

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Roger L. Couch, Circuit Court Judge

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SC Court of Appeals
RESPONDENT,

THE STATE,

V.

TAPPIA DANIELO GREEN,

APPELLANT

APPELLATE CASE NO. 2017-001296

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

State’s Exhibits 32-36 (Pos. Print); State’s Exhibit 38 (Video of Lineup); State’s Exhibit 45 (Audio Recording); State’s Exhibit 46 (Video Recording)

04:18:46PM 1 was taking so long for.

04:18:47PM 2 Q. Why were you-all in a hurry?

04:18:49PM 3 A. Well, it was hot outside and we were in
04:18:52PM 4 Mount Pleasant.

04:18:52PM 5 Q. You testified that you were there for
04:18:54PM 6 90 seconds. It can't get that hot that quick.

04:18:55PM 7 A. I didn't say no 90 seconds. I'd say I
04:18:58PM 8 was there for at least five minutes. They were in
04:19:00PM 9 there five minutes. I said I was in the car for at
04:19:03PM 10 least a minute and a half, two minutes.

04:19:04PM 11 Q. That would be the 90 seconds, being in
04:19:06PM 12 the car a minute and a half?

04:19:07PM 13 A. Yes, sir. I got on all black, you
04:19:09PM 14 know, the weather was kind of hot, sir.

04:19:11PM 15 Q. Okay. So where were you going? Where
04:19:16PM 16 were you walking?

04:19:17PM 17 A. To the end of the building to see,
04:19:19PM 18 like, what was that commotion. There was a wreck
04:19:22PM 19 or something, I didn't know what was going on back
04:19:23PM 20 there.

04:19:23PM 21 Q. The sirens?

04:19:24PM 22 A. I don't think there was no sirens
04:19:28PM 23 there. It was just a bunch of -- I saw police, but
04:19:30PM 24 there were no sirens going on.

04:19:31PM 25 Q. Did you see the lights go on?

04:19:32PM 1 A. No, I just saw a bunch of police. It
04:19:35PM 2 was daytime.

04:19:36PM 3 Q. So you decided to get out of the car
04:19:39PM 4 where it was still hot outside and walk around the
04:19:42PM 5 building, but you didn't hear any sirens and see
04:19:42PM 6 the lights. You just wanted to see where the cops
04:19:45PM 7 were going?

04:19:45PM 8 A. I seen the police. I seen the police.

04:19:47PM 9 Q. And you wanted to see where they were
04:19:49PM 10 going, wanted to keep a tab on them, right? They
04:19:53PM 11 were going to come into the Hardee's?

04:19:54PM 12 A. They could come in Hardee's. Hardee's
04:19:56PM 13 is -- nothing going on around Hardee's.

04:19:59PM 14 Q. Okay. And so you made that call to Mr.
04:20:06PM 15 Johnson?

04:20:06PM 16 A. Yes, sir.

04:20:07PM 17 Q. And you made the call while he was
04:20:10PM 18 inside Wells Fargo?

04:20:11PM 19 A. Yes.

04:20:11PM 20 Q. Because he was taking too long then to?

04:20:14PM 21 A. Yes, sir.

04:20:14PM 22 Q. It was getting hot?

04:20:16PM 23 A. Been hot.

04:20:17PM 24 Q. So this story about you having a little
04:20:26PM 25 bit to drink, riding around in the car, why not

04:20:31PM 1 tell the police back in 2015?

04:20:33PM 2 A. What you mean, why not tell the police?

04:20:34PM 3 I was never questioned. There was, like, a warrant

04:20:37PM 4 was issued directly for my arrest. I ain't never

04:20:41PM 5 wrote a statement; I ain't never did an interview;

04:20:44PM 6 I ain't never did any of those things. This is the

04:20:45PM 7 first time I'm collaborating on this story since I

04:20:50PM 8 was locked up.

04:20:50PM 9 Q. This is first time anybody's ever heard

04:20:50PM 10 this story. That's not -- we've seen from Jonathan

04:20:55PM 11 Johnson you can write letters, you can write

04:20:55PM 12 statements, you can get in touch with law

04:20:57PM 13 enforcement?

04:20:57PM 14 A. So what am I going to do that for? I'm

04:21:00PM 15 here -- I'm here to -- I'm not in jail to say this

04:21:01PM 16 or to say that. That's when you've got the

04:21:03PM 17 evidence and that's when you've got facts. If you

04:21:05PM 18 can prove that -- that's why I'm coming to trial

04:21:08PM 19 today, to prove that these alleged crimes -- I

04:21:12PM 20 ain't did that. That's why I'm in trial today.

04:21:15PM 21 Q. So if I understand that correctly, you

04:21:19PM 22 instead of trying to get a hold of somebody while

04:21:22PM 23 you were sitting in jail two years and say, hey,

04:21:24PM 24 that's not what happened, you wanted to sit in jail

04:21:26PM 25 for two years to come to trial?

04:21:27PM 1 A. No, that's not what I said. I told you
04:21:30PM 2 I done talked to my lawyer about this several
04:21:33PM 3 times. I've asked him to file all kind of motions
04:21:37PM 4 and bond reductions. I did everything I needed to
04:21:41PM 5 do on my end. It just wasn't like I was sitting in
04:21:43PM 6 jail not caring about what was going on. I did
04:21:46PM 7 everything on my end. I can't force nobody to tell
04:21:49PM 8 -- force nobody to put me in the courtroom. I
04:21:50PM 9 can't do any of these things.

04:21:50PM 10 Q. Why not speak to law enforcement when
04:21:52PM 11 you got arrested?

04:21:53PM 12 A. Speak to law enforcement about what?

04:21:56PM 13 Q. An officer had to arrest you. Why not
04:21:59PM 14 tell him, hey, bro, listen -- somebody gets
04:22:02PM 15 arrested --

04:22:02PM 16 A. I didn't get locked up until three
04:22:05PM 17 months later after this crime and there was no
04:22:07PM 18 talking. It was just straight, we have a warrant
04:22:09PM 19 for your arrest, take you to county jail, that's
04:22:12PM 20 that, deal with it with the courts. You know how
04:22:13PM 21 police do.

04:22:13PM 22 Q. I know that they listen if a defendant
04:22:16PM 23 wants to talk to them. That's my point; you sat in
04:22:19PM 24 jail for two years, you didn't try. And now we're
04:22:22PM 25 having this brand new story that you've had two

04:22:25PM 1 years to come up with.

04:22:27PM 2 A. I had nothing to talk about then.

04:22:27PM 3 Q. You had nothing to talk about then?

04:22:27PM 4 THE COURT: Wait right there if you
04:22:30PM 5 want to object.

04:22:30PM 6 MR. ARCHER: Your Honor, we have
04:22:33PM 7 something --

04:22:34PM 8 THE COURT: You don't approach the
04:22:36PM 9 bench unless you ask to approach the bench. We
04:22:38PM 10 have rules, Mr. Archer.

04:22:38PM 11 MR. ARCHER: Yes, sir.

04:22:39PM 12 THE COURT: And you know the rules,
04:22:39PM 13 you've been around as long as I have.

04:22:41PM 14 MR. ARCHER: I've been around a long
04:22:43PM 15 time.

04:22:43PM 16 THE COURT: Thank you. You can object
04:22:44PM 17 from your counsel table.

04:22:46PM 18 MR. ARCHER: Yeah.

04:22:47PM 19 THE COURT: All right. Do you have an
04:22:48PM 20 objection?

04:22:48PM 21 MR. ARCHER: Yes, sir. He is
04:22:51PM 22 commenting on his failure to talk to the police,
04:22:54PM 23 and I think it's an improper comment on his Fifth
04:22:59PM 24 Amendment rights.

04:23:01PM 25 THE COURT: Well, he's testifying.

04:23:03PM 1 MR. ARCHER: He's testifying, but I
04:23:04PM 2 don't think he has to testify as to why he did or
04:23:06PM 3 didn't talk to the police. He's trying to make
04:23:10PM 4 that into something bad when it's his absolute
04:23:14PM 5 constitutional right not to talk to the police, and
04:23:17PM 6 it's an improper comment on his exercise of his
04:23:22PM 7 Fifth Amendment right.

04:23:22PM 8 THE COURT: All right. I'll ask you to
04:23:24PM 9 move on. Sustain the objection.

04:23:24PM 10 BY MR. COOPER:

04:23:37PM 11 Q. So the story that you're telling us now
04:23:39PM 12 -- you've had the opportunity to read your
04:23:45PM 13 discovery --

04:23:46PM 14 A. Yes, sir.

04:23:46PM 15 Q. -- in the case? Everything --
04:23:48PM 16 everybody statement's, everybody's information,
04:23:50PM 17 you've had that opportunity, right?

04:23:52PM 18 A. Yes, sir.

04:23:52PM 19 Q. You've had the opportunity to sit here,
04:23:53PM 20 like the jury, and listen to everybody testify,
04:23:55PM 21 right?

04:23:55PM 22 A. Yes, sir.

04:23:56PM 23 Q. You've had the opportunity to sit here
04:23:59PM 24 and listen to Mr. Johnson testify --

04:24:00PM 25 A. Yes, sir.

04:24:01PM 1 Q. -- right? So the story you're giving
04:24:03PM 2 the Court now is after we've heard everybody else,
04:24:07PM 3 after you've heard it, and you can adapt your story
04:24:10PM 4 the way you need to, right?

04:24:12PM 5 A. If that's the way you want to call it.
04:24:15PM 6 I'm the last person to take the stand that's the
04:24:18PM 7 position I'm called. If you called me first, I
04:24:21PM 8 would have said it first.

04:24:21PM 9 Q. You said that you were holding the
04:24:29PM 10 check stub for Mr. Johnson?

04:24:30PM 11 A. Yes. He give me all the money.

04:24:33PM 12 Q. Why would you also have the check stub?

04:24:36PM 13 A. Why not? It's not like we had the
04:24:39PM 14 actual check. When I work and I get paid, I don't
04:24:42PM 15 care what I do with the check stub. It's no longer
04:24:46PM 16 no good, it's like trash. It's just like the
04:24:48PM 17 enveloped. It's not even good to file taxes, it's
04:24:51PM 18 useless. The check stub is useless. The check is
04:24:55PM 19 important. You can't do nothing with the check
04:24:57PM 20 stub.

04:24:57PM 21 Q. So you just took everything from him,
04:24:59PM 22 the whole thing?

04:24:59PM 23 A. I didn't took nothing from him. I
04:25:01PM 24 didn't took nothing from him.

04:25:01PM 25 Q. Mr. Johnson did?

04:25:02PM 1 A. No.

04:25:03PM 2 Q. It was to cover a drug debt?

04:25:05PM 3 A. I don't know what they had going on. I

04:25:08PM 4 told you earlier what Mr. Johnson told me that they

04:25:11PM 5 had going on.

04:25:12PM 6 Q. So you don't know what was going on in

04:25:15PM 7 the car? You don't know what was going on between

04:25:16PM 8 Mr. Johnson and Mr. Lee?

04:25:17PM 9 A. Besides he said -- well, Lee was at

04:25:21PM 10 Wells Fargo. Besides he said, dog right there, he

04:25:24PM 11 owe me some money. That's it. I know we wasn't

04:25:27PM 12 involved with no kidnapping, wasn't tied up with no

04:25:32PM 13 neck ties and shooting guns and pistols and

04:25:35PM 14 shooting them everywhere. There wasn't none of

04:25:36PM 15 that. That's for sure.

04:25:36PM 16 Q. So you didn't have a gun?

04:25:37PM 17 A. No.

04:25:37PM 18 Q. And you didn't mess with a gun?

04:25:40PM 19 A. No.

04:25:40PM 20 Q. Do you usually have guns?

04:25:42PM 21 A. No.

04:25:42PM 22 Q. Never had a gun?

04:25:44PM 23 A. Yeah, I had a gun before.

04:25:46PM 24 Q. But not that day?

04:25:47PM 25 A. Not that day.

04:25:48PM 1 Q. What do you typically have a gun for?

04:25:51PM 2 A. Everybody got guns.

04:25:52PM 3 Q. I'm not worried about everybody. What
04:25:55PM 4 do you have guns for? Why do you have a gun? What
04:25:56PM 5 do you have them for?

04:25:56PM 6 A. Because I'm able to buy a gun. It's
04:25:59PM 7 not -- it's one of my amendments, you have a right
04:26:03PM 8 to bear arms. So there's not nothing illegal about
04:26:07PM 9 me bearing arms.

04:26:08PM 10 Q. But you didn't have one that day?

04:26:09PM 11 A. No.

04:26:09PM 12 Q. Mr. Johnson didn't have one that day?

04:26:12PM 13 A. No.

04:26:19PM 14 Q. You testified that Mr. Lee had plenty
04:26:23PM 15 of opportunities if he wanted to -- to cause a
04:26:27PM 16 commotion to get somebody's attention, all that.
04:26:30PM 17 Why would that be necessary if there was no robbery
04:26:33PM 18 or kidnapping going on? Why would he have to?

04:26:38PM 19 A. You're asking me why -- I testified and
04:26:43PM 20 I said that Mr. Lee had plenty of opportunities if
04:26:46PM 21 he was being kidnapped and if he was being robbed.
04:26:48PM 22 From my point of view -- he took the stand and
04:26:51PM 23 tried to make me seem I'm this monster. If I'm
04:26:55PM 24 scared of you and you threaten me, threaten me,
04:26:58PM 25 threaten me, and I'm in a public place, I'm not

04:27:00PM 1 going back into the car with you. Why would i? If
04:27:03PM 2 my like is in jeopardy is when I get in the car
04:27:04PM 3 with you, but I'm safe in a public place, why would
04:27:06PM 4 I even turn my life over back to you if I'm so
04:27:10PM 5 scared of you and you're this monster that you
04:27:14PM 6 would lose sleep over at night. Why would I put
04:27:17PM 7 myself in that position? I'm in several public
04:27:19PM 8 places. Why would I go back into the car with a
04:27:23PM 9 monster?

04:27:23PM 10 Q. Because you would be scared of them.
04:27:25PM 11 If you have three people threatening your life --

04:27:27PM 12 A. What could they do to me? I don't care
04:27:31PM 13 -- I don't care how big and bad you was. I won't
04:27:35PM 14 go into a cage with a lion if I don't have to. He
04:27:37PM 15 didn't have to. We were at Hardee's. Who is going
04:27:40PM 16 to go into Hardee's and kill people with no masks.
04:27:43PM 17 Who is going to do that? Let's be reasonable.

04:27:45PM 18 Q. Okay. Let's be reasonable.

04:27:47PM 19 A. We be dealing with facts. We ain't
04:27:49PM 20 dealing with no movies and Hollywood. We're being
04:27:51PM 21 real. Who is going to go into a Hardee's and kill
04:27:55PM 22 several people over a Hardee's paycheck that's
04:28:00PM 23 worth no more than \$300 at the most? Who?

04:28:00PM 24 Q. Stranger things have happened.

04:28:02PM 25 A. Stranger things have happened? You see

04:28:02PM 1 that picture right there on my Facebook? I have
04:28:04PM 2 way more money than \$240 at any given time on me.
04:28:04PM 3 Way more than that.

04:28:09PM 4 Q. What do you do for a living? Where do
04:28:11PM 5 you get your money?

04:28:11PM 6 A. I work.

04:28:11PM 7 Q. Where do you work?

04:28:12PM 8 A. Wherever I find work. I might go to
04:28:16PM 9 the temp service, I had two restaurant jobs washing
04:28:19PM 10 dishes, I've got family who will back me up. I get
04:28:22PM 11 money.

04:28:22PM 12 Q. Do you sell drugs?

04:28:24PM 13 A. No.

04:28:25PM 14 Q. Mr. Johnson sold drugs, though?

04:28:26PM 15 A. I'm assuming. I don't know.

04:28:29PM 16 Q. You don't get involved in that?

04:28:30PM 17 A. No. I smoke weed. I smoke weed.

04:28:34PM 18 Q. So how fast are you -- how fast would
04:28:42PM 19 you say you run?

04:28:42PM 20 A. Pretty fast.

04:28:44PM 21 Q. Can you outrun a bullet?

04:28:46PM 22 A. I can duck a bullet.

04:28:49PM 23 Q. Pretty good reflexes then I guess.

04:28:52PM 24 A. Yes, sir.

04:28:53PM 25 Q. Then maybe you wouldn't be scared if

04:28:55PM 1 somebody had you under the threats of a gun inside
04:28:58PM 2 a building.

04:28:58PM 3 A. First of all, if somebody had me under
04:29:00PM 4 threats inside a job, inside a place, and they're
04:29:04PM 5 outside, they're not no threat to me because
04:29:07PM 6 they're outside. The whole time I was never inside
04:29:10PM 7 a building, I was outside. So me worrying about
04:29:13PM 8 somebody coming in here and killing me and several
04:29:15PM 9 -- and everybody in this building is, like -- who
04:29:19PM 10 does that?

04:29:20PM 11 This is 2017. We're dealing with facts
04:29:24PM 12 here. Like, nobody is going to come inside a
04:29:27PM 13 building and kill anybody, like, and have several
04:29:29PM 14 murder charges on their hands. Like, this is just
04:29:32PM 15 ridiculous, like.

04:29:32PM 16 Q. I agree it's ridiculous, but it
04:29:36PM 17 happens.

04:29:36PM 18 A. That's fabricated. You see that in a
04:29:42PM 19 movie, somebody just come in here and just --

04:29:43PM 20 Q. So this story about you having a gun
04:29:46PM 21 and robbing somebody, that's straight out of the
04:29:49PM 22 movies?

04:29:49PM 23 A. It ain't straight out of no facts.

04:29:53PM 24 Q. Why?

04:29:53PM 25 A. There's no facts about that.

04:29:55PM 1 Q. Why would some guy who doesn't have any
04:29:58PM 2 connection to Charleston lie on you about that?

04:30:00PM 3 A. Why wouldn't he?

04:30:02PM 4 Q. Why would he?

04:30:02PM 5 A. Why wouldn't he?

04:30:03PM 6 Q. What would somebody have to gain from
04:30:03PM 7 something like that?

04:30:08PM 8 A. What would he have to lose from
04:30:09PM 9 something like that?

04:30:09PM 10 Q. So you don't know what he could
04:30:12PM 11 possibly have to gain is your answer?

04:30:14PM 12 A. I don't know what he could have to
04:30:16PM 13 gain. I don't know what he would have to lose.
04:30:16PM 14 His intentions might be different than whatever you
04:30:19PM 15 think. Just like you said, you've seen things
04:30:22PM 16 before, I've heard and seen things that don't make
04:30:25PM 17 no sense before.

04:30:26PM 18 So just like how you see things
04:30:27PM 19 sometimes that make sense or doesn't make sense, I
04:30:30PM 20 see things that sometimes nobody but the person who
04:30:33PM 21 is in that situation can control. That's the only
04:30:37PM 22 thing in their mind. Nobody has an explanation
04:30:41PM 23 about the person that is in the situation.

04:30:44PM 24 Q. Okay. So your story to the jury today
04:30:49PM 25 about you hanging out in the car, had done some

04:30:54PM 1 drywall work, and had smoking weed and drinking
04:30:57PM 2 alcohol, and just hanging out in the car, it got a
04:31:00PM 3 little hot, but you were just hanging out in the
04:31:00PM 4 car, that's what you want the jury --

04:31:00PM 5 A. I got out of the car several times. I
04:31:03PM 6 got out several times. I didn't just sit in the
04:31:08PM 7 car the whole time. Every time it got hot, I got
04:31:12PM 8 out of the car. I had the car door open getting
04:31:15PM 9 air. So, yes, that's what I want the jury to
04:31:17PM 10 believe because that's the 100 percent facts.

04:31:19PM 11 That's what I can prove. Everything
04:31:22PM 12 else that is unethically said, that has to be
04:31:24PM 13 proven. I can actually prove what my role was that
04:31:27PM 14 day of April 14. That's what I was doing.

04:31:31PM 15 Q. But, see, then if we're going to take
04:31:34PM 16 that, then we've got the victim who testified --
04:31:36PM 17 you saw, you were there -- and Mr. Johnson who
04:31:41PM 18 indicated that two people -- that you were the guy
04:31:44PM 19 with the gun, that you were the one threatening
04:31:46PM 20 people, that you were the one that wanted the money
04:31:48PM 21 and all that. So now we just have two people
04:31:50PM 22 making that up?

04:31:51PM 23 A. I have nothing to do with what Mr.
04:31:54PM 24 Johnson said. I don't have nothing to do with what
04:31:54PM 25 Mr. Lee said. Only thing I'm saying is, my story

04:31:58PM 1 at the end of the day is going to have to be judged
04:32:01PM 2 by the jury with the facts of the matter. Not he
04:32:05PM 3 said, she said.

04:32:05PM 4 Anybody can say anything. I can tell
04:32:07PM 5 you right now that this is pee in here. I can sit
04:32:10PM 6 here and tell you that, but if that's not what it
04:32:12PM 7 is, then if you don't do your homework and discover
04:32:16PM 8 that that's not pee and it's water, then it's just
04:32:20PM 9 he said, she said, but when you deal with facts and
04:32:22PM 10 you pour that in a cup and you taste it, it's H2O.
04:32:26PM 11 Then you will know for yourself.

04:32:28PM 12 Q. How well do you know Mr. Johnson?

04:32:31PM 13 A. I know him pretty well.

04:32:32PM 14 Q. How long have you known each other?

04:32:36PM 15 A. What?

04:32:36PM 16 Q. How long have you known each other?

04:32:38PM 17 A. I don't know. I don't know.

04:32:41PM 18 Q. You didn't have anything going on?

04:32:47PM 19 A. No, nothing at all.

04:32:48PM 20 Q. He sure is concerned about you. I
04:32:53PM 21 mean, you heard him. He's concerned about you?

04:32:55PM 22 A. Why wouldn't he be concerned about me?

04:32:57PM 23 Q. Is he scared?

04:32:58PM 24 A. Scared of what?

04:32:59PM 25 Q. You.

04:33:00PM 1 A. How can he be scared of me? He got
04:33:03PM 2 time, however much time --

04:33:06PM 3 Q. We heard on the video that he was
04:33:07PM 4 worried about you maybe going after his mom and
04:33:10PM 5 that made him do all kind of things.

04:33:12PM 6 A. If he was worried about me going after
04:33:14PM 7 his mom, he wouldn't have even told. He wouldn't
04:33:16PM 8 have said nothing. If you're scared of somebody,
04:33:20PM 9 if you're scared of somebody, you ain't going to
04:33:22PM 10 say nothing about that. You're not going to put
04:33:24PM 11 yourself in a position to be come at like this. I
04:33:26PM 12 know because I used to be in the street for a while
04:33:29PM 13 and I'd be with few people. If I'm scared of that
04:33:34PM 14 dog, I ain't going by the dog. I ain't going to do
04:33:34PM 15 nothing that will make that dog come get me.

04:33:34PM 16 Q. Well, he said he was drunk, he could
04:33:35PM 17 have made a mistake, and know he's trying to make
04:33:37PM 18 it right.

04:33:37PM 19 A. There ain't no mistake when you're
04:33:40PM 20 dealing with your life.

04:33:41PM 21 Q. Why was he dealing with his life?

04:33:44PM 22 A. How you mean? You said that he was
04:33:46PM 23 drunk and he probably made a mistake. This is a
04:33:51PM 24 life or death situation. This is not no movie of a
04:33:51PM 25 mistake or me stepping on somebody's shoes. This

04:33:57PM 1 is not telling the police something that didn't
04:34:00PM 2 happen. That's not no mistake. That's fabricated.

04:34:03PM 3 Q. So is it a mistake that what he told
04:34:08PM 4 was it true, or what he told got you in trouble?

04:34:12PM 5 A. I don't know. I don't know. I cannot
04:34:14PM 6 answer that because I wouldn't even say I'm in
04:34:17PM 7 trouble. I'm just temporarily incarcerated until
04:34:21PM 8 we finish dealing with this jury and when we finish
04:34:25PM 9 dealing with the evidence. So I wouldn't say I'm
04:34:27PM 10 in trouble. I'm temporarily incarcerated until the
04:34:30PM 11 facts of my incarceration are proven, then I would
04:34:35PM 12 say I'm in trouble.

04:34:37PM 13 Q. Because the jury gets to determine the
04:34:40PM 14 facts?

04:34:40PM 15 A. The jury gets to determine the facts,
04:34:40PM 16 right.

04:34:44PM 17 MR. COOPER: Beg the Court's
04:34:44PM 18 indulgence?

04:34:44PM 19 BY MR. COOPER:

04:35:31PM 20 Q. So I want to be clear, when did you
04:35:33PM 21 first hold the envelope that had the check stub?

04:35:36PM 22 A. When did I first hold the envelope that
04:35:41PM 23 had the check stub?

04:35:41PM 24 Q. State's Exhibit 30, when did you first
04:35:44PM 25 hold this?

04:35:44PM 1 A. When he got back to the car.

04:35:46PM 2 Q. After Hardee's?

04:35:48PM 3 A. No. After he cashed his check.

04:35:51PM 4 Q. What was -- so how was it set up? Was

04:35:54PM 5 the stub folded inside here with the cash?

04:35:56PM 6 A. I don't know. I'm not sure that -- I'm

04:35:59PM 7 not even sure that I had that envelope. I think

04:36:01PM 8 the cash was folded up in the paycheck stub and he

04:36:07PM 9 gave that to me. I think the envelope was separate

04:36:10PM 10 from the paycheck stub when he got back to the car

04:36:15PM 11 after he had cashed it and he gave it to me and

04:36:16PM 12 Jonathan pulled off.

04:36:17PM 13 Q. So --

04:36:17PM 14 A. When he give it to me, it was like

04:36:20PM 15 that, and the money was wrapped up in it.

04:36:22PM 16 Q. In the stub?

04:36:23PM 17 A. In the stub.

04:36:24PM 18 Q. That's the first time you had it after

04:36:25PM 19 the check cashing place?

04:36:26PM 20 A. The first time I had it after the check

04:36:29PM 21 cashing place.

04:36:31PM 22 Q. Then once you-all let Keith leave, what

04:36:34PM 23 did you-all do with the check stub and cash?

04:36:38PM 24 A. I think I -- I think I placed it like

04:36:42PM 25 somewhere in the middle of the console or on the

04:36:47PM 1 floor or something. I just looked at it and then
04:36:51PM 2 kind of discarded it. Basically, it was trash.

04:36:54PM 3 Q. Did you get your \$30 or --

04:36:56PM 4 A. No. No. No. He ain't -- he ain't
04:36:59PM 5 give me no \$30.

04:37:01PM 6 Q. Let's talk for a second about the
04:37:04PM 7 victim and what -- what reason he may have to come
04:37:08PM 8 down here. He's not -- did you know him before
04:37:13PM 9 this incident?

04:37:14PM 10 A. I wouldn't say I knew him, but I might
04:37:18PM 11 have saw him when I always be with Johnson, and I'm
04:37:21PM 12 pretty sure that him and Mr. Johnson knows each
04:37:24PM 13 other well. I'm pretty sure how they reacted was
04:37:29PM 14 and how their relationship was, that they dealt
04:37:31PM 15 with each other on more than one occasion.

04:37:33PM 16 Q. You don't know that for sure, you're
04:37:35PM 17 just guessing, right?

04:37:37PM 18 A. That's my best judgment.

04:37:40PM 19 Q. But you're not Jonathan Johnson, you
04:37:42PM 20 don't know that for sure?

04:37:42PM 21 A. You're right, I don't know that for
04:37:44PM 22 sure.

04:37:44PM 23 Q. Facts, remember. 2017.

04:37:47PM 24 A. Facts. Facts. Facts.

04:37:48PM 25 Q. Okay. So why would somebody that

04:37:51PM 1 doesn't live here drive two hours down to come lie
04:37:55PM 2 on somebody?

04:37:55PM 3 A. Why not? He's already locked in.

04:37:59PM 4 Q. That's the thing, you say why not, but
04:38:01PM 5 that doesn't answer the question. Would you go and
04:38:05PM 6 get in the car and drive two hours to lie about
04:38:06PM 7 somebody?

04:38:07PM 8 A. I'm totally different from him. His
04:38:09PM 9 intentions might be different. I don't know what
04:38:11PM 10 he has going on; I don't know if he's getting paid
04:38:13PM 11 for this; I don't know if he's received any type of
04:38:13PM 12 United States currency; I don't know --

04:38:17PM 13 Q. He's getting paid? Does somebody want
04:38:20PM 14 you in prison?

04:38:21PM 15 A. Obviously, you're asking me questions
04:38:23PM 16 right now trying to make me say something other
17 than what happened that day.

18 Q. I'm just trying to understand what's
19 going on.

20 A. Because you want me in prison. That's
21 a fact. Deal with the facts. If you want me in
22 prison, you're going to have to deal with the
23 facts. Just like I said, what happened that day,
24 we were chilling. You think somebody would rob
25 somebody for 240? That's just all crazy. This man

1 got a check at Hardee's for \$240. My pants cost
2 way more than \$240, so I don't even play those
3 kinds of games. I don't even --

4 Q. And what kind of work do you do again?

5 A. Any type of work I get my hands on.

6 I'll cut your grass if you want me to and wash your
7 car and paint your house. I'd do anything you want
8 me to do for money.

9 Q. You'd do anything for money?

10 A. Legally. Legally.

11 MR. COOPER: Your Honor, I have no
12 further questions for this witness.

04:39:10PM 13 THE COURT: I'm sorry?

04:39:11PM 14 MR. COOPER: I have no further
04:39:12PM 15 questions for Mr. Green.

04:39:13PM 16 THE COURT: All right. Redirect?

04:39:13PM 17 REDIRECT EXAMINATION

04:39:13PM 18 BY MR. ARCHER:

04:39:23PM 19 Q. Had you worked that morning?

04:39:23PM 20 A. Yes, sir.

04:39:23PM 21 Q. And you worked for Mr. Johnson's
04:39:23PM 22 father?

04:39:26PM 23 A. Yes, sir. He paid us a little side
04:39:27PM 24 money, stuff like that.

04:39:28PM 25 Q. Had he paid you?

04:39:28PM 1 A. Yes, sir.

04:39:29PM 2 Q. Do you remember how much he had paid

04:39:31PM 3 you?

04:39:32PM 4 A. I think he paid me like \$300, or

04:39:36PM 5 something like that.

04:39:36PM 6 Q. \$300?

04:39:37PM 7 A. Yes, sir.

04:39:38PM 8 Q. So you didn't need any money that day,

04:39:40PM 9 right?

04:39:40PM 10 A. Well, I don't never need -- I'm never

04:39:43PM 11 in need for money because I've got family members

04:39:46PM 12 and girlfriends and --

04:39:47PM 13 Q. But that day you had already been paid

04:39:50PM 14 \$300 by Mr. Johnson --

04:39:51PM 15 A. Yes, sir. That day in particular I was

04:39:53PM 16 great, and I had money in my pocket.

04:39:56PM 17 Q. Okay. All right. So you didn't need

04:40:01PM 18 to rob somebody to get more money?

04:40:06PM 19 THE COURT: That's a leading question,

04:40:10PM 20 if it's a question.

04:40:10PM 21 MR. ARCHER: All right. I'll withdraw

04:40:13PM 22 that. I have nothing further, Your Honor.

04:40:14PM 23 THE COURT: Recross?

04:40:16PM 24 MR. COOPER: Beg the Court's indulgence

04:40:19PM 25 one second?

RECROSS-EXAMINATION

04:40:19PM 1

04:40:19PM 2 BY MR. COOPER:

04:40:21PM 3 Q. You said that you are never in need for
04:40:23PM 4 money?

04:40:24PM 5 A. No, sir.

04:40:25PM 6 Q. Because you're always finding a way to
04:40:28PM 7 get it, right?

04:40:28PM 8 A. Like I said several times, sir, I have
04:40:31PM 9 family --

04:40:32PM 10 Q. Girlfriends.

04:40:33PM 11 A. -- girlfriends. I work -- I will go to
04:40:36PM 12 the temp service and get me \$60, \$50 a day if I
04:40:36PM 13 need money that bad.

04:40:43PM 14 Q. Or you could go to Wells Fargo and find
04:40:44PM 15 somebody and get them to get their money from their
04:40:47PM 16 check.

04:40:47PM 17 A. I could also jump off a building and
04:40:54PM 18 land on my feet, the fact that you want me to do
04:40:54PM 19 too. If you jump off that building, nine times out
04:40:56PM 20 of ten you're not going to land on your feet. So
04:40:57PM 21 you can try to spectate anything you want to.

04:41:01PM 22 Right now we're dealing with the facts in this
04:41:03PM 23 case, and the facts that I'm telling the jury is
04:41:05PM 24 that I always have money --

04:41:06PM 25 THE COURT: Sir, you're not allowed to

04:41:08PM 1 directly address the jury.

04:41:10PM 2 THE WITNESS: I apologize, sir. What
04:41:11PM 3 I'm telling you for the whole courtroom, I always
04:41:14PM 4 keep money, I always have money. I would never
04:41:16PM 5 even try to rob a person for a little Hardee's
04:41:20PM 6 check that I know from working in restaurants
04:41:22PM 7 that's probably not going to be no more than 2 or
04:41:26PM 8 \$300.

04:41:27PM 9 Q. You like bigger prizes than that?

04:41:29PM 10 A. No, sir. I rather get it the honest
04:41:33PM 11 way, so I don't have to go through this right here
04:41:36PM 12 that I'm going through right now. I know this
04:41:36PM 13 happens when things like that occur.

04:41:38PM 14 Q. Just one last thing, talking about the
04:41:42PM 15 facts, and you're right the jury is supposed to
04:41:44PM 16 make the decision on facts. And it's just our job
04:41:47PM 17 to present the evidence to them. We've heard
04:41:50PM 18 different people testify about different stories.

04:41:52PM 19 What facts do you have that would
04:41:57PM 20 corroborate your story and make your story --

04:41:58PM 21 A. What facts do I have to corroborate?
04:42:01PM 22 Because I don't have no need to lie. That's why
04:42:03PM 23 there's -- there is something called an
04:42:04PM 24 investigation, investigating this and investigating
04:42:06PM 25 that. He said, she said is not investigation. You

04:42:11PM 1 can easily tell him that he can come in this
04:42:12PM 2 courtroom today and say that. Nobody knows what's
04:42:15PM 3 going on behind closed doors. Nobody knows any
04:42:18PM 4 sorts of thing.

04:42:19PM 5 Facts was meaning that, okay, I'm just
04:42:22PM 6 -- for instance, you see Jonathan Johnson's picture
04:42:25PM 7 on the phone with a gun? Fact. That's a fact that
04:42:28PM 8 he had a gun. Fact is --

04:42:30PM 9 Q. When did he have a gun?

04:42:31PM 10 A. Whenever. Whenever you saw him with
04:42:33PM 11 that red T-shirt.

04:42:34PM 12 Q. He had a gun with that red T-shirt?

04:42:36PM 13 A. Man, you know he said he didn't have no
04:42:39PM 14 gun and you put that picture up there earlier. Not
04:42:41PM 15 that day. He had on a red T-shirt that day, but --
04:42:44PM 16 facts.

04:42:44PM 17 Q. So he got caught in a lie, though.

04:42:47PM 18 A. That's him. You catch me in my lie.
04:42:50PM 19 That's what you're here to do. You're here to
04:42:52PM 20 prove that what I'm saying is a lie, and I'm here
04:42:54PM 21 to say all these pictures on the table down here,
04:42:56PM 22 my hands being on the paycheck stub, my hands were
04:42:59PM 23 all over the car. I always be with Johnson. My
04:43:02PM 24 fingerprints is all over the car. My fingerprints
04:43:02PM 25 is on the paycheck stub. It's probably under the

04:43:04PM 1 tire, on the gas tank, all over the car. That's
04:43:06PM 2 just my fingerprints, like, but a fact is fact.
04:43:10PM 3 Facts is facts, man. You can see a tie and you see
04:43:13PM 4 my fingerprint on a tie. You know for sure there's
04:43:16PM 5 nothing that's being said by any party. It's
04:43:20PM 6 fabricated. I don't have nothing to do with
04:43:22PM 7 Jonathan Johnson's testimony. I don't have nothing
04:43:24PM 8 to do with Keith Lee's testimony. Only person I'm
04:43:26PM 9 here -- and only testimony I control is Tapia
04:43:29PM 10 Green's and Tappia Green's facts is, yeah, the fact
04:43:32PM 11 is I've been here. That's a fact I'm locked up,
04:43:35PM 12 I'm not denying that one bit. The fact that I
04:43:37PM 13 called Jonathan Johnson, I'm not denying one bit.
04:43:40PM 14 Fact is I had on a black shirt, I'm not denying one
04:43:44PM 15 bit.

04:43:44PM 16 Those are three facts that I'm not
04:43:47PM 17 denying, but what I am denying is tieing somebody
04:43:50PM 18 up, having a gun, robbing somebody, and armed
04:43:52PM 19 robbing somebody. Those are the four facts that I
04:43:55PM 20 am denying that you can't prove right now. Or if
04:43:58PM 21 you could, please do.

04:44:02PM 22 Q. If you had done those things --

04:44:04PM 23 A. Yes, sir.

04:44:04PM 24 Q. -- any reason to believe that you would
04:44:07PM 25 come in and tell this jury that?

04:44:08PM 1 A. If I had done those things I would have
04:44:10PM 2 took a plea. I wouldn't be up here arguing my
04:44:14PM 3 innocence. I got a plea back in the time for --
04:44:16PM 4 I'm not going to speak on the length of the
04:44:19PM 5 sentence, but I got a plea -- a plea was offered to
04:44:22PM 6 me. And if I knew I did something --

04:44:24PM 7 Q. For what?

04:44:25PM 8 A. It doesn't matter. I was just told I
04:44:27PM 9 cannot say no type of number in front of the jury,
04:44:30PM 10 so you cannot try to slip me up and ask me
04:44:34PM 11 questions that you know is not permitted in the
04:44:36PM 12 courtroom. Just like I said, if I did something, I
04:44:40PM 13 would man up to that. I would not be taking the
04:44:43PM 14 stand right now playing with my life and just
04:44:47PM 15 taking a big risk of doing that. I would just go
04:44:51PM 16 ahead and eat that and know it would be over soon.
04:44:56PM 17 Facts, those are facts.

04:44:56PM 18 Q. Unless you think you're good at it or
04:45:00PM 19 smarter than the system.

04:45:01PM 20 A. Unless I think -- I don't think
04:45:03PM 21 nothing. Only thing I think is what I know and
04:45:05PM 22 what I'm telling you right now. Pictures on that
04:45:08PM 23 stand or whatever like that, that's what I'm
04:45:10PM 24 telling you right now, facts.

04:45:19PM 25 MR. COOPER: Your Honor, may we

04:45:20PM 1 approach?

04:45:20PM 2 THE COURT: Yes, sir.

04:45:21PM 3 (Bench conference)

04:45:37PM 4 THE COURT: There's a matter I need to
04:45:38PM 5 take up with the lawyers outside of your hearing.
04:45:39PM 6 Step back to your jury room. Don't discuss the
04:45:41PM 7 case while you're outside of the courtroom. Thank
04:45:44PM 8 you.

04:45:44PM 9 (Jury out, 4:45 p.m.)

04:45:54PM 10 MR. COOPER: Your Honor, Mr. Green
04:46:21PM 11 testified that he wouldn't ever do anything illegal
04:46:26PM 12 for money, and he also testified about pleading
04:46:28PM 13 guilty to something earlier. Especially the
04:46:30PM 14 testimony regarding, never do anything illegal for
04:46:32PM 15 money, I think that has absolutely opened the door
04:46:34PM 16 to discuss his 2013 strong-armed conviction,
04:46:38PM 17 strong-armed robbery.

04:46:40PM 18 MR. ARCHER: I don't believe so, Your
04:46:43PM 19 Honor. I mean, I think that's -- that's still the
04:46:55PM 20 prejudicial value of it outweighs the probative
04:46:57PM 21 value of it even now.

04:47:04PM 22 THE COURT: Help me with the facts of
04:47:06PM 23 that case. Now, he pled guilty to that?

04:47:08PM 24 MR. COOPER: Yes, sir.

04:47:09PM 25 THE COURT: All right.

04:47:10PM 1 MR. COOPER: My only concern with that
04:47:12PM 2 is --
04:47:12PM 3 THE COURT: It was not an Alford plea?
04:47:14PM 4 MR. COOPER: No, sir.
04:47:15PM 5 THE DEFENDANT: It was an Alford plea.
04:47:18PM 6 I was offered time served --
04:47:20PM 7 THE COURT: Sir, I'm talking to the
04:47:21PM 8 lawyers.
04:47:25PM 9 MR. COOPER: No, Your Honor. My
04:47:26PM 10 understanding is that it was a guilty plea, not an
04:47:30PM 11 Alford plea. And my concern --
04:47:31PM 12 THE COURT: Do you have the sentencing
04:47:32PM 13 sheet?
04:47:33PM 14 MR. COOPER: I do.
04:47:33PM 15 THE COURT: Pass it up.
04:47:34PM 16 MR. COOPER: And my concern, Judge, is
04:47:37PM 17 the way the defendant has tried to portray himself
04:47:41PM 18 as an upstanding citizen flies in the face of --
04:47:45PM 19 THE COURT: Do you want to see this,
04:47:48PM 20 Mr. Archer?
04:47:48PM 21 MR. ARCHER: I haven't seen it, yes,
04:47:50PM 22 sir.
04:47:50PM 23 THE COURT: Well, take a look at it.
04:47:51PM 24 MR. COOPER: And the other thing about
04:48:18PM 25 that, Judge, he's also testified that he's legally

04:48:21PM 1 able to buy a gun. Under the second amendment, as
04:48:21PM 2 he pointed out, being a convicted felon, that's
04:48:24PM 3 also not true. So I understand there can be a
04:48:26PM 4 prejudicial effect, but I think the way that he
04:48:29PM 5 represented himself to the jury and tried to make
04:48:33PM 6 it seem like he only does things upstanding, only
04:48:35PM 7 does things legally, I think it's a
04:48:35PM 8 mischaracterization and the jury is entitled to
04:48:39PM 9 know that those convictions exist.

04:48:41PM 10 I think he's absolutely opened the door
04:48:43PM 11 to that. And that was a plea down from armed
04:48:51PM 12 robbery.

04:48:53PM 13 THE COURT: Mr. Archer, I did not see
04:49:09PM 14 any notation on the sentencing sheet that it was an
04:49:12PM 15 Alford plea.

04:49:12PM 16 MR. ARCHER: Yes, sir, but I don't
04:49:14PM 17 think there's any indication --

04:49:15PM 18 THE COURT: It does indicate it's a
04:49:18PM 19 plea to a lesser included offence and that there's
04:49:22PM 20 a negotiated sentence. He was sentenced to, I
04:49:28PM 21 believe, seven years and that was suspended to
04:49:32PM 22 471 days he had already served.

04:49:35PM 23 MR. ARCHER: Yes, sir. So, obviously
04:49:40PM 24 -- I mean, obviously, there's -- you don't get 471
04:49:42PM 25 days on a strong-armed robbery unless it's pretty

04:49:45PM 1 substantial extenuating circumstances.

04:49:48PM 2 THE COURT: I don't know whether he
04:49:49PM 3 helped on another defendant. There can be a lot of
04:49:53PM 4 circumstances. You and I both know we're not going
04:49:56PM 5 to start to get into that. We can speculate both
04:50:00PM 6 ways on that.

04:50:00PM 7 MR. COOPER: Your Honor --

04:50:01PM 8 MR. ARCHER: I don't think there's any
04:50:02PM 9 indication that the facts of that particular case
04:50:07PM 10 indicate dishonesty on his part. They can
04:50:10PM 11 introduce --

04:50:10PM 12 THE COURT: Well, we did talk about it
04:50:11PM 13 at the beginning of the trial. At that time I
04:50:13PM 14 heard that it involved a -- somebody jumped a car
04:50:19PM 15 off.

04:50:19PM 16 MR. ARCHER: Somebody did what, getting
04:50:22PM 17 somebody to jump a car off?

04:50:22PM 18 THE COURT: Getting somebody to jump a
04:50:23PM 19 car off.

04:50:23PM 20 MR. COOPER: It involved Mr. Green
04:50:24PM 21 calling the victim, asking him to come jump his
04:50:27PM 22 vehicle, once he got there, he robbed him. I have
04:50:30PM 23 spoken with that victim and he never came to court
04:50:33PM 24 to testify.

04:50:34PM 25 That's also one of the reasons

04:50:35PM 1 Mrs. Shealey, the prosecutor, reduced how she did
04:50:39PM 2 was because of how flighty the victim was, if
04:50:43PM 3 that's the right term. So it wasn't so much
04:50:47PM 4 cooperation from him as it was proving it at trial
04:50:49PM 5 when the victim may not come to court.

04:50:51PM 6 I think Mr. Green even to my questions
04:50:52PM 7 went above and beyond the things I asked to make
04:50:56PM 8 himself seem so upstanding.

04:50:57PM 9 THE COURT: That was not really
04:50:59PM 10 responsive to your question when he started
04:51:01PM 11 offering his good character.

04:51:03PM 12 MR. ARCHER: Well, I think what he said
04:51:06PM 13 was he wouldn't --

04:51:06PM 14 THE COURT: He'd never do anything
04:51:09PM 15 dishonest to make a buck.

04:51:11PM 16 MR. COOPER: Never do anything illegal
04:51:13PM 17 to make money.

04:51:14PM 18 MR. ARCHER: Well, I did not hear that,
04:51:20PM 19 but, I mean, I would have caught it. Okay.

04:51:24PM 20 THE COURT: Well -- ma'am, do you want
04:51:28PM 21 to go back and see what he said so we're clear what
04:51:30PM 22 he said?

04:51:30PM 23 THE COURT REPORTER: Yes.

04:51:30PM 24 MR. COOPER: I'm pretty sure I heard
04:51:30PM 25 it.

04:51:30PM 1 (Requested portion read by the Court
04:55:21PM 2 Reporter.)

04:55:21PM 3 MR. ARCHER: I don't think there's
04:55:21PM 4 anything to say at this point in his life it ain't
04:55:24PM 5 true.

04:55:24PM 6 THE COURT: Beg your pardon?

04:55:25PM 7 MR. ARCHER: There's nothing to
04:55:27PM 8 indicate that at this point in his life that isn't
04:55:31PM 9 true, that he wouldn't do anything except something
04:55:33PM 10 legally to make money, but I don't see where
04:55:37PM 11 anything has changed if he wants to --

04:55:39PM 12 THE COURT: -- strong-armed robbery
04:55:42PM 13 either money or property had to be taken from
04:55:44PM 14 somebody. So I'm not sure what you're talking
04:55:49PM 15 about.

04:55:49PM 16 MR. ARCHER: I mean, what has changed
04:55:51PM 17 since Your Honor had made your initial ruling?
04:55:53PM 18 Nothing really. He's introduced this to impeach
04:56:00PM 19 his testimony, as impeachment.

04:56:00PM 20 THE COURT: He's not allowed to get on
04:56:02PM 21 the stand and make claims and then hide behind the
04:56:07PM 22 fact that he's got a prior conviction. If he's up
04:56:10PM 23 there making claims about his character or the way
04:56:13PM 24 he makes money, and then how -- and then say, well,
04:56:16PM 25 you can't bring that up because you ruled on that

04:56:16PM 1 already.

04:56:20PM 2 I ruled on it in the absence of any
04:56:22PM 3 statements by him that he has a certain character
04:56:27PM 4 or only does things legally. That had not been
04:56:28PM 5 said. He got on the stand and put his character
04:56:33PM 6 into the record.

04:56:35PM 7 MR. COOPER: And in addition to that,
04:56:40PM 8 he several times talked about, I don't need it,
04:56:44PM 9 I've got plenty of money, my pants cost more than
04:56:49PM 10 that. He made a repeated discussion about having
04:56:51PM 11 money, getting money, not needing money, I will do
04:56:53PM 12 anything to get money --

04:56:54PM 13 THE COURT: Here's what I'm going to
04:56:56PM 14 do. I'm going to dismiss the jury for the evening.
04:56:59PM 15 We're going to stop the testimony at this time. I
04:57:02PM 16 want to do a little research. There's cases out
04:57:05PM 17 here on this. You can do the same if you would
04:57:08PM 18 like to bring some authority of law.

04:57:09PM 19 And, of course, Mr. Archer, you have
04:57:13PM 20 the right to bring some authority in law, and let's
04:57:14PM 21 see what we've got.

04:57:15PM 22 Where we are right now, it does appear
04:57:18PM 23 that your client has made a statement in the record
04:57:20PM 24 that he would do anything to make money legally,
04:57:24PM 25 implying that he would not do anything illegally,

04:57:26PM 1 because he was asked whether he sold drugs, whether
04:57:29PM 2 he made -- was in on the drug sale business.

04:57:33PM 3 And he said, no, I cut grass. I do
04:57:35PM 4 this, I do that, anything legal. So he's put that
04:57:39PM 5 into the record. And so the question is now does
04:57:41PM 6 that open the door? Does that change my prior
04:57:44PM 7 ruling concerning the introduction of this
04:57:46PM 8 particular conviction? I will let you bring in any
04:57:51PM 9 authority that you would like to bring in on that.

04:57:53PM 10 So in the morning at 9:00.

04:57:54PM 11 And I caution the witness, you are in
04:57:57PM 12 the middle of your testimony. You are not allowed
04:57:59PM 13 to discuss your testimony with anyone overnight
04:58:02PM 14 during the break. You, of course, can receive
04:58:05PM 15 advice from your lawyer concerning the matters, but
04:58:09PM 16 you cannot discuss your testimony with anyone else.

04:58:13PM 17 MR. ARCHER: Are you saying he can
04:58:15PM 18 discuss his --

04:58:16PM 19 THE COURT: I said with anyone else.

04:58:16PM 20 MR. ARCHER: Huh?

04:58:18PM 21 THE COURT: I said he can discuss it
04:58:19PM 22 with his lawyer, but he can't discuss it with
04:58:21PM 23 anyone else.

04:58:22PM 24 MR. COOPER: I know the words just come
04:58:24PM 25 out of the mouth, but will we have an ability to

04:58:27PM 1 have a transcript to research that?

04:58:30PM 2 THE COURT: I'm sorry, what now?

04:58:32PM 3 MR. COOPER: A transcript of what Mr.

04:58:33PM 4 Green said --

04:58:33PM 5 THE COURT: I'm not sure she can

04:58:35PM 6 produce a transcript --

04:58:35PM 7 MR. COOPER: I mean, something informal

04:58:36PM 8 that we can use tonight?

04:58:36PM 9 THE COURT: You can step down, sir.

04:59:49PM 10 Let's have our jury.

05:01:49PM 11 (Jury in, 5:01 p.m.)

05:02:09PM 12 THE BAILIFF: All present, Your Honor.

05:02:10PM 13 THE COURT: The record will reflect

05:02:14PM 14 that the jury has returned to the courtroom.

05:02:15PM 15 Ladies and gentlemen, an issue has been

05:02:16PM 16 raised that I'm asking the attorneys to bring in

05:02:18PM 17 some legal authority on. So we're going to have to

05:02:22PM 18 make a ruling on that in the morning.

05:02:26PM 19 It's already about two minutes after

05:02:28PM 20 5:00 anyway. So we're going to recess for the

05:02:32PM 21 evening. You know my instructions as you leave the

05:02:35PM 22 courthouse. Do not gather any information about

05:02:37PM 23 the case, do not listen to, watch or read any

05:02:39PM 24 reports. Don't discuss it with anyone. Don't

05:02:47PM 25 allow anyone to discuss it with you. Report any

05:02:47PM 1 contact should anyone try to do that.

05:02:51PM 2 I will have the attorneys come in at

05:02:54PM 3 9:00. If you will be here by 9:15, we'll have to

05:02:57PM 4 deal with this issue first and maybe we can get

05:02:58PM 5 that out of the way. And then about 9:15 we should

05:03:01PM 6 be ready to get started.

05:03:03PM 7 Thank you for your cooperation. You

05:03:05PM 8 are free to go at this time.

05:03:08PM 9 (Jury out 5:03 p.m.)

05:03:34PM 10 THE COURT: All right. We're in recess

05:03:35PM 11 until 9:00 in the morning.

05:03:35PM 12 (These proceedings were recessed at

05:05:06PM 13 5:05 p.m. to be continued 5/25/17 at 9:00 a.m.)

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1 CERTIFICATE OF REPORTER

2

3 I, Carol Denise Lauder, Registered
4 Professional Reporter and Notary Public for the
5 State of South Carolina at Large, do hereby certify
6 that the foregoing transcript is a true, accurate,
7 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 16th day of September, 2017 at
13 Charleston, Charleston County, South Carolina.

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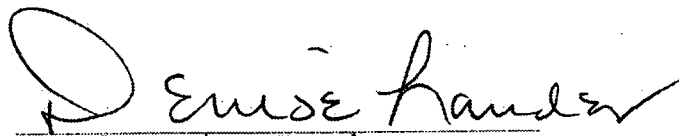
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Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2015-GS-10-5982
	)	2015-GS-10-5983
	)	2015-GS-10-5984
	)	
	)	
State of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Tappia Deangelo Green	)	)
<u>DEFENDANT</u>	)	May 25, 2017
		Columbia, SC

B E F O R E:

THE HONORABLE ROGER L. COUCH, JUDGE; and a jury.

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

DANIEL W. COOPER, ASSISTANT SOLICITOR
 BURNS M. WETMORE, ASSISTANT SOLICITOR
 Attorneys for the State

MARK L. ARCHER, ESQ.
 Attorney for the Defendant

KESHIA REED
 Official Court Reporter

1 (WHEREUPON, Court's Exhibit No. 2 was marked for
2 the record.)

3 THE COURT: All right. State ready to go
4 forward?

5 MR. COOPER: Yes, Your Honor.

6 THE COURT: Defense ready to go forward?

7 MR. ARCHER: Yes, sir, Your Honor.

8 THE COURT: All right. First of all, I've had a
9 conference with the attorneys in my chambers. At that
10 time we discussed two issues that are before the Court.
11 The first issue we discussed was yesterday afternoon when
12 the State was cross-examining the defendant. Questions
13 were asked in regards to his failure to offer an
14 exculpatory statement during his two years of -- roughly
15 two years of incarceration in this particular matter.
16 There was some concern on the Court's part as to whether
17 or not that questioning would have violated what's
18 referred to as the Doyle rule and I've discussed it with
19 counsel. At that time I was advised by the State that
20 there is no record in the file that would indicate that
21 this defendant was ever given this Miranda rights; is that
22 correct, Mr. Cooper?

23 MR. COOPER: Your Honor, that is correct. Just
24 to supplement the record, we have spoken with the
25 arresting officer who did advise that she at no time even

1 spoke with him or gave him Miranda warnings.

2 THE COURT: Tell me the circumstances of his
3 arrest as far as your understanding, Mr. Cooper?

4 MR. COOPER: Your Honor, without the incident
5 report, I believe it was a failure to stop for a blue
6 light and he was initially finally stopped, came to a stop
7 and then the officer came to find out through a search
8 that he had an outstanding pending warrants, warrants from
9 this case, I think other warrants. At that time she was
10 hands off and said that's for a detective to come in and
11 investigate and talk to him, so she booked him in the jail
12 didn't talk with him.

13 THE COURT: He was taken into custody from the
14 blue light stop?

15 MR. COOPER: Yes, sir.

16 THE COURT: And then -- but was not Mirandized
17 at that time or questioned at that time?

18 MR. COOPER: Correct. She had no communication
19 with the defendant.

20 THE COURT: Yes, sir.

21 MR. ARCHER: I don't think we know that he was
22 not Mirandized at that time.

23 THE COURT: Well, there's nothing in the record
24 that would indicate that.

25 MR. ARCHER: Sir?

1 THE COURT: There's nothing in the record that
2 would indicate that.

3 MR. ARCHER: Well, we hadn't talked to the
4 officer who stopped him for the blue light.

5 THE COURT: I have to go on what's in the
6 record. And I'm trying to determine right now the
7 circumstances that the State understands about it. If you
8 have any evidence that you think I should consider on
9 that...

10 MR. ARCHER: I'm going to offer him up that he
11 could -- he tells me...

12 THE COURT: Okay.

13 MR. COOPER: Just to counter Mr. Archer case
14 hearing him the first time, we spoke with the arresting
15 officer and she said that she did not talk to him nor did
16 she offer him Miranda rights. I don't believe that the
17 defendant's testimony on cross-examination yesterday was
18 that he didn't give him a chance to talk or anything like
19 that either, so I think those two things couple together
20 ---

21 THE COURT: Well, let's see what he says. You
22 got the arresting officer here?

23 MR. COOPER: I have to get her on the phone, but
24 I can call her again or see if she can come to court. I
25 don't know where she is, Your Honor.

1 THE COURT: All right. Okay. I'll hear from
2 the defense.

3 MR. ARCHER: Hear from us?

4 THE COURT: I'll hear from you. You're the
5 lawyer, aren't you?

6 MR. ARCHER: Well, my client indicates that he
7 was given post-arrest Miranda rights. I can put him on
8 the stand to testify as to that.

9 THE COURT: Well, he was on the stand and he
10 didn't testify to it.

11 MR. ARCHER: I don't think he was ever
12 specifically asked.

13 THE COURT: No, and I don't think he ever
14 offered it either.

15 MR. ARCHER: Yeah, but he's prepared to.

16 THE COURT: After you've talked to him about it
17 this morning.

18 MR. ARCHER: Huh?

19 THE COURT: After you discussed it with him this
20 morning.

21 MR. ARCHER: I just went in and said were you
22 ever given Miranda rights he said, yes.

23 THE COURT: Okay.

24 MR. ARCHER: Here, here, here and here. He was
25 put under arrest for several sets of charges including

1 armed robbery and some bad checks too.

2 THE COURT: Okay. Yes, sir.

3 MR. COOPER: All right. Okay. Judge, like I
4 said, I spoken with the officer. The officer has advised
5 that she did not speak with the defendant. She advised of
6 his multiple pending charges and at that time decided to
7 book him into the jail let the detectives on the
8 individual cases handle it. Mr. Green's testimony
9 yesterday was that he never ---

10 THE COURT: Well, I would suggest that you get
11 the officer here.

12 MR. COOPER: Yes, sir.

13 THE COURT: We'll take that up later.

14 MR. ARCHER: Well, my client would testify to
15 the time he was stopped for a blue light.

16 THE COURT: Well, he's telling me the officer's
17 going to testify that he was not given his Miranda.

18 MR. ARCHER: Well, the officer who took him to
19 jail ain't the officer who arrested him?

20 THE COURT: Beg your pardon.

21 MR. ARCHER: The officer who took him to jail is
22 not the same officer who arrested him according to him.

23 THE COURT: He was taken into custody or he was
24 taken to the jail.

25 MR. ARCHER: He was taken into custody by one

1 officer and turned over to a lady officer to take him to
2 jail.

3 THE COURT: I don't believe I'm going to try
4 that case. You want me to try the circumstances of his
5 arrest?

6 MR. ARCHER: Well, if that's critical to whether
7 or not he's entitled to a mistrial, I think we need to put
8 evidence up on it.

9 THE COURT: Well, again why don't we put him up
10 and let him testify to this right now.

11 Sir, take the stand.

12 I'm going to ask you to put him under oath
13 today.

14 MR. COOPER: Just to understand the Court and
15 Mr. Wentworth, we're going to have the officer here.

16 THE COURT: I assume he's getting ready to
17 testify that he got his Miranda rights, that's what I been
18 told. If you want to counter that testimony, that's up to
19 you.

20 MR. COOPER: Yes, sir.

21 THE CLERK: Raise your right hand. Do you swear
22 or affirm the testimony you shall give to be the truth,
23 the whole truth, and nothing but the truth so help you
24 God?

25 THE DEFENDANT: Yes, ma'am.

1 THE CLERK: Please have a seat and state your
2 first and last name and spell it.

3 THE WITNESS: Tappia Green G-R-E-E-N.

4 THE COURT: Your witness for the proffer. This
5 is a proffer.

6 MR. ARCHER: Proffer, yes, sir.

7 WHEREUPON,

8 Tappia D. Green,
9 after first having been duly sworn, testified as follows:

10 DIRECT EXAMINATION IN-CAMERA

11 BY MR. ARCHER:

12 Q Mr. Green, when you went to jail what was the arrest
13 for at that time?

14 A At that time I had -- I was driving in the car and I
15 got stop and I basically did a high speed chase. There
16 was like 30 polices out there. And once I finally got
17 apprehend, this guy I don't know his name he ask me -- he
18 read me my rights. He told me I got like 11 warrants. He
19 told me I got warrants for arm robbery from North
20 Charleston Police Department, some bad checks and failure
21 to stop for a blue light. He read me my Miranda rights
22 and he put me in the car with this female officer who
23 transported me to the North Charleston county jail.

24 Q Okay. So you're saying that the officer who arrested
25 you at that time told you you had other warrants pending?

1 A Yes, sir. They advise me of my warrants and they let
2 me know that -- they told me my Miranda rights. He put me
3 in the car with some female and she took me to the county
4 jail.

5 Q Okay. Did the female ever read you your rights?

6 A No, sir, because the guy already read me my rights
7 some guy. She didn't arrest me. She never pursued me.
8 She was already sitting in the car. She basically just
9 transported me to the county jail.

10 Q All right. But you definitely were read your rights
11 at the time you were stopped?

12 A I definitely was read my Miranda rights and he ask me
13 did I want to come down to City Hall.

14 Q Okay. And did they announce at the time you were
15 arrested that they were arresting you not only for the
16 blue light but for other charges?

17 A Several charges failure to stop for a blue light,
18 forgery, armed robbery and kidnapping from North
19 Charleston Police Department.

20 Q Okay.

21 MR. ARCHER: I have no other questions, Your
22 Honor.

23 THE COURT: Wish to cross-examine him on the
24 point?

25 MR. COOPER: Yes, sir.

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION IN-CAMERA

3 BY MR. COOPER:

4 Q Mr. Green, what day were you arrested?

5 A August 18, 2014.

6 Q What time of day?

7 A I really can't recall. I know it was dark outside.

8 Q Would it have been before midnight or after midnight?

9 A Before my midnight.

10 Q Okay. And then -- so what initiated the officer
11 pulling you for blue lights, how did that start?

12 A They said that they got a tip that somebody had a
13 felony warrant for a green Nissan Maximum that fit my
14 description. And when they blue light me, I high speed
15 them to a location. I got out the car and ran.

16 Q What's the location where you got out and ran?

17 A On Saint John Avenue.

18 Q Where did you run to?

19 A Some apartments.

20 Q What's name of them?

21 A Saint John apartments.

22 Q Did you run into one of the apartments?

23 A Yes, sir.

24 Q Which apartment?

25 A I don't know.

1 Q You ran into a random one?

2 A Yes.

3 Q Was it on the hot (sic)?

4 A (No response.)

5 Q What happened next where did they find you?

6 A The person who house I ran in they called the police
7 and told them that, hey, somebody just run into my house
8 and I was sitting on the step. And it was like 11 police
9 some of them are just lined up on both side of the wall
10 like come out, come out with your hands up when they came
11 up, that's when I got cuffed and some guy told me, hey,
12 how you doing. This is Tappia Green, he's wanted ---

13 Q Let's take one step at a time. So the person that
14 said, hey, that's Tappia Green law enforcement?

15 A Yes, sir, law enforcement.

16 Q North Charleston?

17 A Yeah.

18 Q What's the officer's name?

19 A I don't know his name.

20 Q Is he white or black?

21 A White guy, bald head.

22 Q How old would you say he is?

23 A I don't know. I can't say how old he is.

24 Q Is he twenty or is he 50?

25 A How could I know that. I mean, I don't know and I

1 don't know his age.

2 Q Did he look younger than me? Did he look old as
3 Mr. Archer?

4 A He didn't look real old. He probably was like 30, I
5 guess.

6 Q Okay. How tall taller than you?

7 A I don't even know, that's was like two years ago,
8 man.

9 Q You remember your Miranda warnings, but you don't
10 remember how tall the officer was?

11 A Of course, I remember my rights because that's my
12 rights to be Miranda and I know for sure that your case
13 and get thrown out if you are not Miranda.

14 THE COURT: Sir, sir, I'm not going to let you
15 argue with the gentleman. Answer his questions and he's
16 got a right to ask them. Go ahead.

17 BY MR. COOPER:

18 Q So you know the case gets thrown out if your Miranda
19 rights weren't read or were read, that's what you just
20 said?

21 A The warrant read to you. If you're not Mirandize,
22 it's a possibility that your case can get thrown out.

23 Q So is that affecting your testimony today?

24 A No.

25 Q You'll say what help get your case thrown out?

1 A No, I'm gone say what's facts because I just took the
2 oath.

3 Q Well, let's do the facts. How tall was the white
4 bald officer taller than you or shorter than you?

5 A Probably your height, probably your height. I'm
6 assuming. I really didn't ---

7 Q I'm trying to understand if you remember warnings
8 that were given. The way you describe that was pretty
9 explicit, so I'm trying to say if you remember that, you
10 don't remember the officer that said, hey, that's Tappia
11 Green?

12 A Yes, it was a bald head kind of built-stocky dude.
13 He was wearing all green.

14 Q All green?

15 A All green. That's why they do police body cameras.
16 All that should be on record.

17 Q Okay. So what happened to the bald headed man say,
18 hey, that's Tappia Green?

19 A He ask me -- I think, he ask me a couple other
20 questions like what's my name or something.

21 Q Well, what's the question. I mean, I get it if you
22 remember your Miranda warning, you should remember all
23 this. So what questions did he ask you?

24 A I really can't remember exactly what questions he ask
25 me. He was asking me I just don't know.

1 Q You remember the things that can help your case get
2 thrown out is what you're telling me?

3 A Of course.

4 Q Okay. So after you talked to the bald-headed man
5 what happened?

6 A I was put into a cruiser and driven by some female
7 officer and she transported me to county jail.

8 Q So when did you get your Miranda rights?

9 A When the guy -- when the bald-head dude -- when the
10 bald-head dude been like, hey, that's Tappia Green. You
11 got several warrants for our department.

12 Q So you remember that part in the Miranda warnings and
13 not the other questions he asked?

14 A He was basically asking me do I want to come down to
15 the station.

16 Q You just said there were other questions. You said
17 he ask me what's my name something like, but there were
18 other questions. You said you didn't remember those. Do
19 you remember or do you not?

20 A I don't remember the other questions. I know he
21 asked me if I wanted to come down to City Hall and talk
22 about it. I was like, no, take me to county jail.

23 Q Talk about what?

24 A I guess, all my charges.

25 Q He didn't say something specific?

1 A He wasn't specific.

2 Q What kind of cruiser did he put you in?

3 A A regular police cruiser white with the blue lights
4 on top.

5 Q And this was outside the apartment complex?

6 A Yeah.

7 Q Where?

8 A On Saint Johns Avenue.

9 Q Right out in front of the apartment that you ran
10 into?

11 A No, it was in the middle of the road, that's where
12 the cruiser was parked at.

13 Q And who's the officer that was in the car?

14 A I don't know.

15 Q But you know it was a woman?

16 A I know it was a woman.

17 Q How do you know?

18 A How can I not know she's a woman. I can visibly see
19 her.

20 Q Mr. Green, I'm just asking you to explain your
21 answers for the Court, so you can answer the question.
22 How do you know she was a woman?

23 A Because I could visibly see she was a woman. She
24 wasn't a man. The lady who transported me -- the guy who
25 put me in the car was a man. The lady who transported was

1 a woman.

2 Q Long hair. I mean, articulate how do you know?

3 A Because I know how a female look. She didn't look
4 like a guy. She was a woman.

5 Q Was she shorter or taller than you?

6 A I don't know. She was already sitting in the
7 cruiser.

8 Q So you were looking through the little perforated
9 window?

10 A You can see that it's a clear plastic, so it's not
11 like it's black or tinted out and I can't see. I can
12 visibly see that it was a female officer.

13 Q Light hair, dark hair?

14 A I think that she had blond hair, I'm thinking.

15 Q You think or you know?

16 A I'm thinking she had like blond hair.

17 Q You said you could see her?

18 A I could see her, but I don't remember. It was two
19 years ago me getting arrested. I didn't pay attention to
20 who arrested me and who's about to transport me to jail
21 because I'm mad that I'm about to go to jail right now.

22 Q So you don't remember a lot about that night?

23 A I do know the details that's necessary about that
24 night.

25 Q Get your case thrown out?

1 A I wouldn't say get my case thrown out because I was
2 Mirandize, so my case is not gone get thrown out.

3 Q Tell me what the officer said as far as Miranda
4 warnings. How did that go down, what did he say?

5 A You have the right to remain silent. Anything you
6 can -- you have the right to remain silent. Anything you
7 can -- anything you say can and will be hold against you
8 in a in court of law. Do you understand. Do you want to
9 tell us something. No. And I was transported.

10 Q That's all he said?

11 A Yes.

12 Q Okay.

13 MR. COOPER: Your Honor, at this time I have no
14 further questions.

15 REDIRECT EXAMINATION IN-CAMERA

16 BY MR. ARCHER:

17 Q So it's your belief that your case gets thrown out if
18 you're not Mirandized, is that it?

19 A Yes, sir. Yes, sir.

20 Q And because you were Mirandized your case doesn't get
21 thrown out is that what you believe?

22 A Yes, sir. I kind of knew that.

23 THE COURT: Anything further from the witness,
24 Mr. Cooper?

25 MR. COOPER: Nothing further at this time,

1 Judge.

2 THE COURT: All right. You may step down, sir.

3 (WHEREUPON, the witness leaves the witness
4 stand.)

5 THE COURT: Any information on the arresting
6 officer?

7 MR. WETMORE: Judge, I did. Judge, I spoke to
8 Officer Danielle Smoak just then as well as this morning.
9 She was the arresting officer on the failure to stop for a
10 blue light. And what she told me this morning and then
11 just then is that as soon as she noticed those pending
12 serious arrest warrants for arm robbery and kidnapping,
13 she said I didn't speak with him. I booked him into the
14 jail and I notified case detective which would have been
15 ---

16 THE COURT: He's describing at the arrest scene
17 that had multiple officers there. That there was a chase
18 in that he actually got out of the car and fled and went
19 into an apartment somewhere. That's a little different
20 than just a stop on the side of the road and walk up
21 beside the car.

22 MR. WETMORE: Yes, sir. Like I said, she's
23 listed as the arresting officer is my understanding. She
24 said I didn't speak with him because she said she didn't
25 know anything about the underlying case, this case, and

1 therefore just let the detective know. And it sounded
2 like what Mr. Green said is I don't have anything to say
3 just take me to jail and that's what was done. So I did
4 talk to her I said, you know, the judge ---

5 THE COURT: Is she going to be able to come here
6 today?

7 MR. WETMORE: Yes, sir. I said they want to
8 hear from you. She said I'll be there as quickly as I
9 can. She said by about 11. I think she was coming from
10 the north area. If you need to hear from her, I told her
11 to be heading this way.

12 THE COURT: We'll be busy until after 11, so
13 let's move on to the second issue that's before the Court.
14 And I'll leave that open until the officer can get here.
15 The next issue is whether or not the defendant through his
16 testimony yesterday opened the door to allow evidence of a
17 prior conviction to come in. The -- I been given by the
18 court reporter yesterday a rough transcript of what was
19 said. I have reviewed that. And at this time I'll be
20 happy to hear from the attorneys concerning their
21 positions. I think the State is who's trying to introduce
22 the evidence. You may proceed. Mr. Cooper.

23 MR. COOPER: Yes, sir, I just have a criminal
24 case I like to hand up to the Court. For you, Mr. Archer.

25 May I approach?

1 THE COURT: Yes, sir.

2 MR. COOPER: So, Your Honor, the State's
3 position is that there were several instances during
4 Mr. Green's cross-examination testimony where he opened
5 the door to evidence of prior conviction. I believe the
6 Court also has a copy of the transcript as does
7 Mr. Archer. The first instance would be on page four of
8 the transcript. My question to the defendant as I'm just
9 trying to understand what's going on, his answer because
10 you want me in prison, that's a fact, deal with the facts.
11 If you want me in prison, you're going to have to deal
12 with the facts just like I said. What happened that day
13 we were all chillin. You think somebody would rob
14 somebody for 40, that's just crazy. This man got a check
15 at Hardee's for \$240. My pants cost way more than \$240.
16 I don't even play those kind of games. I don't even ask
17 what kind of work did he do. He says any type of work I
18 get my hands on. I cut your grass. I wash your car. I
19 paint your house do anything you want me to do for money.
20 I ask you'll do anything for money. He said legally,
21 legally. There another instance, Judge, where on page
22 three question on line eight is stranger things have
23 happened. The answer stranger things have happened. You
24 see that picture right there on my Facebook, I have way
25 more \$240 any given time on me way more than that. What

1 do you do for a living is the question. Where do you get
2 the money. His answer is I work. Question, where do you
3 work? Answer, wherever I find work like at a temp service
4 restaurant jobs. I wash dishes. I got family who back me
5 up. I get money.

6 Judge, regarding the question specific questions
7 about money the defendant above and beyond the State's
8 question about where he's employed and the work that he
9 does is the evidence that he said on his testimony was
10 such that it seem to suggest that he's hardworking. He
11 would do anything legal for money, wouldn't do anything
12 illegal, would do anything to make an honest living. I
13 think that right there is putting his good character at
14 issue in front of the jury. And the case I just gave
15 State vs. Young, State vs. Young talks about -- when an
16 accused offers evidence of his good character regarding
17 specific character traits relevant to the crime charged,
18 the Solicitor has the right to cross-examine him as
19 particular bad actual conduct.

20 The State is strictly showing bad character only
21 for the traits initially focused on the accused. Each
22 have been done introducing prior convictions both
23 extrinsic evidence, not only is the good character issue
24 but specifically about the robbery. I wouldn't do that.
25 I work for a living. I got plenty of money. I got

1 friends with support. I got girlfriends. I work for a
2 living, wouldn't need -- my pants cost more than that.
3 And I think that puts at issue specifically the armed
4 robbery charge which I seek to introduce the 2013 strong
5 armed robbery.

6 The third and final part, Judge, is on page two
7 of the transcript. My questions with the defendant were
8 I'm not worried about everybody. What do you have guns
9 for. Why do you have a gun. His answer because I'm able
10 to buy a gun. It's one of my amendments. You have a
11 right to bear arms, so it's nothing illegal about me
12 bearing arms. Being a convicted felon the defendant was
13 prohibited from owning a firearm. The statements that he
14 made indicate are not past tense. I'm able to buy a gun.
15 It's nothing illegal about me bearing arms. Those are
16 present tense statements. Those are current statements
17 representing to the jury that he has a present right. So
18 I think that the strong armed robbery conviction should be
19 admissible, Judge, for the State to impeach him regarding
20 his good evidence as far as money and also as a felony
21 conviction to impeach on him statement about being able to
22 own and buy firearms.

23 THE COURT: Yes, sir.

24 MR. ARCHER: The issue of being able to own and
25 buy a firearm, it's misconduct and not charged.

1 THE COURT: Beg your pardon.

2 MR. ARCHER: It's misconduct not charged. All
3 right. He's not charged with owning a firearm.

4 THE COURT: No, but what he's trying to state is
5 the issue is his credibility?

6 MR. ARCHER: Yeah, but, I mean, I think, you got
7 to be able to introduce a prior conviction. How does the
8 prior conviction relate? I mean, I -- he's trying to
9 prove that he owned a firearm which is illegal and that's
10 proving misconduct not charged and that's not proper,
11 okay.

12 THE COURT: Well, so it's your position a
13 witness can get on the stand and say stuff that's not true
14 and you can't cross-examine him on it ---

15 MR. ARCHER: I ---

16 THE COURT: Well, let me finish. When he claims
17 that he has a right to bear and own firearms when he
18 doesn't, so you just let that go because the reason that
19 he can't bear firearms is because he's got a prior
20 conviction is that what you're telling me?

21 MR. ARCHER: Well, if you want to strike the
22 jury that the convictions introduced to show ---

23 THE COURT: I don't comment on the facts.

24 MR. ARCHER: Huh?

25 THE COURT: I don't comment on the facts.

1 MR. ARCHER: Right.

2 THE COURT: I'm not going to instruct them they
3 got to find anything.

4 MR. ARCHER: Yeah. Well, I think all this is
5 real generous. What he's really saying is I ask him what
6 kind of work do you do. And he said -- he tells him and
7 then he says you'll do anything for money. And he says
8 I'll do any kind of legal work for money. And I don't
9 think it raises an issue of him lying. And I said this
10 before I think if he would have said would you do
11 something illegal for money and he said no, that would
12 open the door, but for him to say I'm going to do any sort
13 of legal work for money doesn't open the door to allow him
14 to be impeached with a prior conviction. And I think when
15 you start talking about, you know, he says where is the
16 firearm thing here. What page is it?

17 MR. COOPER: Which one?

18 MR. ARCHER: The firearms thing you talking
19 about?

20 MR. COOPER: Two, I believe.

21 MR. ARCHER: Two.

22 MR. COOPER: Yes, sir.

23 MR. ARCHER: Okay. Let's see, but you don't
24 have a gun? No, he says. But you didn't have a gun? He
25 says no, I didn't.

1 THE COURT: He's asking about whether he had a
2 gun on the day of the incident.

3 MR. ARCHER: Right. He said no.

4 THE COURT: Right.

5 MR. ARCHER: And you don't mess with a gun? No.
6 Do you usually have guns? No. Never had a gun? Yeah, I
7 had a gun before, but not that day. No, that day. Do you
8 typically have a -- what do you typically have a gun for?
9 Everybody's got a gun. I'm not worried about everybody.
10 What do you have guns for? Because I'm able to carry
11 guns. Well, he hasn't said he had a gun at that point in
12 time.

13 THE COURT: Well, he says I am able to carry a
14 gun.

15 MR. ARCHER: He said ---

16 THE COURT: He's not.

17 MR. ARCHER: I am able to buy a gun is not --
18 well ---

19 THE COURT: That's not a true statement.

20 MR. ARCHER: Oh, okay. Well, I stretched it to
21 bend to it. This is very prejudicial and I stretched it
22 to allow this to be ---

23 THE COURT: Question is whether your client
24 through is testimony open the door to let it in. And he's
25 the one who said I am able to carry a gun and he is not

1 able to carry a gun.

2 MR. ARCHER: Oh, okay. Well, you will instruct
3 them then that ---

4 THE COURT: I'm not instructing the jury on
5 anything. Question is whether I'm going to let him ask
6 about it or not.

7 MR. ARCHER: Huh?

8 THE COURT: The issue before me is whether I'm
9 going to let him ask about it or not.

10 MR. ARCHER: Right.

11 THE COURT: I'm not going to instruct the jury
12 anything about that.

13 MR. ARCHER: Well, I mean ---

14 THE COURT: I have a problem with people being
15 on the witness stand and making statements that I know to
16 be false. I been doing this awhile and take offense to
17 that. This courtroom is a place of honor.

18 MR. ARCHER: Well, I think, it's taken what
19 basically is a hypothetical question can you own a gun and
20 he said, well, yeah, I can.

21 THE COURT: Well, I think your client got
22 carried away in vouching for his own abilities to do
23 things he can't do.

24 MR. ARCHER: Correct.

25 THE COURT: He got carried away several times on

1 the witness stand in my opinion, had to calm him down this
2 morning. This is not a street argument. This is a
3 courtroom.

4 MR. ARCHER: Yes, sir.

5 THE COURT: Yes, Mr. Cooper, you're chomping at
6 the bits to say something.

7 MR. COOPER: Sorry, Judge. I think I read the
8 statute. I just wanted to emphasize one point. On page
9 four of my questions, I'm just trying to understand what's
10 going on. At the end where he talks about this was just a
11 check. This man got a check at Hardee's for \$240. My
12 pants cost way more than \$240. I don't even play those
13 kinds of games. My position would be that he's saying I
14 don't rob people for that. I don't do that kind of thing.
15 I think that ---

16 THE COURT: Here's what I'm going to do. The
17 statement about his legal work that was in response to
18 questions that had specifically to do with his employment,
19 jobs that he had and he was responding about the jobs he
20 had in that case. And I'm going to find that that did not
21 open the door to allow the conviction to come in. In
22 fact, there's another step in the analysis that I'm
23 required to make that hasn't even been discussed by the
24 lawyers and that is if I decide that it is admissible,
25 then I got to decide whether or not the probative value

1 outweighs the prejudicial effect. I'm still in that
2 inquiry and I'll cite from the case that you handed up
3 which is State vs. Young and what it said -- and it's
4 referring to a case State vs. Dunlap and that ruled that
5 when a prior crime is similar to the one which the
6 defendant -- for which the defendant is being tried, the
7 danger of unfair prejudice to the defendant from
8 impeachment by the prior offense weighs against its
9 admission. And so there is a -- where we got a strong
10 armed robbery in the past, there's very high bar for it to
11 make that second level of inquiry. And so in the case of
12 the statement concerning that I would do anything legally
13 I think that was in response to a change -- an exchange
14 specifically as to his work. I'll read what it says.
15 Question was what kind of work do you do, so you talking
16 about his work, not his criminal activity, what kind of
17 work do you do. He says any type of work I get my hands
18 on cut your grass, wash your car, paint your house, do
19 anything for money. You do anything for money. He says
20 legally. So I'm going to leave that one alone. And even
21 if I did find it, I think the second prong of the test
22 given how close that question is would weigh against its
23 admissibility.

24 Now, as to the statements he's made about the
25 firearms, that's directly on point. He's vouching for the

1 fact that he says that he is capable or has the legal
2 right to carry guns. He talks about it in present tense.
3 He doesn't talk about it in the past. He made a statement
4 which from my understanding of the law is as a convicted
5 felon he does not have the right to carry a gun. He does
6 not have the right to bear arms and that statement is
7 patently false.

8 Now, I go to the second prong question, which is
9 whether or not the prejudicial effect would outweigh it's
10 probative value. What I will allow the State to do is ask
11 him whether or not he has a felony conviction that would
12 prevent him from carrying a firearm. I'm not going to let
13 you get into the nature of the offense because of its
14 close connectiveness to this particular crime. If I
15 allowed that, then I believe the prejudicial effect would
16 outweigh the probative value. Here however, I will allow
17 you to ask whether or not he has a felony conviction on
18 his record that would prevent him from actually carrying a
19 firearm. He's from the door to that inquiry.

20 MR. COOPER: May I have a question for the
21 Court, Judge?

22 THE COURT: Yes, sir.

23 MR. COOPER: I recognize your rulings on those
24 statements, but if I could ask Your Honor to make a ruling
25 on the statement on page four. The question from the

1 State is I'm just trying to understand what's going on and
2 that's where he has a lengthy response that culminates in.
3 This man got a check at Hardee's for \$240. My pants cost
4 way more than that. I don't even play those kinds of
5 games, that kind of answer wasn't solicited by the State's
6 question. I think --- J

7 THE COURT: I find that that doesn't open any
8 door. Any other ones you want me to specifically rule on?

9 MR. COOPER: Not at this time.

10 THE COURT: Now, I think you have the right to
11 cross-examine as to whether or not a fellow who works at
12 Day Work, which is what he says he does. You go down and
13 works at Day Work. Whether he can afford \$240 pair of
14 pants, I know I don't have any. Maybe, he does. I don't
15 know how he gets them, that's fair game right there. You
16 can do it without getting into a prior conviction.

17 MR. COOPER: Yes, sir.

18 THE COURT: Now, ready to proceed?

19 MR. COOPER: Are we ---

20 THE COURT: I'm going to go forward and finish
21 the cross-examination. When the police officer becomes
22 available, I'll stop and we'll finish that hearing.

23 MR. WETMORE: Judge, she just called my phone as
24 we were -- I stepped out and get an update, if that's
25 okay. Well, maybe she's here. Go ahead and get it. Let

1 me see what she said.

2 (WHEREUPON, a pause in the proceeding.)

3 MR. WETMORE: Judge, she still estimates 11. I
4 told her just to come as quickly as she could. She
5 reiterated the same thing that she told us. There's
6 nothing to say, nothing was said. So she was the
7 arresting officer. She put the handcuffs on him. They
8 secured the apartment complex and he was transported by a
9 transport officer. She said no one read any rights in my
10 presence. And she said once we see those warrants, she
11 said there's nothing to say. She said that time and time
12 again. She said we don't know anything about the case,
13 that's on the case detectives is what she said.

14 THE COURT: How many officers were on the scene.

15 MR. WETMORE: She said because of the failure to
16 stop several did converge. She said as the arresting
17 officer I did not read the rights. No one else did in my
18 presence. He was put in a transport vehicle and taken to
19 jail were those warrants were served. So I've asked her
20 to come and express that to you and she is on the way.

21 THE COURT: All right. Let's proceed until she
22 arrives. She should be here in 20 minutes or so.

23 MR. WETMORE: Yes, sir, that's what she said.

24 THE COURT: Sir, you still on the stand. When
25 we stopped, I believe the State was in the process of a

1 recross. Let's bring the jury in.

2 (WHEREUPON, the jury came into open court.)

3 THE COURT: All right. The record will reflect
4 the jury has returned to the courtroom. Hope everyone had
5 a good evening. If any of you had any difficulty in
6 complying with my instructions please stand?

7 (WHEREUPON, no one responded.)

8 THE COURT: It's like a memo went out to the
9 jury for everybody to wear black today. It kind of caught
10 my attention as you came in, most of you are wearing
11 black. I been in the process of taking argument as well
12 as evidence concerning some motions that are before me at
13 this time and I'm not making any ruling at this point in
14 time. We'll continue with the examination by the State of
15 this witness. You may proceed, Mr. Cooper, pursuant to my
16 earlier instructions.

17 MR. COOPER: Thank you, Judge. May it please
18 the Court. Yes, sir.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION CONTINUES

21 BY MR. COOPER:

22 Q So, Mr. Green, yesterday at some point when we were
23 talking, you told me to catch you in a lie; isn't that
24 right?

25 A Yes, sir.

1 Q Okay. You told this jury yesterday that you are
2 legally allowed to possess own a firearm; isn't that
3 correct?

4 A Yes, I said that.

5 Q Okay. Isn't it true that you have a felony
6 conviction on your record?

7 A Yes, sir.

8 Q And that mean that you can't legally own or possess a
9 firearm?

10 A I mean, I don't know. I still be able to buy one and
11 carry it up my to will, but against the law, then I'm not
12 legally to carry a firearm, but if I need a firearm for
13 protection, I might possess a firearm.

14 Q You might get one any way?

15 A Which required I might possess a fire arm.

16 Q Require by who? Who makes that call?

17 A Me.

18 Q If it's against the law, wouldn't you be violating
19 the law?

20 A Yes, sir.

21 Q So you violate the law when it works for you is what
22 you're telling me?

23 A No, sir, I'm not saying that.

24 Q Just what you said isn't it?

25 A I'm not saying I can violate the law, but if I have a

1 situation, I have to stand my ground I will protect
2 myself. I'm not saying that I go breaking the law and I
3 will buy a firearm and walk around and carry a firearm,
4 but if it's a situation where I have to protect myself,
5 then I will go get a firearm and I will legally -- I will
6 actually be breaking the law by getting a firearm because
7 I do have a conviction and I'm not able -- suppose to
8 carry a firearm. But if I'm in a situation where I need a
9 firearm and my life is on the line, I got to protect my
10 family and the lives of the others then...

11 Q Where would you get the gun from if you can't have
12 one?

13 A Guns are easy to get.

14 Q How so?

15 A Everybody has a gun. People sell guns on the street.
16 You got pawn shops and you got gun stores who legally sell
17 guns. If your money is right, you can go in there and buy
18 a gun.

19 Q When you say the money is right, you mean like owning
20 \$240 pants. You got the money to get a gun if you want a
21 gun?

22 A Yes, sir.

23 Q Okay. So essentially that if you deem it's
24 necessary, you're not going to follow the law whatever the
25 case maybe. You deem it necessary for you to violate it,

1 you gone violate it?

2 A I never said that. You putting words in my mouth.

3 If it's necessary that my life is on the line and the life
4 of my family is on the line, then I will possess a
5 firearm to protect me and my love ones. Sometimes police
6 don't make it there in time enough. I'm not saying that I
7 will break the law just because I'm not saying that, I
8 will just go breaking the law. I never said that, so
9 please don't put words in my mouth. I never said I would
10 do this or I would do this or I wouldn't do that. The
11 only thing I said is if I needed to protect myself, sir,
12 that will take myself and the lives of my family, my love
13 ones and a firearm is required I would possess that
14 firearm.

15 Q I'm not going to worry you about it, that's why you
16 get the chance to answer, that's why I'm asking you. So
17 we can clarify for the jury, so we can make sure you're
18 straight. With regards to the firearm, is there anything
19 else you been untruthful to this jury about?

20 A No.

21 Q You sure about that?

22 A Yes.

23 Q Okay. You told them yesterday that you wouldn't have
24 been involved in this cause you got money and you own \$240
25 pants and all that kind of stuff?

1 A Yes.

2 Q For somebody that does that kind of work that you
3 said that you do restaurants, temp jobs that kind of
4 thing, how do you have all of this money?

5 A You cannot quote my beneficial statement because I
6 can get money from any way. I never said I had several
7 pants of \$250 jeans. I just said I got some jeans that's
8 worth \$250. I work at the temp service. I can cut grass.
9 I can do several miscellaneous things to get money that
10 will add up. I never told you that I spend money daily.
11 I make money and save money. At the end of the day, it
12 will leave me with a lump sum of money, so my income with
13 me having money doesn't even have nothing to do with this
14 because I will not do anything to obtain that like that.
15 \$240 I wouldn't do anything that stupid for \$240. It's
16 not even worth it.

17 MR. COOPER: Your Honor, may we approach at this
18 time?

19 THE COURT: Yes, sir.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury, but out of the hearing of the
22 jury.)

23 THE COURT: Excuse me I'm going to talk to the
24 lawyers outside the courtroom.

25 (WHEREUPON, a break was taken.)

1 THE COURT: Sir, I will allow you to consult
2 with your lawyer for just a minute. I've given him some
3 instructions.

4 (WHEREUPON, a pause in the proceedings.)

5 THE COURT: All right. Mr. Cooper, you may
6 proceed with your examination pursuant to my instructions.

7 MR. COOPER: Thank you, Judge. Yes, sir.

8 CROSS-EXAMINATION CONTINUES

9 BY MR. COOPER:

10 Q So, Mr. Green, when I was talking to you a few
11 minutes ago, you were talking about you and your \$250
12 pants. Where do you get them from?

13 A The mall, sir, stores out at the mall.

14 Q Have a lot of pair of pants like that?

15 A No, sir.

16 Q So you get -- also get money from your friends and
17 family I think you told the jury that yesterday, right?

18 A I said my mom and my girlfriend.

19 Q And your girlfriends?

20 A Yeah.

21 Q They just give you the money?

22 A If I need it, yeah. They'll look out for me if I
23 need it.

24 Q You still -- what kind of temp work do you do? What
25 kind of jobs do you do at the temp staff?

1 A You know how temp service go wherever temp service go
2 to, whatever job they place you. You qualify to work on
3 that job, that's where they send you at. They range from
4 all kind of things.

5 Q Give us some examples for the jury, what should they
6 know?

7 A It might be carpentry. It might be this cleaning job
8 site. It's a whole lot of things, jobs.

9 Q And what kind of work were you doing that morning,
10 the day of the crime?

11 A We was doing some construction work like some
12 dry-sheet-rock work.

13 Q Did you get paid for that?

14 A Yes, sir.

15 Q How much did you get paid for that?

16 A 300, but that wasn't my only day. We was working
17 prior to that too, that just the day I actually receive my
18 earnings of working that day.

19 Q What were you doing before that?

20 A Working.

21 Q What were you doing? I know you said that just
22 specific?

23 A What you mean what was I doing before that? I had
24 two restaurant jobs. I was working at Oak Steak House and
25 (inaudible) on King Street. I was a dish washer on both

1 of those. I also from time to time I would go to the temp
2 service.

3 Q So with all that you could afford to spend money on
4 those kind of things, those expensive items?

5 A Those expensive items, I don't really spend money.

6 Q Just pants?

7 A At that present moment in time I had no bills. I had
8 no kids, so it would be just like I could make money and
9 save money up. And, yes, I did spend money on my
10 wardrobe. It's nothing wrong with spending on my
11 wardrobe. I could have done that at that present moment
12 in time, that's the only thing I had to do with my money.
13 Just like I said, I had no bills. I really had no
14 responsibilities, so, yes, that's what I chose to spend my
15 money on.

16 Q Where were you living?

17 A With my mom.

18 Q And so you spend money on your wardrobe, what else
19 would you buy?

20 A What else would I buy?

21 Q Uh-huh.

22 A Anything I wanted to buy if I had the money for it.

23 Q And you have the money? You got to answer yes or no
24 for the court reporter?

25 A Yes.

1 MR. COOPER: Beg the Court's indulgence one
2 second.

3 THE COURT: Yes, sir.

4 (WHEREUPON, a pause in the proceedings.)

5 BY MR. COOPER:

6 Q So you just testified early this morning that you can
7 get guns off the street if you need to and find a gun?

8 A Yes, sir.

9 Q Are they terribly expensive on the street?

10 A No not really. You can get a gun for \$50, \$60.

11 Q What kind of gun you get for 50, \$60?

12 A Probably -- somebody probably sell you like a little
13 .25 or something, a little small caliber pistol.

14 Q And you also you testified I think on direct that you
15 were smoking weed all day that day?

16 A Yes, sir.

17 Q You buy that on street too?

18 A Yes, sir.

19 Q Where do you get that?

20 A Where I do get weed?

21 Q Uh-huh.

22 A I really don't understand where that question even
23 have to do with me being incarcerated for -- we here to
24 prove a couple of things right now ---

25 Q I think you just answer the question. Your attorney

1 will object if there's something that he don't think is
2 relevant, so the question was where do you buy drugs?

3 A Off the streets.

4 Q How much it usually cost you? Isn't that expensive?

5 A No, weed cost ten, \$20, \$5. Weed not an expensive
6 drug.

7 Q Cocaine. How much that cost on the street?

8 A I don't deal with cocaine.

9 Q Just marijuana?

10 A Just marijuana.

11 Q Anything else you buy on the street that you can get
12 on the street?

13 A No.

14 Q How much marijuana did you have that day?

15 A Probably like three or four blunts.

16 Q Did you have it or was it Jonathan?

17 A All us was smoking. All of us was smoking me,
18 Jonathan. Everybody was smoking.

19 Q Again, the guy in the white shirt who was that?

20 A He was some dude. I really don't know him.

21 Q You didn't know him?

22 A He was with Jonathan, assuming that's his name.

23 Q You didn't know him at all?

24 A I saw him before, but I really don't know him as a
25 person.

- 1 Q Where did y'all pick him up from?
- 2 A Where we pick him up from?
- 3 Q Yeah, where did y'all pick him up from?
- 4 A I think he was by the gas station at Tiger Mart. We
- 5 pick him up from there.
- 6 Q Okay.
- 7 A After we came from work.
- 8 Q And then is the Wells Fargo the first place y'all
- 9 went after work that morning?
- 10 A No, we went to the liquor store.
- 11 Q What did you buy there?
- 12 A A little dollar sample bottle.
- 13 Q How many of them?
- 14 A Probably like three or four of them.
- 15 Q Each or total?
- 16 A Me. I don't know what he bought hisself. I know me.
- 17 I'm speaking for me right now.
- 18 Q When did you drink with them?
- 19 A In the car. I didn't drink all four. I drink like
- 20 two of them.
- 21 Q Before the bank?
- 22 A Yeah.
- 23 Q And then when did you have the other two?
- 24 A Probably sometime in that time period. I can't
- 25 really remember when.

1 Q Between Hardee's or after Hardee's?

2 A I can't really remember when. I just know that I
3 drunk like the two. I drunk like two of them right then.
4 I was really straight and throughout the course of a
5 period of time I drunk the other two.

6 Q Y'all didn't go to another bank before then?

7 A We didn't go to another bank?

8 Q Before then. Before y'all go to Wells Fargo, y'all
9 didn't go to another bank?

10 A No, we didn't go to another bank. We went to Wells
11 Fargo twice. He went to go try and cash his check. They
12 told him he need something, so he went home and got
13 something and then he went back.

14 Q Oh, so y'all went to that bank twice?

15 A Twice.

16 Q Okay, the same bank?

17 A Same bank.

18 Q About what time of day did y'all go there before?

19 A I can't really remember so long ago, I don't recall.

20 MR. COOPER: Beg the Court's indulgence.

21 THE COURT: Yes.

22 MR. COOPER: Your Honor, I have no further
23 question for this witness at this time. Thank you.

24 THE COURT: All right. Sir, you may step down.

25 (WHEREUPON, the witness leaves the witness

1 stand.)

2 THE COURT: Defense may call it's next witness.

3 MR. ARCHER: Yes, Your Honor. I call Shania
4 Burden.

5 THE COURT: Come forward to be sworn please.

6 THE CLERK: Raise your right hand, left on the
7 Bible. Do you swear or affirm the testimony you shall
8 give to be the truth, the whole truth and nothing but the
9 truth so help you God?

10 THE WITNESS: Yes.

11 THE CLERK: Please have a seat and once you do,
12 if you could state your first and last name and spell your
13 last name please.

14 THE WITNESS: Shania Burden B-U-R-D-E-N.

15 COURT REPORTER: Spell your first name?

16 THE WITNESS: S-H-A-N-I-A.

17 THE COURT: Counsel your witness.

18 MR. ARCHER: Yes, sir.

19 WHEREUPON,

20 Shania Burden,

21 after first having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. ARCHER:

24 Q Ms. Burden, what do you do for a living?

25 A I work at Hardee's in Mount Pleasant.

1 Q At Hardee's in Mount Pleasant. Were you working
2 there April the 14th 2015?

3 A Uh-huh.

4 Q Okay. Do you remember ---

5 THE COURT: Ma'am, let me caution you as you
6 answer the questions, you need to answer yes or no, uh-uh
7 and uh-huh sound the same on the tape, so you to need
8 answer yes or no.

9 THE WITNESS: Okay.

10 THE COURT: Thank you.

11 BY MR. ARCHER:

12 Q You were working there April of 2015, correct?

13 A Yes.

14 Q All right. Do you remember anything unusual going on
15 that day?

16 A No.

17 Q Well, were you ever approached by the police about
18 giving a check to an individual?

19 A No.

20 Q Do you remember giving a check to a Vincent Lee on
21 that day?

22 A Keith Lee, yes.

23 Q Okay. I'm sorry, Keith Lee. You gave a check to
24 Keith Lee?

25 A Yes, I did.

1 Q Okay. Good enough. Do you remember about what time
2 that would have been?

3 A We usually give checks out around two in the
4 afternoon, so that probably was about 2:30 or three
5 o'clock.

6 Q I'm going to show you a picture I think you can see
7 it on that screen there.

8 A I can.

9 Q Who's the lady behind the counter?

10 A Me.

11 Q Okay. Do you know who the fellow is standing in
12 front of you?

13 A Yes, it's Keith Lee.

14 Q That's Keith Lee, okay. And that's when he came to
15 get his check, correct?

16 A Yes.

17 Q All right. When he was there, did he appear to be
18 nervous, upset doing anything unusual other than the way
19 he usually acts?

20 A No.

21 Q Okay. He just was acting normal, right?

22 A Yes.

23 Q Okay. Did he ever say anything to you about I been
24 kidnapped?

25 A No.

1 Q Did he ever say anything to you about somebody's here
2 holding a gun on me?

3 A No.

4 Q Okay. Do you know a fellow by the name of Jonathan
5 Johnson?

6 A No.

7 Q Do you have a Ms. Johnson that works for you,
8 correct?

9 A Yes.

10 Q Okay. Now, this fellow in the red shirt how far
11 away -- approximately how far away is she from where
12 you're standing with Keith Lee with Mr. Lee?

13 A Well, he was right there and then he was probably
14 like way behind him.

15 Q Okay. Let me ask you this, would he have been as far
16 away from you -- in this picture would he be as far away
17 from you as I am now?

18 A Yes.

19 Q Okay. So at least as far away. Even further or
20 closer?

21 A Just further.

22 Q Back where I am?

23 A Right.

24 Q Okay. So y'all have -- do y'all have any sort of
25 buttons you can push in case you get robbed or anything

1 like that that calls the police?

2 A Yes.

3 Q All right. And would there have been one of those
4 buttons over here where you're talking to ---

5 A Yes, there would have been.

6 Q There would be one over there?

7 A Yes.

8 Q So if he said I'm here at gun point or help, you
9 could have pressed that button and it would have called
10 the police?

11 A Yes.

12 Q And he worked there at that time, right?

13 A Yes.

14 Q And so he would have known that there was a button
15 there you could have pushed and called the police, would
16 he not?

17 A Yes.

18 Q Okay. But he never said anything. He never said
19 call the police?

20 A No.

21 Q All right. And never in any way acted unusual?

22 A No.

23 Q All right.

24 MR. ARCHER: I have no other questions, Your
25 Honor.

1 THE COURT: You may cross-examine, Mr. Cooper.

2 MR. COOPER: Mr. Wetmore is going handle it.

3 THE COURT: All right, very good.

4 CROSS-EXAMINATION

5 BY MR. WETMORE:

6 Q Ms. Burden, how are you?

7 A I'm fine. How are you?

8 Q Just a couple of questions. You obviously are
9 familiar with the victim in this case Keith Lee back then?

10 A Yes.

11 Q Was he a regular employee?

12 A Yes.

13 Q And I think you -- and the girl he was with at the
14 time also was she an employee?

15 A Uh-huh, she was.

16 Q Now, that day of this case April 14, 2015, you said
17 you didn't see anything unusual about it?

18 A No.

19 Q I know it was awhile back. About that time is it
20 usually pretty crowded at the Hardee's or is that a lull
21 between lunch and dinner?

22 A No, it's kind of slow like around that time.

23 Q It is or it's not crowded?

24 A It's not crowded.

25 Q Okay. And that day was a regular payday for Mr. Lee?

1 A Yes.

2 Q That was his payday?

3 A Yes.

4 Q Was he scheduled to work that day too or no? Do you
5 remember?

6 A I don't remember.

7 Q Previously indicated it wasn't a work day. Do you
8 have anything that he was suppose to be at work, didn't
9 show up?

10 A No, they come there just to pick up their checks at
11 that day like three.

12 Q So is it common to come pick up your checks or do you
13 typically pick them up when they arrive for their shift?

14 A No, just at any time.

15 Q So they get them whenever they want to?

16 A Right.

17 Q On a regular payday and it was -- I think you said
18 they had to wait until at least like two o'clock to get
19 it?

20 A Uh-huh, that's right.

21 Q And it was obviously after two o'clock ---

22 A Yes.

23 Q --- for you to release that check. Now, you said
24 that you -- did you say that you did notice that one of
25 the people charged in this Jonathan Johnson was with Keith

1 Lee?

2 A Yes.

3 Q Okay. Did Jonathan Johnson work there?

4 A No.

5 Q Was he a customer that day?

6 A No.

7 Q But he came in with Mr. Lee?

8 A Yes.

9 Q And you obviously you were working?

10 A Yes.

11 Q You were doing what you're supposed to do. You
12 weren't with any of these folks beforehand?

13 A No.

14 Q Didn't know what was happening in the parking lot?

15 A No.

16 Q And how long was the -- when Mr. Lee approached you
17 for his check, how long was that interaction? Do you have
18 to take a little time to release the check or is it pretty
19 quick?

20 A It was pretty quick.

21 Q Okay. What is the process for releasing the check?

22 A You just say that you're here for your check. They
23 sign off on the pad and then you go.

24 Q Had Mr. Lee called in advance that day to ask for his
25 check?

1 A I don't remember.

2 Q Okay. So you don't remember him calling in for the
3 check?

4 A No, I don't remember.

5 Q You just remember him showing up to get his check?

6 A Right, I do.

7 Q Does he have to sign for it?

8 A Yes.

9 Q Okay. So it's just a few seconds of interaction with
10 him to get his check?

11 A Yes.

12 Q And then you have to go back to work?

13 A Yes.

14 Q Did you have a conversation with Mr. Lee or pretty
15 much, hey, here's your check?

16 A Well, he asked about his schedule and that was about
17 it.

18 Q Okay. Now, so you obviously like I said you don't
19 have any idea what kind of pressure he was under?

20 A No.

21 Q You have no idea?

22 A No.

23 Q You mention that there was a button you could use to
24 push to alert the police?

25 A Yes.

1 Q Are you trained or have you ever had to use it to
2 know what happens if you pushed it?

3 A No.

4 Q So you don't know it's one of those buttons that
5 nobody knows what it does?

6 A Well, we know what it does when we have use it, but
7 we don't usually use it.

8 Q But if you had to use it -- when that button's
9 pushed, what would happen?

10 A The police would come.

11 Q Okay. So did the employees like you and Mr. Lee do
12 they know -- push that button the police are on their way?

13 A Yes.

14 Q So if someone didn't want to alert the police they
15 could know not to push that button?

16 A Yes.

17 Q I would assume as the manager you probably have to
18 make sure people are serious about -- don't push the
19 button because the police are coming, is that true?

20 A Yes.

21 Q So that button's taken very seriously because they
22 know the police are coming?

23 A Yes.

24 Q And someone doesn't want the police to come, they
25 sure wouldn't push the button?

1 A Right.

2 MR. WETMORE: Court indulgence one minute.

3 THE COURT: Yes, sir.

4 BY MR. WETMORE:

5 Q Ms. Burden, were you there in the morning or in the
6 afternoon or?

7 A No.

8 Q Were you just coming in?

9 A At two.

10 Q Okay. So you just pretty much come in?

11 A Yes.

12 Q And when Johnson, the other suspect in this cast came
13 in with Mr. Lee, is that the first time he had come in
14 that day or had he been in there earlier that you had
15 noticed?

16 A No, I don't think.

17 Q So this is the first time he had come in?

18 A Yes.

19 Q And he came in with the victim?

20 A Yes.

21 Q Mr. Johnson's mother, I believe, she also at the time
22 worked there?

23 A Yes.

24 Q Is that true?

25 A Yes.

1 Q Ms. Ivey or Eva?

2 A Ivey.

3 Q Do you know about her pay schedule was she paid that
4 day?

5 A Yes, she was. Everybody get paid on Tuesdays.

6 Q Okay. So she would have gotten a check that day too?

7 A Yes.

8 Q Do you remember if she had already gotten her check
9 or was she working?

10 A I don't remember.

11 Q Don't remember.

12 MR. WETMORE: I have no further questions.

13 THE COURT: Redirect.

14 REDIRECT EXAMINATION

15 BY MR. ARCHER:

16 Q Now, where you're standing there is there a button
17 you can push right at that station?

18 A Yes.

19 Q Okay. So you wouldn't -- where is it under the
20 counter or what?

21 A Yes, right under that register.

22 Q So you can push it without anybody knowing. Does it
23 make an alarm when you push it?

24 A No.

25 Q Okay. And you're standing there with Mr. Keith Lee.

1 Does this fellow ever come over and stand beside y'all?

2 A No.

3 Q All right. So he's always at least as far away as I
4 am?

5 A Yes.

6 Q Okay. And Mr. Lee did not seem to be excessively
7 worried?

8 A No.

9 Q Upset?

10 A No.

11 Q Okay. If he had said call the police or if he was
12 saying call the police I'm being held at gun point, would
13 you have pushed the button?

14 A Yes.

15 Q Okay.

16 MR. ARCHER: No other questions.

17 THE COURT: Recross.

18 RECROSS-EXAMINATION

19 BY MR. WETMORE:

20 Q He asked you about the button, the panic button
21 whatever, you don't believe that made an audible alarm
22 inside the restaurant. You said it doesn't make an alarm,
23 but still the police would be coming immediately once it's
24 pushed, right?

25 A Yeah.

1 Q And so if someone did not want the police to come
2 flying in, obviously they wouldn't try to push the button.
3 They wouldn't try to get you to push the button; is that
4 correct?

5 A Yes.

6 Q So regardless of the noise inside, it's the police
7 coming outside is the end result of pushing that button,
8 is that fair to say?

9 A Yeah, yes.

10 MR. WETMORE: Thank you.

11 THE COURT: Ma'am, you may step down.

12 (WHEREUPON, the witness leaves the witness
13 stand.)

14 THE COURT: You wish to excuse the witness?

15 MR. ARCHER: We have no other witnesses, Your
16 Honor.

17 THE COURT: You wish to excuse this witness?

18 MR. ARCHER: Yes.

19 THE COURT: Any objection?

20 MR. WETMORE: None form the State.

21 THE COURT: You free to go, ma'am. Thank you
22 very much.

23 Ladies and gentlemen, that completes the
24 presentation of evidence by the defense. I got some
25 matters I have to take up with the attorneys at this point

1 in time. I'll ask you to step back to the jury room.
2 Don't discuss anything about the case until I ask you to
3 begin your deliberations. Thank you very much.

4 (WHEREUPON, the jury retire to the jury room.)

5 THE COURT: Has she arrived?

6 MR. COOPER: I believe -- let me go check. I
7 believe Officer Smoak is here. We also made contact with
8 K-9 Officer VanAusdal, I think that is how you say his
9 name, that is the individual who matched the description
10 that the defendant gave that is willing to testify that he
11 did not give Miranda warnings.

12 THE COURT: I'll let you put up whatever proffer
13 you like to make on the point.

14 MR. COOPER: Let me check on my investigator.
15 Thank you, Judge.

16 THE COURT: Yes, sir.

17 (WHEREUPON, a break was taken.)

18 MR. COOPER: Officer Smoak is currently parking
19 her car right now. Officer VanAusdal is at the gym. He
20 has his uniform with him and he should be here in 25
21 minutes, 20 minutes or so.

22 THE COURT: We may not have time for him. We'll
23 see. So she's parking her car now?

24 MR. COOPER: Yes, sir. Your Honor, I'm going to
25 have my investigator make a copy of the report for Mr.

1 Archer. Would, Your Honor, like a copy?

2 THE COURT: Yeah, that be good.

3 (WHEREUPON, a break was taken.)

4 MR. COOPER: Your Honor, may I approach?

5 THE COURT: Yes, sir.

6 MR. COOPER: Thank you, Judge. I believe when
7 the Court is ready Mr. Wetmore will be directing Officer
8 Smoak.

9 THE COURT: So you ready to proceed?

10 MR. WETMORE: Yes, sir, Judge for the purpose of
11 the ---

12 THE COURT: The proffer?

13 MR. WETMORE: Yes, sir.

14 THE COURT: All right. You may call your
15 witness.

16 MR. ARCHER: We got two witnesses, Your Honor.

17 MR. WETMORE: They unrelated.

18 MR. ARCHER: Oh, okay.

19 THE COURT: We going to take one at a time.
20 Call a witness please.

21 MR. WETMORE: Officer Danielle Smoak.

22 THE CLERK: Do you swear or affirm the testimony
23 you shall give to be the truth, the whole truth and
24 nothing but the truth so help you God?

25 THE WITNESS: Yes.

1 THE CLERK: Please have a seat and once seated,
2 if you could state your first and last name and spell your
3 last name please.

4 THE WITNESS: My name is Danielle Smoak spelling
5 S-M-O-A-K.

6 WHEREUPON,

7 Danielle Smoak,
8 after first having been duly sworn, testified as follows:

9 DIRECT EXAMINATION IN-CAMERA

10 BY MR. WETMORE:

11 Q Officer Smoak, thanks for coming here quickly. I
12 appreciate it. We are in the middle of a trial of the
13 defendant Tappia Green for armed robbery and kidnapping,
14 that incident happened April 2015. He wasn't immediately
15 arrested. He wasn't arrested until August 19 of 2015 and
16 you are listed as the arresting officer for whatever role
17 you played in. Let me direct you to that day August 19th
18 2015. Can you tell me a little bit about how you came to
19 come into contact with Mr. Green and serve the outstanding
20 warrant?

21 A Two of my co-workers were actually involved in a
22 pursuit with this individual who was driving the vehicle.
23 He actually fled into a building. I was one of the
24 assisting officers that was there whenever he ran into an
25 apartment building, so myself and the rest of my teammates

1 we surrounded the building like we are suppose to and then
2 we waited for K-9. K-9 got there announce that he had the
3 dog and he was going to release the dog. Well, he heard
4 that and he wanted to come out.

5 Q He being Mr. Green?

6 A Yes. As soon as Mr. Green heard that, he wanted to
7 come out. He had his hands up. He came out, I put
8 handcuffs on him, put him in the car.

9 Q So at that point he was certainly being detained for
10 the failure to stop?

11 A Uh-huh.

12 Q Did you come to find out about these other
13 outstanding warrants that we're here in trial all this
14 week?

15 A Yes, after we ran ---

16 Q How did you find out -- is it in your system?

17 A Yes, we ran through records, a records check.

18 Q And you found he had the outstanding warrants for
19 armed robbery, kidnapping, firearms all that stuff?

20 A And forgery.

21 Q And some forgeries, okay. So at that point did you
22 read him his Miranda rights?

23 A No, sir.

24 Q Did you attempt to interrogate him about this case?

25 A No, sir.

1 Q About the failure to stop for the blue light case?

2 A No, sir, as soon as we found out he had warrants,
3 we -- I actually notified the detective about the forgery
4 warrants and that was that. I do believe she said that
5 she was going to go talk to him.

6 Q Okay. For the forgery case?

7 A Uh-huh.

8 Q So you didn't read him his Miranda rights?

9 A No, sir.

10 Q Did anybody in your presence read him his Miranda
11 rights?

12 A Not to my knowledge.

13 Q After the warrants were discovered, did you have any
14 significant conversation with him?

15 A No, sir.

16 Q Any kind of interaction with him?

17 A No, sir.

18 Q And did you physically take him to the jail to serve?

19 A No, sir, we call transport.

20 Q You called a transport unit?

21 A Uh-huh.

22 Q Okay. And in your presence did that transport
23 officer read him his rights or interrogate him?

24 A They don't do that.

25 Q They don't do that?

1 A That's not part of their protocol.

2 Q They just driving the car?

3 A Yeah.

4 Q Now, he has indicated that he was Mirandized. He's
5 indicated that there's some contact along those lines
6 possibly by a stocky guy with a shaved head in like some
7 fatigues or something like that. Did anybody out there
8 like that you can possibly think of?

9 A There's only one that was a K-9 officer that was
10 there.

11 Q And just to do everything we can to assure this court
12 that he was not Mirandized and not interrogated, that
13 officer's -- we're trying to eliminate that officer as
14 well and what would his name be?

15 A Brandon VanAusdal.

16 Q VanAusdal?

17 A Uh-huh.

18 Q Now, he was there trying -- we're going to certainly
19 try to close that, but you were the arresting officer in
20 this failure to stop for a blue light case. You didn't
21 read him his Miranda rights. No one did in your presence?

22

23 A Not in my presence.

24 MR. WETMORE: I have no further questions. If
25 you would answer Mr. Archer, Mr. Green's lawyer is going

1 to ask you ---

2 THE COURT: Mr. Archer, your witness.

3 CROSS-EXAMINATION IN-CAMERA

4 BY MR. ARCHER:

5 Q You're Officer Smoak?

6 A Yes, sir.

7 Q Okay. Who was the officer that chased him down on
8 the blue light?

9 A That would be Officer Riley and Norwood.

10 Q Officer Riley?

11 A And Officer Norwood.

12 Q And officer who?

13 A Norwood.

14 Q Norwood?

15 A Uh-huh.

16 Q Okay. And can you say that those officers never
17 talked to him?

18 A Not to my knowledge.

19 Q Not your knowledge, but they could have talked to
20 him?

21 A Usually whenever I detain someone and put them in the
22 car, nobody really talks to them after that.

23 Q Usually. Can you say for certain that they didn't
24 talk to him?

25 A No absolutely not.

1 Q Can you say for certain that on this day they never
2 talk to him?

3 A I cannot.

4 Q You cannot?

5 A No, I cannot.

6 THE COURT: Now, who are you referring to, Mr.
7 Archer?

8 MR. ARCHER: The officer who chased him, stopped
9 him for the blue light.

10 THE COURT: Okay.

11 BY MR. ARCHER:

12 Q And who's this other officer that you said met the
13 description of stocky, bald?

14 A Officer Brandon VanAusdal.

15 Q Officer Brandon?

16 A Uh-huh.

17 Q Okay. And what was he doing out there that day?

18 A He was the K-9 officer.

19 Q He was what?

20 A The K-9 officer.

21 Q The K-9 officer?

22 A Uh-huh.

23 Q Did he have -- and he had some kind of run-in with
24 the defendant, right?

25 A He called him out of the building.

1 Q He called him out of the building?

2 A Uh-huh.

3 Q Okay. And you say that he never talked with the
4 defendant?

5 A No, sir.

6 Q Can't say that?

7 A No, I cannot. He could.

8 Q So you don't know of anybody who talk to him, but you
9 can't say for certain that no other officer talked to him?

10 A No, sir.

11 MR. ARCHER: Okay. Thank you very much.

12 THE COURT: Let me ask just a couple of
13 questions. Were you in relationship to where he came out
14 of the building?

15 THE WITNESS: I was the first officer at the
16 doorway. Like if this is the doorway, I was the officer
17 on this side and the K-9 officer was on this side of the
18 doorway when he got called out of the stairwell. I was
19 the first one ---

20 THE COURT: So when he came out, I'm reading
21 your report it says that he came out of the stairwell
22 without further incident. At that time the suspect was
23 taken into custody by PFC Smoak, that would have been you?

24 THE WITNESS: That would have been me.

25 THE COURT: Okay. And so you were standing

1 right by the door where he walked out?

2 THE WITNESS: Yes, sir.

3 THE COURT: As far as you know did any other
4 officers have any contact with him?

5 THE WITNESS: No, sir.

6 THE COURT: Except maybe the K-9 officer who was
7 directly on the other side of the door?

8 THE WITNESS: Yes, sir, that's it.

9 THE COURT: But that would have been in your
10 presence?

11 THE WITNESS: That would have been.

12 THE COURT: Is that right?

13 THE WITNESS: Yes, sir.

14 THE COURT: I'm not trying to put words on your
15 mouth?

16 THE WITNESS: No. He was standing right there.

17 THE COURT: From what I'm reading here, it
18 appears that you were the one who took him into custody as
19 he came out of the door?

20 THE WITNESS: Yes, sir, that's correct.

21 THE COURT: And before that, he was in a
22 stairwell and you were trying to get him out?

23 THE WITNESS: Yes, sir.

24 THE COURT: Okay. Now, what happened after you
25 took him into custody, did you ---

1 THE WITNESS: I put him in the back of my patrol
2 car and waited for transport.

3 THE COURT: Okay. Did you see any other
4 officers get in the patrol with him?

5 THE WITNESS: No, sir, not to my knowledge.

6 THE COURT: All right. And the transport
7 arrived, did you help get him in the transport?

8 THE WITNESS: The transport officer -- the only
9 thing I did was unlock the door and opened it for her.

10 THE COURT: So she was the one that put him in
11 there?

12 THE WITNESS: Yes, sir.

13 THE COURT: And those people don't give
14 warrants?

15 THE WITNESS: No, no, they don't do that.

16 THE COURT: I see your testimony. All right.
17 You want to follow up on any of my questions?

18 MR. WETMORE: Judge, briefly.

19 REDIRECT EXAMINATION IN-CAMERA

20 BY MR. WETMORE:

21 Q I think that the judge covered well enough.
22 VanAusdal the only things he was saying to the defendant
23 were to get -- come out, get out or I'm going to send the
24 dog in?

25 A Commands.

1 Q He certainly wasn't shouting?

2 A No.

3 Q And they were putting him into your patrol car or he
4 was put into your patrol car?

5 A Right.

6 Q And it was secured, locked and everything?

7 A Right.

8 Q And nobody would have gone and read Miranda rights
9 inside your car without you unlocking the car?

10 A Exactly.

11 Q And the transport officer took him from your car to
12 the jail?

13 A Yes.

14 Q And simply served the warrants. They don't Mirandize
15 and interrogate people on the way?

16 A No, sir.

17 MR. WETMORE: I have nothing further, Judge.
18 Thank you.

19 THE COURT: All right. You can follow up any
20 questions you want to ask her.

21 RE CROSS EXAMINATION IN-CAMERA

22 BY MR. ARCHER:

23 Q Are you able to say with absolute certainty that no
24 other officer talked to him from the time you came out of
25 the building until the time he was taken to jail?

1 A I cannot say that with absolute certainty. It was a
2 couple years ago and I -- trust me I've been in multiple
3 pursuits and incidents since then, so it was a long time
4 ago. So I can't say for certainty, no, I cannot.

5 Q No, you can't?

6 A I cannot.

7 MR. ARCHER: Okay.

8 THE COURT: Ma'am, you may step down. Thank you
9 very much.

10 (WHEREUPON, the witness leaves the witness
11 stand.)

12 THE COURT: You may call your next witness.

13 MR. COOPER: Your Honor, Officer VanAusdal is
14 about ten minutes out. He's getting here fast as he can.

15 THE COURT: We'll take a short recess let me
16 know when he's here.

17 MR. COOPER: Yes, sir. Thank you.

18 (WHEREUPON, a break was taken.)

19 THE COURT: I'm going to send the jury out for
20 lunch and then we'll take this up and have them come back
21 later on.

22 MR. COOPER: Yes, sir.

23 THE COURT: So if you'll have a seat.
24 Bring the jury in.
25

1 (WHEREUPON, the jury came into open court.)

2 THE COURT: All right. Ladies and gentlemen of
3 the jury, still in the process of ironing out some
4 technical matters I have to deal with before we can go
5 forward with the closing arguments and charge. I know
6 it's already noon, so I'm going to let you go on to lunch
7 while we deal with these things. While you're away from
8 the courthouse, you understand the -- my directions. I
9 don't know that I need to repeat them. I'll just tell you
10 my instructions remain the same. I'll ask you to be back
11 in the jury room at 1:30, should be in a position to go
12 forward with the closing arguments and charge at that
13 time. Thank you very much. If you free to go to lunch at
14 this time. Thank you.

15 (WHEREUPON, the jury excused for a lunch break.)

16 THE COURT: As soon as he's ready let me know.

17 MR. COOPER: Yes, sir.

18 (WHEREUPON, a pause in the proceedings.)

19 MR. COOPER: The witness is here.

20 THE COURT: I'm sorry.

21 MR. COOPER: The witness is here whenever you're
22 ready, sir.

23 THE COURT: All right. Bring him in.

24 MR. WETMORE: Judge, the State calls Brandon
25 VanAusdal.

1 THE COURT: Come forward to be sworn please.

2 THE CLERK: Raise your right hand, left on the
3 Bible. Do you swear or affirm the testimony you shall
4 give be the truth, the whole truth, and nothing but the
5 truth so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Please have a seat and once seated
8 if you could state your first and last name and spell your
9 last name please.

10 THE WITNESS: Brandon VanAusdal V-A-N capital
11 A-S-D-A-L.

12 THE COURT: All right. Counsel your witness.
13 WHEREUPON,

14 Brandon VanAusdal,
15 after first having been duly sworn, testified as follows:

16 DIRECT EXAMINATION IN-CAMERA

17 BY MR. WETMORE:

18 Q Officer, thank you for rushing down here. Let me
19 take you to August 19, 2015, you were involved in taking
20 the defendant Mr. Green into custody; is that correct?

21 A Yes, sir.

22 Q My understanding is he had fled into an apartment
23 building; is that correct?

24 A Yes, sir.

25 Q When that sort of situation happens is a K-9 officer

1 like yourself called in?

2 A Yes, sir.

3 Q And what are you there to do?

4 A I responded to assist with the officers. I responded
5 to the front of an apartment building. I assisted with
6 the primary function to that incident.

7 Q So you're just securing the perimeter?

8 A Yes, sir.

9 Q You're not there to give anybody their Miranda
10 rights?

11 A No, sir.

12 Q You're not there to interrogate anybody?

13 A No, sir.

14 Q At the door Officer Danielle Smoak testified she was
15 at the door. Were you also at the door?

16 A Yes, sir.

17 Q Okay. Tell me what, if anything, you were
18 communicating with the defendant Mr. Green?

19 A Upon arrival, I deployed K-9 Mojo to the front door
20 and gave three K-9 warnings which consisted of North
21 Charleston police K-9. You're under arrest surrender now
22 or I release the dog and he will bite you. I stated those
23 three times. At which time communication began between
24 officers and the defendant.

25 Q Okay. So you gave K-9 warnings?

1 A Yes, sir.

2 Q But not Miranda warnings?

3 A No, sir.

4 Q K-9 warnings basically say I'm getting ready to
5 release the dog, the dog is dangerous?

6 A Yes, sir.

7 Q But you gave no Miranda warnings to this man
8 Mr. Green?

9 A No, sir.

10 Q In your presence, did anybody -- Officer Smoak or
11 anybody read him his Miranda rights?

12 A No, sir, not that I can testify to. I did not hear
13 any.

14 Q And did you witness Officer Smoak put the handcuffs
15 on him?

16 A I believe it was Smoak. I do not recall who exactly
17 put handcuffs on him. I was there as an assisting officer
18 again giving K-9 warnings that he needs to comply or he
19 will be bite.

20 Q If she testified she put on the handcuffs and put him
21 in her car, did you see anything to the contrary?

22 A No.

23 Q Now, when he comes out, is your dog leashed in your
24 hand?

25 A Yes, he was leashed. I had control of the leash and

1 his collar.

2 Q And I assume he's fairly jacked up at that point, the
3 dog?

4 A Mines more mellow, but he is paying attention to the
5 suspect.

6 Q And so when the suspect comes out, what's your
7 primary responsibility?

8 A To make sure that he's taken into custody without
9 incident.

10 Q And then after that you have to secure that dog, I'm
11 sure pretty quickly?

12 A Yes, sir. After he's taken into custody, I return my
13 dog to the vehicle. And at that point my function was
14 done at that point.

15 MR. WETMORE: Nothing further. Thank you for
16 being here.

17 THE COURT: Mr. Archer, your witness.

18 CROSS-EXAMINATION IN-CAMERA

19 BY MR. ARCHER:

20 Q Reviewing the police report from that night, it says
21 the suspect was served with this warrant and transported
22 to CCUC. Do you remember seeing which officer served him
23 with the warrants?

24 A No, sir. After the incident was completed, I left
25 and went back in service.

1 Q Well, at what point -- I mean, you make arrest, do
2 you not?

3 A Yes, I do.

4 Q At what point do you give Miranda warnings?

5 A Prior to interrogation.

6 Q Prior to interrogation, you give it when you arrested
7 or serve warrants?

8 A If I'm going to ask him any questions, then, yes,
9 I'll give them Miranda warnings, but if it's just a simple
10 warrant service, handcuffs are put on, he's transported.

11 Q Okay. But you don't remember seeing another officer
12 serving the warrants that night?

13 A No.

14 Q Okay.

15 MR. ARCHER: No further questions of this
16 witness.

17 THE COURT: Let me ask you one thing, sir. I
18 note you have a shaved head?

19 THE WITNESS: Yes, sir.

20 THE COURT: Do you recall anyone else at the
21 scene that may have had similar hair do as yours?

22 THE WITNESS: Honestly, I don't remember who's
23 bald and who's not, sir.

24 THE COURT: So you don't recall anyone there who
25 would have been that condition. All right. That's all I

1 wanted to know. Anyone wants to follow up on my question?

2 MR. WETMORE: No, sir, Judge. I appreciate the
3 opportunity to call these folks.

4 THE COURT: All right. You wish to ask any
5 other questions, Mr. Archer?

6 MR. ARCHER: No, Your Honor.

7 THE COURT: You may step down, sir. Thank you
8 very much.

9 (WHEREUPON, the witness leaves the witness
10 stand.)

11 THE COURT: State have any other witnesses at
12 this time?

13 MR. WETMORE: No, sir, Judge. I think, we've
14 established what we need to.

15 THE COURT: All right. We'll discuss the
16 matter. I believe what we're here on would be Mr.
17 Archer's motion I believe; is that correct?

18 MR. ARCHER: Yes.

19 THE COURT: And you're moving for a mistrial?

20 MR. ARCHER: That's correct, Your Honor.

21 THE COURT: All right. Then, Mr. Archer, I'll
22 hear from you on that motion.

23 MR. ARCHER: Well, commenting on the testimony
24 we just heard, the prosecutor handed up to you the
25 incident report from the night of the arrest and I like to

1 make that apart of the record.

2 THE COURT: Any objection to the incident report
3 being made an exhibit for the proffer?

4 MR. COOPER: No, sir.

5 THE COURT: All right.

6 MR. ARCHER: And if you'll look at ---

7 THE COURT: I don't know who's copy is going to
8 go in, but you mine in and I'll have it marked. Ma'am,
9 you can mark this one. It will be marked as a court's
10 exhibit for this proffer without objection. Thank you,
11 ma'am, I appreciate that.

12 All right. Yes, sir, Mr. Archer, it's in the
13 record now.

14 (WHEREUPON, Court's Exhibit No. 3 was marked for
15 the record.)

16 MR. ARCHER: Okay. I think that these reports
17 indicate a lot more went on out there that night than has
18 been put in the record here in the courtroom. If you look
19 to the third to the last page of that report and I'll make
20 sure we're on the right page.

21 THE COURT: There's additional narratives.

22 MR. ARCHER: Additional narratives, right.

23 THE COURT: Yes, sir, I'm there.

24 MR. ARCHER: You go down to the middle of the
25 paragraph. It says the following is a list of charges the

1 suspect has warrants for through North Charleston Police
2 Department kidnapping, armed robbery, possession of a
3 weapon during a violent crime and forgery times four.
4 Suspect also had active warrants with City of Charleston
5 police, probation and parole. My last paragraph says the
6 subject was served with his warrants and transported and
7 lodged into CCDC. And nobody here has testified about
8 having served him with his warrants, but the additional
9 narrative indicates that that night he was served with his
10 warrants.

11 THE COURT: Well, you know, my experience with
12 these things is generally the warrants aren't in the
13 police cars that are chasing him for a blue light
14 violation. They're usually down at the station. And when
15 he gets to the station, that's when he gets the warrants.

16 MR. ARCHER: Well, this narrative ---

17 THE COURT: Doesn't say when he got them.

18 MR. ARCHER: No, it doesn't, but it says he was
19 served with his warrants ---

20 THE COURT: Yes, it does.

21 MR. ARCHER: --- and transported. So it makes
22 it sound like he was served with his warrants before he
23 was transported.

24 THE COURT: Well, it sounds that way, but it
25 doesn't say that it definitely happened in that order.

1 MR. ARCHER: Well, I think we haven't heard
2 everything on this issue.

3 THE COURT: Well, you know, I charge every day
4 Mr. Archer if nothing in life we can be prove beyond any
5 doubt whatsoever.

6 MR. ARCHER: Right. So, I mean, I don't think
7 that they proved that nobody else talk to him out there.

8 THE COURT: All right. I'll hear from the
9 State.

10 MR. COOPER: Thank you, Your Honor. May it
11 please the Court. First thing, I submit to the Court is
12 the case of Brown vs. State the South Carolina Supreme
13 Court case or Court of Appeal case, I apologize. It was
14 submitted to the Court by Mr. Archer earlier this morning,
15 that case stands for and still valid law in South Carolina
16 that the Doyle progeny was for -- which prohibits the
17 prosecutor from eliciting testimony or asking questions on
18 cross-examination about a defendant's post Miranda silence
19 if that individual had not given a statement to law
20 enforcement at the time of his arrest. That case that's
21 Brown vs. State of South Carolina.

22 Court of Appeals quoted Fletcher vs. Weir 1982
23 United States Supreme Court case and they both stand for
24 the premise that it is the assurances in the Miranda
25 warnings which give rise to that protection under right to

1 remain silent and she gave the defendant the belief that
2 if he takes advantage of those warnings he should not be
3 cross-examined about it to take advantage of those
4 warnings. That being said essentially if there is no
5 Miranda warning given, then the Doyle progeny do not
6 apply. That is the position of the United States Supreme
7 Court and the South Carolina Court of Appeals.

8 In this case, Judge, the same page of the
9 incident report that Mr. Archer point to page three the
10 last sentence of the first paragraph says at that time the
11 suspect was taken into custody by PFC. D. Smoak while
12 perimeter units maintain officers' safety. We heard from
13 Officer Smoak. She did not administer Miranda rights. As
14 the one taken into custody, she testified that once she
15 realized he had these active warrants, that that's a
16 matter for the detectives. She took him and she had him
17 given over to transport and he was booked in the jail.

18 Mr. Green then got on the stand and talked about
19 some other person potentially giving him some sort of
20 Miranda rights. We call that individual, that individual
21 said that never happened, didn't talk to him was busy
22 doing his K-9 duties. So, Your Honor, I think we had
23 heard from everybody unless the defendant was trying to
24 allege that somebody else gave him Miranda warnings. We
25 have heard from the officer listening to the report is

1 taken into custody. We have listen to the officer that
2 the defendant claimed gave some sort of Miranda warnings
3 and both stated unequivocally that they did not give
4 warnings.

5 So at this point the State's position, Judge,
6 would be that since the defendant did not receive those
7 Miranda warnings at that time, the State's line of
8 cross-examination yesterday is not violent -- does not
9 violate his constitutional rights under the progeny set
10 forth in Flether vs. Weir United States Supreme Court and
11 Brown vs. State of South Carolina.

12 THE COURT: All right. Anything further? Yes,
13 Mr. Archer.

14 MR. ARCHER: Your Honor, I will note on the last
15 page of the report that says that the incident was
16 recorded with the department issued body camera and
17 determine to give him his warnings.

18 THE COURT: If that evidence is available, I'll
19 watch it right now, but I've delayed this case today
20 already for a whole morning on this issue. The issue
21 arose yesterday.

22 MR. ARCHER: Well, it's incumbent upon them to
23 prove beyond a reasonable doubt.

24 THE COURT: I don't think they have to prove
25 this beyond a reasonable doubt.

1 MR. ARCHER: Okay.

2 THE COURT: This is not guilt or innocence.
3 This is a question of whether or not he received Miranda
4 warnings at the scene. And anyway it would be my finding
5 and I'll probably find it beyond a reasonable doubt, but
6 at this point in time I find that there is sufficient
7 evidence to indicate that the defendant was not Mirandized
8 at that time. I note that on the exhibit page one which
9 is Court's Exhibit Number 3. There is a place where there
10 is a -- if there were a form filled out as part of a
11 rights being given to the defendant, there's a place for
12 that to be checked and a copy attached. There is none. I
13 find nothing in this report anywhere that indicate that he
14 had had his rights given to him by anyone both officers
15 who were present at the door as he was taken into custody
16 which is where the defendant indicated that he was -- as
17 soon as he was arrested, he was advised of his rights.
18 Neither of those individuals gave him -- testified they
19 gave the rights or administered the rights. In fact, in
20 the warrants arrest or traffic arrest such as the rights
21 are generally not given. So I find this is not volitive
22 of the Doyle case and I will allow the question to stand
23 and deny the motion for a mistrial. All right. We will
24 -- now, are there any specific request for charge from the
25 State?

1 MR. COOPER: Judge, I know that I would ask the
2 Court to include the hand of one hand of all charge and I
3 believe included your normal set of charges would be the
4 direct and circumstantial evidence I believe that's ---

5 THE COURT: That's going to be in there.

6 MR. COOPER: Everything else I would just ask
7 you to included the hand of one hand of all.

8 THE COURT: All right. Yes, sir.

9 MR. ARCHER: In the same sentence that he ask
10 for hand of one hand of all, I'll ask for the instruction
11 that mere presence in a crime is not enough.

12 THE COURT: I think in the standard hand of one
13 hand of all charge there is a mere presence charge saying
14 that merely being present is not sufficient. Is that what
15 you're asking for?

16 MR. ARCHER: Yes, sir.

17 THE COURT: Okay. If it's not there, I'll see
18 that it's there. I'll grant both of your request.

19 MR. COOPER: Thank you, Judge.

20 THE COURT: All right. We'll start back at
21 1:30.

22 MR. COOPER: Yes, sir. Thank you.

23 THE COURT: I believe the defense did introduce
24 evidence, so the State will be opening, then the defense,
25 then the State closing.

1 MR. COOPER: Yes, sir. Thank you, Judge.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: All right. Is the State ready to
4 proceed at this time?

5 MR. COOPER: Yes, sir.

6 THE COURT: Defense ready?

7 MR. ARCHER: We are ready, Your Honor.

8 THE COURT: Let's bring the jury in.

9 (WHEREUPON, the jury came into open court.) -

10 THE COURT: Thank you very much. Record will
11 reflect the jury has returned to the courtroom. And if
12 anybody had any difficulty in complying with my
13 instruction during your absence, please stand. It appears
14 all jurors have been able to comply this far. I told you
15 that upon your return we would be allowing the attorneys
16 to again address you directly in their summations or
17 closing arguments. The State will be going first followed
18 by the defense and the State will have a brief rebuttal.
19 Mr. Cooper, are you going to be doing that for the State?

20 MR. COOPER: Yes, Your Honor.

21 THE COURT: You may proceed.

22 MR. COOPER: Thank you, Judge. May it please
23 the Court.

24 THE COURT: Yes, sir.

25 MR. COOPER: Mr. Archer. Ladies and gentlemen

1 of the jury, good afternoon. I know it's been a long
2 week. I appreciate your time and I appreciate your
3 attention during this trial. You heard a lot of testimony
4 over the last couple of days. Some are helpful and some
5 of it probably confusing and contradictory. You've seen
6 the fingerprints. You seen the check stub. You seen the
7 pictures in the light, but what this case is going to
8 come down to is who you believe. Not whether you believe
9 me or Mr. Archer, whether you believe Keith Lee, Jonathan
10 Johnson or Tappia Green. And at the end of the day that's
11 your job.

12 Like I said in the beginning, you are the judges
13 of the facts. Judge Couch is the judge of the law. He
14 will charge you on the law once I finish my argument and
15 Mr. Archer finishes his. He'll explain the law to you
16 very briefly with you in just a minute. He'll explain to
17 you the law, but you're the judge of the facts. And that
18 means it's your job to determine the credibility of the
19 people that sit in that chair. Whatever they say is it
20 credible, is it believable. Any reason for them to have
21 bias or prejudice with what they say. Any reason to have
22 any interest in the outcome of this case. Any vested
23 interest in that, any motive to lie. Those are things for
24 you to consider. The judge will say you can believe all
25 of what somebody said or none of what somebody said or

1 bits and pieces of what somebody said, but it's your job
2 to determine credibility and you do that your entire life.
3 So I ask that you use those experiences in this case
4 because it's going to come down to who you believe was
5 telling the truth and who you believe wasn't.

6 So let's look at who had motive to lie. Keith
7 Lee he's been here all week. He came down Sunday. He's
8 from Allendale. He move to Charleston in February of
9 2015, move back in August a couple months after this
10 incident and still lives there. Not attached to this
11 City, not attached to this county. He came back this week
12 for the trial. I submit to you that he has absolutely no
13 motive to lie to you. I actually asked Mr. Green on the
14 stand, I think, it was yesterday and I asked him why would
15 Keith lie to you, why would Keith lie about you, why would
16 he make this up. And his response is why not.
17 Translation he has no idea either. Keith Lee's not from
18 here. Keith Lee doesn't know these guys. There's no
19 benefit to him. He told you that he works at Hardee's and
20 got a new job at the Hardee's in Bamberg strangely enough,
21 been there about a week and a half. He needs the money.
22 Taking a week off from work to come down here and testify
23 and sit here and be with the trial and be with the
24 prosecution as he's done since day one. That's
25 credibility.

1 Now, he's told the same story to you. He's told
2 the same story to North Charleston Police Department.
3 Again, Detective Caughman testified about that which in
4 this case is somewhat unique that somebody tells the same
5 story time and time again, but he has, hasn't changed.
6 That's one of the reasons that Detective Caughman
7 mentioned that even though they were facts that seem
8 strange in the beginning. The girlfriend sitting at
9 Church's Chicken in the drive through when they dropped
10 them off things of that nature, that seem somewhat
11 suspicious, but through the course of the investigation,
12 through the course of talking to him, through the course
13 of talking to Jonathan Johnson, they believed him. They
14 came to find out that was what happened, that was their
15 belief through their investigation. I submit to you
16 nothing's changed. It wasn't a drug deal. Johnson and
17 Tappia want you to believe that it was some kind of drug
18 deal or some kind of collection of drug debt. Johnson
19 said, oh, he called my phone. You were right there
20 yesterday when I showed the call log and he couldn't find
21 the call. There was no call. They didn't know each
22 other.

23 Like I said with Detective Caughman, Keith's
24 demeanor, his consistent story, no reason to lie. And he
25 has wanted to be involved in the prosecution. That may

1 sound strange to you, but Detective Caughman is right that
2 is not as common as you would think of it is. For a
3 variety of different reasons, people don't want to be
4 involved whether they have some kind of involvement in the
5 crime as well and they don't want to get in trouble,
6 whether they're scared of retribution for who committed
7 the crime. That happens more than you would think. So
8 the fact that he has been involved from the beginning that
9 says a lot about him and that says a lot about what he had
10 to tell you from this trial.

11 Now, the story that Keith told you was
12 corroborated. He testified that they made him call
13 Hardee's from the car. Detective Caughman told you that
14 during the investigation with Keith he was able to find
15 that call where he called Hardee's at 3:30. If you
16 remember Jonathan Johnson in pictures at Wells Fargo about
17 3:10, 3:12, at Hardee's about 3:45, so that time line
18 fits. That was one thing he told you that was true. The
19 description of where people were sitting in the car. He
20 was the first one that testified. Didn't hear anybody
21 else. He was the first one out of the gate told you
22 Johnson was the driver in the red shirt. Johnson and
23 Tappia Green they all corroborated that as well. Told you
24 Tappia Green was the front passenger and that took a
25 little work to get it out of Jonathan Johnson, but Tappia

1 Green did the same thing. He was the one in the black
2 shirt. And the third guy L.B. or whatever his name is we
3 still don't know who he is. The guy in the white shirt
4 the backseat passenger Johnson or Keith Lee gave you that
5 as well and it was corroborated by Johnson and by the
6 defendant and it was the description of what they were
7 wearing.

8 The description of the guns Johnson silver
9 revolver. He testified they didn't take pictures with a
10 gun, didn't have guns, showed you that picture that was on
11 his phone, didn't collect that, don't have that gun.
12 Don't know if that was the gun used or not, but he had a
13 picture with a gun silver revolver match the statement.
14 The black gun that he said that Mr. Green used and
15 Johnson's initial statement with Tracy Williams and Alex
16 Caughman he indicates he's happy to bring that black gun.
17 And the small revolver with the third guy, again, we don't
18 know who that is. He told you about the threats Tappia
19 Green made against him. He got in the car, gave us
20 everything you got. Him and Johnson said that. And when
21 they didn't have much, they see our faces about to go kill
22 them now. And then that's when the check came up and
23 drove to Hardee's and Tappia admonished them again to try
24 anything and we're going to come in there and kill
25 everybody. That's what Johnson's hearing he seen -- or

1 Keith is hearing and that he is seeing the guns. That
2 makes him so scared of what these guys are going to do.
3 You saw him. You saw Tappia Green on the stand the last
4 two days. And I was asking questions, but saw how
5 aggressive he got at me.

6 Imagine, if I had something he wanted, imagine
7 how aggressive he was at Keith Lee wanting that money.
8 Imagine how mad he was at Jonathan Johnson when Jonathan
9 turned him in the first day. And again those threats were
10 confirmed by Jonathan Johnson.

11 So Jonathan Johnson writing those letters. The
12 first day hours after the incident, Officer Williams calls
13 him and he tells him that there was a robbery. He tells
14 them that he was a victim too he was under duress. They
15 knew the guy. He didn't say the name Tappia until he was
16 meeting with Detective Caughman in North Charleston, but
17 he gives these details about the robbery, about how it
18 went down. Details that Keith Lee wouldn't know or vice
19 versa unless it really happened. That call was about
20 6:26. You got the recording listen to it during
21 deliberations if you want to. You'll have that. You'll
22 have the recording with Detective Caughman and I know
23 y'all got not pads after Keith testified. If it becomes
24 important and y'all want to, the Court will play back his
25 testimony for you if you need to see it again if you

1 didn't have notepads at that point. Those are all things
2 you can ask for during your deliberations.

3 But that statement with Officer Williams and
4 Jonathan Johnson that happen about 6:20, 6:30. The 9-1-1
5 call came at 4:15, that's two hours afterwards. They go
6 to North Charleston and Keith and Carissa ended up
7 bringing them back to North Charleston and interviewed
8 them, that's going on about the same time. There's no way
9 Johnson would know what Keith was telling the police and
10 vice versa. The only way that story comes out of both
11 people is it actually happened. Now, Johnson since
12 changed that and we'll get to that in a minute, but he
13 told the same thing to Officer Williams and then to
14 Detective Caughman because that's what happened that day.
15 They wouldn't know one way or the other what Keith was
16 saying or what Johnson was saying. They wouldn't be able
17 to hear somebody else say, yeah, that's what happened.
18 They were giving the facts, that only happens when you
19 know what happened, like Johnson saving his life.

20 To Keith's credit, he said listen that's the guy
21 that got me out of the car, but at the end of the day when
22 Tappia Green wanted to kill me, he's like, no, come on man
23 like we're not going to do that. He let you know that and
24 Johnson said the same thing. He told Officer Williams
25 that, that he had saved the victim's life. I believe

1 that's true. If Keith Lee was going to make something up
2 and frame people and incriminate people, why would he
3 include the fact that they saved his life. If that is his
4 goal and that's what you want to believe, that is his goal
5 is to frame them or set them up for whatever reason. Why
6 include the fact that he saved your life. And then he
7 didn't pick Johnson up out of the line up. Carissa did.
8 She saw him at the bank. And obviously through the
9 investigation, they found out that was the individual
10 involved, but if Keith was supposed to have known Jonathan
11 Johnson as long as he did or at all, how could he not pick
12 him up out of a lineup. That doesn't make sense, that
13 doesn't fit. All these pieces of the facts fits like a
14 puzzle. And if you don't fill them in just right, you
15 don't fill them in in just the right place, then it's not
16 going to make a nice big pretty picture and that's
17 essentially what's going on here. You got a lot of
18 different testimony, a lot of different statements, a lot
19 of different things like that and you're trying to fit
20 them together but think about that. Why would he give
21 credit to somebody he's trying to frame and why would he
22 pick them out of the lineup. He pick Tappia Green out.
23 Why didn't he pick Johnson out.

24 This theory about the public place he could have
25 escaped and call for help is true, true statement. The

1 panic button you said you heard the testimony there were
2 panic buttons in there. The panic button would have
3 called the police. You heard Keith testify about the
4 threats that Tappia Green said to him about going in and
5 killing everybody and the way he acted. And after again
6 having seen him on the stand, I can only imagine how that
7 must have been. Bringing the police there would have
8 caused that problem. Don't -- Mr. Archer and Mr. Green
9 and Mr. Johnson want you to believe that this didn't
10 happen because he didn't call the police or escape at the
11 very first possible motive, that doesn't make sense. We
12 shouldn't hold it to the victim if he didn't escape soon
13 enough, so we don't know if it really happened or not.

14 He told you three guns. Johnson went in with
15 him into Hardee's. Why, if it wasn't to be with him at
16 the time. I've heard the testimony that Keith is there.
17 Johnson's here. I've heard that. That's within the range
18 of a gun, that's what Keith was scared about. Take a
19 chance with his life, take a chance with somebody else's
20 life. I mean, don't if you have any -- and I thought
21 about it too about what I would do in this situation. And
22 if you got any belief about what you would do and if you
23 were to do it differently, don't hold that against Keith
24 because there's one really big difference. And it's that
25 neither y'all, myself, Mr. Archer, Mr. Green, the judge,

1 we got one luxury that he didn't have, no one's got guns
2 against us. No one's walking in with us with a gun.
3 Nobody just threatened us. We can just sit back and hear
4 after the facts and try to make a determination about what
5 we would do in that situation. He had to make it on the
6 fly with the real threat of violence. It's a hard
7 decision. I don't know what I would have done, but don't
8 hold that against him if you think he should have run away
9 or escape.

10 Johnson was inside. Tappia was outside. I
11 mean, let me show you State's Exhibit 12. You've heard
12 the different testimony about what's happened right there.
13 Johnson's inside, so Johnson's inside with Keith. And
14 Keith told you that Tappia Green said you try anything,
15 I'm going to come in there and kill everybody. What else
16 is he doing out there? What possible reason would he be
17 out in front of the Hardee's. It wasn't coming in and
18 getting a Mountain Dew like Jonathan Johnson tried to tell
19 you. What else would he be doing? He's obviously not
20 going in the store. You heard that from my investigator.
21 And then you heard Tappia corroborate that in his
22 testimony. He's not going in there to get something to
23 drink. He's not going to get food. He's going to see
24 what's going on. And he told you that. He told you he
25 got hot. He told you he got hot and then he saw police

1 cars. Well, Keith told you he heard sirens when they were
2 leaving and that makes sense. They hear sirens and they
3 see police cars and that's what scares them. He wasn't
4 hot because of the sun. He thought the police were
5 coming, that's what they're doing.

6 Showing you State's 13. The guy, I guess, that
7 we'll call L.B. going around to check because if you
8 remember where he's looking show you State's 5. So then
9 they're -- he's walking around here, that's Highway 17.
10 That's where they're talking about the police car and
11 going out to Highway 17. That's where they were talking
12 about the police cars going out to Highway 17. That's
13 what he's going to look for see if the police were coming.

14 Now, one thing that I'll point out about that
15 real quick where I got the time stamps. Mr. Green wants
16 you to believe he got hot, that it was getting hot in that
17 car, that Johnson and Keith were taking a long time. The
18 car coming in State's 7. That time stamp 15:42:59, 3:42,
19 one second shy of 3:43 and they haven't even parked yet.
20 Showing you State's 12, 15:46:12, three minutes and 13
21 seconds after you see the car pull in kind of a couple
22 seconds from the park another couple seconds for Johnson
23 and Keith to walk in the Hardee's. He got that hot in a
24 minute and a half, two minutes, that doesn't make sense.
25 Why is he calling Johnson? Why are they in such a hurry

1 if they're just collecting money for an innocent drug debt
2 or whatever they want to tell you. Why in such a hurry.
3 They saw the police because they don't want to get caught.
4 That's what makes sense.

5 Keith told you about how he knew that Tappia --
6 again, he referred to him a lot as the guy in the black
7 shirt didn't know the name until he got arrested somebody
8 got closer to trial, but the guy that he knew as being in
9 charge was the guy in the front passenger seat. The guy
10 in the black shirt. And the way that he knew that is the
11 threats that he made, the demeanor, the way he carried
12 himself. And again we've seen that first hand. How the
13 paycheck was given to him when the guy in the backseat
14 took it from Keith and gave it to Tappia, how the money
15 was given to him after the Cash Advance place. And again
16 in all honesty do you see after seeing Jonathan Johnson
17 and Tappia Green testify who do you think was in charge
18 Johnson. He was 20 years old at the time, but just look
19 at the two of them and their demeanor and how they acted.
20 Do you really think that Johnson was calling the shots or
21 Tappia was taking orders from somebody else. I know we
22 don't have a third person, but I don't think Tappia was
23 taking orders from anybody.

24 Then you got the check stub. That you heard
25 Ms. Cabisco testify that Tappia Green had five

1 fingerprints on it. Jonathan Johnson had one, five
2 fingerprints on the check stub. And I heard the testimony
3 about the cash in the envelope with the check stub. Why
4 would they have everything. Why would Keith just keep
5 everything open. Unless, it was being taken from him.
6 Now, I heard the testimony about the drug debt, the
7 collection and that kind of thing, which I think falls in
8 the beginning when there's no phone call that we've shown
9 that how Johnson knew Keith all that kind of stuff. But
10 that there miraculously there was a drug debt that was the
11 exact same amount of money as the paycheck. It doesn't
12 make sense. That just doesn't make sense. And at the end
13 of the day I think that's what this comes down to for you
14 guys is what makes sense. What can be corroborated.

15 Keith never lied to you, never even been
16 arrested, no motive to lie. Doesn't get a monetary
17 benefit out of this or whatever Tappia said the other day.
18 It doesn't get anything like that. There's no money for
19 something like this. He's losing money. He said it
20 because it was important. That's why he comes down here.
21 He been in Charleston one time after he testified since
22 this incident, that's another part of his life. He's not
23 dating anymore. He's got a fiancé, he's got a baby on the
24 way. Why come back here if this is a lie because it's
25 important to him. I think that shows a lot of

1 credibility. And his demeanor on the stand nice, polite,
2 didn't get terribly upset. He didn't answer questions
3 that he didn't want to answer whether Mr. Archer asked him
4 tough questions. He didn't put up a fight, didn't sit
5 there and say you can't ask me that and get aggressive.
6 That's for you to believe whether or not you believe you
7 think he's telling the truth, but that demeanor up there
8 something hide. Detective Caughman and Butler both told
9 you the same thing, that after talking with him, after
10 examining the case, after hearing from Mr. Johnson, they
11 believed him otherwise they wouldn't have filed charges.

12 Jonathan Johnson, what didn't Jonathan lie
13 about. I think everything after the first day was not
14 true. He gave that first account to Tracy Williams.
15 Again, you'll have that recording and you'll have the
16 interview with Detective Caughman that you can listen to.
17 I know it's not as hard to hear, but listen just as many
18 times as you want during your deliberations. You heard
19 about the testimony about what he said. He admits except
20 for the duress basically what Keith says that Tappia
21 pulled guns. There was a robbery. There was a
22 kidnapping. He didn't get in that car of his own free
23 will. It wasn't armed robbery. That Tappia was calling
24 the shots that Tappia had a gun, that black gun. And the
25 guy in the white shirt also had a gun. Tappia threatened

1 to kill Keith and that Johnson stepped in and saved his
2 life. Again, how else would Jonathan and Keith be able to
3 get North Charleston those details at the same time within
4 about an hour of each other if it wasn't the truth. If it
5 wasn't -- and it didn't really happen.

6 Jonathan's excuse. He said the reason that he
7 told the story that first day, the two stories that were
8 so similar was because he was drinking, scared and under
9 pressure. Didn't seem that intoxicated on the video.
10 Again, you're to judge the credibility. He didn't seem
11 that intoxicated on the video and under pressure from who.
12 You saw the video with Detective Caughman, you could see
13 how he was acting in person, but you saw him in person.
14 You saw Tracy Williams. And he sounded like when Tracy
15 Williams called that he had known Jonathan and wanted to
16 help Jonathan. Where's the pressure. Where's the being
17 scared, from those two guys. I get that he was 20 years
18 old and maybe he was a little bit scared, but to make up a
19 story like that, to make up a story that was corroborated,
20 but he gave those stories to Officer Williams and
21 Detective Caughman. And then he wrote the letters.

22 He then he still came in and pled guilty to
23 armed robbery, to kidnapping, to possession of a weapon
24 during the commission of a violent crime. I heard what he
25 said, but if you're not guilty, you're going to walk in

1 and plead guilty. He told the judge and we went through
2 that when we got the transcript, went through that. The
3 judge asked him then did this really happen, is this what
4 you want to do. You want to plead guilty. Yes, Your
5 Honor, every time. This is the factual account of what
6 happened. Yes, sir. When a guilty plea -- you probably
7 never seen one. I have to give -- the State the
8 prosecutor has to give a resuscitation of the facts. Tell
9 the Court what happened. The same facts I'm telling you
10 today, the same facts I told you this week those are the
11 same facts. And once I'm done doing that, the judge will
12 ask him do you agree with those facts. Yes, Your Honor.
13 Walked in and pled guilty to those charges. I hear what
14 he said on the stand. I read what he said in the letters
15 and I think I know why. I'll get to that in a second, but
16 he walked in and pled guilty. If it was even a drug deal
17 of marijuana or if it was the collection of an innocent
18 debt, would you expect him to walk in and plead guilty. I
19 wouldn't.

20 And at the end the judge asked why he did it
21 because the facts had come out that he knew of Keith, the
22 Hardee's, the connection Johnson had with his mother. And
23 the judge asked him why did you do it. He said I like
24 drugs, I needed to support the habit. He needed to
25 support the habit. He didn't get that check cashed at

1 Wells Fargo before this event, but he pled guilty. And
2 regardless of what he says on the stand when you plead
3 guilty, the judge is very very good about walking through
4 that, understanding what that means and that it is a, yes,
5 I'm pleading guilty because, yes, I am guilty. And they
6 walk through that. And he said, yes, sir, every time. So
7 I know he changed the story to what's in the letters about
8 it was a consensual thing. He owed me money. He was
9 happy to get in the car and go to Hardee's and cash the
10 check, but I think I have a different scenario. I think
11 he was scared that night. I think he was scared that
12 night talking to Caughman. I'm 20 years old talking to
13 the police, talking to the police after what had happened
14 that day, I had no doubt that he was scared, but I know
15 why he was scared that night. I know one person that
16 wasn't happy with what he did that night Tappia Green.
17 Jonathan said Tappia, that's who I was with, that's the
18 one that help me at gun point. Detective Caughman did the
19 search, came back as Tappia Green.

20 Over the course of the investigation, the victim
21 did not have a lineup. His fingerprints are on the
22 checks, that he's admitted being there, so we know it's
23 him. But Tappia must have not been happy that this other
24 guy was implicating him. Imagine how livid he was at
25 Johnson after that. If he got that aggressive with me

1 when I was asking tough questions, I wonder how mad he was
2 at Johnson.

3 And with Johnson everything yesterday for the
4 most part was a lie. I think you saw that. The calls
5 that didn't exist, the Mountain Dew all those kind of
6 things. He was just denying everything. He knew there
7 was going to be a voice on the call still denied it. The
8 one thing he told the truth about when asked him about his
9 mom, the lady that works at Hardee's. A lady that Keith
10 and his girlfriend would give rides to. He loves his mom.
11 He loves his mom. And ask if he would do anything to
12 protect her and he said, yes, as any good son should. He
13 said yes. And then I asked him would you say something
14 untrue to protect your mother. And he looked at me and he
15 said yes. And that is by far the best explanation for
16 this complete change in story. How do you go from
17 implicating somebody of an armed robbery facts that were
18 corroborated by the victim when you don't have a chance to
19 talk about it, to a consensual drug deal. Mr. Green was
20 drunk that kind of thing happened. How does that
21 transition.

22 Fear is a powerful thing, powerful thing. I
23 will lead you to the first line in the first letter he
24 wrote. Chanelly (sic) was the prosecutor that's the name
25 here. I, Jonathan C. Johnson, hereby writing you on

1 behalf of Tappia Green. Fear is a powerful thing. What
2 else would explain that change. He said he was drugged
3 and helped to make up a story, that doesn't make sense.
4 Put two and two together, it's a powerful thing.

5 And now get to Tappia Green. This is the man
6 that has motive to lie. This is the man that has every
7 single reason to be dishonest with you because at the end
8 of day he wants to be found not guilty. Keith's going
9 home either back to Allendale regardless of what happens
10 here. He's back in Allendale working at Hardee's with his
11 family, doing what he was doing no matter what happens
12 here today.

13 Tappia Green is on trial for armed robbery,
14 kidnapping and possession of a weapon, that's motive to
15 lie and you saw that. Yesterday when he talked about
16 catch me in a lie. And then when he told -- when I asked
17 about guns, he told you he had a gun. I absolutely have a
18 gun, why wouldn't I have a gun. I sure can have a gun.
19 Legally allowed to Second Amendment right. Unless, you're
20 a convicted felon and he knows that, but he wanted to tell
21 you on the stand. And if he's going to lie about
22 something so small that is legally allowing to have a gun,
23 what about the big stuff, what about the stuff that really
24 matters. That's key, that's motive to lie. That's not
25 credibility. He doesn't have to lie. I asked him about

1 it today have guns, he could get one anywhere if he needed
2 to off the streets. And to his credit he said he would
3 get one to protect his family, which I understand, but he
4 could get one if he needed to, have one ready for
5 protection for whatever may come. He could get one. He
6 could get one for this incident. He said it wasn't hard.
7 You heard him he said it wasn't hard. He wanted one he
8 could find one. And he called the shots. Keith told you
9 that. Johnson told you that before he changed his story.
10 He was in charge.

11 Then we talked about being outside of Hardee's,
12 which I think is important because I think than more than
13 anything else that shows credibility to Keith's fear
14 because in his testimony I understand that. You're
15 judging the credibility. It's like I have somebody on
16 video committing a crime.

17 Now, this isn't CSI. CSI has been one of the
18 most difficult things for criminal prosecution in the law
19 in general because people think -- expect a certain thing
20 they walk into court. How to find three DNA matches,
21 three fingerprints. It just doesn't work. It's not real
22 life. It would great if every surveillance system worked,
23 yes. Would it be great if every crime made sense, yes.
24 You heard Detective Caughman. It's just not how the world
25 works. It's just not.

1 So in this case it comes down to -- and the
2 judge will tell you about it direct and circumstantial
3 evidence whether it's something like a fingerprint or
4 testimony. This is one of the things that lends the most
5 credibility to Keith's testimony that's not somebody
6 else's testimony. What are they doing outside of that
7 Hardee's, put that picture up again State's 12. And again
8 with the time stamp three minutes 13 seconds after you see
9 the PT Cruiser pull in. Didn't have time to get hot.
10 What were they doing. You said Ray got up there and told
11 you about where the manhole cover was, where the door was
12 that he was going on in. He could have gone in. You can
13 see it kind of right there. The sun while going into the
14 Hardee's he's walking past that. He's looking in the
15 window. Because when you walk up to Hardee's like I'm
16 doing now, the door is here and you walk up to the counter
17 this way. Walk in and see what's going on because they
18 didn't see the police cars. Keith said he heard sirens
19 and Tappia said he saw a police car which that's close
20 enough. Didn't expect to hear sirens, but what else would
21 they be doing if they weren't -- you're sitting in a car
22 in a parking lot you get out to see what the police car is
23 driving by for. Walk across the parking lot to go see.
24 You want to get by because the sun. He's getting nervous
25 because the police.

1 Keith told you when he walked outside what did
2 Tappia Green say to him. He saw the police they push the
3 panic button we're going to keep our promise. And that
4 panic button Keith knew it was there. Shania knew it was
5 there. Nobody knew it did. I'm sure it worked, but does
6 it make -- is it really a sound alarm does it alarm, that
7 sounds. It lets you know the police are coming. If
8 they're already out like this, what do you think is going
9 to happen.

10 At the end of the day if you think, well, Keith
11 could have run. Keith could have hide in the freezer, the
12 think is we don't know. We don't know what guys with guns
13 what they may do when the police come. Who knows. You
14 can't fault Keith for what he thought in the moment for
15 not acting how you may think somebody should act or not
16 escape when they get first shot. They want you -- when I
17 say that, Mr. Archer, Mr. Green want you to believe that
18 because he didn't run out that building or press the
19 button or run into the freezer that this did not happen
20 because he didn't call the police the first moment. He
21 has been with the police every single day since April 14th
22 2015. He went in and talked with them when they asked.
23 He did lineups when they asked. He did every single thing
24 he could to help with the investigation. What more could
25 he do. And if he ran, who knows what could have happened.

1 Maybe, he got away something, maybe something bad happens
2 who knows, but that was the decision he made.. And that
3 doesn't mean that it didn't happen. And Shania came in
4 and said that she didn't recognize anything.

5 I know it was two and a half years ago, but if
6 he is scared of them what would you expect. When he said,
7 he tried and it didn't work. And if that didn't work,
8 what else would you do. If he was really scared and
9 that's what he told you, would you expect him to be acting
10 weird and different. And again they were in there for two
11 minutes, two and a half minutes, not very long at all.
12 And it's interesting because I thought about it time and
13 time again trying to -- how to rationalize this.

14 We don't jump to the absolute worse case
15 scenario when we think about something. I mean, you don't
16 walk outside and think it's a robbery unless you see guns
17 and shootings and things like that, but you don't jump to
18 the absolute worse case scenario off the bat without some
19 other conduct. You just don't do it. It's human nature.
20 So the fact if for a minute or two she didn't realize what
21 was going on, I mean, I can't blame him, but I think that
22 is key.

23 So Judge Couch will go over the law with you in
24 just a few minutes. I'm going to go over it briefly with
25 you now, so you can be thinking about it with my argument,

1 with Mr. Archer's argument and the second time I get up.

2 I want to go over with you briefly now the
3 charges. So the defendant is charged with armed robbery,
4 kidnapping, and possession of a violent crime or
5 possession of a weapon during commission of a violent
6 crime. Armed robbery and these are the elements that
7 Mr. Archer will probably tell you the same thing that my
8 burden and that's up there as well beyond a reasonable
9 doubt. I have to convince you all 12 of you every element
10 beyond a reasonable doubt. That means there are very few
11 things in this world we know beyond all doubt. What
12 beyond a reasonable doubt means is to firmly convince.
13 Firmly convince the defendant's guilt.

14 So armed robbery, taking and carrying away the
15 personal property of another with the intent to deprive by
16 violence, use of force, threat, intimidation while armed
17 with a deadly weapon. They took something from him. They
18 never intended to give it back. They did it with violence
19 or threat of force or intimidation and they had a weapon
20 at the time they did it. That's what armed robbery is.
21 And so in this case the check that was attached to this
22 stub \$242.91. They took him to Hardee's to get the check,
23 took him to the cash advance to cash the check. And then
24 once it was cashed, they kept the money. That is -- once
25 he got out of the vehicle, they left. That's taking and

1 carrying away the personal property the cash with the
2 intent to deprive or not give back by violence, use of
3 force, threat or intimidation. You heard threats. I
4 mean, that's threats, that's intimidation. You heard
5 Keith's testimony. You heard Jonathan on those
6 recordings. Those elements are there and while armed with
7 a deadly weapon.

8 As Keith said, they all three had guns. Only
9 thing Johnson was different on when he talks to the police
10 that night, he said he was the victim. He didn't have a
11 weapon, but Tappia Green did. Keith told you that and
12 Jonathan told you that.

13 Kidnapping, the unlawful seizure, confining,
14 inveigling, decoying, kidnapping, abducting or carrying
15 away on another person by any means necessary without
16 authority of law. A lot of fancy lawyer words inveigle
17 had to practice that. Essentially, what that means is
18 exactly what you think it means. They get a gun as Keith
19 told you to the back of his head, put him in the car and
20 then drive away. He couldn't leave. His freedom was
21 restricted. They took him away, that's kidnapping.
22 Obviously, they didn't have authority of law. I'm sure
23 the police officer when they arrest somebody, you're
24 taking them away, that's authority of law. Jonathan and
25 Tappia they didn't have authority of law. And this does

1 not require the use of a deadly weapon.

2 So seize take control of a person through force,
3 confines to deprive that person of their freedom.

4 Inveigle is to seduce, entice, to coy or persuasion and
5 then kidnap, abduct and carry away, but again it's exactly
6 what you think it means. Take somebody against their will
7 and you go away from taking them somewhere, that's
8 kidnapping. Doesn't matter how far, but North Charleston
9 and Mount Pleasant and back, it's far enough.

10 Possession of a weapon during the commission of
11 a violent crime. If you believe the -- you have to
12 believe the defendant committed a violent crime and was in
13 possession of a weapon at the time of the crime. Both
14 armed robbery and kidnapping are violent crimes. But for
15 this case, you only need one of them. So if you find the
16 defendant guilty of either armed robbery or kidnapping and
17 you believe he had weapon at the time, that's the element
18 of possession of a weapon during the commission of a
19 violent crime. Doesn't have to be both. Each of those
20 two offenses are violent crimes.

21 And then the next thing that I want to show you
22 is not a crime, but it's a legal principle that comes into
23 play in cases like this. It's called the hand of one is
24 the hand of all. What that essentially means is if a
25 crime was committed by two or more people who are acting

1 together committing the crime, the act of one is the act
2 of all. Two or more people acting with a common plan or
3 intent or present at the commission of a crime does not
4 matter who actually committed the crime all are guilty.
5 And the judge will give you an instruction on mere
6 presence.

7 If there's truly somebody that is there that is
8 merely just there, then that is not the hand of one hand
9 of all. If there really was somebody, I think Johnson
10 said that Tappia was so drunk and passed out, Tappia got
11 up and said that wasn't the case. If there was somebody
12 that was in that state or somebody that was just sitting
13 there and no involvement at all, that wouldn't count. But
14 if they're all acting together, it doesn't matter that
15 Johnson walked in with Keith to get the check to cash the
16 check. It doesn't matter that Johnson got Keith to the PT
17 Cruiser. If they're acting together, the hand of one is
18 the hand of all. The really common example that lawyers
19 usually give is that there are two or more people going to
20 do a robbery. There's one gun. There's one bullet, they
21 fire bullet and it kills one person. Obviously, only one
22 of them could have killed the person. They are all guilty
23 of murder. They're doing it together. So just because
24 one sits in the car, one gets out and walks around the
25 parking lot at Hardee's, they're all doing it together the

1 hand of one is the hand of all.

2 And the last thing beyond a reasonable doubt. I
3 touched on this just a minute ago, but the law doesn't
4 require proof beyond all doubt because there's very few
5 things we know beyond all doubt. It's just proof that
6 leaves you firmly convinced. I have each of the elements,
7 that's a high burden. That's how it should be.
8 Defendant's on trial. The State should have to prove it
9 to a high burden of proof. I believe that. Other than
10 this case, we done that. I believe with Keith's testimony
11 with the corroboration, with the lies that Johnson has
12 told, with the stories that Tappia has told, I submit to
13 you we met that burden.

14 Again, like I said at the beginning, you the
15 judge of the facts and determine credibility. Who you
16 believe, who you don't, why you don't. Look past what
17 people say, look to why they say is, what motive, what
18 intent.

19 It is testimony yesterday I was asking Tappia
20 some questions and one of the things he told me back was
21 it's 2017, it's about the facts. Nothing can be more
22 true. The fact Keith Lee never lied to you. He didn't
23 lie to the police. The fact after that first day Johnson
24 lied every chance he got. The fact Johnson and Keith
25 stories match that first day with the only explanation

1 true. The fact Tappia said catch me in a lie on that
2 chair talking to you wasn't a big one, but he lied to you.
3 Again, he lied about the small stuff. What about the big
4 stuff, what about the stuff that really matters, how can
5 you trust somebody, take that into account.

6 The fact I think everybody actually said this.
7 Keith Lee helped jump that car off. He didn't know who
8 Jonathan Johnson was. You heard the testimony about
9 Johnson putting his hand on the shoulder and telling him,
10 hey, you'll know who I am when I tell you about my mom.
11 And that's how he was able to let the police know. Ivey
12 Johnson's son, that's why it took so long to find Jonathan
13 because Tracy Williams had to get the information like I
14 don't know who that is. He didn't know who he was. Sure
15 they weren't meeting up because there was no phone call.
16 He's a good ole country boy. Somebody asked for his help
17 and he helped. I mean, no good deed goes unpunished. He
18 helped somebody and they took his paycheck. They could
19 have taken his life. All because he just wanted to help
20 somebody. It's a fact. The fact he was robbed by
21 Jonathan Johnson, Tappia Green and L.B.

22 The defendant got upset with me yesterday on the
23 stand about the victim was making him out to be some kind
24 of monster. He never said he was a monster. I never said
25 that. I might not be a monster. He certainly not an

1 angel. And as slick as he may think he is up there, the
2 facts speak for themselves. Jonathan Johnson has not
3 changed his story for reasons we talked about earlier.
4 The fact still remains Keith's story hasn't changed.
5 Jonathan Johnson told a story that first day to two
6 different people, that corroborates Keith's story and that
7 is that Tappia Green had a gun. Tappia Green pointed it
8 and threatened the victim, went to Hardee's got the check,
9 cashed the check, was ready to kill him. And for Jonathan
10 Johnson, I don't know where Keith would be today. It's a
11 fact Tappia Green is guilty of armed robbery, kidnapping,
12 and possession of a weapon during the commission of a
13 violent crime. Thank you very much.

14 THE COURT: Mr. Archer, you may proceed for the
15 defense.

16 MR. ARCHER: Yes, sir. You're going to be
17 called to make a really grave decision on somebody's life.
18 And the law requires that you make that decision beyond
19 any reasonable doubt. You got a duty to look for an
20 explanation of the facts and circumstances that is
21 consistent with Mr. Green's innocence as well as a duty to
22 see something to show whether he's guilty or not. Now,
23 it's our position that the facts as told by Jonathan
24 Johnson make a lot more sense than the facts told by Keith
25 Lee. All right. And why? First of Mr. Lee says he

1 didn't know Jonathan Johnson before this date. Didn't
2 know him at all, okay. Well, it's just such an
3 extraordinary circumstance that he ends up in a car with
4 Jonathan Johnson whose mother works with him. They meet
5 in North Charleston, okay. And Jonathan Johnson asked him
6 for a jump and he gives him a jump and then supposedly
7 pulls a gun out and points it at him, okay. So I think
8 number one, but we know this we know that Jonathan
9 Johnson's mother works at the same Hardee's that Keith Lee
10 works at. It's just sort of extraordinary that by chance
11 the son one of his coworkers meets him in a parking lot in
12 North Charleston and decides to do an armed robbery of
13 him. What are the probabilities by chance that that's
14 going to happen. I submit they're astronomical, okay. He
15 goes with him because he knows, all right. I mean, this
16 would happen at random it's almost too much to believe,
17 okay.

18 Furthermore, he says he didn't know Jonathan
19 Johnson, but his girlfriend knew Jonathan Johnson because
20 his girlfriend told Detective Jennifer Butler who
21 committed this robbery. She says Jonathan Johnson
22 committed this robbery. Well, how does his girlfriend,
23 who wasn't there at all during any of this, how does she
24 know Jonathan Johnson is the fellow who's committing the
25 robbery. There's only one way she knows. It's because

1 Keith Lee says who robbed you, John Johnson robbed you.
2 So I think -- there's no way you can ever know everything
3 for sure. We've got two different sides to a story and
4 there maybe some truth on both sides. There may be.
5 We'll never know for sure, but the common sense is his
6 girlfriend has no way to know Jonathan Johnson's involve
7 unless he tells her. And how is he going to tell her
8 Jonathan Johnson's involved if he don't know him. So I
9 think this is a lot of good reason for us to believe that,
10 yes, as Jonathan Johnson said they knew each other before
11 this day, before this thing ever happened they made like
12 they knew each other, all right.

13 Now, Jonathan Johnson says that he owed me money
14 for dope, okay. And that's why we went to get a check
15 cashed. Well, let me tell you this, if it's a stranger in
16 an armed robbery, okay, you don't walk up and say gave me
17 all your money and the guy says I don't have any money,
18 but I got a check at work. We can go out at our work when
19 we pick it up and then I can give you my money. Oh, good.
20 Well, let's ride out and get your check and let's take it
21 to a check cashing place and cash it and then you give me
22 your money. Armed robberies don't work that way.
23 Strangers approach each other in a parking lot and say
24 give me your money and take what they can get and they
25 leave. They don't go riding all over town picking up

1 paychecks, taking them to a check cashing place and cash
2 them.

3 Now, if a fellow owes you a couple hundred bucks
4 for the dope and you say, hey, I want to get paid. And I
5 don't know maybe Jonathan Johnson said it in strong terms.
6 I have no way to know. Maybe, he said look Goddamnit you
7 owe me \$200 MF'er and you gone -- you need to pay me.
8 Maybe that happened. I have no way to know, but it does
9 make sense that when he says you owe me money. And he
10 says I don't have it, but I got a check. Let's go cash
11 the check and you pay me what you owe me, that makes
12 sense. The other explanation doesn't make sense. You got
13 to use your common sense and analyze these things, okay.

14 Why would Keith Lee lie, okay. What his motive
15 for a lie? Well, one possible motive is it was payday and
16 his girlfriend's expecting him to bring home the check to
17 help pay bills, but he's given all of his money to
18 Jonathan Johnson. She says where's the check dear. And
19 he says I don't have the money. Well, why don't you have
20 any of the money. What do you say because dear I paid it
21 all with dope. We don't have the rent money this month
22 because I gave it all to my dope dealer. No, he says I
23 was robbed. I was robbed that's why I don't have my
24 paycheck. And she says, well, we need to tell this police
25 this. What is the old saying what a tangled web we weave

1 when we first practice to deceive.

2 He comes home and rather than tell his
3 girlfriend I gave all my money to my dope dealer, he says,
4 oh, I don't have a check because I got robbed. And from
5 that point on, he's caught. Well, dear, let's go tell the
6 police, okay. So he tells the police I was robbed, you
7 know. And from that day on, he stuck with that story
8 because if you change his story, he's making a false
9 report to the police and that in and of itself is a crime
10 you make a false report.

11 He ain't got much choice. Once he starts the
12 deception, it has to continue. It can't stop, okay. But
13 you need to look at -- it's a bunch of indications here
14 that he's either exaggerating or been untruthful in parts
15 of his testimony, okay. Like for example, he says his
16 hands and feet were tied up and his feet, but he only told
17 the detectives his hands were tide up, okay. Didn't say
18 anything about his feet being tide up. He says Jonathan
19 Johnson on the way from North Charleston to Mount Pleasant
20 put the gun out the window and fired it. He never told
21 the detectives anything about Jonathan Johnson's sticking
22 a gun out the window and fired at him. That's pretty
23 significant fact, that's a big fact to leave out if in
24 fact happened. I was scared to death because this guy --
25 I know that he puts a gun out the window and fires it, so

1 I knew it was loaded. I knew it would shoot. He admits
2 that. He never said anything about it, okay. He gets
3 to -- according to him, this stranger armed robbery takes
4 him to two separate places, takes him to Hardee's to
5 collect his check and then takes him to a check cashing
6 place to cash the check. Well, that's so outrageously
7 unlike that an armed robbers going to take you to cash a
8 check, take you to get a check at your work and then take
9 you to some place to cash it. And when he goes to collect
10 the check all right, here he is at the cash register with
11 Shania Byrd, who is the manager there, okay. He's
12 standing at the cash register getting his check. Where is
13 Jonathan Johnson in that picture. You don't see Jonathan
14 Johnson in that picture. Why? Because if Jonathan
15 Johnson is standing all the way across the room, she says
16 it was as far as from there to where I am, okay. Well, if
17 you're holding a guy hostage with a gun and you take him
18 into a strange place to collect his paycheck, you're not
19 going to leave him up there by himself, you going to be
20 standing right next to him. You're going to be standing
21 right next to him to make sure he don't say, hey, I'm
22 being robbed, call the police, but Jonathan Johnson is all
23 the way across the room. He's not standing next to the
24 guy being threatened to him. He's all the way across the
25 room and that wouldn't happen use your common sense. You

1 got a guy somewhere holding him under supposedly threat of
2 shooting him, you bring him up and you leave him with
3 somebody where he can say, hey, call the cops I'm being
4 held, call the cops. No, he's going to be standing right
5 next to him to make sure he don't say nothing, but give me
6 my check. Don't make sense. The story he tells doesn't
7 make sense. And, you know, I have an old saying from
8 years ago. This is sort of -- this ain't witnesses
9 talking to you.

10 This is a photograph. This is what you call
11 physical evidence. It is the evidence that speaks, but
12 cannot lie. People who testify can lie, but this it
13 speaks, but it doesn't lie to you. And it shows you a
14 picture of something that would highly unlikely to have
15 under these circumstances. Because under these
16 circumstances, this fellow in the red shirt would have
17 been standing right next to him and make sure she didn't
18 call the police. That's what it would have been. It
19 wouldn't have been on the other side of the room. You be
20 standing right next to him to make sure he didn't say I
21 been kidnapped. I'm being held at gun point help, help.
22 All she has to do is return the camera and press a button.
23 The silent alarm goes off, but he didn't say call the
24 cops. Help, call the cops, no. She says he didn't act
25 anywhere unusual from the way he always act. You would

1 think that if he's being held at gun point shaking and
2 acting nervous, but he's not. He's acting normal, okay.

3 Just while I'm over here, let's put this on.

4 The prosecutors put it on a couple times. What's the big
5 deal two guys are sitting in a hot parking lot and get out
6 and walk around the parking lot. What does that say?
7 That say somebody guilty of anything. Don't say nobody is
8 guilty of nothing. It just says two guys are sitting in a
9 hot car got out and walk around the parking lot waiting
10 for the fellows to come back who went inside.

11 Now, supposedly he's tide up when they go
12 somewhere and here's the PT Cruiser. There's the front
13 seat do we see any ties that would have been used to tie
14 him up, no. Here's the backseat, do we see any ties in
15 the backseat that would have been used to tie him up, no.
16 Here's the trunk, do we see any ties that would have been
17 used to tie him up, no. And the cops searched the vehicle
18 and they don't find any ties that would have been used to
19 tie him up. So I think it's reasonable to say he wasn't
20 tied up.

21 Now, let's talk a little bit about Jonathan
22 Johnson. You know human nature is the night Jonathan
23 Johnson is arrested the cops tell him we got you under
24 investigation for an armed robbery. We got you under
25 investigation for kidnapping, okay. He don't say, well, I

1 did it. He says woe, woe, woe, I didn't do it the fellow
2 in the car with me did it. Okay, the story he tells is
3 very much at that point in time to his benefit because if
4 the police believe that Tappia did it and Jonathan Johnson
5 did nothing. Jonathan Johnson gets off. So he's just
6 trying to talk his way out of trouble, okay.

7 On the other hand, when Jonathan Johnson writes
8 twice to the prosecutor and once to his own lawyer and
9 says Tappia had nothing to do with this. That's not his
10 interest. It's very much against his interest because at
11 that point in time he's saying I am solely responsible for
12 what happened. This other fellow had nothing, it's all
13 me, okay. And so even when you say, well, how do we know
14 when he's telling the truth. Well, he's probably telling
15 the truth when the story doesn't help him out. And the
16 story doesn't help him out when he says Tappia had nothing
17 to do with it. It hurts him because that leaves him as
18 only the fellow responsible for the robbery. That hurts,
19 that doesn't help. At the time he said his charges had
20 not been taken care of, okay. Today, when he comes in and
21 talks to you, he's got no reason to lie. No reason at all
22 because whatever he says ain't gone make a rats behind
23 worth of difference what happens to him because whatever's
24 going to happen to him is already happened. He's been
25 before a judge. He's been sentenced. His story ain't

1 gone change none of that, so he's got nothing to win today
2 by coming in and telling you the same thing that a few
3 months earlier was against his interest because it was
4 against his interest to take credit to say Tappia wasn't
5 involved when he was writing letters to the prosecutor.
6 That didn't get any of his interest. He seemly saying I
7 am solely responsible for what happened. There's no
8 reason for him to do that if it's a lie because he hurting
9 himself. He's hurting himself by writing those letters.
10 And when he comes in here today and tells you the same
11 story, he's not doing anything that's going to help. So I
12 think that makes what he says credible, believable, okay.

13 And I think it's interesting if you look at one
14 of those letters, it says he was really worried that
15 people were going to find out he did dope, you know. And
16 that's a reason I think that he had to admit to what
17 Jonathan Johnson said is true. But probably more likely
18 at the time it happened, he just didn't want to tell his
19 girlfriend where his rent money was, I spent it all on
20 dope. And that's where it all begins from the day he
21 tells her that until the day she gets him to the policers.
22 By the time, he gets to the police he can't change his
23 story because he already told her. And you don't want her
24 mad at you. He's already told her. He can't change his
25 story, got to tell the police. And once he tells the

1 people, he can't change it because he committed a crime.

2 All right. I just think, you know, it doesn't
3 make sense that an armed robber takes you to two different
4 places, take one place to collect a check, takes you
5 another place to cash the check, that don't make sense.
6 And I think you realize that in your common sense that
7 that don't make sense. An armed robbery comes up to you
8 in the middle of the night or on a street says give me
9 what you got. And you give him what you got and he runs
10 off.

11 This is such an elaborate plot, okay. And I
12 think there's a lot of stuff in here that says Keith
13 hadn't been told to be honest with you. I think that fact
14 that he says he didn't know Jonathan Johnson on the day
15 this occurred is a major thing. Why? Because when his
16 girlfriend that night tells the police officer who did
17 this and she says Jonathan Johnson, there's only one place
18 she could have gotten it from and that's Keith Lee, so he
19 had to have known it. They want to talk to you about
20 Tappia being angry on the stand and I got to admit he was.
21 He was angry. And I submit to you that maybe that wasn't
22 the best thing for him to do, but that it's righteous
23 indignation of a man who says I didn't do any of this.
24 It's righteous indignation. As probably everyone in his
25 position would feel, but may not say, but he said it. You

1 can't hold that against him. You can't hold it against
2 him at all. Well, the last thing he has to do talk about
3 it and that is a reasonable doubt.

4 The law says that that y'all have to find
5 Mr. Green guilty beyond a reasonable doubt. And I would
6 submit that even the investigating officer Detective
7 Caughman had a reasonable doubt in the beginning. He
8 said, yeah, I had some doubt as to what just happened, but
9 I changed my mind later after he kept coming in to see me,
10 but even Caughman says, yeah, I had some doubt. And I
11 think when you look at -- I said, hey, you take a
12 statement from him. Yes, I did. And in there you ask him
13 do you want to prosecute this, you know. And he said,
14 yeah, I did, to me that's when you give awful unusual.
15 You've got an armed robbery and a kidnapping, two of the
16 most serious offenses known to the law, okay. Two of the
17 most serious offenses known to the law and then officers
18 ask him do you want to prosecute. Yeah, this guy did
19 this. He says do you want to prosecute. You been the
20 victim of two of the most serious offenses known in the
21 law. Why do you ask that question? You ask that question
22 because you ain't so sure the guy's telling the truth and
23 you want to give him a chance to say, yeah, this happened,
24 but, no, I don't want to prosecute. So I think it would
25 be firmly well sure that at least at some point in time

1 Detective Caughman had a reasonable doubt as to any of
2 this happening. And if he had it, his to job's prosecute
3 people. Y'all certainly knew that.

4 Now, what is a reasonable doubt. And I tell to
5 this story. It's best known it's a true story. There is
6 saying in our law and it's actually pretty much the same
7 as it appears in English law that it's better for a
8 hundred guilty men to go free, then one innocent man to go
9 to jail, all right. And according to traditional American
10 law the person -- where that originated from first in
11 America was in Philadelphia, all right. The person who
12 said was a lawyer and I don't think that will surprise you
13 because that sounds an awful a lot like a lawyer talk,
14 send a hundred guilty men free, so you don't send one
15 guilty man to jail. The fellow who said it was a lawyer.
16 He was a radical lawyer. He advocated the violent
17 overthrow of his government and eventually took up arms
18 against that government. He was a lawyer. He was
19 radical. He was a revolutionary. He was John Adams. And
20 he supposedly said that at the trial of the commanding
21 officer of the British troops at the Boston Massacre, the
22 Boston Massacre because he defended the -- commanded the
23 British troops in the Boston Massacre. He was a lawyer.
24 He was radical. He was a revolutionary. He was a signer
25 of the Declaration of Independence, a drafter of the

1 Constitution of United States, the first vice present of
2 United States of America and our second president.

3 And in 1785 Ben Franklin said the same thing he
4 wrote -- a fellow by the name of Benjamin Vaughan he said
5 it's better for a hundred guys to go free than one
6 innocent man to suffer. And the whole point of this is
7 that a reasonable doubt is a very high standard, very high
8 standard. It's not immediate standard or kind of, it's an
9 extraordinarily high standard. You have to be able to
10 look at stuff and not come up with some other explanation
11 other than guilt, whether you believe that's happened.
12 You can go back and say, yeah, I think this happened,
13 that's not a reasonable doubt. You can think that it's
14 more likely than not this happened, that's not beyond a
15 reasonable doubt. A reasonable doubt is a high standard.
16 There's no other rationale explanation with this. You got
17 a rationale explanation. This wasn't a robbery it was a
18 drug collection, somebody collecting some money for drugs,
19 okay. You know, the -- in my mind, I had a blank spot.

20 You know, one thing I would address -- I lost my
21 train of thought. Is why did Jonathan Johnson plead
22 guilty if what he says is what happened. Well, let
23 explain it to you. He said two things. One, I was scared
24 as to what would happen to me if I went to trial. And I
25 thought basically he said I rather not take my chances at

1 trial, okay. And the other thing was he said I wanted to
2 come here to help you. And, you know, we think innocent
3 men don't do anything, but they do. When you looking at
4 bad sentences, you may be take the lesser of an evil which
5 is some sentence but not a worse sentence. Rather than
6 take your chances at getting a really bad one, okay. And
7 that's what he said. He said I didn't want to take a
8 chance.

9 Well, Tappia wants to take his chances. He
10 demanded I want 12 people to decide my fate and y'all
11 happen to be the 12 people and the burden is a tremendous
12 burden. And this idea of a reasonable doubt it is part of
13 the wholly grail of our finding fathers. The wholly grail
14 of our finding fathers. Not just one, but more than one.
15 No, we don't send people to jail unless you reach --
16 unless, you're able to prove things by these high
17 standards. And quite frankly, I think, there's -- that
18 number one with Jonathan Johnson says it happened makes a
19 lot more sense than what Keith Lee says happened. I think
20 it's indication he hadn't been totally truthful in that
21 his girlfriend -- he says he didn't know who it was, but
22 it was the son of a coworker and his girlfriend on the
23 night the robber tells the police officer, yes, Jonathan
24 Johnson only way she can know is he tells her. It's
25 Jonathan Johnson, so he had to know, had to. I think it's

1 -- the way he told you that he was exaggerating and
2 talking about shooting a gun out the window and that's
3 something you never told the police officers at the time
4 that you would certainly expect for him to tell the police
5 officers. I think that he says he was tied up with both
6 hands and feet. Well, originally he told they tied up the
7 hands and there's no real evidence of anything was ever
8 found that he heard tied to anybody. Nothing was ever
9 found in that PT Cruiser and that PT Cruiser was in the
10 police parking lot by that night. And nobody gone through
11 it and cleaned it out. It was a mess. The time this
12 happened was in there in this parking lot and it was no
13 ties in the back or the front or anywhere to tie anybody.
14 So can we always -- can we be sure of anything. No,
15 there's nothing in life to be sure of, but you can use
16 your common sense. And I would submit common sense says
17 the true story lies more in what Jonathan Johnson said and
18 Tappia Green said, than it lies with Keith Lee.

19 And I would ask you to find -- you don't even
20 have to find this more likely than not. You simply have
21 to find there's a reason doubt here. You can find
22 75 percent. I think 75 percent he's guilty. Well, that's
23 one in four chance you're wrong, that's a reasonable
24 doubt, you know. You can find 80 percent he's guilty, but
25 that's a 20 percent chance you're wrong, that's a

1 reasonable doubt, okay. The standard is high. And I do
2 not believe the State has brought in little things here,
3 little things there. Well, here's two guys walking
4 through a parking lot, must be something nefarious about
5 this. Oh, somebody called Jonathan Johnson while he was
6 in Hardee's must be something nefarious about this. It's
7 a bunch of little garbage that adds up to nothing. And I
8 know I keep saying it over and over again.

9 This is the last time I'm going to say it. You
10 don't have to leave your common sense out here in these
11 row of seats. You get to take it back into the jury room
12 and your common senses with the story you heard is not
13 likely not to have happened. The whole idea of meeting a
14 fellow in a parking lot, you don't know him at all, but he
15 just happens to be the son of somebody who work there,
16 that going to the place of employment getting a check.
17 And then going to a check cashing place and cashing it is
18 very unlikely if you're stealing from him. It ain't
19 unlikely if you're collecting a debt from him. That makes
20 lots of sense. Hey, you owe me money. Well, I don't have
21 it. I got check though. Okay, well, let's go get it, and
22 that's all I got to say. You place his faith in your
23 hands and hope that you take it very deeply, very
24 seriously. The obligation is placed upon you as jurors
25 before you find him guilty of anything. Thank you.

1 THE COURT: Ladies and gentlemen of the jury, we
2 been going now for a little while. Let's take a short
3 break before we wrap up the closing arguments. I'll let
4 you step back to the jury room, stretch your legs. Please
5 don't talk about the case until I ask you to do so. You
6 may retire to the jury room for a moment. We won't break
7 long.

8 (WHEREUPON, the jury retire to the jury room.)

9 THE COURT: We're in recess for about five or
10 ten minutes.

11 (WHEREUPON, a break was taken.)

12 THE COURT: All right. I need to make the
13 parties aware of the fact that I'm told that Judge
14 Jefferson on Monday protected Daniel Raymond juror 298 for
15 tomorrow. Given where we are right now, it appears that I
16 will probably relieve him before the case goes to the
17 jury. If I relieve him after the case goes to the jury,
18 I'm required to release the two alternates. When the case
19 got to the jury, we would have to declare a mistrial so I
20 intend to release him from the jury once we've
21 completed -- before I send them back for deliberations
22 just to make you aware. I don't see how they could -- I
23 think it's more than likely that they will go over until
24 tomorrow with their deliberations. So I'm going to go
25 ahead and release him at that time rather than run the

1 risk of miss trying the case. We'll make that drawing
2 when we finish, okay.

3 THE CLERK: Yes, sir.

4 THE COURT: All right. The State ready to
5 proceed?

6 MR. COOPER: Yes, sir.

7 THE COURT: Is the defense ready?

8 MR. ARCHER: Yes, sir.

9 THE COURT: Bring the jury in.

10 (WHEREUPON, the jury came into open court.)

11 THE COURT: The jury has returned to the
12 courtroom. The State has the right to reply at this time.
13 You may proceed.

14 MR. COOPER: Thank you, Your Honor. May it
15 please the Court.

16 THE COURT: Yes, sir.

17 MR. COOPER: Good afternoon, again. So
18 Mr. Archer made a point about Jonathan Johnson's letters.
19 The story in there that Tappia Green wasn't involved at
20 all. It was a consensual drug deal or whatever it says in
21 the letter. That could be plausible and he hangs his hat
22 on that, but there's one big reason that fails and falls
23 completely on its face. The statement that Jonathan
24 Johnson gave to Officer Williams and officer or Detective
25 Caughman at nearly the same time in a different place then

1 Keith Lee gave to North Charleston. They can't explain
2 it. They didn't address that because they can't explain
3 that. Those -- it's not just, oh, I was robbed and no
4 facts. He gives specific facts. Specific facts that the
5 victim gives. And they hadn't seen each other since that
6 robbery, so what's the other. So what's the only
7 explanation and that's the truth. Unless, you think that
8 they sat there and collaborated and that doesn't make any
9 sense at all. But Mr. Archer's contention that these
10 letters are the truth in that that explains it all, that's
11 the most logical conclusion, that's false because you
12 heard from Keith Lee there and then you heard on the
13 recordings when Jonathan denied the statements. Two
14 times, two hours after the incident at 6:30 and a couple
15 of hours after that the same exact story ask Keith Lee.
16 They can't explain that. Because even if Jonathan was
17 drunk, even if Jonathan for whatever reason he made stuff
18 up, how do you count for his story. And if they want you
19 to believe that this is because it was a dope deal and he
20 got in the car willingly and had dope or whatever and had
21 to explain to his girlfriend the months end and the dope
22 and all that non-sense, he's not with that girl anymore.
23 They broke up a couple months after the incident. So
24 their contention is that he didn't want to lie to his
25 girlfriend, they broke up three or four months later.

1 It's 2017. He's been through this process for over two
2 years. He's coming from Allendale for over two years.

3 Mr. Archer said it's astronomical odds that they
4 made it to the bank at the same time, that's interesting
5 I'll give you that. But I think it's more astronomical
6 the statement, that's what we come back to because some of
7 the best evidence in this case is a co-defendant who pled
8 guilty, who accepted responsibility for the charges was
9 given the same -- basically the same exact statement
10 implicating that man was the guy with the gun. It's the
11 robber. The one in charge, that's Keith Lee same time,
12 same time. The odds of that happening and not being the
13 truth are astronomical. Now, I want to correct one thing
14 Mr. Archer said that the way we know that Mr. Lee knew who
15 Jonathan Johnson was was because Carissa said it was him
16 who committed the crime. It's false. Carissa did not say
17 Jonathan Johnson committed a crime. She said when I was
18 in the bank that's who I saw, that's why she picked him
19 out of the lineup because she saw him in the bank.

20 MR. ARCHER: Objection. She has not testified.
21 I don't think he can say what she said.

22 MR. COOPER: Detective Caughman during his
23 testimony spoke about investigation included that
24 information.

25 THE COURT: You may proceed. Overrule.

1 MR. COOPER: Thank you, Judge. And it's when
2 they come together and Keith talks about I have a son,
3 that's how the connection is made, not because Jonathan
4 really knew him or Keith knew him and there was this
5 collaboration.

6 The defense they done this throughout the trial
7 that it doesn't make sense. The crime doesn't make sense.
8 It's astronomical that a robber would grab somebody and go
9 cash a check, do this whole trip. It just doesn't make
10 sense. It doesn't happen, that was Mr. Archer's
11 contention to you. Well, if that's his contention, then
12 he can't then turn around and say, well, here's how it
13 should have gone if that's the case. You can't have it
14 both ways. Can't say there's no way in the world this
15 would ever happen, but if it does, that's really not how
16 it should happen. You can't have it both ways. The fact
17 is with the statements of the victim and Jonathan Johnson,
18 the robbery did happen. The kidnapping did happen. Is it
19 interesting, is it strange, that they go from Wells Fargo
20 to Mount Pleasant, sure. But as Mr. Archer can tell you,
21 doing this type of work, the crime never makes sense not
22 generally, not usually, not always make sense. Criminals
23 are not the smartest group of people. They were maybe
24 they wouldn't do it, maybe they wouldn't get caught. I
25 don't know. But the fact it doesn't make sense doesn't

1 mean it's not truthful. Crimes happen all the time that
2 are strange and don't make sense. That's just how the
3 world works. And criminals aren't the smartest bunch to
4 the fact that he was going to go and rob the place or take
5 someone where his mom works. Didn't say they were the
6 smartest group.

7 If Keith Lee was really trying to do a drug deal
8 and hide from his girlfriend, why would he have to meet at
9 the bank where he walks and gets in the car and his
10 girlfriend comes out and the car's stolen and no one is
11 there, that raises -- to me that doesn't make sense. If
12 he wanted to hide, if he wanted to deceive, you heard
13 Keith testify he was going to take her to work. Why he
14 just say, hey, let's meet afterwards, but, again, there's
15 not one single phone call or text message in all of
16 Jonathan Johnson's phone with Jonathan to tell me when you
17 call, got the records that he could find. He says, oh,
18 no, it's -- that's because it's a no number star 6-7 or
19 something like that. There was one of those in his
20 records, but not the right time, it was later on. So he
21 couldn't point to a single call or a single text message
22 from Keith Lee not one, that's the phone he called Officer
23 Williams on. That's the phone that connected to the
24 defendant's phone outside Hardee's, but not one call and
25 not one text message, no one contact according to Keith

1 Lee, not one.

2 Mr. Archer talked about how there was no neck
3 tie in the car, true statement. That was sometime that
4 night. I forget the time they testified, so it was
5 sometime that night they showed up in the car. Jonathan
6 wasn't driving Jasmine was. Jonathan testified she got
7 off work about 4:30. They keep the kids during the day,
8 that's why there's a car seat there. More likely story is
9 not that showing you State's 24. More likely story is not
10 that they can't tie the neck tie, they just miss one piece
11 of evidence the check stub and the envelope. Showing you
12 State's 25 is where they found it. It's not that it's not
13 there because it didn't happen. They said that's the last
14 piece they forgot to clean out. That's the last piece.
15 That's where the fingerprints on it. I think they got rid
16 of that.

17 The thing about Jonathan Johnson this keep
18 coming back too. Mr. Archer said that he told that story
19 that night to gather his charges. He went and pled
20 guilty, that's about as opposite of getting out of your
21 charges as you can get. He went and pled guilty and he
22 told the judge he accept responsibility.

23 And then Mr. Archer says the letters they begin
24 by describing he's writing on behalf of Tappia Green.
25 Mr. Johnson didn't exactly testify to these. He couldn't

1 tell the story. He couldn't tell the true events. He had
2 to sit here and read the letter. He couldn't get up there
3 and answer questions and tell you here's the story step by
4 step like every other witness. Even Tappia Green got up
5 there and answered one by one. He had to read the letter.

6 Now, whether he wrote it or whether he meant it
7 whatever, I don't know, but he didn't get up there and
8 give testimony like every other witness. He had to get up
9 there and he had to read each of the three letters. And
10 it's not that he says Tappia didn't do it. I'm the only
11 one did it. It's Tappia didn't do it and he wasn't
12 involved and it wasn't a robbery. He backtracks
13 everything.

14 It's not a situation where somebody comes and
15 said, listen, I said his name it was just me. That really
16 didn't happen at all. I don't know why I said what I
17 said. It just didn't happen at all. That doesn't make
18 sense. What makes sense is he tells that story the first
19 night and then he's scared. Scared for his mom. He's
20 scared for himself, scared for his mother. And he said it
21 in the statement he saying things that were not true to
22 protect his mom. And they know where his mom works.
23 Everybody knows where the mom works it's the Hardee's.
24 And Johnson said he went to Wells Fargo to cash a check,
25 that's why he was inside the bank. Showing you State's 1.

1 He's not looking for Keith Lee to do a drug deal inside
2 the bank at the counter at Wells Fargo. He said he was
3 going to cash a check he told you. Him and Tappia going
4 to get that money, went to cash a check. That's why he
5 was at Wells Fargo, not for some mysterious call that we
6 prove doesn't exist.

7 And regarding the parking lot again outside of
8 Hardee's, nobody's just walking around. Johnson's on his
9 phone. He testified to that that he was on his phone.
10 Johnson testified that somebody was on the phone, but
11 didn't tell the whole story. They're not just walking
12 around the parking lot. He's walking around trying to
13 figure out what's going on. He sees the police cars.
14 Even in the summer time, it ain't got that hot that quick
15 where he's got to walk around. And if you're hot, it's
16 hot outside on the pavement, go get something to drink.
17 He's not walking inside. Where they going? The only
18 logical explanation is falls the stories of Mr. Lee and
19 Mr. Johnson. There was silence. They saw police cars.
20 They wanted to figure out what was going on. They were
21 there for three minutes. What could be so important other
22 than that if they're out walking around. And he's on the
23 phone calling Jonathan Johnson.

24 Mr. Archer talked about reasonable doubt and
25 it's rightfully so because that's the burden we have.

1 It's a high burden as it should be. He talked about
2 Officer Caughman. And Officer Caughman probably had some
3 reasonable doubt. Sure, he did. That's how it works.
4 You have the doubt. You listen. You talk to the
5 witnesses. You do the investigation. You look at the
6 evidence and as more and more and more comes out, that's
7 how you get over the threshold. That's how it works. You
8 don't start over the threshold. He's innocent until
9 proven guilty. My job is to prove him guilty. So every
10 -- the testimony that supports our case every bit of
11 evidence, every witness, every picture, whatever you find
12 that's credible and you use, that gets you closer and
13 closer to that threshold, so I told you that. He was
14 skeptical at first and then through the investigation
15 through the demeanor of the victim, how they kept coming
16 back time and time again, that's Johnson's story matched
17 up the first two times, that got him pass that burden. I
18 hope every officer does that, that's how it's suppose to
19 work, that's your job. And I submit with the testimony
20 with the witnesses with the evidence here before you, with
21 statements of Jonathan Johnson before he had the change,
22 that we get above that threshold.

23 If it is as you want to believe that Johnson
24 said it was a collection of debt, they see them in the
25 parking lot say you owe me money. If that is what you

1 believe is the truth, if that still happens by force, it
2 also happens with the gun. They take him against his
3 will. They take money against his will, still armed
4 robbery, still kidnapping, even if that's what you
5 believe. He told you he did the marijuana before he
6 didn't like it. They didn't like it, but if that's the
7 case if that's what you believe that it was a collection
8 of drug debt. If they did it by force, they still met the
9 elements of it. They took and carried him away, took and
10 carried his property away against his will, if they took
11 him away, kidnapped him regardless of the pretense, that's
12 still armed robbery, that's still kidnapping. I submit to
13 you that's not what happened because Keith's always been
14 honest. He's been up front. If you believe it was a drug
15 collection, it's the force that's still there, it's still
16 armed robbery and kidnapping.

17 Let's talk about Mr. Johnson being scared. I
18 think that's accurate. I don't know how else you explain
19 a story that changes so much as it did, implicating
20 somebody else. An armed robbery and kidnapping, that's
21 serious stuff. Implicating somebody else in such a way
22 that corroborates the victim's statement and then turning
23 around and writing on behalf of that individual and
24 completely changing your story. You saw him up there. He
25 wasn't just being dishonest. He was just flat out denying

1 everything. It's common sense. He knew it was on the
2 recording, that's not me. I never said that, knowing full
3 well he did. If that was somebody that truly gave the
4 wrong accounts, I did say that here's why that's not
5 right, here's what I mean. He said he denied everything
6 on this piece of paper. That's not credibility.

7 And Johnson statement is credible because it's
8 corroborated. It's two people hearing the same time and
9 different places said the same thing. They said the same
10 thing. Keith was at Wells Fargo. That he was asked to
11 jump a car off and he did that. They get back to the car.
12 He put a gun to his head and brought him over to the PT
13 Cruiser. They wanted the money didn't have much, had a
14 check. The only option he had and again what people will
15 do in that situation. I'm not a victim of armed robbery.
16 Mr. Archer hasn't been involved in an armed robbery. We
17 don't know we're guessing. He does. He knows. They took
18 him around in Charleston County, took him to Hardee's, got
19 his check and went and cashed it, kept the money.
20 Luckily, he didn't get killed. That's armed robbery,
21 that's kidnapping. And when another person involved says
22 the same thing, you're right I have the photographs that
23 Mr. Archer pointed out. I don't have an in-car camera. I
24 don't have a video of Hardee's of somebody talking or
25 showing a gun, that's powerful. I agree I wish we had it.

1 I wish it existed, but we have somebody that was involved.
2 Maybe, he was scared or whatever. He said listen here's
3 what I'll do. And it's so closely match the victim's
4 statement, that's important.

5 Mr. Archer talked about a hundred guilty men go
6 free and one being innocent. I don't want an innocent man
7 to go to jail. I don't think anybody does. You're not
8 Vaughn. You're not the 1700's. You're not John Adams or
9 Ben Franklin. 2017 in this courtroom is State of South
10 Carolina vs. Tappia Green. You have the victim Keith Lee
11 and his statement. You got the defendant. You got a
12 co-defendant. I don't want an innocent person to go to
13 jail. Nobody wants that. What the evidence in this case,
14 testimony in this case, I don't think that's the case. I
15 ask you to find Tappia Green guilty of armed robbery,
16 kidnapping and possession of a weapon. Thank you.

17 THE COURT: Thank you. All right. Ladies and
18 gentlemen of the jury, that concludes the closing
19 statements or arguments by counsel. I told you when we
20 reached this stage of the proceedings it will be my
21 responsibility to give you your charge concerning the law.
22 We begin the case by my going over with you the three
23 indictments in this case. I will remind you of those
24 three indictments. I will go over them with you briefly.
25 You will be allowed to take the originals into your jury

1 room with you during deliberations and review them at that
2 time. I explain to you that the indictments or the
3 documents that bring the case into this court, they inform
4 us of the charges to be tried. They inform the defendant
5 of the charges against him. The three indictments are for
6 armed robbery, that's case number 2015-GS-10-5983,
7 kidnapping case number 2015-5982, and possession of a
8 weapon during the commission of a violent crime and that
9 is case number 15-5984.

10 Now, the fact that the defendant has been
11 arrested, charged and indicted in this case, those facts
12 do not constitute evidence. They cannot be considered by
13 you as evidence of guilt. Nor does the fact that those
14 things have happened create any presumption or inference
15 of guilt against the defendant. Again, those are just the
16 documents they informed us of the charges that have been
17 lodged. They inform the defendant of the charges against
18 him. They are the charges that the State is required to
19 prove in this case.

20 Now, I will tell you that each indictment
21 contains a separate and distinct charge and you will be
22 called upon to write a separate verdict on each of the
23 indictments. Each indictment it must stand on its own.
24 You are to decide each case based on the law that's
25 applicable to that indictment uninfluenced by your

1 decision as to any other indictment. The defendant may be
2 convicted or acquitted on any or all of these charges.
3 You again will be asked to write a separate verdict on
4 each indictment. I explained at the beginning of the
5 trial the defendant has pled not guilty to those
6 indictments. That plea under our system of justice places
7 the burden of proof on the State solely in this case.

8 A person charged with the commission of a crime
9 in this State is never required to prove himself innocent.
10 It's an important rule of law that a defendant in a
11 criminal case and it doesn't matter what the seriousness
12 of the charge might be, a defendant will always be
13 presumed to be innocent of the crime for which an
14 indictment has been issued, until an unless guilt has been
15 proven to you, the jury, by proof that satisfies you of
16 the defendant's guilt beyond a reasonable doubt.

17 Some people describe the presumption of
18 innocence that all defendant's have somewhat like the robe
19 that a judge wears into the courtroom. Let's say at the
20 beginning of the trial that presumption of innocence is
21 about the defendant's shoulders like a robe. It stays
22 there throughout the trial. It accompanies the defendant
23 into your deliberations and remains about his shoulders
24 until such time as it might be stripped from him by proof
25 that satisfies you of the defendant's guilt beyond a

1 reasonable doubt.

2 Now, the presumption of innocence is not just a
3 legal theory. It's not just a legal phrase. It's a
4 substantial right that all defendants are entitled to and
5 until and unless you, the jury, are satisfied from the
6 evidence presented in the trial of the defendant's guilt
7 beyond a reasonable doubt. Now, you might ask yourself
8 and since you heard me refer to the standard of proof is
9 beyond a reasonable doubt. You may be asking yourself,
10 well, how does the law define a reasonable doubt. What is
11 a reasonable doubt. And I will tell you the cases that
12 have dealt with that issue have defined a reasonable doubt
13 as that kind of doubt that would cause a reasonable person
14 to hesitate to act and the State has the burden of proving
15 the case beyond a reasonable doubt.

16 Let me explain one thing to you so there's not
17 any kind of confusion. I don't know if you ever been
18 involved in a civil case. Civil cases are where people
19 are seeking monetary damages and that can be because
20 somebody didn't pay a debt or they didn't pay their
21 mortgage or they injured somebody and they have to pay for
22 the damages they cause or perhaps they breached a contract
23 or an agreement that they had and they owe money for
24 having breached their contract. Those are the kinds of
25 cases that we refer to as civil cases. The standard of

1 proof in a civil case if you can imagine the scales of
2 justice is when the scales of justice tilt ever so
3 slightly in favor of one side or the other. The standard
4 of proof is by the greater weight of the evidence. So in
5 a civil case if the scales tilt ever so slightly in favor
6 of a plaintiff, the plaintiff gets the verdict. If the
7 scales tilt ever so slightly in favor of a defendant, then
8 the defendant gets the verdict. So that's a standard
9 proof in a civil case, that is not the standard proof in a
10 criminal case.

11 The standard proof in a criminal case is more
12 powerful than that. I will tell you that proof beyond a
13 reasonable doubt is that kind of proof that would leave
14 you confirmly convinced of the defendant's guilt. And I
15 will point out to you however there's very few things that
16 go on in this world that anybody can prove beyond a
17 reasonable doubt whatsoever and the State's not put to
18 that burden. The State does not have to present evidence
19 that overcomes ever possibly doubt.

20 What I will tell you that you should consider
21 all of the evidence in this case. And if after
22 considering all of the evidence in the case, if you are
23 firmly convinced of the defendant's guilt beyond a
24 reasonable doubt, you must find the defendant guilty.
25 However, on the other hand if you think there's a

1 reasonable possibility or a real possibility that the
2 defendant is not guilty, then you must give the defendant
3 the benefit of that doubt and find the defendant not
4 guilty.

5 I told you at the beginning of the case we would
6 have different duties to perform during the trial and I
7 want to remind you what I told you at that time. My job
8 as the trial judge is to be the presider over the case.
9 I've had to rule on certain issues that have come up,
10 motions, appropriateness of questions being asked,
11 admissibility of evidence things of that nature. I will
12 again tell you and instruct you don't take from anything
13 that I have done at the discharge of my duties as the
14 presiding officer to indicate to you that I have a
15 preference one way or the other as to how you determine
16 the facts in this case. I explain at the beginning of the
17 trial you're the sole judges of the facts in the case.
18 Don't take from anything that I say or do to indicate that
19 I have an opinion on that subject, the law does not allow
20 me an opinion on the facts I can assure you. I have no
21 opinion as to how you should determine the facts in this
22 case. I told you earlier as well the same law that makes
23 you the sole judges of the facts makes me the sole judge
24 of the law to be applied in this case. And it's your duty
25 as jurors under your oath to take the law exactly as I

1 give it to you and apply it to the facts as you determine
2 the facts to be. Again, that should you put in a position
3 to render a verdict in this matter. And I will tell you
4 that if you came into this courtroom whether it's an
5 opinion as to what the law is or what the law ought to be
6 and it disagrees with the law is as I give it to you, you
7 must leave your opinions and your ideas about the law
8 outside of the jury room before you begin your
9 deliberations. Again, take the law as I give it to you
10 and apply it to the facts as you determine the facts to be
11 because again you're the sole and exclusive judges of the
12 facts in this matter. It's your duty as jurors to
13 determine the effect, the value, the weight and the truth
14 of the evidence that you heard in this case.

15 Now, I'm going to point out to you one thing and
16 make sure we have a understanding about this. The law
17 divides evidence into two types of evidence and you have
18 the right as a jury to consider these two types of
19 evidence in reaching a verdict in your case. The first
20 type of evidence the law has determined exist is what we
21 refer to as direct evidence. Now, direct evidence is when
22 a witness testifies directly on the fact that sought to be
23 proven. What that means is that person claims to have
24 actually experience the event, been present, witnessed it.
25 They testify directly on the facts they're seeking to

1 prove, that's what we mean by direct evidence.

2 The other type of evidence that a jury has the
3 right to consider in reaching a verdict is what's referred
4 to as circumstantial evidence. Now, circumstantial
5 evidence is proof of a chain of facts or circumstances
6 that indicate the existence of a fact. It's been
7 described as proof of collateral facts from which a main
8 fact might be reasonably inferred. Now, that's some
9 pretty fancy legal language and I like to use a very
10 simple example to illustrate what we mean by proof of a
11 fact by circumstantial evidence.

12 Let's say last night before you went to bed you
13 walked over to the window in your bedroom and you looked
14 outside, beautiful night out. Stars were shinning. Moon
15 was out. So you went to bed and slept well all night
16 didn't wake up at all. The next morning you get up the
17 sun's shinning and you walk over to that same window you
18 were at the night before and you look outside sun shinning
19 beautifully, but when you look a little closer, you notice
20 water dripping out of all the trees. There's puddles out
21 in the driveway and the road in front of your house that
22 weren't there the night before when you looked outside.
23 Maybe the lawn is covered with water thickly. Now, you
24 slept all night. You didn't hear it rain. You didn't see
25 it rain, so you can't state directly as to whether or not

1 it rained, but from collateral facts that you know to be
2 true, you can reasonably infer that it rained at some time
3 during the that. So that's what we mean by proof of
4 collateral facts from which a main fact can be reasonably
5 inferred.

6 Now, the law doesn't make a distinction between
7 the weight and the value you as a juror can give to either
8 direct or circumstantial evidence, that's a decision for
9 you to make. And the law doesn't require a greater degree
10 of certainty of circumstantial evidence then that of
11 direct evidence. What I will tell you that after
12 considering all of the evidence direct and circumstantial
13 if you are firmly convinced of the defendant's guilty
14 beyond a reasonable doubt, you must find the defendant
15 guilty. On the other hand if you think there's a real
16 possibility that the defendant is not guilty, again you
17 must give the benefit of the doubt to the defendant and
18 find the defendant not guilty.

19 Now, in doing your job as a juror, I mentioned
20 at the beginning of the trial that I suppose by now you
21 realize that I was telling you the truth at that time.
22 One of the necessary elements of being a finder of fact in
23 a criminal trial is that you determine the credibility or
24 the believability of the testimony that you've heard in
25 the case. It's your job to determine which testimony

1 convinces you of it's truth. Credibility simply means
2 believability. It's your duty to analyze and evaluate the
3 evidence, determine which evidence convinces you of its
4 truth. You determine the believability of witnesses in
5 this case, you can believe one witness against all the
6 others. You have the right as the sole judges of the
7 facts to believe all the evidence against one as a sole
8 judge of the facts. You can believe all of or part of or
9 none of what a witness may have testified to. You have
10 the right to consider the believability and the
11 credibility of the testimony that you heard. And I urge
12 you to use your good common sense in making those
13 determinations. And I explain to you that you make those
14 decisions every day in your day-to-day life. There's no
15 different in serving on a jury as far as your
16 determination as to the credibility of the witnesses you
17 heard. You have the right to consider such factors as to
18 whether or not a witness exhibited to you some interest in
19 the case or a bias in favor of one side or the other or
20 some type of prejudice or some other motive in the
21 testimony that was given. You have the right and I urged
22 you to consider the appearance of the witnesses as they
23 testified from the witness stand, the way they testified,
24 how they delivered their testimony, use all of those
25 factors I just mentioned and use your good common sense,

1 make an evaluation as to the credibility and believability
2 of the testimony that you heard. It's a necessary element
3 of your job as finder of fact in this case.

4 Now, I will tell you and I mention to you we had
5 witnesses who testified who claimed to be experts within a
6 field. I told you I talk to you about that a little more
7 when I gave you my charge on the law. And I explained at
8 that time that ordinarily the rules of evidence don't
9 allow witnesses to give opinions about things when they
10 testify. That's not allowed under the rules of evidence.
11 The exception to that rule is for someone we designate as
12 an expert, they are allowed to give opinions but within
13 their area of expertise and they're allowed to state the
14 reasons for that. Those witnesses are declared to be an
15 expert because of their either experience or training or
16 education in some art, science, profession or other
17 calling. And they're allowed to state those opinions as I
18 mentioned. I'll tell you as the finders of fact you have
19 the right to consider the opinion of an expert like any
20 other evidence in the case. You give it the weight you
21 think it deserves. Should you decide that the opinion of
22 an expert is not based on sufficient education or
23 experience, if you decide the reasons given for those
24 opinions were not sound or if you believe that the reasons
25 given were outweighed by other evidence, you as a finder

1 of fact have the right to disregard an opinion given by an
2 expert in its entirety or you have the right to give it
3 credibility you think it deserves an expert witnesses
4 testimony however is not to be given any greater weight
5 just because this court declared that person to be an
6 expert. Further, you're not required to accept an experts
7 opinion even though it might not be contradicted by other
8 witnesses.

9 Now, there is a legal theory in our state and I
10 want to go over that with you and it's referred to as the
11 hand of one is the hand of all. And I will tell you that
12 in our statement if a crime is committed by two or more
13 people who are acting together in the commission of the
14 crime, the act of one becomes the act of all. A person
15 who joins with another to commit an unlawful act is
16 criminally responsible for everything done by the other
17 person which happens as a probable or natural consequence
18 of the criminal act done in carrying out the common plan
19 and purpose.

20 For example, two people can be found guilty of
21 killing another person when only one of the two had a gun
22 and there was only one bullet and one only one of them
23 fired the shot that caused the death. If the two or more
24 people were acting together assisting each other in the
25 commission of the offense, then under our law the act of

1 one becomes the act of all. Again, it is sometimes
2 referred to as the hand of one is the hand of all.

3 Now, prior knowledge to the crime is going to be
4 committed without more is not sufficient to make somebody
5 guilty of the crime. The mere fact that you might not
6 know or someone might know another person is going to
7 commit a crime even though the defendant may have been
8 present when the crime was committed is not sufficient to
9 convict the defendant as a principle. Guilt as a
10 principle is shown by actual or constructive presence at
11 the scene of a crime as a result of a prior arrangement.
12 Therefore, there must be a finding of a prior advance plan
13 or a common scheme. And it is necessary for the finding
14 of someone to be guilty of principle. The State must
15 prove beyond a reasonable doubt by competent evidence the
16 theory of the hand of one is the hand of all.

17 A principle in a crime is one who either
18 actually commits the crime or who is present aiding,
19 abetting or assisting in the commission of the crime.
20 When a person doesn't act in the presence of and with the
21 assistance of another, then the act is done by both where
22 two or more are acting together with a common plan or
23 intent and are present at the commission of a crime, it
24 does not matter who actually commits the crime all are
25 guilty. The hand of one is the hand of all. Present at

1 the commission of a crime means to be sufficiently near to
2 aid, abet and assist in the commission of the crime.

3 Now, however mere presence at the scene of a
4 crime is not sufficient to convict one as a principle on
5 the theory of aiding or abetting. An intent is also a
6 necessary element. There must have been a common design
7 or scheme or intent to commit the crime and the crime must
8 have been committed pursuant thereto with the persons'
9 aiding and abetting each other by some overact. Intent
10 means intending the result which actually occurs. The
11 result not accidentally or involuntarily happen. Intent
12 may be shown by acts and conduct of the defendant and
13 other circumstances from which you could reasonably infer
14 intent. The State must prove these matters beyond a
15 reasonable doubt. And again I will point out to you
16 merely being present at the scene of a crime is not
17 sufficient to make someone guilty of that crime.

18 A defendant's presence where a crime is being
19 committed or mere association with a person who commits a
20 crime doesn't make the defendant an accomplice or an aider
21 or abettor of that person committing the crime. The
22 burden is on the State to prove every element of the crime
23 charge. And if after you reviewing all of the evidence
24 you find that the State has prove that the defendant was
25 only present at the scene of the crime and that they have

1 not proved beyond a reasonable doubt any other
2 participation in the crime, then you must find the
3 defendant not guilty. The law is that proof of the mere
4 presence of a defendant at a scene is not in and of itself
5 sufficient for someone to be found guilty.

6 Now, an issue in this case has been the
7 identification, of the defendant as the person who
8 committed the crime and the State has the burden of
9 proving identity beyond a reasonable doubt. You, the
10 jury, must be satisfied as to the reasonable -- as to the
11 accuracy of the identification of the defendant before you
12 can convict the defendant. Identification testimony is
13 constituted by expressions or beliefs or impressions by a
14 witness. You must determine the accuracy of the
15 identification of the defendant. You must consider the
16 believability of the identification of the witnesses in
17 the same way as other witnesses. You may consider whether
18 the witness had an adequate opportunity to observe the
19 defendant at the time of the offense. This could be
20 affected by things like how long or short a time was
21 available, how far or close the witness was, lighting
22 conditions, whether the witness had a chance to see or
23 know the person in the past. Once again, I instruct you
24 it is -- the burden is on the State to prove every element
25 of the crime and that extends to proving beyond a

1 reasonable doubt the identify of the person who committed
2 the crime. And, again, if after examining the testimony
3 you have a reasonable doubt as to the accuracy of the
4 identification of the defendant as a participant in the
5 crime, you must find the defendant not guilty.

6 Now, I'm going to go over the offenses that the
7 defendant has been charged with. First offense I'm going
8 to talk about is armed robbery. The defendant is charged
9 with armed robbery. And in order to prove this offense,
10 the State must first prove beyond a reasonable doubt that
11 the defendant took personal property from the person or
12 presence of another person. Property is in the presence
13 of a person if it's within that person's reach,
14 inspection, observation or control. So that the person
15 could if not overcome with violence or fear keep
16 possession of the property. The State must also prove
17 beyond a reasonable doubt that the defendant carried the
18 property away intending to permanently deprive the owner
19 of the property and to keep the property for the
20 defendant's own use. The slightest removal of the
21 property or the complete possession of the property even
22 for an instant by a defendant is sufficient to show a
23 carrying away of the property. Taking and carry away of
24 the property must have been done with either violence or
25 putting the owner of the property in fear of violence.

1 Finally, the State must prove beyond a
2 reasonable doubt that the defendant was armed with a
3 deadly weapon during the robbery. A deadly weapon is any
4 article, instrument or substance which is likely to cause
5 death or great bodily harm whether any instrument has been
6 used as a deadly weapon will depend upon the facts and
7 circumstances of each case.

8 The next crime that I'm going to discuss is
9 kidnapping. The defendant is charged with kidnapping.
10 And the State in this case must prove beyond a reasonable
11 doubt that the defendant is knowingly and unlawfully
12 seized, confined, inveigle, decoyed, kidnapped, abducted
13 or carried away another person without the authority of
14 law. To do a thing unlawfully is to do it willfully
15 against the law. Knowingly means with knowledge
16 conscientiously and not accidentally. Seize means to take
17 hold of suddenly or forcibly. Confine means to limit,
18 restrict or enclose within bounds, imprison, shut up or
19 keep in. Inveigle means to lure, entice or lead astray by
20 false presentations, promises or other deceitful means.
21 Decoy means to lure. Decoy is something done to entice a
22 person into a trap. Kidnap is to remove a person against
23 his will by unlawful force or by fraud. Abduct means to
24 carry off secretly or by force for an illegal purpose.
25 Carry away means to remove.

1 Now, the State does not have to prove that the
2 defendant did all of those things. Instead, if you find
3 beyond a reasonable doubt that the defendant did any of
4 those things that I just mentioned, you may find the
5 defendant guilty of kidnapping. Something is done without
6 the authority of law, that's something which the law does
7 not sanction, permit, allow, condone or provide
8 justification for. A kidnapping does not have to be for
9 any personal or monetary gain or for any illegal purpose,
10 but it may be for any reason whatsoever.

11 The final crime that the defendant is charged
12 with is possession of a weapon during the commission of a
13 violent crime. First of all, the State for this offense
14 to be established must prove beyond a reasonable doubt
15 that the defendant is guilty of the commission a violent
16 crime as defined in the South Carolina Code of Laws. I
17 will tell you that both armed robbery and kidnapping are
18 defined as violent crimes under South Carolina law.
19 Secondly, the State must prove beyond a reasonable doubt
20 that the defendant while in possession -- while in the
21 process excuse me of committing of a violent crime was in
22 the possession of or visibly displayed what it appeared to
23 be a firearm or a knife.

24 Mr. Barney, as luck would have it, you're
25 sitting in the right seat because I'm going to appoint you

1 as the foreperson of the jury, that means that it will be
2 your responsibility to assist the jury in their
3 discussions. Should the jury at any time have a question,
4 then you would be the person who would write that question
5 on a piece of paper, knock on the door, hand it to the
6 bailiff. The bailiff will then submit it to me for my
7 consideration. I'll caution you there's some questions I
8 can't answer for you because I can't get directly involved
9 in your decisions on the facts. I can't answer questions
10 about the law I've charged, some questions about the
11 procedure, but I'm not asking you to edit any questions,
12 submit them to me, I'll decide what the appropriate answer
13 might be. So just write it on a piece of paper hand it
14 out. Also once the jury has reached a verdict, it'll be
15 your responsibility to record that verdict on a verdict
16 form. I'm going to give that to you in a few minutes
17 after I've gone over some matters with the attorneys and
18 we done some housekeeping chores.

19 Now, the fact that I've appointed Mr. Barney as
20 the foreperson of the jury, I pointed out to you at the
21 beginning of the trial makes him no more important than
22 any other juror in the deliberation of this case. Your
23 verdict must be unanimous. All of you must agree upon the
24 verdict before it becomes the verdict of the jury. So I
25 have appointed him to lead the discussions, but other than

1 that, each of you must agree upon the verdict before it's
2 the verdict. It will be three verdicts one for each
3 charge in this case.

4 Now, I've gone over a great deal with you. I
5 want to be sure I haven't misspoken in what I've told you.
6 I'll go over my charge with the lawyers. We're going to
7 gather the evidence that'll go back with you for you to
8 consider and be sure we agree on what's going back and
9 what perhaps didn't get in and want be going back. So
10 we'll be going over that information as well, so there's
11 housekeeping chores that I have to do. This will be the
12 last time I'll ask you to go back to the jury room and not
13 talk about the case, but I'm going to ask you one more
14 time to go back to the jury room. Don't discuss the case
15 until I ask you to do so. I'll bring you back to the
16 courtroom for your final instructions. You may retire to
17 the jury room.

18 (WHEREUPON, the jury retire to the jury room.)

19 THE COURT: All right. Any objections to the
20 charge from the State?

21 MR. COOPER: Nothing from the State, Judge.

22 THE COURT: Anything from the defense?

23 MR. ARCHER: None from the defense, Your Honor.

24 THE COURT: If you'll come forward gentlemen and
25 let's gather the exhibits, we've had a couple of court

1 reporters. So let's be sure we all agree on what's going
2 back before we send anything back and I'll need to get a
3 verdict form ready and I will do that right now.

4 (WHEREUPON, a pause in the proceedings.)

5 MR. COOPER: And, Judge ---

6 THE COURT: Yes.

7 MR. COOPER: The disk will take a minute with
8 the different recordings and whatnot jump holes, multiple
9 jolk (sic) holes on there recordings. I played clips, so
10 I have those times recorded.

11 THE COURT: One we took something out of?

12 MR. COOPER: Yes, sir.

13 THE COURT: So we're not going to send that one
14 back.

15 MR. COOPER: Well, I think all of them ---

16 THE COURT: I think one -- there was something
17 we eliminated and probably have to play that one in the
18 courtroom.

19 MR. COOPER: And there was one ---

20 THE COURT: So there's two of them we're not
21 sending back?

22 MR. COOPER: I think it's all of them. The jail
23 calls has a whole bunch of calls on there and you have to
24 pick through all the jail calls. I think all the CD's
25 have...

1 THE COURT: So all the CD's if they were to
2 listen to them, they'll have to come back in here?

3 MR. COOPER: Yes, sir.

4 THE COURT: Is that right?

5 MR. COOPER: Yes, sir.

6 THE COURT: Okay. All right. Just one second,
7 I'll have the verdict form for you.

8 (WHEREUPON, a pause in the proceedings.)

9 THE COURT: Gentlemen, if you'll step up, this
10 is the verdict form I intend to use see if they're any
11 objections? And see if there's anything on the indictment
12 you have an objection to?

13 MR. COOPER: Looks good to me.

14 MR. ARCHER: Looks fine to me, Judge.

15 THE COURT: All right. Come to order then,
16 let's bring the jury in.

17 (WHEREUPON, the jury came into open court.)

18 THE COURT: All right. Thank you. The jury has
19 returned to the courtroom. The first thing I need to take
20 care of let's see, Mr. Raymond, I believe on Monday they
21 excused you from Friday court; is that correct?

22 JUROR: Yes, sir.

23 THE COURT: That's my understanding anyway from
24 Judge Jefferson's notes. I note we're within an hour of
25 taking our evening break, so at this time since they

1 excused you from any type of service on Friday, I'm going
2 to remove from the jury at this point and time. So you're
3 excused from any further responsibility. I'll talk to you
4 some more in just a few minutes about that, but I'm going
5 to do that. In order to replace the juror I am removing,
6 I'm having the clerks they have put the two alternates
7 juror numbers on a slip of paper. The other member of the
8 clerk's office is going to pull one of those, that person
9 will be seated on the jury.

10 Which number did you pull?

11 THE CLERK: Your Honor, juror number 334.

12 (WHEREUPON, Court's Exhibit No. 4 was marked for
13 the record.)

14 THE COURT: 334, sir, is that you?

15 JUROR: It's me.

16 THE COURT: That's you, okay. Oh, he's hiding
17 his smile. All right. Ma'am, now you're seated on the
18 jury. You'll be serving as a regular juror on the case.
19 All right. Now, and I do know that there's another juror
20 that has a special event at six o'clock. My intention is
21 for deliberations to go until five. If a verdict has not
22 been reached, we'll break and come back in the morning.
23 So just depends on from here on out, you will be
24 determining how you wish your deliberations to go forward,
25 but we will be breaking for that person to go to some

1 special event that they made us aware of earlier as well.

2 Now, Mr. Bailiff, if you would, sir, if you
3 would hand these papers to the foreperson for me. Thank
4 you. Let me go over the documents I've handed to you.
5 The top one is the verdict form going to use in the case.
6 It has on there the name of the case, the parties
7 involved, each indictment below that is stated as a
8 separate question. Indictment number one, I believe, is
9 for armed robbery, indictment number two is for
10 kidnapping, and indictment number three is possession of a
11 weapon in the commission of a violent crime. Now, under
12 that there two choices not guilty or guilty. Once an
13 unanimous verdict has been reached on one of those
14 choices, you'll put an x or a check on the line next to
15 the appropriate verdict and then move on to the next
16 question. Now, you will not answer number three if a
17 defendant is found not guilty of the first two charges
18 because one of the elements of the third offense is he has
19 to be found guilty of a violent crime and then the
20 question is did he use a weapon in the commission of that
21 crime. So if you find him not guilty of a violent crimes,
22 there's no reason to answer question number three do you
23 understand how that would work?

24 JURY FOREPERSON: Yes, Your Honor.

25 THE COURT: All right. Down below are the

1 indictments. The indictments are the documents I've been
2 going over with you. They've been supplied to you so that
3 you can review the nature of charges and the elements of
4 the crime that's stated in those indictments, so those are
5 for your information in case you need those in your
6 deliberations.

7 Now, we're going to send the exhibits back with
8 you into the jury room. There are disks that have been
9 introduced with recordings on them because -- we went over
10 them thoroughly. There's some things I excluded because
11 they were not admissible under the rules, so if you wish
12 to listen to those disks, let the bailiffs know, we'll
13 have to bring you back into the courtroom so that we can
14 play only those portions that were introduced. So the
15 disk won't be with you in the jury room, but if you have
16 any need to listen to them, you have a right to review
17 them. We'll bring you back into the courtroom and allow
18 you to do that in the courtroom. So do you understand how
19 that would work?

20 JURY FOREPERSON: Yes, Your Honor.

21 THE COURT: Now, if you have any problems or
22 difficulty let the bailiffs know outside of the jury room,
23 they'll be glad to try to take care of that. Let me
24 caution you on one other thing if at any time during
25 deliberations it becomes necessary for a member of the

1 staff to come into the jury room, while that person is in
2 the jury room stop your discussions about the case, don't
3 discuss or deliberate while that person is present, only
4 resume your deliberations when they've completed their
5 task and left the room. So do you understand how that
6 work?

7 JURY FOREPERSON: Yes, Your Honor.

8 THE COURT: Okay. So discussions should not
9 take place in front of anyone other than your fellow
10 jurors. All right. Now, the gentleman that I've excused
11 and, sir, you are an alternate. I'm going to ask that you
12 two gentlemen remain seated. The remainder of you may
13 retire to the jury room and begin your deliberations at
14 this point.

15 (WHEREUPON, the jury began deliberations at
16 4:15.)

17 THE COURT: All right. Gentlemen, let me
18 explain to you, I'm now releasing you from any further
19 responsibility in this case. In the case of an alternate,
20 once 12 jurors go back and begin deliberations, your job
21 has been completed. You are here to fill in in case
22 somebody had to be excused and then you would have been
23 filling in for someone for that reason. So I want to
24 thank you for your presence. I tell people that you are
25 often like someone who was invited to the dance, but we

1 wouldn't let you dance. We do appreciate your presence.
2 We couldn't have done it without you present. And
3 obviously we needed alternates in this case. And, sir, I
4 want to thank you for your willingness to serve and be
5 present. We thought this case when we began earlier in
6 the week would go much quicker than this. Of course,
7 cases take on a life of their own sometimes. We had some
8 issues we had to deal with and took a little longer than
9 we expected, but at any rate thank you for your presence.

10 Now, if you need an excuse for your work, the
11 bailiff will assist you in getting that. You'll get a
12 voucher from the clerk's office for your jury pay. Don't
13 plan to retire on that check. It's not going to be enough
14 to do that. You won't be able to buy Christmas with it or
15 anything like that, but it's all the law allows us to pay.
16 It's not enough for the time that you been with us.

17 Now, I told you throughout the trial not to
18 discuss this case with anyone. I will tell you now that
19 you have a right to do so, but a citizen owes no one an
20 explanation for what they do on a jury. You're not
21 required to discuss it with anybody unless you choose to
22 do that. So if someone were to come to you and bother you
23 about your service or harass you in any fashion, I don't
24 think that's going to happen, but if it does, report it to
25 the clerk's office and the appropriate action will be

1 taken should that occur. Again, thank you for your
2 presence this week and the bailiffs will show you out and
3 there's not another jury trial starting, so this is it for
4 you and you're through for the week. Thank you very much.

5

6 (WHEREUPON, a juror and one alternate juror were
7 dismissed.)

8 THE COURT: Any objections to my final
9 instructions from the State?

10 MR. COOPER: No, sir.

11 THE COURT: Any from the defense?

12 MR. ARCHER: None, Your Honor.

13 THE COURT: All right. We'll be in recess until
14 we receive a question or a verdict. Thank you very much.

15 (WHEREUPON, court in recess.)

16 (WHEREUPON, juror number 280 Laura Pavlides came
17 into the courtroom.)

18 THE COURT: Ma'am, I can quit early today, but I
19 can't release you all together. You have to come back in
20 the morning. I've already released all the alternates, I
21 don't have any other choice. I use the entire trial. So
22 do you want to go home early today?

23 JUROR: It won't matter because tomorrow is the
24 worse day. I got it every 21 days. I don't know what to
25 do. And I don't even leave the house on day two or three

1 because it's so bad. It just happen two days ago.

2 THE COURT: Ma'am, I wish there was something I
3 could do.

4 JUROR: I can't even sit in a chair because I'm
5 going to leave a mark, so it's all the way through, so I
6 really don't know what you want me to do.

7 THE COURT: I don't know what to do, I've never
8 had this problem.

9 JUROR: Me neither. So there's no more
10 alternates?

11 THE COURT: I released all the alternates.
12 We'll be glad to stop and let you do whatever you need to
13 take care of as best you can.

14 JUROR: Okay. I'll just bring a towel.

15 THE COURT: Do you want to go home early today?

16 JUROR: No, it doesn't really matter now, it's
17 all the way through.

18 THE COURT: I'm sorry. I wish I would have
19 known about it before I released the alternates, I
20 certainly would have been willing to cooperate, more
21 willing to cooperate under those circumstances. I hope
22 you understand that, okay.

23 JUROR: All right.

24 THE COURT: You want to start a little later in
25 the morning?

1 JUROR: No, it doesn't matter.

2 THE COURT: If you're here, you're here.

3 JUROR: Yeah.

4 THE COURT: I'm sorry.

5 JUROR: All right.

6 THE COURT: Thank you.

7 (WHEREUPON, juror returned to the jury room.)

8 THE COURT: This juror that was in here, she's
9 not participating with discussions. She's just back there
10 crying. She says it's going to be worse tomorrow.

11 MR. ARCHER: What's her problem I didn't catch
12 it?

13 THE COURT: She's having her period. Apparently
14 she's menopausal, so it's something she doesn't even go
15 out she says on days two and three. You heard what she
16 said?

17 MR. COOPER: I heard.

18 THE COURT: I'm going to have to miss try the
19 case.

20 MR. COOPER: They're here. They heard it.
21 They're capable.

22 THE COURT: We're back to a mistrial.

23 MR. ARCHER: Come back next week. I know it's
24 an unusual situation, but I mean there's no defect with
25 the case.

1 THE COURT: I'm going to miss try the case. If
2 I try to bring that jury back next week after this
3 experience, it's going to be another mess after another
4 mess. I wish she had told me before I had released ---

5 MR. COOPER: Anytime before ---

6 THE COURT: She didn't and now she's back there
7 not participating. And it's going to be worse tomorrow
8 she says. So she's not an effective juror.

9 (WHEREUPON, a pause in the proceedings.)

10 THE COURT: Okay. All right. Let me put on the
11 record, we got a juror who is having a problem with her --
12 she's having her period. Apparently, she's a very
13 emotional thing for her. She's asked to be relieved.
14 She's apparently not being an effective juror at this
15 point in time. I inquired of the defense if they were
16 wanting me to proceed with 11 jurors since I have released
17 the alternates at this time. I'll ask the defense do you
18 wish for me to proceed with 11 jurors?

19 MR. ARCHER: My client says he does not wish to
20 proceed with 11.

21 THE COURT: So he will not waive the
22 constitutional right?

23 MR. ARCHER: He will not waive that right.

24 THE COURT: All right. Bring in the lady who's
25 having the problem.

1 (WHEREUPON, a pause in the proceedings.)

2 THE COURT: I'm informed they've reached a
3 verdict.

4 MR. ARCHER: They reached a verdict?

5 THE COURT: That is what I was just informed of.
6 All right. Get everybody in. Are you ready to receive
7 the verdict?

8 MR. COOPER: Yes, sir.

9 THE COURT: Defense ready?

10 MR. ARCHER: Yes, sir.

11 THE COURT: What was her number?

12 THE CLERK: 280, Your Honor.

13 (WHEREUPON, the jury returned to the courtroom
14 with a verdict at 4:53.)

15 THE COURT: All right. The jury has returned to
16 the courtroom. Mr. Foreman, Mr. Barney, I been informed
17 that a verdict has been reached; is that correct?

18 JURY FOREPERSON: It has, Your Honor.

19 THE COURT: Now, we had an issue that's come up
20 while you were in there deliberating. Do you feel that
21 the jury has had an adequate opportunity to review the
22 case and has issued its decision without duress.

23 JURY FOREPERSON: I do, Your Honor.

24 THE COURT: So you think it is a fair verdict in
25 this matter?

1 JURY FOREPERSON: Yes, sir.

2 THE COURT: And, ma'am, the lady that I talk to
3 about your problem, you are juror number 280 and your last
4 name is -- your first name is Laura; is that right?

5 JUROR: Yes.

6 THE COURT: I want to be sure I've identified
7 you on the record properly juror number 280. Have you
8 been able to participate in this decision?

9 JUROR: Yes.

10 THE COURT: And do you feel that this is a fair
11 verdict on your part?

12 JUROR: Yes.

13 THE COURT: And have you had an opportunity to
14 adequately consider the case?

15 JUROR: Yes.

16 THE COURT: All right. Now, is there any juror
17 -- is this the verdict of all the jury if this is your
18 verdict raise your right hand.

19 (WHEREUPON, all jurors' hands were raised.)

20 THE COURT: All right, pass it to the bailiff
21 please.

22 You may publish the verdict.

23 THE CLERK: Thank you, Your Honor. The State of
24 South Carolina County of Charleston, Court of General
25 Sessions the Ninth Judicial Circuit. State of South

1 Carolina vs. Tappia DeAngelo Green: We, the jury,
2 unanimously find as follows indictment 2015-GS-10-5983
3 guilty, indictment number 2015-GS-10-5982 kidnapping
4 guilty, indictment number 2015-GS-10-5984 possession of a
5 during the commission of a violent crime guilty. Signed
6 Mr. Foreperson May 25, 2017.

7 Ladies and gentlemen of the jury, if this is
8 your verdict please raise your right hands. Please let
9 the record reflect all jurors raises their right hand and
10 the verdict stands.

11 THE COURT: Thank you. Anything further from
12 the State before I release the jury?

13 MR. COOPER: Nothing from the State, Judge.

14 THE COURT: Anything further from the defense?

15 MR. ARCHER: No, Your Honor.

16 THE COURT: All right. Ladies and gentlemen of
17 the jury, I want to thank you for your attention to your
18 duties in this case. I want to thank you for the time
19 that you spent on this matter. I'm releasing you from any
20 further responsibility in this matter at this time. You
21 have the right now to discuss the case with anyone if you
22 wish to. You also have a right not to do so. No one is
23 required to discuss their service on a jury unless they
24 chose to do that. If anyone were to try to harass you or
25 bother you concerning your service on the jury, please let

1 me know or let the clerk know we'll take the appropriate
2 action. They'll give you an excuse from work back in the
3 jury room and you'll get a voucher for your pay next week.
4 It's not going to be enough money to pay you for your
5 time, but it's all the law allows. And again thank you
6 for your attention to your duties. The bailiff will show
7 you out. Mr. Foreman, you'll need to meet with the clerk
8 for just moment. You'll need to sign something on the
9 indictments for us. So, Mr. Foreman, if you'll stay, the
10 rest of the jury is free to go.

11 (WHEREUPON, the jury is dismissed.)

12 THE COURT: You have to sign something on the
13 indictment. She's gone to get them and she'll be in in
14 just a moment, so just have a seat.

15 (WHEREUPON, a pause in the proceedings.)

16 THE COURT: Mr. Cooper, are you getting some
17 sentencing sheets ready?

18 MR. COOPER: Mr. Wetmore went to grab them-real
19 quick.

20 THE COURT: I'm going to step back to my office
21 for just a moment, I'll return.

22 MR. COOPER: Yes, sir. Thank you.

23 (WHEREUPON, a break was taken.)

24 THE COURT: You have your sentencing sheets
25 ready?

1 MR. COOPER: Yes, Your Honor. May I approach?

2 THE COURT: Yes, sir. Okay. All right.

3 Mr. Green, if you will please stand.

4 MR. ARCHER: Your Honor, I have some motions to
5 make.

6 THE COURT: Yes, sir. I still like the
7 defendant to stand though, stand please, sir. Thank you
8 very much.

9 MR. ARCHER: I will repeat my motion about the
10 remaining silent, that you already ruled upon.

11 THE COURT: Yes, sir.

12 MR. ARCHER: We had a juror who was brought out
13 here because she wanted to be released.

14 THE COURT: We did.

15 MR. ARCHER: And I think Your Honor had
16 concluded that she was not in a condition to participant.

17 THE COURT: Well, what I had been told that she
18 was having difficulty back in the jury room and I was told
19 that on days two and three of her problem which would be
20 tomorrow or Saturday, that she had even worse problems,
21 that hadn't arrived yet though those worse problems. So
22 the issue was whether we continued the case or not since
23 I'd already told the jury we would release them at five
24 o'clock and we were at that time within 15 minutes or so
25 of five o'clock.

1 MR. ARCHER: Well, I would make a motion for
2 mistrial based on the fact she appeared to be unable to
3 effectively participate in deliberation.

4 THE COURT: I understand that, but then I
5 inquired of her specifically in the courtroom as to
6 whether or not she was able to participate fully in the
7 verdict and if it was her verdict and she indicated that
8 it was. So I'll deny that motion.

9 MR. ARCHER: Yes, sir.

10 THE COURT: And your motions also -- your
11 posttrial motions concerning the directed verdict I'll
12 deny that as well.

13 MR. ARCHER: Deny those also?

14 THE COURT: Yes, sir. Now, I'm going to
15 consider sentencing in this case. Mr. Green, I'm going to
16 discuss that matter with your lawyer. I'll give you an
17 opportunity to speak. There will be an opportunity for
18 anyone to speak on your behalf, if someone would like to
19 do so.

20 You may proceed.

21 MR. ARCHER: Well, Your Honor, the co-defendant
22 who came in and testified received a sentence of 15 years
23 and I think it's clear he's the primary actor in this and
24 not Mr. Green, so I think that he has to get sentencing
25 ten for the armed robbery.

1 THE COURT: Yes, sir, that's a mandatory minimum
2 in our state.

3 MR. ARCHER: Yes, sir, but I think that a
4 verdict -- I mean, sentence between ten and 15 is
5 appropriate here. Like I said, I think it's clear that
6 Mr. Johnson was the primary actor. He's the fellow to
7 take him inside. He's the fellow who posed the gun
8 initially.

9 THE COURT: Well, he was the fellow holding the
10 money according to his own testimony.

11 MR. ARCHER: Yes, sir. So I know he have to
12 have a minimum of ten years, but I know ten years would be
13 appropriate particularly since this is an 85 percent
14 offense.

15 THE COURT: All right. Mr. Green, is there
16 anything you like to say to me about this?

17 THE DEFENDANT: Yes, sir. I understand I use a
18 trial, sir, and I understand that I got to do sometime in
19 prison, but can it not be too much, so one day I can
20 possibly make it home to my child, sir.

21 THE COURT: All right, sir.

22 THE DEFENDANT: I apologize to the Court being a
23 problem.

24 THE COURT: You don't have anything to apologize
25 to me.

1 MR. ARCHER: He has a child. He's not really
2 seen because it was born while he was in prison.

3 THE COURT: I see. Okay, I understand. Now, at
4 this time I'll hear from the State concerning prior
5 convictions. I'm aware of one, but there may be others
6 that were not considered impeachable.

7 MR. COOPER: Yes, sir. The defendant has 2008
8 possession of a stolen pistol, 2010 unlawful negligent of
9 a child, 2014 assault and battery third degree and a 2014
10 unlawful carry along with a 2013 strong armed robbery as
11 well.

12 THE COURT: All right. Now, does your victim
13 wish to be heard?

14 MR. COOPER: He does at appropriate time, Judge.

15 THE COURT: All right. This would be the
16 appropriate time. I'll be happy to hear you. Sir, if
17 you'll stand, state your name for me.

18 KEITH LEE: My name is Keith Lee.

19 THE COURT: Yes, sir, I'll be happy to hear from
20 you on this.

21 KEITH LEE: I want to say if they would have
22 just asked me for the money, me being an old country boy
23 free hearted and free handed, I would have given the shirt
24 off my back. I would have give them everything I had they
25 just would have came to me and ask me and let me know that

1 they was in need. And I would have just been happy to
2 hand it over to them, Judge.

3 THE COURT: I understand. Thank you, sir.

4 KEITH LEE: Thank you.

5 MR. COOPER: Your Honor, you've obviously heard
6 the facts of this case. You have heard the evidence the
7 jury heard. I understand Mr. Archer's position that they
8 believe that Mr. Johnson is the prime suspect. Your
9 Honor, I think the victim has always maintained that's not
10 the case and I believe the testimony has shown that. He
11 was the one that got out of the vehicle. They got Mr. Lee
12 into the vehicle, took him into the Hardee's. They took
13 him into the check cashing place, but I think the victim
14 explain Mr. Green was the mastermind behind the thing.
15 Mr. Green as, you know, strong armed robbery conviction
16 already. That case involved a situation where he called
17 the victim, asked the victim to come jump his car off.
18 When the victim arrived, there was no car. Mr. Green then
19 robbed him. There was another armed robbery associated at
20 the same time that was dismissed. So Mr. Green has
21 obviously done this before. I think that he was wise
22 enough to know to stay in the car, get somebody else to go
23 out and do what needs to be done. So I think that the
24 State has always maintained that he has been the one at
25 the center of this.

1 Your Honor, I think that he has never taken
2 responsibility. I think he has lied especially to the
3 Court one about Miranda this morning. I think that was a
4 lie to the Court. I think he's lied to the jury. I think
5 he showed no remorse about this incident, Judge.

6 Mr. Johnson took responsibility came in and pled
7 guilty got 25 years suspended to 15 years and that was
8 with the State making clear that that was the individual
9 that saved Mr. Lee's life. Had it not been for
10 Mr. Johnson, Mr. Green very well may have killed Mr. Lee
11 and I think that's an important point, Judge. So I also
12 believe that with change in Mr. Johnson's story coming
13 after the time in which Mr. Green's been incarcerated, the
14 State has every belief that Mr. Green had something to do
15 with that. That he has somehow gotten the co-defendant to
16 write these letters in support of his dismissal of charges
17 or whatever Mr. Green thinks he need to get out of that,
18 Judge.

19 Your Honor, with all the wrapped in together, I
20 think giving his past history, given his conduct here, the
21 threatening of people, the threatening of innocent people
22 in Hardee's, the coming out of the vehicle which again, I
23 think, going into the Hardee's, Your Honor, I think the
24 State would ask for something in the neighborhood of 20 to
25 25 years. I think it's certainly more appropriate for him

1 to have a longer sentence than the co-defendant
2 Mr. Johnson.

3 THE COURT: Mr. Archer, how much time has he
4 claimed a credit for, how long has he been in?

5 MR. ARCHER: He's been in jail for almost two
6 years.

7 THE COURT: When he gets in there, these days
8 are going to be important to him. If he wants to claim a
9 specific number of days, now would be the time to do it.
10 Don't send me a letter two years from now asking for more
11 days.

12 MR. ARCHER: He got married -- he got locked up
13 August the 18th 2015.

14 THE COURT: So he's been in continuously since
15 August the 18th 2015. Do the math for me please, sir? I
16 don't like these issues coming up later on. I'll rather
17 deal with them now.

18 MR. COOPER: Judge, and it has been since
19 8-19-2015, that would be 646 days, Judge.

20 THE COURT: 646.

21 MR. COOPER: Yes, sir.

22 THE COURT: Do you agree with that, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: 646. Help me something, Mr. Cooper?
25 You indicated Mr. Johnson received a sentence of 15 years.

1 What did his prior record...

2 MR. COOPER: Your Honor, it was a 25 suspended
3 to 15.

4 THE COURT: I understand.

5 MR. COOPER: His prior record 2013, his all 2013
6 two counts of possession of marijuana, two counts of
7 driving under suspension, possession of other possession
8 of marijuana, and he was on a YOA for A&B first and
9 unlawful carrying. I think it's important to know, Your
10 Honor, he has at the time and still today a lewd act with
11 a minor and CSC with a minor second pending while
12 Mr. Green has four forgery charges and failure to stop
13 pending.

14 THE COURT: Having reviewed factors in this
15 case, that being the facts involved, the severity of the
16 crimes, the prior record of this individual, his relative
17 participation in this as oppose to the other participants,
18 I find that perhaps his level of participation may have
19 been equal to or less than that of Mr. Johnson. I do
20 however find that his prior record is much more serious
21 than Mr. Johnson having been charged with armed robbery
22 and pled guilty to a strong armed robbery. And so all of
23 those factors taken into consideration in the case of the
24 armed robbery and the kidnapping, the sentencing is to run
25 concurrently. All of these cases I have made a finding

1 that there was no sexual misconduct, that will assist him
2 later on in work release as he approaches the end of his
3 sentence. So there has been a finding included on both
4 sentencing sheets that this does not involve any type of
5 sexual misconduct. Both cases the sentence is 15 years
6 with credit for 646 days and on the possession of a weapon
7 during the commission of a violent crime five years run
8 concurrent. Good luck to you, sir.

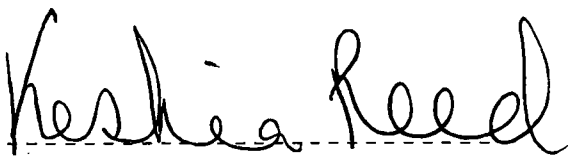
9 END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 191, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Charleston County, South Carolina, on the 25th day of May, 2017.

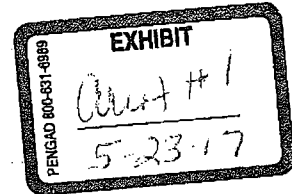
I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 22nd day of November 2017.


Keshia Reed, Court Reporter

Albertha Rivers 309

I have an appointment on 5/25
at 2pm. Is it too late to be excused?

Thanks

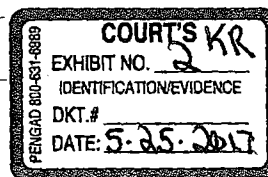


Judge and Court - May 25, 2017
Thursday

I, juror 280, have a banquet
tonight for my child at 6pm -

I had no idea how long this
week would be or where we
we be in the process. I really
need to make this event -

Thank you.



RMB
AUG 21 2015

REVISED 01-01-2008

North Charleston Police Prosecutive Case Folder Checklist

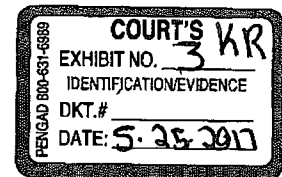
ORIGINAL CASE NUMBER 2015025860 DATE 08-19-2015

DEFENDANT GREEN TAPPIA B M 25

Last Name First Name Race Sex Age DOB

THE FOLLOWING PAPERWORK MUST BE COMPLETED, PLACED IN THE CASE FOLDERS AND CHECKED BY THE DUTY SUPERVISOR BEFORE BEING SUBMITTED.

- ☒ PROSECUTIVE SUMMARY ✓
- ☒ INCIDENT REPORT (1 COPY) BOOKING REPORT (3 COPIES) ✓
- ☒ AFFIDAVIT (4 COPIES) TICKET (ALL COPIES)
- ☒ N.C.I.C. PRINTOUT (1 ORIGINAL)
- ☐ ADVISEMENT OF RIGHTS FORM (1 ORIGINAL)
- ☐ VICTIM NOTIFICATION FORM (IF NOT A BUSINESS) (JAIL RECEIVES YELLOW AND PINK)
- CHECK ANY OF THE FOLLOWING PAPERWORK THAT IS INCLUDED IN CASE FOLDER
- ☐ DEFENDANT(S) STATEMENT(S) (ORIGINALS)
- ☐ CHAIN OF CUSTODY SHEET (EVIDENCE BLUE COPY)
- ☐ OTHER EVIDENCE INFORMATION (DMT DATAMASTER RESULTS)
- ☐ INVESTIGATOR SUPPLEMENTS (ORIGINALS)
- ☐ SEARCH WARRANTS/RETURNS
- ☐ LAB ANALYSIS REQUEST (SLED/F.B.I.)
- ☐ LAB ANALYSIS RESULTS
- ☐ CORONERS REPORT
- ☐ MISCELLANEOUS INFORMATION (Witness Statements)



FIREARM CASES/VIOLENT OFFENSES

- ☐ CRITERIA FOR DETECTIVE NOTIFICATION OR CALL-OUT
Evidence of a unique nature that has been located at the scene and could possibly be linked to recent incidents. For example: bullet resistant vests, masks, clothing, photographs, or other weapons...etc.
Type of firearm or ammunition that may be similar to recently documented crimes.
- ☐ COMPLETE HABITUAL VIOLENT OFFENDER FORM (AS LISTED IN S.C. 16-1-60)
Forward to Crime Analysis Supervisor
- ☐ CHECK PROBATION AND PAROLE STATUS OF SUSPECT(S)
Forward a copy of incident to I.L.P. Unit
If applicable, contact Probation and Parole and report the incident involving suspect.
S.C. Probation and Parole Contact:
Charleston County @ 740-1553 ext.156 Fax: 740-1567 Berkeley County @ 761-8395 Fax: 761-2755
Dorchester County @ 832-8340 Fax: 821-8396
- ☐ BOND STATUS OF SUSPECT(S)
Question suspect about bond status. If on bond, contact appropriate court for possible bond cancellation.
Charleston County Bond Court: 529-7482 Berkeley County Bond Court: 723-2800
Dorchester County Bond Court: 832-0370
- ☐ COMPLETE TRACE FORMS AND FORWARD TO A.T.F. TASK FORCE/INV.SEC.

OFFICER'S SIGNATURE AND BADGE: Ptl. Riley #333

SUPERVISOR'S SIGNATURE AND BADGE: Sgt. Bailey #66

NORTH CHARLESTON POLICE DEPARTMENT PROSECUTIVE SUMMARY REPORT

DATE OF REPORT:	08/19/2015	CASE NUMBER:	2015025860
DATE/TIME INCIDENT:	08/19/2015@2005	LOCATION INCIDENT:	ST. JOHNS AVE
DATE/TIME ARREST:	08/19/2015@2023	LOCATION ARREST:	ST. JOHNS AVE

DEFENDANT INFORMATION

DEF	LAST	FIRST	MID	DOB	AGE	SSN	STATEMENT
#1	GREEN	TAPPIA	D		25		NO

CHARGES

DEF	DEFENDANT(S) CHARGES	WARRANT/SUMMONS
#1	FAILURE TO STOP FOR BLUE LIGHTS AND SIRENS	66305GT

VICTIM INFORMATION

VIC	LAST	FIRST	ADDRESS	PHONE	DOB
#1					

WHAT IS DEFENDANT(S) ACCUSED OF DOING

On August 19th, 2015 at approximately 8:05pm officers got information about a subject in a grey Nissan infinity at 2000 McMillan that possibly had a warrant for a violent felony. When officer's arrived at 2000 McMillan they observed a car matching that description with a subject inside. Once the defendant observed that officers were in the area he tried to flee the scene almost striking a marked patrol vehicle. Officers actively pursued the defendant by activating their emergency equipment. The defendant went down McMillan Ave, across Spruill Ave and then taking a left onto St Johns Ave while reaching approximate speeds of 65mph. The defendant took a left onto Reddin Rd where the vehicle came to a stop and the defendant fled on foot. Officers pursued the defendant on foot where they observed him run into [REDACTED] St Johns Ave. At that time a perimeter was established. The suspect noticed officers presence and came out of the stairwell willingly and without further incident

EVIDENCE

INDICATE IF SUBMITTED FOR ANALYSIS

--

DRUG CASES

1. LIST AMOUNT/WEIGHT OF DRUG (S) :
 2. LIST TYPE OF DRUG:
- FIELD TESTED YES () NO (X)

WITNESS #1

LAST NAME	FIRST	MIDDLE	PHONE NUMBER
RILEY	PTL		843-554-5700
ADDRESS/STREET NUMBER/NAME/CITY/STATE/ZIP CODE			
[REDACTED] RIVERS AVE N CHAS SC 29405			
WHAT WITNESS CAN TESTIFY TO:			
STATEMENT TAKEN: YES () NO (X)			

WITNESS #2

LAST NAME	FIRST	MIDDLE	PHONE NUMBER
NORWOOD	PFC		843-554-5700
ADDRESS/STREET NUMBER/NAME/CITY/STATE/ZIP CODE			
[REDACTED] CLEMENTS AVE # [REDACTED] NORTH CHARLESTON, SC, 29405			
WHAT WITNESS CAN TESTIFY TO: THE INCIDENT THAT OCCURED			
STATEMENT TAKEN: YES () NO (X)			

SUBMITTING OFFICER:	PTL RILEY
DIVISION REVIEWING OFFICER:	SGT BAILEY

NORTH CHARLESTON POLICE SC0100800		INCIDENT REPORT		INFORMATION ONLY ☐		CASE NUMBER 2015025860		NCIC INQ. No. ENT. No.	
INCIDENT TYPE				COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. FAILURE TO STOP FOR BLUE LIGHTS FAILURE TO STOP FOR BLUE LIGHTS				☒ YES ☐ NO	☐ YES ☒ NO	HIGHWAY/ROAD/ALLEY		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Orgn. ☒ Soc. Public ☐ Other ☐ Unknown ☐ Police Off.	
2.				☐ YES ☐ NO	☐ YES ☐ NO				
3.				☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER) Rivers Av / McMillan AVENUE, NORTH CHARLESTON, SC						ZIP CODE 29405	WEAPON TYPE		
INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME
08/19/2015	20:05		08/19/2015	21:29	08/19/2015	20:09	20:09	20:09	21:29
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.	
VICTIM'S NAME (LAST, FIRST, MIDDLE) SOCIETY				RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
						U	U	U	/ 09
ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.	
HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
	0								
ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.	
VIOLENCE/INJURY (VOTI) ☐ YES ☐ NO ☐ EXPLAIN.				COMPLAINANT OF ANY NON-VIOLENCE/INJURY ☐ YES ☐ NO ☐					
VICTIM(S) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK. ☐				DRUGS: ☐ YES ☐ NO ☐ UNK. ☐ TYPE:					
INVESTIGATION ☐ ONE MAN VEH ☐ DETECTIVE PLASMT. ☐ OTHER ☐ ALONE ☐				ASSISTED ☐ * J-TNs Jurisdiction. 8-State. 0-Out of State. U-Unknown.					
☒ SUSPECT	NAME (LAST, FIRST, MIDDLE) GREEN, TAPPIA, DEANGELO				RACE	SEX	AGE	ETH.	DATE OF BIRTH
☐ RUNAWAY					B	M	24	N	
☐ WANTED	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.				RELATED OFFENSE(S) TRA		DAYTIME PHONE	EVENING PHONE	
☒ WARRANT									
☒ ARREST	ADDRESS				CITY		STATE	ZIP CODE	LOCATION NO.
☒ JAIL									
☒ SUMMONS	SUBJECT(S) USING ALCOHOL ☐ YES ☐ NO ☐ UNK. ☒				ARRESTED NEAR OFFENSE SCENE ☒ YES ☐ NO ☐		DATE/TIME OF OFFENSE 8/19/2015 8:05:34 PM		DATE/TIME OF ARREST 8/19/2015 8:23:00 PM
DAY OF THE WEEK S M T W T F S UNK				HOW REPORTED		A= OFFICER DISPATCHED ON CALL B= REPORT TAKEN BY PHONE C= COMPLAINANT WALKED IN		D= COMPLAINT WRITTEN IN E= OFFICER INITIATED F= OTHER	
On 8-19-2015 at approximately 8:00pm Ptl. Riley and Ptc. Norwood responded to 2000 McMillan Ave in reference getting information that a possible wanted subject for a violent felony was in the parking lot in a grey Infiniti. Wearing a White T-shirt and black pants. Upon arrival officers observed a vehicle matching that description parked in a parking space, the subject saw officers pulling up and started to drive off almost making contact with my marked patrol vehicle at a high rate of speed in an attempt to avoid officers. Ptl. Riley started to follow the suspect out of the parking lot onto McMillan Avenue, Ptl. Riley then tried to conduct a traffic stop by activating my Blue lights and sirens. Ptl. Riley caught up to the subject at McMillan Ave and Sprull Ave, at that time Ptl. Riley was able to advise dispatch the tag information which was [REDACTED]. The suspect reached speeds of approximately 65mph while crossing Sprull Ave, where the suspect continued to refuse to comply for the traffic stop with emergency equipment activated. The suspect then took a left onto Saint Johns									
JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY					JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY				
TYPE (GROUP)									TOTAL VALUE
STOLEN									
DAMAGED									
BURNED									
RECOVERED									
SEIZED									
SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		S. F.		☒ ACTIVE ☐ ADM. CLOSED		☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18	
						☐ UNFOUNDED		☒ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE		1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE NO CUSTODY	
REPORTING OFFICER(S)		DATE		UNIT NUMBER		APPROVING OFFICER		DATE	
RILEY, JERRID BLAINE		8/19/2015 8:05:34 PM		333		BAILEY, DANIEL STEPHEN			
NORWOOD, PATRICK WILLIAM-LAWRENC		8/19/2015 8:09:00 PM		197		FOLLOWUP INVESTIGATION ☐ YES ☒ NO		OFFICER	

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: .08/19/2015 20:05	OCA #: 2015026880
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Failure to Stop for Blue Lights

Ave, and then took another left onto Reddin Rd where the vehicle came to a complete stop. The suspect then jumped out of the vehicle and fled on foot towards Saint Johns Ave. Ptl Riley pursued the suspect on foot where he observed the suspect enter 3 Saint Johns Ave and it appeared that the suspect had entered apartment 10 this is located on the second floor of the apartment building. Ptl. Riley and other assisting officers held perimeter at that time. At the time perimeter was established K9 arrived on scene to assist. It was determined that the suspect was still hiding in the stairwell and did not enter apartment 10 this was advised by communications because the occupant of apartment 10 was on the telephone with communications advising the suspect was trying to gain entry. The suspect then acknowledged the police presence and came out from the stairwell without further incident. At that time the suspect was taken into custody by Pfc. D. Smoak while perimeter units maintained officer safety.

Following is a list of charges the suspect was wanted for through the North Charleston Police Department:
Kidnapping, Armed Robbery and Possession of a Weapon during a Violent Crime (2015011975)
and Forgery X4 (2015014941)

The suspect was also had active warrants with City of Charleston Police Department and Probation, Pardon, and Parole (Department of Corrections).

The suspect was served with his warrants and transported and lodged into CCDC by a member of the NCPD Transport Team. The vehicle after it was searched was released to the registered owner Mavis Scott. It was confirmed via NCIC that the suspect was Driving Under Suspension 1st offense, he was additionally charged with this as well as Failure to Stop for Blue Lights and Siren.

No further information at this time.

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 08/19/2015 20:05	OCA #: 2015025860
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supplement for pursuit

On 08/19/2015 at approximately 8:05 pm Pfc Norwood and Ptl Riley received information from an anonymous source that a black male suspect occupying a Silver/Gray Infiniti was in the parking lot of 2000 McMillan and that he had a warrant with the City Of Charleston Police Dept.

Pfc Norwood and Pfc Riley attempted to make contact with the suspect after viewing a black male sitting inside the vehicle described at 2000 McMillan. Prior to making contact Pfc Norwood activated his body camera and also the in car video/audio of unit 225.

Pfc Norwood stopped his vehicle near the rear of the suspect's vehicle and Ptl Riley stopped his car in the front.

Pfc Norwood then visually observed the suspect turned his head back to look at unit 225. At this time Pfc Norwood gained a visual description of the suspect's facial features and his slender build. Once the suspect observed officer's attempting to approach him he fled at high rate of speed driving recklessly out of the parking lot and onto McMillan.

Pfc Norwood then observed Ptl Riley following behind the suspect taking a left onto McMillan.

Pfc Norwood then followed and activated the blue lights and siren of unit 225. Pfc Norwood reached speeds of up to 60 mph while driving unit 225 down McMillan and then slowed to clear the intersection crossing Spruill Ave. Pfc Norwood then accelerated down St Johns from McMillan following as the second vehicle in the pursuit. At this point of the pursuit the suspect turned recklessly onto Reddin from St. John's and abandoned his vehicle on Reddin, which was a 2003 Nissan Infiniti bearing SC TAG [REDACTED] belonging to the owner (Mavis Scott). Pfc Norwood observed the suspect fleeing on foot with Officer Riley on foot pursuing. Pfc Norwood then exited his patrol car and engaged in the foot pursuit which ended with the suspect running into Apt. [REDACTED] at [REDACTED] St. Johns. This apartment was not his residence according to the tenants who stated that the suspect walked in through the open door in an attempt to have the tenant's hide him. The tenant's then called the police to report the suspect. While establishing perimeter Pfc Norwood was shown a photograph of the suspect. Pfc Norwood did recognize the picture as matching the individual in the vehicle at 2000 McMillan that fled officer's. The suspect has active warrants including Armed Robbery, Kidnapping, and Possession of Weapon during commission of a violent crime.

Pfc Norwood established a perimeter with his department issued weapon drawn. After the assistance of K9 and other Officer's, Pfc Norwood observed the suspect come out of the apartment stairwell and surrender.

The entire incident was captured on the Body Camera of Pfc Norwood. The field of vision captured showed Pfc Norwood running in pursuit of the suspect and also captured the front view of the suspect as he walked out of the apartment and surrendered. Other evidence captured showed a front view of the tenant's in apt. [REDACTED] stating that the suspect walked into the apartment and told them to hide him and he would give them money, etc. if they did.

ADDITIONAL NARRATIVE

Agency Name: NORTH CHARLESTON POLICE DEPARTMENT	ORI #: SC0100800	Report Date/Time: 08/19/2015 20:05	OCA #: 2015025800
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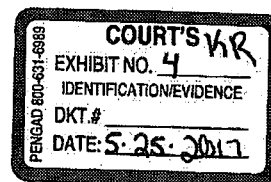
Supplemental entered by MPO Cummins 100

On 08-19-2015 MPO Cummins responded to assist officers with a vehicle pursuit, the pursuit was in reference to a possible murder suspect. Prior to my arrival the suspect fled on foot from Reddin Road and into 3835 Saint Johns Ave. I arrived on scene and due to the suspect possibly being an armed murder suspect I deployed the department issued patrol rifle and stood perimeter watching the door to the stairs were the suspect was sitting. K-9 arrived on scene and advised he would deploy his K-9, the suspect came down the stairs with his hands up and was then detained without incident.

This incident was recorded with the department issued body worn camera.

334

Random selection of alternate
being moved into jury panel



4/25/2017

736

2/11/12 CN

Atlantic Star Foods LLC

Earnings Statement

Keith Lee

Employee ID
Location
Hourly1138932
0658-50
\$7.25Fed Taxable Income
Fed Filing Status
State Filing Status276.73
S-1
S-0Check Date April 14, 2015
Period Beginning March 24, 2015
Period Ending April 6, 2015Check Number 9006179
Net Pay 242.91
Check Amount 242.91

Earnings	Rate	Hours	Amount	YTD
REGULAR	7.25	38.17	276.73	949.60
Gross Earnings		38.17	276.73	949.69

Taxes	Amount	YTD
FITW	3.44	4.83
MED	4.01	13.77
SC	9.22	29.59
SS	17.15	58.88
Taxes	33.82	107.07

Deductions	Amount	YTD
------------	--------	-----

No Deductions

Direct Deposits Type	Account	Amount
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No Direct Deposits

WARNING

YOUR FINGERPRINTS COULD CONTAMINATE
THIS CHEMICALLY-PROCESSED EVIDENCE
DO NOT TOUCH

7.13



**North Charleston Police Department
Report of Photographic Lineup**

OCA #: 2015011975 Date: 4-16-15
 Time: 11:20 Location: 2500 City Hall Lane
 Investigating Officer: Det Kaufman
 Identifying Witness (name & DOB): Keith Lee 7/6/91

- KDL1. I am going to show you a series of photographs of individuals or an array of six photographs of individuals (circle appropriate one).
- KDL2. These photographs may or may not be the person who committed the crime. It is just as important to clear innocent people as it is to identify possible suspects. Whether or not you identify someone, the police will continue to investigate.
- KDL3. After you are done, I will not be able to provide you with any feedback or comment on the results of the process.
- KDL4. Do not discuss this identification procedure or the results with other witnesses in this case.
- KDL5. Focus on the event: the place, view, lighting, your frame of mind, etc. Take as much time as you need.
- KDL6. People may not appear exactly as they did at the time of the event, because features such as clothing style, hair color, hair style, etc. may change, even in a short period of time.
- KDL7. As you look at the photographs, tell me if you recognize the person in them. If you do, please tell me how you know the person, and in your own words, how sure you are of the identification.

Witness Identification Statements

Identification Made: Yes ☒ No ☐

The person in picture 4 looks like him. I am 75% sure
he is the person.

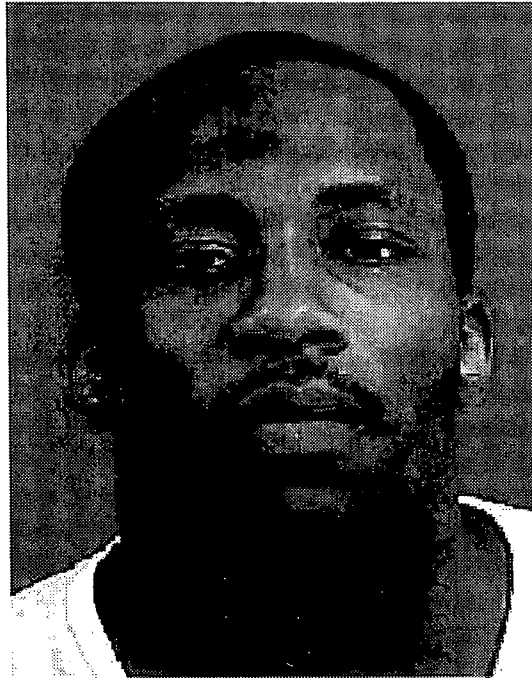
[Signature]
 Independent Administrator's Signature

Keith Lee
 Witness Signature



2015011975

**North Charleston Police Department
Photographic Line Up / Array**



Y Keith Deshaun Lee
4/16/15

ECK/0308077
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-011975

ARREST WARRANT NUMBER
2015A1010201769

DATE OF ARREST

08/19/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV - 3 2015
Date:

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

5-25-2017
Date:

DOCKET NO. 2015-GS-10-05983

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2015

THE STATE

VS.

TAPPIA DEANGELO GREEN
B/M DOB: [REDACTED]

Indictment for

ARMED ROBBERY

SC Code: § 16-11-0330(A)
CDR Code: 0139

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

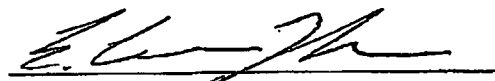
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about April 14, 2015, in Charleston County, South Carolina, the Defendant, Tappia Deangelo Green, 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 Keith Deshawn Lee 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.


CULVER KIDD
ASSISTANT SOLICITOR

ECK/0308077
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-011975

ARREST WARRANT NUMBER
2015A1010201768

DATE OF ARREST

08/19/2015

ACTION OF GRAND JURY
TRUE BILL

M. L. L... NOV 4 2015
Foreperson of Grand Jury Date:

VERDICT

Guilty

John Paray 5-25-2017
Foreperson of Petit Jury Date:

DOCKET NO. 2015-GS-10-05982

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2015

THE STATE

VS.

TAPPIA DEANGELO GREEN
B/M DOB: [REDACTED]

Indictment for
KIDNAPPING

SC Code: § 16-03-0910
CDR Code: 0095

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

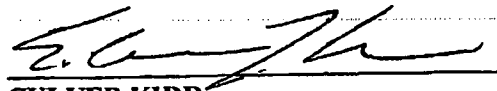
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina on or about April 14, 2015, the Defendant, Tappia Deangelo Green, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Keith Deshawn Lee, without authority of law; all in violation of Section 16-3-910 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.


CULVER KIDD
ASSISTANT SOLICITOR

ECK/0308077
WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER
2015-011975

ARREST WARRANT NUMBER
2015A1010201770

DATE OF ARREST

08/19/2015

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

NOV 3 2015
Date:

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

5-25-2017
Date:

DOCKET NO. 2015-GS-10-05984

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
NOVEMBER TERM 2015

THE STATE

VS.

TAPPIA DEANGELO GREEN
B/M DOB: [REDACTED]

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME

SC Code: § 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

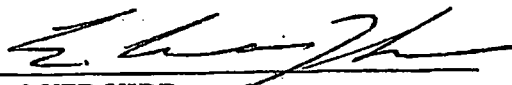
INDICTMENT

At a Court of General Sessions, convened on November 2, 2015, the Grand Jurors of Charleston County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Charleston County, South Carolina, on or about April 14, 2015, the Defendant, Tappia Deangelo Green, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: Kidnapping and/or Armed Robbery; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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


CULVER KIDD
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

TAPPIA DEANGELO GREEN

AKA:

Race: Black/African American Sex: MDOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City/State/Zip: North Charleston, SC 29405-8206ID# [REDACTED] SID# [REDACTED]GDE: Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Armed Robbery

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 ☐ §17-25-45(CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation.☐ Negotiated Sentence. ☐ Recommendation by the State.

ATTEST:

[Signature] 101926
Daniel West Cooper, Assistant Solicitor SC Bar #

Defendant

[Signature] 411
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/25/17☒ 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. 646 days☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service EmploymentTotal \$ plus 20% fee: \$ Payment Terms: Obtain GED ☐☐ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. May serve W/E beginning Recipient: Substance Abuse Counseling ☐*Fine: \$ Random Drug/Alcohol Testing ☐\$14-1-206 (Assessments 107.5%) \$

Fine may be pd. in equal consecutive weekly/monthly

\$14-1-211(A)(1)(Conv. Surcharge) \$100 \$ 100.00pmts. of \$ Beginning \$14-1-211(A)(2)(DUI Surcharge) \$100 \$ \$ Paid to Public Defender Fund\$56-5-2995 (DUI Assessment) \$12 \$ \$56-5-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ \$14-1-212 (Law Enforc. Funding) \$25 \$ 25.00\$14-1-213 (Drug Court Surcharge) \$150 \$ \$50-21-114 (BUI Breath Test Fee) \$50 \$ \$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL: \$ 128.75☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Clerk of Court/Deputy Clerk: Christine BandyPresiding Judge: [Signature]Judge Code: 21/35Court Reporter: Keisha ReedSentence Date: 5/25/17

SCCA 217 (07/2016)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

TAPPIA DEANGELO GREEN

AKA:

Race: Black/African American

Sex: M

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: North Charleston, SC 29405-8206

DL# [REDACTED]

SID# [REDACTED]

*CDL: Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Kidnapping

In violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense.☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ARREST:

Daniel West Cooper, Assistant Solicitor SC Bar # 101926

Defendant

Attorney for Defendant

411
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/25/17☒ (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. 646 days)☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

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: _____

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 61.6 (Public Def/Prob)

\$500

\$

\$14-1-242 (Law Enforce. Funding)

\$25

\$25.00

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

\$150

\$

\$50-2-114 (BUI Breath Test Fee)

\$50

\$

\$56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

7% to County (if paid in installments)

\$

\$3.75

TOTAL:

\$128.75

Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Keisha Reed

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-10-05982

A/W: 2015A1010201768

Date of Offense: 04/14/2015

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☒ CONVICTED OF or☐ PLEADSPresiding Judge: [Signature]Judge Code: 2135Sentence Date: 5/25/17

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

TAPPIA DEANGELO GREEN

AKA:

Race: Black/African American Sex: M

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: North Charleston, SC 29405-8206

DL# [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

INDICTMENT/CASE#: 2015-GS-10-05984

A/W: 2015A1010201770

Date of Offense: 04/14/2015

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

TO: Possession Of A Weapon During The 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 ☐ §17-25-45 (CSC w/minor 1st or Lowd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Daniel West Cooper, Assistant Solicitor SC Bar # 101926

Defendant

Attorney for Defendant SC Bar # 411

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 Service standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/25/17☒ 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. 646 days☐ The Defendant is to be placed on 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 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

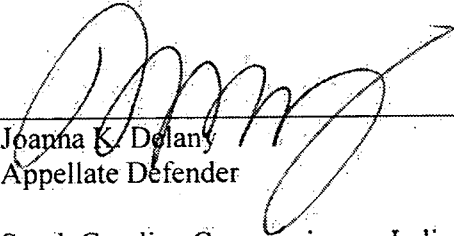
☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP days/hours Public Service EmploymentTotal: \$ plus 20% fee: \$ Payment Terms: Obtain GED ☐☒ Set by SCDPPPS Attend Voc. Rehab. Or Job Corp. Recipient: May serve W/E beginning Fine: Substance Abuse Counseling ☐§14-1-206 (Assessments 107.5%) \$ Random Drug/Alcohol Testing ☐§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ pmts. of \$ Beginning §56-5-2995 (DUI Assessment) \$12 \$ \$ Paid to Public Defender Fund§56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Prob) \$500 \$ Other: §14-1-212 (Law Enforce. Pending) \$25 \$ 25.00§14-1-213 (Drug Court Surcharge) \$150 \$ §50-21-114 (BUI Breath Test Fee) \$50 \$ §56-5-2942(J) (Vehicle Assessment) \$40/ca \$ 3% to County (if paid in installments) \$ \$ 3.75TOTAL \$ 128.75☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/Deputy Clerk: Christine DavisCourt Reporter: Keisha ReedPresiding Judge: Judge Code: 2135 Sentence Date: 5/25/17

SCCA211 (07/2016)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

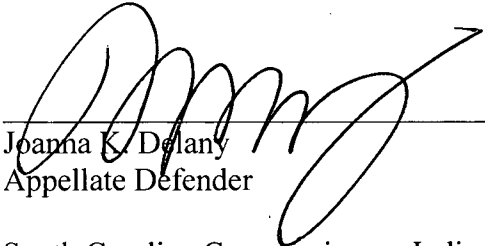
ATTORNEY FOR APPELLANT

This 14th day of November, 2018.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 14th day of November, 2018.

RECEIVED
NOV 14 2018
SC Court of Appeals