a seat in the jury box. If you are
6 not selected, you could just go ahead and
7 proceed to head back to your seat.

8 Starting with Juror number 180,
9 Charles McCutcheon.

10 (JUROR, WHITE MALE, BEFORE COUNSEL)

11 CLERK: And strikes are ten and
12 five with the striking first.

13 What say you for the State?

14 SOLICITOR SIMPSON: Please seat
15 the juror.

16 CLERK: What say you for the
17 Defense?

18 DEFENDANT EDWARDS: Please seat
19 this juror.

20 CLERK: Sir, you've been selected
21 for the trial of this case. Yes, sir. You
22 may take a seat in the jury box.

23 (JUROR NUMBER 180 SEATED)

24 CLERK: Juror Number 279, Benjamin
25 Walsh.

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1 (JUROR, WHITE MALE, BEFORE COUNSEL)

2 CLERK: What say you, the State?

3 SOLICITOR SIMPSON: Please seat
4 the juror.

5 CLERK: What say you for the
6 Defendant?

7 DEFENDANT EDWARDS: Please excuse
8 this juror.

9 CLERK: Sir, you've been excused
10 from the trial of this case. You may return
11 to your seat

12 (JUROR NUMBER 279 EXCUSED)

13 CLERK: Juror Number 204, Kelly
14 Orenstein.

15 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

16 CLERK: What say you for the State?

17 SOLICITOR SIMPSON: Please seat
18 this juror?

19 CLERK: What say you for the
20 Defense.

21 DEFENDANT EDWARDS: Please seat
22 this juror.

23 CLERK: Ma'am, you've been selected
24 as a juror in this case. You can take a seat
25 in the jury box.

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1 (JUROR NUMBER 204 SEATED)

2 CLERK: Juror Number 173, Mario
3 Machado.

4 (JUROR, WHITE MALE, BEFORE COUNSEL)

5 CLERK: What say you for the State?

6 SOLICITOR SIMPSON: Please seat
7 this juror.

8 CLERK: What say you for the
9 Defendant?

10 DEFENDANT EDWARDS: Please excuse
11 this juror.

12 CLERK: Sir, you've been excused
13 from the trial of this case. You may return
14 to your seat.

15 (JUROR NUMBER 173 EXCUSED)

16 CLERK: Juror Number 36, Jacqueline
17 Boyd.

18 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

19 CLERK: What say you for the State?

20 SOLICITOR SIMPSON: Please seat
21 this juror.

22 CLERK: What say you for the
23 Defendant?

24 DEFENDANT EDWARDS: Please seat
25 this juror.

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1 CLERK: Ma'am, you've been selected
2 for the trial of this case. You may take a
3 seat in the jury box.

4 (JUROR NUMBER 36 SEATED)

5 CLERK: Juror Number 261, Lauren
6 Sostrin.

7 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

8 CLERK: What say you for the State?

9 SOLICITOR SIMPSON: Please seat
10 this juror.

11 CLERK: What say you for the
12 Defendant?

13 DEFENDANT EDWARDS: Please seat
14 this juror.

15 CLERK: Ma'am, you've been selected
16 in the trial of this case. You may be seated
17 in the jury box.

18 (JUROR NUMBER 261 SEATED)

19 CLERK: Juror Number 3, Layla Al.

20 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

21 CLERK: What say you for the State?

22 SOLICITOR SIMPSON: Please seat
23 this juror.

24 CLERK: What say you for the
25 Defendant?

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1 DEFENDANT EDWARDS: Please excuse
2 the juror.

3 CLERK: Ma'am, you've been excused
4 from the trial of this case. You may return
5 to your seat.

6 (JUROR NUMBER 3 EXCUSED)

7 CLERK: Juror Number 24, Julie
8 Black.

9 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

10 CLERK: What say you for the State?

11 SOLICITOR SIMPSON: Please seat
12 this juror.

13 CLERK: What say you for the
14 Defendant?

15 DEFENDANT EDWARDS: Please seat
16 this juror.

17 CLERK: Ma'am, you've been selected
18 for the trial of this case. You may take a
19 seat in the jury box.

20 (JUROR NUMBER 24 SEATED)

21 CLERK: Juror Number 238, Althea
22 Salters.

23 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

24 CLERK: What say you for the State?

25 SOLICITOR SIMPSON: Please seat

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1 this juror.

2 CLERK: What say you for the
3 Defendant?

4 DEFENDANT EDWARDS: Please seat
5 this juror.

6 CLERK: Ma'am, you've been selected
7 as a juror in this case. You may be seated
8 in the jury box.

9 (JUROR NUMBER 238 SEATED)

10 CLERK: Juror Number 48, Melanie
11 Brown.

12 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

13 CLERK: What say you for the State?

14 SOLICITOR SIMPSON: Please excuse
15 this juror.

16 CLERK: Ma'am, you've been excused
17 from the trial of this case. You may return
18 to your seat.

19 (JUROR NUMBER 48 EXCUSED)

20 CLERK: Juror Number 298, Jane
21 Yates.

22 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

23 CLERK: What say you for the State?

24 SOLICITOR SIMPSON: Please seat
25 this juror.

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1 CLERK: What say you for the
2 Defendant?

3 DEFENDANT EDWARDS: Please excuse
4 this juror.

5 CLERK: Ma'am, you've been excused
6 from the trial of this case. You may return
7 to your seat.

8 (JUROR NUMBER 298 EXCUSED)

9 CLERK: Juror Number 58, Martha
10 Calk.

11 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

12 CLERK: What say you for the State?

13 SOLICITOR SIMPSON: Please seat
14 this juror.

15 CLERK: What say you for the
16 Defendant?

17 DEFENDANT EDWARDS: Please excuse
18 this juror.

19 CLERK: Ma'am, you've been excused
20 from the trial of this case. You may return
21 to your seat.

22 (JUROR NUMBER 58 EXCUSED)

23 CLERK: The Defendant has exhausted
24 five of his ten strikes.

25 Juror Number 120, Martha Gregory.

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1 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

2 CLERK: What say you for the State?

3 SOLICITOR SIMPSON: Please seat
4 this juror.

5 CLERK: What say you for the
6 Defendant?

7 DEFENDANT EDWARDS: Please seat
8 this juror.

9 CLERK: Ma'am, you've been selected
10 for the trial of this case. You may take a
11 seat in the jury box.

12 (JUROR NUMBER 120 SEATED)

13 CLERK: Juror Number 94, Fitzgerald
14 Drummond.

15 (JUROR, WHITE MALE, BEFORE COUNSEL)

16 CLERK: What say you for the State?

17 SOLICITOR SIMPSON: Please seat
18 this juror.

19 CLERK: What say you for the
20 Defendant?

21 DEFENDANT EDWARDS: Please excuse
22 this juror.

23 CLERK: Sir, you've been excused
24 from the trial of this case. You may return
25 to your seat.

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1 (JUROR NUMBER 94 EXCUSED)

2 CLERK: Juror Number 263, Catherine
3 Stafford.

4 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

5 CLERK: What say you for the State?

6 SOLICITOR SIMPSON: Please seat
7 this juror.

8 CLERK: What say you for the
9 Defendant?

10 DEFENDANT EDWARDS: Please seat
11 this juror.

12 CLERK: Ma'am, you've been selected
13 for the trial of this case. You may take a
14 seat in the jury box.

15 (JUROR NUMBER 263 SEATED)

16 CLERK: Juror Number 225, Martha
17 Rhodes.

18 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

19 CLERK: What say you for the State?

20 SOLICITOR SIMPSON: Please seat
21 this juror.

22 CLERK: What say you for the
23 Defendant?

24 DEFENDANT EDWARDS: Please excuse
25 this juror.

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1 CLERK: Ma'am, you've been excused
2 from the trial of this case. You may return
3 to your seat.

4 (JUROR NUMBER 225 EXCUSED)

5 CLERK: Juror Number 281, Lawrence
6 Wearn.

7 (JUROR, WHITE MALE, BEFORE COUNSEL)

8 CLERK: What say you for the State?

9 SOLICITOR SIMPSON: Please seat
10 this juror.

11 CLERK: What say you for the
12 Defendant?

13 DEFENDANT EDWARDS: Please seat
14 this juror.

15 CLERK: Sir, you've been selected
16 to the trial of this case. You may take a
17 seat in the jury box.

18 (JUROR NUMBER 281 SEATED)

19 CLERK: Juror Number 81, Desyona
20 Davis.

21 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

22 CLERK: What say you for the State?

23 SOLICITOR SIMPSON: Please seat
24 this juror.

25 CLERK: What say you for the

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1 Defendant?

2 DEFENDANT EDWARDS: Please seat
3 this juror.

4 CLERK: Ma'am, you've been selected
5 as a juror in this case. You may take a seat
6 in the jury box.

7 (JUROR NUMBER 81 SEATED)

8 CLERK: Juror Number 165, Patricia
9 Leighton.

10 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 SOLICITOR SIMPSON: Please seat
13 this juror.

14 CLERK: What say you for the
15 Defendant?

16 DEFENDANT EDWARDS: Please excuse
17 this juror.

18 CLERK: Ma'am, you've been excused
19 from the trial of this case. You may return
20 to your seat.

21 (JUROR NUMBER 165 EXCUSED)

22 CLERK: The Defendant has exhausted
23 eight of his ten strikes.

24 Juror Number 39, Melanie Bozeman.

25 (JUROR, WHITE FEMALE, BEFORE COUNSEL)

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1 CLERK: What say you for the State?

2 SOLICITOR SIMPSON: Please excuse
3 this juror.

4 CLERK: Ma'am, you've been excused
5 from the trial of this case. You may return
6 to your seat.

7 (JUROR NUMBER 39 EXCUSED)

8 CLERK: Juror Number 192, Ronald
9 Millings.

10 (JUROR, WHITE MALE, BEFORE COUNSEL)

11 CLERK: What say you for the State?

12 SOLICITOR SIMPSON: Please seat
13 this juror.

14 CLERK: What say you for the
15 Defendant?

16 DEFENDANT EDWARDS: Please excuse
17 this juror.

18 CLERK: Sir, you're excused from
19 the trial of this case. You may return to
20 your seat.

21 (JUROR NUMBER 192 EXCUSED)

22 CLERK: Juror Number 130, Byron
23 Hamstead.

24 (JUROR, WHITE MALE, BEFORE COUNSEL)

25 CLERK: What say you for the State?

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1 SOLICITOR SIMPSON: Please seat
2 this juror.

3 CLERK: What say you for the
4 Defendant?

5 DEFENDANT EDWARDS: Please seat
6 this juror.

7 CLERK: Sir, you've been selected
8 as a juror in this case. You may have a seat
9 in the jury box.

10 (JUROR NUMBER 130 SEATED)

11 CLERK: Juror Number 186, Colin
12 Merrill.

13 (JUROR, WHITE MALE, BEFORE COUNSEL)

14 CLERK: What say you for the State?

15 SOLICITOR SIMPSON: Please seat
16 this juror.

17 CLERK: What say you for the
18 Defendant?

19 DEFENDANT EDWARDS: Please excuse
20 this juror.

21 CLERK: Sir, you've been excused
22 from the trial of this case. You may return
23 to your seat.

24 (JUROR NUMBER 186 EXCUSED)

25 CLERK: The Defendant has exhausted

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1 ten of his ten strikes.

2 Juror Number 287, Lillian White.

3 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

4 CLERK: What say you for the State?

5 SOLICITOR SIMPSON: Please seat
6 this juror.

7 CLERK: What say you for the
8 Defendant?

9 DEFENDANT EDWARDS: Please seat
10 this juror.

11 CLERK: Ma'am, you've been selected
12 as a juror in this case. You may have a seat
13 in the jury box.

14 (JUROR NUMBER 287 SEATED)

15 THE COURT: All right. There's
16 just one alternate. Strikes will be one and
17 two.

18 CLERK: Juror Number 85, Regina
19 Dessassaure.

20 (JUROR, BLACK FEMALE, BEFORE COUNSEL)

21 CLERK: What say you for the State?

22 SOLICITOR SIMPSON: Please seat
23 this juror.

24 CLERK: What say you for the
25 Defendant?

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1 DEFENDANT EDWARDS: Please seat
2 this juror.

3 CLERK: Ma'am, you've been selected
4 as our first alternate. You may take a seat
5 in the jury box.

6 (JUROR NUMBER 85 SEATED)

7 THE COURT: All right. Thank you
8 very much.

9 Are there any Motions from the State
10 regarding the selection?

11 SOLICITOR SIMPSON: None, Your
12 Honor.

13 THE COURT: Any Motions from the
14 Defendant, Mr. Edwards?

15 DEFENDANT EDWARDS: No, sir.

16 THE COURT: Thank you. All right.
17 Ladies and gentlemen, those of you that were
18 not selected, thank you so much for your
19 patience. I'm pleased to inform you, you are
20 now excused for the balance of the day. Call
21 the number after 6:00 tonight and follow that
22 instruction.

23 And, as you've already been
24 informed, if we'll need you, we'll tell you
25 to report. If it says to call back tomorrow

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1 night, then you know tomorrow is your day.
2 And we'll work through that until they
3 dismiss you. But if I get to see you again
4 it will probably be Wednesday. I would think
5 Wednesday or Thursday. So have a good week
6 and thank you so much for your patience this
7 morning. You're free to leave.

8 (JURY PANEL OUT @ 12:17 P.M.)

9 THE COURT: Ladies and gentlemen,
10 those of you that were selected, thank you so
11 much for your patience as well. We're going
12 to need you -- and we'll let you go to lunch.
13 Please, when you're out don't allow anybody
14 to talk with you about this case, talk about
15 it in your presence. Don't discuss the case
16 among yourselves. Of course, you haven't
17 heard any evidence yet, so don't speculate.
18 Have a good lunch. And if you'll return to
19 your jury room by 2:00 we'll resume the trial
20 at that time.

21 When you exit, you'll exit through
22 the door there to your right and they'll show
23 you your jury room and where you need to
24 report.

25 When you come back in, Let's talk

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1 about the seating. Ms. Salters is sitting in
2 one of the assigned seats. And the other
3 assigned seat is really an assigned seat.
4 Ms. Dessassaure, you have the privilege of
5 having that entire back row. That's your
6 seat. You have been selected as an
7 alternate. And that really doesn't have any
8 meaning or significance at all. I think just
9 last week we had to use an alternate and it
10 was within the same day, I think. So things
11 come up sometimes that you have to -- that
12 necessitate a juror being excused. The only
13 difference is this. While you're an
14 alternate you have a role. You are not
15 eligible to be selected as the presiding
16 juror or foreperson, but you're still very
17 much a part of the jury panel because at the
18 end if -- then and only then would you know
19 if you're going to participate in the final
20 deliberations. If the first twelve are able
21 to go forward, then you won't. Neither you
22 nor I know the status of those jurors so
23 please know that.

24 The rest of you, who are sitting in
25 the first two rows, the statute allows me to

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1 select the presiding juror -- I call them
2 presiding juror. They're also called
3 foreperson, forelady, foreman. Someone has
4 to be responsible for signing a verdict form
5 on behalf of the jury. That would be the
6 presiding juror's responsibility. Any
7 exhibits that are introduced during the
8 trial, it would your responsibility to
9 receive those and when the jury has completed
10 its deliberations, returning those to the
11 Court. There may be occasions when there
12 needs to be some written communication from
13 the jury to the court and it would be your
14 responsibility of drafting that on behalf of
15 your fellow jurors. As I stated, any of the
16 first twelve of you are extremely qualified
17 to serve. And I would ask that you pick that
18 person. It doesn't have to be done right
19 away. At some point if you'll select that
20 person.

21 Then once that individual has been
22 selected, I would simply ask that that person
23 occupy the end chair on the first row.

24 The foreperson really facilitates
25 the deliberations by all jurors. And some

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1 persons are better facilitators than others.
2 So you select your person and then that
3 person will occupy the seat. But until then,
4 occupy any

5 seat that you want. Have a good
6 lunch and I'll see you at 2:00. If you'll
7 exit now through the door to your right.

8 (JURY OUT @ 12:25 P.M.)

9 THE COURT: What's your plan? Do
10 you want to do your Motions now before we
11 recess?

12 SOLICITOR SIMPSON: Whatever you
13 prefer, Your Honor.

14 THE COURT: Deb (court reporter),
15 does that suit you?

16 COURT REPORTER: Yes, sir.

17 THE COURT: Let's just go ahead
18 and hear the Motions now.

19 SOLICITOR SIMPSON: Thank you,
20 Judge. First I would like to just put on the
21 record -- I'm going to seek your advice. Mr.
22 Edwards has a -- we're here on a second
23 trial. So we've been through this with
24 counsel before. Just to make sure the record
25 is clean and everything on that, I want to

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1 make clear in the first trial of the case,
2 Ms. Hansotia, on behalf of Mr. Edwards did
3 file a *Neil v. Biggers* challenge to
4 identification. That Motion was denied. And
5 I have here a transcript outlining that
6 reasoning. We could -- I'm trying to clean
7 the record and, giving the benefit of the
8 doubt to Mr. Edwards, maybe if we want to do
9 that again. We'll be happy to do that.

10 THE COURT: Do you want to hear it
11 on the identification?

12 DEFENDANT EDWARDS: Yes, sir.

13 SOLICITOR SIMPSON: Similarly,
14 there was a suppression motion regarding the
15 knife that was brought by Ms. Hansotia. So
16 that, again, we have a clear record of that
17 hearing ---

18 THE COURT: Which we start anew.

19 SOLICITOR SIMPSON: Anew. I
20 understand and we're prepared to go forward
21 with that as well.

22 THE COURT: Well, let me ask you a
23 question. When do these persons -- when are
24 they going to testify in this case, early-on?

25 SOLICITOR SIMPSON: Judge, we're

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1 looking at probably a five-witness case. So
2 really every witness is going to be early on.
3 I'm happy to not call -- before the
4 introduction of any of these items or before
5 the ID, we can take it up at that time. I do
6 think you'll have the context there. And
7 really with any of these things should I lose
8 the Motion, I plan on -- it wouldn't be fatal
9 to our case. I plan on carrying forward.

10 So we also have two items of
11 evidence that Mr. Edwards at this trial seeks
12 to suppress that were not -- there was no
13 motion involved in the first trial. However
14 Your Honor would like to take care of it,
15 we're ready to go. I do think in the context
16 of the trial we could take these up at the
17 appropriate time as well if you'd rather do
18 it that way.

19 THE COURT: Well, my feeling --
20 and I have copies of two Motions to suppress
21 that were provided to me just a few minutes
22 ago. These have been filed, Mr. Edwards?

23 DEFENDANT EDWARDS: No, I ---

24 THE COURT: We'll file the -- I'll
25 file the ones so that they are part of the

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1 record. They're Motions to suppress. One
2 deals -- would suppress the video. Is that
3 what you're seeking to suppress?

4 DEFENDANT EDWARDS: Yes, sir.

5 THE COURT: What's the basis for
6 that?

7 DEFENDANT EDWARDS: The State
8 failed to prove that the female in the video
9 co-existed. They're claiming her to be a co-
10 defendant or co-conspirator in this crime.
11 But she hasn't been tried for anything. She
12 hasn't been implicated in anything. There's
13 no evidence to support that I even knew the
14 woman in the video.

15 THE COURT: Well, the video is
16 just a video. It doesn't testify other than
17 to say it is what it says. There are Rules
18 that allow, that provide for how it can be
19 introduced. Of course, the State will have
20 to make sure that's it's basically
21 authenticated and that the proper person
22 offers it.

23 Whether or not -- what it speaks to,
24 that's up to you to develop. That's part of
25 your case. So that doesn't have anything to

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1 do with whether or not it becomes
2 evidence. So your Motion is noted on that.
3 And I'll -- I can't rule in an abstract,
4 because it's got to be qualified. But when
5 we get to the point that you want to
6 introduce the video, we'll probably need to
7 excuse the jury and I can hear further from
8 you, Mr. Edwards, as to whether or not
9 there's a legal basis for them to introduce
10 the evidence, okay?

11 DEFENDANT EDWARDS: Yes, sir.

12 THE COURT: So your Motion is
13 noted. At this point -- I probably am not
14 going to excluded it for the reasons that you
15 stated, but you can restate those when we get
16 to that point, okay?

17 DEFENDANT EDWARDS: Okay.

18 THE COURT: The other one it
19 appears to be that you are wanting to
20 suppress -- (pause).

21 SOLICITOR SIMPSON: Judge, I
22 think I can offer some context to this.

23 THE COURT: I'm not sure what this
24 one deals with.

25 SOLICITOR SIMPSON: The item

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1 alleged to have been stolen is a green two-
2 liter floor sealant.

3 THE COURT: Uh-huh.

4 SOLICITOR SIMPSON: That item got
5 away, so to speak. It was never recovered.
6 In the first trial what I did was have the
7 loss prevention officer bring one in.
8 There's no trickery here. We're very clear
9 on the record that that's not the sealant
10 that was stolen. But it is kind of relevant
11 to his ability to seal it and things of that
12 nature. But we presented it as and what,
13 again, is purely demonstrative of the item.

14 THE COURT: Okay.

15 SOLICITOR SIMPSON: I think I can
16 lay the foundation in a way that there's no
17 uncertainty, that we're not claiming that to
18 be the actual item.

19 THE COURT: I'll deal with that
20 again at the time of trial, before you seek
21 to introduce it. Before you present it for
22 the jury's review, we probably need to excuse
23 the jury as to whether or not I believe it's
24 relevant. And if it is, I could do a 403
25 analysis at that time to see if the probative

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1 value outweighs -- or the relevance outweighs
2 the -- or the lack of relevance outweighs the
3 probative -- if the prejudice outweighs the
4 probative value.

5 SOLICITOR SIMPSON: Understood.

6 THE COURT: Okay. So Mr. Edwards
7 that's what you're talking about in your
8 Motion to suppress the use of the floor
9 sealant. Is that what you're talking about?

10 DEFENDANT EDWARDS: Yes, sir.

11 THE COURT: Okay. That Motion is
12 noted and protected. And, again, we'll have
13 a formal ruling during the trial, once the
14 foundation has been laid. And then I'll have
15 to make certain determinations in accordance
16 with the rules of evidence.

17 All right. Those are the only two
18 Motions you have, sir, at this point?

19 DEFENDANT EDWARDS: Yeah. I also
20 wanted to cite a due process violation, I'm
21 not sure ---

22 THE COURT: A what?

23 DEFENDANT EDWARDS: A due process
24 violation.

25 THE COURT: Well, that's what

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1 you're doing right now.

2 DEFENDANT EDWARDS: Okay. Well,

3 I ---

4 THE COURT: Due process is what
5 happening. So what's the violation?

6 DEFENDANT EDWARDS: There was
7 some other videos that loss prevention got.
8 They ended up erasing some other things, but
9 there were other videos that were relevant to
10 this case that they didn't present.

11 THE COURT: I'm not going to try
12 to tell you how to practice law. But there's
13 a way to deal with that in cross-examination.
14 I don't know what the status of those are,
15 but that's not uncommon in the business
16 world. So insofar as due process is
17 concerned, you'll have a chance to challenge
18 any testimony you want. That's due process,
19 okay?

20 DEFENDANT EDWARDS: Yes, sir.

21 THE COURT: Anything else?

22 DEFENDANT EDWARDS: No, sir.

23 THE COURT: Okay. Good. Then
24 we'll be back at -- let's be back in here,
25 please, at 1:45.

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1 SOLICITOR SIMPSON: Judge, would
2 you like us at that time to take up the *Neil*
3 *v. Biggers* or ---

4 THE COURT: I think we're going to
5 do ---

6 SOLICITOR SIMPSON: Do that at
7 the time?

8 THE COURT: We'll do that before
9 we -- let's get started, do the opening
10 statements. Is the first witness going to be
11 an identification witness?

12 SOLICITOR SIMPSON: That is the
13 identifying witness. Yes, sir.

14 THE COURT: That is?

15 SOLICITOR SIMPSON: Yes, sir.

16 THE COURT: Well, then when we get
17 back we'll have that and we can go through
18 that process real quickly.

19 SOLICITOR SIMPSON: Okay.

20 THE COURT: Be back at 1:45.

21 SOLICITOR SIMPSON: Okay.

22 THE COURT: Thank you. All right.
23 Thank you.

24 (LUNCH RECESS)

25 (DEFENDANT PRESENT)

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1 THE COURT: Thank you, Mr.
2 Edwards. I apologize for calling you -- you
3 can be seated, sir. Thank you very much. I
4 apologize for calling you Mr. Green. I asked
5 my law clerk 'why in the world?' She said
6 'because that was the defendant you tried
7 last week.' So that's what it was. I
8 apologize to you, sir.

9 DEFENDANT EDWARDS: Thank you.

10 THE COURT: Thank you, sir.
11 All right. Before we start with the hearing
12 you mentioned there's an identification.
13 What is the identification? Is it a lineup?
14 What's the ID issue?

15 SOLICITOR SIMPSON: Your Honor,
16 it was a show up ID.

17 THE COURT: Okay.

18 SOLICITOR SIMPSON: What we
19 argued last time was under the circumstances
20 proper and the Motion was denied.

21 THE COURT: All right. We have
22 the witness.

23 SOLICITOR SIMPSON: Yes, sir.

24 THE COURT: Well, let's go ahead
25 and proceed with that *Neil v. Biggers*.

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1 SOLICITOR SIMPSON: Okay. Thank
2 you, Your Honor. The State calls Detective
3 Rickard Burckhardt.

4 Your Honor, may I bring up another
5 matter while we have a moment?

6 THE COURT: Sure.

7 SOLICITOR SIMPSON: I just,
8 again, wanted to apprise Mr. Edwards the fact
9 that he has a right to move for sequestration
10 of the witness. That would exclude Detective
11 Burckhardt, who is the lead agent, and
12 Michael Smith, who is the loss prevention
13 officer/victim in this case if he would like
14 to do so.

15 THE COURT: Would you wish the
16 witnesses to be sequestered?

17 DEFENDANT EDWARDS: Yes.

18 THE COURT: All right. Well,
19 let's go ahead and exclude them, other than
20 the victim and the chief investigating
21 officer.

22 SOLICITOR SIMPSON: Okay. Thank
23 you.

24 (WITNESS TAKES STAND)

25 RICHARD BURCKHARDT, having been duly

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1 sworn to tell the truth, and nothing but the
2 truth, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR SIMPSON:

5 Q. Detective Burckhardt, good
6 afternoon.

7 A. Good afternoon.

8 Q. Now, where do you work?

9 A. I'm employed at the Charleston
10 Police Department.

11 Q. And how long have you been there?

12 A. Approximately twenty-seven years.

13 Q. And were you working in that
14 capacity in January of 2014?

15 A. I was.

16 Q. And on January 3rd, 2014, did you
17 have an occasion to respond to the Home Depot
18 in West Ashley?

19 A. Yes, I did.

20 Q. And could you explain to the court
21 the nature of that call, and the nature of
22 your response?

23 A. So it was approximately 1:30 in the
24 afternoon on that day on the 3rd of January of
25 2014. And, uh, the call had gone out for an

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1 armed robbery in progress. I was actually
2 not dispatched there. I was relatively close
3 to the store when the call went out. I
4 responded to the store, was my first action.
5 A CPD marked unit, a uniformed police officer
6 had also arrived on scene and gave me a run
7 down on what had taken place; that the loss
8 prevention officer had approached a suspect,
9 suspected of a shoplifting in progress.

10 Upon exiting the point of purchase,
11 which would have been the nursery section at
12 that particular store, the suspect at that
13 point -- well, the loss prevention officer
14 identified himself as loss prevention. The
15 suspect moved a knife out from his body, his
16 clothing, and started flailing the knife,
17 wielding it at the loss prevention officer.

18 Q. So did you have occasion on this
19 response to interview the victim?

20 A. I did.

21 Q. Is it your understanding that the
22 victim had an opportunity to view the suspect
23 during the course of this crime?

24 A. Yes, he did.

25 Q. Did he, without getting into

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1 specifics of what he said ---

2 A. Sure.

3 Q. --- did he convey to you a high
4 degree of -- seem to you to convey a high
5 degree of attention to this occurrence?

6 A. He did.

7 Q. Did he provide to you a description
8 of the person that committed this offense?

9 A. Yes, he did.

10 Q. And could you explain to the Court
11 the details of that description?

12 A. He described the suspect as an
13 African-American male. I believe at the time
14 probably somewhere in the age of forty to
15 forty-five years old. He described him
16 approximately six foot in height, somewhere
17 in the range of one-sixty to one-eighty
18 pounds.

19 Q. Did he also describe to you any
20 clothing he was wearing?

21 A. He did. He described the suspect
22 as wearing a, I believe, a blue and white
23 baseball cap, a black jacket, dark pants.

24 Q. Did anything of interest occur
25 during the course of giving this interview

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1 with the victim?

2 A. Yes.

3 Q. And what was that?

4 A. While I was interviewing the victim,
5 loss prevention in his office, I was advised
6 that it was not uncommon for a suspect that
7 commits that type of crime to go ahead and
8 try to take purchases stolen from that
9 location and to try and exchange them or
10 return them to another Home Depot store for a
11 refund; a refund slip, I think they call it,
12 card credit.

13 And at that time while I'm interviewing
14 Mr. Smith, with loss prevention, the call had
15 already gone out to Home Depot to be on the
16 lookout. And we were advised that an
17 individual was in that store at that time
18 that was actually trying to exchange the
19 items that were taken from the West Ashley
20 store.

21 Q. And how did you respond to that
22 phone call?

23 A. Well, first the North Charleston PD
24 was also alerted to it, to respond to the
25 North Charleston store. We were advised very

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1 soon after that, I mean within minutes, that
2 North Charleston PD had an individual stopped
3 in the parking lot, that was in the car that
4 we BOLO'ed. So my course of action was to
5 conduct a show-up identification process.

6 Q. And explain to the court a little
7 bit about how that process was conducted?

8 A. Sure. So a show up process is a
9 identification process commonly used by law
10 enforcement to where -- when a crime
11 typically is in progress or freshly committed
12 and if there's an individual stopped for a
13 suspicion of a crime, the law enforcement
14 will generally take the witness and/or victim
15 to the location of the stop, have that person
16 review the person that was stopped and see if
17 they can identify them individually.

18 Q. And did the victim, Mr. Smith, was
19 he able to identify this individual?

20 A. Yes, he was.

21 Q. Did he express confidence or
22 certainty to you in that identification?

23 A. Yes, his identification was
24 instantaneous.

25 Q. Okay. Did he express any

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1 qualifications to his identification?

2 A. He did. He added that the gentleman
3 that they had stopped was, in fact, the
4 person that had committed the crime. But
5 he'd also made a comment to me that he had
6 changed his clothing or was not wearing the
7 clothing that he had on while he was at the
8 West Ashley store.

9 Q. And in your position as the lead
10 investigator on this case, were you ever --
11 did you eliminate that difference in clothing
12 description? I'm sorry. Were you able to
13 sort of come up with an answer to that
14 different ---

15 A. I did. So after the identification
16 was confirmed, I spoke with Officer Roberts
17 in North Charleston -- he had the suspect
18 vehicle also stopped. At that point it was
19 unoccupied in the parking lot of Home Depot.
20 I walked around it myself. I made a cursory
21 glance of the inside of the vehicle where I
22 can see the identical items of what -- of
23 what I believed to be the identical items
24 that the suspect was wearing when he was at
25 the West Ashley store.

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1 In addition to that, I also had Mr. Smith
2 make a cursory glance, have him look at the
3 actual items through the glass window in the
4 car and he confirmed the same.

5 Q. Other than that observation of the
6 clothing, any wavering or doubt expressed to
7 you in that ID in terms of who committed the
8 crime?

9 A. No.

10 Q. Was the victim person giving this ID
11 given an opportunity to have a clear view of
12 the detained suspect?

13 A. Absolutely.

14 Q. Anything obstructing that view?

15 A. No.

16 Q. And what was the approximate time of
17 day of this identification?

18 A. The incident was reported somewhere
19 around the neighborhood of 1:30 in the
20 afternoon. The time that I was taking a
21 statement from Mr. Smith at the store and at
22 the time it took me to get to North
23 Charleston -- it was a Friday afternoon.
24 Traffic was getting a little bit heavy --
25 within a half hour, I guess.

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1 Q. Okay. So you believe approximately
2 that this ID took place about a half hour
3 after the alleged offense?

4 A. Approximately.

5 Q. And was the individual detained in
6 North Charleston, you know that you had
7 previously been given a description of the
8 suspect?

9 A. Yes.

10 Q. Did that general description given
11 you by the victim match the person that was
12 detained?

13 A. It did.

14 Q. Detective, you've given -- how long
15 have you been a law enforcement officer?

16 A. Twenty-seven years.

17 Q. And in the course of those twenty-
18 seven years you've compiled what we refer to
19 as six-pack photo IDs before; haven't you?

20 A. I have.

21 Q. What circumstances would lead you to
22 decide to do what you referred to as show-up
23 ID versus what we all know in this profession
24 as a lineup or a six-pack?

25 A. Yeah. So based on this type of

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1 event taking place, it's not uncommon --
2 well, the freshness of the crime being
3 committed. It would be what I would consider
4 to be a fluid investigation. It never
5 stopped. It never ceased and it never
6 stalled out. It was a bam, bam type of
7 thing, uh, and it's just common procedure for
8 any law enforcement to follow that type of
9 identification process.

10 One reason is we also keep in mind that
11 people that are stopped, which is often the
12 occasion, may not be the person that was
13 involved in a crime and it's an effort to
14 basically release those people as soon as
15 possible.

16 Q. Okay.

17 A. So that's the way we moved -- we did
18 what we did.

19 Q. So as a detective, you certainly
20 want to catch the suspect; that's correct?

21 A. Absolutely.

22 Q. But I believe you mention that you
23 also have an interest in making sure you
24 don't have the wrong person. Right?

25 A. There's that and there's the public

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1 safety issue; yes.

2 Q. And, again, this identification took
3 place, in your experience, a relatively short
4 period of time after the actual crime?

5 A. It did.

6 SOLICITOR SIMPSON: Your Honor,
7 I have no other further questions on this
8 issue.

9 THE COURT: Very well. You may
10 cross-examine. Yes, sir.

11 CROSS-EXAMINATION

12 BY DEFENDANT EDWARDS:

13 Q. Good afternoon, Detective?

14 A. Good afternoon.

15 Q. Was there a description? You said
16 there was a description given to you about
17 what the defendant had on?

18 A. Yes.

19 Q. Do you recall what that description
20 was?

21 A. The original description from the
22 West Ashley store where the incident occurred
23 was an African-American male wearing a blue,
24 I think blue and white colored baseball cap.
25 A black-type jacket. I think it was dark

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1 pants.

2 Q. Dark pants?

3 A. Uh-huh.

4 Q. Did the defendant have on that
5 particular clothing?

6 A. He had changed clothes. The
7 clothing that he was wearing at the time of
8 his stop was not the actual clothing he had
9 on at the West Ashley store. As I recall,
10 it may have been some type of sweats, or
11 warmups. The actual clothing, the articles
12 of clothing described by the victim were the
13 items identical that were seen in the back
14 seat of the car.

15 Q. You said you investigate crimes;
16 right?

17 A. I do.

18 Q. Was there evidence that a crime was
19 committed?

20 A. Yes, sir.

21 Q. There was? What evidence was that?

22 A. Well, the evidence, we consider
23 evidence is the crime was documented by the
24 CPD by the victim.

25 Q. So basically ---

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1 A. There's also -- there was evidence.
2 There was video collected later on. I didn't
3 have my hands on it myself, uh, from the two
4 stores that did show the actual incident
5 taking place. I don't think outside of the
6 West Ashley store is within the camera's shot
7 of their surveillance video.

8 Q. So there wasn't an actual video of
9 a crime being committed on camera?

10 A. Not to my knowledge.

11 Q. What's the policy when conducting a
12 show-up?

13 A. The policy?

14 Q. Yeah. The show-up policy, the show-
15 up?

16 A. Policy, it's basically -- we have an
17 instruction that we give all the people we're
18 doing the show-up for, as I did with Mr.
19 Smith. I told him on the way to the store
20 that there was an individual of interest
21 stopped in the North Charleston store. And
22 that we need to take a look at him to either
23 see if he was involved or if he was not
24 involved, to eliminate him from the process.
25 I also told him, as I do with all the people

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1 that I do show-ups with, that his
2 identification has to be absolute, one
3 hundred percent for us to make an arrest.
4 He was instructed on it.

5 Q. Do y'all record show-ups?

6 A. Record it?

7 Q. Yes.

8 A. No. But we document it in police
9 reports.

10 Q. I mean, but y'all don't use video
11 cams?

12 A. No. That's not our policy.

13 Q. Is your car equipped with a video
14 camera?

15 A. No.

16 Q. Were you aware that the North
17 Charleston Home Depot, in the parking lot
18 that they had cameras for that in the view,
19 the parking lot view?

20 A. We sent a detective to obtain
21 whatever video they could related to the
22 incident. I don't believe there was any
23 footage that was captured from their parking
24 lot.

25 Q. But they did have ---

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1 A. I wasn't advised of that.

2 Q. Did you remove the subject from the
3 police car? Would that be considered highly
4 suggestible?

5 A. No.

6 Q. No?

7 A. (Negative gesture).

8 Q. Was the defendant handcuffed when he
9 was in the car?

10 A. He may have been. He should have
11 been for safety reasons.

12 Q. So that wouldn't constitute being
13 highly suggestive ---

14 A. No.

15 Q. Taking somebody in the back of a
16 police car, showing this -- my person to
17 somebody in front of the police car.
18 Wouldn't that cause a person to believe ---

19 A. I wouldn't agree with you, sir.

20 Q. You said that there was a car that
21 -- there were suspects; right?

22 A. Repeat that, please?

23 Q. You said there was a call that there
24 were suspects at the North Charleston Home
25 Depot?

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1 A. There was a call from the start in
2 my interview with the victim, after his
3 encounter with the prime suspect, it is
4 believed that he got in a vehicle with a
5 driver, perhaps, for a getaway car, which
6 would be plural. Yes, suspects.

7 Q. Okay. Did you make a note for them
8 to detain the other suspect?

9 A. I don't follow you.

10 Q. The getaway, the so-called getaway?

11 A. The car had already left the scene.
12 It wasn't there for us to stop. When we
13 arrived at the West Ashley store, they'd
14 already left.

15 Q. The car. You said the car had
16 already left the scene?

17 A. That's right. The defendant was
18 seen getting into a white vehicle with
19 another person.

20 Q. Okay. I'm talking about at the
21 North Charleston. And you said ---

22 A. There was information that -- yes,
23 that there was a female, African-American
24 female that was inside the store that was
25 attempting to either exchange or get credit,

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1 however it works -- inside that store inter-
2 workings -- for the items taken from the West
3 Ashley store. That female was never located.

4 Q. So y'all didn't make an attempt to
5 detain the female inside the store?

6 A. That would have been the store.
7 We were outside or we were on our way dealing
8 with the other issue. It was asked to do
9 that. How she got away, we don't know.

10 Q. Was she ever identified?

11 A. Seems to me there was a -- she used
12 some type ID while conducting the
13 transaction. She was flagged at that
14 transaction. The store indicated any time
15 you make numerous attempts to exchange
16 merchandise that, uh, she was flagged.
17 Therefore, the transaction was not allowed to
18 take place at the store. So she took the
19 item and fled the store.

20 And to finish your question, there was,
21 to my recollection other detectives had
22 showed photographic lineups with that person,
23 the female, to the other people, the victim
24 and such at the home stores. They weren't
25 able to identify her.

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1 Q. There was no warrant or anything for
2 her arrest?

3 A. No.

4 DEFENDANT EDWARDS: That's all I
5 have. Thank you.

6 THE COURT: Any redirect?

7 SOLICITOR SIMPSON: No, Your
8 Honor.

9 THE COURT: Thank you. You can
10 come down.

11 (WITNESS STEPS DOWN)

12 THE COURT: Are there any
13 additional witnesses?

14 SOLICITOR SIMPSON: Not at this
15 time, Your Honor.

16 THE COURT: Very well. Do you
17 wish to present any witnesses, Mr. Edwards?

18 DEFENDANT EDWARDS: No, sir.

19 THE COURT: All right. I'll be
20 happy to hear from you whether I should try
21 to exclude it or not or why it should be
22 excluded.

23 DEFENDANT EDWARDS: All right.
24 Thank you, Your Honor.

25 THE COURT: Yes, sir.

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1 DEFENDANT EDWARDS: They said
2 show-ups are considered to be suggestive and
3 disfavored by many courts. Right I'm sure
4 that at a show-up it is natural that you
5 protect the peoples' rights and that's
6 appropriate when someone's being detained.
7 You do it quickly as possible, do this
8 procedure, so that they have the right person
9 in custody and not detain an innocent person.

10 But what about the rights of the
11 accused? I mean, shouldn't there be
12 something to document footage of a show-up
13 being done or -- you know, so that the
14 accused's rights are not violated.

15 I also think this makes this highly
16 suggestive. You've got one suspect in the
17 back of a police car, handcuffed. He's the
18 only one being shown. That, you know -- and
19 he's also brought out to stand in front of
20 the police car. So, I mean, it seem like
21 that's highly suggestive.

22 So -- plus, there were auto camera
23 views that could have shown the lineup, it
24 could have been recorded. North Charleston
25 Police -- as a matter of fact, their policy

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1 recommends that they record this incident.
2 Being a North Charleston police officer, he
3 was the one that had the defendant detained,
4 it could have been recorded.

5 THE COURT: Okay. I appreciate
6 all of that, Mr. Edwards. That goes to
7 failure to a lack of investigation. But what
8 I have to do, the lynchpin of determining
9 whether or not his testimony is admissible is
10 basically the reliability of the testimony.

11 And we have a loss prevention
12 officer, number one. That's his job, what he
13 does. And he has given a description and, in
14 fact, states with clarity and certainty that
15 the clothes had been changed, but without any
16 question identified you as the person. And,
17 therefore, in this particular case there's no
18 question that this individual because -- for
19 lots of reasons -- but primarily because
20 that's his job. That he had the opportunity
21 to view you. He was certainly -- has been
22 trained to have incredible attention to
23 detail, his attention was -- it clearly was
24 here. The accuracy is absolutely specific.
25 He didn't hesitate, didn't equivocate.

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1 And given that -- and then the time
2 has been -- it's clear. It was almost
3 immediate.

4 So those are the five factors that
5 clearly apply. And there's no question that
6 you're correct, and show-ups can have -- it
7 can be tainted. But in this particular case
8 because of the victim's attention to detail,
9 because of his description and because of the
10 fact that he was so certain as to the
11 identity, the court is going to allow the
12 testimony subject to your objection. So
13 thank you, sir.

14 All right. Is there anything else
15 on this issue?

16 SOLICITOR SIMPSON: Nothing from
17 the State, Your Honor.

18 THE COURT: Okay. All right.
19 What other issues do we have?

20 SOLICITOR SIMPSON: Well, I'm
21 incorporating the suppression Motion from the
22 prior trial. Two others that I think we want
23 to take those up.

24 THE COURT: Yeah. The videotape
25 obviously once it's -- the main fact of that

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1 is going to be to identify it. And then it
2 is what it is. As to whether or not -- a lot
3 of the questions, Mr. Edwards, that you asked
4 the witness here are questions that are more
5 pertinent and germane in the issue of whether
6 or not the State has proved its case beyond a
7 reasonable doubt rather than to its
8 admissibility. That's why we attack evidence
9 once it's admitted. And some of those
10 questions are certainly legitimate and very
11 relevant to that issue. It doesn't
12 necessarily prevent it from being admitted
13 however.

14 Okay. All right. Thank you. We'll
15 address those other issues at the appropriate
16 time. But now for opening statement you
17 certainly would be free to go into, if you
18 choose to, the facts concerning
19 identification.

20 SOLICITOR SIMPSON: Judge, can I
21 bring up one issue, kind of frontload it and
22 in so doing maybe I don't have to object a
23 lot during trial.

24 THE COURT: Okay.

25 SOLICITOR SIMPSON: Mr. Edwards

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1 has been very professional. He's a very
2 intelligent man. In my experience though,
3 one sort of concept that a pro se litigant
4 might get hung up on is the idea that you
5 cannot testify unless you take the stand and
6 subject yourself to cross-examination. And
7 that's a concept, I think, that we would all
8 benefit from maybe an explanation from the
9 court about the difference between even and
10 opening and closing statements and then
11 questioning. He has every right to tell his
12 side of the story but he has to do that from
13 the witness box.

14 THE COURT: Well, I'm going to
15 tell them that your statements, openings and
16 closings, are not evidence.

17 SOLICITOR SIMPSON: Okay.

18 THE COURT: And for the Defendant,
19 while he's representing himself, he may make
20 some assertions but unless it's presented as
21 evidence, it's not -- not to be relied. I'm
22 not going to tell him he can't make
23 statements but I'm going to tell them that
24 they can't rely on his statement.

25 SOLICITOR SIMPSON: Thank you,

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1 Your Honor. A very good point.

2 THE COURT: Okay. Mr. Edwards,
3 you've done thus far -- it's the first time
4 we've had occasion to work together in a
5 trial. I thank you for your courtesy and
6 respect that you've shown the process. So,
7 thank you, sir.

8 DEFENDANT EDWARDS: Thank you.

9 THE COURT: Yes, sir.

10 All right. Do we have all of our
11 jurors?

12 BAILIFF: Yes, sir.

13 THE COURT: Okay. The State's
14 ready?

15 SOLICITOR SIMPSON: We are, Your
16 Honor. Thank you.

17 THE COURT: Are you ready, Mr.
18 Edwards?

19 DEFENDANT EDWARDS: Yes, sir.

20 THE COURT: Thank you, sir.

21 Okay. Let's bring them out here.

22 (JURY IN @ 2:06 P.M.)

23 BAILIFF: All jurors are present,
24 Your Honor.

25 THE COURT: Thank you very much.

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1 Thank you, ladies and gentlemen. We're ready
2 to continue now. I hope you had a good
3 lunch. I would ask you to please give your
4 attention to the clerk as she administers the
5 oath.

6 (WHEREUPON JURY SWORN)

7 THE COURT: Thank you, ma'am.
8 Thank you, ladies and gentlemen.

9 Now ---

10 BAILIFF: Your Honor, ---

11 THE COURT: Yes?

12 BAILIFF: Judge, this juror
13 didn't answer one of your questions. She
14 misunderstood about law enforcement. She
15 does have someone that's retired from law
16 enforcement, but she didn't respond to your
17 question earlier.

18 THE COURT: All right.

19 JUROR NUMBER 204: My under-
20 standing was that it was Charleston County
21 specifically.

22 THE COURT: All right. Well, tell
23 me what the involvement is.

24 JUROR NUMBER 204: My father-in-law
25 is retired FBI.

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1 THE COURT: Where was he primarily
2 -- where did he primarily work?

3 JUROR NUMBER 204: (No verbal
4 response).

5 THE COURT: In Charleston?

6 JUROR NUMBER 204: Partly, yes.

7 THE COURT: And how long has he
8 been retired?

9 JUROR NUMBER 204: He actually just
10 passed three weeks ago. He also worked for
11 the State Department here ---

12 THE COURT: Okay. Well, I'm sorry
13 for that.

14 All right. I'm going to ask you
15 all, ladies and gentlemen, to step out just
16 for a moment. Thank you. Your name and
17 number, please?

18 JUROR NUMBER 204: Number 204.
19 I am so sorry.

20 THE COURT: No apology. No, let
21 me say this. That's precisely one of the
22 reasons that I believe so strongly in the
23 system because people do just what you've
24 done. You didn't have to do that. You could
25 have kept that.

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1 JUROR NUMBER 204: Yeah.

2 THE COURT: But because I asked
3 you if there's anything about this case that
4 would give you any concern about taking the
5 oath and you said there was not.

6 JUROR NUMBER 204: Right.

7 THE COURT: Please step out and
8 we'll be with you very quickly.

9 (JURY OUT @ 2:10 P.M.)

10 THE COURT: All right. What says
11 the State concerning that juror, Juror Number
12 204? Ms. Orenste

13 SOLICITOR SIMPSON: We have no
14 objection to her remaining. No one's told us
15 whether that would ---

16 THE COURT: Well, she didn't
17 indicate that, but I'll be happy to further
18 that? What's your desire, Mr. Edwards?

19 DEFENDANT EDWARDS: I would like
20 to have that juror removed.

21 THE COURT: Very well. We'll put
22 the alternate on. Thank you. Very good.
23 All right. Well, ask them to come in,
24 please. And ask Ms. Orenstein to just be the
25 last juror.

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1 BAILIFF: Okay.

2 (JURY IN @ 2:12 P.M.)

3 THE COURT: Thank you, ma'am.

4 JUROR NUMBER 204: Yes, sir.

5 THE COURT: Also, thank you so
6 much. I appreciated you sharing that
7 information with you. Out of an abundance of
8 caution, we will excuse you from service ---

9 JUROR NUMBER 204: Okay.

10 THE COURT: I'm going to excuse
11 you from further participation in this
12 dispute but thank you for bringing that to
13 the Court's attention. Again, it's a credit
14 to you and a credit to the process.

15 JUROR NUMBER 204: I am so sorry.

16 THE COURT: No apology necessary.
17 That's why we have an alternate. Thank you
18 very much. All right. Call the number after
19 6:00 tonight and follow that instruction.
20 Thank you.

21 JUROR NUMBER 204: Thank you.

22 (JUROR NUMBER 204 EXCUSED)

23 THE COURT: Ladies and gentlemen,
24 thank you very much. I appreciate your
25 participating in this process. As I told

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1 you, it truly is a wonderful process. And
2 that's a perfect example. And it wasn't it
3 would have a problem. She didn't say
4 anything wrong. It was just something that
5 was not disclosed. Out of an abundance of
6 caution, because of that, just to eliminate
7 any potential problems, that's why we put the
8 alternate on. So don't think any more about
9 that. It's precisely what should have been
10 done properly. It's not a discredit to her
11 or anyone else. It's just the way the
12 process works.

13 It's just what we've talked about.
14 You've just made a commitment to do some-
15 thing that we've been talking about all day.
16 In fact, you heard me, the last question that
17 I asked you was is there anything about this
18 dispute that would give you any concern about
19 making that commitment? And each one of you
20 said it was not.

21 And as you know we saw persons that
22 disclosed certain things. That didn't
23 disqualify them, it just helped the attorneys
24 make a decision as to who they wanted to have
25 as a judge. And that's one of the things

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1 that we do. Didn't mean that person wasn't
2 going to be fair and impartial. It just
3 simply was something in that person's
4 background that would give you concern.
5 Well, there are other people available and we
6 can make somebody who doesn't have any of
7 those things that affect or influence them.
8 And that's what you're presented with in
9 this. Each one of you said there was nothing
10 about this case that would give you any
11 concern about being fair and impartial.
12 Thank you.

13 Now, I want to assure you of
14 something. When you walk in here, you've
15 brought everything you're going to need. You
16 brought first of all your common sense, your
17 life's experiences and sense of logic and
18 reason and everyone expects you to apply that
19 at the appropriate time, when you're
20 instructed to begin your deliberations.

21 You also brought something else,
22 which is, I think, equally important. Now,
23 we didn't really talk about it in words but
24 we talked about it in how we go about
25 selecting the jury. You've said, 'I have an

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1 open mind about this dispute. Don't know
2 anything about it. What I've heard about it,
3 it doesn't give me any concern even in making
4 a premature decision.' And I will tell you
5 and instruct you that you must maintain that
6 open mind throughout this entire process; you
7 can't change it until you're instructed to
8 begin your deliberations, because if you do
9 you will have violated the commitment that
10 you've made. Because what you've said is
11 you're going to make this decision based on
12 the evidence and the law.

13 The last stage of this process --
14 there are four. In just a moment the
15 attorneys will have an opportunity to speak
16 to you. They speak to you before you hear
17 the evidence and after you hear the evidence.
18 We'll talk about that in just a moment.

19 The second stage is when you hear
20 the evidence.

21 And the fourth stage is when you
22 hear the law. So until you are given that
23 instruction -- in fact, the last instruction
24 that I will give to you before you commence
25 your deliberations is when you can start. So

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1 until that occurs, remember keep that open
2 mind. It's important to the process.

3 Now, in this case I mentioned to
4 you and each one of you said it was of no
5 concern, wouldn't cause you any problem, that
6 a person accused of criminal offenses in this
7 State has a Constitutional right to represent
8 himself. Mr. Edwards has elected to do so.
9 And that absolutely should not be considered
10 by you in any fashion. He has the right to
11 serve as his own attorney.

12 There is one thing, though, as I said
13 the attorneys, which Mr. Simpson (sic) is not
14 -- he's an attorney. But one of the
15 instructions that I give you is this. They
16 speak to you in what we call opening
17 statements, when they give you a broad
18 overview of the dispute. They'll discuss
19 some of the evidence with you.

20 Then after we hear the evidence,
21 they speak to you in closing arguments. And
22 it's proper from them to then talk about that
23 evidence, talk about some of the inferences
24 that you may draw from that evidence and
25 discuss maybe some legal principles with you

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1 as well.

2 Their remarks will helpful to you
3 when you do begin the process of deciding
4 this case. So please give them your
5 attention. But let me add this, and it is
6 especially important, when an attorney speaks
7 to you, what an attorney is saying in
8 representing their clients can never be
9 considered evidence because the evidence
10 comes through the testimony of witnesses who
11 take the stand and testify. It's important
12 that you talk about things, but their remarks
13 should never be considered evidence.

14 And that is true when a person
15 represents themselves. When they stand in
16 here talking to you as an attorney for
17 themself, their remarks may be helpful but do
18 not consider them to be evidence because the
19 evidence, again, comes through the testimony.
20 Mr. Edwards, if he chooses to, may testify.
21 That's up to him.

22 And I say that to you for this
23 reason. This dispute and how it proceeds --
24 it's very similar. I mentioned we didn't
25 have any civil court this week. But if you

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1 were in a civil trial, everything would be
2 the same. There would be four parts: there
3 would be an opening statement, a closing
4 remark, a charge, same responsibility, same
5 oath. You'd decide them both with the
6 evidence and the law.

7 There are two major differences.
8 One deals with who has the burden of proof,
9 who has that responsibility? In a case
10 that's instituted by the State, in this state
11 and every state in the United States, that's
12 the only party that has to prove anything. A
13 person accused of a criminal offense in this
14 state has nothing to prove or disprove;
15 doesn't have to explain anything; doesn't
16 have to present any evidence for your
17 consideration; doesn't have to say a word.
18 That's up to them. Why? Because the State
19 has brought the charge and the law says that
20 persons accused -- and I'll talk more in my
21 charge. But persons accused of criminal
22 offenses are presumed innocent. You may have
23 heard that term in your life. Those are not
24 just words. That's a mindset. That's what
25 you're required to do. When you're walk in

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1 here in honoring the oath, you have to
2 presume that Mr. Edwards is innocent. And
3 that stays throughout this entire proceeding
4 and can only be removed when, after being
5 instructed to begin your deliberations,
6 you're convinced otherwise from the evidence
7 that you will review.

8 The evidence will be -- you will be
9 assessing that evidence because I will define
10 for you before you go to your jury room to
11 begin your deliberations the various elements
12 of the crime of armed robbery, of possession
13 of a weapon during the commission of a
14 violent crime. I'll give you the elements.
15 Then you will be instructed to begin your
16 deliberations. And your mission is to
17 determine whether or not from the evidence
18 you're convinced to the requisite standard,
19 and that's beyond a reasonable doubt. That's
20 what you'll require.

21 And that's -- basically, a simple
22 definition of it is reasonable doubt is that
23 doubt that would make a conscientious juror
24 who's searching for a truth in case to
25 hesitate to act or to take some action.

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1 We'll talk about it more in my charge
2 portion.

3 That's where it differs again from a
4 civil proceeding, because typically in a
5 civil trial the burden of proof -- and the
6 party who makes a claim in a civil trial has
7 a similar responsibility. There are
8 occasions when a defendant in a civil trial
9 may have to prove some issue. Not so in this
10 one and there's a distinction there. But the
11 standard that you apply in civil is a
12 standard -- the legal term is preponderance
13 or greater weight of the evidence. Simply
14 stated that's a probability standard, is it
15 more likely so than not.

16 Obviously, beyond a reasonable doubt
17 is much greater than that. It's more than
18 somebody being probable with you. It's
19 proven if it satisfies you beyond a
20 reasonable doubt.

21 And that means as to each of those
22 elements that I'll outline for you. You'll
23 have to ask yourself, 'am I convinced to that
24 standard?' If your answer is yes, then the
25 State has met its burden of proof as to that

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1 particular element. Then you move on to the
2 next one and go through that process.

3 If any point your answer is 'no, I
4 don't think so, I'm not convinced of that
5 standard' and that's your collective
6 decision, then the State's failed to meet the
7 burden of proof in that element and you must
8 return a verdict of not guilty.

9 That's what a verdict in a criminal
10 dispute says. A guilty verdict simply says
11 the State in that case met its burden of
12 proof, established each element required of
13 it to that standard of beyond a reasonable
14 doubt. And that jury returned a verdict of
15 guilty.

16 A not guilty means that that jury
17 considered it and they were not convinced of
18 one or more. And, therefore, as the law
19 requires, they had to return a verdict of not
20 guilty.

21 Why, because that presumption of
22 innocence stays until we can change it
23 through the consideration of evidence.

24 Now, Mr. Edwards, as I mentioned --
25 another reason you don't want to decide the

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1 case, as I mentioned, he has the right -- he
2 doesn't have to, as I've already stated, but
3 if does want to present any evidence for your
4 consideration, you won't hear that until the
5 State has presented its entire case. So, a
6 very logical reason you don't want to decide
7 anything until you hear all of the evidence,
8 obviously.

9 But most important, most important,
10 you need to go through all four stages before
11 you begin that process, because obviously the
12 law is something that's critical to your
13 decision. You need to know what the elements
14 are. You need to know what the State has to
15 prove. There are various other aspects of my
16 charge and we'll go over them when I get to
17 that point.

18 But I appreciate your attention to
19 my remarks. I appreciate your attention to
20 this process. It's an honor to serve with
21 each one of you as a judge and I appreciate
22 the commitment that you just made and I'm
23 sure that each one of you will honor it.
24 Thank you.

25 Please give your attention now as

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Opening Remarks by Solicitor

1 the parties give their opening
2 statements.

3 Solicitor, you may proceed.

4 SOLICITOR SIMPSON: Thank you,
5 Judge. May it please the Court?

6 THE COURT: Yes, sir.

7 OPENING STATEMENT

8 BY SOLICITOR SIMPSON:

9 Ladies and gentlemen, good
10 afternoon. We met briefly before. My name
11 is Chad Simpson. I represent the State of
12 South Carolina through the Office of the
13 Solicitor, Scarlet Wilson.

14 We stand here today in the trial of
15 the State of South Carolina versus Gerald
16 Edwards, the gentleman seated here. Mr.
17 Edwards is charged, as you've heard, with
18 armed robbery and possession of a weapon
19 during a violent crime.

20 As Judge Dennis just told you, he'll
21 give you the charge on what that exactly
22 means at the end of trial. And obviously if
23 something I say conflicts with something that
24 he says, you go with what he says. He's the
25 Judge. He's the source of the law. But I

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Opening Remarks by Solicitor

1 think it's kind of helpful to start out --
2 since we just heard about this burden that is
3 definitely mine. The burden of proof in this
4 case is all mine -- to talk a little bit
5 about what I have to prove, particularly as
6 to the charge of armed robbery.

7 It is going to be my burden in the
8 next couple of days to show to you, convince
9 you, that Mr. Edwards took property. That he
10 took property in the presence of another
11 person, in this case an individual named
12 Michael Smith -- and we'll hear from him.
13 That he accomplished that taking by either
14 force or the threat of force. And that that
15 force or threat of force was -- and this is
16 the part that makes it armed robbery -- a
17 deadly weapon. In this case, we're talking
18 about a knife.

19 You'll hear the definition of a
20 deadly weapon. I don't think you will have
21 any problem concluding that a knife is a
22 deadly weapon.

23 Those are the boxes that you have to
24 check, that I have to convince you of this
25 week, for you to render the proper and true

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Opening Remarks by Solicitor

1 verdict of Guilty.

2 I mentioned Michael Smith so let's
3 talk about Michael. Michael's a military
4 veteran and you'll hear from him. His job
5 now is what we commonly refer to as a loss
6 prevention officer or an asset protection
7 officer. That's his job. Shoplifting costs
8 us all, all of us millions of dollars a year
9 because those costs get passed onto us. So
10 what companies do is they hire people for
11 security to prevent these thefts and these
12 costs to the businesses.

13 On January 3rd, 2014 Michael Smith
14 was so employed. He was employed with the
15 Home Depot. I'm sure y'all have some working
16 knowledge of the big box hardware store. On
17 that afternoon he went and took his lunch
18 break. He came back to the Home Depot in
19 West Ashley. That's one of the stores that
20 he works at. He'll tell you about this.
21 2008 Magwood Road. It wasn't a very busy
22 day.

23 He pulls into the parking lot and
24 there's a white Suzuki sitting near one of
25 the entrances. There's a -- he notices an

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Opening Remarks by Solicitor

1 African-American female in the driver's seat
2 and the car's running. Nothing particularly
3 wrong with that, but as he gets out of the
4 car, 'Well, I'll do my job. You know,
5 there's someone out there with the car
6 running. Let me go kind of walk through the
7 store.' He's in plain clothes at this point.
8 There's nothing that identifies him as a loss
9 prevention officer.

10 And so, of course, he says 'let me
11 walk right straight to the floor sealant.' I
12 say, "of course." That's kind of joke. I
13 did not get that in the first either. He is
14 going to explain that to you and I found it
15 kind of interesting. Because you see, at a
16 Home Depot there's not a whole lot of things
17 that you can get out of the door with. You
18 can't steal a refrigerator, obviously, walk
19 right out of the door. There's not a whole
20 lot of things you can steal from a Home Depot
21 that you're going to be able to sell on the
22 street. Not a lot of us have walked around
23 and had someone come up to us and said, 'hey,
24 you want to buy a paint brush or some nails.'

25 So what they do is, a common scheme

1 that he's familiar with is that high-dollar
2 small items get taken. And they get taken
3 for a reason. Because if a person takes a
4 high-dollar item, they take a small item
5 because they can get out of the store with
6 it, if they can get that high-dollar item to
7 another Home Depot quick enough, they can
8 exchange it for a store credit. And you want
9 to talk about something that you can sell
10 very easy? It's store credit to a Lowe's or
11 a Home Depot. There's thousands of painting
12 men, thousands of construction people out
13 there that are happy to buy for fifty cents
14 on the dollar some credit for the Lowe's or a
15 Home Depot. And you'll see that scheme
16 unfold in this case.

17 Because what happens is Michael
18 Smith walks back to the floor sealant.
19 That's one of these common small-in-size,
20 high-dollar items; one jug of floor sealant
21 costs about a hundred dollars. So if you can
22 get that to another store quick enough,
23 that's a hundred dollars of store credit. He
24 walked over there and got a great view of
25 Gerald Edwards looking there at the floor

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Opening Remarks by Solicitor

1 sealant.

2 Again, does he think -- doesn't know
3 a crime is occurring at this point but it's
4 his job to sort of be suspicious. It's his
5 job to walk around. And he sees Mr. Edwards
6 take the floor sealant and walk towards the
7 garden exit. We're all pretty familiar with
8 how these stores are broken down. Over to
9 the garden section and he sees Mr. Edwards,
10 great view, clear view, take the floor
11 sealant and conceal it in a large dark coat
12 and zip up the coat.

13 Even then Michael Smith doesn't
14 confront Mr. Edwards because he wants to make
15 sure. Is that suspicious, stuffing
16 merchandise in your clothing? Yeah. It's
17 real suspicious at this point but you want to
18 make sure you're not jumping to conclusions.

19 So he just acts sort of nonchalantly
20 like a customer and follows Mr. Edwards to
21 the exit, where an individual, a cashier
22 named Keith Heyward -- you'll hear from Keith
23 -- is standing. And as he's standing there
24 acting all nonchalant, he waits for Mr.
25 Edwards right in front of him to walk out of

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Opening Remarks by Solicitor

1 the store, to pass all points of purchase.
2 Only then is he confident that what he's
3 observing is a crime. Only then does he make
4 a move to do his job and confront Mr.
5 Edwards. And he does so under the
6 circumstances rather politely. He'll tell
7 you he just reaches out his hand, touches Mr.
8 Edwards on the shoulder and says "hold on one
9 second."

10 And actually that is the time this
11 goes from a shoplifting to an armed robbery.
12 Because when he reaches out and touches Mr.
13 Edwards, Mr. Edwards had a plan for this
14 occurrence. And that plan was to very
15 quickly turn around, raise a knife over his
16 head, say don't -- something to effect of
17 '*don't effing touch me*', came at him with a
18 knife.

19 Michael Smith is dedicated to his
20 job but he's not going to get killed over
21 some floor sealant, okay? So he sees the
22 knife goes up. He pushes away, makes some
23 distance and backs off. And Mr. Edwards goes
24 down the street.

25 What he's going to tell you is at

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1 this point -- remember when he got there the
2 white Suzuki with the car running? At this
3 point, he calls 9-1-1. The white Suzuki goes
4 traveling down the street to pick up Mr.
5 Edwards. He gets -- worked up. He's almost
6 had a knife pulled on him. Right there,
7 while on the phone the Suzuki goes past and
8 he calls the tag number out. And right away
9 he says, 'listen, you police need to go to
10 the North Charleston Home Depot. And I've
11 had experience. I know what's going on here.
12 If what's going on here is what I think it
13 is, you're going to find this Suzuki in the
14 North Charleston Home Depot. They're going
15 to try and exchange this floor sealant
16 quickly.'

17 CPD responds promptly and did a
18 great job. They called North Charleston
19 Police Department. North Charleston Police
20 Department goes to the North Charleston Home
21 Depot pretty quickly. And ladies and
22 gentlemen, what do you think they find at the
23 North Charleston Home Depot in the parking
24 lot? The white Suzuki, same tag number that
25 he says on the phone live, Gerald Edwards' now

1 in the front passenger seat.

2 So they take Michael Smith, they
3 take him up to this North Charleston to do
4 what's called an ID. Michael Smith's says --
5 and this tells how good he is at observing
6 that. He says, *'that is definitely the guy*
7 *that just pulled a knife on me but he's*
8 *changed his clothes. His clothes aren't the*
9 *same.'*

10 Well, no mystery there. They look
11 right in the back of the white Suzuki and
12 there's the clothes -- we can see this on
13 video, okay. You see the actual knife-
14 pulling happens right on the camera. You'll
15 see what Mr. Edwards was wearing when he came
16 in and went out of the store. That same
17 clothing is found in the back of the white
18 Suzuki. At Mr. Edwards' feet, the knife.

19 And where's the sealant?

20 You will hear from Michael Smith
21 there was an African- American female driving
22 the white Suzuki. Well, they switched and
23 once they get to North Charleston she takes
24 in the sealant to do the exchange. That's a
25 pretty smart operation. He changes clothes.

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Opening Remarks by Solicitor

1 She goes inside to do the exchange. You'll
2 see the video of the register. Michael Smith
3 says "a black female wearing a toboggan". At
4 the same time Mr. Edwards is detained in the
5 parking lot, there is an African-American
6 female at the register, wearing a toboggan,
7 exchanging the sealant.

8 Now, she got away. That's the
9 reality of what happened. While the
10 responded and focused their attention on the
11 person with the knife, as they should have,
12 she got out of the store and got away with
13 the sealant. But you'll see the video of her
14 in there attempting to return it.

15 Ladies and gentlemen, as Judge
16 Dennis explained to you, Mr. Edwards is
17 representing himself. I ask sincerely on
18 behalf of the State to do exactly what I'm
19 going to do, and that is to treat him with
20 respect, with politeness, listen to what he
21 has to say with every bit of critical
22 thinking as you listen to what I had to say.
23 He's an intelligent man. He's going to
24 impress you in the way he carries himself
25 out. And I mean that to his credit.

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Opening Remarks by Solicitor

1 But at the conclusion of this trial,
2 when you hear all of the evidence that I've
3 just recounted to you, I am confident that
4 you will follow that oath that you've taken,
5 you will use, the words the Judge just said,
6 you know, your common sense, your life
7 experience, your logic and you will conclude
8 comfortably that Mr. Edwards did what the
9 State accuses him of doing.

10 And at the risk of seeming like I'm
11 teasing something to make this process a
12 little more interesting, I want to present,
13 after you've heard all of this evidence one
14 more piece of evidence that -- if there is
15 any doubt in your mind, as to what happened
16 that day, I think when you hear my final
17 piece of evidence certainly it's going to
18 remove all doubt.

19 I thank you, as I always do in every
20 trial, for your time and attention. Please
21 just listen to what the witnesses have to
22 say. Judge the evidence. Think critically.
23 I agree this is my burden. I ask you to
24 think critically of the evidence I put
25 forward and I believe at the conclusion of

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Opening Remarks by Defendant Edwards, Pro Se

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1 this trial you will be comfortable in
2 rendering a just and true verdict of guilty
3 as charged. Thank you very much.

4 THE COURT: Thank you, Mr.
5 Simpson. Mr. Edwards.

6 OPENING STATEMENT

7 BY MR. EDWARDS:

8 Good evening, ladies and gentlemen.
9 I too would like to offer my sincere thanks
10 for your time and earnest attention that will
11 be given throughout this trial. I would like
12 to ask you to treat this time, this
13 experience with grave seriousness as if one's
14 life depended on you. Because it does.

15 I would like to ask you to treat
16 this with the utmost seriousness as if a
17 family member or, God forbid, yourself in
18 this situation. Wouldn't you want your case
19 to be decided on facts rather than someone
20 making an assumption as to what happened?

21 I'm not a lawyer by far. I may not
22 be able to say things from a legal stand-
23 point, but I will rely on facts as they
24 become available.

25 Today, I am aware that you are

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Opening Remarks by Defendant Edwards, Pro Se

1 hardworking, honorable citizens and solely
2 for that, the Defense does not wish to waste
3 your time.

4 The prosecution just gave you a
5 theory as to what they want you to believe.
6 The prosecution has to prove every element of
7 this offense charged beyond a reasonable
8 doubt.

9 The first element the prosecution
10 has to prove is that the defendant was in
11 possession of an item belonging to Home
12 Depot. And that he concealed it and stole
13 it. All right.

14 Today, as I mentioned, we're here
15 for a trial of armed robbery. A robbery that
16 the prosecution, with all due respect, would
17 have you to assume happened. A case that
18 y'all are going to have to guess at, a case
19 that y'all are going to have to fill in the
20 blanks. I want to inform you of the role of
21 the prosecutor. His obligation is to govern
22 impartially. His objective is not just to
23 win a case, but simply that justice shall be
24 done. Guilt shall not escape nor should
25 innocence suffer. Even though this

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Opening Remarks by Defendant Edwards, Pro Se

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1 prosecutor is seeking to strike a hard blow,
2 he does not have the liberty to strike the
3 final blow.

4 The prosecution just shared with you
5 their desire to prove that an armed robbery
6 took place on the aforementioned date. With
7 respect to any victim or anyone who suffered
8 loss on that day, the defendant too suffered
9 as well, his family, his loved-ones, his
10 moral commitment, his job. All that has been
11 altered as a result of what the prosecution
12 calls black-and-white, straightforward.

13 Ladies and gentlemen, I ask you with
14 sincere earnest to place your focus on facts.
15 There will be a lot that will not be
16 presented to you during the course of this
17 trial. There will be things not said in
18 hopes that you will conclude the rest. It's
19 the prosecution version and then there is the
20 truth. Their version of the facts does not
21 constitute a crime.

22 The truth is they want you to
23 believe that the defendant stole something;
24 an item, in fact an item that they do not
25 have or cannot locate. Truth is, this item

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1 is the most important thing in this
2 trial. The truth is the prosecution has
3 misconstrued the fact as it pertains to Mr.
4 Smith being threatened with a knife. This
5 knife that has not produced any fingerprints
6 and most importantly, was not found in the
7 Defendant's possession.

8 There are several other facts that
9 the Defense will point out in this trial. I
10 ask you to pay close attention to the gaps
11 and what's not being presented in your
12 presence.

13 Please do not jump to any
14 conclusion. Just use the good sense that we
15 all have. When the Defense has tied every-
16 thing together for you in the end, then of
17 one accord and in sincere unisome (sic), I
18 ask you to render a verdict of not guilty.

19 THE COURT: Thank you, Mr.
20 Edwards. Solicitor, you may call your first
21 witness.

22 SOLICITOR SIMPSON: Thank you,
23 Your Honor. The State would call Keith
24 Heyward.

25 (WITNESS TAKES STAND)

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Testimony of Keith Heyward - Direct Examination

1 KEITH HEYWARD, having been duly sworn to
2 tell the truth, and nothing but the truth,
3 testified as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR SIMPSON:

6 Q. Mr. Heyward, good afternoon.

7 A. Good afternoon.

8 Q. A couple of quick questions about
9 you. You're in school right now?

10 A. Correct.

11 Q. And where are you in school?

12 A. USC.

13 Q. And where do you work?

14 A. Home Depot in Columbia.

15 Q. Okay. So you don't live in
16 Charleston anymore?

17 A. I don't. My family does but I
18 don't.

19 Q. And a pretty heavy school schedule
20 at the moment?

21 A. It is.

22 Q. Working hard both at work and at
23 school?

24 A. Correct.

25 Q. And anxious to get back; correct?

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1 A. (Affirmative nod).

2 THE COURT: Is that a "yes"?

3 WITNESS: "Yes."

4 THE COURT: Thank you.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SIMPSON:

7 Q. I say that because I'm calling you a
8 little out of order because we want to get
9 you back to your busy life. Where did you
10 work in January of 2014?

11 A. Store 1118 on Magwood, Home Depot.

12 Q. Okay. Now is that in Columbia?

13 A. No. No, it's West Ashley;
14 Charleston, South Carolina.

15 Q. Okay. And what was the nature of
16 your employment with Home Depot?

17 A. Cashier.

18 Q. Okay. I'm going to get right to the
19 point so I can get you back to school. Do
20 you remember observing an incident on January
21 3rd of 2014?

22 A. Correct, (affirmative nod).

23 Q. And if you could, just describe -- I
24 may interrupt you from time to time, but
25 describe to the jury what you observed on

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Testimony of Keith Heyward - Direct Examination

1 that date?

2 A. Well, I was in Garden at the time
3 and there was a vehicle pull up. And the
4 vehicle pulled into a garden parking space.
5 It was an African-American driver and there
6 was an African-American male in the
7 passenger's seat. When he got out of the
8 car, she immediately got on her cellphone and
9 she was looking at me the whole time as he
10 was walking inside the Home Depot through
11 the Garden entrance. During this time, Mr.
12 Michael was coming through the parking lot.

13 Q. I'm sorry. I'm going to have to
14 interrupt you.

15 A. Okay.

16 Q. You said Mr. Michael. Who's Mr.
17 Michael?

18 A. Loss prevention at Home Depot at the
19 West Ashley location.

20 Q. And you knew him?

21 A. Yes, I did.

22 Q. Okay. Please continue. Thank you.

23 A. As he walks through the parking lot
24 -- I'm not sure if he knew the car or not but
25 he lingered around in the garden area while

1 the African-American male was shopping.
2 During this time as he came out -- as the
3 African-American male walked through first,
4 Mr. Michael was walking behind him and I was
5 third. As the African-American male
6 approached outside, Mr. Michael grabbed him.
7 And he was like, you know, 'whatever you have
8 just give it to me.' At this time, the
9 African-American male moved his jacket like
10 this. He removed a knife and he raised it
11 over him. Mr. Michael pushed him off and he
12 was like, you know, 'why can't you be a man
13 about it.' The African-American male then
14 ran to Live 5 News and that's where the
15 driver picked him up from.

16 Q. Okay. Now, Live 5 News is -- you
17 mean the location of the studio?

18 A. Correct.

19 Q. And he ran in that direction?

20 A. Correct.

21 Q. Okay. He didn't go right to the
22 media?

23 A. No. He just ran in that direction.

24 Q. And I think you said this, but did
25 you observe anything involving that vehicle

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Testimony of Keith Heyward - Cross Examination

1 after he ran in that direction?

2 A. I mean the vehicle cranked up and he
3 went in that direction to pick him up.

4 Q. Okay. Did you see them pick him up?

5 A. I did.

6 Q. You did? Okay.

7 SOLICITOR SIMPSON: Court's
8 indulgence.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SIMPSON:

12 Q. Mr. Heyward, thanks for taking your
13 time. I don't have any other questions for
14 you. I appreciate your being here.

15 A. You're welcome.

16 THE COURT: Cross-examine.

17 DEFENDANT EDWARDS: May I
18 approach?

19 THE COURT: You need to cross-
20 examine the witness. Y'all approach.

21 (OFF RECORD BENCH CONFERENCE)

22 CROSS-EXAMINATION

23 BY DEFENDANT EDWARDS:

24 Q. Good afternoon.

25 A. How you doing, sir?

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Testimony of Keith Heyward - Cross Examination

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1 Q. You said your name was Keith
2 Heyward?

3 A. Correct.

4 Q. I'm trying to figure out where were
5 you when all this, when this situation was
6 happening?

7 A. At the register.

8 Q. You were at the register?

9 A. Yes, sir.

10 Q. Did you see the Defendant steal
11 something?

12 A. I actually didn't.

13 Q. Huh?

14 A. I actually didn't.

15 Q. You did?

16 A. I did not. I couldn't see what, if
17 anything, was in his jacket.

18 Q. Did you see something in his jacket?

19 A. I did not.

20 Q. You said you saw a knife?

21 A. Correct.

22 Q. Could you describe the knife?

23 A. As he was exiting out -- like I said
24 the first time, he was exiting out, loss
25 prevention grabbed him and said 'give me

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1 whatever you have.' At this time, the
2 Defendant opened his jacket and he raised the
3 knife. It was about six inches, six or eight
4 inches.

5 Q. You know what color the knife was?

6 A. No, sir.

7 Q. But you was sure that you saw a
8 knife?

9 A. I'm positive.

10 Q. Did you give the detective a
11 statement verifying that ---

12 A. I did.

13 Q. You did?

14 A. I did.

15 Q. I don't have any of that in the
16 evidence.

17 A. I wrote statements for Home Depot.

18 DEFENDANT EDWARDS: Do you have
19 the -- do you have the statement?

20 THE COURT: Mr. Edwards, we'll
21 take up that matter. That's a matter that's
22 not pertinent to this conversation right now.
23 Finish your examination and we'll take that
24 up out of the jury's presence. It's a matter
25 of law.

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1 DEFENDANT EDWARDS: Okay, Your
2 Honor.

3 CROSS-EXAMINATION CONTINUED

4 BY MR. EDWARDS:

5 Q. You said you gave a statement?

6 A. I did.

7 Q. You said you saw the female inside
8 the car?

9 A. I did.

10 Q. Did you give a description of the
11 female?

12 A. I mean, just she was an African-
13 American male [sic]. I mean female. I'm
14 sorry.

15 Q. That's it?

16 A. I couldn't give the description of
17 her.

18 Q. And you can't say for certain that
19 you saw a crime being committed?

20 A. As far as the shoplifting, I didn't
21 see a shoplifting occur. But I did see the
22 African-American male raise a knife out of
23 his jacket. I did see that part.

24 Q. Did you see -- did he swipe the
25 knife?

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1 A. He raised it up over loss
2 prevention's head.

3 Q. Over loss prevention's head. So he
4 pretty much -- would you say he swung the
5 knife?

6 A. He opened the jacket, took the knife
7 and did like this (demonstrating). At that
8 time, Mr. Michael pushed him away from him.

9 DEFENDANT EDWARDS: No further
10 questions.

11 THE COURT: Any redirect?

12 SOLICITOR SIMPSON: Thank you,
13 Your Honor.

14 REDIRECT EXAMINATION

15 BY SOLICITOR SIMPSON:

16 Q. Mr. Heyward, you said you never saw
17 the actual shoplifting occur?

18 A. Right.

19 Q. And I appreciate you being forthwith
20 with that. Did I hear you correctly? Did
21 you say you did see the person holding his
22 jacket?

23 A. I did.

24 Q. But you were never able to see what
25 was in the jacket?

1 A. I was not, no.

2 Q. And did this happen pretty quickly?

3 A. It did. Because as soon as they
4 left the register, the register is right
5 there by the door, as soon as he stepped
6 outside the door the whole incident happened
7 right there in about thirty seconds.

8 Q. And you're certain you saw a knife?

9 A. Yes, sir.

10 Q. And you're certain it was raised up?

11 A. Yes, sir.

12 Q. Okay.

13 SOLICITOR SIMPSON: I have
14 nothing further, Your Honor.

15 THE COURT: Recross, Mr. Edwards?

16 DEFENDANT EDWARDS: No, Your
17 Honor.

18 THE COURT: All right. You may
19 come down.

20 (WITNESS STEPS DOWN)

21 THE COURT: Do you wish the
22 witness to be excused?

23 SOLICITOR SIMPSON: Yes, Your
24 Honor.

25 THE COURT: Any objection, Mr.

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1 Edwards?

2 DEFENDANT EDWARDS: No, sir.

3 THE COURT: You're free to leave.

4 Thank you, sir. Call your next witness,
5 please.

6 SOLICITOR SIMPSON: The State
7 calls Michael Smith.

8 (WITNESS TAKES STAND)

9 MICHAEL A. SMITH, JR., having been duly
10 sworn to tell the truth, and nothing but the
11 truth, testified as follows:

12 DIRECT EXAMINATION

13 BY SOLICITOR SIMPSON:

14 Q. Good afternoon, Mr. Smith.

15 A. Good afternoon.

16 Q. Let's start with some general
17 questions about you. How old are you?

18 A. I'm twenty-five years old right now.

19 Q. And can you give the jury a little
20 bit about your professional background?

21 A. In 2006, I actually dropped out of
22 high school before I was about to graduate.
23 I got my GED right away and joined the
24 military. My family's former military. I
25 went in in active duty with 11 Bravo, which

1 is an infantryman. In 2008, I re-classed in
2 the National Guard at that point to a
3 military police officer.

4 Q. And I know it's -- I'm going just to
5 slow down a little bit with your answer.

6 A. Okay.

7 Q. Where are you employed currently?

8 A. I currently work for Home Depot.

9 Q. Okay. In what capacity?

10 A. I am a multi-store asset protection
11 specialist. I cover multiple stores in the
12 district. Currently, I'm cover stores in
13 Charleston. That would include North
14 Charleston, Summerville and West Ashley.

15 Q. Okay. And what's the address of the
16 West Ashley store?

17 A. It's 2008 Magwood Road, Charleston,
18 South Carolina.

19 Q. Let's give the jury a little sense
20 about your duties. What sort of things are
21 you in charge of?

22 A. As a multi-store asset protection
23 specialist, I'm in charge of store safety,
24 theft, fraud, maintenance safety. But we do
25 deal with shoplifting, internal theft,

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1 external theft, fraudulent purchases whether
2 it be credit card, check, or counterfeit
3 money.

4 Q. Were you employed in that capacity
5 on January 3rd of 2014?

6 A. Yes, I was.

7 Q. Do you recall an incident that took
8 place at that time?

9 A. Yes, I do.

10 Q. I may have to interrupt you from
11 time to time. But I'm just going to ask that
12 you recount that incident to the jury if you
13 don't mind.

14 A. Yes. On January 3rd of 2014, I was
15 actually coming back from my lunch break. I
16 observed a white four-door Suzuki car parked
17 over in the garden parking lot. On this day
18 it was rather slow actually in the store.
19 The car was running. It was kind of chilly
20 outside and so I could see the exhaust coming
21 from the back of the vehicle. That's how I
22 knew it was running.

23 I kind of sat in my car for a second.
24 And then I got out because I noticed it was
25 female type figure, a person figure, sitting

1 in the driver's seat. As I walked up a
2 little closer, I notice it was a female
3 sitting in the driver's seat, but I couldn't
4 identify the female. She had like a toboggan
5 wrapped around her head. But I could tell by
6 her hair and the facial structure that it was
7 a female.

8 I then entered the store at the entrance
9 to ---

10 Q. Let me just pause you. You said
11 that you did observe one item of clothing on
12 the driver?

13 A. Yes.

14 Q. And what was that?

15 A. It was like a -- I call it a
16 toboggan. It looked kind of like a scarf/
17 toboggan kind of wrapped around her whole
18 head.

19 Q. Okay. And please continue.

20 A. I then entered the store through the
21 entrance. And at this particular store we
22 have had a lot of rollouts through Garden.
23 We also -- I worked with ORC team, which is
24 organized retail crime. We deal with groups
25 that come in the stores and they steal

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1 multiple items and exchange them for store
2 credits. Part of this process is you have
3 certain items in the store that are high
4 dollar. Small items, some of them are high-
5 dollar big items.

6 THE COURT: Mr. Smith, you're going to
7 have to slow down. Speak slower.

8 SOLICITOR SIMPSON: Yes, please.

9 THE COURT: I can't think that fast.

10 WITNESS: I'll start over.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SIMPSON:

13 Q. It's okay. We have plenty of time.

14 A. Okay. So organized retail crime is
15 when multiple groups hit stores. They go for
16 all different types of merchandise. It can
17 range from anything from screws to high-
18 dollar drills.

19 The particular item that we were having
20 trouble with in these stores is water
21 filters, flooring sealer and Velcro right
22 now. The Velcro could run anywhere from
23 nineteen to twenty-something dollars a pack.
24 Flooring sealer can run anywhere from thirty-
25 nine dollars to a hundred dollars a jug. And

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1 the water filters run anywhere from twenty
2 dollars to about seventy, eighty dollars.

3 At this time we currently started marking
4 all these items with store numbers and soft
5 tags to ID them. Part of this process also
6 is that we contact -- I have multi-stores. I
7 have three stores that I work out of this
8 area. So I mark each store with each store's
9 store number. That's how we track them. And
10 so we know once it got stolen from here, that
11 if they're returned to another store, when I
12 look at the returns, I see this one's got
13 this store number on it.

14 For example 1118 is West Ashley.

15 1103 is North Charleston.

16 So if somebody was to steal one and
17 return it at North Charleston, I would have
18 an 1118 at North Charleston, which is store
19 number 1103. It wouldn't belong there. I'd
20 know that it came from West Ashley.

21 So as part of the process, I entered the
22 store and immediately the three things I
23 check are the water filters, the Velcro, the
24 floor sealer.

25 From that entrance the floor sealer is in

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1 the back of the store, but it is the quickest
2 spot to get to. So I immediately went to the
3 back, towards my office.

4 As I approached the back isle, I noticed
5 a male subject, black, African-American
6 subject, wearing a black jacket and blue
7 jeans, a baseball cap, blue and white. I
8 continued to observe the subject because of
9 his ---

10 Q. Let me stop you real quick. Are you
11 dressed in like a uniform of some kind at
12 this point?

13 A. No. I wear plain clothes. Look
14 just like a customer.

15 Q. And is that kind of by design?

16 A. It's part of our job.

17 Q. You don't want to be identified as a
18 loss prevention ---

19 A. No. Because we don't want customers
20 to know that, you know, we don't want
21 customers to get the wrong idea. We're doing
22 in for the safety of the customers, to keep
23 the prices down by preventing shoplifting.
24 But it also just helps to blend in. Because
25 more people are more likely to steal, per

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1 statistics, if they know an employee's not
2 watching them than if a regular person is
3 standing there.

4 Q. And you said you first approached
5 the suspect area by the floor sealant?

6 A. No, I did not approach the suspect.
7 I actually walked where I could see the floor
8 sealant. I observed the subject by the floor
9 sealant.

10 Q. But to give the jury an idea, using
11 me, about how far away are you at this point
12 in your observing the suspect?

13 A. You would have been standing
14 approximately by that chair back there up
15 against that wall

16 Q. So initially, you're about this far?

17 A. Yes.

18 Q. And you made some observations
19 regarding clothing?

20 A. The clothing, yes.

21 Q. And what were those observations?

22 A. It was a black jacket, dark colored
23 blue jeans, and a baseball cap which was blue
24 and white.

25 Q. Okay. And how did this incident

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1 proceed from that point?

2 A. At that point, I continued to
3 observe for a second, due to the suspect
4 standing in front of the floor sealer, which
5 is one of our high-dollar refund items. I
6 then observed the suspect in question select
7 a bottle of flooring sealer that was valued
8 at eighty-nine dollars and ninety-seven
9 (\$89.97) cents.

10 Q. And what did he do once he picked up
11 the floor sealant?

12 A. He then carried the flooring sealant
13 down the aisle and then made a right towards
14 the outside garden. Once in the outside
15 garden I observed the suspect conceal the
16 flooring sealant into the jacket and zip his
17 jacket up.

18 Q. And did you at that point -- I mean,
19 as a loss prevention person become suspicious
20 that you were seeing someone put merchandise
21 in their clothing?

22 A. Yes. But at the same time you can't
23 assume they're going to steal it. You've got
24 to give them an opportunity to make payment
25 for it.

1 Q. Okay. So did you, you know,
2 confront them at that point or not?

3 A. I did not. I continued to maintain
4 constant observation of the subject.

5 Q. Okay. Now, when that's going on,
6 are you any closer than before or how far
7 away are you?

8 A. At that point, because you want to
9 maintain an observation from a close
10 distance, just in case that they were to --
11 let's say pull it out of their jacket and
12 throw it down. At that point, we would
13 disengage and not make a stop if they were to
14 ditch the merchandise. If they keep the
15 merchandise on them and we've constantly that
16 they still have the merchandise on them, once
17 they pass all points of sale, we then make an
18 approach.

19 Q. Okay. So, using me again, then at
20 that process of the concealment of the
21 sealant and moving toward the point towards
22 purchase, how far away are you?

23 A. Up until the point when we got near
24 the registers, I was probably from here to
25 that table from him.

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1 Q. About here?

2 A. Yes.

3 Q. To the table? Okay. And how does
4 it proceed from there?

5 A. As we start -- now we're inside the
6 garden department, there's containers,
7 several little plants. As you would come out
8 the door, you would have to come down and
9 then make a right to head towards the
10 registers.

11 As Mr. Edwards made the right and then I
12 made the right, I then passed Mr. Edwards. I
13 had a piece of merchandise that I just
14 grabbed real quick that I had in my hand so
15 I'd look like a shopper.

16 Q. What was that merchandise?

17 A. I believe at the time it was a small
18 bottle of Miracle Gro that I grabbed. I just
19 grabbed an item off the shelf.

20 Q. Okay.

21 A. I did approach the register with the
22 cashier, Keith Heyward. I was like, 'hey, I
23 want to purchase this', just to try to, you
24 know, blend in as a customer.

25 At that point Mr. Edwards then passed

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1 behind me and made no attempt at that time
2 to stop at the register and make any form of
3 payment for the merchandise that was
4 concealed in his jacket. So ---

5 Q. Let me stop you. Let me stop you
6 here. Are you certain you observed him place
7 the merchandise in his jacket?

8 A. Yes. A hundred percent.

9 Q. Did you have a clear unobstructed
10 view at that point that you observed him?

11 A. Yes, I did.

12 Q. Was anything about his activity
13 consistent with having something in his
14 jacket?

15 A. Yes. He maintained his left hand
16 inside his left jacket pocket to kind of,
17 sort of as if you had the jacket on and kind
18 of like you would cuddle your stomach like
19 this.

20 Q. Okay. Now, is this his left hand?

21 A. Yes.

22 Q. And so what happened at the
23 register, if anything?

24 A. As Mr. Edwards passed behind me and
25 showed no intent to stop, at that point I --

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1 as he went out the gate, I made my approach.
2 I then placed my right hand on Mr. Edwards'
3 shoulder as I identified myself as Home Depot
4 asset protection. And I told him I needed to
5 talk to him about the merchandise.

6 As slow as you can say this -- when these
7 things happen, they happen a lot faster than
8 talking.

9 At that point, Mr. Edwards then removed a
10 knife from his right side. He then raised it
11 about six to eight inches above his head.
12 And, if I may, he told me that "if you don't
13 get the fuck off me, I'm going to stab you."

14 At that point, for safety reasons I
15 pushed Mr. Edwards back and just completely
16 disengaged for my safety, and safety of any
17 associates that may have been around and the
18 cashier.

19 Q. Well, now that you mention that.
20 You mentioned the register that you
21 approached or that both of you walked out of?

22 A. Yes.

23 Q. Who was manning that register?

24 A. Keith Heyward. He was the cashier
25 at that store at the time.

1 Q. Okay. Once you disengaged from the
2 suspect, where did he go?

3 A. The suspect ran towards the right,
4 towards the Live 5 News Center, if you're
5 familiar with Magwood. Magwood's on this
6 side. Charlie Hall is on this side. So the
7 subject then ran towards Charlie Hall. He
8 then made a left onto Charlie Hall, heading
9 towards Live 5.

10 At that point the white Suzuki then
11 pulled out and I was getting on the phone to
12 9-1-1 to explain to them of a shoplifting
13 incident that just occurred, a knife being
14 involved. As I called 9-1-1 I read the tag
15 number off to 9-1-1 and gave a description of
16 what was going on. Dispatch was kind of
17 trying to calm me down because I was talking
18 kind of fast too.

19 Q. I can't imagine. Continue.

20 A. And as I was still trying to just
21 let them know 'well, before you ask any
22 questions you need to write this tag number
23 down.' And then I gave the description of
24 what happened. As the car pulled out onto
25 Charlie Hall, Mr. Edwards -- it kind of

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1 passed Mr. Edwards. And as he ran up to the
2 car when it stopped, he kind of ran into the
3 back of the car because the female subject
4 driving the car kind of stopped that quick.
5 He then kind of like stumbled around to the
6 side and then jumped in the passenger seat of
7 the car and then the car then took off up
8 Glenn McConnell -- I mean up Charlie Hall
9 heading towards Glenn McConnell.

10 Q. And if I understand you correctly,
11 you're on the phone with 9-1-1 when a lot of
12 that flight is occurring?

13 A. Yes.

14 Q. Was that pretty quickly after you
15 had the knife pulled on you?

16 A. Yes. I'd say as soon as I
17 disengaged that my phone came out of my
18 pocket.

19 Q. Okay. And by disengage you sort of
20 pushed him back?

21 A. I pushed him away, just to get
22 space, just to give him an opportunity to
23 run.

24 Q. And you'd just experienced having a
25 knife drawn?

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1 A. Yes.

2 Q. Okay.

3 SOLICITOR SIMPSON: Your Honor,
4 permission to approach the witness.

5 THE COURT: Yes.

6 DIRECT EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. Mr. Smith, I'm showing you what's
9 been marked for ID only as State's Exhibit
10 14?

11 A. Yes, sir.

12 Q. Do you recognize that?

13 A. Yes, that's the dispatch recording
14 that me and you listened to in your office.

15 Q. And you've listened to this?

16 A. Yes.

17 Q. Is this a fair and accurate
18 representation of your call on that day while
19 this flight is taking place?

20 A. Even though I don't like how I
21 sound, yes.

22 Q. Okay.

23 SOLICITOR SIMPSON: Your Honor,
24 at this point the State would seek to admit
25 State's 14 into evidence and publish for the

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1 jury.

2 THE COURT: Do you have any
3 objection?

4 DEFENDANT EDWARDS: No objection.

5 THE COURT: Without objection
6 State's 14 is admitted.

7 (SO ENTERED AS STATE'S EXHIBIT 14)

8 THE COURT: And you may publish
9 it.

10 (STATE'S EXHIBIT 14 PUBLISHED)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SIMPSON:

13 Q. So Mr. Smith, you were able to give
14 a tag number while observing it; is that
15 correct?

16 A. Yes.

17 Q. Okay. Do you recall what that tag
18 number was?

19 A. Off the top of my head, no I don't.
20 I know it was JBY ---

21 Q. Are you referring to something your
22 prepared there?

23 A. No. It's just my case file.

24 Q. Okay. Would that file refresh your
25 recollection?

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1 A. Yes, it would.

2 Q. Okay. Hey, you know what -- was it
3 the same as we just heard you describe on the
4 9-1-1 recording?

5 A. Yes, it was the same.

6 Q. Okay.

7 A. That you heard me describe on there.

8 Q. And the description of that car
9 again?

10 A. It was a white four-door Suzuki.

11 Q. Okay. And you gave a description of
12 an individual that had pulled a knife on you?

13 A. Yes.

14 Q. Do you recall that description?

15 A. Yes, it was a black male,
16 approximately six foot, a hundred and eighty
17 to -- I mean -- yeah. A hundred and eighty
18 to probably, I'd say two hundred pounds. I
19 believe he did have glasses on that day,
20 black jacket, dark colored pants, blue jeans.

21 Q. Okay. And explain on the recording
22 we just heard that you sort of had an idea of
23 about where they were heading?

24 A. Yes, I do.

25 Q. And where was that?

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1 A. To the North Charleston Home Depot
2 where they were going to come back and return
3 it for a credit/refund at the North
4 Charleston Home Depot.

5 Q. And I believe the very end of the
6 call it ends with you waiting on the police
7 to arrive?

8 A. Yes.

9 Q. Did the police arrive?

10 A. Yes. Within one or two minutes
11 after the phone hung up.

12 Q. And agency, if you recall?

13 A. Charleston City Police Department.

14 Q. Okay. Did you tell the police what
15 happened?

16 A. Yes, I did.

17 Q. Did you explain to them your belief
18 and reason for the belief that they might be
19 going to another store?

20 A. Yes, I did.

21 Q. Okay. And did you give a formal
22 interview to the police at that point?

23 A. At that point I did not give a
24 complete formal interview. I gave a
25 description and a little information about

1 the incident. Moments later, Detective
2 Burckhardt arrived and at that point we did
3 the formal interview.

4 Q. Did anything happen during that
5 interview?

6 A. Yes. I actually received a phone
7 call that interrupted the interview from a
8 store manager at the North Charleston Home
9 Depot telling me that there was an African-
10 American female ---

11 DEFENDANT EDWARDS: Objection.

12 THE COURT: Yes, sir.

13 DEFENDANT EDWARDS: Speculation.
14 That's hearsay.

15 THE COURT: I sustain the
16 objection to what he said. Thank you.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR SIMPSON:

19 Q. Actually, let me step back. I'm
20 getting a little ahead of myself. In your
21 job, you said you actually manage the
22 security at all multiple stores?

23 A. Yes, I do.

24 Q. Is part of that job utilizing any
25 sort of video surveillance equipment?

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1 A. Yes, it is.

2 Q. And give the jury a little
3 description of what kind of video
4 surveillance capabilities they have at the --
5 most of your Home Depot stores?

6 A. At most of them -- it's not one
7 hundred percent surveillance on camera. Our
8 job mainly is we're on the floor in plain
9 clothes for a reason. We're on the floor
10 ninety-five percent of the time. I cannot
11 ace a case or stop somebody from shoplifting
12 just because I just I just watched them on
13 camera. And the reason behind that is
14 because of the fact that I can watch you from
15 my office on camera. However, once I leave
16 my office, I've lost observation of you and I
17 have no idea whether you still have the
18 merchandise on you or whether you ditched the
19 merchandise. Therefore, we do not make cases
20 off camera. We only, in fact, make cases,
21 especially when there's just one of us in the
22 store, you know, a hundred percent
23 observation of watching on the floor.

24 Q. Well, you made a quick point there.
25 Let me back you up a little bit. So there's

1 not one hundred percent coverage of the Home
2 Depot?

3 A. Not on camera, no.

4 Q. What do you mean by that?

5 A. As some stores have a hundred
6 cameras, some stores have thirty cameras.

7 Q. Okay. And every square foot of the
8 store is not going to be covered on video?

9 A. No, it's not.

10 Q. Is that just a reality of the job?

11 A. It's part of the job, yeah. It
12 sucks sometimes but that's just it.

13 Q. When any event occurs, is it your
14 duty to go review, nevertheless, that
15 surveillance equipment?

16 A. Yes, it is.

17 Q. And is it your duty to sort of
18 oversee those recordings? Is that, the
19 management of those recordings part of your
20 job?

21 A. Yes, it is.

22 Q. And if the police need or ask you
23 for copies of any relevant recordings, is it
24 your job to provide it for them?

25 A. Yes, it is.

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1 Q. Was there -- did you review the
2 available camera footage from the incident
3 at the West Ashley Home Depot that we just
4 talked about?

5 A. Yes, I did.

6 Q. And was any of that event captured
7 on video surveillance?

8 A. Yes. The video from the parking lot
9 was captured on video. The entrance to the
10 store and the subject was captured on video.

11 Q. Is that at the garden center?

12 A. At the garden entrance, yes. The
13 subject was also captured from the bottom
14 half in the back of the store where the
15 office camera is ---

16 DEFENDANT EDWARDS: Objection.

17 THE COURT: Yes.

18 DEFENDANT EDWARDS: Speculation.

19 THE COURT: Overruled.

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SIMPSON:

22 Q. Okay. Continue.

23 A. On the back office area it actually
24 captured the subject from the waist down.
25 And then when the subject exited the store,

1 me going behind him was also on camera. And
2 then the vehicle pulling off was on camera.

3 Q. Okay.

4 A. And that particular ---

5 Q. After viewing that video
6 surveillance, did you preserve that --
7 eventually?

8 A. Yes, I did.

9 Q. Did you provide it to the Charleston
10 Police Department?

11 A. Yes, I did.

12 SOLICITOR SIMPSON: Court's
13 indulgence.

14 THE COURT: Certainly.

15 SOLICITOR SIMPSON: May I
16 approach the witness, Your Honor?

17 THE COURT: You may.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR SIMPSON:

20 Q. Now, Mr. Smith, I'm handing you
21 what's been marked for ID only as State's
22 Exhibit 1. Do you recognize that?

23 A. Yes. That's a copy of the CD with
24 the video from our Home Depot.

25 Q. And you've viewed this?

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1 A. Yes, I have.

2 Q. On more than one occasion?

3 A. Yes, I have.

4 Q. Is it a fair and accurate
5 representation of the portions you just
6 described to this jury?

7 A. Yes, it is.

8 SOLICITOR SIMPSON: Your Honor,
9 at this point the State would seek to admit
10 State's Exhibit 1 into evidence and publish
11 for the jury.

12 THE COURT: Do you have an
13 objection?

14 DEFENDANT EDWARDS: No objection.

15 THE COURT: Without objection.
16 State's 1 is admitted.

17 (SO ENTERED AS STATE'S EXHIBIT 1)

18 THE COURT: You may publish it.

19 (STATE'S EXHIBIT 1 PUBLISHED)

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR SIMPSON:

22 Q. (Video playing) -- Mr. Smith, what
23 view are we seeing here?

24 A. This is the parking lot for camera
25 coverage, the garden side of the store. The

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1 parking lot.

2 Q. (Video playing)-- as this plays, Mr.
3 Smith, if you observe something that you, you
4 know, you can testify for, please have me
5 pause it.

6 A. Okay.

7 Q. (Video playing) -- what vehicle were
8 you driving that day?

9 A. I was driving a -- actually, at that
10 point in the year I had a 2013 Chrysler. If
11 you pause it right now -- (video paused).

12 Q. Continue, (video playing).

13 A. -- the vehicle pulling into the spot
14 is the white Suzuki that I observed already
15 parked there after I came back from lunch.

16 Q. (Video playing) -- Mr. Smith, is
17 there another video that corresponds where we
18 saw that individual walk towards the store?

19 A. Yes. The register camera will show
20 -- the register camera will show that that
21 subject enters.

22 Q. (Video playing) -- is this the
23 register camera that you just referred to?

24 A. Yes. This is one.

25 Q. And does this entrance correspond to

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1 where we saw the individual walk from the
2 Suzuki into the store?

3 A. Yes, it does.

4 Q. (Video playing) -- Mr. Smith, do you
5 know that person that we just saw walk in?

6 A. Yes. That's the subject at the time
7 he entered.

8 Q. Okay, (video playing). Mr. Smith,
9 who is that here in the store?

10 A. That is the subject that I observed
11 with the floor sealant.

12 Q. Again, when you made that dispatch
13 call, was that right after that knife had
14 been pulled?

15 A. Yes, it was.

16 Q. Had you gone back and reviewed the
17 video?

18 A. No, I did not.

19 Q. And how did you describe the
20 clothing again on that dispatch call?

21 A. Black jacket, and the darker colored
22 blue jeans.

23 Q. Anything about a hat on the
24 dispatch?

25 A. No, I did not say anything about the

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1 hat on the dispatch call. I guess because I
2 was kind of like amped up. But I did -- I do
3 recall saying about that he possibly had
4 glasses.

5 Q. Okay, (video playing).

6 A. This is another angle of the
7 register.

8 Q. Who is that, Mr. Smith?

9 A. That is the subject in question.

10 SOLICITOR SIMPSON: May I approach the
11 witness, Your Honor.

12 THE COURT: You may.

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR SIMPSON:

15 Q. Mr. Smith, I'm handing you what's
16 been marked for ID only as State's Exhibit 3.
17 Do you recognize that?

18 A. Yes. That's a still shot of the
19 subject entering the store.

20 Q. And is that a still shot of the
21 video we just watched?

22 A. Yes, it is.

23 Q. Is it a fair and accurate
24 representation of the surveillance video?

25 A. Yes, it is.

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1 SOLICITOR SIMPSON: Your Honor,
2 at this time the State would seek to admit
3 State's Exhibit 3 into evidence.

4 THE COURT: All right. Any
5 objection?

6 DEFENDANT EDWARDS: No objection.

7 THE COURT: Without objection,
8 State's 3 is admitted.

9 (SO ENTERED AS STATE'S EXHIBIT 3)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SIMPSON:

12 Q. You mentioned there was a camera
13 angle from the rear of the store?

14 A. Not the rear as in the outside but
15 the back office hallway, there's a camera,
16 yes.

17 Q. And if somebody catches it ---

18 A. It's mainly to watch the timeclock.
19 That's right there, to catch internals for
20 time fraud. However, it does show the back
21 aisle. And to that right of the camera angle
22 is right where the floor sealants go.

23 Q. Okay. (Video playing) -- so this
24 how you described it. You just said ---

25 A. Yes. The doorway right here back

1 office hallway where the two main offices
2 are, one being the store manager. The office
3 back to the left is my office with the door
4 open. And then up toward the right you'll
5 see two shelves and there's a time clock.
6 That's where this is just to verify
7 associates log time sheets. That they
8 haven't missed on or forgotten to clock in,
9 just to see if they tell the truth or not.

10 Q. Okay. Really what we're talking
11 about here. What room did you say it goes
12 in?

13 A. If you follow the view all the way
14 up to the top of the screen. That's right --
15 (video playing) -- now you see the feet walk
16 by. That's the lower half of the suspect.
17 And right where he's standing right now,
18 where you just flipped that back, the
19 flooring sealer is in that bay right there.

20 Q. And what video are we viewing now,
21 Mr. Smith?

22 A. At the current time down at the
23 bottom of the screen, this is the garden
24 register camera that we reviewed before -- at
25 a later time. This time is the part that I

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1 flipped of when the suspect exited the store
2 and I come up -- and we come up to the
3 register and then the suspect exits the
4 store.

5 Q. (Video playing) -- so now you're
6 pretty in close proximity to them at that?

7 A. Yes.

8 Q. And who's behind you?

9 A. Keith Heyward.

10 Q. And what's that in your hand you set
11 down there?

12 A. That's a small bottle of Roundup.
13 I believe that's what it was. I mean, not
14 Roundup but Miracle Gro.

15 Q. And what was your motive again of
16 grabbing that?

17 A. Just to act like a customer, just to
18 kind of blend in.

19 Q. Is this the exit to the store?

20 A. Yes, it is.

21 Q. Is this your last chance to actually
22 pay for a purchase?

23 A. On that side of the store it is,
24 yes.

25 Q. And you testified previously about

1 the pulling of the knife?

2 A. Yes.

3 Q. Using this as sort of a frame of
4 reference, where did that occur?

5 A. Approximately two feet, three feet
6 to the left of that farthest point that you
7 can see on the camera.

8 Q. And who is this again in the
9 picture?

10 A. That's Keith Heyward.

11 Q. Would he have had a clear
12 unobstructed view of what took place right
13 there?

14 A. Yes.

15 Q. (Video playing) -- Mr. Smith, you see
16 -- I think you said the actual incident with
17 the knife took place off camera?

18 A. Yes.

19 Q. Was it just a couple of feet off
20 camera?

21 A. Yes, it did.

22 Q. Were you able to see anything in
23 relation to where you were standing right
24 there?

25 A. You're able to see mine and Mr.

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1 Edwards' shadow.

2 SOLICITOR SIMPSON: May I
3 approach, Your Honor?

4 THE COURT: Yes.

5 DIRECT EXAMINATION CONTINUED

6 BY SOLICITOR SIMPSON:

7 Q. Now, Mr. Smith, I'm handing you
8 what's been marked for ID only as State's
9 Exhibit 4. Do you recognize that?

10 A. Yes. That's the still shot of when
11 I was setting the merchandise on the counter
12 and we were both about to exit the store.

13 Q. I hand you what's been marked for ID
14 only as State's Exhibit 5. Do you recognize
15 that?

16 A. Yes. This is a still shot, a zoom-
17 in of the shadow.

18 Q. And I'm handing you what's been --

19 SOLICITOR SIMPSON: Court's
20 indulgence.

21 THE COURT: Certainly.

22 DIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SIMPSON:

24 Q. -- marked for ID only as State's 6.
25 Do you recognize that?

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1 A. Yes. This is another still shot of
2 the shadow. Only at this point it's fair to
3 say that you can see where my hand is on the
4 bill of his hat. And his right hand above
5 his head.

6 SOLICITOR SIMPSON: Your Honor,
7 at this time the State would ---

8 DIRECT EXAMINATION CONTINUED

9 BY SOLICITOR SIMPSON:

10 Q. Are these fair and accurate
11 representations of the video we've seen?

12 A. Yes, they are.

13 SOLICITOR SIMPSON: Your Honor,
14 at this point the State would seek to admit
15 4, 5, and 6 into evidence.

16 THE COURT: Is there any
17 objection?

18 (OFF RECORD DISCUSSION BETWEEN SOLICITOR
19 AND MR. EDWARDS)

20 SOLICITOR SIMPSON: Your Honor,
21 may we approach?

22 THE COURT: Yes.

23 (OFF RECORD BENCH CONFERENCE)

24 THE COURT: Mr. Edwards is
25 objecting to State's 6. What's the basis of

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1 your objection?

2 DEFENDANT EDWARDS: On this still

3 ---

4 THE COURT: No, sir. What's the
5 basis of your objection?

6 DEFENDANT EDWARDS: Speculation.

7 This one has a time -- a date stamp on it.

8 This one doesn't have ---

9 THE COURT: He's already
10 identified it. You haven't played that. Is
11 that shown on the video?

12 SOLICITOR SIMPSON: Well, he has
13 -- I think I do need a couple of follow-up
14 questions.

15 THE COURT: Yeah. I will sustain
16 the objection as to 5 and 6 at this point.
17 Excuse me. The objection to 6. 5 is
18 admitted without objection. Without
19 objection to 5?

20 DEFENDANT EDWARDS: Yes, sir.

21 THE COURT: What about 4?

22 SOLICITOR SIMPSON: FOUR, he said
23 he didn't have any ---

24 THE COURT: Do you have any
25 objection?

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1 DEFENDANT EDWARDS: No, sir.

2 THE COURT: State's 4 and 5 are
3 admitted without objection.

4 (SO ENTERED AS STATE'S EXHIBIT 4)

5 (SO ENTERED AS STATE'S EXHIBIT 5)

6 THE COURT: State's 6, you wanted
7 to ask follow-up questions?

8 SOLICITOR SIMPSON: Okay. Thank
9 you, Your Honor.

10 THE COURT: Uh-huh.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SMPSON:

13 Q. Mr. Smith, I show you again what's
14 been marked as 5 and 6. Notice -- what do we
15 here on State's 5, on this corner down here?

16 A. On the corner of State's 5 it
17 actually has the timestamp and date. But if
18 you was to remove the timestamp and date, you
19 would have a full scale shot of the actual
20 scene.

21 Q. So it's sort of the software player
22 that you have access to play this video?

23 A. Yes.

24 Q. You can -- this information received
25 can be removed?

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1 A. Yes. The timestamp can be lowered
2 down so you can see the full shot. Because
3 actually you can kind of see it. On the time
4 stamp you can see through it a little bit,
5 but actually it takes up about a half inch of
6 the ---

7 Q. Okay. And did you -- through your
8 job when you were viewing this video, did you
9 view it without the timestamp down at the
10 bottom?

11 A. Yes, I did.

12 Q. And did you pause that because you
13 found it to be irrelevant?

14 A. Yes, I did.

15 Q. Is that what we see in State's
16 Exhibit 6 a fair and accurate representation
17 of the surveillance video?

18 A. Yes. A couple of seconds after --
19 well, milliseconds after this one right here
20 is this one without the timestamp.

21 Q. Okay. Other than the removal of the
22 timestamp, was anything done whatsoever to
23 alter that?

24 A. No, there was not.

25 Q. And that is a fair and accurate

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1 representation of the subject?

2 A. Yes, there is. There is no way at
3 all for me to alter video.

4 Q. Okay.

5 SOLICITOR SIMPSON: Your Honor,
6 at this point the State would -- we
7 understand over Defense objection seek to
8 admit State's 6.

9 THE COURT: Ladies and gentlemen,
10 I'm going to let you go to your jury room.
11 Do not engage in deliberations. Don't
12 discuss the case. There's some matters of
13 law that I need to take up out of your
14 presence. Thank you. We'll be with you in
15 about ten or fifteen minutes. We'll also use
16 this as our opportunity to take our break in
17 the afternoon too.

18 (JURY OUT @ 3:29 P.M.)

19 THE COURT: Mr. Simpson, could I
20 see the three exhibits, please? All three
21 exhibits.

22 SOLICITOR SIMPSON: (Tenders
23 exhibits to Court)

24 THE COURT: Thank you, sir. (Upon
25 review), you want to object -- you want to

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1 admit 6. And if I'm understanding, 6 is
2 supposed to be 5 without the timestamp?

3 SOLICITOR SIMPSON: It is maybe a
4 second after 5.

5 THE COURT: Well, and where is
6 that? I haven't seen that? That hasn't been
7 played. That's my problem. I didn't see
8 that on the video.

9 SOLICITOR SIMPSON: And this is
10 the grounds for -- to it. I understand but -
11 --

12 THE COURT: No, that's the ground
13 because I didn't see it on the video. It
14 does not replicate what the jury has seen.

15 SOLICITOR SIMPSON: Okay.

16 THE COURT: So I sustain the
17 objection as to 6. Thank you.

18 SOLICITOR SIMPSON: Judge, maybe
19 we can take a break. If I'm able, overnight
20 -- it's just a software player thing. Sir,
21 the software doesn't show it. It's a
22 replication.

23 THE COURT: All I'm saying is at
24 this point it's for ID only. He's testified
25 that it is.

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1 SOLICITOR SIMPSON: Right.

2 THE COURT: There's no question
3 about that. My problem is, it's not what the
4 jury has seen.

5 SOLICITOR SIMPSON: Right.

6 THE COURT: Thus far we have the
7 photograph that he's saying comes from the
8 video, but I haven't seen any video that
9 really shows that picture. So, I mean, until
10 you rest, you're free to do whatever you want
11 to with that.

12 SOLICITOR SIMPSON: I appreciate
13 that, Your Honor.

14 THE COURT: I mean, you're not
15 bound by it. All right. Anything else at
16 this point?

17 SOLICITOR SIMPSON: I think we
18 can move on.

19 THE COURT: Mr. Edwards, we had a
20 conversation about the statement from the
21 witness that first testified, Mr. Richardson
22 [sic]. You objected to -- excuse me. Mr.
23 Heyward. And you objected to the statement,
24 there wasn't any statement put in. He said
25 he'd given a statement. Do you wish to be

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1 heard further on that?

2 DEFENDANT EDWARDS: Yes, sir.

3 THE COURT: All right. I'll be
4 glad to hear from you.

5 DEFENDANT EDWARDS: Keith
6 Heyward, he's testified that -- said this
7 alleged incident -- he never gave a formal
8 statement. He never picked the so-called
9 suspect in this incident, he never picked him
10 out of a photo lineup. He never did a show-
11 up or anything which he may have -- up until
12 this point this is the first time he's
13 actually seen me.

14 THE COURT: First of all, did Mr.
15 Heyward testify in the first case?

16 SOLICITOR SIMPSON: He did not,
17 Your Honor. We were trying to find him.

18 THE COURT: All right. That's
19 fine. All right, sir. So your objection is
20 he's never identified you prior to coming
21 into the courtroom?

22 DEFENDANT EDWARDS: Yes, sir.

23 THE COURT: What's your position
24 on that, Mr. Simpson?

25 SOLICITOR SIMPSON: Judge, in

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1 thinking about the testimony, I never had him
2 perform an in-court identification.

3 THE COURT: That's correct.

4 SOLICITOR SIMPSON: I believe he
5 -- I suspect that he would have been able to
6 but I -- I didn't -- that's the reason I
7 didn't touch that.

8 THE COURT: Well, he referred to
9 him as "Defendant", which is clearly
10 identifying him. All right. Well, let me
11 give you these (exhibits) back.

12 SOLICITOR SIMPSON: Well, if it
13 is determined that that was an ID then I
14 think he more than laid out the foundation
15 for that.

16 THE COURT: First of all the *State*
17 *v. Lewis* 363 S.C. 337, 609 S.E.2d 515, a 2005
18 case provides *Neil v. Biggers* does not apply
19 to in-court identifications that occur
20 without a pretrial identification.

21 (Reading): *"The remedy for any alleged*
22 *suggestiveness of an in-court identification*
23 *is cross-examination and argument."*

24 That's what you had the opportunity
25 to do. Therefore, I deny your objection as

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1 to the first time he's identified you. He's
2 entitled to do that. He never did it. As
3 you stated, he's never identified you before
4 today. So your objection is noted but
5 overruled. Thank you, sir. For the reasons
6 stated. Thank you.

7 Okay. We'll be at-ease for about
8 ten minutes. Thank you.

9 SOLICITOR SIMPSON: Thank you,
10 Your Honor.

11 WITNESS: Your Honor, may I step
12 down?

13 THE COURT: You may. Don't have
14 any conversation with any of the attorneys.

15 WITNESS: Yes, sir.

16 (WITNESS STEPS DOWN)

17 (BRIEF RECESS)

18 (DEFENDANT PRESENT)

19 (WITNESS TAKES STAND)

20 THE COURT: Anything before we
21 bring the jury back?

22 SOLICITOR SIMPSON: No, Your
23 Honor.

24 THE COURT: Anything from
25 Defendant.

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1 DEFENDANT EDWARDS: No, Your
2 Honor.

3 THE COURT: Thank you, Mr.
4 Edwards. Okay. Let's bring in our jury.

5 (JURY IN)

6 BAILIFF: All jurors are
7 present, Your Honor.

8 THE COURT: Thank you very much.
9 And for the record, ladies and gentlemen,
10 when we stopped I had admitted State's
11 Exhibits 4 and 5.

12 State's Exhibit 6 is admitted for
13 identification only at this point.

14 Let me explain to you, use this
15 opportunity to explain something. Lot of
16 times you hear "for identification." If it's
17 admitted that means when you go to your jury
18 room that exhibit will accompany you to your
19 jury room so you'll have a chance to study
20 that exhibit and look at it as much as you
21 need to.

22 Sometimes for lots of reasons,
23 persons may have exhibits identified. They
24 have to have a name for the exhibits so the
25 record has a reference to it. That's what we

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1 mean when we say State's Exhibit 6 for
2 identification. That means you're certainly
3 entitled -- and assuming that it stayed that
4 way, you would be entitled to consider the
5 testimony concerning this exhibit, but
6 because it was for Identification Only it
7 will not accompany you to your jury room.

8 That's the distinction between
9 identification or admitted. So, thank you
10 very much. Other than that, it has no
11 bearing or anything to be concerned about.

12 Thank you, Mr. Simpson, you may
13 continue.

14 SOLICITOR SIMPSON: Thank you,
15 sir.

16 THE COURT: You bet.

17 DIRECT EXAMINATION CONTINUED

18 BY SOLICITOR SIMPSON:

19 Q. Mr. Smith, following your 9-1-1 call
20 you stated that a police agency responded to
21 the West Ashley Home Depot?

22 A. Yes, I did. Charleston City Police
23 Department.

24 Q. And you, I believe, just to get us
25 back on track, you said you spoke with a

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1 Detective Burckhardt?

2 A. Yes, I did.

3 Q. Did you give a formal interview to
4 Detective Burckhardt?

5 A. Yes, I did.

6 Q. And did anything occur during the
7 course of giving that interview? Did you
8 ever learn of any furtherance of the
9 investigation?

10 A. Yes. We was interrupted by a phone
11 call.

12 Q. Okay. Don't talk about what you
13 actually heard, but after you received that
14 phone call, what happened?

15 A. We briefly finished up the interview
16 and then Detective Burckhardt actually drove
17 me over to North Charleston.

18 Q. Okay. And when you say North
19 Charleston, is that the North Charleston Home
20 Depot?

21 A. Yes, it is.

22 SOLICITOR SIMPSON: Your Honor,
23 may I approach the witness?

24 THE COURT: Yes, you may.

25 DIRECT EXAMINATION CONTINUED

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1 BY SOLICITOR SIMPSON:

2 Q. Mr. Smith, I'm handing you what's
3 been marked for ID only as State's 13. Do
4 you recognize that exhibit?

5 A. Yes. It's a map that shows the West
6 Ashley Home Depot with a yellow pin. And
7 then the North Charleston Home Depot, and
8 they're both the yellow pin as in like a push
9 pin.

10 Q. And is that a fair and accurate
11 representation to your knowledge of both
12 stores. Is that the actual location of the
13 two stores?

14 A. Yes, it is.

15 SOLICITOR SIMPSON: Your Honor,
16 at this point, the State would seek to admit
17 State's 13 into evidence.

18 THE COURT: All right. Any
19 objection, Mr. Edwards?

20 DEFENDANT EDWARDS: No, Your
21 Honor.

22 THE COURT: Without objection,
23 State's 13 is admitted.

24 (SO ENTERED AS STATE'S EXHIBIT 13)

25 SOLICITOR SIMPSON: And the

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1 Court's indulgence to have him a conversation
2 with Mr. Edwards?

3 THE COURT: Certainly.

4 (OFF RECORD DISCUSSION BETWEEN SOLICITOR
5 AND DEFENDANT EDWARDS)

6 SOLICITOR SIMPSON: Your Honor,
7 may Mr. Edwards and I approach?

8 THE COURT: Yes.

9 (OFF RECORD BENCH CONFERENCE)

10 THE COURT: Thank you so much.
11 You may proceed.

12 SOLICITOR SIMPSON: Thank you,
13 Your Honor.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. Mr. Smith, backing up and very
17 briefly, the video clip from the State's 1?

18 SOLICITOR SIMPSON: May I
19 approach, Your Honor?

20 THE COURT: Yes.

21 DIRECT EXAMINATION CONTINUED

22 BY MR. SIMPSON:

23 Q. I'm showing you what's been marked
24 for ID as State's 20. Do you recognize that?

25 A. Yes. This is a still shot, what you

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1 see on the video here in the top right-hand
2 corner of the shadows. The shadow on the
3 right, if you're looking -- the shadow on top
4 is me, placing my hand up and identifying
5 myself. The shadow on the bottom is the
6 suspect in question, Mr. Edwards.

7 Q. And is State's 20 a fair and
8 accurate representation of that bottom right-
9 hand corner of the video?

10 A. Yes, it is.

11 SOLICITOR SIMPSON: Your Honor,
12 at this time the State would seek to admit
13 State's 20 into evidence.

14 THE COURT: Is there an objection
15 to State's 20?

16 DEFENDANT EDWARDS: Objection,
17 yes, sir.

18 THE COURT: What's the objection?

19 DEFENDANT EDWARDS: That's the
20 same photo. We already got five (State's
21 Exhibit 5). That's the same shot as five.
22 That's not twenty.

23 THE COURT: Well, you can raise
24 that issue if you like. It's what -- let me
25 see twenty? And let me see five.

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1 COURT REPORTER: (Tenders) --
2 State's Exhibit 5 and State's Exhibit 20.

3 SOLICITOR SIMPSON: This is a
4 seconds difference.

5 THE COURT: Your objection is
6 noted. State's Exhibit 5 shows the time date
7 stamp being 1:30:35. And State's Exhibit 20
8 shows 1:30:36. So it's documented. It's one
9 second difference. Your objection is noted,
10 but it's admitted subject to the objection of
11 Mr. Edwards. Thank you.

12 (SO ENTERED AS STATE'S EXHIBIT 20)

13 DIRECT EXAMINATION CONTINUED

14 BY SOLICITOR SIMPSON;

15 Q. Mr. Smith, there was an interruption
16 to your interview with Detective Burckhardt?

17 A. Yes, I received a phone call from
18 the North Charleston Home Depot.

19 Q. And what did you do when you
20 received the phone call?

21 A. We -- well, I took the phone call
22 first. And we finished up the interview.
23 And Mr. Burckhardt stated that we were going
24 to do a show-up ID and he drove me over to
25 the North Charleston Home Depot.

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1 Q. Okay. And approximately how long
2 does it take to drive from the West Ashley
3 Home Depot to the North Charleston Home
4 Depot?

5 A. From the time we shut the office and
6 finished the interview and then getting over
7 there with traffic picking up, it was
8 probably about thirty minutes tops, thirty-
9 five minutes tops.

10 Q. Okay. What did you see as you
11 approached the parking lot of the North
12 Charleston Home Depot?

13 A. I seen a subject standing outside by
14 his car.

15 Q. Okay. Did you see the vehicle at
16 all when you went over there?

17 A. Not at first when we pulled up.

18 Q. Okay. The first thing you saw was
19 an individual?

20 A. Yes. Standing outside of the back
21 of the police car.

22 Q. Was that person in police custody?

23 A. He was in police custody; however,
24 I do not recall if he was handcuffed or not.

25 Q. Okay. Did you have a clear and

1 unobstructed view of that individual?

2 A. Yes, I did.

3 Q. Any problems with your eyesight or
4 how close you were?

5 A. No. Right away I told Detective
6 Burckhardt that that was him but that the
7 subject had changed his clothes. He was in
8 different clothing, but that that was the
9 guy.

10 Q. Okay. And we have the video of the
11 clothing he was wearing. Is that an accurate
12 depiction of what he was wearing when the
13 crime took place?

14 A. Not in this particular clip because
15 you can't see the clothing -- but, yes, the
16 clothing previously was.

17 Q. And you told Detective Burckhardt
18 the clothing was different?

19 A. Yes.

20 Q. Okay. In that visit, did you also
21 see a vehicle?

22 A. Yes. During that visit we did see a
23 vehicle.

24 Q. And what kind of vehicle was that?

25 A. It was a four-door white Suzuki.

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1 The same one that I described leaving from
2 the West Ashley Home Depot.

3 Q. Okay. You said you identified the
4 individual that you were seeing?

5 A. Yes.

6 Q. Any doubts about that identification
7 at the time?

8 A. None at all, not at all.

9 Q. Was that the person that just had
10 pulled a knife on you?

11 A. Yes, it was.

12 Q. And is that person present in the
13 courtroom today?

14 A. Yes, he's sitting right there, Mr.
15 Edwards.

16 Q. Any doubt about that identification
17 today that you've giving in front of this
18 jury?

19 A. No, not at all.

20 Q. Okay. Following that interview,
21 what occurred? I mean, following that ID of
22 the individual, what occurred?

23 A. Well, the police had to do their job
24 at that point so I just kind of waited in the
25 police car.

1 Detective Burckhardt did ask me if I
2 could just take a peek in the back window of
3 the car at some items that were in the back
4 seat. I noticed there was a roll of
5 Reynold's Wrap tin foil, and some clothes.
6 The black that was on top matched the jacket
7 that the suspect had on during the time of
8 the armed robbery at the Home Depot West
9 Ashley.

10 Q. Okay.

11 A. But beside that, I just, I sat in
12 the police car until they asked me to go
13 inside and see if I could get video.

14 Q. Let's get to that. Around that
15 vehicle that you matched as the vehicle you'd
16 seen in West Ashley and that individual, did
17 you see the -- by the vehicle in the parking
18 lot, did you see the female that you'd
19 observed?

20 A. No, I did not.

21 Q. Was she present in the car when the
22 police were there?

23 A. No, she was not.

24 Q. Okay. Were you later asked to look
25 at some video from the North Charleston

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1 store?

2 A. Yes, I was.

3 Q. Did you review that video?

4 A. Yes, I did.

5 Q. And what did that video ---

6 A. At the time the incident occurred in
7 West Ashley, the main incident, so I
8 preserved all the video for that.

9 And when we got to North Charleston I did
10 go look at the video of the return because
11 the phone call that I received was about a
12 return being done at the Home Depot ---

13 DEFENDANT EDWARDS: Objection.

14 THE COURT: What's the objection?

15 DEFENDANT EDWARDS: Hearsay.

16 THE COURT: I'll allow that. It's
17 not offered for the truth of the matter
18 asserted. Overruled.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SIMPSON:

21 Q. So to be clear for the jury, we've
22 seen the video capability of the West Ashley
23 store; correct?

24 A. Yes, sir.

25 Q. Does the North Charleston Home Depot

1 store have a similar video capability?

2 A. Similar, yes. North Charleston
3 actually has two more cameras than West
4 Ashley.

5 Q. Okay. But you were asked about a
6 specific video at the North Charleston Home
7 Depot?

8 A. Yes, I was.

9 Q. And what did that video depict?

10 A. That video that I was asked to look
11 at was the return that was being completed by
12 an unknown female.

13 Q. Okay. A return of what kind of
14 item?

15 A. It was water filters and flooring
16 sealant.

17 DEFENDANT EDWARDS: Objection.

18 THE COURT: What's the basis of
19 your objection?

20 DEFENDANT EDWARDS: Relevancy.

21 The victim he could ---

22 THE COURT: Just -- on relevance,
23 it is overruled.

24 DIRECT EXAMINATION CONTINUED

25 BY SOLICITOR SIMPSON:

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1 Q. Let's be clear. Was the video of a
2 quality, did it allow you to confidently ID
3 the person in that video?

4 A. Not the person in the video;
5 however, I was able to clearly see there was
6 a bottle of flooring sealant on the counter
7 and an unknown black female attempting to do
8 a return.

9 Q. And was that unknown black female in
10 the video from the North Charleston store,
11 did she have any distinctive item of
12 clothing?

13 A. I cannot recall because I was unable
14 to identify the female.

15 Q. Okay.

16 SOLICITOR SIMPSON: Court's
17 indulgence?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR SIMPSON:

21 Q. I'm showing you what's been marked
22 for ID only as State's 2. Do you recognize
23 that?

24 A. Yes, sir. That's the video from the
25 North Charleston Home Depot of just the

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1 return.

2 Q. Okay.

3 SOLICITOR SIMPSON: Your Honor,
4 at this time the State would seek to admit
5 and publish State's Exhibit 2.

6 THE COURT: Any objection?

7 DEFENDANT EDWARDS: Objection.

8 THE COURT: What's the basis of
9 your objection?

10 DEFENDANT EDWARDS: The victim,
11 he testified that he couldn't ID the woman.

12 THE COURT: Understood. What's
13 the basis of your objection? He's identified
14 the video that he's going to publish, wants
15 to publish, that he's already authenticated
16 it comes from the store. That's what's being
17 done. What it shows, I don't know what it
18 shows.

19 DEFENDANT EDWARDS: Well, it's
20 irrelevant, Your Honor.

21 THE COURT: Thank you, sir.
22 Overruled. It's admitted subject to the
23 objection of relevance.

24 (SO ENTERED AS STATE'S EXHIBIT 2)

25 (STATE'S EXHIBIT 2 PUBLISHED)

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR SIMPSON:

3 Q. (Video playing) -- Mr. Smith, you
4 said that you worked at this location as
5 well?

6 A. Yes, it is one of my stores.

7 Q. And what are we seeing here when we
8 see this view from this camera?

9 A. This right here is the view of the
10 actual returns register.

11 Q. (Video playing) -- Mr. Smith, is
12 that -- this is the register where you make
13 returns?

14 A. Yes.

15 Q. Is the female you observed in this,
16 does she have anything on her head?

17 A. She has a gray toboggan on her head,
18 but I'm not able to ID her as the woman who
19 was the driver of the vehicle.

20 Q. Okay. Is the clothing and
21 appearances as best as you can competently
22 tell consistent with that of the female
23 driver of the West Ashley Store?

24 A. Similar, yes.

25 Q. And what item do we see right here?

1 A. That's a bottle of flooring sealer,
2 a one-gallon jug. It's eighty-nine dollars
3 and ninety-seven cents.

4 Q. Is that -- in your experience and
5 your job, is that the same item that you saw
6 the Defendant taking from the West Ashley?

7 A. Yes. That's the exact same item,
8 flooring sealant.

9 Q. Mr. Smith, what happened with this
10 individual and with that sealant?

11 A. The return later was notified and
12 looked into and investigated into. The
13 return was actually denied. What causes
14 denials is any time a subject or a person
15 does a no-receipt return and they enter their
16 ID to do the return, after so many returns,
17 it will deny you. It can deny you because of
18 the amount of returns you do, the dollar
19 amount you do or what we call "look like same
20 excuse." If you return three of those same
21 jugs it will automatically deny you because
22 you're on the list of a high number of
23 refunds.

24 Q. Did you detain this female at the
25 North Charleston Store?

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1 A. No, I did not. I was not inside the
2 store at the time she was.

3 Q. Did you ever see the -- following
4 the denial of the return, did you ever see
5 the actual sealant bottle ever again?

6 A. No, I did not.

7 Q. To your knowledge, was this female
8 we see in this video ever detained at that
9 location?

10 A. No, she was not.

11 Q. Was she ever competently identified?

12 A. No, she's not.

13 Q. So the sealant bottle in question
14 was never recovered; is that correct?

15 A. No, it was not.

16 Q. Did I ask you to bring something
17 with you to court this week?

18 A. Yes, you did. You asked me to bring
19 a similar bottle just to use it as an example
20 of what the floor sealant looks like.

21 Q. Okay. Mr. Smith, I'm showing you
22 what's been marked for ID only as State's 18.
23 And no one's trying to mislead here. Is this
24 sealant bottle that was taken that day by Mr.
25 Edwards?

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1 A. No, that's not the sealant bottle
2 that was taken.

3 Q. So this operates only as an example?

4 A. Yes. This is not the bottle, the
5 actual bottle that was taken. But this is an
6 example of the actual bottle that was taken.

7 SOLICITOR SIMPSON: Your Honor,
8 at this time the State would seek to admit
9 State's 18 as a demonstrative exhibit.

10 THE COURT: Is there an objection?

11 DEFENDANT EDWARDS: Objection.

12 THE COURT: What's the basis of
13 it?

14 DEFENDANT EDWARDS: Relevance.
15 The State has failed to prove ---

16 THE COURT: Thank you, sir.
17 It's relevant insofar as just identifying
18 what was allegedly taken. It has probative
19 value for the jury's assessment as to the
20 practicality and the ability to -- so it's
21 overruled. It's admitted State's Exhibit 18.

22 (SO ENTERED AS STATE'S EXHIBIT 18)

23 SOLICITOR SIMPSON: The Court's
24 indulgence?

25 THE COURT: Yes, sir.

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1 DIRECT EXAMINATION CONTINUED

2 BY SOLICITOR SIMPSON:

3 Q. Mr. Smith, thank you for your time.
4 Please answer any questions Mr. Edwards has
5 for you. Thank you.

6 THE COURT: You may cross-
7 examine, Mr. Edwards.

8 DEFENDANT EDWARDS: Thank you.

9 THE COURT: Are you going to use
10 the videos for any reasons?

11 DEFENDANT EDWARDS: Yes, sir.

12 THE COURT: Do you need ---

13 DEFENDANT EDWARDS: Yes, sir.

14 THE COURT: Okay.

15 DEFENDANT EDWARDS: Thank you.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY DEFENDANT EDWARDS:

19 Q. Okay. Mr. Smith?

20 A. How you doing, sir.

21 Q. You said on the date of January the
22 3rd, you said you were coming back from lunch?

23 A. January 3rd, 2014; yes, sir.

24 Q. And you noticed a white vehicle in
25 the parking lot?

1 A. Yes, sir.

2 Q. Did you become suspicious of that
3 vehicle?

4 A. Not because of the vehicle.

5 Q. All right. Why did you become
6 suspicious?

7 A. Because the vehicle was running. It
8 was parked outside of the gate. And I've had
9 known rollouts come out that gate where
10 people sit in front of vehicles. Other
11 previous shoplifters and suspects have ran
12 out that gate and jumped into a running
13 vehicle. So any time I see a running vehicle
14 outside the garden gate or the contractors
15 loading door, I just kind of observe and see
16 what's going on.

17 Q. So help me understand. You're
18 saying because you see a car in a parking
19 spot that's a regular parking spot that's
20 parked in a parking spot, it's cold outside,
21 it's running. But yet that raises suspicion
22 that you think someone's going to do
23 something wrong because you see a black
24 female sitting inside the car?

25 A. It has nothing to do with the black

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1 female, but it has to do with the gate that
2 has had a previous rollouts out of that gate,
3 yes.

4 Q. So just because the car was running
5 -- so if anybody else was sitting in the car
6 would you still have that kind of suspicion
7 of that person too?

8 A. Yes, I would have. Actually, I
9 would have been if the person had been in a
10 running vehicle.

11 Q. So it's uncommon for people to have
12 a -- just sit in the car that is running, who
13 may want to wait for somebody to come out the
14 store without going in on a cold day and keep
15 warm?

16 A. That's not uncommon. However, it is
17 my job to observe everything that happens in
18 the store.

19 Q. Okay. So you pretty much were pre-
20 determined that someone was doing something
21 wrong when you went inside the store? You
22 automatically, you started looking for
23 someone ---

24 A. No, not at all. I mean ---

25 Q. You said you became suspicious ---

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1 A. Yeah.

2 THE COURT: Hold on a second. Let
3 him finish answering the question before you
4 ask another question.

5 DEFENDANT EDWARDS: All right.

6 CROSS-EXAMINATION CONTINUED

7 BY DEFENDANT EDWARDS:

8 Q. I'm sorry.

9 A. Not at all at first. I did become
10 suspicious, yes, however. My job is to
11 observe stuff throughout the store, whether
12 it be safety, security, theft, fraud, any of
13 that stuff. So when I see a vehicle rolling
14 outside -- I mean running outside of the gate
15 that I've had previous run-outs, I do tend to
16 walk the store. And I will got to my high
17 theft areas first and look and see if there's
18 suspicious activity going on.

19 Q. So you were already suspicious of
20 something going wrong. You said you became
21 suspicious because the car was running?

22 A. Yes, when you word it that way, yes.
23 But it wasn't necessarily because of the car
24 or the person in the car with the car
25 running. It was because of a running vehicle

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1 parked outside of a gate that has had known
2 rollouts.

3 DEFENDANT EDWARDS: Can I get
4 that -- get that out?

5 THE COURT: Can you erase the
6 circle that you wrote -- did on the screen?

7 WITNESS: Yes, sir, (clears
8 computer screen shown before jury).

9 THE COURT: Thank you.

10 CROSS-EXAMINATION CONTINUED

11 BY DEFENDANT EDWARDS:

12 Q. Okay. So you're saying that --
13 seeing where the car is parked, that
14 constitutes a suspicious activity, someone
15 sitting in a car? They're not like right up
16 on the side of the store waiting on somebody
17 to come run and jump in the car, they were
18 parked in a regular parking spot. If I can
19 recall ---

20 THE COURT: Mr. Edwards, you're
21 arguing now. You have to ask a question.
22 You can't just make statements now at this
23 point. Okay?

24 DEFENDANT EDWARDS: All right.

25 THE COURT: You'll have a chance

1 to make an argument in the closing arguments.

2 DEFENDANT EDWARDS: Yes, sir.

3 CROSS-EXAMINATION CONTNUED

4 BY DEFENDANT EDWARDS:

5 Q. Wasn't someone sitting in that black
6 truck, someone ---

7 A. It looked like an SUV?

8 Q. Yeah.

9 A. Yeah.

10 Q. Someone's sitting?

11 A. Yes, sir.

12 Q. Were you suspicious of that vehicle
13 also?

14 A. It wasn't running. At the time when
15 I pulled up from lunch, I didn't see that
16 vehicle pull up. I didn't see the white
17 Suzuki pull up. I seen the white Suzuki.
18 I seen the white Suzuki already sitting
19 there. I seen the black SUV sitting there.
20 And I seen the white car sitting there. The
21 only one that had exhaust coming out of the
22 car was the white Suzuki.

23 Q. And someone was still sitting in
24 that car that could have very well ---

25 A. I didn't notice anybody sitting in

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1 the black SUV. I only paid attention to the
2 vehicle where I seen the white smoke coming
3 from the exhaust.

4 Q. Okay. All right. So when you
5 entered the store you said that you walked to
6 the area of high theft/crime items?

7 A. By high theft, high refund items.

8 Q. High refund items. About how many
9 cameras does this Home Depot have?

10 WITNESS: If I may, Your Honor,
11 is that relevant?

12 THE COURT: You have to answer the
13 question unless there's an objection, yes,
14 sir. If you know the answer.

15 CROSS-EXAMINATION CONTINUED

16 BY DEFENDANT EDWARDS:

17 Q. How many cameras does this Home
18 Depot have?

19 A. I don't like to discuss cameras
20 because of my job. But, however, this store
21 has probably twenty-three, twenty-four
22 cameras.

23 Q. Twenty-three or twenty-four cameras?

24 A. Yes, sir.

25 Q. So out of twenty-four camera shots,

1 you don't have a photograph of the Defendant
2 carrying anything that belongs to Home Depot?

3 A. That is because we do not have a
4 hundred percent surveillance; however, I,
5 myself, am on the floor undercover made a
6 hundred percent observation, as my job, the
7 title did see you, sir, as a Defendant,
8 select and conceal a bottle of flooring
9 sealant.

10 Q. Okay. But you're just saying that
11 this is a commonly high theft refundable
12 item. You are in charge of loss prevention
13 to keep people from taking this item; right?

14 A. Yes, sir.

15 Q. Why wouldn't you have cameras
16 pointed to that item? Why wouldn't some type
17 of surveillance be on that item?

18 A. That's above my pay grade. The only
19 thing I can do is document it, mark the
20 flooring sealer bottoms. Like, for example,
21 that one on the table is marked too with the
22 store number on the bottom and track the
23 refunds.

24 Q. But you did say you installed the
25 camera in the back by the restroom; right?

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1 A. I'm sorry?

2 Q. Did you not install the camera in
3 the back by the restroom?

4 A. No, I did not.

5 Q. Okay. Okay, so ---

6 A. We did have the camera put up for
7 the timeclock.

8 Q. Okay.

9 A. But it wasn't my call. I don't make
10 that decision.

11 Q. Okay. From the area where the
12 restroom is, is it correct to say that the
13 restroom is located in the rear of the store,
14 like in the middle in the back?

15 A. Yes.

16 Q. So from that point up until the
17 garden area, you're saying that there is no
18 camera surveillance for any aisle in between?

19 A. No, there's not.

20 Q. Wow.

21 A. Yes. It sucks.

22 Q. I kind of find that hard to believe
23 so ---

24 THE COURT: No, sir. Refrain from
25 making your arguments, please. Just ask

1 questions.

2 CROSS-EXAMINATION CONTINUED

3 BY DEFENDANT EDWARDS:

4 Q. Did you recognize the female in the
5 car?

6 A. No, I did not.

7 Q. Did you get any facial images or
8 anything?

9 A. The only thing is when she was
10 pulling out, I seen the blackish toboggan/
11 scarf wrapped around her head. And as she
12 smiled, it looked like she was missing a
13 tooth or she had a big gap in her tooth.
14 That's all I could see.

15 Q. You testified that she had on a
16 black toboggan; right?

17 A. I testified that she had on a black
18 toboggan style scarf-type thing that wrapped
19 around her head.

20 Q. But the woman in the video had on a
21 gray hat?

22 A. Yes, I stated that.

23 Q. So isn't that kind off? It couldn't
24 have been the same person; right?

25 A. I'm not saying it is. I'm not

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1 saying it wasn't. But I also testified that
2 I did not recognize the female subject
3 returning the item.

4 Q. Okay. But you provided the video
5 for the prosecution in hopes that that video
6 is used to show that female was an
7 accomplice. You're saying she was the
8 getaway driver; right?

9 A. No. I provided that video because
10 I was asked to, to show the items that were
11 being returned in case it had any relevance
12 to what was going on with the situation.

13 Q. I mean, but how can you say that was
14 a -- I mean that -- I mean, how can you say
15 -- I mean, how can the police ask you for
16 that video when they don't know that that ---

17 THE COURT: I'm not going to allow
18 that question. You ask him how the police
19 could do something. He's not privy to that.
20 That's beyond his ---

21 DEFENDANT EDWARDS: He said the
22 police asked him ---

23 THE COURT: Sir, I'm not allowing
24 you, under 602 to ask that question because
25 it's beyond his knowledge. If you want to

1 establish how he would know what the police
2 would know, that's fine. But I'm not going
3 to allow you to ask that question.

4 DEFENDANT EDWARDS: All right.

5 THE COURT: Thank you, sir.

6 CROSS-EXAMINATION CONTINUED

7 BY DEFENDANT EDWARDS:

8 Q. What's the policy for detaining
9 shoplifters at Home Depot? Are you allowed
10 to physically put your hands on people?

11 A. Yes, we are.

12 Q. But are -- are you supposed to
13 identify yourself first and then put your
14 hands on them or can you just grab someone
15 and then identify yourself?

16 A. Actually, at the time we had to
17 identify ourselves first as we made our
18 approach. It doesn't state whether we put
19 our hand on them at the same time we identify
20 them -- identify ourselves or if we put our
21 hand on them afterwards.

22 Q. But you testified that you grabbed
23 the Defendant first, then identified
24 yourself?

25 A. Yes. I testified that I identified

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1 myself as I grabbed the Defendant. Yes.

2 DEFENDANT EDWARDS: May we
3 approach, Your Honor?

4 THE COURT: Yes, sir.

5 (OFF RECORD BENCH CONFERENCE)

6 THE COURT: Well, you can have it
7 marked so that you can ask him questions.
8 Yes, sir.

9 Hold on just a second. Let's give
10 Mr. Simpson a chance to retrieve what you've
11 asked for at the bench.

12 THE COURT: State's 7 for ID is a
13 bag containing a knife.

14 DEFENDANT EDWARDS: Correct, Your
15 Honor.

16 THE COURT: All right. It's not
17 introduced at this point. It's only for
18 identification only. But you can ask him
19 questions regarding that item.

20 CROSS-EXAMINATION CONTINUED

21 BY DEFENDANT EDWARDS:

22 Q. I understood you gave a detective a
23 statement of what had happened?

24 A. Yes, sir.

25 Q. This was about ten minutes after,

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1 would you say? About ten minutes after this

2 ---

3 A. Five or ten minutes, ten or fifteen
4 minutes, give or take.

5 DEFENDANT EDWARDS: Can I
6 introduce this into evidence?

7 SOLICITOR SIMPSON: No objection,
8 Your Honor.

9 THE COURT: Without objection.

10 SOLICITOR SIMPSON: Without
11 objection.

12 THE COURT: All right. It will be
13 Defendant's Exhibit 1.

14 COURT REPORTER: Is that the same
15 as ---

16 THE COURT: You want to introduce
17 that into evidence?

18 DEFENDANT EDWARDS: Yes.

19 THE COURT: Okay.

20 COURT REPORTER: Defendant's
21 Exhibit 1 for identification.

22 (SO MARKED AS DEFENDANT'S EXHIBIT 1)

23 THE COURT: And as I understand
24 you want to play that, sir?

25 DEFENDANT EDWARDS: Yeah. I want

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1 to play it.

2 THE COURT: So it's not just for
3 identification. Defendant is offering that
4 and it's without objection.

5 SOLICITOR SIMPSON: No objection.

6 THE COURT: Defendant's Exhibit 1
7 is admitted.

8 (SO ENTERED AS DEFENDANT'S EXHIBIT 1)

9 (DEFENDANT'S EXHIBIT NUMBER 1 PUBLISHED)

10 CROSS-EXAMINATION CONTINUED

11 BY DEFENDANT EDWARDS:

12 Q. All right. You stated that the
13 Defendant had a -- you called it a black-
14 handled knife and a black blade?

15 A. Actually, I stated that it appeared
16 to have black angle blade.

17 Q. Appeared to have a black handle and
18 a black blade.

19 A. Yes, sir.

20 Q. Can you look at State's Exhibit 7?

21 A. (Complies).

22 Q. Can you hold that up for the jury?

23 A. (Complies)

24 Q. Is that the weapon you say the
25 Defendant had?

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1 A. Actually, I don't recall.

2 Q. But you said you saw -- you said you
3 saw a black handled knife with a black blade?

4 A. No, I said it appeared to have a
5 black handle, black blade.

6 Q. What color is that?

7 A. That's silver and brown.

8 Q. Silver and brown?

9 A. Yes, sir.

10 Q. So is that the weapon you saw?

11 A. I can't say this is the one I saw,
12 no. The one that I thought I saw appeared to
13 have a black handle, black blade.

14 Q. So that's not the one you thought
15 you saw?

16 A. I don't know if it was or wasn't.
17 It happened so fast.

18 Q. Okay. Right here you said this is
19 where the alleged incident happened where the
20 Defendant allegedly pulled a black handled
21 knife with a black blade. You also stated
22 that you had to push him to disengage; right?

23 A. Yes, sir.

24 Q. Can you ---

25 DEFENDANT EDWARDS: Sir, could

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1 you roll back the DVD?

2 SOLICITOR: (Video playing).

3 DEFENDANT EDWARDS: You went too
4 far.

5 SOLICITOR: (Video playing) -- let
6 me know when.

7 DEFENDANT EDWARDS: Okay, stop.

8 CROSS EXAMINATION CONTINUED

9 BY MR. EDWARDS:

10 Q. Because it doesn't look like you
11 were pushing to disengage, right here.

12 A. (No verbal response).

13 Q. Okay. (Video playing), there's your
14 hand sticking out. Play it one more second,
15 (video playing). Didn't you disengage at
16 that point right there?

17 A. Probably a little bit there. A
18 little bit after. It's hard to tell at that
19 point. Those shadows are almost cut off.

20 Q. It doesn't look like a push?

21 A. I don't see no arm either.

22 Q. Exactly. But you said you had to
23 push the Defendant to disengage?

24 A. I did, but I can't testify to
25 something that's not there. I can't see no

1 arms. I can't -- it doesn't actually show me
2 pushing you on the video.

3 DEFENDANT EDWARDS: Can we go
4 back -- can we get a copy so that I can --

5 THE COURT: No, sir. You can do
6 it but you can't do it right now, Mr.
7 Edwards. The video speaks for itself.

8 DEFENDANT EDWARDS: Thank you,
9 Your Honor.

10 THE COURT: Thank you, sir.

11 CROSS-EXAMINATION CONTINUED

12 BY DEFENDANT EDWARDS:

13 Q. You said when you arrived at the
14 North Charleston Home Depot, you said you
15 identified the man as being me?

16 A. Yes, sir.

17 Q. But you said I had changed clothes?

18 A. Yes, sir.

19 Q. When, in fact, I actually -- those
20 were gray sweats that I had on, on the
21 camera. Not the blue jeans brought into
22 evidence.

23 A. (No verbal response).

24 Q. You also stated you couldn't ID the
25 woman; correct?

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1 A. Yes, sir.

2 DEFENDANT EDWARDS: Can I get
3 this into evidence?

4 (OFF RECORD DISCUSSION BETWEEN SOLICITOR
5 AND DEFENDANT EDWARDS)

6 SOLICITOR SIMPSON: May we
7 approach, Your Honor?

8 THE COURT: Yes.

9 (OFF RECORD BENCH CONFERENCE)

10 THE COURT: Just mark them. As
11 you've seen us do, you have to mark each
12 exhibit separately. And then you can go
13 through the process of trying to have it
14 introduced but you have to do certain things
15 under our Rules. I practiced law for twenty-
16 one years and I could probably tell you how
17 to do it, but once I put on this robe I am
18 prohibited from practicing law; so I can't
19 tell you what to do.

20 DEFENDANT EDWARDS: Okay.

21 THE COURT: Thank you for your
22 courtesy, Mr. Edwards. Thank you.

23 DEFENDANT EDWARDS: Thank you,
24 Your Honor.

25 COURT REPORTER: Defendant's

1 Exhibits Number 2 and Number 3 for
2 identification.

3 (SO MARKED AS DEFENDANT'S EXHIBIT 2)

4 (SO MARKED AS DEFENDANT'S EXHIBIT 3)

5 THE COURT: Okay. Thank you.
6 Defendant's 2 and 3 for ID.

7 CROSS-EXAMINATION CONTINUED

8 BY MR. EDWARDS:

9 Q. Were you aware that there were other
10 footage of the North Charleston store?

11 A. I'm sorry. Can you re-ask the
12 question?

13 Q. Were you aware that there were other
14 footage at the North Charleston Home Depot?

15 A. There is other video at the North
16 Charleston Home Depot. Yes, other cameras.
17 Yes.

18 Q. And this incident in the parking lot
19 was not caught on camera?

20 A. I never checked that video at all.
21 I wasn't asked to do that.

22 Q. Well, in the scope of your duties
23 you search and see all evidence pertaining to
24 any event?

25 A. Yeah, to any events that happened at

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1 the store that it happened at.

2 Q. But you didn't look for it?

3 A. There was no event at the North
4 Charleston store besides you in the parking
5 lot. But that's not a case for the North
6 Charleston store. So, therefore, I wasn't
7 asked to get the video from that store.

8 Q. Okay. But wouldn't that be helpful
9 to maintain -- to put somebody in the place?

10 A. Yes, I guess it could have been.

11 Q. But you didn't retrieve that video
12 and turn it over to the State?

13 A. No, I did not at the time.

14 Q. So you made that presumption on your
15 own that it wasn't relevant?

16 A. I didn't even think about it to make
17 a presumption.

18 Q. But you got the video from the West
19 Ashley parking lot?

20 A. Yes, because that's where the
21 incident happened.

22 Q. Okay. But it's a continuous event
23 theory; right?

24 A. Continuous event theory -- you mean?

25 Q. Yeah. I mean, to locate -- it was

1 still going on. You alerted the police to go
2 to North Charleston?

3 A. I told the police that it was
4 possible that the vehicle would end up in
5 North Charleston, yes.

6 Q. And you ended up coming to North
7 Charleston to identify someone?

8 A. Yes, sir.

9 Q. So wouldn't you think that all video
10 from the North Charleston parking lot should
11 be -- wouldn't you think that would be
12 relevant to this case too?

13 A. It could have been relevant, yes.

14 Q. But you didn't give it to the
15 prosecution?

16 A. No, I wasn't asked for it.

17 Q. But it's your job to provide all ---

18 THE COURT: No, sir. No, sir.
19 He's not the prosecutor. Now, I'm not going
20 to allow you to ask that question under
21 611(a). He's already identified he provided
22 what they asked for. That's all he's
23 required to do. Thank you, sir.

24 DEFENDANT EDWARDS: Okay.

25 THE COURT: He doesn't have a

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1 responsibility outside of that.

2 DEFENDANT EDWARDS: I'd like to
3 enter this.

4 SOLICITOR SIMPSON: The State
5 objects, Your Honor.

6 THE COURT: Okay. Have it marked
7 as -- Defendant's 4?

8 COURT REPORTER: So marked as
9 Defendant's Exhibit 4 for identification.

10 THE COURT: At this point we've
11 had two exhibits, Defendant's 2 and 3 that
12 are marked for identification only.

13 DEFENDANT EDWARDS: Okay.

14 THE COURT: Nothing's been
15 introduced at this point.

16 DEFENDANT EDWARDS: Okay.

17 (SO MARKED AS DEFENDANT'S EXHIBIT 4)

18 CROSS-EXAMINATION CONTINUED

19 BY DEFENDANT EDWARDS:

20 Q. Do you recognize that?

21 A. This is a Charleston Police
22 Department photo lineup with my signature on
23 it; yes, sir.

24 Q. Okay. And what does that say?

25 THE COURT: No, sir. He can't

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1 publish it until it's introduced.

2 WITNESS: It's ---

3 THE COURT: No, sir. Don't
4 publish it yet.

5 You'll have to move it into evidence
6 before he can tell you -- tell us what it
7 says.

8 DEFENDANT EDWARDS: Okay.

9 THE COURT: So do you want it
10 introduced?

11 DEFENDANT EDWARDS: Yes.

12 THE COURT: And you object?

13 SOLICITOR SIMPSON: No objection
14 to the defense exhibit.

15 THE COURT: Defense Exhibit 4?

16 COURT REPORTER: Defendant's
17 Exhibit 2.

18 THE COURT: What is the number on
19 that?

20 WITNESS: It's Number 2, Your
21 Honor.

22 THE COURT: Defendant's Exhibit 2
23 is admitted without objection.

24 (SO ENTERED AS DEFENDANT'S EXHIBIT 2)

25 THE COURT: Now, you can publish

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1 it.

2 DEFENDANT EDWARDS: Okay.

3 CROSS-EXAMINATION CONTINUED

4 BY DEFENDANT EDWARDS:

5 Q. Can you please tell me what that
6 says?

7 A. You want me to read the whole thing?

8 Q. Yes, sir.

9 A. (Reading): "Charleston Police
10 Department photo lineup admonition 1-13-14.
11 OCA#14-00147. Incident Robbery/HAN. Check
12 the box next to the identified photo. Have
13 the victim initial the photos checked as
14 identified."

15 It has a box and it's showing numbers one
16 through six going down a column. Then it
17 says read aloud -- "Read the following
18 paragraph aloud. I am going to show you a
19 group of photos. These photos may or may not
20 contain -- these photos may or may not
21 contain the picture of the person(s) who
22 committed the above listed offense which is
23 under investigation at this time. Keep in
24 mind that the photos may show a variance in
25 complexion, hair, eyes, facial hair,

1 *etcetera. If you recognize anyone in the*
2 *photos as the person or person who committed*
3 *the crime against you or you were a witness*
4 *to, I will ask you if you are positive in*
5 *your identification. I will then ask you to*
6 *sign and date the back of the photos" -- and*
7 *it stops.*

8 And it says, (reading): *"Upon receiving*
9 *these photos do not discuss the results or*
10 *this procedure with other victims or*
11 *witnesses."* Then it has my signature.

12 And then at the bottom it has "Victim/
13 Witness Name: Michael Smith, Jr."

14 Check one: "I was or was not able to
15 identify anyone in the photos listed." I
16 checked the "was not." And then it has my
17 signature. It has 1/13/2014.

18 Then at the bottom it say "Investigating
19 Officer notes one or three, ninety-nine
20 percent three." (Phonetic).

21 And then it's got the sticker for the
22 court to know this is evidence. And it says
23 Defendant Exhibit Number 2.

24 Then a Rule 5, 41 at the bottom.

25 Q. And you made this -- this photo

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1 lineup was in reference to -- that was in
2 reference to this young lady right here?

3 A. I don't know. I was shown a six by
4 six, six photos of one female where they all
5 looked similar.

6 Q. Okay. So it was only one female in
7 this incident; right?

8 A. There was six females on the photo
9 lineup.

10 Q. No. I'm saying in this alleged
11 incident there was only one female involved;
12 right?

13 A. Yes.

14 Q. And that was your reason for getting
15 this video to say that this female was the
16 alleged accomplice/getaway driver?

17 A. Well, if you want me to tell you the
18 truth without it being hearsay, this video
19 was requested because the items that are all
20 there on the video are marked with (Store
21 Number) 1118 and were returned at (Store
22 Number) 1103, right after this incident,
23 being on the counter is the flooring sealer
24 that I watched you conceal in your jacket.

25 Q. Okay. So it's safe to say that you

1 are saying this is -- she's my alleged co-
2 conspirator in crime?

3 A. I'm not saying she is. I'm not
4 saying she isn't. I do not know if she is.
5 I do not know if she isn't.

6 I do know that those items were marked
7 with the store number 1118. I do know that
8 those are -- have high retail, high refund
9 items. And I do know that that flooring
10 sealer is the exact same one that I watched
11 you conceal in your jacket.

12 DEFENDANT EDWARDS: Your Honor,
13 can I get him to answer yes or no?

14 THE COURT: No, sir. You can't.
15 He's entitled to -- he's answered you 'yes.'
16 And he's explaining the answer.

17 The question is -- and he's answered
18 your question thoroughly. And you've asked
19 that several times. So let's move on to
20 something else.

21 DEFENDANT EDWARDS: Okay.

22 CROSS-EXAMINATION CONTINUED

23 BY DEFENDANT EDWARDS:

24 Q. Okay. So that's the stolen
25 merchandise you're saying, on the counter?

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1 A. I've not ever said that that
2 merchandise was stolen or not. I know that
3 that merchandise was marked with 1118, which
4 means it came from store number 1118. I know
5 that that merchandise was being returned with
6 no receipt.

7 Q. I mean, what evidence do you have to
8 say that that's one eighteen (sic) on the
9 bottom of that. How can you say ---

10 A. Because when a cashier called me,
11 even though this is hearsay ---

12 Q. But ---

13 THE COURT: No, sir. He's asked
14 you the question. No, sir. You've asked the
15 question. Now he can answer your question
16 how he knew it. You may go ahead and explain
17 it.

18 CROSS-EXAMINATION CONTINUED

19 BY DEFENDANT EDWARDS:

20 Q. Go ahead. Please.

21 A. It's technically hearsay, but the
22 cashier that called me during the interview,
23 so I had to interrupt the interview, let me
24 know that there was several high-dollar items
25 being returned at 1103, which is the North

1 Charleston Home Depot, with 1118, which is
2 West Ashley Home Depot store number written
3 on the bottom.

4 If you'd like, you can lift that jug up
5 and you'll see how the store number is
6 written on the bottom.

7 Q. Also -- so is the store, Home Depot
8 allowed if this alleged stolen merchandise,
9 aren't they allowed to retrieve it?

10 A. Define your question, please.

11 Q. Okay. Someone's in possession of
12 stolen merchandise and you know about it. Is
13 your store not allowed to retrieve that item?

14 A. That cashier does not know whether
15 that merchandise is stolen or not.

16 Q. But didn't you -- so no one called
17 North Charleston to alert them that someone
18 might be coming there to return stolen
19 merchandise?

20 A. I did call North Charleston.

21 Q. So they were aware that someone
22 might be coming with stolen merchandise?

23 A. Yes. But that cashier is not at
24 liberty to apprehend somebody or detain
25 somebody or confiscate merchandise that she

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1 -- even if she knew it was stolen she's not
2 allowed to do anything with it. I would be
3 the only person to be allowed to do anything.

4 Q. So a manager -- so there's no one at
5 that store that's allowed to retrieve stolen
6 merchandise?

7 A. No. For example, the only person
8 trained is in asset protection. So somebody
9 that's trained to apprehend and detain
10 shoplifting or fraud, for any type of theft,
11 property crime or anything like that, as long
12 as you follow all the rules behind him.
13 Managers, associates, department heads, any
14 other associate in the store that doesn't
15 have this job title, is not trained for that.
16 Therefore, for liability reasons, they're
17 told not to do anything.

18 Q. So they just let stolen merchandise
19 walk out the door?

20 A. That's their policy. That's what
21 they have to do. That's better than a
22 lawsuit though.

23 DEFENDANT EDWARDS: At the time,
24 no further questions.

25 THE COURT: All right, sir.

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1

2 Redirect?

3

SOLICITOR SIMPSON: Thank you,

4

Your Honor.

5

REIRECT EXAMINATION

6

BY SOLICITOR SIMPSON:

7

Q. Just a few questions, Mr. Smith, to

8

follow-up. The Defendant asked you some

9

things about supposedly being unreasonably

10

suspicious. To some degree, being a little

11

suspicious is your job; is that correct?

12

A. Yes.

13

Q. And when you see a running car in

14

the parking lot, do you bust into your store

15

and detain everyone in there and overreact?

16

A. No, not at all.

17

Q. In fact, in this case did you detain

18

Gerald Edwards when you saw him by the floor

19

sealant?

20

A. No, I did not. I didn't ---

21

Q. And when you saw him concealing the

22

merchandise?

23

A. No, I did not.

24

Q. Did you, in fact, let him walk from

25

the store?

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1 A. Yes, I did.

2 Q. And what's the purpose of that?

3 A. To give them an opportunity to
4 present payment for the merchandise.

5 Q. Because you want to be sure before
6 you detain someone?

7 A. Yes.

8 Q. You mentioned the word "liability."
9 I'm sure ---

10 A. Yes.

11 Q. Can you get in trouble for wrongly
12 detaining someone?

13 A. Yes.

14 Q. Is safety of your employees --
15 you've worked for Home Depot for how long?

16 A. It'll be five years April 16th.

17 Q. Is employee safety a concern that
18 you consider in your job?

19 A. Yes, number one.

20 Q. Do you approve of cashiers, even if
21 they have suspicions to detain people?

22 A. I don't even want to talk about how
23 many times we've actually had to close
24 cashiers or fire them for running after a
25 shoplifter.

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1 Q. It's sort of instinctual thing to
2 do?

3 A. It's instinctual, yes. But,
4 therefore, if they are wrong, it could be a
5 lawsuit towards us. Or they're putting
6 themselves in danger by running out after
7 somebody and not being properly trained to
8 deal with the situation.

9 Q. Because somebody could pull a knife
10 on them?

11 A. Yes. A gun, a knife, a bomb,
12 anything.

13 Q. Are you here today to try to hide
14 anything?

15 A. No, I'm not.

16 Q. Where did this incident take place?

17 A. The West Ashley Home Depot.

18 Q. Did you review all the West Ashley
19 video?

20 A. Yes, I did.

21 Q. Did you provide to the police and
22 the prosecution all of the videos that showed
23 your interactions with Mr. Edwards and Mr.
24 Edwards' interaction with the ---

25 A. Yes, I did.

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1 Q. As it applies to the -- just be
2 honest, be totally up front as you have been.
3 As it applies to the North Charleston store,
4 there's a lot of video capability up there
5 too?

6 A. Yes.

7 Q. Is there a high probability that
8 maybe a camera up there caught the parking
9 lot arrest of Gerald Edwards?

10 A. It's possible that if I would have
11 seen the video at the time, it would have.
12 However, there is a blind spot in the middle
13 of that parking lot. Therefore, by not
14 reviewing the video I cannot state whether
15 there was video of it or not.

16 Q. But there is some parking lot video?

17 A. Yes, there is.

18 Q. Possible that it captured that?

19 A. Possibly.

20 Q. You were asked when this happened to
21 get what video footage?

22 A. Just the of the return.

23 Q. At any time did I or the Defense
24 through an attorney request more video from
25 North Charleston?

1 A. Yes, you did at a later date.

2 Q. How did you respond to that request?

3 A. Well, I told you that, 'I'll give
4 you a call back. I'll go to the store right
5 now to try to get it.'

6 Q. And did you go after that phone call
7 directly to the North Charleston store?

8 A. Yes. I actually left my house after
9 that phone call to go and work on my day off.

10 Q. And what was your purpose of going
11 to the North Charleston store?

12 A. To get video of the parking lot to
13 show you where the photo lineup was taking
14 place.

15 Q. Okay. And were you able to recover
16 that?

17 A. No, I was not.

18 Q. Had a substantial amount of time
19 passed between the incident and you going to
20 try to get that?

21 A. Yes, it did.

22 Q. Did you have any hesitation or
23 reluctance in getting that video?

24 A. No, I did not.

25 Q. Okay. Are videos purged routinely

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1 from the system?

2 A. They're not purged. We do not purge
3 or delete any of our videos. However, some
4 stores will have six months; some stores will
5 have a year. North Charleston, in
6 particular, still has an older DVR which only
7 holds about four to four and a half month's
8 video.

9 Q. And when the four and a half months
10 goes, what happens?

11 A. It goes right back over itself and
12 starts over.

13 Q. Rerecords?

14 A. (Affirmative nod).

15 Q. Okay. The defense introduced
16 something, a document that you signed?

17 A. Yes.

18 Q. When I asked you on direct were you
19 able to ever identify the female, what was
20 your response?

21 A. Just the black toboggan scarf thing
22 I seen wrapped around her when she was
23 sitting in the car.

24 Q. But you were up front. You weren't
25 ever able to figure out who that person was?

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1 A. No, I was not. I'd love to figure
2 out who it was, but I couldn't.

3 SOLICITOR SIMPSON: May I
4 approach, Your Honor, briefly.

5 THE COURT: Yes.

6 REDIRECT EXAMINATION CONTINUED

7 BY SOLICITOR SIMPSON:

8 Q. Just so no one is confused, this
9 Defense Exhibit 2, this doesn't apply to
10 anything having to do with your identifica-
11 tion of Gerald Edwards?

12 A. No, it does not.

13 Q. This involves your attempts at a
14 female?

15 A. Yes.

16 Q. So you were shown a six pack of six
17 females?

18 A. Actually, that paper doesn't even
19 state whether it was for a female or not.

20 Q. Well, do you have knowledge today?

21 A. Yes.

22 Q. It was for the female?

23 A. Yes.

24 Q. Okay. So when you say, you know,
25 marking number one or number three, you're

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1 not talking about Gerald Edwards?

2 A. I actually don't recall saying that.
3 I remember saying that, you know, I can't be
4 hundred percent sure.

5 Q. That's interesting. Are you careful
6 when you make identifications?

7 A. Yes. When I make identifications,
8 I base it on all the facts that I do have.
9 I won't even stop somebody for shoplifting
10 unless I'm a hundred percent sure that
11 they've got the merchandise concealed on
12 their person.

13 Q. And you want -- you wanted to catch
14 this female; correct?

15 A. To be honest, I really don't care
16 about the female because she didn't come into
17 the store. She didn't steal. She's the
18 getaway driver. So being, you know, she was
19 not the focus of our apprehension.

20 Q. Okay.

21 A. So to me that's all she was, was the
22 getaway driver. I'm mainly like after the
23 people that are actually stealing the stuff.

24 Q. Okay. But nevertheless, when asked
25 to just pick someone from six people you said

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1 'sorry, I can't do it.'

2 A. Yeah. I mean, I'm not going to
3 guess.

4 Q. The defense introduced an interview
5 with you that we listened to; correct?

6 A. Yes.

7 Q. When we were preparing for trial --
8 are you aware that we're here just for this
9 incident, that you're not supposed to talk
10 about prior incidents?

11 A. Are you -- I mean, now I am.

12 Q. When you were asked about that
13 Suzuki though, in the evidence that the
14 Defense admitted, did that Suzuki draw its
15 attention to you?

16 A. It did. Like right then and there
17 when I first seen, it didn't at first. But,
18 you know, after the incident it clicked in my
19 head. And I actually had a report where
20 cashiers and managers ---

21 Q. Let's just keep it --

22 A. I had had some ---

23 Q. Were you interested in that Suzuki?

24 A. I had an incident a while back that
25 involved a white four-door Suzuki, tag number

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1 unknown.

2 Q. Okay. So when we talk about these
3 suspicions and trying to make it sound like
4 they're bad things, you have every reason to
5 just do your job and go look at the high-
6 theft items?

7 A. Yes, sir.

8 SOLICITOR SIMPSON: Court's
9 indulgence.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SIMPSON:

13 Q. Did you ever lose visual contact
14 with Mr. Edwards between the time you
15 observed him at the floor sealant until the
16 time he walked out?

17 A. From the time that I observed him
18 select the floor sealant to the time he
19 walked, I did not lose any observation of Mr.
20 Edwards.

21 SOLICITOR SIMPSON: Nothing
22 further, Your Honor.

23 THE COURT: Recross?

24 DEFENDANT EDWARDS: Yes.

25 RECROSS EXAMINATION

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1 BY DEFENDANT EDWARDS:

2 Q. When you walked into the store, was
3 the Defendant doing anything suspicious?

4 A. When I walked into the store, as
5 soon as I entered the store or after I was
6 observing ---

7 Q. As soon as you entered the store and
8 you saw me, you made visual contact with the
9 Defendant, was he doing anything suspicious?

10 A. He was standing beside hundreds and
11 hundreds of dollars worth of flooring
12 sealant.

13 Q. So that's suspicious?

14 A. It's not suspicious but my job is to
15 observe things throughout the store.

16 Q. So what made you follow the
17 Defendant? What gave you the inclination
18 that 'he's up to something'?

19 A. Because he selected a hundred
20 dollar, almost a hundred dollar bottle of
21 flooring sealer that I've been losing like
22 crazy.

23 Q. So you're telling me that's a crime,
24 for a black male to select a hundred dollar
25 floor sealant? That's suspicious?

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1 A. I'm not saying that's ---

2 Q. What you're saying is he was
3 standing next to hundreds of dollars worth of
4 floor sealant and he selected one. So ---

5 A. Is that a question or ---

6 THE COURT: Wait just a second.
7 Mr. Smith, don't interrupt.

8 State your question and ask them one
9 at a time, Mr. Edwards, so he can know which
10 one to answer.

11 DEFENDANT EDWARDS: Okay.

12 RECROSS EXAMINATION CONTINUED

13 BY DEFENDANT EDWARDS:

14 Q. Okay. So you're saying okay, the
15 fact that he was standing next to hundreds of
16 dollars worth of floor sealant. He selects
17 one. So that makes him suspicious?

18 A. No, that does not make him
19 suspicious.

20 Q. But you followed him because ---

21 A. I followed him because he selected a
22 bottle of floor sealant that I have been
23 losing. I would have followed anybody
24 whether it be an old white woman, an old
25 black woman, an old Spanish woman, it don't

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1 matter.

2 Q. So it's safe to say anybody that
3 grabbed that floor sealant you would have
4 followed them and suspected them of trying to
5 steal it?

6 A. Yes, sir, I would. I wouldn't have
7 suspected them of trying to steal it, but I
8 would have followed them.

9 Q. Have you ever falsely accused anyone
10 before?

11 A. Well, -- define what you mean? Like
12 as in apprehending someone ---

13 Q. Yeah. Have you ever falsely accused
14 somebody of trying to shoplift and then found
15 out later that they didn't?

16 A. Yes. When first got hired I did
17 make a bad stop.

18 Q. You did?

19 A. Yes, I did.

20 Q. Was that here?

21 A. No, it was not here.

22 Q. Where was it?

23 A. This was four, four and a half years
24 ago, when I was brand new, just learning what
25 the business was.

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1 Q. So you're subject to make mistakes?

2 A. I'm human.

3 Q. Okay. After this alleged incident,
4 you also identified me to someone else; did
5 you not?

6 A. Yes, I did.

7 DEFENDANT EDWARDS: I'd like to
8 move into evidence these.

9 THE COURT: One second, sir.

10 SOLICITOR SIMPSON: No objection,
11 Your Honor.

12 THE COURT: You don't object.
13 It's recross.

14 SOLICITOR SIMPSON: No, sir.

15 THE COURT: It needs to be marked
16 separately. What are these -- new items?

17 DEFENDANT EDWARDS: Yeah.

18 COURT REPORTER: Defendant's
19 Exhibits 5 and 6 for identification.

20 (SO MARKED AS DEFENDANT'S EXHIBIT 5)

21 (SO MARKED AS DEFENDANTS EXHIBIT 6)

22 THE COURT: Right. Defendant's 5
23 and 6 for ID only at this point.

24 CROSS-EXAMINATION CONTINUED

25 BY DEFENDANT EDWARDS:

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1 Q. Will you please read ---

2 THE COURT: No, sir. First you
3 have to have it, introduce it. What did you
4 just show him, Defendant's 5 or 6?

5 DEFENDANT EDWARDS: That's
6 Defendant's 6.

7 THE COURT: All right. Well, have
8 him identify it. He doesn't need to read it
9 because the jury's going to have.

10 DEFENDANT EDWARDS: All right.

11 THE COURT: I mean, you're welcome
12 to have him publish certain portions of it
13 but anything that's introduced, it goes to
14 the jury so they can read it.

15 DEFENDANT EDWARDS: Okay.

16 THE COURT: Okay.

17 RECROSS EXAMINATION CONTINUED

18 BY DEFENDANT EDWARDS:

19 Q. Can you identify that?

20 A. Yes. This is a half a page of a
21 case report from our Home Depot system.

22 THE COURT: Okay. And you want
23 that introduced?

24 DEFENDANT EDWARDS: Yes.

25 THE COURT: Without objection.

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1 It's admitted. Okay.

2 (SO ENTERED AS DEFENDANT'S EXHIBIT 6)

3 RECROSS EXAMINATION CONTINUED

4 BY DEFENDANT EDWARDS:

5 Q. On that affidavit, ---

6 DEFENDANT EDWARDS: Your Honor,
7 can he -- I would like for him to please read
8 that.

9 THE COURT: The whole thing?

10 DEFENDANT EDWARDS: Yes, sir.

11 THE COURT: But you don't need to
12 read the whole thing.

13 DEFENDANT EDWARDS: It's not that
14 long.

15 THE COURT: All right. I mean,
16 we're talking about their time. They're
17 going to be able to read it themselves, but
18 you go ahead and publish it.

19 DEFENDANT EDWARDS: Okay.

20 RECROSS EXAMINATION CONTINUED

21 BY DEFENDANT EDWARDS:

22 Q. If you'd read it.

23 A. This has got my initials on it.
24 It's one of my incident reports. It's an
25 incident involved on December 2nd, 2013. It

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1 states that, (reading): "I, Asset Protection
2 Specialist Michael Smith observed a black
3 male subject..." ---

4 THE COURT: Slow down. The jury
5 needs to be able to understand what you're
6 saying.

7 WITNESS: (Reading): "...a black
8 male subject later identified as Tracy
9 Stinson..." -- However, I must note that at a
10 later date this was changed -- "...wearing a
11 black coat, black, hat selecting multiple
12 items in the tool corral and proceeded to the
13 back of the store. Four of the items I could
14 identify as a Bosch multi-tool blades that
15 were valued at twenty-four ninety-seven, USD
16 each. Other items I identified as Diablo
17 router bits, quantity and prices unknown at
18 the time. Once in the millwork aisle I
19 observed..." -- it still states Stinson
20 "...wrapped items in tinfoil and placed them in
21 the left side of his coat. Stinson then
22 proceeded to the front of the store and
23 exited through the contractor exit without
24 rendering any payment for the merchandise
25 that was on his person. Once past all points

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1 of sale, I made my approach and identified
2 myself both verbally and with my Home Depot-
3 issued ID badge as Home Depot Asset
4 Protection. Stinson began to walk faster
5 into the parking lot. And at this point I
6 disengaged and notified law enforcement
7 giving them all the info I could from a safe
8 distance in the parking lot. Officer T.
9 Graves arrived and took my report. I
10 notified North Charleston Home Depot of the
11 incident and gave them the info to call me if
12 anybody returns the same merchandise and is
13 in a gold four-door car with North Carolina
14 tags. About twenty minutes later North
15 Charleston Home Depot called me with a
16 driver's license number and stated that a
17 black male matching the same description,
18 vehicle, and merchandise just returned it
19 here. I then gave the info to Officer Graves
20 and put it together with the other returns
21 done by the same person known as Tracy
22 Stinson. Officer Graves stated that she
23 would go get the warrant for his arrest and a
24 detective would be in touch to follow-up
25 because Stinson and the group he was with

1 *have multiple return histories in the Home*
2 *Depot and multiple larceny and shoplifting*
3 *charges. Charleston City Police case number*
4 *was 13-105554."*

5 Q. Now, someone was identified as Tracy
6 Stinson. A guy used his ID; is that right?

7 A. Yes, sir.

8 Q. He uses his South Carolina Driver's
9 License?

10 A. A North Carolina drivers license,
11 yes.

12 Q. Well, he used a driver's license?

13 A. Yes.

14 Q. So he was identified as the
15 perpetrator of this ---

16 A. He was identified as the person that
17 did the return. That's actually an incident
18 report, which means as soon as something
19 happens I put that in the system. That can
20 be changed after all the facts are gathered
21 and I put it in as a case.

22 Q. But ---

23 A. So at this time Tracy Stinson was
24 the only name that I had on him.

25 Q. Okay. But he uses the ID and was

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1 identified by matching the description that
2 you gave them?

3 A. I did not identify a Tracy Stinson.

4 Q. On this paper it said that Tracy
5 Stinson was identified as the person.

6 A. Yes.

7 Q. That he was identified ----

8 THE COURT: You're arguing with
9 him now. It speaks for itself. Let's move
10 on.

11 DEFENDANT EDWARDS: Okay.

12 THE COURT: Let's move on, please.
13 Approach, please.

14 (OFF RECORD BENCH CONFERENCE)

15 CROSS-EXAMINATION CONTINUED

16 BY DEFENDANT EDWARDS:

17 Q. This is Number 5, do you recognize
18 that?

19 A. Yes, I do.

20 DEFENDANT EDWARDS: I'd like to
21 introduce this.

22 THE COURT: Any objection?

23 SOLICITOR SIMPSON: Yes, Your
24 Honor. If this is what I think it is.

25 THE COURT: Well, what's the

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1 objection?

2 SOLICITOR SIMPSON: Your Honor,
3 this is a document prepared by someone else
4 or involving an ID of someone else. So
5 there's no relevance to this.

6 THE COURT: Well, this witness
7 didn't prepare this document?

8 DEFENDANT EDWARDS: Huh?

9 THE COURT: Did this witness
10 prepare this document?

11 DEFENDANT EDWARDS: He's the one.
12 He's the ---

13 THE COURT: I'm asking if this
14 witness prepared the document?

15 DEFENDANT EDWARDS: No, the
16 police department.

17 THE COURT: You can't introduce
18 something that somebody else prepared through
19 this witness. You'll have to call that
20 person.

21 WITNESS: I don't recognize it.

22 THE COURT: All right. So that's
23 Defendant 5 is for ID only at this point.

24 It's not admitted. Sustain the objection.

25 DEFENDANT EDWARDS: All right.

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1 No more questions.

2 THE COURT: All right. Thank you,
3 sir. You may come down.

4 SOLICITOR SIMPSON: Your Honor,
5 I'm sorry. There's one piece of evidence I'd
6 like to ask a few follow-up questions on.

7 THE COURT: No, sir.

8 SOLICITOR SIMPSON: A new piece
9 of evidence was admitted.

10 THE COURT: No, sir. Sorry.
11 That's where objections come in.

12 SOLICITOR SIMPSON: Okay.

13 THE COURT: That's why I said it's
14 recross. Thank you. You may come down.

15 WITNESS: Thank you, Your Honor.

16 (WITNESS STEPS DOWN)

17 THE COURT: All right. Ladies and
18 gentlemen, at this point we'll take our
19 recess for the evening. Please remember that
20 you are not at liberty to discuss this case
21 among yourselves or with anyone outside.
22 You're not allowed to do any independent
23 research. When you go home tonight if
24 there's somebody there, I would imagine the
25 first thing's going to be, 'what are you

1 doing, what's the case about?' And there'll
2 be a natural tendency to want to answer that
3 question. If you do, you will violate the
4 oath. You will have started your individual,
5 basically deciding this case, your individual
6 deliberation. We'll finish this case
7 probably tomorrow. And then if you want to
8 talk about it, you'll be free to do so. But
9 until you're excused from this case do not
10 talk with anyone about it.

11 I'm going to ask you to return -- I
12 have some matters scheduled in the morning
13 that are not related to this case at all, but
14 we've scheduled them in advance for some
15 other things. You'll get a little bit later
16 start. I ask you to be here please by 10:00
17 in the morning. Have a good evening. Come
18 directly to your jury room. No need to call
19 the number tonight, but that doesn't apply to
20 you. Thank you.

21 (JURY OUT)

22 THE COURT: All right. Anything
23 from the State before we recess?

24 SOLICITOR SIMPSON: No, Your
25 Honor.

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1 THE COURT: Anything from
2 Defendant?

3 DEFENDANT EDWARDS: No, Your
4 Honor.

5 THE COURT: All right. Mr.
6 Edwards, just let me sort of -- the document,
7 for instance, that you had shown, the reason
8 the objection was, just for your information
9 for future purposes, the person who prepared
10 the document, assuming there's not another
11 objection, that's the party that has to
12 present it. It may reference in, it may
13 reference something he was involved in but
14 unless he prepared that particular document,
15 it would be basically -- as you've objected,
16 it's hearsay. It's somebody else's work,
17 okay. Thank you, sir.

18 DEFENDANT EDWARDS: Thank you.

19 THE COURT: You bet.

20 All right. We'll be at-ease until
21 10:00 in the morning.

22 (COURT IN RECESS)

23 (TRANSCRIPT CONTINUED NEXT PAGE)

24

25

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1

2

3

FEBRUARY 10, 2015

10:15 A.M.

4

5

(DEFENDANT PRESENT)

6

THE COURT: Okay. Let's bring the

7

jury in.

8

(JURY IN @ 10:15 A.M.)

9

BAILIFF: All jurors are

10

present, Your Honor.

11

THE COURT: Thank you very much.

12

Good morning ladies and gentlemen. We're

13

ready to continue this matter. Please give

14

your attention now to the next witness and if

15

you'll call your next witness -- good morning

16

-- in this case.

17

SOLICITOR SIMPSON: Good morning,

18

Your Honor. The State calls James Roberts.

19

THE COURT: Okay.

20

(WITNESS TAKES STAND)

21

JAMES ROBERTS, having been duly sworn to

22

tell the truth, and nothing but the truth,

23

testified as follows:

24

DIRECT EXAMINATION

25

BY SOLICITOR SIMPSON:

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Testimony of James Roberts - Direct Examination

1 Q. Officer Roberts, good morning.

2 A. Good morning.

3 Q. Where are you employed?

4 A. The City of North Charleston Police
5 Department.

6 Q. And how long have you been with that
7 agency?

8 A. Twenty-five years.

9 Q. And what's your current job at the
10 North Charleston Police Department?

11 A. I'm assigned to the patrol division
12 as a patrol officer.

13 Q. And what rank have you obtained at
14 North Charleston Police Department?

15 A. I retired in 2012 as a lieutenant
16 and I returned within weeks as a patrol
17 officer, to go back on the road.

18 Q. And for those not familiar would
19 lieutenant, is that a pretty high-ranking
20 officer?

21 A. It's middle management.

22 Q. So in January of 2014, what was your
23 job with North Charleston?

24 A. I was a day-shift officer in the
25 Patrol division.

1 Q. Okay. Did you have occasion in
2 January of 2014 to respond to the Home Depot
3 in North Charleston?

4 A. I did.

5 Q. And if you could, just describe to
6 the jury the nature of your response to that
7 location?

8 A. I received a radio call. I was
9 dispatched to that location in reference to
10 an individual that was on scene that had been
11 involved in a crime at the Home Depot in West
12 Ashley.

13 Q. And in the course of your response,
14 were you apprised of the nature of the
15 offense he was alleged to have done?

16 A. I wasn't. I got more information as
17 I arrived on scene and met with the
18 complainant.

19 Q. And when you said you met with the
20 complainant, who was the individual you met
21 with?

22 A. I met with an individual named Mr.
23 Hoffman and I believe he was a manager of
24 that Home Depot. And he provided me more
25 information in regards to why I was there.

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1 Q. And is he the manager of that North
2 Charleston Store?

3 A. I'm not sure exactly what his
4 position was, but he did identify himself as
5 a manager.

6 Q. And in the course of this initial
7 response were you ever made aware that there
8 was alleged to be a knife involved in this?

9 A. Correct. Mr. Hoffman indicated that
10 an individual was involved in a theft, a
11 theft at the West Ashley Home Depot. And he
12 stated that as an employee at the Home Depot
13 attempted to intervene, an individual that
14 was committing the theft had pulled a knife
15 on him.

16 Q. And were you made aware of any
17 particular vehicles or subjects that were of
18 interest to any other agencies?

19 A. Mr. Hoffman indicated that there was
20 a white Suzuki in the parking lot, and the
21 individual that was involved in the theft in
22 West Ashley was inside the vehicle in their
23 parking lot there in North Charleston.

24 Q. Let's pause for a second. Is the
25 West Ashley Home Depot in your jurisdiction?

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Testimony of James Roberts - Direct Examination

1 A. It is not. It's the City of
2 Charleston's jurisdiction.

3 Q. And is the North Charleston Home
4 Depot in your jurisdiction?

5 A. Correct.

6 Q. To the best of your knowledge are
7 both those jurisdictions within Charleston
8 County?

9 A. They are.

10 Q. Is it unusual in your twenty-plus
11 years of experience for one agency to assist
12 another in the manner that you did in this
13 case?

14 A. It is not.

15 Q. You guys help each other out when
16 you can?

17 A. Of course.

18 Q. So you were provided with a vehicle
19 suspect of interest when you arrived?

20 A. Yes, sir.

21 Q. And how did you proceed from that
22 point?

23 A. I inquired as to where the vehicle
24 was located in the parking lot. Mr. Hoffman
25 pointed actually to the center of the parking

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Testimony of James Roberts - Direct Examination

1 lot. I then started to drive my vehicle into
2 that area and I observed a white Suzuki with
3 an individual seated on the passenger side of
4 the vehicle.

5 Q. And did you approach that vehicle?

6 A. I did. I stopped my vehicle. I
7 approached. I made verbal contact with the
8 individual. I believe I was speaking to him
9 through an open window. I advised him that
10 he was suspected of being involved in a crime
11 in West Ashley at the West Ashley Home Depot
12 that the City of Charleston Police Department
13 wanted to speak to him about his involvement.

14 Q. Was he cooperative with you?

15 A. He was.

16 Q. Did he fight in any way?

17 A. He did not.

18 Q. And you say this conversation is
19 happening through an open window?

20 A. Correct.

21 Q. And how did he proceed after you
22 shared your reason for being there with that
23 individual?

24 A. I requested his identification,
25 which he provided to me. It was a South

1 Carolina ID card. I then asked him to exit
2 the vehicle because I wanted to check him for
3 weapons, since I knew a knife was involved in
4 the incident.

5 Q. And -- I'm sorry to interrupt. What
6 is the purpose of checking a person for
7 weapons?

8 A. I wanted to make sure he was
9 unarmed. To be sure I don't have to deal
10 with somebody who's armed.

11 Q. And is that for your safety?

12 A. Correct.

13 Q. And how did you proceed?

14 A. I had him step from the vehicle.
15 When he stepped from the vehicle, I conducted
16 what we called a Terry pat. And basically a
17 pat down to check for weapons on him.

18 Q. And during that pat down, did you
19 notice any weapons?

20 A. I did not detect any weapons on him.

21 Q. How did this interview proceed from
22 there? Did you observe anything else while
23 this process was going on?

24 A. When he was stepping from the
25 vehicle, I noticed some movement that, I

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1 guess the best way to describe it, it looked
2 like something slid down from where his right
3 leg was inside the vehicle, when he exited.
4 I couldn't really tell what it was, but when
5 he completely removed himself from the
6 vehicle, up on the floorboard I saw a folded
7 knife on the floorboard of the vehicle.

8 SOLICITOR SIMPSON: Your Honor,
9 may myself and Mr. Edwards approach briefly?

10 THE COURT: Sure.

11 (OFF RECORD BENCH CONFERENCE)

12 THE COURT: You may proceed.
13 Thank you very much, sir. Thank you, Mr.
14 Edwards.

15 DIRECT EXAMINATION CONTINUED

16 BY SOLICITOR SIMPSON:

17 Q. So, if you could to get us back on
18 track. As Mr. Edwards stepped from the
19 vehicle, you observed what again?

20 A. I noticed movement. I saw something
21 move down basically where his left leg was,
22 kind of the mid-calf area, it kind of slid
23 down, slid onto the floorboard. And when he
24 completely removed himself from the vehicle,
25 I could see there was a folding knife on the

1 floorboard where he was seated.

2 Q. Now, when you noticed the knife, did
3 you take Mr. Edwards to the ground?

4 A. I did not.

5 Q. Did you physically restrain him
6 right at that point in any way?

7 A. No, sir.

8 Q. Was he being cooperative?

9 A. He was.

10 Q. Okay. And so what did you do with
11 the knife?

12 A. After I completed my pat down, I had
13 Mr. Edwards move to the front of the vehicle
14 so I could reach down into the vehicle and
15 secure the knife off of the floorboard while
16 viewing Mr. Edwards through the windshield of
17 the vehicle as I reached into it.

18 Q. Okay. You mentioned Mr. Edwards.
19 This individual you were interacting with, is
20 he present in the courtroom today?

21 A. He is.

22 Q. Are you confident that the person
23 you see in the courtroom is the person you
24 interacted with?

25 A. Yes, sir.

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Testimony of James Roberts - Direct Examination

1 SOLICITOR SIMPSON: Your Honor,
2 may I approach?

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION CONTINUED

5 BY SOLICITOR SIMPSON:

6 Q. Sir, I'm showing you what's been
7 marked for ID only as State's Exhibit 7.
8 Would you take a moment to look ???

9 A. (Complies)

10 Q. Do you recognize that knife?

11 A. I do. That's the knife I removed
12 out of the vehicle.

13 SOLICITOR SIMPSON: Your Honor,
14 at this point the State would seek to admit
15 State's 7.

16 THE COURT: Is there any
17 objection?

18 DEFENDANT EDWARDS: No objection.

19 THE COURT: Without objection
20 State's -- what's the number?

21 SOLICITOR SIMPSON: 7, Your
22 Honor.

23 THE COURT: State's 7 is admitted.
24 A package containing a knife. A bag
25 containing a knife.

1 (SO ENTERED AS STATE'S EXHIBIT 7)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR SIMPSON:

4 Q. Following your securing of that
5 weapon, how did this interaction continue?

6 A. I advised Mr. Edwards that he wasn't
7 under arrest but he was being detained, that
8 he wasn't free to leave. I had placed him in
9 the rear of the vehicle that I was operating.
10 And I advised my communications center that I
11 had this individual detained and to advise
12 the City of Charleston that I had him
13 detained.

14 Q. And did the City of Charleston
15 Police Department respond to your location?

16 A. They did.

17 Q. And to your knowledge, from your
18 observation and your knowledge of basic
19 police work, what procedure -- once the City
20 of Charleston ---

21 A. When I saw them arrive on the scene,
22 I made contact with them initially. I asked
23 them how they wanted to see him, if they were
24 going to show up. And they indicated that
25 they were. And at that point I removed Mr.

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1 Edwards from the back of my vehicle. He
2 stood there for a few moments, then he was
3 placed back inside the vehicle. And I was
4 advised that he was identified as the
5 individual from the West Ashley Home Depot.

6 Q. So you weren't in the vehicle with
7 the person identifying Mr. Edwards?

8 A. I was not.

9 Q. But you saw the position of that
10 vehicle vis-à-vis your vehicle with Mr.
11 Edwards?

12 A. Yes, sir.

13 Q. Did that person have a clear
14 unobstructed view of Mr. Edwards?

15 A. Yes, sir.

16 Q. What time of day again was this?

17 A. It was probably about 2:30 in the
18 afternoon.

19 Q. Okay. The sun was out?

20 A. The sun was out.

21 Q. And nothing in between the person
22 and the car with Mr. Edwards?

23 A. No, sir.

24 Q. You said you took him out for a few
25 moments. Is it fair to say this was a pretty

1 quick identification?

2 A. I would say reasonably so. It was
3 probably less than a few minutes.

4 Q. Okay. How did your involvement in
5 this proceed at that point?

6 A. I then provided the identification
7 and the knife to the City of Charleston
8 Officers and left. Mr. Edwards, he was
9 basically transferred to them and they
10 restrained him and placed him into their
11 vehicle. And I departed the scene.

12 Q. So what's been as State's 7 was
13 provided to CPD?

14 A. Correct.

15 Q. And Mr. Edwards was handed over to
16 them?

17 A. Correct.

18 Q. This is their case; correct?

19 A. Yes, sir.

20 Q. Thank you so much for your time,
21 Officer Roberts. Please answer any questions
22 that Mr. Edwards has for you.

23 A. Okay.

24 THE COURT: You may cross-examine,
25 Mr. Edwards.

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Testimony of James Roberts - Cross Examination

CROSS-EXAMINATION

1
2 BY DEFENDANT EDWARDS:

3 Q. Good morning.

4 A. Good morning, sir.

5 Q. I only got a couple of questions for
6 you. What's the policy for doing a show up
7 in North Charleston?

8 A. You talking about then or do you
9 want any current policy or just the ---

10 Q. I want to know are you supposed to
11 record it?

12 A. If I was the administrating officer,
13 I would record it. And the administrating
14 officer is the officer that has the witness
15 inside the vehicle. And if you are
16 administrating officer, you're only required
17 to record if your vehicle was equipped with a
18 recording device.

19 Q. It's your impression ---

20 A. Yes.

21 Q. --- you should record ---

22 A. Yes, sir.

23 Q. Anything that you're involved with,
24 you don't think that you should have recorded
25 that?

1 A. No, sir. Because administrating
2 officer, as I explained, has the witness
3 inside of her vehicle. And the desire to
4 record is to record interaction between the
5 officer and the witness. And also so she
6 could show the viewpoint of the witness
7 themselves, which, of course, I wasn't
8 involved it. I didn't have the witness with
9 me, nor was I in a position to have my
10 vehicle where a viewpoint of the witness
11 would be recorded.

12 Q. Does your car, did it have a camera?

13 A. Yes, sir.

14 Q. Would it have been unreasonable for
15 you to position it so that you could record?

16 A. It would have. Because if you
17 recall, I was facing east, and the City of
18 Charleston Officer actually approached from
19 the west, from the rear of my vehicle. And
20 when I removed you from the back of the
21 vehicle, you were facing to the rear of my
22 vehicle. And my camera was in the front and
23 it would have been recording in the opposite
24 direction and it wouldn't have had any audio
25 from the witness nor would it have a

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1 viewpoint from the witness.

2 Q. I mean, there in the parking lot, it
3 wouldn't have taken a matter of seconds for
4 my car to back up and come around to the
5 front. I mean, it's not that -- it wouldn't
6 have been that much of a problem for you to
7 arrange that, would it?

8 A. Would it have been a problem?

9 Q. Yeah?

10 A. Yes, sir. It would have -- the
11 purpose of a show up is to be a hasty
12 presentation of a potential suspect. And
13 that certainly would have delayed it and it
14 would have lengthened the amount of time that
15 we like to spend on a show up.

16 Q. Okay. Were you aware that there was
17 supposed to be a female suspect as well?

18 A. Yes, sir.

19 Q. Did you make any attempt to locate
20 this female suspect?

21 A. I did not. After I detained you, I
22 was basically -- my time was being spent with
23 you and it wasn't practical for me to leave
24 you inside my vehicle and go inside a
25 business looking for another suspect.

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Testimony of James Roberts - Cross Examination

1 Q. I mean, why didn't you try --
2 there's two suspects and yet ---

3 SOLICITOR SIMPSON: Your Honor, I
4 believe ---

5 THE COURT: Mr. Edwards, it's now
6 argument. He's explained why he didn't do
7 it. So you move onto another question, sir.

8 DEFENDANT EDWARDS: No problem.

9 THE COURT: You're free to argue
10 that, of course, at the conclusion of your
11 case in closing arguments.

12 DEFENDANT EDWARDS: Yes, sir.
13 Thank you.

14 CROSS-EXAMINATION CONTINUED

15 BY DEFENDANT EDWARDS:

16 Q. Did you find any floor sealant in
17 the car?

18 A. Floor sealant in the car that you
19 were in?

20 Q. Yes?

21 A. No, sir.

22 Q. Did you find any stolen merchandise
23 in the vehicle?

24 A. No, sir. I didn't search the
25 vehicle.

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1 Q. Were you aware that theft of some
2 sort had occurred?

3 A. Correct.

4 Q. But yet you looked in the car for
5 what appeared to be a knife?

6 A. Correct. I secured a weapon for
7 officer safety purposes. And since it was a
8 City of Charleston investigation, I left any
9 subsequent search of the vehicle up to them.

10 Q. Did you not glance into the back of
11 the car and notice items in the back of the
12 car?

13 A. I noticed some clothing probably,
14 but other than that I didn't notice anything
15 else that I recall.

16 Q. You didn't notice any relevant
17 material that may have come from Home Depot?

18 A. I'm not sure of what you're
19 referring to, sir.

20 Q. Any merchandise? Anything.
21 Anything of value there afterwards?

22 THE COURT: Well, I'll allow that
23 question but he's already indicated to you --
24 he explained the answer that really covers it
25 and so you're getting close to arguing. He

1 said 'I didn't search it because that
2 wasn't my responsibility.' He said it was
3 someone else's. And you've asked him a
4 question about "could you" and he's answered
5 he could have but that he didn't. He's
6 explained it but you can follow up on that
7 one with any other items if you want to, Mr.
8 Edwards.

9 DEFENDANT EDWARDS: Okay. That's
10 what I was trying to find out.

11 THE COURT: But he answered your
12 question and said he didn't have
13 responsibility, he pretty much said he didn't
14 search it. So obviously, he didn't notice
15 anything because he didn't search it, other
16 than what he's already alluded to.

17 DEFENDANT EDWARDS: All right.
18 I have no further questions.

19 THE COURT: Okay. Redirect?

20 SOLICITOR SIMPSON: Just briefly,
21 Your Honor. Thank you.

22 REDIRECT EXAMINATION CONTINUED

23 BY SOLICITOR SIMPSON:

24 Q. When you say the administrating
25 officer in a show-up if their car is equipped

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1 with a camera, you're talking about CPD.

2 A. I'm talking about that's North
3 Charleston's policy. I don't know about City
4 of Charleston's policy. They have their own
5 methods of doing show-ups.

6 Q. But the agency conducting the show
7 up in this case was what agency?

8 A. It was the City of Charleston.

9 Q. And your car was equipped with a
10 camera?

11 A. It was, (affirmative nod).

12 Q. But in your mind at that time, any
13 recording, if there was any of this
14 identification was the responsibility of?

15 A. The City of Charleston.

16 SOLICITOR SIMPSON: No further
17 questions, Your Honor.

18 THE COURT: Okay. Recross, Mr.
19 Edwards?

20 DEFENDANT EDWARDS: No.

21 THE COURT: You may come down.

22 (WITNESS STEPS DOWN)

23 THE COURT: You wish this witness
24 to be excused?

25 SOLICITOR SIMPSON: I do, Your

1 Honor.

2 THE COURT: Any objection, Mr.
3 Edwards?

4 DEFENDANT EDWARDS: No, Your
5 Honor.

6 THE COURT: You're also free to
7 leave. Thank you, sir. Call your next
8 witness, please, sir?

9 SOLICITOR SIMPSON: Thank you,
10 Your Honor. the State calls Officer
11 Christopher Wyckoff with Charleston Police
12 Department.

13 (WITNESS TAKES STAND)

14 CHRISTOPHER WYCOFF, having been duly
15 sworn to tell the truth, and noting but the
16 truth, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR SIMPSON:

19 Q. Office Wyckoff, how long have you
20 been in law enforcement?

21 A. About six and a half years overall,
22 two years with the Charleston Police
23 Department.

24 Q. And were you working in that
25 capacity in January of 2014?

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Testimony of Chris Wykoff - Direct Examination

1 A. Yes, sir. I was.

2 Q. And did you have occasion in January
3 of 2014 to respond to an incident at the Home
4 Depot in West Ashley?

5 A. Yes, sir, I did.

6 Q. Is that location within your
7 jurisdiction?

8 A. Yes, sir. It is.

9 Q. And is your entire jurisdiction
10 located within Charleston County?

11 A. Yes, sir. It is.

12 Q. If you could just sort of describe
13 to the jury to your role in this response and
14 how that transpired.

15 A. Yes, sir.

16 Q. On the 3rd of January 2014 at
17 approximately 1:30 in the afternoon, I
18 responded to the Home Depot at 2008 Magwood
19 in reference to a larceny in progress. Upon
20 arrival, I spoke with the victim and
21 complainant Michael Smith who works as a loss
22 prevention officer at Home Depot. He advised
23 me that he was walking through the store and
24 observed a black male, later identified as
25 Gerald Edwards, grab a green in color,

1 container of Surface Guard maximum strength
2 sealer.

3 Q. Officer Wyckoff, I'm going to
4 interrupt you for a second.

5 A. Okay.

6 Q. I see you referring to something
7 there. What is that you're referring to?

8 A. That's the incident report that I
9 wrote that day, sir.

10 Q. Okay. And if I could, let me just
11 speed things along. What someone else told
12 you -- we'll just skip over that. Did you
13 speak with the victim of this offense?

14 A. Yes, sir, I did.

15 Q. Okay. And after speaking with them,
16 what transpired?

17 A. He gave me a description of the
18 suspect and a description of the vehicle that
19 the suspect fled in.

20 Q. Was that information relayed to any
21 other agencies?

22 A. Yes, sir, it was.

23 Q. And specifically, what agencies?

24 A. The Summerville and North Charleston
25 Police Departments.

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Testimony of Chris Wykoff - Direct Examination

1 Q. And what was the purpose of relaying
2 this information to the other two police
3 agencies?

4 A. It was for them to check the Home
5 Depots in their respective jurisdictions to
6 see if that suspect vehicle was at their
7 locations.

8 Q. And did you ever come to learn that,
9 in fact, that vehicle was at one location?

10 A. Yes, sir.

11 Q. And what location was that?

12 A. The North Charleston Home Depot.

13 Q. And did your investigation then
14 continue to that location?

15 A. That's correct.

16 Q. Did officers from any other agencies
17 assist you at that location?

18 A. Yes, sir. Officer Roberts from the
19 North Charleston Police Department.

20 Q. If you could relay to the jury what
21 transpired once you arrived at the North
22 Charleston location?

23 A. Yes, sir. Once we arrived on the
24 scene, the suspect stood outside of Mr.
25 Roberts' parked police vehicle for a positive

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1 identification from the victim.

2 Q. And what officer conducted,
3 administered that identification?

4 A. Detective Burckhardt from the
5 Charleston Police Department.

6 Q. Okay. Did you conduct that?

7 A. No, sir.

8 Q. But were you present for it?

9 A. I was present. Yes, sir.

10 Q. Okay. Once that identification was
11 made, what was your role from there forward?

12 A. Once there was positive
13 identification, Mr. Edwards was handcuffed
14 and placed in the back of my car, patrol
15 vehicle.

16 Q. Okay. Was any information ever
17 related to you regarding the Defendant's
18 clothing during this interaction?

19 A. Yes, sir.

20 Q. And what was that any observations
21 or made or ---

22 A. That he was wearing white tennis
23 shoes, blue jeans, and I believe a black
24 leather type jacket.

25 Q. And specifically regarding the blue

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1 jeans, when you were detaining the suspect
2 for arrest, did he appear to be wearing blue
3 jeans?

4 A. Yes, sir. He had on blue jeans
5 underneath another pair of black pants.

6 Q. So did you find that fact relevant
7 at the time to your investigation?

8 A. Yes, sir.

9 SOLICITOR SIMPSON: Your Honor,
10 I'd like to approach the witness.

11 THE COURT: You may.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR SIMPSON:

14 Q. I'm handing you Officer Wykoff
15 what's been marked for ID only as State's
16 Exhibit 9. If you would take a moment to
17 whatever degree to you to look at those
18 items.

19 A. (Complies)

20 Q. Do you recognize those items?

21 A. Yes, sir. I do.

22 Q. What are those?

23 A. They were the jeans and white shoes
24 that the Defendant was wearing that day and
25 the same items I had logged into evidence.

1 Q. So you retained those items from the
2 Defendant?

3 A. Yes, sir.

4 SOLICITOR SIMPSON: May I
5 approach?

6 THE COURT: Yes, you may.

7 DIRECT EXAMINATION CONTINUED

8 BY SOLICITOR SIMPSON:

9 Q. I'm showing you what's already
10 entered into evidence as State's 7. Do you
11 recognize that item?

12 A. Yes, sir, I do.

13 Q. And what is that?

14 A. That is a knife that was handed to
15 me by Officer Roberts that was taken off of
16 the Defendant prior to my arrival.

17 Q. And these are the items that you
18 logged into evidence?

19 A. That is correct.

20 Q. And explain to the jury a little bit
21 about that process. What does mean, logged
22 into evidence?

23 A. When you go down to our evidence
24 room and depending on what the item is. You
25 put in a bag. For instance, these are in

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1 these type of bags and they are sealed. Our
2 initials are put over the seal so they can't
3 be tampered with. They have a sticker on it
4 that we put the case number, bag number, item
5 number, what the offense is and who submitted
6 the evidence. And then that's logged into
7 the computer as well.

8 Q. And is that process to enable you at
9 this stage when we're at trial to confidently
10 ID those items?

11 A. That's correct.

12 Q. And is it intended to ensure that
13 they're not tampered with in any way?

14 A. That's correct.

15 SOLICITOR SIMPSON: Court's
16 indulgence.

17 THE COURT: Certainly.

18 SOLICITOR SIMPSON: Your Honor,
19 the State would seek to admit 8 and 9.

20 THE COURT: Is there any
21 objection, Mr. Edwards?

22 DEFENDANT EDWARDS: No, Your
23 Honor.

24 THE COURT: Without objection
25 State's 8 and 9 are admitted. Thank you.

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1 (SO ENTERED AS STATE'S EXHIBIT 8)

2 (SO ENTERED AS STATE'S EXHIBIT 9)

3 DIRECT EXAMINATION CONTINUED

4 BY SOLICITOR SIMPSON:

5 Q. Officer Wyckoff, thank you for your
6 time. Please answer any questions Mr.
7 Edwards has for you.

8 THE COURT: You may cross-examine,
9 sir.

10 CROSS-EXAMINATION

11 BY DEFENDANT EDWARDS:

12 Q. Good morning.

13 A. Good morning.

14 Q. Mr. Wyckoff ---

15 A. Yes, sir.

16 Q. You said you were one of the first
17 to arrive on the scene?

18 A. That's correct.

19 Q. You spoke to the victim?

20 A. That's correct.

21 Q. Did you speak to any other
22 witnesses?

23 A. That's correct. I did.

24 Q. Who did you speak to?

25 A. I spoke to the cashier that

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1 witnessed -- I'll find his name right here.

2 Keith Heyward, I spoke to him as well.

3 Q. Did he give you a statement?

4 A. He verified what Mr. Smith had told
5 me as to what happened.

6 Q. So there was nothing written down or
7 recorded or ---

8 A. By me, no. That information was
9 handled by Detective Burckhardt.

10 Q. Okay. All right. Were you aware
11 that a description of a knife was given?

12 A. That's correct. Yes.

13 Q. And what was that description?

14 A. A four- to six-inch knife.

15 Q. And color?

16 A. Not that I remember.

17 Q. And it was Michael that spoke to
18 you. He said that it was a ---

19 SOLICITOR SIMPSON: Objection,
20 Your Honor. Pitting.

21 THE COURT: I sustain the
22 objection. You can't ask that question.
23 He's already answered that he doesn't recall
24 any color being mentioned.

25 CROSS-EXAMINATION CONTINUED

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1 BY DEFENDANT EDWARDS:

2 Q. You said you went to relay a message
3 to the North Charleston Police Department?

4 A. Yes, sir.

5 Q. Was there a female suspect involved?

6 A. I was told the driver was a black
7 female driver.

8 Q. Did your agency or North Charleston
9 agency make an attempt to locate this female?

10 A. I believe they did, yes.

11 Q. And what happened?

12 A. They did not locate her inside the
13 store.

14 Q. Did you review the video?

15 A. From which?

16 Q. From the West Ashley store?

17 A. I saw part of it, yes, sir.

18 Q. Was there evidence of a crime
19 committed, that you saw?

20 A. The part I saw was getting a
21 description. And I had your description way
22 before so I could relate that to North
23 Charleston and Summerville police
24 departments.

25 Q. So there wasn't an actual crime on

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1 the video?

2 A. That, I don't know.

3 Q. You were aware of the clothing that
4 was worn in the video?

5 A. Yes, sir.

6 DEFENDANT EDWARDS: Do you have
7 -- (sidebar with Solicitor Simpson).

8 SOLICITOR SIMPSON: Your Honor,
9 may I approach the court reporter?

10 THE COURT: Yes.

11 COURT REPORTER: State's Exhibit 1.

12 CROSS-EXAMINATION CONTINUED

13 BY DEFENDANT EDWARDS:

14 Q. (State's Exhibit 1, video playing)
15 -- from that that video right there, are you
16 -- blue jeans that you see in that bag right
17 there.

18 DEFENDANT EDWARDS: Can he look
19 at the jeans again?

20 THE COURT: Yes, sir.

21 DEFENDANT EDWARDS: (Providing
22 exhibit to witness).

23 CROSS-EXAMINATION CONTINUED

24 BY DEFENDANT EDWARDS:

25 Q. You're saying that those are the

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1 jeans that's in that video?

2 A. The jeans I took off you are right
3 here. They appear to match.

4 Q. Did ---

5 THE COURT: He's answered your
6 question. He said they matched. You asked a
7 question 'can he say' -- you've got to
8 establish how he can testify to that by his
9 own knowledge. 602 says he can't speculate.
10 He wasn't there. He didn't see it.

11 So you asked him whether those were
12 the same jeans. You can ask him that
13 question. I don't know he can answer it
14 though.

15 DEFENDANT EDWARDS: I'm asking
16 him about the jeans in the video.

17 THE COURT: I understand that.
18 He can't answer that question, sir. It's
19 impossible.

20 DEFENDANT EDWARDS: All right.

21 THE COURT: Because he'd be
22 speculating. You've got to establish why he
23 has an opinion and the basis for that
24 opinion. It's got to be made on his
25 observation. You're asking from that whether

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1 those jeans there are the same ones. He's
2 not testified to that.

3 DEFENDANT EDWARDS: Okay.

4 CROSS-EXAMINATION CONTINUED

5 BY DEFENDANT EDWARDS:

6 Q. When you arrived on the scene and
7 you said you noticed the Defendant had on
8 dark pants; correct?

9 A. Yes, sir.

10 Q. Is that not the pants that the
11 Defendant had on?

12 A. You had on two pair of pants. You
13 had black pants over the blue jeans.

14 Q. Are those not the gray pants on the
15 video?

16 SOLICITOR SIMPSON: Objection,
17 Your Honor, speculation.

18 THE COURT: He can't answer. He
19 can't answer that question, sir. Unless you
20 want to qualify him to render an opinion
21 based on his expertise, he can't tell you
22 those the same pants. He can say, as he just
23 said, it looks like them. That's all he can
24 say.

25 DEFENDANT EDWARDS: Yeah. I just

1 want ---

2 THE COURT: But he's answered that
3 question. He said it looks like them. It
4 looks the same.

5 DEFENDANT EDWARDS: All right.

6 THE COURT: But you've asked him
7 whether those are the same pants. He can't
8 -- obviously, he can't testify to that
9 without some qualification as an expert
10 witness.

11 DEFENDANT EDWARDS: All right.

12 THE COURT: Thank you, sir.

13 CROSS-EXAMINATION CONTINUED

14 BY DEFENDANT EDWARDS:

15 Q. Was there any stolen merchandise
16 found in the vehicle that you're aware?

17 A. I don't know. I wasn't inside the
18 vehicle.

19 Q. But you were at the scene?

20 A. Yes, sir.

21 DEFENDANT EDWARDS: That's it for
22 my questions.

23 THE COURT: Okay. Redirect?

24 SOLICITOR SIMPSON: No, Your
25 Honor.

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THE COURT: Thank you, sir. You may come down and you wish for this witness to excused?

SOLICITOR SIMPSON: I do, Your Honor.

THE COURT: Any objection, Mr. Edwards?

DEFENDANT EDWARDS: No, Your Honor.

THE COURT: Thank you, sir. Mr. Wykoff, you're free to leave, sir.

WITNESS: Thank you, sir.

(WITNESS STEPS DOWN)

SOLICITOR SIMPSON: Your Honor, the State calls Jeff Miller with the Charleston Police Department.

THE COURT: Okay.

(WITNESS TAKES STAND)

JEFFREY MILLER, having been duly sworn to tell the truth, and nothing but the truth, testified as follows:

DIRECT EXAMINATION

BY SOLICITOR SIMPSON:

Q. Mr. Miller, good morning. What is

1 your current employment?

2 A. I work for the Charleston Police
3 Department.

4 Q. And in what capacity do you work
5 there?

6 A. I'm the crime scene technician.

7 Q. And how long have you worked there?

8 A. I've been with the department for
9 twenty-nine years.

10 Q. And how long as a crime scene
11 technician?

12 A. For twenty years.

13 Q. And what, just generally speaking,
14 what are some of the duties of the crime
15 scene technician?

16 A. We respond to calls for service such
17 as burglaries, larcenies, auto thefts, cars
18 that are broken into. We take photographs,
19 dust for fingerprints.

20 Q. Did you have occasion to be working
21 in that capacity in January of 2014 to
22 perform a search in this case?

23 A. Yes.

24 Q. And could you describe to the jury
25 how that search came to be and what you did?

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1 A. I received a search warrant for a
2 2008 Suzuki. They requested it be searched
3 for certain items and fingerprints and for
4 any kind of narcotics that might be found in
5 the vehicle.

6 SOLICITOR SIMPSON: May I
7 approach the witness, Your Honor?

8 THE COURT: Yes, you may.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR SIMPSON:

11 Q. I'm showing you what's been marked
12 for ID only as State's 16 and 17.

13 A. (Review).

14 Q. Do you recognize those exhibits?

15 A. Yes, these are copies of photographs
16 that I took.

17 Q. Okay. And starting with State's 16,
18 what is that?

19 A. Exhibit 16 is the back of the
20 vehicle showing the license plate number.

21 Q. And what is that license plate?

22 A. JPY 509, a South Carolina tag.

23 Q. And State's 17?

24 A. State's 17 is a photograph showing
25 the back seat of that vehicle where you could

1 see a jacket and the hat.

2 SOLICITOR SIMPSON: Your Honor,
3 at this time the State would seek to admit 16
4 and 17 as evidence.

5 THE COURT: Is there any
6 objection, Mr. Edwards?

7 DEFENDANT EDWARDS: No, Your
8 Honor.

9 THE COURT: Without objection,
10 State's 16 and 17 are admitted, each being a
11 photograph.

12 (SO ENTERED AS STATE'S EXHIBIT 16)

13 (SO ENTERED AS STATE'S EXHIBIT 17)

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR SIMPSON:

16 Q. Sir, I'm handing you what's been
17 marked for ID Only as State's 10 and 11.
18 Would you take a moment and look at those?

19 A. (Upon review), State's 11 is the hat
20 from the back seat and State's Exhibit 10 is
21 the jacket.

22 SOLICITOR SIMPSON: Your Honor,
23 at this point the State would seek would seek
24 to admit I believe are 8 and 9.

25 COURT REPORTER: 10 and 11.

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1 SOLICITOR SIMPSON: I'm sorry.

2 10 and 11 into evidence.

3 THE COURT: Any objection, Mr.
4 Edwards?

5 DEFENDANT EDWARDS: No, Your
6 Honor.

7 THE COURT: Exhibits 10 and 11 are
8 admitted.

9 (SO ENTERED AS STATE'S EXHIBIT 10)

10 (SO ENTERED AS STATE'S EXHIBIT 11)

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR SIMPSON:

13 Q. Investigator Miller we've been
14 rather brief today. Is this all you did
15 during this search warrant?

16 A. Well, no, I did a complete inventory
17 of the vehicle. So my report indicated
18 everything that was in the car.

19 Q. So you did sort of a soup-to-nuts
20 complete review of everything that was in
21 this car; is that correct?

22 A. Right.

23 Q. Thank you for your time. I
24 appreciate that. Please answer any questions
25 Mr. Edwards has.

1 THE COURT: You may cross-examine.

2 CROSS-EXAMINATION

3 BY DEFENDANT EDWARDS:

4 Q. Good morning, Mr. Miller.

5 A. Good morning.

6 Q. You said that you dusted for
7 fingerprints?

8 A. Correct.

9 DEFENDANT EDWARDS: Defendant
10 would like to enter these exhibits.

11 THE COURT: Have them marked.

12 DEFENDANT EDWARDS: Would like to
13 have it marked.

14 THE COURT: Okay.

15 COURT REPORTER: Defendant's
16 Exhibits 7 and 8 for identification.

17 THE COURT: All right.

18 COURT REPORTER: Excuse me. It's
19 two pages of one document, so it would be
20 Defendant's 7 for identification.

21 THE COURT: Defendant's 7 for
22 identification.

23 (SO MARKED AS DEFENDANT'S EXHIBIT 7)

24 THE COURT: And you want to admit
25 that; is that correct, if there's no

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1 objection?

2 SOLICITOR SIMPSON: No objection,
3 Your Honor.

4 THE COURT: Very well.

5 Defendant's 7 is admitted without objection.

6 (SO ENTERED AS DEFENDANT'S EXHIBIT 7)

7 THE COURT: You may go ahead.

8 CROSS-EXAMINATION CONTINUED

9 BY DEFENDANT EDWARDS:

10 Q. Can you please tell me what that
11 entails?

12 A. This is the report. When I lift
13 fingerprints from any kind of an item, we
14 then chart them and they go to a latent
15 examiner. This is the report that they
16 generate based on the fingerprints that are
17 submitted.

18 Q. Could you please tell me the names
19 of the people whose fingerprints was on that
20 vehicle?

21 A. If I'm reading this correctly, I see
22 Miranda King, Kevin Abbott (phonetic) and a
23 Gerald Demetrius.

24 Q. Did you also look for other items in
25 the car?

1 A. Well, there was a list of items that
2 we had for the warrant, some items -- there
3 was some merchandise. And then there was
4 some narcotics. And they requested any
5 narcotics to be collected.

6 DEFENDANT EDWARDS: Mark this,
7 please.

8 COURT REPORTER: Defendant's
9 Exhibits Number 8 and 9 for identification.

10 (SO MARKED AS DEFENDANT'S EXHIBIT 8)

11 (SO MARKED AS DEFENDANT'S EXHIBIT 9)

12 THE COURT: All right. Is there
13 any objection?

14 SOLICITOR SIMPSON: No, Your
15 Honor.

16 THE COURT: Defendant's 8 and 9
17 then are admitted without objection.

18 (SO ENTERED AS DEFENDANT'S EXHIBIT 8)

19 (SO ENTERED AS DEFENDANT'S EXHIBIT 9)

20 CROSS-EXAMINATION CONTINUED

21 BY DEFENDANT EDWARDS:

22 Q. Would you please tell me what it
23 says on there?

24 A. Sure.

25 Q. What you're looking for.

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Testimony of Jeffrey Miller - Cross Examination

1 THE COURT: What is he reading?

2 Which exhibit are you reading from?

3 WITNESS: Exhibit 8.

4 THE COURT: Thank you, sir.

5 COURT REPORTER: Which is a search
6 warrant.

7 THE COURT: The search warrant?

8 COURT REPORTER: Yes, sir.

9 CROSS-EXAMINATION CONTINUED

10 BY DEFENDANT EDWARDS:

11 Q. Under the description for the
12 warrant, it was clothing matching the
13 suspect's description. *"Dark colored jacket
14 and white baseball cap. Any stolen
15 merchandise to include a roll of foil, floor
16 sealant, any contraband including weapons,
17 drugs, fingerprints and any paperwork to
18 identify the people in the vehicle."*

19 Q. Did you find any floor sealant in
20 the car?

21 A. No, I did not.

22 Q. Did you find any merchandise in the
23 car belonging to Home Depot?

24 A. Well, I did find some aluminum foil.

25 Q. That belonged to Home Depot?

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Testimony of Jeffrey Miller - Redirect Examination

1 A. Well, I don't know about that.

2 Q. Oh.

3 DEFENDANT EDWARDS: That's all I
4 have. That's all I have.

5 THE COURT: Okay. Thank you, sir.
6 Redirect?

7 SOLICITOR SIMPSON: Thank you,
8 Your Honor.

9 THE COURT: Excuse me. Do you
10 have any additional questions, Mr. Edwards?

11 DEFENDANT EDWARDS: No, sir.
12 That's all that I have.

13 THE COURT: Okay. Thank you.
14 You may redirect.

15 SOLICITOR SIMPSON: Thank you,
16 Judge. May I approach?

17 THE COURT: You may.

18 REDIRECT EXAMINATION

19 BY SOLICITOR SIMPSON:

20 Q. Now, just very briefly, referring
21 again to Defendant's 7 that you have, the
22 fingerprint report?

23 A. Yes.

24 Q. Drawing your attention to the -- you
25 were asked whose fingerprints were identified

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1 or list the names according to this
2 report. I believe you testified Gerald
3 Demetrius. Is there a more full name given
4 on that report for that individual?

5 A. Oh, Gerald Demetrius Edwards.

6 Q. So an individual named Gerald
7 Demetrius Edwards was identified as his
8 fingerprints on the car?

9 A. I believe so.

10 Q. Thank you, sir.

11 SOLICITOR SIMPSON: I have
12 nothing further.

13 THE COURT: Recross?

14 DEFENDANT EDWARDS: Yes.

15 RE CROSS-EXAMINATION

16 BY DEFENDANT EDWARDS:

17 Q. But you didn't testify that there
18 was any stolen merchandise in the car;
19 correct?

20 A. Well, I had collected items that I
21 don't know where they actually came from. I
22 don't know if they were Home Depot's or not.

23 Q. But nothing relevant to the search?

24 A. Well, I had collected items based on
25 the search warrant. But whether they tied

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1 into the whole thing, that would be the
2 investigator, whoever was assigned the case
3 to follow-up from that point.

4 Q. All right.

5 THE COURT: All right, sir. You
6 may come down.

7 (WITNESS STEPS DOWN)

8 THE COURT: Do you wish the
9 witness to be excused?

10 SOLICITOR SIMPSON: I do, Your
11 Honor. Thank you.

12 THE COURT: Any objection, Mr.
13 Edwards?

14 DEFENDANT EDWARDS: No, Your
15 Honor.

16 THE COURT: Thank you. You're free
17 to leave, sir. Thank you very much. Call
18 your next witness please.

19 SOLICITOR SIMPSON: Thank you,
20 Your Honor. The State calls Detective
21 Richard Burckhardt.

22 THE COURT: Okay.

23 (WITNESS TAKES STAND)

24 RICHARD BURCKHARDT, having been duly
25 sworn to tell the truth, and nothing but the

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1 truth, testified as follows:

2 DIRECT EXAMINATION

3 BY SOLICITOR SIMPSON:

4 Q. Mr. Burckhardt, good afternoon.

5 A. Good afternoon -- or morning I guess
6 it is.

7 Q. Where do you work?

8 A. I'm employed at the Charleston
9 Police Department.

10 Q. And in what capacity?

11 A. I'm a detective within the violent
12 crime unit.

13 Q. And how long have you worked for
14 Charleston Police Department?

15 A. Approximately twenty-seven years.

16 Q. And how long as a detective?

17 A. Going on seventeen years
18 investigations.

19 Q. Were you working in that capacity on
20 January 3rd, 2014?

21 A. I was.

22 Q. And did you have occasion on that
23 date to respond to an incident at the Home
24 Depot in West Ashley?

25 A. I did.

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1 Q. And if you could, describe to the
2 jury your involvement in that response?

3 A. So on that date it was approximately
4 1:30 in the afternoon. I actually happened
5 to be driving by the store when they were
6 calling out. The armed robbery had just
7 taken place. So along with being dispatched
8 I obviously drove to the parking lot. I was
9 there relatively quick. I think I was on
10 Glenn McConnell Parkway when initially it
11 went out.

12 My first contact was with Officer Wycoff
13 with our police department. He gave me a
14 rundown of what taken place.

15 My next task would be to go meet with Mr.
16 Smith, who was the victim/loss prevention
17 officer at the store and get kind of what had
18 taken place inside the store.

19 Q. And did you record that account?

20 A. I did. I took it on a digital audio
21 recording.

22 Q. Okay. Was your car on that day
23 outfitted with any video capabilities?

24 A. No. None of our detective cars have
25 that capability.

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1 Q. Would that be more of a standard
2 capability put in patrol cars?

3 A. Yeah. As far as I know the only in-
4 car cameras that we have are assigned to
5 certain units. Mostly, for traffic arrests
6 and such, DUI's and so forth.

7 Q. Did you conduct an interview with
8 Michael Smith?

9 A. I did.

10 Q. Did anything relative to your
11 investigation occur during that interview?

12 A. Yes. The sole event, if you will,
13 was pretty much fluid, I would consider a
14 fluid investigation, which means it was
15 constantly moving. It was going on as we
16 were investigation.

17 To answer your question, while I was
18 conducting my interview, during the
19 interview, I was advised that when this type
20 of incident takes place, it is not uncommon
21 for shoplifters to take the stolen items and
22 take them to another Home Depot store and
23 exchange for a store credit. And as we were
24 discussing that very thing happened, a call
25 was -- by the way it had already been put out

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1 to the other stores. And we were alerted by
2 the North Charleston store that an individual
3 was attempting to exchange the very items
4 taken from West Ashley.

5 Q. Okay. So how did you respond to
6 that information?

7 A. So I kind of stepped up the
8 interview with him. And it was necessary at
9 that point, I believe, to transport Mr. Smith
10 from loss prevention in my vehicle to the
11 North Charleston store to conduct what we
12 call a show up identification process,
13 procedure.

14 Q. During the course of the interview
15 with Michael Smith, did he give you sort of a
16 generic description of the person that he
17 saw?

18 A. He did.

19 Q. When you arrived at the North
20 Charleston store, did they have a person
21 detained?

22 A. Yeah. The North Charleston Police
23 responded, Officer Roberts from the NCPD was
24 there, had an individual detained with the
25 basic physical description, clothing

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1 description -- well, at that case, his
2 physical, his age and such, height and weight
3 were pretty much right on with what Mr. Smith
4 told me during the interview, plus the
5 vehicle he was extracted from.

6 Q. Okay. And you mentioned the
7 vehicle. Did you guys have a specific
8 vehicle that was ---

9 A. We did. Mr. Smith, during the
10 encounter with the Defendant, he was able to
11 get the car tag to the extent ---

12 Q. Was that tag consistent with the
13 vehicle observed in North Charleston Home
14 Depot?

15 A. It was the exact tag.

16 Q. Okay. And did you conduct the show-
17 up ID?

18 A. Yeah, I did. So ---

19 Q. Let me pause for a second and get
20 this out -- you said your car is not video
21 capable?

22 A. No, it's not.

23 Q. So was the show-up ID videotaped?

24 A. No, it was not.

25 Q. Okay. How did the procedure go down

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1 from there?

2 A. The way, and the way we do it all
3 the time -- I've done hundreds of cases --
4 that there's a verbal instruction given to
5 the witness by the detective who's conducting
6 the show-up.

7 Q. And what's the purpose of that
8 verbal instruction?

9 A. Well, often is the case, when we
10 conduct investigations and a BOLO, a "be on
11 the lookout" for somebody who was stopped and
12 detained by law enforcement, you have public
13 safety interests first off, that you want to
14 get the person off the street.

15 Second of all, you may have an innocent
16 person that did not commit any crime.

17 So in an effort to expedite the process,
18 we advised them that that's the reason for
19 the show-up and that's why we expedited it
20 the way we did.

21 Q. Okay.

22 A. Yes, sir.

23 Q. And you mentioned advisement to
24 anybody doing the show-up. What do you
25 convey to that person talking ---

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1 A. On that day I instructed Mr. Smith
2 that en route, as we were driving up I-26
3 that there was a person of interest that had
4 been detained at the North Charleston store.
5 I told him that he would be removed from the
6 police vehicle. That we would drive up but
7 he wouldn't get out of my car. He would sit
8 in my car, which he was in my front passenger
9 seat, close enough to where he could make an
10 observation of that person. I told him that
11 his identification had to be one hundred
12 percent absolute in his identification for us
13 to proceed with an arrest.

14 Q. When Mr. Smith -- you were still in
15 the car with him when he saw the individual
16 that was detained?

17 A. That's correct.

18 Q. Did he make an ID of that
19 individual?

20 A. He did.

21 Q. And did you -- did he convey to you
22 any hesitation? Was there any reluctance on
23 his part once he saw the individual?

24 A. There was none whatsoever. And in
25 the hundreds of these that I've done, it

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1 would be one of the -- what I would consider
2 a very good identification. Because not only
3 did he say that's the person that did it but
4 he also said 'that's him but he has changed
5 his clothes', which for us is pretty --
6 that's a pretty good ID.

7 Q. But I guess that raised just a
8 little caution about different clothing on;
9 right?

10 A. It does.

11 Q. Did you resolve that at all?

12 A. I was. So Mr. Smith stayed in my
13 car. I met with Officer Roberts. I asked
14 him where the Defendant's vehicle was. And
15 he pointed it out, the Suzuki. And I did
16 what we call a cursory glance at the vehicle.
17 I didn't touch anything in the car. I
18 basically looked through the windows. And to
19 my observation, I felt that the -- there was
20 clothing in the rear seat that matched the
21 clothing that he had on at the West Ashley
22 store. With that, for further verification,
23 I had Mr. Smith -- I removed him from my car
24 and had him take a look in the windows to the
25 vehicle as well. And he concurred that that

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1 was the clothing that was worn during his
2 incident.

3 Q. And once that positive ID was made,
4 how did the case proceed?

5 A. He was then -- at that time, we
6 would have had a -- I think we had two
7 uniformed CPD officers arrive on scene,
8 Wycoff and Sink, I believe showed up. He was
9 then transferred from the North Charleston
10 custody to the CPD custody. He was then -- I
11 instructed the officers to take him to CPD
12 headquarters.

13 I still remained on scene. I was
14 actually telephoning, calling in information,
15 in anticipation of the search warrant for the
16 vehicle. The vehicle was set up to be towed
17 to our crime lab.

18 Q. Okay. Is it fair to say that Mr.
19 Edwards, with all the information you had at
20 this point, was the focus of your
21 investigation?

22 A. Absolutely the focus.

23 Q. Nevertheless was there some
24 information conveyed to you about a possible
25 accomplice?

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1 A. Yes. In my interview with Mr.
2 Smith, I was also advised that he believed
3 that there was an African-American female
4 accomplice n this case, perhaps the driver of
5 the getaway car.

6 And when we got to North Charleston to
7 the store, obviously there was a lot going on
8 with the Defendant. He was the focus. Our
9 investigation showed that he was also the
10 person that committed the crime of armed
11 robbery with a weapon. So he was the focus.

12 However, we didn't ignore the fact that
13 there might be some female. We were told
14 there was a female in the store, actually
15 that was trying to get a cash credit for the
16 sealer that was taken from the West Ashely
17 store.

18 And I had Mr. Smith at some point go in
19 the store to try and retrieve video -- I'll
20 back it up. I think we were told that the
21 female had somehow slipped through the
22 cracks, gotten out of the store, got into
23 some unknown black vehicle and had left the
24 area, along with the product, with the
25 sealer. We did attempt to retrieve video of

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1 that store.

2 Q. Of that exchange at the register?

3 A. Yes.

4 Q. So the female suspect was never
5 apprehended?

6 A. That's correct.

7 Q. And did you ever view the video from
8 the North Charleston register?

9 A. I never did. And what happened --
10 at the end of that day after my involvement
11 and the Defendant was transferred to CPD
12 headquarters for further investigation, I
13 contacted Sergeant Stanley who's the
14 supervisor of that particular unit, told him
15 exactly, you know, what we had. There were
16 some follow-up issues, two of which was to
17 collect video from both stores. A search
18 warrant was drawn up. And any furtherance to
19 look for the codefendant, I couldn't answer.
20 I don't know what was done with that.

21 Q. Thank you, Detective Burckhardt.
22 Please answer any questions Mr. Edwards has
23 for you.

24 A. Yes, sir.

25 THE COURT: You may cross-examine

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1 this witness.

2 CROSS-EXAMINATION

3 BY DEFENDANT EDWARDS:

4 Q. Good morning, Detective Burckhardt.

5 A. Good morning, sir.

6 Q. You said you were -- were you in
7 charge of taking a statement from the victim?

8 A. I took the victim's statement, yes.

9 Q. You recorded it?

10 A. I recorded it, yeah.

11 Q. Did you get any other statements?

12 A. No.

13 Q. So you didn't interview Keith
14 Heyward?

15 A. I was not made aware of Mr. Heyward
16 during that entire incident.

17 Q. So you weren't aware that Keith
18 Heyward was supposed to be a witness to this
19 alleged crime?

20 A. I was later, but not that day.

21 Q. Did anybody go and try to get a
22 statement from Keith Heyward.

23 A. As I testified to earlier, the
24 assignment was handled by Sergeant Stanley.
25 What he did or didn't do, I can't testify to.

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1 Q. Okay. You were the officer that
2 responded to the alleged incident?

3 A. When I responded to the scene, no.
4 My first responsibility, because it was as
5 I testified earlier it was what we felt was a
6 fluid investigation, I felt that my time was
7 better spent conducting my interview with
8 this witness and then proceed to North
9 Charleston where you were located.

10 Q. Okay. Were there any footage -- I
11 mean, did you review any footage afterwards
12 at any point in time?

13 A. Afterwards as in any time after
14 that?

15 Q. No, at any time?

16 A. No, I didn't. Again, the case would
17 have been assigned probably to somebody else,
18 other than myself.

19 Q. Okay. How long have you been work-
20 ing with the department?

21 A. Twenty-seven years.

22 Q. Twenty-seven years. So you paid
23 pretty good attention to detail and
24 descriptions?

25 A. I try to.

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1 Q. Okay. Was there any physical
2 description of a weapon given?

3 A. I can't recall. I was told it was a
4 knife of sorts. The length and the color, I
5 can't remember.

6 Q. And if I can, can I refresh your
7 memory of the recorded statement that you
8 recorded of Mr. Smith?

9 A. Sure.

10 DEFENDANT EDWARDS: May I have --
11 (sidebar with Solicitor).

12 SOLICITOR SIMPSON: Judge, may I
13 approach the court reporter?

14 THE COURT: Sure.

15 CROSS-EXAMINATION CONTINUED

16 BY DEFENDANT EDWARDS:

17 Q. (Playing audio recording of
18 statement of loss prevention officer) -- did
19 you hear a description of a weapon?

20 A. I think he just stated a black-
21 handled knife.

22 Q. So being that you're -- in your
23 profession, I'm sure you get a lot of
24 description of weapons and things of that
25 nature. So when one is given to you, don't

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1 you pay pretty close attention to that?

2 A. We try to, yeah.

3 Q. Okay. So if he said a black-handled
4 knife and a black blade, when you go looking
5 for a weapon, wouldn't that be the weapon of
6 choice that you look for?

7 A. It could be. But also in my twenty-
8 seven years I've had people robbed who've
9 said the defendant was wearing a black shirt
10 when in actuality it was really red. It's
11 something that happens to their mind when
12 they're looking -- when they're under that
13 type of trauma. So, to answer your question
14 about the knife, I don't know.

15 Q. Wow. Okay. But you were aware that
16 the knife that the prosecution have in
17 evidence is far from that description?

18 A. I actually never saw the knife that
19 was collected at the scene. I was busy
20 conducting the show-up and coordinating the
21 towing of the vehicle and conducting a search
22 of the vehicle.

23 Q. I thought Detective Roberts gave you
24 the knife?

25 A. He didn't give me a knife.

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1 Q. Okay. Through your observation was
2 there any stolen merchandise located that you
3 found in the car?

4 A. I don't believe there was any. I
5 didn't conduct the search. What I did is I
6 narrated the search warrant over the
7 telephone to Sergeant Stanley, so they could
8 construct a search warrant for the vehicle.
9 Am I aware of anything stolen? No, I'm not.

10 Q. Okay. What was the description of
11 the female given?

12 A. It was during my interview with Mr.
13 Smith, he couldn't give all that much because
14 she was in a seated position in the vehicle.
15 I recall something to the effect of a dark
16 colored knitted hat, gapped tooth. That's
17 about it. So we didn't have a very good
18 vantage point to ---

19 Q. That's not a very good ---

20 A. That's not a whole lot, no.

21 Q. Okay. You were the one who asked
22 for the video of the return; right?

23 A. I requested it. I never received
24 it.

25 Q. Okay. So you've never received it?

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1 A. I never saw it.

2 Q. You never viewed it?

3 A. No.

4 Q. Okay. Through your observation,
5 does this video, you think match the
6 description of "black female, black
7 toboggan"?

8 A. Could be.

9 Q. That's gray?

10 A. Yes. It's also, dark. I was told
11 dark knitted hat.

12 Q. You said it was black, though?

13 THE COURT: Sir, you're arguing
14 now. He's already answered your question.

15 DEFENDANT EDWARDS: All right.

16 THE COURT: You can argue that to
17 the jury, as I stated, in your closing
18 argument.

19 DEFENDANT EDWARDS: All right.

20 I have no further questions for you.

21 WITNESS: Thank you.

22 THE COURT: Redirect.

23 SOLICITOR SIMPSON: Thank you,
24 Your Honor.

25 REDIRECT EXAMINATION

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1 BY SOLICITOR SIMPSON:

2 Q. Detective Burckhardt, how long again
3 have you been in law enforcement?

4 A. Twenty-seven years.

5 Q. Conducted a lot of witness/victim
6 interviews in those twenty-seven years?

7 A. Hundreds.

8 Q. Uncommon for details of eyewitnesses
9 to be a bit off?

10 A. Under trauma and stress it's been
11 shown time and time again that they can be
12 mistaken.

13 Q. Were you present yesterday observing
14 the trial?

15 A. I was.

16 Q. Did we speak to one another
17 yesterday throughout the day?

18 A. We did.

19 Q. And could you give the jury an exact
20 description of the tie I had on?

21 A. I think you had a red, white and
22 blue tie on.

23 Q. That's good for a guess. In
24 observing small details, is it common for
25 people to get ---

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1 A. Under -- I am only going by my
2 experience in these cases, under duress and
3 stress, under those circumstances, I've had a
4 gun to my head in my career and I couldn't
5 tell you what the gun looked like. So ---

6 Q. Nevertheless, were you given details
7 from Michael Smith about the person who
8 committed the crime?

9 A. I was.

10 Q. Was a lion's share of those details,
11 did they end up accurate?

12 A. Absolutely. I mean, everything
13 found in the car was identical to the
14 clothing description that was provided to me
15 in my initial interview with the victim.

16 Q. Thank you, Detective.

17 SOLICITOR SIMPSON: No further
18 questions.

19 THE COURT: Recross.

20 DEFENDANT EDWARDS: If I may.

21 THE COURT: Sure.

22 RE CROSS EXAMINATION

23 BY DEFENDANT EDWARDS:

24 Q. Sir, you testified that the female
25 -- the alleged female that they said that was

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1 in the store, she fled the store in a black
2 vehicle?

3 A. Yeah, I referred to my investigative
4 notes here in my report. It seems to me that
5 we were given -- we were offered information
6 from the store management in the North store
7 that it was -- it was by chance that she may
8 have gotten into some undescribed nondescript
9 black vehicle and left the area. That's all
10 we had.

11 Q. So is it possible that that's the
12 vehicle that she ---

13 DEFENDANT EDWARDS: Objection,
14 Your Honor. Speculation.

15 THE COURT: I sustain the
16 objection. Under 602 he can't answer that.
17 He doesn't know.

18 RECROSS EXAMINATION CONTINUED

19 BY DEFENDANT EDWARDS:

20 Q. Was there proof that this female got
21 out of a white Suzuki?

22 A. I don't think we have any other --
23 other than the fact -- this female in the
24 video? We don't know who this female is.

25 Q. You don't know who she is?

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1 A. All we know is there was an African-
2 American female in a Suzuki at the West
3 Ashley store. And that's based on the
4 account offered by the victim, Mr. Smith.

5 Q. Did the female use an ID to attempt
6 to do a return?

7 A. There was an ID presented; that's
8 correct. If the pictures match, I couldn't
9 tell you that.

10 Q. There was a name that was on the ID,
11 so they had a name for a female?

12 A. An ID was presented to the store,
13 (affirmative nod).

14 Q. Okay. So there was a name then?

15 A. There was, yes.

16 Q. Okay.

17 A. If it was that person, I don't know
18 that.

19 DEFENDANT EDWARDS: All right.
20 No further questions.

21 THE COURT: Thank you, sir. You
22 may come down, sir. Thank you.

23 (WITNESS STEPS DOWN)

24 THE COURT: All right. Let's take
25 a break at this point, ladies and gentlemen.

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1 I'll let you go to your jury room. Don't
2 begin your deliberations. We'll be with you
3 in about ten minutes. Thank you.

4 (JURY OUT AT 11:20 A.M.)

5 THE COURT: All right. Is there
6 anything from the State before we recess?

7 SOLICITOR SIMPSON: No, Your
8 Honor?

9 THE COURT: Anything from the
10 Defendant?

11 DEFENDANT EDWARDS: No, Your
12 Honor.

13 THE COURT: How many more -- you
14 have at least one more witness?

15 SOLICITOR SIMPSON: One more.

16 THE COURT: Okay. Fine. Let me
17 go ahead and -- because we'll need to talk
18 after that witness.

19 Mr. Edwards, they still have one
20 more witness before they rest their case.
21 I'm going to need to talk with you after they
22 rest about your decision to testify or not to
23 testify in this matter.

24 So if you haven't -- I'm sure you've
25 been giving some thought to it. Think some

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1 more about it because at the conclusion
2 when we send the jury out, I would like to
3 discuss that with you then, okay?

4 DEFENDANT EDWARDS: All right.

5 THE COURT: Thank you, sir.

6 We'll be at-ease.

7 (BRIEF RECESS

8 (DEFENDANT PRESENT)

9 THE COURT: Bring in the jury.

10 (JURY IN @ 11:35 A.M.)

11 THE COURT: Thank you, ladies and
12 gentlemen. Solicitor, you may call your next
13 witness.

14 SOLICITOR SIMPSON: The State
15 calls Kevin Shurbine.

16 (WITNESS TAKES STAND)

17 KEVIN SHERBINE, having been duly sworn to
18 tell the truth, and nothing but the truth,
19 testified as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR SIMPSON:

22 Q. Officer Shurbine, what agency do you
23 work for?

24 A. I work for the Sheriff Al Cannon
25 Detention Center.

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1 Q. Okay. And what is your job there?

2 A. I'm a professional visitation
3 officer.

4 Q. Okay. And what are some of the
5 duties that are incorporated in that
6 position?

7 A. I'm the main point of contact
8 between the inmates and their attorneys,
9 public defenders, other law enforcement
10 agencies, non-law enforcement agencies.

11 I handle about ninety percent of the
12 subpoenas that are served on the jail, as
13 well I assist the regular logging officers
14 with their day-to day-duties.

15 Q. And is one of your duties in that
16 job sort of the maintenance and control of
17 phone records?

18 A. It is, yes.

19 Q. And let's educate the jury, if you
20 will. Are inmates allowed to use the phone
21 at the jail?

22 A. They are, yes.

23 Q. And what is the process, if you
24 could, the rules as far as using the phone at
25 the jail?

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1 A. Inmates are allowed to use the phone
2 anytime they've been given a PIN number,
3 which is assigned to them down in the booking
4 area. Once they are fingerprinted and
5 photographed, they can use the phone down in
6 processing twice on a free call. And then
7 when they get assigned to a housing unit,
8 they can use the phone any time they're on
9 recreation period.

10 Q. And you mentioned a PIN number. Is
11 that a number that's unique to each inmate?

12 A. It is.

13 Q. Do you guys maintain records of what
14 inmates are associated with what numbers?

15 A. We do. Yes.

16 Q. Are they required to use the phone,
17 to enter that number?

18 A. They are, yes.

19 Q. Are these phone conversations
20 recorded?

21 A. They are, yes.

22 Q. Someone being booked into the
23 Charleston County Detention Center, are they
24 informed that their calls are recorded?

25 A. They are. When the first get their

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1 PIN number, it's on a sheet of paper that
2 says their calls are monitored and recorded.
3 It's on various signs in the processing area
4 as well as in the housing units. There are
5 various signs posted as well as I believe
6 every two minutes or so on a phone
7 conversation it comes on the recording. It
8 says it's automatically recorded.

9 Q. Okay. And you mentioned that one of
10 your duties too is responding to subpoenas?

11 A. Yes, it is.

12 Q. Do you respond to any subpoenas
13 regarding the records of the jail phone
14 calls?

15 A. I do, yes.

16 Q. And how does your agency respond to
17 those subpoenas?

18 A. Once we get a subpoena for phone
19 calls, we look and see what it is they're
20 looking for, to what date range the subpoena
21 could be. That information is input into our
22 database and we perform a search.

23 And once the results are found we print
24 out a hard copy, which is a log, which shows
25 every call that was made, date and time, to

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1 what number. We also burn the audio to a
2 disk.

3 Once that information is completed we put
4 it in a folder and seal it and call the
5 agency that requested the subpoena.

6 Q. Okay.

7 SOLICITOR SIMPSON: May I
8 approach the witness, Your Honor?

9 THE COURT: You may.

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR SIMPSON:

12 Q. I'm showing you first what's been
13 marked for ID only as State's 21. Take a
14 moment to review and let me know if you
15 recognize that document?

16 A. (Upon review), I do. Yes.

17 Q. And what is that document?

18 A. This is a subpoena for phone records
19 for a specific inmate for a specific date.

20 Q. And who is the inmate that the
21 subpoena concerns?

22 A. Gerald Edwards.

23 Q. Okay. And you said when you receive
24 a subpoena like that, in what form do you
25 respond? Do you provide the actual phone

1 calls?

2 A. We do. We provide a printed log and
3 then the audio on CD.

4 Q. Okay. I'm showing you what's been
5 marked for ID Only as State's 12. Do you
6 recognize that?

7 A. I do, yes.

8 Q. And what is that?

9 A. This is an audio CD with the
10 inmate's name, the date of range requested on
11 the subpoena.

12 Q. Okay. And would that have been
13 provided to the requesting agency pursuant to
14 the subpoena?

15 A. It would have, yes.

16 Q. And what inmate is that associated
17 to?

18 A. Gerald Edwards.

19 SOLICITOR SIMPSON: Your Honor,
20 at this time, I would seek to admit and
21 publish portions of State's 12.

22 THE COURT: Is there any
23 objection?

24 DEFENDANT EDWARDS: No, Your
25 Honor.

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1 THE COURT: Without objection
2 State's 12 is admitted.

3 (SO ENTERED AS STATE'S EXHIBIT 12)

4 SOLICITOR SIMPSON: Your Honor,
5 for the -- may I approach, Your Honor.

6 THE COURT: Yes, you may.

7 SOLICITOR SIMPSON: Again, that
8 one's been marked for ID only at this point.
9 That's State's 19.

10 THE COURT: All right.

11 SOLICITOR SIMPSON: A copy of
12 that has been provided to Mr. Edwards.

13 THE COURT: Very well.

14 SOLICITOR SIMPSON: The State
15 will be seeking to admit this.

16 THE COURT: I have a copy. I will
17 be following along.

18 SOLICITOR SIMPSON: Thank you,
19 Your Honor.

20 THE COURT: Uh-huh. Thank you.

21 SOLICITOR SIMPSON: And we would
22 publish this (State's Exhibit 12), Your
23 Honor.

24 (STATE'S EXHIBIT 12, AUDIO RECORDING OF
25 JAIL CALLS PUBLISHED)

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1 SOLICITOR SIMPSON: Your Honor,
2 at this time the State would seek to admit
3 what's previously referred to as State's 19
4 for ID Only.

5 THE COURT: Do you have any
6 objection, Mr. Edwards?

7 DEFENDANT EDWARDS: I would like
8 to have the rest of this. Some of that is
9 missing.

10 THE COURT: Well, you can publish
11 any part you want. The State is offering
12 that part at this -- I've gone along with it.
13 There were a couple of words that were
14 missing from there, some expletives. But
15 other than that, it follows what was
16 published. You're welcome to publish
17 anything else you want to publish.

18 DEFENDANT EDWARDS: Okay.

19 THE COURT: All right. Do you
20 have objection to admitting the transcript
21 of what was published thus far (Exhibit 12)?

22 DEFENDANT EDWARDS: No, sir.

23 THE COURT: Very well. State's
24 Exhibit 19 is admitted without objection.

25 SOLICITOR SIMPSON: Thank you,

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1 Your Honor.

2 (SO ENTERED AS STATE'S EXHIBIT 19)

3 THE COURT: Do you have the whole
4 CD on your computer?

5 SOLICITOR SIMPSON: I do.

6 THE COURT: Okay.

7 SOLICITOR SIMPSON: It's on the
8 computer.

9 THE COURT: I understand. Do you
10 have any additional questions at this point?

11 SOLICITOR SIMPSON: I have no
12 additional questions.

13 THE COURT: You may cross-examine.

14 DEFENDANT EDWARDS: I have no
15 questions.

16 THE COURT: You don't want to --
17 you said you want to publish -- you don't
18 want to publish anything?

19 DEFENDANT EDWARDS: Yeah. I just
20 the -- just some more to the end of that last
21 one.

22 THE COURT: Correct.

23 DEFENDANT EDWARDS: If they can
24 locate it for me.

25 THE COURT: You just tell him

1 where you want it. That's what you have to
2 do. I mean, you have to ask for that portion
3 to be published.

4 SOLICITOR SIMPSON: I have it --
5 it's stopped right there where I stopped.

6 DEFENDANT EDWARDS: Yeah. Keep
7 it going.

8 THE COURT: Keep it going from the
9 last point; is that correct?

10 DEFENDANT EDWARDS: From the last
11 point.

12 (STATE'S EXHIBIT 12 PUBLISHED)

13 DEFENDANT EDWARDS: No, that's
14 not the end. I have listened to this before
15 and obviously there's ---

16 THE COURT: We can put yours in
17 there and block it and have it marked as a
18 Defendant's Exhibit Number 10, I think. And
19 you can publish it.

20 COURT REPORTER: Defendant's
21 Exhibit Number 10 for identification.

22 THE COURT: Okay

23 THE COURT: And do you have an
24 objection to it being admitted?

25 SOLICITOR SIMPSON: I don't.

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1 To my knowledge, that's an exact replica.

2 (SO ENTERED AS DEFENDANT'S EXHIBIT 10)

3 THE COURT: I understand that.

4 So that we don't have any question about
5 that, later.

6 Defendant's 10 is a replica of --
7 what's that number, Number 12?

8 COURT REPORTER: State's Exhibit
9 Number 12.

10 THE COURT: Defendant's Exhibit 10
11 is a replica of State's Exhibit 12, but
12 Defendant has requested that his version be
13 published.

14 SOLICITOR SIMPSON: Your Honor,
15 for the record we're starting from the call,
16 what's called "call number two."

17 THE COURT: Yes, sir.

18 SOLICITOR SIMPSON: Page
19 nineteen.

20 THE COURT: Okay.

21 SOLICITOR SIMPSON: The State's
22 stops at four minutes thirty seconds.

23 THE COURT: Yes.

24 SOLICITOR SIMPSON: Mr. Edwards
25 would like me to start at three minutes

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1 thirty-four seconds, and so it will continue
2 past where we stopped.

3 THE COURT: Very well. So you're
4 going to pick it up at four minutes and one
5 second is where you started according to
6 State's 19; is that correct?

7 SOLICITOR SIMPSON: We started at
8 three forty-three and stopped at four thirty.

9 THE COURT: All right. That's the
10 marking on the CD?

11 SOLICITOR SIMPSON: Yes.

12 THE COURT: Because that's not
13 referenced in State's 19.

14 SOLICITOR SIMPSON: We're
15 starting at the same place I did. And he
16 wants to continue forward.

17 THE COURT: That's fine. That is
18 designated "call number two" on the
19 transcript?

20 SOLICITOR SIMPSON: Yes, Your
21 Honor.

22 THE COURT: Okay. For the jury's
23 information when they review the transcript.

24 (DEFENDANT'S EXHIBIT 10 PUBLISHED)

25 DEFENDANT EDWARDS: That's good.

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1 SOLICITOR SIMPSON: Your Honor, I
2 stopped at five-o-nine.

3 THE COURT: And you're stopping at
4 the request of Mr. Edwards?

5 SOLICITOR SIMPSON: Yes, Your
6 Honor.

7 THE COURT: Okay.

8 SOLICITOR SIMPSON: Your Honor,
9 at Mr. Edwards request we're starting at two
10 minutes.

11 THE COURT: Two minutes?

12 SOLICITOR SIMPSON: Yes, Your
13 Honor.

14 THE COURT: Okay.

15 (DEFENDANT'S EXHIBIT 10 PUBLISHED)

16 DEFENDANT EDWARDS: Stop it.

17 THE COURT: Are you stopping at
18 Mr. Edwards' request?

19 SOLICITOR SIMPSON: Yes, Your
20 Honor.

21 THE COURT: Okay.

22 SOLICITOR SIMPSON: And that is
23 stopped approximately where I started on it.

24 THE COURT: All right.

25 SOLICITOR SIMPSON: Two minutes

1 to three forty-three.

2 THE COURT: Okay. All right. Is
3 there anything else you wish to publish, Mr.
4 Edwards?

5 DEFENDANT EDWARDS: No, sir.

6 THE COURT: Or you wish to publish
7 any additional as a result of that?

8 SOLICITOR SIMPSON: I do not,
9 Your Honor.

10 THE COURT: Thank you.

11 SOLICITOR SIMPSON: Nor do I have
12 any further questions.

13 THE COURT: All right. Do you
14 have any further questions for this witness,
15 sir?

16 DEFENDANT EDWARDS: No, sir.

17 THE COURT: Thank you, sir. You
18 may step down.

19 WITNESS: Thank you, sir.

20 (WITNESS STEPS DOWN)

21 THE COURT: And you wish this
22 witness to be excused?

23 SOLICITOR SIMPSON: I do, Your
24 Honor.

25 THE COURT: Any objection, Mr.

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1 Edwards?

2 DEFENDANT EDWARDS: No, sir.

3 THE COURT: You're also free to
4 leave, sir. Thank you. You may call your
5 next witness.

6 SOLICITOR SIMPSON: Your Honor,
7 at this point the State rests.

8 THE COURT: All right. Ladies and
9 gentlemen, there are some matters of law now
10 that I must take up out of your presence.
11 Timing is pretty good. It's 12:00. So I'll
12 go ahead and take care of those matters of
13 law and you can go on to lunch.

14 I'd ask you to be back in your jury
15 room, please, by 1:30. We'll resume the
16 trial at that time.

17 Please understand that you're still
18 not at liberty to talk about this case among
19 yourselves or allow anybody to talk with you
20 or talk about it in your presence. Have a
21 good lunch and I'll see you at 1:30. Come
22 straight to your jury room.

23 (JURY OUT @ 12:00 P.M.)

24 THE COURT: All right. Are there
25 any Motions from the State at this point?

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Motion for Directed Verdict

1 SOLICITOR SIMPSON: Your Honor,
2 I'll just get ahead of the game at this
3 point. On behalf of Mr. Edwards we would
4 make a directed verdict motion. If he isn't
5 aware of that, we'd like to do the ---

6 THE COURT: Well, I'm going to
7 deal with that.

8 SOLICITOR SIMPSON: Okay.
9 Understood, Your Honor.

10 THE COURT: Thank you. But you
11 don't have any Motions?

12 SOLICITOR SIMPSON: No, Your
13 Honor.

14 THE COURT: Mr. Edwards, do you
15 have any specific motions?

16 DEFENDANT EDWARDS: Just like he
17 said one, I ---

18 THE COURT: And I was going to
19 handle that. As you know -- you've been
20 through a trial with a lawyer once.

21 DEFENDANT EDWARDS: Yes, sir.

22 THE COURT: At this stage, the
23 typical Motion that's made is that the State
24 has failed to meet its burden of proof in
25 establishing beyond a reasonable doubt the

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Motion for Directed Verdict

1 elements of the crimes charged.

2 And, of course, I am required to
3 consider the evidence in the light most
4 favorable to the State in ruling on that
5 Motion. And based on the testimony that we
6 have, we have a witness who basically
7 testified to the crime itself, who testified
8 to all elements of the crime. We have the --
9 certainly, a knife has been found. And in
10 the light most favorable to the State, it
11 could well be, if the jury concludes, that it
12 was the knife that was presented. But even
13 that's not a necessary item to carry the day
14 for this because the witness, if the jury
15 believes that witness's direct testimony of
16 the crime of armed robbery. And obviously if
17 the jury believes that you had a knife and
18 you took the property from the store, that in
19 and of itself, establishes everything. All
20 the rest of it is just additional information
21 for the jury's consideration.

22 I'm not suggesting that that doesn't
23 have any weight or purpose. But the
24 testimony of the eyewitness is sufficient to
25 carry the day for the Motion. So I would deny

1 your Motion for a directed verdict.

2 DEFENDANT EDWARDS: Yes, sir.

3 THE COURT: I think the crime of
4 armed robbery has been established and I
5 think the crime -- by the -- in the light
6 most favorable to the State, as well as
7 having possession of a weapon during the
8 commission of a violent crime. So that
9 Motion is now protected for purposes of
10 review should that become necessary.

11 Do you have any additional motions
12 to make at this point, other than the Motion
13 for directed verdict?

14 DEFENDANT EDWARDS: No, Your
15 Honor.

16 SOLICITOR SIMPSON: No, sir.

17 THE COURT: Okay. Now, you
18 understand that you have the right, as I told
19 the jury, you don't have to testify. You
20 don't have to say a thing. You don't have to
21 present any evidence. But you have the right
22 to do that if you wanted.

23 In addition -- you've already
24 presented some evidence, of course, for the
25 jury's consideration. All of those exhibits

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Motion for Directed Verdict

1 are certainly valid evidence for the jury to
2 consider and you're free to argue that
3 evidence and the reasonable inferences to be
4 drawn from that evidence.

5 But do you wish to present any
6 testimony either from you or any other
7 witness?

8 DEFENDANT EDWARDS: No, Your
9 Honor, I have two other papers that needs --
10 the people that were published on these
11 papers, people who were on the witness list
12 but they haven't ---

13 THE COURT: You have to call them.
14 They're going to have to put them in. So,
15 you want to -- I'll give you until lunchtime
16 to try to do that. I don't know what the
17 significance of those papers are. I don't
18 know anything about them, of course. I don't
19 know anything of them, than what I see when
20 you present them.

21 We can mark them for identification
22 purposes only, you know. But any testimony
23 about those documents would have to be
24 through a witness unless y'all can agree.

25 (OFF RECORD CONFERENCE BETWEEN SOLICITOR

1 AND DEFENDANT EDWARDS)

2 SOLICITOR SIMPSON: Judge I have
3 no objection to admitting these.

4 THE COURT: All right. Very well.
5 You may offer those. They'll be Defendant's,
6 what, 11 and 12?

7 COURT REPORTER: Yes, sir.

8 (SO MARKED AS DEFENDANT'S EXHIBIT 11)

9 (SO MARKED AS DEFENDANT'S EXHIBIT 12)

10 THE COURT: Defendant's 11 and 12.
11 They will be exhibits for the jury and they
12 will be sent back to the jury for its
13 consideration and you're free to discuss
14 those during your closing arguments. Of
15 course, there's no testimony about those
16 exhibits.

17 (SO ENTERED AS DEFENDANT'S EXHIBIT 11)

18 (SO ENTERED AS DEFENDANT'S EXHIBIT 12)

19 THE COURT: Thank you, sir. They
20 just remain with the court reporter. All
21 right, sir. Anything else?

22 DEFENDANT EDWARDS: (No verbal
23 response).

24 THE COURT: Now, do you plan to
25 testify yourself?

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Examination of Defendant - Right to Testify

1 DEFENDANT EDWARDS: No, sir, Your
2 Honor.

3 THE COURT: Now, you understand
4 you have the right to testify?

5 DEFENDANT EDWARDS: Yes, sir.

6 THE COURT: And you understand
7 also that, of course, if you testify you'd be
8 subject to cross-examination. But I will
9 instruct the jury that they cannot consider
10 the fact that you did not testify. Do you
11 understand that as well?

12 DEFENDANT EDWARDS: Yes, sir.

13 THE COURT: You've had sufficient
14 time to think about what you're about to do?
15 That is, declining to testify?

16 DEFENDANT EDWARDS: Yes, sir.

17 THE COURT: Are you under the
18 influence of any alcohol or any medication
19 here today, Mr. Edwards?

20 DEFENDANT EDWARDS: No, sir.

21 THE COURT: Do you know of any-
22 thing that's affecting your ability to make
23 this type of decision?

24 DEFENDANT EDWARDS: No, sir.

25 THE COURT: Are you comfortable

1 with your decision not to testify, sir?

2 DEFENDANT EDWARDS: Yes, sir.

3 THE COURT: Okay. If between now
4 and when I bring the jury back in, I'm going
5 to ask you if you wish to present any
6 additional evidence for the jury's
7 consideration? At which time I assume you
8 will tell me 'no.' At that point the
9 evidentiary portion is concluded.

10 But between now and that point, if
11 you wish to change your mind, just let me
12 know and I will make sure that we talk
13 further about this. If I don't hear from you
14 when I ask you that question and you say no,
15 I'm going to assume that you stand by your
16 decision not to testify. Is that fair?

17 DEFENDANT EDWARDS: Yes, sir.

18 THE COURT: Okay. Thank you so
19 much, sir. And I do find that Mr. Edwards
20 has elected to not testify. Just for the
21 purposes of this -- because Judge
22 Harrington's already made a decision -- did
23 he testify in the first trial?

24 SOLICITOR SIMPSON: He did, Your
25 Honor.

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Examination of Defendant - Right to Testify

1 THE COURT: He did. Then you've
2 been through that both ways and you're
3 weighing all of that as well in making your
4 decision here today; is that correct?

5 DEFENDANT EDWARDS: Yes, sir.

6 THE COURT: Okay. All right. I
7 find that to be a very conscious decision,
8 one that he makes freely, voluntarily, and
9 knowingly and intelligently.

10 And for the purpose of the record
11 let me confirm again -- I'm sure that Judge
12 Harrington put on the record, I think I
13 stated it when I started, I would like to
14 again confirm Mr. Edwards has demonstrated
15 throughout this trial both in his
16 questioning, in his demeanor and approach,
17 he's very, very intelligent, very competent
18 to deal with these matters and has
19 demonstrated that. I also want to commend
20 him for his decorum and respect given to the
21 process. I thank you for that as well, sir.
22 Thank you.

23 DEFENDANT EDWARDS: Thank you.

24 THE COURT: All right. Anything
25 else?

1 SOLICITOR SIMPSON: No, Your
2 Honor.

3 THE COURT: Okay. We'll be at
4 ease until 1:30. Thank you.

5 And we'll move directly into closing
6 arguments, Mr. Edwards. I'll have to excuse
7 the jury for about five minutes or so, ten
8 minutes or so when we come back, because I am
9 going to ask you that.

10 Then there are matters of law that I
11 have to take up. I have to revisit Motion
12 that we just discussed and then we'll do
13 closing arguments and you'll give the first
14 closing, okay? Thank you, sir.

15 DEFENDANT EDWARDS: Thank you.

16 THE COURT: Are you going to open
17 on the law or are you going to just respond?

18 SOLICITOR SIMPSON: No, Your
19 Honor. I'll just respond.

20 THE COURT: Okay. That's fine.
21 Thank you.

22 (LUNCH RECES)

23 (DEFENDANT PRESENT)

24 THE COURT: All right. Is the
25 State ready?

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Examination of Defendant - Right to Testify

1 SOLICITOR SIMPSON: We are, Your

2 Honor.

3 THE COURT: Is the Defendant

4 ready?

5 DEFENDANT EDWARDS: Yes, Your

6 Honor.

7 THE COURT: Let's bring in our

8 jury, please?

9 (JURY IN)

10 BAILIFF: All jurors are

11 present, Your Honor.

12 THE COURT: Thank you very much.

13 All right. I've noticed you continue to

14 occupy that seat. You have been selected as

15 the presiding juror, I assume; is that

16 correct?

17 JUROR NUMBER 261: Yes, sir.

18 THE COURT: And your name and

19 juror number, please for the record?

20 JUROR NUMBER 261: Juror 261. My

21 name is Lauren Sostrin.

22 THE COURT: Thank you, Ms.

23 Sostrin.

24 PRESIDING JUROR: Uh-huh.

25 THE COURT: Thank you very much,

1 ladies and gentlemen for taking care of that.

2 And if you'll recall, the State had rested.

3 And as I mentioned to you when we
4 started, that Mr. Edwards, of course, has
5 nothing to prove or disprove. But he still
6 has the right, if he chooses to, to present
7 additional testimony for your consideration
8 from any witnesses.

9 Mr. Edwards, we've reached that
10 point. Do you wish to present any additional
11 evidence for the jury's consideration, sir?

12 DEFENDANT EDWARDS: No, Your
13 Honor.

14 THE COURT: Very well. That will
15 conclude the evidentiary portion of this
16 process.

17 There still remains two very
18 important aspects, closing arguments, of
19 course, and then followed by the charge.

20 I know you just sat down but there
21 are matters of law that I need to take up out
22 of your presence. We'll be about five
23 minutes and then we'll bring you back in.
24 When we return, please remember something,
25 the remarks that Mr. Edwards and the

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Charge Conference

1 Solicitor will make for you will be
2 helpful when you begin your deliberation,
3 both in your application of the law and your
4 analysis of the facts. But remember
5 something -- that the evidence that you heard
6 came through the testimony of witnesses.
7 Their remarks are not considered evidence and
8 should never be considered evidence by you at
9 any time. Likewise, my remarks during the
10 charge should never be considered evidence
11 either.

12 Please retire to your jury room.
13 We'll be with you very shortly.

14 (JURY OUT @ 1:32 P.M.)

15 THE COURT: Mr. Simpson, are there
16 any Motions from the State at this point,
17 sir?

18 SOLICITOR SIMPSON: No, Your
19 Honor. We had filed a request to charge.

20 THE COURT: Yeah. I've had that
21 and you provided Mr. Edwards with a copy of
22 it?

23 SOLICITOR SIMPSON: I did, Your
24 Honor.

25 THE COURT: Okay. All right.

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Charge Conference

1 Mr. Edwards, other than the Motion, renewing
2 your Motion for directed verdict, any other
3 Motions for you?

4 DEFENDANT EDWARDS: No, Your
5 Honor.

6 THE COURT: All right. And for
7 the reasons previously stated in ruling on
8 the directed verdict at the close of the
9 State's case, I would reiterate all of those.
10 And I failed to add also the jury could also
11 consider the testimony that was rendered
12 through the taped conversations as additional
13 indicia that you committed the armed robbery
14 or committed the offense charged. And when
15 considered in the light most favorable to the
16 State -- obviously, there are other
17 inferences that could be drawn from that as
18 well. But it's enough to -- all of the
19 evidence I've discussed and they've presented
20 would be sufficient, I think, to deny the
21 Motion.

22 Now, do you have any specific requests to
23 charge?

24 DEFENDANT EDWARDS: No.

25 THE COURT: Okay. I will charge

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Charge Conference

1 the request submitted by the Solicitor. I've
2 reviewed that case and it is pertinent to
3 this matter. In fact, the case that -- the
4 *Mitchell* case, I believe was a *Walmart* case,
5 was -- I think the only difference was it had
6 a gun instead of a knife. But it was the
7 same situation, alleged shoplifting and there
8 was an approach outside of the store. So
9 it's very much on point and very much
10 factual. And I've taken some of language --
11 it talks about the robbery and its
12 continuation -- and expanded on that for my
13 general charge. I'm not charging it verbatim
14 as you submitted it, but I think I've covered
15 in my general charge.

16 SOLICITOR SIMPSON: Okay.

17 THE COURT: But at the end if you
18 don't think I've addressed it, just let me
19 know, okay?

20 SOLICITOR SIMPSON: Thank you.

21 THE COURT: And likewise, Mr.
22 Edwards, at the end I will ask you have any
23 exceptions or additions. And if you hear
24 something that you don't think is correct or
25 you don't hear something that you think I

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Closing Argument by Defendant Edwards, Pro Se

1 should have charged, I'll give you an
2 opportunity to also share anything with me at
3 that point as well, sir. Okay?

4 DEFENDANT EDWARDS: All right.

5 THE COURT: All right. Are we
6 ready to go?

7 SOLICITOR SIMPSON: The State's
8 ready, Your Honor.

9 THE COURT: Mr. Edwards, are you
10 ready?

11 DEFENDANT EDWARDS: Yes, sir.

12 THE COURT: Okay. Bring in our
13 jury, please.

14 (JURY IN @ 1:36 P.M.)

15 BAILIFF: All jurors are
16 present.

17 THE COURT: Thank you, ladies and
18 gentlemen. All right. We are now moving
19 into the third phase, the closing remarks.
20 Please give your attention now to Mr.
21 Edwards. Mr. Edwards, you may proceed.

22 DEFENDANT EDWARDS: Thank you,
23 Your Honor.

24 THE COURT: Yes, sir.

25 CLOSING STATEMENT

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Closing Argument by Defendant Edwards, Pro Se

1 BY DEFENDANT EDWARDS:

2 Good afternoon, ladies and gentlemen
3 of the jury. Let me first start off by
4 saying that I have a new found respect for
5 lawyers. This is a hard job. I under-
6 estimated the burden they have, and I
7 apologize for that.

8 Ladies and gentlemen of the jury, I
9 thank you for your service to the community
10 and certainly for your degree of attention to
11 the details and facts of this case. I know
12 it was intense and a lot of details to take
13 in. I know y'all have been paying attention
14 and giving it your full focus, which I
15 appreciate.

16 As I said in the beginning this case
17 is about a missing piece of a puzzle. The
18 prosecution would like you to continually
19 fold those pieces into evidence that doesn't
20 exist, and to rely on witnesses that weren't
21 here.

22 I would like to ask you to take a
23 second to think about the truth as you know
24 it. One thing about the truth, it's always
25 the same when you tell it. Do you agree?

1 You don't have to add anything to it or take
2 anything away from it. Excuse me. You don't
3 have to add anything to it to make it sound
4 more believable or take anything away from it
5 as to say 'what you don't know won't hurt
6 you.' There are going to be times where I'll
7 show you the prosecution either added
8 something to make their story more believable
9 or they left something out that they didn't
10 want you to know.

11 First, let's look at the evidence
12 that doesn't exist. There's no floor sealant
13 here. This sealant here (indicating sample),
14 doesn't exist. The prosecution has failed to
15 show you any evidence to support their theory
16 that the Defendant possessed or took this
17 item. They added this example to make their
18 story more believable.

19 There's no video to support this
20 allegation, even though Michael Smith
21 testified that there are twenty-three cameras
22 at the Home Depot; but they couldn't find one
23 video, one video with any merchandise to help
24 support their theory.

25 Michael Smith testified that this is

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Closing Argument by Defendant Edwards, Pro Se

1 a commonly theft high dollar item. Why
2 wouldn't you have surveillance for that?

3 Michael Smith, the alleged victim
4 in this case, claimed while coming back from
5 lunch he notices a black female sitting in
6 the parking lot with the car running so he
7 became suspicious. Let's see. A plain,
8 ordinary white car with no distinguishable
9 details, no tinted windows, decals, stickers,
10 car runs loud, loud music, etcetera,
11 (negative gesture). Just sitting in an
12 average parking space car running on a cold
13 day. Now, there's something suspicious about
14 that? Why couldn't it be that maybe the
15 young lady's cold and the car's running to
16 keep her warm.

17 But there's another vehicle, a black
18 truck right beside it, with a young man in
19 it, but yet there's nothing suspicious about
20 the other man.

21 Ladies and gentlemen, how many
22 times have you yourself not gone into a store
23 or had someone else wait in the car while you
24 went inside? Does that mean you're up to
25 something criminal? That's what Michael

1 Smith wants you to believe.

2 And it actually justified that the
3 occupant of the truck wasn't running it, so
4 Michael Smith claims. So, therefore, he
5 wasn't suspicious of that vehicle. And I
6 agree, he shouldn't have been.

7 But neither does a black female sitting
8 in a car or any female for that matter. That
9 could very well have been one of you.

10 With respect to Michael Smith job duties
11 and his commitment to those duties, I'm sure
12 he encounters many different customers.
13 Michael Smith testified in open court that
14 because he saw a black man standing by the
15 rack of high-value items he became
16 suspicious. But also on the stand Michael
17 Smith he stated if an old lady was standing
18 there, he would have become suspicious of her
19 too.

20 This particular item, a jug of
21 floor sealant, has not turned up throughout
22 the course of this trial and moreover
23 throughout the course of Defendant.

24 Michael Smith told the police that
25 Defendant displayed and threatened his life

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Closing Argument by Defendant Edwards, Pro Se

1 with a black handled knife with a black
2 blade. It was explained in detail, Defense
3 Exhibit A. The knife the prosecution has
4 entered into evidence is the knife that
5 Michael Smith wouldn't confirm in open court
6 as the knife he saw on this day. A brown
7 wooden-handled knife.

8 Now, how can you get those two
9 colors mixed up? Outside, broad daylight in
10 the sun. I can't understand that.

11 But I challenge any juror to try
12 and open the knife in evidence with one hand
13 -- and he said it was done almost
14 immediately. He testified that as soon as he
15 grabbed the Defendant the knife came out and
16 up above the Defendant's head. I can't
17 understand how Michael Smith, with all due
18 respect, can paint a picture of a brief
19 struggle that never revealed the knife. If
20 you look at the video, I just looked at it
21 prior -- he claims that I swung the knife and
22 that he had back to disengage. But that's
23 not what the video shows. There's no lunging
24 towards Michael Smith nor any pushing from
25 Michael Smith.

1 Truth is Michael Smith returned from
2 his lunch. And upon spotting this so-called
3 suspicious vehicle with a black female
4 occupant chose to entertain an unjust
5 preconceived notion that someone was stealing
6 in the Home Depot. Ladies and gentlemen,
7 that's not merely doing your job, that's
8 profiling with no race -- no race -- no
9 emphasis on race.

10 There are twenty-three cameras and
11 none of them pick up the Defendant concealing
12 an item or even carrying an item.

13 Then there's Keith Heyward who also
14 testified and said he was an eyewitness but
15 who never saw the Defendant conceal any
16 merchandise, although Michael Smith says the
17 concealment happened in the garden area right
18 in front of where Keith Heyward works.

19 If Keith Heyward was an eyewitness,
20 why didn't he give a statement when this
21 alleged incident first happened. He was
22 never mentioned in affidavit prepared by
23 Detective Miller, the same detective who took
24 Michael's statements -- Michael Smith's
25 statement. They both worked at the same

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Closing Argument by Defendant Edwards, Pro Se

1 story. He never picked anyone out of a
2 lineup or show-up or any other ID proceeding
3 other than showing up here at trial thirteen
4 months later. And now, all of a sudden, he
5 remembers everything and wants to come
6 forward.

7 Remember I told you about adding to
8 the story? Well, the prosecution added Keith
9 Heyward to try and help make their story more
10 believable.

11 I understand that victims and
12 eyewitnesses stories won't be verbatim. But
13 Michael Smith and Keith Heyward stories just
14 don't add up. Keith Heyward testified that
15 the Defendant unzipped his coat and pulled
16 out a knife with a six-inch blade. That
17 would be just a pretty big knife. But
18 Michael Smith's statement, which we have,
19 Defendant Exhibit 1, says that the Defendant
20 pulled a knife from his right side? So which
21 is it? Inside the jacket or right side?

22 If you look at the video, how could
23 one unzip, pull out a knife that's not open
24 and brandish it so quickly? It just doesn't
25 add up to the picture that the prosecution

1 wants you to see.

2 Ladies and gentlemen, the gaps, the
3 stone that they leave unturned, it is quite
4 unclear.

5 Then the prosecution wants you to use
6 the video. Now, according to the law, the
7 prosecution claims this person is an
8 accomplice. But the fact is if a crime is
9 committed and there are two subjects
10 involved, you don't just pursue one, you go
11 after both. Michael Smith testified before
12 you, the jury, and stated that he doesn't
13 care about getting the getaway driver. Why
14 not?

15 He claims these people were
16 stealing from this store for quite some time,
17 why wouldn't he want to get everyone
18 involved. The truth is, the prosecution
19 didn't tell you that she was never arrested
20 or charged with any wrongdoing. She used her
21 ID, so they know her name but they're
22 pretending that they don't know who she is.
23 Defendant's Exhibit 11 and 12 will show that.

24 Michael Smith or anyone else could
25 not pick her out of a lineup. Michael Smith

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Closing Argument by Defendant Edwards, Pro Se

1 also stated that the lady driver wore a black
2 toboggan, but the female in the video has a
3 gray hat on.

4 According to Detective Burckhardt's
5 report and Home Depot the female's return was
6 denied due to excess returns under that name,
7 not because she had stolen merchandise at
8 Michael Smith's hands. See Defendant's
9 Exhibits 11 and 12.

10 So as you can see, there's a lot
11 that's left out because they want you to
12 believe their version of event and make your
13 decision on assumptions. The fact of the
14 matter, she was cleared of any wrongdoing.
15 So how can she be cleared of any wrongdoing
16 but you're saying -- they're using a video
17 to suggest I'm guilty of a crime. That is
18 also contradictory. How can she be innocent
19 but then I, as the Defendant, guilty?

20 These are the facts they are telling
21 you about me in words. Then they have these
22 phone calls. What you heard throughout those
23 conversations was a man stunned by the
24 charges placed against him. He's charged
25 with a most serious offense. And now he's

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1 not going to be able to provide for his
2 family and he's about to lose everything he
3 owns. He maintains that he never robbed
4 anyone, there never was any merchandise -- he
5 never took any merchandise. This man is
6 trying to relay and convey things to loved
7 ones in hopes that he could return soon.

8 Also, Officer Roberts testified that
9 no attempt was made to capture this alleged
10 female. Their only focus was on the
11 Defendant. He also testified that there was
12 not any merchandise found. Every officer
13 involved testified that there wasn't any
14 merchandise found, but the prosecution wants
15 you to make an assumption as to what happened
16 at the store and go with their version.

17 If you would review Defendant's
18 Exhibit 11 and 12, where it clearly states
19 there the female, the prosecution wants you
20 to believe was an accomplice, was not denied
21 her attempt to return because she had stolen
22 merchandise. It was because she had an
23 excess returns. She left the store in
24 whatever vehicle she was in. The young
25 lady's fingerprint who was at the store

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1 wasn't found in the vehicle I was driving.

2 So how could she have been with me?

3 Ladies and gentlemen, I would like to

4 cite a few things to you. In *Kyles v.*

5 *Whitley* (phonetic), the U.S. Supreme Court

6 ---

7 SOLICITOR SIMPSON: Objection,

8 Your Honor.

9 THE COURT: Sustained. Sustained.

10 It's not appropriate to argue the law. Only

11 the law that you can argue now is the law of

12 armed robbery and the law of pointing and

13 presenting or -- excuse me -- of being in

14 possession of knife during the commission of

15 a violent crime, Mr. Edwards.

16 DEFENDANT EDWARDS: Can I state

17 beyond the reasonable doubt standard

18 THE COURT: You can talk about

19 reasonable doubt. Yes, sir.

20 DEFENDANT EDWARDS: Okay.

21 THE COURT: But with the

22 definition that -- you can state whatever you

23 want but, of course, as I've instructed them,

24 they're instructed to take the law as I give

25 it to them. But you certainly are entitled

1 to make your statement of the law. Yes, sir.

2 Excuse me for interrupting you. You
3 may continue.

4 CLOSING STATEMENT CONTINUED

5 BY DEFENDANT EDWARDS:

6 The beyond a reasonable double
7 protects three standards.

8 First, it protects defendants' liberty
9 interest.

10 Secondly, it protects a defendant from
11 the stigma of conviction.

12 Third, it encourages community confidence
13 in criminal law by giving concrete substance
14 to the presumption of innocence.

15 It is far worse to convict an innocent
16 man than to let a guilty man go free.

17 Can I say about due process? Due process
18 law?

19 THE COURT: No, sir. That's
20 inappropriate for the jury's decision, sir.

21 DEFENDANT EDWARDS: All right.

22 CLOSING STATEMENT CONTINUED

23 BY DEFENDANT EDWARDS:

24 The reasonable doubt applies to
25 elements that distinguish criminal and

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1 noncriminal conduct.

2 To meet its burden of proof the
3 prosecution has to show you physical
4 evidence, that I possessed this floor sealant
5 and there can't be any doubt in your mind
6 that I possessed it. You can't assume I
7 could have or may have. It has to be
8 undisputed physical evidence that I did
9 possess the floor sealant and stole it.

10 The very first element to prosecute
11 robbery and armed robbery is assertion
12 (sic). Assertion would be when a thief
13 actually takes possession and tries to carry
14 away stolen merchandise. The required
15 element of the law is met when a thief
16 actually has in its possession an item of
17 stolen property.

18 I ask you, earnestly and sincerely,
19 to please place yourself on the side of
20 fighting for justice, as I am doing today;
21 with my only help being the truth and God.
22 My life depends on you, the jury.

23 When you contemplate your verdict
24 and when you finalize your decision, you will
25 know that you and you alone have rendered

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1 justice with a verdict of not guilty.

2 Thank you.

3 THE COURT: Thank you, Mr.

4 Edwards. Mr. Simpson?

5 SOLICITOR SIMPSON: Thank you,

6 Your Honor.

7 CLOSING STATEMENT

8 BY SOLICITOR SIMPSON:

9 Ladies and gentlemen, I'd like to
10 start as Mr. Edwards did by thanking you all.
11 Like him, I did pay attention to you while
12 you were doing your job and I noticed that
13 you were paying attention to both the
14 evidence I presented and the evidence that
15 Mr. Edwards presented and I appreciate that.

16 Typically we'd do in a closing
17 statement is to begin by a review of the
18 facts and the evidence that you've heard.
19 I'm going to be brief in that review. I
20 submit to you now this is a pretty
21 straightforward offense with fairly
22 straightforward evidence.

23 We heard first from Michael Smith,
24 the loss prevention officer, about what he
25 observed that day. And I'm going to get into

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1 some of the points Mr. Edwards made shortly.
2 But Mr. Michael Smith, a professional, doing
3 his job; doing his job competently, observed
4 Mr. Edwards take this bottle of floor sealant
5 and place it in his jacket, walk toward the
6 exit. He didn't overreact at this point.
7 This is not some cowboy, as Mr. Edwards would
8 have you believe, jumping to conclusions or
9 jumping to suspicions. You heard about the
10 fact that even when he saw a customer conceal
11 or hide something in a jacket, he still did
12 not jump to the automatic conclusion that
13 there was something being stolen. He said he
14 was going to wait. He gave them the benefit
15 of the doubt, see if they stopped and maybe
16 take it out of the jacket and pay for it.

17 You heard from Michael Smith that he
18 had eye contact with Mr. Edwards throughout
19 this whole process of the taking the jug,
20 putting it in the jacket and walk toward the
21 exit at a register.

22 You've seen video evidence. And as
23 you heard every camera that captured Mr.
24 Edwards during this process, you've seen.
25 And every bit of that video comports with

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1 what you've heard from the witnesses, two
2 eyewitnesses.

3 Mr. Heyward, a student. He doesn't
4 have a dog in this fight. He's up in
5 Columbia. He's a full-time student. He's
6 moved on with his life. Came here, told you
7 what he saw. Saw this person leaving. Saw
8 the knife come out, saw the person. He
9 testified honestly he didn't see the person
10 put it in the jacket, but said the hand was
11 there, holding -- it looked like he was
12 holding something in his jacket.

13 And you heard from Mr. Smith who did
14 see the actual theft and tried to stop it.

15 And you all have seen the video,
16 which comports with everything you heard from
17 the witnesses.

18 You heard -- and I want to take you
19 back to the beginning of this trial, Mr.
20 Smith relayed this crime live. You had the
21 benefit of hearing a person who was
22 experiencing this live on the phone. Put
23 some weight to that. Listen to that
24 recording of that 9-1-1 call and you hear a
25 person who is worked up, who is a little

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1 amped up and afraid, how you would expect a
2 person to act when a knife has just been
3 pulled on them. Listen to that in the jury
4 room. It's in evidence. You hear him live
5 saying 'I've just had a knife pulled on me.
6 Let me give you the -- the car's driving by
7 right now JPY', blah, blah, blah, gives
8 you that information. And you get to hear
9 that very much transpired as if in real time,
10 the 9-1-1 recording. You heard that
11 recording.

12 Photo stills of the video. And it
13 is unfortunate that the timestamp band seems
14 to obfuscate a little bit here. I want you
15 to look closely at this and note that you can
16 still see the image behind it. There's two,
17 two images that look similar to this. One
18 where you clearly see -- and I know we're
19 playing shadow puppets here -- where you
20 clearly see the shadow of Michael Smith reach
21 out to stop Mr. Edwards.

22 And then the second, State's Exhibit
23 20, you don't see this in the first. One
24 second later, where you see the right arm up.

25 Yes, it's unfortunate that this was

1 right off camera but we see the shadows.
2 We're kind of, you know, playing shadow
3 puppets here. But this again comports with
4 everything you heard from two witnesses:
5 Michael Smith, whose job it was to
6 investigate these type things and Keith
7 Heyward. He doesn't have a dog in this
8 fight. He told you exactly what occurred in
9 front of him.

10 And if that wasn't enough, we get --
11 forgive me -- we get to the point where this
12 becomes a little preposterous to consider
13 that Mr. Edwards was not stealing the
14 sealant. Because what does Michael Smith say
15 instantly to the police officers when they
16 get there, *"I know this scam. I know this*
17 *scam. And if what was happening there, what*
18 *I observed with my own two eyes is true, you*
19 *will find Mr. Edwards"* -- where? *"You'll*
20 *find Mr. Edwards at the North Charleston Home*
21 *Depot. I saw the car, white Suzuki. I got*
22 *the tag. You can't confuse it with another*
23 *Suzuki. Here's the tag number. If what was*
24 *going on was true, you'll find Mr. Edwards in*
25 *North Charleston."*

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1 Ladies and gentlemen, where did they
2 find Mr. Edwards? What vehicle was he in?
3 The same white Suzuki in North Charleston,
4 exactly where on a live recording you hear
5 Mr. Smith say, 'Go look for him there. If
6 what is going on is true, you'll find him
7 there.' And they do.

8 Mr. Edwards is there with what? A
9 knife. Michael Smith, "he pulled a knife on
10 me." Mr. Edwards in North Charleston with a
11 knife at his feet. He was concealing it with
12 his feet. He steps out of the car, there it
13 is; the knife.

14 Mr. Edwards wearing different
15 clothing. That doesn't mean it's the wrong
16 person obviously because he's changed. And I
17 ask you this. If Mr. Edwards is innocent why
18 change your clothes on a cold winter's day?
19 Why take off the jacket on a cold winter's
20 day? Why conceal your jeans with sweatpants?
21 He changed his clothes so he wouldn't be
22 identified. But the clothes you see in the
23 video from the jeans to the jacket to the hat
24 are all there for you in evidence.

25 The sealant. Michael Smith notes

1 for you and he notes for you live -- Mr.
2 Edwards went on for a bit about changing the
3 story but his is all live on the 9-1-1 call
4 the moment it's happening. He's getting
5 picked up by a black female wearing a
6 toboggan. Michael Smith is very honest with
7 you that he did not get the best look. All
8 he could tell, black female with a toboggan.

9 They pull the video of the North
10 Charleston store, a black female attempting
11 to exchange floor sealant, wearing a
12 toboggan.

13 Now, what Mr. Edwards wants to
14 portray to you are all these mysteries that,
15 ladies and gentlemen, are not mysteries, the
16 answers -- while we don't always like them --
17 have been given to you in my case in chief.
18 We have run from none of these issues.

19 What happened to the floor sealant?
20 I told you in the opening statement in my
21 case in chief, the female exchanging that
22 floor sealant got away. Mr. Edwards said
23 'shouldn't they have gone and detained her
24 quicker?' Guess what? I totally agree with
25 that. You don't think I wish they would have

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1 gone in there and detained her? Yes. But we
2 know she was there. She certainly exists.
3 We see it on video, her at the counter with a
4 toboggan exchanging the floor sealant. I'm
5 not trying to trick you with this. I was
6 very direct with you. That is an example for
7 you to see. That's not the actual floor
8 sealant.

9 But we heard in Mr. Smith's cross
10 that the store called him and said 'we've got
11 some floor sealant here.' Where was that
12 floor sealant from? His store, the West
13 Ashley store.

14 Mr. Edwards also wants you to
15 believe that Michael Smith was -- I hope I'm
16 not mischaracterizing what he said to you,
17 that Michael Smith in his job saw a black
18 female and jumped to automatic conclusions.
19 But see something funny here happened to
20 that. You see in the case in chief as the
21 State's lawyer, I can't get into certain
22 things because it's considered unfair and so
23 I didn't. I instructed Michael Smith not to
24 get into these things because it's unfair.
25 Namely, prior thefts. We're here to talk

1 about this theft. We're not here to talk
2 about prior thefts.

3 But what happened during Gerald
4 Edwards cross of Michael Smith? He
5 introduced the interview that's in there.
6 And what does Michael Smith say, that he
7 introduced. "I saw a car, a white Suzuki
8 that I recognized from a prior incident, from
9 a prior criminal activity." And when loss
10 prevention ---

11 DEFENDANT EDWARDS: Your Honor,
12 I object.

13 THE COURT: What's the objection?

14 DEFENDANT EDWARDS: No relevancy.
15 He hasn't proved that.

16 THE COURT: Sir, there's testimony
17 to that effect. Thank you. Your objection
18 is noted and overruled.

19 CLOSING STATEMENT CONTINUED

20 BY SOLICITOR SIMPSON:

21 So this was not a loss prevention
22 officer making assumptions based on age,
23 based on gender, based on race. This is a
24 loss prevention officer that saw a car
25 matching a prior incident.

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1 And even then, he doesn't overreact.
2 Even then he doesn't go in the store and
3 start just detaining people. Even then he
4 sits back and he watches things unfold. He
5 handled himself very professionally. He
6 passed on to the police department
7 professional advice, *'this guy's guilty and I*
8 *think I know where he's going. If I'm right,*
9 *he's at the North Charleston store right*
10 *now.'*

11 And there he was: clothing in the
12 car, knife in the car, video of the female
13 exchanging the sealant. An abundance of
14 evidence that should satisfy you all beyond a
15 reasonable doubt.

16 And I stop here mainly because I
17 think this is an interesting thing to think
18 about. Were that the only evidence we had, I
19 would stand before you today confidently and
20 ask you to return a verdict of guilty. And I
21 think were that the only evidence that we
22 had, this might be interesting to think about
23 how you would come back and what decision you
24 would make.

25 But ladies and gentlemen, that is

1 not the only evidence we have. That is not
2 the only evidence you've heard in this case.
3 The best evidence you've heard in this case
4 came from Mr. Edwards himself. And I ask you
5 right now and in the jury room to do what
6 you've sworn to do and consider this evidence
7 using your personal knowledge and your
8 personal common sense.

9 (Reading):

10 "Gerald, what happened?

11 *Man, I been out. You know how I go*
12 *out and do my little thing, right?"*

13 I wonder what his little thing is. What was
14 it he tells us, (reading): "I leave one
15 place and go on to the other place and have
16 somebody else go do the return."

17 Knowing what you know about the
18 evidence of the crime, how is that not a
19 specific confession from Mr. Edwards' mouth
20 for what is going on here: "I leave one
21 place, then go to another place and have
22 somebody else go do the returns."

23 That's not all. It gets way
24 better, (reading:

25 "No listen, listen man. I went over

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1 *there to the Home Depot in West Ashley.*
2 *When I been coming out, you know, the*
3 *dude, he comes up to me. When he comes*
4 *at me, I put my hand on my knife, right?"*
5 *And admittedly it gets a little bit*
6 *inaudible there but, (reading continued):*
7 *"...touched me and then I'm gone. Now, I*
8 *made it all the way from over there. And*
9 *in the process I tried to go to the other*
10 *one, I went to the other one and tried to*
11 *do the return."*

12 *Ladies and gentlemen, he's*
13 *describing to you the scheme that we're*
14 *alleging he did, (reading): "I go to the*
15 *other one to try to do the return, to get*
16 *the shit returned, and in the process of*
17 *doing that, the police car -- they must*
18 *have called over there and told them or*
19 *whatever."*

20 *It even gets better. Mr.*
21 *Edwards in talking to a friend says,*
22 *(reading): "I didn't draw the knife but*
23 *I took it off. I took it off the clip*
24 *and I said "you better get the F away*
25 *from me."*

1 Ladies and gentlemen, Mr. Edwards
2 just stood before you with a straight face
3 and said, 'How? It's impossible that I could
4 have gotten this knife off -- that I could
5 have had a knife. That's impossible.'

6 Mr. Edwards is doing a good job in
7 his own defense. But every single one of you
8 should be insulted by that. He just looked
9 at you square in the face and said "it's
10 impossible that I got that knife off and I
11 got that knife up."

12 Well, what does he say in his own
13 words here? He says in his own words,
14 (reading): "I took it off. I took it.
15 I took it off the clip and I said you'd
16 better get the F away from me. When they
17 -- I guess they called the other Home
18 Depot from West Ashley. Yep. So now I
19 leave West Ashley and go over there. I
20 get over there. I had the person go into
21 the store to do the return. So I go and
22 sit in the car. Next thing I know, a
23 North Charleston is rolling up. And I
24 said oh, shit. And he gets out and walks
25 up to the car."

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1 Ladies and gentlemen, with all of
2 this evidence of this crime that you've heard
3 this constitutes proof beyond a reasonable
4 doubt.

5 But if you are entertaining any
6 shred of doubt in your mind as to the guilt
7 or innocence of Gerald Edwards, State's
8 Exhibit 19, read it. Scrutinize it. He is
9 walking through the whole event and admitting
10 to every single element of the crime.

11 Mr. Edwards has represented himself
12 in this trial, and he has done so well. I've
13 watched you. You've treated him with dignity
14 and respect, listened to what he had to say.
15 I've treated him with dignity and respect and
16 listened to what he had to say, assisted him
17 when I felt he needed it. It's important
18 that he get his day in Court and a fair
19 trial. I appreciate you affording him that.
20 That's doing your job. I, as well as Mr.
21 Edwards, appreciate that.

22 But Mr. Edwards tried to sell
23 something to you that is not supported by
24 anything that we've heard. He's trying to
25 sell you a tragedy. He wants you to believe

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1 that despite all of this evidence to the
2 contrary, that this is all about a man being
3 unfairly targeted. That's the tragedy he's
4 trying to sell you.

5 I agree with him. There is a
6 tragedy here. The tragedy is that a person
7 who is clearly an intelligent man with
8 ability, a man who is clearly and intelligent
9 and if that intellect was used for good,
10 could really do something with himself.
11 Instead, he chose to use his intellect for
12 scams and schemes. And, yes, when confronted
13 during these scams and schemes, with
14 violence, reacts with violence. And that is
15 a tragedy. That's a sad thing.

16 And one quick note about that and
17 then I'll sit down. You all promised and I
18 believe you'll do this, to do the job that's
19 here. I want to briefly address what that
20 job is. And as you'll hear that job is to
21 take emotions and place them to the side and
22 use your common sense and intellect to
23 analyze the evidence that's been presented to
24 you. That's all I ask of you.

25 Some of you may be angry at Mr.

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1 Edwards right now; angry for putting a man in
2 fear, angry for stealing something that
3 wasn't his. I'm asking you, even though that
4 anger may further my case, I'm asking you to
5 put that anger aside and just use your
6 intellect.

7 On the flip side of that coin, some
8 of you see Mr. Edwards here fighting for
9 himself, alone at the table, may feel some
10 sympathy for where Mr. Edwards finds himself
11 during this trial. This is what I have to
12 say to any of you who are feeling sympathetic
13 to Mr. Edwards, good. You're human beings.
14 Of course you do. That's okay. But just as I
15 asked you to put your possible anger towards
16 Mr. Edwards aside, I'm asking each and every
17 one of you to do your job as you're
18 instructed and put that sympathy aside as
19 well.

20 Do merely what you've promised and
21 sworn to do. Look at all of the evidence
22 that's been presented, read the transcripts
23 of Mr. Edwards speaking in a more opening
24 setting, talking to friends and confessing to
25 all of this, and return the only true

1 verdict, just and true verdict, and that is
2 Guilty.

3 When I told you in the opening this
4 is what I have to prove to you to find Mr.
5 Edwards guilty. That he took property in
6 front of another person, that he got away
7 with that property by using force or threats
8 of force and that this force or threats of
9 force was accomplished with a deadly weapon.

10 A quick note which you won't hear in
11 the evidence -- it doesn't matter whether or
12 not Mr. Edwards raised the knife. What
13 matters, that he had a knife, if he possessed
14 a knife during the crime. Of course he
15 raised it. We heard from the people who saw
16 that he raised the knife, but if that's what
17 you're hanging up with, it doesn't matter.
18 All that matters is that he was armed with a
19 deadly weapon while committing a robbery.

20 Also, you'll hear from the Judge
21 that robbery is a continuous offense,
22 including the escape. And if he used force
23 or threat of force even to further the
24 escape, as he did in this case, then it's
25 still armed robbery.

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If you analyze the evidence with your
common sense, there is one just and clear
verdict and that is guilty as charged.

5

6

Thank you so much for your time and
attention this week.

7

8

THE COURT: Thank you, Mr.
Simpson. Thank you, Mr. Edwards.

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Now, ladies and gentlemen, if I
could have your attention it becomes my
responsibility -- of course, having been my
role of giving you the law to give you the
law, which you've promised that you would
accept and apply fairly and impartially to
the facts that you will determine very
shortly when you begin your deliberations in
this case.

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Each of one of you is expected that
you will, when instructed, determine the
value, the weight and the truth of the
evidence. And both the State and Mr. Edwards
have a right to expect that you will
conscientiously consider the value of the
evidence and apply the law to the facts that
you determine to be true. And to that

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1 extent, both sides will have obtained and
2 received a fair and impartial determination
3 in this trial.

4 During this charge you may hear me
5 and you may have heard the use the word
6 "defendant" from time to time. It's a term
7 that we use to designate a party. The
8 purpose of it is to designate the party
9 against whom some claim is made. That's the
10 only significance. It means nothing else.
11 But when you hear it, know that we would
12 refer to Mr. Edwards and that's just another
13 way of identifying.

14 Mr. Edwards, as I mentioned to you
15 when we started, has been accused by these
16 documents that I'm holding in my hand. And
17 they are what they appear to you to be, they
18 are pieces of paper. They're called
19 indictments. That's a legal term. It just
20 means that these contain the charges.
21 They're not evidence.

22 And to this indictment, Mr. Edwards
23 has rendered a plea of not guilty, which
24 places upon the State the burden of proving
25 the guilt, proving his guilt beyond a

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1 reasonable doubt.

2 As I told you when we started every
3 person, Mr. Edwards included, in this state
4 and in this country accused of committing a
5 criminal offense is presumed to be innocent.
6 And that's an active presumption. Those
7 aren't just words, as I stated it's an active
8 presumption. And each of you has been
9 instructed and will continue to be instructed
10 to maintain that presumption of innocence
11 until and after reviewing the evidence, that
12 you have been firmly convinced the State has
13 met its burden of proof and established his
14 guilt beyond a reasonable doubt. And then
15 and only then may you set aside that
16 presumption of innocence.

17 As I stated, persons accused have no
18 responsibility to prove or disprove anything.
19 They don't have to present any evidence
20 because that rests solely upon the State.
21 And the fact that a person accused of
22 committing a criminal offense doesn't testify
23 in a case, that also may not be considered by
24 you because a defendant has the absolute
25 right to not testify if he or she chooses to.

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1 Therefore, the fact that Mr. Edwards did not
2 personally take the stand and testify, that
3 should not be considered by you in any way.
4 It shouldn't even be discussed in your jury
5 room because if you do then you will have
6 violated the oath that you took.

7 The burden rests upon the State to
8 prove his guilt beyond a reasonable doubt.
9 What is a reasonable doubt? A reasonable
10 doubt is a doubt which would make an honest,
11 sincere, conscientious juror in search of the
12 truth in a case to hesitate to act, to take
13 some action.

14 Proof beyond a reasonable doubt is
15 proof that leaves you firmly convinced of his
16 guilt. Now, there are very few things in
17 this life that we know with absolute
18 certainty. And in criminal disputes such as
19 this, the law does not require proof that
20 overcomes every possible doubt. But based
21 upon your view of the evidence you are firmly
22 convinced that he is guilty of one or more of
23 the charges then you must return a verdict of
24 guilty.

25 If, on the other hand you think

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1 there's a possibility that he's not guilty,
2 then you must give him the benefit of that
3 doubt and return a verdict of not guilty.

4 A reasonable doubt may arise from
5 the evidence which is in a case or the lack
6 or absence of evidence in a case and it's up
7 to you to determine whether or not a
8 reasonable doubt exists as to the guilt of
9 Mr. Evans.

10 I charge you that he's entitled to
11 every reasonable doubt arising in the whole
12 case. And what I mean by that is simply
13 this. If upon any issue of fact, which would
14 be essential for conviction you should have a
15 reasonable doubt as to how that should be
16 resolved, I would instruct you to resolve
17 that in his favor, that is, Mr. Edwards'
18 favor and return a verdict of not guilty.

19 The evidence, of course, which you
20 are to consider consist of the testimony of
21 the witnesses and exhibits that were
22 introduced through their testimony and
23 nothing else.

24 Throughout this matter I have
25 instructed you the remarks of the attorney,

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1 the remarks of Mr. Edwards in his opening and
2 closings are not evidence for your
3 consideration, not at all. And while they
4 certainly have the right to discuss the
5 evidence with you and suggest reasonable
6 inferences that you may draw from that
7 evidence, if their statement of what a
8 witness said or didn't say differs from your
9 collective recollection of what that witness
10 said or didn't say, you're instructed to
11 disregard their remarks and take your
12 recollection. Why? because you're the sole
13 judges of the facts. That's your job and
14 yours alone.

15 Also if any -- during their remarks
16 if any of the remarks differs from the law as
17 I give it to you, you're instructed also to
18 disregard their remarks as to the law.
19 Because for purposes of this proceeding
20 today, I'm the sole judge of the law and
21 that's my responsibility.

22 Also, during the trial there may
23 have been from time to time objections made
24 by either side. And the fact that an
25 objection is made should not be considered by

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1 you either. That is very proper, that they
2 raised issues. Typically, our rules of
3 evidence restrict certain testimony or permit
4 certain testimony. And generally most of
5 those objections deal with a rule of
6 evidence. And it is my duty to rule on that.
7 My ruling shouldn't be considered by you; the
8 fact that they made an objection, shouldn't
9 be considered by you.

10 And I would tell you that frankly,
11 one of the objections -- you've heard me say,
12 'I sustain the objection' or if I overruled
13 it -- if I sustained it, you didn't hear the
14 testimony or the response. If I overruled
15 it, I allowed you to hear it. Don't put any
16 greater weight on it because I allowed you to
17 hear it, because if you do, then you've let
18 me kind of slip over into your area of
19 responsibility.

20 Quite honestly, I guess it's the
21 best example I can give you of how we work
22 together. I made a ruling as a matter of law
23 that I'm going to permit you to hear that
24 testimony and that evidence. But then it
25 should be you, you decide whether you believe

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1 it or not. And if so, how strongly you
2 believe it. And that's how we work through
3 this. I've decided issues of law and you
4 will ultimately decide the issues of fact.

5 Please remember also that while you
6 have pretty broad discretion in deciding the
7 facts -- we'll talk about that more in just a
8 moment -- but you don't enjoy the same with
9 the law. The law -- it's my responsibility
10 to give you that law. And as I talked to you
11 when we qualified you, we all have access to
12 reading some law if we choose to. And if
13 it's your desire to do that after we conclude
14 this trial, so be it. But for the purposes
15 of today, you promised to take the law as I
16 give it and to set aside what your belief of
17 the law was, is or should be. And you must
18 apply this law fairly and impartially to the
19 facts.

20 Consider the charge as a whole.
21 Don't put any greater weight or emphasis on
22 any one aspect of the charge, and the order
23 in which it was given means nothing. I had
24 to put it in some order.

25 Now, in these types of disputes the

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1 evidence -- when a party has the burden of
2 proof, they present evidence and there are
3 two types that you generally deal with:
4 direct evidence and indirect evidence, which
5 the more common name is circumstantial
6 evidence.

7 Direct evidence as that name would
8 imply is when a party claims to have
9 knowledge of a particular fact or
10 circumstance, such as 'I saw something, I
11 felt something, I heard something', generally
12 a sensory perception. And you're satisfied
13 and firmly convinced it's the accuracy and
14 truthfulness of that, then it establishes
15 that particular fact or circumstance.

16 Circumstantial evidence is proof of
17 a chain of facts and circumstances which
18 indicate the existence of another fact or
19 circumstance. It is evidence which
20 immediately establishes collateral facts,
21 from which the main fact can be inferred.
22 Circumstantial evidence is based on inference
23 and not on personal knowledge or observation.
24 And generally -- that's simply when persons
25 testify to a number of facts and you're

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1 firmly convinced of those. And then from the
2 process of inductive or deductive reasoning,
3 it would lead you to a logical conclusion.
4 And that conclusion is one in which you're
5 firmly convinced, then it establishes that
6 particular fact or circumstance.

7 I would tell you the law makes
8 absolutely no distinction between the weight
9 or the value to be given to either direct or
10 circumstantial evidence. Nor is any greater
11 degree of certainty required of
12 circumstantial evidence than of direct
13 evidence. You're instructed to weigh all of
14 the evidence in the case.

15 But, however, to the extent that
16 the State may be relying on circumstantial
17 evidence is to establish any particular
18 element, all of those circumstances must be
19 consistent with each other and when taken
20 together point conclusively to the guilt of
21 Mr. Edwards beyond a reasonable doubt. If
22 these circumstances merely portray his
23 behavior as suspicious or possible or
24 probable, then the proof has failed as to
25 that particular fact or circumstance. And

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1 the reason for that is the mere fact that a
2 circumstance is brought out in a case is
3 strongly suspicious of guilt, or the
4 circumstances are such that a defendant's
5 guilt is probable, that's not enough to
6 sustain a conviction. Because as I stated
7 when we started, the proof that you have to
8 rely on is proof that convinces you beyond a
9 reasonable doubt.

10 How do you decide these facts?
11 Throughout, I told you you were the most
12 qualified person to perform this task because
13 what you're going to do very shortly is apply
14 your knowledge and sense of logic and reason,
15 your understanding of human nature and all
16 the things that we use in our life to assist
17 us in making decisions, such as whether we
18 believe something or not. And there are many
19 factors that we may use to assist us. And
20 I'm going to discuss some of them with you
21 now. But if I don't mention a method or
22 factor that you use in your life and you've
23 found it be reliable, please use it when you
24 begin to analyze the evidence in this case.

25 But some of the factors you may want

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1 to consider is the appearance of the witness.
2 How did they appear to you, straightforward
3 or hesitate in answering the questions?

4 Was the testimony of a witness consistent
5 or inconsistent?

6 Was it strengthened or weakened by other
7 evidence in the case?

8 How did the witness come to know the
9 facts that he or she testified to?

10 And what was the ability of that witness
11 to know those particular facts and
12 circumstances?

13 Is there a reason for a witness to give
14 testimony which may be helpful to one side or
15 the other or maybe detrimental? In other
16 words, was the witness biased or prejudiced
17 in any fashion?

18 In determining what you find to be
19 credible and believable, you're given very
20 broad discretions. You have a right to
21 believe one witness against many, many
22 witnesses against one. You obviously don't
23 count the witnesses but you have the
24 prerogative to believe all or none, I mean,
25 many witnesses or one.

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1 You have the right to believe all of
2 a witness's testimony, parts of a witness's
3 testimony or none of the witness's testimony.

4 Now, of course, you don't make those
5 decisions arbitrarily. But if there's a
6 reason in the evidence in this case for
7 taking that position, you have that
8 prerogative because your objective as we
9 started has been to determine the truth
10 regardless of the source of the evidence.

11 Now, let's -- an issue in this case,
12 as it is in any criminal dispute, is the
13 identification of Mr. Edwards as the person
14 who committed the crime charged. The State
15 has the burden of proving identity beyond a
16 reasonable doubt. You must be satisfied
17 beyond a reasonable doubt of the accuracy of
18 the identification of the Defendant before
19 you can convict him.

20 Identification testimony is an
21 expression of belief or impression by a
22 witness. You must determine the accuracy of
23 the identification of the Defendant and you
24 must consider the believability of each
25 identification witness in the same way as any

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1 other witness. You may consider whether the
2 witness had an adequate opportunity to
3 observe the Defendant at the time of the
4 offense. This will be affected by things
5 such as how long or short of time was
6 available. How far or close was the witness,
7 or what were the lighting conditions.
8 Whether the witness had a chance to see or
9 know the person in the past. Once again,
10 you're instructed the burden of proof rests
11 on the State and that extends to every
12 element of the crime, including proving
13 beyond a reasonable doubt the identity of Mr.
14 Edwards.

15 If, after examining the testimony
16 you have a reasonable doubt as to the
17 accuracy of the identification, you must then
18 return a verdict of not guilty.

19 If, on the other hand, you're firmly
20 convinced as to the identity of Mr. Edwards
21 as the person who committed the crime, then
22 you will look to the elements of the crime.
23 And you will have to decide whether or not
24 the State has met its burden of proof as to
25 each of those elements.

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1 Let's look first at the crime of
2 armed robbery. The Defendant is charged with
3 armed robbery. In order to prove this
4 offense, the State must prove beyond a
5 reasonable doubt that the Defendant took
6 personal property from a person or presence
7 of another person. Property is in the
8 presence of a person if it is within the
9 person's reach, inspection, observation or
10 control so that the person could, if not
11 overcome with violence or prevented by fear,
12 keep possession of that property.

13 The State must also prove beyond a
14 reasonable doubt that the Defendant carried
15 the property away intending to permanently
16 deprive the owner of the property and to keep
17 the property for the Defendant's own use.
18 The slightest removal of the property or the
19 complete possession of the property, even for
20 an instant by the Defendant, is sufficient to
21 show a taking and the carrying away of that
22 property.

23 The taking and the carrying away of
24 the property must have been done with
25 violence or by putting the owner of the

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1 property in fear of violence.

2 The taking away is a transaction,
3 which continues as the perpetrator departs
4 from the place where the property was seized.
5 And may, under appropriate circumstances, be
6 deemed to continue even after such departure
7 from the place of the seizure.

8 Finally, the State must prove beyond
9 a reasonable doubt that the Defendant was
10 armed with a deadly weapon during the
11 robbery. Although the required force or
12 threat of force for the offense of armed
13 robbery must either precede or be
14 contemporaneous with the taking of a victim's
15 property, the use of a dangerous weapon at
16 any point in the robbery will constitute
17 armed robbery as long as it reasonably can be
18 said to be a part of a singular purpose.

19 The perpetrator need not be armed all
20 times during the robbery in order to be
21 guilty of armed robbery. Such person would
22 be guilty if that person arms himself or
23 becomes armed with a deadly weapon at any
24 time during the progress of the taking or
25 while the robbery is being perpetrated.

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1 The crime of robbery is not
2 completed the moment the stolen property is
3 in the possession of the person, but may be
4 deemed to continue during that person's
5 attempt to escape.

6 A deadly weapon, ladies and
7 gentlemen, is an article or instrument or
8 substance which is likely to cause death or
9 great bodily harm. Whether an instrument has
10 been used as a deadly weapon depends on the
11 facts and circumstances of each case. The
12 following examples are instruments which may
13 be deadly weapons: a knife, dirk, dagger,
14 those are deemed to be a deadly weapon.

15 Now, ladies and gentlemen, if you
16 find the Defendant guilty, that is the State
17 has convinced you of the elements we've just
18 discussed for armed robbery, then you may
19 consider the possession of a weapon during a
20 violent crime, during the commission of a
21 violent crime.

22 Armed robbery, I would instruct you,
23 is considered by our law as a violent crime.

24 Possession of a knife during a
25 violent crime: If a person is in possession

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1 of that knife or visibly displays what
2 appears to be a knife during the commission
3 of a violent crime and is convicted of
4 committing or attempting to commit a violent
5 crime, as I just stated, then he would be
6 guilty of this offense.

7 So if you find beyond a reasonable
8 doubt that the Defendant committed that crime
9 and you find beyond a reasonable doubt that
10 he was armed or possessed a knife, then the
11 State would have met the elements of proof
12 and would be entitled to a verdict of guilty.

13 If, on the other hand, the State did
14 not firmly convince you of the armed robbery
15 or the possession of a knife, then you must
16 return a verdict of not guilty based on your
17 assessment of what the State has convinced
18 you of, considering all of the evidence.

19 Criminal intent, ladies and
20 gentlemen, is also a necessary element of a
21 crime and that must be established beyond a
22 reasonable doubt. Criminal intent is always
23 a matter that must be determined by you from
24 the circumstances surrounding the situation,
25 so the law states that criminal intent may be

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1 inferred from the circumstances which have
2 shown to have existed.

3 Criminal intent is a state of mind
4 that operates jointly with the act of the
5 commission of a crime. And intent, would
6 including those very consequences which
7 represent the very purpose for which an act
8 is done or are known to be substantially
9 certain to result regardless of one's
10 specific desire.

11 Criminal intent is a mental state of
12 a conscious wrongdoing. It is up to you to
13 determine whether or not the State has proved
14 what this Defendant intended to do on this
15 particular occasion based on the
16 circumstances that have been shown to have
17 existed. I charge you in that regard that
18 you must establish criminal intent beyond a
19 reasonable doubt.

20 Ladies and gentlemen, throughout
21 this entire process you, just as I, were
22 selected to perform our task as a judge. We
23 don't have any friends to reward. We don't
24 have any enemies to punish. We're not
25 advocates for either side. We're expected to

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1 apply our knowledge, our sense of logic and
2 reason fairly and impartially in analyzing
3 the evidence -- for you and me analyzing and
4 applying the law -- and make a decision which
5 is based on our knowledge and experience.

6 And we're expected to do that.

7 And I'll confess to you -- I've been
8 doing this a little bit longer than you've
9 been a judge -- it's not always easy, because
10 we are human. But we have to acknowledge our
11 humanity and set aside our human traits, our
12 concerns, compassion, all those emotions that
13 we bring with us every day. You're expected
14 to set those aside, apply your sense of logic
15 and reason methodically and analyze the
16 evidence to decide what you believe to be the
17 true facts. Once you decide that, you take
18 the law as I've given it to you, apply it
19 fairly to the facts and report your decision.

20 To assist you in reporting that
21 decision, I've prepared -- there are two
22 verdict forms. The choices are the same.
23 The order in which they appear means nothing,
24 I had to put them in some order. You'll note
25 that they both are captioned, that's simply

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1 so they can file them.

2 One of them deals with armed
3 robbery, the other deals with possession of a
4 knife during the commission of a violent
5 crime. As you know -- the two choices that
6 you'll note on both are Guilty or Not Guilty.

7 Let's talk about them. Basically
8 what will you be saying just for purposes of
9 completing them -- each is separate, you will
10 need to deal with each one. If your choice
11 is guilty or not guilty, I ask you to place a
12 check in the line that, on the line that
13 precedes that and circle it, and then sign
14 it. And when you've done that, you will have
15 completed the form.

16 What will you be saying if it's
17 guilty of armed robbery? You will be saying
18 you've analyzed the evidence and you're
19 convinced from the evidence beyond a
20 reasonable doubt that the State's met its
21 burden as to each element of that crime.
22 And, therefore, your verdict is Guilty as
23 instructed.

24 If it's Not Guilty, then you will be
25 saying that you've analyzed it and the

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1 State's failed to meet its burden as to one
2 or more elements; because as I stated they
3 have to prove each of those elements beyond a
4 reasonable doubt.

5 If your answer is Guilty, then you
6 go on to the possession of a knife during the
7 commission of a violent crime. And you will
8 then analyze the evidence and find out
9 whether the State's met its burden of proof
10 as to whether or not he possessed a knife
11 because you've already determined that he
12 committed crime by entering a verdict of
13 guilty on armed robbery.

14 If your answer is not -- if you find
15 that they failed to prove he had possession
16 of a knife, then it would be Not Guilty.

17 Also, if you return a verdict of not
18 guilty on the armed robbery, you must return
19 a verdict of not guilty on the possession,
20 because there's no violent crime, which is
21 the required act of violence.

22 For there to be a decision, ladies
23 and gentlemen, it has to be unanimous. That
24 means all twelve of you must agree. Eleven
25 to one, ten to two, that's not sufficient.

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1 It takes twelve to zero, has to be the vote.

2 I know you're anxious to get started
3 and you're almost there. I need to discuss
4 my charge with the attorney and Mr. Edwards
5 and it may be necessary to return you and
6 give you some additional instruction or
7 clarification and if so, we'll return you to
8 the courtroom. But if there aren't any
9 additions, then we will gather the exhibits
10 and the verdict form and deliver them to you.
11 When you receive those exhibits, then you may
12 begin your deliberations, but not before.

13 Now, once the deliberations commence
14 the only restriction I place on the
15 deliberations is that if any juror has to
16 leave the table for any reason, you are to
17 stop deliberating until all twelve of you are
18 together. Other than that, you proceed as
19 you deem fair and proper.

20 I thank you for your attention. And
21 let me also tell you also we're going to
22 retain the knife -- not to say that you can't
23 handle it safely, it's just a better thing
24 for us. I do have -- even firearms that can
25 be locked, we can put something in it so that

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1 can't be used but the better thing to do is
2 just simply retain it here in the courtroom.

3 Also, the disks that you've heard or
4 saw, you'll have to come back if you need to
5 hear those. They'll be here. We'll return
6 you to the courtroom. If you want to view
7 the knife, just let us know we'll bring you
8 back and you can pass it through the box and
9 you can examine it as much as you need to,
10 but I'm not going to be sending that back to
11 you as well.

12 All right. With that instruction,
13 please retire to your jury room. Thank you
14 for your attention and await your exhibits
15 before commencing with deliberations.

16 (JURY OUT @ 2:40 P.M.)

17 THE COURT: Exceptions and
18 additions from the State?

19 SOLICITOR SIMPSON: No, Your
20 Honor.

21 THE COURT: Mr. Edwards,
22 exceptions or addition?

23 DEFENDANT EDWARDS: I don't
24 understand that.

25 THE COURT: Do you wish me to

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1 charge anything that I didn't charge or
2 clarify anything I did charge?

3 DEFENDANT EDWARDS: No, sir.

4 THE COURT: Okay. Thank you.
5 And that concludes that. We'll be at-ease.
6 Thank you very much.

7 (COUNSEL AND MR. EDWARDS, APPROVAL OF
8 EXHIBITS)

9 (JURY IN DELIBERATION AT 2:40 P.M.)

10 (COURT IN RECESS)

11 (DEFENDANT PRESENT)

12 (JURY NOTIFICATION @ 3:00 P.M.)

13 THE COURT: I'm advised the jury's
14 reached a verdict. Is the State ready to
15 receive the verdict?

16 SOLICITOR SIMPSON: We are, Your
17 Honor.

18 THE COURT: Mr. Edwards, are you
19 ready to receive the verdict, sir?

20 DEFENDANT EDWARDS: Yes, Your
21 Honor.

22 THE COURT: Okay, they can come
23 in.

24 Mr. Edwards, when I read the verdict
25 -- Paige, do you want me to read the verdict

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1 or do you want to read it?

2 CLERK: I can read it.

3 THE COURT: Okay. When the clerk
4 reads the verdict, I just ask that you just
5 stand for the verdict, please, sir, if you
6 would. Thank you so much.

7 DEFENDANT EDWARDS: Yes, sir.

8 (JURY IN AT 3:03 P.M.)

9 BAILIFF: All are present.

10 THE COURT: Thank you very much.
11 Thank you, ladies and gentlemen. As I under-
12 stand Madam Presiding Juror, you've reached a
13 verdict; is that correct?

14 PRESIDING JUROR: Correct.

15 THE COURT: If you would pass the
16 verdict form, please to Mr. Bailiff.

17 PRESIDING JUROR: (Tenders)

18 THE COURT: Thank you so much, or
19 verdict forms.

20 BAILIFF: (Tenders verdict forms
21 to the judge)

22 THE COURT: (Upon review), the
23 verdict forms have been properly completed.
24 Mr. Edwards, if you'd please stand?

25 DEFENDANT EDWARDS: (Complies)

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1 THE COURT: Thank you so much,
2 sir. Madam Clerk, you may publish the
3 verdict.

4 CLERK: Yes, sir, (reading):
5 "In the Court of General Sessions, Case
6 Number 2014-GS-10-01779, State of South
7 Carolina, County of County of Charleston.
8 State of South Carolina versus Gerald D.
9 Edwards, Defendant.

10 We, the jury, by unanimous consent
11 find the Defendant, Gerald D. Edwards, on the
12 charge of armed robbery, Guilty."

13 Signed foreperson of the jury, February
14 10th, 2015.

15 (Reading): "In the Court of General
16 Sessions case number 2014-GS-10-01780, State
17 of South Carolina, County of Charleston.
18 State of South Carolina versus Gerald D.
19 Edwards, Defendant.

20 We, the jury, by unanimous consent
21 find the Defendant, Gerald D. Edwards, on the
22 charge of possessing a knife during the
23 commission of a violent crime, Guilty."

24 Signed the foreperson of the jury,
25 February 10th, 2015.

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1 Ladies and gentlemen of the jury if this
2 is your verdict, please raise your right
3 hand.

4 (UNANIMOUS AFFIRMATIVE RESPONSE)

5 CLERK: Thank you.

6 THE COURT: Thank you. Mr.
7 Edwards, you may be seated. Thank you so
8 much, sir.

9 DEFENDANT EDWARDS: (Complies)

10 THE COURT: Let the record reflect
11 that each juror has raised his or her right
12 hand in response to the clerk's inquiry.

13 Anything further from the jury, from
14 the State?

15 SOLICITOR SIMPSON: No, Your
16 Honor.

17 THE COURT: Anything further, Mr.
18 Edwards, from the jury?

19 DEFENDANT EDWARDS: No, Your
20 Honor.

21 THE COURT: Thank you. Ladies and
22 gentlemen, thank you very much for your
23 assistance. And it's been a privilege to
24 serve with each one of you. I thank you for
25 the sacrifice that you made to do this. And

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1 I appreciate it very much.

2 I know some of you expressed some
3 concerns and I just thank you for your
4 willingness to bear through it and bore
5 through this. And you are good examples of
6 why I believe so strongly in this system.
7 And I'm not commenting about your verdict.
8 You had a decision to make and you did that.
9 And you applied your common sense in
10 analyzing the facts and applying the law.
11 I'm really talking about the manner in which
12 you approached it. You were dignified in
13 every part of it and I just thank you for
14 that.

15 We're going to pick another jury
16 probably tomorrow. But I'm going to give you
17 all the option. If you want to let this be
18 your jury service for the week, you're
19 finished. So you don't have to -- if you
20 want to come, just call the number after 6:00
21 tonight. It's probably going to say to
22 report at 10:00. But if you don't show, the
23 person that don't come that were on this
24 jury, they are free to go. So thank you very
25 much.

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1 Good luck to each one of you.

2 If any of you have any questions or
3 concerns, if you will wait in the jury room,
4 I will be finished in just a moment. I'd be
5 happy to step in and try to answer those. If
6 you don't, have a great afternoon.

7 You are now free to talk about this
8 case if you wish. But if you choose not to
9 and somebody persists in asking you
10 questions, let Ms. Armstrong know and she can
11 make that known to me and we'll try to
12 resolve it for you. Thank you very much.
13 Have a great day.

14 (JURY OUT @ 3:07 P.M.)

15 THE COURT: All right. Any
16 Motions from the State?

17 SOLICITOR SIMPSON: No, Your
18 Honor.

19 THE COURT: Mr. Edwards, a Motion
20 -- what would typically now that you would
21 move for a new trial based on the fact that
22 the verdict is not supported by the evidence,
23 and it was by some passion or prejudice,
24 caprice. The evidence does not support a not
25 guilty [sic] verdict. Therefore, you request

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1 a new trial. Is that your motion, sir?

2 DEFENDANT EDWARDS: Yes, sir.

3 THE COURT: And, also, you would
4 incorporate into there all the objections
5 that you've made during the trial that were
6 overruled and claim that those were errors of
7 law. Is that correct, sir?

8 DEFENDANT EDWARDS: Yes, sir.

9 THE COURT: Very good. That
10 Motion is noted and denied. Thank you, sir.
11 All right. Are you ready for sentencing?

12 SOLICITOR SIMPSON: The State is,
13 Your Honor.

14 THE COURT: All right. Do you
15 have a sentencing sheet?

16 SOLICITOR SIMPSON: I do. May I
17 approach?

18 THE COURT: Yes.

19 SOLICITOR SIMPSON: (Tenders
20 sentencing sheet)

21 THE COURT: Will you let me know
22 if any juror is staying, please, because I'll
23 take a moment and step back.

24 Mr. Edwards, are you ready for
25 sentencing, sir?

1 DEFENDANT EDWARDS: I don't know
2 if I have a choice. No.

3 THE COURT: Well, I understand
4 that. You don't want to delay sentencing
5 until you hear from anyone or allow anyone to
6 come; is that correct?

7 DEFENDANT EDWARDS: Except for my
8 fiancé, I guess.

9 THE COURT: Sir?

10 DEFENDANT EDWARDS: Except for my
11 fiancé right there.

12 THE COURT: She's here now?

13 DEFENDANT EDWARDS: (Indicating).

14 THE COURT: Okay. That's fine.
15 All right. Solicitor, I'll be happy to hear
16 from you.

17 SOLICITOR SIMPSON: Well, thank
18 you, Your Honor. You've obviously heard this
19 trial so I'll just account for you Mr.
20 Edwards' prior record.

21 THE COURT: Yes, sir.

22 SOLICITOR SIMPSON: Consists of:
23 1986, grand larceny of a motor vehicle,
24 trespassing.
25 1991, grand larceny of a motor vehicle,

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1 shoplifting. He received an active YOA for
2 those offenses.

3 DEFENDANT EDWARDS: I received
4 probation for the shoplifting offense.

5 SOLICITOR SIMPSON: Okay. That
6 does, Mr. Edwards, it does sometimes causes
7 confusion on the rap sheet.

8 DEFENDANT EDWARDS: Okay.

9 SOLICITOR SIMPSON: So it's for
10 that one grand larceny of the motor vehicle.

11 THE COURT: All right.

12 SOLICITOR SIMPSON: And he has:

13 '91, shoplifting;

14 '92 trespassing and paraphernalia;

15 '92, possession with intent to distribute
16 heroin. He received a four-year sentence
17 plus three-year's probation on that.

18 2002, possession with intent to
19 distribute crack;

20 2003, possession of crack and false
21 information;

22 2003, a property offense and enhancement
23 shoplifting;

24 2004, trespassing, resisting arrest,
25 paraphernalia;

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1 2004, possession of crack;

2 2004 property offense enhancement
3 shoplifting;

4 2005, property offense, enhancement
5 shoplifting, possession of crack, an
6 additional property offense enhancement and
7 resisting arrest;

8 2006, property offense enhancement
9 shoplifting, he received a three-year
10 sentence for that;

11 2007, property offense enhancement
12 shoplifting, a one-year sentence;

13 2008, burglary in the second degree. He
14 received a two-year sentence with four years
15 of probation.

16 2010, property offense, enhancement
17 shoplifting a one-year sentence;

18 2011, possession of marijuana, possession
19 of a controlled substance and an additional
20 property enhancement shoplifting.

21 Judge, as a commentary, you hear that
22 record and you ---

23 THE COURT: Yeah, he has a drug
24 addiction?

25 SOLICITOR SIMPSON: He has an

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1 extensive criminal history. I do feel bound
2 as you've observed during this trial, for
3 whatever it's worth, Mr. Edwards is very
4 polite, respecting and our interactions have
5 been very professional, as if he were an
6 attorney.

7 THE COURT: Thank you, Mr.
8 Simpson. I appreciate that.

9 Mr. Edwards, I'll be happy to hear
10 from you now if there's anything you wish to
11 add.

12 DEFENDANT EDWARDS: I just ask
13 that the Court have leniency on me. I'm kind
14 of stunned right now. But, I just ask that
15 the Court have mercy on me.

16 I have a twenty-four year old
17 daughter. I've been trying to rebuild the
18 relationship. Through my addiction, I've
19 been somewhat there and not there. I have a
20 granddaughter that just turned two yesterday
21 and I would like the chance to see her again.
22 I'm forty-six years old.

23 I'm not a violent person, not at
24 all. Regardless of what my record shows, I
25 wasn't raised that way and that's not the

1 person that I truly am. My addiction played
2 everything that's happened throughout my
3 incarcerations and arrests, my whole life.

4 My mother died when I was five years
5 old. I still yet to deal with that issue.
6 I still have trouble to wake up to it because
7 that was the most important person in my
8 life, was taken away from me at a very young
9 age and it's hard for me to understand but I
10 have to accept it.

11 This is my fiancé behind me, Your
12 Honor, we're engaged now. I don't know what
13 the future holds now that it means that I
14 have to go away, but I would like the chance
15 to see her again.

16 I sincerely apologize to the Court.

17 THE COURT: Well, thank you, Mr.
18 Edwards. I appreciate those remarks and I --
19 when I hear records like that, one thing
20 twenty-one years has taught me is when I hear
21 somebody as we've heard you and watched you,
22 I will tell you and I'm not just saying that,
23 that is probably one of the best closing
24 arguments I've ever heard a *pro se* litigant
25 give and I've heard several. You obviously

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1 have intelligence. You're respectful, as
2 I've mentioned throughout the trial, all of
3 that reflects what you said. You weren't
4 trained to be a drug addict. You weren't
5 taught that. You have an addiction and
6 unfortunately people deal with it in various
7 and sundry ways and you've chosen
8 unfortunately a life of crime.

9 And I understand -- I've never been
10 in that situation, but I see it frequently
11 and I understand the compulsion, particularly
12 when you deal with shoplifting. I think your
13 statement, at least for me, told me that 'I
14 steal, this is my scheme, to try to get money
15 to help support my habit.' And maybe others,
16 I don't know, but that's what happens when
17 you get with a group of people who have a
18 similar situation, and each pulls the other
19 down.

20 You understand that, of course,
21 armed robbery carries a minimum of ten years.
22 It's an eighty-five percent sentence. It's a
23 Most Serious offense. And you understand
24 what that is. Your former lawyer has
25 explained that to you?

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1 DEFENDANT EDWARDS: Yes, sir.

2 THE COURT: Insofar as any future
3 activity is concerned. I can't ignore the
4 extensive record that you have. I just can't
5 do that. But I am going to fashion a
6 sentence that I find is basically dictated by
7 all the facts and circumstances in this case.

8 The sentence of the Court on
9 indictment 2014-1779 is twenty (20) years.
10 I'll give you credit for the time that you've
11 served. How much time have you served, sir?

12 DEFENDANT EDWARDS: Thirteen
13 months.

14 THE COURT: Okay. Credit for
15 thirteen (13) months.

16 The sentence of the Court, as you
17 know, on the possession of a weapon during
18 the commission of a violent crime is a five-
19 year-sentence. It's a day-for-day sentence
20 but you will satisfy that because I'm going
21 to make it concurrent. I could make it
22 consecutive but I'm not going to do that.
23 I'll make it concurrent and it's a five-year
24 sentence and you get credit for thirteen
25 months as well towards that. Good luck to

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1 you, sir.

2 DEFENDANT EDWARDS: Where do I go
3 to file an appeal?

4 THE COURT: You can. You'll
5 probably need to talk with the Office of
6 Indigent Defense and they'll assist you. But
7 you have to file it, I think it's within ten
8 days of today's date, sir.

9 DEFENDANT EDWARDS: And how do I
10 do that?

11 THE COURT: Well, I can't help you
12 with that one, sir. But you can talk to the
13 Office and they can help you with that. Good
14 luck in that endeavor. Good luck to you,
15 sir.

16 (TRANSCRIPT CONCLUDED)

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Greenville, South Carolina
October 17, 2016

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston2016-CP-10-2515
IN THE COURT OF COMMON PLEASMr. Gerald Edwards #173780
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEFFILED
2016 MAY 13 PM 1:59
CLERK OF COURT

RECEIVED

MAY 09 2016

INSTRUCTIONS - READ CAREFULLY

P.C.I. MAILROOM

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Perry Correctional Institution
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2014 GS 1001779

- (b) 204631001780
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2/10/15 20 years
- (b) 2/10/15 5 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Attempted
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Sept. 11, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) see attached pages
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached pages
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for new trial
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Court of General Sessions, Charleston County
- ii. _____
- iii. _____

- iv. _____
- (c) the disposition thereof:
- i. pending
- ii. _____
- iii. _____
- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? yes on the record
 (c) your sentencing? yes on the record
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes on the record
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes on the record

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Ms. Shirene Hansotia
Charleston County Public Defenders Office
 ii. _____
 iii. _____

(b) the proceedings at which each such attorney represented you:

i. N/A
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

vacated, New Trial or whatever this court deem
necessary

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Gerald Edwards #173780, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

[Signature]

SWORN to and subscribed before me this 9th
day of May, 2016.

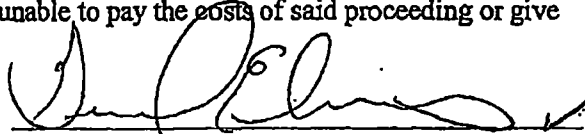
Nancy C. Merchant (L.S.)
Notary Public

My Commission Expires: 1-23-2023

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

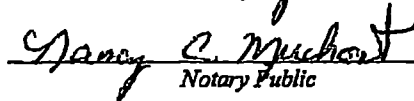
I, Gerald Edwards, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.


Applicant

SWORN or affirmed to and subscribed before me this

9th day of May, 2016.


Notary Public

My Commission Expires: 1-23-2021

PCR Application Continued:

10. a. Ineffective Assistance of Counsel at trial and appeal.
- b. Denial of Direct Appeal.
- c. Conviction and sentence is in violation of U.S. Constitution and state law.

11. (a)(1). Attorney Ms. Hansotia was ineffective for failing to secure a court order relieving her as counsel appointed to represent Edwards at trial and on direct appeal which denied him of his 6th and 14th Amendment right to the effective assistance of counsel.

(a)(2). Attorney Ms. Hansotia was ineffective for failing to consult with Edwards about perfecting an appeal after the court of appeals instructed her to correct deficiencies within ten (10) days of correspondence to comply within state procedural rules which denied Edwards his 6th and 14th Amendment right.

(a)(3). Ms. Hansotia was ineffective for failing to assist Edwards as stand by counsel at trial where Edwards who is not skilled in the science of the law failed to make timely motions and objections at critical stages of the trial that may have changed the outcome of the trial when there exists no order relieving Ms. Hansotia as counsel of record.

(b)(1). Edwards was deprived of his 6th and 14th Amendment right to effective assistance of counsel and direct appeal when Ms. Hansotia failed to correct deficiencies in Edwards' pro-se direct appeal notice as instructed by the court of appeals which violated rules prohibiting conduct tending to pollute the administration of justice and bring the legal profession into disrepute.

(b)(2). Ms. Hansotia was ineffective for refusing to comply with an obligation imposed by the court of appeals upon "good faith" belief that no valid obligation exists to correct deficiencies in Edwards' pro-se notice of appeal when the application of legal regulations by the court of appeals went unchallenged by Ms. Hansotia.

(c)(1). Edwards' conviction and sentence is a result of fundamentally unfair procedure in that he was without the benefit of counsel at trial and post trial when the circuit court never issued any orders relieving Ms. Hansotia as counsel of record which violated the constitutional provisions and state law where the judicial machinery broke down when Edwards' request to be appointed another counsel was denied and no assistance was given to him during trial and direct appeal.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	IN THE NINTH JUDICIAL CIRCUIT
	)	
Gerald Edwards, #173780,	)	Case No.: 2016-CP-10-2515
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief application filed on May 13, 2016, Respondent would show this Court:

I.

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Charleston County Grand Jury for armed robbery (2014-GS-10-01779) and possession of a knife during the commission of a violent crime (2014-GS-10-01780). Applicant represented himself at trial.¹ On February 10, 2015, Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced Applicant to confinement for concurrent terms of 20 years for armed robbery and five years for possession of a knife during the commission of a violent crime.

Applicant filed a *pro se* notice of appeal. The South Carolina Court of Appeals dismissed Applicant's appeal as a result of his failure to serve timely notice of appeal. State v. Edwards, S.C.

¹ Shirene Hansotia, Esquire, initially represented Applicant.

Ct. App. Order dated Sept. 11, 2015. On April 9, 2015, Applicant made a motion to reinstate the appeal. The South Carolina Court of Appeals denied Applicant's motion, stating that he failed to provide a basis for granting a rehearing, specifically that his notice of appeal was timely. The Remittitur was issued on October 22, 2015.

II.

In his application for post-conviction relief Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel at trial and appeal." (sic)
 - a. "Attorney Ms. Hansotia was ineffective for failing to secure a court order relieving her as counsel appointed to represent Edwards at trial and on direct appeal which denied him of his 6th and 14th Amendment right to the effective assistance of counsel."
 - b. "Attorney Ms. Hansotia was ineffective for failing to consult with Edwards about perfecting an appeal after the court of appeals instructed her to correct deficiencies within ten (10) days of correspondence to comply within state procedural rules which denied Edwards his 6th and 14th Amendment right."
 - c. "Ms. Hansotia was ineffective for failing to assist Edwards as stand by counsel at trial where Edwards who is not skilled in the science of the law failed to make timely motions and objections at critical stages of the trial that may have changed the outcome of the trial when there exists no order relieving Ms. Hansotia as counsel of record."
2. "Denial of Direct Appeal"
 - a. "Edwards was deprived of his 6th and 14th Amendment right to effective assistance of counsel and direct appeal when Ms. Hansotia failed to correct deficiencies in Edwards' pro-se direct appeal notice as instructed by the court of appeals which violated rules prohibiting conduct tending to pollute the administration of justice and bring the legal profession into disrepute."
 - b. "Ms. Hansotia was ineffective for refusing to comply with an obligation imposed by the court of appeals upon "good faith" belief that no valid obligation exists to correct the deficiencies in Edwards' pro-se notice of appeal when the application of legal regulations by the court of appeals went unchallenged by Ms. Hansotia."
3. "Conviction and sentence is in violation of U.S. Constitution and state law."
 - a. "Edwards conviction and sentence is a result of fundamentally unfair procedure in that he was without the benefit of counsel at trial and post-trial when the circuit court never issued any orders relieving Ms. Hansotia as

counsel of record which violated the constitutional provisions and state law where the judicial machinery broke down when Edwards' request to be appointed another counsel was denied and no assistance was given to him during trial and direct appeal."

For the purpose of this Return, Respondent incorporates the trial transcript, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, Applicant's appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.²

III.

Because Applicant represented himself at trial, Applicant's allegation of ineffective assistance of counsel must be dismissed. Because "the matter of hybrid representation is left to the discretion of the trial judge, then, by implication, there is no Sixth Amendment right to hybrid representation." State v. Stucky, 333 S.C. 56, 57, 508 S.E.2d 564, 564 (1998). "The Sixth Amendment does not require a court to grant advisory counsel to a criminal defendant who chooses to exercise his right to self-representation by proceeding *pro se*." United States v. Lawrence, 161 F.3d 250, 253 (4th Cir. 1998) (citing United States v. Singleton, 107 F.3d 1091, 1110 (4th Cir. 1997); McKaskie v. Wiggins, 465 U.S. 168, 183 (1984)). See also United States v. Mikolajczyk, 137 F.3d 237, 246 (5th Cir. 1998) (holding since defendant "had no right to standby counsel, it seems unlikely that standby counsel's failure to assist could be a violation of his Sixth Amendment rights"); United States v. Bova, 350 F.3d 224, 226 (1st Cir. 2003) (noting defendant had no right to both "represent himself *and* to enjoy the benefit for standby appointed counsel"). Likewise, "there is no right under the South Carolina Constitution to hybrid representation." Stucky, 333 S.C. at 57, 508 S.E.2d at 564 (citing Foster v.

² Respondent has requested an additional transcript of a proceeding before the Honorable Kristi Lea Harrington and will supplement this Return upon receipt.

State, 298 S.C. 306, 379 S.E.2d 907 (1989)). Further, “[p]lacing reasonable limits on the advice to be given by standby counsel that the court was under no obligation to provide in the first instance does not constitute an abuse of discretion.” Lawrence, 161 F.3d at 253.

IV.

To the extent Applicant alleges he did not knowingly and voluntarily waive his right to counsel, this allegation is without merit. It is well-established that a defendant may waive the right to counsel and proceed *pro se*. Dearybury v. State, 367 S.C. 34, 39, 625 S.E.2d 212, 215 (2006) (citing Faretta v. California, 422 U.S. 806 (1975)). Although a defendant’s decision to represent himself may be to his own detriment, it “must be honored out of that respect for the individual which is the lifeblood of the law.” Id. The proper inquiry is whether the record demonstrates that Applicant “made an informed choice to proceed *pro se*, with ‘eyes open,’” in ruling on whether he made a knowing and voluntary waiver of counsel. Watts v. State, 347 S.C. 399, 402-03, 556 S.E.2d 368, 370 (2001).

Absent a specific inquiry by the trial court into the hazards of proceeding *pro se*, reviewing courts must examine the record to determine whether a defendant had sufficient background or was apprised of his rights by some other source. Gardner v. State, 351 S.C. 407, 412, 570 S.E.2d 184, 185 (2002). When determining if an accused has a sufficient background to understand the dangers of self-representation, the courts consider factors including: (1) the accused’s age, educational background, and physical and mental health; (2) whether the accused was previously involved in criminal trials; (3) whether the accused knew the nature of the charge(s) and of the possible penalties; (4) whether the accused was represented by counsel before trial and whether that attorney explained to him the dangers of self-representation; (5) whether the accused was attempting to delay

or manipulate the proceedings; (6) whether the court appointed stand-by counsel; (7) whether the accused knew he would be required to comply with the rules of procedure at trial; (8) whether the accused knew of legal challenges he could raise in defense to the charges against him; (9) whether the exchange between the accused and the court consisted merely of *pro forma* answers to *pro forma* questions; and (10) whether the accused's waiver resulted from either coercion or mistreatment. Gardner, 351 S.C. at 412-13, 570 S.E.2d at 186-87. Respondent submits the record fully supports Applicant's voluntary waiver of his right to counsel. (Tr. at 6-14). Respondent made two or three previous motions to relieve his trial counsel. (Tr. at 11, lines 2-4).³

V.

Applicant's allegation that he received ineffective assistance of appellate counsel is without merit and should be dismissed. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Here, Applicant represented himself at trial and filed a pro se notice of appeal, which was dismissed as untimely. Therefore, this claim must be dismissed pursuant to Rule 12(b)(6) for failure

³ One of these motions was heard the week of February 2, 2015 before the Honorable Kristi Lea Harrington. The
Page 5 of 7

to state a claim upon which relief can be granted.

VI.

Applicant's third allegation raises claims of trial court error. This is a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VII.

Applicant alleges that his sentence was illegal. Respondent submits that this allegation is entirely without merit. Applicant's sentence was well within statutory limits. A trial court has broad discretion in imposing criminal sentences within the limits prescribed by law. State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976); Clark v. State, 259 S.C. 378, 192 S.E.2d 209 (1972). The courts normally have no jurisdiction to correct a sentence given within statutory limits.

The record shows that before sentencing, the sentencing judge was apprised of all the facts related to the Applicant's convictions. The record further shows that Applicant did not object to the court's sentence. Because Applicant represented himself, it was incumbent upon him to raise such an objection. Applicant's failure to object waived any challenge to the length of the sentence on appeal or collateral review. Cummings v. State, 274 S.C. 26, 260 S.E.2d 187 (1979); Peeler v. State, 277 S.C. 70, 283 S.E.2d 826 (1981). Therefore, this allegation should be dismissed.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained above is hereby denied.

IX.

WHEREFORE, Respondent hereby moves to dismiss this application with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: *Alicia A. Olive*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

May 15, 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2016-CP-10-2515
GERALD EDWARDS,	)	
S.C.D.C. No. 173780,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Rodney Davis, Esquire
Lowcountry Law Office
4000 Faber Place Drive, Suite 300
Charleston, SC 29405**

DATED this 15th day of May, 2017.


Brianna Arnone, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON NINTH JUDICIAL CIRCUIT
2016-CP-10-2515

GERALD EDWARDS,
APPLICANT,
VS.

THE STATE OF SOUTH
CAROLINA,
RESPONDENT.

)
)
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)

TRANSCRIPT OF
RECORD

DECEMBER 5, 2017
CHARLESTON, SC

B E F O R E:

HONORABLE MICHAEL NETTLES

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

JUSTIN HUNTER, ESQUIRE
Attorney for the Respondent

RODNEY DAVIS, ESQUIRE
Attorney for the Applicant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

I N D E X

Page

POST-CONVICTION RELIEF HEARING

3

CERTIFICATE OF REPORTER

13

NO EXHIBITS INTRODUCED

1 (The following proceedings were held
2 December 5, 2017, Charleston County, South
3 Carolina, @ 11:36 a.m.)

4 MR. DAVIS: Judge, if you don't mind, I
5 know we approached the bench a moment ago, but in
6 talking with the attorney general we have Mr.
7 Edwards that -- there might be a dispositive ruling,
8 early on. So if we could handle Mr. Edwards next.

9 THE COURT: Very good.

10 MR. DAVIS: Your Honor, when he comes
11 in the courtroom if I could have just one moment
12 with him here. Thank you.

13 (Attorney confers with client.)

14 MR. HUNTER: Sir, may it please the
15 Court. The next case is Gerald Edwards versus
16 State of South Carolina, 2016-CP-10-2515. Your
17 Honor, he was indicted in April of 2014 in
18 Charleston County for armed robbery and possession
19 of a weapon during the commission of a violent
20 crime. He was initially represented by Ms. Shirene
21 Hansotia, but was relieved by a motion heard on
22 February 6th, 2015, before Judge Harrington. A
23 Faretta hearing was held and he eventually went pro
24 se. The judge granted his right to do so. That
25 was February 6th, 2015. Your Honor has the

1 transcript in there. On February 10th he then
2 proceeded to a jury trial before Judge Dennis and
3 was found guilty as indicted, sentenced to
4 20 years, I believe 20 years on armed robbery and
5 five years for the weapons charge.

6 Now, Your Honor, I know that during the
7 trial he went pro se. He did not have stand-by
8 counsel. Ms. Hansotia was in no way involved with
9 the trial. He then filed a pro se notice of
10 appeal. Your Honor has all the appellate
11 documents. I know they're pretty dense because the
12 Court of Appeals sent a letter to Ms. Hansotia
13 notifying her that she was counsel of record and
14 they did file an appeal, sent her a deficiency
15 letter based on the appeal. The Court then
16 dismissed his appeal as a failure to serve the
17 opposing party timely.

18 Your Honor, he then made a motion to
19 reinstate the appeal, a pro se motion. The Court
20 of Appeals denied that motion. Your Honor, I will
21 point out that at this stage the Court of Appeals
22 sent him a letter saying that they understood Ms.
23 Hansotia was not his counsel of record. Eventually
24 it was dismissed and the remittitur was issued
25 October 22nd.

1 He filed this current action May 13th,
2 2016. Your Honor, he alleges several allegations
3 of ineffective assistance of counsel. Your Honor,
4 the State would move to dismiss any allegations of
5 ineffective assistance of counsel as it relates to
6 the trial against Ms. Hansotia. She was not
7 involved. It is clear that he relieved her. She
8 was not stand-by counsel. She was in no way
9 involved in the case after that hearing on the
10 motion to relieve.

11 As far as the appeal goes, Your Honor,
12 the State does recognize that the Court of Appeals
13 sent contradictory letters. The Court of Appeals
14 sent a letter to Ms. Hansotia saying you are the
15 attorney, then the Court of Appeals sent a letter
16 to the applicant here saying she's not your
17 attorney. Your Honor, based on those facts and
18 just the contradictory information from the Court
19 of Appeals, the State would agree that through no
20 fault of his own was the applicant's appeal
21 dismissed. The State is essentially moving to
22 dismiss all charges as he proceeded -- I mean all
23 allegations of ineffective assistance as he
24 proceeded pro se. The State would consent to a
25 belated appeal. He is present today represented by

1 Mr. Rodney Davis.

2 THE COURT: Mr. Davis.

3 MR. DAVIS: Thank you, Your Honor. The
4 only thing I'll add to that is that we were before
5 Your Honor on November 15th, 2017, and we had a
6 procedural discussion about the case. Ms. Hansotia
7 was not present. I don't believe she had been
8 subpoenaed. She is here present with us today.
9 And I believe at that time -- I know it was a
10 different attorney. I don't recall what attorney
11 general was here, but it was a different attorney
12 general covering. At that time they were not in a
13 position that they would consent to the belated
14 appeal.

15 At that point you continued it to allow
16 the State to have Ms. Hansotia here. You made no
17 ruling on the matter. Just a little bit more
18 procedural history. In response to the State's
19 motion to dismiss, specifically, Your Honor, we
20 would ask to be allowed to go forward on the PCR
21 action and the gist of our argument would be this:
22 You have now also -- I don't recall if this was
23 part of the record back in November or not, but the
24 hearing relieving counsel on February 6th, 2015.
25 We would argue that -- if allowed to go forward on

1 the PCR, we would argue that there's an obligation
2 at this hearing for the attorney of the Defendant
3 seeking to relieve them to insure that the full
4 Farettta questioning was completed. We would argue
5 that it was not. We -- actually I am doing this
6 out of sequence, Your Honor.

7 We would also argue that this hearing
8 in and of itself was unnecessarily requested by
9 client's attorney and then at the hearing the
10 procedure was not properly followed. But the
11 result of the hearing is that he was forced to go
12 to trial pro se. And so we would ask and we would
13 argue that we have a right to present testimony on
14 those issues because we would argue that
15 chronologically and causally the inappropriate
16 relieving of counsel on February 6th, 2015, led to
17 him being pro se at trial which led to his
18 conviction. So we would tie the conduct on
19 February 16, 2015, to the jury's conviction. We
20 would ask to be able to go forward on that matter.
21 If you would allow us we are prepared. If not,
22 then we would take up the second issue.

23 THE COURT: Bear with me just one
24 moment while I review the transcript.

25 (Brief pause.)

1 What is the State's position as to
2 whether or not warnings were adequately given,
3 whether that's a matter for appeal or a matter for
4 post-conviction relief?

5 MR. HUNTER: Well, Your Honor, first I
6 would say the transcript is very thorough. The
7 transcript from February 6th, pages 3 through 7, is
8 very thorough going over his Faretta warnings,
9 going over his charges, his education, his work,
10 his law background or lack thereof, the age,
11 possible punishment. She goes over the fact that
12 Ms. Hansotia -- she goes over the fact that she has
13 been to law school and is very capable. Goes over
14 the fact that it would be beneficial to have a
15 lawyer, there is dangers in not having a lawyer.

16 Obviously the Defendant also says he's
17 tried to dismiss her. He's tried to dismiss her on
18 three separate occasions. So first off, I believe
19 the Faretta hearing was very thorough. As far as
20 any error on the part of the judge during the
21 Faretta hearing, I believe that would be a direct
22 appeal issue. As far as anything that Ms. Hansotia
23 may have done during that hearing, any advice would
24 be proper for a PCR. But, however, I guess that
25 would be up to the applicant to allege some sort of

1 deficiency and some sort of specific things she did
2 or did not do. But I firmly believe that the
3 Faretta hearing speaks for itself. And the judge
4 at the beginning of the trial transcript even
5 acknowledges the fact that Judge Harrington went
6 over his Faretta warnings.

7 So to the extent that he can allege
8 there was something that Ms. Hansotia did or didn't
9 do in regards to that hearing, that would be proper
10 for this forum. Anything that the judge did wrong
11 would be proper for direct appeal. However, I'm
12 not exactly sure if there were specific things
13 alleged that Ms. Hansotia did or didn't do.

14 THE COURT: Mr. Davis, what do you
15 allege the lawyer should have or shouldn't have
16 done in with regards to the Faretta warnings?

17 MR. DAVIS: Your Honor, if I can have
18 just a moment. I am trying to pull that up. Just
19 one moment, I apologize.

20 Give me just one moment. If you let me
21 refer to the record. I apologize.

22 Judge, my argument on that would be
23 while Judge Harrington did inquire as to age,
24 education, employment, any legal education and the
25 consequences of range of punishment, we would argue

1 that is incomplete to thoroughly advise any client,
2 specifically Mr. Edwards, who had never been to
3 trial before, kind of proffer a little bit what I
4 believe he would testify to. Have you ever been to
5 trial, or having only been to trial on this case
6 previously, so he was assisted by Ms. Hansotia. It
7 was a hung jury previously, but he observed that.
8 He had never previously represented himself and we
9 believe that the quick run through of age, I
10 graduated high school, I don't have a legal
11 education, I believe that is insufficient to
12 twofold, one, fully advise Mr. Edwards as to the
13 rights that he would be -- or the benefit he would
14 be relinquishing having an attorney. Secondly, we
15 think it's insufficient for the judge to
16 appropriately determine whether he understands
17 that. Simply reciting a numerical age, I went to
18 high school, I read some law journals, I don't
19 believe that's sufficient for the judge to be
20 confident that he understood the perils of removing
21 his attorney.

22 I know this doesn't answer your
23 question directly, but Mr. Edwards wants me to
24 remind the Court our initial argument is he didn't
25 request this hearing. If allowed to we would argue

1 that while there has been back and forth disputes
2 with his attorney about the former representation,
3 that this hearing on February 6th, 2015, was
4 initiated by his attorney and he did not wish for
5 that to happen. So again if allowed, we would
6 argue --

7 THE COURT: It was clear when the
8 hearing took place he did not want his attorney,
9 Ms. Hansotia. Very good.

10 I tell you, I might very well be wrong
11 in this regard, but I am going to find as a matter
12 of law that the transcript speaks for itself with
13 regard to the Faretta warnings. The
14 post-conviction relief in that regard is denied.
15 However, the belated appeal is granted.

16 MR. DAVIS: If I may have just a
17 moment, there's a proposed order from the attorney
18 general. I would like to make sure my client has
19 reviewed it before I approach.

20 THE COURT: Very good.

21 (Attorney confers with client.)

22 MR. DAVIS: Your Honor, may we
23 approach?

24 THE COURT: Yes.

25 MR. DAVIS: (Hanging.)

1 THE COURT: There is a place for
2 signature for the consent aspect of it.

3 MR. DAVIS: Judge, respectfully on
4 that, I am speaking with my client right now about
5 what your ruling is, what options we have. And we
6 understand your ruling. Mr. Edwards would ask that
7 it be ruling of the Court, not by consent.

8 MR. HUNTER: I apologize for including
9 that on there, Your Honor.

10 THE COURT: We will probably need to
11 modify this order to the effect it is not a consent
12 order.

13 MR. HUNTER: Yes, sir.

14 MR. DAVIS: I apologize for not
15 catching that.

16 THE COURT: I am just going to set
17 it -- I'm going to just discard that order and I'll
18 sign a proposed order consistent with my ruling.

19 MR. HUNTER: Yes, Your Honor.

20 THE COURT: We will stand at ease until
21 1:15.

22 (These proceedings were concluded at
23 11:57 a.m., December 5, 2017, Charleston County,
24 South Carolina.)
25

1
2
3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomate
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 30th day of March, 2018 at
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15 _____
16 Ruth C. Weese

17 Registered Diplomate

18 Reporter
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Gerald Edwards,)
S.C.D.C. No. 173780,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE NINTH JUDICIAL CIRCUIT

2016-CP-10-2515

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT TO
WHITE V. STATE¹**

2018 FEB -1 AM 10:20
JUDGE J. J. COOPER

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed May 13, 2016. An evidentiary hearing into the matter was convened on Tuesday, December 5, 2017, at the Charleston County Courthouse in Charleston, South Carolina before the Honorable Michael G. Nettles. Applicant was present at the hearing and represented by Rodney Davis, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Michael R. Loignon, Esquire, also testified. This Court also had before it a copy of Applicant's PCR application and amendment, the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's appellate records, Respondent's Return, and the plea transcript.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. Applicant was indicted by the April 2014 term of the Charleston County Grand Jury for armed robbery (2014-GS-10-01779) and possession of a knife during the commission of a violent crime (2014-GS-10-01780). Applicant represented himself at trial. On February 6, 2015, Applicant appeared before the

¹ 263 S.C. 110, 108 S.E.2d 35 (1974)

Honorable Kristi Harrington and moved to relieve Shirene Hansotia, Esquire, as his counsel. On February 10, 2015, Applicant appeared pro se and proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable R. Markley Dennis, Jr. sentenced Applicant to confinement for concurrent terms of twenty years' imprisonment for armed robbery and five years' imprisonment for possession of a knife during the commission of a violent crime.

Applicant filed a pro se notice of appeal. The South Carolina Court of Appeals sent a letter to Ms. Hansotia, on February 27, 2015 notifying her that it understood her to be counsel of record and Applicant had filed an appeal. The Court of Appeals sent a deficiency letter to Ms. Hansotia informing her that certain deficiencies with Applicant's appeal must be corrected or the appeal will be dismissed. The Court of Appeals dismissed Applicant's appeal as a result of his failure to serve timely notice of appeal. State v. Edwards, S.C. Ct. App. Order dated March 11, 2015. On April 9, 2015, Applicant made a motion to reinstate the appeal. The South Carolina Court of Appeals denied Applicant's motion, stating that he failed to provide a basis for granting a rehearing, specifically that his notice of appeal was timely. The Remittitur was issued on October 22, 2015.

Allegations

In his application for post-conviction relief, and the amendment filed thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel at trial and appeal."
 - a. "Attorney Ms. Hansotia was ineffective for failing to secure a court order relieving her as counsel appointed to represent Edwards at trial and on direct appeal which denied him of his 6th and 14th Amendment right to the effective assistance of counsel."
 - b. "Attorney Ms. Hansotia was ineffective for failing to consult with Edwards about perfecting an appeal after the court of appeals instructed her to correct deficiencies within ten (10) days of correspondence to comply within state procedural rules which denied Edwards his 6th and 14th Amendment right."
 - c. "Ms. Hansotia was ineffective for failing to assist Edwards as stand by

counsel at trial where Edwards who is not skilled in the science of the law failed to make timely motions and objections at critical stages of the trial that may have changed the outcome of the trial when there exists no order relieving Ms. Hansotia as counsel of record."

2. "Denial of Direct Appeal"

- a. "Edwards was deprived of his 6th and 14th Amendment right to effective assistance of counsel and direct appeal when Ms. Hansotia failed to correct deficiencies in Edwards' pro-se direct appeal notice as instructed by the court of appeals which violated rules prohibiting conduct tending to pollute the administration of justice and bring the legal profession into disrepute."
- b. "Ms. Hansotia was ineffective for refusing to comply with an obligation imposed by the court of appeals upon "good faith" belief that no valid obligation exists to correct the deficiencies in Edwards' pro-se notice of appeal when the application of legal regulations by the court of appeals went unchallenged by Ms. Hansotia."

3. "Conviction and sentence is in violation of U.S. Constitution and state law."

- a. "Edwards conviction and sentence is a result of fundamentally unfair procedure in that he was without the benefit of counsel at trial and post-trial when the circuit court never issued any orders relieving Ms. Hansotia as counsel of record which violated the constitutional provisions and state law where the judicial machinery broke down when Edwards' request to be appointed another counsel was denied and no assistance was given to him during trial and direct appeal."

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ineffective Assistance of Counsel

At the PCR hearing, Applicant's counsel alleged that Applicant unlawfully proceeded pro se at trial because Counsel was ineffective for failing to ensure that a full Faretta hearing was conducted before Counsel was relieved. The State made a Motion to Dismiss, arguing that Applicant any allegation of ineffective assistance of counsel should be dismissed, as Applicant proceeded pro se after receiving Faretta warnings from Judge Harrington on February 6, 2015. This Court grants Respondent's motion to dismiss.

This Court finds the record below shows that Judge Harrington conducted a proper Faretta hearing in allowing Applicant to represent himself. See February 6, 2015 Transcript. At the hearing, Applicant informed the Court that he wished to proceed pro se. February 6, 2015 Transcript, p. 3. The court then went over Applicant's education, work history, law background, and age. February 6, 2015 Transcript, pp. 3-4. The court ensured Applicant was aware of the possible punishment he was facing on his charges. February 6, 2015 Transcript, p. 4. The court informed Applicant that Ms. Hansotia went to law school and practices law every day, but Applicant replied that he did not want Ms. Hansotia to represent him. February 6, 2015

Transcript, p. 5. The court informed Applicant that it does not advise defendants to represent themselves, and Applicant stated that he has tried to relieve Ms. Hansotia on three separate occasions. February 6, 2015 Transcript, pp. 5-6. This Court finds Judge Harrington conducted a full and proper Faretta hearing and Applicant knowingly and intelligently waived his right to counsel. As Applicant waived his right to counsel, his claims of ineffective assistance of counsel against Ms. Hansotia are dismissed as she did not represent him at trial or on appeal. Accordingly, Applicant's allegations of ineffective assistance of counsel are dismissed.

Waiver of Right to Direct Appeal

Respondent also represented to the Court that it would agree that Applicant did not knowingly and voluntarily waive his right to a direct appeal. Respondent pointed out the fact that after Applicant filed a pro se notice of appeal, the Court of Appeals sent a deficiency letter to Ms. Hansotia on February 27, 2015 stating she was Applicant's attorney, yet on May 5, 2015 the Court of Appeals sent a letter to Applicant stating that Ms. Hansotia was not his attorney. Respondent agreed that conflicting reports from the Court of Appeals may have contributed to Applicant's appeal being dismissed.

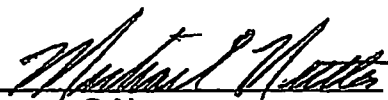
This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

This Court affirmatively finds Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State can remedy Applicant's lack of a direct appeal.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent

AND IT IS SO ORDERED this 23 day of January, 2017.


 MICHAEL G. NETTLES
 Presiding Judge
 Ninth Judicial Circuit

Florence, South Carolina

MEG20140100090

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1400147

ARREST WARRANT NUMBER

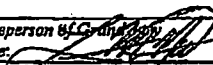
2014A1010200061

DATE OF ARREST

January 3, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 

APR 07 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1001779

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

GERALD DEMETRICE EDWARDS

DOB: 

B/M

Indictment for

Armed Robbery

FILED

4/17/2014 12:58:38 PM

JULIE J. ARMSTRONG

CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

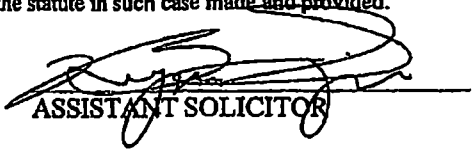
INDICTMENT

At a Court of General Sessions, convened on April 7, 2014 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about January 3, 2014, in Charleston County, South Carolina, the Defendant, Gerald Demetrice Edwards, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Michael Smith with the intent to permanently deprive the victim of possession thereof, in violation of §16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Gerald Demetrice Edwards

AKA:

Race: BLACK Sex: M Age: 46DOB: [REDACTED]Address: [REDACTED]City, State, Zip: Charleston, SC 29403-3616DL#: [REDACTED] SID#: SC00513136*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1001779A/W#: 2014A1010200061Date of Offense: 1/3/2014S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Simpson, Benjamin Chad 71257 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 2.0 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 Proviso 47.9 (Public Def/Prob) \$500 \$ _____
 § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
 § 14-1-213 (Drug Court Surcharge) \$150 \$ _____
 § 50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(I) (Vehicle Assessment) \$40/ea \$ _____
 Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00
 3% to County (if paid in installments) \$ 3.90
 TOTAL \$ 133.90

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk

Court Reporter: Deb Garrison

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 20601Sentence Date: 2/10/15

MEG20140100090

WITNESSES

Charleston City Police Department

AGENCY CASE NUMBER

1400147

ARREST WARRANT NUMBER

2014A1010200062

DATE OF ARREST

January 3, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury Date: APR 07 2014

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1001780

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2014

THE STATE

vs.

GERALD DEMETRICE EDWARDS

DOB: [REDACTED]

B/M

Indictment for

Possession of a Knife During the
Commission of a Violent Crime

FILED

4/17/2014 12:58:39 PM
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)

INDICTMENT

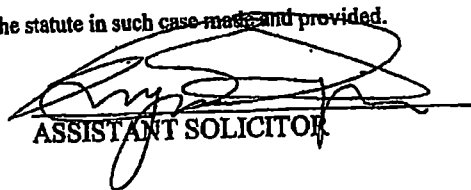
COUNTY OF CHARLESTON)

At a Court of General Sessions, convened on April 7, 2014 the Grand Jurors of Charleston County present upon their oath:

Possession of a Knife During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about January 3, 2014, the Defendant, GERALD DEMETRICE EDWARDS, did possess a knife or visibly display what appeared to be a knife during the commission, or attempted commission, of Armed Robbery, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
Gerald Demetrice Edwards

AKA:

Race: BLACK Sex: M Age: 46DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: Charleston, SC 29403-3616DL#: [REDACTED] SID#: SC00513136*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Possession of a Firearm or Knife During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ARREST:

Simpson, Benjamin Chad 71257 SC Bar# Defendant Attorney for Defendant SC Bar#

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 13 months

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce, Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ <u>3.90</u>
TOTAL		\$ <u>133.90</u>

Clerk of Court/ Deputy Clerk Paige MCourt Reporter: Deb Garrison

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS1001780A/W#: 2014A1010200062Date of Offense: 1/3/2014S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSPresiding Judge R. BaileyJudge Code: 2060Sentence Date: 2/10/15